CMS European M&A Study 2025

Seventeenth Edition

Introduction

It is our pleasure to share the CMS European M&A Study for 2025. We entered 2024 optimistic about deal activity and are pleased to have experienced another positive outcome in terms of the number of transactions on which CMS has advised, given the M&A market has had to navigate some continued choppy political and economic conditions.

The 2025 Study covers 582 deals on which CMS advised in Europe in 2024. This is a record in terms of the volume of deals, demonstrating the depth, scope and strength of our corporate practice across the entirety of our European offices and it shows our ability to assist our clients whatever the sector, the deal size or complexity. We thank our clients for continuing to trust us with their strategic endeavours.

This is the 17th edition of the M&A Study and we firmly believe that it remains the most valuable and comprehensive report of its kind, given the considerable deal sample, sector insight and range of countries reflected as well as the extensive back catalogue of data we are able to measure against.

The rise in deals involving purchase price adjustments (PPA) and earn-outs might indicate a more buyer friendly market in terms of deal pricing than seen in 2023. This is counter-balanced by a significant increase in the use of W&I insurance across all deal value ranges – typically a seller-driven metric. These seem to suggest a reversal in these trends from 2023, perhaps suggesting that buyers are especially focussed on pricing, with sellers using every means to mitigate risk.

Q1 2025 has been positive, and we are pleased to have closed many significant deals and to have received an increasing volume of instructions for high profile mandates. As ever, early in 2025, we remain mindful of economic and political factors that could impact the M&A markets, not least the impact of new political leaders in various countries, but there appears to be some stability in the debt markets and an abundance of available capital and demand from institutional investors.

We hope you find the 2025 CMS European M&A Study insightful and a valuable resource when undertaking M&A deals. We wish you all the best for the year ahead.

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Executive summary

This Study covers 582 share and asset deals on which CMS advised during 2024. We are delighted with this record-achieving outcome given the macroeconomic situations across the M&A market generally.

We highlight where there have been significant changes in deal points over the last 10 years and in particular, in 2024, we note increases in longer limitation periods for warranty claims and the use of purchase price adjustments and earn-outs, a buyer-friendly development that reverses the trend from 2023. This is counter-balanced by a significant increase in the use of W&I insurance across all deal value ranges – typically a seller-driven metric.

Other deal metrics, such as financial limitations, the continued scarcity of MAC clauses, especially compared to the US-market, and deal-related security for claims, appear largely in line with previous years, albeit we did note in 2024 modest increases in the number of deals involving MAC clauses and a form of security.

Highlights / Key Messages

- The data from 2024 demonstrates some changes in deal points relating to pricing – highlights are increases in the number of deals involving purchase price adjustments and locked box structures in non-PPA transactions, a rise in earn-outs and an increase in the use of EBIT/EBITDA as the metric on which to calculate earn-outs. This marks a reversal of the trends from last year and favours buyers.

- We saw some interesting developments in the use of W&I insurance in European transactions. There was an overall 8% increase in the popularity of W&I insurance and this was demonstrated across all deal sizes and in the majority of European jurisdictions (where the UK remains the top market). Our data indicates that W&I insurance remains less economically justifiable on small deals (used in just 8% of cases albeit even here there was a marked rise), but is increasingly standard on medium sized and large deals (45% and 72% respectively).

- ESG and AI have perhaps been two of the most talked about topics in the legal industry over the last few years. Despite this focus in the media and in the legal and sector press, our data suggests that ESG aspects and the adoption of AI tools have yet to become a fundamental component of M&A. Where legal technology tools are known to have been used on transactions, AI tools comprise 32% of the technology used.

- There were some modest changes in risk allocation metrics. In a buyer-friendly trend, there was a shift towards longer limitation periods, with increases in limitation periods both of 18–24 months and longer than 24 months and corresponding falls in shorter limitation periods. However, the position on liability caps was more in line with the rolling average, with liability caps of less than 50% of the purchase price seen on a majority of deals.

- The buyer and seller profiles in 2024 were similar to 2023. Unsurprisingly, on the buy side, 94% of buyers were either strategic investors or finance investors, although strategic investors moved down 4% to 73%, whereas finance investors moved up 4% to 21%. On the sell side, whilst we had anticipated a large increase in individual sellers prompted by the proposed changes in CGT rates in the UK, this was not, in fact, seen in the data and the number of individual sellers and managers remained static at 31% and 13% respectively.

2024 results at a glance

CMS Trend Index

	2014–2023	2023	2024
DEALS WITH PURCHASE PRICE ADJUSTMENT	46%	44%	48%
DEALS WITH A LOCKED BOX (WHERE NO PURCHASE PRICE ADJUSTMENT)	55%	56%	60%
EARN-OUTS	22%	23%	25%
— SHORT EARN-OUTS (12 MONTHS OR LESS)	23%	17%	28%
— LONG EARN-OUTS (36 MONTHS OR MORE)	20%	19%	19%
— EBIT/EBITDA-BASED EARN-OUTS	44%	36%	47%
— TURNOVER-BASED EARN-OUTS	30%	30%	26%
DE MINIMIS	73%	70%	70%
BASKET	68%	64%	62%
— LOWER BASKET (LESS THAN 1% OF PRICE)	60%	60%	64%
— HIGHER BASKETS (MORE THAN 1.5% OF PRICE)	24%	23%	18%
— FIRST DOLLAR RECOVERY	82%	86%	88%
LIABILITY CAPS			
— NO CAPS	11%	11%	8%
— LESS THAN 50% OF PRICE	56%	56%	57%
— LESS THAN 10% OF PRICE	16%	14%	18%
LIMITATION PERIODS			
— 12–18 MONTHS	32%	31%	26%
— 18–24 MONTHS	34%	34%	36%
— MORE THAN 24 MONTHS	22%	25%	29%
SECURITY FOR WARRANTY CLAIMS	29%	23%	25%
— RETENTION FROM PRICE	30%	37%	38%
— ESCROW ACCOUNT	53%	44%	38%
MAC CLAUSE	14%	10%	14%
ARBITRATION CLAUSE	33%	37%	42%
— APPLICABILITY OF INTERNATIONAL RULES RATHER THAN NATIONAL RULES	36%	31%	30%

Key conclusions

Purchase price adjustments – In 2024 there was an increase in the use of purchase price adjustment (PPA) clauses, returning to the same figure (48%) as in 2022 and reversing the 4% drop in 2023. This increase sees PPA clauses pick up to a level only exceeded once (in 2015) and they remain typical in M&A transactions, with price adjustments by reference to cash & debt and working capital adjustments leading the way.

Locked box Transactions – In 2024 the use of locked box provisions in non PPA transactions increased by 4% to 60% and was greater than the 2014–2023 average of 55%. Locked box arrangements, where used, continued to occur more frequently on medium sized transactions (91%) and large transactions (81%) than on small transactions (50%). This is consistent with the results from 2023 and is continued evidence that the use of locked box provisions is more widely accepted on higher value transactions, with large increases in the use of locked box provisions in the Infrastructure & Projects and Real Estate sectors. The 2024 results also point to more price uncertainty in small value transactions.

Earn-outs – There was an increase in earn-outs in 2024, with their use increasing by 2% to 25%. This is consistent with the overall positive trend in earn-outs over the last decade and represents the highest figure in that period and is 3% higher than the rolling average (22%). EBIT/EBITDA remains the most popular metric on which to determine an earn-out, with a significant 11% increase from 36% in 2023 to 47% in 2024. The use of earn-outs in the US increased by 12%, which saw earn-outs being more popular in the US than in Europe for the first time since 2018.

Warranty & Indemnity insurance – 2024 saw a significant increase in the number of W&I insurance policies purchased on M&A deals both overall (up 8% to 24% of deals) and across all deal sizes (nearly three quarters of large deals) and in most European jurisdictions (being most popular in the UK).

***De minimis* –** Transactions with a *de minimis* limitation remained the same as in 2023 at 70%, which is the lowest it has been between 2014–2024. Most *de minimis* levels are from EUR 1 to 0.25% of the purchase price (35% of transactions), with the number of transactions without any *de minimis* provision remaining the same as 2023 (30%).

Baskets – Baskets were used in 62% of European transactions in 2024, 2% drop from 2023 and a 7% drop since 2022, the lowest percentage since 2014. As in previous years, most baskets in 2024 (64%) were from EUR 1 up to 1% of the purchase price and the remainder were at more than 1% of the purchase price. Most basket provisions (88%) are on a 'first dollar' basis, representing a 2% increase on 2023 (and a 7% increase in the last two years), with buyers on risk up to the relevant level but not once exceeded.

Liability caps – For the fourth year running, more than half (58%) of all deals had a liability cap of less than 50% of the purchase price. For large deals, more than half (55%) had a liability cap of less than 10% of the purchase price, while for small deals this proportion was only 10%. By contrast, small and medium sized deals were more likely to have a liability cap equal to the purchase price or no liability cap at all, demonstrating a significant divergence across deal sizes.

Limitation periods – In 2024 we observed a trend towards longer limitation periods. While the use of limitation periods of 18–24 months (up 2% to 36% in total) and of more than 24 months (up 4% to 29% in total) increased, there was a decline in the use of limitation periods of 12–18 months (down 5% to 26% in total) and six–12 months (down 2% to 9% in total). This can be interpreted as a 'buyer friendly' trend, which is in line with the average over the past 10 years.

Security for warranty claims – In 2024 the number of agreements including a form of security for warranty claims increased by 2% (from 23% in 2023 to 25% in 2024). While escrow accounts were the most common form of security over the past 10 years, purchase price retentions caught up in 2024 and are now on a par with escrow accounts as a form of security (both 38%). Retentions were more popular on small deals (42%), whereas escrow accounts are still the most popular security in medium sized and large deals.

MAC clauses – We had anticipated more MAC clauses in 2022 and 2023, given the political and economic volatility at the time, but the increase was not seen until 2024. Last year the use of MAC clauses increased by 4% to 14%, which might indicate that buyers are regaining a stronger bargaining position. Compared to the US where a MAC clause is included in almost every deal (98%), 14% is still extremely low and indicates that MAC clauses remain uncommon in Europe.

Arbitration – In recent years there has been a steady increase in the use of arbitration as a dispute resolution mechanism. This trend continued in 2024. 42% of all deals included an arbitration clause compared to 37% in 2023. However, it is striking that in 70% of all transactions that use arbitration, national rules are applicable instead of international rules. This may indicate that the parties do not want to the national legal system completely.

Tax – In 2024 a tax indemnity was included in 54% of all deals, which is a 6% decrease compared to the average over the past 10 years. In every other deal every other deal with such a tax indemnity, sellers were granted a right to participate in a future tax audit, which represents an increase of 13% from 37% in 2023 to 50%.

Environmental, Social and Governance (ESG)

While ESG factors in M&A are important, the 2025 Study shows ESG was a consideration in the choice of target in only 3% of deals, with only 7% of deals featuring specific ESG due diligence. 6% of deals had specific ESG provisions in the SPA, with specific ESG warranties being the most common provisions included.

These results indicate a significant decrease in the use of ESG as a consideration in transactions, perhaps as a result of macro-economic and geopolitical trends, particularly in the US. The results of the 2025 Study indicate ESG-specific provisions are going to take a significant period of time to become integral in transaction documentation and that it will take longer for ESG due diligence to become a key part of transaction due diligence.

Specific ESG Due Diligence

NO	YES
93%	7%

100% = all evaluated transactions

Specific ESG Provisions in the SPA

NO	YES
94%	6%

100% = all evaluated transactions

ESG Provisions in the SPA

	2024
DELIVERABLE	0.3%
SPECIFIC WARRANTIES	2.2%
SPECIFIC INDEMNITIES	0.2%
SPECIFIC DILIGENCE TOPICS	0.3%
OTHER	0.7%

We do, however, still believe that ESG will, in time, become an important aspect of M&A, regardless of whether or not ESG protection is included in transaction documents. The ESG demands on all businesses from a regulatory and governance perspective, coupled with demands by third parties to adhere to certain ESG requirements and the global drive to achieving 'Net Zero', mean that ESG considerations will still be a critical factor in dealmaking activity.

Deal drivers

Main deal drivers 2018–2024

	2018–2023	2023	2024
ENTRY INTO NEW MARKETS	42%	36%	49%
ACQUISITION OF KNOW-HOW (WITHOUT ACQUI-HIRE TRANSACTIONS)	20%	16%	19%
ACQUISITION OF A TEAM OF EMPLOYEES (I.E. ACQUI-HIRE TRANSACTIONS)	13%	9%	15%
ACQUISITION OF A COMPETITOR	26%	27%	26%
ACQUISITION OF A SUPPLIER	7%	8%	5%
DIGITALISATION	2%	1%	3%
OTHER	23%	30%	23%

We have analysed the underlying rationale for each of the deals covered by the Study as indicated in this chart. Entry into new markets re-emerged as the most popular driver for transactions (49%), a significant increase of 13% on 2023. Deals undertaken to acquire a competitor have continued to stay broadly flat (26%).

The headline details for 2024 were as follows:

- 49% of the deals represented the entry into a new market by the buyer;
- 34% of all deals were either the acquisition of know-how or acqui-hire transactions;
- 26% of the deals were the acquisition of a competitor.

There were significant increases in transactions for the acquisition of know-how and teams of employees and a more modest increase in deals undertaken for digitalisation. The "other" deal driver dropped 7%, suggesting a move back to more traditional deal drivers. It will be interesting to see whether the use of new technologies, in particular those utilising artificial intelligence, and other tech coming to market, will impact deal drivers in future transactions.

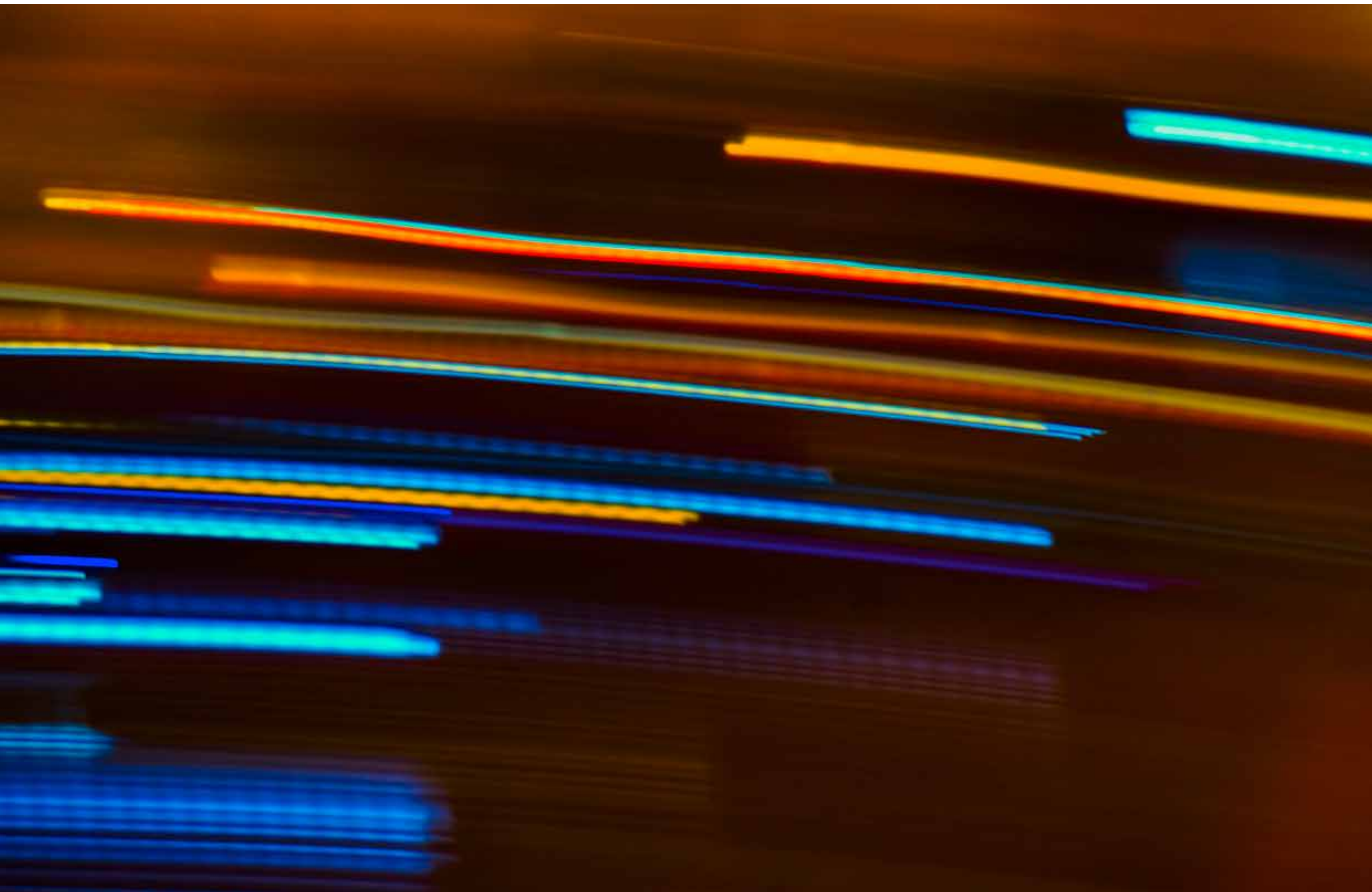
CMS European/US risk allocation comparison

To undertake our annual European/US comparison we compared CMS European data with the equivalent metrics in the SRS 2024 M&A Deal Terms Study **("SRS Report"),** which was published in May 2024. SRS Acquiom provides a suite of M&A transaction services, including to provide virtual data rooms and escrow/payment agent services, and the SRS Report for 2024 analysed deal points from more than 2,100 deals signed between 2018 and 2023.

As a general comment again we can say that we have observed the same differences in market practice between US and Europe as in previous years of the Study, albeit the table below does show some changes to the figures in respect of individual data points.

Earn-outs – We saw an increase in the popularity of earn-outs in both Europe and US in 2024 but the growth in the US was more significant (rising 12% to 33%) such that earn-outs became more popular in the US than in Europe for the first time since 2018. One point to note, however, is that the SRS Report's section on earn-outs does not cover life sciences deals and our experience in Europe is that earn-outs are common in the Life Sciences & Healthcare sector, so the earn-out figures in the US are likely to be even higher.

PPA – Market practice in Europe relating to purchase price adjustments remained consistent at around 46% over the past decade, whilst in the US a PPA is featured in almost all deals (91%). Working capital adjustments remained the most frequently used component of a PPA in the US (90% of deals involving a PPA). In Europe the position was more varied. Working capital adjustments gained popularity in the last three years (to almost 50% of deals with a PPA) but it remains much lower than the equivalent in the US and is often included together with cash/debt adjustments.



Security – Statistics in respect of security for claims remained largely the same as in 2023 in both the US and in Europe. Essentially, in Europe a form of security is included on around a quarter of transactions as compared to two-thirds in the US.

Liability caps/W&I insurance – The prevalence of W&I insurance and the consistent US approach to having low liability caps accounts for 94% of US deals having the seller's liability capped at under 25% of the purchase price. The equivalent figure has risen in Europe but still only 41% of European deals had libility caps at up to 25% of the consideration. The SRS Report notes that approximately 38% of US deals now involve W&I insurance, compared to 24% across Europe as a whole. However, as noted elsewhere in this Study, W&I insurance (i) is not popular on lower value transactions in Europe and (ii) is not uniformly popular in different European territories – for example, the relevant data in the UK and for higher value deals is more consistent with the W&I figures in the US.

***De minimis*/Basket –** Whilst there was a 9% growth in the use of a *de minimis* in the US, they are still much less common than in Europe (27% compared to 70%). We believe the reasonably high feature of (i) 'excess only' baskets and (ii) W&I insurance in the US makes the need for a *de minimis* less obvious. The basis for recovery pursuant to the basket limitation clause was different. The use of 'excess only' baskets was significantly higher in the US. In Europe 'first dollar' baskets are more common. In the US 90% of all analysed deals or of the analysed deals have a basket equal to 1% or less of the purchase price. In Europe there is more variety, with deals involving baskets at 1% or less increasing to 65% in 2024.

The table below sets out a quick reference of the differences described above and also a comparison to the data from 2023.

Europe/US differences

	2023 EUROPE	2024 EUROPE	2023 US	2024 US
PURCHASE PRICE ADJUSTMENT	44%	48%	94%	91%
WORKING CAPITAL ADJUSTMENT	49%	47%	87%	90%
EARN-OUT DEALS	23%	25%	21%	33%
DE MINIMIS	70%	70%	18%	27%
BASKET	64%	62%	81%	81%
BASKET THRESHOLD (1% OR LESS)	59%	64%	89%	90%
'EXCESS ONLY' RECOVERY (BASKET)	14%	12%	42%	52%
'FIRST DOLLAR' RECOVERY (BASKET)	86%	88%	38%	47%
SUB-25% LIABILITY CAPS	38%	41%	93%	94%
MAC CLAUSES	10%	14%	97%	98%
SECURITY FOR CLAIMS	23%	25%	66%	67%
W&I INSURANCE USED	16%	24%	40%	38%

CMS deal size analysis

The Study describes deals as 'small', 'medium sized' and 'large' depending on the values involved and highlights differences in deal terms between them. The deal sizes we use are as follows:

- Deals with values of up to EUR 25m are the small deals;
- Deals with values of between EUR 25m and EUR 100m we call medium sized deals; and
- Deals with values over EUR 100m are the large deals.

The table below shows the highlights for 2024.

We identify below (i) some changes since last year and (ii) the main differences, in each case, when comparing between deal sizes.

PPA/Locked Box – The increase in the number of PPA deals overall was seen in both small and medium sized deals but there was a 3% fall in the figure for large deals which, given the very large proportion of locked box deals, indicates that on large deals the parties prefer to fix the price on completion. In contrast, the growth in locked box deals overall was not seen on small deals.

Earn-outs – Consistent with prior years, earn-outs were most frequently used on small deals and are least popular on large deals. The growth in earn-outs generally was seen both on small and medium sized deals but there was a fall in popularity (by 11%) on large deals. With fewer earn-outs on large deals, we also saw 'other' criteria used to determine how the earn-out was determined either along with EBIT/EBITDA or Turnover (as multiple criteria could be adopted). We also saw that longer earn-out durations on large deals.

Liability Caps – We continue to note that medium sized and large deals feature low liability caps. We also note a rise in lower liability caps (both under 10% and under 25%) across all deal sizes, which is consistent with the increased popularity of W&I insurance across all deal sizes.

