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Banks and climate litigation risk: navigating the low-carbon transition

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Policy report
June 2025

THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE
Grantham Research Institute on Climate Change and the Environment

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Acknowledgements

The authors would like to thank David Ramos Muñoz, Marguerite O'Connell, Martina Menegat, Katharina Plavec, Katharina Klausch, Daniel Segoin, Megan Clay, Javier Solana, Joana Setzer and Irene Claeys for their helpful review comments on this report. Georgina Kyriacou edited the report.

The authors declare no conflict of interest in the preparation of this report. The views in this report are those of the authors and do not necessarily represent those of the host institutions or their funders.

This report was first published in June 2025 by CETEx at the London School of Economics and Political Science.

Suggested citation: Smoleńska A, Chan T, Poensgen I and Higham C (2025) *Banks and climate litigation risk: navigating the low-carbon transition.* London: Centre for Economic Transition Expertise, London School of Economics and Political Science

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List of abbreviations

BCBS – Basel Committee on Banking Supervision
CRD6 –Capital Requirements Directive 6 [EU]
CRR3 – Credit Requirement Regulation 3 [EU]
CSRD – Corporate Sustainability Reporting Directive [EU]
EBA – European Banking Authority
ECB – European Central Bank
ESG – Environmental/social/governance
KRI – Key risk indicator
NFRD – Non-Financial Reporting Directive
NGFS – Network for Greening the Financial System
NGO – Non-governmental organisation
NZBA – Net Zero Banking Alliance
TCFD – Task Force on Climate-related Financial Disclosures
TPT – Transition Plan Taskforce [UK]

Summary

- **Climate-related litigation targeted at banks and their corporate clients has been on the rise in recent years.** This is a heterogeneous and evolving litigation landscape that poses a novel risk to banks, who may find themselves the direct targets of climate-related lawsuits or be exposed indirectly via lawsuits brought against clients, counterparties and peer banks. It also spans prudential risk categories (e.g. operational; credit risk) and has broader systemic implications. While early climate cases primarily targeted governments and big-emitting 'carbon majors', cases against other firms have proliferated quickly.

- **Under the Basel Framework, banks are already required to take into account legal risks, which includes the risk of losses an institution might incur as a consequence of events that result in legal proceedings** – such as fines, penalties, punitive damages, supervisory actions and private settlements that are captured as part of operational risk. Within the EU, regulators have developed further guidance specifically on how banks should deal with litigation associated with climate change risk.

- **Despite the inclusion of litigation risks in supervisory and regulatory guidance and analytical work, precisely what type of litigation banks should be aware of and how the different types of litigation should inform differentiated risk management practices remains underexplored.** Litigation strategies are evolving rapidly. Some cases seek monetary damages based on historic contributions to climate-related harm, some aim to fundamentally change business models to better align with the goals of the Paris Agreement, and others challenge individual projects or greenwashing practices.

- **Based on a review of disclosures from 20 banks supervised by the European Central Bank (ECB) we assess how banks conceptualise and manage litigation risks.** Our findings reveal that many banks across Europe recognise litigation risks as material in the context of climate and environmental factors. However, banks tend not to be specific about how such risks are anticipated to manifest, including what types of litigation are likely to be impactful and how impacts may differ across cases. Banks are also highly inconsistent in how they articulate the link between climate litigation and traditional prudential risk categories.

- **In disclosures, banks largely focus on compliance-related risks (fines) or liability linked to greenwashing, indicating that they may be underestimating the potential impacts of other litigation trends.** This includes the risk of *mismanagement of the transition*[1] cases, and legal risks that may be linked to underlying physical risk drivers (*polluter pays* and *failure-to-adapt* cases). With climate litigation driving both legal and reputational risk, banks may be underestimating market and broader financial stability risks arising in the context of this trend.

- **While bank disclosures reveal that progress is being made with regard to risk identification and assessment, the risk mitigation aspect remains underdeveloped.** To date, banks have relied mostly on governance structures and legal disclaimers or waivers as an attempt to mitigate risks related to disclosing forward-looking information.

- **The diverging and inconsistent practices are concerning from the perspective of risk management, but also for the broader pace of the low-carbon transition.** This merits close consideration by prudential supervisors and policymakers, as it indicates that a potentially significant source of risk is not being adequately identified, monitored or managed.

[1] Referring to the transition to a low-carbon and climate-resilient economy.

Recommendations

Based on our analysis, we identify recommendations for supervisors and banks:

For supervisors

- Provide clear guidance on how climate-related litigation risks relate to traditional risk categories, including credit, market and liquidity risk, in additional to operational risk. Develop a macroprudential approach to climate litigation risk, especially when it straddles litigation and reputational risk concerns with broader market risk impacts.
- Pay close attention to how banks are conceptualising legal risks in supervisory assessments under Basel Pillar 2, alongside public disclosures, and consider supervisory interventions where significant gaps in understanding are identified.
- Review whether banks are assessing not only actual occurrences of ESG [environmental/social/governance] controversies associated with clients, but also the likelihood of litigation, along with the potential magnitude of the financial impact on the client and the bank.
- Support the development of dedicated sectoral and scenario climate litigation analysis to capture emerging litigation trends that are material from a prudential perspective.
- Establish clear expectations for banks' risk management processes, accounting for their own litigation risk exposures, but also exposures to litigation against counterparties. This should include expectations relating to internal iterative transition planning processes.
- Increase empirical research into evolving litigation trends and potential implications of litigation on bank safety and soundness, and financial stability.

For banks

- Monitor climate- and environment-related litigation trends and evaluate these as potential drivers of prudential risk categories, rather than as a siloed, standalone risk category.
- Take steps to systematically identify and assess current and future exposures to litigation risks. This should go beyond understanding cases brought against banks themselves, to include those against counterparties, peer institutions operating in the same jurisdictions, or the governments of jurisdictions in which they have significant exposures.
- Use internal transition planning processes to ensure adequate identification, assessment and mitigation of relevant legal (including litigation) risks. There are elements of private sector transition plans that can help mitigate climate litigation risk.

1. Introduction

Over the past decade, climate-related litigation targeted at both public and private actors has mushroomed. This includes some high-profile cases brought directly against banks. Such litigation trends pose material financial risks to banks. In addition, credit institutions need to manage risks related to the rapidly evolving landscape of climate litigation against corporate clients. How banks identify, manage and mitigate these novel legal risks is of strong relevance from the perspective of prudential policy and the effectiveness of transition policies more broadly. To respond to this challenge, this report investigates how credit institutions engage with climate- and environment-related legal risks. It explains how insights from bank current practice, such as gaps in their legal risk management approaches, should be addressed with targeted prudential policy interventions.

Climate litigation, including climate litigation against firms and financial institutions, has been on the rise in recent years, especially since the signing in 2015 of the Paris Agreement on climate change (Elderson, 2023; Network for Greening the Financial System [NGFS], 2023a; Setzer and Higham, 2024). Setzer and Higham (2025) document close to 260 strategic climate lawsuits initiated against companies from a range of sectors between 2015 and 2024, with more than half of these cases emerging since 2020. Early cases primarily targeted governments and the big-emitting 'carbon majors'; however, cases against firms have proliferated quickly, with increasingly diverse groups of defendants (Ganguly et al., 2018). Climate cases targeting banks and companies outside of the fossil fuel sector are no longer rare, with litigation challenging the provision of financing to companies involved in high-emitting activities on the rise (see further Box 1.1 for definitions used in this report and Box 3.1 for details on ongoing cases against BNP Paribas and ING). Given prevailing uncertainty from the rapidly evolving landscape of climate litigation, supervisors and banks should proactively increase their capacity to understand and manage the emerging risks. Banks should be aware of the litigation risk they are exposed to, the risks that their clients face, and the broader market and systemic impacts that may affect both financial performance and policy direction.

Box 1.1. Definitions used in this report

Climate litigation: Cases before judicial and quasi-judicial bodies that involve material issues of climate change science, policy or law (Setzer and Higham, 2025).

Strategic litigation: Litigation where the claimant seeks to both win the individual case and to influence the public debate on climate action (ibid.).

Legal risk: In this report we follow the Basel bank prudential framework definition as detailed in the EU's 2024 Credit Requirement Regulation, CRR3. This refers to the *risk of loss*, including expenses, fines, penalties or punitive damages, that an institution might incur *as a consequence of events that result in legal proceedings* (emphasis added). Legal risk therefore includes the risk of loss from climate litigation brought directly against the bank, but also the risk of fines from a bank's failure to comply with regulatory requirements. See Art. 4(1)(52a) for a list of potential events that may lead to legal proceedings.

Litigation risk: The risk of climate litigation being brought against a bank, its clients or other bank counterparties (e.g. suppliers). While litigation against clients or counterparties would not strictly be captured under the bank's 'operational/legal risk' (as defined under CRR3), the risk of these lawsuits can impact a bank's credit, reputational and other financial risks.

The financial impacts of such litigation and the potential direct and indirect financial costs are of increasing interest to banks, supervisors and researchers (Peel and Osofsky, 2020; Setzer, 2022;

Solana, 2020a). Direct costs include costs of litigation or fines. Indirect costs relate to the systemic impacts of strategic litigation cases. Such impacts drive reputational and transition risk across the targeted sector, as well as for the banks that provide financing to those companies.

Meanwhile, recent analyses have shown that climate litigation is not currently adequately accounted for in financial risk assessments (Wetzer et al., 2024), even as evidence mounts to show that case filings and decisions negatively affect firm value for carbon majors (Sato et al., 2024). A forthcoming survey study of 811 equity investors and analysts indicates that investors regard climate litigation risk as a significant financial concern, on the basis of novel evidence directly measuring investors' beliefs about such risk and drawing attention to the multidimensional impacts of litigation that extend to broader market dynamics (Gostlow et al., unpublished manuscript).

Those charged with setting prudential rules have been slowly grappling with the mounting financial stability risks arising from climate litigation, with supervisors globally increasingly drawing attention to the need for banks to have in place adequate risk management practices to manage risks arising from climate litigation trends in a more comprehensive manner (European Central Bank [ECB], 2021; Basel Committee on Banking Supervision [BCBS], 2021; NGFS, 2023a, 2023b). Existing regulation does require banks to adequately manage legal risks, including those linked to litigation, as a matter of operational risk. In the EU, the European Banking Authority (EBA), under its 2025 ESG Risk Management Guidelines, requires banks to put in place processes to identify, assess and mitigate risks arising from climate litigation that is directed at banks as well as their clients. A 2025 consultation by the UK's Prudential Regulation Authority (PRA) on the Draft supervisory statement SS3/19 Enhancing banks' and insurers' approaches to managing climate-related risks likewise recognises the financial materiality of climate-related litigation, which requires banks to identify these risks in the context of client risk identification and assessment. However, how bank practices have been evolving in the context of such supervisory interventions is underexplored.

Within this context, this report:

- Reviews how climate- and environment-related litigation risks are currently treated in the prudential regulatory framework
- Summarises key trends in corporate climate litigation, to outline what types of legal risks banks should be anticipating
- Investigates how banks are identifying, managing and mitigating climate-related legal risks
- Identifies key trends in bank practices and differences between them
- Formulates recommendations for banks, policymakers and supervisors to improve the quality of climate litigation risk management, including through the development of transition plans.

Methodologically, we analyse bank disclosures in relation to management of climate change legal risk, with the expectation that how banks disclose this risk in public documents provides insights into how they are identifying, managing and mitigating the risk internally.[2] We adopt a broad definition of such disclosures and dedicated 'transition plan' documents, climate or sustainability reports, disclosures to the Task Force on Climate-Related Financial Disclosures (TCFD), Basel Pillar 3 and annual reporting (see Box 2.1 for an overview of bank disclosure types). In our review of bank disclosures, we code them into three different categories of key information: (a) how banks conceptualise legal, litigation or liability risk; (b) the types of litigation banks anticipate; and (c) how banks identify, assess and mitigate litigation risk, including through how waivers or disclaimers are used to insulate them from potential legal action *ex ante*. For more details on our methodology and a list of banks reviewed, see the Appendix.

Our case selection draws on banks in the EU, as a jurisdiction where climate change risks have already been explicitly integrated into the prudential framework (Smoleńska and Van't Klooster, 2022; ECB, 2020). We select 20 banks from the pool of institutions directly supervised by the ECB within the Single Supervisory Mechanism. To ensure wide geographical representativity we select the largest banks from 10 Member States. The approach developed is intended to be scalable and

[2] The alternative, whereby bank disclosures would be materially inconsistent with internal practices, would expose banks to reputational and litigation risk, particularly related to greenwashing (ECB, 2023; EBA, 2024b).

therefore can be expanded to a larger sample of institutions. It is likewise applicable in other jurisdictions where banks disclose information relating to their risk management.

The extensive climate litigation research developed by the Grantham Research Institute on Climate Change and the Environment[3] serves as a benchmark against which to assess bank practice, and in particular the adequacy of the risk identification and mitigation approaches. We combine this approach with CETEx's work on prudential transition planning and prudential regulation (Dikau et al., 2025; Smoleńska, 2025; Smoleńska and Poensgen, 2025).

The report's findings are intended to support supervisors in their efforts to ensure that regulated financial institutions are effectively managing novel legal risk drivers. While traditionally, supervisors have not consistently engaged with public-facing disclosures from banks, being privy to much more detailed confidential reporting, the nature and content of these disclosures is evolving, given changing market and regulatory expectations. Not only are banks increasingly reporting on a wider range of climate and environment-related risks: they are also increasingly disclosing new, forward-looking information about their transition plans, including targets, strategies to reach those targets, expected changes to their business models and portfolios, and so on. To the extent that this information provides additional evidence on the quality of risk management by banks and is used for benchmarking bank approaches across jurisdictions, supervisors should pay close attention to these reports, and use them alongside other data sources in the context of Pillar 2 supervisory reviews. Our proposed methodological approach is one way that supervisors may integrate such disclosures in their assessment of adequacy of bank risk management.

