C L I F F O R D
C H A N C E

Investing in "New Europe" – A legal guide for investors

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ÜGYVÉDI IRODA

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Defined terms

At the end of this guide is a list of definitions, abbreviations and certain technical terms used in this guide. Generally, when referring in this guide to “the Region” or “New Europe”, this is a reference to all the countries covered by this guide comprising Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia.

Currency conversion

Each of the countries in the Region uses a separate currency. For comparison please consult the chart in section 14, where the equivalent in euro is given by reference to the official exchange rate published by the European Central Bank as at 10 October 2013.

 The position stated is generally as at 30 September 2013 (although information in certain discrete areas has been updated, such as currency exchange rates). Furthermore, certain of the information concerning the Czech Republic has been updated to take into account the new Civil Code, the Business Corporations Act, the new Private International Law Act and other related laws and regulations which came into force on 1 January 2014 as part of a comprehensive update of Czech private law.

Introduction

The countries covered in this guide comprise all of the major economies in Central Europe which have joined the European Union ("EU"). These are Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia[1]. In this guide they are collectively referred to as "New Europe"[2].

Each of these countries has a very diverse history and culture and all speak different languages. However, their more recent histories have shown increasing convergence. For example:

- all had economies generally run on communist principles from 1944/45 until 1989;
- all are now members of the EU joining in waves from 2004 to 2007; and
- all are now Parliamentary democracies with legal systems following similar principles.

As a result of these common historical developments, all of New Europe has seen dramatic changes in its legal system and the structure of its economy.

The purpose of this guide is to provide a basic introduction to any investor wishing to invest in New Europe and carry on business there.

[1] In addition, the countries of Lithuania, Latvia and Estonia are also members of the EU and, although located in Central Europe, have not been included in this guide due to their relatively small size.

[2] "New Europe" is a term originally used by conservative political analysts in the United States to describe European post-Communist era countries in Central and Eastern Europe. The "newness" of these countries refers not to the length of time they have been independent, but to the fact that they have only recently re-acquired the status of capitalist democracies.

contents

1. Introduction to New Europe's legal systems

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The legal system of all of the countries in New Europe follows the "civil law" approach. This is different from countries that have what is generally described as a "common law" legal system, such as the American and English legal systems.

This means that the primary source of law in New Europe is statutory law, very often included in comprehensive codes. At least in principle, judges do not have any role in creating law. They are simply there to decide upon its interpretation.

Apart from law that is created by statute in each of the countries of New Europe, the other source of law is EU law, also referred to as *acquis communautaire* (community acquis). This body of law includes, mainly, treaties and secondary regulations, that are binding directly in all legal systems of the countries in New Europe; directives, which require implementation into national legal systems in order to be binding on companies and individuals; as well as case law of the European Court of Justice and other EU institutions, which is directly binding on the persons to whom they are addressed.

As a result of the Treaty on the Functioning of the European Union (TFEU) to which all of the countries are signatories, the domestic judges in each country are required to apply EU law even when it conflicts with domestic law.

All of the countries in New Europe have written constitutions all being adopted after 1990 as these countries' political systems changed. As a result, all of the countries have a system of constitutional courts which can rule upon whether a law is in breach of its constitution and, if so, declare it invalid.

The judiciary in all of the New Europe countries is divided, broadly speaking, into three main branches: civil courts, which concern themselves with civil law, governing the relations between private persons or organizations, including commercial matters; criminal courts, which deal with crimes and their prosecution; and administrative courts, which interpret rules and regulations made and/or enforced by governmental agencies.

Notaries

One common feature of the legal systems of each of the countries in the Region is the use of the notarial system. Notaries are a separate branch of the legal profession in each jurisdiction. Certain transactions have to be executed in the presence of a notary who will be required to separately check the legality of the transaction and the proper authority of the persons signing the documentation. In some cases (such as transfer of real estate in Bulgaria, Poland and Romania), a notary is required to draw up a special document called a notarial deed, which incorporates all terms of the agreement between the parties. In other cases (such as a transfer of shares in Bulgarian, Czech, Polish and Slovak limited liability companies, a transfer of a business as a going concern in Bulgaria and Poland or a transfer of real estate in the Czech Republic and Slovakia), the notary only needs to certify the authenticity of signatures under a written form agreement. In Hungary there is no type of transaction which requires a notary; however, in certain circumstances parties may seek to execute an agreement in the form of a deed in order to achieve a specific effect (e.g. a transfer of real estate may only be registered by the relevant authorities if made in the form of a deed) or to increase the security of the transaction. In some countries (e.g. the Czech Republic), other authorities or attorneys may also perform the function of the notary.

2. Restrictions on foreign investment

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The entry of New Europe into the EU meant that many restrictions on foreign investment into each country were swept away. However, in all of the countries concerned, the initial as well as any subsequent investment into banks, insurance companies, pension funds and certain other specially regulated businesses will still require a special consent from a governmental authority if the investment leads to certain ownership thresholds being exceeded.

In countries where conduct of a business itself in certain sensitive areas requires a government permit (such as mining in Bulgaria and Poland, protection and security in Poland and Romania, or broadcasting in Poland), an investment into a company conducting such activity may also require a regulatory consent or may constitute grounds for the relevant authority to cancel or vary the permit.

Furthermore, in Hungary and Poland, investment into companies which own local real estate may either require a special permit or be prohibited outright (as is the case with companies owning agricultural land or land located in protected areas in Hungary).

However, the decision on whether or not to approve or prohibit an investment in each of these specially regulated sectors is not supposed to be affected by the nationality of the relevant investor.

The consents referred to above are for investment into a company carrying on the relevant business. In addition, consent of the relevant competition law authority may be required for any such investment and this is described in section 7.

3. Types of investment structures

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Investment vehicles

The following vehicles for the conduct of business are available throughout New Europe:

- Company: This is one of the most popular vehicles used for carrying on business in the Region. A company is an artificial legal person with a separate legal identity. Generally speaking, there are several liability concepts among different company types throughout the whole New Europe. For example, in Slovakia the liability of shareholders in limited liability companies or joint-stock companies is either limited or none, but there are also companies which have shareholders with unlimited liability, generally used for businesses with small turnover, whereas in Poland and Romania, the owners of a company do not have responsibility for the company's debts.

  Companies are treated as separate taxable entities and the taxes applicable to companies are described in section 9. Because this is the most common vehicle for foreigners wishing to conduct business in the Region, a more detailed description of the regulation of companies is set out in section 4.

- Branch or representative office: Unlike a company, a branch or representative office does not have separate legal personality. Instead, it is the registered presence in a country of an entity located outside of that country (e.g. another company). The branch structure has been used by several international banks conducting their business in New Europe in order to establish their presence throughout the Region. Representative offices are less popular, partially due to far more limiting restrictions on their activity (for example in Bulgaria they cannot conduct business activity at all).

- Partnership (used in all countries except Hungary, where they cannot be used by foreign investors): This is an arrangement where different persons (which, in some jurisdictions, such as Bulgaria, can only be individuals or corporate legal entities) come together to conduct a common business but, generally (with the exception of limited partnerships in the Czech Republic), without establishing an entity with separate legal personality. Partnerships can either be unlimited, where all of the partners bear joint responsibility for that partnership's liabilities, or can be limited partnerships, where all the partners will have their liability limited to a fixed amount apart from one partner, commonly known as the "general partner" which must not have its liability limited. Partnerships are generally not treated as a separate taxable entity and each partner is taxed individually on its share of the partnership's profits (i.e. partnerships are "tax transparent"). This is described in more detail in section 9. Partnerships are not commonly used as a vehicle for foreign investment into the Region and are most often used for the conduct of professional services businesses such as law firms. However, their tax transparency may mean they are appropriate for certain specific projects.

Other investment structures

In addition to the vehicles for investment described above, other methods of carrying on business are available using different contractual structures which may or may not require the use of any of these vehicles. These include the following:

- Franchising or licensing agreements: These are agreements whereby a franchisor or a licensor permits a third party to use an intellectual property right, business concept or know-how which it has developed in return for a fee.

- Agency/distribution agreements: These are agreements whereby a person from outside a country may appoint a person within that country as its agent in order to solicit purchasers for its products and services and/or as its distributor in order to distribute its products and services in that country.

- Joint venture: This is a contract between two or more persons to cooperate in a common venture and, indeed, may lead to them establishing a specific company for this purpose jointly owned by them.

4. Regulation of corporate entities

4. Regulation of corporate entities

Introduction

The types of company that can exist in the Region fall into two principal categories as follows:

- Limited liability companies or “LLCs”: These are the most common corporate vehicle for carrying on smaller business in New Europe. The formalities for establishing and running LLCs are generally simpler than for any other form of company.

- Joint stock companies or “JSCs”: Although less common than LLCs, many of the Region’s largest companies are JSCs. This is because, by law, only shares in JSCs can be traded on each of the Region’s stock exchanges. Furthermore, in most jurisdictions, certain businesses can only be carried on by JSCs including, among others, banking, insurance, pensions, investment funds, brokerage and broadcasting. The formalities for establishing and running JSCs are generally more stringent than for LLCs.

As mentioned above, only shares in JSCs can be traded on the Region’s stock exchanges. Such JSCs can be regarded as a further category of company (referred to as public joint stock companies or “PJSCs”). An additional set of regulations applies to these companies, which are described in section 5.

As all New Europe’s countries are members of the European Union, it is also possible to form a public limited liability company called Societas Europaea or “European company”. The vehicle can be used by businesses operating in more than one Member State of the European Economic Area. In practice, however, this entity is fairly uncommon within the Region.

Share capital

Each country in the Region requires that companies incorporated there have a minimum share capital. This is the minimum amount of capital that must be contributed to a company when established (although in certain jurisdictions, the payment of the part of the share capital may be delayed until after the incorporation). The table below sets out the minimum amounts for each type of company in the Region (although note that higher thresholds may apply for companies carrying out certain types of regulated activities).

Country	LLC	JSC	PJSC
Bulgaria (BGN)	2	50,000	50,000
Czech Republic (CZK)	1	2,000,000	2,000,000
Hungary (HUF)	500,000	5,000,000	20,000,000
Poland (PLN)	5,000	100,000	100,000
Romania (RON)	200	90,000	90,000
Slovakia (EUR)	5,000	25,000	25,000

Shares may be subscribed for at their nominal value or above their nominal value. The contributions made to the share capital may, as a general rule, be in cash or in kind.

Cash repatriation

The forms of repatriating cash from a company may be divided into two broad categories: (i) forms specific to the corporate relationship between the company and the shareholders; and (ii) forms based on general contractual arrangements.

The first category may include payment of a dividend (including, in Hungary and Poland, an interim dividend), share buy-back and/or share redemption (which may be combined with a decrease of the share capital) and is frequently subject to restrictions aimed at protecting the share capital and the company's creditors. Such restrictions may include, in particular, the obligation to announce the intention of carrying out a certain form of repatriation, coupled with a waiting period allowing the company's creditors to raise objections, or limits on any amounts that may be paid to the shareholders.

The second category includes any valid contractual arrangement. For example, it is common practice for a subsidiary to pay licence or service fees to its shareholder in exchange for trademark use or provision of know-how or certain administrative or consultancy services, as well as loans. However, transactions should be on arm's length terms to avoid the company's management being liable for acting to the company's detriment and to avoid adverse tax consequences.

Additional capital protection restrictions may apply, which may make an otherwise valid payment impossible, if as a result the coverage of its share capital and/or other mandatory reserve funds would be threatened. Furthermore, if the company is declared bankrupt, recent dealings with the shareholders may be challenged by creditors (please see below).

Shareholders' liability

The shareholders' participation in companies incorporated in the Region (as opposed to certain other legal entities, in particular partnerships) is based on a concept of limited liability.

This means that, in principle, any shareholder that has paid its required contribution to the share capital in a proper and timely manner may not be required to make additional contributions to the company[3] (except where such an obligation is expressly provided for in the company's constitutional documents) and may not, in principle, be required to return to the company any amount duly received from the company (such as a properly declared dividend).

If a company is declared bankrupt, however, dealings between the company and its shareholders contracted during a certain period immediately preceding the declaration of bankruptcy, may be challenged by creditors. Depending on the jurisdiction and the terms of the transaction (in particular, when not done at arm's length), this period may be up to five years.

Certain additional elements of "piercing the corporate veil" (that is, overcoming limited liability) concept may also be found in some jurisdictions of the Region, most notably Romania, where the shareholder's liability may become unlimited during the liquidation process, if the shareholder is found to have "abused" the company's separate legal entity status and caused it to make disposals or assume liabilities in a manner that made the company unable to meet its obligations.

[3] Bulgaria is an exception to this principle, as shareholders in an LLC may be required to make additional contribution to the company in certain circumstances associated with the company's financial standing.

Shares

The share capital of a company is divided into shares (or, in the case of LLCs in certain jurisdictions, similar units called “quotas” in Hungary, shareholding interests in Slovakia and ownership interests in the Czech Republic) with a specified nominal value.

Depending on the jurisdiction, the shareholders in an LLC may either hold more than one share or only one share, and in some jurisdictions shareholders have a choice of which type of LLC to incorporate. The shareholders in a JSC may hold more than one share.

Shares in JSCs (and in Hungary, the Czech Republic and Poland, also in LLCs) may be privileged, in most cases as to voting and dividend rights (although in the Czech Republic and Romania, shares in JSCs may only be privileged as to dividend rights), but the maximum degree of privilege may be limited.

Restrictions on share transfers (including lock-up periods, first refusal rights, pre-emption rights or a requirement to obtain the consent of one or more of the company’s authorities) are permitted and are frequently imposed in the constitutional documents of the company or in contractual documents, such as a shareholders’ agreements, or both. However, the enforceability of such restrictions and the consequences of a transfer in breach of them (e.g. invalidity, liability to pay damages etc.) may vary from jurisdiction to jurisdiction and from one type of restriction to another. It is generally accepted that such restrictions must not, effectively, prevent a shareholder from being able to leave the company in perpetuity.

Company formation documentation

Companies are established by executing the relevant documentation (which in most jurisdictions includes signing the initial form of constitutional documents for the company, in the presence of a notary public or a public official) and then registering these with the appropriate body (such as an appropriate court or a registrar).

In most jurisdictions it is possible to submit the registration documents electronically. However, there may be limits to this, for example in Poland it is only possible to submit documents electronically with respect to an LLC when a model constitutional documents template is used.

The key constitutional documents of the company will set out the different rights and responsibilities of the various authorities responsible for its governance (as described below) and deal with a number of other issues such as the procedure for the transfer of shares.

There are ongoing requirements to update the data registered, and file certain documents, with the relevant company registry during the life of the company. This includes registering any changes to the constitutional documents, the company's authorities and, in most cases, the shareholding of the company, as well as filing annual financial reports.

The following table summarises the key information concerning the corporate and financial status, authorities and shareholders of an LLC or a JSC that must be filed with the relevant company registry.

	Bulgaria	Czech Republic	Hungary	Poland	Romania	Slovakia
Information on corporate and financial status of the company						
Company details	X	X	X	X	X	X
Share capital	X	X	X	X	X	X
Insolvency, receivership, bankruptcy, composition with creditors	X	X	X	X	X	X
Mergers, transformations, divisions and liquidation	X	X	X	X	X	X
Share and enterprise encumbrances	X	X				
Constitutional documents	X	X	X	X*	X*	X*
Annual financial reports	X	X	X	X*	X*	X*

* Denotes information not published online and not included in the formal excerpt from the central company register, but physically available for perusal by third parties on the premises of the relevant registration body (such as a court register).

	Bulgaria	Czech Republic	Hungary	Poland	Romania	Slovakia
Information on authorities of the company						
Data of directors and board members	X	X	X	X	X	X
Data of proxy holders	X	X	X	X		X
Specimen signatures of the above	X		X	X*	X*	X*
Rules of representation	X	X	X	X	X	X
Shareholders' identity disclosure						
Shareholders in an LLC	All	All	All	Shareholders holding more than 10% each All*	All	All
Shareholders in a JSC	Sole shareholder	Sole shareholder	Shareholder holding more than 50%	Sole shareholder	Initial shareholders	Sole shareholder*

* Denotes information not published online and not included in the formal excerpt from the central company register, but physically available for perusal by third parties on the premises of the relevant registration body (such as a court register).

Corporate governance

All companies have two, and in some cases three, authorities involved in their control and management.

Meeting of shareholders

The highest authority is the meeting of shareholders (also referred to in some jurisdictions and/or in some companies as the general meeting of shareholders). Each country reserves to shareholders certain important issues that can only be approved by shareholders.

These typically include the following: appointing and dismissing members of the other authorities of the company such as its members of its management board; approving annual financial reports; deciding on any share capital changes and dividend distribution; deciding on changes to the constitutional documents or business of the company; structural changes to the company, including mergers, demergers, transformations or liquidations; approving major transactions and other matters reserved in the constitutional documents of the company.

Most resolutions are adopted by a simple majority of votes, but more stringent majorities are provided for certain decisions. The majorities vary from jurisdiction to jurisdiction and from company to company, but in principle are more stringent in an LLC than in a JSC and more stringent in a JSC than in a PJSC.

The following table sets out the special majorities for the most frequently taken decisions for each type of company in each of the jurisdictions of the Region. In certain jurisdictions higher thresholds may be imposed in certain cases (e.g. in some jurisdictions, higher majority thresholds apply for a share capital increase if done through a contribution in kind). Additional requirements (such as quorum) may also apply. Furthermore, in principle, any decision that deprives certain shareholders of their special rights or otherwise provides for shareholders to be treated in an unequal manner, requires the unanimous consent of the shareholders (although in some jurisdictions, a qualified majority of 75% of shareholders concerned may apply).

	Bulgaria			Czech Republic			Hungary			Poland			Romania			Slovakia		
	LLC	JSC	PJSC	LLC	JSC	PJSC	LLC	JSC	PJSC	LLC	JSC	PJSC	LLC	JSC	PJSC	LLC	JSC	PJSC
Share capital increase	100%	66%	66%	66%	66%	66%	50%	50%	50%	66%	75%	75%	100%	66%	66%	66%	66%	66%
Share capital decrease	100%	66%	66%	66%	66%	66%	75%	75%	75%	66%	75%	75%	100%	66%	66%	66%	66%	66%

	Bulgaria			Czech Republic			Hungary			Poland			Romania			Slovakia		
	LLC	JSC	PJSC	LLC	JSC	PJSC	LLC	JSC	PJSC	LLC	JSC	PJSC	LLC	JSC	PJSC	LLC	JSC	PJSC
Amendments to articles of association	>75%	66%	66%	100%	66%	66%	75%	75%	75%	66%	75%	75%	100%	50%	50%	66%	66%	66%
Dissolution / liquidation	75%	66%	66%	66%	66%	66%	75%	75%	75%	66%	75%	75%	100%	66%	66%	66%	66%	66%
Merger, demerger and transformation	75%	75%	75%	75%	75%	75%	75%	75%	75%	75%	75%	66%	100%	66%	66%	66%	66%	66%
Buy-back of shares	n/a	>50% / 66%*	>50% / 66%*	n/a	n/a	n/a	n/a	50%	50%	n/a	75%	75%	n/a	n/a	n/a	n/a	n/a	n/a
Squeeze-out	n/a	n/a	n/a	n/a	90%	90%	75%	n/a	90%	n/a	95%	90%	n/a	n/a	n/a	n/a	95%	95%

* In the cases where the constitutional documents of the JSC do not expressly provide for possibility of buy-back.

The majorities may be further modified by the constitutional documents of the company, however, in most jurisdictions the thresholds can be increased but not lowered.

Directors

The second level of authority forming part of each company's governance structure is that of the directors.

The function of a director corresponds to that of an executive director found in many other European jurisdictions. The number of directors and whether they form a collective body varies from jurisdiction to jurisdiction and from company to company. For example, in Bulgaria, the Czech Republic and Hungary, directors of an LLC do not form a collective body (even though they may be required to act jointly in order to represent the company), whereas in Poland both an LLC and a JSC may have one or more directors in order for a board to be formed. However, generally the management of a JSC tends to be more formalised than the management of an LLC.

Except for Romanian and Czech companies or a Bulgarian JSC, directors must be individuals (as opposed to legal entities). They do not need to be citizens or residents of the country in which the company operates, except for certain special types of companies, such as banks (where certain restrictions on appointment apply).

Directors conduct the day-to-day business of the company and represent it in dealings with third parties.

Directors are required to exercise a professional standard of care whilst acting at all times in the company's interests (which may be, at times, different from the interests of the shareholder(s)). Certain exceptions to this rule may apply, for example, in Hungary, if the company is at risk of becoming insolvent, directors must give priority to the creditors' interests and in Bulgaria, directors of a JSC must act simultaneously in the company's and shareholders' interests. Directors are also prohibited from acting in conflict-of-interest situations and from conducting competing activities. Directors who breach their duties (including a number of additional, more specific obligations and prohibitions) may incur both civil and criminal liability.

Except in Romania, directors do not need to receive remuneration for their services. In addition, except in Bulgaria, directors do not need to have a contract with the company, but most of them do, in the form of an employment or a service contract.

Supervisory board

A third authority forming part of a company's governance structure is also found in the Region and is generally known as the supervisory board. This is a concept also found in many other countries of continental Europe. It comprises a body of individuals that have certain rights vis-à-vis the management board. It effectively sits between the management board and the shareholders. In many countries in the Region its function is similar to that of non-executive directors in a company incorporated in England.

There is a mandatory requirement for certain companies in the Region to have a supervisory board. These are described in the table below.

Country	Companies for which a supervisory board is compulsory	Other comments
Bulgaria	None	The supervisory board is not entitled to participate in the management of the company and must not give binding instructions to the management board.
Czech Republic	JSCs	

Country	Companies for which a supervisory board is compulsory	Other comments
Hungary	PJSCs, except if operated under a one-tier system. JSCs, if requested at any time by the founders or shareholders controlling at least 5% of the total number of votes. Any company where this is prescribed by law with a view to protecting public assets or due to the activities in which the company is engaged. Any company, if the annual average of the number of full-time employees of the company exceeds two hundred.	If a PJSC is operated under a one-tier system, the majority of the board supervisory members need to be independent from the company. If the annual average of the number of full-time employees of the company exceeds two hundred, at least one third of the members of the supervisory board must be employees of the company.
Poland	LLCs with share capital of over PLN 500,000 and more than 25 shareholders[4] JSCs	The supervisory board is not entitled to participate in the management of the company and must not give binding instructions to the management board.
Romania	None	
Slovakia	JSCs/PJSCs	The supervisory board is not entitled to participate in the management of the company and must not give binding instructions to the management board.

[4] Such LLCs may instead appoint an audit commission, the powers of which are more limited than those of a supervisory board.

The powers of a supervisory board vary greatly across the Region. For example, in Hungary the supervisory board generally has only the powers necessary to monitor the activities of management (however, in the case of LLCs and JSCs it may be granted powers to appoint or dismiss directors or to determine the remuneration of the directors) but a Hungarian PJSC or a Czech JSC may alternatively follow the one-tier system, where the board of directors exercises both the duties of the management and supervisory board conferred upon them by law. On the other hand, in Poland and the Czech Republic a supervisory board can (and in Bulgaria, it has to) be given the power to appoint or remove members of the management board, which is regarded as an important authority in PJSCs. These powers are summarised in the table below.

	Bulgaria	Czech Republic	Hungary	Poland	Romania	Slovakia
Supervising the activities of the management board	Yes	Yes	Yes	Yes	Yes	Yes
Reviewing company's books and documents	Yes	Yes	Yes	Yes	Yes	Yes
Appointing and dismissing directors	Yes	Yes (if provided for in the constitutional documents of the company)	Yes (if provided for in the constitutional documents of the company)	Yes (if provided for in the constitutional documents of the company)	Yes	No
Approving certain actions of the directors	Yes (if provided for in the constitutional documents of the company)	Yes (if provided for in the constitutional documents of the company or by law)	Yes (if provided for in the constitutional documents of the company)	Yes (if provided for in the constitutional documents of the company)	Yes (if provided for in the constitutional documents of the company)	Yes (only in JSC /PJSC if there is a conflict-of-interest situation)

In addition to those circumstances where the creation of the supervisory board is compulsory, it is also possible to introduce a supervisory board to other companies if the shareholders feel it is appropriate for the running of the company (this however does not apply to a Bulgarian LLC, which cannot have a supervisory board). This can be done when the shareholders wish to have a body that can have oversight of the management board but without being subject to the same level of responsibility.

In exceptional cases, there may also be a requirement for employee representation on the supervisory board of a private company.

Rules of representation

Each country in the Region has strict rules on how a company can be lawfully committed in respect of relations with third parties. The method of representing the company vis-à-vis third parties is specified in the company's constitution, and this information is disclosed in the relevant company register. Only directors of a company can represent it. However, this can be expressed as a director acting: (i) individually; or (ii) with any other directors (e.g. two acting jointly).

Special rules or deviations from the above principles may apply in the case of a conflict of interest. For example, in dealings with its director, a Polish company may be represented by the supervisory board (if appointed) or by an attorney-in-fact appointed by the meeting of shareholders, whereas in Slovakia such contracts would normally require the approval of the other bodies of the company.

Any agreement or commitment entered into by the company which do not comply with these rules of representation will, generally speaking, be void, so it is therefore important to ensure that the right documentation is signed by the right persons or by persons properly authorised by correctly executed powers of attorney.

Attorneys-in-fact and commercial proxies

The power to represent a company can be delegated to other persons by means of powers of attorney executed by those directors authorised to represent the company.

Powers of attorney may be granted to individuals and legal entities. The scope and nature of such powers of attorney may vary significantly between jurisdictions. For example, in Hungary, it is not possible to grant a general power of attorney (i.e. one authorising the attorney-in-fact to perform any and all actions within the ordinary course of business of the company) and a power of attorney granted to an employee of the company may not authorise such employee to act alone.

In Bulgaria, the Czech Republic, Poland and Slovakia, on the other hand, a special type of power of attorney exists, called commercial proxy (prokura). This authorisation may only be granted to an individual. In Poland it requires the unanimous approval of the members of the management board and in the Czech Republic it may be granted only by the shareholders' meeting or as otherwise provided for in the constitutional documents of the company. A proxy holder's name must be recorded in the relevant register of the company. A proxy holder is authorised to perform any and all actions on behalf of the company, except for a limited number of matters. The scope of the proxy holder's powers cannot be restricted vis-à-vis third parties.

5. Regulation of publicly traded companies

5. Regulation of publicly traded companies

This section includes an overview of the specific regulatory regime concerning the offering of shares to the general public as well as the acquisition of significant holdings in publicly traded companies. Also covered in this section are related public reporting obligations and rules concerning access to and use of 'inside information', which generally apply across the Region. In many areas the relevant legal framework has been largely harmonised across the Region as a result of the implementation of EU regulations.

Public offering and listing of shares

A public offering of shares and their subsequent listing on a stock exchange has now developed as an effective structure for raising capital. Despite their relatively short history, the Region's capital markets have generally proved successful at attracting both investors and issuers.

The key EU legislation in this area is as follows:

- Directive 2003/71/EC of 4 November 2003 (as amended by Directive 2010/73/EU) on the regime for public offerings and the requirement to publish a prospectus when securities are offered to the public or admitted to trading (the "**Prospectus Directive**");

- Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;

- Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

- Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 amending directive 2004/39/EC on markets in financial instruments, as regards certain deadlines;

- Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse);

- Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities; and

- Regulation 809/2004, which concerns the information which must be contained in prospectuses and the dissemination of advertisements (as amended) (the "**Prospectus Regulation**").

Because much of the legislation governing the public offering of and trading in securities is now regulated on a pan European Union basis, this has made it much easier for companies within the EU to access stock exchanges in more than one country. It has also made it significantly easier for a company located in one EU country to offer and trade its securities on a market located in another EU country. This has proved particularly helpful for the Warsaw Stock Exchange, which has developed as the strongest exchange in the Region. It has successfully attracted issuers from, not only Poland, but also other countries such as Ukraine, Hungary, the Czech Republic and Slovakia.

Prospectus requirement

Offering shares to the public in the Region is strictly regulated. An offering to the public is a communication to at least 150 persons in each Member State in any form and by any means which presents sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for these securities. Generally, any offering to the public and/or seeking admission and introduction to trading of shares on the regulated market requires a prospectus to be: (i) drawn up; (ii) approved by the competent authority; and (iii) published (i.e. disclosed to the public).

There are certain exemptions from this general rule, most notably, in the case of an offer of:

- securities addressed solely to qualified investors;
- securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors;
- securities addressed to investors who acquire securities for a total consideration of at least EUR 100,000 per investor, for each separate offer;
- securities whose denomination per unit amounts to at least EUR 100,000;
- securities with a total consideration in the EU of less than EUR 100,000, which is calculated over a period of 12 months; and
- shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital.

The following offers are also exempt provided that a document is made available containing information which is regarded by the competent authority as being equivalent to that of a prospectus, taking into account the requirements of EU legislation:

- securities offered in connection with a takeover by means of an exchange offer;
- securities offered, allotted or to be allotted in connection with a merger or division; and
- dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid.

There is also a specific exemption to accommodate share ownership schemes directed at employees. An offer of securities to existing or former directors or employees by their employer (or its affiliates) is exempt provided that the company has its head office or registered office in the EU or is a company established outside the EU, and in each case its securities are admitted to trading either on a regulated market in the EU or on a third-country market[5]. Again, a document has to be made available containing information on the number and nature of the securities and the reasons for and details of the offer.

[5] In the latter case, the exemption applies provided that adequate information is available in the English language and provided that the European Commission has adopted an equivalence decision regarding the third-country market concerned.

In practice each jurisdiction in the Region has imposed additional criteria to be met in order to rely on certain exemptions. For example:

- to rely on the employees' offer exemption in Poland, a formal document has to be issued in Polish[6], based on a specimen provided in secondary national legislation;

- to rely on the employees' offer exemption in the Czech Republic, a formal document has to be issued in the Czech language;

- in respect of the employees' offer exemption under Slovak law, the relevant regulations mirror the wording of the respective provisions of the Prospectus Directive; nevertheless, it is advisable to prepare the document which is made available to the employees in the Slovak language;

- in Hungary in connection with the offering of government securities to the public, if they are offered or admitted to trading on a regulated market only in Hungary, instead of a prospectus, a specified document may be published;

- in Romania, in the case of certain exemptions from the obligation to publish a prospectus as detailed in the secondary legislation (such as the employees' offer exemption), a simplified prospectus in the Romanian language in the form provided for in the secondary national legislation might be required; and

- in Bulgaria the laws distinguish between an initial public offering[7] and a listing on a regulated market, and in both cases the shares offered to employees can be offered without a prospectus provided that when offering shares on a regulated market, the exemption is applicable only if the shares are listed on the same market and are of the same class; in the past, the Bulgarian regulator has required that information documents translated into Bulgarian are delivered to Bulgarian employees.

Certain similar exemptions from the prospectus requirement apply in the case of a pure listing (i.e. without a public offering of securities).

Prospectus content and approval

The prospectus is a formalised, complex document containing information on the issuer and the offered securities, which must be true, reliable and complete and which is material for assessing the issuer's financial and economic situation and its prospects for growth.

