POLISH BANK ASSOCIATION RESPONSE ON THE TARGETED CONSULTATION ON IMPROVING THE EU’S MACROPRUDENTIAL FRAMEWORK FOR THE BANKING SECTOR

**General remarks**

Polish Bank Association welcomes the opportunity to comment the existing macroprudential framework for banking supervision and participate in the discussion how to improve the system in near future. Since the adoption of the Capital Reguquirement Directive (CRD) we can observe the macroprudenial tools used by different countries and assess the effieciency of these measures. This period was also quite interesting looking at the changing macroeconomic situation in the world and in the different countries. We had the time of good business cycles, expecially in the housing area and later we had the unprecedented time of lockdown after the appearing of coronavirus pandemia. It is the reason to express opinion that this experience could deliver the sufficient information wchich changes in the existing macroprudential framework are reasonable in order to improve the system.

We would like to express our general opinion that the macroprudential measures are good solution to manage, mitigate the risk in the banking sector, particularly in areas which are not covered by the other prudential regulations. The macroprudential measures can be used more in point than ohter prudential tools designated for banking sector and it is a big adventage of these measures.

We would like to emphasize that the marcoprudential framework is not included in the Basel standards. There is the formal reason why the more flexible solution can be applied. These measures should be adjusted to the risk which should be addressed by the macroprudential tools.

We are convinced that the macroprudential tools may be used in more tailored way. They do not have always go in the direction to find new instruments to raise the capital requirements for banks. It is very easy and simplified approach which is not always adequate to the real situation. These measures should be more nuanced, aimed at the situation which should be solved by the macrprudential measures.

We do not accept the approach that higher capital requirements lead always to higher stability and safety of banking sector. We have our local experience where very high fiscal burden and restrictive prudential regulation cause the situation where banks are not keen to finance real economy but they concentrate their efforts to buy the treasury bonds. It leads to the situation where this kind of securities are 30% total assets of Polish banks. Banks are very safe but they do not finance economy in the correct scale. We should discuss this subject as very important and urgent one.

High capital requirements lead also to the situation where the return on equity is moderate or low (even in good macroeconomic circumstances) and new investors do not tend to raise their portfolio of shares in banking sector. It leads to counterproductive result that bank may raise their capital by limiting the outflow of dividends only. This approach do not give any chance for development and the better competitiveness to non-bank financial institutions and fin-techs.

We do not want to be treated as the institution being against the idea that banks should not be well-capitalised. We appraciate the vaue of safe and prudent financial institutions. We want to stress our concern regarding the adequate ratio of capital to the scale of banking activity. It is necessary to look for optimal equilibrium not to raise requirements to highest level.

Discussion regards th design of the capital buffers should be performed at the global, international level. More restrictive local regulations may cause worse competetiveness of local financial institutions. There are some regulations concernig the adoption of macroprudential measures by the banks active in the international scale, but this system does not perfectly.

We are strongly convinced it is necessary to reduce the complexity of the measures, particularly the capital buffers. There is sometimes difficult to understand where is the difference in application of different buffers. The good example is the systemic risk buffer and capital conversation buffer. We treat them as the forms to cover the same typy of risk and the form of application varies both measures.

We are concern also regarding the higher proportion of “redeemable” capital buffers. According to the general idea of the capital buffer framework the objective is to both absorb losses and ensure that banks provide sufficient lending in times of stress. In our opinion the latter has been overlooked due to the limited usability of buffers (MDA restrictions).

The important point of the application of macroprudential measures is the right allocation of power and responsibility between national and EU authorities. We know the national authorities and responsible for the application of the measures but parallelly some proposal in this area have to consulted or approved on the EU level. This creates the governance challenge. This question should be approved knowing however we have the single European financial market and national approach to the application of macroprudential regulations.

We need higher level of certainty and transparency on the usability of the buffers in practice. This is particularly important in the worse situation where we are in the low point of business cycle and some measures are temporary released. The better communication is needed in areas concerning the expected time of return to the higher level of buffers after temporary release. It can be difficult for authorities to do it precisely but these decision have the fundamental impact on the efficiency of the macroprudential tools. We have to remember that any release and increase of buffers have the strong consequences in areas:

* Refraining from automatic restrictions on distributions (i.e. MDA).
* Coordination of response from different institutions to ensure the usability of the buffers will not lead to breaches in parallel minimum requirements, i.e. the Leverage Ratio (LR) and the Minimum Requirements for own funds and Eligible Liabilities (MREL).

Without such communication banks may wait for the increase of buffers in the near future and will not be more engaged in the financing of economy knowing that they can raise their own capitals mainly by profits not by new issuance on the capital market.

**FEEDBACK TO THE QUESTIONS LISTED IN THE CONSULTATION PAPER**

1. OVERALL DESIGN AND FUNCTIONING OF THE BUFFER FRAMEWORK

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)

Response: 4

**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?**

Concerning resilience, we stress that EU banks’ overall capital requirements are already set as very high. Our banks are very well capitalized and able to withstand severe losses projected under the stress tests. The experience of last crisis created by the coronavirus pandemia has showed perfectly that banks can survive and deliver services and support to the economy in the turbulent time. This banks were the solution not the source of problems.

