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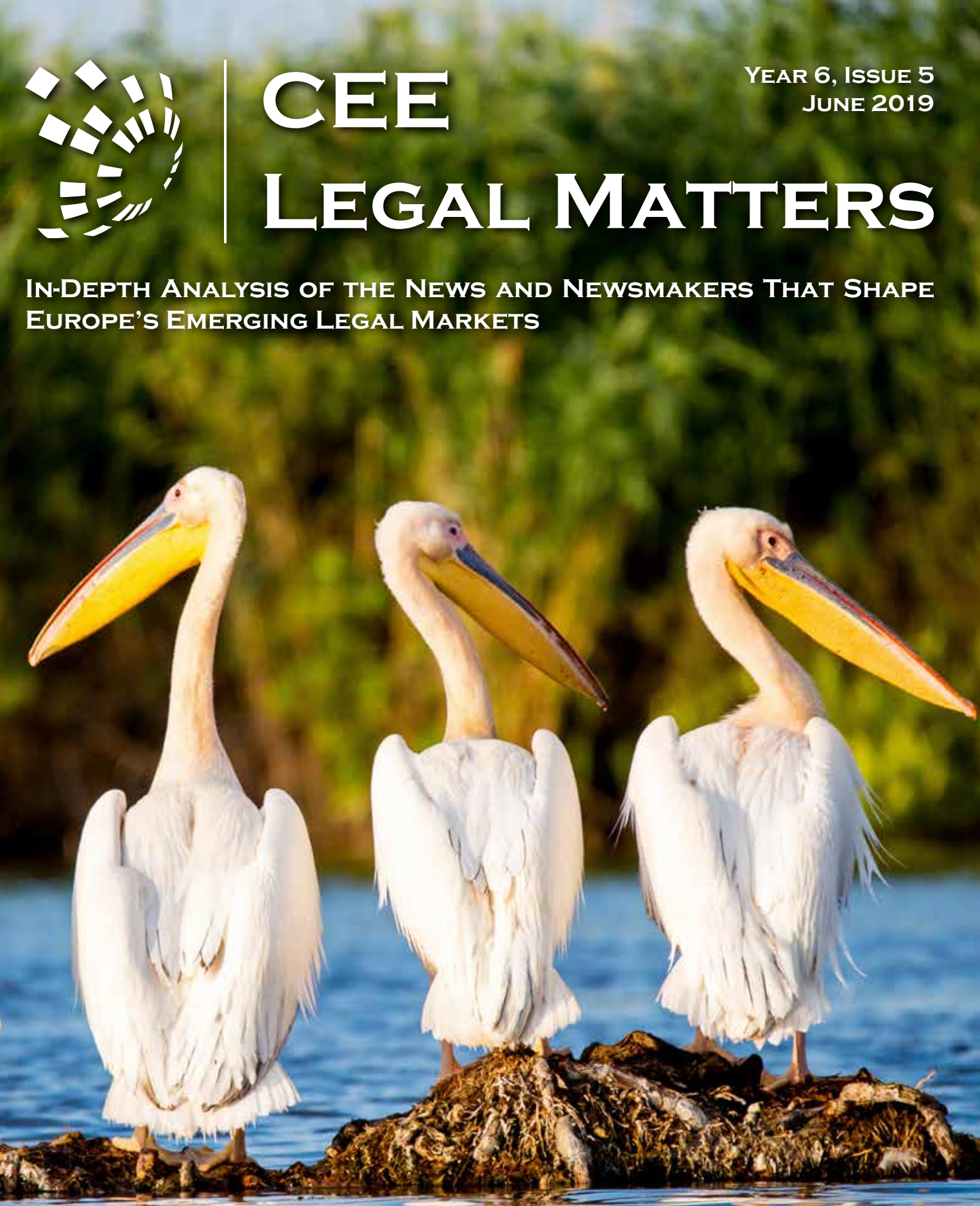
CEE Legal Matters

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



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CEE LEGAL MATTERS

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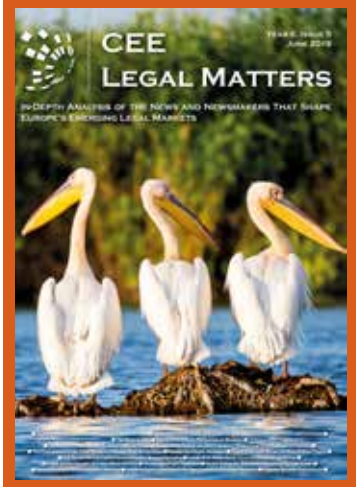

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If you like what you read in these pages (or even if you don't) we really do want to hear from you. Please send any comments, criticisms, questions, or ideas to us at:

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EDITORIAL: HOW DO YOU STAY KING OF THE HILL?

"There are two kinds of people, those who do the work and those who take the credit. Try to be in the first group; there is less competition there."

– Indira Gandhi

"Competition brings out the best in products and the worst in people."

– David Sarnoff

We learned, just moments ago, of the launch of a new publication in one of the markets we cover, dedicated to that country's lawyers and legal industry (and no, I'm not going to tell you which one – stop asking). This isn't the first time we've seen a new legal-industry-focused publication appear in CEE, of course, and obviously a number of them preceded our arrival back in 2013. Still, each time we see a new one, we're forced to pause and reflect on what this means for us.

Does this new publication count as "competition" to CEE Legal Matters? Not necessarily. It covers only one market, and it is written in that country's language. As such, it fits into the realm of older country-specific publications in CEE – *ePravo* in the Czech Republic, perhaps, or *Polski Prawnik* in Poland, or *Jogi Forum* here in Hungary.

On the other hand, there's no denying that in the competition for eyeballs, this is – if not completely, then significantly – a zero-sum game, and the existence of each publication covering the legal industry in all or part of CEE makes our goals a little bit harder to obtain.

Or does it? Perhaps it reflects the growing *strength* of CEE's legal markets, and is thus a sign of growth in the region, which we of course also benefit from. Absolute hegemony can be difficult to maintain over a growing world – but popularity and profit are certainly realistic objectives.

As I write this, I'm aware how familiar a paradigm this is for the law firms we cover. Each established firm sees the arrival of a new challenger in its market as a potential threat to the bottom line, and recognize that the newcomers speak with confidence of their ability to take market-share away from the old guard.

Firms handle this in different ways. The calmer lawyers insist to us that increased competition only forces them to improve their own client service, and profess a calm and patient willingness to let the chips fall where they may. I respect this perspective – even if I do not always believe the partners who claim it – and Radu and I attempt to present a similar sangfroid in our own response.

In some other CEE countries – particularly, perhaps, some of the Balkan states – newcomers are often viewed with more open suspicion and resentment. It would not be correct, however, to suggest that the established firms do not believe in fair competition. Instead, they compete across the board, not just for clients, but for *access* to clients, using the legal or regulatory tools at their disposal to make life difficult for the newcomers. The thinking seems to be, "we've worked hard to become king of the hill – we're going to use that power we worked so hard to obtain to do whatever it takes to stay there." That's not anti-competitive, I suppose, but it's not exactly friendly.

We sympathize. Competition may be necessary, it may be valuable. But that doesn't make it easy. And from our perspective, while we wish new players on the market well … we also hope that the lawyers and law firms in the region, after careful consideration, will decide that, all things considered, CEE Legal Matters is the better destination for their carefully calculated advertising and market budgets. Regional coverage, English language, with an increasing ability to connect the firms not just with the General Counsel in the region, but also with prime referral partners in the UK – next year's Dealer's Choice Law Firm Summit and Deal of the Year Awards Banquet, co-hosted by Slaughter and May and co-sponsored by (so far) Hungary's Nagy es Trocsanyi and Ukraine's Avellum law firms, will be in London. Who better, I ask you?

Competition is one thing. Value is another. We're always working to provide more of the latter, so we can continue to succeed at the former. But it ain't easy!

David Stuckey

GUEST EDITORIAL: DON'T MENTION BREXIT

Having been a foreign lawyer abroad for a significant part of my career so far – this last decade in CEE – I can say that the past couple of years have been the most interesting, and I mean that in the Confucian sense. Not because of local market developments or interesting deals – though there have been plenty of both – but because of the events of 2016 and a certain painful embarrassment and anguish I feel when a well-meaning acquaintance, colleague, or client, in genuine bewilderment, looks me in the eye and asks me, in my capacity as a British citizen and English lawyer, "*what on earth is going on*?"

My best response so far is a weak smile and a shrug. My long-suffering colleagues will tell you that my worst response is to subject them to a diatribe about the strange obsession some in the country of my birth have these days with blue passports and fish quotas.

But it's not just the Anglosphere, of course. These are uncertain times everywhere, in economics as well as politics. On the level of the markets, I have attended several meetings and symposia over the last year or two at which lawyers, bankers, economists, and investors have spoken of their fears (or hopes, depending on their investments strategies or practices) of a credit dam breaking sometime next year or in any case by 2021. At a gathering of LSE alumni recently, Lord Hain spoke about the resentments and mistrust underlying the shocking Brexit vote. His diagnosis would not surprise anyone alive to the apparent madness which has engulfed England and America. But he noted, correctly in my view, that these are all symptoms of significant structural weaknesses in the political economies of the developed world, and need to be considered in those terms.

So what is in store? Prognostication is a dangerous game, as Francis Fukuyama can tell you. At the micro level, there have been some encouraging developments, for example in the legal framework for formal and informal restructurings, as well as the growing sophistication among stakeholders in terms of strategies of value-preservation in a downturn. But since deeper currents are at play which will determine longer-term outcomes, these currents bear some thought.

It's not difficult to agree on some of the fundamental dynamics and risks: unresolved distortions in the credit markets consequent on the last financial crisis; the suspicion that central banks and governments are under-armed for a response to the next crisis; and an unequal distribution of the economic benefits of globalization and the pursuit of austerity – both voluntary and imposed – by cash-strapped and indebted national governments. Though these factors may seem somewhat remote in the parts of CEE where relative economic performance has on the whole been healthy, political and economic crises in this region are often unwelcome imports, and have already begun to have their effects. A crisis in Western Europe and North America will of course negatively affect external resources available for FDI, and local political developments have already depressed perceptions of the region as a worthwhile destination for investment. Economic tensions give rise to societal and political tensions, and the disquiet which I think we all feel is that current developments within the region and beyond presage unwelcome political outcomes if and when another crisis comes. Even now, the weight of populist politics is heavy in Europe.

What our region has to offer at this moment in European history is a relatively recent taste of two opposing visions of society; of the consequences of the two (I would not say twin) populisms alive in the zeitgeist. Much depends on the political class seeking not to profit from societal tensions, but to dampen them, and though current political developments in some quarters do not lend themselves to optimism on this score, we can all do our bit.

It is a common habit among non-lawyers (particularly, I am sure, clients in receipt of an invoice) to quote from Henry VI: "*First, let's kill all the lawyers.*" Though rarely intended as such, this is of course a backhanded compliment, if you've seen the play. The character Dick the Butcher means by these words that, to overthrow civil society, you first take aim at lawyers, as they are the natural guardians of the rule of law. At the risk of self-congratulation, I would argue that lawyers have a unique role to play in the societies in which they live and work. In addition to helping our clients navigate the microeconomic risks and opportunities of their investments and markets, we can also become even more involved in humanitarian and civic organizations, and engage with, and contribute constructively to, the public dialogue. This is certainly my intention for the coming months and years.

Jonathan Weinberg, Partner, White & Case

On The Move:

K&L Gates Withdraws from CEE, DWF Group Takes Over Warsaw Team (p 15)

Conference Countdown:

An Interview With Slaughter and May About the 2020 Dealer's Choice Law Firm Summit in London (p 26)

Moldova in the Balance:

Struggling to Move Beyond Political Division and Geopolitical Pressures (p 52)

Experts Review:

CEE Experts Review Round-up on Agriculture (p 58)

ACROSS THE WIRE: FEATURED DEALS

Integrites Advises on Segment 2 of Ukraine's Syvash Wind Power Project

Integrites has advised NBT on the financing documents for Segment 2 of Ukraine's Syvash Wind Power Project, with commitments of an additional EUR 107.6 million of further senior debt coming from the Black Sea Trade and Development Bank (EUR 30 million), Proparco (approximately EUR 42 million), Finnfund and IFU (EUR 15 million each), and the Nordic Environment Finance Corporation (EUR 5 million).

As reported previously, earlier this year Integrites advised NBT on the acquisition of the project company SyvashEnergoProm LLC and both NBT and Total Eren as sponsors on the development, construction, and financing of the power generation facility and new substation.

According to a joint Total Eren and NBT press release, "at its full capacity, Syvash represents a EUR 380 million total investment. Syvash will consist of 63 wind turbines and is located on 1,300 hectares of land in the southern Kherson region of Ukraine. Once built, it is expected to become the country's largest renewable energy project. It is the first international Financial Close ever achieved for a wind farm of that scale in Ukraine." In addition, the press release asserts, "the electricity generated from Syvash will be sold to state-owned company Energorynok - Ukraine's wholesale electricity market operator. Once the full project is completed, it will have a planned production of 850 GWh per year, hence generating enough electricity to meet the needs of approximately 100,000 households. It is expected to reduce CO2 emissions by 470,000 tonnes per year, hence creating a positive impact on the environment."

K&L Gates worked alongside Integrites in advising NBT. The lenders were advised on Ukrainian law by Redcliffe Partners and on English law by Clifford Chance.

Other legal advisors included Advokatfirman Torngren Magnell KB (borrower's Swedish legal adviser); BCTG Avocats (Total Eren's French Legal Advisor); Eversheds Sutherland (Algihaz' legal advisor); Gernandt & Danielsson Advokatbyra KB (Total Eren's Swedish legal advisor); Kanter Advokatbyra KB (lenders' Swedish legal adviser); and Wikborg Rein Advokatfirma AS (sponsors' Norwegian legal adviser).

Deloitte Legal Supports T-Mobile with Post-Merger Integration of UPC Group

Deloitte Legal and Jank Weiler Operenyi, the Austrian member of the Deloitte Legal Network, have advised T-Mobile group on the post-merger integration of the UPC group.

T-Mobile Austria acquired UPC for EUR 1.9 billion at the end of 2017. During the acquisition process itself, T-Mobile was advised by Wolf Theiss, with Freshfields advising Liberty Global on the sale.

Cobalt Advises on Consolis Acquisition of TMB Group's Latvian and Finnish Operations

Cobalt has advised the shareholders of the TMB Group on the sale of its Finnish and Latvian operations to the Consolis Group, a European supplier of precast concrete solutions, acting through is Finnish entity, Parma Oy.

Founded in 1961, TMB Group employs around 500 people and its annual revenue was close to EUR 125 million in 2018. Although TMB retains its Estonian production unit in Tartu, the transaction was described as among the largest M&A-based exits of Estonian capital from a foreign investment in history.

Consolis initially agreed to buy the TMB Group last summer, acting through Parma Oy then as well. In January 2019 the Estonian Competition Authority terminated the merger control process regarding TMB's Estonian business following the announcement that the parties were abandoning the deal.

"I am really pleased to have our firm and its Finnish Desk involved in one of the largest M&A exits of Estonian capital from a foreign investment, and not only due to the fact that we have been working closely with the sellers from the initial acquisition of TMB's Finnish operations a few years ago. We've therefore had the pleasure of sitting on the best seats to observe our client's tremendous success throughout their whole investment cycle on a foreign market."

– Martin Simovart, Partner, Cobalt

The Cobalt team consisted of Partners Martin Simovart, Elo Tamm, and Egon Talur, Specialist Counsel Jesse Kivisaari, Senior Associate Tonu Kolts, and Associates Liina Saaremets and Mart Blondal.

Ellex Raidla, acting with Finland's Krogerus and Sweden's Setterwalls law firms, advised Consolis Group.

COBALT

Schoenherr Advises Societe Generale on Sale of Slovenian Units

Schoenherr has advised Societe Generale on its sale of subsidiaries SKB Banka d.d. Ljubljana, SKB Leasing d.o.o., and SKB Leasing Select d.o.o. to OTP Bank Group.

As a result of the transaction OTP Bank Group acquired 99.73% of Societe Generale Group's Slovenian unit.

Closing, which remains subject to the approval of the Bank of Slovenia, the European Central Bank, and various antitrust authorities, is expected at the beginning of June, 2019.

Slovenia will be part of the cooperation agreement signed between Societe Generale and OTP Bank Nyrt that encompasses the provision of mutual services in various fields, such as investment banking, capital markets, financing cash, and liquidity management. Societe Generale will remain directly present in Slovenia through its automotive fleet management activities.

Schoenherr worked alongside Jones Day advising Societe Generale on the deal. CMS advised OTP Bank Group on the deal.

PRK Partners Successful in Defending RPG Industries Against Claim Brought by ARC Equity Services

PRK Partners has successfully represented RPG Industries in a first instance court in Ostrava against a claim for damages brought by ARC Equity Services against RPG and Residomo relating to an apartment and its owner. The judgment is not final.

"This case relates to the matter known as 'OKD byty,' which has recently received increasing attention from both the media and high-ranking politicians. At the center of the dispute is whether or not the defendants breached an obligation to offer certain apartments for sale to tenants, as some politicians often incorrectly represent to the public. The court agreed with the defendants that there was no obligation to sell and thus no breach could have occurred."

– Robert Nemec, Partner, PRK Partners

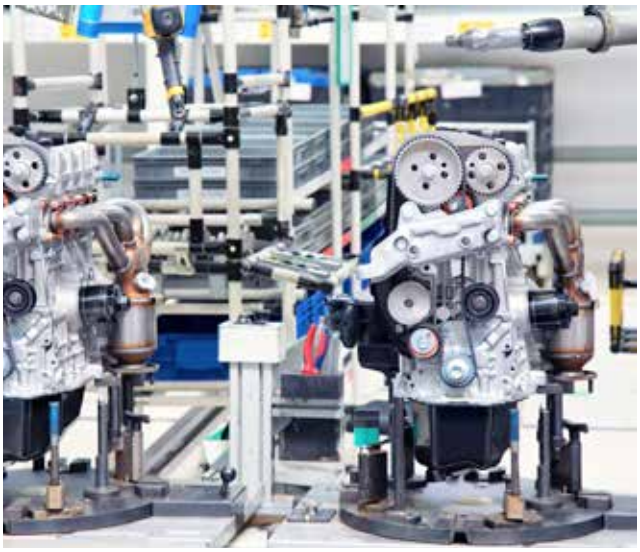
The PRK Partners team consisted of Partners Robert Nemec and Martin Aschenbrenner and Senior Associates Michal Sylla and Lenka Konvalinova.

Dentons represented Residomo in the matter.

P / R / K

ATTORNEYS AT LAW

Karanovic & Partners Advises Calsonic Kansei on Acquisition of Magneti Marelli



Karanovic & Partners has advised Japanese automotive company Calsonic Kansei on its EUR 5.8 billion acquisition of Magneti Marelli, a high-tech components manufacturer for the automotive industry, from Fiat Chrysler Automobiles.

"This acquisition brings together two successful global automotive manufacturers from Italy and Japan, creating a globally-diversified tier-one supplier"

– Ivan Nonkovic, Partner / Independent attorney at law in cooperation with Karanovic Partners

This transaction, which has received all necessary regulatory and anti-trust approvals, combines two businesses with total revenues of EUR 14.6 billion, making Calsonic Kansei the world's 7th largest independent automotive supplier. It will operate out of 170 facilities and R&D centers across Europe, Japan, the Americas, and Asia-Pacific under the name Magneti Marelli CK Holdings.

The Karanovic & Partners team was led by Partner Ivan Nonkovic.

Dentons reportedly advised Fiat Chrysler Automobiles.

karanovic/partners

ACROSS THE WIRE: DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Value	Country
2-May	Tonucci & Partners; Wolf Theiss	Tonucci & Partners advised Union Bank on the acquisition of the International Commercial Bank in Albania, and Wolf Theiss provided legal advice to Union Bank during the regulatory approval phase.	N/A	Albania
18-Apr	Wolf Theiss	Wolf Theiss advised Volksbank Wien AG on its March 4, 2019 placement of EUR 500 million covered bonds and the April 9, 2019 EUR 200 million additional tier 1 notes.	EUR 200 million	Austria
23-Apr	Wolf Theiss	Wolf Theiss advised Japan's Takeda Group on its acquisition of plasma donation center Plasmapunk Favoriten and Donaustadt.	N/A	Austria
23-Apr	Accura; Bech Bruun; Cederquist; CMS	CMS, working with Denmark's Bech Bruun law firm, advised ALPLA on its entrance into a joint venture in Denmark with BillerudKorsnas to develop the biobased and recyclable paper bottle company ecoXpac. BillerudKorsnas was advised by Accura and Cederquist.	N/A	Austria
24-Apr	BPV Huegel	BPV Huegel advised ISS on its acquisition of Austrian business catering company JH Catering.	N/A	Austria
25-Apr	Dorda; Hasch & Partner	Dorda advised Swiss milk processor EMMI AG on the acquisition of a 66% stake in Leeb Biomilch GmbH and its affiliate company Hale GmbH, the Austrian suppliers of organic goat milk and sheep milk products, from shareholders Hubert Leeb and Jorg Hackenbuchner. Hasch & Partner advised Leeb Biomilch GmbH.	N/A	Austria
2-May	Act Legal	Act Legal Austria assisted the BABEG Carinthian Agency for Investment Promotion and Public Shareholding with the legal structuring of its cooperation with mobile operator A1 to open Austria's first "5G Playground" at the Lakeside Science and Technology Park in the Carinthia region of Austria.	N/A	Austria
3-May	Dorda	Dorda advised Warburg HIH Invest Real Estate on the acquisition of the HBF 1 office property at the Vienna Central Railway Station from the Rhomberg Group.	N/A	Austria
6-May	Deloitte Legal; Jank Weiler Operenyi	Jank Weiler Operenyi, the Austrian member of the Deloitte Legal Network, advised T-Mobile group on the post-merger integration of the UPC group.	N/A	Austria
7-May	Allen & Overy; Rautner Attorneys at Law; Wolf Theiss	Wolf Theiss advised Erste Group Bank AG on the issue of EUR 500 million Eligible Liabilities Format Notes. Allen & Overy Frankfurt and Rautner Attorneys at Law advised the consortium of banks.	EUR 500 million	Austria

