18th March 2022

AEB´s comments on "Targeted consultation on improving the EU's macroprudential framework for the banking sector"

The Spanish Banking Association (AEB hereinafter) very welcomes the initiatives undertaken by the European Commission (EC) to cover the mandate set in article 513 CRR to analyze and potentially review the macroprudential framework. Additionally, AEB would like to thank the opportunity to participate in the "targeted consultation on improving the EU's macroprudential framework for the banking sector".

General comments.

As it has been shown during the COVID-19 crisis, the macroprudential framework hasn't worked as expected when it was designed mainly for the following reasons:

- **Complexity:** The current framework is very complex. The existence of many buffers may be confusing among investors and analysts. Additionally, in Europe there are two very difficult to understand buffers which don't exist in the Basel accords (OSIIs buffers and the systemic risk buffer) whose activation depends on the discretionary decisions made by the local authorities.
- **Reluctancy:** Entities have been reluctant to use macroprudential buffers, even when they were authorized, due to market stigma. If entities don´t use capital buffers during a crisis, it means that the framework does not work for the purpose that it was created, and it should be reviewed.
- **Consistency:** AEB finds some conflict of interests during a systemic crisis between the messages received from the micro prudential supervisors (reduce lending and preserve capital) and macroprudential authorities (use capital to finance the economy and avoid a credit-crunch event). If there is no consistency among authorities, it will be very difficult for the entities to satisfy the different supervisory expectations.
- **Transparency:** Lack of transparency regarding the activation/deactivation of macroprudential tools and timeframe to rebuild the capital buffers. The lack of information on how indicators are calibrated (thresholds) creates uncertainties among banks as well. Finally, it is not clear that the indicators used to activate these tools are effective in detecting systemic risks. The activation of these tools should be based on transparent and effective indicators.
- **Overlapping between capital buffers and parallel requirements**. The ESRB has published a report where it explains that buffers overlap with parallel minimum requirements (leverage ratio, MREL and the upcoming G-SII leverage ratio buffer), which makes buffer usability inevitably constrained.
- **Duplicities:** Although the amendments proposed by the EC in the CRR2 were suggested to avoid duplicities among micro prudential risks (through P2R) and macroprudential risks, some duplicities could persist in the current EU framework and the same risks could be covered by different requirements.

Therefore, in AEB´s view, the review of the framework is necessary, but it should be undertaken considering the following principles:

- The reform should not lead to an increase in overall capital requirements. There is the consensus (acknowledged not only by the private banking sector but also by public institutions) that solvency levels and capital requirements in Europe are enough to face severe crises as it has been the case during the COVID-19 crisis.
- The reform should not lead to a double counting of risks. For example, the consultation asks about the possibility to use the macroprudential framework to cover emerging risks such as ESG risks or technological risks. As it is known, some of these risks are already analyzed in the supervisory review process (SREP) and they might be covered, if necessary, though Pillar 2 add-ons, some are part of the operational risk framework and some are being introduced in the pillar 1 requirements (ESG). In AEB´s view, it would be very premature to include these risks in the macroprudential framework, at least until it was not clear how micro prudential supervisors include them in their supervisory process. Otherwise, there is the risk of overlapping requirements to cover the same risks.
- Regarding the governance and institutional architecture, AEB is of the view that national designated authorities (NDAs) should retain the power to activate the macroprudential tools and to identify and calibrate the OSII buffer requirement. In AEB´s opinion, it could make sense more harmonization at EU level in the tools design, but NDAs are uniquely placed to best analyze domestic economic and financial cycles and understand the business model of their banks.

Finally, AEB would like to highlight that a relevant part of the macroprudential kit box is regulated at global level by the Basel Committee on Banking Supervision (BCBS). The **BCBS is working on the assessment and evaluation of the post-crisis regulatory framework, including the functioning of the capital buffers framework**. It released an interim report in July 2020, noting that there are some issues that may warrant further consideration, such as the functioning of capital and liquidity buffers (lack of usage), the countercyclicality in the framework, and the treatment of central bank reserves in the leverage ratio. However, the BCBS did not conclude about the need for potential revisions to these topics. The analysis presented in the interim report will be updated and included in a more comprehensive report that the Committee plans to publish in 2022 as additional data on the impact of the Covid-19 pandemic becomes available. It would be a good opportunity to clarify these topics. **This opens the possibility of broadening the consultation to a global level (BCBS) and not only to a European level**, which is actually preferable considering that it is the Basel Committee definition of buffers what would need to be reviewed in order to make them more releasable

Specific response to the consultation.

1.1. ASSESSMENT OF THE BUFFER FRAMEWORK

Question 1: Has the capital buffer framework been effective so far in providing sufficient resilience against all types of systemic risks in Member States and for different types of banks and exposures?

(1 = highly ineffective, 5 = highly effective)

1 2 3 4 5 Don't know/no opinion

3

Please explain your answer to question 1, considering not only overall resilience, but also the interactions of the individual components of the capital buffer framework (i.e. CCoB, CCyB, G-SII, O-SII and SyRB buffers); is it sufficiently clear which buffer is to be used to address which risk?

