



CEE

YEAR 3, ISSUE 4
AUGUST 2016

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 ■ PRIVATE EQUITY IN CEE ■

■ MARKET SPOTLIGHTS: UKRAINE AND ROMANIA ■ INSIDE INSIGHTS ■

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■ CJEU RULES ON LIABILITY OF MARKETPLACE OPERATORS FOR TRADEMARK INFRINGEMENTS ■

■ INTERVIEW WITH RASTKO PETAKOVIC OF KARANOVIC & NIKOLIC ■ THE CORNER OFFICE: RETREATS ■

■ EXPERTS REVIEW: LABOR & EMPLOYMENT ■

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Keeping The Plates Spinning: Metaphorical Considerations



I've been thinking lately about the various audiences we write for (and who often write for us). At the simplest level, of course, we write for, and about, lawyers and the legal industry. We can re-

fine that a bit: We write for business lawyers and the legal industry in Central and Eastern Europe.

But then, quickly, like dough in the oven, that understanding begins to expand.

In fact, we write for three primary audiences: Domestic lawyers with law firms in each CEE country; Foreign and expatriate lawyers either within or outside CEE whose practices bring them into the region; and Senior in-house counsel directing the legal departments of major companies in the region.

But these categories also contain more than is immediately apparent.

Law firms, for instance. There are the giant international firms, with headquarters in London or New York and branches around the world, from Sao Paulo to Beijing, from Johannesburg to Toronto ... and from Moscow to Warsaw to Istanbul to CEE capitals in between. There are increasingly strong regional firms, based often in Vienna or Prague or Belgrade or Moscow or Vilnius, committed to part or all of CEE. And there are strong local firms in each CEE capital, playing their own integral roles in the marketplace. We write for all of them.

In-house counsel as well. With variously defined titles like General Counsel, Head of Legal, and Chief Legal Officer, some of them focus on their employers' business activities in one country, some in a specific region, and some all over the globe. Each of these roles requires a different focus, a different understanding, a different need for different information. We write for all of them.

There's more. There are lawyers from CEE who obtain LL.M.s at foreign universities and then permanent positions abroad, but who retain a CEE focus – and those who focus elsewhere. There are law firms working in multi-firm networks or associations of different strengths, attempting to

capture as much as possible the strengths of the international law firms without losing their independence and flexibility (and profits). There are those senior legal officers with major companies who somehow manage to remain active in private practice at the same time.

Like the Fibonacci sequence, which expands exponentially as it grows, the more you consider the more you see.

And let me tell you, trying to square that circle – publishing a magazine that covers, illuminates, and informs representatives from all those groups and sub-groups – is a challenge. Regular readers know we regularly include interviews with expatriates and General Counsel, publish articles from and about law firms of all kinds, cover the legal markets across the region, describe the deals and disputes. Those regular readers know that our magazine is content-heavy, with few advertisements.

And we're still trying to find new focuses, new ways to inform. In this issue we introduce the new Corner Office feature, focusing on best practices and tips from Managing Partners at major law firms across CEE about ways they organize, manage, and shepherd their teams to success. Our next issue will introduce another new feature, this time for and about law firm marketing, highlighting the opinions and insights of specialists in the field. We're also planning a recurring feature on new tools and technologies available to law firms and senior in-house counsel, all contributing to the transformational period the industry finds itself in.

But it occurs to me that in our attempts to reach different audiences and entertain/inform many kinds of readers with different expectations and interests, we ultimately reflect the industry we cover. Because the deals on which commercial lawyers in CEE (and this publication, ultimately) depend are about bringing different kinds of entities – large and small, foreign and domestic, sophisticated and rough – together to establish trust, find shared purpose, and reach productive and profitable agreement. Partners and General Counsel alike manage diverse teams with different specialties, expectations, and needs. And everyone's trying to find common ground. It can be like herding cats.

Luckily, I quite like cats.

David Stuckey

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

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Disclaimer:

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

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

Editor's Note: In the Summary of Partner Lateral Moves section of the June 2016 issue we announced that Hasmet Ozan Guner had left the Esin Attorney Partnership in Turkey to form the Guner Law Firm. Although we first reported that story on the CEE Legal Matters website on May 30, 2016, the Esin Attorney Partnership has asked us to clarify that Guner in fact left the firm near the end of 2015.

Guest Editorial: A Maturing Legal Press in CEE



Over the last two decades the London-based legal press has grown into a sector which must have the combined revenue of a top 20 UK firm. It is a success that has proven difficult to replicate in continental Europe, particularly on a regional basis.

When I started working for a law firm, now almost ten years ago, my first instruction was quite clear: Get us coverage in the international legal press. The Central European firm that I was working for had seen a direct competitor taking a lot of the lime light in international publications and directories. Speaking to the partners in my first couple of weeks on the job I soon figured that having a deal covered in *The Lawyer*, *Legal Week*, or the *European Lawyer* was considered the Holy Grail. Although I had been headhunted from Chambers & Partners and according to my CV was a “qualified” journalist, if such a thing exists, I was not really sure how to go about making this happen.

The space these magazines had dedicated to covering international transactions was usually limited to a page a week, so competition with the rest of continental Europe to get your news covered was fierce. Thinking back to my days at university, when as an exercise we were made to write short news items on the basis of press releases,

I recalled that press releases had to catch the reader’s attention and had to focus on bringing something newsworthy rather than simply be pushing out a marketing message. My press releases would have eye-catching headlines and interesting quotes that would be ready made to be copy-pasted straight into a front page article.

I was quite satisfied with the result – an increase in clippings – until a befriended editor at one of the legal directories in London pointed me to an editorial piece in *The Lawyer* which somewhat ridiculed the change in style and word play in press releases of a certain CEE firm. I decided it was better to keep quiet about this and tuned down my releases a bit (the coverage of the firm did not decrease after that so I had clearly made my mark with my somewhat eccentric start).

While working at Chambers & Partners I had picked up the odd copy of *The Lawyer*, but I hadn’t appreciated the full extent of the legal trade press until I began working at a law firm and was confronted with a string of advertising sales people of magazines such as *Managing IP*, *IFLR*, *Global Arbitration Review*, *Global Competition Review*, *Commercial Dispute Resolution*, the *In-house Lawyer* and not to forget the *Law Society Gazette*, to name but a few.

In addition to these magazines, there were publications with more room for reporting on continental firms, most notably the *European Lawyer* and *TopLegal International*, neither of which exist today. One of their main problems, in my view, was that they never became more than extended versions of the single international page and regular country focus articles that the UK-based magazines already had. By focusing on a single market or highlighting a particular practice in each issue they could only please (a small) part of their readership each month. Meanwhile, their UK counterparts had moved beyond the assumption that lawyers pay to read about themselves and started to

approach law firms as complete businesses by dedicating more editorial space to strategy and key law firm support functions (in its upcoming Business Leadership Awards *The Lawyer* has even introduced a category for PAs!).

Legal media in CEE have a lot of catching up to do in that respect. But we are starting to see change happen in some of our local markets. Earlier this year the Czech legal magazine *Právní radce* organized a proper conference for lawyers, with foreign experts coming to speak about developments that would affect law firms and in-house counsel alike. Jaap Bosman came to present his book *The Death of a Law Firm*, which predicts the collapse of many international law firms in the years to come, while consultant Christoph Vaagt came to speak about the remarkable changes that in-house departments have undergone in recent years. Maybe even more remarkable, with their annual GC Summit CEELM is providing a platform where wider issues affecting legal in-house functions and private practitioners are discussed on a regional level in a format that previously was only seen in the UK or (more rarely) in local markets on a single country basis.

As David pointed out in his editorial in the last issue of *CEE Legal Matters*, he and Radu are doing a lot to make a magazine that will please both private practitioners and in-house counsel and domestic and international law firms in CEE. They are going beyond what previous attempts at creating a truly international legal publication have done and are continuously looking to make further improvements. I believe that they have got what it takes to succeed, ensuring that we will (finally) have a lasting and reliable truly regional legal publication in CEE.

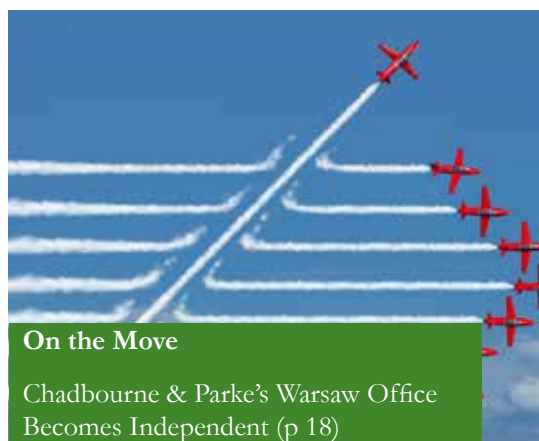
Erik Werkman, Head of BD and Marketing, CMS Prague

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If you like what you read in these pages (or even if you don’t) we really do want to hear from you!

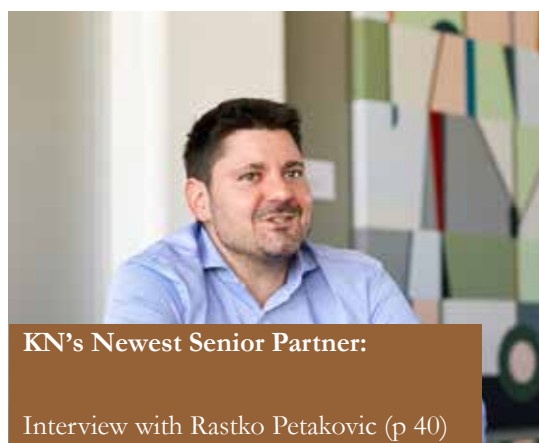
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Letters should include the writer’s full name, address and telephone number and may be edited for purposes of clarity and space.



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Legal Ticker: Summary of Deals and Cases

Full information available at: www.ceelegalmatters.com

Period Covered: June 13, 2016 - August 17, 2016

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
21-Jun	Eckert Fries Prokopp; Wolf Theiss	Wolf Theiss advised Vis Mundi and Levant Capital in their purchase of a 49% stake in Power Horse Energy Drinks GmbH. Eckert Fries Prokopp advised Power Horse.	N/A	Austria
23-Jun	Fellner Wratzfeld & Partner	Fellner Wratzfeld & Partner advised SPAR Österreichische Warenhandels-AG on the acquisition, by way of tender proceedings, of 27 shop locations from the bankrupt estate of Zielpunkt GmbH.	N/A	Austria
29-Jun	Binder Groesswang; Schoenherr	Schoenherr is representing Cubic (London) Limited on a public takeover of all shares not held by San Gabriel Privatstiftung, T.R. Privatstiftung, or the other core shareholders in C-QUADRAT Investment AG, an independent asset management company listed on the Vienna stock exchange. Binder Groesswang advised Talanx on the sale of its 25.1% stake in C-Quadrat to Cubic Limited.	N/A	Austria
7-Jul	Herbst Kinsky	Herbst Kinsky advised investors aws Grunderfonds (Austria), Axel Springer Digital Ventures (Germany), Mairdumont Ventures (Germany), and Russmedia Digital (Austria) on a financing round for the Viennese start-up Zizooboats GmbH.	N/A	Austria
11-Jul	Wolf Theiss	Wolf Theiss advised Dynacast, a global producer of complex precision parts, on its acquisition of all shares in the Austrian company Schlieper GmbH from Schlieper Private Trust.	N/A	Austria
12-Jul	Baker & McKenzie; Fellner Wratzfeld & Partner	Baker & McKenzie advised GFKL Financial Services GmbH on its acquisition of IS Group Management GmbH (trading as IS Inkasso Service) from majority shareholder Hannover Finanz and the IS Group's management, which remains in place after the sale. Fellner Wratzfeld & Partner advised the sellers on the transaction.	N/A	Austria
14-Jul	Cerha Hempel Spiegelfeld Hlawati; Gowling; Gowling WLG; Taylor Wessing	Cerha Hempel Spiegelfeld Hlawati, working in association with Gowling WLG, advised the Convergys consumer management company on its EUR 123 million acquisition of buw, Germany's largest service provider in the customer care industry in private ownership. Taylor Wessing advised sellers Karsten Wulf and Jens Bormannon on the deal.	EUR 123 million	Austria
20-Jul	DLA Piper; Doralt Seist Csoklich; PHH	DLA Piper advised Playtech on its acquisition of a 90% stake in Best Gaming Technology (BGT) for EUR 138 million, from majority shareholder Global Bet Holding GmbH (GBT). The remaining 10% will be retained by Armin Sageder, BGT's founder and CEO. Doralt Seist Csoklich advised Sageder and BGT on the deal, with PHH advising GBT.	EUR 138 million	Austria
27-Jul	Freimuller/Obereder/Pilz; KSW; Schoenherr	Kunz Schima Wallentin advised the PremiQaMed Group on its acquisition of a majority interest in Goldenes Kreuz Privatklinik Betriebs GmbH from Österreichische Gesellschaft vom Goldenen Kreuze. The sellers were advised by Freimuller/Obereder/Pilz, while the anti-trust procedure was managed by Schoenherr.	N/A	Austria
29-Jul	Wolf Theiss	Wolf Theiss advised Eurazeo Patrimoine on its acquisition of 85 hotels operating under the Ibis Budget, Ibis Styles, Mercure, Novotel, and Pulman brands from AccorHotels and other investors.	EUR 500 million	Austria
4-Aug	Binder Groesswang	Binder Groesswang has advised Volksbank Oberes Waldviertel and Volksbank Niederösterreich on the merger of the banking operations of the two banks.	EUR 166 million	Austria
10-Aug	Chiomenti; Linklaters; Schoenherr; Wolf Theiss	Schoenherr, working with Italy's Chiomenti law firm, advised HETA Asset Resolution AG ("HETA") and its subsidiary HETA Asset Resolution GmbH on the sale of Heta Asset Resolution Italia S.r.l. ("HARIT"), including all outstanding loans granted by HETA to HARIT, to an alternative investment fund advised by Bain Capital Credit, LP. Wolf Theiss and Linklaters advised Bain Capital on the transaction.	N/A	Austria
11-Aug	Herbst Kinsky	Herbst Kinsky advised Heliavis AG throughout its extended Series C financing round with prominent foreign investors.	N/A	Austria
16-Jun	Kunz Schima Wallentin; Lumsden and Partner	Kunz Schima Wallentin advised the Pfeifer Holz Group on its acquisition of the Czech Republic's Holzindustrie Chanovice s.r.o., a subsidiary of Germany's Haas Group. The Haas Group was advised by Lumsden and Partner.	N/A	Austria; Czech Republic
27-Jul	Schoenherr; Wilson & Partners	Wilson & Partners advised Markland Holdings Limited on its sale of two multifunctional buildings in Prague to the VIG Fund, an Austrian real estate investor that was represented by Schoenherr.	N/A	Austria; Czech Republic
5-Aug	Knoetzel; Wolf Theiss	Wolf Theiss and Knoetzel successfully represented the Austrian State Printing House before the International Arbitral Centre of the International Chamber of Commerce in Paris in a breach of contract claim against the Republic of Kosovo.	EUR 5 million	Austria; Kosovo
1-Aug	Gleiss Lutz; Kirkland & Ellis; Schoenherr	Schoenherr, working alongside lead counsel Gleiss Lutz, advised the New York private equity fund Lindsay Goldberg on its acquisition of the Schur Flexibles Group from Capiton AG and its management. Kirkland & Ellis advised sellers on the transaction, which remains subject to approval by the antitrust authorities.	N/A	Austria; Poland; Slovakia
11-Aug	Bredin Prat; Fangda; Hengeler Mueller; Mori Hamada; Paul Hastings; Slaughter & May; Wolf Theiss	Hengeler Mueller was lead counsel to the Chicago-based Filtration Group on its acquisition of the industrial filtration business of the MAHLE Group with Wolf Theiss advising on Polish, Romanian, Hungarian, Austrian, and Czech law aspects of the transaction. Slaughter & May advised in the UK, Paul Hastings in United States, Fangda in China, Bredin Prat in France, and Mori Hamada in Japan.	N/A	Austrian; Czech Republic; Hungarian; Polish; Romania

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
5-Aug	Sorainen	Sorainen Belarus advised Nuance Communications on Belarusian aspects of its acquisition of TouchCommerce.	N/A	Belarus
15-Jul	Peterka & Partners	Peterka & Partners advised Tikkurila Oyj, a Northern European paint company, on the sale of its Ukrainian and Belarusian subsidiaries to OU FarbaHouse, a company established by Tikkurila's local management.	EUR 6.8 million	Belarus; Ukraine
20-Jun	Sajic	The Sajic law firm advised on the EUR 1.1 million transfer of ownership of the Motel Internacional in Banja Luka from Internacional Motel a.d. Banja Luka to the Ciambella freight forwarding company.	EUR 1.1 million	Bosnia & Herzegovina
11-Jul	Kambourov & Partners	Kambourov & Partners advised Maxima Bulgaria (operator of the T-Market supermarket chain) on its acquisition of 12 supermarkets in the REWE Group's Penny chain (which terminated its activity in Bulgaria).	N/A	Bulgaria
15-Jul	Kinstellar; Ropes & Gray	Kinstellar worked alongside global counsel Ropes & Gray advised Baring Private Equity Asia on Bulgarian and Romanian elements of Baring's acquisition of a 35 percent stake in TELUS International.	USD 350 million	Bulgaria
10-Aug	Kinstellar; Loyens & Loeff	Kinstellar advised Arkema SA on the acquisition of the Dutch sealant-and-adhesives maker Den Braven from Egeria, a Benelux buyout house, in a deal valued at EUR 485 million. The transaction was managed in over 25 jurisdictions by Loyens & Loeff, with Kinstellar's team providing local law advice in Bulgaria, Romania, Turkey, and Ukraine.	EUR 485 million	Bulgaria; Romania; Turkey; Ukraine
27-Jun	Kocian Solc Balastik	KSB reported "another success" in its representation of Czech Radio in a long-lasting dispute with the Board of the Financial Directorate on the issue of the right to deduct VAT.	N/A	Czech Republic
6-Jul	BBH	BBH advised Allianz Pojistovna, a.s. on its merger with Wustenrot insurance companies Wustenrot Pojistovna, a.s. and Wustenrot, Zivotni Pojistovna, a.s..	N/A	Czech Republic
12-Jul	Law Office Chamrad - Lausmanova; Randa Havel Legal; Simane	Randa Havel Legal advised the shareholders of the HSI spol. s r.o. and Enlogit s.r.o. technology companies to Unicorn Systems a.s. and Servodata a.s., respectively. Unicorn Systems was advised by the Simane law office, and Servodata was advised by the Law Office Chamrad - Lausmanova.	N/A	Czech Republic
15-Jul	Peterka & Partners	Peterka & Partners advised Atlas Copco on the acquisition of the international business of Schneider Druckluft.	N/A	Czech Republic
18-Jul	PwC Legal; White & Case	White & Case advised Red Group on its sale of The Orchard commercial office park in central Ostrava to Hartenberg Holding. PwC Legal advised Hartenberg on the deal.	N/A	Czech Republic
18-Jul	JSK Law Office; NKL Legal; Toman Devaty Law Firm	JSK represented Ashok Leyland UAE on the ownership transfer of truck manufacturer Avia Ashok Leyland Motors to the Czechoslovak Group. The Czechoslovak Group was advised by the Toman Devaty Law Firm and NKL Legal.	N/A	Czech Republic
19-Jul	Kocian Solc Balastik	Kocian Solc Balastik advised Lumitrix on a joint venture with Y Soft Ventures.	USD 1 million	Czech Republic
28-Jul	Kinstellar; Linklaters; Z/C/H Legal	Z/C/H Legal advised CEM VISION on its acquisition of a 100% ownership interest in CEMOD-CZ s.r.o., the former home and fashion subsidiary of the 3SI Group in the Czech Republic and Slovakia. The seller was advised by Kinstellar in the Czech Republic and Linklaters in France.	N/A	Czech Republic
28-Jul	Dentons; Wilson & Partners	Dentons advised Rockcastle Global Real Estate Company Limited on its acquisition of the Forum Liberec shopping center from the British retailer Tesco via a share deal worth approximately EUR 80 million. Tesco was advised by Wilson & Partners.	EUR 80 million	Czech Republic
1-Aug	AK Dolecek; Wilson & Partners	Wilson & Partners advised Markland Holdings Limited on the sale of the Kotva Shopping Centre in Prague to the PSN Group. AK Dolecek advised the buyers on the deal.	N/A	Czech Republic
11-Aug	Balcar, Polansky & Spol	Balcar, Polansky & Spol. obtained a judgment by the Court of Justice of the European Union in favor of the firm's clients – famous trademark owners including Tommy Hilfiger, Burberry, and Lacoste – against Delta Center a.s., a Czech market hall operator.	N/A	Czech Republic
12-Aug	Weinhold Legal	Weinhold Legal advised ITAKA, the largest travel agency active on the Polish market, on its acquisition of CEDOK, the oldest Czech travel agency.	N/A	Czech Republic
16-Jun	Havel, Holasek & Partners; Kinstellar	Kinstellar advised the shareholders of Quinta-Analytica on the sale of their 75% share in the company to Genesis Private Equity Fund III (GPEF III). Havel, Holasek & Partners advised GPEF III on the transaction.	EUR 80 million	Czech Republic; Slovakia
15-Jun	Sorainen	Sorainen Estonia assisted Betoomeister, an Estonian company involved in manufacturing articles from concrete, cement and plaster, in its acquisition of TM Betoon, a ready-mix concrete provider based in Tartu, Estonia.	N/A	Estonia
16-Jun	Glimstedt; Ellex (Raidla)	Glimstedt advised GreenGas Energy OU on its entrance into a long-term purchase and sale agreement with the aspen pulp mill Estonian Cell AS for biogas to be turned into biomethane. Raidla Ellex advised Estonian Cell.	N/A	Estonia
23-Jun	Eversheds (Ots & Co)	Eversheds Ots & Co advised both buyer Tornator Eesti OU and seller Mestnik on the acquisition by the former of 7,500 hectares of forestland in Estonia from the latter.	N/A	Estonia
23-Jun	Ellex (Raidla); Eversheds (Ots & Co)	Raidla Ellex advised Jaakson & Ko OU on the sale of 100% of shares of Jaaksoni Linnahooliduse OU to Eesti Keskkonnateenused AS. Eversheds Ots & Co. advised Eesti Keskkonnateenused on the deal.	N/A	Estonia

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
7-Jul	Eversheds (Saladzius)	Eversheds Saladzius represented SM VII B.V., a company incorporated under the laws of the Netherlands, on its acquisition of 100% of the shares in the Estonian company AS Starman from shareholders Baltic Cable Holding OU, Com Holding OU, and Polaris Invest OU. The firm represented SM VII during the acquisition process and drafted the notification to Competition Council requesting for competition clearance for the proposed acquisition.	N/A	Estonia
8-Jul	Ellex (Raidla)	Raidla Ellex advised Fifaa AS on the acquisition of British fashion brand River Island shops in Estonia from RIFF OU.	N/A	Estonia
8-Jul	Sorainen	Sorainen advised Northern Horizon Capital on upgrading the fund management company licence of its Estonian arm to an alternative investment fund manager (AIFM) licence and on establishing a new public evergreen closed-ended real estate fund. The Estonian Financial Supervision Authority granted the AIFM license and registered the fund as the Baltic Horizon Fund on May 23, 2016.	N/A	Estonia
15-Jul	Ellex (Raidla)	Raidla Ellex represented Nordecon AS, one of the largest construction groups in Estonia, in a public procurement dispute with Rügi Kinnisvara AS, a real estate service company established by the Republic of Estonia.	N/A	Estonia
18-Jul	Ellex (Raidla)	Raidla Ellex represented the BLRT Grupp and its majority shareholder Algaves against a claim brought by BLRT Grupp minority shareholders requesting dividends pursuant to minutes that reflecting a general meeting of shareholders that, according to Raidla Ellex, in fact had not taken place.	N/A	Estonia
19-Jul	Ellex (Raidla); Primus	Primus advised the Olympic Entertainment Group on its sale of the newly opened Hilton Tallinn Park hotel to a company within the East Capital investment group. Raidla Ellex advised East Capital on the transaction.	EUR 48 million	Estonia
22-Jul	Sorainen	Sorainen's Estonian office advised Amanda V East L.P., the fund managed by Finland-based eQ Private Equity, on an investment (made with BaltCap Private Equity Fund II) into DenCap OU.	N/A	Estonia
2-Aug	Sorainen	Sorainen advised Kindel Reklam, Unicorpo, and Trend on the sale of 50% shareholding in Linna Ekraanid to Ekspress Grupp.	N/A	Estonia
25-Jul	Tark Grunte Sukiene	Tark Grunte Sutkiene represented SIA Enefit, the Latvian subsidiary of the Estonian electricity producer Eesti Energia, in a public procurement dispute before the Procurement Monitoring Bureau with VAS Latvijas Dzelzceļš over the process that led to an electric supply agreement with AS Latvernergo worth EUR 12 million.	EUR 12 million	Estonia; Latvia
7-Jul	Fort; Markvarte/ Lexchange	Fort advised the EFTEN Real Estate Fund III AS on its acquisition of logistics centers in Estonia, Latvia, and Lithuania, from group companies of DSV. Markvarte/Lexchange advised DSV in Latvia.	N/A	Estonia; Latvia; Lithuania
21-Jul	Adlex; Ellex (Raidla); Ellex (Valiunas)	Raidla Ellex and Valiunas Ellex advised Baltic Ticket Holdings on its acquisition of Nacionalinis Bilietu Platintojas in Lithuania and Kvitki Bel in Belarus. The Adlex firm advised the sellers on the transaction.	N/A	Estonia; Lithuania
16-Jun	Vilgerts	Vilgerts advised BPM Capital, a mezzanine investment fund managed from Poland and Estonia, on a financing provided to Optometrijas Centrs SIA for the management buy-out and further development of the company.	N/A	Estonia; Poland
22-Jun	Clifford Chance; (Yegin Cifti Attorney Partnership); Freshfields; Verdi	Clifford Chance and its Turkish arm, the Yegin Cifti Attorney Partnership, advised the QNB Group on its acquisition of the National Bank of Greece's 99.81% stake in Finansbank A.S. in Turkey. Freshfields and the Verdi law firm advised the sellers.	N/A	Greece; Turkey
15-Jun	Dentons; Lakatos, Koves & Partners	Dentons advised German asset manager KGAL Group on its acquisition of Eiffel Square, a major office development in central Budapest, from Europa Capital. Lakatos, Koves & Partners advised Europa Capital on the deal.	N/A	Hungary
22-Jun	Allen & Overy; Dentons; DLA Piper; K&L Gates	Allen & Overy advised Erste Group Bank AG on the investment of the Hungarian State (represented by state-owned entity Corvinus Zrt.) and the EBRD in Erste Bank Hungary Zrt. DLA Piper and K&L Gates advised the EBRD and Dentons advised the Hungarian State on the deal.	HUF 77.78 billion	Hungary
7-Jul	CMS; Dentons	CMS advised MOL Plc. on a EUR 615 million revolving credit facility provided by a group of ten banks. Dentons advised the banks on the facility, which was coordinated by BNP Paribas and Erste Group Bank AG, with Erste Group Bank AG acting as the Facility Agent.	EUR 615 million	Hungary
29-Jul	CHSH Dezso & Partners; Oppenheim	CHSH Dezso & Partners acted as advisor to Air Liquide on the sale of its Hungarian subsidiary to the Messer Group. Oppenheim advised the Messer Group on the deal.	N/A	Hungary
26-Jul	Tark Grunte Sukiene	Tark Grunte Sutkiene represented the investment brokerage firm Amenda Markets AS IBS, licensed in Latvia, on its successful application for authorization from the Financial and Capital Market Commission to provide investment services and collateral services in the European Union and the European Economic Area.	N/A	Latvia
13-Jun	Primus	Primus acted for LPKS LATRAPs in the increase of its shareholding in dairy producer Latvijas Piens SIA. The firm is also representing LPKS LATRAPs in the application for merger clearance from the Latvian competition authority.	N/A	Latvia
21-Jul	Tark Grunte Sukiene	Tark Grunte Sutkiene assisted Norvik Banka AS during its preparation to register the Norvik CIS Fixed Income Absolute Return Fund open alternative investment fund with the Financial and Capital Market Commission.	N/A	Latvia

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
25-Jul	Eversheds (Bitans)	Eversheds Bitans supported the Nordic and Baltic high-tech manufacturing company AS HansaMatrix on its private placement and associated equity fund raise and subsequent listing on the Baltic Main List of Nasdaq Riga Stock Exchange.	N/A	Latvia
27-Jul	Hedman Partners	Hedman Partners was chosen by B2B tech accelerator Startup Wise Guys to provide legal advice on expanding the company's operations into Latvia.	N/A	Latvia
28-Jul	Sorainen	Sorainen assisted Oberthur Technologies Latvia with various employment law matters, including updating employment contracts, drafting employment termination documents, and representing the company in court against a former employee's claim for payment of compensation for complying with an alleged non-compete obligation after termination of employment.	N/A	Latvia
1-Aug	Sorainen	Sorainen advised Storent on everyday employment matters, including employment termination and employment of management board members, as well as reviewing and updating Storent's internal policies and regulations.	N/A	Latvia
2-Aug	Sorainen	Sorainen advised Baltic Horizon on its purchase agreement to acquire an office building in Riga from German developer Bauplan Nord, which was advised by bnt.	N/A	Latvia
3-Aug	Sorainen	Sorainen provided legal assistance to reputation management company Lejina & Sleiers during its organization of the "Silicon Valley Comes to the Baltics" technology start-up conference.	N/A	Latvia
3-Aug	Eversheds (Bitans); Timurs Siks	Eversheds Bitans advised Clear Energy Holdings S.A. on the sale of an approximately 50.04% stake in NewFuels RSEZ SIA, the largest producer of wood pellets in Latvia, to Andreas Tserni, who now owns 100% of the company's shares. The buyer was advised by sole practitioner Timurs Siks.	N/A	Latvia
8-Aug	Sorainen	Sorainen provided pro bono legal assistance to the newspaper Bauskas Dzive in its fight with the Iecava Regional Council over its publishing of articles and advertising in the municipal newspaper Iecavas Zinas.	N/A	Latvia
16-Aug	Akin Gump; BPV Grigorescu Stefanica; Ickovics Neustadter Clark Sabag & Co.	BPV Grigorescu Stefanica advised the Latvian financial group 4Finance on its acquisition of the financial group TBIF Financial Services from Kardan Financial Services NV. The deal was coordinated globally for 4 Finance by the Moscow office of Akin Gump, with Ickovics Neustadter Clark Sabag & Co. advising Kardan NV on the transaction.	N/A	Latvia
4-Jul	Ellex (Valiunas)	Valiunas Ellex advised Danske Bank on the signing of a lease of a 12,000 square meter office building from real estate company M.M.M. projects.	N/A	Lithuania
8-Jul	TVINS	TVINS advised UAB Albineta on the conclusion of a franchise agreement involving permission to use Albineta's "Thierry kepykla" trademark.	N/A	Lithuania
12-Jul	TVINS	TVINS advised the investment management company Lords LB Asset Management UAB regarding the setting up of a new closed-end fund intended for investors of its Energy and Infrastructure SME Fund.	N/A	Lithuania
14-Jul	TVINS	TVINS represented UAB Agrosfera on its purchase of real estate and entrance into a state-owned land plot lease.	N/A	Lithuania
14-Jul	Sorainen	Sorainen assisted Enerstena UAB on developing a transfer pricing policy for the company.	N/A	Lithuania
15-Jul	Primus	Primus successfully represented the Lithuanian Football Federation (LFF) in an arbitration before the Court of Arbitration for Sport (CAS), based in Lausanne, Switzerland.	N/A	Lithuania
19-Jul	Tark Grunte Sukiene	Tark Grunte Sutkiene advised AB INVL Technology on its transformation into a special closed-ended investment company.	N/A	Lithuania
21-Jul	Fort	Fort represented UAB Creditinfo Lietuva in an administrative case heard by the Supreme Administrative Court of Lithuania, in which the Court decided that the data published by users of the Facebook social network may be used for assessing their creditworthiness.	N/A	Lithuania
28-Jul	Glimstedt	Glimstedt reported that a judicial panel of the Lithuanian Supreme Administrative Court had granted a claim filed by Lithuanian Jews now living in South Africa requesting that the Lithuanian Interior Minister's decision to refuse their application for restoration of Lithuanian citizenship be revoked and that their application for dual citizenship reinstatement be reconsidered by the Ministry of the Interior.	N/A	Lithuania
29-Jul	BNT	BNT's Lithuania office supported Martin Mucha, the German insolvency administrator, on the sale of the business of the insolvent German Kurz group.	N/A	Lithuania
11-Aug	Primus	Primus advised the Lithuanian football club FC Trakai and advised Ernestas Setkus, the Lithuanian national team goalkeeper, on separate transfer matters.	N/A	Lithuania
22-Jun	Glimstedt; Ellex (Raidla)	Glimstedt advised distribution and logistics provider Sanitex on the acquisition of 100% of shares in Agora DC from Landcom, a company engaged in warehousing, transportation, and other logistics services. Raidla Ellex advised Landcom on the deal.	N/A	Lithuania; Estonia
10-Aug	Zivkovic Samardzic	Zivkovic Samardzic obtained competition clearance in Serbia, Montenegro, and Macedonia for Petrol d.d. Ljubljana's acquisition of control over Slovenian natural gas trader Geoplina.	N/A	Macedonia; Montenegro; Serbia; Slovenia
3-Aug	Turcan Cazac	Turcan Cazac successfully applied to the Moldovan Competition Council for clearance in Moldova of the proposed acquisition by Anheuser-Busch InBev SA/NV of SABMiller plc.	N/A	Moldova
6-Jul	Hogan Lovells; Marjanovic Law	Marjanovic Law acted as local Montenegrin counsel to Hogan Lovells Dubai in advising the Investment Corporation of Dubai on its purchase of the Porto Montenegro marina.	N/A	Montenegro
29-Jul	King & Spalding; Schoenherr	Schoenherr secured a win for Montenegro in the state's second investment arbitration, this time against CEAC, a Cypriot Holding Company represented by King & Spalding International.	N/A	Montenegro

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
13-Jun	Greenberg Traurig	Greenberg Traurig advised Bank Pocztowy on the first issue of the bank's bonds, part of the public bond issuance program for individual investors. IPOPEMA Securities was bookrunner and joint lead manager.	PLN 1 billion	Poland
15-Jun	Clifford Chance; White & Case	Clifford Chance represented a syndicate of banks consisting of PKO BP S.A. (agent), Bank Handlowy w Warszawie S.A., Bank BGZ BNP Paribas S.A., Bank Zachodni WBK S.A., HSBC, and ING bank Slaski S.A. in connection with the conclusion of a credit facility agreement with Synthos S.A. White & Case represented the Synthos S.A. Group.	N/A	Poland
16-Jun	Bierc Siwik & Partners	Bierc Siwik & Partners successfully represented PW ETA in public tender proceedings for maintenance services and construction projects on the roads in the areas of the Polish city of Dabrowa Gornicza.	N/A	Poland
16-Jun	Dentons; Hogan Lovells; White & Case	White & Case advised Echo Investment S.A., the Poland-based real estate investment company, on two significant loan transactions, with Hogan Lovells advising the lenders on the one and Dentons the lender on the other.	EUR 317 million	Poland
16-Jun	Chajec, Don-Siemion & Zyto; Gessel	Gessel advised Salmo and its owners on the sale of 100% of Salmo shares to the Fox International Group Limited. Fox International was advised by Chajec, Don-Siemion & Zyto on the deal.	N/A	Poland
20-Jun	Baker & McKenzie; JF Legal	Baker & McKenzie advised the ASBUD Group on the acquisition of land located between the Warszawa Gdanska railway and the Arkadia shopping center in Warsaw from Balmoral Properties. JF Legal advised Balmoral on the deal.	N/A	Poland
21-Jun	Dentons; Gunderson Dettmer Stough Villeneuve Franklin & Hachigian; Orrick; WKB	WKB acted as local Polish counsel and Gunderson Dettmer Stough Villeneuve Franklin & Hachigian was global counsel to Naspers on its USD 15 million investment in the Brainly social learning network. Brainly was advised by Orrick, Herrington & Sutcliffe, with Dentons' Warsaw office advising the company on selected Polish law aspects.	USD 15 million	Poland
22-Jun	Kochanski Zieba & Partners	The European Court of Human Rights allowed an application lodged by the firm on behalf of KZP client Krzysztof Koniuszewski, a journalist from the weekly Auto Swiat magazine, against the Polish Government.	N/A	Poland
27-Jun	Drzewiecki Tomaszek; Trape Konarski Podrecki	Drzewiecki Tomaszek successfully represented the Polish private postal operator InPost Group in opposition proceedings concerning invalidation of trademark protection for the "PACZKOMAT" trademark against Poczta Polska (the Polish National Post). Poczta Polska was represented by Trape Konarski Podrecki.	N/A	Poland
28-Jun	Allen & Overy; Hogan Lovells	Hogan Lovells advised the Nordea Group on its disposal of the Nordea Polish Open-ended Pension Fund to Aegon. Allen & Overy advised Aegon on the deal.	PLN 6.45 billion	Poland
30-Jun	Noerr; Radzikowski Szubielska Wspolnicy	Noerr advised Target Global on a multimillion-dollar investment in ZnanyLekarz sp. z o.o. via subscription for newly issued shares of the increased share capital of ZnanyLekarz sp. z o.o. by a Target Global affiliate. Poland's Radzikowski Szubielska Wspolnicy advised ZnanyLekarz on the deal.	N/A	Poland
30-Jun	Clifford Chance; White & Case	Clifford Chance advised Bank Zachodni WBK S.A. in connection with a credit facility granted to AASA Polska to finance its lending activities. White & Case advised AASA Polska on the financing.	N/A	Poland
4-Jul	DJBW Danilowicz Jurcewicz Biedeki i Wspolnicy	DJBW Danilowicz Jurcewicz Biedeki i Wspolnicy acted as legal counsel in connection with Medicalgorithmics' establishment of a bond issuance program of unsecured bearer bonds denominated in zlotys worth PLN 70 million.	PLN 70 million	Poland
5-Jul	CMS; Norton Rose Fulbright	CMS advised China Everbright International Limited (CEI) on its EUR 123 million acquisition of Novago, a Polish waste management company, from the Abris Capital Partners private equity fund. Norton Rose Fulbright advised Abris on the transaction.	EUR 123 million	Poland
5-Jul	FKA Furtek Komosa Aleksandrowicz	FKA Furtek Komosa Aleksandrowicz advised the China Council for the Promotion of International Trade on the opening of its first representative office in CEE.	N/A	Poland
6-Jul	Dentons; Hogan Lovells	Hogan Lovells advised Globe Trade Center S.A. on its acquisition of the Office Center Neptun in Gdansk and the Sterlinga Business Center in Lodz from Hines. Dentons advised Hines on the sales.	N/A	Poland
6-Jul	Spaczynski, Szczepaniak and Associates; Weil, Gotshal & Manges	Poland's Spaczynski, Szczepaniak i Wspolnicy law firm advised Dirlango Trading & Investments Limited on private equity fund Innova Capital's investment into Dirlango portfolio companies Netsprint S.A. and LeadR Sp. z o.o. consisting of the acquisition and subscription for a total of 48% of their shares. Weil, Gotshal & Manges advised Innova Capital on the deal.	N/A	Poland
7-Jul	Clifford Chance; Dentons; Norton Rose Fulbright	Norton Rose Fulbright advised ING Bank on a loan facility provided to Hines Poland Sustainable Income Fund for the acquisition of a logistics portfolio in Poland from NGBI Private Equity. Clifford Chance advised Hines on both the financing and the acquisition, while Dentons advised NGBI on the sale.	N/A	Poland
11-Jul	Gessel; RKKW	Gessel represented the owners of the FitFabric chain of fitness clubs on the sale of its six clubs to the Fabryka Formy S.A. subsidiary of Benefit Systems S.A. RKKW – Kwasnicki, Wrobel & Partners advised the buyers on the deal.	N/A	Poland
11-Jul	Greenberg Traurig; WKB Wiercinski, Kwiecinski, Baehr;	WKB advised the holders of the majority of shares in Organic Farma Zdrowia S.A. – including the private equity fund Avallon – on the sale of 63.42% of the share capital (representing approximately 55.65% of the total voting rights in the company) to the Italian company Ecor-NaturaSi. Greenberg Traurig advised EcorNaturaSi on the deal.	N/A	Poland

