



CEE

YEAR 2, ISSUE 5
OCTOBER 2015

LEGAL MATTERS

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



■ ACROSS THE WIRE: DEALS AND CASES IN CEE ■ MARKET SPOTLIGHT: ROMANIA AND GREECE ■
■ EXPERTS REVIEW: INFRASTRUCTURE/PPP ■ INTERVIEW WITH DMYTRO MARCHUKOV OF AVELLUM ■
■ CEE BUZZ ■ ANALYSIS OF THE CJEU'S SAFE HARBOR RULING AND ITS IMPACT IN CEE ■
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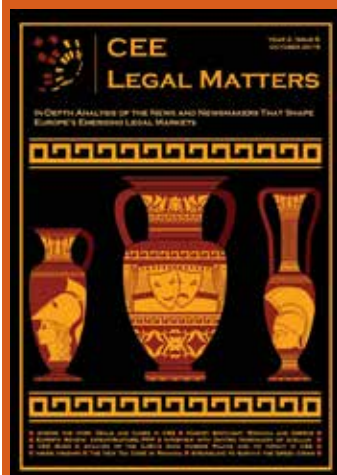
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Editorial: The Magic Word: More



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This has been an especially busy few months for us at CEE Legal Matters.

Oh, it's not as if you can normally find us sleeping in a hammock on the beach with a hat pulled down over our eyes. When we started CEE Legal

Matters, we were aware what we were getting into, and we rolled up our sleeves and got to work. Spending hours every day searching for news of deals, cases, and transactions we could report on the CEE Legal Matters website. Reaching out to sources to have opposing counsel identified, then reaching out to that opposing counsel for confirmation. Transforming the stories we found on firm websites into professional, native-level English (which, let me tell you, was not always easy, though of course I'm not talking about **your** firm). Maintaining and expanding connections with Partners and General Counsel throughout Europe. Staying on top of administrative, financial, supervisory, budgetary, secretarial, and other back office obligations. Designing an effective, attractive website – then watching it crash, and spending days frantically redesigning it to be even better, while negotiating with server hosts to make sure it didn't crash again ... then seeing it crash again.

All of that – just two of us, for a long time – while we were trying to put together the next issue (always, immediately, the next issue) of this, the best magazine for lawyers and about the legal industry in Central and Eastern Europe. Travel, interviews, stories, writing, research, data, editing, revising, photos, formatting, revising, correspondence, revising. And then, revising.

It turns out that publishing a magazine while simultaneously trying to provide content for a website visited by over 45,000 people a day is ... challenging, to say the least.

So it's not like our days were empty before this summer began.

But wow, have these past few months been busy. First, we started putting together the questionnaire for the GC Report – our annual survey of practices and concerns for Chief Legal Officers across Europe – then putting that questionnaire online, then compiling the answers, then considering the results, then writing, formatting, designing, and finally publishing and distributing the final product.

At the same time we were putting together, promoting, and organizing the GC Summit – the first-ever CEE conference dedicated to best practices, strategies, and solutions for CLOs across the region. The event itself, held in Budapest on September 10-11, was a huge success for sponsors, speakers, attendees, and us alike, we're proud to say – but only as the result of hard work and dedication by everyone involved.

Then, still not pausing to take a breath, we turned to the fast-approaching deadlines for this October issue, committed – as we are for every issue – to making it the best one yet.

And, yet again, we succeeded! Check out the summaries of the many firm mergers, office openings, office closings, and tie-ups announced during this busy period. Check out the article about the new Head of Dispute Resolution at Avellum Partners in Ukraine, committed to leading his team forward. Check out the interview with the Schoenherr Tax Team in Romania about the significance and consequences of the new Fiscal Code in that country. Check out the interview with Managing Partners at leading law firms in Greece about the effect of that country's financial crisis on their business and bottom line. Check out the editorials of Helen Rodwell, Bryan Jardine, and Dragos Vilau. Check out Inside Insight, Expats on the Market, the Summary of Deals, the Buzz, Experts Review, and more, and more, and more. Man, this issue is packed.

So it's been a crazy summer. But here's the punchline: We want more. We want to provide more. And we will. In fact, the new CEE Legal Matters Job Board went live on the CEE Legal Matters website on October 22, and we plan to reveal more events and conferences, new features, and bigger plans soon.

And we want to receive more. More emails, more communications, more criticisms, more compliments, more feedback, more ideas, more suggestions. We've said it before, and we'll say it again: We really are committed to making CEE Legal Matters the go-to source of information for and about lawyers in Central and Eastern Europe. Whether you want information about firms, legal analysis, news about deals, information about open positions, professional guidance, or anything else related to the legal industry in this fascinating part of the world, we want to be the first place you look.

But that's for tomorrow. Today, as we put this article to bed ... I think that hammock is looking pretty good after all.

David Stuckey

Guest Editorial: Dealflow Continues to Flourish in an Uncertain Market



When preparing for my welcome speech the night before our annual client party at the end of September, I was reflecting on the current market climate and the past year. Our Prague office has had an excellent year both in terms of financial results and growth of the team. Just before summer we made up two new partners and we have recently added five new advocates to our team.

It felt only natural to put our own positive message into a wider context. The Czech statistical office had just announced an expected GDP growth of more than 4% and a record low unemployment figure. The country is actually among the front-runners in the EU for these macro-economic indicators.

It did not feel right, however, to just reflect on these positive developments – after all, we do not live in a bubble. The refugee crisis is reaching new heights

every day, the position in Ukraine seems unchanged and we are waiting to see how the downward spiral on the Chinese stock exchange will affect us. Just reading the daily headlines is enough to sink you into a mild depression.

But did I really want to kill a celebration with our clients by speculating on all that? To stay on the safe side, I decided for a brief speech summing up developments in our office and thanking our clients for trusting us with their business.

The M&A Outlook – a report CMS published at the end of September – echoes a similar dualistic attitude to European recovery in the M&A sector. On the one hand, confidence is sparked by the IMF forecast that euro-area GDP growth in 2015 will be above 1% for the first time since the post-Lehman financial downturn. However, the 230 CEOs, finance directors, bankers, M&A heads, private equity investors and sector specialists that were interviewed for the report believe that political uncertainty and regulatory issues remain serious concerns for European businesses, making a return to health for the Eurozone circumspect.

Despite the cautious outlook, European M&A deal value is actually at its highest level since 2007. Deal value has risen by 17% for the first half of 2015; however, deal volume dropped by 14% with 2,800 deals compared to 3,300 for the same period last year. For a number of reasons – favorable Euro exchange rate and availability of healthy assets, among them – the European M&A market remains at-

tractive to foreign acquirers from the US and Asia.

A weak euro is still considered one of the biggest threats to European businesses. However, there may still be a silver lining. Many top executives remark on the positive fallout of eurozone volatility. While a weak euro will make imports and outbound M&A transactions comparatively more expensive, it may also make euro-area exports and inbound M&A deals more attractive to international buyers.

Examining the responses to our research, a clear majority (73%) expect that M&A levels will increase or increase greatly over the next 12 months. This shows a similar level of optimism to 2014, when 76% of respondents expected an increase in M&A, and a marked increase from 2013, when only 48% foresaw an uptick in deal-making. While European M&A has had a muted start to the year, M&A is on corporates' agendas, and pipelines are likely to be fuller in the second half of the year.

I am optimistic by nature and believe Europe will be able to deal with problems whether they relate to Russia, the current inflow of refugees, or the euro. Europe – CEE included – still remains attractive for investors from outside the region. We can take hope from the fact that our M&A Outlook shows that executives are bullish about M&A prospects while at the same time being cautious about the economic climate.

*Helen Rodwell,
Managing Partner & CEE Head of Corporate,
CMS Prague*

Write to us

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Please send any comments, criticisms, questions, or ideas to us at:
press@ceelm.com

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



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Legal Ticker: Summary of Deals and Cases

Full information available at: www.ceelegalmatters.com

Period Covered: August 14, 2015 - October 15, 2015

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
17-Aug	BPV Hugel; Schoenherr	Schoenherr advised Immigon Portfolioabbau AG on the sale of VB Leasing Finanzierungs-gesellschaft m.b.H to BAWAG PSK Leasing GmbH – which was advised by BPV Hugel.	EUR 650 million	Austria
18-Aug	Freshfields; White & Case	White & Case advised Barclays, Deutsche Bank, Erste Group Bank AG, NATIXIS, and Raiffeisen Bank International AG as lead managers on the bond issuance by Austrian KA Finanz AG. Freshfields advised KA Finanz.	EUR 1 billion	Austria
19-Aug	Binder Groesswang	Binder Groesswang advised MBI Group Beteiligung GmbH, the Austrian owner of both ANGER Machining and HELLMERICH, on the acquisition of a 76% shareholding in and refinancing of the group by Taiwan's family-owned Tongtai Machine & Tool.	N/A	Austria
21-Aug	Herbst Kinsky	Herbst Kinsky advised the Fattal Hotels Group on its acquisition of the Leonardo Hotel Wien from a subsidiary of Immofinanz AG.	N/A	Austria
31-Aug	Cerha Hempel Spiegelfeld Hlawati; Freshfields	CHSH Cerha Hempel Spiegelfeld Hlawati advised FWU AG, Munich, on its acquisition of 100% of the shares in Skandia Austria Holding AG – and thus indirectly also 100% of the shares in Skandia Lebensversicherungs AG and Skandia Invest Service GmbH, all headquartered in Vienna – from the German Heidelberger Leben Group.	N/A	Austria
3-Sep	Herbst Kinsky	Herbst Kinsky advised AMS AG, a leading worldwide manufacturer of high performance sensor and analog solutions, on the acquisition of the CMOS Sensor Business from NXP Semiconductors.	N/A	Austria
3-Sep	Schoenherr; Wiedenbauer Mutz Winkler & Partner	Schoenherr advised immigon portfolioabbau ag (formerly OVAG – Oesterreichische Volksbank AG) on the sale of its 100% shareholding in VB Factoring Bank AG, including the subsidiary Eurincasso GmbH, to Germany's A.B.S. Global Factoring AG. The A.B.S. group was advised by Wiedenbauer Mutz Winkler & Partner.	N/A	Austria
3-Sep	Cerha Hempel Spiegelfeld Hlawati	CHSH Cerha Hempel Spiegelfeld Hlawati advised Reeder C. J. Ahrenkiel on the acquisition of the remaining 50% stake in IWH from Hochtief Projektentwicklung GmbH, a subsidiary of German-listed Hochtief Aktiengesellschaft.	N/A	Austria
7-Sep	Baker & McKenzie; Doralt Seist Csoklich	Baker & McKenzie advised Warburg-HIH Invest on the sale of the Alt Erlaa retail park in the southern part of Vienna to Semper Constantia Immo Invest GmbH, a subsidiary of Semper Constantia Privatbank. Semper Constantia was represented by the Doralt Seist Csoklich law firm.	EUR 32 million.	Austria
14-Sep	Wolf Theiss	Wolf Theiss advised the VTB Bank (Austria) on the increase of its Common Equity Tier 1 capital.	EUR 200 million	Austria
14-Sep	Fellner Wratzfeld & Partner	Fellner Wratzfeld & Partner advised UniCredit Bank Austria AG in connection with the sale of its 99.94% interest in DC Bank AG to card complete Service Bank AG.	N/A	Austria
21-Sep	CMS	CMS advised AMCS Industriebeteiligungs GmbH on the sale of its subsidiary, the Austrian valve manufacturer Ventrex Automotive, to the Dutch group Aalberts Industries.	N/A	Austria
24-Sep	Allen & Overy; Schoenherr	Schoenherr has advised an international banking consortium consisting of Commerzbank Aktiengesellschaft (technical lead), Barclays Bank plc, Credit Agricole CIB, and CaixaBank SA as Joint Lead Managers on the successful issuance of a fixed-rate mortgage covered bond by Vienna-based Erste Group Bank AG, which closed on September 9, 2015.	EUR 500 million	Austria
25-Sep	Dorba Brugger Jordis	Dorda Brugger Jordis is advising listed BWT Aktiengesellschaft on its merger with its unlisted subsidiary, BWT Holding AG.	N/A	Austria
28-Sep	CMS	CMS successfully obtained permission by the Austrian antitrust authorities for the proposed joint venture of Swissport and DLH Fuel Company mbH, a wholly-owned subsidiary of Deutsche Lufthansa AG.	N/A	Austria
28-Sep	CHSH Cerha Hempel Spiegelfeld Hlawati	CHSH Cerha Hempel Spiegelfeld Hlawati provided legal advice to Immofinanz AG in connection with its invitation to bondholders regarding the incentivised repurchase of bonds which are exchangeable into BUWOG shares, and other related transactions, including the successful placement of 8.5 million ordinary shares in BUWOG by an international banking consortium as part of an accelerated bookbuilding process.	EUR 430 million	Austria
5-Oct	Binder Groesswang; CMS; Wolf Theiss	Wolf Theiss successfully represented Interritus Limited and Trinity Investments Limited on Austrian regulatory and merger control elements of their March 13, 2015 acquisition, via strategic partnership, of 99.78% of the spun-off part of the Austrian state-owned Kommunkredit Austria AG from Finanzmarktbeteiligung Aktiengesellschaft des Bundes.	N/A	Austria
5-Oct	Freshfields; Wilmer Hale; Schoenherr	Schoenherr (on matters of Austrian law) and Covington & Burling (as international counsel) advised underwriters Leerink Partners LLC, RBC Capital Markets LLC, Needham & Company, and Wedbush PacGrow on Vienna-based Nabriva Therapeutics AG's initial public offering in the United States and its listing on the NASDAQ Global Market.	N/A	Austria
14-Oct	Herbst Kinsky; HLMK Law Firm	Herbst Kinsky advised the founders of finderly GmbH on the sale of shares in Shpock ("Shop in your pocket"), a flea market app for high class products, to Schibsted Classified Media.	N/A	Austria

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
8-Sep	Berwin Leighton Paisner; DLA Piper; Linklaters	Berwin Leighton Paisner led a multi-jurisdictional team including DLA Piper Australia and Linklaters Warsaw in advising Prairie Mining on its standard listing on the Main Market of the London Stock Exchange, which admitted on September 3, 2015.	EUR 51.6 million	Austria; Poland
14-Oct	Baker & McKenzie; Cerha Hempel Spiegelfeld Hlawati; Polenak	CHSH and Macedonia's Polenak law firm acted as joint counsel to Telekom Austria Group in connection with the merger of its subsidiary VIP Operator Dooel Skopje with One Dooel Skopje, a subsidiary of Telekom Slovenije Group, both operating in the Republic of Macedonia. Baker & McKenzie Italy advised Telekom Slovenije Group on the deal.	N/A	Austria; Serbia; Macedonia
28-Aug	Sorainen	Sorainen's Belarus office advised the China National Chemical Corporation on local antimonopoly compliance, related to its planned acquisition of control over Pirelli & Co S.p.A..	N/A	Belarus
30-Sep	Sorainen	Sorainen's Minsk office advised the Papa John's pizza take-out and delivery chain on the opening of its first store in Minsk, and thus its first in Belarus.	N/A	Belarus
9-Oct	Aleynikov & Partners	Aleynikov & Partners signed "a long-term Cooperation Agreement" with the administration of the Hi-Tech Park Belarus – an industrial park created by means of a special 2005 law enacted to encourage and support the software industry.	N/A	Belarus
7-Sep	Kambourov & Partners	Kambourov & Partners assisted the Kaufland retail chain in the build-up to the September 2, 2015 opening of its 10th hypermarket in Sofia.	N/A	Bulgaria
21-Sep	Djingov, Gouginsky, Kyutchukov, & Velichkov; Kinstellar; Wolf Theiss	Wolf Theiss advised CEE Equity Advisors on the acquisition, made along with BlackPeak Capital, of a minority share in the Walltopia Ltd. manufacturer of climbing walls. Djingov, Gouginsky, Kyutchukov & Velichkov advised Walltopia on the deal, with Kinstellar providing legal vendor due diligence.	N/A	Bulgaria
12-Oct	Kambourov & Partners	Kambourov & Partners "advised and assisted" Societa Appalto Lavori Pubblici S.p.A., the main contractor for the design and construction of the Dobrich Silistra Gas Pipeline in Bulgaria.	N/A	Bulgaria
22-Sep	Drakopoulos	Drakopoulos "successfully led" a case involving a large quantity of seized counterfeit goods resembling the Asics brand, and convinced a Greek court to order the seized goods destroyed at the Bulgarian infringer's cost, with an additional award of "moral damages" to Asics.	N/A	Bulgaria; Greece
17-Aug	CMS; White & Case	CMS advised the EnerCap Power Fund, a private equity fund focusing on the renewable energy and energy efficiency sectors in Central and Eastern Europe, on the refinancing of its 18MW Horni Lodenice windfarm in the eastern part of the Czech Republic.	EUR 18 million	Czech Republic
20-Aug	Bird & Bird; Merilampi Attorneys	Bird & Bird's corporate teams in Finland and Germany advised the shareholders of Transtech Ltd, a large Finnish rolling stock manufacturer, in the acquisition of the majority of Transtech's shares by Skoda Transportation Group of the Czech Republic. Merilampi Attorneys advised the Skoda Transportation Group on the deal.	N/A	Czech Republic
24-Aug	Noerr	Noerr advised the German publisher Verlagsgruppe Passau on the sale of its Czech publishing business to the financial investor Penta – which was advised by Czech solo practitioner Jan Evan.	N/A	Czech Republic
24-Aug	Havel Holasek & Partners; Schoenherr	Schoenherr advised EVO Payments International (EVO) on the launch of a strategic alliance with Raiffeisenbank a.s. in the Czech Republic in the segment of payment card acceptance. Havel Holasek & Partners advised Raiffeisenbank on the matter.	N/A	Czech Republic
28-Aug	Dentons; Kocian Solc Balastik; Linklaters	Kocian Solc Balastik and Linklaters advised the Netherlands-based BXR Group in connection with the sale of a 100% ownership interest in RPG Byty, the largest privately owned rental residential real estate company in the Czech Republic, along with its facilities management company, RPG Sluzby, to a Czech investment affiliate of Round Hill Capital. Dentons represented Round Hill Capital.	N/A	Czech Republic
21-Sep	Kocian Solc Balastik	Kocian Solc Balastik helped the CART electric device manufacturer win a lawsuit against the Czech Environmental Inspectorate, which had imposed a penalty on it for allegedly failing to abide by the Electric Waste Act.	N/A	Czech Republic
2-Oct	AP Legal; Joksovic, Stojanovic & Partners	Erste Bank Novi Sad announced that it had sold an NPL portfolio to the Czech fund APS. AP Legal provided legal advice on the deal to APS while Erste was supported by Joksovic, Stojanovic & Partners.	EUR 23.5 million	Czech Republic
6-Oct	Havel, Holasek & Partners; Patria; White & Case	White & Case advised Walmark – a portfolio company of Mid Europa Partners, and a major consumer healthcare player in Central and Eastern Europe – on its acquisition of Valosun a.s., which was advised by Havel, Holasek & Partners.	N/A	Czech Republic
7-Oct	CMS; Kinstellar	CMS's Prague office advised the Bluehouse Capital real estate investment management firm on the sale of three shopping centers in the Czech Republic to the newly established Czech real estate fund, NOVA Real Estate. Kinstellar advised NOVA on the deal.	N/A	Czech Republic
18-Aug	Tark Grunte Sutkiene	Tark Grunte Sutkiene advised two separate clients – Flora Ehitus OU and Kemiflora OU – on the sale of a total of six "developed business immovables" in Tallinn to local Estonian retailer Puumarket AS.	N/A	Estonia
26-Aug	Cobalt	Cobalt Legal successfully represented Hanza Holding AB – the leading contract manufacturing services provider in the Nordic countries – in its application for merger clearance from the Estonian Competition Authority for its acquisition of the Finnish group Metalliset, a global provider of mechanics manufacturing services.	N/A	Estonia

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
9-Sep	Cobalt	Cobalt has advised ELKO Group AS on its acquisition of DL Distributors OU, an importer and wholesale distributor of Dell products in Estonia.	N/A	Estonia
14-Sep	Cobalt; Red	Cobalt's Estonia, Latvia, and Lithuania offices acted for a syndicate of banks (including Nordea Bank AB, Estonia branch and Danske Bank A/S, Estonia branch) in a major financing transaction with AS Graanul Invest. AS Graanul Invest was advised on the deal by Red, Attorneys at Law.	N/A	Estonia
17-Sep	CMS; Tark Grunte Sutkiene	Tark Grunte Sutkiene successfully represented AS Eesti Post, the Estonian national postal service provider, in a competition matter before the Estonian Supreme Court.	N/A	Estonia
30-Sep	Sorainen	Sorainen advised Technological Solutions and Pellet 4Energia (member companies of Estonia's Nelja Energia group) on the construction of a cogeneration plant and the pellet plant in Broceni, Estonia.	EUR 30 million	Estonia
1-Oct	Glimstedt	Glimstedt advised Civitta Eesti AS, a leading independent management consultancy in Estonia, in its acquisition of 100% of CPD OU, a company organising the Ajujaht entrepreneurship competition, from its owners.	N/A	Estonia
6-Oct	Red	The Red law firm advised the AS LHV Group on its initial public offering of up to 10,000 subordinated bonds at EUR 1,000 each.	N/A	Estonia
30-Sep	Ellex (Klavins Ellex; Raidla Ellex); Tark Grunte Sutkiene	Tark Grunte Sutkiene advised the Communicorp Group Limited, an Irish private media group, on its sale of the Latvian radio group AS Radio SWH Latvia to Cinamon Holding OU, an Estonian-based entertainment company with a network of cinemas across the Baltic countries. Cinamon Holding was advised by Raidla Ellex in Estonia and Klavins Ellex in Latvia.	N/A	Estonia; Latvia
5-Oct	Delphi, Hammarakiold & Co; Tark Grunte Sutkiene	Tark Grunte Sutkiene advised Fuchs Petrolub SE on Estonian, Latvian, and Lithuanian law aspects of its acquisition of Statoil Fuel & Retail Lubricants business from Couche-Tard Luxembourg S.A.R.L.	EUR 74 million	Estonia; Latvia; Lithuania
14-Oct	Sorainen	Sorainen was chosen by a consortium consisting of Ramboll and CORIT Advisory to perform a study in the Baltic States on behalf of the European Commission on Aggressive Tax Planning.	N/A	Estonia; Latvia; Lithuania
16-Sep	Sorainen	Sorainen advises Food Union on an internal cross border merger in which Premia KPC in Lithuania and former holding company Nordic Foods Holding in Estonia merged with Premia Tallinna Kulmhoone in Estonia.	N/A	Estonia; Lithuania
21-Aug	CMS; Jalovszky	CMS Budapest advised Bluehouse Capital on its successful sale of the Infopark E office building to Diofa Asset Management – which was advised by the Jalovszky law firm.	N/A	Hungary
24-Aug	bpv Hugel; Schoenherr	Schoenherr advised the Rohrdorfer group on its acquisition of CEMEX's operations in Austria and Hungary for approximately EUR 160 million. CEMEX was advised by bpv Hugel on the deal.	N/A	Hungary
9-Oct	CMS; Dentons	CMS and Dentons advised on the development plans of a new Cox & Kings hotel due to be opened by Meininger Hotels in Budapest, with CMS assisting the landlord and Dentons supporting Meininger Hotels.	N/A	Hungary
13-Oct	bpv Jdi Nemeth	The bpv Jdi Nemeth firm in Hungary represented ALD Automotive Hungary in its successful application for Competition Authority approval of the company's acquisition of K&H's motor vehicle operative leasing portfolio.	N/A	Hungary
26-Aug	Sorainen	Sorainen supported the European Bank for Reconstruction and Development on its acquisition of a minority stake in Eco Baltia, a leading provider of waste treatment in Latvia and the Baltic states. The EBRD's investment will be used to finance the construction of a mechanical biological treatment plant for household waste.	EUR 10 million	Latvia
26-Aug	Borenus	Borenus successfully persuaded the Latvian Administrative Regional Court to uphold the claims of clients SIA Konekesko Latvija and SIA Severstal Distribution and annul the refusal of the Latvian State Revenue Service to allow the two companies to deduct value added tax in respect of goods and services they purchased from what turned out to be non-taxpaying companies.	N/A	Latvia
27-Aug	Borenus	Borenus successfully represented the Latvian Cabinet of Ministers in a dispute involving the attempted privatization of a "historically valuable tennis court."	N/A	Latvia
21-Sep	Fort	Fort's Riga office is advising non-bank lender AS Mintos in solving an issue with the Consumer Rights Protection Center about the assignment of claims on a peer-to-peer lending or investment platform.	N/A	Latvia
29-Sep	Allen & Overy; Borenus; Clifford Chance	Clifford Chance (on matters of English and US law) and Borenus (on matters of Latvian law) advised HSBC, Natixis, and DNB in relation to the issuance of 10-year notes by the Republic of Latvia. Allen & Overy advised the Republic of Latvia on matters of English and U.S. law.	EUR 500 million	Latvia
29-Sep	Cobalt	Cobalt Latvia announced that its litigators successfully defended the trademark registrations of Pure Chocolate SIA in an action filed by the German company Tchibo Markenverwaltungs GmbH & Co.	N/A	Latvia
28-Sep	Ellex (Klavins Ellex); Tark Grunte Sutkiene	Tark Grunte Sutkiene advised the Scandinavian financial group Swedbank on its acquisition of Danske Bank's personal banking business in Lithuania and Latvia. Klavins Ellex advised Danske Bank on the deal.	EUR 641 million	Latvia; Lithuania

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
21-Aug	Ellex (Variunas Ellex); Fort	Fort Legal advised the EFTEN Real Estate Fund III AS on its acquisition of UAB Titvesta, the wholly-owned subsidiary of the E.L.L.L. Kinnisvara real estate developer and owner of the Saules Miestas shopping center. Variunas Ellex advised seller E.L.L.L. Kinnisvara on the deal.	N/A	Lithuania
21-Aug	Cobalt; Tark Grunte Sutkiene	Tark Grunte Sutkiene advised the collapsed commercial bank Snoras on the sale of its loan portfolio to UAB Baltijos Kredito Sprendimai.	EUR 169.7 million	Lithuania
31-Aug	Sorainen	Sorainen advised the BaltCap Private Equity Fund II, managed by BaltCap in its acquisition of property manager BPT Real Estate from Northern Horizon Capital. Northern Horizon Capital was advised by Borenius, and Porta Finance was its financial advisor.	N/A	Lithuania
31-Aug	Cobalt	Cobalt Legal advised the Practica Capital venture capital fund on its EUR 100,000 investment in JetCat games, which Cobalt describes as a “huge potential game developer.”	EUR 100,000	Lithuania
3-Sep	Ellex (Valiuans Ellex)	Valiuans Ellex advised Lithuania's Baltpool on various matters related to the operation of the country's power and natural gas exchange.	N/A	Lithuania
8-Sep	Ellex (Valiuans Ellex)	Valiuans Ellex agreed to advise Lithuania's Olympic and world swimming champion Ruta Meilutyte – and her Charity and Sponsorship Fund – on legal issues relating to sports and advertising law.	N/A	Lithuania
14-Sep	Sorainen	Sorainen assisted the LORDS LB Asset Management management company in setting up LORDS LB Special Fund I, a closed-end real estate investment fund for investors in Lithuania.	EUR 20 million	Lithuania
17-Sep	Cobalt; Ellex (Valiuans Ellex)	Cobalt and Valiuans Ellex advised Practica Capital and the Robert Kalinkin fashion design company, respectively, on the former's investment in the latter.	EUR 200,000	Lithuania
9-Oct	Dominas & Partners; Ellex (Valiuans Ellex)	Valiuans Ellex advised Sweden's TeliaSonera on the sale of 100% of shares in Omnitel to TeliaSonera subsidiary Teo LT, an integrated telecommunications, IT, and television company. Dominas & Partners advised Teo LT.	N/A	Lithuania
14-Oct	Sorainen	Sorainen's Lithuanian office advised one of the first donut cafes in Lithuania, Spurgu Fabrikas – which operates under the Donut LAB brand – on its attraction of an investment.	EUR 100,000	Lithuania
8-Oct	ODI	The ODI Law Firm, as part of what it describes as “a firm-wide commitment to pro bono work,” agreed to provide pro bono legal services to emerging Macedonian artist Milan Andov.	N/A	Macedonia
28-Sep	BDK	BDK advised Akuo Energy, the French producer of renewable energy, on the development of the first wind power plant at Krnovo, near the town of Niksic, in Montenegro.	N/A	Montenegro
18-Aug	BSWW Legal & Tax	BSWW advised the Griffin Group on its sale of a package of Polish properties previously purchased from Ruch S.A.	PLN 17.5 million	Poland
20-Aug	Domanski Zakrzewski Palinka	DZP advised the Bauer Media Group on the purchase of 100% of shares in Mediasoft Polska sp. z o.o., a company operating under the eBroker Group name.	N/A	Poland
24-Aug	Dentons	Dentons advised BlackRock's Real Estate division on the preliminary sale of two shopping centers in Southern Poland – the Karolinka shopping center in Opole and the Pogoria shopping center in Dabrowa Gornicza – to RockCastle Global Real Estate.	N/A	Poland
25-Aug	Kochanski Zieba & Partners	Kochanski Zieba & Partners reported that the Court of Appeal in Warsaw dismissed in its entirety an action brought by the Polish General Inspectorate for Road Transport against Robert Felus and Grzegorz Jankowski – the editors-in-chief of the Fakt newspaper and the Fakt.pl website – demanding the publication of a “correction” to an article originally published on September 27, 2013.	N/A	Poland
26-Aug	Dentons; Weil, Gotshal & Manges	Dentons advised TAURON Polska Energia S.A. and TAURON Wytwarzanie S.A., and Weil advised Polish Investments for Development S.A., on their joint investment to finance the construction of a 413 MW unit at the Lagisza power plant in Poland.	EUR 365 million	Poland
26-Aug	Domanski Zakrzewski Palinka; Latham & Watkins; Mrowiec Fialek and Partners	Latham & Watkins and Domanski Zakrzewski Palinka (on Polish law elements) acted for the Carlyle Group, one of the largest global private equity funds, in the July 31, 2015 purchase by Carlyle-controlled Brintons Carpets Limited of 98% of shares in Fabryka Dywanow Agnella S.A. The Mrowiec Fialek and Partners law firm advised the shareholders of Agnella.	N/A	Poland
27-Aug	Squire Patton Boggs	Squire Patton Boggs acted for the Boston-based Public Consulting Group and its wholly-owned subsidiary, PCG Polska z.o.o., on two strategic acquisitions in Poland.	N/A	Poland
28-Aug	FKA Furtek Komosa Aleksandrowicz	FKA Furtek Komosa Aleksandrowicz advised Orange Polska on the sale of all of its shares and the shares of its subsidiary TP Invest Sp. z.o.o. in Contact Center – Orange Polska's outsourcing subsidiary – to Arteria S.A., a company operating in the area of sales support process outsourcing.	EUR 2.13 million	Poland
28-Aug	Allen & Overy; CMS; Herbert Smith Freehills; Wiercinski Kwiecinski Baehr	CMS advised PGNiG SA on obtaining financing for Norwegian company PGNiG Upstream International AS – advised by Allen & Overy – from Societe Generale, BNP Paribas, ING, HSBC, Citibank, CACIB, SEB, and Natixis. The banks were advised by the Wiercinski Kwiecinski Baehr law firm.	USD 400 million	Poland
1-Sep	GFKK Grzybczyk Kaminski Gawlik	GFKK advised the Jacobs Engineering group in connection with the sale of the group's Polish assets to its executives in the country and its withdrawal from Poland.	N/A	Poland

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
2-Sep	Cieslak & Kordasiewicz; Dentons; DLA Piper	Dentons' PPP and Banking and Finance teams advised Bank Gospodarstwa Krajowego on Poland's first public private partnership investment project financing deal, which involved the design, construction, property management and maintenance services of the head office of the District Court in Nowy Sacz.	PLN 49.5 million	Poland
3-Sep	Clifford Chance; Robert Jedrzejczyk & Partners	Clifford Chance advised Katowicki Holding Węglowy on the sale of 100% of the shares in Zakłady Energetyki Ciepłej – a Polish company specializing in the production and distribution of heat as well as production of combined electricity – to DK Energy Polska, a company owned by the French group EDF. DK Energy was advised by the Robert Jedrzejczyk & Partners law firm.	N/A	Poland
8-Sep	BSWW Legal & Tax	BSWW advised a group of institutional bondholders in the process of refinancing the debt of SCO-PAK S.A.	EUR 16.5 million	Poland
14-Sep	Gessel; Norton Rose Fulbright	Norton Rose Fulbright advised Norway's Lindorff Group AB on its acquisition of 100% of shares in Casus Finanse, a Polish company specializing in the management and collection of receivables. Gessel advised the selling shareholders of Casus Finanse.	N/A	Poland
15-Sep	Beza; Biewald; Roedl & Partner	Roedl & Partner advised the international packaging specialist Sudpack Holding on its acquisition of the Bahpol Sp. z o.o. packaging company from Sławomir Słomian and brothers Bogdan and Henryk Krysiak. The sellers were advised by the Beza, Biewald law firm.	N/A	Poland
17-Sep	Walenta Chelchowski	Poland's Walenta Chelchowski law firm advised TVN Ventures on its acquisition of 40% of shares in the Everytap company.	N/A	Poland
21-Sep	CDZ Law; DLA Piper; SDZ Legal; Squire Patton Boggs; Wolf Theiss	Wolf Theiss, Squire Patton Boggs, DLA Piper, CDZ Law, and SDZ Legal Schindhelm advised InterHealth Canada, and CMS advised the EBRD, FM Bank PBP, and Alior Bank, on agreements for the design, construction, equipment, operation, and transfer of Zywiec Powiat PPP Hospital in Poland, in what the parties are describing as "a landmark structured transaction for a new build Integrated Healthcare PPP"	N/A	Poland
21-Sep	Balcar, Polansky a Spol; Masek Koci Aujezdsky	Masek Koci Aujezdsky, working in cooperation with the Balcar, Polansky a Spol. law firm, represented the LiveSport Media group in relation to the acquisition from CTP Invest of land intended for the construction of an administrative complex.	N/A	Poland
23-Sep	Crido Legal; Graf von Westphalen	Crido Legal advised Exact Systems (part of the Work Service Group) in connection with the acquisition of two companies – Control + Rework Service Poland Sp. z o.o. and Control + Rework Service NV. The sellers were represented by lawyers from the German law firm Graf von Westphalen.	PLN 30 million	Poland
25-Sep	Dentons	Dentons advised long-term client The Accor Group on the opening of its first two hotels in Iran.	N/A	Poland
28-Sep	Greenberg Traurig; Norton Rose Fulbright	Greenberg Traurig advised the Cyfrowy Polsat Group in connection with a credit agreement with a consortium of Polish and foreign financial institutions for a term loan and a revolving loan.	PLN 12.5 billion	Poland
28-Sep	Crido Legal	Crido Legal advised Bonnier Business Polska on the acquisition of 100% of shares in Prawomaniacy Sp. z o.o. from IQ Partners and various individuals.	N/A	Poland
29-Sep	Greenberg Traurig	Greenberg Traurig represented Brokton Investments, a company controlled by Zhu Jiman, in its acquisition of a significant block of shares in Bioton S.A. on a regulated market.	N/A	Poland
29-Sep	BSWW Legal & Tax	BSWW Legal & Tax advised the Spanish investment fund Azora Europa with respect to negotiations and conclusion of a lease agreement with Operator Gazociągów Przesyłowych Gaz-System S.A. of a 9200 square meter office space in Cristal Park in Warsaw.	N/A	Poland
1-Oct	Herbert Smith Freehills; Wiercinski Kwiecinski Baehr	Wiercinski Kwiecinski Baehr advised British American Tobacco on Polish legal aspects of its acquisition of the Polish e-cigarette maker Chic Group, with the London office of Herbert Smith Freehills serving as global advisor to BAT on the deal.	N/A	Poland
5-Oct	Domanski Zakrzewski Palinka; Norton Rose Fulbright	Norton Rose Fulbright advised Polish state-owned investment vehicle Polskie Inwestycje Rozwojowe S.A. on the financing for the construction of a new gas-fired CHP plant in Torun.	EUR 130 million	Poland
6-Oct	Czyzewscy Law Firm	Lawyers from the Czyzewscy Law Firm, acting pro bono, successfully represented a child suffering from Dravet syndrome – a rare genetic epileptic dysfunction of the brain – in a dispute with the Polish Minister of Health.	N/A	Poland
7-Oct	Kochanski Zieba & Partners	Kochanski Zieba & Partners reported that the Court of Appeal in Warsaw had reversed the February 2, 2015 judgment of the Regional Court in Warsaw in a case brought by Marek Falenta against Michał Wodziniski (the former editor of Fakt.pl) and dismissed Falenta's demand that fakt.pl portal publish corrections to several articles it published.	N/A	Poland
9-Oct	Chajec, Don-Siemion & Zyto	Chajec, Don-Siemion & Zyto advised Rainbow Tours on the acquisition of a single-letter domain name in Poland from Active 24.	N/A	Poland
9-Oct	GFKK Grzybczyk Kaminski Gawlik	The GFKK law firm agreed to advise on the construction of the Podium Sports and Entertainment Arena in the Polish city of Gliwice.	N/A	Poland
13-Oct	Dentons; Linklaters	Dentons advised Skanska Property Poland on its sale of office buildings in Krakow and Katowice to a fund managed by the Swedish fund manager Niam. Linklaters advised Niam on the deal.	N/A	Poland