Overall, the report's insights into the varying ways in which litigation risks are treated by different banks offer broader lessons about the shortcomings of bank climate change and environmental risk management that should be addressed by prudential regulators. The findings are also relevant to bank practitioners, as well as other stakeholders engaging with banks over the course of the transition.

[3] See www.lse.ac.uk/granthaminstitute/topics/cutting-emissions/climate-change-laws-and-litigation

2. Regulatory context

Despite their financial materiality, banks are proving slow to integrate climate change-related factors, or indeed other environmental factors, into their risk management. Inadequate processes for the identification and management of risks undermine individual banks' stability, and financial stability more broadly. However, financial policymakers have begun to pay attention to the climate litigation trends that exacerbate transition and physical risks. In this section, we first summarise how climate change risks generally, and climate litigation risk specifically, have been integrated into prudential frameworks to date, highlighting developments from the past two decades. We then provide an overview of how climate litigation trends have evolved and explain the types of climate cases that banks can and should anticipate.

Integration of climate change risk into microprudential frameworks

The goal of microprudential regulation is to ensure the safety and soundness of banks. With that purpose in mind, rules and standards, such as those developed by the Basel Committee on Banking Supervision (BCBS) and implemented across jurisdictions globally, require banks to hold adequate levels of capital and have in place sufficiently robust governance and risk management. Under Pillar 1 of the Basel framework, banks calculate the capital they are expected to hold given the financial (credit, market) and non-financial (operational) risks they are exposed to. In addition, enhanced supervisory practices under Pillar 2 of the framework oversee the adequacy of banks' approaches to identifying and mitigating risks. When they identify shortcomings in bank practices, supervisors can require additional Pillar 2 capital requirements for idiosyncratic risks of individual banks that are not covered under Pillar 1. Under Pillar 3, banks disclose specific information to the market, to facilitate market discipline as a further line of defence. As we discuss below, climate-related litigation risk that banks face affects the requirement of banks under all three pillars (see Table 2.1).

Integrating climate change and environmental degradation considerations within the scope of prudential policy has been a major challenge for banks and supervisors alike (Dikau et al., 2025; Smoleńska and Van't Klooster, 2022). While the potential and materialising impacts of climate and environmental factors are already having an impact on firms' financial performance, the backward-looking nature of traditional risk assessment methodologies and data gaps have stifled the consistent incorporation of the former into prudential rules. However, three policy developments have enabled the gradual integration of climate and environmental factors into the prudential framework: the assimilation of climate change factors within prudential risk categories; multiplication of climate change disclosure frameworks; and increased use of discretion by central banks to address risks related to climate change. These developments are discussed below.

Understanding climate risks as financial risks

First, and especially since Mark Carney's 2015 speech when Governor of the Bank of England on the 'tragedy of the horizon', central banks and other prudential authorities have increasingly recognised climate change factors as material drivers of prudential risk categories (credit, market, operational, liquidity and so on) and therefore as relevant risk drivers in the context of pre-existing frameworks. Reference to climate change and environmental risk from this perspective is largely understood as a *clarification*, rather than an *addition* to the prudential rulebook. In addition to physical and transition risk drivers, Carney also distinguished liability risk, linked to losses or damages from compensation for the effects of climate change. As we show in this report, the conceptualisation of liability risk is too narrow to capture the financial risks associated with climate litigation as we know it today (Solana, 2020a). For example, litigation against one project can increase the risk that comparable projects become 'stranded assets' (Ramos Muñoz, 2025).

With the 'tragedy of the horizon' marking a turning point (Barmes et al., forthcoming), further initiatives such as the establishment of the central bank Network for Greening the Financial System (NGFS) in 2017, and work by the BCBS have further clarified how the scope of prudential rules requires banks to manage the climate and environmental impacts on the risk profile of banks and their clients (NGFS, 2020; BCBS, 2022). Such analysis has facilitated convergence and deepened understanding of the transmission channels of climate-related factors to financial risk categories (e.g. BCBS, 2021a) and specific aspects of climate-related risks, such as those linked to nature (NGFS, 2022), including the rise of climate change and nature-related litigation (NGFS, 2023a and 2024b). The approach has had an enduring effect, with jurisdictions such as the EU introducing detailed and granular guidance on ESG [environment/social/governance] risks (EBA, 2025).

Multiplication of climate change disclosure frameworks

Second, financial policymakers more broadly have relied on climate-related disclosures as a first step to improve data availability and thus indirectly improve risk management across institutions by enabling market discipline and stakeholder engagement. Initiatives such as the Task Force on Climate-related Financial Disclosures (TCFD) established a set of recommendations (applicable to both financial institutions and corporates) about what type of information firms should disclose to show how they are identifying and managing the climate change-related risks to which they are exposed (2017). In 2021, the TCFD updated its implementation guidance to encourage firms to further disclose forward-looking information about any transition plans they have in place as part of their strategy to manage these risks (TCFD, 2021). This recommendation was later embedded within the International Sustainability Standard Board's (ISSB) Standard on Climate-related Disclosures, which requires entities to disclose information about any climate-related transition plan they have (ISSB, 2023).

Box 2.1. Where banks disclose information about climate risks

Banks across jurisdictions disclose several types of documents that include information on how they identify and manage risks related to climate change and the environment, including those arising from litigation. Common documents include:

- **Sustainability reports.** In these reports banks disclose their sustainability performance and strategies. Such reports follow voluntary standards (e.g. TCFD/Net Zero Banking Alliance [NZBA]) or mandatory sustainability disclosure rules (e.g. Non-Financial Reporting Directive [NFRD]/Corporate Sustainability Reporting Directive [CSRD] in the EU). These documents are intended to support investor decision-making and stakeholder engagement.
- **Pillar 3 disclosures.** Bank prudential disclosure rules under the Basel framework cover qualitative and quantitative elements related to a bank's financial performance and risk management. They are intended to enable market discipline and monitoring of adequacy of bank governance. In the EU, since 2022 Pillar 3 disclosures have included qualitative and quantitative information on banks' treatment of climate-related and environmental risks. Banks' disclosures cover both current exposures and some forward-looking elements.
- **Transition plans.** Banks are increasingly disclosing forward-looking transition plans as part of their sustainability disclosures (e.g. CSRD) or standalone documents (e.g. following the UK Transition Plan Taskforce's [TPT] framework). Transition plans are defined by the ISSB as "an aspect of an entity's overall strategy that lays out the entity's targets, actions or resources for its transition towards a lower-carbon economy, including actions such as reducing its greenhouse gas emissions" (ISSB, 2023). Given the novelty of these documents, market practice on the location and format of these disclosures continues to evolve.

Some prudential regulators have further incorporated aspects of ESG risk management in the context of market discipline under Pillar 3 disclosure requirements (European Commission, 2022; BCBS, 2023). Disclosure of transition plans as a matter of mandatory rules can help to enhance the robustness of the prudential use case for transition plans (Smoleńska and Poensgen, 2025; NGFS, 2024a). The reliance on disclosures as a governance mechanism changes the role that such documents have in supervisory processes. Where previously supervisors did not actively engage with such bank disclosures, being privy to much more detailed confidential reporting,[4] the sheer volume of such disclosures requires them to at least appraise the impact these may have on reputational risks that the bank faces. The detail on risk management practices suggests further that supervisors should actively appraise whether the content of disclosures is aligned with information reported by banks under supervisory reporting.

Bank transition plans are a case in point. These documents, which outline how an institution intends to align its business model with the transition towards a low-carbon and climate-resilient economy, have emerged as a voluntary tool to substantiate firm-level climate commitments. They have subsequently been subsumed within the prudential remit as a tool to support forward-looking risk management – in some jurisdictions directly and in others indirectly (Dikau et al., 2025; Smoleńska and Poensgen, 2025).

Increased use of discretion by central banks to address climate-related risks

Third, supervisors have been proactively using Pillar 2 discretion to support better integration of climate change and environmental factors in financial stability assessments. Work by international fora has led to elaboration of common supervisory documents such as BCBS's 2022 *Principles for the effective management and supervision of climate-related financial risks*. Central banks and prudential supervisors identified best practice as part of the NGFS's 2020 *Guide for supervisors integrating climate-related and environmental risks into prudential supervision*. Supervisory work involves rapid elaboration of new methodological approaches, such as scenario analysis and climate 'stress testing'. Given the novelty of capturing climate change risks in prudential frameworks, supervisors have also used *soft law* approaches to guide bank behaviour, e.g. via setting expectations, peer assessments and benchmarking of bank performance. On the basis of this work, more recently prudential supervisors have begun to require that banks integrate climate change and environmental degradation across the identification, assessment, mitigation and monitoring phases of risk management.

Additionally, in the EU, integrating ESG risk into prudential rules was part of a major reform of banking regulation (specifically CRR3 and CRD6) in 2024. The EBA's *Guidelines on the management of environmental, social and governance (ESG) risks* outline how banks should integrate ESG factors into business model analysis, risk appetite, internal control (including the three lines of defence) and internal capital adequacy assessment frameworks (EBA, 2025). Further guidance relates to how banks should assess which ESG factors are material to their operations, e.g. based on the sector of activity and their exposures, and how they should quantify related risks, e.g. by establishing key risk indicators (KRIs).

Climate-related litigation as legal risk under the bank prudential framework

There has also been a notable evolution of the incorporation of legal risk into prudential rules in the last two decades. The Basel II framework incorporated legal risk as a subset of operational risk only in the early 2000s. Such risk now covers losses resulting from, for example, fines, penalties, punitive damages, supervisory actions and private settlements. The EU implemented the Basel approach as part of the 2024 Credit Requirement Regulation (CRR3), where Art. 4(1)(52a) specifies that banks should account for the risk of losses that they might incur as a consequence of the following events that result in legal proceedings:

- Supervisory actions and private settlements
- Failure to act where action is necessary to comply with a legal obligation
- Action taken to avoid compliance with a legal obligation
- Misconduct events, which are events that arise from wilful or negligent misconduct, including inappropriate supply of financial services or the provision of inadequate or misleading information on the financial risk of products sold by the institution

[4] For example, in the EU according to Article 430(1)(h) CRR3, banks must report to their competent authorities their exposures to ESG risks, including their exposures to fossil fuel sector undertakings and their exposures to physical and transition risks.

- Non-compliance with any requirement derived from national or international statutory or legislative provisions
- Non-compliance with any requirement derived from contractual arrangements, or with internal rules and codes of conduct established in accordance with national or international rules and practices
- Non-compliance with rules on ethics.

The detailed nature of the above definition suggests increased concern by supervisors with the legal risk to which banks may be exposed in the context of systemic impacts of litigation trends. It further suggests that supervisors should develop clear expectations over how banks should be identifying and mitigating related risks, in the context of the refinement of the approach to operational risk more broadly (EBA, 2024a). Overall, a bank's legal risk should be reflected in the calculation of own-fund requirements for operational risk: high exposure to legal risk should entail higher capital requirements for the bank.

Since climate litigation trends are a prominent source of legal risk for banks, prudential authorities are concerned with their prudential impact (PRA, 2025; NGFS, 2023b). In the EU, authorities have developed further guidance on how banks should deal with climate litigation risk specifically. The ECB's 2020 Guide on climate-related and environmental risks established a supervisory expectation that banks assess the extent to which their own activities expose them to the risk of litigation (ECB, 2020 Expectation 9.2). The EBA's 2025 Guidelines on the management of environmental, social and governance (ESG) risks emphasise, in the context of operational risk specifically, that banks should develop dedicated processes to "assess and manage the likelihood and impact of environment-related litigation risks", with particular emphasis on combined legal and reputational risks arising in the context of greenwashing (EBA, 2025). Information that should be analysed by banks in this respect include ongoing and future changes in public policies and the degree of alignment/misalignment of portfolios with relevant jurisdictional regulatory objectives.

Overall, as summarised in Table 2.1 below, banks are now asked to develop dedicated risk management process to identify, assess and mitigate legal risks, including climate-related litigation. The Basel framework requires banks to integrate climate litigation risks only indirectly. This is unsurprising, however, given that these are high-level standards to be further elaborated in the jurisdictions implementing the rules. Here, the EU rulebook spanning *soft law* instruments (such as the aforementioned EBA *Guidelines* and ECB *Guide*) much more explicitly links the operational risk definition to the climate change risk phenomenon specifically and requires banks to develop dedicated risk management practices to address such risk, e.g. in the context of greenwashing. Furthermore, the EU's Pillar 3 rules applicable to the banking sector require qualitative disclosures of such practices.

Table 2.1. Integration of climate litigation risk within prudential frameworks

	Pillar 1	Pillar 2	Pillar 3
Governance mechanism	Capital (own fund) requirement	Supervisory review and internal capital adequacy assessment	Disclosures (market discipline)
Basel Committee on Banking Supervision (BCBS)	**Indirect**: 'legal risk' is introduced as a high-level concept as part of operational risk (Pillar 1) under Basel II (see OPE 10)	**Indirect**: banks are required to comprehensively manage climate-related drivers of operational risk (Pillar 2, Principles for the effective management and supervision of climate-related financial risks, BCBS, 2022)	No
EU	**Indirect**: 'legal risk' and 'ESG risk' concepts introduced in CRR 3 (Art. 4(1)(52), (52a), and (52d)) **Direct**: EBA Guidelines on the management of ESG risks explicitly refer to climate litigation in the context of operational risk definition	**Direct**: under the EBA's Guidelines banks are required to include litigation risk in ESG risk identification, mitigation and management in a forward-looking manner with emphasis on legal risks arising in the context of greenwashing practices	**Direct**: qualitative disclosure requirements regarding banks' risk management of ESG risks include litigation-relevant aspects (e.g. regarding identification and mitigation of legal costs) (Pillar 3 Implementing Technical Standards)
European Banking Union (EBU)	EU-wide rules apply	EU-wide rules apply + **Direct**: under the ECB's Guide on climate-related and environmental risks where litigation risks are raised in the context of compliance function (Expectation 5.5), and credit and operational risk management (Expectations 8 and 9.2)	EU-wide rules apply

Note: Of the measures outlined above, only the EU's CRR3 and Pillar 3 ESG Implementing Technical Standards are legally binding. BCBS are a global standard, whereas the EBA Guidelines and ECB's Guide are soft law instruments.

