SHAREHOLDER ACTIVISM IN EUROPE 2022

DEFINITIVE ANALYSIS ON ACTIVIST INVESTING, INVESTOR VOTING, AND SHORT SELLING IN THE REGION.

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CONTENTS

ACTIVIST INVESTING IN EUROPE 2022

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FOREWORD

MOMENTUM IS BUILDING BEHIND ESG AND TRADITIONAL ACTIVISM IN EUROPE BUT INVESTORS ARE STILL KEEPING A LOW PROFILE, WRITES JOSH BLACK.

A year after we asked whether activism in Europe had been permanently impaired by COVID-19, a quiet resurgence is taking place.

Admittedly, campaigns have not come roaring back. The number of companies publicly subjected in 2021 was down about 18% on 2020 levels, and the first quarter of 2022 is down 41% on the same period in 2020, below even last year's number. Although this includes environmental and social activist engagements, balance sheet and operational demands have yet to return to past levels and there has been no noticeable uptick in demands for board seats or board seats gained.

Nonetheless, a quiet trickle of new positions and semi-private campaigns bolsters the reasons for optimism we laid out in the sixth edition of this special report last year.

Since that publication, Cevian Capital has taken new positions in Vodafone and Aviva and become increasingly vocal about governance failings at Ericsson, a longtime holding. Trian Partners won two board seats at asset manager Janus Henderson and is reportedly standing by at Unilever, where it has not publicly made any demands. At a smaller market cap, former ValueAct Capital Partners' CEO Jeff Ubben took a stake in British housebuilder Countryside through his ESG activism vehicle, shortly after the announcement that its CEO Iain MacPherson would resign and Usman Nabi's Browning West would get a board seat.

The mention of ESG allows me to highlight some of the new developments in both this area and in our report. In the past year, ESG activism has become significantly noisier and more prominent in Europe, thanks to domestic players like Bluebell Capital Partners and the new Clearway Capital. Although the strategy is perhaps not as well developed as in the U.S., it is clearly making inroads.

Insightia data show climate change and a diverse array of social issues are top of mind for investors, while an article in this report highlights that the introduction of ESG metrics into executive compensation is seen as a good way of heading off pay revolts.

Elsewhere, we highlight the enduring appeal of U.K. companies to activist investors, with its friendly regulators and plentiful opportunities, and passive short trends across the continent.

Sharp-eyed readers will note that this structure dispenses with our previous country-specific approach. Since many of the trends we've noticed over the past 12 months affected Europe as a whole, we felt this was a worthwhile endeavor for this year at least. We're happy to make country-specific data available on request.

There is much more where that came from on our new platform, Insightia One, which allows users to customize dashboards and pull data from across our modules (subscription terms allowing), a significant update following the merger of Activist Insight and Proxy Insight in 2020.

Meanwhile, if you hadn't already heard, Insightia is now part of Diligent, the leading governance software provider. We hope to have more exciting stories to tell you about our journey together by our next report.

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WHAT'S TRENDING IN EUROPEAN ACTIVISM?

CLICK HERE TO LISTEN TO A SPECIAL EPISODE OF THE BEYOND THE BOARDROOM PODCAST, FEATURING AN INTERVIEW WITH WHITE & CASE'S TOM MATTHEWS AND SONICA TOLANI.

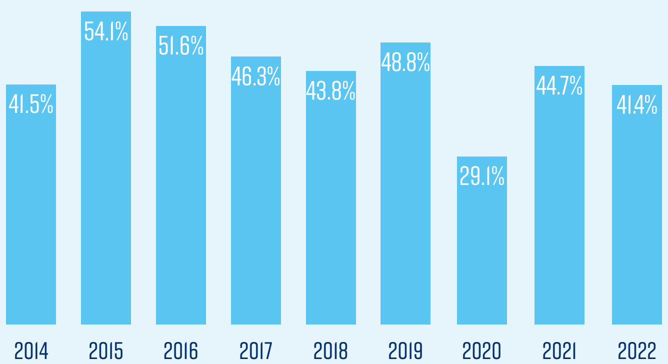
ACTIVISM IN EUROPE

BY THE NUMBERS. FOR MORE NEWS AND DATA, VISIT INSIGHTIA'S ACTIVISM AND VOTING MODULES.

ROLLING 365-DAY TOTAL OF ACTIVIST CAMPAIGNS IN EUROPE

365-day rolling total of public activist campaigns at Europe-based companies.
Source: Insightia | Activism

ACTIVIST SUCCESS RATE IN EUROPE

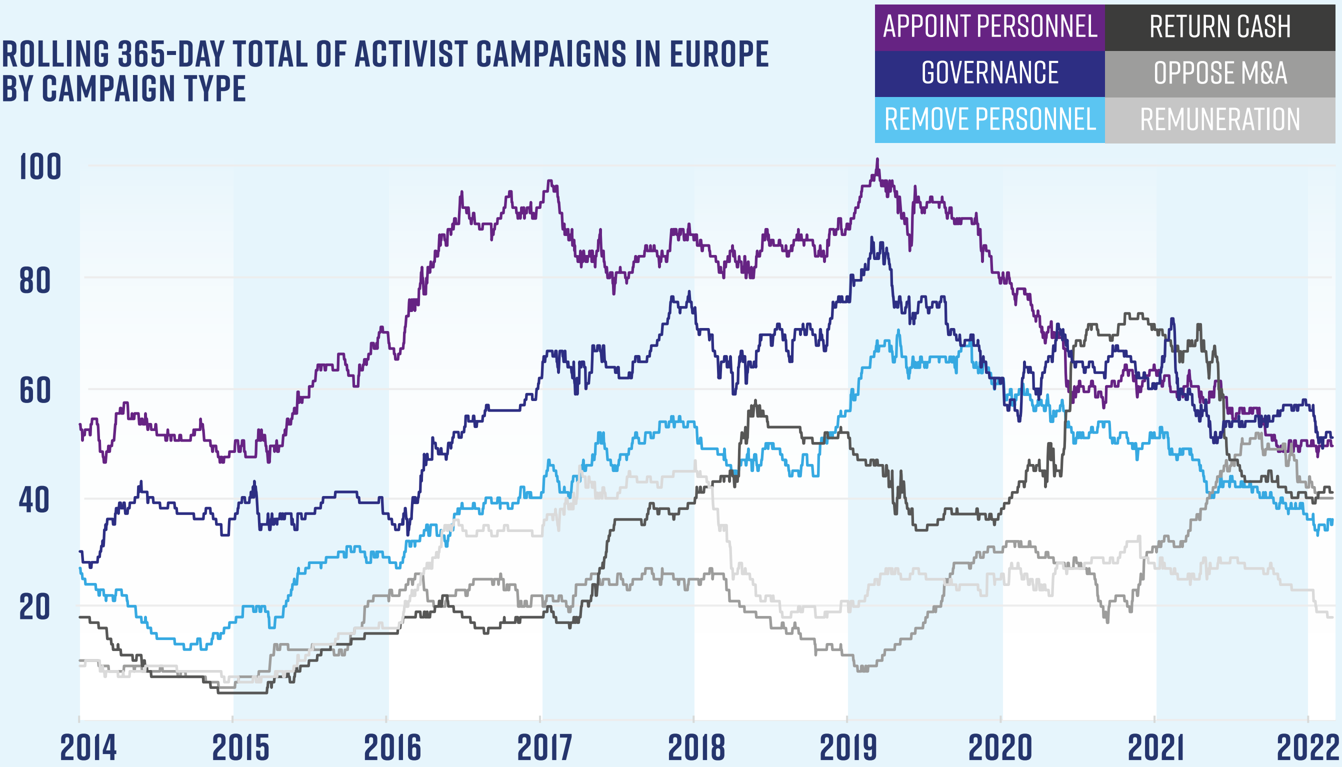


Proportion of activist campaigns at Europe-based companies where the activist was at least partially successful, by year. 2022 data as of March 11, 2022.
Source: Insightia | Activism

TOP ACTIVISTS IN EUROPE

Top primary and partial-focused activists by the number of Europe-based companies publicly subjected to its demands in 2021.
Source: Insightia | Activism

ROLLING 365-DAY TOTAL OF ACTIVIST CAMPAIGNS IN EUROPE BY CAMPAIGN TYPE



365-day rolling total of public activist campaigns at Europe-based companies by selected campaign demand types.
Source: Insightia | Activism

BOARD REPRESENTATION CAMPAIGNS BY REGION

COUNTRY	2014	2015	2016	2017	2018	2019	2020	2021	2022
UK	11	16	18	15	25	30	14	16	5
GERMANY	5	4	8	11	8	12	13	12	0
SOUTHERN EUROPE	8	8	16	8	9	5	3	2	0
SCANDINAVIA	5	10	6	0	6	8	6	3	0
FRANCE	0	4	8	5	5	2	5	2	0
SWITZERLAND	2	4	6	4	2	4	2	2	0
BENELUX	0	1	2	1	3	0	1	4	0
OTHER	13	14	15	24	16	12	9	7	1

Number of Europe-based companies publicly subjected to gain board representation demands, by company HQ and year.
2022 data as of March 22, 2022.
Source: Insightia | Activism

UK: ESG IS THE WAY FORWARD

AN INTERVIEW WITH TOM MATTHEWS, GUY POTEL, PARTNERS AT WHITE & CASE, AND SONICA TOLANI, ASSOCIATE AT WHITE & CASE.