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12-Jul	DJBW Danilowicz Jurcewicz Biedeki i Wspólnicy; PGNG	DJBW Danilowicz Jurcewicz Biedeki i Wspólnicy advised STK Group on the sale of 100% of STK S.A. shares and 80% of Kolej Bałtycka shares to OT Logistics for PLN 33.1 million. Wrocław-based PGNG advised OT Logistics on the deal.	PLN 33.1 million	Poland
12-Jul	Dentons; Greenberg Traurig	The Warsaw office of Greenberg Traurig represented the US-based Amstar private equity fund and the Warsaw-based BBI Development real estate developer on the bulk sale of 72 residential units to German-fund Catella. Dentons advised Catella on the deal.	N/A	Poland
12-Jul	Laszczuk & Partners	Laszczuk & Partners advised Teradata on Polish matters related to its global sale of its Teradata Marketing Applications business to Marlin Equity Partners.	N/A	Poland
12-Jul	Skadden; WKB Wiercinski, Kwiecinski, Bachr;	WKB assisted Ball Corporation on the sale of 4 subsidiaries in Poland, part of its global sale of subsidiaries to the Ardagh Group. Skadden, Arps, Slate, Meagher & Flom acted as the lead global counsel to Ball Corporation.	N/A	Poland
14-Jul	Oles & Rodzynkiewicz; WKB Wiercinski, Kwiecinski, Bachr	WKB advised the Danish company DAFA A/S on its purchase of 100% of shares in Interchemall sp. z o.o. The Oles & Rodzynkiewicz law firm advised the sellers.	N/A	Poland
14-Jul	DJBW Danilowicz Jurcewicz Biedeki i Wspólnicy; White & Case	DJBW advised PGNiG Termika S.A. on a preliminary agreement to purchase 100% of Energy Company Jastrzebie S.A. shares from Jastrzebska Spółka Węglowa S.A. for PLN 371.8 million.	PLN 371.8 million	Poland
15-Jul	Studnicki Pleszka Cwiakalski Gorski	SPCG successfully represented Socrates Investment S.A. before Poland's Supreme Court in a dispute worth approximately PLN 9 million regarding "the payment of interest by a joint-stock company for a delay in dividend payments due to a declaration of annulment of the shareholders' resolution during the AGM."	PLN 9 million	Poland
18-Jul	Davies Ward Phillips & Vineberg; WKB Wiercinski, Kwiecinski, Bachr	WKB advised MB Aerospace group on its purchase of 100% of the shares in Vac Aero Kalisz Sp. z o.o. from the Canadian parent company Vac Aero International Inc. The preliminary share purchase agreement was governed by Canadian law, and Davies Ward Phillips & Vineberg was the lead counsel to MB Aerospace with respect to that agreement and to other aspects of the transaction governed by Canadian law.	N/A	Poland
19-Jul	Noerr; Vinge	Noerr advised SAF-Holland S.A. on its takeover bid for the listed Swedish Haldex Group. The Vinge firm advised SAF-Holland on Swedish law.	EUR 442 million	Poland
19-Jul	K&L Gates; Wolf Theiss	Wolf Theiss Warsaw advised Consolidated Precision Products Corp. on its successful acquisition of two casting facilities located in Rzeszów, Poland from a business unit of Pratt & Whitney Canada, a subsidiary of United Technologies Corporation. K&L Gates advised UTC on the transaction.	N/A	Poland
20-Jul	Gessel; Oles & Rodzynkiewicz	Gessel advised Zortrax, a 3D printing company, on an investment agreement it entered into with the company Ultro. Under the agreement, Ultro is ultimately entitled to acquire a total of 1.2 million shares of Zortrax, which represents a 15% stake in the company. Oles & Rodzynkiewicz advised Ultro on the transaction.	N/A	Poland
20-Jul	Chajec, Don-Siemion & Zyto	Chajec, Don-Siemion & Zyto advised real estate investor and developer Capital Park Group on setting up a joint venture with the Akron Group in order to modernize the ETC shopping center in the town of Swarzędz, Poland.	N/A	Poland
25-Jul	Weil Gotshal & Manges; White & Case	White & Case advised UniCredit on the sale of approximately 26.2 million ordinary shares in Bank Pekao, the second largest Polish bank, to institutional investors. Weil Gotshal & Manges advised joint bookrunners Morgan Stanley, Citigroup, UBS, UniCredit Bank AG Milan Branch, and Dom Maklerski Banku Handlowego S.A.	EUR 750 million	Poland
26-Jul	Soltysinski Kawecki & Szlezak; White & Case	White & Case advised Bank Zachodni WBK S.A., a member of Santander Group, on indirect financing to guarantee the potential acquisition by the fund FCapital Dutch B.V. of up to 34.29 percent of the shares in AmRest Holdings SE. Soltysinski Kawecki & Szlezak advised FCapital Dutch on Polish matters.	EUR 356 million	Poland
27-Jul	Bierc Siwik & Partners	Bierc Siwik & Partners succeeded in a claim it made before Poland's National Chamber of Appeals on behalf of Saferoad Grawil and Saferoad Kabex against the Poznań Division of the Polish General Directorate for National Roads and Motorways regarding a public tender for year-round, comprehensive maintenance in a segment of Poland's s11 motorway.	N/A	Poland
2-Aug	DJBW Danilowicz Jurcewicz Biedeki i Wspólnicy; Elzanowski Cherka & Wasowski	DJBW Danilowicz Jurcewicz Biedeki i Wspólnicy advised P.H.U. Lokomotiv on the sale of forty-seven locomotives to Industrial Division sp. z o.o. Elzanowski Cherka & Wasowski advised Industrial Division on the sale.	N/A	Poland
5-Aug	Eversheds (Wierzbowski)	With Eversheds as global counsel to Parker Hannifin in the July 1, 2016 acquisition, Wierzbowski Eversheds advised the American engineering company on Polish aspects of its acquisition of the German company Jäger Automobil-Technik GmbH and the Polish company Jäger Automotive Polska Sp. z o.o.	N/A	Poland
8-Aug	Bierc Siwik & Partners	Bierc Siwik & Partners succeeded in its representation of Poland's PORR Polska Infrastructure before Poland's National Chamber of Appeals against the Province Roads Authority Łódź in a dispute involving a public service contract for the expansion of provincial road no. 710 by constructing a bridge across the Warta river in the city of the same name.	N/A	Poland
8-Aug	Magnusson	Magnusson advised a joint venture of Valad and Oaktree Capital Management on the acquisition of four office properties in the Wisniowy Business Park in Warsaw from Peakside Polonia Management.	N/A	Poland
9-Aug	Kochanski Zieba & Partners	Kochanski Zieba & Partners advised the Skanska Group on the acquisition of property in the center of Warsaw from the Borysław Group S.A.	N/A	Poland

TURUNÇ*

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Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
10-Aug	Domanski Zakrzewski Palinka	DZP reported that it served as main advisor and coordinator of the Polish-Swedish team of lawyers and tax and financial advisors on the USP Zdrowie Group's acquisition of the Polish-Swedish Naturell Group.	N/A	Poland
11-Aug	Allen & Overy; DJBW Danilowicz Jurewicz Biedecki I Wspolnicy; Magnusson; P+P Pollath + Partners	DJBW Danilowicz Jurewicz Biedecki i Wspolnicy advised Europol's Renewables GmbH, a member of the VTC Group from Munich, on its acquisition of 62.5% of shares of Bilfinger Mars Offshore Sp. z o.o. from Bilfinger SE. Allen & Overy advised Bilfinger SE on the deal, with P+P Pollath + Partners advising Europol's Renewables on German aspects. Minority shareholder MS Mars was advised by Magnusson.	N/A	Poland
12-Aug	Gessel	Gessel advised Lentex S.A. on the sale of its controlling stake in Novita S.A. to Tebesa S.A., a subsidiary of Israel-based Vaporjet Ltd.	N/A	Poland
13-Jun	Noerr	Noerr advised S&T AG on its takeover of a 52% stake in Gadagroup Romania.	N/A	Romania
23-Jun	Leroy & Asociatii; Suci Popa	Suci Popa announced that it advised Petrofac Solutions and Facilities Support on its acquisition by Expert Petroleum SPV. Leroy & Asociatii advised Expert Petroleum on the deal.	N/A	Romania
8-Jul	Bondoc & Asociatii	Bondoc & Asociatii advised Romanian Fondul Proprietatea on the sale of its full shareholding in E.ON Distributie Romania S.A. and E.ON Energie Romania S.A.	N/A	Romania
13-Jul	Buzescu Ca	Buzescu Ca obtained a victory for Statkraft Markets, a member of the Statkraft Group, in an appeal filed by the Romanian electricity system and transmission operator, Transelectrica, of the lower court's dismissal of its claim of re charges for cross-border electricity trading.	N/A	Romania
20-Jul	Buzescu Ca; Bech-Bruun	Buzescu Ca assisted Danfoss on its acquisition of the two Romanian subsidiaries of Sondex. The Danish Bech-Bruun law firm was global counsel to Danfoss.	N/A	Romania
27-Jul	Allen & Overy; Gabriela Assoum Predescu; Tuca Zbarcea & Asociatii	RTPR Allen & Overy advised Elefant Online and its shareholders, Millennium Gold Resources and the Catalyst Romania private equity fund, on the investment into Elefant Online by the Emerging Europe Accession Fund advised by Axxess Capital and a supplementary investment from minority shareholder Catalyst Romania. Tuca Zbarcea & Asociatii and sole practitioner Gabriela Assoum Predescu advised Axxess Capital on the transaction, which remains contingent on the approval of the Romanian Competition Council.	N/A	Romania
28-Jul	Zamfirescu Racoti & Partners	Zamfirescu Racoti & Partners advised Complexul Energetic Hunedoara, a company fully owned by the Romanian State, on its absorption of Societatea Nationala a Huilei Petrosani, a state company active in the mining field.	N/A	Romania
29-Jul	Suci Popa	Suci Popa successfully represented Enel Investment Holding in an ICC dispute involving claims amounting to over USD 1.2 billion brought by the Romanian government.	USD 1.2 billion	Romania
1-Aug	Dentons; Dinulescu & Maxim; Savin & Asociatii	Dentons structured the transaction and Tuca Zbarcea & Asociatii advised APS Holdings on the acquisition of the first of two Romanian portfolios of non-performing loans, while Dentons, Dinulescu & Maxim, and Savin & Asociatii advised APS Holdings on the acquisition of the second.	N/A	Romania
2-Aug	Bondoc & Asociatii	Bondoc si Asociatii advised Mid Europa Partners on Romanian law aspects of its acquisition of full control over Waberer.	N/A	Romania
9-Aug	Schoenherr	Schoenherr's Bucharest office advised Austrian insurer Vienna Insurance Group on its acquisition of the Romanian operations of the French group AXA.	N/A	Romania
16-Jun	Debevoise & Plimpton; Linklaters	Debevoise & Plimpton advised NLMK on a new USD 700 million, 7-year Eurobond offering, with an annual coupon rate of 4.5%. Linklaters advised Joint Lead Managers Deutsche Bank AG, London Branch, ING Bank N.V., London Branch, J.P. Morgan Securities plc, and Societe Generale.	USD 700 million	Russia
27-Jun	Baker Botts; Orrick	Orrick represented Russian banks Sberbank and VTB as providers of RUB 70 billion in financing for Telmamskaya HPP LLC. Baker Botts advised Telmamskaya HPP on the deal.	USD 1.1 billion	Russia
30-Jun	Vegas Lex	Vegas Lex prepared Russia's first "federal special investment contract" for the Russian Federation and the Russian subsidiary of Germany's CLAAS group of companies.	N/A	Russia
30-Jun	Berwin Leighton Paisner; Goltsblat BLP	Goltsblat BLP, the Russian Practice of Berwin Leighton Paisner (BLP), jointly with BLP advised Irish regional airline Cityjet on negotiating a framework agreement for delivery of 15 firm and 16 optional aircraft, including leasing documentation and engine and airframe support services agreements.	USD 1 billion	Russia
30-Jun	Georgiev, Todorov & Co.; Sidley Austin; White & Case	Georgiev, Todorov & Co., working with Sidley Austin, successfully represented the Russian company Atomstroyexport in a dispute with the Bulgarian National Electric Company (NEC) involving the Belene nuclear power plant before a three-member panel of the International Court of Arbitration at the International Chamber of Commerce in Geneva. NEC was represented by White & Case.	N/A	Russia
30-Jun	FBK Legal	FBK Legal advised on the establishment of a joint venture in Russia involving the production of high-speed trains.	N/A	Russia
1-Jul	Liniya Prava	Liniya Prava prepared an investment agreement signed on June 16, 2016 by the French company Arc International to construct a glass manufacturing plant in the Chernyakhovsk industrial park in the Kaliningrad region of Russia.	N/A	Russia
19-Jul	Cleary Gottlieb; White & Case	White & Case advised CJSC Sberbank CIB (as agent to the Russian Federation) and Sberbank CIB and VTB Capital (as joint global coordinators and joint bookrunners) on the USD 812 million privatization of the Russian Federation's 10.9 percent stake in the charter capital of PJSC ALROSA, the world's leading diamond mining company. Cleary Gottlieb Steen & Hamilton advised PJSC ALROSA on the deal.	USD 812 million	Russia
20-Jul	Alrud	Alrus successfully represented the joint-stock company TVEL in a dispute with Westinghouse Electric Company LLC.	N/A	Russia

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
27-Jul	Alrud	Alrud advised Russian entrepreneur Igor Sosin on the sale of his 49% share in a Russian joint venture with OBI, the German supplier of household and repair goods, to the German company.	N/A	Russia
28-Jul	Hogan Lovells	Hogan Lovells reported that its Moscow corporate team has advised Russia's largest state-owned bank, Sberbank, on launching a strategic joint-venture to produce unique cashier equipment with pre-installed tax software for small businesses. The transaction is expected to close this summer.	N/A	Russia
29-Jul	Ilyashev & Partners	Ilyashev & Partners successfully defended the interests of the State Enterprise Antonov in a dispute with JSC Aviacor-Aviation Plant in the Arbitration Court of the Samara Region in a dispute involving remuneration for use of a trademark during the manufacture and sale of aircraft.	N/A	Russia
4-Aug	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners represented consumer goods giant Procter & Gamble on its USD 12.5 billion sale of its beauty brands to the American beauty products manufacturer Coty Inc.	USD 12.5 billion	Russia
4-Jul	Zivkovic Samardzic	Zivkovic Samardzic advised South Central Ventures on its EUR 700,000 investment in City Expert, a Belgrade-based startup that, according to the firm, "has gained traction rapidly with its innovations and use of technologies in the real estate sale and rental sector."	EUR 700,000	Serbia
4-Jul	KPMG (Marjanovic Law)	KPMG Serbia and its associated law firm, Marjanovic Law, acted as lead transaction counsel to the Government of Republic of Serbia during the two-year privatization procedure of Zelezara Smederevo.	N/A	Serbia
5-Jul	Zivkovic Samardzic	Zivkovic Samardzic successfully represented Serbia's 021 broadcaster in a copyright infringement case resulting in what the firm called "a landmark decision ... reinterpret[ing] the current events exception in Serbian copyright law."	N/A	Serbia
7-Jul	Zivkovic Samardzic	Zivkovic Samardzic successfully represented Vojvodjanska Banka a.d. Novi Sad before Serbia's Supreme Court of Cassation in civil proceedings related to a bank guarantee issued by the bank's legal predecessor to Moscow Investment Bank as collateral for a USD 3 million loan granted to petrochemical plant HIP Pancevo.	USD 3 million	Serbia
7-Jul	Samardzic, Oreski & Grbovic	SOG/Samardzic, Oreski & Grbovic acted as local Serbian counsel to the Danaher Group regarding Serbian aspects of the spin-off of the Fortive Corporation as a company independently traded on the New York stock exchange.	N/A	Serbia
8-Jul	Stankovic & Partners (NST-Law);	Stankovic & Partners (NSTLaw) announced that the Commercial Court in Zajecar had adopted the pre-packaged reorganization plan for the four companies of the RTB Bor Group's copper mining and smelting complex in Serbia.	EUR 1.2 billion	Serbia
21-Jul	Gecic Law	Gecic Law advised the Science and Technology Park Belgrade, which was founded in partnership by the Government of Serbia, the City of Belgrade, and the University of Belgrade to facilitate an association between economic, scientific, and educational organizations.	N/A	Serbia
14-Jul	Taylor Wessing	Taylor Wessing advised Best in Parking - Holding AG on a private tender process regarding the sale of a city center multi-story underground car park in Bratislava.	N/A	Slovakia
30-Jun	Kavcic Rogl Bracun; Selih & partnerji	Selih & partnerji advised German company C3 on its acquisition of a majority stake in PM, Slovenia's largest content marketing agency. The sellers were represented by Kavcic Rogl Bracun.	N/A	Slovenia
7-Jul	Jadek & Pensa; ODI Law Firm	ODI advised Tus Nepremicnine, the real estate company of Slovene retailer Tus, on the sale of the Planet Tus Koper shopping center to the South African real estate fund Greenbay, which was advised by Jadek & Pensa.	N/A	Slovenia
26-Jul	ODI Law Firm; Selih & Partnerji; Ulcar & Partnerji; White & Case	ODI advised SKB Banka d. d. (a part of Societe Generale Group) on a EUR 17.25 million acquisition financing of KJK Investicije 3 d.o.o., a Slovenian SPV under the control of KJK Fund II. Selih & Partnerji advised KJK on the financing and the underlying transaction – KJK's acquisition of Tomplast d.o.o. (and indirectly its subsidiary Unitplast d.o.o.) from Ramapo Holdings Limited — which was represented by Ulcar & Partnerji and White & Case.	EUR 17.25 million	Slovenia
8-Aug	ODI Law Firm	ODI advised debtor Elektrosvetlo on a EUR 12 million out-of-court restructuring with BAMC/DUTB and Banka Sparkasse.	EUR 12 million	Slovenia
16-Jun	Latham & Watkins; Paksoy; Yazici Legal	Paksoy, working alongside Latham & Watkins, advised lead arranger QInvest LLC and financiers Qatar Islamic Bank Q.S.C., Barwa Bank Q.S.C., Al Khaliji, Fibabanka A.S., and Turkiye Finans Katilim Bankasi A.S. on a Murabaha Agreement and Term Facility Agreement for Boyner Perakende ve Tekstil Yatirimlari A.S. ("Boyner") in the amount of USD 90 million. Yazici Legal advised Boyner on the deal.	USD 90 million	Turkey
16-Jun	Baker & McKenzie (Esin Attorney Partnership)	Esin Attorney Partnership, a member firm of Baker & McKenzie International, advised Clear Channel Ireland Limited on the sale of its Turkish assets, Clear Channel Tanitim ve Iletisim A.S. and Mars Reklam Produksiyon A.S., to Turkish investor Umut Senol.	N/A	Turkey
16-Jun	Allen & Overy (Gedik & Eraksoy); Erdem & Erdem	Allen & Overy and Gedik & Eraksoy, A&O's Turkish arm, advised the shareholders of the Solventas Teknik Depolama A.S. chemicals and petrochemicals storage company on the sale of their shares in the company to Turkish port operator Yilport Konteyner Terminali ve Liman Isletmeleri A.S., a subsidiary of Yilport Holding A.S. – itself a wholly-owned subsidiary of Yildirim Group, a leading Turkish industrial group. Erdem & Erdem advised Yilport Holding on the deal.	N/A	Turkey
20-Jun	Arnold & Porter; Paksoy	Paksoy served as local counsel to the Turkish Treasury on its issuance of USD 1 billion lease certificates due 2021 in July 2016. Arnold & Porter LLP acted as international counsel to the Turkish Treasury. Joint Lead Managers were Emirates NBD P.J.S.C., HSBC Bank PLC, and Standard Chartered PLC.	USD 1 billion	Turkey

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
29-Jun	BTS & Partners; Turunc	The Turunc law firm advised Elba HR (now rebranded as Peoplise) on investment into the company by Revo Capital. BTS & Partners advised Revo on the investment, which was part of the Borsa Istanbul Private Market (BIST).	N/A	Turkey
30-Jun	Chadbourn & Parke (Bilgic Attorney Partnership); Clifford Chance (Yegin Cifti Attorney Partnership); Dechert	Clifford Chance and the Yegin Cifti Attorney Partnership (YCAP) provided English and Turkish law advice, respectively, to Odea Bank on a TL 1.0 billion capital increase subscribed to by the IFC, the IFC Financial Institutions Growth Fund (a private equity fund managed by IFC Asset Management Company), and the EBRD. Odea Bank is a subsidiary of Lebanon's Bank Audi Group, which received English law advice by Dechert and Turkish law advice from the Bilgic Attorney Partnership.	N/A	Turkey
5-Jul	Baker & McKenzie; (Esin Attorney Partnership); Yazici Legal	Baker & McKenzie SCP (Paris) and Esin Attorney Partnership (Istanbul), a member firm Baker & McKenzie International, advised Commerzbank and a syndicate of international banks on their extension of a multi-tranche term loan facility to the Industrial Development Bank of Turkey. YaziciLegal was borrower's counsel.	USD 280 million	Turkey
13-Jul	Baker & McKenzie (Esin Attorney Partnership); Dentons (BASEAK)	The Esin Attorney Partnership, a member firm of Baker & McKenzie International, advised ING Group's Turkish subsidiary on a syndicated loan obtained for general trade finance purposes. Balcioglu Selcuk Akman Keki Attorney Partnership, working alongside Dentons, advised the lenders.	N/A	Turkey
14-Jul	Latham & Watkins; Paksoy; Yazici Legal	Paksoy, working together with Latham & Watkins, advised Comdata, the Italian industrial partner for Business Process Outsourcing held by the Carlyle Group, on its acquisition of Win Bilgi Iletisim Hizmetleri A.S., a leading call center services provider in Turkey. Yazici Legal advised the seller, Ugur Turkmen, on the deal.	N/A	Turkey
14-Jul	Baker & McKenzie (Esin Attorney Partnership)	The Esin Attorney Partnership, a member firm of Baker & McKenzie International, advised Hitachi Kokusai Turkey on its acquisition of a stake in the share capital of BCS Teknoloji Yayıncılık Habercis Sanayi ve Ticaret A.S.	N/A	Turkey
14-Jul	Kolcuoglu Demirkan Kocakli; Schoenherr	Schoenherr advised the Mondi Group (consisting of Mondi Limited and Mondi plc) on the acquisition of 90% of the outstanding share capital in Turkish Kalenobel for around EUR 90 million on a debt-and-cash-free basis from ARGUS capital, a CEE focused private equity group, and M. Olcay Hephiz, one of the company's founders. Kolcuoglu Demirkan Kocakli advised the sellers on the deal.	EUR 90 million	Turkey
15-Jul	Baker & McKenize (Esin Attorney Partnership)	The Esin Attorney Partnership advised the shareholders of the Planet Platform and TV group on the sale of a majority stake of the issued share capital of Planet TV ve Uydu Platform Isletmeciligi A.S., the Turkish broadcast platform company, to Sony.	N/A	Turkey
18-Jul	Paksoy	Paksoy advised the EBRD and IFC on their acquisition of a 5% stake in Akfen Yenilenebilir Enerji A.S., which holds the renewable energy asset portfolio of Akfen Holding A.S., constituting of hydro, wind, and solar energy investments.	N/A	Turkey
19-Jul	Moral Law Firm	The Moral law firm advised Murat Turistik Tesis Yatirimlari Otel Sanayi ve Ticaret A.S. on the construction and development of the Park Forbes Shopping Mall and Double Tree by Hilton Iskenderun.	USD 120 million	Turkey
19-Jul	BTS & Partners; Gokce Attorney Partnership	BTS & Partners advised Revo Capital on its USD 1.4. million investment to V-Count. Gokce Attorney Partnership advised V-Count on the deal.	USD 1.4 million	Turkey
1-Aug	Bezen & Partners; Watson Farley & Williams	Bezen & Partners, working alongside international counsel Watson Farley & Williams, advised China Aircraft Leasing Group Holdings Limited on the closing of its first Japanese Operating Lease with a Call Option financing in relation to two new Airbus A320 delivered to Pegasus Airlines in June.	N/A	Turkey
2-Aug	Bezen & Partners	Bezen & Partners advised the European Bank for Reconstruction and Development on its TRY 70 million investment in YDA Insaat Sanayi ve Ticaret's four year bond issuance.	EUR 21 million	Turkey
15-Aug	Baker & McKenzie (Esin Attorney Partnership); Hogan Lovells; Paksoy	The Esin Attorney Partnership, a member firm of Baker & McKenzie International, advised Burgan Bank on a USD 87 million and EUR 57 million syndicated multi-tranche term loan agreement with 13 banks from 8 countries. Paksoy advised the lending banks on the deal, with Hogan Lovells advising on English law aspects.	EUR 144 million	Turkey
17-Aug	Erdem & Erdem	Erdem & Erdem advised Yilport Holding on its acquisition of operating rights to the Puerto Bolivar Harbor, located in Machala, Ecuador, for a period of 50 years, in return for an investment of USD 750 million.	USD 750 million	Turkey
13-Jun	Egorov Puginsky Afanasiev & Partners	EPAP Ukraine acted as legal counsel to the Ukrainian Association of Ferroalloy Producers and Other Electrical Metallurgy Products Manufacturers and the Nikopol, Zaporozhye, and Stakhanov Ferroalloy Plants in a countervailing investigation initiated in 2014 by the Eurasian Economic Commission.	N/A	Ukraine
21-Jun	Sayenko Kharenko	Sayenko Kharenko announced that it is advising Auchan, one of the world's largest food retailers, on various Ukrainian law issues, including real estate investment issues, regulatory, land, criminal, and criminal-procedural matters. The firm also reported that it is representing Auchan "before state and local authorities, law enforcement authorities, public councils, working groups, and commissions."	N/A	Ukraine
22-Jun	Ilyashev & Partners	The European Court of Human Rights accepted for consideration a complaint drafted by Ilyashev & Partners for the OJSC Feodosia Shipbuilding Company "Morye" on the purported violation of its rights resulting from what the firm describes as the "illegal nationalization of [the company's] property in the Crimea."	N/A	Ukraine
23-Jun	Redcliffe Partners	Redcliffe Partners acted as Ukrainian law adviser to the Astarta Group in connection with export financing obtained from AKA Bank.	N/A	Ukraine

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Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
4-Jul	DLA Piper	DLA Piper advised the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH, commissioned by the German government, on the formation of an energy efficiency fund in Ukraine.	N/A	Ukraine
4-Jul	Vasil Kisil and Partners	Vasil Kisil & Partners acted as a legal advisor to AWAS, one of the world's largest aircraft lessors, in connection with the execution of a large-scale agreement for sale to KAHALA of a portfolio of 30 aircraft, worth over USD 260 million, that have been leased to 16 airlines in 14 countries worldwide.	USD 260 million	Ukraine
12-Jul	Ilyashev & Partners	Ilyashev & Partners advised Ukroboronprom – an association of multi-product enterprises in various sectors of the defense industry of Ukraine – during the creation and registration of the aircraft manufacturing cluster Ukrainian Aircraft Corporation.	N/A	Ukraine
13-Jul	Asters	Asters acted as legal counsel to the International Finance Corporation in connection with USD 15 million financing provided to fuel supplier Nadezhda Group.	USD 15 million	Ukraine
19-Jul	Lavrynovych & Partners	Lavrynovych & Partners entered into a cooperation agreement with the Ukrainian insurance company SPARE to provide legal protection and legal assistance to SPARE's clients in the event of what Lavrynovych & Partners called “an insurance event.”	N/A	Ukraine
25-Jul	Sayenko Kharenko	Sayenko Kharenko represented Yenakieve Iron and Steel Works – a member of the Metinvest Group – in an anti-dumping investigation related to imports into the Eurasian Economic Union of bars originating in Ukraine.	N/A	Ukraine
26-Jul	Aequo; Vasil Kisil & Partners	Aequo advised Viasat World Limited, a leading international TV company, on its acquisition of Viasat Ukraine LLC from the Modern Times Group. Vasil Kisil & Partners advised the Modern Times Group on the transaction.	N/A	Ukraine
27-Jul	Sayenko Kharenko	Sayenko Kharenko represented the interests of the Altcom financial industrial group in court and enforcement proceedings relating to a UAH 52 million debt recovery.	UAH 52 million	Ukraine
27-Jul	Integrites	Integrites successfully defended the interests of Atlas Copco in a dispute with the State Fiscal Service in Ukraine.	N/A	Ukraine
27-Jul	Asters	Asters acted as local transaction counsel to the International Finance Corporation (IFC) in connection with a USD 25 million working capital loan to Astarta, one of the largest agricultural producers in Ukraine.	USD 25 million	Ukraine
5-Aug	Axon Partners	The World Intellectual Property Organization Arbitration and Mediation Center dismissed the complaint filed by Hromadske TV against its former CEO – and Axon Partners client – Roman Skrypyn, granting him full and sole ownership of the “hromadske.tv” domain name.	N/A	Ukraine
8-Aug	Redcliffe Partners	Redcliffe Partners acted as Ukrainian law counsel to a security trustee, Natixis, that represents a group of lenders on the extension of a USD 215 million secured facility to Kernel, a leading agricultural company in the Black Sea region.	USD 215 million	Ukraine
8-Aug	Avellum; Clearly Gottlieb; Latham & Watkins	Avellum advised Allergan Inc. on Ukrainian matters related to its divestiture of its global generic pharmaceuticals business to Teva Pharmaceutical Industries Ltd. through a complex cross-border carve-out. Latham & Watkins acted as global employment counsel to Allergan Inc., with Clearly Gottlieb Steen & Hamilton LLP acting as global corporate counsel to the company on the approximately USD 40.5 billion transaction.	USD 40.5 billion	Ukraine
12-Aug	Integrites	Integrites successfully represented the Ukrainian division of the DHL logistics company in proceedings in the Court of Appeal and then in the Supreme Economic Court of Ukraine in a dispute with a DHL client.	UAH 10.6 million	Ukraine
15-Aug	CMS	CMS Cameron McKenna advised PJSC Alfa-Bank (Ukraine) on the restructuring of a multi-million dollar financing of PJSC Toronto-Kyiv, which owns and operates a mixed-use real estate property called the Toronto-Kyiv Complex, located in downtown Kyiv.	N/A	Ukraine

Full information available at: www.ceelegalmatters.com

Period Covered: June 13, 2016 - August 17, 2016

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

Subtle but Significant: Chadbourne & Parke's Warsaw Office Becomes Independent



In May 2016 the Warsaw office of Chadbourne & Parke spun off into independent status and is now operating as Radzikowski, Szubielska i Wspólnicy (RS&W), with Chadbourne itself no longer formally present in Poland.

Chadbourne issued only the following brief announcement about the change: “For improved flexibility and client service, it was decided that our Warsaw practice would best be conducted by Radzikowski, Szubielska i Wspólnicy operating as an independent law firm that is part of Chadbourne’s international legal network. We look forward to the ongoing success of this longstanding collaboration.”

Despite its withdrawal, Poland remains listed on the Chadbourne & Parke website with the note that “We work closely with independent affiliate Radzikowski, Szubielska I Wspólnicy sp.k to provide legal services to numerous international investors pursuing opportunities within or originating from the Polish market,” with the Polish firm’s name hyperlinked to its own website.

When contacted by CEE Legal Matters, both Chadbourne and RS&W stayed fairly tight-lipped about the change, with Chadbourne responding to our inquiries by suggesting we speak with RS&W, and RS&W responding to inquiries by forwarding Chadbourne’s statement and adding “we do not have further comments.”

Following the change, former Chadbourne and RS&W Partner Marek Krol left the firm to join Magnusson.

Four for One: CEE Firms Merge Into Arcliffe



Four firms in Central and Eastern European – Pepa & Dobre from Romania, JedwabnyLegal from Poland, Krutak & Partners from Czech Republic, and DKKR Partners from Hungary – have joined forces to create Arcliffe, which its members describe as “a premiere legal practice in CEE.” Together, the firm claims 40 lawyers, including 18 partners.

According to a press release issued by the new firm, “Arcliffe has been set up by the first three law practices, with DKKR Partners cooperating on an exclusive basis.” In addition, in Cyprus, Arcliffe will cooperate with the Tornaritis Law Firm.

Tomas Krutak, the Managing Partner of the former Krutak & Partners in Prague, describes the new firm as “an opportunity for us to bring to expanded geography our practice strengths, and that’s for the benefit of our clients.”

Tomasz Jedwabny of Warsaw added that “our combination is about the Emerging Europe role in a globalizing economy and the European Union.”

“Arcliffe will focus on Emerging Europe, now a matured and increasingly sophisticated market with more demands on law practices to provide a unified and cost effective platform,” said Steven Pepa, a Canadian lawyer based in Bucharest.

“All our lawyers are well aware of the Anglo-American legal service standards, and expanding regionally our local knowledge and expertise was the main drive for our combination,” said Edward Dobre, who is based in Bucharest and is one of the pivotal lawyers involved in setting up Arcliffe. “It happened under the auspices of the big family of international law firms that started to do business in Emerging Europe in the 90s, a venture to which we have all participated in one way or the other.”

DKKR Partners will cover the Hungarian market for Arcliffe. “We are positioned to support and assist the fellow members of the new firm. Our clients and prospective clients are becoming increasingly interested in investing in the Emerging Europe economies,” said DKKR Partners’ Daniel Kaszas.

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Soloveicik Brings Public Procurement Team to Cobalt Lithuania



Former Glimstedt Partner Deividas Soloveicik has joined Cobalt Lithuania to head its Public Procurement practice, bringing with him a team of five public procurement specialists.

According to Cobalt, “Deividas Soloveicik has over 15 years of experience practicing commercial law and is one of the most highly regarded Public Procurement law experts in the market.” He becomes the tenth Partner at Cobalt Lithuania and is joined at the firm by former Glimstedt lawyers Karolis Smaliukas, Karolina Kersyte, Dovile Jankauskyte, Neringa Basinskaite, and Kasparas Biliunas.

“I am delighted at the addition of another group of experienced lawyers, who will further enhance our professional team,” said Irmantas Norkus, Managing Partner at Cobalt Lithuania. “We are consistently growing as a firm, and our robust M&A, Banking and Finance, Dispute Resolution and other practices are highly valued in the market. The team led by Deividas has a wealth of experience and boasts a strong reputation as public procurement law experts. Its arrival will enable us to expand further and will add strength to our capabilities to efficiently serve our clients on the most challenging legal matters.”

Cobalt reports that Soloveicik “has represented clients before national courts at all instances and arbitral institutions [and] provided legal advice to Lithuanian and foreign private clients and contracting authorities, including the Commission of the European Union, on the legal aspects of public procurement and pre-commercial procurement.” According to the firm, “Soloveicik focuses his practice on civil and administrative litigation in the areas of public procurement, matters related to misuse of EU funds and application of financial corrections against beneficiaries of EU funds, and performance of public contracts.”

“The motivating factors in our decision to join Cobalt were its successful performance in recent years, its partner approach towards integrated services, its largest pool of talent and resources in the Baltic States and Belarus, and its excellent reputation in the field of public procurement,” Soloveicik said. “I am certain that our professional skills, experience and consistent work will contribute to the exceptional service delivery to Cobalt’s and our mutual clients. We are joining our forces to create a market-leading Public Procurement practice group which is deeply experienced across all aspects of public procurement and able to offer legal services

responsive to the needs of clients. Our joint efforts will deliver synergies and opportunities to grow as a team of professionals and to serve as a trusted advisor to our clients on significant projects.”

At Glimstedt, Soloveicik was replaced as head of the Public Procurement practice by Associate Partner Mindaugas Jablonskis.

A Magyar Move: Lakatos Koves & Partners Takes Team from Kinstellar



Lakatos Koves & Partners has announced the arrival of Partners Adam Mattyus and Eszter Ritter and Associate Lawyer Tamas Olah from the Budapest office of Kinstellar. LKT also announced the promotion to Partner of Counsel Ivan Solyom.

Mattyus has a longstanding practice in Corporate/M&A and Competition law at Freshfields Bruckhaus Deringer and Linklaters. His practice focuses on providing general commercial law advice and transactional work. At LKT he will join Partner Richard Lock in heading the Corporate/M&A group.

Ritter also worked previously for Freshfields Bruckhaus Deringer and Linklaters. According to LKT, “over the last twelve years she has advised multinational clients in all areas of competition law with a strong focus on antitrust, merger control, and related litigation work.”

New Partner Ivan Solyom, who has been with LKT for 16 years, focuses on M&A, Telecom, and Competition law work. Solyom and Ritter will co-head LKT’s Competition Practice.

LKT Managing Partner Peter Lakatos said: “We are very pleased to welcome Adam, Eszter, and Tamas to our firm. In addition to welcoming these newcomers I am also pleased to be able to announce Ivan Solyom’s promotion to be a partner in the firm. Adam Mattyus’ practice is a perfect bolt-on to our existing and growing Corporate/Commercial and M&A practice, and Eszter Ritter’s arrival significantly enhances our Competition law offering and capability. It is now nearly seven years since our firm spun off from Clifford Chance. We have focused on developing our international client base and establishing our position as one of the leading independent firms in Hungary serving inward investors and have established the firm as the ‘go to’ independent firm

for referrals from international firms. The firm has been expanding over the last two years, and the hiring of Mattyus and Ritter marks a significant step up. With their experience at Kinstellar and before that at Freshfields and Linklaters they share our view of the world and understanding of the needs of our predominantly international clients. Mattyus' and Ritter's arrivals also significantly enhance our team's German language offering. This development follows closely upon the arrival from Clifford Chance in London of English qualified Banking & Finance Partner John Fenemore."

LKT Corporate head Richard Lock said: "The arrival of this team marks a step change for the M&A/Corporate practice and for the firm as a whole. Adam's and Eszter's practice is complementary to ours – a great fit. Adam brings to the picture a long standing practice of relationship-based corporate and competition advice that is a welcome addition to our offering. I am also pleased that Ivan Solyom, one of the counsel and longest starting members of the LKT Corporate team, is being promoted, in recognition of his key role and contribution, both in relation to transactional M&A and also in Competition law work."

Trio of White & Case Prague Partners Move In-House to Client R2G



White & Case Partner Michael Smrek and Damian Beaven and Local Partner Ales Zidek have left the firm's Prague office to join the R2G asset management company founded by Oldrich Slemr, a former shareholder of CGS Holding, a major global industrial tire manufacturing business.

In a statement released by White & Case, Czech Managing Partner David Plch commented that: "all three lawyers have been valued members of the firm and we fully understand their decision to pursue this exciting opportunity. We wish them every success and look forward to continuing to work with them in the future – but as clients rather than colleagues."

In that same official statement, Smrek is quoted as commenting: "White & Case has the unique advantage for CEE players with regional and global ambitions of combining a top tier M&A team in Prague with a strong presence in both London and New York. In my new role I fully expect to instruct my former colleagues at White & Case on a regular basis, because it's the firm in the Czech and wider CEE market that's best suited to advising on large, complex, cross-border M&A and other deals and matters."

