CENTRAL AND EASTERN EUROPE

Insolvency & Restructuring

Survey | 2020/2021

bnt attorneys in CEE

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We are delighted to present this third edition of our Insolvency & Restructuring Survey. The second edition of the Survey was released in 2018. Since then, our readers have sent us ample feedback, for which we are immensely grateful. This feedback – from business owners and managers, from lenders and other creditors, and also from insolvency office-holders – was not only motivating but also proved valuable when preparing this third edition of the Survey. Our aim remains the same: to provide a useful overview of the rapidly changing legal framework for insolvencies in Central and Eastern Europe and to help decision makers get a sense of the impact of insolvencies in CEE jurisdictions, thus enabling them to take the right decisions at an early stage, including the decision to consult insolvency experts to help secure their interests.

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Co-Head of the bnt Insolvency & Restructuring practice group

Our firm's international insolvency and restructuring practice group pools the know-how and expertise of insolvency lawyers from our offices in 10 CEE jurisdictions. In this region we are thus uniquely positioned to advise creditors, debtors, insolvency office-holders and other stakeholders on all insolvency and restructuring matters, such as pre-insolvency protection of creditors' rights, creating insolvency-remote collateral, representing creditors in insolvency proceedings, pre-insolvency debt restructuring, legal duties of company bodies and shareholders in crisis, capital maintenance regulations, mandatory regulations under tax/social security law, employee questions, mass lay-offs, joint intra-group liability, prerequisites and risks of de-facto management, claw-back and voidance of transaction rights and distressed M&A.

Sincerely,
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Note: this Survey is based on laws in effect on 31 March 2020. Due to the extraordinary dynamics of legislative measures, COVID-19 measures have been outsourced in a separate factsheet updated on a regular basis and available as a pdf on our webpage www.bnt.eu. Note also that, despite having been prepared diligently, this Survey and the information in it are not to be understood as legal advice, which should be sought from an insolvency specialist for each specific case.

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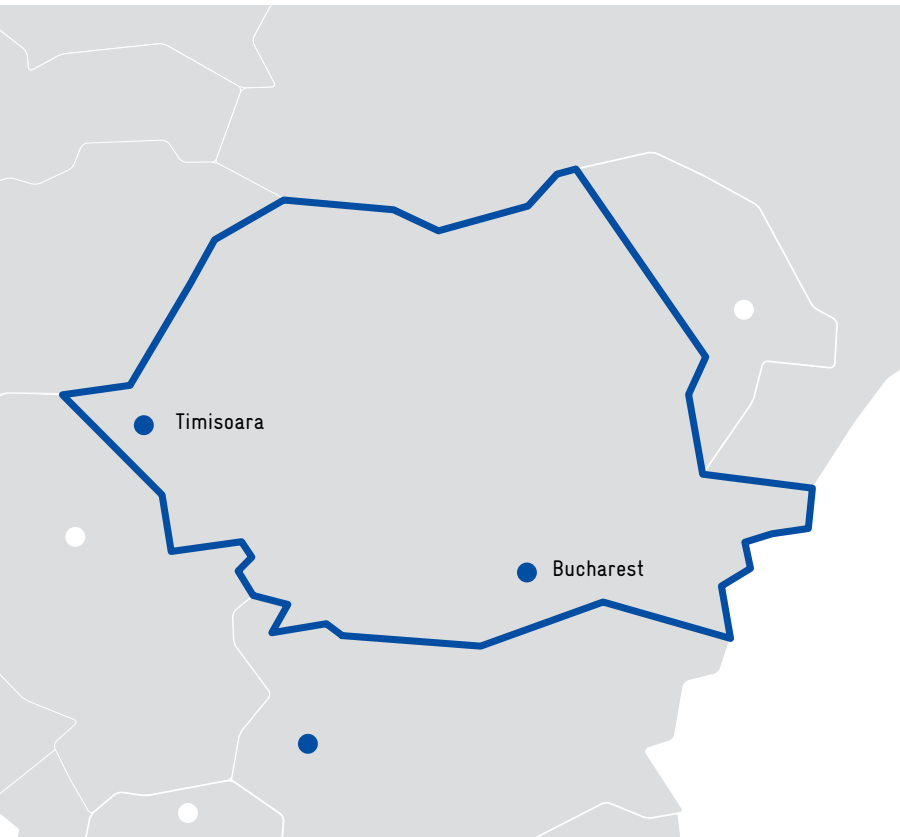