EU banks are very well capitalized and have entered covid crisis with larger capital and liquidity buffers compared to previous crises. However, some challenges related to their usability of buffers have clearly emerged.

Regarding the capital buffers framework, one clear lesson from the covid crisis is that **banks have been reluctant to use the capital buffers**. There are a number of factors that may undermine banks' willingness to accept a decline in capital ratios, including market-based factors (e.g. rating downgrades, higher funding costs), distribution restrictions (hitting MDA triggers), uncertainty on the evolution of the pandemic, uncertainty on how fast authorities will require to refill the buffers, pressure by supervisors (not regulators) to maintain higher capital levels, etc.

In particular:

- **There is potential conflict of interests among authorities**. Although the last micro prudential supervisors' goal is financial stability (as in the case of the macroprudential supervisor), they usually prioritize the viability of the supervised entities. It leads to inconsistencies since the macroprudential authority will compel entities to finance the economy to prevent a credit crunch and the micro prudential supervisors will force entities to cover potential losses with provisions and will prefer the use of buffers to cover future losses.

- **Stigma effect:** Breaching a regulatory requirement is seen by investors as a bad signal and they don´t take the time to analyze whether the breach is allowed by the authorities or not. As it is known, entities compete in the capital markets and capital level is a key indicator that investors use as a benchmark. Therefore, it is difficult to aspire that bank use their capital buffers to finance the economy if their capital ratios might be damaged.

- **Uncertainty:** The process to rebuild the buffers once they have been used during a crisis is not regulated and it depends on the supervisor's willingness. Entities don´t know in advance how demanding the process might be the process and they prefer avoiding uncertainties.

- **Rigidity:** The use of capital buffers could imply the activation of MDA. The current framework is not flexible, and MDA is activated whatever is the reason behind. The MDA activation has very severe consequences (and the impact in terms of access to capital markets could be very damaging for the entities.

Question 2: Has the capital buffer framework been effective in dampening financial or economic cycles in Member States?

(1 = highly ineffective, 5 = highly effective)

1 2 3 4 5 Don't know/no opinion

2

Please explain your answer to question 2, considering in particular the experience to date with the calibration of buffers during phases of economic growth and rising vulnerabilities, and the use of buffers after an economic/financial shock; do you see any impediments to the intended use of buffers both during upswing and downswing phases?

As raised in question 1, there are significant challenges undermining at present the usability of buffers:

1. Market stigma associated with breaching MDA thresholds, which occurs if a bank operates within in its buffer range. The inability to pay dividends, is perceived quite negatively by the market, understanding in that case that a business is not profitable. Therefore, banks are reluctant to cut their dividend payments.

2. Uncertainty related to the timeline for rebuilding buffers. Banks would be more willing to draw upon their buffers to the extent they were certain on their ability to replenish them in a clear and timely manner.

3. Lack of alignment between applicable Regulation, macroprudential competent authorities and supervisors at European and International level. While buffer flexibility may encourage banks to operate under their buffer levels to finance the economy, supervisors should not require banks to strengthen their capital ratios.

Question 3: How well is the systemic importance of banks addressed by G-SII and O-SII capital buffer requirements?

(1 = very poorly, 5 = very well)

1 2 3 4 5 Don’t know/no opinion

2

Please explain your answer to question 3, considering in particular whether G-SII and O-SII buffer requirements are appropriate and coherent, also across countries, in view of their market shares, activities, market conditions, advances in setting up the Banking Union, and the risk their failure would pose to financial stability.

GSII capital buffer:

In our opinion how the GSIB´s capital buffer is designed is not accurate. It means that some GSIBs could be overcapitalized. Specifically, in our opinion the definition of cross-jurisdictional indicator is not appropriate.

The BCBS sets out that the objective of this indicator is to capture banks’ global footprint. Two indicators in the cross-jurisdictional category are used to measure the importance of the bank’s activities outside its home (headquarter) jurisdiction relative to overall activity of other banks in the sample: (i) cross-jurisdictional claims; and (ii) cross-jurisdictional liabilities. The idea is that the international impact of a bank’s distress or failure would vary in line with its share of cross-jurisdictional assets and liabilities. The greater a bank’s global reach, the more difficult it is to coordinate its resolution and the more widespread the spillover effects from its failure.

While we appreciate the recognition of EU members as a Single Jurisdiction, we consider that the current cross jurisdictional indicator unduly penalizes the more diversified European banking groups with subsidiaries in third countries.

Therefore, we believe a review of the definition of the cross-jurisdictional category is required, specifically the treatment of local claims funded locally. Activities performed locally by an affiliate in local currency should be considered local activities, and not cross-border activities. Therefore, we strongly consider that the cross-jurisdictional category should not include activities financed by an affiliate in its home country and currency:

- The local claims in local currency should be excluded from cross-jurisdictional claims indicator, and

- The amounts in local currency used to finance local claims in local currency should be excluded from the cross jurisdictional liabilities indicator.

OSII capital buffer.

