

Your World First

C/M/S/

Law . Tax

CMS European
Real Estate Deal Point
Study 2017

October 2017

Table of contents

Real Estate Investment Market 2016/2017	3	Limits on liability	22
Summary	4	<i>De minimis</i> clauses	22
Overview of 2016 results	5	Basket clauses	25
Asset classes	8	Liability caps	27
Contract partners	11	Exclusion of liability in the event of knowledge	30
Purchase price	13	Methodology	32
Purchase price adjustment	13	Client-focused thought leadership initiatives	33
Payment protection	15	About CMS Real Estate	34
Warranty and guarantees	17	Contacts	34
Warranty provisions	17	Where can I find CMS?	35
Objective and subjective guarantees	18		
Reference date for warranties	18		
Limitation periods (existing buildings)	19		
Security for warranty claims	20		

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 1,151 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.

Copyright in the study and/or this report is held by CMS Hasche Sigle. Any sharing or publication of the study and/or this report requires the written consent of CMS Hasche Sigle. The study and/or this report are protected by copyright and may only be used for personal purposes. Any reproduction, distribution or other use of the study and/or this report in whole or in part (e.g. on the Internet) requires the prior written consent of CMS Hasche Sigle. If the results of the study and/or this report are used with the prior written consent of CMS Hasche Sigle, CMS Hasche Sigle must be identified as the author.

Use and sharing of this study and/or this report are subject to German law.
The place of jurisdiction is Berlin, Germany.

Real Estate Investment Market 2016 / 2017

The European investment market continued to perform well after the previous record-breaking years. In 2016, total investment volume was around EUR 230bn, less than 10% below the record amount of the previous year. The highest transaction volume in Europe was achieved in Germany in 2016, marking a first for the country. With a total of almost EUR 60bn, Germany replaced the UK as Europe's most attractive real estate market. Germany was regarded as a "safe haven" in Europe due to its comparatively stable economic and political situation and the diversity of its property markets.

In 2016, geopolitical tensions were greater than they have been for many years. Donald Trump, arguably the most controversial candidate in American history, gained the presidency, while the EU's relationship with Russia and Turkey is increasingly under strain. In addition to the ongoing risk of terrorism, Europe also faces the largest wave of migration for 100 years. Last year, the British electorate voted to leave the European Union. Although the prospect of Brexit has had an impact, especially on the UK market, it has not triggered a slump in the investment market; investment is being displaced instead. A lack of alternative investment options coupled with favourable financing conditions led to continued strong demand for real estate investment. A further explanation for the slight fall in investment volume compared with 2015 is that some investors were frustrated by a lack of supply. Excess demand caused the asking prices for property to rise further, as a result of which peak yields fell to record-low levels. In response, investors focused in particular on alternative asset classes such as hotels, care homes and student accommodation. Alongside the expectation of higher returns, the latter two property types have the additional advantage that they are not sensitive to the economy. Rapid re-letting is practically guaranteed, thereby minimising vacancy risk.

This year is unlikely to see a slump in the European investment market either, with real estate being regarded as a stable investment despite political uncertainty. Insurance companies are likely to be particularly active and have already said that they intend to increase their property ratio.

The new CMS European Real Estate Deal Point Study 2017 now includes more than 1,100 transactions. Compiling the study involved comparing the transactions on which we advised in the period 2010 to 2016, enabling us to highlight developments and trends.

We hope that you will find our study helpful in your work in the real estate investment sector. We would welcome any feedback.



A handwritten signature in blue ink that reads "Volker Zerr".

Dr Volker Zerr, MRICS
Partner

About CMS Real Estate

With the largest commercial real estate team in Europe and one of the biggest worldwide, CMS is well positioned to help investors, funders, developers, landlords and occupiers navigate all aspects of the real estate market and maximise their assets. Whatever the size and scope of your project or deal, with almost 800 Real Estate

lawyers in 40 countries we have the resources to meet your needs quickly and efficiently, offering deep local expertise. We have been active in real estate in our markets for decades, so we understand the culture, the economic context, the local legal context and the history.

Contacts

CMS Austria

Dr Johannes Hysek, MRICS

T +43 1 40443 3250

E johannes.hysek@cms-rrh.com

CMS Belgium

Bruno Duquesne

T +32 2 74369 40

E bruno.duquesne@cms-db.com

CMS Bulgaria

Darina Baltadjieva

T +359 2 447 1350

E darina.baltadjieva@cms-rrh.com

Jenia Dimitrova

T +359 2 92199 10

E jenia.dimitrova@cms-cmno.com

CMS Croatia

CMS Serbia

Gregor Famira

T +385 1 4825 600

E gregor.famira@cms-rrh.com

CMS Czech Republic

Lukáš Hejduk

T +420 296 798 892

E lukas.hejduk@cms-cmno.com

CMS France

Aline Divo

T +33 1 4738 5695

E aline.divo@cms-bfl.com

CMS Germany

Dr Volker Zerr, MRICS

T +49 711 9764 160

E volker.zerr@cms-hs.com

CMS Hungary

Gábor Czike

T +36 1 48348 19

E gabor.czike@cms-cmno.com

CMS The Netherlands

Arnout Scholten

T +31 20 3016 472

E arnout.scholten@cms-dsb.com

CMS Poland

Wojciech Koczara

T +48 22 520 5583

E wojciech.koczara@cms-cmno.com

CMS Spain

Javier Torre de Silva

T +34 91 4519 321

E javier.torredesilva@cms-asl.com

CMS Switzerland

Dr Stefan Gerster, LL.M., MRICS

T +41 44 285 11 11

E stefan.gerster@cms-vep.com

CMS United Kingdom

Pranai Karia

T +44 20 7367 2742

E pranai.karia@cms-cmno.com

Where can I find CMS?





Your free online legal information service.

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



Your expert legal publications online.

In-depth international legal research and insights that can be personalised.
eguides.cmslegal.com

CMS Legal Services EEIG (CMS EEIG) is 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, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luxembourg, Lyon, Madrid, Manchester, Medellín, Mexico City, Milan, Monaco, Moscow, Munich, Muscat, Paris, Podgorica, Prague, Reading, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sheffield, Singapore, Sofia, Strasbourg, Stuttgart, Tehran, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

cms.law