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1. General information

1.1. General types of restructuring proceedings for companies under Romanian insolvency law (Law no. 85/2014)

- There are three types of restructuring proceedings. These are (Law no. 85/2014):
  - Ad hoc mandate: a specific judicial procedure by which an ad hoc mandator is appointed by a judge to reach agreement within a maximum of 90 days between a debtor who is in financial difficulty, and one or more of his creditors in order to prevent a state of financial difficulty.
  - Procedure for arrangement with creditors (concordat preventiv): represents an agreement concluded between a company in financial difficulty and creditors holding at least 75% of the value of the accepted and uncontested receivables, approved by the judge, whereby a plan for redress is proposed, and the creditors agree to support the efforts of the debtor to overcome the difficulty they are in. The procedure is co-ordinated by an administrator.
  - Option to restructure within the insolvency proceedings.
- Bankruptcy proceedings for companies under Romanian insolvency law (Law no. 85/2014)
- Bankruptcy proceedings (aimed at liquidation) are one of the options under the more general term of insolvency proceedings.
- Bankruptcy proceedings aim at maximizing the degree of asset recovery and debt recovery, by granting debtors efficient and effective business recovery methods through the judicial reorganization procedure.
- Two ways are available to carry out bankruptcy proceedings. These are:
  - Bankruptcy proceedings (simplified form) is the insolvency procedure when the company enters directly into bankruptcy proceedings, either at the opening of the insolvency proceedings, or after an observation period of a maximum 20 days.
  - Bankruptcy proceedings (general form) is the insolvency procedure whereby the company, after an observation period, enters successively into judicial restructuring proceedings and bankruptcy proceedings (if there are chances of redress and the creditors agree with the proposed measure) or separately, only into judicial restructuring, or only into bankruptcy proceedings (in the case of failure of a restructuring plan or when such a plan is not proposed or not accepted).
- Notes:

  Restructuring proceedings represent a way of carrying out insolvency proceedings which is applied to a company, being a legal entity, in order to pay its debts, by observing a programme of payment of debts.

  Bankruptcy proceedings represent insolvency proceedings that apply to a company in order to liquidate its assets to cover its liabilities, followed by removal of the debtor from the commercial register.

  Specific rules apply to some corporations e.g. banks and insurance companies.

1.2. Debtor in possession (self-administration)

- Prevention proceedings: yes
- Insolvency: possible if restructuring is still an option or is in progress, in practice seldom

1.3. Insolvency register

- For prevention proceedings:
  - National trade register: www.onrc.ro
  - Court portal: http://portal.just.ro
- For insolvency proceedings:
  - Informational system in terms of insolvency maintained by the Romanian National Trade Register Office: https://portal.onrc.ro
  - Court portal: http://portal.just.ro
  - National trade register: www.onrc.ro

1.4. Competent court for opening bankruptcy and restructuring proceedings

- District court (tribunal) at the seat of the distressed company.

1.5. Average duration of proceedings

- Restructuring proceedings:
  - An ad hoc proxy negotiates with creditors in order to ensure that the state of difficulty in which the company finds itself ends within a maximum of 90 days.
  - The procedure of arrangement with creditors ends within a maximum of 60 days.
- Bankruptcy proceedings:
  - no official statistics available
  - As a general rule, if it is found that there are no assets in the company or that they are insufficient to cover the administrative expenses and no creditor offers to advance the corresponding amounts, the judge will rule to close the procedure and to remove the debtor from the commercial register.
  - Reorganisation plan: execution of a reorganisation plan may not exceed 3 years, calculated from the date of confirmation of the plan.