The exact requirements for the prospectus are specified in the Prospectus Regulation. Such document must contain, *inter alia*[8]:

- a description of the structure and timetable for the public offering and/or listing;

- risk factors connected with the offering and the offered shares;

- history and structure of the issuer and material contracts to which the issuer is a party;

- the issuer's employment structure;

- potential and existing litigation and claims to which the issuer is a party;

- use of proceeds from the offering;

[6] Specifically, the Polish legislation allows the Polish language requirement to be waived, if the offering concerns securities of an issuer outside the EU, whose securities are listed on a regulated market covered by an equivalence decision – in this case, the offering document may be drawn up in the English language.
[7] It could also be made on a regulated market.
[8] National legislation may require certain additional elements.

- a detailed description of the issuer's business and operations; and
- audited financial statements of the issuer for a period of three financial years preceding the date of the prospectus prepared in accordance with, or equivalent to, International Financial Reporting Standards.

Once the prospectus is prepared, it has to be approved by the relevant authority. Generally, there are two possibilities for issuers based outside the EU to have a prospectus approved for the purpose of the offering/listing process:

- taking the 'direct' route, i.e. applying for the approval of the prospectus as a non-EU issuer in a jurisdiction within the European Union; or
- using an EU incorporated SPV holding shares of the underlying company concerned, which would issue its own shares for the purpose of the offering/listing, in practice enabling the listing of the business located outside the EU.

Both structures lead to the same effect. However, the procedural aspects of the two structures differ quite substantially.

In the first case, the relevant company would have to apply to the competent authority of the state where it wanted to conduct the offering and/or seek listing on the relevant stock exchange. In this case, the prospectus would have to be drawn up in the national language of the relevant jurisdiction. This prospectus would then have to be submitted to the regulator for approval. The potential downside of this process in the Region is that the proceedings can be lengthy, particularly in complicated cases (such as where there is a prospectus for an issuer from outside the EU) and the regulator has less experience.

In the second structure, the prospectus would be submitted to the regulator of the country of the SPV's incorporation (usually 'business friendly' jurisdictions such as Luxembourg, the Netherlands or Cyprus) and, upon approval, notified to the regulator of the jurisdiction in which the offering and/or listing is made. This 'passporting' route is commonly used by non-EU issuers, most notably from Russia and Ukraine. It also enables the prospectus to be drawn up in the English language, which is customary for the financial sector in the EU. Only a translation of a summary of the prospectus is required into the national language of the jurisdiction in which reliance on the prospectus is sought, and it must contain the most significant elements of the prospectus. This usually comprises around 20 pages on the offering structure, risk factors, use of proceeds etc.

This structure has proven to be popular for a number of issuers whose business is based outside the EU, such as Ukraine. The average timeframe for obtaining approval of the prospectus in certain EU countries is significantly shorter and the regulators have more experience in dealing with complicated cases. The disadvantage for an issuer from outside the EU is that a new holding company for the business being listed would need to be established in an EU jurisdiction.

Marketing of the offer

After the prospectus is approved it can then be published and used for the purpose of the offer. A public offering requires the intermediation of a licensed investment firm (brokerage house or a bank licensed to conduct such activities). Generally, it is enough to publish the prospectus on the issuer's website and make it available to the public through the intermediary's branches.

It is permissible to freely disseminate information on the offer through the press and other means. However, a suitable disclaimer indicating the promotional nature of the material and reference to the prospectus as the legally binding source of information is required.

Such advertisements or announcements must not contain any untrue or misleading information, or any information inconsistent with the information contained in the prospectus as submitted to the regulator.

Admission and introduction to trading

Each of the Region's countries operates its own regulated market with listing criteria specific to it.

The tables below show the relevant stock exchanges in the Region, the number of traded companies on such exchanges, the market capitalisation of the exchange and the criteria for listing.

Country	Stock exchange	Number of traded companies	Total market capitalisation (million EUR)
Bulgaria	Bulgarian Stock Exchange	170[9]	4,900
Czech Republic	Prague Stock Exchange	28 (including 11 non-Czech entities)	40,000
Hungary	Budapest Stock Exchange	52	15,520
Poland	Warsaw Stock Exchange	443 (including 45 non-Polish entities)	190,000
Romania	Bucharest Stock Exchange	224	24,600
Slovakia	Bratislava Stock Exchange	13 / 64 (listed market / regulated free market)	4,060

[9] Public companies and collective investment schemes.

The basic criteria for listing on the main market in each country in the Region are described below.

Country	Requirements	
Bulgaria	**Prospectus requirement**	Yes
	Lack of restrictions on transferability of shares	Yes
	Dematerialized shares (book entry form)	Yes
	Shares paid in full	n/a
	No bankruptcy, liquidation or transformation proceedings underway	Yes
	Free float requirement	At least 25% of the issue is owned by minority shareholders or the value of shares held by minority shareholders is equal to at least BGN 5 million (approx. EUR 2.5 million)
	Market capitalization	n/a
	Independent members of board(s)	Yes 1/3 of the members of the managing or supervisory board are independent The issuer implements the rules for corporate governance, approved by the Bulgarian stock exchange
	Financial statements history and additional requirements with that respect	Financial report for at least 2 of the last 5 years showing profit
	Corporate history	At least 5 completed financial years
	Other	At least 1 year of trade on the Standard Segment of the Bulgarian Stock Exchange Average monthly turnover of not less than BGN 300,000 (approx. EUR 150,000) for the last 6 months The average monthly number of transactions concerning the issuer's shares for the last 6 months of minimum 150

Country	Requirements	
Czech Republic	**Prospectus requirement**	Yes
	Lack of restrictions on transferability of shares	Yes
	Dematerialized shares (book entry form)	Yes Ordinary ‘dematerialised’ (book entry form) shares and registered with a common depositary
	Shares paid in full	Yes (subject to minor exceptions)
	No bankruptcy, liquidation or transformation proceedings underway	n/a
	Free float requirement	At least 25% of the shares to be listed are held by the public in the EU (subject to minor exceptions)
	Market capitalization	At least EUR 1 million
	Independent members of board(s)	n/a
	Financial statements history and additional requirements with that respect	Audited financial statements of the issuer published for at least 3 consecutive financial years preceding the submission of the application for admission.
	Corporate history	The company has undertaken business activities for at least 3 continuous years before the planned listing of the shares
	Other	A certificate evidencing the conferment of ISIN
Hungary	**Prospectus requirement**	Yes
	Lack of restrictions on transferability of shares	Yes
	Dematerialized shares (book entry form)	Yes Shares ‘dematerialised’ (book entry form) and registered with the clearing house
	Shares paid in full	n/a
	No bankruptcy, liquidation or transformation proceedings underway	Yes

Country	Requirements	
Hungary cd	**Free float requirement**	A minimum of 25% of the securities in the series to be listed shall constitute the free float. To meet the required free float minimum, if the proportion falls short of 25%, the market value of freely floating securities shall be at least HUF 2 billion If the security series does not meet the above mentioned requirements then the security series shall be held by at least 500 investors with ownership evidenced at the time of listing; otherwise the series to be listed shall be held by at least 100 investors, with evidence of ownership available The requirement related to the number of shareholders need not be examined for issuers applying for a listing of securities that are already listed on a regulated market and are found to pass the category tests performed using the trading data of that market
	Market capitalization	At least HUF 5 billion in terms of market value
	Independent members of board(s)	n/a
	Financial statements history and additional requirements with that respect	Audited financial statements of the issuer published for at least 3 consecutive financial years preceding the submission of the application for admission.
	Corporate history	n/a
	Other	The number of owners, ownership structure, with a list and description of shareholders with more than 5% interest in securities series, with their percentage holdings referred to in the application for admission
Poland	**Prospectus requirement**	Yes
	Lack of restrictions on transferability of shares	Yes
	Dematerialized shares (book entry form)	Yes Shares 'dematerialised' (book entry form) and registered with the clearing house. The request for admission to trading must cover all the shares within the same class
	Shares paid in full	Yes
	No bankruptcy, liquidation or transformation proceedings underway	Yes

Country	Requirements	
Poland cd	**Free float requirement**	<u>*Free float requirements for the main (official) market:*</u> The shareholders, each of which is able to exercise no more than 5% of shareholder votes, hold at least: (A) 25% of the shares referred to in the application for admission to exchange trading (i.e. not all the shares in the company), <u>**or**</u> (B) 500,000 shares with a value equal to at least to EUR 17 million or more, calculated based on the last sale or issue price, <u>**or**</u> (C) if neither of the above cannot be fulfilled – such number of shareholders that ensures liquidity of exchange trading. If any of the first two (i.e. A or B) is fulfilled, C does not apply. If neither A and B is fulfilled, shares may be introduced to trading subject to assessment made by the WSE on basis of C. <u>*Free float requirements for the parallel (unofficial) market:*</u> The shareholders, each of which may exercise less than 5% of shareholder votes, hold at least: (A) 15% of the shares referred to in the application for admission to exchange trading (i.e. not all the shares in the company); <u>**and**</u> (B) 100,000 shares referred to in the application for admission to exchange trading with a value of EUR 1 million or more, calculated based on the last sale or issue price Shares may be introduced to trading on the unofficial market if both A and B are fulfilled.
	Market capitalization	At least EUR 15 million (calculated as the product of the number of all the issuer's shares and the forecasted market price)
	Independent members of board(s)	n/a Issuer should comply with corporate governance rules of the WSE or explain why it decides not to comply. One of the rules provides that at least two members should be independent
	Financial statements history and additional requirements with that respect	Audited financial statements of the issuer published for at least 3 consecutive financial years preceding the submission of the application for admission
	Corporate history	n/a

Country	Requirements	
Poland cd	**Other**	n/a
Romania	**Prospectus requirement**	Yes
	Lack of restrictions on transferability of shares	Yes
	Dematerialized shares (book entry form)	Yes The shares must be registered with the regulator The request for admission to trading must cover all the shares within the same class
	Shares paid in full	Yes
	No bankruptcy, liquidation or transformation proceedings underway	n/a
	Free float requirement	There must be a sufficient free float, which pursuant to applicable rules is ensured where: – the free float is equal to at least 25% of the paid–in capital represented by the relevant class of shares; or – the normal operation of the market is ensured with a percentage of shares of less than 25% due to the large number of shares that are in circulation and their wide dispersion to the public
	Market capitalization	n/a
	Independent members of board(s)	n/a
	Financial statements history and additional requirements with that respect	The company must have prepared and submitted its financial statements for the 3 years prior to the admission to trading in accordance with applicable legal provisions The company's forecasted capitalisation must amount to at least EUR 1million; if the company's capitalisation cannot be forecasted, the company's capital and reserves (including the profit or loss for the latest financial year) must be equal to at least EUR 1 million
	Corporate history	The company must have been operating for 3 years prior to the admission to trading

Country	Requirements	
Romania cd	**Other**	The company must have been incorporated and be performing its activity in accordance with applicable legislation If the shares have been publicly offered before their admission to trading, the shares cannot be admitted to trading before the closing of the subscription period
Slovakia	**Prospectus requirement**	Yes
	Lack of restrictions on transferability of shares	Yes
	Dematerialized shares (book entry form)	Yes The shares were successfully subscribed for in a public offering
	Shares paid in full	Yes
	No bankruptcy, liquidation or transformation proceedings underway	Yes
	Free float requirement	At least 25% of the nominal value of the shares is distributed to the public (subject to minor exceptions)
	Market capitalization	At least EUR 1 million
	Independent members of board(s)	n/a
	Financial statements history and additional requirements with that respect	Financial statements of the issuer (audited, if applicable) published for at least 3 consecutive financial years preceding the submission of the application for admission
	Corporate history	n/a
	Other	The shares were successfully subscribed for in a public offering At least 25% of the nominal value of the shares is distributed to the public (subject to minor exceptions). The stock exchange not being aware of any circumstances which would harm or threaten the interests of the investors or an important public interest if the shares are listed on the stock exchange

Acquisitions of significant holdings of shares in public companies

Apart from specific regulations concerning the offering of shares to the public and the listing of shares on a stock exchange, each country in the Region imposes certain conditions on acquiring significant holdings of shares in listed companies. Again, most of the applicable provisions are derived from EU legislation.

Tender offers

EU Directive 2004/25/EC on Takeover Bids ("**Takeovers Directive**") imposes an obligation to announce a tender offer directed at shareholders of a listed company by an entity acquiring a controlling stake in that company. The rationale behind this concept is to enable investors to exit a company at a fair price (determined by a set of variables specified by law) where there is a change in shareholders having a major influence on the company.

Unlike the rules for public offerings, this area of securities law is less harmonised across the Region and the detailed principles for conducting tender offers differ between jurisdictions. A good example of a significant difference in this area is the two thresholds for mandatory takeover bids applicable in Poland. Please see the table below summarising the tender offer thresholds for each country in the Region.

Country	Mandatory tender offer thresholds	Additional thresholds
Bulgaria	• 1/3 (provided no entity holds more than 50% of the total votes), or 50% or 2/3 of the total votes - requirement to launch a tender for all shares in the company, or transfer such number of shares so as to reduce the number of votes held to less than, respectively, 1/3 or 50% or 2/3 of the total votes in the company[10] (applies equally to acquisitions made directly or through related parties or indirectly). • The acquisition of more than 3% of the voting shares of the company by an entity holding between 1/3 and 2/3 of the total votes within one year. The mandatory tender offer rules do not apply in the case of privatisation, i.e. the acquirer shall not be subject to the obligation of launching a tender offer if the 1/3 threshold or other thresholds are crossed within the special regime for privatisation of state and municipal assets and companies, unless shares subject to the privatisation regime are acquired on a stock exchange.	Voluntary tender offers for the acquisition of shares in a public company in case of: • acquiring a 90% stake, when the acquirer may launch a voluntary tender offer, which may be com bined with the mandatory tender offer to be launched upon exceeding the 1/3, 50% and 2/3 threshold (in certain cases this tender offer could lead to the delisting of the public company); or • intention to acquire 1/3 or more of shares/votes by an entity holding already at least 5% of the votes in the public company.

[10] If the 2/3 threshold is crossed within 14 days following the crossing of the 50% threshold, then only one tender should be launched.

Country	Mandatory tender offer thresholds	Additional thresholds
Czech Republic	• 30% of the total votes - in cases where such stake is controlled by one shareholder (or multiple shareholders acting in concert); however this does not apply if the shareholder (or shareholders acting in concert) does not exercise control over the company. In the absence of proof to the contrary, an entity is considered "controlling the company" if it possesses 40% or more of the company's voting rights and no other shareholding entity in the company holds the same or a higher percentage of votes. • 90% of the total votes - if the bidder acquires at least 90% of the shares as a result of an unlimited and unconditional tender offer, it must launch an additional tender offer for all the remaining shares in the company. The mandatory tender offer requirements do not apply: • in the case of a purchase of shares from members of the same capital group; • in the case of an acquisition of shares as a result of a transformation of the entity if all the participating entities are members of the same capital group; or • if the mandatory tender offer threshold was reached as a result of a prior unconditional and unlimited tender offer.	Voluntary tender offers permissible.

Country	Mandatory tender offer thresholds	Additional thresholds
Hungary	• 33% of the total votes – requirement to launch a tender for all the shares in the company. • The mandatory threshold of 33% is reduced to 25% where no shareholder directly or indirectly holds more than 10% of the target company's voting rights. A bidder could be forced into making an offer even though the increase in its shareholding arises from involuntary actions, such as a capital reduction or changes to voting rights attached to shares. There is no given interim period to sell down below the threshold.	Voluntary tender offers can be launched irrespective of the thresholds.
Poland	• 33% of the total votes – requirement to launch a tender for up to at least the 66% threshold. • 66% of the total votes - requirement to launch a tender for all the shares in the company. If the threshold of 33% is exceeded as a result of action other than the acquisition of shares in the secondary market (for example, the indirect acquisition of shares, subscription for new shares or the acquisition of shares in a public offering), the shareholder concerned has to either make a tender offer or avoid the mandatory tender offer requirement by selling down below the 33% threshold within a 3-month interim period. This does not apply to exceeding the 66% threshold, i.e. in this case a tender offer for all outstanding shares in the company has to be launched, unless the holding falls below 66% as a result of a share capital increase, amendments to the statue of the listed company or the expiry of the preference of shares (if any).	Voluntary tender offers for the acquisition of shares in a public company in case of an acquisition increasing a shareholder's share in the total number of votes by more than: • 10% within a period shorter than 60 days in the case of a shareholder holding less than 33% of the total votes; or • 5% within 12 months in the case of a shareholder holding 33% or more of the total votes.

Country	Mandatory tender offer thresholds	Additional thresholds
Poland cd	The tender offer requirements when exceeding the 33% threshold of the total votes do not apply in the case of: • a purchase of shares from the Polish State Treasury either during the course of an IPO or during the 3-year period following the sale of shares by the Polish State Treasury in the course of an IPO; or • a purchase of shares from members of the same capital group. The tender offer requirements when exceeding the 66% threshold of the total votes do not apply in the case of a purchase of shares from members of the same capital group.	The above requirements are not applicable to: • a purchase of shares on the primary market (i.e. an acquisition of new shares); • an acquisition of existing shares in a public company by way of a contribution in kind; • an acquisition as a result of a merger or demerger of a public company; • a purchase of shares from members of the same capital group; or • a purchase of shares from the Polish State Treasury either during the course of an IPO or during the 3-year period following the sale of shares by the Polish State Treasury in the course of an IPO.
Romania	Any person who, further to the acquisitions performed by it or by the persons with whom it acts in concert, acquires more than 33% of the voting rights in a publicly traded company, must launch a public offer addressed to all the other shareholders for the shares in such publicly traded company no later than 2 months from such threshold being reached/ exceeded. The above-mentioned requirement does not apply to: • the acquisition of shares within the privatisation process; • the acquisition of shares from the Romanian Ministry of Public Finance or from other entities, in the process of the enforcement of budgetary receivables; • transfers of shares between a parent company and its subsidiaries or between the subsidiaries of the same parent company; or • acquisitions made through a voluntary takeover public offer.	A voluntary takeover bid may be launched by the bidder and addressed to all shareholders, for all their holdings, for the purpose of acquiring more than 33% of the voting rights of the target company.

Country	Mandatory tender offer thresholds	Additional thresholds
Romania cd	If the 33% threshold is exceeded as a result of: • a decrease in the share capital through the redemption of the issuer's own shares followed by the cancellation of such shares; • the exercise of a pre-emption, subscription or conversion right or the conversion of preference shares into ordinary shares; or • a merger/spin-off or succession, the person that acquired more than 33% of the voting rights can either launch a tender offer or sell the shares that exceed the legal threshold, within 3 months from the acquisition. The above-mentioned requirements are not applicable in the following situations: • shares issued by undertakings of collective invest ments in transferable securities (EU-licensed investment funds) which are incorporated as companies operating in accordance with the risk spreading principle and whose units can be directly or indirectly redeemed from such fund's assets, upon the holders' request; or • securities issued by central banks of EU member states.	

Country	Mandatory tender offer thresholds	Additional thresholds
Slovakia	• 33% of the total votes (the "controlling portion of votes") – triggers the requirement to launch a tender offer when at least this portion is controlled by an entity acting alone or in concert with other persons. The mandatory tender offer requirements do not apply in the case of: • the acquisition of the controlling portion of votes on the basis of an unlimited and unconditional tender offer; • legal succession, provided the legal predecessor launched a mandatory tender offer or the succes sor's voting rights are not increased; • transfer of a business or a part thereof within the bankruptcy/restructuring proceedings, provided that the acquirer's voting rights are not increased; or • an ownership structure changes among persons acting in concert, provided that the total share of the voting rights does not change. The company itself is obliged to announce a mandatory tender offer if the general meeting decides to delist the shares (see below).	Voluntary tender offers permissible.

Launching of the tender and minimum price offered within the tender

The tender offer requires that a tender offer document be drawn up containing relevant information on the offer, most notably the price at which the bidder wishes to acquire shares from other shareholders, the number of shares subject to the tender, the timeline for the offer and further intentions towards the company. Usually, such document has to be filed either with the regulator or the stock exchange for prior clearance.

The table below summarises the minimum pricing rules and the timelines for tenders in the Region.

Country	Minimum pricing rules	Timeframe for the tender
Bulgaria	The highest of the following: • the equitable value per share subject to the tender offer indicated in the rationale attached to the tender offer document and determined according to gener ally accepted valuation methods; • the average weighted market price of the shares during the last 3 months, or if the mandatory tender offer was not launched in time, during the 3 months that preceded the deadline for launching the tender offer; and • the highest price paid by the bidder or its affiliates during the 6 months before the registration of the tender offer or, if the mandatory tender offer was not launched in time, during the 6 months that preceded the deadline for launching the tender offer and where the price of the shares cannot be determined by this method, the price must be equal to the latest issue price or the latest price paid by the bidder, whichever is higher.	The timeframe for the tender is not less than 28 days and not more than 70 days following publication of the tender, except for the case where a competing tender offer is launched.

Country	Minimum pricing rules	Timeframe for the tender
Czech Republic	The price offered for the shares cannot be lower than the highest price paid for the shares by the bidder or cooperating entities[11] during the 12 months preceding the date when the obligation to launch the mandatory tender offer arises. If such minimum price cannot be determined, the minimum price offered for the shares cannot be lower than the average price of the shares for the last 6 months preceding the tender.	The minimum validity period of the tender offer is 4 weeks from the publication of the tender. The maximum validity period is not set by law. In the case of a mandatory tender offer, the consideration must be provided within 60 days of the tender offer publication.
Hungary	For mandatory tenders, the highest of the following: • the volume-weighted average stock market price for the 180 calendar day period preceding the date when the bid was submitted to the regulator for approval; • the highest price contracted for the transfer of the target company's shares by the bidder and affiliated persons within the 180 calendar day period preceding the date when the bid was submitted to the regulator for approval; • if available, the volume-weighted average stock market price for the 360 calendar day period preceding the date when the bid was submitted to the regulator for approval; • the aggregate of the contracted call price and the commission for a purchase or repurchase option exercised by the bidder and affiliated persons within the 180 calendar day period preceding the date when the bid was submitted to the regulator for approval;	The tender period may last between 30 and 65 calendar days. The starting date of the acceptance period must be set by the tender offeror between the 2nd and the 5th calendar day following the date of publication of the offer. The acceptance period can be extended for a further 15 calendar days if, upon the request of the bidder, the regulator approves the extension.

[11] Pursuant to the Czech Act on Takeover Bids this concept covers any individual/entity acting in concert with: (i) the bidder, with the aim of assuming substantial influence on the target (ii) the target, with the aim of frustrating the takeover. The Czech Act on Takeover Bids does not provide any restrictions with regard to the nature of the relationship of a co-operating entity to the bidder / target and, consequently, a shareholder, director, creditor or any third party can qualify as a co-operating entity within this definition.

Country	Minimum pricing rules	Timeframe for the tender
Hungary cd	• the aggregate of the contracted call price and the commission for a purchase or repurchase option fixed in an agreement by the bidder and affiliated persons concluded within the 180 calendar day period preceding the date when the bid was submitted to the regulator for approval; • the consideration received for exercising the voting rights fixed in an agreement by the bidder and affiliated persons concluded within the 180 calendar day period preceding the date when the bid was submitted to the regulator for approval; and • the amount of equity capital per share. For voluntary tender offers the price can be set freely by the bidder but if a minimum acceptance threshold is set and if the threshold set is crossed then the price has to be the amount of equity capital per share.	
Poland	For tenders connected with crossing the 33% threshold or 'voluntary tenders' the price cannot be lower than: • the average market price for the 6 months prior to the date the tender offer is announced; and • the highest price paid for the shares by the bidder, its controlling companies, subsidiaries and aggregated entities during the 12 months immedi ately preceding the announcement of the tender offer.	Depending on the type of tender offer – the tender period may last between 14 and 70 calendar days (for a voluntary tender offer or tender offers connected with crossing the 33% threshold) or 30 and 70 calendar days (for a mandatory tender offer for all the shares) and may be extended in justified circumstances up to 120 calendar days.

Country	Minimum pricing rules	Timeframe for the tender
Poland cd	For tenders connected with crossing the 66% threshold: • the average market price for the 6 months prior to the date the tender offer is announced; • the average market price for the 3 months prior to the date the tender offer is announced; and • the highest price paid for the shares by the bidder, its controlling companies, subsidiaries and aggregated entities during the 12 months preceding the announcement of the tender offer.	
Romania	For mandatory takeovers: • The price in the case of a mandatory offer must be at least equal to the highest price paid by the bidder or the persons with whom it acts in concert for the respective shares in the 12 months preceding the date of the submission of the bid documentation to the regulator. • This method of price calculation is not applicable if the bidder or the persons with whom it acts in concert did not acquire shares in the 12 months preceding the offer or if the regulator (*ex officio* or following a notice) considers that the relevant transactions are of such nature as to influence the correctness of the way the price is established. • Under the conditions mentioned in the preceding bullet point and if: i) the tender offer is performed within the term imposed by law (as detailed under the section “Tender Offers” above), the price in a mandatory takeover bid will be equal to the highest of the following values (determined by an independent expert): 1) the weighted average trading price for the 12 months preceding the date of the submission of the bid documentation to the regulator;	The takeover period (applicable for both mandatory and voluntary takeover bids) may not fall below 15 business days and may not exceed 50 business days from the publication of the offer.

Country	Minimum pricing rules	Timeframe for the tender
Romania cd	2) the net assets of the target (according to the most recent audited financial statements of the target) divided by the number of shares on the market; and 3) the value of the shares as determined through an expert based on the international valuation standards; or ii) the tender offer is not performed within the term imposed by law (as detailed under the section "Tender Offers" above), the price in the mandatory takeover bid will be equal to the highest of the following values (determined by an independent expert) 1) the weighted average trading price for the 12 months preceding the date of the submission of the bid documentation to the regulator; 2) the weighted average trading price for the 12 months preceding the 33% threshold being reached; 3) the highest price paid by the bidder or the persons with whom it acts in concert for the respective shares in the 12 months preceding the 33% threshold being reached; 4) the price obtained by dividing the net asset of the target company (according to the most recent audited financial statements of the target company, prior to the date of the submission of the bid documentation to the regulator) by the total number of shares being traded; 5) the net asset of the target (according to the audited financial statements of the target prior to the 33% threshold being reached) divided by the number of shares on the market; and 6) the value of the shares as determined through an expert based on the international valuation standards.	The takeover period (applicable for both mandatory and voluntary takeover bids) may not fall below 15 business days and may not exceed 50 business days from the publication of the offer.

Country	Minimum pricing rules	Timeframe for the tender
Romania cd	• If the conditions in the preceding bullet point are not applicable and the tender offer is **not** performed within the term imposed by law (as detailed under the section "Tender Offers" above), the price in the mandatory takeover bid will be equal to the highest of the following values: 1) the highest price paid by the bidder or the persons with whom it acts in concert for the respective shares in the 12 months preceding the date of the submission of the bid documentation to the regulator; 2) the highest price paid by the bidder or the persons with whom it acts in concert for the respective shares in the 12 months preceding the 33% threshold being reached; 3) the weighted average trading price for the 12 months preceding the date of the submission of the bid documentation to the regulator; and 4) the weighted average trading price for the 12 months preceding the 33% threshold being reached. For voluntary takeovers: The price in a voluntary public takeover bid must be at least equal to the highest of: • the highest price paid by the bidder, or by the persons with whom it acts in concert, in the 12 months preceding the date of the submission of the bid documentation to the regulator; • the average trading price of the shares during the 12 months preceding the date of the submission of the bid documentation to the regulator; and • the price obtained by dividing the value of the net assets, according to the last financial statements of the target, of the target company by the number of issued shares.	

Country	Minimum pricing rules	Timeframe for the tender
Slovakia	The ‘fair consideration’ (subject to the approval of an expert appointed by the regulator) being not lower than: • the highest price paid for the shares by the bidder or person acting in concert with the bidder during the 12 months preceding the obligation to announce the mandatory tender offer; • the consideration determined by the expert; • the net value per share of the company assets according to the most recent audited financial statements; and • the average market price of the shares over the 12 months preceding the obligation to announce the mandatory tender offer.	The validity period of the tender offer cannot be less than 30 calendar days and not more than 70 calendar days from the publication of the tender offer.

After publication of the bid documentation the shareholders can then place their sales orders with an intermediary (brokerage house or a bank), whose appointment is necessary for conducting the process. Prior to launching the tender offer it is also necessary to place suitable collateral with such intermediary for the purpose of settling the tender (usually a cash deposit, but a letter of credit or a bank guarantee and certain financial instruments are also sufficient).

Tender offer conditionality

Generally it is permissible to make a tender offer conditional on the occurrence of certain events, for instance certain decisions of public authorities, absent which the announced tender can be legitimately cancelled. It is also possible to determine a minimum acceptance threshold, i.e. the minimum number of shares the bidder wishes to reach and if such number is not reached then the bidding entity is not obliged to acquire any shares upon the tender’s completion.

Country	Conditionality of the tender	Minimum acceptance threshold permissibility
Bulgaria	The law does not manifestly state that the tender offer can be made conditional, for instance, on receiving a regulatory permit or concentration clearance[12]. In the case of a privatisation via the acceptance of a tender offer, the privatising body (e.g. the Bulgarian Privatisation Agency) may impose certain conditions on the bidder, the acceptance of which is a condition for the privatisation of the shares owned by the state or municipality.	Possible, in the case of a voluntary tender offer announced by an entity holding at least 5% of the total shares who wishes to acquire 1/3 or more of the shares. In this case the bidder may indicate both the maximum and/or the minimum number of shares it wishes to acquire.
Czech Republic	The mandatory tender offer and the additional tender offer must be unlimited and unconditional. The voluntary tender offer may be conditional if the satisfaction of the condition does not depend on the bidder's (or any entity acting in concert with the bidder) actions.	The minimum acceptance threshold is permissible only for voluntary tender offers.
Hungary	In the case of mandatory tenders the bidder must purchase all shares offered, unless the participating interest to be acquired by the bidder in the target company would be less than 50% pursuant to the declarations of acceptance, and the bid contains a cancellation clause for this instance.	Permissible for mandatory tender offers: only a threshold of 50% can be set. Permissible for voluntary tender offers: any threshold can be set.

[12] Typically, such approvals are obtained in advance.

Country	Conditionality of the tender	Minimum acceptance threshold permissibility
Poland	Voluntary and mandatory tender offers can be conditional upon the occurrence of the following events: • the passing of a specific resolution by the shareholders' meeting or the supervisory board of the target company; • the success of another tender offer for shares of a company forming part of the same capital group as the target company carried out by a company forming part of the same capital group as the bidder; • the conclusion by the target company of a specific agreement; and/or • the satisfaction of any legal conditions required to close the tender offer, including clearance from the relevant public authority (such as merger clearance). These conditions are not permitted if an obligation to make a mandatory offer arises out of any action other than the acquisition of shares in the secondary market, for example, by acquiring an intermediate holding company or during a delisting tender offer.	Permissible for tenders for crossing the 33% and 66% threshold and voluntary tenders. Not permissible for tenders announced after crossing the 33% and 66% thresholds.

Country	Conditionality of the tender	Minimum acceptance threshold permissibility
Romania	Romanian legislation does not expressly provide for such possibility but there is no prohibition either.	Romanian legislation does not expressly provide for such possibility but there is no prohibition either.
Slovakia	The mandatory tender offer may be neither partial nor conditional. The voluntary tender offer may be conditional only upon reaching a minimum acceptance threshold.	The minimum acceptance threshold is permissible only for voluntary tender offers.