How are activists in the U.K. increasing their focus on E&S issues?

There is a growing consensus that improved E&S management is a bellwether of future financial performance. Both active and passive managers are giving greater attention to these issues, as record amounts of capital chase "ESG-friendly" companies. E&S issues have become hard for companies to ignore, with valuations impacted by greater numbers of investors shunning and screening out companies that fall short.

The energy, mining, and banking sectors, longtime key constituents of U.K. public markets, continue to come under the most scrutiny, with high-profile E&S campaigns launched at some of the largest companies in these industries. However, the scope for E&S activism is now far broader than this, with the pandemic accelerating awareness of human capital management and supply chain issues. Consequently, the consumer and retail sectors have come under increasing scrutiny. We expect E&S campaigns to be a key feature of activism campaigns in 2022.

How will activism in the U.K. impact M&A activity in 2022?

U.K. public markets remain depressed relative to international peers. Long-term undervaluation, coupled with relatively supportive fiscal policies, and a favorable U.S. dollar to U.K. pound exchange rate, will mean the U.K. continues to attract interest from foreign investors, and from the U.S. in particular. In the last 12 months, activists have zeroed in on conglomerates as ripe for M&A solutions ranging from spin-offs and take-privates to strategic acquisitions. We expect this trend to continue.

Despite the current geopolitical tensions and an inflationary environment introducing a potential slowdown in levels of M&A activity, in particular compared with 2021's record year, we expect activists to continue to promote and pursue M&A solutions in the U.K. Whilst valuations remain opaque and markets depressed, we also expect opposition toward M&A to continue.

Will special-purpose acquisition companies (SPACs) be a feature of activism in 2022?

Changes to the U.K. Listing Rules aimed at attracting SPACs to the U.K. saw the first U.K. SPAC listing in late November 2021, and we expect more this year despite the slowdown in the U.S. In addition, a near-saturated U.S. market is turning to Europe and the U.K. for "de-SPAC" transaction targets. Conversely, activists pushing companies to sell off non-core assets will target this new source of capital for "de-SPAC" transactions.

SPACs looking at "bubble" sectors (such as ESG and technology) may risk overpaying to get a deal done and may become vulnerable to "SPAC-tivism" (both long and short) if "bad" deals emerge.

Other than ESG and M&A activism, what will be the biggest trend in activism in the U.K. in 2022?

We expect to see the rise of "retail activism" in 2022. Market participants in the U.K. have watched the successes of retail investors in the U.S. with interest. U.K. platforms are being set up to help retail investors engage meaningfully with companies. Institutional activists may be wary of the unpredictable nature of these investors, but it is also possible that they will become allies in campaigns, with the ability to help deliver demands to management teams rapidly and efficiently. We expect ESG concerns to feature prominently in these campaigns.

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FRANCE EMBRACES ACTIVISM

AN INTERVIEW WITH SAAM GOLSHANI, DIANE LAMARCHE, PARTNERS AT WHITE & CASE, AND SIMON MARTIN-GOUSSET, ASSOCIATE AT WHITE & CASE.

What are the outcomes of the main activist campaigns conducted in the past year?

The French market has witnessed a number of recent high-profile activist campaigns, with activists engaging both mid-cap and large-cap issuers. 2021 saw Amber Capital's landmark success in effecting major changes to Lagardère's corporate structure and Bluebell Capital successfully removing Danone's CEO, assisted by Artisan Partners.

The strategies employed by activists in France are particularly notable, ranging from confidential shareholder dialogues (as was the case at Pernod Ricard) to judicial battles (as seen at Lagardère). Although most campaigns remain confidential, this strategic breadth, along with an ever-increasing number of large-cap activist targets, demonstrates France's growing activist-friendly reputation. Recent campaigns have lacked the hostility of previous years. As a result, activism is no longer perceived as predatory but rather as a driver of performance and good governance.

How are activists in France increasing their focus on E&S issues?

Consistent with global trends, ESG activism continues to affect French companies already facing increased public and regulatory pressure (e.g. PACTE Act, Duty of Vigilance).

Alongside traditional corporate activists, a broad range of shareholders now closely scrutinize French issuers' ESG credentials, including specific ESG-focused funds, non-governmental organizations (NGOs), and institutional investors. These shareholders frequently work in tandem using "activist" methods, given that interests in ESG-themed campaigns often align. Demands are no longer limited to advisory shareholder resolutions on climate strategy and enhanced E&S disclosure: investors are pursuing binding E&S targets.

French issuers initially resisted ESG demands from activists. There appears to have been a sea-change in 2021. Several high-profile French companies (including TotalEnergies and Vinci) proactively submitted climate-related shareholder resolutions, possibly to stave off activist intervention. This trend is expected to continue into the 2022 proxy season.

How does French stock market regulator Autorités des Marches Financiers (AMF) consider shareholder activism today?

Following largely pro-issuer reports from French industry bodies and think tanks, the AMF published an April 2020 report on activism, noting that the existing regulatory framework was "sufficiently flexible and robust".

In March 2021, the AMF adjusted its previous position. Most notably, it emphasized the importance of shareholder dialogue on key strategic topics, such as governance and ESG performance.

The AMF's light touch approach is perhaps unsurprising, given its prior comments on responsible activism's potential to improve price discovery, governance, and management structures.

Other than ESG, what will be the biggest trends in activism in France in 2022?

In the short-run at least, activists will continue to engage issuers with Russian exposure. As issuers enter a post-COVID world, the ongoing Russian conflict may also catalyze event-driven activism. Calculating fair company valuations is difficult enough in the current environment. Should the economic outlook worsen, insolvencies and restructurings could follow.

Coalitions (or wolf packs) of activists are also likely to become a key feature of French campaigns. Bluebell showed at Danone that small stake activists can garner wider shareholder support, from both fellow activists and institutional shareholders, to agitate for changes.

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GERMAN ACTIVISTS TARGET CLIMATE LAGGARDS

AN INTERVIEW WITH DR. MURAD DAGHLES, PARTNER AT WHITE & CASE AND DR. THYL HASSLER, LOCAL PARTNER AT WHITE & CASE.

What are the outcomes of the main activist campaigns conducted in Germany in recent years?

The German activist landscape has seen recent high-profile campaigns at some of the country's largest blue-chip companies, with the activists succeeding at least partially in their goals.

Activist investors have sought and achieved two key outcomes: board representation and influence over strategic decision-making. Cerberus' public pressure at Commerzbank changed the company's board composition. Cevian's campaign at ThyssenKrupp led to the sale of its elevator unit. Approaches from Elliott led SAP to target increased efficiency and Bayer to revise its Monsanto litigation strategy. At MDAX listed digital company Scout24, two outcomes were realized: Elliott's demands resulted in the sale of key company assets and the company implementing an ambitious share buy-back, whilst Pelham's proposed candidate was appointed to the company's supervisory board at a shareholder meeting.

Activists have also exerted influence over takeover bids. Most recently, Advent and Centerbridge saw their offer for Aareal Bank fail following its public rejection by activists Petrus Advisers and Teleios. The activist pair continue to push for changes to the company's board composition.

Germany remains a level playing field for activist investors.

How are activists in Germany increasing their focus on ESG issues?

ESG campaigns typically target companies exposed to transition risks in ESG-sensitive segments like commodities, energy, chemicals, and heavy industry. Enkraft Capital's recent targeting of RWE AG, where they demanded that Germany's largest energy supplier split into "brown" and "green" units, is illustrative of this trend.

ESG aspects serve as a gateway for activists not only to demand changes in ESG strategy but also to achieve traditional activist goals. Public awareness of ESG's importance continues to rise, and ESG campaigns attract elevated levels of public interest. As an added benefit, ("silent") institutional investors are often much more likely to support such campaigns.

How does the German stock market regulator view shareholder activism today?

Unlike the European-wide regulator the European Securities and Markets Authority (ESMA), the German Federal Financial Supervisory Authority is yet to make an official statement.

