

Herzlich willkommen
zum
50. FINANCE-Roundtable M&A

VERANSTALTER

FINANCE
Das Magazin für Finanzchefs

MITVERANSTALTER

CMS
law · tax · future

Flaute oder Rückenwind – Wie entwickelt sich der M&A-Markt 2023?

Dr. Oliver C. Wolfgramm
Partner
CMS

Finance M&A Roundtable

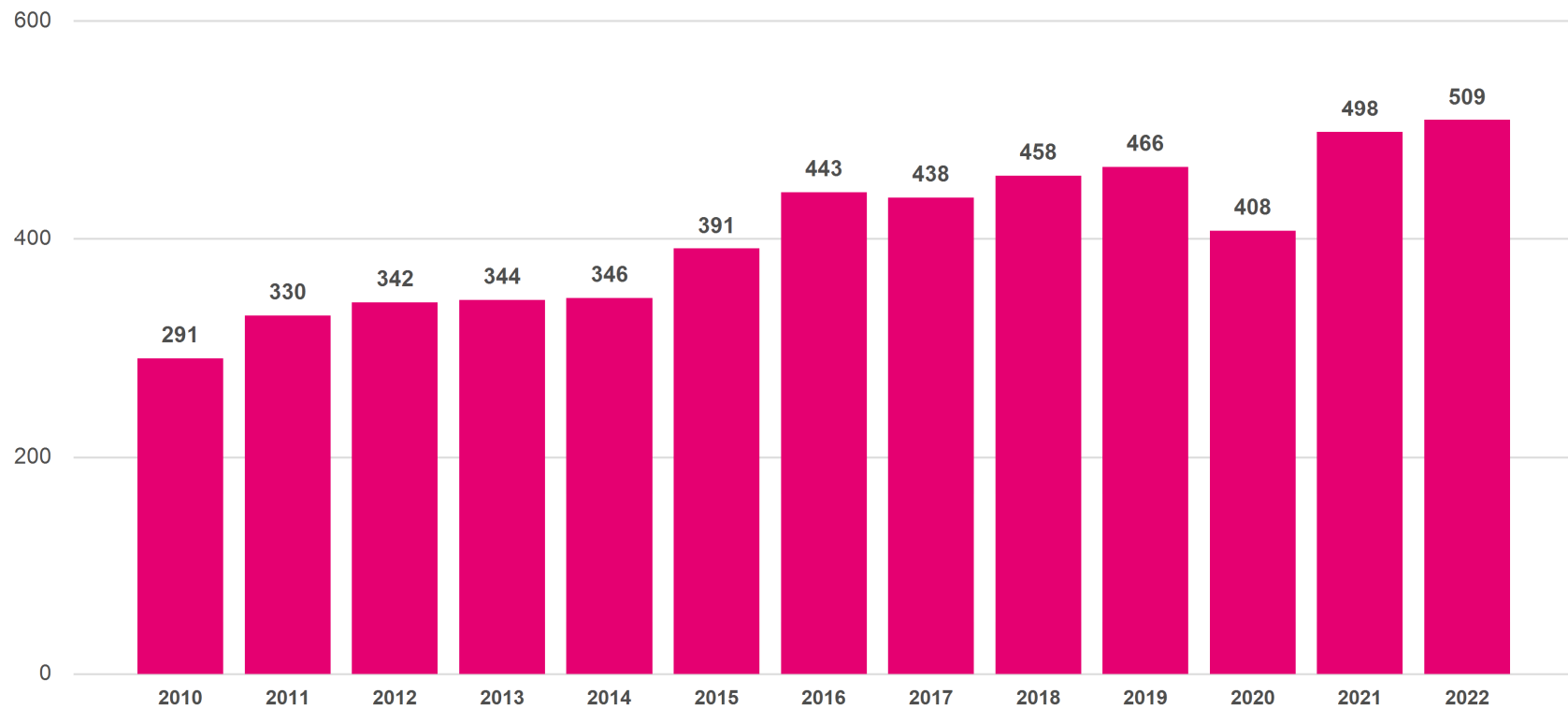
CMS European M&A Study 2023

Dr Oliver Wolfgramm

26 April 2023

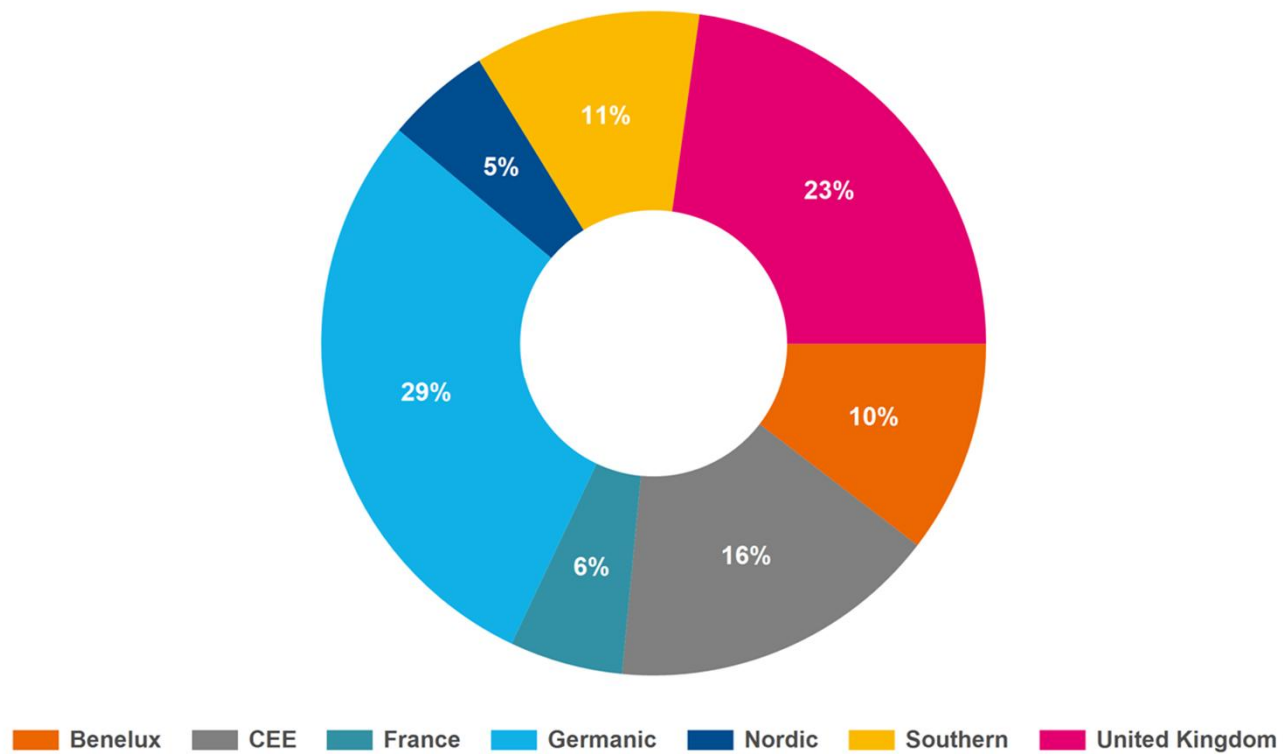
Introduction

Number of transactions 2010 - 2022



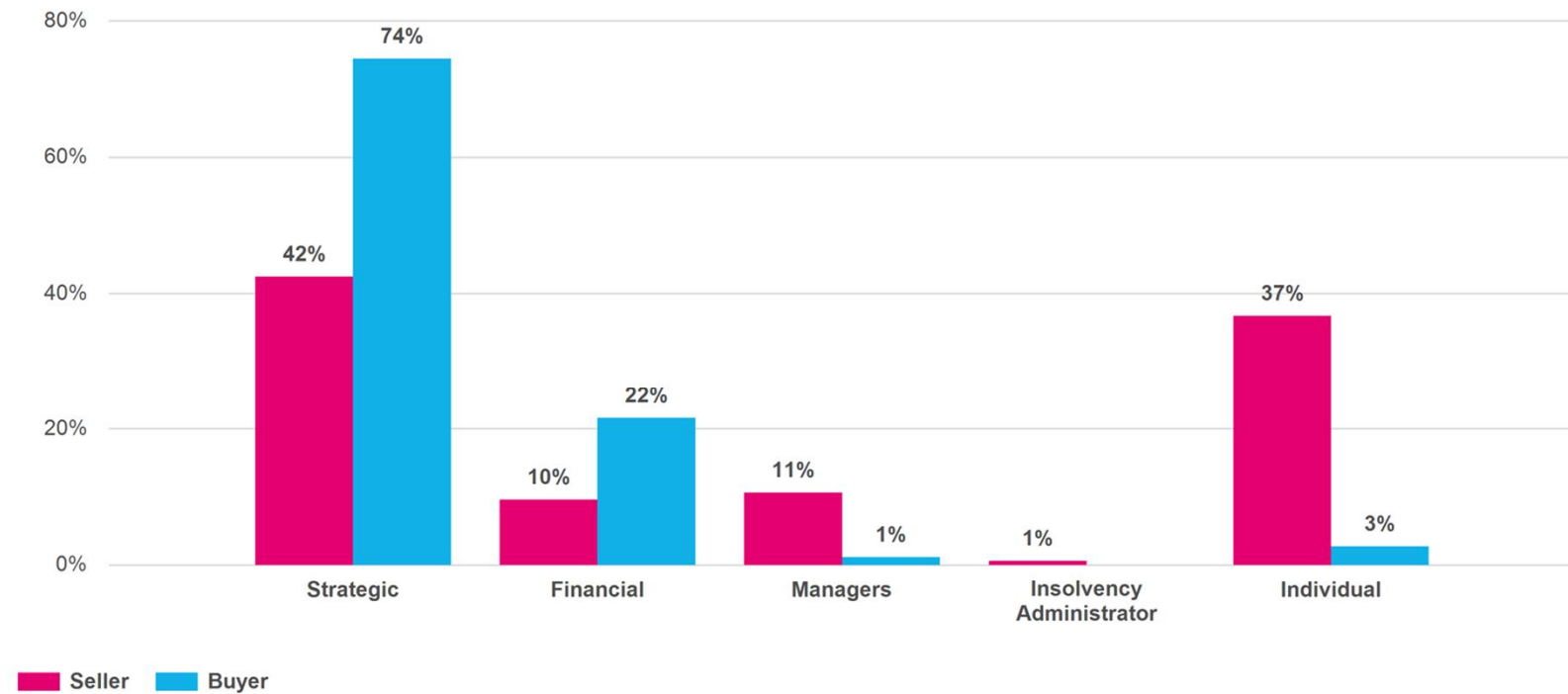
Introduction

Number of transactions 2022 in all countries and regions



Introduction

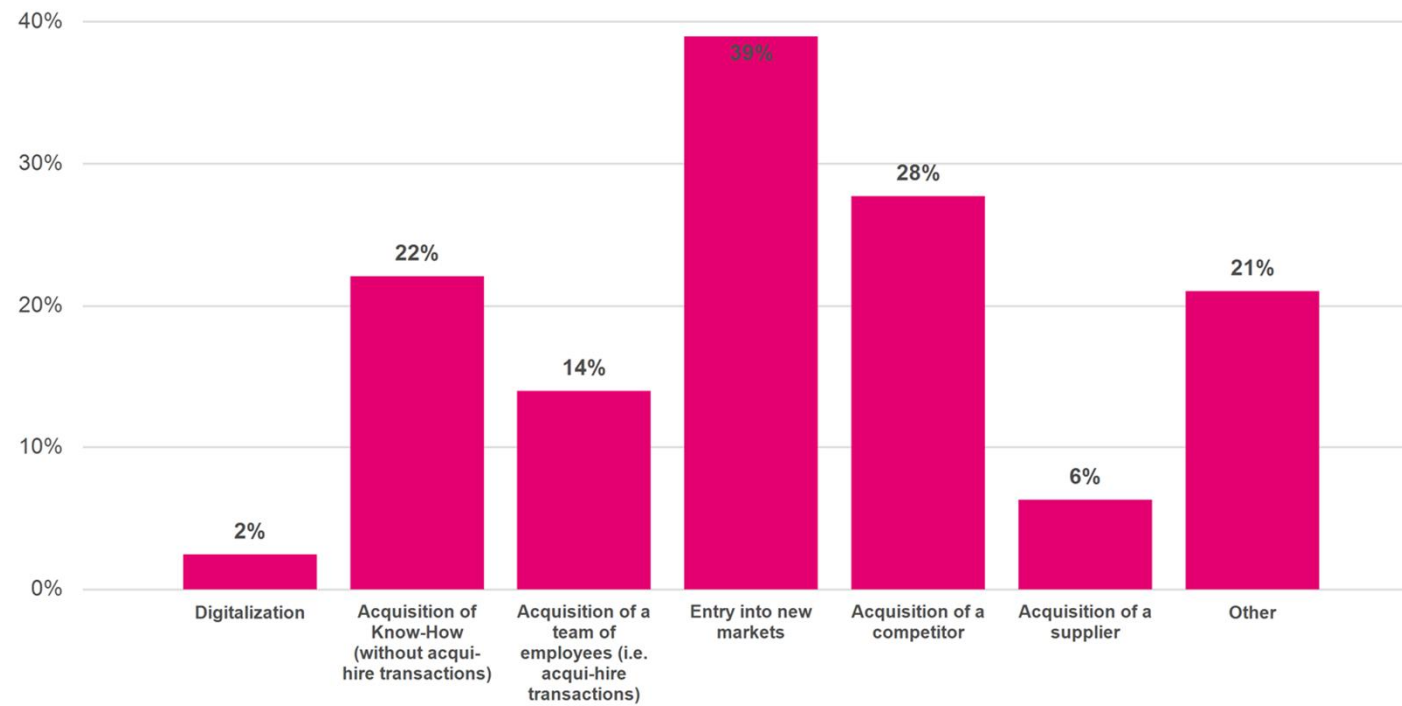
Seller's and Buyer's Background 2022



100% = all evaluated transactions, multiple nominations possible
In several transactions parties from more than one particular group of seller's or buyer's were involved.

