

# The 2019–2020 annual European venture capital deal terms survey

Compiled by Withers tech, Schnittker Möllmann Partners (SMP),  
Viguié Schmidt & Associés and Wenger & Vieli

withers tech

 SCHNITTKER  
MÖLLMANN  
PARTNERS

 VIGUIÉ SCHMIDT  
& ASSOCIÉS

wenger & vieli  
Attorneys at law



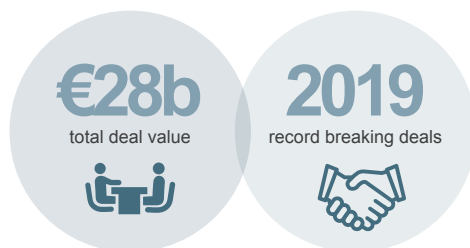
# The strength of the European venture capital and startup market

The European venture capital (VC) market had a record-breaking year in 2018. The deals were spread across all types of transactions from IPOs, unicorns and super seed rounds. Europe saw €20.5 billion of total deal value across 3,384 deals, €47.5 billion of total exit value across 373 exits and €8.4 billion of total capital raised across 62 funds.<sup>1</sup>

Also, corporate VC made their existence known in 2018 by throwing a record amount of capital at European startups which made them important sources of capital for startups.<sup>2</sup>

Alongside the trend of larger Seed and Series A rounds and the unprecedented growth of Fintech across Europe, the state of the European startup and venture market in 2018 was vigorous.<sup>3</sup>

But 2019 has been even stronger. Before the close of 2019, the European VC ecosystem saw five new unicorns and six large venture-backed exits across Germany, Switzerland, France, UK, Spain and Israel. And, by Q3 2019, €28 billion was already invested in Europe and Israel compared with the recording-breaking €20.5 billion in 2018.



1) Pitchbook , European Venture Report , 2018

2) Pitchbook, European VC Trends in 9 Charts , 2019

3) Dealroom, Quarterly Venture Capital Report, Q3 2019

# The big picture

VC deal terms can vary from country to country and what is standard in the UK may be an optional term in another country.

*European VC deal terms vary, but all of the deal terms create an environment to grow business, raise capital and nurture talent.*

Four law firms<sup>1</sup> from four European countries, UK, France, Germany, and Switzerland compiled 53 VC deal terms to benchmark conventional Series A VC deal terms across the four countries to create the first annual 2019–2020 European Venture Capital Deal Terms Survey.

The VC deal terms were selected based on the most frequently used terms in each of the countries and fall into three primary areas which define most startup transactions: economic, control and reps, warranties and remedies.

*...the most relevant takeaway for entrepreneurs and investors is that all four countries are well-suited for VC financings.*

Economics' deal terms are those that govern the financial aspects of the deals. Control terms cover the issues of running and managing a company like corporate governance, founder interests and employees. While the venture capital survey found differences between the four surveyed markets of the UK, Germany, France and Switzerland, the most relevant takeaway for entrepreneurs and investors is that all four countries are well-suited for VC financings.

Each country approaches VC deal terms in a similar manner which encourages the movement of businesses, talent and capital in Europe.

With more similarities than differences across the four surveyed countries, each of the legal systems represented in this survey can accommodate the interests of international investors which may be used for US-style VC agreements and structures.





The 2019–2020 European Venture Capital Deal Terms Survey provides valuable guidance for everyone doing deals across Europe and when they enter less-familiar jurisdictions.



The Survey categorized 53 VC deal terms as economic, control or reps, warranties and remedies. The 53 deal terms have been benchmarked and condensed to 14 key terms and then delineated by categories based on purpose of the deal terms, with some deal terms like exits and transfers fitting in both categories. This resulted in four primary deal characteristics.

| Economic deal terms          | Control deal terms                    | Cross over terms             | Reps, warranties and remedies           |
|------------------------------|---------------------------------------|------------------------------|-----------------------------------------|
| Deal commercials (valuation) | Advisory board                        | Exit rights/IPO triggers     | Representations and warranties/remedies |
| Milestone investments        | Reserved matters/ investor majority   | Transfer restrictions        |                                         |
| Anti-dilution protection     | Founder non-compete/ non-solicitation | Right of first refusal       |                                         |
| Liquidation preference       | (Minority) shareholder pooling        | Tag-along/co-sale provisions |                                         |
| Information rights           |                                       | Founder vesting/lock-up      |                                         |
| Employee participation       |                                       |                              |                                         |

These four primary deal characteristics centre around:

1. future financing,
2. exits and IPO to control terms like founders' vesting, founders' non-compete/solicitation,
3. veto-rights, and
4. control over the group of shareholders across Germany, UK, France, and Switzerland reveal differences country by country but show that primary differences come down to elements found in Civil law versus Common law jurisdictions.

