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LEGAL MATTERS

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



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Legal Matters: The Buzz

Austria

HETA still dominating talks

The ongoing HETA crisis continues to dominate conversations between lawyers, according to Christoph Wildmoser, Partner at Herbst Kinsky. The aspect most frequently discussed in recent days is whether and to what extent investors in the EUR 10 billion worth of outstanding bonds – among them German banks and insurance companies, and several US and UK-based hedge funds – are willing to accept a haircut. At the moment, they have been offered a buy-back of 75 percent of the bond value, an offer which has been refused by investors' groups. Wildmoser explains that many law firms are involved in some form or another in advising either HETA, the federal state, or one or more of the investors.

The Austrian real estate tax discussed in the Buzz in the December 2015 issue remains a hot topic as well, with relevant legislation having come into effect in January 2016. The new act “represents a fundamental change in the way in which the tax value is calculated” (which results in a significantly higher value), Wildmoser said, and unfortunately it lacks clarity. Wildmoser mentioned that there are intense discussions among practitioners over how to calculate the actual tax burden – which almost every lawyer working on a real estate deal is obliged to do.

Looking at the market as a whole, Wildmoser mentioned that probably the most notable movement in the last couple of months is the departure from Wolf Theiss of a team of lawyers led by Bettina Knoetzl to set up their own firm [see page 18] – a move in line with a trend of spin-offs in the market but more noteworthy than most due to the number of lawyers and their supposed revenue potential. Finally, Wildmoser – in a nicely collegial manner – mentioned Binder Groesswang and Schoenherr as firms that seem to be doing well in recent months, with both involved in a number of big deals.

Bulgaria

Busy period for legislators in Bulgaria



The Sofia Bar Association elected a new Chairman on February 7, according to George Dimitrov, Managing Partner at

Dimitrov, Petrov & Co., who notes that Bogdan Petrov, one of his firm's Managing Partners, was appointed to the Bar Association's Attorney Council.

The recent period has been a busy one in terms of legislative updates, and Dimitrov points out that the National Assembly adopted on second reading a new Public Procurement Act early this February. He explains: “Though it has a lot of deficiencies, the new law governs all matters relating to the establishment of national public procurement rules. The rules cover both the low value procurements and the powers of the bodies for preliminary and follow-up control, including the main national body – the Public Procurement Agency.” A Draft Act for Amendment and Supplement to the Registered Pledges Act is also to be submitted to the National Assembly. According to Dimitrov, the amendments cover several aspects and “are aimed at ensuring legal certainty and turnover efficiency, eliminating certain inconsistencies and gaps in the existing legal framework and making administrative services more accessible.”

In other developments, Bulgaria's organized power exchange started on January 19, 2016. Dimitrov reports that the amendments to the Energy Act and the Renewable Energy Act from July 2015, “explicitly provide producers of energy from renewable energy sources the opportunity to sell at freely negotiated prices and/or on the balancing market energy quantities which exceed the net specific production, based on which preferential prices are defined in the relevant decisions of the Energy and Water Regulatory Commission.”

Lastly, and directly impacting the lives of lawyers in the market, Dimitrov says that “a five-member panel in the Supreme Administrative Court has upheld the decision of the three-member panel of the same court, which declared void §2 of the Additional Provisions of Ordinance No. 1 for the minimum size of attorney fees.”

Croatia

Ironing out the coalition



According to Aleksej Miskovic, Partner at Glinska & Miskovic, there is ongoing discussion in Croatia around the blockage resulting from the recent elections in which, while the coalition of parties led by the Croatian Democratic Union party secured a relative majority of seats in the Parliament, it did not

win enough to secure a government without creating a coalition. In order to achieve this, it created a coalition with a grouping – according to Miskovic it is not a formal political party – called “Most” (which translates to “bridge”). With the two political groups’ political platforms “not fully aligned,” there have been a few hiccups in setting up the new government, in particular at the level of appointing the officers operating under the different ministers, which has led to a number of projects being put on hold – an issue still affecting the country three months after the elections. A number of aspects are not yet clear as a result, including what the fiscal policy will be, with the country (and the EU Commissioner for Economic and Financial Affairs, Taxation, and Customs) eager to see the new budget for the country. Miskovic explains that, as a result of the political setting, most law firm matters connected to the government are quite slow these days.

The corporate/M&A market registered quite a few important moves last year, and that is likely to continue, while the financing market, although generally vibrant, tends to revolve primarily around refinancing of existing deals or distressed real estate projects, which, Miskovic reports, “is not really creating new value per se but is keeping lawyers in the country busy.”