Introduction

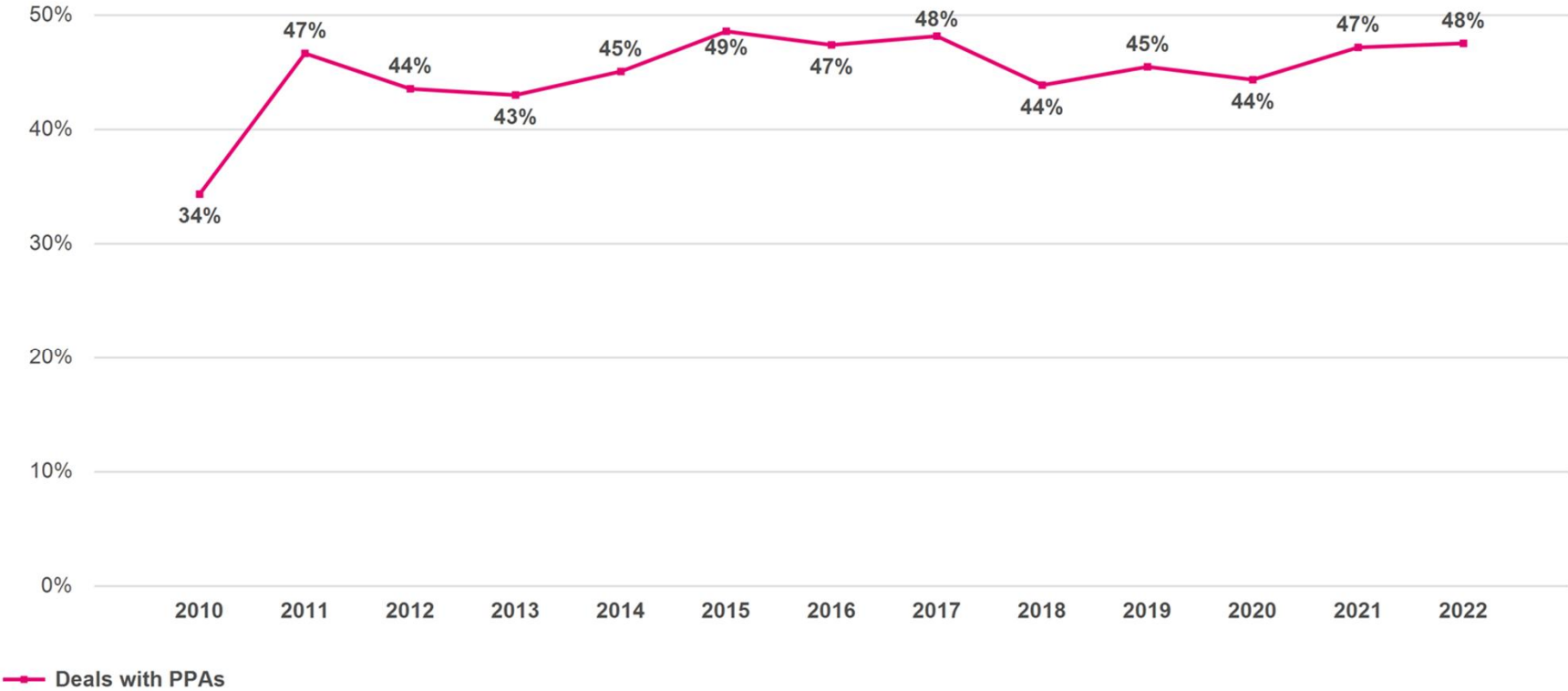
Main deal driver 2022



100% = all evaluated transactions
More than one nomination possible

Purchase price adjustment

Trend Index 2010 - 2022

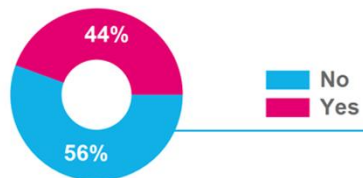


Purchase price adjustment / Locked box

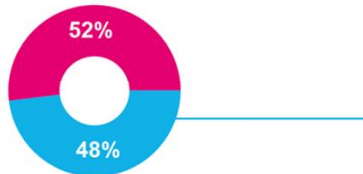
By purchase price 2022

Purchase price adjustment

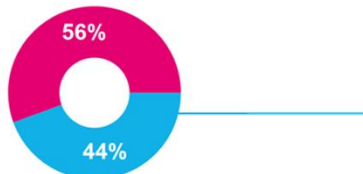
< 25 m



25 - 100 m

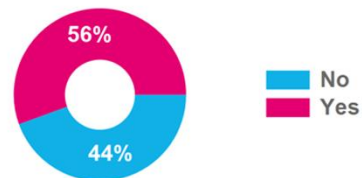


> 100 m

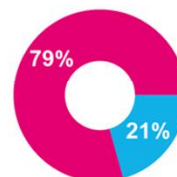


Locked box

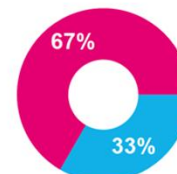
< 25 m



25 - 100 m



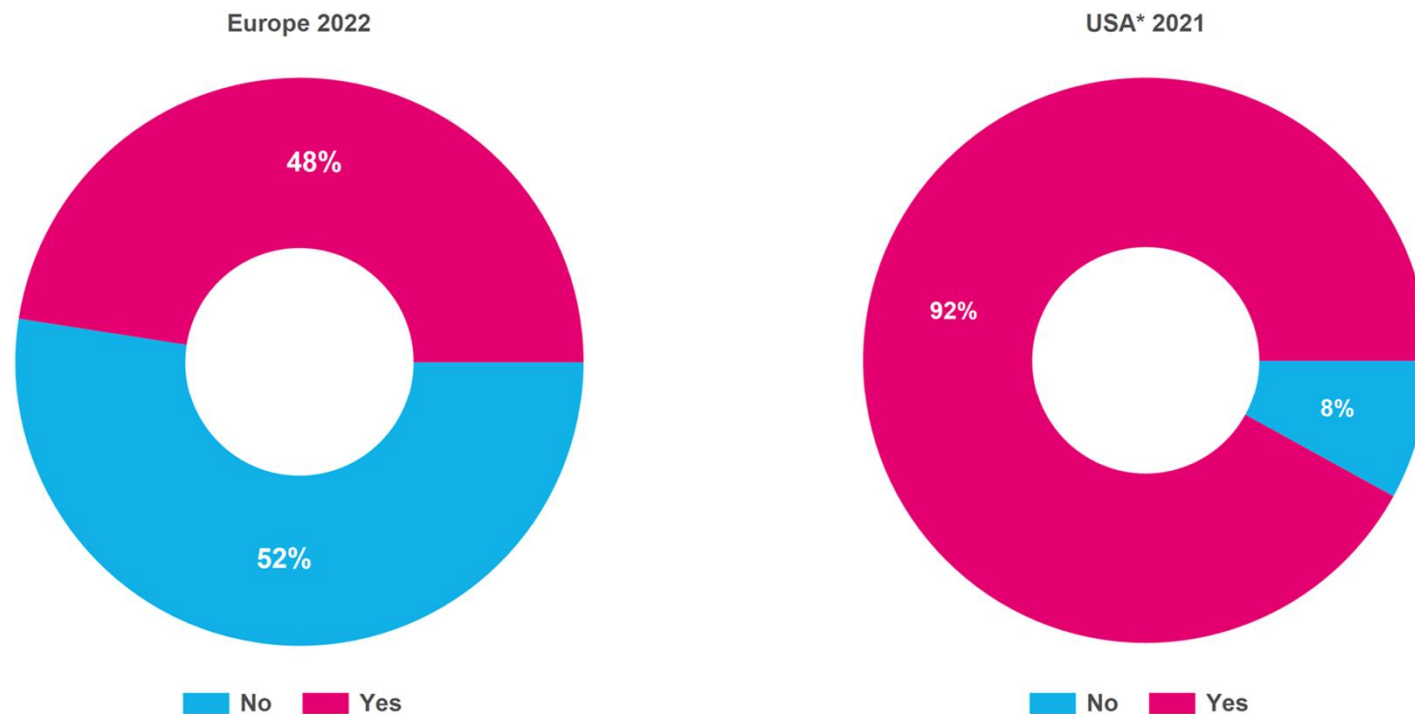
> 100 m



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

Purchase price adjustment / Locked box

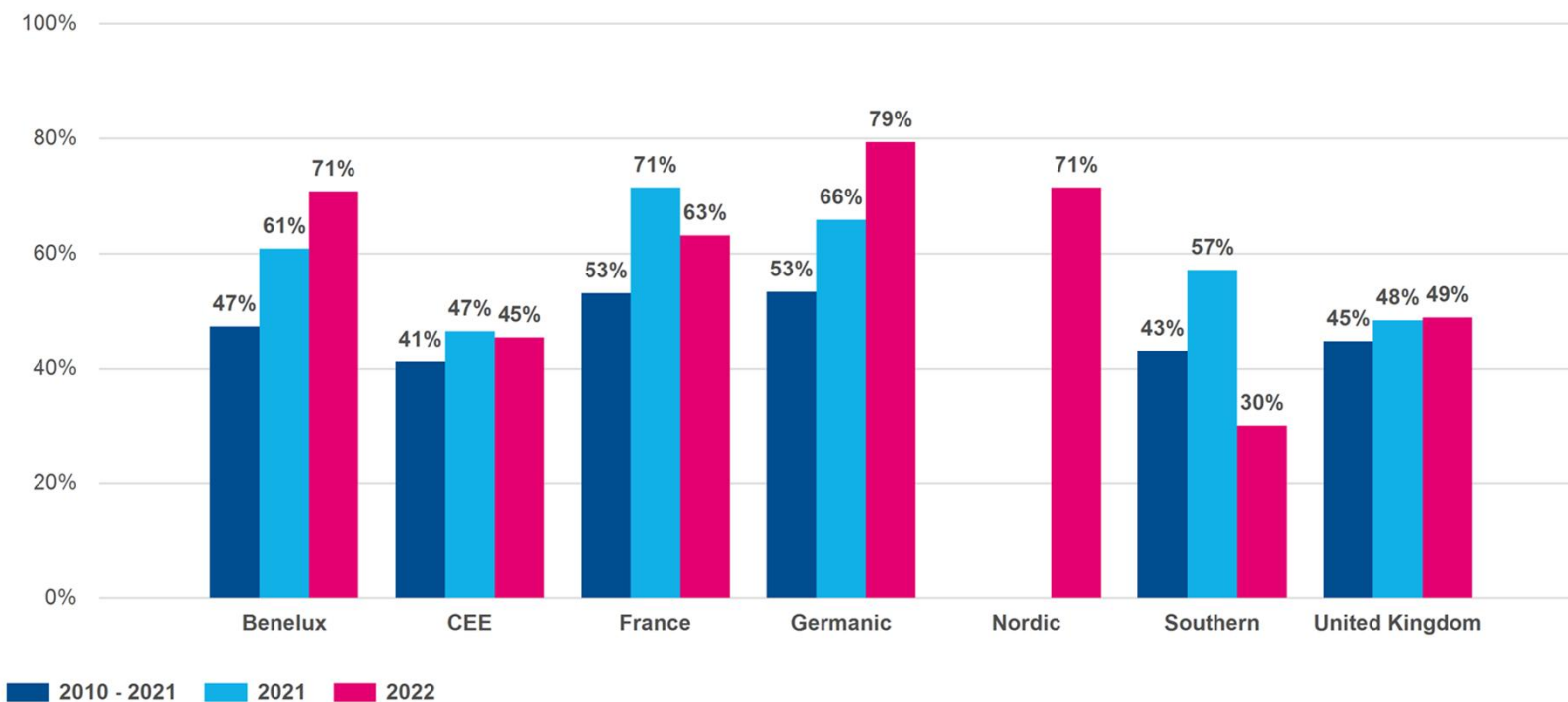
Purchase price adjustment Europe / USA



*The US data was derived from "SRS Acquiom 2022 M&A Deal Terms Study" produced by SRS Acquiom Inc.

Purchase price adjustment / Locked box

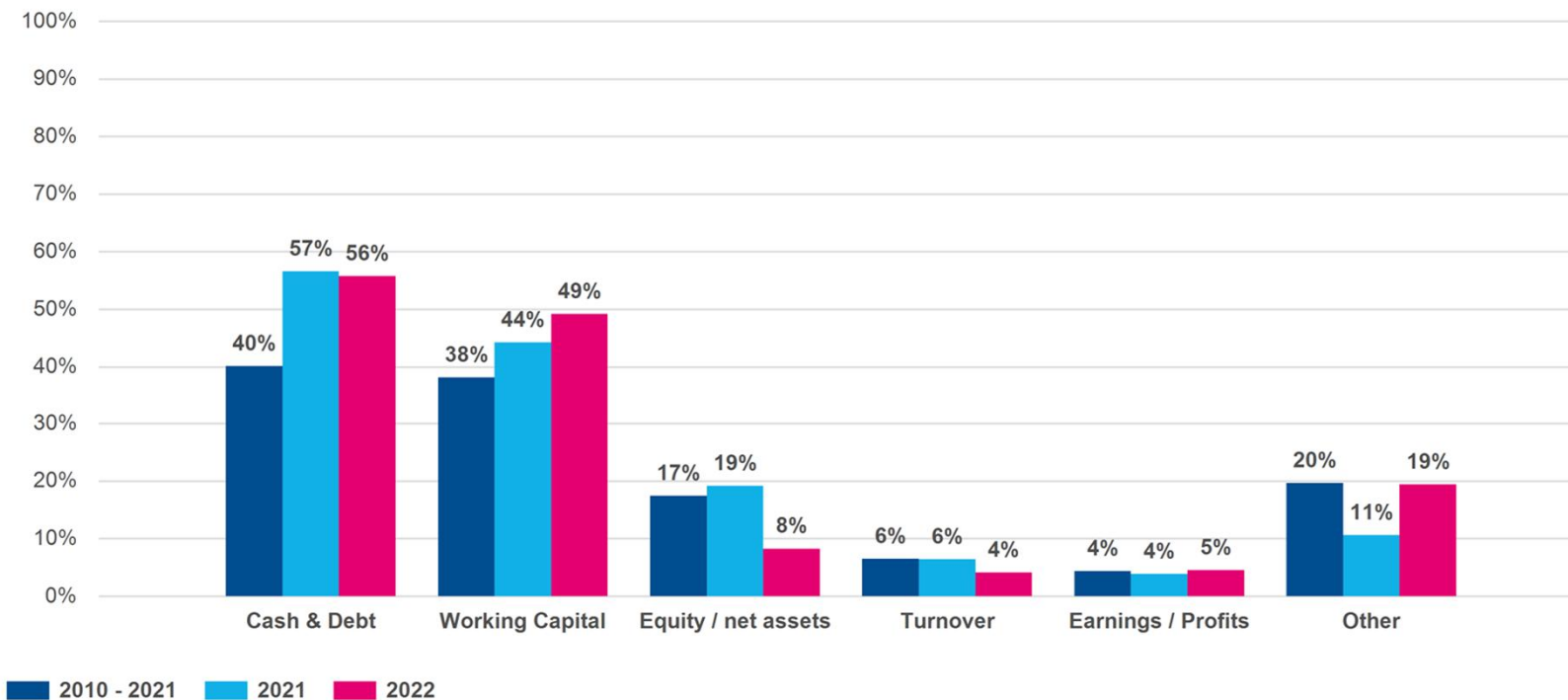
Locked Box 2010 - 2022



100% = transactions with no purchase price adjustment mechanism (Deals with purchase price adjustment and locked box are not included)
No data for region Nordic before 2022 available

