



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL
MARKETS UNION

Financial systems and crisis management
Macroprudential policy

TARGETED CONSULTATION

ON IMPROVING THE EU'S MACROPRUDENTIAL FRAMEWORK FOR THE BANKING SECTOR

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudice the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply **by 18 March 2022** at the latest to the **online questionnaire** available on the following webpage:

https://ec.europa.eu/info/publications/finance-consultations-2021-banking-macroprudential-framework_en

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.**

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published in accordance with the privacy options respondents will have opted for in the online questionnaire.

Responses authorised for publication will be published on the following webpage:

https://ec.europa.eu/info/publications/finance-consultations-2021-banking-macroprudential-framework_en

Any question on this consultation or issue encountered with the online questionnaire can be raised via email at fisma-macropru@ec.europa.eu.

INTRODUCTION

Background of this targeted consultation

With this targeted consultation, the European Commission wishes to consult on the EU's macroprudential framework for the banking sector in view of the legislative review mandated by Article 513 of [Regulation \(EU\) No 575/2013, as amended by Regulation \(EU\) 2019/876](#) (hereinafter 'CRR'). The information obtained will feed into the impact assessment for a possible legislative proposal.

The Commission is interested in evidence and substantiated views from a wide range of stakeholders. Contributions are particularly sought from non-governmental organisations representing notably users of financial services, think tanks and academics, national regulators and supervisors, banks and other financial institutions, and EU institutions.

Context and scope of the targeted consultation

The Commission is launching this targeted consultation to gather evidence in the form of relevant stakeholders' views and experience with the current macroprudential rules for banks in line with the [better regulation principles](#) and in view of the forthcoming legislative review mandated by Article 513 CRR.

Article 513 CRR requires the Commission to complete a review of the macroprudential provisions in CRR and in [Directive 2013/36/EU \(hereinafter 'CRD'\)](#) by June 2022 and, if appropriate, to submit a legislative proposal to the European Parliament and to the Council by December 2022.

Macroprudential policy is the use of primarily prudential tools to limit systemic risk and safeguard financial stability. Systemic risk refers to the risk of a widespread disruption to the provision of financial services caused by an impairment of the financial system or parts of it, and which can have serious negative consequences for the real economy. Macroprudential policy complements microprudential policy, which focuses on the soundness of individual financial institutions. By providing a systemic perspective, it aims to correct externalities that are not tackled by microprudential supervisors who address risks at the level of a single institution. It has clearly defined financial stability objectives, specific instruments and dedicated institutions. Macroprudential policy has been established in the wake of the 2008 Global Financial Crisis.

The macroprudential toolkit for credit institutions (referred to as 'banks' in the remainder of this document), introduced in the Capital Requirements Regulation and Directive (CRR/CRD), is applicable since 2014. The macroprudential framework implements and expands international standards agreed by the Basel Committee on Banking Supervision (BCBS). The main tools are capital buffers, i.e. Common equity Tier 1 (CET1) capital requirements on top of minimum (Pillar 1) and additional (Pillar 2) capital requirements. Capital buffers hence reduce the risk that unexpected losses will result in banks breaching their minimum and additional capital requirements.

The mandate in Article 513 CRR offers the opportunity to review and improve the EU macroprudential provisions applicable to banks. Article 513 CRR envisages a broad scope for the review, requiring the Commission to assess the effectiveness, efficiency and transparency of the macroprudential framework, and listing a number of specific issues to be considered in view of a possible legislative proposal. These issues must be

analysed taking into account ongoing discussions at the international level. It is also necessary to take into account the Covid-19 crisis experience, the first time many macroprudential instruments were utilised during a crisis. The Covid-19 shock affected banks' balance sheets far less than typical stress test scenarios, thanks (in part) to the swift and determined fiscal and monetary policy responses to the pandemic, the progress made over the past decade in strengthening the (micro and macro) prudential requirements for banks and the progress made in setting up the Banking Union. However, the crisis did highlight some important macroprudential issues that have been subject to international debate, such as the releasability of buffers and banks' willingness to use them during a crisis. While, the full lessons and consequences of the Covid-19 crisis are still uncertain, the macroprudential review provides a good opportunity to start addressing any gaps or weaknesses in the current framework and reflect on ways to make macroprudential policy more effective in the post-pandemic period and beyond.

