

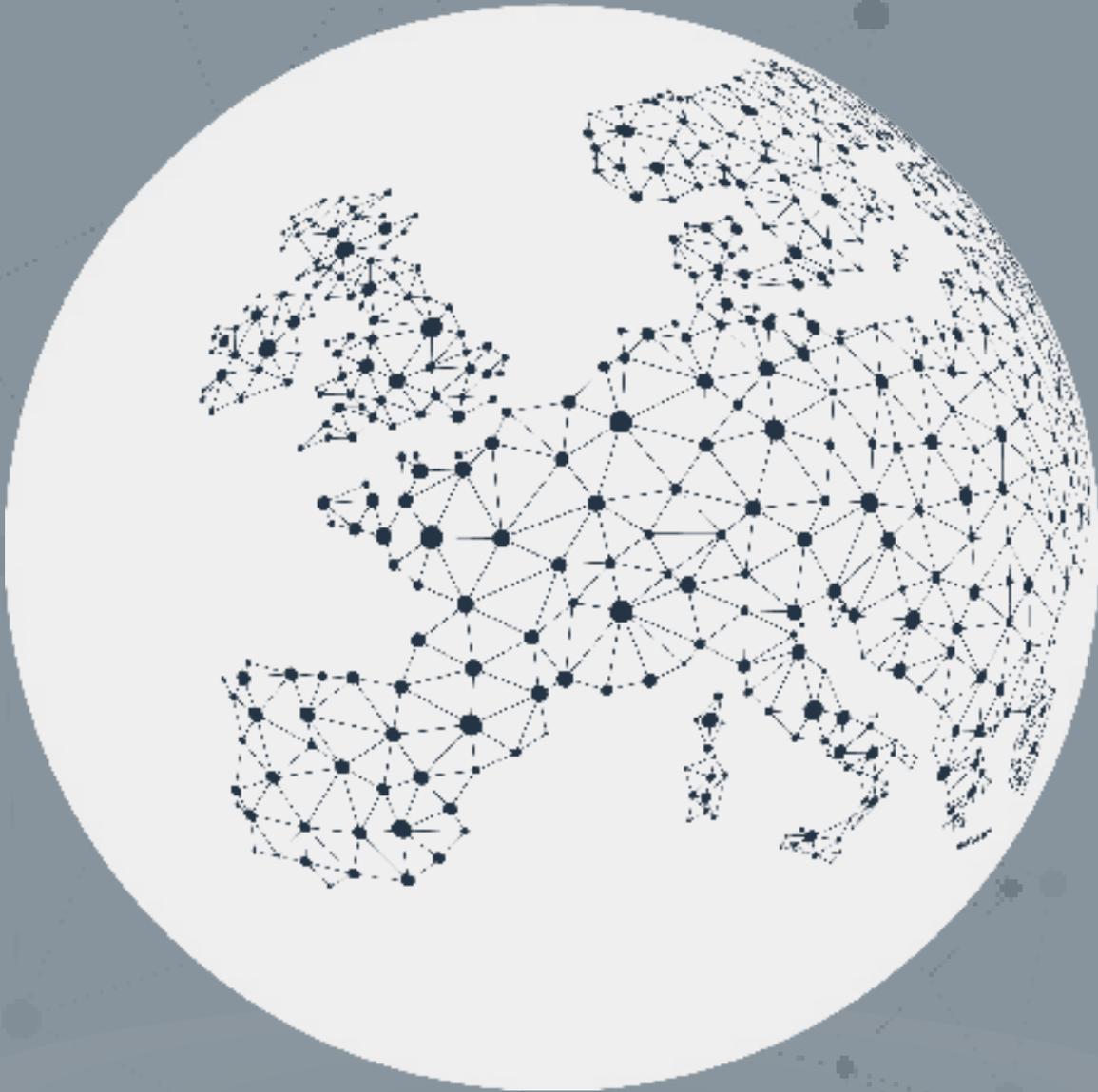


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M&A Opportunities in the Energy Sector

January 2023

An Opportunity for Europe: Hydrogen and Renewable gases. | The Next Frontier

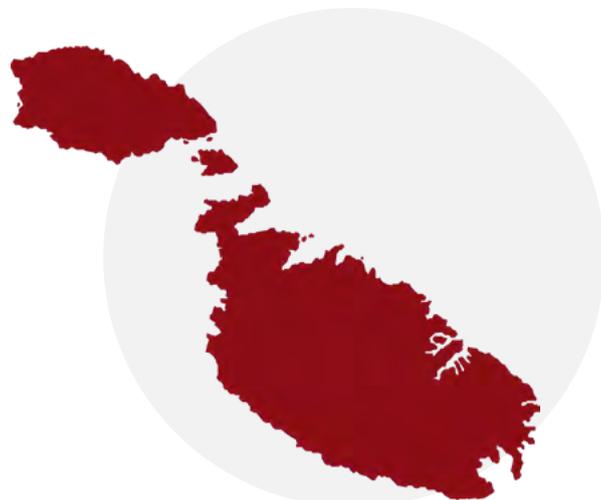
The Renewable Energy Communities: A new path for the EU renewable energy industry. | The Italian Case.



M&A OPPORTUNITIES IN THE ENERGY SECTOR



MALTA



How has the energy crisis affected M&A transactions in your jurisdiction?

Malta, a small island in the middle of the Mediterranean with an area of 316 km², is a very unique example when analysing the energy sector and the current energy crisis Europe finds itself in. Malta has only one energy supplier – it distributes electricity and develops the national electricity distribution network. The sole supplier of energy in Malta, Enemalta PLC, was partly acquired through an M&A transaction back in 2014.

The island does not currently have any wind farms, although it does have several solar farms, in relation to which there has been some recent M&A activity. Therefore, whereas M&A activity in other industries is quite active, both on a national and a cross-border level, the energy sector does not attract substantial M&A work in Malta.

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

The main legislation applicable to insolvencies and reorganisations is the Companies Act of 1995 (Chap. 386 of the Laws of Malta). The liquidation process available under the Companies Act varies based on whether a company is solvent or insolvent. In the former case, shareholders may decide by means of an extraordinary resolution that a company is to be dissolved and put into liquidation. A detailed statement of affairs, including a list of creditors alongside a declaration of solvency, must be submitted by the directors of the company. The winding up process must be completed within a year.

As to the latter case, shareholders may decide by means of an extraordinary resolution that a company is to be put into a creditors' voluntary winding up. A creditors' meeting must be convened within

fourteen (14) days of the shareholders' resolution. In this case, creditors have priority when it comes to appointing a liquidator.

In other cases, a company may be dissolved or wound up by the court. This generally happens when creditors wish to initiate the liquidation of a company. The law thus grants such creditors the opportunity to apply to the court for a winding-up order. A possible ground that can be used in such case is a company's inability to pay its debts. If the court is satisfied that the creditor has obtained enforcement measures against the company through an enforceable document and the debt remains unpaid for twenty-four (24) weeks, there will be a presumption of insolvency enabling the court to proceed with the winding-up order.

As for Reorganisation Processes, a company may choose between three different procedures. Firstly, if all creditors agree, it may enter into an arrangement with its creditors. Secondly, it may choose to carry out a Company Reconstruction Procedure, under which the company applies to the court for it to appoint a mediator to assist the parties in reaching a compromise, which will then have to be submitted to the court for approval. The court could also be asked to sanction a compromise or arrangement that ensures the support of creditors representing 2/3 in value of the claims. Finally, another option is the Company Recovery Procedure (CRP), which involves an application to the court to appoint a special controller to manage the company. This is intended to give respite to the company for a period of four (4) months, during which creditors cannot act against it. When considering whether to grant such a moratorium, the court will consider the likelihood of the company reaching a compromise with its creditors as a result of it.

No new energy-specific procedures have been introduced. However, the Maltese Parliament recently issued three bills with the main goal of partially transposing the EU Directive on Restructuring and Insolvency of 20 June 2019. These are as follows:

- 1 Commercial Code (Amendment) Bill:** An update to certain provisions of the Commercial Code, mainly replacing the term "curator" with "bankruptcy trustee", as well as extending the powers of the Civil Court (Commercial Section) within the insolvency legislation and strengthening the existing legal framework on bankruptcy and the discharge of debt.
- 2 Pre-Insolvency Bill:** A newly proposed Act to strengthen the legislative framework relating to insolvency and provide a pre-restructuring and restructuring framework.
- 3 Insolvency Practitioners' Bill:** A newly proposed Act to provide a modern framework to make the existing insolvency legislation framework more efficient and effective by regulating the work of insolvency practitioners.



Which tax measures against the energy crisis have been adopted in your jurisdiction?

Malta's budget for 2023, which was announced in October, focuses on the energy crisis, with the government stating that it would spend 10% of its recurrent expenditure in 2023 to maintain a freeze on energy and fuel prices. The government has therefore decided to absorb the increased energy costs, at a predicted cost to the government, according to analysts, of around €400 million in 2023.

Through Malta Enterprise, Malta has also introduced the Smart and Sustainable Investment Grant, which provides business funding to support investments in more sustainable and digitalised processes resulting in competitive enterprises by optimising the use of resources in their activities. The maximum grant that can be awarded to support an eligible investment is for 50% of the eligible expenditure, up to a maximum grant of €50,000 per project. Furthermore, a Tax Credit of up to €20,000 per project may be awarded as an additional 10% (i.e. rising to 60%) if the project meets one of the criteria set forth below and 20% (i.e. rising to 70%) provided the project meets the required criteria.

“

The liquidation process available under the Companies Act varies based on whether a company is solvent or insolvent.



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Andersen Corporate highlights in Europe

Our International Association

Andersen Global® was established in 2013 as the international entity surrounding the development of a seamless professional services model providing best-in-class tax and legal services around the world.

Andersen Global Chairman and Andersen CEO
Mark L. Vorsatz, Andersen (U.S.)

The association of legally separate, independent member firms comprises of more than 13.000 professionals worldwide, over 1.800 global partners, and a presence in over 390 locations in more than 170 countries worldwide. Our growth is a by-product of the outstanding client service delivered by our people, the best professionals in the industry. Our objective is not to be the biggest firm, it is to provide best-in-class client service in seamless fashion across the globe. Each and every one of the professionals and member firms that are a part of Andersen Global share our core values. Our professionals share a common background and vision and are selected based on quality, like-mindedness, and commitment to client service. Outstanding client service has and will continue to be our top priority.

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Presentation



You may also be interested in:

M&A Alert – December 2022

"The M&A market in Europe: 2022 and expectations." As the year draws to a close, our M&A experts discuss the key insights and factors that will influence the M&A market and continue to influence predictions for the coming year.

[See more](#) →

European Corporate Insights – July 2022

"Doing Business in uncertain times". Different mechanisms to protect transactions. Guidelines and regulations that impact each jurisdiction, marked by the pandemic, the war in Ukraine, energy price hikes, lack of raw materials, supply difficulties, etc.

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The energy sector has been one of the main players in the field of M&A in recent years due to the growing interest in renewable energies which, although in 2020 it contributed 9% of the energy consumed in Europe - compared to 14% from nuclear energy and 77% generated by oil, gas and coal -, it is set to be the main player in the near future, not only to reach the 2030 Agenda for Sustainable Development Goals (SDG), but also to reduce the dependence on third countries.

Over the past 10 years, Europe has maintained a significant pace of investment in energy, allocating USD 80 billion to the renewable energy sector in 2021. This placed Europe as the second world power in this field behind China. It has been a commitment that, however, has not mitigated the impact of the energy crisis in this region.

The post-pandemic economic recovery and the outbreak of the Russia-Ukraine war have triggered a global energy crisis with unprecedented price hikes, resulting in a year-on-year increase in retail electricity prices of almost 50% since July 2021. As a result, both the EU Institutions and all European countries have taken urgent measures to protect a critical sector such as energy one and ensure citizens' access to the energy resources.

In addition to public investment to promote sustainable energy, some countries are bringing back conventional sources, such as coal-fired electric power plants. This has encouraged private investors to bet again on the oil and gas sector. It is no coincidence that investment interest in fossil fuels has grown considerably in recent years.

The energy sector, despite facing a slowdown in transactions like all other sectors in 2022, remains one of the targets of private equity, and must adapt to the measures adopted both in the European institutions and in each country that establishes regulations according to its own particularities. Andersen's Corporate and M&A practice, together with the Energy group, provides a comprehensive analysis of 15 European, addressing transaction trends in this sector and the regulatory and tax measures adopted by each country to deal with the crisis without overlooking the evolution of the sector and the needs of both the people and the sector.

It is also highlighting the growing trends in the energy market, in line with the SDG, such as energy communities or new clean energy sources such as hydrogen. Andersen's Energy team is involved in innovative initiatives, such as communities coming together to reduce the cost of installing clean energy and increase efficiency with energy self-supply, in countries such as Spain and Italy, as detailed in one of the examples in this magazine.

Andersen's Energy team also analyzes the present and future of green hydrogen. It is a resource that has impacted strongly on the market, both because of the interest of investors and companies that have begun the transition to this new energy source, which is expected to be one of the main energy resources of the future.

This new edition of the Corporate and M&A Magazine offers a comprehensive benchmarking analysis of the energy sector in Europe and the new trends for investments in this field. This edition also includes the most recent regulatory developments in Europe and European countries to be considered by the private equity players in their investments in the near future.



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Coordinator*

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WHAT'S NEWS IN...

BELGIUM

The Corporate Opportunity Doctrine, introduced in Europe, is also in Belgium increasingly accepted. Directors of a company or an association may not simply keep economic opportunities for themselves without first offering these to that company or association.

[Read More](#)

Seeds of Law is drafting an e-book relating to the new contract law in Belgium, that came into force on 1 January 2023. Our e-book is entirely dedicated to the new contract law and gives a clear overview of all the changes effective since 1 January 2023 and the main points of interest are described in detail.

New Belgian contract law thoroughly updates contractual relations and their legal basis as we have

known them before. Case law, legal doctrine and customs were taken into account by the legislator.

In that e-book we discuss a.o. the following major changes that have an impact on corporate law and M&A:

— The new contract law gives a legal basis to pre-contractual liability.

In corporate law, pre-contractual liability also arises in the context of acquisition agreements, and more specifically in the context of "pre-contracts" concluded prior to such an agreement. Pre-contractual documents are indeed legally binding despite of the fact that parties usually considered these as simple commitments. For example, one thinks of the letter of intent (LOI), agreements

in principle, memorandum of understanding, etc, in which the true intention of the parties must be correctly reflected. This implies that the parties must cooperate with each other during the negotiations and cannot break off negotiations without reasonable justification.

— The doctrine of hardship

One of the major innovations of the new contract law is the introduction of the theory of hardship or unforeseeability. The theory of hardship therefore allows the revision of the contract in the event of the occurrence of new circumstances, subsequent to the conclusion of the contract, which are not attributable to the party relying on it, and if these circumstances have had a disrupting effect on the economy of the contract.

In acquisition contracts, the hardship doctrine has long been applied through the so-called "material adverse change (mac) clauses". This clause provides for "a change in circumstances that significantly reduces the value of the company". This refers to, for example, a fundamental change in market conditions, such as, for example, a collapse in material or production prices, the fire of the property that was sold, shareholder agreements following an acquisition etc.

While mac clauses may remain useful, Belgian law has now a legal basis to rely on in case of substantial changes of conditions, even the contract does not include any hardship clause.

BULGARIA

As Europe is facing an unprecedented Energy crisis due to limited gas imports, the Bulgarian government, which has been struggling due to the unstable political climate, has nevertheless taken steps to mitigate the adverse implications to its citizens, both natural and legal persons.

What is important to consider is that Bulgaria is the largest net exporter of energy in the CEE region, ranking 3rd in Europe overall for the first half of 2022 according to Enappsys, an energy think tank. Moreover, domestic production of energy is largely not dependent on gas, as it accounts for less than 15% of overall production.

The Energy crisis has thus affected the internal market in terms of heightened interest in sustainable energy projects, as locally the sector is rapidly growing. Having that in mind, the last quarter of 2022 saw relevant legislative developments, as discussed below.

Financing Agreement under the Recovering and Resilience Facility

On 5 December 2022, Bulgaria signed a Financing Agreement under the Recovering and Resilience Facility, which was established in accordance with Regulation (EU) 2021/241 of the European Parliament and the Council. 58.9% of Bulgaria's Recovery and Resilience Plan are intended to support climate objectives.

As a result, the Financing Agreement envisages the application of three financial instruments to the total value of EUR 180 million, which, amongst others, serve for the financing of climate-neutral goals. One of the three pillars of the program is named "Green transition and circular economy" and allows domestic micro, small and medium enterprises to implement green solutions, which by definition includes energy efficiency and self-sustenance.

The Bulgarian government has proposed the Financing Agreement for ratification in the Parliament.

