2022 European Sustainability-Linked Loans Wrap: Sustainability-Linked Loans Continue to Gain Prominence in 2022 but Margin Adjustments Remain Modest

Key Takeaways

- Despite the slowdown of the European primary market in 2022, European leveraged loans with environmental, social and governance features continued to gain prevalence following the increased demand seen in 2021.
- 2022 European sustainability-linked loans continued to apply annually determined margin increases or decreases based on the borrower's performance against pre-set criteria. The cumulative ESG margin adjustment leveled off within the range of - / + 7.5 bps and - / + 10 bps in 2022.
- Adjustments to the margin based on key performance indicators and annual sustainability performance targets that the borrower has developed and aims to achieve during the life of the loan continued to be predominant in 2022. Only a small minority of loans opted for an external ESG score/rating or adopted hybrid approach, similar to 2021.
- The inclusion of a requirement for external oversight in measuring the borrower's performance against the pre-set criteria remained at a consistent level in 2022. However, hurdles remain in obtaining external verification and ESG data standardization. Proposed regulations and industry best practice, including standard provisions for sustainability-linked loans, may go some way to address these issues.
- 2022 European sustainability-linked loans increasingly include express provisions to amend key performance indicators and sustainability performance targets, or "rendez-vous clauses", albeit in different forms. Although further improvements should be made in order to involve external oversight during the amendment process, the overwhelming majority of sustainability-linked loans require the approval of the majority of lenders when adopting these changes.

Introduction

European leveraged loans with environmental, social and governance ("ESG") features became increasingly prevalent in 2022 since our first review in 2021. In 2022, 50% of European leveraged loans included sustainability-linked features. This continues the upward trajectory highlighted in 2021, when 44% of European leveraged loans included these features. Despite the slowdown of the European primary market due to the Russian invasion of Ukraine and rising interest rates, ESG remains at the forefront of developments in the European leveraged loan market.

Sustainability-linked provisions have now reached a certain level of standardization, shaping the direction in which European ESG financing is aiming to develop. In particular, the pricing mechanism and ESG margin ratchet adjustments now appear increasingly uniform.

Positively, European sustainability-linked loan ("SLL") documents are, in some respects, following the course envisaged by investors and trade bodies previously. This is evidenced by the prevalence of the margin step up for failure to deliver the relevant ESG reporting documentation (which 82% of respondents to the European Leveraged Finance Association's survey thought should apply) and increasing use of the express amendment provisions for key performance indicators ("KPI") and/or sustainability performance targets ("SPT") highlighted by the Loan Market Association ("LMA").

Having said that, there could be further improvements. Following promulgation and implementation of mandatory regulations, including the Corporate Sustainability Reporting Directive ("CSRD"), the publication of the second edition of the Guide for Company Advisors to ESG Disclosure in Leveraged Finance Transactions by the LMA and the European Leveraged Finance Association and the LMA's Guidance for Green, Social, and Sustainability-Linked Loans External Reviews, it is hoped that increased ESG disclosure in offering materials and ongoing financial reports, consultant oversight and external verification will feature more in future European SLLs. This will provide greater rigor and transparency and help to combat greenwashing by ensuring continued clear and ambitious setting of targets and ensure independent verification of ESG metrics and methodologies. The cost of appointing external parties may give borrowers second thoughts, but the credibility and standardization that external parties can bring may provide longer term benefits.

Looking forward, it would be beneficial for investors if more borrowers from outside the manufacturing and industrial sectors issue sustainability-linked loans. That may perhaps come with greater clarity as to the scope and definition of social and governance criteria, those being areas that may be of greater relevance to non-manufacturing borrowers.

In this article, we look at how ESG provisions have continued to evolve in European leveraged loan documents. This article is based on senior facilities agreements ("SFA") featuring sustainability-linked provisions in the European leveraged finance market, governed primarily by the laws of England and Wales, as analyzed by Reorg EMEA Covenants, from Jan. 1 to Dec. 31 2022 ("2022 SLLs"). From time to time in this article we compare 2022 SLLs with 2021 SLLs.

A note of caution: Given the lighter volume of deals in 2022, the statistics for 2022 SLLs are more sensitive to distortion. In most instances, the statistics suggest some identifiable trend, but in a few instances showed movements that could be explained as much by the market as by data distortion.

Market, Regulation and Best Practices Overview

In light of its increasing reach in financial markets, ESG financing has attracted the attention of regulatory bodies battling greenwashing. For now, their focus appears to be on tightening ESG requirements and parameters for ESG rating agencies and providing greater transparency and consistency in the market for sustainable investment products. The lack of clarity in how ESG data should be collected and reported and the subjectivity applied by ESG rating agencies when assessing ESG metrics constitutes an obstacle to the more widespread adoption of ESG provisions in syndicated loans. ESG investigations, greenwashing concerns and current market conditions could force market participants to re-think their approach to ESG. As long as ESG issues continue to make headlines globally, however, and to be a key consideration for investors, it seems more likely than not that ESG financings will continue to feature prominently in the market the foreseeable future.

In 2022, the European institutions worked extensively on implementing sustainable finance on different fronts. The CSRD will ensure better access to information for market participants assessing investment risks arising from climate change and other sustainability issues. The directive will apply from the 2024 financial year, for annual reports published in 2025 onwards. Listed small and medium enterprises will also now be required to report on sustainability, but they will be exempted from the application of the directive until 2028.

To help scale up sustainable investments and implement the European green deal, last July an additional delegated regulation supplementing the EU taxonomy regulation (EU) 2020/852) ("EU Taxonomy") was published. The regulation expands the current list of environmentally sustainable activities for the purposes of the EU Taxonomy included in a previous delegated regulation effective from Jan. 1, 2022. The additional delegated regulation applied from Jan. 1, 2023.

Following its prior publication of the Green Loan Principles, Sustainability Linked-Loan Principles and Social Loan Principles ("Principles"), earlier last year the LMA published an additional best practice guidance to market participants (Guidance for Green, Social, and Sustainability-Linked Loans External Reviews) and a series of articles focussed on hot topics which emerged during its round table discussions with market participants (KPI Selection - A Matter of Materiality; Fear of Failure - Frustrating Ambition and It's a Matter of Time). Updated Principles, aiming to continue tightening industry standards, are also expected to be published in February this year, together with model credit provisions for SSLs.

More recently, the U.K. Financial Conduct Authority ("FCA") weighed in on the issue of greenwashing by publishing a consultation paper on the introduction of sustainability disclosure requirements and investment labels to help investors in their decision making process. The consultation will be open until Jan. 25, 2023, and the FCA is aiming to publish the final rules and guidance by June 2023.