Date covered	Firms Involved	Deal/Litigation	Value	Country
7-May	Linklaters; Rautner Attorneys at Law; Wolf Theiss	Wolf Theiss and Linklaters Frankfurt advised Erste Group Bank AG on the issue of EUR 500 million Additional Tier 1 Notes. Rautner Attorneys at Law advised Joint Lead Managers BAML, Barclays, Erste, Goldmans, and UBS.	EUR 500 million	Austria
15-Apr	Allen & Overy; Boyanov&Co; Go2Law; Kambourov & Partners; Mayer Brown; O'Melveny & Myers; Spasov & Bratanov; Tsvetkova Bebov Komarevski	Boyanov & Co. advised the lenders on a EUR 100 million syndicated financing of the Advance Media Group EAD's acquisition of the Nova Broadcasting Group from MTG Broadcasting AB and Eastern European Media Holdings S.A. Advance Media was assisted by O'Melveny & Myers in London and Kambourov & Partners in Sofia. MTG Broadcasting was advised by Allen & Overy, Go2Law, and Spasov & Bratanov, and Eastern European Media Holdings was advised by Mayer Brown.	EUR 100 million	Bulgaria
25-Apr	Dimitrov Petrov & Co.	Dimitrov Petrov & Co helped Telenor Bulgaria obtain regulatory permission to conduct the business of an insurance agent.	N/A	Bulgaria
24-Apr	King Wood & Mallesons; White & Case	White & Case advised Total Eren, a French renewable energy Independent Power Producer, on the acquisition of NovEnergia Holding Company, a Southern European Independent Power Producer. King Wood & Mallesons advised NovEnergia.	N/A	Bulgaria; Hungary; Poland
8-May	Zuric i Partneri	Zuric i Partneri advised both OTP Bank d.d. and Splitska Banka d.d. on their merger.	N/A	Croatia
17-Apr	CMS; Forlex; Pinsent Masons	CMS advised the ESPIRA private equity fund on the acquisition with ICON's executive management team of ICON Communication Centres, a provider of multilingual contact center services, from the joint administrators of former energy broker Utilitywise Plc. The FORLEX law firm advised Icon management, and Pinsent Masons advised the administrator.	N/A	Czech Republic
17-Apr	JSK; Marian Jerabek Law Firm	JSK advised the Sedlacek family on the sale of PONY Auto Trend s.r.o. and PONY Plast s.r.o. to Fine Gusto Nature Trade s.r.o. The Marian Jerabek Law Firm advised Fine Gusto Nature Trade on the acquisition.	N/A	Czech Republic
23-Apr	CMS; Schoenherr	CMS Prague advised Ceskoslovenska Obchodni Banka, the Czech division of the KBC Group, on the acquisition of 45% stake in the Ceskomoravska Stavebni Dporitelna bank from Bausparkasse Schwabisch Hall, which was advised by Schoenherr.	EUR 240 million	Czech Republic
24-Apr	Glatzova & Co	Glatzova & Co advised CSOB on the creation of a joint venture with the Mall Group, to improve the MallPay payment service that facilitates shopping at Czech shopping malls.	N/A	Czech Republic
2-May	CHSH; Havel & Partners	CHSH advised SES Spar European Shopping Centers on its entrance into a joint venture with Czech investors DBK and Proxy Finance regarding the ownership and operation of the Europark Prague shopping center. EPI, a joint venture of DBK Praha and Proxy Finance, acquired a 77% stake in the shopping center from SES, which retains the other 23%. EPI advised by Havel & Partners.	N/A	Czech Republic
3-May	Allen & Overy; Freshfields	Allen & Overy advised a consortium of investors managed by Macquarie Infrastructure and Real Assets Limited on its acquisition of a 50.04% stake in Innogy Grid Holding from RWE, making the consortium the sole owner of IGH. Freshfields Bruckhaus Deringer advised RWE on the deal.	EUR 1.8 billion	Czech Republic
7-May	PRK Partners	PRK Partners successfully represented RPG Industries against a claim for damages brought by ARC Equity Services against RPG and Residomo.	N/A	Czech Republic
15-May	Glatzova & Co	Glatzova & Co. advised DRFG Financial Managementon a public offer of notes up to CZK 2 billion.	CZK 2 billion	Czech Republic
24-Apr	Sorainen; TGS Baltic	TGS Baltic advised Royal Vopak N.V and Global Ports Investments PLC on the sale of the shares of Vopak E.O.S., an independent oil terminal operator in the Baltics, to Abu Dhabi-based Liwathon.	N/A	Estonia
25-Apr	Sorainen	Sorainen helped Holm Bank become the first credit institution in Estonia to obtain a credit institution license from the European Central Bank under the new European Union Single Supervision Mechanism framework.	N/A	Estonia
25-Apr	Cobalt	Cobalt advised the BaltCap Growth Fund on its acquisition of a minority stake in Viru Haigla AS, which will use the investment to expand its Pihlakodu chain of elderly care homes.	N/A	Estonia
2-May	Ellex (Raidla)	Ellex Raidla advised the European Investment Bank on the signing of a EUR 20 million framework loan agreement with the Estonian City of Tartu that will support the city's development plan and investments in education.	N/A	Estonia
3-May	Ellex (Raidla)	Ellex Raidla advised AbeStock AS, a wholesale company that is part of the ABC Group, on the acquisition of AS Sales-Star.	N/A	Estonia

Date covered	Firms Involved	Deal/Litigation	Value	Country
3-May	TGS Baltic	TGS Baltic advised Chaga, an Estonian producer of organic food supplements, on its investment round on Funderbeam, a funding and trading platform which enables small investors to buy and sell equity stakes in private companies.	N/A	Estonia
15-May	Cobalt	Cobalt is advising AS Ragn-Sells on its agreement with Eesti Energia to research the possibility of recycling and increasing the value of oil shale ash.	N/A	Estonia
9-May	Cobalt; Krogerus; Ellex (Raidla); Ellex (Valiunas); Setterwalls	Cobalt advised the shareholders of the TMB Group on the sale of its Finnish and Latvian operations to the Consolis Group, a European supplier of precast concrete solutions, acting through is Finnish entity, Parma Oy. Ellex Raidla, acting with Finland's Krogerus and Sweden's Setterwalls, advised the buyers.	N/A	Estonia; Latvia
6-May	Sarhegyi & Partners	Sarhegyi & Partners advised the Hungarian Export-Import Bank on the issue of a second tranche of a EUR 40 million domestic bond program arranged by ERSTE Investments Hungary.	EUR 40 million	Hungary
6-May	Sarhegyi & Partners	Sarhegyi & Partners advised GrECo Direct Holding AG on its acquisition of Hungarian insurance broker portal Biztositas.hu from Netrisk.hu, MCI Private Ventures Fund, and AMC Capital IV Net.	N/A	Hungary
6-May	Sarhegyi & Partners	Sarhegyi & Partners advised the Ministry of Innovation of Technology of Hungary on the EUR 30 million acquisition of 20% of Hungarian steel products manufacturer Ozdi Steelworks Ltd, a subsidiary of German steel products manufacturer Max Aicher GmbH & Co. KG.	N/A	Hungary
18-Apr	TGS Baltic	TGS Baltic helped Apranga APB establish subsidiary Apranga HLV SIA, which will operate Zara Home stores in Latvia.	N/A	Latvia
23-Apr	TGS Baltic	TGS Baltic advised SIA M257 on the opening of Akropole, a shopping and leisure mall in Riga.	N/A	Latvia
2-May	Skrastins & Dzenis	Skrastins & Dzenis successfully represented the SIA U-R-A Architectural Studio in a dispute with a contractor.	N/A	Latvia
6-May	TGS Baltic	TGS Baltic successfully represented the shareholders of the AS Grindeks pharmaceutical company in Latvia's appellate court against a claim by VAS Privatizacijas Agentura arising from Grindeks' alleged failure to make a mandatory buy-back offer.	EUR 1.9 million	Latvia
14-May	Cobalt	Cobalt is advising Roche Latvija on the reconstruction of Roche's historic headquarters in Riga, as well as on an agreement with Italian contractor Novatek to level the building.	EUR 5 million	Latvia
16-Apr	Motieka & Audzevicius	Motieka & Audzevicius advised 70 Ventures, UAB on the establishment of the 70 Ventures Accel and 70 Ventures Seed private equity funds. 70 Ventures, UAB was selected by INVEGA as the manager of the accelerator funds, which will provide training and investment for innovative start-ups.	N/A	Lithuania
24-Apr	Sorainen	Sorainen successfully represented Topo Grupe in a trademark registration dispute.	N/A	Lithuania
3-May	Ellex (Valiunas)	Ellex Valiunas assisted Baltic Sea Properties in obtaining a EUR 23.4 million refinancing loan from the Luminor bank to refinance 23 stores in Lithuania leased by the Norfa retail chain and logistics center.	EUR 23.4 million	Lithuania
6-May	Adon Legal	Adon Legal helped UAB IBS Lithuania revise its electronic money institution license.	N/A	Lithuania
6-May	Motieka & Audzevicius; SPC Legal	Motieka & Audzevicius advised YNOT Media on the acquisition of FCR Media Lietuva, the Lithuanian division of the FCR Media Group, a company owned by BaltCap which operates in the market of advertising services and business information dissemination through digital channels. SPC Legal advised the sellers.	N/A	Lithuania
7-May	Sorainen	Sorainen advised Volfas Engelman on the acquisition of shares in Lamate, a Lithuanian company engaged in the extraction of mineral water, and on the construction of the Uniqa mineral water plant in southern Lithuania.	N/A	Lithuania
14-May	Sorainen	Sorainen advised AB NEO Finance on its public share offer, as well as on its entrance to the First North alternative securities market in Lithuania.	N/A	Lithuania
15-May	Eversheds Sutherland	Eversheds Sutherland Ots & Co advised Apax Partners and Media Investments & Holding OU on the acquisition of the Baltic Classifieds Group, a portfolio of online classified advertising platforms in the Baltics.	N/A	Lithuania
15-May	Turcan Cazac; Volciuc Ionescu	Turcan Cazac advised Victoriabank and Banca Transilvania on a club deal loan in Moldova to Lemi Invest S.A. to finance the construction of the first A+ class office building in Chisinau and a 4-star Courtyard Marriott Hotel. Volciuc Ionescu advised Victoriabank and Banca Transilvania on matters of Romanian law.	N/A	Moldova

Date covered	Firms Involved	Deal/Litigation	Value	Country
17-Apr	CMS; Jones Day; Schoenherr	Jones Day advised Societe Generale on the sale of its majority stake in the share capital of Societe Generale Montenegro to OTP Bank Nyrt. Schoenherr advised Societe Generale on matters of Montenegrin law, and CMS advised OTP.	N/A	Montenegro
15-Apr	Baker Tilly Woroszylska Legal; Gide Loyrette Nouel; Linklaters	Gide advised Yareal International on the sale of buildings A and B in Warsaw's LIXA office project to Commerz Real AG. Commerz Real was advised by Baker Tilly in Poland and Linklaters in Luxembourg.	N/A	Poland
16-Apr	Greenberg Traurig	The Greenberg Traurig Warsaw office advised VD Invest, a subsidiary of Vantage Development, on the sale of Wroclaw's Delta 44 office-retail building to pan-European investor and asset manager M7.	N/A	Poland
18-Apr	Hogan Lovells	Hogan Lovells successfully represented the Malta Foundation in a dispute with Poland's Ministry of Culture and National Heritage in the Regional Court in Warsaw.	N/A	Poland
18-Apr	Baker McKenzie; Kochanski & Partners; White & Case	Kochanski & Partners advised IB6 Fundusz Inwestycyjny Zamkniety Aktywow Niepublicznych, an investment fund managed by the Griffin Real Estate group, on the sale of a Warsaw office building to an entity belonging to the Generali group. The purchaser was advised y White & Case and Baker McKenzie.	N/A	Poland
25-Apr	Mrowiec Fialek	Mrowiec Fialek and Partners advised private equity fund Value4Capital on the sale of the Konsalnet group's operations in the field of security of persons and assets, including manned guarding, GPS monitoring, and technical security systems, to Separgefi SAS.	N/A	Poland
26-Apr	CMS; Solivan Pontes; SSW Pragmatic Solutions	Solivan, the Polish member firm of Pontes The CEE Lawyers network, advised German project developer WKN on the sale of the 42 MW Barwice wind farm and the 132 MW Jasna wind farm to Germany's Wirtgen Invest Energy GmbH and Stadtwerke Munchen, respectively. Wirtgen Invest was represented by SSW Pragmatic Solutions and Stadtwerke Munchen was advised by CMS in Germany and Poland.	N/A	Poland
2-May	Greenberg Traurig	Greenberg Traurig advised Tritax EuroBox plc on the acquisition of a logistics facility in Strykow, Central Poland, from a company belonging to the Panattoni Europe group.	N/A	Poland
2-May	SSW Pragmatic Solutions	SSW Pragmatic Solutions advised PGS Software on the introduction of its I-series shares to trading on the regulated market of the Warsaw Stock Exchange.	N/A	Poland
3-May	Gessel	Gessel assisted Sunfish Partners with the legal and tax structuring of a new fund established under the PFR Starter program of the Polish Development Fund.	N/A	Poland
3-May	Greenberg Traurig	Greenberg Traurig advised Union Investment on the acquisition of a multiplex cinema in Lodz from the Cineworld Group.	N/A	Poland
8-May	Maruta Wachta; Whitestone Legal	Maruta Wachta advised Orange Poland on its acquisition of a 100% stake in BlueSoft from Tokajami and Wellchosen Investments. Tokajami and Wellchosen Investments received legal advice from Whitestone Legal.	PLN 200 million	Poland
8-May	Baker McKenzie; Dentons	Dentons advised Solaque Holding Ltd, a developer of renewable energy installations, on setting up a joint venture with Wind Power Invest A/S, advised by Baker McKenzie Warsaw.	N/A	Poland
9-May	Jara Drapala & Partners	Jara Drapala & Partners advised Mercedes-Benz Polska on matters related to the development of a logistics center in Olltarzew, near Warsaw.	N/A	Poland
9-May	Clifford Chance; Gide Loyrette Nouel	Clifford Chance advised Commerzbank on the April 5th issuance by mBank of CHF 125,000,000.00 unsecured bonds under the EMTN Program that will be listed on SIX Swiss Exchange Ltd. Gide advised mBank.	CHF 125 million	Poland
13-May	KKLW	KKLW is assisting the Sinfonia Varsovia Orchestra with the construction of the orchestra's new headquarters in Warsaw.	N/A	Poland
15-May	Deloitte Legal; Mrowiec Fialek	Mrowiec Fialek and Partners advised Value4Capital's V4C Poland Plus Fund on the acquisition of a minority stake in Dreamcommerce S.A. from the company's shareholders. Dreamcommerce S.A. was advised by Deloitte Legal.	N/A	Poland
15-May	Dentons; Weil, Gotshal & Manges	Dentons Warsaw advised Bank Pekao S.A., BNP Paribas Bank Polska S.A., and Banco de Sabadell S.A on revolving credit facilities worth a total of PLN 500 million granted to the CIECH S.A. chemical company and guaranteed by CIECH's five subsidiaries. Weil Gotshal & Manges advised CIECH on the deal.	PLN 500 million	Poland
23-Apr	Clifford Chance	Clifford Chance Badea advised First Bank, owned by US-based investment fund J.C. Flowers & Co., on its acquisition of Bank Leumi Romania.	N/A	Romania
8-May	Nestor Nestor Diculescu Kingston Petersen	Nestor Nestor Diculescu Kingston Petersen is supporting the Norofert Group, a Romanian producer of organic agricultural products, on its listing in the AeRO market of the Bucharest Stock Exchange.	N/A	Romania

Date covered	Firms Involved	Deal/Litigation	Value	Country
9-May	PeliFilip; Peli Partners; Popovici Nitu Stoica and Associates; Reff & Associates	Reff & Associates advised Nepi Rockcastle and a group of companies owned by Romanian real estate entrepreneur Ovidiu Sandor on the sale of an office building in Cluj-Napoca to Dedeman. Popovici Nitu Stoica and Associates advised the buyer. Additionally, a team that started at PeliFilip and moved to Peli Partners acted as strategic adviser to one of the sellers.	N/A	Romania
8-May	Bryan Cave Leighton Paisner; Harneys	Bryan Cave Leighton Paisner and Harneys advised HMS Technologies Limited, a major shareholder of HMS Hydraulic Machines & Systems Group, on the restructuring of core shareholder shareholding.	N/A	Russia
2-May	Bojovic Draskovic Popovic & Partners	Bojovic Draskovic Popovic & Partners advised Turkish car part manufacturer Feka Automotive on the acquisition of 40 thousand square meters of land in Serbia to construct a production plant.	EUR 11 million	Serbia
6-May	Bojanovic & Partners	Bojanovic & Partners helped Vodafone obtain a license to work in Serbia from the country's Agency for Electronic Communications and Postal Services.	N/A	Serbia
9-May	Zivkovic Samardzic	Zivkovic Samardzic advised South Central Ventures on its investment in LeanPay, a consumer financing startup that helps people pay for consumer goods on credit in installments.	N/A	Serbia
10-May	Dentons; Karanovic & Partners	Karanovic & Partners advised Japanese automotive company Calsonic Kansei on its acquisition of Magneti Marelli, a high-tech components manufacturer for the automotive industry, from Fiat Chrysler Automobiles. Dentons advised the seller.	EUR 5.8 billion	Serbia
15-May	BDK Advokati	BDK Advokati advised Dubai's P&O ports on its EUR 23 million acquisition of Port Luka Novi Sad in northern Serbia.	EUR 23 million	Serbia
18-Apr	White & Case	White & Case advised Deutsche Bank, HSBC France, Natixis, Societe Generale, and Vseobecna Uverova Banka as lead managers on the Slovak Republic's issuance of EUR 1 billion 0.750% notes due in 2030.	EUR 1 billion	Slovakia
3-May	Kinstellar; Skubla & Partneri	Kinstellar's Bratislava office advised Austria's European City Estates on its acquisition of the Business Centrum Tesla 2 office complex in eastern Slovakia from Penta Real Estate. Skubla & Partners advised Penta Real Estate on the sale.	N/A	Slovakia
14-May	CMS; Jones Day; Schoenherr	Jones Day and Schoenherr advised Societe Generale on its sale of subsidiaries SKB Banka d.d. Ljubljana, SKB Leasing d.o.o., and SKB Leasing Select d.o.o. to OTP Bank Group. CMS advised OTP Bank Group on the deal.	N/A	Slovenia
17-Apr	Gide Loyrette Nouel; Yilmaz Law Office	Gide Loyrette Nouel advised Kyu Investment UK Limited, a strategic operating unit of Hakuhodo DY Holdings, on the acquisition of a controlling stake in ATOLYE Yaratici Proje Gelistirme Egitim Danismanlik Tasarim Hizmetleri ve Ticaret A.S. The Yilmaz Law Office advised ATOLYE.	N/A	Turkey
25-Apr	Dentons; Paskoy	Paskoy advised Ziraat Katilim on its entry into murabaha syndicated loan agreement with Bank ABC, Dubai Islamic Bank PJSC, Emirates NBD Capital Limited, Standard Chartered Bank, and Warba Bank. Dentons advised the banks on the loan agreement.	EUR 250 million	Turkey
30-Apr	Turunc	Turunc advised Vinci Venture Capital on its investment into Octovan.	N/A	Turkey
25-Apr	Clifford Chance; Integrites; K&L Gates; Redcliffe Partners	K&L Gates and Integrites advised NBT on the financing documents for Segment 2 of Ukraine's Syvash Wind Power Project, with commitments of additional senior debt from the Black Sea Trade and Development Bank (EUR 30 million), Proparco (approximately EUR 42 million), Finnfund and IFU (EUR 15 million each), and the Nordic Environment Finance Corporation (EUR 5 million). The lenders were advised on Ukrainian law by Redcliffe Partners and on English law by Clifford Chance.	EUR 107.6 million	Ukraine
26-Apr	Eterna Law	Eterna Law persuaded the Supreme Court of Ukraine to recognize and enforce a disclosure order issued by the High Court of Justice of England and Wales on behalf of client Soufflet Negoce SA.	N/A	Ukraine
30-Apr	Ilyashev & Partners	Ilyashev & Partners successfully represented Lifelong Meditech Private Limited, an Indian manufacturer of sterile hypodermic single-use syringes, in an anti-dumping investigation on imports of syringes into Ukraine from the Republic of India, the Republic of Turkey, and the People's Republic of China.	N/A	Ukraine
30-Apr	Integrites	Integrites is providing pro bono legal advice to the Lifelover charitable foundation, which organizes leisure and recreational activities for senior citizens.	N/A	Ukraine
6-May	Baker McKenzie; DLA Piper	DLA Piper advised Perion Network on its acquisition of Septa Communications LLC (also known as Captain Growth) – a Ukrainian start-up which applies AI-driven technologies to marketing. Baker McKenzie advised the sellers: Co-Founders Dmytro Plieshakov and Dmytro Bilash.	EUR 3.75 million	Ukraine

Full information available at: www.ceelegalmatters.com

Period Covered: April 15, 2019 - May 15, 2019

ON THE MOVE: NEW HOMES AND FRIENDS

K&L Gates Withdraws from CEE, DWF Group Takes Over Warsaw Team

K&L Gates will close its Warsaw office, the firm's last in CEE, and the entire Warsaw team will join London's DWF Group, which acquired the former K&L Gates Jamka sp.k for an estimated net asset value of GBP 3 million.

K&L Gates issued a statement declaring that: "After a careful and thorough assessment of our clients' needs against the backdrop of economic and related trends, current and future opportunities and factors in the market, and the great strength of the firm's other offerings in Europe in particular and elsewhere, K&L Gates previously determined that it was in the best interest of the firm to separate from the practice based in Warsaw. The Warsaw-based lawyers are now in the process of joining with another firm and we are working with them on an amicable termination of our remaining relationship. We wish them the best in their new affiliation."

According to an article on the DWF Group website, "the acquisition will result in the opening of a new office for DWF in Poland, its first since its IPO, with 11 partners, 45 lawyers, and a further 31 support staff joining DWF. The deal is expected to be completed later this month." The firm reported that "K&L Gates Jamka is anticipated to generate revenue of approximately GBP 7 million in the financial year ending 30 April 2020."

DWF Managing Partner and CEO Andrew Leaitherland said that: "We look forward to welcoming [Warsaw Managing Partner] Michal Pawlowski and his colleagues to DWF. This move will strengthen DWF's capabilities in our global sectors of financial services and real estate, among others, and provides further opportunities in technology and energy where our businesses have strong alignment. It is the next step towards achieving our strategy of delivering Complex, Managed and Connected Services on a truly global scale. It also fulfills on one of the international expansion opportunities we highlighted in our Prospectus. Poland has a strong and dynamic economy and is an important gateway to Central, Eastern and South-Eastern Europe as a whole. Having a presence there delivers on our international strategy to be where our clients

need us to be."

For his part, Pawlowski commented that: "Becoming part of DWF provides the opportunity to continue our growth and development plans within both the legal services and connected services markets of Poland. Our values and culture, as well as our strongly aligned sector focus provide a platform for our future success." Pawlowski told CEE Legal Matters that the integration into DWF is expected to be complete by the end of May, and "until completion no changes are implemented and we continue operating as a law firm in cooperative arrangement with K&L Gates LLP. Post-integration we will become part of DWF, but the local legal entity will remain the same, which, together with other factors will ensure seamless continuation of pending projects, irrespective of their nature."

The Warsaw office will be DWF's 7th continental European office, alongside Brussels, Paris, Milan, and three in Germany. The firm reports that, "on completion, DWF will have more than 3,200 people across 28 key commercial centers in the UK and internationally, across four continents."

In withdrawing from Poland, K&L Gates concludes its on-the-ground presence in Central and Eastern Europe. The firm closed its Moscow office at the end of 2015.

By David Stuckey

Grata International Opens Belarus Office

Grata International has announced the termination of its co-operation agreement with Arzinger & Co. and the opening of a new office in Belarus, led by former Arzinger & Partners lawyer Dmitry Viltovsky and colleague Maxim Lashkevich.

A press release issued by the new Grata International BY declares the move to be "a vital step in implementing Grata International's strategy of providing top quality client service through a unified network applying the highest service delivery standards and best practices."

"Our team in Minsk has set ... ambitious plans and as an integrated member of Grata International, they will receive full support from all our offices," declared Grata International Senior Partner Aidar Sarymsakov. "By joining Grata International Dmitriy Viltovskiy and Maxim Lashkevich will ensure a seamless transition for all ongoing projects in Belarus in which Grata International is involved. As we move to the next level in providing legal services to our clients in Belarus, the previous cooperation with Arzinger & Partners has now come to an end. We thank them for their assistance over the years and wish them well for the future."

Grata's relationship with Arzinger & Partners began in February 2015.

"To achieve a new stage in our development we've decided to join efforts with our strategic partner Grata International," declared Viltovskiy and Lashkevich in a joint statement. "The key features to unity with our partners are shared ethics & values and a desire to provide outstanding service to the highest standards within the international network. The establishment of an integrated office in Belarus will open for us new prospects for realization of our full potential, while our clients will benefit from access to a large team of professional lawyers worldwide."

By David Stuckey

Schoenherr Establishes Consumer Protection Group

Schoenherr has established a dedicated firm-wide Consumer Protection group, led by Partner Wolfgang Tichy.

The group consists of Austrian and CEE experts from relevant practice groups such as regulatory, dispute resolution, corporate/M&A, EU, and competition.

According to Schoenherr, the group will provide advice on "consumer protection-related matters to ensure compliance with the applicable consumer protection laws and regulations, providing instant crisis management services to clients in all industries, and litigating on their behalf."

"Consumer protection is complicated and affects all legal relationships between entrepreneurs and consumers," comment-

ed Tichy. "The EU commission has prioritized the strengthening of consumer rights, which makes it a growing concern for all involved. We advise our clients in all compliance matters in order for them to pre-empt and avoid cost-intensive court proceedings or reputational damage."

Tichy has been with Schoenherr since 2005. He studied law at the University of Vienna and was admitted to the bar in 2010.

By Mayya Kelova

Maravela | Asociatii Becomes MPR Partners | Maravela, Popescu & Roman

Romania's Maravela | Asociatii changed its name to MPR Partners | Maravela, Popescu & Roman.

According to the firm, "the new brand links the names of the founding partners Gelu Maravela, Alina Popescu, and Ioan Roman (MPR) to the initials of all firm's partners, thus including Dana Radulescu and Alexandra Rimbu, who were recently promoted to equity partner positions."

The firm also revealed a new logo, consisting of a white letter M on an orange background, which – according to the firm – "symboliz[es] the everlasting memory of Founding Partner Marius Patrascanu, sadly departed in 2016." According to the firm, "The new brand is thus purported to flag out the important contribution of the entire team to the firm's establishment and development to date. Moreover, the rebranding process is meant to reflect the firm's current market positioning and its next development stage on national and international levels."

