

# Breakout Session I. Insolvency Issues in Real Estate



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## Topics

1. Current trends on the real estate market in the Nordics, Germany and Southern Europe
2. Legal framework concerning realisation of distressed assets in different jurisdictions
3. Recent case studies of distressed assets from respective markets
4. Expected progress of the real estate market in coming years

## Current Trends

- What are the current trends on the real estate market in your own jurisdiction?



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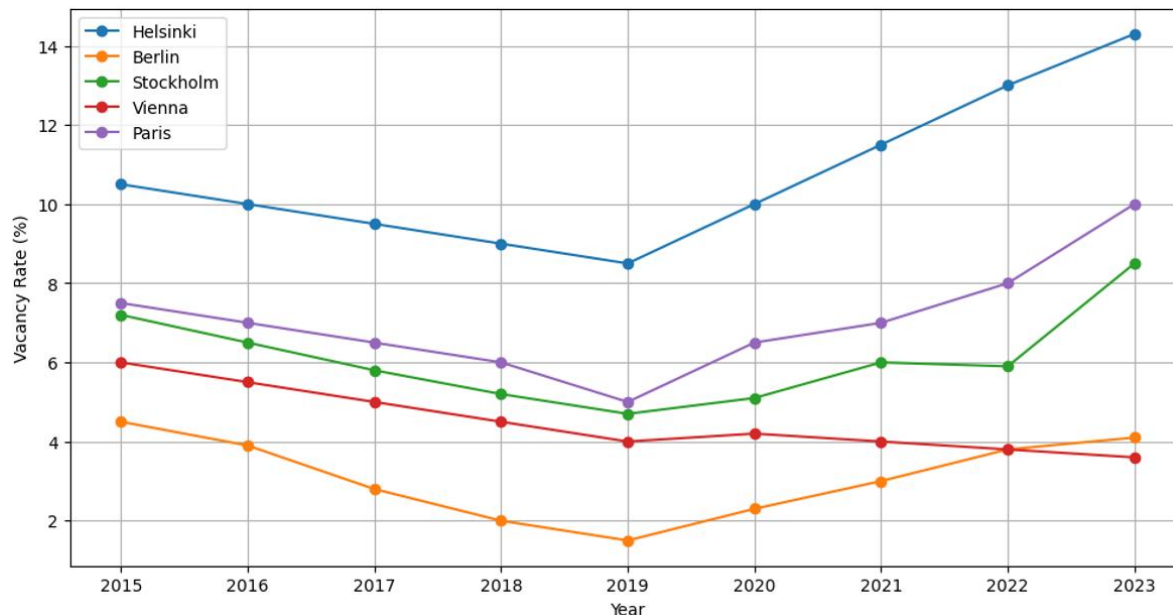
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## Office Vacancy Rates (2015-2023)



Source: Cushman & Wakefield

# Legal Framework

- How does enforcement of distressed property play out in your jurisdictions?

# Case Studies

- Interesting real estate cases in Austria?
- Other cases of interest in Europe?



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## Future Outlook

- What is your prediction what will happen on the real estate market in the coming year?
- Will there be many non-consensual enforcements of distressed real assets?





# INSOL EUROPE 2024 - Sorrento Congress

## Overview of the Fürst Restructuring





# What is 'Project Fuerst'?



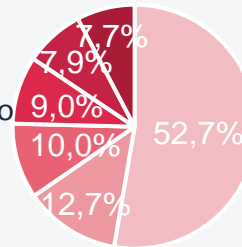
- Real estate asset located in Berlin
- One of the largest construction developments in Germany
- Very prestigious location: Kurfürstendamm (known as the "Ku'damm")
- Total lettable square metres: 107,000<sup>1</sup>

## MIXED USE:

Includes office, retail, hotel, gym, theatre, cinema, museum and kindergarten



- Office
- Hotel/Gastronomy
- Entertainment



AS AT OCTOBER  
2023

**BT4**

(future office tower)



**BT5**

(future gym)



**BT6**

(fully completed mixed-use property)