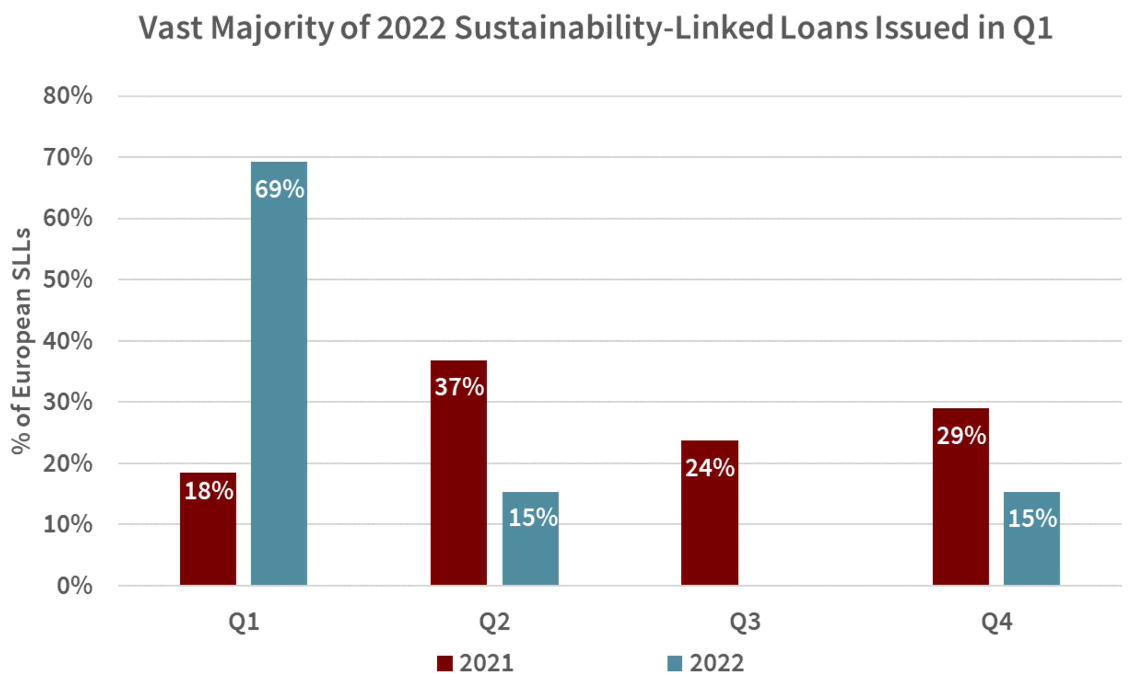
More developed and improved guidance such as the ones published by the LMA and FCA and the advent of new regulations including the CSRD and the EU Taxonomy, could provide a boost to ESG financing by giving it more credibility and clarity. On the investor side, appropriate guidance and regulations can help with investment decision making, allowing for clearer labeling of their investments, and minimize mis-selling risks. For borrowers, clarity will help with their continued compliance with applicable regulations and to broaden their appeal to potential investors.

An Overview of Sustainability-Linked Loans

The incorporation of ESG features into loans is a means to incentivize borrowers to improve their performance in selected ESG areas against pre-set criteria ("SL Criteria"). Specifically, the incentive comes in the form of pricing - a margin adjustment mechanic (often referred to as an *ESG margin ratchet*) is built around the SL Criteria and the borrower's performance will result in either a decrease, or an increase, to the margin based on how it performs against these criteria.

Half (50%) of European leveraged loans reviewed by EMEA Covenants in 2022 included sustainability-linked features, a steady increase since 2021 (44%). The majority of 2022 SLLs came to market in Q1 2022, slowing down in Q2 2022, disappearing in Q3 2022, and reappearing in Q4 2022. In our view, this trend was not a reflection of a decline in market demand for ESG financings, rather it is a consequence of the challenging market conditions over this period and the reduced flow of new money deals.

Cupa and TSG are just a couple of examples of SLL financings completed in 2022, as **publicly reported.**



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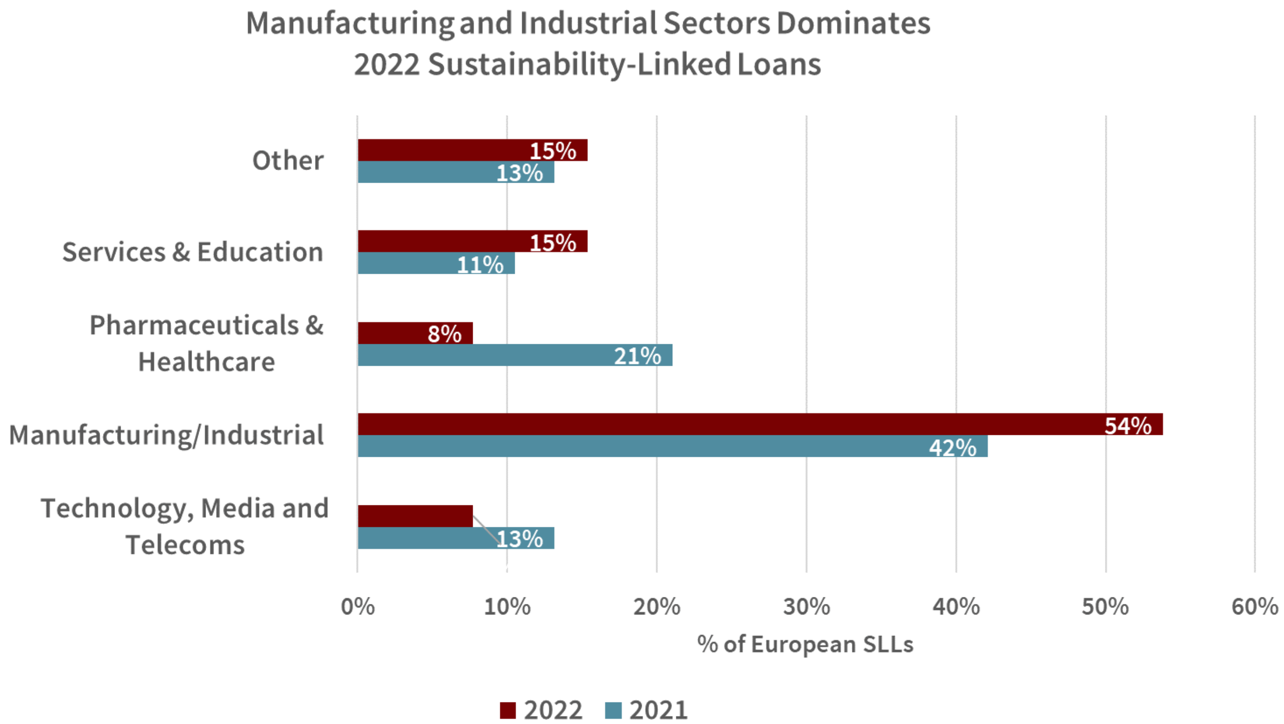
Borrowers in the manufacturing and industrial sectors accounted for the majority ([54%]) of 2022 SLLs. The high proportion represented by these sectors may be due to their higher environmental impact compared to companies operating in other sectors. Environmental KPIs are also more easily tracked (as discussed further below), and it may thus be easier for borrowers to scope and define SL Criteria for ESG margin ratchet setting purposes.