Lining up local legislation with Directive (EU) 2018/2001

On 11 November 2022, the Ministry of Energy proposed amendments to the Law on Energy from Renewable Sources, which intend to duly implement the provisions of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources into local legislation. The amendments are aimed at encouraging and increasing the production of energy through sustainable sources.

The changes envisage, amongst others, the goals of the Bulgarian government to increase the use of sustainable energy sources for a larger part of the overall consumption, specific aims in sectors such as transport, and mandatory minimum sustainable

energy percentages in the different energy segments (electricity, heating and cooling). Moreover, the amendments envisage that consumers who produce sustainable energy for their own needs to be able to produce, store and sell any excess.

The proposed amendments, however, have received moderate critique in the form of professional opinions reading the amendments as restricting the building of hydroelectric power plants, which essentially deviates from the aims envisaged by the amendments.

Currently, the proposed amendments are in the public debates stage and are likely to be subject to refinement before adoption.

Impact on the local M&A market

As reviewed above, the Energy crisis has had the effect of spiking both legislative, financing and business interests in the field of renewable energy in Bulgaria. It is expected that in the 2023-2024 period we shall see both acquisition of renewable energy-oriented businesses and establishment of new players on the local market.

CROATIA

Introduction of the Euro in Croatia

The Law on the Introduction of the Euro as the Official Currency in the Republic of Croatia (Official Gazette Nr. 57/22, 88/22), which entered into force on July 15th, 2022, regulates the rule for the introduction of the euro, i.e. the rules for the conversion, supply and exchange of cash kuna for cash euro, dual expression, application of the principle of continuity of legal instruments, budgets, financial plans, business books, financial statements in the process of introducing the euro as well as supervision of the application of the Law on the Introduction of the Euro and misdemeanor provisions.

Thus, the period of mandatory dual expression for all business entities (in euro and kuna) with the application of a fixed exchange rate of conversion started on September 5th, 2022, and will last until December 31st, 2023.

A double price statement implies the expression of the prices of goods, services, and other monetary statements simultaneously in euro and in kuna with the application of a fixed exchange rate of conversion.

According to the decision of the Council of the EU on the adoption of the euro in Croatia, the fixed exchange rate of conversion is 7.53450 kuna per 1 euro. The dual circulation period started on the day of the introduction of the euro and lasted for 2 weeks (started on January 1st, 2023 at 00:00 and lasted until January 14th, 2023 at 24:00). Dual circulation implied a period in which the euro and kuna were used simultaneously during cash transactions as

legal tender, i.e. during this period both the euro and the kuna were in circulation at the same time.

Business entities have the obligation to double-expression prices exclusively towards consumers in the Republic of Croatia and are obliged to express the prices of goods and services in a clear, legible, visible, and easily visible manner in the euro and kuna and in accordance with the rules for recalculation and rounding and with the mandatory display of a fixed conversion rate:

- in the business premises at the point of sale or
- on goods or on the price list if it is a service,
- on the website,
- in an offer or contract on a durable medium,
- in a notification given to the consumer before or during the conclusion of the off-premises and distance contracts,
- in the course of advertising in any form offering the sale of goods or services except in the case of, advertising through a radio program and a voice message in other forms of advertising,
- in the reminder and other notice of outstanding debt to be submitted to the consumer,
- on the account,
- through other forms of price statements.

It is important to emphasize that in accordance with the principle of continuity of legal instruments, employers will not be obliged to change existing employment contracts stating contracted salaries in kuna.

However, the Act stipulates that in the period of dual expression in the service contract and the copyright

Changes in the Companies Act

Due to the introduction of the euro in the Republic of Croatia, changes have been introduced with regard to the Companies Act as well. In order to harmonize the expression of the amount of share capital and nominal amounts of shares or business shares, the Law on Amendments to the Companies Act (Official Gazette No. 111/1993, 34/1999, 121/1999, 52/2000, 118/2003, 107/2007, 146/2008, 137/2009, 111/2012, 125/2011, 68/2013, 110/2015, 40/2019, 34/2022, 114/2022– hereinafter: ZIZTD) was adopted. This Act nominates the amounts of share capital, nominal amounts of shares, and business shares in the euro, and prescribes the manner of implementing the denomination in the euro for the existing share capital, shares, and business shares denominated in kuna.

Joint stock companies are obliged to convert the existing amount of share capital and the nominal amount of shares into euros. The conversion shall be carried out using a fixed exchange rate of conversion from kuna to euro, rounding to the nearest cent. The amount thus obtained should still be aligned with the requirements of the ZIZTD. The amended Article 162 of the ZIZTD stipulates that the minimum share capital of a joint stock company is EUR 25,000.00, and the amended paragraph 2 of Article 163 stipulates that the minimum nominal amount of a share is 1.00 euro.

A joint-stock company is obliged to make above-mentioned adjustments within one year from the date of the adoption of the euro.

As for limited liability companies, the amended Article 389 of the ZIZTD stipulates that the minimum share capital of a limited liability company is EUR 2,500.00, and the amended Article 390 stipulates that the minimum nominal amount of the business share is EUR 10.00, while the simple limited liability company should have minimal share capital in the amount of EUR 1.00, which is also a minimal nominal amount of the business share. The limited liability company must carry out the adjustment procedure within three years from the date of the adoption of the euro.

In accordance with the principle of continuity of legal instruments set out in Article 9, Pursuant to Article 10 of the Act on the Introduction of the Euro as the

Official Currency in the Republic of Croatia, legal instruments: articles of association or statement of incorporation of the company shall remain valid. The obligation and manner of amending these legal instruments are prescribed by this Act and ZIZTD.

Cash obligations of companies based on shares or business shares that currently qualify for maturity after January 1st, 2023, will be fulfilled in euros by conversion in accordance with the Act on the Introduction of the Euro as the Official Currency in the Republic of Croatia. Therefore, if the company has made a decision to pay a dividend or profit share, and shall make the payment after January 1st, 2023, the amount for payment will be converted into euros and thus paid.

The Additional Corporate Tax Act

The Additional Corporate Tax Act (Official Gazette Nr. 151/2022) entered into force on December 23rd 2022. Under the law, additional corporate taxpayers will be those with increased profits regardless of the activity they perform. This additional income tax, colloquially called the extra profit tax, at the rate of 33 percent will be paid by companies that generated revenues of more than HRK 300 million in 2022, and only on profits in the amount higher by 20 % compared to the four-year average. Specifically, the tax base is taxable profit in 2022, which is 20 % higher than the average taxable profit in a four-year period (2021, 2020, 2019, and 2018). Thus, large entrepreneurs will pay corporate income tax at the rate of 18 percent, and on the realized "extra profit" they will pay an additional tax at the rate of 33 percent.

The obligation of additional corporate tax for 2022 will be due with the date of filing of the corporate tax return in 2023. Representatives of the Government in the discussions pointed out that the additional tax is one-time, that it is solidary, and that the revenues from it will be directed exclusively to help the most vulnerable citizens.

The Anti-Money Laundering and Terrorist Financing Act

The MONEYVAL report stated that in the Republic of Croatia, cash is intensively used in the commission of criminal offenses (tax evasion, corruptive crimes, drug abuse) that pose the greatest threat to money laundering, and recommended the Republic of

Croatia consider reducing the current threshold or aligning it with the threshold that sets limits in payment or collection in cash when performing registered activities, which threshold amounts to HRK 75,000.00.

Consequently, it is proposed to prescribe a new threshold for the notification of cash transactions in the amount of EUR 10,000.00, which will be equal to the threshold that sets limits on payment or collection in cash when carrying out a registered activity.

The Act on Amendments to the Anti-Money Laundering and Terrorist Financing Act (Official Gazette Nr. 108/2017, 39/2019, 151/2022) came into force on January 1st 2023. One of the changes adopted by the Act on Amendments to the Anti-Money Laundering and Financing Act is that the threshold of notification of cash transactions to the Anti-Money Laundering Office will be reduced from HRK 200,000.00 to EUR 10,000.00.

POLAND

Amendments to the commercial companies law

The new government draft act on amendments to the Commercial Companies Code and certain other acts implements the EU directives (for e.g. (UE)2019/1151) by introducing, inter alia, changes to company reorganisations, both at national and cross-border level. The draft includes the following new types of reorganisations: division by incorporation of new companies, division by acquisition and incorporation of a new company, division by separation, division by spin-off. As part of cross-border operations, the amendment introduces cross-border demergers of capital companies and cross-border transformations. The draft aims, inter alia, to simplify the cross-border merger process and to protect creditors, minority shareholders and employees in cross-border reorganisations. The planned amendment to the Commercial Companies Code is expected to enter into force on 31 January 2023 subject to provisions concerning the exchange of information on executive prohibitions, which will enter into force on 1 August 2023.

The Introduction of a family foundation into Polish legislation

The family foundation is intended to facilitate the succession of family businesses by creating solutions to continue the business and protect the assets beyond one generation. One of the aims of the foundation is to protect family businesses from being sold off, which leads to the loss of their family character, but also from assets moving abroad.

The draft law on family foundations stipulates that the foundation is to be a legal entity established by the founder's articles of association or by testament and will. According to the wording of the bill, the founder can only be a natural person with full legal capacity. The beneficiary, on the other hand, may be not only a natural person, but also a non-governmental organization conducting public benefit activity. The law does not require that there be any kinship between the funder and the beneficiary.

The family foundation act enters into force three months after the date of promulgation. Currently, the bill has been forwarded to the Senat (upper chamber of parliament) and President of the Republic of Poland.

New Competences of Supervisory Boards

At the end of 2022, the Polish Commercial Companies Code was amended. Provisions governing the holding law were added, including those that provide for the structure of a group of companies and the rules of its management, and, additionally, the amendment enhanced the competences of supervisory boards in companies. The explanatory memorandum to the amended act indicates that one of the main reasons for introducing the changes was to **"provide supervisory boards with tools for more effective corporate governance"**.

One of the solutions which is intended to accomplish the said goal is provided for in Art. 3801 of the Commercial Companies Code. The regulation requires that managing boards in joint stock companies regularly inform their supervisory boards about the main areas of the company's activity. This obligation applies to the following information, without limitation: resolutions adopted by the managing board, the company's situation, its assets, material circumstances relating to managing

its affairs and the extent of achieving the established directions of business growth. Importantly, the information is to be presented to supervisory boards at the managing board's initiative during each supervisory board meeting. Information regarding transactions and other events that may affect the company's financial situation should be presented to supervisory boards promptly.

Before this requirement was introduced, supervisory boards often had no sufficient knowledge of the company's situation. The changes definitely strengthen their position and should offer adequate tools for effective supervision of the company's operations.

SLOVAKIA

One-click incorporation of a LLC

From 1th February 2023 the incorporation of a LLC can be realized via standardized online forms with the assistance of an interactive guide; this guide can create (under predetermined parameters) the memorandum of association as well. This method of incorporation will have its limitations compared to a standardly incorporated LLC, e.g. the company cannot have more than 5 shareholders, only selected activities may be the subject of the company's business, the contributions may be exclusively monetary, etc.

The effectiveness of the transfer of the majority business share in a LLC

Recent amendment to the Commercial Code regulates the moment when the transfer of a majority shareholding in a LLC takes effect. Following the amendment, the effects of the transfer of a majority shareholding towards the company take effect from the date of delivery of the share purchase agreement to the company, not as previously as of the moment of registration in the Commercial register.

New FDI regime in Slovakia

The new regime will come into effect on 1 March 2023 and will also be applicable to deals signed before 1 March 2023 but not closed before this date. The new Act regulates transactions subject to FDI screening, screening regimes (compulsory/voluntary/ex offa screening), industries subject to

compulsory screening or investigative powers and potential sanctions.

SPAIN

The new Startups Act enters into force to boost entrepreneurship in Spain

The new Startups Act has entered into force in December, after the approval of the Congress of Deputies, introducing important new features, mainly in terms of tax incentives and streamlining procedures to attract investment and talent, with the aim of boosting entrepreneurship.

Andersen has prepared an analysis of all the key aspects of the law, including the following points: scope of application, tax incentives, investment, and talent, attracting and retaining talent and formalities applicable to the incorporation of emerging limited companies.

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THE NETHERLANDS

DAC 7

The data collection and due diligence obligations for platform operators under DAC 7 regulations apply from 1 January 2023. Based on DAC 7, digital platforms must collect, verify and report information on sellers using their platform to sell defined goods or provide services.

The list of low-tax jurisdictions for 2023

The list of low-tax countries is relevant for the controlled foreign company (CFC) legislation, certain ruling requests and the conditional withholding tax on interest and royalties.

The low-tax countries for 2023 are:

- countries that have a statutory corporate income tax rate of less than 9% or
- Are in the European Union's list of non-cooperative jurisdictions.

The Tax Plan 2023

The Tax plan includes a corporate income tax hike, a windfall tax on excess natural gas profits, a cap on the 30% ruling and changes to the taxation of substantial shareholdings and investment income. Most of the measures contained in the Tax Plan will take effect from 2023.

Tax Treatment of Payments to Non-Resident Hybrid Entities

The State Secretary for Finance issued a decree setting out the tax treatment of income received by (or through) hybrid entities, specifically in cases where a payment is made (and attributed) to a foreign hybrid entity considered to be non-transparent by the Netherlands but transparent by the state in which that hybrid entity is established.

Such an issue arises, particularly concerning corporate structures involving the United States.

The Dividend Withholding Tax Act (DWTA) provides that, for applying of the dividend withholding tax exemption, any underlying person entitled to income paid to a hybrid entity is deemed to be the beneficial owner of that income if that underlying person is treated as the beneficial owner of that income under the tax laws of that other state. The Withholding Tax Act 2021 contains a similar provision. In practice, some uncertainty had arisen regarding applying these provisions in cases where a hybrid entity (in the Netherlands) made a payment to another (e.g., in the United States). The decree contains the following example for clarification purposes.

A US Incorporated (Inc.) holds all the shares in a US LLC (LLC), which in turn, holds all the shares in a Dutch limited liability company (BV). The Netherlands considers the LLC and the BV to be non-transparent. The United States considers the BV (through check-the-box regulations) and the LLC transparent. BV pays a dividend/interest/royalty to the LLC. The Netherlands treats the payment as having been made to the LLC. The United States does not see the payment flowing to the LLC but treats the Inc. as having received said income.

In these cases, according to the decree, the payment by BV to LLC may be treated as being paid to a tax resident of the United States (Inc.), i.e., the latter will be considered the beneficial recipient of the income. However, to receive this treatment, the Dutch

withholding agent (BV) must make plausible that the income is considered at the level of the underlying participants (achterliggende participanten), i.e., the Inc. This may be done, for example, by presenting a US tax return that shows the income was attributed to a non-transparent US entity. With regard to the application of the Netherlands - United States Income Tax Treaty (1992) (as amended through 2004) (or similar provision in another treaty), for purposes of the example, the decree notes that the dividend, interest or royalties may be treated as income of a resident of a contracting state.

The decree notes in this context that if the United States grants relief from double taxation for the underlying Dutch corporate income tax, this does not take away from the fact that the income was considered in the United States.

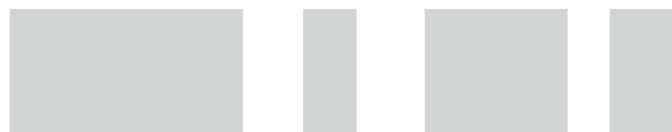
UKRAINE

Ukraine imposes a new set of individual anti-Russian sanctions

On 19 October 2022, the President of Ukraine issued Decrees # 726/2022 and 727/2022 (the "Decrees"), approving lists of individuals and legal entities subject to sanctions in Ukraine.

According to the Decrees, 2,507 individuals and 1,374 legal entities have been sanctioned within the framework of the Law of Ukraine "On Sanctions". A broad spectrum of restrictions prescribed by Ukrainian law has been applied to the sanctioned persons and entities.

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M&A OPPORTUNITIES IN THE ENERGY SECTOR



ALBANIA



How has the energy crisis affected M&A transactions in your jurisdiction?

After very high levels of M&A activity in the years 2018-2019, the Covid crisis in Albania affected, among others, even M&A transactions by slowing down the market. The market started to recover in late 2020, and it does not seem to be affected by the ongoing energy crisis. The transactions carried out involved mainly the pharmaceutical, banking, telecommunications and construction markets, whilst there were even some transactions for energy companies.

Albania is focused on incorporating renewable energy, especially wind and solar, into its generation mix. Very little of Albania's generation capacity is from fossil fuels. Instead, the predominant technology is hydro, accounting for around 95% of domestic capacity if you include small and large plants. During 2018-2020, several investments in small solar farms were finalised, increasing solar generation capacity to 21 MW. The Government has granted preliminary approval for several solar and wind farms.

Over the past decade, the Government has undertaken a series of public investments and initiatives to address sector shortcomings, chiefly with support from international donors. The energy sector in Albania therefore represents good investment and trade opportunities in a variety of areas. As a result, we can observe a significant increase in interest in renewable energy, especially as energy security is becoming more and more difficult to secure.

