NautaDutilh Belgium's Private Equity & Venture Capital Barometer Q4 2018

This is NautaDutilh Belgium's seventeenth Private Equity & Venture Capital Barometer. After our spring 2014 Interim Report, we decided to survey, on a quarterly basis, a select group of private equity and venture capital players, asking about current and expected trends in their practice. This issue shares highlighted results from the fourth quarter of 2018 (Q4 2018).

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The Q4 2017 Barometer refers to NautaDutilh Belgium's thirteenth Private Equity & Venture Capital Barometer, *available at* https://www.nautadutilh.com/sites/nautadutilh.com/files/inline-files/barometerbelgiumq4_2017_a4%20%281%29.pdf
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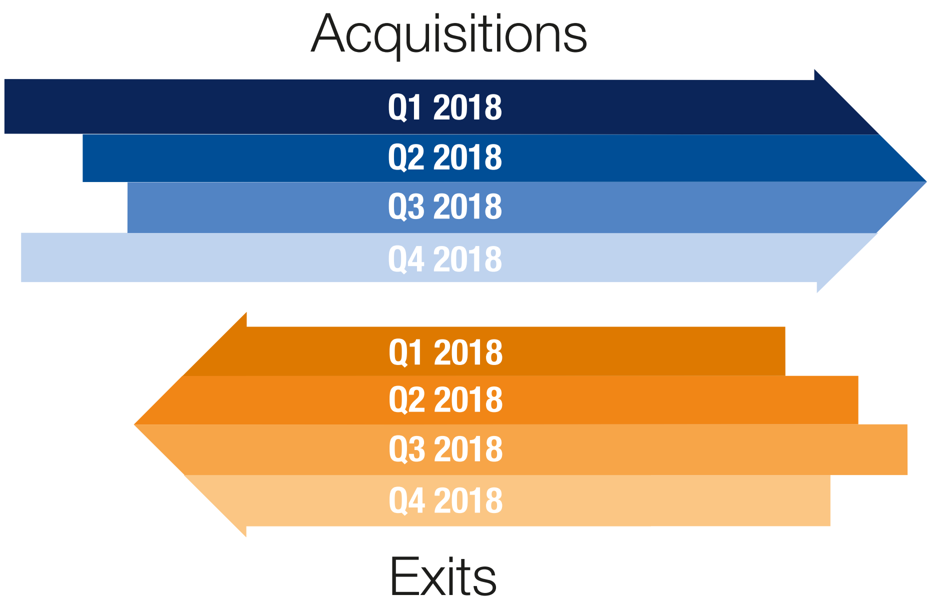


Acquisitions and exits

Since Q4 2015, acquisitions have exceeded exits in reported transactions, indicating a healthy investment climate with large amounts of cash available to snap up attractive targets. In Q3 2018, we reported that acquisitions appeared to be slowing down and only exceeded exits by 1%, a much smaller margin than in previous quarters. However, in Q4 2018 acquisitions rose once again, exceeding exits by 8%. In addition, it should be noted that a number of exits related to secondary buy-outs, indicating continued private equity involvement in the target company.

