

Managing Risk – Board level approaches to risk

START





Presenting today



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Today's agenda

Litigation

1



Employment

3

Governance

2





Litigation: Class & Representative actions



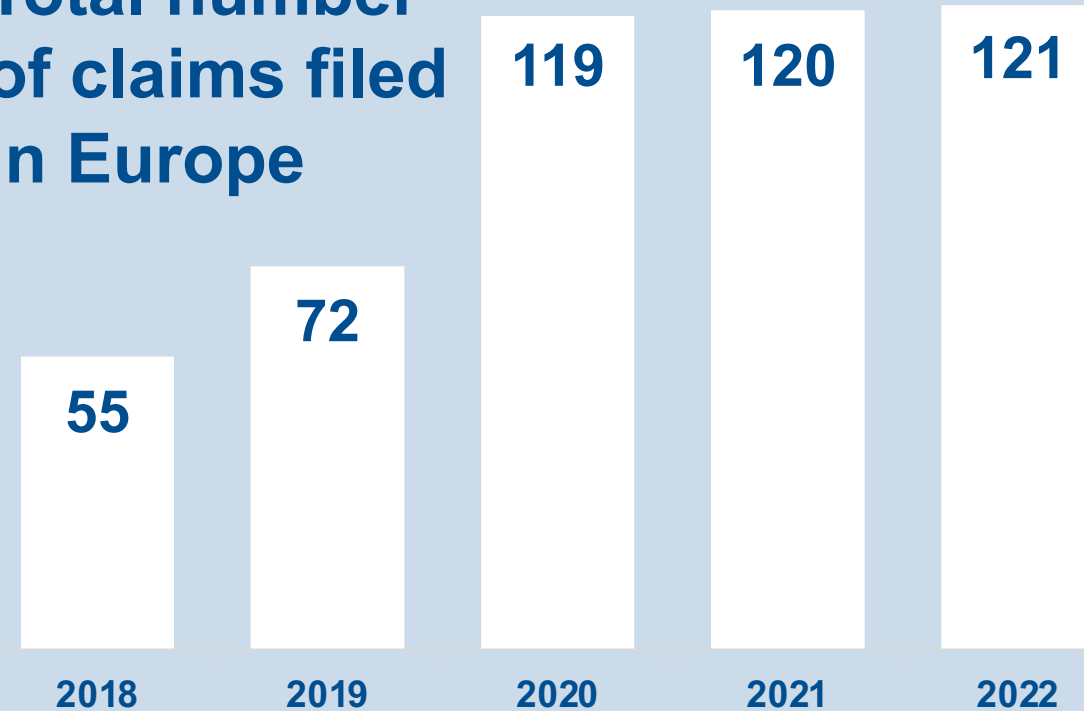


Increasing class actions in Europe

The CMS European Class Action Report is the only report identifying total claims filed for the past 5 years across Europe.

The number of class actions filed in Europe in 2022 slightly exceeds 2021, at 121 claims. A **220% increase** from 2018.

Total number of claims filed in Europe





Drivers for increased risk



1

New procedures



Representative
Actions Directive

National
procedures



2

New claimant law firms



3

More litigation funders





Opt-out mechanisms and risk

Norway

Existing opt-out mechanism. Court approval required, usually based on written submissions. Opt-out criteria: claims so small majority claims would not be brought as individual actions; and claims do not raise issues that need to be heard individually.

UK (England & Wales)

Opt-out proceedings available before the Competition Appeal Tribunal for alleged breaches of competition law. Representative (opt-out) proceedings available (in England & Wales) for any cause of action but representative and class members must have the 'same interest'.

Spain

Opt-out claims can be permitted by court. Claims must be sufficiently homogeneous not clearly unfounded. Court may certify claims on an opt-in basis where claims for individual class members exceeds €5,000.

Portugal

Opt-out claims can be brought by individuals or suitable associations for specified breaches of substantive law (incl. consumer protection and competition laws).

Netherlands

Settlement effort required first. Then for the court to decide is claim is suitable to proceed. Requires majority of members to be resident in NL; defendant seated in NL or close connection to it; and alleged act to have occurred in NL.

Belgium

Existing opt-out mechanism where public interest is infringed. Interests of class members must be identical.

Hungary

Existing opt-out mechanism where public interest is infringed. Interests of class members must be identical.

Slovenia

Court approval required with specified qualifying criteria; must be on behalf of identifiable class of individuals concerning same or related questions of fact or law.

Bulgaria

Existing opt-out mechanism; class must be identifiable and able to finance the litigation.





