Your World First



Greenfield investments in CEE



Contents

4 CEE region

- 4 What must investors consider
- 6 Largest investments in CEE
- 8 Balancing the factors in CEE
- 9 Investment gran
- 28 Timing and procedural steps
- 36 Acquisition of real estate
- **37** Infrastructure
- 38 Taxation
- 40 Labour issues

42 Utilities

- 43 Tackling corruption
- **44** Coordination of the project
- **46** Contact with local authorities



CEE region

What must investors consider?

This guide to investment in the Central and Eastern European ('CEE') region is intended to help potential investors understand what incentives are available when investing in the leading countries in CEE. It gives information on the process of entering into an investment agreement in order to access funds, and also covers key real estate, competition, infrastructure, tax and employment considerations.

Since the fall of the Berlin Wall over a quarter of a century ago, the countries of CEE have attracted significant foreign direct investment in greenfield operations. Indeed many manufacturing businesses have focused on expanding capacity in CEE countries, sometimes at the expense of Western Europe.

By way of example, in the automotive sector many Original Equipment Manufacturers (OEMs) have developed additional capacity in the region. Over the last decade or so there have been noteworthy investments by Hyundai, KIA, and Volkswagen Group and, more recently Jaguar Land Rover has declared its intention to open a factory in the region. Many component suppliers including Bosch, Delphi and Honeywell have set up manufacturing facilities to serve these operations, as well as customers in Western Europe. We have also seen significant investments in manufacturing in electronics, IT, life sciences and consumer products.

However, it would be simplistic to regard the CEE region as merely providing relatively low-cost manufacturing facilities. Since the admission of many countries in the region to the European Union, there has been a significant move by companies from all sectors to set up shared services operations. These range from an accounting back office for IBM in Poland to a call centre for AIG in Bulgaria. We have also seen a number of companies create IT operations in the region. This has been particularly marked in Romania, where there is a strong emphasis on the technology sector.

Over the coming years this trend is likely to increase. Many governments in the region realise that for their economies to catch up with Western European income levels, it will be necessary for there to be more in the way of 'value-added' input. This is likely to mean that CEE countries will be keen to attract more R&D centres and engineering bases.

International companies wishing to invest in the CEE region will inevitably look at a number of different markets before selecting a suitable location. Often potential investors run beauty parades and seek offers from local investment agencies regarding incentives packages. In conjunction with this process, investors normally organise site trips to identify suitable land plots, ascertain the availability of skilled labour and assess the transport links.

We have structured this guide in such a way that potential investors can compare incentives and other key criteria in respect of the major markets.

We focus on seven countries: Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia and Turkey. These seven countries have attracted the highest greenfield FDI levels in recent years. However, there are other markets including the Baltic States and parts of the former Yugoslavia which can also prove attractive. This guide comes with a health warning that it is not meant to be comprehensive and that laws can quickly change. If you wish to go ahead with an investment, it is vital to seek professional advice at an early stage. CMS is a full service law firm with sizeable offices in all the countries covered by this report. We frequently help international investors plan and implement greenfield operations, and can introduce you to the investment agencies in these countries.

lain Batty

Partner, Head of CEE Commercial Practice CMS Warsaw +48 22 520 5505 iain.batty@cms-cmno.com



5 reasons to invest in CEE

- 1. Well-educated labour force and lower labour costs than in Western Europe.
- 2. Tax exemptions and preferences for investors.
- 3. The region benefits from EU structural funds and multiple national investment grants.
- 4. Rapidly developing infrastructure with good transport links to Western Europe and elsewhere.
- 5. Significant and growing domestic markets.



EU funds in total (2014-2020)

Largest investments in CEE

Sector		Bulgaria	Czech Republic	Hungary	Poland	Romania	Slovakia	Turkey
Machinery	4	SKF, Lufthansa Technik, Montupet	Ingersoll Rand, Siemens, Edwards, Daikin	Apollo, Hankook, Continental, Bridgestone, Ibiden, Knorr-Bremse, Denso	Faurecia, Nexteer Automotive, TRW, Delphi, Valeo, Hutchinson, Michelin, Bridgestone, Goodyear, Pilkington, Johnson Controls, Lear Corporation	_	INA Kysuce, Getrag Ford Transmissions, INA Skalica, Vaillant Industrial Slovakia, Continental Automotive Systems	Airbus
IT & Telecoms	Ļ	ICB, CISCO, Microsoft, HP	Microsoft, Skype, DHL, Tieto, Red Hat, SolarWinds, IBM, NetSuite	IBM, ZTE, SAP, Oracle, Huawei, Nokia	IBM, Asseco, Comarch, Ericpol	Microsoft, Oracle, ZTE, Huawei, IBM, Nokia, Orange	Dell, IBM, HP, ESET, Sygic	Foxconn
Shared Services Centres		Coca-Cola Hellenic Bottling Company, HP, AIG	DHL, Accenture, ExxonMobil, IBM, SAP, Infosys, Johnson & Johnson	British Telecom, BP, Vodafone, National Instruments, Emirates, IBM, Morgan Stanley, Tata, General Electric, Diageo	Shell, Electrolux, HP, Nokia, Heineken, Carlsberg, Credit Suisse	-	Dell, IBM, Hewlett-Packard, AT&T, Lenovo, Accenture, JCI, NESS	-
Electrical Engineeri Electronics	ing/	Liebherr, ABB, Siemens, Honeywell	-	Samsung, Flextronics, Philips	LG Display Poland, Jabil, Sharp, Funai, LG Electronics, Alcatel-Lucent, Kimball Electronics, Flextronics International, Dell	-	Samsung Electronics, Whirlpool, Foxconn, Panasonic Electronic Devices Emerson Electric Slovakia, Emerson	Bosch, Huawei
Automotive		Witte Automotive, Sumitomo Electric, Yazaki Corporation	Hyundai, Johnson Controls, Volkswagen/Škoda Auto, Bosch, Toyota/PSA, Valeo, Faurecia, TRW, Magna	Audi, Suzuki, Daimler - Benz, Bosch, General Motors	Volkswagen, Fiat Auto, General Motors, Ford	Renault, Autoliv, Ford, Daimler, Draxlmaier, Bosch, Continental	Volkswagen, KIA Motors, PSA Peugeot Citroen, Jaguar Land Rover	Fiat Chrysler Automobiles, Ford, Hyundai, Toyota, MAN, BMW, PSA Peugeot-Citroen, Renault
Lifesciences	<u>]</u>	Pharmaceutical Product Development, TEVA Pharmaceuticals	TEVA Pharmaceuticals, LonzaBiotec, Baxter International, Otsuka Pharmaceuticals, Sanofi Aventis, Beckman Coulter, Zentiva	GE Healthcare, Johnson & Johnson, Becton Dickinson, TEVA, Sanofi, Sauflon	GlaxoSmithKlein, Bayer CorpScience, GenMed	GSK, Glenmark, Aspen, Novartis, Pfizer, Roche	Elfa Pharma, GSK, Low&Bona	Novartis, Pfizer, GSK, Bayer, Sanofi-Aventis, Unilever
R&D	‡	-	-	Becton Dickinson	NSN, Motorola, Samsung, Delphi, Rockwell Automation, Faurecia, Delphi, Valeo, Google, Capgemini, Oracle, Unilever	Oracle, Unilever	Johnson Controls, ON Semiconductor, Leoni, BSH, ThermoSolar, Sauer Danfoss, Krauss Maffei, Ness, Siemens, Alcatel-Lucent, Mühlbauer, Continental Automotive Systems	_