"By aligning the firm's branding elements to our leadership mechanics, current firm status and international development plans, we wish to provide an additional boost to our evolution within the next five years, that we hope will be as generous as the first five," explained Partner Alina Popescu. "We take the opportunity to reiterate our gratitude towards our clients, team, suppliers and friends for their continued trust and support given from our establishment to date. With your help, we wish to continue making the (legal and business) world a better place."

"Ever since the beginning I have been fortunate enough to work alongside partners of great value," added Founding Partner Gelu Maravela, "who have had the same contribution as mine to the establishment, management and development of the successful business law firm that MPR Partners | Maravela, Popescu & Roman is today. Our new name is meant to emphasize the importance of the team and to help the firm in its international endeavors."

By David Stuckey

Leadell Pilv Closes Tartu Office

Leadell Pilv has closed its Tartu office and is now operating exclusively out of its main office in Tallinn.

In a statement that appeared on the firm website, Leadell Pilv insisted that it "is still a full-service law firm," and reported that, "although the firm has its permanent place of business in Tallinn, legal services are provided all over Estonia and with [the firm's] Latvian and Lithuanian counterparts in other countries as well."

According to that statement, "according to the decision of the partners of the office, the activities of the Tartu office were terminated as a result of long-term and thorough analysis and developments and changes in the legal services market. Above all, questions arose regarding practical considerations and the need for continuing the department, as well as of economic expediency."

"Over the past 10-15 years, significant developments in society and in the economic environment, especially in the field of information technology, have also dramatically changed people's past behavior," explained Managing Partner Aivar Pilv. "For a long time now, it has been clearly noticeable that the client's choice of lawyer will no longer be substantially affected by the location of the service provider .... This is especially true with regard to the size and distances of Estonia and people's mobility."

Instead, Pilv insists, "the choice of law areas offered by the law firm and related skills and experience, as well as specialization, are the decisive factors in making choices for clients by a law firm or a particular lawyer. Today, there are a number of convenient technical options for dealing with a lawyer,

discussing the necessary actions and positions, which do not require a lawyer-client meeting every time during the work process. The necessary questions and solutions are handled promptly between the lawyer and the client, regardless of the distance and the location of someone. Therefore, the existence of a law office department in Estonia is no longer as important as some time ago or in 1996 when the Tartu office in question was opened."

By David Stuckey

CEE Attorneys Adds Bulgarian Arm in Sazdov & Petrov

Bulgaria's Sazdov & Petrov law firm has become a member of the CEE Attorneys network of law firms.

Sazdov & Petrov was established in Sofia in 2005 by Partners Alexander Sazdov and Blagovest Petrov. The firm focuses on advisory work in the fields of corporate law, mergers and acquisitions, real estate, intellectual property rights, and tax law.

By Andrija Djonovic

Arcliffe Opens Vilnius Office

On April 5, 2019 Arcliffe announced the take-over of Vilnius's as Kenstavicius ir Partneriai law firm, with the new Arcliffe office headed by Partner and Coordinator Dainius Kenstavicius.

Arcliffe Regional Partner Tomas Krutak commented, "the opening of our Baltics practice together with Dainius will [provide] our Central and Eastern European clients [with] better coverage in the Baltics, with Arcliffe one of the first firms now facilitating the access of business in and out of the entire CEE region."

Dainius Kenstavicius said, "our Lithuanian practice matches perfectly the culture and the expertise that Arcliffe developed in the region. Henceforth, we are happy to join Arcliffe and participate in the endeavors to set up a premiere Baltics practice."

Arcliffe covers CEE through offices located in Poland, Czech Republic, Romania, Cyprus, Serbia, Bulgaria, Slovakia, Hungary, and Lithuania, as well as other countries in Emerging Europe through strategic partnerships.

By Mayya Kelova

Kocian Solc Balastik Establishes Accounting Subsidiary

Kocian Solc Balastik established KSB Accounting, a new subsidiary offering services in the fields of accounting and auditing to businesses operating on the Czech market.

KSBA's services include, among other things, the processing and keeping of accounts; drafting accounting documents; checking the formal accuracy of accounting documents; recording tangible and intangible assets; processing monthly, quarterly, and annual financial statements; and drafting management reports.

By Andrija Djonovic

Erratum: In the May 2019 issue we mistakenly identified Andrzej Posniak as having made partner at CMS. In fact, Posniak, who has been a part of CMS's partnership for many years, was appointed Managing Partner of the firm's Warsaw office. We apologize for the error.

PARTNER APPOINTMENTS

Date Covered	Name	Practice(s)	Firm	Country
1-May	Andrea Potz	Labor	CMS	Austria
2-May	Roland Heinrich	Labor	SCWP Schindhelm	Austria
2-May	Alice Meissner	Corporate/M&A	SCWP Schindhelm	Austria
1-May	Kostadin Sirleshtov	Energy/Natural Resources	CMS	Bulgaria
1-May	Jelena Nushol	Banking/Finance	CMS	Croatia
3-May	Michal Palinkas	Corporate/M&A	Randa Havel Legal	Czech Republic
8-May	Lukas Havel	Life Sciences	BNT	Czech Republic
8-May	Peter Maysenholder	Life Sciences	BNT	Czech Republic
13-May	Tatjana Shishkovska	Corporate/M&A	Polenak	Macedonia
13-May	Aleksandar Dimic	Real Estate; Litigation	Polenak	Macedonia
13-May	Metodija Velkov	Competition	Polenak	Macedonia
1-May	Marek Oleksyn	TMT/IP	CMS	Poland
1-May	Lukasz Dynysiuk	Corporate/M&A; Tax	CMS	Poland
7-May	Anna Shashina	TMT/IP; Corporate/M&A	Bird & Bird	Russia
14-May	Ksenia Litvinova	Tax	Pepeliaev Group	Russia
1-May	Petra Corba Stark	Corporate/M&A	CMS	Slovakia
1-May	Michal Hutan	Real Estate	CMS	Slovakia
17-Apr	Elena Volyanskaya	Insolvency/Restructuring	LCF Law Group	Ukraine
1-May	Tetyana Dovgan	Corporate/M&A	CMS	Ukraine

PARTNER MOVES

Date Covered	Name	Practice(s)	Firm	Moving From	Country
2-May	Dmitry Viltovsky	Corporate/M&A	Arzinger & Partners	Grata International	Belarus
2-May	Maxim Lashkevich	Real Estate/ Construction	Arzinger & Partners	Grata International	Belarus
2-May	Michal Pawlowski	Corporate/M&A	DWF Group	K&L Gates	Poland
2-May	Piotr Kunicki	Energy; PPP/ Infrastructure	DWF Group	K&L Gates	Poland
2-May	Rafal Wozniak	Capital Markets	DWF Group	K&L Gates	Poland
2-May	Maciej Jamka	Dispute Resolution	DWF Group	K&L Gates	Poland
2-May	Izabela Szczygielska	Corporate/M&A	DWF Group	K&L Gates	Poland
2-May	Oskar Tulodziecki	TMT/IP	DWF Group	K&L Gates	Poland
2-May	Oskar Waluskiewicz	Energy	DWF Group	K&L Gates	Poland
8-May	Michal Matera	Real Estate; Corporate/ M&A	Allen & Overy	White & Case	Poland
8-May	Adrian Ster	Competition	D&B David si Baias	Wolf Theiss	Romania
25-Apr	Vojtech Palinkas	Corporate/M&A; Real Estate	MCL Law Firm	Allen & Overy	Slovakia
6-May	Ilay Yilmaz	Corporate/M&A; TMT/IP	Esin Attorney Partnership	ELIG Gurkaynak	Turkey
15-Apr	Illya Tkachuk	Corporate/M&A	Integrites	Jeantet	Ukraine
15-Apr	Igor Krasovskiy	Banking/Finance	Integrites	Jeantet	Ukraine

THE BUZZ

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

SERBIA: MAY 9

Vladimir Bojanovic, Managing Partner of Bojanovic & Partners in Belgrade, rejects the idea that legislative or regulatory updates are of critical importance in his country. "In Serbia it's not legislative reform that would fuel the development on its own," he says. "It's closely connected with new investments that require modern legislation – so in a way recent investments (which are by and large the biggest in the recent history) are shaping and pushing forward modern legislation – the relation of these two is symbiotic."

Bojanovic reports that four sectors – Energy, Technology, Distressed Assets, and Corporate/M&A – are particularly active in Serbia at the moment. And "I'd say that the energy sector is currently dominating in Serbia – by far," he says. "That's my personal impression, at least. The biggest projects are in Energy." He concedes, laughing, that he may be slightly biased, as his firm is working, along with JPM, on Gazprom's TurkStream project, which he describes as "the biggest energy project of all time in Serbia – worth billions and billions of euros." Serbia started the construction of its section of the TurkStream pipeline for transit of Russian natural gas to Europe this spring. Gastrans, the company in charge of the project, is owned by Switzerland-based South Stream Serbia, in which Russia's Gazprom holds a 51 percent stake, with Srbijagas holding the remainder. The planned 400-km stretch through Serbia will link the Serbian natural gas transmission system with those of Bulgaria and Hungary, and the project on Serbian territory is expected to be completed by Dec. 15 of this year.

Bojanovic's pride in his firm's mandate radiates. "The project is extremely exotic," he says. "A project of this kind has never happened before. It has high strategic importance, and it will guarantee a steady gas supply for many years ahead." He notes that that "we created legal history with this project, which started last year," describing it as "like a thunderstorm in the Serbian market." He explains that, "the market was so silent – it was sleepy, and then this project came, and it shook the market up a lot. A lot contractors, a lot of subcontractors, and a lot of subcontractors of subcontractors." He repeats that "we're very privileged to work on it."

As for the Tech sector, Bojanovic says that Serbia has "seen several big entrances in the market in recent years, including Vodafone," and he notes that his firm recently helped the company obtain a license to operate in the country from Serbia's Republic Agency for Electronic Communications and Postal Services.

"The third segment would be distressed assets," says Bojanovic, "because things are not going so well in Serbia." He reports that "we are at the end of the cycle for the sale of the distressed assets in Serbia, and the last one was the 2018 sale of NLB's NPL portfolio, which is going to be worth several millions."

Finally, he says, the fourth active sector is Corporate/M&A, as he reports that "some of the biggest funds in Europe have entered the market and are expected to be exiting soon."

By David Stuckey

ROMANIA: MAY 16

While Romania awaits the EU parliamentary elections scheduled for May 2019 and the country's presidential elections scheduled for the end of this year, Stratulat Albulescu's Managing Partner Silviu Stratulat is not holding out much hope for significant change in the country.

"I don't believe in black and white or in a party being a lot better than another one, and in a huge change overnight," says Stratulat. "Each political party running in the coming elections has already had power, and neither has done a lot with it." Instead, he says, he believes that Romania's problems are related to the public mindset more than the politicians, who merely "represent public opinion."

"Luckily we are not under a dictatorship, with imposed ideas," he smiles.

But Stratulat does not let the government completely off the hook, either, and he points out that it has not taken any steps to prevent or mitigate the effects of what he describes as "the looming global economic crisis" on the country. Ultimately, he believes, the development and growth of the Romanian economy could have been handled better, and he says the full potential of the market has not been reached and certain regulations, such as tax code, have not been stabilized. "We should have done a lot more to incentivize investments," he sighs, describing Romania as a market with immense potential for international investors.

On the other hand, Stratulat concedes that the market is not stagnant, and that "nowadays the country is becoming more of an investment destination than before." He reports that the positive development came partly from a decrease of the flat tax from 15 to 10 percent a few years ago, which, he says, "helped make Romania a more attractive market." Additionally, he describes the Romanian market as "full of human and natural resources that allow a certain level of investments." Altogether Stratulat says both the market and the economy are more mature than they were in the recent past.

Among the most significant changes to the country's legislation, Stratulat says, are amendments to the Romanian Fiscal Code enacted earlier this year providing individuals with the ability to purchase more than one housing unit with a reduced VAT. The law will further "incentivize growth in the real estate market," he reports.

When it comes to the legal market, Stratulat says that the biggest concern is the level of fees. According to him, fees have been decreasing steadily since 2008, although salaries have been increasing – which he describes as "a weird balance, mainly caused by segmentation of the market: spin-offs, emerging small firms, and new trends in client communication and management skills." According to him, this pressure on fees limits firms from investing in important technology. "At the same time," he says, "there is a lot of pressure on lawyers to deliver more, as the market is built on clients' terms."

By Mayya Kelova

UKRAINE: MAY 17

"You know that there are quite a lot of things happening in Ukraine now," says Vadim Medvedev, Partner at Avellum in Kyiv, who begins by talking about the recent election in April of Volodymyr Zelensky to the Ukrainian Presidency. He explains that former President Petro Poroshenko was considered to be a "business-as-usual candidate," but the business community is uncertain about Zelensky's plans, "as there are a lot of gray areas and open issues with respect to his policies and programs – it's simply unclear."

"Another thing which is currently on the business agenda," Medvedev says, "is the reform of the Ukrainian Fiscal Service." Although Ukraine's Tax and Customs departments were brought under a single roof in 2012, that experiment has apparently not been successful, and the "tax focus has often overwhelmed the customs concerns," so the two are being once again split into separate state authorities. Medvedev says that no definitive timetable has been approved yet,

"but what we have seen in recent months is an open competition for the positions of head of both new services, and that process has been delayed by multiple challenges in court by various interested parties, some claiming an entitlement to one position or the other, and others accusing the process of lacking transparency." Medvedev smiles, though, calling it "part of the political process." He also reports that former Deputy Minister of Finance Serhii Verlanov, a tax lawyer with significance experience in the Big 4 and various law firms, has just been announced as new head of the country's Tax service. The likely head of the Customs service is Maxim Nefyodov, who was in charge of designing the country's widely-praised public procurement system.

Otherwise, Medvedev reports, on April 15, the new Bankruptcy Code was signed into law. He says of the Code, which will come into effect on October 21,that "one of the most interesting elements is the ability of private individuals to claim insolvency, which is expected to significantly clean up the accounts of banks that have struggled to handle non-performing loans and mortgages for the past ten years." He describes this as a positive step. "It's not exactly a cash-in for the banks, but it will make their accounts cleaner and easier, and help many individuals to achieve the u-shape to recover from serious financial difficulties."

He also refers to "two or three major tax changes that are being discussed." The first is the implementation of the OECD's G20 BEPS plan. The Ukrainian government, Medvedev reports, has already developed a BEPS-implementation bill, but it has not yet been formally submitted to the Parliament. He reports that the business community "is eager to have it submitted and voted on, because it will obviously affect their approach to various transactions."

The second issue, he says, "is the widely-discussed implementation of Distributed Capital Tax, which will replace the Corporate Income Tax, so you don't pay corporate tax until you make a profit distribution." According to him, it follows similar models in Estonia, Latvia, and Georgia, "and it's been debated heavily for the past three years in Ukraine. It was approved by the Parliamentary Tax Committee not long ago, and it may be pushed for, but I doubt the Parliament will vote on such controversial things before the Parliamentary election."

The third thing, he says, "is a tax amnesty for any capital which was not properly taxed before, involving scrutiny for potential hidden capital and unpaid tax."

Medvedev says that things are going well in a general sense, and he reports that "there is no real frustration on the legal business side." Still, last month's Presidential election and the upcoming parliamentary elections in October are putting a temporary chill on new projects. "The biggest problem with election years is that certain projects are put on hold," he explains. "So we are looking forward to the political situation resolving itself, and the business situation returning to business as usual." As a result of the elections, he says, "the concern is that the uncertainty will remain until the end of this year, and it may slow down business, so we are not expecting this to be an overactive year."

By David Stuckey

AUSTRIA: MAY 27

Dorda Partner Martin Brodey starts his provision of The Buzz in Austria by describing the market as very busy and reporting that "two things are blossoming in particular – transactions and litigation – which we see from practice as very strong." He notes that "Austria is mainly oriented towards the export of highly specialized industrial products and the provision of high-skill services," and that "this keeps business busy - transactions are stable and flourishing."

When asked which business sectors are most active, Brodey says that "the spotlight is on digitalization - it's on everyone's mind." He reports that "special industry groups have been formed within Dorda to focus on M&A in the digital sector" and says that other offices can be expected to do the same. He specifically underlines blockchain technology as a "new and interesting point – as it gets more of a hold on the markets, lawyers will need to figure out exactly what kind of an impact it may have on businesses and the services they offer." He believes that "lawyers will have to follow this closely to be able to provide clients with the necessary legal advice."

However, a political crisis in the wake of the publication of a secret video depicting what he describes as the "untenable statements" of two top politicians of the Freedom Party has taken hold of the Austrian system, and Brodey reports that the scandal is "felt in all aspects of business." According to him, "the current coalition has been terminated and the Freedom Party ministers are leaving office with an interim government in place," with "all complex legislative processes put on hold until the elections are held in September or October." He

believes that "some legislative projects will continue under the interim government with experts but more significant topics, such as an administrative reform, will effectively be put on hold."

"Regardless of the crisis, private business is not impacted and transactions are continuing at a steady pace, whatever the political constellation," Brodey reports, but he concedes that "confidence in the Austrian political system will have to be restored nationally and internationally, which will take time."

Finally, Brodey says that the legal market itself is "more or less stable – there are not a lot of shifting between the firms." He adds that there are no "moves of large lawyer teams" and that although "every now and then, a new firm gets set up," it is of no large impact on the market overall.

By Andrija Djonovic

BULGARIA: MAY 28

Schoenherr Sofia Managing Partner Alexandra Doytchinova starts by talking about what's happening – or rather, what's not happening – in the Bulgarian legal market. "Nothing has moved," she says, "which is not surprising, because Bulgaria is very conservative in this respect. Firms splitting and merging happens once in five years, if at all. So there's nothing happening there on this front."

In terms of business, however, things seem to be moving along so far in 2019. She reports that her firm worked on several major deals so far this year, including the Societe Generale Bulgaria sale that closed in January and the acquisitions by Ireland's Smurfit Kappa of BalkanPack, a corrugated board and packaging manufacturer, and of Vitavel, another Bulgarian manufacturer of corrugated board and corrugated board packaging. She describes those as "huge transactions for us." Still, she notes that while "we are satisfied with the first half of the year, we're completing matters which actually started last year. We're fairly busy – we can't complain about utilization – but it's more finishing existing projects and work on commodity deals than starting new major ones." She says, "there will be follow-up work on the deals we've worked on, so we're confident we'll be busy enough, but in terms of new really big transactions, the market is not too optimistic, at least from the current perspective."

Of course, there are still *some* major projects happening. "The concession of the Bulgaria airport, of course, is huge," Doytchinova says. "That's the biggest infrastructure project currently on the market." She cites reports that there are five bidders in the running, with two in particular considered to be ahead. The result of the process is expected for June, she says, noting that "the decisive criteria will be anyway on the commercial side, including envisaged investments – not legal."

Doytchinova reports that "another thing that's a bit of a painful process for various reasons, including political, is the sale of CEZ Bulgaria's assets." Last year's SPA between CEZ and Bulgaria-based Inercom for reportedly approximately EUR 320 million was blocked by Bulgaria's Commission for Protection of Competition, which concluded that the deal could lead to the establishment of a dominant position. Although Inercom's appeal is still under consideration, CEZ has reportedly now terminated the SPA (citing "unlawful obstructions" by Bulgaria regarding the deal) and is now conducting exclusive talks with another investor, EuroHold Bulgaria– a Bulgarian listed investment group. There's also been some interest from India Power.

Doytchinova also refers to the continued reports that the Bulgarian Telecommunications Company (operating as Vivacom) will be for sale still this year and cites media coverage that the shareholders have hired investment bank Lazard to structure the sales process. According to her, "that's basically the next biggest thing for the market."

Finally, the Schoenherr Sofia Managing Partner turns to the subject of new Bulgarian regulations related to EU's anti-money laundering directives that require Bulgarian companies and formations to register (and so make public) their ultimate beneficial owner(s) with the Bulgarian commercial register. The new regulations are creating a huge amount of paperwork, she says, "because Bulgaria is being 'the best student in class,' and is requiring loads and loads of information obtained from clients, and hundreds of pages to be translated and filed with the register." According to Doytchinova, "especially with larger clients it's a bit of a saga, as you have to list not only the ultimate owner(s), but also all the interim entities holding indirect control and their complete data, including all their representatives set out by name, their respective citizenship, addresses, and so on." As a result, she says, "this is going to be the predominant work of corporate departments in Bulgarian law firms for the next two weeks, because the deadline is May 31."

By David Stuckey

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CONFERENCE COUNTDOWN

AN INTERVIEW WITH SLAUGHTER AND MAY ABOUT THE 2020 DEALER'S CHOICE LAW FIRM SUMMIT IN LONDON

Planning has already begun for next spring's Dealer's Choice Law Firm Summit – the premier conference for CEE-focused private practitioners – which, for the first time ever, will take place in London, along with the CEE Deal of the Year Awards Banquet.

The Dealer's Choice conference will be co-hosted by Slaughter and May, which has been involved for many years with CEE Legal Matters' annual regional GC Summit conference for senior in-house counsel. We reached out to Slaughter and May Partner Jonathan Marks and Business Development Manager Justina Omotayo to discuss the event.

CEELM: Why did Slaughter and May decide to sponsor the Dealer's Choice event next year?

Jonathan: We have enjoyed working with CEE Legal Matters and supporting the annual CEE GC Summit, and we found the Dealer's Choice really useful last year in Prague, providing us with the chance to catch up with a number of law firms and meet new ones. I was on a panel at that event and enjoyed the discussions with the other panellists on how to manage referral work. When CEE Legal Matters suggested that they wanted to do the Dealer's Choice program here in London next year, we thought it would be quite a good way to provide support for the CEE Legal team and continue to raise our profile with law firms in the region.

Justina Omotayo

As you know, the way that we work in the CEE region is different from some other major international firms. They have offices in the region, while we work with the leading independent firms in the area, and so for us, an event that is focused on law firms as well as clients is a very good way of keeping up with them. Something like this is a valuable chance to work with people in terms of panel participation, attending the sessions, and of course socializing with people as well.

Justina: An event like this is also in alignment with our international strategy. We are committed to and invested in this region, working with international

clients operating in CEE in conjunction with our colleagues in CEE law firms. We have been working with CEE Legal Matters for a number of years now; this shows a coordinated relationship and is not something new for us. The Dealer's Choice event hosted in London is a great opportunity for us and provides a sense of how our relationship with CEE Legal Matters has developed over the years.

CEELM: At last year's Dealer's Choice event in Prague did you make new contacts, or was it mainly maintaining existing relationships?

Jonathan: Yes, we added to our contacts. I find that it is all helpful. Last year the event was followed immediately by the GC Summit, so I could meet in-house as well as external lawyers. Even things like CEE Legal Matters' Birthday party in Budapest last Autumn, which I came

Jonathan Marks

to, provided us with the opportunity to meet people informally – we have had follow-up meetings with a number of those firms as well as visiting various other firms during my stay. So we do make contacts and sometimes get pitch opportunities too.

It is very time efficient. To have everyone gathered in one place is a really good way to work around the room. If you are going to see individual firms or they are coming to us, you don't get the same momentum. Compared to if you are actually there for a day or so and can connect with a range of people.

CEELM: Is it more valuable for your firm to have the event in London than somewhere else?

Justina: It provides our audience the opportunity to engage with the wider Slaughter and May team outside of the CEE region. That would be one of the key benefits of hosting it in London. Although we have key partners involved in CEE, it allows partners from the wider firm that wouldn't necessarily make a trip to the region to get involved.

Jonathan: It is good for us but also for the other delegates who can market to UK-based clients and firms whilst they are here.

CEELM: As you are the official host of the Dealer's Choice event, do you have any initial thoughts on topics or content?

Justina: No specifics have been set yet on which topics in particular, but possibly on the importance of networking, and best practice when working with relationship firms.

Jonathan: It is still early days, but I think having it in London also gives it a lead into the UK legal technology scene. We have a new initiative called Collaborate, which involves us working with a number of legal technology suppliers. We could have something on during the day with a legal technology aspect.

Justina: An example would be Luminance – an AI company that we are invested in. They could potentially be involved in one of the discussions alongside our innovation team.

Jonathan: We may also consider a panel with GCs or a session on what GCs look for in their lawyers or something similar. I think what has been good about the various CEELM legal events is getting in front directly with clients. It would also be a good opportunity to have a dialogue on best practice on cross-border M&A and financings.

CEELM: What do you think is the primary value to firms and lawyers coming from the continent?

