

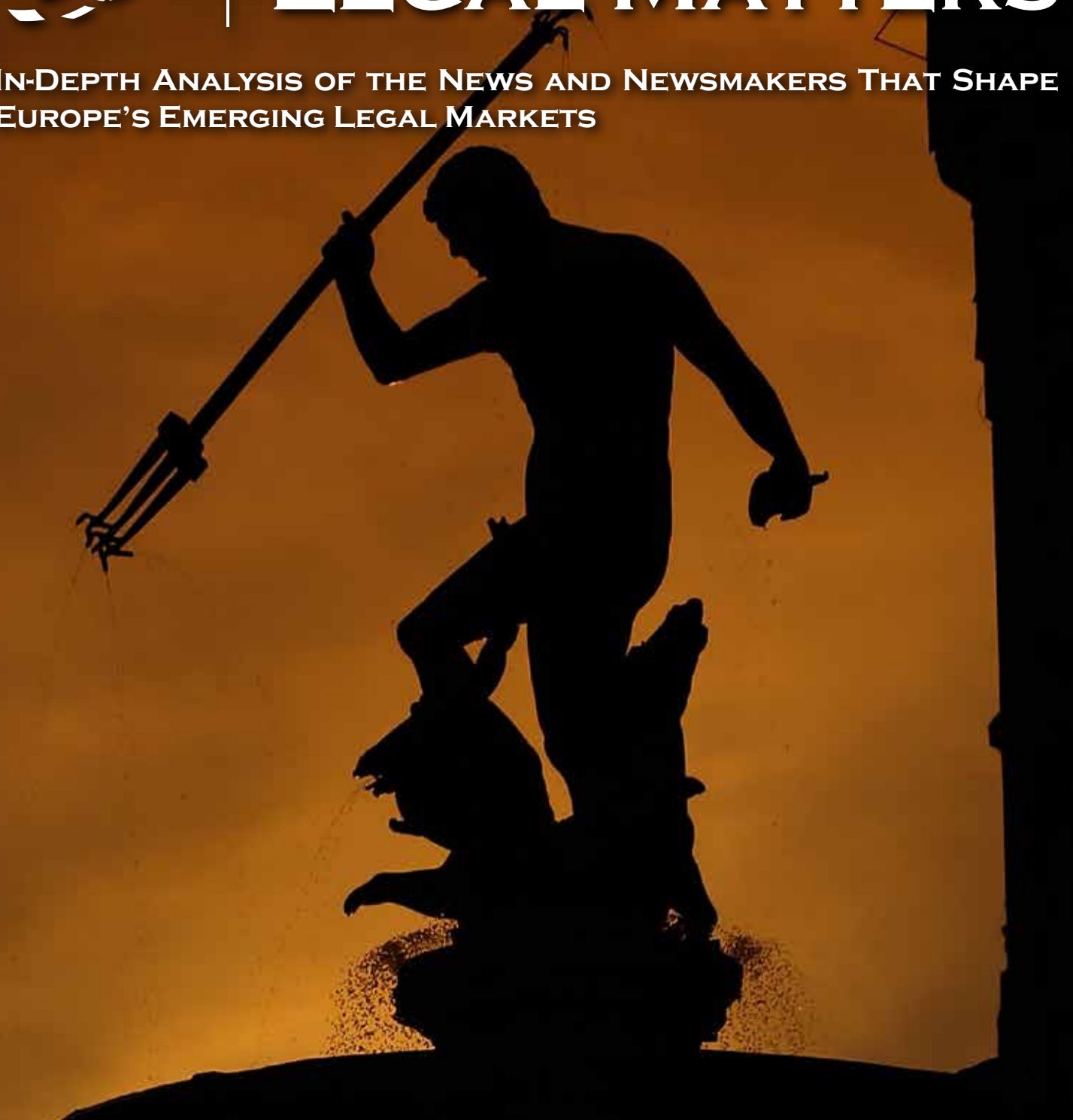


CEE

YEAR 4, ISSUE 6
JUNE 2017

LEGAL MATTERS

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

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 - ON THE MOVE: NEW FIRMS AND PRACTICES ■ GUEST EDITORIAL: IN-HOUSE AND PRIVILEGED ■ THE BUZZ IN CEE ■
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 - TENDING THE POLISH BAR: INTERVIEW WITH THE PRESIDENT OF THE NATIONAL COUNSEL OF LEGAL ADVISORS ■
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CEE
LEGAL MATTERS

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



The Editors:

David Stuckey
david.stuckey@ceelm.com

Radu Cotarcea
radu.cotarcea@ceelm.com

Letters to the Editors:

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

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At CEE Legal Matters, we hate boilerplate disclaimers in small print as much as you do. But we also recognize the importance of the "better safe than sorry" principle. So, while we strive for accuracy and hope to develop our readers' trust, we nonetheless have to be absolutely clear about one thing: Nothing in the CEE Legal Matters magazine or website is meant or should be understood as legal advice of any kind. Readers should proceed at their own risk, and any questions about legal assertions, conclusions, or representations made in these pages should be directed to the person or persons who made them.

We believe CEE Legal Matters can serve as a useful conduit for legal experts, and we will continue to look for ways to expand that service. But now, later, and for all time: We do not ourselves claim to know or understand the law as it is cited in these pages, nor do we accept any responsibility for facts as they may be asserted.

EDITORIAL: BREVITY IS THE SOUL OF WIT

"I saw the angel in the marble and carved until I set him free." – Michelangelo

In addition to the hundreds of emails I send each week, I also write dozens of articles for the CEE Legal Matters website, as well as a significant amount of the content in every issue of this magazine. I also review/edit/revise the dozens of interviews, Expert Review articles, Market Snapshots, and other content produced by other writers in each issue of the magazine. You may not be surprised to hear that writing is on my mind a lot.

It seems so easy, doesn't it? Just put your thoughts on a page. A few thousand keystrokes, and –hey presto! – a fascinating article, an insightful editorial, a penetrating analysis.

If only.

Those of us who write for a living can only laugh at the memory of our early school days, when the assignment of a mere 200-word essay was a familiar source of mental stress. Finding those 200 words seemed virtually impossible. Inevitably, the placement of those last fifteen words resembled the final steps of a runner stumbling towards the finish line of his first marathon: Slow, awkward, and as painful to watch as to perform.

Now, in our adulthood, we deal with the opposite agony. How to hit word limits. How to narrow our thousands of words down into their most pointed, most effective, purest form. How to satisfy editors, maintain the interest of readers, and most effectively persuade our audience.

It's a painful process, for me as for everyone else. For just as we impose word limits on the lawyers who contribute articles to this (and every) issue of the CEE Legal Matters magazine, our Managing Editor imposes similar restrictions on me as he carries out his formatting responsibilities. Being faced with a firm instruction to cut another 100 or 200 words (or sometimes 500 words) from whatever masterpiece I've prepared for a particular issue is, by now, a familiar agony.

Still, I know (and encourage others to remember) that, in fact, the end result is inevitably – inevitably – better. Keeping articles, essays, editorials, briefs, and memos short forces clarity and focus upon us. Brevity keeps the reader engaged, and forces discipline upon the author. Think about that Michelangelo quote.

"Writing is easy. All you have to do is cross out the wrong words." – Mark Twain

But as in all things, Mark Twain said it better than I can. So allow me to present several of his comments on the importance of brevity in writing, in the hope that we all can take encouragement from them.

- "A successful book is not made of what is in it, but what is left out of it."
- "To get the right word in the right place is a rare achievement. To condense the diffused light of a page of thought into the luminous flash of a single sentence, is worthy to rank as a prize composition just by itself Anybody can have ideas. The difficulty is to express them without squandering a quire of paper on an idea that ought to be reduced to one glittering paragraph."
- "I notice that you use plain, simple language, short words and brief sentences. That is the way to write English – it is the modern way and the best way. Stick to it; don't let fluff and flowers and verbosity creep in. When you catch an adjective, kill it. No, I don't mean utterly, but kill most of them – then the rest will be valuable. They weaken when they are close together. They give strength when they are wide apart. An adjective habit, or a wordy, diffuse, flowery habit, once fastened upon a person, is as hard to get rid of as any other vice."
- "The time to begin writing an article is when you have finished it to your satisfaction. By that time you begin to clearly and logically perceive what it is you really want to say."
- "I didn't have time to write a short letter, so I wrote a long one instead."
- "Substitute 'damn' every time you're inclined to write 'very;' your editor will delete it and the writing will be just as it should be."

It's worth emphasizing that we appreciate all the effort made by the authors of articles and editorials in this and every issue of our magazine – and I hope they forgive what must sometimes seem to be arbitrary flourishes of my red pen. But by cutting I cure. The goal, after all, is to find that angel in the marble and set her free.

Oh yes. The original draft of this editorial was 1200 words.



David Stuckey

GUEST EDITORIAL: IN-HOUSE AND PRIVILEGED

By Daniel Szabo, South-East Europe
Legal Counsel, HPE



Last year the Hungarian Ministry of Justice prepared a new Attorney Act that would radically re-structure the current regulatory approach to in-house counsel. GCs of leading companies in Hungary were given the opportunity to share their views in the process, giving them a rare occasion to pause and collectively consider the nature of this branch of the legal profession which in its few decades of existence has grown so much in significance.

We found that the most distinctive characteristic of our activity is that it is deeply embedded into the business of our only client: our employer. Leading companies tend to employ lawyers at all levels of the organization, including the c-suite. We believe that this intimate alignment with corporate decision-making is our biggest value to business and society since we bring the aspect of legality to every significant corporate decision.

In the Communist Hungary of the 1950s, in-house counsel were referred to as “corporate prosecutors” – a concept overemphasizing their role as guardians of legality at the expense of counselling and advocacy. Because fundamentally in-house counsel *are* trusted legal advisors.

However, the European Court of Justice, in its *Akzo Nobel* decision, was skeptical of the ability of in-house counsel to strike a balance between legality and our employers’ interests when it held that as employees we lack professional independence. Consequently, the ECJ refused to extend the legal professional privilege enjoyed by private practitioners to our advice, exempting it from discovery. Our relationship of trust with our employers was viewed as complicity. In reality, however, an in-house counsel is neither a cop nor an accomplice, but – as I said – a trusted advisor. This perspective is gaining ground as the *Akzo Nobel* logic is being challenged.

Indeed, courts in Belgium, the Netherlands, and Australia are beginning to recognize that when it comes to legal professional privilege our role is not that different from private practitioners after all, as both of us are sources of legal guidance when it comes to defending client positions against the all-powerful state. Some courts recognize this even in the absence of bar association membership of in-house counsel that would provide a separate disciplinary liability – which, many believe, provides an institutional guarantee of independence. I think that being liable under two separate regimes – your employment contract and the disciplinary powers of the bar

– creates many challenges.

For example, how can the bar establish facts if most of the necessary data is with an employer reluctant to disclose it?

Another aspect to look at is the relationship between in-house counsel and private practitioners. A superficial observation would suggest that the two should be in intense competition for the corporate legal budget. In reality, their roles are complementary and large organizations cannot function without both: In-house counsel provide day-to-day advice and have subject-matter expertise specific to the business, while private practitioners take on large-scale litigations, restructurings, internal investigations, M&As, and similar assignments. Of course, in-house counsel retain (or play a key role in retaining), instruct, and approve the performance and invoices of law firms, which does create the potential for friction, for example in a high profile billing dispute.

While Belgium opted for a standalone in-house counsel bar association, recognizing in a very consistent way the distinct nature of this branch of the legal profession, Hungarian lawmakers have chosen a somewhat different approach. In-house counsel in this country now have the option to apply to the Hungarian Bar Association for membership, and those admitted will share the institution with private practitioners. As a result, they will be subject both to the Bar’s disciplinary authority (although disciplinary councils composed of private practitioners must have an in-house counsel member whenever hearing in-house cases) and their employee liability. Most importantly, Hungary’s new Attorney Act extends the legal professional privilege to in-house attorneys who join the Bar, while those who do not join will not have it and cannot represent their employer in court or countersign documents (a formal requirement in Court of Registration and Land Registry proceedings, among others). The Ministry argues that these activities make the role of in-house counsel and private practitioners essentially the same.

While I agree with the Hungarian Ministry that in many essential ways the roles of private practitioners and in-house counsel are similar and that both should be protected by the attorney-client privilege, I’m not sure I agree that the roles are in all important ways identical – thus I prefer the Belgian version. Still, I think the moves made by the Belgians and the Hungarians represent a welcome step forward and an overdue recognition of the important role in-house counsel play.



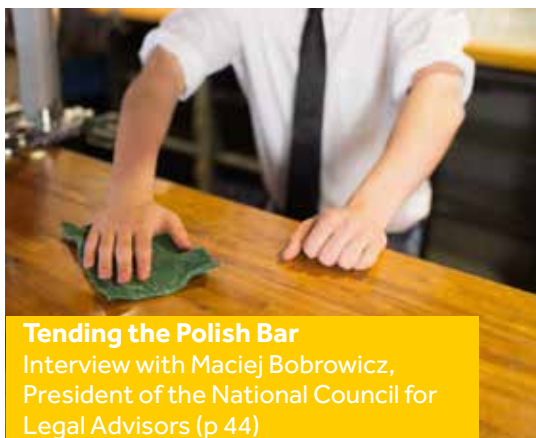
New Homes and Friends

Act Legal Law Firm Alliance Appears on Scene (p 14)



Hungary

The Spiraling Controversy of Hungary's Lex CEU (p 30)



Tending the Polish Bar

Interview with Maciej Bobrowicz, President of the National Council for Legal Advisors (p 44)



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LETTERS TO THE EDITORS



Dear CEE Legal Matters Editors,

I have been a faithful reader of the magazine since its first issue, and I am an admirer of your work. You happen to bring us – the law practicing community of the CEE – a monthly selection of important news on the state of the market, as well as legislative and judiciary developments in the region, not to mention valuable insights on best practices.

In your May issue, on page 54, Ms. Marketa Cvrckova of Taylor Wessing wrote in the third paragraph of her text on real estate transfer tax that: “In Poland, the taxpayer is the seller.” I found that statement inconsistent with the law in my native jurisdiction, namely with the Tax on Acts in Civil Law. As a matter of fact, such regulation indeed existed for the selling entrepreneurs only, until the 1989 Stamp Duty Law changed it to universal joint and severe obligation of the contracting parties. Currently however – and this is valid since 2007 – the sole taxpayer is the buyer, charged by the notary public acting as a government agent collecting the so-called tax on acts in civil law.

All of the abovementioned tax regulation is applicable only while the real estate transaction is exempt from VAT, where the rules change, and the VAT is of course charged by the seller on its invoice, and further to be appropriately accounted for and paid to the treasury.

I hope this clarifies the issue enough. And it goes without saying: “Only those that do nothing never err” ...

Best of luck!

Maciej Sobkowiak

General Counsel at Nickel Development
Poland

Marketa Cvrckova responds:

We have to acknowledge that said information in our article was incorrect. When drafting the article and comparing various CEE regulations to Czech law, we tried to keep the content as simple and clear as possible in order to ensure that it did not go too far beyond its limited scope. Unfortunately, a misinterpretation of Polish law occurred unintentionally. Of course, the correct information, if to be simplified, is that in Poland the taxpayer is the buyer.

WRITE TO US

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**

Letters should include the writer's full name, address and telephone number and may be edited for purposes of clarity and space.

Thank You To Our Country Knowledge Partners For Their
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ACROSS THE WIRE: DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
19-May	Wolf Theiss	Wolf Theiss advised the Vienna Insurance Group as issuer and Erste Group as arranger, sole lead advisor, and bookrunner on VIG's issuance of a EUR 250 million 3.5% tier 2 subordinated bond.	EUR 250 million	Austria
1-Jun	Wolf Theiss	Wolf Theiss provided legal support for the April 2017 groundbreaking for the new Boehringer Ingelheim production facility in Vienna and advised on the creation of related contracts.	EUR 700 million	Austria
6-Jun	Fellner Wratzfeld & Partner; Weber & Co.; White & Case	Fellner Wratzfeld & Partner advised the former owners of GREENoneTEC Solarindustrie GmbH on the sale of its majority stake in the company to China's Haier Group. Weber & Co. and White & Case advised the buyers on the transaction.	N/A	Austria
7-Jun	Binder Groesswang; Schoenherr; Stibbe	Schoenherr advised Erste Group Bank AG on the financing of the leveraged buyout of Austrian sensor technology manufacturer Frauscher Sensortechnik GmbH by New York-based Greenbriar Equity Group LLC. MNKS acted as Luxembourg counsel for Erste Group, and Frauscher Sensortechnik and Greenbriar were advised by Binder Groesswang and Stibbe, respectively.	N/A	Austria
8-Jun	Brandl & Talos	Brandl & Talos advised Dr. Karl Petrikovics, former executive with Immofinanz AG, on a settlement he reached with the company.	N/A	Austria
12-Jun	CHSH Cerha Hempel Spiegelfeld Hlawati; Wiedenbauer Mutz & Partner	CHSH Cerha Hempel Spiegelfeld Hlawati advised the shareholders of FirmenABC Entwicklung und Management GmbH on the sale of 80% of its share capital to Eugen Marketing Beteiligungen GmbH, a company belonging to the Swiss Investnet group. The buyers were advised by Wiedenbauer Mutz Winkler & Partner Rechtsanwälte.	N/A	Austria
13-Jun	Brandl & Talos	Brandl & Talos provided assistance to the venture capital fund capital300 with the setup and FMA registration process.	N/A	Austria
14-Jun	Wolf Theiss	Wolf Theiss provided advice to IHR Labor, a recently-merged network of medical laboratories, on legal questions involving IP, data protection, employment law, corporate law, tenancy law, and the drafting of contracts.	N/A	Austria
13-Jun	CMS; Ostermann & Partners	CMS teams in Austria and Croatia advised Zagrebacka banka d.d, a member of UniCredit Group, on its sale of non-performing loan portfolios to a company controlled by APS Holding a.s. Ostermann & Partners advised APS Holding on the deal.	N/A	Austria; Croatia; Czech Republic
26-May	Weil Gotshal & Manges	Weil Gotshal & Manges in the United States secured asylum for an LGBT man from Belarus who was forced to flee his home after being targeted for numerous assaults on account of his sexual orientation.	N/A	Belarus
1-Jun	Stepanovski, Papakul & Partners	Stepanovski, Papakul & Partners provided legal support for the incorporation in Belarus of four companies from Guangdong in China – three of which have become residents of the Great Stone Industrial Park.	N/A	Belarus
7-Jun	Sajic	Sajic obtained a successful result for Krajina Osiguranje against a EUR 1.1. million claim for unjust enrichment filed by the company Boska.	EUR 1.1 million	Bosnia and Herzegovina

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
7-Jun	Moral; White & Case (Cakmak-Gokce Attorney Partnership)	Moral Law Firm advised the Kardesler Family on the sale of Tozmetal Ticaret ve Sanayi A.S. to GKN. The Cakmak-Gokce Attorney Partnership, the Turkish arm of White & Case, advised GKN on the deal.	EUR 24 million	Bosnia and Herzegovina; Turkey
24-May	Djingov, Gouginski, Kyutchukov & Velichkov; Tsvetkova Bebov Komarevski	Tsvetkova Bebov Komarevski advised Romania's Prime Kapital on the acquisition of two shopping malls in Bulgaria by the Luxembourg-registered PKM Investments (a joint venture of MAS Real Estate and Prime Kapital) from Poland's Globe Trade Centre. The sellers were advised by Djingov, Gouginski, Kyutchukov & Velichkov.	EUR 62 million	Bulgaria
2-Jun	Divjak, Topic & Bahtijarevic; Gide Loyrette Nouel; Praljak & Svic	Divjak, Topic & Bahtijarevic, working alongside Gide Loyrette Nouel, advised BNP Paribas Cardif Insurance in the sale of its Croatian entity to Croatia Osiguranje, making Croatia Osiguranje the sole owner of BNP Paribas Cardif Insurance in Croatia. Croatia Osiguranje was advised by Praljak & Svic.	N/A	Croatia
13-Jun	ODI Law	ODI Law advised the seller – a private individual – on the sale of a 42.1218 % stake in Iskra to Taxgroup Gmbh, one of the existing shareholders of the company. The deal also involved the purchase by the firm's client of a share in Caveat Romanae.	N/A	Croatia; Slovenia
19-May	Dvorak Hager & Partners; Havel, Holasek & Partners	Dvorak Hager & Partners advised Pebal s.r.o., on investment into the company by JB Capital and the establishment of a joint venture. Havel, Holasek & Partners advised JB Capital on the deal.	N/A	Czech Republic
25-May	CMS; Kinstellar	CMS Prague advised Prologis on its sale of the Ostrava Logistics Park to CBRE Global Investors. Kinstellar advised the buyers on the deal.	N/A	Czech Republic
2-Jun	Clifford Chance	Clifford Chance's Prague office advised the regional used car dealership AAA Auto International a.s. in connection with the planned refinancing of the acquisition of the company and agreeing the terms of operating loans for its entire group from CSOB.	N/A	Czech Republic
12-Jun	DLA Piper	DLA Piper advised the Karlin Group on the creation of a joint venture with the Shinkun & Binui developer for a residential real estate project in the Modrany part of Prague.	N/A	Czech Republic
14-Jun	Schoenherr	Schoenherr advised AG Foods Group and Cooperatief Avallon MBO U.A. on the settlement of minority shareholders' disputes and on a subsequent management buyout.	N/A	Czech Republic; Hungary; Poland; Slovakia
14-Jun	Jeantet	Jeantet advised the Mama Shelter hotel chain – a subsidiary of the Accor Group – on the opening of new hotels in Prague and Belgrade.	N/A	Czech Republic; Hungary; Serbia
14-Jun	Tuca Zbarcea & Asociatii; Wolf Theiss	Tuca Zbarcea & Asociatii advised Czech pharmacy chain Dr. Max, owned by Penta Investments Group, on its acquisition of the Fastpharm SRL, lezer Farm SRL, Panpharma Med SRL, and York Farm SRL chains, which will be rebranded and run under the name "Dr. Max". Wolf Theiss advised the sellers, a Romanian family.	N/A	Czech Republic; Romania
13-Jun	Dvorak Hager & Partners	Dvorak Hager & Partners provided legal assistance to Czech Republic Sotheby's International Realty in connection with its entry into the Czech and Slovak markets.	N/A	Czech Republic; Slovakia
18-May	Glikman Alvin	Glikman Alvin successfully defended writer Kaur Kender against criminal charges of creation and dissemination of child pornography in his work.	N/A	Estonia
31-May	Cobalt	Cobalt Estonia advised a newly launched venture capital fund, Change Ventures, on Estonian law issues related to fund formation and on its first three investments, into Interactio, Timbeter, and Guaana.	N/A	Estonia
9-Jun	Cobalt	Cobalt Estonia advised venture capital firm Karma Ventures on its investment in SpectX, a startup founded by former security engineers at Skype and Swedbank that is developing an analytics software solution for rapid processing of unlimited amounts of data.	N/A	Estonia
13-Jun	Leadell (Pilv)	The Leadell Pilv Law Office successfully represented private individual Allan Kiil in a dispute against Tallinna Sadam (Port of Tallinn).	EUR 25,000	Estonia

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
14-Jun	Ellex (Raidla)	Ellex Raidla advised Endover Kinnisvara on its issuance of EUR 6.5 million notes.	EUR 6.5 million	Estonia
6-Jun	Ellex; Sorainen	Sorainen advised CPA:17-Global on the acquisition of a 70% position in a joint venture with Baltic Retail Properties. Ellex advised Baltic Retail Properties on the deal. The portfolio includes eighteen retail stores and one logistics facility in locations throughout Lithuania, Estonia, and Latvia.	EUR 127 million	Estonia; Latvia; Lithuania
19-May	Kyriakides Georgopoulos	Kyriakides Georgopoulos advised Cookpad International LTD on its acquisition of Greece's Sintages tis Pareas online recipe contents business.	N/A	Greece
14-Jun	Kovacs, Reti, Szegheo Law Office	The KRS Law Office advised PortfoLion Regional Private Equity Fund on its investment of EUR 2 million in the Codecool Kft. IT training company.	EUR 2 million	Hungary
18-May	Sorainen	Sorainen advised Medap Systems, a Latvian developer of medical diagnostics equipment software, on trademark registration and intellectual property protection issues.	N/A	Latvia
18-May	TGS Baltic	The Latvian office of TGS Baltic assisted AS DNB Banka and its group companies during the insolvency proceedings of a debtor and in related legal proceedings, resulting in partial settlement of the claims and the takeover of the real properties pledged as security for the loan by a company in the DNB Banka group.	N/A	Latvia
23-May	Deloitte Legal	ZAB Deloitte Legal represented AS Indexo in its successful application for an investment management license and its registration as a manager of funds in a funded pension scheme.	N/A	Latvia
7-Jun	Cobalt; Dottir Attorneys; Fenwich & West	Cobalt Latvia, working alongside US counsel Fenwick & West, advised visual presentation platform Prezi in its acquisition of Infogram, a web-based data visualization company in Latvia. Infogram was advised by Dottir Attorneys in the United States.	N/A	Latvia
22-May	Motieka & Audzevicius	Motieka & Audzevicius advised ZSC Techteam and ZeroSum Capital OU on each's acquisition of 40% of the shares in long-term firm client Finbee – which the firm also represented on the deal.	N/A	Lithuania
23-May	Cobalt	Cobalt assisted UAB Mobilus Mokejimai in obtaining an electronic money institution license for restricted activity, enabling it to issue electronic money and provide payment services in Lithuania.	N/A	Lithuania
7-Jun	Sorainen	Sorainen advised Regus on the lease of office premises at the Park Town business center developed by MG Valda.	N/A	Lithuania
8-Jun	Ellex; Sorainen	Sorainen assisted the Lithuanian Ministry of Finance in issuing ten-year and thirty-year Eurobonds and borrowing EUR 750 million and EUR 550 million respectively. Ellex Valiunas advised lead managers BNP Paribas and J.P. Morgan on the Eurobonds issuance.	EUR 1.3 billion	Lithuania
12-Jun	Motieka & Audzevicius	Motieka & Audzevicius successfully represented Lithuania's public non-profit deposit system administration institution Uzstato Sistemos Administratorius before the District Court of Vilnius City.	N/A	Lithuania
13-Jun	Allen & Overy; Cobalt	Cobalt represented a syndicate of banks including AB SEB Bankas (in Lithuania), Danske Bank A/S (in Denmark), and Nordea Bank AB (in Sweden), in granting a syndicated loan of EUR 60 million to Telia Lietuva. The borrowers were advised by the South African office of Allen & Overy.	EUR 60 million	Lithuania
13-Jun	Ak Law Firm; Clifford Chance (Yegin Ciftci Attorney Partnership)	The Yegin Ciftci Attorney Partnership advised Turkiye Is Bankasi and Turkiye Sinai Kalkinma Bankasi on financing provided to Turkuaz Petrol Urunleri A.S. for its acquisition of TP Petrol Dagitim, the fuel retailing branch of Turkiye Petrolleri, Turkey's state-owned oil and gas firm. The Ak Law Firm represented Turkuaz Petrol Urunleri (a subsidiary of Zulfikarlar Holding A.S.) on its successful bid for TP Petrol Dagitim.	N/A	Moldova; Turkey
18-May	Gessel; eszek Czarny, Wojciech Budny & Partners	Gessel advised the Madej Wrobel cold cut producer on its take-over by Bruno Tassi. The Leszek Czarny, Wojciech Budny & Partners firm advised the buyers.	N/A	Poland
19-May	Gessel; Sobczynski Adwokaci	Gessel represented private equity fund Highlander Partners on its take-over of Rotometal Sp. z o.o. S.K., a producer of cylinders used in printing adhesive labels for the consumer sector and other polygraphic components. Sobczynski Adwokaci advised Rotometal and its owners in the transaction.	N/A	Poland