The review of the macroprudential provisions in CRR and CRD pursues goals that are distinct from those of the banking package proposed by the Commission on 27 October 2021 to finalise the implementation of the Basel III agreement in the EU. This consultation is being launched after the publication of the banking package proposal, allowing respondents to take into account the likely implications of the package for the macroprudential framework in banking, and in particular the Output Floor, which sets a lower limit ("floor") on the capital requirements ("output") that banks calculate when using their internal models.

Responding to this consultation and follow-up

The Commission has decided to launch a targeted consultation designed to gather evidence on improving on the EU macroprudential framework for the banking sector.

The targeted consultation is divided into four sections:

- Section 1: Overall design and functioning of the buffer framework (Questions 1-4)
- Section 2: Missing or obsolete instruments, reducing complexity (Questions 5-8)
- Section 3: Internal market considerations (Questions 9-13)
- Section 4: Global and emerging risks (Questions 14-16)

Each question focuses on a particular aspect of the macroprudential framework. Respondents are invited to indicate the extent to which they consider that change is necessary regarding this particular aspect and to present their reasoning, as far as possible supported by evidence. If the space for responding is not sufficient, respondents may use links or upload background documents with the required evidence. Respondents are also invited to raise any general or specific observations they have on improving the EU macroprudential framework for banks which were not covered in other sections (Question 17).

The targeted consultation is available in English only and will be open until 18 March 2022.

CONSULTATION QUESTIONS

1. OVERALL DESIGN AND FUNCTIONING OF THE BUFFER FRAMEWORK

The comprehensive macroprudential toolkit for banks, introduced following the Global Financial Crisis, is applicable since 2014. The macroprudential framework implements, and expands on international standards agreed by the BCBS. The main tools are capital buffers, i.e. additional Common equity Tier 1 (CET1) capital requirements on top of the Pillar 1 and Pillar 2 requirements that banks need to fulfil to remain a going concern. Capital buffers hence reduce the risk that unexpected losses will result in banks having to be declared failing or likely to fail. They enable banks to absorb losses while maintaining the provision of key services to the economy.

The CRD sets out five capital buffers, which together form the combined buffer requirement (CBR). Four buffers are based on the Basel agreements, while one is EU-specific. The four Basel-defined buffers are:

- capital conservation buffer (CCoB, Art 129 CRD), which is calibrated at 2.5% of the total amount of assets adjusted by the riskiness of these assets (Risk Weighted Assets, RWA), to ensure that banks have an additional layer of usable capital that can be drawn down when losses are incurred;
- countercyclical capital buffer (CCyB, Art 130 CRD), which aims to protect the banking sector from periods of excess aggregate credit growth that have often been associated with the build-up of system-wide risks;
- global systemically important institutions (G-SII) buffer (Art 131 CRD), which aims to reduce the probability of failure of a global systemically important bank by increasing their going-concern loss absorbency capital requirement;
- other systemically important institutions (O-SII) buffer (Art 131 CRD), which aims to reduce the probability of failure of banks that are deemed systemically important at the national level by increasing their going-concern loss absorbency capital requirement.

The EU-specific buffer is the systemic risk buffer (Art 133 CRD), which can be used to address a broad range of systemic risks, which may also stem from exposures to specific sectors, as long as they are not already addressed by the other buffers above.

Each bank has to meet a specific CBR. Unlike a breach of minimum capital requirements, breaching the CBR does not prevent banks from operating as a going concern, but banks breaching their CBR have to restrict distributions in the form of dividends, share buy-backs, coupon payments on additional Tier 1 (AT1) instruments, and discretionary bonus payments, and they will have to submit a capital conservation plan to supervisors.

When faced with a shock, buffers should avoid excessive deleveraging by banks, which could amplify the initial shock to the economy. In the Covid-19 crisis (the first crisis with a macroprudential framework in place), banks have indirectly benefited from unprecedented public support measures to their household and corporate customers; therefore, the shock-absorbing feature of capital buffers has not been tested.