One reflection we would like to share concerning the **OSII buffer methodology**, is that it does not take in consideration the business model of the banking entities (whether it is centralized or decentralized) and consequently does not consider their resolution strategy (whether Single Point of Entry/ Multiple Point of Entry). Considering that the OSII buffer seeks to reduce the probability of failure of systemic institutions and cushion their impact in the event of failure, we consider that the assessment of the probability of failure should consider another element available to regulators, which is the Group's Resolution Model and accordingly estimate the OSII buffer based on the consolidation perimeter used in the resolution strategy. Otherwise, there may be inconsistencies between the consolidation perimeter used to calculate the OSII buffer and the consolidation perimeter used to calculate MREL.

In any case, the final decision on the OSII methodology and buffer calibration should remain at NCAs hands, as they have a better understanding of the economic cycle of its jurisdiction and of the business model of their banks.

1.2. POSSIBLE IMPROVEMENTS OF THE BUFFER FRAMEWORK

Question 4: What changes would improve the current buffer framework and what would be, in your view, the pros and cons of these changes?

We consider the buffer framework would benefit from some improvements:

1. During the coronavirus crisis we have learned that banks **need the flexibility to react to an unexpected shock**, and in this sense the release of the countercyclical buffer in some countries was a step in this direction. Consequently, from a macroprudential perspective, it may be beneficial to consider whether there is sufficient releasable capital in place to address future systemic shocks.

   Buffers would need to be more releasable without creating more buffers nor increasing the overall size of the existing ones. One alternative under discussion, which has pros and cons, is the **setting of a positive rate for the Countercyclical Buffer (CCyB) in normal times (as it is a releasable buffer) and lowering CCoB without increasing the overall combined buffer requirement.** On one hand, it would enhance the ability to address unforeseen events and would enable banks to provide financing to the real economy increasing the amount of capital to be releasable without compromising their resilience in a downturn and without activating MDA distribution restrictions reducing the market stigma, as it is the only explicitly releasable buffer in the Basel framework. Regarding the overlaps with parallel requirements, the CCyB has the additional advantage that it does not affect the calculation by default for the market confidence charge as part of MREL-RW, unlike other buffers. On the other hand, we are cautious about this possibility because an increase of the CCyB should not lead to higher overall capital requirements for banks. In addition, a CCyB release is ineffective if the released capital is simultaneously tied up by a parallel minimum requirement such as the leverage ratio or MREL (loss absorbing amount). The fact that the CCoB reduction is a decision that should be taken at Basel is a risk, as it may take some time.

We would support making the capital buffers more releasable without resulting in an increase in overall requirements. Therefore, another option would be to make the CCoB releasable. However, this decision would also take time as it corresponds to Basel.

2. As raised in previous questions it is key to define clear rules related to the timeline for the restoration and replenishment of buffers after a shock.
3. Coordination between local and global supervisors should be enhanced.

4. Another issue that is important to address is the **overlapping between capital buffers and parallel requirements**. The ESRB has published a report where it explains that buffers overlap with parallel minimum requirements (leverage ratio, MREL and the upcoming G-SII leverage ratio buffer), makes buffer usability inevitably constrained. When considering potential mitigating options for the overlapping, one of the report proposals is to increase the size of usable buffers by enlarging either the buffer size or the minimum requirement on which they stack. However, we do not agree with the proposed solution, which will imply an increase in bank's capital for which the ESRB provides no rationale.

Question 4.1. Enhanced clarity of the buffer framework: Consider whether there is scope for simplifying/streamlining the buffer framework or providing better guidance on how to use it.

As previously highlighted, AEB considers it is key to provide certainty related to the timeline for rebuilding buffers after a shock.

Question 4.2. Releasable buffers: Consider in particular whether an increase of releasable buffers could be achieved in a capital-neutral way over the cycle, the circumstances and conditions under which buffers should be released and what coordintion/governance arrangements should be in place.

As raised in question 4, we are of the view that buffers would need to be more releasable without creating more buffers nor increasing the overall size of the existing ones. Regulators and Supervisors should consider lowering the CCoB, and other systemic buffers and use this capital difference to meet a target level for the CCyB in normal times without increasing the overall amount of buffers or changing the basis on which a breach of the correspondingly lower CCoB led to the suspension of distributions.

We would also support making the capital buffers more releasable without resulting in an increase in overall requirements, for example, making the CCoB releasable.

Having said that, it is of the utmost importance that adjustments to the way national competent authorities release the CCyB should be enhanced to avoid market fragmentation across different jurisdictions.

While there is a need to harmonize approaches at EU level, the decision to operate countercyclical capital buffer (CCyB) should remain at the national level, since National Competent Authorities (NCAs) could have a deeper understanding of the national financial cycle and system

Question 4.3. Buffer management after a capital depletion: How can capital buffers be restored/replenished after an adverse shock in such a way that banks will provide sufficient lending in the recovery? In that regard, is there scope for optimising the MDA restrictions and capital conservation rules as laid down in Articles 141 to 142 CRD?

It is key to define clear rules related to the timeline for the restoration and replenishment of buffers after a shock.

While breaching MDA level implies dividend restrictions, banks are going to be reluctant to use this buffer to provide lending in the recovery. In the past crisis distributions have been limited for institutions with no need of triggering their MDA. In the future, general bans on dividends for the banking sector should be avoided, as there is no similar bans for other sectors. The MDA framework has not been tested yet.

