

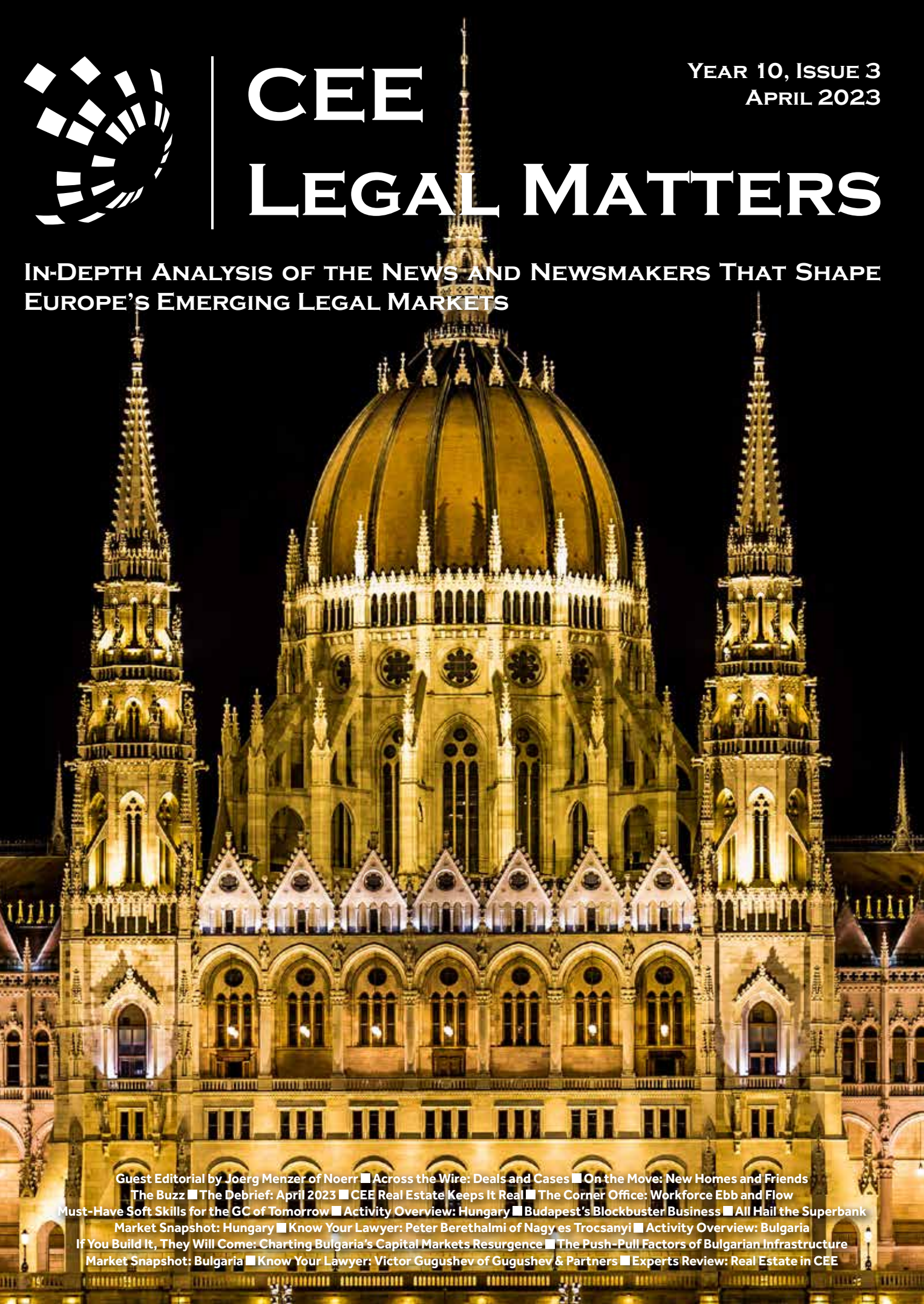
CEE

YEAR 10, ISSUE 3

APRIL 2023

LEGAL MATTERS

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



Guest Editorial by Joerg Menzer of Noerr ■ Across the Wire: Deals and Cases ■ On the Move: New Homes and Friends
The Buzz ■ The Debrief: April 2023 ■ CEE Real Estate Keeps It Real ■ The Corner Office: Workforce Ebb and Flow
Must-Have Soft Skills for the GC of Tomorrow ■ Activity Overview: Hungary ■ Budapest's Blockbuster Business ■ All Hail the Superbank
Market Snapshot: Hungary ■ Know Your Lawyer: Peter Berethalmi of Nagyes Trocsanyi ■ Activity Overview: Bulgaria
If You Build It, They Will Come: Charting Bulgaria's Capital Markets Resurgence ■ The Push-Pull Factors of Bulgarian Infrastructure
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EDITORIAL: DEAR RADU,

By Radu Neag

Every magazine issue, I inevitably glance over the Letters to the Editors text: an invitation for our readers and contributors to critically engage with us and the articles we publish. Sadly, we get much fewer such letters than I'd like. Still, today I realized that – while they might not start with the customary Dear Editor – we do get a large number of emails that would fit the bill.

So, I thought I'd share those recurring conversations with everyone, to showcase that we do hear you, and share our resulting thought processes. Frequently Asked Questions for the Editors, a FAQE letter to the editors, if you will:

Why did you change my name / the name of my law firm / the client's name? We cannot use non-English characters in print or online. The CEE region is linguistically diverse, and we know it's suboptimal to change names – but for consistency and ease of processing, we're sticking to one language (US English). I hope you'll agree with us that the small inconsistencies produced in translation are preferable to the inevitable mistakes that would occur when non-native speakers are processing 20-plus different alphabets and languages.

Why can't we spell the firm's name / the client's name in all capital letters? Leaving aside that we don't like shouting at our readers, because that's not how the language works. While branding materials can create and follow their own rules, printed text is simple: names start with capital letters unless they are an acronym. Acronyms are all capitals. Compound names (containing two or more words) might have each original word capitalized.

Can you refer to me by first name in the article/interview? We could, but we decided we shouldn't a long time ago. You know us, we're a friendly bunch, and we address everyone by their first name in our communications. For our articles, we feel using last names is a good balance between being formal (Mr. Cotarcea) and striking too friendly a tone (Radu). Not to mention first name doubles are a lot more frequent than people's last names being the same (the sad case of the CEELM Editors team).

Can I see the final article/interview before publishing? No, we just don't have the timeslot in our process for an additional confirmation conversation – especially if we were to incorpo-

rate conflicting requests from different contributors last minute. Longer Answer: we always point out when your (written) notes or answers need to be confirmed for publishing. After that point, we might work on that content (to clarify, shorten, or streamline) but we'll not change any of its meaning. That is, ultimately, an Editor's job. If ever you're unhappy with the results, please call us on it.



Who else is contributing to the piece? No, we just can't share that info (and spoil the surprise). You'll just have to find out, along with everyone else, once the magazine is published.

Why did you change that bit of my text? Why can't I use lists, bullet points, or references? Same answer to both: because we try to feature insightful articles, rather than dry recitations and compilations of legal texts. We don't want our magazine to be extra work – where you need to grab the odd legal text in order to understand a point. As such, we'd like our experts to process the information themselves – and distill it into insights – rather than leave that job to our readers.

Why do you need another photo? This one looks fine to me. The resolution needed for print quality is much higher. But it is not ridiculous: usually, a 1-megabyte photo will do (something that any semi-modern phone can take if you are really scrambling).

Why do we have to have a Partner or Head of Practice as the author? As said above, we like featuring legal experts and their insights, so this is a good rule of thumb. We understand you might have a brilliant Senior Associate you want to put forward: we'll still need the firm's stamp of approval for that content, and that usually comes from a Partner or HoP – the same as your clients usually expect. Also, give that person a promotion if they deserve it – we'll happily cover the appointment.

I had this idea for an article I wanted to put forward. Would you like to publish it? Depends. In essence, the answer is always yes, but it comes with many caveats (related to space, timeliness, and opportunity costs). So please involve us in your thought process as early as you can (ideally, way before finalizing the draft) and we'll do our best to align our objectives. ■



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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: ADAPTABILITY IN TIMES OF CHANGE

By Joerg Menzer, Head of Bucharest Office, Noerr



Adaptability in times of change is one of the most needed qualities in individuals, but societies at large also need to have it, to better take advantage of shifting times. Are the CEE region and its legal profession able to adapt to the changes it is facing?

CEE has been developing at a good pace in the past years. Foreign investments are being made constantly, despite the difficulties Europe and the world are facing today. The pandemic was one challenge for the world gener-

ally. The countries in the CEE region all adapted differently but overcame this period by identifying growth opportunities. In the legal market of the pandemic years, there was a shift of perspective towards the digital world: IT&C, data privacy, consumer rights, implementation of secure remote work processes, global online transactions, etc. A new regulatory framework was created in this field and processes needed to be implemented in compliance with that. All legal professionals quickly embraced the changes and strengthened their services, to meet the needs of their clients. In addition, the legal industry got a boost of digitalization itself and proved to be quickly able to adapt to and use the “new normal” for itself and its clients.

The war in Ukraine and the energy crisis are the new challenges remodeling the economy and the way future industrialization and the service-based industry are being constructed. And they are changing demand for legal consultancy as well.

The current geopolitical situation presents numerous challenges. However, it is also a chance for the CEE region and, thus, for the legal profession in CEE. Countries need to adapt. The move of their economies towards an IT-based, service economy with a highly automatized industry using green energy cannot be achieved without drastic changes by both governments and societies. And here adaptability of a new kind is needed: not the flexibility of changing political agendas and strategies according to the latest poll or upcoming elections – rather, a flexibility rooted in a clear and steady policy of industrial

development and functional services by the state.

The legal profession must contribute by getting involved in society, in advising governments, and by standing up for the Rule of Law. When looking to invest in a country, there are some focal aspects that investors analyze: infrastructure, political stability, the workforce (availability, qualifications, and cost), and smooth administrative processes. And it's exactly here that adaptability has a different meaning from what is traditionally understood in many CEE countries. To adapt means needing to gain, defend, or develop a competitive position compared to other regions. Many of the CEE countries like Poland and the Czech Republic have pursued this stable development, while others are still struggling.

It must be understood that the development of a strong civil society, school, and medical system is just as important as that of infrastructure and IT backbones. Only based on this can a country adapt, as the capacity for adaptability depends on the qualified middle class of a country. If this part of society is lost – be it through mental resignation or worse, leaving the country – no future development in changing times can be secured. And here, the legal community can also be decisive. Leading law firms and lawyers need to understand that they embody the Rule of Law, and they must explain that not only to their clients but also to public stakeholders and within their community. The Rule of Law, especially in CEE, is under pressure and, thus, the legal profession must defend it.

The current geopolitical context attracts investments from neighboring countries into the CEE region, whether relocations from Ukraine and Russia or nearshoring of supply chains from Asia. There is an increasing activity of restructuring and rethinking the geostrategic positioning of companies. This leads to a new mobilization of M&A, Real Estate, and Tax teams, for example. The legal profession is quite capable of supporting these investments and creating the needed trust in our region.

CEE countries and their people are open-minded and characterized by adaptability, creativity, and the readiness to put effort into the things they wish for. However, the legal profession must help governments understand the need to truly invest in the future. ■

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ACROSS THE WIRE: DEALS AND CASES

Date Covered	Firms Involved	Deal/Litigation	Value	Country
16-Feb	KPMG Legal; Taylor Wessing	Taylor Wessing advised the Amedes Group on its acquisition of the remaining 49% stake in ArchimedLife from VLSI Holding. KPMG Law advised the seller.	N/A	Austria
16-Feb	DSC Doralt Seist Csoklich; GvW Graf von Westphalen; Wolf Theiss	Wolf Theiss advised the JP Hospitality Investors Club and the JP Immobilien Group on two hotel development and lease agreements for projects in Kitzbuehel and Trieste. DSC Doralt Seist Csoklich and Graf von Westphalen reportedly advised the two hotel operators.	N/A	Austria
17-Feb	Frimmel Anetter Schaal; Raue; Schoenherr	Schoenherr, working with Raue, advised Allmyhomes on establishing a joint venture with a consortium of Austrian real estate experts operating as Allmyhomes Venture Partner AT. Frimmel Anetter Schaal reportedly advised the consortium.	N/A	Austria
22-Feb	Herbst Kinsky; KPMG Legal	Herbst Kinsky advised Star Capital Partners on obtaining a majority shareholding in Myflexbox Austria in the course of a capital increase. KPMG Law affiliate Buchberger Etmayer Rechtsanwaelte advised Salzburg AG – previously the sole shareholder of Myflexbox – on the issuance of the new shares to Star Capital.	N/A	Austria
28-Feb	Herbst Kinsky	Herbst Kinsky advised AG Capital on the acquisition of majority stakes in Intelia and Embers and on their merger into a new group of companies.	N/A	Austria
1-Mar	Baer & Karrer; Haider Obereder Pilz; Wolf Theiss	Wolf Theiss, working with Baer & Karrer, advised Farner International on the transaction that saw The Skills Group becoming part of European agency group Team Farner. Haider Obereder Pilz reportedly advised the sellers.	N/A	Austria
8-Mar	BPV Huegel; DSC Doralt Seist Csoklich; Linklaters; Schiefer	BPV Huegel, working with Linklaters, advised the Macquarie European Infrastructure Fund 4 on the sale of its Energie Steiermark stake to the Province of Styria for EUR 525 million. DSC Doralt Seist Csoklich and, reportedly, Schiefer Rechtsanwaelte advised the Province of Styria.	EUR 525 million	Austria
10-Mar	Roschier; Schoenherr; Travers Smith	Schoenherr, working with Travers Smith and Roschier, advised Inflexion on the acquisition of a majority stake in European financial technology company Nomentia from PSG Equity and Verdane.	N/A	Austria
10-Mar	CMS; KPMG Legal	CMS advised Swiss ABB E-mobility AG on its Series A investment into Austrian property technology company Payuca. KPMG Law advised Payuca.	N/A	Austria
14-Mar	Cerha Hempel; Weik	Cerha Hempel advised Raiffeisen Immobilien KAG on its acquisition of a business center in Kirchberg am Wagram, Lower Austria, for the R320 special real estate fund. Weik Attorneys-at-Law reportedly advised the seller.	N/A	Austria
13-Mar	CMS; E+H; Milbank	CMS advised DPE Deutsche Private Equity on the sale of its stake in the VTU Group to winning bidder Altor Fonds. Milbank and E+H advised Altor Fonds.	N/A	Austria; Poland; Romania
16-Feb	Clifford Chance; Djingov, Gouginski, Kyutchukov & Velichkov; Linklaters; Tsvetkova Bebov & Partners	Djingov Gouginski Kyutchukov & Velichkov, working with Linklaters, advised the joint lead managers on the Republic of Bulgaria's EUR 1.5 billion issuance of sovereign bonds under its global medium-term note program. Tsvetkova Bebov & Partners, working with Clifford Chance, advised the Bulgarian state.	EUR 1.5 billion	Bulgaria
21-Feb	Musseva & Ivanov; Tokushev and Partners	Tokushev & Partners and Musseva & Ivanov helped MFG Ins obtain an insurance license from the Financial Supervision Commission of Bulgaria.	N/A	Bulgaria
22-Feb	Wolf Theiss	Wolf Theiss advised the IFC on its acquisition of a minority stake in Vienna Insurance Group-owned pension assurance company Doverie.	N/A	Bulgaria
10-Mar	Djingov, Gouginski, Kyutchukov & Velichkov; Schoenherr	Djingov Gouginski Kyutchukov & Velichkov advised SAT Health on its acquisition of the Home Medic – Home for Medical Center. Schoenherr reportedly advised seller Danail Danilov.	N/A	Bulgaria

Date Covered	Firms Involved	Deal/Litigation	Value	Country
20-Feb	Miskovic & Miskovic; Savoric & Partners	Savoric & Partners advised Croatian private equity fund Feelsgood on its EUR 600,000 investment in Zagreb-based educational technology company Vidi-To. Miskovic & Miskovic advised Vidi-To and its majority owner, founder, and CEO Tomislav Kotnik.	EUR 600,000	Croatia
14-Mar	Miskovic & Miskovic	Miskovic & Miskovic advised joint agents Erste & Steiermaerkische Bank, OTP, Privredna Banka Zagreb, Raiffeisen Bank, and Zagrebacka Banka and co-arranger Hrvatska Postanska Banka on the Republic of Croatia's EUR 1.85 billion retail bond issuance.	EUR 1.85 billion	Croatia
20-Feb	Kocian Solc Balastik; Wolf Theiss	Kocian Solc Balastik advised the Arete Group on the acquisition of land for the expansion of its logistics park in Rokycany. Wolf Theiss advised the Duvenbeck Group on the sale of the plot and the lease agreement for the Arete Park Rokycany 2 logistics center to be constructed on it.	N/A	Czech Republic
9-Mar	Clifford Chance	Clifford Chance advised European lottery operator Allwyn on a EUR 335 million accordion facility with a syndicate of international banks. Allen & Overy reportedly advised the banks.	EUR 335 million	Czech Republic
21-Feb	Clifford Chance; White & Case	Clifford Chance advised a club of Czech banks led by Ceska Sporitelna on their financing for the Rohlik Group. White & Case advised Rohlik.	N/A	Czech Republic; Romania
20-Feb	Ellex (Raidla); Thommessen Law Firm	Ellex, working with Norway's Thommessen, advised InfraVia on its acquisition of a stake in wind farm developer Vindr Group.	N/A	Estonia
22-Feb	Dentons; Sorainen	Sorainen, working with Dentons, advised Deutsche Bank on a EUR 600 million syndicated loan agreement with Eesti Energia to refinance its 2016 bond issuance and support investments.	EUR 600 million	Estonia
28-Feb	Sorainen	Sorainen advised the shareholders of Milrem Robotics on their sale of a majority stake in the company to the Edge Group.	N/A	Estonia
10-Mar	Sorainen	Sorainen advised Estonia-based health technology start-up Nanordica Medical on raising EUR 375,000.	EUR 375,000	Estonia
22-Feb	KLC	KLC successfully represented three KTEL regional bus companies – those based in Larisa, Ioannina, and Heraklion – in a pilot trial procedure before the Supreme Administrative Court for the compensation of state-granted discounts on fare tickets.	N/A	Greece
28-Feb	Karatzas & Partners; Koutalidis	Koutalidis advised the National Bank of Greece on the issuance of a EUR 71 million bond loan by Reds subsidiary Gyalou Emporiki Kai Touristiki Monoprosopi for the purchase of the former US base in Gournes, Crete. Karatzas & Partners advised Reds.	EUR 71 million	Greece
2-Mar	Cytowski & Partners; White Summers	Cytowski & Partners advised LaunchHub Ventures and Emerge Education on leading a USD 5 million Series A round for Colossyan. The White Summers European Office in association with Weiszbart & Partners advised Colossyan.	USD 5 million	Hungary
14-Mar	Greenberg Traurig	Greenberg Traurig advised the Cromwell Property Group Poland on its sale of the Wisniowy Business Park office complex in Warsaw to an unidentified Hungarian investor through a share deal.	N/A	Hungary; Poland
2-Mar	Boros Arpad Andras; Cerha Hempel; SOG	Cerha Hempel Hungary and the SOG Law Firm been appointed as members of an international legal consortium to screen potential companies and advise on investments by the Emirate of Dubai's "Operation 300 Billion" program. The consortium also reportedly includes the Boros Arpad Andras law firm in Budapest.	N/A	Hungary; Serbia
16-Feb	Ellex (Klavins)	Ellex successfully represented TD Trans before the Senate of the Supreme Court of Latvia in a cassation claim regarding a Riga Regional Court ruling on the breach of the unfair competition prohibition, where almost EUR 30,000 in loss compensation was awarded.	N/A	Latvia
16-Feb	Cytowski & Partners	Cytowski & Partners advised Trace.Space on its USD 1.5 million pre-seed financing round led by Fiedler Capital and including Foreward, Charlie Sanghurst, and Andris Berzins from Change Ventures.	USD 1.5 million	Latvia
16-Feb	Eversheds Sutherland; TGS Baltic	TGS Baltic advised Eco Baltia on its inaugural EUR 8 million issuance of three-year bonds. Eversheds Sutherland acted as trustee for the issuance.	EUR 8 million	Latvia
21-Feb	Cobalt	Cobalt advised Latvenergo on its EUR 50 million issuance of six-year green bonds with a fixed annual interest rate and a yield to maturity of 4.952%.	EUR 50 million	Latvia
8-Mar	Walless	Walless advised the Eco Baltia Group on its acquisition of Pilsetas Eko Serviss via its subsidiary Latvijas Zalais Punkts.	N/A	Latvia

Date Covered	Firms Involved	Deal/Litigation	Value	Country
22-Feb	Motieka & Audzevicius; Sorainen	Sorainen advised the Titanium Baltic Real Estate fund on its acquisition of a Vilnius building housing Avia Solutions Group's headquarters. Motieka & Audzevicius advised Avia Solutions Group company AviaAM Leasing Service Centre on the share sale and leaseback transaction.	N/A	Lithuania
24-Feb	Adon Legal	Adon Legal advised subsidiaries of the Galio and NDX groups on a EUR 53 million refinancing from the SEB Group for their recently acquired retail portfolio including 17 stores, with Maxima and Ermitazas as the main tenants.	EUR 53 million	Lithuania
28-Feb	Cobalt	Cobalt advised the shareholder of the SBS Group on the sale of the company to Monnoyeur subsidiary Arkance.	N/A	Lithuania
6-Mar	Sorainen	Sorainen provided pro bono advice to Local Ocean on intellectual property matters related to its development of sustainable and eco-friendly farming technology for growing high-quality shrimp.	N/A	Lithuania
10-Mar	Motieka & Audzevicius; Primus; TGS Baltic	Motieka & Audzevicius advised In Balance Grid on a EUR 1.3 million investment from EIT Urban Mobility, the Business Angels Fund, Civinity, and the Motieka Investment Fund. Primus advised the Business Angels Fund and other investors. TGS Baltic reportedly advised existing investor Contrarian Ventures.	EUR 1.3 million	Lithuania
13-Mar	Sorainen	Sorainen successfully advised the receivership estate of EminiFX in recovering and repatriating approximately EUR 60 million in Bitcoin to the victims in an ongoing case where US authorities are targeting a crypto-related Ponzi-like scheme.	USD 59 million	Lithuania
17-Feb	Allen & Overy	Allen & Overy advised Solida Capital and 1 Asset Management on a new purpose-built student accommodation project in Warsaw.	N/A	Poland
20-Feb	Clifford Chance; Rymarz Zdort Maruta	Rymarz Zdort Maruta advised the Three Seas Initiative Investment Fund on its EUR 150 million investment in R.Power. Clifford Chance advised R.Power.	EUR 150 million	Poland
20-Feb	Norton Rose Fulbright	Norton Rose Fulbright advised a fund managed by Sienna Private Credit on its mezzanine financing to a Polish borrower for the construction of a 35-megawatt wind farm.	N/A	Poland
21-Feb	Clifford Chance; Norton Rose Fulbright	Norton Rose Fulbright advised RGreen Invest SAS on the EUR 38 million financing provided to PAD RES for the construction of a 76-megawatt photovoltaic portfolio in Poland. Clifford Chance advised PAD RES.	EUR 38 million	Poland
21-Feb	Allen & Overy; Clifford Chance	Clifford Chance advised a consortium of banks on their agreement for a revolving credit facility of up to PLN 1 billion and a term loan of up to PLN 1.5 billion with Enea, granted as a sustainability-linked loan. Allen & Overy advised Enea.	PLN 2.5 billion	Poland
22-Feb	SRC	Poland's SRC Law Firm advised landlord Golden Star Estate on the lease agreement for nearly 14,000 square meters of office space in the Konstruktorska Business Center in Warsaw to Lionbridge.	N/A	Poland
22-Feb	Hogan Lovells; WKB	Hogan Lovells advised Bank Millennium on its sale of an 80% stake in Millennium Financial Services to Towarzystwo Ubezpieczen na Zycie Europa and Towarzystwo Ubezpieczen Europa and their strategic bancassurance partnership. WKB Lawyers advised both buyers.	N/A	Poland
22-Feb	Gessel	Gessel advised Kredyt Inkaso on establishing its PLN 100 million bond issuance program and the required regulatory approvals.	PLN 100 million	Poland
23-Feb	ADP Legal; Wardynski & Partners	Wardynski & Partners advised the Cainiao Network on its Polish partnership agreement with Deutsche Post DHL Group company DHL E-Commerce Solutions. ADP Legal reportedly advised the DHL company.	N/A	Poland
23-Feb	Clifford Chance; WKB	Clifford Chance advised Abris Capital Partners and Graal Group founder Boguslaw Kowalski on the sale of Graal to Lisner Holding. WKB Lawyers advised the buyer.	N/A	Poland
28-Feb	DLA Piper; Greenberg Traurig	Greenberg Traurig advised P3 Logistic Parks on the acquisition of the 185,000 square-meter Wroclaw Campus 39 logistics park from Panattoni. DLA Piper advised Panattoni.	N/A	Poland
28-Feb	SSW Pragmatic Solutions	SSW Pragmatic Solutions advised Baltic Power on the contract with Erbud for the construction of the operation and maintenance base for the Baltic Power offshore wind farm.	N/A	Poland
28-Feb	Wardynski & Partners	Wardynski & Partners advised Genomtec on the transfer of its listing from NewConnect to the main market of the Warsaw Stock Exchange.	N/A	Poland
28-Feb	B2RLaw	B2RLaw advised the Moffitt Cancer Center and its for-profit subsidiary OncoBay Clinical on Clinscience's USD 33.5 million investment in OncoBay.	PLN 33.5 million	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
28-Feb	Dentons	Dentons advised PKO Bank Polski on the financing granted to Wind Farm Lada – a company controlled by Re Alloys and, indirectly, by Luma Holding – for the construction of the 35-megawatt Dzwola onshore wind power project.	EUR 96 million	Poland
3-Mar	CMS; Eversheds Sutherland	Eversheds Sutherland advised the Eika Real Estate Fund – represented by Eika Asset Management – on the acquisition of the Celebro office building in Warsaw from White Stone Development. CMS advised the sellers.	N/A	Poland
6-Mar	Rymarz Zdort Maruta	Rymarz Zdort Maruta advised SFS Ventures on its transfer of an 11% stake in Eurozet to co-shareholder Agora.	EUR 9.17 million	Poland
8-Mar	Gessel; Wardynski & Partners	Wardynski & Partners advised Tertinall Investments and its shareholders on the transaction that saw BNP Paribas Bank Polska become a minority shareholder in the company and, indirectly, in organic egg producer Wysoka Grzeda. Gessel reportedly advised BNP Paribas Bank Polska.	N/A	Poland
9-Mar	Greenberg Traurig	Greenberg Traurig advised landlord Invesco Real Estate on its lease agreement with Carrefour Polska for retail space in the Plac Unii office and retail complex in Warsaw.	N/A	Poland
10-Mar	Clifford Chance; Gessel	Gessel advised PGB Holdco on its sale of biogas electricity producer Polska Grupa Biogazowa to TotalEnergies. Clifford Chance advised the buyer.	N/A	Poland
14-Mar	B2RLaw; Dechert; Matheson	B2RLaw, working with Dechert and Matheson, advised Graham Partners on its acquisition of Taoglas Group Holdings from its founder.	N/A	Poland
15-Mar	Gide Loyrette Nouel; GKR Legal	Gide Warsaw advised Value4Capital and Genesis Capital on their acquisition of Polish supply chain management solutions provider XBS Group. GKR Legal advised XBS.	N/A	Poland
20-Feb	Dentons; DLA Piper	Dentons advised HB Reavis on obtaining a EUR 475 million financing from Santander Bank Polska, Bank Pekao, Helaba, and Berlin Hyp for the development of the Varso Place building complex in Warsaw. DLA Piper reportedly advised the lenders.	EUR 475 million	Poland; Slovakia
16-Feb	BPV Grigorescu Stefanica	BPV Grigorescu Stefanica advised Bucharest-based software and infrastructure company Incrys on its acquisition of Usource.	N/A	Romania
17-Feb	Clifford Chance; Dentons	Dentons advised Romanian state-owned CEC Bank on the establishment of its EUR 600 million medium-term note program and its first two issuances amounting to over EUR 249 million. Clifford Chance advised arrangers Citigroup and Raiffeisen Bank International.	EUR 249 million	Romania
20-Feb	Deloitte Legal (Reff & Associates); Nestor, Nestor, Diculescu, Kingston, Petersen; PwC Legal (D&B David and Baias)	PwC Legal Romanian affiliate D&B David si Baias advised US-based investment fund Broadhurst on the sale of Romanian bakery group Vel Pitar to Mexico's Grupo Bimbo. NNDKP and Deloitte Legal affiliate Reff & Associates advised Grupo Bimbo.	N/A	Romania
20-Feb	Schoenherr	Schoenherr advised Eurobank Greece on the sale of a commercial real estate asset in Iasi, Romania, to the real estate division of the Radacini Group.	N/A	Romania
22-Feb	Clifford Chance	Clifford Chance advised Banca Comerciala Romana and Erste Group Bank on the financing for Eney Power Holding's acquisition of the Romanian renewable energy portfolio from Jade Power Trust.	N/A	Romania
27-Feb	BPV Grigorescu Stefanica; Cytowski & Partners; Greenberg Traurig; Sirbu & Vornicu Law	Cytowski & Partners and BPV Grigorescu Stefanica advised Romanian tech company Veridion on its USD 6 million seed financing round led by Launchub Ventures with OTB Ventures and Underline Ventures together with existing investors Day One Capital and Gapminder VC. BPV Grigorescu Stefanica also advised Launchub, OTB, and the existing investors. Reportedly, solo practitioner Konstantina Chilingirova also advised Launchub, while Greenberg Traurig also advised OTB, and Sirbu & Vornicu advised Underline Ventures.	USD 6 million	Romania
2-Mar	Voicu & Filipescu	Voicu & Filipescu successfully represented a client before the court of first instance and on appeal in a medical malpractice case, being awarded RON 550,000 in damages.	RON 550,000	Romania
3-Mar	BPV Grigorescu Stefanica; KPMG Legal (Toncescu si Asociatii)	BPV Grigorescu Stefanica advised Omnia Capital on its acquisition of Dumagas from Bancroft. KPMG Legal Toncescu si Asociatii advised Bancroft Private Equity.	N/A	Romania
8-Mar	Filip & Company	Filip & Company advised Instant Factoring on a EUR 600,000 financing from several investors including MicroEurope.	EUR 600,000	Romania