2024 results at a glance

Deal size comparison

	< EUR 25M	EUR 25M – 100M	> EUR 100M
PURCHASE PRICE ADJUSTMENT (PPA)	44%	59%	49%
LOCKED BOX (NO PPA)	50%	91%	81%
EARN-OUTS	29%	22%	11%
— SHORT EARN-OUTS (12 MONTHS OR LESS)	27%	32%	26%
— LONG EARN-OUTS (MORE THAN 36 MONTHS)	14%	27%	50%
— EBIT/EBITDA-BASED EARN-OUTS	46%	58%	25%
— TURNOVER-BASED EARN-OUTS	29%	12%	25%
LIABILITY CAP (LESS THAN 10% OF PRICE)	10%	28%	55%
LIABILITY CAP (LESS THAN 25% OF PRICE)	28%	53%	68%
W&I INSURANCE USAGE	8%	45%	72%
LIMITATION PERIOD (OF MORE THAN 24 MONTHS)	28%	31%	26%
SECURITY FOR WARRANTY CLAIMS	63%	26%	11%
ESCROW ACCOUNT (IF SECURITY FOR WARRANTY CLAIMS IS AGREED)	30%	43%	69%
MAC CLAUSE	10%	24%	18%
ARBITRATION	61%	26%	13%
TAX INDEMNITY CLAUSE	46%	69%	70%

W&I insurance – 2024 again showed the continuing trend that W&I insurance is more likely to be adopted on large deals. However, we commented in 2023 and 2024, that new W&I insurers had entered the market with a focus on SME deals and offering lower minimum premiums, and this now appears to have translated into more W&I insurance policies being purchased also on small deals (a 4% increase to 8%). W&I insurance was purchased on nearly three-quarters (72%) of large deals (a 25% increase from 2023). There was also a 8% increase in usage to 45% on medium sized deals.

Limitation Periods – There was a buyer friendly trend seen in respect of limitation periods across all deal sizes in 2024, with growth in longer limitation periods (longer than 24 months) – this was most clearly seen on medium sized deals, with an 11% increase to 31%.

Security – The frequency of a form of security being used on deals was largely static on small and medium sized deals but rose 9% on large deals. Where there is security, on small deals the form of security is most likely to be a retention or holdback, whilst on large deal, it is typically an escrow account.

MAC – The use of MAC clauses overall rose in Europe (reversing the trend from recent years). This rise was most obviously demonstrated in medium sized deals (increasing by 11% to 24%). MAC clauses are least popular on small deals (10%).

Tax – 2024 continued the trend from 2022 and 2023 that tax indemnities are most frequently deployed on medium sized and large deals (with 5% growth across both deal sizes). In contrast, for small deals, there was a continued fall in the use of tax indemnities.

CMS European regional differences

As we have seen in previous editions of the Study we continue to see sizable differences in market practice on certain deal metrics across European regions, with the highlights as follows:

- The majority of deals have liability caps of less than 50% of the purchase price but it is noticeable that this continues to be in the minority in the UK and CEE.
- In 2024, 'first dollar' baskets were almost universally used on all deals in Benelux, CEE, the Nordics and the UK.
- The take up of W&I insurance continues to be most prevalent in the UK and increased by 13% from 2023. There were also significant increases in the use of W&I Insurance in France (up 11%) and the German-speaking countries (up 14%).
- Limitation periods for warranty claims are generally for 24 months or less but it was notable that those of more than 24 months increased by 4%. The majority of deals in CEE had limitation periods of more than 24 months and there were also increases in the Southern European countries (up 9%) and the UK (up 11%).
- The use of MAC clauses varied significantly across Europe, with the highest number of deals with MAC clauses being in CEE at 32% of deals. MAC clauses are rarely used in Benelux, the UK or the German-speaking countries.

We have set out below some continued trends and variations concerning the relevant metrics across Europe as follows:

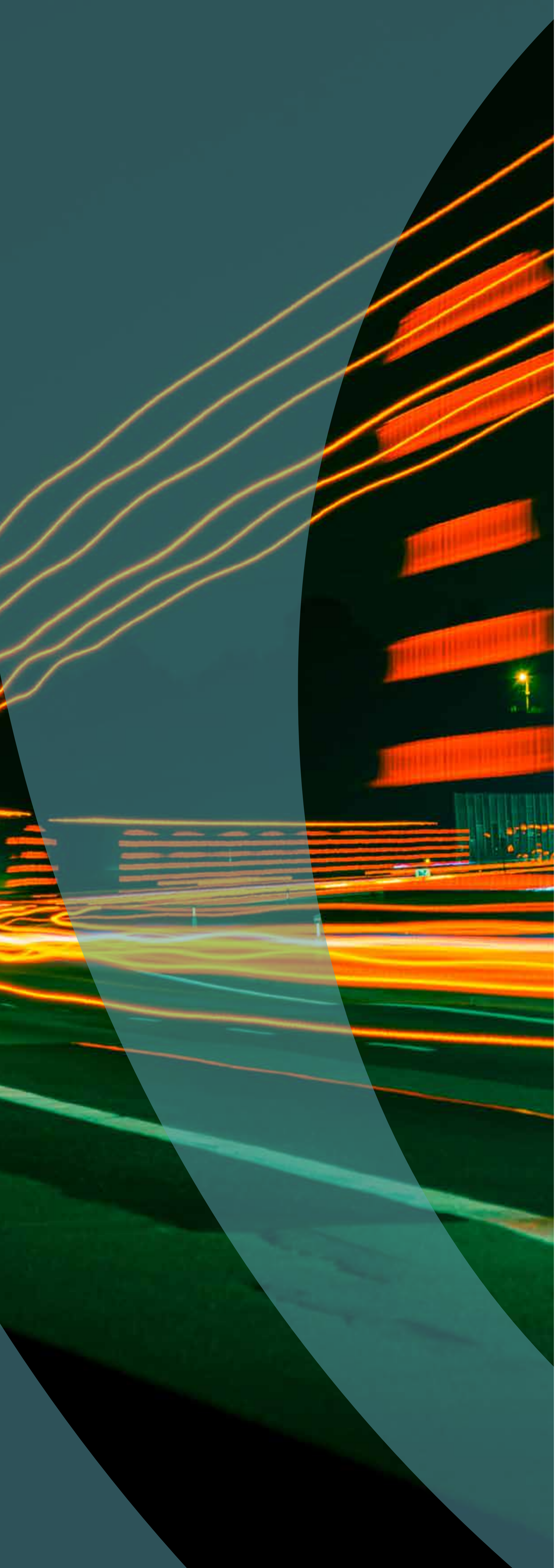
PPA/Locked Box – PPA clauses were most popular in the Southern European countries (73%), CEE (53%) and the UK (53%), but there was a big decrease in Benelux from 46% in 2023 to 41% in 2024. The number of deals in CEE with PPA clauses increased significantly by 10% from 2023, as it did in the Nordics, which saw an increase of 16% to 29%. PPAs continued to be less popular in France (36%) and the German-speaking countries (40%), although the figures for France and the German-speaking countries remained stable at 36% and 40% respectively. For non-PPA transactions, locked boxes are most common in Benelux (75%), France (83%, up by 8%) and the German-speaking countries (72%). The UK is below the average, having 49% of deals with locked box transactions, with the Southern European countries (56%), CEE (48%) and the Nordics (50%) making up the rest.

Earn-outs – As compared with the average of 25%, the German-speaking countries (30%) and the Nordics (41%) stand out as being above average. Excluding these two regions, the others were all within 4% of 20%, suggesting that the Nordics, up 13% on 2023, may be skewing the average for 2024. Benelux also saw a big decrease of 13% on 2023.

Financial Limitations – The consistency across Europe in the application of some form of *de minimis* and basket financial limitation in the majority of deals continues from previous years, although there were significant drops in the use of *de minimis* provisions in Benelux (down 8%), CEE (down 7%) and the UK (down 9%). This was countered by increases in France (up 8%), the German-speaking countries (up 12%) and the Southern European countries (up 5%).

The use of basket provisions was consistent across Europe, with all regions above 50% except France (45%). It is noticeable that only the German-speaking countries saw an increase in the use of basket provisions (up 11% from 62%).

Market practice in the use of liability caps at more than 50% of the purchase price continued to vary greatly between regions and countries, with CEE (55%) and the UK (51%) at one end of the scale on Benelux (31%) and the German-speaking countries (31%) at the other end. Noticeable changes since 2023 include a 14% drop in CEE, a rise of 11% in France and a rise of 8% in Benelux.



W&I insurance – As we have previously mentioned in this Study, W&I insurance remained most popular in the UK, whereas the uptake in other countries is proving slower, as brokers and insurers establish a presence. The UK remained the stand-out country, with the use of W&I insurance on deals increasing by 13%. The second highest region is now the German-speaking countries (up 14% to 26%), with France also showing a significant increase of 11% on 2023. The use of W&I insurance showed a small increase in CEE (up 3%) and the Nordics (up 6%), whereas Benelux has remained flat. The Southern-European countries experienced a 5% decline (down to 9% in 2024) from 2023.

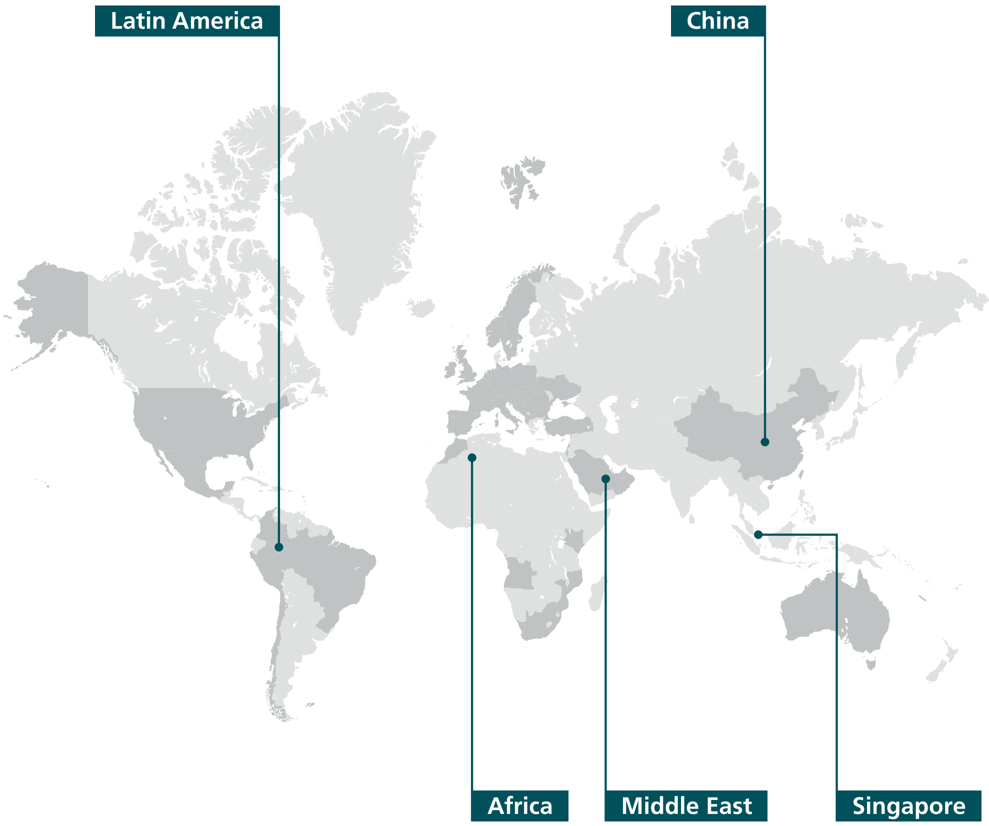
Limitation Periods – As identified in more detail in this Study, and consistent with previous editions, most limitation periods within Europe were for 24 months or less. In countries where there was an exception to this, CEE remained stable at 56% of deals. France dropped from 64% to 44% and there was an increase of 9% for Southern European countries. Other regions which experienced an increase in limitation periods greater than 24 months included the UK (up to 23%) and Benelux (up to 19%).

MAC clauses – There was an increase in the use of MAC clauses to a European average of 14% in 2024. This is in line with the 2014 – 2023 average and an increase of 4% on 2023. Benelux (7%) and the UK (9%) were at the lower end of deals with MAC clauses, with these results continuing to show consistency across certain European regions. On the higher end were CEE (32%), France (14%, up by 8%) and the Southern European countries (27%), with the Southern European countries showing a huge 13% increase since 2023.

Arbitration – This Study has always seen a wide range in the use of arbitration provisions as compared with resolution through the local court systems, and this continued in 2024. The European average was 42% of deals. Those countries that consistently applied arbitration continued to have a high percentage of deals that used these clauses – predominantly CEE (which saw a 6% increase, to 82%, since 2023). There was a significant rise in the use of arbitration provisions in the Nordics (up to 82% on the 2023 results) with smaller increases in the German-speaking countries (up 5%), France (up 2%) and Benelux (1%). Arbitration provisions continue to be least used in the UK and France.

CMS markets outside Europe

Our colleagues in CMS offices in Africa, China, Latin America, Middle East and Singapore have commented on specific differences in market practice on the M&A transactions on which they advised as follows:



Africa

Deal structuring in Africa is evolving, with trends shaping transactions across key sectors. Private equity investments in infrastructure, telecoms, and green energy are rising, aligning with ESG priorities. As 2025 unfolds, dealmakers must balance geopolitical risks with emerging opportunities.

In **Angola,** privatization under PROPRIV is driving deals, with W&I insurance and deferred payments used to mitigate risks. In **Kenya,** business-friendly reforms and digital registries are boosting investor confidence, while PPPs and privatization deals feature contingent pricing and government-backed guarantees. In **Mozambique,** mid-sized business transactions remain active despite oil and gas project delays. In **South Africa,** mining deals are rising, with renewable energy demand driving investment in battery minerals and independent power producers (IPPs).

China

In China, arbitration is the predominant mechanism for resolving disputes. *De minimis* clauses and earn-outs are commonly used, while MAC clauses remain relatively rare. Specific ESG provisions in SPAs are still an exception.

Latin America

The M&A market in Latin America is showing signs of recovery, with risk allocation trends favouring sellers.

Representations & Warranties clauses, which were previously more common in cross-border transactions, are now becoming increasingly prevalent in domestic deals within the same jurisdiction. Similarly, price determination and adjustment mechanisms, such as the locked box, are gaining traction – not only in cross-border transactions, where they were already well-established, but also in local transactions.

We have also observed a growing acceptance of local laws as the governing law for SPAs. In such cases, parties typically opt for arbitration and often agree that the arbitral tribunal should include one or two international arbitrators or that the arbitration seat should be in a different jurisdiction from the governing local law.

Additionally, there is a rise in transactions involving regional Latin American players – buyers who already have assets, interests or a presence in the region and therefore possess a deeper understanding of the market, its risks and its nuances. The exit of certain private equity funds, driven by the maturity of their investments, presents an opportunity for both investors already active in Latin America and international players with experience in similar emerging markets.

Middle East

Locked boxes are less common in the region compared to Europe. Although they are somewhat more prevalent than in the past, completion accounts still tend to dominate, reflecting a preference for ensuring value for money and a general scepticism towards the reliability of locked box accounts and audited accounts. Limits of liability generally align with UK trends in terms of threshold levels. *De minimis* clauses are typically present, unlike in Europe where 25 – 30% of deals may lack them. Baskets tend to be 'first dollar', and liability caps typically range between 10 – 50% depending on the deal size.

W&I Insurance is becoming increasingly prevalent in the market and is generally a buy-side policy. General warranty periods rarely exceed two years, with the most common duration being between 12 – 24 months. Datarooms are typically disclosed. Security for claims usually involves retention or escrow, with bank guarantees and other forms rarely being seen. MAC clauses are unusual in the region. Arbitration is more common than court proceedings, contrasting with Europe's preference for courts. It is considered the default standard due to a lack of confidence in local courts.

Singapore

Escrows are much less common on deals these days and are fairly expensive to put in place, with the KYC process becoming extremely difficult to clear. Whilst we encountered one (seller requested) escrow arrangement, escrows are certainly not the norm these days.

MAC clauses are here to stay and will continue to become far more bespoke than they have ever been, considering the current state of the world and the increasingly uncertain deal environment which transacting parties need to navigate. Given today's heightened risk environment, 'market standard' carve-outs are an endangered species.

Locked Boxes are almost as common now on Asia M&A deals as the more traditional purchase price adjustment mechanism for determining the purchase price. While locked boxes have historically been seen as a seller-friendly completion mechanism, locked boxes are also becoming increasingly appealing to buyers for the same reason – locked boxes provides, certainty of purchase price at the time the SPA is signed, remove need for the usually heavily negotiated and time-consuming process of drafting purchase price adjustment mechanism provisions, and reduce the potential for disputes to arise when it comes to determining the final purchase price post-completion.

Purchase price adjustment (PPA)/Locked box

Purchase Price Adjustment (PPA) clauses are designed to ensure the correct purchase price is ultimately payable by the buyer for the target business. Adjustments can arise by reference to the target company's debt and cash position or to its working capital or overall net asset position at completion. The parties to the sale and purchase agreement thereby achieve certainty that the final purchase price reflects the actual debt, cash, working capital or net asset position.

PPA provisions can mean there is uncertainty as to the final purchase price at the time of completion. A significant period of time may elapse before the price is agreed or determined. Parties may feel this is unhelpful or impractical and therefore include 'locked box' provisions to avoid post-completion price adjustment. In such cases, an agreed balance sheet is warranted by the sellers and the SPA includes undertakings that no unpermitted payments (called 'leakage') (e.g. dividends and management charges) will be made by the target. There is normally an agreed list of specific items that qualify as 'permitted leakage' for greater certainty.

General Overview

In 2024 there was an increase in the use of purchase price adjustment clauses in M&A agreements (by 4%, returning to the same level as 2022). This figure remains a significant minority and PPA clauses can be considered to be standard provisions of an M&A transaction. The increase suggests that a significant proportion of buyers were able to insist on PPA provisions. There was also an increase of 4% in the use of locked box arrangements for non-PPA transactions (60% in 2024 compared with 56% in 2023), which is 5% above the average usage of 55% for the period 2014 to 2023.

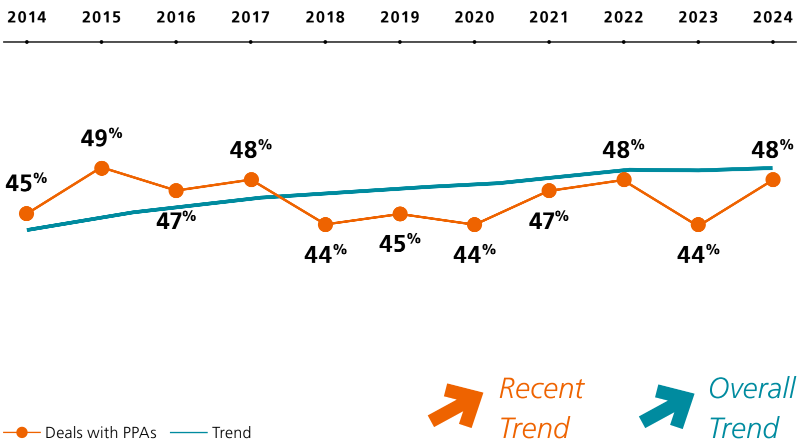
PPA provisions remain prevalent on deals, being included in a significant minority of transactions, suggesting buyers are often able to insist on such adjustments

PPA Ratio 2024

48%

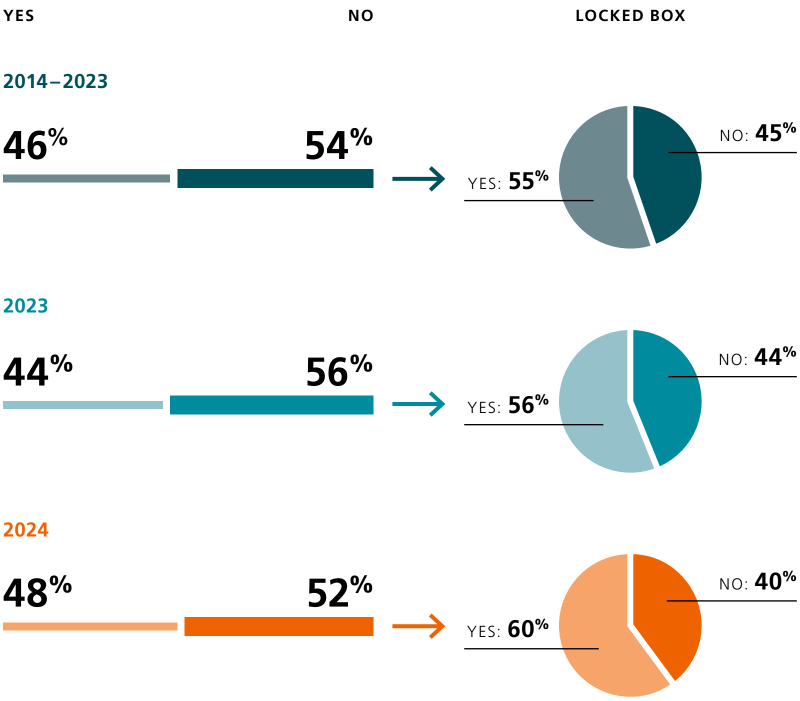
CMS Trend Index

Purchase Price Adjustment



Locked Box 2014–2024

Purchase Price Adjustment



100% = all evaluated transactions

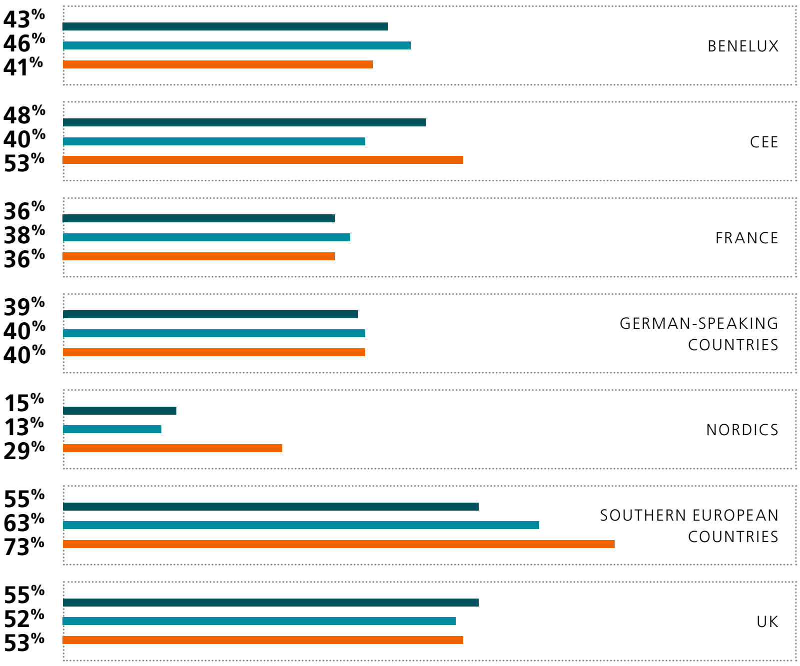
Specific Issues

Regional Differences

The use of PPAs continued to vary across the European jurisdictions. There were large increases for CEE, the Nordics and the Southern European countries, up 13%, 16% and 10% respectively. There was a 5% decrease in the use of PPAs in Benelux while the other regions remained broadly constant.

