

Q3 2024

Editor's Note

As Q3 2024 comes to an end, let us focus on current legal updates and those lying ahead of us in the coming months. Therefore, this edition of *to the point finance* offers legal insights on new legislation like the implementation of the Representative Actions Directive in Austria, the new version of the Polish act implementing MiCA, the final report on the draft RTS on subcontracting of critical or important functions under DORA, an overview of the NPL Directive as well as the UK ratifying the 2019 Hague Judgements Convention. We also highlight important topics in our CEE jurisdictions, like mezzanine financing in Hungary or the possibility of challenging loan agreements based on WIBOR in Poland.

To complement the broader topic of developments in new legal frameworks, the Regulation on European Green Bonds (EuGB Regulation) will apply from 21 December 2024. In that respect, the European Securities and Markets Authority (ESMA) published a first consultation on registration-themed technical standards, which was open for feedback until 14 June 2024. The ESMA's proposals related to the registration and supervision of external reviewers under the EuGB Regulation aim to clarify the criteria for assessing an external reviewer's application for registration. The ESMA expects to publish a final report in Q4 and will subsequently submit the draft technical standards to the European Commission for endorsement by 21 December 2024. Consultation on the remaining technical standards is due to be published by the ESMA in Q1 2025.

By covering 14 jurisdictions, our banking, finance and capital markets teams in CEE will guide you through further legislative changes and new legal developments on the financial markets in our region.



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Lending | Poland

- **Possibility of challenging loan agreements based on the WIBOR index.** The WIBOR rate is the interest rate at which commercial banks lend to each other. On 31 May 2024, the District Court in Czestochowa referred four questions to the Court of Justice of the European Union for a preliminary ruling on whether loan agreements in PLN can be assessed for abusive WIBOR clauses.

The WIBOR index serves as a basis for mortgages, leases, debt instruments, deposits and derivatives. Challenging this rate could affect investor confidence, as disputing long-term contracts based on allegedly flawed rates may make the Polish market unpredictable.

So far, there have been 24 final judgments in this matter, all in favour of the banks. The courts found that: (i) banks informed borrowers about the consequences of variable interest rates; (ii) communication about risks was clear and understandable; (iii) borrowers were aware of potential rate changes; (iv) contract terms were transparent; (v) the WIBOR rate is set independently by an external entity under the supervision of the Polish Financial Supervision Authority; and (vi) banks cannot be held solely responsible for rate changes. Therefore, the courts concluded there are no grounds to invalidate the agreements or remove the WIBOR rate from loan contracts.

[Aleksandra Golawska](#)

Regulatory | EU

- **The EBA, ESMA and EIOPA issued their joint final report on the draft Regulatory Technical Standards (RTS) on subcontracting information and communication technology (ICT) services that support critical or important functions under the Digital Operational Resilience Act (DORA).**

The RTS are addressed to financial entities as defined under the DORA (credit institutions, payment institutions, investment firms, EMIs, etc.) and cover the requirements that need to be considered in agreements with ICT third-party providers. These are: (i) a pre-contractual due diligence process and risk assessment on the use of subcontractors; (ii) specific clauses that must be incorporated under the agreements with ICT third-party providers, regulating the subcontracting conditions (including specific termination rights for the financial entities); and (iii) monitoring

requirements, allowing ICT third-party providers to properly oversee their subcontractors.

The RTS aim to establish a common framework that increases the level of digital operational resilience across financial entities in the EU.

[Francesca Buta](#)

Marketplace | Hungary

- **Navigating the heights of growth: mezzanine financing as a strategic bridge in the start-up lifecycle.** Mezzanine financing is typically used by established companies seeking to expand, rather than by start-ups or developing companies. However, in Hungary, it has become a crucial tool for the growth of start-ups. Mezzanine financing serves as a bridge between debt and equity, providing a flexible solution for start-ups ready to scale. Hungarian start-ups often require funds for their initial projects, and mezzanine financing, being unsecured and subordinated, is ideally suited to this purpose. It is especially attractive for Hungarian entrepreneurs looking to grow without substantial equity dilution. Covenants for mezzanine capital can usually be easily customised to fit the company's growth trajectory, ensuring alignment between the interests of the investor and the founder.