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
22-May	Linklaters	Linklaters Warsaw, working pro bono, assisted the Empowering Children Foundation on its purchase of property in Warsaw earmarked to be Poland's first specialist support center for children.	N/A	Poland
26-May	Studnicki Pleszka Cwiakalski Gorski	SPCG advised the Aon Group on Polish law aspects of the global sale of its benefits administration and HR BPO platform to private equity funds affiliated with Blackstone.	USD 4.3 billion	Poland
31-May	SSW Spaczynski, Szczepaniak & Partners	SSW Spaczynski, Szczepaniak & Partners advised Capital Park S.A. on its issuance of K-series bearer bonds.	EUR 15.67 million	Poland
6-Jun	Mrowiec Fialek & Partners	Mrowiec Fialek & Partners advised Advent Libri, a portfolio company of Advent International, on its acquisition of the Empik School – one of the largest foreign language schools in Poland.	N/A	Poland
6-Jun	Domanski Zakrzewski Palinka; Taylor Wessing; WMS Treuhand	DZP advised Wielton SA, on its acquisition of 100% of shares in the German Langendorf GmbH, which manufactures trailers, semi-trailers, and special vehicles for transporting glass and other challenging materials. The Langendorf Group was represented by Germany's WMS Treuhand law firm, and Taylor Wessing advised NWR Bank on the deal.	N/A	Poland
7-Jun	Allen & Overy	Allen & Overy advised the International Finance Corporation on its EUR 137 million investment in subordinated green bonds issued by Bank Zachodni WBK.	EUR 137 million	Poland
8-Jun	Studnicki Pleszka Cwiakalski Gorski	SPCG obtained a successful result for Tesco Polska in the Court of Appeal in Krakow in a dispute with a contractor concerning the legal nature of guarantee deposits securing their performance.	N/A	Poland
9-Jun	CMS	CMS advised the EBRD on its participation in the acquisition of Zabka, one of Poland's leading food retailers, with an equity investment of up to EUR 25 million.	EUR 25 million	Poland
12-Jun	Domanski Zakrzewski Palinka	DZP advised Envelo (Digital Mail Services Poland sp. z o.o.) , the largest platform for postal services in Poland, in a dispute with the Ministry of Finance concerning the application of VAT on their flagship product, the sale of e-stamps.	N/A	Poland
12-Jun	SSW Spaczynski, Szczepaniak & Partners	SSW Spaczynski, Szczepaniak & Partners advised Capital Park S.A. on its issuance of K-series bearer bonds.	EUR 15.67 million	Poland
12-Jun	Greenberg Traurig	The Warsaw office of Greenberg Traurig represented Amstar in connection with a joint venture with developer Hines and the acquisition by the joint venture company of a 0.92 hectare plot of land in the city center of Krakow from Heitman.	N/A	Poland
13-Jun	Chajec, Don-Siemion & Zyto	Chajec, Don-Siemion & Zyto advised a fund managed by TFI Capital Partners S.A. on an indirect transfer to Aplitt S.A. of all shares in Monetia Sp. z o.o., which the firm describes as "the largest Polish company in terms of the number of outlets specializing in financial transaction outsourcing and cash transaction handling."	N/A	Poland
14-Jun	Gessel; PWP Kancelarie Prawne	Gessel advised Enterprise Investors on the sale of a 32.99% stake in Skarbiec Holding S.A. and on the sale of a PLN 75 million block of shares on the Warsaw Stock Exchange. The shares were purchased by Murapol, a leading Polish real estate developer, which was advised by PWP Kancelarie Prawne.	PLN 75 million	Poland
14-Jun	Chajec, Don-Siemion & Zyto	Chajec, Don-Siemion & Zyto advised NanoGroup S.A., an advanced biotech company, on setting up a holding designed to generate added value by tapping into the group's potential.	N/A	Poland
31-May	Reff & Associates; Schoenherr	Reff & Associates advised Investcapital Malta Ltd – a subsidiary of BRIEF-Kruk – on its acquisition of a debt portfolio with a nominal value of RON 1.25 billion from BRD Groupe Societe Generale. Schoenherr advised the sellers on the deal.	RON 1.25 billion	Romania
7-Jun	Nestor Nestor Diculescu Kingston Petersen; Popovici Nitu Stoica & Asociatii	Popovici Nitu Stoica & Asociatii advised Romanian DIY retailer Dedeman, on its acquisition of the AFI Park 1-3 office buildings in Bucharest from AFI, with an additional option to buy AFI Park 4 & 5. Nestor Nestor Diculescu Kingston Petersen and solo practitioner Bianca Stamatiou advised AFI.	N/A	Romania
23-May	Clifford Chance; Latham & Watkins	Clifford Chance advised EVRAZ plc, the London-listed globally integrated steel, mining, and vanadium company, on its disposal of the entire issued share capital of its fully owned subsidiary JSC EVRAZ Nakhodka Trade Sea Port to its majority shareholder Lanebrook Limited. Latham & Watkins advised Lanebrook Limited on the deal.	USD 354.4 million	Russia

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
26-May	DeHeng Law Offices; Liniya Prava	Liniya Prava, working with DeHeng Law Offices in China, advised ChinaNetCenter on its acquisition of a 70% share in the charter capital of LLC CDN-video from ZAO Leader, its subsidiary LLC CDN-Invest, and three business angels.	N/A	Russia
30-May	CMS; DLA Piper	DLA Piper advised Guard Capital, a venture capital fund specializing in telecom and Internet projects, on the sale of a 79.6% stake in DocDoc.ru, an e-medicine company in Russia, to Sberbank. Sberbank was represented by CMS on the deal, which sees the remaining stake belong to the founder of DocDoc.ru and its key management.	N/A	Russia
31-May	Egorov Puginsky Afanasiev & Partners	Egorov, Puginsky, Afanasiev and Partners assisted with the transfer of JSC Uralsib's motor insurance portfolio to JSC Reliance.	N/A	Russia
2-Jun	Egorov Puginsky Afanasiev & Partners	Egorov, Puginsky, Afanasiev and Partners acted as legal advisor to the special committee on the rights of Russian bondholders in the international debt restructuring of the Roust Corporation.	N/A	Russia
7-Jun	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners advised Danone Russia on its entry into a joint project with Soyuzmultfilm.	N/A	Russia
8-Jun	Akin Gump Strauss Hauer & Feld; Skadden, Arps, Slate, Meagher & Flom	Akin Gump advised PJSC Lukoil on the sale of 100% of the shares in JSC Arkhangelskgeoldobycha Diamond Mining Company to the Otkritie Group. The buyers were advised by Skadden, Arps, Slate, Meagher & Flom.	EUR 1.45 billion	Russia
9-Jun	Debevoise & Plimpton; Norton Rose Fulbright	Debevoise & Plimpton advised Polyus Gold International Limited in connection with its agreement to sell up to a 15% stake in PJSC Polyus for a total consideration of up to approximately USD 1.4 billion to a consortium led by Fosun International Limited and including Hainan Mining Co., Ltd and Zhaojin Mining Industry Company Limited. Norton Rose Fulbright advised the buyers.	USD 1.4 billion	Russia
13-Jun	BGP Litigation	Russia's BGP Litigation firm advised Hyundai Samho Heavy Industries Co. Ltd. on its entrance into a "large scale joint venture project with PJSC Rosneft" in the Russian Far East.	N/A	Russia
6-Jun	DLA Piper	DLA Piper advised steel producer EVRAZ on its sale of the entire issued share capital of Kadish Limited, the holding company of EVRAZ Sukha Balka, to Berklemond Investments Ltd, a company of the DCH Group.	N/A	Russia; Ukraine
8-Jun	Ilyashev & Partners	Ilyashev & Partners successfully represented SE Confectionery Corporation ROSHEN, PJSC Kharkiv Biscuit Factory, PJSC Confectionery Factory Kharkiviyanka, and PJSC Poltavakonditer in an anti-dumping investigation related to the import into Ukraine of certain types of chocolate and other food products containing cocoa powder manufactured in the Russian Federation.	N/A	Russia; Ukraine
13-Jun	Bojovic & Partners; Schoenherr	Bojovic & Partners advised the Poseidon Group, a British property investment, development, and management company, on the structuring of its co-investment partnership in the Capitol Park Sombor retail park project with Mitiska REIM, which was advised by Schoenherr.	N/A	Serbia
23-May	Baker McKenzie (Esin Attorney Partnership)	Esin Attorney Partnership represented the shareholders of Eko Faktoring A.S. in their acquisition of the remaining 18.4% of shares in Kooperatieve BVS Financial Services.	N/A	Turkey
24-May	Paksoy; Pekin & Bayer	Paksoy advised Anadolu Endustri Holding on its acquisition of the final 19.50% shares in MH Perakendecilik from Moonlight Capital S.A., giving Anadolu Endustri ownership of 100% of the company. Pekin & Bayer acted as local counsel and Dickson Minto as foreign counsel to Moonlight Capital S.A.	N/A	Turkey
24-May	Akol Ozok Namli Attorney Partnership; Baker McKenzie (Esin Attorney Partnership); Cleary Gottlieb Steen & Hamilton	The Esin Attorney Partnership and Baker McKenzie advised Global Ports Holding, the world's largest independent cruise port operator, on its initial public offering on the London Stock Exchange. Cleary Gottlieb advised the banks on the deal. Akol Ozok Namli Attorney Partnership served as Turkish counsel to the banks, working alongside Cleary Gottlieb.	GPB 465 million	Turkey

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
31-May	Balcioglu Selcuk Akman Keki Attorney Partnership	Balcioglu Selcuk Akman Keki Attorney Partnership advised ThyssenKrupp Access Solutions GmbH on the termination of its joint venture in ThyssenKrupp Encasa Asansor Sanayi ve Ticaret A.S. and the sale of its shares to joint venture member EMT Asansor.	N/A	Turkey
2-Jun	Dentons (BASEAK); Paksoy	Balcioglu Selcuk Akman Keki Attorney Partnership advised Yildiz Holding on the TRL 220 million sale of its Orgen Gida affiliate and its Bizim Mutfak brands to the Japanese food and chemical corporation Ajinomoto Co., Inc. Paksoy advised the buyers on the deal.	TRL 220 million	Turkey
6-Jun	Baker McKenzie (Esin Attorney Partnership)	The Esin Attorney Partnership advised the lenders in relation to USD 160 million and EUR 69 million Dual Currency Murabaha Facilities provided to Ziraat Katilim Bankasi A.S. ABC Islamic Bank acted as agent, HSBC Bank Middle East Limited acted as facility coordinator, and 13 international banks acted as documentation agents. The lenders included 13 international banks.	USD 160 million; EUR 69 million	Turkey
6-Jun	Clifford Chance (Yegin Ciftci Attorney Partnership); Guliz Ucar	Yegin Ciftci Attorney Partnership advised Alcazar Energy Partners on the acquisition of Yander Elektrik, a company holding a wind power plant license in the western region of Turkey. The sellers were individual shareholders, represented by sole practitioner Guliz Ucar.	N/A	Turkey
9-Jun	Caliskan Kizilyel Toket; Dentons (BASEAK)	Balcioglu Selcuk Akman Keki Attorney Partnership – the Turkish arm of Dentons – advised Turkven Private Equity on its acquisition of Mikro Yazilimevi Yazilim Hizmetleri Bilgisayar San. Tic. A.S., a Turkish company active in the software sector. Caliskan Kizilyel Toket advised the sellers.	N/A	Turkey
26-May	Ilyashev & Partners	Ilyashev & Partners successfully represented the interests of the Ukrainian DIY hypermarket chain Epicentr K in a review of safeguard measures concerning the import of porcelain tableware and kitchenware into Ukraine.	N/A	Ukraine
8-Jun	Aequo	Aequo advised Piraeus Bank Ukraine on Ukrainian law matters related to an uncommitted trade facility of up to EUR 5 million from the European Bank for EBRD.	EUR 5 million	Ukraine
8-Jun	Asters	Asters joined the working group for the establishment of a medical cluster as part of the the V. I. Vernadsky Tavriyskiy National University organized under the auspices of the Government of Ukraine.	N/A	Ukraine
9-Jun	Avellum; Freshfields; Sayenko Kharenko	Sayenko Kharenko acted as Ukrainian legal counsel to joint lead managers J.P. Morgan Securities plc and ING Bank N.V., London Branch in connection with the cash tender offer with respect to USD 750 million 8.25 percent notes due 2020 and the issue of new USD 500 million 7.75 percent notes due 2024 by MHP S.A. MHP was advised by Avellum on Ukrainian law and Freshfields on English law.	USD 1.25 billion	Ukraine
9-Jun	Dentons	Dentons' Kyiv office acted as legal counsel to the Ingenico Group on its acquisition of the payment activities business of Bancomzvjazok JSC through the purchase of 100% of the shares in a newly created legal entity, SST (Systems of Secure Transactions).	N/A	Ukraine

Full information available at: www.ceelegalmatters.com

Period Covered: March 20 - May 16, 2017

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

Act Legal Law Firm Alliance Appears on Scene



A new European alliance with a substantial CEE presence has appeared on the legal scene. The new Act Legal alliance (branded in lower-case, as “act legal”) consists of founding members AC Tischendorf (in Germany), BSWW (in Poland), MPH (in Slovakia), Randa Havel Legal (in the Czech Republic), Vivien & Associates (in France), and WMWP (in Austria).

According to a press release distributed by the new alliance,

“with around 250 first-class corporate lawyers, tax consultants and business experts, act legal will be the very first choice for top-quality legal advice in Europe.” That same press release claims that “act legal plans to provide global support to clients through its existing network memberships, linking it to more than 57 law firms and approximately 1,350 lawyers in all major business centers of the world.”

Act Legal’s activities will be coordinated by a team consisting of Sven Tischendorf from AC Tischendorf, Nicolas Vivien from Vivien & Associates, and Martin Randa from Randa Havel Legal.

Martin Randa explains: “Changes in the way of our clients work, in particular by increasing international trade interdependence and consolidating of originally local businesses into larger units, have been the main impulse for the formation of act legal. With act legal our aim is quite plainly to offer the market the best of all legal consultancy worlds, by combining top partner-led, local law firms with international professionalism. In addition, act legal will offer talent-ed, entrepreneurial-minded, internationally-oriented lawyers an attractive platform for their professional careers.”

Act Legal reports that it “aims to have its own offices in all major countries of Europe,” and that “initial talks are already underway with high-performing law firms in Scandinavia and Southern Europe focused on Corporate, M&A, and General Commercial law.”

Komnenic Law Office Opens in Podgorica



The Komnenic Law Office has opened for business in Podgorica, Montenegro.

Led by Milos Komnenic, who was a Senior Associate in the Jovovic Mugosa & Vukovic law firm before hanging out his shingle, KLO currently employs three legal practitioners, though Komnenic says he intends to expand the team soon. Komnenic explains this his new firm “provides full service, with a particular focus on Real Estate, Financing, M&A, Tax, and Private Investments. Our clients come from different areas of business, such as energy, construction, gambling, etc. Among the clients that we would mention is the utility and energy company A2A from Italy, which in the largest ever privatization in Montenegro partially privatized the country’s only public energy supplier.”

“I am very excited and satisfied with the new start,” Komnenic added,

“which as any fresh start gives you motivation and different view. The target which I hope I and my associates will be able to reach is to establish KLO as a local player enable to provide immediate and efficient assistance to the clients, without too many formalities before. After almost nine beautiful years in JMV, I have to thank also to my previous office and confidence of the partners to be a lead team member in charge of various M&A, Finance, Tax and general commercial matters.”

Leadell Balciunas & Grajauskas Opens Brussels Office



Leadell Balciunas & Grajauskas – the Lithuanian arm of the Leadell alliance in the Baltics – has announced the opening of a representative office in Brussels, Belgium, led by Associated Partner Kestutis Rudzika.

According to Leadell, “the new office, situated in the heart of the main business and financial district of Brussels, will enable us to offer a wider range of legal services. As part of our strategy, we will focus on international tax, transfer pricing and other cross-border services. The new location will also facilitate the interaction with the European Commission and other EU institutions.”

CMS Launches Slovak Office



After more than two decades of providing clients in Slovakia with legal advice through associations with local law firms, on June 1 CMS began providing Slovak law advice through what it calls “a fully-integrated Slovak team ... co-headed by Peter Simo and Petra Corba Stark, [which] consists of 10 experienced lawyers who cover all the main areas of business law.”

The news of CMS's new entity in Slovakia follows the announcement, made in January of this year, that it and former associated firm Ruzicka Csekcs would be terminating that arrangement as of May 31, 2017.

In a new statement distributed by CMS, Slovakian Co-Head Petra Corba Stark commented: "The responses to our announcement that we received from our clients have been overwhelmingly positive and the team has hit the ground running in terms of client instructions. We believe there is a place for a firm like ours in the current market and are ready to further develop our business locally."

Grata Announces New Associate Office in St. Petersburg



Continuing its rapid development in Russia, Grata International has announced that Saint Petersburg's Legal Studio has become its new associate office.

According to a statement released by Grata International, "following the firm's expansion into such regional hubs as Novosibirsk, Samara, and Kazan, establishing a presence in the second largest city of Russia was only a question of time."

Grata International describes Legal Studio as "a relatively young fast growing law firm, which has already gained the reputation as one of the leading legal counsels in [St. Petersburg's] North-West Federal District."

Vladimir Komarov, the Managing Partner of Legal Studio, said that "we are pleased to be part of Grata International, for us it is an opportunity to expand customer service, improve the quality of service, and attract new partners. Now we are writing a new page of our joint history, which promises great prospects and

many years of productive and mutually beneficial cooperation with our new partners."

Grata International Senior Partner Almat Daumov commented that: "We see our mission in the further development of Grata International's positions in the regions of Russia. The launch of an associate office in St. Petersburg is an important step in our plan implementation in Russia and countries of Northern and Eastern Europe. From the beginning of 2017 we have established productive and effective communication with Legal Studio law firm. I am confident that the team of talented lawyers headed by Vladimir Komarov will considerably reinforce our Russian practice. We will continue to respond to emerging regional and international challenges according to needs of our clients."

Subotic & Jevtic Attorneys at Law Opens Doors in Belgrade



Serbian attorneys Milica Subotic and Julijana Jevtic have announced the formation of a new law firm: Subotic & Jevtic Attorneys at Law.

According to a statement released by its founding partners, "Milica Subotic and Julijana Jevtic have brought years of knowledge and experience gleaned from major law firm backgrounds and incorporated it into their own law firm. Other members of their firm, Mr. Zarko Borovcanin and Ms. Tamara Ostojic, being highly specialized and experienced attorneys, are confirmed also to be dynamic, creative and excellent legal advisors and minds."

Subotic has over 15 years of experience in Corporate & Commercial law and has significant expertise in Project Finance and PPP projects. She was a Partner at Jankovic, Popovic & Mitic, where she was chair of the Competition law department, before leaving in March of this year.

Jevtic also has over 15 years of experience advising multinational clients, governments, and financial institutions on M&A, Privat-

ization, and Restructuring and Insolvency. She also specializes in Banking and Finance matters and Capital Market regulations.

Julijana Jevtic explained that: “Having spent most of our professional lives in a large law firm, the four of us are looking to work in a smaller, more flexible environment.”

Milica Subotic emphasized that she has “the highest regard” for her former colleagues at Jankovic, Popovic & Mitic, and that she “expects [it] to remain a leading law firm.”

Merger of SDM Partners and Aronovych and Partners in Ukraine



SDM Partners and Aronovych and Partners have merged in Ukraine.

According to a statement on the SDM Partners website, “while SDM Partners has gained a reputation as one of the leading Ukrainian law firms, successfully supporting its Ukrainian and international clients for over nine years in all areas of law, Aronovych and Partners is one of the first law offices of independent Ukraine, which started its activity in 1993 and has successfully been providing professional legal services to both legal entities and individuals for more than 24 years.”

SDM Partners Managing Partner Dmytro Syrota commented that “first of all, the merger will strengthen the law practice of SDM Partners in the field of civil and family cases and criminal law, headed by Felix Aronovych – the founder of Aronovych and Partners and the new Partner of SDM Partners.

Felix Aronovych commented that “using the great experience of Aronovych and Partners and the high international standards of SDM Partners, our team will be able to provide services to clients in the areas such as civil, family law and especially, criminal law, which is so current nowadays.”



SUMMARY OF CEE MOVES AND APPOINTMENTS

IN-HOUSE MOVES

Date Covered	Name	Company/Firm	Moving From	Country
4-May	Martina Tomova	Uniq and Uniq Life	Paysafe Group	Bulgaria
7-Jun	Antti Perli	Ellex (Raidla) Head of Venture Capital and Emerging Companies Practice	SmartCap	Estonia
12-Jun	Robert Ionita	NEPI	Reff & Asociatii	Romania

PARTNER MOVES

Date Covered	Name	Practice(s)	Firm	Moving From	Country
8-Jun	Jurate Kugyte	Corporate	Vilgerts	TGS Baltic	Lithuania
23-May	Milos Komnenic	Real Estate	Komnenic Law Office	Jovovic Mugosa & Vukovic	Montenegro
8-Jun	Louis Skyner	Energy	Dentons	Clifford Chance	Russia
16-May	Tanja Unguran	Corporate/Tax	MIM Law	Karanovic & Nikolic	Serbia
12-Jun	Vladimir Kordos	Real Estate	Konecna & Zacha	bnt	Slovakia

SENIOR APPOINTMENTS

Date Covered	Name	Appointed To	Firm	Country
11-May	Matyas Kuzela	Partner	Randa Havel Legal	Czech Republic
24-May	Zdenek Kucera	Head of Dispute Resolution and TMT	Kinstellar	Czech Republic
16-May	Tomasz Rogalski	Head of Energy and Infrastructure	Norton Rose Fulbright	Poland
12-Jun	Irina Dimitriu	Head of Real Estate	Reff & Associates	Romania
1-Jun	Petra Corba Stark	Co-Head of Bratislava Office	CMS	Slovakia
1-Jun	Peter Simo	Co-Head of Bratislava Office	CMS	Slovakia
7-Jun	Peter Kubina	Managing Partner	Dentons	Slovakia
7-Jun	Stanislava Valentova	Partner	Dentons	Slovakia
19-May	Alla Kozachenko	Head of Corporate and M&A	DLA Piper	Ukraine
12-Jun	Victoria Fomenko	Head of Tax & Customs	Integrites	Ukraine



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THE BUZZ



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



UKRAINE – JUNE 7

Uptick in Activity



Alexander Borodkin, Partner at Vasil Kisl & Partners in Ukraine, is asked what lawyers are talking about in his country at the moment. “I would say they’re talking about new investments,” Borodkin answers.

Borodkin says that, “starting from October or November of last year we feel there’s a little more activity in the legal market. Slowly things are picking up. The driving reasons could be a certain kind of stability over the last few years. We’ve reduced inflation, and there’s some stability in the East. This environment is giving business people some predictability, which is good for the market, not only in the form of restructurings and asset sales – things lawyers have been doing over the past few years to stay busy – but now actually in the form of investments. Businessmen are picking up the money from under their mattresses, and placing it in undervalued assets.” As a result, he says with a smile, “those who know the market – or who think they know the market better than others – they’re buying and investing.”

Borodkin reports seeing an uptick in activity from Israeli investors. “Normally it would be the Russians, of course, but now not so much, as one by one Russian investors and business are withdrawing from the country.” He says Turkish and Polish investors are exploring opportunities as well, though no big deals have closed yet, and “maybe in 2-3 years we’ll see the rest of Europe, and the Arabs. Maybe in 5-10 years even the US or China.”

“I would mention two sectors as particularly active,” he says. “Above and beyond agriculture, which has stayed strong over previous years.” The first Borodkin mentions is real estate: “mostly residential real estate – social class (cheap apartment buildings).” He says there are no free land plots in the market,

“so investors are forced to take commercial land, rezone it, get all the permits. So it’s difficult to do it. But they’re doing it.”

The second active market at the moment is energy, Borodkin reports, particularly in the form of renewables. “Even though we’ve lost Crimea, which is great for renewables, the Kher-son region next door is also very good.” Unlike many of its western neighbors the Ukrainian government hasn’t yet pulled back from its incentives, he says, so both wind and solar projects are growing.

Turning to the ongoing reform of Ukrainian legislation, Borodkin emphasizes the positive. “legislation is currently being reformed in many areas, particularly in the judiciary system, of course. Is it working? It depends on what you compare it to. I had a case in Hungary recently where it took me a year to get a letter of enforcement, but even in ‘corrupt’ Ukraine you can get that in a month or two.” Still, he says, “of course it could be better.” In any event, Borodkin notes, the question is less about the need for legislative reform than it is about the effectiveness of efforts to implement that reform. “The law is always changing,” he smiles. “It’s not that difficult to change the law. But it can be difficult to implement those changes. Like with Court reform. We have the laws – but changing the institution itself is the great challenge.”

CROATIA – JUNE 12

Agrokor Dominates the News



When asked what’s happening in Croatia, Dusko Zuric’s answer is simple: “Agrokor is happening.”