The crisis has triggered a discussion on whether the capital buffer framework is optimally designed not only to provide additional resilience, but also to act counter-cyclically when

necessary, including by encouraging banks to maintain their supply of credit during an economic downturn. The review of the macroprudential framework should therefore focus on the best use of buffers in a crisis, covering various aspects:

- Stigma related to Maximum Distributable Amount (MDA) restrictions: Using capital buffers during a crisis (i.e. breaching the combined buffer requirement (CBR)) does not prevent banks from continuing to operate as a going concern, unlike a breach of Pillar 1 minimum capital requirements. However, when operating below their CBR, banks face automatic and graduated (depending on the buffer shortfall) restrictions on distributions, including dividends, bonus payments and coupon payments on Additional Tier 1 instruments. While these payout restrictions are designed to prevent imprudent depletion of capital, they may also incentivise banks to deleverage to avoid such restrictions and market stigma.
- Capital buffer usability: Unlike minimum requirements, capital buffers that have been built-up can in principle be drawn down or released when losses have to be absorbed during times of stress. Capital buffers are only fully usable if they can be depleted without breaching parallel minimum requirements, i.e. the Leverage Ratio (LR) and the Minimum Requirement for own funds and Eligible Liabilities (MREL), including the MREL subordination requirement for certain banks. In practice, parallel prudential and resolution minimum requirements may become binding before capital buffers are fully used and hence may limit banks' ability to sustain lending in situations of economic distress. However, it is also important to bear in mind that the leverage ratio is precisely intended to prevent banks from becoming excessively leveraged. Moreover, reducing overlaps between buffers and other requirements may not be possible without implications for the calibration of overall capital requirements and of requirements in the resolution framework (Bank Recovery and Resolution Directive (BRRD), Single Resolution Mechanism Regulation (SRMR)).
- Balance between structural and releasable buffers: In response to the Covid-19 crisis, responsible authorities reduced and relaxed capital requirements for banks (notably certain buffers) and Pillar-2 Guidance to enhance their lending capacity in the face of a steep rise in liquidity needs of households and businesses. The scope for capital releases from macroprudential buffers was quite limited, though, as only one macroprudential buffer, the CCyB, is explicitly designed to be released in a crisis. The bulk of the capital buffers (i.e. CCoB, G-SII and O-SII buffers and, to a lesser extent, SyRBs) are of a structural nature and should be in place at all times or for as long as a particular type of risk is present. As there are concerns that banks might prefer to deleverage rather than allow their capital to fall below the CBR, there are calls for making a larger share of buffers releasable in a crisis. One option that is being widely discussed is a positive neutral CCyB rate, i.e. a CCyB calibration that would be above zero even in the absence of a credit boom. A key question in that regard is whether a positive CCyB rate over the cycle should (and could) be achieved without an increase in the overall level of capital requirements.

- Procyclicality in risk weights: Capital buffer requirements are expressed in percentages of risk-weighted assets, so the amount of capital needed to meet a given combined buffer requirement depends on the level of risk weights. This is an issue for banks using internal models to calculate risk weights for their various exposures, but it may also affect banks using the standardised approach to the extent that they rely on external ratings. Rising credit losses caused by an economic shock may drive up risk weights (or lower external ratings), increasing the amount of risk-weighted assets held by banks and, hence, the amount of capital they need to meet their buffer requirements, which are expressed as percentages of risk-weighted assets. This phenomenon has not been observed in the current crisis as public support measures have kept loan defaults at a low level. However, in a different crisis with rapidly rising loan defaults, rising risk weights could accelerate the depletion of capital buffers and cause banks to behave pro-cyclically. This could also be an important aspect of how the buffer framework operates in a crisis, although the impact of risk weight variations over the cycle can be expected to be mitigated by the Output Floor.
- Banks' willingness to use their buffers will also depend on their expectations as regards the restoration and replenishment of buffers after a shock. They will be more reluctant to lend if they know that their capital requirements will quickly increase. This depends on how MDA restrictions and capital conservation rules as laid down in Art. 141 to 142 CRD are applied and how soon released/reduced buffers are restored to their previous levels.

