

The Skadden logo consists of the word "Skadden" in a white, serif font, centered within a solid red rectangular box.

# Skadden

Skadden, Arps, Slate, Meagher & Flom LLP  
& Affiliates

OCTOBER 2017

The background of the entire page is a large, stylized image of the European Union flag, featuring a dark blue field with twelve yellow stars arranged in a circle. In the bottom-left corner, a large, stylized Union Jack flag is partially visible, overlapping the EU flag.

## ACTIVIST INVESTING IN EUROPE A SPECIAL REPORT



Activist Insight

# Germany

Germany has long been a laggard in the space of shareholder activism due to both legal and cultural challenges. Yet despite the headwinds, recent years have attested that activism can thrive there. If 2016 was a relatively blockbuster year for activism, with 16 companies publicly targeted across the entire year, 2017 looks set to at least match that tally.

While board refreshment remains a high priority, minority protections and the strength of German companies has M&A coming second. 2016 saw eight M&A campaigns, amounting to 26% of all publicly recorded demands, and a further eight demands related to board or management revamps. In 2013, the most fertile year before 2016, five M&A demands were recorded – representing almost one-third of the total – with Elliott Management alone launching two campaigns. Whereas most of the activity in the past was limited to merger arbitrage and opposition to takeovers, the past two years saw more complex campaigns, with a greater number of calls for board and business changes.

Activists interviewed for this special report radiate optimism, but acknowledge that the market is still embryonic and will probably never reach U.S. or U.K. levels. Petrus Advisers' Till Hufnagel believes the nation needs time to embrace activism, much like private equity strategies required years to become popular two decades ago. Petrus sees many opportunities in Germany and Europe and is considering expanding into Italy.

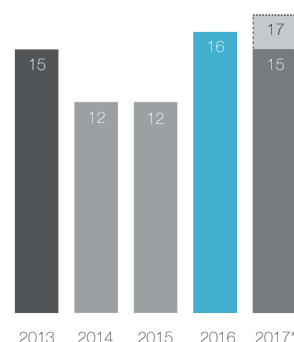
The CEO of Active Ownership Capital ("AOC"), Klaus Roehrig, whose campaign at Stada put the drugmaker in play with private equity firms, says institutional investors are increasingly willing to support activists and become more active themselves because of a low yield environment and the European Union's push for greater shareholder engagement, particularly on executive remuneration. Meanwhile, Guy Wyser-Pratte thinks the region is attractive for its "great" discounts, although he admits Germany's corporate governance code of voluntary compliance "has no teeth."



## Noteworthy Activist Campaigns

Date	Activist	Issuer
Sep 2017	Petrus Advisers	Commerzbank
Aug 2017	Elliott Management	Stada
May 2017	AOC	Schaltbrau Holding
Mar 2017	Nijaz Hastor	Grammer

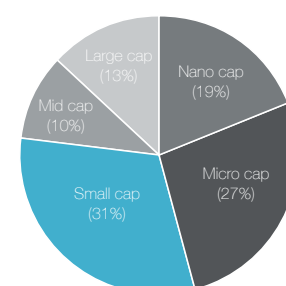
After last year's proxy contest at Stada Arzneimittel put the company in play, private equity firms had to work hard to get a deal past Elliott Management's merger arbitrage strategy. For its second major campaign, AOC, the fund that started the Stada battle, teamed up with Satora Beteiligungs to try and elect a three-person slate at Schaltbrau Holding. Autoparts manufacturer Grammer only won a proxy contest with Bosnian activist Nijaz Hastor after courts lifted an injunction against a white knight investor brought in as a new 9% shareholder. More recently, Petrus Advisers challenged Commerzbank to outline credible plans for its subsidiary, Comdirect.



Companies publicly subjected to activist demands per year

The number of activist campaigns in Germany was already elevated in 2016 and is predicted to grow in 2017.

\* As of September 30, 2017. Projected full-year figure shown in dotted box.



Size of companies publicly targeted by activists since 2013

At the end of the third quarter, the relative weighting of large-cap activist targets in 2017 was above the historical average, driven largely by a quiet year for mid-market firms.

Matthias Horbach &  
Holger Hofmeister

## Cultural and structural changes mean German activism is set to continue.

In 2017, shareholder activism continued to be a driver of change to the corporate landscape in Germany, launching or bringing to an end some noteworthy public campaigns. While overall activity, to the extent publicly visible, has been approximately at last year's (high) level, there is still significantly less activity than, for example, in the U.K.

The relevant legal framework in Germany has not changed over the last year. However, changes are on the horizon due to an amendment to the EU Shareholder Rights Directive (Directive (EU) 2017/828 dated May 17, 2017) that has recently been enacted and must be implemented by the member states by mid-2019. Changes will relate to, among others, "say-on-pay" matters and related-party transactions, and have the potential to create uncertainties and, therefore, further disputes and exposure to shareholder activism.

### *The results are in*

AOC's campaign at German pharmaceutical company Stada, initiated in 2016, has been among the most prominent cases in Germany. This campaign resulted in a shake-up of the company's management and supervisory board (in particular, the CEO and chief financial officer left the company), a successful takeover offer by Bain Capital and Cinven, and a recent Stada share purchase and public statement by Elliott aimed at increasing the compensation to be offered by the Bain Capital/Cinven bidding entity to all Stada minority shareholders in connection with a domination agreement it plans to enter into with Stada. While the offer price amounted to 66.25 euros per share,

Elliott requests compensation of at least 74.40 euros per share.

Elliott Management is also still busy with SLM Solutions, a provider of metal-based additive manufacturing technology solutions, after its opposition to the proposed takeover of SLM Solutions by General Electric led to GE dropping its takeover attempt and acquiring a competitor instead.

### *Activist demands are evolving*

Over the last year, shareholder activism not only focused on "typical" goals such as obtaining board seats or pushing companies into M&A transactions. Board compensation matters and related shareholder resolutions also received a fair amount of media attention. For example, the supervisory board of SAP was only narrowly discharged from liability – a standard meeting item – due to shareholder resistance caused by the supervisory board's approval of the management board's compensation package. The annual general meeting of Munich Re had to resolve a "say-on-pay" vote (which is voluntary and non-binding in Germany) and rejected the company's proposal.

Taking into account the growing number of educated investors that are willing to actively engage in discussions with boards, and ongoing, often technology-driven changes and challenges to various business sectors, shareholder activism will likely develop and play an even more important role in Germany over the next few years.

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