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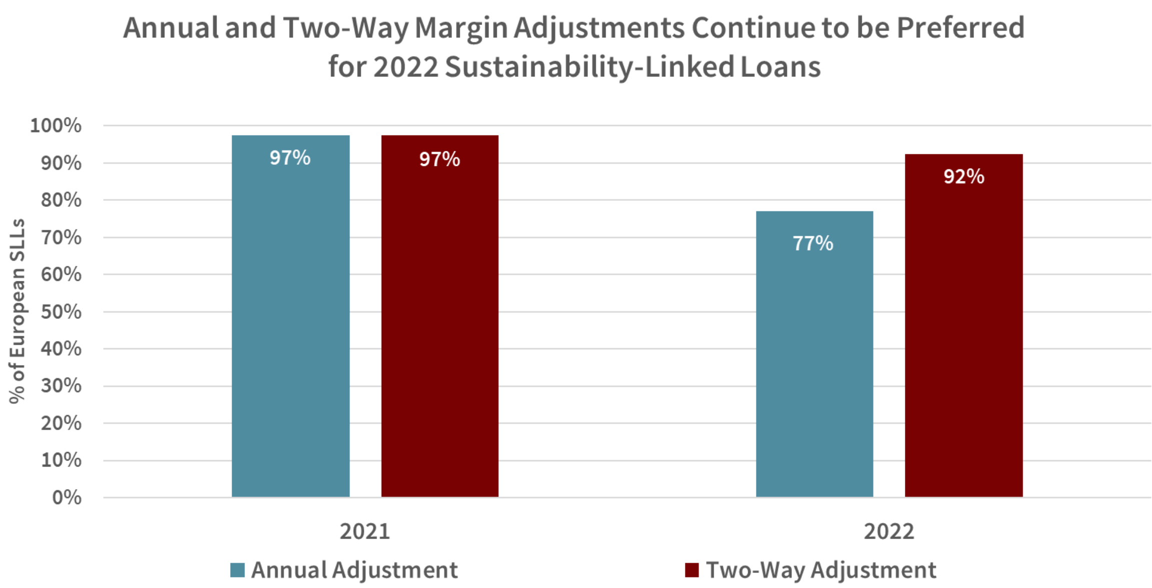
Impact on Economics

ESG margin ratchets operate independently from leverage-based margin ratchets and are linked to the borrower's performance against the SL Criteria exclusively.

Annual Margin Reset and Two-Way ESG Margin Ratchet Adjustments

Typically, an annual margin reduction applies if the borrower meets the prescribed SL Criteria. If the borrower's performance falls below the agreed levels, an annual margin increase will apply. As the table below shows, **annual margin reset and two-way ESG margin ratchets continue to be preferred for 2022 European SLLs.** Only one 2022 SLL reviewed applied only a margin reduction for meeting the SL Criteria - we expect that the investor community will push back on such limited application of the ratchet to maximize the impact of ESG provisions on borrower conduct vis-a-vis ESG matters.



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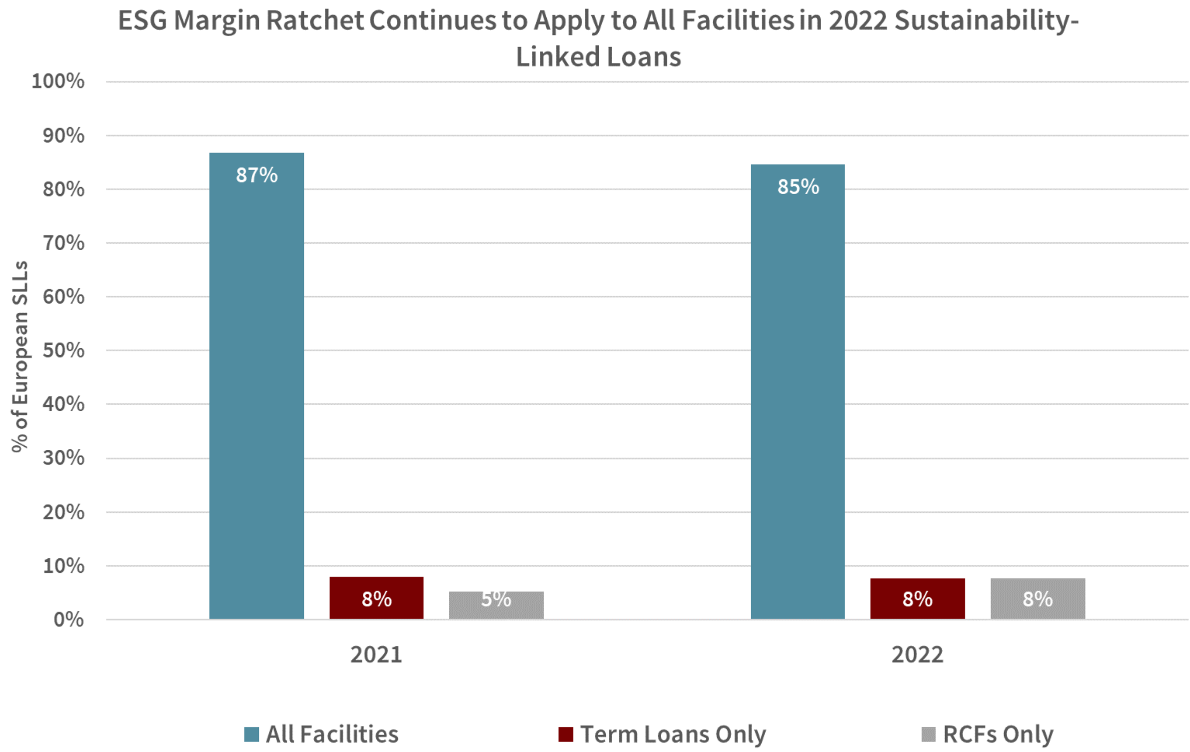
Applicable Facilities

Similar to 2021 SLLs, the **overwhelming majority of European SLLs in 2022 apply the margin ratchet adjustment mechanism to all facilities within the same SLL.** That means that all lenders within the same facility will be treated equally as to application of the adjustment mechanic, independent of whether they are a revolving credit facility ("RCF") lender or term loan lender.