Date Covered	Firms Involved	Deal/Litigation	Value	Country
8-Mar	Nyerges & Partners	Nyerges & Partners advised Shikun & Binui Energy on the engineering, procurement, and construction agreement with CJR Renewables for the development of a 69.5 megawatt-peak project in Satu Mare, Romania.	N/A	Romania
9-Mar	Deloitte Legal (Reff & Associates)	Deloitte Legal Romanian affiliate Reff & Associates successfully represented NEPI Rockcastle's Promenada Mall Bucharest before the Bucharest Court in an urban planning-related administrative dispute resulting in the end of the suspension of the Urban Plan for Bucharest's Second District.	N/A	Romania
9-Mar	Carmen Medar Law Office; RTPR	Radu Taracila Padurari Retevoescu advised Zarea on its acquisition of a 70% stake in the Domeniile Dealu Mare Urlati group. The Carmen Medar Law Office advised the seller.	N/A	Romania
13-Mar	Suciu Popa	Suciu Popa successfully represented the Libra Internet Bank before a court of law by securing the rejection of garnishment validation for money held in Revolut accounts.	N/A	Romania
16-Feb	Dentons; Doklestic Repic & Gajin; Karanovic & Partners; Selih & Partners; Ulcar & Partnerji; Zavisin Semiz & Partneri	Zavisin, Semiz & Partneri and Dentons advised a banking consortium on their EUR 155 million financing for the 103.3-megawatt Krivaca wind farm project. Karanovic & Partners advised the Axpo Group on its market-terms long-term PPA with project company Ivicom Energy. Selih & Partnerji advised the agent – Erste Bank – on the deal. Ulcar & Partnerji advised borrower Ivicom Energy and its co-owners and sponsors – Serbia's MK Group and Slovenia's Alfi Green Energy Fund – on the transactions. Doklestic Repic & Gajin reportedly advised turbine supplier and installer Nordex Energy.	EUR 155 million	Romania; Serbia; Slovenia
28-Feb	NKO Partners	NKO Partners advised CTP on its acquisition of Vojvodina-based land developer BIMS Properties.	N/A	Serbia
28-Feb	NSTLaw	NSTLaw Stankovic and Partners been appointed as the official representative for NYSE-listed technology company PAR in Serbia in accordance with the country's law on personal data protection.	N/A	Serbia
8-Mar	Holman Fenwick Willan; Milbank; Schoenherr; Zivkovic Samardzic	Zivkovic Samardzic, working with Milbank, advised the shareholders of Eurobank Direktna Beograd on its sale to AIK Banka Beograd. Schoenherr and Holman Fenwick Willan advised AIK Banka.	N/A	Serbia
9-Mar	NKO Partners	NKO Partners advised the Dr. Max Group on its acquisition of the Belgrade-based Beolek pharmacy chain.	N/A	Serbia
13-Mar	NKO Partners	NKO Partners successfully represented Modekolo before Serbia's Administrative Court in a competition-related dispute.	N/A	Serbia
16-Feb	Dentons; Nosko & Partners	Dentons advised DRFG on its acquisition of the Ister II project company from the Galata Group. Nosko & Partners reportedly advised the seller.	N/A	Slovakia
21-Feb	Field Law; Fieldfisher; Paksoy	Paksoy, working with Fieldfisher, advised Samsun Yurt Savunma on its acquisition of an 80% stake in UK-based military defense equipment manufacturer AEI Systems. UK-based Field Law reportedly advised the sellers.	N/A	Turkey
8-Mar	Herguner Bilgen Ucer; Paksoy	Paksoy advised the shareholders of SAP partner MBIS on the sale of the company to Nagarro. Herguner Bilgen Ucer advised Nagarro.	N/A	Turkey
22-Feb	Asters	Asters successfully represented the interests of PrivatBank before the Supreme Court of Ukraine, securing a final ruling on the bank's ownership following its 2016 nationalization.	N/A	Ukraine
3-Mar	Everlegal	Everlegal successfully represented the interests of the Louis Dreyfus Company Ukraine in a dispute with a supplier over the collection of a fine amounting to 30% of the value of unfulfilled agricultural product orders.	N/A	Ukraine
14-Mar	Avellum	Avellum supported the action group led by Ukraine's Ministry of Finance and the State Financial Monitoring Service in its efforts towards the adoption of restrictive measures against Russia by the Financial Action Task Force.	N/A	Ukraine



Deals and Cases:

- Full information available at: www.ceelegalmatters.com
- Period Covered: February 16, 2023 - March 15, 2023

Did We Miss Something?

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

ON THE MOVE: NEW HOMES AND FRIENDS

Romania: Nyerges & Partners Opens Doors in Bucharest

By Teona Gelashvili (March 2, 2023)

Former Vlasceanu, Nyerges & Partners Partner Mihaela Nyerges has established Nyerges & Partners in Romania, with the new firm opening for business on January 1, 2023.

Specializing in corporate and M&A, real estate, and finance, Nyerges was previously a Partner with Vlasceanu, Nyerges & Partners from 2021 to 2023. From 2020 to 2021, she was a Managing Associate at MPR Partners. Earlier still, she spent over 14 years with Tuca Zbarcea & Asociatii, from 2005 to 2020, having first joined as an Associate, being promoted to Senior Associate in 2008, and Managing Associate in 2010. She was also an Associate with Musat & Asociatii, from 2003 to 2005, and with Ernst & Young in 2003.

According to a press statement, “Nyerges & Partners will focus on mergers & acquisitions, energy & natural resources, real estate & urbanism, construction, corporate & commercial, environment, banking & finance, and EU funding. Its client portfolio includes both local entrepreneurs and international companies. Currently, the firm has a team of five lawyers, but it is actively expanding, with plans to add three more lawyers by the end of this year.”

“Our law firm was founded with a commitment to deliver exceptional services based

on our top-tier law firm expertise and to act as true partners to our clients by providing them with the dedicated attention and responsiveness of a boutique law firm,” Nyerges commented. “We have carefully built our team by selecting lawyers who share our high professional and ethical standards, and we are committed to fostering an environment that promotes their well-being and professional development. In addition to serving our clients, we are deeply invested in contributing our expertise to improve the business environment in Romania by being actively involved in the activity of the business associations.” ■

Poland: BKB Baran Ksiazek Bigaj Launches HR and LegalTech Department

By Andrija Djonovic (March 8, 2023)

BKB Baran Ksiazek Bigaj has announced it has launched a new HR and LegalTech department, starting from March 1, 2023, and headed by Managing Associate Lukasz Laguna.

According to the firm, “the HR and LegalTech department will cover areas such as the use of artificial intelligence systems within employment processes, employment through digital platforms, legal issues of information protection, assisting in the development of diversity and inclusion based on secure digital tools, and digitalization of employment processes and anti-harassment systems.”

Laguna has been with BKB Baran Ksiazek Bigaj since 2019 when he joined as a Trainee Attorney. According to the firm, he specializes in labor law and new technology law. ■



Romania: Kuglay & Trandafir Launches in Bucharest

By Andrija Djonovic (March 8, 2023)

In March 2023, the law offices of Andra-Roxana Trandafir and Irina-Ioana Kuglay have joined forces to form a new law firm in Romania: Kuglay & Trandafir – Attorneys at law.

According to a Kuglay & Trandafir press statement, the firm focuses primarily on criminal law, especially on those cases that involve the “criminal liability of legal entities, medical malpractice, or insurance measures.”

Before joining forces with Kuglay, Trandafir had spent over two years in solo practice. Before that, she spent almost four years as a Legal Counsel with BRD – Groupe Societe Generale and almost 11 years with Stoica & Asociatii. According to the firm, “Trandafir specializes in criminal law and has mainly handled cases related to economic crimes and in which issues of freezing orders and criminal liability of the legal entities were raised.”

Kuglay has, prior to setting up Kuglay & Trandafir, spent over twenty years working as a prosecutor, including stints with the Ministry of Justice working on the implementation of the *Criminal Procedure Code* and being an Advisor to the Prosecutor General. She’s also “a trainer at the National Institute of Magistracy for the disciplines of Criminal Procedure Law and Criminal Law,” according to the firm.

The two Partners are joined by Cristina Cuscoanis, a Junior Lawyer. ■

Turkey: Diri Legal and Sevi & Mergen Join Forces

By Andrija Djonovic (March 10, 2023)

Turkish law firms Diri Legal and Sevi & Mergen have joined forces to form a new full-service law firm in Istanbul – Diri Sevi Mergen – helmed by Partners Nazan Diri Bal, Ali Murat Sevi, and Turhan Mergen.

Diri Bal specializes in corporate and M&A, IT and data protection, and competition law. Before joining forces with Sevi & Mergen, she spent over five years as the Managing Partner of Diri Legal. Earlier, she spent over 11 years with the Birsell Law Offices.

Sevi’s primary areas of focus are commercial law, company law, and capital markets law. He spent over five years as a Partner with Sevi & Mergen and almost 14 years with the Birsell Law Offices.

Mergen’s expertise is corporate and M&A, project finance, consumer law, and labor law. Before setting up the new firm, he spent over five years as a Partner with Sevi & Mergen and almost a decade with the Birsell Law Offices.

According to a Diri Sevi Mergen press statement, “with this reunion of old colleagues as partners who have worked at the Birsell Law Offices for more than a decade, the team enjoys the taste of a fresh start blended with a warm familiarity and well-suited rebranding.”

■



On The Move:

■ Full information available at:
www.ccelegalmatters.com
 ■ Period Covered:
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press@ceelm.com

PARTNER APPOINTMENTS

Date	Name	Practice(s)	Firm	Country
13-Mar	Martin Zahariev	TMT/IP	Dimitrov Petrov & Co	Bulgaria
13-Mar	Encho Simeonov	Litigation/Disputes; Insolvency/Restructuring; Life Sciences; Logistics/Transportation	Dimitrov Petrov & Co	Bulgaria
3-Mar	Vladimir Polach	Litigation/Disputes	Squire Patton Boggs	Czech Republic
3-Mar	Matej Pustay	Litigation/Disputes	Squire Patton Boggs	Czech Republic
15-Mar	Tomas Bures	Corporate/M&A; Banking/Finance; Infrastructure/PPP/Public Procurement	PRK Partners	Czech Republic
15-Mar	Jan Varecha	Corporate/M&A; Insolvency/Restructuring	PRK Partners	Czech Republic
15-Mar	Eva Hromadkova	Corporate/M&A; Banking/Finance	PRK Partners	Czech Republic
16-Feb	Aleksandra Dobrzynska-Grezel	Corporate/M&A	Rymarz Zdort Maruta	Poland
16-Feb	Marek Kanczew	Labor; Tax	Rymarz Zdort Maruta	Poland
16-Feb	Jakub Krzemien	Corporate/M&A; Real Estate	Rymarz Zdort Maruta	Poland
16-Feb	Katarzyna Lukaszewicz	Corporate/M&A	Rymarz Zdort Maruta	Poland
28-Feb	Malgorzata Kurzynoga	Labor	BKB Baran Ksiazek Bigaj	Poland
14-Mar	Michal Tracz	Corporate/M&A	KRK Kieszkowska Rutkowska Kolasinski	Poland
6-Mar	Cristina Tudoran	Labor; Litigation/Disputes	Filip & Company	Romania
6-Mar	Silviu Vasile	Competition	Filip & Company	Romania
9-Mar	Cristina Cretu	TMT/IP; Data Protection	MPR Partners	Romania
21-Feb	Bojana Javoric	Corporate/M&A	Jankovic Popovic Mitic	Serbia

PARTNER MOVES

Date	Name	Practice(s)	Moving From	Moving To	Country
3-Mar	Wolfgang Gabler	Litigation/Disputes	Weinrauch	Taylor Wessing	Austria
28-Feb	Alex Slujitoru	Litigation/Disputes; Tax	Bancila Diaconu si Asociatii	Reff & Associates	Romania
2-Mar	Mihaela Nyerges	Corporate/M&A; Real Estate; Banking/Finance	Vlasceanu Nyerges & Partners	Nyerges & Partners	Romania
3-Mar	Okan Gunduz	Litigation/Disputes	Gunduz Legal Services	Kolcuoglu Demirkan Kocakli	Turkey

IN-HOUSE MOVES AND APPOINTMENTS

Date	Name	Moving From	Company/Firm	Country
3-Mar	Simona Hornochova	Kocian Solc Balastik	Czech General Financial Directorate	Czech Republic
1-Mar	Pawel Hincz	Baker McKenzie	Advanced Protection Systems	Poland
2-Mar	Marija Chatzimpyrou	Intesa Leasing Beograd	NLB Lease&Go	Serbia
1-Mar	Merve Oney Barlas	DGPays	TurkNet	Turkey
3-Mar	Senem Berkem Pafalak	Modanisa	Goktekin Enerji	Turkey
27-Feb	Anton Karlov	Molson Coors Beverage Company	Molson Coors Beverage Company	Bulgaria

THE BUZZ

In **The Buzz** we check in on experts on the legal industry across CEE for updates about 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.

Romania Kicking 2023 Off in Force: A Buzz Interview with Laura Estrade of Act Legal Romania

By Andrija Djonovic (February 22, 2023)



A high degree of effervescence in the country, with massive legislative updates both taking hold and still in the works – as well as a potential Prime Minister rotation soon to come – is what keeps lawyers talking in Romania, according to Act Legal Romania Partner Laura Estrade.

enacted, amending the minimum threshold for negotiating a collective bargaining agreement. The new threshold is set at ten employees, down from the previous 21.”

Continuing, Estrade reports a positive change for energy developers. “Starting this January, the urban zoning plan – PUZ – is no longer required for the development of smaller renewable projects. This slims down the project timeline by several months – up to nine in total,” she explains. “Still, this PUZ exemption is only applicable for projects covering under 50 hectares, which ought to be extended to larger projects as well, considering the need for supporting green energy projects overall and for removing the current hurdles placed in the path of large energy undertakings,” she says.

The current dynamic of 2023 is quite, quite positive even with the wider geopolitical context of the war and economic turmoil.

“Another thing that the business community would appreciate clarity on is the new FDI screening procedure,” Estrade continues. “The new procedure was introduced in 2022 – seeking to implement EU regulation, which is understandable, considering everything that has been going on in the world in the past several years – but clarity is sorely lacking for businesses,” she explains. “The scope of the implementation, as well as the implementation calendar, are lacking and we are all waiting for a new law which should approve the ordinance and for guidelines from the authorities.”

“There has been a bit of a slowdown around New Year’s, with many catching a well-deserved break after a very intense 2022 – but 2023 has since kicked off in force across all sectors,” Estrade begins. “The current dynamic of 2023 is quite, quite positive even with the wider geopolitical context of the war and economic turmoil.”

At the end of December 2022, the new whistleblowing legislation entered into force in Romania, which, according to Estrade, means that “companies that have over 250 employees should be very careful and compliant. There hasn’t been any sort of a grace period for this new law, meaning that it applies from day one.” She goes on to add that the National Agency for Integrity announced the launch of a new speak-up channel, to be used by employees to blow the whistle, should the “internal, mandatory corporate channels prove fruitless.” Additionally, she notes that a new “law on social dialogue was

Finally, Estrade reports that the current government coalition, formed by the liberals, social democrats, and Alliance for Hungarians in Romania, has “started to more actively discuss the rotation in the Prime Minister position. This would lead to a new Prime Minister coming into office in May 2023, this time from the ranks of the social democrats, and taking over from the current Prime Minister, a liberal,” she says. “As you can see, with all of these updates and goings on, it is safe to say that we are finding ourselves in the midst of a very active year, even though it has only just started,” Estrade concludes. ■

A Bit of a Downturn in Slovakia: A Buzz Interview with Michaela Stessl of DLA Piper

By Andrija Djonovic (March 14, 2023)

Amidst a wave of reorganizations and restructurings in the country, new businesses are looking to enter Slovakia – but have to face its new FDI screening mechanism. Despite the slight economic downturn, there is yet reason to hope for better days, according to DLA Piper Country Managing Partner Michaela Stessl, especially given the prospects of the automotive sector.

“There is a lot of reorganization and restructuring work right now, as a direct consequence of the economic downturn that came about as a post-Covid result exacerbated by the war in Ukraine,” Stessl begins. “Lawyers are extremely busy with reorganizations and restructurings, which is impacting several areas, not just corporate.” She says that, depending on client preferences, these procedures could be quite complex. “Liquidation procedures in Slovakia are very complex and demanding in the best of scenarios, and the current situation is far from ideal for most businesses,” she says.

Clients looking to shift their business elsewhere, to downsize their business, or to straight-up shut down – all of this is impacting the business landscape in Slovakia. “Looking at matters from a long-term perspective, some businesses are leaving the country and creating room for others – and we have already seen a sharp interest,” Stessl reports. “Many foreign businesses, in particular from the US, are expressing a strong desire to establish themselves in Slovakia. These endeavors, largely by defense companies looking at CEE countries, are, also, complex and require a lot of careful, professional work.” On account of such replenishment in business numbers, Stessl notes she is “not too pessimistic, from a business perspective.”

However, these incoming businesses might be facing some hurdles. “As of March 1, 2023, a new FDI screening mechanism is finally in place, after two years of different iterations and drafts,” Stessl reports. With the new mechanism having entered into force, she says any new company seeking to establish its presence in Slovakia will have to apply “careful analysis to figure out if its actions trigger a screening procedure and a notification to the regulator, or if it has to be discussed with them beforehand.” According to her, this also applies to intragroup acquisitions and transfers of shares, which only creates the need for more attention. “The FDI screening mechanism represents a major point of interest for businesses, especially given the minor discrepancies between different EU member states that deployed it into their national frameworks. If not analyzed and approached properly, non-compliance could stifle a transaction or even terminate it and lead to substantial monetary fines,” she explains.

Ultimately, Stessl says the Slovakian economy is, right now, in “a bit of a downturn – there are layoffs, the state’s budget is overindebted, and a certain percentage of the GDP needs to be used for defense purposes. Also, finding qualified employees for local businesses is a bit problematic nowadays.” Still, despite all of that, there are sectors of the economy that are performing well and are showing promise for the future, she notes. “Slovakia has a strong automotive sector and, recently, has managed to attract Volvo to engage in electric car production here. Consequently, this will attract other related businesses, such as battery makers, which could create additional ripple effects – all reasons for a more positive outlook,” Stessl concludes. ■



“
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A hand in a dark suit sleeve is shown holding a highly polished, reflective metal handle. The handle is curved and ornate, set against a background of a wood-grain texture. The entire image is overlaid with a semi-transparent purple color.

Hristov
Partners

SIMPLICITY IS
EXCELLENCE

Bulgaria's Still Got IT: A Buzz Interview with Pavel Hristov of Hristov & Partners

By Andrija Djonovic (March 13, 2023)



Bulgaria has seen its Eurozone and Schengen admission dates pushed back by at least a year, while political instability and frequent elections remain the norm. Still, there is room to hope for better times, according to Hristov & Partners Partner Pavel Hristov, mostly thanks to the vibrant IT, transportation, and logistics sectors.

“Bulgaria, much like other countries in the region and the EU, is mostly influenced by two external factors – the economic crisis and the war in Ukraine,” Hristov begins. “They dominate all aspects of the political and economic life in the country.”

Speaking of politics, it looks like Bulgaria is still on a thorny path. “We have early general elections slotted for April 2, following a series of several extraordinary elections in the past couple of years. Indeed, we have had more caretaker governments than regular ones, with some parliaments dissolving after only a few months,” Hristov explains, adding that the situation is still problematic. “We might see another early election before the year is up. Taking all of this into account, it is no wonder that the legislative process has all but stopped.”

This legislative halt came at a thoroughly inopportune time. “The big challenges for Bulgaria right now are the Eurozone and Schengen zone entries,” Hristov says. “For these to become a reality, a comprehensive set of legislative measures must be undertaken, and the national authorities and regulators must be reformed and reinforced. For example, amendments need to be made to the commercial law to provide for the personal bankruptcy of individuals, updates of laws that govern the financial system are needed concerning the National Bank and anti-money laundering, and an overall judicial reform is required,” he elaborates.

And before Bulgaria adopts the Euro currency certain economic conditions must also be met. “The annual inflation rate

of 13% is above the required 3%, and this has also contributed to the Eurozone entry date being pushed back tentatively from January 1, 2024, to January 1, 2025.” The Bulgarian economy is facing a difficult period, primarily due to the current geopolitical context. “Following a relatively good 2022 that saw a 4% GDP growth, the projections for this year are almost halved and are between 1% and 2%. On the flip side, however, our annual inflation projection stands at 7-8% for the end of 2023, which is lower than the 13% of 2022 – giving us room for hope,” Hristov says.

We have early general elections slotted for April 2, following a series of several extraordinary elections in the past couple of years. Indeed, we have had more caretaker governments than regular ones, with some parliaments dissolving after only a few months. We might see another early election before the year is up. Taking all of this into account, it is no wonder that the legislative process has all but stopped.

Finally, even within such a framework, there are business sectors that are performing admirably. “Exports are a huge driver of the economy, especially business-to-business services, primarily in the IT services sector,” Hristov says. “The Bulgarian IT sector is robust and is, to an extent, sheltered from the overall turmoil. It clearly outperforms all others and is attracting significant investments, garnering attention from numerous funds,” he says, pointing, as an example, to the presence of VMware and SAP as major employers of local software developers and engineers.”

In addition to IT, Hristov reports there is an uptick in transportation and logistics as well. “There is a huge demand for (and peak in) construction work, especially related to logistics. We have seen several interesting transactions lately, many with an international aspect to them.” As retail switches from physical to online, Hristov stresses the importance of having a strong infrastructure to support supply channels. “Even if transportation and logistics have a similar level of growth as last year, the growth in terms of volume will be fantastic,” he concludes. ■

Ukraine's Unbreakable Lawyers: A Buzz Interview with Alla Kozachenko of Kinstellar

By Andrija Djonovic (March 14, 2023)



The Russian invasion is still ongoing, affecting all areas of life in Ukraine, but there are slivers of hope and reasons to stay positive and optimistic, according to Kinstellar Partner Alla Kozachenko.

“Russia’s full-scale invasion continues with heavy shelling of infrastructure – aiming to cut off connectivity, water, and electricity,” Kozachenko begins. “Lawyers had to adapt in order to ensure the continuity of services to their clients. With power outages for more than ten hours a day, we had to work from ‘points of unbreakability,’ gas stations, bomb shelters, and other locations, and we had to distribute work to colleagues outside of Ukraine as well. Our offices are now fully equipped with power generators – which allows us to continue working even during power outages.” Through it all, she says that Ukrainian lawyers demonstrated “incredible resilience, managed to persevere, and are now ready for anything.”

Legal work, according to Kozachenko, centered primarily around “support to NGOs in their charitable endeavors around the country, working on corporate, regulatory, commercial, tax, and other issues. Many NGOs came to Ukraine to provide war-related assistance, and they require help with structuring their operations, registering international technical assistance projects, and general tax and legal support,” she explains.

Moreover, lawyers have been heavily engaged in advising clients on sanctions-related legislation. “As the Russian aggression continues, so does the sanctions framework evolve and expand, meaning that we have to stay on top of it at all times in order to be able to fully support our clients in their needs,” Kozachenko says. Furthermore, she reports that transactions are “back on track. While there has been a slowdown at the beginning of the war, transaction pace has resumed and more and more M&A deals are taking place,” she says. Additionally, matters of “workforce relocation, layoffs, and conscription to military service” are also keeping everybody busy.

On a positive note, Kozachenko reports that the Ukrainian tech sector hasn’t skipped a beat and has continued to grow despite the war. “We have seen a number of mandates of structuring tech companies’ operations in Ukraine,” she reports. “The interest of foreign and local investors was preserved, seeing as how this sector was affected by the war the least, due to the possibility of remote work and relocation to safer areas,” she explains.

Finally, she remains optimistic, looking ahead. “We’re sure we’ll win the war, and we very much hope that will happen soon. Once the war is over, businesses will be rebuilt and things will go back to normal,” she says, adding that she expects real estate and dispute resolution to be the busiest areas once the rebuilding starts. In conclusion, Kozachenko says: “We are witnessing investments into the country and, even with this disastrous war ongoing, have managed to work decently. And we will continue to work just as hard on our path to victory.” ■



We are witnessing investments into the country and, even with this disastrous war ongoing, have managed to work decently. And we will continue to work just as hard on our path to victory.

Bonds, Exits, and Compliance Make a Splash in Croatia: A Buzz Interview with Tomislav Pedisic of Vukmir & Associates

By Andrija Djonovic (March 15, 2023)



A massive government bond program, an exciting local start-up exit to Google, and several recent and upcoming legislative updates are high on Croatian lawyers' agendas, according to Vukmir & Associates Managing Partner Tomislav Pedisic.

"The Republic of Croatia has recently issued bonds with a guaranteed 3.25% interest, in an effort to raise awareness of securities trading," Pedisic begins. "This major endeavor on the part of the government was a big success – with about 45,000 individual citizens subscribing to the program, to the tune of EUR 1.35 billion – followed by a EUR 515 million institutional investor round." According to him, the bonds, which stand to mature by March 2025, offer an excellent interest rate. "The next best interest rates, offered by banks, currently stand at 0.45%, so it is pretty obvious why this was so alluring to such a high number of people."

Furthermore, Pedisic reports an exciting move in the Croatian start-up sector. "Recently, it finally became public that Google acquired Photomath, a mathematical equation-solving application, from a local start-up called Phootomath, which is itself a spin-off of another domestic company, Microblink." The driving force behind Photomath and Microblink is Damir Sabol, a serial entrepreneur and known figure within the Croatian start-up community. As Pedisic reports, the Photomath sale was "recently cleared by regulators in the US and the deal is currently being vetted by EU regulators. It is expected that, if everything goes well, the clearance of the EU regulator will be issued by the end of the month. This latest transaction confirms Croatia's status as the leading technology hub in the immediate region and a serial producer of success-story tech companies," he says.

Turning to legislative updates, Pedisic provides an update

on the transition efforts of companies, following the switch from HRK to EUR at the beginning of the year. "While it was initially envisaged that both stock companies and LLCs would have a limited period to make the conversion of their share capital to euros, in terms of amending their incorporation documents, some amendments were recently introduced." According to him, such a vast administrative transition represented a massive cost point, especially for SMEs, which led to a legislative change that allowed for LLCs to "only have an obligation to adjust their documentation in case of changes to their incorporation documents or status changes – for example, carve-outs, mergers, and share capital changes – as opposed to having to do it within a strict window of time."

With the recently passed Digital Services Act and the Digital Markets Act, somewhat of an overhaul of the European digital landscape took place.

Finally, Pedisic points to several upcoming legislative tollgates on the EU level that apply to Croatia. "With the recently passed *Digital Services Act* and the *Digital Markets Act*, somewhat of an overhaul of the European digital landscape took place," he says. These acts stand to change how providers of digital services such as search engines and online platforms, and in particular gatekeeper online platforms – digital platforms with a systematic role in the internal market that function as bottlenecks between businesses and consumers – like Amazon or Google, operate and report on their compliance. "This will surely lead to a massive uptick of associated work for tech-law-focused law firms," he notes.