Q4 2025

**Anticipated Completed Project**



# Challenges of the Fürst Restructuring

Near term  
maturity

No market  
refinancing  
available

German law  
governed  
instruments

Ongoing  
challenges to  
jurisdiction

Bridge funding  
need / stabilise  
project

Consensus  
building

Accelerated plan  
timeframe

Change of  
restructuring  
landscape /  
judicial sentiment  
post-Adler

# Summary Takeaways

- Complex, contested, high value, cross-border restructuring
- Implemented by an RP in the UK
- COMI shift to access the UK regime
- Comprehensive balance sheet recapitalization, including new super senior facility with elevation incentive
- Innovative bridge funding structure provided by existing senior creditors
- Reset of senior debt maturities
- Eventual exclusion and cancellation of EUR 250 million 'out of the money' subordinated debt instruments
- Restore the Group to solvency by: (i) restructuring the Group's secured debt; and (ii) providing new money to allow the completion of the development.

## Learning Points:

- Consider use of section 901C(4) and section 901F to **disenfranchise out of the money creditors from voting**
- **COMI shifting is effective**
- Ensure the proposal contains an **element of give and take** for every creditor class.
- **Modifications are possible**
- Any creditor wishing to challenge the plan company's valuation should **put forward independent expert valuation evidence.**

# Accessing the UK RP

Options for foreign companies to establish sufficient connection

## COMI shift

- Moving the plan company's centre of main interests (COMI) to the UK
- *Examples: Fürst, Smile Telecoms and Gategroup*

## Issuer substitution

- Use provisions in existing debt documents to exchange the foreign incorporated issuer for a UK incorporated company
- *Example: Adler*

## Co-obligor structure

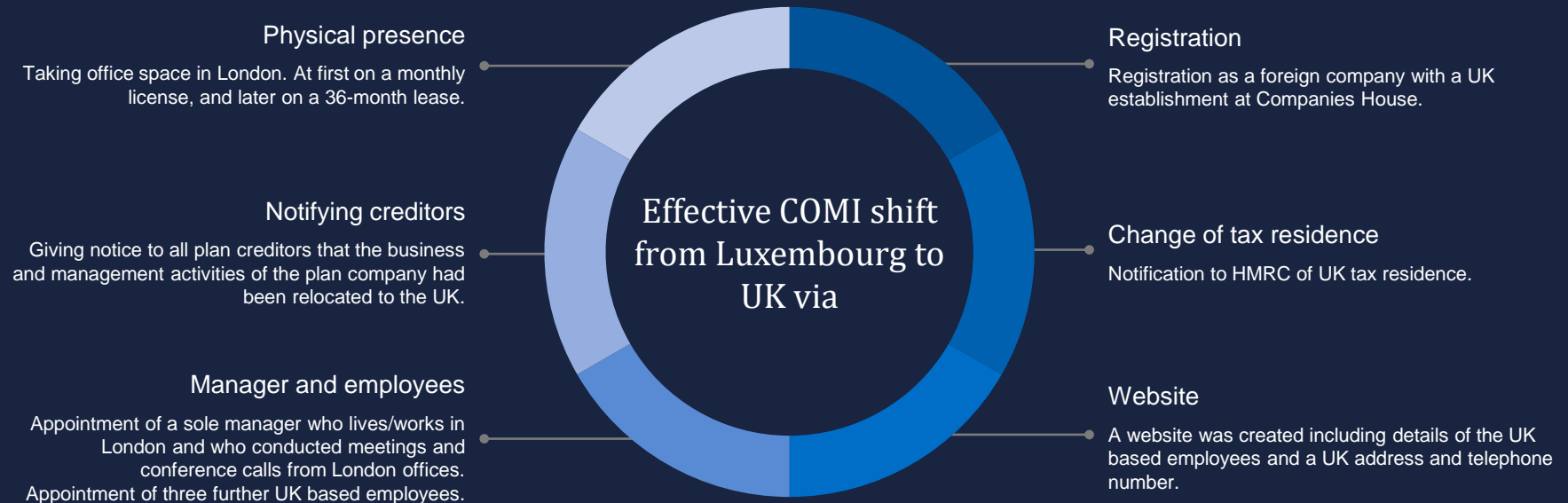
- Incorporate a new UK company and insert it into the current structure as a co-obligor with the existing foreign debtors
- *Example: Gategroup used a co-obligor (largely to avoid potential defaults if the Issuer proposed an RP) alongside a COMI shift of the Issuer*