Application of an ESG margin ratchet to either the RCF or term loan only continued to be limited in 2022 SLLs, as it was in 2021.

As the ESG credentials of a borrower (and ESG risks to its business and operations) should be of equal interest to investors across such borrower's debt capital stack, equal treatment of all lenders appears sensible by ensuring all lenders share in the same objectives and benefits.

Where the ESG margin ratchet applied only to the RCF and not the term loans, the effectiveness of the ESG margin ratchet as an incentive for the borrower to make ESG improvements is significantly weakened. That is because the RCF is unlikely to be fully drawn at all times and, for the undrawn portions, any reduction or increase in the margin would only minimally impact the borrower through the RCF commitment fee (which is typically measured as a percentage of applicable margin). Therefore, we consider that to maximize the effectiveness of the ESG margin ratchet it should apply equally across all facilities, and any borrower that takes its ESG targets seriously should want to achieve ESG margin reductions on the often more significantly sized term loans.



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ESG Margin Ratchet Adjustments

The applicable cumulative ESG margin ratchet step-downs / step-ups among 2022 SLLs leveled off within the range of -/+ 7.5 basis points to -/+ 10 basis points. The distribution of margin adjustments, compared with 2021, suggests that the market is moving towards a standardized **ESG margin ratchet adjustment**.

Cumulative Margin Adjustments	2021	2022
2 bps	3%	0%
5 bps	11%	0%
7.5 bps	47%	15%
10 bps	32%	39%
12.5 bps	3%	0%
15 bps	8%	8%

Failure to Provide the SL Documentation

In addition to the margin adjustment mechanism based on performance against the SL Criteria, **SLLs typically apply an automatic increase to the margin if the borrower fails to provide the required documentation evidencing its performance against the SL Criteria** ("SL Documentation")**.** The SL Documentation, to be delivered annually, typically includes:

- **For SLLs based on ESG score/rating**: copy of the rating/score from the ESG rating agency;
- **For SLLs based on SPTs**: company certificate and/or sustainability annual report setting out the borrower's performance against the KPIs.

While presence of this provision slightly slipped down in 2022 SLLs (62%) compared with 2021 SLLs (74%), it was still included in the majority of 2022 SLLs.

Failure to deliver the SL Documentation continues not to trigger a default or event of default under the relevant SLL. While this will not surprise lenders as defaults are linked to credit events, it will be interesting to see whether the sustainability-linked provisions in 2023 would develop some teeth to bite underperforming borrowers, given the current modest pricing adjustments.

Positively, an increasing number of 2022 SLLs apply a margin increase if the borrower-appointed qualified third-party ("External Verifier") qualifies its ESG reporting documentation. This trend could be explained by lenders' increased focus on greenwashing concerns, as such provisions should encourage borrowers to ensure full disclosure and cooperation with their chosen report providers.

Triggers	2021	2022
Deals with a margin increase if SL Documentation is not provided	74%	62%
Deals with a margin in crease if External Verifier qualifies SL Documentation delivered by it	5%	23%

Sustainability KPIs and ESG Ratings

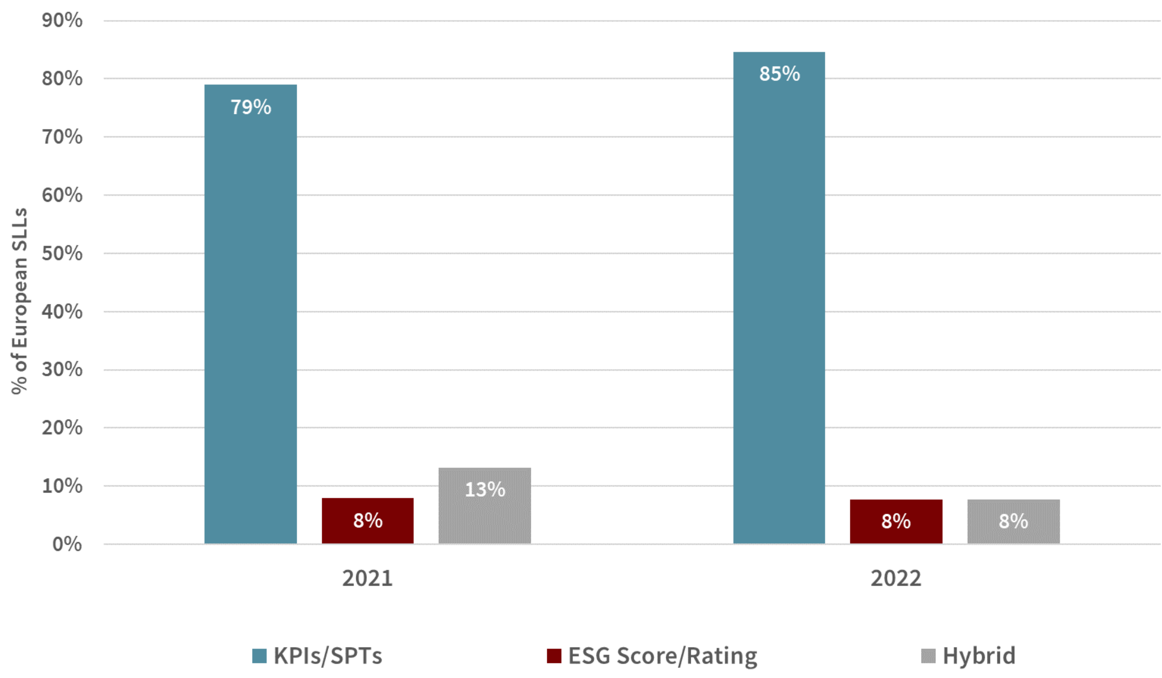
Performance

Similar to a leverage-based margin ratchet, a margin increase or decrease under the ESG margin ratchet will apply depending on the borrower's performance against the SL Criteria. Borrowers' performance in SLLs can be measured in different ways:

- **SPTs based:** one or more key performance indicators ("KPI") and sustainability performance targets ("SPT") that the borrower has developed and aims to achieve during the life of the loan, with annual performance targets; or
- **ESG rating/score based**: an overall ESG rating/score provided by a third-party ratings agency, with the baseline set at the ratings/score assigned on or around closing and against which the borrower's future performance is measured; or
- **Hybrid approach**: a hybrid approach taking one of the following forms: (i) the margin ratchet is KPI-based, but with an external ESG score being required to ascertain one or more (but not all of) the KPIs or (ii) the documentation outlines a framework for use of either KPIs or an overall ESG rating, with the borrower given the choice which to pursue.