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
13-Oct	CMS; Latala i Wspolnicy	CMS provided legal advice on the IPO of Inpost SA – a member of the Integer.pl group, and the largest independent postal operator in Poland – to managers IPOPEMA Securities S.A., Wood & Company Financial Services, and Alior Bank S.A. Brokerage House. The Latala i Wspolnicy law firm advised Inpost and the Interget.pl Group.	EUR 25.5 million	Poland
15-Oct	Squire Patton Boggs	Squire Patton Boggs advised the CEE venture capital fund MCI.TechVentures on a recently completed minority share investment in iZettle, a Sweden-based mobile payments company, following the company's Series D funding round.	N/A	Poland
15-Oct	Greenberg Traurig; Weil Gotshal & Manges	Greenberg Traurig advised Pekao Investment Banking S.A., Ipopema Securities S.A., and Vestor Dom Maklerski S.A. – the managers of AAT Holding S.A.'s IPO – on the offering and admission of AAT Holdings' existing shares to trading on the Main Market of the Warsaw Stock Exchange. Weil Gotshal & Manges advised AAT Holding on the IPO.	EUR 13.5 million	Poland
14-Sep	Domanski Zakrzewski Palinka	DZP succeeded in a high-profile case involving the re-privatization of real estate at Al. Ujazdowskie 23 in Warsaw.	EUR 4.7 million	Poland; Serbia
19-Aug	Buzescu Ca	Buzescu Ca represented La Padana s.r.l. before the Romanian Road Transport Authority in its successful application for a freight transportation license for its Romanian subsidiary.	N/A	Romania
14-Sep	Allen & Overy; CMS	CMS Romania advised the BRD Groupe Societe Generale and UniCredit Bank on a syndicated loan provided to A&D Pharma, the biggest pharmaceutical group in Romania. A&D Pharma was advised by RTPR Allen & Overy.	EUR 127 million	Romania
29-Sep	Tuca Zbarcea & Asociatii	Tuca Zbarcea & Asociatii advised Michael Kors on its recent opening of a second retail shop in Bucharest, located in the Baneasa Shopping Center, following the launch of its flagship store in the JW Marriott Grand Hotel in July.	N/A	Romania
30-Sep	Tuca Zbarcea & Asociatii; Vilau Associates	Vilau Associates successfully defended SN Aeroportul International Timisoara – Traian Vuia SA against a claim brought by insolvent Carpaitair SA as damages for alleged state-aid. Carpaitair was represented by Tuca Zbarcea & Asociatii.	EUR 10 million	Romania
30-Sep	Tuca Zbarcea & Asociatii	Tuca Zbarcea and Asociatii obtained an "irrevocable judgement" from the Bucharest Court of Appeal, rejecting the challenge filed by a consortium of bidders against the awarding of a contract to Teamnet Project Management Solution for the expansion of the 112 emergency call number system in Romania.	EUR 10 million	Romania
9-Oct	Sidley Austin; White & Case	White & Case advised York Capital Management Global Advisors, LLC and Oak Hill Advisors (Europe) LLP on the share placing by Globalworth Real Estate Investments Limited. Globalworth was advised by Sidley Austin.	EUR 53.8 million	Romania
13-Oct	Dentons; Drakopoulos	Drakopoulos advised Bluehouse Capital on the sale of the Victoria Center Office Development to the German real estate fund GLL Partners. Dentons advised GLL on the deal	EUR 27 million	Romania
15-Oct	Greenberg Traurig; Tuca Zbarcea & Asociatii	Tuca Zbarcea & Asociatii advised on Romanian elements of GKN plc's July 2015 acquisition of Fokker Technologies Group BV from Arle Capital, working alongside global counsel Greenberg Traurig Maher.	EUR 706 million	Romania
17-Aug	Akin Gump; Norton Rose Fulbright	Akin Gump advised PJSC LUKOIL on a project financing to finance further development of the Shah Deniz gas field (Phase 2) in the South Caspian Sea in Azerbaijan.	EUR 1 billion	Russia
19-Aug	Dentons; Yulchon	Dentons, in cooperation with the Korean law firm Yulchon, represented the Korean company GS Home Shopping on the creation – together with Rostelecom – of the Big Universal Mall TV shopping channel.	USD 20 million	Russia
25-Aug	Dentons; White & Case	Dentons represented the owner of the Soseddushka retail chain on the sale of 100 stores in the city of Orenburg and Orenburg Oblast to the X5 Retail Group, the largest grocery retailer in Russia.	N/A	Russia
26-Aug	Akin Gump; Herbert Smith	Akin Gump advised PJSC LUKOIL in the sale of its 50 percent stake in Caspian Investments Resources Ltd. to China-based Sinopec.	USD 11 billion	Russia
27-Aug	Debevoise & Plimpton	The Moscow and London offices of Debevoise & Plimpton are advising Uralkali, one of the world's largest potash producers, in a buyback program of its Common Shares and GDRs.	USD 1.32 billion	Russia
17-Sep	Cleary Gottlieb Steen & Hamilton; White & Case	White & Case advised BASF subsidiary Wintershall and Cleary Gottlieb Steen & Hamilton advised Gazprom on a multi-billion Euro asset swap between the two.	N/A	Russia
17-Sep	Dentons	Dentons advised Lenta, one of the biggest chains of hypermarkets in Russia, on the purchase of land plots and real estate in Chelyabinsk, Omsk, Volgograd, and Taganrog from the O'Key group of companies.	N/A	Russia
17-Sep	Tilling Peters	Tilling Peters won a bank guarantee dispute in the Russian arbitration court of cassation on behalf of LANIT (an acronym for the "Laboratory of New Information Technologies").	EUR 385,700	Russia
22-Sep	Goltsblat BLP	Goltsblat BLP advised the Russian Federal Agency for State Property Management on a shareholders agreement with the Republic of Bashkortostan on voting by and disposal of shares in the Bashneft oil company.	N/A	Russia
1-Oct	Goltsblat BLP	Goltsblat BLP successfully persuaded the Arbitration Court of St. Petersburg and the Leningrad Region of Russia to satisfy the claim of clients Universal Music Russia and Warner Music UK against the VKontakte social network.	N/A	Russia

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
7-Oct	Allen & Overy; Debevoise & Plimpton; Norton Rose Fulbright	Norton Rose Fulbright is advising Sacturino Limited – controlled by Said Kerimov, the son of billionaire Suleiman Kerimov – on its offer of USD 2.97 per share for the 59.8% share capital of Polyus Gold International that it or its parent Wandle Holdings Limited does not already own or have an interest in. Debevoise & Plimpton is advising Sacturino on financing aspects for its offer, which include a facility arranged by VTB Bank – which was advised by Allen & Overy.	USD 5.49 billion	Russia
14-Oct	Egorov Puginsky Afanasiev & Partners	The Competition Practice team of Egorov Puginsky Afanasiev & Partners successfully defended the interests of Yandex – Russia's largest IT company – against Google, in the former's claim that the latter had abused the market in relation to pre-installed app stores for devices on the Android operating system.	N/A	Russia
15-Oct	Debevoise & Plimpton	The London and Moscow offices of Debevoise & Plimpton are advising longstanding client Norilsk Nickel on a new 7-year Eurobond offering, with an annual coupon rate of 6.625%.	EUR 1 billion	Russia
28-Sep	Jankovic Popovic Mitic	JPM Jankovic Popovic Mitic provided “full legal support” to Swarovski on its September 3, 2015 official opening of a production facility in Subotica, Serbia.	N/A	Serbia
28-Aug	Miro Senica & Attorneys	Miro Senica & Attorneys advised Adria Mobil, a large Slovenian manufacturer of motor-homes and caravans, on a bond issue.	EUR 24 million	Slovenia
17-Sep	Ulcars & partnerji; Wolf Theiss	Wolf Theiss advised the Deutsche Bahn Group and its Slovenian subsidiary, Arriva Dolenjska in Primorska, on the acquisition of a majority of shares in the Slovenian bus operating company Alpetour - Potovalna agencija d.d.	EUR 25 million	Slovenia
19-Aug	Gurel Yoruker; Paksoy	Paksoy advised The Hongkong and Shanghai Hotels, Ltd., on their July 7, 2015 entrance into a shareholders' agreement with Salipazari Liman Isletmeciligi A.S. (SLI), Dogus Holding A.S., and BLG Gayrimenkul Yatirimlari ve Ticaret A.S. to set up a 50/50% joint-venture company for development of a Peninsula Hotel at the Salipazari Port in Istanbul. SLI was advised by the Gurel Yoruker law firm.	EUR 300 million	Turkey
31-Aug	Chadbourn & Parke	Chadbourn & Parke represented the State Oil Company of Azerbaijan Republic in connection with an option-based financing for its subsidiary, SOCAR Turkey Enerji A.S.	USD 1.3 billion	Turkey
7-Sep	Dentons (BASEAK); Van Campen Liem; YukselKarkinKucuk	Van Campen Liem and YukselKarkinKucuk assisted the Stryker Corporation with the acquisition of all the shares in Muka Metal A.S.. Balcioglu Selcuk Akman Keki, the Turkish arm of Dentons, advised Murat Kantarci and other shareholders of Muka Metal on the deal, as well as on post-closing service arrangements between some of the shareholders and Muka Metal.	N/A	Turkey
22-Sep	AVK; Paksoy	Paksoy advised the shareholders of Hidro-Mak, a Turkish company, on the sale of a majority of shares to Kirchhoff Ecotec, the owner of the FAUN and ZOELLER brands. The AVK law office advised Kirchhoff Ecotec.	N/A	Turkey
28-Sep	Baker & McKenzie (Esin Attorney Partnership)	The Esin Attorney Partnership – the Turkish member firm of Baker & McKenzie International – advised Burak Balik on the sale of the remaining 50% of his shares in Netmarble Turkey to Netmarble Games, a Seoul-based leading mobile game producer and publisher, which had purchased the first 50% in 2013.	N/A	Turkey
6-Oct	Albuquerque & Associados; Erdem & Erdem	Erdem & Erdem represented the Yildirim Group of Turkey in the acquisition of 100% of shares of Mota-Engil Logistica and Tertir Terminais de Portugal from the Mota-Engil SGPS, SA. Portuguese group.	EUR 355 million	Turkey
7-Oct	Dentons (BASEAK); Paksoy	Paksoy advised Japan's DyDo Drinco, Inc. on its acquisition of 90% of the shares in Della Gida, Bahar Su, and Ilk Mevsim Meyve Sulari, which operate carbonated drink, coke, water and fruit juice brands, from Yildiz Holding. Yildiz Holding was advised by BASEAK, the Turkish firm associated with Dentons.	N/A	Turkey
7-Oct	Akol Law Office; Kolcuoglu Demirkan Kocakli	Kolcuoglu Demirkan Kocakli advised the European Bank for Reconstruction and Development in its acquisition of a minority stake of the Turkish port operator Global Ports Holding. The Akol Law Office advised GPH.	N/A	Turkey
8-Oct	Kenaroglu Intellectual Property	Kenaroglu Intellectual Property successfully represented Oliver Peoples, Inc., in two actions before the Istanbul Civil IP Courts of First Instance to have local trademark registrations for OLIVER PEOPLES invalidated on the basis of the reputation of the mark in other jurisdictions, the plaintiff's genuine rights in the trademark arising from extensive prior use in other countries, and the bad faith of the defendants.	N/A	Turkey
8-Oct	Gide Loyrette Nouel; Paksoy	Paksoy advised Messer Tehnogaz on the recently-completed sale of Messer Aligaz Sanayi Gazlari ve Ticaret A.S., its natural gas subsidiary, to Air Liquide Gaz Sanayi ve Ticaret A.S. – part of the French industrial gas producer Air Liquide. Gide Loyrette Nouel advised Air Liquide on the deal.	EUR 12 million	Turkey
9-Oct	Paksoy	Paksoy advised Nissan on its acquisition of 100% of the shares of the sole distributor of Nissan automobiles in Turkey, Nissan Otomotiv Anonim Sirketi, through its wholly-owned subsidiary Nissan Middle East FZE, from another Japanese corporation, Sumitomo.	N/A	Turkey
14-Sep	Van Campen Liem	Van Campen Liem assisted Turkcell Iletisim Hizmetleri A.S. with its acquisition of the remaining 44.96% stake in Euroasia Telecommunications Holding B.V. (Euroasia) from System Capital Management.	N/A	Turkey; Ukraine
21-Aug	Asters Law Firm	Asters acted as legal counsel to Primestar Energy FZE on the purchase of 100% of the shares in Ukraine's Ukgazprombank PJSC.	N/A	Ukraine

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
28-Aug	Baker & McKenzie	The Kyiv and Paris offices of Baker & McKenzie acted as Ukrainian and English law counsel to the European Bank for Reconstruction and Development in connection with a new syndicated loan facility for Nibulon, Ukraine's leading grain and oilseeds trader and producer.	USD 130 million	Ukraine
28-Aug	Aequo	Aequo advised the Ukrainian Business Group on its acquisition of 100% of the shares of PJSC RWS Bridge Bank, a bridge bank established on the basis of the recently-declared-insolvent PJSC Omega Bank, from the Deposit Guarantee Fund.	N/A	Ukraine
3-Sep	KPD Consulting	KPD Consulting successfully represented Laggar LLC in a dispute with the State Tax Inspection Service of the Dniprovskiy District of Kyiv involving Laggar's claim to a value added tax refund.	EUR 83,000	Ukraine
3-Sep	CMS	CMS Kyiv successfully represented Allianz Australia Life Insurance Limited, OnePath Life Limited, and Suncorp Life & Superannuation Limited in what the firm describes as "a complex fact-finding and private investigation assignment," culminating in proceedings throughout the Ukrainian Administrative Court system.	N/A	Ukraine
3-Sep	Sayenko Kharenko; White & Case	Sayenko Kharenko acted as legal advisor to Ukreximbank on the restructuring of its Euro-bond issues due 2015, 2016, and 2018.	N/A	Ukraine
8-Sep	Aequo	Aequo advised UniCredit Bank (Russian Federation) on the restructuring of a loan facility granted to what the firm describes only as "a major energy equipment producer operating in Ukraine and other European countries."	EUR 30 million	Ukraine
14-Sep	Ilyashev & Partners	Ilyashev & Partners successfully represented PZU SA in its application for clearance by the Antimonopoly Committee of Ukraine of its acquisition of a 25% stake in Alior Bank SA.	EUR 386 million	Ukraine
16-Sep	Vasil Kisil & Partners	Vasil Kisil & Partners successfully represented Shell Exploration & Production Ukraine Investments (IV) B.V., the investor and operator under the Production Sharing Agreement for hydrocarbons to be produced at Ukraine's Yuzivsk field, in a tax dispute.	N/A	Ukraine
16-Sep	Aequo	Aequo advised NCH Capital (USA) and its newly acquired Ukrainian subsidiary, the NAP II FUND - Astra Bank, on fulfilment of investment obligations undertaken in the course of the bank's buyout from the Deposit Guarantee Fund (including the increase of Astra Bank's registered capital up to UAH 160 million and bringing the bank's activity into compliance with the requirements of the banking legislation) to terminate the curatorship of the Deposit Guarantee Fund over Astra Bank, earlier declared insolvent by the National Bank of Ukraine.	N/A	Ukraine
16-Sep	Doubinsky & Osharova Patent and Law Agency	Ukraine's Doubinsky & Osharova Patent and Law Agency successfully defended the IP rights of the Exxon Mobil Corporation in an action to cancel a trademark which it claimed was "confusingly similar" to Exxon Mobil's "Pegasus" trademark.	N/A	Ukraine
21-Sep	Sayenko Kharenko	Sayenko Kharenko acted as legal counsel to Oschadbank with respect to the bank's reprofiling of two Eurobond issues.	EUR 1.2 billion	Ukraine
24-Sep	Vasil Kisil & Partners	Vasil Kisil & Partners successfully represented the interests of Hongyang Metal Industry, an international investor in the Ukrainian manganese ore industry, in land disputes with the Ukrainian prosecutor.	N/A	Ukraine
25-Sep	Dentons	Dentons' Kyiv office is acting as Ukrainian legal counsel to a group of bondholders, led by Franklin Templeton Investments – one of Ukraine's largest private creditors – regarding the restructuring of Ukrainian debt. The bondholder group also includes T. Rowe Price, TCW Group, and BTG Pactual Europe.	N/A	Ukraine
2-Oct	Egorov Puginsky Afanasiev & Partners	The competition practice team at EPAP Ukraine assisted the Nokia Corporation in obtaining regulatory clearance from the Antimonopoly Committee of Ukraine for its EUR 15.6 billion acquisition of Alcatel-Lucent in April 2015.	EUR 15.6 billion	Ukraine
5-Oct	Avellum Partners	Avellum Partners advised Mohawk Industries on its successful application to the Antimonopoly Committee of Ukraine for merger control clearance of its acquisition of the IVC Group.	USD 1.2 billion	Ukraine
13-Oct	Asters	Asters provided legal advice on Ukrainian merger control matters related to Actavis's March 2015 acquisition of control over Allergan, Inc., including the obtaining of clearance from the Antimonopoly Committee of Ukraine.	USD 70.5 billion	Ukraine
15-Oct	Weil, Gotshal & Manges	Weil Gotshal is advising the Ad Hoc Creditors' Committee (AHC), consisting of Franklin Advisers, Inc., BTG Pactual Europe LLP, TCW Investment Management Company, and T. Rowe Price Associates, Inc., on the restructuring of Ukraine's sovereign debt. According to Weil, "the restructuring plays a critical role in securing Ukraine's ongoing stability and economic recovery." White & Case is advising Ukraine.	N/A	Ukraine

Full information available at: www.ceelegalmatters.com

Period Covered: August 14, 2015 - October 15, 2015

Did We Miss Something?

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

On the Move: New Homes and Friends

Varul Launches Polish Help Desk in Vilnius

The pan-Baltic Varul law firm has opened what it calls “a Polish Help Desk” in the firm’s Vilnius office.

According to Varul, “Lithuania has solid long-term cooperation with its neighbour Poland. Being small, but very attractive for Polish entrepreneurs, Lithuania can offer broad trade and investment opportunities for Polish businesses thanks to its constantly growing economy, qualified labour, IT development and financial perspectives after the introduction of the euro in 2015.” In addition, the firm explains, “in recent years Varul lawyers have been involved in a variety of cross-border projects and transactions with Polish companies working in insurance, health care, automobiles, technology and hardware industry sectors providing them with legal advice on all corporate, commercial, employment, banking and finance, intellectual property, real estate and construction law matters. Moreover, Varul is one of the founders of the Polish-Lithuanian Chamber of Commerce (PLCC) in Lithuania (established in March 2015) and is actively involved in PLCC activities promoting cross-border cooperation, strengthening business contacts and helping companies from Poland establish their business in Lithuania.”

According to the firm, Lithuanian Managing Partner Robert Juodka will head the Polish Desk, and Partners Giedre Dailidė and Ernesta Ziogienė and Associate Jaroslav Pavlovskij are also involved.

Dentons Launches Greek Desk in Brussels



Dentons has launched a Greek Desk, operating from the firm’s Brussels office. According to the firm, the new desk will “provide Greek, other European, US, and other clients with innovative cross-border business and legal solutions on a broad range of practices including core corporate and financial regulatory legal services, expert counseling on energy, EU competition, privatization, infrastructure, debt restructuring, bank reorganiza-

tion, international dispute resolution, restructuring, insolvency, and bankruptcy.”

The firm reports that the Greek Desk will be led by Counsel Orestis Omran, who “has a strong network of contacts in both the Greek Government and the market including in the energy, financial institutions, government, infrastructure and PPP, private equity and real estate industries.”

Omran is both Greek and US-qualified. He is a graduate of the University of Chicago Law School and has successfully represented clients in international arbitrations and litigation before Greek courts, as well as handling Greek aspects of US and cross-border litigation, oil & gas, infrastructure and PPP projects, investment funds, and insolvency matters. Dentons reports that Omran “has strong contacts in the Greek Government and the wider market.”

Weinhold Legal Joins EY in the Czech Republic



On September 1, EY Law added a legal advisory arm in the Czech Republic and reintegrated with the team of Weinhold Legal, which had split off from it several years before.

Magdalena Soucek, EY Managing Partner for the Czech Republic and Central and Southeast Europe, commented: “With a team of more than 40 legal professionals now available to our clients, we believe the unique integration of EY’s advisory practice with the legal expertise of Weinhold Legal will mean we can continue enhancing the quality of our services. We intend to make full use of the potential our collaboration holds and provide clients with services unparalleled in their scope and expertise.”

Daniel Weinhold, Managing Partner of Weinhold Legal, added: “EY is a global organization with more than 190,000 professionals operating in 155 countries providing legal services in 65 jurisdictions. Joining with such an unprecedented professional workforce will give our clients tremendous international reach and access to a deep pool of multidisciplinary knowledge and

experience. We look forward to further developing the unique multidisciplinary solutions that we've helped pioneer in more than twenty years of successful engagement in the Czech Republic."

The business names of Weinhold Legal and all EY Group companies in the Czech Republic remain unchanged.

Borenium Begins Withdrawal from the Baltics



On September 21, 2015, Borenium announced that it is withdrawing its brand from the Baltics, and that its offices in Lithuania, Estonia, and Latvia will – after a “locally defined” transition period – “continue their operations outside of the Borenium Group brand alliance.”

According to Borenium, “this decision was supported by recent legal market changes in the Baltic area and by our firm’s focus on developing its core business under the Borenium brand.” The firm emphasized that its Baltic offices were already separate legal entities owned by local partners, and the logistics involved will thus be minimal. The firm reports that it “will carry on building on and strengthening its current presence in Finland, Russia, and the United States.”

Sorainen Swoops In

Capitalizing on the opportunity, Sorainen immediately announced that former Borenium Lithuania Managing Partner Daivis Svirinas and former head of Borenium’s Lithuanian Dispute Resolution practice Zygimantas Pacevicius had agreed to join its office in Vilnius, along with a team of eleven lawyers.

Svirinas had been Managing Partner at Borenium Lithuania for 5 years before moving, and had headed the office’s competition and energy practices. At Sorainen he will head the Lithuanian Competition & Regulatory Team, which includes the Competition, Energy & Utilities, Infrastructure & Regulatory, and EU Law practices.

Svirinas said of the change: “We have always striven to ensure the highest quality of legal services to our clients. Client expectations have been growing lately, and this further stimulates the

ongoing consolidation of the legal services market. Having seen the agile growth of Sorainen in the Baltic States and Belarus, we decided to join this firm with which we also share the same professionalism, high standards and approach towards the quality of legal advice. Sorainen will be strengthened by the accession of our team and thus even better placed to ensure top quality services to our clients.”

Pacevicius has become a Partner with Sorainen’s Dispute Resolution Team.

The team coming with Svirinas and Pacevicius from Borenium to Sorainen includes IP/IT and Dispute Resolution specialist Stasys Drazdauskas, plus Attorneys-at-law Jurgita Karvele, Jonas Kiauleikis, Julija Kirkiliene, Laima Kuncinaite, Simonas Skukauskas, and Andrius Sidlauskas, and lawyers Monika Malisauskaite, Natalja Moll, Ieva Cumacenskaite, and Ingrida Kryzauskiene.

Laimonas Skibarka, the Co-Managing Partner of Sorainen and the office Managing Partner of Sorainen Lithuania, said: “We are glad that Daivis Svirinas and Zygimantas Pacevicius have decided to join our firm, bringing with them a strong team of lawyers. They will further strengthen our practices in competition, energy, and dispute resolution, and will contribute to helping our clients succeed, which is our core purpose.”

Cobalt Makes Its Play

Two days later, Cobalt announced that Borenium lawyers in Estonia, Latvia, Lithuania, and Belarus would join it as of January 1, 2016, turning Cobalt into “the largest full-service business law firm operating in the region.”

Cobalt was formed in May 2015 when the former Raidla Lejins & Norcous offices in Latvia and Lithuania joined with the former Lawin office in Estonia.

Cobalt reports that once this merger is concluded, it will consist of 180 lawyers.

Indeed, although Cobalt initially announced that its merger with Borenium was “expected to be completed across the Baltics by January 1st 2016,” in fact the process in Estonia appears to have moved much more quickly than anticipated, as Borenium announced on October 5 that the two firms “have completed their merger in Estonia and, as of today, operate jointly under the name Cobalt.” In a subsequent email to CEE Legal Matters, Cobalt Communications Manager Marika Parn explained that “as of October 1st 2015 Borenium in Estonia does not exist anymore, we are operating jointly as one firm and as one business unit under the name Cobalt.”

Cobalt’s Estonian office is now led by former Borenium Partners Sten Luiga and Jaanus Mody and previous Cobalt MP Martin Simovart. Former Borenium Estonia Partners Peeter Kutman, Aivar Taro, Karina Paatsi, Egon Talur, Kristel Raidla-Talur, and Margus Mugu have also moved over to their erstwhile competitors.

Although the Latvian, Lithuanian, and Belarusian mergers are not yet complete, the teams have been announced. In Latvia, the new team of 50 lawyers will be led by current Cobalt MP Dace Silava-Tomsone and former Borenium Partner Lauris Liepa. For-

mer Borenus Partners Indrikis Liepa and Gatis Flinters will join the Riga office as well.

In Lithuania, Cobalt's team will grow to 65 lawyers and will remain led, as it was before the merger, by Partner Irmantas Norkus. Partner Vaidas Mackonis from Borenus joins his new colleagues in Vilnius, with Borenus Lithuania Founding Partner Dalia Foigt joining Cobalt as Specialist Counsel.

In Belarus, Cobalt's team of 5 lawyers will be led by current Cobalt Managing Partner Darya Zhuk.

Meltem Akol Leaves White & Case in Istanbul



The Akol Attorney Partnership in Turkey is no more, at least in its relationship with White & Case in Turkey, as former Executive Partner Meltem Akol has concluded her relationship with the oldest international law firm in Turkey and gone independent.

Akol spent all of her professional career at White & Case, joining immediately after graduating from Istanbul University in 1991. In 2008, following the departure of Executive Partner Emre Derman, the then Derman Duren Akol Law Firm was renamed Duren Akol, with Aydin Duren as Executive Partner. When Duren then also left in January 2009 to become Head of Legal at Turkey's Garanti Bank, Akol took over sole stewardship.

When asked why she felt the time was right to detach from White & Case, Akol said, "for the last couple of years I've been wondering how I wanted to spend the second half of my career ... [because] if I wanted to do something different, I should do it now, or I should accept being part of an international law firm environment for the rest of my career." Ultimately, she said, she concluded that, "I still have the stamina, and the desire, and the excitement for this profession, so I thought now was a good time."

For the time being she will continue to practice under the Akol Law Firm name, but she plans to rebrand at the end of the year, when she will formally partner with 3 other high-profile Turkish lawyers – whose identities she declined to reveal for the time being – in a 4-person partnership. She has big plans for the new

entity, which she expects to grow quickly to 15 lawyers in 2016, and then to 30 lawyers in 2017.

And despite the recent political upheaval in Turkey, Akol is optimistic about her prospects. "I've been doing this for the past 24 years," she says, "and it hasn't been steady and stable for those 24 years. As long as it's a realistic business model, and it provides a high quality of service, which is reasonably priced, I think there will always be a buyer for these services."

She insists she left White & Case on good terms, and she explains the change in characteristically modest terms. "You know me, I'm a low-profile person, and I'd rather keep it that way. I'd rather focus on the work."

Following Akol's departure, White & Case announced that its Istanbul office would be led going forward by Zeynep Cakmak (the former Executive Partner of White & Case's associated firm in Ankara) and Istanbul-based Banking/Finance Partner Guniz Gokce. The office began operating as Cakmak Gokce Attorney Partnership on September 15, 2015. Despite Zeynep Cakmak's formal assumption of duties in Istanbul, the Cakmak Attorney Partnership in Ankara won't change its name, as Ms. Cakmak has been replaced as formal head of that office by her husband, Mesut Cakmak.

When contacted by CEE Legal Matters for a comment about Akol's departure, a White & Case spokesman in Turkey reported that "despite all the legalities and new entities and these things, essentially it's one person leaving the firm." He insisted that, "in terms of quality of work and the service everyone's going to get from White & Case, it really is business as usual."

Grata Dips Multiple Toes Into CEE



Grata International – the Central Asian firm established in 1992 with a presence in Kazakhstan, Uzbekistan, Azerbaijan, Kyrgyzstan, Uzbekistan, Mongolia, Russia, and Tajikistan – has, over the course of 2015, been expanding, cautiously, into a number of CEE countries.

Starting in CIS

In May 2015, Grata – which opened a Moscow office in 2013 – signed a Memorandum of Understanding and Cooperation

with the Arzinger & Partners law firm in Belarus, according to which Arzinger & Partners will provide Grata clients with “comprehensive legal support in Belarus and other countries where Arzinger & Partners has presence.” Arzinger & Partners was established in 1990 in Germany, and the firm opened its Minsk office in 2006.

Tlek Baigabulov, Senior Partner at Grata, said that: “We are very happy to join our efforts to develop a global law firm – Grata International, with real experts and associates from Arzinger & Partners. We are confident that the synergies and ambitions of the cooperation will not only help to strengthen significantly our position in Belarus but also to expand presence of Grata International in Eastern Europe and the Baltic States. We hope we will soon tell good news to our clients about expansion and opening full services practices in China, UAE, and South Korea.”

For his part, Sergei Mashonski, the Managing Partner of Arzinger & Partners, said: “The cooperation is an important step in the development of our firms. Such integration is a logical step forward in view of strengthening of various associations in the CIS countries, including the EurAsEC (Eurasian Economic Community). Our association is not limited to the post-Soviet countries and taking into account the experience of Arzinger & Partners in working with European companies, together we intend to expand our geographical presence in other countries as well.”

The Europe/Asia Border

Subsequently, in Mid-August, 2015, Grata announced that it had signed another Memorandum of Understanding and Cooperation, this time with the Isikal Law Office in Istanbul, giving the firm a foothold by the Bosphorus.

According to a Grata press release, Isikal “provides legal support and consulting services in many areas of law, such as: real estate and construction, business, energy, commercial law, corporate law, contract law, zoning law, and intellectual property, as well as providing opportunity to clients by acting as a solution partner.”

According to Baigabulov, “appearance of our associated office in Turkey, represented by the Isikal Law Office, is a great convenience for our customers, professional development for the team, and strengthening of the friendship between our countries and people. The office in Istanbul will be a great support for the further promotion of our firm.”

Alper Isikal, the Founding and Managing Partner of his eponymous law office, is similarly enthusiastic: “I think it is exciting for all of us that the professional expertise and experience of the team of the Isikal Law Office is going to integrate with Grata International. As is known, Turkey is between Asia and Europe from the East to the West as well as it is between Russia and Middle East from the North to the South. The Isikal Law Office is located in Istanbul, which is the heart of the business life in Turkey. I believe the team of the Isikal Law Office will continue

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to give legal support to the clients effectively and efficiently as known, and within this association with Grata International will carry it out to an enlarged area.”

The Baltics

On August 26, Grata continued its expansion into CEE with the announcement that had signed yet another Memorandum of Understanding and Cooperation, this time with the Alliks un Partneri firm in Riga, Latvia.

Akhmetzhan Abdullayev, Senior Partner of Grata, said: “The excellent personal qualities and experience of Aldis Alliks and his colleagues determined the choice of the law firm Alliks un Partneri, as an associated office in the Republic of Latvia. Latvia is one of the key transit [and] transportation corridors of the Eurasian countries. Many of our customers consider the question of exports, imports, and investments into the economy of this country. And now they have a great opportunity to provide their business with the quality legal services of Grata in this jurisdiction “

For his part, Aldis Alliks said that: “I am truly glad and honored that the Law Office Alliks un Partneri has been given a chance to join what I see as one of the next vital players on the international legal arena. This is going to be a great benefit and advantage not only to colleagues, but also – and especially – to clients.”

The Heart of CEE

Finally, on September 3, Grata announced that it had entered into a Memorandum of Understanding and Cooperation with another Arzinger & Partners office – this time in Prague. This gives Grata – which less than a year ago had a CEE presence only in Moscow – a total of 5 CEE offices.

An in-depth summary of Grata’s expansion and plans for the region can be found in the December 2015 issue of the CEE Legal Matters magazine.

Go East! Pepeliaev Group Opens Sakhalin Office

The Pepeliaev Group has opened an office in Sakhalin, the large Russian island in the North Pacific Ocean that is approximately one fifth the size of Japan.

Attorney Andrey Mikulin, who practices in the areas of administrative, financial, customs, and civil law, has been appointed as the head of the Yuzhno-Sakhalinsk office, and Moscow-based Partner Pavel Kondukov, who heads the firm’s Offshore Projects and PSA Group and whose practice includes a number of Sakhalin-based clients, has been appointed the Manager of the Pepeliaev Group’s practice in the Far East (which also encompasses an alliance office in Vladivostok operated in unison with Russin & Vecchi).

According to the firm, Mikulin has “fifteen years of experience of advising major Russian and foreign companies on various



legal issues, including legal support of large-scale projects in the fishing, construction, raw materials, and processing industries. [He] has successfully implemented projects for Sakhalin Energy, Nippon Express, Airgas Sakhalin, Parker Drilling, Independent Energy Company, and other companies.”

Kondukov, meanwhile, “has 13 years of experience in litigation and providing advice to Russian and foreign companies. He specializes in the application of legislation on taxes and levies, sub-soil use and production sharing agreements. He has many times been involved in drafting amendments to different items of legislation and has participated as an expert in sessions regarding offshore deposits presided over by the chairman of the Energy Committee of the Russian State Duma.”

According to the Pepeliaev Group, the Russian Far East – often mistakenly described as Siberia, though in fact that region is further west – is “a region of Russia which is strategically important for the development of the national economy and attracting foreign investments. Mechanisms have been developed at the initiative and under the personal control of the Russian President to improve the investment climate in the region: territories of advanced development have been created, a law ‘On the Free Port of Vladivostok’ has been signed, and many investment projects are being implemented. Additionally, enormous deposits of raw materials are concentrated in the Far East. All this gives rise to a need for qualified and experienced advisors who can help business to solve the most difficult challenges.”

Pepeliaev Group Managing Partner Sergey Pepeliaev commented: “We have been nurturing the idea of opening our own office in the Far East for a long time, taking into account the enormous business potential of this region. We have had clients and projects there for years but could not find a permanent representative who would be worthy to become Pepeliaev Group’s ambassador in the region. Now, finally, everything has worked out and we are ready to offer to business in the Far East a range of legal services at a totally new level.”

The Yuzhno-Sakhalinsk office is the Pepeliaev Group’s fifth, following full offices in Moscow, St. Petersburg, and Krasnoyarsk, and the alliance office in Vladivostok.

Integrites Picks Up Two Teams in Ukraine



Integrites is making waves in Ukraine.

First, the firm merged with the five-person Statnikov and Partners law firm and placed Denys Statnikov as the head of the firm's Criminal Law, Civil, and Administrative Law Practice.

Statnikov founded his eponymous firm in 2010, where he regularly defended clients before criminal, civil, and administrative courts, mainly in the areas of economic crimes and performance (and non-performance) of official duties.

According to Integrites, "the strategic choice [to merge firms] was made in light of growing market demands for relevant legal protection – a recent increase in cases where protection of businesses in criminal proceedings is needed due to charges of legal regulations in lobbying, securities fraud, tax crimes, embezzlement, and insider dealings. The Statnikov & Partners team of lawyers at law has considerable experience in protection from prosecution, representing clients in criminal cases of significant complexity, relationships with law enforcement authorities, protecting clients' assets from illegal actions of third parties, and dismissing economic and corruption charges. Upon the accession, the main focus of Integrites criminal law practice will be on the support and protection of business in criminal proceedings related to charges brought by the fiscal authorities and matters regarding anti-corruption legislation and compliance procedures, as well as in the area of white-collar crime. The team of attorneys at law will be able to effectively protect the business interests of clients in cases of illegal undertakings on behalf of the state, fiscal authorities and law enforcement agencies."

