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# to the point
# Finance

Q2 2022

## Editor's Note

**Togetherness, agility, stamina | CEE**
The tragic situation in Ukraine has given us all pause to appreciate that very little, if anything, can even begin to compare to the tragedies unfolding so close to home. It has shown us that each of us can help in some little way and that together we can achieve more to help those in need. That there is a great deal to be grateful for and that nothing can be taken for granted. I am grateful for the solidarity shown and the amazing efforts put forth by all our team members and clients. We will need to continue working together, both to support those in need and to assist our clients in the current, predominantly volatile, environment.

Q2 was a busy period for banking & finance throughout all our offices in CEE, and it is also set to be a busy summer. No doubt it will continue to be volatile, and we will likely have to weather more stop & go situations, more distressing circumstances. Energy and infrastructure/public law projects are already centre-stage and this is not likely to change any time soon. Consolidation work in the financial sector seems to be ongoing. Debt restructurings are tangibly on the rise (in particular on the back of the market conditions and the Restructuring Directive, which is expected to be implemented in most CEE jurisdictions this summer). In parallel, governments will likely double down on consumer protection, on new support schemes for households and essential businesses and, in some jurisdictions, on new moratoria on bank loans. Take Romania for example: the end of May saw the transposition of Directive No. 2019/2161 on consumer protection, a new moratorium on credit repayments was introduced at the end of June and Directive (EU) 2019/1023 on preventive restructuring frameworks is expected to take effect in July, not to mention all the energy-related initiatives.

We will continue to work together with our clients and friends to help those in need and to assist our clients. We will also continue to focus on both agility and long-term stamina. And I am grateful that we can continue to do this and am optimistic about the future.


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## Austria

- **EBA assesses role of environmental risks in prudential framework for banks and investment firms**
  In May 2020, the European Banking Authority (EBA) published a Discussion Paper (DP) on the role of environmental risks in the prudential framework for credit institutions and investment firms. The EBA anticipates that environmental risks will trigger higher losses than they have in the past, and has therefore conducted an analysis as to whether the current Pillar 1 own funds requirements framework does actually capture these risks appropriately or whether capital requirements might be underestimated (and thus would need to be increased). The DP explores whether and how environmental risks could be better incorporated into the prudential framework, including in relation to all risk categories, such as credit, market and operational risks. The EBA also makes it clear that this DP investigates whether the risk profiles of exposures are appropriately reflected based on evidence and correlation, and explicitly emphasises that the DP is not currently intended to be used for policymaking (or political) purposes. The full DP can be downloaded here.

  Matthias Pressler

## Hungary

- **EBA support to Hungarian green financing**
  The European Investment Bank (EBA) will support Hungarian green financing by granting long-term forint-denominated loans, pursuant to the cooperation agreement entered into with the Hungarian National Bank (HNB) in May 2022. The cooperation aims to boost sustainable economic and social growth and to support post-pandemic recovery and climate action in Hungary. The HNB launched two programmes: the Green Home Programme and the Green Mortgage Bond Purchase Programme. The Green Home Programme facilitates the development of green homes and establishes a green home loan market. According to this programme, the HNB will reimburse Hungarian banks for the financing granted for the construction and purchase of green homes. The Green Mortgage Bond Purchase Programme is also intended to support the purchase of green-rated mortgage bonds and aims to promote green housing lending from this alternative market too.

  Gergely Szaloki

## Poland

- **Marketplace**
  In response to inflation and the rapid growth of reference rates in Poland, the Sejm (the lower house of the Polish Parliament) recently passed a bill introducing credit holidays, the expansion of the Borrowers Support Fund, the replacement of the WIBOR index and the extension of anti-inflationary shields. The process of choosing a replacement for WIBOR will be regulated by a separate bill. The following indicators are being discussed: WIRF (Warsaw Financial Market Index), WIRD (Warsaw Deposit Market Index) and WRR (Warsaw Repo Rate). It is worth mentioning that PLN borrowers who have taken out residential mortgage loans have started to question the methodology of determining the value of the WIBOR index by filing lawsuits. The effects of those challenges are to be closely monitored.

  Paula Weronika Kapica

## Slovenia

- **SEE: Financial sector deal activity – summer break?**
  Looking at the first two quarters of 2022, two key observations can be made with regard to financial sector expansion/M&A activity in SEE. On the one hand, consolidation activity in the banking sector has slowed somewhat (with the exception of the activity resulting from the resolution of Sberbank Europe), with certain pending deals being put on hold and short-term plans for growth-driven acquisitions temporarily shelved by players otherwise in expansion mode. On the other hand, a similar "deceleration" can be observed in the expansion plans of players in the fintech area, where the "SEE market conquest" optimism observed in 2021 (both in terms of M&A and greenfield cross-border market entries) gave way to a more cautious and selective target (market) approach. At present, it is difficult to judge whether this is a broader sign of the upcoming summer break or simply a (temporary) slowdown resulting from the overall (consumer and institutional) uncertainty caused by the current global situation. In any event, we will be staying tuned throughout the summer!

  Vid Kobe

## Bulgaria

- **Insolvency and pre-insolvency**
  A government draft transposing the EU Restructuring Directive was published in May 2022. The "likelihood of insolvency" criterion under the current domestic framework has been amended and a restructuring application may be filed if, based on the maturities expected over the next 12 months (as opposed to the current six months), the debtor would be unable to make payments (as opposed to the current situation whereby certain payments are made). The current six-month threshold means that applications are submitted too late, as courts regularly find an actual insolvency as opposed to a "likelihood of insolvency". Another novelty is the special insolvency priority for providers of new financing – an option under the Directive that the government adopted in the draft.

  Tsvetan Krumov

## Austria

- **Will term-independent costs be reduced in the event of early loan repayment?**
  With reference to the ECJ's "Lexitor" ruling, the Austrian Supreme Court recently clarified that the Austrian legislator's intention not to provide for the pro-rata repayment of term-independent costs in the event of early repayment of loans, outlined in para. 16 (1) of the Consumer Credit Act (old version; VKrG aF), would result from the clear wording of the national legal provision. The Supreme Court is therefore of the opinion that term-independent costs are not to be reduced in the event of early loan repayment according to para. 16 (1) of the Consumer Credit Act (old version). The legislator has, however, since amended para. 16 (1) of the Consumer Credit Act in line with EJC case law. It is ultimately still unclear which costs are actually covered by the right of reduction under current Austrian law.

  Bettina Kranawetter

## EU

- **Direct lending**
  Against the backdrop of an increasing demand for credit from alternative debt providers, on 25 November 2021, the European Commission proposed a harmonised set of rules for direct lenders, which should not be overlooked. The proposed amendments to the AIFMD include the introduction of harmonised rules on the risk and liquidity management of direct lenders and loan origination funds as well as additional transparency obligations. Most notably, however, the European Commission's proposal foresees that AIFMs/AIFs should be permitted to lend on a cross-border basis throughout the EU. If enacted in the proposed manner, this will resolve any conflict with bank-lending monopoly rules that may otherwise exist in Member States.

  Martin Ebner

## Romania

- **New moratorium**
  Government Emergency Ordinance No. 90/2022 entered into force on 29 June 2022. It stipulated that the payment of loan instalments (principal, interest and fees) may be deferred at the request of the borrower for one to nine months for loans taken out before 30 April 2022 (some conditions do apply). Revolving loans, including credit cards, overdrafts and credit lines are excluded.

  Matei Florea

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For further information, please contact any of the individuals named above, your usual contacts at Schoenherr or any member of our banking, finance & capital markets practice group.