Corporate Germany has traditionally harbored reservations over activism, often criticizing activists for short-term opportunism. More recently, this has started to change, as activist shareholders have been successful in supporting companies adapting to challenging environments. Activists have therefore enhanced their reputation as potential strategic partners, capable of helping companies transform their business models.

Other than ESG, what will be the biggest trend in activism in Germany in 2022?

We expect so-called "passive" institutional investors to play an increasingly active role. Such investors are, by far, the largest shareholder group in DAX-listed companies, and are yet to embrace engagement with activists or traditional private equity investors fully. It remains to be seen how far this will change.

Institutional investors like the Bavarian Pension Fund have explicitly changed their investment strategies to become more "active". Such plans are ambitious, given the sheer number of investments they hold. To implement such strategies in the future, institutional investors could well become more open to partnering with activists. As a minimum, they could steadily become more supportive of campaigns that align with their interests. It will be interesting to observe companies' reactions to any such developments.

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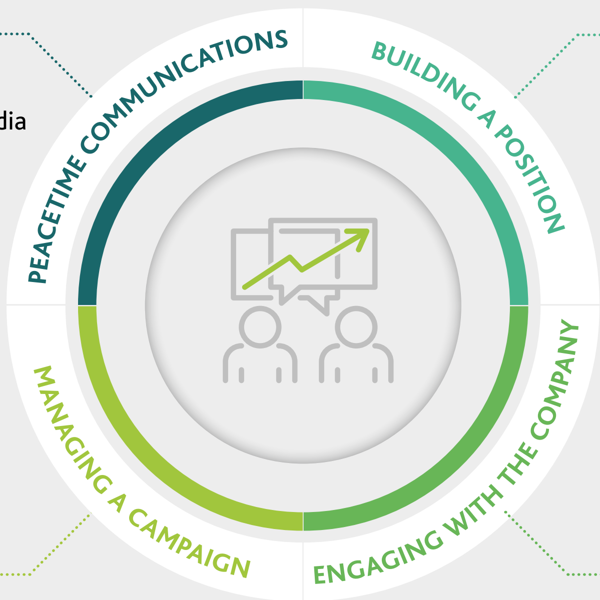
We take a holistic approach to reputation management for engaged shareholders – helping with positioning and messaging; building relationships with important stakeholders; campaigns to grow AUM and support fundraising; and advising on how to mitigate and manage issues.



- Profile management
- Establishing and managing media relationships
- Due-diligence/market intelligence on potential investments

- Communications regarding disclosure/position being made public
- Strategic planning with other advisors (e.g. lawyers/solicitation advisors/IOD)
- Political intelligence

- Communications to support proxy contest
- Reactive and proactive media management
- Shareholder and broader stakeholder engagement
- Digital strategy (micro-site, social media)

- Advising on engagement with board and management teams (including constructive private discussions)
- Drafting/review of materials e.g. letters to the board; investor communications
- Preparedness for counter-briefing

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THE GREAT DIVERGENCE

THE U.K. MARKET HAS BEEN MORE ATTRACTIVE FOR ACTIVISTS THAN CONTINENTAL EUROPE OVER THE PAST YEAR, WRITES IURI STRUTA.

Activism activity in the U.K. and continental Europe historically moved in unison since records began in 2013. Last year, these markets started to diverge. Activism in continental Europe has waned, while the U.K. headed higher.

Cheaper and better

That the U.K. has been more attractive is no surprise. The country has been providing more opportunities for activists than the continent thanks to the relative cheapness of its market and more openness by managements to outside advice. Arguably, more of the larger U.K. companies have lagged their European counterparts in making strategic reorganizations and have underperformed, providing activists with a good pipeline of potential targets.

Indeed, divestiture demands at U.K. companies doubled in 2021 and they were up so far this year compared to the same period last year. U.K.-based Vodafone Group and Unilever have been facing calls to streamline their businesses by pursuing asset sales. In continental Europe, the number of divestiture demands saw only a minor increase from 12 to 14 in 2021.

U.K. management teams are more likely to settle with their activists than their European counterparts. In 2021, more than half of U.K. engagements for board seats concluded in settlements. In continental Europe, just around a quarter reached amicable resolutions, although this was an improvement over previous years.

And while numbers in continental Europe are still high, a larger part of activity, especially in countries like Germany, has been driven by local small shareholders that occasionally engage in activism by submitting proposals at annual meetings. Many of these demands were either for larger share buybacks or higher dividends. Demands for cash returns in continental Europe reached a record in 2020.

Too challenging

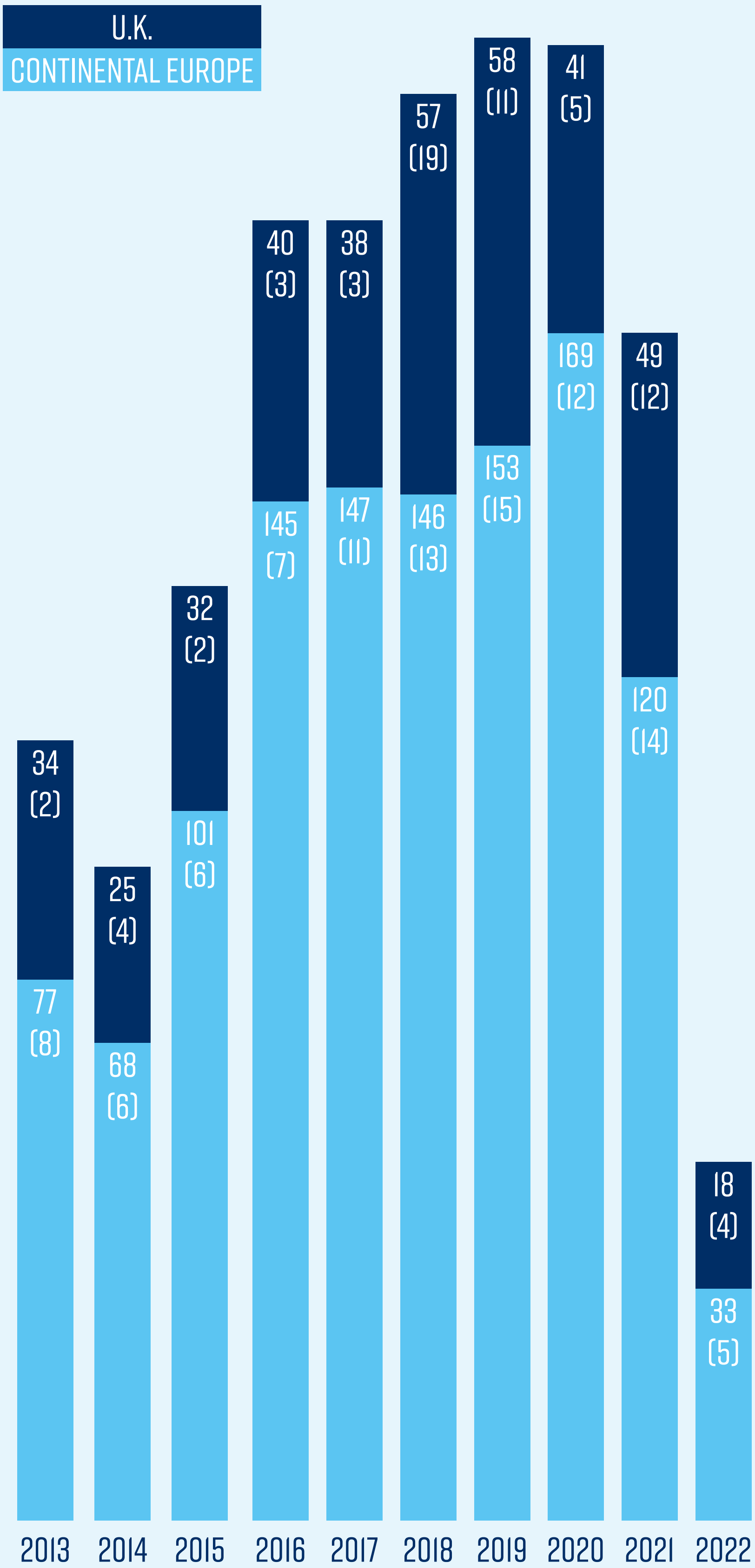
Arguably, some of the more challenging campaigns have taken place in continental Europe, which might have discouraged foreign activists from venturing into the region. Amber Capital had a rough multi-year campaign at Lagardère Group that included multiple lawsuits, although the activist achieved success in 2021 after teaming up with Vincent Bollore's Vivendi. Cevian Capital's multi-year engagements with Germany's ThyssenKrupp, ABB, and Bilfinger, proceeded well, but the activist's returns on these campaigns have been rather disappointing so far, according to Insightia's Total Follower Return feature.