## English governing law and jurisdiction

- English law governed debt documents and clauses in debt documents conferring jurisdiction on the English Courts
- *Examples: Cimolai, Hong Kong Airlines, Yunneng Wind Power*
- It may be possible to change existing governing law to establish connection
- *Example CFG Investments (China Fishery Group) changed governing law of notes from New York to English law*



# How the COMI shift was achieved in Fürst



# Recognition

## Overall finding on recognition:

There was a reasonable prospect that the plan would be recognised and given effect to in Luxembourg and Germany. Certainty as to the position under overseas laws was not needed.

## Recognition in Luxembourg

Luxembourg court would recognise the plan if:

- The Luxembourg court did not have exclusive jurisdiction.
- There was some actual connection between the dispute and England.
- The initiation of the English proceedings was not aimed at evading Luxembourg law or a potential Luxembourg judgment.
- The order sanctioning the plan complies with Luxembourg public policy.
- There is no decision of the Luxembourg courts which is irreconcilable with an English order sanctioning the plan.

## Recognition in Germany

- Recognition to be achieved under section 343 of the German Insolvency Code (Insolvenzordnung).
- The plan to be recognised only if COMI was in England at the time of the order sanctioning the plan.

## COMI shifting works

- The Court confirmed that the COMI shift in this case **was effective**.
- There was extensive argument on forum shopping but the **Court found that this was not a case of “bad” forum shopping**, there were sound legal and commercial reasons for it.