Time Trend Europe

Purchase Price Adjustment



100% = all evaluated transactions

No data for Nordics before 2022 available

The use of a locked box structure in non-PPA transactions increased to 60%

PPA Usage in the Southern European countries

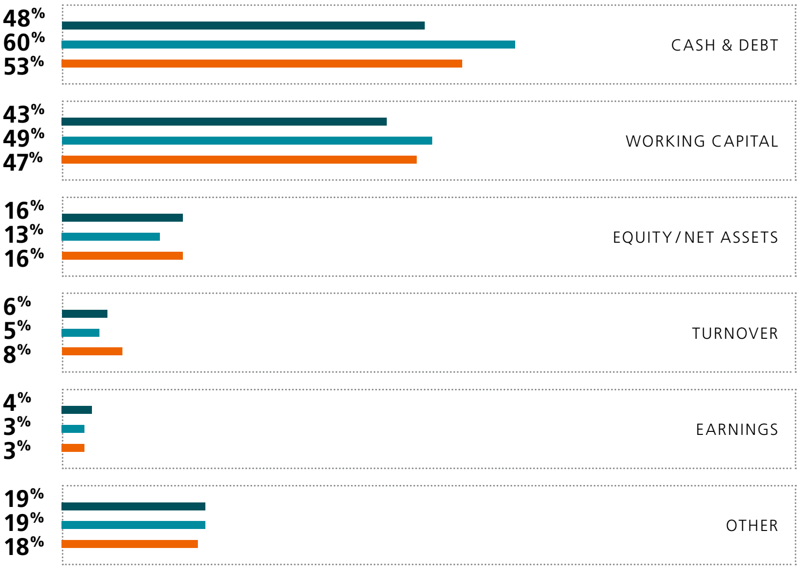
73% ↗

Net Debt/Working Capital Adjustments

Cash & Debt and working capital are by far the predominant elements in calculating PPAs. The application of cash/debt as the adjustment factor in a PPA transaction dropped 7% to 53%, which remains above the 48% rate for the period 2014 to 2023. The use of working capital as an adjustment factor dropped 2% to 47% and also remained above the 2014 to 2023 average of 43%. The statistics suggest that working capital price adjustments, combined with a calculation of the cash/debt position of the target, represent a normal position for European transactions.

Chosen Criteria

Purchase Price Adjustment



● 2014–2023 ● 2023 ● 2024

Cash & debt does not include 'cash only' and 'debt only'

100% = all transactions including a purchase price adjustment – multiple criteria may apply

Net cash and working capital are the predominant elements in calculating PPAs

Sector Differences

While the average use of locked boxes was 60% of non-PPA transactions, there were huge differences between sectors, with Banking & Finance, Infrastructure & Projects, Industry, Business (other services) and Life Sciences & Healthcare significantly above the 60% average and Hospitality, Travel & Leisure (at only 21%) significantly below this average. There were very noticeable declines in the application of locked boxes in non-PPA transactions in Hospitality, Travel & Leisure (down 41% on 2023), Consumer Products (down 13%) and Technology, Media & Communications (down 11% on 2023). Conversely, there were significant increases in Infrastructure & Projects (up 30% on 2023), Energy & Climate Change (up 23% on 2023) and Real Estate (up 23% on 2023). It is difficult to draw any firm conclusions, given the relatively wide variation in locked box use between sectors and the year-on-year changes, except to note that the 2024 average is an increase of 4% on 2023 and above the 2014 to 2023 average.

Frequency of Locked Box Mechanism

Non PPA Transactions

SECTOR	2014 – 2023	2023	2024
BANKING & FINANCE	59%	53%	60%
HOSPITALITY, TRAVEL & LEISURE	51%	62%	21%
ENERGY & CLIMATE CHANGE	52%	35%	58%
CONSUMER PRODUCTS	60%	55%	42%
TECHNOLOGY, MEDIA & COMMUNICATIONS	57%	63%	52%
INFRASTRUCTURE & PROJECTS	46%	50%	80%
LIFE SCIENCES & HEALTHCARE	59%	71%	68%
REAL ESTATE	37%	30%	53%
INDUSTRY	62%	69%	73%
BUSINESS (OTHER SERVICES)	58%	70%	71%
CMS AVERAGE	55%	56%	60%

100% = transactions with no purchase price adjustment mechanism in the respective sector

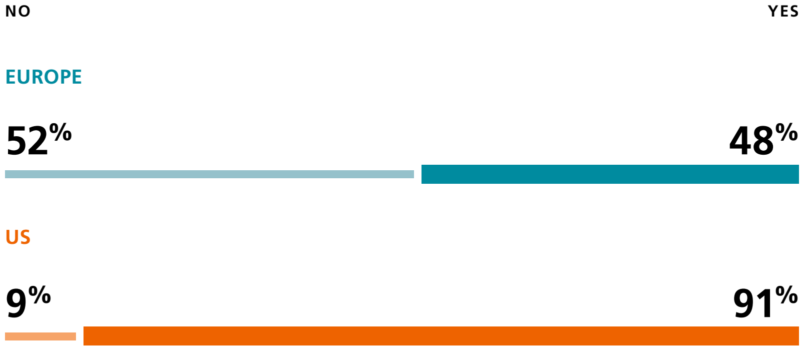
Locked box usage in the Infrastructure & Projects sector

80%

European/US Differences

As indicated above, the use of PPA provisions in deals remained in a significant minority (at 48% in 2024) across all European jurisdictions, and was far behind US practice, where PPAs were used in nearly all deals (at 91%). Most US deals (90%) included an adjustment in respect of the target's working capital as determined at completion of the transaction. PPA can be considered standard in the US. In European deals there continued to be more scope for negotiation as to the preferred approach to PPA provisions.

Europe/US
Purchase Price Adjustment



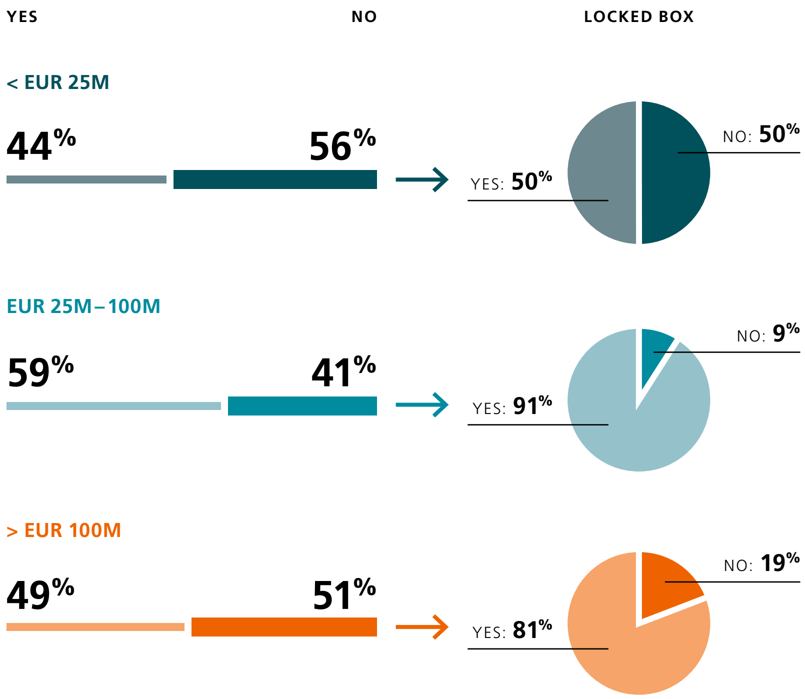
100% = all evaluated transactions

Analysis by Deal Size

The increase in the use of locked boxes in non-PPA transactions was not reflected in small deals and the biggest increase was in medium sized deals. For large deals locked box usage in non-PPA transactions was 81%.

The increase of locked boxes in non-PPA transactions was most significant in medium sized deals

Deal Size 2024
Purchase Price Adjustment



100% = all evaluated transactions
100% = transactions with no purchase price adjustment mechanism
(deals containing purchase price adjustment and locked box at the same time are not included)

Earn-out

In an earn-out the buyer makes one or more additional payments after completion, usually depending on the financial performance of the acquired business over a defined period. Sellers may achieve a higher price through an earn-out but often will be required to remain with the business (exposed to leaver provisions) and must wait to receive the additional consideration.

General Overview

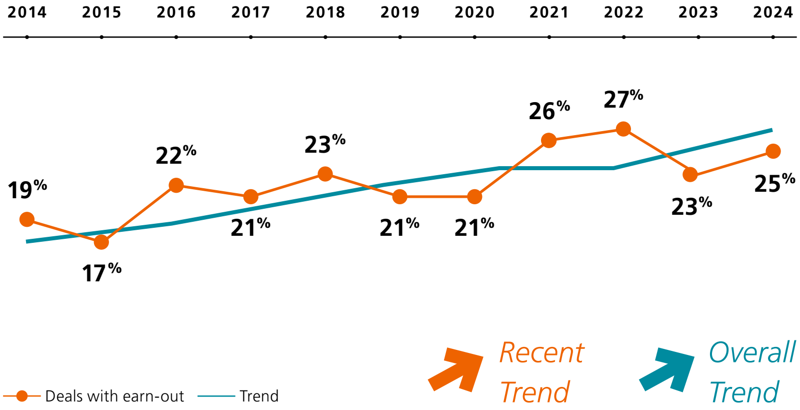
There was an increase in earn-outs in 2024, albeit not reaching the same levels seen in 2021 and 2022, with their use increasing by 2% to 25%. This outcome is consistent with the overall positive trend in earn-outs over the last decade and represents the third highest figure in that period and 3% higher than the rolling average (22%). As the financial performance of businesses has stabilised post-pandemic we had expected earn-outs to become more prevalent, especially in sectors such as Life Sciences & Healthcare and Technology, Media & Communications where they have traditionally been popular.

Earn-out popularity

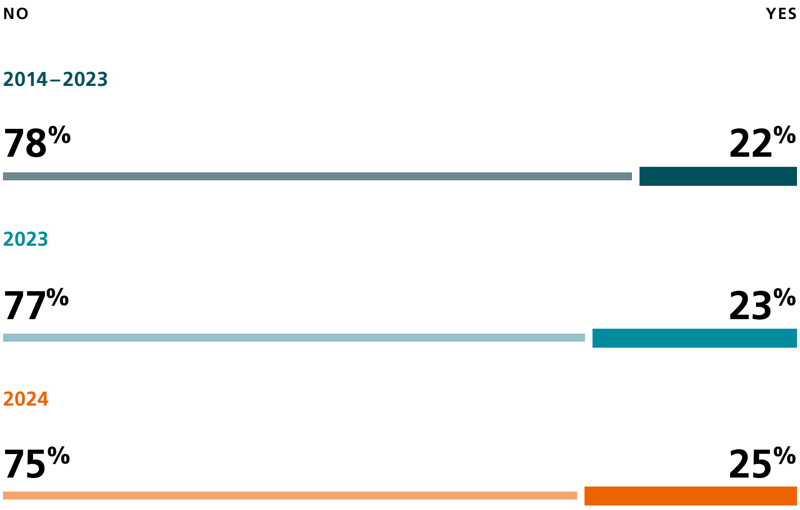
Growth in popularity of earn-outs

CMS Trend Index

Earn-Outs



Earn-out 2010–2024



100% = all evaluated transactions

Specific Issues

Sector Differences

Together with the overall increase generally, we noted increases in the popularity of earn-outs in sectors not usually associated with deploying them – Infrastructure & Projects (44%), Energy & Climate Change (22%), Banking & Finance (33%) and Real Estate (18%). People-led or creative sectors – Life Sciences & Healthcare and Technology, Media & Communications (TMC) and Consumer Products again demonstrated that earn-outs are customarily adopted in these industries. Hospitality, Travel & Leisure experienced a significant fall in the use of earn-outs (down 11% to 6%) but this would not be a sector typically known for earn-outs.

Frequency of Earn-out Mechanism

Earn-Outs

SECTOR	2014–2023	2023	2024
BANKING & FINANCE	20%	25%	33%
HOSPITALITY, TRAVEL & LEISURE	12%	17%	6%
ENERGY & CLIMATE CHANGE	17%	14%	22%
CONSUMER PRODUCTS	22%	24%	19%
TECHNOLOGY, MEDIA & COMMUNICATIONS	29%	29%	32%
INFRASTRUCTURE & PROJECTS	15%	14%	44%
LIFE SCIENCES & HEALTHCARE	39%	33%	31%
REAL ESTATE	12%	11%	18%
INDUSTRY	21%	24%	24%
BUSINESS (OTHER SERVICES)	24%	31%	25%
CMS AVERAGE	22%	23%	25%

100% = all evaluated transactions of the respective sector

Earn-out growth in multiple sectors

Earn-out Determination

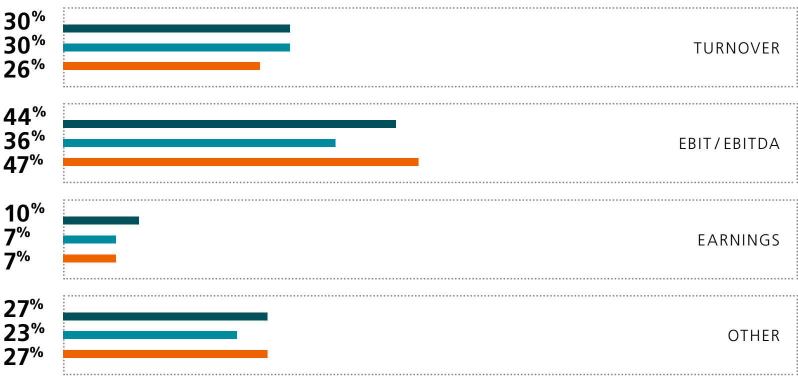
EBIT/EBITDA retained the No. 1 ranking as the most popular metric on which to determine an earn-out and with a significant 11% increase in frequency from 36% in 2023 to 47% in 2024. Correspondingly, there was a material decrease (by 4%) in the use of Turnover/Revenue as the criterion to measure an earn-out.

EBIT/EBITDA-based earn-outs

47% ↗

Time Trend

Earn-Outs



● 2014–2023 ● 2023 ● 2024

100% = all transactions including an earn-out clause – multiple criteria may apply

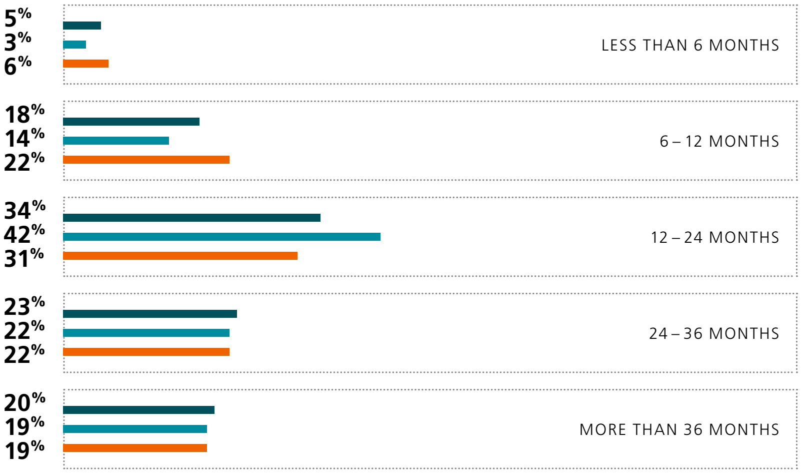
Earn-out Duration

The growth overall in the frequency of earn-outs was countered by a seller-friendly trend in 2024, with an increase in shorter earn-out periods. There were notable rises in earn-out durations of six to 12 months (up 8% to 22%) and less than six months (up 3% to 6%). This resulted in a marked fall in earn-outs of between 12 to 24 months (down 11% to 31%), albeit this remained the most common duration overall. Longer earn-out periods (24 months and longer) remained static.

> *Earn-out durations of 12 to 24 months remain most popular*

Duration of Time Periods Relevant for Assessment

Earn-Outs



● 2014–2023 ● 2023 ● 2024

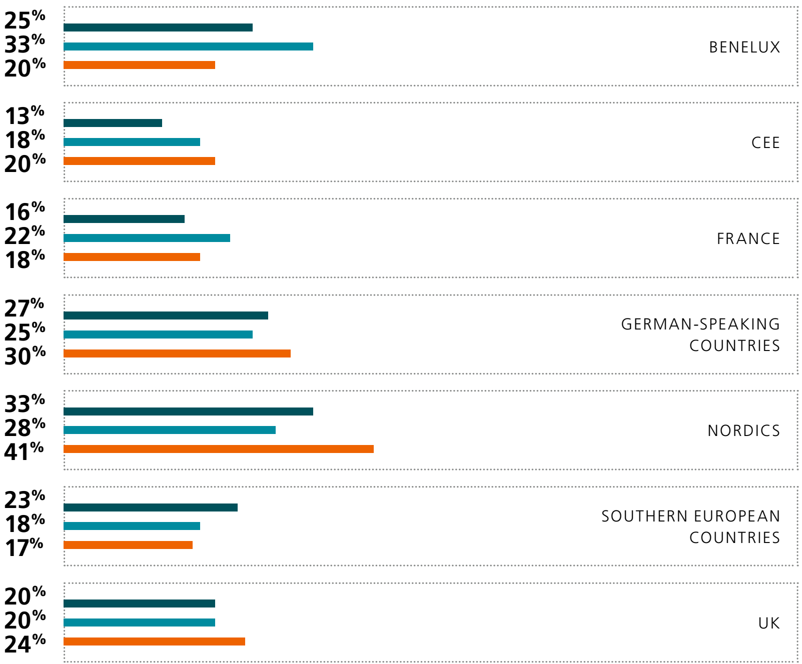
100% = all transactions including an earn-out clause

Regional Differences

The Nordics, UK, the German-speaking countries and CEE all evidenced a rise in earn-out use in 2024, consistent with the overall trend and in all cases with percentages higher than the 10 year average. There were, however, falls in frequency in France, Southern European countries and most notably in the Benelux (showing a reversal from 2023's large rise in that region).

Time Trend Europe

Earn-Outs



● 2014–2023 ● 2023 ● 2024

100% = all evaluated transactions

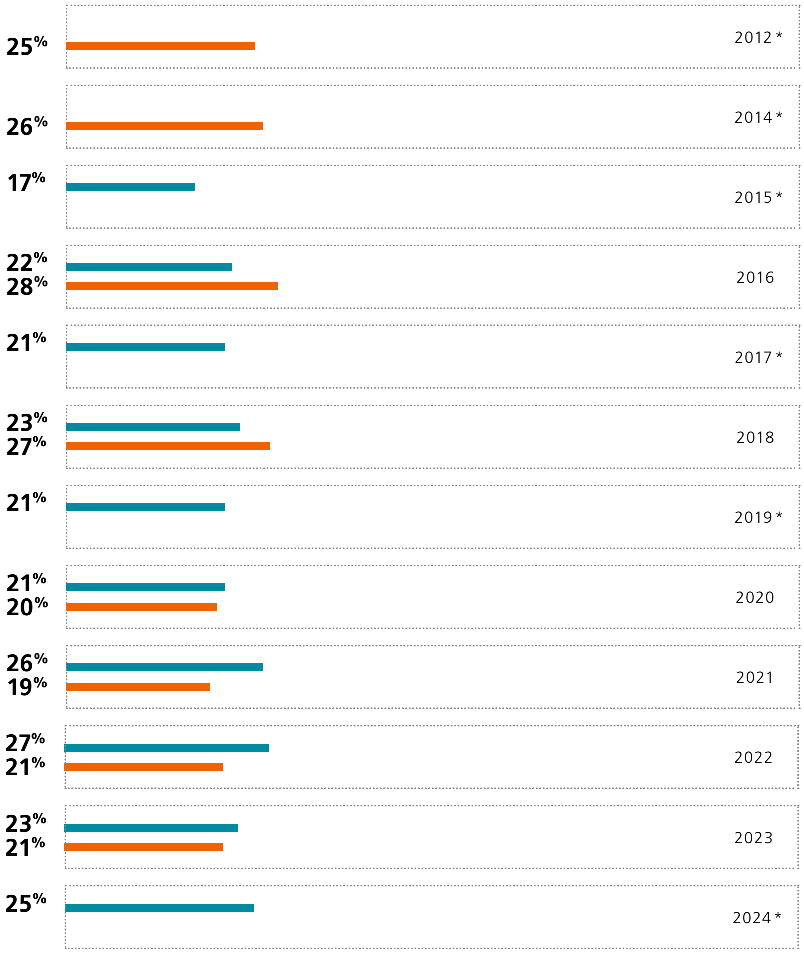
No data for Nordics before 2022 available

European/US Differences

The increase in the use of earn-outs in the US seen in 2023 was again experienced in 2024, with a rather dramatic 12% increase and earn-outs being more popular in the US than in Europe for the first time since 2018. 2024 again demonstrated the notable divergence between European and US market practice in terms of earn-outs metrics, with EBITDA/EBIT being more popular in Europe but Turnover/Revenue most commonly used in the US.

Europe/US

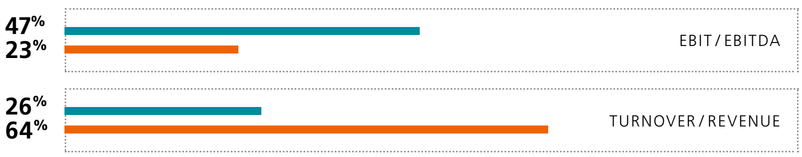
Earn-Outs



Europe US
100% = all evaluated transactions
* No data available

Earn-out Europe/US

Earn-out criteria



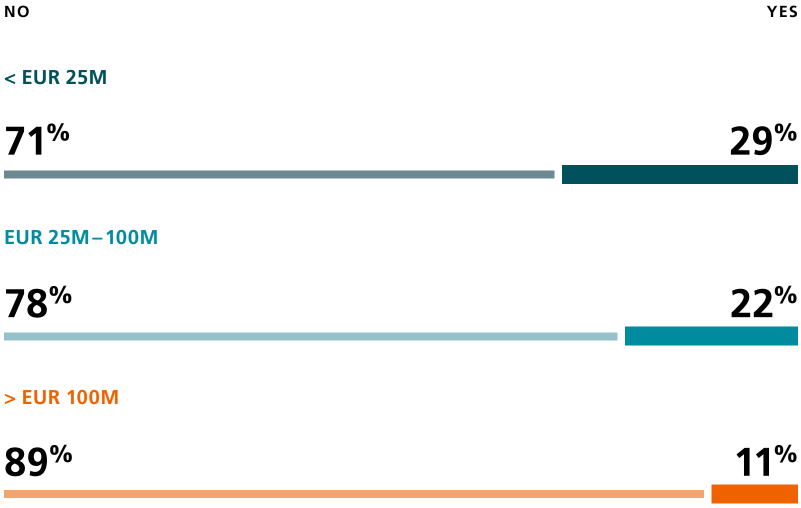
Europe US
100% = all evaluated transactions with an earn-out mechanism

Analysis by Deal Size

These three graphs highlight certain differences in the earn-out data depending on transaction value. 2024 was again a year where earn-outs clearly were most frequently used on small deals and there was a marked decline in their use on large deals. With fewer earn-outs on large deals, we also saw 'other' criteria used to determine how the earn-out was determined, either along with EBIT/EBITDA or Turnover (as multiple criteria could be adopted).