Integrites Managing Partner Ruslan Bernatsky is excited about the addition, saying: "Statnikov and Partners is a strong player in the field of court practice and criminal defense, possessing a high level of competence and a large portfolio of clients. We are confident that the accession will substantially strengthen the positions of Integrites and provide new alternative choice for customers."

Only a week or so later, the firm announced that Julian Ries – the former co-head of Gide Loyrette Nouel's Kyiv office – had come over as well, along with fellow Gide Partner Oleksiy Feliv and the rest of the 7-lawyer team that moved from Beiten Burkhardt to Gide when the German firm closed its doors in Kyiv in December, 2013.

At Integrites, Ries will return to his native Germany, where he will head Integrites' newly-announced representative office in Munich, while Feliv and new Integrites Partner Oleg Zagnitko (who was a Senior Associate at Gide) will stay in Kyiv. According to Integrites, "the new team will be the basis for Integrites' European Desk, led by Oleksiy Feliv, and will focus on supporting clients from Germany, Austria, Switzerland, France and Italy."

With this recent pick-up – which follows shortly after Integrites announced an expansion in Moscow and a new office in Guangzhou, China – Integrites increases in size to 210 employees, including 20 partners, serving clients in Kazakhstan, Russia, and Ukraine, and via representative offices in the UK, Germany, Netherlands, and China.

Partner Julian Ries believes that "strengthening of Integrites with the Munich office, as well as the European Desk, meets a growing demand among clients currently actively exploring Western European markets. The Munich office is primarily intended to accompany Integrites' clients together with partner law firms in German-speaking countries."

In an exclusive conversation with CEE Legal Matters, Ries said that, "I didn't really know Integrites over many of my years in Kyiv, but the more we spoke to them the more we learned that it was quite a unique firm in terms of business development, in terms of techniques and approaches. It's also a firm that's rapidly expanding. It's really a strong set-up. And they have a very interesting approach of how to approach companies and develop business with them. The more we spoke with each other the more we found similar principles, similar approaches; I was very impressed."

Commenting on the merger, Feliv noted that, "Integrites' strategy to become one of the strongest international law firms in Ukraine, and to take a leading position in the CIS market, as well as bringing clients from Eastern European countries to the Western European markets, corresponds to the ambitions of the new team and our vision of the medium-term development of the company. We are confident that our international experience and work standards will strengthen Integrites and open for our customers new possibilities of our support in countries where Integrites is already present."

Integrites Senior Partner Vyacheslav Korchev said: "Teaming up with the new partners and their team, we complement our litigation, banking, arbitration and government relations practices with first-class services in real estate and construction, corporate law and M&A, mediation, and restructuring. In our endeavor to be a leader in the market, this is the first strategic decision."

When contacted by CEE Legal Matters, Gide Partner Bertrand Barrier wished his former colleagues the best going forward, and said that his firm would make an additional announcement regarding its plans soon. Although those plans had not yet been announced at the time this issue went to print, rumours abound, and readers interested in Gide's plans for Ukraine, and the region, are advised to visit the CEE Legal Matters website regularly for updates.

Summary Of New Partner Appointments

Date Covered	Name	Practice(s)	Firm	Country
3-Sep	Anne-Karin Grill	Litigation/Dispute Resolution	Schoenherr	Austria
7-Sep	Dorota Ploskowicz	Banking/Finance; Capital Markets; Corporate/M&A	Peterka & Partners	Poland
7-Sep	Michal Bielinski	Corporate/M&A	Peterka & Partners	Poland
18-Sep	Piotr Janiuk	Real Estate	Galt	Poland
13-Oct	Kirill Trukhanov	Litigation/Dispute Resolution	Vegas Lex	Russia
3-Sep	Derin Altan	Capital Markets	White & Case	Turkey
3-Sep	Emre Ozsar	Corporate/M&A	White & Case	Turkey

Summary Of In-House Appointments And Moves

Date covered	Name	Company	Moving From	Country
12-Aug	Tamara Kosutic	Croatian Post (Head of General Legal and Normative Affairs)	Siemens Convergence Creators	Croatia
9-Oct	Andras Busch	Siemens Healthcare (Head of Legal)	(Internal Promotion)	Hungary
15-Oct	Zsolt Csanadi	MVM Hungarian Electricity (Head of Legal)	Kinstellar	Hungary
12-Aug	Aleksandar Vujosevic	Neoplanta (Head of Legal)	Bambi-Banat	Serbia
27-Aug	Nikola Kavedzic	Mirabank (Head of Legal)	ProCredit	Serbia
20-Aug	Tomurcuk Eroglu	Turcas Petrol (General Counsel and Head of Legal)	Schoenherr	Turkey
31-Aug	Atike Kokbudak	Kordsa Global (Head of Legal)	(Internal Promotion)	Turkey
7-Sep	Basak Gurbuz	Walt Disney Company	Gun & Partners	Turkey
28-Sep	Ozen Keskin	Generali Turkey (General Counsel and Chief Legal Officer)	Bayer	Turkey

Other Appointments

Date Covered	Name	Firm	Appointed to	Country
7-Sep	Michael Lind	Wolf Theiss	Vice President of the Corporate and M&A Commission of the Association of Young Lawyers.	Austria
3-Sep	Vita Liberte	Varul	Managing Partner of Latvian office.	Latvia
1-Oct	Bogdan Stoica	Popovici Nitu Stoica & Asociatii (Formerly Popovici Nitu & Asociatii)	Named Partner of the firm.	Romania
5-Oct	Partner Roman	Integrites	Managing Partner of the firm's new office in Guangzhou, China (former Managing Partner of firm's Moscow office).	Russia
5-Oct	Mikhail Marinin	Integrites	Managing Partner of Moscow office.	Russia
5-Oct	Andrey Mikulin	Pepeliaev Group	Head of the Yuzhno-Sakhalinsk office.	Russia
5-Oct	Pavel Kondukov	Pepeliaev Group	Manager of the firm's Far East practice.	Russia

Summary Of Partner Lateral Moves

Date covered	Name	Practice(s)	Firm	Moving From	Country
18-Sep	Mari Matjus	Life Sciences	Jesse & Kalaus	Sorainen	Estonia
23-Sep	Sten Luiga	Insolvency/Restructuring	Cobalt	Borenien	Estonia
23-Sep	Jaanus Mody	Litigation/Dispute Resolution	Cobalt	Borenien	Estonia
23-Sep	Peeter Kutman	Corporate/M&A	Cobalt	Borenien	Estonia
23-Sep	Aivar Taro	Real Estate/Construction	Cobalt	Borenien	Estonia
23-Sep	Karina Paatsi	Labor; Litigation/Dispute Resolution	Cobalt	Borenien	Estonia
23-Sep	Egon Talur	Tax	Cobalt	Borenien	Estonia
23-Sep	Margus Mugu	Real Estate/Construction	Cobalt	Borenien	Estonia
23-Sep	Kristel Raidla-Talur	Corporate/M&A	Cobalt	Borenien	Estonia
16-Sep	Akos Kovach	Competition	Hogan Lovells (Counsel)	Gide Loyrette Nouel (Managing Partner)	Hungary
2-Oct	Tamas Tercsak	Corporate/M&A	CMS (Counsel)	Dentons	Hungary
19-Aug	Girts Ruda	Banking/Finance	Eversheds	Sorainen	Latvia
23-Sep	Lauris Liepa	Litigation/Dispute Resolution	Cobalt	Borenien	Latvia
23-Sep	Gatis Flinters	Corporate/M&A	Cobalt	Borenien	Latvia
23-Sep	Indriķis Liepa	Corporate/M&A; Tax	Cobalt	Borenien	Latvia
22-Sep	Daivis Svirinas	Competition	Sorainen	Borenien	Lithuania
22-Sep	Zygmantas Pacevicius	Litigation/Dispute Resolution	Sorainen	Borenien	Lithuania
23-Sep	Vaidas Mackonis	Transportation/Logistics	Cobalt	Borenien	Lithuania
23-Sep	Dalia Foigt	Litigation/Dispute Resolution	Cobalt (Specialist Counsel)	Borenien	Lithuania
30-Sep	Laura Cereskaite-Kinciuvienė	Transportation/Logistics; Litigation/Dispute Resolution	Averus	Sorainen	Lithuania
17-Aug	Joanna Lagowska	Real Estate/Construction	K&L Gates	Dentons	Poland
19-Aug	Monika Zuraw	TMT/IP	BSWW Legal & Tax	Wardynski i Wspolnicy	Poland
27-Aug	Jan Kaczmarczyk	Corporate/M&A	Kochanski Zieba & Partners	K&L Gates	Poland
2-Sep	Michał Pawłowski	Capital Markets	CMS	DLA Piper	Poland
3-Sep	Marcin Matyka	Tax	Norton Rose Fulbright	DLA Piper	Poland
14-Sep	Marcin Aslanowicz	Litigation/Dispute Resolution	Wolf Theiss	Baker & McKenzie	Poland
16-Sep	Delia Belciu	Spanish Desk	TSAA	Astronergy Solar – Chint Energy	Romania
16-Sep	Cristina Popescu	Compliance/Regulatory	CMS (Counsel)	Eversheds	Romania
16-Sep	Olga Chaykovskaya	Real Estate/Construction	Lex Borealis	Beiten Burkhardt	Russia
3-Sep	Charles Dunn	Private Equity	Kinstellar	Blizzard Partners	Turkey
21-Sep	Meltem Akol	Banking/Finance	Akol Law Firm	White & Case (Cakmak Gokce Attorney Partnership, formerly Akol Attorney Partnership)	Turkey
6-Oct	Mufit Arapoglu	Capital Markets	Balcioglu Selcuk Akman Keki (Dentons)	Yegin Ciftci Attorney Partnership (Clifford Chance) (Counsel)	Turkey
7-Sep	Tatiana Timchenko	TMT/IP; Corporate/M&A	Peterka & Partners	Private Practice	Ukraine
14-Sep	Dmytro Marchukov	Litigation/Dispute Resolution	Avellum Partners	Egorov Puginsky Afanasiev & Partners	Ukraine
15-Sep	Olena Perepelynska	Litigation/Dispute Resolution	Integrites	Sayenko Kharenko	Ukraine
29-Sep	Denys Statnikov	Criminal Law; Civil and Administrative Law	Integrites	Statnikov and Partners	Ukraine
5-Oct	Julian Ries	Corporate/M&A	Integrites (Head of representative office in Munich)	Gide Loyrette Nouel (Co-Head of Kyiv office)	Ukraine
5-Oct	Oleksiy Feliv	Real Estate/Construction	Integrites	Gide Loyrette Nouel	Ukraine
5-Oct	Oleg Zagnitko	Banking/Finance	Integrites	Gide Loyrette Nouel (Senior Associate)	Ukraine

Note: Unless otherwise specified, these represent Partner positions with both old (“Moving from”) and new (“Firm”) firms. Where the position has changed to or from that of a Partner, we highlight that in brackets next to the firm’s name

Legal Matters: The Buzz

The Buzz

The Buzz is a short summary of the major and relevant topics of interest in Central and Eastern Europe, provided by those best positioned to know: law firm partners and legal journalists/commentators on the ground in each CEE country.

Austria

True sales, mid-market M&A, and rushed real estate transfers in Austria

Regulatory issues in the financial sector are still the hot topic in Austria, according to Christoph Moser, Partner at Weber & Co., who says that “the securitization market [is] expected to soar in the next few months, based on market and client feedback we receive.” Aside from the well-known balance sheet clean-up pressures, securitizations in the form of true sales are starting to pop up on the radar. Moser explained that, until recently, several market players preferred synthetic securitizations without selling the actual loan portfolios. The problem was that in the aftermath of the crisis, these securitization terms became “too associated with the downfall and flagged in the minds of many as automatically toxic.” Mentalities are changing now, according to Moser, and this should eventually allow banks to clear up on their capital requirements and investors to diversify. This is also reflected in the European Union’s efforts to establish a Capital Markets Unit, which would include securitizations as a prime measure.

This shift away from the “securitization-equals-toxic” calculus is reflected in the increasing number of banks to explore true sales – “not just banks that are in trouble.”

Private M&A is also something keeping lawyers busy in Austria, with deals in the EUR 70-100 million range seeming to be especially attractive to investors.

Lastly, Moser pointed to changes in the tax system related to the transfer of real estate due to come into effect at the beginning of 2016. The current system of taxation is based on an outdated method of calculating value, and the new method will therefore result in a considerable surge in the amounts due for transfers of ownership. Although not really an inheritance tax, the transfer of ownership seems to have triggered a flux of work (for both notaries and lawyers) coming from families who are looking to transfer real estate assets to a younger generation before the new calculation system – which, Moser explained, in certain cases can result in a tax up to 10 times greater than the current system – is implemented.

Croatia

Crazy times in the banking world with a bankruptcy law to top it off

According to Natalija Peric, Partner of Mamic Peric Reberski Rimac (MPRR), banks in Croatia “are very concerned” over the so-called “Law on Swiss Francs” introduced in the country, which allows for conversions of loans from Swiss Francs to Euros. Peric reported that the local press is buzzing over the many legal claims already brought by banks against the Croatian Government, including three before the constitutional court, and a number of others who have announced their plans to file international investment arbitration procedures. “Difficult times for banks in Croatia” is how Peric described the aftermath of the legislation that was passed this year.

Another “delicate” piece of legislation passed by the Croatian Parliament recently was a new bankruptcy law. “Despite it being a relatively small country of 4.5 million people, Croatia has around 14-15 thousand companies currently with blocked accounts, even for more than 3 years now. Many of these are inactive companies with no employees that have a cumulated debt of over HRK 15 billion (approx. EUR 2 billion), and the new piece of legislation will push most of these into insolvency by default,” Peric explained.

The actual bill came into effect on September 1, 2015, and 6,500 bankruptcy proceedings commenced in the week following, with the government aiming to start the rest by the end of the year – a goal described by the MPRR Partner as “an ambitious plan to say the least!” Peric was positive, ultimately, saying, “it is a healthy exercise and it will be good for the market to be cleaned of these companies.”

Last but not least, a new renewable energy law has been introduced into Croatia, with several significant features, among which is the implementation of a new premiums system that was adjusted to align with EU Commission guidelines. The bill was adopted in September 2015, and part of it has already come into force. The new premiums system is to be implemented as of January 1.

We’d like to thank the following for sharing their opinions and analysis:

- Vladimir Dasic; Partner; BDK Advokati/Attorneys at Law
- Natalija Peric; Partner; Mamic Peric Reberski Rimac
- Theis Klauberg; Partner; bnt attorneys-at-law
- Marko Kairjak; Partner; Varul
- Jiri Barta; Partner; bpv Braun Partners
- Christoph Moser; Partner; Weber & Co.
- Sorin David; Partner; D&B David and Baias (Connected law firm of PwC)
- Stojan Semiz; Partner; Zavisin Semiz & Partners

Czech Republic

(Church) Real estate has the market buzzing

Not only is the real estate crisis over in the Czech Republic, but, according to Jiri Barta, Partner at bpv Braun Partners, people are quite optimistic about the future. “One sign of that,” Barta explained, “is that people are more willing to invest and less willing to sell – those with assets prefer sitting on them and waiting for the future.”

The hype is facilitated by several new funds being formed that are now in “an obvious need to spend money and are actively scouting the Czech Republic, perceived as a stable and risk-free market.”

With this real estate revitalization as the background, Church restitutions are the big topic that everyone is interested in. Barta explained that after the revolution a great deal of real estate was returned to private owners in the early 90s. The one notable exception was real estate that had been owned by the Church prior to nationalization, because, in Barta’s words, “while it was clear that what was taken from natural persons must be returned, politicians simply could not agree on how to approach former Church-owned assets.”

It took 20 years, but a compromise was found, which is exciting for lawyers and the real estate market overall, as it will offer an unblocking solution to a lot of old issues. Among those, Barta explained, is a provision put in place prohibiting the state from selling any assets that once belonged to the Church. This caused problems, since it often happened that commercial zones included property affected by a so-called “church clause,” and thus could not easily be developed. “And these are not rare instances,” Barta noted. “We’re talking about hundreds of them across the country.”

The solution is a rule that land that remains free and undeveloped will be returned to the Church, while land that has been changed or developed will not be returned, but financial compensation will be provided. There are still some ongoing issues related to proper land identification, and a few disputes are pending with Church lawyers trying to also secure plots that now belong to third parties – an aspect of the problem that is still a couple of years away from being solved.

Estonia

Funding loan portfolios and a legal market carousel

Estonia’s highlight, according to Varul Partner Marko Kairjak, is the growing number of non-bank providers of financing in the market. Raising capital for these financial players seems to be the main discussion point within the Estonian and European financial services authorities, as some jurisdictions (Lithuania, for example) have imposed a ban on loan-portfolio financing through bond issues. In the case of Estonia, however, these financial institutions have received a green light to raise funds for a loan portfolio via bonds through private placement, but they have not been allowed to go public with them – “a somewhat awkward set-up,” as Kairjak described it. While the main goal of the financial market is to have these “specialized institutions offer an alternative source of funding” for customers, it is not yet 100% clear how to proceed with capitalizing these loan portfolios.

The second big topic in Estonia – and the Baltic region as a whole, according to Kairjak – is the ongoing consolidations in the legal market. Kairjak explained that with the merger between Cobalt and Borenius, Cobalt is now at the top in terms of size. (See page 15). “We used to have Sorainen with around 60 lawyers and everybody else with around 30-35. Soon, it looks like we’ll have a market with 2-3 firms close to 60, another ‘big 2’ or ‘big 3,’ and everyone else much smaller. The market is, at the moment, waiting to see what this amalgamation will lead to, since these large types of firms will grow to an economy of scale that will push the rest of the smaller players to determine what their comparative advantage will be and force them to decide if they want to be a small full-service competitor or turn into a boutique set-up. We’ll see how this legal market carousel will stop, but it will likely take 2-3 years.”

Latvia

Work is building up

One of the industries to keep an eye on in Latvia, according to Theis Klauberg, Partner at bnt attorneys-at-law, is construction. “Hardly anything has been built since the crisis, especially in commercial real estate,” Klauberg explained, “and office space in the capital of Riga is starting to run short.” He added that “we have investors coming into the country and they are looking for space to rent but soon realize that in the center of Riga anything above 250 square meters is very limited.”

There have been some construction projects in the country, according to Klauberg, but most of it has been focused on residential buildings, fueled by Russian demand. With the Ukrainian and Russian crisis and the ruble taking a tumble, that demand has dried out. The result? “We simply have too many flats and no new offices.” The situation is price-driven as well, Klauberg explained, as rental prices in Latvia – below EUR 12 per square meter – are considerably lower than in other Baltic states, which makes it “difficult to motivate anyone to build.” By contrast, in Lithuania for example, the market recovered much faster as a result of “investors being actively invited in by the Lithuanian Government, coming in much sooner, and taking up space – thus driving up demand.”

Klauberg reported relatively few legal updates of significance, with the highlights being a potential tax reform and a growing restriction on selling agricultural land to foreigners.

In terms of the legal industry, Klauberg reported an “uneventful summer” in terms of big-ticket deals, but he said that M&A and FDI is slowly picking up – and pointed to his firm’s German clients, which he said are showing increased interest in Latvia. Against this background, he also pointed to the great deal of consolidation going on among Baltic law firms, and commented on some of the formerly well-known brands – and some smaller firms – disappearing off the radar altogether.

Montenegro

The Turkish connection

Montenegro is registering a good level of interest from Middle Eastern investors, according to Vladimir Dasic, Partner at BDK Advokati/Attorneys at Law. He pointed out that there are still a few companies in the market awaiting privatization, but said that there was “nothing really spectacular to report on that front at this point in time.” By contrast, he said, the country is registering a lot of transactions in the hotel, leisure, and resort areas.

Turkish investors seem to be leading the pack in terms of interest in banking (Ziraat Bank), real estate (Dogus Group), and port logistics (Global Ports Holding). Dasic explained that political ties support this interest to a great extent, but said it also has to do with the fact that, although Montenegro is a smaller market than Turkey, there are a lot of commonalities between the two countries in terms of industry practices. The trend seems like a natural one from the Turkish perspective, according to Dasic, since it is driven both by the ever-expanding Turkish potential clientele in Montenegro as well as a drive to capture market share now, before the country joins the EU.

Particularly exciting is the interest shown by several multinational groups looking to open banks in Montenegro, which would focus on private banking. The process is currently on hold, Dasic said, but he believes it would be potentially very beneficial for the market overall.

The energy sector, especially in renewables, was the last one that the BDK Partner pointed to as a “must-keep-tabs-on,” with a number of interesting projects in the pipeline.

Romania

Steady growth with a touch of caution

“Generally [in Romania] 2015 looked better than 2014,” explained Sorin David, Partner of D&B David and Baias. “As a country, we are growing, and we are increasingly convincing more and more investors that we are solid and we’re a good investment ground with no major risks,” he added. The D&B Partner said that M&A, while on the rise, is not concentrated in one particular industry. Instead, the energy, food production, transportation, medical services, and financial services (especially in terms of NPL transactions) sectors are all registering increased activity, and he added that, “it is definitely a buyers’ market, not a sellers’ one at the moment.”

Aside from that, commercial lawyers are being kept busy by what David described as a “projects driven market,” with some activity on the regulatory, restructurings, litigation, antitrust, and administrative areas.

One particular trend in Romania, David said, is that prosecutors (both from general and specialized offices) are picking up speed in structuring of various cases at the moment, which has an impact on the business world overall, especially in terms of evasion cases. “It is an exercise very much in its initial learning-curve stages,” explained David, which is “worrying since I am not sure that prosecutors and criminal courts are sophisticated enough to assess certain schemes considered normal in other countries accurately and, as a result, they tend to flag them simply as tax evasion.” This is particularly concerning to the business community since, as David pointed out, “prosecutors have tremendous tools at their disposal to freeze a business with an end goal of recovering sums flagged as due.” For the legal community, this means a lot of work – both preventive and forensic – and David stressed that “middle management and up are definitely more concerned with understanding the potential pitfalls and more engaged in preemption than before.”

Serbia

Excited over infrastructure partnerships

Public Private Partnerships have had a “late legal framework that did not register a lot of success in Serbia with [the] one initial road concession having failed,” reported Stojan Semiz, Partner with Zavisin Semiz & Partners. Things are looking up these days, however, with a joint venture between Serbia and Arab investors that resulted in the Belgrade Waterfront project. Although it was not performed within a PPP framework, it is nonetheless a hot topic in the country, as it represents “a successful partnership with a foreign investor to show others that there is drive at an institutional level and that it can work.”

There are, in fact, several exciting initiatives in the works, according to Semiz, including a waste disposal project, parking spaces, and even an initiative for a PPP transportation project. While all are still in the project-and-tendering phase, he notes, he is excited to see the move in areas that “have no precedent in the last 15 years,” both in terms of the investors and work they will draw in (including for the lawyers advising on the tenders at this stage), and in terms of “addressing long-standing infrastructure problems.”

Real estate work has been keeping lawyers busy in Serbia as well, primarily in terms of financing and refinancing. Semiz explained that the latter, in particular, is a hot area at the moment in light of the fact that, after the financial crisis, lenders are much more cautious when it comes to investing in actual development projects, but show much more appetite when a project is fully stabilized.

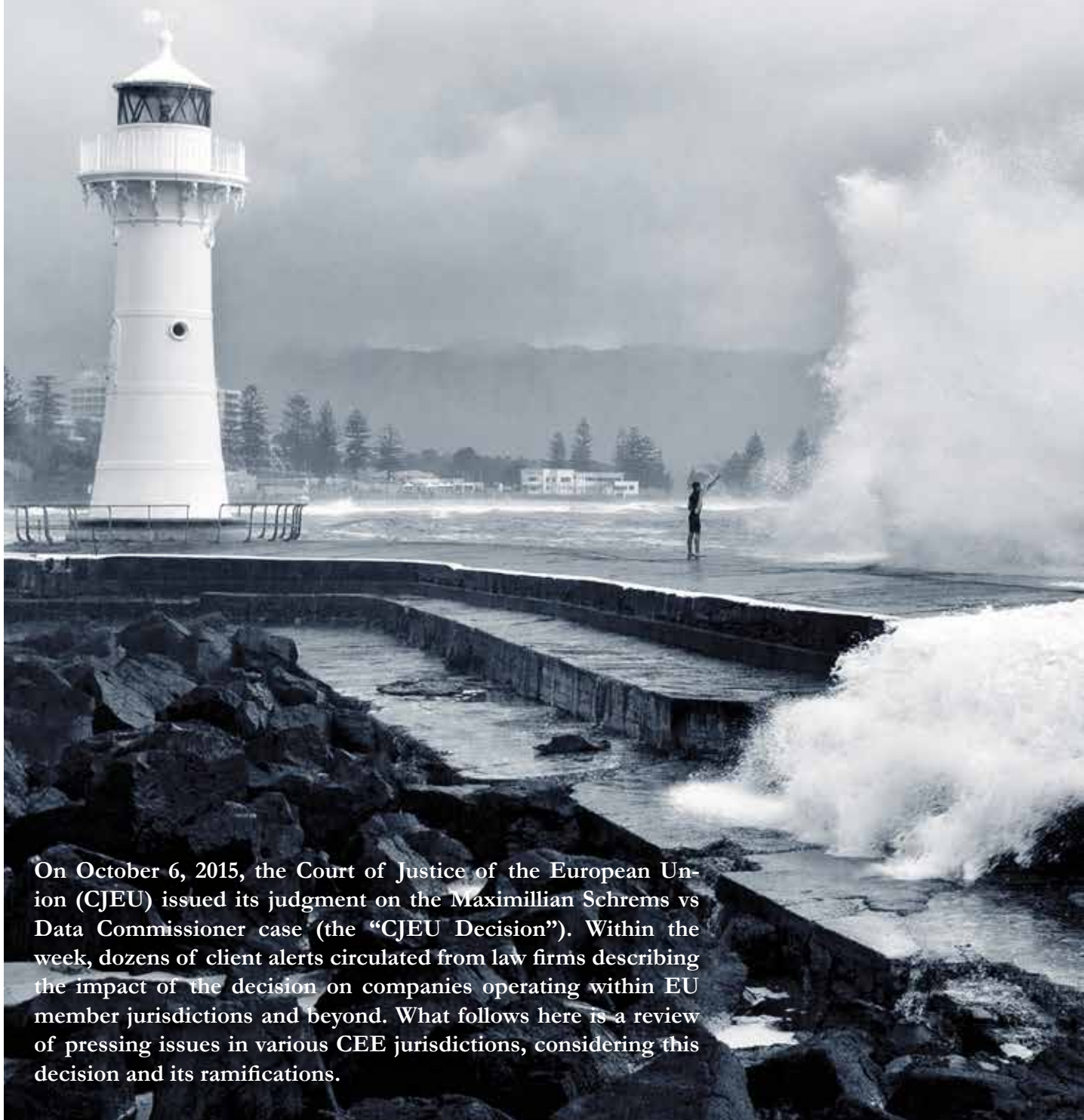


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Navigating Out of Safe Harbors



On October 6, 2015, the Court of Justice of the European Union (CJEU) issued its judgment on the Maximillian Schrems vs Data Commissioner case (the “CJEU Decision”). Within the week, dozens of client alerts circulated from law firms describing the impact of the decision on companies operating within EU member jurisdictions and beyond. What follows here is a review of pressing issues in various CEE jurisdictions, considering this decision and its ramifications.



An Austrian Against Facebook

In 2000, the European Commission issued Decision 2000/520/EC, outlining a series of Safe Harbor principles involving the protection of data. Based on self-certification that they were ensuring the level of protection required by 2000/520/EC, approximately 4,500 United States companies, including Google and many other IT giants, were allowed to legally transfer user, customer, or employee data.

The CJEU case began when Austrian law student Max Schremps addressed “the state institution of Ireland” – the Data Protection Commissioner, or DPC – “requesting to terminate the routing of his personal data from Facebook Ireland to the servers of Facebook Inc. situated in the US.” Schremps claimed that the presumed access of several federal agencies in the United States to his personal data indicated that the country could not adequately ensure its protection. Indeed, as Milan Samardzic, Partner, and Nikola Kasagic, Senior Associate at Samardzic, Oreski & Grbovic noted in an article published in the Thought Leadership section of the CEE Legal Matters website, “in light of Edward Snowden’s leaks regarding mass surveillance of personal data by the National Security Agency, it was clear the US is not capable of adhering to the strict requirements set out in European regulations.”

No More Safe Harbor

According to Detlev Gabel, Partner at White & Case, the CJEU Decision has two components: First, the court declared the original 2000/520/EC Commission decision invalid. Second, the court ruled that a decision of the EC declaring the protection of personal data provided by a third country adequate cannot “eliminate or even reduce the powers available to the national supervisory authorities under the Charter of Fundamental Rights of the European Union and the Data Protection Directive,” meaning that national authorities retain the power to “examine with complete independence” whether data transfer to a third country complies with the Directive.

While Gabel points out that both the EC and national data protection authorities “are expected to issue guidance for businesses affected by the judgment shortly,” companies are left in limbo during the interim.

US Reaction

On the day of the ruling, US Secretary of Commerce Penny Pritzker released the following statement in response to the European Court of Justice decision surrounding the Safe Harbor Framework: “Since 2000, the Safe Harbor Framework has proven to be critical to protecting privacy on both sides of the Atlantic and to supporting economic growth in the United States and the EU. We are deeply disappointed in today’s decision from the European Court of Justice, which creates significant uncertainty for both US and EU companies and consumers, and puts at risk the thriving transatlantic digital economy. Among other things, the decision does not credit the benefits to privacy and growth that have been afforded by this Framework over the last 15 years.

For the last two years, we have worked closely with the European Commission to strengthen the US-EU Safe Harbor Framework, with robust and transparent protection, including clear oversight by the Department of Commerce and strong enforcement by the US Federal Trade Commission.

The court’s decision necessitates release of the updated Safe Harbor Framework as soon as possible.

We are prepared to work with the European Commission to address uncertainty created by the court decision so that the thousands of US and EU businesses that have complied in good faith with the Safe Harbor and provided robust protection of EU citizens’ privacy in accordance with the Framework’s principles can continue to grow the world’s digital economy.”

We reached out to several CEE experts for comments about the state of affairs as we went to print in mid-October.

Austria

Axel Anderl, Partner at Dorda Brugger Joridis, explained that, in Austria, the Authority “is working on a solution/proposal [as to] how to cope with the logical consequences of the decision which is that all data transfer to US has to be approved,” but that there had been no “official announcement, yet.” As to the transition, Anderl said, “although from a strict legal perspective, any

data transfer to the US initially based on Safe Harbor has to be stopped immediately, we assume that there will be some kind of regulated approval proceedings to (quickly) legalize the existing transfers. The Authority usually establishes a more pragmatic approach due to the expected heavy workload, as multiple Austrian data controllers currently use US data processors.”

Bulgaria

Desislava Krusteva, Senior Associate and Senior Legal Expert at Law and Internet Foundation with Dimitrov, Petrov & Co., explained that the CJEU Decision “does not come as a surprise” in Bulgaria. Krusteva explained that “in its practice the Bulgarian Personal Data Protection Commission (PDPC) has already started to limit the application of the Safe Harbor agreement” and pointed to several instances where “the PDPC has disregarded this EU instrument and has stated in its opinions that in case of data transfers to a Safe Harbor company, prior approval from the PDPC is required in order to ensure an adequate level of protection of the transferred personal data.”

While this limitation in Bulgaria, had, before the CJEU’s decision, been “symptomatic and controversial as contradicting to the provisions of Decision 2000/520/EC,” in the aftermath of the CJEU judgment, “it is definitive.” As a result of this, Krusteva explained: “Performing data transfers to entities located in the US only on the grounds of the invalidated Safe Harbor scheme bears a high risk of sanctions.”

Krusteva emphasized that “for all data controllers in Bulgaria currently it is highly recommended to reconsider the mechanisms used for data transfers to the US in case those transfers are based solely on the fact that the companies-recipients of data are certified under the Safe Harbor scheme. Depending on the structure of the cross-border data transfer, such mechanisms may include: using standard contractual clauses which, according to the European Commission, offer sufficient safeguards to data protection in case of transfers; undergoing an authorization procedure for data transfers to the US; and others.”

Croatia

The Croatian Data Protection Authority (AZOP) seems to have acted more quickly than most authorities following the CJEU Decision. Olena Manuilenko, Head of

Intellectual Property at Divjak, Topic & Bahtijarevic, pointed out that AZOP immediately issued an initial guidance available on its official website in Croatian. She explained that, according to AZOP, “any transfer of personal data of Croatian data subjects will have to be based either on the data subjects’ consent or a data transfer agreement pre-approved by the national DPA, or another available statutory derogation, depending on the circumstances of each case. It is worth mentioning that data transfer agreements based on the EU Standard Contractual Clauses will also have to be submitted to the national DPA for review and approval prior to any data processing or transfer.” To add to the challenge, a Croatian translation of the agreements will be required. Manuilenko added: “Companies affected by the ECJ decision may consider adopting the Binding Corporate Rules” – internal rules such as a Code of Conduct – “which would also be considered a sufficient guarantee of the adequate level of personal data protection.”

Until approval is obtained, the law does not allow transfers, according to Manuilenko, with potential liability for privacy violations, whether at the misdemeanor level (fines) or criminal level (for directors, managers and the company). She added: “Since the companies who have relied only on Safe Harbor will now have to align their data processing in accordance with the new circumstances, there should be a leniency period, but there is no official guidance about it yet.”

Baltic States

“So far Baltic companies, as well as national data protection authorities, all appear to be in a ‘wait-and-see’ mode,” said Pirkko-Liis Harkmaa, Partner at Cobalt, who noted that she had not yet faced many inquiries from clients worried about the CJEU Decision. She reported that “at the moment it seems that none of the Baltic data protection authorities has or is ready to issue their official positions and appear to wait for the Article 29 Working Party uniform guidance.”

In Estonia, according to Mihkel Mäidla, Senior Associate and Head of Technology & Data Protection at Sorainen, “from now on a prior authorization from the Inspectorate has to be obtained to transfer personal data to the US. The data exporter must demonstrate that it has a valid legal basis to process the personal data and that a sufficient level of data protection is guar-

anteed in the US for that specific case of data transfer.” Miidla explained that the exporters of the data can “generally rely on data transfer agreements that are based on EU Model Contracts or Binding Corporate Rules.”

There are a few exceptions for which an authorization from the Estonian Inspectorate is not needed, according to Miidla: “(1) If the data subject has provided a valid consent for the specific transfer to take place; (2) Where the transfer is necessary for the protection of the life, health, or freedom of the data subject or another person if obtaining the consent of the data subject is impossible; or (3) If a third person requests information obtained or created in the process of performance of public duties and the data requested do not contain any sensitive personal data and access to it has not been restricted for any other reasons.”

“There is a great deal of uncertainty regarding how quickly [companies] should implement new measures and obtain a relevant authorization for transferring personal data to the US,” explained Miidla. “On one hand it is clear that the Safe Harbor principles can no longer be relied upon and the data exporters have to implement new measures for the transfers but on the other hand it is also unlikely that the Inspectorate will now direct its resources into active supervision over data controllers who are likely transferring personal data to the US. There is no official guidance available from the Inspectorate on this issue. It is expected that the Inspectorate will soon update their non-binding guidelines on data transfers.”

At the end of the day, Harkmaa reported out that the Inspectorate “has expressed an opinion that the CJEU Decision does not have a major impact on Estonia and sees that the most probable aftermath of the decision is that the legal costs of companies would rise due to the need to draft model clauses and internal rules. In practice, many companies also have, in parallel to the Safe Harbor exception, relied on model clauses and DPA [Data Privacy Authority] approval or data subject consent, so in most cases the abolishing of the Safe Harbor exception does not affect them.”

In Latvia, Harkmaa said, while “companies have started to show interest in how to react to the decision,” in fact companies in that country that have transferred data to the US were already going beyond the requirements of the safe harbor exception, so the potential impact on Latvian compa-

nies was not particularly large.

In Lithuania as well, according to Harkmaa, “the unofficial Data Protection Authority’s opinion appears to be that the CJEU Decision would be relevant for data transfer permit applicants that have based their application on the Safe Harbor exception only, [but] in practice and according to the DPA’s knowledge this might have been the case with very few applicants. Others have provided model clauses, etc.” Harkmaa added that the unofficial recommendation from the Lithuanian DPA to data controllers, “is to cease transfer as of the CJEU Decision day or to urgently agree on model clauses to ensure the adequate privacy protection.” She noted that this is in contrast to the Estonian and Latvian DPAs, which “have expressed no such radical recommendations.”