Question marks around the Constitutional Court and increased M&A and regulatory workload

Aside from the question marks related to the new and – in his words – “fairly unstable” coalition, Boris Babic, Senior Partner at Babic & Partners, points to the Constitutional Court as one of the most common sources of debate among lawyers in Croatia. He explains that there are empty slots within the court that need to be filled by May 7, 2016, or the court will be left with only six judges out of the normal 13, and unable to adjudicate important matters such as those related to repeals of laws and control of elections. The problem is that the current coalition does not have the two-thirds of the parliament required to make the appointments over the objection of an opposition which “seems opposed to the constitutional court, as it is set up currently, overall.” According to Babic, the court is seen as the “fourth pillar of power in the country,” beyond the traditional three of executive, parliamentary, and judiciary, since it “holds a special role beyond standard judiciary,” including even the power to impeach the president.

On the business side, M&A deals seem to be driven in particular by the tourism sector in terms of volume. Babic also points to last summer’s EUR 505 million BAT/Adris deal as one of the largest in the country in terms of value.

Regulatory work is also keeping lawyers in the country busy, with competition law related work on the rise. This is led both by the increasing M&A activity but also by what Babic describes as a more aggressive competition agency, which is using dawn raids for matters beyond the usual cartel cases. The manner in which some of these raids are carried out is somewhat controversial, according to Babic, and “gives rise to some questions from the perspective of human and constitutional rights.”

Czech Republic

New Civil Code continues to bedevil Czech lawyers



Partner Jiri Buchvaldek of the Czech Republic’s Hruby & Buchvaldek law firm says that the Czech Republic’s new (in 2014) Civil Code remains a significant problem, and Buchvaldek says, simply, that “it’s not as straightforward and clear as you’d expect a new law to be.” Although a draft amendment is currently being considered, none has as yet been enacted – and, surprisingly, Buchvaldek himself opposes it, saying that while “I was praying for a quick amendment” when the new Code was introduced in 2014, “after two years I’m thinking the opposite: let the law live, and let the courts settle it and develop case law regarding its interpretation.” As a related problem, he notes that a number of government ministries try to construe and interpret the Code in improper and self-serving ways, often directly contrary to the written opinions of Professor Karel Elias, the “Father” of the Code, who was primarily responsible for creating it.

Buchvaldek also describes an ever-increasing amount of regulation as a source of frustration for lawyers and clients alike. One recently passed law on electronic payments requires every business that accepts payments by credit or bank cards to be connected to the tax authority and to report every payment within two seconds. This attempt to minimize fraud and VAT evasion imposes additional costs on entrepreneurs. In Buchvaldek’s view the increased regulation, particularly in the tax sphere, is “getting crazy,” and he says that “everybody is complaining.” He concedes that it may also mean more business for tax advisors, and perhaps on the margins for firms handling disputes over tax penalties, “but not that much.”

Buchvaldek also sighs at the backlogs, lack of predictability, and occasional incompetence of judges in the Czech courts. Even simple eviction actions, he said, can take years, imposing significant burdens on landlords unable to clear out undesirable and often delinquent tenants. The system is disorganized, he says, and too often judges are simply not prepared, sometimes even asking counsel for assistance on matters within their own presumed competence. As a result, even matters that should be straightforward are sometimes decided in counterintuitive and perplexing ways, making judgments almost impossible to predict, and making it difficult to know how to advise clients. As a small hopeful note, Buchvaldek said that the younger generation of judges seems better equipped than their predecessors.

In general, Buchvaldek says, business is continuing to revive in the Czech Republic, and although he hesitates to compare it to the freshly-concluded 2015, he says that “compared to 2014 it’s much better,” and that “you can see it everywhere in Prague.”

Estonia

E-residency – a drive for foreign investments, if done right



While e-residency is not a new topic in Estonia, according to Annika Vait, Partner and Attorney-at-Law at Law Firm Alterna, the topic has resurfaced as controversial with the government considering changes to Estonian law to allow for the establishment of companies in Estonia using the e-residency card which carry out business in a different country. Vait explains that, if this happens, several problematic legal issues are likely to arise: “For example, it is unclear what law applies if this Estonian company, established here but running in another country, should have disputes with an Estonian company. Which country should you pay taxes in – or should you sometimes have to pay taxes to both countries – are also question marks.”