1.6. Approximate satisfaction rate of bankruptcy proceedings

Type of creditor	Ranking	Avrg. satisfaction (%)
cost of insolvency proceedings	1st	no official statistics, assessed over 80%
financing granted during the proceedings	2nd	no official statistics, assessed over 70%
employees	3rd	no official statistics, assessed at ≈ 60%
continuation of the debtor's business after the opening of proceedings	4th	no official statistics, assessed at ≈ 50%
public budget	5th	no official statistics, assessed at ≈ 40%
alimony	6th	no official statistics, assessed over 30%
sums determined by the judge to support the debtor and their family if the debtor is a natural person	7th	no official statistics, assessed at ≈ 20%
creditors secured by pledge and/or mortgage and/or lien	8th	no official statistics, assessed over 15%
unsecured creditors	9th	no official statistics, assessed at ≈ 10%
subordinated claims	10th	no official statistics, assessed at under 5%

2. Bankruptcy proceedings (generally aimed at liquidation)

- Bankruptcy proceedings are one of the options under the more general term of insolvency proceedings.

2.1. Persons entitled to file a petition for bankruptcy

- Creditors
- Company manager, proxy
- Persons or institutions expressly provided by law

- Employees
- Financial Supervisory Authority against entities regulated and supervised by it
- Romanian National Bank in the case of a credit institution

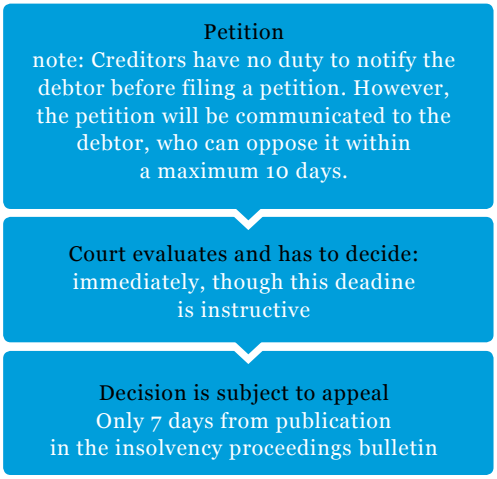
2.2. Grounds for filing a petition

- An insolvent debtor is obliged to file a claim for bankruptcy with the tribunal requesting within a maximum of 30 days from the occurrence of insolvency. The debtor is unable to pay certain, liquid and due debts for over 60 days due to insufficient funds.
- One or more creditors may request the opening of insolvency procedure against a company if holding against a company a receivable over RON 40,000 that is unpaid for at least 60 days from its maturity.
- over-indebtedness of a capital-based company
- Company fails to pay salaries and other employment-related payments.

2.3. Grounds for opening bankruptcy proceedings

- Company is insolvent (i.e. company does not meet its due obligations and the value of its short-term assets is less than the value of its short-term debts).
- A capital-based commercial company is over-indebted (i.e. it has negative equity).
- A credit institution's solvency indicator decreases below 2% or the operating authorization has been withdrawn due to the impossibility of financial recovery.

2.4. Statutory procedure for opening bankruptcy proceedings



2.5. Effects of opening bankruptcy proceedings

- Court issues a decision to open bankruptcy proceedings:
  - The court appoints a provisional insolvency practitioner for the insolvency who becomes active immediately.
  - The court sets the day for the first meeting of creditors.
  - The court sets the deadline date:
    i. to file an opposition to the opening of the procedure
    ii. for registration of applications for admission of receivables
    iii. for verification of receivables and for preparation and publication of a preliminary table of receivables
    iv. for finalization of the table of receivables
    v. for organization of the first meeting of the Committee of Creditors.
- Decision to open the bankruptcy procedure is published in the insolvency proceedings bulletin to the following effects:

- The management of the company may lose the right of administration.
- Creditors have a maximum of 45 days to file claims for registration with the creditors' table; however, they must observe the possibly shorter deadline set by the court for registration of applications for admission of receivables.
- Individual enforcement proceedings and court proceedings against the debtor are suspended.
- No interest, increase or penalty of any kind or expense, generically called accessories, may be added to receivables due prior to the date of opening the procedure.