Harkmaa said that: “Local companies who belong to multinational groups where certain employee or customer data is being held in centralized databases in servers in US, or local companies who use service providers who retain data in servers in US, are recommended first to inquire how the relevant group company or service provider intends to change its practices in light of the ECJ decision and guarantee adequate safety of data transfers and data processing. If appropriate, EU model clauses should be incorporated into existing agreements, or new appropriate contractual arrangements should be put in place or any other suitable allowed measures guaranteeing the adequate level of data protection should be adopted (such as binding corporate rules). Thereafter the process for applying for DPA approval for the relevant data transfer should be initiated.” She clarified that “DPA approval may be skipped if the data subjects give their informed free consent to such data transfers, however from the practical point of view this solution could only work in case of companies who need to approach only a few data subjects (e.g. a few employees whose data is being processed in a centralized US database), but would be complicated and not practical in case of mass data transfers.”

Hungary

Marton Domokos, Senior Counsel at CMS, says that: “Hungarian companies who have been relying on the Safe Harbor scheme should seek alternative options of safeguarding the privacy of personal data transferred in the US.” He added that “Data transfer to the US is possible on the

basis of the prior, express, and informed consent of the relevant person; however, as the result of the CJEU’s ruling, Hungary’s Authority for Data Protection and Freedom of Information (NAIH) may want to review whether a consent contains adequate information on the level of the data protection in the US. Besides an individual consent or intra-group transfers based on BCRs, the only alternative for Hungarian companies is to conclude the so-called EU Model Clauses (based on Commission Decisions No. 2001/497/EC, and No. 2010/87/EU), provided that there is a legitimate interest for the proposed data transfer. Since January 1, 2012, entering into other individual data transfer agreements is not considered as providing ‘adequate protection’ for data transfers to the US.” Otherwise, the Hungarian Authority is itself analyzing the significance of the CJEU Decision. According to Domokos, “in its communication, the NAIH emphasized that it is currently reviewing the tasks that will arise from the ruling in Hungary and will coordinate with other EU data protection authorities.” She suggests that “the NAIH may also want to revise its prior position on data transfers outside the EU; in particular, its Recommendation on Data Transfers Abroad dated November 11, 2013 where Safe Harbor was recognized as adequate protection.”

Beyond EU Member States

Of course, the CJEU Decision was significant for non-EU jurisdictions as well, with client alerts appearing from law firms in Montenegro, Serbia, and Turkey appearing soon after the Decision was issued.

Conclusion

While ambiguity hovers over companies in many of the countries affected by the ruling, at the end of the day, Harkmaa’s words of guidance – though spoken in the context of the Baltic states in particular – reflect the common theme: “Any recommendations that can be given to clients at this moment have to be based on common sense.” She commented: “I do not see any reason for immediate panic, and it is highly unlikely that the DPAs would start to impose sanctions for non-compliance without first issuing official guidance and applying a reasonable grace period for bringing data transfer processes into compliance with such guidance.”

Radu Cotarcea

Avellum Partners Makes Its Move:

Disputes Expert Dmytro Marchukov Leads a Growing Litigation Practice in Ukraine

In September CEE Legal Matters reported that Dmytro Marchukov had joined Avellum Partners as Partner and Head of the firm's Dispute Resolution Practice. We sat down with Marchukov recently to learn more about his decision to join the firm, plans for the firm's Dispute Resolution Practice, and feelings about the reliability of Ukraine's court system.

Although Marchukov had only just joined Avellum Partners when CEELM sat down with him to speak, he said he already felt comfortable and integrated. "It doesn't feel like a new firm anymore just because I've been plugged into so many of the ongoing matters," he smiled. "It's somewhat exhilarating after over 10 years with my previous firm."

An Unexpected Natural Move

Marchukov, who graduated from the Institute for International Relations in Kyiv in 2006, had already begun his professional career at Egorov Puginsky Afanasiev & Partners Ukraine (EPAP). "I started with them in 2005," he remembered. "In Ukraine, at the time, it was still called Magister & Partners, although it changed its name to the shorter 'Magisters' after a couple of years. At the time it was a heated race between it and Egorov Puginsky as to which was the largest of the CIS law firms, but after 2011, when the two merged, that position was really not a question." Marchukov looked back on his experience with EPAP fondly. "I felt quite ok there and, at the time negotiations with Avellum started, I thought I'd

spend another 10 years with the firm."

Indeed, Marchukov claimed that his decision to join Avellum Partners did not reflect dissatisfaction with EPAP. He explained that there were "no internal reasons – nothing actively driving me out of the previous firm really. I couldn't be happy with absolutely everything of course, I think that's impossible, but I was definitely happy with most of it." Instead, he described his decision as "a combination of small reasons that somehow clicked together. Of course, certain financial terms played a part but they were not the core drivers. I think in EPAP I still had to wait for a couple of years to be involved in certain matters and processes to the extent I am now." Marchukov clarified: "Avellum is

a bit more of a liberal environment – it was founded six years ago by three Partners, and I represent the first lateral major addition, so in this way it is rather conservative, but if they add a Partner, it is a full parity that's on the table – something I felt I was ready for. Of course, I would not have joined many law firms in Ukraine even if they had offered the same, but with Avellum, I feel I joined a truly Western-minded firm, driven by quality of service."

Marchukov said that "I always perceived Avellum as quite a decent firm with strong professionals and a certain vision that I shared," and thus, "by late July I comfortably agreed to the move." The transition was fairly painless, he reported. "I really thought a lot about my move," he said. "There was

a transition period – allowing for ample time to plan – and I think I departed in an ethical way and transferred all that had to be transferred. To my mind, everything went more or less smoothly although it was my first real experience of switching firms.” Nonetheless, he laughed, “the truth is, time will tell – maybe in a month or two I might have a different answer!”

Step 1

At the moment, the Avellum Partners’ dedicated Dispute Resolution team consists of Marchukov and four associates, though Marchukov said he plans to expand the team soon. In the interim, he said, “I enjoy a lot of support from the lawyers in sister practices (corporate, antitrust, banking and finance, etc.).”

When asked about the main BD strategies he’s planning to implement as the head of his practice Marchukov said: “The market itself is not easy in Ukraine these days. I do not think that I have to reinvent the wheel. I am employing the same strategies that everyone does in the market: face-to-face meetings, events, meetings with lawyers in international firms. One thing that matters to me is a clear approach of mine: we have a dispute resolution *team*, and I should not be the only one to appear everywhere, so I am asking my more junior members to get involved in BD activities. To that end, I have an Associate at an event in Poland soon, a mid-level at an event in November, and so on – the market should know not only me as the head of practice, but the team as a whole.”

Of course, he pointed out, he is not starting from scratch. “What has been done before is quite positive and useful,” he said. “The Dispute Resolution practice was already quite established prior to my involvement.” As a result, he said with pride, “I have to admit – and I’m happy to do so – that the team is quite strong and known in the market and has a good portfolio of cases – really, my task is more to not spoil anything! If it goes the way it did before it will already be good but, at the same time, I think there are areas we can improve. It is however very helpful that I am not starting from scratch and have a precious heritage.”

A Look at the Market

Litigation is one of the practices that Managing Partners in Ukraine consistently identify as critical, and Marchukov does

not believe this is only a function of the recent geopolitical and financial crises. “I think that litigation in Ukraine has been widely discussed in the last year or two,” he concedes. “But even in the last 15 years it has tended to be a hot topic.”

The major obstacle to an effective and Western-styled dispute resolution practice in Ukraine is one common in many CEE jurisdictions. According to Marchukov, “We are always fighting corruption, and the Ukrainian judiciary is always the place where the fight with corruption is necessary.” And Marchukov is aware of the importance of cleaning up the system in his country. “I sometime hear the phrase ‘show me the country with no corruption’ because, of course, there are no such countries. But at the same time, there are so many countries where corruption is an exception – or a rare exception – and Ukraine has to become one of these countries, especially in the judiciary.”

Marchukov described some of the attempts that have been made to address the problem. “At some point,” he sighed, citing an example, “the salaries of judges were increased, hoping that would lead to less interest towards bribes. On the other hand, if a judge has a low salary and still drives the most recent Mercedes model, it should probably raise some alarm bells – now, high salaries provide more of a justification to see that.” Still, there are some interesting developments towards this goal, according to Marchukov: “For example, a large judicial reform was passed, with others to follow. I’m not quite optimistic that all will become fine overnight, but I do see some things that have been reformed in an atypical manner for Ukraine such as dissenting opinions on judgments. Even there, some people think that we do not need them, and others think that we just imported a change

from abroad for the sake of a change, but I think it is better, because – while it is not an obligation to write one up – it might



Dmytro Marchukov,
Partner and Head of Dispute Resolution,
Avellum Partners

mean that there was something wrong with the opinion of the majority. If some corruption was involved in the majority decision and such minority opinions spring up more and more often, the majority might become more cautious in issuing a corrupt decision.”

“At the end of the day, I hope I’m not naive about any of this,” Marchukov said. “You see that even when you fight corruption quite actively, many people still find the loopholes to circumvent the system – that’s probably the most discouraging thing.”

Conclusion

Marchukov’s knowledge of the Ukrainian courts and clear-eyed attitude about the challenges facing litigators in the country is impressive, and his enthusiasm about joining Avellum Partners is infectious. He appears well suited to lead the firm’s Dispute Resolution team – and the team’s clients – successfully into the future.

Radu Cotarcea

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Market Spotlight Romania

Guest Editorial: Compliance, Compliance, Compliance



The Romanian legal market has maintained its “up and coming” status in the past 12 months. According to a press release from the National Bank of Romania, foreign direct investment in Romania increased by 39%, reaching EUR 1.66 billion in the first 6 months of 2015. This increase has been reflected in a significant number of transactions in agriculture, healthcare, banking, real estate, FCMG, energy and natural resources, construction, IT, and



infrastructure, either pending or successfully completed. And there is more good news – we are seeing an increasing number of foreign investors investing for the first time in Romania or returning to Romania after a considerable number of years abroad. The appetite for investment in Romania is back, including for investment funds attracting money from Asia and the Middle East.

Under the EU Cohesion Policy, Romania has been allocated EUR 23 billion – approximately EUR 9.5 billion of which is dedicated to the Large Infrastructure Operational Program for Romania and is to be invested in transport, environmental, and energy projects. The amount will increase to EUR 11.8 billion based on national co-financing, and we expect infrastructure and energy projects to be the main focus of investment in the next year. Likewise, investment funds are looking for opportunities to invest in transportation and infrastructure-related businesses like logistic parks and companies active in construction.

Concomitantly with the increase in investments and transactions, we have seen an increased willingness by Romanian authorities to tackle corruption, tax evasion, and money laundering in an effort to reduce the black and grey market and to boost the real economy and the revenues of the State budget. This initiative has targeted private businessmen and most importantly private business entities, irrespective of whether they have done business with the Romanian State or not. The new Criminal Code that entered into force in February 2014 and other related laws and regulations contain corruption-related provisions addressing both public and private sector corruption as well as transnational corruption, and Romanian prosecutors are increasingly focused on imposing corporate criminal liability on private business entities.

With a record number of criminal investigations against Romanian politicians – including at least 3 European level cases and several arrests of high profile members of the Romanian Parliament – it has indeed been an extremely “hot” year, and Romanian attorneys are paying closer attention to

compliance and regulatory issues than before as their clients need to ensure that they are taking appropriate steps to comply with relevant laws and regulations and remain safe from any reputational risks and corporate scandals.

The Romanian High Court of Cassation and Justice recently stated that a legal entity is criminally liable for acts against the financial interests of the European Union. The case under review dealt with the submission of false statements by the vice-president of a company that led to obtaining financial assistance through the European Agricultural Guarantee Fund. In another pending criminal case, a legal entity is being investigated for tax evasion in relation to assets that it allegedly undervalued in order to declare and pay lower taxes.

To this end, there have been several law firms that have increased their activity in regulatory & compliance matters and have advised a number of Romanian companies to undertake a thorough review of their internal rules and regulations on regulatory & compliance issues, starting with the adoption of – or, as the case may be, the updating of its understanding of – the Corporate Code of Ethics and Internal Regulations and the implementation of training programs for its management and employees to ensure that internal rules and regulations are strictly enforced. We estimate that this practice will increase exponentially in the next years.

The recent focus on compliance does not deal only with corruption and tax evasion, but also covers a wide spectrum of best practices in antitrust and state aid matters, intellectual property and IT, employment, consumer protection, and money laundering, as we are seeing an increased monitoring of the Romanian market by the Competition Council, The National Authority for Data Protection, The National Authority for Protection of Consumers, and the Labor Inspection Authority, to name a few of the Romanian authorities in charge with compliance supervision.

The efforts of the Romanian authorities to tackle corruption and tax evasions have not only increased the Regulatory & Compliance work of Romanian attorneys but also started to play an important role in various due diligence reviews when Romanian businesses, entities, or assets are being acquired. While in the past such due diligence investigations were of no concern or were limited in scope, nowadays a thorough review is performed on transactions with State entities and where there are pending or potential investigations against the target, its shareholders, and other companies within the same group. Hence attorneys will pay more attention to transaction documents in terms of representations and warranties of the sellers in terms of regulatory & compliance issues.

*Dragos Vilau, Partner,
Vilau I Associates*

Cracking the Code:

Exploring the New Fiscal Code in Romania

On September 7, 2015, the provisions of the new Romanian Fiscal Code were promulgated by the President of Romania, and they were published in the Official Gazette of Romania three days later. As a result, on January 1, 2016, Romania will have a new Fiscal Code for the first time since 2004, and the tax regime in the country will be significantly different for both local businesses and foreign investors alike. We reached out to Schoenherr Tax Bucharest Managing Director Theodor Artenie, Director Oana Manuceanu, and Director Mihaela Popescu for information about this important development.



Theodor Artenie, Managing Director,
Schoenherr Tax Bucharest



Oana Manuceanu, Director,
Schoenherr Tax Bucharest



Mihaela Popescu, Director,
Schoenherr Tax Bucharest

CEELM: Why was the new Fiscal Code deemed necessary?

Schoenherr: In the more than 10 years since it was first published, the Fiscal Code had undergone a significant number of changes making it very difficult to be read by taxpayers attempting to be compliant.

Apart from the fact that it looked like a disastrous patch-work, with hundreds of amendments that were tough to track, it also contained a number of provisions which were completely out of alignment with each other or, worse, with common business practices of Romanian companies. For example, relevant provisions from the profit tax legislation did not match provisions from the VAT legislation, some provisions of VAT legislation did not match those from the excise duty legislation, and so on. Another relevant example is related to the taxation of financial transactions, especially at the level of individual investors: the old Fiscal Code lagged behind the complex transactions and products currently being developed on the market, and as a result it became anachronistic and difficult to apply.

Therefore, with every passing year there was an ever-increasing need to clean up, re-arrange, re-draft, and re-align the provisions of this very important piece of legislation.

CEELM: What are the most significant elements of the new Code?

Schoenherr: Apart from the general overhaul of the format of the Fiscal Code, which included a new numbering of all the articles and a reshuffling of some existing provisions, there were also a number of amendments. These can be split into three main categories:

- 1) Those that will have a direct and immediate impact on the Romanian state budget. These include the reduction of some tax rates (e.g., the standard VAT rate will be reduced from 24% to 20% in 2016 and then to 19% in 2017, the excise duty rates for alcoholic beverages have been reduced, gasoline and diesel fuel taxes will be reduced in 2017, and the dividend tax will be reduced from 16% to 5% in 2017), the removal of others (for instance, the special construction tax will cease to exist in 2017) and the increase of the taxable base (such as a pension contribution for freelancers).
- 2) Those significantly changing the provi-

sions regulating certain taxes. In particular, the property tax regime – especially those provisions applicable to the building tax – was almost completely reconsidered and rewritten, with new concepts and rules introduced to explicitly regulate the tax regime applicable to tax-transparent entities. Similarly, taxation rules applicable to joint-venture arrangements were significantly amended.

“...with every passing year there was an ever-increasing need to clean up, re-arrange, re-draft, and re-align the provisions of this very important piece of legislation.”

3) Those that aim at clarifying various aspects. This category includes a significant number of amendments which were either imposed by existing best practices or by various interactions between the Romanian Central Tax Authority and the business community.

Apart from the three categories listed above, one very important aspect of the new Fiscal Code (in our view) is that it introduces additional anti-abuse rules, including the notion of “abuse of rights” – the introduction of explicit provisions detailing the consequences of tax abusive practices, especially in the field of VAT, as well as the transposition of the anti-abuse rules from the EU Parent-Subsidiary Directive.

This particular set of amendments is in line with the recent approach of the Romanian Tax Authorities, who have increasingly focused on limiting tax abuse and tax evasion. Nonetheless, unfortunately, in the absence of a clear definition or clear guidelines defining “the abuse of rights,” we believe that these new provisions are likely to give rise to various forms of abuse from tax officers as well, considering past experiences when these matters were not treated with the required level of responsibility.

CEELM: Does the Code reflect a genuinely popular consensus, or is it controversial?

Schoenherr: As one might expect, the debates around some of the amendments in the first category mentioned above were rather abundant and somewhat fierce – around the VAT rate cut, for example.

We believe that the debates had an important political undertone mainly driven by

the fast-approaching parliamentary elections and by the various factions’ desire to get a head start in the election campaign.

Apart from the political content of the debate, there were also a number of genuine concerns voiced by various institutions and experts about the reduction of the standard VAT rate, which is thought to have the highest impact on the public

purse, and about other tax cuts such as the dividend tax and the removal of the special construction tax scheduled for 2017. The main points were the difficulty to predict if the collection of taxes will increase to such an extent that it will compensate for the loss resulting from the cut of the respective tax rates (especially VAT) and if the boost in consumption will be sufficiently vigorous to cover at least part of this loss. Additionally, one other topic that sparked the increased level of controversy around the reduction of the VAT rate was that, according to the National Bank of Romania and of the Romanian Fiscal Council, the measure is likely to also have negative macro-economic consequences (especially as regards inflation/deflation).

However, although there are areas in the new Fiscal Code that are far from reflecting a genuinely popular consensus (especially the increased taxation of active income and freelance activities, while the tax burden on passive income – such as dividends – will lower as of 2017), it is only fair to conclude that the new Fiscal Code is a step forward for the Romanian legislative framework.

CEELM: How is the local Romanian business community reacting to the Code?

Schoenherr: Without proclaiming to be the voice of the Romanian business community, we would venture to say that the new Fiscal Code was generally well received. One of the reasons we believe this to be true is that it was drafted in significant consultation with Romanian companies. It also promises a higher level of predictability in the fiscal environment, as it introduces clearer taxation rules and stricter deadlines for future amendments.

Of course the process was far from perfect and there remain a number of unresolved tax issues, which are still likely to cause headaches and frowns.

CEELM: How is this likely to affect foreign investors?

Schoenherr: We believe that the overall impact on foreign investments will be positive since the new Fiscal Code should be perceived as a step towards creating a more predictable tax environment in Romania.

Also, the various tax cuts, combined with existing relief mechanisms (e.g., the participation exemption regime) and other new mechanisms (e.g., a VAT reverse charge for the sale of real-estate and for electronic goods), is likely to create a competitive economic environment with new opportunities for foreign investors looking to expand or consolidate their presence in Romania.

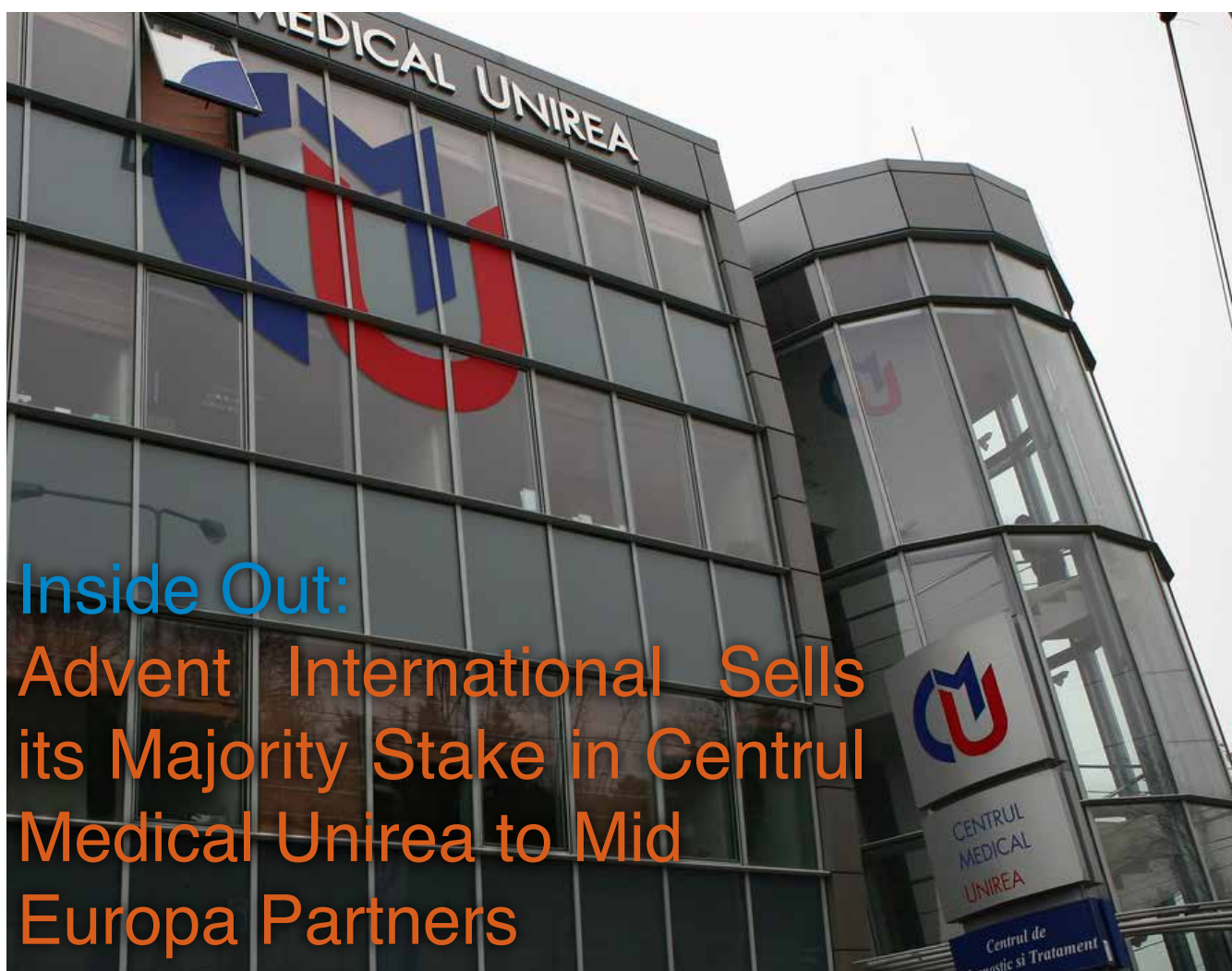
CEELM: An earlier version of the new Code was rejected by the President on the ground that the tax cuts were too severe and were likely to result in a high budget deficit. What changes did the Parliament make to this version to address those concerns?

Schoenherr: The main debate was around the reduction of the standard VAT rate (as already mentioned above), which was initially suggested to be from 24% to 19%. After several rounds of talks, it was agreed by all parties to reduce the VAT rate gradually – to 20% in 2016 and to 19% in 2017.

Another concession made for the adoption of the new Fiscal Code was to postpone the dividend tax cut – from the current 16% to 5% – until 2017.

Last, but not least, another “hot potato” was the controversial tax on special constructions which was first introduced in 2014 and which generated an uproar in the Romanian business community, as it was perceived as a tax on investments. This “out of nowhere” tax – which was literally introduced overnight – generated some 1.5 billion RON in revenue for the state budget. The initial proposal was to have it removed in its entirety on January 1, 2016, but following negotiations, it has been agreed to keep it for one more year, until 2017.

David Stuckey



Inside Out: Advent International Sells its Majority Stake in Centrul Medical Unirea to Mid Europa Partners

The Deal

On August 5, 2015, CEE Legal Matters reported that RTPR Allen & Overy had advised the Advent International Corporation on the sale of its majority stake in Centrul Medical Unirea S.R.L. – the healthcare services provider conducting its business under the brand name “Regina Maria” – to the private equity fund Mid Europa Partners. The Enayati family sold their minority share in Centrul Medical Unirea as well, and were advised by NNDKP. Mid Europa Partners was advised by White & Case and Bondoc & Asociatii, with CMS advising Erste Bank – acting as the sole underwriter of the acquisition facility – on debt financing provided to Mid Europa Partners. The transaction, which remains subject to approval by the Romanian competition authority, is expected to close before the end of the year. We asked Costin Taracila, the “T” in RTPR Allen & Overy, some questions about this major deal.

CEELM: How did RTPR Allen & Overy become involved in the deal? In other words, why did Advent International select the firm – and you, as external counsel – for this particular deal?

C.T.: We have a long-standing relationship, Advent International being one of our very active private equity clients for some years. We advised them on several transactions in Romania, just to mention only the last one, the exit from Ceramica Iasi which was concluded last summer. Historically we acted for Advent on the acquisition of Centrul Medical Unirea back in 2010 and the further add-on of Euroclinic, and we were best placed to act for them on the exit from the same business. It’s a strong relationship based on trust.

CEELM: What, exactly, was your mandate when you were retained?

C.T.: We were retained to advise on the entire process, from NDAs, vendor due diligence, data room guidance, SPA nego-

tiations, signing, conditions precedent, and closing. The final result was not too different from the initially agreed scope of work in terms of the key areas. We were pleased to be retained for the full process, and Advent and its local team are transaction driven, so there were no surprises for either of us in terms of our expectations and how the process was eventually organized.

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

C.T.: The RTPR Allen & Overy team was led by me, and I was assisted by Alina Stavaru (Counsel) on negotiations and Roxana Ionescu (Senior Associate) on due diligence and transaction structuring. Other members of the team were Ana Eremia, Diana Dimitriu, Andrei Mihul, Laurentiu Tisescu, Raluca Deaconu, Adrian Cristea, and Monica Marian (Associates). On the international team, Hugh Owen from Allen & Overy Budapest advised on the English law aspects of the transaction, supported

by Esther Lemmon in A&O London on the tax covenant.

CEELM: What were the English elements Hugh Owen worked on, in particular?

C.T.: Hugh worked mainly on the share sale and purchase agreement, which was governed by English law and which contained provisions which, although typical for this kind of secondary buy-out, are still quite private-equity specific. He and I led the negotiations together on this. He also worked on the Warranty and Indemnity Insurance policy, which is an important element of more and more M&A transactions – it is a very specific document where prior experience is essential. There were other complex private-equity-specific elements which, for confidentiality reasons, we can't mention here.

CEELM: What does the final deal look like, how is it structured, and how did you help it get there?

C.T.: The deal involved Advent selling approximately 80%, and the Enayati family selling approximately 20%, of the shares in Centrul Medical Unirea SRL. There was a partial rollover of management's shares. The deal was a locked-box deal with regulatory conditions only.

“Other than that, the biggest challenge was to be able to negotiate and to deliver a ‘Rolls Royce’ service to our client for over 30 hours in a marathon, sleepless, negotiation session in Bucharest.”

- Costin Taracila

We walked hand in hand with our client from the inception of the exit until a successful signing and beyond. Given that we were involved in every single step of the process, this allowed us to have a complete overview and to be able to offer tailor-made advice combining the pure legal advice with all relevant business considerations. We like to think that we were more than a legal adviser; we were what we like to call “the trusted adviser” for our client. This was a competitive sale where all the advantages and disadvantages of different bids and bidders had to be taken into consideration before getting into negotiations. Proper vendor due diligence and preparation were key for the success of the deal, then once things heated up we brought all the key ingredients to the table: the due dil-

igence team, the competition team, the Romanian and English law M&A team, and the English tax team. All for the benefit of a hands-on and very business-oriented client.

CEELM: What can you tell us about the application for competition authority approval?

C.T.: The application for competition approval involves sections related to the purchaser and its group (this part was handled by Mid Europa's legal advisors) and others with information about the target group, its services, and markets (handled by our team). In a competitive process such as this one, the part of the application that relates to the target group and which is the most consistent is prepared in parallel with the negotiations in order to smooth the application process. We think the approval by Romanian competition authority will be granted in the coming days, and we do not see any reasons for a delay, with the closing of the deal immediately after.

CEELM: Were there any unexpected challenges involved in the process?

C.T.: There were challenges, of course, as in any deal of this type. For example, we ended up with the actual sale transaction

being negotiated in parallel with a sophisticated management incentives plan which had to be agreed by the purchaser with the management of the target. We had to combine the experience of the Luxembourg, English, and Romanian teams in order to be able to advise the management of Regina Maria in parallel with the sale process. Other than that, the biggest challenge was to be able to negotiate and to deliver a ‘Rolls Royce’ service to our client for over 30 hours in a marathon, sleepless, negotiation session in Bucharest.

CEELM: Similarly, looking back, what elements are you proudest of?

C.T.: The ability to keep all the balls in the air throughout the various jurisdictions and



Costin Taracila,
Partner,
RTPR Allen & Overy

work streams involved under time pressure, while at the same time keeping that level of mutual instant understanding and trust with our client which made those “May I have a separate word with my client” moments very rare. Also, we are very proud of the teamwork between our Romanian and international teams. We have known each other and worked together for many years now, and there is a mutual respect and understanding that enables us to work together very effectively. We also felt that we had a very good understanding of what the buyer was going through on their side, too. So (since we have done it ourselves countless times) we understood what they had to do, for example with the financing banks and the warranty and indemnity insurer, and because we understood these elements perfectly ourselves, it enabled us to ensure that our approach in negotiations was one that they could accept. We knew what issues they were facing as a private equity buyer, and we knew what they could and could not accept.

CEELM. How did the negotiations work for this deal? With so many players and law firms involved, it must have been complicated logistically, no?

C.T.: The negotiations took place at our premises in Bucharest. Mid Europa was effectively given 24 hours' exclusivity to get the deal signed, and after the deal team flew into Bucharest on Sunday, 2 August, the customary 30+ hour meeting ensued, with a signing on the Tuesday afternoon, 4 August. All the key players were in the room.

CEELM: How would you describe the

working relationship with Advent International?

C.T.: We could not detail the relationship with Advent International on this deal without giving special praise to Emma Popa Radu and Raluca Nita (the Managing Director and a Director of Advent's office in Romania, respectively), who were in charge of supervising this investment in Regina Maria as all as with the exit process, along with their Luxembourg and Boston teams, which offered all the needed support almost around the clock during the intense negotiations. Besides the in-depth and unique mix of strategic vision and understanding of legal, financial, and tax implications of all matters involved, they were always able to quickly turn around clear instructions focusing on the really important open points throughout the negotiations. And the ability to make business decisions almost on the spot made all the

difference and allowed the negotiations of this deal to end with a successful signing within a short timeframe.

CEELM: How would you describe the working relationship with your counterparts at CMS, NNDKP, White & Case, and Bondoc & Asociatii on the deal?

C.T.: It was definitely a deal between professionals. It is of paramount importance to have all teams "speaking the same language" when it comes to sophisticated matters requiring top law firms around the table. And this was certainly the case – it was good that all of us, as the top private equity law firms in the CEE region, were involved in this deal, enabling us to deal with complex and specific issues that firms without PE experience would have found difficult to get over the line in the same time frame.

CEELM: Does the deal have any greater significance in Romania, or in the region?

C.T.: This is the largest Romanian transaction in healthcare in the last few years on the Romanian M&A market. This gives a very positive signal about the fact that in Romania there are very good businesses, and we encourage investors to look closer at Romania as an attractive market. Romania is a large market with enormous potential and still great opportunities for exceptional returns. We are committed to Romania, and we are pleased to see continued interest in the country from important investors like Mid Europa.

We look forward to taking part in many more M&A opportunities like this in the near future.

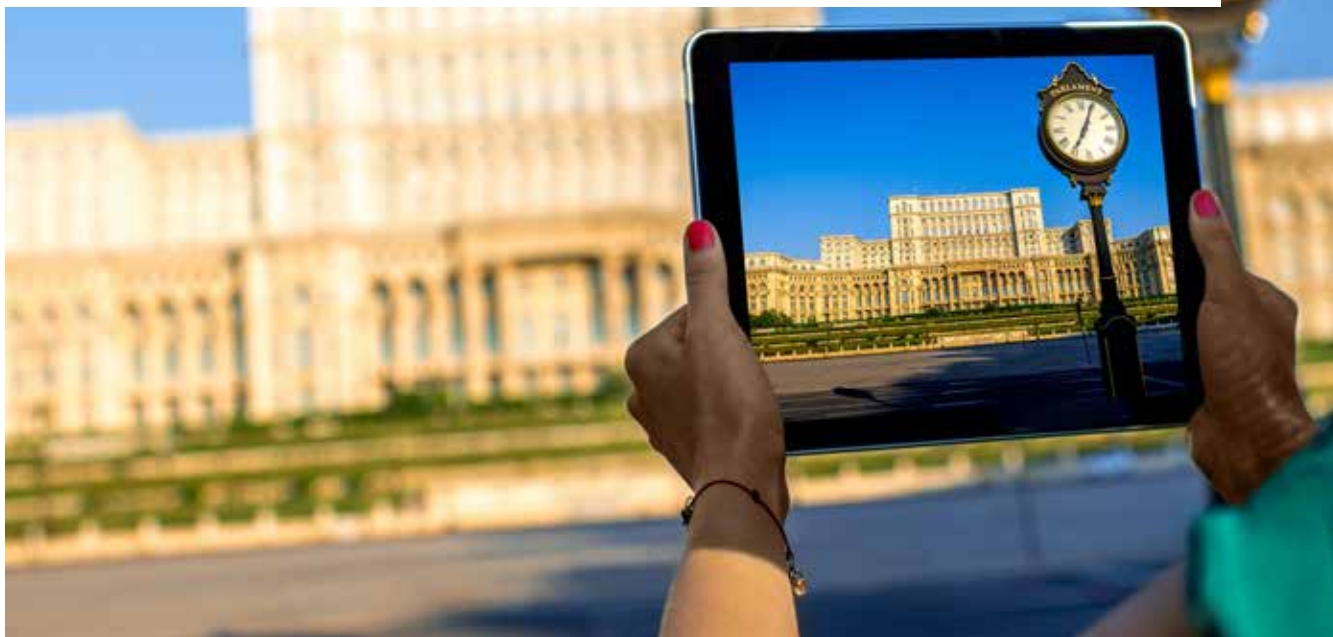
David Stuckey



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Market Snapshot: Romania



A Landmark in the Romanian iGaming Law History: The First Online Gambling Licenses Issued



Alina Dumitru,
Associate,
NNDKP

Ana-Maria Baci, Partner, and Alina Dumitru, Associate,
Nestor Nestor Diculescu Kingston Petersen

After years of being effectively stalled, the Romanian online gambling market has finally been unlocked and the wait for remote gambling operators has proved to be worthwhile. Thus, the long-awaited results of a tumultuous legislative process are now tangible in the form of decisions issued by the National Gambling Office (NGO) – which offers those organizers who meet its requirements the right to lawfully operate in Romania.

Although temporary, these official licenses are nevertheless a step forward in the country's struggle to release the online gambling market from the “fence” regulations. As it stands, the licenses give operators the interim right to organize and operate remote gambling activities in Romania, while they continue with the process of applying for a full 10-year license. Initially valid only until December 31, 2015, the interim licenses will be extended to be valid for a period of one year from the date of granting, subject to compliance with legal provisions, so that the market can continue to function until the technical regulations are implemented and until the operators fulfill the conditions to ob-

tain full licenses.

Romania's connection with online gambling can be traced back to 2010, when the government passed Law no. 246/2010, amending the Government Emergency Ordinance No. 77/2009 for the organization and exploitation of games of chance, and removing the restriction from facilitating online gambling to reflect market reality. In 2013, after three years in which the regulations were on paper only – no licenses had been issued as no regulatory body was in place – the Government created the National Gambling Office to oversee the country's online gambling activity.

The law establishes an amnesty for those operators that have carried out remote gambling activities in Romania, without holding a license and authorization issued by the Romanian authorities, subject to certain conditions being fulfilled.

Currently, according to the official website of the NGO, there are 16 operators who have obtained the interim right to organize and operate remote gambling activities in Romania, including such significant operators such as Betfair, PokerStars, 888, Sportingbet, and bet365 (the complete list can be viewed on the NGO's official website).

In addition to issuing a “white” list, the NGO also publishes a “blacklist,” showing those operators who have operated online gambling entities without paying license and authorization fees, as well as other amounts owed, as well as operators that have cleared the past in Romania by paying the amnesty fee, but have chosen to stay out of the Romanian market for the future. Currently the NGO has blacklisted 147 operators.