Purchase price adjustment

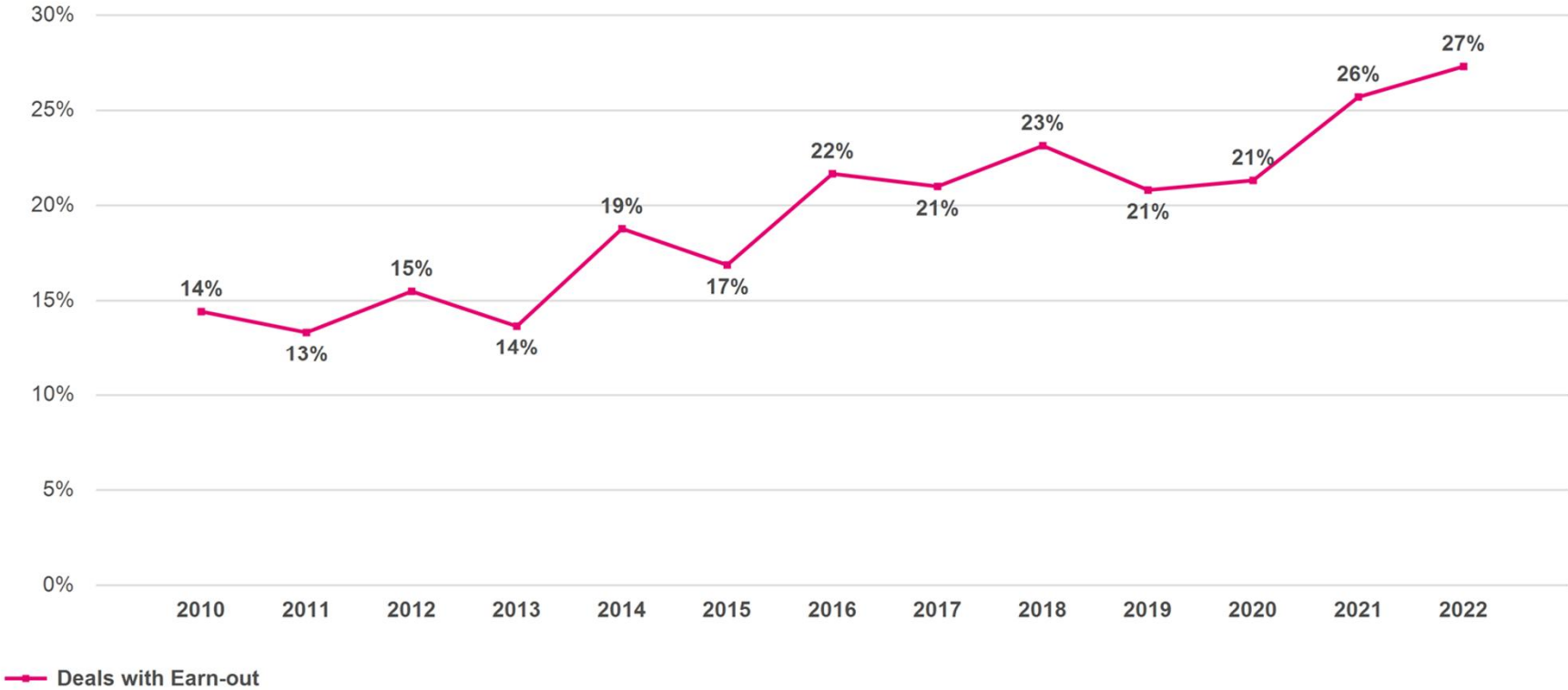
Time trend 2010 - 2022



100% = all transactions including a purchase price adjustment // Cash & Debt does not include "cash only" and "debt only"
Multiple nominations possible

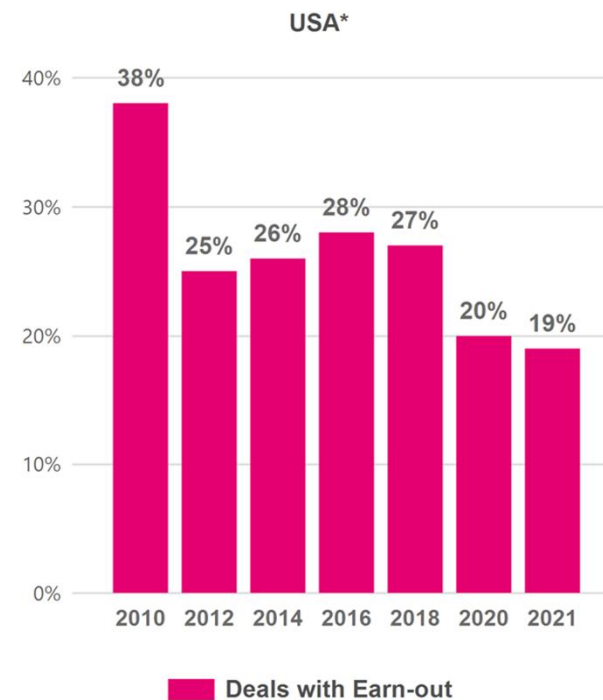
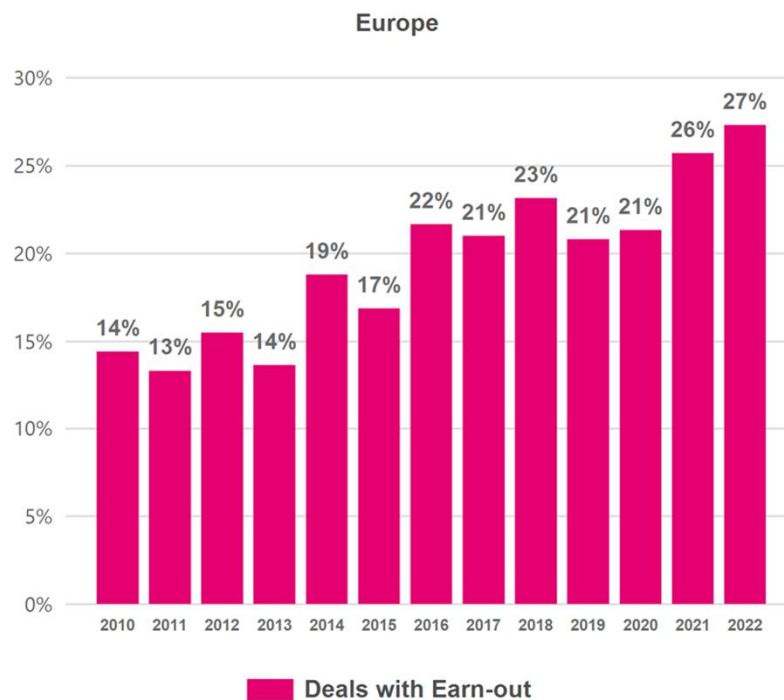
Earn-out

Trend Index 2010 - 2022



Earn-out Europe / USA

Frequency of Earn-out provisions Europe / USA

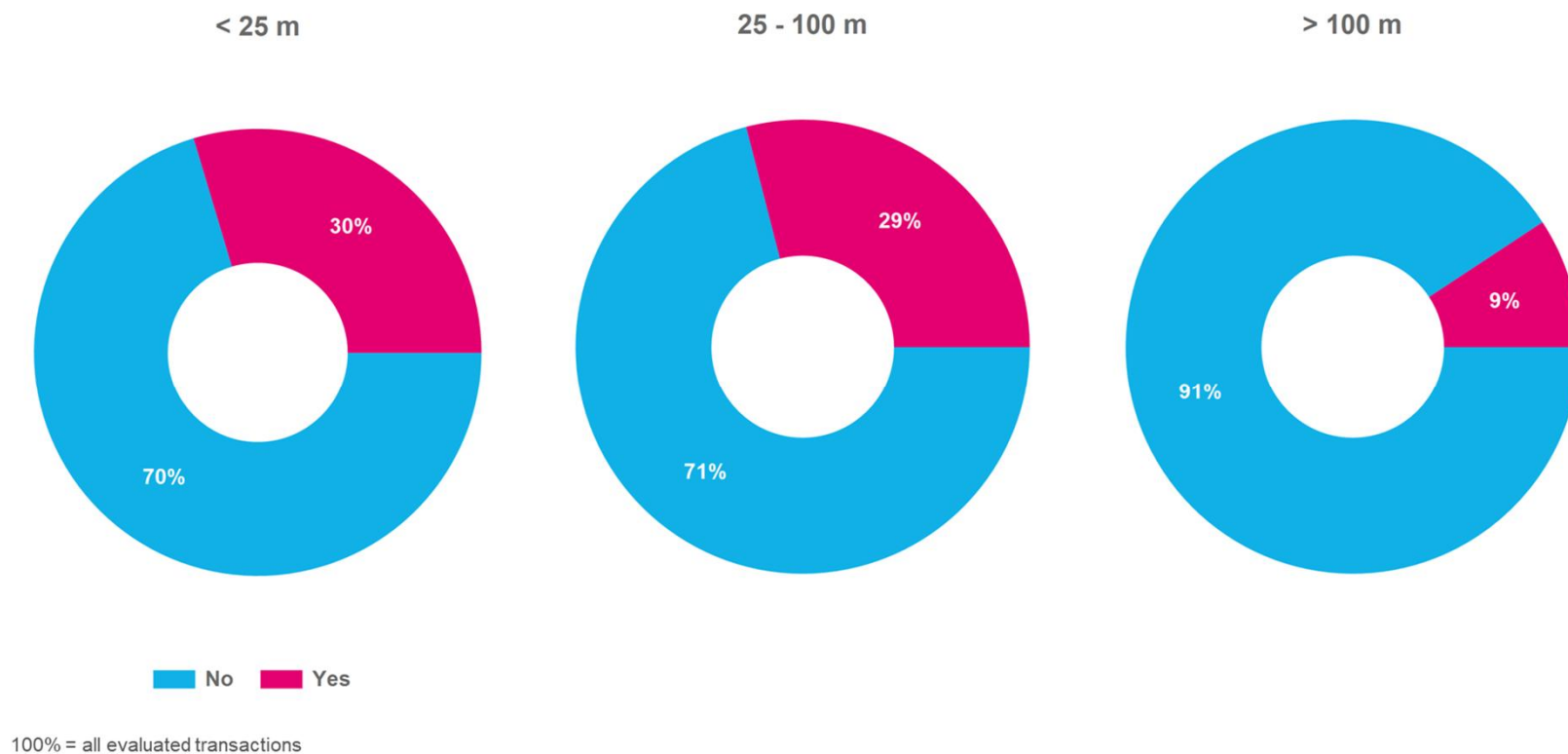


100% = all evaluated transactions

*The US data was derived from "SRS Acquiom 2022 M&A Deal Terms Study" produced by SRS Acquiom Inc.

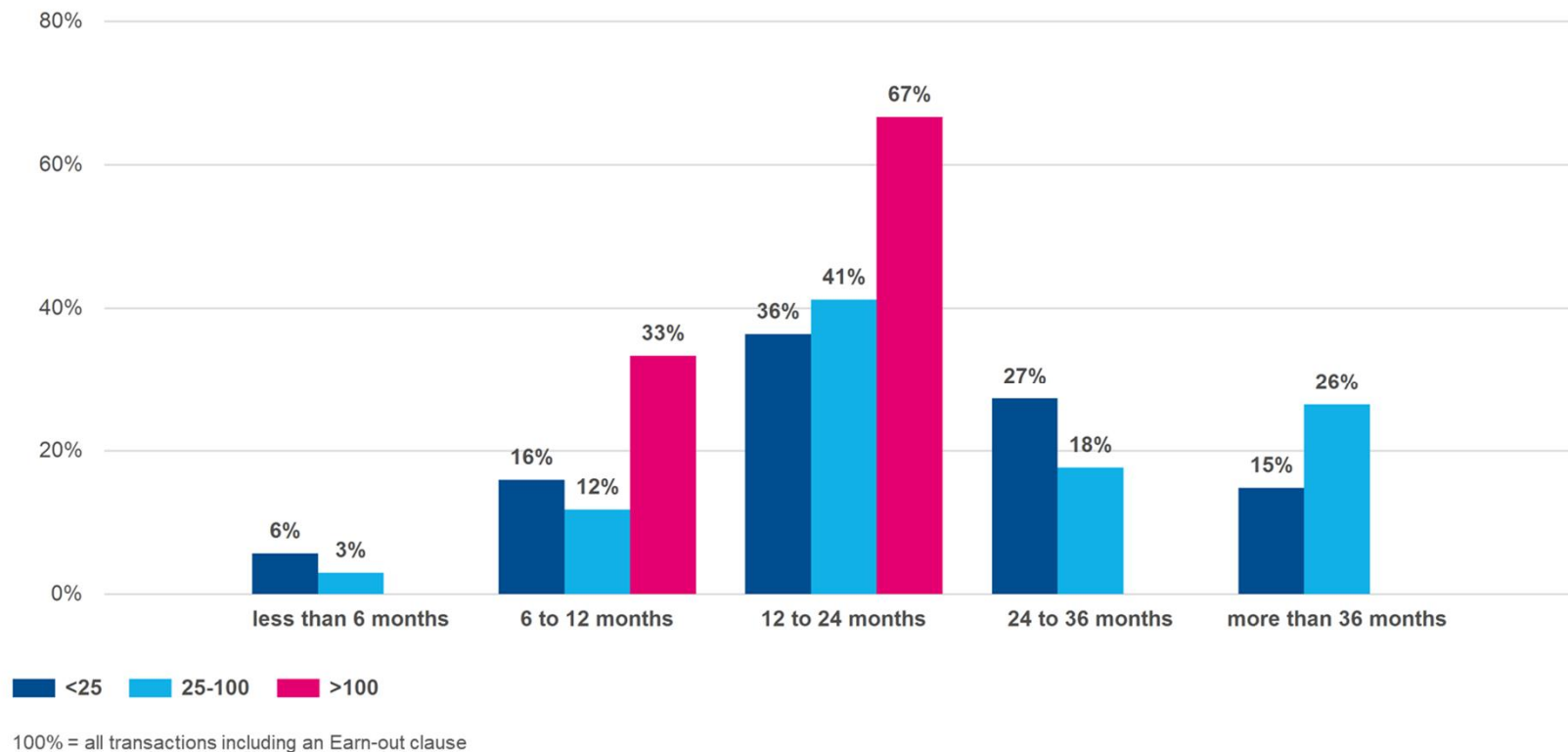
Earn-out

By purchase price 2022



Earn-out

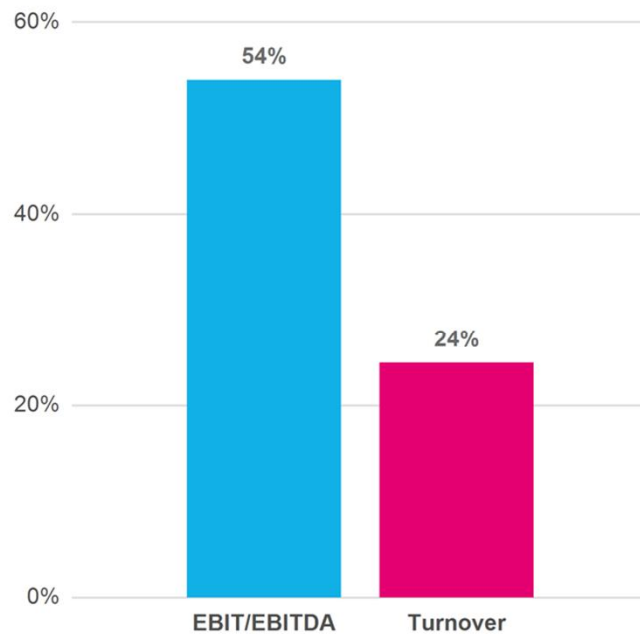
Duration of time periods relevant for the assessment of the Earn-out (2022)