As things stand, a business address is required in Estonia, but Vait reports that many entities are asking firms that are counseling them to use their address to establish companies in Estonia. In fact, Vait says that, among the planned updates, the government is considering allowing only law firms to provide what she called a “post-receiptment” service.

The ultimate end goal of the e-residency initiative is to enhance investments in the country, but, in light of the above, Vait feels the plan is not fully thought through. “In my personal opinion, if you lose the Estonian address demand, you will not help investments much because we’ll have companies registered in Estonia that are not really making their business here, and I am unsure to what extent that’d amount to ‘real’ investments.” Nonetheless, it does make certain things easier, according to the Alterna Partner, who points to the ease of working digitally these days in Estonia using the e-residency card as an undeniably business-friendly aspect.

Macedonia

Macedonia too good to ignore



Last year was slow in terms of M&A in Macedonia, according to Gjorgji Georgievski, Partner and Regional Head of TMT at the ODI Law Firm, and the pattern will probably stay the same this year. Last year’s largest deal was the merger between Telekom Slovenije’s “One Telecommunications” and Telekom Austria’s “VIP Operator” entities, but most of the activity was registered in projects related to the construction of public infrastructure such as administrative buildings, roads, hospitals, and schools.

With 2016 an election year in the country, Georgievski expects this activity to continue. TMT is also expected to continue registering movement, and the TMT Regional Head at ODI Law reports that a number of companies have announced that they will be acquiring some smaller players in the country. In fact, Georgievski expects the market to be dominated by two or three companies in the mid-term, since, although many of the deals have not yet been confirmed, “the market is simply not large enough to accommodate more than two/three players.”

The promise of FDI is also a common subject of conversation among lawyers in the market, with the Government taking active steps to drive it up via technological industrial development zones by providing infrastructure, substantial help in terms of securing financing for construction costs, subsidies for salaries, and VAT exceptions, as well as allowing foreign investors the ability to purchase property at preferable prices, among other things. Simply put, “the benefits are simply too good to ignore,” says Georgievski, who looks at Johnson Controls’ new plant set up in the country as a sign of things to come.

Under the principle of, “in Macedonia, one thing is certain: that there is nothing that is certain,” Georgievski is also optimistic about potential work coming from potential privatizations announced in the mining, manufacturing, and pharmaceutical sectors, “but these things tend to move slowly, and it is uncertain if we’ll see any of them pan out in this year, 2017, or 2018.”

Montenegro

FDI drive and Montenegrin firms picking up

Infrastructure and energy seem to be the name of the game in Montenegro, according to Vladimir Radonjic, Managing Partner at the recently established Radonjic/Associates. This is primarily led by foreign investor interest, with solar energy and small hydro power plants an extremely popular attraction point for FDI, along with two wind power plant projects currently under development in the country. Infrastructure is primarily driven by the massive EUR 800 million investment in the highway connecting Podgorica and Kolasin in the north of Montenegro as well as projects developed at municipal levels.

Real estate is also registering a “renewed interest,” with projects such as the largest super yacht marina in the Adriatic being a spearhead for what Radonjic describes as a set of luxury projects geared towards drawing in high-net-worth individuals from around the world. Projects such as a number of hotels and other residential projects currently under development are generating a lot of interest from investors and “breathes new life into the Montenegro real estate market.”

Radonjic observes that Montenegrin law firms are increasingly becoming involved in commercial/corporate matters, including on the governmental side, a sphere that was traditionally dominated by Serbian/regional law firms.

Poland

Don't get lost in the static



According to Ron Given, Partner at Wolf Theiss, among lawyers and the population in general, the buzz in Warsaw these days relates to the new Polish government and potential consequences that it could have with respect to business. As an expat, Given finds the current discussions in the country quite interesting, with most people – particularly Polish lawyers – “coming out of the gate extremely negative with messages along the lines of ‘this is the end of life as we know it.’” While he concedes that there are some red flags related to the country’s first non-coalition government, combined with its nationalistic agenda, Given said: “I tend to push back a little bit on whether this is really an indication that the lawyering business

is due to take a turn for the worse. There might be some social implications, sure, but what I see as potentially influencing the market considerably more these days is, for example, the lower valuations on the Warsaw stock exchange which have an influence over private transactions as well. A longstanding buyer/seller valuation gap has narrowed.”