Currently, as in other countries, renewables are subject to business pricing uncertainty caused by inflation, interest rates and prices for raw materials, but in Albania very favourable climate conditions provide a big opportunity to invest in the sector. Consequently, we expect M&A activity to increase as we witness a day-to-day shift from traditional investment needs and hydro requests to more renewable sources such as solar and wind.

Potential sellers and buyers can put their focus on under-construction or existing plants (several HPPs are under construction and in need of financing and investment) and will find in Albania a new market with huge potential.

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

Albania has only one law governing insolvency and restructuring procedures in the country, Act No. 110/2016 of 27 October 2016, the "Bankruptcy Act". The implementation of this Act is further regulated by secondary pieces of legislation in the form of Decisions of the Council of Ministers. The Bankruptcy Act applies to all types of companies and industries except for the banking and financial sectors (banks, pension and investment funds, insurance companies, and other institutions holding deposits from the public). The sectoral laws that govern and regulate activities in the banking and financial sector contain specific rules relevant to the insolvency and/or liquidation of the companies operating therein.

No specific Acts to manage insolvency regimes in the form of ad-hoc measures have been adopted in the current crisis. The only special measures adopted since the entry into force of the Bankruptcy Act are those adopted during the Covid-19 pandemic. In March 2020, after the surge of Covid-19, the Council of Ministers approved Normative Act No. 13 of 2 February 2020 on specific measures to be taken for

enforcement, mediation and bankruptcy activities during the epidemic state caused by COVID-19. Pursuant to this Normative Act, bailiff, mediator and bankruptcy administrator services, as well as the deadlines for all related procedural actions, were suspended until the end of the epidemic state. The courts' activity and bailiff, mediator and bankruptcy administrator services resumed on 27 May 2020, and the Normative Act lost its effect.

Which tax measures against the energy crisis have been adopted in your jurisdiction?

The country's power policy is focused on renewable energy additions to the grid, as well as on improving the overall grid. Albania's Government is encouraging the deployment of wind and solar power through policies such as auctions, feed-in tariffs, value-added tax (VAT) and import tax exemptions.

For instance, a reimbursement of excise tax can be obtained for fuel used by companies involved in the construction of electric energy resources with an installed power of no less than 5 MW per source.

More broadly, the Government provides fiscal incentives for so-called Technological and Economic Development Areas (TEDAs). There are 45 types of investment incentives in total, spread in 29 TEDAs. They are sector-specific incentives in the fields of manufacturing, agri-business, agriculture, tourism, renewable energy, ICT, the automotive industry, oil and gas, handicraft and others.

VAT: Imported goods in TEDAs and transported goods between TEDAs are exempt from VAT. A reduced rate of value added tax of 6% was applied to sales of public passenger transport vehicles with nine or more seats and only an electric motor. The 6% rate was applied until 31 December 2021. The reduced VAT rate applied to this type of supply since 1 January 2022 is 10%. Each company that produces or installs solar panel systems can benefit from exemptions from the customs duties and VAT charged on solar panel systems. Each person who produces or installs such systems for hot water or for sanitary purposes in buildings or technological processes in industry is entitled to reimbursement of the custom duties paid on the import of raw materials used for the production or assembly of these systems.

Profit tax: The profit tax rate applicable to legal persons engaged in the production/development of software is 5%. In addition, developers and users are exempt from 50% of the profit tax rate for a period of 5 years.

Construction tax: Developers' projects are exempt from infrastructure tax, and buildings in TEDAs are exempt from real estate tax for 5 years.



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BELGIUM



How has the energy crisis affected M&A transactions in your jurisdiction?

In line with the international M&A market, Belgian acquisition activity strongly recovered in 2021 after the decrease in 2020 due to the Covid-19 crisis. The growth was greatest in the large acquisition deals segment with deals above €100 million. Private equity players also showed significant growth. According to the Belgian financial press, the total reported deal value for 2021 amounted to €30 billion, compared to €20 billion in 2020. The number of smaller deals (under €1 million) has remained about the same.

However, it should be emphasised that the Belgian legislator has not provided for any obligations to register acquisitions with a notary, which means that information on M&A transactions in Belgium is mainly obtained from surveys and figures/research carried out by law, consultancy and accountancy firms.

For 2022, the experts' predictions on the evolution of the M&A market were rather mixed as a consequence of geopolitical tensions, the explosion in the prices of raw material, supply uncertainty, fast-growing inflation and rising long-term interest rates. According to the first quarterly figures provided by an international accounting firm, the recovery continued unabated in 2022.

We are still awaiting other statistics regarding M&A practices in 2022. An online survey was conducted with 197 Belgian M&A experts between 7 February and 5 April 2022. Given the above issues, there was no consensus on the future of the Belgian M&A market. Experts' expectations were as follows: one in four respondents expected a decrease of less than 20%. 51% anticipated a significant increase, and 29% predicted no change. There were also differences in expectations across size segments. Overall, the potential impact of a global economic downturn was estimated to be strongest in the larger

segments. Nevertheless, the real impact of the energy crisis on M&A transactions in Belgium remains to be seen.

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

The Law of 30 Oct 2022 on temporary support measures due to the energy crisis provides for measures for energy-intensive companies in difficulty. However, in order for a company to qualify as an energy-intensive enterprise, it must meet some conditions:

- 1** The company was incorporated before 24 February 2022;
- 2** As of 24 February 2002, the company had not permanently ceased making payments;
- 3** The company has no overdue tax or social security debts (except those covered by an instalment plan). Tax debts of up to €1,500 or debts whose existence or amount is in dispute and on which no final decision has been made do not count;
- 4** The company's energy products and electricity purchases account for at least 3% of the value added for calendar year 2021;
- 5** In the three months immediately before the Law came into force, the amount of money that the company had to pay for energy was at least double the average amount paid for energy between 1 Jan 2021 and 30 Sept 2021.

The Law allows energy-intensive companies in difficulty whose property is seized to cover debts contracted for the purchase of energy products after 24 Feb 2022 to request the lifting of the seizure (this does not apply to seizures of real estate and ships).

In addition, an energy-intensive company in difficulty cannot be declared bankrupt or be dissolved by the courts on a writ of summons. However, there are some exceptions to this. A company can still be declared bankrupt or dissolved by the court if it consents or on the initiative of the public prosecutor, the provisional administrator appointed by the president of the Commercial Court or the Chamber for Companies in Difficulty. A court-ordered dissolution or bankruptcy at the request of an (unpaid) creditor is therefore no longer possible. Nor can the transfer of all or part of its business under judicial authority be ordered. This rule is valid until 31 December 2022 and may be extended by successive periods of 3 months thereafter.

Which tax measures against the energy crisis have been adopted in your jurisdiction?

Several measures have been taken by the Government to counteract the effects of the energy crisis and the increase in electricity and gas prices. These include, among others, the grant of premiums and a VAT reduction.

On 18 March 2022, the Belgian government concluded an energy agreement reducing the VAT rate from 21% to

6% on electricity and gas. Consumers (private customers) were granted a VAT reduction on electricity from March to December 2022 and a VAT reduction on gas from April to December 2022. Professional customers (companies) enjoy the reduced VAT rate on gas only from August 2022 to December 2022.

There is also deferred payment of withholding taxes and income taxes for all companies, whether or not they are energy-intensive. Employers are usually required to pay withholding tax on a monthly or quarterly basis. This period is extended by two months for monthly employers for earnings associated with November and December 2022. For quarterly employers, the payment for the fourth quarter of 2022 has also been deferred for two months. Income taxes such as personal income tax, corporate income tax, tax on legal entities and tax for non-residents will have a payment term of 4 months instead of the usual 2 months.

Finally, if a company makes an energy-saving investment, an investment deduction can be obtained under certain conditions. This is a tax benefit under which a certain percentage of the investment's acquisition or investment value may be deducted from taxable profits. In this way, the federal government is trying to promote and encourage the use of renewable energy sources.

The situation is therefore being closely monitored in Belgium. Measures can still be extended when they expire until the energy market goes back to normal.



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The situation is therefore being closely monitored in Belgium. Measures can still be extended when they expire until the energy market goes back to normal.



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CROATIA



How has the energy crisis affected M&A transactions in your jurisdiction?

In terms of value of M&A transactions in Central and Eastern Europe, 2021 had the highest value in the last five years. Some analyses of global trends predicted that, despite earlier predictions that in 2021 and 2022 investors would be concerned about the COVID-19 pandemic, inflation and the unstable energy market, 2022 will be another incredibly productive year. In the Republic of Croatia, the value of last year's M&A transactions totalled EUR 1.86 billion, which was a significant rise from the previous year. In the Adriatic region, to which Croatia belongs, technology and IT companies are the most traded companies, but an upward trend has also been observed in the number of transactions related to the sale of family businesses established when the countries of Southeastern and Eastern Europe were transitioning to a market economy. In the Adriatic region, the deals closed in 2021 were worth 2.5 times more in total than those closed in 2020. The Republic of Croatia continues to experience a rise in cross-border M&A transactions as a result of intensified activities by private (mainly international) capital funds. The trends are generally positive, both in the Republic of Croatia and in the region as a whole, and the market has started to improve after being affected by the COVID-19 pandemic until recently. One reason for the growing interest in the Croatian market is the fact that the Republic of Croatia has adopted the euro as its official currency, which entails a certain reduction in investment risk for foreign investors. Special purpose acquisition companies (SPAC) are expected to take on a prominent role during 2022, since almost 500 SPACs have yet to announce a merger, and the short timeframe in which the transaction needs to be closed will lead to competition with private equity and other corporate stakeholders. The conclusion is that the Croatian market is following the positive trends of the region and, despite growing inflation,

higher interest rates, increased regulation and the energy crisis, there is no indication of a slowdown in M&A transactions this year.

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

The Act on Amendments to the Bankruptcy Act, NN 36/2022 of 31 March 2022 (hereinafter, the "AA BA") stipulates that debtors must have access to clear and transparent early warning tools which can detect circumstances that could give rise to a likelihood of insolvency, especially when the debtor has not made certain types of payments and can signal to debtors the need to act without delay.

The establishment of early warning tools for small businesses is ensured by the Ministry in charge of entrepreneurship and crafts. The AA BA provides that the information on the content of restructuring plans and the method for preparing them will be made publicly available on the e-Court Notice Board, which is specially tailored to the needs of micro-, small and medium-sized enterprises, and in both Croatian and English.

Furthermore, debtors, as well as the general public, will have access to relevant and up-to-date information about the availability of early warning tools and the procedures and measures concerning the restructuring and discharge of debt (release from remaining liabilities) on the e-Court Notice Board. Such information must be easily accessible and presented in a user-friendly manner.

Debtors can also use the advisory services of public or private organisations in order to design a strategy

to avoid impending insolvency, and employers must inform employees at least once a year of any updates on early warning tools, as well as on the procedures and measures related to the restructuring and discharge of debt (release from remaining liabilities).

The purpose of making relevant information easily accessible, including the obligation to publish information, is to allow appropriate measures to be taken in good time to avoid payment defaults – i.e. insolvency – but the ordinance governing early warning tools and access to information has yet to be adopted.

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Green energy technology companies, which exist at the intersection between technology and renewable energy, are still attracting investors and, with the current market situation, there are no indicators of it slowing down.

Which tax measures against the energy crisis have been adopted in your jurisdiction?

In March 2022, the Government of the Republic of Croatia adopted a package of measures worth nearly HRK 5 billion (approx. EUR 700 million) aimed at mitigating the impact of rising energy prices. These include amendments to the Value Added Tax Act, the decision to subsidise gas prices for households, micro- and small businesses, and one-time financial aid for socially vulnerable citizens.

The Act on Amendments to the Value Added Tax Act, adopted on 30 September 2022 following an urgent parliamentary procedure, reduces the rate of value added tax from 25% and 13% to 5% for a variety of basic necessities and items, including baby food, oils, fats, live animals, fish, vegetables, fruit, eggs, and the like. A reduced rate of 13% is applied to the delivery of natural gas and thermal energy from heat plants, firewood, pellets, briquettes, wood chips, etc.

Natural gas deliveries will be subject to a 5% reduced value added tax rate between 1 April 2022 and 31 March 2023, in response to the energy crisis and the uncontrollable rise in the price of energy

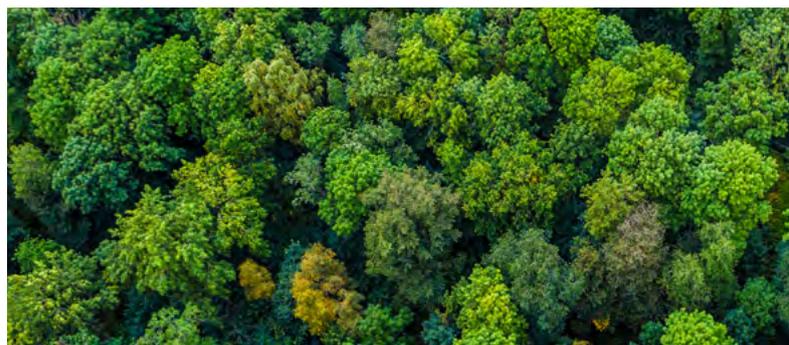
products. Thanks to these measures, citizens and small business owners should save more than HRK 2 billion in total in VAT (approx. EUR 270 million).

VAT on the construction and delivery of solar panels has been abolished. With that move, the Government of the Republic of Croatia has demonstrated a positive shift towards energy self-sustainability, which will be an imperative next step in light of the energy prices on the market.

In order to reduce gas prices, the Government will use HRK 1.2 billion (approx. EUR 150 million) in subsidies to cover for a portion of the cost of gas for households and micro-, small and medium-sized businesses. The Government of the Republic of Croatia funded these subsidies by auctioning off emissions units and selling the mandatory stocks of oil and petroleum products on the market.

Retirees, farmers, fishermen and the most socially vulnerable groups are all given additional support in the form of an energy payment subsidy.

Furthermore, the Government of the Republic of Croatia periodically releases decrees regulating the cost of essential petroleum products and removing excise duties on such products, thus temporarily (for 7 or 30 days) controlling the price of petrol and diesel.



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CZECH REPUBLIC

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Due to Czech industries' high focus on the automotive sector, we expect drastic changes as a result of the increase in EV production.



How has the energy crisis affected M&A transactions in your jurisdiction?

After record-breaking M&A activity in 2021 (in terms of deal value), we are witnessing a slowdown both in the number of transactions and in the value of transactions completed in 2022. Nevertheless, the slowdown is much less dramatic than expected after the beginning of the conflict in Ukraine. Despite the uncertain market situation, we expect a decrease in M&A activity of only around 5–10%, and the main driver of the decrease is not directly the energy crisis but mainly the interest rate rise that is heavily affecting the availability of bank financing.

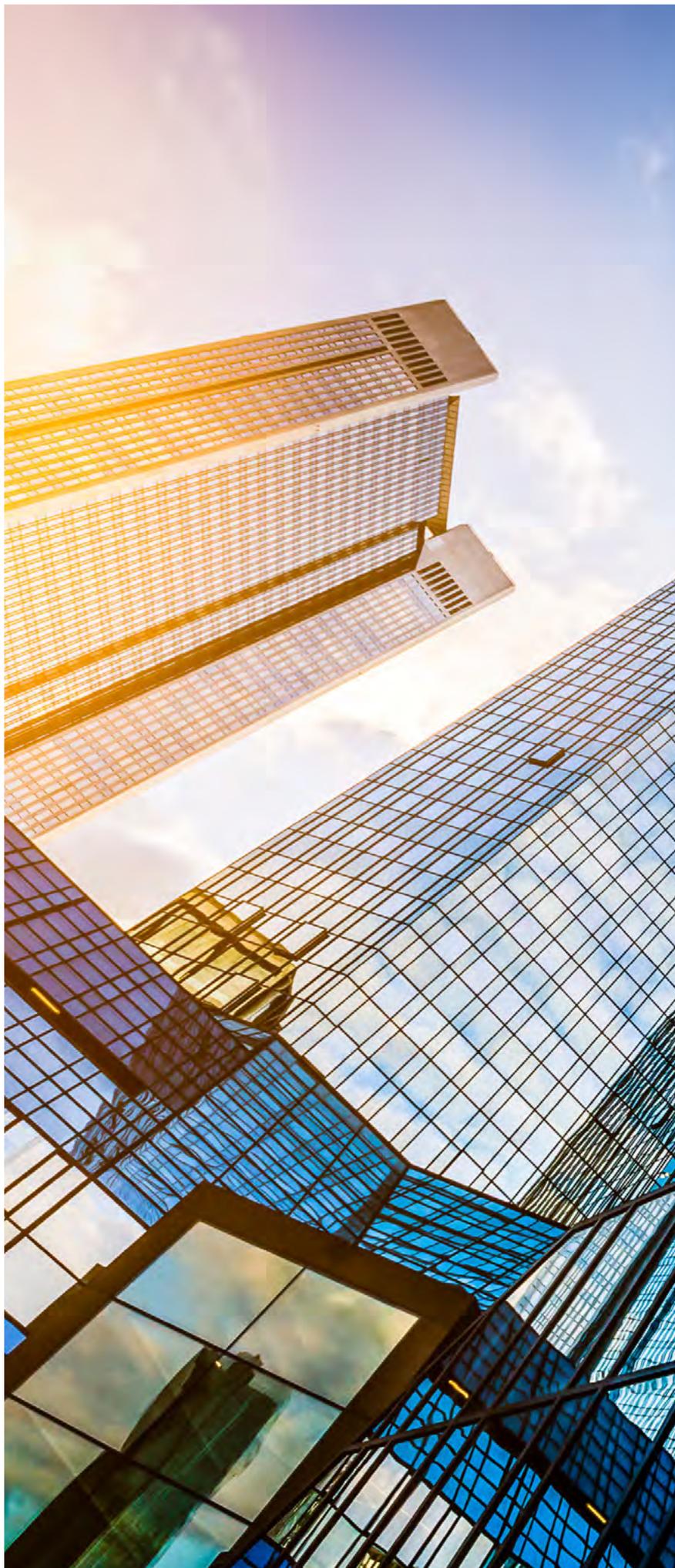
On the other hand, the energy crisis has brought an unprecedented increase in interest in energy projects in the Czech Republic (the value of transactions in the energy sector had already increased by more than 200% in 2021). Investors are focusing mainly on photovoltaic power station projects (a sector that was practically dead between 2010 and 2020 due to the fact that high prices were guaranteed only for electricity produced by photovoltaic plants built on or before the end of 2010). In the first ten months of 2022 alone, the electricity distribution companies received grid connection requests for PV plants for more than

10 GW of power. This creates great pressure on the need for high investments in electricity accumulation technologies, and we can already see increased activity in this sector. Unfortunately for solar parks, the legislation reacted only with respect to small PV plants built by households, giving no preferential treatment to medium and big projects, which are being affected by the Czech Republic's extremely lengthy building permit procedure.

