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P2PS IN EUROPE
2020

EUROPEAN OVERVIEW

P2Ps seek control of a listed company, usually with a view to owning 100% of the share capital either at, or shortly after, completion.

The conduct of P2Ps is regulated, with rules aimed at providing an orderly framework for acquiring listed companies and treating shareholders fairly. The rules may also seek to regulate how competitive situations should be conducted. As P2Ps are price sensitive (given the need for control premia), timely and full disclosure is a common theme throughout the process. Although there is a degree of harmonisation across EU Member States and the UK in terms of how P2Ps are regulated, there are important variations between jurisdictions.

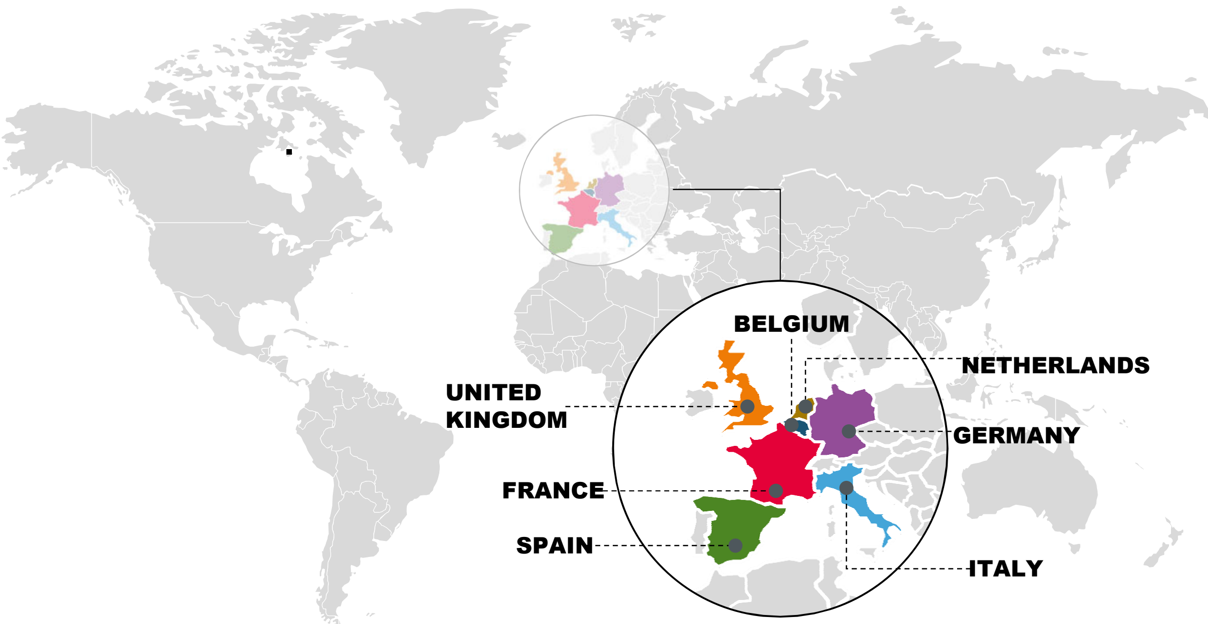
P2Ps typically offer target company shareholders a 100% cash exit and are usually supported by the board of the listed company. Hostile offers made directly to target shareholders are possible but carry much higher execution and reputational risks and are, as a result, relatively rare (particularly for transactions backed by financial sponsors).

The ability to reduce execution risk or seek cost coverage through contractual deal protections varies from jurisdiction to jurisdiction and diligence is typically more limited than in private treaty transactions, reflecting the listed status of the target company.