Jonathan: If I was a firm from the region coming to London I would want to make the most of it. The program itself will be exciting, of course, whether it's legal technology or insight on how to get referral work or best practice on cross-border deals, etc. There is also an opportunity, as I mentioned, while they are here, to meet clients who might be based in London. If they are lucky, the weather may be good, which is always a bonus, especially if they are staying for the weekend.

CEELM: Thank you so much. We're excited to see you, and everybody else, next spring!

Maria Bredican

THE CORNER OFFICE: PERFORMANCE REVIEWS

In The Corner Office we ask Managing Partners across CEE about their unique roles and responsibilities. The question this time around:

How do you do performance reviews, and how important are they to the planning and management of the firm?

Performance reviews are an essential part of the planning and management of any law firm. CMS places a special focus on the appraisal process, which has evolved over the years. Our unique partner model allows for a flexible and modern approach to performance reviews for partners. It allows the firm to consider and reward the individual partner's contribution. Recently CMS updated its model of rewarding the contribution of our associates and we are very pleased with the initial results of the new model. It is based on the understanding that there is a minimal chargeable work that each associate needs to produce in order to be eligible for promotion or a bonus, but once this threshold is achieved, there are many additional criteria that are considered and taken into consideration. Therefore, for both partners and associates, the combination of both business and personal contribution is taken into consideration. As part of the process of performance reviews, it is key that there is not a single reviewer – or indeed, not a single office – reviewing and providing a view on the contribution. At CMS we make sure that an individual is reviewed by his/her practice group heads and managers at an office level, a CEE level, and a global level, thus ensuring that all feedback is taken into consideration. 360-degree and client feedback are also essential parts of our promotion and performance review system.

Kostadin Sirleshtov, Managing Partner, CMS Sofia

Every morning, the partners in our Prague office are provided with an overview of the performance of their respective team for the day before compiled automatically by our billing system. The daily overview helps the partners to efficiently follow the performance of their teams, and allows us to react very quickly to any underperformance. This data is furthermore checked on a monthly basis by the management. We have certain targets and benchmarks, which depend on the

position of the lawyer. If these benchmarks are not met, there is no direct (negative) consequence, but we try to find out with the relevant partner and team member what the reason for the underperformance is and if a correction is possible. Therefore, to answer the question in short: Yes, performance reviews are important.

Erwin Hanslik, Partner, Taylor Wessing Czech Republic

Continuous feedback and performance reviews are important components of our everyday life, also at Wolf Theiss. If we do it well it will inspire our team members and stimulate them for further improvement, thus supporting the achievement of targets, fostering personal growth, and contributing to higher firm-wide performance.

At Wolf Theiss, we always start the year with a 360-degree feedback process that gives the opportunity for everyone at WT to provide anonymous constructive, respectful, and fair feedback to all lawyers and team leaders. Everyone also assesses their own performance, reviews their own achievements for the past year, and sets targets for the year ahead. These are used as a basis for personal appraisal meetings.

A lot of time is invested in the annual evaluation review and therefore it is important to take enough time to communicate the feedback results. The real value of this process is in the communication. It is not a traditional top-down evaluation but rather a collaborative exercise providing a reflection of the previous year's performance based on feedback from multiple sources that contributes to personal development.

Through the comparison of different results from the "self-assessment" and "the assessment of others," an interpretation of the results can be made and actions of self-development can be established. To achieve this, putting the individual targets together helps to build personal strengths and allow for work on weaknesses. As a consequence, this supports and influences business objectives and is critical for establishing new expectations.

A personal note at the end: conducting the series of meetings is sometimes demanding but there is nothing more energizing than these discussions with motivated colleagues.

Zoltan Faludi, Managing Partner, Wolf Theiss Hungary

Appropriately assessing [our lawyers'] daily endeavors may sometimes be likened to mastering the (im)possible, yet like any good captain the Managing Partner requires swift and accurate intel to steer the ship and weather any eventual storms. Being aware that certain aspects of day-to-day work may be subject to economic-criteria-based scrutiny, while some may not, we tend to spread the review net as widely as possible, taking thus into account both the aforementioned performance aspects.

Keeping the expected return of particular projects foremost in mind, individual performances are primarily weighed by billable hours returns, based upon various criteria, which subsequently provides a platform for firm-level assessments. Considering the nature of certain work, non-billable hours are also included in such assessments, allowing for an exhaustive and fair performance review. Realizing that impressions may not always boil down to sheer numbers and reports, we tend to conduct regular interviews where the latter are discussed with individual colleagues.

Generally, such exercises are repeated quarterly and annually

at firm level, including both individual as well as general performance reviews, allowing therefore for real-time mapping of the firm's heartbeat. Throughout the years, such information, complemented by a good grasp of the local markets, has proved invaluable in terms of proper mid- to long-term planning, which is nothing short of essential considering the volatility of today's global economy.

Uros Ilic, Managing Partner, ODI Law

At Avellum we did semi-annual reviews for many years. However, this year we are switching to quarterly reviews based on a detailed 360-electronic-review form, which allows people to assess each other according to various skills and KPIs. This form also allows a person to compare his/her own self-evaluation with peer reviews. To achieve a uniform approach to grading, we have prepared detailed guidelines for each position and each grade. Such performance reviews are part of Avellum's culture and are extremely important both for partners and employees, because they give a balanced view of the person from all angles. These performance reviews also play a significant role in promotions and the distribution of bonuses.

Mykola Stetsenko, Co-Managing Partner, Avellum

Effort is good, value makes a difference. Continuous feedback is something that is truly and deeply rooted in the Karanovic & Partners culture and we find it to be the most effective development tool. Therefore, we perceive our annual Performance Appraisals process as only a formal part of the performance evaluation. Nevertheless, we take it very seriously and we approach it systematically, since it is of crucial importance for setting up KPIs on both the individual and firm level. The process itself is quite complex and requires the active engagement of the senior partners and the firm management. The most important outcome of this process is a tailor-made, individual development plan for each individual, based on the self-assessment of the person being appraised and the performance appraisal conducted by that person's supervisor. A well-designed Development Plan depends on a comprehensive assessment of the firm's needs and, although individually created, it is aligned with the overall business goals, departmental goals, and our personal targets.

Rastko Petakovic, Managing Partner, Karanovic & Partners

Although we evaluate our team members and discuss potential promotion at the end of every calendar year, performance reviews may occur as often as three to four months. Key considerations include legal know-how in relevant practice areas, fluency in legal English, client care, computer literacy, and work efficiency, as well as soft skills, such as partnership and team work, communication skills, dedication to the firm's policies, and personal development. For certain positions, leadership and team-nurturing skills are equally important, along with business development skills.

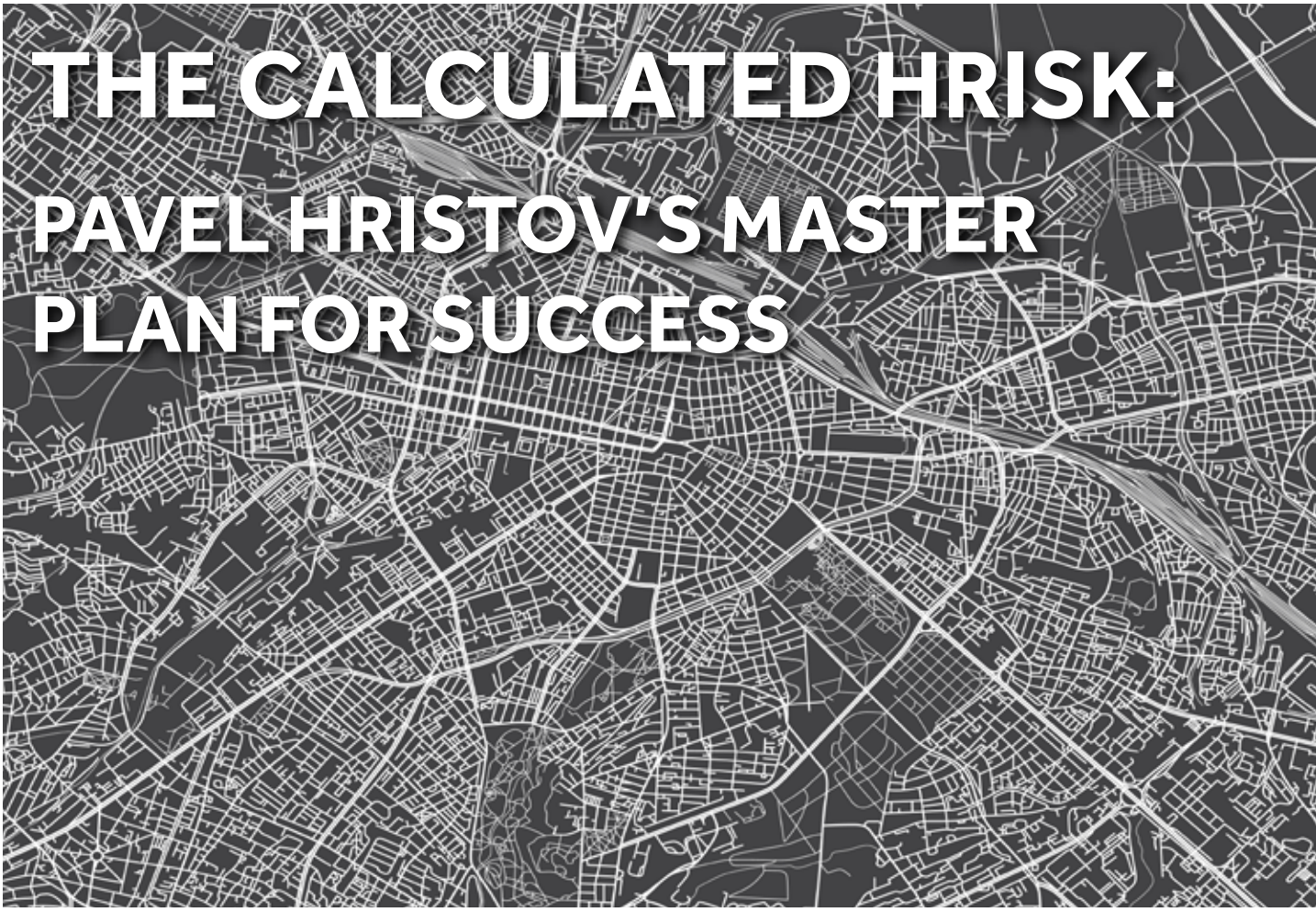
The review is especially aimed at assessing compatibility with the pillars of our firm, which are: (i) very high professional standards; (ii) excellent client care; (iii) a pleasant working environment; and (iv) continuous development of the firm and of each of its members.

Performance reviews are essential for team planning and development. They also allow us to reward talent and merits while correcting any points that are not in accordance with our ethos. It also drives business development, which is an essential part of any lucrative activity.

Alina Popescu, Founding Partner, MPR Partners | Maravela, Popescu & Roman

Our firm is truly focused on performance review and generally feedback between our attorneys and associates and partners. With currently around twenty lawyers in Serbia we do not have a comprehensive and complex performance review program. We hold performance review sessions with each member of our team twice a year. At these sessions partners provide feedback on the work, achievements during the previous six months, and our plans, expectations, and possibilities within the firm. At the same time we receive feedback from our team members, including their opinions about their own performance, their status within the firm, and the type of work they are engaged in, as well as their potential suggestions for improvements. Our experience over the years has confirmed that these performance reviews and fostering an open relationship is very helpful to managing the firm and planning for the future. In many cases this has enabled us to successfully replace team members, hire the right people, and maintain the positive atmosphere in the firm and the excellent team spirit that we are known for on the market.

Milan Samardzic, Partner, Samardzic, Oreski & Grbovic



THE CALCULATED HRISK: PAVEL HRISTOV'S MASTER PLAN FOR SUCCESS

Pavel Hristov opened the doors of Bulgaria's Hristov & Partners law firm in 2013. Since then, his firm has grown steadily, and today competes on even terms with the long-established powers on the Bulgarian law firm market. We sat down with Hristov, himself a highly-regarded commercial lawyer, to learn about his firm's history, strategy, and success.

CEELM: What makes Hristov & Partners stand out? What are your main selling points?

Pavel: Double R: Reputation and Recommendation. Every matter that we take we do our best on. For this reason, we do not claim and we do not try to be a full-service firm. We are specialists in three areas that we focus on – Corporate / M&A, Competition / Anti-Trust, and general Commercial / Transactional. The last of these basically includes any kind of challenges that, say, a Bulgarian exporting company can face trying to export and trying to negotiate a contract with a foreign partner. And, if we work on an M&A deal, and the clients are satisfied, and they wish to continue working with us and instruct us on their day-to-day matters. This happens in about 80% of the cases.

CEELM: Anything else?

Pavel: Let me step back a bit. During the privatization period the government officials – the so-called privatization agency – used to prepare the entire set of documents only in the Bulgarian language. For example, when the tender for the concessions for the airports in Varna and Burgas in 2006 was announced, the entire set of documents was made available only in Bulgarian – thousands of pages of important legal documents and information. And this meant that for all the law firms that participated in this, quite a significant part of their work in terms of time was legal translation. We had to translate what the Bulgarian legal language meant, and then we had to communicate that to the clients, and how they should calculate their risks and prepare their bids in order to be compliant. So we started like this – we started with translation. And to add value we not only translated the legal texts, but also the context.

And when I started my professional career 15 years ago, many of the lawyers were absolutely comfortable with their technical knowledge, and sending across

and stating to the client in good English what the law meant, and providing a legal technical analysis of specific provisions of the law. But they didn't feel comfortable if they had to provide context, and they didn't feel comfortable if they had to give advice that involved projecting what would happen in the next five years, when the business actually operated.

But we learned. We learned that these are the questions that experienced foreign investors coming to Bulgaria after having entered numerous other countries and numerous other jurisdictions want answered. It was a blessing to start by working on the deals of the first big private equity firms coming to Bulgaria, which brought in huge teams of experienced foreign legal advisors with them. We started picking up their quality and their style of advice, as well as their integrity and their commitment to their clients – and this is how we differentiate ourselves. Our focus is that we support and act alongside international law firms doing deals in Bulgaria.

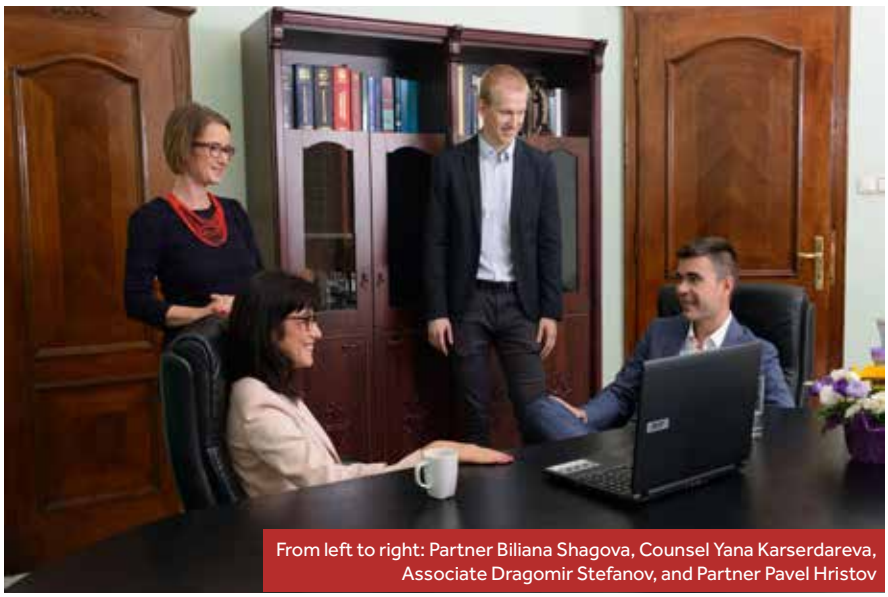
And another thing is that because we try to focus mostly on M&A deals and the bigger mandates in the area of competition and commercial law, our client base is by definition limited. We have a much narrower client base, which helps us avoid being conflicted out of larger transactions. For example, one of the largest transactions we ever worked on came to us due to a conflict that existed in the primary partner firm of the client here in Bulgaria, so the international law firm turned to us. Because we were not conflicted out, we were able to work on one of the biggest transactions in Bulgaria that year.

CEELM: What's Hristov & Partners' history?

Pavel: I was at Boyanov & Co. for four years, and then I spent six years with CMS Cameron McKenna helping them strengthen their M&A and Competition practices in Bulgaria, which were nowhere to be seen before that. And then I started this firm in 2013 together with two other former CMS lawyers Kremena Stoyanova and Iordan Iordanov. Kremena, who is a Counsel and our Real Estate practice head, was the Head of Real Estate and Employment at Cameron McKenna for several years, and then she decided that bigger was not better for her, and she decided to start her own practice and focus on the areas she likes and avoid those she doesn't.

CEELM: Are they still here?

Pavel: Not Iordan. He left to start his own firm one year later, in 2014.



From left to right: Partner Biliana Shagova, Counsel Yana Karserdareva, Associate Dragomir Stefanov, and Partner Pavel Hristov

CEELM: You say you focus on working with international law firms. Does that mean you try to develop referral relationships?

Pavel: Yes, that's a big part of what we do. We meet with them, we go to events – quality events – especially where part of the time is dedicated to networking, basically to communicate face to face. This is the important aspect. And then we talk. And then it turns out that sometimes we have common clients, sometimes we know other lawyers from their firms. Maybe we've worked on transactions with other lawyers from their firms that can recommend us, and vice versa.

CEELM: That raises an interesting subject. Do you have good relationship with competing firms in Bulgaria, and do you refer work back and forth?

Pavel: It's awkward in Bulgaria. We have a very good relationship with many of the law firms, especially the ones who are doing M&A and competition, and we know each other on a personal level. With some of them we are even friends. But in terms of referrals, it has proved to be quite difficult to refer work to another Bulgarian law firm. For various reasons. Some are subjective, some are objective. It's hard for me to say why it doesn't work. It happens quite rarely. It could happen much more often, but it doesn't.

CEELM: What about outbound? Do you refer work to firms outside Bulgaria?

Pavel: Again, rarely. Because in order not to be conflicted out we have a very small number of Bulgarian clients. We have a few who are quite ambitious, and some of them try to grow abroad, or engage in cross-border transactions, so they need foreign advice, and that's a time when we can refer them, but we only have a few of those clients.

CEELM: How many lawyers and how many partners are there today?

Pavel: We have three partners and three senior counsel and one associate. Aldin


Pavel Hristov

Shenkov is based in Plovdiv, and his practice is focused mostly there; we work together on an ad hoc project basis. Biliana Shagova is the third partner. For ten years she used to work for the busiest boutique law firm in the energy field. After ten years with that firm, Biliana decided that she wanted to start her own practice, and I convinced her that two was better than one. So she joined, initially as a counsel. This is the normal pattern here. Develop the practice, develop a group of clients, develop a reputation, and commit to the firm, then you are a partner.

CEELM: This is an interesting model. With so few associates, the senior lawyers must do most of the work themselves.

Pavel: We don't have a single client who expects junior lawyers to work on their matters. I don't know if we selectively choose these kinds of demanding and sophisticated clients, or this is our reputation, so we attract only these kinds of clients. But for seven years we haven't had one client say, "well, this kind of work should be done by a junior lawyer."

CEELM: Does that mean you don't work on large due diligence exercises?

Pavel: Of course we do. We just do them ourselves. Nobody expects that there should be a huge due diligence exercise, with tens of lawyers sitting around the table and reading through thousands of pages. Nobody expects that, and nobody has time to wait for that. The time it takes to do this kind of due diligence and produce a due diligence report with an executive summary of 150 pages [rolls his eyes]. We have committed and very focused, very experienced clients, and they expect real time advice. And real time action. Which means that the client expects daily updates of what's going on, and what will be the issues and what will be the appropriate actions to remedy them. Immediately. Not in two weeks, when the due diligence report can be prepared, and then it takes more time to read it, and then more time to explain it. And then – eventually, if you are lucky – one of the partners in the law firm will have taken the time to read through the due diligence report himself and then understand the issues and then communicate them. We don't waste time for that.

There's another way of explaining this. For instance, at the end of 2016 we worked with Dentons in advising Group Spadel on its EUR 120 million acquisition of Devin AD, the largest Bulgarian bottled water producer, from Advent International. Guess how many lawyers Dentons had on this transaction? Four. And our team here in Sofia was six lawyers. Just six lawyers. That was absolutely sufficient for a full due diligence.

CEELM: But there are only seven people in the firm. If six are working on one transaction, that must mean you can't really work on more than one deal at the same time.

Pavel: We can and we do. To illustrate that, in parallel to the Spadel/Devin transaction we acted for G4S plc. on the divestment of their Bulgarian business to VIP Security, which is the largest deal in the security industry in Bulgaria to date. First of all, we're pretty good lawyers. Among the best in the market. So yes, we work extra time when necessary on projects. And yes, we say no to some clients. We don't take every opportunity to work, and every mandate, and on every area and in every industry. We try to develop our expertise and reputation in specific industries and specific practices.

Plus, we are efficient. We do things efficiently, and we try to avoid any miscommunication and any misunderstanding with the client in the very beginning. We learned the hard way that scoping is the most important thing in a transaction, and managing expectations. Explain the scope, agree on the scope and timeline, shake hands with the client, and commit to that. When you have real-time-communication with the client, this is the opportunity to adjust and to adapt. We have the ability to refocus and be flexible and adapt in the course of a transaction. Which is a big differentiator in a firm with seven lawyers doing a large transaction, compared to a firm with 40 lawyers trying to do the same transaction.

But also, this is not really so unusual here. The firms we compete with – the other best law firms in the Bulgarian market – look at their structure. They also have a lot of partners, and a lot of senior associates. So this is a common model here. One of the reasons is the fee levels in the country. Bulgaria probably has the lowest hourly rates in Central and Eastern Europe. So for this reason, for our model to be sustainable, one of the options is that you focus the work on where it's the most profitable, where it's the most necessary.

David Stuckey

MARKET SPOTLIGHT: ROMANIA

At a Glance:

- Population: 19.64 million
- Life expectancy: 75.01 years
- Current President: Klaus Iohannes
- 2018 FDI: EUR 4.27 billion
- 2018 GDP: EUR 209.07 billion
- GDP per capita: EUR 9,629
- 2018 GDP Growth: 4.10%
- GDP Breakdown by Sector:
  - Services: 62.60%
  - Industry: 33.20%
  - Agriculture: 4.20%

In this section:

GUEST EDITORIAL:
EVOLUTIONARY TRENDS IN THE ROMANIAN LEGAL MARKET

As one of the few "foreign" lawyers who has been continuously active on the Romanian market for the last 20 years, it is interesting to note the evolution of this market over that period.

I first came to Romania as a representative of the American Bar Association's Central and Eastern European Law Initiative (CEELI) from August 1996 to August 1997. At CEELI, we advised relevant stakeholders in numerous areas, including: (i) strengthening the independence of the local judiciary; (ii) working with regional Bar Associations; and (iii) providing "best practice" templates of model US laws for consideration in Romania.

It is important to remember the historical context here – Romania had begun the process of transforming from a central command economy to a free market economy only six years before I arrived in the country. Hence, many of the "rules of the game" that we now take for granted in a market economy simply didn't exist at that time.

For example, during my stint at CEELI, we worked on projects benchmarking certain recently-adopted (or soon to be adopted) legislation against analogous US legislation in areas like: (i) Bankruptcy (addressing certain deficiencies in the law adopted in 1995); (ii) Antitrust (Competition) (which had first been addressed in a law that had been adopted only a few months before my arrival in Romania in 1996); and Secured Transactions (the concepts of which were eventually addressed in different laws adopted in 1999, 2011, and early 2019).

In this regard, Romania really was the "Wild East," with either incomplete (or completely missing) commercial legislation to attract and reassure investors in Romania that they would be protected. Nonetheless, despite these deficiencies, lawyers in Romania needed to adequately advise those investors willing to enter the Romanian market at that time.

Hence, when I returned to Romania in August 1998 to establish and manage the Bucharest office of the US-based Arent Fox law firm, the need to advise clients in areas where there was either a complete lack of relevant legislation or a dearth of any practical legal precedent was an immediate challenge. This was a situation faced by all commercial lawyers advising investors in Romania at that time, both foreign and local.

At that time, the Romanian market for commercial lawyers was essentially dominated by a handful of well-reputed local law firms (which had cut their teeth as local counsel for large international law firms, which had not yet entered the local market prior to 1995) and certain international law firms (like Arent Fox) that had planted their flag in Romania after 1995. Although these foreign law firms typically had already opened offices in other CEE markets, they typically found it more difficult to obtain market share here as a result of their relatively late entry into the Romanian market and the stronger position the local law firms had managed to carve out in the market during the five to six years prior to the foreign firms' entry.