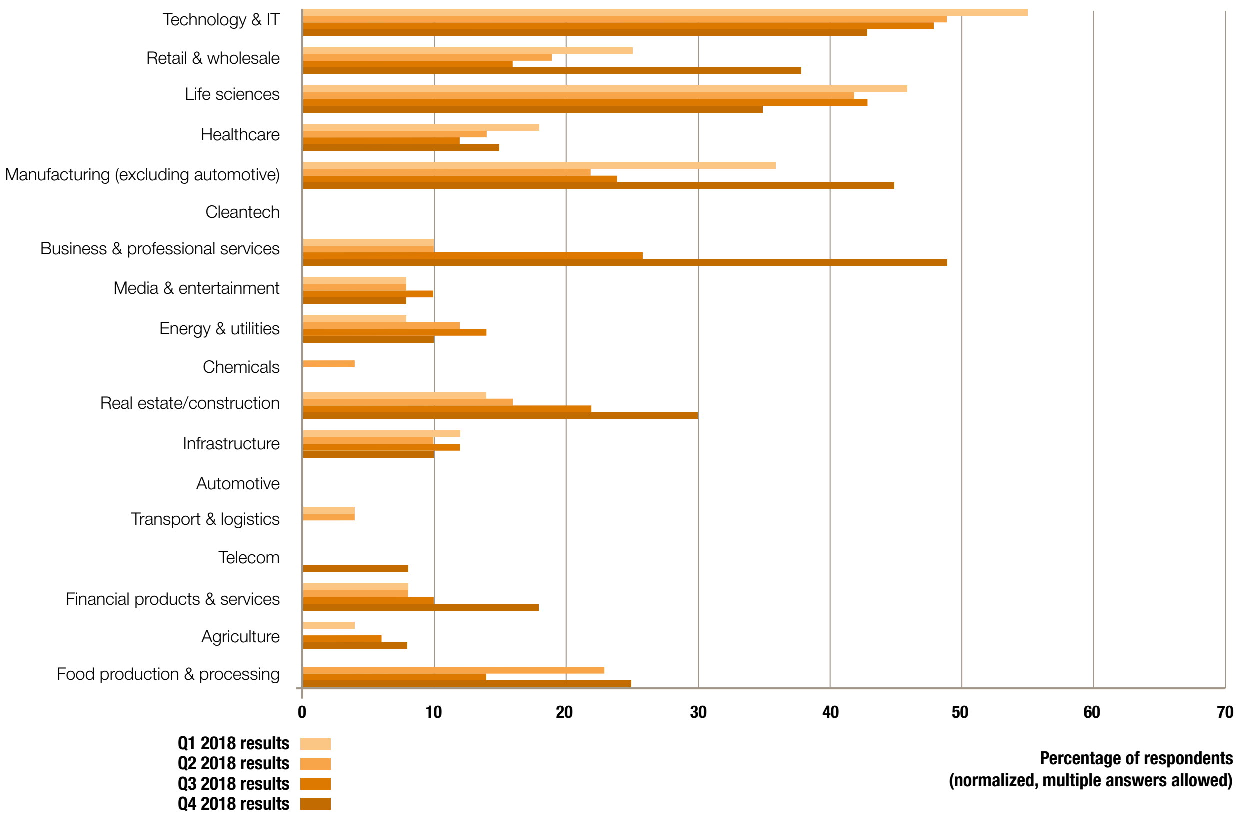
While the number of deals closed in Q3 dropped slightly compared to previous quarters, this figure rose again in Q4, especially in December. As mentioned in our previous barometer, one possible explanation for this drop could be that a number of investment funds reached maturity, resulting in divestment. A number of new funds were created in Q4 to fill the void, however. We also noted a number of high-value deals in the pipeline in Q3. We are pleased to report that many of these deals successfully closed in Q4 and that the year ended on an optimistic note.

Sectors with the most PE/VC activity

Compared to previous barometers, the top four sectors with the most private equity and venture capital activity in Q4 2018 revealed few surprises. In Q3 2018, the most active sectors were (i) technology and IT, (ii) life sciences, (iii) business and professional services and (iv) manufacturing. In Q4 2018, the top four sectors were (i) business and professional services, (ii) manufacturing, (iii) technology and IT and (iv) retail and wholesale

The retail and wholesale sector re-entered the top four for the first time since Q3 2017. Although the life sciences sector witnessed a number of deals as well as funding rounds, it did not make the top four in Q4 2018. Nor did the food sector, although there were still a fair number of deals reported, indicating continued interest by private equity players.

In Q4 2018, the ***business and professional services sector*** witnessed substantial private equity and venture capital activity. Some of the most noteworthy deals were:



- KeBeK's acquisition of a stake in the Dutch employment services provider Fintrex Group, for an undisclosed amount;
- Cobepa's acquisition of Scalian, a French provider of consultancy services and project support, from French private equity player Andera Partners, for EUR 200 million;
- French private equity firm Arkea Capital's acquisition of a 70% stake in Groupe Legris Industries, a Brussels-based provider of technical expertise to help companies grow, for an undisclosed amount;
- the sale of Ecadis, an auction platform for second-hand cars, by ABN Amro and Vortex Capital Partners to its American counterpart KAR Auction Services, for EUR 91 million;
- the sale of Greenhouse Dienstencheques by Vectis Private Equity to Nastor Group, for an undisclosed amount;
- Robur Capital's sale of a 60% stake in Mides, an engineering consultancy firm, to House of Talents.