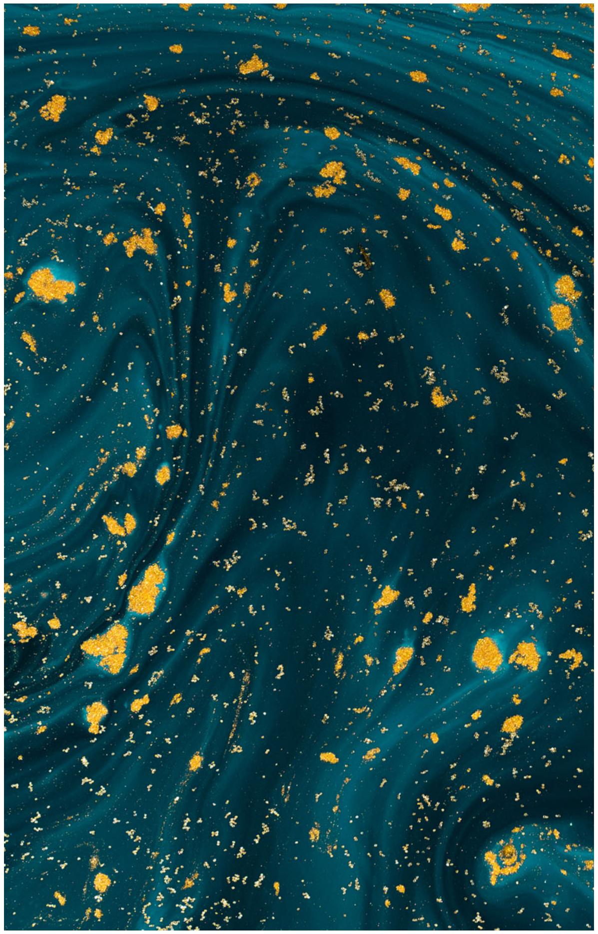
Current conditions in the public markets may provide opportunities for P2Ps across Europe, although continued uncertainty as to business outlook resulting from Covid-19 may mean that discussions with respect to valuation are more challenging. It is also important that P2Ps become supported, once again, by the debt markets, allowing financial sponsors to demonstrate an ability to execute proposals.

Each jurisdiction will have a benchmark for control premia, which may evolve at different stages of the economic cycle. The constituents of the listed company's share register may also inform specific value considerations or bid tactics.

This overview provides a comparative high-level overview of some of the key considerations of P2Ps within each of the highlighted European jurisdictions (together, the "**Key Jurisdictions**").



KEY CONSIDERATIONS



This overview addresses the common questions when planning a P2P, such as:

- How are P2Ps structured?
- What scope of diligence can be expected?
- Is there leak risk?
- Is stake building possible?
- Are termination rights available?
- What deal protection is available?
- What level of target shareholder support is needed?
- How long does the process take?
- What are the options with management teams?
- Is shareholder litigation or activism common?

KEY FEATURES
P2P IMPLEMENTATION AND STRUCTURE

P2P implementation and structure	
Implementing a P2P	P2Ps in most of the Key Jurisdictions are implemented by way of a tender offer structure. This involves the bidder making an offer and target shareholders electing to accept that offer. Following the offer, it may be necessary, in order to acquire 100% of the target share capital, for minority shareholders to be squeezed out through a compulsory acquisition process which is available if the bidder has acquired (including through acceptances of the offer) a threshold number (which varies between 90% and 95% across jurisdictions) of target shares. See further the comparative table on page 24. The UK also has a scheme of arrangement structure, whereby the P2P is implemented principally by the target and requires approval by way of a shareholder vote and the Court. If approved, a scheme of arrangement delivers 100% of the target company to the bidder, with no need to squeeze out a minority.
Mandatory P2P	Typically, acquiring 30% or more of a target's existing share capital will trigger the requirement for a mandatory takeover offer. In the UK and Spain, mandatory P2Ps must be in cash or offer a cash alternative. In the other Key Jurisdictions, a bidder may offer cash or shares admitted to trading on a regulated market in the EEA (listed shares). However, a cash offer will typically be required where the bidder has acquired target shares for cash before or during the offer (see further the comparative table on page 20 for specific details). Typically, mandatory P2Ps must not be conditional. In Germany and Spain, only conditions relating to anti-trust and regulatory approvals may be permitted, whereas in the UK, mandatory P2Ps may be conditional only on the bidder acquiring >50% control of the target's voting rights. See further the comparative table on page 21 for specific details.
Voluntary P2P	A voluntary P2P is more flexible on commercial terms and conditions, although stake building may have implications for the offer price (see further page 17). Typically, bidders are free to set the bid price. However, market purchases made before and/or during an offer will generally set a minimum price and/or require the bidder to increase the bid price. In Spain, in certain circumstances, where the target will be delisted following completion of the offer, the offer price must be calculated by applying certain valuation criteria and be supported by a valuation report issued by an independent financial adviser appointed by the bidder.
Timing	Timing for implementing a P2P varies across the Key Jurisdictions, ranging from two to six months to three to four months (excluding any period to squeeze out a minority). The timeline will be protracted, however, by competing bids and any lengthy anti-trust or regulatory approvals required prior to completion. See further the comparative table on page 24 for specific details.

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