"Not to mention the *EU Corporate Sustainability Reporting Directive* which entered into force recently," Pedisic continues, saying the CSRD requires a number of large companies as well as listed SMEs to "comply with the EU rules about social and environmental information that companies need to report and to follow the *European Sustainability Reporting Standards*, which will be adopted during 2023. The first reports will be integrated into the 2024 financial year," he explains, "meaning that we will see the fruits of these labors in early 2025." ■

Balancing Estonia's Potentialities: A Buzz Interview with Jaanus Magi of Magnusson

By Andrija Djonovic (March 17, 2023)



Finding its balance after a general election, Estonia is looking at a year of potential IT sector labor force shake-ups, a likely uptick of reorganization and bankruptcy procedures, as well as a potential real estate sector slowdown, according to Magnusson Estonia Managing Partner Jaanus Magi.

“The general elections took place quite, quite recently, so it might be a bit premature to judge the effectiveness of the new coalition, but what we can say at this point is that it will likely be a more liberal one compared to its predecessors,” Magi begins. “This presents an opportunity to finally get answers on some legislative questions that have been brewing for some time.”

Magi says that he does not expect much liberalization to come to the financial sector, however. “I believe that the old money-laundering scandals are still quite vivid to many, especially with some litigations still pending,” he says. Additionally, he reports that there have been significant tightenings of cryptocurrency regulations in Estonia. “Taking everything into account, as well as the fact that several crowdfunding frauds also happened, I do not expect there to be any reversals in this legislative approach.”

Still, Magi goes on to say that many start-ups and growth companies are registering in Estonia. “These companies are, by and large, quite data-heavy, which increases the risk of data leakages. No matter how close of a focus is kept on cybersecurity, the regulator’s approach is too soft, which means that we expect private data leak litigation to go up in Estonia, as well as Europe in general for that matter.” Moreover, he reports that there is “surprisingly strong financing activity” when it comes to start-ups and that transactions are going strong.

Still, not all is perfect, and Magi says that “several noticeable layoffs took place in the IT sector. I’m afraid we might see a restructuring of the labor force in the IT sector this year, with the industry to become more of an employer’s market,” he says. “There is a feeling that start-ups and investors are a lot more careful about boosting employment numbers and that they are trying to be leaner and more prepared.”

Nevertheless, Magi says that it isn’t unemployment that’s worrying, but rather Estonia’s trade balance. “There has been quite a sharp decrease in exports – which might be attributed to the war or the energy prices – but it seems we have a problem with the overall competitiveness of some sectors of our economy,” he explains. “This might lead to reorganizations and bankruptcies this year. There is even a new institution – the Bankruptcy Ombudsman – tasked with making these proceedings more efficient.”

Finally, Magi reports a potential tempest for commercial tenants. “With the inflation numbers last year standing at 19.4%, many commercial leases were affected on account of indexing. This, coupled with the rising energy prices, might come as a real shock for tenants,” he explains. “And, with the interest rates for the landlords going up, we might see some real tension in the sector amidst an overall real estate slowdown. The banks are the real gatekeepers here,” according to him, “and they are becoming more stringent in handing out loans to real estate developers.” ■



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50 Shades of Governmental Interference in Hungary: A Buzz Interview with Zoltan Faludi of Wolf Theiss

By Andrija Djonovic (March 17, 2023)



The Hungarian government is actively shaping the market and there are both positive and negative effects on many levels, according to Wolf Theiss Managing Partner Zoltan Faludi.

“Looking at the current investment climate, there are a few interesting matters of note,” Faludi begins. “The good news is that investors’ appetite is still positive and strong and we have noticed inbound investment coming along in a quite vibrant fashion, despite the after-effects of the COVID-19 pandemic and the ongoing war in Ukraine.” As he sees it, it’s all “a matter of balance between predictability and transparency, measuring the effects of governmental interference and activity in the short term against the long run.”

According to Faludi, the Hungarian government has taken quite an uncustomary approach to many business areas and sectors. “There is a discussion underway regarding the new concept of the *Architecture Act*, which intends to extend the scope of regulatory intervention over a wider range of construction materials,” he says. “This imposes quite a hit on building material manufacturers, especially when it comes to the potential export of their products. The increase of regulatory reach in this area impacts construction endeavors the most, increasing industry uncertainty.”

Furthermore, Faludi reports that there has been some friction with respect to the recently introduced tax on extra profits. “The new tax impacts a wide area of sectors, most so energy, banking, and pharmaceuticals. Questions of justifiability abound and, while there are some good reasons as to why it was introduced, its entering into effect did not resonate well with everyone.” Additionally, he says that the recent implementation of the FDI screening control mechanism has also

created an air of uncertainty, to an extent. “The screening mechanism, while by no measure unprecedented, does appear to be somewhat overarching. For example, it is treating intra-EU and extra-EU investments the same, which might be, to an extent, more stringent than its original purpose.”

The good news is that investors’ appetite is still positive and strong and we have noticed inbound investment coming along in a quite vibrant fashion, despite the after-effects of the COVID-19 pandemic and the ongoing war in Ukraine. [It is all] a matter of balance between predictability and transparency, measuring the effects of governmental interference and activity in the short term against the long run.

However, not all governmental interference causes friction, and Faludi reports a number of positives. “There have been a lot of subsidies targeting investors, primarily via cash incentives and favorable regulations,” he reports. “This has led to an uptick in business activities across sectors, primarily in automotive, which is a big ticket for the Hungarian economy.” Additionally, he says there is finally a plan for a new regime for investing in wind-powered renewable energy sources. “The last time we’ve seen a tender for wind power was in 2016, and things have been quiet since. However, recently, and within the auspices of the Hungarian Recovery and Resilience Plan, on-shore wind power sources are back in action,” he says. “At long last, in addition to solar subsidies, we will soon see a new regime targeting wind projects and allowing for more vibrant investments to take place.”

Finally, Faludi says that “looking at the big picture, investments are going strong and the climate outlook is rather positive. Investor appetite abounds and I hope that governmental interference won’t create any pushback.” He concludes by saying: “with many companies relocating their production centers to Hungary, brands like BMW setting up an electric car production facility, and further new production plants emerging in the high-tech sector, we are looking at good things to come.” ■

A Buyer's Real Estate Market in Lithuania: A Buzz Interview with Ruta Radzeviciute-Meizeraite of Fort Legal

By Teona Gelashvili (March 20, 2023)



The real estate market in Lithuania is in flux, facing significant challenges and, at the same time, providing numerous opportunities to explore, according to Fort Legal Partner Ruta Radzeviciute-Meizeraite.

“We are currently living in a very interesting decade, and the past few months have not been an exception,” Radzeviciute-Meizeraite begins. “The situation in the world, especially the war in Ukraine, had a significant impact on Lithuania’s real estate market.”

“Unfortunately, with the developments in Ukraine, everything came to a halt for about two weeks,” Radzeviciute-Meizeraite remembers. “Later, we were then hit with huge inflation, and the prices of construction materials skyrocketed. Consequently, all construction activities were either stopped, postponed, or renegotiated due to the high costs of construction and inflation.” During the autumn, she continues, “inflation was still present, and the banks changed their financing policies significantly, leading to a rise in Euribor rates. As a result, transactions were once again impacted, and financing became more expensive.” Looking to the future, she notes that Lithuania is keeping an eye on global economic news, as “there are concerns that the Baltic region might face a crisis in the summer.”

Still, Radzeviciute-Meizeraite says there are acquisitions and developments taking place, but 2023 is not a blooming year like 2020 or 2021. “However, it’s important to note that, in Lithuania, businesses are making the best of the current context,” she adds. “Amidst the current slowdown in the real estate market, there are still opportunities to be found.”

For instance, Radzeviciute-Meizeraite points out, “there are potential fire sales and there are interested buyers, and we’re in a better position than we were during the 2008 financial crisis. Some well-established local players have been growing since then, and they have cash reserves that they’re not afraid to use to acquire promising prospects or take advantage of potential fire sales. For context, cheap money has been available for a while, which has led to some opportunistic or less experienced players becoming over-leveraged, or about to be.” Consequently, she notes, “for those with cash, this is an opportunity to take over these assets. While ongoing transactions may be limited, it’s only a matter of time before more deals start happening. After being a seller’s market for a long time, real estate is now becoming a buyer’s market.”

As for the most sought-after real estate segments, Radzeviciute-Meizeraite highlights there is an increased interest in “acquiring quality commercial assets such as business centers, shopping centers, and especially logistics centers.” According to her, “local players have taken over investments from Western foreign investors that have halted or delayed their plans. They are particularly interested in single-tenant shopping centers that host major retailers, located in smaller cities, which are considered secure investments as food is a necessity regardless of economic conditions.” ■



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Family Foundations and Remote Work in Poland: A Buzz Interview with Michal Konieczny of KWKR

By Teona Gelashvili (March 22, 2023)



Polish lawyers are actively discussing two legislative acts – one regulating family foundations and the other focused on remote work – set to impact their practices, according to KWKR Konieczny Wierzbicki & Partners Managing Partner Michal Konieczny.

“In Poland, a new law establishing a new type of entity is just coming into force,” Konieczny begins. “In May 2023, a new act will be introduced to regulate family foundations.” He points out that “family businesses have been popular in Poland but, until now, they had no specific regulation regarding succession in Polish law. As a result, their assets are often placed abroad in various forms, which was quite costly.” According to him, “the purpose of family foundations is to create a structure to support businesses over generational transitions and to support the successor. The business and the family would be formally separated, with the family being the beneficiary of the foundation. The foundation would be managed professionally to protect the assets in case of the retirement of the founder of the family business.”

Konieczny believes that family foundations could be quite a popular type of entity in Poland because the legislation also sets out favorable tax solutions for them. “The establishment of such foundations will not be taxed, and transferring assets to them will also not be taxed,” he notes. “Additionally, the acquisition of property rights for the beneficiaries of family foundations will not be subject to inheritance or donation taxes. Therefore, beneficiaries may become beneficiaries without any tax costs.”

Moving on to remote work, Konieczny highlights new regulations on remote work that are set to come into force in

Poland. “Before the COVID-19 pandemic, there were regulations in place for teleworking, but they were over-regulated and not commonly used in the market,” he says, adding that “during the pandemic, temporary regulations were introduced to support employers in maintaining their business operations, making distance working less strict, more flexible, and easier to implement.” Now that these temporary regulations are expiring, he says “an amendment to the Polish labor code has been introduced.”

The purpose of family foundations is to create a structure to support businesses over generational transitions and to support the successor. The business and the family would be formally separated, with the family being the beneficiary of the foundation. The foundation would be managed professionally to protect the assets in case of the retirement of the founder of the family business.

According to Konieczny, law firms will need to comply with new remote work themselves: “this has led to shifts in the work of law firms.” Additionally, “businesses are more open to remote work, especially those in IT or new technology, with 80 to 90% of employees working remotely regularly, with fewer days in the office. The new regulations will come into effect in April, and it is high time for compliance work,” he notes.

Konieczny also highlights some current developments in the Polish market. “Currently, the market appears to be stable, but the real estate sector is less dynamic due to inflation and high loan costs. Sales of new apartments have stalled and are significantly lower than last year, resulting in the sector being less active and in a holding pattern,” he notes. “Regarding M&A, I did not observe any negative developments, however, there is still less activity,” Konieczny points out. “While the ongoing deals continue to proceed, unfortunately, we are not witnessing many new projects starting or picking up, and it is unlikely that we will see a large number of new and exciting projects in the market, for at least the first half of the year.” ■

Turkey's Shifting Priorities: A Buzz Interview with Onur Kucuk of KP Law

By Teona Gelashvili (March 22, 2023)



The major discussion points in Turkey have been drastically different – before and after the earthquake – with the upcoming elections gaining new importance, according to KP Law Managing Partner Onur Kucuk.

“The earthquake has affected 11 cities in Turkey, mainly in the southeast and eastern regions, and the current death toll is more than 48,000,” Kucuk says. “The earthquake was huge and devastating and, since February 6, the agenda has changed dramatically.”

“Before the earthquake, in our normal life, we were discussing legal developments, including the difficult topic of elections,” he continues.

“We talked about the unorthodox approach of the central bank of Turkey regarding interest rates and the fight against inflation, and whether this would impact foreign investments, imports, and exports in Turkey.” Another topic before the earthquake, according to Kucuk, was the early retirement law. “Even if the person was entitled to retire in working days, he or she had to wait until the age of 58,” he says. “People demanded the early retirement age be lifted, allowing for immediate retirement in Turkey for those who couldn’t retire because of age barriers. This law was heavily discussed in the Turkish market and was recently passed two weeks ago.”

“After the earthquake, life was greatly disrupted, not just legally but in every aspect,” Kucuk adds. “Everything came to a halt for a few weeks. During the initial period, international and domestic aid flooded in to assist with the situation. These earthquakes caused an estimated USD 34.2 billion in direct physical damages in Turkey, according to a World Bank rapid damage assessment report, and damages in investment exceed USD 75 to 85 billion, which will have a significant impact on social and legal life.” According to him, the government also took a number of measures to address the situation.

“The other issue at hand is the upcoming presidential election, which will be held on May 14, 2023,” Kucuk notes. According to him, the elections are of crucial importance: “the ruling party has been in power for 20 years now, and the opposition, united behind one candidate, is hoping to defeat them. We will see if they are successful.”

“While the earthquake has had a significant disruptive impact, we continue working on M&A and investments,” Kucuk notes. “Turkey is never short on investments. Strategic investors are still investing in Turkey, mainly in industrial manufacturing and some in TMT.” Additionally, “another issue to consider is that companies were already allowed to buy their own shares under the Turkish commercial code,” Kucuk says. Still, “although the economy did not come to a complete halt due to the earthquake, there may come a point when Turkey will need those companies to finance various projects. In such a scenario, it is likely that Turkish companies will seek financing abroad,” he points out. ■



The earthquake has affected 11 cities in Turkey, mainly in the southeast and eastern regions, and the current death toll is more than 48,000. The earthquake was huge and devastating and, since February 6, the agenda has changed dramatically.

Albania Doubles Down on Energy and EU Acquis: A Buzz Interview with Sabina Lalaj of Deloitte Legal

By Teona Gelashvili (March 23, 2023)

As the Albanian government seeks to utilize the energy crisis as a catalyst for encouraging energy investments and production, significant changes are expected in the country's overall legislation – in light of the negotiation process – to comply with EU standards, according to Deloitte Legal Local Legal Partner Sabina Lalaj.

“Albania’s notable features nowadays include the energy crisis and the government’s efforts to try and turn that into momentum to foster investments in energy production,” Lalaj begins. “The government’s aim is to make Albania self-sufficient throughout the year and an energy exporting country.” According to her, it is evident that Albania is experiencing a boom in energy production investments, “particularly in wind and solar energy, as the government is favorable to facilitate the development of energy projects. To this end, the government is organizing another round of renewable energy auctions to further promote energy production.”

As part of this new initiative, Lalaj highlights recent changes in energy legislation: “The government has sent the amendments to the *Law On the Promotion of the Use of Energy From Renewable Sources* before the relevant parliamentary commissions. They are currently under review and discussion by those bodies. The law aims to provide better regulation and clarity to the sector and its actors.”

Considering the recent heightened attention on renewable energy, Lalaj says that work in the legal sector has shifted: “lawyers have been particularly busy figuring out how to help smaller companies operating in the energy sector to engage with investors and enhance their capabilities; or directly assisting the investors to identify potential investments in energy projects and carry out the due diligence on such projects. These discussions are taking place in most of the law firms, and many of us are involved.”

In addition to all that, Lalaj notes “there are developments in the capital markets industry. After the approval of the new package of laws on capital markets in 2020, the supervisory authority is now leveling up the approval of a series of secondary legislation that will enable the implementation of said laws and facilitate the operations in the market.”

Another important topic being discussed, according to Lalaj, is that changes are expected in Albania’s overall legislation, to align with EU acquis: “currently, we are in the screening procedures, and a large part of our institutions are preparing to work towards fully aligning our legislation with the EU acquis.” Several legislative proposals are currently in the works, she notes, and will be unveiled in the near future. ■



Lawyers have been particularly busy figuring out how to help smaller companies operating in the energy sector to engage with investors and enhance their capabilities; or directly assisting the investors to identify potential investments in energy projects and carry out the due diligence on such projects. These discussions are taking place in most of the law firms, and many of us are involved.

THE DEBRIEF: APRIL 2023

In **The Debrief**, our Practice Leaders across CEE share updates on recent and upcoming legislation, consider the impact of recent court decisions, showcase landmark projects, and keep our readers apprised of the latest developments impacting their respective practice areas.

This House – Implemented Legislation

As of March 2023, there have been notable legislative developments in the labor sector in Poland, according to Wolf Theiss Associate Oliwia Pecht. “On March 21, new regulations on employee records came into effect,” Pecht says. “Employers are required to introduce a new part to employee personnel files – Part E – where documentation related to employee sobriety checks will be stored.”

“March 2023 also brought the first so-called auto-enrolment in employee capital plans (PPK),” Pecht continues. “PPK is a pension scheme for collecting pension savings. The employees can voluntarily unsubscribe from the scheme by submitting a declaration. The employer is required to ‘re-enroll’ people into the program every four years (counting from April 1, 2019), unless they opt out.”

Additionally, Pecht notes that the new remote work regulations are set to take effect on April 7, 2023: “the Ministry of Family and Social Policy has published the first answers to questions arising about the interpretation of these regulations. The ministry has confirmed that an employer does not need to provide an employee working remotely with a desk or a chair. Moreover, the employer is not obligated to cover any part of the costs of water consumption, utilities, and use of the employee’s apartment or home space, if not otherwise agreed, for example, in the remote working policy.”

This House – Reached an Accord

NGL Legal Junior Associate Paulina Roslon-Horosz draws attention to the recently signed new Polish act on clinical trials. “On March 21, 2023, the long-awaited act on clinical trials of medicinal products for human use was signed by the President of the Republic of Poland,” she notes. “The act is a completely new regulation for clinical trials of medicinal products in Poland. It is currently awaiting announcement in the Journal of Laws and will enter into force 14 days after the announcement.”

“The new provisions are aimed at ensuring the application of *Regulation (EU) 536/2014* on clinical trials in Poland,” she continues. “Among others, the act includes provisions on

compensation for damages to study participants, which will be paid from the Clinical Trial Compensation Fund, and procedures for granting permission for a clinical trial, as well as a system of obligatory civil liability insurance for investigators and sponsors.”

Separately, Pecht notes that Poland’s president also signed the new amendments to the *Labor Code* on March 23. “These amendments implement two directives: the so-called *Work-Life Balance Directive* and the *Directive on Transparent and Predictable Working Conditions in the EU*,” she says. “A variety of new solutions will be introduced through the amendments. These include, among others, caregiver leave of five days per calendar year to provide personal care to a relative, and time off work – either two days or sixteen hours per calendar year – due to *force majeure* in urgent family matters. Both solutions have been thus far unknown to Polish regulations. In addition, an employee who has been employed for at least six months will have the right to change the contract type to an open-ended contract or a contract for more predictable and safer working conditions. And an employer will also be required to justify the termination of a fixed-term contract and to notify the trade union organization of this justification.” According to Pecht, the amending act will come into force twenty-one days after its promulgation.

Pecht also says that, on March 21, the president signed an amendment to the *Act on Foreigners*. “The act aims to bring Polish legislation in line with EU changes to the Schengen Information System, which took effect on March 7,” she says. “The changes included improving the process of returning third-country nationals illegally residing in the Schengen area to their countries of origin and improving border checks. In addition, the law introduces certain simplifications in the procedure for obtaining a Polish travel document.”

Regulators Weigh In

Roslon-Horosz highlights that in February, the Polish Chief Pharmaceutical Inspectorate announced that, “given the import and production restrictions outlined in *Article 21 of the Single Convention on Narcotic Drugs of 1961*, import licenses for



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Zsofia Olah,
Head of Employment and Labor,
OPL Gunnercooke

the intra-Community acquisition of hemp herb other than fibrous, the issuance of which would lead to exceeding the limit specified in the estimate (including exports), will not be issued.” According to her, “the use of the procedure for increasing the import limit for hemp herb other than fibrous is possible only in a situation where the authority obtains objective data on the actual demand for this substance. Therefore, the basis for increasing the volume of the estimate will be data on the use of hemp herb other than fibrous as a pharmaceutical raw material intended for magistral formula preparation.”

The Verdict

OPL Gunnercooke Head of Employment and Labor Zsofia Olah highlights the CJEU judgment of March 2, 2022, in Case C-477/21, where a train driver employed by Hungarian national railway company MAV-START challenged the company’s refusal to grant them a daily rest period of at least 11 consecutive hours.

According to Olah, the CJEU “held that daily and weekly rest are autonomous concepts,” and that “the weekly rest period cannot begin to run until the worker has benefitted from daily rest.” In practice, according to her, it means that “for example, if an employee works under a general schedule – Monday to Friday, eight scheduled hours a day – and therefore has Saturday and Sunday as his two scheduled weekly rest days, his 11-hour daily rest must precede these rest days. This means that they should stop working at 1 p.m. on Friday.” Olah highlights that “this judgment is highly likely to lead to the modification of the *Hungarian Labor Code* and, once it is modified, several employers will need to rethink their working schedules,” adding that it could potentially also influence the national employment laws in the region.

Done Deal

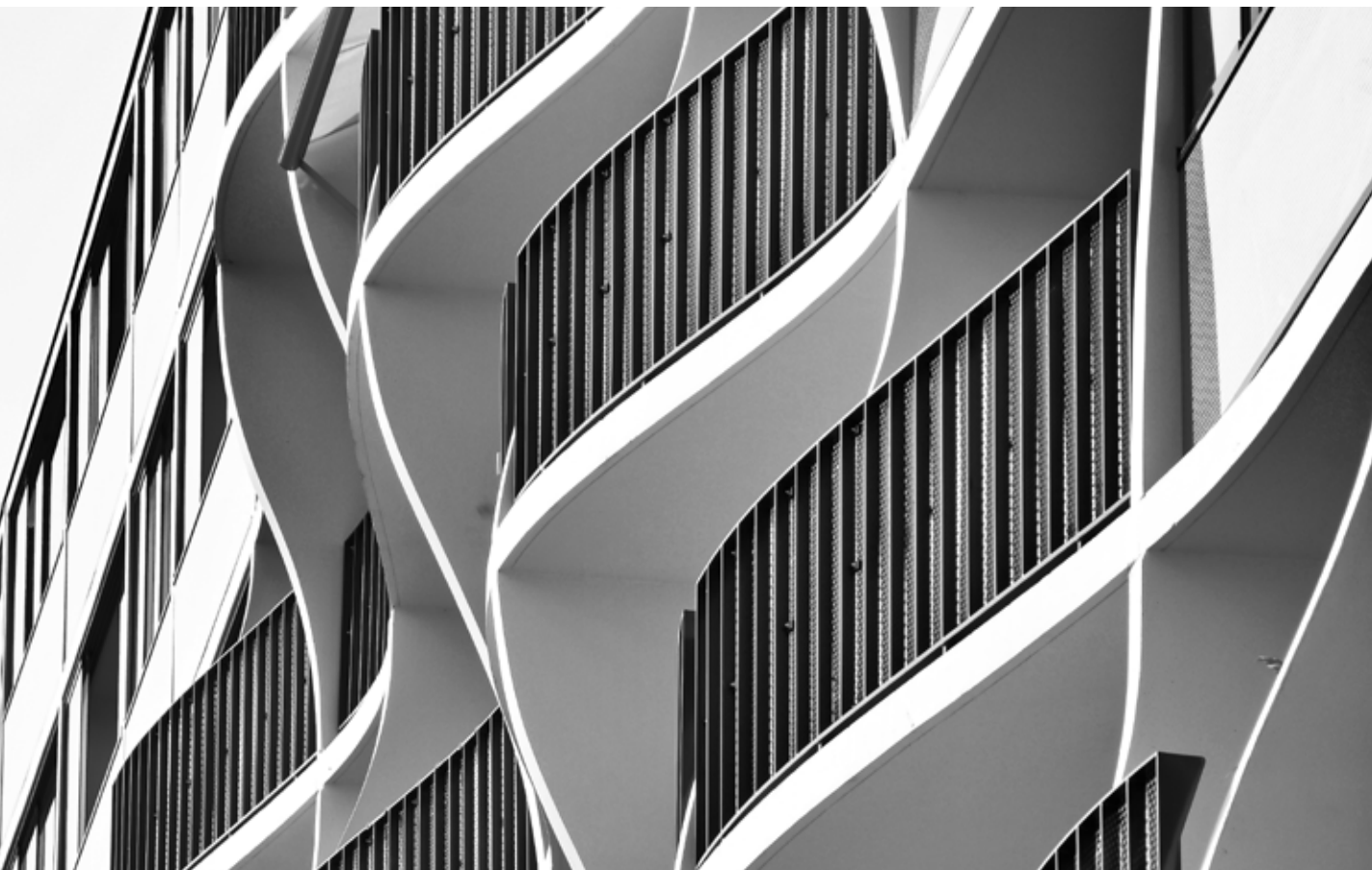
Finally, Radovanovic Stojanovic & Partners Partner Sasa Stojanovic puts some recent M&A deals in Serbia under the spotlight. “In terms of notable transactions, the banking industry in Serbia has seen a significant increase in consolidation through M&A deals,” he notes. “A prime example is the recent agreement between AIK Banka and Greek Eurobank regarding the acquisition of Eurobank’s Serbian subsidiary – Eurobank Direktna – by AIK Banka, which was signed in early March. Upon the completion of this transaction, and the respective merger which can be expected approximately one year later, this will bring the total number of banks in the Serbian market to 20, compared to the previous 24 in December 2021.” According to him, this demonstrates a clear trend toward consolidation in the Serbian banking sector, which is set to continue.

Stojanovic further highlights a growing trend in Serbia’s energy sector, indirectly influencing the country’s M&A market. “Renewable energy is gaining more ground in Serbia, as evidenced by the recent long-term power purchase agreement for renewable energy signed in February,” he notes. “This marks the first agreement of its kind in Serbia, between Serbian MK Group and Slovenian ALFI Green Energy Fund co-owned Ivicom Energy doo Zagubica and the Swiss Xpo Group. The successful implementation of this practice is expected to lead to increased activity in M&A transactions in the respective industry in Serbia.” ■

CEE REAL ESTATE **KEEPS IT REAL**

By Teona Gelashvili

Following a tumultuous year marked by the ongoing conflict in the region and rising financing expenses, we reached out to experts across CEE to gain a deeper understanding of the real estate landscape, including key factors driving the industry and the primary obstacles it faces.



Resilience and Endurance

In the Czech Republic, Hungary, Romania, and Ukraine, the most sought-after real estate assets in the past year, despite the ongoing challenges, have been logistics and industrial properties, while in Serbia and Croatia, the residential real estate segment still has the spotlight.

Logistics and Industrial: the factors leading to the surge in demand for logistics and industrial real estate differ across CEE jurisdictions. In the Czech Republic, high demand is

related to the COVID-19 pandemic: “during the pandemic, there was an enormous interest in new logistics premises coming from e-shops,” PRK Partners Partner Roman Pecenka notes. “Although the pandemic is already over, the e-shops have leased all the free logistics premises that were available on the market at that time.” Consequently, he says, due to the lengthy and burdensome permitting process, “the current offer of free assets is clearly not sufficient for the current needs of the sector.”

Similarly, Tuca Zbarcea & Asociații Partner Razvan Ghe-

LEGAL MATTERS

orghiu-Testa highlights that, in Romania, the demand for logistics real estate is linked to “the tremendous development of the retail sector in recent years,” as well as “to the absence of highways linking Romania’s main geographical areas, both factors leading to the development of regional logistics hubs.”

According to Nagy es Trocsanyi Managing Partner Peter Berethalmi, in Hungary, the increased demand for industrial and logistics real estate is related to the increase in product volumes stored in warehouses: “20 to 30% more products are stored in various warehouses, so demand is high for the logistics and warehouse type, while industrial properties are mainly being traded in the countryside, due to an increased demand for industrial lots.”

Meanwhile in Ukraine, according to Avellum Partner Maksym Maksymenko, high demand in the logistics and industrial real estate segments is related to the war: “due to the active warfare, many businesses relocated to the western and central regions of Ukraine, primarily e-commerce, FMCG, and food businesses,” he notes, highlighting that these businesses are looking for new facilities to resume their operations. “As a result, and considering that in most regions a lot of warehouses and storage facilities were destroyed by Russian attacks, developers and investors are constructing new logistics facilities to satisfy that rising demand,” he notes.

