

# HENGELER MUELLER

NEWSLETTER | JANUARY 2018

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M&A SNAPSHOT 2017 | NEW PARTNERS AND COUNSEL 2018 | TAX PRACTICE LAUNCH IN MUNICH

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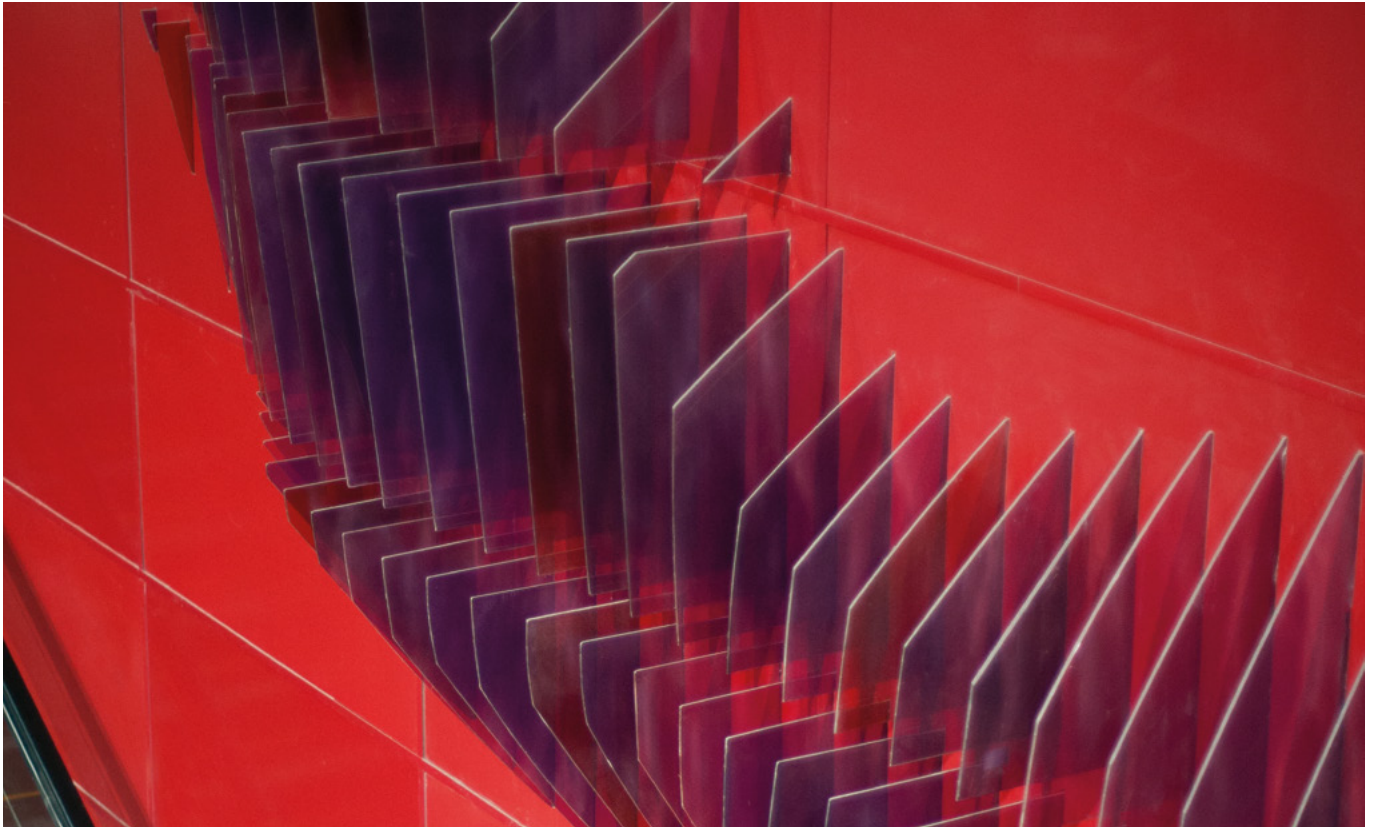
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M&A SNAPSHOT

## The year of the megadeals: 2017 European M&A deal value hits record high

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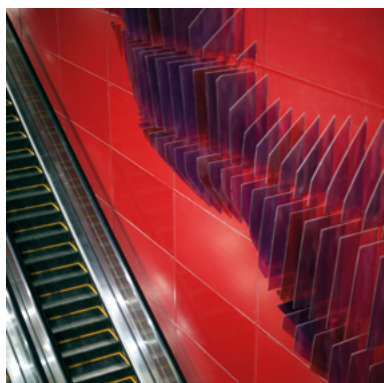
Source: Mergermarket,  
“Global & Regional M&A Report Q4 2017”

Diverging from the global trend, **European M&A increased by 14% in value compared to 2016** (USD 815.4bn), as Europe’s economic recovery helped to push the region’s M&A to a post-crisis high of USD 929.3bn across 7,235 deals. Europe’s aggregate deal value for 2017 accounted for 29.6% of the global M&A total – the highest such figure since 2012.

