



AT1 INSTRUMENTS

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PURPOSE AND ELIGIBILITY

- **Purpose:** provide going-concern loss absorbency
- **Insolvency Ranking:** below Tier 2 and ahead of equity for insolvency claims; own funds ranking between Tier 2 and CET1
- **Subject to Write-Down or Conversion tool under the BRRD/SRM:** Statutory write-down or conversion applies in addition to contractual terms; liability cascade after CET 1
- **Construction:** can be structured to be debt and not equity (from a legal, accounting and tax perspective)
- **Functional criticism:** Credit Suisse write-down of AT1 to zero with no impact on equity (see last slide on ECB proposal)
- **Eligibility:** perpetual (no fixed maturity); full subordination; principal loss-absorption via conversion to CET1 or temporary/permanent write-down on trigger; fully discretionary, non-cumulative distributions; no incentives to redeem; prior supervisory approval for any call or repurchase.
- **Trigger:** automatic activation at specified capital thresholds; recognition of point-of-non-viability loss absorption.
- **Instrument features:** issued and paid-in; no features that undermine loss absorbency.
- **Disclosure:** clear, prominent warnings on coupon cancellation, trigger activation, and potential resolution actions; disclosures on available distributable items for previous years.

LEGAL BACKGROUND IN THE EUROPEAN UNION

- CRR (Art. 51 et seq. CRR and Art. 72 et seq. CRR)
- EBA Q&A (on eligibility requirements, buy backs, incentive to redeem, material amendments)
- Monitoring Report (last update report dated 24 June 2024, EBA/REP/2024/11)
- EBA letters to a specific law firm (somehow problematic publicity against issuers)
- Template terms and conditions (EBA template; German Banking Association Template in Germany)
- Governing law (usually the home state law of the issuer; third Country laws are considered to be complex structures)