Question 4.4. Overlap between capital buffers and minimum requirements: How important is it to reduce the overlap between capital buffers and other requirements, and how could this be achieved without unduly raising overall capital requirements and having to re-open the composition of the leverage-ratio based "capital stack" and the calibration of the MREL based on the total exposure measure and the MREL subordination requirement?

Question 4.5. Consistent treatment of G-SIIs and O-SIIs within and across countries: Should there be more EU-level guidance or binding rules on the identification of O-SIIs and the calibration of O-SII buffers? Should the leverage ratio buffer requirement for G-SIIs also apply to O-SIIs?

The OSIIs identification and calibration should remain at national level, as national authorities have a better knowledge of the domestic macrofinancial cycle and business model of their banks. Certain harmonization could be useful in Europe, possible via introducing maximum requirements per bucket, or clarifying how national supervisors should reflect banking sector size and concentration when designating and calibrating the buffer.

An additional leverage ratio buffer for OSIIs is not considered appropriate since it would imply potential overlaps with other measures including MREL, the new output floor and Pillar 1 and 2 requirements.

Question 4.6. Application of the SyRB to sectoral exposures: Are the thresholds for opinions and authorisations appropriate for sectoral SyRB rates (and for the sum of G/O-SII and SyRB rates)? Should the combined SyRB rate be calculated as a percentage of total risk exposure amounts and not sectoral risk exposure amounts? How should sectoral risk exposure amounts be calculated after the introduction of the output floor?

2. MISSING OR OBSOLETE INSTRUMENTS, REDUCING COMPLEXITY

2.1. ASSESSMENT OF THE CURRENT MACROPRUDENTIAL TOOLKIT AND ITS USE

Question 5: Based on the experience so far, have you observed any major gaps in the EU macroprudential toolkit (also beyond the buffer framework)?

(1 = major gaps, 5 = fully comprehensive)

1 2 3 4 5 Don’t know/no opinion

3

Please explain your answer to question 5, indicating which gaps you perceived and what consequences these gaps have or might have had.

We believe there are no major gaps in the EU macroprudential toolkit, however we consider the current toolkit as too complex.

Moreover, we consider there is room for reducing overlaps with EU specific buffers like SyRB, CCyB, P2G and P2R.

Therefore, we strongly believe double counting of risks should be avoided across all buffers and countries.

If more transparency was provided by supervisors on P2G and P2R risk drivers, this could help to address potential overlaps.

Question 6: Has the experience with the macroprudential toolkit so far revealed any redundant instruments or instruments that need to be redesigned to make them fit for purpose? Yes No Don't know / no opinion

YES

Please explain your answer to question 6, specifying which instruments could be redundant or would need to be redesigned, as well as the expected benefits thereof:

We consider as redundant SyRB and article 458CRR.

- SyRB is designed to prevent and mitigate macroprudential or systemic risks for the financial sector or subsets of that sector on all or a subset of exposures in a determined Member State. Therefore, the SyRB is assessed as being redundant given the development of other tools to reduce systemic risk, e.g. recovery and resolution framework. With the increased level of the O-SII buffer and the highly differentiated application and calibration of the SyRB, the risks for overlaps between these buffers are seen as high since it is not clear which buffer should be used to cover which parts of the systemic risk. This could become an even larger challenge if the sectoral SyRB is used in some countries while some countries use the SyRB more widely and where the bank is also subject to an O-SII buffer, how to define any overlaps in such a situation.

- At the same time, article 458 empowers competent authorities to impose additional requirements due to macroprudential or systemic risks for authorised institutions or a subset of those institutions on all or determined subsets of exposures (among others, concerning the level of own funds, risk weights for the residential and commercial immovable property sector) in a determined Member State. With the implementation of the coming CRR3 increased risks weights will be already included.

In addition, we consider G-SII and O-SII buffer would benefit from a redesign. As raised in question 3:

- **The design of the G-SII capital buffer** is not accurate as far as some G-SIIs could be overcapitalized. Specifically, in AEB´s opinion the definition of cross-jurisdictional category should be revisited.

  The BCBS sets out that the objective of this indicator is to capture banks' global footprint. Two indicators in the cross-jurisdictional category are used to measure the importance of the bank's activities outside its home (headquarter) jurisdiction relative to overall activity of other banks in the sample: (i) cross-jurisdictional claims; and (ii) cross-jurisdictional liabilities. The idea is that the international impact of a bank's distress or failure would vary in line with its share of cross-jurisdictional assets and liabilities. The greater a bank's global reach, the more difficult it is to coordinate its resolution and the more widespread the spillover effects from its failure.

  We consider that the current cross jurisdictional indicator unduly penalizes the more diversified European banking groups with subsidiaries in third countries.

  Therefore, we believe a review of the definition of the cross-jurisdictional category is required, specifically the treatment of local claims funded locally. Activities performed locally by an affiliate in local currency should be considered local activities, and not cross-border activities. Therefore, we strongly consider that the cross-jurisdictional category should not include activities financed by an affiliate in its home country and currency:

  - The local claims in local currency should be excluded from cross-jurisdictional claims indicator, and

  - The amounts in local currency used to finance local claims in local currency should be excluded from the cross jurisdictional liabilities indicator.