Following up on that thought, Given explains that the market recently registered a downgrade in credit ratings, which lowered the value of its currency, but, from a transactional perspective, that’s not an entirely bad thing, especially for a country like Poland that is so heavily exports-oriented. This lowering of the currency and generally lower market valuations are, for Given, signs of transactions on the horizon. This might be curved a bit by the new asset taxes on financial services, and Given believes that banks will no doubt take a hit (especially when combined with the potential Swiss franc loan conversions), but he also believes that this can be comfortably outbalanced by strategic buyers and private equity firms that “seem strong and in no real need for further financing.” The proposed taxes on retail business are also something that may facilitate transactions, as, Given explains, these new taxes will provide incentive for consolidation in the sector, with companies “needing to get bigger and better to carry the burden.” Consolidation talks are also taking place around some of the state companies, especially in the energy sector, further expanding the pool of potential transactions.

“If you listen closely,” Given explains, you will also notice how the new government is pushing for Poland to “move away from being simply a cheap labor country to a more innovation-focused economy,” and people are looking forward to seeing specific proposals, which will likely be geared towards tax incentives on the R&D and IT/IP side. Given says positive signs are already visible, with one US company recently purchasing an operation in Poland.

“If you get lost on the dispute on the constitutional court only,” Given explains, “you miss out on a lot of other important signs of things to come. Yes, the prior government seems to have had its own political shenanigans going on, and the new one is replying in kind, but I find it important to not get lost in the static and focus on all the potential I see in the market. I am certainly not selling Poland short.”

Romania

Clearing the way to sustainable growth and getting back to fundamentals

“These last few months have represented an interesting period in Romania,” starts Valentin Voinescu, Partner at Nestor Nestor Diculescu Kingston Petersen, “but I think there are a couple of fundamental things constantly discussed.”

Voinescu starts by discussing the Romanian market in general, a market that “is essentially trying to find a point of growth and a way forward out of a period marked by recession and constant changes.” One of the prerequisites for this growth, in his view, is dealing with the massive amount of non-per-

forming debt on the market. Indeed, he points out, “huge efforts” were invested into selling these portfolios last year and the NNDKP Partner expects this trend to continue into 2016. While “things are moving in the direction of cleaning up this debt,” there are several factors working against it. First, there’s a populist movement element when it comes to debt review in general, reflected in the enactment of the individual insolvency law and the mortgage release law currently being debated, which would allow a debtor to simply forego the mortgage and be released of the entire debt. Voinescu worried this stands a good chance of backfiring, since banks will be tempted to increase costs of financing to balance the risk, making less financing available to begin with. “It is also not necessarily conducive towards cleaning up the NPL side, since potential investors would have to take on increased risk with these portfolios now,” he adds. The second barrier he identifies is what he describes as a “mismatch between funding abilities and needs in Europe.” He explains that while the feedback of peers in other jurisdictions is that some markets and some financial institutions “are sitting on a pile of liquidity” and while emerging markets are “thirsty for funding,” the connection between the two simply does not seem to be taking place. “But this has to happen,” says Voinescu. “The fundamental truth is that we need healthy banks funding high growth and potential where this truly exists in Europe, and until this happens, we cannot ‘wish away’ stagnation, no matter how much liquidity is generated by institutional means.”

The second overarching discussion in the country is the care with which clients are looking at their budgets in recent years. “I believe this ignores a reality of our market,” Voinescu explains, adding: “yes, competition is useful and healthy if there is quality work available, but the Romanian market simply does not have enough quality work to create 20 truly top law firms. The number of players might give a feeling of enough competition to drive down fees, but I fear we are kidding ourselves by looking only at the lower costs with no judgment as to the quality of the service.” He argues that “what is happening with this whole race to generate the lowest cost is that clients are slowly amassing risks. It is something we’ll see to a full effect when the market is re-adjusted and slowly, but surely, we’ll see a return to quality as the main concern, as one of the fundamentals for hiring lawyers in the first place.”

Slovenia

Focus falls on the legal profession itself

Talks about the legal profession seem to be at the top of the agenda in Slovenia, according to Nina Selih, Partner at Selih & partnerji. The issues of ethics, corruption, how to handle issues related to conflicts, and professional insurance – in terms of what is mandatory and what is not – are all frequently discussed. The last of these, in particular, is linked to new developments, as Selih – who is also a member of the executive board of the Slovenian Bar – explains that the Bar has been approached by the insurance company providing mandatory professional insurance with a request to increase its fees con-

siderably, resulting in a lot of negotiations between the two organizations.