Balancing the factors in CEE

Potential investors need to take into account a variety of factors in choosing a location. Many of these factors are covered in this guide, e.g. investment grants, tax incentives, land purchase issues, employment law etc.

It is rarely the case that an investment will be made on the basis of a single set of criteria. For example, the tax regime on its own should rarely be a sole determinant. Governments change, as do tax regimes. Likewise, labour costs have increased in some markets over the last few years and are likely to continue to do so, although claims that there will be convergence with Western Europe in the coming decades may be wide of the mark.





EU rules

Generally, under EU law it is prohibited to grant any kind of incentives that may affect competition and trade between Member States. However, there are a number of exceptions from this general rule, allowing the granting of aid for research and development, training, the creation of employment and environmental protection. There are also certain exemptions from the general prohibition, to facilitate the development of certain business areas or activities. This permit is known as sectoral aid. Current priority sectors for such sectorial aid are set out in the table above.

Furthermore, regional aid is permitted to promote economic development in areas where the standard of living is abnormally low or where serious unemployment (compared to the EU average) occurs. The intensity of aid will depend on which region the investor chooses.

As many of the countries in CEE are less economically developed than their western European counterparts, aid is often permissible under EU law to encourage development within regions. It is generally the case that aid tends to be more generous away from major conurbations. For example, in Poland, aid generally will not be available for investments in the Warsaw region but will be available for investment in the south of the country, where unemployment tends to be high. The main exception to this general rule is the Czech Republic where, as set out in the table below, there is a uniform percentage of aid available across the whole country (with the exception of Prague).

Investment grants

The table below presents the range of maximum level of aid in regions within EU CEE countries¹:



The maximum amount and form of support varies from country to country. We set out below a summary of the main support available in each country.

¹ Based on Regional Aid Map for each country approved for the years 2014-2020.



Bulgaria

In Bulgaria there are two main categories of support – employment subsidies as cash grants to enable existing employees to obtain further qualifications and/or the creation of new employment, and support for new investment by way of cash grants for the acquisition of assets and/or building infrastructure. There is also a third category of support, which is available with either of the above. This comprises enhanced administrative support whereby licenses, permits, etc. relevant to a certified investment project are processed with priority. Investment projects are classified as Class A and Class B according to mainly quantitative criteria such as the minimum number of new jobs and minimum investment expenditures, as set out in the tables below.

Employment subsidies



Available support Level of grants for job creation (the figures below apply to all sectors)



of actual payroll costs (available for a maximum period of 24 months)

Support for new investment



Available support

Level of grants for job creation (the figures below apply to all sectors)

25%

of eligible costs (but not more than EUR 18.75 m for the Yugozapaden region)

50%

of eligible costs (but not more than EUR 37.5 m for the rest of Bulgaria)

Czech Republic

In the Czech Republic there are two categories of support – (i) employment subsidies as cash grants for job creation and training and (ii) cash grants for strategic projects.

Required level of investment and job creation

Available support





Employment subsidies as cash grants for job creation and training are only available in regions with high unemployment rates. These subsidies are as follows:



² Industrial Zone Holešov, Industrial Zone Ostrava – Mošnov, Triangle Industrial Zone (Northwest), Industrial Zone Joseph (Northwest), and Industrial Zone Kolín-Ovčáry, Industrial Zone Nošovice, Industrial Zone Škoda Plzeň.



Hungary

Hungary has two main categories of support. These are cash subsidies and development tax incentives. Cash subsidies can take a number of forms, as listed in the table below, where, besides the location of the investment, there is also a minimum cumulative condition for both the size of the investment (i.e. amount of eligible costs, including assets or payroll for new employees for the first 24 months) and the minimum number of new jobs created.



¹ In case of investments by small enterprises the maximum level of support could be increased by 20%, in the case of investments by medium-sized enterprises the maximum level of support could be increased by 10%

² Within the Central Hungary region, there are different categories of city, which attract different levels of support ³ SMEs shall meet less stringent conditions as specified above









4 +10% for medium-sized companies and +20% for small companies ⁵ For SMEs please see above

17



The amount of subsidy will be decided by the government, taking into account factors such as the number of jobs created above the minimum ratio of employees with higher education; the sector concerned etc. The key subsidised sectors are biotechnology, electronics, machinery, life sciences, information technology and telecommunications, automotive, the food industry and shared service centres.

Tax incentives

Tax incentives are available. These amount to up to 80% of the corporate income tax payable (up to the state aid intensity ceilings, which also reflect cash grants), and may be claimed for a limited amount of time (for 12 years after completing the investment, and not later than 16 years from the application). The minimum amount of investment in order to make a development eligible for tax incentives are as follows:





Poland

In Poland there are two categories of support – employment grants and support for new investment. Both categories of support may be obtained simultaneously. In order to attract support both the minimum investment and new jobs figures need to be met.