When it comes to board composition, countries in the survey did not show significant differentiation – any differences being rather subtle. Instead, the report highlights the importance given to the composition of the board by investors in the respective jurisdiction. In the four countries surveyed only the UK is a Common Law jurisdiction.

Overall, the 2019–2020 Venture Capital Deal Terms Survey shows that VC deals are handled more or less in the same way through the UK, Switzerland, France and Germany and these similarities support investment from foreign VCs.



The 2019–2020 Venture Capital Deal Terms Survey identified 14 key VC deal terms startups should look at when working on a funding round. The survey also shows how those deal terms vary country by country.

#### 1. Milestone investments

Improves the internal rate of return of an investor (the later they invest, the higher is the internal rate of return) and diminishes the risk of losing all their money if the startup doesn't perform well before the milestone date.

#### 2. Future financial rounds

Provisions concerning future capital increases.

#### 3. Anti dilution

Serves to protect investors against a dilution of the value of their investment in the event of a lower company valuation in (a) subsequent financing round(s).

#### 4. Reps, warranties and remedies

Stipulates the representations and warranties in respect of company matters such as corporate existence, shares, financials, IP, employees, important contracts etc. as well the remedies in case of a misrepresentation or a breach of a warranty.

#### 5. Reserved matters and voting rights

Veto rights for investors / shareholders in respect of certain decisions (to be determined on a case-by-case basis) at shareholder and the board level.

#### 6. Founder-vesting/lock-up/protective covenants

Prohibitions / restrictions with regard to share transfers on the part of the founders or operating shareholders. Serves the purpose of incentivizing the founders and operating shareholders to remain operational for a certain period of time.

#### 7. Disposal of shares

Restrictions relating to share transfers. Serves to keep the circle of shareholders small and secure that each shareholder is bound by the shareholders' agreement

#### 8. IPO trigger and structured M&A process

Rules to be determined on a case-by-case basis in relation to an IPO or an M&A deal.

#### 9. Liquidation preference

Specifies the distribution of the proceeds in determined 'liquidation' events (such as liquidation, winding up, sale, change of control etc.) and how much proceeds the investors can collect before any of the remaining proceeds, if any, are distributed to the (other) shareholders.

#### 10. (Minority) shareholder pooling

Minority shareholder pooling: regulates the pooling of minority shareholders for the purpose of facilitating to interact with them.

#### 11. Employee participation ((v)esop)

Incentivize employees by issuing options or (virtual) shares based on participation plans to get excellent workforce due to limited budgets.

#### 12. Cost/expenses

Cost/expenses: deals with the allocation of costs between the parties.

#### 13. Exclusivity/break-up fees/binding effect

Provisions to demonstrate to the investors that the startup is committed to do the transaction without searching for alternatives. A break-up fee can be a remedy in case of a breach of an exclusivity clause. And certain terms and conditions are not binding (in the Term Sheet), which is explicitly stated.

#### 14. Typical documentation

Typical documentation: investment and subscription agreement, shareholders' agreement, articles of association, board (organizational) regulations and notarial documents.

## Here are some subtle differences between countries

### United Kingdom

Most VC-backed companies are private limited liability companies, with a single board of directors responsible for all significant decisions of the company. While it is a fundamental principle of UK law that a director cannot delegate his powers, it is common for the board to delegate some specific duties to a committee of directors of the company, such as a remuneration or audit committee.

The law makes no distinction between executive and non-executive directors – both have equal powers and equal fiduciary duties. In practice, however, an executive director has day to day management and operations responsibility, whereas a non-executive director would not.

### France

Under French law, French limited liability companies (sociétés par actions simplifiées) may be freely organized by the shareholders of the company via the by-laws, and, where appropriate, a shareholders' agreement.

The board may assume specific management and strategic functions or may only play a supervisory role (depending on the stipulations provided for in the by-laws and/or the shareholders' agreement). Each board member shall be personally liable for any wrongdoings.

### Germany

Most VC-backed companies in Germany are structured as limited liability companies (Gesellschaften mit beschränkter Haftung, GmbH) which generally only have two governing bodies: the shareholders' meeting and the managing director(s).

To facilitate quick decision making on operational matters and to make the German GmbH more similar to a US incorporation and an advisory board is often implemented.

### Switzerland

The board of a Swiss company limited by shares is responsible for both strategic decisions and operational management of the company. However, it can delegate all transferable duties to an executive management and has to retain a limited number of (strategic) duties only.

Each Board member is personally and jointly and severally liable for any wrongdoings.