- **The OSII buffer methodology** does not take in consideration the business model of the banking entities (whether it is centralized or decentralized) and consequently does not consider their resolution strategy (whether Single Point of Entry/ Multiple Point of Entry). Considering that the OSII buffer seeks to reduce the probability of failure of systemic institutions and cushion their impact in the event of failure, we consider that the assessment of the probability of failure should consider another element available to regulators, which is the Group's Resolution Model and accordingly estimate the OSII buffer based on the consolidation perimeter used in the resolution strategy. Otherwise, there may be inconsistencies between the consolidation perimeter used to calculate the OSII buffer and the consolidation perimeter used to calculate MREL.

In a similar way as it has been explained for the GSIIs buffer, for the OSII buffer AEB also believes a review of the definition of the cross-jurisdictional category is required, specifically the treatment of local claims funded locally. Activities performed locally by an affiliate in local currency should be considered local activities, and not cross-border activities. Therefore, we strongly consider that the cross-jurisdictional category should not include activities financed by an affiliate in its home country and currency. This is something already contemplated by Spanish authorities, which should not change.

Finally, to improve the usability of the buffers in crisis times, we consider buffers would need to be more releasable without creating more buffers nor increasing the overall size of the existing ones. In this sense, as raised in question 4, Regulators should consider lowering the CCoB and use this capital difference to meet a target level for the CCyB in normal times without increasing the overall amount of buffers or changing the basis on which a breach of the correspondingly lower CCoB led to the suspension of distributions. While the benefit of rebalancing would increase the amount of capital to be releasable and reduce the market stigma, we are of the view that adjustments to the way national competent authorities released the CCyB should be ensured to avoid market fragmentation across different jurisdictions.

We would also support making the capital buffers more releasable without resulting in an increase in overall requirements, for example making the CCoB releasable.

Question 7: How effective has the macroprudential toolkit and EU governance framework been in managing a crisis?

(1 = highly ineffective, 5 = highly effective) 1 2 3 4 5 Don't know/no opinion

2

Please explain your answer to question 7, notably in light of the experience gained during the Covid-19 crisis:

As we have already explained in previous questions, we consider the capital buffer framework only functioned partially during the crisis. While the CCyB proved its (limited) usefulness, the CCoB proved useless due to MDA restrictions and the inability of macroprudential authorities of releasing capital buffers (except for CCyB).

It should be noted the release for the countercyclical capital buffer as was done during the COVID-19 crisis in the countries where this was possible gave good signals to the market in the highly uncertain times that was at the crisis moment. However, the plethora to support measures implemented at the same time makes it difficult to isolate the effect of this measure.

Therefore, we encourage regulators to review the macroprudential framework to make buffers more releasable without creating more buffers nor increasing the overall size of the existing ones.

2.2. POSSIBLE IMPROVEMENTS OF THE BUFFER FRAMEWORK

Question 8: What changes to the current set of instruments would improve the macroprudential toolkit and what would be, in your view, the pros and cons of these changes?

Having into consideration the upcoming Basel III implementation will increase current risk weights due to input floors, operational risk considerations, among others and the ongoing ECB (TRIM) and EBA (IRB) initiatives, we consider it is of the utmost importance to avoid any overlaps from the macro-prudential toolkit.

As raised in previous questions, we consider the current set of instruments would benefit from:

1. Rebalancing current buffers to be more releasable without creating more buffers nor increasing the overall size of the existing ones.

2. Reviewing redundant instruments as SyRB and art 458 CRR.

3. Avoiding EU and/or national authorities to place restrictions on distributions for the entire banking system.

Question 8.1. **Borrower-based measures: Should all Member States have a common minimum set of borrower-based measures to target more directly potentially unsustainable borrowing by households and corporates, particularly in a lowinterest-rate environment? Which tools should Member States have and what role should EU bodies play in fostering their effective use?**

We consider no additional borrower-based measures should be defined. As previously flagged SyRB and article 458 CRR are available (and being redundant) to impose additional requirements due to macroprudential or systemic risks.

Considering the need to reduce the complexity of the framework, we do not consider it necessary to define a common set of BBM at European level.

Question 8.2. System-wide distributions restrictions: Should EU and/or national authorities have the power to restrict distributions for the entire banking system to conserve capital in a severe crisis situation? Under which conditions and how should such system-wide restrictions be used, taking also into account the role of European bodies?

No, our members consider neither EU nor national authorities should place restrictions on distributions for the entire banking system in the same way that there are no similar restrictions in other economic sectors.

The circumstances to restrict distributions are already regulated through MDA mechanism. In case EU and/or national authorities would have the power to restrict distributions for the entire banking system the situation would be overregulated.

It should be noted the ECB and other competent authorities introduced during COVID crisis a blanket ban on dividend distribution. Overall, we consider it best to avoid suspending dividend payments ahead of any breach in MDA to limit undue impact on bank share ratings and uncertainty over future actions.