What kind of litigation should banks anticipate?

Despite the inclusion of litigation risks in supervisory and regulatory guidance and analytical work, precisely what type of litigation banks should be aware of and how the different types of litigation should inform differentiated risk management practices remains underexplored, especially in the context of novel climate litigation trends.

Various typologies exist to help actors understand the variation in the field of climate litigation (Setzer and Higham, 2025; UNEP, 2023), and how it may result in direct and indirect financial risks (Solana, 2020a). The need for banks and supervisors to respond to the heterogeneity of climate cases is starting to gain traction. Wetzer et al. (2024) note the potential benefits of using qualitative scenario-based approaches (referred to as "legal transition scenarios" that capture developments in legal outcomes and different understanding and applications of law across jurisdictions) to better account for the evolving landscape of climate litigation risk. In a 2023 report on microprudential supervision of climate litigation risk, the NGFS similarly identifies the importance of thematic trends and differences in climate litigation approaches in different jurisdictions (NGFS, 2023b).

In this report we use the typology of case strategies developed by Setzer and Higham for their *Global Trends in Climate Change Litigation* snapshot report series to understand the types of climate cases that banks can and should anticipate. Table 2.2 summarises the most relevant case types, providing examples as a point of reference.[5]

Early climate litigation against corporate actors focused on trying to hold major emitters accountable for the damages caused by their emissions. A 'second wave' of corporate climate litigation cases has involved a more diverse set of actors, with cases taking different approaches to challenging corporate behaviour in the face of the climate crisis (Ganguly et al., 2018; Setzer and Higham, 2024). There is a significant body of 'backward-looking' cases that seek to hold high-emitting companies responsible for past emissions, many of which have been filed by subnational governments in the US. However, there is also a growing trend of more 'forward-looking' cases, that seek to change corporate behaviour in the present and over the coming decades to ensure better alignment with the goals of the Paris Agreement and improve management of transition and physical risks (Setzer, 2022).

To date, the most common type of climate case aims to mainstream climate considerations into public and private decision-making (Setzer and Higham, 2025; see Table 2.2 below). Many of these cases rely on environmental impact assessment legislation to target individual fossil fuel projects that are expected to result in significant greenhouse gas emissions. In recent years, across Europe, litigants have particularly focused on challenging the failure of decision-makers to consider downstream or 'Scope 3' emissions in permitting fossil fuel projects. Cases are ongoing, for example, in Norway against three major oil fields in the North Sea: Breidablikk, Yggdrasil and Tyrving (Setzer and Higham, 2025).

Looking beyond climate litigation, strategic claims encompassing broader aspects of nature, such as biodiversity loss, deforestation, ocean degradation, carbon sinks and plastic pollution, also appear to be on the rise. It can be expected that the nature, scope and targets of nature-related legal action will also evolve, taking inspiration from climate-related litigation and benefiting from increasing public awareness of the nature crisis and its nexus with the climate crisis. Such litigation will also be of increasing relevance for banks and the financial sector (NGFS, 2024b).

In this report we focus on forward-looking 'climate-aligned' cases. These are cases that appear from the complaint, case documents and any campaign material to be requesting judicial relief that would align with climate action goals, such as reducing emissions, increasing adaptation or fostering resilience to climate impacts. We chose to focus on climate-aligned cases as they constitute the majority of climate litigation, thus carrying high relevance for banks and supervisors (Setzer and Higham, 2025). However, it is important to recognise the increase in non-climate-aligned cases in recent years. This is currently most prevalent in the United States, but it is prudent for European banks, particularly those that operate internationally, also to pay close attention to such developments (see Box 2.2).

Overall, we anticipate that banks should be concerned both with cases that might be filed directly against them, creating operational risk, and those filed against their clients and counterparties, which could amplify other types of risk, including credit, reputational and liquidity risk (NGFS, 2023b). Banks can be exposed indirectly if the direct legal costs that a client debtor faces from climate litigation are significant enough to affect its solvency, or if the public and retail customers associate the client's harmful activities with the financing bank (Solana, 2020a). Banks should also be aware of cases that are filed against peer banks and other financial institutions, as there may be spillover effects, also from a financial stability perspective. For example, a successful claim against a given bank may increase the probability of similar claims against other banks providing similar services or products (ibid.), and courts may, by analogy, apply conclusions from one case to a different case (Ramos Munoz, 2025). We also anticipate that banks should be concerned with climate cases filed against governments, as these can lead to shifts in the regulatory landscape that can contribute to transition risk (for example, challenges to licensing and approval processes for oil and gas projects may lead to stranded assets) (NGFS, 2023a).

[5] This table is adapted from Table 2.1 in *Global Trends in Climate Change Litigation*: *2025 Snapshot* (Setzer and Higham, 2025).

Furthermore, banks should adopt a dynamic approach to legal risks: impacts of litigation may vary throughout the stages of a case. Litigants involved in strategic litigation may see the case as part of a broader campaign and will plan how different stages can be used in different ways to contribute to change (Batros and Khan, 2020). This has implications for how risks should be managed (see further below). The initial filing of a case, the surrounding media attention and the process of conducting public hearings may largely focus on increasing reputational risk but also start to affect credit risk, whereas the delivery of judgment and the implementation of remedies are more likely to directly influence liquidity risk of the individual defendant. However, at the same time, the legal precedent set in this case may affect the litigation, reputational and transition risk of peer companies or financial institutions.

Box 2.2. New complexities in the climate litigation landscape – emerging risks for banks and supervisors

While most climate litigation aims to accelerate climate action, climate litigation is becoming more complex. Of the 226 cases filed in 2024, approximately 27% of cases involved arguments seeking judicial relief that may prevent or delay climate action (Setzer and Higham, 2025); a large majority (88%) of these were filed in the US. As multinational entities, banks and their clients may face litigation from multiple directions. They may be challenged from different angles within and across jurisdictions, and courts may reach contrasting outcomes. For example, 'climate-washing' or 'greenwashing' arguments have already been made by opposing sides over the same issue. In the US, in December 2023, the Tennessee Attorney General filed a complaint against BlackRock alleging that the company misled consumers by overstating the extent to which ESG factors create financial benefits to investors. However, in France, ClientEarth later filed a complaint against BlackRock challenging its investments in fossil fuels despite marketing funds as 'sustainable' (see Table 2.2). Most recently, in November 2024, multiple Republican-led states jointly filed a lawsuit against BlackRock and two other institutional investors, alleging that their ESG investment practices amount to anti-competitive behaviour and violate anti-trust laws.

Additionally, although many non-climate-aligned cases directly challenge and seek to delay government or companies' climate measures, some cases are more complex and raise questions about trade-offs between climate, biodiversity and other environmental objectives, or challenge how climate policy is designed, rather than oppose the need for climate action in its entirety. For example, 'just transition litigation' is an emerging set of cases that challenge the exclusion and violation of communities' rights in the implementation of renewable energy and critical mineral projects (Savaresi et al., 2024). Litigation risk identification, assessment and mitigation will need to account for these complexities.

Table 2.2. Types of strategic climate litigation that banks should anticipate, based on global climate litigation trends

Strategy	Definition and relevance	Examples	Legal risk type (CRR3 definition) - if filed against bank
Cases against companies: banks may anticipate that these types of cases will be filed against them directly, against their clients and counterparties, or against other banks.			
Polluter pays cases	Cases seeking monetary damages from defendants based on an alleged contribution to climate-related harm. Although no case has yet been successful, there are now cases that have been permitted to proceed to the evidentiary stage in Europe and the US. If such a case is successful it could open up high-emitting companies to significant financial liabilities in relation to a wide range of extreme weather events, which some have argued could result in widespread bankruptcies.	***Lliuya v. RWE***: Filed in 2015, this case argued that German energy company RWE should be held responsible for causing an increased risk of flooding from a glacial lake in the Peruvian Andes that could affect the claimant's home. The case was dismissed in May 2025. ***California v. Exxon***: One of more than 30 cases filed by subnational governments in the US, this case argues that Exxon Mobil and other major polluters should pay part of the costs of adaption in California. The case argues that the company's disinformation on climate change has delayed climate action.	Non-compliance with legal requirement
Integrating climate considerations cases	Cases that seek to integrate climate considerations, standards or principles into a specific decision, with the dual goal of stopping policies and projects that would contribute to climate change, and mainstreaming climate concerns in decision-making. Most of these cases have been filed against governments, but there have been cases filed against companies over decisions such as the financing of new coal power plants.	***ClientEarth v. Polska Grupa Energetyczna***: Filed in 2019, this case seeks to compel a power plant operator in Poland to reduce emissions and cease the use of lignite as a fuel for energy production. ***The Philippine Movement for Climate Justice et al. v. Standard Chartered***: In February 2024, a group of NGOs filed a complaint against Standard Chartered plc to the UK National Contact Point, the non-judicial grievance mechanism established by governments for compliance with the OECD Guidelines for Multinational Enterprises. They argue that in financing four coal-fired power plants in the Philippines, the bank has breached the Guidelines.	Non-compliance with legal requirement; failure to act
Corporate framework cases	Cases that seek to disincentivise companies from continuing with high-emitting activities by requiring changes in group-level policies, corporate governance, and decision-making extending throughout the companies' operations. These cases often concern the alignment of a company's activities with the goals of the Paris Agreement. Cases have been filed directly against banks, and against companies in high-emitting	***Milieudefensie v. Shell***: In November 2024, a Dutch appellate court confirmed that Shell has a responsibility to reduce greenhouse gas emissions to prevent harm to Dutch citizens. However, the court declined to impose a quantified emissions reduction order on the company. ***Smith v. Fonterra***: This case argued that New Zealand's biggest emitters, including dairy processing company Fonterra, owe a legal duty to reduce their greenhouse gas emissions. In February 2024, the New Zealand	Non-compliance derived with contractual arrangements or internal rules; failure to act

	industries including fossil fuels and agriculture. Litigants often combine corporate framework arguments with other strategies, e.g. turning-off-the-taps or climate-washing arguments. See below for two high-profile cases brought directly against banks, which combine these three strategies (*Milieudefensie v. ING*; *Notre Affaire à Tous Les Amis de la Terre*, and *Oxfam France v. BNP Paribas*).	Supreme Court gave permission for this case to proceed to trial. ***Comissão Pastoral da Terra and Notre Affaire à Tous v. BNP Paribas***: This case challenges the bank's due diligence processes for failing to prevent human rights violations, specifically in its financial dealings with a major beef producer implicated in land-grabbing and deforestation in the Amazon.	
Failure to adapt cases	Cases that challenge a government, company or the management of a company for failure to take physical climate risks into account. These cases may be ex-ante in nature, arguing that more needs to be done to avoid a company's operations exacerbating the harm to stakeholders such as clients or local communities in the event of physical climate risk materialising. They may also be ex-post, arguing for damages after a physical climate risk has materialised and the impacts have been made worse by the company's activities. While ex-post cases are currently rare, we anticipate that this type of litigation will grow as changes in the science make it easier to argue that a given physical impact was foreseeable in the context of a changing climate.	***Assad v. Seu***: This case was a shareholder derivative action filed in 2024 against Hawaii's largest electric utility on the basis that the company's operations exacerbated deadly wildfires in 2023, resulting in significant financial damages to the company (as well as the filing of numerous additional claims for damages). ***Conservation Law Foundation v. Shell Oil Co.***: Filed in 2021, this case alleges that Shell has failed to maintain fuel storage terminals in New Haven, Connecticut, in a way that adequately addresses increased physical risks from climate change.	Failure to act
Transition mismanagement cases (elsewhere referred to as 'transition risk' cases, here renamed to avoid ambiguity)	Cases that concern the mismanagement of transition risk by directors, officers and others tasked with ensuring the success of a business. These cases share a lot in common with corporate framework cases and integrating climate considerations cases but with the key difference being that they are focused on the impacts on the business itself rather than on the impacts on external stakeholders.	***Métamorphose v. Total***: Filed by shareholders in 2023, this case alleges that Total has erroneously valued the future price of carbon and thus failed to properly account for the company's emissions, leading to an overevaluation of assets and unlawful dividends. ***Enea derivative litigation***: The management of the Polish energy company has initiated legal action against former directors and insurers who had supported the company's investments into a coal fired power station project, which had previously been challenged by NGOs and was ultimately cancelled.	Non-compliance with legal requirement; failure to act
Climate-washing or greenwashing cases	Cases that challenge inaccurate corporate narratives regarding contributions to the transition to a low-carbon future, or other forms of climate	***FossielVrij NL v. KLM***: In 2023, the District Court of Amsterdam decided that KLM had violated consumer law with its misleading claims regarding its use of carbon	Misconduct events