Apart from the operation of the buffer framework over the cycle, its suitability for dealing with structural risks should also be reviewed. Particular attention should be given to the appropriateness of capital buffers for systemically important institutions, global (G-SIIs) and other (O-SIIs). Together, these institutions are the main providers of credit to households and firms in Member States and, as such, vital to economic performance. At the same time, the integration of G-SIIs and O-SIIs in increasingly complex financial systems makes them vulnerable to financial shocks occurring outside the banking sector and may create potential contagion channels for financial instability (see section 4 for the global contagion risks). In addition to specific buffer requirements (G-SII buffer), G-SIIs have to comply with tighter limits on their leverage ratio, the leverage ratio buffer. Such a leverage ratio buffer requirement does not exist for O-SIIs. Art. 513(e) CRR requires the Commission to consider whether the leverage ratio buffer requirement should also apply to O-SIIs.

Another primarily structural buffer is the SyRB. Its use has been made much more flexible recently (through the 2019 amendments to CRD, which became applicable at the end of 2020), allowing its application to sectoral exposures (or subsets thereof); at the same time, the restriction to apply it only to structural risks was removed. SyRBs, in particular sectoral SyRBs, are not yet widely used. They have been considered as a possible substitute for risk weight measures in accordance with Art. 458 CRR, which exist in several Member States. The calibration of a sectoral SyRB would have to be very high to address macroprudential risks that are not fully reflected in risk weights, as those low risk weights would also imply lower capital requirements for a given buffer rate. High calibrations would also imply more complex authorization procedures.

Having several different types of buffers introduces a degree of complexity in the macroprudential framework. This complexity may be unavoidable in the EU in view of (i) the flexibility that is needed to address a wide range of different systemic risks across different Member States, and, (ii) the existing decentralised governance of the EU macroprudential framework in banking. However, it may be useful to consider whether this complexity could be reduced or whether clearer guidance would be needed to ensure a consistent use of the buffer framework across Member States.

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

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?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

NA

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

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?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Many public banks have an important role in contributing to sustain activity in the economy in downturns, thus representing an important support for the countercyclical policies of the respective governments.

Their ability to perform such a role stems from the public ownership and public policy mandates that underpin the high credit ratings, typically at the same level as the respective government owners. The high credit rating allows them to maintain effective access to funding even with turbulence in the capital markets that typically limits the access of privately owned commercial banks, and they are hence able to keep up their lending activities.

Whilst the release of the countercyclical buffer has been somewhat effective at supporting the lending capacity of public banks, for the reasons mentioned by the Commission on p. 6-7 in the consultation document, the structural buffers reduces the ability of public banks to perform a countercyclical role. Indeed, the consequences to a public bank of using the buffers may be expected to be even more serious than if a privately owned bank decides to use the buffers. If a private bank operates within the buffer range this may as mentioned in the consultation document carry stigma relating to restrictions on MDA and may represent a weakening of credit standing reflecting the reduced level of capitalization, factors that may affect both the share price and the funding cost of the bank.

For a public bank there will be an additional concern that market participants, including investors and rating agencies, may interpret use of the buffers as a reduced level of owner commitment, which may cause additional rating downgrades (beyond the direct effects linked to the reduced level of capitalization) which ultimately might be interpreted as a threat to their franchise. For this reason, public banks are and must be particularly reluctant to use the buffers.

MDA restrictions may have a similar effect. Whilst public owners will often not expect or demand payment of dividends from their owned public banks, failure to pay interest on AT1-instruments could also be interpreted as a reduced level of owner support and amplify effects of breaching the combined buffer requirement.

To allow public banks to maintain supply of credit more effectively and support the level of activity in the economies in downturns, it would be more appropriate in light of their business models if more emphasis was placed on other macroprudential instruments than the structural buffers, e.g.:

- Increase the relative share of releasable buffers
- Aggregating CCyB and CCB to a new releasable buffer.

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

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.

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Application of the systemic importance scoring methodology developed by EBA seems not to be applied consistently across member states, and there also seems to be little consistency between the systemic score of individual institutions and the calibration of the level of their respective O-SII buffers.

Thus, significant distortions occur in the EU (gold plating). Against the backdrop of the Single European Market and a harmonised resolution regime it would be welcomed if the determination of O-SII buffers is subject to a uniform concept and common parameters.

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?

For public banks it would be more appropriate if more emphasis was placed on other macroprudential instruments than the structural buffers in the current buffer framework, as explained further in the last part of the response to question 2.

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.