Minimum employment figures and investment levels to attract support



Romania

Romania currently runs a couple of state aid schemes, the most relevant being: (i) a cash grant scheme covering salary costs in job creating investments and (ii) a cash grant scheme covering the creation or acquisition of tangible and intangible assets in investments which has a major impact on the economy. Unlike certain other countries covered in this report, there are no statutory requirements for the creation of a minimum number of jobs or minimum investment levels.

Scheme supporting investments in regional development which promote job creation



Jobs created must be maintained for 3 years for SMEs and 5 years for large sized enterprises. Investment must remain operational over the same period.

Scheme for promoting investments with a major impact on the economy



Investor must source at least 25% of the eligible costs from own equity. Costs associated with tangible assets cannot exceed 50% of the total eligible costs of the investment.

Other tax incentives

Romania offers a number of other tax incentives including: (a) profit tax exemption (in certain conditions) for reinvested profit; (b) income tax exemption (in certain conditions) in the IT (software development) sector.

Deer location Maximum level of grant EUR EUR 26.25 m EUR Western All other regions EUR EUR EUR EUR The second second

Bucharest region

Slovakia

In Slovakia, there are two general categories of financial support: incentives for new investments and incentives for creating new jobs.

Other types of financial support include income tax relief and transfer of state/municipal real estate or exchange of real estate at a price lower than the market value.

Overall amounts of aid are subject to a maximum investment limit as a percentage of eligible costs (maximum intensity).1

Maximum intensity of investment aid*





* as % from the amount of Eligible costs

In order to be eligible for financial support, the following criteria apply to investment amounts and job creation.

costs up to EUR 50 m

over EUR 50 m and up

to EUR 100 m

over EUR 100 m

Minimum investment amounts

Industrial manufacturing











Shared services centres



¹ Please note that recently the Slovak Government initiated amending the rules and regulations regarding investment support. Such new rules are likely to step into force from 1 January 2018.

*60% of <u>all</u> employees must have an university degree

Financial support for newly created jobs

The maximum amount of support varies depending on the region of Slovakia. The diagram below shows the amount of financial support per job created.

than average

EUR

6,000

Industrial

manufacturing

than average

EUR

10,000

Industrial

manufacturing

Western Slovakia



Districts with an unemployment rate up to 35% higher than average





Districts with an unemployment rate between 35% and 60% higher

EUR 10,000

Technological

Centres

Districts with an unemployment rate between 35% and 60% higher

EUR 10,000

Technological

Centres

Districts with an unemployment rate at least 60% higher than average

EUR

6,000

Shared services

centres

EUR 6,000

Shared services

centres

Central Slovakia

Districts with a lower than avarage unemployment rate



Districts with an unemployment rate up to 35% higher than average



Eastern Slovakia

Districts with a lower than avarage unemployment rate



Districts with an unemployment rate up to 35% higher than average



















Turkey

Turkey has pursued an aggressive incentives scheme, which has been available to both Turkish entities and Turkish subsidiaries of foreign companies, since 2012. For the purposes of the scheme, Turkey is divided into six regions. Region 1 is the richest region, containing cities such as Istanbul and Izmir while Region 6 is the poorest. The incentive scheme is also divided into four regimes: the general investment incentives regime, the regional investment incentives regime, the large scale investment incentives regime and the strategic investment incentives regime.

The general investment incentives regime supports investments in an amount of at least TL 1 million for investments in regions 1 and 2 and TL 500,000 for investments in regions 3, 4, 5 and 6. Investments that may not be incentivised cannot benefit from this regime.

Under the regional investment incentives regime, on the other hand, the sectors to be supported are determined according to the potential and size of the local economy of the relevant region. As with the first regime, this regime also supports investments in an amount of at least TL 1 million for investments in regions 1 and 2 and TL 500,000 for investments in other regions. Certain activities, such as the manufacture of renewable energy turbines and generators and certain mining activities, are provided with higher value incentives, especially if the value of the investment is at least TL 1 billion.

The large scale investment incentives regime supports 12 investment areas, mainly relating to the energy, infrastructure and life sciences sectors. The minimum investment amount required in order to benefit from the relevant incentives varies between TL 50 million and TL 1 billion.

The strategic investment incentives regime, meanwhile, supports investments where the production capacity for the products to be manufactured will be less than the products exported, the export value of the products to be manufactured for the last year has been USD 50 million, the investment amount will be at least TL 50 million and the investment will create added value of at least 40%.

The support to investors under each regime is set forth in the following table.

General investment incentives regime





Large scale investment incentives regime

Region 2



Strategic investment incentives regime



Support Provided	General Investment Incentives Regime	Regional Investment Incentives Regime	Large Scale Investment Incentives Regime	Strategic Investment Incentives Regime
VAT Exemptions	Provided for all regions.	Provided for all regions.	Provided for all regions.	Provided for all regions.
Customs Tax Exemptions	Provided for all regions.	Provided for all regions.	Provided for all regions.	Provided for all regions.
Tax Deductions	-	Provided for all regions.	Provided for all regions.	Provided for all regions.
Social Security Premium Support (Employer Share)	-	Provided for all regions.	Provided for all regions.	Provided for all regions.
Income Tax Withholding Deduction	-	Provided for investments in region 6.	Provided for investments in region 6.	Provided for investments in region 6.
Social Security Premium Support (Employee Share)	-	Provided for investments in region 6.	Provided for investments in region 6.	Provided for investments in region 6.
Interest Rate Support	-	Provided for regions 3, 4, 5 and 6 within the scope of regional investment incentives.	-	Provided for regions 3, 4, 5 and 6 within the scope of regional investment incentives.
Allocation of Land	-	Provided for all regions.	Provided for all regions.	Provided for all regions.
VAT Returns	-	Not provided.	_	Provided for the construction expenses of strategic investments with an investment amount of at least TL 500 million.