	misinformation. This type of case has seen significant growth in recent years, and more than 70% of cases have been successful. Many such cases directly target financial institutions.	offsets and biofuels, under its 'Fly Responsibly' campaign. ***ClientEarth v. Blackrock***: In October 2024, the NGO filed a complaint against Blackrock to the French financial regulator, alleging that the company actively manages retail investment funds marketed in France with 'sustainable' in their names, despite collectively holding more than US$1 billion in fossil fuel investments.	
Turning-off-the-taps cases	Cases that challenge the flow of finance to projects and activities that are not aligned with climate action, often taking inspiration from Article 2.1(c) of the Paris Agreement. While most of these cases have been filed against public finance institutions, some cases have been filed against private banks in recent years. Typically, such cases also constitute corporate framework cases or integrating climate considerations cases, but we highlight them separately to alert financial actors to the increased likelihood of being targeted. Several cases challenge the flow of finance towards environmental crimes. Although these cases may not explicitly refer to material issues of climate change science, policy or law, their outcomes affect climate action. These cases argue that banks' due diligence measures to prevent anti-money laundering and other financial crimes are inadequate and thus have facilitated environmental crimes like illegal deforestation in the Amazon. For example, in November 2023, several NGOs filed a complaint with the French National Prosecutor's Office against BNP Paribas, Crédit Agricole, BPCE and Axa, alleging that these banks have committed criminal offences of laundering and concealment, due to their financing of agribusiness companies with previous records of illegal deforestation (Sherpa et al., 2023). In the UK, the Global Legal Action Network [GLAN] and the London Mining Network have filed complaints against copper traded on the London Metal Exchange,	***Milieudefensie v. ING***: This case argues that the bank's insufficient climate action violates its duty of care under Dutch law. Among other requests, the claimants demand that ING establish a climate policy in line with the 1.5°C target of the Paris Agreement, including reducing emissions across scope 1, 2 and 3. ***Notre Affaire à Tous Les Amis de la Terre, and Oxfam France v. BNP Paribas***: Filed in 2023, this case argues that the bank has failed to comply with its obligations under France's duty of vigilance law, to assess, disclose and mitigate the social and environmental impacts of its investments.	Non-compliance with legal requirement

	alleging that the production of such copper involved serious environmental harm and thus constitutes 'criminal property' under UK law (GLAN, 2025).		
Cases against governments: banks may anticipate that these types of cases could act as a driver of transition risks and increased legal uncertainty for companies and banks. However, we would expect banks and supervisors' engagement with this type of litigation to be more limited than engagement with corporate cases.			
Government framework cases	Cases that challenge the ambition or implementation of climate targets and policies affecting the whole of the economy and society. Most of these cases are filed at the national level, but cases have also been filed against subnational governments and even at the municipal level. These cases can lead to rapid changes in the policy landscape which may increase transition risk for banks.	***Friends of the Irish Environment v. Ireland***: This case argued that Ireland's 2017 National Mitigation Plan was insufficiently designed to achieve substantial short-term emissions reductions. In July 2020, the Supreme Court quashed the Plan. ***KlimaSeniorinnen v. Switzerland***: In April 2024, the European Court of Human Rights confirmed that Switzerland's failure to act on climate change constitutes a violation of the European Court of Human Rights. The ruling highlighted deficiencies in the country's regulatory framework, including a failure to quantify carbon budgets.	N/A
Integrating climate considerations cases	Cases that seek to integrate climate considerations, standards or principles into a given decision or sectoral policy, with the dual goal of stopping specific harmful policies and projects, and mainstreaming climate concerns in policymaking. As noted above, the majority of these cases are filed against governments. That said, also cases against governments can have direct impacts on corporate activities, for example by resulting in asset stranding.	***Finch v. Surrey County Council***: Decided in June 2024, the UK Supreme Court concluded that planning permission for oil production in Surrey, SE England, was unlawful, as the environmental impact assessment had failed to assess the downstream, Scope 3, emissions from the combustion of fuel. ***Mihaileni Dam Project***: This case challenged a government decision to expropriate land for a dam project without conducting an environmental impact assessment. ***NGOs' complaint to the European Ombudsman on the Omnibus proposal***: Eight NGOs filed a complaint challenging the European Commission's preparation of the 'Omnibus' legislative package that proposes amendments to the Corporate Sustainability Due Diligence Directive. Among other procedural issues, the complaint alleges that the Commission failed to assess consistency of the proposal with the EU's climate objectives.	N/A

3. How banks conceptualise climate litigation risk

How banks conceptualise climate litigation risk, and in particular how they relate climate risk trends to prudential risk categories, varies greatly. Banks appear to underestimate litigation trends linked to forward-looking 'mismanagement of transition' cases and physical climate risk. With climate litigation trends straddling litigation and reputational risk concerns, banks also appear to underestimate the systemic risk dimension of climate litigation. This section reviews how banks identify climate litigation risks, considering how they understand the relationship between litigation risk, and financial and non-financial risk.

How banks classify litigation risk offers insight into how they understand who is exposed to such risks – whether it is the bank itself, its clients or whether the target of litigation is left unspecified. Furthermore, bank practices are revealing about the perception and understanding of climate litigation trends. While in many cases climate litigation is referenced in generic terms, several banks introduce an additional level of granularity when it comes to specific litigation risks they are concerned with. Differences in conceptualisation of risk have implications for the adequacy of banks' overall approach to risk management related to climate litigation.

Our findings reveal that many banks across Europe recognise litigation risks as material in the context of climate and environmental factors. Just over half of the analysed banks refer to climate litigation in their disclosures; when we include references to climate-related 'liability risks', the share rises to three-quarters. However, fewer than half of banks' disclosures that mention 'litigation' or 'liability' risk in the context of climate change are specific about who faces this risk (e.g. banks' clients, other banks or service providers), or what type of litigation is likely to be most impactful. The heterogenous practices and gaps suggest that banks still struggle with understanding how they and the broader environment they operate in may be affected by this trend. Further convergence is needed in how banks treat climate litigation as a driver of financial and non-financial risk categories: for the purpose of calculating capital requirements, but also for developing sound and forward-looking risk management practices more broadly.

Banks differ in how they articulate the links between climate litigation and prudential risk categories

Overall, we observe much variation in how banks refer to litigation risks, both across institutions and across different documents, and in particular in whether and how they draw a link to prudential risk categories. Some banks incorporate considerations of litigation risks into the context of prudential risk categories, such as operational risk, but also credit risk. Others refer to such risk in the context of standalone categories of climate and environmental risk, without making a clear connection to how these risk factors may loop back to the traditional risk categories that underpin financial loss and capital requirement calculations. Where banks link legal and litigation risks to operational risks, as required by the prudential rules, the approaches differ conceptually. Some banks treat litigation risk in the context of either transition or physical risks. Quite a few banks appear to conceptualise risk transmission differently across sustainability and risk (i.e. Pillar 3) disclosures. This suggests a lack of integration of approaches across internal functions within the same organisation.

In addition to operational risk, our review of bank practices draws attention to the impact of climate litigation trends on other risk categories, and in particular credit risk. Some banks acknowledge that their clients can be targeted for past environmental conduct (e.g. Raiffeisen) and that actions can be brought against companies for damages by citizens suffering consequences of climate change (e.g. BNP Paribas). Such trends, especially in sectors related to high-emitting or polluting activities, affect the creditworthiness of banks' clients, and therefore impact on clients' credit risk. We find little evidence that banks capture the impact of climate litigation on market risk (Sato et al., 2024, NGFS, 2023b).

Climate litigation concerns straddle legal and reputational risks

Climate change cases appear in bank disclosures in the context of legal but also reputational concerns. For example, KBC states: "Changing investor, client or community expectations and public scrutiny regarding the financing of sectors or activities which are harmful or perceived to be harmful can lead to reputational damage, for example in the form of litigation cases" (2023 Risk Report, p.129). While the prudential framework neatly draws the line between operational and reputational risks, only the latter have a bearing on own-fund calculations. From this perspective, banks would have an incentive to present the risk they face as a reputational rather than litigation risk. The emphasis on reputational damage and risk arising in the context of climate litigation is common to several banks. Even where reporting on climate litigation shows a relatively high degree of sophistication in terms of understanding consequences of potential litigation against the bank, this is placed in the context of reputational risk management rather than operational risk management.

The difficulty in disentangling the reputational and legal risk effects also reflects the broader systemic impacts of climate litigation trends that are not being systematically integrated into the existing prudential framework. For example, Nordea identifies that "reputational risk can arise due to failure to deliver on internal and external promises and expectations can lead to negative attention from customers and media, *claims and lawsuits*, which in turn can increase lapses and reduce new business" (emphasis added) (2023 Annual Report, p.169). Nordea goes on to note that this type of ESG risk cannot be dismissed as "immaterial" (ibid.). Given the overlap between legal and reputational risk in this conceptualisation, it is not clear how the bank then considers impacts on its capital requirements and own-fund calculations. Supervisors should therefore further reflect on and provide guidance on how bank institutions should address the interconnections between reputational and legal risks.

How banks deal with greenwashing[6] is a further case in point as regards the idiosyncratic and systemic dimensions of climate litigation risks. Climate-washing litigation has also increased rapidly in the past few years, with cases surging from a handful in 2016 to just over 160 by the end of 2024 (Setzer and Higham, 2025). More than a quarter of banks in our sample have explicitly connected greenwashing to litigation risk (CaixaBank, Santander, Intesa, KBC, ABN AMRO and ING). However, greenwashing cases can also have systemic effects, propagated via reputational channels. Furthermore, the reputational aspect associated with greenwashing can cut both ways: ING Bank also recognised the risk that both greenwashing *and* responses to it may pose for its clients. The bank notes: "Fear of litigation, penalties and negative sentiment from stakeholders can lead companies to 'greenhush', which works against transparency and limits the quantity and quality of publicly-available information for banks to assess their clients' transition efforts" (2024 Climate Progress Update, p.15). This was also one of several places where banks recognise the potential for litigation risks (whether greenwashing-related or not) to manifest in different parts of the supply chain, with several banks anticipating the impact of litigation against clients and counterparties, as well as against the bank itself. It is also an instance where a bank recognises that litigation risk may complicate and hinder its efforts to obtain accurate sustainability information and data, highlighting the ongoing need for clear regulatory expectations to be imposed on both banks and client firms.

[6] Greenwashing has been defined in the EU as: "a practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants" (ESMA, 2024a).

Banks may be overlooking litigation linked to mismanagement of the transition

In the few instances where banks provide greater detail about the types of legal risk to which they may be exposed, they focus on either compliance (fines) or liability risks. In the context of the climate litigation taxonomy described in Table 2.2, the types of cases identified by banks relate to:

- Greenwashing or climate-washing cases,[7] including claims/lawsuits that could emerge from issuance of sustainability-related bonds (e.g. CaixaBank), or consideration of whether a bank is considered or not to be following sustainability practices (e.g. Santander)
- Forward-looking corporate climate cases targeting banks specifically (e.g. KBC, BNP, Raiffeisen, ING, Santander)
- Potential litigation and penalties arising from issues related to climate change, including improper management of associated risks, whether in its business, actions, communication, supply chain or somewhere else (e.g. BBVA).

Banks contemplate, on the one hand, risks related to their entire operations, typically arguing that overall, corporate policies and financing decisions are not aligned with the goals of the Paris Agreement, and, on the other, more narrowly targeted 'integrating climate considerations cases' that challenge decisions concerning specific projects or a particular aspect of a bank transition policy (see Table 2.2). The sample of the banks further reveals the systemic impacts of broader financial litigation trends: for example, in recent years Spanish courts have adopted a more interventionist approach in financial product mis-selling cases (concerning hybrid securities or interest rate derivatives), which may have sensitised some of the Spanish (and Italian) banks to the possibility of analogous greenwashing claims (Lamandini and Ramos Munoz, 2023). This observation further draws attention to the importance of jurisdictional trends in accurate governance of climate litigation risks.

Two banks in our sample, ING and BNP Paribas, are already facing filed (and currently pending) cases (see Box 3.1). While the detail in the documents reviewed is relatively sparse, both banks are indeed among the frontrunners in terms of clearly identifying litigation related risks. In ING's case, this is most evident from its legal disclaimer, in which the bank notes that the "outcome of current and future litigation, enforcement proceedings, investigations or other regulatory actions, including claims by customers or stakeholders who feel misled or treated unfairly, and other conduct issues" (2024 Climate Progress Update, p.107) could have a significant impact on the degree to which plans and statements made in its Climate Progress Update report would be implemented. BNP also makes several references to climate litigation risk, including the potential for damages related to litigation, either against a bank directly, a company or government.

In our overall assessment, banks appear to underestimate the emerging trends in climate litigation related to mismanagement of the transition by directors, officers and others tasked with ensuring the success of a business. This may be because this type of litigation itself is relatively new, with just 18 cases recorded since 2015 (Setzer and Higham, 2025). However, the question of how companies and financial institutions should be managing the risks associated with climate change is likely to remain a contested issue, particularly as the physical impacts of climate change continue to materialise. Such cases share similarities with the forward-looking 'corporate framework' type cases mentioned above, but unlike these cases their arguments are grounded in the financial damage that mismanaging the transition can cause directly to the business (through, for example, assets becoming stranded) rather than the harm that continuing with climate-damaging business practices may cause to other stakeholders. Typically, these cases are brought by shareholders, and may take the form of derivative actions.

As mentioned above, BBVA is the only bank that appears to recognise this type of litigation risk, describing "Potential litigation or penalties to BBA arising from issues related to climate change,

[7] This type of litigation has seen major growth in recent years, with just over 160 cases and complaints filed since 2015 (Setzer and Higham, 2025). Such cases, which focus on firms issuing misleading statements regarding climate change and their response to it, tend to be heard more swiftly than climate cases that target broader changes in firms' business models like those discussed above. Of the just over 100 cases decided by the end of 2024, more than 60% were concluded in favour of the claimants (ibid).

including improper management of associated risks, whether in its business, its actions, its communications, in its supply chain or otherwise" (2023 Report on TCFD, Progress toward Transition Plan, p.28). Similar language is used by Intesa, but in the context of litigation risk faced by the bank's clients. Intesa refers to the risk of "losses arising from an unintentional or negligent failure to meet a professional obligation to specific clients (including fiduciary and suitability requirements)" (2023 Climate Report, p.30). While the cases anticipated here do not strictly relate to litigation that is fundamentally concerned with the success of Intesa's own business, it nonetheless relates to the broader issue of the mismanagement of transition risks.