# United Kingdom



*“The UK has a deep, well-advanced and varied VC pedigree. This is not a new sector for the UK economy and, as a result, the UK has shown and will continue to show many of the key markers which have created a sustainable VC scene for years to come.”*

James Shaw | Global Head and Partner, Withers tech, London



## Similarities in approach between the various jurisdictions

According to James Shaw, Global Head of Withers tech, the analysis from the 2019–2020 European Venture Capital Deal Terms Survey highlights the similarities in approach between the various jurisdictions. Shaw notes that it should help professional advisers in each jurisdiction to speak with confidence to their clients who are either considering raising cross-border capital or considering investing cross-border.

| *‘Any differences in the terms are quite subtle.’*

‘However, from a constitutional perspective, the UK is the only Common Law jurisdiction where Germany, Switzerland, and France are all Civil Law-based, and so there may be a difference in procedure and/or governance which may also have an impact and should also be considered in the round,’ said Shaw. ‘Because the UK is a Common Law jurisdiction, it’s more closely aligned with the US than the other countries in the survey, which is helpful for startups wanting to expand to the US.’

| *‘Because the UK is a Common Law jurisdiction, it’s more closely aligned with the US...’*

Shaw cites world-class academics and research; extensive and sophisticated investor base; governmental support for innovation and the growth economy; international outlook; well-positioned globally; robust and trusted legal framework, as several of those key markers that underpin a robust startup and venture market.

When it comes to financial factors, from a domestic perspective, the UK continues to see VC and the new growth economy as an important part of the UK’s future.





‘A lot of public sector funding is geared towards commercialisation and the UK tax regime, particularly the successful Enterprise Investment Scheme which continues to incentivise wealthy private individuals to deploy capital into early-stage businesses which in turn helps seed innovation and new ideas,’ noted Shaw.

‘From an international perspective, overseas investors see the UK as an attractive market in which to deploy capital,’ says Shaw. ‘Valuations in the UK are seen as relatively low and this has caused a significant increase in the flow of capital from foreign investors to the UK.’

Shaw notes that in addition, the legal landscape and the relative approaches to VC investments in the UK are becoming more closely aligned with the US, which again lowers the barrier to entry for US investors.

Shaw also believes the UK will continue to be a global leader in the VC community post-Brexit. ‘The UK continues to be a stepping stone for many European companies to raising transatlantic funding with London continuing to be a major global finance hub.’

## Venture capital deal terms by country

| Country                                                                                                | Founder-vesting/lock-up/<br>protective covenants                                                                                                                        | Founder lock-up/<br>vesting period                                                                                                                                                                                                                                            | Cliff period                                                                                                                                                                           |
|--------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  <b>UK</b>            | Founder vesting is very common in UK VC transactions.                                                                                                                   | A three to four year reverse vesting period (ie. founder shares can be clawed back).                                                                                                                                                                                          | A one-year cliff during the vesting period can be considered market standard.                                                                                                          |
|  <b>Germany</b>       | Vesting and/or lock-up undertakings on shares held by the founders are market standard.                                                                                 | A three or four year reverse vesting period is standard. In certain (later-stage) funding rounds, vesting will typically not start anew with each financing. During the vesting period, founders will generally not be entitled to dispose of their shares (founder lock-up). | A one-year cliff during the vesting period can be considered market standard.                                                                                                          |
|  <b>France</b>      | Vesting and/or lock-up undertakings on shares held by the founders are market standard.                                                                                 | A three to five year (i) lock-up on shares and (ii) reverse vesting (ie founder shares can be clawed back) is market standard. In certain (later-stage) funding rounds, vesting will typically not start anew with each financing.                                            | A one-year cliff during the vesting period can be considered market standard.                                                                                                          |
|  <b>Switzerland</b> | A founder vesting is not always requested but often, the founders themselves demand a founders' vesting in order to bind all founders in the operations of the company. | A three or four year vesting period is market standard.                                                                                                                                                                                                                       | A one-year cliff during the vesting period can be considered market standard. In later-stage financings cliff-periods are less often as founders have already proven their commitment. |

# Germany

A stylized map of Europe is shown in the background. The map is composed of white outlines on a dark olive green background. Germany is highlighted in a solid teal color, making it stand out from the rest of the map.

*“The German VC scene has experienced exceptional growth in recent times, with investments from non-European VC/PE funds as well as large-scale family offices lifting the German market to another level.”*

Adrian Haase | Schnittker Möllmann Partners (SMP)



## Shifts in the German venture capital market

According to Ben Ullrich, Partner at SMP in Berlin, a notable difference between the current German VC market compared to the UK, the Swiss, and the French VC markets are that investment commitments rarely seem to be conditional upon the achievement of certain milestones.