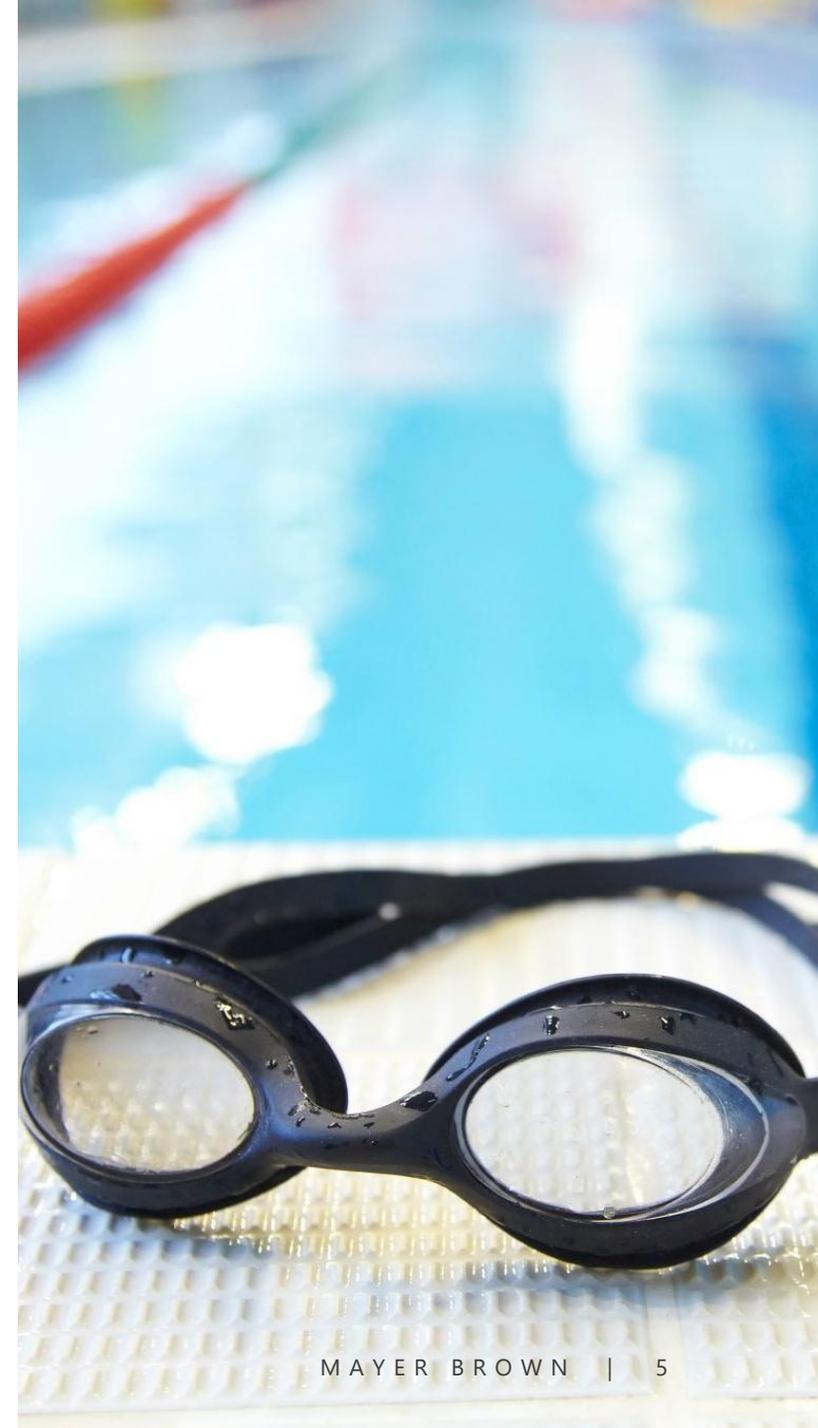


CURRENT ISSUES, PITFALLS, AND MARKET PRACTICE

- **Permanence vs call expectations:** avoid drafting that creates incentives to redeem; manage litigation risk with clear risk factors
- **MDA (Maximum Distributable Amounts) constraints:** coupons may be cancelled despite solvency; make issuer discretion language explicit
- **Resolution uncertainty:** align with applicable resolution hierarchy, point-of-non-viability standards, and recognition of resolution powers, especially cross-border
- **Trigger design:** set levels and mechanics (conversion vs write-down) to avoid value transfer from CET1 and ensure operational feasibility
- **Calls:** provide capital-neutrality analysis; engage with supervisor; tightly define tax or regulatory event calls to avoid de facto incentives in line with EBA recommendations
- **Cross-border/non-EU law:** ensure contractual recognition of bail-in and home/host regime consistency
- **Legacy/grandfathering and evolving CRR/Level 2:** use variation/substitution provisions to preserve recognition without expanding investor rights
- **Distribution compliance:** observe product-governance, PRIIPs/KID, and retail restrictions; ensure consistency across prospectus, term sheet, and prospectus.

EBA MONITORING REPORT – SELECTED KEY ASPECTS

- **Trigger Events:** clear, simple, and explicit reference to the possibility of calculating the CET1 ratio "at any time". Definitions should avoid making references to "as determined by the bank" or to regulatory reporting dates. There should be a trigger on the basis of all levels of solvency applicable to the institution, meaning triggers at consolidated, sub-consolidated, and solo levels as applicable.
- **Calls and Redemptions:** The EBA expresses reluctance on long notification periods for calls that might undermine the permanence of the instruments. For continuous call options after five years, institutions should not announce the call before obtaining prior supervisory approval
- **Write-Down or Conversion:** Write-ups should be fully discretionary, with no provision linking them to contractual, statutory, or other obligations. Provisions should not indicate that a write-down/conversion notice must be given before the institution can exercise the loss absorption mechanism
- **Contingent Clauses:** The EBA recommends disallowing the use of contingent clauses in AT1 terms and conditions of EU issuances. While presenting some benefits (particularly for hedge accounting), the EBA views that contingent clauses present prudential concerns that outweigh the potential benefits
- **Distribution Cancellations:** No provision should link a change in payments to contractual, statutory, or other obligations, as payments are fully discretionary. The effectiveness of cancellation should not be made subject to a notification, and non-payment of distributions should be evidence of cancellation
- **Standardisation:** The EBA encourages issuers to use the standardised templates published by the EBA in October 2016 and expects that terms and conditions should not be unduly complex, but as simple and clear as possible



ECB RECOMMENDATION ON AT1 RECALIBRATION OR CESSATION

Report of December 2024: Recommendation #2:

the going-concern loss-absorbing capacity of the capital stack could be improved by adjusting the design or the role of AT1 (and Tier 2) instruments.

