

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



Deal activity across Europe maintained a steady pace in 2022 despite the increasing number of economic headwinds, according to the latest annual European M&A study by global law firm CMS.

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

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

Horea Popescu, Head of CEE Corporate M&A at CMS and managing partner of CMS Romania: “Central and Eastern Europe (CEE) performed well in 2022. Poland recorded 25 M&A transactions for the study, Romania ranked second, with ten transactions, equal to the Bulgarian market. M&A markets in Hungary, Croatia and the Czech Republic are close behind with eight, seven and six transactions, respectively, consolidating the evolution trend of recent years following the pandemic. Despite adverse regional and global macroeconomic and political developments, M&A activity in the region shows that market players can readily adapt to new circumstances and that CMS is extremely well placed to confront the challenges and complexities that lie ahead.”

Rodica Manea, Corporate M&A partner, CMS Romania: “There are many business opportunities in CEE that continue to attract investments. The main deal drivers in the region were new market entries and acquisitions of competitor companies, which together last year accounted for 77% of the transactions assessed in our study, CMS European M&A 2023. We are also witnessing a consolidation of the new status of the Romanian market, which tends towards the performances of Poland, gaining in complexity and in the degree of sophistication of the transactions. We are pleased to be able to contribute, through CMS’s multi-jurisdictional expertise, to this evolution.”

Louise Wallace, partner and Global Head of the CMS Corporate/M&A Group, said: “The challenging M&A landscape last year has not resulted in considerable movement from the deal rhythm found in more benign years. We remain cautiously optimistic about deal activity in Europe in 2023 – notwithstanding that many of the adverse economic and political factors that have historically impacted on M&A growth are still evident. The fact that our team has still delivered a record number of M&A transactions reflects the strength of our corporate offering throughout Europe.”

Dr Malte Bruhns, partner and Global Head of the CMS Corporate/M&A Group, added: *“Whilst it has been another turbulent year for M&A, there is clearly appetite out there to get deals done, and across all major sectors. Without doubt, there will still be challenges with many of the headwinds that we experienced last year continuing into 2023. Yet we can take comfort in knowing that 2022 was still a strong year for dealmaking despite those challenges and that opportunities still abound.”*

Key findings:

• **MAC clauses:** MAC clauses are still not very popular on European deals, with only 13% of deals having them. They are used even less on medium to large value deals. This is in stark contrast to the US, where MAC clauses are still incredibly common and were used on 98% of the deals.

• **Earn-outs:** The frequency of earn-outs has continued to rise, now applying in 27% of deals as compared to 14% in 2010 when CMS first analysed the use of earn-outs. This is coupled with a rise in the use of EBIT or EBITDA as the relevant measure for the earn-out applying in 54% of such transactions. This trend applies across the board in Europe and runs counter to the experience in the US market. Earn-outs are seen most commonly in small and medium-sized deals.

• **Locked box transactions:** For 2022, there was a more significant increase in the application of locked box arrangements (62% in 2022 compared with 51% in 2020). The increase is even higher for medium sized deals up to EUR 100m, where 79% of the deals were locked box transactions. This increase is even more marked when compared against the average usage of 51% for the period 2010 to 2021. Our view is that this reflects a wider acceptance of locked box provisions instead of purchase prices adjustment provisions, particularly for larger deals. Also note a finding from the CMS Private Equity Study that PE deals show a marked preference (85%) for locked box structures.

• **Warranty & Indemnity (W&I) insurance:** The popularity of W&I insurance has grown significantly over the last five years, particularly in the UK – albeit its application stabilised in 2022 at 32%. W&I cover is prevalent primarily in large deals with values over EUR 100m with W&I cover being obtained for 58% of those deals. The level of cover purchased varies, although a significant proportion of deals (nearly 40%) had cover of an amount equivalent to more than 30% of the purchase price.

• **ESG & sustainability:** ESG factors in M&A are becoming more relevant and important. Investors are facing pressures to uphold higher governance standards across all industries and geographical regions. It also seems likely that dealmakers want to capitalise on attractive ESG value creation opportunities. However, ESG aspects are only just beginning to appear specifically as part of the due diligence process (33% of deals) and in transaction documents (45%).

Key regional differences:

• **PPA/Locked box:** PPA clauses are most popular in Benelux (55%), the southern countries [Italy, Spain and Portugal] (64%) and the UK (59%), as compared with the European average of 48%. There was a big swing in respect of Benelux from 34% in 2021. PPAs are less popular in France (32%), the German-speaking countries (38%) and Nordics (19%). Vice versa, locked boxes are most common in the German-speaking countries (79%) and Nordics (71%), compared to the average of 62%. At the other end of the scale are the southern countries (30%) and CEE (45%).

• **MAC clauses:** There was a drop in the application of MAC clauses to a European average of just 13% in 2022. As with many of the study's metrics, there was a wide disparity across the region, with the UK and Nordics at the low end. Just 4% and 5% of their deals respectively included a MAC clause. At the high end, France and the Southern countries, included MAC clauses in 29% and 27% of deals. The swing in France was enormous, rising from just 4% in 2021.

• **Earn-outs:** There is a wide disparity across Europe in the application of earn-out provisions. As compared with the average of 27%, Nordics (42%), the German-speaking countries and Benelux (both 36%) stand out as being ahead whereas CEE is much lower, with just 11% of transactions. There was a big swing upwards in respect of Benelux and the German-speaking countries from 20% and 30% respectively in 2021 to 36% in 2022.

• **W&I insurance:** The application of W&I insurance has grown significantly in the UK over the last five years whereas the uptake in other countries is slower as brokers and insurers begin to establish a presence. The UK remains the stand-out country, albeit the use of W&I insurance has stabilised at 32% for 2022. This compares with the next highest country, France, at 18% – itself a massive step up from 4% in 2021. By contrast, in the German-speaking countries W&I insurance dropped to 10% in 2022 from 17% in the previous year.

Read the full CMS European M&A Study 2023 [here](#).