The liquidity fallout from the implosion of Agrokor’s landmark 2013 acquisition of Slovenia’s Mercator, which created

one of the biggest food and retail businesses in Central and Eastern Europe but also resulted in the accumulation of almost EUR 6 billion in debt, continues to resonate across the region. Agrokor’s president and 95% owner, Ivica Todoric, has sought protection from creditors and handed control of the group to an emergency administration controlled by the Croatian state and court, all under a newly passed law – nicknamed Lex Agrokor – creating a form of pre-bankruptcy protection for systemic enterprises.

The significance of the crisis is hard to over-estimate. Agrokor employs 60,000 people in Croatia, Slovenia, Serbia, Bosnia-Herzegovina, and Hungary and supports many more jobs at suppliers. Its reported EUR 6.5 billion annual revenues are equivalent to about 15 percent of Croatia’s gross domestic product. As a result, the country’s finance minister has warned that the crisis could reduce Croatia’s economic growth this year, and many believe that a bankruptcy could have disastrous impacts on the country’s economy. “It’s our national exercise,” says Zuric. “I think everyone is involved. We’re working on the other side, for creditors, banks, and suppliers.” When asked if the crisis is demanding full use of the firm’s resources, Zuric sighs. “Not all of our time,” he smiles ruefully, “but all of our brain power.”

Zuric notes that the crisis is also having serious affects in Bosnia, “and to a small extent even for Slovenia.” He emphasizes that the Croatian government acted quickly and appropriately to address the matter. “Once the crisis became visible to the country, the government recognized it as a systemic risk and acted for the benefit of all stakeholders,” he says, adding that “this is one of the few occasions where most will agree the government acted in the right direction.” Zuric reports that one way or another the special administration will not linger too long, as the special administrator is required to act and reach a restructuring deal within 15 months. If the deal is not reached within this period, he says, the procedure of emergency administration will be terminated, “leaving everyone with an even more complex situation.”

Zuric concedes that the crisis is providing significant business for law firms in Croatia, but insists it is not really the kind he and his colleagues want. “It’s not something we like to promote. It is fantastic for the workloads of the legal profession, but it’s too serious to discuss or think of in these terms. It will of course mean a lot of work – but it’s more serious than that. It’s a complex cross-border, cross-business exercise, with five main categories of creditors.” And with almost every leading firm in the market getting work from the deal, there is little competition for business. “Since basically everyone is involved, all the law firms are simply following their own clients. We’re not fighting for work. We’re flooded with it. Everybody is dealing with it. However, since M&A is one of our core practice group, we are looking at this a bit further and are

hoping that our firm will get involved at the point when the real restructuring of Agrokor starts.

Although it can be hard to look past the Agrokor implosion, Zuric says that otherwise things are going mostly well in his country, “We’ve had a severe crisis since 2008, but for the last two years public finances are a bit better and still improving. We’re in a growth phase. Lawyers usually see their business follow a year behind the economy. So we’re seeing that benefit now.” When asked to identify which sectors are leading the growth, he points to real estate. “Particularly commercial real estate, but we’re seeing moderate growth across all real estate sectors.” Still, he insists, it’s not only the real estate sector that’s growing. “Overall business is in a good mood. Especially now that it’s summer – summer in Croatia is like steroids. The touristic sector is doing well – and the forecasts are for it to do even better.”

In addition, Zuric continues “the public finance sector looks like it has improved. It looks we are about to exit the excessive deficit procedure required by the European Union. And it seems that the government has managed to get it under control. Normal people may not feel it, but businesses feel it. Improvements instability, access to funding and credit, even reductions in the deficit – and then of taxes. This is something, as a taxpayer, I’m really looking forward to. This was never the plan that was discussed openly, to reduce the debt. This was a surprise, and everybody’s happy. Our public debt is falling.”

SLOVENIA – JUNE 12

A Return to Normality



Things are stable in Slovenia at the moment, according to ODI Law Managing Partner Uros Ilic. “The last few year were

extremely busy because of the previously-distressed situation in Slovenia,” he explains, “but now things are back to normal. On the M&A side you will not have as many large deals as in recent quarters, since the privatization work stream has completely dried up. A few deals in the pipeline, but nothing of a very big size. The sale of Cimosa has finally been successfully concluded, the Gorenjska Banka sale and Cinkarna Celje are in process, and a few transactions are still in the pre-marketing stage. It seems that we are also no longer the hot spot for NPL buyers, hedge funds, and the like, as normal growth activities/business activities are back.”

Everybody is still looking towards the NLB deal, according to Ilic, referring to the long-awaited IPO of Slovenia’s largest bank, which was famously put on hold following the Brexit decision. “This is probably the last fundamental jewel from the nationalism perspective,” he reports, describing the bank as “the heart of the financial system in Slovenia.” He continues: “If this flies, everything is available. If the government does not sell it, we are in tighter spot for foreign investors. So that’s why this has greater significance even than as a stand-alone transaction.” Unfortunately, the Managing Partner of ODI says, “now we’re seeing last minute complications, as the supervisory board (of the Slovenian Sovereign Holding) has refused to grant its consent for the proposal of the offer price range for NLB share, and thus is trying to put the burden of the transaction directly on the government acting as a shareholder.” As a result, he says, “there’s a fight among coalition parties- with each trying to avoid responsibility for an unpopular transaction. It is very likely we will see another hang sale since elections are coming up in less than a year and politicians are not immune to public perception. It might happen that the EU Commission takes over the sale process entirely or that NLB subsidiaries will be quickly sold. “

Otherwise, Ilic says, some sectors remain busy, as “a couple of real estate deals are coming towards closing, with Merkur being one of them. It seems that real estate is now the most viable industry.” There is also the potential for significant direct investment from Magna, he reports, which is looking to expand on its existing unit in Graz and is considering building a greenfield operation in Slovenia. “The Government is offering them help and financial incentives to build an automotive unit here, but several local environmental groups are opposing the construction of what they believe will be a polluting site.” He says that those groups are seeking a referendum which may stop the construction.

The building of a second railway track for the Koper harbor to facilitate the transport of products inland from the port remains the largest controversial infrastructure project in the country. Ilic reports there may be another referendum on this matter as well, “not this time over environmental issues, but over financing and costs.” He says that the strongest opposi-

tion political party is seeking to deny the government a victory by supporting those demands.

Finally, on the subject of the fallout in Slovenia from the Agrokor/Mercator crisis in Croatia, Ilic reports that his country has created the so-called “Lex Mercator law – essentially copy/pasted from Lex Agrokor idea.” Still, he says, it’s less of an issue in Slovenia than in Croatia. “Basically we do not see the same pressure and discussion as in Croatia. Everybody’s aware that at some point Mercator will most probably be sold to a new buyer, either in a package deal with Konzum, or as a single deal, but for the time being it seems to be self-sustainable, the debt is regulated by the Master Restructuring Agreement.” He smiles, concluding, “for the time being everybody’s getting paid, the shelves are full – my wife is a regular shopper there and hasn’t seen any problems.”

MONTENEGRO – JUNE 13

Calming of Political Wars Generates

Rare Hope



“You cannot really start with the legal industry before you understand the political moment in the country” says Vladimir Radonjic, the Managing Partner of Radonjic / Associates in Montenegro, when asked for the Buzz in his country. “Politics has been the main subject of conversation in the country for the last 12 months.”

According to Radonjic, the country was “caught in the cross-

fire between the US and Russia,” due to the Montenegrin NATO accession process. In fact, “we have been talking only about the NATO accession since the election last October – it was the major political subject in the country. This kind of political issue affects all other matters in the country of course, and the country’s economy before anything else.” Still, Radonjic reports, “the waters may be calming down now” as a result of the country’s accession to NATO on June 5, 2017. “We are now newest fully-fledged NATO member country, and this topic may be put *ad acta* now,” he says. As a result, he says, “I would say 2017 may be a year of expectations. After a year of political turmoil – discussion on whether we should be joining the NATO or not – everything can finally focus on the economy.”

That’s not a simple topic, of course, as Radonjic admits that Montenegro’s economy “is not really in such good shape.” Still, he says, the new government headed by the new Prime Minister seems to be looking for new solutions for these economic deficiencies.” Radonjic is encouraged. “They seem to be doing well, so far, and we are experiencing some good signs.” He points out that “we used to be the regional leader in FDI for a couple years, and although for the last few we’ve seen a decline, now there are some impulses and signs of recovery.” Radonjic reports seeing a pick-up in interest from international investors looking into Montenegro as a potentially good jurisdiction to be based in, and also as a potential hub for regional or even global activities, “particularly for the banking and financial industry, software and other services companies.” He believes that Montenegro can compete with the economies of a similar size that are doing well in such industries. “Montenegro can do as good as Malta,” he says.

Still, Radonjic says, although, “I am seeing openness of the government to explore these new opportunities, and I am confident this will lead to new growth, the increase of public debt remains a hot topic, and especially the period from 2018 to 2020 will be challenging for the Montenegrin government because repayment of existing loans and governmental bonds will come due.” He says that he and his colleagues in the legal industry are hoping the government will be able to cope with such difficulties and keep their eyes on the opportunities that do exist and move the country’s economy forward.

In terms of sources of activity in the economy, Radonjic points to “three main sectors: infrastructure, energy and real estate.” Major projects initiated in each of these fields during previous years are progressing well.

In real estate, Radonjic pointed to three main projects: Lustica Bay, Porto Montenegro, and Portonovi. He says, “tourism figures are increasing, and Montenegro as a destination is becoming more popular. And this of course affects the real estate sector.”

Indeed, on a related matter, the main infrastructure project continues to be the construction of the planned highway from Podgorica to Belgrade. The construction of the first part is accelerating – Radonjic says “they’re now working at full speed after a year and half of delays” – and he says the country “is now in negotiations with the Chinese contractor handling the construction to begin working on the second phase, so we hope this may happen in the near future too.” According to Radonjic, “that’s the most important infrastructure project in the country.”

Finally, Radonjic says, “on energy the key topic is still the EPCG – the State-owned electricity production company that was privatized few years ago by Italy’s A2A S.p.A., and after a lot of back and forth between the government and the Italians, the local media are now reporting that the Italians might be activating their exit strategy by selling their share back to the Government or to other interested investors.” In addition, he reports, “the government exploring the possibilities with potential investors – Chinese companies, among others – for hydro power plants on Moraca river, so that’s also something that may contribute to the growth of the local economy.”

BOSNIA & HERZEGOVINA – JUNE 15

Unending Political Dysfunction Source of Frustration in B&H



Branko Maric, the Managing Partner at Maric & Co. in Sarajevo, sighs when asked for the Buzz in Bosnia & Herzegovina. “Our main concern is the very awful political situation that is reflected in the judiciary system.”

Maric notes that “we are divided country,” and says that “the Federation of Bosnia & Herzegovina is practically under blockade, as there is no parliamentary majority, and practically the government only makes laws that are most necessary.” As a result, he says, “everyone is talking about how the state is doing nothing to improve the investment climate in the country,” and that there are “too many administrative barriers.” Branko sighs again. “In theory investors need two things: A stable political system and an effective judiciary – and we don’t have either of those.” Indeed, he says, the complete administration of the judicial system is inefficient and extremely complicated.”

When he’s asked whether corruption is behind the inefficiency of the courts, Maric hesitates. “Well, first of all the court system is not efficient, that’s for sure. Is it corrupt? That’s not easy to establish, because in the last 20 years they have elected lots of judges without sufficient legal knowledge. And when you get bad and stupid judgments it can be difficult to decide whether it’s based on corruption or just incompetence. Everyone’s talking about corruption, and certainly several judges have been prosecuted, but whether that’s the main problem is unclear. Either way, the point is you can’t get sufficient protection. If, as an investor, I have to wait five years to get a final decision in a court case it’s a pure catastrophe – I don’t need it at all by then.”

When it’s put to him that this sounds like a good situation for the legal community, he agrees: “The end of the story is for the lawyer it’s a good situation – you can’t do anything without a good lawyer here.” Indeed, he says, “my firm is rather busy ... but I would prefer if we were busy with a different kind of work. There are a lot of exits, there’s a lot of restructuring work, and a lot of labor cases because of the poor shape of the economy.” He laughs. “It’s an extremely interesting place to work – there’s always something challenging. But I would prefer the situation would not be so good in this way.”

Maric reports that “the problem is that the taxation office just wants to collect money, so they put pressure on taxpayers and very often find tax liabilities even where they don’t exist.” Ironically, Maric says, “in this respect I’m rather satisfied with the position of the courts, as in the last year something like 97% of cases the court annulled the final decision of tax authorities.” Even that doesn’t solve the problem, he says. “The problem is that the tax authority takes the money before the court case, and then after the court case it’s very difficult to get it back – and if you do get it back they give it without any interest.”

In terms of the more traditional areas, Maric says there’s some activity, but not much. “Real estate is going slowly,” he says. “There are some interesting places by the seaside, but it’s still not a trend. Some people – I wouldn’t call them investors –

are coming from Arab countries to buy weekend houses, but it's not really a trend." In addition, he says, "there is some investment in infrastructure on the highway, but there's always problem with the tenders, with public procurements. They said they would privatize the Bosnian telecom company, but the problem is when they actually tried the prices were set too high." Maric says that "it's still in discussion."

CZECH REPUBLIC – JUNE 15

Changes in Czech Law Creating Business for Lawyers



"What is currently happening in Prague is the GDPR," says Jiri Hornik, Partner at Kocian Solc Balastik in Prague, referring to the EU's new Data Protection Regulation being implemented across Europe.

"The new regulation that was created last year is really becoming an issue for many of our clients," Hornik says, "including large corporations, because the penalties they face (for non-compliance) are very severe, so many clients want to make sure they're compliant." As a result, he says, "because it requires a lot of changes in the internal systems of companies, we're seeing a lot of requests from clients – those requests are coming every week." Indeed, he warns, "it usually takes a couple months to do a complete analysis and ensure they're compliant – it requires us to go into the company and understand how it works and how the system is designed and then make the necessary changes." Thus, he says, those companies that put off the process may not get it done in time. "The regulation is supposed to become effective and enforceable in

May of next year. And it really takes a lot of time for companies to get prepared – you can't just do it overnight."

Hornik agrees that the consulting industry is, at least for a little while, benefiting from the process, calling it "good for business in every jurisdiction in the European Union, where it will generate a lot of work for lawyers and IT consultants."

In general, Hornik says, "business is fine – I would say it's growing." He says KSB's transactional practice is doing well, but draws particular attention to the increasing significance of compliance for clients, forced to "take into account all the regulatory requirements which are currently in place." Hornik points to a new requirement in the country that's creating work as well: "In the Czech Republic we are dealing with a Public Contracts Registry, meaning if you're entering into a contract with a public entity, that contract must be recorded in a public registry, and failure to register means it's not effective. The law was implemented last year, and following a one year trial period where the failure to register did not have such impact on the contracts concerned, on July 1, 2017 it becomes fully effective. That increases the burden on the side of clients to ensure their contracts are registered." Unfortunately, he says, "the problem we have is that the law is not very clear in defining the public entities that fall within its scope and there also are unclear exceptions to its application."

Hornik says that Real Estate practices are doing really well in the Czech Republic. "Real Estate is booming tremendously I would say, especially in the residential sector," he says. "The reason is because interest rates remain really low, which generates a huge demand on the side of investors, as everybody wants to buy an apartment, either for their own needs, or to rent it out on Airbnb, which means prices have gone way up." The KSB Partner claims that the Czech Republic is registering the highest growth in the EU for apartment prices, and "even the Czech National Bank has noticed that the prices are a bit overheated." According to him, "that means there's a lot of work in real estate, especially on the part of residential developers." But it's not only residential projects that are growing. Hornik points to "a growing market for industrial and logistical projects as well, because the yield from those products is even higher than it is for residential or retail, so many investors are trying to buy completed projects, because it's a safer investment, which generates even demand for new projects." He says his firm is "working for the developers who are building new projects, and also for investors who have decided to buy such projects for the purpose of investment."

Finally, Hornik says, the "upcoming general elections in October will significantly affect the market." The current Czech government has announced plans to make large investments in country's infrastructure, he reports, "even considering using PPP projects on the highway projects, as EU funds are

difficult to get.” Past PPP attempts, Hornik reports, “were highly politicized, and eventually terminated,” and as a result “for a long time nobody even wanted to hear about PPP.” Still, recent successful PPP projects in Slovakia have encouraged their Czech neighbors to reconsider, and Hornik is hopeful that “if this project succeeds this will generate a pipeline of other projects.” Still whether or not the government gets the opportunity to try may depend on the results in October. “We’ll see how it ends up, because the elections may change that, and it will be quite difficult to make big decisions before the election.” He describes the current period as “a standard pre-election moratorium on important decisions.”

AUSTRIA – JUNE 16

Austrian Shows Commitment to Start-Ups



When asked about the Buzz in Austria, Thomas Kulnigg, Partner at Schoenherr, says that M&A activity has significantly increased, with 2016 being one of the top 10 years in deal volume since 1988, and he says that 2017 is “well on its way.” What Kulnigg is currently excited about, beside the typical Corporate/M&A work, is the start-up work his team is doing.

Kulnigg begins by pointing to a recently-passed law in Austria making it easier to establish limited liability companies (GmbH) with only one shareholder – the founder – who also acts as sole managing director. The law, which is scheduled to come into effect at the beginning of 2018, allows such com-

panies to complete the registration/creation process online, meaning that, other than a visit to a bank to check your ID, “everything can be done from your desk.”

Kulnigg notes that the new law is hardly a game-changer. “Because of its limitations, I don’t think this is a big shot” he says, explaining that the law applies only to entities with one shareholder and may thus be not relevant for foundations by several founders, which is the majority of start-up foundations – but he describes it as “a step in the right direction.” At the moment, he says, companies have to go “both to the notary public and the banks, taking time and money,” so a simplified process will be useful.

Besides, Kulnigg reports, that law is hardly the extent of Austria’s commitment to start-ups. “The Austrian government has planned to provide additional funding of up to EUR 185 million to start-ups,” he reports”. “Austria generally provides a lot of different forms of funding to start-ups,” he says, and while he concedes that also other countries in the region provide some form of grants to start-ups, he describes the significant funding available to start up a company in the country as “an Austrian peculiarity.” Kulnigg adds that there is a lot going on this the scene, citing as a prime example a new accelerator expected to work with 100 such companies per year beginning in the fall of this year.

Moving outside the start-up world, Kulnigg describes that his practice is still busy with classic M&A work such as wind-down transactions for the Austrian Bad Banks. Kulnigg is advising them now for several years in and outside of Austria. It is “great working for them as the deals are interesting as well challenging.” Kulnigg is happy to be able to help them fulfilling their wind-down objectives. “They are doing actually great,” Kulnigg adds.

In terms of other recent legal developments, Kulnigg adds that Austria recently announced plans to make it easier for joint stock companies to give shares to employees as additional remuneration. A draft bill, which Schoenherr was able to comment before it was published, was recently published enabling employers to grant shares up to EUR 4.500 to employees per year on a tax-free basis.

In general, Kulnigg says, lawyers on his Start-up team are staying busy. He reports that his group is “getting a larger and larger footprint, working with some of the biggest venture capitalists in Austria, for which we have inter alia developed an incentive program that is based on equity participation rights. We are rolling that out in their entire portfolio.” In addition, he says, “our corporate and M&A group is very busy. We’re doing great at the moment.”

LATVIA – JUNE 16

Encouragement from the Bar and Advocates Law



“First of all this spring we re-elected the governing body and another institutions for attorneys,” says Agris Bitans, the Managing Partner of Eversheds Bitans in Latvia, when asked for the Buzz in his country. “A new Chairman and a new council.”

Bitans was encouraged by the Bar Association’s decision to pay attention to issues at its annual meeting that he believes have been overlooked in recent years. “As usual there were a lot of activities, but there were also some special conversations about ethical issues and changes in the by-laws. We haven’t finished the process yet, but we’re now awake – no longer sleepy. So I think it’s a good development in general, even if we haven’t made many changes yet.”

When asked what conversations in particular he’s referring to, Bitans explains that “we discussed the necessity to improve the position of our ethical council. It’s been elected until now by the council of the Bar Association. The idea is that this ethical committee should be elected by the general meeting, to put it in a higher position in our organization. And there’s a conversation about the rights and capacities of the institution itself, so that it can initiate its own investigations and activities on ethical matters instead of being passive, but that’s not

happening yet.”

That’s not all, Bitans says. “Another technical issue which is very important is new discussions of amendments to the Advocates Law, including clarifying the legal status of law firms.” Bitans says that until now it hasn’t been made completely clear for all state institutions that firms were and could be treated as independent legal entities – just as partnerships – “but now it’s clear that we’re separate legal personalities for tax purposes and ability to enter into contracts, and so on.”

Turning to the subject of business, Bitans says M&A is happening, slowly, “but you can’t say it’s a very positive time.” He says, “we are busy, but clients have become more demanding, and they’re looking for more opportunities to save money. That’s a logical tendency – they want to make sure they’re not overpaying.” Ultimately, Bitans says, clients are simply getting more savvy about making smart choices of external counsel. “Everyone’s recognizing it’s important to select and manage appropriate law firms.”

Bitans report that he’s seeing “a lot of activity in the financial and FinTech sectors. A lot of new companies, a lot of activity in the fast transfer of finances, and that requires a lot of experience, so we’re involved in a lot in that area.”

Real Estate is “showing some signs of activity,” Bitans reports, but nothing major is happening quite at the moment. “There’s interest,” he says, “but it’s not happening yet. Prisma – a major shopping mall chain – has decided to leave Latvia and cancel its activities in the Baltics, so that’s causing some problems. That’s a terrible sign. But on the other hand, we see that IKEA opening a centre near Riga. So that’s good.”

Finally, Bitans turns to a potential change of significance in the country’s legislation. “One large change which is being discussed and which should be monitored very carefully is tax reform.” He reports conversations about reforming the corporate income, real estate, social security, and medical insurance taxes, and says, “but of course it’s not so easy. If you minimize one tax you can impact municipal governments, but of course we would like to spend the revenues for several purposes, so there are many questions. From one side it’s positive that this discussion of tax reform is happening now, rather than in the autumn, when there won’t be much time left for forming of state budget, so it’s good that we’re already talking about it. From another – creating uncertainty regarding the taxation system is not good.” Bitans says the results of local government elections that took place on the weekend June 3 will also be significant, “to see if there’s influence on the government, to see how stable the current government is. But so far there’s no direct indication.”

RUSSIA – JUNE 19

Capital Markets Leading the Way in Russian Rebound



“These are interesting times,” says Natalia Drebezgina, Partner at Debevoise & Plimpton in Moscow, when asked for The Buzz in Russia. “Everyone was hopeful for this year, and basically those hopes have come true. There’s increased activity in the market that started at the beginning of the year and is continuing.” Drebezgina reports that capital markets work is up significantly, as “the number of Eurobond issuances by Russian issuers is astonishing – and at really low rates.” She says following recent issuances by Detsky Mir, Europlan, TMK, and the recently announced Polyus deal, equity capital markets, which were slow since before 2014, “seem to be picking up a bit as well.”

Drebezgina reports that “M&A has picked up a great deal, primarily Russia to Russia deals and foreign investment from China.” She also notes an increase in interest from the investors from the Middle East. “We also see real estate M&A and some construction deals. Some of the projects that were put on hold are now moving ahead.” She smiles. “The market appears to be quite busy.”

“That said,” Drebezgina concedes, “the market is still influenced by geopolitical and macroeconomic developments.” She notes that some optimism came from the resumption of slow economic growth and the hope for improvement of bilateral relations following last fall’s election of Donald Trump to President in the United States, “though the results have been more complicated than we expected.”

Drebezgina says there’s no major new legislation pending at the moment. “In terms of legislation, we are still digesting the recent reforms of the Civil Code, corporate law updates, changes to interested party and major transactions regime, the increased use of Russian law in deals and changes to the arbitration law and rules on arbitrability of disputes. So the last couple of years were full of new developments, which effect most transactions, and the market is still adapting to those.”

Finally, turning to the subject of the Russian legal market, Drebezgina refers to some fallout from Chadbourne’s global tie-up with Norton Rose, with the firm’s formal Managing Partner moving to Reed Smith in London. “But otherwise nothing major,” she says. Drebezgina says there haven’t been any major cuts at firms in recent months. “Difficult decisions were made in prior years,” she says. “And now everyone is in a waiting mode.”

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THE SPIRALING CONTROVERSY OF HUNGARY'S LEX CEU

On April 4, 2017, the Hungarian Parliament passed via an expedited procedure an amendment to the country's Higher Education Act (Act CCIV of 2011 on National Higher Education) requiring, among other things, that foreign universities not based in the EU: (1) operate under a formal agreement between their country of origin and the Hungarian government; and (2) maintain campuses and offer degree programs in their country of origin. It was signed into law on April 10, 2017.

The law is referred to as "Lex CEU" by the media in honor of its presumed target, as Budapest's Central Eastern University is the only university in the country that would be affected by it. CEU – which was famously founded in 1991 by Hungarian/American financier George Soros – is registered in New York (although it

does not operate there) and is accredited in both the United States and Hungary. It has a profoundly international profile, as with 1,500 current students from 117 countries and almost 14,000 alumni in 133 countries, it was recently ranked the second-most international university in the world by Times Higher Education.

It has also long been viewed with skepticism by current Hungarian Prime Minister Viktor Orban and members of his Fidesz ruling party.

The passage of the new law generated an uproar both in Hungary and around the globe by individuals who believe it to be a targeted and discriminatory attack on CEU and on freedom of education in general. For its part, CEU claims that the expedited procedure employed by the Hungarian parliament in passing

the amendment was unconstitutional, as organizations entitled to express their opinion on the subject had not been consulted, and insists that the amendments violate rights of freedom of academic research, studies, and education as enshrined in the Basic Law of Hungary.

In an interview with Hungarian public radio, Viktor Orban stated that CEU – which he identified as "the George Soros University" – "enjoyed an unfair advantage over Hungarian Universities and fell short of regulations." On April 26, Hungary's Members of the European Parliament defended the newly-amended law to their counterparts by explaining that it "applies to 28 universities and only requires common standards to be fulfilled."

