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Disclaimer

The results of the study and/or this report and the conclusions presented therein do not necessarily reflect the views of the lawyers or employees of CMS Hasche Sigle involved in preparing the study and/or this report. A total of 1,516 real estate transactions were evaluated for the study and/or this report. There are inevitably many differences between the individual agreements and the clauses they contain. Individual provisions were categorised in order to allow the results to be compared, a process that required a degree of subjective discretion. Although certain trends can be identified in the study and/or this report, each transaction exhibits individual features that have not been included or referred to in the study and/or this report. As a result, the conclusions of the study and/or this report are subject to a number of important reservations that are not expressly disclosed in the study and/or this report.

Reliance on this study and/or this report is at the user's own risk. CMS Hasche Sigle and its lawyers cannot accept any liability that may result from such action.

Real Estate Investment Market 2018 / 2019

A first glance suggests there were no major changes in the European investment market in 2018, with the investment volume being roughly the same as in the previous year at around EUR 264bn. However, considerable differences emerge when one compares the individual markets. In the UK, the impact of Brexit is becoming increasingly evident, leading to a decline in the value of British transactions in 2018 by around 10% year-on-year. The Netherlands and Spain were also unable to match their previous year's figures. Germany, meanwhile, saw a record year in 2018, with investment totalling more than EUR 60bn for the first time. France also had an excellent year, posting a rise in investment volume of around 10%.

Despite ongoing high demand for real estate investments due to the continuing lack of alternative options and persistence of low interest rates, tensions in the global economy are holding back the European investment market in 2019. The unresolved trade disputes between China, the US and Europe, continuing uncertainty around Brexit – now under the leadership of Boris Johnson – and the generally weaker growth of the global economy are resulting in softer underlying momentum, although activity levels are still very strong. Lack of product supply is also acting as a constraint on investment volumes. In the first half of 2019, there was significant divergence across the regional German investment markets. While Frankfurt posted shrinking transaction volumes, Berlin reported record figures. It will be interesting to see how things pan out in the second half of the year.

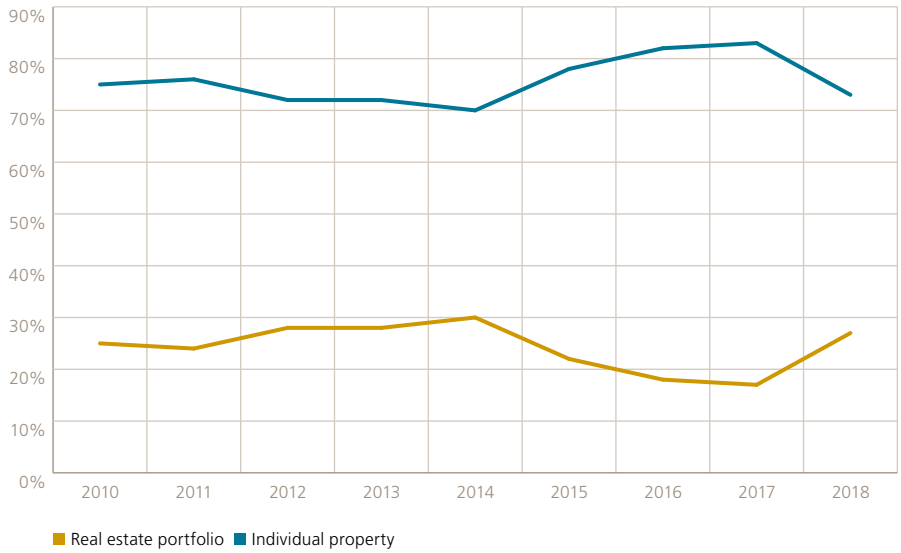
The new CMS European Real Estate Deal Point Study 2019 now includes more than 1,500 transactions. Compiling the study involved comparing the transactions on which we advised in the period 2010 to 2018, enabling us to highlight developments and trends.

The market response to our study indicates that it can be a valuable tool when preparing for contract negotiations. Any feedback you may have is very welcome.