Question 8.3. Temporary relaxation of prudential requirements to support the recovery after a shock: Should EU and/or national authorities have more powers to relax prudential requirements after banks have suffered a shock, to avoid procyclical behaviour and enhance banks' capacity to support the recovery? What elements of the prudential framework could be addressed using such powers (e.g. unwarranted risk weight hikes after a shock)? Could Art. 459 CRR be adapted for this purpose?

During a crisis, relaxation of prudential requirements would be welcome to support the recovery after a shock being clearly defined the timeline for the restoration and replenishment of buffers after a shock. Certainty in this regard is key to enhance buffer usability.

Moreover, we are of the view Pillar 1 and Pillar 2 macroprudential instruments should also benefit from relaxation via article 459 CRR.

Instruments targeting risk weights and internal model parameters: How will the forthcoming application of the input and output floors under the Basel III agreements affect the need for tools that adjust risk weights or the parameters of internal models (Art. 124, 164 and 458 CRR)? Are such tools still necessary and, if yes, how should they be adapted to the new regulatory environment?

The upcoming Basel III agreements will lift input parameters like the PD floor from 3bp to 5bp and operational risk considerations, thus increasing risk weights. This is complemented by several ongoing ECB (TRIM) and EBA (Future or IRB) initiatives, such that any further adjustments are not deemed relevant.

3. INTERNAL MARKET CONSIDERATIONS

3.1 ASSESSMENT OF THE CURRENT MACROPRUDENTIAL FRAMEWORK'S FUNCTIONING IN THE INTERNAL MARKET

Question 9: Are macroprudential measures as used by national authorities generally commensurate with systemic risks in a given country, or do you consider that there are unjustified disparities across countries?

(1 = highly disparate, 5 = fully commensurate) 1 2 3 4 5 Don't know/no opinion

Please explain your answer to question 9, providing supportive evidence on possible disparities and their likely impact on the internal market:

In our opinion the **decision to operate releasable buffers should remain at the national level**, although there should be tools to ensure that there is a level playing field across Member States. NCAs could have a deeper understanding of the domestic MS financial cycle and its evolution or the bank´s business model when making decisions. Furthermore, the nature of the coronavirus crisis is very different from the 2008 crisis, it has been a macroeconomic external shock affecting all countries at the same time. However, not all Member States have been affected in the same way and there is no need to release buffers uniformly.

Question 10: Has the oversight of national macroprudential policies through notification, assessment and authorisation procedures been proportionate and effective in preventing an excessive use of macroprudential tools and undue market fragmentation? (1 = highly ineffective, 5 = highly effective) 1 2 3 4 5 Don't know/no opinion

Please explain your answer to question 10, taking also into account the complexity of procedures and related administrative burdens for authorities and the industry and whether you see scope for streamlining and simplifying the procedures, while retaining necessary safeguards:

Question 11: Have the provisions on reciprocation been effective in maintaining a level playing field in the banking sector and preventing the circumvention of national macroprudential measures through regulatory arbitrage? (1 = highly ineffective, 5 = highly effective) 1 2 3 4 5 Don't know/no opinion

Please explain your answer to question 11, indicating notably whether you would see merit in extending the mandatory reciprocation framework to the instruments not currently covered by it:

We would say that the provisions on reciprocation have been effective, however it would be advisable to foster the signature of Memorandums of Understandings (MoUs) among countries. In particular, regarding measures on a given sector (like consumer credit), the existence of a significant foreign branch without a MoU may make any measure useless.

Question 12: Has the current allocation of responsibilities for macroprudential policy between the national and European level been effective in ensuring that sufficient and appropriate action is taken to limit systemic risks and manage crises?

(1 = highly ineffective, 5 = highly effective) 1 2 3 4 5 Don't know/no opinion Please explain your answer to question 12, taking notably into account the roles of the ESRB, the ECB and the Commission (which may impose stricter prudential requirements in accordance with Article 459):

Regarding the allocation of responsibilities, we consider it has been effective up to now. And in our opinion some decisions like the (de)activation of the CCyB and the identification and calibration of the OSII buffer, should remain at the national level, although there should be tools to ensure that there is a level playing field across Member States.

3.2 POSSIBLE IMPROVEMENTS RELATING TO THE FUNCTIONING OF THE MACROPRUDENTIAL FRAMEWORK IN THE INTERNAL MARKET

Question 13: What changes to the current governance arrangements and oversight procedures would improve the compatibility of macroprudential policy

making with the internal market, and how could the complexity of procedures be reduced?

Question 13.2 Monitoring of the macroprudential stance: Should there be regular overall assessments of the macroprudential requirements (or stance) in each Member State in addition to, or as a substitute of, the EU-level monitoring and vetting of individual macroprudential measures? What measures should be available to which bodies in case the national macroprudential stance is deemed disproportionate to the level of risk (too low or too high)?

Question 13.2 Reciprocation of national macroprudential measures: Should there be mandatory reciprocation for a wider range of macroprudential measures and how could this be implemented (role of the ESRB, materiality thresholds, etc.)?

The reciprocity decisions should be decided by national authorities being voluntary the decision or reciprocity.