Governance:

Managing risks and seeking opportunities





Boardroom risks in the 21st Century



As volatility in multiple domains grows in parallel, the risk of polycrises accelerates

*World Economic Forum,
Global Risks, 2023*

- » Economic
- » Environmental
- » Geopolitical
 - » Peace and security
- » Societal
 - » Rule of Law
- » Technological
 - » Cybercrime

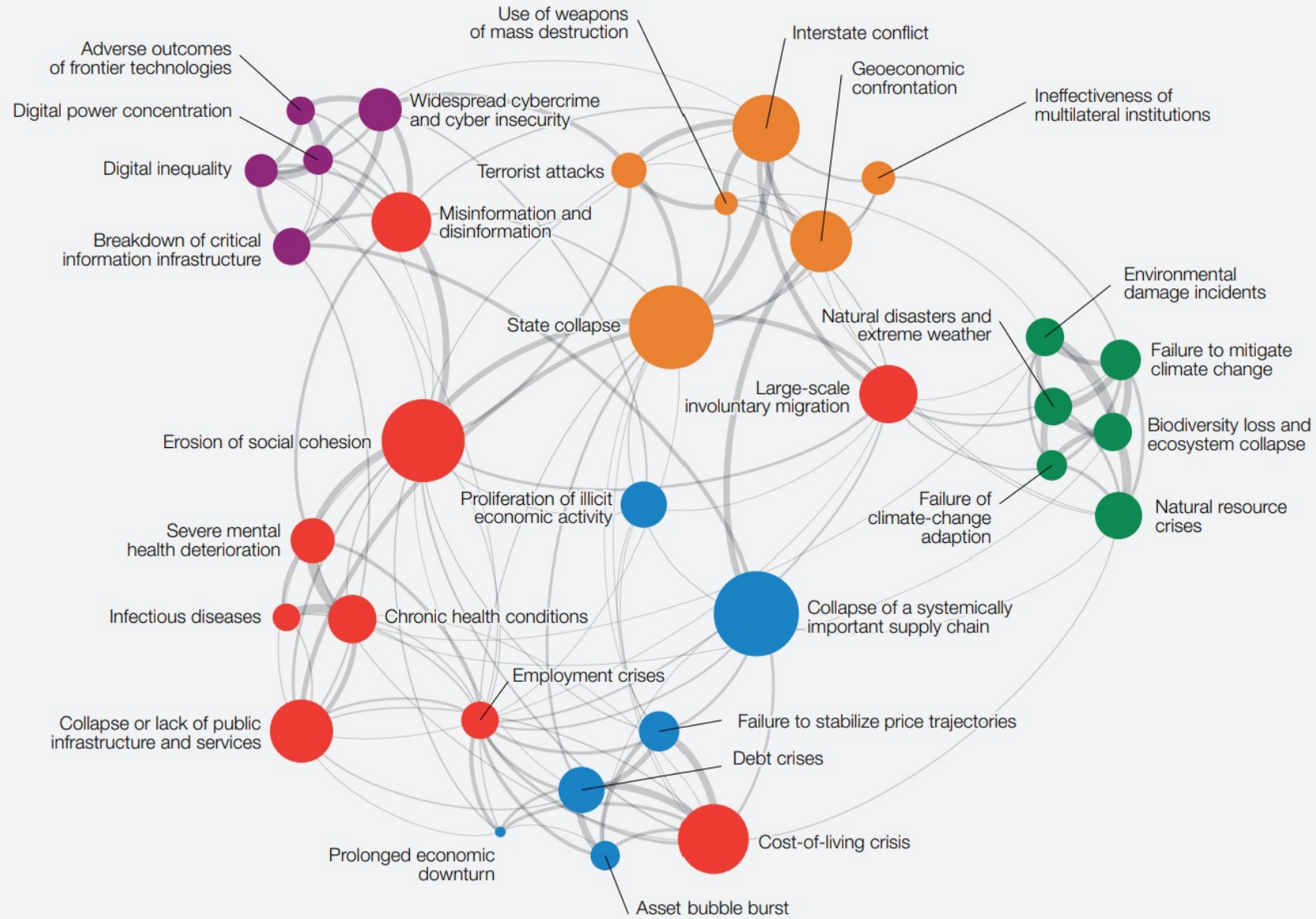
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Global risks

- » Economic
- » Environmental
 - » Decarbonisation
- » Social
 - » Staff
 - » Local communities
- » Technology and Innovation
- » Operational
 - » Access to resources
 - » Supply chains
 - » Security and stability

2

Company risks



Nodes

Risk influence



Edges

Relative influence



Risk categories

Economic

Environmental

Geopolitical

Societal

Technological





Finding the right strategy

- » Assessment of main drivers for transformation and innovation
- » Alignment with the risk assessment
- » Re-evaluation of the business model?
- » Build or buy?
- » Compete or cooperate?
- » Debt or Equity?





Managing change

- » Duties and responsibilities of directors
- » Business judgement and legal obligations
- » Governance systems in a group: group under control
 - Overall group responsibility: limits and risks
 - Compliance systems
- » Empowering the teams: Systems thinking



Employment





Key employment risks

Staff representation and rights of works councils

Whistleblowing procedures (discrimination, bullying, harassment)

Reclassification of freelancers into employees

D&I



Focus on D&I



1

Equal pay



2

Women on Board



3

NFRD and CSRD



Please do contact us