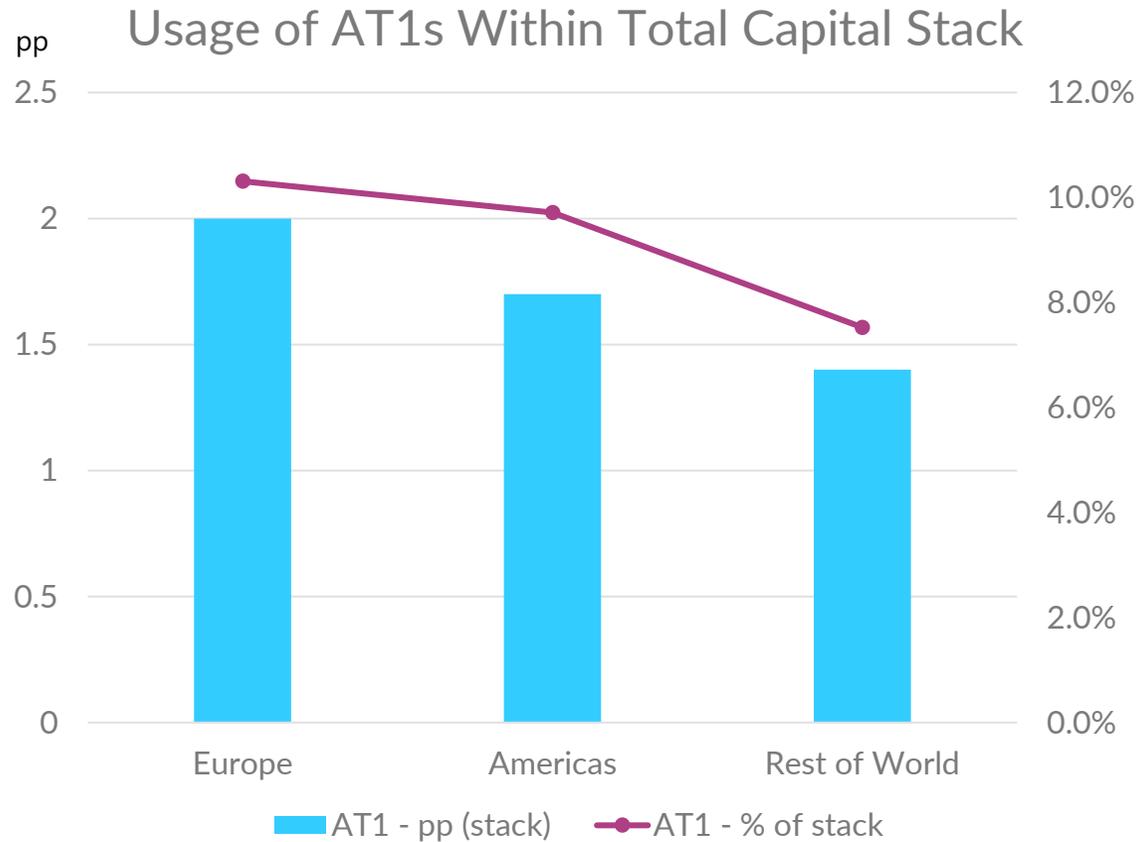
Two alternatives can be considered.

- First, the features of AT1 instruments could be enhanced to further ensure their loss-absorption capacity in going concern and provide additional clarity to banks and investors on the going-concern loss-absorption properties of AT1 instruments. It would not modify the role of AT1 (and Tier 2) instruments, and would therefore not reduce the overlap with going-concern requirements.
- Alternatively, non-CET1 instruments could be completely removed from the going-concern capital stack. This could be achieved either by fully or partially replacing them with CET1 instruments or by eliminating them without any replacement in the going-concern framework. This alternative would (i) decrease the complexity in the going-concern framework, as only one type of instrument would have to be considered in going concern; and (ii) reduce the interplay between the different requirements.

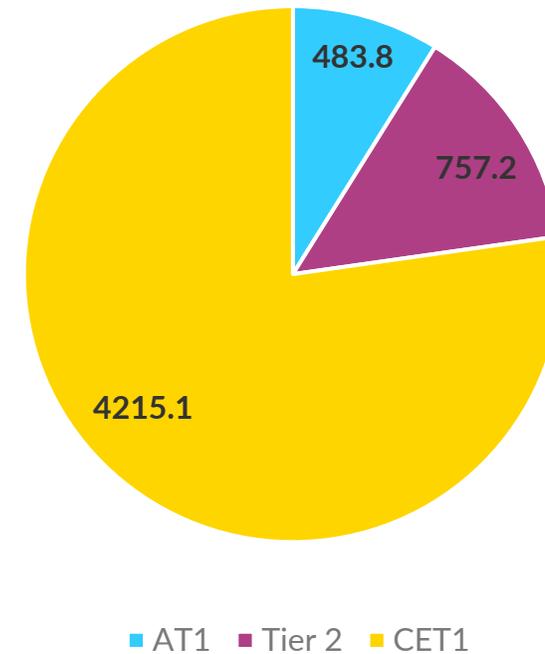
This recommendation aims to strengthen the quality of capital required under the EU regulatory framework, align the functioning of the going-concern capital stack with its intended purpose and thereby increase transparency for banks' creditors.