A clear reason for this increase has been an **uptick in megadeals across Europe**, which saw the largest number of deals worth over

USD 10bn since 2008 (12 deals). In 2017, 11 megadeals in Europe with a combined value of USD 254.2bn, were announced.

Comprised of 3,846 deals worth USD 504.5bn, **the Eurozone has been key to the increase in European M&A values**, accounting for 54.3% of the continental total. This represents the second largest total for the Eurozone since the crash. As the region’s GDP has risen and confidence in the market appeared to increase following the results of several key elections in Europe, M&A figures



have mirrored this sentiment, characterised by a hike in deals between countries within the Eurozone.

**Private equity buyout activity went from strength to strength last year**, reaching its highest value and deal count since the financial crisis. This represents a 17% share in total European M&A value – the highest annual share of M&A since 2007. In the last 12 months, there were 1,388 buyouts targeting European assets, worth a total USD 158.4bn, 25.9% higher than the equivalent value in 2016, with deal count also increasing (USD 125.8bn, 1,286 deals).

**Industrials & Chemicals was the most active European sector in 2017 by both value and deal count**, hitting USD 147.3bn across 1,453 deals announced. Following the takeovers of Linde (USD 45.5bn) and Siemens' mobility business (USD 8.7bn), the sector hit its second highest post-crisis value, only just behind the USD 165.7bn (1,487 deals) recorded in 2016. Germany traditionally performs strongly in the sector. In 2017, German M&A accounted for a 60% share of Europe's dealmaking in the sector – the highest ever percentage for the country on Mergermarket figures.

*„The Best Friends could be said to be the most successful alliance of independent firms around at the moment.“*

The Lawyer European 100

#### EUROPEAN LEGAL ADVISER LEAGUE TABLE RANKED BY VALUE, FULL YEAR 2017

Rank	House	Value (USD m)	Number of Deals
<b>1</b>	<b>Best Friends</b>	<b>334,706</b>	<b>244</b>
2	Freshfields Bruckhaus Deringer LLP	243,012	151
3	Linklaters	205,762	173
4	Clifford Chance LLP	157,738	164
5	Davis Polk & Wardwell LLP	139,211	21
6	Allen & Overy LLP	124,486	185
7	Cravath, Swaine & Moore LLP	122,589	9
8	Latham & Watkins LLP	116,959	116
9	Cleary Gottlieb Steen & Hamilton LLP	116,558	39
10	Blake, Cassels & Graydon LLP	92,340	9

The League Table is based on announced deals with European targets between 01/01/2017 and 31/12/2017.



BONELLIEREDE  
BREDIN PRAT  
DE BRAUW  
HENGELER MUELLER  
SLAUGHTER AND MAY  
URÍA MENÉNDEZ

#### Best Friends Group

The Best Friends group comprises BonelliErede in Italy, Bredin Prat in France, De Brauw Blackstone Westbroek in the Netherlands, Hengeler Mueller in Germany, Slaughter and May in the UK as well as Uría Menéndez in Spain and Portugal. Each firm is considered to be a market leader in its respective jurisdiction.



## DEAL HIGHLIGHTS

## Best Friends

**08/11/2017**

**innogy SE** and **SSE plc** have agreed to merge innogy's British retail business power with SSE's household energy and energy services business in the UK to form a major, independent British retail energy company. Hengeler Mueller is advising innogy on the transaction in an integrated team with Slaughter and May.

**18/07/2017**

**Centrica plc**, a UK-based international energy and service company, and **Stadtwerke München GmbH** have reached an agreement to combine Centrica's European oil and gas exploration and production with **Bayerngas Norge AS** to form a newly incorporated joint venture and create a leading independent European E&P company. Together with Slaughter and May, Hengeler Mueller has been advising Centrica on the formation of the E&P joint venture.