Residential: on a different note, the real estate market in Serbia and Croatia is primarily driven by the residential segment. “Official data shows that the residential segment and, specifically, the sales of apartments dominate the sector in Serbia, with more than 55% of total transactions in 2022,” Gecic Law Senior Associate Milos Petakovic says. “An important factor is the significant influx of migrants, which initially affected the leasing market but is steadily transitioning into real estate purchases. Moreover, a number of new attractive locations, especially in bigger cities, were used for the development of residential complexes, which increased the quality of the offer and further spurred demand.”

Similarly, Cipcic-Bragadin Mesic & Associates Partner Marina Mesic says the high demand in Croatia is related to “especially young families that are seeking to resolve their housing problem, while, at the other end are people who are buying real estate as an investment and a way of preserving money value.” According to her, “there is an increased demand for apartments bought by young people using a housing loan that is partly financed by the government and has favorable interest rates.”



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Razvan Gheorghiu-Testa,
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Tuca Zbarcea & Asociatii



Roman Pecenka,
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PRK Partners

Industry Growth Hamstrung by Legislation and Administration

Although some segments of the real estate industry are experiencing heightened levels of activity, the legislative framework does not always seem to be able to keep pace with this rapid progress. Lawyers point out that in Romania, Ukraine, and the Czech Republic, the main industry hurdle is related to obtaining building permits.

“In Bucharest, the main problem is the absolute deadlock at the local administration level, where very few new building permits have been issued and almost no new urban planning documentation approved for quite some time now,” Gheorghiu-Testa notes. “This translates into an extremely low number of new projects, with direct consequences both for the rental market and the investment market.”

Similarly, the key legislative hurdle in Ukraine according to Maksymenko, is that “at present, if the investor follows the general construction legislation, they will spend about one or two years allotting the land plot, amending local town-planning documentation to meet construction needs, and obtaining the necessary data to start designing the building. This not only slows down the construction process but also wastes investors’ resources.”

Interestingly, bank loans were a source of financing in only 11% of transactions in 2022, which makes the real estate market resilient to the current decline in credit activity. However, as credit policies tighten, this may cause a decline in new major developments.

Pecenka agrees with both, saying that in addition to the extremely long permitting process, the problem “is being multiplied by the old zoning plans of cities.”

Another major impediment to the development of the sector, according to both Mesic and Petakovic, is related to unresolved ownership issues: “the main obstacle in the further development of the real estate sector and its investments are unresolved ownership relations and the slow judiciary,” Mesic says. In Serbia, Petakovic notes there are “long-standing issues of ownership over the land of previously privatized companies,” but “new legislation has been announced that would further digitalize and expedite this process.” Still, he says “a major hurdle remains in resolving the issue of approximately two million structures that have been built in the past without a construction permit, which are still being legalized and are

excluded from the market.”

Financing Adds Insult to Injury

On top of all those country-specific obstacles, several CEE jurisdictions have encountered challenges with real estate financing in the past year. “The local real estate financing market follows the trends in the larger CEE region,” Gheorghiu-Testa notes. “In the current economic context, when debt has become much more expensive and financing conditions across the region have worsened, Romania could not be an exception. Thus, financing costs are higher, banks are more selective in lending money, and developers are more cautious in accessing financing.”

“As of now, in Ukraine, the critical issues for effective financing are the absence of war risk insurance and a transparent investment mechanism for rebuilding,” Maksymenko continues. “Solving these two issues will significantly help attract private investments in the real estate sector and the Ukrainian economy in general. Until these issues are addressed, a lot of investors will stay wary of the market and wait until a transparent, competitive, and secure investment climate emerges.”

Serbia, on the other hand, went all cash. “Interestingly, bank loans were a source of financing in only 11% of transactions in 2022, which makes the real estate market resilient to the current decline in credit activity,” Petakovic says. “However, as credit policies tighten, this may cause a decline in new major developments.”

It Could Be Worse

While pointing to some potential slowdowns in the next few months, the lawyers do not predict a dramatic change. “The sector is expected to continue to grow during this year, albeit at a slower pace, as the most prominent projects and market influencers are still ongoing,” Petakovic notes. “With a decline in housing loans and the overall economic circumstances, the number of transactions will likely drop, but not decisively.”

“The industrial and commercial segments will grow, prices will also rise, and office building demand will stabilize as the market needs to respond to the new service charge, ESG, and fit-out cost issues. Residential properties will not collapse either, but there will be fewer transactions overall,” Berethalmi sums up. ■

THE CORNER OFFICE: WORKFORCE EBB AND FLOW

In **The Corner Office**, we ask Managing Partners at law firms across Central and Eastern Europe about their backgrounds, strategies, and responsibilities. Keeping in mind last year's complexities and the uncertainties ahead, this time we asked: **Has your team shrunk or increased in the last 12 months and what are your expectations for 2023?**



Mykola Stetsenko, Managing Partner, Avellum:

Our team at Avellum remained pretty much the same in terms of our size last year. Some of our people left Ukraine because of the war and, consequently, some of them decided to pursue their careers abroad. However, we also continued with our annual internship program and took aboard an additional ten Associates in the summer of 2022, most of whom stayed with us. We also saw some changes in the business support team, but size-wise we remained almost the same. In 2023 we intend to grow our team further both with new interns, as well as some limited lateral hires.



Andrej Leontiev, Managing Partner, Taylor Wessing:

According to the ranking of The Slovak Spectator, in 2022 we were the second-largest international law firm in Slovakia in terms of the headcount of legal professionals. Although we dealt with several cases of natural employee fluctuation, the average figure within the last 12 months increased, though insignificantly. Speaking about improving the capacities of our team, we do not focus on the size anymore but rather emphasize the continuous specialization of the individual team members. Therefore, we expect some lateral hires and promotions in the coming months, not due to fluctuation but mainly because of expanding and deepening our specific practice area or industry competence.



Oleksiy Feliv, Managing Partner, Integrites:

After 12 months of full-scale war, Integrites retains around 95% of the pre-war number of staff. We are committed to keeping the team in its current structure – unlike many peer firms, we refused personnel cuts or unpaid leaves. Almost 25% of junior to senior lawyers became secondees, and most of them combine secondment and employment with the firm. Moreover, we hired people dismissed by other firms at the early stage of the war and are in discussions with several teams to hire from the market. As for my expectations for 2023, they largely relate to the

developments in the war against Russia. Victory and ceasefire will make Ukraine the key investment target on the continent, resuming interest in transactions, and bringing on many construction and infrastructure projects. Hence, lawyers will have a lot of work. Integrites will remain open for business and stick to its core corporate values – our team the most important of them.



Horea Popescu, Managing Partner, CMS:

Our team has increased by over 20% in the last 12 months. It was a period of accelerated growth due to excellent market circumstances, increased demand for specialized legal services, and a particular boom in transactional services, particularly in the renewable energy space but also beyond that. For 2023, I am cautiously optimistic. We expect that the market while remaining positive, would become less buoyant. As such, my goal is to ensure the smooth integration of the new hires into the team and to add a more limited number of additional fee earners. Of course, opportunistic hires can never be excluded in case of interesting candidates filling in potential gaps in our team. In these uncertain times, I remain excited about the possibilities ahead and see our business continue to expand to match the ambitious growth plans our clients have.



Katarina Kresal, Managing Partner, Senica & Partners:

From 2019 on, it has been a very challenging time for our law firm – in a positive way. As the legal profession is globalizing, we decided to strengthen our position by joining Andersen Global, developing seamless professional services and providing best-in-class tax and legal services worldwide. In 2022, we launched Andersen, Ltd., a subsidiary of Senica & Partners, to round up our one-stop-shop strategy, offering our clients a wide range of other advisory services, such as tax and financial due diligence, IBR, transactional support, financial forensics, valuations, accounting, ESG, cybersecurity, etc. All these changes generated the growth of our business and our team. We expect this trend to continue in 2023, as we will develop and add advisory services and extend Andersen,

Ltd.'s activities into Western Balkans countries, starting with Serbia.



Kinga Hetenyi, Office Managing Partner, Schoenherr:

The Schoenherr Hungary team has grown in the last 12 months due to a high degree of client loyalty and the acquisition of many new clients and projects.

Thanks to our HR marketing activities directed at students, we have received an exceptionally high number of applications from extremely talented young lawyers and have also made several lateral hires. Many of the law students return after graduating and apply for permanent associate positions at our office. Recently, we have even managed to attract young talent who speak both English and German. We have also had female colleagues giving birth and returning after just a few months or several years of maternity leave to either full-time or part-time positions. And the number of partners also keeps growing, with the recent appointment of Laszlo Kruepl as a new Local Partner. This all means that our office is on an upward trend that shows no signs of stopping.



Milos Olik, Partner, Rowan Legal:

In 2022, we have seen an increase in the number of legal professionals. We have expanded our team in all areas of seniority – we have managed to attract several very promising junior colleagues, and we are also proud to have been

joined by prominent legal personalities. These include Jan Frey, one of the greatest M&A experts in the Czech Republic, and Romana Szutanyi, an expert in Employment Law.



Ion Nestor, Co-Managing Partner, Nestor

Nestor Diculescu Kingston Petersen: The number of lawyers in the NNDKP team has not changed substantially in the last 12 months. Our practice teams have remained

stable, with many senior lawyers with solid and relevant experience, thus capable to manage projects of major complexity without the need to increase our size. In 2022, we put flexibility and mobility at the forefront once again, adapting to the new trends and realities, and keeping the hybrid way of working. For 2023, we will focus on enhancing our capabilities by recruiting young talent, both in consultancy and in litigation, in line with the growing number of projects and requests received from our clients. We will continue to seek to attract young professionals sharing the same standards with us, who will benefit from the talent and experience of our senior lawyers, aiming at strengthening our

practice teams and maintaining the high quality of the legal assistance provided by our firm to its clients.



Akos Fehervary, Managing Partner, Baker

McKenzie: While an economic downturn is predicted for 2023, we do not expect changes in the number or composition of our legal team this year, similarly to the last 12 months when no major shift happened.

Our team has always been the core of our efforts to provide the highest quality of service to our clients, and we believe in long-term strategies. The global challenges of recent years saw clients needing advice regarding unprecedented complex issues – advice that can be delivered by law firms with highly skilled legal experts. Similarly, under the current circumstances, we expect increased demand from our clients to address new types of challenges related to turbulent markets. Consequently, we keep investing in developing our teams to ensure the best service to clients and a desirable career path for our colleagues.



Arkadiusz Krasnodebski, Poland Managing Partner, Dentons:

In 2022, we maintained steady, organic growth. Our Warsaw team has not undergone any major structurizations – both the hiring and attrition rates remained at regular levels. We

fulfilled the promise we made to our people that not a single person would lose their job because of the pandemic. We are continuing our strategy to invest in and upskill our team, which is both highly trained and well versed in terms of legal practice. Of course, we decided to announce some major additions, such as Christian Schnell (Energy) and, recently, Jaroslaw Witek (Defense) – these transfers of partners and their teams reflect the dynamics of business needs and challenges we are facing as a major CEE economy, especially in the wake of Russian aggression on Ukraine.



Tarik Guleryuz, Partner, Guleryuz & Partners:

Over the past 12 months, our firm has experienced a period of both challenges and opportunities. We witnessed a significant increase in business volume, accompanied by the integration of several new personnel,

including a Partner with genuine expertise in the Transportation & Employment Law fields. Despite our confidence that this upward trend will continue in 2023, the upcoming presidential and parliamentary elections in June will be a decisive factor for the remainder of the year and the years to come. In the past two years, the Turkish

government has implemented an “unorthodox” economic policy that has resulted in elevated inflation and currency depreciation. Likewise, foreign investors have either suspended or postponed their investments due to concerns regarding uncertainty. We believe that, regardless of the elections’ outcome, the business climate will improve once they conclude, with a sense of stability alleviating those uncertainties.



Jaroslav Havel, Managing Partner, Havel

& Partners: We have been growing continuously since the firm was founded in 2001. With 320 lawyers and tax advisors, the Havel & Partners team outnumbers other law firms in the Czech Republic according

to the number of lawyers and advisors by more than three times. Our advantage is especially the comprehensive nature of our services – we have top experts for all branches of law and business. We also provide advice in other related areas – economics, crisis management, communications, and security, which gives us a major competitive advantage.



Victor Constantinescu, Managing Partner,

Kinstellar: Kinstellar’s Bucharest office has grown and continues to grow year-on-year, both in terms of revenue and headcount. This has been the case even with the pandemic, while 2022 was a particularly strong spot. With an excellent partner group and

a talented attorney pool, we anticipate continued growth in 2023 across all practice areas. Despite the Ukraine invasion and headwinds internationally, Romania is well-placed geopolitically to benefit from massive investments in renewable energy, nearshoring, defense, agriculture, and infrastructure spending. We’re already seeing this, and strongly believe companies need a one-stop shop for legal advice across all areas. We are optimistic about what is to come in 2023.



Panagiotis Drakopoulos, Managing Partner,

Drakopoulos: Our team increased significantly in the last year, with the addition of one partner, one senior associate, and two junior associates. We are planning to further expand our team in the immediate future by attracting at least two more senior/middle-level

members. The increase in the volume of our firm’s workload over the last 12 months, along with a promising pipeline projected ahead, have prompted Drakopoulos to adopt a more aggressive stance in the legal services market, looking

to pursue lateral hires of quality people, capable of adding to the team’s capacity and capabilities within a short period, thus securing our swift growth.



Ismail Esin, (former) Managing Partner,

Esin Attorney Partnership: Esin Attorney

Partnership has celebrated its 25th Anniversary back in 2022 and we had a 10% growth in terms of headcount last year. I believe, given the local and global

developments, 2022 can be considered a pivotal point in history; characterized by economic, geopolitical, and environmental climate change crises. We are now back in the office – from fighting off what was hopefully the final phase of the pandemic – to a full-blown conflict. Things escalated quickly, and the Turkish market also felt the aftermath. From where I stand, there is no doubt that 2023 will be another year of tests: from the upcoming elections in May to the recent devastating earthquake that hit Turkey and the social-economic interlinked implications for all of us in the market accordingly. However, I’m hopeful we will come out strong, continue building trust within and across our communities to address the multitude of challenges that demand we work together, and keep doing each day what we do best: advising our clients.



Timur Bondaryev, Managing Partner,

Arzinger: Our team has shrunk dramatically under the impact of war – at the end of the day, we had to downsize by approximately 50%. We realized that the war would have a

huge impact on the economy of the country and, most probably, from a short- and mid-term perspective, Ukraine would not need such a large law firm as Arzinger was before the war. This meant, for us, that we had to restructure our business, reinventing new, much smaller but very flexible shapes. We succeeded in this task. We managed to keep the expertise and know-how all across the board and kept an excellent team, which can handle very diverse and complicated projects and work 24/7, should this be required. As for 2023, we don’t expect significant hirings until the Ukrainian victory. As soon as the war is won, we will see huge demand for professional lawyers given the need to rebuild Ukraine and attract FDI. It is obvious, however, that we don’t know when exactly it will happen – even though we are confident that the Ukrainian victory and defeat of Russia is just a matter of time. ■

MUST-HAVE SOFT SKILLS FOR THE GC OF TOMORROW

Alexey Amvrosov, Lead Counsel for IBM Consulting in CEE, based in Vienna, highlights the soft skills that will differentiate successful legal leaders from those less so.



The modern corporate world environment is becoming more and more competitive. In-house lawyers are not immune to this trend. To become and stay successful, a senior lawyer needs to possess a combination of various skills and abilities. For many decades, legal hard skills – simply put, very good technical knowledge of the law, its interpretation, and drafting skills – have been at the forefront of a successful in-house legal career. However, new times create new challenges. Technical knowledge of the law, like many other technical areas, gradually becomes more and more automated. “Legal robots” are already capable of answering simple legal questions, and there is no way back – this technology will only improve in the coming years. In this environment, soft skills become increasingly important and will differentiate more successful legal leaders from less successful ones.

In essence, soft skills are personality traits and abilities that characterize one’s relationships in a social environment. “Social” is of critical importance here. Soft skills are very human by their nature and are much more difficult to automate, at least from a short-term perspective.

Unfortunately, for a very long time, social skills were not taught in schools in any structured manner. People had to figure out by themselves the right ways to communicate, collaborate, and build social relationships. This is gradually changing now – more and more development programs are being offered in the market. However, social skills still have not become a significant part of the classical education structure. There are even views that social skills (being a major cornerstone of soft skills) can hardly be taught. However, they can be developed and practiced. Those lawyers who acknowledge the importance of soft skills and take proactive steps to upgrade their abilities accordingly will greatly benefit from this in their career development.

opment.

There are many studies about soft skills that suggest different scopes and categorizations. In my view, these are the main areas where senior lawyers can differentiate themselves from others.

Effective Communication

Key for any successful social relationship. It starts the relationship and helps keep it beneficial and productive. When learning legal hard skills, lawyers get used to the complex and formal professional language. This is clearly an asset for many legal purposes, for example, contract drafting and commercial dispute resolution. However, this is not the language a business speaks. The task of a senior in-house lawyer in general and of a General Counsel, in particular, is to help and enable management to take decisions. This can only be done effectively if the management and the lawyer speak the same language. While preparing, the lawyer obviously must do all the detailed and complex homework – research, analysis, when necessary with the involvement of subordinates, colleagues, and external counsel. But when it comes to business interactions, management needs a condensed summary, conclusions, and recommendations, not the whole backstory. Simplicity equals clarity. The converse is necessary too: a GC must be able to explain the business tasks and objectives to subordinates and, where necessary, external counsel – and make sure that the tasks are well understood.

Broadly speaking, communication also includes presentation skills. Delivering messages supported by slides has become the prevailing standard, even though some companies are testing alternative ways. A good presentation to the business needs to be well structured and only include high-level bullet points. Of course, this does not prevent sharing factual material in



Unfortunately, for a very long time, social skills were not taught in schools in any structured manner. People had to figure out by themselves the right ways to communicate, collaborate, and build social relationships. This is gradually changing now – more and more development programs are being offered in the market. However, social skills still have not become a significant part of the classical education structure.

parallel, where necessary. But the delivery of the presentation has to be clear and concise.

Another important part of the “communication soft skills” cluster is adaptability. A senior lawyer must be able to deliver messages to different audiences in different ways. It is also important to follow the flow of the meeting – a presentation at an executive meeting can easily turn into a discussion – even if the presentation has not concluded yet. It is a skill to change the mode of delivery “on the fly” and still communicate all the important messages even if not exactly in accordance with the original plan.

Judgment and Problem-Solving

Good judgment is a clear differentiator of a strong General Counsel. In many cases it comes with experience – just a good brain or good knowledge of the law does not equal good judgment. Rather than providing individual answers to specific legal questions, a general counsel thinks in a different way that considers the surrounding legal and regulatory environment (and in some cases also other elements of the business context), and how to deliver the best results for the business. General Counsel’s thinking should be always result-oriented – in brief, this can be described as “not only spotting a problem but resolving it.”

Furthermore, a General Counsel must be able to take balanced decisions or make recommendations, in various circumstances. Of course, a more comfortable environment is one where there is enough time and capacity to analyze all factors, but sometimes decisions need to be taken very quickly. A good senior in-house lawyer will be most valued if they are able to come to conclusions even in an environment of partial uncertainty. The world has become very fast in recent decades – often, there is simply not enough time to consider all possible and impossible factors, so decisions need to be taken even if not all factors are known. Having said that, this should not be taken to an extreme – if a lawyer believes that there is truly and objectively not enough information to come to a legal conclusion, this should be communicated to the

business management accordingly.

There is one very important element in the judgment area. When making decisions and offering recommendations, the general counsel shall not turn into a business decision-maker but remember that they are a lawyer. High personal integrity, honesty, and transparency are essential. The judgment must always follow these principles. The GC has a particular role in the organization and is valued from the legal perspective, even though taken in a business context.

People Skills

Not less important for a successful General Counsel is the ability to build and maintain strong and effective relationships with various groups – top management, other business and support functions, subordinates, external counsels, professional associations, and others. There are specificities with regard to each of these groups. For example, managing employees is not exactly the same as managing external law firms, and is quite different from interaction with business representatives who, in many instances, will be seen as the in-house lawyer’s clients. The general principle is that collegial and respectful treatment is an absolutely essential factor for a successful relationship. Speaking specifically of the subordinated legal employees, all good practices of people management need to be followed – lead by example, trust, do not micromanage, etc. The legal profession, maybe more than many others, has been traditionally developing as a very trusted and respected one. Even if a lawyer is a company employee, these attributes do not disappear. An in-house legal colleague who is treated with a high degree of respect, trust, and collegiality (like we do at IBM) feels more empowered and delivers better results.

A lot more can be said about the importance of soft skills in the role of a General Counsel and the legal profession overall. However, the above collection of thoughts will hopefully help the readers navigate their way into the ocean of the corporate legal world. ■

This article represents the personal views of the author.



MARKET SPOTLIGHT: HUNGARY



ACTIVITY OVERVIEW: HUNGARY

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Anthony O'Connor



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Attila Ungar



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Erika Papp



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Gabor Czike



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BUDAPEST'S BLOCKBUSTER BUSINESS

By Teona Gelashvili

Hungary has traditionally been the go-to hub for filming in Continental Europe. DLA Piper Partner **Monika Horvath** and Dentons Partner **Timea Bana** talk about the evolution of Hungary's film industry over the past decade and whether the country has maintained its position as the primary European filming destination.



Hollywood East

In recent years, “Hungary has not only maintained its position as the go-to production location in Europe but has increased its significance and strength,” Bana begins. “Interestingly,” she points out, “recently, Jamie Lee Curtis referred to Hungary by the nickname of Hollywood East.”

“In daily life, local citizens may often find film trucks standing on public streets of the city center of Budapest or in the Buda Castle,” Horvath continues. “If you watch movies or television series, it is easy to identify parts of Budapest and realize how many international productions were actually shot in Hungary,” she adds, highlighting that “there is a long list of examples. To mention a few, Budapest doubled as Paris (*Colette*, *Radio Active*, *Mrs. Harris Goes to Paris*), Berlin (*Atomic Blonde*), Moscow (*Die Hard 5*, *Black Widow*, *Red Sparrow*), Vienna, or Milan. It is also more often that Budapest plays itself: *Spy*, *FBI: International*, *Red Sparrow*, *The Spy Who Dumped Me*,” Horvath notes.

“Although other CEE countries, such as Poland, the Czech Republic, and Romania, are trying to attract more productions by applying similar incentives, Hungary remains the number one destination for foreign, especially US-based, production

companies in Europe after London,” Bana adds.

Architecture, Food, and Night-Life – And the Solid Industry To Back It All Up

According to both lawyers, there are some specific features that motivated foreign filmmakers to opt for Hungary as their filming destination, starting with gastronomy and nightlife. For Horvath, “the hundred different architectural styles of Budapest are an important factor to attract international productions,” highlighting again that “Budapest provides the possibility to shoot scenes as if in Paris, Moscow, Berlin, Rome, Milan or Vienna.” On top of that, she highlights that “Budapest is still more cost-effective than most of these other cities,” and “has modern studio facilities, the highest technical quality equipment rental offering as well as VFX and post-production houses.”

“Actors and other members of the cast usually speak with great respect about the vibrant cultural and gastronomic scene in Hungary and especially Budapest,” Bana says. “Several world-renowned actresses and actors have been known to frequent Budapest’s restaurants and nightlife.” Additionally, according to her, “in recent years, several high-quality studios have opened their doors to production companies.”



Monika Horvath,
Partner,
DLA Piper Hungary



Timea Bana,
Partner,
Dentons

The Clincher? Supportive Legislation

Still, Horvath and Bana highlight that one factor has contributed to the success story of Hungary's film industry more than any other: "legislation in Hungary is very producer friendly. The government has declared its intention to attract as much movie production as possible by providing the tax rebate and by removing administrative and technical barriers," Bana says.

"The highest motivation for productions in coming to Hungary is the existence and amount of the Hungarian tax credit and the reliability of the system disburse funds," Horvath agrees. "The

Hungarian tax credit means a refund guaranteed and paid out by the Hungarian state currently amounting to 30% of the direct film production costs of a film that is registered by the National Film Office of Hungary as eligible for indirect state support. Film production costs incurred in Hungary, and partly outside of Hungary, would also qualify for the Hungarian tax credit."

"Financial support schemes are available in more European countries, but none of them has the same financial scale as in Hungary," Horvath continues. "The size of the support is capped at a much lower level and the applicable percentage of actual production costs is generally 20% or 25%, so lower than in Hungary." It helps that "productions go to specific locations mostly if the storyline requests specific geographical or architectural locations," according to her, while "generally, qualifying the program for a tax credit scheme is rather burdensome from an administrative perspective and productions try to make use of such incentives only above a certain production size."

So, Hungary has the best of both worlds: great locations and

a solid support system. Sure, Horvath notes, "from time to time the productions have to queue and wait for the actual payment for a couple of months, but in the end, they receive the approved payments." As a result, Bana says that the legal sector had to evolve with the market. According to her, the country has highly skilled "lawyers and accountants, who can help companies apply for the tax rebate, provide labor law advice on actor contracts, help protect intellectual property, and provide other assistance which is essential to the production of world-class motion pictures." She highlights that while "such professional expertise is also available in London, the costs of production in Hungary are significantly lower."

The Red-Carpet Special Treatment

Looking back at the past ten years, Bana and Horvath highlight that one of the biggest challenges that the film industry faced in Hungary was related to the COVID-19 pandemic. As it turned out, the industry got all the help it could have needed.

"During the pandemic, there was approximately a two-month hiatus when traveling was restricted and lockdown regulations were rather unclear and made the work of the productions totally uncertain," Horvath points out. "After the initial two months, productions resumed around June and July 2020, returned to Hungary, and returned to work."

According to Horvath, the "Hungarian authorities provided special treatment for film productions and enabled international production crew and cast to enter the borders of Hungary for film production purposes nearly seamlessly, through the COVID-19 pandemic. Studios and production facilities issued their own COVID-19 riders applicable during production." Luckily, she notes that "applying health and safety rules was taken very seriously by those productions."

For Bana, Hungary's relatively lenient lockdown and travel rules were the decisive factor for continued activity in the industry: "during the global COVID-19 pandemic, most studios were shut down due to lockdown rules," she notes. "In Hungary, however, the lockdown rules and travel bans were not as strict as in the US or other EU countries." According to her, "this allowed movie production to continue in Hungary in a time of unprecedented global crisis. Due to the looser rules, although the first year of the pandemic caused a slight drop in movie production, Hungary benefitted from a significant head start after the lockdown rules and travel bans were lifted in other countries – which led to a major rise in production in the first years after the pandemic." ■

ALL HAIL THE SUPERBANK

By Teona Gelashvili

In recent years, the major development in Hungary's banking system is the establishment of the country's superbank through the merger of Budapest Bank, MKB Bank, and the Takarek Group. **DLA Piper Partner Andras Nemescsoi, Forgo Damjanovic & Partners Managing Partner Gabor Damjanovic, and Jalsovszky Law Firm Managing Partner Pal Jalsovszky** share insights into the driving forces behind this development, its current status, and its anticipated impact on Hungary's banking sector.

Politics or Economy? A Bit of Both

"The establishment of the 'superbank' is being implemented in two stages," Nemescsoi begins. "The merger of Budapest Bank and MKB Bank took place on March 31, 2022, and Takarekbank will subsequently merge into MKB on May 1, 2023."

"The new entity, called MBH Bank Nyrt., will be the second largest financial institution in Hungary, with a market share of around 25%," Jalsovszky adds. "The 'superbank' would be listed on the stock exchange in 2025, with a target return on equity of 15% over the next four years."

As for what drove its creation, Nemescsoi and Jalsovszky highlight the economic factors. "The creation of the 'superbank' in Hungary was driven by the government's effort to strengthen the country's banking sector and to promote economic growth," Jalsovszky says. The merger, according to him, "is part of a larger plan to consolidate the Hungarian banking sector, which was considered to be fragmented and inefficient."

The main idea behind the creation of the superbank, according to Nemescsoi, was to exploit the synergies between the three banks: "Through the process, the strengths, values, and best practices of each party, including the high-quality customer service, should be combined, thus maximizing shareholder value," he notes.

Damjanovic, on the other hand, thinks that the rationale behind the merger is rather political: "upon assuming power in 2010, Orban expressed his desire to see more Hungarian investors and owners in certain key sectors compared to the previous years," he notes. "This would involve reversing some privatizations in essential sectors of the economy, such as the banking sector, telecoms, and energy." According to him, "the objective of this is twofold: first, to exert control over Hungary without interference from external investors – or

political checks and balances, as there currently are none in Hungary – and second, to continue squeezing out foreign investors and banks."

"It is evident that Orban has amassed significant power, with unofficial estimates suggesting that between 30 to 50% of the economy is under his control, either through state-owned enterprises or ownership by his family and friends," Damjanovic continues. "To continue expanding this influence, having the backing of a large bank is crucial."