Unsurprisingly, CEU disagrees. In an interview with CEE Legal Matters, Zsolt



Enyedi, the CEU Pro-Rector for Hungarian Affairs and a Professor of Political Science, claimed that the Lex CEU “is discriminatory because the amendment is tailored to specifically target the unique situation of CEU.” Enyedi also described Lex CEU as problematic because it makes the continued operation of foreign universities in Hungary dependent on the decision of the Ministers instead of the accreditation institutions and other independent bodies specifically designed and constituted for that purpose.

In addition, according to Enyedi, although CEU in fact does operate based on a joint declaration of the governments of Hungary and the State of New York, there was no previous requirement that it do so, and by tying the operating rights of foreign universities in Hungary to the existence of this kind of inter-govern-

mental agreement, the Lex CEU “makes the educational autonomy of these institutions dependent on the prerogative and preferences of politicians.”

As a result, on April 21, 2017, opposition members of the Hungarian Parliament filed a constitutional claim with the Hungarian Constitutional Court challenging the new Amendments. According to Enyedi, in view of statements made on the issue by legal experts like Lazlo Solyom (the first Chairman of the Hungarian Constitutional Court and Former President of Hungary) describing Lex CEU as a clear violation of the constitution, CEU is confident that it will get a reprieve.

In addition, in April 2017 the European Commission started infringement proceedings against the Hungarian government regarding the new law, sending

a letter to the Hungarian authorities informing them that “Lex CEU was incompatible with fundamental freedoms enshrined in the EU treaties – namely, right to academic freedom, freedom of education, freedom to provide services, and freedom of expression under the EU Charter of Fundamental Rights.” Hungary has one month to present its views regarding the breach. The Commission will give a reasoned opinion if the observations presented by the Hungarian government is not considered satisfactory, and if necessary, refer the case to the Court of Justice of the EU.

It appears the bill is unpopular even with Fidesz’s supporters outside the country, as, on April 29, 2017, the Presidency of the European People’s Party (EPP) – the EU center-right party of which Fidesz is a member – asked Hungarian Prime Minister Orban and Fidesz to take all necessary steps to comply with the commission’s request, while making it clear that the “EPP wants the CEU to remain open, [have] deadlines [be]suspended, and dialogue with the US to begin.”

Subsequently, on May 17, 2017, the European Parliament passed a resolution calling on the Hungarian government to repeal Lex CEU, to “immediately suspend all deadlines,” and to start dialogue with relevant U.S. authorities. That same day CEU issued a public statement calling on the Hungarian government “to listen to its European partners and initiate negotiations.”

At the moment of publication, the Hungarian government has yet to act on any of these requests, although a Hungarian government official will reportedly meet on June 23 in New York with a representative of Andrew Cuomo, the governor, to discuss the university’s future.

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Rafatu Ohiare

THE CORNER OFFICE: THE LEAST FAVORITE THING

In The Corner Office, we invite Senior and Managing Partners at law firms from across the region to share information about their careers, management styles, and strategies. For this issue, we asked them to describe their least favorite part of their jobs.

Marian Dinu, Managing Partner,

DLA Piper Romania



What I am about to say may come as a shock to associates, coming from a Managing Partner: What I like least in my job is time recording. Of course I preach to everyone that they should record their time daily, and for good reason; It is the only way to accurately capture what you do as a lawyer. And

there are times when entering time is not too time-consuming or difficult: Those days when I spend eight hours or more negotiating a transaction. When it gets hard is on a normal day, when as Managing Partner I deal with countless issues, big or small, client-related, or admin/management, with the added benefit of frequent interruptions when I set out to do a task. Accurately capturing time for one of those days is ... well, a chore.

Kinga Hetenyi, Managing Partner,

Schoenherr Hungary

For me, the worst part of the Managing Partner job is when I have to deal with internal regulations and policies such as about money laundering and client identification policies, procedures for archiving, etc. These policies need to be set up



once, and then revised and updated regularly. We have to make sure that we follow the legal rules and the bar association's guidelines and still remain efficient. Even if I delegate significant parts of it, I still need to read and approve internal policies. This is the most boring and annoying part of the job for me. Furthermore, some of the rules and guidelines are unfortunately not very clear and it is sometimes difficult to decide how to implement them into our own internal policies.

Erwin Hanslik, Managing Partner,

Taylor Wessing Czech Republic



I really do like my job as Managing Partner. But of course, like in all jobs, there is something that I really do not like, and that is completing submissions to international legal directories. Yes, I know, it is absolutely important. And yes, we always take part. But it simply makes me nervous when we have to do it again. Most of us lawyers are quite bad at marketing. We usually do not like to talk about ourselves.

OK – there are some exceptions among us. But in principle, we lawyers are not salesmen. I consider this a definite disadvantage in our studies, particularly when you have studied in

continental Europe. During my studies in Salzburg, I had to learn law – but not how to sell my knowledge. Now you can imagine how I react when our marketing manager sends me the submission for a legal directory. At first, I just put it aside. Then I get a first and friendly reminder. I get very creative (yes, you would not expect such creativeness from a lawyer) in finding reasons why I have not yet done it. Then I receive the second and “not-so-friendly-anymore” reminder, which I – yes, I have to admit this – usually ignore. Frankly, the last reminder is very direct and – yes, I have my submissions done by then. And yes, of course everything would be easier if I had my submissions prepared during the year whenever a transaction is completed. But it is the same logic as when getting Christmas presents for my wife. The closer Christmas comes, the more effective, creative and generous I get.

Ron Given, Co-Managing Partner,

Wolf Theiss Poland



Letting people go is a very tough part of the job. It is never fun or easy, but some cases challenge you more than others. Clear issues with performance, interpersonal frictions, and/or financial results usually can't be ignored for long. You are more or less compelled to get in there and do what needs

to be done. I find most challenging dealing with young lawyers who have managed to accumulate all the right academic and social markers and survive the recruitment gauntlet but, when put in the context of a functioning, modern law office, demonstrate that they do not have the mental and social elasticity to meet the demands that clients put upon us these days.

Sadly, the inability to “think like a lawyer” can rarely be fixed by training, the mere lapse of time, or, most assuredly, all the good intentions in the world. It's nobody's fault and the only thing you can really do wrong is to ignore it, hoping that the clean-up cup is passed to someone else. You need to do everything you can, in both onboarding and off boarding, to help people get into situations into which they fit and will be happy. And those situations exist for everyone. They just need to be found. Although you should generally not expect to receive much appreciation from those you walk to the door, howsoever gently, it does happen.

From time to time I am together with lawyers I've had to let

go in years gone by and we talk about the challenging time we went through together (often acknowledging that, like any divorce, such situations rarely bring out the best in those that depart), the good things that were waiting for them in subsequent positions, and that things have really turned out as they should for everyone. Such affirmations help give you the backbone to deal with the next difficult situation that inevitably awaits you.

Uros Ilic, Managing Partner,

ODI Law Slovenia



Although becoming a Managing Partner was always one of my main goals, the function itself definitely presents a challenge. It takes a whole person and there is almost no room for personal life. You have to be a leader, a role model, a teacher, an innovator, an organizer and so much more at

once and the person to whom the team will come for either advice or comfort. You always have to look at the big picture by having in mind what is best for the firm and the team. Even when you think you got it right and a task is completed, there is often some kind of surprise waiting around the next corner.

Whether at home or on vacation or whatever I'm doing (with today's technology there is actually no such thing as a real vacation), I'm always thinking of ODI. That never-ending-to-do list and the inability to step away from it all at least for few days is something that is definitely the worst part of the firm Managing Partners' job.

Mykola Stetsenko, Managing Partner,

Avellum



What I really don't like about my job is chasing clients for outstanding bills. I completely accept that in a competitive environment you have to negotiate on price, and in Ukraine clients very often negotiate proposed fees heavily. However, once we have agreed on the

price and the schedule of payments, I really expect that our invoices will be settled without any delay. Unfortunately, that is not always the case. While large foreign corporations often indicate from the start that the processing time for an invoice is about 30 days, some Ukrainian clients are quick to promise immediate payment of the invoice. In reality, I often end up chasing a client five or six times about an outstanding invoice with a delay of three to four months and getting all sorts of explanations and excuses. This is really frustrating and may even spoil an otherwise great client relationship.

Vefa Resat Moral, Managing Partner,

Moral Law Firm



Imagine the last working hours of a heavy business day. Following consecutive meetings, interactive production with several departments, and administrative daily works on accounts, your extension rings and an agitated voice is on the line like a heavy arm reaching to your ear from the phone.

Whoever or whatever the reason of the intolerable result you, as the Managing Partner, are the nearest person or target of the client to reach up and criticize. Then you face the reality that despite your team's high-quality work, client satisfaction appears just over the mountain. As a Managing Partner one of the hardest and less enjoyable part of my duty is cooling down hot-tempered clients on unsatisfactory results on legal matters.

Luckily, I do not experience such cases frequently. We have to be wise and great psychologists when reevaluating matters and advising clients on those hard days. In case of a shared responsibility of the firm on the result – which has happened only very rarely in the last 20 years – we are always ready to wear the shirt of fire, never blaming any of our teammates, since the firm is our shelter and accounts are settled with our team behind our walls. In addition to the necessity of sustaining high quality work even on hard days, psychology plays a major role in the Managing Partner's approach of cooling down the client and it is the magical key in order to continue working with them for many decades – a priceless reward that we are always proud of.

Tomas Rybar, Partner,

Cechova & Partners



Most lawyers hate doing their timesheets. And it is equally disliked by me to chase my colleagues to do their timesheets on time and properly. And while we lawyers are often very concentrated on providing our work product to clients on time (and we know this is an important element they judge us on, sometime even irrationally ahead of quality), we are not nearly as good at meeting internal deadlines in non-client matters. And hence another unpopular duty of a Managing Partner.

Biljana Joanidis, Partner,

Joanidis Law & Patent Office



I have been practicing law in the same firm since graduating from law school. During that time, my practice has been devoted to almost everything that has been needed in the office: Coming to the office, running to be on time in court, going to trials, coming back to office, meetings with clients, and drafting legal actions.

I was content to let other to manage the firm while I did my best as a trial lawyer and to learn as much as I could from books and practice. As with many other firms, our firm was led very capably for many years by a senior lawyer – my father. About four years ago, he resigned from that role and left it to be led by me and my brother, which somehow caused fear in the way of unfamiliar things to carry on.

I love my work – simply adore it, have loved it from the beginning – but what bothers me the most is the waiting between trials, that sometimes can be a whole day, where I am useless and forced to carry my work home, as we deal with client problems not only at work but also at home. Simultaneously, my biggest bother is the expectations of the outcome of some cases, when they do not match the results in previous cases or in decisions reached by other institutions. Although

these things bother me, it is challenging to move forward.

Irmantas Norkus, Managing Partner,

Cobalt Lithuania



What I do not like in my job is the fact that I like every aspect of it. Running a firm is like living several lives at one time. Running a firm in an emerging market is even more. More speed and complexity. You have 20 years to achieve a level of excellence similar to that of the leading firms from western

markets that are 50-70 years of age.

Bringing partners together, building bridges between generations, pushing for more competition, winning deals and cases, expanding networks, hunting for talents, etc., is a constant effort – but fun too. I love this job; however, as a counsel, I am cautious not to miss important details in managing the firm. It is a constant feeling that “everything is OK” but there must be “something”. I do not like this feeling.

I would like to wear my Metallica T-shirt in the office, but I can't. This I do not like either.

Erem Bener, Managing Partner,

Bener Law Office



I am generally very displeased when it comes to dismissals. This is my weakest point. Even when we are not happy with somebody's work, I do not take action immediately. I want to give them enough time to improve. But sometimes dismissal is inevitable.

Collection is also always an issue. This is a very sensitive subject because you need to collect your service fee but without stressing the client. This is really tiring. Generally, we obey

client's payment dates but sometimes we need to deal with some clients very sensitively.

The last point that comes to my mind is having the best price with suppliers. In Turkey sometimes FX rates fluctuate and increase in a very short time. If your payments (i.e. rent) are in FX, this gives you a hard time. You have to negotiate with your suppliers or deal with it. These negotiations are not easy. Because you do not want to ruin good relationships but you need to reduce your unexpected costs too.

Mark Harrison, Managing Partner,

Harrisons Solicitors



It is my personal obligation as Managing Partner at Harrisons to keep an aquarium at our office and look after the fish, including feeding them, cleaning the glass on the inside, and ensuring they have sufficient vegetation. On entering my office I first switch on the bright blue neon light and

then the main light. The part I like the least is then looking at the surface to see if any fish have died. In general, smaller fish have a shorter lifespan than larger fish, and fish that lay eggs live longer than those that give birth to live young.

As many people will know I name all my baby sharks after lawyers I have personally met or crossed paths with. I had thought of getting Red Bellied Piranhas but they don't seem to get on well with each other, unlike sharks, no matter which lawyer I name them after.

Unfortunately, now and again (and completely by cause of nature – nothing else, I can assure you), a shark may die and I then give my undertaking, which as you know is a promise made by a solicitor upon which the fish is entitled to rely, binding me as a solicitor to flush the dead fish down the toilet, wrapped in the softest toilet paper I can find. An undertakers job, so to speak. That is the one regular part of my job I like the least, notwithstanding who that shark represented.

... yesterday I bought 10 more sharks!!!

Juri Raidla, Senior Partner,

Ellex Raidla



To be honest, the part I like least in my job is writing invoices to my clients. You can only be the best lawyer when you dig deep into the client's business to obtain an in-depth view allowing you to find the scenarios to solve the matter in question. That means that at the top of professional relations

the lawyer will also have some personal relations with the representatives of the client.

The level of personal touch you get through this job makes the invoicing part most difficult for me. And even more, no matter the kind of relationship you have with the client, there is always a question before the invoicing: Have you really delivered full value to the client?

Most probably the belief that perfection is somewhere far away to be reached is what has throughout the years kept me and our firm going at its full speed. We always aim higher, even if the results today is at its best.

Zoltan Faludi, Managing Partner,

Wolf Theiss, Hungary



The first thing that immediately comes to my mind is: Administration.

I would rather be in the front, meet clients, deal with legal issues, and find new and innovative solutions. Administration, however, usually consumes a lot of valuable

time – recording time sheets, signing documents, filling in forms, etc. My enthusiasm burns on a smaller flame and I feel that I could spend this time on more valuable things.

A Managing Partner has to focus on so many different needs: The day-to day operation of the firm with a special focus on finance, risk, and client relationship management, and long-term strategic planning. It also involves paving the road for the individual development of younger colleagues – which provides lot of pleasure in this position. Next to all this, administration can seem like a waste of time. Of course, it is a

very important and necessary part, essential to gaining a realistic understanding of how the firm is doing and where is it going, and determining how it will get there. However, if you have the right people around you, it is much easier to cope with all this and lead the firm to success.

The hardest task in my job is to let people go – luckily, we were only forced once during our firm's ten years to reduce the team for financial reasons. But sometimes for professional reasons or for the good of the team I have to make these decisions.

Filips Klavins, Managing Partner,

Ellex Klavins



I dislike conflict of interest situations, but they seem to arise almost every other day. Of course, it is of critical importance to be cognizant of the potential for conflicts, to have a system to check for them and to avoid them, and to keep your ethics and reputation spotless. Nonetheless,

when potential conflict situations arise it is painful to turn down opportunities for new work and new clients.

Operating in a comparatively small market such as Latvia, we often are involved in a matter for one party when we are contacted by another party in the same matter. If the party we cannot represent because of conflict is a potential new client, it is a disappointment to turn that client down but it is a clear and easy decision.

In our small market, obviously more of our existing clients deal with each other, so there is more chance for conflicts to appear. Where a waiver of conflicts is not possible, and where the conflict involves two of our existing clients, is when I dislike my job. Then there are also the discussions and explanations to the clients, which are ok if we have good relationships with them and can have an open and frank discussion, but also agonizing because of that same fact that we have good relationships with them and we are telling them “no.”

All partners deal with this issue, but my MP job further includes involvement in discussions where two clients are involved and each is the favourite client of a different one of my partners. Even more unpleasant ...

Panagiotis Drakopoulos, Managing Partner, Drakopoulos



Having to work out of four main offices in four different countries means that I am on a plane almost half of my time. Upon arriving in each different office, the very first matters that need my attention are issues arising between partners or associates in the firm, or client-related problems. Only once these matters have been tended to do things become smoother and work flows more comfortably, be it in terms of client meetings, partner discussions regarding the firm's regional vision, or strategizing regarding the firm's approach locally.

As I would rather enter each of our offices to find only a positive and creative atmosphere, it is that first issues-filled part of my trips, immediately following my arrival in each office, that I like the least.

Peter Lakatos, Managing Partner, Lakatos Koves & Partners



One aspect of my job that I sometimes find increasingly challenging and trying is the inability to plan ahead. Law is a service industry and as such, it is imperative to serve clients at all times, including Friday nights and weekends – a new mandate can come in any time and I obviously cannot tell

the client that I will deal with their issue later. As a result, due to the ever-changing dynamics of the workload, continuous scheduling and re-scheduling is a constant task of mine; I don't have the privilege of enjoying a carefully-planned daily routine, as it is bound to be disrupted at one point or another. From my experience I would thus say that work-life balance is extremely difficult to master at the Partner and Managing Partner level of the job. After close to 30 years in the legal profession, I can honestly admit that the unpredictability of the volume and urgency of the work is something serious to cope with, and especially so in cases when I have an alternative view on the timing of a given mandate, which so often proves to be right.

Kostadin Sirleshtov, Managing Partner, CMS Bulgaria



There isn't really a part of my job which I hate. This is probably why I devote some 3-4 thousand hours a year to it. Still, probably the part of my job which I like least is fighting complacency. You seldom see a young lawyer coming to an international law firm who is not willing to travel the world, put in what it takes

for the client to be happy, and so on. As Associates (and even Partners) settle into the job, however, they very often become overtaken by the "nine to five" mentality. Don't get me wrong; I don't believe the workaholic approach is the right one and certainly don't recommend it to young lawyers. But as I sometimes say, "targets are not for decoration" (this is a version of a joke I heard in Egypt where we were told that traffic lights are "for decoration").

So fighting complacency is probably the least favorable part of my job, most likely because I can't really understand it and don't need any special motivation to do my job.

One of the ways of pushing for the extra mile is by being transparent. Lawyers are notoriously competitive, so that often works. Other structured models that work in practice are flexible progression models. Not everyone wants to be a Partner, plus you can't really have a team of 11 Ronaldos playing on the field at the same time. So structuring your team around individual specifics works as well. Providing practical examples also help – Associates just have to imagine what they require from their own service providers and do the same for our clients.

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FACE-TO-FACE: JAN MYSKA AND PETR SYROVATKO OF WOLF THEISS AND EDIT ROSTA OF 3M

Who knows more about lawyers than other lawyers? In the Face-to-Face feature, we step back and allow private practitioners to sit down directly with in-house counsel to discuss their challenges, strategies, and solutions.

In this issue, Wolf Theiss Managing Partner Jan Myska and Counsel Petr Syrovatko talk with Edit Rosta, the General Counsel for Hungary, Slovakia, and the Czech Republic at 3M.

J.M.: Edit, you cover legal affairs for Hungary, Slovakia, and the Czech Republic. How would you define your role and what sort of challenges are you facing in your daily business?

E.R.: My role in these three countries is first of all to define my role, because this region – which we call a central region – was created just two years ago (or maybe just a bit more). This was a huge change, as only one of these entities had an internal legal person before. So the organizational change was new, and the role is new, and so for me it's very much the building phase at the beginning, with a lot of coordination

and educating my internal clients about the value of in-house counsel and what we can do together and how far we can go together.

Of course, this is the beginning phase, I would say. I have been doing this now for just over a year and now I can say that we have created the foundation. Now comes the building itself, and that is a lot of contract management, contracting procedures, template creation, and making sure that people understand what the risks are -- because sales people of course want to do business. And sometimes they are too pushy and they just don't feel like any risks

are around the corner. It also develops trust and helps people become aware, to educate them a lot – a lot – so I am doing trainings in a big way on subjects like competition and data privacy, but also contract management (which is more like an internal question but at a moment when we can't locate all contracts that we have to have that is also something that needs to be addressed). And, of course, we have a lot of compliance-related trainings, and their creation is also part of my job.

And for me the challenge of course are the languages. Czech and Slovak are relatively similar although I understand that these



are two different languages. My language – Hungarian -- is like from the Moon. So obviously the common language is English. But I am working on my Czech and my Slovak as I work.

P.S.: What differences stand out to you as the most significant in the legal markets of the three countries you cover: The Czech Republic, Slovakia, and Hungary?

E.R.: I think all three are extremely well developed and firms like yours are present everywhere. I knew Wolf Theiss from my previous life back in Hungary and I used to work with them a little bit. From this point

of view I think we are extremely comfortable because we have a huge selection to choose from. I find in all three countries that the English penetration is really high in the profession – so I really didn't have any issues with that – and so is the knowledge and professionalism. I think we are really developed so there aren't many big differences. My strategy is to use firms like yours – let's call them international firms – and I also like to use the local ones. I like the local small offices and I like to see how they operate. I really like to divide assignments between the two kinds of firms not only because of finances but also just to see their working styles. Sometimes it's



Jan Myska
Managing Partner
Wolf Theiss Prague

good to be slow and go through the details with a smaller firm and sometimes we need the expertise and the speed that a firm like Wolf Theiss can much more easily provide. Then it is done over the weekend and we are all happy.

J.M.: You said that you are using external counsels a lot. Do you tend to have a panel in each country and then a panel covering the entire region or do you select law firms on a case to case basis?

E.R.: When I joined 3M there were not really internal legal advisors on board so there were already law firms working for all the three entities – and of course the natural decision was to keep working with them. So first of all I gave myself some six to eight months to see how it would go and how happy we were together. In this regard I'm quite happy and I'm quite lucky that obviously the companies were selected carefully. Working with your firm is one of the first times that I am opening this up a little bit because I want an international firm that can cover the three markets because we do have questions – especially in competition – that need to be addressed in all three countries and then it is much easier to reach a common understanding. Also, as I mentioned, I like bigger law firms for their speed and also for their professionalism. Obviously you have the best translators and you have the best communication methods, so that is something that I appreciate.

P.S.: Who is the decision-maker in selecting external counsel and what are the crite-

ria in selecting the firms you will be working with? Also, your company is US-based. Is there a preference for the US firms with offices in Europe?

E.R.: Surprisingly, for the Central Region I am very independent and there are not many instructions coming down. Meaning that our US headquarters do not really order us to use any of the big names. While we have some such instructions regarding tax advisors, that has not reached legal yet. Perhaps it is coming my way – I don't know – but for the time being I am quite independent, as are my colleagues in similar countries. So we make our selections, and then of course we get approval from senior management. Your firm is a good example of this because Wolf Theiss works for the

East Region – meaning the Balkans, mostly – and I got very good references. That was just about the time when I was starting to talk with you about cooperating, so in this respect your firm is a kind of good example, in that it covers many areas for 3M but we did it totally independently, so if I wanted a different firm than Wolf Theiss nothing would have happened I could have made that choice.

I am independent in my decisions and most important for me is always the chemistry – without which, at the end of the day, I think you cannot really select a law firm. I see how people approach my questions and it is very important to see how much an independent lawyer – whose job is already difficult enough – can understand

my way of thinking and my company's way of thinking, which is huge and extremely complicated. I'm sure all your clients are like that. What is very important for me is to see the lawyer's eagerness to try to understand and try to put himself in my shoes and figure out what will be my next idea – which sometimes is easy and sometimes is not.

J.M.: That is very interesting actually. Have you identified certain trends in getting legal services provided by external counsels – in terms of how they behave – and what would you advise external counsels to do to attract you?

E.R.: External counsels have to realize that their clients at companies like 3M – fast-



track companies, I would say – have very little time and sometimes have very limited interest. Sometimes my interest extends only to resolving the problem without needing to know the whole context in the given country. This means that I often have to read messages maybe on my phone – maybe I do not have the opportunity to open up my laptop because it is late at night and I am cooking dinner in the meantime – but I still have to check what is going on because we have a deadline the next afternoon or something. In other words, the legal advice must be concise and must be clear. I am organized like this – my brain is wired this way – if my questions are clear then I want the answers also to be clear. I like receiving the entire context, including legal cases and examples perhaps from the given country – but I may agree on it two days later or a week later, or I will return to it if I have an hour to kill or something. So for me it is very very important that the lawyer should be able to speak my language in this respect, as I do not really want to spend time trying to figure out what they wanted to say. I want concise and clear answers. Even if it is complicated sometimes.

“In other words, the legal advice must be concise and must be clear. I am organized like this – my brain is wired this way – if my questions are clear then I want the answers also to be clear.”

The other thing I think external law firms need to realize is that today with big companies every other question involves a compliance issue.

P.S.: Have you noticed a lack of professionals in the legal market? How does that affect you and your firm?

E.R.: I can't say that in the Czech Republic, in general, there is a lack of something. One more message to the lawyers not to forget is that very often your client is totally alone. For instance, I am the only lawyer here, and sometimes I only need a friendly confirmation from my external counsel that, yes, the way I think is correct or not correct – or maybe I should reconsider that. I am still looking for somebody who could be my best friend in this respect in the Czech Republic. And the questions are still very similar for all three of the jurisdictions I cover – especially as the operation of the companies is really matrix and cross-border, so obviously if you do something here with me it will also effect on the other markets, and vice versa. But I do not mean to say that there are no good competition lawyers in the Czech Republic because I am of course not in the position to judge that. But I am still looking for my best friend.

J.M.: Apart from the competition work are there any other challenges you foresee at the moment that you will have to deal with in the near future in your region, like – for example – the implementation of the data protection directive?

E.R.: Yes, that is coming our way. Luckily, 3M has realized that it is coming and the time is flying so there is already a project set up for this with the full legal project team high above. This is on a European level, not on the regional level, and will I have to understand sooner or later, when it reaches my level, what to do. For me the challenges are definitely data privacy and data protection in all three jurisdictions. It is very similar obviously – we are all in the EU – but Slovakia seems to be the strictest for the time being. Another new thing coming our way are the new health care regulations that are going to be implemented in this country next year. I do not see any big issues with employment law, which is pretty stable. In all the three countries we have the regular questions, of course – but then usually the regular answers.



Petr Syrovatko
Counsel
Wolf Theiss Prague

P.S.: You lived in Budapest for 16 years before moving to the Czech Republic. What do you like the most about the Czech Republic and Prague?