4. GLOBAL AND EMERGING RISKS

4.1 ASSESSMENT OF THE CURRENT MACROPRUDENTIAL FRAMEWORK'S SUITABILITY FOR ADDRESSING CROSS-BORDER AND CROSS-SECTORAL RISKS

Question 14: Have macroprudential tools been appropriate and sufficient to limit the systemic risk arising from EU banks' exposures to third countries? (1 = not at all appropriate and sufficient, 5 = fully appropriate and sufficient) 1 2 3 4 5 Don't know/no opinion

5

Please explain your answer to question 14, also in light of the experience gathered so far, considering in particular whether the EU's existing macroprudential tools and capital requirements (notably Articles 138 and 139 CRD) are sufficient to limit systemic risks emanating from EU banks' third country exposures:

Question 15: Is the EU macroprudential toolkit adequate for monitoring and mitigating banks' systemic risks related to global market-based finance,

securities and derivatives trading as well as exposures to other financial institutions? (1 = not at all adequate, 5 = fully adequate) 1 2 3 4 5 Don't know/no opinion

Please explain your answer to question 15 in light of the experience gathered so far, identifying in particular gaps related to derivatives, margin debt and securities financing transactions:

We believe there should not be a specific macroprudential buffer that would specifically tackle banks´risks arising from exposures to global market-based finance, securities, derivatives trading and "other financial institutions".

In this context, both i) the P1 market risk framework and ii) the stress test framework (EBA stress tests through P2G and ICAAP process through P2R) adequately address such risks.

In our view, the current EU capital framework is calibrated in a way that losses incurred in times of extremely severe stress could be absorbed while preserving bank´s ability to provide funding to the economy. In parallel, the SSM is in charge of evaluating banks´robustness and preparedness at individual level. As such, there is no need to add any new element/tool to the current macroprudential framework.

4.2. POSSIBLE ENHANCEMENTS OF THE CAPACITY OF THE MACROPRUDENTIAL FRAMEWORK TO RESPOND TO NEW GLOBAL CHALLENGES

Question 16: How do you expect systemic risks to evolve over the coming years and what enhancements of the EU macroprudential monitoring framework and toolkit (notably capital buffers, rules on risk weights and exposure limits), would be necessary to address global threats to financial stability?

Question 16.1. Financial innovation: What risks to financial stability could result from banks' new competitors (FinTech and BigTech) and the arrival of new products (notably crypto-based)? Is there a need to enhance banks' resilience in view of such changes? If so, how could this be achieved while maintaining a level playing field?

Fintechs: the focus is once again on the financial institutions, but on the contrary, the risk to financial stability could come from other players. Focus should be placed on the unregulated players.

Risk resulting from banks' new competitors (fintechs/bigtechs) should be addressed by regulating such new entrants, making sure that they are subject to regulation and supervision as soon as they start providing financial services (for example via "entity-based rules", as suggested by the BIS).

Crypto assets: It is necessary to elaborate a global framework, a common classification and a taxonomy to ensure a level playing field. And it´s important to do this before introducing a macroprudential treatment for crypto assets. In addition, we consider it appropriate to highlight the (positive) contribution of MiCA, where a classification for crypto assets will be introduced, which in our opinion is consistent with the same activity, same risks, same treatment principle.

The Financial Stability Institute has released the paper "Gatekeeping the gatekeepers: when Big Techs and FinTechs own banks". They embody greater risks, if compared to commercial or industrial non-financial corporates (NFCs), when they seek to own banks; mainly due to their extraordinary market power and ability to leverage network effects. Other risks include conflicts of interest, concentration of power/anticompetitive behaviours, contagion and systemic risk, and impediments to supervision.

When it comes to the provision of financial services, "same activities, same risks, same regulation and same supervision" must apply. Activities should be regulated and supervised for all financial and non-financial services providers (including tech providers) alike, based on the risk posed by the activity they undertake. There are gaps in the regulation and we may require additional regulatory frameworks. For instance, considering a holistic entity-based regulation for non-banks entering financial services. There should be a harmonized supervisory approach across jurisdictions, in a digital context that is global by definition.

In the meantime, EU DORA will be introduced shortly. This is designed to further enhance banks' operational resilience in regard to use of BigTech (e.g. cloud), FinTech and cybersecurity. We would recommend that policymakers pause until DORA is in place and has been well established, before considering any further macroprudential requirements or increased capital requirements in respect of technology related issues.

We believe that a global framework is needed in relation to crypto-assets owing in part to their international nature and scope, and levels of variety in assets and their complexity.

In addition, given the mandate CRR3 includes in its article 461b ("By 31 December 2025, the Commission shall review whether a dedicated prudential treatment should be developed for exposures to crypto assets, and shall, after consulting EBA and taking into account international developments, submit a report to the European Parliament and to the Council, together with a legislative proposal […] "), for the time being we are of the view no prudential treatment for crypto assets should be defined previous neither to the fulfillment of the mandate nor the industry has been sought views via public consultation.

Question 16.2. Cybersecurity: Is there a need to enhance the macroprudential framework to deal with systemic cybersecurity threats? If not, how should the existing tools be used to mitigate threats and/or build resilience?

Cybersecurity: The current prudential framework already addresses these risks through the operational risk framework and DORA.