Meanwhile, France has made clear that Elliott Management's bumpitrage activism is not welcome in the country, hitting the activist fund with a fine in 2020 over its role in frustrating the merger between Norbert Dentressangle and XPO Logistics. Elliott has been more timid with its bumpitrage since.

Indeed, Europe's largest activists Elliott and Cevian have mostly invested in the U.K. in recent years. Few other smaller U.S. activists stepped deeper into Europe.

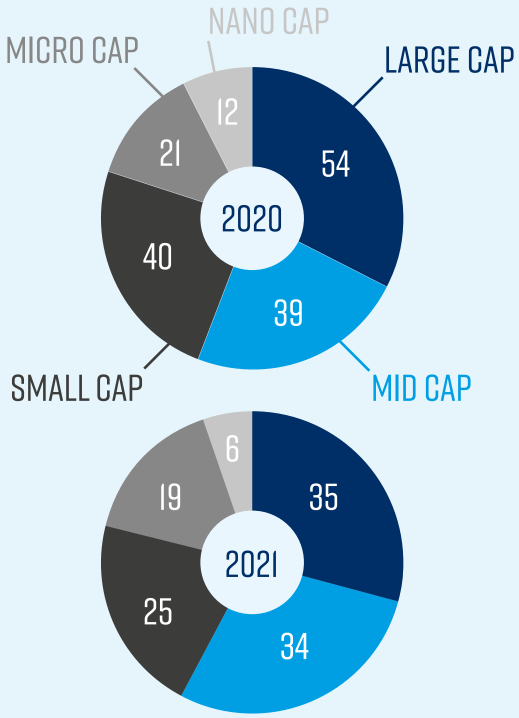
But the continent and the U.K. are similar in some respects. Both regions saw a higher number of large-cap companies targeted, proportionally, in 2021 and 2022. Mirroring a global trend of investors looking for assets insensitive to rising interest rates, the consumer defensive sector attracted more activism. A record 12 European companies in the sector were subjected to activist demands in 2021 and six already this year.

ACTIVIST TARGETS IN EUROPE AND (DIVESTITURE) DEMANDS



Number of companies publicly subjected to activist demands by HQ and year. (Companies publicly subjected to divestiture-related demands in brackets). 2022 data as of April 20, 2022.
Source: Insightia | Activism

ACTIVIST TARGETS IN CONTINENTAL EUROPE BY MARKET CAP



Proportion of Continental Europe-based companies publicly subjected to activist demands by year.
Source: Insightia | Activism

GAIN BOARD REPRESENTATION DEMANDS BY OUTCOME

CONTINENTAL EUROPE			U.K.	
SETTLEMENT	WENT TO VOTE	YEAR	WENT TO VOTE	SETTLEMENT
6	25	2014	5	4
12	37	2015	6	6
14	54	2016	7	8
7	48	2017	8	5
8	50	2018	6	12
7	43	2019	14	16
8	27	2020	7	7
8	23	2021	4	9
1	3	2022	3	4

Outcome of resolved gain board representation demands by HQ and year. 2022 data as of April 20, 2022.
Source: Insightia | Activism

EMERGING TRENDS: POLITICAL ACTIVISM CONVERGES WITH ESG

ESG ISSUES ARE A CENTRAL FOCUS FOR COMPANIES, INVESTORS, AND THE PUBLIC. SHAREHOLDERS HAVE BEGUN PUSHING FOR COMPANY CHANGE TO ADDRESS BUSINESS RISKS ASSOCIATED WITH POLITICAL CONCERNS, WRITES CAS SYDOROWITZ, GLOBAL CEO OF GEORGESON.

In a globalized, digital world, shareholders are empowered to voice opposition to company actions that they perceive to create reputational or financial risk – and use votes or even the threat of divestiture to hold companies accountable. Now, political activism appears to be an emerging lever for investors of all types. Consider three recent scenarios:

Ericcson shareholders hold CEO Börje Ekholm accountable for payments made to ISIS members in Iraq.

Recent revelations revealed misconduct at telecom company Ericcson, under the leadership of Chief Executive Börje Ekholm, including payments made to the Islamic State terror group ISIS to work in and smuggle equipment into ISIS-controlled territories. In 2019, Ericcson signed an agreement with the U.S. Department of Justice and paid $1 billion in criminal and civil penalties for its misconduct in Iraq. But Ekholm stayed quiet about the ISIS payments since then and, from 2019-2021, received $20 million in bonuses.

Due to the alleged misconduct and lack of disclosure, which created significant reputational damages, shareholders pressed for corporate reforms at Ericcson's March 29 annual meeting. The governance and oversight failures were also cited by proxy advisers Institutional Shareholder Services (ISS) and Glass Lewis when recommending shareholders vote against Ekholm's reelection.

Why it matters: Shareholders took it upon themselves to hold management and the board accountable for funding a terror group.

Defense investments as an emerging ESG area.

In recent years as ESG pressures have risen, asset managers and other investors have moved away from defense-related investments. As a result, some defense companies experienced a decrease in capital and long-term relationships were severed. Rheinmetall's bankers – BayernLB and LLBW – ceased their long-term relationship with the armored vehicle maker. Defense companies have long suffered divestment and/or restrictions on investors' abilities to own their stock.

As conflicts emerge, such as the Ukraine-Russian war, shareholder pressure over the manufacturing of certain armaments has relaxed. Defense investments is an emerging ESG area.

Why it matters: The Ukraine war has caused many investors to change how they view defense investments and where it fits into ESG.

TotalEnergies faced pressure from activist investors to divest its Russian assets and halt business with Russian counterparts in response to the war in Ukraine.

German activist investor Clearway Capital this year called on French energy company TotalEnergies to divest its Russian assets and cease the import of oil and natural gas from Russia, in light of the war in Ukraine. Clearway warned that failure to do so would result in shareholder dissent at its next annual meeting. Clearway Capital claimed it had the support of other large TotalEnergies investors. Additionally, the Church of England's Pensions Board sent a letter to the company indicating that it may reconsider its shareholding if TotalEnergies did not cut business ties with Russia. TotalEnergies ultimately acquiesced to stop buying Russian oil and petroleum products by the end of the year.

Why it matters: Short- and long-term business risks related to reputation, sanctions, and other political issues led both active and passive shareholders to push an energy company to end business ties with Russia.

Activism is maturing and adapting to the world's current events during the 2022 proxy season. In the last couple of years, we saw the rise and fast-paced evolution of ESG activism as it morphed with each significant event such as COP26, the Black Lives Matter protests, or the Ukraine-Russian conflict. It seems that ESG activism is converging with political activism, a byproduct of current political tensions and instability.

There are more stakeholders that companies need to consider beyond only shareholders, including employees, customers, suppliers, and politicians. Shareholder meetings are now being used as venues by activists to gain public recognition and to apply pressure to broader stakeholders to take action.

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EUROPE'S ACTIVIST INVESTORS ADOPT ESG

UNIQUE FORMS OF ESG ACTIVISM ARE EMERGING IN EUROPE AND INFLUENCING THEIR PEERS IN THE U.S., WRITES JOSH BLACK.

Europe, the home of board diversity quotas, sustainability directives, and flourishing green funds, is finally starting to develop something closer to the ESG activism of the U.S.

Although Insightia data suggest that the heyday for social- or governance-related public demands was in 2017, environmental issues peaked in prominence more recently and hedge fund managers have begun making the link between ESG and valuation explicit. The first campaign by Clearway Capital, Europe's first dedicated ESG activist fund, and public demands by Bluebell Capital Partners at two major energy companies indicate that the strategy is emerging from behind closed doors.

The role of ESG

As in the U.S., activists are convinced that making companies more sustainable can make them more valuable.

"When I first started this, it became very clear that in a lot of people's minds, ESG is viewed as a trade-off between shareholders and everybody else," Clearway's founder, Gianluca Ferrari, told Insightia in an interview for this report. "The way I've positioned Clearway is that I still think companies need to maximize the value they deliver to shareholders and the only way to do so over the long-term is to be sustainable."

So far, companies that try to pit sustainability concerns against shareholders are viewed skeptically. Last year, French dairy company Danone ousted its CEO after criticism from Bluebell and Artisan Partners, despite being a certified public benefit corporation and operating in a strategic industry.

Niklas Ringby, co-head of EQT Public Value, a fund run by the Scandinavian private equity firm that invests in public equities and takes a constructivist approach, says many of the mid-caps in its target universe "employ a wait and see approach" that he deems "not good enough."