There is, therefore, scope for significantly broader engagement with existing litigation risk trends in how banks are managing the transition. Banks should consider not only the risk of litigation from NGOs and communities concerned about the bank's overall contributions to climate change, but also the risk of litigation brought by parties that are more directly – and financially – concerned with questions relating to their own business interests and their intersection with those of the bank. In addition, another source of future litigation could lie in the inconsistencies across documents we have identified in terms of how individual banks disclose climate-related and environmental risk management, with regard to litigation risk, but also physical and transition risk more broadly.

Box 3.1. Litigation targeting financed emissions: the cases of *Notre Affaire à Tous v. BNP Paribas* and *Milieudefensie v. ING*

In October 2022, two notices of intent to sue were issued against the French Bank BNP Paribas by separate groups of NGOs. In both cases, the NGOs alleged violations of France's Duty of Vigilance Law, which requires large entities to put together a "plan of vigilance" detailing how they will avoid environmental and human rights harms resulting from their operations. The first claim, filed by *Comissão Pastoral da Terra and Notre Affaire à Tous*, was largely focused on BNP's provision of financing to companies actively involved in deforestation in the meat and dairy industry in Brazil. The second, filed by *Notre Affaire à Tous Les Amis de la Terre and Oxfam France*, also alleges that BNP's overall "plan of vigilance" falls short of what would be required to avoid contributing to climate-related harm, with a focus on the bank's ongoing investments in new oil and gas projects. These cases combine turning-off-the-taps, corporate framework and climate-washing arguments.

In March 2025, the Dutch NGO Milieudefensie formally launched a case against Dutch bank ING, arguing that the bank's emissions reduction policies are not fully aligned with the Paris Agreement, particularly its Scope 3 or financed emissions. In particular, the NGO focuses on seeking that ING (i) stops financing new fossil fuel projects, (ii) establishes reduction targets across all its portfolio and (iii) establishes reduction targets for Scope 3 emissions (and reports both financed and facilitated emissions). The case relies on Dutch tort law and follows a similar line of argument to that used in the case of *Milieudefensie v. Shell*. A recent judgment from the Hague Court of Appeal in the latter case held that while Shell does have an obligation to reduce emissions under Dutch tort law, there was insufficient certainty in the scientific evidence provided for the court to determine an exact emissions reduction target for the firm's Scope 3 emissions. The claimants have filed an appeal to the Dutch Supreme Court (Court of Cassation), although this is limited to legal questions, rather than reassessing factual findings from the case. Milieudefensie has separately brought a new lawsuit against Shell seeking that the company stops developing new fossil fuel fields and adopts emissions reduction targets aligned with a 1.5°C pathway.

Banks adopt varied approaches to considering litigation as either an outcome of transition risk or a driver of transition risk

Supervisors have identified litigation risk as a driver of transition risk and/or outcome of transition or physical risks materialising. However, analysis of the current reporting of banks shows that considerably more focus has been placed to date on climate litigation risk as a driver of, or transmission channel for, transition risk. This also affects the type of litigation that banks appear to anticipate, with certain types of climate cases being identified more frequently, and others being insufficiently considered.

BNP Paribas, for example, describes "judicial proceeds… linked to infringement of Duty of Care obligations" as an "example of a potential *impact* of transition risk" (emphasis added) (2024 Climate Report, p.12). A similar approach is adopted by KBC, which describes litigation risks as a potential "*result*" of transition risks, driven by "potential changes in policies and regulation, technological development and/or customer behaviour" (2023 Sustainability Report, p.66). On the other hand, rather than seeing litigation risk as an outcome of transition risks, some banks, such as Raiffeisen, describe it as a transmission channel for those same risks (see below). Both approaches have merit. Litigation certainly can result in direct financial impacts, which can be seen as the manifestation of transition risk. Similarly, the filing of a case against a firm or an adverse ruling can have significant consequences for that firm's relationship with customers and counterparties, meaning that the case may also act as a driver for other types of risk. In some cases, the first litigation against an entity may even spur additional litigation against the same entity or others in its supply chain. Strategic litigation may, moreover, have systemic effects – accentuating transition risks across sectors. While it is not essential for banks to take a uniform approach to addressing the question of whether litigation should be understood as an outcome of transition risk or as a driver of it, supervisors interested in ensuring comparability may wish to encourage banks to adopt a more uniform approach that encompasses both aspects.

Banks underestimate drivers of litigation deriving from physical risk

Overall, few banks seem to appropriately identify physical risk related litigation. In Raiffeisen's 2023 Sustainability Report, for example, the bank explains how it has conducted its assessment of the materiality of climate and environment-related risks. It goes on to list the material risks arising from both transition and physical risks, using the traditional risk taxonomy of credit, market, liquidity and operational risk. When discussing operational risk under the transition risk heading, the bank notes: "Corporates and banks may be exposed to increasing legal and regulatory compliance risk, as well as litigation and liability costs associated with climate-sensitive investments and businesses. Furthermore, climate-related lawsuits could target corporations as well as banks for past environmental conduct, whilst seeking to direct future conduct" (2023 Sustainability Report, p.75). Yet despite the recognition that there might be exposure related to lawsuits targeting companies and banks for past conduct, which could be assumed to encompass climate cases relating to past greenhouse gas emissions, there is no similar discussion of litigation as contributing to operational risk in the "physical risk" section. This is in spite of the consideration of various channels through which increased physical climate damage could manifest as financial risks for clients: for example, where physical property taken as bank collateral is damaged by an extreme weather event.

Considering litigation as a further channel for such risk to manifest would be a sensible course of action for most banks. Below, we discuss the two types of cases that are briefly mentioned in some banks' reporting; these case types could provide a basis for further engagement with litigation related to physical risks.

Polluter pays cases

In general, there is insufficient consideration in banks' plans and reports of the risk of backward-looking 'polluter pays' cases involving banks, or their clients being ordered to pay for climate-related damages based on their contributions to past emissions. BNP Paribas, a bank which, as noted above, is currently facing litigation over its ongoing financing of high-emitting activities, gives one of the clearest assessments of this type of risk out of the reports reviewed. The bank notes that both transition and physical risks could "result in to potential disputes, claims for compensation, or legal proceedings brought against a company, a State or a financial institution that could be held liable by any stakeholder or citizen *who has suffered from climate change*" (emphasis added) (2024 Climate Report, p.11).

Very few other references were found that could be interpreted as relating to polluter pays cases, however. This may be because this type of corporate litigation is currently rare and mostly filed in the US by subnational governments (Setzer and Higham, 2025). However, in several recent decisions, the US Supreme Court has refused petitions that seek to prevent these cases from going to trial in state courts. This should put actors on notice that there is at least a chance that one or more will meet with success. Importantly, polluter pays cases are not just a US phenomenon. While there have been only three such cases in Europe to date (Koistinen et al., 2025), there is significant potential for the volume of such litigation to grow in coming years, as more physical climate damages manifest. The high-profile case *Lliuya v. RWE*, although dismissed in May 2025 on evidentiary grounds, established a key legal precedent, affirming that major emitters can be held liable under German civil law for climate-related harm based on their proportional contribution to global emissions.

Legal avenues for corporate accountability in the context of climate change have improved, as scientific evidence that connects the harmful effects of climate change and emissions has developed (Wentz et al., 2023). There is increasing dialogue and collaboration between experts in attribution science (which links specific impacts to emissions) and legal practitioners and scholars (Reyes et al., 2025). The prospect of such a case being successfully filed against a bank has already been considered in the literature. Rott (2023), for example, has argued that "German law, with its open-worded provisions, could be innovatively interpreted in such a way as to accommodate climate litigation against private companies, and that, under certain circumstances, banks could be held liable for lending to tortfeasors or to companies that put third parties' property at risk" (p.414). However, this has not yet been successfully tested in court and may not be applicable across jurisdictions. For example, in the UK, it has been argued that the prospects for this type of litigation are fairly limited, and claimants face evidential and causation challenges (Bouwer, 2021).

While the risks associated with polluter pays cases remain less certain than the risk of other forms of litigation addressed in this report, they do merit further consideration by banks given the potential significance of their ramifications for banks (if filed against them directly) or counterparties.

Failure-to-adapt cases

The other type of litigation closely connected to physical risk that appears in our sample is 'failure-to-adapt' litigation; we found several references to cases that fit this profile. Failure-to-adapt cases challenge a government or firm for failing to take physical climate risks into account (Markell and Ruhl, 2010; Setzer and Higham, 2025). Such cases may involve arguments that a firm violated a relevant legal duty by failing to consider the likely implications of physical climate risks, resulting in harm or a risk of harm arising to the claimant. These are in many ways simpler to argue than polluter pays cases: rather than requiring the attribution of climate-related harm to a firm's overall contribution to greenhouse gas emissions, they simply require a finding that a type of climate-related harm has become reasonably foreseeable, and that the firm in question owes the claimant a duty to act to prevent the harm from manifesting. However, there are relatively few such cases against firms at the present time.

Although these types of claims are generally insufficiently considered, two banks do provide evidence that they have taken them into account. Firstly, Caixa Bank identifies the potential for "legal and compliance risk associated with perception of non-compliance with adaptation obligations" (2023 Climate Report, p.46). Although fairly generic, this statement seems to contemplate failure-to-adapt cases directly. Secondly, and more interestingly, ABN AMRO identifies the potential for a specific form of failure-to-adapt case to manifest with regard to its mortgage business. The bank identifies elevated "duty of care risks" with relation to homeowners facing increased flood risk in a five-year time horizon (2023 Annual Report, p.127). As Heemskerk and Cox (2023) have noted, under Dutch law, banks have a duty of care to their clients and to third parties to ensure that they leverage their societal role (and associated expertise) to avoid undue risks being taken. In the context of mortgages, this could be understood to require the bank to avoid lending against properties where the value of the property could be significantly reduced by the manifestation of a foreseeable physical climate risk (e.g. flood risk), resulting in an essentially unsecured debt.

To some extent, it is surprising that only one bank in our sample has demonstrated awareness of this type of litigation risk, particularly in the context of residential mortgages. The implications of physical climate risks, and the potential for associated litigation, are starting to be carefully considered by the insurance industry, for example (see Golnaraghi et al., 2021; ECB-EIOPA, 2023). There is certainly scope for the banking industry to follow suit.[8]

[8] The ECB recently issued an opinion on an Irish law, which points out how problematic flooding (and the lack of flood insurance) can be for individual banks, and for the financial sector (ECB, 2025).

4. How banks manage climate litigation risk

Banks have begun to identify and mitigate litigation-related risks, but the mitigation aspect of risk management remains significantly underdeveloped. This section maps banks' risk management processes, from identification through to mitigation.

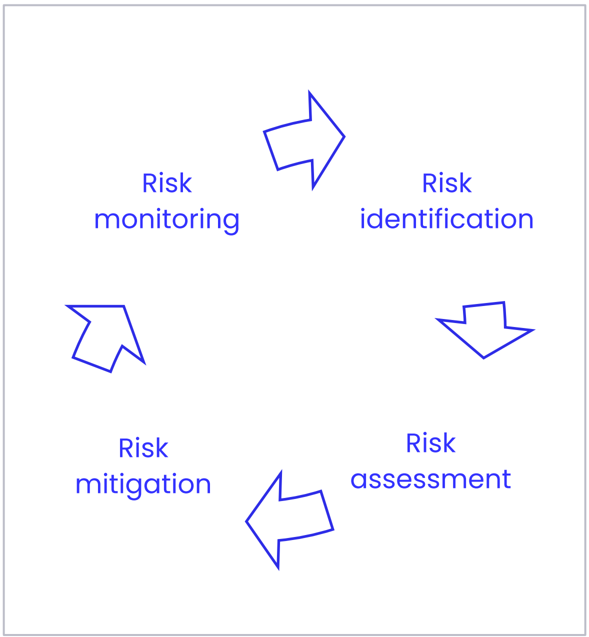
Overall, disclosure of litigation risk management is uneven

Disclosures reveal that banks are focusing relatively more on regulatory compliance, than litigation, as a source of legal risk. Fewer than half of the 20 banks reviewed for this report disclose specific processes or governance structures targeted at identifying and assessing climate litigation risk. This suggests that in identifying the risk of the losses an institution might incur, both legally and in terms of the impact on valuation and reputation, banks focus on supervisory enforcement, compliance and due diligence obligations (i.e. CRR3 Art. 4(1)(52a)(a, b and e)). Conversely, other sources of legal/litigation risk may be overlooked, such as those arising from misconduct events (such as greenwashing (CRR3 Art. 4(1)(52a, d)) or non-compliance with contractual arrangements (CRR3 Art. (1)(52a, f)), especially given the direction of the climate litigation trends discussed above.

Secondly, the level of detail that banks provide regarding identification and management of litigation risk differs widely. Whether banks consider litigation risk in the context of operational or reputational risk is consequential. For operational risk, the prudential rules stipulate a dedicated own fund requirement. This is not the case for reputational risk. This discrepancy creates scope for regulatory arbitrage by banks, which should be addressed by supervisors, as it may lead to under-provisioning for litigation risk events. Furthermore, given that only few banks expressly consider litigation risk to their clients in the context of credit risk assessment, banks may underestimate the impact of litigation trends on their clients.