Due to Czech industries' high focus on the automotive sector, we expect drastic changes as a result of the increase in EV production. The Czech government is trying to get the VW gigafactory to be built in the Czech Republic, which would have tremendous impact on the whole sector. Unfortunately, VW's decision on the gigafactory has been postponed to 2023.

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

No specific insolvency rules have been issued to manage the crisis. Temporary rules were adopted in response to the Covid-19 pandemic (mainly the possibility of obtaining extraordinary moratoriums and the temporary abolition of statutory bodies' obligation to file insolvency petitions), but all these measures ended in June 2021. We do not expect any other measures to be adopted.

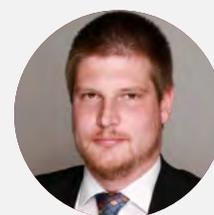


Which tax measures against the energy crisis have been adopted in your jurisdiction?

There was a brief period (November and December 2021) of zero VAT on electricity and gas. However, this was not extended to 2022 and, furthermore, the decision on the VAT pardon was held illegal as being in violation of EU law.

The energy sector has been seriously affected by the recently approved windfall tax. According to the newly approved law, certain companies (mainly electricity producers and coal mining companies) must pay 60% tax on all “extraordinary” profit made between 2023 and 2025. “Extraordinary” profit is defined as 20% above the average profit made in the previous 4 years.

No specific tax measures to reduce the effects of the high energy prices have been adopted (or proposed).



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GERMANY



How has the energy crisis affected M&A transactions in your jurisdiction?

In Germany, the number of M&A transactions decreased by 25% in the first half of 2022 compared to the second half of 2021. However, the transaction volume in Germany was still slightly higher than in the first half of 2020, whereas the deal value decreased. In conclusion, the German transaction market can be said to be roughly back at 2020 levels.

The reasons that led to a decline in transactions mostly relate to general economic uncertainties as a result of the Russian invasion of Ukraine that originally led to rising energy prices and inflation, but it is also due to supply chain disruptions due to Covid-19 lockdowns in China. The inflation levels not experienced by Germany for decades, added to the end of the zero-interest policy of recent years, have led investors to be more cautious.

One of the more resilient markets seems to be the Telecommunication, Media and Telecom sector (TMT sector), with fewer numbers of transaction but higher overall deal values compared to the second half of 2021. The focus on this sector may be due to the Digital Strategy 2025 programme, which makes the TMT sector a future-oriented, and therefore interesting, sector for investors.

Looking ahead, the shortages in the energy sector triggered by the Russian invasion of Ukraine, which have particularly affected Germany due to its high reliance on Russian gas imports, have shown that the transition towards renewable energy is a step that should be taken swiftly to facilitate the autonomous supply of energy. Observers therefore see great potential for future transactions in the renewable energies sector.

Overall, the energy crisis has led to a temporary setback in the positive development experienced

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Germany due to its high reliance on Russian gas imports, have shown that the transition towards renewable energy is a step that should be taken swiftly to facilitate the autonomous supply of energy. Observers therefore see great potential for future transactions in the renewable energies sector.

in recent years, especially compared to the record year of 2021. However, the reluctance to close M&A deals is expected to vanish in the near future, with a lot of deals in the pipeline. Financing costs may have an impact on transaction values but, as explained above, there are enough opportunities for future transactions.

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

Germany reacted to the current situation on the energy and commodity markets by passing a law temporarily adjusting its insolvency rules. For this purpose, the German legislator made some technical amendments to the law already introduced in March 2020 as a reaction to the COVID 19 pandemic and

changed its name to the “Restructuring and Insolvency Law Crisis Consequences Mitigation Act” (Sanierungs- und insolvenzrechtliches Krisenfolgenabmilderungsgesetz - “SanInSKG”). The new law entered into force on 9 November 2022, and its application is limited in time until 31 December 2023.

The new law provides for a mitigation of the insolvency ground of over-indebtedness. Under German law, a company must file for the start of insolvency proceedings without undue delay and no later than six weeks after the occurrence of the over-indebtedness. A company is over-indebted if its assets no longer cover its debts, unless the company is more likely than not to continue trading as a going concern in the next twelve months (going concern forecast). The SanInSKG: (i) reduces the time period for a positive going concern forecast from twelve months to four months; and (ii) extends the maximum time period for filing an insolvency application on the grounds of over-indebtedness from six weeks to eight weeks.

Furthermore, the new law aims to facilitate access to insolvency proceedings under the company's own management and the start of restructuring proceedings. Under German law, a debtor who files for the initiation of insolvency proceedings under its own management or for the initiation of restructuring proceedings must submit a financial plan containing an in-depth description of its sources of finance in order to disclose how the going concern of the company and the payment of the procedural costs will be ensured. The SanInSKG brings these forecast and planning periods down from six months to four months.

By adjusting the aforementioned time periods, the German legislator has taken account of the fact that, in view of the current price volatilities and the uncertainties regarding the type, extent and duration of the energy and commodity market crisis, forecasts can often only be based on uncertain assumptions. The adjustments thus aim to prevent companies from having to file for insolvency on the grounds of over-indebtedness prematurely and to enable them to continue to manage themselves and retain access to their restructuring proceedings, which might otherwise be excluded due to their inability to plan for the long term.

Which tax measures against the energy crisis have been adopted in your jurisdiction?

To mitigate the financial impact of the sharp rise in energy costs for both people and the economy, the German government launched three relief packages in 2022, with a total volume of around €100 billion, as well as an economic defence shield against the consequences of the Russian invasion of Ukraine to cushion the blow of rising energy costs and the most severe consequences for both consumers and businesses. This will be funded with up to €200 billion. These packages not only contain tax measures to counter the energy crisis but also try to give private households and businesses relief from the consequences of the Russian invasion of Ukraine and rising energy costs in a more general manner.





Below is an overview of the most significant measures:

The EEG has been abolished with effect from 1 July 2022. Electricity consumers were previously paying this levy to their electricity provider, which then passed it on to the grid operator. The EEG levy funded the expansion of renewable energies and distributed it among electricity consumers, including companies. Consumers are therefore now paying a total of €0.0372 per kWh less, adding up to a total of €6.6 billion for all consumers throughout Germany.

Additionally, the German government aims to grant private households and businesses relief from the sharp rise in energy costs by means of electricity and gas price caps (Strom- und Gaspreisbremse). These caps set fixed maximum electricity and gas prices for 80% of annual consumption. In order to provide an incentive to save energy, there are no price caps for the remaining 20%. In the case of industries whose consumption exceeds 30,000 kWh, the cap applies to 70% of their annual predicted consumption.

As to tax measures, the German government reduced VAT on fuels for three months, from 1 June 2022 to 31 August 2022. The energy tax rate was reduced by €0.02955 per litre for petrol, and €0.01404 per litre for diesel.

Furthermore, the VAT rate for gas was reduced from 19% to 7%, with retroactive effect from 1 October 2022 to the end of March 2024. The reduced VAT rate will also apply to district heating.

In order to become more independent with regard to energy, the government seeks to promote renewable energy by, among others, introducing a zero VAT rate for the supply and installation of photovoltaic systems and an income tax exemption for certain photovoltaic systems.

A measure that was important for employers was the German government's decision to introduce an inflation adjustment premium of up to €3,000.00. The compensation premium is time-limited and can be paid to employees until the end of 2024. No social security contributions or income tax are payable on the premium. The payment is to be made in addition to wages. However, payment of the inflation compensation bonus is not mandatory for employers.





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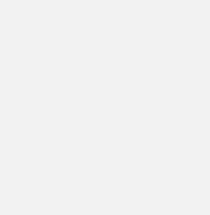
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HUNGARY



How has the energy crisis affected M&A transactions in your jurisdiction?

2021 was a record year for the global M&A market, and the Hungarian M&A market broadly followed this trend, with the number of transactions in 2021 showing an increase compared to the previous year. Despite the conflict in Ukraine and the ongoing energy crisis, M&A activity has remained relatively high so far in 2022. Transactions have been mainly in the Technology/IT sector, but the number of transactions in the energy sector has also increased significantly compared to 2020.

The Energy M&A market is mainly focused on renewables, with a significant number of transactions. Hungary's dependence on Russian energy resources is very strong. Most of the gas supply for Hungarian users comes from Russia via pipelines. Hungary's landlocked status makes it even more difficult to obtain gas from other sources. Hungary is planning to introduce further measures to alleviate this dependence, focusing on more intensive extraction of domestic fossil fuels, exploring new extraction options and seeking other supply substitutes.

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

In Hungary, a number of measures have been taken to mitigate the effects of the energy crisis, but no new insolvency legislation has been passed as a result of the energy crisis. Nevertheless, the provisions of some laws adopted in response to the energy crisis contain provisions remotely related to insolvency. For example, the Government of Hungary adopted Government Decree No. 260/2022 (21 July) on the establishment of a special natural

gas reserve, whose Article 4 contains insolvency-related provisions: the special natural gas reserve is exempt from execution and is not included in the assets of economic entities as defined in the Law on Bankruptcy and Liquidation.

However, following the COVID outbreak, the Hungarian legislators introduced two new procedures for companies in financial difficulties.

The Hungarian Parliament adopted Act LXIV of 2021 on Restructuring and on the Amendment of Certain Acts for the Purpose of Approximation, which transposes Titles I and II of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 into Hungarian law. This Act lays down rules on preventive restructuring frameworks available for debtors in financial difficulties when there is a likelihood of insolvency, with a view to preventing their insolvency and ensuring their viability, with procedures leading to a discharge of the debt incurred by the insolvent entrepreneurs; and measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.

The other newly introduced procedure is included in the provisions of Act XCIX of 2021 on transitional rules in relation to emergency situations. Articles 48-73 of the Act contain the rules on the reorganisation of companies. Reorganisation is a procedure conducted from an economic point of view to improve the asset, financial and solvency situation of an enterprise in financial difficulties and thus ensure its continued operation.

Which tax measures against the energy crisis have been adopted in your jurisdiction?

The Hungarian Government recently introduced the following measures to support Hungarian entities during the energy crisis:

1 A State aid programme for small and medium-sized enterprises (SMEs) operating in the manufacturing/processing industry was announced in early October. The programme aims to support eligible SMEs with their liquidity, profitability and competitiveness problems, along with preserving workplaces. The programme provides for two levels of State aid: (i) a non-repayable direct grant to compensate for the increase in energy prices; and (ii) a non-repayable direct grant to support energy efficient investments. In order to be eligible for the programme, certain conditions must be met, such as that the number of staff members in the supported SMEs in the third quarter of this year may not drop by more than 10% by the end of September 2023, or that the company must carry out energy efficient investments until the end of the following year.

2 A factory rescue programme under which the Hungarian Government provides support to large companies engaged in manufacturing for energy efficiency and energy production investments has also been introduced. In the case of the HUF 150-billion (first round) programme announced, the energy efficiency improvements of large companies will be subsidised by 30% in Budapest and 45% in rural areas. Companies intending to carry out a development to expand their energy supply capacity by at least HUF 200 million (e.g. by installing solar panels or increasing their energy efficiency in any other way, leading to a reduction in energy costs) could be eligible. The programme started on 2 November 2022.



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In Hungary, a number of measures have been taken to mitigate the effects of the energy crisis, but no new insolvency legislation has been passed as a result of the energy crisis.



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ITALY

How has the energy crisis affected M&A transactions in your jurisdiction?

The Italian Government has adopted several legislative measures directly or indirectly relating to restructuring during this pandemic period.

All the successive Law Decrees from the beginning of the Covid 19 pandemic in February 2020 introduced measures to ensure that companies (including those in crisis) affected by the Covid-19 emergency remained in operation, to suspend the activities of the Collection Agent, to support liquidity through the banking system, to support business and to introduce new financial measures to help companies, significant economic measures to help workers and enterprises affected by the new pandemic-related restrictions, to suspend some tax / social security payments, and so on.

In particular, the Italian Government decided to delay several times the entry into force of the new Business Crisis and Insolvency Code (which first appeared in January 2019 with the issue of Legislative Decree 14/2019), which had been initially scheduled for 15 August 2020 and that, following various amendments and additions due to the pandemic crisis, finally come into force – integrated with Legislative Decree 83/2022 of 17 June 2022 – on 15 July 2022, which was the deadline for transposing the EU Directive on Restructuring and Insolvency (Directive No. 2019/1023).

The most important innovations in the new Code are: new tools for the resolution of the business crisis through mitigated warning tools that give entrepreneurs incentives to take voluntary action to overcome the crisis; out-of-court crisis resolution tools with limited powers for the judicial authority; company reorganisation using tools that favour business continuity.

It is a change of perspective from the Bankruptcy Act of 1942, because the aim of the new Code is to ensure that businesses remain as going concerns,



promptly identifying financial and economic difficulties and offering management teams solutions to overcome the crisis, just as required by the European Restructuring and Insolvency Directive.

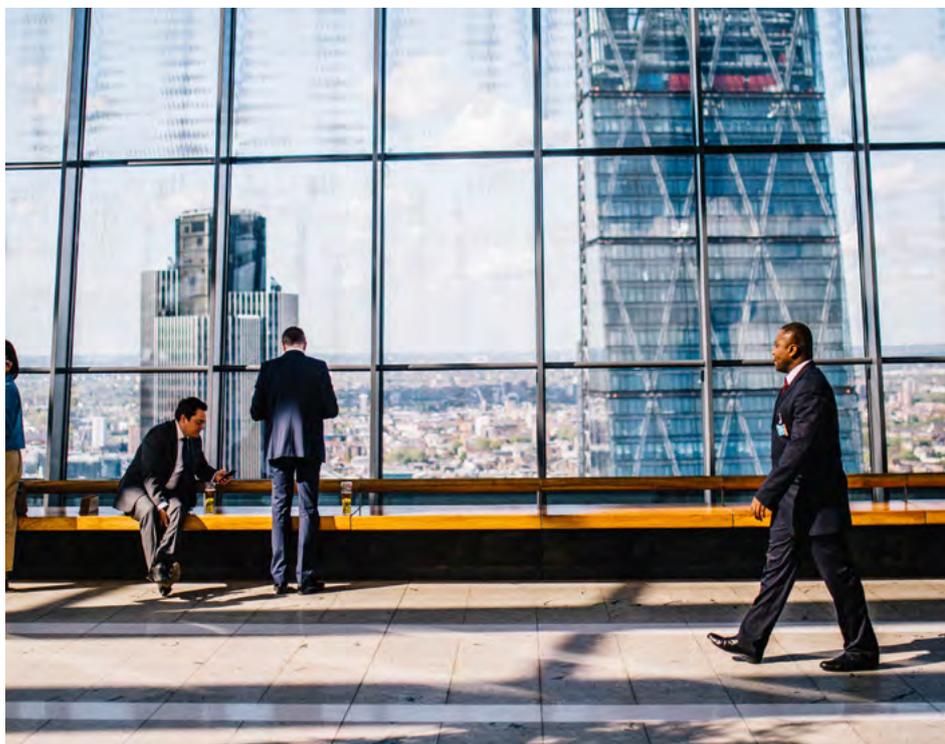
The most important innovation in the new Code is the abolition of the "sistema di allerta" ["warning system"] and the introduction of new tools to overcome the crisis as soon as possible, such as negotiated settlements ("composizione negoziata della crisi"). To make the best possible use of this tool, all companies are required to have in place an internal management and accountancy system ("adeguati assetti organizzativi, amministrativi e contabili") that is suitable for the size and nature of the business, in order to: a) highlight equity, economic and financial imbalances; b) verify the sustainability of debts and the prospect of business continuity for the following 12 months; and c) ensure the availability of the information required for access to the "composizione negoziata" if needed.