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Summary Of Partner Lateral Moves

Date covered	Name	Practice(s)	Joining	Moving From	Country
6-Jul	Walter Gapp	Banking/Finance; Capital Markets	Rautner Attorneys-at-law	Schoenherr	Austria
30-Jun	Darina Petrova	Corporate/M&A	Arcliffe	N/A	Bulgaria
30-Jun	Natalia Pavlova	Corporate/M&A	Arcliffe	N/A	Bulgaria
30-Jun	Jan Pechman	Administrative Law; Litigation/Dispute Resolution	Arcliffe	Krutak & Partners	Czech Republic
30-Jun	Michaela Wazikova	Insolvency/Restruc- turing; Corporate/M&A	Arcliffe	Krutak & Partners	Czech Republic
30-Jun	Tomas Krutak	Real Estate; Corporate/M&A	Arcliffe	Krutak & Partners	Czech Republic
18-Aug	Jennifer Foss	Real Estate	BADOKH	Dentons	Czech Republic
23-Jun	Chris Watkinson	Corporate/M&A, Private Equity	Dentons	BBH	Czech Republic; Hungary
14-Jun	John Fenemore	Banking/Finance	Lakatos Koves & Partners	Clifford Chance	Hungary
30-Jun	Daniel Kaszas	Corporate/M&A; Competition	Arcliffe	DKKR Partners	Hungary
30-Jun	Dorottya Kereszty	Corporate/M&A; Labor	Arcliffe	DKKR Partners	Hungary
30-Jun	Levente Rovid	Tax	Arcliffe	DKKR Partners	Hungary
30-Jun	Nora Deme	Real Estate	Arcliffe	DKKR Partners	Hungary
5-Jul	Adam Mattyus	Corporate/M&A; Competition	Lakatos Koves & Partners	Kinstellar	Hungary
5-Jul	Eszter Ritter	Competition	Lakatos Koves & Partners	Kinstellar	Hungary
5-Jul	Deividas Soloveicik	PPP/Infrastructure	Cobalt	Glimstedt	Lithuania
23-Jun	Marek Krol	Banking/Finance	Magnusson	Chadbourne & Parke	Poland
24-Jun	Włodzimierz Radzikowski	Corporate/M&A	Radzikowski, Szubielska i Wspolnicy	Chadbourne & Parke	Poland
24-Jun	Dorota Szubielska	Tax	Radzikowski, Szubielska i Wspolnicy	Chadbourne & Parke	Poland
24-Jun	Gabriel Wujek	Corporate/M&A	Radzikowski, Szubielska i Wspolnicy	Chadbourne & Parke	Poland
24-Jun	Marcin Boruc	Litigation/Dispute Resolution	Radzikowski, Szubielska i Wspolnicy	Chadbourne & Parke	Poland
24-Jun	Przemysław Kalek	Energy	Radzikowski, Szubielska i Wspolnicy	Chadbourne & Parke	Poland
24-Jun	Piotr Karwat	Tax	Radzikowski, Szubielska i Wspolnicy	Chadbourne & Parke	Poland
24-Jun	Dariusz Michalski	Real Estate	Radzikowski, Szubielska i Wspolnicy	Chadbourne & Parke	Poland
24-Jun	Igor Muszynski	Energy	Radzikowski, Szubielska i Wspolnicy	Chadbourne & Parke	Poland
24-Jun	Joanna Nowak Paradowska	Energy	Radzikowski, Szubielska i Wspolnicy	Chadbourne & Parke	Poland

24-Jun	Agnieszka Piasecka	Real Estate	Radzikowski, Szubielska i Wspolnicy	Chadbourne & Parke	Poland
24-Jun	Sylwester Pieckowski	Litigation/Dispute Resolution	Radzikowski, Szubielska i Wspolnicy	Chadbourne & Parke	Poland
24-Jun	Zbigniew Skorczynski	Corporate/M&A; Banking/Finance	Radzikowski, Szubielska i Wspolnicy	Chadbourne & Parke	Poland
24-Jun	Mariusz Stawiarczyk	Real Estate	Radzikowski, Szubielska i Wspolnicy	Chadbourne & Parke	Poland
30-Jun	Magdalena Brzozowska	Real Estate	Arcliffe	JedwabnyLegal	Poland
30-Jun	Tomasz Jedwabny	Banking/Finance; Capital Markets	Arcliffe	JedwabnyLegal	Poland
7-Jul	Jaroslav Beldowski	Banking/Finance	Dentons	SMM Business Lawyers	Poland
30-Jun	Edward Dobre	Corporate/M&A, Private Equity	Arcliffe	Pepa & Dobre	Romania
30-Jun	Radu Voloaga	Dispute Resolution	Arcliffe	Pepa & Dobre	Romania
30-Jun	Steven Pepa	Corporate/M&A	Arcliffe	Pepa & Dobre	Romania
30-Jun	Tudor Velea	Private Equity	Arcliffe	Pepa & Dobre	Romania
17-Aug	Sergey Milanov	Banking/Finance	Goltsblat BLP	K&L Gates	Russia
30-Jun	Frantisek Horvath	Real Estate	Arcliffe	N/A	Slovakia
30-Jun	Milan Siska	Real Estate; Corporate/M&A	Arcliffe	Krutak & Partners	Slovakia
23-Jun	Irina Tymczyszyn	Litigation/Dispute Resolution	Chadbourne & Parke	Bryan Cave	United Kingdom

Helpful Tips

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.

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Summary Of New Partner Appointments

Date Covered	Name	Practice(s)	Firm	Country
5-Jul	Ivan Solyom	Competition	Lakatos Koves & Partners	Hungary
24-Jun	Tomasz Jan Sieminski	Competition	Czyzewscy	Poland
25-Jun	Pawel Gutowski	Competition	Czyzewscy	Poland
1-Jul	Weronika Achramowicz	Corporate/M&A	Baker & McKenzie	Poland
4-Jul	Michal Czarnuch	Life Sciences	Domanski Zakrzewski Palinka	Poland
4-Jul	Tomasz Kaczynski	Life Sciences	Domanski Zakrzewski Palinka	Poland
17-Jun	Otilia Petrescu	Real Estate/Corporate/M&A	Stratulat Albulescu	Romania
18-Jul	Gaye Spolitis	Corporate/M&A	Erdem & Erdem	Turkey

Summary Of In-House Appointments And Moves












Date covered	Name	Company/Firm Joined (Role)	Moving From	Country
24-Jun	Filip Grzesiak	C.R.E.A.M (Head of Legal)	Crido Legal (Senior Associate)	Poland
28-Jun	Aleksey Belozersky	Novartis (Head Legal & Compliance Oncology for Russia, Ukraine, and CIS)	GSK (Counsel)	Poland
2-Aug	Ugur Ates	Kurum Holding (Legal Counsel)	Kurum Holding (Chief Legal Counsel)	Turkey
16-Aug	Can Akcaoglu	Tupras (Chief Legal Officer)	Mapfre Genel Sigorta A.S	Turkey
23-Jun	Michael Smrek	R2G	White & Case (Partner)	Czech Republic
23-Jun	Damian Beaven	R2G	White & Case (Partner)	Czech Republic
23-Jun	Ales Zidek	R2G	White & Case (Local Partner)	Czech Republic

Other Appointments

Date Covered	Name	Firm	Appointed to	Country
4-Jul	Helmut Bergmann	Freshfields Bruckhaus Deringer	Managing Partner	Germany, Austria, and CEE
16-Aug	Marianna Erdei	Ernst & Young	Legal Director	Hungary
29-Jun	Mindaugas Jablonskis	Glimstedt	Head of Public Procurement	Lithuania
1-Jul	Aleksandra Auleytner	Domanski Zakrzewski Palinka	Equity Partner	Poland
1-Jul	Artur Nowak	Domanski Zakrzewski Palinka	Equity Partner	Poland
1-Jul	Joanna Wierzejska	Domanski Zakrzewski Palinka	Equity Partner	Poland
27-Jun	Julia Kirpikova	KIAP	Head of Commercial Practice	Russia
25-Jul	Rastko Petakovic	Karanovic & Nikolic	Senior Partner	Serbia

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Legal Matters: The Buzz

In “The Buzz” we interview experts on the legal industry living and working in Central and Eastern Europe to find out what’s happening in the region and what legislative/professional/cultural trends and developments they’re following closely. Because the interviews are carried out and published on the CEE Legal Matters website on a rolling basis, we’ve marked the dates on which the interviews were originally published.

Austria (July 18)

Political Developments of Significance



An “exciting election” has marked the Austrian market over the last few months, according to Alexander Petsche, Managing Partner of Baker & McKenzie in Vienna. “We had an election of the President of the Federal Republic that was annulled recently by the Constitutional Court due to formalistic misbehavior during the election process,” Petsche explained.

According to Petsche, Austria allows voting by post, and the two issues raised before the Constitutional Court were that the members of the committee responsible for counting these “votes by letter” started the counting process too early (despite, Petsche says, the existence of several rules setting forth when the letters should be opened and when the counting should commence), and that, in some regions, not all the members of the committee were present when the counting started. “It was a very large trial with over 90 witnesses being heard. It has never happened that an election of a President was challenged and, while the court found no evidence of manipulation, it did argue that theoretically it could have happened, which was sufficient to annul the election.”

Staying within the political realm, Petsche pointed out that Austria has a new Chancellor, as the previous one stepped down “mainly due to the failure of the left wing party to have a successful presidential candidate.” The new Chancellor was described by Petsche as a “typical manager,” who acted as the CEO of Austrian Railways in the past. This change has brought forth a “New Deal” that has some legal impact: it mainly aims to make it easier for companies

to be set up in the country. At the moment, Petsche explained, the foundation of a new company is “very complicated in Austria” and the goal is to lessen the amount of red tape. This initiative is also going to be complemented by “a start-up initiative, with more than EUR 185 million put aside towards supporting start-ups.”

Turning to legal industry, Petsche noted an increase in the amount of investment arbitrations taking place in Vienna involving CEE countries. Petsche – himself a Board Member of the International Arbitral Centre of the Austrian Federal Economic Chamber – mentioned that the arbitration function of the organization has been considerably busier in the recent period.

Speaking about the legal market, Petsche highlighted two developments. The first is an increasing number of boutique firms opening in the country: “Ten years ago no one would have left a large firm as a Senior Partner – you just made your career and would have been in a position to maintain that. I assume it primarily relates to either a matter of decision making within law firms or to the fact that sometimes senior lawyers do not want to invest part of their time on administering a firm. From our perspective, they don’t necessarily pose a threat, as they work in a different segment.” The second development was that of PwC Legal’s entrance into the Austrian market on July 1. Petsche noted that, surprisingly, it wasn’t PwC Austria that initiated it but rather PwC Legal Germany that expanded into the country. He described PwC Legal Germany as a very strong player in Germany and its arrival in Vienna means that KPMG is the only one of the Big 4 without a law firm arm in Austria.

Belarus (August 19)

Between a Rock and a Hard Place

Squeezed as it is uncomfortably between Ukraine and Russia both geographically and economically, Belarus continues to suffer from the ongoing crises in and conflict between the two, according to Sorainen Belarus Managing Partner Kiryl Apanasevich, as well as the indirect but continuing effects of foreign sanctions imposed on Russia, its closest trade partner and largest investor. Apanasevich points out that Russia has traditionally provided about 50% of Belarus’s foreign trade and foreign investment, with Ukraine usually also among the top in trade. As a result, and in light of the circumstances in which all three countries find themselves, he sighs, the status of the Belarusian economy and market again “shows negative trends so far this year.”

The first quarter of 2016, in particular, Apanasevich reports, was “pretty dreary.” There were very few transactions in corporate/M&A or banking/finance, and Real Estate, he says, “was totally down.” The GDP was declining, he said, and resulted in a declared drop of approximately 4% in 2015. Q2, he conceded, was a bit better, with international financial institutions starting to show some activity. He also pointed to several completed transactions, mainly in the IT industry, including Facebook’s acquisition of Belarusian app developer Masquerade Technologies (which his office advised on) as significant, and “already a sign of a maybe a slightly growing market.”

“Nevertheless,” he said, still referring to Q2 “GDP was down by another 2.5% over last year – which itself was already down from the year before. Real Estate remains dead, with no transactions of any significance, and Banking/Finance work has changed, with less work coming from trade finance and almost no project finance work, and instead more requests coming related to securitization and financial restructurings – which, he noted, “means that many corporate borrowers do not feel healthy.”

Q3 so far, “has been the most positive in terms of the micro-economy.” Apanasevich explained that inflation is going down, the State implemented a local currency denomination on July 1, and recent forecasts refer to an expected 1% growth for the next year. IT remains the most active sector, and international institutions seem to be showing more interest in Belarusian companies as a result of difficulties of various kinds they’re encountering in neighboring countries. There’s also, Apanasevich reported, “a new wave of privatization-related issues,” including in the banking industry, and he refers to the contemplated privatization of Belinvestbank (the country’s fourth largest) with the participation of the EBRD and recent announcements that the Belarusbank – currently 100% owned by the Belarusian state – will potentially be looking for a foreign investor to take a minority share (perhaps 20%-25% in the next few years). Apanasevich referred as well to various anticipated infrastructure projects which “should generate work for lawyers and also have an impact on the economy of the country in general.”

Finally, Apanasevich is able to smile at the shifting alliances and associations that have dominated news in the neighboring Baltic legal markets for the past 18 months, reporting that lawyers at firms in the Belarusian market, which is much calmer and more stable, are enjoying “taking popcorn and watching the show.”

Czech Republic (July 4)

Controversial Changes to The Execution Procedure



Zdenek Tomicek, Partner in the Czech office of CEE Attorneys, turned first to the intended amendment to the Execution Procedure Act proposed by the Czech Ministry of Justice, which could oblige creditors to provide monetary guarantees of costs of the Court Executor in the proceedings – which would then be forfeited if execution turned out to be impossible.

“I understand the reason for this amendment,” Tomicek said, “but

the problem is, this will also be applicable to B2B creditors, who are not always aware of debtor assets, and public sources are very limited [in] this respect.” As a result, creditors who win their claims – which should, after all, put them in a better position – will have to provide guarantees to the executors, providing additional risk to them.

Tomicek said this will, on top of everything else, have a significant effect for lawyers and law firms who also provide debt collection services, who will have to explain to clients that yet another fee is required of them.

Tomicek also agreed with previous The Buzz sources who expressed frustration with the Czech judiciary, noting that judges – especially at the lowest level – are simply not regularly trained and from time to time fail to refer to the judicial practice of higher courts in reaching their verdicts. Tomicek rolled his eyes, saying “sometimes it’s frustrating.”

The legal market itself is strong at the moment, Tomicek said, especially with the continued rebound of the real estate and financial services markets. There’s a continuing need for international or regional firms in the Czech Republic, he said, but the particular kind of firms needed is changing. The major international players “from the 1990s” are too expensive, he said, pointing out that one or two seem to be closing their doors and withdrawing from the country every year. They’re being replaced, he reported, by smaller regional players, staffed by lawyers who trained at major international firms during the big-payday years but are now able to offer their services at considerably lower prices. As a result, “small Czech law firms are more and more involved in the market,” which Tomicek called “a good thing for the Czech market – better if Czechs are successful here than just foreign lawyers.”

Finally, Tomicek referred to the comments about the changing demands and expectations of young lawyers that were made in the article about the Hungarian Round Table that appeared in the April 2016 issue of the CEE Legal Matters magazine. He said his colleagues are witnessing an identical phenomenon in the Czech Republic: new lawyers who “come out from law school, know nothing about the practice, but ask when they can go home.” He called it a “sad question,” and explained, “I understand asking about money – but when to go home?” He agreed with the comments by Zoltan Lengyel of Allen & Overy in that April 2016 Round Table that it’s up to the law firms to adapt, and asked, simply, “but how?”

Estonia (July 22)

Changing Legal Market Remains Primary Subject of Conversation

“In terms of the legal market,” said Toomas Prangli, Sorainen’s Managing Partner in Estonia, “times have been very turbulent the last 15 months. Many Baltic alliances are being broken, and new ones are emerging.” He pointed, by way of illustration, to the recent split of the Estonian part of Tark Grunte Sutkiene from that pan-Baltic alliance, which replaced it with Varul’s Estonian office – which in turn triggered the dissolution of that firm’s alliance in the region.

Sorainen, Prangli said, has been following the developments closely



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from the sidelines, although “the changes don’t really affect us directly.” Nor does he believe the consolidation and shake-up of alliances in the Baltics has stopped yet, noting that there is “still a lot of pressure, especially on second- or third-tier law firms, to merge to stay in the race.” “The small-sized law firms have to decide if they want to be close to the first tier” – by merging or aligning with others to increase headcount and practice group coverage – “or stay smaller, which can also be a perfectly good choice for them and many clients.”

In terms of business, Prangli said, “things have been very busy this year.” The bigger Estonian firms, he reported, have been very busy, with M&A, financial transactions, and real estate practices all strong. “Existing businesses are reevaluating their positions, and new ones are entering,” though he conceded that “it’s hard to generalize why, exactly.” He referred to research showing that local investors in Estonia are much more active in buying up foreign capital than their counterparts in other Baltic markets. He expects Q3 and Q4 to stay profitable as well, in the absence of any disruptive financial event.

When asked about the effects of the Brexit, Prangli said so far they are minimal in Estonia, which he described as not as exposed to the UK markets as other countries in the region, which have proportionally bigger trade with Great Britain. “We’ll just have to wait and see until Article 50 is invoked and negotiations are clear.”

There are a few “hot topics” in terms of legislation, Prangli reported. The first is related to e-residency. A year and a half ago Estonia initiated a residency program allowing anyone from anywhere in the world to register for an Estonian ID card, providing access to Estonia services, programs, and agencies online. “At last count 11,000 people from outside the country have taken advantage of this,” he said, though he explained that many of the related legal issues – from possible double taxation issues to money laundering concerns – remain unresolved. “How to make sure the system is not misused,” he said. Parliament has acknowledged the problem and is already drafting a framework to address many of the issues. In the meantime, law firms such as his are encouraging some clients to take advantage of the program, which is designed to make life simpler for them.

Another area that is “quite active,” according to Prangli, is the Estonia start-up sector, booming both in the number of start-ups and start-up accelerators. “As always, legislation lags behind,” Prangli says, but changes enacted last year are making things better, and people are talking about it. Estonia has a strong history of tech start-ups – with Skype being the most famous example – and Prangli suggests that the small size of the country can actually function as an advantage, forcing start-ups to think about cross-border and multi-lingual functionality at early stages in the process. “Small is good, in that sense.”

Finally, Prangli commented on the “bottleneck” in employment tax – especially in social insurance tax – which can discourage companies from hiring highly paid specialists. “That’s an issue,” Prangli notes, but “on the other hand, clients see the value of stability in taxation, and one of our clients has said they watched the income tax structure for ten years, and only now are confident in its stability enough to invest in the country.”

Greece (July 7)

Successful Review Encourages Hope in Greece



“First of all,” said Nicholas Papapolitis, Managing Partner of Papapolitis & Papapolitis, “there was a very big debate, and a very big pause, on everything that had to do with investment in Greece and Greek businesses up until the completion of the first Review by the Troika.”

That first Review happened in May, after which, Papapolitis said, “there was some real positivity, including a sense of new interest, specifically by foreign capital.” The demonstration by the Greek government of its ability to make the necessary reforms has created a real “change in atmosphere,” he said, and a real increase in interest.

There’s also been a significant amount of legislative reform as well, Papapolitis noted, particularly in the Greek Civil Code, which has been amended “in order for the enforcement to become faster for lenders who have lent money in the Greek market.” In addition, Papapolitis said, “we have created a new framework for the acquisition, servicing, and management of non-performing loans.” All of this is “towards the positive,” he said, “for the first time in a long time.”

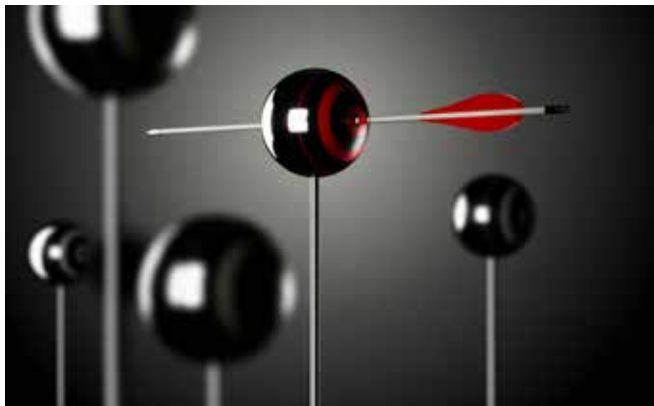
Also, he said, the ECB has announced that Greek banks have received a waiver, resulting in almost a half billion euros of increased liquidity for the banks. And now there are discussions to have Greece – if the country successfully completes the Troika’s second review in October 2016 – to also be included in the ECB program of quantitative easing.

Papapolitis is unquestionably enthusiastic about the changes, but he warns that the effects of the Brexit on the Greek economy are difficult to predict, leading to yet another period of uncertainty.

Business for law firms is “definitely” picking up as a result of interest from foreign credit institutions and financial investors purchasing assets from banks, and M&As are slowly picking up as well, with his own firm preparing to announce its involvement in a major M&A in the next few weeks. Papapolitis explains that the large firms suffered a great deal from the recent years of crisis, and some laid off of people as well, and while that process seems to have concluded, he’s not seeing any rebound in headcounts just yet. In addition, he sighed, the government has recently instituted a new pension scheme for “freelance professionals” (which includes lawyers, doctors, and engineers), increasing insurance payments made through the public pension fund five times.

Hungary (July 19)

Competition for Quality, Not Fees



A change in the way law firms compete in the Hungarian market was highlighted by Eszter Kamocsay-Berta, Managing Partner of KCG Partners, who explained that while law firms have tended to compete on fees in an otherwise saturated market over the last few years, there is now a trend of “moving beyond price competition.”

Kamocsay-Berta argued that, instead, it is now a competition of quality, with clients “expecting and appreciating value added, cutting-edge knowledge, and smart and tangible solutions with clients finding it critical for law firms to understand their perspective.”

Another trend in Hungary Kamocsay-Berta identified was that of small- and mid-sized firms looking to join or build their own law firm networks in CEE: “We don’t really expect to see more international firms expanding into the country, but we do see more and more of these international alliances shaping up. The latest example of that is the that of the former Kinstellar team announcing it co-founded a new regional network.” This focus on building a regional alliance is, in part at least, responsible for another direction of the evolution of law firms in the country, according to Kamocsay-Berta: “In a world where building these kinds of regional cross-border alliances is becoming a priority, it is of enormous importance for law firms in Hungary to focus on enhancing their exposure and visibility in the market. This has led to increased attention being dedicated to law firm marketing and communications, and we see that the legal services market is slowly evolving towards opening up and communicating more.”

This acknowledgment that law firms are competing with one another for business, Kamocsay-Berta observed, may also be what’s behind the increased buzz in the market about the possibility of a new act on the legal profession. The KCG Partner said the final form of this update – if, indeed, it comes to pass – is not yet known, but she hopes that it will further this evolution towards a fully functioning and commercial market.

Turning to the legislative front, Kamocsay-Berta spoke of a general tendency towards modernization and innovation. She pointed to Hungary’s newly enacted public procurement law, new civil code, and ongoing reform in the civil procedure as examples of this. The last of these, she said, were the updates enacted “in order to restore trust in the financial markets.” Following a scandal involving brokerage firms that led to several high-profile criminal cases, the new updates include elements such as an increased liability and personal

liability of the main officers or supervisory board members of financial services providers.

Kosovo (July 13)

Reason for Hope in Kosovo



Law firm business is decent in Kosovo, according to Visar Ramaj, the Managing Partner of Ramaj & Palushi, but it’s currently dominated mainly by simple transactional/commercial work with local companies making business connections primarily in trade (distribution agreements, etc.). There are also a growing number of disputes – the result of increasingly active tax administration and regulatory agencies.

But Ramaj believes business should pick up substantially in the next few years, thanks to an ever-improving legal framework, projected economic growth, and a series of major development projects expected to affect the country’s major industry and infrastructure.

Kosovo is known for being a “dynamic legal market,” Ramaj reported, explaining that the country’s legal framework changed frequently in the 17 years since the Kosovo War concluded. This resulted in an improved legal environment for business and a resulting increase in the need for legal services. As evidence, he pointed to three major legislative changes in recent years. The first, he said, was the Law on Obligations enacted in 2012/2013 which made Kosovo a stronger and more appealing business environment, especially in the area of Contract law. The second development of significance was the “complete change in the tax regime” that took place in the second half of 2015, including a new Law on Value Added Tax, Corporate Income Tax, Personal Income Tax. Finally, Ramaj said, the country’s Law on Public Procurement came into force earlier this year, digitalizing and simplifying the relevant procurement procedures while also guaranteeing that foreign and local investors would be treated the same in tenders. Ramaj described the three changes as “positive ... with impact on the legal industry,” though he conceded that the country was still in a “period of uncertainty,” waiting for a formal practice to be established under the new laws.

Ramaj also drew attention to the new EU-funded Code of Civil Law, which has been in the drafting process for almost two years and which is expected to unify the current patchwork system, with various laws drafted by American and EU experts under different grant programs. No public draft has been released yet, so it’s difficult to predict the eventual success of the project, but he’s hopeful.

Ramaj then turned the conversation to current major projects that bring with them the potential for significant work for lawyers in the

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country, but he started with a disappointment: the recent failure of the Brezovica privatization – one of the very first PPP projects contemplated in the country – for a ski resort widely regarded as the best in the Balkans. The tendering process lasted some two years, but it failed because the French investors failed to provide guarantees for the first stage of the investment (approximately EUR 164 million), sending the entire project back to square one. Ramaj noted that another major project, the apparently-successful privatization of the Kosovo Post & Telecommunications services, had also failed for several reasons, including a breakdown of the political process in Parliament, turning the effort into what Ramaj described as “a major failure to the country.” The resulting dispute is now before ICSID arbitration panel.

Still, Ramaj emphasized, there are a number of encouraging projects in process. First he referred to the creation of a new coal-based power plant (sponsored by the World Bank, the Kosovo Government, and Contour Global). An MOU was signed and the contract should be signed soon, Ramaj said, noting that the project will inevitably create a need for legal expertise.

Ramaj also referred to the disposal of the Trepca mining complex. Kosovo is widely considered one of the richest countries in terms of minable resources, Ramaj reported, including coal, lead, and other minerals. The Government has initiated a feasibility study to see whether Trepca requires reorganization or liquidation and to review possibilities for infusions of private capital to revitalize the mining industry. The results of the study, Ramaj claimed, will be important for the development of the country and will provide a lot of work for lawyers.

Finally, Ramaj said, the country is exploring the development of its railway system following a EUR 50 million grant from the EU and a EUR 50 million loan from the EBRD. The law accepting the loan was passed in February. This project as well will involve many local companies and various transactions with local enterprises, requiring more local legal expertise.

In light of these major projects planned for Kosovo, the Government has drafted a Law on Strategic Development which would allow it to negotiate directly with investors rather than following the strictures of the Public Procurement Law. This has raised many concerns and caused some controversy, Ramaj reports, but he notes that the “Government is pushing hard,” for the Law, which would also provide tax breaks and subsidies for major investors.

“The current level of development in Kosovo is very low,” Ramaj concedes. But with more investment expected soon and projected economic growth leading to increased activity in local business, he’s expecting “an increased need for legal services.” As a result, he says, “the legal industry is optimistic about the future.”

Latvia (July 6)

The Solidarity Tax Under Fire

The most controversial legislative development in Latvia in recent months, according to Klavins Ellex Managing Partner Filips Klavins, is the so-called “Solidarity Tax” that went into effect in January 2016.

The tax applies to individuals with the highest incomes in the country – estimated as affecting only those with incomes in the top

0.5%. Many people are complaining it’s unjust, Klavins reports, as it represents an unreasonable reach into the pockets of those who, acting honestly, are already paying the most tax, instead of those who have, by participating in the so-called shadow economy, avoided paying tax altogether. A challenge to the tax was just filed in the Constitutional Court last week, Klavins reports.



The Solidarity Tax is not creating much billables for lawyers in the market yet, though Klavins reports that executives of clients “are raising questions about it.” Attorneys are paying close attention to and discussing the issue, as in Latvia, “by quirk of law,” they are considered sole proprietorships and self-employed. As a result it’s not clear yet whether they will be affected by the new tax or not.

Another “hot topic,” according to Klavins, is the recent legislative proposal to expand the rights of notaries by requiring all Real Estate conveyances to be performed under the Notarial Act, based in part under the assumption that notaries would be able to evaluate the pricing of transactions to ensure they’re not set artificially low to avoid accompanying taxes. Klavins described the notary association in Latvia as being well-organized and good at lobbying, but said the proposal “just didn’t make sense,” especially for more complicated transactions with multiple moving parts. Although the debate over it was heated for the first six months of the year, the proposal is fading now, Klavins believes.

In general, business is good in Latvia, following several years of 4% growth. The Brexit has put everything on hold for a couple of weeks while people try to evaluate its consequences, but he expects things to pick back up soon. M&A is not as strong this year as it was last year, but finance work and regulatory work are up. The process for Latvia’s May 2016 accession to the Organization of Economic Cooperation and Development has resulted in the levying of fines against some Latvian banks which hadn’t been paying full attention to their AML obligations, providing a source of work for banking lawyers in the country. Real Estate is strong as well, with shopping malls and construction developments underway. “Things are good,” Klavins reports, while also pointing out that his firm’s dispute resolution team is active, with cross-border work both in the form of arbitrations and in Latvian enforcement of foreign judgments keeping them busy.

As for the Latvian legal market itself, Klavins believes more consolidation is likely later this year, from smaller firms joining forces to increase their ability to compete with the major players. It’s time-consuming to grow organically in the country, Klavins reports, and there’s not that much lateral movement, so significant expansion is likely to come in the form of mergers and consolidation.

Macedonia (June 28)

Courts on Strike



“Let’s start with the bad,” said Valentin Pepeljugoski, the Managing Partner of the Pepeljugoski Law Firm in Macedonia, who reported that the strike of Skopje court administration employees that began at the end of May was “not good for bar members.”

The strike, which started when administration employees were not included in the recent 35% salary increase received by judges, public prosecutors, and officials in the public prosecutor’s offices, is, according to Pepeljugoski, “really bad for the rule of law, for clients, etc.” He concedes, however, that the salaries of court administration “are really very low” – he called them “beneath human dignity” – and he emphasized that, “if you ask me I fully approve of the administration.” Matters considered “urgent” which can’t easily be postponed – including requests for injunctions, bankruptcies, and IP matters – are being heard, but the solo practitioners and smaller law offices that focus their practices heavily on litigation are being really hurt by the delay in most matters. Business law firms like his, Pepeljugoski says, are better able to weather the storm.

Otherwise, business in Macedonia is as good as it can be under the circumstances, Pepeljugoski says, “although the political situation is not so good.” He refers especially to the energy sector as strong, as the country’s Competition Authority has begun a process of reviewing agreements in the sector very carefully, providing substantial work for lawyers. The Macedonian energy market is not a “free market,” according to Pepeljugoski, with only state-owned enterprises able to purchase energy from suppliers, who are often badly positioned to sue because of badly drafted agreements. He also notes that the banking sector is strong.

He also refers to an ongoing fight for market share among two trash collecting companies, which spills over regularly into the courts.

Turning to the legal market in Macedonia, Pepeljugoski points out that there are no “big international firms” in the market, as “our law does not allow foreign lawyers to set up classic law firms here as founders,” although he notes that several regional law firms specializing in the former Yugoslavia have “consultant” offices in Skopje. The market is fairly stable, and a few local firms have sprung up recently, started by two or three young lawyers, but in his opinion the traditional firms still dominate the market.

Finally, Pepeljugoski noted, a new Civil Code is in the works and expected to be enacted sometime next year. “For me it is not necessary,” he sighed, “because we already have the law.” He said the decision to create a new Civil Code in the country is following

“a trend in CEE,” and said, “for me, it’s not a positive one.” He sighed. “It creates problems when you’re always amending, always revising.”

Poland (July 26)

Political Turmoil Possibly Overestimated



There’s still a lot of discussion about the political climate and political upheaval in Poland, according to Wlodek Rzycki, Partner at K&L Gates in Warsaw, but concerns about the change in government haven’t yet had any noticeable effect on the legal industry itself, he says, emphasizing that, “I hope they won’t.”

Instead, it’s business as normal, Rzycki reports, with firms in the market “fairly busy.” Corporate transactions are still going on, and foreign investors remain interested in Poland. Real Estate seems a little down at the moment, he concedes, especially in the office development and construction sector, but he also notes that so much office space was built in the country in the last couple of years that people may simply be taking a breath to adjust. And while Private Equity may be a bit down at the moment, as foreign funds may be a bit cautious about the short-term effect of the 2015 elections (which saw control of the government shift to the right wing Law & Justice party), strategic and institutional investors “are still doing stuff, looking [at] things from a long-term perspective.”

Taking a step back, the Krakowian Rzycki noted that Warsaw has become a “very nice place to live” in recent years, noting that while it used to be “quite ugly,” it’s now “really improved, the standard of living is better, and it’s much easier to post people here.”

Turning to the legislative front, Rzycki referred to recent changes to tax laws, particularly relating to tax restructuring – which might, he said, impact transactional work – as well as changes to the Polish Public Procurement law designed to make infrastructure projects easier (though he’s not convinced).

He also referred to last winter’s crisis involving disputed appointments to Poland’s Constitutional Tribunal, which remains a major point of discussion, although he noted that the controversy “hasn’t really translated into effects yet on corporate lawyers.”

Turning finally to the legal marketplace itself, Rzycki referred to persistent rumors about the smaller and weaker international firms being under increased pressure, noting that Chadbourne’s recent departure may be related to that pressure. “The trend is,” he said, “you need to be bigger to survive.” He described the process as “a sign of a developing legal market,” but also said that “this is a market in transition – there’s lots of disruption in the marketplace.”

Serbia (August 12)

Controversial Announcement by Serbian Bar



On August 1, 2016, the Belgrade Bar Association published a letter on its website signed by President Slobodan Soskic, asserting that Dragan Karanovic, Senior Partner of Karanovic & Nikolic, had been removed from the Bar's table of registered lawyers.

According to the letter, Karanovic was expelled based on Article 83 1/9 of Serbia's Law on Advocacy because he was enrolled as of March 7, 2016, in the court register of the Municipality of Sarajevo. CEE Legal Matters reached out to both Karanovic and Soskic for comment.

Karanovic, not surprisingly, contested the Belgrade Bar's decision, which he attributed to the Bar's "abusing a vague regulatory provision." He explained that the only statement by the Bar that had merit was "the trivial fact" that he had been a Director of a Bosnian company for 20 days in March this year. He claimed that he is "still in all formal and practical respects a member of the Bar" and said he was never expelled. Karanovic declared that the decision of the Belgrade Bar "is only one illegal step in the illegal process, a process that we expect will not be carried through." He said that the Bar, ultimately, is "an illegally-formed body, given that the representatives that present themselves as the Board are not elected in a legal manner that passed a decision in a process without due process which is, in its merits, illegal." Karanovic reported that he would be taking steps to remedy the situation: "We will file an appeal with the Serbian Bar Association and expect the decision to be annulled in a short period."

In terms of the statements published on the Bar Association's website, Karanovic said: "I realize that there are some letters on the site of the Bar but we will take steps to find remedies to address this abuse and we expect support from regional and European Bar Associations" – support that he argued would arise out of his and his firm's "over 20 years of practice where I think we confirmed the highest standards and a stance on moral integrity." He also noted that he has "already received a lot of support from other law firms and lawyers, in particular young lawyers who see this as a signal for concern for professionals in the field." Karanovic concluded, "I am not personally targeted as much as I think this is more about what we stand for."

"Looking at the bigger picture," Karanovic said, "there are ongoing disputes between the boards of the Serbian Bar and the Belgrade Bar, which saw long campaigns carried out by the Belgrade Bar trying to impede the progress of the legal practice." "They simply do not recognize that the nature of firms has evolved and there

are commercial lawyers in the market now as well who are just as much legal professionals as, say, criminal lawyers." He also noted that this move by the Belgrade Bar might be part of a pre-election campaign, as elections are due to take place this autumn.

In terms of what he expects after things settle down, Karanovic said: "We will invest more of our time and effort to engage into changes of the regulations so that they support the highest standards of integrity – which I do not feel is the current situation of the Belgrade Bar. We hope the elections will be a starting point in that direction, and we certainly want to talk to all those involved in the legal profession to organize our profession in a way that gives all of us a way of working in the market."

Soskic did not respond to repeated attempts by CEE Legal Matters to reach him for comment.

Slovenia (August 18)

Slow and Steady Wins the Race



This is a stable and steady time for lawyers in Slovenia, according to ODI Law Managing Partner Uros Ilic, who says that the consistent growth of the past few years – he reports 12 straight quarters of growth in the country – shows no sign of abating. Indeed, Ilic reports, although lawyers and clients alike are taking holidays in August, July was "extremely busy" in Slovenia.

NPL transactions – both single and portfolio deals – remain a primary concern in the country, with the highly-publicized IPO of NLB temporarily on hold as a result of the Brexit. Ilic explains that it had been contemplated that the newly-privatized bank would be dual listed on the London Stock Exchange but that the Brexit puts that in doubt, so everyone's taking a step back to consider. The privatization is expected to go forward in September, but Ilic shrugs: "Who knows?"

When asked if the Brexit was affecting Slovenia in other ways, Ilic dismissed the idea. "To be honest, if the expected listing on the LSE wasn't involved in the NLB privatization, there would be no major effect on Slovenia at all."

Otherwise, the banking sector remains in a consolidation phase, and the RE market is "finally awakening," particularly in the hotel sector, as Ilic notes that the Hotel InterContinental in Ljubljana currently under construction is adding a new floor every week.

In Slovenia, as in the rest of the former Yugoslavia, the courts take a month off from mid-July to mid-August (except for urgent matters), and the judges returned to work on August 16, meaning the litigators in the country are now ramping up as well.



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Finally, Ilic says that there are no significant changes to the Slovenian legal market. Fee pressure remains extremely high, Ilic notes, pointing out that fees were not really discussed for several years after the crisis hit and suggesting that the downwards pressure on them, which continues now several years after the crisis has abated, is therefore perhaps not surprising.

In short, Ilic says, “people are busy, and things are going well – everything is quite stable.”

Slovakia (July 4)

Significant Changes to Slovakian Codes



According to Jan Azud, Partner at Ruzicka Csekcs s.r.o. in association with members of CMS, the new Slovakian government still hasn't completely settled in following the March 2016 elections, and with summer and the EU Presidency here, Azud says, “everything has stalled a bit.”

The Slovakian legal market deals with commoditization and insourcing like the rest of the region, Azud reports. There are few changes of significance among the leading firms in recent years, nor any real spin-offs of significance, and Azud doesn't expect the list of international firms in the country to expand anytime soon. One persistent characteristic of the Slovakian law firm market is that it's highly competitive, and the long-term trend is seeing fees decrease. There's an increased awareness of the need for value-added services and special products at law firms, Azud reports, as well as the need to invest in law firm marketing, and lawyers increasingly have to be ready to compete aggressively to “get the work you need and to get interesting work.”

Last year was good in terms of the amount of work for the bigger law firms, Azud says, though it's still difficult to tell whether this year will be successful or not. The trend is positive, and the economy is growing, but Azud reports that “Slovakian business is, to a significant extent, driven by public spending, so the government situation needs to get settled.” He's optimistic, though, that things will start moving more effectively soon.

Turning to recent legislation, Azud says that Slovakia has expanded its current Civil Procedure Code into three parts, which became effective in July. He described this as a “complete reform of civil procedure” and expects it to have a “significant effect on the legal market” – although, at this point, it's difficult to predict exactly what form that effect will take. Modernizing the Code “should be

a good step forward,” Azud explains, but ultimately “we'll have to wait to see the actual consequences of its application.”