E.R.: In Prague, the Fringe festival, of course, which is on now. We usually do not sleep when the Fringe is on. What I like about Prague is that it is safe. The public transport system that you have is absolutely world-class – and I come from a city that has a good public transport system. What you have here is ... come on, you are spoiled. Or should I say we are spoiled, because I am also part of it, enjoying it. I like the culture, cultural life, I like that there is always something going on, that it never sleeps. I also like the size of the city – it is not too big but it is not too small. Lots of parks, and I love the riverside. So it is kind of a second home – as it should be.

J.M.: That's great to hear. What about the Czech cuisine?

E.R.: Oh, I do not like knedliky. I am so sorry. My son loves it. So sometimes we buy it and just prepare something with knedliky.

J.M.: Good, I think, I think it is a perfect way to end our conversation.

E.R.: Definitely. Thank you guys.

J.M.: Thanks a lot.

David Stuckey

MARKET SPOTLIGHT: POLAND



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GUEST EDITORIAL: POLAND – THE SILICON VALLEY OF EUROPE?



When I first moved to Poland about eight years ago from my native London I encountered a world different from the one where I had spent most of my life. While Facebook and Skype were conquering the Western world, very few in Poland had heard of these companies. And when I described both companies to my new colleagues in Poland, the resounding response was “they will never take off in Poland, as we already have similar local social media and communication applications” – namely Nasza-Klasa and Gadu-

Gadu – “we are too patriotic and resistant to want to use foreign technology.” (When it comes to producing its own technology, Poland loves to wave its own flag, a case in point being the fact that Poland collectively celebrates every time Hollywood actor Tom Hanks is photographed next to a Polish Fiat car).

Fast forward to the present day. Facebook has well in excess of 11 million users in Poland and holds a 74% market share in the 18-25 age group. Skype is now, by a country mile, the leading VoIP communication application in Poland. It’s fair to say that the international technology companies have a stranglehold on the Polish market, no doubt fueled by the waves of Polish emigrants to Western Europe that have been exposed to Western technology.

However, Polish companies are fighting back. In October of last year, the Polish online auction site Allegro (of recent Christmas advertising fame) was sold by its South African owners Naspers to a club of private equity funds for USD 3.25 billion. For a period of time, eBay and Alibaba were thought to be vying over acquiring the auction site, with the latter eventually announcing that it will enter the Polish market in its own right. Despite attempts to do so, eBay has failed to get ahold of the Polish market. It will be interesting to see if Alibaba will fare any better.

Aided by a more conservative government, the Polish technology market is seeing something of a boom. Companies such as CD Projekt and Vivid Games are taking the international computer games market by storm with The Witcher 3 (the last installment of CD Projekt’s series of Witcher games) winning just about every computer games award internationally.

Then there are companies such as G2A and LiveChat, not to mention software producers such as Asseco and Comarch. Last year the international press published a study undertaken by HackerRank showing which countries have the best

developers. Poland placed third in the ranking only to be beaten by China (first) and Russia (second), with the US not even appearing in the top ten.

G2A is a prime example of the rise of Polish technology companies. The global digital marketplace for gaming products was established in 2010 in a small town over 100km east of Krakow by its two Polish founders. The company now boasts in excess of 700 employees, with its headquarters in Hong Kong and various offices throughout the world and in excess of 12 million visitors to its website. Commentators have noted that G2A’s rate of growth has been quicker than the equivalent first six years of both Facebook and eBay.

Nonetheless, the success of Polish technology companies on the international arena will largely depend on their ability to access capital, which isn’t abundantly available in Poland. With a floundering Warsaw Stock Exchange and a shortage of venture capital funds offering the amount of capital to give the market real punch, Polish technology companies will find themselves turning to foreign markets.

Last year our firm, Kochanski Zieba & Partners, undertook the first dual listing of a Polish company (Work Service – Eastern Europe’s largest company in the staffing and human resources sector) through depositary interests on the London Stock Exchange. Moreover, the transaction was the first ever in which a Polish law firm directly advised the issuer on a listing outside of Poland. Since then a number of Polish technology companies have openly and publicly stated that they wish to access capital through foreign exchanges, including London and Nasdaq.

In the same way that our larger US law firm cousins such as Cooley and Fenwick & West were there at the outset of the Silicon Valley bubble, achieving success through growing with their clients, Polish technology companies are loyally keeping with the Polish law firms that understood and continue to understand their businesses best, having worked with them hand-in-hand from the very beginning.

The immediate uncertainty following Brexit and US presidential elections resulted in Polish technology companies putting their international plans on hold. As the international market settles, and following a surge in transactions in the last quarter of 2016 that has carried through to the first months of this year, the race is back on to be the first Polish technology company to truly go global. Exciting times to be a Polish law firm.

**Adam Piwakowski, Partner,
Kochanski Zieba & Partners**

TENDING THE POLISH BAR:

**Interview with Maciej Bobrowicz,
President of the National Council for
Legal Advisors**

As part of our year-long series of interviews with the bar associations presidents of CEE, we spoke recently with Maciej Bobrowicz, President of Poland's National Council for Legal Advisors, at his office in Warsaw.



CEELM: To start, can you fill us in on your background? How long have you been in this role?

M.B.: Now I'm in my third term as the President of the National Council of Legal Advisors, after two three-year terms of office. The rule in Poland is that you should occupy only two terms. But luckily the rules changed recently, and now it is possible to take the position for a third time. I won that third election in 2016 – and this time it's not a three-year term, it's a four-year term, so I'll keep it until 2020.

CEELM: And what did you do before you took this position?

M.B.: Basically, there have been two tracks in my career. Let's start with the thread that led me to this position at the Council. If you wish to reach the position of the President of the National Council of Legal Advisors, you need to have some kind of experience in self-government; specifically, in the self-government of attorneys. That's why we can call this thread the "self-governmental track." I first needed to become a member of a regional bar association, then to become a member of the executive committee there. I occupied the position of the Vice President, and that allowed me to be nominated for the President of the Bar Association itself. After winning the elections and serving some time in the regional self-government, I was eligible to be nominated for the President of the Central Bar Association.

The second thread is my own practice. Naturally, I couldn't set up my own initiative in Communist Poland. The only possibility was to work in state-governed companies. Yet, when the system changed from Communist to Capitalist, a door was opened to set up my own business. And precisely 23 days after the first rules emerged in Poland about the free market in 1989, my friend and I set up the first law office. I am not sure if it was the first office in Poland, but it was certainly among the first. It was in Zielona Gora in the West of Poland, and it was certainly the first one there.

CEELM: How did you end up in Zielona Gora?

M.B.: Let me first give you some context. I was born in Poznan, and I studied at the University of Adam Mickiewicz in Poznan.



Maciej Bobrowicz

Naturally, I wanted to serve my apprenticeship as an attorney at law there, but unfortunately there were no places left. Please remember that we are talking about Communist Poland. At that time there were no law offices. If you wanted an apprenticeship, you had to work in a state-governed company. Unfortunately, no vacancies were available in Poznan. That's why I was delegated to Zielona Gora. The first place that I worked was in a transport company, as a lawyer there. Then I was able to finish my apprenticeship in a different company – a construction company. Afterwards, I took and passed my professional exam.

And luckily after my exams came the change of the political system. That meant freedom – and that's when I opened my first law office.

CEELM: Was Zielona Gora where you started your career on the self-governmental track?

M.B.: Yes, it began at the transport company, the very company where I started my apprenticeship. I joined the self-government there, and became the Secretary of the Zielona Gora Bar Association. Then I won the elections and was appointed as the President of that Regional Bar Association. After two terms of office at that position,

I moved to Warsaw to the Central Bar Association.

CEELM: So you moved to Warsaw as a part of that self-governmental thread?

M.B.: Yes, that's right.

CEELM: Were you serving clients in Warsaw as well?

M.B.: Not initially. When I first moved to Warsaw, I continued to work in my own law office in Zielona Gora. And then, after some time – although I can't now remember exactly how much – I set up my new business in Warsaw, and that office in Zielona Gora just phased out. But for a while I was commuting between Zielona Gora and Warsaw.

CEELM: Ok, let's move forward to the present. Are you working with clients now, or are you only involved with the self-governmental thread now?

M.B.: The majority of my time is spent on this self-governmental function. However, I do also run my own company, offering legal services as a solo practitioner.

CEELM: Let's talk about your official role. Tell us about the relationship between the National Council of Legal Advisors and the National Chamber of Legal Advisors.

M.B.: Let me first talk about the National Chamber of Legal Advisors. It was founded on the 6th of July of 1982, so it's 35 years old. This body was of course created in accordance with an act on legal attorneys, which was passed by the former government of Communist Poland. The function of this body is to gather all attorneys into one association. Consequently, if you want to be an attorney at law in Poland, you have to be a member of the National Chamber. Such an association ensures the maintenance of common professional standards.

In this sense, the National Chamber is the broadest body, and it associates 40,000 attorneys at law in Poland. The National Council is a kind of management board, which coordinates the actions and activities of the Chamber.

CEELM: How does one join the National Chamber? How does one qualify to practice in Poland?

M.B.: First you need to graduate from a 5-year course at a university. The education there is focused on theoretical aspects. Then, you have to take a test if you want to start your period of apprenticeship. This level of apprenticeship is crucial here, in order to establish who you really are and what legal profession you wish to pursue. There are, of course, different kinds of apprenticeships, depending on what career path – judge, legal attorney, prosecutor, etc. – you choose. These apprenticeships are organized by the regional bar associations, yet everything is under the supervision of the National Chamber.

CEELM: Are there different tests for different kinds of directions?

M.B.: Yes. There's another distinction as well. If you want to be a notary or a barrister or a legal attorney, you work in a company, and everything is under the protectorate of the National Chamber, which provides the training and designs the tests. But if you want to be a judge or a prosecutor, there is a state school where you pursue that. And then of course afterwards you have to pass the professional exam.

CEELM: How difficult is it to pass the exam?

M.B.: President: Roughly, if you take the mean for the attorney's section, the passing

rate is about 75-80%.

CEELM: What would you say is the role and responsibility of the National Council of Legal Advisors?

M.B.: Let me give you some major tenets of the body. Basically, we first have to train the apprentices. We have to raise the qualifications of the members by providing trainings, conferences, and distance learning. We have to give opinions on normative acts. And of course we have to represent the 40,000 members of the National Chamber.

“There’s so-called ‘dignity’ in the way you should conduct your profession. Let’s just act logically. In other words, you shouldn’t break certain rules of decency.”

Of course, in order for the Chamber to work properly, we need to have a kind of monitoring system – a Code of Ethics. We have a disciplinary court, and a so-called internal prosecutor, and we can of course issue different penalties, up to being excluded from the legal profession.

CEELM: Many bar associations in Central and Eastern Europe are very conservative. They allow no advertising and no international law firms. Poland appears to be at the other end of that spectrum. In your opinion, is the bar association here liberal or conservative? What are your feelings about advertising and marketing? Are there any limitations here on it?

M.B.: Actually, the definition matters a great deal here, because there is a great distinction between a commercial advertisement and informing the public. The advertising of legal services is crucially different from things like bottled water or FMCG products, of course, where the turnout is really fast. As far as legal services are concerned, around 60-65% of clients are private individuals who learn about lawyers through word of mouth. And because that’s a long-term process, commercial advertisements do not really fulfill their aim in the same way they do for bottled water. It’s a different kind of commercial.

In addition, the context of course plays an important role. You would not consider it appropriate to insert a commercial of a law company on a controversial website, to use an example. There’s so-called “dignity” in the way you should conduct your profession. Let’s just act logically. In other words, you shouldn’t break certain rules of decency.

CEELM: But if someone wants to put an advertisement in a newspaper, for instance, that says “we are ranked in the first tier of law firms,” that’s not a problem here, right?

M.B.: That’s right. Basically we’re talking now about how to inform the public of your company. Of course, you can give as much information as you want. But be careful about emotional language and language that sets comparative values. You can provide information about prices or what you do, but you can’t say “we’re the best.”

CEELM: In some smaller markets, some believe that that allowing larger law firms to advertise is unfair to the smaller law firms. Is that true here? Do smaller law firms object to the ability of the larger firms to advertise?

M.B.: Basically, there is no feeling of injustice here. The thing is, with the bigger companies, you don’t really feel that they have to compete in commercials with the smaller companies. The bigger ones are submitted each year to the rankings, and if you’re a bigger company, you don’t really have to look for commercials, you just look for rankings. These are exclusive fields, so if you’re a smaller company, you don’t really feel the injustice, because you’re looking for different things – you’re looking for different kinds of clients, depending on how big you are. Also, in-house lawyers know precisely which law firms they need to work with. They don’t really need commercials.

CEELM: But, again, there are no limits on it.

M.B.: Yes, but remember that commercials will always be assessed with respect to the context in which they appear.

CEELM: Moving on, how does discipline work when a lawyer is accused of acting unethically? Is there a centralized committee, or do the individual bar associations handle it themselves?

M.B.: We have a Code of Ethics, which sets ethical norms for every attorney at law. If they are breached, the cases are investigated by a spokesman of disciplinary affairs, who is appointed in each of Poland’s 19 bar associations. If the spokesman concludes that there is some evidence that the Code of Ethics has been breached, the case is brought to that bar association’s disciplinary court. Of course, the lawyer is entitled to lodge an appeal against a sentence to the Higher Disciplinary Court in Warsaw.

CEELM: The last question is simple. Are things going well here? What’s your perspective at the moment?

M.B.: It’s difficult to define the problems – I’d rather talk about my projects. I’ve recently managed to organize a television campaign to inform the public about the very nature of a legal attorney, and we’ve managed to organize two fortnight campaigns on television that are just about to air. It is the first promotion campaign of this type in Poland.

CEELM: Are those commercials, documentaries? What do you mean?

M.B.: It’s a thirty-second commercial to air on prime time. One thing more. The National Council has received some competencies from the penal code, and we want to be able to share with the public that now we can do more.

In addition, there is another project. We have launched a Social Codification Committee consisting of prominent legal experts such as professors, judges, and solicitors, all working *pro bono*, to create an act explaining how laws should be enacted – how laws should be formed.

CEELM: Finally: You’ve been reelected twice. What do you think is your greatest strength as a leader?

M.B.: It’s a good question worth considering. You should ask the people who elected me.

CEELM: But what do you think your greatest strength is?

M.B.: Perseverance, faith in what I do, and passion.

David Stuckey

MARKET SNAPSHOT: POLAND

NEW PAYMENT REGULATIONS TO FOSTER FINTECH REVOLUTION



Jan Byrski
Partner, Truple Konarski
Podrecki & Partners

The new Payment Services Directive (PSD2), scheduled to enter into force on January 13, 2018, will change the established business models in the payment market. This is due to new types of payment services and new rules which oblige banks to assist third party providers (TPP) in accessing their accounts and initiating

payment transactions. Much depends on how PSD2 will be transposed into national legislation, a process which should be completed by January 13, 2018.

PSD2 expands the definition of payment services by adding payment initiation services (PIS) and account information services (AIS) to the catalogue.

PIS are services in which their provider initiates a payment order at the request of the payment service user (the payer) from the payer's account at another financial institution. The PIS provider is, in fact, a facilitator that enables the transmission of funds from the payer's account to the payee, without the need for the payer to communicate directly with its account-holding institution (in most cases, a bank).

AIS services are intended to provide consolidated informa-

tion on one or more payment accounts held by the service user in other financial institutions. An AIS provider will enable the user to receive aggregated information from payment accounts held by one or more financial institutions in a single place.

The provision of TPP services does not depend upon the existence of a contractual relationship between the TPP and the account-holding institution. Every credit institution which operates payment accounts will be obliged to have an open interface (API) in place to enable third party providers to communicate with it in order to gain access to its data or to initiate payment transactions. Under PSD2, on the one hand, institutions operating payment accounts are obliged to treat the TPP on an objective, non-discriminatory, and proportionate basis. On the other hand, banks must apply the highest measures to make their interfaces secure in order to protect the interests and data of their clients. In some countries, like Poland, banks are organizing to create a common Open API standard for national banking systems. Such projects are considered positive and beneficiary for both sides because of their universal nature, lower costs of development, and integration (e.g., the third-party provider need adapt only to a single banking interface). Banks are also eager to benefit from the Polish Open API project, which, for example, allows them to charge an additional premium free for the provision of certain information to an AIS provider which is not mandatory under PSD2.

Under Article 32 of PSD2, Member States retain the right to introduce lower regulatory requirements for companies



Karol Juraszczyk
Legal Advisor, Traple Konarski
Podrecki & Partners

intending to start providing services in the payments industry. Restrictions include a rule that such companies need carry on the payment service business only in their home Member State and that the average turnover in payment transactions cannot exceed the limit set by the Member State (which cannot be higher than

EUR 3 million per month). In accordance with the draft Polish PSD2 implementation act, the Polish legislator has decided to use this national option to introduce the concept of a “Small Payment Institution” in the domestic legal system. This form of conducting business in Poland requires notification to the Polish Financial Supervision Authority (although no authorization from the PFSA is required), requires that the average monthly payment transactions not exceed EUR 1.5 million, and provides that a maximum of EUR 2,000 may be stored on the user’s payment account. Such entities may provide all kinds of payment services, but not PIS and AIS, which seem to be a good option for start-ups to verify whether their business model idea has the potential to become successful.

Given the above, it seems that the new regulations will create comfortable conditions and a productive environment for the financial technology community in the EU. This, in turn, should foster the development of innovative Fintech businesses. For banks, PSD2 brings substantial challenges but, as

can be observed, banks are also trying not to fall behind and take advantage of the fast-changing market environment. We hope this race will ultimately benefit payment service users.

[The Traple Konarski Podrecki & Partners law firm is participating in the public consultation process related to the eventual implementation of PSD2 in Poland.]

**By Jan Byrski, Partner, and Karol Juraszczyk,
Legal Advisor, Traple Konarski Podrecki & Partners**

THE ROAD TO PRIVATE ENFORCEMENT



Marta Smolarz
Head of Antitrust & Competition
Noerr Warsaw

On May 17, 2017, a governmental draft of the act on actions for damages caused by in-fringements of Competition law (the “Private Enforcement Act”) was approved by the upper house of the Polish parliament. It is now awaiting the presidential signature. Although this legislative proposal was forced

by EU Directive 2014/104/EU (the “Private Enforcement Directive”) and it mostly transposes its provisions into Polish law, it also introduces revolutionary changes to the law of delicts and the corresponding civil procedure. The adoption of the Private Enforcement Act will remove certain procedural

impracticalities inherent to any action for damages resulting from a Competition law infringement. Moreover, it goes beyond the measures stipulated under the Private Enforcement Directive. It is expected that the Private Enforcement Act will enter into force by the end of June, 2017.

A Set of New Presumptions

The Private Enforcement Directive introduces a presumption that cartel infringements cause harm. The scope of the implementing provision under the Private Enforcement Act is significantly broader than required under the Private Enforcement Directive, and applies to any Competition law infringement, including abuse of dominant position, and irrespective of the effect on trade between Member States.

Presumption of fault is also new to the delictual liability based on the concept of fault. While the Private Enforcement Directive does not impose a specific rule in respect of the basis for liability, the Polish legislator opted for fault-based liability (rather than risk-based liability, which indeed does not require evidence of fault). At the same time, this presumption constitutes another step beyond the Private Enforcement Directive, which does not speak of such a legal tool.

Finally, the Polish implementing measure introduces a presumption of the pass-on effect in respect of an overcharge paid by the indirect purchaser, where the infringement caused an overcharge paid by a direct purchaser and the indirect purchaser acquired products or services from the direct purchaser. Such a presumption is claimed to be in line with the goals of the Private Enforcement Directive, although addressed only in its preamble.

Taken together, the three presumptions greatly improve the position of Polish claimants by shifting the burden of proof to the defendant in respect of the causal link between infringement and loss.

The New Rules of Discovery

The Private Enforcement Act introduces a new discovery measure, previously unknown to the Polish civil procedure: A request for disclosure of evidence. The aim of this new evidentiary tool is to provide claimants with access to evidence not in their possession and which is inaccessible under the current procedure unless the precise scope of the evidence is known to the claimant. Pursuant to art. 16 of the Private Enforcement Act, courts, at the request of claimants able to prove the plausibility of their claims and who undertake to use the evidence only for the purpose of ongoing private enforcement proceedings, will order the defendants or third parties to disclose evidence at their disposal. Furthermore, under similar conditions, courts may also compel the competition authority to disclose evidence. These discovery measures now provide an abstract description of the type of evidence which must be disclosed, as claimants are no longer required to specify the exact item or items which must be disclosed, but

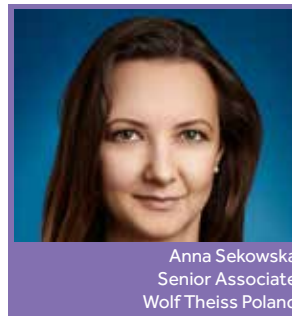
only the type of items and their key features.

Statute of Limitation

Probably the most crucial legislative amendments introduced by the Private Enforcement Act concern the statute of limitation for private enforcement. In most cases the current limitation period runs out while antimonopoly proceedings before the competition authority are still ongoing, which renders access to private enforcement illusory at best. The Private Enforcement Act extends the present limitation period of three years to five years. Furthermore, and more importantly, it introduces suspension rules which, in the event the competition authority takes action towards an alleged infringer, suspend the statute of limitation until one year after the authority's decision becomes final or the proceedings are otherwise terminated. This significantly improves access to private enforcement and, in particular, access to evidence gathered in the course of antimonopoly proceedings.

By Marta Smolarz, Head of Antitrust & Competition, and Joanna Szacinska, Associate, Noerr Warsaw

RECENT DEVELOPMENTS REGARDING POLISH ANTI-AVOIDANCE AND ANTI-HYBRID MEASURES



Recent Developments Regarding Polish Anti-Avoidance and Anti-Hybrid Measures: The Fight Against Tax Dodging Gathers Steam

The OECD's Base Erosion and Profit Shifting (BEPS) Project

A few years ago OECD and G20 Leaders noticed that the international tax landscape had changed dramatically. The financial crisis and aggressive tax planning by multinational enterprises had resulted in significant losses to state budgets, and perceived tax evasion had become part of the political agenda. Consequently, joint actions were taken to increase transparency and the cross-border exchange of information in tax matters and to address the weaknesses of an international tax system that had created opportunities for questionable tax tactics.

BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity. These practices can obviously undermine the fairness of tax systems, as businesses that operate across borders can use BEPS to gain a competitive advantage over enterprises that only operate at a domestic level. The OECD's BEPS package

released in 2015 provides 15 Actions that equip governments with the domestic and international instruments needed to tackle BEPS and ensure that profits are taxed where economic activity and value creation occur. The BEPS project is of major significance for developing countries due to their heavy reliance on corporate income tax.

The European Commission's Initiative

As a follow-up to the OECD's BEPS conclusions and in order to provide a common solution at the EU level, in mid-2016 the EU Council adopted Anti-Tax Avoidance Directive 2016/1164 (ATAD), which lays down rules against tax avoidance practices that directly affect the functioning of the internal market. In late 2016, the Commission presented a proposal to complement the Directive with a broader anti-hybrid approach.

The ATAD contains a packet of anti-abuse measures targeting the common forms of aggressive tax planning. With some exceptions, the rules should be applied by all Member States as from January 1, 2019.

Implementation of the Anti-Avoidance Rules in Poland

Poland appears willing to introduce anti-avoidance measures without prodding by Brussels. One of ATAD's measures – the controlled foreign company (CFC) rule, which is designed to deter profit shifting to a low or no-tax country – has been in force in Poland since 2015. Generally, under CFC rules, a Polish parent company is obliged to pay corporate income tax in Poland with respect to profits generated by a subsidiary located in a low-tax country, even if no dividend payments take place. However, as Poland is not a particularly advantageous jurisdiction for holding companies, it is unlikely that this rule will have a significant impact on taxpayer behavior.

The interest limitation rule has been present in the Polish tax system for many years. The rule addresses a common situation in which intercompany debt is used instead of equity and interest deductions artificially reduce profits. Recently, however, Poland amended these rules by giving taxpayers the right to choose one of two alternative methods of computing tax-deductible interest costs. The "historical" method provides for a simple debt-to-equity ratio (currently 1:1) as a limiting factor. The newer method, which is more aligned with the ATAD's solution, links the limitation on tax-deductible interest to such factors as company's EBIT and the value of its assets, and applies also to interest payable to non-related parties.

Another measure – a general anti-abuse regulation – was introduced in Poland in mid-2016 and its wording is similar to the ATAD's proposal. This rule counteracts aggressive tax planning when other rules do not apply. Due to its potential broad applicability it may turn out to be the most powerful tool used by tax authorities to combat tax dodging in Poland. The rule states that a taxpayer will be denied any tax benefit

which results from an artificial arrangement aimed solely or primarily at receiving such benefit.

Other anti-avoidance measures exist or are still to be implemented in the Polish tax system but may require amending to fully comply with ATAD.

The continuing implementation of the anti-abuse packet should be viewed positively. One would hope, though, that such anti-avoidance rules and, in particular, the general anti-abuse regulation, will not themselves be abused by the tax authorities in order to shut down all tax optimization possibilities in Poland, including ones supporting legitimate business purposes.

By Anna Sekowska, Senior Associate,
Wolf Theiss Poland

TEMPORARY EMPLOYEES TO BENEFIT FROM IMPROVED REGULATIONS



Barbara Jozwik
Head of Labor & Employment
Schoenherr Poland

The Polish Act on Temporary Employees dated July 9, 2003 (Journal of Laws of 2003, No. 166, item 1608, as amended) has been in force since 2004. The Act contains many flaws, however, resulting in the unequal treatment of temporary employees compared to employees hired directly under employment agreements.

To better protect temporary employees' interests, new provisions have been introduced to the Act, effective June 1, 2017.

The most important changes cover the following:

1. Period of Employment: The same user-undertaking (the entity using the services and work of temporary employees) will be able to cooperate with the same temporary employee only for a total of 18 months within a 36-month period. The 18-month limit applies both to employment agreements and civil law contracts.

A user-undertaking thus will not be able to cooperate with the same temporary employee after the lapse of this time limit, even via a different temporary work agency (an "agency"). The amended provision aims to prevent employers from circumventing the statutory time limits by concluding employment agreements with the same employee through different agencies.

2. Type of Work: A user-undertaking cannot employ a tem-

porary employee to perform work that for the previous three months was performed by a direct employee of the user-undertaking who was released for reasons not attributed to the employee. This restriction is territorial in character. Therefore, a temporary employee cannot be employed by the same user-undertaking in any of the user-undertaking's units located in the same municipality as the unit in which the previously released employee was employed.