The next period in the Romanian legal market was what I recall as the privatization period. Again, Romania generally lagged behind other CEE countries in tackling privatization, so the "wave" hit later. The foreign and Romanian law firms enjoyed access to both buy-side and sell-side mandates (working on projects such as the World Bank-funded "Private Sector Adjustment" (PSAL) initiative which funded advisors on the due diligence and preparation for sale of some 64 large state-owned companies in Romania). At Arent Fox we were mandated on 22 such PSAL sell-side projects and I remember the period of 1999-2001 accordingly as being quite busy.

From around 2002 until 2007, the Romanian legal market was marked by a growth trend. The economy was generally doing well and in preparation for EU accession in 2007 much of the legislative deficiency that had marked the earlier period had been or was being addressed.

This period also saw the first significant evolutionary changes in the local legal market, as some foreign firms withdrew, others entered, and new law firms were created either by "alumni" lawyers from those foreign firms or by spin-offs of lawyer teams from those local firms that had dominated the market in the years immediately after 1990.

The 2008-2009 crash had an immediate impact on the legal market. However, in more recent years we have seen that as Romania has become more integrated with the EU and global markets, client expectations from their Romanian lawyers have evolved accordingly. Clients now demand more dynamic, complex, and sophisticated legal advice than could have been possible back in Romania of the 1990s.

Bryan Jardine, Managing Partner, Wolf Theiss Bucharest

FULL SPEED AHEAD: PELIPARTNERS HITS THE GROUND RUNNING

On April 1, 2019, a team led by Francisc and Carmen Peli left Romania's highly-ranked and widely-respected PeliFilip, which the Pelis had co-founded in 2008, to start PeliPartners. We reached out to Francisc Peli to learn more about the reasons for the big change and his plans for the new firm.

CEELM: Congratulations on the launch of PeliPartners. Can you walk us through your decision to part ways with your former partners at PeliFilip and start this new venture?

Francisc: Thank you, although that already seems like a long time ago. It is true, we built a great firm in a decade of PeliFilip and – most importantly – we had success.

Carmen Peli and I decided to establish PeliFilip – and invited all the other partners to join – in 2008 when the financial crisis was about to start. We agree to stick to a simple plan: to focus on quality, be informal, gather the most talented young lawyers possible, and dedicate our personal time to clients and projects.

We followed these simple rules, and we were consistent throughout. We wanted to be leaders in terms of quality, not quantity. Both Carmen and I, as well as our core team in PeliPartners – our partners Oana Badarau and Mihnea Galgotiu-Sararu – invested hundreds of thousands of hours in PeliFilip, and it became part of our lives. Our touch was felt in every part of that firm, from inception of the brand to the last software we used. And I was managing partner of PeliFilip for eight years, up until 2016. For me, PeliFilip was a signature project.

In 2015, PeliFilip was already "Law Firm of the Year" in Romania, with a client portfolio that included the most important companies active in Romania. I was always very proud of our success, and I still am.

However, PeliFilip was our dream as 30 year olds; PeliPartners is our maturity venture. We felt that we needed to reinforce our original ideas and plans and add just a bit of a twist. We felt we needed to be ourselves and not deviate from our original credo. We added more experience and a better understanding of our role – and we continue to gather exceptional people who trust us and believe in us and our upgraded project. The feedback we get is fantastic and our entire team is energized to move this project forward and to adapt to the changes our clients are facing in their businesses on a daily basis.

CEELM: Can you tell us a little bit about how PeliPartners will be structured, and what specializations it will have?

Francisc: PeliPartners is a full-service law firm. And we think of it as a powerhouse in legal services in Romania, both in terms of competence as well as the type of projects in which we are already involved. We are now a team of over 30 elite professionals – including both veterans who have worked with us for many years and newcomers who have joined our team in recent days. In the first week, all clients we relied on confirmed that they will continue with our new format. Several important banks sent requests for offers. We got new high-profile mandates and we are operating with business as usual. Our vision is to upgrade and reform the services we offer in the key areas of practice to the benefit of both our clients and the people in our firm. Indeed, Carmen Peli, Oana Badarau,

and I have many years of experience in landmark transactions on the Romanian market. In between the three of us, in the last 12 months alone we have advised on transactions with an aggregate value of almost one billion euros. Our main practices are:

- Corporate M&A, where we have solid expertise in our team and are lead counsels for the main transactions taking place on the Romanian market
- Finance-Banking, where Carmen and her team are recognized for their expertise by large investment funds and first-class financial companies
- Real Estate, where Oana Badarau leads the largest and most experienced legal team in Romania
- Competition/ Antitrust, where we have in-depth expertise in complex projects in various industries such as insurance, telecom, and healthcare
- Dispute Resolution, where Mihnea Galgotiu-Sararu coordinates a team of shining stars with over ten years of experience in high-profile litigation and arbitration projects in various fields – from telecom and technology, to energy, finance, PPPs, real estate, infrastructure, logistics, and sports.

CEELM: How do you plan to differentiate yourself from your competitors in the market?

Francisc: We have great competitors out there – we learned how to become better from some of them. We are different as we have always been different: We have an exceptional track record of high-profile projects over a long period of time. We always manage to hire the best and most ambitious young lawyers in the market, who want to be involved in big projects so they can show they can make a difference. Together as a team we have what it takes to deliver what clients want every day: Quality in a timely manner. And we do it every time, over and over again. That is why clients love us.

CEELM: Do you plan on joining a regional or international network at some point?

Francisc: We have long-term collaborations with first-class law firms in the world – and we would like to continue our collaboration with them. We have not considered joining a network, but the truth is that we have had no time to actually consider it – we do not exclude it de plano. Should such an opportunity arise, we will weigh it, always looking to preserve our identity, our ideas, and the values that make us special today in Romania.

CEELM: How would you describe the market, the economy, and the prospects for the future right now in Romania for a firm like yours?

Francisc: The economy is doing just fine, and the local transactions are many and significant. There seems to be no sign that anything will slow down soon. However, we live in a global economy, so we are dependent on what is happening outside Romania.

The Romanian legal market is competitive, but there is always room for good professionals doing their job. Lawyering is a matter of reputation – and we have built an excellent one in the past 20 years. We are now just bringing it to the next level.

CEELM: Finally, a broad and personal question. What are your personal feelings about this new adventure – about PeliPartners?

Francisc: According to a study published by the Harvard Business Review last year, people in their 40s are the most likely to launch a successful business. I think that this is because it is a time in your life when you have gathered tremendous experience and you know how to put your ideas in practice exactly as you want them to be. I am now 44. I know exactly what I want and what I want PeliPartners to look like. I have with me an extraordinary team – and we all want the same thing. And there is enthusiasm – contagious enthusiasm about the project. I feel privileged. And I feel alive.

David Stuckey

Oana Badarau

Mihnea Galgotiu-Sararu

Carmen Peli

Francisc Peli

MARKET SNAPSHOT: ROMANIA

CERTIFICATES ATTESTING THE OWNERSHIP OF LANDS OBTAINED VIA THE PRIVATIZATION PROCESS

Radu Boanta,
Partner,
CEE Attorneys

Due to multiple murky provisions in the applicable legislation, the privatization process in Romania has triggered a number of legal battles, varying from the rescission of share sale purchase agreements concluded between the Romanian state (acting through various entities) and investors for the investors' failure to comply with investment obligations to the recognition or protection of certain rights arising from the privatization itself.

A particular type of dispute stems from the certificates attesting the ownership of lands belonging to the privatized entities ("Certificates"). These titles were issued based on a specific procedure by the public institutions involved in the privatization process (*e.g.*, the ministries under which the former state-owned enterprises – reorganized after the fall of the communism as commercial companies or government business enterprises (in Romanian "*regii autonome*") – used to function). Their purpose was to attest, in the interest of the Romanian State, the ownership of lands adjacent to various factories/plants belonging to the privatized entities which were used (more or less) in the course of their business (the "Lands").

The legislation in the privatization area was devised to include a little twist, with the shares of the former state-owed entities sold to investors without the value of the Lands being factored into the price, only to allow the Romanian State, at a later stage, when the Certificates were finally issued, to participate as single contributor in the share capital increase of the privatized entities with the value of the Lands included in the Certificates.

This often resulted in the investors being flipped-over by the relevant public institutions involved in the privatization process as the value of the Lands (which was set on the basis of valuation methods close to market value) was far greater than the value of the share capital, with other indicators/methods such as net asset value/adjusted net asset being completely left out.

As inequitable as this share capital increase by operation of law appears to be - given that in many cases the issuance of the Certificates took place long after the completion of the privatization and the making of the investments undertaken in the privatization contracts - its ultimate legal consequences were (and still are) in most cases extremely severe for the investors.

In order not to lose control over companies acquired from public institutions via the privatization process and into which

they have invested their time, effort, and money, the investors are forced to purchase a number of the newly-issued shares at an even higher price simply to restore them to the *ex ante* position they had before the share capital increase.

What appears to be completely unfair, however, is the fact that the Certificates are used even long after their issuance. For example, in a recent dispute we were involved in, we questioned the validity of a share capital increase with a land value included in a Certificate issued back in 2002. The share capital increase operation had been registered with the Trade Registry in 2017 in respect of a company which was privatized in 2000. During the legal proceedings, we asked the court, *inter alia*, to rule that the entitlement of the public institution involved in the 2017 privatization process to a share capital increase operation with the value of land included in a Certificate issued in 2002 was time-barred.

The court upheld our position and ruled that since the Certificate was issued in 2002 and was not availed of within the statute of limitations prescribed by the law for any ius in personam (*i.e.*, the right to enforce a particular person's obligation), the public institution was barred from capitalizing on the rights afforded under it.

The case summarized above is not, obviously, the exclusive means to deter all the unbalanced situations created by the abusive manner in which the Certificates are put into effect. Depending on the case, the evidence, and other legal elements, effective defenses can be put in place in order to prevent any bitter consequences generated by the Certificates.

By Radu Boanta, Partner, CEE Attorneys

ROMANIA'S IMPLEMENTATION OF THE EU'S FOURTH MONEY LAUNDERING DIRECTIVE

Adrian Chirvase,
Partner,
Popescu & Asociatii

The implementation of the EU's fourth money laundering directive (2015/849/EU, or MLD4) is a subject of significant interest in Romania, as the process of adopting a new Money Laundering Bill (MLB) in line with the provisions of the MLD4 to replace the current Money Laundering Act is in full progress.

As currently constituted, the MLB will require companies and other legal entities incorporated within Romania's territory to obtain and hold adequate, accurate, and current information on their beneficial ownership, including details of the beneficial interests – the "reporting entities" – they hold. The MLB is expected to obtain the necessary support to be approved by the Parliament.

As MLD4 does not require the information to be publicly available, in Romania, all the information gathered by the reporting entities according to the MLB must be kept in accordance with Regulation (EU) 2016/679 (General Data Protection Regulation) and the Data Protection Act no. 667/2001, and only disclosed to specified authorities.

Mention should be made that, in terms of the MLB, the "beneficial owner" is any natural person(s) who ultimately owns or controls the entity and/or the natural person(s) on whose behalf a transaction or activity is being conducted, either directly or indirectly. Also, the legal definition of the "beneficial owner" includes a list of categories of individuals that ultimately may control a legal entity.

In this respect, the actual form of the MLB provides that the reporting entities shall have a number of obligations, including to: (i) report suspicious transactions, as well as transactions that do not present the usual suspicion indicators, but are made in cash and with a value of at least the RON equivalent of 15,000 EUR; (ii) provide information regarding the beneficial owners, defined by the law as "any natural person(s) who ultimately owns or controls the entity and/or the natural person(s) on whose behalf a transaction or activity is being conducted, directly or indirectly"; (iii) effect customer due diligence, either simplified, standard, or extended; (iv) preserve relevant reporting documents; and (v) effect a risk assessment regarding the exposure of their activity to money laundering and terrorism financing, considering the main risk factors such as clients, country, geographical area, products, services, transactions, or distribution channels.

In addition, the MLB contains several obligations related to personnel, such as the requirement that a person be designated with responsibilities related to the enforcement of the MLB, and the requirement that a periodic training of employees be conducted with respect to the provisions of the MLB.

Considering its novelty, it is anticipated that the obligation to provide information regarding the beneficial owners shall have the greatest impact on companies. As a consequence, it is important to note that the obligation applies to "corporate and other legal entities," such as trusts, associations, and foundations, as well as other legal entities that administrate and distribute funds.

Nonetheless, the MLB sets out several specific obligations, which have the nature of transitory provisions of the law, such as filing a declaration regarding the beneficial owner in the Registry of Beneficial Owners. Personal information must be provided regarding the beneficiary as well as the manner in which it exerts control over the entity.

Failure to comply with this obligation, if not corrected after being noted by the competent authority, shall result in the dissolution of the legal entity.

Another important issue to consider is that, once the MLB enters into force, companies will be prohibited from issuing bearer bonds, and all existing bearer bonds shall be converted into nominative bonds. Failure to fulfil this obligation within the provided term will result in the dissolution of the entity.

Finally, it should be noted that infringement of the MLB's provisions may entail civil, disciplinary, contraventional, administrative, and/or criminal liability.

By Adrian Chirvase, Partner, Popescu & Asociatii

EQUITABLE PRICE OF MANDATORY BIDS: THE ROMANIAN APPROACH

Narcisa Oprea, Partner, Schoenherr Bucharest

Natural or legal persons directly or indirectly acquiring shares granting more than 33% of the vot-ing rights in a Romanian listed company are required to make a bid as a means of protecting the company's minority shareholders. Under the European legal framework, the offeror must address that bid to all minority shareholders, offering to purchase all their holdings at an equitable price.

As a matter of principle, the highest price paid for the shares issued by the Romanian listed com-pany by the offeror over a 12-month period before the bid shall be regarded as an equitable price.

The Romanian Financial Supervisory Authority can impose an adjustment to the mandatory bid if it believes that acquisitions made by the offeror in the last 12 months have an impact on the fairness of the bid. In such a case, the bid must at least equal the highest of: (a) the average market price of the company's shares in the 12-month period preceding the bid, (b) the net asset value per share booked in the company's last annual financial statements, or (c) the price determined by a valuator.

What if the offeror has indirectly acquired shares in a Romanian listed company and no listed shares have been directly acquired in the last 12 months, as when, for instance, an offeror ac-quires 100% of the share capital of the majority shareholder of a Romanian listed company in a single transaction? While it may be argued that the price paid per listed share in an indirect acquisi-tion would better protect minority shareholders, as it basically offers them equal exit terms, the Romanian Financial Supervisory Authority does not take the indirect acquisition price into account when determining

the mandatory bid. There have been cases where this position has been unsuc-cessfully challenged in court, with the courts holding the view that, as stated above, the price of the mandatory bids after indirect acquisitions must be at least equal to the highest of: (a) the average market price for the 12-month period preceding the bid, (b) the net asset value per share, or (c) the price determined by a valuator.

How about if the offeror has unintentionally acquired shares granting more than 33% of the voting rights, as where, for instance, the offeror owns 25% of the voting rights and as a result of a capi-tal increase with pre-emption rights only (where the offeror has exercised its pre-emption rights in full while other shareholders have not) its holding increases after closing the capital increase to more than 33% of the voting rights? In case of an unintended acquisition, the acquirer of more than 33% of the voting rights may choose between selling the shares exceeding said threshold or launching the mandatory bid. If the preferred option is to launch a mandatory bid, the above rules will apply when determining the price of that bid.

Considering the specific nature of Romanian law and the powers of the Romanian Financial Super-visory Authority to adjust bids when assessing the acquisition of more than 33% of the voting rights in a Romanian listed company, potential purchasers would be wise to consider the worst-case scenario. For the acquirer this is a mandatory bid that is the highest of: (a) the highest price paid by the offeror for the listed shares over a 12-month period before the mandatory bid, (b) the average market price for the 12-month period preceding the bid, (c) the net asset value per share, and (d) the price determined by a valuator.

By Narcisa Oprea, Partner, Schoenherr Bucharest

INCENTIVES FOR INVESTMENTS IN ROMANIA

Iulian Sorescu, Head of Financial, State Aid & Management Consulting Department, Noerr

State aid has always been a success story in Romania, with a lot of companies developing medium-sized investment projects based on money coming from Romanian authorities. And the success story continued through 2018 and into 2019. But let's look at this story from the beginning.

In the first few years after the launch of state aid in Romania – *i.e.*, from 2008 – a rather small number of companies were interested in applying for such financial incentives, probably due to the restrictions imposed at the time (i.e, a minimum investment of EUR 30 million) and because the global environment was not favorable for investments. However, as interest grew over time, so did the number of projects for which state aid was granted. Overall, in the first state aid phase (2008-2014), there were 83 investment projects approved, with a state aid value of more than EUR 700 million. According to the representatives of Romania's Ministry of Public Finances, there actually were significantly more applicant companies, but some were rejected due to inadequate or incomplete documentation, unrealistic financial projections, or failure to meet state aid requirements.

Sebastian Popescu, Counsel, Noerr

Scoring criteria were introduced in 2016, allowing the Ministry of Public Finances to conduct a transparent decision–making process in selecting the relevant projects. This approach was challenged by businesses and some professional bodies, however, and a new and more flexible granting mechanism was implemented in September 2018. The new mechanism is clearly much more investor-oriented, although there are still companies whose applications fail based on improper documentation. While involving a consultant might not be of particular significance in other countries, in Romania the expertise arising from the successful cases has become critical, as the country's state aid legislation is rather brief and practical experience can turn a promising project into a successful one.

According to the recent statements of state representatives, the Government will continue to support viable investment projects, as significant amounts have been allocated in the national budget for that purpose. The latest publicly-available information indicates that more than EUR 400 million has already been granted to 40 projects, with close to EUR 500 million remaining in the budget for use by 2020. The current scheme for investments in assets – which is regulated by Government Decision no. 807/2014 – allows investors to benefit from the same conditions as in the past: a refund of up to 50% of the cost of the assets, paid entirely in cash. The refund rate of 50% is very high compared to other CEE countries, where companies receive an average of only 20-30% in state aid.

Companies applying for state aid can either be new or existing and can be either large enterprises or SMEs to fulfil the eligibility criteria, and of course must be active in fields compatible with state aid (which most are, with the exception of, among others, the mining, construction, trade, and transportation fields). The main eligibility criteria include parameters such as the level of investment (a minimum of EUR 1 million), profitability in past years, and financial ratios (*e.g.*, return

on turnover, net assets, and share capital level). These differ depending on the type of investment project (*i.e.*, long-established versus newly incorporated companies).

The state aid scheme offers advantages to both the Romanian State and the beneficiaries of the incentives. While the benefit is obvious for companies, for the State the advantage comes from payments in the form of employer and employee contributions, profit tax, and local taxes. Furthermore, investment projects have a multiplying effect on the national economy, generating additional investments, jobs, and additional contributions to the State budget. Economic and political aspects show that state aid will continue to be an important tool for attracting private investment, and will provide both local and foreign investors with a viable source of financing that can be used to supplement existing financing sources.

By Iulian Sorescu, Head of Financial, State Aid & Management Consulting Department, and Sebastian Popescu, Counsel, Noerr

GDPR DISRUPTION OF COMMON BUSINESS PRACTICES - PROCESSING PERSONAL IDENTIFICATION NUMBERS IN ROMANIA

Daniel Alexie,
Co-Head of IP & Data Protection,
Maravela, Popescu & Roman

The Romanian personal identification number ("*cod numeric personal*" in the Romanian language) is a unique and general identifier that is assigned to each individual at birth and appears on most personal documents, including birth certificates and identity cards. The number remains unchanged throughout an individual's life.

Romania's law implementing the General Data Protection Regulation imposes additional conditions and safeguards for processing personal identification numbers when the processing is based on the legitimate interests of the data controller. Under these circumstances, when processing personal identification numbers for a legitimate interest, controllers need to comply with the following requirements: (i) appropriate technical and organisational measures must be implemented in order to comply with the data minimization principle and to ensure the confidentiality and security of the personal data; (ii) a data protection officer must be appointed (this obligation exceeds the similar obligation imposed by the GDPR, so that data controllers processing personal identification numbers based on a legitimate interest must appoint data protection officers even when the GDPR does not required them to do so); (iii) specific storage periods must be established in accordance with the kind of personal data to be processed and the purpose of the data processing, and specific timelines for data deletion must be implemented; and (iv) periodic trainings for the personnel responsible for data processing must be organized in order to raise awareness regarding the obligations laid down by the GDPR.

These requirements will apply not only to the processing of personal identification numbers but also to the series and numbers of identity cards, passport numbers, driver's license numbers, social security numbers, and any other identification numbers of general application. Nevertheless, our focus is on the personal identification numbers, as they are processed on a large scale by Romanian data controllers.

Diana Borcean,
Associate,
Maravela, Popescu & Roman

In practice, almost every Romanian entity, including public authorities and institutions, uses his/her/its personal identification number to verify the identity of natural persons. In addition, the vast majority of Romanian controllers from the private sector process the personal identification numbers of their employees and clients in different contexts, including by publishing or distributing documents containing them.

Romanian data controllers process the personal identification numbers of clients with tremendous ease, most commonly in order to: (i) identify and distinguish between clients who have similar or identical names, addresses, and services; and (ii) verify client payment histories. These types of processing will in most circumstances be based on the data controller's legitimate interest.

Still, in this context as in all others, almost all Romanian data controllers will need to carry out a legitimate interest assessment and to implement the aforementioned conditions and safeguards when processing personal identification numbers.

After carrying out the legitimate interest assessment, if the interest of the controller is overridden by the interests and fundamental rights and freedoms of the data subject or if the appropriate measures and safeguards cannot be implemented, the data processing will be considered unlawful and the data controller will need to find a different legal ground in order to be GDPR-compliant.

From our point of view, the personal identification number – like as any other national identification number – should be processed only when it is strictly necessary (for example, in or-

der to enter into a contract or to bring a legal claim against the data subject) and not just as a matter of business opportunity.

Taking into account the large-scale processing of personal identification numbers in Romania and the habit of controllers of using the numbers to simplify their commercial operations, compliance with the GDPR's requirements should be carefully ensured by assessing the legal ground used for data processing.

To sum up, it is highly likely that Romania's legal provisions implementing the GDPR will force Romanian data controllers to rethink the common practice of processing personal identification numbers and to find alternatives for processing data in a manner that does not disrupt their businesses while remaining GDPR-compliant.

By Daniel Alexie, Co-Head of IP & Data Protection, and Diana Borcean, Associate, MPR Partners | Maravela, Popescu & Roman

PRACTICAL ISSUES REGARDING THE FREEZING AND CONFISCATION OF INSTRUMENTALITIES AND PROCEEDS OF CRIME

Adrian Chirvase, Partner, Popescu & Asociatii

At the European Community level there have been numerous regulations related to asset freezing and confiscation, the most recent being Directive 2014/42/EU of the European Parliament and of The Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (the "Directive").

Most of the texts in the Directive find a corresponding provision in national legislation. In Romania, the relevant provisions are implemented in the Criminal Code and the Criminal Procedure Code. For the few issues that have not yet been implemented, the Romanian legislator has initiated a bill to modify and complete criminal normative acts in order to transpose the Directive, but the legislative proceedings do not seem to advance.

The Directive requires the Member States to establish minimum rules on the freezing of property in criminal matters, and to establish the necessary measures to enable the confiscation of instrumentalities and proceeds or property following a final conviction for a criminal offence, including from convictions obtained *in absentia*.

The Directive also refers to the possibility of freezing the assets of third parties, meaning that the Member States are required to take the necessary measures to enable the confiscation of proceeds or other property which, directly or indirectly, were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation. This actual or implied knowledge must be established on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than market value.

The Romanian Criminal Procedure Code already regulates several proceedings that ensure asset freezing by allowing the Prosecutor, the Preliminary Chamber Judge, or the Court to establish a distraint when necessary in order to avoid concealment, destruction, disposal, or dissipation of assets that may be subject to special or extended confiscation or that may serve to secure the penalty by fine enforcement or to pay court fees or to compensate damages caused by the committed offense, regardless of whether targeted at an individual or a company.

A matter worth considering is that the asset freezing may be maintained until the final judgment is pronounced. Since complex criminal investigations may take several years, this can represent a major problem for their subjects.