On July 1 Slovakia began enforcing criminal liability of legal entities as well, bringing the law closer to EU and American standards; previously, only natural persons or individuals could be found guilty of crimes. Azud expects this to increase work for lawyers as well, at least to some extent, helping companies with preparations and compliance, not to mention with formal investigations or prosecutions.

Finally, Azud says, the country enacted a new Public Procurement Law which became effective on April 18th of this year, transposing EU directives on public procurement. Reiterating his point about the significance of public spending to the Slovakian economy, Azud reports that, while the actual effect of the law remains to be seen, it is “definitely an important piece of legislation.”

Turkey (August 3)

The Coup's Consequences



Eren Kursun, Partner and head of M&A and PE practices at Esin Attorney Partnership, the Turkish member firm of Baker & McKenzie International, concedes that the second half of 2015 and 2016 has been slower for many law firms in Turkey, primarily because of the political environment, but he also emphasizes that the year has been “so far, so good for us.”

When asked about the effect on business of the failed July 15 coup d'état in Turkey, Kursun says: “It's complicated.” He describes the event as “like a nightmare” and says “during the first few days, to be honest, nobody – including myself – was thinking much about business. We cared first about more fundamental issues.” Still, he emphasizes that business has not suffered as much as many expected. Only one of Esin's M&A deals was put on hold – and that was at a very early stage to begin with – and Kursun reports that the firm continues to work on IPOs and many other projects. He does not expect to see any real exodus of investors as a result. “Turkey remains open for business and an attractive market for both financial and strategic investors.”

Indeed, Kursun reports, the removal of those in positions of authority associated with Fethullah Gulen, the exiled Turkish cleric accused by the Turkish government of masterminding the coup attempt, “is quickly moving past any sense of crisis.” He continued: “There is of course some political uncertainty, like in many countries, but it's nothing like as bad as has been reported interna-

tionally.” In fact, he says, “many people are seeing the government’s actions as necessary to safeguard the country’s long term future and prosperity.”

Kursun claims that “almost everyone was against the attempt to remove a democratically elected government by force, regardless of individual political views,” and he says the attempted coup has in many respects brought the Turkish people together. The fact that even many Turks who do not necessarily support the AKP did not view the attempted coup as an opportunity to get rid of the government played a uniting role for the people, Kursun reports, which he says “has created conditions for a somewhat peaceful environment.” He also praised the government for its efforts to keep financial markets as stable as possible in extremely difficult circumstances – pointing out that the XU100 is up 7% this year at the time of writing. Clients are now in a wait-and-see mode – a familiar situation across much of Europe, he points out, referring both to the United Kingdom after the Brexit vote, and Spain after its recent elections. “I don’t want to be too optimistic,” he says, “but I think things will bounce back in a couple of months. And, as I said, even now very few deals have actually been canceled; things are just moving a bit more slowly. We have received several RFPs

and engagements since the failed coup.”

Finally, the subject turns to the legal market itself. When asked whether the recent police shut-down of YukselKarkin (reported on the CEE Legal Matters website on July 25, 2016) is of concern for the legal market, Kursun says no, describing it as an isolated event, and “not reflective of anything against the legal market.” Kursun points out that ten years ago White & Case, where he himself spent nine years, was pretty much the only international firm of significance in the market, and faced little competition. “But now all the biggest international firms are here: Baker & McKenzie, Allen & Overy, Clifford Chance, and so on. Meanwhile Turkish firms have become more sophisticated.” In part as a result, he says, fee pressure has grown due to tough competition. “The market is ever more competitive. That’s a challenge, but we take a long-term view. You will always find someone buying work by offering big discounts. But that’s not sustainable. Clients want and need quality advice, especially in uncertain times. Just because something’s cheap doesn’t mean that it’s good value. Clients increasingly recognize this important difference.”

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CJEU Rules on Liability of Marketplace Operators for Trademark Infringements

In a groundbreaking judgment (Case C-494/15, *Tommy Hilfiger Licensing LLC, et al. v Delta Center a.s.*) involving a trademark dispute originating in the Czech Republic, the CJEU has recently clarified that the tenant of a market hall who sublets sales areas to market-traders selling counterfeit branded goods, is an intermediary within the meaning of Art 11 of the Enforcement Directive (2004/48/EC).

The CJEU also ruled that the liability criteria adopted for online marketplace operators such as eBay (See case C-324/09, *L'Oreal et al. v eBay*) shall be applicable to the same extent to “offline” marketplace operators.



Denisa Assefova, Attorney at Law, Schoenherr



Michael Wöller, Counsel, Schoenherr



Adolf Zemmann, Attorney at Law, Schoenherr

Good News for IP Owners

Up until now, brand owners were mostly left to pursue smaller-scale sellers of counterfeit goods on an individual basis, often involving considerable effort and costs which in many cases could not be recovered in full from the infringers. Thus, the CJEU decision will certainly be widely appreciated by all EU brand owners. It opens new doors for IP right holders who may be in the position to apply for injunctions against intermediaries whose services are used by IP infringers. Consequently, operators of physical marketplaces may be forced to take active measures against market traders engaged in the sale of counterfeit products on their premises.

In its decision, the CJEU provided a uniform EU-wide interpretation of the term “intermediary” as far as operators of public marketplaces are concerned. It is reasonable to assume that the CJEU’s interpretation in the present case may also be applicable to various other service providers such as consignment agencies and storage space providers.

Warning for Landlords and Other Commercial Service Providers

Lessors of basically any sales areas, in-

cluding sales points in shopping malls, market halls, flea markets, and outdoor marketplaces (including publicly operated spaces) should now realize that they may be held liable for not taking effective action against tenants who commit IP infringements. Lessors may even face preliminary injunctions or similar measures taken by IP owners, even if they are not themselves directly involved in any IP infringements.

According to the CJEU judgment, such injunctions should be effective and dissuasive, but also equitable and proportionate. While landlords cannot be required to exercise general and permanent supervision over their tenants, they can be forced by judicial injunctions to take measures to avoid future infringements by the respective tenants who previously committed IP infringements. The measures to be taken against intermediaries in order to prevent future infringements (e.g. interim injunctions) will generally have to fit into the national procedural framework of the respective EU Member State but need to fulfill the criteria established by the CJEU. This, in some cases may require a broad interpretation of national procedural rules in order to comply with the requirements of EU law.



It will be interesting to see how the Czech Supreme Court (which originally referred the case to the CJEU and will now have to decide on the merits of the case based on the CJEU ruling) and courts in other EU Member States will implement the CJEU decision in practice. However, the judgment is a clear warning to all landlords operating in the EU, who should now evaluate their renting policies and contractual arrangements. At least from a compliance perspective, landlords should in particular ensure that they have (1) effective risk-mitigating measures in place to minimize and/or avoid the sale of counterfeit goods in their leased premises and to sanction such proven conduct (for example by reviewing and amending the relevant contractual provisions, distributing warnings and notices to create awareness among lessees, etc.); and (2) internal procedures in place to quickly react and take appropriate measures when they become aware of IP-infringements being committed by their lessees (comparable to the “notice and take down” procedures adopted for online sales platforms).

History of the Case

The case leading to the CJEU judgment is particularly interesting and dates back

to 2012. The defendant in the proceedings, Delta Center a.s., is in fact currently renting the Prague Market Halls (“Pražská tržnice”) situated in the heart of Prague from the City of Prague, which owns them. Delta Center in turn sublets the individual sales areas and stalls to market traders who, on many occasions, have been found to be selling counterfeit products. It is common knowledge that counterfeit goods are being sold in the Prague Market Halls, and the customs officers together with the police conduct regular raids, usually seizing hundreds of counterfeit goods.

Holders of famous brands such as Tommy Hilfiger, Lacoste, and Burberry have jointly taken action against Delta Center before the Czech courts to force Delta Center to take active measures to prevent the further sale of these counterfeit products, at least by sellers who have already been convicted in court (often criminally) or in administrative proceedings for their conduct.

In the main proceedings, IP owners requested a preliminary injunction against Delta Center ordering it to (1) refrain from concluding or extending any contracts for the rental of sales areas in the

halls with persons whose conduct was held by the judicial or administrative authorities, with final effect, to constitute an infringement or a risk of infringement of the rights conferred by the trademarks mentioned in the application; and (2) refrain from concluding or extending any contracts with terms which do not include an obligation on the part of market-traders to refrain from infringing the applicants’ intellectual property rights, or a clause allowing Delta Center to terminate the contract in the event of the infringement or likelihood of infringement of those rights.


“the CJEU decision will certainly be widely appreciated by all EU brand owners. It opens new doors for IP right holders who may be in the position to apply for injunctions against intermediaries whose services are used by IP infringers.”

The IP owners were not successful in the first- and second-instance proceedings, primarily because the Court concluded that Delta Center could not be considered a “provider of means or services ... used by a third party to infringe IP rights” (i.e., an intermediary). The case was brought before the Czech Supreme Court, which, at the moment, is seeking guidance from the CJEU.

The case is all the more interesting from the local perspective, since at the very beginning of the dispute between the brand owners and Delta Center it also became apparent that Delta Center owes the City of Prague high amounts in rent. The whole case became public, and many people have questioned the legal position of the City of Prague, which effectively is also profiting from the sale of counterfeit products.

Denisa Assefova, Michael Woller, and
Adolf Zemann, Schoenherr

KN's Newest Senior Partner: Interview with Rastko Petakovic

A portrait of Rastko Petakovic, a man with dark hair and a beard, wearing a light blue button-down shirt. He is sitting at a desk with his hands clasped, looking slightly to the right with a pleasant expression. In the background, there are colorful geometric shapes and office equipment.

On July 25, CEE Legal Matters reported that Rastko Petakovic was appointed Senior Partner at Karanovic & Nikolic (KN), the first non-founding Partner to gain the title. Petakovic, who first joined KN's Belgrade office in 2005 as a trainee, established the firm's competition team in 2007 and became a Partner in 2010. CEE Legal Matters sat down with Petakovic to learn more about his appointment and his plans going forward.

CEELM: Congratulations on your most recent appointment. What does the title of Senior Partner mean within KN and how will it influence your role going forward?

R.P.: Thank you! I am really excited to have been given this opportunity to continue contributing to this outstanding firm. I think this promotion is a good blend of recognition and responsibility: the firm's recognition of what I have done so far makes me feel proud of the achievement, and the responsibility it has given me makes me ask the question, "What's next?" Because being a Senior Partner means having a seat at the top table and being able to influence the strategic direction of the firm. And that is what's next – I want to contribute to raising the firm to the next level. Although we have been and still are a really successful legal practice in this region, I believe we can do even more for our clients, and I will give it my all for us to do just that.

CEELM: To what do you attribute your success at the firm, and what

were the main supporting elements within the firm allowing you to achieve this new position?

R.P.: A mix of qualities and a lot of luck over the years. Above all, I am a lawyer, and I still enjoy arguing a case before the Competition Authorities and pulling an all-nighter working on a complex deal structure. The joy of using all your legal and personal skills to resolve a complex legal matter is the reason why I studied law in the first place. I still feel a rush whenever I get that 'eureka' moment and solve a problem for a client. Ultimately, loving what you do makes you focused on delivering results for clients, day in and day out. To stretch the metaphor from the beginning, when you collect enough XP points, you get leveled up.

But the other part of your question is key here. To succeed you also need the right environment, where consistency and results pay off. So I was very lucky to begin my career at Karanovic & Nikolic where we focus on professional development and supporting each other. Long before

we established our team for Learning & Development, you could walk into the office of a Senior Partner and ask for help. That one-on-one time was key to my personal development, and I truly appreciate the time and patience given to me as I learned the profession. Since then the firm has developed a structured approach to career progression and helping lawyers thrive. The two main elements that make this possible are the people and the company culture, both of which have developed and matured during my time here – over ten years. It's this combined potential and support that makes me confident we can always reach that next level while enjoying the journey along the way.

CEELM: How did the other four Senior Partners affect your career?

R.P.: The firm was established in extraordinary times by extraordinary people who are all still active in the day-to-day operations. Each Partner has helped me in a different way. When I first came to the firm I was a trainee on Dejan [Nikolic]'s team, so my legal formative years have

been affected mostly by his approach to work – which was putting the client first (I cannot emphasize this enough). Patricia [Gannon] influenced me most on how to identify and grow a business – to see opportunities where others don't. Dragan [Karanovic] brings stability and structure to the work, and he is excellent at planning and executing – qualities which I value highly. Milos [Vuckovic] is great with people – he is very focused on investing in people and helping them maximize their potential. All are different and bring a unique set of skills to the table, which has been the key behind our success. They are all world class professionals and great lawyers, and the combination of their diverse qualities is what many firms look towards when establishing their top team.

CEELM: What were the most significant and exciting challenges you faced during your time with the firm?

R.P.: The most challenging and the most exciting situations have happened with my clients: sometimes it's negotiating a complex Phase 2 decision or waiting for the court to decide on the case involving a largest fine ever or negotiating a deal that hangs on a thread. Again, so many times I was lucky enough to secure a great deal for the client, which is hugely personally rewarding.

To be fair, from time to time we have faced internal organizational challenges too. We are rigorous, and we hold our teams to the highest standards, which sometimes results in pressure. We hire the very best students from the law faculties and top professionals who are able to work in a top achieving environment, and we expect world class performances from them. It comes as no surprise then that some people learn along the way that they do not share the same vision or way of doing things, and that is when we have to go our separate ways – which is completely normal. Sometimes, these kinds of developments are capable of evoking strong feelings and reactions, and handling that can often present a challenge.

CEELM: What would you say is different about Karanovic & Nikolic?

R.P.: Karanovic & Nikolic is a unique firm from this region as it has clearly emerged from this part of the world,

and, by working with lawyers across borders, it has a top reputation for being open-minded and relevant to the business community investing in the former Yugoslavia.

I also think it's the values. If you look at the people who are loyal to a company or firm, most often you will see that they share the values and feel as if they belong to the culture of the organization. I like to explore new things, find new ways of doing things, and KN people are open to that – and the firm is the same. I am ambitious, and so is KN. Being a lawyer in itself demands being a strong individual, but while working with clients who expect a full range of services we have to work in teams and have low to no tolerance for what is less than an excellent performance. We were the first firm to develop defined practice areas of experts and we are starting to work in cross-functional teams and industry focused groups where all of our specific know-how merges and results in some completely new and “edgy” ideas. This is the wide-bodied spirit I like about KN.

CEELM: How would you describe the importance of the work that you do?

R.P.: Top tier internationally-minded law firms are an essential part of the investment ecosystem. An aspect that rarely anyone considers is the role that commercial law firms play in attracting foreign investors to the market. Essentially, leading commercial law firms are the investment infrastructure in any country, together with blue chip companies. Clients look into a number of factors when deciding where to invest – the economic situation, political stability, rule of law, and market opportunities and advisors, as well as the overall support given to them. They require sophisticated and internationally-minded advisors to guide them through the process of investment, and that is what we do. If we are able to give them the standard they are accustomed to in their home country, and sometimes go above that, then we are doing our job right.

Additionally, for over 20 years we have taken a proactive role abroad, positively raising the profile of the country and the region in general, explaining all the issues

outlined above, and encouraging often prejudiced investors to explore possibilities. In this way we play the role of economic ambassadors, and I think it should be noted that billions of euros have been invested through deals KN advised on – and at least 100,000 jobs have been created or retained as a consequence.

CEELM: In announcing your appointment, Karanovic & Nikolic reported that you “played a key role in 2015 in expanding the firm’s practice in the region.” Can you explain what that role was and what lessons you drew from that experience?

R.P.: Last year was a great one for the firm, as we grew quite a bit both within specialized teams and also new markets such as Slovenia where we cooperate with a fantastic team of lawyers who have had an extraordinary first year. Speaking from my own experience, as you can see, it's so important to align the company's vision with the vision of the people with whom we wish to cooperate, and that was the main focus of my involvement with our expansion. Having it happen with the right people, in the right places, at the right time, is just great to be part of.

CEELM: On a lighter side, you're obviously a huge tech fan. What are your favorite pieces of technology, both for work as well as leisure?

R.P.: Yes, I am a huge tech fan and am known in the office to be very open to how technology can change our lives and the way we work. The firm clearly recognized this as they gave me a cool hover board as a promotion gift and I have been having fun with it in the office! I am the type who queues for the new iPhones, new Harry Potter books, and any type of gadget one can try. I live with my family in the countryside, which is a wonderful de-stressor, and I enjoy flying my drone and recording amazing 4K videos of the beautiful scenery with it. This summer we had the most amazing teambuilding event where I put my drone to work, shooting and editing a video for the Competition team's entry into our film competition. Although not quite Oscar standard yet, I was pleased with the result, and we had a few laughs along the way.

The Corner Office: Retreats

In The Corner Office, we invite Managing Partners at law firms from across the region to share information about the strategies they employ to keep their teams motivated, effective, and focused. For this issue, we asked them to reveal what sorts of firm retreats and activities they host and/or organize for their lawyers.

Andras Posztl, Country Managing Partner, Horvath & Partners DLA Piper (Hungary)



We have a team-building weekend every year involving the whole staff. A few recent examples include visiting an adventure park, rafting, hiking, games for team building (like tug of war and bubble football), and a forest Segway adventure.

Besides this, we regularly participate in volunteering and charity actions, including participating in the UNICEF Fund Raising Cycle Challenge and taking part in major running events like the Vivicitta, K&H, and Spar Marathons to support Magic Lamp, a Wish-Granting Foundation for children suffering from life-threatening illnesses.

Panagiotis Drakopoulos, Senior Partner, Drakopoulos Law Firm (Greece)

In terms of team building, we hold Christmas and end-of-court season dinners for the entire office in each country separately

[the firm has offices in Greece, Romania, and Albania – ed.] and have organized a couple of retreats over the past few years for the Romanian office.

I would not say we do as much as we could, nor that we do it in an organized and consistent manner, and a mid-term priority of ours is to do more, in a systematic way, and, most importantly, include activities involving all our countries together. This last part would help develop a cross-border mentality and boost collective consciousness of the firm's regional approach towards a global market.

Alexandr Cesar, Managing Partner, Baker & McKenzie (Czech Republic)



We have two outings every year. In March (or around March) we go skiing (or cross-country skiing or simply hiking), usually in the Alps, and in September we go to different places in the

Czech Republic, to the countryside, to do sports and other outdoor activities, depending on what the particular place has to offer: hovercrafts, scooter trips, dragon boats, shooting sports (including gun and bow shooting), climbing, etc. Our outings are usually two-to-three-day trips, reserved for our staff members only. It's about the beautiful outdoors, good food, experiencing new adventures, and fun.

We also organize some activities to which families of our staff members are invited, the most popular being the Christmas parties and the St. Nicholas parties. The St. Nicholas parties take place at our office and are designed for children to play a major role. Parents bring homemade food and sweets, and the children can participate in a number of fun competitions, where winners are awarded with sweets and small presents. The highlight of the event is when a group of our staff members, dressed-up as St. Nicholas and his devils & angels, appear and give presents to the children – provided that they have behaved nicely throughout the year and on condition that they sing a song to St. Nicholas. The Christmas parties are for our staff members and their partners, and are evening events that take place in a good restaurant & bar venue in Prague, with great food and music and often connected with some activities – curling, bowling, etc.

Zoltan Faludi, Managing Partner, Wolf Theiss (Hungary)



“No trainer – but retreats for fun only.” This is our concept of team-building exercises. We at Wolf Theiss deliberately do not engage trainers or arrange for dedicated and organized team-building exercises. I had some bad experience in the past with other firms and decided to avoid this type of “training” at the new firm we set up in 2007 for Wolf Theiss in Budapest.

We do work hard and are professional throughout the year – even if the year is not the most successful one. We deserve a weekend to relax and enjoy ourselves. As there are couple of sailors in the office, including myself, we started a sailing weekend at Balaton in 2008. This July we held our ninth Wolf Theiss Regatta. Nothing has changed. That says everything. No pro-

fessional lectures or any formal content over the weekend, just sailing and party. The safety briefing may be the most professional part of the exercise. For a team of 40-45 people it is easily manageable and we enjoy it very much.

Beyond the sailing retreat we celebrate regularly and use even professional occasions to have fun and spend time together outside of the office. We find occasions such as promotions of our colleagues, our fifth anniversary, various events, a spring and after-summer party. We even celebrate birthdays. These little efforts contribute to a warm and relaxed environment that everyone appreciates and admires. At the end of the day, we spend more time together than we do with our family – it must be more than work; it must be fun.

Damir Topic, Partner, Divjak, Topic, Bahtijarevic (Croatia)



As our people work long hours, we are very sensitive in taking their additional time for team-building events. Therefore, two or three times a year we organize barbecue parties outside the city which our colleagues attend together with their spouses and children. It proves to be the best gathering for our colleagues, since they enjoy good food and nice wine together. These parties are without any particular scenario or schedule – just enjoying being together outside the office and having a nice time with our families. The peak of the season is the Christmas party, with more fun (live music) and entertainment (karaoke), etc.



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Gonenc Gurkaynak, Managing Partner, ELIG, Attorneys at Law (Turkey)



ELIG, Attorneys-at-Law has been sponsoring a Turkish wheelchair basketball team, ELIG Avukat Burosu Engelli Yıldizlar (Disabled Stars), for the past three years, and we are proud that during this past year our team made it to the top Turkish league, along with well-respected teams such as Besiktas and Galatasary.

Our team plays every other weekend, and when the games are in Istanbul, there is always a lot of support from ELIG lawyers and staff who have really gotten behind the team during the past three years. The office coordinates transport to wherever that week's game may be in the city, and every month or two we get together for a pre-match brunch or post-match dinner so that we can make an afternoon of it. It is also a great way of way of getting our own team together outside of the office. We attended a rousing match against Besiktas a few weeks ago, and while our team may not have won this particular game, they held their own with a well-deserved score of 71-51. We were on hand to support the team 100%, even if it was a challenge drowning out Besiktas supporters with their home advantage.

Uros Ilic, Managing Partner, ODI Law Firm (Slovenia)



At ODI, retreats are purely a time for the lawyers and other staff members to build relationships with their colleagues through a

series of fun activities. The aim is to have a relaxed, social day away from the busy legal practice, telephones, and e-mails. The retreat agenda is kept light, with planned social activities and meals. As most employees at ODI are fitness fanatics, and most live by the slogan "healthy body-healthy mind," recreational activities are always high on the agenda. To appeal to the lawyers' naturally competitive nature, we always have a competition of some sort.

In June we went to Planica, in Slovenia – which is famous for ski jumping competitions – for some bush walking and then, for the adrenaline junkies, went on the world's steepest zipline, which is 566 meters long and where you can reach speeds of up to 85 km/h in just a few seconds. The day finished with a nice meal and some drinks in Retece, a village nearby. I'm not sure how to measure success of such an event apart from seeing people relaxed, happy, and enjoying themselves.

Eugenia Sutkiene, Managing Partner, Tark Grunte Sutkiene (Lithuania)



The last six or seven years we have taken the entire office (including support and administration) abroad for three-or-four-day skiing events. We have been skiing in Slovakia, Italy, France, and a couple of times in Austria. We have not abandoned this idea even in the deepest economic crisis time in 2010 and went to the Silichy skiing resort in Belarus, not only to have fun, but a bit of exoticism too. This was a good opportunity to spend some time with our Belarusian colleagues. With the office growing (now we have more than 130 people) the skiing event is turning into a very costly and challenging exercise logistically and otherwise but our people love it. It is an excellent team-building event, and we do not have any intention to give it up. We also have an annual pan-Baltic-partners skiing event. We have a summers gathering of the three Baltic offices semi-annually. Our departments and practice groups have team-building events a couple of times per year (i.e., sports, stress management, and various fun events with elements of training). We also have an annual golf tournament for our clients, where most of the senior lawyers participate very willingly and have a lot of fun with the clients and together. This event is very popular among the lawyers and clients. Said events not only unite our team but also motivate our employees and teach them to work as a team, increasing the unity level.

**Mykola Stetsenko, Managing Partner,
Avellum (Ukraine)**



Avellum aims to create an atmosphere where every member of the team feels comfortable and motivated. We never force team-building exercises. I would even say they spring up natu-

rally; we only support our people in their urge to do what they love. As an example, we have regular movie nights: we buy some snacks and watch a movie using a projector in our conference room. Our team loves to participate in the film selection process – people come up with their suggestions and then vote to choose the best option. The organizing committee usually uploads two or three movies, since we rarely finish by watching only one of them.

We also love to celebrate some special occasions. We try to escape from the city to celebrate New Year's Eve or Avellum's birthday. For example, we had a wonderful time at Bukovel (a ski resort in Ukraine) and Batumi (in Georgia). We have plenty of sports lovers and travelers with us who continue to come up with amazing ideas. Our people lead active lifestyles and engage each other in various activities, from running and bowling to culinary master classes, concert going, even board games.

David Stuckey

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Industry Report: Private Equity



Contributing to this Report



Ronald Given; Partner;
Wolf Theiss



Lucian Bondoc; Managing
Partner; Bondoc & Asociatii



Peter Huber; Managing Partner;
CMS Austria

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Poland Doing Better than Most



According to Ron Given, Partner at Wolf Theiss, “the Polish market is doing better than most of the world where M&A is down.” Indeed, Given believes the market’s potential is still not fully being realized. “I read a front page Wall Street Journal article recently about how Germans are now gravitating more towards the Czech Republic, but we haven’t really been seeing it. On the other hand, with valuations what they are and with the Warsaw Stock exchange still being relatively weak alternative, I’m a bit surprised there are not more deals.”

Still, Given pointed to the January 2016 sale of Smyk as a recent deal of significance: “I particularly remember that one because everybody in Poland knows the store opened in 1952 – the year I was born. It was essentially a fund to fund deal but certainly not a bad sized one – it was sold by Penta Investments and Eastbridge Group to Bridgepoint.”

In terms of players to watch, Given described Warburg Pincus as active in Poland, with its 2016 acquisition of Apteki Gemini – a discount pharmacy chain – likely to generate some add-on investments, and reports that it might be looking to sell the INEA cable TV company, which it acquired in 2013. Another recent

“flagship deal” Given pointed to is MCI Management’s sale of the INVEA travel portal in the Czech Republic and Poland to Rockaway Capital (Czech Republic). Given explained that, “unless you’re talking about monster deals that catch the attention of Blackstone and others,” the CEE-based private equity houses tend to both be more active and “in some ways more savvy in the region than their international competitors.”

Another interesting market player, Given reports, is a fund new to the region: Coast2Coast. Its arrival shows that CEE “continues to attract as a region,” Given says, noting that the fund tends to invest off its own balance sheet rather than raise funds from third parties, which “gives them a bit more agility and flexibility.” The Wolf Theiss Partner is intrigued by the fund – “not really a CEE-based but not a Blackstone either” – and said he first became aware of them when they acquired the Sonko rice cake producer in Poland and then again when his Hungarian colleagues assisted them in acquiring a nutritional production company.

Looking at the current pipeline, Given commented: “Mid Europa Partners is one of the huge outfits, of course, and we expect a couple of their portfolio



Ronald Given; Partner;
Wolf Theiss

items to be up for sale soon.” Given referred to Mid Europa’s likely sale of the Zabka Polska chain of retail stores, which he described as “a huge deal of at least EUR 1 billion – a classic potential for the likes of KKR, Advent, Blackstone, etc.,” and expectations that Mid Europa will sell the Diagnostyka business, which, due to its relatively smaller size, “will certainly involve people like Penta and more local buyers.” He expects to see the sale of Allegro by Napsters – which some estimate to be worth over EUR 3 billion – as “another obvious target for the bigger league outfits.”

Radu Cotarcea

Romania is Picking Up Speed



Lucian Bondoc; Managing Partner; Bondoc & Asociatii

According to Lucian Bondoc, Managing Partner of Bondoc & Asociatii, the Private Equity market is picking up speed in Romania. “We see a lot more determination to look at the country, a phenomenon that’s been building up for the last two years already,” Bondoc commented, noting with pride that “we’ve been lucky enough to be involved in some of the most notable deals to date.”

Bondoc said that especially in light of Mid Europa’s 2015 acquisition and subsequent expansion of Regina Maria in the country, healthcare is a popular target for PE investments in Romania. He explained: “The private healthcare sector

has seen considerable growth. Both because Romania was one of the lowest spending countries in the EU in terms of healthcare but also because we had over 10,000 doctors leave the country, we’ve had some gaps in the sector. Combine that with the overall growth of the economy and increased demand as a result, we’ve seen considerable growth on the private side of this.” In terms of Mid Europa specifically, Bondoc commented: “They are coming in from the Polish experience and with a considerable regional approach.” He pointed out that healthcare is not the only sector with real potential in the country, but “in terms of what’s been closed, yes, we can see a focus on it.”

IT and Internet-based start-ups are another sector of interest, Bondoc reported, pointing to the recent acquisition by eMag – the largest online retailer in Romania – of Fashion Days, and its ongoing purchase of PC Garage, which is pending approval by the country’s Competition Council.

But Bondoc maintains a degree of caution in his positive outlook. “While our plate is pretty full at the moment I admit I

am looking out for the fall-out of various elements, such as the Brexit and the situation in Turkey,” he commented. “Despite being rather comfortable in geopolitical terms relative to both, we may see a slowdown, or even a bust, at a pan-European level. I see no real downside for now related to either, but I am starting to feel a temptation from the investors’ side to wait and see.”

In terms of the profile of potential investors looking at Romania, Bondoc explained that, primarily for historical reasons, it might prove “difficult for those that do not have a local team in terms of assessing what’s on the ground.” While Mid Europa and CVC are some of the big names looking at the market, there are also several funds “that are more prudent and go for the small- and mid-sized deals.” For all of these, he emphasized, whether they actually close anything comes down to both the size of and their abilities to understand the specifics of the market. “Once you complete a deal here, you get comfortable, but it depends on what you are ready to digest at your first go,” he concluded.

Radu Cotarcea

SEE Markets at an Interesting Point in Their Development



Peter Huber; Managing Partner;
CMS Austria

“On one end you have the developed markets like the Czech Republic and Poland with a lot of activity and large deals with many of the usual names,” explained Peter Huber, Managing Partner and Head of the International Corporate Transactions team of CMS Austria at CMS. On the other, he said, “and probably more interesting, we have the smaller and not so developed markets in the region where we’ve seen changes over the last few years.”

Referring to SEE in particular, Huber pointed to KKR’s investment in Telemach as a “breakthrough in the region in many ways,” both due to the size and the fact that it was a secondary deal. “We might see a lot more secondary deals here and I

am happy to see that the larger players are increasingly prepared to take into pricing certain risks that come with the region.” Mid Europa’s 2015 investment in Danube Foods of Serbia was another notable secondary deal that Huber pointed to.

Huber agreed that, for CMS, the Balkans are a particularly attractive region these days in terms of targets, noting that unlike in Poland, the Czech Republic, and even Russia and Turkey to some extent, deals like KKR’s and Mid Europa’s in SEE are a relatively recent development. Such deals, Huber claimed, result from more entrepreneurs who started their businesses in the 90s now becoming more open to selling. “Of course, we might also see more situations like the disposal of SABMiller, where large corporates are trying to focus geographically and some of them considering CEE as non-core, which might stimulate deal flow even further.”

Huber expect to see additional deals in the consumer products, retail, and healthcare industries. Laboratories, he said, are a particular submarket to watch since there seems to be significant room for consolidation in the market. Another interesting case to keep an eye on, according to Huber, is the privatization of the Komercijalna banka in Serbia, “where there should be considerable PE inter-

est.” When asked if the Serbian Government would consider PE funds or is likelier to look for a strategic investor, Huber responded that “it will be a level playing field with price obviously playing an important role. I do not believe that PE will at a disadvantage.” He added: “there are probably only a few large EU banks that would be taking on an M&A of that size in Serbia. There might be the odd Chinese conglomerate but I would definitely see room for PE on this particular situation.” The CMS Partner wondered only whether Serbia’s price expectations “are realistic or if they are somewhat inflated as with some of the privatizations in Slovenia.”

The Austrian market has been “somewhat more quiet recently but we are seeing deal flow in the mid-market segment.” The market is small, and not cheap, Huber said. “There might be opportunities in listed companies where the valuations of some tend to be lower than their counterparts in Germany or other markets but very few targets in terms of private holders would lend themselves to a PE transaction,” Huber explained. He pointed to retail, healthcare, and property as sectors with the most potential.

Radu Cotarcea

Market Spotlight: Romania

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Guest Editorial: A U.S. Lawyer's Observations on Romania: 1996-2016 and Beyond



It may perhaps be symbolic that I pen this rather reflective article for CEE Legal Matters now, considering that August 2016 marks twenty years to the month since I first stepped off the plane at Otopeni Airport in Bucharest, Romania, to serve as a liaison for the American Bar Association's Central and Eastern European Legal Initiative (CEELI), having taken a one-year leave of absence

from my litigation practice in Los Angeles.

As conceived, I would describe CEELI as a sort of “legal Peace Corps”, whereby experienced lawyers from the US were parachuted into the countries of Central and Eastern Europe with the idea of introducing “best practices” to the emerging markets in this region. It is hard for some to remember now, after twenty years have passed, but at that time it had been only six years since the revolutions of 1989 had shaken the region to its core. While all of the countries in the region had as a result of these fundamental political changes transitioned from a central command economy to a free market capitalist economy, many of the “rules of the game” that had been developed over the last century and taken for granted in the Western market economies had yet to be introduced or effectively implemented in the CEE/SEE region.

So, for example, the assignments during my 1996-1997 tenure as a CEELI liaison in Bucharest were to provide model laws and commentary to relevant stakeholders covering areas as diverse as Competition, Secured Transactions, and Bankruptcy law. In some instances these laws had yet to be introduced – and, where they had been, no sufficient practical experience or training existed in relation thereto.

Another area where we advised was institution-building in the judiciary – i.e., strengthening the judiciary as a truly independent branch of authority through training and consultation. Here too, Romania and other countries in the region were struggling to shake off the legacy of “telephone justice” – where a call from the Ministry of Justice to the judge considering a particular case could very well influence the outcome of that case.

I also traveled around Romania speaking to regional Bar Associations, usually accompanied by one or two “pioneer” Romanian lawyers. One of the concepts that I would discuss was the idea of hourly billing. This was very alien to most Romanian lawyers at that time – even experienced commercial lawyers – who tended to bill their fees at fixed or flat rates based on a Bar-approved rate sheet. Attempts to explain the business case for hourly billings was often met by looks of incredulity and the muttered phrase “nu sa poate in Romania” (“it can't be done in Romania”).

My one-year term with CEELI ended too quickly, but back in the States I learned of a law firm that was looking to expand into Romania. One thing led to another, and in August 1998, almost exactly one year later, I was back in Bucharest, this time to set up the office of a US law firm.

What are the changes I have observed over the period from 1998 to the present? Certainly the market for legal services has matured tremendously, and client expectations for quality legal services, the level of sophistication and complexities of the transactional market, and generally the skills and expectations of the junior and mid-level local lawyers have all increased tremendously. I think this is a healthy and positive development for the Romanian market overall, but one which does place increasing competitive pressures on the fees of those lawyers who are scrambling for the same deals in the same market.

What about the future? Certainly at a macroeconomic level the indicators bode well for Romania. It has experienced some of the most significant GDP growth in the EU over the last couple years, and experts predict a further healthy growth of 4.2% in 2016. Much of this has been driven by increased consumer spending, following on the heels of several VAT reductions since 2015 (including a reduction of the overall VAT rate from 24% to 20%) and expectations that it will decrease still further to the pre-crisis level of 19% in 2017. This development, coupled with three increases in the minimum salary in the last two years and a reduction of the capital gains tax from 16% to 5% have fueled this spending increase (and increased the consternation of the IMF). Whether these increases can be sustained and future tax increases avoided will largely depend upon improving the efficiency of tax collection efforts, as recovery rates are currently among the lowest in the EU.

Still, its geopolitical position, staunch support (post-Brexit) for continuing EU membership, and continuing commitment to NATO (as well as its strong bilateral relationship with the US), coupled with potential for growth in sectors as diverse as energy, infrastructure, agriculture, IT, and tourism would all suggest that Romania is poised for future growth. This rather rosy expectation assumes that no global macroeconomic shock, “backsliding” from the current political will towards open and competitive markets and intolerance of corruption, or further irrational changes to the legislative framework in Romania will occur in the near future.

Hopefully, investors will also see Romania as an attractive destination within the “new Europe,” and this will translate into more work for all lawyers in this market – a true rising tide that will float all of our legal boats in this dynamic corner of south-eastern Europe.

*Bryan Jardine, Managing Partner,
Wolf Theiss Bucharest*

Romanian Round Table: Confidence with Qualifications

Attendees:

Bryan Jardine; Managing Partner; Wolf Theiss Rechtsanwälte (Host)

Lucian Bondoc; Managing Partner; Bondoc & Asociatii

Ana-Gabriela Atanasiu; Head of Legal; Bucharest Stock Exchange

Ramona Ene; Legal Manager; Cargill

Marian Dinu; Managing Partner; DLA Piper Dinu SCA

Ioana Regenbogen; Head of Legal & Corporate Affairs; ING Bank

Alina Popescu; Co-Managing Partner; Maravela & Asociatii

Stefan Caramida; Senior Counsel Romania & Bulgaria; Philip Morris International

Catalin Baiculescu; Partner; Tuca Zbarcea & Asociatii

On Tuesday, July 11, 2016, ten senior Romanian lawyers gathered at the Bucharest office of Wolf Theiss for a CEE Legal Matters Round Table to discuss the state of the Romanian economy, the Romanian legal market, and their expectations for the future.



The good humor and general confidence exhibited by participants of the Round Table reflected Romania's growing economy and stable legal market, and the participants seemed to share a belief – though of course cautiously expressed – that the future in Romania is bright. Ioana Regenbogen, the Head of Legal & Corporate Affairs, ING Bank N.V. Amsterdam Bucharest Branch, summarized: “We have the figures and predictions for the next year. It's something like 4.2, and if we look to the other countries, it's amazing; it's like double of Croatia, Serbia, much higher than Bulgaria, and so on. Even Poland is only at something like 3.5. So it's amazing.”

A Qualified Enthusiasm

At the same time, many of the experts who gathered at Wolf Theiss's office agreed that they were not quite as busy as the country's overall economic figures might suggest, and a number of them pointed at the current political situation in the country as the reason.



Bryan Jardine,
Managing Partner,
Wolf Theiss Rechtsanwälte (host)

Bryan Jardine, Managing Partner at Wolf Theiss Romania and host of the event, suggested that the upcoming election in the country might be playing a role. “I think on a macro level the economy's going quite well, and the statistics suggest that it's one of the best performing economies in Central and Eastern Europe. The problem for us, at a more micro level, is how you translate this into real business. This is because we face an election year coupled with aggressive and public anti-corruption efforts. While the latter is a positive development in the medium to long term, in the short term it can have a chilling effect. Indeed, we have seen that

impact on many deals that have stagnated or not proceeded. This is the case in particular when you're dealing with public officials on the other side of deals. Effectively, they are reluctant to take the initiative, or sign contracts, or move negotiations forward, given the concerns that they could be replaced following the elections and their actions subsequently scrutinized by the anti-corruption authorities. So in this context, it is often 'safer' to do nothing... So from our perspective, while Romania certainly is one of the biggest potential legal markets in the region, we have seen challenges in part because of these contextual factors."

Lucian Bondoc, Managing Partner at Bondoc & Asociatii, expressed a tempered enthusiasm. "We see the market growing, for sure, and I believe that such is likely to continue for a couple of years, but indeed one needs to remain prudent. I think from a psychological stand-point, we are not out of the crisis. But in terms of number of deals, complexity, and people being more relaxed about decisions, we see some real progress."