"There's an opportunity to support these companies but also demand and drive change," Ringby told Insightia recently. He gave the example of Adapteo, which was acquired by a Goldman Sachs infrastructure fund after it added recyclable temporary structures for schools to its worker accommodation business, boosting its ESG rating. "Customers expect companies to be ESG leaders and working towards that goal helps future-proof businesses by incorporating sustainability criteria into processes and decision making across organizations. But it's also about attracting a different type of investor capital which can lead to a re-rating of the stock," said Ringby.

How Europe differs

Unlike U.S. ESG activists Engine No. 1 and Inclusive Capital, campaigns by Third Point Partners and Bluebell Capital have pushed companies like Shell, Glencore, and RWE to break up or separate the more polluting parts of their businesses from the greener ones. That may be because some European investors like Norges are adopting more stringent divestment policies, while in the U.S. index funds play a larger role and do not divest.

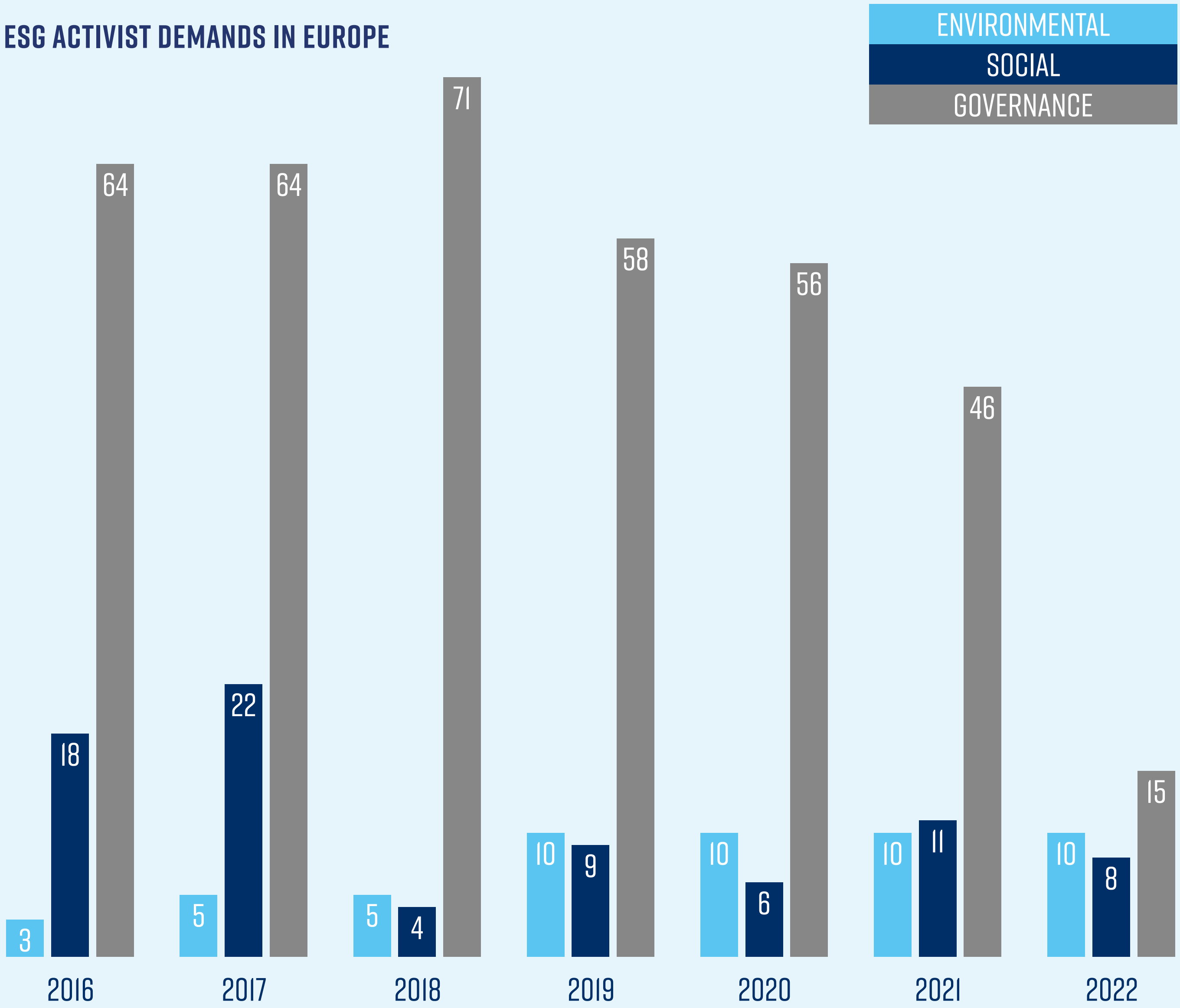
Social concerns are also prominent. Clearway's Ferrari told Insightia that he views his firm's successful call for TotalEnergies to stop buying Russian oil in the wake of the country's invasion of Ukraine as a social issue since it is based on preventing the company from supporting a violent and authoritarian regime, as well as preventing permanent value impairment. Bluebell and CIAM, a French activist, both place a high emphasis on board diversity as part of their ESG strategies, working with the grain of support for more stringent quotas than are applied in the U.S.

The different approaches may lead to innovation that is recycled back into the U.S. arsenal. Bluebell's Marco Taricco pointed out in an interview with Insightia that the fund pioneered non-economic campaigns in 2020, drawing attention to ESG issues at Belgian chemical company Solvay while holding a token share of a target. Earlier this year, Carl Icahn adopted a similar strategy with animal welfare-themed proxy fights at U.S. companies McDonald's and Kroger with just 200 shares.

ESG ACTIVISM

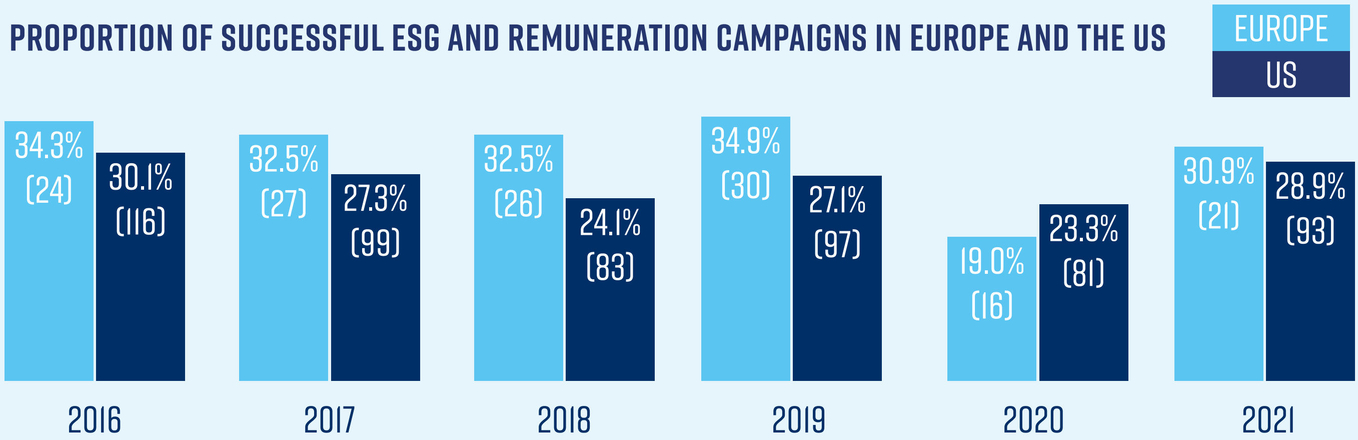
CLICK HERE TO DOWNLOAD INSIGHTIA'S 2021 REPORT ON ESG ACTIVISM.

ESG ACTIVIST DEMANDS IN EUROPE



Number of Europe-based companies publicly subjected to activist demands by demand type each year.
2022 data as of April 22, 2022.
Source: Insightia | Activism

PROPORTION OF SUCCESSFUL ESG AND REMUNERATION CAMPAIGNS IN EUROPE AND THE US



Proportion of companies with at least partially successful ESG and remuneration activist demands compared to the number of companies with resolved ESG and remuneration activist demands. (Number of companies with at least partially successful ESG and remuneration demands in brackets.) Insufficient results for 2022 demands at time of writing.
Source: Insightia | Activism

THE CHANGING ROLE OF ESG IN ACTIVIST INVESTING

AN INTERVIEW WITH JASON CAULFIELD, GLOBAL HEAD OF VALUE CREATION SERVICES, AND JAMES HILBURN, ESG M&A LEAD AT DELOITTE IN LONDON.

How have ESG demands evolved in activist campaigns?