Challenges and a Strong Will to Overcome Them

The creation of the superbank presented several difficulties and challenges from the very beginning. According to Nemescsoi, "the combination of the three banking groups is a uniquely complex process, which is very rarely seen in practice globally."

One of the major difficulties, according to both Nemescsoi and Jalsovszky, was related to the complex regulatory framework: "the banking sector in Hungary, just like in the other member states of the EU, is heavily regulated, and the multi-step merger had to comply with various legal and regulatory requirements," Jalsovszky notes. "The merging banks had to obtain regulatory approvals from several regulatory authorities, including the Hungarian Competition Authority, the Hungarian National Bank, and the European Central Bank."

Additionally, Nemescsoi adds, "the Hungarian state's involvement – being the ultimate shareholder of Budapest Bank – also raised the usual public sector-related issues, such as scrutiny of EU state aid issues, and the high formality requirements of public-sector decision making."

Jalsovszky and Damjanovic also highlight the issue of differences in organizational culture: "the three member banks involved in the merger have different organizational cultures, which makes it challenging to integrate them into a single en-



Andras Nemescoi,
Partner,
DLA Piper Hungary



Gabor Damjanovic,
Managing Partner, Forgo
Damjanovic & Partners



Pal Jalsovszky,
Managing Partner,
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tivity with shared organizational values,” Jalsovszky says. “This may lead to some resistance from employees and management, which further complicates the merger process.”

“Two of these three banks were highly regarded professional banks, and all three with distinct profiles, resulting in varying approaches, KYC procedures, and IT systems,” Damjanovic adds. “As a result, integration took a significant amount of time. The integration process is still underway, as evidenced by customers – depending on the bank with which they originally worked – there are still different procedures available. Even for online banking systems, both legacy and new IT systems are still in use, further emphasizing the ongoing nature of the integration process.”

Finally, Nemescoi mentions the challenges throughout the COVID-19 period: “An interesting factor was that COVID-19 set in at a very early stage of the transaction. The project had been built on a series of personal daily meetings – these were all promptly canceled.” However, according to him, “this forced change not only had not hindered but had actually

contributed to the efficiency of the transaction process.”

Between Optimism and Caution

As for the effectiveness of the Hungarian banking sector after the merger, the lawyers tend to be ambivalent. For Nemescoi and Jalsovszky, the change is rather positive: “the merger is supposed to boost the competitiveness of the Hungarian banking sector and lead to increased efficiency and cost savings, as the new ‘superbank’ would be able to take advantage of economies of scale,” Nemescoi notes.

“The new bank ‘aims to be Hungary’s most modern bank,’ which will ‘introduce flexible, internationally leading digital solutions,’ serve the entire market spectrum and all customer segments in the future, with a strong focus on a new, modern range of products and services for retail, micro, small, and medium-sized enterprises and agricultural customers,” Jalsovszky references. Overall, he says that “it is hoped that the creation of a stronger, more efficient bank would improve access to credit for businesses and individuals, boost investment, and drive economic growth.”

According to Jalsovszky, “in addition to promoting economic growth, the merger is also seen as a way to reduce the government’s exposure to the banking sector. The Hungarian government had acquired a significant stake in several banks, including Budapest Bank and MKB Bank, i.e., two of the three predecessors of the ‘superbank’, and the merger is also seen as a way to reduce its financial risk and exposure.”

For Damjanovic, “as with any other banking sector, creating a *second-largest bank* leads to sector consolidation, with both advantages and disadvantages.” According to him, “having a major bank, which can provide a wealth of information and data on the economy, is useful for various purposes, such as the FDI regime.” Moreover, he says that “having a major bank is related to the state having access to an enormous set of information, that can be used later to facilitate potential transactions.”

Additionally, Damjanovic highlights the potential threats stemming from dealing with the taxpayers’ money: “having the support of a major bank is hugely beneficial for the government’s acquisitions. However, in the long term, it is also a significant risk since it may involve taxpayers’ money. The recent collapse of Credit Suisse in just three days and its aftermath serve as a reminder of how dangerous it is to play with taxpayers’ money. In that sense, any problem that may arise could become a major issue.” ■

MARKET SNAPSHOT: HUNGARY

WILL THE NEW RULES ON ABUSE OF RIGHTS REQUIRE RETHINKING HR PRACTICES?

By Zsafia Olah, Head of Employment and Labor, OPL Gunnercooke



Recent changes to the *Hungarian Labor Code* on the abuse of rights rules are a hot topic among employers, HR professionals, and employment lawyers in Hungary. In this article, we will take a look at what the new rules mean for employers and how they may mitigate the legal risks and financial exposure arising from the amendments.

The Meaning of Abuse of Rights in Employment Law

Most abuse of rights cases concern conduct by the employer (e.g., termination, instructions) that, on the face of it, is an exercise of legal rights, but instead is carried out for reasons concealed by the employer. If the conduct itself is unlawful, or if it is not a concealed act, then this does not constitute an abuse of rights.

A typical example is when an employer dismisses an employee for a reason apparently connected with the employer's operations (such as a reorganization, or the employee's position being eliminated), while, in reality, the employer terminates the employee because they uncovered illegal company practices, had conflicts with their supervisor, or raised unpleasant complaints within the organization.

What Changed as of January 1, 2023?

Until the end of last year, if an employee claimed that their termination or another type of conduct by the employer violated the prohibition on the abuse of rights, then the burden of proof was on the employee. In a dispute, the burden of proof describes which party must prove something to win their case in court. Until January 1, it was the employee who needed to prove the fact that there was an underlying reason to the employer's actions, and that this hidden reason was actually the grounds for the employer's ostensibly lawful decision. The new rules have split the burden of proof between the parties:

The party referring to an abuse of rights (usually the employee) must prove the facts and circumstances supporting the violation and, also, the negative consequence suffered. The latter is pretty obvious in termination cases. The other party (typically the employer) must prove that there is no link between the facts and circumstances and the negative consequence.

As an example, the employee provides evidence (e.g., emails, witness testimonies) that they had a workplace conflict with the management; then the employer needs to prove that the conflict had nothing to do with the dismissal but was rather connected with the company's reorganization. However, it is rather difficult to prove that something does not exist, so employers are in a much harder position following these amendments to the burden of proof.

In addition to these new evidential burdens, employers now also face greater financial exposure in abuse of rights claims against them. Under the new rules, employees may claim to be reinstated in their position if they are successful in their claim. If the employee claims reinstatement, their claim will not be limited by the 12-month salary cap if they claim loss of earnings.

We can assume that employees will more often bring a claim of abuse of employer's rights due to the new rules being more beneficial to them.

How To Mitigate the Risks of and Exposure to Such Claims?

The new rules require employers to pay even more attention to termination matters than before. Due to the possibility of employee reinstatement, losing an abuse of rights case can be much more expensive than a directly unlawful termination claim. Therefore, it is essential – now more than ever – to ensure that employees are not dismissed for concealed reasons.

Employers can implement the following steps to help prevent and defend against abuse of rights claims: 1) maintaining objective performance evaluation records; 2) documenting employee misconduct through emails and warning letters; and 3) drawing up transparent and objective redundancy criteria.

The difficult part of it is that dismissing people has so many personal aspects and, from the employer's perspective, these new rules make HR processes even more bureaucratic. Despite the risks, however, employers should not unnecessarily see threats in every corner either. The new rules are not likely, for example, to change court practice where employers may lawfully choose underperforming or previously misbehaving employees for redundancy. ■

THE HIGHS AND LOWS OF RENEWABLE ENERGY IN HUNGARY

By Zsafia Fuzi, Partner, and Eszter Bedo, Associate, Forgo, Damjanovic & Partners



The Hungarian renewable energy sector has developed significantly in recent years: the share of electricity from renewable energy sources in gross final electricity consumption was 7.51% in 2017, increasing to 13.9% in 2021. This rapid development was mainly due to the increase in solar power capacity, as the installed capacity of Hungarian solar power plants was around 350 megawatts in 2017, while it exceeded 4000 megawatts in 2022.

Support Schemes

The sector's development was supported by the mandatory offtake (KAT) support scheme until December 31, 2016, and by a new support scheme (METAR) from January 2017. The introduction of the METAR scheme did not interfere with the previously obtained KAT entitlements, under which the power plants may sell their produced energy through mandatory offtake based on an annual fixed amount (HUF 40.34/kilowatt-hour in 2023).

The METAR scheme comprises three sub-systems determined by the power plant's capacity: (1) a feed-in tariff (for plants below 0.5 megawatts) with the same rules as those of the KAT system; (2) a green premium without tendering (for plants below 1 megawatt) according to which the producers receive administrative premium support above the market reference price as a surcharge claim; and (3) a green premium granted through tendering procedures for all kinds of renewable power plants. The budgets of the feed-in and green-premium-without-tendering sub-systems determined for 2020-2026 were exhausted in 2019; therefore, new entitlements cannot be requested.

However, the METAR green premium tendering procedure is still available for new renewable energy projects. The tenders are technology neutral, with one bidding round and a price-based evaluation. The winners will be granted green premium support at the initial supported price in the winning bid for the period determined in the tender call, capped at 20 years. The Hungarian Energy and Public Utility Regulatory Authority (HEA) organizes the tenders; the last tender occurred in March 2022.

The provisions of participating in the KAT or METAR scheme have changed several times in recent years. Currently, the pro-

ducers in the feed-in tariff systems are not allowed to leave the support scheme and sell their produced electricity on the free market.

Grid Deficiency

Due to the rapid growth of the Hungarian renewable energy sector, the electricity system currently faces a capacity deficiency. Therefore, a new system for connection to the transmission grid was introduced in April 2021, according to which capacity may be obtained through competitive allocation tenders or in an individual procedure. The Hungarian TSO, MAVIR Zrt., regularly determines the free capacity of the transmission grid, and developers can apply for these free capacities. The first publication was released at the beginning of May 2022 and, according to that, there was zero capacity in the system. The TSO will release the second publication on free capacities by April 30, 2023.

While the result of the first publication essentially meant that developers could not apply for capacity through the competitive allocation system, the individual procedure is still an option for developers, and the previously required and accepted connection requests (in the amount of approximately 5000 megawatts) will still be met. In addition, the TSO's network development plan for the Hungarian electricity system has been approved: the TSO plans to modernize and expand capacity with more than HUF 400 billion in the next four years.

Guarantees of Origin

Significant developments happened in the Hungarian guarantees of origin (GO) system in 2022. As HEA, the GO system operator, joined the European Energy Certificate System (EECS), Hungarian GOs may now enter the international market, and foreign GOs received within the EECS are recognized in Hungary. Besides, the Hungarian GO market was launched. This market is an auction-based and multiple-seller model market operated and organized by HUPX Zrt. According to HEA publications, nearly 1,073 gigawatt-hours of domestic and 10 gigawatt-hours of foreign GOs were sold for around EUR 3.53 million at the September 2022 HUPX auction. The next auction is organized for March 21, 2023. ■



POSITIVE 2023 OUTLOOK FOR HUNGARIAN M&A DESPITE RISK FACTORS

By Kinga Hetenyi, Office Managing Partner, Schoenherr Budapest



After a record deal value in 2022, the outlook for M&A in Hungary for 2023 remains positive despite several risk factors. What are they and what could compensate for them? What other factors could have an impact on the current trends?

Global M&A trends are always perceived with some delay in Hungary. While global M&A boomed mostly in 2021 and the beginning of 2022 and started to recede in the second half of 2022, in Hungary the same boom lasted until the end of 2022. As a result, after Poland and Austria, Hungary was third in the CEE region in terms of M&A deals with a little over EUR 3 billion in value. While this figure was largely due to the acquisition of Vodafone, the fifth-largest deal in the region, the number of deals in Hungary in 2022 remained the same as in 2021. Most M&A activity took place in the technology sector, with energy being second, and real estate third. Also notable is Hungary's vibrant private equity sector, which has developed significantly in the last couple of years and is currently very active. Transaction advisors have also reported increased demand for their advice from private equity circles.

The Hungarian M&A market started to experience a slowdown only at the very end of 2022, when inflation rose to a level higher than the European average, with a consequential increase in interest rates. This has prompted the government to introduce several measures, including price caps on fuel and various food products, whose controversial effects and potential contribution to inflation are still being disputed by economists. High inflation has also triggered a legislative increase of the merger control thresholds applicable since January 1, 2023.

M&A experts are still largely positive about 2023, but some have struck a note of caution. Of course, market players may simply be buying time, because high inflation makes deals riskier for sellers. This may, however, lead to an even bigger rise in deals in the mid-term, just like we saw in 2021 after the holdback by anti-Covid measures. At the beginning of this year, the Hungarian government has already made several promises to decrease inflation to a one-digit figure by the end of the year. This seems realistic given

that inflation has already stagnated in Western Europe. Political aspects, especially the war in Ukraine, as well as the debate over the disbursement of EU funds to Hungary and the infringement proceedings pending against Hungary, may also have an impact and could hold some transactions back even longer.

It is also worth mentioning that high foreign direct investment in Hungary reached a record of more than EUR 6 billion in 2022. Given the wide scope of the Hungarian FDI approval regimes (Hungary has two running in parallel), the question of the need for FDI approval by the Ministry of Economic Development arises not only in every international M&A transaction but also in many finance transactions. Unfortunately, no official statistics are available about either the total number of Hungarian FDI cases or the number of approvals or denials. In our experience, however, approval is granted in most cases, and there are only very few areas that the government regards as sensitive or strategic to deny approval. Hungarian FDI procedures are document intensive, but the ministry reacts within reasonable deadlines.

One of the cases where approval was denied has been submitted to the European Court of Justice (ECJ) for a preliminary ruling. The case has raised valid questions about the compatibility of FDI regimes that also apply within the EU/EEA (such as the second Hungarian FDI regime) with the free movement of capital under the *Treaty on the Functioning of the European Union*; and about the relationship between a previous merger control process, in which the Commission approved the acquisition, and a further acquisition by the same investor that is being scrutinized under the relevant Hungarian FDI rules. We are currently waiting for the opinion of the ECJ General Advocate. ■

FORGING AHEAD IN COMPETITION LAW – A SNAPSHOT OF THE HUNGARIAN LANDSCAPE

By Istvan Szatmary, Partner and Head of Antitrust and Competition, Oppenheim Law Firm



2022 brought many changes in competition law in Hungary and, as far as we can see, 2023 will not be any different. Here is a short summary of what was on the table in 2022 and what the consequences are.

In the first half of 2022, the competition law community was preparing for the application of the new rules relating to online trading platforms as well as on pricing information for products sold at discounted prices. These rules seem to be relatively technical at first sight, but the standards for their application had been established well before the official entry into force (May 25, 2022) of the new legislation. As a result, the planning of marketing campaigns focusing on price discounts now requires more scrutiny by players in the retail sector.

Influencer marketing has become a widely used tool in commercial communication and raised several novel questions. Authorities began to deal with those issues in various decisions but, in 2022, the Hungarian Competition Authority summarized its expectations and best practices in a notice published following a public consultation. A somewhat novel approach taken by the authority is that even a virtual entity (such as an animal, a mascot, a digital character, or an avatar) can be considered an influencer if it creates and publishes online content on its own website, social media page, video sharing, or other online platform.

Internal and preventive compliance plays an ever-growing role in major groups. Companies realize that the sooner an infringement is detected the less harm is caused, in monetary terms and in terms of managerial time and effort. Along these lines, and to help protect valuable sources within organizations, the EU issued the whistleblowing directive back in 2018. Member states had to transpose the directive until mid-2022. Some member states (including Hungary) missed the transposition deadline, and the Commission referred these cases to the Court of Justice of the EU. Non-compliance causes tension within groups operating on a cross-border level, particularly if HQ already applies the rules while, at the same time, subsidiaries do not have the proper legal ground rules to apply the same.

Then the New Year brought significant changes to merger control and antitrust enforcement. In merger control, one of the most significant changes is the increase of notification thresholds – a change that reflects the effects of inflation as well as the trends of the forint/euro exchange rate. In line with the ever-harsher enforcement of mandatory rules, the current minimum amount of fines for gun jumping is removed but, at the same time, the upper limit has increased. However, for companies, the most relevant new development is the introduction of the approach of the Commission regarding the timing of notifications: it will be possible to officially notify a transaction (even if signing has not taken place) if the parties can demonstrate their good-faith intention to proceed with the deal.

As regards antitrust enforcement, an innovative new tool is introduced: the warning letter. The chairman of the Hungarian Competition Authority became entitled – without opening a formal investigation and without declaring that a possible infringement has taken place – to issue a warning letter to market players. Such warning letters may be issued when the authority considers that market trends indicate potential infringements of competition rules. Its purpose is to enable the authority to communicate directly with market players and share its concerns about the possible infringement. In their reply, market players can describe their views on the content of the warning letter, including steps they may have taken, or they may take to ensure compliance with competition rules.

For 2023, we expect a similarly active approach from the authority as we saw in 2022. This includes the issuance of new guidance in the field of green claims (greenwashing) and in merger control, where a public consultation has already started. The transposition of the *Representative Actions Directive* and the entry into force of the new rules in 2023 will open new horizons for consumer protection associations, both within and outside of Hungary. It is yet to be seen what impact the new rules will have on the judicial enforcement of consumer protection rules, but companies active in the B2C segment should watch out for the developments this year. ■

THE FUTURE OF HUNGARY'S ENERGY SECTOR IS TAKING SHAPE

By Viktor Jeger, Partner, Nagy & Trocsanyi



The escalation of the war in Ukraine in February 2022 shocked Hungary's energy sector to such an extent that the Hungarian government declared a state of energy emergency by its resolution dated July 15, 2022. After the first anniversary of the escalation, the smoke has cleared enough to draw conclusions regarding the future based on the reactions of the stakeholders.

By now, energy security has become just as important as price on the market: businesses have accepted that the age of cheap energy may have come to an end, and they conclude energy supply contracts on elevated prices as long as those prices and supplies are guaranteed. In addition, they are prompted to invest in electrification: decreasing the oil and gas needs of manufacturing, transportation, and HVAC is not just for sustainability anymore, but also for ensuring the profitability of operations.

Businesses invest in their own energy generation as well. By installing solar panels or even solar farms, they can reduce their dependence on external circumstances. These solar projects may gain even more traction soon: while new connections to the electrical grid may be approved only in exceptional cases, due to the saturation of the grid, solar farms not feeding into the grid are still permitted.

Hungary has experienced a solar rush in the past few years: currently, more than 4 gigawatts of domestic and industrial solar capacity is connected to the grid, accounting for 13% of the electricity generation, while the connection of 5 gigawatts in additional industrial capacity and 100,000 new domestic solar plants has already been approved. To clear out the industrial projects not having the necessary financing in place, the government issued a decree, in December 2022, requiring new securities from developers. As it turned out, the market is committed: only 1 megawatt of capacity was given up. It is a common standpoint on the market, though, that not all sections of the grid are saturated, and there is hope for capacities opening up for allocation once more of the ongoing projects come online.

Grid constraints can also be alleviated by the ambitious network development plan of the state-owned transmission system operator, MAVIR, for modernization, capacity extension, and reconstruction – valued at HUF 400 billion. The development is scheduled to take place in the next four years. And grid development may not only serve solar farms. Although wind turbines are effectively banned on the territory of Hungary, this regulation is under revision with the aim of lifting the ban.

However, the time when Hungary may rely solely on renewables can come in the distant future only considering Hungary's environmental conditions, i.e., the periods when there is barely any wind or sun (if at all). Until then, a large portion of the natural gas saved by electrification is meant to be burned in plants balancing the fluctuations of renewable energy generation. Hungary's largest energy group, state-owned MVM, announced its plans to commission two combined-cycle gas turbine power plants, and expand its power plant in Tiszaujvaros with two gas-fired blocks (1 gigawatt total output) and its Matra power plant with a 650-megawatt gas-fired block. These power plants are intended to be suitable for hydrogen as well.

Nuclear power must be also mentioned here since the plant at Paks accounts for 45% of Hungary's electricity generation. The license of the four units of the power plant will expire between 2032 and 2037. Although two new units have been commissioned, with an improved energy output over the current units, the Paks II project lags behind and its fate is somewhat uncertain, given that the general contractor of the project is Rosatom. Although Rosatom is not a sanctioned Russian entity as of now, this may change and even its participation leads to unforeseeable complications: e.g., to date, subcontractor Siemens Energy has not received the approval of the German government for the export of the control system. Considering the uncertainties of the Paks II project, extending the lifecycle of the old units is a government priority.

While the escalation of the war in Ukraine is, indeed, a significant challenge to the Hungarian energy sector, the stakeholders have started to adapt to it and we may witness the birth of a more resilient and diverse energy market. ■

RECENT DEVELOPMENTS IN BANKING AND FINANCE

By Petra Mayer-Nagy, Head of Finance, and Miklos Stettner, Head of Consumer Conciliation, Lajer Legal



In terms of legislation, first, a long-awaited amendment of the insolvency act allows the liquidator to upkeep the debtors' operation during the liquidation process even if it is at a loss, if it can be assumed that the operation preserves the assets better than shutting off the business would. The liquidator can decide to continue the operation for the first 120 days of the liquidation procedure, but any further extension of this operation period requires the approval of the court. During such an upkept operation, new loans can be drawn down and new funders can be involved, which seems to be a new possibility for financial institutions and investors. Such loans can be covered by new collaterals, such as pledges, and arising claims will take the first place in the order for satisfaction of the claims. As this new legislation is already in use during the liquidation of the biggest Hungarian steel mill, where the possible future buyer is providing new resources, the first experiences will follow soon.

Second, the number of securities available to creditors will increase if a legal institution known in German law as *Erbbaurecht* is implemented in Hungarian law. To our knowledge, the legislator is planning to reintroduce this legal instrument into Hungary in order to strengthen economic competitiveness. The use of the right of the building (in Hungarian: *éptményi jog*) as security for a loan would allow, for example, the favorable financing of solar parks.

Third, in our experience, there has been a significant increase in the number of online fraud claims for refunds brought before the Hungarian Financial Conciliation Board (PBT). The frauds in these proceedings take various forms. It is common for fraudsters to pretend to be a bank employee and in this way obtain the customer's bank details. It is also common for fraudsters to send an offer for the customer's product on an online marketplace and then get the customer's necessary bank details during a fake payment transaction, even using a fake banking website. Depending on the type of bank details acquired, the fraudsters use them directly to get the customer's money (credit card details), or they install and activate a new mobile banking application or mobile wallet (e.g., Google Pay or Apple Pay) to the customer's account.



The bank can demonstrate in PBT proceedings that the fraudulent transactions were authorized in accordance with the terms of its contract with the customer. The bank can prove that data required for the transaction (e.g., PIN) are only known to the customer, and – regardless of any circumstances – the transaction would never have succeeded without the data given out. However, due to the strict implementation of the revised *Payment Services Directive* (PSD2) in Hungary, in the absence of customer acknowledgment, that is not sufficient in itself.

The PSD2 was not intended to exempt consumers from liability if they disclose their sensitive bank details to strangers through gross negligence. For these reasons, the Hungarian Banking Association has initiated a legislative amendment to ensure that the cost of consumers' gross negligence is not borne by the banks.

Looking at the markets, the bank sector is getting more concentrated and there is significant movement in the bank market. Erste Bank Hungary Zrt. used the possibility provided by Hungarian regulations where a bank's portfolio can be transferred (in whole or in part) with the approval of the National Bank. With the help of the succession of the employer as defined in the *Labor Act*, it bought the entire portfolio and took over most of the employees of German Commerzbank AG subsidiary Commerzbank Zrt. In a similar fashion, after acquiring Sopron Bank, its whole portfolio has been transferred to its new owner, Magnet Bank.

Meanwhile, there is a huge three-way merger ongoing, with the former TakarekBank as leader, including Budapest Bank and MKB Bank. It will be completed this spring, establishing the second largest bank in Hungary, the Magyar Bankholding, with 100% Hungarian ownership.

Finally, contrary to the trends above, according to market rumors, two new entities (neobanks) are expected to enter the Hungarian bank market, one having already filed for a license. ■

CHALLENGES IN 2023 ON THE OFFICE LEASE MARKET IN HUNGARY

By Marton Karika, Managing Partner, and Judit Vidoczy-Feher, Attorney at Law, Act Legal Ban & Karika



Energy crisis, inflation, and the forint exchange rate slide: what impact have these circumstances produced on the office lease market? This article aims to provide an overview of the challenges the office lease market faces in Hungary in such a turbulent period.

Owners and landlords are now, for the first time, facing the scale and complexity of the problem of soaring energy costs. Although the COVID lockdown has already disrupted market conditions in 2020 and 2021, as a result of the spread of remote work, the third and fourth quarters of 2022 brought questions of energy efficiency into the spotlight – for the office lease sector in Hungary as well. The trend towards remote work will foreseeably not stop but will continue to be vital for energy-saving purposes. The current state of the office market will certainly encourage both landlords and tenants towards closer cooperation – to probably enable both parties to benefit from their enhanced cooperation – on a scale reflecting their negotiating power.

Within the frame of such cooperation initiatives, in many places, a so-called action plan was set up, which meant thinking together with tenants, assessing office use habits, and the overall or individual savings that could be achieved by changing those habits have preceded investments in energy efficiency. For instance, in several buildings, following the introduction of the unified home office, the building energy systems have been modified accordingly, e.g., pre-treated fresh air temperatures have been lowered on designated days, or the lighting intensity of the buildings has been reduced, either partially or completely, in pre-agreed areas of the building. Investments to help reduce operational costs are becoming more common: individual utility meters have been installed for tenants to help them make their own savings through rethinking and controlling office habits, and technical solutions for the segmentation of buildings and presence detection (smart solutions) have been elaborated. In some buildings, completely new alternative heating/cooling systems are being installed.



In office market terms, it is still a very short time since the energy prices started to go out of control, but it is clear that buildings that have already paid particular attention to integrating environmentally conscious green energy systems will have a strong advantage. In addition to ESG considerations, the need to keep utility costs low will foreseeably increase demand for green buildings. This might also mean that demand for category B office buildings will fall, while (existing and newly built) category A office buildings will continue to be in demand and will be able to keep rents at high levels.

The extremely high Hungarian inflation rate (14,5% yearly compared to 2021 CPI) currently does not seem to further upset tenants, as the vast majority of office leases are linked to euro-based inflation (MUICP), a figure that has fluctuated between 0 and 2% for many years. Although the figure of nearly 10% in 2022 is indeed an increase by an order of magnitude, excessive tenant dissatisfaction has not yet been experienced by the landlords. This is compounded by the fact that energy costs have increased at a much higher rate, and all actors are focused on addressing and solving that issue.

The market trends and the need for cooperation between landlords and tenants will certainly affect existing lease agreements and also new ones, and legal solutions will need to be adapted to provide for the varying needs of the parties. The role of lawyers with strong negotiation skills and expertise spiced with solid knowledge of the market and its tendencies will continue to be of the essence for both landlords and tenants. ■

HUGE CONSOLIDATION AND IMPORTANT NEW LEGISLATION IMPACTING THE HUNGARIAN TMT MARKET

By Janos Rausch, Managing Partner, and Gergely Szabo, Partner, Ban, S. Szabo, Rausch & Partners



The Hungarian telecoms market saw several major transactions during the past few years, with 2022 and early 2023 witnessing undoubtedly the largest transaction in decades:

the acquisition of Vodafone Hungary by 4iG (51%) and state-owned Corvinus Zrt. (49%) for a deal value of approximately EUR 1.7 billion.

4iG further strengthened its position in the Hungarian market and is now a converged operator having a large customer base across mobile and fixed communications, as well as a powerhouse in the CEE telecoms landscape. The involvement of the Hungarian state in the transaction is a step towards realizing the governmental vision of creating a national ICT champion. According to the news, Vodafone Hungary will likely be rebranded to “One”. In addition to its newly acquired majority in Vodafone Hungary, 4iG owns a considerable stake (directly or indirectly) in Digi, Invitech, Antenna Hungaria, Hungaro Digitel, and Yettel Hungary. Therefore, the biggest questions for 2023 are how 4iG can integrate Vodafone Hungary into its portfolio, what steps will be taken for the smooth interoperability of the different systems and assets, and what synergies can be reached within its portfolio.

The other topic of interest for 2023 is the availability of passive telecoms infrastructure, as 5G networks need significantly more masts and towers to cover the same area. In anticipation of that, in November 2020, Vodafone Hungary de-merged its infrastructure assets (ground towers and roof-top sites) and established Vantage Towers, which it still owns. The access to and use of passive infrastructure (including co-location and use of its existing Digi and CETIN towers and sites) will be an interesting question for 4iG in the next years.