Other support offered by CEE countries

In addition to the general incentive scheme outlined above, the Turkish government introduced the Programme for Centres of Attention in November 2016, giving priority to the development of five regions in Eastern and South-Eastern Turkey. Accordingly, private sector investments in these regions will be incentivised through funds from the Development Bank of Turkey. In January 2017, four incentive packages were provided for these Centres of Attention. These are the Investment and Manufacturing Support Package, the Package for Support for Moving Manufacturing Facilities, the Call Centre Support Package and the Data Centre Investment and Energy Support Package. The incentives to be provided for each package are as follows:

Package. The incentives to be provided for each package ar
Package
Investment and Manufacturing Support Package
Package for Support for Moving Manufacturing Facilities
Call Centre Support Package
Data Centre Investment and Energy Support Package

In addition to the above, certain types of investment will be given priority in each region, such as logistics in Region 1, textiles in Region 2 and the manufacturing of construction materials in Region 3.

Region 1

Incentive

Consultancy services / Allocation of investment areas / Building construction support / Interest free investment loans / Reduced interest operational loans

Cash support for moving / Incentive support / Allocation of investment areas and reduced interest operational loans (if the facility is to be moved) / Consultancy services and interest free investment loans (for new facilities)

Allocation of buildings / Fibre communication infrastructure / Personnel training / Allocation of investment areas / Building construction support / Interest free investment loans

Data centre energy support / Fibre communication infrastructure / Allocation of investment areas / Interest free investment loans

Timing and procedural steps

As a general rule, most applications for investment aid in the EU countries will involve a two-stage process. It is firstly necessary to deal with the national authorities. In most cases, subject to a few exceptions, national authorities will have to seek approval from the European Commission.

The timing of the investment process in CEE will generally depend on the size of the project and the scope of the investor's needs. Usually it will be necessary to enter into a specific investment agreement with the relevant government. Often such agreements can take a long time to finalise and may go through many iterations.

As a general rule, it is not possible to commence investment until at least the formal application for state aid has been submitted. In certain cases, it will be necessary to wait until later in the process.

The timing set out below primarily focuses on situations where only domestic approval is required. Usually the national authorities that have considered the state aid application will, after giving preliminary approval, submit the application to the European Commission.

For more straightforward cases, there is a simplified procedure which provides that the Commission will adopt a decision within 20 working days from the notification. For more significant cases, the member state granting the aid will submit an application form to the Commission. The content of the application form is generally agreed with the investor.

For more significant cases the Commission investigation will take at least six months. As a general rule, it is recommended that the investor makes direct contact with the Commission in advance, particularly where a significant amount of state aid is contemplated. The Commission should be able to give guidance as to its thoughts on the form of the application and documentation to be entered into between the investor and the member state.

In large projects there is inevitably a risk of other delays, which may occur, for instance, in cases where zoning is required (see below) or where the state is involved in the acquisition of land or the preparation of a site. In order to minimize such a risk it is always recommended to include deadlines for the completion of each key stage of process into the investment agreement or side letters signed by the local authorities.

Sometimes governments and governmental agencies in the region can play fast and loose with confidential information. Often this is to ensure favourable publicity for a government, particularly in the run up to elections or to score points over other countries competing for the same investment. To minimise such problems, it is essential that a potential investor emphasise that the maintenance of confidentiality is a prerequisite for investment in the country. This can be reinforced by having appropriate confidentiality provisions with corresponding penalties, in the investment agreement and other key documentation.

Bulgaria

In Bulgaria, the investment incentives process officially starts with the submission of an investment project to the Invest Bulgaria Agency. Usually, this step is preceded by detailed discussions with the Invest Bulgaria Agency and the Ministry of Economy ('MOE'). The implementation of the investment project may not start before the investment project has been submitted for certification. Only investment projects that meet certain criteria (eligible sectors, minimum amount of investment, minimum new employment etc.) can benefit from incentives.

The process is divided in two major stages. The first stage involves certifying the investment project. Depending on the type of the certificate (Class A, or Class B) different sets of incentives are available for the project. The second stage covers negotiating and entering into a specific investment agreement in respect of particular investment incentive(s). It normally takes three to four months from the submission of the investment project until entry into a specific investment agreement but the process may take longer in certain situation.





MOE reviews the Project and the onini and resolves on th certificate issuance (for priority investments) Approximately 30 days Specific contracts may be concluded and aid may be granted – 2-4 weeks from obtaining the certificate



Czech Republic

In the Czech Republic, the investment process officially starts with an application for incentives to CzechInvest. No investment should be undertaken prior to this time. From the point at which the application is received, the whole procedure normally takes around six to nine months. The exact time will depend on how quickly the applicant files the final application. From the submission of the final application, the Ministry of Trade and Industry has 30 days to issue a binding promise to grant investment incentives. The promise takes the form of an administrative decision. In practice, for larger investment, certain aspects of the investment can be also governed in an investment agreement between the investor and the state.

In case of employment subsidies, after the applicant obtains a promise of investment incentives, the applicant (employer) enters into an agreement for the granting of subsides with the Employment Agency. This agreement sets out the terms for granting of these subsidies.



Hungary

The investment process in Hungary officially starts with the submission of a detailed investment aid application to the Hungarian Investment Promotion Agency ('HIPA'). HIPA will then confirm the receipt of the application within a few days. The investment cannot start prior to submission of the application for investment aid.

Following the technical assessment of the application, HIPA as a representative of the donor and on the basis of the donor's agreement will provide the applicant with a non-binding, conditional offer. If the applicant accepts such conditional offer, the donor will present the subsidy application to the Hungarian Government. The Government will then issue its decision on granting the subsidy. In accordance with the decision of the Hungarian Government the donor will conclude an investment agreement with the applicant.

The procedure from acceptance of the conditional offer by the applicant to the signing of the investment agreement (including notification to the Commission) normally takes 6-12 months. However, if Commission notification is unnecessary, the process will usually be much shorter.



Gov.'s decisio signing the **Conclusion of the** Agreement 0 to 6 months Ministry provides the applicant with a conditional, non-binding offer

Poland

In Poland, the investment process consists of two procedures conducted simultaneously:

(i) negotiation and conclusion of an investment agreement; and (ii) procedure to obtain a permit to operate within a Special Economic Zone ('SEZ'). The investment agreement process officially starts after submission of the grant application to the Polish Investment and Trade Agency ('PAIH') and usually takes approximately three months. The procedure for obtaining the SEZ permit is shorter and takes no more than two months.