A number of capital increases and funding rounds in the ***business and professional services sector*** were also covered by the press:

- Hello Customer, a provider of AI algorithms to analyse customer feedback, raised more than EUR 2 million in its latest funding round to finance its expansion in Europe; the main investor was Dovesco,[1] along with a number of private investors;
- Spectrum Equity, an American venture capital fund, participated in a funding round by Belgian online learning platform Datacamp for an amount of USD 25 million.

The ***manufacturing sector*** consistently features in the top four sectors with the most private equity activity. Q4 2018 was no different. The following deals were reported in the press and by MergerMarket:

1 The investment fund of Anthony and Gregory De Clerck.

- the acquisition of Limonta Sport, the branch of the Italian Limonta Group which produces artificial turf, by Sports & Leisure Group, backed by Chequers Capital, for an undisclosed sum;
- the much-anticipated sale of PhysIOL, an optical lens manufacturer, by TA Associates Management, an American private equity fund, to US manufacturer Beaver-Visitec for an undisclosed amount;
- Vendis Capital's acquisition of Alpine Hearing Protection, a Dutch manufacturer of hearing aids, for an undisclosed amount;
- Ergon Capital Partner's sale of the Spanish manufacturer of outdoor lighting and furniture Benito Urban, to Ona Capital Privat, a Spanish private equity firm;
- Gimv's acquisition of Sainte-Lizaigne, French manufacturer of taps and valves, for an undisclosed amount;
- the sale of Schaetti, a Swiss manufacturer of hot-melts, thermoplastic adhesive powders and thermoplastic metal coatings, by Swiss private equity fund Patrimonium Private Equity Advisers and others to Dakota Coatings, a Belgian manufacturer of adhesive powders and coatings;
- the acquisition by French investment fund Ardian of a majority stake in Inula, a maker of essential oils, for EUR 550 million.

The acquisition of Inula was one of the most anticipated deals in the last quarter of 2018, with many private equity players participating in the auction, and one of the largest Belgian private equity deals in 2018, although the acquisition of Ablynx by Sanofi (assisted by NautaDutilh) for a staggering EUR 3.9 billion remained the year's biggest deal by far.

In addition to the abovementioned deals in the ***manufacturing sector***, Cowboy, a producer of electric bikes, raised EUR 10 million in additional capital, mostly from American venture capital fund Tiger Global Management and private investors, to finance its further development.

In the ***technology and IT sector***, a long-term member of the top four, the following noteworthy deals were reported:

- the acquisition of a majority stake in Combell, a Belgian website hosting company, by HG Capital from Waterland, for an amount thought to be in the region of EUR 700 million, although the exact price was not disclosed;
- the sale of Babelway, a provider of cloud-based B2B integration solutions, by Belgian private equity and venture capital funds Nivelinvest, EMERGE and Sherpa Invest to American corporate player Tradeshift Inc.;
- Waterland's acquisition of a majority stake in Intracto, a provider of digital advertising solutions, for an undisclosed amount;
- Alpina Capital Partner's acquisition of a 70% stake in Objective International, a provider of IT solutions for shops and warehouses, from private investors for EUR 14 million;
- Ardian's acquisition of a majority stake in Trustteam, a Belgian IT service provider, from French investment fund Naxicap Partners; the deal value was not disclosed by the parties but is thought to have been around EUR 100 million;
- the sale of CoScale, a provider of monitoring platforms, by Gimv and Qbic Venture Partners to a US provider of cloud-based applications and performance management solutions, for EUR 5 million.

A number of investment rounds in the ***technology and IT sector*** are also worth mentioning:

- in its latest funding round, Graphcore, a UK start-up producing AI chips, raised EUR 176 million to secure its position as industry leader in the AI chip market; investors included Microsoft Corporation and Samsung Electronics as well as a number of private equity funds, led by Atomico and new investor Sofina;

– Sweepbright, a provider of IT solutions for real estate agents, raised EUR 2.3 million, including from new investors Cennini Holding,[2] QuaeroQ[3] and a number of private investors.