Where the bank explicitly discloses that it has procedures in place to manage litigation risks, it is often not clear what actions are being taken, or what quantitative and/or qualitative data is being considered. For example, BBVA, in relation to controversies associated with wholesale customers, refers to having "developed a procedure for managing environmental and social disputes with the objective of identifying the existing processes that prevent the materialization of disputes in addition to establishing the way of managing and resolving them in this area" (2023 Report on TCFD, Progress Toward Transition Plan, p.41) – but no details of the procedure are provided.

Figure 4.1. Risk management cycle



Such information, including detailed risk assessments/internal policies/scenario analyses regarding climate-related litigation, is shared with supervisors by some banks, rather than in public-facing documents. Nonetheless, gaps and inconsistencies in banks approaches outlined in public disclosures are revealing of trends in how banks manage litigation risks. Our analysis of the disclosures banks make as regards the first (identification and assessment) and second (mitigation) stages of risk management (see Figure 4.1), further reveals a stark imbalance in banks' approaches in favour of the former.

How banks identify and assess litigation risk

Banks identify litigation risk primarily through compliance processes

Banks identify litigation risks differently depending on how they conceptualise this type of risk. Where the primary concern is legal risk stemming from regulatory compliance, they focus on the role of second line of defence (compliance function), which includes monitoring statutory and regulatory requirements, and reporting on the risks of sanctions, financial loss or reputational damage to which the bank is exposed. Often, this also includes reference to advising, informing and assisting senior management on promoting a culture of compliance (enacting a 'tone from the top') throughout the bank. In line with EBA guidance on the third line of defence, banks also refer to the internal audit function, having the responsibility to independently oversee and provide reasonable certainty to senior management on compliance with legislation (e.g. CaixaBank).

There is also some evidence of whistleblower policies, which could serve as channels to report violations by the bank or its counterparties. These violations can provide a legal basis for climate litigation claims. Nordea's whistleblowing function, for example, covers "concerns about suspected misconduct such as breaches of human rights, or irregularities such as fraudulent, inappropriate, dishonest, illegal or negligent activity or behaviour in operations, products or services" (2023 Annual Report, p.86). As set out by Solana (2020b), climate cases in financial markets can relate to fundamental human rights, internal decision-making processes, disclosure obligations, breach of contract in financial products, or breach of fiduciary duties or negligence by directors and trustees.

In determining how to respond to a dispute or breach of regulation, banks can adopt different approaches, but it is important that banks provide comprehensive information to supervisors on their overall exposure and the systems they have in place to ensure systemic risks are managed.

Banks use sectoral analysis as a proxy for litigation-risk identification

In terms of the transition risk assessment more broadly (see Smoleńska and Poensgen, 2025), some banks use sectoral analysis to identify which of their clients are likely to be particularly exposed to climate litigation risk; ABN AMRO is an example of a bank that does this. As explored further in Box 4.1, banks should also be using geographical analysis to identify litigation risk exposures, with the objective of identifying and mitigating jurisdiction-specific transition and physical legal risk drivers.

Box 4.1. Understanding sensitivity to litigation risk exposures in different country contexts - example of Rabobank and climate litigation in Brazil

Litigation risk management should be adapted to a specific bank's geographical scope. While climate litigation cases have now been recorded in nearly 60 countries (Setzer and Higham, 2025), there are different levels and types of exposures, depending on the local context.

Rabobank discloses that it operates internationally, with a "strong presence in the food value chain, from smallholder farmers to multinational food producers". It is present in countries with high deforestation and land conversion risk. As a result, in priority sectors and regions, the bank has created a distinct deforestation and land conversion policy, based on a no-deforestation and no-land-conversion approach, even when legally allowed. Rabobank identifies Brazil, with its densely forested areas, as a high-risk country.

Over half of the climate litigation cases in Brazil concern land use and forestry issues, with an equal split between those filed against government bodies for their lack of action and those against companies or individuals responsible for deforestation (Setzer and Higham, 2024). As carbon sinks, forests will play a crucial role in efforts to achieve net zero. Climate litigation that combines deforestation and climate change arguments has already emerged, with at least 81 cases filed between 2009 and 2023 that address deforestation and forest governance (ibid.). Some cases seek to quantify and compensate for environmental and climate-damage (e.g. *IBAMA v. Dirceu Kruger*), while others rely on human rights arguments. An increasing number of cases challenge violations of communities' procedural or substantive rights, in the context of voluntary carbon credit projects.

It is prudent to tailor risk identification and mitigation processes to sector or country contexts. For example, to identify legal risk of deforestation-related disputes, Rabobank screens its customers to verify if they are on an embargo list maintained by the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA). IBAMA is a federal agency under the Ministry of Environment. If the customer is on the list, the bank starts a customer due diligence process, requiring the customer to clarify the listing and provide information. However, the bank caveats that "due to contractual obligations" and its "duty of care as a bank", it may not be able to take action until the investigation and possible external proceedings are complete.

External providers play an important role in informing client-related litigation risk identification processes

Although several banks claim to procure information regarding any disputes and litigation from the clients directly (e.g. AIB), banks also procure controversy-related information from external providers (e.g. Eurobank). Such data may then be incorporated into creditworthiness assessments. Banks further deploy ESG controversy monitoring tools that use AI (e.g. Raiffeisen), satellite imaging that helps to identify violations (e.g. in cases related to deforestation or modern slavery) or semi-automated tools for assessing vulnerability to ESG issues (e.g. Nordea). From a supervisory perspective, the challenge will remain to ensure that such deployment of external data sources and tools are deployed by banks in a critical way and with sufficient understanding.

Banks are starting to use scenario-analysis to identify litigation risk

Several banks experiment with scenario analysis for the purpose of climate litigation risk identification (e.g. Deutsche Bank, Nordea, Intesa, UniCredit, Santander), also differentiating the risk exposure over different time horizons (e.g. Caixa Bank). For example, Intesa's operational risk measurement framework, which includes an annual scenario analysis, sets out the different cases where liabilities for the bank may arise. According to the bank, this includes lawsuits related to its investments; financing of polluting companies; social or environmental disputes linked to its business activities; and "a specific scenario pertinent to the risk of losses due to a violation of fiduciary obligations with clients or with Financial Markets regarding ESG issues" (2023 Climate Report, p.71). This scenario details three situations: (a) violation of ESG regulatory frameworks; (b) non-fulfilment of contractual and possible non-contractual liabilities; and (c) greenwashing and violation of ESG disclosure obligations (ibid.). It is not clear whether litigation scenario analyses conducted by banks are limited to cases against the bank, or whether it would also include actions by the banks' clients or suppliers. For example, in Deutsche Bank's disclosures, the bank states that it has established a dedicated team in non-financial risk management to carry out "a risk review and litigation scenario analysis to identify liabilities and reputational risk" (2023 Initial Transition Plan, p.57) but does not provide details on the specific scenarios.

Furthermore, banks are often not clear about how their use of scenario analysis for identifying operational risk differs from its use in the context of reputational risks more broadly. Using greenwashing scenarios, ABN AMRO assesses both reputational and liability risks, including "claims and regulatory costs", from mis-selling, misreporting and misleading advertising as a concern over a five-year horizon (2023 Pillar 3 Report, p.205). Similarly, Deutsche Bank mentions that the bank has implemented initiatives to improve its "control environment" around greenwashing. This includes applying scenario analysis as a "standard risk management tool" to understand key drivers of misrepresentation of sustainability information (2023 Non-Financial Report, p. 52).

Banks use governance structures and processes to assess climate-related litigation risks

Where banks provide greater detail on the assessment of climate litigation risks, the use of dedicated committees and other governance structures appears to be a popular avenue for assessing the magnitude of litigation risk and ensuring consistent treatment of litigation risk across business operations. In most cases, such structures are linked to general compliance functions.

Building up internal capacity is an important first step to support risk identification. For example, ABN AMRO has deployed dedicated thematic engagement with clients regarding due diligence obligations (related to forced labour in a solar supply chain). There, the relevant clients were identified by the bank's own Intelligence-Led Financial Crime team, "based on transaction data". The team then "distinguished clients based on whether these transactions directly involved companies named in public reporting on this issue or were transactions with intermediary parties" (2023 Annual Report, p.278). Raiffeisen bank, meanwhile, relies on ESG expert opinion from its Sustainable Finance department, which it provides in cases of 'critical clients' using "past and current controversies and incidents; the legal environment (i.e. whether high environmental and social standards are ensured through EU regulations)" (2023 Sustainability Report, p.98). The Compliance function at Deutsche Bank disclosed a new requirement in 2023 for a central 'ESG Regulation team' to assess the highest priority cross-divisional ESG regulatory items, and for the Legal and Compliance team to provide mandatory sign-off on the interpretation and impact assessment of such items (DB Non-Financial Report, 2023). Similarly, AIB describes the levels of approval for ESG disclosures, starting from a recommendation by a Group Disclosure Committee to the Sustainable Business Advisory Committee, ahead of making a recommendation to the Board for approval. In making such a recommendation, the Group Disclosure Committee itself receives recommendations from the Group Sustainability Committee on any new legal and regulatory requirements impacting disclosures on ESG matters.

A recurring theme in the documents we analysed is the overlap between reputational and legal risk management already mentioned above. This aspect is also illustrated in processes in place for risk identification and assessment. At least one bank, Santander, has established specific governance structures to monitor litigation risk, using an exposure-based approach. It refers to a "multi-disciplinary working group on ESG controversies, coordinated by the Reputational risk function", which "pay[s] special attention to any controversy" about the bank's "highly sensitive initiatives and liability implications as an intermediary in several value chains" (2023 Climate Finance Report, p.31). Other banks leave the responsibility for litigation risk management to existing governance structures. For example, Intesa requires the Group General Counsel to monitor the rise of ESG litigation, with "a focus on climate/environmental related issue[s]" (2023 Climate Report, p.17).

Overall, in their disclosure of processes to identify litigation risk, banks appear to focus on the impact of climate litigation on their clients (causing credit risk), rather than how specific practices of banks expose them to litigation (causing operational risk), which constitutes an important gap. This reflects the fact that banks' low-carbon transition is dependent on the transition of their clients. To the extent that banks' strategic decisions or service and product design may also give rise to litigation, our findings appear to point to a further gap regarding risk management of greenwashing cases.

Table 4.1 summarises our findings regarding the type of litigation risks that banks identify and maps these against trends in strategic litigation.

Table 4.1. Sources of potential litigation risk identified by banks

Source of litigation risk	Potential strategic climate litigation	Prevalence in banks' disclosures[9]	Analysis
ESG regulatory non-compliance	Integrating climate considerations cases; transition mismanagement cases *Note: in addition to strategic litigation, regulatory enforcement by public authorities is likely*	High	Failure to comply with ESG regulations may lead to litigation against the bank directly. Most reviewed banks use their existing compliance function to assess this risk.
Breach of human rights	Corporate framework cases; failure-to-adapt cases; turning-off-the-taps cases	Medium	Where present, the disclosure refers to the risk of human rights violations by the bank's counterparties. Banks mainly use internal or third-party (ex-post) controversy screening tools to identify violations by clients. However, climate litigation trends suggest the banks may also be challenged directly for their financing to such activities.
Environmental and social due diligence obligations	Corporate framework cases; failure-to-adapt cases; climate-washing cases; turning-off-the-taps cases	Low	Due diligence obligations can be highly contingent on where the bank operates, as some jurisdictions have mandatory environmental and social due diligence requirements over value chains, in the context of the transition. Disclosures show that some banks have sustainability committees to monitor these.
Climate-washing or greenwashing (including mis-selling, misreporting or misleading advertising)	Climate-washing cases	High	Banks identify potential greenwashing litigation against them directly, but also against their counterparties. Several banks use scenario analysis for identification and assessment. Disclaimers serve to mitigate litigation risk.
Breach of fiduciary duties	Transition mismanagement cases	Low	Duties differ across legal systems and can result in litigation against banks directly, but also against their counterparties. Banks can assess this risk through scenario analysis.
Environmental harm	Corporate framework cases; failure-to-adapt cases; turning-off-the-taps cases	Medium	As with breaches of human rights, banks use (ex-post) screening tools to identify potential environmental violations by counterparties. However, banks may also be exposed to litigation challenging their financing of harmful activities. Banks may use contractual provisions to mitigate this risk.
Securities litigation, including lawsuits relating to banks' climate-related disclosures	Climate-washing and transition mismanagement cases	High	Banks identify this risk as material. Extensive disclaimers around forward-looking statements, especially with reference to protections under US securities laws, seek to mitigate this litigation risk.

[9] This assessment is based on our review of the proportion of banks (out of the 20 banks reviewed) that reference the particular source of litigation risk.

How banks mitigate litigation risk

Banks have discretion over which combination of mitigation tools can best manage climate-related legal risks over the short, medium and long term. In line with EBA guidance on the management of ESG risks more broadly, this could include engagement with counterparties; adjusting financial terms; developing sectoral policies; diversifying portfolios; or using other tools deemed appropriate in line with the bank's risk appetite. EU authorities provide no specific guidance on how litigation risk should be mitigated, though obviously complying with legal requirements offers one such avenue. Our analysis of bank disclosures allows us to distinguish between bank practices that are ex-ante in nature (i.e. they mitigate risk) and ex-post (i.e. they relate to minimising negative financial consequences on the bank once litigation occurs). In particular, there is a clear, key role for the disclosure of dependencies and assumptions in transition plans, often in a 'disclaimer' section of the bank disclosure, acting as a form of risk mitigation. Such waivers are highly informative as a proxy for the direct litigation risks banks foresee, and therefore the type of operational risk that should be adequately provided for.