Dr. Volker Zerr, MRICS
Partner

Asset classes

Portfolio – Individual property – Change over time in Europe



Individual property
73%

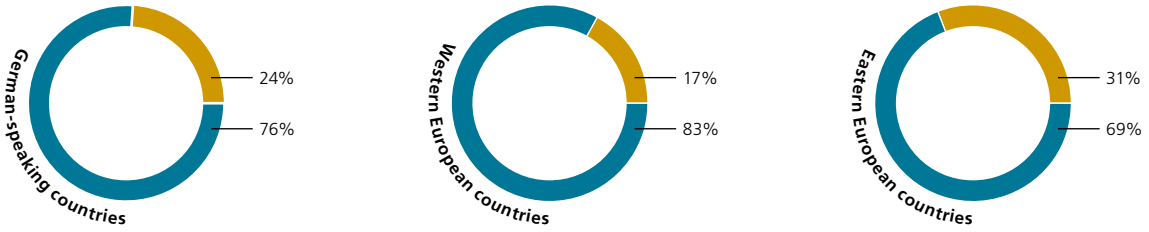
Real estate portfolio
27%

CMS trend index for Europe: Individual property

Recent decline in transactions involving individual properties after years of growth

An increase in portfolio transactions was observed throughout Europe in the period 2010 to 2014. During this time, the proportion rose from 25% (2010) to 30% (2014). In 2015, however, this trend reversed in favour of transactions involving individual properties. The share of such transactions increased from 70% to 83% over the period 2015 to 2017. More recently, however, a rise in portfolio deals was observed, with their share rising significantly from 17% in 2017 to 27% in 2018. This is primarily due to an increase in substantial retail property portfolios and industrial and logistics portfolios over the past two years.

Portfolio – Individual property – Five-year period (2014 to 2018)

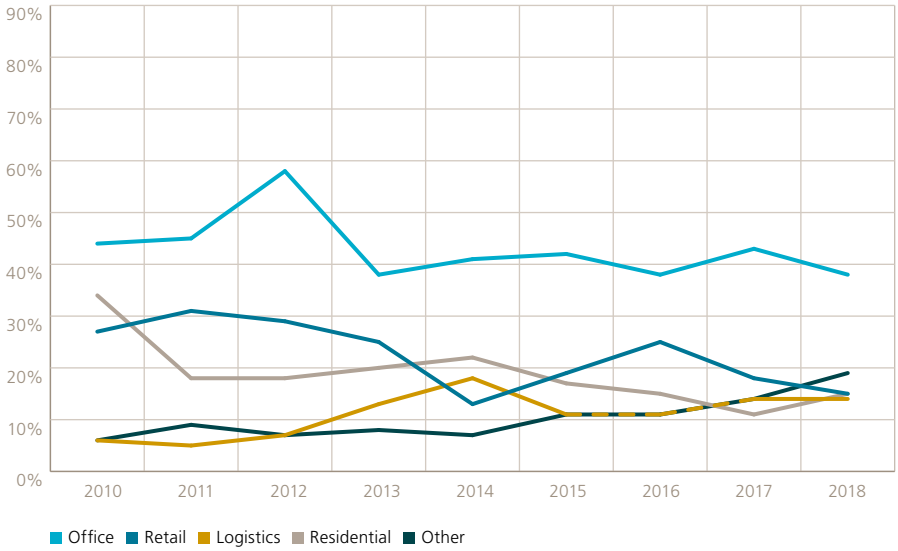


■ Individual property ■ Real estate portfolio

A Europe-wide comparison of all evaluated transactions in the last five years (2014–2018) reveals that single-asset deals were the norm in all regions. Portfolio transactions were much rarer during this period. At 31%, the percentage of portfolio transactions was highest in the Eastern European countries. In the German-speaking countries, by contrast, the share of portfolio transactions was only 24%. The proportion of portfolio transactions was lowest in the Western European countries, at 17%.