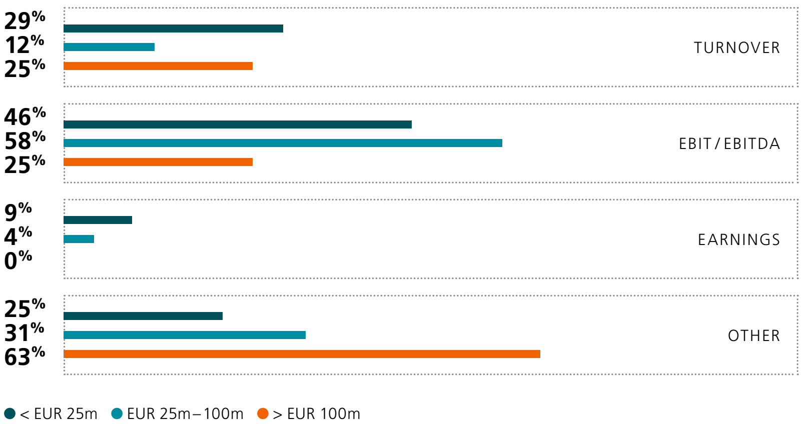
Earn-outs less common on deals > EUR 100m

Deal Size
Earn-Outs



100% = all evaluated transactions

Comparison of criteria
Earn-Outs by Purchase Price 2024

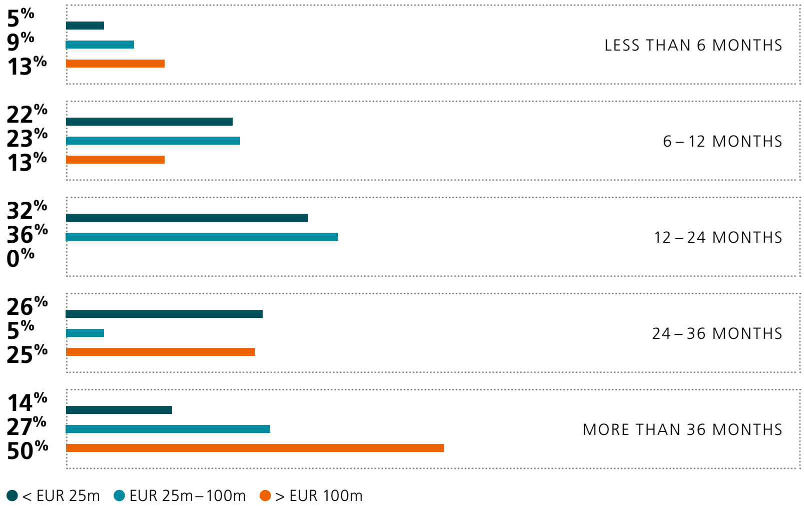


100% = all transactions including an earn-out clause

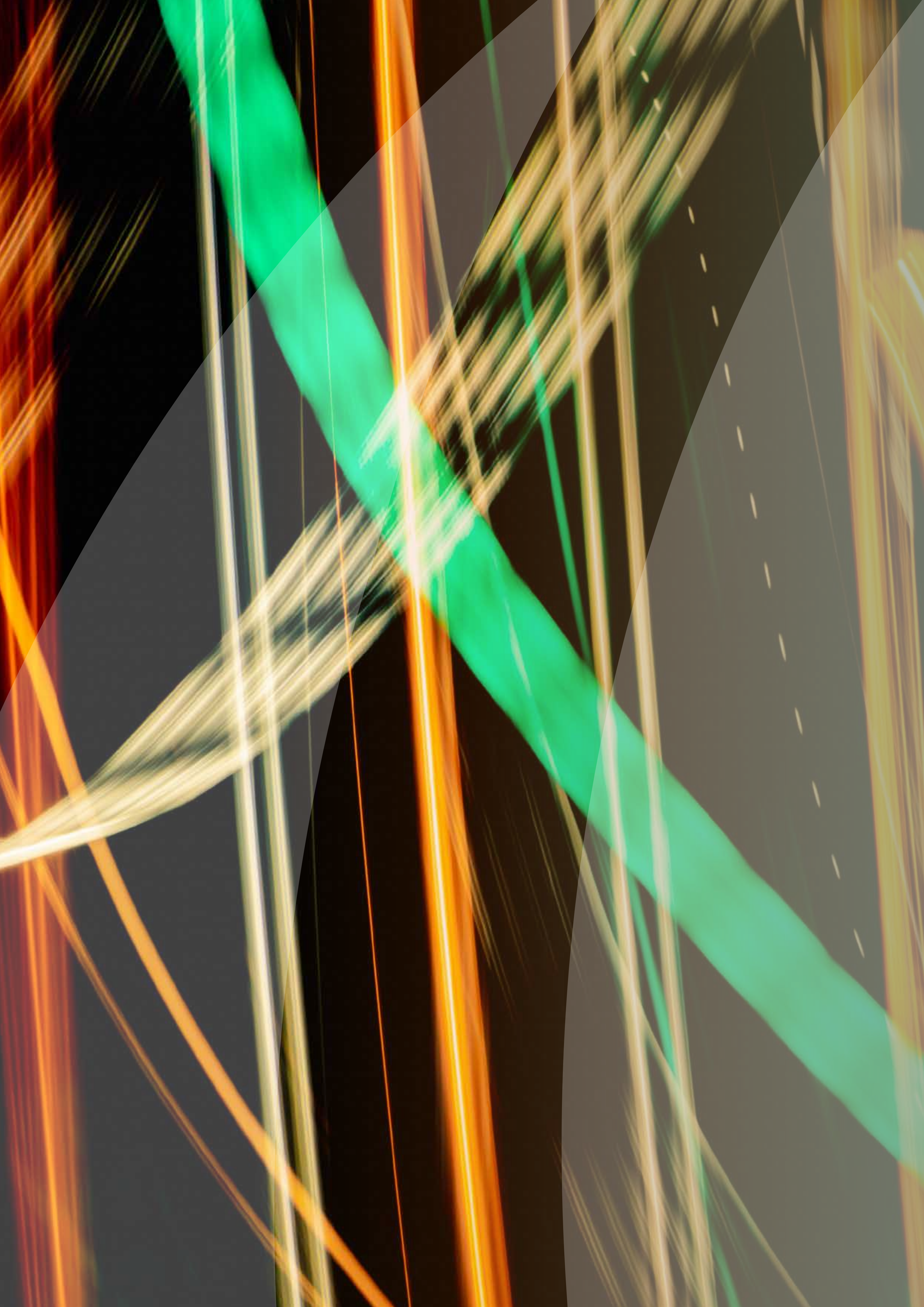
We also saw longer earn-out durations on large deals.

Duration of Time Periods Relevant for Assessment

Earn-outs



100 % = all transactions including an earn-out clause



De minimis

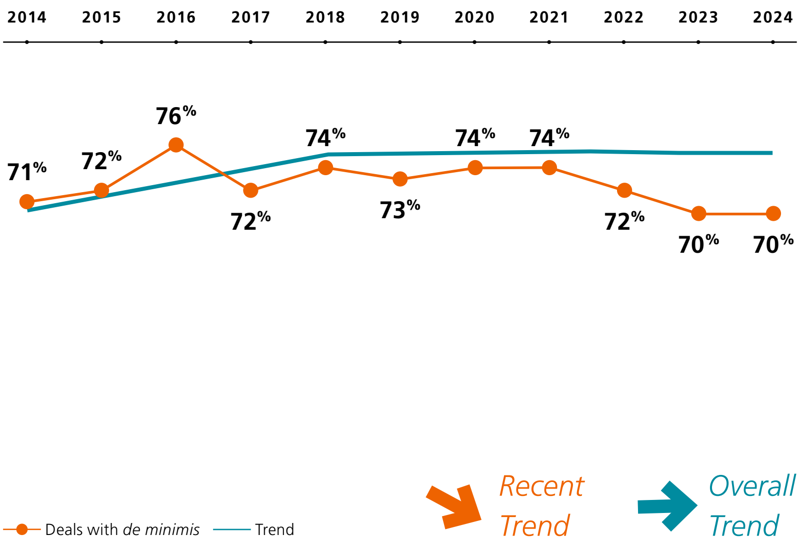
Most M&A agreements provide that the buyer cannot bring certain warranty claims below an agreed minimum amount, often referred to as the *de minimis*. If a warranty claim is less, then the claim is automatically excluded. The seller is thereby protected from potential liability for small claims. However, the *de minimis* arrangement may not be appropriate for deals with full W&I insurance cover, as this is reflected in the W&I insurance policy itself.

General Overview

The number of transactions with a *de minimis* clause remained constant at 70%, remaining at the lowest this figure has been. This demonstrates that, while a *de minimis* is now the market norm across most European jurisdictions, there may be room for negotiation to remove the *de minimis* threshold in certain deals (e.g. involving W&I insurance).

CMS Trend Index

De Minimis

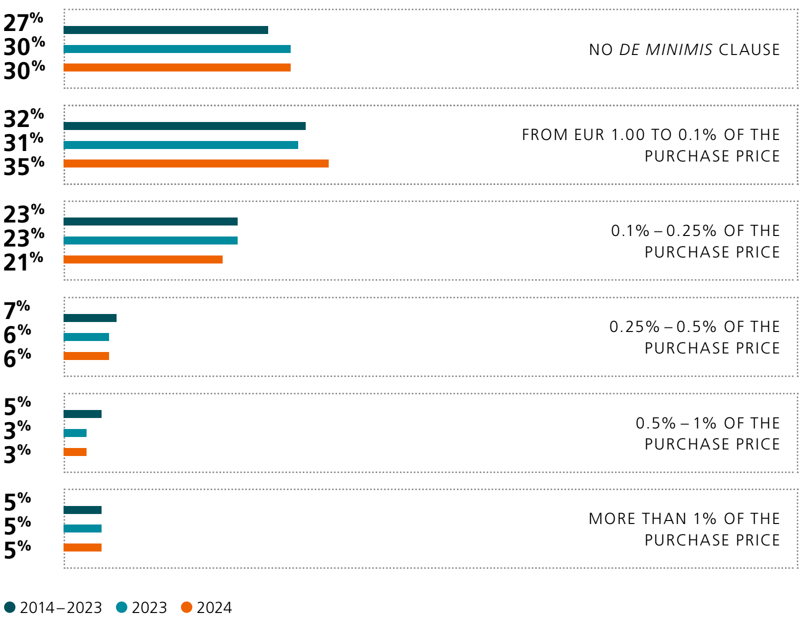


De minimis levels

Most *de minimis* levels were from EUR 1 to 0.25% of the purchase price (56% of transactions) although the 30% of transactions, without any *de minimis* provisions remains the same as 2023 and may reflect the use of W&I insurance. In 2023 *de minimis* levels at less than 0.1% of the purchase price increased to 35%, and 3% above the 2014–2023 average. The use of a *de minimis* at 0.1 to 0.25% of the purchase price dropped to 21%, 2% below the 23% average of 2014–2023.

Levels 2014–2024

De Minimis



100% = all evaluated transactions

De minimis levels of EUR 1.00 to 0.1% of purchase price:

35%

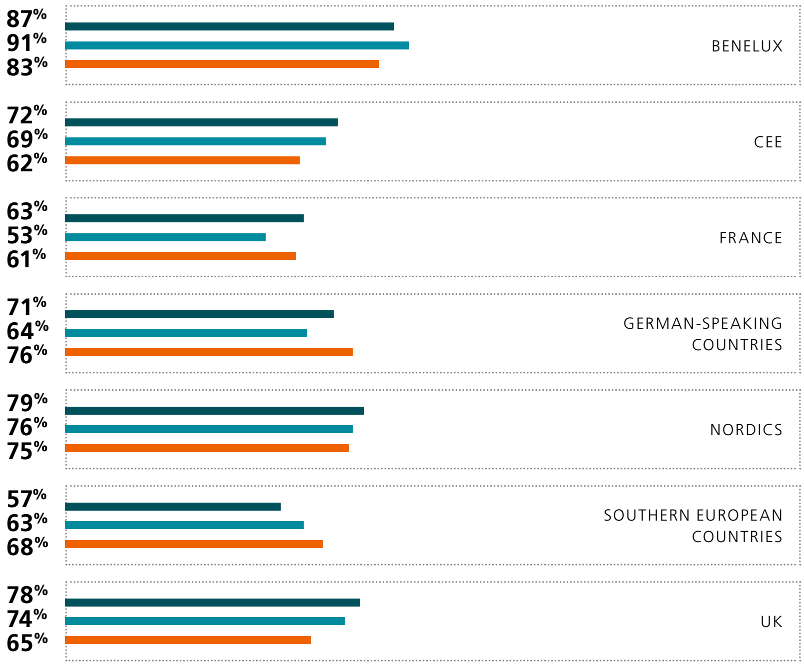
De minimis levels of EUR 1 to 0.25% of the purchase price were most common

Specific Issues

Regional Differences

The use of *de minimis* clauses across Europe continues to show evidence of convergence. The gap between countries is shrinking, with the range now from 61% (in France) to 83% (in Benelux). There were increases in France (up 8%), the German-speaking countries (up 12%) and Southern European countries (up 5%) but significant decreases in the UK (down 9%), Benelux (down 8%) and CEE (down 7%).

Time Trend Europe



● 2014–2023 ● 2023 ● 2024
100% = all evaluated transactions
No data for Nordics before 2022 available

Basket

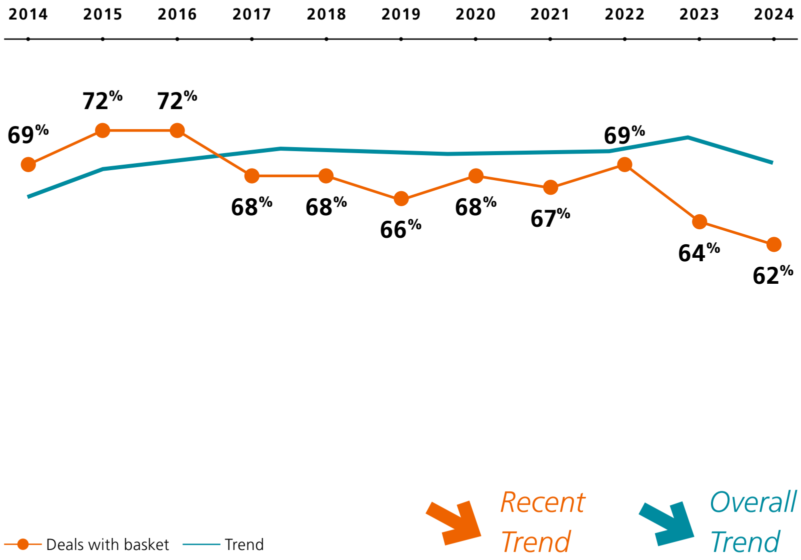
Most M&A agreements have a basket provision, which prevents warranty claims from being made where the total amount claimed in respect of all warranties is less than an agreed 'basket' amount. This is often agreed as a percentage of the purchase price. With a 'first dollar' basket, the buyer can recover the whole amount of a successful claim if the claim exceeds the basket amount. In contrast, an 'excess only' basket provides that the buyer is entitled to recover only the part of the claim that exceeds the basket amount. For deals with full W&I insurance cover a basket provision may not be required as this is reflected in the W&I insurance policy itself.

General Overview

There was a 2% decrease in the application of baskets in European transactions at 62% for 2024 compared with 64% for 2023, representing a 7% drop since 2022. These decreasing levels most likely reflected the use of W&I insurance, particularly in the UK, where the basket is not as relevant if the equivalent liability is assumed by the W&I insurer.

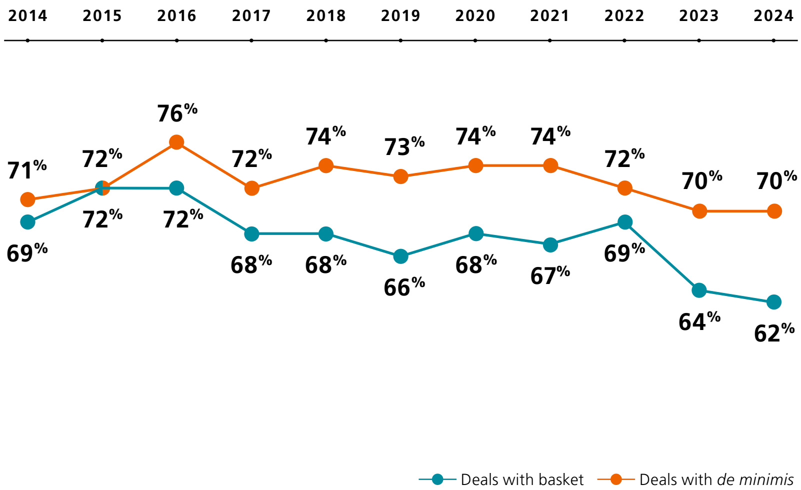
CMS Trend Index

Baskets



The trend for applying of a basket provision decreased by 2% in 2024 while the use of *de minimis* provisions remained constant at 70% of deals. This indicates that *de minimis* provisions can continue to be insisted upon where there is no corresponding basket provision and is perhaps explained by the fact that *de minimis* provisions are often still included in W&I insurance deals, even where the basket provisions are less relevant because the *de minimis* figure often reflects the excess on the W&I insurance policy.

Comparison: Existence of *De Minimis* and Basket



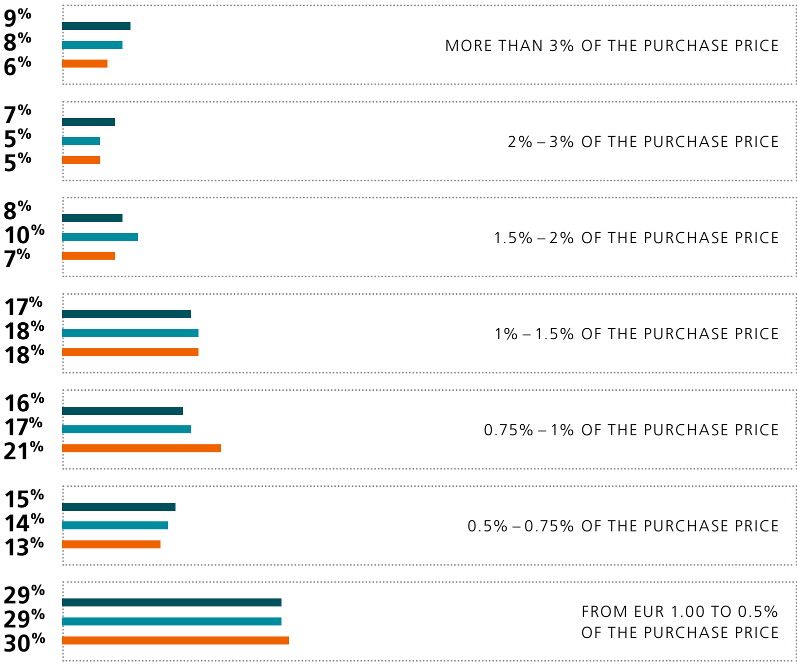
Specific Issues

Size of Baskets

Baskets at the lowest level, from EUR 1 to 0.5% of the purchase price (30%), remained broadly at the 2014–2023 average. As in previous years, most baskets in 2024 (64%) were up to 1% of the purchase price and the remainder were at more than 1% of the purchase price. Similarly, most basket provisions (88%) were on a 'first dollar' basis, up by 2% on 2023, thereby requiring buyers to be on risk up to the relevant level but not once it is exceeded. A 'first dollar' basket is usually larger than an 'excess only' basket. The percentage of transactions with baskets above 2% of the purchase price dropped back to 11%, indicating that baskets above 1.5% of the purchase price can be considered 'off market'.

Time Trend

Baskets



● 2014–2023 ● 2023 ● 2024
100% = all transactions with a basket clause

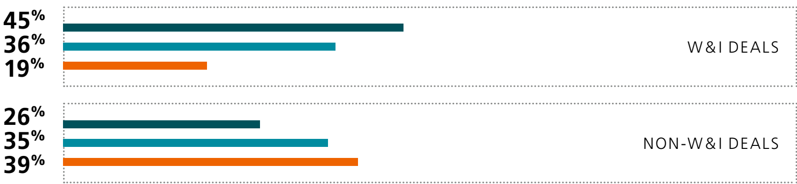
Basket sizes increased, with most at 1.5% of the purchase price or less

Impact of W&I Insurance

The comparative statistics continued to show the advantage for sellers where W&I insurance applied and suggested there was scope to increase basket levels on non-W&I insured deals. Most striking was that, where the basket was up to 0.5% of the purchase price, this was achieved in 49% of W&I insured deals compared with 27% for non-W&I insured deals.

Basket Thresholds for 2024

W&I insured deals + non-W&I insured deals



● Up to 0.5% ● > 0.5%–1% ● > 1%
100% = all evaluated transactions in the respective category

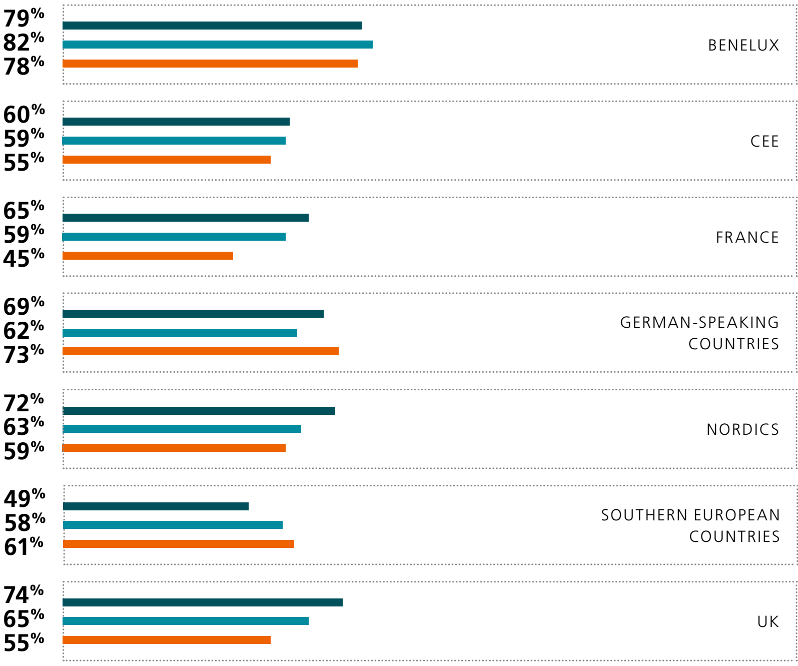
Basket levels reduce significantly if W&I insurance applies

Regional Differences

There was a more consistent pattern in the use of baskets across European transactions in 2023, with the exception of Benelux, which remained high at 78%. The German-speaking countries also experienced a significant increase of 11%. There was a huge drop for France, down by 14%: baskets were used in only 45% of their transactions, and the UK also experienced a 10% decline in the use of baskets, down to 55%. Only in France were baskets used in less than half of transactions.

Time Trend Europe

Basket application



● 2014–2023 ● 2023 ● 2024
100% = all evaluated transactions
No data for Nordics before 2022 available

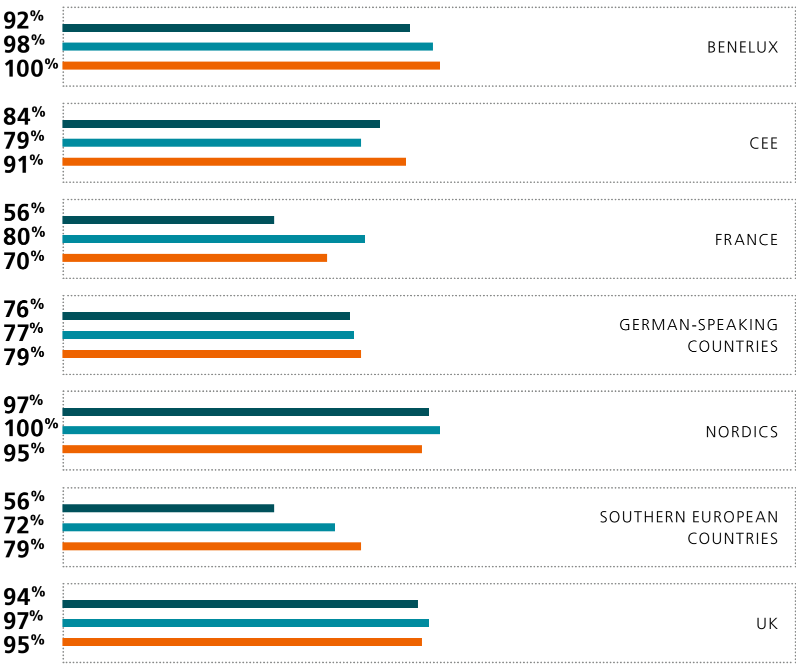
A marked variance in the use of 'first dollar' baskets across the different jurisdictions continued, with an extraordinary 100% in Benelux, 91% in CEE, 95% in the Nordics and 95% in UK transactions. It is notable that the use of 'first dollar' baskets, for the second year running, was above 70% for all European countries in 2024, although there was still a wide variation in market practice between the European jurisdictions in this respect.