Bondoc agreed with Jardine's suggestion that the government's hesitancy was affecting business but suggested that the effects were more likely to be felt down the road. "I'm more concerned in the medium term, because we see a bit of temptation from the Parliament for populist decisions, and this could have an impact on the medium term.... I agree that the appetite of the politicians and of the government generally to take decisions of a certain magnitude in the current environment remains to be tested."

Catalin Baiculescu, Partner at Tuca Zbarcea & Asociatii also agreed that the public sector "has not been the biggest generator of law firm fees for many years now," but he put a positive spin on the situation, pointing to reports showing that "2015 was the best year for M&A transactions since 2010," and suggesting that, "in light of the state sector's failure to generate work, the increase in the private sector is even more significant, because in 2010 there were a significant number of public projects which do not exist these days."

Alina Popescu, the co-Managing Partner at Maravela & Asociatii, suggested that even the little work that does come

from the state may be fool's gold. "Even if there is a project, and even if you win a tender, the number of billable hours you are able to actually charge the state is lower than it would be in case of working with a private client in a similar deal, and although there is some work we have seen – for instance water infrastructure rehabilitation projects, court litigation, or international arbitration – when you decide to go for such a project you need to think very carefully about whether you actually have a margin out of the deal."



Marian Dinu,
Managing Partner,
DLA Piper Dinu SCA

Marian Dinu, the Managing Partner at DLA Piper Dinu, concurred that the temporary nature of the current government made big deals and privatizations unlikely. "The current government is transparent and is trying to do everything right, but they've also only been here for a very short term, and we're going to have elections in a few months, and no one can predict exactly what the outcome will be; therefore this is not an environment where big transactions, big privatizations can be done, as obviously that would take a bit more time than the two or three months."

Not everyone was as resigned to the current situation, however, and Ana-Gabriela Atanasiu, the Head of Legal at the Bucharest Stock Exchange, expressed her impatience. "Honestly, I don't think we should be so resilient and understanding that deals are delayed or falling through because it's election year. Normally, I shouldn't have to care that it's election year when doing business. There should be some sort of general understanding that the deals will go through in a certain climate, that the state policies will con-

tinue to exist, because they need to exist, regardless who comes to power. People that live here often get frustrated that they have to wait for the elections to pass in order for things to move. I don't think it's normal for us to say, 'we will put the deals on hold, we will not privatize anything, for example, because we will have elections in November and we should see what happens.' We're losing a summer; we're losing precious time."



Ana-Gabriela Atanasiu,
Head of Legal,
Bucharest Stock Exchange

In any event, there was general agreement that, despite a recent slowdown in legal work ("a pause", as Marian Dinu described it), many sectors remained active. According to Ramona Ene, Legal Manager at Cargill, "agriculture is not dead ... not at all. It's true that agriculture may not be perceived as glamorous as other industries, but I think the fact that we ignore how much agriculture brings to Romania in GDP is a mistake. It's a huge potential that Romania still has in agriculture."

"The current government is transparent and is trying to do everything right, but they've also only been here for a very short term, and we're going to have elections in a few months, and no one can predict exactly what the outcome will be"

Stefan Caramida, Senior Counsel Romania & Bulgaria at Philip Morris International added that infrastructure was equally busy. Caramida explained that: “We had a discussion with a huge banking group which is very interested in investing in infrastructure and in financing huge infrastructure projects. And the stoppage is also because we had some problems with European funds. And it looks like this will be solved, and maybe at the end of the year, and next year, we will have some European funds in order to invest in infrastructure.”

Bryan Jardine clarified that even the government was making the right efforts. “I think the important thing is that the government seems to be committed to making the right decisions in terms of investor-friendly policies. For example, we’ve recently seen the adoption of some comprehensive new laws in the area of public procurement, which I hope will incentivize foreign investors to come in with the expectation that the playing field will be more level.”



Stefan Caramida,
Senior Counsel Romania & Bulgaria,
Philip Morris International

Caramida then turned the subject to the inequality of economic recovery benefits across the various regions of Romania: “Some areas in Romania, they’re doing incredibly well. Consider cities like Sebes, where a lot of foreign investors built manufacturing facilities. For example, Mercedes manufactures car transmissions there. Apparently, Sebes’ unemployment rate is close to zero. Cluj is another example of a success story, with companies investing and developing there, particularly in the IT area. And then we have cities like Bucharest. I read recently that Bucharest’s per capita GDP on a PPP [purchasing-

power-parity] basis is allegedly more than 120% of EU average. Personally, I don’t feel it, but from this perspective apparently Bucharest does better than Berlin or Madrid. I look around, I don’t feel that we are doing better than Berlin, but this is what the statistics say. If we look at other cities or regions, the statistics probably come closer to what I perceive as reality – GDP per capita stands in some places at below 40% of the EU average. I think this huge disparity is a problem for the government, but also for companies with national reach, including FMCG [fast-moving consumer goods] companies who need different business models to address the disparities in purchasing power and consumers’ behavior.”

“I think the important thing is that the government seems to be committed to making the right decisions in terms of investor-friendly policies. For example, we’ve recently seen the adoption of some comprehensive new laws in the area of public procurement, which I hope will incentivize foreign investors to come in with the expectation that the playing field will be more level.”

Ramona Ene nodded, noting that the unequal distribution of skilled lawyers in Romania also posed “a challenge for various clients who have activities spread across the country.” She elaborated: “I have difficulties in retaining a trustworthy and efficient lawyer outside of Bucharest. There are very competent lawyers in the countryside, but they might have a challenge with email, they might not have the

habit of informing the client immediately after a meeting is held or after a hearing in court.”



Lucian Bondoc,
Managing Partner,
Bondoc & Asociatii

Lucian Bondoc said he didn’t think that this was much of a problem, suggesting that most work can be done from Bucharest anyway. For Bondoc, the bigger problem is keeping up with the many and ongoing changes to Romanian law. As a result, he said, “there is indeed a difficulty sometimes to build up resources from other counties, but not because there would not be good individual lawyers there. It is rather about the complexity of law now In a context where you have over 130,000 pages of EU acquis communautaire transposed since 1989, much of it modified many times since the transposition [he noted later that “the fiscal code has changed over 250 times since the Romanian revolution, and health care legislation over 1,000 times”], and there is almost no single public institution keeping the same name as 20 years ago, it is quite unlikely for someone that is a freelancer to be able to properly cover very complex projects, even if he/she may well be very good in some law areas.”

The Contested Significance of Brexit

None of the Round Table participants expected the United Kingdom’s vote to withdraw from the European Union to have a profound effect on the Romanian economy or business.

Ioana Regenbogen expressed the general ambivalence on the subject. “Brexit matters,” she said, “but at least from what we know they are not one of the key export partners for any of the CEE countries,

including Romania, so from this point of view let's say that the impact should be moderate. The second consideration would be how much it would cost us, the exit, as regards contribution of Romania or other CEE countries to the EU budget, or if we look to the highest net contributors to EU budget, we see Netherlands in first place, and then Germany, Finland, Sweden, Austria, and so on, and we are, maybe third before last, and if we keep the scenario of spending what we spend now, maybe for Romania it will be an extra 0.05 from our GDP. So probably a moderate impact on us. And, in general, on the CEE level."



Ioana Regenbogen, Head of Legal & Corporate Affairs, ING Bank N.V. Amsterdam Bucharest Branch

Marian Dinu expressed a mild skepticism that the Brexit would turn out to be positive for the country. "There are some people who say that it may in the medium term actually benefit Central and Eastern Europe, because some manufacturing may relocate from the UK to here. It's still too early to see any concrete outcome out of that, and on balance I would not see Brexit as a very good thing for the region, to be honest, as in fact chances are that it will produce economic damage in Europe and in UK and we will also experience that."

"We are not the main competitors of the UK market," Ana-Gabriela Atanasu conceded, "so I don't think that the opportunities will come directly to us," adding that she believes Brexit ultimately does represent an opportunity for Romania and its neighbors. "What we can do is to be smart about it and to see how we can position ourselves, because we are a very interesting country within the re-

gion. Can we make some sort of alliances with other countries in Central and Eastern Europe to get a piece of what is leaving UK? I think we should analyze why people and businesses were seated in the UK... I don't think it was just the financial center of London, it was also a cultural choice; it was the whole package that the UK had to offer; it was the legal system too and the lifestyle.... I think we should target the players that could be interested to move into this hub that Romania can be for Central and Eastern Europe, and we need to be smart about it. What can we really get out of Brexit?"



Catalin Baiculescu, Partner, Tuca Zbarcea & Asociatii

Several Round Table participants suggested that the process of moving away from UK choice of law provisions and jurisdictional provisions had already begun, and thus should not properly be attributed to Brexit. "UK law was traditionally important," said Marian Dinu, "but more and more we have seen Romanian law govern transactions, and that has been a trend for the past few years, so it's probably going to continue as a natural trend, it's not going to be necessarily because of the Brexit. Sometimes I even puzzle when I see that people want English law on relatively small transactions when in fact the cost of resolving a dispute in the UK, it's enormous, and it could not be justified by the size of the transaction. We don't tend to have many transactions in the hundreds of millions of euros here – maybe with the exception of the banks, who occasionally do big loans and so on – therefore I think that's one of the reasons why the UK laws are on a downtrend already, and that may continue."

Approval for the Romanian Judiciary

While the quality and reliability of courts in a number of other CEE jurisdictions have drawn criticism, the Romanian judiciary was consistently praised by the Round Table participants. Alina Popescu, for one, noted that "I personally have a good opinion, at least in terms of trends, and in the newer generations, that have graduated the National Magistrates' Institute and are better and better."

Of course, nothing's perfect, and as the conversation continued a few reservations appeared. Lucian Bondoc suggested that, "the trend is positive in our experience, and I think overall you usually get what you expect, kind of," but said "there are some areas where it's a bit trickier, such as fights against public authorities."

And Ioana Regenbogen said that she "would add just one other area, which is consumer litigation, where we still see a non-unitary approach of the courts, in the sense that we see different judgments on essentials of similar or even identical cases, for example related to abusive clauses or conversion of foreign currency loans."



Ramona Ene, Legal Manager, Cargill

Ramona Ene added her concerns as well: "I would also point here to fiscal claims, where the final outcome is quite unpredictable to my taste at this moment. Although we had some successes in court, it took too long. We were not able to have success from the first tier of jurisdiction. We had to go to the supreme court and then back to the first court for error retrial."

Marian Dinu smiled and suggested a bal-

anced view: “I would answer this in the following way. We occasionally still have bad surprises in the Romanian legal system, but the fact that they are surprises is actually quite good.”

The New Generation of Lawyers

Stefan Caramida turned the conversation to the subject of young lawyers, pointing out that he had been intrigued by the conversation in the Hungarian Round Table that appeared in the April 2016 issue of the CEE Legal Matters magazine about the challenges older lawyers had encountered with the new generation. He asked the table, “although every generation says about the next generation, ‘you know, back in our time,’ I’m actually curious how everybody’s feeling about the younger generation.”



Alina Popescu,
Co-Managing Partner,
Maravela & Asociatii

Alina Popescu agreed that new lawyers seemed to have attitudes and goals different from those of previous generations. “They definitely seem to have quite a different approach to the one we had at the beginning of our career. For instance, we are seeing fewer and fewer people who are willing to commit to a challenging work schedule. We therefore need to come up with something far more interesting than just the prospective of becoming a partner in the law firm, or interesting deals. These are still important things altogether, but we are seeing more and more people who are looking for something more than that: more balance between professional and personal life, a fair and friendly working environment, the perspective of being exposed to significant roles in important projects from an early stage in one’s career, benefits.”

Ana-Gabriela Atanasiu had also observed a difference, but she thought it was a positive. “When I had my juniors, I found them to be extremely creative, but they would actually do the work only if you know how to use them, if you know how to talk with them. I had juniors that were only five to ten years younger than me and I still didn’t understand what their gadgets were about, how they found access to information, what resources they used, etc. I’m not an old lawyer, but when I got the students for summer practice, and later on then they became junior associates, they found things, and they knew stuff which sometimes amazed me. So, if you just encourage them and look at their creativity and try really hard to understand the way they want to do things, which is completely different than the way we used to do things, we might find some common ground to work together.”

“Often our role as lawyers is more than just advising clients. We’re trying to be ‘cheerleaders’ to promote investors to come into Romania.”

“On the other hand,” Atanasiu said with a smile, the new generation keeps her on her toes and forces her to reevaluate her expectations. “I recall a time when we were in this really big transaction, and at 6:00 or 7:00 they used to look at the door and at me and then again at the door. Usually, they wanted to go out because they had reservations for dinner, the movies, etc., so they behaved in a way I never thought was possible when I was a junior. If you refuse them ‘the 7:00 PM exit’ they challenge you, and they say, ‘Why not?’ And then you have to provide an answer and justify yourself.”

Wrapping Up

Bryan Jardine, who opened the conversation, concluded it as well. “Often our role as lawyers is more than just advising clients. We’re trying to be ‘cheerleaders’ to

promote investors to come into Romania. Therefore, how do we differentiate Romania from other regional competitors? While it’s true that Bulgaria may have a more attractive flat tax rate of 10% versus 16%, 16% for Romania is still quite attractive when compared to neighboring countries in the region. And while Romania may not be as employer-friendly as Bulgaria, we still have less restrictive and protective labor laws than France, for example. So, there may be some specific areas where Romania is not as competitive. However, what we try to promote is a more holistic vision of Romania as an investment destination. We talk about the educated work force and certain sectors which are booming, like IT in areas around Cluj, tremendous potential in agriculture and agro-tourism. Indeed, all of these areas could further prosper if the inadequate access infrastructure in Romania were improved. However, this is a double-edged sword—if you improve highway access, more development will follow, which could lead to the despoiling of the Romanian countryside.”

Finally, Jardine said, “One of the biggest concerns for investors remains the legislative uncertainty in Romania. We’ve seen how poor governmental policies have decimated the renewable energy sector. Even for investors who aren’t necessarily interested in renewable energy, they look at this as a case study for Romania and question if the government could pull such ‘bait-and-switch’ tactics to attract investors into other sectors with incentives that are granted and then subsequently revoked. ‘How do I know they’re not going to do that with agricultural subsidies or with IT salary incentives or tax breaks for investment in favored zones,’ investors may rightfully ask. So there’s always this legitimate concern of investors that they may become ensnared in a situation of changing legislation, and unfortunately Romania doesn’t have a very good track record one can defend when it comes to this concern. But again, I think if you really look at Romania as a whole, we continue to counsel our clients on the advantages of investing here, stressing the positives while being realistic about the challenges.”

David Stuckey

Market Snapshot: Romania



Romanian Real Estate Market is Back on the Mend



Panagiotis Drakopoulos

Following a long period of financial and political crisis and subsequent stagnation, Romania is now making strides to secure its economic upturn from the historic lows recorded in its investment market rates over the last five years, inevitably affecting the real estate market in all its aspects.

The Romanian real estate market experienced a powerful comeback last year and has not ceased to track an upstream record thereafter. Anticipation of “at least 5% increases at national level” until the end of 2016 expressed by major real estate groups such as Colliers and RE/MAX Romania reflect the local market’s positive evolution.

So far, Romania’s real estate seems to be growing strongly particularly in the retail and industrial sectors. Official data indicate an increase of 10-20% in retail market over 2015, accompanied by a similar increase in retailers’ sale performances and in the delivery of new retail projects, mainly including large shopping centers and non-food retail chains in some of Romania’s biggest city centers. Meanwhile, the industrial market has managed to multiply its existing stock over the last year. A wide range of industries is driving demand for industrial space, with an emphasis on manufacturing production and with the automotive industry retaining its dominant position.

Other segments of the real estate market, including office, housing, and the investment market, as well as logistics, have recorded satisfying levels of sound transactions and moderate-to-buoyant investment volumes. As regards the office market, although supply and demand curves seem to be dragged downwards, the strong

ongoing pre-leasing activity that commenced in 2014 is temporarily restoring the market’s equilibrium. The investment market, for its part, has mostly relied on the favorable fiscal regulatory framework that provides for a drop of 4% in the VAT rate, encouraging existing investors to expand their portfolios, targeting top quality assets and new players to attempt a series of income-producing transactions, even if they remain cautious at this stage and slightly reluctant to fully integrate in the region. Significantly increased activity is also reported in the residential market area, where both supply and demand are building up steam, with sophisticated investors opting for premium residential units, taking advantage of beneficial recent fiscal regulations. Logistics seems to be the only sector that has remained stable compared to the last couple of years with no significant activity going on and a forecast of moderate growth, limited essentially to cities.

When it comes to new entries in the investment market, an interesting development worth mentioning seems to be coming from the Middle East, aided by the current oil crisis: over the last quarter, our firm has been working on a couple of large-scale deals involving prime real estate in Bucharest, representing investors from that region who wish to reduce their risk exposure in the oil and gas sector by diversifying their non-energy investment portfolios into new destinations.

Overall, Romania’s ability to rapidly build up efficient mechanisms to combat crises and its talent for immediately catching investors’ eyes even before ensuring 100% market safety have allowed it to evolve into a regional business hub for South East Europe. As a result, we fully expect that Romania will continue enjoying increasing and sound internal demand, while the anticipation of much more favorable financial conditions over the next few years will support continuing improvement and growth for the real estate sector.

By Panagiotis Drakopoulos, Senior Partner, Drakopoulos

New Procurement Laws in Romania: A Boost to Large Public Infrastructure Projects?



Ligia Popescu

Romania is anticipated to be a major beneficiary of the European Structural and Investment Funds (ESIF) and could receive up to EUR 31 billion by 2020. Improved infrastructure is at the forefront of Romania's prosperity agenda, and consequently optimizing the award procedures remains a major priority. Foreign investor interest in public tenders for large infrastructure projects (mostly the construction of transport infrastructure) should be stimulated by the implementation of new and improved tendering procedures to make the process more transparent, efficient, and fair.

Until now, the Romanian public procurement regime has been based upon a single main law – Government Emergency Ordinance no. 34/2006 on the award of public procurement contracts, public works and service concession contracts – and secondary legislation related thereto.



Bryan Jardine

The new Romanian public procurement laws of May 2016 mirror the newly reformed European regime by implementing European Directives 2014/23/EU, 2014/24/EU, and 2014/25/EU through the enactment of four separate procurement laws and corresponding secondary legislation, each covering a specific area (i.e., general public procurement, sector procurement, works and services concessions and remedies, and appeals concerning the award of public procurement contracts). The new laws will apply to all public procurement proceedings initiated after their entry into force and to public procurement contracts concluded after this date.

Large infrastructure projects will benefit from the newly improved regime in a number of areas, including simplified awarding criteria, improved publicity and transparency rules, and above all, more efficient anti-corruption provisions.

The laws provide exhaustive details on the way in which the awarding criteria “best quality-price ratio” or “best report quality-cost” should be applied by the contracting authorities. Moreover, bidders are no longer required to submit all the documents proving their eligibility. Instead, they may rely upon a European Single Procurement Document which will be used for this purpose and only the winning bidder will have to submit the detailed required documents in order to be awarded the public procurement contract.

SEAP – the local electronic system for public acquisitions – remains the only electronic platform for tender publicity purposes, providing the specific standard submission forms and the publication of tender notices in Romania and in the Official Journal

of the European Union. Communications between the authorities and the bidders can only be made electronically (i.e., via SEAP or other electronic means of communication), thereby increasing the efficiency of the process.

Corruption in public administration has been described by the European Commission as a “systemic problem” in Romania. Sectors such as construction and infrastructure were among those especially prone to practices jeopardizing the fairness of the tender procedures, with bid rigging and conflicts of interest relatively widespread even in those projects benefiting from EU funding and corresponding control mechanisms.

By Ligia Popescu, Dispute Resolution Coordinator, and Bryan Jardine, Managing Partner, Wolf Theiss Bucharest

Giving In Payment Law: A Bird's Eye View from A Dispute Resolution Perspective



Alina Ungureanu

The Romanian Law on Giving Real Estate Collaterals in Payment to Discharge Debts under Loan Agreements (the “*Datio in Solutum Law*”) entered into force in May 2016.

The law stirred fierce debates before it was adopted, and President Klaus Iohannis even referred it back to the Parliament for review.

So far, only two months after its entry into force, dozens of claims of unconstitutionality have already been raised before the Constitutional Court of Romania.

The law applies to mortgage loans of up to EUR 250,000.

Datio in Solutum involves the submission of a notice by a debtor on the transfer of ownership over debtor's real estate collateral to the bank to repay his/her loan. The lender is called to the notary public for the transfer of the ownership right within no less than 30 days. During this period, any payment obligation to the lender and any court or out-of-court proceedings initiated by the lender against the debtor or his/her property is suspended.

The lender may file legal action against the debtor's decision. However, until the court issues a final ruling, loan payments and any court or out-of-court proceedings against the debtor remain suspended.

If the lender is not present at the notary public on the notified date or does not file legal action against the procedure, the debtor may ask the court to rule on the transfer of the real estate collateral to the bank in exchange for writing off the loan. Loan payments and any court or out-of-court proceedings against the debtor remain suspended until the court issues a final ruling.

The law stipulates that it was adopted in order to cover loan agreement risks and real estate devaluation risks. Therefore, it will be applicable both to loan agreements which are ongoing at the time

of its entry into force and to agreements concluded after this date.

In most cases, it is banks filing legal actions against debtors' *Datio in Solutum* notices. In these legal actions, dozens of unconstitutionality claims have been raised by the banks and more than 45 cases have been referred to the Constitutional Court of Romania. The unconstitutionality allegations involve the breach of the ownership right, the non-retroactivity of laws, the predictability of laws, the breach of the separation of powers, freedom of commerce, and legal certainty principles. So far, the Constitutional Court of Romania has not ruled on these claims.

Meanwhile, pursuant to a press release by the National Bank of Romania and the Romanian Bank Association, half of the credit institutions granting mortgage or home loans have decided to raise the applicable down payment required, due to this law.

On June 30, 2016, a regulation for the amendment of the Fiscal Code was published in the Official Journal of Romania. According to this regulation, natural persons transferring ownership of their real estate collaterals to the banks to repay their loans will be exempted from property transfer tax.

The National Union of Notaries Public in Romania (UNNPR) has decided to cut the fees charged for the transfers of real estate collaterals within *Datio in Solutum* proceedings by 50%. The UNNPR notified the Ministry of Justice of its decision, but a law in this regard is yet to be adopted.

The *Datio in Solutum* Law has polarized society in a way few legislative acts have managed to do lately. While consumers welcomed the law, the National Bank of Romania and the commercial banks expressed their concern in relation to the drop in banking-system solvency as a result of this law. Moreover, law professionals acknowledge that the law has several inconsistencies which need to be addressed in due course.

Hopefully, the Constitutional Court's much awaited decision will shed light on the constitutionality of this law.

By Alina Ungureanu, Managing Associate,
Tuca Zbarcea & Asociatii

Corporate/M&A In Romania

M&A in the Technology Era



Cristina Bucur

Technology today influences perhaps all sectors of the economy as well as our day-to-day lives. In an age when we all want everything to happen faster and easier, the need to develop various software programs, solutions, and applications has never been bigger, and there is great competition to bring innovations to the market. Naturally, the M&A market in the technology

sector follows the trends of the sector itself.

Overcome Challenges for Great Opportunities!

The IT sector has become more and more relevant for Romania's economy. At the declarative level, it has been elevated to a key sec-

tor. As a matter of practice, although some tax benefits have been provided, the sector still needs targeted, supporting measures. Romania clearly has a lot of potential in the area, as proven by the successful stories of entrepreneurs and specialists in the field, which should be used as a runway for overall economic growth.

The effervescence in the IT sector triggered a dynamic M&A market with projects ranging from small investments to mid-size or even large transactions. In particular, investors have shown interest in financing technology start-ups and seed or small-size businesses with big ideas that need funds to go global. While the reasoning behind such interest varies widely, from strategic investments to financial returns, business angels, venture capital funds, corporate venturing units, and private equity funds are all keeping an eye on the technology sector.

As lawyers, we are able to see the two faces of the coin. On different projects, we have acted both on the investors' and on the entrepreneurs' side. We have thus in our mind both perspectives and know their challenges.

For investors, one of the biggest challenges is quickly adjusting to and understanding the local business and regulatory environment. It is always (also) about speed in the technology sector, as the tech world can often have moved on by the time a decision is actually made. While amazing progress has been made by the local business environment in assimilating international M&A trends and concepts, it is not easy to keep pace with a continuously changing global market; therefore, the investor and the local entrepreneur may not always be on the same page when negotiating the deal.

For start-ups, access to funds is essential to go big and global. While this access has improved, Romania is still behind big technology hubs across the globe. One of the biggest challenges entrepreneurs face when attracting financing from foreign investors is about being aware of and understanding global trends in international markets. Absent this understanding, entrepreneurs might look to the M&A process from their perspective only, disregarding the investor's reasons for proposing certain conditions for the investment, and ignoring market practice may lead to a rather long and painful M&A process. In the end, for timing reasons, the investment might not even happen at all. If young entrepreneurs benefit from corporate and business support earlier in the process, their chances of getting the funds they need quickly and in mutually advantageous terms will increase.

Keep an Eye on Agritech!



Paula Corban

Technology is more and more about addressing needs across industries. In terms of a new focus, the mix of technology and agriculture in Romania is full of potential. However, despite the wealth of its agricultural land, Romania is last in the EU in terms of productivity. Facing the constantly increasing need for food combined with major climate changes and limited availability of agricultural land, the world is looking at innovative tools and technologies, particularly digital ones. The quality and quantity of agricultural production is increased using sensing technology to make farms more "intelligent" and more connected



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through so-called “precision agriculture” or “smart farming.” Traditional agriculture is no longer enough, and big farmers in Romania have started to look at new technologies to optimize the yield per unit of farm land. On a large scale, the process is definitely difficult and challenging, as costs are high and smaller, traditional farmers may be reluctant to embrace new technologies.

Certainly the transformation process has started. Young entrepreneurs in the technology field are willing to boost agriculture with their fresh vision for the future, and agri-tech will become a priority for years to come.

By Cristina Bucur, Counsel, Ana-Maria Andronic, Counsel, and Paula Corban-Pelin, Counsel, DLA Piper Romania

Romanian Intellectual Property: Walking Up the Road to Sustained Growth



Michalis Kosmopoulos

Despite the financial hardship and the challenges that have arisen during the recent financial crisis, Romania has managed to turn into a regional business hub for South-east Europe (SEE), rapidly transitioning from an early stage to a growth stage. Intellectual Property (IP) could not be left behind, since it belongs among the foundations of modern economic growth, constantly facing new challenges that need to be addressed and always serving as an excellent platform for enhancing financial performance and exploring new routes to financial development.

OSIM, the Romanian State Office for Inventions and Trademarks, has reached a high standard of organization, serving the needs of IP owners in structures similar to European institutions, on the basis of the EU harmonized legal framework. Therefore, it should come as no surprise that foreign IP owners closely monitor the Romanian registries and take quick action against infringers. Solid IP institutions implementing sound policies are designed to serve IP, and IP proprietors are following all available procedures to secure their rights in an emerging-economy jurisdiction of great interest for trade players coming both from the West and the East – especially Russia and China.

What is more, IP-intensive industries – through the promotion of creativity and innovation – continue to create opportunities which Romania has been constantly benefiting from. Romanian universities have gradually evolved into centers of innovation, and the startup ecosystem is making decent efforts to adjust to the globalized economy and secure funding opportunities. Besides, Romania is considered to be one of the fastest-growing information technology (IT) markets in the SEE area: numbering over 100,000 certified IT professionals, Romania has managed to rank itself first among European countries and sixth worldwide. Therefore, it comes as an urgent necessity that more incentives be given to this sector, so that Romania is able to take advantage of the favorable financial timing and catch the wave of EU-funded projects that

are currently running, promising to expedite the integration of Romanian R&D activities into European networks.

From a geostrategic point of view, Romania is at a crossroads for counterfeit and pirated goods, with the respective manufacturing centers expanding from the East to EU and non-EU Eastern European countries such as Moldova and Belarus. More precisely, the Constantza port is a point of high interest, and there is an urgent need to strictly monitor and report counterfeiting activities, especially following the recent EU law amendments addressing counterfeits in transit to non-EU countries. Moreover, Romania is positioned on the way from Turkey and Bulgaria to the north, forming a cordon around the Black Sea, a thriving corridor of international trade, but also a route for IP infringement activity. This is the main reason that Romania is listed both as a potential producer and/or transit point in trade with counterfeit goods for the EU (OECD/EUIPO (2016), Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, OECD Publishing, Paris), and is among the nine Member States with the highest impact of counterfeiting in clothing, footwear, and accessories (as evidenced by the 2015 EUIPO report on “The Economic Cost of IPR Infringement in the Clothing, Footwear and Accessories Sector”).

Romania fares well in terms of interagency cooperation, where a wide range of enforcement agencies appear to be highly competent in addressing the anti-counterfeiting issue, while the Romanian Public Ministry is in charge of implementing the action plan for the Romanian Strategy in the Intellectual Property Rights field and for coordinating public authorities, a structure that beacons the will of Romania to struggle against counterfeits and piracy.

Taking all this into account, a snapshot of the situation in IP in Romania would reveal a country with a growing economy which values intangible rights and has been successfully keeping up with EU developments in the field. Romania is dealing efficiently with the challenges appearing before it, justifying a future listing as an IP-driven country.

By Michalis Kosmopoulos, Partner, Drakopoulos

2016 Brings Significant Changes to Tax Legislation



Tudor Nedelea

Romania’s key pieces of tax policy legislation, its Tax Code and Tax Procedural Code, were substantially amended by the version that entered into force on January 1, 2016, after intensive consultations with representatives from the business community. The new legislative framework aims to provide clarity and predictability to domestic taxation, to stimulate economic growth

and investments, to simplify the tax collection process, and to reduce compliance costs for taxpayers, so that investors can plan their local activities with increased certainty.

With an income tax rate of 16% that is among the lowest in the

EU and is the second lowest in the region, one may say that Romania has a tax system favorable to economic activities. The reduction of the (i) dividend tax from 16% to 5% and (ii) of the VAT rate from 24% to 20% (to be further reduced to 19% from 2017) are additional measures designed to create an even more attractive environment for investors.

In addition, the New Tax Code contains specific tax exemptions applicable to holding companies located in Romania and to companies active in the IT sector. In doing so, Romanian fiscal legislation seems to follow global trends, and the Romanian tax authorities are more open than ever to understanding the challenges that the taxpayers face in their daily activities.

Fight Against Tax Evasion – Increased Number of Tax Audits

The complex process that Romanian tax legislation is going through also involves a change in the procedures used to apply the provisions within the Tax Code and Tax Procedural Code. This process is still not finalized, and there are situations when ambiguous provisions could trigger potential exposure in practice. As such aspects may have a negative impact on the business climate, and in particular on investment decisions, tax planning remains crucial for all projects and should be on the agenda of all investors.

The changes in the tax legislation are aimed at encouraging voluntary compliance of taxpayers and to counter tax evasion, especially in the VAT area. The tax authorities also show an increased interest in verifying the economic substance of new businesses by performing thorough background checks whenever a new VAT registration request is submitted or an existing company goes through a change of shareholders and/or directors. This was prompted by a new VAT registration procedure based on pre-defined risk criteria, and, as a result of this new procedure, about 33% of new requests for VAT registration have been rejected.

Also, an exercise whereby existing companies were required to demonstrate their intention and capability to carry out economic activities showed that the tax authorities are keen in following the new procedure and can be quite aggressive in applying it. In 2015, 50% of the existing companies that had received requests to submit documentation proving their intention and capability to carry out economic activities had their VAT codes cancelled or their files sent to the antifraud division.

Focus on Inter-Company Transactions

The trend in transfer pricing developments in Romania reveals the growing interest of the Romanian tax authorities towards related party transactions, which is one of the main areas of tax investigation. Under these circumstances, multinational companies are advised to pay close attention to the arm's-length nature of the transactions they carry out and the corresponding documentation file, so as to be prepared in case of any transfer pricing disputes with the tax authorities.

In 2016, transfer pricing documentation requirements have changed and now consider the category of taxpayers and the value and type of transaction (i.e., financial transactions, supply of services, or purchases/sales of goods). Transfer prices can be adjust-

ed for taxpayers who (i) fail to substantiate the arm's-length character of the transactions carried out; (ii) fail to make the transfer price available to the tax authorities during tax inspections; or (iii) provide a transfer pricing file deemed incomplete.

By Tudor Nedelea, Partner and Head of Tax,
DLA Piper Tax SRL

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Inside Out: Voicu & Filipescu and Reff & Associates Advise on Bel Rom Twelve's Sale of Land to New Europe Property Investments



The Deal:

On April 1, 2016, CEE Legal Matters reported that Voicu & Filipescu and Reff & Associates (a member of the Deloitte Legal network) had advised on Bel Rom Twelve's sale of 12 of the 22.5 hectares of land it owned in Ramnicu Valcea, Romania, to the South African investment fund New Europe Property Investments (NEPI).

The transaction represented the third sale of real estate between the parties and was described by Bel Rom shareholder Hendrik Danneels as "one of the most important real estate transactions in Romania over the recent period."

The Players

■ **Roxana Negutu, Partner, Voicu & Filipescu: Counsel for Bel Rom**

■ **Diana-Mihaela Radoi, Managing Associate, Reff & Associates: Counsel for NEPI**

CEELM: How did you, Roxana, originally become involved with Bel Rom Twelve, and how did you, Diana, become involved with NEPI? How were you selected as external counsel initially, and when was that?

R.N.: We have been cooperating with the Bel Rom group of companies for over ten years now, during which time we have assist-

ed them in numerous transactions as well on day-to-day matters. The assistance has covered either conducting due diligence investigations in the process of acquiring plots of land or other subsequent operations aimed to the development of their retail parks throughout Romania.

D.R.: The collaboration between NEPI and R&A started in 2007, when NEPI was founded by former Deloitte colleagues. The initial collaboration was due to a strong relationship between people at the top of the two organizations. In time, the relationship grew richer and deeper, expanding at multiple levels as we worked together in tens of transactions over about nine years and as several colleagues of ours joined NEPI at one time or another. I believe that an im-

portant part of R&A's development is owed to NEPI's growth in the market which was in turn enabled by our dedication to their business.



Roxana Negutu,
Partner,
Voicu & Filipescu

CEELM: At what stage were you brought on board, and what, exactly, was your mandate when you were retained

R.N.: We were involved in the previous stages of this investment project intended by Bel Rom, years ago. The economic downturn interrupted the client's initial plans and this particular project was put on hold, until the discussions with NEPI for sale were initiated. Given the features of this plot of land, [Bel Rom] had considered it for a mixed retail and residential project ever since it acquired it. By this deal, 12 hectares were sold to NEPI for future retail development, while the remaining plot was kept by Bel Rom Twelve for a potential residential development.

From the moment this deal was first put into discussion, we were part of the team assisting the seller in the process of due diligence, handling the matters related to the updated status for the land, the dismemberment operations, and providing assistance in drafting and negotiating the transaction documents.

D.R.: Initially, we were approached by NEPI to perform a title check with respect to the land located in Ramnicu Valcea held by Bel Rom Group. At that time, it was not clear whether the transaction would be structured as an asset or share deal. Consequently, the object of our legal analysis was subsequently extended as the outline of the transaction got clearer. The new areas of our legal review included aspects such as environment, development (urbanism and construction aspects), and even corporate matters regarding the owner of the property subject to the transaction, although the project was finally structured as an asset deal.

Additionally, the title check proved to be broader than we initially thought, as there were certain issues that required extensive investigation with the public authorities and cadaster officers. Our main purpose was to clarify all the identified issues and eliminate the risks in order for the acquisition to be performed by NEPI.

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

R.N.: The core team was formed of three team members, coordinated by myself.

D.R.: The R&A team in charge of the legal due diligence included more members in order to cover the vast areas of the analysis intended to be obtained by NEPI, as follows: Cristina Buric, Miruna Stanciu, and Maria Nitulescu for title check and development; Adina Gutiu for environment, and myself as the coordinator.

The transactional team, however, included myself and Maria Nitulescu, under the direct coordination of Partner Alexandru Reff, while we also collaborated closely with the legal department of NEPI at the time (Amalia Rapan and Mihai Vlad Lintmaier) who facilitated the performance of the transaction.

CEELM: How was the transaction structured, and how did you help it get there?

R.N.: The project consisted of a preliminary sale purchase agreement in which the main conditions precedent were agreed upon and which were afterwards implemented by the seller. These varied from dismemberment operations to clarification of pending litigations, consent for the existing lease agreements, and so on. Among others, a particularity of the transaction consisted in a superficies and servitude neighboring right granted between themselves by the parties for the future projects to coexist.

D.R.: The transaction was in the end structured as an asset deal concluded in two stages: first a bilateral promissory sale and purchase agreement, followed by the conclusion of the sale and purchase agreement with an effective transfer at the signing date. In addition, an easement and superficies agreement was also concluded for the construction of an access road on part of the land remaining with Bel Rom Group.

We should perhaps also mention that the object of the transaction changed following negotiations and internal decisions of NEPI regarding the required area of land for the development of their project. This result-

ed in the amendment of the transaction structure several times, but in the end, we managed to reach a form suitable for both parties.

CEELM: What would you describe as the most challenging or frustrating part of the process?

R.N.: The volume of documents to handle and formalities to be performed was considerable, and input from the Romanian authorities was also necessary. These aspects extended the procedures longer than the parties had anticipated. The plot was initially aimed for industrial use [and] was linked with an abandoned railway network, [and it] had become meanwhile subject to certain pending restitution claims subject to the Romanian special law for assets confiscated under the communist regime.

D.R.: The continuously changing structure was the most challenging aspect of the project for lawyers on both sides. It required an additional amount of work in order to maintain a good position for our clients and not to lose sight of the initial intention, which was to reduce and eliminate the risks before implementing the transfer of ownership. I suppose that at one point it became frustrating, especially when things would change after we, the lawyers, had reached an agreement on the form of the contractual provisions, as we would have to re-negotiate the terms of the amended provisions. This process always takes time, as the lawyers have to meet again and agree on the form of each single clause.



Diana-Mihaela Radoi,
Managing Associate,
Reff & Associates

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

R.N.: Not necessarily, as it was rather the other way around. The smoothest part was the fact that the parties knew each other and

worked jointly to finalize the deal.

D.R.: The signing formalities for concluding the promissory agreement and the sale agreement went smoothly, mainly due to the fact that we managed to put all documentation in place before signing and also because Voicu & Filipescu cooperated with our notary for the authentication formalities.

Another aspect I should mention, and maybe this is also the result of the cooperation of V&F lawyers, is that the due diligence documents were provided in an orderly manner almost to the extent that we received a complete set of documentation for the ownership history. Usually the due diligence documentation is not provided in such a complete and friendly manner. By this we mean the sellers' representatives may send only parts of a document, improperly scanned agreements, or mixed up documentation (corporate and environment in same folders, unrelated documents scanned together etc.). These aspects always generate additional issues in our report based on the lack of information provided. However, it was not the case with this project, where we managed to eliminate most of the issues resulting from lack of documents.

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

R.N.: The mandate was clear from the beginning and fits the particularities of this type of deal. Our services were adjusted to [NEPI's] expectations and exigencies as we have always done in relationship with all our clients.

D.R.: The final result matched the initial scope of work in a very general way, namely that of offering the necessary assistance for the acquisition of a plot of land from Bel Rom, while the specifics changed on the way, as mentioned earlier. Nevertheless, even with these amendments, I believe the final result still matched the initial intention of the parties.

Although, the legal due diligence analysis required longer hours than we expected as additional information and documents were provided to us for further review. Both teams of lawyers were actively involved in obtaining documents and confirmations from authorities, and it was a common purpose of both parties to eliminate findings and perform the deal in good terms for both parties.

CEELM: What individuals in Bel Rom

Twelve directed you, Roxana, and what individuals in NEPI directed you, Diana, and how would you describe your working relationship with them?