Banks deploy ex-ante processes such as training on ESG regulations to pre-empt litigation

Our analysis finds that most banks' ex-ante mitigation focuses on capacity and resource-related actions. These actions seek to mainstream awareness and build capacity within the bank to understand compliance risk specifically. This type of mitigation action, through training and development, is familiar to banks, and is well-established for ESG risks in general. Training on sustainability regulations can help prevent legal proceedings relating to non-compliance, but crucially, climate litigation strategies and legal grounds are developing in a heterogenous manner. As discussed in Section 2 above, there are different case strategies, and litigants also rely on laws that were not originally designed to address sustainability issues (e.g. tort law, company law, and anti-money laundering regulations). The complexity is further amplified in a cross-jurisdictional context.

We find evidence across many banks of compliance risk training on climate regulations and taxonomies and greenwashing (e.g. Santander), but there is no explicit disclosure from banks on whether this would include training on how such compliance or reputational risk might evolve into legal proceedings. Raiffeisen is an exception, as it briefly refers to knowledge development on "legal requirements on existing and potential obligations as well as *liability issues* relating to ESG criteria" (emphasis added), provided through external legal attorney expertise (2023 Sustainability Report, p.5). Training of clients is also mentioned as a risk mitigation measure but similarly, this focuses on awareness of sustainability regulations, rather than litigation risk.

Banks engage with counterparties on litigation risks

Putting in place clear policies for engagement (and escalation) with counterparties that face high legal risk can also help mitigate banks' risks. ABN AMRO divides its engagement with corporate clients into four categories: normal intensity; focus list; high intensity; and thematic. 'Focus list' is a process that is initiated if the bank identifies a combination of high-risk factors, such as reports from media or civil society organisations that "give cause for concern". 'Thematic focus' is also triggered if the bank identifies that the sector or industry of such a client is "at risk of breaching the bank's ESG-related requirements, including requirements regarding human rights" (2023 Pillar 3 Report, p. 207).

While rare, there is some evidence of strategy-level policies that can act as risk mitigation measures. For example, in classifying its sustainable investments approaches, among other exclusions, Eurobank has 'norm-based exclusions', which exclude issuers that do not comply with basic standards of business and international norms. However, it is noted in Eurobank's 2024 TCFD Report that the sustainability assessment and eligibility outcome do not prevent the bank from dealing with such counterparties, which undermines the credibility of this policy as a risk mitigation measure unless approval of such financing is complemented with additional own funds and monitoring engagement. Subject to interpretation, this norm-based exclusion could include compliance with standards established in non-binding guidance such as the UN Guiding Principles on Business and Human Rights, or the OECD Guidelines for Multinational Enterprises, both of which are commonly relied upon in climate litigation. While we find mentions of risk appetite objectives integrating 'ESG themes' and reputational risks (e.g. from KBC), there is insufficient disclosure for supervisors or other stakeholders to assess how litigation risk may affect a bank's ability to remain within the stated risk appetite.

In mitigating legal risks associated with suppliers, our analysis revealed several examples of contractually agreed safeguards. AIB, for example, requires suppliers to attest annually to key bank policies (or clauses in such policies), which commits them to complying with legal obligations in the supplier's operating jurisdiction, including environmental laws. Although not identified in our review, similar procedures may reasonably be in place for client relationships.

Banks try to mitigate their own litigation risks through disclaimers and waivers

In just under half of the bank disclosures analysed, there are broad-ranging waivers and disclaimers that seek to delineate the bank's responsibility but also insulate it from potential legal action ex-ante.[10] Some of the disclaimers' language is generic: for example, banks explicitly state the documents are not intended to be interpreted as an offer to sell or otherwise acquire securities, nor to provide any financial (investment, legal or tax) advice. Several banks then explicitly exclude liability for any loss arising from any use of the document or its contents. ING appears to try to explicitly exclude liability by stating that the document makes "no representation or warranty as to whether any of our securities constitutes a green or sustainable security" (2024 Climate Progress Update, p.107). BNP Paribas' disclosures specify that it or its representatives will not be liable "whatsoever in *negligence* or otherwise for *any loss however arising* from any use of this report or its contents or *otherwise arising in connection with this report or any other information or material discussed*" (emphasis added) (2024 Climate Report, p.70). LLBW also makes clear that the disclosure of information in these reports "says nothing about the materiality or possible financial impact of this information" (2023 Sustainability Report, p.36) and Deutsche Bank makes a similar statement. KBC also expressly caveats that using the terms 'green' and 'sustainable' do not "necessarily suggest that what we describe is already (fully) aligned with the EU Taxonomy" (2023 Sustainability Report, p.2). Although not a clear exclusion of liability, one bank, Rabobank, explicitly states that the report is written from a Dutch law perspective. This can also be interpreted as a form of risk mitigation.

Overall, bank waivers or exclusions fall broadly into four categories:

- Exclusion of liability whatsoever for the document
- Exclusion of use case (e.g. not an offer to sell securities; no characterisation of materiality; not a guarantee that targets will be met)
- Exclusion of liability for third party information
- No obligation from the bank to update or revise contents of the document

Through the disclaimers, banks have primarily tried to restrict use of the disclosure to "informational/informative/information purposes only" (e.g. BBVA, Rabobank, Santander and Société Générale). The concern is likely related to the risk of securities litigation being brought. More than half of the banks have extensive disclaimers around their documents that contain 'forward-looking statements', especially in the context of documents labelled as 'transition plans' or 'sustainability disclosures'. Securities and misrepresentation laws, and the relevant liability standards for forward-looking statements, differ across jurisdictions. Such waivers refer strictly to risks arising from lawsuits for misstatements in corporate disclosures. These types of lawsuits for sustainability-related statements are, at present, relatively rare in Europe. However, given the reliance of the EU Sustainable Finance Framework on disclosures, this avenue for strategic litigation may be gaining prominence in the future. Furthermore, there is a disclaimer used by some banks (e.g. BBVA) to deliberately insulate its forward-looking statements from liability in the US (see Box 4.2). However, given the reliance of the EU Sustainable Finance Framework on disclosures, this avenue for strategic litigation may gain prominence in the future.

[10] For example, as mentioned in Box 4.1 above, outside of the legal disclaimer section, Rabobank stated that it has a duty to adhere to contractual obligations and to respect local regulations and "as a consequence [it] cannot exclude having at any moment in time customers accused of illegal deforestation or customers who are in the process of meeting IBAMA's (or any other relevant governmental bodies') obligation to restore land" (Rabobank 2023 Impact Report, p.44). This can also be viewed as a form of 'disclaimer'.

Box 4.2. Forward-looking statements and safe harbours

In some jurisdictions, there are 'safe harbours' for forward-looking statements: provisions that protect companies and directors from legal liability under certain conditions. For example, in the US, if forward-looking statements are accompanied by meaningful cautionary statements, the issuer is generally protected from liability claims under federal securities laws (Rosen and Carey, 2016). BBVA explicitly refers to these protections, provided under the United States Private Securities Litigation Reform Act of 1995, in its transition plan progress report. In the EU, ESMA published a call for evidence in October 2024, soliciting views on whether liability risks are driving non-disclosures of forward-looking information and whether safe harbours should be introduced (ESMA, 2024b). From July to October 2024, the UK Financial Conduct Authority (FCA) also consulted on new rules for protected forward-looking statements. The FCA aims to finalise rules by the end of June 2025 (FCA, 2024).

Generally, forward-looking statements refer to any information about the management's belief or expectation about the firm, which in the context of bank transition plans, may include:

- Intentions, objectives, expectations, projections or estimates and their underlying assumptions (e.g. BNP Paribas)
- Statements regarding future financial performance or "future growth rates or the achievement of future targets, including those relating to ESG performance" (BBVA 2023 Report on TCFD, Progress Toward Transition Plan, p.121)
- Statements relating to the bank's "potential exposures to various types of operational, credit and market risk" (ABN AMRO 2023 Annual Report, p.444).

Banks refer to four key dependencies on which the performance of their risk management relies as a way of mitigating litigation risk: regulation, market factors, geopolitical risks and data-related gaps or concerns. Bank disclaimers emphasise that the methodologies, quality of data and reference scenarios are likely to evolve. Forthcoming EU policy is expected to improve data quality, and harmonised standards and calculation methods are also expected to improve, which is highlighted in several disclosures (e.g. Deutsche Bank's 2023 Initial Transition Plan). Some banks worry, however, that non-financial information (NFI) is especially subject to measurement uncertainties and "may not be comparable to NFI of other companies" (Santander 2024 Climate Finance Report, p.86). The concerns around methodological uncertainties and inconsistencies across the sector illustrate the necessary role of regulators in helping align practices and address shortcomings in climate-related data (Smoleńska and van 't Klooster, 2022). The proposed EU Omnibus Simplification Package is thus a worrying development, as it would introduce new uncertainties to the Corporate Sustainability Due Diligence Directive, Corporate Sustainability Reporting Directive and the Taxonomy Delegated Acts, and potentially penalise early adopters of transparent planning and disclosure (Smoleńska and Reitmeier, 2025).

However, in line with the EBA's *Guidelines on the management of environmental, social and governance (ESG) risks* (paras 27 and 29), data limitations are no excuse for poor risk mitigation. Banks should document remediating actions, such as using estimates or proxies (e.g. based on sectoral or regional trends in litigation) and use expert judgement and qualitative data, ultimately aiming to reduce the use of estimates over time. To mitigate risk related to data, some banks obtain limited assurance from external auditors on sustainability information in their reports. However, a few banks also expressly state that the figures in these documents are unaudited, given they are not annual financial reports. For example, in Société Générale's NZBA Progress report (2024), it notes that "any claims of having achieved significant carbon reduction have not been verified by an independent third-party".

The examples of the actions taken by banks to mitigate challenges caused by poor data availability show that while safe harbours may support confidence and legal certainty, they must not be used as an excuse for no action. As is well known, climate change risks are characterised by complexity, both because of the physical effects and uncertain consequences of the interactions of complex systems, and because of the economic consequences of the transition. There is also no universally accepted methodology for assigning probabilities and quantifying possible outcomes for many types of climate-related risks (Smoleńska and van 't Klooster, 2022). Consequently, forward-looking tools – transition plans, scenario analyses and stress tests – are emerging to overcome the limitations of existing prudential frameworks. Addressing all forward-looking information through a safe-harbour lens risks depriving such tools of their effects in terms of effectively steering bank behaviour and reducing risk exposures.

Banks reveal little after a dispute against the bank or its counterparties has arisen

Banks that are subject to ongoing litigation do not explicitly address the related risks in their disclosures. In the case of the two banks from our sample that are currently part of climate litigation proceedings, ING's disclosures mention indirectly that the outcomes of such litigation and future claims by customers or stakeholders might also affect future performance (in relevant disclaimers), while BNP Paribas does not address its ongoing case.

Some banks disclose information about procedures that would be triggered after a dispute has arisen. These are in place for both litigation against the bank and that against the client. As a result, the procedures disclose serve to mitigate various types of risk: operational, credit and reputational risks. For example, CaixaBank has a Working Group within its Sustainability Committee, which provides an opinion on the seriousness of potential and materialised disputes (alerted through external or internal sources) relating to counterparties and proposes response strategies. Similarly, Santander's multi-disciplinary working group on ESG controversies is coordinated by the reputational risk function, but the group pays particular attention to "liability implications as an intermediary in several value chains". Any significant threat is escalated to senior management to take "proper mitigating measures". Santander's standard contract also specifies that the bank can demand an early repayment of loans if it discovers a material breach of environmental laws and regulations. This contrasts to the approach taken by Rabobank when it discovers customers are involved in deforestation allegations (see Box 4.1 above).

5. Recommendations and outlook

This report has revealed gaps in current bank practice and the regulatory environment with regard to climate litigation risks. While this form of risk is a novel area of concern for supervisory authorities, the types of issues we identify are relevant for broader discussions about climate change risk assimilation in prudential frameworks: a focus on identification rather than mitigation, underestimation of physical risk and arbitrage between risk categories. Our findings should be of interest for financial policymakers, as they indicate that a potentially significant source of risk is not being adequately identified, monitored or managed. In this section we provide recommendations for prudential supervisors and credit institutions.

Recommendations for prudential supervisors

- **Reflect on how climate-related litigation risks relate to traditional risk categories.** In supervisory guidance and engagements with banks, supervisors can play an important role in reducing inconsistencies and gaps in how litigation risks are considered, by outlining the different types of litigation trends that banks should be mindful of, and articulating how these can act as risk drivers of traditional prudential risk categories. Such guidance should reflect that climate-related litigation can be a driver of credit, market and liquidity risk, in addition to operational risk. Supervisors should also further develop an approach that integrates the possible systemic impacts of climate litigation for transition risk across tradition prudential categories.

- **In supervisory assessments (Pillar 2), pay attention to how banks are conceptualising legal risks.** Even where supervisors receive more detailed confidential reporting on litigation risk management, they should consider how banks communicate on the former in their disclosures. Public disclosures have a bearing on reputational risks and provide insight on system-wide trends. Supervisory intervention may be warranted where a review of public disclosures combined with targeted supervisory engagements reveals:
    - little to no evidence that the bank has a nuanced understanding of whether and how emerging climate litigation trends might impact its business or that of its clients;
    - lack of consistency in how legal risks are classified and understood across different bank functions; and/or
    - significant gaps in the types of litigation risks considered by banks (such as cases related to mismanagement of the transition or physical risk-related litigation).

- **In supervisory assessments of risk identification and assessment processes,** consider whether banks are assessing not only actual occurrences of ESG controversies, but also the *likelihood* of litigation, as well as the potential *magnitude* of the financial impact on the bank. Prudential authorities should support the development of dedicated sectoral and scenario analysis to capture emerging litigation trends that are material from a prudential perspective.

- **In supervisory assessments of risk mitigation and management processes,** supervisors should set out clear expectations for, and assess the robustness of, the bank's risk management processes including its processes for managing its own litigation risk exposures, as well as exposures to potential litigation against counterparties. This should include expectations relating to internal iterative transition planning processes, which are particularly suitable in this respect given the evolving nature of climate litigation trends.

