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Climate-related litigation risks – ECB publishes speech

4 September 2023 – The European Central Bank (ECB) has published a speech given by Frank Elderson, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, addressing the risks of climate and environment-related litigation for the banking sector. Mr Elderson stresses that the rise in this kind of litigation poses “*a major source of risk that needs to be properly anticipated and addressed*” for financial institutions, who are increasingly becoming direct targets.

Mr Elderson urges banks and other financial institutions to not simply assume that individual companies do not have a duty to do their “*fair share*” in combatting climate change. Instead, Mr Elderson suggests banks and supervisors alike must, if only as a precaution, manage the risk of the higher courts finding that this is already a binding duty today.

Mr Elderson recommends that banks become more familiar with growing trends in climate-related litigation, and highlights that the rise in such litigation will likely expand past the issue of reducing carbon emissions to other matters affecting the environment, such as deforestation.

In conclusion, Mr Elderson advises banks to establish Paris-aligned transition plans which are “*realistic, transparent and credible*” in order to best mitigate the increased risk of climate-related litigation, and to do so proactively.

“Come hell or high water”: addressing the risks of climate and environment-related litigation for the banking sector

Second economy-wide climate stress test - ECB publishes results

6 September 2023 – The ECB has published an Occasional Paper setting out the results of its second economy-wide climate stress test (CST). The 2023 CST assesses the resilience of firms, households and banks in three transition scenarios, which differ in terms of timing and ambition:

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- an “*accelerated transition*”, which frontloads green policies and investment, leading to a reduction in emissions by 2030 in line with the goals of the Paris Agreement;
- a “*late-push transition*”, which continues on the current path and does not accelerate until 2026, but is still intense enough to achieve Paris-aligned emission reductions by 2030; and
- a “*delayed transition*”, which also starts only in 2026, but is not sufficiently ambitious to reach the Paris Agreement goals by 2030.

According to the ECB, the CST’s results show that:

- firms and households clearly benefit from a faster transition, with the short-term costs of transition proving to be smaller in comparison to the financial risks in the medium term;
- banks are exposed to the highest credit risk if the transition has to be rushed at a later stage (in the late-push transition, banks can expect their credit risk to rise by more than 100% by 2030); and
- delaying transition altogether, and not acting at all, exacerbates the impact of physical risk on the economy and the financial sector significantly, and will lead to even higher costs and risks in the long term.

In conjunction with the CST, the ECB has also published a blog post written by Luis de Guindos, Vice-President of the ECB. Mr de Guindos stresses how vital it is to act now in order to combat climate change as “*If we act now, it will be better all round – for nature and our economies*”. He further outlines a number of policy measures that will help the transition to net zero, including that transition plans compatible with EU policies implementing the Paris Agreement should become legally binding and publicly disclosed.

[Occasional Paper](#)

[ECB Blog: Need for speed on the Road to Paris](#)

[Press release](#)

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Power to withdraw authorisation – Versobank A S v ECB

7 September 2023 – The European Court of Justice (ECJ) has dismissed an appeal by Versobank A S (Versobank) - a less significant credit institution (LSI) established in Estonia - against a ruling by the General Court of the European Union (the General Court) that the ECB had legitimately revoked Versobank's authorisation in light of breaches of anti-money laundering and anti-terrorism financing (AML/CFT) provisions.

From 2015, Estonia's national competent authority (NCA) – the Financial Supervisory Authority (FSA) – observed that Versobank was violating AML/CFT provisions. The FSA found that Versobank's risk management procedures and its AML/CFT governance arrangements were inadequate. Despite receiving several notices from the FSA to restore compliance with the relevant legal requirements in the time period from 2015 to 2017, Versobank failed to do so. The FSA on 10 April 2017 therefore concluded that Versobank was likely to fail. As the FSA believed that resolution was not in the public interest, it asked the ECB to withdraw Versobank's authorisation in accordance with article 80 of the Single Supervisory Mechanism Framework Regulation (468/2014/EU). On 6 March 2018, the ECB decided to withdraw Versobank's authorisation.