The 'first dollar' recovery in Benelux

100%

Time Trend Europe

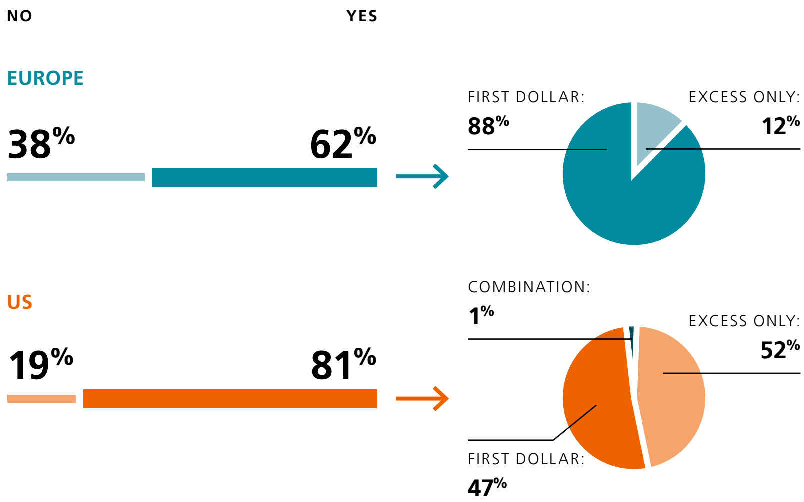
First dollar



● 2014–2023 ● 2023 ● 2024
100% = all transactions with a basket
No data for Nordics before 2022 available

We have previously noted that the US market used a basket in a significant majority of its transactions (81%). The US market used ‘excess only’ baskets in 52% of transactions, whereas ‘excess only’ baskets did not apply in most of the European countries, with just 12% of deals covered and ‘first dollar’ recovery applying in 88% of European transactions. There was also a disparity in the amount of the basket, with just 10% of US transactions applying a basket of more than 1% of the purchase price as compared with 35% for European transactions.

Frequency
Baskets



100% = all evaluated transactions

Liability caps

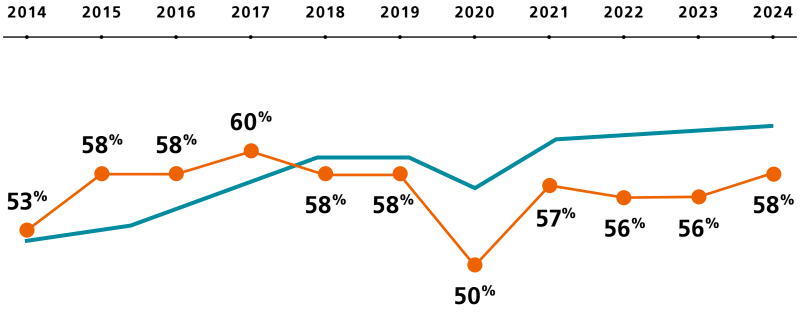
In most M&A transactions it is usually accepted that the seller will cap its liability in respect of warranty claims. This capped amount may simply be the purchase price, so the buyer cannot recover from the seller any more than it has paid. However, there is often extensive debate as to the level of a liability cap, which can vary significantly from deal to deal, particularly for large deals. For deals with W&I insurance the liability cap is often a nominal amount, as the W&I insurer assumes the risk in respect of the warranties in place of the seller.

General Overview

In 2024 there was a continuation in the trend that the majority of deals (58%) had a liability cap of less than 50% of the purchase price. The use of W&I insurance on deals continues to have a significant impact, with liability caps of less than 10% of the purchase price being prevalent on 58% of W&I deals.

CMS Trend Index

Liability caps (less than 50% of purchase price)



Deals with a liability cap of less than 50% of the purchase price — Trend

Liability Caps for 2024

W&I insured deals + non-W&I insured deals

W&I insured deals ● Non-W&I insured deals

100% = all evaluated transactions in the respective category

Liability caps (less than 50% of purchase price)

The number of deals with liability caps of less than 50% of the purchase price remains in the majority (58%)

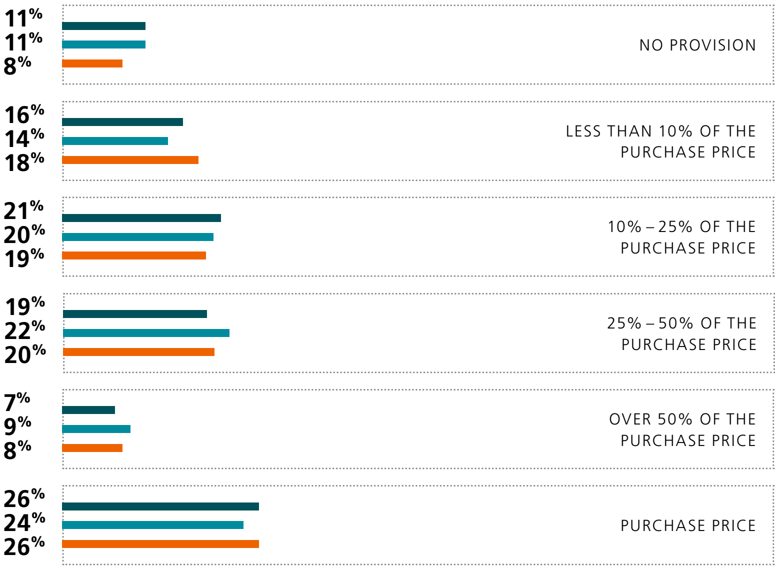
The Study shows deals in 2024 with a liability cap of less than 10% of the purchase price (at 18%) increasing 4%. The proportion of deals with liability caps equal to 10–25% and 25–50% of the purchase price remained broadly constant at 19% and 20% in each case. The proportion of deals with a liability cap equal to the purchase price increased by 2% to 26%. A small minority of 8% of the transactions did not have a liability cap at all, which is a drop of 3% on 2023 and the 2014–2023 average.

Deals without liability caps

8%

Amount

Liability Caps



100% = all evaluated transactions

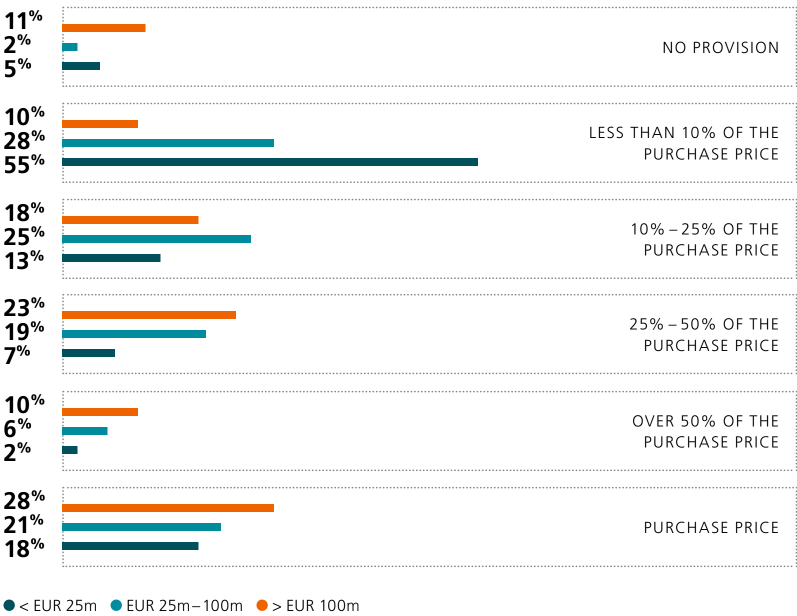
Analysis by Deal Size

More large transactions had liability caps of less than the purchase price. For 55% of large deals and 28% of medium sized deals the liability cap was less than 10% of the purchase price, whereas for small deals such a liability cap applied only in 10% of such deals. The 2024 results suggest that for small deals, while the cap is most likely to equal the purchase price (28%), there was a wider variety of caps above 10% of the purchase price up to the purchase price.

For small deals the purchase price or no cap is most likely to be the agreed position

Amount by Deal Size

Liability Caps



100% = all evaluated transactions

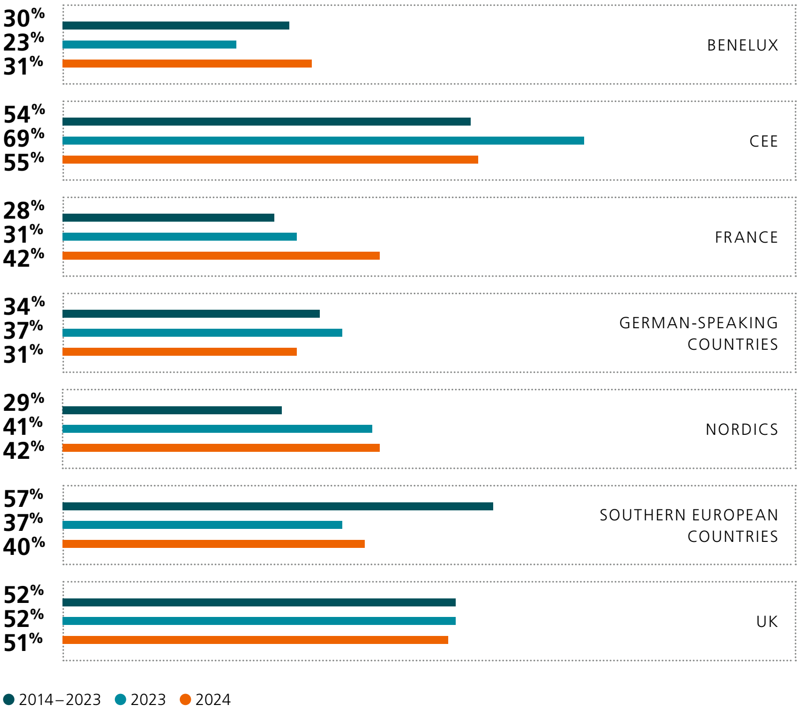
Specific Issues

Regional Differences

The European average for deals with a liability cap of more than 50% was 42% of all deals in 2024, a drop of 2% on 2023's figures. The most noticeable decrease was seen in CEE, down 14% to 55%, with the German-speaking countries also experiencing a 6% drop. There were significant increases for Benelux (up 8%) and France (up 11%), while the figures remained largely consistent with 2023 in the Nordics, the Southern European countries and the UK. Market practice in the use of liability caps of more than 50% of the purchase price continues to vary significantly between European regions and countries.

Time Trend Europe

Liability Caps of more than 50%



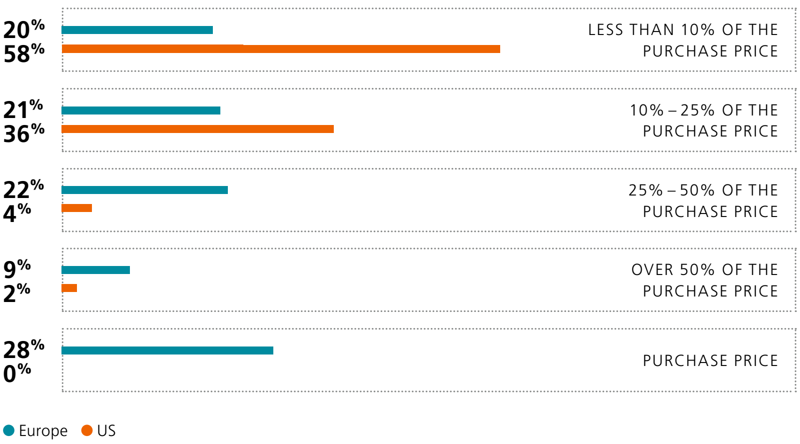
100% = all evaluated transactions
No data for Nordics before 2022 available

European/US Differences

The US market has a more consistent and less varied range of liability caps, with the vast majority (94%) of deals in the US having a cap of 25% or less of the purchase price. Indeed a majority of US deals (58%) have a cap of less than 10% of the purchase price. In our European sample only 20% of deals in 2024 had a cap of less than 10% of the purchase price (up 4% on 2023) and most European deals (28%) had a liability cap equal to the purchase price (up 1% on 2023).

Liability Caps

Liability Caps of more than 50%



100% = all transactions with a general liability cap
US data refers to 'transaction value'

Sector Differences

As indicated above, 37% of all European deals had caps of up to 25% of the purchase price, which is a 3% increase on 2023 and consistent with the 2014–2023 average. The largest exceptions to the overall average were in Infrastructure & Projects (up 37% to 50%), Real Estate (up 10% to 47%) and Hospitality, Travel & Leisure (up 19% to 55%); and just 26% of deals in the Technology, Media and Communications sector had a liability cap at this level. The variations year on year in respect of particular sectors were significant in some instances, so we continue to consider that deal size and geography, rather than sector, are the major determining factors in settling on an agreed level of liability cap.

Frequency
Liability Caps up to 25%

SECTOR	2014–2023	2023	2024
BANKING & FINANCE	35%	50%	28%
HOSPITALITY, TRAVEL & LEISURE	43%	36%	55%
ENERGY & CLIMATE CHANGE	28%	32%	39%
CONSUMER PRODUCTS	40%	25%	33%
TECHNOLOGY, MEDIA & COMMUNICATIONS	35%	36%	26%
INFRASTRUCTURE & PROJECTS	27%	13%	50%
LIFE SCIENCES & HEALTHCARE	36%	37%	44%
REAL ESTATE	50%	37%	47%
INDUSTRY	40%	43%	32%
BUSINESS (OTHER SERVICES)	33%	25%	39%
CMS AVERAGE	37%	34%	37%

100% = all evaluated transactions of the respective sector

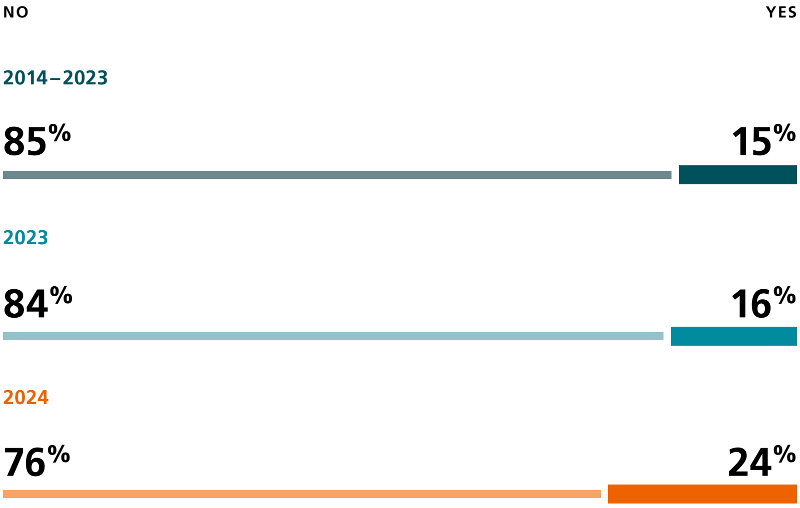
Warranty & Indemnity insurance

Transactions involve W&I insurance as a solution to situations where (i) there is no obvious or willing warrantor to stand behind the warranties (e.g. where there are private equity sellers) or (ii) there is an insufficient amount of financial coverage provided by the warrantors.

General Overview

2024 saw a significant increase in the number of W&I insurance policies purchased on M&A deals both overall (up 8% to 24% of deals) and, as shown below, across all deal sizes. Our experience throughout 2024 was that pricing remained soft and it was an attractive market to seek W&I insurance, both for asset-rich deals and more operational businesses.

Time Trend
W&I Insurance



100% = all evaluated transactions

The market this year

Brian Hendry, Head of Mergers & Acquisitions at W&I Insurance broker Paragon International Insurance, notes that:

"The W&I insurance market across Europe continues to evolve to meet the developing M&A landscape. While still extremely competitive within the sweet spot of the top end SME, midmarket and large transactions, underwriters are increasingly competing on deal sizes with EV's of EUR 1m upwards and as a consequence the policy count has increased. Not only is the overall pricing falling but coverage continues to expand; policy excesses are falling and complexity is being removed from the underwriting process as underwriters are pushed to commoditise the product further.

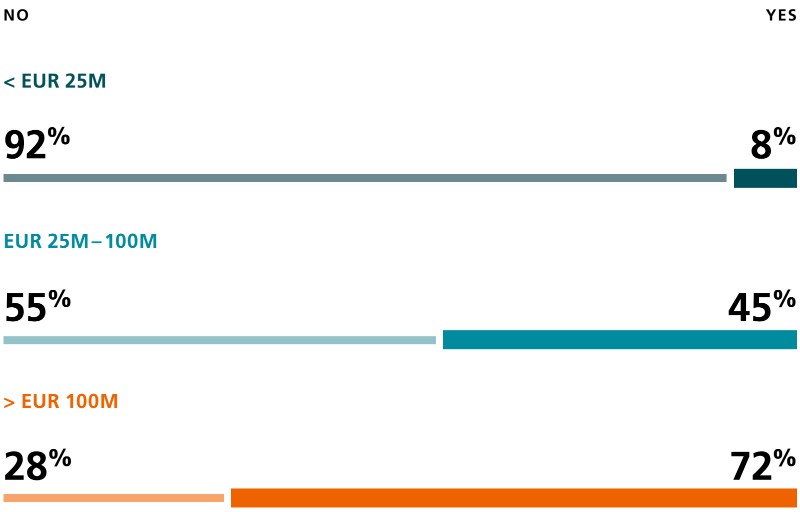
Due to the scope of "policy enhancements" now readily available, such as knowledge, materiality, data room and due diligence scrapes, there is good evidence that the protection provided for a breach of warranty under a W&I insurance policy is better than it has ever been and arguably wider than the recourse that would be available under an SPA where W&I insurance isn't used.

While there was the potential that the material uptick in claim costs for the transaction product group and a degree of market consolidation would be reflected in increased pricing in 2025, to date there is no sign of W&I insurance premium rates increasing and, as new entrants vie for market share, it is expected that there will be a further softening of rates. Unless there is a material increase in deal flow across all sectors and transaction sizes, we expect W&I insurance terms to continue to soften across the board."

Analysis by Deal Size

2024 again showed the continuing trend that W&I insurance is more likely to be adopted on large deals. However, we commented in both 2023 and 2024 that new W&I insurers who focus on small and medium sized deals deals and offer lower minimum premiums had entered the market and this now appears to have translated into more W&I insurance policies being purchased also on small deals (a 4% increase to 8%). W&I insurance was purchased on nearly three-quarters (72%) of large deals (a 25% increase from 2023). There was also a 8% increase in usage to 45% on medium sized deals.

W&I Insurance 2024
By purchase price (Europe-wide)



100% = all evaluated transactions

W&I insurance most used on deals with larger values; growth across all deal sizes

Specific Issues

Sector Differences

Whilst there is a consistent trend when comparing W&I insurance use against deal size, the same cannot necessarily be said when analysing the sector data. In 2024 Energy & Climate Change was the sector that adopted W&I insurance the most. The data shows significant variances across sectors. There were surprising falls in W&I insurance policies being purchased on Hospitality, Travel & Leisure and Infrastructure & Projects deals, whilst the statistics in the Real Estate sector were reasonably flat, which appears to contradict the consensus in the market that W&I insurance is standard in deals in those sectors.

Frequency

W&I Insurance

SECTOR	2014 – 2023	2023	2024
BANKING & FINANCE	3%	5%	3%
HOSPITALITY, TRAVEL & LEISURE	11%	7%	6%
ENERGY & CLIMATE CHANGE	14%	14%	19%
CONSUMER PRODUCTS	9%	15%	5%
TECHNOLOGY, MEDIA & COMMUNICATIONS	16%	18%	16%
INFRASTRUCTURE & PROJECTS	2%	7%	3%
LIFE SCIENCES & HEALTHCARE	6%	9%	15%
REAL ESTATE	21%	10%	11%
INDUSTRY	10%	8%	11%
BUSINESS (OTHER SERVICES)	7%	7%	12%
CMS AVERAGE	15%	16%	24%

100% = all evaluated transactions of the respective sector

Type of Policy and Costs

A W&I insurance policy will almost always be a buy-side policy (95%). Despite sell-side policies being rare, sellers sometimes agree to pay some or all the premium payable for the policy (e.g. by accepting a reduction in purchase price as means of contribution), with the premium being paid by the seller on 5% of deals with W&I insurance down 6% from 2023, which demonstrates how standard it now seems for sellers to demand buyers to purchase a W&I policy at their own cost. We do note though that the non-purchasing party bore a proportion of the W&I insurance costs 39% of the time, and when doing so the proportion of the costs it agreed to bear was between 25 – 50% typically.

W&I Insurance

By purchase price

	SELL SIDE	BUY SIDE
2014 – 2023	7%	93%
2023	4%	96%
2024	5%	95%

100% = deals in which W&I insurance was actually used

Premium paid by

	SELLER	BUYER
2023	5%	95%

The non-purchasing party bore proportion of costs

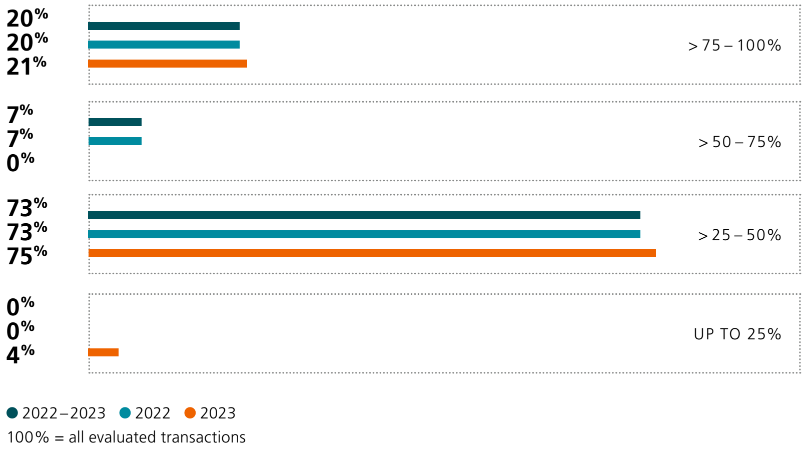
	YES	NO
2024	39%	61%

100% = all evaluated transactions

A W&I insurance policy is almost always a 'buy-side' policy and sellers less frequently make a contribution to the buyer's costs

W&I Insurance

Proportion of costs that the seller party bore

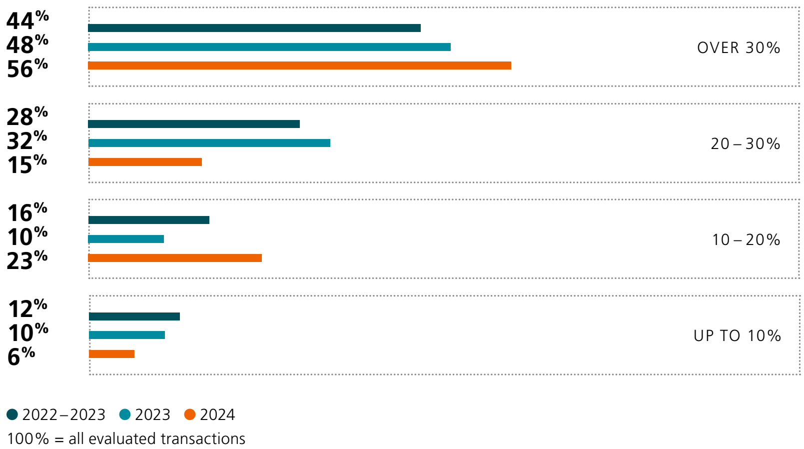


Level of coverage

We have three years' data on the level of cover purchased via W&I insurance and the statistics are beginning to show that two levels of cover are proving most popular – over 30% and between 10 and 20%. It will be interesting to measure this over time and compare it with the experiences of W&I insurance brokers.