## DEAL HIGHLIGHTS

## Hengeler Mueller

**25/10/2017**

Austrian lender **BAWAG Group AG** successfully completed its IPO with the listing of its shares on the Vienna Stock Exchange. In view of a total offer volume of approximately EUR 1.9 bn the transaction is the biggest IPO ever on the Vienna Stock Exchange and the first significant deal for more than three years. Hengeler Mueller advised BAWAG on all aspects of the IPO.

**26/09/2017**

**Fortum**, a leading energy company headquartered in Finland, has published a voluntary tender offer to all shareholders of **Uniper SE**, including **E.ON** holding a 46.65% stake. The total value of the Fortum offer amounts to appr. EUR 8 bn. Hengeler Mueller is advising Fortum on the transaction.

**27/07/2017**

**Trius Holdings S.C.A.**, a holding owned by funds advised by **CVC Capital Partners** as well as co-investors, has entered into an agreement to sell its shares in **ista Luxembourg GmbH** to **Lamarillo S.à.r.l.**, an indirect wholly-owned subsidiary of **Cheung Kong Property Holdings Limited** and co-investor **CK Infrastructure Holdings Limited**. **ista Luxembourg GmbH** is the parent company of **ista Group**, a leading energy services provider. Hengeler Mueller advised the seller and the CVC funds on the transaction.

**26/06/2017**

The German entrepreneur Professor **Hans Georg Näder** has entered into an agreement with funds advised by **EQT** regarding the acquisition of a 20-percent participation in **Otto Bock HealthCare GmbH**. Hengeler Mueller advised EQT on the transaction.

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NEWS

## New Partners and Counsel 2018

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Find out more about our lawyers on our website

➤ [www.hengeler.com/lawyers](http://www.hengeler.com/lawyers)

### Daniel Möritz

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Daniel advises listed companies, family businesses and private equity clients on private and public takeovers as well as corporate matters and reorganisations.

### Sebastian Schneider

Partner, Berlin

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Sebastian advises on a broad range of corporate matters, on corporate reorganisations as well as M&A projects. He also specialises in energy law.

### Matthias Berberich

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Matthias advises and represents companies and business associations, predominantly from the technology, IT, communication and media sectors.

### Matthias Cloppenburg

Counsel, Düsseldorf

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Matthias advises on a broad range of corporate matters, on corporate reorganisations and on public takeover offers.

### Sonnhild Draack

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Sonnhild advises national and international corporate clients on all collective and individual employment law matters and represents her clients in employment litigation.

### Steffen C. Hörner

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Steffen advises clients on all aspects of tax and accounting law. He primarily focuses on tax aspects of capital market and financing transactions, joint ventures, mergers and acquisitions as well as complex issues of current taxation.

### Andreas Lischka

Counsel, Frankfurt

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Andreas has a broad practice covering financing, banking and capital markets and particular experience in advising banks on structured finance transactions.

### Peter Wehner

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Peter advises national and international corporate clients on all aspects of employment law (individual and collective matters), with a focus on the employment-related aspects of M&A transactions and corporate reorganisations.

### Ralf Willer

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Ralf's practice covers a broad spectrum of commercial litigation, domestic and international arbitration as well as alternative dispute resolution.



*"We are delighted to strengthen our partnership with two new partners and seven new counsel in several major practice areas of the firm. They have contributed to the success of our practice groups with their outstanding work over the past years and stand for excellent client service and profound expertise."*

Dirk Bliesener and Georg Seyfarth, Co-Managing Partners





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INSIDE THE DEAL

## Clean Energy: Ørsted completes divestment of a 50% stake in German offshore wind farm Borkum Riffgrund 2

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In December 2017, Ørsted, formerly DONG Energy, completed its divestment of a 50% stake in the German offshore wind farm Borkum Riffgrund 2 to Global Infrastructure Partners (“GIP”) for a total price of approximately EUR 1,170 m. Ørsted is currently constructing the project that will consist of 56 turbines with an aggregate capacity of 450MW in the North Sea. Once built, it will provide operation as well as maintenance services and will market the power production. Borkum Riffgrund 2 is expected to be fully commissioned in 2019 and will be the fourth offshore wind farm in Germany operated by Ørsted alongside Borkum Riffgrund 1 as well as Gode Wind 1 and 2.

Hengeler Mueller advised Ørsted comprehensively on all four offshore wind projects. Nicolas Böhm, lead partner at Hengeler Mueller says: “We have been advising Ørsted on its offshore wind transactions in Germany, including

acquisitions, divestments and regulatory processes, for more than a decade. By supporting Ørsted in its offshore wind activities, we are helping to shape the German Energiewende and to reach the country’s ambitious climate targets.”