Squeeze–out and delisting

The Takeovers Directive also creates the concept of a compulsory buy–out (known as “squeeze-out”) of minority shareholders and grants such shareholders the right to demand that such process be launched after a relevant shareholding threshold is reached. This procedure is usually governed by similar principles applicable to a tender, i.e. it requires certain minimum pricing and other formal conditions to be met. Local jurisdictions also provide for the possibility to take the listed company private once a certain level of votes in the company is reached.

The rationale for this is that it gives a shareholder holding an overwhelming percentage of shares in a listed company the right to acquire all the shares and thereby avoid dealing with what could be a very large number of shareholders each holding a very small number of shares. Conversely, it also gives minority shareholders the right to exit that shareholding to avoid being stranded in a company over which they have no influence and which may be delisted, thereby depriving them of the ability to trade their shares. It is one of the few occasions in the Region when persons other than state institutions are given rights of this nature.

The table below specifies the squeeze-out and delisting thresholds across the Region.

Country	Squeeze out threshold	Delisting threshold
Bulgaria	95% of the total votes following the tender offer	• 2/3 of the total votes of the shareholders present at the general meeting in a situation where: (i) 14 days before the general meeting, as well as on the last day of each of the previous two calendar years, the number of shareholders is less than 300; and (ii) the value of company's assets on the last monthly balance sheet and on the last two audited annual balance sheets is less than BGN 500,000 (approx EUR 250,000); or • By unanimous decision of the general meeting provided that 100% of the capital was present at the general meeting. • In circumstances where, the voluntary tender offer has been launched as a result of the acquisition by the bidder (directly, indirectly or through related persons) of 90% of the total votes and: (i) the tender offer is accepted by at least 1/2 of the minority shareholders; or (ii) shareholders representing at least 1/2 of the share capital present at the general meeting of the company voted for the delisting resolution, however, the shares owned by the bidder prior to the launch of the tender offer mentioned above are not allowed to vote at that meeting; the bidder votes only with the shares acquired as a result of the tender offer and afterwards. • Delisting can also be performed following a successful squeeze-out.
Czech Republic	90% of the total votes	66% of the votes at the meeting resolving on the delisting where shareholders representing at least 75% of the shares to be delisted are present.

Country	Squeeze out threshold	Delisting threshold
Hungary	90% of the total votes (a tender offer for all the shares is required to be announced first)	Automatic delisting: If investor(s) making a tender offer has (have) taken steps to exercise its (their) call option to acquire the remaining portion of shares under the squeeze-out provisions. Delisting a security upon request: If all the shares of a listed public company are acquired by a single shareholder.
Poland	90% of the total votes	80% of the votes at the general meeting resolving on the delisting where shareholders representing at least 50% of the share capital are present at the meeting (a tender offer for all the shares is required to be announced first).
Romania	The majority shareholder must: • own at least 95% of the total number of shares bearing voting rights and at least 95% of the voting rights which may be effectively exercised; or • in the context of a public takeover offer (addressed to all shareholders for all their shares) have acquired shares representing at least 90% of all the shares bearing voting rights and at least 90% of the voting rights within the offer.	Following the squeeze-out procedure, the company can be delisted.
Slovakia	95% of the registered share capital	2/3 of the votes of the shareholders present at the general meeting resolving on the delisting.

Ongoing reporting obligations for listed companies

All companies whose shares are traded on one of the Region's stock exchanges are subject to reporting obligations. This is to ensure investors continue to be properly informed about the company's business and financial position. All these reporting obligations are imposed on the issuer itself. These obligations include the obligation to provide all price-sensitive or "inside information" as well as ongoing and periodic financial information. More details regarding inside information are provided below. The ongoing information to be reported to the market is defined by the local laws of each country in the Region and may differ. Generally, it is expected that issuers will provide market participants with information on events or circumstances which are deemed to have an impact on the issuer, such as entry into material contracts, the acquisition or disposal of material assets and the issue of new securities.

Periodic financial reporting is regulated at the EU level. Therefore, the same provisions apply across the Region. The financial information to be publicly reported includes the following:

- audited consolidated annual financial statements, including a management report on the financial statements and the management's opinion that the financial statements show, amongst other things, a true and fair value of the company's financial position;
- half-yearly financial statements, which need only be reviewed by the company's auditors and are not audited; and
- quarterly financial statements, which do not have to be reviewed or audited.

The table below summarises the most important reporting obligations applying in each country in the Region.

Country	Reporting Obligation	Timing
Bulgaria	Price-sensitive information	Promptly upon the occurrence of the relevant event or promptly upon becoming aware of such event, but not later than the end of the next business day.
	Periodic information (quarterly and annual financial information)	Annual financial report within 90 days from the end of the financial year.
		Quarterly report within 30 days from the end of the quarter.
	General meetings	Invitations to all general meetings, including agenda, materials and proposals for decision, at least 45 days prior to the meeting.
		Minutes from the general meetings within 3 business days following the meeting.
Czech Republic	Price-sensitive information (in the form of current reports)	Without undue delay after the event giving rise to the information or after the information was ascertained.
	Ongoing information (in the form of current reports)	Without undue delay after the occurrence of the information or after the information was ascertained.
	Periodic information (quarterly, half-yearly and annual financial information and interim report)	Generally the timing will be determined by the time schedule that the issuer is obliged to provide to the regulator. The specific regime applicable to certain financial reports is as follows: • annual financial report no later than 4 months after the end of financial year; and • half-yearly report within 2 months following the end of the first 6 months of the fiscal year.

Country	Reporting Obligation	Timing
Hungary	Price-sensitive information	Promptly upon the occurrence of the relevant event or promptly upon becoming aware of such event, but not later than within 24 hours.
	Ongoing information (in the form of current reports)	Promptly upon the occurrence of the relevant event or promptly upon becoming aware of such event, but not later than within 24 hours.
	Periodic information (quarterly, half-yearly and annual financial information and interim report)	In accordance with a time schedule specified by the issuer, but generally not later than: (i) within 42 to 70 calendar days following the end of the first half and the second half of each financial year for interim management reports or within 42 to 70 calendar days following the end of each quarter for quarterly reports; (ii) within 2 months following the end of the first half of each financial year for half-yearly results; and (iii) within 4 months following the end of each financial year for annual results.
Poland	Price-sensitive information (in the form of current reports)	Promptly upon the occurrence of the relevant event or promptly upon becoming aware of such event, but not later than within 24 hours.
	Ongoing information (in the form of current reports)	Promptly upon the occurrence of the relevant event or promptly upon becoming aware of such event, but not later than within 48 hours.
	Periodic information (quarterly, half-yearly and annual financial information)	In accordance with a time schedule specified by the issuer, but generally not later than: (i) within 45 days following the end of each quarter in the case of quarterly reports or 60 days in the case of a report referring to the last quarter of each financial year; (ii) within 2 months following the end of the first half of each financial year for half-yearly results; and (iii) within 4 months following the end of each financial year for annual results.

Country	Reporting Obligation	Timing
Romania	Price-sensitive information (in the form of current reports)	The company must inform the public without delay.
	Privileged information (in the form of current reports)	Promptly upon the occurrence of the relevant event or promptly upon becoming aware of such event, but not later than within 24 hours.
	Periodic information (quarterly, half-yearly and annual financial information)	Reports must be submitted not later than: (i) 45 days following the end of each reporting period in the case of quarterly reports for the first and third quarter of the year; (ii) within 2 months following the end of the first half of each financial year for half-yearly results; and (iii) within 4 months following the end of each financial year for annual results.
Slovakia	Price-sensitive information	Without undue delay.
	Ongoing information	Without undue delay.
	Periodic information (half-yearly and annual financial information)	The issuer is obliged to publish: (i) half-yearly financial information within 2 months following the end of the first half of each financial year; and (ii) annual financial information within 4 months following the end of each financial year.

Reporting obligations connected with the acquisition of shares in a public company

There are ongoing public disclosure obligations applying to the acquisition and disposal of shares in listed companies. Usually such notification has to be filed within a specified period of time with the company whose shares were acquired and/or a market regulator. Again, these principles are largely based on EU legislation.

For the purpose of determining the number of shares/votes held by the given entity, the Region's regulations provide for votes to be aggregated when held by affiliated entities (i.e. parent companies and subsidiaries) and entities 'acting in concert'. Entities acting in concert are entities bound by a written or oral agreement aimed at conducting certain actions towards the listed company, most typically the joint acquisition of shares, joint voting at the general meeting or conducting a joint policy towards the listed company whose shares are held by such entities.

The table below summarises the thresholds for a notification, the timeline for notification and to whom the notification should be sent in each jurisdiction.

Country	Basic notification thresholds	Additional thresholds	Time limit for the notification	Addressees
Bulgaria	5% and each multiple of 5% of the total votes.	n/a	4 business days after the day following the day on which the entity: • learns about the acquisition, transfer or the option to exercise the voting rights or was obliged to learn, depending on the specific circumstances; or • was notified of the change in the total number of the voting rights. In the event of a direct acquisition of shares or transfer of voting shares the Bulgarian clearing house must inform the relevant entity not later than the day after the event.	Both the company concerned and the regulator.
Czech Republic	3%[13], 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50% and 75% of the total votes.	n/a	4 business days after the date on which the shareholder becomes aware of the change or would have become aware of the change had he been acting with prudence; any person concerned is deemed to be aware of the change 2 days after the relevant transaction was executed.	Both the company concerned and the regulator.

[13] If the issuer's registered share capital exceeds CZK 100 million, i.e. approx EUR 4 million.

Country	Basic notification thresholds	Additional thresholds	Time limit for the notification	Addressees
Hungary	5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 75%, 80%, 85%, 90%, 91%, 92%, 93%, 94%, 95%, 96%, 97%, 98%, and 99% of the total votes.	n/a	Promptly upon the date of the change or from the date on which the shareholder became aware of the change or, acting diligently, should have been aware of the change, but no later than within 2 calendar days from the date of the transaction.	Both the company concerned and the regulator. A disclosure must also be made to the court of registration and it must be published in the Companies Gazette within 30 calendar days.
Poland	5%, 10%, 15%, 20%, 25%, 33%, 33 1/3%, 50%, 75% and 90% of the total votes.	• Shareholder holding over 10% of the total votes – each change by at least 2% of the total votes. • Shareholder holding over 33% of the total votes – each change by at least 1% of the total votes.	4 business days from the date of the change or from the date on which the shareholder became aware of the change or, acting diligently, should have been aware of the change, or 6 trading days (for transactions executed in the regulated market) from the date of the transaction.	Both the company concerned and the regulator.
Romania	5%, 10%, 15%, 20%, 25%, 33%, 50%, 75% or 90% of the total votes.	n/a	3 business days starting from the date immediately preceding the day when the shareholder: • became aware of the acquisition/disposal or the possibility of exercising the voting rights or, considering the circumstances, when it should have acknowledged it, irrespective of the date when the acquisition, disposal or the possibility of exercising the voting rights becomes effective; or	The company concerned, the regulator and the market where the shares are traded.

Country	Basic notification thresholds	Additional thresholds	Time limit for the notification	Addressees
Romania cd			• became aware of the hanges, other than the acquisition or transfer operations mentioned above.	
Slovakia	5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% of the total votes.	n/a	4 business days from the date on which the shareholder becomes aware of the change or should have become aware of the change had the shareholder been acting with prudence, or the date on which the shareholder is informed of the change.	The company concerned.

Inside information considerations

Legislation across the Region restricts the use of 'inside information' for the purpose of acquiring, disposing and taking investment decisions concerning the shares of a publicly traded company. Breach of these rules constitutes 'insider trading' which is a criminal offence.

Following the EU's Market Abuse Directive 2003/6/EC 'inside information' is defined as information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments. Information is considered of a precise nature if such information discloses circumstances or events which have happened or may reasonably be expected to happen, and such information is sufficient to assess the potential effect of such circumstances or events on the price or value of shares. A good example of such precise information would be the termination of a significant agreement or that someone intends to launch a tender offer for shares. On the other hand, any information which is only a forecast or someone's opinion or valuation may not be considered to be information of a precise nature. In particular, if the forecast is based on several variables or assumptions, it should not be considered to be information of a precise nature, because there is uncertainty as to whether it will become true or not.

In order to determine whether information is price-sensitive or not, usually a 'reasonable investor' test is applied. If information is likely to be taken into account by a reasonable investor in making an investment decision (buy, sell or retain shares), the information should be classified as price-sensitive and will constitute inside information.

Inside information and due diligence of a listed company

It is typical for acquisitions of significant holdings in listed companies that the prospective buyer usually wants to carry out some form of due diligence review of the target. In the case of public companies, any such exercise has to take into account regulations concerning access to and use of inside information.

The target is generally restricted in providing the bidder with inside information before fulfilling the reporting requirements laid down in relevant regulations. This is to comply with the concept of equal treatment of all participants in a regulated market. Moreover, apart from a ban on the delivery of inside information, the regulatory framework of each jurisdiction in the Region provides that anyone who has obtained inside information but was not allowed to acquire it, is also prohibited from using it (i.e. will not be able to buy shares in a company to which such inside information relates).

In practice, provided the target is cooperative and that the information to which any bidder wishes to obtain access is not itself restricted by confidentiality undertakings given to any third party, it is usually possible to carry out due diligence in advance of launching a tender offer for the following reasons:

- the term “inside information” is construed narrowly;

- in any event, a listed company is always required to announce inside information within its possession as soon as it becomes aware of it so, at least in theory, it should have no price -sensitive information in its possession; and

- there is a safe harbour for transferring inside information to a third party if it is pursuant to negotiations with that third party related to a transaction; therefore, a direct confidentiality undertaking is usually put in place between the bidder and the target, with the transfer of information being referenced to a possible transaction between the two (this solution is acceptable in Poland, Hungary, the Czech Republic and Slovakia); in certain jurisdictions, such as Romania, such an undertaking would only allow the target to delay the disclosure of inside information while negotiations are ongoing.

Acquiring shares when in possession of inside (price-sensitive) information is generally prohibited and there is no clear exemption available. Nevertheless, in certain jurisdictions (Poland and the Czech Republic) there is a view that there are situations where acquisitions, carried out pursuant to a tender offer, do not constitute a breach of law even when the acquirer is in possession of inside information.

6. Raising Finance

6. Raising finance

Debt finance

Introduction

A company may finance its business by borrowing funds from third parties. Debt finance is commonly obtained in the form of loans or bonds. The first section of this chapter will deal with raising money through loan finance, the second part will supplement this by considering fund raising through the issue of bonds.

Loan finance

Types of lenders

Loans may be arranged and provided by the company's banks and other third party senior lenders, by specialist lenders (such as so-called 'mezzanine' lenders) who charge a higher price (margin) but take on more risk or by the shareholders or their related companies. Depending on who is providing the loans, the loans may rank as senior, mezzanine or subordinated (also known as junior). This ranking will determine when and whether the lender will receive funds that are due to it. In addition, the senior and mezzanine lenders will benefit from a security package, whereas the junior lenders will usually be prohibited from taking security. If there is insufficient money to repay every loan, senior loans will be repaid first. If any money remains, the mezzanine lenders will be repaid, followed by the subordinated lenders. The interrelationships between the various levels of loans are governed by intercreditor or subordination agreements, which are contractual arrangements between the lenders under which they define the hierarchy of repayments and agree that any money received by the lower ranking lenders not in accordance with the hierarchy is passed on to the higher ranking lenders.

Loans of smaller amounts are provided by individual banks on a bilateral basis. Larger loans are usually provided by groups of banks or syndicates of lenders. These are known as 'syndicated' loans and may be traded to other lenders on a secondary market.

Types of facilities

A loan may be a term loan or a revolver. A term loan cannot be reborrowed once it is repaid in part or in full. A revolver can be renewed each time it is paid off. Term loans may be amortising (repayable in equal amounts over the life of the loan), they may amortise in part but require a large payment at the end of the term or they might not amortise at all and require a single 'bullet' repayment at the end of the term.

In the case of a loan facility provided for the acquisition of a company, the types of facilities provided under the loan agreement usually include three elements:

- a term facility for the financing of the purchase price payable for the shares of the target company under the sale and purchase agreement;

- a term facility for the refinancing of existing indebtedness of the target company; and

- a revolving facility for financing its ongoing expenditures. The revolving facility may also include mechanisms for 'ancillary facilities' that may cover the issue of bank guarantees and letters of credit.

Bridge financing is short-term financing which is intended to be repaid quickly through a refinancing under longer-term facilities. It is sometimes put in place to finance acquisitions of companies where time is critical.

The facilities and the terms on which they are provided will vary with the nature of the business being financed. For example, finance for real estate acquisitions is usually provided at a higher ratio between the amount loaned and the value of the collateral over which security is given than for acquisitions of manufacturing or service businesses. This means that a borrower would need to put up less of its own money to finance a real estate acquisition than to finance the acquisition of a manufacturing business.

Syndicated loans: role of arrangers, agents and security agent

In a typical syndicated loan, banks designated as mandated lead arrangers are awarded an exclusive mandate by the borrower to arrange and underwrite a facility which is later transferred in part (i.e. syndicated) to other lenders. The arrangers charge a separate fee for performing this service. Alternatively, a small group of banks will grant the facility either with the intention of holding the participations or syndicating them in the secondary market. A facility agreement may contain restrictions on the transfer of participations, for example by requiring the borrower's consent to a proposed transfer.

One bank will be appointed as an agent of the syndicate of lenders. Its role will be to represent the lenders. For example, the agent will receive all payments and information from the borrower and distribute them to the lenders.

If the syndicated loan is secured by security interests such as pledges or mortgages, a security agent may be appointed. A security agent holds the security in its own name, but contractually agrees to distribute the proceeds of the security in accordance with the provisions of the relevant loan or intercreditor agreement. Security can pose difficulties on syndication, sometimes requiring confirmations from security providers or the registration of new security. This problem can often be avoided by adopting an English law parallel debt structure.[14] Such a parallel debt structure involves the creation of an additional obligation from the obligors to the security agent pursuant to which the obligors are required to pay the same amounts to the security agent as they are required to pay to the finance parties under the relevant finance documents. Therefore each obligor assumes at least two separate and independent, although parallel, obligations. The additional obligation owed to the security agent is constructed in a way that avoids double liability on the part of the obligors because payment by an obligor to the security agent or trustee proportionately reduces the obligor's obligation to the other finance parties and vice-versa. The security agent is subject to sharing provisions in the facility or intercreditor agreement and upon receipt of funds in discharge of the parallel debt obligation is bound to distribute the proceeds to the relevant finance parties who have a right to them under the relevant documentation

[14] In most jurisdictions, including Bulgaria and Hungary, parallel debt obligations are not expressly legally regulated and may not have been tested by the courts. As a result, there is a small risk of such parallel debt being considered invalid, with similar consequences for the related security interest. This risk is minimised where, as in a typical parallel debt clause, it is clear that the parallel debt would not force the debtor to pay a debt twice. In most cases parallel obligations are governed by foreign law (e.g. English law) and their validity would be assessed with regard to that law, although local law may still be relevant to the question of the enforcement of a judgment based on a parallel debt clause in local courts.

Terms of loan agreements

Recommended form terms

For larger loans, senior facility agreements in the Region are commonly based on the recommended form documentation published by the Loan Market Association ("**LMA**") in London. They are tailored by the inclusion of a number of clauses to deal with local issues. LMA standards and LMA style documentation have been generally absorbed into the local markets and can be said to form the market standard among the leading law firms and those banks that are most active in providing sizeable loans, particularly when English language documentation is required. If a foreign entity takes part in the transaction such as a foreign guarantor or a foreign lender or if the loan is to be syndicated in the international markets, the parties may also elect English law to govern the facility in which case an LMA recommended form agreement will be used as the basis for negotiations.

When a facility is documented in English it is common for most of the security agreements to be documented in English as well, other than any security which must be executed in the form of a notarial deed or which must be registered with a court. An example is a mortgage or pledge which has to be documented in the local language and then submitted to the court or other relevant authority for registration. For the purpose of enforcement, the agreements may also need to be translated into the local language.

Conditions precedent and drawdown mechanics

Conditions precedent are usually documents which the borrower must provide to the lenders after the signing of the loan agreement but before it will be able to request or drawdown any money under the loan.

Conditions precedent across the Region mirror those which are required in other markets. Generally these will include: the borrower's constitutional documents, excerpts from registers, all necessary resolutions and authorisations, certificates signed by authorised officers declaring certain matters to be true, financial statements, reports relating to the transaction being financed or the assets over which security is being given, copies of all relevant documents, legal opinions relating to the capacity of the obligors and their due authorisation of the transaction documents issued by the borrower's counsel and legal opinions as to the legality, validity and enforceability of the finance documents under their governing law issued by the lender's counsel.

In the case of a loan for the acquisition of a company, conditions precedent will include the execution of the acquisition documentation, payment of all necessary equity contributions and the provision of relevant tax, environmental, technical, due diligence and other reports, valuations and regulatory approvals. Legal opinions are also given in favour of the finance parties by the borrower's counsel as to the legality, validity and enforceability of the sale and purchase agreement. All the conditions precedent are in practice only satisfied on the day of the closing of the sale and purchase of shares in the target group.

A conditions precedent checklist is generally circulated and maintained by the lender's counsel, with items being ticked off as they are provided.

Representations and warranties

The main purpose of representations and warranties is to enable the lenders to make certain assumptions on which they are willing to advance funds to the borrower on particular commercial terms and to communicate those assumptions to the borrower. They also prompt the borrowers to disclose any matters which may make the representations untrue.

LMA style representations and warranties have become market standard in the Region with limited modifications. Therefore each of the obligors will be expected to make representations as to its corporate status, the binding nature of the transaction documents, the governing law, its centre of main interests, non-deductibility of tax, the absence of a default, the information and financial statements that were supplied, environmental issues, absence of litigation, security interests, its ownership structure and other deal specific issues. LMA style agreements usually deem certain representations to be repeated on drawdown dates and interest payment dates.

If a misrepresentation is made in the loan agreement then, in most cases, the lender will have a right to refuse to make the loan or to terminate the agreement and demand immediate repayment of the loan if the money has already been advanced. Fraudulent misrepresentations made for the purpose of obtaining a loan can also give rise to criminal liability.

Positive covenants

The purpose of covenants in the loan facility is for the lenders to exercise some control over, and thereby impose some limits on, the future actions of the borrower so that the borrower does not take steps that may increase the credit risks that the lenders took on at the time that they entered into the facilities. In this area as in others, LMA standard covenants have been accepted into market practice in the Region.

Positive covenants usually include undertakings to maintain insurance cover and to comply with authorisations, licences and laws. There may also be particular covenants in relation to the maintenance of a certain ownership or corporate structure. A number of covenants will also be included relating to the perfection of security or the resolution of problems disclosed by the due diligence that could not be carried out before drawdown.

Negative covenants

Negative covenants usually include undertakings not to make disposals or acquisitions of substantial assets, not to diversify away from the company's core business, not to lend funds outside the group and not to make distributions to shareholders. The most important of the negative covenants is the negative pledge, which is an undertaking not to grant security to third parties.

Financial covenants and information

A facility agreement will contain covenants measuring the group's financial performance against certain benchmarks. These will usually include covenants which measure: the group's tangible net worth; "gearing", being the ratio of the group's consolidated net debt against its earnings before interest, tax, depreciation and amortisation; and "interest cover", being the group's earnings before interest and tax against its finance charges.

The borrower will also be required to deliver financial information to the lenders. It is common to require the borrower to deliver annual, half-yearly, quarterly and sometimes monthly financial statements.

Prepayment and repayment

A loan agreement often specifies certain events, which, if they occur, will automatically require the borrower to prepay the outstanding loan. Such mandatory prepayment events usually include illegality, change of control, disposal of substantial assets and, in the case of acquisition financings, disposal of shares through a listing on a stock exchange. In addition, the proceeds of insurance claims are often required to be prepaid under a mandatory prepayment clause.

Apart from scheduled repayments, the lenders can also accelerate the facilities and demand early repayment if an event of default has occurred. Again, LMA standard events of default have become the benchmark in the Region. These typically include non-payment of any amount due under the loan agreement, breach of representations or undertakings, cross-default, change of business, insolvency and insolvency proceedings, unlawfulness of the transaction documents, repudiation of the transaction documents and a material adverse change.

Local banking law may also give a lender who is a bank additional statutory rights to: cancel part of its commitment or decrease the amount of the loan; or terminate the loan agreement where the borrower does not comply with its obligations under the loan agreement or an event occurs that causes the borrower to lose its "creditworthiness". Furthermore, local law may also empower a lender in certain circumstances to demand that additional security be provided in respect of the loan or demand a business recovery plan to be implemented.

Security

Typical security package

The security package to secure a loan typically comprises: registered and financial pledges over shares and bank accounts; enterprise pledges over all of the borrower's assets including rights and moveable assets such as intellectual property rights and inventory and equipment; mortgages over real estate; and assignments of receivables under key contracts such as leases or construction contracts, acquisition contracts and insurance policies. In the case of project financing, the lenders will typically also require step-in rights to be granted to them in relation to key contracts under direct agreements with the relevant third party contractors. Such direct agreements will require the lenders to receive notice before a contract is terminated by the borrower's counterparty and will allow the lenders to take over the borrower's rights and obligations under the contract if they choose to cure the borrower's default. Lenders also typically require security by way of assignment or pledge over loans provided to the borrower by shareholders or related companies.

In addition, lenders in some countries may require a submission to execution. This is not strictly a security instrument but rather a tool to expedite the execution of a claim by a bailiff. It allows execution proceedings to be initiated without litigation as to the merits of the claim, and if such litigation results the onus to bring the claim and pay the court fees lies on the borrower. The form of this instrument may vary from country to country. In the Czech Republic, Bulgaria or Poland, for example, a notarial deed evidencing the existence of the secured obligation (whereby a debtor as the security provider agrees that this record can be used as a title for enforcement of such obligation) can be executed by a lender and a debtor before a notary. This deed then gives a lender the right to enforce the security without a need to obtain a court judgment.[15]

Some security, for example a Polish mortgage, is enforced by court enforcement proceedings, which are conducted by a court bailiff. The process of mortgage enforcement is lengthy, and is therefore usually treated by lenders as a "defensive" security which encumbers the real estate and maintains the lender's priority as against third parties, but cannot ensure quick recovery of money for the repayment of the secured loan. A different part of the security package, the registered pledge over the Polish company's shares, can be viewed as an "offensive" security. In some jurisdictions, this can be enforced quickly and easily by the giving of a notice and allows the lender to take control of the whole company whose shares have been pledged, including all of its assets.

In the area of enforcement, there are some notable differences among the jurisdictions in the Region. In some countries, including the Czech Republic and Hungary, the parties are free to agree on out-of-court enforcement methods for all or some types of security. As already noted above in relation to "submissions to execution", in some countries, the law also allows for the faster enforcement of security in certain cases. For example a lender to a Bulgarian borrower may obtain an enforcement order from the court for receivables secured by a mortgage based only on an application to the court accompanied by relevant evidence. The court could then issue a writ of execution, without a full trial, on the basis of which a collection procedure can be opened.[16]

Some security interests do not require registration. They are effective from the date of signing of the security agreement, however, to make them effective vis-à-vis third parties (i.e. to 'perfect' them), it may be required to notify certain persons, for example, the debtors of the assigned receivables or the company whose shares are pledged. On the other hand, mortgages and registered pledges have to be registered in the relevant register.

Refinancing and existing security

If the borrower has already borrowed money and granted security, lenders under a new facility may require that such loans are repaid and security is released at the time that they advance their loans. Existing lenders may have prior ranking security or may benefit from negative pledge covenants in their financing documentation. They will not release the security until the money that is owed to them has been paid in full. Consequently, it is common for the new lenders to sign a so-called 'unwinding' agreement with the existing lenders whereby the existing lenders consent to the pre-closing creation of second ranking security in favour of the new lenders and agree to release their security after their secured loans have been refinanced by the new lenders. In exchange the new lenders commit to release or 'unwind' the second ranking security if closing does not occur.

[15] However, note that a debtor may still challenge the validity of this deed in court during the enforcement proceedings and the relevant security cannot then be enforced prior to the court's final decision on this challenge.

[16] The debtor is not left defenseless and could object to such collection on the grounds, for example, that it had paid the debt.

Types of security

Bulgaria

Type of security interest	Assets which the security interest can cover	Means of enforcing the security interest
Special pledge	May be established over receivables, book entry securities and movables (other than ships and aircraft); equity shares in general and limited partnerships, limited partnerships with shares or limited liability companies; aggregate of receivables, of machines and equipment, of goods or materials and of book entry securities; rights in patents for inventions, utility models, registered marks, industrial designs, topologies of integrated circuits and certificates for plant varieties and animal breeds; and commercial enterprises.	i) The pledgee submits to the Special Pledge Registry a notice to commence execution; ii) the pledgee notifies the pledgor of the enforcement; iii) the pledgee is entitled to sell the assets in a private procedure; and iv) amounts received from the sale are deposited with a depository selected by the pledgee. The depository distributes the proceeds to the pledgee and other creditors having rights over the assets or proceeds.
Commercial pledge	Movables, including bearer securities, that are delivered to the pledgee and are under its control.	The pledgee may sell the pledged assets without court intervention, but only if this is explicitly agreed in the pledge agreement.
Financial collateral arrangement	Monetary claims, financial instruments and credit claims which, under a financial collateral arrangement, are used to secure or otherwise cover the performance of certain financial obligations.	Without court intervention: by acquisition or sale of the subject of the financial collateral or by setting off a monetary claim used as collateral against the relevant financial obligations.
Civil law pledge	Receivables and movables.	By obtaining a writ of execution from the court and enforcement proceedings by a court bailiff.
Commercial lien	Movables and securities of the debtor received in a lawful manner.	Enforced by the obligee retaining in its possession the movables and the securities.
Aircraft pledge	Aircraft.	Enforced by obtaining a writ of execution from the court and enforcing by a court bailiff.
Mortgage	Real estate and superficies right.	Enforced by obtaining a writ of execution from the court and enforcement proceedings by a court bailiff.
Maritime mortgage	Ships.	Enforced by obtaining a writ of execution from the court and enforcment proceedings by a court bailiff.

Czech Republic

Type of security interest	Assets which the security interest can cover	Means of enforcing the security interest
Pledges/ mortgage	Movables, receivables (existing or future), enterprise, shareholding interests, book entry shares, certain intellectual property rights; and real estate.	Enforced, in general, by: (i) a court sale of the pledged/mortgaged assets; (ii) a private sale authorised by a court order; or (iii) a sale of the pledged/mortgaged assets in a public auction. There is a specific enforcement regime in relation to certain types of assets, such as listed shares, which can be sold through a licensed securities broker, or unlisted shares, which can be sold in a public auction. Also, a shareholding interest can be sold in a public tender or in a public auction.
Security transfer of right	Typically relates to ownership rights.	Enforced in the way agreed in the agreement on security transfer. According to the majority view in the market, it is not possible to agree on appropriation of assets transferred by a security transfer.
Security assignment	Typically relates to receivables (existing or future) arising under commercial contracts, insurance policies and bank account agreements.	The secured lender does not need to conduct a court auction and can sell the receivables itself and use the proceeds to satisfy the debt.
Financial collateral arrangements	Only certain types of assets qualify as financial collateral, for example: securities, cash and receivables for payment of cash. Financial collateral arrangements can, in general, only be established in favour of lenders that are financial institutions.	Enforced: (i) in the way agreed in the agreement on financial collateral arrangement; (ii) otherwise by the sale of the financial collateral (if not specified in the agreement, then in a manner corresponding to the practice of the relevant financial market) or the set-off of the value of the financial collateral against the secured receivable.