Finally, the NGO also announces on its home page that “the participation of individuals (natural persons) on Romanian territory in remote gambling activities that have not been authorized by the NGO constitutes a criminal offence punishable with a fine ranging between RON 5.000 to RON 10.000” and warns such individuals that after the expiry of the amnesty period (90 calendar days from the date Law no. 124/2015 (which expired on September 10, 2015) became effective), “by banning the access to unauthorized platforms, there is a risk that the money deposited in these platforms can no longer be returned”.

While Romania is closer to a complete and effective online gambling legal framework, it remains to be seen how things will evolve, given the challenges the NGO has to face in a maturing environment.

A Panic-Stricken Business Sector Under Antifraud Inspections Assault

In the nine years since Romania joined the European Union, the number of tax litigations has more than quadrupled in the country and now represent about a quarter (about 150,000) of all pending cases in the Romanian court system.

The tax collection system has become more aggressive as a result of pressure to increase both state budget revenues and the level of voluntary compliance.

Statistics released by the Fiscal Administration on Oct. 5, 2015, demonstrate an increase of 7.8% (RON 10.6 billion) in total collected revenues in the first nine months of 2015, compared to the same period in 2014.

Out of the amounts collected, RON 4.75 billion (approximately EUR 1 billion) consists of VAT. The authorities are eager to underline that this increase in collected revenues can only be explained as the “direct and exclusive result of the fight against tax evasion,” and emphasize “the toughening of the criteria for VAT fiscal enrolment, the setup of periodic subsequent review mechanisms of VAT payers, and the simplification of the cancellation procedures of the VAT codes.”

The spearhead of the fight against tax evasion was the Fiscal Antifraud Division (DGAF), which was established at the end of 2013.

Throughout 2014 and 2015, the DGAF launched a series of obscure filtering criteria which enabled them to pick specific targets, run unannounced inspections, and quickly initiate thousands of fiscal injunctions. No less than 26,214 taxpayers, selected based on a high-fiscal-risk analysis, had suffered such inspections in 2015 at the time this article was written, and

By **Luisiana Dobrinescu**, Managing Partner, and **Ionut Dobrinescu**, Partner, **Dobrinescu Dobrev**

EUR 678.83 million has already been claimed as due to the state budget. Under suspicion of imminent evasion, assets and bank accounts valued at EUR 429.24 million were frozen as part of EUR 635.24 million worth of suspected fraud networks, while an unprecedented EUR 45.58 million of fines were issued.

It is anyone's guess whether this means that the fiscal administration has become as efficient a collector as it has become an aggressive inspector, or whether the level of voluntary fiscal compliance has subsequently increased as panic has struck the business sector.

As lawyers with a practice focused on both fiscal consultancy and fiscal litigation, we can only observe that a great majority of DGAF injunctions (over 80%) have not been duly followed by regular inspections, while noting the fundamental distinction that DGAF injunctions are not constitutive of fiscal debts. Consequently, all these measures and amounts imposed by the DGAF cannot be subject to court actions.

It is a relatively simple task to run a systemic algorithm in order to identify suspected targets of tax evasion and inspect them in two or three days and an entirely different thing to conduct a procedural fiscal inspection materially capable of issuing enforceable decisions.

While the DGAF attempts to establish itself as one of the most important administrative structures in Romania, ordinary tax inspectors are intimidated about performing regular tax

inspections after the DGAF's arrival. In such circumstances, the targeted taxpayers' economic activities are blocked, while the statistics count the mere estimates and freezing measures claimed under DGAF injunctions as good-as-money.

DGAF inspections follow an entirely atypical procedure, with no procedural rules regarding its duration, and no right for targeted parties to be defended – or even heard. Legal remedies against the freezing measures imposed by the DGAF on bank accounts and on assets are limited to civil appeals in front of first degree courts, regardless of the (often huge) value of the estimates issued. Such ordinary courts are by no means specialized fiscal tribunals, and the judges, in general, are disinclined to handle complex fiscal cases, because of their limited ability to scrutinize and consider. Although the fiscal procedure requires that the risk of evasion be perceivable, most judges simply presume it based on the impressive estimates of fiscal debts and the apparent complexity of the fraud charges.

Unfortunately, the new Fiscal Procedure Code that will come into force on January 1, 2016, does not much improve the legislative climate. More and more taxpayers, without any opportunity to defend themselves in front of a fiscal court, are forced to follow the only solution available at this moment: insolvency.



Luisiana Dobrinescu, Partner,
Dobrinescu Dobrev

Reporting White Collar Crimes

Lucian Bondoc, Managing Partner,
Bondoc si Asociatii SCA
companies.

Who Has to Report?

There does not seem to be a common understanding of the phrase “persons vested with inspection prerogatives,” since the law itself fails to provide a definition. Although the phrase could reasonably be understood to refer mainly to auditors, censors, and public control bodies, in practice company directors and managers are often understood to fall within its scope as well, on the grounds that they also oversee their employees (and thus arguably are in a position to notice the perpetration of white collar crimes). Obviously, a broad interpretation favors law enforcement, since the reporting duty encompasses a wider range of individuals. On the other hand, there is little doubt that such extensive interpretation comes with significant risks for

What Has to be Reported?

Unlike other legal provisions, the relevant provision of Law 78/2000 does not only require that persons vested with inspection prerogatives have to report an actual crime of which they are fully informed. Instead, it specifically requires that reporting has to be done with respect to “any data from which clues result showing that an illicit act that could trigger criminal liability has been performed.”

This requirement is significantly more broad



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Perpetration of a crime is normally perceived as implying a deserved punishment, and it comes with the expectation that the author of the crime would not be genuinely surprised to be accused of it. However, Romanian law sets out certain circumstances in which crimes can consist of a failure to report criminal acts perpetrated by someone else.

This article focuses on an element of Law 78/2000 on Fighting, Detecting and Sanctioning Acts of Corruption (“Law 78/2000”) requires that persons vested with control prerogatives report any signs of illicit acts involving criminal liability.

Bad faith failure to comply can result in imprisonment for a period from 6 months to five years, while negligent failure to comply can result in imprisonment from 3 months to 2 years or a fine.

than a simple obligation to report the perpetration of a crime, because it requires a sharp (and normally, specialized) evaluation of a particular situation in which only hints of a potential crime become discernable and relevant.

Frequently, this can generate doubts and controversies, thus placing the person subject to the legal reporting obligation in a very delicate position: not being sure that there is something to worry about, while knowing that failure to

report could lead to his/her own criminal liability. This pushed towards in over-reporting, and raises the risks of embarrassment (and potentially more serious consequences) in those cases where authorities establish that the reported clues do not actually indicate the perpetration of a crime.

When to Report?

The law does not specifically provide for a term within which one has to report. In the

absence of any such provision, one should report promptly after reaching a conclusion of relevance.

To conclude, I would say that companies need to apply extra care in a variety of situations and also think thoroughly about the internal investigation methodologies prompted at a group level. Common sense may simply not be sufficient.

Challenges Posed by the Public Procurement Law Reform in Romania



Delia Ropan,
Senior Associate,
NNDKP

Adina Chilim-Dumitriu, Partner, and Delia Ropan, Senior Associate, Nestor Nestor Diculescu Kingston Petersen

The process of transposing 2014 EU directives in the public procurement domain (Directive 2014/24/EU (concerning the “classical” sector), Directive 2014/25/EU (utilities), and Directive 2014/23/EU (concessions)) into Romanian law has pro-

vided an opportunity for a more extended reform of the Romanian legal framework regulating this sector.

Currently, the public procurement domain in Romania is regulated through a main normative act – Government Emergency Ordinance nr. 34/2006 regarding the award of public procurement contracts, public works concession contracts, and services concession contracts, as amended and supplemented (comprising provisions regarding the classical sector, utilities, concessions, remedies, etc.). In addition to this, there are series of secondary and tertiary laws setting forth and/or detailing various aspects relevant for the sector.

As opposed to the current status, the strategy of the Romanian legislature with respect to the proposed new legal framework (transposing 2014 EU directives) is to have several and separate primary laws for each major field: classical public procurement, utilities, concessions and challenges/remedies (defense procurement is

regulated by a separate normative act).

Thus, in July 2015 two of the draft laws (on classical procurement and on remedies) were submitted for public consultations (together with the strategy for the public procurement field). In September 2015 the other two draft laws (on utilities and concessions) were also made public.

As a result, the public procurement sector is expected to be reconfigured not only in substance, but also from a formal perspective, with the stated aim of creating a more stable, coherent, and systematic legal framework.

The deadline for transposing the new directives is April 18, 2016, but pursuant to the intention of the Romanian legislators, the (majority of the) new provisions are expected to enter into force on January 01, 2016.

Although the primary laws are of major importance, the secondary and tertiary laws will also play a considerable role in the application of the principles stated in the main laws.

Like the EU Directives they transpose, the new draft laws regulate not only the organization of the public procurement procedures, but also specific aspects regarding the contract performance phase. Accordingly, there are provisions setting forth the conditions and situations in which a contract may be modified without or-

ganizing a new public procurement procedure. Guidelines on this matter are currently available in CJUE case law, which was in fact codified by the 2014 directives (and implicitly by the Romanian draft laws). Given the various factual situations that may be relevant in assessing the conditions under which a contract may be modified without organizing a new procedure, the topic is and will remain quite a sensitive one.

From an institutional perspective, the legal framework setting forth the organization and functioning of the competent authority for regulating, monitoring, and verifying public procurement was also reformed in 2015. Thus, the National Agency for Public Procurement has been created to take over the competences, activity, and personnel of (i) the National Authority for Regulating and Monitoring Public Procurement, (ii) the Unit for the Coordination and Verification of Public Procurement of the Ministry of Public Finances and (iii) the divisions verifying public procurements of the regional general departments of public finances. The new agency gathers the previous institutions playing important roles in the public procurement field (including with respect to ex-ante and ex-post verifications of the award procedures) under the same umbrella.

For Romania, a full and accurate assessment of the public procurement reform will be possible after the publication of the final versions of the draft laws and after the issuance of the basic secondary and tertiary laws.

Dispute Resolution: A Practical Guide to the Recognition and Enforcement in Romania of Foreign Judgments Rendered in Non-EU jurisdictions

The recognition and enforcement of foreign judgments in Romania follows different judicial procedures depending on whether the orders were issued by the courts of law of a EU or a non-EU member state.

Recognition and enforcement of judgments pronounced by the courts of a non-EU jurisdiction departs from the framework governing within-EU procedures and fall under the international law provisions of the Romanian Civil Procedure Code; national law provisions are applicable only if the relevant provisions of international treaties to which Romania is a party do not provide otherwise.

Foreign judgments relating to personal status are recognized directly under Romanian law if they refer to the personal status of the citizens of the state in which they were issued; in any other case, they must first be recognized in the state of citizenship of the litigant parties. Recognition of all other court decisions in Romania require a ruling by a court of law in Romania and may be sought either incidentally or directly through application. Under no circumstances may the competent Romanian court or authorities examine a foreign judgment as to its substance or modify it.

The interested party applying to have a foreign judgment recognized shall prove that the res judicata applies in their case – i.e., that the relevant judgment is final and irrevocable in the state it was pronounced, that the court that issued the judgment had the jurisdictional competence to do so, and that there is reciprocity with respect to the effects of foreign judgments between Romania and the state where the judgment was rendered.

ment was rendered.

However, there have been cases where Romanian courts have refused to recognize a foreign judgment on the grounds that the judgment violated the principles of public order found in private international law or had been obtained as a result of fraud, where the dispute – involving the same issue and brought by the same parties – had already been settled by a Romanian court, or where the case was still pending in Romania when it was introduced into the foreign law court.

With respect to the enforcement of a foreign judgment in Romania, national law stipulates that if the party on whom a foreign law court judgment is to be enforced resists or refuses to comply, the judicial enforcement of an exequatur procedure shall apply; however, foreign judgments on precautionary measures or interim enforcement are unenforceable in Romania.

The person who seeks enforcement of a foreign judgment in Romania shall apply for a declaration of enforceability before the competent court of the jurisdiction where the enforcement procedure will commence and support his/her application with evidence that all formal conditions for the recognition of the judgment have been fulfilled and that the foreign judgment is enforceable in the country where it was rendered.

In the event that, during the enforcement procedure, any of the litigant parties are obliged to make a payment in foreign currency, conver-

Valentin Cicean, Partner, Drakopoulos

sion to the national currency (LEI) shall be made on the basis of the exchange rate as of the date the decision became enforceable in the state where it was issued. In case the payment bears interest, such interest shall be governed by the law of the court that pronounced the judgment until the moment the judgment becomes enforceable and, thereafter, shall be subject to Romanian law. On the basis of an irrevocable decision permitting enforcement, an execution writ shall be issued under the laws of Romania.

Court settlements fall under the same regime as foreign judgments in terms of enforceability and, upon fulfillment of the same enforceability conditions, they may generate the same effects in Romania that they produce in the jurisdiction of settlement.

Generally, recognition and enforcement of foreign judgments in Romania are regulated via a straightforward and relatively fast-track procedure, though the process can turn into a time-consuming exercise where the person sought to be summoned resides abroad. Otherwise, the relevant proceedings set a strict framework and narrowed-down admissibility conditions that the opposing party may only challenge on the grounds of non-compliance and/or non-fulfillment of the prerequisites set out therein.



Valentin Cicean, Partner, Drakopoulos



Inside Insight: Ramona Ene

Legal Manager – Romania and Bulgaria at Cargill



Ramona Ene is the Legal Manager responsible for Romania and Bulgaria at Cargill, which provides food, agriculture, financial, and industrial products and services in 67 countries. Prior to joining the company in 2005, Ene was a Partner with Anastasescu & Asociatii from 2003 to 2005, a Partner with the Ramona Ene Law Office from 2000 to 2003, and an Associate Lawyer with the Mihail Georgescu Law Office from 1998 to 2000.

CEELM: Please tell us a bit about your career leading up to your current role with Cargill.

R.E.: My late maternal grandfather was the first who foresaw a future in a legal career for me, when the rest of my family was pushing hard for me to enter the healthcare system. He was a Sergeant in World War II and spent a couple of years in captivity. I like to believe I inherited from him the resilience to pursue my own goals despite everybody else's opinion. Immediately after graduation I became a member of the Prahova Bar and started a practice in my hometown, Valenii de Munte. During my apprenticeship years I was blessed to be guided by Mihail Georgescu – for decades one of the most distinguished Judges at the Ploiesti Appellate Court, at that time retired – and he instilled in me his passion for civil law and the court atmosphere. A few years later, following my heart, I moved to Bucharest, where I initially practiced as a litigator for Anastasescu & Asociatii and fairly quickly became a Partner. Moving to Cargill as an in-house lawyer was a difficult professional decision; I remember it took me a couple of sleepless nights to make the call, but in the end it proved to be the right choice.

CEELM: Cargill was your first in-house experience and you stuck with it. What has kept you in both the industry and company for 10 years?

R.E.: It's a very simple explanation: Cargill

has a special charm, and I fell in love with it. It starts with the fact that I enjoy serving an industry which serves Romanian farmers and brings its own contribution to the bread I eat in the morning. I am proud that our Code of Ethics is a living document that we all strive to observe in everything we do, not just another poster hanging on corporate walls. I am excited to be part of a sophisticated and educated European legal team of approximately 60 lawyers, who are constantly exchanging best practices, ideas, and knowledge, and who are continuously engaged in exciting assignments. In Cargill I have always felt valued as a person and lawyer by the numerous internal clients I worked with over the years and in various roles I undertook. All of these have brought me plenty of opportunities for personal and professional growth. Last but not the least, it gave me great pleasure to initiate Cargill's first Cares Council in Romania and serve as its President for some good years, helping the communities where we operate to thrive together with our company. Cargill Cares Councils are employee-led groups that implement strategic community involvement activities in their local communities. Cargill has more than 350 of these councils around the world and we share the common goal of ensuring that Cargill is investing its financial and human resources to help meet our business objectives while serving local communities.

CEELM: Globally, the company prides

itself in “feeding the world in a responsible way,” by “reducing environmental impact.” How is that drive reflected in your local legal work?

R.E.: We have one member of our legal team in Romania, Iulia Danila, who is part of a European in-house environmental legal team. They work together to provide legal advice to Cargill businesses in Europe on a variety of environmental issues. Cargill's customers, consumers, governments, and activist groups are demanding greater transparency around where and how the raw materials that Cargill trades and processes are produced. Increasingly, these key stakeholders want reassurance that every player at every step in the supply chain is acting in a responsible and sustainable manner. Cargill is focused on assessing and managing the environmental and social impacts of its operations and supply chains to mitigate commercial, regulatory, and reputation risk. Our legal work spans Europe and is often not limited to a single country like Romania.

CEELM: You are responsible for overseeing legal matters of the company for both Romania and Bulgaria. While you are a qualified lawyer in Romania, presumably, your Bulgarian legal training is very limited. How do you overcome this barrier and still stay on top of legal affairs in that country?

R.E.: The Bulgarian market has a wide range of law firms offering excellent legal service, and for our daily operations we consult them. That being said, there are multiple ways to overcome a lack of local qualification – and even flip that into an advantage. We should not forget that Bulgaria and Romania are both EU state members and consequently in the last years have harmonized many of their laws according to European legislation, thus many legal concepts are applicable mutatis mutandis. Both countries have quite similar economic developments and the maturity of their legal proceedings and enforcement of law is quite similar. After some time working on certain areas of law specific to our industry, I ended up becoming familiar with certain local regulations which impact our activities there. Similarly, on employment matters, where questions are quite frequent for in-house lawyers, I found that sometimes Bulgarian rules are more permissive than the Romanian Employment Code. I think our Bulgarian business took advantage of my Romanian insights on input business when we

first launched their crop inputs sales.

CEELM: On August 17, 2015, Cargill announced that it signed in a EUR 1.35 billion deal to enter the aquaculture nutrition business. How does a global deal like that, from a 67-country company, affect your legal work at the local level?

R.E.: As a competition law specialist I was invited to be part of the larger legal team that helped this deal go through, with my role being to manage and obtain regulatory approvals. At the beginning of August the parties were discussing closing the deal by the end of this year, but as you have probably seen a few days ago the closing was announced. Such a result would have not been possible without very aggressive deadlines for preparing the economic concentration notifications in several countries where the transaction required filing. Cargill is a large organization and its business lines are managed independently, thus collating, reviewing, and presenting consolidated economic, commercial, and legal data per each country's legal demands tested my project coordination abilities quite heavily. The holiday season as well as time zone differences didn't help either. Honestly, I would not have accomplished it without the great help received from my fellow colleagues, who were responsive to my requests.

One feature I like the most in our organization is that opportunities are offered to everyone, regardless where are located. We all can bring our contribution to the best of our capabilities. In the last decade I was privileged to work for clients located in several coun-

tries in CEE on important cross-border projects, so I can testify that professionalism and diversity are appreciated in Cargill regardless of where people come from.

CEELM: Did you handle the local regulatory merger clearances in-house or did you externalize the work to a law firm? Why?

R.E.: We operate based on a model where in-house and external legal work is properly balanced to provide the best value to Cargill. Competition law and merger control is a rather highly specialized field where knowledge and proven expertise makes a big difference, especially because each jurisdiction has different requirements and each regulator may have a different perspective on market definitions.

CEELM: While on the topic, in general, if you have to outsource legal work, what are the main criteria you use in selecting the law firms you will work with?

R.E.: Like any other organization, we try to obtain the best quality-value ratio from our relationship with law firms. Generally, the experience a law firm can put behind a project is critical, their capabilities and resources are important, and of course cost is always a factor to consider. As I mentioned before, I tend to view merger control as a rather highly specialized field where knowledge and experience matters most.

CEELM: Once a project is concluded with external counsel, do you have a formal KPI system in place to assess your

collaboration with them? Even if on an informal basis only, what are the main things that will influence your decision to work with them in the future?

R.E.: I believe we have quite an efficient way to track satisfaction, especially for major projects. Each project brings its own unique criteria, thus we ask for feedback from external collaborators on how we can further improve our internal work processes. Personally, in addition to expertise and professionalism brought to the table by the external counsel, I always remember the extra mile someone will walk with me to produce the best legal product in given circumstances. Working under budget or fee caps, which is our preferred approach, may not be the biggest incentive for a law firm to spend all its resources for the best conceivable legal product, but I am often impressed by the tremendous good will and effort our external collaborators make to deliver on this goal.

CEELM: On the lighter side, if you were not a lawyer, what other career would you have pursued?

R.E.: Once, when I had severe and persistent laryngitis, I contemplated the idea that nothing in life is to be taken for granted and I wondered what might happen if eventually I would not be able to speak again ... I honestly don't imagine myself doing something else, with the notable exception of being the mother of my three lovely boys.

Radu Cotarcea

Inside Insight: Luiza Oprisan Head of Legal at Kanal D

Luiza Oprisan is the Head of Legal of the Kanal D television station in Romania, which is owned by Dogan Media International S.A. – a subsidiary of Dogan Yayin Holding, the biggest media group in Turkey.

Oprisan's experience includes working as the Deputy Legal Director of Vimetco Management, as a Deputy Manager, Tax and Legal with PnC, the Head of International Law Office with BAN-COREX, and as a Judge with the Bucharest Sectors 1 and 2 and Tulcea Courts. She also spent a couple of years in Montreal, Canada, working as an Assistant Manager/Human Resources with B.E.S.T. Security.



CEELM: You have quite a colorful career leading up to your current role with Kanal D. What were the biggest challenges when you took on your current position?

LL.O.: It is quite varied indeed – at least in as far as a lawyer's career is concerned.

There were plenty of challenges, both when I started [at Kanal D] as well as some that sprung up along the way. I had to learn a lot about television from a legal stand-point. The variety of work that comes my way – ranging from general freedom of the press and freedom of speech to applying legal knowledge related to corporate and contractual law, labor law, licensing, and managing the relationship with the CNA [the National Audiovisual Council of Romania - ed.] – is something I have to be able to cope with on an ongoing

basis

CEELM: You mentioned the right to free speech. How does that come into play?

L.O.: There have been several litigations I had to handle related to celebrities claiming intrusions into their private lives. I always found these cases fascinating since court proceedings represented, in their basic form, a fundamental debate between the freedom of expression of our journalists and that of the right to privacy of individuals with the status

“I try to implement the following in everything I do: quality, attention to detail, quick response time, willingness to assume extra work if required. I display the above and expect and hope they will be mirrored by those I work with.”

of public figures. We won every single case in this area – which I am naturally happy about – but further than that, the balancing act between the two rights is something I always enjoyed exploring. There have also been a few cases in the area of image right (personal/professional), one mediated and the other partially admitted by the Court, where we made some journalistic mistakes, but finally the outcome was a balanced one between the parties involved.

CEELM: Your experience includes working as a judge. In what way has this experience helped you as an in-house counsel?

L.O.: Professionally speaking it helped a great deal. First, it furthered my legal knowledge to the standards of a good judge. At the same time, it taught me invaluable tools in treating parties, which I later made a point of applying to all my colleagues: respect, attention to detail, and professionalism. Furthermore, when I am now in court as a defendant, I try to apply the same thinking I used to apply as a judge, incorporating in our arguments everything that I remember a judge needs to make a solid decision – simply put, I can still put myself in a judge’s state of mind.

CEELM: Banking, Tax, and Mining are all areas you worked in prior to joining KanalD. What was it about your current industry that made you stick with it for such a long time?

L.O.: The creativity and the drive for freedom of expression have always kept me plugged in. At the same time, the people I am surrounded by on a daily basis are great to work with due to their creativity, the extent to

which they enjoy their work, and the ongoing pursuit of finding the right balance between creativity and audience ratings.

In terms of specific legal matters, authorship rights and all its implications are fascinating to work with as well. At the same time, working with the CNA is also an interesting part of the role. In many ways, defending yourself in front of the body is like a mini-litigation. Of course, you can take it further if you are unhappy with the result and contest the decision in court as well, but it is not my approach to do so – I’m more focused on keeping a good relationship with the supervisory body, mostly due to the fact that its decisions are usually legally grounded. Last but not least, the litigations that I mentioned as defendants on right to privacy claims from public figures just keep things constantly interesting.

CEELM: You’ve said before that your key approach to working with people “is leading by personal example.” How do you apply that in practice in your current role?

L.O.: For a 300-400-strong organization, our legal team is quite small – 4 people, myself included. The best examples I can think of in terms of personal interactions relate to applying a few principles: respect, common sense, good faith, casualness of the relationship, listening, and patience. In terms of professional principles, I try to implement the following in everything I do: quality, attention to detail, quick response time, willingness to assume extra work if required. I display the above and expect and hope they will be mirrored by those I work with.

CEELM: Kanal D is held by the Dogan Group – a Turkish company. What cultural differences have you identified working with the Group’s management and how do they influence your work?

L.O.: I think cultural differences always play a role. In the past I’ve worked under Romanian management (as a judge and with Bankcomrex), at PwC I had an Australian Partner for our Tax and Legal, and in Canada the management was, again, obviously not Romanian. I try to always pay attention to cultural differences, and trying to adapt and adhere to their rules and approaches seemed like the right thing to do.

In our current organization, the same types of difference can be felt and I have always

tried through both professional and interpersonal interactions to be as accommodating as possible to help international management feel welcomed in a foreign environment.

The most notable difference I would point to is probably related to the actual management style – a model that I would personally never implement but, to be honest, it rarely affects me since I am concerned with the overall legal health of the organization rather than the business operations.

CEELM: As a former tax professional, you’ve surely been following the ongoing tax amendments in Romania (see page 34). What’s your take on these developments?

L.O.: I have been following these updates from afar because they are rather interesting but I can’t say I’ve been reading in detail all the ramifications. They sound good overall and I hope they will lead to a balance between growth and fiscal sustainability but, I will say, I believe it all starts from collection and ends with the way its spent.

As for our work directly, we need to keep apprised of a lot of taxes: VAT, social taxes, and withholding tax on licenses is a constant with almost all licenses coming as a net fee (especially on Turkish licenses).

CEELM: As a recent participant to the CEE Legal Matters GC Summit, what was your main takeaway and why should your peers not miss next year’s conference?

L.O.: I enjoyed most the opportunity to exchange information on applied models presented by the speakers on specific case studies. It’s a really good initiative to offer a platform for GCs to discuss their challenges and exchange best practices. I believe next year’s will be equally useful, if not more so, both to those who attended this year and to new participants.

CEELM: On the lighter side, what is your favorite thing to do to relax after a long day at the office?

L.O.: I definitely get to relax a lot when I walk my dog – Bella, who’s a bit of an alien with some saying he’s a Bichon, others saying he’s an Chinese Imperial Dog ... regardless, I adore her!

I also tend to carve out some time to call up loved ones (my daughter, for example, who is now in London) and give myself a bit of time to catch up on the latest political national and international news, and yes, my facebook, before some light reading.

Radu Cotarcea

Inside Insight: Vicentiu Ramniceanu

Legal Director at Compania Nationala Loteria Romana S.A.

Vicentiu Ramniceanu is the Legal Director of the Romanian National Lottery Company ("Compania Nationala Loteria Romana S.A."), a role that he has held since June 2013. Prior to joining the Lottery he worked as Supervisor, Corporate Banking, for Banca Comerciala Romana from 2011 to 2013, and for EY as Senior Legal Counsel from 2008 to 2011. His earlier experience included working as Senior Legal Counsel for Oglin-da Nemes Voicu and the A.C. Pop Law Office and as Legal Counsel with Sulica Protopopescu Vonica, EOS KSI Romania, and the UNHCR.



CEELM: Please tell us a bit about your career leading up to your current role.

V.R.: Becoming a lawyer was a dream come true, as it is a tradition in my family. I had the unexpected opportunity to work as a trainee lawyer with one of my former university professors, concentrating at first on the foundations of civil and corporate law.

Following that I took on successive challenges – several collaborations with international organizations or law firms – that introduced me to both marvelous and complex fields of law, including humanitarian law, real estate, public sector, M&A, IP law, and capital markets law. I call this experience a valuable one for we know that any large company is required to comply with legal requirements in most of the aforementioned areas. Building on the desire to deepen my knowledge of banking law, in 2011 I joined one of the major financial institutions in Romania in corporate legal services for a couple of years. That was an intense period, due to a call for quick adjustment to the bank's workflows, a switch to a new Civil Code, and compliance with complex legal data processing, all in a fast-moving environment. It was a successful experience, owing to specific abilities I had acquired previously by working within a Big Four company. Later on, in 2013, I joined the Romanian Lottery as General Counsel.

I should mention that during these fifteen years of legal practice, I was inspired and supported by generous, hard-working, and experienced professionals, each of them contributing, through their example, to most

of my achievements. Should they recognize themselves in this posture, I assure them, once more, of my deepest appreciation.

CEELM: You work for a rather unique type of a company. How does your role as a GC in it differ from previous in-house roles?

V.R.: The Romanian Lottery is a state-owned company operating in a private, competitive environment. Although gambling is not a harmonized field at the European Union level, the principles enshrined in EU Treaties as well as competition and state-aid legislation shape gambling legislation and practice in Romania and in other EU member states.

In my capacity as the GC of the organization, my first priority is to respond to legal risk management requirements, both internal and external. Besides driving on-going legal activity, my personal concern is to provide documented, actionable advice to management and to internal beneficiaries in every area, most frequently in labor, public procurements, and gambling. Differences from previous assignments include the specificity of the company, entrenched practices that required updating, changing legislation, and responding to various public authorities' and institutions' control missions, each of them with a different, specific approach. Working in a public company imparts additional responsibility in our daily missions since every risk can have an impact on the company's ability to fulfill its public interest purpose.

CEELM: On a day-to-day basis, what

type of work takes up the better part of your time?

V.R.: From the very start I must say that every task has its particular weight and influence in the overall process. It is for this reason that, after consulting with the management of the company, I establish daily priorities, which are then imparted to the legal team. I like to stay close to people and advise them, or brainstorm solutions, with everyone's experience being a valuable asset in our work. I also try to save a couple of hours in the afternoon for legal updates and in-depth analysis of complex issues.

CEELM: The website of the Lottery lists 15 pieces of legislation and legislative updates as the basis of its operations – with two dated 2015. What were these two recent updates, and how did they affect the company?

V.R.: Gambling legislation has gone through some major changes in the past 12 months, all testing our ability to respond quickly, analyze, draft contributions, and adapt our procedures and work. All of our efforts were aimed at the utmost protection of the Romanian Lottery's interests and its specific mission, combined with aligning our activities to recommended practices in the field.

Amendments to the gambling law generated additional obligations for gambling operators, all meant to ensure a safer, more responsible environment for the players. In 2013 the authority in the gambling sector – the National Gambling Office, an entity subordinate to the Romanian Government – initiated a new framework to gambling legislation.

Legal norms, enacted in the last 12 months, regulate new activities and new products for the Romanian gambling market, such as land-based and remote (online) betting exchanges, remote casino-type games, poker games carried out in poker clubs and raffles or temporary gambling activities carried out in resorts. Moreover, mutual betting activities, both online and land-based, exited from the monopoly of the Romanian Lottery. Furthermore, all activities organized by various economic operators to stimulate sales which do not involve a participation fee or additional expense from the participants, or an increase in price from the one the product had prior to the advertising campaign, are subject to the prior approval of the Office.

CEELM: How large is your legal team and how is it structured?

V.R.: The Romanian Lottery is a large company, with almost two thousand agencies operating at the national level. Therefore our legal team, encompassing more than fifteen legal counselors, provides specialized assistance both at a central level and to the territory, whenever such assistance is required. Two services divide our legal work into legal advice and real estate issues on one side and litigation with authorization attributions on the other side.

CEELM: As someone not exposed to the industry in-depth, highlighting real estate and authorization attributions litigations seems a bit surprising. Can you elaborate about the scope of work within those two areas of your legal team?

V.R.: Our colleagues from the legal advisory & real estate team are entrusted with the task of supervising and safeguarding the company's rights in respect to its immovable assets and ensuring the registration of these assets in the Land Book. Their attributions are separated from the activities of the other team, which covers litigations and authorizations. The last two are not connected, meaning that our litigations cover the usual disputes related to labor, contesting minutes of contraventions, or the settling in courts of law of various issues related to non-fulfillment of duties arising from contractual relationships.

CEELM: Do you have a dedicated regulatory function, and how would you say its operations vary from a private company?

V.R.: We do have a dedicated team to fulfill regulatory obligations. This team is integrated in our Legal Division and attends to any authorization process. Additionally, the advisory legal team and the General Counsel are responsible for following any legal

developments, both general and specifically related to the gambling sector. Since I took office this team has provided opinions, comments, and support in drafting laws, and taken any opportunity to express our position in respect to specific gambling legislation. I should mention that it has been commonplace within the gambling industry to have public consultations on gambling legislation amendments within a consultative panel of the Romanian authority in the field – the National Gambling Office.

CEELM: The selection of law firms by public companies tends to be a heavily scrutinized process in Romania, and in CEE in general. What best practices have you developed to meet this challenge?

V.R.: I was invited during a summer law school to describe the advantages of becoming an in-house lawyer. Capitalizing on the experience of almost a decade in-house, I felt it was important to mention the ability of an in-house lawyer to understand the entire process surrounding a legal issue, the easiness to address questions and to inquire on the matters at hand. Specialization came second as an asset, with the same legal counselors performing all parts of a legal operation, whether advisory or litigation. Working for the same employer for years, of course, can also generate costs related to routine, lack of motivation or of experience in unfolding a major project, lack of familiarity with particular types of competition inquiries or the merger/acquisition process. In this context, and for matters that stand outside the usual workload of a company legal department, specialized outsourced assistance may be required.

Law firms able to demonstrate competence and experience, dedicated lawyers, and a presence in top-tier specialized rankings – along with an offer of reasonable fees – may be selected, according to the applicable legal

framework, in line with specific acquisition procedures.

Since excessive use of external counsel became a matter of concern for the prudent expenditure of public funds, public companies have begun manifesting a growing interest in the process of capacity building and empowering internal counsels, though benefiting from a law firm's qualified expertise during harsh times may always be advisable.

CEELM: On the lighter side, early in your career, you were involved with several non-profit organizations, including Handicap International and the UN-HCR. What satisfies your activist needs these days?

V.R.: I'm glad that you mention this and admit that my activist period, as you call it, inoculated me with principles and values I still apply today. It is not by chance that foreign students or graduates undergo voluntary service before getting a job, no matter their area of specialization.

In any position, awareness of stakeholder interests is a must, whether we're talking about clients, employees, or the community in general. Understanding this phenomenon, I looked for opportunities to contribute to increasing the corporate social responsibility effect, with my volunteering work involved planting trees (while with EY), supporting community projects through a dedicated grants platform ("Bursa Binelui"), and getting involved in various projects developed by NGOs. It is always the right time to do the right thing at the right place.

The views expressed in this interview belong solely to Vicentiu Ramniceanu and in no way are to be construed as official positions of C.N. Loteria Romana S.A.

Radu Cotarcea



If you have any information about major acquisitions, lateral moves, office closings, or other developments of significance in a CEE legal market, please contact us at press@ceelm.com. Confidentiality is guaranteed.

Inside Insight: Ioana Regenbogen

Director and Head of Legal Department at ING Bank

Ioana Regenbogen is the Director of the Legal Department at ING Romania.

A graduate of the Faculty of Law at the Babes-Bolyai University in Cluj-Napoca, Romania, and holding a Masters degree for executives in Business Administration from Asebus & Kennesaw State University in 2010, she was admitted to the Bucharest Bar in 2001. Regenbogen first joined ING Bank in April 2005.



CEELM: Please tell our readers a bit about your career leading up to your current role.

I.R.: In 2000, after graduating from Babes-Bolyai University Law School, I concentrated on studying for the admission exam at the National Institute for Magistrates with the aim of becoming a judge. Besides my interest in law, I thought that this profession's standards of integrity, fairness, and appropriateness resonated best with my professional vocation and character. During the exam preparation period (one month after graduation), I was offered the opportunity to work in a Romanian private bank (formerly known as "Banca Dacia Felix"), as the legal counselor in charge of all of the bank's civil proceedings involving foreign jurisdictions. I immediately accepted, more as a buffer against the stress of the magistrate admission exam's failure. The range and diversity of legal problems and fields that I went into after I joined the legal team in Banca Dacia Felix was expanded to such an extent and was so challenging that I eventually decided to continue my work in the banking area. In 2001 I was admitted to the Bucharest Bar as a lawyer, and had the enormous opportunity to work as a trainee lawyer with one of most highly regarded Romanian lawyers, Adrian Vasiliu. Both during my training and after obtaining my full credentials as a lawyer, I continued to collaborate with Banca Dacia Felix, eventually becoming the Deputy Head of the Legal Department.

In 2005 I left for ING, where I was put in charge of managing the (at the time, very

young) Retail Banking Legal Team, and then assumed the role of Director, Head of the Legal Department, ensuring legal support for all business lines of the bank (RB, MCB, CB, FM), plus for other entities within the ING group (ING Leasing, ING Com Fin, Amsterdam Broker, ING Services).