2.6. Persons obliged to file for bankruptcy

- Company manager, proxy: an insolvent debtor must file a claim with the tribunal for insolvency procedure within a maximum of 30 days from the occurrence of insolvency or, if the debtor is involved in good faith in extrajudicial procedure for restructuring his debts, within 5 days from failure of negotiations.

2.7. Sanctions for failing to file for bankruptcy in time

- Civil liability: compensation of damages incurred by the company plus its creditors
- Criminal liability: for late filing including the risk of a prison sentence

2.8. Appointment of an insolvency practitioner

- Insolvency court at its discretion appoints a provisional insolvency practitioner.
- Depending on who filed to open the insolvency procedure (the insolvent debtor or the creditor), it may propose the appointment of a certain insolvency practitioner that will have to be confirmed / rejected at the first Meeting of Creditors.

2.9. Ethical standards for insolvency practitioners

- The Code of professional ethics of the National Union of Insolvency Practitioners (UNPIR) together with Government Emergency Ordinance no. 86/2006 on organization of the activity of insolvency practitioners and the Statute on organization and exercise of the profession of insolvency practitioner are the main rules according to which insolvency practitioners (either judicial administrators or liquidators) carry on their activity.
- No code of conduct yet applies to insolvency practitioners. However, there are cases in which problems occur regarding the ethical conduct of an insolvency practitioner. Banks are known to work closely with their preferred insolvency practitioners, sometimes against the other creditors. In some cases, competitor companies have attempted to attack an insolvent debtor's business by abusive collaboration with an insolvency practitioner.
- Statutory sanctions: withdrawal of licence to carry out activities as an insolvency practitioner for misconduct.
- In practice, liability cases against insolvency practitioners for damages by the estate and/or by creditors are rare and court practice is not well developed.

2.10. Time for lodging creditors' claims, consequences of failure

- Creditors must file a claim for registration with the creditors' table within a maximum of 45 days from publication of a court decision to open the bankruptcy procedure; however, they must observe the possibly shorter deadline set by the court for registration of applications for admission of receivables. A creditor who fails to register a claim within this term will lose the right to be included in the table of creditors and will not acquire the right to participate in the procedure as regard its claim.
- In practice, the risk of a creditor losing this right is quite low, as the designated insolvency practitioner must notify creditors of the obligation to register a claim. However, in numerous cases creditors lose this right as they do not meet the legal deadline for lodging their claim for registration with the creditors' table because notification is communicated without observing the legal term for doing so i.e. at least 10 days in advance.

2.11. Costs of filing claims

- Stamp duty of RON 200 (approximately 45 Euro) is required for all filed claims based on Law no. 85/2014 on the insolvency procedure.

2.12. Administration costs

- Administration costs include remuneration payable to the insolvency practitioner as well as other administration costs (accounting services, transportation, stationery and office supplies, legal services, storage and evaluation of goods).
- Administration costs are remunerated with priority over the rest of the receivables, whether they are guaranteed or not, out of the revenues from the sale of the company's assets.
- By law, insolvency practitioners are entitled to honoraria fees for their work, in the form of fixed fees, success fees or a combination thereof. The provisional fee for the observation period is established by the judge at the opening of the bankruptcy procedure, based on certain criteria as provided by law. These fees may be amended by decision of the creditors' meeting, which will necessarily take into account the legal provisions listing the criteria according to which the level of the fee must be established and reflect the degree of complexity of the activity. Payment of the insolvency practitioners' honoraria fees - judicial administrators or liquidators - or other procedural expenses will be made from the fund established according to law. Their calculation will be based on standard rates and costs as decided by the Assembly of the permanent representatives of UNPIR.
- There are no specific rules on administration costs. Usually, an insolvency practitioner is awarded a monthly remuneration of approx. RON 1,500-2,000 (approx. €300–500). However, depending on the complexity of the insolvent debtor, these fees may significantly increase.
- If it is found that there are no assets in the company or that these are insufficient to cover the administrative expenses and no creditor offers to advance the corresponding amounts, the judge will rule to close the procedure, as well as with regard to removal of the debtor from the register in which it is registered. In that case, all creditors in practice lose all their claims.

