

CMS European M&A Study 2023: Record number of deals last year despite challenging economic backdrop

(Bratislava, Wednesday 22nd March 2023): Deal activity across Europe maintained a steady pace in 2022 despite the increasing number of economic headwinds, according to the latest annual European M&A study by global law firm [CMS](#).

The “**CMS European M&A Study 2023**”, now in its 15th edition, covers 509 share and asset deals on which CMS advised during 2022 – a record number of deals for the annual study, showing that there have been plenty of deal opportunities despite the difficult macroeconomic environment caused by rising inflation and interest rates, slowing growth and increased geopolitical tension.

The study reveals that the main driver for transactions in 2022 was entry into new markets (39%), a slight drop from 43% in 2021. There was also a decline in deals involving the acquisition of a competitor from 32% in 2021 to 28% in 2022 – most likely reflecting a step back from acquisitions seeking a post-pandemic consolidation of revenues and costs.

Dr Oliver Werner, Partner at CMS Slovakia and Austria, said: *“In 2023, it is likely that we will continue to see a robust M&A market in the region, with a particular focus on technology, healthcare, and renewable energy sectors. Political and economic stability will play a key role in attracting foreign investment, and regulatory frameworks will need to keep pace with the evolving landscape of cross-border transactions. Overall, the M&A market in CEE presents exciting opportunities for investors looking to expand their global footprint and capitalize on the region’s growth potential.”*

Juraj Fuska, Partner at CMS Slovakia, added: *“Although last year saw much turbulence for M&A, there was still a strong desire to get deals over the line in all the key economic sectors. Therefore, it is reassuring that 2022 transpired to be a good year in the industry. However, the upheaval of last year will continue through 2023. Investor confidence has begun this year modestly, although it is expected to pick up in the second half of the year. Nevertheless, there remain many M&A opportunities in the CEE region, and hopefully the desire to get deals done that we saw last year will also continue during 2023.”*

Key findings:

- **MAC clauses:** MAC clauses are still not very popular on European deals, with only 13% of deals having them. They are used even less on medium to large value deals. This is in stark contrast to the US, where MAC clauses are still incredibly common and were used on 98% of the deals.
- **Earn-outs:** The frequency of earn-outs has continued to rise, now applying in 27% of deals as compared to 14% in 2010 when CMS first analysed the use of earn-outs. This is coupled with a rise in the use of EBIT or EBITDA as the relevant measure for the earn-out applying in 54% of such transactions. This trend applies across the board in Europe and runs counter to the experience in the US market. Earn-outs are seen most commonly in small and medium-sized deals.

- **Locked box transactions:** For 2022, there was a more significant increase in the application of locked box arrangements (62% in 2022 compared with 51% in 2020). The increase is even higher for medium sized deals up to EUR 100m, where 79% of the deals were locked box transactions. This increase is even more marked when compared against the average usage of 51% for the period 2010 to 2021. Our view is that this reflects a wider acceptance of locked box provisions instead of purchase prices adjustment provisions, particularly for larger deals. Also note a finding from the CMS Private Equity Study that PE deals show a marked preference (85%) for locked box structures.
- **Warranty & Indemnity (W&I) insurance:** The popularity of W&I insurance has grown significantly over the last five years, particularly in the UK – albeit its application stabilised in 2022 at 32%. W&I cover is prevalent primarily in large deals with values over EUR 100m with W&I cover being obtained for 58% of those deals. The level of cover purchased varies, although a significant proportion of deals (nearly 40%) had cover of an amount equivalent to more than 30% of the purchase price.
- **ESG & sustainability:** ESG factors in M&A are becoming more relevant and important. Investors are facing pressures to uphold higher governance standards across all industries and geographical regions. It also seems likely that dealmakers want to capitalise on attractive ESG value creation opportunities. However, ESG aspects are only just beginning to appear specifically as part of the due diligence process (33% of deals) and in transaction documents (45%).

Key regional differences:

- **PPA/Locked box:** PPA clauses are most popular in Benelux (55%), the southern countries [Italy, Spain and Portugal] (64%) and the UK (59%), as compared with the European average of 48%. There was a big swing in respect of Benelux from 34% in 2021. PPAs are less popular in France (32%), the German-speaking countries (38%) and Nordics (19%). Vice versa, locked boxes are most common in the German-speaking countries (79%) and Nordics (71%), compared to the average of 62%. At the other end of the scale are the southern countries (30%) and CEE (45%).
- **MAC clauses:** There was a drop in the application of MAC clauses to a European average of just 13% in 2022. As with many of the study's metrics, there was a wide disparity across the region, with the UK and Nordics at the low end. Just 4% and 5% of their deals respectively included a MAC clause. At the high end, France and the Southern countries, included MAC clauses in 29% and 27% of deals. The swing in France was enormous, rising from just 4% in 2021.
- **Earn-outs:** There is a wide disparity across Europe in the application of earn-out provisions. As compared with the average of 27%, Nordics (42%), the German-speaking countries and Benelux (both 36%) stand out as being ahead whereas CEE is much lower, with just 11% of transactions. There was a big swing upwards in respect of Benelux and the German-speaking countries from 20% and 30% respectively in 2021 to 36% in 2022.
- **W&I insurance:** The application of W&I insurance has grown significantly in the UK over the last five years whereas the uptake in other countries is slower as brokers and insurers begin to establish a presence. The UK remains the stand-out country, albeit the use of W&I insurance has stabilised at 32% for 2022. This compares with the next highest country, France, at 18% – itself a massive step up from 4% in 2021. By contrast, in the German-speaking countries W&I insurance dropped to 10% in 2022 from 17% in the previous year.

Read the full CMS European M&A Study 2023 here: <https://cms.law/en/int/publication/cms-european-m-a-study-2023>

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Methodology: The study includes deals that were structured either as a share sale or an asset sale, including transactions where a seller held less than 100% of the target company's share capital – provided that this represented the seller's entire shareholding in the target company. The study also includes property transactions – provided that they involved the sale or acquisition of an operating enterprise such as a hotel, hospital, shopping centre or comparable business and not merely a piece of land. Internal group transactions were not included in the study. The data has been divided for comparative purposes into four European regions. The countries included in each of these regions are as follows:

- **Benelux:** Belgium, The Netherlands and Luxembourg
- **Central and Eastern Europe (CEE):** Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Slovakia, Slovenia, Serbia and Ukraine
- **German-speaking countries:** Austria, Germany and Switzerland
- **Southern Europe:** Italy, Spain and Portugal
- **Nordics:** Norway and Sweden

France and the United Kingdom are presented as individual categories.

Transactions included in the study cover a wide range of sectors, including banking & finance, hotels & leisure, energy & climate change, consumer products, technology, media & communications (TMC), infrastructure & projects, life sciences & healthcare and real estate.

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