Hungary

Type of security interest	Assets which the security interest can cover	Means of enforcing the security interest
(1) Registered securities defined in the Hungarian Civil Code		
Real estate mortgage	Registered real estate.	Enforced by: (i) the parties, outside of court proceedings, if so agreed; (ii) standard court enforcement procedure; (iii) notarial enforcement; or (iv) a simplified court enforcement procedure.
Real estate call option	It is a common practice in Hungary to create a call option right over real estate. A call option may be established over other types of assets as well.	(i) The buyer or a person appointed by the buyer may exercise the call option right by the delivery of a unilateral option declaration to the seller upon the occurrence of an enforcement event. (ii) The ownership right of the real estate is transferred to the buyer or the appointed person on the date the option declaration has been duly delivered. (iii)The buyer or the appointed person will become entitled to claim the registration of its ownership right with the relevant Land Registry from the date when the ownership has been validly transferred.
Fixed charge over moveable assets	Moveable assets. The secured assets remain in the possession of the security provider, who is entitled to use them. However, the security provider must maintain the property in good condition.	Enforced by: (i) the parties, outside of court proceedings, if so agreed; (ii) standard court enforcement procedure; (iii) notarial enforcement; or (iv) a simplified court enforcement procedure.
Quota charge	The usual method is to take a lien on rights (as business quotas represent rights). The quota pledge agreement must be registered at the relevant court of registration.	Enforced by: (i) the parties, outside of court proceedings, if so agreed; (ii) standard court enforcement procedures; (iii) notarial enforcement; or (iv) a simplified court enforcement procedure.
Floating charge	A floating charge can be established over the whole estate or an independent economic division of a company, and can cover all present and future assets of the security provider.	Enforced by: (i) the parties, outside of court proceedings, if so agreed; (ii) standard court enforcement procedure; (iii) notarial enforcement; or (iv) a simplified court enforcement procedure.

Type of security interest	Assets which the security interest can cover	Means of enforcing the security interest
IP pledge	Security can be taken by a lien over intellectual property rights.	Enforced by: (i) the parties, outside of court proceedings, if so agreed; (ii) standard court enforcement procedure; (iii) notarial enforcement; or (iv) a simplified court enforcement procedure.
(2) Unregistered securities defined in the Hungarian Civil Code		
Possessory pledge over moveable assets	Moveable assets can be secured by a pledge. The pledged assets must be handed over to the secured creditor who must maintain the pledged property in good condition and return it upon termination of the pledge. No registration is required.	Generally enforced by: (i) the parties, outside of court proceedings, if so agreed; (ii) standard court enforcement procedure; (iii) notarial enforcement; or (iv) a simplified court enforcement procedure.
Charge and/or assignment of contractual rights and receivables	Security over contractual rights (can be taken by a charge and/or assignment of rights and receivables).	There are a number of methods of enforcing a charge or an assignment. The most straightforward way is to demand that the underlying obligor perform its obligations towards the chargee/assignee.
Security deposit agreement over shares	A security deposit qualifies as financial collateral under the EU Financial Collateral Directive. A security deposit could be created over cash, financial instruments (such as shares) and loan participations.	The security deposit (being financial collateral) enables the beneficiary to satisfy its claims directly from the security interest, without the need to enter into a formal sale process (i.e. it may acquire the cash/shares upon enforcement). Settlement should be agreed by the parties in advance (e.g. calculation of the price on which sale or direct acquisition may take place).
(3) Securities not defined in the Hungarian Civil Code		
Aircraft and vessel mortgage	There are separate registers held by the aviation and shipping authorities. With respect to the airframe, security is available in the form of a mortgage while the engines could be the subject of separate security in the form of a fixed charge. As regards ships, the same may apply also in respect of the hull and the engines.	Enforced by: (i) the parties, outside of court proceedings, if so agreed; (ii) standard court enforcement procedures; (iii) notarial enforcement; or (iv) a simplified court enforcement procedure.

Poland

Type of security interest	Assets which the security interest can cover	Means of enforcing the security interest
Registered pledges	Registered pledges can be established over movables, shares, receivables (existing or future) and transferable proprietary rights, with the exception of real estate and ships. An “enterprise pledge” can be established over the collection of all the pledgor’s transferable assets (other than real estate).	Enforced by: (i) the parties through self-help seizure outside of court proceedings, if so agreed; (ii) standard enforcement procedure by a court bailiff; (iii) the sale of the pledged assets in a public tender; and (iv) in relation to the “enterprise” pledge, receivership or leasing of the pledgor’s enterprise.
Financial pledge	Financial pledges can be established over securities, shares in limited liability companies and receivables under bank accounts. Financial pledges can only be established in favour of lenders who are banks or financial institutions and cannot be established by natural persons.	Enforceable by a court bailiff pursuant to the Civil Procedure Code or, subject to contractual election by the parties, through: (i) a transfer of title to the collateral to the creditor; (ii) a sale by the creditor; or (iii) a right of use of collateral by the creditor.
Civil law pledge	A civil law pledge may be established over movable assets including receivables, bills of exchange and intellectual property rights.	Enforced through time consuming proceedings by a court bailiff.
Security transfer of ownership	Movables, for example inventory, vehicles, plant and equipment. The lender may allow the debtor to retain possession of the movables.	Since the lender has title, it is free to dispose of the movables upon default by the debtor. If the lender does not have possession of the movables and the debtor objects to returning them, the lender can only recover possession through court proceedings. But in bankruptcy, the bankruptcy officer (not the secured creditor) is responsible for realising the value of the collateral.
Security assignment	Typically it relates to receivables (existing or future) arising under commercial contracts, leases, insurance policies and bank account agreements.	The assignee may bring proceedings directly against the underlying debtor of the assigned receivable who, after receiving notification and instructions to pay the assignee, does not discharge the assigned obligation. But in bankruptcy, the bankruptcy officer (not the secured creditor) is responsible for collecting the assigned debt.
Mortgage	Real estate.	Court enforcement proceedings which are conducted by a court bailiff.
Maritime mortgage	Ships.	Similar to mortgages over real estate.

Romania

Type of security interest	Assets which the security interest can cover	Means of enforcing the security interest
Immovable mortgage	Real estate (including rights to use the land or superficies rights in the land (e.g. rights in buildings on the land)).	In case of enforcement, the bailiff may: (i) allow the debtor to sell the asset himself; or (ii) sell the asset by means of public auction or direct negotiation.
Movable mortgage	Receivables, bank accounts, shares, intellectual property rights, natural resources to be extracted (i.e. oil, gas, mineral resources), livestock, crops, equipment and any other movable assets, tangible or not.	The creditor may choose to enforce the movable mortgages pursuant to either: (i) the enforcement procedure provided by the Romanian Civil Code; or (ii) the enforcement procedure provided by the Romanian Code of Civil Procedure. According to the Civil Code provisions, in the event of default, the creditor has the right to choose between: (i) selling the mortgaged asset (by means of public auction or direct sale, in a commercially reasonable manner); (ii) taking over the mortgaged asset on account of the secured obligations; and (iii) taking over the asset for administration purposes. If the enforcement is made in accordance with the Code of Civil Procedure, the bailiff may: (i) allow the debtor to sell the asset himself; or (ii) sell the asset by means of public auction or direct negotiation.
Mortgage over the universality of assets assigned to the activity of an enterprise	The universality (or entirety) of present and future movable assets owned by the mortgagor at any moment and assigned to the activity of an enterprise.	Enforced in accordance with the rules set out above for movable mortgages.
Mortgage over shares	Shares in limited liability companies and/or joint stock companies.	Enforced in accordance with the rules set out above for movable mortgages.
Mortgage over bank accounts	Bank accounts.	Specific rules for enforcement are set out in the Civil Code: (i) set-off between the secured amount and the amounts in the bank account; and (ii) ordering the credit institution where the bank account is opened to release all sums in the account to the secured creditor.
Mortgage over receivables	Receivables.	Specific rules for enforcement are set out in the Civil Code: (i) requesting payment from the underlying debtor; and (ii) selling the receivable, in any case, within the limits of the secured amount.

Acquisition finance for the purchase of a company

Within the European Union, a financial assistance prohibition applies to public companies. A public company, often with its shares traded on a stock exchange, may not finance directly or indirectly the acquisition of or subscription for its own shares. Therefore it cannot grant loans, provide security or make advance payments in order to support its own acquisition. Any transaction concluded in breach of this prohibition may be void. However, there may be exemptions to the prohibition in the relevant local laws.

Some jurisdictions in the Region also choose to extend this rule to a greater or lesser extent. Under Czech law private limited liability companies are also prohibited from financing the direct or indirect acquisition of their shareholding interests and Hungarian law also applies the prohibition to companies of this type. In Bulgaria the prohibition applies to joint stock companies that are not public. No explicit prohibition exists with respect to limited liability companies and the prevailing opinion is that those companies may grant loans for or provide security on the acquisition of their own shares. However, it should be noted that given the possible risks, Bulgarian banks prefer not to receive security from the targets of acquisitions which they finance.

If financial assistance restrictions apply the target of the acquisition will not be able to provide guarantees or security to the bidder's lenders before or upon closing. But the lenders will wish to obtain security over the assets and cash flows of the target as soon as possible after closing. The target might be able to provide some economic support to the bidder through the payment of dividends, the transfer of some of its assets or business to the bidder or the payment of lease, service or management fees. Once the target has been delisted, the bidder will normally progress to a debt push down to the assets of the target. The usual way of effecting a debt push down is to transform the target from a public company into a limited liability company or to merge it with the bidder (which is usually a private limited liability company and so not subject to financial assistance limitations) in such a way that the bidder is the surviving entity. The merged entity then assumes the bidder's repayment obligations under the financing agreements. However, the advisability of a merger will depend on the particular circumstances as a merger could cause tax or regulatory problems if the target has tax deductible losses to be carried forward by the bidder or holds licences that are important for the business that could be infringed due to the merger.

The provisions of a facility agreement relating to the acquisition of a company listed on a stock exchange usually reflect the requirements and steps described above. The facility usually includes a guarantee facility pursuant to which a bank guarantees the funds for the tender offer that, once drawn, converts to an advance under the facility. The facility agreement also contains undertakings relating to the tender offer such as not to amend its terms without the agent's approval, deadlines for squeezing-out minority shareholders, delisting and conversion into a limited liability company or merger with the bidder, and conditions subsequent requiring the creation of security by the target once it has been transformed into a limited liability company or merged.

As regards security, as described above, initially the target will not be able to provide security to the bidder's lenders in relation to the acquisition debt, therefore, the only available security relating to the target will be over the shares in the target. If the acquisition is combined with the refinancing of existing indebtedness of the target (which is usually the case), the target will grant security in relation to the refinancing debt.

Bonds

Introduction

An alternative method for raising debt finance is the issue of debt securities. Debt securities are a form of financial instrument where an issuer promises to repay the investors the amount borrowed on a later specified date, usually with interest. There are different types of debt securities, often distinguishable by the length of their maturity period, which can be anything from less than one year to decades.

In some countries of the Region, such as Bulgaria, debt securities may be issued only by a company formed as a joint stock company and the public offering of bonds is only allowed for companies that have existed for at least two years and have adopted at least two annual financial statements.

There may be several reasons why a company may choose to issue debt securities instead of borrowing from a lender. This will largely depend on how much money needs to be raised and the size and creditworthiness of the borrower. The main advantages of issuing debt securities over borrowing in the syndicated loan market are the following:

- the borrower may be able to reach a wider group of potential investors compared to when borrowing under a syndicated loan and this way the borrower may be able to obtain a more competitive price for borrowing if the demand is high from investors;

- debt securities usually have fewer and less restrictive covenants than a syndicated loan;

- debt securities may be easily traded by investors, who do not need to wait to the maturity date to realise their investment by selling the debt securities on international capital markets;

- debt securities often have fixed interest rates whereas syndicated loans usually have a floating rate of interest;

- security is often not given to holders of debt securities while syndicated loans are more likely to be secured; and

- disclosure requirements may be more stringent for syndicated loans, where the lenders will conduct extensive due diligence on the borrower and will monitor the borrower's activities more actively during the life of the loan.

Types of bonds

There are different types of bonds including:

- Eurobonds – these are bonds denominated in a currency foreign to the country where they are issued. For example, USD denominated bonds issued by a Polish or Hungarian issuer. The primary clearing systems in which Eurobonds will be held and traded are Euroclear and Clearstream in Europe.

- Domestic bonds – these are bonds dominated in the currency of the country where they are issued and regulated by national law. The national clearing systems for each country in which the bonds would be registered are outlined in the table below.

Country	National Clearing System
Bulgaria	Central Depository AD (publicly offered dematerialized bonds)
Czech Republic	Central Securities Depository
Hungary	KELER Securities Clearance System - operated by the Central Clearing House used mainly by the participants on the Budapest Stock Exchange
Poland	National Depository for Securities
Romania	Central Depository
Slovakia	Central Securities Depository

Both Eurobonds and domestic bonds may be categorised into different types of bonds depending on their characteristics. Some examples of these are outlined below:

- Fixed rate bonds – bonds with a fixed interest rate, which is set when the bond is issued and remains unchanged until maturity. The interest (or “coupons”) will be payable annually or semi-annually before the bond’s maturity.
- Variable rate bonds – bonds with a rate of interest that changes in a specified way and at specified times during the term of the bond.
- Floating rate bonds – bonds with a fluctuating interest rate based on a benchmark rate (such as EURIBOR, LIBOR, WIBOR depending on the currency of the bond) plus a margin.
- Zero coupon bonds – bonds bought at less than their face value (at a discount) with the face value being repaid to investors at maturity. These bonds do not pay any interest.
- Ordinary bonds or privileged bonds – depending on the rights granted to the bondholders. These can be:
  - o materialized or dematerialized; or
  - o convertible into shares (which could be subject to restricted transferability to third parties).

The laws in the Region also usually regulate secured bonds. One example are the so-called mortgage bonds secured by a mortgage on one or more assets. These bonds are typically backed by the holding of real estate and/or other property such as equipment. In a default situation, mortgage bondholders have a claim to the underlying property and could sell it off to compensate for the default. It is also sometimes possible for these bonds to be secured by pledges.

The form of a bond

In Bulgaria, Hungary and Poland, the issuer can choose whether to issue bonds in document form or dematerialised form. For a document form bond, rights under the bonds are created at the time of issue, while for a dematerialised form bond, the rights under the bond are created at the time of its recording in the register. Dematerialised bonds can also be traded on a stock exchange.

Key regulatory issues

Since all the countries of New Europe are members of the European Economic Area ("**EEA**"), there are several regulatory obligations that issuers must comply with when listing debt securities on regulated markets in the EEA. For example, the Prospectus Directive (2003/71/EC) (as amended), which has been implemented in all New Europe countries, requires an issuer to produce a prospectus when making an offer of debt securities to the public within the EEA; and when an application is made for debt securities to be traded on an EEA regulated market (which includes all main EEA exchanges).

However, there are exemptions in the following cases:

- the offer of debt securities is only made to qualified investors;
- the issue of the debt security is valued at less than a specified threshold, e.g. EUR 100,000;[17]
- a private placement is offered to less than 150 individuals in each country where the offer is made (excluding qualified investors); or
- the total minimum consideration per investor is more than a particular threshold, e.g. EUR 100,000.

[17] The thresholds referred to above may vary for different countries in the Region, for example, in the Czech Republic the threshold is EUR 1,000,000.

It is important to note that even if the bonds are to be listed on a non-EEA market, these regulations will still apply if they are to be offered to members of the public within the EEA. The supervision and compliance with EU regulatory requirements is overseen by different regulatory bodies in each country outlined in the table below.

Country	Regulatory Body
Bulgaria	Financial Supervision Commission (under Financial Supervision Commission Act effective 3 March 2003)
Czech Republic	The Czech National Bank (under Act No. 6/1993 Coll., on the Czech National Bank, as amended)
Hungary	Hungarian Financial Supervisory Authority *(Pénzügyi Szervezetek Állami Felügyelete*) (under Act No. CLVIII of 2010 on the Financial Supervisory Authority)
Poland	Financial Supervision Commission (under Supervision Financial Act, dated 21 July 2006)
Romania	Financial Supervisory Authority (formerly National Securities Commission)
Slovakia	National Bank of Slovakia

Therefore, to issue debt securities within the EEA a prospectus will be required which must be approved by the relevant national regulatory body, subject to certain exemptions. There are also other EU regulations that issuers will need to comply with when issuing debt securities within the EEA area, such as ongoing disclosure obligations.

There may be US law implications even when issuing securities outside of the US. Debt securities are usually issued as either Reg S bonds, which cannot be offered to US investors or US beneficial owners, or Rule 144A bonds, which can be offered to US qualified institutional buyers. Therefore, US securities regulations should be considered before issuing any debt security.

7. Competition and merger controls

7. Competition and merger controls

Introduction

This section summarises the key areas of antitrust law which apply throughout New Europe.

Antitrust law in the Region follows a number of general principles and shares a number of common concepts. The main reason behind this is that all of the countries in New Europe are members of the EU and, therefore, must apply EU law as part of their internal legislative systems. Since its establishment in 1957, the EU has created and enforced antitrust rules which cover, among other things, areas such as merger control, abuse of a dominant position, horizontal cartels and vertical restraints.

One of the criteria for the accession of the countries of the Region to the EU (as all of the countries involved had economies run according to socialist principles) was the requirement to create and standardise relevant antitrust rules. In order to meet the membership requirements, New Europe followed Western European examples and established their own antitrust regulations which are based on and, therefore, mostly mirror those set out in the TFEU.

Set out below is a explanation of when and how the EU and/or the national antitrust rules apply.

Merger control regime to be applied – "it is better to prevent than to cure"

Depending on the size of the transaction, either the EU or the relevant national merger control rules apply.

The EU merger control regime

The EU merger control rules apply to large-scale international transactions measured according to cumulative turnover thresholds (i.e. transactions have an "**EU dimension**"). These transactions must be notified to the European Commission (the "**Commission**"). The rules are set out in Council Regulation (EC) No. 139/2004 (the "**EUMR**"). Once a transaction qualifies for notification to the Commission, the EU national authorities are prevented from applying their own merger control rules. There are a few exceptions to this rule, according to which a transaction might be referred by the Commission to a national competition authority or vice versa. The aim of these exceptions is to determine the best authority to deal with the given transaction.[18]

How to decide whether to notify a transaction to the Commission?

Generally, all "concentrations" with an EU dimension must be notified to the Commission before they are implemented.

The "change of control" test

According to the EUMR, concentrations include:

(i) mergers;
(ii) acquisitions (i.e. acquisition of control);
(iii) as well as structural so called full-function joint ventures (including venture capital transactions) that perform, on a lasting basis, all the functions of an autonomous economic entity. The determining factor is whether the transaction will lead to a lasting change in (direct or indirect) control over one or more undertakings (businesses).

[18] When the Commission has jurisdiction to deal with a case under the EUMR, it is the sole competent authority in the EEA, which means that it exercises its powers not only with respect to the EU Member States, but also with respect to the territories of the EFTA States (i.e. Switzerland, Norway, Iceland and Liechtenstein).

The definition of control is very broad. It is sufficient that one party acquires *"the possibility of exercising decisive influence"* over another company. The minimum threshold for decisive influence is the ability to veto strategic decisions affecting the business policy of the target (in particular, relating to the budget, the business plan, major investments or the appointment of senior management). In contrast, veto rights that are normally accorded to minority shareholders in order to protect their financial interests as investors are not viewed as conferring decisive influence.

Control can be exercised on a sole or joint basis. Sole control exists if only one party is able to exercise a decisive influence over the target company. If more than one party is able to exercise a decisive influence over the target company, then such parties will be in a position of joint control. Control may also arise on a *de facto* basis, regardless of the shareholding structure concerned.

The EUMR excludes from the definition of concentrations:

- certain acquisitions by credit institutions, insurance companies or other financial institutions holding securities on a temporary basis;
- acquisitions by a liquidator or similar officeholder in the context of insolvency proceedings;
- certain acquisitions by financial holding companies (without involvement in the day-to-day management of the undertaking concerned); and
- intra-group restructurings.

Does the transaction have an EU dimension?

The level of the parties' relevant undertakings effecting the concentration turnover (worldwide and within the EU) determines whether a concentration has an EU dimension. This is irrespective of whether or not the undertakings effecting the concentration have their seat or their principal fields of activity in the EU, provided they have substantial operations there.

What counts as turnover?

The relevant turnover is the amount derived in the preceding financial year from the sale of products or the provision of services after the deduction of sales rebates and taxes directly related to turnover (such as VAT) and after the exclusion of any intra-group sales.

Different rules apply to credit and other financial institutions.

The European Central Bank provides exchange rates in euro for certain non-participating currencies in its monthly bulletin available at www.ecb.eu.

Identifying the "undertakings concerned"

The undertakings concerned are:

- the merging companies, in the case of a merger;
- the bidder and the target (but not the seller), in the case of a public bid;
- the buyer and the target (but not the seller), in the case of an acquisition of sole control; or
- the parties that will be exercising joint control after completion of the transaction, in the case of a joint venture. Where joint control is established over a pre-existing company, this company will also count as one of the undertakings concerned.

The thresholds

A concentration has an EU dimension where:

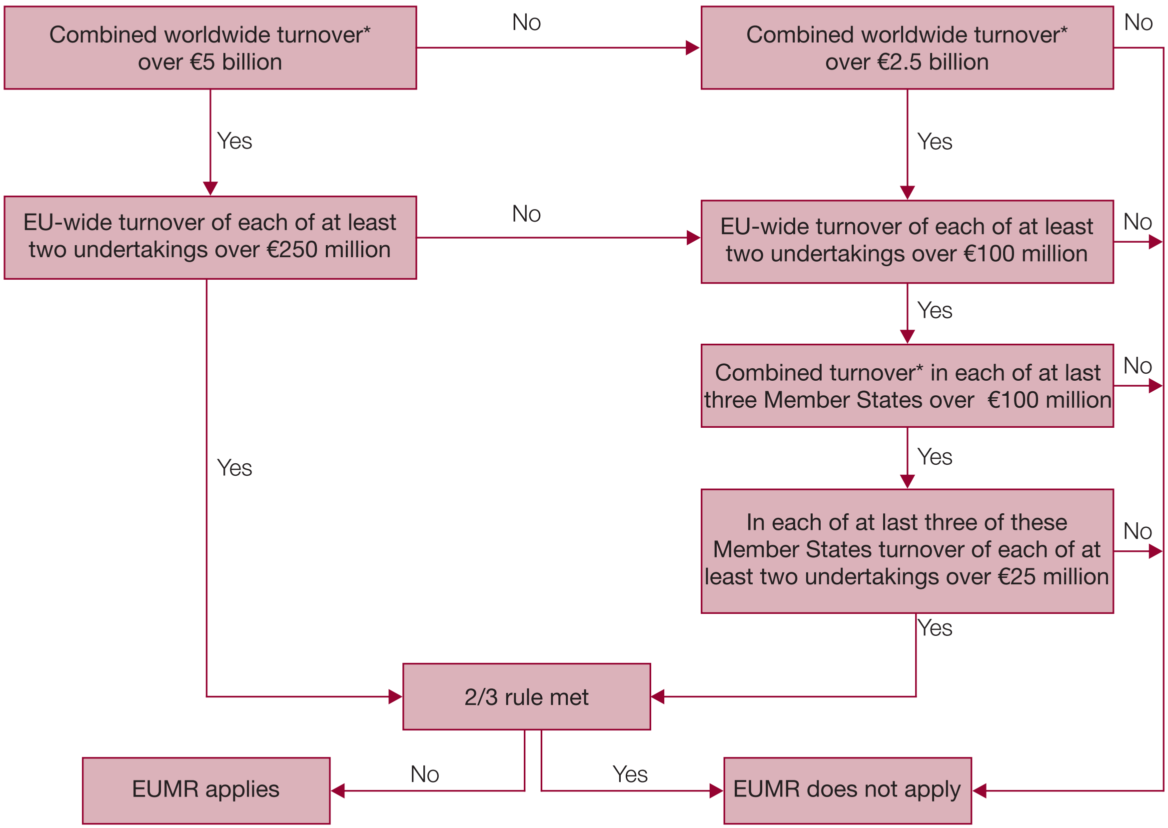
- the combined aggregate worldwide turnover of all of the undertakings concerned is more than EUR 5 billion; and
- the aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million; unless
- each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. This is intended to exclude concentrations where the effects are felt primarily in a single Member State, since in these circumstances the national competition authority is better suited to dealing with it.

In addition, a concentration which does not meet the above thresholds has, nevertheless, an EU dimension where:

- the combined aggregate worldwide turnover of all of the undertakings concerned is more than EUR 2.5 billion; and
- the aggregate EU-wide turnover of at least two of the undertakings concerned is more than EUR 100 million; and
- in each of at least three Member States, the combined aggregate turnover of all of the undertakings concerned is more than EUR 100 million; and
- in each of the three Member States mentioned above, the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million; unless
- each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.

The purpose of the thresholds set out in the third and fourth bullet points is to catch concentrations of a smaller size where it is likely that the transaction would otherwise have been caught by multiple national merger control regimes, given that the parties carry on, jointly and individually, a minimum level of activities in three or more Member States.

The EUMR thresholds are set out in the following flow-diagram.



* All undertaking concerned

What is the relevant merger authority at the EU level?

The relevant merger authority at the EU level is the Commission in Brussels. EUMR notifications must be submitted to the Commission's Directorate-General for Competition (the "**DG COMP**"), who will investigate them using sector-specialised units, e.g. for Basic Industries, Energy, Transport etc.

Further information about the DG COMP can be found on its website at http://ec.europa.eu/competition/index_en.html (available in English).

The DG COMP's decisions concerning merger cases are subject to individual judicial review by the Court of Justice of the European Union (the "**ECJ**") based in Luxembourg. Further information about the ECJ, can be found on its website at www.curia.europa.eu (available in all the official languages of the EU).

Member States may carry out a parallel investigation of transactions that are investigated under the EUMR, however, only concerning non-competition aspects, to protect certain legitimate interests, such as public security, plurality of the media and prudential rules.

Notification of a concentration

All concentrations with an EU dimension must be notified to the DG COMP prior to their implementation and following:

(i) the conclusion of the agreement;
(ii) the announcement of a public bid; or
(iii) the acquisition of a controlling interest.

Notification may also be made where the undertakings demonstrate to the Commission a good-faith intention to conclude an agreement (i.e. a letter of intent) or they have publicly announced an intention to make a bid, provided the intended agreement or bid would result in a concentration with an EU dimension. In principle, the concentration cannot be completed before it has been cleared by the Commission. An exception to this rule applies for public bids and for a series of transactions in securities, by which control is acquired from various sellers. These can proceed so long as the transaction is notified without delay and the bidder/acquirer does not exercise the voting rights attached to the securities in question, or does so only to maintain the full value of its investments based on a derogation granted by the Commission.

The Commission may, on request, grant a derogation from the obligations presented above. The request to grant a derogation must be reasoned. Such a derogation may be granted subject to conditions and obligations in order to ensure effective competition. A derogation may be applied for and granted at any time, either before notification or after the transaction.

The Commission's review procedure

The investigation is conducted in two phases. The vast majority of transactions are cleared after the first phase. The EC must make a decision within binding time limits. If it fails to do so, the concentration is deemed to be cleared.

First phase – the DG COMP examines the case as soon as it is received. The Commission has 25 working days in which to make its initial assessment. The 25 working day period begins on the working day following that of the receipt of a notification or, if the information to be supplied with the notification is incomplete, on the working day following that of the receipt of the complete information. This period shall be extended to 35 working days where the parties offer commitments to have the transaction cleared or where a Member State makes a request that the merger be referred to it.

Second phase – the Commission has an additional 90 working days from the initiation of the second phase of the proceedings in which to approve or prohibit the transaction. This period is extended to 105 working days where the parties offer commitments, unless they are offered less than 55 working days after the initiation of the proceedings. The 90 and 105 working day periods may also be extended once at the request of the parties within 15 days working days after the initiation of proceedings, or at any time thereafter by the Commission with the agreement of the parties. The total duration of any extension(s) must not exceed 20 working days.

Powers of decision of the Commission

Depending on the circumstances of a transaction, the Commission may issue three kinds of decision:

- an unconditional decision – if the Commission finds the concentration compatible with the internal market;

- a conditional decision – the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market; or

- a prohibition decision – if the Commission finds the concentration incompatible with the internal market and there is no possibility for the undertakings concerned to offer commitments, it may prohibit the concentration.

Sanctions

Prohibition decisions – where the Commission declares a concentration to be incompatible with the internal market in circumstances where the transaction has already been implemented, it has wide powers to restore conditions of effective competition. In particular, it may require any undertakings or assets brought together to be separated or the cessation of joint control.

Fines – the Commission has the power to impose fines on persons or undertakings committing procedural and substantial infringements. Failure to make a notification or the implementation of the concentration before clearance is obtained may result in substantial fines being imposed on the undertakings concerned of up to 10% of their aggregate worldwide turnover. In 2009, the Commission fined a company EUR 20 million for the implementation of a concentration without having first received clearance under the EUMR.

Transactions without an EU dimension – notification of a concentration to national competition authorities of Member States

If a transaction does not exceed the thresholds presented above (i.e. does not have an EU dimension), it may still be subject to notification to the national competition authorities of the relevant Member State. The table below sets out the jurisdictional thresholds in effect in the Region.

Country	Authority/Legal act	Necessity of notification
Bulgaria	Commission for the Protection of Competition (the "**CPC**") (Комисия за защита на конкуренцията). Law on the Protection of Competition of 28 November 2008 (the "**LPC**")	Subject to **mandatory notification** where: • the combined turnover in Bulgaria of all of the undertakings concerned in the year preceding the year of the concentration exceeded BGN 25 million; **and** • the turnover in Bulgaria of each one of at least two of the undertakings concerned in the year preceding the year of the concentration exceeded BGN 3 million (approx. EUR 1.533 million) **or** the turnover in Bulgaria of the target in the year preceding the year of the concentration exceeded BGN 3 million (approx. EUR 1.533 million).
Czech Republic	Office for the Protection of Competition (the "**OPC**") (Úřad pro ochranu hospodářské soutěže). Consolidated Act on the Protection of Competition (the "**APC**")	Subject to mandatory notification where: • the combined turnover of the undertakings concerned in the last financial year in the Czech market exceeded CZK 1.5 billion (approx. EUR 61 million) **and** at least two of the undertakings concerned each achieved a turnover of at least CZK 250 million (approx. EUR 10 million) in the Czech market in the last financial year; **or** • the turnover of: - the target (if the proposed transaction is structured as the acquisition of an undertaking's shares, ownership interests or membership interests on the basis of an agreement, or any other means that allows the acquirer to control such undertaking); or

Country	Authority/Legal act	Necessity of notification
Czech Republic cd		- at least one of the undertakings establishing a joint venture (if the transaction is structured as the establishment of a joint venture); or - the acquired business (or a part thereof) or the acquired assets (if the proposed transaction is structured as the acquisition of a business, a part thereof or an acquisition of assets); or - at least one of the merging or amalgamating undertakings (if the proposed transaction is structured as a merger), in the last financial year in the Czech market exceeded CZK 1.5 billion (approx. EUR 61 million) **and** the worldwide turnover of one of the other undertakings concerned in the last financial year exceeded CZK 1.5 billion (approx. EUR 61 million).
Hungary	Hungarian Competition Authority (the "**HCA**") (Gazdasági Versenyhivatal). The Hungarian Competition Act (the "**CA**")	Subject to mandatory notification where: • the combined worldwide turnover of the undertakings concerned exceeded HUF 15 billion (approx. EUR 53 million) in the previous financial year; **and** • there are at least two undertakings concerned whose combined turnover exceeded HUF 500 million (approx. EUR 1.789 million) each in the year preceding the merger. • In relation to concentrations otherwise not exceeding the HUF 500 million threshold, concentrations which took place within the two year period preceding the concentration in question between the same parties should also be taken into account.