In parallel with my career advancement I have also pursued other learning opportunities, such as obtaining a Business Law Master's and the ASEBUSS EMBA program.

CEELM: You've now been with ING in one form or another for 10 years. What drew you to the banking sector originally, and what has kept you here for so long?

I.R.: Yes indeed, I just turned 10 with ING this year. Wonderful, challenging, hard-working ten years! As already mentioned, by pure chance I came to work for a bank. I very much liked the versatility of the bank legal counselor role, in the sense that we are exposed to many areas of law – from corporate, civil and banking law to IP, privacy, and labor law, and in some cases, unfortunately, even insolvency law. Besides that, the opportunity to get involved in very challenging growth-oriented and innovation-focused projects and initiatives drew me in. We are living and working in a period of digital revolution that is hastily spreading in all sectors, including banking, which shifts considerably the way of delivering financial services and products. Last but not least, the people (extraordinary professionals and team players) and the healthy organizational culture of ING played big parts.

CEELM: You've seen quite a few changes

in the industry, from both a business and regulatory perspective, over the years. Which would you identify, looking back, as the ones posing the biggest challenges from a regulatory standpoint?

I.R.: If we speak only for banks and financial institutions' regulation and supervision, the framework of the Romanian financial sector was, in the last 10 years, in an ongoing process of implementing EU legislation, Basel II and Basel III provisions, etc. There is probably more to come as well at a local level from EBA's regulatory activity. I would say that the Romanian banking legislation is, at present, very much harmonized with the applicable *acquis communautaire*.

On a separate note, but still very much linked to bank business, I must say that the consumer protection field has been one of the areas experiencing a severe transformation in the last, let's say, 7-8 years. I think we still have to strive here for the right balance between the financial safety rights of consumers and the necessity of a sound business for banks.

CEELM: Market consolidation and NPLs have been the two buzzwords in the industry in Romania. How have these impacted your work as an in-house counsel with ING?

I.R.: ING NPL's ratio was situated at a low level as compared to the market average, given our prudential policies in credit risk, both in lending for individuals and for corporates. Where possible, we tried to amiably solve problems by offering feasible restructuring solutions to both our consumer clients and companies. Here our support was definitely needed, both in advising on restructuring solutions and in drafting the credit restructuring documentation, especially for big corporations. We also contributed in very complex cases, with cross-border implications, sometimes in close cooperation with external lawyers and other times not. In some of the few major insolvency proceedings on which we assisted, ING offered us the opportunity to work on winding-ups and to find reorganizing possibilities or even starting some M&A transactions. Unfortunately we also had to deal with complex enforcement procedures.

CEELM: At the last moment you were not able to join us at the CEE Legal Matters GC Summit due to other commitments, but you were initially going to speak there about "KPIs and Competencies for the Legal Department." Why did

you find this topic particularly relevant for in-house counsel?

I.R.: The legal profession was always a highly-skilled and knowledge-based job. However, advances in technology and an increasingly competitive environment may call for some changes in some skills and abilities of lawyers. That is why I thought the topic would have been of certain interest.

Of course, I do not think that the future pertains to robot-lawyers or to automated lawyers, though I know that in the US and in the UK provision of online legal services is very successful already. Therefore we might be required in the future to switch to new ways of offering legal services, using more and more software and experimenting with new technologies in general and using more business and financial knowledge as well. In short, it'd entail becoming multi-disciplinary experts.

Otherwise, we need to look beyond our own area of expertise and to find win-win solutions with our business and risk functions. We need to strive more for efficiency and simplicity (we tend to be so much more complex and sophisticated, both in our language and in our analysis and judgment!) so as to be able to help business make informed decisions.

We sometimes are so preoccupied with identifying all possible risks associated with a project or a particular transaction that we forget that our purpose needs to be finding solutions together with business under acceptable risks. I can say my team "masters" this approach beautifully.

CEELM: "Beautifully" is a brave word. I think the obvious question is, "How?" Specifically how did you get your team to get into that mindset?

I.R.: First, by personal example – both my managers' and mine.

Second by constantly discussing the benefits (both on one-on-one, but also as teams), such as increased (internal) client satisfaction and therefore excellent cooperation between the Legal, Business, and Risk departments, increased productivity, accelerated results, etc.; or what's in it for the respective colleague (as a personal development "investment"), not only the value added of his/her contribution to our employer.

All these, in one form or another, are translated into our shared or individual KPIs or into our development actions or are embedded in the skills and behaviours expected by ING as standards.

I have to say that our internal clients have their merits as well in our "modelling" during the time, as they are excellent professionals and challengers.

CEELM: How close would you say the GC community is in Romania? Do you interact with colleagues from other banks in the country and exchange best practices?

I.R.: Pretty close. Yes, I interact with colleagues from other banks, both in the Romanian Associations of Banks and in the Council of Banking Employers in Romania, and I must say we have some very valuable legal professionals working in the banking field.

My colleagues and I are members of various workgroups at these associations, but we also engage at a more diversified level (with NBR, ANPC, or Private Consumer Protection Associations' representatives), and I honestly think that together we can promote cooperative relationships with various authorities and aspire to good business ethics and best practices. Moreover, we want to contribute to, and are involved in, the legislative process.

CEELM: When you have to outsource legal work, how do you pick the external counsel you will work with on a specific project?

I.R.: We look at their professional proficiency, their reputation, good track record history, time and resources allocated for us. We have a panel of law firms, both at the global level and at the local level, that would be recommended as satisfying all these criteria. We look at price as well, of course.

CEELM: On the lighter side, what is a *must see* place in Romania in your experience?

I.R.: The Danube Delta, which hosts hundreds of species of birds and dozens of freshwater fish species. It is the second largest delta in Europe, after the Volga Delta, and is the best preserved on our continent. In fact next week, together with another very big team in the bank, we in the Legal Department will have an off-site meeting there. I look forward to getting back there. I myself have been there already 5 times.

Radu Cotarcea

Expatriate on the Market: Bryan Jardine of Wolf Theiss

CEELM: Can you run us through your background, and how you got to Romania?

B.J.: I am a California-admitted lawyer since 1990 and first came to Romania in 1996 on a one-year assignment as a legal liaison with the Central and Eastern European Legal Initiative ("CEELI") project of the American Bar Association. Essentially, this was a program to bring US lawyers to the CEE/SEE region in order to assist as the economies of these countries transitioned from central command to market style economies. Many of the "rules of the game" needed to be developed and the idea of the program was to bring in U.S. trained lawyers to introduce some ideas of "best practice." For example,

during the time I was in Romania, we worked on projects related to laws of competition, bankruptcy, and secured transactions, while also hosting training projects related thereto with the existing judicial institutions and local Bar associations. We also did a lot of work with other NGOs and institution-building organizations that were present in Romania at that time.

CEELM: Was it always your goal to work abroad?

B.J.: Yes. My undergraduate degree was from the School of Foreign Service at Georgetown University in Washington, D.C. This is one of the premiere schools for training U.S. diplomats and state department personnel in the U.S. So I knew I wanted to do some-

thing overseas. Three years after graduation, I decided to go back to school to get my law degree at UCLA. Thereafter, I worked as a litigation attorney in the LA market for the period from 1990-1997 (with the exception of my one-year CEELI hiatus). However, I always envisioned myself eventually working overseas and my experience with CEELI in Romania simply reinforced that idea. For me, being an international attorney, living and working in a foreign market over the last 17 years, has offered the perfect career blend of both my undergraduate and law school experience and interests.

CEELM: Can you describe your practice, and how you built it up over the years?

B.J.: One of the advantages of working as a



American lawyer Bryan Jardine is the head of Wolf Theiss's office in Romania, and he advises clients on matters related to corporate mergers and acquisitions, energy law, regulatory and public procurement, dispute resolution, and real estate. Jardine, graduated from the UCLA School of Law in 1990, and moved to Romania in 1996 as representative of the American Bar Association and East European Law Initiative "ABA-CEELI" in Bucharest. He joined Wolf Theiss in 2005 to open the firm's Bucharest office, which he has led since.

lawyer in an emerging market like Romania is that you tend to be more of a generalist. In the U.S., lawyers typically have very specialized and focused areas of practice – for example, you are not just a lawyer, or even a real estate lawyer, but a real estate lawyer who handles only tenant eviction (unlawful detainer) cases for commercial landlords. I find this to be constraining and I imagine that in time, the work could become fairly routine and even dull. In contrast, when I came to Romania I found myself working on different transactions in many different areas – including energy, telecom, FMCG, and media. You learn about these businesses and meet different types of people from different industry backgrounds. This keeps the practice interesting for me. My practice has developed over the years given my experience, contacts, and knowledge in relation to the CEE/SEE markets and Romania in particular. Currently I have a fairly diverse practice. Interestingly, I am still involved in advising clients on a number of litigation matters we have pending in Romania, although I don't advocate in court here (as I can rely on my very capable Romanian colleagues). However, the majority of my practice is transaction oriented.

CEELM: Do you find local/domestic clients enthusiastic about working with a foreign lawyer, or do Romanian clients prefer working with Romanian lawyers?

B.J.: In my own case, this really depends. I work with a number of local clients who understand the added value of having a foreign lawyer involved – especially if the counter-party may be a foreign company or individual. This is typically the case if the local company is negotiating a deal with a foreign investor, represented by international coun-

sel. Having their own foreign-trained lawyer involved gives the local client comfort that his lawyer is "speaking the same language" (both literally and figuratively) as the other side's lawyer.

On the other hand, for purely local deals, the client may (understandably) question the added value of involving a foreign lawyer. But often times, even on these purely local deals, the clients may want a foreign lawyer involved. In my case, the years of experience working in the Romanian market coupled with my ability to perhaps offer a different perspective on certain issues could be perceived as a benefit, even on such a purely domestic deal.

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

B.J.: I was recently discussing this point with a client. In my early days in Romania, I was often struck by the view of most lawyers that if the law did not allow for something, it must be prohibited. In contrast, the U.S. approach is always that unless the law specifically forbids something, it can be construed as generally allowed. This U.S. approach is more "solution-oriented" vs. "problem-oriented" and I believe also reflects to a certain degree the American cultural "can-do" attitude.

A second difference that I see is that the common law is much more organic and flexible. It develops and adapts as the courts interpret and construe its application to real life cases and these interpretations themselves become legally binding on future courts. In contrast, in a civil law jurisdiction like Romania, the court decisions, while perhaps useful, are not

necessarily legally binding and do not create mandatory judicial precedent for future cases. Laws can only be adapted through parliamentary decision or government ordinance. I see this system as therefore being generally more rigid and slower to adapt to swift market changes and legal developments in certain areas.

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

B.J.: I think for a law firm, having a senior expatriate lawyer in the office can offer a certain perspective on matters that may be handled by the local lawyers. For example, I often serve as a "sounding board" to my Romanian colleagues to try and explore potential solutions to different issues. I also try to assist my colleagues in presenting concise, solution-oriented legal analysis to clients in a way that I believe they will most appreciate. For foreign (especially U.S.-based) clients it is often reassuring to speak to a U.S. lawyer when working on a deal in a foreign jurisdiction with which they may be unfamiliar, like Romania. I remember some years ago, when handling a deal for a client, being on a call with the general counsel in Chicago. He actually said during that call "Bryan, it is very reassuring when I speak with you, since I feel like I am speaking with my lawyer across town."

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

B.J.: I spent several years in the early 2000s in Budapest, and enjoyed that city and the country of Hungary very much. However, I have to say that one of the most beautiful areas I have visited is the coastline of Croatia. I have been there twice, but only briefly and once for a business conference, so I really did not have an opportunity to experience it fully. However, my wife and I are planning to charter a sailboat with friends next summer to spend a couple weeks and really try to explore the Croatian coastline and islands.

CEELM: What's your favorite place in Bucharest?

B.J.: Probably Herestrau Park. It is a great place to walk on a sunny afternoon with my wife and my seven-year-old son, who can ride his bicycle there. They have really cleaned it up a lot in the years we have been here in Bucharest and there are also some wonderful restaurants along the lake, which offer fine dining in a beautiful setting. When we have guests visiting from the U.S., Herestrau Park and the lake area are must-sees.

David Stuckey

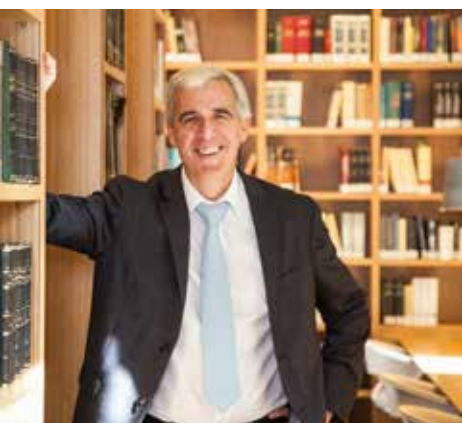
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Market Spotlight Greece

Guest Editorial: Are Greek Lawyers Ready and Able to Go From Bust to Boom?



Greece is in its sixth year of economic crisis, the impact of which has been assessed by some as more severe than that of the Great Depression in the USA. The crisis has taken a heavy toll on many enterprises and individuals. It has also triggered a massive effort at reforms in public administration, in critical legislation affecting insolvency and civil procedure, in labor relations, and in state-owned enterprises. The reform effort has faced stiff resistance from organized interest groups, and there has been both delay and backtracking. Nevertheless,

after a series of elections and a referendum, there appears to be broad political consensus in favor of their implementation.

On a macro level, the struggle to push reforms forward – on which international institutions have played a critical role – seems yet another step towards the modernization of Greece and its economy and its fuller incorporation into the European project.

One sector that seems greatly in need of modernization is that of legal services. There are many lawyers in Greece – approximately 43,000 – with 21,000 in Athens alone. Most Greek lawyers are sole practitioners, while most of the rest are in some kind of cost-sharing arrangement. The only permitted form of collective practice of law is through a partnership (similar to a general partnership) with unlimited liability, which has been reserved exclusively for lawyers. Law firms are generally small, with few bringing together more than 20 lawyers (both partners and associates), and none exceeding the 100 mark.

Small size works also as a limitation on specialization; the vast majority of lawyers combine advisory work with litigation and handle matters that range from property transfers and disputes to rental agreements, family and succession matters, and even minor crimes. Another feature of the Greek legal market worth flagging is that most law academics (from lecturers up to professors) are active attorneys who rely on their academic credentials to cover the dearth of specialized non-academic practitioners. Finally, Greek lawyers tend to follow the professional path of their parents, and many law firms, including some of the largest and most prominent, have a family nucleus. Outside of shipping, law firms in Greece are nearly all domestic. This absence of in-

ternational competition may have enabled firms to remain in business despite less-than-optimal funding and poor organization. All in all, it would seem that there is much room for improvement in the Greek legal market.

But progress may be swift. There are many highly qualified individual lawyers, including many young lawyers with international credentials and experience. There is greater awareness of the pitfalls of solo practice in a turbulent economy and the enhanced security and peace of mind that participation in a larger group of practitioners can provide. The crisis has also encouraged clients to seek better quality for their money and widened the performance gap between the top performers and the laggards. Alternatives to the traditional style of provision of legal services attract more attention and converts.

As the pace of reforms picks up, the economy of Greece may enter a new phase of accelerated growth. There is hope of much greater foreign direct investment in the country, bolstered – among other things – by planned improvements in the administration of justice (including speedier enforcement of contractual rights), more efficient liquidation laws, and greater flexibility in employment. Foreign clients are likely to expect and induce a higher standard of legal services and to drive both consolidation and specialization. More foreign investment is also likely to encourage more international firms to enter the market, which will further increase competitive pressures.

The ability of Greek practitioners to respond to new competitive pressures will depend on a number of factors: First, on the willingness of bar associations to embrace a market-friendly model of the regulation of legal services (they are currently committed to a regulatory model in which lawyers are required by law to be retained for various types of transactions, while clients are required to contribute to the lawyers' pension fund), to impose continuing practical education requirements, and to introduce and enforce a meaningful code of conduct. Second, on the ability of law school faculties to shift from a focus on abstract legal analysis to the development of practical professional skills. Finally, and crucially, on the willingness of lawyers themselves to make the adjustments required without undue delay, so that they may reap their rewards.

*Stathis Potamitis, Managing Partner,
PotamitisVekris*

The Greek Legal Market: Struggling to Survive the Crisis

Managing Partners from leading Greek law firms describe the market and their strategies for coping with the ongoing financial crisis in their country.





The Background

We'll skip the inevitable recitations of ancient glory, the trite reference to gods and myth, classical drama, politics, and philosophy, Euripides, Pericles, and Socrates, and jump right to the first quarter of the 21st century. Because while Greek history is undeniably rich, that adjective is not used to describe many other aspects of the country at the moment.

In 2009, a perfect storm of financial disaster – the growing global financial crisis plus structural weaknesses in the Greek economy – combined with the revelation that data on government debt levels and deficits had been systematically misreported by the Greek government, led to a plummet in investor confidence and, eventually, to the largest sovereign debt default in history.

The effect on the country's economy was dramatic. Greek wages fell nearly 20% from mid-2010 to 2014, and the unemployment rate rose from below 10% to nearly 25%. Greek GDP fell by 26%, and GDP per capita fell 24%.

In 2014, however, a glimmer of light became visible at the distant end of the tunnel. That year the significant spending cuts demanded of the Greek government resulted in a primary budget surplus. At the same time, a decline of the unemployment rate and return of positive economic growth helped the Greek government regain access to the private lending market for the first time since the eruption of its debt crisis.

However, a parliamentary election in December 2014 produced a Syriza-led government, which announced its rejection of the terms of the bailout agreement. As a result, the International Monetary Fund, the European Commission, and the European Central Bank – the so-called Troika – suspended all scheduled remaining aid to Greece. This led to a renewed and mushrooming liquidity crisis (for both the Greek government and the Greek financial system), while interest rates for the Greek government at the private lending market spiked, making it once again inaccessible as an alternative funding source.

Renewed attempts to reach a renegotiated bailout agreement were made by the Greek government, which – after receiving a new proposal from the Troika on June 25 – again broke off talks to announce that a referendum on the proposal would be held

In this article:



Panayotis Bernitsas,
Managing Partner,
M&P Bernitsas



Pangiotis Drakopoulos,
Managing Partner,
Drakopoulos



Catherine Karatzas,
Managing Partner,
Karatzas & Partners



Stathis Potamitis,
Managing Partner,
Potamitis Vekris

on July 5, 2015.

In that referendum, a 61% majority voted to reject the bailout terms (causing indexes worldwide to tumble, based on profound uncertainties about Greece's future and the increasing possibility of the country's exit from the European Union). On July 13, Eurozone leaders reached a provisional agreement on a third bailout program to save Greece from bankruptcy, but the deal requires further negotiations and ratification in several national parliaments.

A Crowded Marketplace

Though there are few international law firms in the country – only Norton Rose Fulbright and Watson Farley & Williams have anything approaching a full-service office in Greece, while Clyde & Co., Ince & Co., and Holman Fenwick Willan, focus primarily on Shipping and Transport matters – clients do not lack for choices. Legal500 lists 29 different Greek firms in its ranking for Corporate/M&A. Thus, if not thoroughly saturated with law firms, the Greek legal market is at least well populated, although there's more or less a consensus about who the leading firms in the country are. ("There are five that are generally recognized as the leading firms, which tend to receive more recognition than the others – those would be KG, [M&P] Bernitsas, Karatzas, Koutoulides, and Potamitis Vekris," says Potamitis Vekris Managing Partner Stathis Potamitis.)

And not everyone is happy about the current state of affairs.

According to Stathis Potamitis, "one of the problems with the legal market in Greece is that we're still extremely disorganized. That has to do partly with the fact that there are very few foreign players, outside of the shipping practices. The local players are, in the vast majority, smaller offices that have a family core, as used to be the case in other southern European countries. So both in size and organization, we're not very developed."

Potamitis draws a connection between the large number of Greek firms competing for foreign clients and an inefficient dispersion of talent – which he ties also to the small size of the firms. "You should not have so many firms. The only reason we have so many is because the lawyers have not been able to come together and cohere into rational units."

Potamitis says the suggestion that some

clients may be confused by the number of firms competing for mandates is "absolutely right," and insists that "we see a lot of that." Ultimately, he says, "it's been such a challenge to know what to do. I think we're going to see the changes when the crisis settles down. Now there's a lot of confusion. I think we have such a disorganized market that it's going to change dramatically, and there's going to be consolidation."

But that's not to say the overall quality is lacking, Potamitis insists. "I think that overall Greek law is quite well informed. I think the problem with Greek law services is that there's no guaranteed minimum standard, so it's the luck of the draw. Some people are exceptional. I think we have some lawyers in Greece that are really first rate, and each of the major firms has some excellent lawyers. At the same time you may have a very good firm, very well-known firm, that has some very poor lawyers. So I think it's more of an organizational problem than a problem of the skill set available amongst the lawyers."

Panayotis Bernitsas, the Managing Partner of M&P Bernitsas, believes that there are "a disproportionate number of lawyers in Greece," but he does not feel the number of firms damages his bottom line. Instead, Bernitsas says that the large number of Greek firms identified by the ranking services represents merely an increased awareness of those services. "People within the legal community have started to understand that they should form law firms, they should have a wider practice, and they should try to be visible by international clients through the various legal directories," he says. "It's not so much that there's been such a big increase in law firms, but there has been a tendency for existing law firms to become more visible internationally."

And unlike Potamitis, Bernitsas claims not to be worried about the potential for confusion among potential clients. He says, "I think generally foreign clients are very inquisitive in asking their advisors which Greek lawyers to use." In any event, he says, eventually the clients will find their way to quality service. "If clients are dissatisfied with the legal services they have received in the past," he says, "then of course subsequently they prefer to go with a firm with a proven track record, even if this is a more expensive option."

Catherine Karatzas, the Managing Partner

of Karatzas & Partners, suggests that the crisis may be having an effect on the “too many lawyers” phenomenon. “The significant repercussion of the crisis,” she says, “is that the new generation does not want to stay in Greece. You can not talk to a Greek in his twenties, in his third decade of life, who sees his future in Greece. For instance, we’ve recently lost a couple of associates who were very happy here, but they were seeing a risk in the country and so left to get jobs in London and Switzerland and elsewhere. Good associates, who didn’t have any ties to Greece, in terms of family, children, and so on ... it was easy for them to move.” As a result, Karatzas sighs, “we may have difficulty in finding new talent.”

Looking Back to the Good Old Days of ... 2014

Though the Greek crisis has continued for several years now, it appears that 2014 was going well for the leading law firms in the market, before – at the very end of the year – things froze. Catherine Karatzas said: “It was very, very optimistic at the end of last year, because a lot of investors were interested in Greece, and we could see an increased volume of legal work. But after the elections, and after the delays and negotiations, and even later with the referendum and the Memorandum, we saw a decrease in foreign investment, we saw a decrease in privatizations and in everything.”

Pangiotis Drakopoulos, the Managing Partner at the Drakopoulos law firm, echoed his counterpart at Karatzas & Partners, noting that, “because of the election – we have had 3 elections since 2014 – this has stopped everything. It is amazing how politics affects the market. Last year things were looking up, also from an international perspective, and we had actual projects ready to be signed from firms that wanted to buy NPL portfolios from Greek banks, that wanted to buy portfolios of investment buildings from developers, in the US, the UK, and Germany, ready to be signed. We had done all the work, the due diligence, the agreements.” In September clients started to hesitate, Drakopoulos sighs, “and in December – when it was clear that we’d have elections in the next couple of months – everything stopped. Pencils down, and everybody walked away. Immediately. It was amazing, how the market froze. And unfortunately it’s still frozen, because everybody wants to see what will happen. And this is what kills foreign

investment.”

Strategies for Survival in 2015

Unsurprisingly, none of the Managing Partners we spoke to admitted to laying lawyers off as a result of the crisis, though many conceded they were selective about when to replace those lawyers who left on their own. All insisted that their firms were weathering the crisis better than many of their smaller competitors, though they admitted that times were tough.

Panayotis Bernitsas acknowledged that “there is significant fee pressure coming from other firms, as they decrease their fees to get mandates at any cost, which does have an effect on the market.” In other words: “The market is under a lot of pressure.”

“...it’s been such a challenge to know what to do. I think we’re going to see the changes when the crisis settles down. Now there’s a lot of confusion. I think we have such a disorganized market that it’s going to change dramatically, and there’s going to be consolidation.”

- Stathis Potamitis

Of course, he’s aware that those potentially market-destructive practices are the result of the even greater financial pressure on the smaller firms. “Small law firms have suffered a lot,” according to Bernitsas. “Some medium law firms have totally disappeared – including those who relied on 3 or 4 local clients who are no longer in business or had problems. The sole practitioners who deal mostly in general litigation are struggling.”

As the market has shrunk, “my view is that the Tier 1 firms and some of the Tier 2 firms have gotten most of the incoming deals and transactions. Those of us who receive foreign referral work from other law firms or investment banks have managed first of all to keep the people that they have hired, and perhaps some of them have even expanded a little bit.”

Stathis Potamitis believes that “crises tend to separate the hearty from the laggards,” and he insists that his firm, which began as the EY-associated law firm in Greece, has actually thrived during the crisis: “We went independent in 2009, and that was the beginning of the crisis here – which has been profound – and nevertheless we have doubled our size and tripled our revenue.” He ties the ability to weather the storm to the greater diversity and wider-ranging practices of larger firms, which enable them to

provide the particular services required by clients in time of crisis. Thus, Potamitis said, “we emphasize things that were very useful during the crisis, like insolvency law, and we had a very strong litigation practice unlike the other big firms ... so we were able to benefit from the increase in litigation.” He continued. “In the beginning there was a lot of turmoil in the labor market, and we have a very strong employment law group. Then there’s been a lot of development in tax, and we brought in 3 years ago a very well-known tax expert as a partner. So if you take care to address the needs that crises create, you can benefit from that.”

And Potamitis Vekris has taken advantage of its size to move people between groups, using “banking experts for insolvency, for

instance, which actually makes a lot of sense, or M&A lawyers for financial matters.” Potamitis says, “so I mean we try to make the best use we can of available time.”

And that’s not to say there’s no traditional work. Potamitis says, “what you see now is more opportunistic transactions. In recent weeks we’ve seen a lot of people coming in and looking at ways to migrate. And if you’re looking to migrate, one of the ways you do that is by merging with foreign entities. So you don’t have M&As which are driven by consolidation, but by something else. But still, it’s work. And we also expect to see a lot more privatization work in the near future.”

Still, Potamitis concedes that “the last 7-8 months have been extremely difficult.” The problem, he notes, is not necessarily related to a shortage of revenue. Instead, “the difficulty with the crisis is you have to watch your cash flow, and the flow of business is extremely erratic. As a mean there’s probably a lot, but sometimes there’s too much, and sometimes there’s too little. I think the challenge has been with having sufficient provisions, because some [clients] either delay payment or just are not even able to make payment. It’s a real challenge for somebody who’s in charge of a group, as I am.”

Panagiotis Drakopoulos says, simply, “the crisis put an end to the easy money.” As a result, he says, in an understatement, “the crisis affected the legal market a lot. Several firms went bust. There has been extensive downsizing; lawyers don’t get paid as they used to. The market has changed completely.”

While Bernitsas and Potamitis refer to their firms’ flexibility and diversity in adapting to the practices required by clients, Drakopoulos’s firm pursued a different solution even before the crisis. Concluding that the older and more established firms in the market were already well placed to attract public contracts and had greater access to established industry, he opted to look elsewhere for growth opportunities.

“You bet on the country, not based on its financial shape – all the better if its financial shape is bad, because you find a better deal, with better prospects. But if there’s no national financial strategy, this is a no-no. The thing is, everybody loves Greece. Investors want to invest in Greece. We just don’t let them!”

- Panagiotis Drakopoulos

“What we did was twofold: we looked for foreign clients more closely – meaning clients that didn’t care what the name of the firm was, but just how competent we were, and talked to their peers for recommendations. And the other way was for us to go abroad, not just to target foreign clients, but also foreign markets, and that’s why we chose to expand in Southeastern Europe.” As a result, his firm – alone among Greek firms – has offices in Bucharest and Tirana, in addition to its hub in Athens.

Drakopoulos concedes that, “most of our Greek clients stopped their fixed-fee ongoing engagements. But because our foreign offices have been doing well, this somehow balanced out the decrease in work from Greek clients. Of course we have been receiving instructions from foreign clients in Greece, as well, which was a real boost. Our overall strategy is to be the named firm to do business in the Balkans as a whole, where I am confident that we’re well positioned.”

Catherine Karatzas also claims to have survived the crisis more or less intact, noting that, in fact, “we may marginally have increased.” She added, “I don’t know if we are lucky, but we’ve managed to keep everyone busy. We had a big M&A transaction, some local M&As ... we were also

lucky in the sense that we had more foreign clients than local, because I know that a number of local law firms encountered difficulty because they were having trouble getting paid.”

Around the Bend

Catherine Karatzas says that “I don’t think confidence has returned. I think the market expects more before confidence returns. First of all we have to re-capitalize our banks, and generally show a commitment to change and reform.” Still, she says, “I’m a bit more optimistic, in the sense that I believe regardless of who is in charge, there is an 80% majority found in all the polls that Greeks want to stay in the Euro, so the major political parties will be able to find common ground and will be able to imple-

ment the reforms and the changes that we need to move forward.” She smiles. “I can’t say I’m optimistic, but compared to what I used to be I’m more optimistic.”

For his part, Panagiotis Drakopoulos insists that it doesn’t matter which government is in power, or which particular policies it pursues, as long as the country picks a path and sticks to it. “It is only political uncertainty,” he says, when asked what’s holding growth back. “The state of the economy is irrelevant for big investments. It just changes the type of investment. You still make the investment. You bet on the country, not based on its financial shape – all the better if its financial shape is bad, because you find a better deal, with better prospects. But if there’s no national financial strategy, this is a no-no. The thing is, everybody loves Greece. Investors want to invest in Greece. We just don’t let them!”

Stathis Potamitis thinks carefully when he’s asked if he’s hopeful about the next few months in Greece. “It’s an extremely difficult question, because while there seems to be agreement between the major parties that we’re going to comply with the agreement with the Europeans and the IMF, there’s still a lot of theatrics. The parties themselves lack cohesion, and there’s a lack of clear vision as to what to do for

their own sake, and what’s going to make them popular and successful and ensure that they’re going to stay in power. So I’m guardedly optimistic, but I think we’re still not there. At some point I think that growth will start, but I would be surprised if it happens in the next 12 months. I think the next 12 months will be better than the last 12 months, but not markedly better.”

Unlike the others, Panayotis Bernitsas appears fairly sanguine about the future and says, “there is now a lot of work in the pipeline, and many hours spent in preparing for the new re-capitalization of the systemic banks that is needed in Greece. So I think that the big law firms – the ones that have expertise in this type of work and are a port of call for foreign investors and clients – have a significant number of mandates. Not as many as we expected last year, but they can keep going at the same pace.”

Bernitsas doesn’t deny the potential for disappointment. “We don’t know what’s going to happen of course,” he conceded. “If things turn sour, and the government does not manage to go through the various motions that are required by the European community, we may face serious problems like everybody else.” Still, he chooses to focus on the positive. “But the assumption is that the government is going to abide by what it has signed with the European authorities and the IMF, and as a result things are going to fall into place. There is a pressing need for the banking system to be re-capitalized, which has already resulted in a lot of work.”

Ultimately, he believes, much of the short-term future depends on the particular course the government takes. “We think that by, let’s say, the end of the year we’ll know whether this government is willing and able to proceed with the implementation of the measures required of it by the Troika and Eurogroup. If they do succeed and if there’s a first report that all the changes that are required in the public administration and have been approved by Parliament are going to be implemented, then I believe there’s going to be a significant rebound of the Greek market. But if the Government continues to drag its feet or to not want to implement what was agreed, then of course we are going to face very hard times.”

David Stuckey

Market Snapshot: Greece



Enforcement Agency Shared Competence and Anti-Counterfeiting Strategy

Over the past few years, anti-counterfeiting practice in Greece has been equipped with a wide pallet of enforcement strategies, varying from compound civil and criminal procedures to more simple practices. The most effective strategy in each case cannot be detached from its particulars, including the identities of the infringers, the volume of goods involved, and the responsiveness of authorities and enforcement personnel in various geographical areas.

Article 39 of Greek Law 4155/2013 provides for a new and more straightforward practice with respect to the seizure and immediate destruction of seized counterfeits on the basis of article 23 of Regulation (EU) 608/2013 (the “Customs Regulation”). This practice may be implemented by all competent agencies upon an infringer’s consent, without preventing IP owners from initiating civil and criminal proceedings and claiming damages, introducing thus a unique and innovative EU-wide market legislation.

The agencies empowered to act by Law 4155/2013 are:

Customs: In addition to the duties assigned to them by the Customs Regulation, Greek customs authorities are also entitled to conduct market inspections in order to identify and confirm whether all customs procedures have been properly observed. With respect to counterfeit goods, it is expressly stipulated in Greek law that customs shall apply the simplified procedure set out in article 23 in cases where an importer grants its consent to the destruction of the seized goods.

By Michalis Kosmopoulos, Partner, Drakopoulos

Police: Although police action is mostly associated with criminal law enforcement procedures, Greek legislation has assigned to the police authority the duty to seize and destroy counterfeits upon the infringer’s consent, making use of the simplified procedure tool, thus curtailing long court proceedings and heavy paperwork.

SDOE/YEDDE: The Financial and Economic Crime Unit of the Greek Ministry of Finance (SDOE) and the recently integrated Agency for the Assurance of Public Revenue (YEDDE), working in association, have been very active in identifying IP infringing activity; plans for an upcoming merger of the two agencies have further enhanced the role of anti-counterfeiting practice as a necessary fiscal tool in current times of financial crisis.

Market Auditors: Operating as a separate department within the Ministry of Economy (not to be confused with the Ministry of Finance), market auditors have demonstrated flexibility and determination while addressing ex officio proliferation of counterfeits in small-scale trade and high-complexity cases.

Coast Guard: Although there has been minor activity reported on coast guard anti-counterfeiting actions, a more enhanced presence should probably be considered in port zones of ordinary market activity, and especially in Greek islands during high season.

The implementation of the current well-structured legislative framework on anti-counterfeiting by highly competent agencies could

build a strong and efficient protection scheme against infringers, addressing cases which would otherwise be left aside, i.e. where the small quantity of counterfeit goods in connection with the insularity of the Greek landscape would not support the expenses required for appropriate legal action. The good news is that amid the hard conditions caused by Greece’s financial and recent political crisis, national agencies have not exhausted their potential; however, over longer transitional periods – during which financial crime units are under restructuring-limited manpower – administrative underperformance and disorientation could slow down a decisive boost in tackling the problem.

Administrative and enforcement agencies activity will not be enough to completely overhaul the current unproductive anti-counterfeiting strategies; the initiative lies always with IP owners, who should assess the market and identify the appropriate measures to be taken, either by opting to go after the “big fish” by initiating criminal proceedings and claiming damages, or to end minor cases by sending simple cease and desist letters. In all cases, IP owners should bear in mind that inactivity and idleness from their side will only lead to proliferation of counterfeits and reassure infringers that their illegal trade can remain non-sanctionable.



Michalis Kosmopoulos,
Partner, Drakopoulos

Inside Insight: Stathis Mihos

Legal Director at Pfizer

Stathis Mihos is the Legal Director of Pfizer Hellas S.A. Since 2001 he has worked as Legal Director in Greece for many international companies. Prior to going in house, he worked for over 10 years in several Greek law firms, including Kallimopoulos-Loukopoulos-Alexiou Law Firm (Now KLC Law Firm), Alexiou Law Office, and Dimaratos Law Office.



CEELM: Please tell us a bit about your career leading up to your current role with Pfizer.

S.M.: I first made the move from the law firm world to in-house in 2001, and never looked back. I started as the legal manager for the Greek affiliate of Lafarge (a company producing cement and other building materials) and then moved in 2006 to lead the local legal team of BP, the oil and gas company. BP's operations were acquired by

the Hellenic Petroleum Group in 2009 and I stayed on until the end of 2011. I served a brief stint as the Legal Director for the French retailer Carrefour in Greece in 2012, the year in which Carrefour sold its share in the local company to their Greek partners. I joined Pfizer in 2013 as their Legal Director for Greece, Cyprus, and Malta. I believe I was very lucky to have worked in companies that are very diverse, operating in different industries, based in different countries, and using different

business models. This has allowed me to have a better understanding of the role of an in house counsel and to improve my skills adapting to the diverse needs of the internal clients.

CEELM: In light of that experience, how would you define the role of a “General Counsel”?

S.M.: I think the often-overlooked part of the title is the word “General.” In fact our internal clients – or business partners, if you wish – expect us to be true to this word in two ways: i) to be able to provide legal advice on all legal matters; and ii) to be both business and legal advisors. If we want to continue with the wordplay, then one should also think of the GC as the “General” that leads the troops in all the organization's legal battles!