Finally, in the ***retail and wholesale sector***, which re-entered the top four, the following deals can be mentioned:

– Bencis Capital Partners' acquisition of the Dutch pharmacy chain Medsen Apotheek for an undisclosed amount;
– Vendis Capital's sale of German retailer Eyes and More to Hans Anders for an undisclosed amount;
– the acquisition of a 66% stake in kitchen and homeware retailer LivWise by private equity funds Tilleghem and Dynamica, from private investors; the deal value was not disclosed;
– Gimv's acquisition of the German provider of medical devices for incontinence Medi-Markt Homecare-Service and Medi-Markt Service Nord Ost, for an undisclosed amount;
– Sofinim's sale of Distriplus, a retailer of books, stationary, cosmetics and perfumes, to Jacques Bogart;
– the long-awaited acquisition of Hema from Lion Capital by Ramphastos Investments, for an undisclosed amount.

In addition to PE and VC activity in the top four sectors, a number of deals in other sectors are worth mentioning. As stated above, the ***food sector*** is becoming increasingly important. Kharis Capital, which has recently acquired stakes in a number of fast-food chains (such as Burger King, Quick and O'Tacos), added a new company to its portfolio: Nordsee, a German fast-food chain specialising in seafood. Also in the food sector, Gimv acquired French cheese manufacturer Ste Comtoise de Spécialités Fromagères, while The Huggy's Bar, a Walloon gourmet burger chain, raised EUR 1 million to finance its expansion.

There was some interesting private equity activity in the ***finance sector*** in the final quarter of 2018. The American private equity firm Warburg Pincus acquired the Belgian branch of Banca Monte Paschi for EUR 42 million. In addition, iBan First, also known as «PayPal for SMEs», a start-up providing international payment solutions for small and medium-sized enterprises, raised EUR 15 million in additional capital.

In the ***life sciences sector***, the largest deal in Q4 2018 was Cobepa's acquisition of BioAgilytix Labs, an American lab specialising in the bioanalysis of large molecules, from US private equity firm Riverside Partners. The transaction was valued at EUR 353 million.

One final deal which deserves special mention was in the ***hospitality sector***. In December 2018, it was announced that a Chinese consortium led by Jin Jian International and including SINO-CEE Fund (backed by private equity house SINO-CEEF Capital Management Company) had acquired a 49.06% stake in the Swedish hotel chain Radisson Hospitality, which is headquartered in Brussels. According to MergerMarket, the deal value was estimated at EUR 347 million. In February 2019, the consortium announced that they had acquired a stake of 94.1% and would proceed with a squeeze-out following the mandatory takeover procedure. In this context, the delisting of Radisson Hospitality from Nasdaq Stockholm has been requested.

Private equity in 2018: an overview

With 2017 described as a record year for private equity, 2018 had a lot to live up to.[4] Many of the trends we noticed in 2017 continued in 2018. Deal volume held more or less steady, and multiples remained high. As mentioned in previous barometers, high multiples indicate large amounts of dry powder available in the investment world. Private equity

2 The investment fund of the Claeys family.
3 The investment fund of the Matexi Group.
4 PitchBook, *2018 Annual European PE Breakdown*

investors were indeed prepared to fork out significant sums to acquire high-quality targets in 2018, with prices in some cases being driven even higher due to competition with corporate players. One explanation for the large amounts of dry powder available could be continuing low interest rates, which render private equity investment an attractive option for wealth management.

According to MergerMarket's *Deal Drivers EMEA* report, 2018 was a «lop-sided year», with the largest deals taking place in the first half of the year and the second half taking a hit. We noticed a similar trend on the private equity market in Belgium.[5] Figures for the first two quarters of 2018 were indeed higher, with a decided drop in transactions in the third quarter. However, in the last quarter of 2018, PE activity picked up again, and some high-value deals closed before year's end. The general slowdown in M&A activity could be due to a number of factors, such as the entry into force of the GDPR, heightened protectionism and Brexit uncertainty.[6] Indeed, stricter compliance norms, such as those introduced by the GDPR and MiFID II, can affect deals in a number of ways, for example by requiring more extensive due diligence, thereby resulting in slower deal speed and more complicated negotiations.