This regulation should prevent the intentional substitution of permanent employees with temporary ones.

Inspections carried out by the National Labor Inspectorate will investigate the type of work performed by the temporary employee, not the position of the previously released employee.

3. Rules on Remuneration: The new provisions impose an additional obligation on user-undertakings to submit their internal regulations on remuneration (i.e., remuneration rules or collective bargaining agreement), and to inform any agency which requests the information of any changes to remuneration rules. For its part, the agency is obliged to notify the temporary employee of the remuneration rules prior to concluding an employment agreement. This obligation was introduced in order to ensure non-discriminatory remuneration for temporary employees providing similar work to direct employees and agency employees.

4. Extension of Temporary Employees' Agreements: To protect pregnant employees, agreements with pregnant employees who have been performing temporary work for at least two months in total that would have expired after the third month of pregnancy will be extended until the date of birth (in such cases the provisions of the 18-month employment limit will not be applied). Until now labor code regulation has not applied to temporary employees, and in order to avoid additional costs, employers were choosing not to extend the agreements of pregnant temporary employees, depriving them of their right to maternity leave. Because of this newly-automatic extension, the temporary employee will now be entitled to maternity leave and the statutory maternity allowance.

5. Employee Records: The user-undertaking must keep records of temporary employees working on the basis of employment agreements and civil law agreements (including information on the start and end date within a period of 36 consecutive months). The user-undertaking is obliged to store this information in paper or electronic form for three years after the termination of temporary employees' employment agreements.

6. Contact with the Agency: Agencies are obliged to provide temporary employees with the contact details of the agency's representative to enable direct contact with the agency, as it is their official employer.

7. Financial Guarantees: Agencies must have financial guarantees (in the form of bank or insurance guarantees) in place in order to secure employee claims and sanctions imposed on agencies, and cannot have any social security payment arrears (voivodeship marshals will be obliged to monitor this).

8. Jurisdiction: If agencies breach the rights of temporary employees, the affected employees will be able to sue them in court either in the jurisdiction of the agency's registered address or in the jurisdiction of the place of employment.

The changes will contribute to the more equal treatment of employees employed through a temporary work agency. They will also reduce the practice of hidden permanent cooperation between a user-undertaking and the same temporary employee.

By Barbara Jozwik, Head of Labor & Employment,
Schoenherr Poland

CAPITAL MARKETS: THE BOND MARKET IN POLAND CONTINUES TO GROW



Piotr Smoluch
Managing Partner
act BSWW

The corporate bond market in Poland has continued to develop steadily throughout recent years and experienced marked growth in 2016. This is mainly due to the fact that the whole market continues to function in an environment of low interest rates. The Polish National Bank reference rate has remained at the level

of 1.5 p.p. The WIBOR 3M rate currently is 1.73% and the WIBOR 6M rate is 1.81%. In 2016. There has been continuing stagnation on the share market, which has had a positive influence on the debt market.

This year – 2017 – may be a bit more difficult for the corporate bond market than last year, mainly due to the gradual growth of the share market as well as the increase of the inflation rate. This may potentially lead state authorities to increase the reference rate, which would presumably have negative consequences for the bond market. However, for the time being there is no visible stoppage on the Catalyst market.

The financial market specialists at INC Investment & Consulting report that the value of corporate bonds listed on the Catalyst market (excluding state-related entities) amounted to PLN 42.18 billion at the end of 2016, compared to PLN 37.31 billion at the end of the preceding year. At the end of last year 373 corporate bond series issued by 130 companies were listed on Catalyst. The average nominal value of one series reached PLN 31 million compared to PLN 30 million in the



Jakub Salwa
Partner
act BSWW

preceding year.

The highest total values of bond series placed on Catalyst in 2016 were observed in the banking sector (Getin Noble Bank - PLN 2.46 billion, PKO BP - PLN 3.78 billion, and mBank - PLN 1.25 billion) as well as in the energy and resources sectors (Orlen Group - PLN 5.27 billion, PGNiG - PLN 2.50 billion, Tauron - PLN 1.75 billion, Enea and Energa PLN 1 billion each).

The Catalyst market remains the strongest and most influential corporate bond regulated market in CEE – twice as big as the Czech market, over four times larger than the Hungarian market, and almost four times larger than the Slovak market.

The numbers presented above show the significant and steady growth of only the Catalyst market itself. The market of unlisted corporate bonds is more difficult to calculate. Nevertheless, one thing is for certain: Development can be observed across the entire corporate bond market, both in terms of value and the growing share of bond debt across the entire debt market structure. As presented by the Michael/Strom brokerage house, back in 2009 the companies had PLN 222 billion of bank debt compared to only PLN 12.2 billion of bond debt. In 2012, the proportion was PLN 272 billion to PLN 31.4 billion. In 2014, the proportion changed to PLN 301 billion of bank debt and PLN 52.7 billion of corporate bond obligations. Summing up, the annual average dynamics of bank debt growth was only 6.3%, while the annual average dynamics of the corporate bond market reached 34%.

Our professional experience confirms the above trends, especially when it comes to the growing number and value of specialized corporate bond funds which offer tailor-made financing. Over the last year our office has assisted with over a hundred bond issues, a significant number of which involved private debt financing where the whole series was taken up by one or two specialized funds.

Such corporate bond/mezzanine funds have become an important alternative to bank debt, as, in exchange for a higher interest rate they can offer lower expectations as to security for the deal, a more flexible approach to the terms and conditions, and faster processing of the project. Funds are often able to finance projects which failed to meet the expectations of banks.

We are optimistic about prospects on the market. We observe a growing need for legal assistance in respect of bond issues, both regarding public and private offers to be placed on Catalyst as well as private tailor-made financing offered by corporate bond funds. With the growing bond market, we have been noticing increasing competitiveness on the correspond-

ing legal market and higher client expectations – both positive factors that continue to improve market standards.

**By Piotr Smoluch, Managing Partner,
and Jakub Salwa, Partner, act BSWW**

REVIEWING THE POLISH RESTRUCTURING LAW



Agnieszka Ziolk
Head of Restructuring
CMS Poland

Almost a year and a half after Poland's Restructuring Law entered into force, introducing a clear separation between restructuring and bankruptcy, now is a good time to review its affects.

Before the reform, although there were two available options – liquidation bankruptcy and bankruptcy with arrangement (which provided a better chance of resuming business and continuing operational activities) – almost 85% of bankruptcies ended with liquidation of the debtors' enterprises. The level of recovery of receivables in such proceedings was among the lowest in Europe, at an average of 60%, while in the UK and Germany it was as much as 85-90%.

The new law stressed the need to improve the efficiency of proceedings, in particular to increase creditors' satisfaction, as well as to provide better chances of continuing business operations. Thus, the new law introduced four new types of restructuring proceedings, all designed to facilitate the reaching of arrangement with creditors, and most not only offering debtors restructuring tools, but also placing them on relatively safe ground for the distressed period in order to let them work out a solution and conduct the arrangement process.

The reform introduces new tools, such as the ability to enter into a partial arrangement with creditors who have significant influence on the debtor enterprise's operations. It also introduces the institution of "pre-pack," which enables the sale of all of a bankrupt's enterprise or an organized part of its assets, where the sale operates as an enforced sale and is made on terms negotiated with an investor even before formal bankruptcy proceedings commence. Although criticized for its lack of transparency, thanks to this solution the sale is effective upon the declaration of bankruptcy rather than after months or even years of bankruptcy proceedings.

The experience of the first year and a half of the new law shows that the change has considerably and positively influenced the number of initiated proceedings. Data from the Polish Ministry of Justice shows that as many as 543 restructuring applications were filed in the first year of the new law, out of which more than 200 resulted in actual commencement of proceedings. In 2016 over a quarter of all initiated

insolvency proceedings were in fact restructuring proceedings. In addition, research indicates that the time between the appearance of the first indicators of financial problems and the commencement of proceedings has been reduced by more than 30% over previous years. This clearly indicates the increase of Polish entrepreneurs' legal awareness, as well as proving the non-stigmatizing effect of separating restructuring from bankruptcy.

More powerful tools on the side of entrepreneurs have resulted in an increased number of successful out-of-court and consensual restructurings, where the banks often appear as the other party. The banks often take a more open approach towards the introduction of modifications into financing structures and project requirements in crisis situations where the modifications are made on the basis of a thorough analysis of the enterprise and its financial situation and are presented to the banks at an early stage and properly applied.

We also see increasing interest from investors in purchasing pre-packed enterprises, resulting in a "new life" for enterprises on the brink of bankruptcy.

Even though it is not perfect and still requires improvement, the reform has proven to be a major step in the right direction. I believe that the new law can play a positive and effective role in encouraging businesses to use restructuring tools instead of passively waiting for difficulties to solve themselves, which usually leads to bankruptcy.

**By Agnieszka Ziolk, Head of Restructuring,
CMS Poland**

DISPUTE RESOLUTION IN POLAND IN 2017



Malgorzata Surdek
Managing Partner
CMS Poland

As the first half of 2017 draws to an end, dispute resolution in Poland continues to face dynamic changes. This is due to numerous pieces of legislation being implemented as well as certain policy issues of the ruling party. We focus in this article on several trends or changes that our clients are struggling with or which might

affect businesses in the foreseeable future.

The financial sector continues to be hit with consumer litigation and regulatory or criminal proceedings. In particular, banks are facing numerous claims concerning Swiss franc loans, including group action proceedings and even criminal investigations. While insurers have so far been spared from criminal investigations, unit-linked insurance still gives rise to consumer litigation, both in individual and group action cases.

Furthermore, businesses in every sector are going to be affected by the recent amendments to criminal law. In April 2017 new rules on the confiscation of assets in connection with a crime came into force, including those related to: (i) confiscation of the entire enterprise owned by an individual used to commit a crime or



Filip Grycewicz
Associate
CMS Poland

hide the proceeds of a crime; (ii) the imposition of compulsory company management on a corporate entity; (iii) presumption of criminal origin of proceeds regarding assets obtained five years prior to the commission of a crime. Furthermore, investigating authorities now have extended wiretapping abilities and may use evidence obtained via operational surveillance. Increased sanctions for invoice fraud (up to 25 years imprisonment) may provide incentive for developing internal control mechanisms and a system of reviewing business partners, as the authorities now verify all companies in a distribution chain and, in cases of invoice fraud, a company and its directors may now face consequences for the actions of their employees, agents, or business partners as well.

On June 1, 2017 dispute resolution legislation known as the "Creditors' Protection Package" came into force. From now on, it will be clearer when investors in construction cases will be liable towards sub-contractors, creditors have a stronger position in enforcing their claims, general guidelines on administrative penalties will become regulated, and extended rules on settling disputes with administrative authorities will be in place. It remains to be seen whether the new law will also increase the importance and impact of group action proceedings, as it is designed to both facilitate the procedure and broaden the scope of disputes that qualify for it.

By the end of June 2017, the implementation of the Private Enforcement Directive should enter into effect. The Act on Actions for Damages for Infringements of Competition Law provides, among others, extensive document production tools previously unknown in the Polish legal system. As these have been present in other jurisdictions and in arbitration, both claimants and respondents might wish to turn to international law firms with expertise in these fields. Such firms may also be more useful in obtaining opinions of damages experts – a crucial element in complex disputes involving infringements of competition law.

The impact of the government's continuous policy of infringing upon the independence of the judiciary remains to be seen. In contrast to the Constitutional Tribunal, thus far the changes in common courts have not been drastic, but if the general trend upholds, courts may become less reliable for resolving disputes. This could provide arbitration or mediation a significant opportunity to become a serious alternative in

resolving commercial disputes.

Last but not least, the new act on the General Council to the Republic of Poland (PGRP) was implemented on January 1, 2017. As the PGRP has been granted extended powers allowing it to become the sole legal advisor and attorney for public authorities and companies, this may affect the legal industry in Poland.

The framework of resolving disputes in Poland is developing at an extraordinary pace, which continues to be a challenge for businesses but increases the importance of reliable legal advice. In view of the current trends, companies may look to extend their compliance teams and to preparing to deal with investigating authorities, particularly when it comes to handling internal and external investigations as well as the increased liability of directors.

**By Malgorzata Surdek, Managing Partner, and
Filip Grycewicz, Associate, CMS Poland**

CURRENT DIFFICULTIES WITH VAT REFUNDS IN REAL ESTATE TRANSACTIONS



Malgorzata Wasowska
Head of Tax Practice
act BSWW

The Polish tax authorities have once again changed their view on the VAT classification of specific activities. This time, the shift in opinion concerns real estate deals. Until quite recently, tax authorities agreed that in general the sale of a commercial building constituted a supply of goods and thus was subject to VAT. However,

there appears to be a trend towards classifying such transactions as sales of enterprises – which are not subject to VAT due to simultaneous transfer of lease agreements by operation of law, security deposits, house rules, and the rights to building designs. In addition, the authorities attempt to challenge the classification of transactions already in place, in spite of relevant tax rulings, by picking on minor discrepancies between the description of a future transaction and the transaction as it actually happened (a strategy often also employed where the refund of input VAT has already been revised by the tax authorities).

This change of classification will primarily affect the buyer, who will not be entitled to deduct input VAT and, if VAT has already been refunded, will be obligated to return it with default interest. Moreover, in some cases, buyers may also be required to pay a VAT penalty (additional VAT liability). In addition, the buyer will also be bound to pay a tax on civil law transactions, charged on the market value of individual assets

comprising the enterprise (up to 2%), plus default interest. Significantly, should the buyer fail to obtain a certificate which would release it from liability for the debts of the seller related to the enterprise in due time before the transaction, the buyer may be found jointly and severally liable for tax arrears related to the running of an enterprise by the seller.

In general, a change of classification of a transaction on the buyer's part should ideally be followed by a corresponding reclassification on the seller's part. This would mean that the seller would have the right to reclaim VAT unduly paid. In practice, however, the tax authorities may disagree with the new classification and refuse to return overpaid VAT.



Sergiusz Felbur
Associate
act BSWW

However, recent administrative court holdings show that each transaction should be examined individually and that it should not be assumed a priori that each disposal of buildings along with lease agreements represents a disposal of an enterprise.

A sale of shares in a real estate company may be used as an alternative to an asset deal. Choosing this option, however, also involves tax-related risks. First of all, it should be determined if the seller is acting as a VAT payer. If yes, in the event of a sale of 100% of shares, one may argue that the deal is, in the economic sense, a disposal of an enterprise, and therefore that it should fall outside the scope of VAT. There are, however, more problems to be dealt with. Another issue is the exemption from VAT in the event of a disposal of shares in a real estate company. Under the provisions of the Polish VAT Act, VAT exemption is excluded for disposals of company shares carrying, among others, the title to real property. Also, as exclusion of VAT exemption was incorrectly implemented in the Polish system, taxpayers may rely directly on the provisions of EU VAT Directive 2006/112/EC. However, it should be noted that in reality it may be more favorable for the parties to the transaction if the disposal of shares is VAT-able given that the buyer could have the right to deduct input VAT and at the same time would not be obligated to pay the tax on civil law transactions.

Summing up, considering the uncertainty on the real estate market about the classification of a sale of commercial buildings, it is extremely important to carefully analyze the subject matter of the transaction, ensure that the parties to the transaction are protected in the event of reclassification of the transaction by making additional arrangements, and consider what transaction structure will be best in a given situation.

**By Malgorzata Wasowska, Head of Tax Practice,
and Sergiusz Felbur, Associate, act BSWW**



INSIDE OUT: Advent International Invests in Integer.pl

The Deal: In February 2017, CEE Legal Matters reported that CMS had advised Integer.pl S.A. on the investment made into the company by private equity fund Advent International. Clifford Chance advised Advent International on the deal.

The Players:

- For Integer.pl: Rafal Wozniak, Counsel, CMS
- For Advent International: Slawomir Czerwinski, Counsel, Clifford Chance

CEELM: How did you and your firms become involved with Integer.pl and Advent International on this matter? Why and when were you selected as external counsel initially?

CMS: In August 2016 Integer announced its decision to seek an investor who could support its growth and development. CMS was engaged shortly afterwards. We were chosen not only because our offer was acceptable for Integer but mostly because of our deep expertise in M&A and ECM transactions. As Integer is listed on the Warsaw Stock Exchange we had to offer complex services related to typical M&A advisory and also show our great experience in the ECM market.

CC: I think that the first time we discussed this project with Advent was late summer last year. It was one of those meetings we have with them from time to time to discuss current business opportunities. We worked with Advent on a number of projects in Poland prior to this one and my impression was that once they made the decision to pursue this transaction they also decided to go with us.

CEELM: What, exactly, was the initial mandate when you were retained for this project, Rafal?

CMS: We were engaged to support Integer during the process of obtaining a new investor, but I cannot comment on the exact scope.

CEELM: Were you engaged to help them find the new investor, or had that process already been completed by the time you got involved?

CMS: Our scope of engagement related only to legal matters. We were not supporting process of finding investor.

CEELM: And what about you, Slawomir? What was the initial mandate when you were retained by Advent?

CC: Our mandate covered the whole transaction, from the due diligence of the asset, through advice on the structure, merger control and negotiations of the relevant documentation, to certain post-completion restructuring of the group. By the time we got involved by Advent, I think they were pretty close on the investment concept and decided to launch the formal part of the process.

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

CMS: Our team consisted of many lawyers from different practices. I was the leading lawyer, and I was supported by Senior Associate Zuzanna Jurga from the corporate team. The team also included also such corporate lawyers as Partner

Dariusz Greszta, Senior Associate Rafal Kluziak, Associate Magdalena Trzepizur, and Lawyer Jakub Szczygiel responsible for corporate law advisory. In addition, Senior Associate Agnieszka Ziolk – the head of our restructuring practice – was involved on restructuring and banking matters. In addition, Partner Graham Conlon and London-based Senior Associate Valentina Santambrogio from the International Private Equity practice at CMS were involved in the deal.

CC: I led the Clifford Chance team. The core corporate team consisted of Senior Associate Jaroslaw Gajda, Counsel Jaroslaw Lorenc, and Of Counsel Nick Fletcher. They were supported by Senior Associates Mateusz Stepien, Kamil Sarniecki and Aleksandra Lis-Rychlinska, and Associates Antoni Wandzilak, Joanna Pominkiewicz, and Katarzyna Aleksandrowicz. Associates Marta Michalek-Gervais and Associate Marta Matynia assisted with merger control aspects, while Associate Pawel Dlugoborski from the banking team assisted with issues on the financing aspects of the transaction.

CEELM: As we reported in our original story, as part of the agreement signed on February 23, the parties agreed to announce tender offers to subscribe for shares in Integer.pl and its subsidiary InPost and to delist the shares of both companies from the Warsaw Stock Exchange. The transaction was financed solely by Advent International through its subsidiary AI Prime Luxembourg, which would allocate approximately PLN 170 million for debt refinancing. The fund would also provide an additional approximately PLN 500 million for the purposes of financing future funding needs. Can you add any details to that original summary?

CMS: [declined to answer].

CC: There were two agreements governing the transaction: The investment agreement and shareholders' agreement.

The investment agreement described the investment process and provided for different scenarios which would allow acquisition and de-listing of target companies, depending on the ultimate result of each of the tender offers. The transaction also involved arrangements with a number of current institutional investors of the Integer Group and with Mr. Rafal Brzoska who agreed to re-invest in the Integer Group's new holding company. This will be carried out as a roll-over of the investors' current investment in Easypack (one of the Integer Group's main operational companies) into a holding company in Luxembourg and a swap of Mr. Brzoska's shares in Integer.pl for new shares in the same holding company.

The shareholders' agreement governs shareholders' relations in the Integer Group.

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

CC: The tender offers were successfully settled in April 2017



Slawomir Czerwinski

and the so-called squeeze-out procedures in both Integer and in InPost, aimed at the acquisition of all of the shares in both companies held by the minority shareholders who did not disposed their shares through the tender offers, were finalized on May 29, 2017.

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

CMS: As always with public M&As you never know whether minority investors will respond to the tender offer and whether the transaction will close. I think that execution risk is most challenging aspect of these processes.

CC: Definitely structuring and timing. As both target companies are listed on the WSE they were acquired through two tender offers launched in parallel. These offers were announced at the same time and were structured in a way that allowed Advent not to complete the transaction if one of the tenders was not successful. Advent's investment decision was based on the assumption that the Integer Group would be taken private, so the transaction structure provided for different scenarios which would allow this goal to be achieved, depending on the ultimate result of each of the tender offers. This structure has very few precedents on the Polish market.

Moreover, the timing and dynamics of the transaction were extremely important given the dire financial situation of the Integer Group. The substantial part of its current debt financing scheme was approaching its repayment deadline and the Integer Group had to agree on amending the terms and agree on the "stand still" arrangements with the lenders in order to enable the transaction to proceed. The repayment of the debt has been postponed and will be effected with the assistance of Advent, both through equity funding and debt refinancing.



Rafal Wozniak

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

CMS: The process itself was rather standard. However, what made it different from others was the scale of Integer's operations and the financial condition of the Group. We had to beat the clock and only managed to be successful through the hard work of everyone involved, including Integer's management board, [and] its key employees and advisors.

CC: I think that both tender offers went very well. After settlement Advent and Mr. Ralal Brzoska controlled over 90% of shares in both Integer.pl S.A. and InPost S.A. so we could immediately initiate squeeze-out procedures in both companies aimed at the acquisition of all of the shares held by the minority shareholders who did not dispose their shares through the tender offers. This made our life much easier.

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

CMS: [Declined to answer.]

CC: It was a very complex deal, but Advent had from the very beginning made up its mind to pursue this investment pretty much in the manner we actually did. There were some changes to the structure we had to introduce to take account of the status of the negotiations or address certain legal issues that arose down the road that had to be made, but nothing material in terms of the overall investment concept.

CEELM: What individuals at Integer.pl directed you, Rafal, and what individuals at Advent instructed you, Slawomir –

and how did you interact with them?

CMS: We communicated directly with the management board and key employees using all available channels: email, phone and personal meetings to make the process as smooth as possible given the time pressure.

CC: The deal team we worked with directly was led by Advent Director Peter Nachtnebel in Frankfurt, and included Vincent Bergin (Legal Counsel at Advent) and Assistant Director Lukasz Golebiewski, in Warsaw. The interaction was rather tight, as the deal team wanted to be on top of all matters in the transaction, and thus in the most intense period we worked face to face during negotiations and internal meetings. Generally, Peter conducted negotiations. However, certain issues were negotiated between the lawyers only.

CEELM: How would you describe the working relationship with each other on the deal?

CMS: Most of our contacts were made through email and phone calls, but personal meetings were also required. As leading M&A firms we have similar standards implemented on our projects and both teams were very professional and business-oriented. I would like to make particular mention of the great work done by Slawomir Czerwinski.

CC: The relationship with CMS has been quite good. The team led by Rafal Wozniak is very professional and generally in the know regarding the company (they worked with them for quite some time). This is not the first time we worked with them on the transaction so I knew what to expect. I do not know exactly what was the proportion of emails and phones vs. in person meetings, but definitely we had a lot of interaction with them. The transaction is very complicated so we had to negotiate quite a lot of documents and at times we were almost in a constant contact with CMS.

CEELM: How would you describe the significance of the deal to Poland?

CMS: Integer is a leading postal and APM operator. I believe that with Advent's support it could become a global player.

CC: I would not say that this was a mega deal in Poland. The transaction received a lot of attention due to Mr. Brzoska's involvement and the fact that, according to rumors reported by some media, his relations with certain investors are less than perfect. Moreover, the transaction is generally rather complicated, with two tender offers in parallel and a complex restructuring of certain investors of the group to Luxembourg, so a number of major law firms with presence in Poland has been involved and therefore the deal received a lot of publicity in the legal world as well.

David Stuckey

Expatriate on the Market: Interview with Daniel Cousens of Linklaters

English lawyer Daniel Cousens has been based in Linklaters' Warsaw office since 2006. He advises international corporates, private equity sponsors, and strategic investors on M&A deals and inbound and outbound investments in Central and Eastern Europe, particularly in Turkey, Ukraine, and Poland. Cousens co-heads Linklaters' Turkey desk and is a member of the firm's CEE and CIS teams. Before moving to Warsaw, he spent five years in Linklaters' Moscow office. He studied English and French law at University College, London and Universite Aix-Marseille, and he speaks English, French, Russian, and Polish.



CEELM: Run us through your background, and how you came to Warsaw.

D.C.: It's a bit of a long story but it probably starts with meeting my now wife, who is a Manchester Pole, when we were studying together in London. After my studies I worked and lived in (former Soviet) Georgia for two years on conflict resolution projects after which I realized I should probably come back and take up my offer of a training contract in the UK. Quite soon after qualifying we moved to Moscow – me to work with Linklaters, my wife to work with another firm. After five fun years in Russia the time came for a move and Warsaw was the obvious choice – we've been here 10 years now.

CEELM: Was it always your goal to work abroad?

D.C.: Probably – I certainly knew for sure when I qualified that I wanted to go abroad.

CEELM: You have a fairly diverse practice, with unique geographic coverage. Tell us briefly about your practice, and how you built it up over the years. And how did you come to co-head Linklaters' Turkish desk?

D.C.: From Warsaw it made sense to concentrate on the wider region – Ukraine was the first country I concentrated on, mostly because it made most sense after my time in Russia and later I was lucky enough to be able to help build up our Turkey practice and, in particular, get to know and work with the Turkish corporate groups.

CEELM: There are obviously many differences among the various jurisdictions you focus on. Can you describe some of the more interesting/challenging differences?

D.C.: I think seeing the differences in culture and just the way things are done is one of the most interesting parts of my job – behavior which might be normal in one country could cause great offence in another.

CEELM: Focusing primarily on Poland, what cultural differences between that country and the UK strike you as most resonant and significant?

D.C.: After so long here and living in a mixed Polish / British family I'm not sure I can see the differences anymore! Joking apart of course there are lots of differences between the UK and Poland but I don't think you can generalize – in both countries there are all sorts of people with all sorts of ways of looking at the world.

CEELM: You've lived in Poland for over a decade now. What significant changes have you seen in that time, in the legal industry and/or market?

D.C.: I think the legal market in Poland has got a bit more sophisticated, there are fewer international firms and fewer expats, all of which is probably healthy. Since 2008 the markets in the region seem to have been more volatile and we've all had to get used to operating a bit differently and doing different types of work – less M&A and more disputes in my case.