Measuring against predetermined **KPIs remained the most popular approach to measure the ESG performance of a company in 2022 SLLs**, with a small minority opting for an external ESG score/rating or adopting an hybrid approach.

2022 Sustainability-Linked Loans Continue Measure Performance Against KPIs



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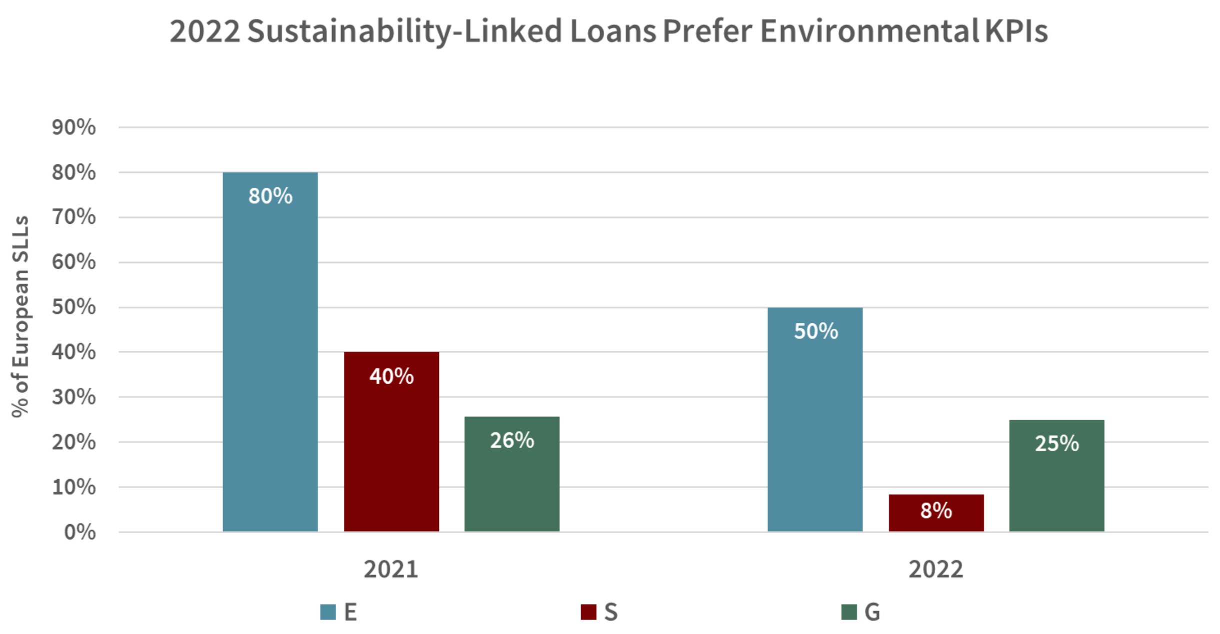
E, S or G

Although there is no specific definition of what an environmental, social or governance KPI is, the International Capital Market Association ("ICMA") has recently categorized approximately 300 KPIs for sustainability-linked bonds and grouped them within the three sustainability themes (E, S or G). In this article we have used the ICMA categorization given the LMA has in the past looked to "[align] with [ICMA] as much as possible … to promote consistency across debt (bond and loan) markets", and expect it may take a similar if not the same approach in any future guidance.

Environmental KPIs continued to be most popular among 2022 SLLs borrowers, likely because they are seen as the easiest to track and more impactful in order to tackle climate change issues. Governance KPIs continue to feature in a significant minority of deals, whilst social KPIs featured in only one. Mirroring the trend in Europe, in the U.S. we saw only two deals with ESG margin adjustments including (social) diversity KPIs - they were based on increasing the number of female employees within the company and women in leadership.

As highlighted by the LMA, one likely reason for the exclusion of social or governance related KPIs/SPTs is the difficulty in measuring the actual impact of such KPIs in terms of sustainability performance. As the LMA exhorts, such reasons alone should not result in exclusion of the S or G elements as KPIs for European SLLs. Additional dialogue and strong levels of ambition could help push such KPIs to levels of acceptability.



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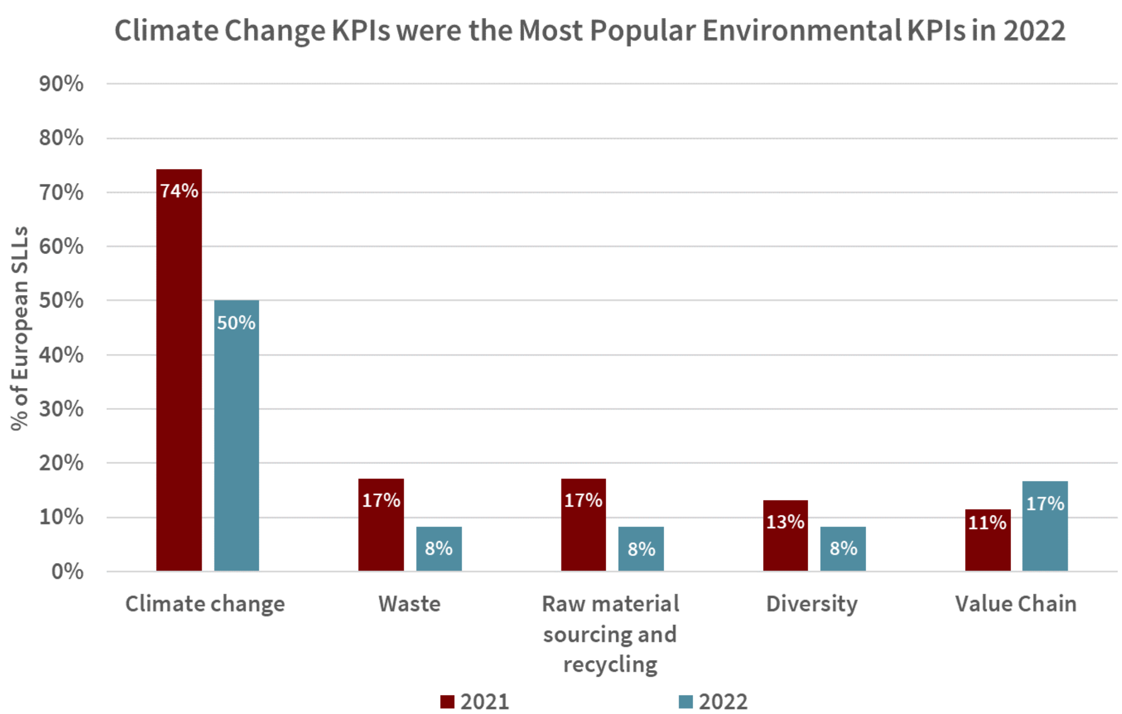
As expected, climate change remained the most prominent ESG concern in 2022 SLLs, with KPIs based on the reduction of greenhouse gas emissions and promotion of electric and hydrogen vehicles being most common.