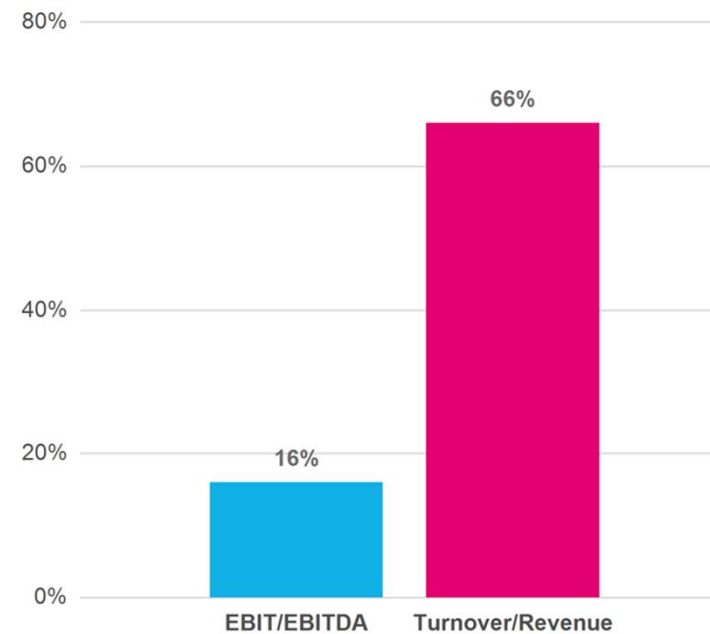
Earn-out

Earn-out criteria Europe / USA

Europe 2022



USA* 2021

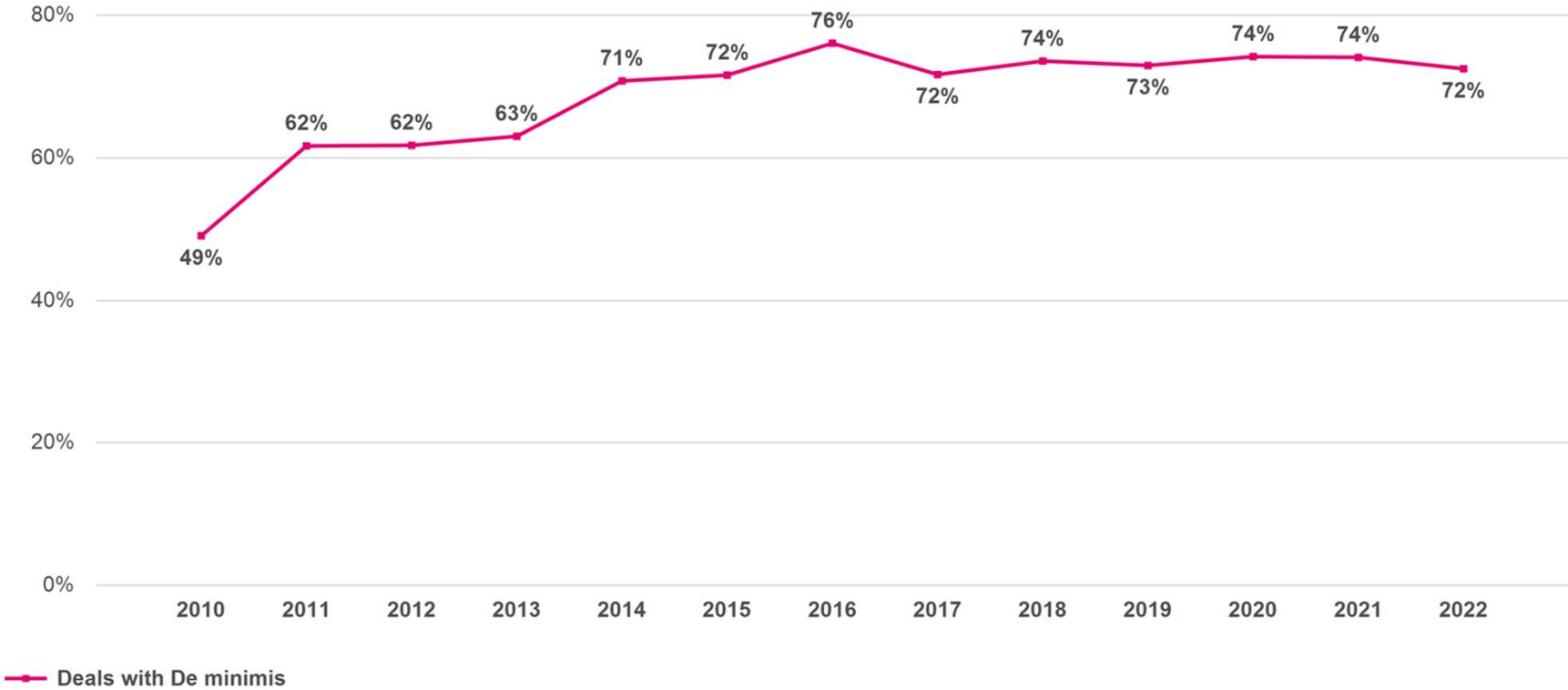


100% = all evaluated transactions with an earn-out mechanism

*The US data was derived from "SRS Acquiom 2022 M&A Deal Terms Study" produced by SRS Acquiom Inc.

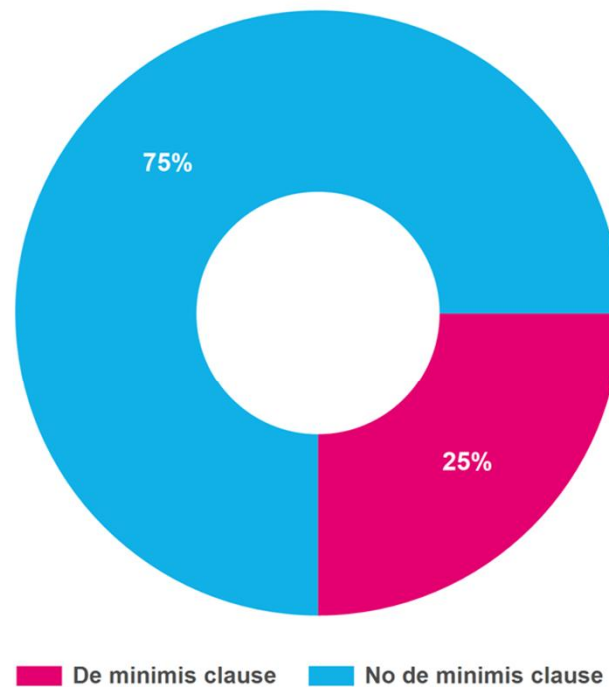
De minimis

Trend Index 2010 - 2022



De minimis

De minimis clause USA* 2021

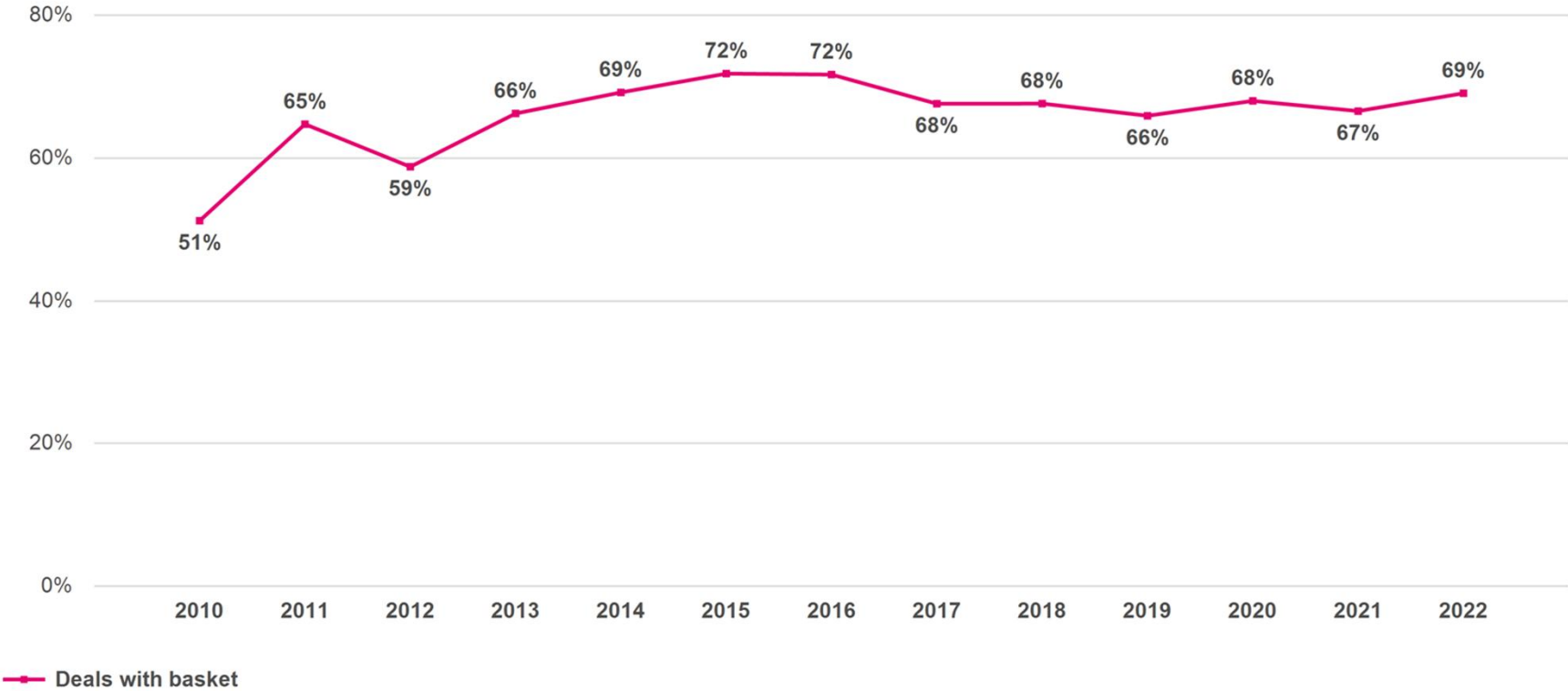


100% = all evaluated transactions

*The US data was derived from "SRS Acquiom 2022 M&A Deal Terms Study" produced by SRS Acquiom Inc.