Moreover, in terms of companies, one of the main issues that may arise relates to the fact that asset freezing may be ordered in respect to assets owned or held by a third party. Consequently, if a company is the subject of a criminal investigation (*i.e.*, one related to money laundering), the assets of its contractual partners may be frozen as the alleged results of the criminal activity. That third party, who may be unaware of the existence of the criminal investigation (or trial), may find it quite difficult to challenge the proceedings, as only a short time is given to do so following the communication of the freezing order, which can make it very hard to obtain the relevant information.

As a result, the length of the asset freezing may be a very significant problem to a company affected by such measures, irrespective of whether that company is the target of a criminal investigation or only a third party.

Summarizing the above, in Romania the risk of asset freezing does not exclude third parties not involved in the perpetration of the crime.

By Adrian Chirvase, Partner, Popescu & Asociatii

INSIDE OUT: ALPHA BANK COVERED BONDS PROGRAMME

The Deal: **The Deal: In April 2019 CEE Legal Matters reported that Clifford Chance Badea had advised Alpha Bank Romania on its EUR 1 billion direct issuance global covered bond programme – the first-ever in Romania. RTPR Allen & Overy advised Barclays Bank PLC as arranger on the programme, which came three years after the country's covered bond law entered into force.**

The Players:

- **Counsel for Alpha Bank Romania: Madalina Rachieru, Partner, Clifford Chance**
- **Counsel for Barclays Bank PLC: Andreea Burtoiu, Counsel, RTPR Allen & Overy**

CEELM: Madalina, how did you and Clifford Chance become involved with Alpha Bank on this matter?

Madalina: It was a combination of factors, starting with our team's involvement in the preparation of the current Romanian covered bonds law, our reputation as a leading Capital Markets law firm, and our collaboration with Alpha Bank Romania on previous projects.

We were at the core of the new Romanian covered bond legislation that came into effect three years ago. Since 2010, I have worked side by side with the Romanian Banks' Association, the National Bank of Romania, and the Romanian Financial Supervisory Authority to draft a new legal framework in this area, aligning Romanian legislation with European standards and practices.

We have also built a reputation as the leading law firm assisting on complex transactions that shape the business environment (first-of-its-kind transactions).

It was, therefore, a natural choice for Alpha Bank Romania to consider selecting as legal counsel the firm that helped bring this new legislation to life and who would also be able to assist in introducing a new instrument on the local market.

CEELM: Andreea, how about you? How did you and RTPR Allen & Overy become involved in this matter?

Andreea: Allen & Overy has a long history of assisting Barclays Bank PLC on

various other complex and first-of-their kind matters in the past.

CEELM: What, exactly, was the initial mandate when you were each retained for this project, at the very beginning?

Madalina: We were approached by Alpha Bank Romania at a very incipient phase of the project, in January 2017, when Alpha Bank Romania and Barclays were exploring the features of the Romanian covered bonds legislation and to what extent they could implement a covered bonds programme in Romania.

Further to that analysis, a significant number of queries resulted and Alpha Bank Romania, which knew that I had assisted the Romanian Banks' Association in preparing and agreeing with the National Bank the Covered Bonds Law, determined that our team would be best placed to shed light into Barclays queries. Once the structure issues had been clarified, Alpha Bank Romania decided to launch a covered bonds programme and we were mandated to assist Alpha Bank Romania on all aspects of the programme, in particular in relation to the base prospectus, the negotiation of all the contracts (cover pool monitor agreement, covered bondholders representative agreement, mortgage agreement, deed of charge, servicing agreement, agency agreement, *etc.*), the approval of the programme by the National Bank, the corporate approvals, the publicity formalities for the mortgage over the cover pool, issuing legal opinions, *etc.*

Andreea: Considering the novelty of the envisaged mandate for the Romanian market, our appointment was structured as a two-stage process: in the first stage of our appointment, we assisted with various structuring matters. Once these had been solved, we continued with the preparation of the relevant documentation for the program.

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

Madalina: As lead partner, my main tasks were [managing] the relationship with ABR and the other parties, considering the numerous structure issues that arose during the process due to the fact that it was a first-of-its-kind transaction, and providing overall supervision of the transaction and all of the documents.

Counsel Radu Ropota was in charge of the day-to-day management of all the aspects of the transaction, assisted by Associate Georgiana Evi. Also, Associate Yolanda Ghita-Blujdescu supported the team on various regulatory issues.

As our office in Bucharest operates as a fully integrated part of the firm's interna-

tional network, we were also able to consult with Partner Christopher Walsh and Associate Theodoros Kotsiras, from our London office, on various issues related to the contractual documentation.

Andreea: I and Partner Victor Padurari led the RTPR Allen & Overy team and managed the transaction. Our team involved in this project also included Andreea Chiriac, Lia Ilie, and Ioana Ilie, lawyers specialized in finance and capital markets deals.

CEELM: How was the programme structured, ultimately?

Andreea: The transaction was structured as a programme, with the first issue in the amount of EUR 200,000,000 being made around the time of the establishment of the programme. Programmes are generally preferred to individual issues when the issuer envisages further issues; this is because all documentation is agreed upon at the establishment of the programme and hence subsequent issuances can take place more efficiently from both time and cost perspectives; at the same time, a programme will also expedite things at the investors' end for future issuances and shows the issuer's commitment to developing a long-term sustainable product. As Alpha Bank Romania's programme was the first established under Romania's covered bonds legal framework, our involvement consisted of harmonizing the parties' expectations with the requirements of the Romanian law.

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

Madalina: First-of-their-kind deals usually face specific delays generated mainly by legal challenges that require flexibility and innovative solutions.

In this particular case, the work was extremely intense, given the complexity of the project. Among other things, we had to align all contractual mechanisms so that the rights and duties of all parties involved could still function in practice.

The main challenge came from the fact that Romania's covered bonds law was inspired from the German Pfandbrief Act, while the covered bonds programme was governed by English law. We needed to identify innovative solutions that satisfied Romanian law specificities while still keeping the features of the various English law concepts of the programme.

Andreea: Indeed, since this is the first transaction made under Law No. 304/2015, we had to break ground on a number of aspects. Throughout the process, various aspects needed to be solved and/or alternative solutions identified, keeping in mind that that, on the one hand, the Romanian legal framework was new and modern, but did not and could not address in extensive detail the complex mechanics of an international covered bonds issue, and on the other hand, well-established international covered bonds practice and expectations.

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

Madalina: We worked very well and efficiently with the team of Alpha Bank Romania, which was very professional thorough the whole process.

Andreea: Considering that all parties involved had the common goal of getting the transaction finalized, all parties involved cooperated continuously for such purpose. Effective communication and availability of all parties were strong points during the process. Moreover, the legal advice of both parties was undertaken by highly experienced teams with considering capital markets experience on this type of transactions, which we believe made the process smoother.

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

Madalina: The structure of the programme kept being adjusted during these two years in order to cater to the particularities of the Romanian legislation and the feedback received from the National Bank. We also needed to accommodate the requirements of various parties who later joined the project (the rating agency, the cover pool monitor, the covered bondholders' representative, *etc*).

We addressed various queries raised by Moody's in order to be able to issue its rating and comments from the National Bank of Romania. We also dealt with the approval of the prospectus by the Commission de Surveillance du Secteur Financier and the listing process on the Luxembourg Stock Exchange and the Bucharest Stock Exchange.

The fact that we had a very good relationship with Moody's even from the time when we were in the process of preparing the Covered Bonds Law and our previous experience in secondary listings of other bonds on the Bucharest Stock Exchange expedited and significantly smoothed the interaction with the other parties.

As mentioned, the main challenge was to identify solutions that took into account the expectations of the National Bank and of the other parties and the Romanian law specificities, while still keeping the features of an international market standard programme.

Andreea: The mandate remained along the original lines, however due to the novelty of the transaction on the Romanian market, the timing for completing the transaction was longer than originally envisaged. The structure had to be fine-tuned along the way to accommodate specific requirements either from the issuer's side or from the other parties involved: the asset monitor, the prospective covered bondholders representative, and the regulator.

CEELM: What specific individuals at Alpha Bank Romania directed your team's work, and how did you interact with them?

Madalina: The Alpha Bank team was coordinated by Periklis Voulgaris (Whole-

sale Vice-President) and mainly included Emil Mitescu, Eduard Istratescu (Legal Manager) and Nicoleta Ruxandescu (Deputy CEO of Alpha Finance Romania).

But I should also mention the fact that, without the involvement of Mr. Sergiu Oprescu (the CEO of Alpha Bank Romania) in the process of drafting the covered bonds legislation and the discussions with the National Bank, the enactment of the current legislation which allowed the covered bonds programme to be established would probably not have been successful.

CEELM: How about you, Andreea? What specific individuals at Barclays Bank PLC directed your team's work, and how did you interact with them?

Andreea: Our team's work was generally coordinated by the structuring team at Barclays Bank PLC, and in particular by Director Elena Bortolotti. The team at Barclays Bank PLC are greatly experienced in covered bonds transactions and hence guided all teams involved so as to achieve a great end result.

As part of our involvement in the transaction, we also worked closely with Alpha Bank Romania S.A.'s team, including Periklis Voulgaris, Emil Mitescu, Nicoleta Ruxandescu, Eduard Istratescu and Ioana Dumitrescu.

Considering the international component of this transaction, the majority of our work was generally carried out by phone and email, although several meetings were also held in person in Bucharest. The novelty of the overall transaction lead to extensive correspondence and conference calls either between all parties or sub-divided into legal or commercial workstreams/parties. Barclays Bank PLC and our teams were always available for discussing, sharing prior experience and finding new ways going forward.

CEELM: How would you describe the working relationship with RTPR Allen & Overy on the deal?

Madalina: Radu Taracila Padurari Retevoescu is a professional team which we have met in past transactions and, therefore, our work together was efficient and beneficial to all parties involved. Our interpretation of the Romanian law particularities was similar and, as such, we worked together to identify constructive solutions.

Due to the fact that most of the contracts were drafted by Allen & Overy in London, a large amount of work was done by email and we negotiated mainly by conference calls. There were also weekly conference calls to discuss the progress of the project and planning ahead.

CEELM: What about you, Andreea? How would you describe the working relationship with Clifford Chance on the deal?

It was great to have on the other side of the table an international law firm of comparable caliber, which had a highly-qualified team involved on this deal. Having all the parties advised by top international law firms (both having extensive experience in similar transactions in other jurisdictions) helped a lot in completing such a complex and novel transaction. I would describe our working relationship with CC on this transaction as a deal between professionals who were committed to closing the deal in the best interests of their clients.

CEELM: How would you describe the significance of the deal to Romania, or to the region?

Madalina: With the covered bonds issued by Alpha Bank, Romania has finally joined the other EU countries which have active covered bonds markets.

I am confident that this is a major step for the Romanian economy in general, as it allows the expansion of financial intermediation and stability in the financial system – it is known that banks with a broad and diversified range of funding tools are more resilient.

Covered bonds are viewed as low-risk investments and help diversifying the

Madalina Rachieru

Andreea Burtoiu

funding structures of banks and securing sources to support lending growth. Its positive impact can also be transferred to banks' individual clients through lower costs in real estate loans.

Andreea: The programme established by Alpha Bank Romania S.A. is the first covered bond programme established in Romania. We are therefore privileged to be part of the team that finalized this pioneering transaction on the Romanian market. Covered bonds are a feasible financing solution for the banks in Romania and until now we had a modern but untested legal basis, and a well-established international practice of bond issues, but no local experience. With this first covered bonds programme, credit institutions are more likely to consider covered bonds as a feasible instrument for attracting liquidities.

This deal marks another "first" for the Romanian capital markets.

David Stuckey

~~EX~~Re PATriate ON THE MARKET

SIMONA MARIN OF CMS BUCHAREST

Simona Marin is an English- and New York-qualified partner in CMS's International Finance team in Bucharest, where she focuses on project finance, real estate finance and other financing structures, both syndicated and bilateral, secured and unsecured. Simona has over ten years' experience advising on a broad range of high-profile financings and projects throughout Central and Eastern Europe.

CEELM: Run us through your background, and how you ended up in your current role with CMS in Romania.

SIMONA: I was born and raised in Romania until the age of 15, when I went to NY with my mother. So my high school, college, and law school education was completed in the United States. Throughout this time, I always came back to Europe at least once a year and I always believed that the European lifestyle and frame of mind fit me better than that of the United States. At a certain point in my legal career I also spent three years in Athens (as part of CMS) assisting our clients in Greece with their projects in Romania and South East Europe.

CEELM: Was it always your goal to work in Romania?

SIMONA: Working in Romania was not really a goal for me, but rather a combination of favorable circumstances, as in my last year of law school I met Simon Dayes and a few other partners who at the time were part of the Hayhurst Robinson law firm. Simon suggested I return to Romania when I passed my New York state bar exam. Since I was already thinking that the United States was not really the place for me, and Romanian was my first language, I decided to give it a try, although my decision surprised quite a few people among my friends, my family, and I daresay a few at Hayhurst Robinson. Having a common law background I qualified under English law and have been practicing in CEE for over thirteen years.

CEELM: Tell us briefly about your practice, and how you built it up over the years.

SIMONA: My practice focuses primarily on assisting banks and other financial institutions on cross-border projects and real estate finance transactions in the CEE region and other developing markets. When I joined Simon and the Hayhurst team in Bucharest in 2005, the Romanian banking and financial market was in its early stages, from a transactional perspective. The international financial institutions like the EBRD and IFC were very present in the market, but the commercial banks were only then starting to make their presence felt. In 2006, when Hayhurst Robinson merged with CMS Cameron McKenna, the major players in the banking community were the Greek banks, who were all looking to lend into Romania on a cross-border structure, financing the development and operation of commercial real estate assets. Most cross-border transactions were done under English law and I was able to put both my degree and my Greek language skills to good use in developing a strong relationship with the Greek banks. Over time the Greek banks started instructing the Bucharest Banking and Finance team

in all of their international transactions in South East Europe. At the same time we began doing more project finance work for the international financial institutions. And once the crisis hit and the Greek banks were required to leave the CEE markets, they were swiftly replaced by Austrian and German banks looking to plug the gap. Today, my biggest clients are Raiffeisen International Bank, Erste Group Bank AG, and UniCredit Bank, out of Vienna, Milan, and (via their local subsidiaries) throughout CEE, followed very closely by the EBRD, BSTDB, and IFC.

The key to growing my practice has been the ability to offer clients representation under English law and transaction management for CEE transactions from within CEE, backed by local law advice, all within the same law firm. I and the Bucharest banking team are involved in transactions across the region and work with the CMS offices in each of those countries to offer seamless cooperation.

CEELM: How would clients describe your style?

SIMONA: Relaxed and easy to communicate with, but business–minded and committed to finding solutions with the client.

CEELM: There are obviously many differences between the American and Romanian judicial systems and legal markets. What idiosyncrasies or differences stand out the most?

SIMONA: Romania is a developing market with a young judiciary, whereas the United States is a developed market with hundreds of years of undisturbed legal precedent. This makes Romania and its CEE neighbors a very exciting platform for practicing law, because almost no transaction is the same – even the so-called cookie-cutters. It means that apart from offering sound legal advice, lawyers have the opportunity to assist clients with structuring transactions to overcome potential legal uncertainties. Another very important difference is that Romania is a civil law jurisdiction (meaning its legal system is based on codified statutes) whereas the US and the UK are common law jurisdictions where case law (meaning published judicial opinions) are of primary importance. However, the type of transactions my team and I undertake more often than not involve both types of law, and it is a very interesting exercise for us to compare and contrast how certain principles established under common law, would or might be interpreted in Romania or other civil law jurisdictions.

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

SIMONA: I think the United States is very often described as a melting pot of cultures, but I rather think of it as a salad bowl, a country which is ethnically and racially diverse, and where the various cultural elements compliment and set each other off, rather than blend into one single culture. I think by comparison Romania is a rather homogenous culture, heavily influenced by its history and geography. It's fascinating seeing these two cultures through the eyes of one another. I think probably the formative years I spent in the US have made me appreciate aspects of the Romanian culture on which I had not focused on before – and vice-versa of course. Actually I think nowadays there are lots of similarities between the two rather than stark contrasts – especially as Romania is becoming increasingly open to international influence, having become, in certain areas, a cultural hub for CEE.

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

SIMONA: I think one of the most important aspects for clients in our practice area is the ability to manage a transaction from inception to completion. Someone who undertakes cross-border transactions in several jurisdictions can bring to the table the experience of several jurisdictions and solutions developed over time in those jurisdictions. I think another important element for our clients is consistency, by which I mean the knowledge that whether a transaction in in Romania, Poland, Ukraine, Serbia, Germany, or Cyprus, the level of know-how and expertise is the same. A lead counsel who has acted in many jurisdictions and has managed several teams will be able to pull a transaction together in the same way across all of those jurisdictions. For a firm like CMS, having someone with this kind of experience and background is important because it provides valuable know-how transfer. I work with each of our local CEE teams as well as our teams in Western Europe and beyond and I am able to transfer information and experience from one team to another and from one transaction to another. This is an invaluable tool for me and I trust it is of great to both my clients and my colleagues.

CEELM: Do you have any plans to move back to the US?

SIMONA: While I am extremely grateful for the many opportunities, personal and professional growing up in the US has given me, I do not see myself moving back to the US. But one should probably never say never (laughs).

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

SIMONA: My favorite country to visit is Greece, not just because of my family connections there (my husband is from Crete), but because of the incredible natural beauty of the country, the welcoming culture, and the incredible history of the people.

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

SIMONA: Mogosoaia Palace, on the north edge of Bucharest – a place steeped in history and culture, as well as a lovely park where you can spend a wonderful summer Sunday afternoon.

David Stuckey

MARKET SPOTLIGHT: MOLDOVA

At a Glance:

- Population: 3.55 million
- Life expectancy: 71.61
- Current President: Igor Dodon
- 2018 FDI: EUR 202.2 million
- 2018 GDP: EUR 9.9 billion
- GDP per capita: EUR 2,038
- 2018 GDP Growth: 4%
- GDP Breakdown by Sector:
  - Services: 62%
  - Industry: 20.307%
  - Agriculture 17.70%

In this section:

GUEST EDITORIAL: THE MOLDOVAN LEGAL MARKET – JUST THE FACTS

The Republic of Moldova has three and a half million people – two and a half million fewer than when it was part of the Soviet Union. The Soviet bar was strictly a criminal/civil/family bar, with lawyers doing international legal work concentrated mainly in Moscow. With the breakup of the Soviet Union, local bars (such as Moldova's) were forced to develop legal capabilities from scratch to serve the needs of local businesses and foreign investors.

The Moldovan Bar: Back in the Soviet days the Moldovan bar counted only about 300 advocates. Today, the Ministry of Justice has issued 3,400 licenses to practice law (although fewer than 2,000 lawyers are actually practicing). Moldovan advocates may not be employed, and bar licenses need to be suspended for those advocates accepting in-house positions or working outside of the legal profession.

Law Firms and Solo Practitioners: The law on the Moldovan legal profession requires lawyers to organize themselves either as solo practices or law firm partnerships, and not as commercial entities. The majority of Moldovan advocates are organized as solo practices, and the current register of law firms includes only 180 partnerships. The largest such partnership includes 56 general practitioners. The average Moldovan business law firm has 5-15 advocates.

Financial Transparency and Market Size: Moldovan law firms do not publicize their annual gross revenue or other similar metrics, and the information is not available from public sources. My estimate of the total size of the Moldovan legal services for international business is somewhere between EUR 10-20 million. For comparison: (a) the profitability of the entire Moldovan banking sector in 2018 was EUR 80 million; (b) the profitability of the entire Moldovan insurance sector in 2018 was only EUR 2.3 million; and (c) the 400+ Moldovan IT sector companies employing about 13,000 software engineers reported EUR 145 million in 2018 revenues from export of IT services.

Taxation of Legal Practice: Moldovan lawyers pay 18% tax on income after deducting expenses, and they are exempt from VAT. The social security and medical insurance of lawyers are fixed amounts that are independent from the level of earnings.

Regional Mobility and Language Capabilities: As the majority of Moldovans (including lawyers) have multiple citizenships, and as the most popular second citizenship is Romanian, Moldovan lawyers are able to travel visa-free anywhere in Europe and the CIS. The Romanian/Moldovan language is a must for lawyers, of course, and Russian is indispensable as the regional language of business communication. Contract drafting is Russian is also not infrequent. Many business lawyers also speak English, French, and/or German.

Core Practice Areas: General corporate, M&A, banking/finance, employment, tax, real estate, and local industry work are the main areas where legal expertise is required. My prediction is that after a long slowdown, M&A will keep Moldovan lawyers busy for at least the next two or three years.

Litigation is not very popular among large businesses (both local and foreign), who prefer, if at all possible, to avoid encounters with the Moldovan judiciary, which dealt with around 300,000 cases in 2018 (less than 50% were civil cases, primarily in the areas of family law, employment law, and ordinary debt collection). The average Moldovan judge hears an average of 60 cases a month.

International arbitration is not a popular practice area among Moldovan lawyers, and business law firms probably manage fewer than ten international arbitration mandates each year, all together.

Emerging Practice Areas: With the launch of the Moldovan Citizenship by Investment Program in November 2018, Moldova has become a destination for affordable European investment immigration. This has opened new professional avenues for Moldovan lawyers interested in international immigration work and has led international immigration law firms from all over the world to treat Moldova as a new market.

Law Firm Referrals: Top global law firms are an important source of business for Moldovan law firms, with referrals coming primarily from London, Bucharest, Moscow, and Kyiv.

Romanian law firms are another source of business for Moldovan lawyers. Aside from unity of language and traditional historic ties, 30% of all Moldovan exports go to Romania, making Romania the number one buyer of Moldovan products. Many Romanian companies treat Moldova as a market for their goods and services, making the collaboration between Romanian and Moldovan firms quite active. Moldovan lawyers are also known to attend court hearings in Romania frequently in collaboration with Romanian lawyers and vice versa.

Collaboration with law firms from Moscow and Kyiv, as well as other CIS cities, is another area of practice for the Russian-speaking Moldovan lawyers. Moldovan companies maintain strong commercial relations with their customers and suppliers in the East, so that the need for legal work servicing this area of business will always be in sufficient demand.

Alexander Turcan, Managing Partner, Turcan Cazac

MOLDOVA IN THE BALANCE

The landlocked former Soviet republic struggles to move beyond political division and geopolitical pressures to find a steady and reliable path to prosperity.

Packed between two worlds – the safe and familiar CIS block and the tempting treasures of the EU – Moldova has yet to decide which path to choose – a decision that with great significance for the country's political and economic destiny. At the same time, Moldova is struggling, as always, with long-standing internal economic and political challenges.

A Split Mind

Perhaps inevitably, the clash of national narratives from the Soviet past and the independent present have seeped into Moldova's recent parliamentary elections. Unable to decisively move forward, the country has not had a functioning parliament since the February 24, 2019 election, with neither party able to meet the necessary electoral threshold (33% of the vote) to form a new government. The pro-Russian Party of Socialists of the Republic of Moldova, which obtained 31.1% of the vote, came closest, with the Democratic Party of Moldova (23.6%) and the Party of Action and Solidarity (26.8%) coming in second and third, respectively.

"Currently there is no certainty as to how the relationship with Russia will develop. There were many cases when Russia changed rules overnight and goods were seized and destroyed for imaginary reasons."

Subsequently, negotiations among the parties to form a coalition government have failed, and on May 22, 2019, President Igor Dodon asked the country's Constitutional Court for authority to dissolve the Parliament. In the meantime, the lack of a functioning government, in the words of Turcan Cazac Managing Partner Alexander Turcan, has "caused internal political instability."

And not only political. Efrim, Rosca & Asociatii Senior Lawyer Ilona Panurco notes that the instability is causing a frustrating lack of predictability and sustainability for businesses as well.

Neither Fish Nor Fowl

Famously, the country's ties with both the EU and Russia pull Moldova back and forth between the two, with the country's economy and politics suffering as a result. According to the World Bank, with a 2018 GDP per capita of only USD 2,274, Moldova is the poorest country in Europe, right behind neighboring Ukraine.

"We are in a special economic relationship with the EU and our government is always trying to get into the EU. Yet generally the public does not believe that EU accession will happen in the near future, and nobody is really hoping for it."

In its efforts to improve its relationship with the EU, according to ACI Partners Managing Partner Igor Odobescu, Moldova joined the EU's Eastern Partnership in 2009, and in 2014 the country entered into the EU-Moldova Association Agreement, which included the introduction of a Deep and Comprehensive Free Trade Area. This latter move in particular led Russia to impose import restrictions on Moldovan produce. Still, despite the sanctions, approximately ten percent of Moldovan exports continue to go to Land of the Tsars. "Currently there is no certainty as to how the relationship with Russia will develop," Odobescu says. "There were many cases when Russia changed rules overnight and goods were seized and destroyed for imaginary reasons."