The lower share of portfolio transactions across Europe is primarily attributable to the excess demand in the commercial real estate market that has persisted for several years now. Due to the lack of core properties in European conurbations in particular, they are now rarely offered as multi-asset deals, being increasingly marketed individually instead at much higher prices.

Asset classes – Change over time in Europe



CMS trend index for Europe: Alternative asset classes

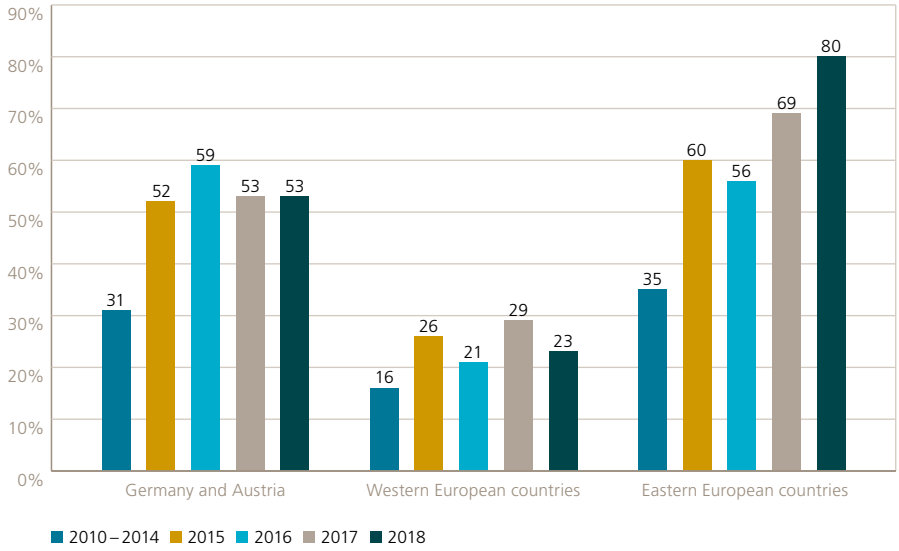
2016 11%

2017 14%

2018 19%

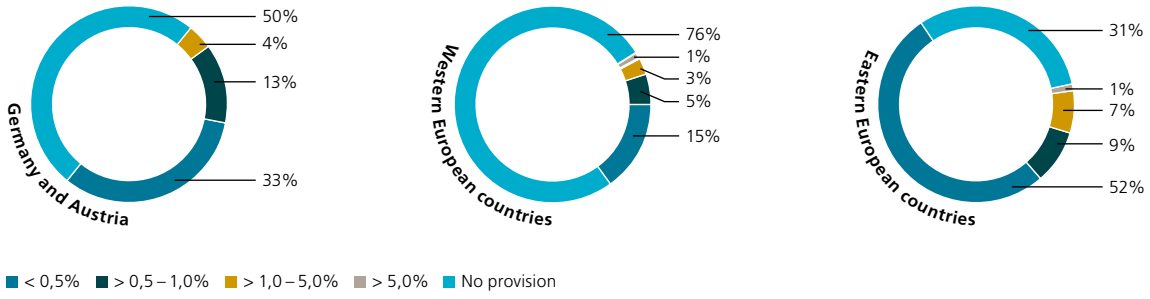
Unbroken trend towards alternative asset classes: investment in industrial properties, serviced apartments, care homes, student accommodation and hotels is gaining in popularity