3. Ranking of claims / creditors

3.1. Secured creditors

- By law, the notion of "receivables benefiting from a cause of preference" includes receivables "which are accompanied by a privilege and / or a right of mortgage and / or of rights assimilated to the mortgage, and / or of a right of pledge on the assets of the debtor's patrimony, irrespective if it is a principal debtor or a third guarantor with respect to the beneficiaries of the causes of preference". However, all such claims must be registered with the creditors' table in order to be entitled to participate in the procedure.
- All creditors of receivables held prior to the opening of the procedure and that are admitted in the procedure and registered with the creditors' table must be granted the benefit of secured receivables and be paid according to justifying documents, before other claims are registered with the creditors' table.
- Defrayal of secured receivables is carried out, as in the case of the other receivables, as regulated by the applicable law for bankruptcy procedure:
  - according to the distribution plan as per the approved reorganization plan, or
  - according to the distribution plan from the bankruptcy procedure.

  Even in the case of secured creditors, this is a deferred payment and, as a rule, a partial payment.

3.2. Unsecured creditors

- An unsecured creditor is equal to other unsecured creditors and, if diligent and swift, may obtain its claim against an insolvent debtor only if the debtor is creditworthy and, in addi-

tion, owns assets unencumbered by guarantees or other causes of preference and which are not executed against by other creditors.

- In the bankruptcy procedure, all debts, both unsecured and guaranteed, are affected by the sacrificial character of the procedure: forced pursuit can no longer be realized individually, but only within the bankruptcy procedure; the value of claims is frozen at the level from the date of opening the procedure; debt coverage is carried out as provided by the Insolvency Law, i.e. through the payment programme in the reorganization plan or through the distribution plan in bankruptcy procedure, which involves not only deferred payments, but also reductions or even total deletions of debts.
- Ranking of claims is as follows:

Cost of insolvency proceedings	1st
Financing granted during the proceedings	2nd
Employees	3rd
Continuation of the debtor's business after the opening of proceedings	4th
Public budget	5th
Alimony	6th
Sums determined by the judge to support the debtor and their family if the debtor is a natural person	7th
Creditors secured by pledge and/or mortgage and/or lien	8th
Unsecured creditors	9th
Subordinated claims	10th

3.3. Employees

- Employees can request opening of bankruptcy procedure if debts owed and unpaid exceed the value of six average gross salaries per economy / per employee, unlike other creditors, who must have a debt of at least RON 40,000.
- After the opening of the bankruptcy procedure, employees no need to file a claim for registration with the creditors' table, as they are automatically registered with the creditors' table, unlike other creditors, who, if they do not file a claim for registration with the creditors' table, lose the right to participate in the bankruptcy procedure involving the debtor.
- Employees have a prior rank in the distribution plan within the procedure. Receivables arising from the employment report are placed in the third rank.

4. Nullifying contracts

- The insolvency practitioner examines transactions entered into within up to 24 months before filing for bankruptcy and brings an action to annul those that have been detrimental to the bankruptcy proceedings.

5. Restructuring proceedings (aiming at rescuing a company)

5.1. Legal grounds

- There are three types of restructuring proceedings:
  - Ad hoc mandate procedure
  - Arrangement with creditors
  - Option to restructure within the insolvency proceedings.
- Ad hoc mandate:
  - The debtor initiates judicial procedure by filing a request with the court to appoint a proxy. In its request, the debtor will propose a proxy from among authorised insolvency practitioners.
  - The request is lodged with the president of the Tribunal and is registered with a special register.
  - Within 5 days a subpoena will be addressed to the debtor and the proxy.