W&I Insurance

Level of coverage

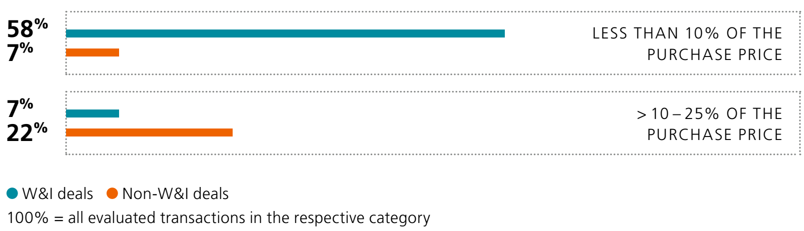


Liability Caps

Deals with W&I insurance are more likely to see the seller being able to achieve lower liability caps. This may be a nominal amount with the buyer able then to purchase a W&I insurance policy either to top up its warranty coverage or, as is common, to be its sole recourse. In 2024, 58% of deals (up 8%) involving W&I insurance had liability caps that were less than 10% of the purchase price compared to only 7% of non-W&I insured deals.

Liability Caps for 2024

W&I deals + non-W&I deals

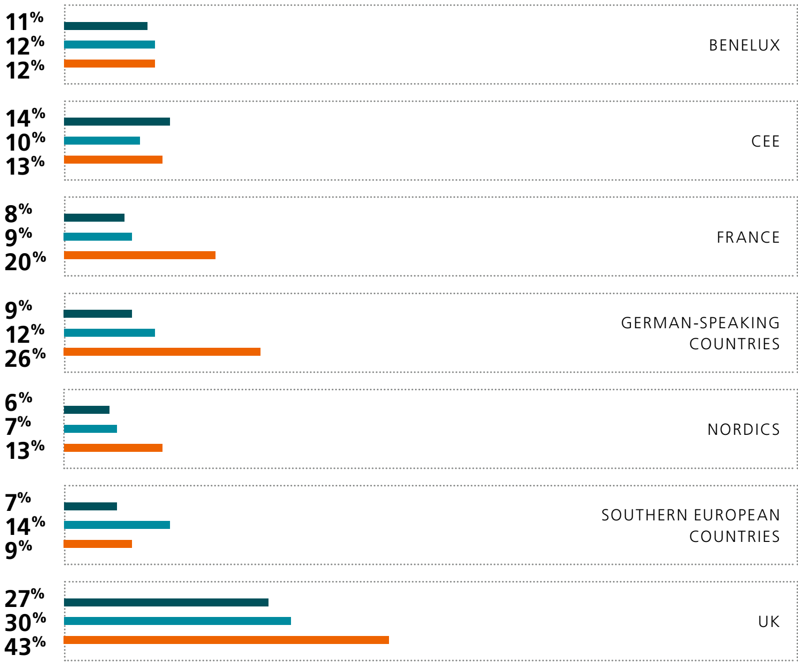


Regional Differences

Regional disparities in the popularity of W&I insurance appeared again in 2024. The UK remained the market most comfortable with W&I insurance and its popularity surged 13% to 43% (16% higher than the 10 year average). The overall rise in the use of W&I insurance was similarly experienced in most European regions (CEE, France, German-speaking countries, the Nordics) with a decline only in Southern European countries. W&I insurance remained more popular in the US than in Europe, as the SRS Report indicates that RWI insurance (as it is known in the US) was purchased in approximately 38% of deals (a 2% fall).

Time Trend Europe

W&I Insurance



● 2014–2023 ● 2023 ● 2024

100% = all evaluated transactions

No data for Nordics before 2022 available

Claims Notifications

Specialist W&I insurance broker HWF has published its 2nd HWF European W&I Claims Study (HWF | W&I Market Claims Study), which provides invaluable insight on, among other topics, claims notifications and claims paid in respect of W&I insurance policies placed in Europe since 2016. Key takeaways include that claims notifications were made on average on 11.64% of policies and claims were paid on 4.32% of policies (or 53.10% of notifications). Across the eight-year period covered by the HWF study, 49.67% of notifications related to breaches flowing from seller fraud, non-disclosure and third-party claims, being matters which could not in the ordinary course be discovered through due diligence.

claims notifications were made on average in

11.64% of policies

claims were paid on

4.32% of policies (or 53.10% of notifications)

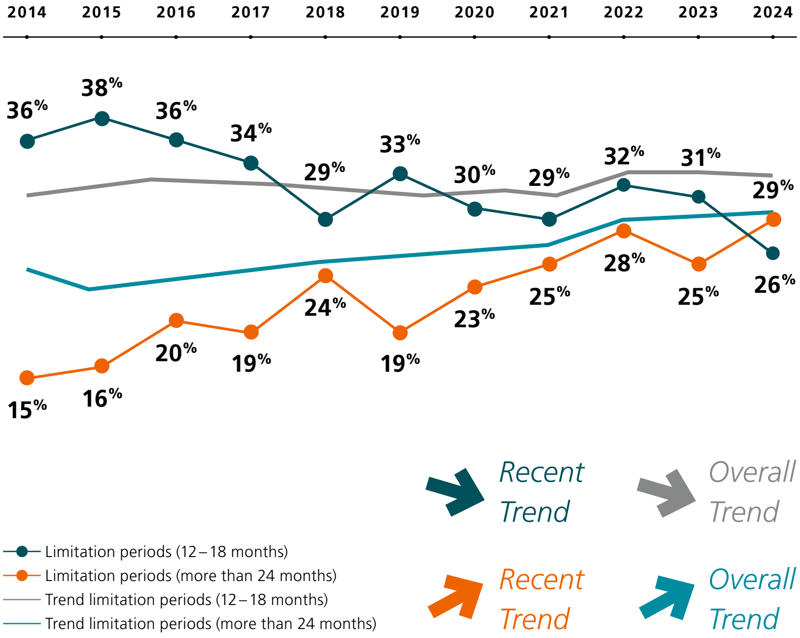
Limitation period for warranty claims

When negotiating a sale and purchase agreement it is in the seller's interest to negotiate shorter limitation periods for warranty claims than the periods which would apply under the relevant statute. Short limitation periods mean less time for the buyer to bring claims. While 2023's data indicated a slight decrease of longer limitation periods over 24 months, which could be interpreted as a shift towards a more seller-friendly market, 2024's data reflects a shift back to longer limitation periods and a more 'buyer-friendly' approach.

General Overview

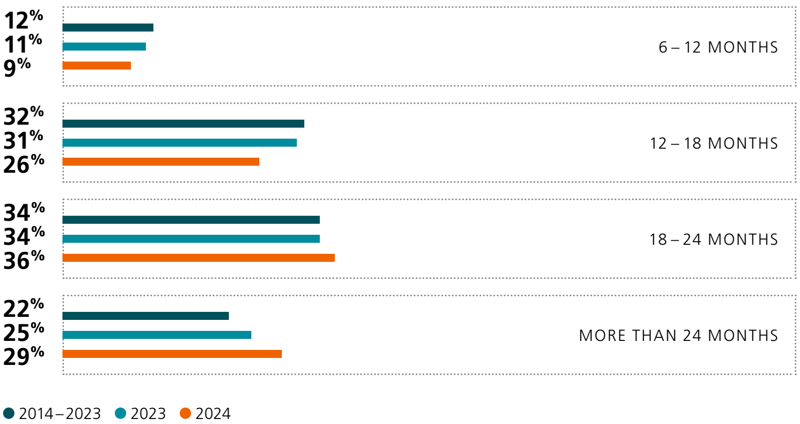
In 2024 we noted an increase in longer periods (more than 24 months), reaching a peak of 29%. This confirms the trend observed since 2014 that limitation periods of more than 24 months are steadily increasing, with a few exceptions of minor dips in the years 2017 (down 1%), 2019 (down 5%) and 2023 (down 3%). This increasing trend towards limitation periods of more than 24 months in 2024 was mainly seen in the United Kingdom (plus 11%), the Southern European countries (plus 9%) and Benelux (plus 4%).

CMS Trend Index
Limitation Periods



In line with the above, the use of short limitation periods decreased. While the limitation period of six to 12 months only decreased slightly by 2%, from 11% in 2023 to 9% in 2024, the limitation period of 12 to 18 months decreased by 5% from 31% in 2023 to 26% in 2024 and represents the lowest figure since 2014. In both cases, this deviates from the average of the past decade (decrease by 3% and 6% respectively). In contrast, not only have limitation periods of more than 24 months increased (from 25% in 2023 to 29% in 2024), but also the use of limitation periods from 18 to 24 months is up (from 34% in 2023 to 36% in 2024). In these cases, too, an increase can be seen not only in comparison to last year, but also with regard to the ten-year average (increase by 2% and 7% respectively). A general turnaround towards shorter limitation periods, which was considered possible last year, has not materialised after all.

Time Trend
Limitation Periods



100% = all evaluated transactions

Trend back to longer limitation periods – in line with the average development since 2014

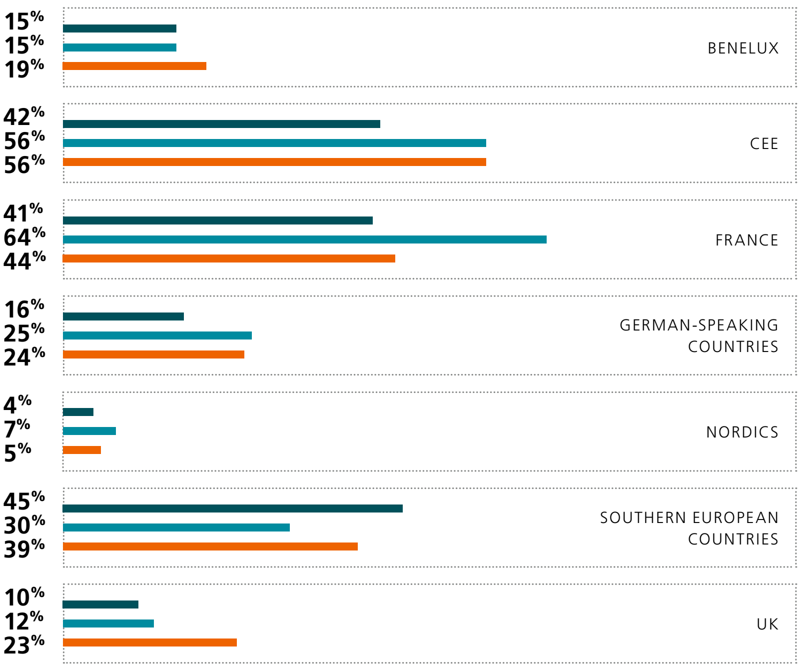
Specific Issues

Regional Differences

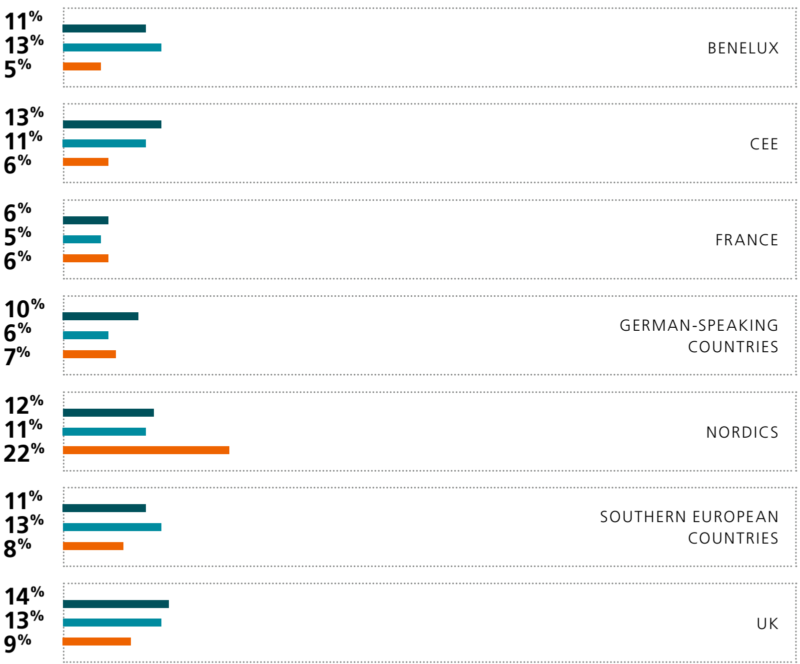
In Benelux, the Southern European countries and the UK, the use of limitation periods of more than 24 months increased in 2024, which had an impact on the trend towards longer limitation periods, whereas in all other territories, except France, only minimal fluctuations can be observed in comparison to 2023. Even though no changes can be observed with regard to the use of limitation periods of more than 24 months in the CEE region (56% in 2023 and 2024), the consistently high number of deals with such limitation periods is striking. with more than half of the deals providing for such regulation. A significant decline in such long limitation periods can be observed in France (from 64% in 2023 to 44% in 2024), although this is more in line with the average over the past ten years.

Time Trend Europe

More than 24 months



6 to 12 months



● 2014–2023 ● 2023 ● 2024
100% = all evaluated transactions
No data for Nordics before 2022 available

CMS Sector Analysis

In 2024, longer limitation periods (i.e. those exceeding 24 months) were most likely in the Energy & Climate Change sector and the Consumer Products sector (38% and 42% of deals respectively), a development which is not reflected in the average figures since 2014. Besides these two sectors, a comparatively large deviation from the average of the past ten years can be observed in the TMC (up 8%) and Real Estate sectors (up 10%), even though for these two sectors the percentage of deals with limitation periods of more than 24 months declined by 5% and 3% respectively compared to 2023. It is notable that, in the Infrastructure & Projects sector, no deals in 2024 involved a limitation period of more than 24 months (compared to 36% in 2023). However, this decrease is not totally unexpected, since an increase up to 47% for deals with limitation periods of 18 to 24 months can be seen (up 26% compared to 2023).

Limitation Periods

More than 24 months

SECTOR	2014 – 2023	2023	2024
BANKING & FINANCE	18%	16%	16%
HOSPITALITY, TRAVEL & LEISURE	26%	9%	25%
ENERGY & CLIMATE CHANGE	22%	19%	38%
CONSUMER PRODUCTS	23%	27%	42%
TECHNOLOGY, MEDIA & COMMUNICATIONS	19%	32%	27%
INFRASTRUCTURE & PROJECTS	15%	36%	0%
LIFE SCIENCES & HEALTHCARE	25%	24%	26%
REAL ESTATE	20%	33%	30%
INDUSTRY	23%	33%	28%
BUSINESS (OTHER SERVICES)	22%	16%	30%
CMS AVERAGE	22%	25%	29%

100% = all evaluated transactions of the respective sector

Longest limitation periods in the Energy & Climate Change sector and the Consumer Products sector

18 to 24 months

SECTOR	2014 – 2023	2023	2024
BANKING & FINANCE	37%	52%	52%
HOSPITALITY, TRAVEL & LEISURE	25%	24%	21%
ENERGY & CLIMATE CHANGE	29%	32%	36%
CONSUMER PRODUCTS	33%	25%	19%
TECHNOLOGY, MEDIA & COMMUNICATIONS	36%	39%	40%
INFRASTRUCTURE & PROJECTS	30%	21%	47%
LIFE SCIENCES & HEALTHCARE	39%	44%	42%
REAL ESTATE	34%	38%	36%
INDUSTRY	37%	26%	32%
BUSINESS (OTHER SERVICES)	35%	40%	34%
CMS AVERAGE	34%	34%	36%

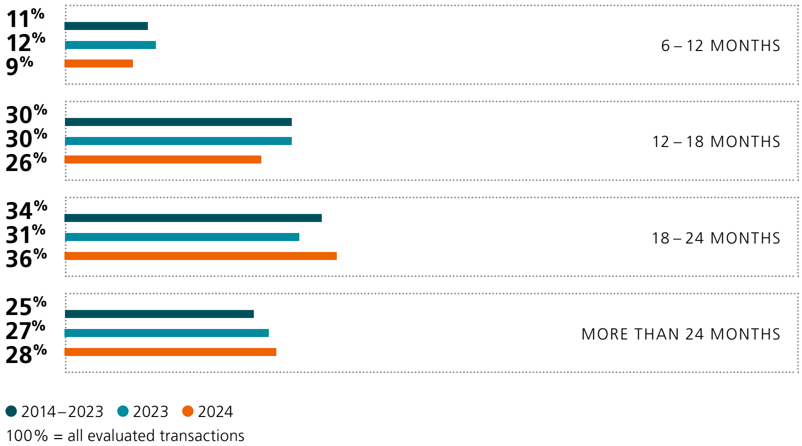
100% = all evaluated transactions of the respective sector

Analysis by Deal Size

In line with last year's Study, deal size was not a key factor for the length of limitation periods. Regardless of the amount of the purchase price, we note an ongoing trend towards limitation periods of more than 24 months, especially with regard to medium sized deals (up 9% compared to 2023). In principle, it can be said for small, medium sized and large deals that deals with a limitation period of 18 to 24 months have been most common in 2024 (36% average of all deals, irrespective of the deal size). As regards the use of limitation periods in small deals, the development is in line with the general observation that shorter limitation periods decreased and longer ones increased.

Time Trend

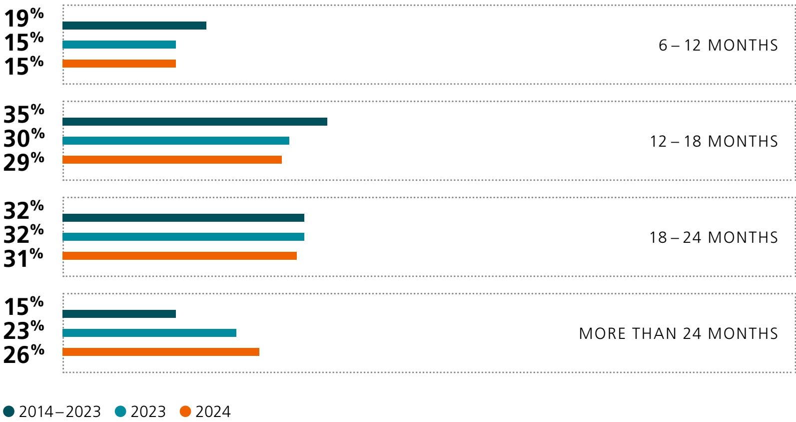
By purchase price less than EUR 25m



A similar trend can be seen with large deals, with the exception being a decrease of 1% for deals with limitation periods between 18 and 24 months.

Time Trend

By purchase price more than EUR 100m

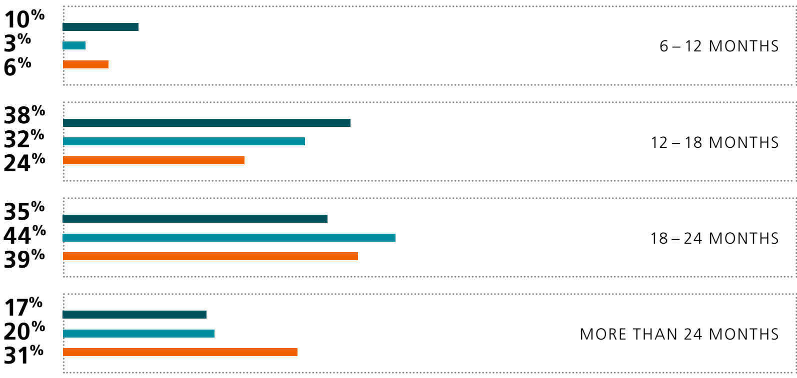


100% = all evaluated transactions

The only deviation from the general remarks above relates to medium sized deals, where there was a small increase in limitation periods of six to 12 months (up 3%) and a decrease in the use of limitation periods between 18 and 24 months can be seen (down 5%).

Time Trend

By purchase price EUR 25m – 100m



● 2014 – 2023 ● 2023 ● 2024

100% = all evaluated transactions

Limitation periods of more than 24 months have increased irrespective of deal size, but limitation periods between 18 and 24 months still seem to be the preferred period for all deals

Security for warranty claims

In some M&A deals, the buyer is concerned about the seller's ability to pay claims. Therefore, the parties may include a form of security for warranty claims. The type and the value of the security depends on many factors, such as the likelihood of a claim occurring, the strength of the seller's covenant and the cost, administration and time needed to obtain a particular type of security.

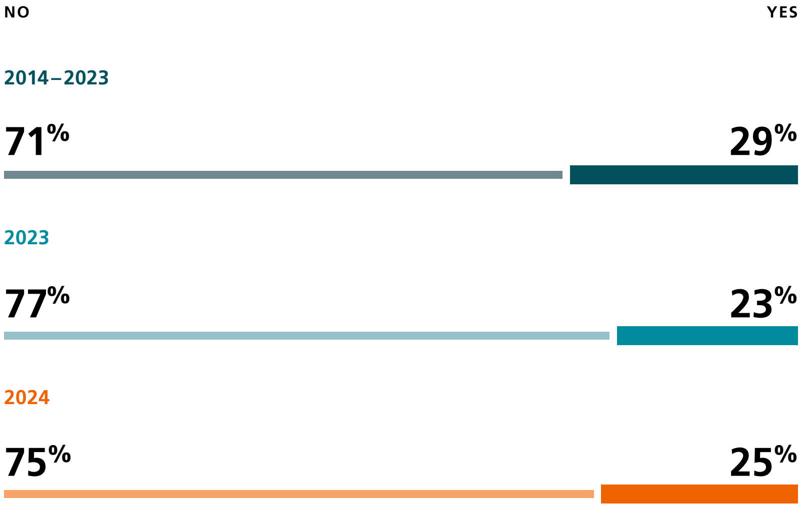
General Overview

In 2024, the use of security for warranty claims increased by 2% compared to 2023, up to 25% in total. Thus, in line with the trend since 2014, the use of security for warranty claims is relatively low, which indicates a 'seller-friendly' bargaining position, allowing the sellers to avoid having to provide security for warranty claims in three-quarters of the transactions.