CEELM: Prior to joining Pfizer, you worked for an FMCG company in a similar position. Would you say the role of a Legal Director in a heavily regulated industry is more difficult, or are the increased regulations making things easier due to less ambiguity?

S.M.: I think that the more regulated an industry is, the more important the role of the in-house lawyer is. He/She has to be able to navigate through a maze of various laws, directives, rules, policies, and the like when providing legal advice and handling legal matters. The whole organization expects the in-house lawyer to be aware of all the regulations in place and expects him/her to raise a red flag when appropriate. This puts an enormous pressure on the lawyer, especially when dealing with important or sensitive issues. On top of that, the lawyer often appears to be the messenger of bad news, and no one likes such a messenger. On the positive side, I would say that an in-house lawyer in a heavily regulated industry develops expertise that is indispensable to the company and essential for doing business in a compliant manner.

CEELM: Since we mentioned regulations, what are your main tools in staying apprised of regulatory updates?

S.M.: This is indeed the information age and despite the plethora of regulations of

all kinds, there's no lack of information providers. We subscribe to several online databases that provide updates on regulatory developments. In recent years many newsletters prepared by law firms are sent out when there are changes in relevant laws or important decisions by the Courts or Regulators. The trade associations of each industry also monitor such developments closely and distribute information of this sort to their members. Some Regulators disseminate information and even offer training on new matters. Finally, good old-fashioned word of mouth communication, in formal and informal networks, usually fills the gaps.

CEELM: It's interesting that you mentioned the newsletters you subscribe to. A General Counsel who spoke at the GC Summit we hosted recently (and who happens also to have worked as a regional GC for Pfizer) described newsletters from law firms along the lines of "if that is when I learn of a new regulation, I am caught by surprise and not doing my job." Do you agree with that?

S.M.: Oops, you caught me! Seriously now, the GC you talked to (I suspect I know who he is) is right. It is rare that a law firm would issue a newsletter as soon as a new regulation comes into force. But there is added value in (many, not all) of these communications, as a backup source of information, an opportunity to discuss a matter in greater depth, if the law firm went to the trouble of researching the matter, and also as a handy way to disseminate information among colleagues.

CEELM: I know Pfizer has a unique strategy when it comes to the Pfizer Legal Alliance. Can you tell us a bit about how it works and what the benefits of the model are?

S.M.: The Pfizer Legal Alliance (PLA) is an awarded multiyear partnership arrangement between Pfizer and 15 member law firms. It promotes an information-sharing culture aimed at creating enduring relationships. Member firms have agreed to work on a flat-fee basis and each year the specific financial terms with each firm are revised to reflect new work assignments. The PLA emphasizes proactive and preventive counseling and the delivery of comprehensive solutions, and it rewards partnership and collaboration. The PLA liberates lawyers from measuring their contribution based on time worked, and instead rewards them

for the worth of their advice and ability to effectively solve problems, share knowledge, and work together. The firms need to be cost effective and commit to providing Pfizer with periodic utilization reports to assess effort levels by matter. Alliance member firms have been selected based on criteria relating to Experience and Expertise, Creative Partnership, and Financial Arrangement and Discounts. They all display a solid understanding of Pfizer's business and legal issues, and are positioned to deliver innovative and practical solutions to help achieve business goals and have a deep and strong team to handle Pfizer's

"The whole organization expects the in-house lawyer to be aware of all the regulations in place and expects him/her to raise a red flag when appropriate. This puts an enormous pressure on the lawyer, especially when dealing with important or sensitive issues. On top of that, the lawyer often appears to be the messenger of bad news, and no one likes such a messenger."

needs. The firms benefit from a steady flow of work, the opportunity to expand their scope of work and deepen their knowledge of Pfizer and the pharmaceutical industry, and develop junior-level talent. In countries where our PLA firms have no presence we use local counsel that demonstrate the same skills and values.

CEELM: From a legislation standpoint, what are the main aspects keeping your legal team busy in Greece?

S.M.: For the readers that have been living on another planet the past few years, let me emphasize that Greece is facing a very deep crisis. A large part of the agreement Greece has signed with its partners is devoted to structural reforms, which means many changes in the way companies do business – especially in the pharmaceutical industry – and in the way justice is delivered. We try to keep abreast of these developments and to provide business-oriented policy suggestions when in discussions with policy setters.

CEELM: In what way(s), if at all, has the socio-economic context of Greece and its relationship to the EU in the last few months affected your work?

S.M.: In addition to reforms taking place at a very fast pace, as explained before, and the mounting state and private debt that has forced us to use both our negotiation skills and the Courts, more often than in the past, International Reference Pricing

(also known as external reference pricing) – a price control mechanism whereby a government considers the price of a medicine in other countries to inform or establish the price in its own country – requires our attention. IRP is inherently problematic as a means of ensuring optimal prices and in times of crisis can be devastating if not operated with the utmost care and flexibility. In simple words, the use of IRP by many countries means that what happens with the prices of medicines in Greece can have an impact far beyond our country, which can fuel a vicious circle of consequences.

CEELM: What was the most challenging project for you and your in-house team and what lessons did you take away from it?

S.M.: In the context of the current crisis, making sure that we are able to collect our debts remains a top priority and requires a cross-functional team effort. The legal team's role in this effort is important and usually the last port of call. In recent years we have used our in-house expertise and that of our outside counsel to successfully defend company interests before State Authorities and Courts and to negotiate deals that are lawful and beneficial for the company. At one time we found ourselves the claimants in many courts across the country, asking for State debts to be repaid. The learning curve was steep, in that we needed to assimilate the lessons learned very quickly, so that we could apply this knowledge to other cases. The situation is much better now, but we remain vigilant.

CEELM: On the lighter side, what has been the most rewarding team-building exercise you participated in?

S.M.: We recently participated in a large drum circle (google it!) with over 350 colleagues. It was a good introduction in team dynamics and co-ordination but a lot of fun as well. And not as painful for the ears as one might have feared!

Radu Cotarcea

Inside Insight: Eleni Stathaki

Head of Legal at Upstream



Eleni Stathaki is the Head of Legal at Upstream, a leading end-to-end m-commerce provider for subscription-based digital services in developing markets. Prior to joining Upstream in 2010, Stathaki was as in-house counsel with Sonae Sierra between 2007 and 2010 and with AEGEK between 2002 and 2007. In 2006, she was also an intern in London with Lovells (now Hogan Lovells), while on training leave with AEGEK.

CEELM: To start, can you tell our readers a bit about your career leading up to your current role?

E.S.: While in law school, I never thought I would end up as a law practitioner – I was envisaging a career as an academic. Then life happened. Very early on, I gravitated towards in-house work: first in a group of construction groups, dealing with public procurement and infrastructure works. Then, I moved to a shopping center management group, and lastly to Upstream, which is active in the mobile/digital industry. Incidentally, all three groups were active in South Eastern Europe and specifically in Romania.

I don't see changing industries as a negative thing; on the contrary it keeps things interesting. In any case, regardless of the industry, the skills needed are the same anywhere: delivering practical, commercial legal advice in the business context.

CEELM: As an m-commerce business, Upstream is almost by definition a very progressive company. How does the culture of such an organization influence the work of its in-house counsel?

E.S.: In a major way! Like other companies in this sector, Upstream has always been a very agile, fast paced, dynamic company, always looking for innovation. This agility is part of its corporate culture, so it could not

leave Legal unaffected. As a result, I focus on being practical, commercially minded, and open to new ideas. Dealing with ambiguity is also another competency I have cultivated here. Upstream offers its services in more than 26 languages, and over 50 markets, each with its own special characteristics and requirements. What works in one market may not work in another.

Lawyers as a professional group are naturally cautious: when presented with a business proposition, normally my first impulse would be to say "No, this is risky." But this attitude is counter-productive and would get us nowhere. So now the approach is more like: "Yes, under the following conditions."

CEELM: In the General Counsel Summit CEE Legal Matters recently hosted, one of the speakers from a progressive environment highlighted the fact that there is usually a lag between product development/R&D and regulators setting the "ground rules" for new products. How do you cope with this kind of ambiguity?

E.S.: This is, in fact, a situation that we have often dealt with. One of our first projects in Greece in 2005 was very new both in a commercial and in a regulatory sense and it caused quite a stir.

In most cases of a new product or solution, I find that either there is some legislation on the matter which has become obsolete or addresses a slightly different situation, or that there are detailed regulations in place, which however have not yet been tested in practice and on which there is no case law.

The answer in both instances is the same. We do our homework thoroughly and we get advice from experts. Then we find the middle ground between opting for the aggressive scenario and playing it safe. Ultimately, it is a fine line to walk and very challenging from a legal point of view, but our approach has worked so far!

CEELM: As far as the legal function that you manage directly in Greece is concerned, what types of legal work keep you busiest?

E.S.: We mostly do contractual work, drafting, reviewing, and negotiating agreements of all kinds. As Upstream has a wide geographical footprint, and is active in over 50 markets, from Brazil to Vietnam, we make sure we get thorough legal advice on the regulatory environment in each country by coordinating with outside counsel. We also handle day-to-day corporate matters for the headquarters as well as all the subsidiaries, although we outsource complex transactional work.

Other than that, we work closely with Finance and Human Resources on all day-to-day matters from the opening of a bank account to helping with obtaining visas. Never a dull day!

CEELM: For a company working in your field, data protection is probably a critical aspect. Does this influence your work at all or is it something that you leave to the tech team to worry about?

E.S.: A little bit of both: I tell the tech team what our obligations are and they find the appropriate security measures to comply with them, and to ensure that our technology platform that handles over 10

billion interactions a year meets these requirements.

Having reached over 1 billion consumers, and engaged over 200 million users around the world, we take data protection very seriously indeed. The fact that we are able to consistently deliver the highest engagement rates in the industry reflects our commitment to privacy protection. We have always been very careful, and as a result we have never had any issues. However, with the EU General Data Protection Regulation coming on, we will need to overhaul our policies to make sure they are up to speed. We have certainly planned to invest time and effort into this.

CEELM: When you need to outsource legal work, what is the main criteria you use to select what external counsel you will use?

E.S.: As there are only three of us in the Legal Department, we do outsource specialized legal work quite often. There is no single criterion, but rather a combination of several: expertise, responsiveness, professionalism, business acumen. It is essential that counsel gives relevant advice,

taking into consideration both commercial and business aspects. Last but not least, value for money is always important, as is keeping within budget.

CEELM: After working with a law firm on a specific project, what are the main KPIs which you analyze to review the collaboration?

E.S.: Like I said, it's a small department that is still evolving, so there are no strict KPIs. Instead, we review the firm's overall performance. A key question is whether the firm gave timely, practical, and value-added advice, and whether they were responsive. I also appreciate it when counsel shows a constructive attitude vis-à-vis the issue at hand, especially in the context of corporate transactions and contract negotiations.

CEELM: On the lighter side, what is your favorite item in your office?

E.S.: The global map that hangs on the wall. It is very exciting to see where the next project is, e.g. Mozambique or Peru. I have improved a lot in geography in the last five years!

Radu Cotarcea

Inside Insight: Dimitris Smirnis

Head of Legal at Metro S.A., Greece

CEELM: Please tell us a bit about your career.

D.S.: I studied at the Law Department of University of Athens and I started my career as a lawyer in 1998. In the first years I practiced as an Attorney at Law dealing mainly with civil and penal law cases. I provided legal services to my clients – both individuals and companies – and had many court appearances. Later, I focused on practicing corporate and business law. In 2005 I started working as a counsel at Metro S.A., a leading company in retail and wholesale of food and household products. Also in 2005 I started working as a counsel at Optima S.A., a brother company of Metro S.A. dealing mainly with cheese and dairy products. Today I'm the Head of Legal of both companies, which continue to grow aggressively despite the economic crisis in Greece.

I've also been a Legal Counsel at Grantex S.A. since 2008 and Diagnosis S.A. since

2011. Grantex S.A. is a brakes and parts company and Diagnosis S.A. provides health services.

CEELM: So you've been the Managing Partner of the Smirnis & Associates Law Firm since 1998, and you are simultaneously working as an in-house counsel in several companies. What exactly led to this set-up, and how common is it in the Greek market?

D.S.: According to Greek Law, a lawyer in Greece is a "public servant," who practices law in private. It sounds conflicting but it's not. It means that lawyers cannot be employees while they provide legal services to companies. So I decided not only to keep managing the Smirnis & Associates Law Firm but to also to develop the firm. This is not common in the Greek Market. Most lawyers who work as in-house counsels stop practicing in private but I preferred to go against the mainstream and this decision proved right.



Dimitris Smirnis holds senior in-house positions with Metro, Optima, Grantex, and Diagnosis, all while also working as the Managing Partner of Smirnis & Associates Law Firm. CEE Legal Matters reached out to him to learn more about this rather unusual set-up.

CEELM: How do you split your time between all of these functions and your private practice?

D.S.: Time management is an everyday challenge. As a counsel I devote most of my time to the companies I work for and as a manager at Smirnis & Associates I supervise but I also trust my colleagues to serve our clients.

CEELM: I'm assuming at least some of the companies where you work as counsel have other in-house legal team members. How do you manage to coordinate their work without your physical presence?

D.S.: Yes they have. Our cooperation is excellent. When my physical presence is not possible, we stay in touch thanks to technology.

CEELM: While the companies that you currently work for operate in different jurisdictions, how do you manage potential conflicts between them and clients of the Smirnis & Associates Law Firm – or do you simply not work with

clients from these industries at all?

D.S.: We do not represent other clients from these sectors of the market in order to avoid conflict issues.

CEELM: When you spoke with Grantex and Diagnosis about taking on in-house functions with them, a few eyebrows must have been raised at your set-up. What were the main objections/concerns, if any, and how did you circumvent them?

D.S.: Both companies honored me by proposing to be their Legal Counsel having full knowledge of my professional status, so there were no objections or concerns.

CEELM: Of your current in-house roles, which do you find to be the most challenging and why?

D.S.: Being the Head of Legal at METRO S.A. is the most challenging role. Its continuous growth and development requires not only leadership and efficiency but also thoughtfulness and essential and timely consulting.

CEELM: As things stand, would you take on any more in-house roles should the opportunity present itself?

D.S.: Not for the time being, but I keep my mind open to future challenges.

CEELM: It is in many ways a matter of comparing apples and oranges but, since you are exposed to both on an ongoing basis, which of the two worlds (private practice or in-house) do you find to be the most rewarding and why?

D.S.: Both worlds are rewarding. Private practice provides freedom of choices. In-house counseling provides knowledge of interacting inside a corporate environment.

CEELM: On the lighter side, if you would have the opportunity tomorrow to pick any other profession than a lawyer, what would it be?

D.S.: The essence of life is living the present but I'll answer your question. I would be a novelist.

Radu Cotarcea

Inside Insight: Paris Passias Legal Director at Navarone

Paris Passias is the Legal Director of the Navarone shipping company. Prior to joining the company in June 2015, he was briefly the General Counsel of Vivartia, preceded by three years as a Partner with the Kitsaras Passias Sfikas Tsantitis Law Firm (he served double duty from 2012-2014, during which time he also acted as in-house counsel for Navarone). Before that, Passias was the General Counsel of the telecom operator OTE for 4 years after working as the Head of the Foreign Investments Legal Department and General Counsel of OTE International Investments. His experience also includes working as an in-house counsel for the International Reefer Services Shipping Company and as an Associate with Rokas and Partners.



CEELM: You've been in a variety of roles and industries throughout your career but somehow always returned to the shipping sector – what do you find particularly attractive about it?

PP: I believe it was always the international focus that drew me in and made sure it stuck with me. Early in my career I worked in Germany, and that was probably the first such exposure, but especially once I came back to Greece and worked with OTE, I acquired a real taste for such an exposure, with the telecom group expanding considerably throughout SEE, as you know [referring to OTE's recent acquisition of shares in the Romanian telephone operator Romtelecom].

Shipping is one of those industries that is, by definition, internationally oriented so it was inevitable to become attracted.

CEELM: Speaking of the industry, according to some records, the Greek merchant navy is the 3rd largest in the world. What do you believe has contrib-

uted to its current position?

P.P.: Geographical position aside, I think it's simply a matter of a natural talent. Greeks have historically been merchants – at least considerably more so than manufacturers – and I think that's just been a tradition that has stuck with us.

CEELM: Does the Greek government promote the sector more than others? Did that play a part?

P.P.: That's actually a common misconception. I wouldn't say the industry received any special support to be honest. The one example towards this that I can think of is the state insurance promises provided to the shipping industry after World War II, when the sector took a hit with the global decline in trade.

In recent days, in fact, it is going in the opposite direction, with budgetary pressures being reflected in the taxing regime that we need to operate under. With the shipping industry being so big, it was bound for it to get on that radar.

CEELM: At the same time, it is estimated that it employs 7% of the workforce in the country. What specific challenges does an in-house counsel working for such a large employer face?

P.P.: I am not 100% sure about that number, but, indeed, the industry is one of the largest employers in Greece. I would say that, for the most part, the same employment regulations are applicable to us as to any other type of company. As a result, I would not say we face any specific challenges on that end, especially since labor unions in Greece are not as strong as they would be in other places, and that could be an area where one would imagine the volume of employees would play a big part.

Of course, that number probably accounts for Greek nationals employed within the shipping industry. Here you need to differentiate between onshore and offshore staff. Onshore, most of our employees tend, indeed, to be Greeks, and they usually represent highly-skilled and well-paid technicians, engineers, etc., meaning that the “usual” labor concerns rarely pop up. In terms of the offshore employees, many are foreign nationals, and that complicates things a bit, but nothing insurmountable.

CEELM: Working in this industry means requires that the company, and implicitly its legal function, needs to be very international in mindset. How is that reflected in your legal function?

P.P.: Indeed, one of the main aspects about our legal function is the variety of having to deal with an issue in Argentina one day, then with a port issue on the other side of the world the next. One thing that simplifies everything greatly, however, is the fact that almost all legal aspects that have to do with our industry tend to operate under common law. How is that reflected within our organization? Firstly I am qualified as a solicitor as well and I do tend to work a great deal of the time with UK-based law firms. As for issues coming up that require specific local legal knowledge, we simply outsource them to local firms.

CEELM: I'm assuming it wouldn't make much sense to build up those capabilities in-house.

P.P.: No, definitely not. It'd simply be way too expensive to have one specialist on call for each of the immensely diverse jurisdictions we deal with on a regular basis.

CEELM: Since you mentioned it, there are a number of international firms in

Greece that are present in the country primarily because they were drawn in by their shipping practice. Do you find the market saturated with such practices, or can we expect more to join?

P.P.: I think that pretty much all of the ‘big boys’ are already in Greece to be honest, so even if there would be room in the market, I don't really see many contenders left who might be targeting the market and are not on the ground already. The few who have not yet ticked a presence were probably scared off by the current economic climate, but to be honest, at the end of the day, so much of the work would happen out from London that I am not sure it'd be needed for them to open up an office here. Maybe it made a lot more sense in the past, but thanks to technology these days, I simply don't see a logistical need anymore.

CEELM: On the lighter side, for anyone not having had the pleasure of visiting Greece, what's the first place in the country you'd recommend they visit?

P.P.: Athens should be the first stop. The Greek capital is “small Greece” itself! Visit the new Acropolis Museum, built by the New York-based architect Bernard Tschumi with its 4,000 beautiful objects and the stunning view over the Parthenon Temple. Stroll in the old city of Plaka, have lunch at a seaside tavern in the picturesque harbor “Mikrolimano” (little harbor) in Piraeus, drive southwards on the cliff-fringed route to catch up with the most awesome sunset from the Poseidon Temple in Cape Sounion. Enjoy your goodbye drink at the Galaxy bar in the Hilton Hotel with the amazing panoramic view over the city of Athens and the glittering Saronic Sea.

Radu Cotarcea

Want to learn about deals or gain insight into specific jurisdictions or industries? CEE Legal Matters has compiled all deals reported on and submitted to us throughout 2014 in one indexed, sortable, and easy to search online list.

Readers can access this list at: www.ceelm.com/2014-deal-list

Expat on the Market: Marie Kelly of Norton Rose



English solicitor and Scottish national Marie Kelly is a Partner at Norton Rose Fulbright in Athens, where she heads the firm's Greek Dispute Resolution Practice. She specializes in shipping litigation and shipping contracts including ship-building contracts, and also has a great deal of experience in arbitration and in commercial litigation in the high court.

Kelly got her law degree from the University of Glasgow in 1982 and subsequently studied at the College of Europe in Bruges and the University of Edinburgh. She has been with Norton Rose Fulbright since 1998, when she moved with her husband to Athens.

CEELM: Run us through your background, and how you got to Greece.

M.K.: I first qualified as a Scottish solicitor, then as an English solicitor, and then as a barrister in England. Before I was called to the bar my specialization was European competition law which I practiced at Ashurst Morris Crisp for a number of years. However, I missed appearing in court which I had done quite a lot of in Scotland so decided to move to the bar.

CEELM: Was it always your goal to work abroad?

M.K.: No. I would not say it was ever a goal to work abroad, but on the other hand I like working abroad and have worked in Brussels and Frankfurt. My husband, who is Greek, suggested that we go to Greece for one year so that he could work on a project there. (He is a photographer). I agreed, provided I found a job for the year and got one year's sabbatical from my chambers. That was 18 years ago.

CEELM: Can you describe your practice, and how you built it up in Greece over the years? And do you appear exclusively in English courts, or do you appear in Greek courts and Arbitrations as well?

M.K.: My practice is quite diverse for a English qualified lawyer based in Greece in that I do a lot more than shipping. Since I arrived, although the bulk of my practice has been shipping work I have always had a reasonable amount of non-shipping

work including international arbitrations often arising out of share sale and purchase agreements with Greek companies; non-shipping disputes in the High court including on licensing and distribution agreements and various other disputes under, e.g., management agreements or inheritance disputes. I would say that my practice has changed somewhat over the years in that I now deal with a large number of shipbuilding contract disputes – that probably makes up about 30 to 40% of the practice nowadays. When I first arrived in Greece we rarely dealt with shipbuilding contract disputes but it is an area that I am interested in and I have built it up over the years.

My team only deals with English law disputes. We work with Greek lawyers external or within the firm in relation to cases in the Greek courts. I have however appeared as a witness in court in Greece. That was an experience in itself, as the procedure is much more informal than in England and I was amused to see the lawyers getting into arguments with the judge.

CEELM: Do you find local/domestic clients enthusiastic about working with a foreign lawyer, or do Greek clients prefer working with Greek lawyers?

M.K.: I think Greek clients want the best lawyer to deal with their cases and they do not mind whether the lawyer is Greek or foreign. They are also very used to working with foreign lawyers in the shipping sector. It also helps that I speak Greek.

CEELM: There are obviously many differences between the English and the Greek judicial systems. What idiosyncrasies or differences stand out the most?

M.K.: The English law rules on disclosure are very different to the Greek rules where you only disclose what you want to rely on. Greek shipping companies are very sophisticated so they are well used to the English law concept of disclosure now but it still seems strange coming from a Greek law perspective that you have to disclose documents that are detrimental to your case.

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

M.K.: I think first-hand experience of working in the UK as a barrister and a solicitor is valuable to the firm and the clients. I think it gives a good understanding of the mindset of judges and tribunals and you can explain how they are likely to view evidence. In a way it is as though I have a foot in both camps. I have lived long enough in Greece to understand that the legal system is sometimes viewed with suspicion, but with my background I hope I can allay some of those fears.

CEELM: Outside of Greece, which CEE country do you enjoy visiting the most?

M.K.: It's difficult to say. I would have to mention two great and very different cities in the CEE: Istanbul for the fabulous food, the atmosphere and the Grand Bazaar – the most beautiful shopping venue I have ever been to – and Budapest for the sheer beauty and grandeur of the city, combined with the punk mentality of the "ruin bars."

CEELM: What's your favorite place in Athens?

M.K.: Plaka, under the Acropolis is touristy but it is nevertheless beautiful and even better in the wintertime when it is quieter.

David Stuckey



Next Issue's Market Spotlights

Czech Republic

Poland

Experts Review: Infrastructure/PPP

Experts Review in this issue focuses on Public Private Partnerships (PPP). Thus, of course, the articles are arranged in the order ... of country rank in the International Handball Federation, as listed on the IHF's website on October 15, 2015.

According to the IHF, the German Handball Association is ranked first in the world, with Russia – No. 2 overall – the leading country from CEE, and Hungary 4th overall and 2nd in the region. Unfortunately, there is no article from either Russia or Hungary this time, so Serbia – No. 6 overall – takes the place of pride.

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Serbia

Realization of Infrastructure Projects Through PPP/Concession Schemes



It has been almost four years since the adoption of the new Serbian PPP and Concessions Act. The principal idea of the legislators at the time was to liberalize the process for awarding PPP/concession projects both in terms of governmental oversight (previous legislation involved active participation of the Government

of Serbia in several steps of the award procedure) and in terms of the entities allowed to act as grantors (public companies (*javna preduzeća*) may act as public partners under the new PPP and Concessions Act whereas, under earlier legislation, public companies were not considered as concession grantors – the concession agreements were signed by the Government of Serbia or, in case of development of communal facilities for the purpose of performing communal activities, municipalities). So far, not a single significant infrastructure project in Serbia has been realized through a PPP/concession scheme.

The main hurdle which potential grantors faced in development of PPP/concession projects was the lack of experience and guidance in identifying and realizing potential PPP/concession projects. The PPP Commission – the governmental body tasked with, inter alia, assisting and consulting authorities in the implementation of best practices for the development of PPP/concession projects – was relatively inactive and limited its activity to the administrative role of reviewing and approving submitted PPP project proposals.

A pilot concession project sponsored by the EBRD for the development of an underground garage in Sabac in 2012-2013 failed to attract a single bidder, presumably because of the unwillingness of the municipal authorities to assume certain risks usually expected from grantors in these kinds of projects.

The lack of experience and know-how as well as the complexity of PPP/concession procedures meant that the decision makers in the higher echelons of the governmental and municipal authorities avoided using PPP/concession procedures and opted for simpler and more straightforward procurement procedures for developing large infrastructure projects. The availability of soft loans from international financial institutions contributed as well to this trend. The standard procurement procedures in Serbia were plagued with bidders' challenges and unfair business practices (most notable in this regard was Alpine, whose entire business model in Serbia was based on dumping prices).

So, it was not until Serbia faced strong budget constraints and an inability to borrow further that the authorities turned to the structures prescribed under the PPP and Concessions Act for large infrastructure projects.

The primary example of this new approach is the Vinča waste-to-energy project. In order to replace the existing waste management system with a modern one, the City of Belgrade decided to employ a PPP DBFOT (design-build-finance-operate-transfer) structure. The private partner to be selected in the competitive procurement process will be tasked with development of a waste treatment and disposal facilities with an annual capacity of 480,000 tons of residual municipal solid waste and about 100,000 tons of construction and demolition waste. The project will include the production of electrical and/or heating energy from waste, as well as the closing and rehabilitation of the existing landfill. The PPP contract award is planned to take the form of a competitive dialogue. The process is currently in the pre-qualification phase, with the dialogue phase to begin in early November.

The fact that this project is being structured and managed by the experienced team of the IFC and other international advisers guarantees that the project will meet international best practices. Therefore, it is not surprising that the largest companies in the waste management sector are participating in the process.

The successful realization of this trailblazing project will pave the way for other upcoming projects, such as the Belgrade airport and Belgrade water utility projects. It should also raise the awareness of foreign investors, especially the large infrastructure funds, of investment opportunities in the Serbian infrastructure. Finally, it should bring an end to the non-transparent practice of awarding infrastructure projects directly and without the tendering process, as required by various intergovernmental agreements. We have seen this practice more than once in Serbia, and the results have rarely delivered the required infrastructure in a short time and for the market price.

Dragoljub Cibulic, Partner, BDK Advokati/Attorneys at Law

Romania

Public-Private Partnerships in Romania – Lost in Legislation



There has been a complete lack of public-private partnerships in Romania to date. For the last five years Romania has been struggling to develop a legal framework for public-private partnerships which would allow the country to tap into private investors' money for key development projects. The process is far from over.

Romania's current public-private partnership law (Law no. 178/2010) is not used in practice, mostly because of its unclear provisions regarding key topics such as public partners' financial contribution to projects, the guarantees for financing institutions in case of a project's failure, and a clear distinction between projects that can be marketed as public-private part-

nerships versus projects that can be marketed as concessions. In addition, ongoing political debates over the shortcomings of the existing law have led to the initiation of another public-private partnership law, which is currently in the process of being adopted.

Even with the draft law that is set to abrogate the existing law, a number of potential problems exist, suggesting that the large degree of uncertainty that dominates the process of tendering public-private partnership projects in Romania may continue even after its adoption.

Contributions by Public Partners



The draft law allows public partners to contribute to public-private partnerships and take associated risks only if their doing so does not impact Romania's public debt and budgetary deficit thresholds. Therefore, at the investment stage, public partners can contribute only EU funds to

projects. Throughout the projects' operation and maintenance lifespan, public partners can make payments out of public funds subject to compliance with Romania's public debt and budgetary deficit thresholds.

The challenge may lie, however, in aligning the timing and bureaucracy around accessing EU funds. The Romanian public partners have yet to prove that they have the capacity to access EU funds in a timely way to support projects developed as public-private partnerships.

Amendments to Substantiation Studies

Substantiation studies make or break public-private partnership agreements. These studies cover topics such as risks and risk allocation, compliance with Romania's public debt and budgetary deficit thresholds, and necessary investments. The draft law requires that these studies be approved by different governmental entities through a process that can be burdensome, and may need to be amended as private investors are selected. The current wording of the draft law reads that each amendment of these studies triggers new approval processes that suspend the public procurement procedures. If the amendments are not approved, the procedure is to be terminated.

Lawmakers have not taken into consideration the fact that interested private investors could propose alternative offers, which may or may not result in the alteration of substantiation studies. As a result, this provision in the draft law may cause some companies to question the value of investing time and money in a process that can be suspended or terminated due to cumbersome bureaucracy.

Unilateral Termination by Public Partners

Subject to damages payable towards private investors, the current draft law allows public authorities to unilaterally terminate

agreements with private investors for exceptional circumstances concerning the public interest, such as public health, environmental protection, quality and safety standards, tariff affordability for users, and the need to ensure unrestricted access to a certain public service.

This right of public partners remains one of the most controversial points of the draft law, both because of the lack of clear definitions of "exceptional circumstances" and "damages," and because of the Romanian public partners' track record of constantly changing their minds.

Replacement of Private Partners

A final point for consideration is that the draft law permits public partners to replace private partners whenever those private partners or project companies do not fulfill their obligations. The replacement may not require new public procurement procedures for selecting another private investor.

Providing public partners with a mechanism to replace private partners without having to run new public procurement procedures for selecting another private investor may lead companies not to participate in any public-private partnership programs. The reasons are many, chief among them the Romanian authorities' poor track record of conducting transparent public procurement procedures and finalizing agreements, and the unwillingness of companies to invest time and money in bidding on projects from which they can later be excluded for reasons outside their control.

If it proceeds, these issues may be addressed during the implementation of the draft law. But in addition to the need for a stable and clear legal framework, public-private partnerships in Romania require political commitment, mostly because of the significant social and political impact of these projects. To encourage the involvement of companies that hold the expertise needed for the successful completion of public-private projects, the political class must ensure that the projects benefit from clear and transparent rules and regulations or risk losing the participation of these companies.

*Claudiu Munteanu-Jipescu, Partner, and
Diana Poputoaia, Senior Associate, Dentons*

Croatia

Infrastructure Investments in Croatia: A Story in the Making



Over the last four years, the Croatian government has persistently attempted to attract international interest to its numerous infrastructure projects. It has offered international investors a number of such projects, mostly in the energy and transport sectors. The outcome of such investment ini-

tatives was not always as expected, but optimism remains that investor interest in Croatia will not dwindle.

The past two years have been particularly active. The most important driver of the surge has been the energy sector, with oil and gas concessions and an LNG terminal attracting the most interest from international investors. The transport infrastructure sector closely followed, with the social infrastructure sector taking a back seat.

In the transport infrastructure sector, the most important success story is the new Zagreb Airport. Awarded under the PPP model, the project faced some initial controversy, but has quickly gained popularity and promises to be a flagship infrastructure project for the government.



This was not the case with the contemplated motorways monetization. Facing strong public resistance to the project and a reported mismatch between investor interest and government expectations, the government abandoned the concession model. Now, advised by the World Bank, it is

contemplating alternative models for monetizing its highways, including an IPO of the motorways management company scheduled to be launched in autumn of this year. It remains to be seen whether the alternative model will attract a level of investor interest equal to the government's high expectations.

The government's other racing horse is investment in energy infrastructure. The most important current project is the award of licenses for onshore and offshore oil and gas exploration. The first round of tenders has attracted interest from most important international industry players despite initial delays caused by cross-border environmental consultations. The offshore tender also suffered a setback when a couple of preferred bidders withdrew from the project faced with unresolved border issues between Croatia and Montenegro. The onshore tender did not face any such problems, but the governmental approval process was delayed and the government announced it will not sign the contracts until after the elections which are scheduled for early November. Despite all obstacles (including low oil prices), both projects still promise to be success stories for the government.

The government also started actively preparing project documents for the construction and operation of a new LNG terminal on the island of Krk. Through a series of tenders, the government has selected well-known international legal, financial, and technical advisors to provide help identify and engage the preferred bidder. It is expected that the initial round of tenders for selection of contractual counterparts will be launched in the first half of 2016.

In contrast to the Energy sector, investments in social infrastructure, especially under the PPP model, are still few and far between, and the PPP model for construction and operation of social infrastructure in Croatia remains heavily underutilized.

Currently, there are only a few PPP projects available in the market despite the obvious appetite of international investors. The market perception remains that some of these projects have not been very well prepared, resulting in significant delays and the failure to secure proper commitments from investors.

The proper preparation of large infrastructure projects remains the single most important condition for the success of a project. Croatia, as a young democracy, has often not had the experience or the resources to properly prepare projects on its own. Nonetheless, the Croatian government and its bodies have historically been reluctant to seek external help in the form of qualified international consultants capable of providing the requisite support. The support of such consultants is sometimes still viewed as redundant, the view being fuelled by various state bodies arguing that the internal capacities within the state are sufficient to properly prepare and execute any project. Sadly, experience has shown on many occasions that this is simply not so.

Fortunately, recent trends indicate that the Croatian government has finally realized there is value to be found in engaging experienced advisors for its flagship projects. Many success stories are based on the benefits the government gained from such support. The hope thus remains that the Croatian government will continue to utilize the support of experienced advisors as a means to a very important end: the benefit of all of its citizens gained through well-prepared and thought-out projects.

Ronald Given, Partner, and Sasa Jovicic, Senior Associate, Wolf Theiss

Poland

PPP in Poland: Current Trends and Planned Legal Developments



The number of Public Private Partnership (PPP) projects currently underway in Poland suggests that the market has finally recognized the number of public project opportunities and that the applicable legal framework is considered acceptable. This article aims to highlight the current PPP legal

framework and changes planned by the Polish government to boost this growing trend.

Currently, there are 83 ongoing PPP projects in Poland, with 129 more in development. Projects range from the development of underground car parks in Warsaw, through the provision of management, maintenance, and operation of collective water supply services in the Pomerania District of Poland, to construction of thermal waste conversion plants in the Wielkopolska and Pomerania areas. The value of projects also differs significantly, ranging from relatively small thermal plants to large highway projects, thus making PPPs appealing to both mid-size and large-scale investors. A PPP market related to energy-ef-

efficiency projects is another future possibility. With the EU directive of 25 October 2012 (2012/27/EU) in place, calling for each Member State to increase energy efficiency by 20% by 2020, the PPP sector is likely to speed up.



PPP – as defined by EU guidelines – is understood as cooperation between the public and private sectors for the development and operation of infrastructure, driven by limitations in public funding and efforts to increase the quality and efficiency of public services. In Poland, the PPP legal frame-

work is statutory and consists of the Public Private Partnership Act of 19 December 2008 (PPP Act); the Act on Concessions for Works or Services of 9 January 2009 (Concession Act), and the Public Procurement Law of 29 January 2004 (Public Procurement Law).

The PPP Act is a cornerstone regulation which sets out key rules governing cooperation between a contracting authority (such as a local self-government unit or another public finance sector entity) and a private partner, i.e., a domestic or foreign entrepreneur. The PPP Act allows this cooperation to be based either solely on a contract or effected through an SPV in the form of a corporate entity (either a limited liability vehicle or a joint-stock company) or a partnership. Under the PPP Act cooperation between a private and public partner shall be laid down in a civil law contract, with the PPP Act setting out key elements of the agreement, including (i) the form of regulation regarding the private partner's remuneration; (ii) the allocation of risks and responsibilities between the private investor and its public partner; and (iii) the private partner's asset contribution.