Country	Authority/Legal act	Necessity of notification
Poland	President of the Office of Competition and Consumer Protection (the "**OCCP**") (Prezes Urzędu Ochrony Konkurencji i Konsumentów). The Competition and Consumer Protection Act (the "**ACCP**")	Subject to **mandatory notification** where: • the combined worldwide turnover of the undertakings concerned (including the seller) in the financial year preceding the year of the notification exceeded the equivalent of EUR 1 billion; **or** • the combined turnover in the territory of Poland of the undertakings concerned (including the seller) in the financial year preceding the year of the notification exceeded the equivalent of EUR 50 million, **except when:** (i) the turnover of the undertaking over which control is to be taken; or (ii) the turnover achieved by the property (a part of another undertaking's property to be acquired) did not exceed in the territory of Poland in any of the two financial years preceding the notification the equivalent of EUR 10 million.
Romania	Romanian Competition Council (the "**RCC**") (Consiliul Concurentei). The Romanian Competition Law (the "**RCL**")	Subject to **mandatory notification** where: • the combined worldwide turnover of the undertakings concerned in the previous financial year exceeded EUR 10 million; **and** • the turnover in Romania of at least two of the undertakings concerned exceeded EUR 4 million.

Country	Authority/Legal act	Necessity of notification
Slovakia	Antimonopoly Office of the Slovak Republic (the "**AOSR**") (Protimonopolný úrad Slovenskej republiky). The Act on the Protection of Competition (the "**APC**")	Subject to **mandatory notification** if: • the combined Slovak turnover of the undertakings concerned is at least EUR 46 million in the preceding financial year and at least two undertakings concerned each have a Slovak turnover of at least EUR 14 million in the same period; **or** • the individual Slovak turnover of: (i) the target (in the case of the acquisition of control over an existing undertaking); (ii) at least one of the parties to a new full-function joint venture; or (iii) at least one of the parties to the "merger" or consolidation" (as defined by Slovak corporate law), exceeds EUR 14 million **and** the worldwide turnover of at least one of the other parties is EUR 46 million.

Calculation of turnover – general rules in the Region

Turnover figures are calculated on the basis of revenues from the sales of products and services falling within the undertaking's ordinary activities, as an aggregate turnover, and taking into account the following:

- the turnover of the parties to the concentration; plus
- the turnover of the entity/entities controlled, directly or indirectly, solely or jointly, by the parties to the concentration; plus
- the turnover of the entity/entities that will control, directly or indirectly, solely or jointly, the parties to the concentration after the transaction; plus
- the turnover of the entity/entities controlled by the entity/entities that will control, directly or indirectly, solely or jointly, the parties to the concentration after the transaction; plus
- the turnover of the entity/entities controlled jointly by two or more of the entities referred to above;

minus

- sales discounts, value added tax and other turnover-related taxes; and
- intra-group turnover achieved from the sale of goods and services among the entities referred to above.

With respect to Hungary, in the case of foreign companies, only turnover achieved in Hungary (i.e. generated by sales to Hungarian customers or companies) should be taken into account, while in the case of Hungarian registered companies, all turnover should be taken into account.

When calculating turnover in the territory of a country, the revenue from exports shall not be taken into account.

Special rules apply to the calculation of turnover of banking and other financial institutions and insurance undertakings.

Are joint ventures caught?

Yes, joint ventures are caught by the Region's antitrust rules.

Most of the countries mirror the EU rules in this respect. The only one which has established different principles regarding joint ventures is Poland.

The ACCP lists the creation of joint ventures (called "joint undertakings" in Poland) as a type of concentration. The creation of joint undertakings is caught regardless of whether the joint venture is a newly created undertaking or an existing one (created by means of the acquisition of joint control), or whether the joint undertaking is a full-function or non-full-function entity. There were some doubts as to whether the notification requirement should also extend to a situation where one undertaking first creates another undertaking and then disposes of its shares to others. In its Decision No. DKK-104/10 of 10 November 2010, PGNiG/ Tauron, the OCCP confirmed that such a scenario requires notification as well.

Different rules in the Region regarding the clearance timetable

After a transaction has been notified to the relevant competition authority, the authority is bound by respective national rules regarding the clearance timetable, which are summarised in the table below.

Country	Review procedure
Bulgaria	Two phases are possible: **Phase 1** 25 working days from the registration of the notification (which takes place within three days from the submission of a complete notification)[19] (extendable twice by 10 working day periods in order to modify the terms of the concentration and submit additional data and information in relation thereto). **Phase 2** An additional period of 4 months (extendable by 25 working days for cases of factual/legal complexity).
Czech Republic	Two phases are possible: **Phase 1** 20 calendar days in simplified matters or 30 calendar days in other-than-simplified matters from the submission of a complete notification (extendable in the latter case by 15 days if commitments offered). **Phase 2** 5 months from the submission of a complete notification (extendable by 15 days if commitments offered).

[19] In the case of the submission of an incomplete notification, the CPC gives the applicant up to seven days to complete it. Therefore, the period between filing and registration could be as much as 10 days.

Country	Review procedure
Hungary	Two phases are possible: **Phase 1** 45 calendar days from the submission of a complete notification (extendable by 20 calendar days). **Phase 2** 4 months from the submission of a complete notification (extendable by up to 2 months).
Poland	There is only one phase: 2 months from the submission of a complete notification (extendable by 14 calendar days), extendable each time when further information is requested by the OCCP.
Romania	Two phases are possible: **Phase 1** 45 calendar days from the submission of a complete notification. The RCC may request further information in order to decide whether a notification is complete. **Phase 2** 5 months from the submission of a complete notification.
Slovakia	Two phases are possible: **Phase 1** 25 working days from the submission of a complete notification, extendable by 30 working days. **Phase 2** An additional period of 90 working days.

Sanctions throughout the Region

The notification of a transaction which has met the established thresholds is mandatory everywhere in the Region. If the undertaking responsible for making the notification fails to submit it to the relevant competition authority, the latter may impose the relevant sanctions set out below.

Country	Sanctions for not filing and/or implementing prior to clearance
Bulgaria	The CPC may impose fines of up to 10% of the worldwide turnover achieved by the undertaking concerned in the financial year prior to sanctions. Implemented transactions may be unwound, and the participating parties may be instructed to take measures to restore the *status quo ante*. To date, these powers of the CPC have not been used as its policy is not to unwind non-permitted transactions provided they were capable of being permitted from the beginning. The CPC only instructs the parties to restore the competition and unwind the concentration if there were no grounds to permit the concentration from the outset.
Czech Republic	The OPC may impose fines of up to CZK 10 million or up to 10% of the worldwide turnover achieved by the undertaking concerned in the financial year prior to sanctioning. Implemented transactions may be unwound, and the participating parties may be instructed to take measures to restore the *status quo ante*.
Hungary	The HCA may impose maximum daily fines of HUF 200,000 (approx. EUR 715) for late filing or failure to file. If a filing has been made, and is later cleared, there is no penalty for implementing prior to clearance. If a transaction is not cleared, the participating parties may be instructed to take measures to restore the *status quo ante*.
Poland	The OCCP may impose fines of up to 10% of the worldwide turnover achieved by the undertaking concerned in the financial year prior to sanctions. It may also impose a fine on individuals holding managerial positions up to the equivalent of 50 times the average monthly salary in Poland. Implemented transactions may be unwound and the participating parties may be instructed to take measures to restore the *status quo ante*, only if restoration of the competition in the market is otherwise impossible.

Country	Sanctions for not filing and/or implementing prior to clearance
Romania	The RCC may impose fines of between 0.5% and 10% of the worldwide turnover achieved by the undertaking concerned in the financial year prior to sanctions if closing takes place before clearance or until a waiver is granted by the RCC. Implemented transactions may be unwound and the participating parties may be instructed to take measures to restore the *status quo ante* in the case of incompatibility with a normal competitive environment or in cases where the implementation has been made in breach of a condition for clearance.
Slovakia	The AOSR may impose a fine of up to 10% of the achieved turnover by the undertaking concerned in the financial year prior to sanctions. If: (i) the worldwide turnover of the undertaking is less than EUR 330; (ii) the undertaking has no turnover; or (iii) the turnover cannot be determined, the AOSR may impose a fine of up to EUR 330,000. Implemented transactions may be unwound and the participating parties may be instructed to take measures to restore the *status quo ante* in order to restore the conditions of effective competition on the relevant market.

Antitrust & cartels

EU rules regarding prohibited agreements (pursuant to Art. 101 TFEU)

"People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in conspiracy against the public, or in some contrivance to raise prices".
The Wealth of Nations, Adam Smith 1776

General rule

The following is prohibited as being incompatible with the internal market:

- agreements between undertakings;
- decisions by associations of undertakings; and
- concerted practices,

which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- directly or indirectly fix purchase or selling prices or any trading conditions;
- limit or control production, markets, technical development or investment;
- share a market or sources of supply;
- apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and
- make the conclusion of contracts subject to the acceptance by the other parties of supplementary obligations, which by their nature or according to technical usage have no connection with the subject of such contracts.

Any agreements or decisions concluded in conflict with the above are considered void.

Definition of agreement

An agreement within the meaning of antitrust law is concluded between at least two independent undertakings. It indicates a manifestation of the intention to behave in the same way in the relevant market. This means that the existence of the mutual intention to cooperate of at least two undertakings is sufficient to establish that they have entered into an agreement. Interestingly, the form of an agreement is irrelevant. It may be concluded in written, oral or any other form whatsoever. This approach allows the Commission (or the national competition authorities) to prove its existence, as it is very rarely possible to obtain a document that would indicate the conclusion of an agreement.

Parallel behaviour

Competitors behaving in the same way does not always mean that they have entered into a prohibited agreement. A detailed analysis of market trends usually leads to the conclusion that the undertakings concerned acted independently (so-called "parallel behaviour"). Such actions are not prohibited, because independent behaviour is not covered by the above-mentioned definition.

Exemptions

Any agreement between undertakings, any decision of undertakings or any concerted practice that contributes to the improvement of production or distribution of goods or to the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- impose on the undertakings concerned restrictions that are not indispensable to the attainment of these objectives; or

- afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question

are exempt from the application of Art. 101(1) TFEU.

Fines imposed by the Commission

The issue of fines is regulated in Council Regulation No. 1/2003 of 16 December 2002 ("Regulation 1/2003"). The Commission may impose fines on undertakings or associations of undertakings where, either intentionally or negligently, they infringe Art. 101 (as an anticompetitive agreement) and/or Art. 102 TFEU (abuse of dominant position). The fine may not exceed 10% of the total turnover achieved in the preceding year by each undertaking participating in the infringement.

Where the infringement of an association relates to the activities of its members, the fine may not exceed 10% of the total turnover of each member active on the market affected by the infringement of the association.

The Commission may also impose fines amounting to 10% of the total turnover achieved in the preceding financial year by an undertaking or association of undertakings where, either intentionally or negligently, they contravene a decision ordering interim measures or they fail to comply with a commitment made binding by the Commission's decision. Furthermore, the Commission may impose periodic fines amounting to 5% of the average daily turnover achieved in the preceding financial year per day and calculated from the date fixed in the decision.

For the infringement of an order by the Commission for the supply of information or the supply of incorrect or misleading information, either intentionally or negligently, the Commission may impose a fine on undertakings not exceeding 1% of the aggregate turnover for the preceding financial year.

The Commission's decisions in antitrust cases are subject to individual judicial review by the ECJ. Further information can be found at www.curia.europa.eu (available in all the official languages of the EU).

Corporate leniency programme – a rush to denounce illegal conduct

The leniency policy offers companies involved in a cartel (companies that self-report and hand over evidence) either total immunity from fines or a reduction of fines that the Commission would have otherwise imposed on them.

Since 2006, the Commission has been applying a new leniency programme, which is proving much more successful than the previous one.[20]

The conditions for obtaining full immunity against fines are as follows:

- being the first to submit evidence that enables the Commission to: (i) to carry out an investigation; and (ii) establish an infringement; and

- (i) full cooperation with the EC; (ii) termination of cartel infringement; and (iii) no previous coercive actions to oblige other firms to participate in the infringement.

Undertakings which do not qualify for immunity may benefit from a reduction in fines if they provide evidence that represents "significant added value" to that already in the Commission's possession and have terminated their participation in the cartel.

National rules regarding anticompetitive agreements in the Region

All the countries of the Region have established rules applicable to anticompetitive agreements. These rules cannot be more restrictive than their EU equivalents. In addition, if the agreement affects trade between Member States, each authority can apply the rules of Art. 101 TFEU in parallel. For minor cases, national authorities apply only their domestic law. The national antitrust rules applying to anticompetitive agreements do not vary substantially from Art. 101(1) and (3) TFEU.

Fines

The laws of each of the countries in the Region contain provisions relating to the consequences of infringing the national rules applicable to antitrust enforcement. Usually, the amount of a fine cannot exceed 10% of the aggregate turnover in the financial year prior to the sanctioning.

[20] Between 2002 and 2005, the EC received 159 leniency applications.

The table below sets out the main differences in respect of the sanctions imposed in the Region.

Country	Possible fines
Bulgaria	Criminal sanctions: Under Bulgarian law, cartel behaviour is not a criminal offence. Administrative sanctions: The CPC may impose fines of up to 10% of the worldwide turnover achieved by the undertaking concerned in the financial year prior to sanctioning. Lack of cooperation during the investigation or the delivery of untrue or confusing information could lead to a fine of 1% of the worldwide turnover achieved by the undertaking concerned in the financial year prior to sanctioning. The CPC is also entitled to impose periodic sanctions on undertakings that fail to comply with the measures imposed by the CPC aimed at the termination of the violation and the restoration of competition. Their daily value may reach 5% of the worldwide daily turnover of the undertaking concerned achieved in the financial year prior to sanctioning. Sanctions on individuals: Individuals who have contributed to violations of the LPC, unless subject to criminal punishment, shall be penalised with a fine between BGN 500 and 50,000 (approx. EUR 250 to 25,000).
Czech Republic	Criminal sanctions: Under Czech law, cartel behaviour may constitute a criminal offence, with an envisaged penalty of up to 8 years of imprisonment for natural persons (e.g., directors of a company who directly participated in negotiations and the execution of the cartel). Bid rigging in public tenders is considered a separate criminal offence and is punishable by up to 10 years of imprisonment for natural persons, or forced liquidation, confiscation of property, prohibition on participating in public tender, or a fine for companies. Administrative sanctions: The OPC may impose fines of up to CZK 10 million or up to 10% of the worldwide turnover achieved by the undertaking concerned in the financial year prior to sanctioning.

Country	Possible fines
Hungary	Criminal sanctions: Under Hungarian law, cartel behaviour is not a criminal offence. However, bid rigging in a public tender is a criminal offence punishable by up to 5 years imprisonment. Undertakings which were fined for public procurement rigging by the HCA may be excluded from future public procurement procedures for 5 years following the date of the resolution. Administrative sanctions: The HCA may impose fines of up to 1% of the worldwide turnover achieved by the undertaking concerned in the financial year prior to sanctioning, for providing incorrect, incomplete or misleading information, for the failure to comply with an order of the HCA or for the failure to respond to requests from the HCA. In addition, the HCA may impose fines of up to 10% of the worldwide turnover achieved by the undertaking concerned in the financial year prior to sanctioning, for any other breach of the CA. Sanctions on individuals: The HCA may impose an administrative fine on any person who is required to cooperate in the process to ascertain the relevant facts of the case (i.e. the managing director or other employees of the undertakings) if, during the course of the proceedings, they perform acts or engage in conduct which is aimed at or results in the protraction of the proceedings or making it impossible to reveal the relevant facts of the case. For individuals, the minimum amount of the administrative fine is HUF 50,000 (approx. EUR 170) and the maximum amount thereof is HUF 500,000 (approx. EUR 1,700). The administrative fine for failure to meet the deadline prescribed for procedural obligations can be HUF 50,000 (approx. EUR 170) for each day of delay.

Country	Possible fines
Poland	Criminal sanctions: Under Polish law, cartel behaviour is not a criminal offence. However, bid rigging in a public tender is a criminal offence punishable by up to 3 years of imprisonment. Administrative sanctions: The OCCP may impose fines of up to 10% of the worldwide turnover achieved by the undertakings concerned in the financial year prior to sanctioning if such undertaking participates in a cartel. Furthermore, in separately instituted proceedings, the OCCP may fine an undertaking up to EUR 50 million if the undertaking, even unintentionally, fails to provide information requested by the OCCP or provides misleading or false information. Additionally, if an undertaking does not cooperate with OCCP officials during a dawn raid, the OCCP may fine the undertaking up to EUR 50 million. In the event of a delay in complying with a final decision rendered in a cartel case, the OCCP may fine the undertaking concerned up to EUR 10,000 per day of delay. Sanctions on individuals: If a person holding a managerial position or a board member of an undertaking or association of undertakings or a person authorised to act on behalf of an undertaking does not cooperate with OCCP officials during a dawn raid, he/she may be fined up to the equivalent of 50 times the average monthly salary in Poland.
Romania	Criminal sanctions: Under Romanian law, cartel behaviour may constitute a criminal offence punishable by up to 3 years of imprisonment or a criminal fine and the loss of certain rights. Bid rigging in a public tender followed by a distortion of the bided price is considered a separate offence and is punishable under specific legislation. Administrative sanctions: The RCC may impose fines of between 0.5% and 10% of the worldwide turnover achieved by the undertaking concerned in the financial year prior to sanctioning. Furthermore, in separately instituted proceedings, the RCC may impose a fine of up to 1% of the worldwide turnover achieved by the undertaking concerned in the financial year prior to sanctioning if the undertaking, even unintentionally, fails to provide information requested by the RCC, provides misleading or false information or does not cooperate with RCC officials during a dawn raid.

Country	Possible fines
Slovakia	Criminal sanctions: Under Slovak law, cartel behaviour may constitute a criminal offence, with an envisaged penalty of up to 6 years of imprisonment. Bid rigging in a public tender is considered a separate criminal offence and is punishable by up to 12 years of imprisonment. The protective measure of the confiscation of monetary assets may also be imposed upon legal entities (up to EUR 1.66 million). Administrative sanctions: The AOSR may impose fines of up to 10% of the worldwide turnover achieved by the undertaking concerned in the financial year prior to sanctioning if such undertaking participates in a cartel. The fine may also be imposed if the undertaking does not fulfil a condition or comply with restrictions or obligations imposed by a decision of the AOSR. If: (i) the worldwide turnover of the undertaking is less than EUR 330; (ii) the undertaking has no turnover; or (iii) the turnover cannot be determined, the AOSR may impose a fine of up to EUR 330,000.

Abuse of a dominant position

General rule

Art. 102 TFEU states that: *“abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States”.*

Examples of activities that specially infringe Art. 102 TFEU are:

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and
- making the conclusion of contracts subject to the acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

What is a dominant position?

Art. 102 TFEU does not provide a definition of a “dominant position”. Following judicial decisions, we distinguish: (i) single-firm dominance; and (ii) collective dominance.

Dominance is defined as a position of economic strength enjoyed by an undertaking that enables it to prevent effective competition being implemented on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately consumers. In other words, a dominant firm has a superior ability to engage in exclusionary behaviour hampering the competitive structure in the market.

How can a dominant position be proved?

The most important criterion when determining whether an undertaking holds a dominant position is its market share. Art. 102 TFEU does not provide thresholds beyond which an undertaking is recognised as having a dominant position. The thresholds were established by the jurisprudence of the ECJ, which states that a market share of 50% or more may be considered strong *prima facie* evidence of a dominant position (although, in the case of national rules, the threshold is usually 40%). However, these presumptions are not absolute and an undertaking may prove that even when it possesses such a high market share, other factors show it does not have a dominant position.

Apart from the market share criterion, other factors are used to test whether an undertaking holds a dominant position, including barriers to entry or expansion and countervailing market power.

Abuse of a dominant position

Abuse of a dominant position is always prohibited. However, it is not illegal to achieve and maintain a dominant position or to expand as a dominant player, as long as no abuses are committed.

The concept of abuse is an objective one and relates to the behaviour of an undertaking which is such so as to influence the structure of a market where, as a direct result of the presence of the undertaking in question, competition has been weakened.

Actions which constitute an abuse of a dominant position are in their entirety or in the relevant part void.

Exemptions

In principle, there are no exemptions from this rule.

Fines

The issue of fines is regulated by Regulation 1/2003. The Commission may impose fines on undertakings or associations of undertakings where, either intentionally or negligently, they infringe Art. 102 TFUE. The fine may not exceed 10% of the total turnover in the preceding financial year.

The Commission’s decisions concerning antitrust cases are subject to individual judicial review by the ECJ. Further information on this can be found at www.curia.europa.eu (available in all the official languages of the EU).

Rules concerning a dominant position in the Region

The laws of each of the countries in the Region provide general provisions relating to the prohibition of abuse of a dominant position. There are differences in wording, but the meaning is the same in all the legislations concerned and reflects Art. 102 TFEU. In parallel, Art. 102 TFEU may be applied by national authorities when there is an effect on trade between Member States. For minor cases, national authorities apply only their domestic law.

As indicated above, there is neither a legal definition of a dominant position nor one describing the abuse of a dominant position. The tables below sets out how this issue is regulated in the Region.

(i) Dominant position

Country	Definition of a dominant position
Bulgaria	The relevant provision of the LPC does not vary substantially from Art. 102 TFEU.[21]
Czech Republic	The relevant provision of the APC does not vary substantially from Art. 102 TFEU. In the absence of proof to the contrary, an undertaking is deemed not to be in a dominant market position if its market share in the relevant market does not exceed 40%. On top of the general rules on abuse of a dominant position in the APC, Czech law contains specific rules regulating the behaviour of large retail chains in relation to their suppliers on the relevant markets for food and agricultural products.
Hungary	The relevant provision of the CA does not vary substantially from Art. 102 TFEU.
Poland	The relevant provision of the ACCP does not vary substantially from Art. 102 TFEU. It is presumed that a dominant position exists when the market share of an undertaking exceeds 40%.

[21] The old Law on Protection of Competition contained a presumption that an undertaking enjoying a 35% market share is dominant. This approach was abandoned by the now-effective LPC, and decisions are taken on a case-by-case basis.

Country	Definition of a dominant position
Romania	The relevant provision of the RCL does not vary substantially from Art. 102 TFEU. It is presumed that a dominant position exists when the market share of an undertaking exceeds 40%.
Slovakia	The relevant provision of the APC does not vary substantially from Art. 102 TFEU. On top of the general rules on abuse of a dominant position in the APC, Slovak law contains specific rules regulating the behaviour of large retail chains in relation to their suppliers on the relevant markets for foodstuffs.

(ii) Abuse of a dominant position

Country	Abuse of a dominant position
Bulgaria	The relevant provision of the LPC does not vary substantially from Art. 102 TFEU. The LPC does not provide an abstract definition of what amounts to an abuse. Rather, it contains a non-exclusive list of particular examples of prohibited behaviour, which to a large extent overlap those listed in Art. 102 TFEU. On top of the examples listed in Art. 102 TFEU, the LPC expressly prohibits refusal to deal. [22]
Czech Republic	The relevant provision of the APC does not vary substantially from Art. 102 TFEU. The APC does not provide an abstract definition of what amounts to an abuse. Rather, it contains a non-exclusive list of particular examples of prohibited behaviour, which to a large extent overlap with those listed in Art. 102 TFEU. On top of the examples listed in Art. 102 TFEU, the APC expressly prohibits: (i) predatory pricing; and (ii) a refusal to grant access to essential facilities.

[22] The LPC further prohibits various types of commercial behaviour that are qualified as “unfair competition”, amongst which are predatory pricing, unfair comparative advertising and misleading advertising. Those prohibitions apply to all merchants, not just to those enjoying a dominant position.

Country	Abuse of a dominant position
Hungary	The relevant provision of the CA does not vary substantially from Art. 102 TFEU. The CA does not provide an abstract definition of what amounts to an abuse. Rather, it contains a non-exclusive list of particular examples of prohibited behaviour, which to a large extent overlap with those listed in Art. 102 TFEU. On top of the examples listed in Art. 102 TFEU, the CA expressly prohibits: (i) predatory or excessive pricing; (ii) a refusal to deal; and (iii) unfair discrimination.
Poland	The relevant provision of the ACCP does not vary substantially from Art. 102 TFEU. The ACCP does not provide an abstract definition of what amounts to an abuse. Rather, it contains a non-exclusive list of particular examples of prohibited behaviour, which to a large extent overlap those listed in Art. 102 TFEU. On top of the examples listed in Art. 102 TFEU, the ACCP expressly prohibits: (i) counteracting the formation of conditions that are necessary for the emergence or development of competition; and (ii) imposing onerous contractual terms yielding undue benefits and division of markets according to territorial, product or entity-related criteria.
Romania	The relevant provisions of the RCL do not vary substantially from Art. 102 TFEU. The RCL does not provide an abstract definition of what amounts to an abuse. Rather it contains a non-exclusive list of particular examples of prohibited behaviour, which to a large extent overlap those listed in Art. 102 TFEU. On top of the examples listed in Art. 102 TFEU, the RCL expressly prohibits; (i) a refusal to deal with specific suppliers or beneficiaries; (ii) excessive or predatory pricing; (iii) exporting under the production costs and covering the differences with margins obtained from increasing internal prices; (iv) the exploitation of a dependency situation of an undertaking which does not have an alternative, in similar conditions; and (v) the termination of a contractual relationship following the refusal of the commercial partner to agree to unjustified commercial conditions.
Slovakia	The relevant provision of the APC does not vary substantially from Art. 102 TFEU. The APC does not provide an abstract definition of what amounts to an abuse. Rather, it contains a non-exclusive list of particular examples of prohibited behaviour, which to a large extent overlap those listed in Art. 102 TFEU. On top of the examples listed in Art. 102 TFEU, the APC expressly prohibits the temporary abuse of economic power with the aim of excluding competition (e.g. predatory pricing).

8. Employment law

8. Employment law

Introduction

Although the details of employment regulation vary across the Region, employment law in New Europe follows a number of general principles and uses a number of common concepts that are harmonized to a certain extent by EU regulations. These are summarised below.

The relationship between an employer and its employees is regulated by a number of different sources as follows:

- Statute: every country in the Region has a comprehensive set of employment laws that generally set out minimum standards of protection for employees. There is also, across the Region, an increasing amount of EU legislation that applies to employment relationships.

- Written contracts: In most countries in the Region an employment relationship must be documented by a written contract between the employer and employee. This can grant more generous terms to the employee than those provided for by law.

- Work regulations: In most countries in the Region, an employer employing more than a certain number of employees must adopt a set of regulations of general application to all employees.

- Collective Bargaining Agreements: These are agreements negotiated with trade unions representing employees and most often include terms more beneficial to an employee than those laid down by law. In Poland, Hungary and Bulgaria, these can be negotiated either on a case-by-case basis between the individual employer and trade unions or on a national basis for certain industries and apply to all employers and employees in that industry whether or not they are members of the trade union concerned. In Romania these may be negotiated on a national basis for certain industries and apply to the members of the employers' organisations that negotiated the agreements. In Slovakia, higher level collective bargaining agreements apply only to employers who agree to be bound by them.

Types of employment contracts

There are various types of employment contracts in the Region, such as probationary contracts, fixed term contracts, specific tasks contracts and indefinite period contracts. Indefinite period contracts are the most popular and generally give the highest level of protection for the employee as their termination has to be justified and in some countries consultation with trade unions is required if the employee that is being dismissed is represented by a trade union.

Probationary contracts are often entered into when an employee first starts working as they give the employer an opportunity to assess the employee and can be terminated relatively easily. In Romania and the Czech Republic, indefinite period and fixed term contracts may include probationary period clauses. The maximum duration of the probationary period depends on the type of contract and the type of job. The maximum periods for probationary contracts in the Region are set out in the table below:

Country	The maximum period for probationary contracts[23]	Termination period for probationary contracts
Bulgaria	6 months	n/a
Czech Republic	3 months for regular employees 6 months for the top managers (within the meaning of the Czech Labour Code)	No prescribed termination period The termination is effective upon its delivery to the employee (if no later date is determined by the employer)
Hungary	3 months	No prescribed termination period The termination has immediate effect
Poland	3 months	3 working days if the probationary period is less or equal to 2 weeks 1 week if the probationary period is longer than 2 weeks but less than 3 months 2 weeks if the probationary period is 3 months.

[23] To be read “probationary period clause” for Romania.

Country	The maximum period for probationary contracts[23]	Termination period for probationary contracts
Romania	For contracts concluded for an indefinite term the probation period is: • 120 calendar days for management positions; • 90 calendar days for execution positions; • 30 calendar days for persons with disabilities. For contracts concluded for a fixed term: • 5 business days for a contract concluded for less than 3 months; • 15 business days for a contract concluded for a period between 3 and 6 months; • 30 business days for a contract concluded for more than 6 months; and • 45 business days for a management position, if the contract is concluded for more than 6 months.	No prescribed termination period The termination has immediate effect
Slovakia	3 months for regular employees 6 months for certain top managers (within meaning of the Slovak Labour Code)	No prescribed termination period The termination is effective upon its delivery to the employee and should be delivered to the employee with a 3 day termination period.

Termination notice

In general, there are statutory minimum lengths of termination notices in the Region in relation to the dismissal of employees. This means that the employee cannot be granted shorter termination notices than those required by law, however, it is possible to contractually extend the length of termination notices. In some countries, the length of termination notice depends on the type of contract and generally on the length of employment with a given employer. The length of termination notices for indefinite period contracts in the Region are set out in the table below.

Country	The length of termination notice
Bulgaria	Minimum 1 month irrespective of the length of employment; the length of the termination notice may not exceed 3 months. 15 days if the termination is due to the employee being employed elsewhere.
Czech Republic	2 months period effective at the end of the month.
Hungary	Generally 30 days, however: – 35 days if the employee has worked more than 3 years with a given employer; – 45 days if the employee has worked more than 5 years with a given employer; – 50 days if the employee has worked more than 8 years with a given employer; – 55 days if the employee has worked more than 10 years with a given employer; – 60 days if the employee has worked more 18 years with a given employer; and – 90 days if the employee has worked more than 20 years with a given employer. By agreement of the parties the above notice periods may be extended by up to 6 months.
Poland	Two weeks if the employee has worked for less than 6 months with a given employer. 1 month if the employee has worked for at least 6 months with a given employer. 3 months if the employee has worked for at least 3 years with a given employer.
Romania	20 working days.

Country	The length of termination notice
Slovakia	Generally 1 month, however: – 2 months if the employee has worked for at least 1 year with a given employer; and – 3 months if the employee has worked for at least 5 years with a given employer and the employment was terminated by the employer for organisational reasons.

Protection from dismissal

Protection is given against the termination of employment without good reason by giving the relevant courts the ability to order the reinstatement of employment and/or require that the employer pays compensation to the employee concerned. The remedies that may be awarded by the court in the Region are set out in the table below.