‘While such milestone mechanisms used to be more common in Germany, the German VC market has shifted in the past couple of years,’ said Ullrich. ‘We assume the reason for this is an increased bargaining power on the side of the founders due to substantially more funding being available.’

Adrian Haase, Senior Associate at SMP in Berlin, adds that whilst in most other European jurisdictions a compensatory capital increase seems to be the major remedy for breach of representations and warranties, the primary remedy in most German VC investment agreements is still a cash payment.

*Haase says that ‘soft factors in Germany play a role in its position as a strong startup ecosystem.’*

‘Germany, being the largest economy in Europe, offers a large market potential for goods and services offered by VC-backed companies presumably enabling them to scale faster than their competitors in smaller economies,’ said Haase. ‘The major German cities and hubs for entrepreneurial enterprises, particularly Berlin, offer a relatively affordable cost of living, which attracts an international workforce that is being recruited by fast-growing start-up companies.’

Haase believes that Germany’s location at the heart of Europe and its close relationship with Eastern Europe attracts many well-educated techies.

### VC deal terms handled differently by each country

- Future financing rounds
- Remedy
- Purchase option
- Liquidation preference
- Reps and warranties

When it comes to financial factors in Germany Ullrich notes that the number of sophisticated international investors such as Softbank or Sequoia providing capital to the German start-up market has increased rapidly.

‘This has fuelled the trend of larger VC financing round sizes and increased valuations. In addition, most successful entrepreneurs continue to be involved in the VC ecosystem even after a successful exit providing know-how, capital, and networking opportunities,’ added Ullrich.

Ullrich says that more traditional investors, such as corporates, family offices, and pension funds are becoming increasingly involved in VC investment opportunities to balance their portfolio strategy in the current low-interest environment.

# Three of the most frequently asked venture capital deal terms

No matter which jurisdiction, the authors agreed that several key terms appeared to carry more weight than others when discussed with Founders and/or Investors. The following are the three most frequently asked questions with comparisons between jurisdictions:

1



## Liquidation preferences

Except for special situations such as a restructuring one time non-participating liquidation preferences are very much the standard across the four jurisdictions. This means that in case of a small exit the last investors get to cash in prior to everyone else. If however there is enough to distribute everyone will participate pro rata in a liquidity event.

2



## Pre-money valuations

This is usually calculated on a fully-diluted basis being the total issued share capital PLUS any rights to convert into shares (eg. convertible debt, share options etc.). There is often a negotiation around whether any uplift in the option scheme (as a result of the round) should form part of the pre-money valuation.

3



## Leaver regime

Each founder should most frequently accept to grant to the main investors, and sometimes other shareholders, an option to purchase whole or part of the shares held by the founder in case of a termination of his/her functions (employee, director) within the company.

Depending on the reason of the termination, the shares can be purchased with a discount on the fair market value (often medium or bad leaver events) or without any (or with a limited) discount (good leaver). The definition of the good/medium/bad leaver events and the associated discounts on the fair market value often lead to difficult discussions between Investors and founders.

# France

*“The French VC scene has experienced significant growth over the past decade, resulting in France being one of the leading European VC market in recent years.”*

Louis Chenard | Partner, Viguié Schmidt & Associés



# Increased investment in the French venture capital market

In 2018, a record €3.6 billion<sup>1</sup> was invested in French startups and scaleups<sup>2</sup>.

Louis Chenard, Partner, Viguié Schmidt & Associés says this can be explained by active government support and investments such as La French Tech and Bpifrance, major accelerators like Station F, TheFamily, Schoolab; and record amount of capital in the hands of VCs, including corporate VCs (CAC40 companies) which are active in France.



Cross-border investment into French ventures has also been growing notes Chenard.

'US and UK-based VCs being more and more active and looking in the French market for lower valuation as those they can find in their domestic markets.

Looking back over the last 18 months, many leading French VCs raised new funds which will support the French VC market for at least several more years,' said Chenard. 'In addition, a high number of successful entrepreneurs continue to be highly involved in the French VC ecosystem providing advisory, angel investment and networking opportunities which led to larger VC financing round and increased valuation.'

*'In this context, the French market will continue to benefit from a growing interest from non-domestic investors.'*

Chenard says the similarity between the VC deal terms in the UK, Switzerland, France and Germany will result in growing exchange between those four countries.

'In this context, the French market will continue to benefit from a growing interest from non-domestic investors,' added Chenard.

Chenard says that due to the large amount of capital currently available in France, founders of French VC backed companies have an increased bargaining power which has led to a more balanced contractual relationship between Investors and founders.

Chenard also notes the Board of Directors is key to the relationship between the founders and the VCs in France. The prior approval of the board (including, often, the lead VC approval – or the qualified majority of the leading VCs) is usually necessary before the implementation by the management or by the general assembly of a broad scope of structuring decisions.