Transactions with basket clauses



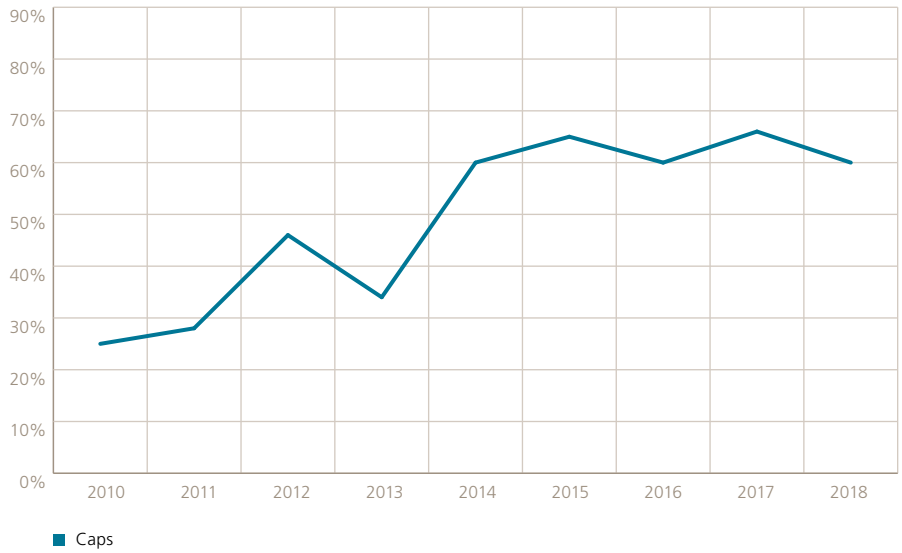
In Germany and Austria, the proportion of transactions with basket clauses has consistently exceeded 50% since a sharp increase from an average of just 31% in the years 2010 to 2014 to 52% in 2015. The peak was reached in 2016, at 59%. In 2018, as in the previous year, the percentage was still high, at 53%. In the Eastern European countries, the strong upward trend continued in 2018. While the proportion of deals with a basket clause was already well over 50% in the three previous years, an all-time high of 80% was posted in 2018. In other words, the share of deals with basket clauses has almost tripled since 2010. Contract practice in the Western European countries differs in this respect, with basket clauses being included on average in only 16% of agreements in the period from 2010 to 2014. In the two following years, Western Europe also saw a rise, though (2015: 26% and 2016: 21%). After reaching its highest level to date (29%) in 2017, the proportion of deals with basket clauses was lower in 2018 at 23%, approximately the same as in the previous years.

Basket clauses – Five-year period (2014 to 2018)



In Germany and Austria, basket clauses were agreed in an average of half of all transactions in the overall period covered by the study. The threshold was less than 0.5% of the purchase price in 33% of agreements. Higher thresholds were agreed in just 17% of all transactions. In the Western European countries, meanwhile, basket clauses were only included in agreements in about a quarter (24%) of all deals. Here the minimum limits were below 0.5% of the purchase price in 15% of cases and above that level in 9% of deals. By contrast, basket thresholds in excess of 0.5% of the purchase price were agreed more than twice as often in the Eastern European countries, namely in 17% of all transactions. At 52%, the proportion of deals in this region with a lower threshold of up to 0.5% of the purchase price was also the highest in Europe. Overall, basket clauses were used in more than two thirds (69%) of all transactions in the Eastern European region.

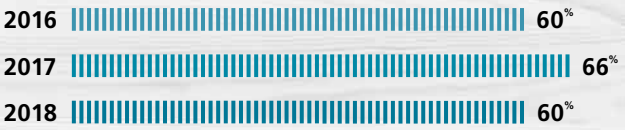
Liability caps – Change over time in Europe



Caps

60%

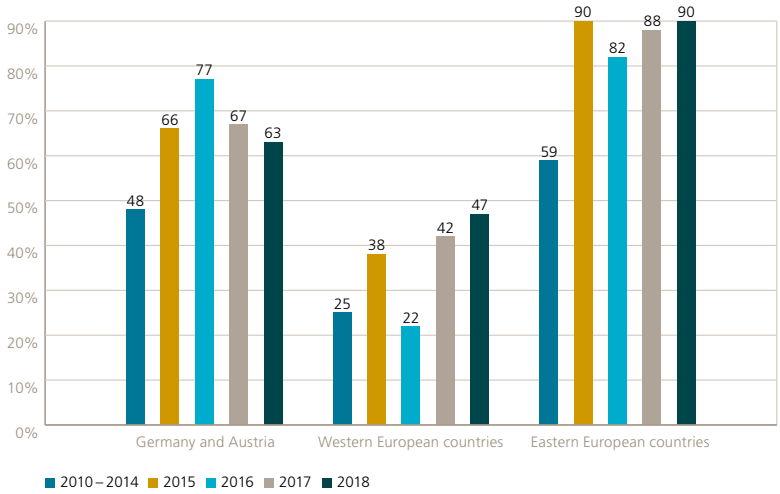
CMS trend index for Europe: Transactions with caps