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EAPB would urge the Commission to provide enhanced clarity on appropriate use of the buffers and to provide the institutions with greater transparency/predictability on expectations with regards to the timeline for replenishment.

We see a need to withdraw instruments that increase the chance of duplicating measures to mitigate risks, create an unlevel playing field and contribute most to complexity. In particular, we believe the system risk buffer should be removed. The system risk buffer is a special European requirement that is not covered by Basel. It also seems to act as a “catch-all buffer” which can be used for risks that are not already covered by other capital buffers.

The next step would then be to review all existing instruments in terms of their uniform implementation in the EU. This would include, among other things, implementation of the buffer for other systemically important institutions (O-SII buffer). The design of national calculation methodology differs considerably from country to country in Europe.

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 coordination/governance arrangements should be in place.

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EAPB would in general urge the Commission to reconsider the balance between structural and releasable buffers, cf. the response to question 2. In particular, we would suggest aggregating CCyB and CCB to a new releasable buffer. This should support a capital neutral adjustment of the capital buffer concept. It must be ensured that a review does not lead to a general increase of capital requirements within the EU.

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?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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 introduction of an additional leverage ratio buffer for O-SIIs must be rejected because of the complexity and dependencies with other requirements.

For institutions with a leverage ratio capital requirement that is close to the risk weighted capital requirement, the L-MDA provisions based on the leverage ratio buffer calculation methodology set out for G-SII in practice seems to imply significantly more restrictive distribution restrictions than the MDA restrictions that they would be subject to due to a relatively equivalent breach of the risk weighted combined buffer requirement.

For some public banks that are O-SII, the calibration of the leverage ratio capital requirement at 3 pct. will furthermore be close to the risk weighted capital requirement including the combined buffer requirement and may often operate as a front stop, rather than a back stop as intended, due to the low risk nature of their portfolios. For such institutions, a leverage ratio buffer would have the effect that the leverage ratio would represent a front stop much of the time, and would imply overcapitalization for the low risk nature of their portfolios. With a leverage ratio buffer it would furthermore not be possible for

such institutions to use the risk weighted buffers to maintain lending in downturns according to the intention. A leverage ratio buffer for G-SII should for these reasons in EAPBs view not apply to O-SII.

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As mentioned above, we suggest that system risk buffers are removed.

2. MISSING OR OBSOLETE INSTRUMENTS, REDUCING COMPLEXITY

The EU has a broad and complex range of macroprudential tools. One of the questions to be assessed in the review is whether certain existing tools have become obsolete, whether some need to be strengthened and whether certain tools are missing. The scope for reducing unwarranted complexity should also be explored.

The Commission is required to assess in particular whether Borrower-Based Measures (BBM) should be added to the EU macroprudential toolkit to complement capital-based instruments and to allow for the harmonised use of these instruments in the internal market, assessing also whether harmonised definitions of those instruments and thereporting of respective data at Union level are a prerequisite for the introduction of such instruments (Article 513(1)(d) CRR). BBM could complement the existing toolset to address and mitigate systemic risks, especially those related to real estate, and to prevent the potential negative spill-overs to the broader financial system and the economy. While several Member States are already using BBM based on national law, a complete set of BBM is not available in all Member States. This could affect the ability to address systemic risk and create cross-country inconsistencies and difficulties with reciprocity, where this is necessary to ensure the effectiveness of BBM in the internal market.

The review should also seek to identify instruments that may be obsolete. The finalisation of the Basel III reforms and the introduction of an output floor has implications for macroprudential instruments that directly or indirectly affect risk weights such as those provided under Articles 124, 164 and 458 CRR, which concern exposures secured by mortgages. Furthermore, having multiple prudential tools that can target similar risks creates unwarranted complexity and may contribute to a more fragmented internal market. The powers to set floors for, or raise, certain risk weights and parameters (as set out in Articles 124 and 164 CRR) have not been widely used since their introduction in the EU framework. In particular, Article 164 CRR has never been used by an EU Member States. Some of the shortcomings of the two articles have been addressed in CRR II, with the aim of improving their usability. While the very short time span since the improved articles have been applicable does not allow to conclude on their actual usability, it does make sense to reassess their suitability in view of the introduction of the output floor with the finalisation of the Basel III reforms.