# Thank you



**Florian Bruder**

Partner

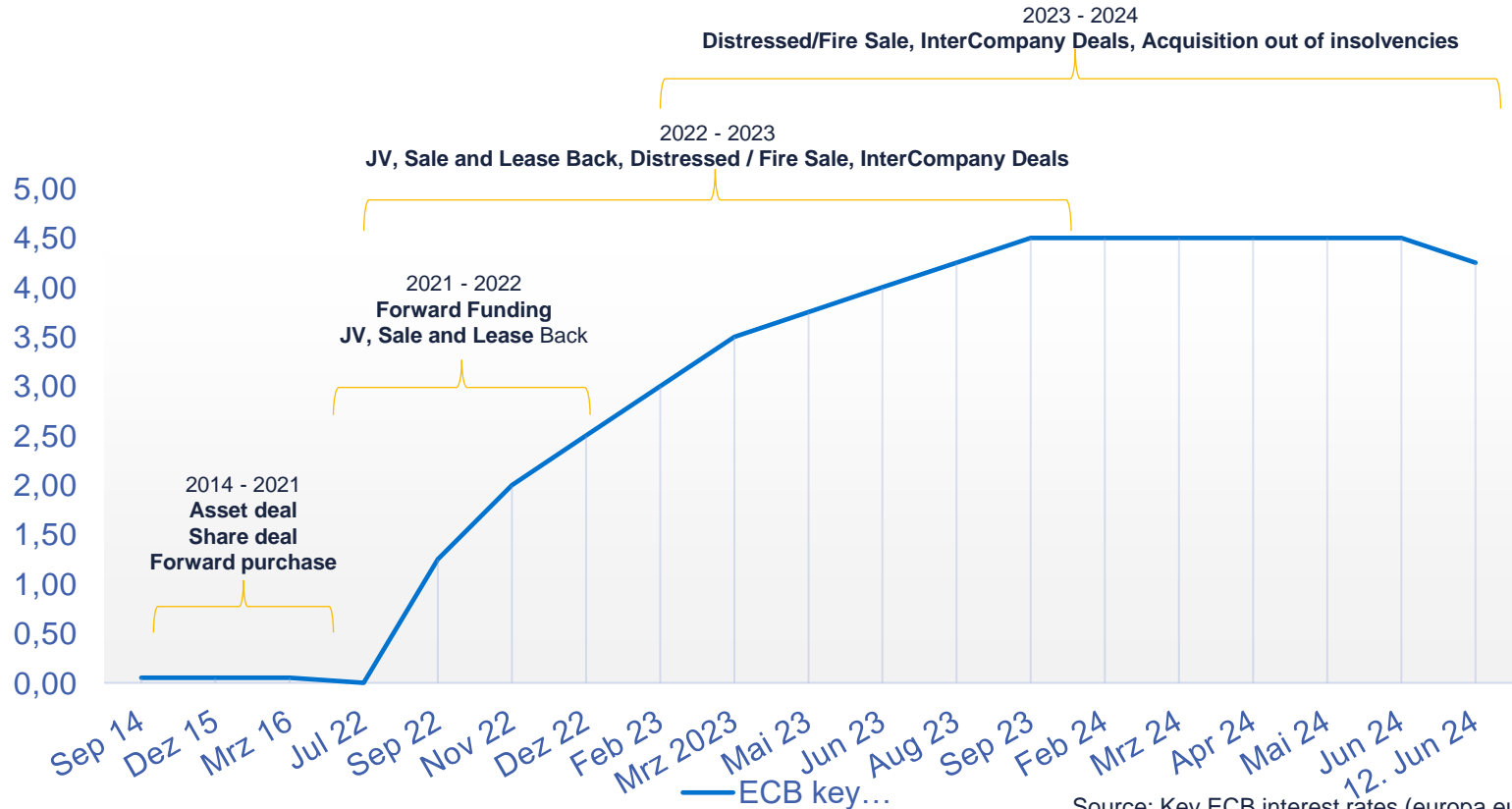
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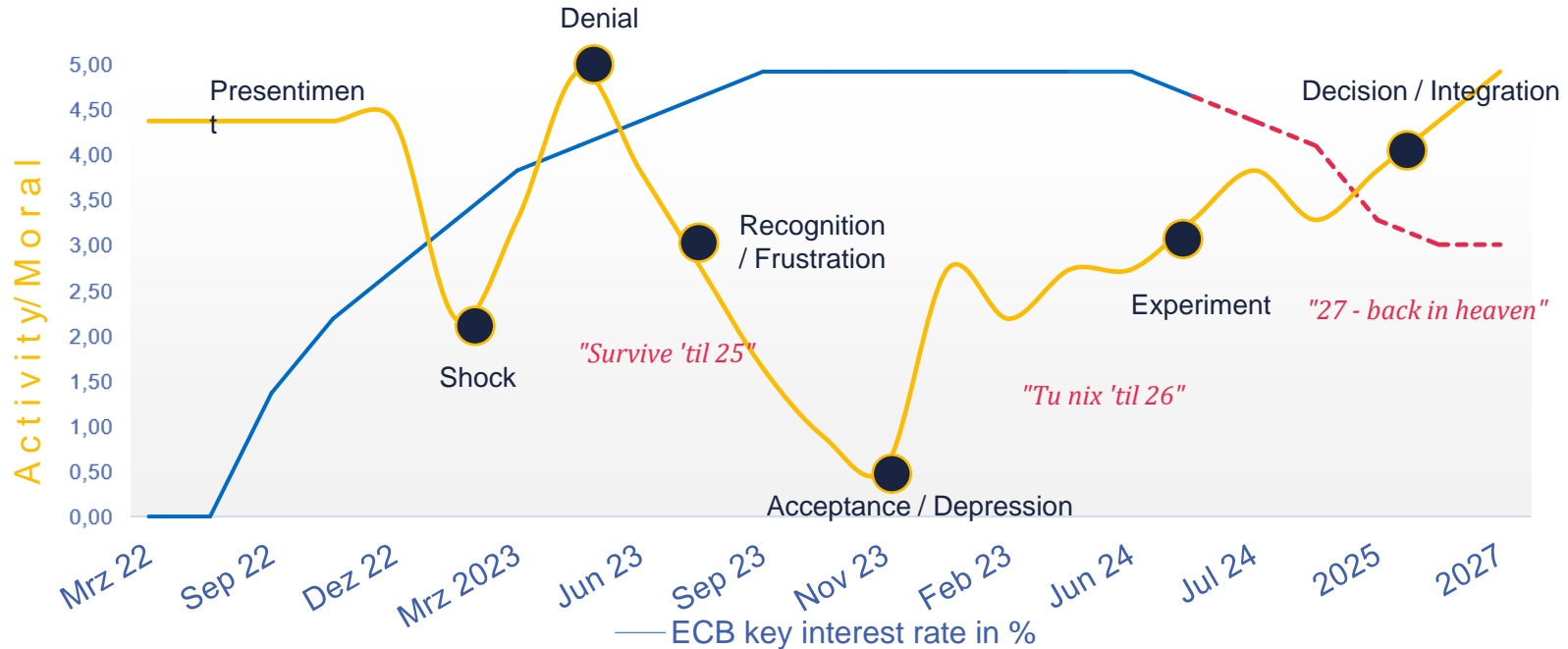