'Boards of directors seems to have a more central role in the relation between VCs and founders in France than in the UK, Switzerland and Germany,' said Chenard.

Another difference Chenard emphasizes is that bad leaver terms in France are often more restrictive. In the case of a termination of a managers functions within the company, a significant failure is needed to characterize the bad leaver; where termination for cause seems to be sufficient in the UK, Switzerland and Germany.'

1) EY 2018 venture capital survey, page 3

2) EY 2018 venture capital survey ([https://www.ey.com/Publication/vwLUAssets/ey-barometre-d\\_u-capital-risque-en-france-bilan-annuel-2018/%24File/ey-b\\_arometre-du-capital-risque-en-france-bilan-annuel-2018.pdf](https://www.ey.com/Publication/vwLUAssets/ey-barometre-d_u-capital-risque-en-france-bilan-annuel-2018/%24File/ey-b_arometre-du-capital-risque-en-france-bilan-annuel-2018.pdf))

# Switzerland



*“Switzerland is known for its leading universities, such as the ETH in Zurich and the EPF in Lausanne. A large number of globally successful innovation and technology companies stem from either one of these (or other) Swiss universities.”*

Beat Speck | Partner, Wenger & Vieli

## Switzerland is attractive due to its high quality of life and moderate taxation

According to Beat Speck, Partner in the Swiss law firm, Wenger & Vieli, Switzerland is attractive for investors and founders due to its high quality of life and moderate taxation. In 2018, the country brought in more than \$1 billion into Swiss firms which was an increase of 32% from 2017 and three times the volume of funds from 2013.<sup>1</sup>

‘The country’s modern infrastructure, its legal and political stability and the large number of qualified employees are other success factors,’ said Speck. ‘In general, the Swiss VC scene is developing with strength and there are more professional investors, business angels and family offices focussing on the Swiss market ever’.

Speck notes that there is also a large number of platforms and programs that support startups with funding which shows the growth of the Swiss VC market.

*‘But this survey shows that VC deal terms in Switzerland will be more or less handled in the same way in the UK, France and Germany, which makes it easier for an investor to invest in all of these countries.’*

‘One of the big differences in VC deal terms from the 2019–2020 European Venture Capital Deal Terms Survey lies in the threshold for triggering a tag-along right. Whereas in the other three countries this threshold is 50% or a change of control, respectively, minority shareholders in Switzerland also benefit from a co-sale right the threshold of which can go as low as five to 15%,’ said Speck.

Speck says the second most important difference from the Swiss perspective is the purchase option on the occurrence of certain trigger events, such as death, insolvency, criminal acts against other parties, material breaches of the shareholders’ agreement and/or termination of employment agreements.

‘While France and Germany don’t include this concept regularly, in Switzerland, purchase options are market standard. The UK seems to know the same market standards; however, in the UK the purchase options are stated in the articles of association at corporate law level. In contrast, purchase rights in Switzerland are usually dealt with on a contractual level only.

Speck says that in general, Swiss VC are basically the same as in all other four surveyed countries.





‘The few issues which are handled differently are simply due to different corporate laws,’ added Speck.











1) Swissinfo.ch, Swiss venture capital breaks CHF1bn barrier for first time, 2019.







