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CMS Private Equity Study: Europe's Private Equity market turns more buyer-friendly as deal activities decline

For the newly released 2023 edition of the annual CMS Private Equity Study, we analysed data from over 100 private equity deals on which CMS advised in 2022. The survey found that overall deal activities remained strong well into the third quarter of the year before a drop in the fourth quarter. In view of a decline in deal value and a slowdown in exit activities, the review revealed that a significant number of new investments were add-on acquisitions. Most transactions (23%) involved the technology, media and telecoms (TMT) sector, followed by real estate and construction (18%) and the life sciences sector (17%).

As an overall market trend, in line with general M&A deals, earn-outs were on the rise, especially when a private equity investor was on the buy side – a clear sign of the market becoming more buyer-friendly. While ESG issues continued to be high on the agenda of PE investors last year, ESG rarely appears specifically as part of the legal due diligence process or in transaction documents.

Alexander Rakosi, partner at CMS in Vienna: “2022 was quite an active year for the PE market, though there was a decline in exit activities. Despite the difficult macroeconomic context, we remain cautiously optimistic and continue to see opportunities for transactions favoured by emergency situations or diversification measures. Digitalisation has ceased to be the main driver, as entry into new markets has taken top priority instead. Although investors have become more cautious, we are seeing some positive signs for the coming year and expect a solid level of PE deal activities in Europe in 2023. The market seems to be slowly developing in favour of buyers again, with increasingly buyer-friendly conditions, greater use of earn-outs and a more buyer-friendly approach to liability.”

Key findings:

- **New investments versus exits:** 2022 saw even fewer exits than the year before (8% in 2022 versus 15% in 2021), indicating that the economic framework for exits has further worsened. 85% of the PE deals analysed were new investments, while 7% were secondary buyouts (i.e. deals with a PE investor on both the sell and the buy side), which is significantly less than in 2021 (15%). The 2021 trend where a lot of deals were add-on transactions further accelerated in 2022 (52% of deals in 2022, after 43% of deals in 2021).
- **Deal drivers:** Digitalisation was no longer a main deal driver, showing that many PE funds had already implemented digitalisation strategies in 2020 and 2021, but also that tech asset valuations were not as attractive.
- **FDI procedures:** Over the past year, fewer approvals or clearances were obtained (8%) than in 2021 (15%).
- **Purchase price adjustments:** Marked preference (80%) for locked box (i.e. the purchase price is set upon signing with no permitted leakage and no adjustments on completion). From 2021 to 2022, purchase price adjustment mechanisms decreased by roughly 6 percentage points in PE deals (whereas non-PE deals saw the use of purchase price adjustment mechanisms increase by 3 percentage points).
- **Earn-outs:** The use of earn-out provisions increased by 12 percentage points in 2022 compared to 2021 (37% of all PE transactions reviewed). However, earn-outs were far more often agreed on in smaller deals (45%) than in higher value deals (7% of deals over EUR 100m).
- **Non-compete clauses:** In 2022, PE buyers demanded more stringent terms, with 38% of deals including a non-compete for longer than 30 months, while only 24% of transactions on trade deals came with a similar time period.
- **Management incentive schemes:** The use of vesting increased as compared to 2021, though its terms became more favourable to management in 2022, with shorter vesting periods (a time horizon of two to three years having gained 17 percentage points over the range of four to five years, compared to 2021). On the other hand, leaver provisions were tightened, with both sweet equity and strip equity being taken back from bad leavers in even more cases (an increase by 10 percentage points over 2021).
- **Sellers' and buyers' negotiation strength:** We have seen buyer-friendly developments in some instances (e.g. increased use of "tipping" baskets rather than "excess only" baskets).

Read the full CMS Private Equity Study 2023 [here](#).

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About CMS Reich-Rohrwig Hainz

CMS Reich-Rohrwig Hainz is one of the leading law firms in Austria and South-Eastern Europe and has offices in Vienna, Belgrade, Bratislava, Istanbul, Kyiv, Ljubljana, Podgorica, Sarajevo, Skopje, Sofia and Zagreb. Thanks to their specialisation, around 200 lawyers and tax experts are able to advise clients efficiently and at the highest level in all matters of national and international business law.

CMS Reich-Rohrwig Hainz is also a founding member of CMS, an international organisation of law firms. With around 5,000 lawyers and 73 offices in 43 countries, CMS has many years of local expertise as well as a global network.

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