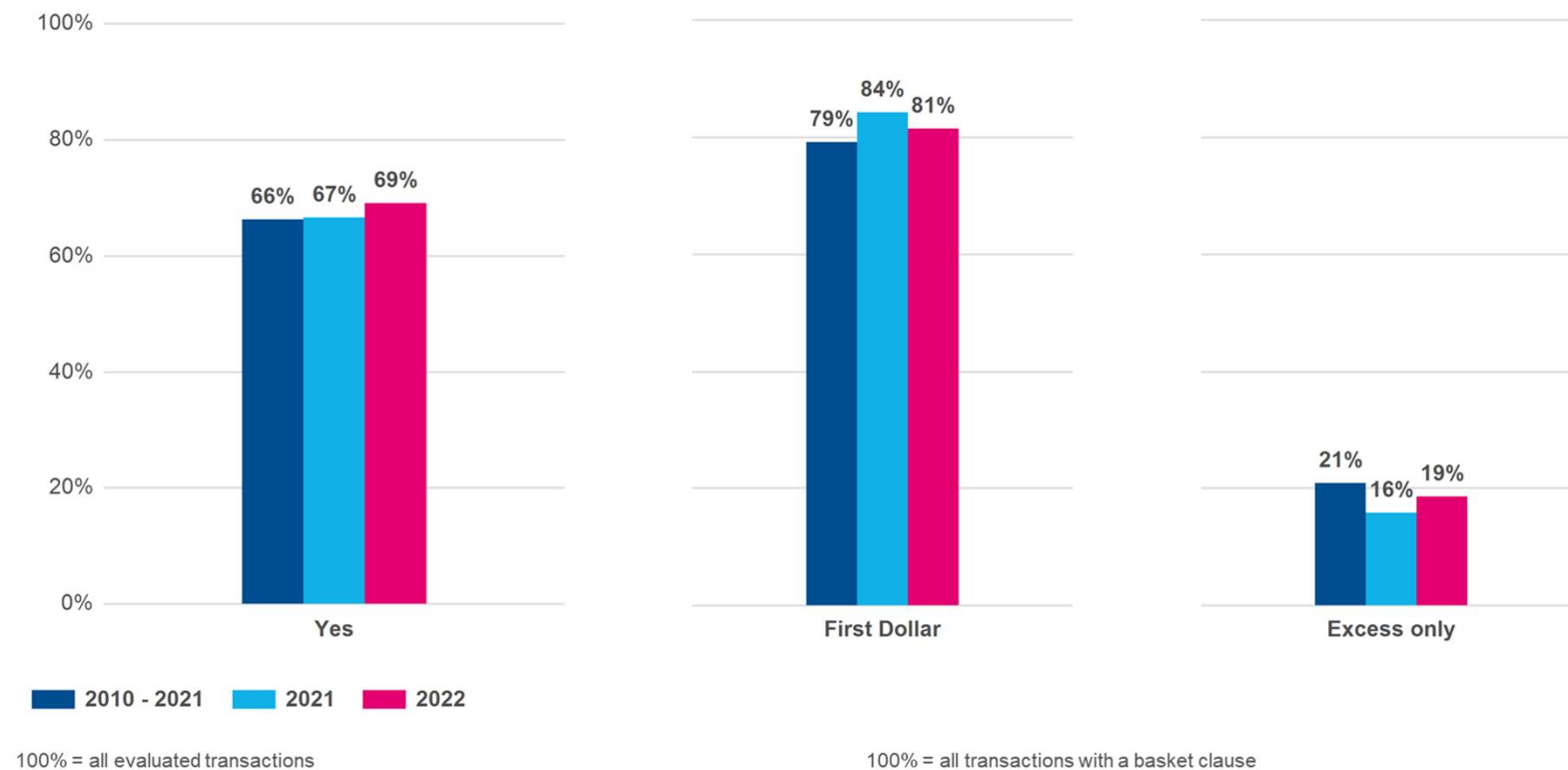
Basket

Trend Index 2010 - 2022



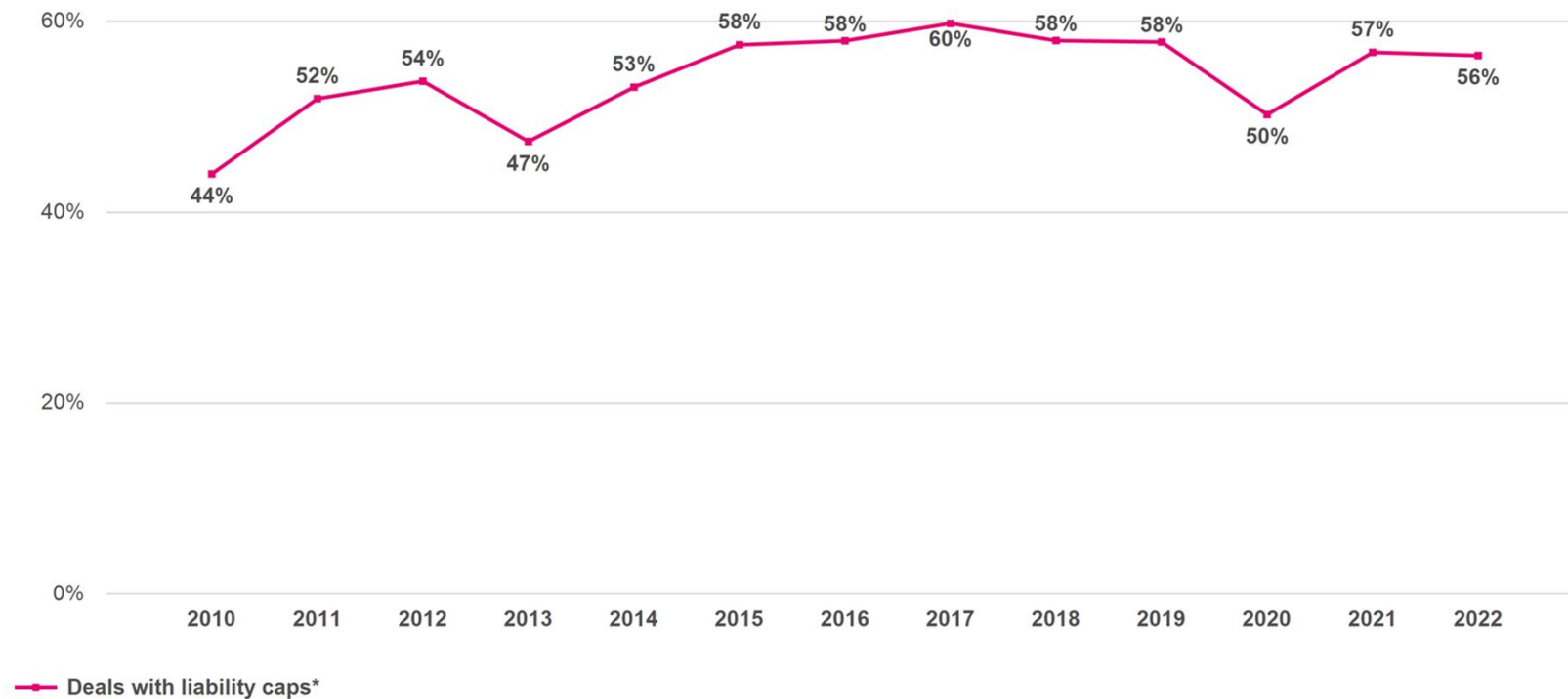
Basket

Time trend 2010 - 2022



Liability caps

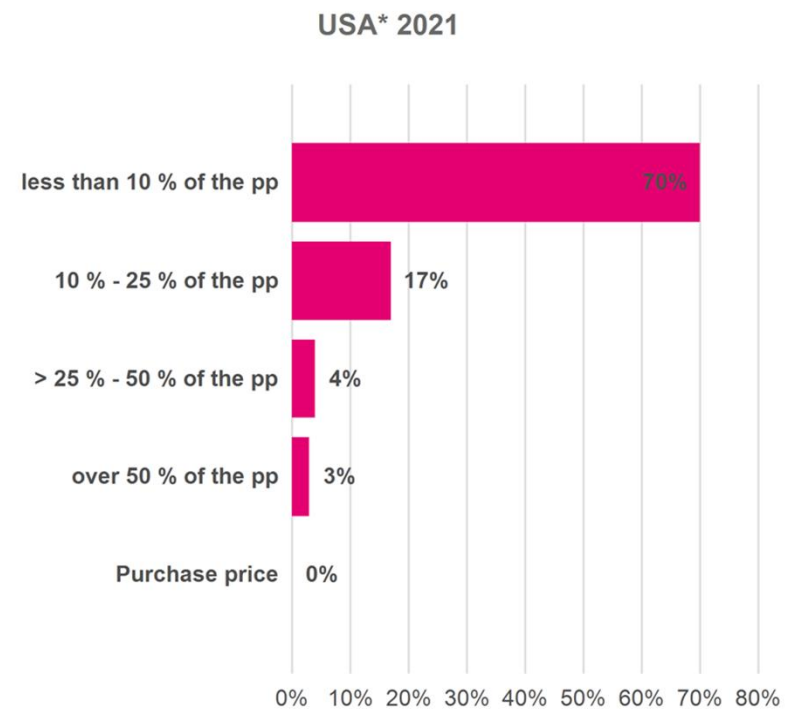
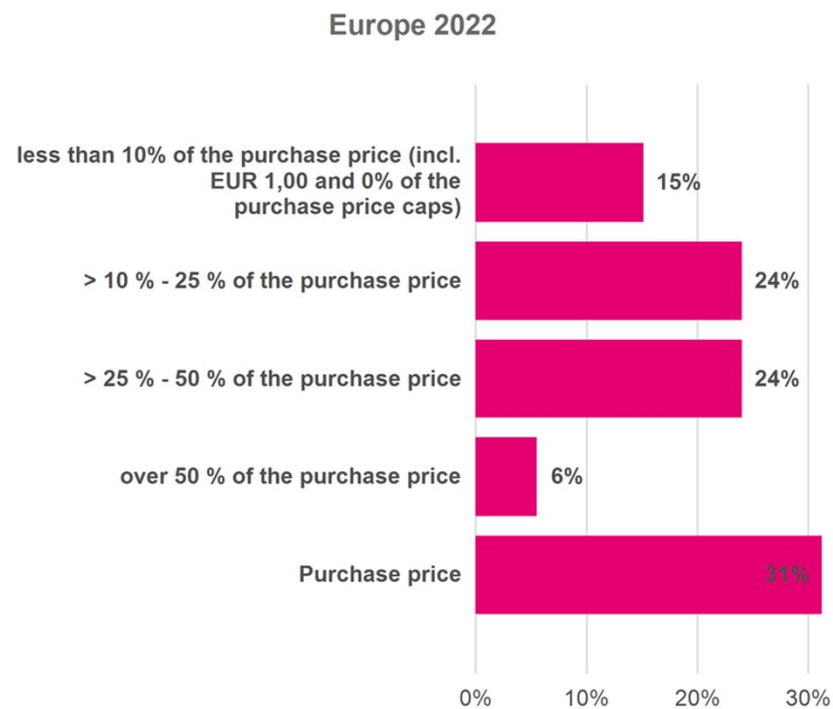
Trend Index 2010 - 2022



*Liability caps with less than 50% of purchase price

Liability caps

Europe / USA

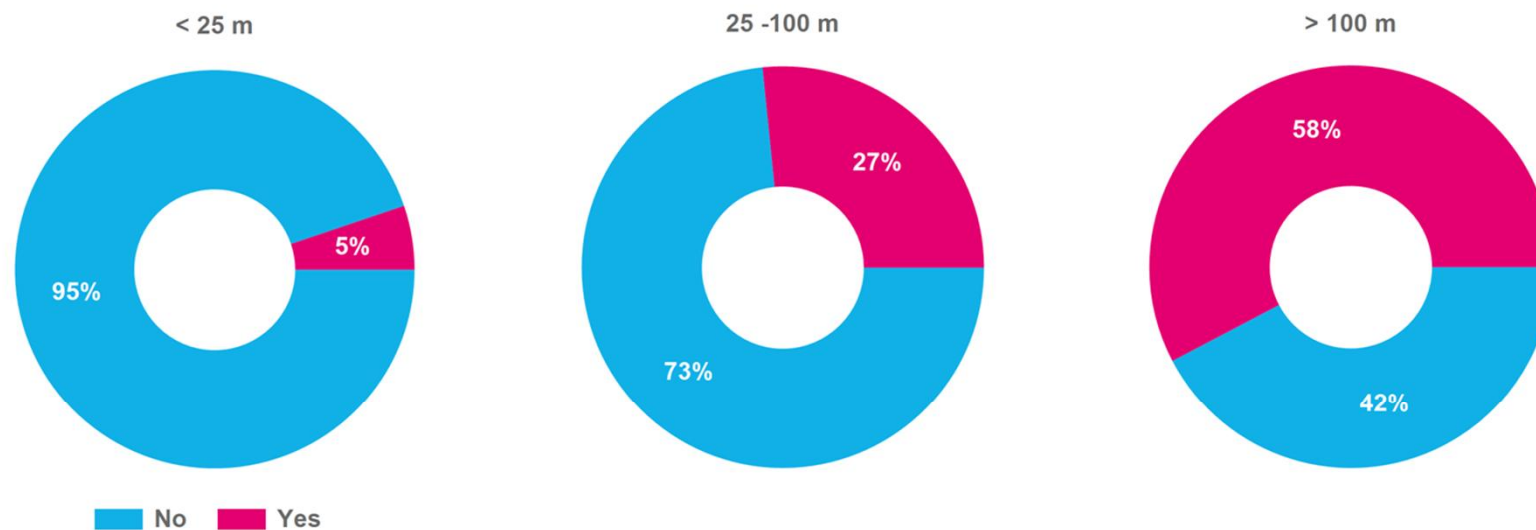


100% = all evaluated transactions with a general liability cap

*The US data was derived from "SRS Acquiom 2022 M&A Deal Terms Study" produced by SRS Acquiom Inc.