In this context, the Code lays down the warnings of a possible crisis, such as over half of all monthly salaries being overdue for at least 30 days; payables to suppliers being overdue for at least 90 days where such payables exceed those that are not yet due; or payables for taxes and social security contributions exceeding the established limits (as regulated by Art. 25-novies of the Act).

If the warnings exceed the thresholds, an invitation to activate a "composizione negoziata" application is made by the Qualified Public Creditors (INPS, INAIL, Agenzia Entrate and Agenzia della Riscossione) and the Auditor, if there is one. Timely disclosure by the Auditor and their supervisory role in the assessment of liability in the event of damage to the company and its creditors are taken into account.

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The most important innovations applied to the new Code are: new tools for resolution of the business crisis through mitigated warning tools that incentivize the entrepreneur to take voluntary action to overcome the crisis; out-of-court crisis resolution tools with limited powers by the judicial authority; reorganization of the company through tools that favor business continuity.



The “composizione negoziata della crisi” is activated by submitting a request to the competent Chamber of Commerce. The entrepreneur must upload some documents (there is a fixed list including, among others, the last three years’ balance sheets, a list of creditors, etc.) on the website asking for an Expert (chosen from a published list of accountants, lawyers, advisors, etc.) to be appointed. The entrepreneur must also carry out a self-test on the website to check that their company meets the requirements for restructuring.

The appointed Expert is a mediator/facilitator appointed to help the company and its creditors reach an agreement.

Pending negotiations, the entrepreneur is fully in charge of the business, but they must keep the expert informed of any extraordinary acts of management or of any activities that are not consistent with the negotiations and the turnaround target. Creditors (especially banks and financial intermediaries) must actively participate in the negotiations.

The entrepreneur can also request protective measures for the company’s assets (such as a stay from enforcement or the filing of bankruptcy, but not from employees’ claims).

The negotiation period can last a maximum of 180 days, at the end of which the expert must issue a final report on how the negotiations were carried out. This period may lead to a mutual agreement on restructuring and rescheduling or a standstill

agreement with creditors (the best result) or to no agreement. In this last case, the entrepreneur can: a) file a certified recovery plan (“piano attestato di risanamento”) as per Art. 56 of the Act; b) request the approval of a debt restructuring agreement (“omologazione di accordo ristrutturazione dei debiti”) as per Arts. 57, 60 and 61 of the Act; c) file an application for a simplified composition with creditors (“concordato semplificato”) for the liquidation of assets as per Art. 25-sexies of the Act; and, finally, d) avail themselves of one of the crisis regulation tools provided by the Act.

Out of all these tools, the arrangement with creditors (“concordato preventivo”) under Art. 84 of the Act is the most significant change compared to previous versions.

An entrepreneur in a crisis situation can propose to their creditors a plan that provides for their satisfaction, to at least the same extent as that achievable in the event of judicial liquidation, as a going concern, the liquidation of the assets of the company or the attribution of its activity to an underwriter. The continuity of the business must protect the interests of creditors, starting with employees, but a minimum satisfaction is no longer necessary.

The restructuring plan subject to approval (“Piano di ristrutturazione soggetto ad omologazione”) under Art. 64 of the Act is a brand-new tool.

It is a cross between a recovery plan (“piano di risanamento”) and an arrangement with creditors (“concordato preventivo”): it is possible to deviate from the rules for the distribution of assets provided that there are qualified majorities and the adhesion of all creditors in terms of classes.

In summary, the new Business Crisis and Insolvency Code introduced many innovations, all with the aim of anticipating the business crisis in order to deal with it effectively to the advantage of entrepreneurs and creditors.

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

Last quarter’s mergers and acquisitions market results confirm the growing international uncertainty. In fact, according to Bloomberg legal data, Q3 2022 saw a significant drop in global M&A volume compared to recent quarters, and no market segment was immune to the decline.

The degree to which transaction activities contracted in the third quarter of 2022 is dramatic. Last quarter recorded the second lowest total transaction volume (USD 504 billion) for control shares of all quarters from 1 January 2017 to 30 September 2022. Only the second quarter of 2020, when the reality of the Covid-19 pandemic began to set in, recorded a lower quarterly transaction volume (USD 225 billion). As far as the Italian market is concerned, 781 M&A deals were formally closed in Italy in the first nine months of 2022, down 14% from 906 deals in the first nine months of 2021, with a total value of approximately EUR 56 billion. Even the total value figure is down from EUR 71 billion in the first nine months of 2021 affected, however, by the Stellantis deal of approximately EUR 19.8 billion.

This confirms the trend already noted in the first six months of the year, when 537 deals were concluded (down 13% from 616 deals in the first six months of 2021) for approximately EUR 30 billion, up from EUR 52 billion in the first half of 2021 (affected, again, by the Stellantis deal).

That said, given the geopolitical uncertainty and the current sharp economic slowdown, these are still satisfactory numbers. The closing of important deals during the third quarter mitigated the slowdown recorded mid-year in terms of countervalues, while

a decline in volumes can be confirmed as a result of the macroeconomic and geopolitical scenario that led operators, especially industrial ones, to slow down / postpone many deals. They confirm the primacy of private equity funds: five of the top 10 deals by countervalue in the first nine months were completed by financial investors.

The fallout of the energy crisis, which erupted in an environment already severely affected by Covid-19 that had seen the cost of raw materials skyrocket, is once again fuelling the liquidity needs of Italian companies. Energy costs have tripled for sectors such as retail and the cold chain. And, in spite of measures taken by policymakers, levels are generally expected to at least double compared to 2019, a scenario that could affect M&A transactions. Italy, however, appears to hold its position firm among the most attractive countries in Europe.

The energy-intensive industries, such as the processing industry, ranging from steel and metal components to production using furnaces, such as the ceramics industry, appear to be the most affected by high utility bills.

In fact, energy-hungry companies usually have rates of 3-4% of energy costs as a percentage of sales, and this rate has now almost doubled.

There are several factors resulting from this scenario that affect M&A transactions.

First of all, there is a reduction in the multipliers by which company prices are calculated, driven by negative market price trends. In addition to this, there is a contraction in the profitability of firms and their ability to generate cash, further negatively impacting valuations. There is also the more recent pressure on the capital structure caused by rising interest rates, which is pushing traders to be more cautious in purchasing transactions. However, it is precisely because of the operational and financial difficulties that entrepreneurs may see the opening of capital as a means of overcoming the crisis.

Looking at deals to monitor in the coming months, we will see an increase in distressed, crisis-related M&A deals. This is likely to occur in more fragmented sectors, where the average size of companies is smaller and for which achieving a higher critical mass can make a difference.

Likewise, in those same industries companies with still-attractive business models and fundamentals can still be found. In such cases, we may help consolidate M&A transactions. Think, for example, of the food sector, where this trend is already happening, or sectors with a strong technology and innovation component.

In general, according to traders' analyses, international investors continue to look at Italy with interest, something that would also justify a good volume of cross-border transactions.

Experts think that, globally, the level of M&A deals will continue along the lines seen in the first half of 2022.

As for Italy, there are widely varying estimates.

Many advisors are talking about a slight contraction in activity. Nevertheless, much will depend on the unfolding of three variables: the impact of

government measures on the cost of energy, the course of the conflict, and – finally – the degree of openness attributed to Italy by foreign governments following the election.

In any case, analyses confirm that Italy is still considered one of the most attractive markets in Europe.

Finally, the latest transactions announced include the agreement between Investindustrial and Eataly's current shareholders, which calls for a EUR 200 million investment by Investindustrial, which will thus come to hold 52% of Eataly's capital with the aim of supporting its international growth.

As of today, the M&A pipeline expected to close by the end of the year is composed of medium-to-large deals that would lead to an Italian M&A market of about 70 billion, a higher value than the one recorded in 2019, the last pre-pandemic year.



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Next quarter's activity will be affected by rising interest rates, the inauguration of Italy's new government and fluctuating prices for energy resources. In a complex 2023 scenario of subdued growth, responses from governments and companies will thus be decisive.

through to 30 June 2023. Some flexibility has also been introduced to reflect each country's national circumstances and the measures in place at national level. These include the possibility of setting a higher revenue cap, using measures that further limit market revenues, differentiating between technologies, and applying limits to market revenues of other actors, including traders.

Which tax measures against the energy crisis have been adopted in your jurisdiction?

The recent energy crisis has made it necessary to adopt some tax measures aimed at curbing the effects of the economic downturn. More specifically, several measures to compensate for the energy crisis have recently been agreed at both European and national level.

On 30 September EU governments agreed to tax the windfall profits of oil and gas companies and to cap the revenues of wind, solar and nuclear power generators.

The "Solidarity Contribution" (as defined in EU-speak) should be calculated on taxable profits starting in 2022 and/or 2023, depending on national tax rules, that are above 20% higher than the average yearly taxable profits since 2018. The EU anticipates that this policy should raise about EUR 140 billion. The solidarity contribution will be calculated on taxable profits: if a business' average taxable profits have increased by more than 20% in 2022 and/or 2023 compared to its taxable profits since 2018, the business will be charged the solidarity contribution. Its exact amount is up to each member state, subject to a minimum 33% of the increase in profits above 20%. It should also be noted that the affected taxpayers will be EU companies and permanent establishments, and EU Member States will use the proceeds of the solidarity contribution to provide financial support to households and companies and to mitigate the effects of high retail electricity prices. As anticipated, EU Energy Ministers have agreed a new revenue cap for inframarginal power generation of EUR 180/MWh. National governments will now implement this. Although this is not strictly a tax measure, it is useful to note how EU Member States have agreed to use measures of their choice to collect and redirect surplus revenues towards supporting and protecting final electricity customers. The mandatory limit on revenue will be introduced on 1 December 2022 and will apply all the way

At national level, some countries have enacted specific provisions in this regard. Below are some specific examples of actions taken at national level. In Italy, for example, a number of tax measures have been introduced to support both end consumers and enterprises. Introduced to help families in difficult financial situations to bear the costs of electricity, natural gas and water, certain social bonuses are also granted in situations of physical discomfort, i.e. when the customer (or a member of their family) is suffering from a serious illness requiring the use of electro-medical equipment. As per the companies, the main measures to mitigate the increase in electricity costs are extraordinary subsidies granted in the form of tax credits that can be summarised as follows: (i) tax credit for so-called "energy-intensive" enterprises; (ii) tax credit for so-called "gas-intensive" enterprises; (iii) tax credit for the purchase of electricity for all enterprises (other than "energy-intensive" ones); and (iv) tax credit for the purchase of natural gas for all enterprises (other than "gas-intensive" ones). With reference to the first one, please note that a tax credit equal to 45% of the cost incurred for the electrical power effectively consumed in the first quarter 2023 by energy-intensive enterprises was provided by the Italian legislator. The tax credit is recognized if the average price of the electrical power per KW/h purchased in the last quarter 2022 is increased by more than 30% compared to the average price of the electrical power per KW/h of the last quarter 2019.

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THE NETHERLANDS

How has the energy crisis affected M&A transactions in your jurisdiction?

There is a trend, which can be seen throughout Europe, of companies shifting more towards investing in the innovation business in the field of enduring energy and other options that are contributing to alternatives to current oil and gas power supplies.

At the end of the previous year, the total volume of Merger & Acquisition activities decreased slightly compared to previous months of the same year due to (among other things) the outbreak of COVID-19 and turbulence on the global markets. However, energy transition deals accounted for roughly 20% of energy sector deals of more than USD 1 billion in 2021.

Looking specifically at M&A activities in the energy sector, the results for the first six months of 2022 were lower than initially expected. However, these lower results are not completely surprising given the very relevant and unexpected circumstances being faced since the beginning of this year, such as strong inflation, geopolitical unrest and strong fluctuation in (commodity) prices.

Nevertheless, experts expect strong M&A results for the second part of this year. This turnaround is expected, among other things, due to the ample supply of capital present in the market and the many opportunities currently emerging in the market, as well as certainly from the ongoing acceleration of the energy transition.

The role of M&A in the energy transition is only expected to increase in the future.

Traditional energy companies are expected – partly as a result of pressure from society and their own

shareholders – to sell a vast majority of their ‘old’ fossil energy assets and instead start investing in ‘new’ sustainable variants.

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

Several measures have been put in place by the Government to support households as well as businesses. The most wide-reaching one is the price cap on gas and electricity from 1 January 2023.

This price cap is expected to be helpful only for small and medium-sized enterprises (SMEs) due to its maximum threshold. Under this measure, an adjusted maximum tariff will apply to consumptions of up to 1,200 m³ of gas and 2,900 kWh of electricity. Normal market prices will apply to amounts in excess of these.

In addition, the Dutch Government has introduced the ‘Tegemoetkoming Energiekosten-regeling (TEK)’. From 1 November 2022, companies that consume more than 5,000 m³ of gas or 50,000 kWh of electricity per year and at least 12.5% of whose turnover consists of energy costs will be eligible for this. Under this measure, companies will receive compensation for part of the additional amount they have started paying for energy. Companies will be compensated for 50% of the excess, calculated using threshold prices, up to a maximum amount of EUR 160,000.

To be eligible for TEK, companies must meet the following conditions:

— The company must have an annual consumption of more than 5,000 m³ of gas or 50,000 kWh of electricity; and

— At least 12.5% of its turnover must go towards energy costs; and

— The company must meet the European definition of “SME”:

- Under 250 employees
- Annual turnover not exceeding EUR 50 million
- Annual balance sheet not exceeding EUR 43 million

However, due to European procedures for government support and the European Commission's approval, the start date for applications is expected to be no sooner than in the second quarter of 2023. In the period before this, the Government has declared that it will be more flexible towards companies requesting an extension for payment of tax. Financial institutions have announced that they will do the same with regard to businesses that request additional funding to overcome the crisis.

A few tens of thousands of companies are expected to use the support measures, at an expected total cost to the Dutch Government of EUR 3.1 billion.

Looking at the crisis currently faced by the Netherlands and at the amount of financial support measures that businesses are expected to pay back, we can safely say that businesses will face tough times in the coming months.

Which tax measures against the energy crisis have been adopted in your jurisdiction?

On 1 November 2022 the Netherlands released a legislative proposal for the levy of a solidarity contribution. This is effectively a windfall tax based on the EU regulation of 6 October 2022 under which member states must levy additional tax on excessive profits generated by taxpayers in the fossil fuel sector in 2022 and/or 2023. The revenue from this levy will be used to finance the price cap on gas and electricity (discussed above). The legislative proposal provides for an additional tax levy of 33% on “excessive profits” generated in financial

years starting in 2022 (i.e. only one financial year). Excessive profit is calculated as the profit realised for CIT purposes, minus 120% of the average profit in the previous four years.

An additional measure to finance the price cap on gas and electricity has been proposed. This involves increasing a specific levy on fossil fuel payable by businesses that are actively engaged in the exploration of fossil fuels, calculated based on these businesses' turnover. The rate of this levy will be increased for 2023 and 2024. The increased rate is payable on turnover resulting from a gas price in excess of EUR 0.50 per cubic metre. There has been a proposal to increase the levy to 65% for that portion of businesses' turnover.

Dutch tax law provides for a number of deductions for certain environmentally sustainable investments. Although no specific measures have been announced yet, the Dutch Government does intend to increase the available budget for these deductions. In addition, there are a number of subsidies for which the available budget has already been increased. The Dutch Government also intends to implement an additional subsidy to promote the use of environmentally sustainable innovative techniques, and a legislative proposal for this purpose will be released in the first quarter of 2023. There are also plans to further promote investments in the sustainability of business assets by providing State guarantees for loans used to finance such investments. The high-level outline of the planned measure mentions that guarantees can effectively be obtained for 67.5% of such loans.

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The role of M&A in the energy transition is only expected to increase in the future.

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NORWAY



How has the energy crisis affected M&A transactions in your jurisdiction?

M&A activity in Norway was exceptional in 2021, in terms of both number of deals and their values. Despite the ongoing conflict in Ukraine and significant market volatility, M&A activity has remained high so far in 2022, although with more delays and postponements than in previous years.