Versobank contested the ECB's decision and put forward several arguments in the first instance proceedings before the General Court, including the ECB's lack of competence to: (i) withdraw the authorisation of Versobank as an LSI, and (ii) rule on national legislation, including laws implementing European AML/CFT directives. Versobank's position was rejected by the General Court. In its recent judgement, the ECJ upheld the findings of the General Court in appeal, ruling that:

- the ECB was the competent authority to withdraw Versobank's authorisation. The ECB is responsible for prudential supervision not only of significant credit institutions (SIs), but also of LSIs when it comes to certain tasks. According to articles 6(4) and 4(1)(a) of the Single Supervisory Mechanism Regulation (1024/2013/EU) (SSM Regulation), the ECB has the exclusive power to withdraw authorisation of SIs and LSIs after consulting the respective NCA or following a proposal of the NCA; and
- the violation of national AML/CFT measures is a legitimate ground for the ECB to revoke authorisation. According to the Capital Requirements Directive (2013/36/EU), in some

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cases national law provides a valid ground for withdrawal of authorisation, such as where an institution breaches national AML/CFT provisions that derive from the AML Directive (2005/60/EC).

[Case C-803/21 P Judgement of the Court \(First Chamber\) ECLI:EU:C:2023:630](#)

Supervision of bank culture – ECB publishes speech

20 September 2023 – The ECB has published a speech given by Frank Elderson, Member of the Executive Board, and Vice-Chair of the Supervisory Board, of the ECB, on how culture drives risk in banks and what supervisors can do about it. Mr Elderson highlights the importance of supervising culture in banks, noting “*it is often culture that whispers the first signs of trouble*”. Key points made in the speech include the following:

- Culture represents the “DNA” of how a bank and its employees operate and react to risk. As such, it is key for supervisors to observe a bank’s culture closely in order to proactively identify potential risks.
- The ECB must identify similar warning signs to ensure that banks are safe and sound, and the financial system remains stable. It examines both the “hardware” of a bank’s governance and “software” of those behaving within it in order to truly understand how it is set up to deal with risk.
- In assessing risk culture within banks, which Mr Elderson defines as the set of norms, attitudes and behaviours related to the awareness, management and control of risks in a bank. The ECB considers the tone from the top, due to its crucial role in establishing a culture of prudent risk-taking within an institution. In doing so, it evaluates whether board members include the bank’s declared set of values and norms in their decision-making, including through board member interviews.
- In the ECB’s recent review of management body effectiveness, its supervisory teams considered whether the necessary structural elements of management bodies were in place and the quality of debate and challenge within those structures. A key element it focused on was the culture of constructive challenge. An important way the ECB sees whether this is taking place is by observing board or committee meetings.

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Mr Elderson also addresses those who believe the assessing the behaviour and culture of banks is outside the remit of banking supervisors. He states that this element is core to the role of supervisors and one on which they have been asked to supervise, both by international standard-setters and EU legislators. In doing so, supervisors do not directly steer a bank's management, but rather assess the dynamic between a bank's board and its management.

Treading softly yet boldly: how culture drives risk in banks and what supervisors can do about it

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EUROPEAN BANKING AUTHORITY (EBA)

EBA launches 2023 EU-wide transparency exercise

22 September 2023 – The European Banking Authority (EBA) has launched its EU-wide 2023 transparency exercise. It expects about 124 banks to participate. As in the previous years, the data will cover capital positions, profitability, financial assets, risk exposure amounts, sovereign exposures and asset quality.

The EBA expects to publish the results of the exercise in December 2023.

[Press release](#)

Basel III implementation – EBA publishes Basel III Monitoring Report

26 September 2023 – The EBA has published its second mandatory Basel III Monitoring Report (the Report). The Report provides an assessment of the Basel III implementation by EU/EEA credit institutions as of December 2022. The Report's main finding is that to fully implement the Basel III framework by 2028, credit institutions collectively need additional Tier 1 capital of EUR 0.6 billion.

The changes in the Basel III framework primarily influence exposures, which in turn affect risk-weighted assets (RWA) and the minimum required capital (MRC) related to credit risk, operational risk and the leverage ratio). Importantly, the new Basel III framework introduces an aggregate output floor, as is noted by the EBA in the Report. The effects stemming from these risk factors are primarily assessed based on the MRC and, to a lesser extent, through the examination of capital shortfalls and variations in capital and leverage ratios. A separate annex to the report includes an impact assessment for the EU implementation of Basel III under the revised Capital Requirements Regulation ((EU) 575/2013) (CRR3).

[EBA Basel III Monitoring Report](#)

[Press release](#)

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DORA – ESAs publish report on the landscape of ICT third-party providers

27 September 2023 – The European Supervisory Authorities (ESAs) (comprising the EBA, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority) have published a report on the landscape of information and communication technology (ICT) third-party providers (TTPs) in the EU (ESA 2023 22) (the Report).