CEELM: What particular value do you think a senior expatriate lawyer in your role adds – both to a firm and to its clients?

D.C.: I'll let the clients decide that!

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

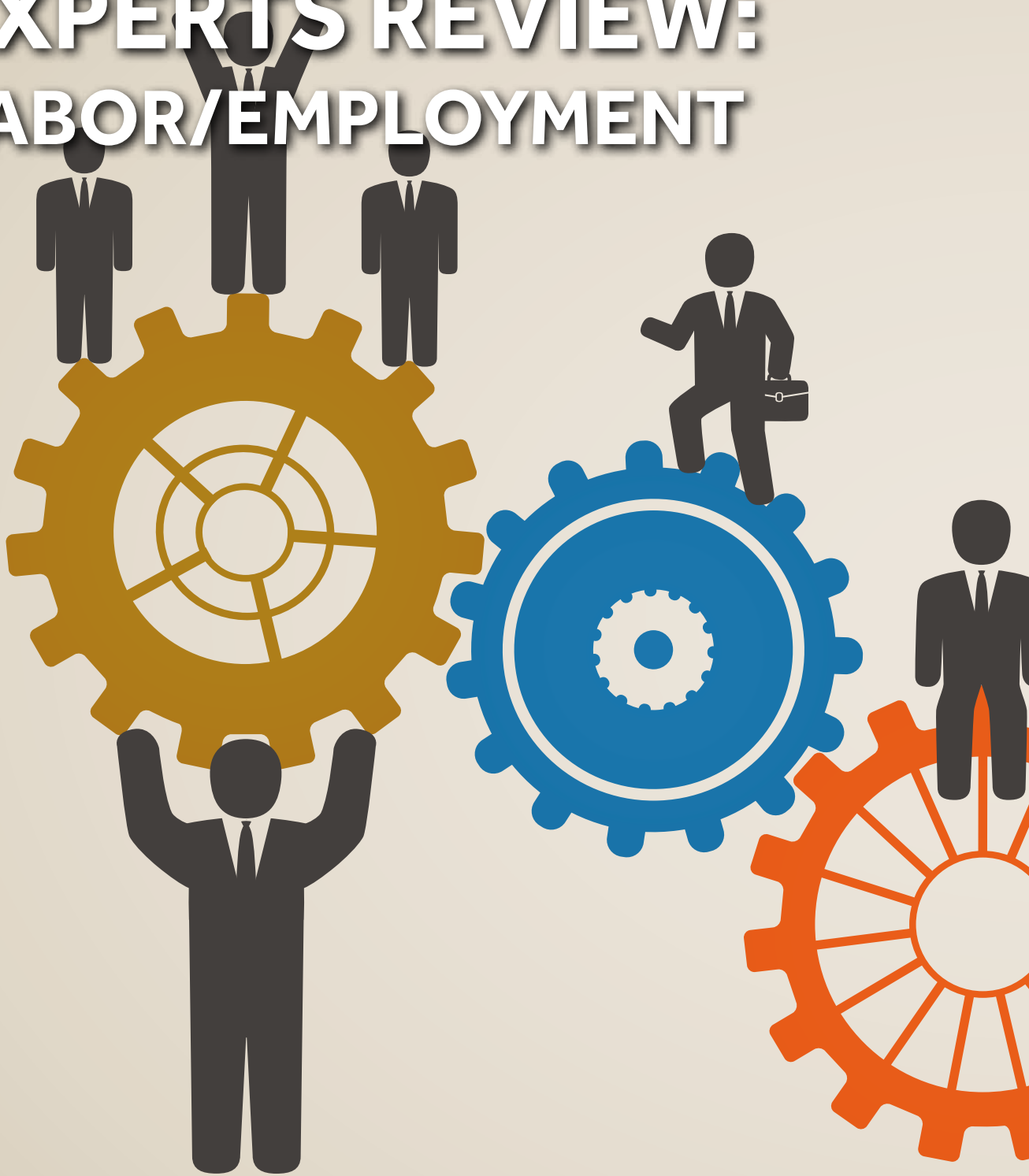
D.C.: I really enjoy my time in Turkey, where the people are wonderful, the views are spectacular and the food is amazing.

CEELM: What's your favorite place to take guests in Warsaw?

D.C.: I like to take guests out rowing on the Wisla – a wide, wild and empty river, right in the center of Warsaw.

David Stuckey

EXPERTS REVIEW: LABOR/EMPLOYMENT





The subject of Experts Review this issue is Labor/Employment – and, keeping with the theme, the articles are presented in order of the average number of hours worked in 2013 by workers living in OECD member nations. Greece’s article is therefore presented first, as the average worker in that country labored for 2060 hours a year that year (still far behind OECD leader Mexico, where the average worked clocked 2237 hours a year). The OECD average was 1770 hours.

As Bulgaria, Serbia, Ukraine, and Romania are not members of the OECD, the articles from those countries are presented last, on the (perhaps generous, but happily granted) assumption that they have more enlightened work-life balances.

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GREECE

Greek Labor Sector Stays Mired in High Unemployment Rates as Debt Crisis Goes On



Georgia Konstantinidou

Almost nine years since the onset of the Greek debt crisis, the country's deep and prolonged recession has led to a substantial decline in ordinary financial activity and has swept away a quarter of Greece's Gross Domestic Product (GDP), an aftermath usually observed in times of war.

The ongoing crisis has had an extremely negative effect on Greece's labor market as well, as more than one million jobs have been lost (in a country of 11 million people). Unemployment has reached 27% – the highest percentage in the EU and more than twice the average in the Eurozone – and twice that among ages 15-25.

Besides the already-existing structural problems of the Greek labor sector, austerity measures have definitely played a significant role in the rise of unemployment; namely, in an attempt to reduce huge budget deficits, Greece had to implement a severe fiscal consolidation program by dramatically reducing government and public spending and implementing important reforms and restructuring procedures in practically all sectors of social, business, and economic life.

Extensive labor market reforms have been effected amid efforts to restructure the labor market, improve competitiveness, boost the economy, and thus reduce unemployment. Prior to the debt crisis, the Greek labor market was a highly-regulated market in comparison to the markets of other EU countries. Such enhanced regulatory activity continued post-crisis, as a series of legislative reforms were enacted in order to address market rigidities, obtain a higher degree of labor market flexibility, reduce the cost of wages, and encourage businesses to employ more workers, especially of younger ages.

Such reforms included, *inter alia*: Reducing the minimum wage, which was reduced even more for young employees (ages 15-25); reducing overtime costs; extending the probation period; reducing the severance payment upon dismissal; facilitating part time and rotation work; increasing the retirement threshold; and abolishing the requirement that governmental authorization be obtained for collective dismissals.

Such measures have had little impact on the overall unemployment picture, however, as the fundamental problem remains: The persistent lack of labor demand. Meanwhile, budget constraints and cuts in public spending stand in the way of expanding temporary subsidized public work programs (most of which are EU-funded), the majority of which are targeted towards

young people.

In these circumstances, the situation seems bleak both for those who have managed to maintain their employment status and for the underemployed, who are floating in and out of low-paid, temporary, part time, or uninsured jobs.

Of course, the worst and most worrying problem is that unemployment is not simply an economic figure or an economic problem. It is foremost a serious social problem that tends to have a detrimental effect on individuals, often tearing into the fabric of society. Unemployment causes misery, poverty, and indebtedness, is catastrophic for people's self-esteem, leads to depression, desperation, and suicidal thoughts, and wastes any potential they have. It is directly linked with increases in the crime rate. The longer people stay out of work, the more unemployable they become.

In contrast with the common pattern in other EU countries, in Greece, highly qualified persons holding university degrees have a higher risk of being unemployed or underemployed. That leads talented and highly skilled persons, especially young ones, to emigrate in search of a better future. As a result, Greece is not only faced with serious economic problems but also with a Brain Drain – suffering the loss of the most significant factor for economic growth and development: Its young, highly-educated workforce.

In the absence of a rapid and dramatic economic turnaround, an entire generation faces a grim future. Despite measures taken at different levels, it is clear that the ever-growing unemployment rate will not stop or slow down until the debt crisis is finally over and the economy stabilizes and improves.

Georgia Konstantinidou, Partner, Drakopoulos

HUNGARY

Labor Code Changes in Hungary Are Yet to Come



Gabriella Ormai

A number of changes to the Labor Code expected to come into force on July 1, 2017, will not do so. These amendments to the Code – which were submitted to the President of the Parliament by the head of the Economic Committee – would primarily have affected work-time scheduling provisions, making the Labor

Code more sensitive to the needs of the improving economy and changing labor market. According to Parliament, the amendments would have significantly improved production for businesses over a period of six to seven years.

Specifically, the amendments would have affected the legal definitions of the working day and working week. The chang-



Gyorgy Balint

es would also have put work time scheduling into the focus of work organization instead of the operation of employers. Currently, if the employer organizes work within a time frame, only the start and the end dates of that time frame must be indicated and shared. According to the proposed (and now cancelled) changes, the employer would also have been required to share the work time to be fulfilled with employees.

According to the current provisions of the Labor Code, a work time frame may be four months, which can be extended to twelve months on the basis of an agreement between the employer and a trade union. The planned changes to the Labor Code would have extended the length this time from 12 to a maximum of 36 months, and would have resulted in additional changes to the legal content of the work time frame. The planned amendments would have affected the provisions of general work time scheduling and its requirements, such as when work time scheduling must be shared with the employees. Additional changes would have been implemented concerning the questions of how and when the employer could modify already-announced work time scheduling.

According to available information, the above changes resulted from lobbying activity by the automotive industry and were submitted to Parliament without consulting employees' representative bodies. As a result, the proposed changes triggered significant protest among trade unions and other organizations, which claimed that the proposed amendments – in particular the implementation of the 36-month work time frame – would substantially increase employee vulnerability and result in a significant increase in administration burdens. They also claimed that the proposed amendments were not in line with EU directives. They argued that the introduction of the 36-month work time frame would be acceptable if collective bargaining agreements could be sealed with entire business branches – which would guarantee employees' interests – instead of the individual collective bargaining agreements which are fairly standard in Hungary. The employees' representative bodies also insisted that the provisions in the proposed amendment allowing work time scheduling to be modified on the basis of employee consent be deleted, arguing that employees would be under great pressure from employers to provide that consent.

Surprisingly, employers also criticized the proposed amendments on the ground that they would result in a significantly increased administrative burden.

Ultimately, the head of Parliament's Economic Committee had a hearing with both employer and employee representatives and concluded that the proposed amendments, in their current form, inadequately fulfilled their economic purpose. Ac-

ordingly, he recommended the withdrawal of the plans. The Parliament's Economic Committee agreed by an overwhelming majority.

As a result, the changes to the Labor Code will not come into force on July 1, 2017, as expected. However, discussions on the matter have not ceased. According to employee representatives, the current negotiations should not only affect the cancelled amendments, but should also settle certain matters left unresolved when the new Labor Code came into force on July 1, 2012.

Gabriella Ormai, Managing Partner, and Gyorgy Balint, Senior Associate, CMS Hungary

RUSSIA

Electronic Documents in Employment Relations



Dmitri Nikiforov

The development of modern technologies and the growing role of electronic documents in commercial relations influence the employment sphere, among others. Companies increasingly use electronic employment agreements and electronic policies, which increases the efficiency of employment paperwork turnaround. However, the positions of Russian employment law and the courts on electronic employment documentation are not uniform.

According to Article 6 of Russia's Federal Law No. 63-FZ on Electronic Signature, dated April 6, 2011, an electronic document signed by a qualified digital signature is considered equal to a manually signed hard copy and can be used unless a hard copy is expressly required by law or regulation. Although the Russian Labor Code does not directly prohibit the use of electronic employment documents, it expressly permits their use only for remote work, which is defined as the performance of a labor function without a permanent work place where the employer and employee communicate with each other on employment-related matters via the Internet. An employment agreement with a remote employee shall provide terms and conditions for electronic document exchange between its parties, regarding, in particular, the use of a qualified digital electronic signature and the sending of receipt confirmation in respect of electronic documents. Parties to remote work agreements shall use only qualified digital electronic signatures, as other types of electronic communication (e.g., e-mails from an authorized e-mail address) cannot ensure the proper identification of a sender.

The Russian courts' position varies on the use of electronic documents for employment relations not connected with remote work. Russian courts are not unanimous in either permitting or prohibiting electronic employment documents exchange in employment relations. Some courts take the conservative ap-



Anna Maximenko

proach and apply the provisions of the Labor Code literally, holding that its requirement for a written form of a document or for familiarization of an employee with a document per his signature refers only to a hard copy and to manual signature, respectively. Other courts are more liberal in their interpretation of the Labor

Code provisions and find either equality between hard copies and properly signed electronic documents or the absence of restrictions on the use of electronic document exchange in the Labor Code.

In the absence of direct provisions prohibiting or allowing the use of electronic documents in employment relations and uniform court practice on this issue, failure to maintain hard copies of employment documents carries a risk of adverse consequences. For example, if an employer and an employee signed only an electronic employment agreement, a Russian regulator or court may conclude that employment relations were not formalized properly and that the employee was admitted to work without an employment agreement. In this case, employment not established on the basis of actual admittance to work and any special arrangements (such as a fixed term of employment or probation period) will become invalid. In addition, an employer may be subject to an administrative fine for the failure to properly conclude an employment agreement, ranging up to RUB 100,000 (approximately USD 1,783) for a legal entity and up to RUB 20,000 (approximately USD 357) for its officers. Additionally, a court or regulator may not accept electronic documents as evidence of facts that they establish and, consequently, an employer may find itself, *e.g.*, in breach of termination procedure and forced to reinstate the dismissed employee.

Russian authorities understand the trend towards electronic document exchange in employment relations and the Russian Ministry of Economic Development has proposed a bill directly qualifying electronic documents in employment relations as documents in written form. According to the bill, an employer and an employee will be able to use digital signatures if the employer adopts a policy to that effect. However, the sphere of electronic employment document exchange remains limited: Employment agreements, apprenticeship agreements, agreements on full material liability, and collective bargaining agreements remain valid only in hard copy; employees may demand the use of paper employment documents instead of electronic ones; and familiarizing new employees with an employer's policies shall be established by manual (and mutual) signatures. Nonetheless, the bill is a significant step towards state acknowledgement of electronic document exchange in employment relations. The government's next step should be gradual transfer to electronic employment books.

Dmitri Nikiforov, Partner, Anna Maximenko, International Counsel, and Elena Klutchareva, Associate, Debevoise & Plimpton Russia

POLAND

Important Changes to Polish Labor Law



Radoslaw Biedeki

On January 1, 2017, a number of new provisions in Polish labor law came into force introducing some significant changes for employers and employees and, to a certain degree, for persons hired on the basis of contracts for work and service contracts.

The first two amendments were introduced by the Act Amending Certain Acts to Improve the Legal Environment for Enterprises of December 16, 2016 and were adopted in order to simplify various aspects of labor law.

One of these two amendments relaxes some of the requirements for small businesses in connection with obligations to establish internal rules and social benefit funds. New legislation provides that companies with at least 50 employees not covered by a collective labor agreement must draw up remuneration regulations, and companies with between 20-50 employees that are not covered by a collective labor agreement must also draw up remuneration regulations if they are requested to do so by a workplace trade union. Similar obligations have been adopted for preparing workplace rules and for establishing a company social benefit fund. Until December 31, 2016, the obligation to establish internal policies and, with some exceptions, social benefit funds also applied to all companies with an employee headcount of at least 20 employees as of January 1 of each year.

The second simplification concerns the issuance of employment certificates. According to the amendment effective from January 1, 2017, employers are now obliged to issue a work certificate containing specific details of the employment within seven days of termination of an employment contract, unless they intend to conclude a new employment contract with the employee – or even in those circumstances if the employee so requests. This request may be delivered in electronic form. This change restores provisions which were valid before March 21, 2011.

Another amendment in the Labor Code, this time of particular significance for employees, provides a new, unified time limit for filing appeals to the labor courts. It extends the deadlines for employees to appeal against a notice of dismissal or termination of employment without notice to 21 days from the delivery of the relevant letter of termination of an employment contract (with or without notice period), or from the date of expiry of an employment contract. The previous law provided two different terms – seven days to appeal against notice of dismissal

and 14 days for claims concerning termination for cause and for establishing an employment relationship.



Katarzyna Zwierz-Wilkocka

The amended Labor Code also changes the provisions on concluding agreements on shared financial liability of employees for entrusted property. According to the new rules, such agreements will be invalid unless they are in writing and signed by both the employer and the employee. Under the interim provisions, agreements which were concluded before January 1, 2017 will be governed by the old rules.

The last (but not least) important piece of legislation that came into effect on January 1, 2017 extended the coverage of the Minimum Wage Act, with several exceptions, to contractors and persons providing services to enterprises as part of their business activities. As of this date, they are entitled to a minimum rate of PLN 13 per hour (approximately EUR 3 per hour) in 2017 for performing an assignment or providing services.

New legislation provides that it is not possible to waive or transfer the right to remuneration at the minimum rate to another person. The amendment also requires that a record be kept of the hours spent performing an assignment or providing services and that appropriate associated documentation should be kept for three years from the date on which the remuneration is due.

The legislation described above provides a number of exceptions to the minimum hourly wage legislation. The most important relates to situations where the contractor or service-provider decides the time and place the assignment or services will be performed or offered and is entitled to remuneration only in the form of commission. The Act also provides that the minimum remuneration must be paid out in cash and, if the contract was concluded for a period longer than one month, that remuneration must be paid at least once a month.

In view of this new legislation, provisions in contracts for work and service contracts concerning remuneration should be reviewed and adjusted (either by concluding new contracts or by amending existing ones). A breach of this obligation may result in a fine of PLN 1,000 to PLN 30,000.

It should be also noted that on January 1, 2017 the minimum gross monthly wage for employees was raised, so that in 2017 it amounts to PLN 2,000 (approximately EUR 474).

Radoslaw Biedecki, Managing Partner, and Katarzyna Zwierz-Wilkocka, Senior Associate, Noerr Poland

LITHUANIA

Lithuania Liberalizes Labor Code



Inga Kostogriz-Vaitkiene

In pursuit of solutions to the problem of unemployment and the flexibility of the labor market, Lithuania has endorsed a new Labor Code, which will come into force on July 1, 2017. The main objectives of the new legislation are to adapt the country's laws to reflect progress in the market and to allow more liberal labor relations

between employers and employees. The changes are intended to facilitate job creation, reduce the unemployment rate, ensure clarity in labor relations, and make the Lithuanian market more attractive to investors.

The most significant changes, which are aimed at liberalizing labor relations, involve the types of available employment contracts, employee dismissal procedures, and the size of severance payments.

One of the biggest disadvantages of the previous Lithuanian legislation governing labor relations was its very strict regulation of the termination of work contracts. The new Labor Code permits further grounds for termination on the initiative of either party – and now allows an employer to dismiss an employee without cause. Such a situation was impossible under the provisions of the previous Labor Code, which obliged employers to substantiate their decisions to terminate a work contract. This led to numerous disputes in the courts. Even more importantly, employers can now dismiss employees who do not achieve required results, or if their position becomes inefficient or surplus to the employer's requirements. These changes enable employers to focus on the efficiency of their businesses, because the risks posed by dismissals would be minimal.

Alongside the new grounds for the dismissal and termination of the work contract come significant changes to the provisions governing notice periods and severance pay. Earlier regulations provided employees with long notice periods of between two and four months and generous severance pay, so that employers frequently could not afford to terminate their contracts. Under the new Labor Code, different notice periods (starting at three days and increasing to a maximum notice period of one month) and amounts of severance pay (around twice the employee's average monthly salary) apply, depending on the grounds for the termination. Overall, the new provisions concerning notice periods and severance pay help to maintain the balance of interests between employers and employees.

The new Labor Code significantly increases the range of employment contract types available, from four under the previous legislation to a total of nine. This creates flexibility in labor re-



Ieva Zablackaite

lations, and allows the parties involved to choose the best options in terms of working conditions. Under the new provisions, the parties can enter into a fixed-term employment contract even for positions of a permanent nature – something that was strictly prohibited under the old Labor Code.

The new code also includes such contract types as an employment contract for project work, a job-sharing employment contract, an employment contract with several employers, and an employment contract for seasonal work – all of which specify appropriate working conditions for particular situations.

The new legislation introduces average working hours of 48 hours per week, up from the previous average of 40 hours per week. Overtime work is increased to 180 hours per year, while current law allows only 120 hours. An option is provided for even more overtime hours to be arranged via collective agreements that can be beneficial to employees’ interests as much as those of employers.

By July 1, 2017, employers should have prepared updates and amendments to employees’ contracts and work regulations. The new legislation safeguards employers’ interests by offering around 11 different types of regulation that help to ensure stability and clarity in the work place and avoid disputes.

The new Lithuanian Labor Code promotes working relations that conform to modern economics, enable easier job creation, and create more opportunities for small and medium businesses as well as foreign investors. Although the new Labor Code is planned to come into force on July 1, 2017, the Lithuanian Government is still considering some minor changes. Either way, the new Labor Code is expected to mark a turning point in the Lithuanian market, providing the necessary means for Lithuania to maintain its competitiveness.

Inga Kostogriz-Vaitkiene, Partner, and Ieva Zablackaite, Paralegal, CEE Attorneys Vilnius

TURKEY

An Overview of the Law on Human Rights and Equality Institution of Turkey



Noyan Turunc

In General

The Turkish Law on Human Rights and Equality Institution of Turkey (the “Law”) entered into force on April 20, 2016, replacing its predecessor (the Law on Turkish Human Rights Institution). The Law established the Human Rights and Equality Institution

of Turkey (the “Institution”), the mission of which is to carry out activities to protect and improve human rights in Turkey, ensure the right to equal treatment of all persons, prevent discrimination in enjoying human rights and freedoms recognized by law, and combat torture and ill-treatment.

The Institution – which replaced the predecessor Human Rights Institution – was established to function as the national prevention mechanism in these regards. Because the Institution’s executive organ, the Human Rights and Equality Board, has recently been fully appointed, it is timely that we review some of the relevant provisions of the Law for Turkish employers.

At its core, the Law prohibits all sorts of discrimination based on gender, ethnicity, skin color, language, religion, beliefs, philosophical and political views, national origin, wealth, birth status, marital status, medical conditions, disability, and age.

The Law also introduces explicit definitions and denotes new mandates for equality and non-discrimination, including for employers. The Law stipulates that institutions which are responsible for guaranteeing a person’s human rights, equal treatment, and non-discrimination shall be obliged to take necessary measures to end any relevant breach, prevent its repetition, and ensure compliance with the Law through legal and executive means. As such, public institutions and organizations offering services such as education and training, judiciary, law enforcement, health, transportation, communication, social security, social services, social welfare, sports, accommodation, culture and tourism, and the like; professional organizations; and real persons and private legal entities may not discriminate against persons who are benefiting from their services, who have applied to use their services, or are interested in obtaining information about their services.

The Law defines nine types of prohibited discriminatory behavior. The most relevant of these categories for employers are: (1) the prohibition of all sorts of direct and indirect discrimination in hiring practices, and (2) the prohibition of intimidation/harassment in the workplace.

Non-Discrimination by Employers

The Law prohibits employers (as well as persons authorized by employers) from discriminating against any of the following persons on any work-related processes, including the provision of information, application, selection criteria, recruitment requirements, and termination of the work relation: (1) employees or applicants for employment; (2) persons who are in a workplace for practical work experience or who apply for this purpose; and (3) persons who want to learn about the workplace or the relevant business to be employed in any capacity, or to obtain practical work experience.



Didem Bengisu

The prohibition on non-discrimination is wide in its scope and includes job listings, the workplace, work conditions, guidance services at work, on-the-job training, promotions and benefits, among other things. Furthermore, employers cannot reject a job applicant based on pregnancy, motherhood, or childcare needs.

Notwithstanding the foregoing, the Law also specifies that the following cases, among others, cannot be deemed as discrimination prohibited by the Law: (1) different treatment in appropriate manner because of the existence of compulsory occupational requirements in the field of employment; (2) in cases where the employment of a particular gender is compulsory; (3) age limitations due to the obligations of the job, and age-specific treatment in a manner proportionate and necessary for the relevant employment; (4) employment of members of a certain religion by institutions of that religion (but only for the purposes of religious services or religious training); (5) the setting of membership criteria by associations, non-profits, political parties and professional organizations; (6) necessary and proportional different treatment in order to eradicate existing inequalities; and discrimination based on the immigration status of non-citizens.

Intimidation/Harassment in the Workplace

The Law also specifically prohibits intimidation in the workplace, which is defined as the taking of any intentional action based on the non-discrimination bases listed above with the aim of excluding, isolating or alienating an employee. The Law further prohibits harassment in the workplace, which includes any offensive, defamatory, derogatory, or embarrassing behavior (including in a psychological or sexual manner) based on one of the non-discrimination principles of the Law and that has the purpose of, or results in, the infringement of human dignity.

Compliance

The Institution has the authority to monitor compliance by and levy administrative fines for violations of the requirements of the Law on employers. As such, employers should at all times be mindful of the foregoing obligations, and implement necessary measures and processes to comply with them.

By Noyan Turunc, Founding Partner, and Didem Bengisu, Attorney, Turunc



The 2016 Deal List is now publicly available. Go to this link for a comprehensive overview of all client work carried out by each of the 590+ firms in CEE that we reported on in 2016:

www.ccelegalmatters.com/index.php/deal-list-2016

SLOVAKIA

Quicksand of the Slovak Fight Against Illegal Employment: Businesses Face Overkill



Radovan Pala

Currently, a heavily-discussed topic in Slovakia is the “overkilling” interpretation and application of the concept of illegal employment by state authorities. In Slovakia, illegal employment does not only cover the classical scenario of the factual employment of a worker without the proper establishment of a labor-law relationship, but also a situation where the employment contract was duly executed, but the employer did not register the employee in the country’s social insurance system until the employee actually commenced working.

Based on the strict statutory wording and with the aim to show effective enforcement, Slovak labor inspection authorities have adopted a practice of “revealing” illegal employment in cases where an otherwise clearly honest employer registered the employee with a delay of only a few days, or even just one. According to this practice, employment is qualified as being “illegal” even if the official registration stated the correct date of the first working day, but itself was only made after the commencement of employment. The inspection would also not take into account the fact that the employer duly performed all other obligations concerning payments of salary, taxes, and insurance. This slavish interpretation and draconian application of the definition of illegal employment violates both constitutional interpretation and the legislator’s intent and purpose in creating the Act on Illegal Employment.