In any event, Russia's role is hardly limited to receiving agricultural imports. As Moldova imports all of its supplies of petroleum, coal, and natural gas, Russian fossil fuels – which accounted for over 75% of Moldova's supply in 2017

Turcan Cazac

Igor Odobescu

Ilona Panurco

– has been a significant element in its relationship with Moldova for decades. Unsurprisingly, this relationship has had a profound effect on Moldova's political decisions. "We are a very small country and totally dependent on energy resources from Russia," Odobescu says. "They are using this tool to influence some of our decisions and we depend on the will of Russian politicians."

Moldova is working to diversify its energy supply, and the country has recently

signed an agreement with Romanian natural gas transporter Transgaz to construct a 120-kilometer pipeline into the country from the EU. As a result, Alexander Turcan says, "we will have the option to buy gas from not only a traditional channel, which is coming from the East, but also from a channel coming from the West."

Still, Turcan suggests that Russian influence in Moldova might actually be increasing, pointing to the recent presidential elections in Ukraine. According to him, "the politics of new President Volodymyr Zelensky, who is more open towards Russia than President Poroshenko, may consolidate Russia's politics and influence Moldova even more."

In addition, President Dodon has pushed his country towards the East, last year securing "observer" status for Moldova in the Eurasian Economic Union, which consists of member states Russia, Belarus, Kazakhstan, Armenia, and Kyrgyzstan.

The EU Alternative

In part as a result of Russia's influence on the country, Ilona Panurco sighs, "the prospects of joining the EU are getting more remote, because the political powers – the parliament and the president – have different targets." And EU accession is not merely a matter of Moldova's political choices anyway, according to Alexander Turcan, who notes shifting priorities in the EU have slowed its expansion as well. "We are in a special economic relationship with the EU and our government is always trying to get into the EU," he says. "Yet generally the public does not believe that EU accession will happen in the near future, and nobody is really hoping for it."

Whether accession is likely in the near future or not, Moldova continues to make efforts to bring the country's rules and regulations in line with EU directives, coinciding with the government's general pro-business tendencies. Among the most recent major reforms in the past 15 years is the country's newly-modernized Civil Code, which Odebescu describes as now being "one of the most modern codes in the region." The newly-revised Code includes new requirements for insurance contracts, contracts for deposit, loan, and mortgage agreements, and investment and ownership procedures. "The Civil Code provides a level of contractual freedom that was not previously possible," says Panurco. "This means lawyers will be more creative in drafting contracts for their clients."

Although Panurco notes that overall FDI is not increasing in Moldova, she reports that the country's automotive, energy, IT, and renewable energy sectors are growing, and points out that automotive suppliers Lear Corporation, DRA Draexlmaier Automotive, and Gebauer & Griller have recently established plants in Moldova's free economic zones.

> *"The Civil Code provides a level of contractual freedom that was not previously possible. This means lawyers will be more creative in drafting contracts for their clients."*

Turcan believes that Moldova is an attractive market for investors in the automotive sector for its combination of geographic proximity to EU producers and relatively low costs. "This is how Moldova is competitive in this particular market," he says, pointing to data showing that the sector is now among the top ten export categories in Moldova. Indeed, that growth is remarkable. According to Invest Moldova, the total export in the automotive industry in 2017 grew 37.1% from the year before, and it now accounts for 14% of all the country's exports.

The IT sectors is also thriving in Moldova, Turcan reports, with more and more investors joining the Moldova IT Park – the country's first – which was launched on January 1, 2018 and established for a period of ten years.

Finally, Moldova's latest step towards economic growth is the Moldova Citizenship-by-Investment program, which focuses on attracting foreign capital and investment, and which provides, in Turcan's words, "a foreign person looking for citizenship immigration one more option." The MCBI program claims to provide visa-free access to 122 destinations, including the countries in Europe's Schengen Area and both Turkey and Russia. As a result, Turcan says, a variety of businesses which otherwise would have little interest in Moldova, are showing interest in citizenship in the country, making the Moldovan passport "among the most affordable in Europe." In addition to the low cost, Moldovan passports are prepared especially quickly, he adds. "EU citizenship is generally available within a year and a year and a half, while Moldovan is within three or four months," he says.

As a result, Turcan reports that the country is expected to receive over EUR 1 billion in the coming four to five years from citizenship immigration alone. "It is expected to bring more money into the economy without actually spending resources," he says, "as the country only gives out citizenship, it does not sell resources, and it also allows people working in the service industry to generate additional income." He describes it as a win-win for economy and local business."

Conclusion

Ultimately, despite the political clutter, Moldova continues to try to find a way to economic growth and navigate safely between two competing worlds. "The main challenge for Moldova is to identify and grow its global competitive advantage," says Turcan. It remains to be seen how one of the poorest European countries will break through its challenging domestic landscape and what path it will take to sustainable growth.

Mayya Kelova

INSIDE INSIGHT: INTERVIEW WITH IGOR ANDRIES, HEAD OF LEGAL AT ORANGE MOLDOVA

CEELM: Thank you for speaking with us, Igor. Can you walk us through your career leading you up to your current role?

Igor: In my last year at Moldova State University Law Department, I won a fellowship from the Open Society Institute and continued my studies at the Case Western Reserve Law School in the U.S., where I obtained my LL.M degree in US Legal Studies, focusing on corporate, securities, and commercial law. Upon my return to Moldova, I joined a USAID-sponsored technical assistance project working on the reform of the Moldovan securities markets. In 1997, I obtained my attorney license and continued my career as general practitioner. From 1998 to 2003, I worked at KPMG Moldova, advising international and local clients on business law and taxation matters. Since the end of 2003, I have been Head of Legal & Regulatory Division of Orange Moldova, a subsidiary of the Orange Group, one of the world's largest operators of mobile and Internet services.

CEELM: What are the most significant changes you've seen in Moldova's legal market over the course of your career?

Igor: Our legal framework has changed a lot over the years. Moldova received a lot of support from the EU, the United States, and international financial organizations in reforming its legal system and institutions in accordance with Western standards. These reforms made the work of a business lawyer more complex and demanding, but at the same time easier thanks to better transparency and improved processes. These changes created a demand for lawyers with a different approach, skills, and knowledge. There is a new generation of talented lawyers acting as in-house counsels or in law firms.

CEELM: Is the Moldovan legal and regulatory system as good as it could be for Orange Moldova? Are there changes you would like to see, or alternatives present in other markets that you would like to see tried in Moldova?

Igor: The current Moldovan legal and regulatory system is generally favorable for business, but not as good as it could be. There are still many problems that need to be addressed by the authorities. Orange understands though that Moldova is a young country which is still in transition. Being one of the major investors in the country, Orange is in constant dialogue with various institutional stakeholders and plays an active role in improving Moldova's legal and regulatory system using various platforms.

CEELM: Tell us about the legal depart-

ment at Orange Moldova. How big is it, and how is it structured?

Igor: We are eight lawyers. Each lawyer takes care of a particular area, however there is no strict delimitation and we are happy to help each other when necessary. The lawyers at Orange Moldova are experienced and qualified professionals, with a high work ethic. Each of them works quite autonomously, with little direction and oversight, but can count on colleagues for advice and support. We also have a very close cooperation with our colleagues from business teams.

CEELM: What is your typical day at work like?

Igor: I spend quite a lot of time on operational matters and advocacy. This includes working or guiding my colleagues on more complex issues and performing tasks which set policies or rules. I also try to be proactive and use every opportunity to contribute to the improvement of the legal and regulatory framework that impacts our company.

CEELM: What skills do you think you have that are of most use to you in your job?

Igor: I try to maintain a business approach to my job. A good business lawyer should not simply answer questions on what is the applicable law, but act as if she or he is running the business together with her/his colleagues responsible for business processes. This means that he should be proactive: anticipate issues, help find solutions, evaluate risks, and give clear recommendations. Other important skills are tenacity, perseverance, communication skills, and leadership.

CEELM: What was your biggest success or greatest achievement as a lawyer in terms of particular projects or challenges?

Igor: I am very proud of my contribution to the success of Orange's business in Moldova and to the shaping and improvement of the Moldovan legal and regulatory system, which has wider effects on the country and its people.

CEELM: What one person would you identify as being most important in mentoring you in your career?

Igor: I have learned from many people I worked with. Still, I am particularly thankful to my bosses – both Managing Partners and CEOs – who have always supported me and helped me grow professionally. Each of them was different and taught me various things: be business-minded, communicate efficiently, take responsibility for solving issues, turn challenges into opportunities, and constantly look for innovation.

CEELM: On the lighter side, what is your favourite book or movie about lawyers or lawyering?

Igor: My favorite movie about lawyers is "A Civil Action", with John Travolta and Robert Duvall in star roles. It is about a successful and cynical personal injury lawyer from a small law firm who takes on a case involving two big industrial companies thought to be responsible for causing a serious disease to several people through contamination of the town's water supply, at the risk of bankrupting his firm and career. I saw this movie when I was in law school in the US. I liked the main character very much for his tenacity, loyalty to the client's cause ("the case is about more than just money") and sense of humor. I probably wanted to be a little bit like him.

CEELM: What would you like the world to know about Moldova that isn't that obvious?

Igor: Moldova is a beautiful country, which has many talented and hardworking people. Despite all its problems, it could be a good investment opportunity for those with patience and determination.

David Stuckey

EXPERTS REVIEW: AGRICULTURE

"Agriculture is our wisest pursuit, because it will in the end contribute most to real wealth, good morals, and happiness." – Thomas Jefferson

Well, maybe. At the very least, Agriculture is a critical element of economic health in many countries. As such, for the first time, it forms the basis for Experts Review.

The articles are presented this time around in order of Agricultural land as a percentage of overall land area in 2016, according to the World Book. Thus the article from Moldova, where 74.2% of the country's overall land area was designated as Agricultural, is first, and that from neighboring Ukraine (71.7) is second. The article from Estonia, where only 23.1% of the land is designated as Agricultural, comes last.

By way of comparison, 46.7% of all land in Central Europe and the Baltics is designated as Agricultural, as is 37.4% of the world's.

In This Section:

MOLDOVA

The Reform of the Moldovan Civil Code and its Impact on the Financing of Agribusiness in Moldova


Octavian Cazac

Major developments in 2018 and 2019 have affected the growth of the agricultural industry and agribusiness in Moldova. Key among these developments was the March 1, 2019 adoption of the restated Moldovan Civil Code, which significantly affected the parts of the Moldovan legal framework relevant to businesses.

The Civil Code is the most comprehensive and detailed legislative act in the area of private law in the Republic of Moldova. This organic law regulates the status of persons, property, obligations, inheritance, and private international law. Adopted in 2002, it entered into force on June 12, 2003, and it has undergone only minor amendments in the 15 years since. This legislative policy was intentional, in order to ensure stability of the private law in the Republic of Moldova. The Law to Modernize the Civil Code and to Amend Certain Legislative Acts that entered into force on March 1, 2019 (the "Law") is a significant step forward and a major effort to modernize the national legal infrastructure, in order to bring it in line with current regulatory regimes elsewhere in Europe and the rest of the world.

In this regard, the latest legislative developments on the international and European levels have been studied and considered, in particular the Draft Common Frame of Reference (DCFR) of the European Union and the civil codes of jurisdictions such as Germany, France, Romania, Italy, the Czech Republic, and Hungary, as well as the recently-amended Russian Civil Code.

The Law was adopted to bring the private law in the Republic of Moldova more in-line with European and international developments, more accurate and predictable, to better protect the validity of the contracts, to enhance the freedom of contract in B2B transactions, and to improve consumer protection in B2C transactions, among other things. Among the many novelties is the introduction of the law of trusts (*fiducia*).


Vadim Taigorba

In addition, and in part due to the reform of the Civil Code, 2019 has also been significant for the development of Moldovan agribusiness in terms of redefining the ability of companies in the sector to finance their development. Although the Moldovan finance market is fairly limited (with Moldovan banks and lending companies only making traditional financing products available), Moldovan laws and practice do not significantly limit or discourage the ability of companies to seek financing abroad.

Acting on this basis, the Trans-Oil Group of Companies – the single largest Moldovan agricultural business group (involving over fifteen companies in Moldova, as well as several in Switzerland and Cyprus) – has made, through an Irish subsidiary, a USD 300 million secure Eurobond issuance on the Irish Stock Exchange. The settlement date of the issuance was April 9, 2019, with the Eurobonds maturing on April 9, 2024. This Eurobond issuance is the first of its kind for Moldova and its implementation involved a number of novel legal issues and solutions.

The bulk of transactional documents in the issuance were not governed by Moldovan law. The effects of such documents would be recognized in Moldova, however, by virtue of Moldova's private international law, which, after the reform of the Moldovan Civil Code, implements the EU Rome I Regulation and the favorable regime instituted thereby. In particular, the new provisions have largely done away with the poorly-defined concept of "mandatory provisions of law" of Moldova, which, due to its broadness, could easily limit the effects of contracts governed by foreign law. A significant portion of the security documents put in place to secure the issuance were governed by Moldovan law, but with a much heavier degree of reliance on legal concepts and institutions existing under English law than is usual for cross-border financing transactions. These instruments also benefitted significantly from the reform of the Moldovan Civil Code and its greater allowance for customized contractual structures and provisions. Although complex and unusual, the transaction structure was possible to implement in Moldova. Furthermore, the guarantees and security put in place by Moldovan guarantors for the purposes of the Eurobond were approved by the National Bank of Moldova, under Moldovan currency control laws, demonstrating that the implementation of such a novel financing solution is indeed possible, which should raise local awareness of and stimulate interest in the Eurobond as a financing instrument.

Octavian Cazac and Vadim Taigorba, Partners, Turcan Cazac

UKRAINE

Ukrainian Trade English Style


Iurii Gulevatyi

Ukraine is a leading producer and exporter of agricultural products, and agribusiness is the driving force of the country's economy, as almost 40% of overall foreign currency earnings which come in to the state budget relate to agricultural exporters. The industry grows every day, engaging ever-more investments from both national and foreign participants. Nonetheless, the relevant logistics and infrastructure requires improvement, as does the quality of applicable legal framework.

The GAFTA Standard Contract

Ukraine's agricultural sector, like so many others, is heavily governed by English law because many Ukrainian market participants incorporate GAFTA standard contracts, governed by English law. However, even though English law provides many advantages, it remains a challenge for traders and lawyers in Ukraine, as the mechanism concluding and performing contracts under English law is often in conflict with the Ukrainian system of law. Nevertheless, many Ukrainian traders are very familiar with the GAFTA standard contracts, and well aware of the rules of English law.

Still, Ukraine is a unique jurisdiction in terms of the application of English law to certain contracts through incorporation of GAFTA standard contracts – in particular, GAFTA Contract No. 78 (the "Original Contract"), a standard contract for the sale of grains providing for a number of delivery terms by rail. The Original Contract provides for CPT (or "carriage paid to") delivery terms. This provides a unique challenge for Ukraine, as on the one side it calls for English law as governing the sales contract (which incorporates the Original Contract), although the CPT contract itself is performed on the territory of Ukraine. As a result, the sales contract is performed in Ukraine, but calls for the application of English law.

Despite the established laws and regulations applicable to the delivery of goods by rail, however, uncertainties occur. In particular, the Original Contract does not correspond to Ukrainian market realities. As a result, companies operating in the Ukrainian market saw the need to adapt the Original Contract to Ukrainian realities. For this reason, a working group consisting of traders, logistics practitioners, and lawyers was formed under the auspices of the Kyiv branch of the GAFTA office to draft and promote various amendments to the Original Contract. This resulted in the new GAFTA 78UA Contract (the "Amended Contract") – English law infused with Ukrainian market peculiarities.

Unsurprisingly, the differences in the mechanisms laid out in the Original Contract and those in the Amended Contract demonstrate the reality of the Ukrainian market in terms of delivering goods by rail/road.

How GAFTA's Standard Contract was Brought in Line with Ukraine's Market Expectations


Leila Kazimi

One of the main changes was in the mode of transportation. The Original Contract did not provide for the possibility to deliver the goods by road. This forced Ukrainian traders to include provisions as to delivery by trucks into their individually negotiated contracts, given that in Ukraine goods are delivered to port or terminal either by rail and/or road. The Amended Contract has this option, so that parties incorporating the Amended Contract will have both options (rail and/or road) by default in contrast to the Original Contract.

The Amended Contract contains fundamentally different delivery terms. For instance, as the Original Contract did not contain DAP and DAT terms – although they, along with CPT, are among the most popular commercial terms for inland deliveries in Ukraine – both were included in the Amended Contract, and DAF and DDU were removed. The Amended Contract also calls for the Ukrainian market scheme for the determination of final quality and quantity as well as the dispatch/delivery period, depending on delivery terms. Market participants will have a more distinct and clear understanding going forward in choosing the appropriate delivery terms for their transactions.

The Amended Contract is also designed to resolve certain problems in the Ukrainian market associated with logistics and abusive practices. For instance, the provision that dispatch/delivery shall be made in approximately evenly-spread quantities throughout the period of dispatch/delivery was introduced in order to prevent sellers in a rising market from attempting to postpone the delivery until the last day possible – and to prevent buyers in a falling market from postponing confirmation of deliveries to the terminal until the last day.

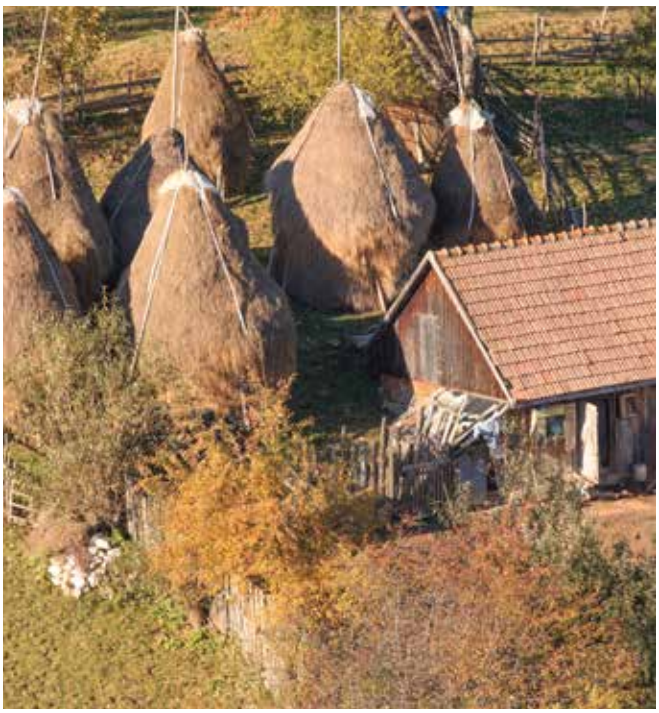
Conclusion

Consequently, in order to create a workable mechanism of goods delivery by rail or road, several of the Original Contract's clauses were updated in the Amended Contract. As such, Ukraine has significantly impacted the world of international trade by bringing GAFTA's standards in line with the reality of performance in Ukraine.

Ivan Kasynyuk, Partner, Iurii Gulevatyi, Senior Associate, and Leila Kazimi, Associate, Avellum

ROMANIA

Agriculture, Farming, Agri-Business in Romania



Dan Borbely

Over 77% of the European Union's territory is classified as rural (47% is agricultural land and 30% is forest). The numbers are little different in Romania, where around 81% of the territory is rural (approximately 50% is agricultural land and over 31% is forest cover).

The Romanian farming sector is characterized mostly by small farms (92.2% of the holdings are less than five hectares in size), with a growing number of extremely large farms especially in the most fertile regions close to the Danube river. Therefore, a large part of the agricultural land needs consolidation for more efficient management and higher returns. However, investors are sometimes reluctant to plunge into agri-business, generally because of some combination of the following: (i) some agricultural land is state property; (ii) limitations exist on the purchase of agricultural land by certain categories of foreigners; (iii) sale and purchase procedures may become too intricate due to legal pre-emption rights; and (iv) they fear they will not be allowed to build on or change the purpose of agricultural land.

The good news is that there is an answer to any question and a solution to any problem. Even when the investment is to be made on agricultural land which is the public or private property of the State, the law currently provides for fast concession procedures, including a direct award of concession agreements to owners of certain types of agricultural equipment. However, Romanian legislation provides for specific levers in favor of the state so that, even if the concession agreement is still valid, the land under concession can be returned to the state or the concession agreement can be unilaterally terminated by the state if the national or local interest requires it, subject to the payment of fair compensation in advance (any resulting disputes will be referred to the competent court). The problem is that compensation should be both *fair* and *paid in advance*, and this subject requires careful consideration. An investor in need of a huge amount of a particular fodder that is not easily found on the market will not be very pleased to receive *fair* compensation for the termination of the concession if this makes it impossible for the investor to feed its livestock. On the other hand, how can compensation be *paid in advance* when, in most cases, the parties do not agree on the amount of the compensation that is appropriate? Legal proceedings take time and are costly for investors. An insurance policy might help an investor cover losses from the termination of a concession until the execution of a new concession agreement for similar land can be arranged. Another potential issue with the concession of agricultural land could arise when the concessionaire changes the investment plan and asks the state for an amendment of the concession agreement. For a substantial variation of the concession agreement, the award procedure should be re-initiated, and the investor risks not being re-awarded the concession.

Raluca Chelaru

Farmers have always been encouraged to invest in agriculture and financing options are still available to them. However, this market also attracts large investors who do not need grants, are fast-moving, make quick decisions, and have the required know-how. This can be the case for an investor intending to merge multiple businesses into one. Farming is often believed to generate the highest yield for agricultural land, but there are cases when investors may want to branch out and apply to withdraw a piece of land from a larger plot from agricultural use. For example, an investor may want to develop a rural bed & breakfast facility on an already existing farm. When its land is residential, things can go smoothly, because the building permit will automatically allow for the withdrawal of the land from agricultural use.

Agriculture, farming, and agri-business: From basic rural needs to high level investments, Romania is prepared to welcome initiatives in agriculture.

Dan Borbely, Partner, and Raluca Chelaru, Senior Associate, Tuca Zbarcea & Asociatii

HUNGARY

Challenges to Agricultural Policy Objectives of the EU


Janos Toth

The agricultural sector in the European Union is facing an increasing number of legal and regulatory challenges, in contexts which are genuinely multidisciplinary.

The sector has traditionally attracted close political attention at both the EU and national level, and regulatory and policy decisions at both levels have often led to substantial - in some instances drastic - changes to its continued functioning.

The diversity of stakeholders involved in these policy discussions have not led to better decision-making either, as effective sector governance would require meaningful dialogue about difficult policy choices between private farmers and global conglomerates and between civil society organizations and national regulators.

Various laws and policy decisions have triggered an increasing number of questions around policy coherence. The lack of a coherent set of carefully crafted regulations means that any response to a segmented sectoral issue (*e.g.*, whether to keep providing subsidies to increase provincial productivity) inevitably generates other issues (*e.g.*, the potential exhaustion of natural resources).

Each of the following nine objectives the EU has recently set for its ever-evolving Common Agricultural Policy suffer from these problems and thus raises further challenges, with considerable legal and regulatory relevance.

1. Ensuring a Fair Income for Farmers vs. Increasing Competition for Natural Resources: Access to land is limited by the small proportion and high price of land coming onto the market. National legislation in most EU territories, such as the 2013 Hungarian land act, has introduced strict regulatory control over any transfer and leasehold of agricultural land.

2. Increasing Cross-Border Competiveness vs. Transboundary Pests and Diseases: Lack of border control of livestock within the single European market means that plant pests and animal diseases travel across regions fast, which immediately affects the ability of producers and food manufacturers in infected areas to access other markets. Regulatory prevention strategies, however, require national veterinary and plant health service capacities and increase the administrative burden for market players.

3. Rebalancing the Power in the Food Chain vs. Inequality and Insecurity Among Farmers: One of the main economic challenges to farmers is access to markets, particularly concerning bargaining power in the food chain. In December 2018, the European Commission and Council announced its support of proposed legislation against unfair trading practices in the agricultural and food supply chain which would improve the role of farmers in the chain by banning some of the most common unfair trading practices of large, multinational buyers.

4. Climate Change Action vs. Economic Growth: Sustainable use of natural resources has become a hot concept in agriculture too, which unfortunately becomes difficult when trying to increase sectoral output. National regulators and EU lawmakers have ensured that farmers in segments that can most easily reduce their environmental footprint are better subsidized, or even incentivized.