(i) Conclusion of the investment agreement



The investment process officially starts after submission of the grant application to the Polish Investment and Trade Agency ('PAIH'). After evaluation of the documentation, PAIH will make its decision on recommended support for the project and submit its recommendation to the Minister of Development in order to obtain the final approval. Once the recommendation is approved, PAIH will provide the Investor with the binding offer. The Investor has a maximum 30 days to decide whether to accept the offer or not. In case of a positive decision, the investor has to apply to the Minister of Development for a letter of intent confirming that the investment may commence. As a final step, the Minister of Development will conclude an investment agreement with the investor. The whole procedure usually takes approximately three months.

(ii) Obtaining an SEZ permit



In order to carry on business activities in the SEZ, a permit has to be issued. To apply for a SEZ permit, a company has to prepare a formal documentation ('the Offer') for submission to the SEZ. The Offer must contain the business plan that describes the envisaged investment to be carried out in the SEZ and must state the declared amount of capital expenditure to be incurred and the number of new jobs that will be created. The minimum capital investment expenditure for which an SEZ permit can be issued is EUR 100,000. Once the Offer is prepared, the company can take part in a tender organised by the SEZ authorities. It is common for the company to be the only participant in the tender. If it wins the tender, the company is granted a permit to operate in the SEZ. Please note that there are some business activities that do not qualify for operation in a SEZ (e.g. manufacturing of tobacco, manufacturing of alcoholic beverages, wholesale and retail services). Therefore, before filing the Offer, it is advisable to check whether the planned business activity is covered by one of the exclusions. The procedure to obtain the SEZ permit usually takes no more than two months.

Romania

In Romania, the granting of state aid follows certain procedural phases, as follows:

Phase I – application for a financing agreement which includes: (i)

- Submission of a Request for Financing;
- Assessment of the Request for Financing from both, a documentary and an eligibility/compliance perspective;
- Publication of the results on the website of the Ministry of Public Finances ('MPF');
- Communication of results to applicants which meet the eligibility/compliance criteria.

Phase II – evaluation of application, which includes: (ii)

- Submission of evaluation/assessment documentation by applicant;
- Assessment of Phase II documentation (in this phase, the applicant may be requested to submit additional documents and/or clarifications);
- Issuance of the Financing Agreement;
- Notification of the applicant via post as to the issuance of the Financing Agreement.

Requests for Financing may be submitted only during the course of 'financing sessions', which generally last 10/15 working days and are announced in advance on the website of the Ministry of Public Finances at least 30 days in advance. The timeline for granting financing under the State Aid schemes is usually as follows:

Announcement of financing sessions	Financing Session	Phase I evaluation	0
Min. 30 days	 ↓ └↓ └_ 10 days	30 days	
T _o	T ₁ T ₂		T ₃

- date on which the financing session is announced via MPF website; T_
- Τ, start date for financing session;
- end date for financing session; Τ,
- T3 end date for Phase I evaluation;
- T, communication of results to eligible applicants;
- T₅ deadline to submit Phase II documentation;
- T₆ within 10 working days).

In general, the MPF recommends that a period between 5 and 10 months be taken into consideration from the date of the Request for Financing until final issuance of the Financing Agreement regional State Aid is granted in accordance with EU Regulation no. 650/2014 and is exempt from notification to the European Commission.



end date for Phase II evaluation (* note the 30 days start to run from the day the Phase II documentation is complete; the MPF may request additional documentation/clarifications, each such request to be responded to

Slovakia

The investment process starts when an investment plan and an application form including all the required attachments are submitted to the relevant ministry (usually the Ministry of Economy – 'MOE'). The procedure normally takes about three months. However before submitting, the investment plan we recommend having a detailed discussion with the MOE as well as the Slovak Investment and Trade Development Agency (SARIO) in order to ensure matters will proceed smoothly after submission of the application.

The investment process consists of several time-limited stages:

- 1. After the submission of an investment plan, the MOE has 30 days to prepare a detailed expert opinion of the plan.
- 2. If the opinion indicates that the applicant has the capacity to comply with the general terms and conditions for allowing the investment and that the investment will make a significant contribution to the regional economy, within 20 days of the delivery of the expert opinion, the MOE should prepare a proposal to grant investment aid.
- 3. The proposal will be sent to investment aid providers, who have 15 days to prepare a written statement on whether they agree to grant the aid.
- 4. If the aid providers agree, the MOE will prepare an investment aid offer within the next 10 days.
- 5. The applicant must submit an application for investment aid to the MOE within 10 days of the receipt of the offer.
- 6. On the basis of the application, the MOE submits a proposal to grant the investment aid for the approval of the Slovak government. If the investment aid is not subject to the requirement to notify the European Commission, the MOE must issue a decision on the approval of the investment aid to the applicant within 5 days of receiving the Slovak government's approval.

The applicant must have a controlling interest in the recipient of the investment aid. In certain cases a recipient of investment aid must register its ultimate beneficiary owner with the register of public sector partners. The obligation to register with the register of public sector partners also applies to suppliers of the recipient of the investment aid.



Turkey

In order to apply to benefit from incentives, an application fee must first be paid to the Ministry of Economy ('**Ministry**'). Following the payment of such fee, the investor makes an application to the General Directorate of Incentive Practices and Foreign Capital of the Ministry and submits documents relating to the planned investment. For investments with a value of less than TL 10 million, applications may be made to local development agencies and chambers of industry in order to obtain an investment incentive certificate. Applications are evaluated technically and financially in accordance with macro-economic policies. The total procedure involving the evaluation must be concluded no later than two months after the date of application.

The main requirements to benefit from the incentives available are investments of at least TL 2 million and employment of at least 30 persons with respect to manufacturing; the employment of at least 200 persons for call centres and at least 5,000 m² floor space for data centres. Priority will be given to those investments providing higher employment rates, R&D activities and the investor's experience in the relevant requested investment.