R.N.: In Bel Rom Group we worked directly with the members of the board for this specific project.

D.R.: For this project, the R&A team worked under the legal coordination of Amalia Rapan, former in-house lawyer with NEPI. The commercial decisions were made, however, by Alexandru Morar, now the CEO of NEPI.

I believe that my working relationship with Amalia would be best described as efficient and productive. The intentions of NEPI were communicated to us by Amalia in a clear way, so we managed to deliver materials that required little or no amendments on their part.

CEELM: How would you describe the working relationship with your counterparts at the other firm on the deal?

R.N.: We have a good and cooperative relationship with the team from Reff & Associates. This was the third time our clients Bel Rom and NEPI have met in this type of deal and this has significantly smoothed things out, as by now everybody knows each others' expectations and is familiar with the drafts to be used.

D.R.: V&F lawyers acted in a professional manner and always had in mind the purpose of closing the deal; from this perspective we had a common goal. Perhaps that is why, apart from the customary contradictory discussions regarding certain contractual terms usual for these types of negotiations (e.g., liability of seller, payment of the purchase price., etc.), it felt like we worked together for the effective performance of this transaction.

No unnecessary or pointless issues were raised just for the sake of carrying the negotiations. Also, Roxana Negutu was very helpful with the due diligence information, and she was actively involved in the formalities with the public authorities with the purpose of clarifying certain issues from our report. It is interesting, I suppose, how, as a lawyer, you can help your client by working effectively with the other party.

CEELM: This is not the first deal you've worked on between Bel Rom Twelve and NEPI. Does that familiarity make the transactions happen faster – at this point is it a pretty simple process?

R.N.: It does help, as I mentioned before, because this familiarity also comes with a level of already gained trust. On the other hand, each project has its particularities and every negotiation calls for fine tunings in the approach of the consultants, if they are to help their clients meet the most optimal solution.

D.R.: The familiarity does help, but it does not necessarily make it a simple process. There are certain aspects you just cannot ignore or skip. Each side needs to negotiate the contractual terms in the most favorable way for its client and has to perform all kind of checks on the documentation, regardless of the trust you have with the other party. I won't deny though that the familiarity helped during negotiations between the principals and certain aspects that needed to be resolved were temporarily sorted out based on the trust of the parties until an effective solution to a problem could be found.

CEELM: How would you describe the significance of the deal in Romania?

R.N.: I would say this deal is important due to the message it sends – the message of a new wave of interest to develop retail projects in middle cities in Romania. While so far Bucharest and only two other main cities seemed to draw the attention of investors, NEPI's interest for Ramnicu Valcea comes as a signal of the investors' attention towards expansion.

D.R.: This transaction had a value of approximately EUR 10 million so it can be easily considered an important deal on the real estate market, especially now as investors are still reluctant to put their money in real estate. The significance of the deal may be also viewed from the perspective of the general development of the area where the new NEPI project will be located. As such, the construction of a new commercial center of an important size in Ramnicu Valcea, where NEPI is not currently in the market, will have an impact on the real estate market of that area.

On the other hand, we consider this project to be one of the smaller deals we have assisted NEPI in closing, as opposed to transactions with values ranging between EUR 40-100 million. Just recently we assisted NEPI with the acquisition of the European Retail Park Sibiu from Argo Group and previously owned by Bel Rom Group. The value of this transaction was EUR 100 million and was performed rather quickly considering the complexity of the entire project.

David Stuckey

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State Aid&European Structural Funds,
White Collar/Investigations/Compliance

Inside Insight: Dana Ionescu

Head of Legal at Adecco Romania



Dana Ionescu is the Head of Legal at Adecco Romania, a company she has been with since October 2013. Previously, she worked as the Legal Affairs Coordinator and HR Business Partner for Rosegaur from 2010 to 2013. Earlier still, she was a Senior Legal Consultant with Realitatea-Catavencu, a Legal Manager with the Dacris Group, a Legal Manager and HR Business Partner with Phoenixia Grand Hotel, and a Legal Advisor with the Romanian Ministry of Transportation, in the External Financial Relations Directorate.

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

D.I.: My career has been like a roller-coaster ride so far, and I have enjoyed every minute of it. It's been shaped by the people I've met, mentors I've had, and, eventually, me. The chain of opportunities and experiences in different fields of activity took me from European structural funds to television and from private security to HR.

I have never planned any of my career moves. I don't have such a perfectionist gene in me, rather more along the lines of a "let's jump off the cliff, I am sure I can handle it" gene. And so far, it's been very interesting and challenging.

CEELM: You've been with Adecco for over two years now. In what ways do you find your role is different working with a human resources services provider from your past experiences?

D.I.: I have always had to reinvent my job in light of legislative changes and organizational needs. That's what's kept me alive. I like the rush of adrenaline that any major change brings. It motivates me. So I chose to work in companies that could offer me this thrill. And none of these companies disappointed me from this point of view.

Is working in HR services different from other services? The legislation is different, but anything else is not. Adrenaline level in HR services? Still very high!

CEELM: Can you give us an example of such a change that got your blood flowing in the last few years and what you had to do to adapt?

D.I.: The most dramatic change for me was when I joined a private security company (the third biggest in the country at that time). It was a stressful work environment, with a highly compliance-oriented culture and extremely formal communi-

cation between colleagues. However, with the guidance of a former secret services colleague from whom I received some life lessons, I tamed my way of being and working and integrated myself in the company. It turned out to be one of the greatest workplaces for me.

CEELM: Even before working with Adecco, you held various roles involving working as an HR business partner within the legal team. What drew you towards HR?

D.I.: Fate! It just so happened that I've met the most amazing HR directors in the companies I worked in, so I spent a lot of time in their offices brainstorming for best legal solutions to fit the HR problems. That is how I realized legal and HR is a match made in heaven. And I intend to stay in this "legal-HR marriage" for a long time.

Besides, you know what they say: "Find out what you like doing best and get someone to pay you for it." So far, this has worked for me.

CEELM: How does your regular day in the office look? What areas take up the most of your time?

D.I.: Let me assure you that no two days are the same in a legal department, but all the days have something in common: emails and calls. There are days in which there is some "firefighting" to be done and days in which emails and calls put everything in place. I have to admit I'm fortunate to do something I love, and I cannot complain that I have a regular job with a mind-numbing routine.

CEELM: You mentioned you also provide advice at times for Adecco's clients. What are the main areas where that happens?

D.I.: Adecco Romania has clients ranging from the IT field to automotive, from agriculture to tobacco. We provide them legal and HR consultancy, tailor-made

for their field of activity, based on our extensive expertise. For our legal team, being exposed to so many complex legal issues is a gold mine from a professional point of view, as we get to stay up to date with all fields of activity. I believe that the clients learn from us, and we learn from them. It's a win-win partnership.

CEELM: In light of your focus, if you could change any one thing related to labor law in Romania, what would it be, and why?

D.I.: In my opinion, there is still some work to be done regarding the equal protection of both the employer and employees so that companies are encouraged to employ more people and the employees feel more safe in terms of their rights being respected. Also, we could all benefit from updating the Labor Code with the latest business and society challenges and needs.

CEELM: Would you say there are enough regulations towards improving work-life balance? What would you add towards enhancing this?

D.I.: I'm pretty sure there is no perfect, one-size-fits-all, work-life balance. Thus, there are no secret recipes that any regulation can bring on the table. So let's not require a regulation to take care of what people can do. This balance is only up to us, how we position ourselves and how we convince others what is important to us. This is no simple task, I know. Someone smart once said that the most common way people give up their power is by thinking they don't have any.

Personally, I am not a "married to the job" kind of person, but rather a "work smarter, not harder or longer" type. Productivity in my profession should be given by efficient work and passion, not by long hours.

CEELM: On the lighter side, in our research for this interview we came across a rather active blog that you run. Tell us a bit about this exercise.

D.I.: Oh, you found out about www.danaionescu.ro! Well, most of my friends are career addicts with no children, and the few that do have children are really serious when talking about them. So I felt the need to show them the funny side of a parent's life. After that, the blogging evening sessions started – my everyday ten-minute escape from everything. Just me and my laptop, laughing by myself when writing about my kids and my job – and everything in between. I'm planning to get the best out of my life, and I think that laughing is the best life can offer (besides chocolate, of course), so I'm going for it.

Radu Cotarcea

Inside Insight: Andreea Alexandrescu

Head of Legal at Carrefour Romania



Andreea Alexandrescu is the Head of Legal with Carrefour Romania, a company that she has spent the better part of her career with. She first joined the retail company in 2006 as a Legal Advisor responsible for real estate matters. Prior to her current company she worked for Gide Loyrette Nouel.

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

A.A.: I graduated from Bucharest Law School in 2000 and went on to continue my academic studies at McGill University in Canada with an LLM in International Business Law. Immediately after obtaining my Masters degree, I returned to Bucharest and started working as a trainee in the Bucharest office of Gide Loyrette Nouel, specializing mainly in real estate law. At the end of 2006 I decided to give a different perspective to my legal work by going to the "other side." Thus, I joined Carrefour Romania as a legal advisor in charge of real estate aspects. Carrefour's expansion in Romania was just starting. I became legal director in 2009.

Looking back, I somehow get the feeling that my entire career has been under Carrefour's sign. At Gide I had worked for Carrefour on most of its projects as an external counsel (Carrefour was one of the office's major clients at the time) and I had developed a very strong rela-

tionship with the former legal director of Carrefour Romania. The change in 2006 seemed like the most natural thing to do, and the promotion in 2009 – even though it came very unexpectedly – took place very smoothly. During the last ten years with Carrefour I have evolved both as a professional and as a person. I had to face lots of challenges in terms of legal issues, and I learned to manage them and overcome them. I also learned what it feels like to provide valuable support in the making of real-time and real-life decisions as part of a team.

CEELM: How large is your current legal team, and how is it structured? Do you specialize your team members by area of law? Do you deal with purely legal aspects, or does your role incorporate compliance and/or regulatory as well?

A.A.: I have a team of 15 legal advisors structured among four areas of expertise: commercial, real estate, corporate, and labor law. We started as generalists, but as the issues we were dealing with became more and more complex and required an extensive degree of expertise we turned towards a specialized approach. Unfortunately, there is no such thing as “purely legal aspects.” Yes, we have to play a compliance and regulatory role and we need to do that by adopting a business-oriented approach. Compliance is obviously not a sexy topic but with the proper methods and resources we can make sure our colleagues from the other departments eventually accept it and embrace it.

CEELM: Carrefour recently announced the opening of its seventh supermarket in Timisoara. What are the types of legal challenges that you have to address in such projects, and to what extent is that work typically carried out by the in-house team versus external counsel?

A.A.: Expansion is a very important area in which the legal department is involved. The legal challenges related to it vary from difficulties in the negotiation of the transaction documents, to ownership problems, to urbanism requirements making the project possible to be realized, to problems in the relationships with neighbors or the difficulties in the

process of obtaining the operating permits. For supermarkets we have the resources necessary to carry out almost all the related legal work internally. We rely on external counsels strictly with respect to the due diligence on the title, mostly due to timing-related constraints or in litigations. The rest of the work is carried out by the in-house team. We have developed best practices based on the various situations we have been confronted with, and this enables us to be understand the risks easier and faster and to find and propose solutions. Also, for the expansion process, good communication between the teams (legal, property, finance, technical, etc.) is very important.

CEELM: Speaking of external counsel, when you need to outsource legal work, what are the main criteria you use in picking your advisors?

A.A.: The level of expertise is important but I also value the ability to give tailored solutions and specific answers. Depending on the complexity of the issue and the timeline to be met, resources may also be an important criteria.

CEELM: The retail sector has seen a number of developments in the way products are delivered to consumers from express/unmanned shops, online shopping and delivery, and so on. How do these developments affect your role as an in-house legal counsel for a company in this sector?

A.A.: Each such development usually translates into a new legal challenge. We need to be there for the change and make sure it is implemented in accordance with applicable legislation. We need to anticipate and we need to be creative. Also, we need to know when to say no and how to say no to certain business ideas or practices. However, we always explain the reasons why a certain practice/idea cannot be implemented and provide alternatives.

CEELM: From a legislative standpoint. What are the recent or upcoming pieces of legislation that are or will be giving you the most work?

A.A.: The piece of legislation that will definitely mark the retail industry for this year is Law no. 150/2016 for the

modification and completion of Law no. 321/2009 concerning the sale of food products. In the media, it is known mostly by reference to the obligation it imposed to have at least 51% “Romanian” products on the shelves for a number of categories of products (such as meat, milk, eggs, fruits, vegetables, bakery, and honey). However, the law has significantly reduced the terms of payment and has eliminated the concept of “services” from the relationship between suppliers and retailers. It has also imposed other obligations with regards to the reception process for the food products and with respect to promotions for Romanian products. We have been working a lot lately trying to tailor the contracts and the internal processes to the new legal requirements.

I would also add the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). For Carrefour, how personal data is collected, processed, and used is very important. We will definitely review once again our practices, procedures, and documents in order to make sure we are fully compliant and aligned.

CEELM: If you could implement one legislative change to make your life easier, what would it be and why?

A.A.: I would definitely amend Law no. 150/2016 in order to clearly stipulate for a transitional period for its entering into force. I would also probably reintroduce the concept of services of logistics, marketing, and some other specific activities.

CEELM: On the lighter side and since it's August, what's your all time favorite holiday spot?

A.A.: I cannot say I have a single all time favorite spot. There are several places that come to my mind but they all possess more or less the same ingredients: lots of sun, lots of good food, and friendly people.

Radu Cotarcea

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Market Spotlight Ukraine



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Guest Editorial: Transparency in the Ukrainian Legal Market as a Way to Economic Growth



The Ukrainian legal market, like the country itself, faces substantial challenges and changes. Despite the largely chaotic rather than stable economic and political factors, it is still possible to underline the most crucial tendencies within the market.

First of all, it is obvious that a considerable part of the premium segment is shared among 10-15 law firms, both local and international. It is particularly evident in such practice areas as Corporate and M&A and International Arbitration as well as such industries as IT, Telecom, and Pharmaceuticals.

The ongoing transformation in the political, economic, and social life of Ukraine results in an increase in demand for certain legal services previously less popular with clients. For instance, starting from the beginning of 2014, the National Bank of Ukraine has withdrawn the licenses of more than 80 banks – slightly less than half of all banks operating in Ukraine. As a result, the Deposit Guarantee Fund, a specialized governmental institution of public administration established to protect the rights of individual depositors (natural persons) in the banks in Ukraine, according to its officials, currently faces more

than 100,000 lawsuits and thus requires assistance from a number of outside counselors. As a result, such practice area as Litigation with State authorities, including the State Fiscal Service of Ukraine, remain in great demand among foreign businesses which cannot tolerate political chaos in Ukraine.

White Collar Criminal Defense is growing rapidly among multi-practice law firms as well. Although only a few significant market players even considered providing such services to clients five years ago, now, as a result of the proactive work of, among others, the National Anti-Corruption Bureau of Ukraine, White Collar Criminal Defense is viewed as potentially one of the fastest growing practice areas on the market.

Leading time in privatization of State-owned enterprises did not bring the expected work to Corporate practices. Moreover, the first attempt of the Odessa Port Plant privatization turned out to be a fiasco for the Ukrainian government, which did not give much hope to the legal market.

Local law firms have become more globalized, as, enhanced by strong specialists, many firms are looking for a broader global prospective. Thus, many top ten market players work through international legal networks and alliances which provide them with a workload in certain practice areas.

Transparency and non-corruption policies in the legal market still remain vivid topics when it comes to market estimation and evaluation. Recent research of the local services market published by Delo.ua in early 2016 showed that over 50% of market players were contributing to the country's shadow economy – with the legal market being no exception. Still, most international clients choose a compliant and above-board service provider in contrast to one who tolerates corruption and evades taxes.

While the expectations for the quality of legal services only increase, their price does not, as the foreign currency rates, which have been more or less stable for the past year, have not affected the pricing policies of law firms as much as they did in the past. Many international clients – in addition to their local counterparts, of course – require rates in local currency (UAH) to avoid the possible fluctuation of exchange.

*Andriy Stelmashchuk, Managing Partner,
Vasil Kisel and Partners*

A Market Dependent on Reform: A Ukrainian Round Table



Attendees:

Natalia Kochergina; Partner; DLA Piper (Host)

Anna Babych; Partner; Aequo

Armen Khachaturyan; Senior Partner; Asters

Mykola Stetsenko; Managing Partner; Avellum

Serhiy Piontkovsky; Managing Partner; Baker & McKenzie

Olexander Martinenko; Senior Partner; CMS Cameron McKenna

Olexiy Soshenko; Managing Partner; Redcliffe & Partners

Nazar Chernyavsky; Partner; Sayenko Kharenko



On July 26, 2016, a cross-section of eminent lawyers from leading law firms in Ukraine gathered at DLA Piper's Kyiv office for a wide ranging Round Table conversation about the state of the Ukrainian economy and legal market and their expectations for both going forward.

Image: President of Ukraine Petro Poroshenko during a meeting of the National Council of the reforms in Kiev (photo credit: palinchak)

State of the Market

"I can feel the market is starting to pick up," started host Natalia Kochergina, Partner at DLA Piper, kicking off the conversation. "A number of our clients – retailers especially – have renewed their expansion plans, which have been frozen for several months now. At the same time, we see activities on Asian plans for investment – in particular Chinese." Armen Khachaturyan, Senior Partner of Asters, agreed: "We also see some activity in its incipient stages. We need to wait until the end of the year to see what the reality will be, but I am optimistic that growth will be renewed."

Not everyone is so bullish on the future. Olexander Martinenko, Senior Partner at CMS Cameron McKenna, cautioned that the 1% GDP growth projections for the country are still "very much dependent on the position of Ukraine in the global landscape" and how several macro-economic elements will play out.

Martinenko identified several critical sectors for business in the country. "There are several key areas that the country simply cannot afford to let die," he said. "One of them is energy. Certain global energy projects have died away: shale gas, black sea oil, and gas deposits. I would say that what we need to do is look at these key areas and plan to serve our clients in these: energy, agriculture, FMCG, and even some tech and IT sectors where Ukraine shows potential and growth on an annual basis." Khachaturyan also identified energy as one of the traditional areas of interest for investments in Ukraine: "Unfortunately, the Odessa privatization failed recently. The plans presented at the beginning of the year have not materialized yet, but the expectation that they will pan out is still pending in the market. The failure (at least on the surface of things) of shale gas projects was a hit, but the projects are still active, and [we are] also curious to see how these rather lucrative projects will work."

Nazar Chernyavsky, Partner at Sayenko Kharenko, also pointed to the state sector and agriculture as "key areas driving the growth in Ukraine." Chernyavsky noted that the public sector is "rather complicated," as "there are of course some industries that cannot be allowed to die

In this article



Natalia Kochergina; Partner;
DLA Piper (Host)



Anna Babych; Partner;
Aequo



Armen Khachaturyan; Senior
Partner; Asters



Mykola Stetsenko; Managing
Partner; Avellum

out – like the others mentioned – but that require enormous investments which private organizations are simply not willing to make in the country right now, meaning we need to look to the public sphere for that input.” One alternative to private investment, Chernyavsky suggested, are international donors. Indeed, he said, “some have been quite generous to date, such as the EBRD, which has invested considerably and has committed to doing even more.” Of course, he conceded, these deals, and implicitly the flow of cash into the country from all outside investors, “is heavily dependent on the reforms.”

Reforms

According to Chernyavsky, the pace of reform in Ukraine since the 2014 Euromaidan Revolution has been relatively slow. Some positive steps have been made, he agreed, “and we can see that reflected in the mood of international donors continuing to work with us,” but he insisted that “more needs to be done, and this is one of those areas where lawyers can be trend setters, since they can get involved and since there are still many changes to be made. I know that almost all firms are involved heavily in bringing them about.”

The current climate in Ukraine reminded Serhiy Piontkovsky, Managing Partner of Baker & McKenzie, of an earlier moment in Ukraine’s post-Communist history. “To some extent I feel it is back in the 90s,” he said, with “a lot of projects on reforms driven and financed by international donors. It’s a good time for lawyers to use this setting to introduce novelties in the country and then, when the markets are back, to build upon [them].”

Piontkovsky agreed that the reforms that have been made so far are “relatively small” and “there is a lot to do.” Still, progress is being made, he suggested: “We worked on elements related to reforms on corporate governance for example, we are seeing a lot of reforms that are taking place at the level of large state-owned companies. A large area of reforms now is focused on PPP and concession laws, with some projects coming in from the EBRD driving that. The same [is true] with the management of state-owned banks. Basically if you look at any

regulator within the country, they all have their own agenda and legislation-reform proposals.”

Indeed, a number of Round Table participants pointed to successful improvements that have already been made. Chernyavsky, for instance, pointed to the much-needed reform of financial restructuring standards to bring them up to Western par, noting that the Ukrainian Ministry of Finance has initiated projects using international donor funds to introduce several changes to existing laws and provide new mechanisms for financial restructuring – a process “that was done on a fast track.” Chernyavsky explained that these changes “provide [companies with] new instruments to restructure their debts [to] allow them to re-launch their businesses. In the past, they were afraid that their creditors would take all their assets, so there was no point in commencing restructuring. The Turkish experience, which was largely used when drafting this law, proved that it is a good chance to re-launch the whole system.”

Anna Babych, Partner at Aequo, described a draft law on limited liability companies as “a long-sought reform” backed by “a huge campaign launched by the Ministry of Economy.” Even with the vote on it being delayed until the autumn session, she believes this marks “great progress.” Other improvements worth noting, according to Babych, are the increased powers of investigation assigned to the Security Commissions and the raising of thresholds needed for competition clearances.

Olexiy Soshenko, Managing Partner of Redcliffe Partners, added that “one of the hot topics that Ukraine is struggling with so far is improving the judicial system and police enforcement.” Mykola Stetsenko, Managing Partner of Avellum, also commented on “the first fruits of the law enforcement agency reforms and judicial reform and anti-corruption bodies.” Stetsenko reported that, “we haven’t seen a lot of people put into jail yet, but we are seeing arrests and prosecutions: a sign that Ukraine is finally fighting corruption, and hopefully internationals will see it.”

It is “obvious that a lot of reforms are taking place” Martinenko agreed, while

reminding everyone that Ukraine has long been seen as a place with immense but “unfortunately, unfulfilled potential.” Martinenko takes the current claims to reform with a grain of salt, noting that, “it is the case for the last 20-25 years that everybody is talking about Ukraine needing to achieve its potential. A lot of foreign colleagues say it is not just about the reforms but that a lot depends on implementation or law enforcement and the application of law. As some might recall Ukraine was faced with scandals related to selective application of law. That’s the most important next step: looking at whether, in addition to judicial reform, the application of it will be in line with what was declared.”

Still, Babych expressed a cautious optimism, insisting that it “takes time for the nation to mobilize behind this progress.” She explained that: “Keep in mind that some of these reforms are just so critical that we need to take time and discuss them in society before we see even draft bills in the parliament.” Soshenko agreed, suggesting that, “while there is some level of dissatisfaction with the current pace of the reforms,” people need to be patient. He added: “It is challenging to be as quick and successful as society expects. We observe a generally positive trend of successful private sector lawyers, bankers, and other business people taking on challenging jobs in the Government – but some old school officials are still there. I doubt it is even feasible to replace them all.”

Practices and Competition

The conversation then transitioned to the law firm world. According to Asters’ Khachaturyan, financial restructuring “will likely continue to be a huge practice.” For his part, Chernyavsky reported that a lot of work “rises from compliance, a bit from corruption as well, as well as some areas that are globally hot, like data compliance and protection that are increasingly becoming relevant for Ukraine, especially for the internationals present in the country.” Martinenko added that, “some bread and butter matters such as dispute resolution – which is active in both good and bad times – will always be something we’ll look out for.” Babych, however, noted that areas such

as corporate/M&A, “will grow later than others.”

Khachaturyan then turned to increased competition from new directions in the law firm market. First, he commented on the boutiques starting to appear, focusing on matters such as “immigration, which has developed into a booming practice,” or on private clients and wealth management practices, “with people trying to invest and getting citizenships in EU countries.” He then commented on the increased competition from the Big Four as well, reporting that they are “evolving into an actual legal practice ... with all major practices, including M&A, corporate, and finance work.”

“more needs to be done, and this is one of those areas where lawyers can be trend setters, since they can get involved and since there are still many changes to be made. I know that almost all firms are involved heavily in bringing them about.”

Martinenko, at CMS, was not convinced, insisting that “it is clear that there will be no room for non-specialized law firms.” He added: “There is an advocacy law that explains who can be an advocate [and] cater to what practices. I cannot imagine an advocate who will provide accounting services. Secondly, we need to understand what the legal services are. For example, tax has two components: calculate digits or understand what the law says – two completely different areas. From experience the Big Four are great on calculating digits. If, on the other hand, CMS comments on law aspects, that does not mean we can calculate digits. We analyze what the law says and what are the pros and cons of various set ups.”

In addition, DLA Piper’s Kochergina

pointed out, what’s good for the goose is good for the gander. “Sure, they are spreading their wings as they have always done. But it’s a two-way street. Law firms are also competing with them. Tax litigation involvement means you enter into their spheres increasingly.” Either way, Kochergina claimed not to be too concerned, explaining that, “as a person who worked for a Big 4 in the past and now as a Partner for DLA, I can look at the level of services and can say that in the Big Four, legal services are supplementary. They are not doing the same types of legal work.”

“one of the hot topics that Ukraine is struggling with so far is improving the judicial system and police enforcement.”

Following up on Kochergina’s reference to law firms encroaching on the traditional territories of the Big Four, Chernyavsky, at Sayenko Kharenko, reported that his law firm was developing several non-traditional practices as well. “Some were rather accidental for us, such as the accounting services, since we had a large team move over from PwC and we suddenly had this capacity. Apart from that we established a government relations practice a while ago, which is not only engaged in these types of pro bono services but also provides GR for American and Western companies, specifically to lobby some targeted changes in the legal framework as well as some traditional Western GR work. In that respect we compete with some of the GR agencies operating in Ukraine. On top of that we have a corporate security practice which provides advice to local companies on how to organize their security.”

Speaking in general terms, Piontkovsky noted that, despite the resurgent Big Four and the increased boutiques, “generally I find that the market has stabilized.” He explained: “The economy two years ago was going down, and inflation was at

In this article



Serhiy Piontkovsky; Managing Partner; Baker & McKenzie



Olexander Martinenko; Senior Partner; CMS Cameron McKenna



Olexiy Soshenko; Managing Partner; Redcliffe & Partners



Nazar Chernyavsky; Partner; Sayenko Kharenko

two-digit numbers, but now all of these indicators have come to normal levels, and I feel that the legal market has achieved a certain level of stability as well. Yes, we've seen some departures, but my understanding is that the economy and legal market has stabilized now and all are waiting for growth."

Stetsenko was even more optimistic: "In terms of trends in the market we see some mergers between some of the smaller firms, some exits, and some spin-offs. I'd say the market is active. I'm maybe a bit overoptimistic but a few months ago we even had talks that we may see big international players considering coming into the market, which will likely lead to a consolidation of the local players. I haven't heard of any real talks about actual mergers between local players, but we'll see two or three years down the line."

On Salaries and Fees

Stetsenko reported that as the market seems to have stabilized, all law firms are busy. This, he explained, "means less competition for clients and more competition for talent."

Coming from one of the largest international law firms in the world, DLA Piper's Kochergina perhaps unsurprisingly believes that local firms have trouble matching the "clear set of standards in terms of career path and those opportunities which lawyers get with international firms. I think the general trend is that working for a local law firm is a good experience and good school before you get to join an international firm because you cannot start directly working with an international law firm." Babych, from Ukrainian law firm Aequo, responded that while internationals might have a clearer track and direction, "the downside there is that, perhaps, there is not enough room to grow into." In contrast, she argued, with local players young lawyers still have opportunities to develop. Kochergina was unpersuaded, explaining that international firms "have a notion of a business case. If you have one, there is always room for a Partner."

Stetsenko joined into the argument about the difference between local and international firms as well, noting that his firm, at least, had yet to see any lawyers move

to an international firm. In his view, it all comes down to a matter of expectations: "I think locals have to apply the same standards in order to compete with international firms. What you also need to keep in mind is that locals tend to work with plenty of internationals on a referral basis, and aside from simple interactions, many impose their standards on local referrals."

Kochergina conceded the point: "Most don't just want to work for an international or local. They are looking for an established practice and a known Partner. I guess then it matters less if it is an international or local but they look for the leader or practice to get experience."

Redcliffe Partners' Soshenko claimed that "the Ukrainian market is different in the sense that local firms have traditionally been quite strong." In addition, he noted, "there are also fewer internationals in Ukraine than in other CEE jurisdictions. This means that locals and internationals compete for the same high-profile work. Leading local firms adhere to exceptionally high standards of professional ethics and ways of doing business, comparable to those of the top international law firms. They also tend to put forward competitive salaries, attract, and keep really good lawyers."

Martinenko suggested that one explanation for fluctuations in the salaries offered in the market could be that many firms have started paying in the Ukrainian currency – the Hryvnia (UAH). Chernyavsky reported that his firm had switched to UAH back in 2008: "In fact it was an appreciated move and it was a good moment to switch, as the local currency appreciated. At the time everyone was happy, but it did not last, because in September it depreciated." Kochergina claimed that if fees are set in foreign currency, that should be reflected in the salaries as well, but Stetsenko disagreed, because "the exchange rate became so unstable that we were tired of updating the salaries regularly." Ultimately, he said, "like most firms we re-assess this twice a year and pay bonuses up to 50% to match both performance and currency fluctuations."

As far as fees are concerned, Stetsenko explained that "because of the competi-

tion in the market, most [firms] stuck to the foreign currency.” Chernyavsky suggested that this practice might be a reflection of the fact that most of the firms present at the Round Table work predominantly with foreign clients, though Kochergina disagreed, replying that it is “most law firms are serving a fair number of both the local and international clients – it’s impossible to act differently these days.” Chernyavsky conceded that it might depend on the practice, but added that, “When we started we had almost 80% of work from foreign clients – where it was more acceptable to be charged in foreign currency. Especially in light of fluctuations, foreign currency is at least more predictable. At the same time, yes, many local clients do raise the issue of being charged in local currency – not just invoicing but calculating the rates in local currency. In that case, especially where we are working with state bodies, we need to accept it, but that’s more of an exception.”

“I’d say the market is active. I’m maybe a bit overoptimistic but a few months ago we even had talks that we may see big international players considering coming into the market, which will likely lead to a consolidation of the local players.”

Although there were, as always, expressions of concern about how extreme the pressure to lower fees had become, Martinenko had a potentially surprising report: “I can compare what’s in Kyiv and the region. I can say that our average fees (not just CMS’s but all firms) are much higher than in Poland or the Czech Republic. I am surprised that my colleagues in other CEE offices need to charge far less, especially if they work for state-controlled companies. From this

point of view, I think we have small room to complain here. Our situation is not as bad, and with the market level rates it is livable here.”

Kochergina agreed with Martinenko’s report, and offered a potential explanation: “It’s a riskier market, meaning higher liability, and it used to be a really unsaturated market as well.” Chernyavsky agreed: “Historically, the higher rates are related to the fact that we had scarce legal talent. Ten years ago we had a lot of investors, and the Ukrainian market was offering them really high margins, meaning they were eager to pay but difficult to find someone to help.”

Of course, as Stetsenko explained, fees aren’t the only consideration. “I think we also need to distinguish between nominal rates and actual realization,” he said. “I can’t speak for my colleagues, but we have not dropped our rates after the revolution. But what we have seen is pressure to provide higher discounts. I remember this discussion years ago when I was still at Baker & McKenzie. When Swiss lawyers were uncomfortable working with London colleagues on deals because of different traditions. In Switzerland, a maximum of a 5% discount is a rare exception. In London, it is common to go for a discount of 20%. Swiss lawyers had to adapt their mentality when they had to give a quote together with London colleagues. It’d be interesting to see if discounts in Ukraine are as high as in other CEE markets.”

Khachatryan was skeptical, arguing: “I agree that both nominal rates and realization [are] much higher. What we see is a Ukrainian level that is higher than the average CEE level, such as Polish, Hungarian, Czech, Bulgarian, or Macedonian rates, and even German ones at times. That, however, matters less when – on a multi-jurisdiction project – we are [shown] the average rates in other markets and are told, ‘look, guys, you want to be on the project, then just match it.’ And we would. The discount depends on the expectations and interest to be on the project – a constant question for Ukrainian lawyers.”

Babych said that, at the end of the day, “we are talking about value for money.”

She noted that Ukraine “is still very much a traditional market” in contrast to European jurisdictions in which “you see a lot of firms customizing a lot of their services but also see a movement towards commoditization and IT developments” to keep margins healthy despite the fee push. Kochergina agreed, noting that, at least in that way, lawyers in Ukraine are lucky to be working in an underdeveloped market.

“I can compare what’s in Kyiv and the region. I can say that our average fees (not just CMS’s but all firms) are much higher than in Poland or the Czech Republic. I am surprised that my colleagues in other CEE offices need to charge far less, especially if they work for state-controlled companies. From this point of view, I think we have small room to complain here.”

Kochergina concluded the event by explaining that the legal profession can be broken down into three types of work: “Rocket science, trusted business advisor – which is more sophisticated than commodity – and then commodity. The business of law is seeking to find a balance and chasing rocket science while filling in the gaps in margins with the other two. We’re providing a lot of the first since the market is not sophisticated.”

She ended the afternoon with a grace note: “Of course the market will develop, but there is still room to be romantic about our profession at this point.”

Radu Cotarcea

Market Snapshot: Ukraine



Recent Trends in the Ukrainian Energy Sector



Armen Khachatryan

In 2015-2016 almost all energy related trends are driven by the Ukrainian government's efforts to bring its legislation into compliance with the Third Energy Package, which the country is required to do as a member of the European Energy Community. Indeed, Ukraine is in the process of a large-scale reform of its energy sector.

Implementation of the Gas Market Law



Yaroslav Petrov

In April 2015 the Ukrainian Parliament adopted the new Gas Market Law, which is a significant step for Ukraine in reforming its gas sector and making it compliant with the Third Energy Package. Although the law became effective on October 1, 2015, full implementation of the Gas Market Law is still pending. Adoption of the law triggered the development of a significant amount of secondary gas legislation, including the GTS Code, Gas Distribution System Code, and Gas Storages Code, all of which came into effect on January 1, 2016. Adoption of the Gas Market Law opened the market to many new participants both from abroad and within Ukraine.

As part of the Gas Market Law's implementation, Ukraine is required to unbundle its NAK Naftogaz of Ukraine ("Naftogaz") monopoly. On July 1, 2016, the Cabinet of Ministers of Ukraine

(the CMU) approved a comprehensive plan for Naftogaz restructuring, which was developed based on consultations with the Secretariat of the Energy Community. According to this plan, by October 1, 2016, the CMU should establish the separate public JSC (joint stock company) Main Gas Pipelines of Ukraine (to be 100% owned by the State and managed by the Ministry of Energy), which eventually will function as the TSO (transmission system operator). The unbundling of Naftogaz has been delayed due to arbitrations between Naftogaz and Gazprom. Until these disputes are resolved the GTS will remain under the operation of Public JSC Ukrtransgas (established by Naftogaz).

The Political Situation in Ukraine Impacts the Country's Gas Market

As a result of the political situation, Ukraine is trying to diversify its natural gas supply channels, and the country has managed to significantly increase its supply from other European countries. According to the data provided by Naftogaz, in 2013 Ukraine imported 92% of its gas from Russia, in 2014 74%, and in the first quarter of 2015 Ukraine imported 39% from Russia and 61% from the EU. In 2016 Ukraine is not importing gas from Russia at all. To change this trend Gazprom recently has been trying to offer Ukraine cheaper prices for gas than the rest of Europe.

Independent Regulator

Ukraine as a member of the European Energy Community needs to harmonize the powers and strengthen the independence of its energy regulator. The Ukrainian regulator – the Ministry of Energy – and the Secretariat of the European Energy Community jointly developed a draft law on the regulator, which is compliant with the Third Energy Package. There have been several failed attempts to adopt this draft law. Adoption of new legislation, which would strengthen the status of the regulator, is imperative for the purposes of liberalizing the electricity and gas markets in Ukraine, and the Parliament should focus on this initiative.

Liberalization of Electricity Market

Ukraine's electricity market is functioning on the basis of the single-buyer model. Transition to a full-fledged liberalized electricity market is expected by mid 2017. However, the effective legislation is not fully compliant with EU rules. The Ministry of Energy, working together with the Secretariat of the Energy Community, prepared a draft Law on Electricity Market of Ukraine, which has been submitted to the Parliament and is expected to be adopted in 2016. Although the draft law is compliant with the Third Energy Package, some of its provisions are difficult to implement in Ukraine due to specifics of the country's electricity market – in particular provisions on compensation of imbalances for solar- and wind-energy generation companies. Moreover, the draft law does not stipulate a clear mechanism for compensation of a “green” tariff.

Increase of Energy Prices

In 2015-2016, under pressure from international financial institutions, Ukraine significantly increased utility costs for its population and made efforts to raise prices for energy resources to a market level. After increasing energy prices, the government changed the system of subsidies, which envisages that instead of going to Nafgaz they are paid directly to the population.

By Armen Khachatryan, Senior Partner, and
Yaroslav Petrov, Counsel, Asters

Currency Controls in Ukraine: Recent Developments



Glib Bondar

Over the years Ukraine has been known as a country with restrictive currency control regulations. Historically, these have been aimed at limiting the flight of capital out of the country and maintaining the stability of Ukraine's local currency, the hryvnia (UAH). Recent events related to the annexation of part of Ukraine's territory and military activities in eastern regions

of Ukraine put huge pressure on Ukraine's economy and on the hryvnia. In response to these challenges (including currency market turbulence), in 2014 the National Bank of Ukraine (NBU) tightened the currency control regime further by introducing so-called “temporary” currency control measures.

The NBU has issued a handful of resolutions almost every three months since then, extending the “temporary” restrictions, each time with certain modifications, including, most recently, NBU Resolution No. 342 dated June 7, 2016 (“Resolution No. 342”). As part of these measures, the NBU has imposed quite a few limitations on local currency market players, including limitations on the right of individuals to purchase foreign currency and withdraw funds from their bank accounts, shortening the maximum period for settlements under export and import operations of Ukrainian residents, and requiring banks to sell foreign currency proceeds received by their clients on the Ukrainian interbank market. At

the same time, some of the NBU's temporary measures have also impacted foreign lenders and other investors in Ukraine.

Cross-Border Loans

In March 2014, the NBU imposed an absolute prohibition on making early repayment of any amount under cross-border loan agreements. A few exceptions to this prohibition followed later on, primarily to allow prepayments to international financial institutions as well as of loans supported by foreign export credit agencies (ECA).

In August 2015, the NBU introduced a ban on changes to lenders and/or borrowers under cross-border loan agreements. For some time, this prohibition hindered any restructuring efforts involving assignments or similar arrangements. In January 2016, this prohibition was replaced with a new cross-border loan-registration procedure involving additional scrutiny from servicing banks and the NBU. The new procedure has not yet been properly tested, but it is clear that registration with the NBU of new lenders/borrowers will now require additional time and effort.

Repatriation of Dividends and Other Payments



Igor Lozenko

Generally, since September 2014, the NBU has prohibited the payment of dividends out of Ukraine, the repatriation of proceeds from sale of equity interests in Ukrainian companies and debt securities of Ukrainian issuers. This has made it impossible for foreign investors to repatriate their investments out of Ukraine and has affected the structuring of M&A transactions in

Ukraine. The NBU also restricted cross-border payments under most types of individual licenses issued by the NBU.