In 2019, dealmakers will face new challenges which will require them to adapt to rapidly changing circumstances. However, as noted in our previous barometers, the PE market is quite resilient. In its *Private Equity Trend Report 2019*, PwC states that the flexibility inherent in private equity is a great asset in uncertain times. When corporate players become more cautious, especially in the wake of Brexit, private equity can capitalise on the reduced competition and focus on assets that other players will not touch, such as publicly listed companies.[7]

PE firms and companies are already starting to adapt to new challenges. While investors obviously expect good returns, other drivers are at play as well. In 2018, many investment funds paid more attention to diversity and to the environmental and social aspects of investment management, often offering green investment options. As mentioned in previous barometers, a relatively new trend is the establishment of funds dedicated to ensuring gender balance in private equity and venture capital circles, in order to give female entrepreneurs a chance to catch up to their male counterparts. Stricter requirements for companies to provide transparent information regarding their sustainability, corporate social responsibility and diversity policies also contribute to this movement.

In addition, PE investors are branching out into new sectors to find interesting targets. Traditionally, Belgian private equity activity has focused on the technology and IT, life sciences and manufacturing sectors. Over the past year, however, other sectors have attracted interest from PE players, such as the food sector. In addition, it should be noted that Chinese investors have shown considerable interest in European targets. The takeover of Radisson is but one example. While the Chinese private equity market is growing and Chinese investors are looking at Europe, it is not as easy for European investors to enter the Chinese market. Finding new markets for PE deals will be one of the challenges faced by PE and VC investors in 2019.

The *private privak* as an investment vehicle

In 2018, the statutory framework governing the private privak was thoroughly reformed in order to bring the *private privak* into line with comparable foreign vehicles and render it more attractive to private equity investors

5 Europe, the Middle East and (North) Africa
6 MergerMarket, *Deal Drivers EMEA FY 2018*
7 PwC, *Private Equity Trend Report 2019: Powering through uncertainty*

by amending the regulatory requirements and tax treatment. The idea is to allow investors to invest in unlisted companies through a *private privak*. Key changes include the possibility to extend the maximum term of existence of a *private privak* to 18 years, to exert control over the portfolio company's management and to enter into shareholder agreements. In addition, the registration with the federal tax authorities no longer needs to be finalised before incorporating the *private privak.* The tax treatment of the *private privak* has also been modified in order to further reduce any potential tax leakages (e.g. extension of the VVPRbis regime, introduction of a withholding tax exemption for redistributed dividends in case the *private privak* could not set off the dividend withholding tax, etc.).

In conclusion, since the reform, the *private privak* is more than ever an interesting option for private equity investors. Investors benefit from limited liability, a closed-end structure and a pre-defined and secure exit route, in addition to tax benefits. While the number of *private privaks* incorporated each year has been slowly rising, this figure doubled from 2016 to 2018 and is expected to continue to grow.

New Company Code approved by Parliament

On 14 November 2018, the draft Code of Companies and Associations was approved on first reading by the commercial and economic law committee of the House of Representatives. On 27 November 2018, it was approved on second reading. The vote followed a call for approval by a group of business lawyers, including two partners from our firm.

On 28 February 2019, the new Code of Companies and Associations was finally approved by the House of Representatives. The final version of the legislation is available here.

The new Code will enter into force on 1 May 2019. Companies incorporated after that date will have to comply in full with the provisions of the new Code. For pre-existing companies, the new rules will apply as of 1 January 2020. However, as of 1 May 2019, companies may opt to voluntary apply the new Code, by amending their articles of association. On 1 January 2020, current company law will cease to be applicable and a four-year transition period will start to run. During this transition period, which ends on 1 January 2024, all companies and organisations will be required to align their articles of association with the new provisions (e.g. on the occasion of a capital increase or decrease).

Given the vast number of changes the reform entails, our team of specialised lawyers has created a secure online portal where you can find all relevant information about the new Code in a central place. Sign up here or access the portal directly **here** if you've already registered.

NautaDutilh has also prepared a roadmap to facilitate compliance and avoid legal uncertainty during the transition period. The roadmap also includes pointers on how to make the most of the new Code. The roadmap is available on our **portal**.