At the time of publication, there is no specific procedure or timeline to be followed for incentive applications within the scope of the Program for Centres of Attention.





Acquisition of real estate

Depending on the type of investment, investors may take advantage of various ways of holding real estate. The most popular are: (i) ownership (full right to use, manage and dispose); (ii) leases; (iii) in Poland, perpetual usufruct right (a long-term right to use or manage property and to construct own buildings on publicity-owned land); or (iii) other rights which are limited in scope and time (e.g. easements, rights of usufruct etc.).

In case of the acquisition of property, it is common to sign a preliminary or conditional sale agreement. It is crucial to fulfil all the formal requirements when buying real estate – usually this should be done in an appropriate legal form before a notary public. Depending on the local regulations, it may sometimes also be necessary for foreigners to obtain specific consent to purchase real estate. It is very important to check public registers, as in some countries rights entered into such registers are presumed to be valid while rights which are not entered there are presumed to be non-existent.

An investor is required to obtain a number of permits before it starts business activity. The main one is a building permit (required for construction, renovation and reconstruction). A building permit may only be issued if the application complies with a zoning plan, an environmental decision and after meeting all the technical requirements. In case when the acquired land is agricultural land, the investor must obtain a permit allowing for its exclusion from agricultural production. Generally this will entail an additional fee for the investor.

At the end of the construction process, an occupancy permit is also required.

Many CEE countries also have specific regulations concerning:

- 1. remnants of the communist legal system e.g. restitution rights for owners who were deprived of rights by Nazi or Communist regimes,
- 2. protection of historic monuments,
- 3. expropriation regulations,
- 4. restrictions relating to acquisition of certain types of real estate (i.e. agricultural or forest lands) (Poland only), and
- 5. Special Economic Zones (Poland only).

Zoning

is a local law for the specified area presenting a possible designation of properties covered by the plan. As a rule, no development of a non-agricultural character is allowed on agricultural land. Zoning is commonly controlled by local governments.

Infrastructure

Before the final decision on the location of the project is made, it is extremely important to analyse the available infrastructure. The most important areas to investigate are:

- 1. Roads
- 2. Rail links
- 3. Airline access
- 4. Access to water

A high level overview of CEE infrastructures is below:

Country	Roads	Rail lines	Airports	Access to water
Bulgaria	776 km of highways	Currently over 6,500 km of railway lines operated by state and private companies	5 international airports	4 ports. Borders with the Danube and the Black Sea.
Czech Republic	1250 km of highways	Currently over 9 580 km of railway lines operated by state-owned and private companies	5 public international airports (with a total of 24 international airports)	There are no borders with the sea, however there are many rivers especially the Elbe flowing into the Nordic Sea.
Hungary	1883km of motorways	7794 km public railway lines operated by one state-owned and one with majority state ownership	5 international airports	Danube-Rhine-Main Canal and the Danube– Black Sea Canal as well as inland waterways
Poland	3,253 km of motorways (of which 1,641 km are highways)	Currently over 20,000 km of railway operated by state-owned and private companies	15 international airports	Borders with the Baltic Sea. The main ports are Gdańsk, Gdynia, Szczecin-Świnoujście, Kołobrzeg
Romania	17,272 km of national roads, of which 6.194 km are European roads; and 683 km are highways;	10,777 km of public railway lines;	16 international airports	Borders with the Black Sea. Main maritime ports are: Constanta, Sulina and Mangalia. Also crossed by the River Danube – main fluvio- maritime ports are Braila, Galati and Tulcea.
Slovakia	415 km of highway (with a further 130 km under construction)	Currently over 3,600 km of railway lines operated by state-owned company	8 international airports	River Danube flows through Bratislava and connects the North Sea and the Black Sea.
Turkey	65,909 km of highways	Currently 12,097 km of railway lines operated by state-owned companies	55 airports of which 21 are classified as international	7,186 km of borders with the Black, Aegean, Mediterranean and Marmara Seas. The main ports are Ambarli, Mersin Haydarpasa and Iskenderun.



Tax will be a key issue when determining the location of an investment. An investor will usually act through an investment vehicle such as a company or partnership. The applicable tax regime will vary depending on the precise structure.

A high level overview of the main forms of tax is set out in the below table. It is always important to check the precise level of tax, and relevant exemptions, available in specific circumstances. It is also prudent to ascertain whether there are any stamp duties, transaction taxes etc. in place.

Country	Personal Income Tax	Corporate Income Tax	VAT (standard rates)	Real estate tax
Bulgaria	10%	10% flat rate Income tax and social security contributions relief available for specific business activities in certain areas.	20%	Determined by each municipality in the range of 0.1 to 4.5% on the tax value / balance sheet value of the property. No RET on agricultural land.
Czech Republic	15% (extra 7% tax for annual incomes over approx. EUR 474,890)	9%	10%, 15%, 21%	According to type, location and purpose of use of the real estate etc. using these rates per m ² : Residential and agricultural: EUR 0.7 , Industrial: EUR 0.37 , Other
			industri	business: EUR 0.37 , Special ndustrial zones: exemption or up to 5 years .
Hungary	15%	9%	5%, 18%, 27%	
			m ² or 3% of the adjusted market value.	
Poland	18-32% (or 19% flat rate for entrepreneurs)	19% Income tax (15% for companies with revenues up to EUR 1,2 million or companies in their first year of business activity); exemptions for business activity in Special Economic Zones	0%, 5%, 8%, 23%	Max. annual rate for land uses for business purposes cannot exceed PLN 0.89 per m ² and PLN 22.66 per m ² for buildings. Real estate tax exemptions may be granted to investors on the basis of a resolution passed by the relevant local authorities.

Labour issues

EUROSTAT data shows that in 2016, average labour costs in the European Union amounted to EUR 25.4 per hour. Labour costs on average in CEE are approx. 30% lower than the equivalent rates in Western Europe.