Move Towards Liberalization

With signs that the hryvnia may be stabilizing, the NBU currently appears to be on the way to gradually easing these temporary restrictions. In particular, in May-July 2016 the market saw a series of NBU resolutions relaxing some of the restrictions. Most importantly, pursuant to Resolution No. 342, the NBU now allows foreign investors to repatriate dividends accrued in 2014 and 2015, subject to a monthly-capped amount. In addition, foreign currency proceeds under ECA-supported loan agreements and proceeds transferred into Ukraine as foreign investments have been exempted from the mandatory foreign-currency sale requirement. The foreign-currency sale requirement itself has now been reduced from 75% to 65%. The NBU has also extended the maximum term for settlements of export and import transactions from 90 to 120 days.

Although certain other temporary currency restrictions previously introduced by the NBU still remain in place, the signs of liberalization marked by recent NBU steps should add more freedom to cross-border transactions and have a positive effect on the business environment in Ukraine.

By Glib Bondar, Partner, and Igor Lozenko, Counsel,
Avellum

The New Investment Environment for Public-Private Partnerships in Ukraine



Tetyana Gavrysh

The public-private partnership (PPP) model is used worldwide for infrastructure development and social welfare projects. In 2016, the Ministry of Economic Development and Trade of Ukraine allocated 312 state-owned assets for PPP projects. The focus of these projects was healthcare, transport infrastructure, energy, mechanical engineering, and agribusiness.

Now the question is whether Ukrainian PPP projects are promising enough in the eyes of private investors. Today the Ukrainian healthcare market is estimated at USD 4.9 billion. However, state-owned and municipal clinics in Ukraine that provide 90% of services fail to satisfy the market's demand in both the scope and quality of healthcare services needed by the patients.

Despite the fact that the On Public-Private Partnership Act was adopted in Ukraine as early as 2010, a World Bank's report mentions only two implemented projects under this law. There are two main reasons for this delay. The first one is that the project launch procedure is complicated, expensive, and requires a mandatory assessment of project efficiency and risks at the investor's expense – but provides no guarantees that the investor carrying out that assessment will eventually be awarded the contract (due to the competitive selection of investors). The second reason is that the state does not provide any long term (i.e., over one year) financial guarantees due to budget legislation. As a result, PPP transactions are usually based on the legislation defining the legal regime of specific contracts (e.g., concession, joint venture, management, lease, etc.), and not under the Act On Public-Private Partnership.

In 2016, the Ukrainian Parliament attempted to rectify the situation. In May an amendment to the On Public-Private Partnership Act came into force and expanded the scope of guarantees for investors. For instance, investors now have the right to suspend the fulfillment of their obligations if the prices for their products, which are regulated by the state, are economically unjustified. Another improvement is the newly introduced right to settle disputes via international arbitration. The Parliament is also considering changes to budget laws that would allow the state to provide long term financial guarantees in PPP projects.

So what forms do PPP projects take in Ukraine, and why?

The most commonly-used forms of PPP projects are: (1) concession and (2) lease of state-owned and municipal property. Currently, large infrastructure and industrial structures such as plants, ports, and roads may be among the objects of concession. Concession is one of the few forms of PPP (along with financial lease) which allows private investors to eventually obtain priority right to buy-out of the state-owned property.

Lease remains the most regulated and safe option for investors. An investor may lease the whole property or some part of it (i.e., a building or its section), and may also renovate or introduce technical modernization or other improvements to the leased property at its own expense and be compensated for it. In some instances,

following these improvements, the investor may become an owner of this property. The law does not state the maximum period of lease, but usually the assets are leased for at least 10 years.

A joint venture agreement involves the combination of the assets and/or organizational resources (stake) of the public and private sector parties to carry out a joint project. In Ukraine, the state's stake in a joint venture can be no lower than 50%, which cannot be overruled by contract. The maximum lifespan of a joint venture is not legally defined and is up to the partners to determine.

So far, management contracts have been seldom used in PPP, which is partly due to their novelty in the Ukrainian business environment. At the same time, this is the most flexible form, since the law does not yet dictate any mandatory provisions. Acquisition of management services by the state will be carried out through the mechanism of public procurements, including e-system "ProZorro." The law does not limit the duration of management contracts, though the default term is five years. The amended version of the On Public-Private Partnership Act mentions management contracts alongside concessions and joint ventures, so we can expect it to be used more often.

Ukraine carries significant potential for PPP projects. And while in the past legislation did not provide solid procedures and guarantees for private partners, the situation now is rapidly changing.

By Tetyana Gavrysh, Managing Partner,
Inyurpolis Law Firm

Arbitration in Ukraine

General Overview



Svitlana Chepurina

The Ukrainian legal framework governing international arbitration generally follows the international standards set by UNCITRAL. Ukrainian law explicitly prohibits review of arbitral awards on the merits. Also, such essential provisions as grounds for setting aside and for refusing recognition and enforcement of an arbitral award replicate the UNCITRAL Model Law and the New York Convention, respectively. That said, Ukraine has not implemented the 2006 amendments to the UNCITRAL Model Law designed, among other things, to improve the regulation of interim measures in arbitration. Furthermore, there are certain distinctions in Ukrainian arbitration-related legislation that favor international arbitration – or that may have the opposite effect.

One of the principal pro-arbitration features of Ukrainian law is that it extends the application of the international arbitral dispute-resolution mechanism to the parties incorporated and having places of business within Ukraine, provided that at least one of the parties qualifies as an entity with foreign investments. Such a provision appears to give a valuable tool to foreign investors setting up business in Ukraine to opt out of the jurisdiction of Ukrainian courts – which is often a preference.

It is worth noting, though, that Ukrainian arbitration law plac-

es considerable emphasis on the written form of the arbitration agreement. In this respect, Ukrainian arbitration law does not reflect the 2006 revisions to the UNCITRAL Model Law that permit an arbitration agreement to be concluded orally, provided that the parties' consent to arbitration is recorded in any form.



Anna Vlasnyuk

Moreover, Ukrainian law qualifies a rather broad range of disputes as non-arbitrable. Notably, disputes relating to challenge of acts (whether of regulatory nature or not), disputes arising out of state procurement contracts, and corporate disputes fall under the category of disputes not capable of settlement by arbitration. The Ukrainian law position with respect to the list

of non-arbitrable disputes has been a subject of ongoing debate. There are proposals to narrow down this list and carve out corporate disputes or, to the contrary, to declare disputes related to transactions with securities or equity interests in a Ukrainian entity and a number of other matters as non-arbitrable.

Recent and Prospective Legislative Developments

The Ukrainian parliament has recently passed two laws that will take effect in October 2016 related to the enforcement procedure. The new laws introduce the concept of private bailiffs to the Ukrainian legal system. That is expected to increase the efficiency of the enforcement procedure. While the laws target enforcement proceedings generally, the anticipated positive effect will also extend to arbitral awards that have been recognized and allowed for enforcement by a Ukrainian court.

Furthermore, a bill concerning judicial supervision and support for arbitration is currently pending before the Ukrainian parliament.

If enacted into law, the bill would introduce long-awaited changes to the Ukrainian arbitration-related legal framework. The bill limits the judicial proceedings on challenge, as well as on recognition and enforcement of arbitral awards, to two court instances (currently, up to four court instances may be involved in such proceedings, with a possibility of a higher court sending the case for repeat review by a lower court). Further, the bill proposes to empower Ukrainian courts to issue orders on provisional measures in support of arbitration and to enable parties to seek court assistance in obtaining evidence for the purposes of arbitration.

Recent Developments in Enforcement of Arbitral Awards

One of the most notable recent cases is the enforcement of an emergency arbitrator award rendered against the State of Ukraine in favor of JKK Oil in an Energy Charter Treaty arbitration under the emergency arbitrator procedure contemplated by the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. A Ukrainian first-instance court initially ruled that the award be recognized and enforced, rejecting all government objections. Notably, the court dismissed the argument that the award was rendered beyond the scope of the submission to arbitration – observing, in this regard, that the emergency procedure was provided for under the applicable arbitration rules. This decision was later reversed by the appellate court, based on the public policy objection because the award concerned hydrocarbon exploration royalties. Although overruled on appeal and still awaiting a final court decision, this case offers useful guidance on enforcement of a somewhat unconventional arbitral award for the Ukrainian legal system and generally demonstrates the trend of pro-arbitration decision-making by Ukrainian courts.

By Svitlana Chepurna, Partner, and
Anna Vlasnyuk, Associate, Asters

Expat on the Market: Graham Conlon of CMS in Ukraine



Graham Conlon is a Partner and English-qualified solicitor at CMS, where he is the Co-Head of International Private Equity and the Head of Corporate and M&A in Kyiv. He divides his time between Warsaw and Kyiv and has a regional role and advises on private equity and M&A transactions throughout Europe and beyond.

Before joining CMS in 2010 Conlon spent five years with Linklaters renowned "flying squad" in London and Bucharest, then almost two years with Bingham McCutchen and another year and a half with Salans (now Dentons) in Almaty, Kazakhstan.

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

G.C.: I originally signed up for a career in the Royal Air Force, and they sponsored me through university and taught me to fly before I realized that a career in the military was probably not what I wanted in the medium and long term. So in my final year

of university I applied to Linklaters, got the job, and requested special permission to extricate myself from my military commitments. I received that permission, but on the condition that I repay everything back to them – a debt that was hanging over my head for quite some years before I could finally afford to pay it back!

CEELM: Was it always your goal to

work abroad?

G.C.: Yes. One of the main reasons I joined Linklaters was because of the international opportunities available. As part of that I was offered the opportunity to spend six months as a trainee in Bucharest, and I loved it so much that I ended up staying four years, working as part of Linklaters' regional CEE/SEE private equity team, doing deals all over the place. It was hard work, but a lot of fun too, and I learned a lot – in particular thanks to Ted Cominos, my former Linklaters boss and mentor. But at some point I decided that it was about time to return to London, so as to not get pigeon-holed as a CEE specialist at too young an age, and I took a job at a US firm. But whereas I had been running deals at one-year PQE in CEE, back in London I was responsible for drafting due diligence

reports, doing basic research, and doing first drafts of transaction documents. I felt under-challenged and bored and quickly realized that I was an emerging-markets lawyer at heart. And so I dedicated my career to emerging markets from that moment onwards. But by then it was 2008, just after Lehman Brothers, and the M&A market was a bit quiet, so I used the opportunity to spend a couple of years on secondment to Almaty, Kazakhstan, where things remained pretty busy notwithstanding the global crisis.

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

G.C.: I joined CMS as a Partner in 2010 along with Ted Cominos and seven other former Linklaters colleagues. Ted and the team have since moved on, but Anela Musat, Camelia Tanasoiu, and I stayed, and we continued to build up the practice and the team step by step, and I am really lucky to work with such great colleagues for great clients. Generally my clients tend to be private equity funds, strategics, or high-net worth individuals doing M&A deals in the region, but I also act for CEE/CIS-based clients when they are doing deals in the West. For example, last year I advised Amica, the Polish white goods company, on their entry into the UK: the largest Polish investment in the UK to date, as far as I am aware.

CEELM: Do you find CEE clients enthusiastic about working with foreign lawyers, or – all things considered – do they prefer working with local lawyers?

G.C.: The very big cross-border PE & M&A deals, as well as M&A deals in less developed markets, are often governed by English law. Clients therefore require English-qualified advisors in such circumstances, and they appreciate the value-add that we can offer given that we are based on the ground in the region and have a long track record of doing deals here. By the time that clients instruct lawyers, they have typically made up their mind (at least in principle) that they want the deal to go ahead, so they need lawyers who can find a way to get the deal done on sensible terms, rather than come up with a long list of reasons as to why it cannot. On nearly every CEE/CIS deal there is always an issue that pops up – an issue which, in the West, might be a deal-breaker, or at the very least a reason to chip away at the purchase price, or delay closing. But chances are that we have seen the issue before, somewhere else in the region (and I

have seen a real range of strange issues in my time, including some which would make a John Grisham novel seem tame), and we are able to find pragmatic ways to get over it and move on with the deal. In more developed countries such as Poland, however, the need for an expat lawyer is much less – the jurisprudence and the courts are sophisticated enough for local law to be used. However English law is still used sometimes when there is a cross-border element.

CEELM: How about the cultures? How would you distinguish the four cultures you've lived and worked in?

There are definitely cultural differences between the UK and some of these countries – and a lot of superstitions. Some of my favorites include: never leaving a window or door open such that a draft blows through (otherwise you will get sick); not whistling indoors (you'll get poor); not returning to your house to pick up something you forgot – and be sure to look in the mirror if you do; not shaking hands over the door threshold (in case you disturb the spirit that lives there – as it might then be tempted to wreak havoc in the household, and bring bad luck to those who live there); offering to shake a woman's hand before she offers hers; never giving a bouquet of flowers with an even number of flowers in it (even numbers are only for funerals); never giving a clock or a watch to someone as a present (they might think you want to kill them); never offering the corner seat to an unmarried girl – unless you want her to remain single for the rest of her life; and being very wary of encountering a woman first thing in the morning with an empty bucket (the cleaner in my block once got a real telling-off for this very reason). Plus of course there are culinary differences (horse meat and camel's milk in Kazakhstan, and 'Herring under a fur coat' in Ukraine) and business differences (getting a deal done in Turkey is a completely different kettle of fish from getting a deal done in Poland, which again is completely different from Ukraine). But if there is one thread which joins all the countries together, then it is the warmth of the people with whom I have worked and met over the years. They have always been very hospitable, and have gone out of their way to make me feel welcome, much more so, I feel, than would usually be the case if/when foreigners visit the UK.

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

G.C.: When deals are governed by English law, then the added value is clear. But even when they are not, clients still sometimes require expats to be involved. Earlier this year I advised on a high-profile deal in Italy for example – a deal which had absolutely no connection with English law or the UK whatsoever. But I was involved simply because it was a complex cross-border deal with a number of difficult issues to negotiate and solve, and the client wanted a trusted M&A practitioner to help negotiate the deal and project-manage it to a successful signing and closing – a deal which completely destroyed my Christmas and New Year break, but I guess that is the price of being a transactional lawyer sometimes!

CEELM: Outside of the countries you've worked in, which CEE/CIS country do you enjoy visiting the most?

With the exception of two or three countries, I've advised on transactions in pretty much every CEE/CIS country there is – from the Baltics to the Balkans, and from the Czech Republic to Tajikistan. I don't always travel on each and every deal, but I have been to most of these countries over the years, and I am very fortunate to be able to combine one of my passions (traveling) with my job. There is no particular place which I would single out above the others therefore, though given that my wife is Ukrainian and my son half-Ukrainian, it is perhaps only natural that I have a particular fondness for Ukraine – a country which has it challenges, but with a population of 45 million and a genuine desire for change at the grass-roots level, it is just a matter of time until the unbelievable potential of that country – the last sizeable emerging market in Europe – shines through.

CEELM: What's your favorite place in Kyiv?

Kyiv is a beautiful city, especially in the summer, and I have plenty of favorites. But on a sunny day I would recommend a nice walk from St. Sophia's Cathedral, past St. Michael's Cathedral and St. Andrew's Church, and then down Andreevsky Spusk to get a sense as to Kyiv's beauty. Volodymyr's Hill also has great views over the Dnipro river and beyond. For a beer after work, then the fountain at Golden Gate is a nice down-to-earth place to relax in the summer, and for something a bit more up-market, Ohota na Ovets in Podil is one of my favorite restaurants.

David Stuckey

Inside Out: Sayenko Kharenko Advises Sberbank and Citibank on Restructuring of Sovereign-Guaranteed Loans to Yuzhnoya's State Design Office and the Road Agency of Ukraine



The Deal:

On March 8, 2016, CEE Legal Matters reported that Sayenko & Kharenko had advised Sberbank on the restructuring of a sovereign-guaranteed loan to Yuzhnoya's State Design Office and the Road Agency of Ukraine (Ukravtodor) with an outstanding principal balance of approximately USD 367 million and had advised Sberbank and Citibank on the restructuring of another loan to Ukravtodor with an outstanding principal balance of EUR 37.3 million. Linklaters advised the banks on matters of English law, and Avellum acted as Ukrainian counsel to the Ministry of Finance of Ukraine on both matters.

As we reported at the time, the outstanding principal balance of the two sovereign-guaranteed loans and accrued interest thereon were discharged in full, and the two loans were terminated, in exchange for the delivery to lenders in respective portions of (i) the USD 315.769 million aggregate principal amount of Ukraine's 7.75% notes due in 2019, representing 75% of the outstanding principal balance of the loans plus accrued interest, and (ii) the USD 102.246 million aggregate notional amount of Ukraine's GDP-linked securities, representing the remaining 25% of the outstanding principal balance of the loans.

We reached out to Nazar Chernyavsky, the Partner at Sayenko Kharenko who led his firm's team on the restructurings, for more information.

CEELM: How did you and Sayenko Kharenko become involved in the deal?

N.C.: We became involved through Linklaters – the banks' English-law advisor. Since we advised on the previous Ukrainian sub-sovereigns restructuring deals in 2015, Linklaters approached us with a request to assist the banks with the restructuring of the loans to Ukravtodor and the Yuzhnoye State Design Office.

CEELM: At what stage were you



Nazar Chernyavsky, Partner,
Sayenko Kharenko

brought on board, and what, exactly, was your mandate when you were retained?

N.C.: We became involved once the preliminary commercial agreement on going through with the deals was reached by the Ministry of Finance and Sberbank and Citibank. The deal structure was preliminarily discussed, and we were expected to analyze it, provide our general views on viability from the Ukrainian law perspective, and verify several structural issues which were subject to negotiation. As the preparation went forward, we had to change several elements to accommodate the banks' requirements for execution.

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

N.C.: I was the Partner responsible for structuring and overall supervision of the deal. The firm's Counsel Anton Kobeynikov generally managed the transaction documentation and the firm's deliverables (e.g., legal opinions), and he was assisted in that by Associate Taras Shyb. Apart from the core team, we also involved members of our arbitration and corporate law teams to ensure that the relevant bits of the transaction documentation were in order.

CEELM: How was the loan restructured and the new loan structured, and how did you help achieve those results?

N.C.: The basic idea underlying both transactions was to restructure the loans made to Ukravtodor and Yuzhnoye State Design

Office by exchanging them into sovereign Eurobonds and value-recovery instruments issued by the State of Ukraine within the framework of restructuring of its own sovereign debt in 2015.

The exchange was made through replacement of the borrower under each loan with the State of Ukraine by means of novation. Simultaneously with that, new sovereign Eurobonds and value recovery instruments were issued and delivered to Sberbank and Citibank to replace the novated loan.

The main task of the banks' advisors was to ensure that the execution (consisting of the replacement of the borrower and issuing and delivering new Eurobonds in exchange for the loans) not be interrupted, leaving the banks midway through the process. Our team, in co-operation with Linklaters, managed to tweak the transaction structure to keep the banks' position as protected as possible throughout the whole execution process.

CEELM: What would you describe as the most challenging or frustrating part of the process, and why?

N.C.: The most challenging part of the process was to reach an agreement among the parties as to what flexibility is allowed under Ukrainian law. Since the transaction was a one-off exercise (meaning that the sovereign does not assume the debt of sub-sovereigns on a regular basis), the regulation of the transaction was quite limited. More specifically, there was just one paragraph in the Ukrainian 2016 budget law which described how this transaction should be done. Due to its general nature, the provision provided some flexibility on the one hand, but, on the other, was subject to different interpretations as to the sequence of steps. As a result, the legal advisors of the banks and of the Ministry of Finance had to spend some time to agree on the interpretation and the execution approach that would be acceptable to all parties.

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

N.C.: Due to the general nature of our mandate, the result generally matched what was requested from us in the beginning. Some tweaks were made in the course of the transaction, and we had to provide a bit more detailed explanations of various con-

cepts involved (in particular, the detailed regulation by the 2016 budget law, the value-recovery instruments or "state derivatives" as they are called in the Ukrainian laws, etc.).

CEELM: What individuals in Sberbank and Citibank directed you, and how would you describe your working relationship with them?

N.C.: The Sberbank and Citibank teams working on the transaction showed a good understanding of the issues involved and active thinking in resolving the problems arising in the course of the transaction. We have had a great established working process and effective communications with both banks and spent a number of quite interesting legal discussions at the time of brainstorming the deal elements.

CEELM: Did you work closely with Linklaters, or were the roles distinct, without much need for communication/cooperation? Can you describe that relationship?

N.C.: Linklaters had a co-ordinating English-law counsel role on the transaction. As a result, we co-operated closely with them in getting the deal done. Generally, our firm has a long-lasting relationship with Linklaters. On this transaction, as usual, we had professional and constructive communication which enabled us to achieve the best result for our clients.

CEELM: How would you describe the working relationship with your counterparts at Avellum on the deal?

N.C.: We work regularly on Ukrainian capital market and finance deals with Avellum. As a result, we know their team very well and are very comfortable in having them advising the counterparty to our client.

CEELM: How would you describe the significance of the deal in Ukraine?

N.C.: The deal was one of very few similar deals for Ukraine. By successfully completing the restructuring of loans of Ukravtodor and Yuzhnoye State Design Office, Ukraine managed to lessen the debt burden, which is crucial in the current difficult economic and financial environment. In addition, by accomplishing this restructuring Ukraine made another step in complying with the requirements of the IMF Extended Fund Facility to manage external sovereign and sub-sovereign debt.

David Stuckey



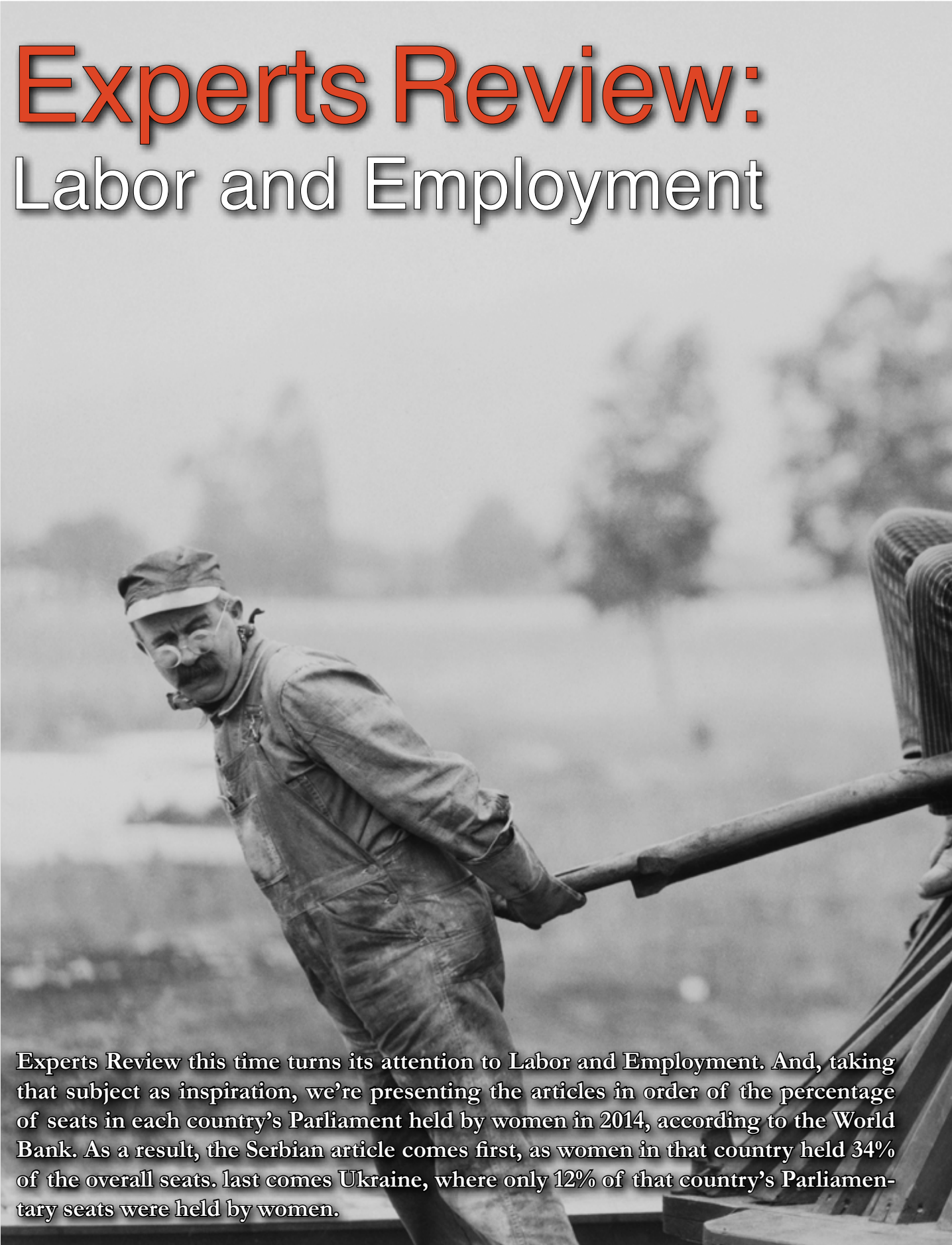
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SAYENKO KHARENKO



Experts Review: Labor and Employment



Experts Review this time turns its attention to Labor and Employment. And, taking that subject as inspiration, we're presenting the articles in order of the percentage of seats in each country's Parliament held by women in 2014, according to the World Bank. As a result, the Serbian article comes first, as women in that country held 34% of the overall seats. last comes Ukraine, where only 12% of that country's Parliamentary seats were held by women.



■ Serbia (34%)	page 92
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Serbia

How to Fight the Abuse of Sick Leave in Serbia – Is There a Solution?



Milos Lakovic

Large-scale industry employers in Serbia often face the problem of high absenteeism due to abuse of sick leave by employees.

These cases repeat throughout the year and negatively affect the profitability of businesses. Employers, therefore, often wonder how this problem can be solved, and if legislation can offer a solution.

The abuse of sick leave appears in two forms: (i) When it is approved and used without medical justification (for example when an employee is not sick at all); and (ii) When the sick leave was used contrary to the reasons for which it was approved (for example when employees are working for another employer while on sick leave).

In principle, the Labor Act prescribes that an employee can be dismissed if he/she abuses the right to sick leave. However, before dismissal, the employer must prove that the employee was in fact abusing the right to sick leave.

The Labor Act was amended in July 2014, with the intention of including more flexibility for employers in proving the abuse of sick leave. Before the amendments to the Labor Act were adopted, the Act only regulated the procedure for proving the abuse of sick leave through the State Medical Institution (the “Official Procedure”). The Official Procedure is designed to allow a medical committee to reassess the first medical opinion in terms of which the sick leave was approved. Unfortunately, the Official Procedure in practice usually provides no results, and is therefore often avoided by employers.

Pursuant to the 2014 amendments of the Labor Act, however, employers in doubt as to whether sick leave was claimed without valid medical reasons can either: (i) refer the employees to a private medical institution for medical analysis in order to determine whether the employee abused his or her right to sick leave (at the employer’s cost), or (ii) confirm the claimed sickness by a procedure regulated under the employer’s internal policy. If an employee refuses to undergo the analysis in the private medical institution, he/she can be dismissed.

Although it seems that employers can easily solve the problem of abuse of sick leave by simply ordering employees to undergo medical analysis in private medical institutions, unfortunately the situation is not so simple.

The results of medical examinations in private medical institutions have been found to be more objective than the results of the Official Procedure, as the doctors in State Health Institutions tend to have an employee-friendly attitude. However, these results cannot be cited as grounds for termination of employment. In fact, a private medical institution can only perform a particular medical analysis (e.g., blood test, x-ray, or similar procedures), and the results can then be used in the Official Procedure. Thus, the possibility of having a particular analysis in a private medical institution is not beneficial for employers, and instead the burdensome and time-consuming Official Procedure still needs to be completed, with results from analysis able only to be used as additional evidence.

On the other hand, employers are in a position to regulate their own internal procedures for investigating the abuse of sick leave. Such pro-



Marija Zdravkovic

cedures can be performed by members of a special committee who can in principle visit the employee at his/her home in order to confirm whether he/she is acting in accordance with the doctor’s advice (e.g., if an employee with a broken leg actually has a cast on his/her leg). However, only in rare cases can the committee’s report be the sole ground for termination of employment. For instance, if the

committee confirms that a sick employee is out walking the streets instead of resting at home, this cannot be taken to be firm evidence, as the medical authority would need to confirm whether such behavior could have a negative impact on his/her recovery.

On the other hand, if the employer’s committee caught an employee working for another employer this could be used as evidence against the employee, and the employment contract could be terminated without initiating an Official Procedure.

In a nutshell, when the latest amendments to the Labor Act were prepared, in July 2014, the legislature sought to help employers by creating a system to prevent the abuse of sick leave. Unfortunately, however, the abuse of sick leave still remains a perplexing problem.

Milos Lakovic, Partner, and Marija Zdravkovic, Head of Employment, Moravcevic Vojnovic and Partners in association with Schoenherr

Austria

New Law on International Assignments



Philipp Maier

The majority of internationally assigned employees coming to Austria need to go through a formal and cumbersome immigration/registration process, which only short trips for internal meetings which are not project- or client-related, entail no service delivery, and last no longer than five days do not entail. This process includes the obligation: (i) to register incoming employees one week

in advance with the Austrian Central Coordination Authority for the Control of Illegal Employment (“Zentrale Koordinationsstelle für die Kontrolle illegaler Beschäftigung”), and (ii) to retain wage documents (including employment contracts, pay slips, working time records, etc.) and make them available to the finance police upon request. Violations of these obligations are subject to severe administrative fines ranging up to EUR 50,000. Austrian authorities have become increasingly strict in recent years when enforcing these requirements.

These obligations on employers are currently regulated by the provisions of various legal acts, such as the AVRAG and the AUG. As of January 1, 2017, these provisions will be consolidated into and regulated by one single Act – the Social and Wage Dumping Combat Act (“Lohn- und Sozialdumping-Bekämpfungsgesetz” – or the “Act”). This new Act will also bring some legal easing for companies sending employees to Austria and some exemptions from the relevant provisions on international assignments.

Exemptions

The international employment of particularly skilled employees – those who have imperative special skills – will be exempted from the Act if the following conditions are met: (i) the employee will not stay in Aus-

tria more than two months in any one calendar year; and (ii) the scope of the employee's work involves one of the following internal activities: research and development, trainings to be provided by the employee, planning of project activities or exchange of experience, business consulting, controlling, and co-operation in group departments which have competence over other jurisdictions (provided that the Austrian department has strategic planning and control functions, i.e., cluster departments, typically including: HR, technical processes, project monitoring, controlling, finance management, and regional management).

In addition, employees who have a monthly gross salary of at least EUR 6,075 (this value is applicable for 2016 and will be updated at the beginning of 2017) are exempted for stays of up to five days (this exemption cannot be invoked for repeated short term engagements for one and the same candidate).

The following exemptions apply to both categories of employees identified above:

EU/EFTA/third-country nationals employed by an EU/EFTA-based employer are not subject to registration requirements before the start of the international assignment, nor to document-keeping requirements for salary related information, and third country nationals not employed by an EU/EFTA-based employer are also not subject to document-keeping requirements for salary-related information.

These exemptions apply only to internal activities and not to client-related activities.

Easing

As of January 1, 2017, the deadline for notifying the authorities of an international assignment of seven or more days will be abolished. This will not have any major impact, as under the document-keeping rules the relevant documents and information will still be required to be available on site as of the first minute of the engagement of the employee in Austria. Therefore, it is recommended to keep the seven-day filing deadline for processing purposes.

Also, as of January 1, 2017, the document-keeping requirements will also be satisfied if all relevant information and documents (for all employees engaged on a specific project) can be handed over to the immigration control officers at the place of work in electronic form at the time of inspection.

Furthermore, it will be sufficient to provide the authorities with one registration for all continuous international assignments during a reference period of three months.

Conclusion

The new law on international assignments to Austria will bring some improvements to the legal situation of companies sending employees to Austria. The legal requirements for the majority of employees will, however, remain the same as before, and companies will have to implement a sufficient compliance system in order to prevent significant financial impacts via administrative fines.

*Philipp Maier, Partner,
Baker & McKenzie Austria*

Croatia

Pre-Employment Screenings in Croatia



Dora Gazi Kovacevic

Pre-employment screenings of potential job candidates, commonly known as background checks, are not always an easy task for employers. A proper balance needs to be found between asking the right questions, allowing employers to find the best match for a certain job position, and not stepping too far into a candidate's private sphere. Pre-employment screenings are not specifically regulated, but the permitted scope for questions is determined on the basis of the Croatian general legal framework, which mainly focuses on the permissible acquisition of data relating to job applicants and a non-discriminatory attitude.

Preparatory Phase: What is Relevant for a Particular Job Position?

Before hiring a candidate for a job opening, employers need to fully understand the applicable legislative framework and prepare the entire process in detail.

Only information that is directly relevant for that particular employment relationship may be requested during the pre-employment screening. In this respect, the specific conditions of employment (e.g., education, skills, language) should be set out by the law, CBA, or even internal documents. Therefore, even if certain specific issues that matter to the employer in the hiring process are not statutorily required (such as drug abuse testing or providing a record showing no pending criminal proceedings), the employer may still successfully set up these requirements under its internal documents, provided that applicable regulations are observed (e.g., employers are not permitted to request proof of previous convictions). A job applicant's nationality may only be relevant if a working or similar permit is required. Also, job applicants are not required to inform a potential employer of an illness or any other condition unless it would prevent or hinder them in adequately performing their employment obligations or endanger the lives or health of others. If job applicants do claim to have such an illness or other condition, an employer is entitled to verify their health status in this regard by arranging and paying for a specific medical examination.

Understanding Legal Constraints During the Recruitment Process

During the recruitment process, everyone involved on behalf of the employer should be made familiar with applicable legal constraints.

No discrimination is allowed. Job applicants may refuse to reply to questions which are not directly job related, which embarrass them, or which violate their right to privacy or personal dignity. Examples of such questions are ones concerning religion, political beliefs, marital status, sexual orientation, and family expansion plans.

All job applicants should be treated equally regardless of their gender, age, marital status, ethnicity, education, sexual orientation, beliefs, and/or other personal characteristics.

Right to privacy and data protection. The job candidate's rights to privacy and personal data protection require that all processing of personal data must comply with the principles related to data quality, such as fairness, proportionality, and relevance. Also, if recruiting is done



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from the company's headquarters (HR departments) located outside Croatia, employers should be aware that any transfer of personal data outside Croatia requires prior approval from the Croatian Data Protection Agency.

Some employers may want to collect information on job applicants by contacting third parties, such as the applicants' universities or previous employers. However, this can only happen with the applicant's consent. Asking for references is recommended in order to obtain information on the applicant's background.



Ana Grubesić

Cautious use of social media. With the rise of social media use, employers are more often turning to screening applicants online. This could potentially lead to a number of legal risks, and therefore caution is recommended. Although there are no clear-cut regulations as to the right to privacy online within an employer-job applicant context, it is recommended that only publicly posted information

be viewed. Even then, information that a potential employer is not entitled to have or to consider during the recruitment process may be revealed, such as pregnancy, political, or religious views. Such information cannot be used as a basis for hiring decisions and can potentially lead to discrimination claims. Also, information available online may not always be accurate, and it is recommended that applicants be allowed to respond to information obtained through these mechanisms before dismissing their applications.

Befriending someone or using someone else's profile for the purpose of gathering private restricted information from an applicant's social media site in order to use it in the hiring process is strictly off limits.

Consequences of Non-Compliance

Should potential employers conduct unauthorized pre-employment screenings, they could face discrimination claims and fines due to non-compliance of up to EUR 7,800 for the company and EUR 800 for the responsible person within the company.

Luka Tadic-Colic, Partner, Dora Gazi Kovacevic, Counsel, and Ana Grubesić, Senior Associate, Wolf Theiss

Poland

New Regulations Concerning the Posting of Workers in the Framework of the Provision of Services That Came Into Force on June 18, 2016

On June 18, 2016, the Polish Act dated June 10, 2016, on the posting of workers in the framework of the provision of services (Journal of Laws of 2016, item 868) came into force.

The Act implements European Enforcement Directive 2014/67/EU and imposes new duties on employers posting workers to Poland.

Posting Workers To and From Poland

Poland is one of the three main sending Member States. In 2014 over 428,405 PDs A1 (portable documents, issued to certify which social security legislation applies to workers posted to an EU member state other than the one in which they customarily work) were issued (as compared to the next two Member States: Germany (255,724 PDs) and France (25,203). At the same time, Poland received 14,521 PDs A1 for posted workers from other Member States. While this data may



Piotr Rawski

not be a precise measure of the actual number of postings, it still shows the relative importance of posting workers in the Polish labor market.

Therefore, implementation of European Enforcement Directive 2014/67/EU in Poland and in other Member States should be taken into consideration by all employers posting their workers either to or from

Poland.

New Duties for Employers



Tomasz Lasyk

The Act gathers in one legal document both the rules on posting employees which already existed as part of the Labor Code (e.g., a duty to provide a minimal salary), and brand new regulations implementing the Enforcement Directive 2014/67/EU (e.g., a duty to provide a statement to the labor authorities on posting employees to Poland).

The key new duties imposed on employers posting employees to Poland include the duty: (i) to indicate a person representing the employer before the labor authorities; (ii) to provide the labor authorities with a statement indicating information concerning posting of employees; and (iii) to keep documents with respect to the posting.

New Tasks and Competences of the National Labor Inspection

In addition, the National Labor Inspection (POL: "Państwowa Inspekcja Pracy") has been designated as the competent authority to cooperate with authorities of other Member States. New tasks and competences of the National Labor Inspection pertain to carrying out checks and controls concerning employee qualifications as posted workers. They also include communicating with authorities of other Member States in order to ensure compliance with the law in posting workers both to and from Poland. Furthermore, the National Labor Inspection is responsible for providing authorities of other Member States with information concerning posted workers and employers posting workers to and from Poland.

Identification of a Genuine Posting

The Act implements the provisions of the European Enforcement Directive 2014/67/EU in regard to identification of a genuine posting. The National Labor Inspection may carry out an overall assessment of all factual elements characterizing a posting employer's activities.

Improved cooperation with authorities of other Member States, in connection with additional competences, should make it more difficult to abuse and circumvent provisions of the law which concern posting of workers.

Summary

The Polish Act implementing the Enforcement Directive imposes new duties on employers and provides new competences for the National Labor Inspection. Since Poland is one of the main Member States posting workers to other countries, the new Act will likely have an impact on many companies. Therefore, companies which post workers to and from Poland should take steps to ensure compliance with the new law.

Piotr Rawski, Partner, and Tomasz Lasyk, Lawyer, Baker & McKenzie Poland

Greece

Assessing the Impact of the Crisis on the Greek Labor Market: Will It Ultimately Manage to Secure Its Rebirth?



Georgia Konstantinidou

Since the onset of the Greek sovereign debt crisis and in the midst of non-stop negotiations with the European Commission, the European Central Bank, and the IMF, Greece has been instructed to apply tight fiscal consolidation measures and implement a series of structural reforms to improve its competitiveness and boost its growth in return for desperately needed financial assistance and

securitization of its bail out.

In this context, Greece has undergone extensive labor market transformations in an attempt to regain a competitive edge, enhance employability, and reverse the dramatic increase in the unemployment rate (now at almost 30%) that has been reported since the outbreak of the crisis.

Market transformations include, inter alia, reducing the minimum wage 22% to EUR 586 (and 32% to EUR 510 for market entrants under 25 years of age), limiting salary adjustments, and amending the employment protection regulation facilitating layoffs (i.e., by reducing the notice period and drastically cutting severance pay entitlements). Moreover, a series of reforms has been initiated to increase employment flexibility, reduce labor costs, and bend the rigidity of the Greek labor market, primarily by introducing new recruitment facilities for employers, allowing them to transform active employment contracts into part-time employment schemes, extending the maximum duration of fixed-term contracts to three years, and reducing the protections for employees during the one year trial period. Such changes clearly mark the current trend in labor law towards more flexible forms of employment.