NautaDutilh would be pleased to advise you on the necessary measures to ensure timely compliance with the new Company Code. Please contact Elke Janssens or Philippe Remels for more information.

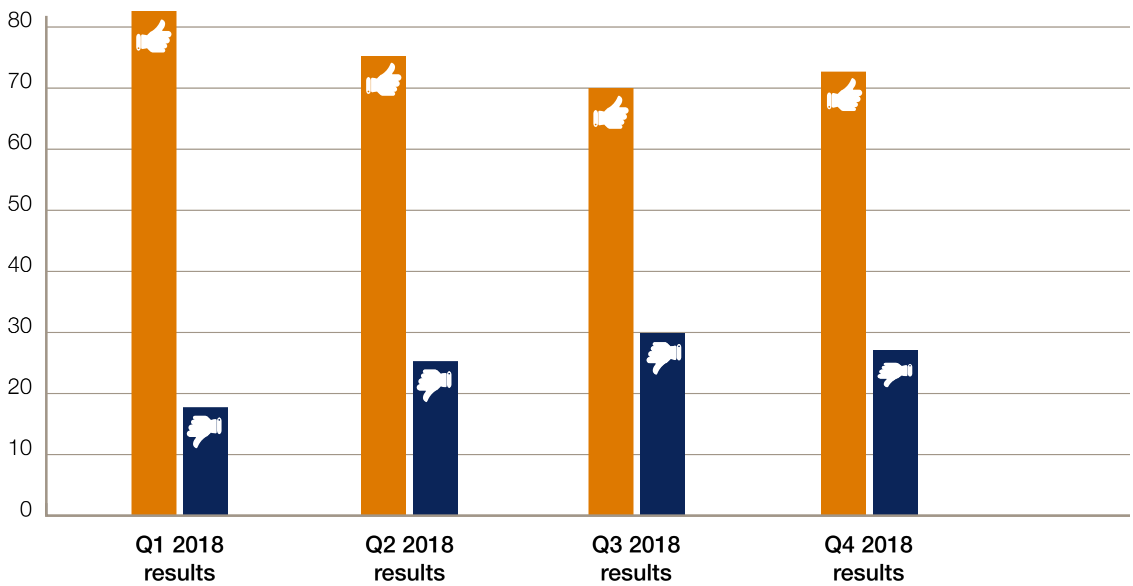
Deal speed

After having declined sharply from 19 to 14 (Q4 2015), the number of weeks needed to sign/close a deal (from receipt of the information memorandum) dropped further to 11 in Q1 2016 but rose to 18 weeks in Q2 2018. The Q3 2018 barometer revealed a slight increase in deal speed, to 16 weeks. In Q4 2018 respondents reported an average deal speed of 14 weeks. In keeping with the increase in PE activity in Q4 compared to Q3, it appears that deals sped up in order to close before year's end.

Tax issues not a driving force but increasingly important

When commenting on the Q3 2015 results, we predicted that tax issues would become more important. Indeed, starting in May 2015, we noticed greater interest from taxpayers in obtaining rulings. This shift was probably due to a heightened awareness of *inter alia* the Base Erosion and Profit Shifting (BEPS) rules, which will further modify the tax climate in which companies operate. According to our latest survey, 72% of respondents consider tax rulings to be important.

Is Belgian ruling practice a factor when considering potential deals?



Post-closing issues

A worrisome trend (noted for the first time in our Q3 2015 barometer and confirmed by subsequent surveys) is that an increasing number of respondents are reporting post-closing issues, while previously they stated that, in principle, they do not experience claims under the representations and warranties. Our Q2 2017 survey revealed the highest percentage of respondents reporting post-closing issues (86%). According to our latest barometers, however, post-closing issues are declining slowly, from 78% (Q1) to 75% (Q2), 73% (Q3) and 70% (Q4).

While we still do not have detailed information about the underlying reasons for this trend, there are several possible explanations. *First*, parties are paying more attention to the representations and warranties and tend to negotiate specific (e.g. tax) indemnities. *Second*, more clients and private equity players are requesting limited due diligence, which means potential issues may not be spotted. *Last but not least*, the sectors in which certain companies operate (including the retail & wholesale and technology & IT sectors) are increasingly complex.

Post-closing issues