The data on security for warranty claims is interesting when looked at in the context of the increasing adoption of W&I insurance. In 2022 and 2023 we stated our belief that a fall in the use of security for warranty claims could be linked to the increased use of W&I insurance. That statistic perhaps is not as clear this year, given the 2% increase in the use of security at the same time as the use of W&I insurance also increased. However, when it is measured over the last decade, we do believe there is a correlation.

As regards the specific forms of security used, a retention of the purchase price, and the use of escrow accounts, are the most common forms of security for warranty claims (both 38%).

Time Trend
Security



100% = all evaluated transactions

Security for warranty claims only used in a quarter of transactions

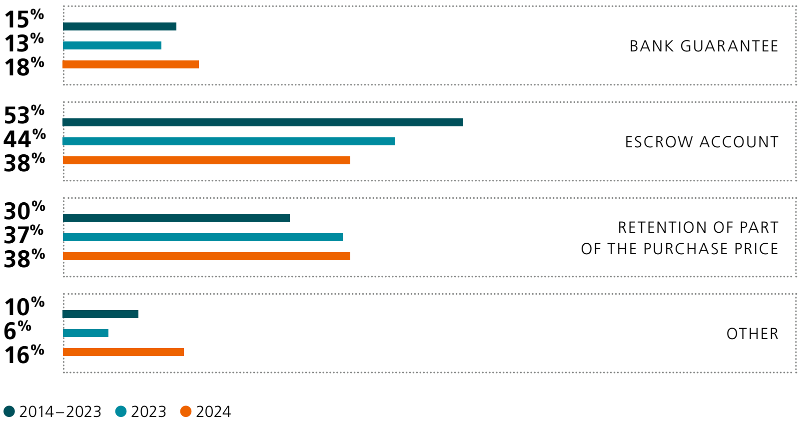
Specific Issues

Type of Security

Between 2014 and 2023, escrow accounts were by far the most popular security for warranty claims, being used in 53% of the transactions with security. In 2024 we observed the opposite trend to the past ten-year average and to the 2023 results, with a decrease in the deals with escrow accounts (down 6% to 38% in total), which was accompanied by an increase in purchase price retentions (up 1% to 38%) and the use of bank guarantees (up 5% to 18%). This increase is also seen when measured against the average over the last ten years.

Time Trend

Security



100% = transactions with safeguarding mechanism – more than one type of security possible

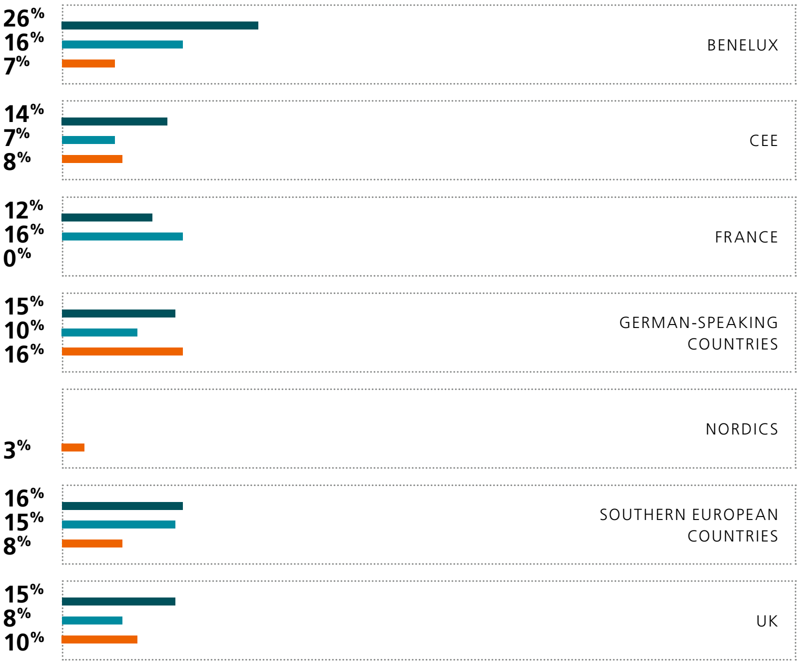
The popularity of escrow accounts is decreasing – retention of part of the purchase price is now just as popular as the use of escrow accounts

Regional Differences

There have been major fluctuations across Europe in the use of escrow accounts as security over the last ten years. When looking at the figures for 2024, a significant decrease in transactions in which an escrow account was used can be observed in Benelux, France and Southern European countries: in Benelux by 9% from 16% to 7%, in France by 16% from 16% to 0% and in Southern European countries by 7% from 15% to 8%. The opposing trend can be seen in the German-speaking countries, where the use of escrow accounts increased by 6% to 16% in 2024 compared to the previous year (10%). Slight fluctuations of 1% to 3% can be seen in the CEE region, the Nordics and the UK.

Time Trend Europe

Use of escrow accounts



● 2014–2023 ● 2023 ● 2024

100% = all evaluated transactions

No data for Nordics before 2022 available

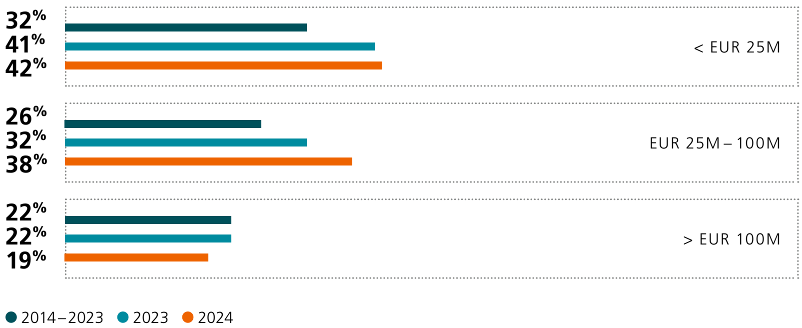
Due to the significant decrease of escrow accounts in some regions, the escrow account is no longer the most popular form of security

Analysis by Deal Size

In 2024, the use of a retention was more common (42%) in small deals than in medium sized deals (38%) or large deals (19%). This is in line with the average use of retentions, irrespective of the deal size, during the past ten years. In contrast, the use of escrow accounts is less common in small deals (only 30%), more common in medium sized deals (43%) and by far the most common form of security in large deals (69%). This suggests that the bigger the deal is, the more the parties favour the independent security that an escrow provider offers. This observation is not surprising and is similar to the use of W&I insurance, where the lower deal value does not justify the costs, complexity, administration, etc. required to set up a W&I insurance policy or an escrow account. The trend in medium sized deals turned towards retentions in 2024, even though this type of security still lags 5% behind the use of escrow accounts (38% vs 43%). The use of retentions for medium sized deals increased by 6% (from 32% to 38%).

Retention of part of the purchase price

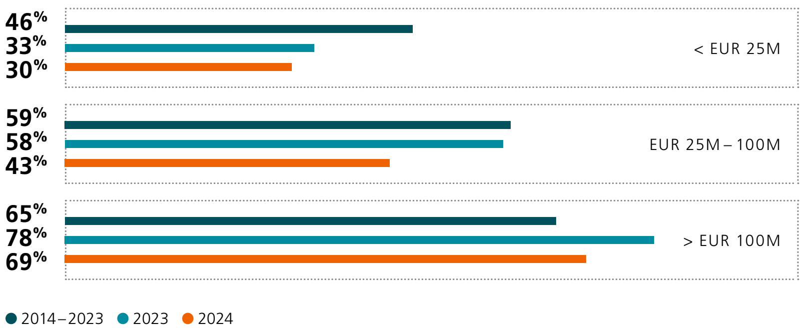
By purchase price 2014 – 2024



100% = transactions with safeguarding mechanism – more than one nomination possible

Escrow accounts

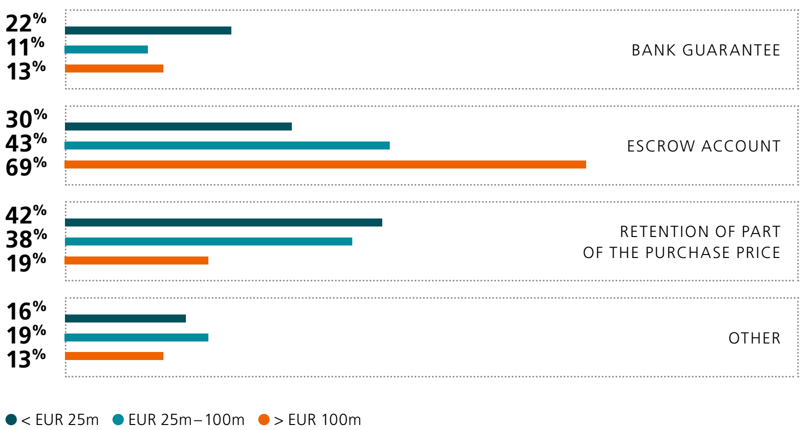
By purchase price 2014 – 2024



100% = transactions with safeguarding mechanism – more than one nomination possible

Security for warranty claims

By purchase price 2024



100% = transactions with safeguarding mechanism – more than one nomination possible

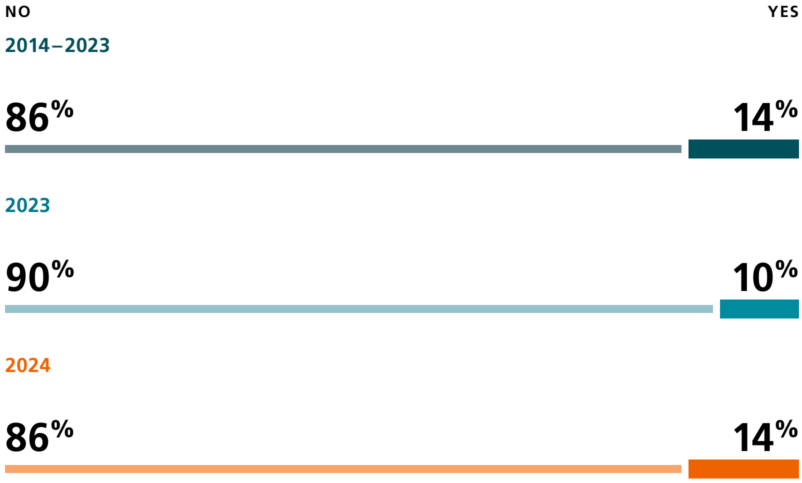
MAC clause

Where signing and completion do not occur simultaneously, it is in the interest of the buyer to prevent fundamental changes occurring between the two dates. Material adverse change clauses (MAC clauses) can be negotiated for this purpose in order to allocate the risk of such changes. MAC clauses entitle the buyer to terminate the agreement if a specific event materialises before completion. Such events are expressly defined in the agreement and are often subject to extensive and detailed negotiations. The seller will usually try to exclude specific unavoidable events from triggering the MAC clause, so that the risk of any fundamental change is borne by the buyer.

General Overview

The decline in the use of MAC clauses in 2022 (14%) and 2023 (10%) was reversed in 2024, climbing back to 14% of all transactions. Against the background of multiple crises worldwide, this decrease in the use of such clauses in 2022 and 2023 was surprising, since it might have been expected that the agreement of such clauses would increase with the increased volatility of the global situation. One explanation for the 4% increase of MAC clauses in 2024 would perhaps be the impact of geopolitical tensions and new political leaders in various countries.

Time Trend
MAC Clauses

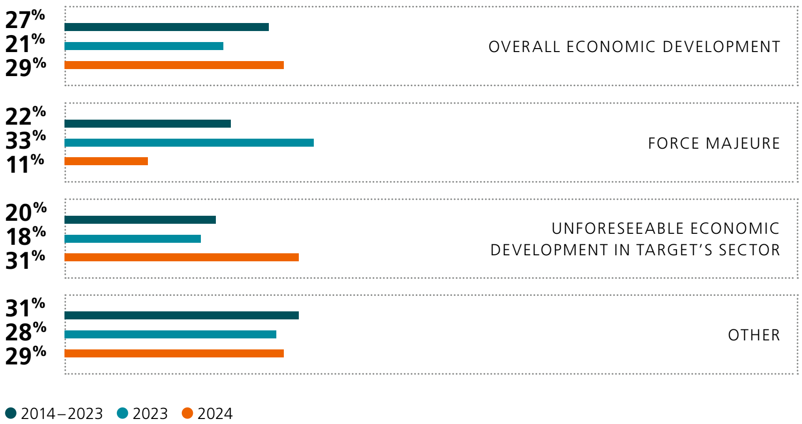


100% = all evaluated transactions

Use of MAC clauses in transactions back in line with the average trend of the past ten years

If a seller does agree to a MAC clause, it is in its interest to narrow the scope of the provision as far as possible. This can be ensured by negotiating exemptions/carve-outs for fundamental changes beyond the seller's control: the carve-out based on sector-specific economic development gained significance in 2024 compared to the previous year (up 13% from 18% in 2023 to 31% in 2024). The same development can be observed for exemptions based on 'overall economic development,' its use having increased by 8% from 21% in 2023 to 29% in 2024. Exemptions justified by force majeure have declined by 22% (from 33% in 2023 to 11% in 2024).

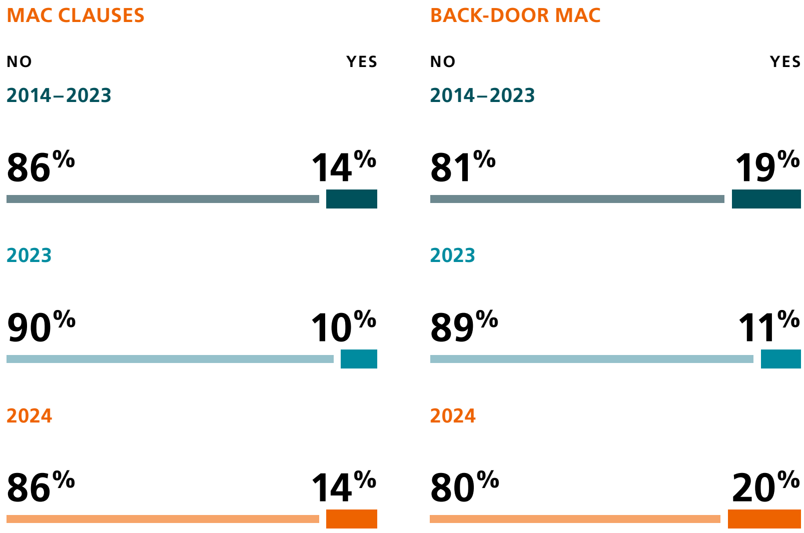
Exemptions
MAC Clauses



100% = all transactions including a MAC clause – more than one exemption possible

The frequency of back-door MAC clauses in transactions (i.e. a right of the buyer to rescind or terminate the SPA in the event that warranties given as of signing are not true and accurate after signing or at completion) significantly increased in 2024, with 20% of deals including such a clause compared to 11% in 2023. This is more in line with the ten-year average of 19% for the period between 2014 and 2023 and is concurrent with the increasing overall trend in the use of such MAC clauses.

Back-Door
MAC Clauses 2014–2024



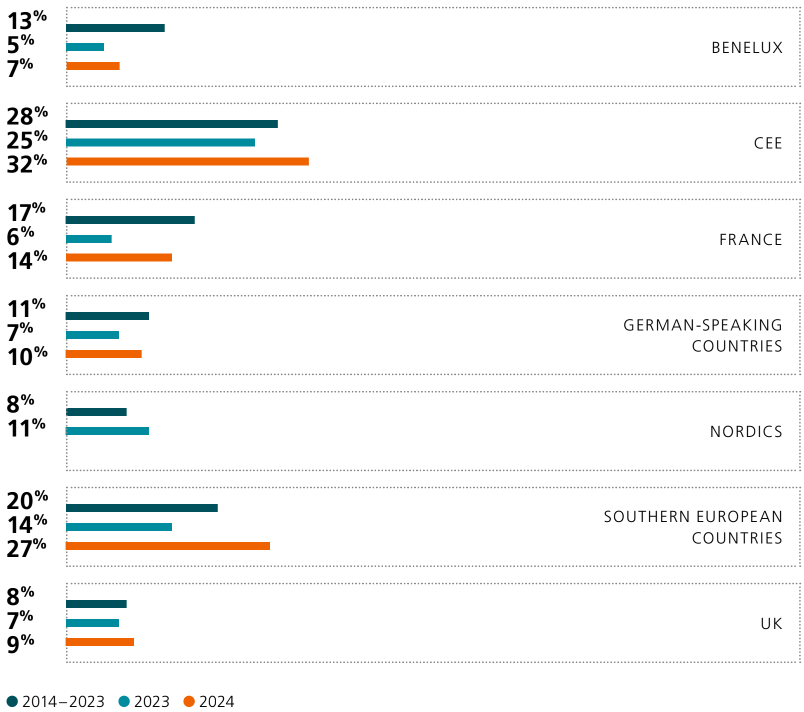
Specific Issues

Regional Differences

There continue to be stark regional differences in the use of MAC clauses. While in the CEE region (32%) and the Southern European countries (27%) around one-third of all transactions included MAC clauses in 2024, the use of MAC clauses is still relatively low in other regions (between 0% and 14%). In every region, except the Nordics, there was an increase in the use of MAC clauses in 2024. The most significant increase can be noted in the Southern European countries (by 13% from 14% to 27%), France (by 8% from 6% to 14%) and in the CEE region (by 7% from 25% to 32%).

Around one-third of all transactions included MAC clauses in the CEE region and the Southern European countries in 2024

Time Trend Europe
MAC Clauses



100% = all evaluated transactions
No data for region Nordic before 2022 available

Sector Differences

In 2024, MAC clauses were most frequently used in the Energy & Climate Change sector, where a significant increase of 20% can be seen compared to 2023. A similar trend can be observed in the Banking & Finance and Life Science & Healthcare sectors, where the use of MAC clauses increased by 10% to 17%, and by 11% to 23% respectively. With regard to the Technology, Media & Communication sector we can see a turnaround in 2024 compared to the development in 2023, where 19% of all transactions in the TMC sector included MAC clauses. In 2024, this number dropped significantly to 5% of all deals, which, when reviewing the average over the past ten years (12%), indicates that last year was an outlier. In all other sectors only minimal fluctuations were seen.

Frequency
MAC Clauses

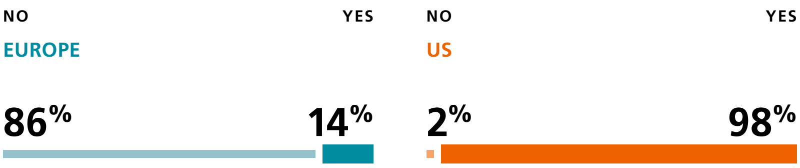
SECTOR	2014–2023	2023	2024
BANKING & FINANCE	19%	7%	17%
HOSPITALITY, TRAVEL & LEISURE	13%	14%	13%
ENERGY & CLIMATE CHANGE	14%	5%	25%
CONSUMER PRODUCTS	13%	15%	16%
TECHNOLOGY, MEDIA & COMMUNICATIONS	12%	19%	5%
INFRASTRUCTURE & PROJECTS	11%	9%	6%
LIFE SCIENCES & HEALTHCARE	16%	12%	23%
REAL ESTATE	15%	3%	10%
INDUSTRY	14%	7%	13%
BUSINESS (OTHER SERVICES)	12%	6%	5%
CMS AVERAGE	14%	10%	14%

100% = all evaluated transactions of the respective sector

European/US Differences

While MAC clauses are still unpopular in Europe (only 14% in 2024 and 10% in 2023), figures in the US reflect the complete opposite. In contrast to Europe, MAC clauses are used in 98% of US deals according to the most recent US statistics for 2024. This striking discrepancy supports the assumption that in Europe the bargaining position of sellers is strengthening and that sellers are increasingly demanding transactional certainty. However, it is important to bear in mind that in certain European jurisdictions, a greater number of transactions are being signed and completed at the same time compared to the US. In such cases, there is, of course, no need for MAC clauses.

Europe/US 2024
MAC Clauses



100% = all evaluated transactions

Disparity between Europe (14%) and the US (98%) further increases

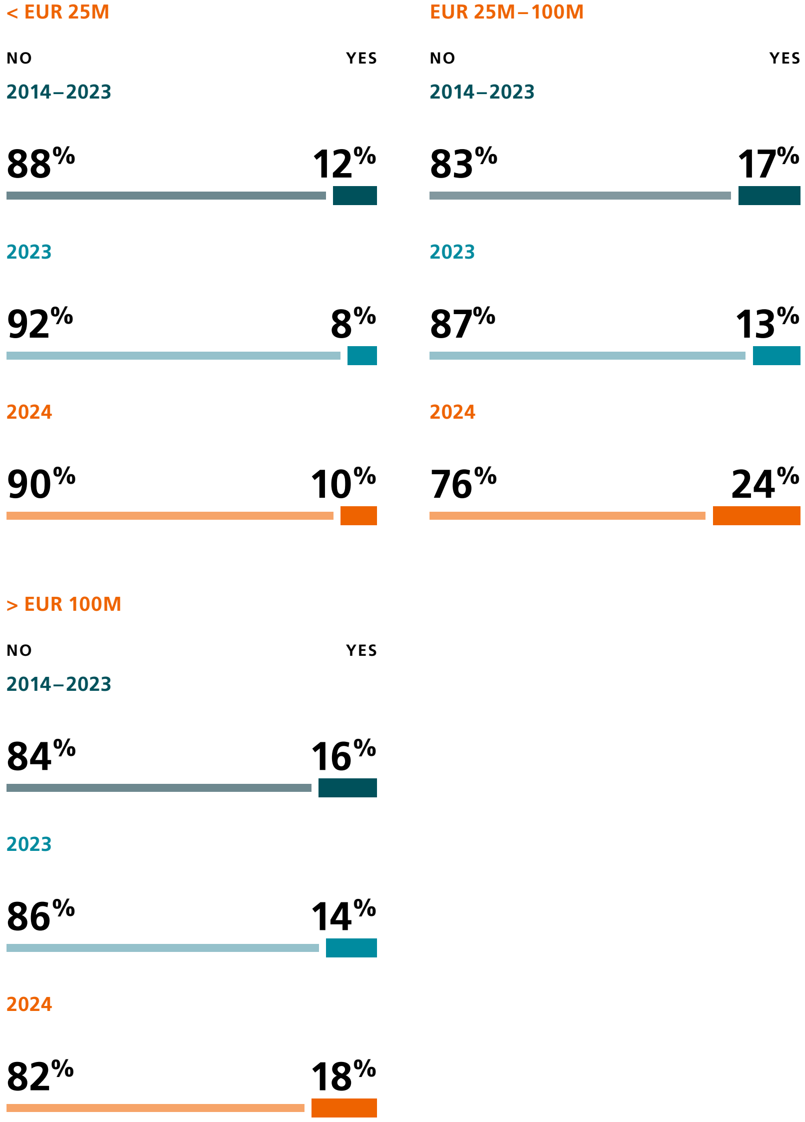
Analysis by Deal Size

The trend from 2023, where MAC clauses were included more often in agreements concerning large and medium sized deals than in small deals, continued in 2024. While in small and large deals the development of the use of MAC clauses remained relatively stable from 2014 to 2024 (fluctuations from 2% to 4%), in medium sized deals the use of MAC clauses increased by 11% from 13% in 2023 to 24% in 2024. Overall, the use of MAC clauses in all purchase price categories increased compared to 2023.