Sound transition planning can also prevent banks from taking action that could give rise to potential claims (e.g. greenwashing, mismanagement of the transition, or providing misleading forward-looking statements to the markets). In this context, reliance of waivers and disclosures of dependencies of banks' transition strategies should be treated as a starting point for action, rather than an excuse for inaction.

- **Conduct further research on the evolving litigation trends and potential implications of litigation on bank safety and soundness and financial stability.** Our analysis of public disclosures indicates that while many banks recognise the climate litigation trend as material, their approaches differ widely and are incomplete. Comparative analysis reveals jurisdictional differences, which can only partially be explained by the diversity of legal systems. Furthermore, the scale of the potential risk of emerging litigation trends at the wider financial system level is poorly understood. Analysis should consider not only the implications of potential legal action against banks themselves, but also that of legal action against counterparties, institutions operating in similar markets, or governments.

Recommendations for banks

- **Stay on top of emerging climate- and environmental-related litigation trends and evaluate these as potential risk drivers of traditional prudential risk categories**, rather than as a siloed, standalone risk category.

- **Take steps to systematically identify and assess exposure to litigation risks, building on this conceptualisation.** In this evaluation, banks should take into account the full range of climate-related litigation trends (as set out in Section 3).

- **Consider significant litigation trends which may impact counterparties, peer institutions operating in the same jurisdictions, or the governments of jurisdictions in which they have significant exposures** in addition to the potential implications of cases brought against themselves. Litigation scenario analyses, which explore the potential implications of cases brought against the bank as well as key counterparties, can be an important tool for strengthening risk identification and assessment. Where material risks are identified and disclosed, practitioners should take care to ensure that there is consistency in how these risks are classified and conceptualised across multiple documents, including Pillar 3 disclosures, annual reports and dedicated sustainability reports.

- **Use internal transition planning process to ensure adequate identification, assessment and mitigation of relevant legal (including litigation) risks.** Transition plans have received much attention in recent years as versatile tools that banks and other private actors can use for a variety of purposes (including substantiating net zero commitments, and articulating material changes to the entity to investors and other primary stakeholders). The quality and robustness of a bank's transition planning process, and banks' exposure to climate-related legal and litigation risk are strongly linked (Clarke and Clay, 2025).

Related to the final recommendation above, in Box 5.1 we provide examples of how common elements of private sector transition plans and planning processes can help banks manage the risks of specific types of climate cases being brought against themselves or their clients.

As supervisory guidance develops and engagement with banks on litigation risk increases, our findings in this report will likely need to be revisited. However, we hope that the report can serve as a starting point for further dialogue with key stakeholders on how banks understand litigation risk and how transition plans and traditional risk management can best address such risks.

Box 5.1. Transition planning as climate litigation risk mitigation

Transition plans (TPs) and planning span five broad areas: Foundations, Implementation Strategy, Engagement Strategy, Metrics and Targets and Governance (GFANZ, 2022, TPT, 2023; EBA, 2025). As developed in our complementary work (Smoleńska and Poensgen, 2025), each core TP element contains information that is relevant from a climate change risk identification and mitigation perspective. In the table below we apply this approach to climate litigation risks. It should be noted that in many cases transparent disclosures of a transition plan are a pre-condition for ensuring that the underlying actions translate into reductions of legal and litigation risks.

Examples of transition plan actions	Most relevant climate case type, against either the bank directly or a client/counterparty
1. Foundations	
Strategic objectives and long-term goals: defining ambitious, science-based decarbonisation and climate-resilience objectives, based on reasonable assumptions (see below).	**Banks** Corporate framework cases; turning off the taps cases; failure-to-adapt cases; transition mismanagement cases *Setting, and transparently disclosing, objectives that are aligned with the goals of the Paris Agreement, particularly how banks intend to address financing of high-emitting activities, and how its operations take physical risks into account, is crucial to mitigating the risk of these cases.*
Assumptions and dependencies: clearly defined and transparently disclosed key assumptions and external factors on which delivery of the transition plan relies, e.g. related to evolving policy landscapes; price developments of technologies.	**Banks** Climate-washing or greenwashing cases; transition mismanagement cases *Clearly identifying and transparently disclosing key assumptions and external dependencies and linking these dependencies to the bank's engagement strategy can help banks provide evidence that they are not providing misleading information, and are taking meaningful steps to manage the transition.*
2. Implementation strategy	
Business operations: integrating climate-related risk and client transition plan assessment into core decision-making, e.g. lending and pricing decisions, setting of financial terms.	**Banks** Integrating climate considerations cases; climate-washing or greenwashing cases; transition mismanagement cases *Taking and disclosing these actions can help a bank demonstrate that it is adequately taking into account climate considerations in decision-making and substantiate green or climate-related claims. It can also protect directors, officers and others tasked with ensuring the success of a business against challenges that they are not adequately managing climate-related physical and transition risks.* **Counterparties** Corporate framework cases; failure-to-adapt cases *Similarly, reviewing corporate clients' TPs to ensure that they are robust and credible can support a bank in identifying and mitigating potential risks arising from clients being subject to corporate framework and failure-to-adapt cases. Banks can leverage third party tools like the Transition Pathway Initiative, which assesses companies' emissions pathways with sector-specific benchmarks.*
Business operations: integrating legal risk screening into counterparty assessment; integrating litigation safeguards into financial terms; integrating litigation risk into pricing decisions.	**Counterparties** Corporate framework cases; government framework cases *Corporate framework cases challenge the fundamental business model of banks' fossil fuel-intensive clients and could, if successful, pose a credit risk to the bank. Licensing and permitting for projects financed by banks can also be subject to litigation. Banks should ensure that customer onboarding, due diligence processes and lending and investing strategies account for legal risk.*

Policies and conditions: exclusion policies, engagement and escalation policies, whistleblower policies.	**Banks** Turning off the taps cases; climate-washing or greenwashing cases *Banks may face legal challenges for failure to implement responsible strategies for phasing out high-emitting assets or activities. They may also be challenged for misalignment between statements on climate ambition in strategic objectives, and the disclosures on implementation actions to meet such goals. Strong policies and conditions can protect a bank from such claims.* **Counterparties** Polluter pays cases; corporate framework cases; government framework cases *Banks' clients may face litigation that seeks monetary damages for their past contributions to climate change harm, or litigation that seeks to change their future operations. To mitigate the bank's own risk, exclusion, engagement and escalation policies should comprehensively account for such legal risk for each client (considering their sector, geography and other exposures).*
3. Engagement strategy	
Engagement with value chain: describing current and planned engagement activities with clients, customers, industry and the public.	**Banks** Transition mismanagement cases; turning-off-the-taps cases *Clear disclosure of engagement activities, how these are linked to identified assumptions and dependencies, and how banks are actively supporting a just transition can help mitigate legal risk associated with failing to align finance flows and bank activities with the goals of the Paris Agreement. Similarly, as financial intermediaries, banks rely on the provision of data and actions from clients for delivering their own transition plan objectives. To mitigate legal challenges that transition risks are being mismanaged, banks should adopt a proactive approach to requesting data underlying clients' emissions reduction pathways, evidence that they have considered the best science available, and requiring disclosures from clients on how uncertainties in their assumptions will be improved over time.*
4. Metrics and targets	
Governance, business and operational metrics and targets: clear disclosure of metrics and targets used to drive and monitor progress.	**Banks** Climate-washing or greenwashing cases; transition mismanagement cases; corporate framework cases *Reporting on metrics and targets that the bank uses to monitor and drive progress of portfolio alignment, and any limitations of taxonomies, tools, methodologies or definitions (e.g. around financed or facilitated emissions) can help mitigate the risk of greenwashing and illustrate how the bank's senior management is effectively monitoring and managing the transition.* *It is recognised that there may be methodology and data limitations to certain banking activities. To mitigate underlying legal risk, banks should be explicit and upfront about the methodologies used in its strategic objectives, and disclose how they are taking steps to improve any data limitations.*
Carbon credits: disclosure about how the bank uses or plans to use carbon credits to achieve its transition plan.	**Banks** Climate-washing or greenwashing cases *The purchase and use of carbon credits has increasingly been challenged in climate-washing litigation globally. If a bank uses or plans to use credits to achieve its transition objectives, it is crucial to provide clear disclosure of the due diligence processes the bank has taken to ensure the credits are credible (e.g. how concerns about additionality, immediacy and durability have been addressed).*
5. Governance	
Board oversight and reporting: considering climate litigation risk in existing risk governance processes	**Banks** Transition mismanagement cases *Litigation risk can amplify transition risk exposures. Ensuring that litigation risk is integrated into existing risk governance processes at the*

(including board and relevant committee decision-making).	*board level can help mitigate the risk of challenges to those tasked with ensuring the success of the business. Disclosures under the other Transition Plan Taskforce Disclosure Framework Governance elements (e.g. executive incentives and remuneration, and skills, competencies and training) will also help mitigate risk of transition mismanagement cases being brought, as it illustrates the bank taking steps to increase internal capacity and accountability.* **Counterparties** All climate case types
Roles, responsibility and accountability: integrating climate litigation risk considerations into the existing risk management framework.	
Incentives and remuneration: integrating transition planning objectives into executive incentives and remuneration structures.	
Skills, competencies and training: implementing training and capacity-building programmes on sustainability regulation and emerging climate-related litigation trends.	

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Appendix: Methodology

Documents reviewed

We analysed bank disclosures in relation to management of climate change legal risk, with the expectation that how banks disclose climate change legal risk in public documents provides insights about how they are identifying, managing and mitigating climate-related legal risks internally. We adopt a broad definition of such disclosures and dedicated 'transition plan' documents, climate or sustainability reports, TCFD disclosures, Pillar 3 and annual reporting.

Our case selection draws on banks in the EU, as a jurisdiction in which climate change risks have already been explicitly integrated into the prudential framework (Smoleńska & Van't Klooster, 2022; ECB, 2020). We selected 20 banks from the pool of institutions directly supervised by the European Central Bank (ECB) within the Single Supervisory Mechanism. To ensure geographical representativity we selected the largest banks from within 10 Member States. The approach developed is intended to be scalable and therefore could be expanded to a larger sample of institutions. It is likewise applicable in other jurisdictions where banks disclose information relating to their risk management.

Bank	Document(s) reviewed
ABN AMRO	• 2023 Annual Report • 2023 Pillar 3 Report
AIB	• 2023 Annual Report • 2023 Sustainability Report
BBVA	• 2023 Report on TCFD, Progress toward Transition Plan
BNP Paribas	• 2024 Climate Report
CaixaBank	• 2023 Climate Report
Commerzbank	• 2023 Non-Financial Report • 2023 Pillar 3 Disclosure Report
Crédit Agricole	• 2023 Acting for the Climate Report
Deutsche Bank	• 2023 Initial Transition Plan • 2023 Non-Financial Report
Erste	• 2024 Climate Report
Eurobank	• 2023 Annual Report on Business & Sustainability • 2024 TCFD Report
ING	• 2024 Climate Progress Update
Intesa	• 2023 Climate Report
KBC	• 2023 Sustainability Report • 2023 Risk Report
LLBW	• 2023 Sustainability Report (supplemented by the Sustainability Practices)
Nordea	• 2023 Annual Report • 2024 Climate Targets and Actions • 2023 Sustainability Indices
Rabobank	• 2023 Impact Report
Raiffeisen	• 2023 Annual Report • 2023 Sustainability Report
Santander	• 2024 Climate Finance Report
Société Générale	• 2024 NZBA Progress Report
UniCredit	• 2023 Integrated Report

Review process

We designed a coding framework to identify three key categories of information:

a) How banks conceptualise legal, litigation or liability risk
b) The types of litigation banks anticipate
c) How banks identify, assess and mitigate litigation risk, including through how waivers or disclaimers are used to insulate them from potential legal action *ex ante*.

Findings from category 1 below have been primarily incorporated into our analysis in Section 3 of this report, and findings from categories 2 and 3 have been incorporated into Section 4. The three categories were designed to help us address our main research question: *how is climate litigation risk currently integrated (or not integrated) in banks' transition planning and risk management?*

We coded all documents on NVivo. To ensure coding reliability across the four authors, we met regularly to review, discuss and where relevant, amend and align codes. Our guiding questions for coding are set out below. After reviewing all 20 banks, we had multiple discussions to consolidate our answers to the questions below and identify cross-cutting themes. For example, answers to questions 1(c), 1(d) and 1(e) allowed us to separate out banks into those that appear to incorporate considerations of litigation risk into prudential risk categories, those that incorporate it into climate and environmental risk, and those that consider it part of climate-related risks (transition and physical). It also allowed us to identify gaps, e.g. as covered in Section 3, few banks consider how litigation risk and physical climate risk interact.

1) Definition of legal, litigation or liability risk

a) How is legal risk defined?
b) What does legal risk include, bearing in mind the CCR3 definition?
c) Is legal risk considered part of operational risk or compliance risk? Or is it considered as a sub-category of physical and transition risk? Or a separate liability risk? All or multiple of these?
d) Is climate change-related legal risk referred to as a driver of other risks?
e) How does reputational risk relate to litigation risk?

2) Legal risk management

a) Does the bank explain how it identifies legal risks (e.g. governance structures, processes, policies)?
b) Does the bank explain how it assesses the likelihood and magnitude of legal risk?
c) Does the bank explain how it mitigates *ex-ante* legal risks?
d) Does the bank explain how it manages *ex-post* legal risks?
e) For each of the above, does risk management relate to: the bank, bank's activities, its clients
f) or other counterparties (e.g. suppliers) or unspecified?

3) Legal waivers and disclaimers

a) What caveats are expressly included?
b) Which stakeholder groups are referenced?