Warranty & Indemnity insurance

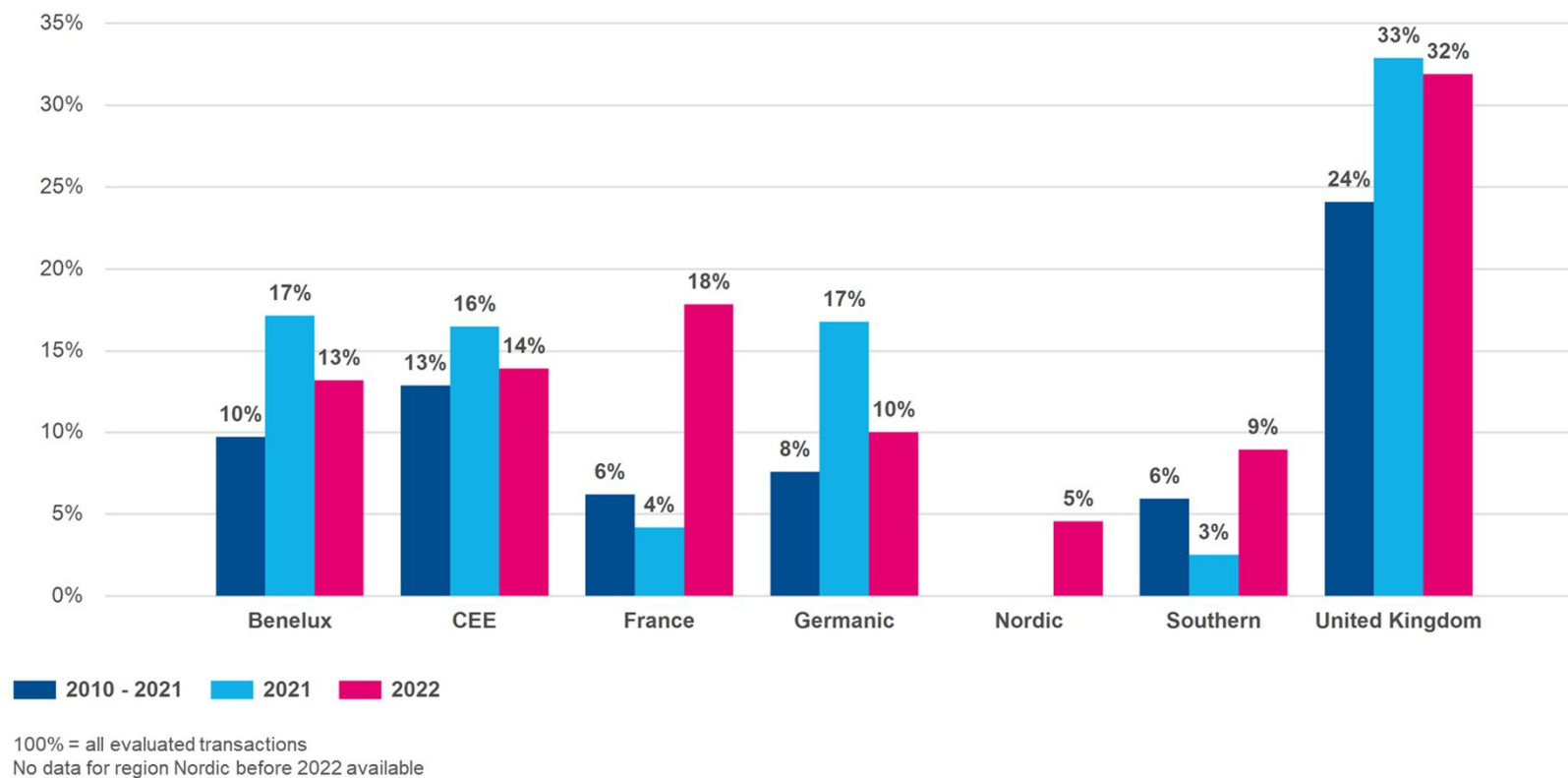
By purchase price 2022



100% = all evaluated transactions

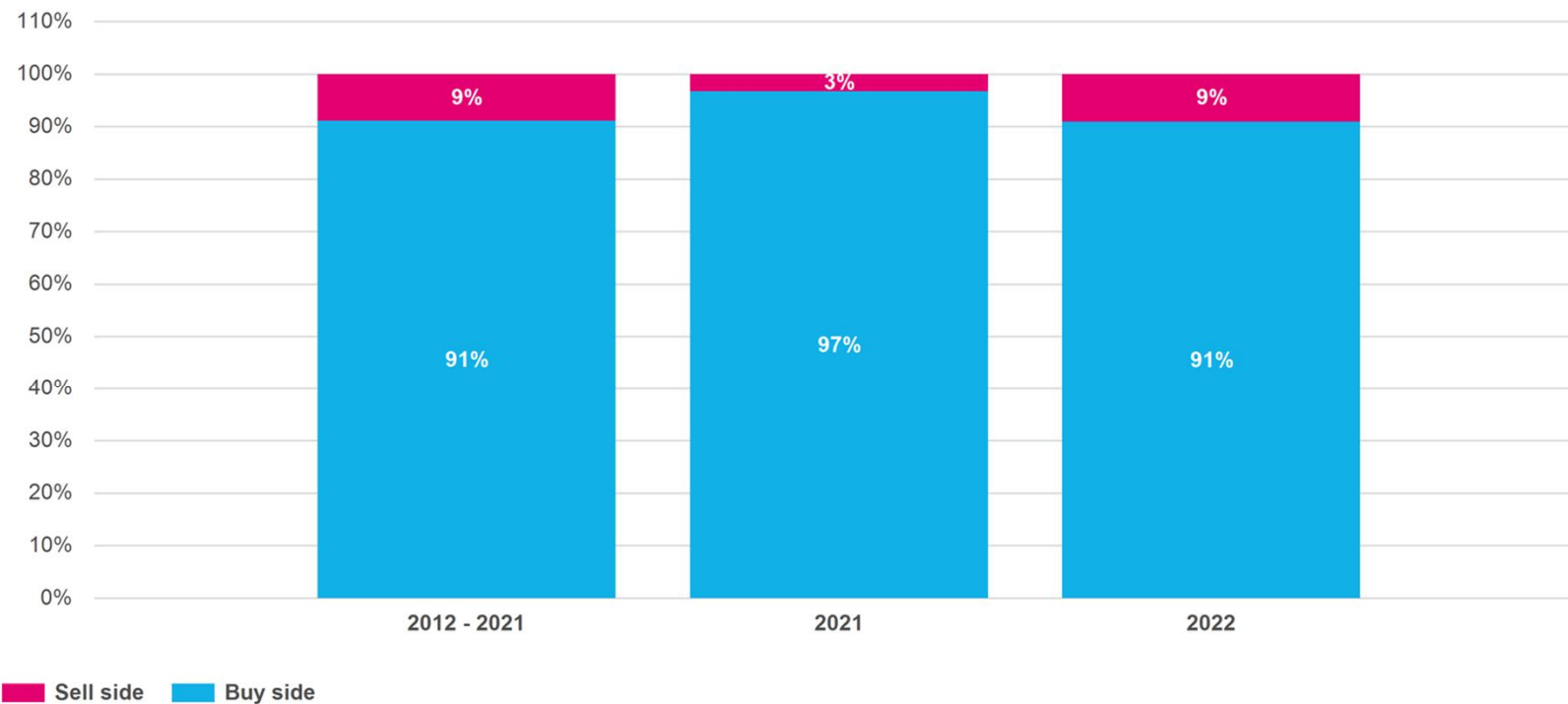
Warranty & Indemnity insurance

Frequency of Warranty & Indemnity insurance 2010 – 2022



Warranty & Indemnity insurance

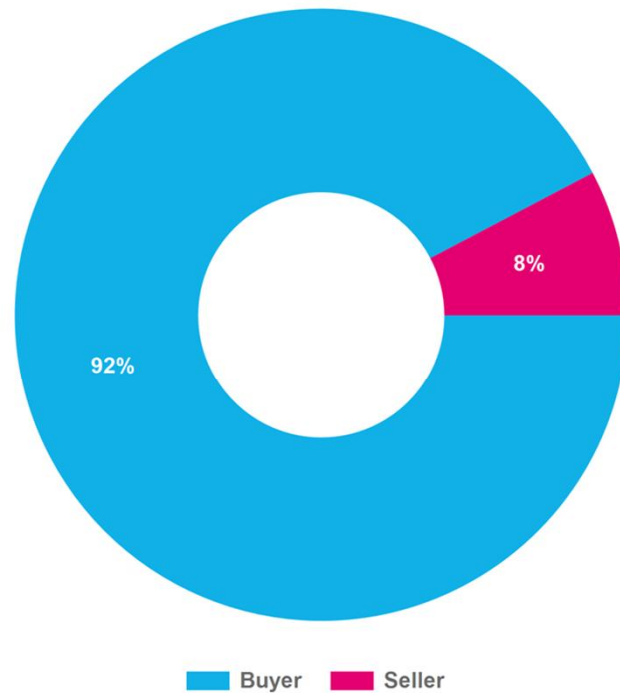
Time trend 2012 - 2022



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

Warranty & Indemnity insurance

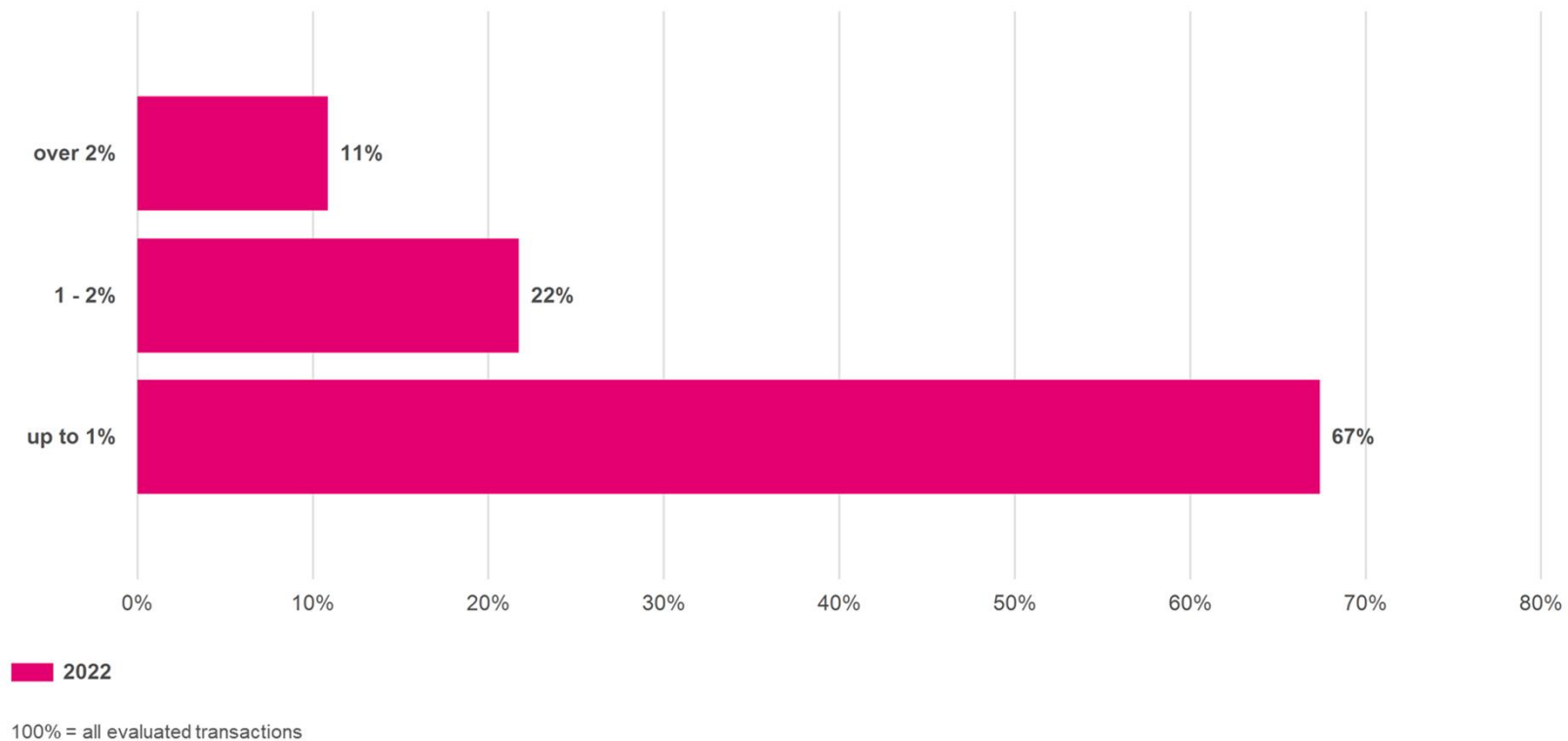
Premium Paid By