The use of MAC clauses increased in all purchase price categories in 2024

MAC Clauses 2014–2024

By purchase price



100% = all evaluated transactions

Arbitration

When negotiating an M&A deal, the question usually arises as to whether or not the parties will resolve disputes before a public court or a private tribunal. Reasons for agreeing to arbitration include the desire to avoid courts in jurisdictions where proceedings are time-consuming and the outcome is highly unpredictable, as well as a desire to minimise publicity. There are also perceived downsides, such as the relatively high costs of arbitration and the concern that potential increases in efficiency will not actually be achieved in practice. However, since it may still be difficult to enforce foreign judgments in some jurisdictions, the need to obtain an award that can be enforced in multiple jurisdictions is probably the strongest driving force for choosing arbitration.

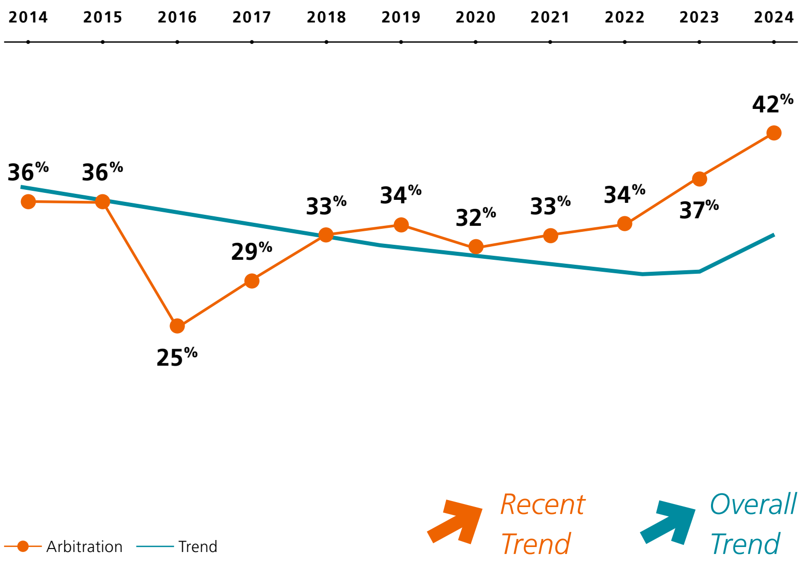
General Overview

The number of deals with dispute resolution mechanisms further increased from 37% in 2023 to 42% in 2024. Since 2016, arbitration clauses have almost constantly gained in popularity, with the exception of a minimal decrease in 2020 (down 2%). This indicated the importance for companies of avoiding public and time-consuming proceedings as well as the need for enforceable foreign judgments. These reasons may outweigh the high costs of arbitration proceedings.

Arbitration is becoming increasingly popular in M&A transactions

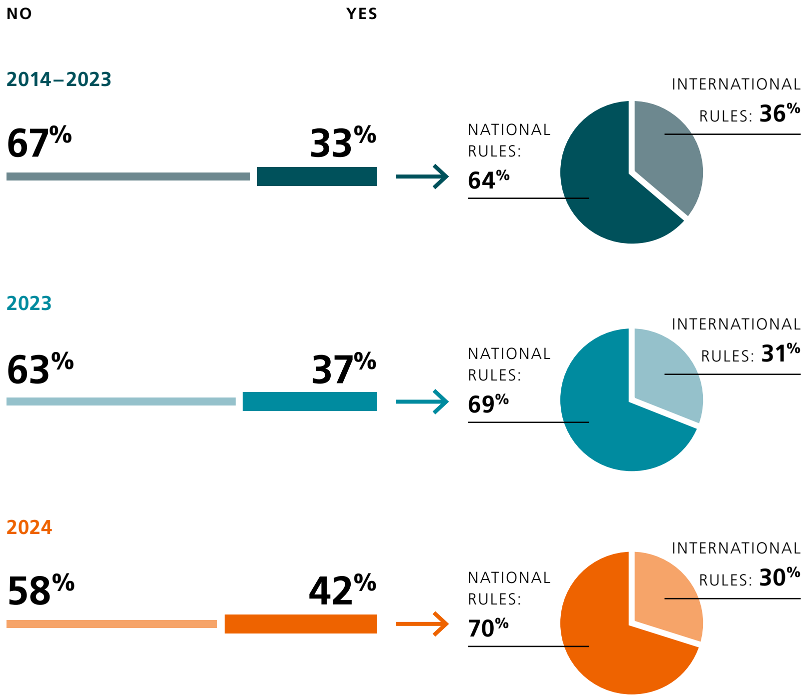
CMS Trend Index

Arbitration



While arbitration clauses are becoming more and more common, which could indicate a move away from the national legal system in favour of a standardisation of the international M&A market, the trend concerning the rules governing arbitration trends constantly towards the use of national rules (70% in 2024).

Time Trend
Aribtration



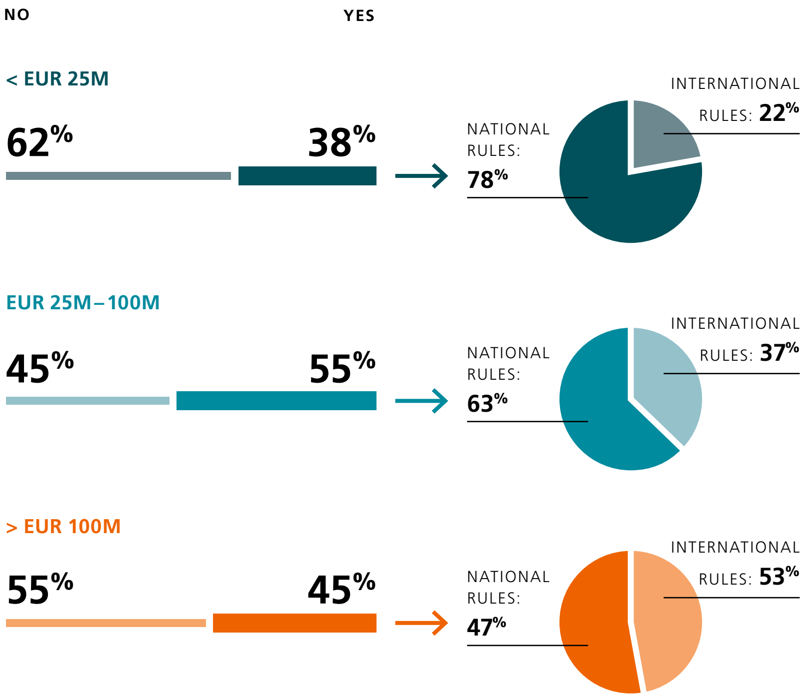
100% = all evaluated transactions

Analysis by Deal Size

Arbitration clauses are especially common in medium sized and large deals, at 55% (medium sized deals) and 45% (large deals) of all transactions. By contrast, only 38% of small deals included an arbitration clause. The larger the M&A deal is, the less important it is to the parties that national law will apply (78% of the cases in small deals compared to 47% in large deals). This might not be surprising, as many large deals will be international/cross-border in nature.

Arbitration clauses are used in almost every second deal with a purchase price above EUR 100m

Use of Arbitration
By Purchase Price 2024



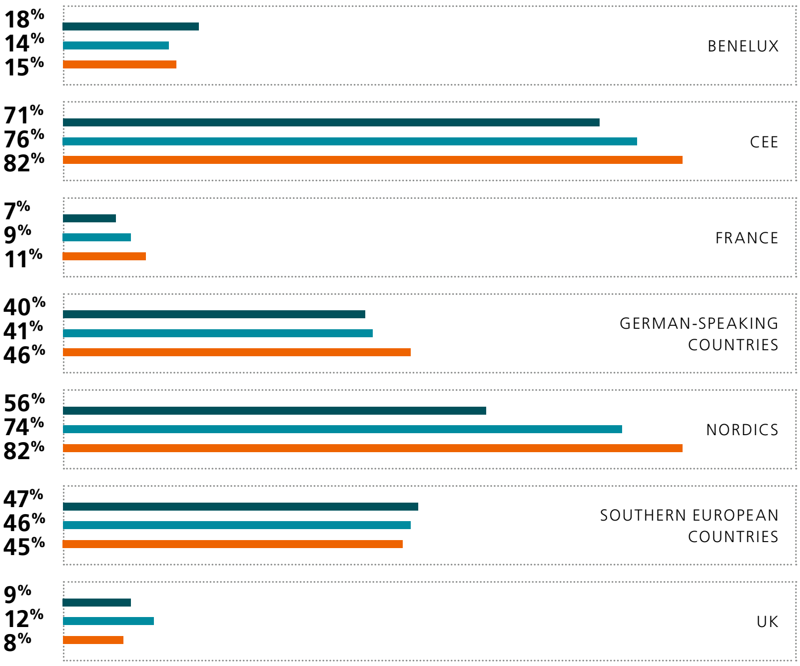
100% = all evaluated transactions with an arbitration clause

Specific Issues

Regional Differences

In 2024, arbitration clauses remained relatively uncommon in Benelux, France and the UK. While in Benelux and France the use of such clauses slightly increased (by 1% in Benelux to 15% and by 2% in France to 11%), there was a slight decline can be noted in UK (from 12% in 2023 to 8% in 2024). The opposite development can be seen in the CEE region and the Nordics. In both regions 82% of all transactions in 2024 included an arbitration clause. Since 2023 use in these two regions has increased by 6% (CEE) and 8% (Nordics). In between these two extremes are the German-speaking countries, as well as the Southern European countries, where a relatively stable use of arbitration clauses can be seen. In the German-speaking countries the use of arbitration clauses slightly increased from 41% in 2023 to 46% in 2024, whereas in the Southern European countries, with almost every second transaction including an arbitration clause (45%), the use of such clauses decreased by 1% compared to 2023.

Time Trend Europe
Aribtration



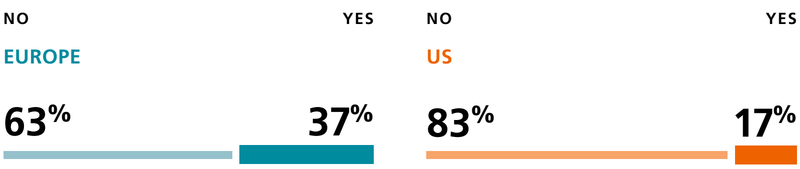
● 2014–2023 ● 2023 ● 2024
100% = all evaluated transactions
No data for Nordics before 2022 available

Arbitration clauses are used in the CEE and the Nordics in 82% of all deals

European/US Differences

The use of arbitration clauses remained much more popular in Europe (37%) than in the US (17%) in 2024. This is in line with the data from 2023, where in Europe 33% of all transactions included an arbitration clause, whereas in the US only 19% of the transactions did so.

Europe/US
Arbitration Clauses



100% = all evaluated transactions

Tax

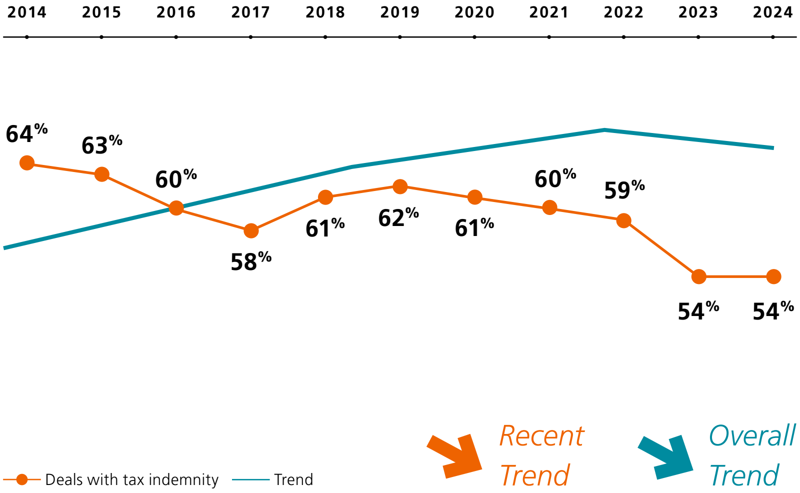
The rationale behind a tax indemnification provision is that the buyer wants to be held harmless for pre-completion tax risks. Tax indemnities often include specific caps and time limitation periods. There are different types of limitation periods for tax indemnity claims, namely ‘absolute’ limitation periods and ‘relative’ limitation periods. An ‘absolute’ limitation period bars tax claims by the buyer after a fixed date. A ‘relative’ limitation period is directly related to a decision by the relevant tax authority. In these cases, the limitation period (which is usually very short) does not start until a relevant decision has been made by a tax authority.

General Overview

The fall in the use of tax indemnities since 2019 was halted in 2024, although the figure of 54% (same as 2023) remains the lowest it has been over the past decade.

CMS Trend Index

Tax indemnity agreed



Participation right at a future tax audit

While 2023's declining trend with regard to the seller's right to participate in a future tax audit (only in 37% of all transactions) assumed a buyer-friendly trend, a return to a more seller-friendly approach can be observed in 2024, where sellers were granted the right to participate in a future tax audit in every second transaction that involved a tax indemnity. This development seems to be more in line with the average development over the past ten years, where in 44% of the deals the sellers were granted such a right.

Participation Right in Future Tax Audit

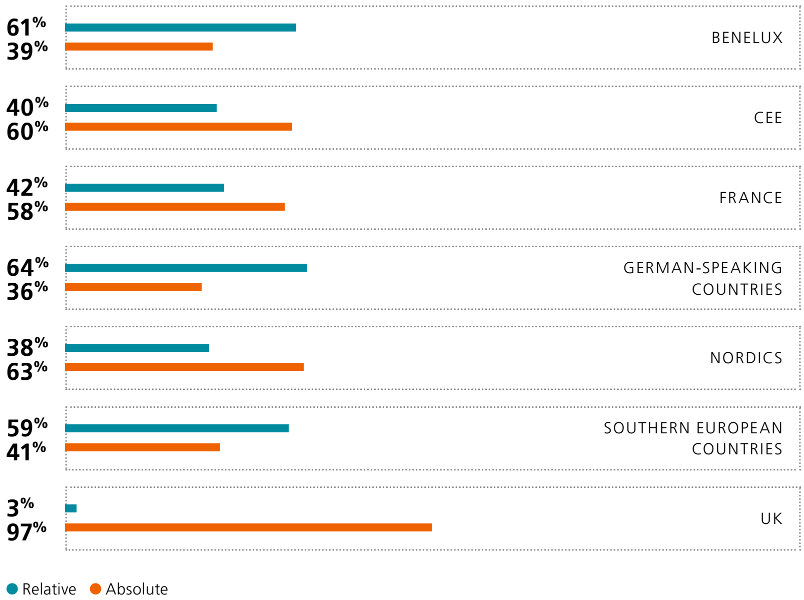
100% = all evaluated transactions

Specific Issues

Regional Differences

Just like in 2023, strong regional differences in the use of absolute and relative limitation periods continued in 2024. Absolute limitation periods dominated in the UK (97%) and were also more common than relative limitation periods in the CEE region (60%), France (58%) and the Nordics (63%). In contrast, relative limitation periods remained more prevalent in Benelux (61%) and the German-speaking countries (64%).

Absolute and Relative Limitation Period 2024

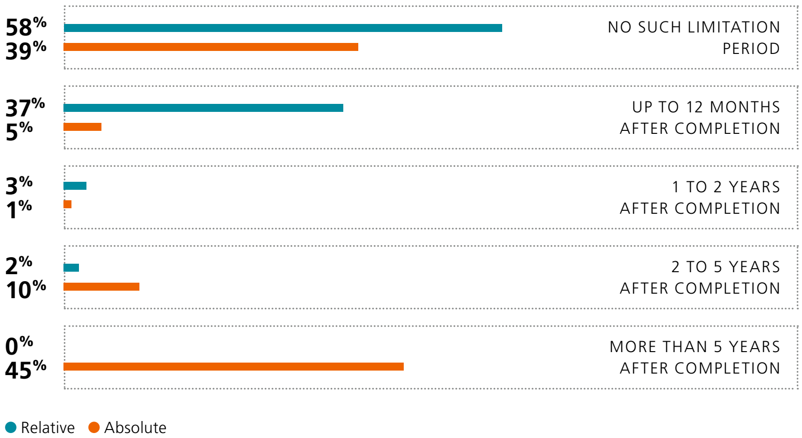


100% = all transactions with tax indemnity clause
No data for Nordics before 2022 available

Duration of limitation periods

Parties who agreed on an absolute limitation period for tax indemnities tended to choose periods of more than five years after completion (45%). This is in line with the trend since 2022 (47% in 2022 and 44% in 2023). When agreeing on a relative limitation period, the majority of the parties agreed on a limitation period of up to 12 months after the relevant decision of the tax authority (37%).

Absolute and Relative Limitation Period 2024



100% = all evaluated transactions with a tax indemnity clause

Due to rounding, totals do not correspond with the sum of the separate figures.

Analysis by Deal Size

As in previous years, the current data shows that tax indemnities were more frequently included on large deals (70%) and medium sized deals (69%) than in small deals (only 46%). This is in line with the trend observed in 2023; however, compared to 2023, the use of tax indemnities in large as well as medium sized deals increased in both deal size categories by 5% in 2024. Even though the use of tax indemnities in small deals is already comparably low, a decline of 3% was observed in M&A deals (from 49% in 2023 to 46% in 2024).

Tax indemnities dominated in medium sized and large deals

Tax Indemnity Agreed
By purchase price

	2023 NO	2023 YES	2024 NO	2024 YES
< EUR 25M	51%	49%	54%	46%
EUR 25M – 100M	36%	64%	31%	69%
> EUR 100M	35%	65%	30%	70%

100% = all evaluated transactions

Global reach, local knowledge

The Americas

Bogotá
Lima
Mexico City
Rio de Janeiro
Santiago de Chile
São Paulo
Silicon Valley*

Europe

Aberdeen
Amsterdam
Antwerp
Barcelona
Belgrade
Bergen
Berlin
Bratislava
Bristol
Brussels
Bucharest
Budapest
Cologne
Dublin
Duesseldorf
Edinburgh
Frankfurt
Funchal
Geneva
Glasgow
Gothenburg
Hamburg
Istanbul
Kyiv
Leipzig
Lisbon
Liverpool
Ljubljana
London
Luxembourg
Lyon
Madrid
Manchester
Milan
Monaco
Munich
Oslo
Paris
Podgorica
Poznan
Prague
Reading
Rome
Sarajevo
Sheffield
Skopje
Sofia
Stavanger
Stockholm
Strasbourg
Stuttgart
Tirana
Vienna
Warsaw
Zagreb
Zurich

Africa

Casablanca
Ebene
Johannesburg
Luanda
Maputo
Mombasa
Nairobi

Middle East

Abu Dhabi
Dubai
Muscat
Riyadh
Tel Aviv

Asia-Pacific

Beijing
Brisbane
Hong Kong
Shanghai
Singapore
Sydney

*Representative Office

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Our latest CMS Corporate / M&A headline deals

Aareal Bank

CMS advised Aareal Bank on the EUR 3.9bn sale of Aareon, a European provider of Software-as-a-Service (SaaS) solutions for the property industry, together with Advent International to the US-private equity investor TPG and global investment group CDPQ.

BBC Studios

CMS advised BBC Studios on its acquisition of ITV's 50% joint venture interest in international streaming platform, BritBox International, for GBP 255m.

Bruker

CMS advised Bruker Corporation, a US technology company listed on NASDAQ, on the EUR 870m acquisition of ELITech Group in a transaction spanning nine countries across Europe.

Carlyle

CMS advised Carlyle on acquiring Baxter International's Kidney Care unit for USD 3.8bn.

Corvinus

CMS advised Hungarian state-owned Corvinus, together with French VINCI Airports SAS as minority shareholder, on the EUR 3.1bn acquisition of the group of companies operating Budapest Airport.

CTS Eventim

CMS advised CTS Eventim on its proposed acquisition of See Tickets and the live events business of Vivendi in a deal spanning France, UK, Spain, Portugal, Switzerland and The Netherlands.

Groupe SII

CMS advised the family group of Bernard Huvé and managers of French multinational digital services company Groupe SII on the EUR 1.3bn simplified public tender offer for the shares of Groupe SII for its delisting from Euronext.

easyJet

CMS advised listed company easyJet on the acquisition of SR Technics maintenance facility in Malta for an undisclosed amount, resulting in easyJet undertaking heavy maintenance in Malta.

Eesti Gaas

CMS advised Eesti Gaas on the strategic acquisition of 100% of the shares in EWE Polska sp. z o.o., a major player in the Polish gas and electricity market.

Encavis

CMS advised the German energy producer on a EUR 2.8bn voluntary public takeover offer by KKR.

Equinor

CMS advised Equinor on its USD 5.3bn 50/50 corporate joint venture with Shell UK, marking one of the largest energy deals in the UK North Sea.

Equinor

CMS advised Equinor on its USD 1.1bn swap transaction with BP in the US, which saw Equinor take full ownership of the Empire Wind lease and projects and BP take full ownership of the Beacon Wind lease and projects.

Hanseatic Energy Hub

CMS advised Hanseatic Energy Hub on financial close for the project financing to develop and realise the planned terminal for liquefied gases in Stade. Total investment is circa EUR 1.6bn.

Holtzbrinck Publishing Group

CMS advised Holtzbrinck Publishing Group on the successful IPO of Springer Nature. The market capitalisation on the date of issue was around EUR 4.9bn.

NJJ Holding

CMS advised a consortium led by NJJ Holding on its historic acquisition in Ukraine's telecoms sector, the landmark acquisition of Datagroup-Volia, Ukraine's leading fixed telecom and pay TV provider, and Lifecell, the country's third-largest and fastest-growing mobile operator.

Packeta

CMS advised Czech group Packeta on the sale of 100% of the ownership interest in the Packeta Group in an auction process to CVC Capital Partners and Emma Capital.

RSBG

CMS advised RSBG, the private equity arm of RAG Foundation, on the sale of a majority stake in Masco Group, a global provider of engineering solutions for the pharmaceuticals and biotech industries, in a controlled auction process to ARDIAN, a world-leading private investment firm.

Sentinel Capital Partners

CMS advised Sentinel Capital Partners on all European aspects of its acquisition of Carrier Global Corporation's Industrial Fire Business for USD 1.43bn.

Swiss Life

CMS advised a consortium of Swiss Life Asset Managers and Vesper Next Generation Infrastructure Fund I on the acquisition of RAD-x, a leading European diagnostic imaging practice operator.

Telefónica Deutschland

CMS advised the management board of Telefónica Deutschland Holding AG on a EUR 1.3bn voluntary public takeover offer from Spain's Telefónica Group.

Methodology

The Study includes deals which 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 this represented the seller's entire shareholding in the target company. The Study also includes property transactions provided 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
- Nordics:
  Norway and Sweden
- Southern European countries:
  Italy, Spain and Portugal

France and the United Kingdom are presented as individual categories.

Transactions included in the Study cover the following sectors:

- Banking & Finance
- Hospitality, Travel & Leisure
- Energy & Climate Change
- Consumer Products
- Technology, Media & Communications
- Infrastructure & Projects
- Life Sciences & Healthcare (pharmaceutical, medicinal and biotechnical products)
- Real Estate
- Industry
- Business (Other Services)

Some comparative data from the US was derived from "SRS Acquiom 2024 M&A Deal Terms Study" produced by SRS Acquiom Inc. Due to rounding, some totals may not correspond with the sum of the separate figures.

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*2024, deal volume and value, Bloomberg, Factset, LSEG, Mergermarket

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