Jason Caulfield (JC): Historically, ESG has been an independent concern to more financially focused activists. A "pure play" activist may have seen some useful mileage in raising ESG concerns to challenge a board or executive team they are already at odds with, but it typically did not form a core part of the value thesis. That has really started to change.

James Hilburn (JH): Absolutely. Governance, and in particular how it contributes to decision-making and remuneration, has often been a driving concern for activist investors. But there is increasing recognition of the tangible role played by environmental and social attributes of a business.

Why has ESG become so salient to activist investors?

JC: The rise of ESG performance as a driver of a company's broader value has totally altered the equation. The evidence that good ESG performance is correlated to good financial performance has been enough to trigger capital flows. As valuations have changed commensurately, ESG performance naturally appears more frequently on the radars of activist investors.

JH: Indeed, demonstrating and changing the perception of a company's ESG performance to the marketplace is now another way of changing valuation multiples – not just a way to take issue with a management team. Whilst some activists can get a tough reputation, others genuinely want to drive ESG improvements for ethical as well as financial reasons.

How have activist campaigns changed as a result?

JH: Now that ESG topics have established themselves, investors, including activists, will need to apply an ESG lens to their value strategy for an investment. That means they also need to educate themselves on environmental or social aspects of a business that can drive or destroy value. Activist investors have approached us to understand more about where and how values and long-term value can overlap.

JC: Whilst more constructivist investors – those that don't wage proxy fights – are willing to pursue this longer-term, there are also opportunities within shorter-term activist strategies. M&A and triggering divestitures have been key focuses for larger activist investors, especially in Europe and the U.K. Differential valuations that may be applied to different parts of a company due to their ESG standings – a sort of good bank/bad bank distinction – becomes a valid point of attack.

What does this mean for the board or executives of a company?

JC: It creates a number of things for consideration. Firstly, when carrying out a business review to avoid activist attention, companies now need to add ESG to the other variety of lenses that they apply. Secondly, as a company is building its strategy for value creation, it must take ESG into that process more systematically – not pursuing value creation from a more targeted improvement of ESG performance could provide the angle by which an activist launches a campaign.

JH: A word of caution is needed – ESG is still somewhat immature relative to many financial perspectives on a business. So gauging priorities is not straightforward, and indeed there is a degree of subjectivity on what good ESG looks like.

JC: Nonetheless, the best way to reduce the impact of an activist investor campaign is to avoid one in the first place. Stepping back, thinking like an activist, and challenging your company in the way an activist would is a great place to start.

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PUTTING PAY INTO PERSPECTIVE

HEFTY CEO PAYOUTS THAT WERE MISALIGNED WITH BROADER STAKEHOLDER EXPERIENCES RESULTED IN SIGNIFICANT PAY REVOLTS FOR EUROPEAN ISSUERS IN 2021, WRITES REBECCA SHERRATT.

While COVID-19 led to increased investor scrutiny of compensation structures on an international scale, European issuers were particularly hard hit by pay revolts in 2021. Average support for advisory "say on pay" proposals across Europe dropped to 92.6% in 2021, compared to 93% and 94% in 2019 and 2020, respectively, according to Insightia's *Voting* module.

Proxy adviser recommendations were even less forgiving, with Institutional Shareholder Services (ISS) endorsing 74.6% of "say on pay" proposals in Europe in 2021, compared to 78.8% and 80.8% in the previous two years, according to synthetic recommendations. In comparison, ISS endorsed 88.7% of advisory "say on pay" proposals at U.S.-listed companies in 2021.

"Across Europe, remuneration-related resolutions were the most contested type of resolutions in 2021," Domenic Brancati, global chief operating officer at Georgeson, told Insightia in an interview. "In 2020, investors were more flexible because of COVID-19. In 2021, investors became more demanding as the world entered a 'new normal.'"

As more European regulators implement the Shareholder Rights Directive II (SRD) ruling, many investors also received their first-ever opportunity to call out deficient compensation structures in 2021. A record-breaking 2,367 advisory "say on pay" proposals were subject to a vote in Europe in 2021, compared to 1,478 and 1,913 in 2019 and 2020, respectively.

One for all, all for one

Ideagen suffered the largest pay revolt in 2021 among European companies. The U.K. software firm's remuneration report faced 76.7% opposition at its October 27 annual meeting due to retroactive adjustments to chief financial officer Emma Hayes' long-term incentive plan (LTIP), to vest awards which otherwise would not have been granted.

Morrisons' "say on pay" proposal received 29.9% support at the FTSE 250 grocery store's June 10 annual meeting, after CEO David Potts was offered a 5% pay rise, despite profits dropping by 50% over the past year.

University of California Investments voted against both compensation structures, criticizing the companies for failing to account for the "full costs of managing COVID-19."

Leading fund managers also cited misaligned compensation structures as the primary driver for adverse voting action against European issuers. BlackRock supported 69.4% of European "say on pay" proposals in 2021, compared to 81.9% and 79.4% in 2019 and 2020, respectively, while Vanguard supported 76.2% of "say on pay" proposals in 2021 compared to 84.3% and 78.9% the previous two years.

"The immediate reaction to the pandemic in 2020 was largely positive – some companies froze or cut executive payouts, but there can be knock-on effects," Lisa Harlow, head of investment stewardship, Europe, at Vanguard told Insightia in an interview. "In cases where executives have not been paid bonuses, companies may want to make up for lost time and bolster executive rewards. We saw this occur in 2021 and will likely see it in the coming year."

Ensuring accountability

Investor proxy voting policy updates make clear that issuers will be subject to voting action if they fail to align compensation with ESG metrics. Allianz Global Investors updated its proxy voting policy on February 22, revealing that the $743 billion asset manager will vote against European large-cap companies that fail to include ESG key performance indicators (KPIs) in their executive compensation structures. Cevian Capital has similarly pushed investors to vote against compensation structures that fail to include ESG metrics this proxy season, while BMO Global Asset Management revealed it will engage with European companies across carbon-intensive sectors to understand how executive pay is linked to climate strategy.

In order for compensation structures to win investor approval going forward, Georgeson's Brancati said that it is "especially important to keep investors apprised of the progress of various ESG initiatives," whether that be the impacts of the pandemic, climate change, or human capital management.

The use of ESG metrics in compensation structures may assure investors that issuers are paying sufficient oversight to material risks. Ben Colton, global head of asset stewardship, voting and engagement at State Street Global Advisors (SSGA) told Insightia that "ESG metrics need to be quantifiable, sufficiently challenging, and incentivize behavior that is clearly articulated in companies' disclosure."

SUPPORT FOR "SAY ON PAY" PROPOSALS IN EUROPE

INVESTOR	2018	2019	2020	2021	2022
BLACKROCK	76.8	81.9	79.4	69.4	N/A
VANGUARD	82.0	84.3	78.9	76.2	100.0
STATE STREET GLOBAL ADVISORS	90.6	91.0	89.1	83.0	N/A
INSTITUTIONAL SHAREHOLDER SERVICES	74.8	78.8	80.8	74.6	84.6
GLASS LEWIS	80.7	80.1	81.1	77.4	86.6
AVERAGE VOTE RESULT FOR (%)	92.5	93.0	94.0	92.6	93.8
TOTAL PROPOSALS	1490	1478	1913	2367	143

Average support for (%) "say on pay" proposals by year at Europe-based companies.
2022 data as of March 23, 2022.
Source: Insightia | Voting

"SAY ON PAY" REVOLTS IN EUROPE BY COUNTRY

	2018		2019		2020		2021		2022	
SUPPORT	NO.	%	NO.	%	NO.	%	NO.	%	NO.	%
UK										
LESS THAN 95%	212	28.1	243	30.7	207	28.0	210	27.4	24	29.6
LESS THAN 80%	61	8.1	74	9.3	47	6.3	73	9.5	7	8.6
LESS THAN 50%	8	1.1	9	1.2	4	0.5	7	1.0	1	1.2
FRANCE										
LESS THAN 95%	192	38.4	200	34.7	217	28.8	272	35.0	7	33.3
LESS THAN 80%	40	8.0	44	7.6	56	7.4	55	7.1	0	-
LESS THAN 50%	5	1.0	3	0.5	1	0.1	5	0.7	0	-
SCANDINAVIA										
LESS THAN 95%	4	40.0	2	50.0	0	-	6	46.1	0	-
LESS THAN 80%	0	-	1	25.0	0	-	1	7.7	0	-
LESS THAN 50%	0	-	0	-	0	-	0	-	0	-
BENELUX										
LESS THAN 95%	29	52.7	9	60.0	50	52.6	70	66.7	0	-
LESS THAN 80%	11	20.0	3	20.0	16	16.8	19	18.1	0	-
LESS THAN 50%	2	3.6	0	-	6	6.3	3	2.9	0	-
SWITZERLAND										
LESS THAN 95%	59	68.6	49	67.1	41	73.2	63	71.6	1	25.0
LESS THAN 80%	16	18.6	9	12.3	7	12.5	12	13.6	0	-
LESS THAN 50%	2	2.4	1	1.4	1	1.8	1	1.1	0	-

Number and proportion of "say on pay" revolts at Europe-based companies by year and HQ.
2022 data as of March 23, 2022.
Source: Insightia | Voting

RIVAL TERMS

AS EUROPEAN DEAL MAKING RAMPED UP IN 2021, SO DID ACTIVIST OPPOSITION TO DEALS DEEMED DETRIMENTAL TO MINORITY INVESTORS, WRITES JASON BOOTH.