The Report notes that there are around 15,000 ICT TPPs which are directly serving financial sector entities across the EU. The most frequently used ICT TPPs support many critical or important functions and provide a wide range of services, many of which are classified as non-substitutable. The ESAs intend to use the findings of the report to inform preparations for the application of the Regulation on Digital Operational Resilience for the Financial Sector ((EU) 2022/2554) (Digital Operational Resilience Act or DORA).

[ESAs report on the landscape of ICT third-party providers in the EU \(ESA 2023 22\) Webpage](#)
[Press release](#)

MiCA – EBA publishes response to Call for Advice

29 September 2023 –The EBA has published its response to the European Commission's Call for Advice on two delegated acts under the Regulation on markets in cryptoassets ((EU) 2023/1114) (MiCA). The response contains technical advice in relation to the criteria for determining the significance of asset-referenced tokens (ARTs) and electronic money tokens (EMTs), and the supervisory fees that may be charged by the EBA to issuers of significant ARTs and EMTs.

The EBA recommends a set of core and ancillary indicators for each criterion for determining significant ARTs and EMTs. These core indicators would provide for a provisional assessment of significance, while the ancillary indicators would be employed should the core indicators lead to an inconclusive determination. The EBA notes that these would encompass diverse elements of interconnectedness and international scale, and would take account of data availabilities.

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In relation to the proposed supervisory fees, the EBA provides advice regarding matters for which fees are due, the amount and the way they are to be paid, and the methodology to calculate the maximum amount per entity that can be charged by the EBA. The EBA stresses that flexibility will be needed to estimate the amount of fees each year given the speed at which the market is developing and growing.

The EBA also identifies several gaps in reporting obligations for issuers of ARTs and EMTs under MiCA which, if left unaddressed, would severely restrict the EBA's ability to assess tokens. As such, the EBA plans to work on relevant guidelines in Q1 2024 in order to establish uniform data reporting using common formats and templates.

The provisions relating to ARTs and EMTs under MiCA will apply from 30 June 2024.

[EBA's Technical Advice in response to the European Commission's December 2022 Call for Advice
Press release](#)

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MREL reforms – ECON publishes draft report

12 September 2023 – The European Parliament’s Economic and Monetary Affairs Committee (ECON) has published a draft report (2023/0113(COD)) (the Report) on the European Commission’s (the Commission) legislative proposal for a Directive amending the Bank Recovery and Resolution Directive (2014/59/EU) (BRRD) and the Single Resolution Mechanism (SRM) Regulation (806/2014) regarding certain aspects of the minimum requirement for own funds and eligible liabilities (MREL). The Report suggests various amendments to the Commission’s proposed Directive.

The amended provisions in the BRRD and the SRM Regulation would remove the obligation for resolution authorities to set MREL for liquidation entities in certain circumstances. Resolution authorities would also have a discretionary power to set internal MREL on a consolidated basis to a subsidiary of a resolution entity.

[SRB MREL Dashboard Q1.2023](#)

Resolvability heat map – SRB publishes annual resolvability assessment

19 September 2023 – The Single Resolution Board (SRB) has published the results of its second annual resolvability assessment, covering the year 2022. The assessment analyses the progress that banks in the Banking Union have made to build up their resolvability capabilities. The main findings include:

- continued build-up of MREL capacity: despite markets conditions, two thirds of banks have reached their final MREL target for 2024, including the Combined Buffer Requirement (CBR). As a result, the aggregate MREL shortfall has decreased by one third compared to 2021, and now amounts to 0.3 percent of the total risk exposure amount (TREA).
- enhanced bail-in operational preparedness: most banking groups pay more attention to the development of internal loss transfer and recapitalisation mechanisms. Furthermore, banks with liability contracts governed by the law of a third country have taken steps to ensure contractual recognition of bail-in.

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By the end of 2023, the SRB expects banks to enhance their liquidity estimation in resolution, prepare for asset separation or restructuring, and improve management information systems (MIS) capabilities. The SRB will review any remaining shortcomings and take appropriate action as needed.

[Resolvability assessment 2022](#)

[Press release](#)

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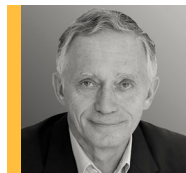
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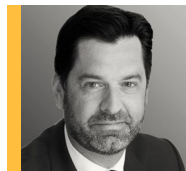
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