USAGE OF AT1 INSTRUMENTS IN THE CONTEXT OF GLOBAL BANKS' CAPITAL



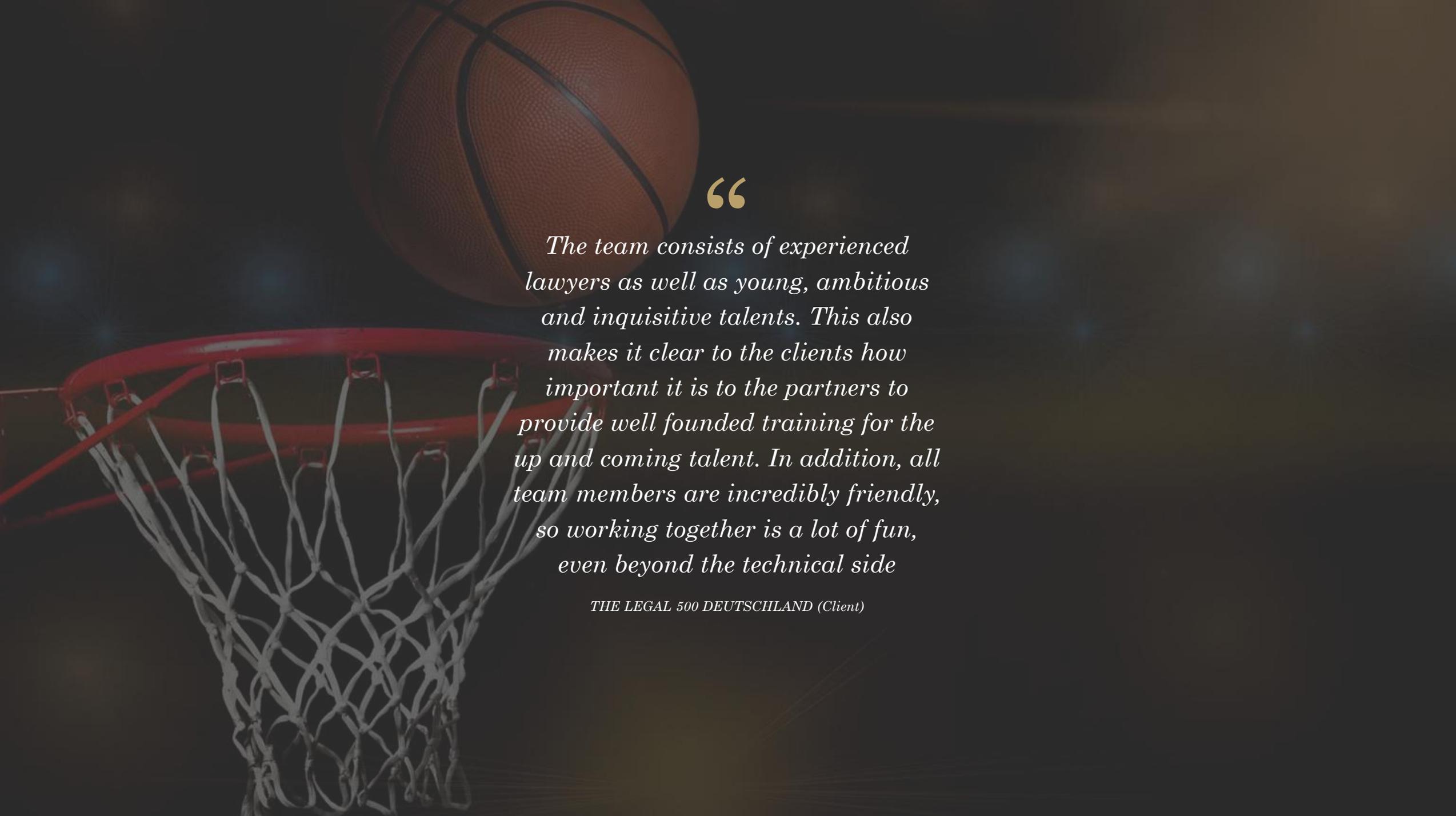
Global – Breakdown of Capital Stack (Basel Monitoring Report Sample)



Source: Basel Committee Monitoring Dashboard, Data received to 26 September 2025

A close-up photograph of three blue darts with gold-colored barrels and fletching, all of which have hit the bullseye of a dartboard. The dartboard is positioned on the right side of the frame, showing its characteristic black and white diamond pattern. The background is a soft, out-of-focus bokeh of light and dark colors, suggesting an indoor setting with ambient lighting. The text "THANK YOU!" is superimposed in the center of the image, partially overlapping the darts.

THANK YOU!

A basketball is positioned in the upper left quadrant of the image, partially obscured by the text. Below it, the red rim and white net of a basketball hoop are visible. The background is a dark, textured grey.

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THE LEGAL 500 DEUTSCHLAND (Client)

A basketball is positioned in the upper left quadrant of the frame, partially cut off by the top edge. Below it, a basketball hoop with a white net is visible, also partially cut off by the left and bottom edges. The background is a dark, textured grey with some subtle light patterns.

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