## The 14 key venture capital deal terms in detail

| Country                                                                                                   | Milestone investments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Future financing rounds                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Anti-dilution                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>UK</b><br>            | <p>Milestone investments are common in high risk specialised technologies, such as therapeutics, where there are key milestones which(if achieved) can have a significant effect on the valuation. They are sometimes seen in technology transactions, although they tend to be for more early stage investment rounds (seed and Series A) ie. at proof of concept and/or establishing market acceptance. In distressed venture financings, bridge financings or where a company is struggling to raise money generally, tranching investments can be quite common as a means of limiting an investor's exposure to risk.</p> | <p>The decision to raise further financing is a matter for the Board of Directors. Investors almost always insist on a veto right on this Board decision. As a result, a company's ability to raise finance will almost always require the consent of the Investors/Investor Majority. As the Company grows, this veto right will evolve so as to remain a pragmatic veto (ie. by Investor Majority). Earlier stage investors should be prepared to allow specific veto rights to become veto rights of the Investor Majority. In addition, future financing rounds often require an amendment to the articles of association which will require the support of 75% of the shareholders (statutory).</p> | <p>Anti-dilution protection is common for institutional investors in the UK. As a result, it is less common in on early stage rounds due to the importance of angel investors' participation. At the time of writing, the tax reliefs available to business angels on equity investments into eligible companies are extremely attractive and may be prejudiced by anti-dilution rights. As a result, anti-dilution is often limited to institutional/series A and beyond.</p> |
| <b>Germany</b><br>     | <p>Milestone investments are not very common and, if at all, are only seen in early-stage financing rounds.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>The implementation of future financing rounds usually requires (i) a majority of 75% of the Company's shareholders (with the latter being the statutory majority requirement) and (ii) an investor majority. Sophisticated documents will, in addition, provide for a "financing drag along" whereby a certain majority may demand that all measures are taken that are necessary or expedient to implement future financing rounds (including certain changes to the Shareholders' Agreement). This is intended to maintain the company's ability to raise funds even where individual shareholders disagree and refuse to amend the shareholders' agreement.</p>                                    | <p>While anti-dilution provisions (i.e., downround protection) are market standard in German VC-backed financing rounds, sometimes only those preferred shares issued in the ultimate (and penultimate) financing round carry such right or such right may otherwise be limited in time.</p>                                                                                                                                                                                   |
| <b>France</b><br>      | <p>Milestone investments are regularly seen in early stage financing rounds but are less common in post series A or later-stage financing rounds.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p>In the context of early stage financing rounds, investors (mostly business angels) will generally not benefit from a veto right on future financing rounds.</p> <p>Veto rights for investors (mostly VC) in Series A or later-stage financing round are very common.</p>                                                                                                                                                                                                                                                                                                                                                                                                                              | <p>Anti-dilution protections are market standard in VC backed financing rounds; sometimes it only applies to holders of preferred shares (excluding seed/early stage investors).</p>                                                                                                                                                                                                                                                                                           |
| <b>Switzerland</b><br> | <p>Milestone investments are repeatedly seen in seed and early-stage financing rounds; they are less common in post series A or later-stage financing rounds (except in certain sectors such as medtech, biotech, etc.).</p>                                                                                                                                                                                                                                                                                                                                                                                                  | <p>In early stage financing rounds, investors (mostly business angels) seek to implement provisions whereby all existing shareholders will have to agree on a future financing round if the Board recommends to do so.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>Anti-Dilution protections are market standard and usually apply to holders of preferred shares only (sometimes excluding seed/early stage investors).</p>                                                                                                                                                                                                                                                                                                                   |

| Country                                                                                                   | Representations and warranties/remedies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Reserved matters/<br>investor voting rights | Founder-vesting/<br>lock-up/protective covenants                                                                                                                              | Disposals of shares                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>UK</b><br>            | <p>In the UK, contractual warranties are standard in almost all venture funding rounds (perhaps with the exception only of very early stage Advanced Subscription Agreements/EFAST investments). Conversely, however, representations are not standard. The reason is that a breach of a representation can give rise to non-contractual claim for misrepresentation (either under common law or under statute – the Misrepresentation Act 1967) which can expose a warrantor to potentially unlimited liability. As a result, claims for misrepresentations are almost always expressly excluded from the investment documents.</p> | <p>Reserved matters are standard terms.</p> | <p>These are very common in UK VC transactions</p>                                                                                                                            | <p>As with the other jurisdictions, Investors don't like Founders leaving. Usually, investors aim to make it as difficult as possible to step out of the company prior to a (common) exit. However, as the Company grows and the Founder's equity stake becomes more valuable, there is a trend to allow secondary transfers of management shares on Series B/C rounds on the basis that derisking a Founder can help him release more potential for the Company.</p> |
| <b>Germany</b><br>     | <p>Representation and warranties are given in virtually any German VC-backed financing round (both early and later stage). However, especially the business representation and warranties are often very limited in early rounds due to the relatively short existence of the company concerned.</p>                                                                                                                                                                                                                                                                                                                                 | <p>Reserved matters are standard terms.</p> | <p>Vesting and/or lock-up undertakings on shares held by the founders are market standard.</p>                                                                                | <p>Usually, investors aim to make it as difficult as possible (for the founders) to leave the company prior to an exit.</p>                                                                                                                                                                                                                                                                                                                                           |
| <b>France</b><br>       | <p>While representations and warranties are standard in series A and later-stage financing rounds, they are less common in seed and early-stage financing rounds.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p>Reserved matters are standard terms.</p> | <p>Vesting and/or lock-up undertakings on shares held by the founders are market standard.</p>                                                                                | <p>Usually, investors aim to make it as difficult as possible to step out of the company prior to a (common) exit. However, as the Company grows and the Founder's equity stake becomes more valuable, there is a trend to allow secondary transfers of management shares on Series B/C rounds.</p>                                                                                                                                                                   |
| <b>Switzerland</b><br> | <p>Representations and Warranties are standard. However, in very rare cases some smaller startups manage to do a financing round without an investment and subscription agreement, and hence without representations and warranties (whereby the investment is based on a subscription form and the shareholders' agreement only).</p>                                                                                                                                                                                                                                                                                               | <p>Reserved matters are standard terms.</p> | <p>A founder vesting is not always required but often, the founders themselves demand a founders' vesting in order to bind all founders in the operations of the company.</p> | <p>Usually, investors aim to make it as difficult as possible to step out of the company prior to a (common) exit.</p>                                                                                                                                                                                                                                                                                                                                                |