Country	Compensation	Reinstatement of employment
Bulgaria	Yes, up to 6 month's salary provided that the employee remains unemployed during that period.	Yes.
Czech Republic	Yes, up to the amount of salary and benefits the employee would have been paid had he/she worked his/her notice period. However, should the time period for which the employee is entitled to compensation exceed 6 months, the compensation for any additional time may be, upon the employer's request, decreased by the court.	Yes, if the employee notifies the employer in writing that he/she insists on being further employed without undue delay.

Country	Compensation	Reinstatement of employment
Hungary	Yes, any unpaid salary and other benefits or payment of damages, if any were caused in excess of the loss of income, up to the amount of maximum 12 months absence fee (i.e. average salary), plus severance payment due, if not paid out at the time of termination of employment.	Yes, but subject to certain circumstances.[24]
Poland	Yes, up to the amount of salary the employee would have been paid had he/she worked his/her notice period (in addition to the normal termination notice to the employee).	Yes.
Romania	Yes, the equivalent of the salaries and other rights to which the former employee would have been entitled if employed.	Yes, if requested by the employee.
Slovakia	Yes, up to the amount of employee's average salary from the last three months (within meaning of the Slovak Labour Code) for the maximum period of 36 months. Upon the employer's request, any compensation payable that is equivalent to paying the employee's salary for a period exceeding 12 months may be decreased by the court.	Yes, if the employee notifies the employer in writing that he/she insists on being further employed.

[24] At the employee's request the court shall reinstate the employment relationship if: a) it was terminated in violation of the principle of equal treatment; b) it was terminated during the time when serving a dismissal is prohibited by law; c) it was terminated without the consent of the trade union in case of an employee who is a member of a trade union; d) the employee served as an employees' representative at the time his employment relationship was terminated; e) the employee successfully challenged his own declaration or consent related to the termination of his employment relationship.

Collective redundancies

The concept of redundancy was developed to allow employers to reduce the number of employees when, due to economic circumstances, they no longer needed such a large work force whilst also giving employees a certain minimum level of protection.

Collective redundancies are decisions made by employers to terminate the employment of a group of employees. Each country in the Region has a special procedure that applies in a redundancy situation. Redundancy is also regulated by EU law. Any employer contemplating collective redundancies must hold consultations in good time with the employees' representatives with a view to reaching an agreement on any redundancy plan.

These consultations must, as a minimum, cover the means of: (i) avoiding collective redundancies or reducing the number of workers affected; and (ii) mitigating the consequences, in particular by recourse to social measures aimed at redeploying or retraining those workers made redundant.

There is also a requirement to notify the relevant public authority that a redundancy situation has arisen.

In the Region, collective redundancy is triggered when over a period of 30 days (except for Hungary where this period is 6 months) the number of redundancies is:

- at least 10 workers in establishments normally employing more than 20 and less than 100 workers;
- at least 10% of the number of workers in establishments normally employing at least 100[25] but less than 300 workers; or
- at least 30 workers in establishments normally employing 300 workers or more.

In addition to paying employees the amount of salary the employees would have been paid had they worked their normal notice period the following redundancy pay must be paid to the affected employees. In some countries, there is a cap on the amount of the redundancy pay.

[25] 101 for the Czech Republic.

Country	Amount of the redundancy pay	Time of employment with a given employer
Bulgaria	1 month's gross remuneration.	n/a
Czech Republic	1 month's average monthly remuneration.	An employee employed for less than 1 year.
	2 months' average monthly remuneration.	An employee employed for more than 1 but less than 2 years.
	3 months' average monthly remuneration.	An employee employed for a minimum of 2 years.
Hungary	None in addition to the statutory entitlements due in the event of a dismissal.	n/a
Poland	1 month's remuneration.	An employee employed for less than 2 years.
	2 months' remuneration.	An employee employed for more than 2 but less than 8 years.
	3 months' remuneration.	An employee employed for a minimum of 8 years.
	The amount of the redundancy pay should not exceed 15 times the statutory minimum monthly remuneration.	
Romania	n/a[26]	n/a

[26] Certain industry or company level collective bargaining agreements may provide for such compensations.

Country	Amount of the redundancy pay	Time of employment with a given employer	
		In case of termination by agreement:	In case of termination by notice:
Slovakia	1 month's average remuneration calculated from the last three months.	An employee employed for less than 2 years.	An employee employed for more than 2 but less than 5 years.
	2 months' average remuneration calculated from the last three months.	An employee employed for more than 2 but less than 5 years.	An employee employed for more than 2 but less than 5 years.
	3 months' average remuneration calculated from the last three months.	An employee employed for more than 5 but less than 10 years.	An employee employed for more than 10 but less than 20 years.
	4 months' average remuneration from the last three months.	An employee employed for more than 10 but less than 20 years.	An employee employed for more than 20 years.
	5 months' average remuneration from the last three months.	An employee employed for more than 20 years.	n/a

Minimum pay

All of the countries in the Region have a minimum salary concept. This is either established as a minimum hourly payment or a minimum monthly payment. Generally, it is increased on an annual basis by reference to an inflation index (consumer price index) projected for a given year. The minimum pay in the Region in 2013 is set out in the table below:

Country	Minimum pay		Time period
Bulgaria	BGN 310[27]		Monthly
Czech Republic	CZK 50.60		Hourly
	CZK 8,500		Monthly
Hungary[28]	Minimum wage:	HUF 93,000	Monthly
	Guaranteed minimum wage[29]:	HUF 108,000	
	Minimum wage:	HUF 21,400	Weekly
	Guaranteed minimum wage:	HUF 24,850	
	Minimum wage:	HUF 4,280	Daily
	Guaranteed minimum wage:	HUF 4,970	
	Minimum wage:	HUF 535	Hourly
	Guaranteed minimum wage:	HUF 621	
Poland	PLN 1,600		Monthly
Romania	RON 800[30]		Monthly
Slovakia	EUR 1.941		Hourly
	EUR 337.70		Monthly

[27] BGN 340 as of January 1, 2014.;
[28] For full time employment.;
[29] For positions requiring higher education.;
[30] As of 1 July 2013.

Paid holiday

There is a minimum entitlement to paid holiday usually linked to the length of service of an employee or the age of the employee. Years in education may sometimes count towards the time in employment on the basis of which the number of days of paid holiday is calculated. The entitlement to paid holiday in the Region is set out in the table below.

Country	Number of days of holidays	Time in employment / age
Bulgaria	20 working days.	At least 8 months in employment.
Czech Republic	20 working days.	n/a
Hungary	Under the age of 25: 20 working days; Above the age of 25: 21 working days; Above the age of 28: 22 working days; Above the age of 31: 23 working days; Above the age of 33: 24 working days; Above the age of 35: 25 working days; Above the age of 37: 26 working days; Above the age of 39: 27 working days; Above the age of 41: 28 working days Above the age of 43: 29 working days; and Above the age of 45: 30 working days. Additional days of holidays apply: • to employees with children (2 working days for 1 child, 4 working days for 2 children and 7 working days for more than 2 children under age 16); • to an employee following the child's birth (5 working days); • to an employee under the age of 18 (5 working days); and • to an employee working under dangerous circumstances or who suffered a degree of health impairment of at least 50% (5 working days).	Number of holidays is linked to the age of the employee and is irrespective of the time in employment.

Country	Number of days of holidays	Time in employment / age
Poland	20 working days.	Up to 10 years in employment.
	26 working days.	At least 10 years in employment.
Romania	20 working days.	n/a[31]
Slovakia	Under the age of 33: 20 working days; and Above the age of 33: 25 working days.	Number of holidays is linked to the age of the employee and is irrespective of the time in employment.

Limits on working hours

There are limits on the maximum working hours an employee can be required to work in any given period. The minimum standards set out by EU regulation in this respect are as follows:

- a limit to weekly working time, which must not exceed 48 hours on average, including any overtime;
- a minimum daily rest period of 11 consecutive hours[32] in every 24 hour period;
- a rest break during working time if the employee is on duty for longer than six hours;
- a minimum weekly rest period of 24 uninterrupted hours for each seven day period, which is added to the 11 hours' daily rest;
- paid annual leave of at least four weeks per year; and
- extra protection in the case of night work (for example, average working hours must not exceed eight[33] hours per 24 hour period; night employees must not perform heavy or dangerous work for longer than eight hours in any 24 hour period; and there is a right to free health assessments and, in certain circumstances, to transfer to day work).

[31] Certain industry or company level collective bargaining agreements may provide for holiday entitlements linked to length of service.
[32] 12 consecutive hours in Bulgaria.
[33] 7 hours in Bulgaria.

The limits of daily and weekly working time in the Region are as follows:

Country	**Daily working time**	**Weekly working time**	**Number of working days a week**
Bulgaria	8 hours.	40 hours.	5 days a week.
Czech Republic	• Not defined, however, length of the shift cannot exceed 12 hours. • 8 hours for employees under the age of 18.	40 hours; shorter weekly working time applies to defined categories of employees (e.g. employees working under three-shift non-stop regime: 37.5 hours).	• Preferably 5 days a week. • Employees must always be entitled to a rest period of at least 35 hours a week (48 hours a week for employees under the age of 18).
Hungary[34]	8 hours	40 hours on average within a determined settlement period.	5 days a week.
Poland	8 hours	40 hours on average within a determined settlement period.	5 days a week.
Romania	8 hours	48 hours on average within a determined settlement period.	5 days a week.
Slovakia	8 hours	40 hours; shorter weekly working time applies to defined categories of employees (e.g. employees working under three-shift non-stop regime – 37.5 hours).	• 5 days a week • employees must always be entitled to a rest period of at least 2 consecutive days a week.

[34] Where working time is defined within the framework of banking or payroll working time period, working time may be determined irregularly for each day of the week or for certain days only (irregular work schedule).

Maternity benefits

Various forms of protection are given to employees having children, including a minimum period of paid and unpaid leave immediately before and after the birth, and also a guaranteed right of return to work. The minimum period of paid and unpaid leave in the Region is set out in the table below.

Country	Period of paid leave	Period of unpaid leave
Bulgaria	Pregnancy and childbirth leave - 410 calendar days for each child, 45 days of which shall be taken before the anticipated date of birth. Maternity leave – for raising the first, second and third child until hey reach 2 years of age. 6 months of paid leave for each subsequent child[35]. Paternity leave – 15 days following the birth of the child.	Maternity leave for raising forth and subsequent children until they reach 2 years of age. Parental leave for each of the parents for raising a child until he / she reaches 8 years of age of up to 6 months for the entire period. This form of leave can be used after the leave for raising a child until his / her second year of age, including if the leave for raising a child was not used in full[36].
Czech Republic	28 weeks (37 weeks if 2 or more children are born). The maternity leave usually commences 6 weeks before the childbirth.	If mother and/or father of the child so requests they are entitled to additional parental leave until the child reaches the age of 3, or with the consent of the employer, until the children reaches the age of 4.
Hungary	24 weeks of which maximum 4 weeks may be taken before the anticipated date of birth.	An employee is entitled to unpaid childcare leave in order to personally take care of the child until the child reaches the age of 3.
Poland	20 weeks of which at least 2 weeks may be taken before the anticipated date of the birth[37]. From September 2013, maternity leave was extended by another 26 weeks.	An employee employed for at least 6 months is entitled to unpaid childcare leave of up to 3 years in order to personally take care of the child, but not longer than until the child reaches the age of 4.
Romania	126 days of which at least 42 days must be taken after birth[38]. 1 or 2 years, depending on parent’s choice, for healthy children and 3 years for children with disabilities[39].	n/a
Slovakia	34 weeks (43 weeks if 2 or more children are born). The maternity leave usually commences 6 weeks before the childbirth.	If mother and/or father of the child so requests they are entitled to additional parental leave until the child reaches the age of 3, or with the consent of the employer, until the children reaches the age of 5.

35 Portions of this leave could be assigned to the father or to a grandparent of the child;
36 Could be taken in portions not shorter than 5 business days. A parent may transfer up to 5 months of his / her parental leave to the other parent;
37 This increases if more than one child is born at the same time.;
38 Payments are not covered by the employer; instead they are covered by the public health insurance system.;
39 Payments are covered by the state budget.

Work permits

EU nationals do not need work permits to work in another EU country and live there for that purpose.

With regard to non-EU nationals, a work permit is required to work in the Region. There may be a separate procedure in relation to highly qualified employees.

Freedom to join a trade union and to strike

There is freedom to join a trade union, and officials in trade unions have various forms of protection, in particular protection against termination of employment.

There is a guaranteed right to strike. However, usually, declaring a strike has to be preceded by a formal procedure aimed at resolving the dispute to which the strike relates. A strike consists of the employees collectively refraining from work in order to resolve a dispute. Generally, for the period of a strike organised in accordance with the law, the employee retains the right to social insurance benefits and his/her rights under the employment relationship, except for the right to remuneration.

Works councils

EU regulations introduced another employee representative body that has the right to be informed about the current and planned situation of the employer and its plans regarding employment, however, it does not impose a set method for employers to inform and consult with this body. This body is a "works council" and it has similar rights to those granted to trade unions, however, in most countries it is only a consulting body that does not have the right to block the employer's actions. In practice, a works council is consulted in the event of, for example, collective redundancies or the transfer of the employer's shares or other employment restructuring.

In certain countries, the employer is obliged to establish a works council if it employs at least 50 employees. The obligation to establish a works council for employers with over 50 employees does not apply in the Czech Republic and Slovakia, however, in Slovakia, should the employer (being a joint stock company) have over 50 employees, one third of the supervisory board members must be elected by the employees.

Transfer of employment undertaking

The purchase of a company's enterprise or its major assets (so called "asset deals") as well as, for example, its transformation (e.g. by merger), lease or division (but not purchase of shares therein) automatically transfers a place of work to a new employer. This imposes certain obligations on both the existing employer and the new employer.

Generally, the employer should inform its trade unions (or employees if there are no trade unions) of the reasons and consequences of the transfer and planned proposals regarding the terms of employment.

In the case of the transfer of the workplace (transfer of an employment undertaking) from one employer to another, legal provisions secure that the rights of the employees transferred are protected. Rights and obligations under the employment contract or relationship pass from the previous employer to the new one. In Poland, Bulgaria and Hungary, the former and new employer are jointly and severally liable for the obligations resulting from the employment relationships arising before the transfer.

Collective agreements continue to apply until they expire or are terminated or replaced. The period for complying with them may be limited, but must not be for less than one year.

Generally, the transfer of an undertaking does not in itself constitute valid grounds for dismissals. In Slovakia, however, should the transfer result in a material change of work conditions and an employee does not consent to such change, his/her employment is deemed to be terminated on the date of the transfer and he/she is entitled to redundancy pay of up to three months' average remuneration.

Anti discriminatory regulations

EU regulations provide for extensive protection against discrimination on the basis of sex, race, religion, sexual orientation and age. They are based on the principle of equal treatment between employees. It prohibits all direct discrimination (where one person is treated less favourably than another is, has been or would be treated in a comparable situation) or indirect discrimination (where an apparently neutral provision, criterion or practice is likely to put someone at a particular disadvantage compared with other persons, unless it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary), as well as harassment (unwanted conduct with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment) and any behaviour which makes one person discriminate against another person.

The non-discrimination obligation applies in various sectors of activity such as, in particular:

- access to employment and to unpaid activities, specifically during recruitment;
- working conditions, including concerning hierarchical promotion, pay and dismissals;
- access to vocational training; and
- involvement in workers' or employers' organisations, and in any professional organisation.

Anyone who believes they are a victim of a failure to comply with the principle of equal treatment can make a claim to a court for compensation in Poland, Romania, Hungary. In Bulgaria, such all employees can claim for termination of the violation, restoring the *status quo ante* and refrainment from further violations in future. In the Czech Republic and Slovakia the discriminated person may also ask the court for: (i) a ruling ordering the employer to refrain from the discriminatory conduct; (ii) to remedy the consequences of the discriminatory act; and/or (iii) monetary compensation.

The burden of proof falls on the party accused, who must prove that the principle of equal treatment has not been infringed. The complainant is protected against any adverse treatment or adverse consequences as a reaction to the proceedings.

Health and safety procedures

Employers are obliged to secure that health and safety procedures are followed in the place of work.

There are technical requirements that have to be met by the building in which the work is carried out and the machines that are used for carrying out work.

Generally, employees, before commencing work, are obliged to undergo health and safety training. Furthermore, in Poland, Romania, Slovakia, Bulgaria and Hungary employees are obliged to present the employer with a medical certificate confirming that they are able to work in the position in which they have been employed.

Public authorities are entitled to inspect health and safety conditions at work. The employer is obliged to suspend the work of employees if there is a possibility of the occurrence of a threat to their health or life.

Generally, it is inadmissible to apply materials, chemical substances or technological processes in the workplace without a prior determination of the degree of their harmfulness.

In the case of an accident at work the employer is obliged to take the necessary remedial measures.

Social security contributions and benefits

Employers and employees are obliged to pay various social security contributions that are then designated for financing retirement, pension, sick leave and accident benefits. The social security system is generally governed by the State in the Region. In Bulgaria, the Czech Republic, Slovakia and Hungary a private pension plan may be set up in addition to the state social security system. The contribution to the state and/or private pension fund required by law is described in section 9 (Tax).

In Poland, until recently, as a rule, employees acquired the right to retire upon reaching the age of 65 (men) or 60 (women). From 2013 the retirement age will be gradually increased up to the age of 67. Newly employed employees will acquire the right to retire upon reaching the age of 67.

In Slovakia, until recently, employees acquired the right to retire upon reaching the age of 62 years and after having paid retirement pension insurance for at least 15 years. From 2017 the retirement age will be gradually increased.

In Hungary, until 2012, employees acquired the right to retire upon reaching the age of 62. From 2012 the retirement age was increased up to the age of 62 - 65 depending on the year of birth of the affected employee (only those born after 1952 are affected by the increase). The system is applicable uniformly to men and women.

In Bulgaria, until the end of 2011 retirement rights were obtained upon reaching the age of 63 and 37 years of length of service (men) and upon reaching the age of 60 and 34 years of length of service (women). From 2012 the retirement age and length of service will be increased by 4 months per year until reaching the age of 65 and 40 years length of service (men) and the age of 63 years and 37 years length of service (women)[40].

An employee who has suffered a work accident or occupational disease could be entitled to numerous benefits paid by the social security authority. In the Czech Republic, the employee is also entitled to claim damages from the employer (e.g. loss of remuneration during and/or after incapacity for work, compensation for pain and lesser employability and purposefully incurred costs related to medical treatment). In Slovakia, the employee is entitled to claim material damages from the employer. In Bulgaria and Poland the employer may be also liable for payment of certain compensation.

An employee may take sick leave because of an inability to work due to illness. Sick pay in the Region is paid for a certain period of time by the employer, and after this period the social security authority takes over the obligation to pay.

[40] One-year suspension of the age increase is currently discussed in the Bulgarian Parliament.

9. Tax

9. Tax

This section summarises the forms of taxation commonly found throughout New Europe. In particular, this section is focused on taxes paid by businesses operating in the Region. Each country has a separate system of taxes and its own system of tax administration. However, the systems across the Region share a lot of similarities. Furthermore, EU law imposes some controls on the Region's taxes, particularly in respect of VAT. Income taxes (applicable to companies and individuals) are payable on the basis of a "tax year". For every country in the Region this is the same as the calendar year (although in some countries the local subsidiary may apply for its tax year to be different from the calendar year in order to harmonize it with its foreign parent company).

Tax residence

The tax system applying to anyone carrying on business in the Region will be dependent on their tax residence. A company or an individual that is tax resident in one of the countries of the Region is subject to income tax applicable in that country on its worldwide income, profit and gains (unlimited tax liability). A company or an individual not tax resident in one of the countries of the Region is subject to income tax applicable in that country only on income, profit and gains generated in that country (limited tax liability).

Tax residence for companies is generally determined on the following basis:

- the company's residence (legal seat) in one of the Region's countries; or
- the fact that its management and control is carried out in one of the Region's countries.

As regards individuals, their tax residence is determined on the following basis:

- if they stay in one of the Region's countries for a period exceeding 183 days in a given year; or
- if they have a centre of vital interest[41] in one of the Region's countries.

Taxes on companies

The principle tax paid by companies is a tax on their profits i.e. income tax. This is the company's revenue minus expenses that the tax law in each country allows to be deducted from that revenue in order to determine the company's profits.

The corporate income tax rates applying in the Region are as follows:

Country	Corporate income tax rates
Bulgaria	10%
Czech Republic	19%
Hungary	10% up to HUF 500 million and 19% above that
Poland	19%
Romania	16%
Slovakia	19%

[41] "Centre of vital interest" is a term used predominantly in double tax treaties. An individual has his/her centre of vital interest in a given country if his/her family is staying in that country, he/she carries on economic activity in that country or has immovable property in that country. Some internal legislations (e.g. Bulgarian) contain definitions that follow the principles of those found in the double tax treaties).

Different rules apply across the Region to determine what tax costs can be deducted. Costs incurred in relation to the construction or purchase of fixed assets are deducted through depreciation write-offs for the period determined in the tax regulations of the relevant country. There are also different rates applying to the depreciation of fixed assets in each country.

Additionally, there are rules regarding the carrying forward of tax losses against future profits. The table below summarises the tax loss carry-forward periods and maximum amount of tax loss that can be used in one year applicable in the Region.

Country	Tax loss carry-forward period	Maximum deduction of carried-forward tax loss in one year
Bulgaria	5 years	100%
Czech Republic	5 years	100%
Hungary	Indefinite	50%
Poland	5 years	50%
Romania	7 years[42]	n/a
Slovakia	7 years[43]	100%

Dividends

The payments of dividends by companies to their shareholders are generally subject to withholding tax deducted from the dividend by the paying company before it is paid. The rates of withholding tax on dividends are determined by the tax laws of each country. However, these rates are modified by the provisions of double tax treaties concluded by each country with the country where that shareholder is tax resident. The table below sets out the standard withholding tax rates applicable in each country.

Country	Withholding taxes on dividends
Bulgaria	5%[44]
Czech Republic	15%
Hungary	zero (corporate shareholder) 19% (private individual shareholder)
Poland	19%
Romania	16%
Slovakia	5%[45]

Dividends distributed to a corporate shareholder which is tax resident in the Region or in any other country in the EU benefits from an exemption from paying withholding tax if the following conditions are met: (i) shares in the paying company are held for at least two[46] years; and (ii) the shareholder holds at least 10% of the shares in the paying company[47].

[42] This is available only for losses incurred as of 2009. For previous losses, the term is five years.
[43] The tax loss reported before 1 January 2010 may be deducted from the tax base during not more than five consecutive tax periods.
[44] This rate is applicable in Bulgaria only to dividends paid to individuals or to non-EU companies. The dividends paid to EU companies are not subject to Bulgarian withholding tax.
[45] Dividends paid from the profit declared after 1 January 2004 are not subject to tax in Slovakia.
[46] One year – in the case of the Czech subsidiary.
[47] These conditions do not apply to the dividends paid by Bulgarian companies.

Value Added Tax

Value Added Tax ("VAT") is a tax charged on the supply of most goods and services within the Region. VAT is assessed and collected on the value of goods or services that have been provided every time there is a transaction (sale/purchase). The seller charges VAT to the buyer (this is "output VAT"). If the buyer uses the purchased goods or services for his business, the tax it has paid for such purchases (this is "input VAT" from the buyer's perspective) can be deducted from the tax it charges to its customers (output VAT). Only the difference between output and input is paid to the tax office. If the amount of input exceeds the output VAT, the buyer can claim back the surplus from the tax office (refund of VAT). This means that VAT is levied only on the margin (in other words, on the value added) of each transaction, by each participant in the sales chain. It is therefore the final consumer (not being a VAT taxpayer) that ultimately bears the burden of paying VAT in full.

The VAT regulations in the Region are fairly similar in each country in the Region since they are based on EU Directive 2006/112/EC. Any differences between the regulations in the Region's countries have to remain within the limits allowed by the provisions of this Directive.

Several tax rates exist for VAT, where one rate is basic and is applicable to most supplies of goods and services, and some supplies of goods and services are zero-rated, whilst others are subject to a reduced rate or are even exempt from VAT. If the buyer of goods and services carries out only VAT-exempt business activity (for example banking or insurance activity), this buyer is not allowed to receive a refund of input VAT. The basic rates of VAT applicable within the Region are as follows:

Country	VAT basic rate
Bulgaria	20%
Czech Republic	21%
Hungary	27%
Poland	23%
Romania	24%
Slovakia	20%

The table below describes some of those services to which reduced rates, zero rates or exempt rates apply.

Country	Activities to which reduced rates apply	Activities to which zero rates apply	Activities to which exempt rates apply
Bulgaria	Accommodation services (e.g. hotel) (9%)	Intra-community supply of goods, export of goods, international transportation of passengers and goods, supply of goods provided by agents, brokers and other intermediaries, supply of tourist services outside EU territory	Financial and banking services, some land and building related transactions, provision of services and supply of related goods for healthcare, education, culture and religion, supply of non-profit making nature, financial services, insurance services, organising gambling games, sale of a business as a going concern, in-kind contributions in companies
Czech Republic	Food, books/newspapers, pharmaceutical/healthcare products, accommodation, public transport (15%).	Intra-community supply of goods, export of goods	Banking and other financial services, healthcare services, postal services, sale of a business as a going concern
Hungary	Supply of pharmaceuticals, books, newspapers and magazines (5%), milk and dairy products, bread and other bakery products, provision of hotel rooms and other commercial accommodations (18%)	Intra-community supply of goods, export of goods	Financial and banking services, insurances, healthcare services, postal services, sale of shares and quotas of a company
Poland	Supply of agricultural products and services (3%), books, newspapers and magazines (7%), pharmaceutical and healthcare products (7%), some municipal services (7%)	Intra-community supply of goods, export of goods	Financial and banking services, healthcare services, postal services, sale of a business as a going concern
Romania	Medicines for human and veterinary use, books, newspapers and periodicals, accommodation in hotels or in areas with a similar function, supply of prostheses and orthopaedic products (9%), housing delivered as part of welfare policy (5%)	Intra-community supply of goods, export of goods	Healthcare services, banking and insurance services, postal services, education services
Slovakia	Medical and pharmaceutical products, medicines, certain hygienic products, books, brochures (10%)	Intra-community supply of goods, export of goods	Financial services, insurance services postal services; health care, social assistance services, supply and leasing of immovable property, operation of lotteries and other similar games, sale of a business as a going concern

Transaction taxes

All countries in the Region tax certain types of transactions, in particular, the transfer of shares, increases of share capital, certain types of loans and the transfer of real estate.

Set out below is a table giving details of the most common transaction taxes applicable to business transactions in the Region.

Country	Type of transaction	Tax	Person paying
Bulgaria	Transfer of real estate	Local tax ranging between 0.1% and 3% of the purchase price or the tax assessment whichever is higher (exact rate determined by the local Municipal Council with respect to each municipality)[48]. Not applicable to in-kind contributions to the capital of commercial companies.	The buyer; although the parties may agree otherwise, in which case the buyer shall guarantee the payment of the tax.
	Transfer of motor vehicles	Local tax ranging between 0.1% and 3% of the purchase price or the tax assessment whichever is higher (exact rate determined by the local Municipal Council with respect to each municipality). Not applicable to the transfer of motor vehicles that have not been registered in Bulgaria[49] . Not applicable to in-kind contributions to the capital of commercial companies.	The buyer, although the parties may agree otherwise, in which case the buyer shall guarantee the payment of the tax.
	Donation (including cancellation/ writing off of debts)	Local tax (gift tax) of 3.3% to 6.6% of the value of the donation/cancelled debt. The exact tax rate is to be determined by the local Municipal Council with respect to each municipality.	The buyer, although the parties may agree otherwise, in which case the buyer shall guarantee the payment of the tax.

[48] The income received by the seller (if any) would participate in the formation of its taxable profit. If the seller is a foreign company (not very common, as foreign entities in most cases need local subsidiaries to own real estate), the income would be subject to withholding tax.

[49] A motor vehicle can be used in Bulgaria only if registered with the Traffic Police.

Country	Type of transaction	Tax	Person paying
Bulgaria cd	Receipt of assets by operation of a will of a deceased individual (a company may not inherit directly from a deceased person, but could be bequeathed assets by will).	Local tax of 3.3% to 6.6% of the value of the assets received. The non-taxable limit is BGN 250,000. The exact tax rate is to be determined by the local Municipal Council with respect to each municipality.	The entity receiving the assets.
	Loans	The interest income from loans extended by Bulgarian merchants forms part of their taxable income. The interest amounts paid by Bulgarian registered companies to foreign lenders are subject to 10% withholding tax, unless a double tax treaty provides for a more favourable tax rate. The interest amounts paid to EU companies may be subject to preferential withholding tax of 5% under certain conditions.	Lender
Czech Republic	Sale of real estate	4%	Seller (although the parties may agree that the buyer is the tax payer)
Hungary	Financial transactions, payments via bank accounts or by post[50]	0.3% but maximum HUF 6000 per transaction 0.6% for cash withdrawals	Financial service providers
	Phone calls and text messages	HUF 2/min and HUF 2/message; max HUF 700/month for individuals and HUF 2,500/month for businesses.	Service providers
	Sale of real property and shares of property holding companies	4% of the fair market value up to HUF 1 billion, 2% above that; maximum HUF 200 million per property.	Buyer

[50] Applicable as of 1 January 2013.

Country	Type of transaction	Tax	Person paying
Poland	Sale of shares	1% of the sale price.	Buyer
	Increase of the share capital in the company	0.5% of the value of the increase of the share capital (only nominal value, not share premium).	Company
	Loans	2% exemption applicable to bank loans and credit facilities and to shareholder loans.	Borrower
	Sale of real estate	2% exemption is available if the sale of real estate is subject to VAT.	Buyer
Romania	Sale of real estate by individuals	If the seller acquired the real property less than 3 years prior to the sale: 3%, where the declared value of the property does not exceed RON 200,000; and RON 6,000 plus 2% of the declared value of the property where such declared value exceeds RON 200,000. If the seller acquired the real property more than 3 years prior to the sale: 2%, where the declared value of the property does not exceed RON 200,000; and RON 4,000 plus 1% of the declared value of the property where such declared value exceeds RON 200,000.	Seller
Slovakia	No transfer taxes in Slovakia	n/a	n/a

Taxation of individuals

As previously mentioned, an individual's tax liability depends on his or her tax residency. An individual that is tax resident in one of the countries of the Region is subject to income tax applicable in that country on his or her worldwide income, profit and gains (unlimited tax liability). An individual not tax resident in one of the countries of the Region is subject to income tax applicable in that country only on income, profit and gains generated in that country (limited tax liability). However, under both limited and unlimited tax liabilities individual persons having their source of income within the Region will pay personal income tax. Since the regulations regarding personal income tax are specific for each Region country and this tax is levied on various types of income, for the purpose of this guide, the taxation of the two most common sources of individual income is presented: (i) employment income; and (ii) income resulting from acting as a member of the management board of a company.[51]

The table below sets out the rates and thresholds applicable to employment income annually across the Region.