According to OECD data, the percentage of part-time employees involuntarily working on a part-time basis has risen from 26% in 2008 to 44% in 2012, while the OECD average in 2012 was 17.8%. On the other hand, the average annual hours worked per employee has also increased during the same period, scaling up to the third highest in the OECD – 15% higher than the OECD average. Vulnerable population groups (young people, long term unemployed, women, etc.) face greater barriers when it comes to finding employment. In fact, in 2013, 58% of men and women under 25 were unemployed, securing for Greece the highest unemployment rate in the EU.

The majority of these reforms, including the introduction of laws reducing and freezing the minimum wage—normally established through collective bargaining agreements – have undoubtedly led to the deregulation of the collective bargaining system.

These reforms in the Greek labor market have resulted in great controversy among social groups. The reforms have received fierce criticism, on one hand, for being detrimental to both social dialogue (collective bargaining) and human rights and, on the other hand, for generating extremely poor results when it comes to creating new employment opportunities. Such criticisms, though not entirely groundless, fail to take into account the fact that the effects of labor reforms also depend heavily on the so-called “business cycle” which is seriously affected and undermined by the implementation of strict austerity and fiscal consolidation policies as the Greek recession continues.

Nonetheless, it is a fact that both the European Council and the International Labour Organization (ILO) have called on Greece to observe International Labour Conventions on fundamental human rights, such as the right to work, the freedom of association, and the right to organize, highlighting the absence of social dialogue and the need to strengthen and safeguard such fundamental human rights. Furthermore, it has been stressed that Greek authorities have failed to provide the social support required in order to tackle the sharp rise in unemployment, let alone protect the right to just and favorable conditions of work.

Six years since the first Memorandum was introduced in 2010, and after numerous wage and pension cuts, staggering unemployment rates, and a vicious circle of deficits and recession, a much more pervasive set of measures stemming from the third Memorandum (Law 4336/2015) adopted last August is yet to be implemented. These new reforms are rumored to pertain to mass layoffs, collective bargaining, additional wage and benefit cuts (including further reduction of minimum wage and the elimination of holiday and annual leave bonuses for private sector employees) and the introduction of new forms of employment, in a last effort to further encourage flexibility. The omens so far may not be good for the already traumatized Greek labor market, and it remains to be seen whether it will manage to survive and, after all, head towards its rebirth.

Georgia Konstantinidou, Partner,
Drakopoulos

Bosnia and Herzegovina

Labor Reform in Bosnia and Herzegovina



Emina Saracevic

The past half year has been a tumultuous one for Bosnia and Herzegovina (BH). Labor reforms, which strike at the very heart of the socio-economic structure of every nation, are under way in both entities of BH – the Federation of Bosnia and Herzegovina (FBH) and Republika Srpska (RS). The adoption of new labor legislation was prompted by the Reform Agenda for BH 2015-2018, the implementation of which is an imperative in BH's search for EU integration.

The situation was especially turbulent in FBH. The old Labor Law in FBH was passed in 1999 and since then has undergone many amendments. As stated in the Reform Agenda for BH 2015-2018, the labor regulatory framework was not flexible enough, and the Government of FBH found that it was necessary to harmonize the law to a greater extent with the Directives of the European Union, international conventions such as the European Social Charter (revised), and conventions of the International Labour Organization.

The Parliament of FBH adopted the new Labor Law of FBH under urgent procedure and passed it on July 31, 2015, through its House of Representatives, just a day after it was passed by the House of Peoples. Besides meek criticism by the opposition and a protest organized by the Association of Independent Trade Unions of BH, there was no stronger defiance in respect to the new labor law – at least in comparison to situations in other countries (e.g., this year's protests in France aimed against labor reforms). The new Labor Law came into force on August 20, 2015, and the social partners braced themselves for its impact and the arduous process of collective bargaining. Meanwhile, some delegates of the House of Peoples argued that the law was adopted contrary to rules of procedure, so the Constitutional Court of FBH



Harun Novic

was called upon to determine the regularity of the law's passing. On February 17, 2016, just as the new General Collective Agreement was signed and ready to be published in the Official Gazette of FBH, and as employers began adapting their internal acts to the new Labor Law, the Constitutional Court of FBH ruled that the law had, indeed, been adopted contrary to proper rules of procedure. As a result,

the old Law became valid again, the new Law could be re-adopted by the House of Peoples (this time by proper procedure), and the new General Collective Agreement no longer had its legal ground.

This put those employers which had already adapted their internal acts to comply with the new law in an unfortunate position. Fortunately, this situation of legal uncertainty was resolved in relatively short order as the new Labor Law of FBH, adopted with the same text of the law from 2015, finally came into force on April 14, 2016.

Upon the Law's (re)entry into force, the social partners agreed to sign the new General Collective Agreement with the same text as the one signed in February 2016, and it came into force on June 23, 2016.

The aim of the new labor legislation was, among other goals, to raise the competitiveness of the local economy by liberalizing the labor laws but also to provide additional workers' rights which had previously been provided for only by collective agreements, plus some that had not previously existed at all.

The new Labor Law of FBH introduced many innovations, such as provisions prohibiting discrimination, harassment, and psychological workplace bullying; enabling work outside the employer's premises; affecting representativeness of trade unions; altering the general manager status (i.e., it is no longer required for a general manager to conclude an employment contract); obliging an employer to deliver a copy of the mandatory insurance application to employees; requiring that medical examinations be conducted; altering the duration of annual leave; altering the maximum duration of an employment contract for a definite period, and many more.

The new General Collective Agreement for the territory of FBH also introduced some new elements into the labor-regulation landscape of FBH. Many employees' rights that were defined by the previous general collective agreement were delegated to be defined by branch or individual collective agreements, an employer's internal acts, or employment contracts.

Despite the arduous process of passing the Labor Law, it has yet to prove that its provisions are adequate for BH's socio-economic environment. As with any major reform, only time will tell to what extent it turns out to be a success or failure.

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Czech Republic

How Employment Law Became a Factor for Investors in CEE

Had one taken a look at the employment laws in, say, Germany or France in 1989 and compared them to the then Czechoslovak Labor Code, one would have been surprised: The law in formerly Socialist countries was so pro-employer that it looked like a capitalist law from the 1920s. Protection of employees in matters such as unfair deci-



Arthur Braun

sions by their superiors, dismissals, protection in the event of sickness, duration of vacation, and maximum working hours was a lot worse than in the EC countries at the time. And this is before we consider work safety, actual employee involvement in management, protection of privacy, non-discrimination, and so on. In practice, matters were even worse, as employees were often forced to ac-

cept contractual penalties, wage cuts, and other unjust actions because of a lack of information, a lack of courage, inefficient legal protection, or simply the need to keep their job.

Maybe because in theory the factories before were owned by the workers themselves, Czechoslovak (and Hungarian and Romanian) employees were not able to enjoy many of the privileges their colleagues in Western Europe had, such as the six weeks of vacation or 35-hour working weeks guaranteed in France or Germany. Moreover, trade unions – a former pillar of the communist regimes – had such a bad reputation that workers exited from them en masse. And although a few areas – such as energy, railways, and state administration – remained unionized, even in those there were extremely few collective disputes. Strikes, as important as they were in the 1980's in Poland and later during the various national revolutions across Eastern Europe, were subsequently almost unheard of.

In addition, while social security charges for employers were higher in this part of the world than in Western European countries (even today in the Czech Republic today the rate is 34%, and in Slovakia even higher, compared to Germany's 21%), with wages only one third of the average wages a few miles to the west, this was only a moderate cost.

For more than 20 years, Western trade unions tried to convince Czech employees to become as self-confident as their colleagues in the West. Only in a few instances, such as with Skoda Auto, did they find much success.

This did not mean, however, that employees were defenseless, and in fact they often resolved their dissatisfaction with employers in unexpected ways. For instance, productivity is often lower than expected, even with much of the salary coming in variable parts – an indication of demotivation. Even though sickness was and is sanctioned financially, for instance, absences in Czech as well as Slovak companies remain higher than in the foreign parent companies, leading to such things as a “bonus for attendance” – a reward to employees simply for not calling in sick.

Company theft – a phenomenon much more common here than in Western Europe – is another way employees in this part of the world attempt to rebalance a perceived inequality. In interviews with employees accused of theft one often hears the internal justification: “They pay us so much less than in their Western parent companies, I was justified in making up for my low wages by simply taking this thing.”

The most obvious sign of bad labor relationships, of course, is high turnover in the workforce. Recent years have witnessed a high demand for skilled staff, and the Czech Republic, for instance, has unemployment levels below Germany. As a result, frustrated or dissatisfied employees who once may have sought the assistance of a trade union, works council, or state court (into which trust as to quality and speed is still very low), will often now simply leave the firm. Since 2004/2007 the possibility of working at a much-better-paid position in London, and since 2011 in Munich, is a realistic option and has led to an undeniable brain drain, most visible in the hospitals all over the region.

On the other hand, employers cry for more flexibility in working relations, for instance to introduce so-called “working hours accounts,” allowing them to react faster to increases and decreases in demand, as they are used to in their German or US operations. New matters such as working from home that are not covered by the old laws have sprung up. Both employers and employees have to deal with the new digitalized economy, where the old eight-hour working day to be performed in a factory or an office is slowly but surely becoming a thing of the past.

What will the countries in our region do in order to stay attractive to investors in the present situation? Although the wage cost advantage of the CEE countries is disappearing (albeit slowly), a qualified workforce will become even more scarce.

But couldn't modern employment laws allowing for the flexibility needed in the 21st century, together with institutionalized mechanisms of solving conflicts between employers and their employees, become an advantage in the international race of CEE countries for competitiveness?

Arthur Braun, Partner,
bpv Braun Partners

Estonia

New Case Law on Remedies for Unlawful Dismissal in Estonia

The Supreme Court of Estonia has recently ruled that the Employment Contracts Act (the “Act”), which does not provide for reinstatement as a remedy to employees that have been unlawfully dismissed, is constitutional, and that the Act entitles such employees to seek compensation much higher than the customary amount of three months' average wages.



Anu Sander

The Act states that the termination of an employment contract is void when the employee is dismissed without a valid reason. However, in most cases no reinstatement will follow once the court or the labor dispute committee (collectively, the “Court”) has established the absence of a valid reason. The Court shall, upon the request of the employer (or the employee), itself terminate the employment contract as

of the time when it would have expired in the case of valid dismissal. The Act provides only one exception to the rule, protecting employees who were pregnant or had the right to pregnancy or maternity leave or had been elected as the employees' representative at the time of dismissal. In these cases the Court shall not satisfy the employer's request for termination and the employment relationship shall continue, unless it is not reasonably possible considering mutual interests.

The Act provides that the employee is entitled to three months' average wages as compensation for unlawful dismissal, but at the same time grants the Court the right to change the amount of the compensation, depending on the circumstances of the case and the interests of both parties. In practice, the customary position of the courts has been to award the employee three months' wages without any analysis of the actual damage suffered by the employee due to the unlawful dismissal.

In the last two years several cases have reached the Supreme Court which have a significant effect on the resolution of unlawful dismissal cases.

In 2014, the Supreme Court was asked to determine whether the Act, which does not provide for reinstatement as a remedy to employees that have been unlawfully dismissed, is compliant with the constitution of the Republic of Estonia. The Supreme Court found that the Act was compliant with the constitution as well as with the specific requirements of the European Social Charter that employees be provided with adequate compensation if they are dismissed without a valid reason. In 2015, the Supreme Court also confirmed that termination of a fixed-term contract by the Court, upon the request of the employer, is constitutional.

The Supreme Court also, however, explained that the compensation amount of three months' wages stipulated in the Act is not an adequate compensation in most cases, but merely a minimum one which shall be awarded at the initiative of the Court, without any employee's request even needed.

The Supreme Court has ruled that employees are entitled to seek full compensation for lost income from the date that the unlawful dismissal took place and the date of the termination judgment, less any wages received in new employment while the litigation was ongoing. In addition, compensation may even be awarded for unpaid wages after the lawful expiry of the employment contract and for non-financial loss (i.e., anxiety and/or stress).

Furthermore, the Supreme Court has said that the Courts are obliged to explain to the employees their right to seek full compensation of loss. The Supreme Court has also found that upon the request of the employee the Court may terminate the employment contract with the condition that it ends only upon payment of the compensation awarded to the employee.

These recent decisions of the Supreme Court have clarified that the previous customary compensation amount of three months' wages awarded by the courts is not in most cases the adequate level of compensation for the unlawful dismissal. Consequently, employers should be aware that unlawful dismissal entitles the employees to seek full compensation of loss, including the wages not received during the litigation. The litigation may, however, last for a year or more. Therefore, it is wise to consult a lawyer and measure twice, cut once, before dismissing any employee.

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Hungary

Amendments to the Labor Code – Is There More to Come?



Kinga Hetenyi

Amendments to the Hungarian Labor Code entered into force in June 2016. The amendments were approved as part of the Act on the State Budget 2017 and are rather technical, mostly involving provisions that ensure compliance with recently amended European legislation. In this article, we briefly summarize the most important amendments to the Labor Code.

Protection From Dismissal

The Hungarian Parliament recently supplemented the rules protecting employees from unfair dismissal. The former labor code, in force until 2012, provided unconditional protection against the termination of employment of pregnant employees and those undergoing fertility

treatment. The current labor code also includes this rule but stipulates that employees may only enjoy this protection if they had informed their employer about their pregnancy or fertility treatment before the dismissal was communicated to them.



Daniel Gera

The Office of the Commissioner for Fundamental Rights (OCFR) initiated a constitutional review of this provision before the Hungarian Constitutional Court shortly after the new labor code came into force. The Constitutional Court examined the question, agreed (partially) with the OCFR, and abolished the requirement to inform the employer of the said circumstances “before dismissal”.

The current amendment supplements the partly abolished provision and affords the employer the opportunity to revise its decision if the employee informs the employer after the communication of the dismissal that she in fact enjoys protection. In such case the employer may withdraw its notice within 15 days of receiving the notice of the protection.

Provisions on Resting Time

The rules governing daily rest periods – Section 104 of the Hungarian Labor Code requires that a period of at least 11 hours must be provided for an employee between working days – were also modified. The most important reason for the amendment was that the European Court of Justice (ECJ) confirmed in one of its decisions (*Syndicate Solidaires Isere case (C-428/09)*) that the health, safety, and personal security of employees can only be ensured if their right to sufficient rest time is respected. This implies that no activity which may disturb the employee is allowed during the rest period. Furthermore, the rest period must immediately follow the working period.

Following the principles of the ECJ’s interpretation, the respective Hungarian provision was amended so that if an employee receives fewer than 11 hours of daily rest between two shifts, the next two daily rest periods must total at least 22 hours.

According to a secondary rule, if the rest period falls in the beginning of the summer period, a minimum of 10 hours must be provided, and in the case of divided, continuous, or multiple shift employment or seasonal work, the minimum rest period is 7 hours.

These new provisions will enter into force on January 1, 2017. This means that any working-time cycle, reference period, or pre-defined working time that is organized before then may “break” into the new year without change.

Provisions Related to Executives

The range of strict provisions governing executives’ employment will be widened.

Currently the Labor Code represents a rather flexible approach in relation to executive employees, in that it allows the parties to contract away from the legal rules on a wide range of topics. The Labor Code contains only a few provisions from which an employment contract may not deviate (e.g., an executive employee may not fall under the personal scope of a collective agreement).

According to the new provisions already in force, the labor contract of an executive employee may not deviate from the provisions of the Labor Code in respect of (i) the rules providing statutory exemption from work during fertility treatments, obligatory medical examinations, and maternity leaves; (ii) the rules governing the protection from dismissal in cases of pregnancy, maternity leave, and fertility treatment; (iii) the

special working time rules of endangered employees.

The reason behind these amendments is that the related EU Regulation (2010/18/EU) on parental leave has changed, which has to be harmonized with domestic rules.

Ease of Sunday Working Ban

The earlier provision prohibiting Sunday work for employees working in on-call duty positions (e.g., facility management, security staff, etc.), if they were scheduled to work on the preceding Saturday, was abolished as of June 18, 2016. This provision was abolished as it was found to be impractical.

Summary

The Hungarian Parliament tried to keep the integrity of the Labor Code while amending it where necessary due to EU law obligations. The current modest amendments came by surprise, as a more significant amendment proposal had been prepared and published by the Government last autumn. That proposal was not approved, but it may be introduced to the Parliament again in the near future.

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Slovakia

New Rules for Posting Employees Under Slovak Law



Jan Makara

In 2014, the European Parliament and the Council adopted Directive 2014/67/EU (the “Directive”) on the enforcement of Directive 96/71/EC concerning the posting of employees in the framework of the provision of services and amending Regulation No. 1024/2012 on administrative cooperation through the Internal Market Information System.

Even though European legislation in the field of posting is not new, as it was first adopted back in 1996, the Directive aims to improve the conditions for the cross-border posting of employees by establishing a common set of appropriate provisions, measures, and control mechanisms necessary to ensure a better and more uniform implementation, application, and enforcement of rules concerning the posting of employees.

All Member States were obliged to implement the Directive by June 18, 2016. The Slovak Republic did so by adopting Act No. 351/2015 Coll. On Cross-Border Cooperation in Posting Employees for Work Performance in Framework of Provision of Services (the “Act”), which came into effect on the final day for implementation of the Directive.

As is clear from its title, the Act governs cooperation between Member States in the exchange of information and investigation of facts related to the posting of employees and serving of documents and decisions on imposing fines. It is worth mentioning that fines imposed on an employer in relation to the posting of employees in another Member State can be enforced by the authorities of the employer’s home Member State.

The Act brings with it new obligations, burdening especially those foreign employers which post employees to the Slovak Republic (i.e., host employers). For example, such employers are obliged to inform the Slovak National Labor Inspectorate prior to the posting (i.e., to provide information related to the posted employees) and to maintain documents related to the posted employees throughout the posting period.

The Slovak inspectorates will be able to follow the cross-border posting of employees more easily thanks to the indicative criteria stipulated by the Act (e.g., according to the place of the employer's registered seat or the usual workplace of the posted employee). Once the cross-border posting is identified, the inspectorates can subsequently examine the fulfillment of the duties and compliance with the rules of the posting.

The Act also significantly amended other Slovak labor law legislation, including the Labor Code (Act No. 311/2001 Coll.) and the Act on Illegal Work and Illegal Employment (Act No. 82/2005 Coll.).

As regards the Labor Code, its brief provisions in the area of the posting of employees were extended by new definitions of the posting of employees, posting employer, and posted employee. The Labor Code introduced the joint liability of a Slovak service provider for the payment of wages to a host employee, if

it is not paid by the host employee's employer, who is in the position of subcontractor of the service provider. Also, Slovak employers are obliged to inform their employees about working conditions in the country where they will be posted and to conclude a written agreement with them on the posting with all legal essentials.

The Act on Illegal Work and Illegal Employment introduces a ban on an entrepreneur client receiving work or services from a contractor performed by a person who is illegally employed by the contractor. This applies to the cross-border provision of services exceeding 5 days in a 12-month period, or to any work – whether cross-border or not – performed by temporarily assigned workers, without a time limit. For a breach of the ban, a fine of up to EUR 200,000 may be imposed on the client, regardless of whether it knew about the illegal employment.

The Act also influences commercial relations – as the client should introduce a mechanism for verifying that all work (service) providers have valid employment contracts and are part of the social security system – and introduces a mechanism of indemnification in case the contractor violates the prohibition of illegal employment.

To conclude, due to new EU legislation, the conditions for posting employees within the European Union have significantly changed, affecting the Slovak Republic. These changes will have, in our opinion, a substantial impact on the cross-border provision of services throughout the European Union, not only from a labor-law perspective but also from a commercial point of view.

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Latvia

Improvement of the Regulation on Posting of Workers (the Posting of Workers Enforcement Directive)



Andrea Rubene

The free movement of persons, freedom of establishment, and freedom to provide services are fundamental principles of the European Union. The 1996 Posted Workers Directive (96/71/EC) provided a framework so that both businesses and workers could take full advantage of the opportunities offered by the single market. However, in 2003 the European

Commission evaluated the implementation of the 1996 Posted Workers Directive and identified several problems.

In order to rectify these problems and to reduce the uncertainty ex-

isting in the field of labor law, especially concerning the posting of workers, and as a response to the verdict of the Court of Justice of the European Union in Viking, Laval, and Ruffert, the European Union drafted and adopted Directive 2014/67/EU (the "Posting of Workers Enforcement Directive"), requiring its members to implement it into national regulatory enactments before June 18, 2016.

The aim of the Posting of Workers Enforcement Directive is to strengthen the social dimension of the common market, to protect workers, to improve the conditions of work in cases of posting of workers, and to promote administrative cooperation and exchange of information between the institutions of the EU Member States.

Amendments to the Labor Law of the Republic of Latvia (hereinafter referred to as the "Labor Law") were drafted in order to transpose certain provisions of the Posting of Workers Enforcement Directive and came into force on June 9, 2016.



Ivita Samlaja

Latvia is among those EU Member States that had already included in their Labor Law the obligation on the part of an employer posting workers to Latvia to inform the State Labor Inspectorate (SLI) of the posting in writing. However, this obligation has been supplemented by a requirement that the information be provided to the SLI in the Latvian language. In addition, henceforth, employers will have to submit more information to the SLI in terms of their own identification and contact information, the duration of the posting, the start and end of the working period, etc.

The amendments also transposed the requirements of the Directive relating to the obligation on the part of the employer to ensure that all concluded employment contracts; pay slips; time-sheets indicating the beginning, end, and duration of the daily working time; and proof of payment of wages be kept by the employer's representative in Latvia. At the request of the responsible authority, the documents must be translated into Latvian.

Moreover, the Labor Law has been supplemented by a regulation providing that the provisions regarding business trips shall be applicable to postings of workers. Thus foreign employers, when posting workers to Latvia, shall be obliged to pay daily allowances for the business trip in addition to the minimum wage and reimbursement of the expenses in order to ensure equal treatment between Latvian and foreign (posted) workers. In addition to this supplement, amendments to the Labor Law affect subcontracting chains and contractor liability by providing that posted workers who are employed by a subcontractor are entitled to claim unpaid wages from the contractor. Such rights are limited to the minimum wage of the country where the worker is posted. The contractor will have regressive rights towards the subcontractor. This liability currently is only implemented towards contractors in the field of construction (i.e., construction of buildings and specialized construction work).

Further, amendments to the Labor Law include the previously contested principle that has now been clearly formulated in the Directive, namely, that the employer has to comply with the administrative requirements and submit to the requirements of the supervisory and control institutions of the state where he or she has posted a worker.

Finally, pursuant to the requirements of the Directive, each state has an obligation to create an Internet database where the employees and employers can find all the necessary information with regard to the laws and regulations in the field of labor law, including the amount of mini-

mum wage in each state. Thus, each employer will have to read through the labor requirements of other states, which will also be shared with the European Commission and other Member States. Currently, this Internet database has not been created in Latvia.

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Montenegro

Temporary Employment of Seasonal Workers



Milena Roncevic

It is no secret that Montenegro is a country heavily oriented towards tourism, and its macro-economic activity is primarily based on services related to hotels, restaurants, and other similar tourist facilities. Generally speaking, one of the main characteristics of the tourism industry is expressed in its seasonal nature. This aspect is particularly relevant for Montenegro, a country that – despite

owning a couple of winter/skiing resorts as well – has a much stronger emphasis on its seaside and summer season which, due to its higher level of development, also has greater labor force needs. Being currently in the middle of that season, this seems like a good moment to provide a short overview and analysis of seasonal employment trends in Montenegro.

Up until now, various employers have reported 20,015 jobs available for 2016, out of which 18,316 positions are for a certain time-limited period. Unsurprisingly, more than a half of these positions are stationed around the country's coastal cities.

Although the tourism industry is a popular source of employment, it has become clear that people are less interested in working in other spheres, such as agriculture. Conditions are difficult due to high temperatures and the open air, and so the majority of citizens prefer to work on the coast. Around 6000 citizens found seasonal work this year, a figure that – when taking into account the size of the Montenegrin economy – is no small feat.

The seasonal jobs are interesting both to domestic and foreign summer workers. Domestic companies in particular try to convince young people in Montenegro to get seasonal jobs and work during the summer. To that extent, a few of the major companies such as Porto Montenegro organized a mini summer job fair that offered all of the applicants the opportunity to talk with the company's representatives regarding positions across different departments, such as construction, marina work, and housekeeping.

During 2015, the Montenegrin Parliament adopted the new Law of Foreigners which – at least from the perspective of employers – brought along certain problems and uncertainties. Employers were mostly worried about a new provision which stated that regardless of the annual quota, foreign nationals may only be taken on if domestic workers with appropriate qualifications are unavailable. Although this trend is well known abroad and is tightly connected with the concern of domestic workers being undercut, employers – together with a few commercial chambers in Montenegro – decided to fight this new Montenegrin regulation and came out as winners.

They have every reason to be very satisfied with the results, as according to the Law on Amendments to the Law on Foreigners – which entered into force in mid-March 2016 – the employment of foreigners is no longer conditioned on proving that there are no unemployed

persons registered who meet the requirements for the position or who rejected an offer to fill it. The employers' overarching opinion has been that this amendment significantly improved and liberalized the Montenegrin labor market shortly before the beginning of the tourist season, which was essential for conducting successful summer business.

The Ministry of Internal Affairs has issued 7465 work permits to foreign citizens, with most of them being working in the hospitality industry. The most popular jobs are those that require higher levels of qualification, such as cooks, bakers, and butchers. In addition, a lot of applicants showed interest in working in reception, administration, etc.

Experience shows that a significant number of workers stay to work even after the season ends, and some of them get contracts. The number of employers grows each year as well, with the opening of new hotels and restaurants and the overall development of tourism in Montenegro – bringing more job opportunities along the way. This is also possible due to the fact that, even though the tourist season usually lasts from six to eight months, some locations make it possible for employers to conduct their work all year.

It will be interesting to see how Montenegrin tourism will develop in the years to come. Hopefully, attention will be focused on facilitating the employers' position regarding seasonal employment, allowing for more freedom in negotiating work conditions but without losing an equivalent focus on the workers' interests as well, and finding an adequate balance between the two – often unnecessarily conflicting – sides.

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Romania

Suspending an Employee's Labor Contract is No Longer an Option



Tiberiu Csaki

Two recent decisions of the Constitutional Court of Romania related to an employer's ability to suspend an employee's employment contract have created an unfortunate situation for both employers and employees, with the former limited in their ability to protect themselves and the latter at risk of being terminated without cause.

Background

Last year, the Constitutional Court of Romania issued Decision no. 279/2015, which was later published in the Official Gazette no. 431 of June 17 2015, on the constitutionality of Article 52(1)(b) of the Labor Code. The effect of this decision was to restrict an employer's ability to suspend an employee's employment contract. Previously, an employer was able to suspend an employee's contract if the employer filed a criminal complaint against the employee. This was conceived as a safeguard to protect the employer's economic and commercial interests if an employee was accused of having committed a criminal offence. However, the Constitutional Court found that this provision was contrary to other constitutional norms, since suspending the employee's labor contract was seen as a disproportionate measure to achieving the objective of protecting the employer's interests.

This year, the Constitutional Court issued a second decision restricting employers' ability to suspend labor contracts even in cases where there is suspicion of misbehavior on the part of an employee. Thus, through Decision no. 261 issued on May 5 2016, published in the Of-

ficial Gazette no. 511 of July 7, 2016, the Constitutional Court found that the provisions of Article 52(1)(a) – permitting employers to suspend a labor agreement for the duration of an employee's preliminary disciplinary investigation, prior to issuing a final decision – are also unconstitutional, on similar grounds as last year's decision.

While last year's decision had a limited effect on businesses, since the filing of criminal complaints could be done only under restrictive conditions, this new decision is expected to have a much wider impact on business and labor relations, because it covers the most frequent type of disciplinary cases.

In its decision, the Constitutional Court argued that although the provision was justified by a legitimate objective – to protect the employer's commercial interests – which it was adequate and capable of fulfilling, its protection of employers' rights was disproportionate compared to those of employees, particularly as the suspension of the labor contract was arbitrarily dependent on a condition which the employer itself could create. In other words, an employer could instigate a disciplinary investigation of an employee, and then, on the basis of that investigation, suspend the employee's labor contract. In addition, the law lacked a clearly defined time limit for such a suspension, and offered very few remedies for the employee, so the Court concluded that it did not offer sufficient guarantees against abuse.

However, other provisions of the Labor Code limit an employer's right to sanction an employee for disciplinary offenses pursuant to a disciplinary investigation to a six-month term, so there is an inherent limitation on the duration of the investigation and related labor-agreement suspension. Moreover, if the employee is found innocent, the Code provides that compensation is due for the period of suspension, during which time he or she may also enter into alternate employment agreements.

The Unintended Result

Taking this into account, as well as the normal legal redress available in cases of abusive behavior, the unintended consequence of the constitutionality decision is that both employers and employees may now find themselves in a less favorable position.

Commencing a disciplinary investigation into an employee's alleged offense without being able to suspend the employment contract for the duration of the investigation will put pressure on both sides and give rise to potential risks. Allowing the employee to continue working when there is reason to suspect he may have committed an offense creates the risk that the employee could repeat the offense or interfere with the investigation and the gathering of evidence.

Such a situation does not only affect employers; it can also adversely affect employees. Since the employer will want to finalize a disciplinary investigation as quickly as possible in such conditions, this will lessen the employee's chance of a full and complete investigation while also subjecting the employer to potential procedural errors that could further develop into costly litigation.

As of the decision's publication in the Official Gazette, the application of the unconstitutional provision has been suspended for 45 days. During this time, the Labor Code may be amended to address the constitutionality issue that the Court identified. If this does not happen, however, the provision will be permanently struck down.

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Russia

Dismissal of an Employee During the Probation Period

A probation period is common for employment contracts in Russia. With certain exceptions, the standard term of a probation period is three months, and for some managing positions this can be prolonged to six months.



Svetlana Seregina

A probation period per se does not mean that an employee can be dismissed without any reason within the probation term. During the probation period, the employer is entitled to terminate the employment contract only if the new employee has shown unsatisfactory work results which can be observed at any time during the probation period. So, the advantage for an employer is shorter terms of dismissal and an easier procedure of termination compared to usual circumstances, when the dismissal of the employee is, in practice, much harder.

Although the procedure may seem easy for an employer who is not well-versed in practical labor law, such dismissal raises a conflict with the employee, and in the majority of cases, an employee dismissed on the basis of "unsatisfactory results during the probation period" appeals to the court that the dismissal was illegal and requests that the basis of the employment termination in the labor documents be changed. In the case of court proceedings, the employer needs to be proactive in being able to prove a) the legality of the grounds for termination; and b) compliance with the statutory procedure for termination.

Acceptable grounds for termination include mistakes and defects in work, improper execution of official orders, failure to perform work on time, etc. Usually, employers who wish to support their position in the case of a dispute sign a plan of the work for the probation period with the employee, with a specified list of tasks and dates for their fulfillment. Breaches of the company's disciplinary rules also can be taken into account. Notwithstanding the foregoing, court practice reveals that the assessment of an employee's business qualities remains at the discretion of the employer – a subjective criterion which must be duly documented and supported by evidence. To present reliable evidence in court, the employer has to monitor the work of the new employee from the beginning of the employment period and make written notification to the employee of any problem. Evidence presented in court may include documents prepared by the employee with mistakes in them, notes from senior managers to the employee, and a written protocol with conclusions on the results of the probation period.

Thus, Russian labor regulation does not provide a list of possible breaches by an employee and necessary supporting evidence, which can vary from case to case. Written evidence is usually preferable in a court dispute with an employee, but evidence of an employee's failure to perform satisfactorily can also be presented in the form of emails and the witness testimony of other employees of the company. In each case, the judges will evaluate the presented evidence and decide at their own discretion.

The employee will also have a good chance to challenge the dismissal in court if the employer failed to comply with the formalities of employment and/or dismissal procedures. In order to mitigate these risks, the employer needs to remember the following: termination of employment is possible only before the probation period expires; and



Lenara Lyutvi

three days' prior written notice, clearly describing the nature of the unsatisfactory performance and providing well-grounded reasons must be given to the employee, as it will not be possible to provide new reasons for termination of employment in court. Failure to comply with this procedure as well as improper grounds of termination of employment will result in the dismissal being deemed illegal and

the employee being restored to his/her working position by the court. In addition, the employer will have to pay the salary for the time of forced unemployment and compensate the employee for moral damage and legal costs.

To summarize, the relevant court decisions on dismissal due to unsatisfactory results during the probation period reveal that courts are on the side of the dismissed employee if the formal procedure of dismissal is breached and/or the employer did not provide sufficient evidence to prove the employee's unsatisfactory work results during the probation period.

Considering the above, and keeping in mind that a court dispute with an ex-employee generates material and administrative costs to the employer, it is worth considering a peaceful termination of employment with the unsuitable employee based on the mutual agreement of the parties.

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Turkey

Turkey Adopts New Law to Introduce Temporary Employment Through Private Employment Agencies



Sirma Zeytinoglu

Introduction

Turkey has recently adopted a new law to officially enable temporary employment relationships through private employment agencies, while offering better protection for temporary staff. The Law Amending Labor Law 4857 and Turkish Labor Agency Law 4904, which entered into force on May 20, 2016, frees the way for private employment agencies to be-

come intermediaries in establishing temporary employment relationships between employers and employees.

Previously, even though the Regulation on Private Employment Agencies banned private employment agencies from carrying out temporary employment activities, the law had no teeth. As a result of this loophole, private employment agencies were engaged in placing temporary employees, even though this was technically against the law.

The amended Article 7 of the Turkish Labor Law allows private employment agencies to arrange temporary staffing for certain types of work, and regulates the employment terms and conditions for temporary workers.

Principal Modalities for Establishing Temporary Employment Relationships Through Private Employment Agencies

Private employment agencies can provide temporary staffing services by concluding a temporary employment agreement with an employer

and transferring an employee over to the employer under the conditions set forth in the Labor Law.

However, private employment agencies cannot be intermediaries for all kinds of work; the Amending Law restricts them to providing temporary employees for only certain types of jobs or situations, including: (a) an employee's maternity leave, military service and other cases where an employment agreement is suspended; (b) seasonal agricultural work; (c) household work; (d) intermittent work not included in the daily business of the enterprise; (e) urgent work with regard to occupational health and safety, or in the event of a force majeure which significantly affects production; (f) unpredictable increase in the enterprise's average work load which necessitates temporary employment; and (g) periodic increases in the workload, in situations other than seasonal work.

Allowing employers access to temporary employment due to an "unpredictable increase in the capacity of the enterprise's average overload" has been criticized, as it creates uncertainty as to how to determine the "average workload." Employers could abuse this by adopting a relatively low workload as an average in order to employ the minimum number of permanent employees and use temporary workers when the workload increases.

While the duration of temporary employment is limited to the duration of the situation requiring temporary help (e.g., maternity leave), there is no inherent time limitation for seasonal and household work. The law attempts to address this by setting out overall limits for temporary employment. Temporary employment agreements can be signed for up to 4 months and renewed twice for up to 8 months – for a grand total of 12 months. Furthermore, if an employer uses a temporary employee for a certain job, it then has to wait at least 6 months after that employee leaves before using a private employment agency to staff that role again.

If the temporary employment relationship exceeds the above thresholds, then an indefinite employment relationship is established between the temporary employer and employee. When this happens, the liability of the private employment agency ceases.

In the three-party relationship, the private employment agency is the employee's principal employer and is responsible for paying the employee's salary and benefits. The employment agency can establish a temporary employment relationship by signing a written employment agreement with the employee, and a written procurement agreement with the temporary employer.

To protect temporary employees from differential treatment by employers, the Amending Law provides that temporary employees cannot be employed under less favorable conditions than permanent employees for the same work. This includes being entitled to the same social benefits which are offered to full time staff during the employment period. At the end of the employment relationship, the temporary employer can offer the employee a permanent position and this cannot be limited in the employment agreement between the private employment agency and the employee.

Conclusion

Even though the Amending Law takes a positive step in protecting the rights of temporary employees, it has also been the target of criticism among academics who point to the uncertainty in some of the situations where employers can use private employment agencies. No doubt the uncertainties regarding the implementation of the amended Article 7 of the Labor Law will be addressed by the labor courts in the years to come.

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Ukraine

Management of Employee Personal Data Issues During Internal Corporate Investigations



Mykola Stetsenko

Corruption and other illegal practices have always been a major concern for international corporations doing business in Ukraine. Such corporations often initiate comprehensive internal investigations to confirm compliance by key personnel and the company as a whole with anticorruption requirements, including the Foreign Corrupt Practices Act (FCPA), trade regulations and restrictions, and

relevant internal regulations. A common problem during such investigations is maintaining the right balance between the scope of the information which needs to be reviewed and the privacy of the employee.

In Ukraine an employer must receive prior written consent from the employee to process any of that employee's personal data. Under normal circumstances, this does not create any problems, since employees usually provide a broad consent to process their personal data for the employment purposes on the first day of employment.

The situation is different with internal investigations. Lawyers and employees within a company's compliance department usually require a very broad scope of information, including corporate and personal email correspondence and correspondence performed via electronic devices, along with various documents, notes, and contracts. In some cases, moreover, this information must be transferred to third parties, such as the compliance department of the parent company, external consultants, or state authorities. The consent which employees provide on their first day of employment rarely covers processing such a broad scope of information for such a specific purpose. Therefore, the employer has to obtain a new, broader consent from the employee when an investigation is pending, which can be quite difficult – or downright impossible – if the employee has something to hide.

To avoid this situation, we recommend asking each key employee to sign a very broad consent to process his or her personal data as early as possible, well before an internal investigation is even on the agenda – preferably on the first day of employment. This consent must expressly allow the employer to process corporate and private correspondence, correspondence through corporate devices, and any documents, notes, files, archives, and operations of the employee, to store such information, and to transfer it abroad. Such consent should also indicate that the employee's personal information may be processed by the employer, its affiliates, external consultants, and state authorities for the purpose of internal or external investigations.

It is very important to remember that in Ukraine the analysis of correspondence requires the consent of all parties to the correspondence. In practice, it is almost impossible to obtain all necessary consents. To mitigate possible risks, we recommend that the analysis be structured in a way that will keep the number of potential violations to a minimum. One way to do that is to cypher the personal details of the correspondence, starting with replacing the name of each party to the correspondence with a specific code prior to analyzing it, which will allow the analysis to be made without violating the privacy of the parties. After the analysis is completed and the employer has determined the scope of the correspondence which may be relevant to the investigation, the employer may then request the names of the parties to the correspondence and their consent to analyze it.



Yuriy Zarembo

Another common problem during internal investigations is that Ukrainian law prohibits the transfer of personal data to countries which do not provide a sufficient level of personal data protection. The USA is one such country. Therefore, the transfer of personal data of Ukrainian citizens to the USA is, formally, prohibited. At the same time, state authorities, working in cooperation with the American

Chamber of Commerce in Ukraine, have reached an agreement to work around this restriction. To transfer an employee's personal data from Ukraine to the USA, a Ukrainian company must enter into a personal-data transfer agreement with the US company. Such agreement provides for a broad set of undertakings on the part of the US company to ensure the safety of the personal data to be transferred. Having such an agreement does not entirely remove the risks which can arise from the transfer of personal data from Ukraine to the USA, but it definitely mitigates them.

Currently, internal investigations in Ukraine are associated with many difficulties and require careful structuring to avoid exposure to administrative, civil, or criminal liability. At the same time, the most recent draft of the new labor code permits an employer to use technical means to control compliance of employees with their labor duties, subject only to the prior notification of the employees. If passed, it will be a substantial improvement for employers who wish to conduct internal investigations in Ukraine.

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Next Issue's Experts Review: Capital Markets





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