According to the consultation, the banking sector is exposed to cyber-threats and its reliance on critical infrastructure offered by third-party providers is presented as a new source of vulnerabilities for the banking sector. However, in order to mitigate these emerging risks, regulation is rapidly evolving to soundly respond to those new threats within the banking sector.

A potential enhancement of the macroprudential framework which eventually could impose an additional layer of capital to specifically address cyber-risk would not seem an appropriate solution as i) other tools are likely to be more effective to deal with this source of risk, ii) it would create overlaps with existing the Pillar 1 and Pillar 2 frameworks, and it would iii) put banks at a disadvantage with non-banks competitors.

Cybersecurity risk is already covered through the operational risk framework. Banks include cyber risk in both their current Pillar 1 Advanced Models Approach and in Pillar 2 scenarios in order to address the following risks: intrusion and contamination of critical IT assets, unavailability of workstations due to malware, hacking, phishing… unavailability of an IT service following the execution of a threat.

Throughout 2021 certain documents (including BCBS principles on operational resilience) have been already released to mitigate emerging risks, which proves the recent regulatory efforts in addressing new risks related to digital operational resilience:

> As an example of regulatory response, the Digital Operational Resilience Act (in the final stages of discussion) sets out requirements concerning the security of network and information systems supporting the business processes of financial entities. DORA proposes to introduce certain requirements in relation to the contractual arrangements concluded between ICT third-party service providers and financial entities and an oversight framework for critical ICT third-party service providers when providing services to financial entities.
>
> Additionally, to the new regulatory approach, with regards to the regulation already applicable, for the banking sector payment institutions and e-money issuers is noteworthy the EBA’s outsourcing guidelines as a paramount tool to control the quality and performance of outsourced functions, including IT outsourcing.

- Moreover, the CRD establishes governance requirements for institutions being 'outsourcing' one of the specific aspects of institutions' governance arrangements.
- The recently released proposal of CRR adds the definition of ICT risks and includes the latter in the definition of operational risk, which proves the regulatory framework is currently adapting to new sources of emerging risks.

With regards to the extension of macroprudential framework to deal with cybersecurity threats, for the time being, the regulatory response seems sufficiently sound, and our understanding is that certain room for implementation should be allowed before exploring whether the macroprudential tool is an effective tool to address these risks.

Question 16.3 Climate risks: Should the macroprudential toolkit evolve to ensure its effectiveness in limiting systemic risks arising from climate transition and from physical climate change, also considering the current degree of methodological and data uncertainty? And if so, how?

The current capital framework already addresses, at least indirectly, risks arising from climate risk and other ESG risks. Climate-related risks are appropriately covered by the microprudential policy.

- To date, the banking industry is in the process of integrating ESG factors in their strategies, governance, risk appetite, risk and control management, in line with the ECB guide on climate-related and environmental risks and the BCBS consultation currently ongoing.
- In terms of transition risks and physical risks, there is a consensus to not consider risks associated with climate change as a new risk category but rather a risk driver with a potential positive or a negative impact for those categories already covered by the Bank's risk management system (credit risks, operational risks, reputational risks, insurance risks, etc.). Accordingly, existing framework and processes are being updated to integrate climate risk factors and ensure that their increasing importance is properly taken into account.

Moreover, we would recommend waiting for these EBA expected reports to assess whether a dedicated prudential treatment of exposures related to assets or activities subject to impacts from climate and other Environmental and Social factors would be justified.

In addition, we would note also that there is considerable work remaining in relation to climate risk and agree with the EC's observation concerning the current degree of methodological and data uncertainty, but also the possible materialization in the long-term time horizon (not in short-term), these should not result in additional capital burdens immediately. Common standards need to be evolved to ensure comparability & level playing field.

At a wider level, while banks can clearly form a very effective part of the solution to achieve the objective of net-zero greenhouse gas (GHG) emissions in the EU economy by 2050 they should not be the primary enforcers of the EU climate policy.

Finally, as raised by the Financial Stability Institute in its FSI briefs nº 16, we are of the view that applying the current macroprudential framework to contain systemic climate-related financial risks is likely to be ineffective and potentially counterproductive for financial stability.

Question 16.4. Other ESG risks: Should the macroprudential toolkit further evolve to address financial stability risks stemming from unsustainable developments in the broader environmental, social and governance spheres? How could macroprudential tools be designed and used for this purpose?

ESG risks inclusion into the macroprudential framework could lead to an unbalanced evolution of the E, S and G spheres . For instance, by "protecting" the environmental part of ESG through the identification of potential environmental risks or penalizing certain jurisdictions (this will depend on how it is finally defined) could dynamite the transition of the economy of these countries, unbalancing their stability and leaving behind the social sphere of ESG.

We think that these global emerging risks should not be tackled through macroprudential tools, at least, until the prudential framework (microprudential tools) is fully developed.

They should already be considered. In the SREP charter many of the risks are already included and justify the Pillar 2.

Regarding global emerging risks, systemic risk can also be originated in the **non-bank financial sub-sectors**, so it may be necessary to develop macroprudential tools in this area.

OTHER OBSERVATIONS

Question 17: Do you have any general observations or specific observations on issues not covered in the previous sections?