100% = all evaluated transactions

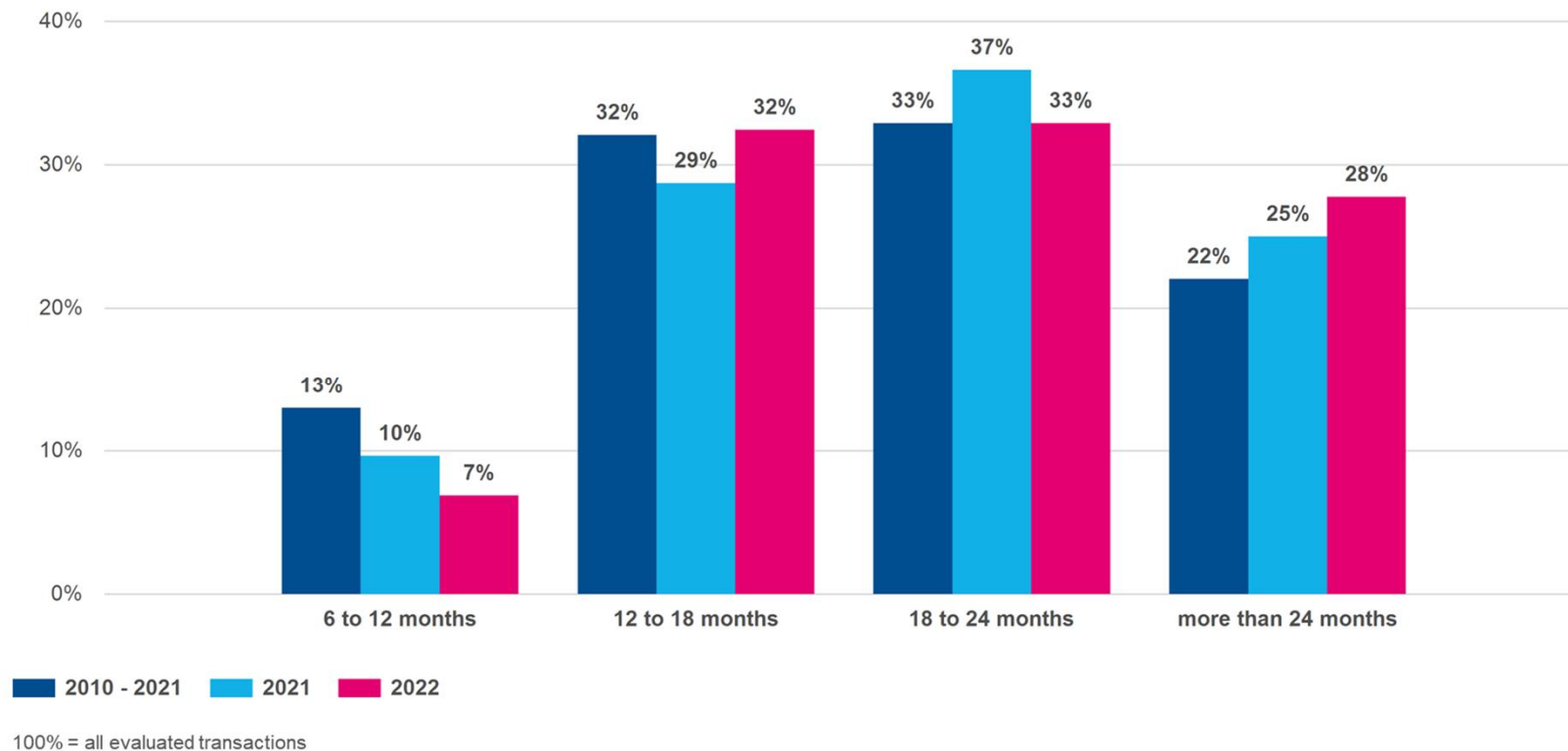
Warranty & Indemnity insurance

Level of premium: % of purchase price



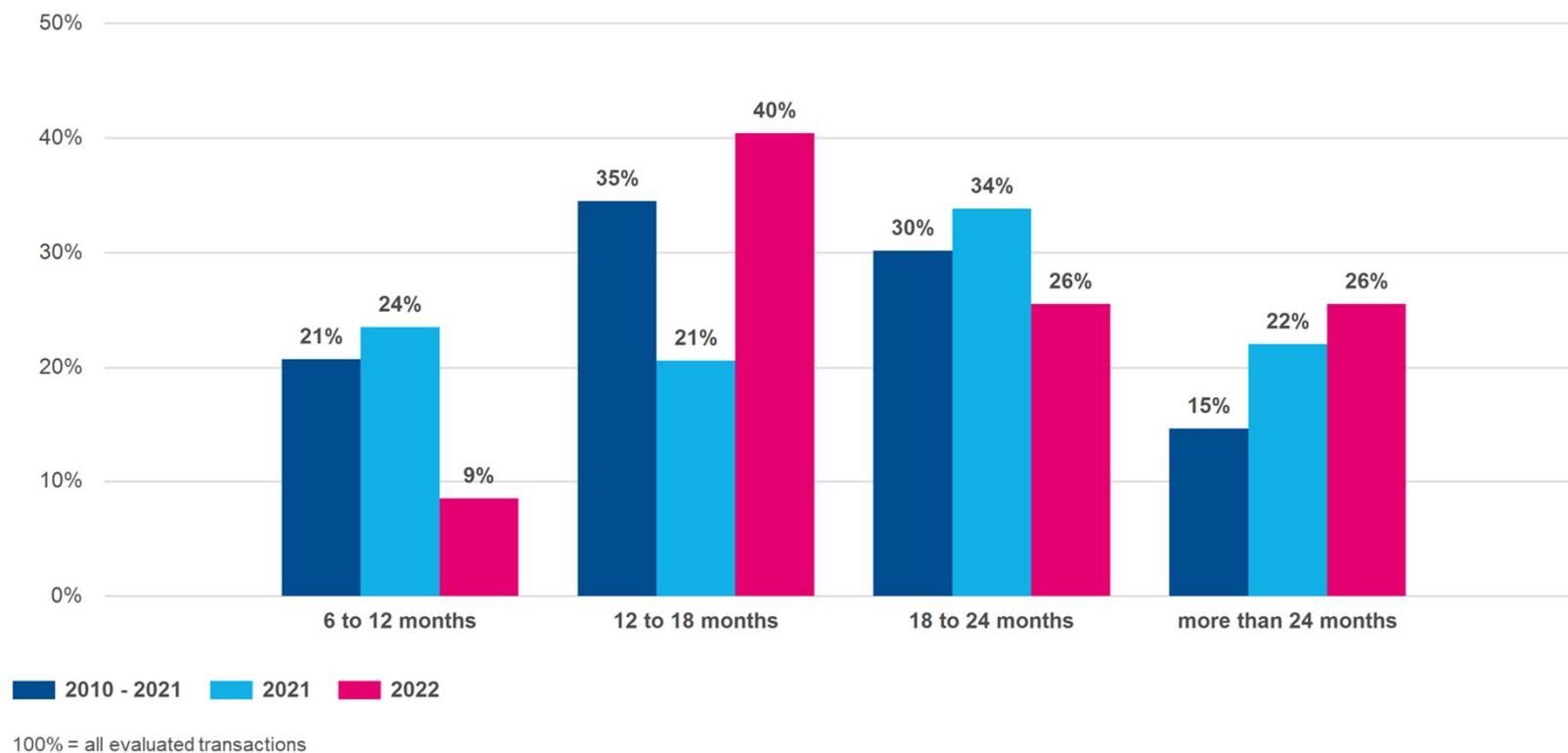
Limitation periods for warranty claims

Limitation period for Warranty Claims 2010 - 2022



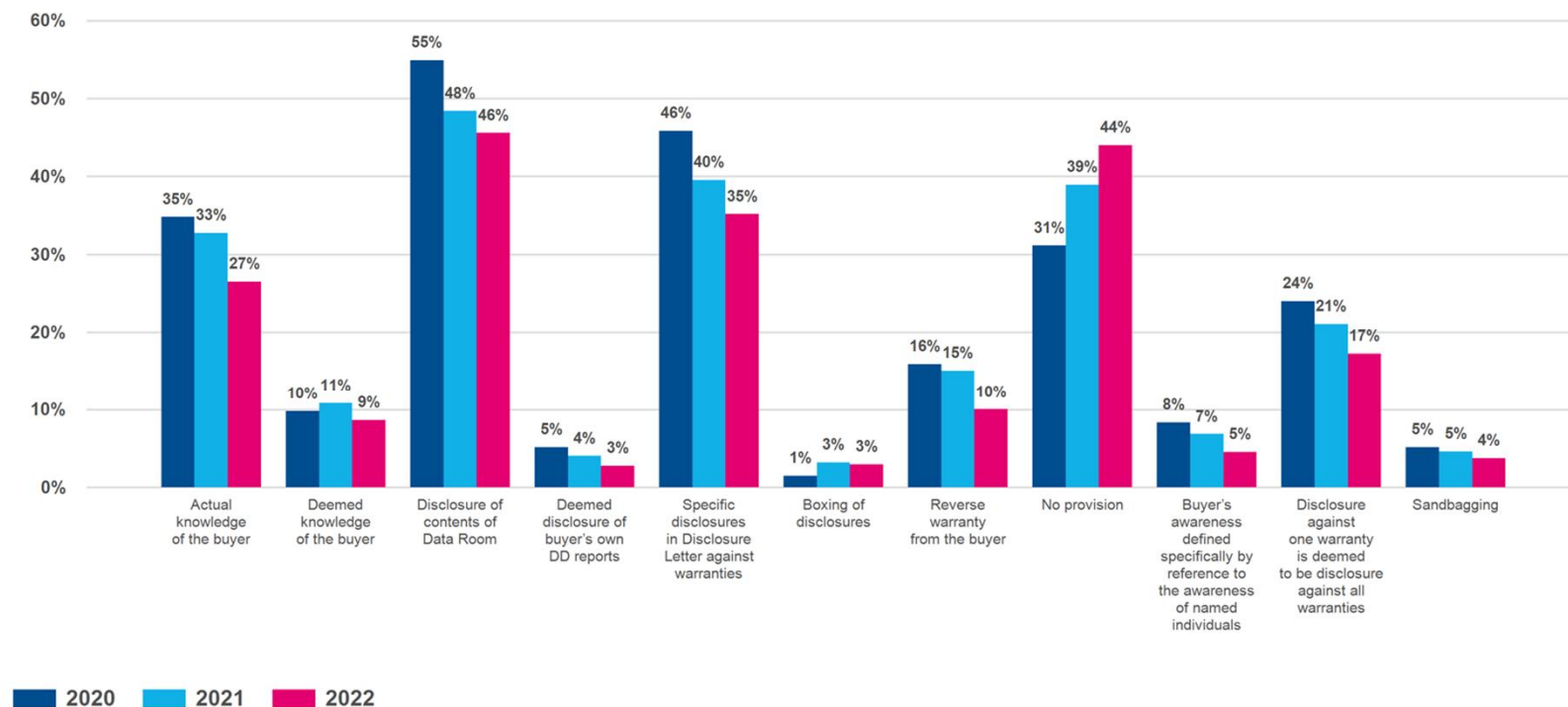
Limitation periods for warranty claims

By purchase price EUR > 100 mill. 2010 - 2022



Limitation of liability for warranty claims

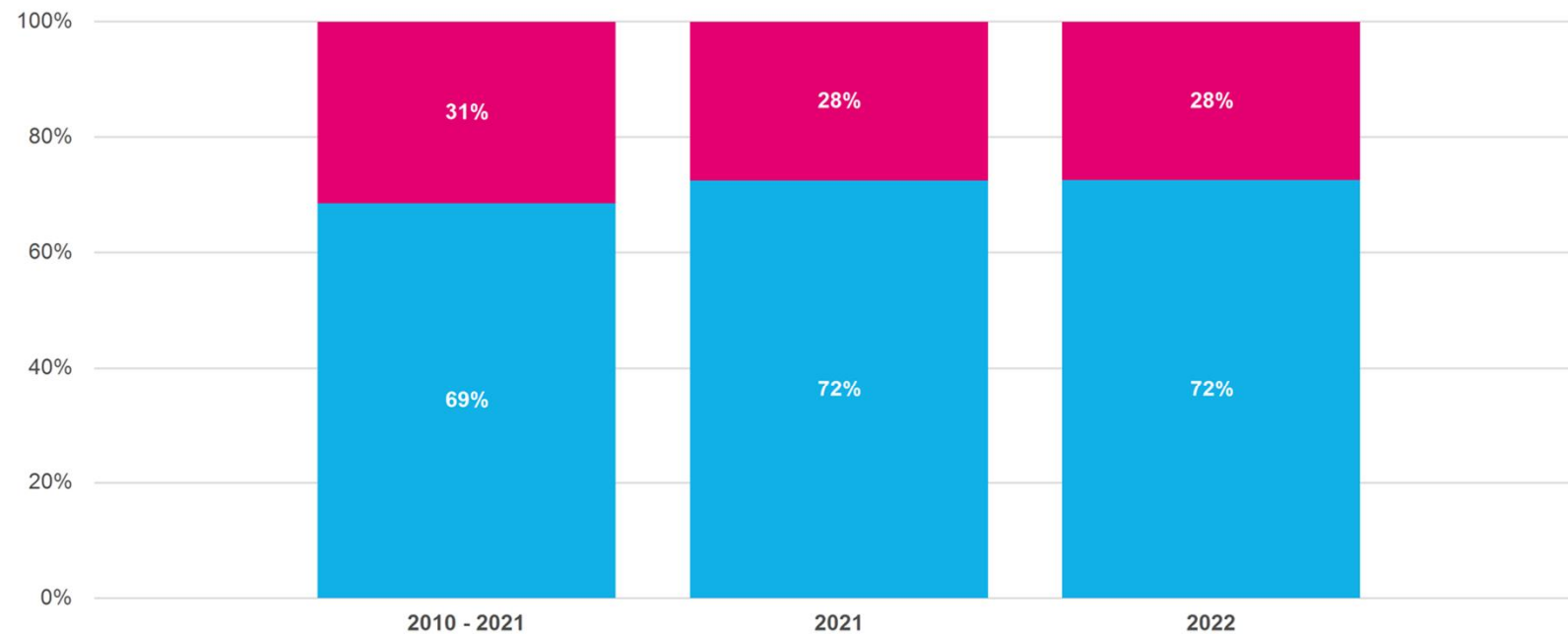
Exclusion of Warranty Claims 2020 - 2022