A new draft law is in the works related to attorneys’ advertising, Selih reports. While the draft has not yet been circulated, the existing law was missing regulations that would cover law firms as entities, as opposed to individual lawyers. “There will be new solutions provided in the new law that will allow law firms to be more clear and benefit from a more transparent framework,” she explains. To Selih’s knowledge, the new law will not change the advertising regime of the profession.

In terms of legal work, there are a few potential projects in the market, but the one most likely to come to fruition is the sale of the largest Slovenian bank, which, as a result of a EU Commission decision, needs to be sold by the end of 2017. A second notable deal is that of a railway track that needs to be built from the port of Koper to Ljubljana, with a tender already being published to carry out the work.

Turkey

Turkey stable despite challenges



Kerem Turunc, Partner at the Turunc law firm, starts out by referring to the hope heading into the country’s elections last fall that the results would provide some stability for the economy. He reports that, indeed, despite worrying macro-economic numbers – including high unemployment and inflation – and geopolitical challenges involving Syria, Iraq, and recent problems with Russia, foreign interest in the Turkish market is continuing. Foreign investors are continuing to look for M&As and good investment opportunities, and, Turunc reports, “Private Equity funds are still heavily looking into the market – even global funds are still looking.” The economy, he notes, is large and diverse and able to withstand a number of challenges that might pose greater problems for smaller countries. Indeed, when asked about the fallout of the recent terrorist attack in the Sultahnemet district of Istanbul, Turunc reported that while some cruise ships have altered their routes or taken Turkey out of their itineraries altogether, and tourism – including Real Estate in the tourism industry – has been somewhat affected, the attack otherwise has had few obvious direct effects on the economy. He points to the expected IPOs of Turkish national gas company Igdas and the Borsa Istanbul as

signs of a still-vibrant economy.

On the legislative front, Turunc refers to the proposed new draft Tax law – designed to consolidate the currently-separate Personal Income Tax Law and Corporate Tax Law – expected to be enacted sometime this year. He expects the law to bring clarity to certain transactions, by – among other things – changing the Capital Gains tax for Share Transfers. Turunc personally isn't sure that the two laws need to be consolidated – he prefers amendment and enforcement over full-on replacement – but says that the biggest problem Turkey has had for many years with regard to Tax is enforcement, “which puts companies that play by the rules at a disadvantage compared to those who don't,” so as long as it's fairly and consistently enforced it should be a step forward.

Finally, Turunc refers to a new Draft Attorneyship Law in Parliament that may change the structure of law firms to create a more flexible model that replicates the Joint Stock Company model, though he's not sure exactly when – or if – it's going to become law.

Ukraine

Temporary crisis but positive signs driven by reforms and privatization hopes



Talks amongst lawyers in Ukraine are “overshadowed by the ongoing political crisis,” explains Mykola Stetsenko, Managing

Partner of Avellum. According to Stetsenko, the crisis was partially caused by discussions related to a potential kick-off of large-scale privatizations and generally about influence over some of the state companies. If these come to life, a lot of legal work will float to the players in the market, and Stetsenko notes the possibility of a strong influx of investment into the country to accompany it. Stetsenko points to the previous wave to back up his expectation, noting that it brought considerable momentum to the state budget while improving the market overall.

In terms of reforms – a recurring theme in the Ukrainian Buzz – the Parliament is “pretty much dysfunctional, again as a result of the temporary crisis, and not as many pieces of legislation are being adopted as needed,” according to Stetsenko. However, several important aspects did make it through, with Ukraine's new tax system already having a positive effect on the market. Globally speaking, Stetsenko points out, the reforms taking place in the last six to nine months are also making themselves felt, including “a lot of press on state officials being charged with corruption.” While it is still relatively early in the investigation processes, Stetsenko believes this will represent both a positive signal for potential investors as well as a deterrent for other corrupt officials.

In his own industry, “law firms are continuing to focus on servicing their core base clients, with dispute work still keeping many firms afloat.” Stetsenko points out there is some transaction work going around, as well as some activity in the banking and agricultural sectors but “at a terribly low level.” Finance teams are also kept busy primarily by restructuring work, but, at the end of the day, many firms that “do not have the privilege of working on the little transactional work available” are forced to focus on bread and butter matters.

As to the law firm landscape, Redcliffe & Partners and Everlegal's launches were the only notable developments in recent months that Stetsenko can point to – both primarily resulting from Clifford Chance's retreat from the market. Stetsenko refers to unconfirmed rumors that a regional player is contemplating a potential entry into the market, before warning, “then again, these kinds of rumors are always floating around.”

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

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