- The procedure is a confidential procedure by which an ad hoc proxy negotiates with the creditors in order to overcome the state of difficulty in which the company finds itself.

- The proxy's objective is to reach an agreement within a maximum of 90 days between a debtor in financial difficulty and one or more of his creditors in order to end the financial difficulty.

- Arrangement with creditors (concordat preventiv):

  - Initiation of an arrangement with creditors may be performed by any debtor in a state of financial difficulty with three exceptions (e.g. debtors convicted of economic offences, those who are already bankrupt, or who have previously benefited from the preventive agreement procedure in the last 3 years, or for claiming the civil liability of anyone who contributed to the bankruptcy of the company).

  - The essence is an agreement between a company in financial difficulty and its creditors holding at least 75% of the value of accepted and uncontested receivables, approved by the judge, agreement by whom a plan for redress is proposed, and the creditors agree to support the efforts of the debtor to overcome the difficulty they are in. The procedure is co-ordinated by an administrator.

  - The concordat is a legal instrument by means of which opening of the debtor's insolvency is discouraged.

  - The concordat has a judicial character because it is applied by the court through a judge.

  - The concordat has a secret and urgent character such as the ad-hoc mandate (the parties are summoned within 48 hours of receiving the request).

  - The concordat is collective because all the creditors of the debtor are invited to participate, and vote on the project to be agreed upon, and can be opposed after approval even if they did not sign it.

  - The concordat is unitary, because on the date of the closing of the agreement all individual actions by creditors and all accessories will be suspended, and the creditors will not be able to request opening of bankruptcy procedure against the debtor.

- Option to restructure within the insolvency proceedings:

  - Restructuring proceedings is the procedure that is applied to the debtor in order to settle its debts.

  - The procedure involves the proposal of a restructuring plan by the creditors holding at least 20% of the registered receivables, by the insolvency practitioner as well as the by the debtor.

  - The restructuring plan will be voted in the creditors' meeting, and in order to become effective, the plan must receive the approval of the judge.

  - Once the restructuring plan is approved, the debtor enters into the restructuring procedure, its activity being conducted pursuant to the provisions of the plan.

  - The restructuring plan may be executed within a maximum three years, with the possibility of prolongation up to one year.

  - The receivables will be paid as per the schedule of payments, which is a mandatory annex of any restructuring plan.

5.2. Participants in procedure

- Arrangement with creditors:

  - Judge: has jurisdictional activities, plays a referee role and pronounces definitive and enforceable decisions.

  - Insolvency practitioner: implements the arrangement with creditors, executes the creditors' table, summons and chairs the creditors' meeting, in relation to the debtor, supervises fulfilment of the obligations assumed by agreement, presents the arrangement agreement to the judge for approval.

- Creditors: may participate individually or in creditors' meetings, however, until approval of the arrangement are just creditors while, after approval of the arrangement, the creditors, whether they signed the arrangement or not, are bound by the arrangement, which applies to all creditors.

5.3. Arrangement plan offer

- Arrangement with creditors:
  - arrangement plan with assets and liabilities of the debtor, the reasons that caused the financial difficulty, and a projection of the financial evolution for the next 24 months
  - redress plan for reorganisation of the debtor's activity, the modalities of overcoming the state of financial difficulty.
- The term for fulfilment of debts is 24 months from the execution date with an extension possibility for 12 months. In the first year payment of a minimum 20% of the value of the debts established by the arrangement plan is mandatory.

5.4. Approval of arrangement plan

- Arrangement with creditors procedure:
  - Creditors may negotiate and vote on the plan during a maximum 60 calendar days in one or more collective or individual negotiation sessions with the creditor in the presence of the judicial administrator proposed by the debtor.
  - The arrangement plan is considered approved by the creditors with at least 75% of the value of accepted and uncontested receivables.