100% = all evaluated transactions - more than one nomination possible

Security for warranty claims

Security for warranty claims 2010 - 2022

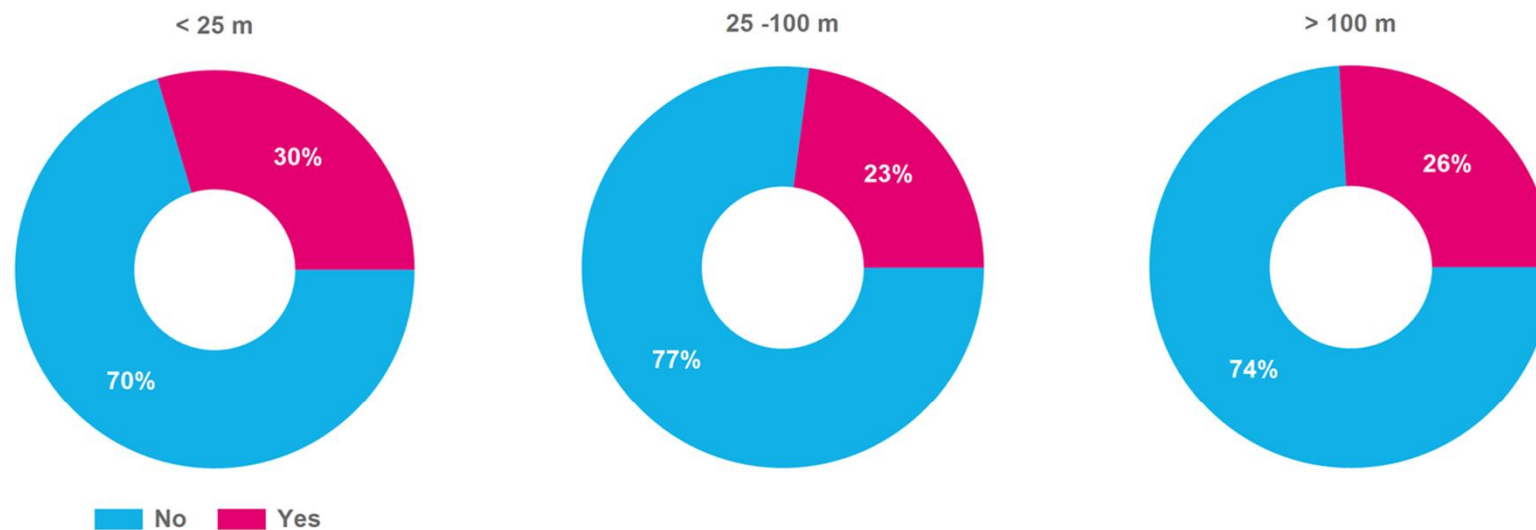


■ Yes ■ No

100% = all evaluated transactions

Security for warranty claims

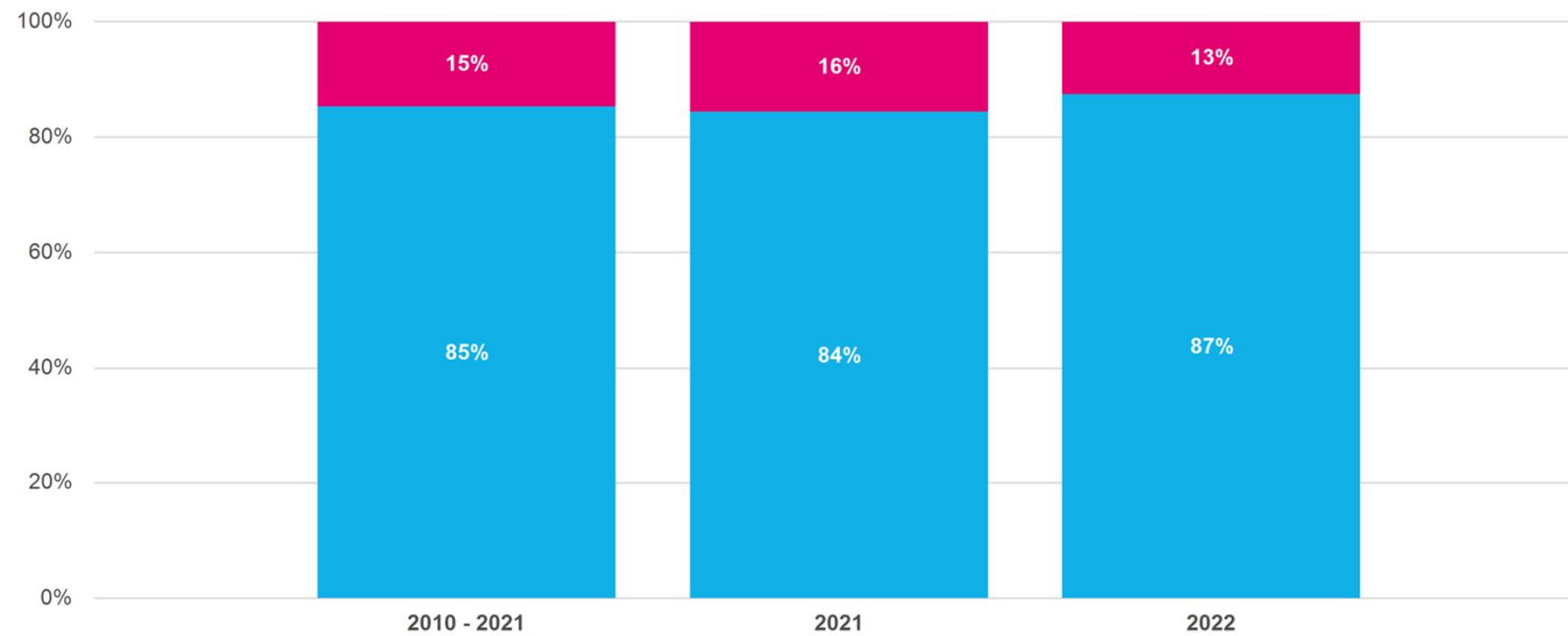
By purchase price 2022



100% = all evaluated transactions

MAC clauses

Trend trend 2010 - 2022

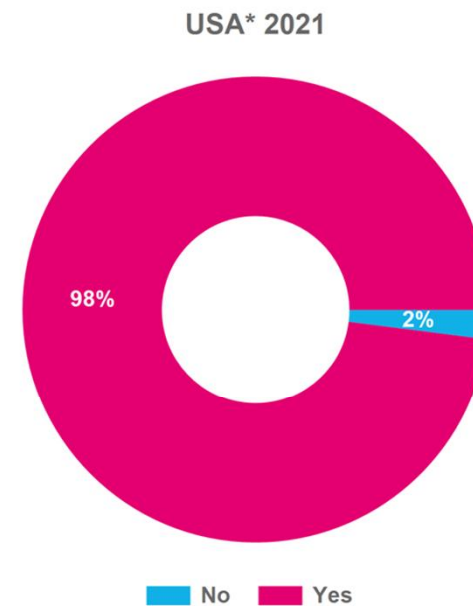
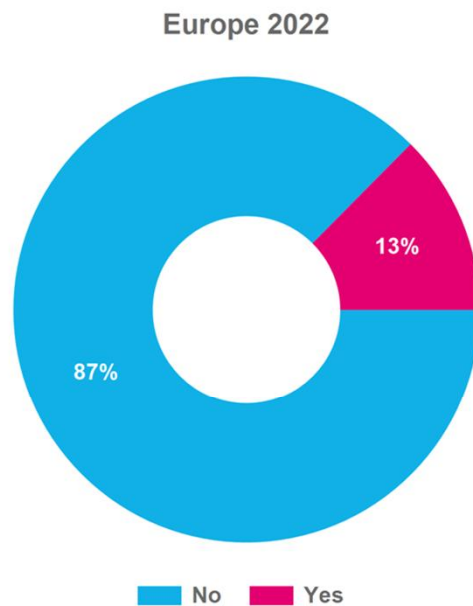


■ Yes ■ No

100% = all evaluated transactions

MAC clauses

Europe / USA

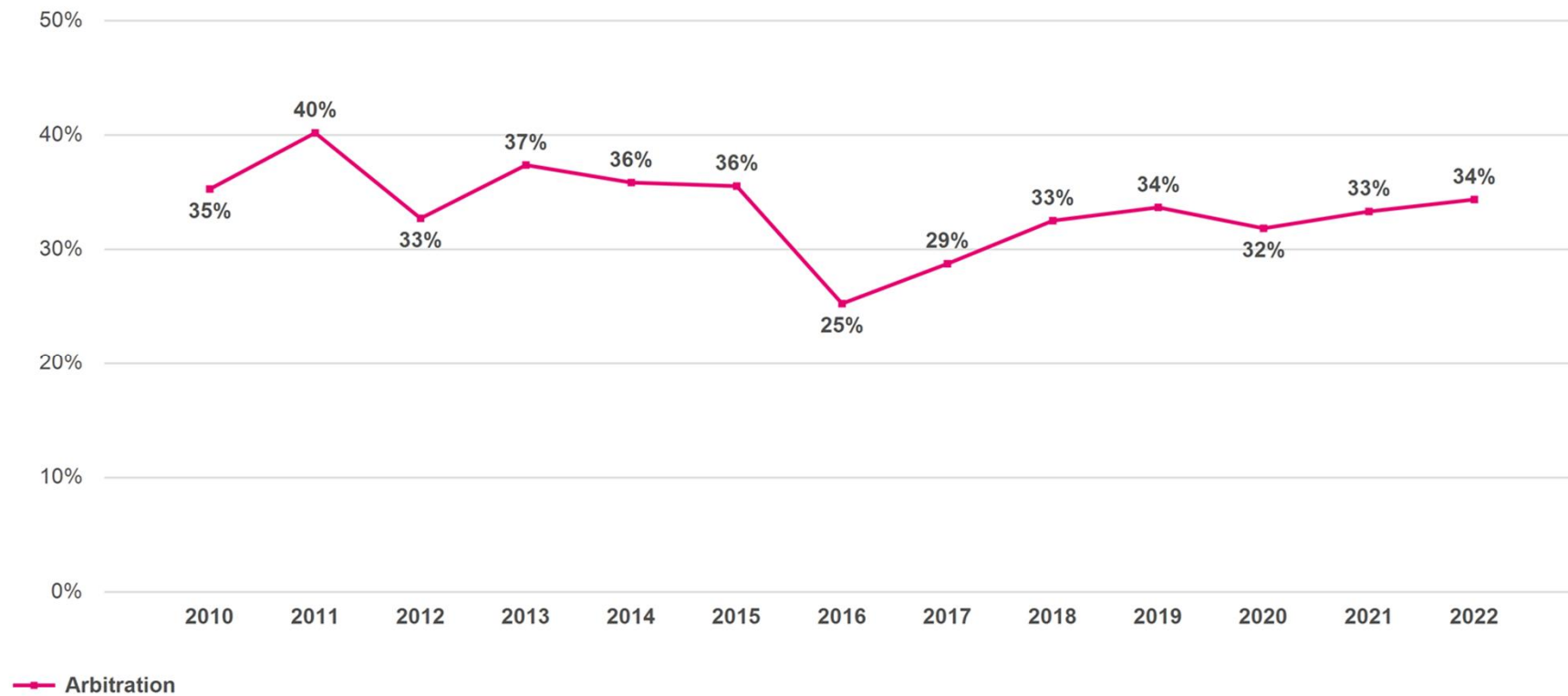


100% = all evaluated transactions

*The US data was derived from "SRS Acquiom 2022 M&A Deal Terms Study" produced by SRS Acquiom Inc.

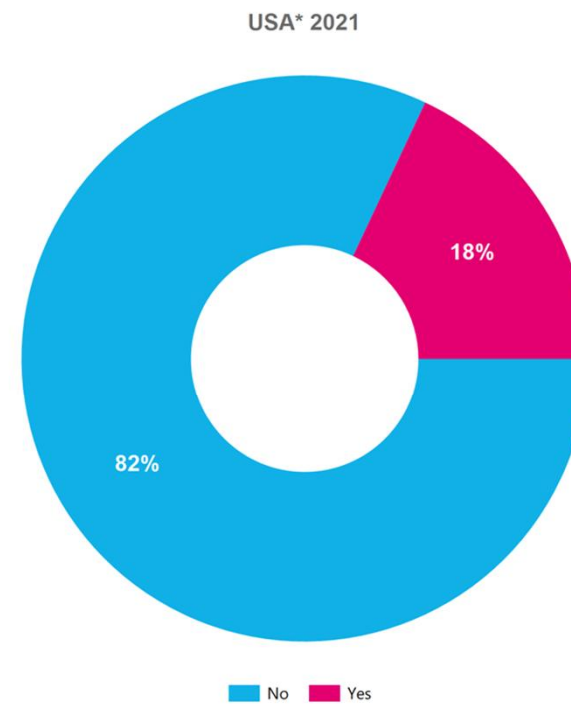
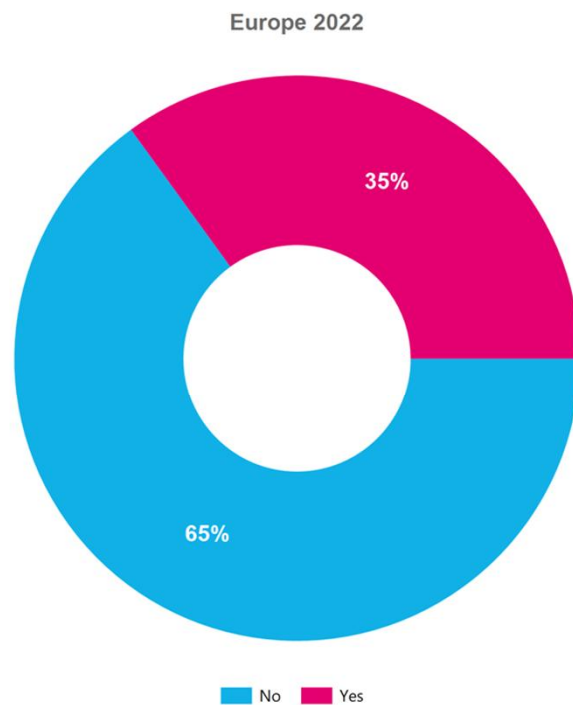
Arbitration

Trend Index 2010 - 2022



Arbitration

Arbitration Clauses Europe / USA

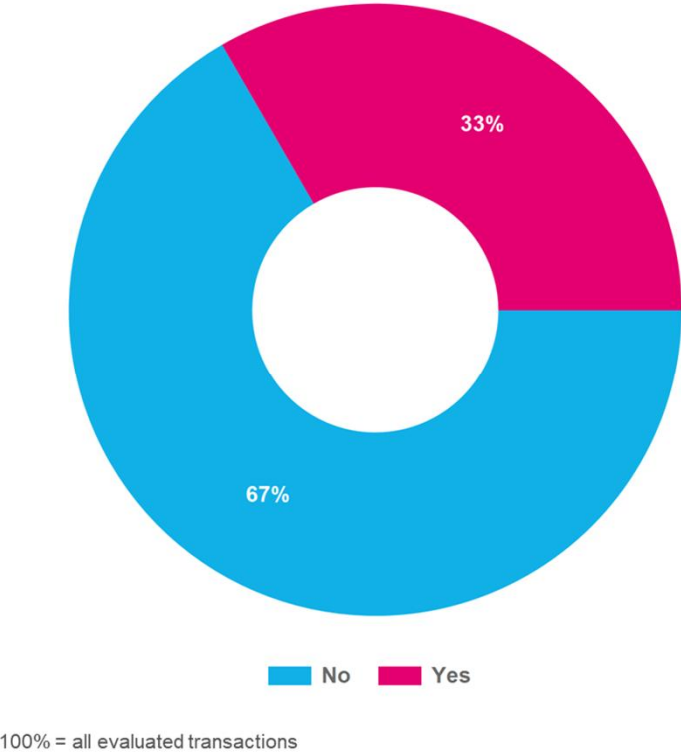


100% = all evaluated transactions

*The US data was derived from "SRS Acquiom 2022 M&A Deal Terms Study" produced by SRS Acquiom Inc.

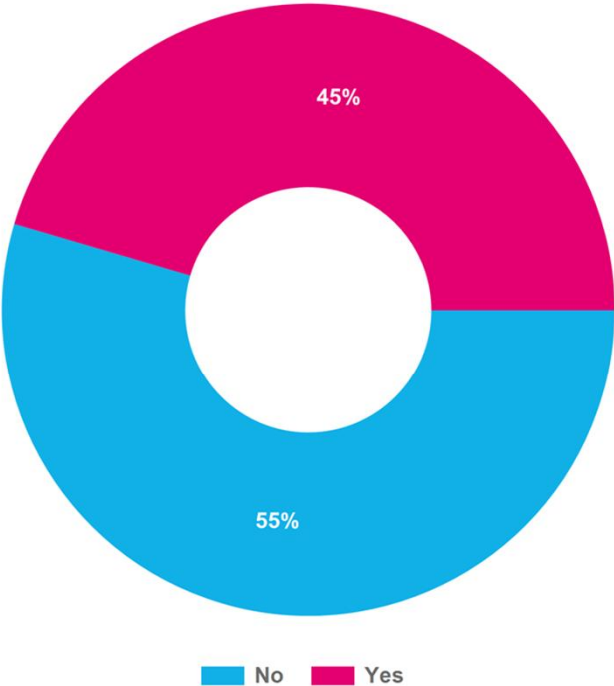
Environment, Social, Governance (ESG)

Specific ESG Due Diligence



Environment, Social, Governance (ESG)

Specific ESG Provisions in the SPA



100% = all evaluated transactions

Dr Oliver Wolfgramm



Dr Oliver C.
Wolfgramm

Partner

Corporate / M&A

T +49 69 71701 253

E oliver.wolfgramm@cms-hs.com

Frequently recommended for M&A.

JUVE

Since 2011 listed in the category: *Germany's best lawyers for corporate law.*

Handelsblatt / Best Lawyers

"Results-oriented, very good commercial understanding in the client's interest, efficient negotiation skills, even with difficult negotiation partners."

The Legal 500 Germany, 2022

Expertise

Oliver Wolfgramm is a partner in the Corporate/M&A practice group in CMS' Frankfurt office. He has more than 20 years of experience in advising German and foreign companies on national and cross-border M&A and private equity transactions as well as Joint Ventures and corporate reorganisation.

Over the past few years, Oliver has also built up a special advisory practice for Chinese state-owned enterprises (SOEs) and private companies – both strategic and financial investors – that acquire or co-operate with businesses in Germany and Europe.

From 1998 to 2003 Oliver was an associate with law firm Hengeler Mueller in Frankfurt and Düsseldorf. From 2001 to 2002 he worked with the legal department of Merrill Lynch in London.

Oliver joined CMS in November 2003 and became a partner in 2005.



Your free online legal information service.

A subscription service for legal articles on a variety of topics delivered by email.
cms-lawnow.com

The sole purpose of this document is to provide information about specific topics. It makes no claims as to correctness or completeness and does not constitute legal advice. The information it contains is no substitute for specific legal advice. If you have any queries regarding the issues raised or other legal topics, please get in touch with your usual contact at CMS Hasche Sigle.

CMS Hasche Sigle is one of the leading commercial law firms. More than 600 lawyers serve their clients in eight major German commercial centres as well as in Beijing, Brussels, Hong Kong and Shanghai. CMS Hasche Sigle is a member of CMS Legal Services EEIG, a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

CMS locations:

Aberdeen, Abu Dhabi, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Bergen, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Cúcuta, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Liverpool, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Mombasa, Monaco, Munich, Muscat, Nairobi, Oslo, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Shanghai, Sheffield, Singapore, Skopje, Sofia, Stavanger, Strasbourg, Stuttgart, Tel Aviv, Tirana, Vienna, Warsaw, Zagreb and Zurich.

CMS Hasche Sigle Partnerschaft von Rechtsanwälten und Steuerberatern mbB, registered office: Berlin (Charlottenburg District Court, PR 316 B), list of partners: see website.

cms.law

Herzlichen Dank für Ihre Aufmerksamkeit!

JETZT VORMERKEN
51. FINANCE-Roundtable M&A
am 14. November 2023