Country	Rates	Thresholds /Ceilings
Bulgaria[52]	10%	Flat rate and no tax exemptions based on the amount of the income[53].
Czech Republic	15%	n/a
Hungary	16%	Up to HUF 2,242
	HUF 358,720 + 20.3%	Above HUF 2,242
Poland	18%	Up to PLN 85,528.00
	PLN 14,839.02 + 32%	Above PLN 85,528.00
Romania	16%	n/a
Slovakia	19%	n/a

[51] In Romania: there is no such distinction. Personal income is subject to a flat tax rate of 16%. In addition, directors' remuneration is treated as a salary for tax purposes.
[52] The employment income is just part of the overall income that is subject to tax.
[53] The mandatory social and medical security instalments, as well as some voluntary instalments paid by the employee are to be deducted from the income.

The table below sets out the rates and criteria applicable to the taxation of the income earned by management board members across the Region.

Country	Rates	Criteria
Bulgaria	10%	Performing duties as manager/member of board on the basis of a shareholders' and board's resolution and management contract. The tax rate is one and the same irrespective of the tax residency.
Czech Republic	15%	n/a
Hungary	The same as in the case of employment income.	n/a
Poland	20%	Performing duties on the management board of a company on the basis of a shareholders' resolution and not being tax resident in Poland.
	The same as in the case of employment income.	Performing duties on the management board of a company on the basis of an employment contract or management contract (tax residence is irrelevant).
Romania	16%	n/a
Slovakia	19%	n/a

It should be noted in relation to employment that it is also common for employers to have to pay additional taxes. Part of these payments are also incurred by the employee. In principle, these are intended to fund social benefits provided by the state to employees. The table below sets out the nature of the taxes applicable in each of the countries in the Region.

Country	Taxes	Employer		Employee	
Bulgaria[54]		% of remuneration for employees born before 1960	% of remuneration for employees born after 1960	% of remuneration for employees born before 1960	% of remuneration for employees born after 1960
	Common disease and maternity fund	2.1%	2.1%	1.4%	1.4%
	Pension security	9.9%	7.1%	7.9%	5.7%
	Unemployment fund	0.6%	0.6%	0.4%	0.4%
	Industrial accidents and occupational diseases fund	0.4% – 1.1%	0.4% – 1.1%	n/a	n/a
	Medical security	4.8%	4.8%	3.2%	3.2%
	Supplementary compulsory pension security	n/a	2.8%	n/a	2.2%
	Total	17.8% – 18.5%	17.8% – 18.5%	12.9%	12.9%

[54] The maximum amount from which these deductions/payments on behalf of the employer are made is BGN 2,200.

Country	Taxes	Employer	Employee
Czech Republic[55]	Pension insurance	21.5%	6.5%
	Sickness insurance	2.3%	n/a
	Employment fund	1.2%	n/a
	Health insurance	9%	4.5%
	Total	34%	11%
Hungary	Social tax	27%	n/a
	Contribution to state training fund	1.5%	n/a
	Contribution to employment of disabled persons	HUF 964,500 p.a. per capita missing from the required employment level of disabled persons (5% of the total number of employees)	n/a
	Pension insurance	n/a	10%
	Health insurance	n/a	7%
	Contribution to National Employment Fund	n/a	1.5%
	Total	33.5%	18.5%

[55] The amounts are capped at four times the average gross salary (except health insurance which is uncapped).

Country	Taxes	Employer	Employee
Poland	Pension insurance	9.76%	9.76%
	Disability insurance	6.5%	1.5%
	Accident insurance	n/a	from 0.67% to 3.86%
	Health insurance	n/a	2.45%
	Employment fund	2.5%	n/a
	Employee benefits guarantee fund	0.1%	n/a
	Total	18.86%	14.38% - 17.57%
Romania	Social security (pension) contribution	20.8%, 25.8% or 30.8% depending on working conditions (but capped at five times the average gross salary[56])	10.5% (but capped at five times the average gross salary[56])
	Health insurance	5.2%	5.5%
	Unemployment insurance	0.5%	0.5%
	Work accidents, risk insurance and occupational disease insurance	0.15% to 0.85% (depending on the risk category)	n/a

[56] For 2013 the average gross salary is RON 2,223.

Country	Taxes	Employer	Employee
Romania	Medical leave	0.85% (but capped at 12 minimum gross salaries[57] multiplied by the number of employees covered by this contribution)	n/a
	Guarantee fund	0.25%	n/a
	Total	27.5%, 28.2%, 32.5%, 33.2%, 37.5% or 38.2%	16.5%
Slovakia	Pension insurance	14%	4%
	Sickness insurance	1.4%	1.4%
	Unemployment	1%	1%
	Guarantee insurance	0.25%	n/a
	Disability insurance	3%	3%
	Reserve solidarity fund	4.75%	n/a
	Accident insurance	0.8%	n/a
	Health insurance	10%	4%
	Total	35.2%	13.4%

[57] The current minimum gross salary for 2013 is RON 800, as of July 2013.

Local taxes

The countries in the Region impose local taxes which are levied on land and buildings or certain activities. With respect to business activity, the most important local tax is real estate tax, which is levied on land and buildings. This tax is payable by the owner of the real estate. However the rates depend on whether the real estate is used for the purposes of business activity.

In Hungary, the municipal building and land tax is payable regardless of the use of the property. Not only can properties be taxed by local municipalities, but also business activity carried out in the territory of the particular municipality.

The table below sets out the rates of real estate tax that are applicable to buildings, infrastructure and land used for business activity across the Region.

Country	Tax rates
Bulgaria	**Buildings** – Municipal Councils determine a rate within a range of 0.01 to 0.45% of the tax assessment value per year. **Infrastructure** – not-taxable. **Land** (only urbanized land plots) – Municipal Councils determine a rate within a range of 0.01 to 0.45% of the tax assessment value per year. **Tourist tax** – a specific local tax levied on the businesses providing hotel accommodation services. The specific amount is determined by the Municipal Council on an annual basis. **Motor vehicles** – depends on the power of the engine (higher tax for more powerful vehicles) and the year of production of the vehicle. (The older the vehicle the lower the tax.) The tax is paid annually. **Refuse collection fee** – fee payable for the garbage collection services provided by the municipality. The annual amount of the fee is often much higher than the local tax on real estate.
Czech Republic	**Buildings** – rates can vary by municipality, type and purpose of the use of a building or apartment; maximum rate CZK 15 per square metre. **Land** (incl. infrastructure) – rates can vary by municipality, type and purpose of the use of land or infrastructure; maximum rate: CZK 10 per square metre or 0.75% of the official value per square metre published by the government decree.

Country	Tax rates
Hungary	**Buildings** – rates can vary by municipality; maximum rate HUF 1,100 per square metre or 3.6% of fair market value. **Land** – rates can vary by municipality; maximum rate: HUF 200 per square metre or 3.0% of fair market value. **Business income** – rates can vary by municipality; maximum rate is 2% on the net sales revenue less certain expenses (costs of goods sold, subcontractors, recharged service fees, material expenses).
Poland	**Buildings** – PLN 17.31 per square metre. **Infrastructure** – 2% of the initial depreciation value. **Land** – PLN 0.62 per square metre.
Romania	**Buildings** – - 0.1% of the taxable value of the property for individuals. The tax increases depending on the number of buildings owned. - 0.25% and 1.5% (the exact value is set by the local council) of the entry value of the building for legal persons. The tax increases if the building is not revalued periodically. **Land** – a fixed amount per square metre depending on the rank of the locality where the land is located and the area and/or category of land use, in accordance with the classification set by the local council.
Slovakia	**Land tax** – 0.25% of the tax base (the tax base depends on the area in square metres and on the value of the land depending on its type). **Building tax** – EUR 0.033 per every built-in square metre. **Apartment tax** – EUR 0.033 per square metre[58].

[58] The tax administrator of a municipality may set a different annual tax rate; however, such tax rate may not exceed five times (for land tax) or 40 times (for building tax and apartment tax) the lowest annual tax rate set by the tax administrator in a generally binding regulation.

Transfer pricing

Transfer pricing regulations exist to ensure that prices in transactions between related companies are established on a market-value basis. In other words, prices used by related companies should be the same as they would have been had the parties to the transaction not been related to each other. The purpose of these regulations is to prevent profits being systematically directed to countries having low income tax rates.

The Region's countries have adopted the Organisation for Economic Co-operation and Development's (OECD) principles regarding transfer pricing. This means that the methods of verifying the prices used by related parties and the documentation requirements imposed on the parties to a transaction are generally the same within the Region. However, the types of relationships that result in companies being recognised as related for transfer pricing purposes are different.

The table below sets out the criteria applicable in each of the countries in the Region that must be met in order for the parties to the transaction to be recognised as related for the purpose of the transfer pricing regulations.

Country	Relationship criteria
Bulgaria	The Bulgarian Tax and Insurance Procedure code provides a definition of related parties as follows: • a corporation or a person who holds more than 5% of the issued voting participating interests or shares in the corporation; • any two persons, of whom one exercises control over the other; • any persons whose activity is controlled by a third party or by a subsidiary thereof; • any persons who jointly control a third party or a subsidiary thereof; • any two persons of whom one is a commercial representative of the other; • any persons who participate, whether directly or indirectly, in the management, control or capital of another person or persons and, therefore, they can agree on conditions other than the customary conditions; • entities related by management staff; • any two persons, of whom one exercises control over the other even through a subsidiary or a commercial representative; • employer and employee; • partners; • any two persons of whom one has made a donation to the other; and • spouses, close relatives and persons inhabiting a single household. In the Transfer Pricing Manual issued by the National Revenue Agency, which provides guidelines on the matter, the Agency states that a mark-up of 3%–8% in a related parties transaction would qualify as market based and, therefore, no further investigation should be carried out.

Country	Relationship criteria
Czech Republic	Capital relationship: (i) one party (company, individual) directly or indirectly participates in another company's capital or voting rights; or (ii) one party directly or indirectly participates in the capital or voting rights of other companies, and this party (company, individual) has a holding of at least 25% in the other companies' share capital or voting rights; in such case all are regarded as related parties. Control/personal relationship: (i) one party (company, individual) participates in the management or control (supervision) of another company; (ii) identical persons or related persons participate in the management or control of other persons (companies); such other persons (companies) are regarded as related parties.
Hungary	A company or an individual is a related party of a company if it controls at least 50% of the voting rights in that company or has the right to elect or remove more than half of the legal representatives or the supervisory board of the company, regardless of whether any of them is a foreign tax resident or not. A company and other companies are related parties if a company or an individual controls at least 50% of the voting rights in both companies or has the right to elect or remove more than half of the legal representatives or the supervisory board of both companies, regardless of whether any of them is a foreign tax resident or not. A foreign tax resident business and its local permanent establishment and respectively a Hungarian tax resident business and its foreign permanent establishment are also related parties.
Poland	A company or an individual resident in one country controls a company resident in another country or holds at least 5% of the shares of that company (in such a case controlling and controlled companies are related or the individual and controlled company are related). The same company or individual controls two companies having their residence in two countries or holds at least 5% of the shares of those companies (in such case these two companies are related).

Country	Relationship criteria
Romania	An individual is related to another individual if they are spouses or relatives up to the third degree. An individual is related to a legal person if the individual holds, directly or indirectly, and including holdings of related parties, a minimum of 25% of the value/number of the shares or voting rights in such legal person, or if the individual effectively controls the legal person. A legal person is related to another legal person if: • the first legal person holds, directly or indirectly, including holdings of related parties, a minimum of 25% of the value/number of the titles or voting rights in the second legal person, or if the first legal person effectively controls the second legal person; • the second legal person holds, directly or indirectly, including holdings of related parties, a minimum of 25% of the value/number of the titles or voting rights in the first legal person; or • a third legal person holds, directly or indirectly, including holdings of related parties, a minimum of 25% of the value/number of the titles or voting rights in both the first and the second legal person.
Slovakia	Related parties are economically or personally related parties as well as parties related in other ways. A relation in another way is considered a business relationship established only for the purposes of decreasing the tax base or increasing the tax loss of the party. Economic or personal interrelation – one party participates in the ownership, control, or management of another party, or a relationship between parties which are under the control or management of the same party, or in which the same party has direct or indirect equity interest. Participation in the ownership or control – any direct, indirect, or indirect derivative holding of more than 25% of the registered capital or the voting rights. Participation in management – the relationship of members of statutory bodies or supervisory bodies of a partnership, company or co-operatives, towards such a partnership, company or cooperative.

Thin capitalisation

The thin capitalisation rules existing in the Region limit the amount that a company can claim as a tax deduction on interest when it receives loans from its shareholders. The scope of that limitation depends on the following criteria:

- the amount of the loan and the amount of the share capital of the company (the debt to equity ratio); and
- the percentage of shares held by the shareholder that grants the loan to the company.

The thin capitalisation mechanism works in such a way that interest on loans granted to a company by a shareholder (holding a specific percentage of shares) is not tax deductible to the extent the loan exceeds a specific debt to equity ratio.

The table below sets out the percentage of shareholding that limits the tax deductibility of the interest resulting from a loan granted by a shareholder holding such percentage of shares and the debt to equity ratio applicable in each of the countries in the Region.

Country	Shareholding	Debt to equity ratio (loan to share capital ratio)
Bulgaria	Generally the shareholding is irrelevant for the applicability of the thin capitalization rules[59].	3 to 1
Czech Republic	25%	4 to 1
Hungary	Generally the shareholding is irrelevant for the applicability of the thin capitalization rules. However, as well as shareholder loans, any non-bank loan is included in the amount of debt.	3 to 1
Poland	25%	3 to 1
Romania	n/a	3 to 1
Slovakia	n/a	n/a

[59] In Bulgaria the thin capitalisation rules are not applicable to interest under bank loans or financial lease contracts, save for those cases where: (i) the bank or the financial lease company and the borrowers are related parties; or (ii) a party related to the borrower is a guarantor under the loan/the financial lease; or (iii) a party related to the borrower has ordered the granting of the loan/the financial lease.

The below table summarises the types of shareholding resulting in thin capitalisation restrictions regarding shareholder loans.

Country	Loan granted by the direct shareholder (parent company)	Loan granted by the indirect shareholder (parent of parent company)	Loan granted by a sister company
Bulgaria	Thin capitalisation rules apply.	Thin capitalisation rules apply.	Thin capitalisation rules apply.
Czech Republic	Thin capitalisation rules apply.	Thin capitalisation rules apply.	Thin capitalisation rules apply.
Hungary	Thin capitalisation rules apply.	Thin capitalisation rules apply.	Thin capitalisation rules apply.
Poland	Thin capitalisation rules apply.	n/a	Thin capitalisation rules apply only if the shareholder holds at least 25% of the shares in either the company that borrows or in the sister company that grants the loan.
Romania	Thin capitalisation rules apply.	Thin capitalisation rules apply.	Thin capitalisation rules apply.
Slovakia	n/a	n/a	n/a

Imports and exports – within/outside EU

Taxation relating to the Region's imports and exports depends on whether goods are imported or exported within the EU or outside of the EU.

Within the EU

The supply of goods between VAT registered traders is generally zero-rated. To qualify for this, the EU VAT registration number must be put on the invoice. Where VAT is payable, the customer receiving supplies must pay VAT at the rate applicable to that country. On sales to non-VAT registered customers, the trader generally charges the domestic VAT that would be charged on a domestic sale. However, supplies of services are treated differently. Generally, the place of supply for VAT purposes for the supply of services between two VAT taxpayers will be where the customer is based. A few exemptions from this rule exist. This generally dictates what rate of VAT is due on a given supply of services.

Outside of the EU

Exports of goods outside of the EU are subject to VAT but are generally zero-rated. Imports from outside the EU are subject to VAT, which is payable by the importer at the same rate as if the goods were supplied within the Region (rates described in the table above apply). Customs duty and excise duty may also be payable on imports.

Customs duties

Customs duty is applicable only on an import of goods to the EU. Customs rates are unified for the whole of the EU. Therefore, the same rate is applicable irrespective of the country in the Region to which the goods are imported. The supply of goods within the Region is not subject to customs duties.

Double tax treaty network

The Region's countries have agreed with other countries in bilateral agreements to mitigate the effects of double taxation. Such agreements are known as double tax treaties. Double tax treaties, in particular:

- reduce the amount of tax withheld by the countries that are party to the treaty in relation to interest, dividends and royalties paid by a tax resident of one country to tax residents of the other country;
- define the circumstances in which the income of individuals resident in one country will be taxed in the other country, including salary, income from self employment, pensions and other income; and
- provide a mechanism for eliminating double taxation (this can be a tax credit (each country grants credit for the taxes of the other country to reduce the taxes of a resident of the country) or a tax exemption (each country grants a tax exemption on specific incomes earned in the other country to reduce the taxes of a resident of the country)).

Each country in the Region has a double tax treaty network and has treaties with over 80 countries, including the USA, China and nearly all of Europe.

Special tax incentives

Special tax incentives exist in the Region's countries. Tax benefits are granted with respect to investment within special zones, investment in specific activities and investments that create new employment.

The table below summarises the types of incentives existing within the Region.

Country	Tax incentives
Bulgaria	Bulgarian tax legislation provides general and regional corporate tax incentives. General tax incentives are applicable when hiring personnel in specific categories i.e. people listed as unemployed for more than 12 months, people aged 50 or higher who are listed as unemployed or people with disabilities[60]. The employer is entitled to reduce its financial result for tax purposes by the total amount it pays in remuneration to these employees and towards health and social insurance fees, effectively paid during the first 12 months of employment of these people[61]. As of the beginning of 2014, employers would be entitled to reduce their financial result with amounts paid as scholarship / tuition grants to students (subject to some additional conditions). There are also general tax incentives allowing specialised social and health security funds to retain 50% of their corporate tax payable with respect to their economic activity that is directly linked or is auxiliary to their main activity. A percentage of the donations in favour of certain persons (such as the Bulgarian Red Cross) are tax deductible. Collective investment schemes, licensed investment companies of the closed-end type and special purpose investment companies are exempt from corporate tax. Regional tax incentives are applied through a much more elaborate mechanism and specific requirements involving in some cases the approval of not only the state but also the Commission. A basic guideline is that a company is entitled to such incentives for investing in regions with unemployment rates over 35% higher than the national average (no corporate tax is payable, provided that the funds benefiting from such relief are used for investment purposes) and investing in agriculture (tax relief of 60% of the payable corporate tax, provided the funds benefiting from such relief are used for investment purposes). In order to enjoy such tax relief, the company has to meet certain additional requirements.

[60] A separate, special tax incentive is granted to companies formed under the People with Disabilities Integration Act, which because of their specific nature are not mentioned here.

[61] The remunerations and the contributions for social and health insurance are legitimate expenses taken into account when computing the financial result. Thereafter, these amounts are deducted from the financial result for tax purposes only to determine the taxable result of the employer.

Country	Tax incentives
Czech Republic	Incentives are provided for new manufacturing investments, R&D and shared service centres (meeting certain criteria such as minimum volume of investment and location of the investment). Types of incentives include: (i) income tax holiday for 10 years; (ii) job-creation subsidies; (iii) employee retraining subsidies; and (iv) sale of land by a municipality to an investor for a discounted price.
Hungary	Tax relief is available in the form of tax credits for companies making capital expenditures: • in excess of HUF 3 billion, resulting in new jobs; • in excess of HUF 1 billion, resulting in new jobs in a depressed area; and • in excess of HUF 100 million, in assets relating to food hygiene, protection of the environment, R&D, film and video production and creating new jobs. There are special tax relief schemes available only for SMEs.
Poland	Tax relief schemes are applicable for investment in special economic zones "**SEZ**". Currently 14 SEZs exist. A company that operates in a SEZ benefits from the relief when it makes investments in the zone or creates new places of work in the SEZ. The mechanism for calculating the relief is complicated and generally depends on the value of the investment and labour costs relating to the new places of work created. The relief to which a company operating in a SEZ is entitled concerns the tax due on the income related to the activity conducted in the SEZ. The relief also relates to real property tax concerning the land, buildings and structures used for conducting activity within the SEZ.
Romania	*Special incentives regarding expenses related to research and development activities* Companies can benefit from an additional deduction of 20% of eligible expenses incurred in connection with R&D activities performed by them. Furthermore, accelerated depreciation may be applied for devices and equipment used in R&D activity. In order to benefit from this additional deduction, R&D activities have to be conducted to obtain results that the taxpayer can actually benefit from. *Dividend tax exemption for reinvestments* Dividends are exempted from taxation as of 1 January 2009 if they are invested in the same or in another Romanian company's share capital. To benefit from this exemption, dividends must be reinvested to preserve and increase the number of employees and to boost existing lines of business.

Country	Tax incentives
Romania cd	*Local tax exemptions for businesses located in industrial parks and science technology parks* No property tax is due for buildings and construction located in an industrial park. Land within industrial parks is also exempt from land tax. The incentives granted for the set up and development of industrial parks include: • lower taxes on tangible assets and land used by the park; • exemption from taxes on land; • deferred payment of VAT for materials, equipment and connection to the public utilities networks during the investment period, until the park is put into operation; • development programmes for infrastructure, investments and equipment endowments granted by local and central public administration, companies and foreign financial assistance; and • donations, concessions and structural funds for development. Companies operating within an industrial park benefit from various services offered by the park administrator free of charge or with reduced fees. Advantageous conditions with regard to the location and use of the infrastructure and communications of the park, with payment in instalments.
Slovakia	Investment incentives are provided to support initial investments of business undertakings and to support the creation of new job positions. Types of investment incentives include the following: (i) investment subsidies; (ii) income tax relief for a maximum of 10 years; (iii) job-creation subsidies; and (iv) sale of immovables for a discounted price. R&D incentives are provided in the form of: (i) subsidies for R&D; and (ii) income tax relief for a maximum of 3 years. The taxpayer is allowed to claim tax relief up to the amount of the tax calculated from the proportional part of the tax assessment base (not the full tax base but proportionately decreased by a coefficient calculated depending on the amount of the justified costs of the investment and own sources of the taxpayer being it either the taxpayer’s equity or own actually incurred costs). There is no legal entitlement for the provision of incentives even if all statutory conditions are fulfilled (the incentives have to be approved on a case by case basis by the Government).

10. Intellectual property

10. Intellectual property

This section includes an overview of the regulations of intellectual property rights commonly found in New Europe. In many respects these regulations are the same across the Region as a result of the implementation of EU regulations, as well as a result of the adoption of a number of international treaties.

Trademarks

Trademarks are commonly used for the designation of the goods or services of an undertaking. In order for a designation to be registered as a trademark:

- it should distinguish the goods or services of an undertaking from those of other undertakings;
- it should be capable of being graphically represented, in particular as a word, graphical designation, three-dimensional shape or melody; and
- there should be no obstacles for the registration of a trademark, such as, for example prior registration of an identical or similar trademark by another undertaking (the regulations regarding trademarks specify these obstacles in detail).

Protection of trademarks in the Region can be divided into three regimes that provide equal protection in the territory where the registration has been made:

- National registration procedure
  Protection of a trademark may be granted under national regulations of each of the countries of New Europe. Under these regulations, a trademark is registered by the national authority and the trademark is protected in the country of registration.
- Community Trademark
  A trademark may also be protected as a Community Trademark on the basis of Council Regulation EC 207/2009 dated 26 February 2009. A Community Trademark is registered by a specialised European authority, the Office for Harmonisation in the Internal Market. Under a Community Trademark a designation is protected throughout the entire EU.
- International registration procedure
  Finally, protection of a trademark may be granted on the basis of international treaties. The relevant treaties comprise:
  - the Madrid Agreement Concerning the International Registration of Marks dated 14 April 1891; and
  - the Protocol relating to the Madrid Agreement concerning the international registration of marks dated 27 June 1989.

Protection may be granted in the territories of states that are party to the treaties. All of the countries of New Europe are party to both of these treaties.

The registration of a trademark under an international procedure based on these treaties requires the prior registration (or an application for registration, depending on whether the Madrid Agreement procedure or the Madrid Protocol procedure is applied) of a trademark in the country of origin (generally, under the Madrid Agreement the country of origin is the country of the applicant's seat, whereas under the Madrid Protocol, the country of origin may be discretionarily chosen by the applicant). Subsequently, an application for international registration should be filed with the International Bureau of the World Intellectual Property Organisation via the national authority of the country of origin. The application should specify, in particular, the countries where the trademark is to be protected and it needs to be identical to the basic application or registration.

The protection of trademarks in all of the procedures described is granted for a period of 10 years from the date of filing an application and may be indefinitely prolonged for subsequent 10 year periods.

Registration of a trademark gives the rightholder:

- exclusive use of the trademark in the territory where it is protected in relation to the goods and services specified by the rightholder;
- the right to prevent other persons from using trademarks that are:
  – identical to the registered trademark in relation to identical goods and services; or
  – identical or similar to the registered trademark in relation to identical or similar goods or services, if there is a risk of confusion of these trademarks; and
- the right to authorise another person to use the trademark (licence).

Patents and utility models

Patents

A patent is an industrial property right that may be granted for an invention that:

- is new;
- involves an inventive step;
- is susceptible to industrial application; and
- is not expressly excluded from the possibility of patent protection.

As with trademarks, a patent can be obtained by three different methods:

- the national registration procedure in proceedings conducted by a national patent authority;
- the registration procedure before the European Patent Office on the basis of the Convention on the Grant of European Patents; and
- international registration on the basis of the Patent Cooperation Treaty and Strasbourg Agreement Concerning Patent Classification via the International Bureau of the World Intellectual Property Organisation.

The latter two procedures do not result in the creation of a separate industrial property right (as in the case of the Community Trademark), but facilitate the patent application procedure in different countries. The registration procedures do not automatically create an intellectual property right effective in each country of the Region but require an additional verification of the patent application by the national authorities.

The EU has recently adopted documents on a new system of patent protection, which would result in the creation of a single patent valid across the entire EC (similar to a Community Trademark). However, the ratification procedure by the EU member states is pending[62].

A patent is generally granted for a maximum period of 20 years provided that the renewal fees are paid (save for pharmaceuticals, which can receive an additional five years protection). The manner of paying renewal fees varies depending on jurisdiction, e.g. in Poland an initial fee is paid for a period of the first five years from the filing of an application for the grant of a patent and renewal fees for subsequent years are paid annually and in Romania the initial fee is paid for a period of the first three years and renewal fees for subsequent years are paid annually.

Grant of a patent gives the rightholder:

- exclusive use of the invention in the territory where it is protected;

- the right to prevent other persons from unauthorised manufacture, use, offering, sale or import of products the subject of the invention or manufactured directly using the method that is the subject of the invention; and

- the right to authorise another person to use the invention (licence).

Utility models

A utility model is an industrial property right protecting technical innovations that might not qualify for a patent. However, methods are not protected as utility models.

In comparison to patent protection, the registration of utility models has less stringent protection requirements. Namely, while the requirement of “novelty” must always be met, that of “inventive step” may be much lower or absent altogether depending on the jurisdiction[63]. In practice, protection for utility models is often sought for innovations of a rather incremental character, which may not meet the patentability criteria.

A utility model can be registered using the same three methods described above in relation to patents. In addition, the rights of a utility model holder are similar to a patent.

The protection of utility models is granted for a maximum period of 10 years from the date of filing an application for registration.

[62] Please note that Poland did not sign the Agreement on a Unified Patent Court.
[63] Please note that in Slovakia the regime for patents and utility models was harmonised and the “inventive step” requirement applies to utility models as well.

Industrial designs

An industrial design refers to the legal right which protects the overall visual appearance of a product or a part of a product. An industrial design is protected by law as a result of the registration procedure (registered industrial designs). However, in some jurisdictions industrial designs may also be protected despite lack of registration.

Registered industrial designs

For valid registration, an industrial design must:

- be new;
- have an individual character; and
- not be subject to restrictions on registration of an industrial design, such as, for example, being solely dictated by the product's technical function (the regulations regarding industrial designs specify particular restrictions in detail).

Protection of industrial designs in New Europe can be divided in three co-existing legal regimes:

- National registration procedure
  An industrial design can be registered by filing an application with the national authority of each of the countries of New Europe. Under that system the industrial design is protected only in the country of registration.

- Community registration procedure
  A Registered Community Design is valid throughout the whole of the EU. A Community Design application is filed directly with the Office for Harmonization in the Internal Market or through the national patent office.

- International registration procedure
  An industrial design can also be registered in a procedure based on international treaties, in particular the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs dated 2 July 1999 (Hague system for the international registration of industrial designs).

  On the basis of the Hague system a single application for the protection of industrial designs in the designated countries (being signatories of the Hague Agreement) may be filed and produces the same legal effect in each designated country as if the application had been filed directly with the national registration authority.

  Please note, however, that neither the Czech Republic nor Slovakia are party to the Hague system.

Registration of the industrial design gives the rightholder:

- exclusive use of the industrial design throughout the territory of the registration; and
- the right to prevent any third party from making, offering, putting on the market, importing, exporting or using a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

The protection of registered industrial design is granted for a maximum period of 25 years as of the date of filing an application, without the possibility of further renewal.

Unregistered industrial designs

There are some European jurisdictions where a design may be a subject of protection despite lack of registration (unregistered industrial designs).

Although the national regulations of the countries of New Europe do not provide for protection of unregistered industrial designs, it is possible to obtain protection for unregistered design on the basis of EU regulations (Unregistered Community Design). Although an Unregistered Community Design has to meet the same characteristics as a Registered Community Design in order to be protected, its scope and duration is limited. The holder of an Unregistered Community Design may only prevent third parties from copying the design for a period of three years from the date on which the design was first made available to the public within the territory of the EU.

Copyright and neighbouring rights

Copyright

Copyright regulations in the Region are influenced by international treaties, in particular the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and a number of EU Directives.

The main aim of copyright regulations is the protection of human works that carry a certain degree of originality and creativity. Copyright relates to a wide range of works comprising in particular literary, graphic, photography, musical, film and architectonical works, as well as software. Copyright protection is effective by virtue of creation of a work, provided that the work is perceivable in any manner. Therefore, there is no need to register such works in order to obtain copyright protection.

All of the countries in the Region have incorporated a dualistic copyright system consisting of the moral rights of an author and economic rights (rather than a unified system, which does not divide copyright into moral rights and economic rights).

Generally, the moral rights cannot be transferred, except in Bulgaria where the transfer of moral rights is allowed except for the right of the author to claim authorship of the work and the right to request the name, pseudonym or other identification of the author to appear in the usual way whenever the work is used.

Except in the Czech Republic and Slovakia, the economic rights are transferrable, however, the scope of transferability may vary in different countries in the Region (for example in Hungary transferability is restricted to the rights concerning software, database and works ordered for the purpose of advertising).

The author’s moral rights generally include the right to:

- authorship;
- be identified as an author of a work;
- integrity of the work;
- decide on the first publication of the work; and
- supervise the use of a work.

The economic rights to a work comprise, in particular, the right to:

- reproduce the work;
- issue copies of the work to the public;
- rent and lend an original or a copy of the work; and
- exhibit the work and communicate the work to the public, for example, via broadcast media or the Internet.

The holder of economic rights to a work may transfer his/her rights to another person or authorise another person to use the work, i.e. licence the work[64]. The table below sets out the main requirements established for copyright transfer agreements across the Region.

Country	Form	Other requirements
Bulgaria	In writing in order to be valid if: (i) exclusive rights are transferred or (ii) moral rights are transferred.	The term of the agreement may not exceed 10 years.
Czech Republic	n/a	n/a
Hungary	In writing in order to be valid.	Transfer of rights is restricted to the rights concerning software, database and works ordered for the purpose of advertising.
Poland	In writing in order to be valid.	Must specify the fields of use that are the subject of a transfer and the territory with respect to which the transfer is made.
Romania	In writing in order to be valid, except for the works used in the press.	Must specify the economic rights that are the subject of a transfer and the fields of use thereof, the term of the transfer, the territory with respect to which the transfer is made and the consideration of the holder of the economic rights that are the subject of the transfer.
Slovakia	n/a	n/a

[64] In Romania, this constitutes assignment of the work.