High proportion of transactions with a liability cap throughout Europe

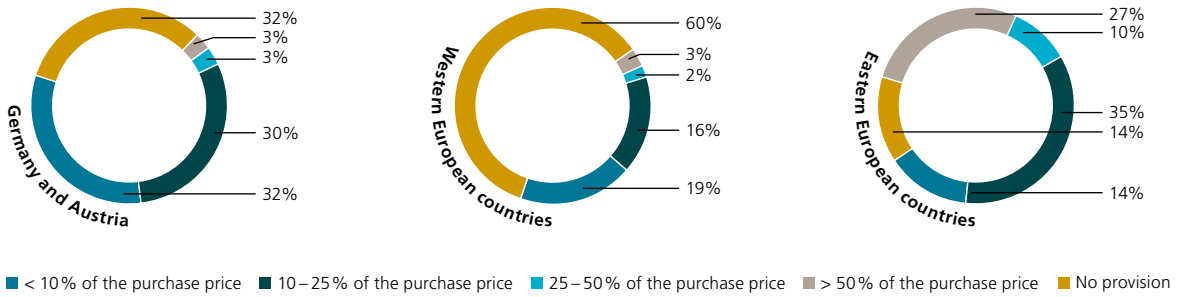
Agreeing a liability cap for the seller is extremely important when dealing with warranties in transaction agreements. The cap specifies the seller's contractually-agreed maximum liability for the warranties given. Apart from a temporary drop in transactions with a liability cap in 2013, from 46% to 34%, the proportion of deals with a cap has risen steadily over the years, climbing from 25% in 2010 to 65% in 2015. After a decline of 5 percentage points in 2016, the proportion of agreements with a contractually-agreed maximum liability reached 66% in 2017, the highest-ever level in the period covered by the survey. The percentage fell back to 60% in 2018, but remained significant. These figures demonstrate that sellers continue to enjoy a very strong negotiating position.

Transactions with caps



There was a clear trend towards agreeing liability caps for property transactions across Europe up to 2016. In Germany and Austria, the proportion of transactions with a liability cap rose from an average of 48% in the period 2010 to 2014 to 66% in 2015. Unlike in the other regions, there was a further increase to 77% in 2016, with the proportion then falling back to 67% in 2017 and declining further to 63% in 2018. In the Eastern European market, however, the reverse trend applied in recent years: while caps were agreed in more than half of all transactions (59%) in the period 2010 to 2014, the percentage of deals with a liability cap was 90% in 2015. In 2016, the figure dropped to 82%. The Europe-wide record set in 2015 was repeated in 2018 (90%). An even sharper rise was seen in the Western European countries. In the years 2010 to 2014, a cap was agreed in only 25% of deals in this region on average. In 2015, the share rose to 38%, only to fall back again to 22% in 2016, just below the average for the period 2010 to 2014. In 2017, on the other hand, the 2015 level was exceeded again, while 2018 saw a new record level of 47%.

Liability caps – Five-year period (2014 to 2018)



Where the transactions examined contained liability caps, they were usually between 10% and 25% of the purchase price in Germany and Austria and also in the Western European countries (30% and 16% of all transactions, respectively) or less than 10% (32% and 19% of all deals examined, respectively) during the period under review. Only 6% and 5% of all agreements, respectively, were subject to a liability cap exceeding 25% of the purchase price. In the Eastern European countries, there were not only far fewer transactions without a liability cap (14%), but the caps agreed were mostly high. A cap exceeding 25% of the purchase price was agreed in 37% of all transactions in the region. In slightly more than a third (35%) of agreements in Eastern Europe, the cap was between 10% and 25% of the purchase price. Low caps of less than 10% were included in 14% of deals.