| Country                                                                                                   | IPO trigger and structured M&A process                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Liquidation preference (non-)participating                                                                                                                                                                                                                                                                                                                                               | (Minority) shareholder pooling                                                                                                                                                                                                                                                             |
|-----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>UK</b><br>            | IPO and M&A process triggers (including the appointment of agents/ advisers) are normally Investor Majority reserved matters.                                                                                                                                                                                                                                                                                                                                                                                                                                | Similar to the other jurisdictions, most if not all financing rounds will provide for a (senior) liquidation preference for the new investors; such liquidation preference will usually be one-time (1x) non-participating. Participating preference rights are uncommon. [Note: The life science sector forms an exception and may provide for higher liquidation preference multiples] | Minority shareholders and/or employees are often pooled in the shareholders' agreement in order to simplify the decision-making process for a large number of shareholders. However, due to the pooling structure, each such shareholder has a right to step out of such pool at any time. |
| <b>Germany</b><br>      | IPO and M&A process triggers are commonly linked to the drag-majority and/or subject to the reserved matters.                                                                                                                                                                                                                                                                                                                                                                                                                                                | Essentially all financing rounds will provide for a (senior) liquidation preference for the new investors; such liquidation preference will usually be one-time (1x) non-participating. Participating liquidation preferences are very rare these days, except in special situations (eg.: restructurings).                                                                              | Minority shareholders and/or employees are often pooled to simplify the decision-making process for a large number of shareholders. Pooling can occur in various forms, eg. by way of a voting pool or a pooling entity.                                                                   |
| <b>France</b><br>      | The board (usually a reserved matter) triggers an IPO or a structured M&A process, both will need the support of a qualified shareholders' majority.                                                                                                                                                                                                                                                                                                                                                                                                         | Essentially all financing rounds will provide for a (senior) liquidation preference for the new investors; such liquidation preference will usually be one-time (1x) non-participating.                                                                                                                                                                                                  | Minority shareholders and/or employees (including ESOP beneficiaries) will generally enter into a short form shareholders' agreement. Shareholders' pooling is quite unusual.                                                                                                              |
| <b>Switzerland</b><br> | The Board (usually with qualified quorum) triggers an IPO. The Board, however, will in most cases require the support of a (qualified) shareholders' majority for key decisions (such as for the capital increase, the appointment of new Board members and the audit company, etc.). The same applies to a structured M&A process: The Board (with a certain [qualified] quorum) can trigger (or sometimes some investor(s)), but without the support of a (qualified) shareholders' majority (except for a fire sale), the process will not be successful. | Essentially all financing rounds will provide for a (senior) liquidation preference for the new investors; such liquidation preference will usually be one-time (1x) non-participating. The life science sector forms an exception and may provide for higher liquidation preferences.                                                                                                   | Minority shareholders and/or employees are often pooled in the shareholders' agreement in order to simplify the decision-making process for a large number of shareholders. However, due to the pooling structure, each such shareholder has a right to step out of such pool at any time. |



