



Q4 2020

**Editorial| CEE**

- **As the end of 2020 approaches we are seeing a lot of changes** in financial markets regulations, accelerated by the first serious economic downturn in a long time. Many of the **country-specific topics** explored in this edition of *to the point: finance* are also relevant to CEE jurisdictions other than the one they address.

**Crypto-assets** are clearly a recurring theme in many CEE countries. Regulators are defining their approach to this category and indicating that despite popular belief, this area may fall within various regulatory regimes.

**Front-end fees and other credit costs** have already been the subject of a European Court of Justice (CJEU) ruling, which confirmed that in the case of early repayment, banks need to reimburse all charged costs on a pro rata basis. The wave of lawsuits against banks in Serbia suggests that in this non-EU jurisdiction provisions regarding front-end fees may in some cases be null and void.

**The best times for insolvency and restructuring are yet to come**, as the full impact of the COVID situation becomes visible. Nonetheless, the fact that almost half of all contributions concern insolvency is a clear sign of the times. And although the **deposit guarantee scheme discussion** is reported for Austria, the banking community is raising the very same concerns and remedy ideas in other CEE jurisdictions as well, including Poland.

I hope that these brief reports will be of interest to you and will encourage you to **get in touch with us for more** on any of these topics.



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**Crypto-asset buffet (re)opens for business | Slovenia**

- **The world of crypto-assets moves fast and can be confusing.** Decentralised Finance – or DeFi – takes this to another level with concepts and projects such as yield farming, Sushi Swap and YAM Finance springing up and closing every day. But what is actually going on in DeFi behind the rapid rate of innovation and food-inspired nomenclature? If cryptocurrencies aimed to disrupt payments and ICOs did the same for venture capital, this latest crypto-craze pursues the disintermediation of core banking business: lending and deposit taking. Unsurprisingly, legal issues and regulatory uncertainty may somewhat spoil the meal.  
[Jurij Lampič](#)

**Recent developments in deposit guarantee schemes | Austria**

- **For a couple of years now, Austrian law has been based on the principle** that all credit institutions which hold eligible deposits will join a uniform deposit guarantee scheme. So far, Austrian banks have been members of the general deposit guarantee scheme. But in the aftermath of two bank insolvencies, some groups of banks are considering establishing independent deposit guarantee schemes. This can be achieved (under Austrian and EU law) by forming an institutional protection scheme in accordance with Art. 113(7) CRR (IPS) which applies for recognition as a deposit guarantee scheme with the following main characteristics: (i) all elements of an IPS are fulfilled; (ii) the scheme is a separate legal entity fulfilling the statutory governance rules; (iii) the articles of the scheme and the agreements with the members ensure the proper functioning of the scheme; and (iv) the members of this independent scheme hold at least 15 % of all eligible deposits in Austria.

[Peter Feyl](#)

## Lending | EU

- **On 30 November the EU Parliament and Council of the European Union** announced, the agreement on amendments to the 2016 Benchmark Regulation (BMR). To what extent this agreement takes into account the suggestions made by the German Presidency to the **amendments** proposed by the European Commission in Summer 2020, remains to be seen once the legal text (announced on 10 December to be agreed) is published. The EC's proposed amendments already contained an important step forward: Subject to opt-out rights, statutory fallback benchmarks (and spread adjustment and conforming changes to contracts) should be designated by the EC and in certain instances also national authorities. This is designed to reduce risks from "tough legacy contracts". For those pre-BMR contracts that lack contractual fallback provisions, the amendments suggested by the German Presidency further enhance legal certainty.

[Martin Ebner](#)

## Reform of Croatian insolvency law regarding credit institutions announced | Croatia

- **In November 2020 the entirely new Compulsory Liquidation of Credit Institutions Act** (*Zakon o prisilnoj likvidaciji kreditnih institucija*, the "Act") entered into the Croatian parliamentary procedure. The Act should come into force by 1 January 2021.

The aim of the Act is to eliminate the weaknesses of the existing bankruptcy regime for banks set out in the Credit Institutions Act and to increase the efficiency of the entire process. Hopefully, the Act will also resolve the current uncertainties surrounding the applicability of the law governing netting agreements during bankruptcy proceedings. It will be interesting to see what effect this change will have on close-out netting opinions for the banks.

[Ozren Kobsa](#)

## Marketplace | Poland

- **Recently, in view of the rapid development of the use of blockchain technology** to issue crypto-assets, the Polish Financial Supervision Authority (KNF) issued its statement on the issuance and trading of crypto-assets, which so far have not been regulated in the Polish legal system. The KNF distinguished between the following most popular types of tokens: currency, utility and investment tokens (and hybrid tokens). Different laws may apply to such tokens depending on their characteristics and the activity related to them, e.g. regulations on AML, payment services, financial instruments or public offering. The document may lead to legislative changes and serve as guidelines for companies in the technology industry, especially with respect to required licences.

[Weronika Kapica](#)

## Front-end fees | Serbia

- **The Serbian courts are bogged down in more than 50,000 cases against local banks**, in which individuals are asking the courts to declare front-end fees provisions in loan agreements null and void. In 2018, the Supreme Court confirmed that banks are entitled to collect front-end fees if these are clearly and unambiguously stipulated in the agreement. This wording left room for interpretation and instead of clarifying the debate opened the floodgates for a new wave of disputes against the banks.

Although the banks, courts and public prosecutors are pushing for this issue to be resolved on a systemic level (together with the involvement of the Serbian government), there is no clear solution in sight.

[Dusan Obradovic](#)

## Special situations | Hungary

- **Due to the second wave of the pandemic, the Hungarian government decided to extend the moratorium** until 30 June 2021. For now, lenders cannot enforce claims against their consumer or corporate clients, although clients may opt out of the moratorium. The moratorium is applicable to capital, interest and fee payment obligations for all loan, credit and financial leasing agreements; however, interest will continue to accrue pursuant to their terms. In addition, lenders seated in Hungary may not terminate their loan, credit and financial leasing agreements until 30 June 2021.

[Gergely Szalóki](#)

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