There were 28 European companies publicly subjected to activist demands opposing M&A deals in 2021, the highest number since at least 2013, while the 13 companies targeted by demands pushing for M&A represented the lowest level since 2017, according to Insightia's *Activism* module.

The economic disruption caused by COVID-19 spurred more deal opposition worldwide in 2021, with opposing campaigns outpacing pro-M&A campaigns globally for the first time in years. Yet in Europe, opposing mergers in order to get a better price, known as bumpitrage, has long been the favorite activist tactic, with targets of demands opposing M&A outnumbering pro-deal targets in seven of the last nine years. Of the 19 opposed deals initiated in 2021 that were eventually completed, 11 saw the deal price increase.

The rule of more

European regulators have created plenty of opportunities for activists to block deals. Squeeze-out rules in most of Europe mean shareholders controlling just 10% of shares can usually block tender offers. And once a deal is blocked, in most cases a second offer can't be made for 12 months.

U.S. activist fund Alta Fox Capital was aware of the rules when it opposed a proposed 40 Swedish krona ($4.76) per share tender offer by Entain for Swedish gaming company Enlabs, arguing it was worth at least 55 krona per share.

"Alta Fox confidently believes we have the support to block a squeeze-out of minority shareholders, legal counsel to ensure their fair treatment under Swedish law, and the determination to obtain a fair price that is reflective of Enlabs' standalone growth prospects," wrote Alta Fox's CEO Connor Haley in an open letter. Entain subsequently increased its offer to 53 crowns per share, a 32% bump from its initial offer, which Alta Fox agreed to.

Supermarket sweep

The U.K. saw the largest number of M&A deals opposed in 2021, led by the bidding war over WM Morrison Supermarkets. Shareholders Legal & General Investment Management, JO Hambro, and M&G were vocal throughout the bidding process, demanding higher prices and more transparency in the deal. The result was a 25% increase in the buyout price.

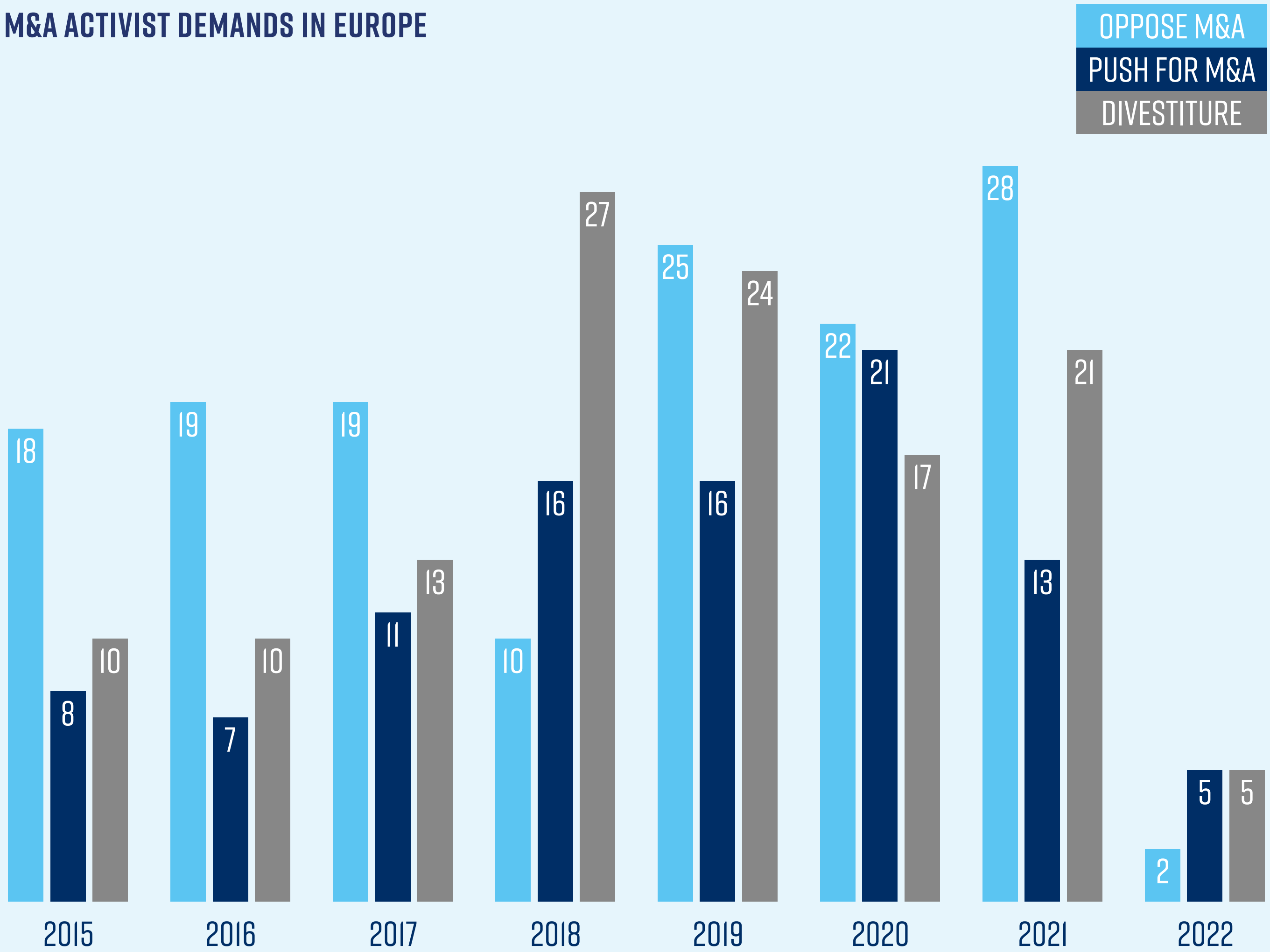
The U.K.'s "scheme of arrangement" structure for public takeover bids includes various minority protections to ensure fairness. The scheme must be approved by at least 75% of votes cast by target company shareholders present at a special meeting. The scheme must also be approved by the court, which will hear objections from interested parties, including dissenting shareholders, before making a decision.

The cost of failing to appease an activist shareholder can be steep. When Toscafund Asset Management deemed Ramsay Health Care's offer for U.K. hospital group Spire Healthcare too low last June, the suitor raised its offer by only 4% to 250 pence per share. Just 70% of the votes cast at a special meeting supported the transaction with Ramsay, below the required 75% threshold, terminating the deal. So far, however, Toscafund's gamble in opposing the deal has not paid off, with Spire's share price hovering around the 230 pence level since the transaction was canceled.

M&A ACTIVISM

CLICK HERE TO DOWNLOAD INSIGHTIA'S 2021 REPORT ON M&A ACTIVISM.

M&A ACTIVIST DEMANDS IN EUROPE



Number of activist M&A demands made of Europe based companies by demand group and year.
2022 data as of March 11, 2022.
Source: Insightia | Activism

OUTCOME OF DEALS OPPOSED BY ACTIVISTS IN EUROPE AND THE US

	2013	2014	2015	2016	2017	2018	2019	2020	2021
EUROPE									
DECREASED OFFR	0	0	0	0	0	1	0	0	0
INCREASED OFFER	2	1	7	7	4	0	6	9	11
NO AMENDMENT	2	4	3	5	3	6	11	7	8
US									
DECREASED OFFR	0	0	0	0	0	1	0	0	0
INCREASED OFFER	3	2	2	5	0	4	1	6	2
NO AMENDMENT	6	4	5	16	3	8	7	7	3

Outcome of M&A deals opposed by activists at Europe- and US-based companies by year.
2022 data as of March 11, 2022.
Source: Insightia | Activism

LONGER DAYS

CHANGES IN PASSIVE SHORT INTEREST AT COMPANIES IN THE U.K., GERMANY, AND ITALY INDICATED THAT THERE IS MORE CONFIDENCE IN THE MARKET THAN A YEAR AGO, WRITES JOE LYONS.