Further to the above transaction, there were and will be interesting legislative changes affecting Hungarian TMT players. In early November 2022, the Hungarian Competition Authority (HCA) issued a new guideline covering influencer marketing issues and, thus, the media industry. The guideline provides definitions for: influencer, content, consideration, commercial practice, and editorial content. The HCA gave detailed practical advice on how

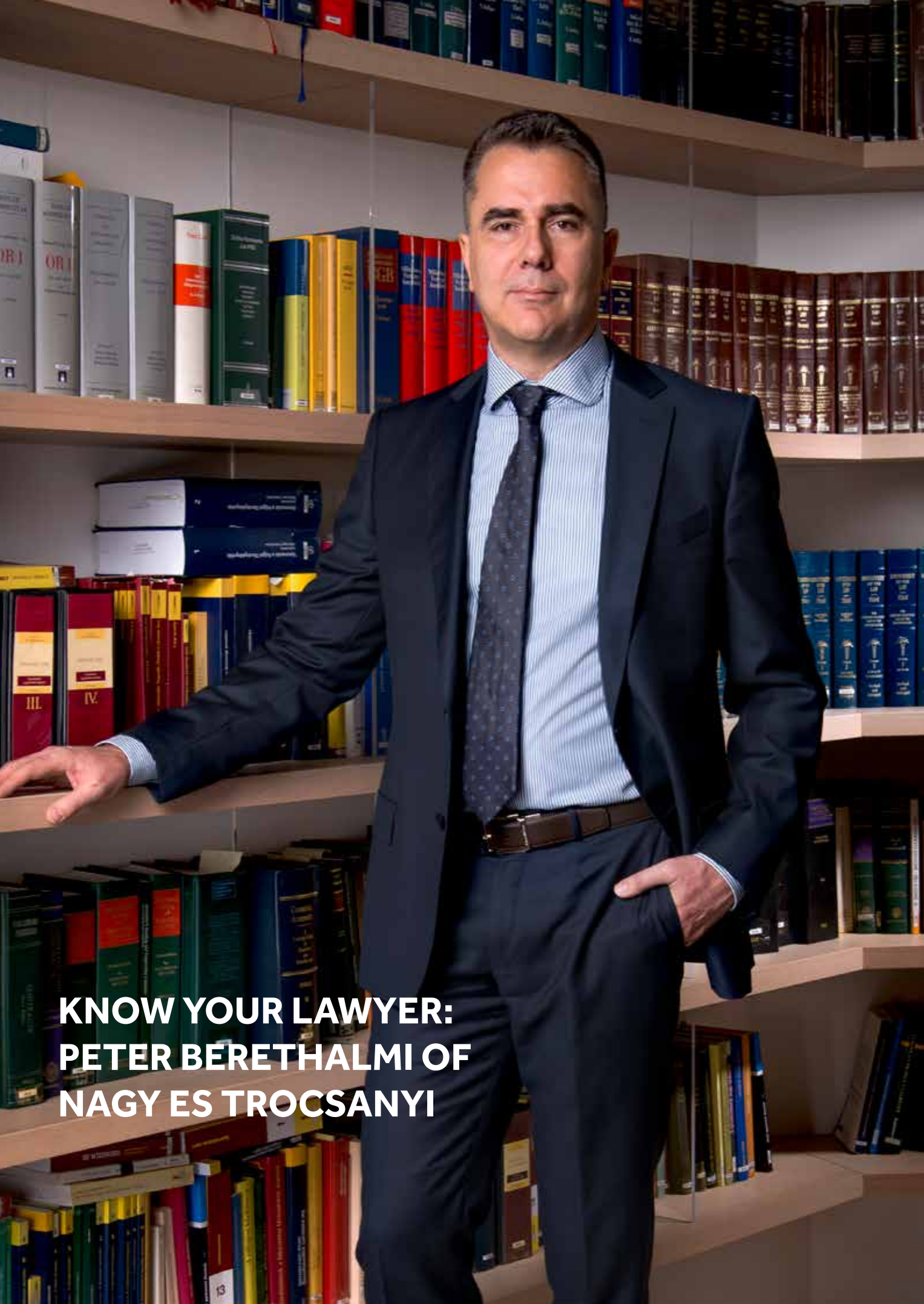
to announce content that has received a consideration, while the guideline summarizes further requirements aimed at appropriate advertising for marking sponsored content. Moreover, the guideline deals with the liability of different players and provides tips for due compliance. As the devil lies in the details, we would suggest developing control points, doing continuous monitoring, and having detailed written contracts with influencers covering all aspects of their advertising.



In addition to the above, one must also follow the current EU trends and keep an eye on the upcoming AI, cyber, and data legislation affecting the TMT industry as well. Gatekeepers beware: the *Digital Markets Act* (DMA) will serve as an *ex-ante* instrument for fixing digital markets even before the large online platform might endanger fair competition and more user choices. The DMA sets clear dos and don'ts for the daily operation of gatekeepers to ensure fair and open digital markets. The relevant rules will be applicable from May 2, 2023, while the designation of gatekeepers will be made by September 6, 2023, at the latest.

In addition to the DMA, the *Digital Services Act* (DSA) will be another hit. The DSA regulates providers of intermediary services, hosting services, online platforms, and very large platforms to fight against illegal content or goods and promote traceability, plus provide safeguards for users. The relevant rules of DSA will be applicable from February 17, 2024, while the designation of large online platforms and search engines will be made well in advance.

Other than the DMA and the DSA, the *Data Governance Act* will also certainly affect market players and the creation of the framework of data access and data sharing (rules are applicable from September 24, 2023), while the new *NIS2 Directive* will provide for strengthened cybersecurity (although its implementation will be mandatory from October 2024). Moreover, it will be interesting to follow the development of the *AI Act*, *Cybersecurity Resilience Act*, and *Data Act*, as well as the long-awaited *ePrivacy Regulation*. The effects of the Vodafone transaction together with the ever-changing legislative landscape will provide sufficient challenge for Hungarian TMT professionals for the upcoming period. ■



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- **Out of office activity:** Cooking, traveling, the gym, concerts, theater
- **Quote:** "... Fall in love with becoming the best version of yourself but with patience, with compassion and respect to our own journey" – Sylvester McNutt

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

Berethalmi: One project that involved a private equity firm, with a London law firm pitching for MKB: the due diligence was huge, the London law firm was exceptionally demanding, and the process was relatively tense.

And what was your main takeaway from it?

Berethalmi: Trust my own instincts and never give up.

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

Berethalmi: I enjoy cooking and watch too many cooking videos on YouTube.

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

Berethalmi: In my junior years, Ildiko Varga was very influential in my professional approach – I learned to focus on the details without losing perspective. She also taught me that the legal profession is not only about the law, rather it is about people and how you manage them.

■ **Book:** All books by Peter Nadas

■ **Movie:** *Youth*, written and directed by Paolo Sorrentino

Top 5 Projects:

- HVG office building – the first major transaction that I participated in was a real estate transaction in 2000. I was very junior but lead the transaction. It involved many late-night meetings;
- HVG transaction – the first major M&A transaction that I assisted also relates to HVG. This was a two-year process that resulted in WAZ acquiring a majority shareholding in HVG;
- Coca-Cola HBC – as a Junior Partner, I advised the Coca-Cola local bottling company for more than ten years, since the early 2000s, and participated in the HBC transaction when the bottling business became listed in Greece;
- Kemira GrowHow – the Finnish company (that later changed its name) was my first major client in competition law matters. For three years, I worked on various authority inspections;
- French veterinary company Ceva Sante Animale – a very recent client. I mention them because of the large number of construction and FDI projects that I am working on right now, which makes them special.

Name one mentee you are particularly proud of.

Berethalmi: I am proud of all the lawyers that I have worked with when they were juniors. I hope I played some role in their professional development. I am proud when young lawyers learn how to appreciate themselves and not give up on themselves: that leads to constant development. If I had to highlight one person, I would mention Tamas Pasztor, who was the Head of Legal & Operation at CPI Hungary – and is currently their Country Chief Operating Officer. He is responsible for legal, compliance, and operational matters. I am proud of him because he developed not only professionally, but also developed his personality to become a mature lawyer and manager who is capable of management in general, not only solving legal problems.

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

Berethalmi: "Challenges give you consistency in your life, encourage self-reflection, and build confidence" – Lewis Howes, *The Greatness Mindset*.

MARKET SPOTLIGHT: BULGARIA



ACTIVITY OVERVIEW: BULGARIA

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

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



75



41

Kostadin Sirleshtov



73



28

Georgi Tzvetkov



52



16

Damian Simeonov



37



14

Diana Dimova



34



13

Alexandra Doytchinova



13

Yordan Naydenov



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IF YOU BUILD IT, THEY WILL COME: CHARTING BULGARIA'S CAPITAL MARKETS RESURGENCE

By Andrija Djonovic

For Bulgaria's capital markets, the past ten years saw several landmark developments, large IPOs, and programs and initiatives tailored for small and medium-sized enterprise needs. Penkov Markov & Partners Associated Partner Boris Lazarov, Djingov Gouginski Kyutchukov & Velichkov Partner Gergana Monovska, and Tokushev and Partners Managing Partner Viktor Tokushev walk us through the highlights.

Landmark Developments

“Against the backdrop of a decade filled with many challenges, optimism prevails thanks to several decisive steps that have been taken towards the development of the Bulgarian capital market,” Tokushev begins. “In 2016, on the initiative of the Central Depository, the Financial Supervision Commission, and in partnership with the business community, a *Strategy for the Development of the Bulgarian Capital Market* was adopted. The project analyzed the current state of the capital market in Bulgaria and outlined areas for action aimed at its accelerated development.”

According to Tokushev, “measures were adopted to increase the range of financial instruments traded on the Bulgarian Stock Exchange and, in 2017, trading in government securities started within the framework of the established regulated secondary market for sovereign domestic debt. The trading of shares of the first exchange-traded fund – Expat Bulgaria SOFIX UCITS ETF, and the opportunity for Bulgarian investors to invest directly in shares of international companies on the new market – BSE International – have improved the country's image as an investment destination,” he explains.

“In 2018, the Exchange has been granted approval by the Financial Supervision Commission of Bulgaria to set up the new SME Growth Market BEAM – a special market organized by the BSE which allows small and medium enterprises in Bulgaria to become listed companies,” Lazarov chimes in. “The main objective of the BEAM is to provide SMEs with an alternative to the banking finance of businesses by giving them the opportunity to raise funds within easier terms in comparison to those on the main BSE market.”

It would appear the BEAM market has been a success, with Tokushev reporting that “the first IPO on the growth market was that of technology company Biodit AD, which raised

BGN 1 million in capital. Since then, a total of 14 companies have benefited from access to capital with a lower administrative burden,” he says. In total, 2022 saw seven successful IPOs completed on the BSE, “six of which were on the BEAM market,” Tokushev says, stressing that “in this respect, the past year was the strongest in at least 15 years.”

On the other hand, Monovska points to several market issues as well. “The Bulgarian capital market has been marked by low trading turnover and a lack of liquidity of the BSE. There has been a tendency of delistings from the BSE by large market players, such as the Bulgarian Telecommunication Company, delisted in 2013, energy sector companies, such as those part of the Energo-Pro group, delisted in 2015, and the former CEZ power units, delisted in 2022 after being acquired by Bulgarian insurance group Eurohold,” she reports.

Greatest Hits

“In 2018, Gradus AD, a joint-stock company specializing in poultry farming, feed production, and agricultural trade and exporting, made its stock market debut with the largest initial public offering in the history of Bulgaria,” Lazarov says. “On the first day of the IPO, the company registered 43,961,878 shares at the price of BGN 1.80, totaling close to BGN 80 million on the Bulgarian Stock Exchange.”

“This was the largest IPO on the Bulgarian stock exchange since the economic crisis and the largest listing since 2007 when the First Investment Bank raised BGN 107 million,” Tokushev adds. While the IPO gave Gradus a boost, the “war in Ukraine seriously affected the price of cereals, which are the main resource for the company's production,” he continues. “Despite this, the company started the year with expectations of increasing revenues and profits, a sustained increase in margins in all the sectors in which it operates, and an increase in the company's stock market value.”



Boris Lazarov,
Associated Partner,
Penkov, Markov & Partners



Gergana Monovska,
Partner,
Djingov, Gouginski,
Kyutchukov & Velichkov



Viktor Tokushev,
Managing Partner,
Tokushev and Partners

Breaking Barriers

“Globally, there is a strong interest for investments and even migration of entire business segments to emerging and developing markets such as Central and Eastern Europe, which unfortunately bypass Bulgaria,” Tokushev says, assessing the outlook of the capital markets. “In recent years, both the public and private sectors have relied heavily on European programs and European Structural and Investment Funds. With cautious optimism, we can say that attracting investment through the stock exchange is beginning to come into focus for business and the state,” Tokushev posits.

However, there are hurdles as well. According to Tokushev, this year is looking at difficult financial conditions due to inflation. “The war in Ukraine has had an undeniable economic impact on the Bulgarian market. Against this backdrop, there are important steps to be taken towards the introduction of the euro in Bulgaria,” he says. “The country is in the process of implementing several measures related to payment and settlement systems. In the area of securities settlement in Bulgaria, the main measure is the accession of the Depository for Government Securities at the BNB and that of the Central Depository JSC to the TARGET2-Securities centralized securities settlement platform.”

Monovska chimes in, stressing that “most of the listed companies have a very small free float. Even the largest companies are small by international standards and the market lacks a benchmark issue after the delisting of large players such as Bulgarian Telecom,” she explains. Limited free float and weak corporate governance, according to her, contribute to “a low level of trust in the capital market and the low interest of international investors.”

Lazarov agrees, stating that the biggest obstacles to seeing a market boom are rather related to “some cultural and advertising contextual factors. On one side, the capital markets are not usually taken into consideration by a lot of investors for various reasons, on the other side, the entrepreneurs had, for a long period of time, access to easy funding through the banks.” Still, Lazarov ultimately believes that “the situation is changing and there is a trend of more and more people taking part in the capital markets, be it as a prospective company seeking capital or as investors searching for a promising target.” ■

Market Drivers

Looking at the key drivers of the local equity and debt markets, Tokushev primarily stresses the overall regulatory framework improvements, “both in terms of rules for debt financial instruments and to ease listing conditions. Overcoming fragmentation in national legislations will greatly increase the flexibility of companies, especially SMEs, to list on regulated and growth markets.”

Lazarov adds that “the BEAM market is driving the local equity market forward, a perfect option in comparison to the heavily regulated main BSE market, whose rules sometimes make it difficult for Bulgarian businesses to comply. In addition, the BEAM market appears more and more to be a great alternative to bank financing for companies.” Lazarov explains that according to available data, “in 2022, a record 45% growth of the companies listed on the BEAM market occurred, increasing the total capitalization on the market by 35%.”

THE PUSH-PULL FACTORS OF BULGARIAN INFRASTRUCTURE

By Andrija Djonovic

Bulgaria's infrastructure sector has seen major projects completed and many more are planned. With the country facing political turmoil and corruption still an infrastructure buzzword, Kinstellar Partner **Antonia Mavrova** and Gugushev and Partners Senior Partner **Victor Gugushev** navigate the intricacies of Bulgarian infrastructure.



By Land, By Sea, By Air

The 2020 concession of Sofia Airport, awarded to the SOF Connect consortium, is, to Mavrova, still the most resounding success in recent years. “We haven’t seen any infrastructure project development of such scale, although there were ambitious plans for big infrastructure projects such as tunnels, airports, and ports,” she says. “The expansion of Terminal 2 is set to begin in line with the overhaul plans.”

In terms of roads, Mavrova notes that “a few small-scale highway projects are due to be completed soon, including the Europe highway connecting Sofia with the Serbian border, and parts of the Struma highway, while larger projects such as Hemus are being delayed due to various reasons.” She reports that her office has “witnessed some progress on the modernization of railway infrastructure part of the TEN-T network and with funds from the *Operational Program on Transport 2014-2020*, along the railways of Sofia-Septemvri and Plovdiv-Burgas, while still others are being delayed.”

Additionally, “last year, the Three Seas Initiative Investment Fund announced its first investment in infrastructure in Bulgaria – the acquisition of a stake in BMF Port Burgas, the operator in the Port of Burgas,” Mavrova highlights.

Big Plans, Even Bigger Dreams

Assessing the state of affairs now, and looking at the future, Mavrova says that “the new geopolitical context has a consequential impact on the priority projects in the pipeline for the future. Global supply chains are being shifted and Bulgaria is

seeking to position itself as a regional hub.” According to her, it has become increasingly important to improve connectivity with neighboring countries, such as, for example, “the overhaul of the Varna and Ruse seaports.”

Gugushev chimes in, adding that “the European Commission approved the *Bulgarian Transport Connectivity Program 2021-2027*, which is the first major infrastructure program for Bulgaria adopted by the EC.” According to him, “funds over EUR 1.6 billion are earmarked under the program and are planned to be invested in some of the largest road and railway projects, in the purchase of specialized equipment in water transport, as well as investments to reduce harmful transportation emissions. This program also provides funding under the *National Recovery and Resilience Plan*.”

Furthermore, Gugushev says that “in the road sector, the priorities are the construction of the Ruse-Veliko Tarnovo highway and the Shipka tunnel, which will provide a fast connection between Central, Northern, and Southern Bulgaria. The completion of the Struma Highway (Sofia-Kulata) is another priority in the axis for road projects,” he explains. When it comes to the railway sector, the main priority is “the completion of the railway lines Elin Pelin-Kostenets and Voluyak-Dragoman, as well as the modernization of the sections from Sofia to the Serbian and Macedonian borders.”

Continuing, Mavrova says that “another way for Bulgaria to position itself as a hub is focusing on nearshoring and logistics. A step in that direction was made last year when the government adopted a list of industrial parks identified as



Antonia Mavrova,
Partner,
Kinstellar



Victor Gugushev,
Senior Partner,
Gugushev and Partners

strategically important for the balanced territorial development of the country,” she notes. “When well-connected to the rest of the county, industrial parks could be the center of major logistics and manufacturing activities,” Mavrova explains.

Recovering the Recovery and Resilience Plan

“The *Recovery and Resilience Plan* is perceived to be a driver of the infrastructure sector and includes a number of elements to improve transport and digital infrastructure delivered through investments contingent on the implementation of a set of reforms,” Mavrova says. Frequent political upheavals over the past two years have

stalled matters somewhat, and certain aspects of the plan are set to be renegotiated. Still, certain projects have kicked off, including “one for developing industrial zones, which aims to put in place conditions to attract investors on the grounds of industrial parks by building basic, green, specialized and/or social infrastructure,” Mavrova points out.

The full potential of the plan remains yet to be realized. “The renegotiations with the European Commission are set to restart in April 2023 and we are yet to see how this will impact the programs for infrastructure projects that were envisioned in the plan,” Mavrova adds.

Under the Corruption Blanket Term

Even with several successfully completed major projects in the bag, and a fairly comprehensive plan for the future, the infrastructure sector in Bulgaria has other problems. “It is undeniable that large-scale infrastructure projects depend on political will and a stable government – which Bulgaria has been lacking for the last two years,” Mavrova says. “Major projects are being delayed not only because of the political uncertainty

but also because tender procedures are often being appealed by the unsuccessful bidders, or by other interested parties, on grounds of corruption, among others.”

Gugushev, for one, feels that corruption is the key problem. “Corruption in the public sector and, specifically, in road construction has a direct negative impact not only on the pace of development and the quality of infrastructure projects in Bulgaria, but it is also an indirect cause that leads to a significant increase in the risk to the life and health of all persons traveling along the national road network,” he explains. Specifically, “in order to absorb a public resource in huge proportions, corrupt practices in Bulgaria led to one of the highest prices for the construction of a kilometer of highway in Europe. According to information presented in the media, the prices for Struma Highway exceeded BGN 50 million per kilometer with VAT, which at that time was a record for the European Union,” he explains.

Not only that, but the “artificial increase in construction prices for the purposes of their criminal appropriation left other significant projects without the necessary financing,” Gugushev shares. “Currently, Bulgaria has around 800 kilometers of existing highways and more than 50% of the road network in the country is amortized, dangerous for traffic, and in need of repairs, for which there are not enough funds,” he says. “In order for the profit margins to be even higher, road construction is massively carried out in poor quality. Recently, it was found that 33% of the asphalt thickness is missing on some of the newly built routes – paid for with European funding. Poor quality construction is one of the main reasons why Bulgarian roads are among the deadliest in Europe,” Gugushev stresses.

Interestingly, “in order to be able to absorb the European funds for the construction of roads in the country in a timely manner, in many places the construction was carried out without having finished the administrative procedures for permitting construction. At the moment, this represents a serious challenge regarding the commissioning of the roads built without the relative documentation,” Gugushev continues.

Finally, Gugushev also highlights there was an “extremely non-transparent practice in road construction” in place, known as in-house procurement. “The construction was assigned to a state-owned company without the necessary capacity, which then subsequently used the major construction companies as subcontractors, thereby circumventing the requirements of the *Public Procurement Act*.” ■

MARKET SNAPSHOT: BULGARIA

THE BLOW OF THE WHISTLEBLOWING LEGISLATION IN BULGARIA

By Irena Georgieva, Managing Partner, PPG Lawyers



On May 4, 2023, the *Bulgarian Whistleblower Protection Act* (the Act), which transposes *Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of whistleblowers for violations of Union law* (the Whistleblowing Directive) will enter into force.

In addition to the public sector, the Act will also apply to the private sector, where the demarcation line is the number of employees – for companies with more than 50 employees, the Act enters into force on December 17, 2023. However, regardless of the number of employees, companies that carry out certain specific activities determined by the Act also fall under its scope. These are, for example, activities from the financial and insurance sectors, other enterprises of public interest, persons obligated under the anti-money laundering laws, and others.

To date, most of the comments on the Act point to the need for whistleblower protection, which in many member states has been non-existent or severely limited. The slow process of transposing the Whistleblowing Directive was also criticized.

However, it is of interest how such legislation will be adopted in countries like Bulgaria (from the former Eastern Bloc) and what kind of understanding it will meet in business circles.

First, it is striking that the Bulgarian legislator has given up the possibility of anonymous reporting. This was an expected solution. The submission of anonymous reports has long been frowned upon in our country, as it is considered that their credibility cannot be proven, and the person who filed an anonymous report is not responsible in any way whatsoever. However, this local decision is in sharp contrast to the legislation of other member states, which consider that if the possibility of anonymous reporting is not given, the persons who might face discomfort in commenting on a violation are discouraged due to the presence of subordination relations in their employment. It is expected that the scope of the Act would be limited in practice also because, in countries with fresh memories of the communist

regime, this type of regulation is instinctively associated with the duty to report rather than the right to protection.

Next, the Act contains clauses that are contradictory to the rest of the Bulgarian legislation. For example, reporting to the responsible person in the company is accompanied by a warning of liability for solicitation – a crime, the composition of which takes place only when the solicitation is carried out before an official state authority.

The entire organization of the whistle-blowing process also deserves criticism – especially the internal whistle-blowing channels that should be created for each company. The data protection officer (DPO), or other persons performing a personal data protection position with the company, may be additionally charged with the duties of collecting and analyzing the evidence on alerts. Thus, the job description of a DPO, which is already most often performed by persons with other employment duties, now increases with more – and significant – obligations. In reality, if an employee carries out all these duties, they will hardly have the opportunity to professionally perform their main duties in terms of competence.

On top of it all, the Commission for Personal Data Protection (the regulator for personal data issues in Bulgaria) will also be the central authority for filing reports under the Act. Although the Act will enter into force soon enough, clarifications and guidelines are still awaited from this body on how and in what form reports should be submitted to it, in order to ensure the existence of an external whistleblowing channel. So, as companies struggle to reach compliance with the new legislation, they are hampered by a lack of clear instructions on how to achieve it.

It must be recognized that the new whistleblower protection rules may theoretically be of benefit to the adherence to the rules for carrying out basic economic activities, but on the other hand, they are another serious burden on businesses that are already struggling to prove themselves in compliance with all regulatory requirements. It also remains to be seen how well the use of this Act for “retaliatory” purposes will be avoided, although the law itself prohibits such actions on paper. ■

DIVERSIFICATION OF THE GAS SUPPLY, NEW NUCLEAR PROJECTS, AND BALANCING CAPACITIES FOR BULGARIA

By Kostadin Sirlishtov, Managing Partner, and Dian Boev, Associate, CMS Sofia



The political turbulence within and beyond Bulgaria has not only caused unpredictability in the regulatory environment but also drastic changes in the national energy sector. Following the Russian invasion in Ukraine, Bulgaria took steady steps to break its dependence on Russia as a single supplier of natural resources.

Nuclear Power

At the beginning of 2023, the caretaker government adopted a *Strategic vision of the Bulgarian energy sector with a horizon 2053* (Strategic Vision). The emphasis of the Strategic Vision is put on nuclear energy, where 4000 megawatts of new nuclear capacity is envisaged to be put in operation until 2045, in parallel with the decommissioning of the existing 2000 megawatts. The construction of a second nuclear power plant (NPP) in Bulgaria, with a 2000-megawatt capacity on the Belene nuclear site, is also part of the Strategic Vision even though several governments over the last 30 years have tried, without success, to find a strategic investor to develop the Belene NPP project.

In addition, Bulgaria took significant steps toward the diversification of its nuclear supplies for its existing reactors away from Russia. The single operating nuclear power plant, Kozloduy NPP, signed a ten-year agreement with Westinghouse, which as of 2024 will be delivering nuclear fuel for the 1,000-megawatt VVER Unit 5. Moreover, as of 2025, Framatome will supply nuclear fuel for the 1,000-megawatt VVER Unit 6. On top of that, in January 2023, the Bulgarian National Assembly adopted a decision requiring the caretaker government to initiate negotiations with the US Government for the construction of two new AP 1000 Westinghouse units at the existing Kozloduy NPP site.

Natural Gas

The natural gas market in Bulgaria, despite being liberalized, has a high market concentration since the public supplier Bulgargaz holds a dominant position in the wholesale segment. Lately, the natural gas market in Bulgaria suffered numerous changes. Bulgaria was among the first European countries to have its gas deliveries from Russia halted. In April 2022, Bulgargaz refused to follow the ruble payment requirement that Gazprom made attempts to introduce unilaterally, following a Russian presidential decree.

However, due to the halted gas deliveries from Gazprom, Bul-

garia took steps to diversify its supplies and break its dependence on that major supplier. Before the halted Russian supplies, Bulgaria counted on its two long-term gas supply agreements – with Gazprom and with the Azerbaijan Gas Supply Company (for around one sixth of the annual consumption in 2021).



In October 2022, the Interconnector Greece-Bulgaria (IGB) was commissioned and, thus, Bulgaria currently receives 1 billion cubic meters of Azeri gas per year, at highly competitive prices. The Azeri gas covers around one third of Bulgaria's annual consumption. Since the long-term gas supply contract between Bulgargaz and Gazprom expired at the end of 2022, Bulgargaz migrated to spot-market deals to satisfy the consumer demand for 2023, while searching for long-term solutions.

Also, at the beginning of 2023, Bulgarian transmission system operator Bulgartransgaz started the construction of the Interconnector Bulgaria-Serbia (IBS), with a bidirectional capacity of 1,8 billion cubic meters per year. Considering the consumption fluctuations during winter and summer, in 2023 Bulgartransgaz started the expansion of the Chiren underground gas storage up to 1 billion cubic meters.

Thoughts for the Future

Changes are envisaged to allow Bulgaria to decrease its carbon dioxide emissions by 55% until 2030, compared to 1990, and reach a net-zero economy by 2050. Significant changes are expected in the energy sector, with the decommissioning of the coal thermal power plants (with a capacity of over 3,600 megawatts) around 2030. Nevertheless, the Strategic Vision developed a model considering the construction of seven gigawatts of solar and two gigawatts of wind capacity by 2030, and 600 megawatts of storage capacity.

The key asset in Bulgaria's energy balancing market is the Chaira Pumped Storage Hydropower Plant (PSHPP), with a production capacity of 864 megawatts and a pumping capacity of 788 megawatts. It is out of operation and the government is trying to restart it in 2023. The Chaira PSHPP could secure flexibility in the power system since (1) it can exploit its pumping capacity to balance the excess production and (2) produce power in the event of shortages. Future investments of EUR 200 million are envisaged to enable the restart of its generation capacity. ■



**KNOW YOUR LAWYER:
VICTOR GUGUSHEV OF
GUGUSHEV & PARTNERS**

Career:

- Gugushev & Partners Law Office, Senior Partner, 2022-present
- Gugushev & Partners Law Office, Partner, 2020-2022
- Gugushev & Partners Law Office, Senior Associate, 2017-2020
- Gugushev & Partners Law Office, Associate, 2012-2017
- Gugushev & Partners Law Office, Trainee, 2007-2012

Education:

- Columbia Business School, Columbia University, Entrepreneurship Program, 2021-2022
- Queen Mary University of London, Master of Laws, 2014-2015
- Sofia University Kliment Ohridski, Master of Laws, 2007-2012

Favorites:

- **Our of Office Activity:** Cooking
- **Quote:** “*Amat Victoria Curam*”
- **Book:** *The Republic* by Plato
- **Movie:** *Lord of the Rings*

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

Gugushev: The acquisition of Delivery Hero’s businesses by Glovo in six separate legal jurisdictions – Bulgaria, Romania, Serbia, Bosnia & Herzegovina, Montenegro, and Croatia. The EUR 170 million deal was characterized by its highly complex cross-border aspects, multiple stakeholders, and tense deadlines. The professional work of the Gugushev & Partners team on this project has deservedly won the Deal of the Year Award for 2021, received at a ceremony in London organized by CEE Legal Matters.