Norway has great access to oil and gas and renewable energy resources, such as bioenergy, hydropower and wind power. High M&A activity within the energy sector is therefore not something new in the Norwegian M&A market. However, there are good indicators to suggest that the energy crisis has resulted in, and will contribute to, increased activity within the renewable energy sector. For instance, the significant increase in energy prices has led to considerable interest in small-scale hydropower (where installed capacity is less than 10 MW), which is an essential energy provider in Norway. A number of international energy and infrastructure investors are investing or seeking to invest in this segment. Recently, there has also been high M&A activity in the offshore wind sector, and it is not unlikely that we will have more activity in this field in the near future.

Green energy technology companies, which exist at the intersection between technology and renewable energy, are still attracting investors and, with the current market situation, there are no indicators of it slowing down. Worth mentioning is also the increasing level of investments in auxiliary technologies, which are important for a green energy transition through either mitigation or adaptation. This includes iA battery production, electric vehicle charging infrastructure, etc.

With the above being said, it is realistic to expect M&A activity in Norway in general to be affected in line with the rest of the world. Significant volatility and uncertainty, together with increased inflation

and interest rate increases, may lead to challenges when it comes to financing certain acquisitions. It is also reasonable to assume that investors will apply extra caution when considering targets. In the end, this may mean that successful transactions, including those within the energy sector, may take longer to complete.

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

Norway has not introduced any specific new insolvency rules to address the current energy crisis, as political discussions have focused on various support schemes for the affected industries. A general energy scheme was introduced in September 2022 as a mix of State-funded contributions for some of the industries most severely affected by the crisis (based on factual power consumption), as well as a more widely available Government-guaranteed loan arrangement scheme.

Norwegian insolvency legislation was, however, amended in May 2020, when the temporary Act addressing financial issues caused by the outbreak of Covid-19 entered into force. This Act introduced new and more flexible measures to aid companies in financial difficulties, including a removal of the former dividend threshold in connection with compulsory compositions. The Act was originally intended to remain in effect only until 31 December 2021, but it was extended until 1 July 2023 pursuant to

a parliamentary resolution dated 17 December 2021, which extended its application beyond the pandemic. The temporary Act is expected to remain in force until a permanent Reconstruction Act has been formally adopted, which is expected to happen no later than before the new expiry date.

Which tax measures against the energy crisis have been adopted in your jurisdiction?

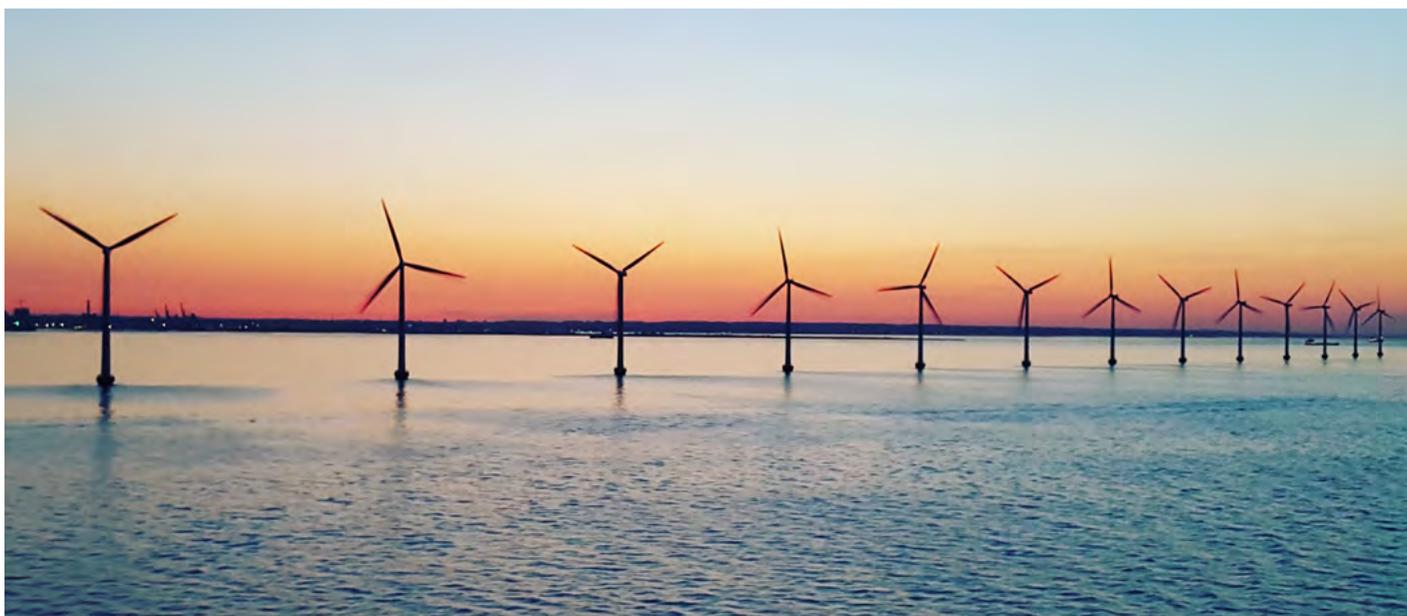
Norway has not introduced any specific tax measures against the energy crisis.

As described above, Norway is a considerable energy producer and net energy exporter.

The energy sector in Norway is benefitting hugely from the energy crisis resulting in high energy prices. This is probably the main reason why no specific

tax incentives for increasing energy production have been introduced. On the contrary, several new measures resulting in higher taxes for the Norwegian energy sector have been proposed by the Norwegian Government in the State Budget for 2023.

As regards sectors other than energy production (which are not benefitting from the high energy prices mentioned above), no specific tax measures aimed at reducing the effects of the high energy prices have been proposed or adopted. However, this must be seen in light of the other measures being proposed or adopted, such as the compensation scheme for businesses with a certain level of energy consumption, and the increased “CO2 compensation” (related to the EU CO2 quota system) for Norwegian power-intensive industry members.



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POLAND



How has the energy crisis affected M&A transactions in your jurisdiction?

M&A activity in Poland was extraordinary in 2021, in terms of both number of deals and values. Due to the Russian invasion of Ukraine, M&A activity in Poland (mostly with big multinational investors) has decreased, and many transactions have been delayed or postponed. However, despite the conflict in Ukraine, two enormous local energy sector transactions made progress in Poland in 2021 and 2022: PKN Orlen and LOTOS, two of Poland's largest refinery companies, will be merging by the end of 2022. Moreover, shareholders of the Polish natural gas monopolist PGNiG voted in favour of the planned merger with Poland's leading oil and gas company PKN Orlen in October 2022.

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

Poland has not introduced any specific new insolvency rules as a result of the current energy crisis, as political discussions have focused on various support schemes for the affected industries, i.e. mostly for energy-intensive industry and individuals.

Which tax measures against the energy crisis have been adopted in your jurisdiction?

Poland has not introduced any specific tax schemes against the energy crisis. However, Poland has reduced the following VAT rates in view of the energy crisis: i) for electricity: from 23% to 5%; ii) for natural gas: from 23% to 0%; iii) for system heat: from 23% to 5%; iv) and, for car fuel: from 23% to 8%. Poland has recently discussed this topic with the EU, and it seems likely that the reduced VAT rates for electricity, system heat, natural gas and car fuels will be cancelled from 1 January 2023.



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PORTUGAL



How has the energy crisis affected M&A transactions in your jurisdiction?

No data on the impact of the energy crisis on the Portuguese M&A market is yet available. However, according to the Transactional Track Record, the number of M&A transactions recorded in Portugal in the third quarter of 2021 indicated a recovery when compared to 2020 and the pre-pandemic period, a trend that was reversed in the first quarter of 2022, with a 21% decrease in the number of M&A transactions compared to the same period of 2021 (although there was a significant 27% increase in investments by private equity and venture capital funds in Portugal).

It may still be too early to attribute the M&A figures of the first quarter of 2022 to the energy crisis, but it cannot be denied that the negative effects of the energy crisis in Portugal are already being felt, as most Portuguese companies are facing a substantial increase in the cost of purchases of raw materials, oil and gas, resulting in a general increase in prices (which is not specific to Portugal but rather a European trend). In this context and given the increase in financing rates and inflation, it is expected that the Portuguese M&A market will also be affected by the crisis.

Nevertheless, it is important to highlight that the renewables energies sector in Portugal has proven to be very dynamic in the past few years, especially in 2021, with a total of 61 transactions for around EUR 11,000 . This year, the total number of energy M&A transactions recorded is 38 so far, for a total amount of EUR 2,333 , a drop in volume of 50% in euros when compared to 2019 and 2020. This is not specifically a Portuguese trend, as numbers in Europe have been consistently dropping in this sector since 2020 .

The development potential of the Portuguese renewable energies sector is well known, due to

the country's natural resources. In a context of global difficulties accessing non-renewable energy sources, there is an opportunity for growth for this sector, as shown by the fact that solar and wind M&A transactions have accounted for most energy M&A transactions closed in Portugal in 2022. According to Transactional Track Record, Portugal has led the way in energy M&A transactions in 2022 compared to other European geographies.

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

Portuguese Insolvency rules have been amended in 2022 in the context of the Covid-19 outbreak, as well as in order to transpose Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.

In this context, the already existing special revitalisation process (PER) – a preventive restructuring process – has been subject to adjustments, of which the introduction of the “cross-class cram-down” mechanism, which has no tradition in the Portuguese legal system, should be particularly noted. This enables courts to impose restructuring plans on creditors, which may help speed up the implementation of such plans.

In this context, the already existing special revitalisation process (PER) – a preventive

restructuring process – has been subject to adjustments, of which the introduction of the “cross-class cram-down” mechanism, which has no tradition in the Portuguese legal system, should be particularly noted. This enables courts to impose restructuring plans on creditors, which may help speed up the implementation of such plans.

As to measures with a practical influence on corporate agreements, the Portuguese legislators have clarified that a party’s declaration of insolvency may not be considered legitimate grounds for the termination of an agreement, and such clauses are considered null and void.

Other amendments regarding insolvency proceedings for individuals have been introduced. The most interesting of these is the reduction of the personal insolvency period from five to three years. In general, the changes presented aim to introduce greater efficiency in the conduct of proceedings, increased debtor protection during the negotiation period, the strengthening of the principle of equal treatment of creditors and increased protection for companies’ financial backers during the PER.

No specific measures have been implemented so far as a result of the energy crisis.

Which tax measures against the energy crisis have been adopted in your jurisdiction?

In September 2022, the Portuguese Government adopted a plan of extraordinary measures to support Portuguese companies in the context of, among others, the rise of energy prices in Portugal.

Although some of the measures included in the plan are not yet being carried out – as they are subject to further approval by the European Commission – several tax and finance measures for Portuguese companies are already in force. These include, among others, the creation of State credit lines to support companies affected by the rise in energy prices and raw materials (representing a total expenditure of EUR 600,000,000) and promote the acceleration of the energy transition (for a total amount of EUR 290,000,000).

Companies in the agricultural sector, which have been particularly affected by the crisis, will now be able to deduct their electricity and natural gas costs

from their annual corporate income tax declaration as well as benefit from an exemption from taxes on agricultural gas (this measure is valued at around EUR 25 million). As for freight companies, the Portuguese Government has also extended the partial refund of the gas costs borne by them, a measure that was already in force.

Other temporary measures, such as the suspension of taxes on petroleum products and the carbon tax on natural gas, have also come into force.

As to private social solidarity and non-profit institutions, a State contribution to their gas costs in order to face the increase in price, involving a EUR 5,000,000 investment by the Portuguese Government, has been approved.

The above measures show the Portuguese Government’s significant concern regarding the mitigation of the energy crisis, and it is hoped that they will have a positive impact on Portuguese Companies.

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Nevertheless, it is important to highlight that the renewables energies sector in Portugal has proven to be very dynamic in the past few years, especially in 2021, with a total of 61 transactions for around EUR 11,000 .



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SLOVENIA

How has the energy crisis affected M&A transactions in your jurisdiction?

While the Covid crisis in Slovenia has put many M&A transactions on hold or even terminated them, this cannot be said of the ongoing energy crisis. Currently, M&A transactions in Slovenia are proceeding smoothly, and we are fortunately yet to see any cancellations or other disruptions due to the current global energy crisis.

Europe's net zero target commitments and the activities of financial investors are particular drivers of the growth in renewables and the interest in new technologies. Companies are aggressively making deals aimed at reducing carbon production from their operations to meet net-zero targets. In addition, the supply chain disruptions in the past two years have led to a recalibration of European industries' strategies.

As a result, we can observe a significant increase in interest in renewable energy and industry production assets in Slovenia, especially as energy security has become a top priority due to the war in Ukraine.

Renewables are currently subject to business pricing uncertainty caused by inflation, interest rates, prices for raw materials and political disruption. Despite all this uncertainty, we expect M&A activity to increase because of the acceleration of the energy transition and the emergence of parties who see an opportunity to create additional value in the current macroeconomic environment. Potential sellers (and buyers) of such assets will need to engage consistently with many new parties and adapt their M&A strategy accordingly to ensure that their business remains legitimate and profitable in a way that generates additional revenue for them.



How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

While some Slovenian insolvency rules were temporarily put on hold during the COVID crisis, the Slovenian Government has for now decided to provide State aid to businesses that are being particularly encumbered by the high electricity and natural gas prices.

On 31 August 2022 the Slovenian legislators adopted the Act establishing aids to the economy due to high electricity and natural gas prices ("ZPGVCEP"), which entered into force on 10 September 2022. Under ZPGVCEP, the Government will provide non-repayable grants to businesses with the aim of co-financing the cost of electricity and natural gas. At the beginning of October 2022, an amendment to the ZPGVCEP further increasing State aid was adopted.

Aid for the economy is available to legal or natural persons carrying out an economic activity in the Republic of Slovenia that were registered as companies, sole traders, cooperatives, chambers of commerce, economic interest groups, representative trade unions, associations or institutions up to and including 30 November 2021.

Co-financing may be received for costs incurred between 1 June 2022 and 31 December 2022 that exceed twice the increase in the prices of electricity and natural gas compared to the same period in 2021.

The ZPGVCEP provides for three types of aid to the economy:

— **Simple aid:** Simple aid is granted to companies affected by the Russian attack on Ukraine or by sanctions or retaliatory countermeasures taken in response to the attack. The amount of simple aid paid per month during the eligible period is 50% of the beneficiary's Eligible Costs in that month.

— **Specific aid:** This enables companies to partially recover the costs incurred as a result of the exceptional increase in the price of natural gas and electricity. The amount of specific aid paid for each month of the Eligible Period is 30% of the beneficiary's Eligible Costs for that month.

— **Aid for 'energy-intensive businesses':** This is for companies whose annual cost of electricity purchased or produced in the course of their business is at least 3% of the annual value of their production. The EUR 2 million limit on the amount of aid payable per beneficiary may not exceed 50% of the beneficiary's Eligible.

It should be pointed out that each beneficiary may only claim one type of aid. Aid may be claimed until 15 November 2022.

Although the main purpose of ZPGVCEP is to help companies due to the rising energy prices (and, consequently, to protect them from possible insolvency), the Slovenian legislators have not yet adopted any measures directly related to insolvency law.

Which tax measures against the energy crisis have been adopted in your jurisdiction?

In Slovenia, temporary measures involving a reduction of the VAT rate applicable to energy supplies will apply from 1 September 2022 to 31 May 2023. The measure to temporarily reduce VAT on energy supplies, which supplements the one regulating the retail prices of certain energy products for final consumers, addresses the issue of energy price inflation and the even higher energy price increases expected. The temporary VAT reduction on energy products ensures that consumers, particularly the most vulnerable groups with the lowest incomes,

are further relieved of the impact of price increases during the peak energy consumption period, i.e. the coming heating season.

The Act on an emergency Value Added Tax measure to mitigate the increase in energy prices (ZNUDDVE) passed in September 2022 temporarily provides for VAT to be levied and paid at a reduced rate of 9.5% on supplies of:

- electricity falling within tariff code 2716 00 00;
- natural gas falling within tariff codes 2711 11 00, 2711 21 00 and 2711 29 00;
- district heating falling within standard classification of activities code D/35.30; and
- firewood for heating 4401.

The Financial Administration of the Republic of Slovenia has prepared explanatory notes on the implementation of ZNUDDVE showing, inter alia, that:

- the reduced VAT rate applies only to supplies of goods under the specified tariff codes, with the additional condition that the goods supplied must be used for heating and not, for example, for powering lorries and other vehicles (liquefied natural gas supply);
- ancillary services (network charges) that are closely linked to the supply of electricity must also be subject to the reduced VAT rate for the supply of electricity.



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SPAIN



How has the energy crisis affected M&A transactions in your jurisdiction?

The number of M&A transactions in Spain's energy sector has been growing steadily over the past four years, but 2022 has brought a significant decrease in this activity of about 25% to 35% compared to the same period in 2021. Despite the decrease in the number of deals, the overall economic value of transactions has remained in line with 2021.