[Gábor Pázsitka/Bálint Bodó](#)

Marketplace | Poland

The new version of the Polish act implementing Regulation of the European Parliament and of the Council (EU) 2023/1114 of 31 May 2023 on crypto-assets markets was published in August 2024 (after public consultations). The amended draft provides for increased supervisory powers of the Polish Financial Supervision Authority, e.g. higher administrative fines, authority to block internet domains and freeze cryptocurrency accounts. There has been no change to the proposed supervisory fee for CASPs. Polish VASPs would be required to obtain the CASP licence by 30 June 2025, a shorter deadline than initially proposed. The Polish parliament is expected to adopt the new law in the fourth quarter of 2024.

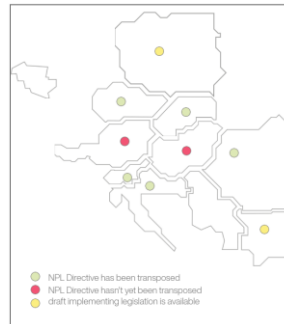
[Weronika Kapica](#)

Regulatory | EU

- **In 2021, EU legislators adopted the NPL Directive (Directive (EU) 2021/2167)** to ensure a functioning and liquid secondary market for distressed credit, while simultaneously ensuring robust debtor protection. The regulatory framework introduced by the NPL Directive should help banks sell off NPLs, thereby reducing their NPE ratios. These ratios are currently on the rise again as a result of the COVID-19 pandemic and economic disruptions caused by geopolitical changes.

The deadline for the national transposition of the NPL Directive was 29 December 2023.

Hence, national implementation provisions should have been applicable from 30 December 2023 on. While the national transposition of the NPL Directive has been progressing slowly, with only a few EU Member States having implemented it in time, implementation efforts have recently intensified. An increasing number of states have adopted laws or are discussing draft legislation aimed at implementing the NPL Directive into national law. An overview of NPL Directive transposition in the CEE region is provided below. For additional guidance on the local implementation of the NPL Directive, covering a broad range of topics relevant for sellers and purchasers of NPLs as well as credit servicers, please refer to the dedicated info corner on our website ([LINK](#)).



[Michael Schmiedinger](#)

Consumer finance | Austria

- **Austria implemented Directive (EU) 2020/1828, known as the Verbandsklagen-Richtlinie-Umsetzungs-Novelle ("VRUN"), in July 2024.**

The law concerns **representative actions for the protection of the collective interests of consumers**, aiming to provide consumers effective and efficient means to protect their collective interests against unlawful trade practices.

The law proposes that Qualified Entities, which are legal persons meeting certain criteria, can bring (cross-border) actions for injunction and redress on behalf of consumers. These actions are meant to complement the existing legal remedies, especially under Sections 28 et seq. of the Consumer Protection Act.

Actions for injunction aim to stop and prohibit all unlawful behaviour by a trader that affects or threatens to affect the collective interests of consumers. Actions for redress aim to oblige the trader to provide a remedy (performance or design) to consumers affected by the unlawful conduct who join the action (opt-in mechanism). Actions for redress require that the claim involve at least 50 consumers in similar situations, with the court deciding on common issues and individual claims in a two-stage procedure. The Commercial Court of Vienna will have jurisdiction for both types of representative actions.

[Manuela Zimmermann](#)

Finance general | International

- **The United Kingdom** recently ratified the HCCH Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the "**2019 Hague Judgments Convention**"), which will take effect in the UK from 1 July 2025. The 2019 Hague Judgments Convention is of particular importance for finance transactions, since it applies to nonexclusive and asymmetric jurisdiction clauses.

The 2019 Hague Judgments Convention will apply to any judgment rendered by the **courts of England or Wales** in civil and commercial proceedings, whereas Scotland and Northern Ireland have been exempted from the UK's ratification. If a party issues a claim in the Courts of England and Wales after 1 July 2025, irrespective of whether the finance documents were concluded before that date, under an agreement that contains a non-exclusive or asymmetric jurisdiction clause, the judgment will be enforceable subject to the terms of the 2019 Hague Judgments Convention.

In short, the ratification of the 2019 Hague Judgments Convention by the UK provides additional comfort to parties involved in cross-border finance transactions that contain a submission to the courts of England and Wales.

[Daniel Gritsch](#)

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