A licence[65] agreement may be exclusive (granting the licensee the exclusive right to use the work within a specified scope) or non-exclusive. The table below sets out the main statutory provisions regarding form, possibilities of termination and other requirements of a licence agreement across the Region.

Country	Form	Statutory provisions on termination	Other requirements
Bulgaria	If the licence is exclusive, it has to be made in writing in order to be valid.	The term of the agreement may not exceed 10 years. In the event that a contract granting exclusive rights does not specify a deadline by which the licensee should commence the use of the work, the author may terminate the contract if use of his work has not started within 2 years of the conclusion of the contract, or of the date of handing over the work, whichever of the two is later. The above provisions are not applicable to the use of architectural works.	Licence agreement must specify the type of licence (exclusive or non-exclusive), the amount of the remuneration, the term and territory in which the licensee is authorised to use the work. If the above is not specified in the agreement it shall be deemed as a non-exclusive license agreement, concluded for a term of 3 years and for the territory of the country of which the user is a national or the country of its seat if it is a legal entity.
Czech Republic	If the licence agreement is exclusive, it has to be made in writing in order to be valid.	The author may immediately withdraw from an exclusive licence agreement if the licensee does not use the licence at all or insufficiently and the author's legitimate interests are adversely affected. However, the author has to call upon the author to use the licence first and this right may not be exercised after a certain period following granting of the licence (generally 2 years). The author may also withdraw from a licence agreement if the unpublished licensed work no longer conforms to his beliefs and his legitimate personal interests would be affected by the publication of the work. A licence agreement may be terminated by notice only if it provides for such way of termination. Finally, a licence transfers by operation of law upon legal successors of the licensee unless the licence agreement provides otherwise.	Licence agreement must contain a specification of the copyrighted work, manifestation of will to grant a licence and the amount of licence fees. In addition, licence agreement must specify the manner of use of the work and the territorial and temporal scope of the licence.

Country	Form	Statutory provisions on termination	Other requirements
Hungary	In writing in order to be valid, with very few exceptions.	Unless specified in the agreement, the duration of the licence is based on the customary duration in licence agreements concluded for the use of works similar to the work forming the object of the agreement in question. The agreement containing a license of exclusive use may be terminated if the user fails to commence the use of the work within the period determined in the agreement or a period that can reasonably be expected in the given situations; or if the user exercises the rights he has acquired through the agreement in a manner that is obviously inappropriate for achieving the goals of the agreement or in a manner that is inconsistent with the intended purpose.	Licence agreement must specify the territory, term, type of use and volume of use, otherwise legal interpretation is usually more favourable to the author.
Poland	If the licence is exclusive, it has to be made in writing in order to be valid.	A licence for an unspecified period may be terminated with 1 year's notice effective at the end of a calendar year (this term can be amended). A licence for a fixed period longer than 5 years can be terminated with 1 year's notice effective at the end of a calendar year after the first 5 years of the agreement. If the licensee who has undertaken to disseminate the work does not start the dissemination within the agreed time limit (or if there is no agreed time limit – within 2 years from acceptance of a work), the author may terminate the licence and may claim damages after the expiry of an additional time limit given to the licensee, not shorter than 6 months.	Licence agreement must specify the fields of use that are the subject of the licence, the territorial scope of the licence and the term of the licence.

Country	Form	Statutory provisions on termination	Other requirements
Romania	The licence (exclusive or non-exclusive) agreement has to be made in writing in order to be valid.	The author may request the termination of the licence agreement if the licensee does not use the licence at all or insufficiently and the author's legitimate interests are adversely affected. The termination can be requested after 2 years from the conclusion of the licence agreement. The restricted 2 year period is reduced to 1 year as regards periodical publications and to 3 months with respect to daily publications. A licence agreement may be terminated by notice only if it provides for such way of termination.	Licence agreement must specify the licensed rights, the fields of use, the term of the licence, the territorial scope and the licence fee.
Slovakia	Licence agreement has to be made in writing in order to be valid.	The author may immediately withdraw from a licence agreement if the licensee does not allow him to amend the work before its publication or if the licensee would use the work in a manner decreasing its value. A licence agreement may be terminated by notice only if it provides for such way of termination. Finally, a licence transfers by operation of law upon legal successors of the licensee unless the licence agreement provides otherwise.	Licence agreement must specify the manner of use of the work, the territorial and temporal scope of the licence and the amount of licence fees.

As a rule, the economic rights run for the life of an author and seventy years after his/her death. If a work has been created as a work of joint authors the seventy year term commences on the date of the death of the last surviving author.

In the event of an infringement of copyright, the author or other authorised entity (the catalogue of the entities varies in different jurisdictions) may seek protection in court. The table below sets out the main remedies in each of the counties of New Europe available in the event of infringement of moral rights and economic rights.

Country	Remedies in the event of a breach of moral rights	Remedies in the event of a breach of economic rights
Bulgaria	• Claim to establish the infringement. • Claim to cease infringing actions. • Claim to award a certain amount as compensation for moral damages.	• Claim to establish the infringement. • Claim to cease infringing actions. • Claim for compensation of the damages resulting from the infringement. • Claim for seizing and destroying (or delivering) the illegitimately produced copies of the work or databases, including negatives, master copies, printing forms and others used for the purposes of copying. • Claim seizing and putting out of operation the copying, decoding and reproducing equipment used exclusively for committing violations. • Announcement of the court decision granting the infringement claim via 2 daily newspapers and a television program with national coverage.
Czech Republic	• Claim the authorship. • Claim to cease (potential) infringing actions. • Claim to apology and monetary satisfaction as compensation for non-monetary damages. • Claim to cease providing services constituting the infringement. • Claim to publish the judgment.	• Claim to cease (potential) infringing actions. • Claim to be informed about the manner and scope of the infringement. • Claim to eliminate the consequences of the infringement. • Claim to cease providing services constituting the infringement. • Claim to publish the judgment. • Claim damages in the amount of the actual damages and either lost profits or payment of the remuneration that would be due for the licensed use of the work. • Claim unjust enrichment in the amount of doubled remuneration that would be due for the licensed use of the work.

Country	Remedies in the event of a breach of moral rights	Remedies in the event of a breach of economic rights
Hungary	• Claim to assess the infringement. • Claim to cease infringing actions. • Claim to give a public apology or similar remedy for the infringement. • Demand that the infringer provide information on the parties taking part in the manufacture of and trade in goods or performance of services affected by the infringement, as well as on business relationships established for the infringement. • Claim to eliminate the consequences of the infringement and to seize/destroy the assets and materials used for the infringement. • Claim to award a certain amount as compensation for moral damages (if the damage is imputable to the infringer).	• Claim the economic gains (profit) achieved through the infringement. • Claim compensation (if the damage is imputable to the infringer).
Poland	• Claim to cease infringing actions. • Claim to perform actions necessary to eliminate the consequences of the infringement. • Claim to award a certain amount as compensation for moral damages.	• Claim to cease infringing actions. • Claim to eliminate the consequences of the infringement. • Claim damages in the amount of either the actual damages and lost profits or payment of double (or if infringement is caused wilfully or by negligence, triple) the amount of remuneration that would be due for the consent to use the work. • Render the acquired benefits.

Country	Remedies in the event of a breach of moral rights	Remedies in the event of a breach of economic rights
Romania	• Claim to cease infringing actions. • Claim to perform actions necessary to prevent/eliminate the consequences of the infringement. • Claim to award a certain amount as compensation for moral damages.	• Claim to cease infringing actions. • Claim to prevent/eliminate the consequences of the infringement. • Claim damages in the amount of either the actual damages and lost profits or payment of triple the amount of remuneration that would be due for the consent to use the work. • Render the acquired benefits.
Slovakia	• Claim the authorship. • Claim to cease (potential) infringing actions. • Claim to apology and monetary satisfaction as compensation for non-monetary damages. • Claim to publish the judgment.	• Claim to cease (potential) infringing actions. • Claim to be informed about the manner and scope of the infringement. • Claim to eliminate the consequences of the infringement. • Claim damages at least in the amount of remuneration that would be due for the consent to use the work. • Claim unjust enrichment at least in the amount of remuneration that would be due for the consent to use the work.

Neighbouring rights

The intellectual property regulations in the Region also include a category similar to copyright called "neighbouring rights". Neighbouring rights generally comprise the rights of performing artists in performances, the rights of producers in recordings of sounds of a performance or of other sounds (phonograms) and visual performance recordings and rights of radio and television organisations in broadcasts of their programmes.

The duration of neighbouring rights is generally 50 years but the date of commencement of this period is established separately for each type of neighbouring rights.

Under Polish, Czech, Slovak and Romanian law, there are also other categories of neighbouring rights, for example, rights to first editions (which relates to rights of publishers who were the first to publish a piece of work for which the protection under the copyright regime has expired).

Another sui-generis right that should be noted is a right protecting databases, which is set out in the Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases and transposed to the national laws of countries of the Region.

11. Money laundering and anti-corruption laws

11. Money laundering and anti-corruption laws

In the last decade, a strong and efficient system of combating money laundering and terrorist financing has been developed in the Region. Its impact is wide and needs to be considered carefully.

Anti-money laundering ("AML") laws

The AML system in the Region is designed to assist the authorities in identifying, disrupting and deterring money laundering and underlying criminal activity by requiring higher standards of transaction monitoring across certain sectors, particularly the financial services sector.

The AML system usually imposes monitoring obligations on certain institutions, such as banks, financial institutions and lawyers. Such persons are required to report suspicious transactions. This means that in general they are obliged to record and store, for a certain period of time, records of any transaction with a value exceeding the amount set by law, regardless of whether the transaction is carried out as a single operation, or as several operations if circumstances indicate that they are interrelated, and records of certain specified transactions regardless of their value.

Moreover, institutions are obliged to report where they know, suspect or have reasonable grounds to suspect that someone is engaged in money laundering if this information has come to them in the course of their regulated business. The institutions may report either to the police, the prosecutor or the state agency dealing with organised crime and terrorist financing (if one has been established). The substantive law in the Region penalises involvement in money laundering, so these bodies are obliged to commence a criminal investigation if there is a suspicion that an AML crime might have been committed.

Anti-corruption laws

Criminal law in the Region penalizes bribery, both in the private and public sectors.

With regard to bribery in the public sector, providing or promising a material or personal benefit to a person holding public office is prohibited. Moreover, in general, public officials are obliged to report bribery.

With respect to the private sector, bribery might take place where a material or personal benefit or promise thereof is granted to or received by a director of a company or person having a significant influence over the decision-making process in that company, or a shareholder of a company[66], in exchange for actions that could damage the company, constitute unfair competition practices under a relevant statute or confer an inadmissible advantage on the person giving or offering the bribe[67] or where a material or personal benefit or promise thereof is granted to or received by any employee performing duties within a private company, for the purposes of performance, non-performance or delayed performance of an act related to his/her duties or contrary to those duties[68]. Romanian law also incriminates “traffic of influence” i.e. a situation where a material or personal benefit or promise thereof is promised to be granted, offered or granted to a person who has influence or suggests that he/she has influence over a person holding public office or to any employee performing duties within a private company to persuade him/her to perform or not to perform one of his/her service duties.

[66] In Hungary.
[67] In the Czech Republic, it is sufficient that a bribe was given in connection with business activities, without any further statutory criteria.
[68] In Romania.

Please note that there are no certain value thresholds for such benefits or promises, for example, in Romania any amount or material benefit that might entail an increase of the recipient's assets, without legal grounds, might be considered bribery if caused by the actions described above.

Some countries in the Region have introduced criminal[69] or quasi-criminal[70] liability of corporate entities. This means in general that a corporate entity may be held criminally or quasi-criminally liable for bribery committed by its employee or, in Romania, for bribery committed by any individuals, provided that the criminal offence is committed during the performance of the entity's object of business or while the individual was acting for the benefit of or in the name of the legal entity. However, such liability is usually (with the exception of Slovakia) of a secondary nature to the criminal liability of an individual, i.e. the entity can be held criminally liable only after the person who committed the offence has been found guilty and sentenced by a court of law.

Romanian law does not make such a distinction, so both the individual and the legal entity can be investigated and punished simultaneously. In the Czech Republic, the criminal liability of a corporate entity is independent from the criminal liability of a person. Therefore, under some circumstances, a corporate entity can be held liable even though the criteria for the criminal liability of the person who committed the offence are not met.

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[69] Poland, Romania and Hungary.

[70] Quasi-criminal liability of corporate entities was introduced in Slovakia. It enables protective measures of confiscation of money or confiscation of property to be imposed on corporate entities.

12. Dispute resolution

12. Dispute resolution

System of law

Every country in the Region is a civil law jurisdiction. This means that court precedents are not binding on the Region's courts. However, the courts of lower instance usually follow the judgments of higher courts because of the "force of their authority".

Structure of the court system

In general, the court system is made up of common courts and a Supreme Court in each country[71].

There are several levels of common courts in the countries in the Region:

- district courts (covering the area of one or more municipalities);
- regional courts (covering the area of the jurisdiction of two or more district courts); and
- courts of appeal (covering the area of jurisdiction of two or more regional courts)[72].

As a general rule, the system of civil jurisdiction consists of two or three instances. A judgment of a court of first instance can be appealed against to a court of second instance. The grounds for a cassation appeal[73] against the judgment of the appeal court are usually limited, for example, to questions of law, or a certain minimum value threshold is set.

In principle, the Supreme Court supervises the judicial activity of all the common courts and is responsible for ensuring uniform interpretation of laws and court practice. The Supreme Court examines cassation appeals and may also issue resolutions on an interpretation of legal provisions that raise doubts in practice or in a particular case.

[71] In Poland, Bulgaria and the Czech Republic the court system also includes administrative courts.
[72] In some countries in the Region, e.g. in the Czech Republic, Slovakia and Poland, regional courts act as courts of appeal with respect to district court decisions.
[73] Or for the second appeal in Romania, or for the amendment of the judgment in Hungary.

Court fees

As a general principle, the losing party pays the costs and legal fees. A brief overview of the court fees in all jurisdictions in the Region is shown in the table below.

Country	Court fee for pecuniary claims	Is there a maximum amount set by law?
Bulgaria	4% of the value of the claim, but not less than BGN 50	No
Czech Republic	For claims not exceeding CZK 40 million, 5% of the value of the claim For claims exceeding CZK 40 million, CZK 2,000,000 plus 1% of the amount in excess of CZK 40 million, the amount over CZK 25 million is not counted	Yes (CZK 4,100,000)
Hungary	6% of the value of the claim	Yes (HUF 1,500,000)
Poland	5% of the value of the claim	Yes (PLN 100,000)
Romania	Depends on the value of the claim (fixed amount plus a percentage between 1%-10% of the value of the claim)	Yes (RON 6,611 plus 1% of the amount in excess of RON 250,000)
Slovakia	6% of the value of the claim	Yes (EUR 33,193.50 in commercial matters and EUR 16,596.50 in other cases)

Territorial jurisdiction

In principle[74], the court with jurisdiction over the seat of the respondent has territorial jurisdiction to hear the case. Nevertheless, the parties may choose to submit their dispute to a court of first instance other than the court territorially competent to hear the case[75]. The parties may also limit the claimant's right to choose between several courts competent to hear the dispute[76] .

State jurisdiction

As a general rule, courts have jurisdiction if the defendant is domiciled, habitually resident or has its seat in the country where the lawsuit is filed.

In principle, it is possible to exclude the jurisdiction of local courts in favour of the courts of a foreign state. For example, in Poland, to exclude the jurisdiction of Polish courts, both parties must have the right to bring an action in the courts of the foreign state. However, in the Czech Republic, Bulgaria and Slovakia exclusive jurisdiction clauses may be applied only if the case has an international element. In Hungary, the courts disregard the applicable foreign law if such law is contrary to public policy. Hungarian courts may also disregard foreign law when it is associated with a foreign component artificially created by the parties for the purpose of avoiding the law that would otherwise have been applicable. Moreover, in Hungary the parties are bound to stipulate the jurisdiction of Hungarian courts if their agreement is related to Hungarian national assets situated in Hungary.

In certain cases, the parties may not exclude the jurisdiction of local courts, for example disputes arising or which may arise from contracts entered into by a consumer[77] who is domiciled or habitually resident in the local jurisdiction, disputes revolving around rights *in rem* in immovable property and possession of property located in the local jurisdiction or when disputes regard insolvency.

Limitation periods

The possibility of bringing a claim is limited by limitation periods. The limitation periods depend on the type of claim being pursued and fluctuate, for example between one and ten years in the Czech Republic, Poland and Slovakia, between three and ten years in Romania (with limited exceptions of one- and two-year limitation periods) or between six months and ten years in Bulgaria. In Hungary, the general limitation period is five years, but claims relating to property are not limited by limitation periods. The statutory periods of limitation run from the time that a claim becomes due, and, in principle, they cannot be modified by an agreement. However, in Romania the limitation periods may in certain cases be modified by the parties.

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[74] For example in Romania the law limits the choice of jurisdiction in certain cases (claims regarding real estate, commercial companies and insolvency), whereas in Hungary it is prohibited to choose certain courts located in the capital.

[75] Except in Slovakia. In the Czech Republic this concerns only business related disputes.

[76] Except in Slovakia and the Czech Republic.

[77] In Bulgaria, pursuant to Regulation 44/2001, local jurisdiction over consumer contracts may be excluded by an agreement entered into after the dispute has arisen.

Enforcement

In order to enforce a judgment, a party must obtain an enforcement clause, which confirms that the judgment is final and binding and may be enforced by execution. The enforcement clause is usually issued by a court. However, for example, in Romania, in certain situations a judgment does not need to be vested with a writ of execution in order to be enforced. In Bulgaria, enforcement of judgments is carried out by virtue of a writ of execution issued by the court on the basis of a final first instance judgment or on the ground of a second instance judgment even before it enters into force. A writ of execution may also be issued on the grounds of an enforcement order, which a Bulgarian court may grant in an expedited court procedure without ruling on the merit of the case.

In practice, the major difficulty in enforcing domestic judgments is the efficiency of enforcement proceedings. The assets recovered through execution are divided between different categories of creditors. Firstly, in general the claims for the costs of the enforcement proceedings are satisfied. Secondly, certain claims may have priority status and be satisfied ahead of all other claims, for example, in Bulgaria and Poland claims for alimony payments or, in Bulgaria, claims secured by mortgage or pledge when the enforcement is carried out in respect of real estate and movables provided as security. The remaining creditors are paid if there is any money left.

Enforcement and recognition of foreign judgments

The procedure with respect to the enforcement or recognition (judgments that are not enforceable are submitted for recognition) of foreign judgments depends on the country of origin of the judgment.

Recognition and enforcement of judgments from the EU

The enforcement and recognition of judgments issued in EU member states is regulated by Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

A judgment rendered, or other judicial decision (such as an injunction) issued, in EU member states is automatically recognised by the court in any other EU member state without any special procedure being required.

Recognition and enforcement of other foreign judgments

Generally, a foreign judgment in a civil case is recognised by law. A judgment issued in a foreign state and enforceable in that state will be enforced in the country where the enforcement is sought if its court declares it enforceable. This declaration will be issued unless any of the circumstances mentioned below that prevents recognition occurs.

In principle, a judgment will not be recognised if:

- recognition would be contrary to the fundamental principles of the legal order (public policy) of the country where the enforcement is sought;
- the judgment is not final and binding in the country of origin; or
- if it is irreconcilable with an earlier final and binding judgment given in the country where the enforcement is sought.

There are only minor differences among the jurisdictions in the Region. Besides the above mentioned prerequisites, in the Czech Republic, Poland, Slovakia and Bulgaria a judgment may not be recognised if, among other reasons, a party to the proceedings was deprived of its right of defence. Moreover, in Bulgaria a judgment will not be recognised if there is a pending dispute on the same matter between the same parties referred to the Bulgarian court before the commencement of the court proceedings in the foreign state or if the foreign court has no jurisdiction to hear the case.

Product liability

Laws on product safety and liability have developed extensively in the Region in recent years. Therefore, it is important for companies willing to invest in the Region to have an understanding of their legal exposures in this respect.

In general, if a product causes injury, loss or damage to third parties, then the distributor of the product or the manufacturer may be exposed to liability. Product safety and liability laws usually impose a strict liability regime on all the parties involved in the production or distribution chain. This means that the manufacturer is liable if the product is defective, even if the manufacturer was not negligent in making that product defective.

Besides local laws on this matter, all countries in the Region were obliged to implement the EU General Product Safety Directive. This defines a product as any product (including in the context of providing a service) which is intended for consumers or likely, under reasonably foreseeable conditions, to be used by consumers even if not intended for them, and is supplied or made available in the course of a commercial activity. The EU General Product Safety Directive prohibits producers or distributors from placing or supplying unsafe products on the market. If they infringe the safety requirements imposed by the EU General Product Safety Directive, relevant enforcement authorities will take action. They may impose a fine or require the withdrawal or recall of the product in question. Therefore, there are only minor differences between the regulatory regimes in the Region.

Environment

Environmental laws aim to create a system regulating the interaction between the natural environment and the impact of man (e.g. construction projects). All the countries in the Region have adopted local laws or implemented the EU directives on the protection of the environment. Therefore, businesses must bear that in mind when preparing investment projects involving, for example, construction of a power plant or highway.

Arbitration

Arbitration is an important alternative to litigation in the Region.

In principle, the parties may refer to arbitration any matter in which they are free to act and settle before a court. Some exceptions refer to, for example, disputes concerning rights in rem over real estate, disputes involving criminal, family or labour law matters (in Bulgaria), or consumer disputes (in Slovakia and the Czech Republic[78]). In Hungary, the parties may not choose arbitration if their agreement is related to Hungarian national assets situated in Hungary. The agreement between the parties concerning the arbitration determines the procedure, the applicable law and the language of arbitration[79].

The arbitration agreement may indicate the permanent court of arbitration that will have jurisdiction to resolve the dispute. The agreement must be in writing. This requirement is satisfied if the agreement is contained in a document signed by both parties, in an exchange of letters, faxes, telegrams or other means of telecommunication, or in general terms and conditions to which the parties have referred. An exception to this rule exists in Romania, where in the case of the institutionalised arbitration of the Chamber of Commerce and Industry of Romania the rules provide that the competence of the arbitral tribunal may also be derived from an arbitration claim filed by one of the parties and accepted by the other party if the other party did not invoke the exception of lack of competence of the arbitral tribunal in its statement of defence.

The arbitral tribunal resolves disputes in accordance with the law applicable in the given legal relationship and, if authorised, in accordance with the general principles of law or on an *ex aequo* and *bono basis*. The appropriate state court is entitled to grant interim relief in support of both domestic and international arbitration proceedings.

Setting aside an arbitral award

The advantages of arbitration are:

- arbitration proceedings may prove to be quicker and cheaper than court proceedings in certain of the countries of the Region;
- arbitration proceedings take place in private;
- the expertise and experience of members of an arbitration panel may be greater than that of ordinary courts;
- the possibility of selecting an arbitrator, unlike the courts of law where the parties cannot select the judge(s); and
- an arbitral award is the equivalent of a final judgment, it may be enforced.

[78] In the Czech Republic, an arbitration agreement concerning consumer contracts cannot be part of the general terms and conditions.

[79] In Romania, equity rules do not apply to the procedure, but only to the interpretation of substantive law and the attitude of the parties, namely the interpretation of evidence and procedure rules are not subject to equity. A trial subjected to equity does not eliminate the application of public order rules, even if they seem inequitable to arbitrators.

The disadvantages of arbitration are:

- even though in some jurisdictions arbitration proceedings may be quicker than conventional court proceedings, it is still necessary to go back to the court to enforce an arbitration award;
- arbitration is not so effective at handling multi-party disputes;
- the basis of an appeal from an arbitration award is much more limited; and
- sometimes arbitrators' fees may be considerable.

Upon the application of a party, an arbitral award may be set aside by a relevant state court if the party making the application proves that, for example:

- there was no arbitration agreement between the parties or the agreement was invalid, ineffective or ceased to be binding in accordance with the law governing the agreement;
- a party was not duly notified of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present its case;
- the award was made in relation to a dispute not contemplated by or not falling within the terms of the arbitration agreement or contains a decision on matters beyond the scope of the arbitration agreement;
- the composition of the arbitral tribunal or the basic rules of the arbitral procedure was contrary to that agreed on by the parties;
- the award was criminally obtained or it was based on a counterfeit document;
- in the same case between the same parties a final and binding judgment has already been issued.

Recognition and enforcement of foreign arbitral awards

All the countries in the Region are signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "**New York Convention**"). The New York Convention applies to the recognition and enforcement of arbitral awards made in the territory of a state other than the state where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It also applies to arbitral awards not considered as domestic awards in the state where their recognition and enforcement are sought.

Courts in the Region are rather strict when applying the prerequisites for not admitting recognition or enforcement. Therefore, most arbitral awards (either foreign or domestic) are recognised and enforced in the Region. Pursuant to the New York Convention, the recognition and enforcement of an award may be refused at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

- the parties to the agreement were, under the law applicable to them, under some incapacity, or the agreement is not valid under the law to which the parties have subjected it or, failing any such indication, under the law of the country where the award was made;

- the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;

- the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced;

- the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;

- the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

- the subject matter of the difference is not capable of settlement by arbitration under the law of that country;

- the recognition or enforcement of the award would be contrary to the public policy of that country.

Permanent arbitral tribunals

The most popular arbitration institution in the Region is the Court of Arbitration at the Polish Chamber of Commerce located in Warsaw, Poland. It was founded in 1950 and currently handles over 400 cases per year, offering high quality arbitration services in many languages, including English, German and Russian.

Other important institutions in the Region are listed below.

Country	Name of the arbitration institution	Number of cases tried every year	Date of establishment	Does it offer arbitration services in English?
Bulgaria	Arbitration Court at the Bulgarian Chamber of Commerce and Industry	Over 250 per year	1953	Yes
Czech Republic	The Arbitration Court at the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic	Approx. 3,000	1949	Yes
Hungary	Permanent Court of Arbitration at the Hungarian Chamber of Commerce and Industry	Approx. 300 (including national and international arbitration)	1949	Yes
Poland	Court of Arbitration at the Polish Confederation of Private Employers "Lewiatan"	Approx. 30	2005	Yes
Romania	The International Court of Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania	Data not available	1953	Yes
Slovakia	Court of Arbitration of the Slovak Chamber of Commerce and Industry	Data not available	1993	Yes; however, oral hearings are conducted in Slovak or Czech, interpretation into another language is provided on request. Arbitrators may also request the translation of documents into Slovak.

The most popular foreign arbitration institutions for companies from the Region are the ICC (International Chamber of Commerce), the LCIA (The London Court of International Arbitration), the SCC (the Arbitration Institute of the Stockholm Chamber of Commerce) and the VIAC (The Vienna International Arbitral Centre).

13. Bilateral Investment Treaties ("BITs")

13. Bilateral Investment Treaties ("BITs")

Many countries in the Region have entered into BITs with countries located outside of Europe. The main goal of the BITs is to encourage, protect and create favourable conditions for investors of one of the contracting parties in the territory of the other contracting party. BITs contain dispute resolution clauses, which usually provide for multi-tier settlement schemes involving, for example, diplomatic negotiations or arbitration.

A number of these are summarized below:

BIT between Poland and	Date of entry into force	Does the BIT contain an arbitration clause?
China	1988	yes
USA	1994	yes
Australia	1992	yes

BIT between the Czech Republic and	Date of entry into force	Does the BIT contain an arbitration clause?
China	1991	yes
USA	1992	yes
Australia	1994	yes

BIT between Slovakia and	Date of entry into force	Does the BIT contain an arbitration clause?
China	1991	-
USA	1992	yes
Australia	-	-

BIT between Bulgaria and	Date of entry into force	Does the BIT contain an arbitration clause?
China	1994	yes
USA	1992	yes
Australia	-	-

In addition the EU has entered into bilateral trade and investment agreements with a number of countries including South Korea, Mexico and South Africa and is in the course of negotiating such treaties with a number of other countries including the USA, China, Canada, Japan and the Association of South East Asian Nations.

Trade agreements

All the countries in the Region have entered into trade agreements with countries located outside the European Union. Among others are trade agreements on the avoidance of double taxation as described in section “Double tax treaty network”. Each country in the Region has a double tax treaty network and has treaties with over 80 countries or treaties on the enhancement of economic cooperation (their aim is to enhance and intensify the development of economic cooperation between the signatories).

14. Currencies

8 Throughout this guide, certain values have been expressed in local currencies of the relevant countries. The following table summarizes legal currencies in each of the countries of the Region, including the average exchange rate into EUR as published by the European Central Bank on 10 October 2013:

Country	Currency name	Abbreviation	= EUR 1
Bulgaria	*lev*	BGN	1.9558
Czech Republic	*koruna*	CZK	25.529
Hungary	*forint*	HUF	295.52
Poland	*zloty*	PLN	4.1958
Romania	*leu*	RON	4.4592
Slovakia	*euro*	EUR	1

appendix
definitions

Appendix

Definitions

In this guide:

"ACCP" means the Polish Competition and Consumer Protection Act
"AML" means anti-money laundering
"AOSR" means the Slovak Antimonopoly Office
"APC" means the Slovak Act on the Protection of Competition
"BIT" means Bilateral Investment Treaty
"CA" means the Hungarian Competition Act
"CEE" means Central and Eastern Europe
"ECJ" means the European Court of Justice
"Commission" or **"EC"** means the European Commission
"CPC" means the Bulgarian Commission for the Protection of Competition
"DG COMP" means the Directorate-General for Competition of the EC
"EEA" means the European Economic Area
"EU" means the European Union
"EUMR" means the EU Council Regulation (EC) No. 139/2004
"EFTA" means the European Fair Trade Association
"HCA" means the Hungarian Competition Authority
"ICC" means the International Chamber of Commerce
"JSC" means a joint stock company
"LCIA" means the London Court of International Arbitration
"LLC" means a limited liability company
"LLP" means a limited liability partnership
"LMA" means the Loan Market Association
"LPC" means the Bulgarian Law on the Protection of Competition
"M&A" means Mergers and Acquisition
"New Europe" or **"Region"** means all the countries covered by this guide comprising Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia
"New York Convention" means the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
"OCCP" means the Polish Office of Competition and Consumer Protection
"OECD" means the Organisation for Economic Co-operation and Development
"OPC" means the Czech Office for the Protection of Competition
"PJSC" means a public joint stock company
"Prospectus Regulation" means the EU Council Regulation no. 809/2004
"RCC" means the Romanian Competition Council
"RCL" means the Romanian Competition Law
"Regulation 1/2003" means the EU Council Regulation no. 1/2003
"R&D" means Research and Development
"SCC" means the Arbitration Institute of the Stockholm Chamber of Commerce
"SEE" means South-Eastern Europe
"SEZ" means a special economic zone
"SPV" means a special purpose vehicle
"TMT" means Telecommunications, Media & Technology
"TFEU" means the Treaty on the Functioning of the European Union
"TRIPS" means the Trade Related Aspects of Intellectual Property Rights
"VAT" means Value Added Tax
"VIAC" means the Vienna International Arbitral Centre

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