Costs	Bulgaria	Czech Republic	Hungary	Poland
Minimum approximate gross monthly wage (EUR) ¹	EUR 235	EUR 407	EUR 412	EUR 435
Average approximate gross monthly wage (EUR) ¹	EUR 507	EUR 1,117	EUR 969	EUR 1,033
Social security costs ¹	18.1% for employers	34% for employers	28.5% for employers	Approx. 22.4% for employers
Recorded unemployment ¹	7.6% (April 2017)	4.1% (May 2017)	4.6% (April 2017)	7.7% (April 2017)
Percentage of highly educated citizens ²	28.9% (2015)	24.5% (2015)	26.5% (2015)	32.7% (2015)
Number of universities	46 universities	68 universities	66 universities	347 universities
Proportion of trade union membership (approximate) ³	20%	17%	12%	15%

Costs	Romania	Slovakia	Turkey
Minimum approximate gross monthly wage (EUR) ¹	EUR 275	EUR 435	EUR 453
Average approximate gross monthly wage (EUR) ¹	EUR 718	EUR 1,033	EUR 385
Social security costs ¹	23.45% for employers	35.2% for employers	22.5% for employers
Recorded unemployment	5.3% (April 2017)	7.7% (April 2017)	11.7% (March 2017)
Percentage of highly educated citizens ²	19.6% (2015)	23.5% (2015)	18.2% (2015)
Number of universities	80 universities	34 universities	174 universities
Proportion of trade union membership (approximate) ³	33%	17%	4.5%

Although many employment laws are harmonised pursuant to EU rules, there are numerous differences between them and many country-specific variations. Nevertheless, there are some common legal characteristics.

Typically, across the region a staff member can be hired as an employee, freelancer or a self-employed entrepreneur. Non-employee structures may be attractive due to e.g. social security and tax requirements, but the employeeemployer relationship still dominates and is promoted at both local and EU levels. Moreover, local authorities tend to fight 'hidden employment' structures, so freelancer and business-to-business structures may be subject to scrutiny.

¹ Source: <u>tradingeconomics.com</u>

New entrants sometimes begin local operations with agency workers, i.e. employees recruited and hired by a temporary work agency. This is a quick and cheap option to start a business and get staff on board. However, restrictions on hiring agency staff limit the feasibility of this structure, so businesses usually eventually opt for permanent staff, predominantly employees. An employment relationship typically needs to be documented with a written contract. The main forms of contract are trial-period agreements, fixed-term contracts and open-ended contracts, with the latter being the preferred option for more CEE employers. Although fixed-term contracts are attractive for the business, their usage is typically limited, e.g. the duration of a single contract may be restricted (e.g. in Poland to 33 months).

Although employment contracts are often simple and concise, many labour laws will automatically apply and govern the employment relationship. Each country has an extensive body of laws regulating issues such as working time, rest periods, overtime, work on Sundays etc. Investors should pay particular attention to working time restrictions, as they may not be in line with their business needs. For example, ensuring a 24/7 business operates within working time restrictions may be a challenge. Any violations may be closely monitored, as the law and local courts typically give preference to employees.

Most CEE countries protect employees against termination without notice. Such measures include: statutory notice periods, employer's obligations to give a reason for termination, classes of heavily protected employees e.g. pregnant employees. Moreover, individual or group redundancies will require payment of severance pay and an information and consultation procedure.

Hiring local staff will inevitably require an investor to comply with local tax, social security and payroll regulations. Typically, an employee must be covered by state-run pension insurance to which both the employer and the employee must contribute.

CEE countries – as required by EU laws – allow employees to participate in the company's important decisions. Employees are free to establish trade unions and works councils. On many occasions employee representatives must be informed and consulted e.g. on issues such as mass lay-offs or social issues.

Employee mobility is key to the economic growth of CEE countries. In most cases, EU nationals can freely move between Member States and work in the country of their choice. Thanks to this, an investor may easily use its existing EU workforce and specialists to start operations in the CEE region. Non-EU citizens can only work and live in CEE countries after meeting visa and residency requirements.

² Source: http://ec.europa.eu/eurostat/statistics-explained/images/7/7a/Share of the population by level of educational

attainment%2C_by_selected_age_groups_and_country%2C_2015_%28%25%29.png

³ Source: <u>www.worker-participation.eu/National-Industrial-Relations/Countries/Czech-Republic/Trade-Unions</u>

Utilities

Agreements concerning utilities (water supply, gas, electricity) will need to be signed between the investor and each supplier. For that purpose it is crucial to define the exact needs of the investor.

It is an increasingly common practice in certain countries for investors to sign a preliminary agreements with utility companies at the very beginning of the investment process. This enables the volume to be guaranteed and the price to be fixed.

The crucial aspects to be discussed with utilities suppliers are:

- 1. Costs;
- 2. Timing; and
- 3. The risk of routing utilities to the site.



Tackling corruption

Many countries in Central and Eastern Europe are making determined efforts to tackle corruption. Nevertheless, corruption is more prevalent in CEE than it is in most parts of Western Europe. In the 2016 Transparency International Corruption Perceptions Index, the countries covered by this report have the following positions in the league table (where 1 is the least corrupt (Denmark) and 174 is the most corrupt (Somalia).



Any potential investor needs to be mindful of corruption related risk. It is, in particular, important to ensure that all staff and consultants working on an investment project are mindful of the risk and implement appropriate corporate procedure.

CMS has produced a comprehensive guide to anti-corruption laws in CEE and elsewhere. This can be found at https://cms.law/en/INT/Publication/CMS-Guide-to-Anti-Bribery-and-Corruption-Laws



Effective investment Coordination of the project

Local legal systems are usually complex and provide many traps for the unwary In order to minimize the timing of transaction it crucial to choose the appropriate legal advisor.

Ranked as a Top 10 Global Law Firm, CMS can work for you in 40 countries and with 71 offices worldwide. 4,500 CMS lawyers offer you business-focused advice tailored to your needs, whether in your local market or across multiple jurisdictions. Our network of offices makes us one of the largest legal service providers in CEE.

We have enormous experience in cross-border investment projects. Our clients benefit from well-established contacts with governments and investment authorities and a clear commercial approach to our clients' needs.