And what was your main takeaway from it?

Gugushev: That 24 hours are never enough. Seriously speaking, the main takeaway for me was that only a professional approach can take you out of a difficult situation. In this project, I had the great pleasure and opportunity to work with top-level experts in my team and in the counterparty’s team as well. Even though it was an extremely complicated deal, with many stumbling blocks, our common efforts helped to avert a deadlock and lead the project to a successful closure.

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

Gugushev: My passion for cooking. Culinary experiments with products, tastes, and flavors inspire my creativity. Good company that delights in the result of my efforts in the kitchen is the desired satisfaction – not only my family and friends – but also many of our partners and clients have tasted, and highly valued, my original dishes.

Top 5 Projects:

- Advising BlackPeak Capital on its acquisition of a stake in Telelink Bulgaria AD. Leading the team and coordinating the multijurisdictional aspects for the EUR 8 million transaction;
- Advising Delivery Hero as lead Partner in all stages of the sale of Delivery Hero’s Bulgarian subsidiary. The deal was closed simultaneously in six jurisdictions;
- Advising Alfa Star on the registration of the first evergreen EuVECA fund in the country. A significant advantage of the EuVECA label is that it enables managers to market their funds to high-net-worth individuals investing a minimum of EUR 100,000;
- Advising Eleven Fund III Cooperatief U.A. and leading the team on the acquisition of a Greek-based start-up company. The investment was in the form of a conversational loan that can eventually be converted into company shares;
- Assisting the majority shareholders of NJ Partners, a leading food retailer in Bulgaria, in the process of the sale of their shares to the company’s minority shareholders.

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

Gugushev: I would definitely say Dimitrinka Metodieva, a Senior Partner in our firm and a great colleague of mine for many years. Her diligent approach, timely manner, and the responsibility with which she addresses tasks have always impressed me and have been an example to follow. One quality I find particularly important for a mentor is the readiness to share experience with others and, more precisely, with younger colleagues. Many people might have the impressive personality and achievements to be role models, but the ones who are ready to dedicate time and effort to teach and transfer their knowledge are rare diamonds. Dimitrinka is one of them.

Name one mentee you are particularly proud of.

Gugushev: Mihaela Dimitrova is a rising star in our office and a young colleague with significant achievements over the last couple of years. In 2022, she successfully completed an executive program in Energy Markets and Services. Her work was recognized with a scholarship, and she was invited as a speaker at an international conference – and this is just the beginning of her professional career. I am really proud that my mentorship contributed to Mihaela’s confidence.

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

Gugushev: Don’t take yourself too seriously and work hard. Both will be appreciated.

EXPERTS REVIEW: REAL ESTATE

This issue's Experts Review section focuses on **Real Estate**. The articles are presented ranked by the 2022 annual construction sector production index, according to Eurostat data. The index tracks variations in (price-adjusted) yearly construction output volumes compared to a 2015 baseline (where 2015 volumes represent 100%).

The article from Montenegro leads the section, with a whopping, almost two-and-a-half times larger output in 2022 than in 2015, followed by the articles from Albania and Serbia, both sporting over 80% increases. Bulgaria, Greece, and North Macedonia wrap up the issue, with roughly 9.5%, 15%, and 40% drops, respectively, in the 2022 construction index.

Country	2022 Construction Output (% of 2015 volumes)	Page
■ Montenegro	234,7	Page 64
■ Albania	188,1	Page 66
■ Serbia	180,8	Page 68
■ Hungary	160,4	Page 69
■ Slovenia	158,4	Page 70
■ Romania	145,2	Page 71
■ Croatia	141,9	Page 72
■ Austria	131,2	Page 74
■ Poland	127,8	Page 75
■ Czech Republic	107,6	Page 76
■ Latvia	106,0	Page 77
■ Ukraine	100*	Page 78
■ Bosnia & Herzegovina	97,9	Page 79
■ Bulgaria	90,4	Page 80
■ Greece	84,2	Page 81
■ North Macedonia	59,7	Page 82

*No data was available for Ukraine. The country was assigned the 2015 baseline.





MONTENEGRO: A POSTCARD-READY REAL ESTATE ENVIRONMENT

By Jelena Vujisic, Partner, Vujacic Law Offices



Montenegro is still considered a rising star in the Balkan peninsula, attracting the attention of potential investors worldwide, and that's especially the case with the country's real estate market.

Legal Framework

Foreigners can own and buy real estate in Montenegro and there are no legal restrictions – except those regulated by the *Law on Ownership Rights* – only prohibiting the acquisition of certain types of immovable property by foreigners, like forests, agricultural land, etc.

Foreigners can buy immovable property as individuals, but they can also acquire real estate by setting up a local company for the acquisition, in which case they can avoid the previously mentioned limitations.

It is significant to note that, when signing the *Stabilization and Association Agreement*, Montenegro granted national treatment to EU nationals acquiring real estate on its territory.

The procedure for the sale and purchase of real estate is subject to notarization and, subsequently, to the registration of the ownership transfer at the Cadaster and State Property Administration.

Taxation

Purchase of real estate property in Montenegro is also subject to the property transfer tax, in case of its acquisition on the secondary market. The property transfer tax rate is 3% and the amount of tax depends on the estimated market value of the real estate asset traded.

On March 1, 2023, The Parliament of Montenegro adopted an amendment to the *Real Estate Transfer Tax Law* that will be applicable from January 1, 2024, which increased the property transfer tax rate depending on the estimated market value of the real

estate asset. This amendment prescribes the progressive rate of 3% will apply to those real estate assets with an estimated market value of less than EUR 150,000. For those properties with an estimated market value over EUR 150,000, the property transfer tax will be calculated at the amount of EUR 4,500 plus 5% of the amount over EUR 150,001.

Owners of real estate in Montenegro are also required to pay the annual property tax. The rate for the annual property tax is proportional and amounts to between 0.3% and 1% of the market value of the real estate asset. That amount can be increased in the case of secondary apartments to up to 1.5% and for undeveloped land up to 5%.

The Real Estate Market

Although the real estate business picked up in 2019 due to the Economic Citizenship Program, which started in January 2019, the Government of Montenegro decided to close its Economic Citizenship Program to new applicants, from 2023. This decision was taken in line with a recommendation by the European Commission against operating an investor citizenship scheme.

The prices for real estate in Montenegro are growing in line with the global growth trend, but it is also expected that prices in the real estate market will stabilize during the course of this year. There is also a notable trend in the real estate market, where the prices of old apartments offered for sale by their owners are higher than those for apartments under construction and of new construction offered for sale by investors – the complete opposite of the pricing trend that was observable just a year ago.

Montenegro's accession to NATO in 2017, as well as the country acting in line with EU standards within its current process of accession to the EU – which we fully expect to happen in the next few years – additionally contribute to creating a favorable investment destination, the full potential of which will be realized after Montenegro joins the EU. ■



Legal



Tax



Social Security



Customs and Foreign Trade



Intellectual Property Law and R&D



Competition Law and Antitrust



ALBANIA: LEGAL FRAMEWORK AND RECENT DEVELOPMENTS ON USING STATE-OWNED REAL ESTATE FOR PROMOTING INVESTMENTS

By Aigest Milo, Co-Managing Partner, and Armando Toslluku, Senior Associate, Kalo & Associates



The trend is clear: real estate is noticeably becoming the most dominant sector of foreign investments in Albania. Records from national and international entities and organizations provide data confirming the accelerating increase in the past few years. According to the data provided by the Bank of Albania, by the end of September

2022, the total value of foreign investments in real estate has exceeded USD 1 billion, representing a 43% increase compared to the same period of the previous year, and constitutes 9.5% of the total foreign investments in Albania.

The reasons behind the soaring of real estate transactions in Albania can be attributed to the geopolitical background related to the clear perspective of Albania's EU accession, and competitive prices compared to the region, as well as, to some extent, to recent changes in the legal framework facilitating the use of state-owned land for purposes of investment in real estate.

With the fall of the communist regime, the Albanian Government has carried out a series of legal reforms aimed at the privatization of state-owned land to boost its crippled economy. The main pillar of that strategy was the attraction of foreign investments through the grant in use of state-owned land with the option to acquire ownership once the proposed investment was completed.

The first piece of legislation was enacted back in 1995, allowing foreign individuals or legal entities that had plans to invest in Albania to purchase state-owned land or other state-owned immovable properties, at the sole condition that the value of the investment made or planned to be made was not less than three times the value of the land, as established by a Council of Ministers Decision. In practice, that condition is easily met as the value established by the Council of Ministers Decision for state-owned land is well below the market value, which is a clear indicator of the encouraging nature of that legal provision towards foreign investments.

The possibility of foreign investors acquiring state-owned land was further enhanced in 2008 by expanding the options available to them. Based on that legislation, it is nowadays possible to conclude a lease agreement or an emphyteusis agreement with state

organs, allowing the use and successive acquisition of state-owned land for carrying out the planned investments. In order to privatize such state-owned land, the lease or the emphyteusis agreement should be at least for five years and the investment should be not less than 150% of the land's value; if the investment is higher than 750% of the land's value, no minimum term is applicable.



In addition to the above, a recent normative development related to the introduction of strategic investments legislation is currently being heavily used in practice for boosting foreign investments in real estate transactions as well. Based on the legislation on strategic investments, a proposed investment in certain economic sectors – such as energy and mining, transport and communications, tourism, agriculture and fishing, technological and economic development areas, etc. – meeting certain thresholds (from USD 1 million to USD 100 million), and aimed at job creation, is eligible for obtaining a series of support measures from the Albanian Government, including the use or ownership of state-owned land.

In terms of supporting measures, with reference solely to real estate, the investor can benefit from land consolidation services, as well as the right to use state-owned immovable properties to the benefit of the investment, or to acquire the ownership of state-owned land, including the possibility to benefit from the expropriation of private owners.

The use or ownership of state-owned land for the benefit of strategic investments can be directly linked to the trend evidenced above, considering that a substantial part of the projects having obtained strategic investment status is related to the construction of touristic accommodation structures, and residential and commercial ones, along the Albanian riviera, mainly constructed over state-owned land.

The current practice and investment curve further confirm that state bodies have shown consistency in being open to offering state assets to foreign investors, and this trend does not seem to be slowing down. ■



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SERBIA: 2023 NOVELTIES AND CHALLENGES IN REAL ESTATE

By Tanja Dugonjic, Partner, Bojanovic & Partners



Despite facing various challenges brought on by unfavorable market trends and the global events that shaped them, the Serbian real estate market continued to grow in the last quarter of 2022 according to a press release by the Serbian Republic Geodetic Authority (RGA). The RGA also stated that the overall value of the real estate market underwent record-high 36% year-over-year growth in 2022, with a total of EUR 2.3 billion used to purchase real estate during the fourth quarter of 2022 alone. This marks an increase of 27.3% compared to the same quarter in 2021. The most expensive apartment in Serbia was sold for just over EUR 2.4 million. These figures illustrate the significance of the real estate market in the Serbian economy.

The Serbian government has recognized the economic importance of the real estate and construction sectors, as well as the corresponding need for improved legislation that would enable their further growth by providing more legal certainty to investors and other participants. At the end of January 2023, the Serbian Ministry of Construction, Transport and Infrastructure published the *Draft Law on Amendments to the Law on Planning and Construction* and invited all governmental authorities, organizations, entities, and those interested from the general public to participate in public comment. At the time of writing, the public comment process was still ongoing, and it remains to be seen whether the final version of the draft will be updated to take into account the suggestions and remarks generated.

Proposed amendments aim to, among other things, accelerate the building permit issuing process, contribute to the “green agenda” by introducing the term “green building” and regulations on construction waste management and storage, impose additional obligations on investors, and clarify the provisions which were not interpreted unanimously by the competent authorities. For example, it has been proposed that any investors who obtain a “green building” certification will be entitled to a 10% decrease in their contribution to the development of land for construction. Also, investors must provide proof of waste management to obtain a usage permit. Furthermore, investors would be required

to obtain an insurance policy before they begin work in order to protect any citizens who could be jeopardized by construction efforts. Finally, it is being proposed that new buildings should be connected to the existing utility infrastructure free of charge.

The general public’s reactions suggest that the most controversial amendment is the abolishment of a conversion fee for construction land. According to the Ministry’s explanation attached to the *Draft Law on Amendments to the Law on Planning and Construction*, the conversion fee will be abolished for all entities except sports associations, non-profits, agricultural and housing cooperatives, and persons and entities covered by the provisions outlined in the *Annex G to the Agreement on Succession Issues of the Former Socialist Federal Republic of Yugoslavia*. The rights and obligations of these exempted entities in relation to the conversion of usage and ownership rights for construction land will be regulated by separate laws. The Minister of Construction, Transport and Infrastructure said that the proposal came about because, in past years, conversion fee revenues were not significant, and their elimination would attract more investments in the construction sector, enable higher salaries, create new jobs, and consequently result in more rapid economic growth.

While legislation in the construction sector is facing changes, legislation governing the sale of real estate remains the same; but the application of such laws in practice can be challenging, especially for the sale of real estate portfolios containing properties of differing legal statutes. One example is a portfolio containing some real estate with a statutory pre-emption right and some without. If the potential buyer is asked to make an offer on the entire portfolio without the option to exclude certain properties, it is up for debate if the pre-emption right applies to the entire portfolio or only to certain items.

Life has always been more creative than law, and therefore it is the lawmakers’ task to create laws with clear and practical rules that do not leave room for variation in interpretation by authorities. Time will tell if the proposed amendments, when implemented, will result in an improved business environment and legal certainty in Serbia’s construction and real estate sectors. ■

HUNGARY: NEW REGULATIONS ON E-LAND REGISTRATION, THE RIGHT TO CONSTRUCT, AND COMPLETELY NEW CONSTRUCTION CODE EXPECTED IN 2023

By Peter Berethalmi, Managing Partner, Nagy es Trocsanyi



Act C:2021 on the land registry (E-Land Registry Act) was announced on June 28, 2021. It was expected to take effect in February 2023, but it will come into effect on February 1, 2024. The new E-Land Registry Act intends to switch the land registry procedures to electronic, so the intention is that procedures relating to any real property would be digitalized. The aim is that no paper-based documents be filed with the land registry, rather all applications and communication would be done electronically (digitalized).

The enforcement rules of the E-Land Registry Act will be introduced by a new government decree (enforcement decree) that is expected in 2023, so that all stakeholders can prepare for the February 2024 start of the new regime. The enforcement decree will specify the rules relating to (1) electronic applications, when and how the communication will be done electronically; (2) automatic registrations; (3) the data of the property that can be registered; and (4) rights and facts that can be registered. It is likely that a new 3D property register will also be regulated by the enforcement decree.

Practicing lawyers are most anxious about the automatic procedure because such automatization will be strictly regulated, and only specially licensed lawyers will be eligible to keep working with the automatized procedure.

The Right To Construct – A New Right Created by the Civil Code

According to the draft explanation of an amendment to the current *Civil Code (Act V:2013)* a new right will be created in the *Civil Code*, the “right to construct” (*építmeny jog*), that was known in the Hungarian legal regime in the past, at least from German and Austrian examples. According to the draft explanation, there is currently an obstacle to economic development where financing the creation of various buildings, constructs, or technical equipment (for example solar power plants, tunnels, or bridges) is difficult without proper financing securities. This type of investment could be enhanced with proper financing if such financing

could be secured with a tradeable and chargeable right, the ‘right to construct,’ implemented in the Civil Code. This right will be registrable in the land registry and will be a basis for a mortgage and/or pledge, which can also be registered in the land registry. The expectation is that the country’s competitiveness will increase due to this new legal right.

New Construction Code, New State Construction Investment Law

The government also intends to introduce a new *Construction Code* and a new law on state-participation construction developments. While the first exists only as a concept for now, the government having published the concept of the *Act on the Hungarian Architecture* (Construction Code) in March 2023, the latter law was already published earlier as draft legislation. Both legal texts will address sustainability, environmental impact, energy efficiency, good (public) taste, protection of architectural heritage, and other issues.

The new Construction Code will replace (1) the law on the chambers of engineers and architects; (2) the *Act on Built Environment*; (3) the *Act on the Protection of the Visual Environment of Towns*; and (4) the *Act on Cultural Heritage*. The new Construction Code intends to strengthen the roles of the chambers of engineers and architects, reform the system of general architects (*foépítészek*) in construction, and pay more attention to the qualification of designers and other participants in the construction process. Also, the new Construction Code will more rigidly regulate the role of designers: the designer will have a veto right with respect to the occupancy permit, for example. The mandatory insurance of both designers and construction companies will be re-addressed. There will be a clarification with regard to the activities that are subject to licensing and those activities that are subject to notification only.

The above are only examples from the substantial new legislation that will require a careful review once published as a law. It will have an impact on almost all fields of architecture and construction; thus, all stakeholders will need to put in a tremendous effort in familiarizing themselves with it. ■

SLOVENIA: THE RISING COST OF BUILDING MATERIALS AND THE INVARIABILITY OF PRICE CLAUSE

By Maja Subic, Partner, and Luka Rzek, Associate, Senica & Partners



In the past few years, the global community has faced the acute challenges of the COVID-19 health crisis and the war in Ukraine, which significantly impacted the continuing rapid increase of prices in the building

industry. The main reasons for the rising prices of building materials were initially linked to the health crisis, as many production facilities were closed and production was severely delayed. Once the post-closure period started, demand for materials worldwide surged, exceeding supply. The war in Ukraine additionally triggered particularly severe disruptions to global markets for critical raw materials and it produced an unprecedented increase in energy prices. Consequently, legal questions relating to the issue of significant increases in the prices of building materials have arisen, e.g., the extent to which a contractor can increase its prices in case of price fixation clauses.

In the Slovenian legal system, construction contracts are regulated in the special part of the *Code of Obligations* (the OZ). In practice, there are many different ways of determining the price in a construction contract, including using the invariability of price clause (also a fixed price clause), which represents a significant departure from the principle of monetary nominalism and, due to the economic effects of the COVID-19 epidemic and the war in Ukraine, could in itself lead to a significant imbalance in the contractual obligations between the contracting parties. Even if the parties to a construction contract have explicitly agreed that the price will not change, it may be changed if certain stipulated conditions are met. Article 656 of the OZ sets out the legal consequences of an increase in the prices of the elements when the invariability of price clause is included in the construction contract. The contractor may in such cases demand a change of price if the prices for elements rise so that the price for the works should be more than 10% higher. The contractor is thus entitled to request a change in the contract price only to the extent of a price difference exceeding 10%, demonstrating a clear delineation of the risks of price changes between the principal and the contractor, provided that the construction contract contains an invariability of price clause. The risk of price increases of up to 10%

of the starting value is borne by the contractor, while the principal bears the risk of higher price increases.



Many of the major real estate projects in Slovenia, which started before the outbreak of the COVID-19 epidemic or the outbreak of the war in Ukraine, were subject to an invariability of price clause, which led to the frequent application of Article 656 of the OZ in practice. Since these events caused the first widespread application of that article since 2002 (when the OZ entered into force), the problem of demonstrating price variation in construction contracts has arisen in practice. Namely, the OZ does not provide a methodology to serve as a basis for demonstrating price increases, and there is still no settled case law on this question. According to some legal theorists, the index method (i.e., the percentage of the price increase is determined by applying various indexes) should be applied in a specific case, rather than the analytical method (i.e., also by other means of proof, such as specific documents). As the burden of proof regarding price increases is on the contractor, the index method favors contractors, making it much easier to prove price increases. However, from the point of view of investors, the index method is less favorable as it is in their interest to be held responsible only for concrete price increases.

In our opinion, all provided evidence should be found relevant and admissible when establishing the actual price increase. Based on a free assessment of the evidence principle, the court should then decide in what percentage a price increase actually occurred in a particular case. This would be the only way to avoid lump-sum estimates of the amount of the price increase and to avoid passing on the burden of the increased prices of building materials to investors. The answer to this question will ultimately be shaped by Slovenian case law in the following years. ■

ROMANIA: DRAFT LAW AMENDING TERMS OF CHALLENGING BUILDING PERMITS AND URBAN PLANNING DOCUMENTATION

By Oana Albota, Partner, and Bogdan Roscaniuc, Senior Associate, Albota Law Firm



On November 11, 2022, the Romanian Senate (as decisional chamber) passed a draft law that includes certain amendments with respect to the terms applicable to administrative and court challenges brought against construction and urbanism documentation. Purportedly aiming to

clarify and bring further predictability to the existing legal framework (i.e., *Law no. 50/1991*, *Law no. 350/2001*, and *Law no. 554/2004*) till the approval of the *Constructions and Urbanism Code*, the new draft law proposes amendments to the existing legal enactments mainly with respect to the terms in which non-governmental organizations will be allowed to challenge suspicious building permits and/or urban planning documentation.

More specifically, the draft law proposes that NGOs should be able to challenge the urbanism documentation only within a maximum of one year from their approval date (as an exception from the general five-year term set for all other categories of interested persons).

Also, the possibility of an NGO to challenge a building permit is subject to observing the following deadlines: the preliminary complaint must be submitted to the authority within 30 days from the last publicity act made in relation to the respective building permit and the court claim for the cancellation or suspension of the building permit must be filed within sixty 60 days from the authority's response (or deemed response) to the preliminary complaint. As regards the "last publicity act" wording used by the draft law, this refers to the latest of the following dates: the date when the city hall published the building permit-related information; the date when the beneficiary affixed the building information/identification panel; the date when the building permit related information was published in the press; or the date of the building permit's land book registration.

The main reason for the changes proposed by the draft law was, as indicated in the law's explanatory statement, to bring further predictability and security to the real estate market by dissuading or curbing speculative or unfounded challenges of permitting documentation by NGOs (which in practice, at least at the Bucharest market level, resulted in multi-million euro investments being

put at risk to be delayed or shut-down).

Therefore, the deadlines proposed by the draft law are more restrictive compared to the existing term of a one-year maximum allowed to any interested person (including NGOs, there currently being no legal distinction between such entities and other persons) to challenge a building permit in court. Currently, that term runs from the date when the interested person became aware of the respective building permit; in practice, that date was often deemed to be represented by the land book registration of the building permit or any other date when the person effectively became aware of the building permit, leaving the court to assess the starting date on a case-by-case basis.



Considering the sanitary role of the NGOs in the rather anarchical and disarrayed Romanian construction environment in recent years – with NGOs bringing to a halt several development projects affecting green areas or heritage buildings, and putting under scrutiny questionable urbanism documentation, including the much-talked-about coordination Bucharest district zoning plans – the draft law was considered by many as an underhanded attempt to narrow down the NGOs rights to the benefit of devious real estate developers. The law's contesters asserted this to be all the truer since, in many cases, the NGO represented a last resort for citizens unable, in terms of finances or know-how, to protect their rights against ill-intentioned real estate developers.

As a consequence, on December 05, 2022, a parliamentary group submitted a complaint against the draft law to the Constitutional Court. The complaint alleges that, among others, the necessity of the draft law has not been duly substantiated and that the law also infringes upon several constitutional concepts, such as free access to justice, the observance of applicable international treaties (i.e., the Aarhus Convention), and the principle of the uniqueness and impartiality of justice, setting discriminatory rules against NGOs.

The complaint was registered with the Constitutional Court under file number 27274/2022 and, on February 22, 2023, the Court announced the complaint was rejected and the challenged draft law was confirmed to fully observe constitutional requirements. Subsequently, numerous NGOs petitioned the Romanian president for the law to not be promulgated. ■

CROATIA: STRATEGIC INVESTMENT PROJECTS – 10 YEARS LATER

By Ana Vrsaljko Metelko, Head of Real Estate, Ostermann & Partners



Strategic investment project legislation was first introduced into the Croatian legal system through the *Strategic Investment Act* that came into force in 2013, which, after two amendments (in 2014 and 2016), was replaced by the new *Strategic Investment Act* in April 2018.

This piece of legislation provides that a strategic investment project is either (1) a private project, financed by natural persons, domestic or foreign companies registered in Croatia; (2) a public investment project whose project holder is a legal entity owned by the state or local government; or (3) a public-private investment project whose project holders are private and public legal entities from various areas and industries ranging from mining, energy, tourism, transport, and infrastructure to science, technology, and education, and which includes the construction of buildings and has to be recognized and proclaimed as strategic by the Republic of Croatia.

In addition to these types of investment projects, the Act includes another category – potential strategic investment projects, which can be executed on real estate wholly or partially owned by the state or local government that is provided in the zoning plans for investment project development or on the maritime domain, if it forms a functional and economic unit with those real estate assets. The selection of investors for the implementation of a potential strategic project is carried out through a public call, usually in two rounds.

Currently, there are 29 proclaimed strategic investment projects with a combined value of approximately EUR 3.4 billion, announced in the period from 2014 to 2023, most of which are public projects (20 out of 29). Except for 2020 when no new projects were proclaimed as strategic, at least one project was proclaimed as such every year. 2017 and 2018 have the most significant volume of newly proclaimed SI projects: eight and six, respectively – almost all of them being public projects and the majority concerning the construction, reconstruction, expansion, and development of the water utility and communal infrastructure, watery supply systems, and wastewater collection and drainage systems. Out of those nine private SI projects, the majority are in the tourism sector, either entirely or in combination with

other activities, apart from one project in the industry sector.

For a project to be proclaimed as strategic, it must meet certain requirements – financial thresholds depending on the type of investment and eligibility for EU funding and programs support (ranging from the minimum of approximately EUR 10 million to up and over EUR 10 billion) and compliance with spatial plans and strategic Croatian and EU documents.

It is also expected that the implementation of such a project creates conditions for significant employment depending on the type and location of the project; significantly contributes to the development or improvement of manufacturing and service-providing conditions and standards; introduces and develops new technologies that increase competitiveness and efficiency in the economy or the public sector and/or raises the overall level of safety and quality of life of citizens and environmental protection; positively affects several economic activities and its implementation creates added value and which to a greater extent contributes to the sustainable development and protection of space, environment, and culture as well as significantly contributes to the competitiveness of the Croatian economy.

Additionally, a project can be proclaimed as strategic if it concerns certain activities ranging from production and processing activities, high value-added service activities, and health activities to the energy sector and infrastructure activities, to name a few.

In addition to proclaimed SI projects, the Ministry of Economy and Sustainable Development holds a *List of Strategic Investment Projects* with the potential to be proclaimed as SI projects. This List contains a total of 47 projects with a combined value of approximately EUR 8 billion – 38 public projects, eight private projects, and one public-private project. Public projects are planned in a wide range of the infrastructure and construction sectors – from the construction and reconstruction of airports and seaports, transport (with a significant volume of works in railway and road transport), waste disposal, energy, and water infrastructure.

Since the avowed status advantages of projects proclaimed as strategic investments include their faster implementation, with fewer necessary procedures, it remains to be seen how many of those 47 projects that are in the waiting phase will be proclaimed as strategic investments, as well as the level of their potential positive impact to some new investment cycles. ■

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AUSTRIA: LATEST DEVELOPMENTS IN THE REAL ESTATE MARKET

By Birgit Kraml, Partner, Wolf Theiss



The Austrian real estate market has been characterized by steady growth over the last decade, driven by a strong economy, low-interest rates, and increasing demand from both local and foreign buyers.

The COVID-19 pandemic was the first disruptor to this stability, although the Austrian government has been very generous with subsidies to support the economy. Furthermore, due to a provision of the *Austrian Civil Code*, no rent had to be paid by lessees if the rented premises could not be used during lockdowns. The hope for a new normal was challenged in 2022 by additional disruptions, as the market now faces several further challenges, including a shortage of affordable housing, high inflation, rising construction costs, the impact of rising interest rates, and new regulations (many ESG-related) that need to be adopted by the industry.

Affordable Housing

According to data from the Austrian National Bank, the average price of apartments in Austria increased by 50% from 2015 to 2023, with Vienna being the most expensive city. The demand for real estate in Austria is mainly driven by urbanization, migration, and gains in disposable income, leading to a shortage of affordable housing in some areas.