The reasons for this situation are various and well known to the European market: the Russia-Ukraine conflict and rising energy prices on the one hand (the average energy price in Spain reached EUR 544/MWh at the beginning of March 2022, with an hourly peak of EUR 700 MWh) and the volatility of the exchange rate against the dollar, plus increasing interest rates, are a combination that affects valuations and profitability rates.

However, there are reasons for optimism too. Spain has some country-specific circumstances that support this view. More specifically, there has been a significant increase in assets under development, particularly photovoltaic assets. The year 2021 was a year of impasse in these assets due to the delay in securing authorisations and carrying out administrative procedures, but a high number of projects is expected to reach Ready to Build status in the coming months, enabling the construction phase to begin. Due to Spain's climate, professionals have been specialising in renewables for decades, which has resulted in Spain having excellent engineering firms able to build and operate highly efficient plants. The start of the construction and operation of these new projects will probably revitalise M&A activity.

In addition, the energy sector is experiencing greater regulatory certainty and there are ambitious objectives defined in the new Climate Change Act and the 2030 Agenda that envisages the inclusion of around 60 gigawatts (GW) of renewable energy by 2030. For these reasons, we understand that M&A deals in the energy sector will not be significantly

affected, in spite of the drop in transactions with Spanish involvement in the first half of the year. Although the number of transactions is not expected to be the same, their value is higher. This means that the market will not cease to operate.

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

A number of measures have been taken by the Government to counteract the effects of the energy crisis and the increase in electricity and gas prices. These include, among others, gas price caps and reductions on indirect taxation affecting end users. The Government measures, however, have not included any changes to the insolvency legislation so far, although there would have been a good opportunity to include such measures in the Spanish Bankruptcy Act, which was recently significantly amended.

The only energy-specific insolvency measure adopted is in the context of a pre-insolvency remedy, the filing of a notice aimed at commencing negotiations with creditors with a view to restructure a business' debts. Once this notice has been filed, the supply agreements that are necessary for the continuity of the debtor's activity may not be terminated. This provision expressly includes energy supply agreements. The only exception to this rule is those agreements that may have been negotiated in an organised market such that they may be replaced at market price (such as forward agreements).

In addition to the above, in the course of bankruptcy proceedings, energy supply agreements that were

breached before or after the start of such proceedings may not be terminated if the court rules that they are to continue and the amounts still owed by the bankrupt debtor are paid within 3 months after the court ruling. This remedy similarly applies to other bilateral agreements with outstanding obligations for both parties.

Which tax measures against the energy crisis have been adopted in your jurisdiction?

In Spain, the Government has put intense tax measures in place since the second half of 2021 to alleviate the negative effects of the energy crisis. Reductions and waivers of VAT, Electricity Tax and Tax on the Value of Electricity Production have now been added to the fiscal measures recently adopted in relation to Personal Income Tax (PIT) and Corporate Income Tax (CIT), which are contained in the +SE Plan (+ Safety for your Energy).

Back in June 2021, the VAT tax rate was reduced from 21% to 10% for electricity supplies for contracts with a fixed power term not exceeding 10 kW when the average monthly price of the wholesale market in the month prior to that of the turnover exceeded EUR 45/MW, as well as for supplies made to vulnerable homes, regardless of the price of electricity from the wholesale market.

In addition, the Tax on the Value of Electricity Production (a tax of 7% on income from electricity supplies) was suspended. Furthermore, in September 2021 the rate of Electricity Tax was reduced from 5.1% to 0.5%, the minimum rate allowed by EU legislation. All these measures have an impact on the various components that determine the final price of electricity.

Those measures have been extended until the end of 2022 and reinforced by the additional reduction of VAT down to the 5% allowed by the European Union due to the ongoing aggravation of the energy crisis.

Finally, on October 2022 the Spanish Government extended the application of the PIT deduction for one more year in order to improve the energy efficiency of homes. This provides a longer period to undertake the works required to reduce the consumption of non-renewable primary energy or demand for heating or cooling homes.

On the other hand, dealing with CIT, taxpayers can freely amortise investments made in facilities intended for the self-consumption of electricity, as well as facilities for thermal use for own consumption, provided that they use energy from renewable sources and replace facilities that use energy from non-renewable fossil sources. The new facilities should start operating in 2023.

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Due to Spain's climate, professionals have been specialising in renewables for decades, which has resulted in Spain having excellent engineering firms able to build and operate highly efficient plants.



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SWEDEN



How has the energy crisis affected M&A transactions in your jurisdiction?

In common with many other countries, M&A activity in Sweden was at a record high in 2021, in terms of both volume and number of transactions. Not only have we noticed this in our firm but the same has been found, for example, in statistics and financial and capital market reports (see, for example, the PwC report according to which the number of transactions increased by 24% from 2020).

After the 2021 peak, we have noticed that deals have somewhat decreased in the traditional industry and that the new energy sector has been put in the limelight. The Stockholm stock exchange has experienced a highly volatile period since the beginning of 2022, with share values plummeting by 20-25%, including on large-cap shares and more so on the smaller markets. According to a Baker McKenzie report, the number of transactions in Sweden fell by approximately 39% in number, and 67% in value, during the first three quarters of 2022, compared to the same period in 2021. The reduction in Sweden is comparable to the reduction seen globally. In comparison to pre-pandemic levels, the number of transactions during Q3 2022 was 17% higher than in Q3 2019.

The energy crisis has so far had moderate negative effects on the Swedish economy as a whole, but this is expected to change. As a big net exporter of energy, Sweden has seen a moderate increase in inflation rates, but households have experienced higher energy prices in the southern part of the country. As a consequence, the Swedish central bank's governing interest rate has been significantly adjusted upwards. This will have a direct effect on the bank market and on risk willingness in capital markets, including both private and public M&A transactions, and will lead to higher market uncertainty going forward. Nevertheless, some positive voices are hailing a recovery during 2023 due to fundamental share values on Nasdaq Stockholm

now regaining their attractive valuations. However, such a turnaround on the market is dependent on how the international markets develop, due to Sweden being a big exporting nation, and on the development of energy prices both domestically and on the EU energy market (Sweden

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

No new insolvency laws or rules have been introduced in Sweden due to more difficult times or a recession. Instead, the primary focus has been pre-emptive (such as the possibility of temporarily postponing payment of taxes for companies). Furthermore, a financial support package will be introduced for electricity users in most of Sweden. The support will be provided to everyone: both natural and legal persons, as well as government institutions and similar organisations.

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The energy crisis has so far had moderate negative effects on the Swedish economy as a whole, but this is expected to change. As a big net exporter of energy, Sweden has seen a moderate increase in inflation rates, but households have experienced higher energy prices in the southern part of the country.



Which tax measures against the energy crisis have been adopted in your jurisdiction?

The Swedish Government has recently put forward two legislative proposals regarding energy tax adjustments due to the increasing energy prices. The proposals involve: (i) abolishing a tax on combustion; and (ii) scrapping an energy tax reduction for computer halls. The purpose of the proposals is to eventually increase electricity production in cogeneration plants and increase incentives for energy efficiency in computer halls. Sweden has also put forward a request that has led to the European Commission in turn proposing to the European Council that Sweden be allowed to apply for a temporary reduction in the energy tax on diesel and petrol.

As to Swedish households, the cost of electricity is a major expense. VAT on electricity accounts for 25% of the total electricity price, including electricity tax. Households therefore pay more in tax when the price of electricity rises. Due to increasing electricity prices, there has been a large increase in tax revenue from electricity. The Government has said that it is not reasonable for the State to receive much higher revenues when electricity prices skyrocket. As a result, the leading conservative party (now in office) has presented a proposal for the temporary abolition of electricity tax during the coldest months of the year (January and February). The extra income received by the State due to high electricity prices should go back to households. Even service companies that pay full electricity tax will be eligible for the reduction.



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PIECE OF OPINION





An Opportunity for Europe:
Hydrogen and Renewable Gases.
The Next Frontier



The Renewable Energy
Communities: a new path for the
EU renewable energy industry.
The Italian case.

An Opportunity for Europe: Hydrogen and Renewable Gases. The Next Frontier

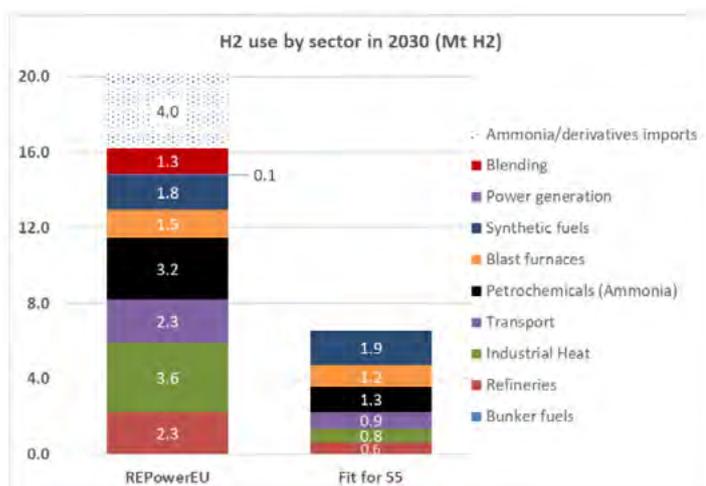
Current scenario

On 26 August 2022 the Dutch TTF natural gas index closed at an all-time high of EUR 349/MW. On average, in 2022 the TTF traded at six times the price recorded in 2021. In 2022, emission allowances traded at an average of EUR ~80 in EEX. Industrial production costs have skyrocketed. According to Eurostat, the European Producer Price Index has increased by as much as 41.9% YoY.

The current situation has triggered a growing interest in hydrogen and renewable gas projects. Member States and operators are searching for alternative fuels to replace natural gas, especially in hard-to-electrify sectors, such as energy-intensive industries.

Measures to promote hydrogen and renewable gases

The EU has increased the hydrogen use target twice since the approval of the EU Strategy on Hydrogen back in 2020: first in 2021 with the Fit-for-55 package, and then in 2022 after the outbreak of the Ukraine war through the RePowerEU plan. The latter has increased the target from 5.6 Mt to 20 Mt, 10 Mt of which will have to be produced in the EU while the rest is expected to be imported from third countries.



[Source: European Commission (2022): Implementing the REPowerEU Action Plan: Investment Needs, Hydrogen Accelerator and Achieving the Bio-Methane Targets].

Green transition is one of the main pillars of the EU Recovery and Resilience Facility. Hydrogen and renewable gases play a relevant role in the national recovery and resilience plans (“RRP”) of EU Member States. Significant investments of at least EUR 9.3 billion in hydrogen have been proposed in the framework of the RRP. 15 Member States have included measures dedicated, either partly or exclusively, to hydrogen in their RRP. The measures cover the whole hydrogen value chain – from production to transport, storage and end use.

Additionally, the Commission has approved two Important Projects of Common European Interest (IPCEIs) on hydrogen:

— IPCEI Hy2Tech – July 22: This aims to develop innovative technologies for the hydrogen value chain to decarbonise industrial processes and the mobility sector, with a focus on end users (EUR 5.4 billion).

— IPCEI Hy2Use – September 2022: This involves the construction of hydrogen-related infrastructure and the development of innovative and more sustainable technologies for the integration of hydrogen into the industrial sector (EUR 5.2 billion).

In September 2022, during her State of the Union address, the President of the Commission announced the intention of creating a “European Hydrogen Bank”. To date, we know that this initiative will invest EUR 3 billion in the capitalisation of the hydrogen market to close the gap between supply and demand. This new tool will be financed by the Innovation Fund. In addition, on the consumption side, the Commission plans to roll out Carbon Contracts for Difference (CcFD) to support the uptake of green hydrogen by industry. CcFDs are contracts under which a public entity and a private agent agree on a fixed carbon price over a given period.

By way of example, in 2022 Portugal approved a reform of the regulations on the national gas transmission and distribution networks. Italy passed a legislative decree to promote the use of renewable gases in transport, industry and residential sectors and an implementing decree setting out the conditions for its use and the new incentive system. Spain passed two decrees regulating the direct connection of a renewable gas production facility to the natural gas grid.

In the meantime, EU institutions are processing legislative initiatives to address current and future challenges and prevent the risk of disharmonisation:

Proposal for a Regulation and a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen:

- The proposed directive will recast Directive 2009/73/EC.
- The proposed regulation will recast Regulation 715/2009.
- The Economic and Social Committee issued its opinion. The proposals have been submitted to the Council of the European Union.
- These initiatives establish rules for independent hydrogen networks, including rules for third-party access. Among other cross-border provisions, the proposed regulation establishes that transmission system operators (“TSOs”) are to accept gas flows with a hydrogen content of up to 5% at interconnection points between EU Member States.

Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 of the European Parliament and of the Council, Regulation (EU) 2018/1999 of the European Parliament and of the Council, and Directive 98/70/EC of the European Parliament and of the Council as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652.

- The European Parliament approved amendments to the text on 14 September 2022.
- Under Article 27 of the proposed Directive, the Commission has to adopt one delegated act for adapting and developing the additionality criteria and emission calculation of renewable hydrogen. The draft was published in May 2022. However,

the European Parliament approved amendments to the Directive proposal in September 2022. The Parliament has defined “renewable hydrogen” as hydrogen produced through the electrolysis of water (either in an electrolyser, powered by electricity stemming from renewable sources, or through the reforming of biogas or the biochemical conversion of biomass, if in compliance with the sustainability criteria set forth in Article 29 of the same Directive). Now, under the proposed Article 27, in order to be considered renewable, electricity will not be subject to the additionality criteria at European level, and the temporal correlation will be more flexible.

- The Directive proposal also includes, among others, provisions for the removal of obstacles to renewable hydrogen purchase agreements.

There is a technical and legal debate regarding the definitions of “renewable hydrogen” and “low carbon hydrogen”. The EU institutions are on the verge of deciding the role to be played by each of them. The coming months and years will be very interesting in terms of shaping the applicable legal framework. Legal operators must be very attentive to the new business opportunities in this market.

The current scenario offers vast opportunities for operators and stakeholders that can use hydrogen and other renewable gases as an alternative source of energy. Andersen’s Energy and Natural Resources team is in a privileged position to provide advice and guidance to its clients in all matters related to the hydrogen sector.



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The Renewable Energy Communities: a new path for the EU renewable energy industry.

The Italian case.

The recast of the European Union Renewable Energy Directive (Directive UE/2018/2011 (hereinafter “**RED II**”) entered into force in December 2018, followed by the Internal Electricity Market Directive (Directive UE/2019/944 or IEMD) and Regulation EU/2019/943 (“**IEMR**”), both of which have paved the way to the implementation of the Clean Energy Package in the European Union.

RED II, which is legally binding since June 2021, set the overarching European target for renewable energy and includes, inter alia, rules to ensure the uptake of renewables in the transport sector and in heating and cooling, as well as common principles and rules for renewables support schemes.

Among other things, article 1 (16) RED II introduced the renewable energy communities (“**RECs**”). These are legal entities established in accordance with the laws of each Member States aimed at providing environmental, economic or social community benefits for their shareholders or members or for the local areas where RECs operate through the self-consumption of the energy produced by a renewable energy plant shared by the community. Furthermore, RED II sets forth other mandatory requirements for RECs including the following:

- members shall be only natural persons, SMEs or local authorities (including municipalities);
- RECs shall be based on open and voluntary participation; and
- RECs shall not pursue financial profits.

The purpose of this new instrument is to boost distributed generation transforming consumers in prosumers by implementing “zero-mile” local energy production schemes and smart grids. The new paradigm is expected to foster and support industry development through smaller, simplified and dispersed renewable energy production projects.

RED II and, more specifically, the set of rules on RECs, have been implemented in Italy initially under Law Decree n. 162 of December 30th, 2019 (“Decree 162”), and more recently by Legislative Decree n. 199 of November 8th, 2021, (“Legislative Decree 199”).

Decree 199 follows the principles set forth by RED II and lays down certain additional provisions:

- Where member/s of a REC is a SME, the SME’s business purpose may not consist in the participation or the management of the REC;
- REC members shall be connected to the grid through the same electric primary substation (corresponding territorially to about three or four municipalities or two or three districts for larger cities);
- The RES plants covered by Decree 199 shall be built only on certain specific suitable areas (aree idonee), such provision to be further implemented through ad-hoc decrees of the Ministry of Ecological Transition and the ministry of Agricultural, Food and Forestry Policies. The areas shall be identified by each Region.

To encourage the establishment of RECs, Legislative Decree 199 includes also certain favorable provisions concerning respectively, the authorization procedure regarding the building and the operation of RES plants (art. 18 and 22), including an incentive mechanism (art. 8)

Pursuant to Art. 8 of Decree 199 RES plants operated in the interest of the REC are eligible for the incentive scheme provided their capacity does not exceed 1 MW. The incentive can be granted to RES plants that became operational after the entry into force of Decree 199. For operating plants, the incentive is limited to 30%.

After the plant has been put into operation, the REC can apply, directly or via an external company - to the Gestore Servizi Energetici S.p.A. ("GSE") for the incentives available under the Ministerial Decree but only with regard to the energy directly produced and consumed by such REC.