Following GIP’s acquisition of a 50% stake in the Gode Wind 1 Offshore Wind Farm in 2015, which Hengeler Mueller also advised Ørsted on, the Borkum Riffgrund 2 transaction is the second joint venture between Ørsted and GIP. As part of the Borkum Riffgrund 2 transaction, GIP will issue a rated project bond to a consortium of lenders. The Gode Wind 1 project was financed with a similar bond structure and Talanx, which additionally acts as cornerstone lender, coordinated the project bond in both transactions. The consortium of lenders for the Borkum Riffgrund 2 bond includes many of the Gode Wind 1 lenders and expands the lender group to include DekaBank, Edmond de Rothschild AM’s





BRIDGE platform, La Banque Postale Asset Management, NN Investment Partners and Wiener Städtische Versicherung. The senior bond for Borkum Riffgrund 2 has a term of approximately ten years and is expected to be certified externally as a “green bond”, a bond product developed with the support of Hengeler Mueller, to facilitate the provision of institutional debt to offshore wind construction projects. **Gode Wind 1 marked the issuance of the first non-recourse, investment grade, certified green bond dedicated to part finance an offshore wind farm asset under construction.**

Headquartered in Denmark, Ørsted has transformed over the past ten years from one of the most coal and oil-intensive European utilities to the largest supplier of clean energy in Europe. The company is one of the major investors in the renewable energy infrastructure in Germany and a global leader in offshore wind with a 25% market share.

Offshore wind makes a significant contribution to the German energy transition

enabling the country’s energy supply to be increasingly based on renewable energy.

#### **Hengeler Mueller’s energy practice**

Hengeler Mueller has been involved in major transactions in the energy sector for many years. The firm continuously advises both industrial players and financial investors on the core issues in all areas of energy law, especially in transaction-related and regulatory matters covering every category of the energy market (generation, transmission, distribution, supply and trading). For all aspects – whether conventional or renewable energies, joint ventures, restructuring, financing of major projects or grid and storage operations – Hengeler Mueller’s energy experts have a profound understanding of the regulatory framework and processes involved, combining their know-how and expertise in corporate and competition law, financing and dispute resolution. The firm advises the energy sector in all its German offices with a special focus on renewable energies in Berlin.

➤ [www.hengeler.com/en/expertise/orsted](http://www.hengeler.com/en/expertise/orsted)



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OFFICE NEWS

## Hengeler Mueller launches tax practice in Munich

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*By expanding our tax practice to our Munich office we have increased our presence in one of the most important economic centres of Germany*

The Munich launch team includes Markus Ernst and Gunther Wagner, two new experienced counsel, alongside our long-standing partner Matthias Scheifele, who has relocated to Munich from the Frankfurt office.

They have strengthened the Hengeler Mueller tax practice and, at the same time, have set up the tax desk in Munich. Our Munich office offers, in addition to advice in other legal practices, comprehensive tax advice to companies, their owners and shareholders, focussing on all tax aspects mainly within M&A transactions, corporate reorganisations, private equity as well as financing and financial restructuring.

## Hengeler Mueller's tax practice in Munich

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### **Matthias Scheifele**

Matthias advises on all tax aspects of mergers and acquisitions, corporate reorganisations as well as financing transactions. He also has extensive experience in advising on the restructuring of distressed companies. Another focus of his practice is tax compliance, tax disputes and litigation.

### **Markus Ernst**

Markus advises on all tax aspects of mergers and acquisitions, corporate reorganisations, as well as financing transactions, audits and contentious proceedings. He also focuses on advising financial institutions on internal investigations and compliance matters regarding tax-driven transactions.

### **Gunther Wagner**

Gunther advises on all tax aspects of mergers and acquisitions, corporate reorganizations as well as financing transactions. He also has extensive experience in advising on international tax law. Another focus of his practice is tax disputes and litigation.





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LEGAL SPOTLIGHT

## Hengeler Mueller presents GIR Live in Frankfurt

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In November 2017, Hengeler Mueller hosted the GIR Live conference in its Frankfurt office – the first such event in Germany.

In the first panel session, chaired by Hengeler Mueller partner Dirk Uwer, Roan Lamp (De Brauw Blackstone Westbroek), Michael Rackow (Legal and Compliance, Siemens), Thomas Schürle (Debevoise & Plimpton) and Martina de Lind van Wijngaarden (Freshfields Bruckhaus Deringer) addressed the dilemma of diametrically opposed laws in cross border investigations and discussed ways that they have seen enforcers and defendants approach a seemingly intractable problem.