The key feature of the PPP Act is that it provides rules for a private partner selection. These rules differ depending on the type of project involved. If the private partner's remuneration consists of the right to collect profits from the PPP project (e.g., through a toll highway), the selection and PPP contract's content are determined by the Concession Act, which sets out a fairly uncomplicated four-step selection procedure. Where, however, the Concession Act is not applicable, the somewhat more complicated procedure of the Public Procurement Law kicks in.

Despite the growth in the number of PPP projects in Poland, there remain ways the PPP system in the country can improve. The average value of a PPP project in Poland is over 2 million EUR – less than the average in France, Spain, or the UK. To catch up with other EU countries, in February 2015 a set of guidelines for the amendment of PPP-related regulations was adopted by the Polish Government. The proposed changes to the PPP regulations include, among other things, doing away with the requirement that a contracting authority notify the head of the Public Procurement Office if a PPP contract is to be concluded for a period of more than 4 years or exceeding the value specified in the governmental regulation. Additionally,

the guidelines aim at providing the contracting authority with significant discretionary powers regarding negotiating over the value of the security provided by a private partner. Finally, the government aims at dispelling ambiguities regarding the character of expenses incurred by the contracting authority due to the performance of a PPP contract, which is supposed to facilitate funding. Although the Government Legislation Center has recommended that work on the bill be accelerated, with the 2015 elections and the ouster of the ruling coalition around the corner, its fate remains uncertain.

Patryk Figiel, Head of Projects, and Jakub Dabrowski, Associate, Linklaters

Austria

Different Demand and New Legal Framework for Infrastructure PPPs in Austria



Whereas Public Private Partnerships in Austrian infrastructure projects have been a rare species for many years, interest on the public side has risen significantly. At the same time, the new EU Concession Directive – due to be implemented into Austrian law by April 18, 2016 – also brings

amendments to the legal framework. As a result, interesting times in the Austrian infrastructure market are guaranteed.

Different Public Demand for Infrastructure Models

Although several infrastructure projects in Austria involved PPP models in the past (and it is fair to say that these projects were successful), the vast majority of all projects have been implemented in the traditional (i.e. non-PPP) manner. The main reasons included the very good financing conditions offered to the public side because of the country's AAA ranking, the sufficient manpower of awarding authorities to implement projects by themselves, and not enough pressure from budget restrictions. Large public awarding authorities in Austria also possess decades of experience, even in very complex projects.

The new driver for interest in privately financed projects, and PPPs in particular, is the increasing amount of public debt on both the provincial and municipal level. According to public accounting standards, the ESA 2010, a project in which the main risks are allocated to a private partner, however, require that the infrastructure investment and related debts be in the private partner's books. As a result, the investment and debts do not become part of the public bookkeeping and thus are not elements of the public debt that is reviewed under the Maastricht criteria.

Accordingly, legal advisors on the public side need a thorough understanding of ESA 2010 requirements related to risk transfer. The allocation of the risks (and tasks) of an infrastructure project does not only influence aspects like price, bankability,

securities, contract drafting, and the selection and award criteria, but also affects whether the 'economic' ownership in a certain infrastructure project belongs to the public or whether it is shifted to the private partner. In other words, it is not only the legal ownership in the respective building, road, etc., that determines who has 'economic' ownership – what counts even more are the typical risks and benefits of the project.

From the viewpoint of public accounting and budgeting the private partner carries the main risks and benefits if both the construction risk and either the so-called 'availability risk' (referring to the availability of a certain infrastructure) or the 'demand risk' (referring to the use of the infrastructure) are mainly shifted to it. To achieve this goal, lawyers drafting an infrastructure contract must make sure that the private contractor assumes the risk of finishing construction of the project in time, without additional costs and according to contractual requirements, before the contractor gets paid and before the infrastructure asset is taken over.

The demand risk is allocated to the contractor too if it is not guaranteed that it can earn back its investments, financing costs, and operation expenses because of not selling enough or because of customers not accepting sufficiently high prices. The availability risk is transferred if negative (contractual) consequences of either defective quality or a complete non-availability of the infrastructure are significant enough that the private partner cannot cover its costs. If in a contract both demand and availability risks are transferred but one of these two accounts for more than 60% of the contract price, the legal analysis can in a first step assess only this risk; only if the result remains unclear should all risks be assessed.

Currently, in Austria, the project pipeline for PPPs in particular contains roads, hospitals, schools, and administrative buildings.

New Procurement Law Framework

Under ESA 2010 rules slightly different requirements apply to PPPs than to concessions. This is where the new Concession Directive enters into play. The new Directive 2014/23 not only clarifies how concessions shall be awarded but also contains much more detailed definitions of concessions than the procurement regime from 2004. Unfortunately the definitions of 'PPP' and 'concession' under budgeting rules differ from the 'concession' definition of Directive 2014/23.

What makes it even worse is that both the Concession Directive and the budgeting rules refer to the main project risks (i.e., construction, availability, and demand risks), but the Concession Directive – and thus public procurement law – does not clearly distinguish between these risks. It instead uses an overall perspective of all risks of a certain project. The reason for the difference is the slightly different goal which procurement law has to achieve: The award of a concession has to comply with a much more flexible and less strict legal regime than the award of a normal public contract because strong risks are transferred and thus distortion of competition is less likely. So it is only the overall degree of risk transfer that counts. For public budgeting, by contrast, it is important whether the main risks and benefits

that constitute economic ownership are transferred.

Thus a project can be a concession under procurement law but not under public budgeting rules and vice versa. So don't blame your lawyers for confusing terminology. But you can demand clear advice.

Thomas Hamerl, Partner, CMS

Czech Republic

Better Late Than Never: Big Infrastructure PPPs Finally in the Czech Republic?



Despite many attempts to implement public-private partnerships at the state level in the Czech Republic, only a handful of PPP projects have been realized. The Czech Ministry of Transport seems determined to change this, starting this year with transport infrastructure projects. A private partner is to build and operate a section of the R4 expressway in South Bohemia, and other projects are expected to follow. This article concerns the status and possible future development of Czech PPP policy with a special focus on transport infrastructure.

PPPs in Czech Republic today

Interest in PPPs has grown since 2006 when new laws on the awarding of PPP projects came into force. A number of large-scale infrastructure projects were planned on the state level, some reaching billions of euros in value. The vast majority of them, however, did not proceed to the construction phase for various reasons.

In a turbulent political environment, plans for PPP projects prepared by one government were often not supported by successor governments. Some pilot projects were unsuitable for realization in the form of PPPs or lacked sufficient preparation. Moreover, the 2009 financial crisis created a difficult financing environment. Last but not least, the Czech Republic receives a substantial sum of money from EU funds that may not be used for PPPs. These circumstances led the government to recall significant PPP infrastructure projects, including the completion of the D3 freeway in South Bohemia and the AirCon railway connection from Prague's city center to the airport.

The implementation of PPPs has been more successful on the municipal level. Water and wastewater facilities in particular are run as PPPs. In a typical model, the municipality owns the infrastructure, whereas the service provider is a private investor who operates the infrastructure, pays a consideration for its lease, and collects fees from end customers. Another example of a successful municipal public-private partnership project is the repair facility for public transport vehicles opened last year in

Pilsen.

What to Expect in the Coming Years



Despite previous failed efforts, the Ministry of Transportation is willing to partner with the private sector for significant infrastructure projects. Faster and better construction and, thereafter, more reliable administration of the projects are among its main motivations. That the main flow of money from EU funds will dry up by 2023 is also driving the efforts.

Earlier this year, the Ministry hosted a conference dedicated to the kick-off of Czech PPPs in transportation infrastructure and presented a number of guiding principles for the future. To reduce the overall risk, thorough preparation should precede the tenders. This mainly includes timely acquisition of land and necessary zoning and building permits. To maximize financial effectiveness, PPPs should be implemented where the use of EU funds is limited, i.e., outside the Trans-European Transport Network of key roads across Europe designed to facilitate the mobility of goods and passengers within the EU (the “Ten-T network”). Finally, the so-called DBFOM approach (Design Build Finance Operate Maintain Concession) is expected to be adopted.

In a typical DBFOM, the private partner is responsible for the design, construction, financing, operation and maintenance of the infrastructure. As opposed to a full concession, the state bears the risk of ridership and handles the collection of tolls. The private partner receives regular payments based on availability, which usually do not start until the road is operational. Distribution of the risk is based on the unpredictability of traffic, which may be significantly lower than expected. This was the case of the infamous Hungarian M1/M15 and M5 motorways, where the risk of demand was transferred to the private partners and the traffic did not reach anticipated levels. As a result, the motorways ended up being re-nationalized.

R4 Expressway: A Promising Pioneer?

The first major piece of Czech road infrastructure to be built and run as a PPP is expected to be a 32-km section of the R4 expressway connecting Prague with south-west Bohemia. The preconditions seem hopeful: all zoning permits have already been granted, land acquisition is ongoing, and the feasibility study showed positive results. Furthermore, R4 is not part of the TEN-T network.

The Ministry of Transportation already launched a tender for related financial, legal and technical counselling. The government is expected to assess the project in the coming weeks and, if approved, construction could begin as early as 2017.

Tomas Rychly, Partner, and Lenka Krutakova, Of Counsel, Wolf Theiss

Slovakia

The Future of PPP and Infrastructure Projects in Slovakia



The PPP model in Slovakia has encountered problems since its introduction in 2007. The government at the time established a PPP-focussed department within the Ministry of Finance and a PPP Association. The law was intended to enable the construction of critical infrastructure, but arguably the only project to have reached successful financial close is the R1 expressway, with an investment in excess of EUR 1 billion. The PPP scheme included the design, build, finance, operation, and maintenance of the 51.6 km dual two-lane road connecting the towns of Nitra and Tekovské Nemce, to the east of the capital city Bratislava.

Other projects were launched by the Slovakian government in 2006-2010, but when the government's term ended, the incoming government decided to cancel them, claiming that they were too expensive and overpriced. Between 2010-2012 the new government decided to continue with infrastructure investment, but further motorways were constructed using EU funds rather than PPP arrangements. Infrastructure spending has continued since 2012, with two further projects in initial phases, including the approximately 27-km D4 motorway around Bratislava and a hospital in the Patronka section of the city. The latter will represent the first PPP project in Slovakia's public health system, and is expected to cost between EUR 200 and EUR 500 million. Uncertainty, however, continues to surround the future of these projects. The main reason for previous cancellations by the Slovakian government was that these projects, in their view, could be constructed for less. The projects at the time were under negotiation and final contracts had not been signed. In the context of the global economic downturn, public authorities in Slovakia – as elsewhere – had to deal with debt crisis, with the government continuing to demand value for money as price remains king.

By way of illustration, two large construction companies in the country, both heavily engaged in infrastructure development, became insolvent in 2015, with both claiming that the prices tendered by the government in 2010-2012 were too low and it became difficult to pay their sub-contractors as a result. There are many in the country that remain unconvinced by these arguments, suspecting fraudulent activity and pointing out that similar projects in Austria and elsewhere in Europe involved costs comparable to those tendered by the 2010-2012 government but did not lead to insolvencies.

The people of Slovakia view the current projects and infrastructure investment as necessary, but the negative publicity concerning previous projects leaves many suspicious of the current

complex model. There is no questioning the public's appetite for infrastructure improvements; however, for PPP to remain a viable solution, pricing inefficiencies will need to be addressed.

Given the scarcity of successful examples of PPP projects in Slovakia, there is no overwhelming public optimism and support for the PPP model in particular, compared to other financing models. That isn't to say there is none at all, especially since PPP schemes although indisputably complex and costly – represent a flexible tool. There is not enough of a positive track record at the moment, but if pricing was to improve, PPPs have the potential to meet the growing demand for infrastructure improvements.

With respect to Slovakia's infrastructure sector, there are great opportunities, since important investments are expected. Roads and hospitals remain a priority for Slovakia as these are the areas most in need of improvement. But if the PPP model does prove to be a success in the coming years, there are other areas that could benefit as well, including education facilities and energy projects – all of which lack adequate investment and struggle to keep up with public demand.

Given the complexities and obstacles in recent years, PPP remains an interesting area, although it can be challenging for lawyers to get involved and probably will not provide enough work to justify all firms making it the foundation of their practices. The challenge is to get on the moving train, get one's foot in the

door, and establish PPP capabilities and brand in a blooming market.

The future of PPP and infrastructure in Slovakia is far from certain, but the lessons are there to be learned and opportunities to be exploited. Attitudes about costs could change, and if economies across Europe improve in the coming years, we could see PPP's potential realized, but it is too early to get excited.

Peter Kubina, Partner, Dentons

Slovenia

PPP Opportunities for Slovenia: The Divaca-Koper Rail Project



As its key infrastructure project, the Slovenian government is keen to promote the expansion of the port of Koper as a competitive northern Adriatic container port and logistics hub, but further development of the port depends greatly on the development of improved transport links and freight rail systems between the inlands

Rojs, Peljhan, Prelesnik & partners is one of the leading law firms in Slovenia, providing services to legal entities, for more than 20 years now. The firm has been continuously ranked as a top-tier law firm in Slovenia by all the leading legal directories – Chambers and Partners, IFLR1000 and Legal 500. At the forefront of the firm's business are M&A transactions, joint ventures, due diligence, capital market transactions, banking and finance, general corporate & commercial law, competition law, labor law, infrastructure and construction, PPP & public procurement, real estate transactions, insolvency law, litigation and dispute resolution.

The firm's team consists of internationally oriented lawyers who have either gained international working experience or attained a postgraduate degree abroad. Lawyers understand clients' needs and offer high standard services to long-term clients active in different economic sectors such as automotive industry, banking & finance, technology, life sciences, construction, infrastructure, tourism, media and retail.

In 2014 Law firm Rojs, Peljhan, Prelesnik & partners has become part of the new regional alliance, TLA Top-tier Legal Adriatic, which was founded by 6 individual top ranked law firms from Slovenia, Serbia, Croatia, Bosnia and Herzegovina, Montenegro, and Macedonia in order to provide clients with full legal support in the scope of multi-jurisdictional projects. Members of the TLA association operating in Adriatic region have a wide reputation among clients, recognized both locally as well as internationally, immense legal knowledge and are also known for their outstanding achievements by legal global directories. They all share a common vision for prompt, complete and cost efficient legal services when it comes to establishing, building and maintaining clients' presence in the Adriatic region.

ROJS, PELJHAN, PRELESNIK & PARTNERS

TLA Top-tier Legal Adriatic

and the coast. The Divaca-Koper rail section forms a pivotal part of this plan.

The cost for a second 27.1-km Koper-Divaca railway line, which would facilitate a greater flow of goods from coastal to inland areas and abroad, has been estimated at around EUR 1.3 billion, and Slovenia expects to receive funding from available EU sources and other private and/or domestic public sources. To obtain this funding, the Government appointed an inter-ministerial working group to propose a set of possible forms of public-private partnership (PPP). The inter-ministerial group's conclusions on plausible PPP models for the biggest rail project in Slovenia are expected to be published in October or November, 2015. In the meantime, the findings of the International Transport Forum at the Organization for Economic Cooperation and Development (ITF/OECD) – mandated by the Ministry for Infrastructure to prepare a risk assessment study of the Divaca-Koper rail project, including a study on possible models of PPP – have already been revealed to the public.

The ITF study, which reviewed financial, technical, social, and economic aspects of the investment and related risks, concluded that the project for the construction of the second rail line carries a high level of risk, especially considering the financial constraints of the state. Against this background, the conclusions of the ITF study as to the most viable financing option were twofold. First, the most financially promising option for the realization of the rail project is a demand-based PPP, in which both the second track and the port would be concessioned with demand risk borne by the private party. In this model, the ITF noted, in order to achieve full financial cost recovery, the PPP would require important government support. Thus, as a more economically sensible solution in the short-term, the ITF suggested a completely new approach: the construction of an off-port/inland terminal – most likely in the town of Divaca. The off-port terminal concept would enable undisturbed and accelerated throughput growth (particularly of containers) and thus accelerate the growth of the port. This would allow the construction of the second rail line to be postponed until it becomes more economically viable, and in the short term would be more likely to attract private investors, given that the maximum expected cost for the construction of the off-port terminal would be in the range of EUR 50 million.

Although this second option – the inland off-terminal concept – could be a good solution, it appears that the government is firm in its intention to construct a second rail line, while considering possible measures to address financial concerns related to the project. The Ministry mentions increasing the funding obtained from EU sources such as the CEF, for instance, which may be possible, and/or constructing a strictly freight rail system (i.e., not a passenger-based system), and thus minimizing expenses. The government's decision to focus its efforts towards realizing Slovenia's most vital rail project comes as no surprise, following more than a decade of government feasibility studies and the severe capacity problem with the existing rail infrastructure placing further development of Port Koper at risk.

In light of the announced intention of the government to continue the Divaca-Koper rail project, it is expected that the public

procurement for the tendering of a detailed engineering review of project cost and design solutions as well as possible rationalization and optimization of the project will be announced this month. It will include verification of prices and the total value of the project in relation to the current market situation; verification of adequacy of technical solutions and possibilities for rationalization and optimization; and a catalogue of anticipated risks during construction. Second, with regard to the PPP models found as most appropriate by the inter-ministerial group, a tender is expected to be opened this month to preliminarily assess the interest of private investors for individual PPP forms, with the ultimate goal of finding the most suitable private investor by the end of 2016.

*Robert Prelesnik, Senior Partner,
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Ukraine

Ukraine: Steps Towards Efficient PPP Legal Regime



Ukraine's current deep political crisis combined with the armed conflict in the East, the occupation of Crimea, and years of extreme corruption have severely depleted the country's reserves. Technically outdated and worn out infrastructure (roads, railways, sea ports, centralized heat and water supply systems, etc.) require significant capital, which obviously can be provided not only by state and local budgets but also by private investors.

The experience of developed jurisdictions shows that "public-private partnerships" ("PPPs") succeed where well-defined and efficient legal regimes create a solid ground for combining significant investment, intellectual, and innovative resources. And indeed, the initial legislative basis for PPP regulation in Ukraine was enacted in the late 90s with the adoption of laws governing concessions, including in the area of toll road construction. The next step in PPP regulation was taken by the Parliament in 2010, when the separate PPP Law was adopted.

By and large, this PPP Law sets forth the basic "rules of play" for PPP projects in Ukraine. It defines a public-private partnership as a cooperation between state authorities, local governments (public partners), and private entities or individual entrepreneurs (private partners), performed under the procedure established by the PPP Law and other enactments. It requires that the duration of a PPP project may not be less than 5 years and may not exceed the threshold of 50 years. It says that PPPs should mainly be resorted to in roads and railways construction; gas, heat and energy supply; healthcare; tourism; and recreation. Finally, it says that joint activity agreements and concession agreements are deemed PPP agreements.

Although the framework has been in place for several years

now, historically, the practical implementation of PPP projects in Ukraine has always been hindered by insufficient political will, as well as the lack of understanding of how PPP works from the state and local officials' side. Among the legal obstacles to PPP development in Ukraine have been: (i) the prohibition against transferring a property used in a PPP project into a private partner's ownership for the term of the PPP agreement; (ii) a lack of regulation of a step-in in case of a private partner's non-performance; (iii) cumbersome and time-consuming procedures for obtaining permits, licenses, and other approvals; (iv) a lack of clarity as to participation in a PPP project of a company created by the tender winner; and (v) lack of a mechanism for granting state guarantees. This list of obstacles is hardly exclusive.

The current Ukrainian government seems more PPP-oriented, however, and clearly understands the necessity of attracting private investments. In September 2015 the Parliament of Ukraine sent a draft law on removal of regulatory barriers for PPP development ("Draft Law") for a second reading.

If implemented in its current form, the Draft Law should positively influence PPP governance. First, it allows the transfer of real estate into a private partner's ownership for the term of a PPP agreement. This, in turn, should bring about the opportunity to raise more project financing, since having a real property in ownership would allow a private partner to use it as security of its obligations under such financing.

Second, it partially regulates the step-in of a new private partner. The circle of entities allowed to step in, however, is limited to institutions which extend financing for the relevant PPP project.

Third, the Draft Law entitles a public partner in a PPP to purchase goods and services from a private partner without conducting a mandatory public procurement procedure. This legal development is certainly positive considering how long and burdensome public procurement procedures can be in Ukraine.

To provide additional comfort to investors, the Draft Law also suggests wider guarantees against adverse changes of law, but at the same time exempts application of this stability clause in the tax, customs, and currency-control areas. Finally, PPP tender winners will be allowed to establish a separate legal entity solely for the purposes of PPP project implementation. This should solve the current problem of holding companies not having the right to participate in PPP tenders with the understanding that they will assign the PPP project – should they win the tender – to their Ukrainian subsidiary.

Introduction of an efficient and well-defined PPP legal regime is undoubtedly challenging and time-consuming, and it can only be tested in practice. But this should be done sooner rather than later. Ukraine will need extensive investment to rebuild its Eastern cities and to get its economy back on the right track. This is why all legal developments in the PPP area are aimed at creating a favorable investment climate and PPP marketplace and ensuring that foreign investors, despite the difficult political situation, invest in Ukraine.

Serhiy Piontkovsky, Managing Partner, Baker & McKenzie Kyiv

Lithuania

PPP In Lithuania



The topic of public and private partnerships (PPP) in Lithuania has always attracted a great deal of attention. National public infrastructure, though tremendously improved over the last few decades, still requires considerable investment. In the past, EU Structural Funds enabled governmental and municipal institutions to make investments in the improvement of infrastructure by straightforward procurement of construction works or goods. The provision of public services or the maintenance of infrastructure was only rarely entrusted to the private sector. Reasons ranged from the lack of a reliable legal framework, to the fear that the profit motive would drive the prices for public services, to the fear of getting tied up in lengthy PPP procedures and complicated agreements. Nevertheless, to date about 40 PPP projects have been implemented, with 36 of them being concessions, and the rest private finance initiatives. Most of the projects have been implemented at the municipal level and in the area of service provision.

Available EU Structural Funds as well as public finances do not cover existing needs for improvement in public infrastructure in various sectors. The public calls for more efficiency in managing public finances and improvement of the quality of public services. Private business is willing to assume more long-term obligations instead of short build-and-deliver type projects. Political support for PPPs has grown during recent years. All of these provide a stable basis for more PPP projects to be launched in the future.

Regulatory Framework and Main Aspects



A study conducted by the EBRD in 2012 found that the PPP legal framework in Lithuania is highly compliant with the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2001) and best practices, as well as working with medium effectiveness in practice. The most

important laws for PPP projects are the Law on Concessions, the Law on Investment, the Law on State and Municipal Property, and the Public Procurement Law, as well as the Government's guidelines on PPPs. Recent amendments to the Law on Investment have provided for the right of the private partner to initiate a PPP project. Amendments to the Law on Concessions will ensure further compliance with EU legislation, providing more unified regulation. The preparation of PPP projects is strongly supported by a centralized structure consisting of two

governmental agencies: Invest Lithuania and the Central Project Management Agency (CPMA). Invest Lithuania focuses mainly on the private sector and investors, helping them to understand the system and to communicate with public institutions, whereas the CPMA acts as a PPP competence center, providing training, consultations, and support for the public sector in preparation of investment projects, tender documentation, and selection of a private partner.

Sectors eligible for PPPs are energy, railway network, transport infrastructure, waste management, health care, telecommunications, tourism and leisure, education, and other areas upon specific approval.

The PPP process and its length depend on the type of the project, regardless of whether the PPP project is implemented with a governmental or municipal institution.

Pipeline and Financial Support

PPP projects require considerable homework from both the implementing public institution and the private investor. A clearly established pipeline and plans communicated well in advance strengthen chances to attract solid and experienced private investors and partners. A successful project (such as a street lighting project) in one municipality may be multiplied in others, making the process less costly and more efficient. The value of current PPP project pipelines listed on the websites of Invest Lithuania and the CPMA is estimated at over EUR 250 million. The projects include the Vilnius-Utena Road Reconstruction, the Via Baltica Road Section Expansion, the Vilnius City Street Lighting Modernization, the Vilnius City Street Resurfacing, the Marijampole Social Housing, five police stations in Lithuanian Cities, prisons in Vilnius, Klaipeda, Panevezys, and Siauliai, and the Vilnius Multifunctional Complex. Recently, our firm has been consulted by the Lithuanian Road Administration on the “Implementation Project of the Palanga Bypass Construction and Maintenance” PPP project and is currently involved in a PPP project for the Development and Maintenance of the Infrastructure of Courts Operating in Vilnius.

The Government took another important step by addressing the risks associated with the financial reliability of the public sector, especially municipalities. UAB Viesuju Investiciju Pletros Agentura, a state-owned company, used the EU Structural Funds to set up the Energy Efficiency Fund, which aims to provide financial instruments for the renovation of central government buildings (in the form of preferential loans) and street lighting modernization projects (in the form of guarantees). Initially the fund will manage EUR 79 million, with up to EUR 65 million provided for the modernization of central government buildings and up to EUR 14 million for guarantees in street lighting modernization projects. In the future, available funds will be increased, leveraging both institutional investors and private funds. The recycling nature of the funds will allow for returned funds to be re-invested in the future.

Given the consistent support for PPP projects at the governmental level and the increasing availability of EU funds to sup-

port PPP initiatives, it can be reasonably expected that public competence in preparing and conducting PPP projects will stabilize and grow, enabling more public infrastructure projects to be developed through PPPs.

Dainius Stasiulis, Partner, and Neringa Grazinyte, Associate Partner, Tark Grunte Sutkiene

Bosnia and Herzegovina

Bosnia and Herzegovina's Road to PPP – The Corridor 5-C Example



Every country strives to achieve well-developed, efficient, sustainable, and safe road and transport infrastructure. The state of infrastructure indicates the level of a country's development. At the same time, its development is a precondition for economic, commercial, administrative,

and cultural growth and prosperity.

The largest and most significant transport infrastructure project in Bosnia and Herzegovina is the construction of the highway within the Corridor 5-C (branch “C” of the fifth Pan-European corridor).

Some explanation may be useful. At the second Pan-European transport conference, held on Crete in March 1994, the European Union specified its main goals in the area of infrastructure. Ten Pan-European transport corridors were defined at the third Pan-European transport conference, held in Helsinki in 1997. These corridors are therefore known as the “Helsinki corridors.” Branch “C” of Corridor 5 is 702 km long and runs from Budapest to Ploce, a Croatian port on the coast of the Adriatic Sea, via Osijek and Sarajevo.



The longest part of Corridor 5-C runs through Bosnia and Herzegovina, starting from Svilaj, a town on the Sava River on the country's northern border with Croatia, and running to Bijaca, the southern border with Croatia near the town of Ljubuski. The total length of the Bosnia and Herzegovina

section is 335 km and extends across and connects both state entities – the Federation of Bosnia and Herzegovina and the Republic of Srpska.

Construction of the highway within the Corridor 5-C project is of vital importance for Bosnia and Herzegovina, as it not only aims but in fact is obliged to improve the state of the country's infrastructure in accordance with the Agreement on Stabilization and Association which Bosnia and Herzegovina concluded

with the European Union. The Law on the Highway on the Corridor 5-C adopted by the Parliament of the Federation of Bosnia and Herzegovina back in 2013 defines the highway as public property of interest for Bosnia and Herzegovina and its entities. The highway connects Bosnia and Herzegovina with the European highway network as well as with the ports on the Adriatic coast. Along its route there are several cities which represent administrative, economic, and cultural centers; namely, Zenica, Sarajevo, and Mostar.

The conceptual design and the feasibility study were completed back in 2007, and by March 2015, 92 km of the highway had been completed.

The key issue related to construction of the highway on Corridor 5-C, which led to numerous debates and deliberations, is financing of the construction. Realizing the project requires considerable financial means, and for a transitional country such as Bosnia and Herzegovina which does not have sufficient budgetary resources to fund the whole construction by itself, the financing model is a crucial element for successful implementation of the project.

So far the construction has been financed mainly through credits by the EBRD, the Council of Europe Bank, and the European Investment Bank, with one section financed from the budget of the Federation of Bosnia and Herzegovina. On September 28th, 2015, Public Enterprise Motorways FB&H Ltd. Mostar ("Motorways FB&H"), the entity competent to construct the highway, announced that the EBRD had approved funding in the amount of 60 million EUR for the construction of a new 10 km segment, and that the initiative has been sent to the Government of the Federation of Bosnia and Herzegovina for approval.

However, it has also been announced that certain sections of the highway will be financed through a PPP model. In April 2013, Motorways FB&H signed a contract with the International Financial Corporation to provide advisory services with the aim of successfully implementing a Private-Public Partnership as a construction model of several highway sections. The IFC would conduct its mandate in two phases. The first one would consist of carrying out technical, commercial, legal, and regulatory due diligence for the project and presenting the proposed transaction structure to the Government of the Federation of Bosnia and Herzegovina, while phase two would focus on obtaining the approval of the proposed transaction structure by the Government and the IFC's assistance in implementing an open and transparent competitive bid process to select a private developer for the project.

This model is commonly used worldwide, and it has proved to have numerous positive effects, especially when for countries with limited budgetary investment capacities. However, there is a hindrance to implementation of this model due to the fact that the Federation of Bosnia and Herzegovina still has not adopted the Law on Private-Public Partnership – a necessary legal basis and framework.

The Government of the Federation of Bosnia and Herzegovina adopted the Draft Law on Private-Public Partnership in October 2013, and it has been adopted by both the House of Representatives and the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina. However, due to the specifics of the country's legislative process, more consideration and evaluation remains before its final enactment.

There is no official and concrete indication of the time frame in which the procedure related to adoption of the Law could continue, but we can hope it will happen soon, as Private-Public Partnerships could be the one model which would allow for Bosnia and Herzegovina to avoid further loans.

Adis Gazibegovic, Managing Partner, and Saida Porovic, Associate, Saracevic & Gazibegovic Lawyers

Estonia

The Estonian Public Procurement Market: Future Trends and Changes



A Stable Market With Few Changes

The Estonian public procurement market has been fairly stable and uniform in the last couple of years. While experiencing steady growth, the major trends in the market have remained unchanged. We expect that the consolidation of contracts and a wider spread of joint procurement proceedings, along with the implementation of new EU procurement directives, however, is about to break the ice and bring about some significant changes.

A relatively large number of very small contracting authorities is what sets the Estonian market apart from the bigger economies of the European Union. Despite the country's small size, there are over 200 municipalities with their own local governments, all of which are contracting authorities. Likewise, there are also a large number of small and medium-sized enterprises (SMEs) that according to global standards might even be considered micro-enterprises. It comes as no surprise then that over 50% of procurements have been conducted as "simplified proceedings", falling below EU and national monetary thresholds.

In terms of monetary value, such simplified proceedings only amount to just over 10%. Throughout the years the state itself and the large state-owned enterprises have played an influential role on the market, and their orders have accounted for about two-thirds of the market's value. This is particularly the case with construction and road works, where the state and its enterprises are the most important clients on the market.

What Will the Future Hold?

From a legal point of view, the largest change in upcoming

years will definitely be the implementation of the three new EU public procurement directives (i.e., 2014/23/EU, 2014/24/EU, and 2014/25/EU) in March 2016. As opposed to amending the current Public Procurement Act, to incorporate these directives, the Estonian legislature has opted to enact a brand new one. This is the first major revision of public procurement law since 2007.

For the most part, the revision will carry on the current legislation and solidify the interpretations and principles already expressed in the case law of both the domestic courts and the Court of Justice of the European Union. Nonetheless, the legislative revision will also bring about some significant changes which in our opinion may have a profound effect on the Estonian market.



For some years now, there has been a trend towards the consolidation of contracts and joint procurement. For instance, although previously every ministry procured all of its IT-equipment separately, the Centre of Registers and Information Systems now jointly procures all of such equipment

for the state and its ministries, departments, and agencies. We have also seen an increase in joint procurement by the smaller local governments.

This trend is favored by the new EU public procurement directives and, consequently, also by the new national legislation, and we expect the trend to continue and become more widespread. As a consequence, the aggregate value of contracts will rise, and a fall in the percentage of low-value simplified proceedings is expected.

While joint procurement will no doubt bring savings and more efficiency to the public sector, it might also upset the market. It might limit access to the public procurement market for smaller tenderers, of which there are many. There will be a need to address this problem in the upcoming years if the legislature or the contracting authorities take no immediate steps to remedy this effect. Opening up the market to SMEs has been declared to be among the aims of the new directives. We suspect that the current Estonian trend might work against it.

As a new possibility the new Public Procurement Act is set to give contracting authorities the option of taking a tenderer's fulfillment of previous contracts into account. In recent years, there has emerged a small group of companies who frequently breach procurement contracts and fail to fulfill them. While the high likelihood of future problems is known to the contracting authority, the current Act and its case law offer few if any chances to take this into consideration in subsequent procurement proceedings.

We have high hopes for the new legislation, which would allow contracting authorities to disqualify such repeat offenders.

It would have a broader social and economic scope, especially in the construction market. Such regulation will allow the state, the biggest client, to implement best business practices and influence the market to be more responsible and sustainable in the long run.

There has been a steady rise in fully electronic procurement proceedings. We expect this trend to continue. In 2014, such proceedings accounted for 68.5% of all the procurement proceedings, and most likely we will see this percentage rise towards 75-80% in the following years. Estonia is well placed to take advantage of e-procurement. The country has not only the necessary IT-infrastructure, including the widespread use of digital signatures, but also the willingness of the market to embrace digitalized solutions in everyday business. This allows the contracting authorities to expedite the move towards more efficient and fully fledged e-procurement.

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Albania

Coming Soon: A New Balanced-Out Regulatory Framework for Concessions and PPPs in Albania



The absence of a stable and predictable regulatory framework in Albania undoubtedly accounts for the country's financial instability and stagnant development. The possibility of an upcoming tumble in the national economy calls for reforming one of the most vital national legislative sectors:

concessions and PPPs. The law on concessions and PPPs has been amended several times, in an attempt to harmonize it with respective EU legislation and the needs and trends of the Albanian market. As a result, it has inevitably evolved into a hybrid system that has often created legal deadlocks between investors and the state authorities.

Over the last decade, the Albanian government has opted to allocate the largest part of the state budget to the development of a national infrastructure, leaving niche market sectors without adequate financial support. However, the poor quality of work performed by local and international companies on these projects has created a vicious circle in which large expenditure was required to complete unfinished projects and provide maintenance for existing ones. In order to reverse this unsustainable tradition, the Albanian government started considering the assignment of the country's main highways in concession/PPP to specialized companies that would also undertake subsequent maintenance.

The implementation of a new concession/PPP scheme sets the focus on the Milot-Morine highway connecting Albania to Kosovo. According to a feasibility study conducted almost

five years ago, the operation of the highway would incur toll charges of 5 Euro for passenger vehicles and 10 Euro for transport vehicles. However, the accuracy of the study was strongly contested by the competent authorities and several experts, on the grounds that it disregarded a series of major technical and financial elements, including, inter alia, the previously unsuccessful concession venture of the Tirana international airport, the impact on the personal financial situation of Albanian and Kosovar citizens, the business relationship between the two countries and the comparatively low toll tariffs of 1.5 to 2 Euro currently imposed in the same region. On the technical level, the highway remains under construction, with several issues outstanding, discouraging investors from participating and supporting a partially delivered and under-performing project.

In light of the above, the current concession/PPP contract is intended to effect the construction, upgrade, operation, and maintenance of the highway for a period of 30 years. Although the tender process was initiated in 2014, there have been several delays and postponements from the competent authorities and participating investors, who still seem reluctant to facilitate the procedure. The Ministry of Transport and Infrastructure has provided limited information on investors' rates of return and the special framework that will be implemented for the highway's ordinary users, such as local farmers, small businesses, students, and public clerks, and to date there has been no provision for a toll-free alternative to the highway, as international practice mandates.

Upon the elimination of all socio-technical barriers on the performance and operation of the project, the Milot-Morine highway will be the first large-scale concession/PPP and investment project to be implemented in Albania. With the application deadline for the tender not yet expired, it is not clear whether the scheme will take the form of a concession or PPP. Investors are clearly in favor of a concession arrangement that will secure for them full control of the SPV subsidiary that will own the project; equally, the Albanian government hopes to have the investor make the initial investment and carry out the full management of the project. Moreover, due to the expanding scale of the project and its subsequent public economic impact, the tender procedure will inevitably generate a public debate on the efficiency and sustainability of the possible investment scheme. As a result, the Albanian government will be forced to make a tough decision over the choice between concession and PPP with respect to the project management and maintenance, and a more complicated decision calling for better management of public money and the creation of a fund for the maintenance of the highway.

Besnik Duraj, Partner, Drakopoulos Law Firm



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