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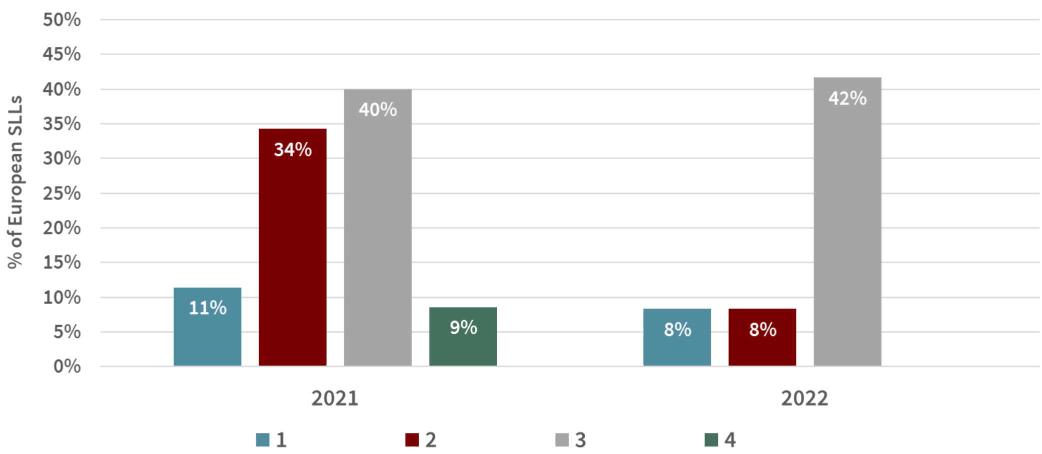
Number of KPIs

Overall, borrowers set their margin adjustments based on achieving between one to four KPIs, with the majority including a pricing reduction for every KPI achieved. **ESG margin adjustments with three KPIs seem the preferred option among 2022 SLL borrowers**, consistent with the trend seen in 2021.

2022 Sustainability-Linked Loans Continue Setting 3 KPIs



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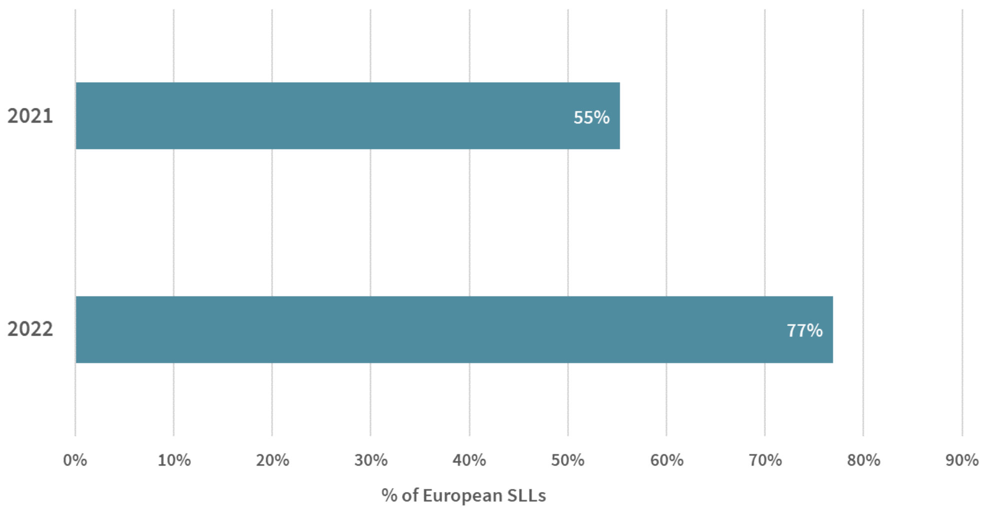
Amending Sustainability Targets Following a Significant Event (“Rendez-vous Clause”)

The amendment provisions in European SFAs generally state that any amendment can be made with majority lender consent, unless expressly stated. One common exception is for amendments resulting in a reduction to the margin, which requires the consent of all affected lenders. Amendment of KPIs / SPTs (including changes to KPI calculation methodology) could indirectly lead to a reduction in margin (for example if the SPTs is made easier to meet thereby triggering a margin decrease or avoiding a margin increase), and therefore, under the standard amendment provisions, may require the consent of each affected lender.

However, more than two-thirds of 2022 SLLs include what the LMA terms the “rendez-vous clause”, i.e. express provisions that allow for updates to KPIs and SPTs (see the LMA Sustainability Linked Loan Principles), with the consent threshold typically set at majority lender level.

In 2022 an Increased Proportion of Sustainability-Linked Loans Included Provisions Expressly Allowing Amendment of Sustainability Targets Following Significant Events



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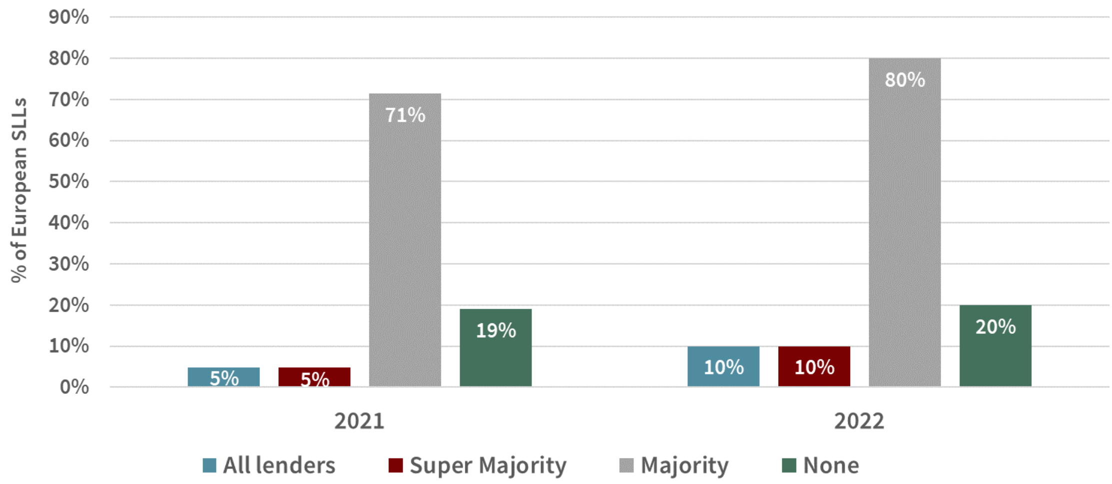
2022 Sustainability-Linked Loans Continue Requiring Majority Lender Consent to Amend Sustainability-Linked Provisions