How to structure and strategise a cross border investigation was the focus of the second panel session moderated by the conference's co-chair Heiko Albrecht (Wessing & Partner). Panelists Christine Braamskamp (K&L Gates), Edward Nkune (Forensic Risk Alliance), Olaf Schneider (Bilfinger SE) and Christopher Wenzl

(Prosecutor General's Office Frankfurt am Main) discussed the inception, mid-case and end-game of a cross border investigation.

### **Key takeaways from the panel session included:**

- Several differences regarding the attitudes of German prosecutors and the UK SFO, i.e. dawn raids are more prevalent in Germany than in the UK.
- Both sets of investigators concurred on their desire for cooperation from the organisation being investigated in order to limit its exposure further down the line.
- Ring-fencing relevant data and key people in an investigated organisation is vital.
- Consideration of additional stakeholders and management of information flows, and the balance between providing too much, too little,

incorrect or inconsistent information: the latter is particularly important to law enforcement.

- Value of misconduct needs to be calculated as soon as possible in order to facilitate planning and instill confidence to shareholders or other stakeholders.
- As well as a financial sanction, an organisation entering into a Deferred Prosecution Agreement (DPA) could expect to be assigned a monitor. Independence is key and whilst the monitor is responsible to law enforcement that needs to ensure that the company is actually addressing any compliance gaps, it must also ensure that monitorship is risk based and proportional.
- An excellent outcome is if the company uses monitorship as an opportunity to overhaul its compliance regime rather than an unwanted intrusion. A frequent and open dialogue with law enforcement agencies or the regulator is key. A culture of cooperation along with feedback from the company can ensure that recommendations are practical and realistic.

### **Hengeler Mueller's investigations practice**

Hengeler Mueller's investigations team advises clients in complex, often cross border compliance issues and, in recent years, has conducted and led some of Germany's most important inquiries and internal investigations.



Hengeler Mueller's expertise covers, in particular, supervisory requirements and investigations, prosecution, competition and other regulatory investigations, criminal commercial law and disciplinary proceedings. All lawyers active in the firm's compliance and investigations practice combine compliance experience with their expertise in particular areas of business law, such as corporate, competition, dispute resolution and data protection/regulated industries. Hengeler Mueller has extensive experience in dealing with US matters and works closely with the Best Friends group on cross border compliance issues. The Hengeler Mueller investigations team includes partners: Vera Jungkind (Düsseldorf), Fabian Quast (Berlin), Sven H. Schneider (Frankfurt), Wolfgang Spoerr (Berlin), Christoph Stadler, Dirk Uwer (both Düsseldorf) and Daniel M. Weiss (Frankfurt).

The international investigations guide Global Investigations Review lists Hengeler Mueller within its GIR 100 ranking in

the category "world's leading firms for cross border corporate investigations". GIR 100 is published annually and offers a comprehensive analysis of the leading investigations practices in jurisdictions around the globe.

GIR Live, an international investigations conference, organises several specialised events throughout the year in key jurisdictions worldwide for corporate, law firm and consultancy delegates, as well as delegates from government authorities, to discuss current developments in investigations law.



➤ [www.hengeler.com/en/internal-investigations](http://www.hengeler.com/en/internal-investigations)

# Supervisory boards in Germany 2017

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## THINK DIGITAL

### Hengeler Mueller supervisory board survey reveals new challenges

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Last year, Hengeler Mueller and Heiner Thorborg conducted a new supervisory board study, together with the German market research institute DKI, surveying supervisory board members of listed companies in Germany on current topics and challenges of their work. Alongside questions concerning their sources of information, ways of communicating with their supervisory board colleagues and expenditure of time for their work, participants in the survey also provided their opinions on topics such as “diversity”, “liability and reputation-related risks” and “digital transformation”.

#### Digital transformation

The majority of surveyed supervisory board members consider digital transformation to be highly important. Around 70% of participants say that it is either “very important” or “important” for their board. At the same time, the majority of participants

are not convinced that their board is fit for the challenges digital transformation entails: a third of supervisory board members (33%) in the survey cannot judge the digital expertise within its board; almost a third (27%) even feel that it is either “low” or “absolutely low”.