# Effects of the ECB key interest rate on transaction structures




Source: [Key ECB interest rates \(europa.eu\)](https://www.europa.eu)

# Effects of the ECB key interest rate on willingness to invest



Source: Key ECB interest rates (europa.eu)

A low-angle, upward-looking shot of several modern skyscrapers with glass and steel facades. The buildings curve around a central point, creating a circular frame that looks up at a bright blue sky with some light clouds. The perspective is from the ground looking straight up.

Survive 'til '25  
Do more in '24 !

# Breakout Session II.

## Directors' Duties in the Twilight Zone



**Panel leader:**  
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WKB, Poland / INSOL  
Europe YMG Co-Chair



**Cristian Fischetti**  
Lexia Avvocati, Italy



**Robert Paterson**  
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# Breakout Session III.

## Digital assets in insolvency: Practical aspects



**Carmel King**

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INSOL Europe Co-opted  
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# Digital assets in insolvency: practical aspects

Goal of this breakout session:

- Help you on your digital asset journey
- Demystify various aspects of the asset class
- Discuss how legal and regulatory frameworks are evolving
- Highlight practical insolvency consideration

Digital assets in insolvency are not coming at some point  
**they are here today!**

# Digital assets in insolvency: practical aspects

## Pre-Appointment:

- Jurisdiction
- Petitioning for insolvency
- Investigation
- Procedures / policies
- Infrastructure – pre-appointment planning



# Digital assets in insolvency: practical aspects

## Post-Appointment:

- Investigating and securing the digital asset
- Assessment and Valuation – volatility
- Creditor / Stakeholder engagement (shareholders, law enforcement, regulators)
- Proving /Adjudication / Distribution (fiat or in specie)
- Technology - Inhouse/External solutions
- Risk Management
- Insurance
- Cost/Time/Effort

# Digital assets in insolvency: practical aspects

## Questions?

# Breakout Session IV. Innovation Amidst Adversity: European Perspectives on Distressed Startups



**Panel leader**  
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Anchor, Germany



**Georges-Louis Harang**  
Addleshaw Goddard (Europe),  
France / INSOL Europe Co-opted  
Council member, Country  
Coordinator & EECC Co-Chair