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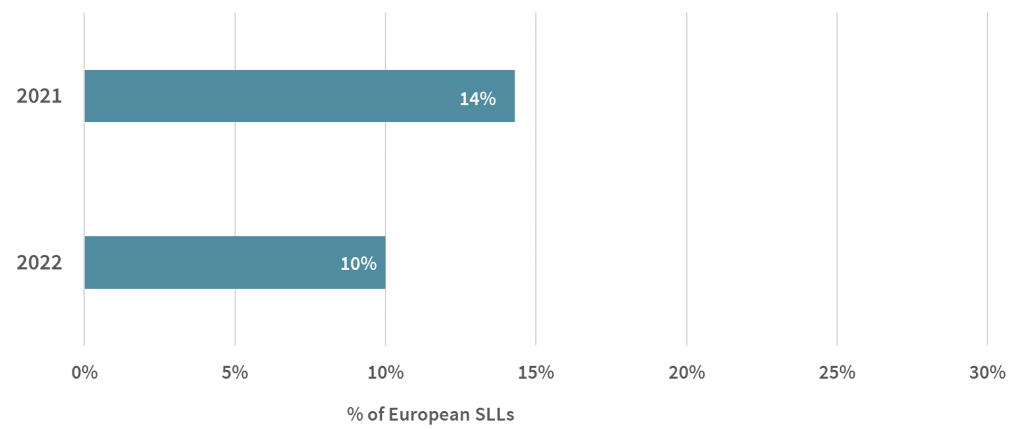
Once an amendment is proposed, a period during which the borrower and lenders are to negotiate in good faith starts (typically 45 days). **If the borrower and majority lenders fail to reach agreement on proposed amendments to the KPI/SPT, typically the ESG margin ratchet is disapplied entirely.**

A small minority of 2022 SLLs also delegate assessment of the proposed changes to third parties. In one instance, certain amendments can be agreed by the ESG coordinator and bind the lenders even if the majority lenders have rejected the initial proposal. It is hard to imagine in what circumstances the views of the majority lenders and ESG coordinator may diverge so drastically so as to result in an unwanted amendment for the lenders, or in what circumstances an ESG coordinator would take the risk of incurring potential liabilities to the lenders if it agrees proposals already rejected by the majority lenders.

Outliers aside, the increased prevalence of the “rendez-vous clause” in 2022 is a positive trend which brings SLL practice more in step with LMA guidance for sustainability-linked loans. However, there are still a limited number of SLLs which require an external verifier to review these amendments. The lack of external oversight on these amendments could bring along an increased risk of litigation or greenwashing, especially when such changes are left entirely at the discretion of the borrower and not subject to majority lender consent.

2022 Sustainability-Linked Loans Requiring External Verification to Amend Sustainability-Linked Provisions



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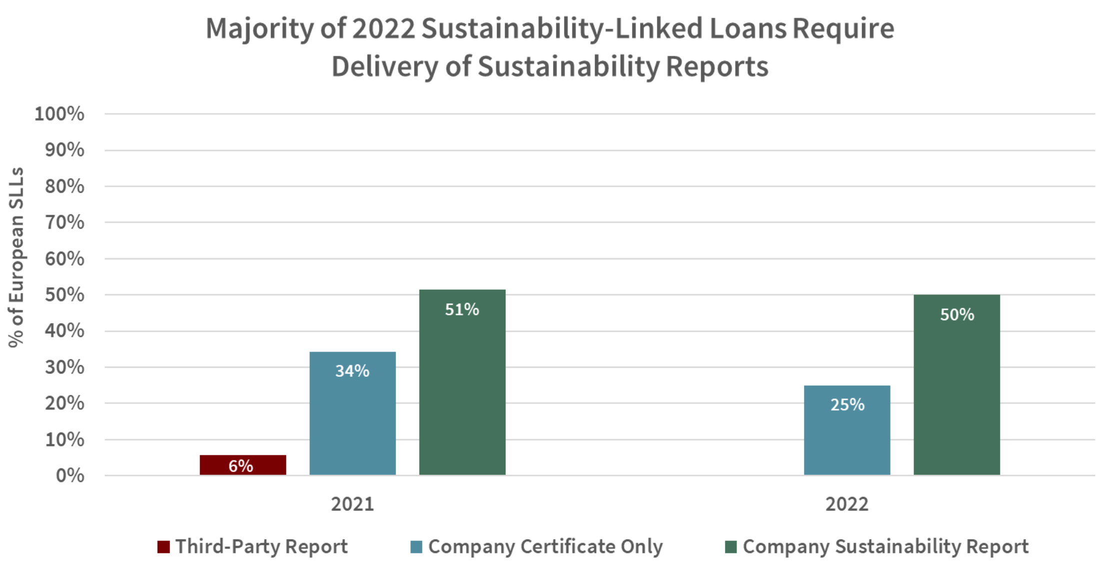
Disclosure, Reporting and External Verification

In order to evidence compliance to the SL Criteria, borrowers are required to provide SL Documentation, **typically on an annual basis**.

For **SLLs based on ESG rating**, deliverables can include a **copy of the rating from the ESG rating agency** or company certificate/notification stating the ESG rating.

For **SLLs based on SPTs** (e.g. company certificate and/or sustainability report), documents required typically include a compliance certificate to be delivered annually, with the certificate or report setting out the relevant information to enable determination of whether the SPTs have been met and what ESG margin adjustment will apply.

Sustainability reports were required to be delivered in half of SLLs based on SPTs reviewed. These reports are intended to provide lenders with a more fulsome set of information (e.g. how calculations have been made; adjustments made to the KPIs/SPTs). Whilst the requirement for fully independent reports have not been seen in any of 2022 SLLs, the requirement for **an External Verifier to provide statements of verification or assurance as to the borrower's determination of SPTs featured in 58% of 2022 SLLs based on SPTs** (either in the company certificate / sustainability report delivered by the company or in a separate accompanying document).