#### How to boost digital expertise

Digital expertise is most common among age groups not yet represented on supervisory boards. However, even if a supervisory board lacks individual digital expertise, there are many ways in which it can guide and monitor the managing board of a company regarding its digital transformation:

- Use training measures to improve digital expertise (according to the Corporate Governance Code, the company shall support training measures for supervisory boards)



- Ensure required expertise within the managing board or subordinated departments
- Maintain close liaison with internal experts of the company
- Seek external advice to monitor digital strategy of the managing board if internal digital expertise is insufficient
- Establish a dedicated subcommittee of the supervisory board to deal with digital strategy and prepare plenary resolutions

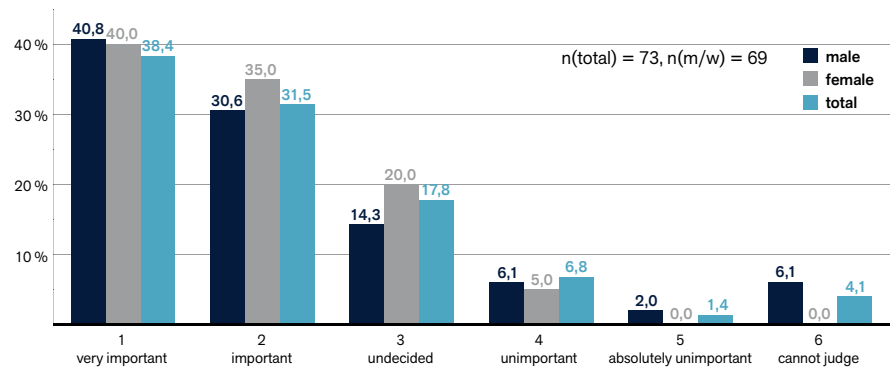
### Hengeler Mueller's corporate practice

Hengeler Mueller sets the standards when it comes to corporate law. According to individual client needs, the firm tailors and implements all kinds of complex transactions such as mergers, spin-offs, transformations, takeovers and post takeover integrations of listed companies, and group reorganisations, both in Germany and cross border. One of its strengths is the combination of corporate know how with broad M&A and capital market expertise. Hengeler Mueller advises on all matters of corporate governance, board compensation and board liability, and supports corporates in their shareholder meetings and in any type of corporate litigation. Many of the firm's partners are involved in scholarly legal research and the drafting of new corporate law bills in Germany and Europe.

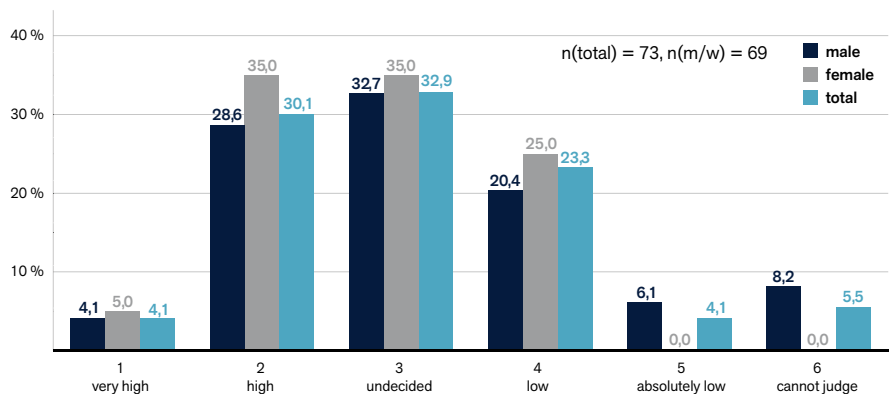
For the entire study (German language version), please visit [www.hengeler.com/en/newsletter](http://www.hengeler.com/en/newsletter)

➤ [www.hengeler.com/corporate](http://www.hengeler.com/corporate)

### "How important is the topic of 'digital transformation' for your board?"



### "How high is the level of competence regarding the topic of 'digital transformation' within your board?"



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AWARDS

## Mergermarket European M&A Awards 2017

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**HENGELER MUELLER**  
GERMANY M&A LEGAL ADVISER  
OF THE YEAR  
WINNER 2017

Hengeler Mueller took home the trophy for German M&A Legal Adviser of the Year 2017 on December 7, 2017.

Mergermarket's European M&A Awards gather senior dealmakers from across the region at a black-tie gala dinner.

Over 40 prizes are awarded for creative advisory work on complex transactions.

The rigorous judging process is unique. It starts with analysis of Mergermarket's league tables followed by a shortlist announcement and scrutiny by a panel of expert judges.

There is only one winner per category, which means an M&A Award from Mergermarket is true recognition of an outstanding year.

➤ <http://events.mergermarket.com/awards>