Since the end of March 2021, the average change in short interest was negative 0.3% in both Germany and the U.K., whereas there was a slight uptick in Italian short interest by 0.12% in the same time period. The fact that there is less short interest in Europe's two largest markets may suggest investors are becoming increasingly optimistic.

At the end of Q1 2022, there were 220 companies with short positions in the U.K., more than double the 100 German companies and quadruple the number of Italian companies. However, average short interest in Germany reached 2.1%, compared to 1.5% in the U.K. and Italy.

In the U.K. and Germany, the sector with the highest number of companies with a short position was consumer cyclical, with 100 and 47 companies, respectively. In Italy, the technology sector had the most companies with a short position at 16.

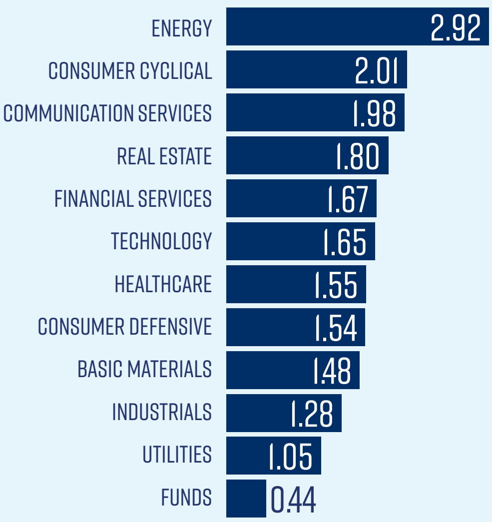
The top three companies with the largest short interest in the U.K. were all in the consumer sectors. Supermarket chain J Sainsbury's had a short interest of 12%, Hammerson's was 8.7%, and the struggling cinema chain Cineworld had a short interest of 8.31%.

As of March 31, the energy sectors in both Italy and the U.K. had the highest average short interest, with 3.3% and 2.75% respectively. In Germany, the sectors with the highest short interest were communication services, healthcare, and consumer defensive, with 2.63%, 2.56%, and 2.53% short interest, respectively.

Since the end of March 2021, all sectors recorded by Insightia's *Shorts* module in the U.K. have seen a decrease of less than 1% in average short interest, except for the financial services sector which increased by 0.5%, and the funds sector, which exhibited no change.

In the same period last year, the German healthcare sector saw the largest increase in average short interest by a positive 1.37%. Italy's technology sector had an average short interest increase of 1.28%.

SHORT INTEREST IN EUROPE BY SECTOR (%)



Average short interest (%) as of March 31, 2022 in UK-, Germany-, and Italy-based companies, by sector. Source: Insightia | Activist Shorts

TOP PASSIVE SHORT SELLERS BY VALUE OF INVESTMENTS AS OF MARCH 31, 2022.

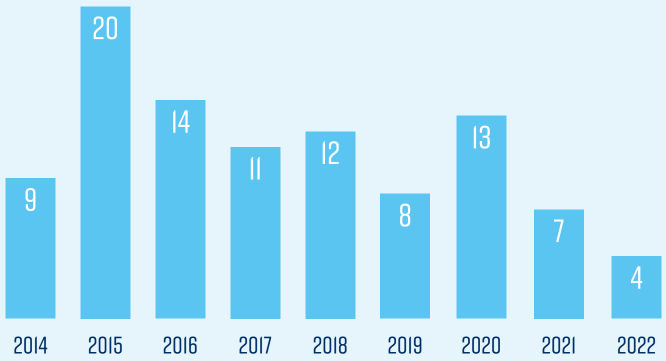
GERMANY		
	MARSHALL WACE	€1,286.62M
	CITADEL ADVISORS	€532.79M
	SANDBAR ASSET MGMT.	€404.09M
	BLACKROCK INV. MGMT.	€374.08M
ITALY		
	GLG PARTNERS	€232.75M
	CPPIB	€126.77M
	EXANE ASSET MGMT.	€123.54M
	CITADEL ADVISORS EUROPE	€107.58M
UK		
	MARSHALL WACE	£1,093.15M
	GLG PARTNERS	£615.00M
	BLACKROCK INV. MGMT.	£399.09M
	WORLDQUANT	£369.40M

Values given in local currency. Source: Insightia | Activist Shorts

ACTIVIST SHORTS IN EUROPE

BY THE NUMBERS. FOR DETAILED REPORTING AND DATA, VISIT INSIGHTIA'S ACTIVIST SHORTS MODULE.

ACTIVIST SHORT CAMPAIGNS IN EUROPE

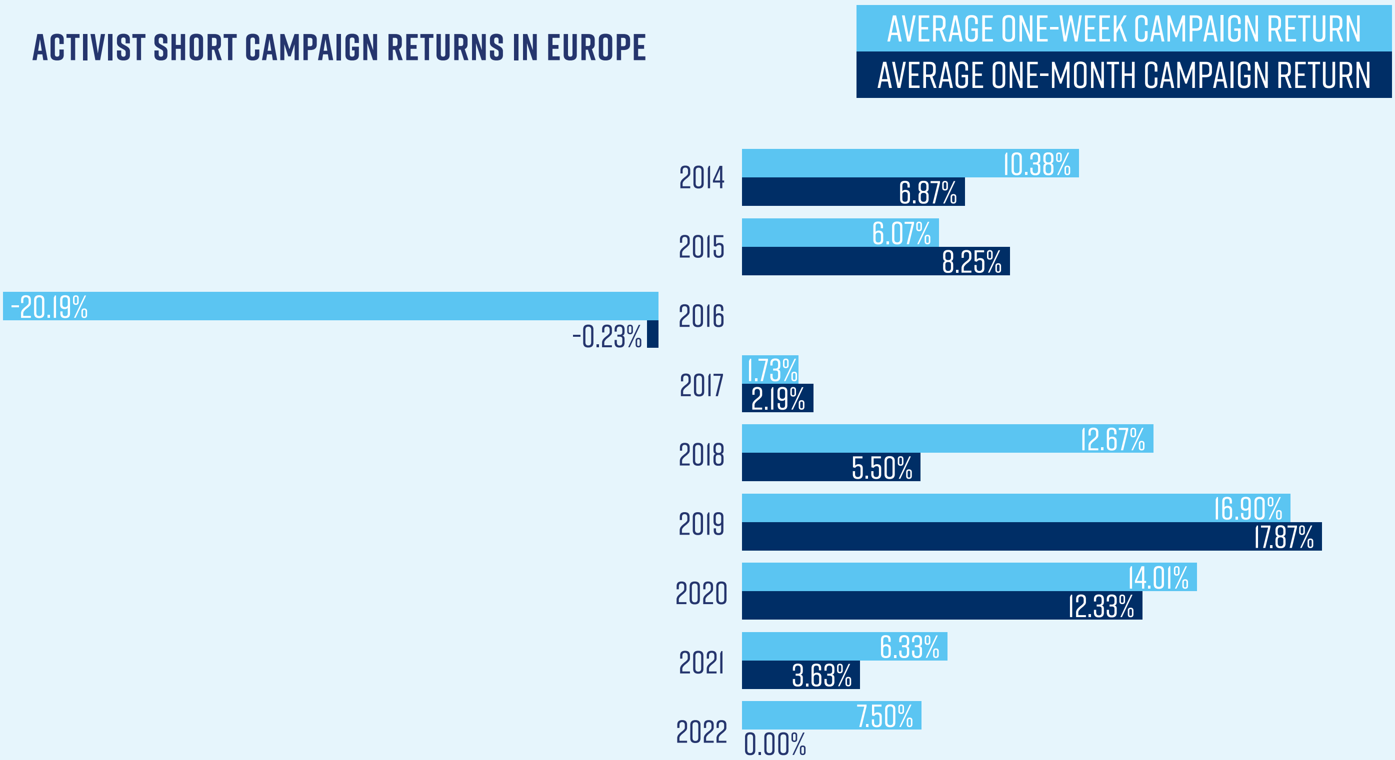


Number of activist short campaigns launched against Europe-based companies, by year.
2022 data as of March 22, 2022.
Source: Insightia | Activist Shorts

COMMON ACTIVIST SHORT ALLEGATIONS IN EUROPE

Most frequent activist short allegations made of Europe-based companies between January 1, 2014 and March 22, 2022.
Source: Insightia | Activist Shorts

ACTIVIST SHORT CAMPAIGN RETURNS IN EUROPE



Average one-week and one-month activist short campaign returns at Europe-based companies, by year. (Positive returns are good for the short seller).
2022 data as of March 22, 2022.
Source: Insightia | Activist Shorts

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