With Article 458 CRR, the CRR and CRD package contains a last-resort measure to flexibly address a number of systemic risks that cannot be adequately and effectively addressed by other macroprudential tools in the package. The use of the tool is subject to

various safeguards, aimed at avoiding that such measures create disproportionate obstacles to the functioning of the internal market. During the past years, Article 458 CRR has been used by some Member States to adjust risk weights for exposures to residential real estate markets. The need for such measures may diminish, given that the SyRB can be used for sectoral exposures and due to the phasing-in of the output floor.

Article 459 CRR empowers the Commission under very restrictive conditions to impose stricter prudential requirements for a period of one year in response to changes in the intensity of micro- or macroprudential risks. However, scenarios where the conditions for using this article would be met are very unlikely. Moreover, the Article could become more symmetric and allow for the temporary relaxation of certain requirements, notably to support the recovery after an adverse shock.

One measure that could have made sense in the context of the Covid crisis would be the temporary imposition of system-wide restrictions on the distribution of capital to investors and staff in the face of exceptional uncertainty. However, such a measure would not have been covered by Article 459. During the Covid-19 pandemic, authorities in the EU asked banks to refrain from capital distributions, through dividends, share repurchases and bonuses, to ensure the stability and resilience of the banking system and to support the flow of credit to the real economy. Those recommendations aimed at retaining capital in the banking system, including capital released from buffers and from Pillar 2. The recommendations were observed by banks. EU legislation currently only allows supervisors to impose legally binding distribution restrictions on banks on a case-by-case basis but does not provide for legally binding supervisory powers to temporarily prohibit distributions on a system-wide basis under exceptional circumstances. Microprudential supervisors consider that they had sufficient powers to enforce their recommendation on distribution restrictions in the Covid-19 crisis. However, in the context of the macroprudential review, the role of macroprudential authorities in imposing restrictions on distributions in exceptional circumstances should also be considered, as well as their coordination at the European level.

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

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

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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?

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 low-interest-rate environment? Which tools should Member States have and what role should EU bodies play in fostering their effective use?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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 pro-cyclical 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?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

3. INTERNAL MARKET CONSIDERATIONS

The EU macroprudential framework also seeks to preserve the integrity of the internal market while leaving it mostly to Member State authorities to adequately address systemic risks, which tend to be specific to individual Member States (although this may change with deeper economic and financial integration). The largely decentralised use of macroprudential instruments is therefore framed by provisions in CRR and CRD, which require an EU-level surveillance and, in some cases, authorisations for measures that could create obstacles to the functioning of the internal market. The complexity of procedures and of the interactions between different instruments may, however, prevent authorities from making an effective use of the instrument and possibly cause an inaction bias, especially in the case of sectoral SyRBs that may need to be calibrated at very high rates to be effective.

Moreover, the effectiveness of national macroprudential measures in the internal market depends on being able to prevent, through reciprocation by other Member States, circumvention and regulatory arbitrage. This issue may arise not only in relation to other Member States, but possibly also for other parts of the financial sector to the extent that they can provide similar services as banks. It is important to assess, also in light of the recent crisis experience, whether the current framework offers not only the appropriate macroprudential tools to national authorities, but also ensures their effectiveness in the internal market, and whether it provides for adequate safeguards for the integrity of the internal market and avoids market fragmentation especially within the Banking Union. The review should therefore also consider whether provisions related to the internal market achieve their goals, and whether they do so without undue complexity or whether there is scope for simplifying and streamlining procedures while maintaining necessary safeguards.

Art. 513(1)(f) CRR requires an assessment as to whether the current voluntary reciprocation of certain macroprudential measures should be made mandatory and whether the current ESRB framework for voluntary reciprocity is an appropriate basis for that. Reciprocity is currently voluntary for a CCyB above 2.5%, SyRBs and measures taken under Article 458 CRR.

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:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 11: Have the provisions on reciprocity 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 reciprocity framework to the instruments not currently covered by it:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

According to CRD IV Art. 140(1), the institution-specific countercyclical capital buffer rate shall consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the institution are located. The geographical location of relevant credit exposures is identified according to the provisions of Regulation (EU) No 1152/2014. The general rule under Art. 2 of the regulation is that the relevant credit exposures, with some limited exceptions, shall be allocated to the location of the obligor, ie. on an immediate counterparty basis, whereas according to the Basel framework, the relevant credit exposures should be allocated on an "ultimate risk" basis, ie. based on the location of the debtor of any underlying credit or the location of any parent/guarantor of

the exposure.