With house prices and rental rates steadily increasing, in 2021 the government introduced measures to address this challenge by adopting a cap (indexation-stop) on rental costs. However, this does not apply to all leases, as the Austrian lease regime is quite complex. As of April 2023, an indexation of the rent by 8.7% is anticipated. The government was discussing a rent increase cap for 2023 to protect lessees. The conservative and the green party eventually agreed upon (further) housing subsidies (*Wohnbeihilfe*) in the amount of EUR 225 million instead of a cap. Housing and heating allowances in the amount of EUR 450 million had already been granted in 2022 due to the dramatic increase in gas and electricity prices. The Austrian legislator also recently introduced the *Bestellerprinzip* for rentals. As of July 1, 2023, the party ordering broker services will have to pay for the agents' fees. This should provide further financial relief for renters.

Rising Interest Rates

Another challenge is the impact of rising interest rates on the real estate market. Low-interest rates have been a key driver of the

growth in the market, and the significant increase in interest rates has already resulted in a slowdown in investments. Additionally, stricter lending criteria have been introduced, making it more challenging for buyers to become eligible for a loan. Investors expect price reductions in all asset classes.

New Regulations

The real estate sector is considered one of the major energy consumers and carbon polluters in the EU. ESG principles are therefore an increasingly important consideration in the industry, particularly with the introduction of the *EU Taxonomy Regulation* and its delegated act which already provides concrete details on how buildings must be built to conform with the taxonomy. The Regulation aims to improve transparency and comparability by providing investors with a clear understanding of sustainable activities and promoting disclosure of such. This helps investors to make more informed decisions.

ESG compliance has a direct impact on property value, market demand, and the attractiveness of a particular building for tenants. Investors (and tenants also) have for some time asked for ESG-certified buildings. In Austria, the most common ESG certifications are OeGNI (Austrian Society for Sustainable Real Estate), DGNB (German Sustainable Building Council), and LEED (Leadership in Energy and Environmental Design). The environmental aspect of ESG focuses on reducing energy consumption, minimizing waste, and improving the overall sustainability of buildings. The Austrian government has implemented various policies and regulations to encourage the development of energy-efficient buildings and the use of renewable energy sources, for example by introducing simpler procedures in the *Condominium Rights Act*. The social aspect of ESG focuses on creating safe, healthy, and inclusive communities. This includes ensuring access to affordable housing, creating spaces that promote physical and mental well-being, and supporting local communities. The governance aspect of ESG in real estate focuses on ensuring transparency, accountability, and ethical behavior in the management and operation of real estate assets. This includes having clear policies and procedures in place for managing risks and conflicts of interest, as well as promoting diversity and inclusion in the workplace.

Sustainability and ESG will therefore play a major role in future transactions and will transform the entire industry. Finally, sustainability issues are also becoming an increasingly important argument in court proceedings when it comes to the refurbishment of buildings. ■

POLAND: NO BUILDING PERMIT NEEDED FOR CONSTRUCTION OF SINGLE-FAMILY BUILDING OVER 70 SQUARE METERS

By Pawel Zelich, Head of Warsaw Office, and Marcin Pater, Junior Associate, Noerr



A building permit, according to Polish construction law, is the administrative decision authorizing the commencement and the carrying out of construction or the execution of building work other than construction of a building structure. According to a draft act

(*Project no. UD427*) presented by the Ministry of Development and Technology, a project will no longer require the obtaining of a building permit to start building single-family buildings, regardless of their size.

What Is a Single-Family Building?

It is worth emphasizing that a building must meet specific requirements for it to be classified as a single-family building. Firstly, the building must serve the purpose of satisfying residential needs. Secondly, it must be a structurally independent unit. Lastly, the building must have no more than two living units; or one living unit and one business unit, with a total area not exceeding 30% of the total area of the building.

It is essential to note that distinguishing between a single-family building and a multi-family building (the term “multi-family building” has no legal definition in the Polish legal system) is important because constructing a single-family building entails fewer formalities compared to a multi-family building. Some of these avoided formalities include not needing to obtain a building permit and having less restrictive fire safety regulations.

Assumptions of the Amendment Removing the Requirement for a Building Permit

The amendment eliminates the obligation to obtain a building permit for all single-family buildings, regardless of their size, as long as they have a maximum height of two stories. Currently, a building permit is not required for a two-story single-family building with a built-up area of up to 70 square meters that fits entirely within the plot on which it is designed.



Thus, the construction of a single-family building with an area above this value will also not require a building permit. The amendment simplifies and speeds up the investment and construction process, as well as reduces the burden both on investors and on architectural and construction administration and construction supervision authorities.

The amendment is intended to resolve issues such as lengthy proceedings, legal inconsistencies regarding the construction of single-family buildings between those with a built-up area of less than 70 square meters and those exceeding that limit, and the excessive burden on investors in the procedure for obtaining a building permit, making a notification, and commissioning the construction facility for use.

Construction Notification Instead of Building Permit

As per the amendment, a professional site manager must supervise the construction and a construction log must be maintained. After completing the work, it will not be necessary to obtain a permit for the use of the building. However, eliminating the need for a building permit means that the construction of a single-family building must be reported.

This is to be carried out on the basis of a project drawn up with a site manager so that the previously employed site manager will confirm the building’s readiness for habitation. This may raise some concerns about transferring responsibility for the construction to, among others, the site manager, due to the lack of prior inspection by public administration authorities.

Entry into Force

The amendment aiming to eliminate the requirement for a building permit for a single-family building larger than 70 square meters is anticipated to become effective as early as 2023. However, the exact date for the amended provisions to take effect is unknown. As per the legislature’s website, the government is planning to approve the draft in the first quarter of 2023. ■

CZECH REPUBLIC: REVISED ENERGY PERFORMANCE OF BUILDINGS DIRECTIVE – MORE PRACTICAL EPCS?

By Roman Pechenka, Partner, and Karolina Kresova, Associate, PRK Partners



On February 9, 2023, the Committee on Industry, Research, and Energy voted in favor of a revised *Energy Performance of Buildings Directive* (EPBD), which is a part of the

EU's new extensive climate and energy legislation known as "Fit for 55". The main

objective of the revised EPBD is to reduce greenhouse gas emissions and the overall energy consumption of buildings by 2030 with the eventual goal of reaching climate-neutral buildings in the EU by 2050. As one of the means to achieve this target, the draft directive sets forth new provisions on energy performance certificates (EPCs) that should lead to their better quality, which will help raise awareness and thus contribute to more energy-efficient buildings. Setting the EU's ambitious goals aside for now, how does the new regulation on EPCs help real estate stakeholders?

EPCs have been a part of the real estate industry for two decades now, first introduced by an earlier version of the EPBD in 2002. The intent of EPCs is to show potential buyers, tenants, and the public (where public buildings are concerned) how energy efficient a certain building is, so they can compare and assess its energy performance against others.

Currently, in the Czech Republic, all new buildings, some public buildings, and all buildings sold or rented are required to have an EPC. EPCs provide information on buildings' energy performance, rating them on an A-G scale. Although the A-G rating scale is used throughout the EU, the actual parameters for the individual classes are defined on the national level. For this reason, there are discrepancies in what each class means in various member states, diminishing the informative value of EPCs. In addition, EPCs are prepared based on project documentation in the case of new buildings, before any construction actually takes place, for the purposes of permit proceedings. However, since structures often undergo many alterations during the actual construction process, and there is no requirement to update the EPC once finished, the information provided in the EPC may not actually correspond to the energy efficiency of the final structure.

The variability between EPCs across the EU and their inaccuracy deepen the difference in their informative value when com-

pared to other certifications such as BREEAM, LEED, etc. In the Czech Republic, investors, developers, and other stakeholders in the real estate market tend to rely on those certifications more – when assessing the energy performance efficiency of buildings – effectively rendering the EPC a mere administrative requirement without any added value.



The proposed EPBD should, however, improve the use of EPCs. It sets a harmonized scale and provides a clear methodology for labeling the buildings according to primary energy use in kilowatt-hours/square meter/year, complemented by an indicator on operational greenhouse gas emissions and renewable energy that should ensure the comparability of EPCs across the EU.

Furthermore, simplified procedures for updates to EPCs and the issuance of EPCs in some simple cases are proposed to allow for easier access to current information. All EPCs are to be issued digitally and made available in a publicly accessible national database for the energy performance of buildings. To make the EPCs more reliable and to increase their overall quality and accuracy, on-site visits and quality control will be required with respect to the issuance of EPCs.

In addition, the proposal widens the scope of buildings that must have an EPC. Under the new rules, buildings undergoing a major renovation, buildings for which a lease is being renewed, and all public buildings will also be required to have an EPC, whereas buildings occupied by public authorities and frequently visited by the public will also have to visibly display their EPC.

Although the final wording of the EPBD is not yet known, it is clear where the future of EPCs is headed. As such, we cautiously welcome the further harmonization of EPCs aiming to improve access and the quality of the information with respect to the energy performance of buildings, since the current EPCs more or less fail in this regard. However, it remains to be seen whether the new rules will make the EPCs more practical and an actually reliable tool for the assessment of the energy performance of buildings by real estate stakeholders. ■

LATVIA: SUPREME COURT SHEDS LIGHT ON LIABILITY OF BUILDING OWNERS FOR ACCIDENTS ON PREMISES

By Dace Silava-Tomsone, Managing Partner, and Sergejs Rudans, Specialist Counsel, Cobalt Latvia



At the end of 2022, the Latvian Supreme Court finally made a judgment in one of the dozens of civil cases stemming from the so-called Zolitude tragedy. 54 people died and dozens were injured back in 2013,

when the roof of a trade center located in one of the suburbs of Riga, Zolitude, collapsed. The trade center had been in operation for a mere two years and the statutory warranty period had lapsed just before the accident. It was long before any need for structural checks and repairs could have been suspected.

The Zolitude tragedy triggered widespread public debate, a parliamentary investigation, and a broad reform of Latvian construction law. At the same time, issues of the liability of parties involved in various roles during the construction of the building remained open for years, while the battle before the courts continued.

Relatives of the perished sued a number of involved parties, including the owner of the trade center, claiming moral and other damages caused. The main question that the Supreme Court had to answer in the case was whether the owner of a building can be held liable for damage caused as a result of the collapse.

First, the court rejected an argument of strict liability of the owner. The Latvian law qualifies construction works as a source of increased danger triggering strict liability for damage caused. The court concluded that once the construction works are completed, the building itself is no longer regarded as a source of increased danger, and there is no strict liability of the owner.

Further, the court established that an owner of a property can face liability for the wrongful actions of a contractor only in a case where the owner can be blamed for negligence in choosing a construction company or a supervisor of the works. The court stressed that an owner is entitled to rely on the professionalism of a licensed contractor and the competence of the public authorities that have commissioned the building.



At the same time, the court interpreted the obligation of an owner to properly maintain the building broadly. The court concluded that it is not sufficient for the owner to comply with express legal requirements in respect of specific actions to be taken. The owner has a general duty to exercise reasonable effort in order to avoid potential harm that the building could cause other persons. From this perspective, it is important to establish whether in any given situation the owner could have predicted the possibility of the harm. The court provided a list of aspects to be taken into account when evaluating whether an owner has complied with their general obligation to prevent harm: the probability of the harm and potential severity of it, the expected behavior of other persons (reliance on safety), the owner's ability to mitigate the harm, the proportionality of the anticipated harm to required costs, etc.

Although, in general, any person who has suffered harm is required to prove a breach of law (failure to maintain) by the owner, in the case when the harm is caused by the collapse of a building, there is a presumption of breach of the owner's duty to maintain the building and the burden of proof is on the owner to refute that presumption. Such an approach is based on the premise that the collapse of a building resulting in casualties gives reason to assume that maintenance obligations have been neglected, and the owner is best placed to bring evidence to prove the opposite.

For the time being, the judgment of the Supreme Court has put an end to the debate on the scope of liability of building owners in Latvia: there is no liability of the building owner without fault for damage caused. ■

UKRAINE: IS THE RUSSIAN INVASION CONSIDERED A FORCE MAJEURE EVENT FOR A UKRAINIAN-LAW LEASE CONTRACT?

By Serhiy Piontkovsky, Partner, Baker McKenzie Kyiv



The laws of Ukraine define *force majeure* as an extraordinary and unpreventable event, man-made or act of God, which objectively makes impossible the performance of contractual obligation(s) by one or both parties to a contract. Force majeure exempts a non-performing party from liability (penalties) for breach of contractual duty if caused by force majeure rather than from the performance of contractual

obligations. This means that a party is usually required to resume performance of its contractual duties once force majeure is over, unless a contract provides otherwise (i.e., a contract may provide that a certain protracted duration of force majeure allows one or both parties to unilaterally terminate a contract).

Russian Invasion as Force Majeure Under Lease Contract

A party's ability to raise a force majeure excuse based on the Russian invasion depends on particular circumstances and cannot be automatically justified only by Russia's invasion into Ukraine.

From a landlord's perspective, its principal obligations are to make premises available to, accessible, and suitable for intended use by a tenant. The landlord's failure to do so is a basis for enforcement of contractual penalties and claims for damages by the tenant. However, if such failure is caused by destruction or damage done to premises or its utilities supply communications due to the Russian invasion, which constitutes an objective impossibility for a landlord to properly provide premises to the tenant, the force majeure remedy can be raised. Those scenarios are almost the only ones when a landlord may want to resort to force majeure. In other cases, when the landlord's premises are not damaged or destroyed, a landlord is formally deemed to have made the premises available to a tenant, even if the premises are in an unsafe environment. As a landlord has no control over external events (military actions, shelling or its threat, etc.), their occurrence will not be considered as the landlord's breach of the lease agreement and, thus, there is no point in invoking force majeure.

From the tenant's perspective, it must be carefully assessed if raising a force majeure remedy is feasible and even necessary. In practice, many tenants wish to stop using premises and suspend making rent payments (or even terminate their leases) due to safety concerns caused by shelling or threats thereof, premises

being in territories where active military actions are taking place, etc. However, raising force majeure concerning the obligation to pay rent would require tenants to demonstrate that the Russian invasion caused an objective impossibility for the tenant to make a rent payment.

Siding with proponents of the conservative approach, we believe that cases when it would be possible for a tenant to claim force majeure due to the Russian invasion will likely be limited to instances (if any) when the banking system was not operational, and payments could not be processed. Raising force majeure is helpful for escaping liability for breaches but not the performance of obligations. Even if tenants' failures to pay rent were justified by the Russian invasion as a force majeure event, tenants would face multiple claims from landlords for payment of rent once the Russian invasion is over.

Hence, tenants may want to consider other legal options to be released from rent or at least obtain a rent decrease. For instance, Ukrainian law releases tenants from the obligation to pay if it was not possible to use premises due to circumstances beyond tenants' control and provides for tenants' right to claim a rent decrease if the possibility to use premises was significantly reduced. Other strategies may involve claims of a material change of circumstances that accompanied the execution of the original lease, etc.

Proving a Force Majeure Event

If a party decides to pursue a force majeure option, it may want to apply to the Ukrainian Chamber of Commerce and Industry (UCCI) for certification of force majeure. Certificates are issued individually, following consideration by the UCCI of the relevant lease contract, the circumstances of the breach, and its nexus to the Russian invasion. Although UCCI's certificates are not automatically binding for courts, they are often obtained either due to a contractual requirement to do so or to make the legal position in the court more persuasive. Additionally, before commencing court action, UCCI's certificate of force majeure may be used in negotiations with a counterparty.

Please note that the well-known UCCI letter *No. 2024/02.0-7.1* dated February 28, 2022, confirming that the Russian invasion and subsequent imposition of martial law are extraordinary and unavoidable events, is not a substitute for individually obtaining the UCCI's certificate of force majeure in each particular case. ■

BOSNIA AND HERZEGOVINA: KEY DILEMMAS TO SOLVE WHEN BUYING REAL ESTATE

By Tijana Krivokapic, Business Development Partner, Ibrahimovic & Co



In the complex administrative apparatus and historical diversity of Bosnia and Herzegovina, a complex system of Real Estate Registries was developed. What does a buyer need to know in order to protect themselves from the risks that can arise in the purchase of real

estate?

The first step is to answer whether the buyer can become a real estate owner. Aliens may acquire ownership of real estate if there is reciprocity between the countries. If the citizen of BiH may acquire ownership of real estate in the foreign country, the foreigner may acquire ownership of real estate in BiH. In legal practice, lawyers often face a problem when the interested foreign buyer comes from a country that does not have reciprocity with BiH. That is often handled by the foreigner establishing a company in BiH, which can then buy real estate without limitations.

The second step is to check the real estate's status. The historical past of BiH resulted in the existence of two Real Estate Registries – Land and Cadaster. The Land Registry contains data on the ownership and the encumbrances on real estate, whereas cadaster data represents the ownership status and technical data on the real estate (shape, area). The problem starts with the inconsistencies between land and cadaster data, the reality being that much data was destroyed irreversibly during the war and because of the divisions in the country. For the buyer to acquire real estate without risk, the relevant land and cadaster data should be equal. That is not often the case, so asking a lawyer for help is recommended.

Because of the huge impact of those inconsistencies between land and cadaster data – for example, inconsistencies between owner and landlord, or the area and plot numbers not being the same – the Entities have initiated the procedure of public display of real estate. It means commissions are formed, whose task is to harmonize the land and cadaster status. Republika Srpska intends to abolish the dual records entirely and, instead of Land Registry Certificates and Property Deeds, to issue only Extracts from the Real Estate Registry, which shall contain the harmonized

records. Instead of the Land and Cadaster Registries, a unique institution was established – the Administration for Geodetic and Property-Legal Affairs – which shall assume responsibility over real estate. On the other hand, The Federation implemented the procedure of public display in order to harmonize the data between the two institutions, whereas the Land and Cadaster Registries would keep their purpose in the future. In practice, this is a complex problem and the harmonization procedure will be slow, as the Cadaster might not accept the data harmonization solution offered by the Land Registry, which would often lead to long-term court proceedings.

At this stage, it is necessary to hire a topographer, for more than one reason. Firstly, it is crucial to determine the boundaries of plots on the ground; but it is of the utmost importance to determine if there are any encumbrances that were not entered into the registry records for that plot. Although, in theory, all the land encumbrances (water irrigation rights, cable setting rights) must be entered as such in the registry, that is not the case in practice. It often happens that a client intends to buy a plot where the landline or cables were not entered into the registry, with its practical construction possibilities limited as a result. That risk makes a thorough check a necessary step in the process of purchasing any real estate.

Finally, a real estate purchase cannot happen without a notary public. The notary public is considered to be the final instance that makes the agreement between the parties formal and concludes the Notarial Purchase Contract. The Real Estate Purchase Contract can only be processed by a notary public, and this specific form is required for the transaction's validity.

Therefore, the purchase of real estate is a procedure implemented in three steps which demands the common participation of a lawyer, a topographer, and a notary public. Skipping any of the steps can significantly complicate matters. Therefore, preventive action is the key to risk avoidance and the most efficient solution, making the system of real estate in BiH fundamentally simple. ■

BULGARIA: LEASE AGREEMENT TRENDS AND ISSUES

By Dimitar Vlaevsky, Head of Real Estate, Schoenherr Bulgaria



The end of the COVID-19 pandemic led to growth in the commercial real estate market in Bulgaria. So far, the biggest winners are the office, industrial, and logistics sectors, since most investors and retailers are still hesitant about the future of shopping centers. According to the latest reports, the available office space in Bulgaria increased by 7% in the second half of 2022, and more than 180,000 square meters of office space were leased during the same period, the highest amount since 2017. This led to higher average rents, currently between EUR 13.5 and EUR 15.5 per square meter for office class A, and between EUR 9 and EUR 10 for office class B. There are similar trends in the industrial and logistics real estate market, which have both continued to grow in 2022.

ESG

Although Bulgaria is falling behind in implementing the EU ESG requirements into its national legislation, partially due to the political instability in the last two years (with five parliamentary elections including the upcoming one in April 2023), the real estate market has already developed its own requirements. According to real estate agents, at least a third of new office lease agreements signed in 2022 is for relocations, since the tenants are seeking “green” buildings with better attributes. Currently, the available area in class A office buildings is less than 11%, compared with approximately 16% for class B.

Owners of “older” office buildings are already looking into the possibilities of upgrading their assets to meet the new “green” requirements. Additional pressure on them is expected from banks and investment funds, which are already looking at how ESG will affect their portfolios. And while ESG and green clauses are still a rarity in standard Bulgarian lease agreements, owners and tenants are taking a closer look at them.

Also, higher electricity prices due to the war in Ukraine have forced industrial tenants to opt for solar energy. The large roof spaces of most industrial buildings and Bulgaria’s sunny skies provide perfect conditions for investment in rooftop solar plants.

However, the legislator is again falling behind in this area by complicating the development procedure for owners and tenants with too much red tape.

Legal Issues

The rapid development of Bulgaria’s real estate market over the last 15 years, following the country’s accession to the EU and the entry of major foreign companies, has led to more sophisticated lease agreements. However, the legislation on leases adopted back in 1950, based on the planned state economy, did not change except for the removal of the restriction on lease agreements of over ten years. Thus, the courts must interpret and make rulings on complex lease agreements using laws from another era.

Bulgarian law allows for lease agreements to be registered in the Real Estate Register, to protect the tenant’s rights if the leasehold is sold by the owner, including in case of a forced sale during enforcement or insolvency procedures. However, the law is not clear on whether the new owner replaces the landlord as a party to the existing lease agreement or whether the new owner must observe the terms of this agreement. In addition, there are complications regarding the payment of rent, service fees, etc.

Case law on the matter is either missing or not very helpful. The Bulgarian Supreme Court may be expected to issue a special ruling that will be mandatory for the lower courts until the legislator clarifies the law. Until such a ruling is issued, however, the matter will remain up for debate by scholars and judges alike.

Finally, another issue that has been getting more attention is what happens to the lease agreement in the case of a spin-off where the lease is to be assigned to the newly founded company. Such reorganizations, especially among major foreign companies with branches around the world, are becoming more frequent. But the law is again unclear about whether the new company (subsidiary) becomes a tenant and replaces the parent company or if both companies remain jointly liable to the owner. The legislator must therefore resolve this and other questions to better protect the interests of both owners and tenants. ■

GREECE: REAL ESTATE INVESTMENT COMPANIES

By Mika Lalaoui, Partner, Drakopoulos



The real estate market in Greece has risen the most in the last years, creating attractive incentives for institutional investors, who are constantly seeking optimal investment structures to implement their large-scale real estate projects. A highly popular investment vehicle among seasoned real estate players has been the Real Estate Investment Company (REIC),

which promises investors financial benefits and a more stable and favorable tax regime.

REICs, known as real estate investment trusts (REITs) in other countries, are investment vehicles used in large-scale real estate investment and were introduced in Greece by L.2778/1999. REICs are authorized and supervised by the Hellenic Capital Market Commission (HCMC). A REIC is formed as a *Societe Anonyme* to invest through acquisition and manage real estate assets and must operate under specific rules and regulations applicable to REICs, including L.4548/2018 on *Societes Anonymes*, and stock market legislation, including corporate governance rules.

REICs' incorporation is authorized by the HCMC, and their initial share capital may not be less than EUR 25 million, fully payable upon their incorporation and consisting of contributions in cash, money market instruments, securities, and property, immovable or movable, which serve the operational needs of the company.

Within two years from its incorporation (can be extended to 36 months), a REIC must apply for the listing of its registered shares on the Athens Stock Exchange. At the time of listing, at least 50% of a REIC's share capital must be invested in real estate property.

A REIC's investment portfolio is regulated, and it may invest in commercial and industrial real estate properties, residential assets (up to 25% of its total investments), hospitality, marinas, etc., as well as in leasing (up to 25% of its total investments), long-term concessions (up to 20% of its total investments) and property development. Such investments may be made through direct asset acquisition – and/or real estate-focused (minimum 80% stake) SPVs, holding companies, other REICs, EU real estate mutual funds, or EU-Alternative Investment Funds – up to 25% of the REIC's total investments.

A REIC's investment should meet the following requirements: (1) at least 80% of the total assets must be invested in real estate

properties; (2) single property value cannot exceed 25% of total investments; (3) real estate properties used for REIC operations must not exceed 10% of the total assets; and (4) properties in countries outside EEA must not exceed 20% of the REIC's total investments. Loan and credit facilities are permitted for amounts not exceeding in total 75% of the REIC's total assets, with the possibility to set up liens and encumbrances on the assets as loan security. A REIC must pay annual dividends of at least 50% of its annual net profits.

A REIC's portfolio must be evaluated at the end of each semester, by an independent chartered evaluation surveyor. Any intended investment or divestment must also be evaluated by an independent chartered evaluation surveyor and any such investment or divestment may be effected only with a deviation of plus or minus 5% from its evaluation.

The particular benefits applicable to REICs constitute a key advantage for making them a highly attractive investment component. They include specific tax exemptions (e.g., exemption from real estate transfer tax on acquisition of real estate property), reduced rates of annual property taxes, an annual tax equal to 10% of the European Central Bank interest intervention rate increased by one point calculated on the average of the investments at their current value, and the exemption of dividends from income tax.

Although subject to regulatory restrictions, investing in REICs is considered to be a more secure way of investing in real estate, due to their expertise in asset management and identification of investment opportunities and related investment risks; and flexible, because REICs' shareholders have the option to divest anytime through the Stock Market.

REICs' institutional framework is currently under consultation with the assistance of the Hellenic Fund and Asset Management Association and the HCMC, to integrate into their institutional framework the developments of the real estate market in recent years and provide REICs with greater flexibility in their investments and a competitive advantage over private investment funds.

In light of the growing need to implement policies regarding the environment, climate change, and energy efficiency and the integration of ESG strategies to attract investors, and given that "green" properties constitute a very small part of existing buildings, REICs should be provided with incentives to expand their portfolio of "green" properties, either through the acquisition of properties located in strategic locations, which can then be upgraded, or through the development of new properties, by adopting bioclimatic characteristics. ■

NORTH MACEDONIA: INVESTMENT OPPORTUNITIES IN THE REAL ESTATE MARKET

By Ivica Jevtic, Managing Partner, and Marija Boceska, Attorney, Tosic & Jevtic



The Macedonian real estate market reached its greatest growth and development in the last ten years. As a result of the increased investments in the real estate market, the legislation that regulates the respective matter is constantly changing to meet the amended conditions resulting from the growth, so we can see simplified procedures

for obtaining building permits and simplified procedures for the transfer of ownership rights.

The legal conditions set for the sale of real estate are some of the safest in Europe and guarantee safe transactions for both parties. The safety of that procedure secured almost no fraud or illegal sales in the last ten years, which of course represents a great incentive for all investors. The sales tax rate, which varies from 2% to 4%, and the yearly property tax, which varies from 0.1% to 0.2% of the property value, make North Macedonia a country with one of the lowest property tax rates – in combination with the profit tax of 10% making the country attractive for foreign investments in the real estate market.

North Macedonia allows and gives foreign citizens the right to acquire property and property rights over construction land. *Law no.18/01* on property and related rights makes a distinction between categories of foreigners in *inter vivo* legal acts. The law provides that foreign citizens that are residents of any member country of the EU and OECD can obtain property rights in the same conditions as domestic citizens. For residents of other countries, obtaining property rights is dependent on the rule of reciprocity.

Also, in the past several years, as a result of the increased interest coming from foreign and domestic investors in the construction industry, the increased need for construction workers is felt in North Macedonia the same way as in the rest of Europe. Consequently, the Macedonian government presented and adopted a new law on foreigners, *Law no. 97/18*, which enables investors to bring qualified workers from abroad and obtain their work permits in very short periods. The average time for obtaining work and stay permits for foreign workers is 45 days, which makes

this process one of the fastest and least bureaucratic in all of Europe.



According to one of the country's leading real estate companies, FortonMKA, and their CEO, Katerina Nikolov, although there has been a certain rise in the construction of quality business space in the last ten years in our capital, Skopje, the next development phase in commercial real estate would be the "business city" – several larger buildings exclusively intended for business activities in office space. That business city may be located a little further from the strict city center, following a pattern we can see in other capitals in Central Europe, which implies adequate transport infrastructure as well as the implementation of international construction standards for A-class business centers.

A quality working space built in accordance with the highest standards, with all the comforts it provides for employees, is becoming an increasingly important factor in attracting new employees, a process that has been a serious challenge for Macedonian employers lately. There is a small number of business centers in Skopje that meet the international criteria and definitions for "class A," while the Macedonian classification for class-A business centers represents a system of criteria adapted in accordance with the local market. This is the reason why there is a huge space for development on several levels: technical, content, price, project size, innovation, and the creation of signature projects.

Finally, industrial and logistics real estate in North Macedonia is also shifting from owner-occupier to being lease driven after the pandemic. The access to finance with increasing interest rates is resulting in shifting from CapEx to OpEx for current and future occupiers. Despite the decreasing price uncertainty, the rental rates for class A industrial & logistics stock remain high compared to other classes, due to the limited supply and requirements applied according to international standards. The future supply of modern industrial & logistics stock depends on the innovative approach of local authorities to provide adequate traffic connectivity, as well as utilities and social infrastructure, as prerequisites for industrial & logistics developments. ■

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