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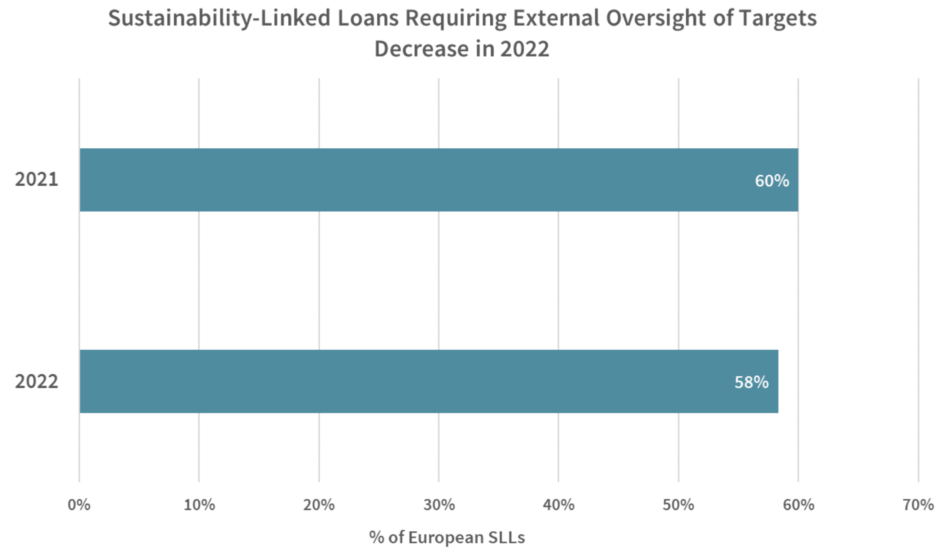

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Overall, the requirements for third party verification of SPT determination and to deliver sustainability reports are positive. Anecdotally, we understand hurdles remain in obtaining external verification and in ESG data standardization. Some examples: (1) an inclusion based social target may not be easy to verify due to data protection laws concerning sharing of employee information with third parties; (2) inconsistency of "green" measures where sometimes what is green for one is not necessarily green for another and (3) ESG information provided by borrowers may not be sufficient or pertinent (e.g. backward-looking) to comply with mandatory reporting disclosures. However, we expect further developments in this area following publication of the Guidance for Green, Social, and Sustainability-Linked Loans External Reviews by the LMA, suggestions by the European Leveraged Finance Association on how to strengthen borrowers' contractual commitments to disclose ESG data to lenders within loan documentation and other guides published by other technical bodies and regulators.

Other Documentary Considerations

Sleeping SLLs

KPIs, SPTs and ESG scores should be set at around the time the loans are originated based on the available information at that time (see the LMA Sustainability Linked Loan Principles, which states that SPTs should be ambitious and set "before or concurrently with the origination of the loan", as "determined and set between the borrower and lender group").

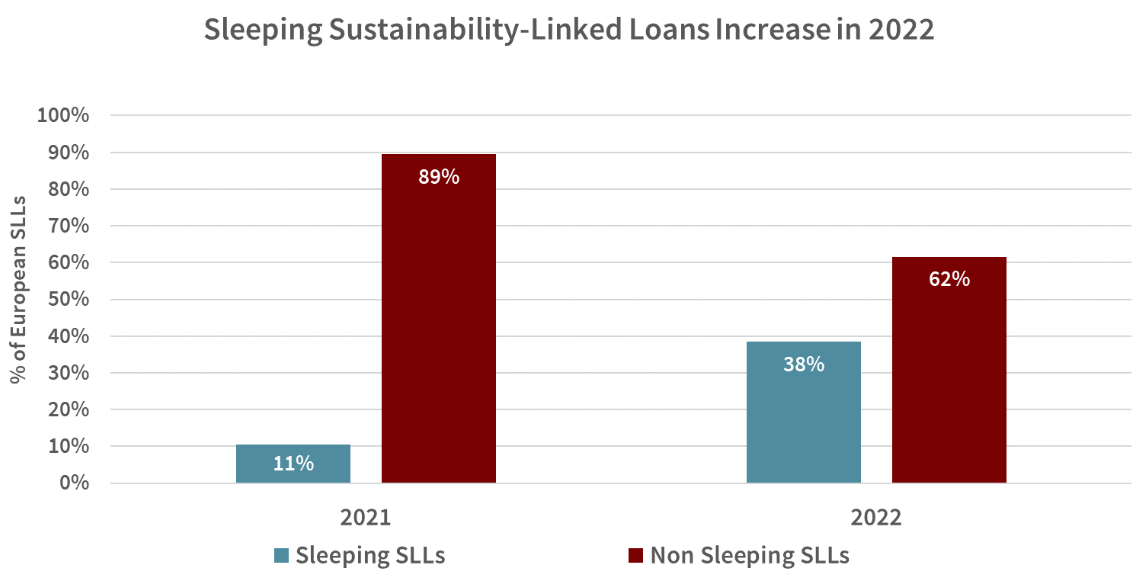
As some parties might not have had sufficient time to agree the KPIs / SPTs at the time of loan origination, some deals postpone setting of all KPIs/SPTs to a later date. The parameters of the ESG margin ratchet agreed at the outset varies from deal to deal, but almost always includes the maximum margin increase / decrease, with a handful also specifying the type of KPI to be used. The KPIs and SPTs are then generally to be agreed by the majority of lenders in a later amendment or side letter, in some cases with no deadline for agreement of such baseline or targets, but sometimes required to be agreed within a 12-month period after closing.

Although this provision allowing the parties to agree ESG features at a later stage seems to clash with the sustainability-linked loan principle mentioned above, we see how it can positively impact the ESG space. In particular this provision can potentially:

- Encourage more borrowers to opt for sustainability-linked financing, even if all the necessary related work has not been completed yet; and
- Provide flexibility within the sustainability-financing instrument to allow parties to conduct further due diligence in establishing the SL Criteria that should apply.

However, care should be taken to ensure that when set in the future, such KPIs / SPTs are meaningful and ambitious (for example, it should not be set at a level that the borrower already knows it will achieve based on data available to it after loan origination) and the loan is not prematurely labeled as SLLs.

As the graph below shows, an **increased number of 2022 SLL borrowers have introduced this provision compared to 2021**. An explanation could be that due to the turbulent market conditions, 2022 borrowers have prioritized securing the financing over the ESG strategy, while 2021 borrowers had less concern over the market conditions.



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Sustainability Investments

Some SLLs in 2021 required borrowers to invest the savings from application of the ESG margin ratchet into sustainability investments. We previously questioned whether the borrower would be required to confirm or provide information as to the sustainability investments made, and also queried if developments would lead to consequences for failure to make such investment.

Perhaps due to the lack of teeth of such provision, **the investment requirement faded away entirely in 2022**. From the perspective of achieving ESG objectives, it would be ideal if borrowers were required to make such investments using savings from the ESG margin ratchet, however, it may be sufficient for now that borrowers meet their initial (ambitious and meaningful) ESG targets.

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