For public banks with a public policy mandate, if they have relevant credit exposures, such exposures will in many cases benefit from guarantees from regional or local government, which are not always 0% risk weighted and will serve public policy objectives, such as financing public investments or support financing needs in defined parts of the economy. Such credit would generally not be a relevant constituent when defining excess credit growth in the private sector. The inclusion based on the location of the obligor therefore implies that the institution-specific countercyclical buffer rate will deviate from the geographical distribution of identified relevant excessive credit growth. This may limit the ability of public banks to fulfill the public policy objectives if such exposures give a disproportionately high weight to countercyclical buffer rates in economies with high credit growth in the private sector. EAPB would for this reason urge the Commission to review the provisions of Regulation (EU) 1152/2014 and align the EU rules in this area with the Basel framework.

To give proper effect to the reciprocity mechanisms, the Commission should furthermore introduce provisions to determine the geographical location of exposures also for the purpose of calculating the institution-specific systemic risk buffer.

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):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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)?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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.)?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

4. GLOBAL AND EMERGING RISKS

Financial stability in the EU does not only depend on limiting systemic risks and vulnerabilities within the EU banking sector. There are contagion risks originating outside the EU, possibly involving non-bank financial intermediation, that also need to be addressed. While financial intermediation through non-banks is growing in importance, banks continue to play a pivotal role in the global financial system. Large banks provide crucial services for non-bank financial intermediaries. At the same time, some increasingly significant developments, and in particular cyber security breaches, the entry of big tech firms into financial services and crypto assets, all take place at a global scale and can represent growing threats to financial stability. Also, the Covid-19 crisis has shown how events originating outside the financial sector can affect financial stability. In the future, climate risks are likely to materialise more suddenly, more frequently, more severely and with greater cross-border implications. In the [recent](#)

[consultation on the Renewed Sustainable Finance Strategy](#), most respondents highlighted the importance of having a robust macroprudential framework that incorporates climate risks. The suitability of the existing macroprudential toolkit will have to be assessed in view of the above-mentioned global risks.

Exposures to third countries can also represent a threat to financial stability. Articles 138 and 139 CRD foresee powers to address risks arising from excessive credit growth in third countries and to ensure a coherent approach for the buffer setting for third country exposures. These powers have never been used since their introduction in the EU framework, raising the question whether these provisions represent the most appropriate way of dealing with systemic risks stemming from third countries.

From a financial stability perspective, a growing non-bank financial sector brings benefits in terms of increased risk-sharing across the financial system, but it can also result in new risks and vulnerabilities. In particular, the expansion of the non-bank financial sector in recent years has been accompanied by an increase in the riskiness of some asset portfolios, rising liquidity transformation and increased leverage. Such risk-taking has created vulnerabilities which need to be monitored and assessed, taking into account interconnectedness within the financial system and the banking sector in particular, as well as the role of non-bank financial institutions in funding the real economy more broadly. Art 513(1)(g) CRR mandates the Commission to consider tools to address new emerging systemic risks arising from banks' exposures to the non-banking sector, in particular from derivatives and securities financing transactions markets, the asset management sector and the insurance sector.

The banking sector is exposed to growing cyber-threats, and its reliance on critical infrastructure offered by third-party providers may create new vulnerabilities. Financial stability can be disrupted when cyber incidents spread across banks through their financial and information technology connections, as well as their common dependence third-party service providers.

Finally, crypto-assets are a new, rapidly expanding but high-risk and largely unregulated asset class that also spawns a large industry of service providers. Banks can become exposed to crypto-assets through an increasing variety of channels, direct and indirect, financial or operational. It should therefore also be assessed whether adjustments to the macroprudential framework are needed in response to the rise of the crypto economy.

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

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:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

OTHER OBSERVATIONS

Please indicate any other issues that you consider relevant in the context of review of the macroprudential framework. You may also use this section to express your views on priorities and the desirable overall outcome of the review.

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

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.