| Country                                                                                                   | Employee participation ((v)esop)                                                                                                                                                                                               | Cost/expenses                                                                                                                                                                                                                                              | Exclusivity/break-up fees/ binding effect                                                                                                                                                                                                                                                            | Typical documentation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>UK</b><br>            | Employee participations are either structured as (equity) options (with or without early exercise) or virtual shares (phantom stocks). The key driver of the structure are taxes.                                              | The company usually reimburse the investor(s) for all reasonable legal fees and expenses up to a defined threshold, depending on the financing stage.                                                                                                      | Exclusivity (for the benefit of the investors) is commonly seen in term sheets. Break-up fees are rarely included. Other than with respect to fees and costs, exclusivity, confidentiality and governing law, the provisions of the term sheet usually do not have a binding effect to the parties.  | Term Sheet, Investment and Subscription Agreement, Shareholders' Agreement, Articles, Board Regulations and any other document required based on the DD findings (such as new employment agreements, IP assignment agreements etc.)                                                                                                                                                                                                                                                                                                              |
| <b>Germany</b><br>      | Employee participations are either structured as (equity) options (with or without early exercise) or virtual shares (phantom stocks).                                                                                         | The company will usually reimburse the lead investor for all reasonable legal fees and expenses up to a defined cap depending on the financing stage (early-stage: approximately €10k, Series A: approximately €25–35k; Series B: approximately €50–100k). | Exclusivity (for the benefit of the investors) is seen in many term sheets. Break-up fees are rarely included. Other than with respect to fees and costs, exclusivity, confidentiality and governing law, the provisions of the term sheet usually do not have a binding effect on the parties.      | Term Sheet, Investment (and Subscription) Agreement, Shareholders' Agreement (sometimes combined in one document with the Investment Agreement), Articles of Association, Rules of Procedure for the Management, Rules of Procedure for the Advisory Board and other documents required based on due diligence findings (such as new employment agreements). Subject to the structuring of the financing rounds, secondary share purchase agreements (by founders, business angels to new investors) will also be included in the documentation. |
| <b>France</b><br>       | Employee participations are either structured as (i) (equity) options (with or without early exercise), or (ii) free shares.<br><br>The structure of employee participations is determined mostly based on tax considerations. | The company will usually reimburse the investor(s) for all reasonable legal fees and expenses up to a defined threshold, depending on the financing stage.                                                                                                 | Exclusivity (for the benefit of the investors) is commonly seen in term sheets. Break-up fees are very rare.<br><br>Other than with respect to fees and costs, exclusivity, confidentiality and governing law, the provisions of the term sheet usually do not have a binding effect to the parties. | Term Sheet, Investment and Subscription Agreement, Shareholders' Agreement, Articles, Board Regulations and any other document required based on the DD findings (such as new employment agreements, IP assignment agreements etc.). Subject to the structuring of the financing rounds, secondary share purchase agreements (by founders, business angels to new investors) will also be included in the documentation.                                                                                                                         |
| <b>Switzerland</b><br> | Employee participations are either structured as (equity) options (with or without early exercise) or virtual shares (phantom stocks). The key driver of the structure are taxes.                                              | The company usually reimburse the investor(s) for all reasonable legal fees and expenses up to a defined threshold, depending on the financing stage.                                                                                                      | Exclusivity (for the benefit of the investors) is commonly seen in term sheets. Break-up fees are rarely included. Other than with respect to fees and costs, exclusivity, confidentiality and governing law, the provisions of the term sheet usually do not have a binding effect to the parties.  | Term Sheet, Investment and Subscription Agreement, Shareholders' Agreement, Articles, Board Regulations and any other document required based on the DD findings (such as new employment agreements, IP assignment agreements etc.)                                                                                                                                                                                                                                                                                                              |

## About the law firms

Four European Law firms collaboratively participated in the survey to compare 53 deal terms in four European countries<sup>1</sup>. For further information please contact one of the following:



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Withers tech is a full-service international technology law practice that's part of Withersworldwide. Our comprehensive legal offering is designed to meet the unique needs of entrepreneurs, investors and high growth technology companies in a number of industries including life sciences, proptech, fintech, cleantech, adtech and emerging technology sectors such as blockchain, crypto, and artificial intelligence.

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James Shaw | [James.Shaw@withersworldwide.com](mailto:James.Shaw@withersworldwide.com) | +44 7725 241 604  
Withers LLP, 20 Old Bailey, London EC4M 7AN



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Most recently we were shortlisted as German Law Firm of the Year for PE and VC by JUVE, the German equivalent of The Lawyer.

Benjamin Ullrich | [benjamin.ullrich@smp.law](mailto:benjamin.ullrich@smp.law) | +49 151 40 22 8686  
Adrian Haase | [adrian.haase@smp.law](mailto:adrian.haase@smp.law) | +49 151 40 22 8688  
Schnittker Möllmann Partners (SMP), Hardenbergstraße 27, 10623 Berlin

Viguié Schmidt & Associés | [www.vs-a.fr](http://www.vs-a.fr)



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The firm is also focused on complex venture capital financing, advising national and international investors as well as high-profile technology companies in various sectors.

Louis Chenard | [lchenard@vs-a.fr](mailto:lchenard@vs-a.fr) | +33 664 275 160  
Viguié Schmidt & Associés, 146 Boulevard Haussmann, 75008 Paris

Wenger & Vieli Ltd | [www.wengervieli.ch](http://www.wengervieli.ch)



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Beat Speck | [b.speck@wengervieli.ch](mailto:b.speck@wengervieli.ch) | +41 79 338 88 85  
Gordana Nisevic | [g.nisevic@wengervieli.ch](mailto:g.nisevic@wengervieli.ch) | +41 79 897 17 45  
Wenger & Vieli Ltd., Dufourstrasse 56, Postfach, CH-8034 Zürich