5. Preserving Landscapes and Biodiversity vs. Agricultural Productivity: While the adoption of modern agricultural technology and solutions can drastically increase agricultural productivity, these tools often come under stringent regulatory restrictions, if not prohibitions. The classic example is genetically modified organisms, which are completely prohibited in the Hungarian agricultural sector by the Hungarian Constitution.

6. Environmental Care vs. Food Loss and Waste: The unprecedented demand for food ironically increases food waste, which is estimated at as much as one-third of all food produced for human consumption. Regulators are striving to find solutions to reduce this and to ensure a sustainable and environmentally safe solution.

7. Supporting Generational Renewal vs. Population Growth, Urbanization, and Aging: A particularly painful social challenge for farmers in an aging society such as Hungary's is inter-generational succession. Ensuring both economic viability and environmental sustainability creates a complex challenge for those senior farmers who cannot bear the costs and may lack the resources for modern management. Therefore, in April 2019 the Hungarian Government proposed to review and renew the relevant national legislation specifically to enable a fair and smooth inter-generational succession of privately-owned agribusinesses.

8. Vibrant Rural Areas vs. Climate Change and Natural Disasters: A relatively new challenge is climate change, which is increasing the risk of floods, droughts, and previously-unknown exotic diseases. Limiting the impact of natural disasters on agriculture is critical, leading the Hungarian Government to launch a national system to prevent damage from hail.

9. Protecting Food Security and Health Quality vs. Changing Food Systems and Innovation: In the EU, the increasingly strict regulatory environment is leading to the reduction of investments into innovative solutions. As a result, businesses in the EU are lagging behind competitors in global markets.

Janos Toth, Partner, Wolf Theiss, Budapest

TURKEY

Legal Regulations Against Division of Agricultural Lands by Inheritance Under Turkish Law

Demet Yilmaz Utkaner

Preventing the division of agricultural lands is important in preserving quality in the sector and ensuring the continued contribution of agriculture-related income to the domestic economy. As a result, every positive step taken in the agriculture sector creates a similarly positive movement in the economy. Among the most important steps taken in this regard in Turkey were the 2014 amendments to the Law on Soil Protection and Land Use No. 5403, including to the definitions of "minimum agricultural land size" and "agricultural land size of sufficient income," affecting the division of inherited agricultural land and transfers of ownership of agricultural lands with designated sizes.

The 2014 Law on the Amendment of the Law No. 6537 requires that inheritors of agricultural land after May 15, 2014 who are unable to agree on the transition process of that land within one year of the previous owner's death do so in court. Within that one year, inheritors can decide to transfer the ownership of the agricultural area to one or more of the inheritors, a family partnership, a limited liability company they have established, or even a third party. When making this decision, however, the rules about "minimum agricultural land size" and "agricultural land size of sufficient income" – both established to protect the value of agricultural land from being diminished via over-division – should be taken into account.

Article 8/A of Law No. 5403 regulates that agricultural lands cannot be divided more than the minimum land size designated as "agricultural land size of sufficient income." Additionally, it is not possible to increase, in the land registry, the amount of shares or the number of shareholders in land qualifying as "land size of sufficient income," although there is no prohibition against transferring shares to another current shareholder or to a third party.

Responsibilities of Inheritors Regarding the Transfer of Agricultural Lands and the Legal Consequences of Not Fulfilling These Responsibilities

Zuhra Acar

If inheritors do not reach a settlement regarding the transfer of ownership and none of the inheritors requests the transfer of ownership of the inherited agricultural land from a competent civil court of first instance within one year after the previous owner's death, the Ministry shall extend the period to do so by an additional three months. If transfer procedures are not completed within this period, a lawsuit can be filed by the Ministry *ex officio* and exempt from any court expense against the inheritors. In this lawsuit, the court can decide to transfer ownership of agricultural income to a competent inheritor, taking into account in its analysis potential inheritor's personal skills and abilities, whether they are living off the agriculture sector, and if they have agricultural lands besides the one at issue. If there are no competent inheritors, the court will transfer the ownership to the highest bidding inheritor; if no inheritors want to claim the land, the land can be put up for auction to third parties.

In determining who is a "competent inheritor," conditions set out in regulations promulgated by the Ministry of Agriculture are taken into account. These regulations set out a point evaluation system, such that inheritors with 50 points or more are considered to be competent inheritors.

If an increase occurs in the value of a part or all of the "agricultural land with sufficient income" due to non-agricultural usage within 20 years after the transfer of ownership to an inheritor, the material value of the land at the time of transfer is recalculated, taking the date at which the non-agricultural use of the land was allowed into account. The difference in value between the two rates is paid to inheritors in accordance with their shares by the inheritor who acquired the land with the transfer. For deaths occurring before May 15, 2014, transfers which have not been completed yet should be completed in accordance with the articles of the previous law.

Conclusion

The importance of these regulations is undisputable when dividing agricultural lands by inheritance, taking into account the decrease in agricultural land use efficiency and the potential damage to the economy are taken into account. However, difficulties in interpreting the law and criticisms that the regulations are impractical show that there will be legal obstacles to overcome for applications within the context of Law No. 5403. For this reason, parties involved in such matters are advised to seek legal advice in order not to face any forfeiture.

Demet Yilmaz Utkaner, Executive Partner, and Zuhra Acar, Senior Associate, Sezer & Utkaner

BULGARIA

Growing Cannabis in Bulgaria: "Is It Legal?!" or "Are You Stoned?!"

Elena Todorova

Bulgarian legislation on the legal cultivation of cannabis could make for interesting reading. Some readers might feel that the regulations and definitions are "the most hilarious things ever." This ar-ticle aims to show why.

Cannabis (hemp) is an annual flowering herb belonging to a genus of plants that in some cases can be used to obtain marijuana. Cannabinoids are the chemical substances in the herb that influ-ence humans. One of these cannabinoids – tetrahydrocannabinol (THC) – is the psychoactive sub-stance of cannabis. Another – cannabidiol (CBD) – is not subject to regulation and monitoring un-der Bulgarian law. THC may range from 0.2 to 21%, depending on the variety of hemp. All plant varieties in which the THC content is less than 0.2% are qualified as industrial cannabis (and un-suitable for marijuana production). Industrial cannabis is used in the textile, food, and feed indus-tries, among others.

The "Dualistic" Approach

The applicable legislation reveals that Bulgarian lawmakers still do not know whether growing in-dustrial cannabis is a good thing or a bad thing – or a crime. All this handwringing is embodied in the requirements of a single legal act – the Bulgarian Narcotic Substances and Precursors Control Act (the NSPCA).

On the one hand, the NSPCA allows the cultivation of industrial hemp with THC content of less than 0.2%, but on the other hand it implements the Convention on Psychotropic Substances (CPS) and the UN Single Convention on Narcotic Drugs (1961).

It's Legal

According to the NSPCA and applicable secondary legislation, natural or legal persons who are registered as farmers and have not been convicted of crimes related to the production, handling, and marketing of drugs and that are against the customs regime have the right to grow industrial cannabis.

To receive a permit for the cultivation of industrial hemp, farmers must submit a sample form ap-plication to the Minister of Agriculture, Food and Forestry (MAFF) together with a clear court record and a declaration that the farmer will not separate, use, or process parts of the hemp plant. If the applicant is a legal person, all members of the management bodies must provide clear court rec-ords and declarations.

Applications are considered by a committee, which must decide within three months of the submis-sion whether to issue a permit (in the form of a licence) or to waive the application. The licence is valid for three years. The MAFF does not charge a fee for this procedure.

... But It's Also a Crime.

However, THC and its isomers, delta 6a (10a), delta 6a (7), delta 7, delta 8, delta 10, delta 9 (11) (and their stereochemical variants) are classified and listed as narcotic substances on the List of Plants and Substances Presenting a High Risk to Public Health Due to the Harmful Effects of the Abuse Thereof (the "List") under the NSPCA. As the definition of a "narcotic substance" includes all substances on the List, products containing THC are classified as "preparations." Under Bulgarian law, preparations are subject to the same control measures as narcotic substances, and police and customs authorities are thus obliged to seize any preparations containing THC which are pro-duced, processed, acquired, stored, used, imported, or designated for export and re-export or re-leased on the local market.

The lack of a legally-permissible minimum amount of THC puts all products placed on the Bulgari-an market containing cannabinoids at risk – even products containing CBD, since it is practically impossible to exclude traces of THC in these products.

In addition, according to the law in Bulgaria, the processing of the stem and seeds of industrial cannabis is legal, as they can be used for fiber, for feed, and as seed for sowing. However, the leaves and flowers of industrial cannabis are still considered a source of marijuana, leading to a legal misconception. Although CBD cannot be produced in Bulgaria, CBD and products containing CBD can be imported into the country and freely sold. This gives rise to numerous complications for farmers and processors, and requires reconsideration of the existing legislative framework.

Elena Todorova, Co-Head of Real Estate, Schoenherr Sofia

CZECH REPUBLIC

Adventures in Bringing a Novel Tobacco Product to Market


Roman Pecenka

The tobacco products market is heavily regulated in the Czech Republic, as it is across the European Union. A key document is the Tobacco Products Directive (2014/40/EU), which sets out a uniform, detailed framework for all EU member states. The TPD thus provides substantial direction regarding tobacco regulation, tobacco products, and electronic cigarettes, as well as novel tobacco products. It includes comprehensive definitions of various types of tobacco products and regulates their labeling and packaging, mandatory health warnings and security features, and how to place them on the EU market.

With that in mind, it would seem that introducing a novel tobacco product on the Czech market should be fairly straightforward, and once introduced in one EU market the manufacturer should be able to apply similar rules in other member states. Unfortunately this is not the case; in fact the opposite applies. While Czech tobacco legislation does comply with EU regulation in general, it is Byzantine in execution, with provisions that are confusing and surprisingly scattered across numerous and often contradictory legal acts.

Although most of this legislation is simply a translation of EU rules, the devil, as always, is in the details. Czech laws are rife with minor deviations from the EU definitions, leading state authorities to adopt surprising – and for the manufacturer, ultimately expensive – interpretations.

For example, a strict reading of a particular Czech law would likely yield the conclusion that the health warning for a smokeless tobacco product should cover 30 percent of the surface of the entire package. However, according to the English version of the TPD, the health warning should cover 30 percent of the "surface concerned." As a result, there might be two completely different packages. On the TPD-compliant package, only the two main surfaces of the package will contain a health warning occupying a standard one-third of each surface, whereas on the one corresponding strictly to the text of the Czech translation the health warning would occupy almost half of each concerned surface. In order to find an EU-compliant interpretation that would get around the infamous gold-plating of a national legislator, one would have to analyze the different language versions of the TPD to determine the EU lawmaker's intention.


Kristyna Faltynkova

Even if you conquer such hurdles, there is still copious room for surprises. One single product might be defined in different ways in the Czech Republic. This is the case for the novel tobacco product IQOS, which our client, Philip Morris, is preparing to launch in the Czech Republic. The IQOS device looks like an electronic cigarette, but it is not. The tobacco sticks that are heated in the device look like small cigarettes, but they are not. With IQOS the tobacco is not burnt but heated, meaning that what the user inhales is different than from an electronic cigarette – and that the legal definitions and applicable law differ as well.

Due to these inconsistencies in Czech legislation, IQOS and its tobacco sticks occasionally escape Czech regulation completely. The law on excise duty, which defines tobacco products subject to excise duties as cigarettes, cigars, cigarillos and smoking tobacco (this definition applied only to this specific law), did not include them until April 1, 2019. Similarly, the Act on Health Protection from the Harmful Effects of Drugs only prohibits the use of electronic cigarettes and "smoking" in public places. Thus, heating tobacco sticks in an IQOS device should be permitted in all places where regular smoking and use of electronic cigarettes is prohibited, *i.e.*, in public transportation, airports, restaurants, *etc.* Notwithstanding this, the general approach is to allow the use of IQOS devices only where the use of electronic cigarettes is allowed.

As a result of all the considerations described above our lawyers have been thoroughly involved in helping Philip Morris with all stages of preparation for the launch of IQOS on the Czech Market – to the surprise of most of our client's staff. We have been working with Philip Morris's marketing, production, sales, reclamation, tax, and legal departments, as well as with the web designers, including the entire e-shop system, since the client has been made fully cognizant of the most relevant rule in (and not just in) Czech legislation: *"Vigilantibus iura scripta sunt."*

Roman Pecenka, Partner, and
Kristyna Faltynkova, Senior Associate, PRK Partners

SLOVAKIA

Food Trade in Slovakia Will Have New Rules

Peter Oravec

On March 28, 2019 the Slovak parliament adopted Act No. 91/2019 Coll. on Unfair Conditions in Food Trade, which completely replaces previous legislation on the subject.

Act No. 91/2019 formally applies to all food business operators, including both suppliers (*e.g.* manufacturers and distributors) and retailers of food products, irrespective of their actual market power. Nevertheless, the wording of some of the act's provisions on "unfair conditions" indicates that it is in reality aimed at protecting suppliers and imposing severe restrictions and fines on retailers.

The act lists over 30 conditions which may not be agreed upon, requested, or enforced in food trade. These unfair conditions are in many cases formulated very broadly, which may lead to a similarly broad interpretation by the Ministry of Agriculture and Rural Development, which is empowered with supervising compliance with the act. The act thus brings an uncertainty into the relationship between suppliers and retailers of food products which is likely to impede innovations by the suppliers, leading to a limited selection for and thus ultimately harm the end-consumers. For example, the act limits the amount of payments which retailers may request from suppliers for certain services, such as those related to advertisements for the suppliers and their food products, logistics services, and placing supplier food products at certain spots in the supermarket.

Another unfair condition under the act is the purchase of food products by retailers for a price lower than the economically-justified costs of their suppliers. This prohibition seems to lack inner logic and may in reality be a concealed price regulation, as in general, retailers cannot sell food products to end consumers for prices lower than their procurement prices.

Jan Augustin

The act also declares that retailers must pay for food products delivered to them by their suppliers within 20 days from delivery of the supplier invoice or 30 days from the supply of the food product. In case of food products intended for immediate consumption, this time period is reduced to 10 days from delivery of the supplier invoice or 15 days from the supply of the easily-spoiled food product.

As indicated above, compliance with the act will be supervised by the Ministry of Agriculture and Rural Development. For this purpose, the ministry may also raid the premises of food business operators and request that they produce any documents potentially relevant to the supervision. The ministry may impose fines of up to EUR 500,000 for violations of the act. This is a significant increase from the fines available under the previous legislation.

Depending on the circumstances, in addition to imposing a fine, the ministry may also order the food business operator to remedy the underlying unfair condition before a specific deadline. The ministry may fine operators who fail to remedy unfair conditions before that deadline, in some instances more than once.

Appeals against fines levied by the ministry do not have a suspensive effect. This means that the fine must be paid within 30 days from delivery of the first instance decision on the fine, irrespective whether this decision may later be annulled by the appellate body or court. This regulation seems unconstitutional and in due time it may be annulled by the constitutional court.

In conclusion, the new act overall appears to be an unsystematic legal regulation which substantially formalizes the normally informal contractual relationships between suppliers and retailers of foodstuffs. The act will thus surely increase the costs which suppliers and retailers will have to incur in connection with their business, but in the end does not bring any benefits to either of them. The legislation seems to be politically motivated and therefore we assume it will probably be annulled should the government change.

Peter Oravec, Partner, and Jan Augustin, Attorney, PRK Partners

AUSTRIA

Regulated Industries and Non-Exhaustion of IP Rights in the Course of Parallel Trade


Egon Engin-Deniz

In a recent case involving parallel-imported agrochemical products, the District Court of The Hague ruled that non-compliance with the requirements laid down by the European Court of Justice (CJEU) for parallel import of re-labelled products displaying the original right-holder's trademark constitutes trademark infringement, particularly if the right-holder is not properly notified of the parallel import and is not offered a sample of the relabelled product on request. This decision shows that the requirements for parallel import are applied strictly by the courts and have a broad scope (not limited to pharmaceutical products), allowing the mark-holder to exercise control over the resale, re-labelling, and re-packaging of its original products within the EU.

Background

Under Article 15 of Regulation 2017/1001 and Article 15 of Directive 2015/2436, a trademark owner cannot oppose the use of its trademark by third parties for goods that were put on the EU market either by the trademark owner or with its consent. Consequently, a parallel importer can purchase the (original) goods of the trademark owner in one EU member state and resell them in another EU member state. The rights of the trademark owner are considered "exhausted." However, the trademark owner can oppose this use of its trademark and parallel import, provided there are "legitimate reasons" for doing so. This is particularly the case where the condition of the goods is changed or impaired.

The Judgement

In the particular case described above, the defendant company sold agricultural fungicides which had been previously imported from another European country. The company had been granted a parallel permit for the product but relabelled it because of the different language and regulatory requirements. The products nevertheless still contained various trademarks from the trademark owner's company after re-labelling. The defendant company did not notify the trademark owner prior to the import though, and despite several warning letters, denied any obligation to notify and to send a sample of the relabelled product upon request. The defendant company claimed that the trademark owner's company had sufficient knowledge of the imports and the CJEU's repackaging conditions applied only to pharmaceuticals.

In its judgement, the District Court of The Hague rejected the claim that the CJEU's repacking conditions and related EU case law applied exclusively to pharmaceutical products. As both pharmaceutical and plant protection products are in a very sensitive area of products – one in which the public is extremely demanding with respect to quality and integrity – the Court held that the CJEU's repacking conditions apply to both product categories. In addition, the District Court held that because both kinds of products can be potentially harmful, the applicable use instructions, dosages, and warnings on and in the packaging are of major importance. The District Court also stated that the specific subject-matter of a mark is to guarantee the origin of the product bearing that mark, and that relabelling products simply as repackaging by a third party without the authorization of the proprietor is likely to create real risks for that guarantee.

Conclusion

While parallel imports normally are covered by the principle of "free movements of goods," The Hague District Court made it clear that the continuous use of the original right-holder's trademark imposes certain obligations on the parallel importer in the context of re-packaged/relabelled agrochemicals, hereby following the principles set up by the CJEU indicated above. The court pointed out that *all* CJEU repackaging conditions have to be met, namely a prior notification to the right holder, the provision of a sample of the relabelled product upon request, no defective, poor-quality, or untidy re-labelling (or re-packaging), and no (negative) effect of the re-packing and/or re-labelling on the original condition of the product. Following this case, a trademark owner can also take proper action against parallel imports for plant protection products which do not comply with the CJEU repackaging conditions. At the same time, parallel importers who aim to comply with these conditions should have and will have no issues with the trademark owner.

Egon Engin-Deniz, Partner, CMS Vienna, Rogier de Vrey, Partner, CMS Amsterdam, Filip de Corte, Head of IP Crop Protection, Syngenta, and Joachim Hofmann, Senior Trademark Lawyer, Syngenta

SLOVENIA

Anticipated Changes in the Regulation of Slovenian Agricultural Land

Andrej Kirm

Structural changes are being proposed to Slovenia's agricultural land policy to incentivize young farmers to purchase and lease agricultural land and increase food self-sufficiency. Many companies strongly oppose some of these proposals.

The Slovenian Ministry of Agriculture, Forestry and Food (MAFF) recently proposed amendments to three interconnected acts in the area of Agricultural Land Policy. We will focus on the most important of these proposed changes, some of which have encountered strong opposition.

MAFF is proposing an increase in the amount of compensation due to any change in the purpose of agricultural land by 100% from what is currently required. It is also proposing to extend the obligation to pay compensation to categories of agricultural land previously exempt from this obligation. As a result, if the proposal is adopted, building on agricultural land will cost more than it does now, and the obligation will apply to more kinds of agricultural land than now.

Sara Mauser

MAFF is also proposing to change the Policy of Agricultural Land by improving the ability of young farmers to lease state-owned agricultural land by offering them areas gradually taken away from large leaseholders (*i.e.* those who lease more than 100 hectares) at the expiration of the lease. First, they would take 5%, in ten years they would take an additional 7%, and in the next ten years another 10% of the surface. For large leaseholders (mainly agricultural companies) this of course means a land loss. For example, a company leasing 500 hectares would lose a total of approximately 100 hectares.

Legal limitations apply to sale and lease transactions of agricultural land with a number of pre-emptive beneficiaries. The proposed changes also relate to the order of the pre-emptive beneficiaries, both for lease and for purchase of agricultural land, with special attention paid to young farmers, who are now placed higher in the chain. The changes proposed by MAFF are designed to encourage the generational renovation of farms, as young farmers are, in many cases, currently unable to obtain agricultural land due to restrictive legislation.

Unsurprisingly, some of MAFF's proposals face strong opposition from agricultural companies, which oppose the planned limitation of lease of state-owned agricultural land to a maximum of 100 hectares (1 square km). They also oppose the gradual withdrawal of land, which is likely to affect their individual business activities. The limitations being proposed could thus limit the business development of large and mid-size agricultural companies.

The draft act is currently in public discussion until the end of May, with the public able to comment and propose amendments. A number of responses are expected. MAFF will be expected to find a compromise between the requests of small farmers who expect better access to agricultural land, and agricultural companies which expect legislation that will not impede their business development.

Andrej Kirm, Partner, and Sara Mauser, Legal Associate, Kirm Perpar

ESTONIA

Why Should One Invest in Estonian Agriculture?

Ergo Blumfeldt

Estonia is probably best known for its IT businesses and startups. At the same time its population density is among the lowest in Europe, which means that forestry and agriculture are also topics to look into. Due to the country's geographical location and climate, Estonia is well-suited for dairy farming, and the Estonian islands and seaside regions are also very good for beef cattle farming. Agricultural subsidies provided by the European Union and the Estonian government have resulted in some of the most modern dairy production facilities in the world, making the Estonian average cattle herd size the second-highest in Europe. As a result of state-of-the-art genetics, the average milk production per cow is over 9,300 kilos per annum – the second highest result in Europe, right after Denmark. As a consequence, foreign investors have turned to Estonia for investment possibilities. Here we would like to look more into the possibilities of investing in Estonian agriculture and what to bear in mind.

Arable Land. Around half of the land used belongs to farms. In Estonia's 15 years in the EU, as a result of agricultural subsidies, the price of land has increased significantly: approximately 3.4 times in the last ten years. Due to modern equipment and methods, the land is in good condition, and in several areas it is the main or only source of competition for farmers. The restrictions for acquiring land are relatively reasonable. Both legal persons and citizens of countries which are members of the European Economic Area or the OECD have the right to acquire immovables on the same basis as Estonian legal persons and citizens. All Estonian legal persons can acquire immovables containing fewer than ten hectares of agricultural land without any restrictions. If a legal person would like to buy an immovable containing more than ten hectares of agricultural or forest land, that person must have been engaged in the production of agricultural products for at least three years preceding the transaction or receive an authorization from the local municipality. There are no limitations on acquiring shares for a legal person who has acquired such land.

Siim Maripuu

Change of Generations. Estonian agriculture is in a state of transition, as many of the managers and owners of agricultural companies who transformed the leftovers of Soviet collective farms into modern and productive farms are now retiring or withdrawing from the sector. The land is expensive, as is the technology and farm buildings that house, in some cases, over 1000 cows, meaning that the possibilities for younger farmers to take over are limited. Agriculture is thus growing more and more into a business in Estonia with an ever-growing number of farms owned by local and international funds, corporations, and wealthy individuals. Most farms are no longer managed by their owners (as they were ten years ago) and this has created a class of experienced and business-minded managers. The farmers selling their life's work may have been building their farms up for over 40 years and have helped with the upkeep of the local communities, resulting in tough negotiations when selling shares. Many of the former (Soviet) cooperative farms that were transformed into companies still have hundreds of shareholders – mainly people who have worked them, and their inheritors. Still, as a rule, such companies have one manager who has run the business for years and has a larger stake in the company.

Transaction Process. The recognition of the value of legal assistance and professional transactional advice has grown among farmers significantly over the last three decades, as a thorough Due Diligence process now includes reviewing rental agreements, agricultural subsidies received and used, environmental issues (such requirements have significantly increased over the last few years) and, of course, the usual financial and legal concerns. One should also bear in mind when acquiring a farm in Estonia that it is not only a business. It is also a community that you acquire, as many local villages are dependent on the agricultural business. This means that getting to know the local people and their issues is critical during the transaction process. Doing this smoothly helps with finding a workforce, renting land, and conducting business in the future.

Does Agriculture in Estonia sound interesting? Triniti is the only law firm in Estonia with a legal team specialized in Agriculture. We have been involved in most of the substantial agricultural transactions in Estonia over the last ten years. Get in touch!

Ergo Blumfeldt, Partner, and Siim Maripuu, Senior Associate, Triniti

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