It is worth emphasizing that the incentives are not granted for all the energy produced, but only for the amount of energy shared within the community, i.e. that consumed by the members in the same production time slot. Therefore, if production is higher than consumption within the community, for the excess energy produced, the REC's only the economic return is the sale on the market of the surplus of the energy produced.

As for the amount of the incentives, further details are set forth, inter alia, in (i) the Decree of the Ministry of Economic Development enacted on September 16th, 2020, which provides for a tariff over a twenty-year period equal to Euro 110,00 per MWh and (ii) in the ARERA resolution n. 318 of August 4th, 2022, which contains the eligibility requirements for the incentives.

For a complete implementation of the provisions contained in Decree 199, additional Ministerial decrees should have been passed within 180 days from the publication of Decree 199 (i.e. June 2022). Unfortunately, no such implementing ministerial decrees have been issued yet. Recent reports suggest that the new Italian Government will pass the implementing decrees in the following days/weeks.

Such uncertain regulatory scenario has clearly thwarted the development of the RECs in Italy: according to Legambiente (the most prominent Italian environmentalist association) there are around 100 RECs established in Italy as of June 2022, of which only 16 have completed the entire registration procedure with the GSE and only three have obtained State incentives.

Nonetheless, the increase in energy prices over the last months in the European market, sharpened by the war in Ukraine, has underscored the importance of taking a new approach to the energy production models. In this respect, RECs represent a more efficient and ecologically driven solution warmly supported by all the players/participants in the energy markets.

Exponential growth in the number of RECs is expected to occur in the near future. A study by the Politecnico di Milano (Electricity Market Report) estimates that, by 2025, Italian energy communities will number around 40,000 and will involve around 1.2 million households, 200,000 offices and 10,000 SMEs.

The non-for-profit principle applicable to RECs should not limit the birth and development of new business models applicable to the renewable energy industry. On this point, it is worth noticing that, pursuant to art. 30 of Decree 199, RES plants shall only be utilized by and available to the community. However, from a civil law perspective, ownership of such plant could be in the hands of third parties, including individuals or companies. Furthermore, the RECs framework regulation does not prevent communities from assigning certain activities/services to third-party providers (e.g. for profit companies) or to arranging remuneration schemes with such third party provider involving a partial economic share of the States incentives.

In light of the above, it is widely believed among experts and analysts that RECs will represent in the near future one of the most appealing approach to the renewable energy business across European Union and will pave the way to new business schemes and models which will noticeably change the standards of the industry.



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TRANSACTIONS
APPOINTMENTS
HIRINGS

HIGHLIGHTS



GERMANY

Andersen Germany expands service offering with partner access at Berlin office

As of July 1, 2022, Andersen German has welcomed Detlev Stoecker as a new partner specializing in real estate business law, corporate law and litigation. As a notary, he further completes Andersen's service offering in Germany.

Stoecker joins Andersen with his entire team and will focus in particular on complex transactions, including cross-border transactions, and the expansion of notarial services. Stoecker has considerable experience in real estate transactions, including international experience, on both buyer and seller sides. Most recently, he assisted Akelius Residential Property AB on the sale of the Akelius Group's real estate portfolio in Germany, Sweden and Denmark with a total of almost 30,000 apartments.

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established position on the Polish market for past years recommended by Chambers and Legal 500, has become part of an international organisation - Andersen Global. After the merger, over 80 people work in the Warsaw office, while Andersen in Poland has over 130 people in the offices in Warsaw, Katowice and Toruń.

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Ponizio Polska in the transaction for the sale of Ponizio Polska shares to Laumann Beteiligungs GmbH

Andersen in Poland and Michał Pomorski advised the shareholders of Ponizio Polska Sp. z o.o. on the conclusion of a preliminary agreement for the sale of shares in Ponizio Polska to Laumann Beteiligungs GmbH. From the side of Andersen's Warsaw office, the transaction was led by Bartłomiej Wietrzykowski, Senior Associate, under the supervision of Marcin Matyka, Managing Partner. Tax advisory was provided by Konrad Kleszczewski, Director, and Rafał Ciołek, Partner from the tax law team.

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TRANSACTIONS

ITALY

Andersen in Italy oversaw the acquisition of the 100% ownership of Selettra Illuminazione Pubblica by SCIF Streetlighting Italy, buyer side.

With this transaction and with the support of a team led by the partner and lawyer Gherardo Cadore, SCIF Streetlighting Italy and SCIF Industries LTD expanded and continued diversifying their product portfolios, as well as strengthening their global footprint and infrastructure investment.

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POLAND

Merger of Andersen Tax & Legal Matyka i Wspólnicy and FKA Furtek Komosa Aleksandrowicz

Andersen in Poland and FKA Furtek Komosa Aleksandrowicz have merged and continue to operate as Andersen Tax & Legal Matyka i Wspólnicy sp.k. Thanks to the merger, FKA, a law firm with an

SPAIN

Andersen advises Solaer on the closing of financing for a 50 MW project

Andersen has advised Solaer, a business group in the renewable energy sector, on the closing of financing, provided by the bank Caixabank, for a 50 MW project.

The Group's activity, with a presence in Spain, Europe, United States, and Latin America, focuses on the design, promotion and construction of photovoltaic solar installations and self-consumption.

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Andersen advises Vive Solar Group in its incorporation process and in the purchase of three photovoltaic installations

Andersen has advised the Vive Solar group in its build-up process, as well as in the signing of three co-development agreements for the promotion of photovoltaic installations with the energy companies Halia Distribution Management, S.L. and Cristugar,

Vive Solar brings together 30 photovoltaic projects of varying degrees of development and power located in various provinces of Spain (mainly Andalusia, the Basque Country, Valencia and Castilla y León), as well as in Colombia and Guatemala.

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Andersen advises Institut Marquès on the strategic agreement with Czech clinic FutureLife for its entry into the Spanish market

Andersen has advised Institut Marquès, an assisted reproduction company based in Barcelona with clinics in Spain and Italy, on the strategic agreement with FutureLife, a leading pan-European provider of In vitro Fertilization (IVF) and related genetic services headquartered in the Czech Republic, for the entry of the Czech clinic into the Spanish market.

This agreement, framed in the growth plan of Institut Marquès, will allow the company to take its innovative projects and initiatives to a larger scale through FutureLife's pan-European network and its extensive experience in the sector.

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Andersen advises Emperador Inc. on secondary listing on the Singapore Exchange (SGX)

Andersen has advised Emperador Inc. on the admission of the secondary listing on the Singapore Exchange (SGX) in relation to legal matters affecting the Spanish jurisdiction.

Emperador Inc., an international spirits company with a broad portfolio of brands distributed in more than 100 countries, has an estimated market capitalisation of S\$7.3 billion and was previously listed on the Philippine Stock Exchange.

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Andersen advises the Spanish group MFI on the sale of the company to the German group Fielmann

Andersen has advised the Spanish group MFI (Medical Fomento Industrial, S.L.), a leading supplier of optics and acoustics in northern Spain, on the sale of the group companies Ibervisión (Ibervisión Servicios Ópticos, S.L.), Medop (Medop, S.A.) and

Elaboria (Elaboria, S.L.), to the Hamburg-based listed company Fielmann.

This acquisition boosts the Fielmann Group's entry into Spain, in line with its plans to achieve market leadership in Spain in the medium term, while the MFI Group accelerates its expansion by gaining access to an international supply chain and a superior omni-channel platform.

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Andersen advises Temporales on the sale of the company to the Dutch Ik Blink Groep

Andersen has advised the employment platform Temporales on the sale of the company to the Dutch Ik Blink Groep, being involved in all aspects of the transaction both in Spain and in the Netherlands.

Temporales, founded 10 years ago with the aim of linking workers from Southern Europe and Latin America with job offers in Northern Europe and serving 6,000 people a year, joins Ik Blink to continue growing internationally.

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Andersen advises fintech company Flexoh on its strategic alliance with Chilean unicorn company Betterfly

Andersen has advised the employment platform Temporales on the sale of the company to the Dutch Ik Blink Groep, being involved in all aspects of the transaction both in Spain and in the Netherlands.

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America's Cup appoints Andersen as the exclusive Spanish legal services provider for the 37th edition, to be held in Barcelona in 2024

Andersen has been appointed as the exclusive legal services provider in Spain for the 37th edition of the America's Cup, one of the most important sporting events in the world, which will be held in Barcelona

in 2024, after being selected among the main law firms in Spain by ACE (America's Cup Event) Barcelona S.L., the entity created by the Defender of the Race and holder of the rights to the America's Cup, Emirates Team New Zealand.

Andersen is already providing legal advice to the organising team of the event, which in its 37th edition in Barcelona will be held based on two fundamental pillars: sustainability and innovation.

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Andersen advises Squirrel Media on the acquisition of two production companies, Grupo Ganga and Comercial de Contenidos Audiovisuales

Andersen has advised Squirrel Media on the acquisition of Comercial de Contenidos Audiovisuales, which is a Spanish film and TV producer and distributor, as well as on the acquisition of 51% of the business conglomerate Grupo Ganga.

The transactions are part of the growth process in which is involved Squirrel Media, a listed company in the Madrid Stock Exchange

[Read More about Comercial de Contenidos Audiovisuales](#)

[Read More about Grupo Ganga](#)

Andersen advises All For Padel on the sale of shares to Spain Oman Private Equity Fund FCR

Andersen has advised All For Padel, a company dedicated to the manufacture and commercialization of paddle tennis courts and paddle rackets, on the entry into the capital of Spain Oman Private Equity Fund FCR, a venture capital fund participated by the Oman Investment Authority together with Cofides and managed by MCH Private Equity Investments. All For Padel seeks to strengthen the company's structure and grow in the US market, where it already operates.

[Read More](#)

Andersen advises Segurfer XXI and Póliza Médica on the sale of their insurance brokerage business units to Grupo Concentra

Andersen has advised Segurfer XXI and Póliza Médica in the sale of their insurance brokerage

businesses to Grupo Concentra, a group majority owned by the French fund Blackfin Capital Partners.

[Read More](#)

Andersen advises Grupo Impar on obtaining CNMV approval to launch new private equity firm

Andersen has advised the real estate consultancy Grupo Impar in the process of obtaining authorisation from the Spanish Securities and Exchange Commission (CNMV) to launch its new Closed-Ended Collective Investment Undertakings (SGEIC), Impar Capital Asset Management, SGEIC, S.A. Impar Capital Asset Management will invest its capital in companies in the real estate sector whose purpose is the development and rehabilitation of projects in Spain, a country where it has a long track record, which have great commercial potential and are located in consolidated areas.

[Read More](#)

Andersen advises Redext Group on the process of its sale to Wildstone

Andersen has advised Grupo Redext, a Spanish firm controlled since 2005 by the GMT Communications fund, now known as Apse Capital, in the process of its sale to Wildstone, a British outdoor advertising company acquired by Antin in August.

Andersen advises StockAgile on the closing of a €2.5 million financing round

Andersen has advised StockAgile, the omnichannel management software managed by Novadigits Technologies SL to optimise inventory and sales for SMEs, in the closing of a €2.5 million financing round, led by venture capital firm Nauta Capital, 4Founders Capital, Angels and Zone2Boost.

The company will use this capital injection to improve the product and customer service, thus promoting a new sales and marketing strategy with the aim of positioning itself as a leader in omnichannel sales management in the retail sector.

[Read More](#)

Andersen advises Hotelverse on the closing of a second funding round

Andersen has advised Hotelverse, a hotel booking platform, in the closing of a second funding round, rising €1 million.

This second round is part of the startup's fundraising strategy, which on this occasion will be used to adapt the company's commercial structure to current demand and the scalability of its product.

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UKRAINE

Sayenko Kharenko advised on landmark USD 22.5 billion consent solicitation by Ukraine

Sayenko Kharenko acted as Ukrainian legal counsel to J.P. Morgan, the solicitation agent in connection with the consent solicitation for 13 series of Ukraine's outstanding Eurobonds (amounting to approximately USD 19.5 billion of the sovereign's debt) and separate consent solicitation in relation to approximately USD 3 billion GDP-linked securities issued by Ukraine in 2015.

[Read More](#)

Sayenko Kharenko advises Canada on the CAD 500 million loan to Ukraine funded by Ukraine Sovereignty Bonds proceeds

Sayenko Kharenko has acted as Ukrainian legal counsel to the Government of Canada in connection with the CAD 500 million loan to Ukraine. The loan has been funded by a five-year Ukraine Sovereignty Bond issued by Canada to assist Ukraine in its effort to provide essential services to Ukrainians this winter, such as pensions, the purchasing of fuel, and restoring energy infrastructure.

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Sayenko Kharenko advises on sale of Helsi to Kyivstar

Sayenko Kharenko has acted as legal counsel to the shareholders and management of LLC "Helsi Ukraine" ("Helsi"), the leading digital health care

provider in Ukraine, with respect to the sale of a controlling stake in Helsi to PrJSC "Kyivstar" ("Kyivstar") and creation of a joint venture.

[Read More](#)

Sayenko Kharenko advised J.P. Morgan in connection with Oschadbank's Eurobonds consent solicitation

Sayenko Kharenko acted as Ukrainian legal counsel to J.P. Morgan, the solicitation agent, in relation to the consent solicitation by Joint Stock Company "State Savings Bank of Ukraine" (Oschadbank) from the noteholders of its USD 700 million loan participation notes due 2023 and USD 500 million loan participation notes due 2025.

[Read More](#)

Sayenko Kharenko advises Intellias on the acquisition of Digitally Inspired

Sayenko Kharenko has acted as legal counsel for Intellias, a global software engineering and digital consulting company, in connection with acquisition of Digitally Inspired, a UK based peer, focusing on the Retail and eCommerce industry.

[Read More](#)

Sayenko Kharenko advises AIR on its acquisition of Scalelab

Sayenko Kharenko has acted as legal counsel to AIR Media-Tech ("AIR") with respect to the acquisition of the entire shareholding in Scalelab. The transaction is a part of AIR's strategy of creating the largest creators ecosystem globally. It is expected that the deal will create synergy of two strong social media players in the creator economy market and give new opportunities for creators partnering with them.

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APPOINTMENTS

José Vicente Morote, European Legal Coordinator, has been re-elected as a member of Andersen's Global Board.

Andersen's European Legal Coordinator and also Managing Partner in Spain, José Vicente Morote, has been re-elected unanimously as a member of Andersen's Global Board.

The Global Board is the highest and most exclusive governing body of Andersen Global given that it sets the strategic lines of development and management of the legal and tax services firm and is composed of 12 members.



Jose Vicente Morote - *European Legal Coordinator and Managing Partner at Andersen Iberia*

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Jaime Aguilar's appointment as Andersen's Corporate and M&A Training responsible in Europe.

Together with the Global Training Committee, led by Jose Vicente Morote, have appointed Jaime Aguilar as the new Training responsible for the Corporate and M&A practice in Europe. Jaime Aguilar, Partner at the Madrid office, has an extensive experience as a professor in the Centro de Estudios Garrigues. He is also in charge of the design and development of the Training Program for Andersen Iberia. In his new role as Training responsible for Corporate and M&A in Europe, he will be designing different training activities that will involve all categories to ensure consistency and seamless service, which is one of the priorities for Andersen globally.



Jaime Aguilar - *Partner*

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HIRINGS

Andersen incorporates Carmen March as Partner to reinforce the Corporate and M&A practice in the Valencia office

Andersen has hired Carmen March as a partner in the Corporate and M&A practice in the Valencia office, thus betting on the solid growth of this practice with the help of the best professionals.

Carmen March has more than 30 years of experience, specialising in M&A transactions and company restructurings, with extensive experience in the real estate and renewable energy sectors.

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[Meet Carmen](#)



Carmen March - *Partner*

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carmen.march@es.Andersen.com

Federico Belausteguigoitia joins Andersen as Partner in the Energy M&A team

Andersen has appointed Federico Belausteguigoitia as a Partner in the Corporate and M&A practice in the Madrid office, thus reinforcing the capabilities of this department, mainly in the energy sector.

Belausteguigoitia specialises in the energy sector, specifically in investment and divestment transactions of renewable assets, advising on the acquisition and/or sale of licences, permits and authorisations for the construction of renewable energy facilities. In addition, he has been recognised by the international guide Chambers & Partners in the area of Energy & Natural Resources.

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[Meet Federico](#)



Federico Belausteguigoitia - Partner

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Andersen has appointed Marta Morales as a partner to strengthen its Corporate and M&A practice in Andalusia

Andersen has hired Marta Morales as Corporate and M&A Partner in the Seville office, with the responsibility of coordinating the activity of the corporate department in Andalusia. The firm continues its commitment to the solid growth of the department in all the offices.

Marta Morales has more than 25 years of professional experience, in which she has specialized in the areas of Corporate M&A, restructuring and distressed transactions.

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[Meet Marta](#)



Marta Morales - Partner

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