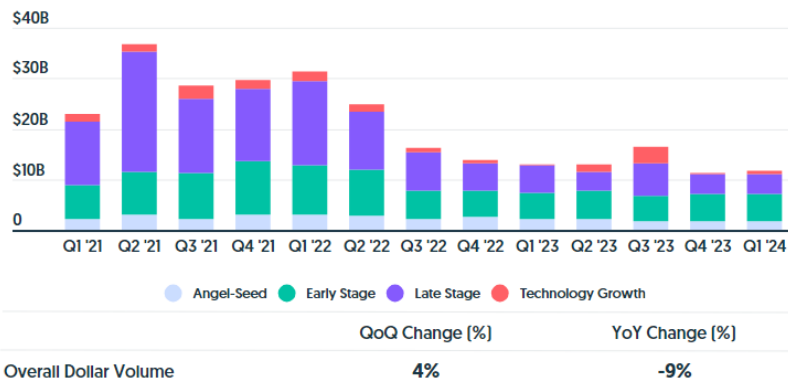
**Sarah Ilic**  
Mishcon, UK



**Antonia Mottironi**  
Ardenter Law, Switzerland  
/ INSOL Europe Country  
Coordinator

# Introduction

## Europe Venture Dollar Volume Through Q1 2024



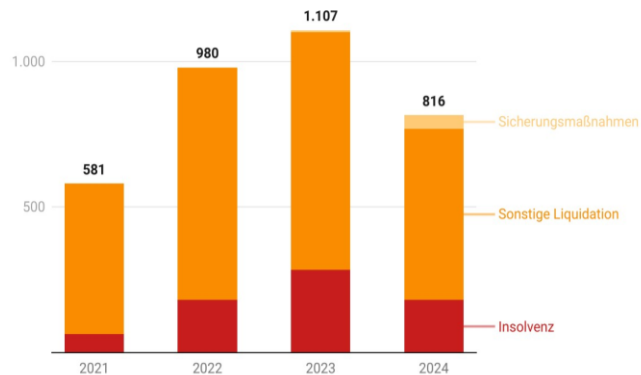
Source: Crunchbase news

# Introduction

## Spotlight: Germany

### Annual startup insolvencies and liquidations

German startups up to 10 years old



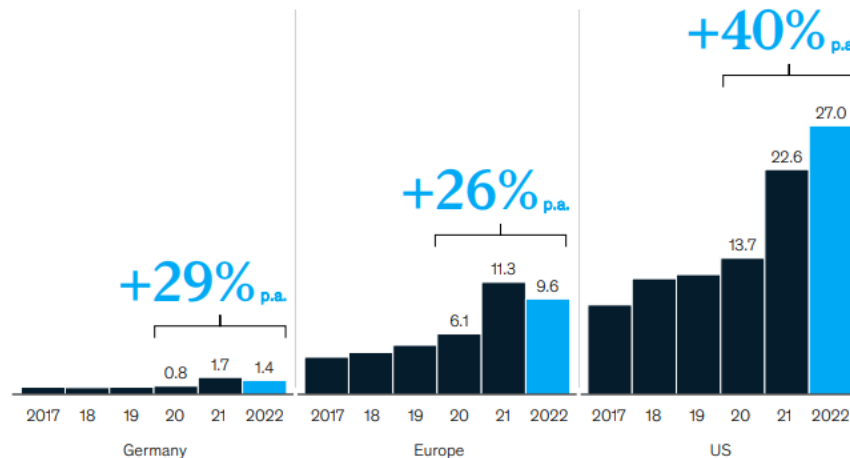
*"Sicherungsmaßnahmen" bedeuten die vorbereitende Sicherung des Vermögens vor der eigentlichen Insolvenzeröffnung. Alle Angaben ohne Gewähr.*

Quelle: startupdetector • Erstellt mit Datawrapper

# Introduction

## Early-stage funding remains comparably stable

Funding investment, \$ billion



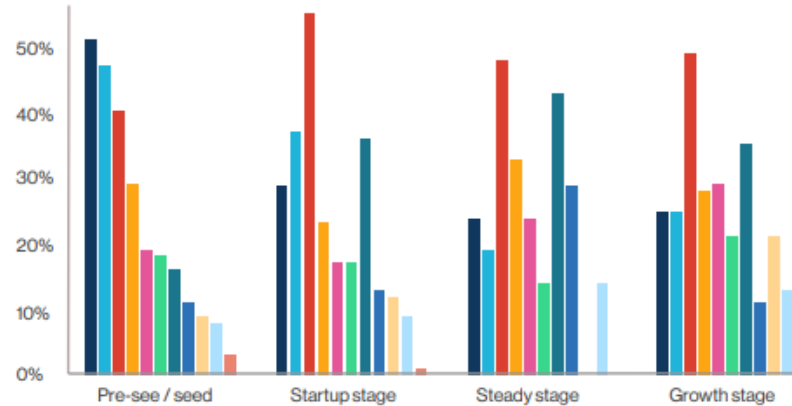
Source: PitchBook

Note: Figures may not sum to 100%, because of rounding.  
<sup>1</sup>Software as a service. <sup>2</sup>Internet of Things. <sup>3</sup>Augmented reality/virtual reality.  
 Source: Crunchbase; Dealroom; PitchBook; McKinsey analysis

# Introduction

Figure 18: Business challenges per stage of development of the startup\*

\*Founders could choose more than one option, so the total per stage adds up to more than 100%



Source: European Startup monitor 2019/2020