Reveal, Prohibit, and Sanction

According to the explanatory report to the Act on Illegal Employment, the purpose of its adoption was to “reveal, prohibit, and sanction cases when there is no labor-law relationship between the employer and the employee established by an employment contract and the employer fails to register the employee into the Social Insurance Agency in order to avoid paying the insurance.” It follows that in order to conclude whether a late registration of the employee should be qualified as illegal employment, the relevant authority must take into account also material aspects – i.e., all the factual circumstances of the case. Despite the fact that this view has been confirmed by several recent decisions of the courts, labor inspectors continue to apply a purely formalistic interpretation that has disproportionately harmful effects on all employers.

These effects are aggravated by the fact that a qualification of the employment as being “illegal” has direct serious consequences on the legal position of the employer. Illegal em-



Radoslava Lichnovska

ployment does not only result in the payment of fines. The employer is automatically entered into a publicly available list of illegal employers who are barred from receiving any type of state aid and subsidies (including EU funds) and from participating in any public tenders. These consequences can have a disastrous effect on large investors as well as on municipal entities.

Amendment on the Way

As this situation is not sustainable, an amendment of the Act on Illegal Employment is currently being prepared to moderate the definition of illegal employment in order to remove the inappropriate severity of the legal regulation. Only cases in which the employee is not registered into the system of social insurance by the time the inspection is conducted shall be regarded as illegal employment, and a long-stop period within which an employee must be registered will be introduced.

Nevertheless, serious issues concerning the application of illegal employment sanctions remain. Without legal delegation, the National Labor Inspectorate has decided to enter employers into the public register of illegal employers solely on the basis of findings in inspection protocols. An inspection protocol only serves as a summary of findings for the commencement of proceedings on imposing a fine. This means that the state authorities publicly identify the employer as being illegal before the case has been finally decided (indeed, most employers who are currently in the register have not yet been fined). This approach negates the principle of presumption of innocence. And because an inspection protocol is not a decision which can be appealed against, when used in this way, it seriously affects the rights of the employer. The inspection protocol contains neither the information that the findings contained therein result in registration into the list of illegal employers nor information about potential remedies of such consequences.

The practice of the National Labor Inspectorate can be regarded as in excess of its authority and there are several court proceedings in which employers seek judgements which would confirm this opinion.

Radovan Pala, Partner, and
Radoslava Lichnovska, Senior Associate, Taylor Wessing Slovakia



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www.ccelegalmatters.com/index.php/briefings

CZECH REPUBLIC

Changes to the Czech Labor Code in Legislative Process



Barbora Rovenska

An extensive amendment to the Labor Code currently under discussion in the Czech Parliament is scheduled to become effective on July 1, 2017, although the effective date might be postponed due to certain delays in the legislative process.

The main aim of the amendment is to increase the flexibility of employment relationships and to provide employees with even greater protection than they currently enjoy. Major changes to be brought by the new regulation include, *inter alia*, the introduction of a new category of top level managerial employees; the requirement of employee consent for transfers to a type of work other than that agreed to in the employment contract; increased guarantees for employees who work based on agreements other than employment contracts (*i.e.*, agreements based on work performance or activity); and a new method of calculating the length of annual leave.

Homeworking and Teleworking Regulations

One of the most frequently-discussed parts of the amendment is the change and clarification of the legal framework of so-called *homeworking*. Homeworking has become extremely popular in the Czech Republic in the past few years and it is mostly viewed as an advantage for employees as it allows them to successfully combine their professional and family lives.

The current Labor Code allows employees to work not only at the employer's workplace but also at other places agreed to by the employer. It is also possible to combine work at the employer's workplace on certain days with work at other places on other days. However, a more extensive regulation of *homeworking* and *teleworking* is missing; this deficiency is supposed to be remedied by the amendment (inspired by the 2002 European Framework Agreement on Telework), which will require employers to cover all costs directly incurred by employees for work outside the employers' workplaces, such as costs of Internet connections or telephone bills. Such compensation, which can be paid as a monthly lump-sum, will in no case be part of employee's wage or other remuneration for work. Further, employers will be obliged to provide, install, and maintain the equipment necessary to perform the work (unless employees use their own equipment), and to take appropriate measures to ensure the protection of data used and processed by employees for professional purposes. On the other hand, it will be the employee's responsibility to comply with relevant legislation and company rules concerning data protection. Employees, even when working at home, will be obliged to comply with the employer's occu-



Tereza Suchankova

ational health and safety policies.

An employer will be obliged to ensure that employees who work outside the employer's premises have the opportunity to meet other employees at the employer's workplace. This rule is intended to protect the homeworking employees from social isolation and

it should also guarantee that these employees have the same opportunity for career progression as employees working at the employer's premises.

Employees working outside the employer's workplace will be allowed to decide for themselves when they will work, provided that the work is performed properly and timely according to the employer's instructions. However, in such cases employees will not be entitled to a premium for overtime work or to a compensatory wage for most personal obstacles to work.

As indicated above, the new regulations for homeworking launched a broad public discussion. Employers are afraid of an increase in administrative and financial burdens in connection with the proposed regulation of homeworking. There are some who suggest that the amendment may lead to a decrease in the number of employers who offer their employees the possibility to work from home. However, the Ministry of Labor and Social Affairs of the Czech Republic has pointed out that the current legal framework already indicates that dependent work is performed at the employer's cost and liability. Thus, the proposed modifications will only state some of the current obligations of employers more explicitly, while maintaining the existing practice. In addition, the possibility of an individual agreement between an employer and its employees has been retained.

*Barbora Rovenska, Partner, and
Tereza Suchankova, Junior Associate, Rovenska Partners*

AUSTRIA

Industry 4.0: The Implications of a Global Phenomenon for the Austrian Social Insurance System



Wolfgang Kappek

The world is currently facing the Fourth Industrial Revolution – an era of technological progress that will have significant impacts on the entire labor market system.

The Revolution

The First Industrial Revolution paved the way from hand to mechanical production, while the Second enabled mass production, and the Third was all about automatization. The now-looming Fourth Industrial Revolution will enhance digital networking by

blurring the lines between the physical and digital spheres in the industrial production process.

The Possibilities

As a consequence of this progressive digitalization and the possibilities of modern online platforms, a global trend towards atypical employment relationships across all industries can be discerned. More and more tasks are being offered by entrepreneurs to the crowd of people using their PCs to look for flexible and appealing jobs that do not limit them to acting under a single employer's regime. However, the flexibility and efficiency they seek comes hand in hand with a loss of labor law rights, and the common wish to minimize (or eliminate) tax and social security payments collides with the public interest.



Manuel Mullner

The Classification

The difficulty in distinguishing between an employee and a contractor is not a new issue; it has posed problems for entrepreneurs for many years. However, the so-called "gig economy" will increase the number of persons engaged in atypical employment relationships at an exponential pace. Whether a person qualifies as an employee or an independent contractor depends on specific circumstances and factors, of which the nature of the contractual obligation, whether there is a relationship of authority and subordination, whether payment is made for a specific piece of work or on the basis of time spent, and whether the contractor is exclusively acting for a single principal or for a number of different companies are only some.

The Implications

In Austria, the classification as employee or self-employed contractor also affects the assignment to a specific social security system. A (regular) employee is guaranteed insurance under the General Social Insurance Act (ASVG), while a self-employed contractor falls under the National Industrial Insurance Act (GSVG). Both systems are run by different social insurance companies. The competent one for regular employees is in principle one of nine regional health insurance companies (GKK), whereas the counterpart for self-employed contractors in principle is the social insurance company for commerce and industry (SVA).

The biggest risk in engaging an independent contractor is that the competent authorities could determine that the relationship should have been classified as an employment relationship, requiring the employer to pay income tax and social insurance contributions as well as ancillary wage costs. In Austria, back payments for five years (for social security) and up to ten years (for tax) apply. In addition, (potentially enormous) administrative fines and criminal charges might be imposed.

The Solution?

At the moment, there is no sure way to avoid this risk in Austria, as the only way to determine the correct form of classification is a non-binding request to the social insurance company. Unsurprisingly, and in light of the potential sanctions for misclassification, the situation has led to heavy criticism. However, the option of having a specific contractual relationship categorized by authorities in advance is currently under discussion, and a draft bill for a Social Security Assignment Act was released in April 2017 and is currently undergoing the parliamentary legislative process. According to the ambitious plan of the Austrian Federal Government, the new law shall be enacted on July 1, 2017 with the aim of providing legal certainty with a binding assessment of the social insurances.

The Disappointment

In reality, the much-anticipated draft bill comes with a number of limitations and is not capable of providing the envisaged legal certainty. Problematically, a binding determination regarding classification either into the ASVG or the GSVG scheme will only be possible upon the mutual agreement of the different social insurance companies (in principle the GKK and SVA), and even then only when the provided information is correct and has not changed since the submission.

Given the fact that an assignment to a specific insurance system means revenue for the that system’s competent social insurance company (in the form of social insurance contributions), a mutual agreement will be unlikely. In its absence, mandatory insurance under the ASVG will apply, although the overruled social insurance companies (the SVA in principle) will have a right to appeal. Although the final wording of the Act still remains to be seen, there is a risk that the new regulations will not lead to legal certainty for entrepreneurs and their contractors and will even spark a war of the different social insurance companies on “paying members.”

Wolfgang Kapek, Partner, and Manuel Mullner, Associate, Taylor Wessing Austria

SLOVENIA

Posting Workers To and From Slovenia



Branko Ilic

The National Assembly of Slovenia has adopted the new Transnational Provision of Services Act regarding the posting of workers (the “Act”). The Act, which is scheduled to come into force on January 1, 2018, implements European Enforcement Directive 2014/67/EU and imposes new conditions for employers posting

workers to and from Slovenia.



Luka Jesenko

As defined in Article 26 of the Treaty on the Functioning of the European Union, the free movement of services is, along with the free movement of persons, goods, and capital, among the four basic freedoms necessary for the functioning of the European Union internal market. The free movement of services means that

a company or a self-employed person that provides a certain service in its/his/her own country can provide that service anywhere within the EU and in any European Economic Area Member State. An employer can post an employee to another country so that he or she can, within the frame of providing that service, perform work for the employer there. If the legislation of the country of origin at the time of posting a worker to another Member State were to be used, and that legislation offered a lower level of the workers’ rights protection, this could provide a foreign service provider a competitive advantage over local service providers. Thus, the main objective of the Act is to avoid the multiplication of “letter-box” companies that use posting as a way to circumvent employment rules, and provide better protection to posted workers.

In accordance with the Act, the posting of workers from an employer registered in an EU Member State (a “Foreign Employer”) to work in Slovenia (and vice versa) is possible in one of the following ways: (1) the service is carried out on the account and under the supervision of the Foreign Employer under a contract concluded with the party for whom the service is intended; (2) the service is carried out on the basis of an act regulating the posting of workers to an institution or enterprise based in Slovenia which the Foreign Employer has a capital link with; or (3) the posting is carried out as a part of providing the work to a user with a seat or residence in Slovenia (so-called “Agency Workers”).

The Act sets the same basic conditions for Foreign Employers wanting to post workers in Slovenia and Slovenian employers who wish to post workers in other Member States. Both Foreign Employers and Slovenian employers must comply with the following conditions: (1) That employers usually do their business in the Member State of Employment; (2) that the worker being posted abroad usually does not provide services in the Member State in which the work will be carried out; (3) that employers do not violate the most important provisions of employment law regarding workers’ rights, and (4) that employers are duly registered for the services provided by the posted workers in their home States.

Employers fulfilling these conditions can obtain a so-called A1 certificate issued by the competent social security institution in the Member State of Employment. This certificate must be obtained for each individual worker by both foreign and Slovenian employers at least 30 days prior to the worker being posted

abroad. It is also useful to prove in which Member State the social contributions for posted worker are being paid.

Before starting to provide services in Slovenia, foreign employers are required to register with the Employment Service of Slovenia and are required to guarantee rights to their workers for the duration of their posting in Slovenia. Such rights must be in line with Slovenian regulations and the provisions of the applicable branch collective agreements regulating working hours, breaks and rest, night work, minimum annual leave, salary, health and safety at work, special protection for workers, and equality guarantees, if Slovenian legislation is more favorable for the worker than the rights guaranteed by the Member State of Employment.

The Act also includes provisions on special subsidiary liability. If a foreign temporary employment agency does not pay wages or social contributions to its workers posted in Slovenia, then the Slovenian user is liable for these payments. Moreover, in the construction sector, if a Foreign Employer that is a direct subcontractor of a Slovenian construction company does not pay wages to its workers posted in Slovenia, then his Slovenian contractor becomes liable for the payment of the wages.

To conclude, the new Act will likely have an impact on many foreign and domestic companies which post workers to and from Slovenia. Such companies should take steps to ensure compliance with the new law.

*Branko Ilic, Partner, and Luka Jesenko, Associate,
ODI Law Firm*

BULGARIA

Bulgaria's Application of the ECJ's Rules for Keeping Employment Relationships in Transfers of Undertakings



Maria Drenska

Employment relationships require special protection both at European and national levels. Although largely enshrined in European legislation, those protections remain subject to modifications to ensure efficiency and security of the employment process.

In addition to discrepancies existing between the European and national systems, ambiguities in the application of national legal norms may arise due to their non-compliance with EU legislation.

The EU Approach

The European Court of Justice (the "Court") has developed case law involving the application of Directive 2001/23/EC (and the consolidated Directives 77/187/EEC and 98/57/EC), which regulates the preservation of employment relationships

in cases of transfer of activities and tangible assets.

The Directive covers all cases of legal transfer (including mergers) of enterprises or business activities, or distinct parts thereof. The Directive applies to any transfers where an entity retains its identity.

In *Abels*, 135/83, the Court held that since the Member States have differences in their national legal systems about the scope of the "legal transfer" concept, the Court's analysis cannot be confined to the literal understanding of the text. A transfer can be based on a contract, a unilateral act, a court decision, or a law, and in some cases there is no direct contractual relationship between the transferor and the transferee.

The Court has established criteria for determining when there is a transfer of a business entity which retains its identity and when the employment relationships are being preserved. Thus, national courts are required to make a comprehensive examination in each case as to whether the following criteria are present: (i) the type of business or activity; (ii) whether tangible assets are transferred; (iii) the value of the intangible assets at the time of transfer; (iv) whether the majority of staff is taken over by the new employer; (v) whether the customers are transferred; (vi) the degree of similarity between the activities carried out before and after the transfer; and (vii) the discontinuation of the activities.

Applying the Directive is of major importance for public procurement, outsourcing, and other cases where one contractor of a service is replaced by another, yet the Court has applied its criteria inconsistently. Thus, in *Abler* C-340/01, it confirmed the transfer of staff between employers without a direct contractual relationship. Overall, the Court has ruled that existing employment relationships should be taken over by the purchaser of a tangible asset or activity.

Keeping Employment Relationships According to the Practice of the Bulgarian Supreme Court

The Bulgarian Labor Code regulates the preservation of employment relations, especially where the employer is changed because of a transfer of the "aggregates" of activities, personnel, and assets. In two of its interpretative decisions, the Bulgarian Supreme Court (BSC) has confirmed that the list of retained employment relationships in the law is exclusive and has held that the protection of Bulgarian law is more extensive than that provided in the Directive. Furthermore, the BSC has held that the existing legislative approach protects the interests of each party to the employment relationship and that the legislative balance must not be violated by interpretation in favor of either side. The BSC stated that "protection is established in imperative order and it can neither be expanded nor narrowed."

It is not clear whether the European Court of Justice's criteria in favor of better protection for employees are applied by the Bulgarian courts. However, the BSC generally preserves em-

ployment relations in cases of change of contractor in public procurement contracts when the original contractor has ceased operations. The BSC also accepts that the application of the provision of the Bulgarian Labor Code involving transfer of part of an activity or of tangible assets does not require the existence of a contract with specific clauses between the two enterprises. The BSC accepts that the transfer of activity and the preservation of the employment relationships exists when a law abolishes the existence of an administrative body and another body undertakes its functions.

The Expectations

Implementing Directive 2001/23/EC and the European Court of Justice's case law in the national legislation of the Member States is an ongoing process and remains subject to disagreement. A synchronization at the European level as well as future engagement of the Bulgarian courts to create specific rules will ensure a proper balance in the country's legal system and better protection of employment relationships in the country.

*Maria Drenska, Head of Employment,
CMS Bulgaria*

ROMANIA

Non-Competition Clauses: How to Prevent Former Employees from Working for the Competition



Andreea Suci

In the present economical context, which often favors the migration of the employees from one company to another, the only tool left for employers seeking to prevent employees from working for competitors after leaving their companies is to include non-competition clauses in employment contracts.

Pursuant to the Romanian Labor Code, parties may negotiate and include a non-competition clause into an employment contract expressly stating that the employee is precluded from competing against his/her employer for a maximum period of two years after the termination of the employment contract. In return for this obligation, the employer shall pay a monthly compensation to the employee throughout the non-compete period.

General Conditions of Validity

In order to be valid and have the desired effect, a non-competition clause has to be included in the employment contract by agreement of the parties, either at the conclusion of the contract or at a later date by means of an addendum.

Furthermore, non-competition clauses are effective provided that the following elements are included: a) Activities prohibited to the employee. The non-competition clause should establish specific prohibited activities rather than completely

prohibiting the employee from exercising his/her profession or specialization (as such so-called "exclusivity clauses" are prohibited under Romanian law); b) The period during which the non-competition clause takes effect. The maximum period that a non-competition clause may be effective is two years from the date of termination of the employment contract; c) Specific third parties for which the employee may not work. The rule requiring that specific third parties be named proves to be difficult in a market economy in which economic agents come and go with relatively high frequency. Therefore, the doctrine allows third parties be listed as a category of employers (such as, for example, travel agencies, car manufacturers, etc.), in addition to the identification of primary competitors on the market; d) The applicable geographic area. As a rule, the geographic area may not include the entire country, which would be in fact an impermissible general comprehensive ban on exercising one's profession/trade; e) The amount of non-competition indemnity. Under the Romanian Labor Code, the monthly non-competition indemnity is negotiable – and must be at least 50% of the average gross salary of the employee in the six months prior to the date of employment termination.

In the case of unfair terms, the employee may refer the matter to the competent court, which can cancel the clause totally or partially, decreasing the effects of the non-competition clause within the legal limits allowed. Therefore, as they limit the freedom to work (i.e., the right to work), care should be taken to draft non-competition clauses in full compliance with both the law and court practice in order to ensure the desired effects.

Amending the Non-Competition Clause

Since the employment contract is the law of the parties, consent must be given not only when the contract is entered into but also for any modification or termination thereof. Competent courts have consistently ruled that the employer does not have a unilateral right to waive a non-competition clause, unless agreed-upon by both parties in writing in advance.

Legal Liability

Employees who breach a non-competition clause may be obliged to reimburse the indemnity paid by the employer. A claim for additional damages may be filed by the employer provided that it can prove damages suffered as a result of the competitive acts of the employee. Penalty clauses are strictly forbidden and therefore void under employment law.

Conclusion

Non-competition clauses seem to have a rather low practical relevance for the employer, as the immediate effect of breaches is only the recovery of indemnities paid by the employer. Nevertheless, the psychological impact of such clauses often prevents employees from competing with their employer's business during their effective period.

*Andreea Suci, Head of Employment & Pensions,
Noerr Romania*

SERBIA

Employee Leasing in Serbia Still a Grey Zone



Marija Oreski Tomasevic

Leasing of employees – a situation in which employment agencies hire employees and act as their formal employers and then lease them to perform actual work for their client companies – has become a frequent phenomenon in Serbia the past few years.

For employers, leasing employees instead of employing them seems like a win-win situation, providing them with the workforce they need without the hassle of dealing with administrative responsibilities associated with workforce management. Usually, a company's obligation under this arrangement is to pay a monthly invoice to the employment agency and the agency will do the rest - register the employee with the competent social security authority, pay the salaries and contributions, and deal with other work-related issues prescribed by law.

Employee leasing was not invented in Serbia – it has been around for a couple of decades now. However, the legal framework regulating this practice does not exist in Serbia yet, leaving employees vulnerable to various types of abuse. Employers in Serbia turn to leasing agencies not only for administrative and financial reasons but primarily to avoid the strict legal requirements imposed by the Serbian Labor Act – especially those relating to temporary employment and dismissal.

The current Serbian Labor Act does not regulate the hiring of employees by employment agencies for the purpose of leasing them to the agencies' clients. However, employment agencies are registered and operate in accordance with Serbian Employment and Unemployment Insurance Act, with the precondition of acquiring a permit from the Serbian Ministry of Labor. Services which the agencies are allowed to provide in accordance with the Employment and Unemployment Insurance Act are: providing information on possibilities and conditions of employment; searching jobs in the country and abroad; professional orientation and advising on career planning; and enforcing some of the measures of active employment policies based on a contract with National Employment Service. None of these services include hiring and leasing employees to the agency's client companies to perform those companies' actual work. Nonetheless, there are more than 90 employment agencies in Serbia which provide this service without proper legal regulation.

Directive 2008/104/EC of the European Parliament and the Council of the EU on temporary agency work prescribes the framework of working conditions for the employees hired via employment agencies in the EU, granting such employees basic protections and warranties in order to cater both to the employers and the employees. Although the Directive is not directly

applicable in EU member states, these states must incorporate the Directive's basic principles into their own local legislation – a requirement which also applies to Serbia on its EU integration path. In addition, the International Labour Organization's (ILO) Private Employment Agency Convention no. 181 regulates this issue



Dunja Tasic

by granting guarantees to employees engaged via employment agencies which include, among other things, the freedom of association and collective bargaining, minimum wages, limitations for working hours, paternal protection, and so on.

In October 2016, the Serbian Ministry of Labor announced the draft of a law which would regulate the labor provided via employment agencies and which would harmonize Serbian legislation with the EU Directive. This draft law has yet to be presented to the public, and until that happens employees hired via employment agencies face discrimination and legal uncertainty, with no right to sick leave or vacation days, the potential for overwork, and, most importantly, no ability to seek damages or compensation from the company they actually work for, because they are formally employed with the agency. The practice of Serbian courts in cases of law suits filed by leased employees against both agencies and their actual employers is not unified; in some cases, the courts recognize the client company as the actual employer, while in other cases the courts deny the leased employee the legal protection against the actual employer and recognize only the agency as the employer.

It is imperative to pass a law regulating the hiring and leasing of employees by employment agencies in accordance with the EU Directive and ILO's Convention as soon as possible. It is less relevant whether a new law is passed or the existing Labor Act or Employment and Unemployment Insurance Act is amended, as long as protection is provided for the employees and responsibilities are prescribed for the agencies and the actual employers in a way that is suitable for all parties involved.

Marija Oreski Tomasevic, Partner, and Dunja Tasic, Senior Associate, Samardzic, Oreski, & Grbovic

UKRAINE

Protecting Confidential Employer Information



Mykola Stetsenko

Preserving confidentiality is always a top priority for a successful business, especially if you have an advanced R&D department. Taking into account the need to freely transfer information on the one hand and the strict necessity to preserve the safety of personal data and databases on the other,



Yuriy Zaremba

the issue of confidentiality becomes even more important.

In Ukraine, unlike in Europe and the USA, legislation provides employers with very few instruments to protect their commercial secrets. As a result, companies must develop their own legal instruments to keep such secrets secure.

Currently, the best instruments for an employer wishing to protect confidential information are: (1) adopting a comprehensive policy on confidential information and incorporating relevant provisions into its charter; and (2) incorporating relevant restrictions into employment agreements and job descriptions. There is also hope that the regulation of confidentiality protections will improve for the employer with the adoption of the new Labor code of Ukraine.

Internal Regulation on Confidential Information

We recommend that every employer have a separate and detailed policy on confidential information to: (1) define commercial secrets and confidential information in maximum detail; (2) regulate procedures on the access, transfer, and safekeeping of commercial information; and (3) provide for sanctions for violations of confidentiality.

The same provisions can be mirrored in the charter of the company and the collective bargaining agreement (if one exists).

The creation of such a policy allows employers to regulate the procedures related to confidential information in detail on the company level and provides them with multiple instruments to defend their interests in courts. At the same time, there is uncertainty regarding the enforcement of such policies, since Ukrainian courts tend to rule in favor of employees when employers try to impose restrictions which are not expressly provided for by law.

Employment Contract and Job Description

Including strict confidentiality obligations into employment contracts is a common practice in Ukrainian offices of international companies. If properly implemented, doing this allows the employer to impose certain financial and disciplinary liabilities on employees making unauthorized disclosures of confidential information. Again, however, there is no certainty regarding how the courts will enforce the relevant provisions of such contracts.

From a practical point of view, a separate confidentiality agreement is a better solution, because, as a civil law agreement rather than an employment contract, the courts' reluctance to allow for expanded restrictions in an employment relationship do not apply.

To further improve the protection of confidential information, we recommend that employers insert extensive obligations to

preserve confidential information into employee job descriptions. When preparing such job descriptions, we recommend that the widest possible range of issues related to treatment of commercial secrets be included.

If the obligations related to commercial secrets are included in the job description, a violation may serve as grounds for dismissal of the employee. However, there is a risk that such a dismissal may be challenged in court, since commercial secret obligations do not always correlate with the employee's job function and their inclusion in the job description may be viewed as deterioration of working conditions as compared to standards guaranteed by the Labor code.

New Hope

The draft of the new Labor Code of Ukraine, which we expect to be adopted this year, provides for a more specific regulation of confidentiality issues. In particular, the draft provides employers with the ability to dismiss employees for unauthorized disclosures of confidential information. This innovation will provide employers with real leverage in respect of the safety of confidential information and, it is hoped, will help to shift court practice on cases related to the protection of commercial secrets in favor of employers.

Another right set out in the draft of the new Labor Code relates to the monitoring of employee activities at work. The draft allows employers to monitor and record employees' work activities by technical means, subject to prior written notice. Although not directly related to commercial secrets, this is yet another instrument which can assist in preventing leakage of confidential information. This instrument can also be extremely helpful in internal corporate investigations.

If the new Labor Code is adopted soon, and without material changes, it should positively affect the regulatory framework for protection of confidential employer information in Ukraine.

Mykola Stetsenko, Managing Partner, Yuriy Zaremba, Associate, Avellum



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