CEE

Iain Batty Partner, Head of CEE Commercial Practice CMS Warsaw +48 22 520 5505 iain.batty@cms-cmno.com

Bulgaria

Atanas Bangachev

Partner, Head of Corporate CMS Sofia +359 2 921 9913 atanas.bangachev@cms-cmno.com

Czech Republic

Tomáš Matějovský

Partner, Head of Commercial, Regulatory and Disputes CMS Prague +420 296 798 852 tomas.matejovsky@cms-cmno.com

Helen Rodwell

Managing Partner, CEE Head of Corporate CMS Prague +420 296 798 818 helen.rodwell@cms-cmno.com

Hungary

Dóra Petrányi CEE Managing Director Partner, Co-Head of Commercial CMS Budapest +36 1 483 4820 dora.petranyi@cms-cmno.com

Tamás Tercsák

Of Counsel CMS Budapest +36 1 505 4964 tamas.tercsak@cms-cmno.com

Poland

Andrzej Pośniak Partner, Corporate & Tax Department CMS Warsaw +48 22 520 5673 andrzej.posniak@cms-cmno.com

Wojciech Koczara Partner, Head of CEE Real Estate and Construction CMS Warsaw +48 22 520 5583 wojciech.koczara@cms-cmno.com

Romania

Cristina Popescu

Senior Associate CMS Bucharest +40 21 407 3811 cristina.popescu@cms-cmno.com

Gabriel Sidere

Managing Partner CMS Bucharest +40 21 407 3800 gabriel.sidere@cms-cmno.com

Slovakia

Petra Čorba Stark Counsel CMS Bratislava +421 940 637 825 petra.corbastark@cms-cmno.com

Turkey

Alican Babalioglu Partner, Corporate & M&A CMS Istanbul +90 212 401 42 60 alican.babalioglu@ybb-av.com

Contact with local authorities

Each country has its own Foreign Investment Agency which is a part of the governmental structure. Often investors will explore a number of countries at the outset. In such circumstances it makes sense to get the Foreign Investment Agencies to compete with each other. This can produce benefits later on, particularly if it elicits commitments to accelerate time scales.

It is generally recommended to commence contact with agencies at an early stage when starting to explore markets. The agencies can provide a great deal of know-how and logistical support including assistance with identifying suitable locations.

The details of each agency are provided below.

Invest Bulgaria Agency

Invest Bulgaria Agency is an institution for encouraging, attracting and assisting foreign investments and priority investment projects to the Republic of Bulgaria. The function of the Agency is to assist the companies in the investment process, and to also provide prospective investors with up to date information on the investment process in the country, legal advice, identification of suitable Bulgarian partners, co-ordination of the investment policy with other institutions, etc. Invest Bulgaria Agency also assists investors in their dealing with all Bulgarian government institutions.

www.investbg.government.bg +359 2 9855500 iba@investbg.government.bg



CzechInvest

Czechlnvest was established in the year 1992. Czechlnvest is an agency of the Ministry of Industry and Trade that advises and supports existing and new entrepreneurs and foreign investors in the Czech Republic. Czechlnvest is exclusively authorized to file applications for investment incentives at the competent governing bodies and prepares draft offers to grant investment incentives. Its task is also to provide potential investors current data and information on business climate, investment environment and investment opportunities in the Czech Republic. In 2016, the Agency for Entrepreneurship and Innovation split away from Czechlnvest and is now responsible for the drawdown of money from the European Union funds from 1 January 2016.

www.czechinvest.org +420 296 342 579 fdi@czechinvest.org



Hungarian Investment Promotion Agency

The Hungarian Investment Promotion Agency was established on 1 January 2011 under a Government Decree to provide professional help to foreign companies intending to invest in Hungary. It operates under the supervision of the Ministry of Foreign Affairs and Trade. Through its extensive network of contacts in the public and private sectors, HIPA provides foreign investors with high-quality support for critical investment decisions and a wealth of supplementary services. HIPA helps foreign investors through the whole investment process, from start to finish, through a one-stop shop service model, free of charge.

www.hipa.hu +36 1 872 6520 info@hipa.hu

Polish Investment and Trade Agency ('PAIH')

The Polish Investment and Trade Agency ('PAIH') helps investors to enter the Polish market and find the best ways to utilise the possibilities available to them. The Agency also guides investors through all the essential administrative and legal procedures that involve a project. PAIH provides rapid access to the complex information relating to legal and business matters regarding the investments, helps in finding the appropriate partners and suppliers, together with new locations.

www.paih.gov.pl +48 22 334 98 00 invest@paih.gov.pl

Romanian Department for Foreign Investment & Public-Private Partnership

The Romanian Department for Foreign Investment & Public Private Partnership (DISPPP) is a Romanian Governmental agency. Its main functions consist of the coordination, monitoring and application of governmental policies in the field of promotion, marketing, attracting and implementing direct foreign investments in Romania, and in the field of public private partnerships. Among others, DISPPP supports the implementation of foreign investments, acting as a point of contact between foreign investors/partners and, as applicable, central and local Governmental authorities.

www.dpiis.gov.ro/new_dpiis/ +4021 318 50 52 investromania@investromania.gov.ro

Slovak Investment and Trade Development Agency (SARIO)

SARIO is a government-funded allowance organization that works under the supervision of the Ministry of Economy of the Slovak Republic. The mission of the agency is to design and use all kinds of stimuli to increase the influx of foreign investment while promoting Slovak companies in their effort to transform into high-performance businesses in the globalized world market. SARIO provides in–depth information about Slovak business environment, industry opportunities, complex information on setting up a business, site selection assistance as well as real estate services. The provision of consultancy services on state incentives is one of the integral parts of SARIO's agenda.

www.sario.sk/en +421 2 58 260 100 sario@sario.sk





Polish Investment & Trade Agency PFR Group









Law.Tax

Your free online legal information service.

A subscription service for legal articles on a variety of topics delivered by email. **cms-lawnow.com** C'M'S' e-guides

Your expert legal publications online.

In-depth international legal research and insights that can be personalised. **eguides.cmslegal.com**

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

CMS locations:

Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Medellín, Mexico City, Milan, Monaco, Moscow, Munich, Muscat, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Riyadh, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sheffield, Singapore, Sofia, Strasbourg, Stuttgart, Tehran, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.