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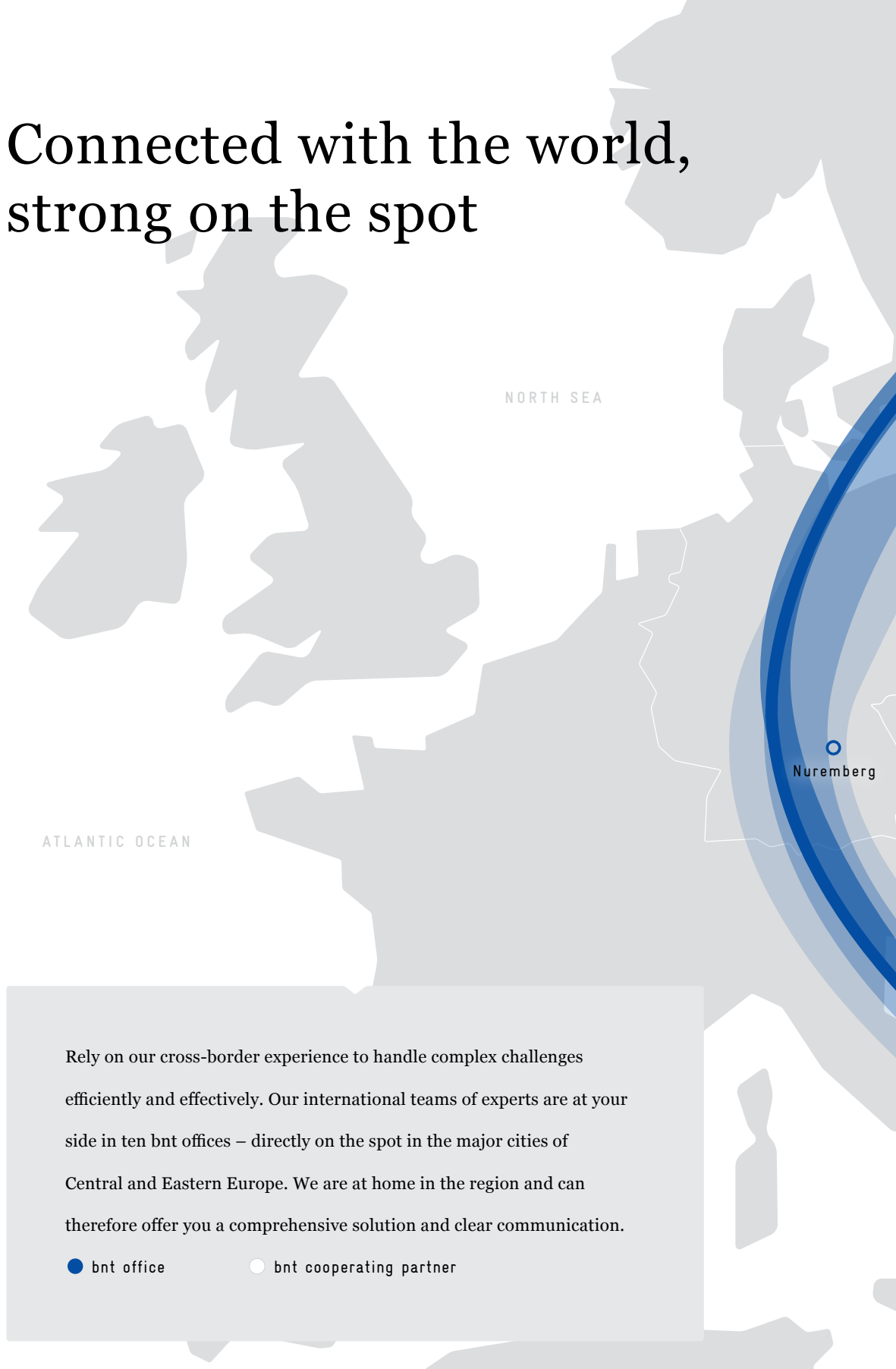

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