The interaction between the individual components of the capital buffer framework is another topic. We see some challenges related to the usability of the buffers. We mentioned in the general remarks that it is difficult to understand the difference between the systemic risk buffer and capital conversation buffer. We see them as the form to raise prudential requirements but the scope and sense of application is similar. The same question concerns the usability of buffers and other instruments in non-macroprudential framework (for example pillar 2 additional requirements. In our opinion it should be simplified and the similar buffer should not be duplicated.

So, referring to the interactions of the individual components of the capital buffers framework, we see need to better clarify which risks each component of the framework is meant to address, notably in order to avoid overlapping. In our view, there should indeed be no overlap, either within the macroprudential framework or across the different prudential frameworks (P1/P2; risk-based/leverage, etc.).

In our view, the capital buffers should be calibrated taking into account the risks already covered under P1 and P2 requirements. In this regard, P2G should be offset against the capital conservation buffer, as P2G and the CCoB overlap in nature. Furthermore, while no overlap is in principle expected between P2G and the countercyclical capital buffer (CCyB), competent authorities should, on a case-by-case basis, also offset P2G against the CCyB, based on the consideration of the underlying risks covered by the buffer and factored into the design of the scenarios used for the stress tests, after liaising with the macroprudential authority.

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

(1 = highly ineffective, 5 = highly effective)

Response: 3

**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?**

Buffer requirements, except the CCyB and the SyRB, are fixed in absolute terms (i.e. not calibrated depending on financial or economic cycles). Under these circumstances, we do not see how the buffer framework can effectively dampen financial or economic cycles. The only explanation can be that general higher capitals make the crisis less severe but this topic do not concern directly the application of buffers but higher capital requirements as the whole.

In Poland the CCyB is all times zero. In our opinion it could be reasonable to introduce the CCyB in order to limit the demand on the mortgage credit for resident purpose but it was not introduced. In this situation we can assess the efficiency of the CCyB on the local market.

Concerning the systemic risk buffer release, we express our opinion that it was efficient measure and well applied at the beginning of lockdown. It was more successful in order to meet the capital requirements in the time of possible high losses in the credit portfolio, less in bigger credit activity. This credit activity was very low because the demand on the credit was low and many households and entrepreneurs received cheaper support from official bodies than the bank credit. It is the reason why it would be very difficult for us to assess the efficiency of the systemic risk buffer. The situation was extraordinary and public support was very high in that time.

In addition, and as already underlined in our earlier remarks, we see impediments to the intended use of buffers when banks do not have the good knowledge how log the release period can last and which will be level of buffer the release period. This approach limits the efficiency of buffers as banks are waiting for the decision that the release is over and they have to mobilize the capital in order to meet new requirements.

The stigma associated to restrictions on profit distribution (MDA) can successfully prevent banks from drawing down real capital buffers in times of stress. In this regard, it would be good to look for any solution how to lower the MDA threshold in periods when the rebuilding of bank capital was indicated by the supervisory/prudential authority, new buffers were set up.

For a capital relief on risk-based capital requirement (P1+P2) to be effective, institutions should not be otherwise constrained by MREL or LR requirements. A proper coordination should be ensured between authorities in this respect.

Uncertainty about timing and strength of economic recovery coupled with time constrained measures, particularly considering that credit cycles are long in nature, contribute to the industry concerns on the usability of buffers, as lowering capital ratios beyond certain levels could expose banks to severe market discipline (approaching the regulatory minimum may be associated with the point of non-viability) leading to increase in risk premia and funding costs, as well as to a lack of depositors confidence and reputation, ultimately affecting the bank in subsequent stages of the crisis, where most support is needed.

In this respect, authorities should allow for a sufficient period, aligned with extended credit cycles to replenish buffers, in order to avoid unwarranted counter cyclical-effects that may occur particularly at times of low profitability or complicated access to capital market.

**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)

Response: 3

**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, 9 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.**

It is crucial to recognize that the G-SII / O-SII buffers, which are capital measure, are not the only tool – and certainly not the most effective tool – to address and mitigate the negative externalities associated with institutions perceived as “too big to fail (TBTF)”. The G-SII / O-SII buffers are the result of the scale. Bigger banks have bigger responsibility for all market but it is made in our opinion without the context of G-SII / O-SII buffers.

In particular, we believe it is time to recognize the positive effects of the measures adopted to reduce the impact of failure of large banking groups: banks are now much better capitalized and resolvable, risky business models and funding sources are less prominent, and bank resolution schemes have substantially progressed. We believe that the cumulative amount of systemic risk in the banking sector has reduced.

We do not have in Poland the headquarters for banks indicated as globally important banks. This is the reason why we can not assess the appropriateness of the G-SII buffer. We have the subsidiaries of the globally important banks but it is completely different matter in this area.

Specifically referring to EU O-SIIs, the EBA “[Report on the appropriate methodology to calibrate O-SII buffer rates](https://www.eba.europa.eu/sites/default/files/document_library/Publications/Reports/2020/961796/EBA%20report%20on%20calibration%20of%20OSII%20buffer%20rates.pdf?retry=1)” (EBA/Rep/2020/38, p. 7) mentioned, inter alia, that unjustified heterogeneity (in O-SII buffer rates) is a source of concern from the perspective of a common EU standard, the single market and the banking union in particular. We do not have such broad picture as the EBA has. On local market the differences between the level of O-SII buffer for different banks are not so significant. In this regard, it is essential that CRD, Art. 131, ensures a harmonized approach to the calibration of O-SII buffer rates, so that institutions – with the same O-SII scores – should be subject to the same O-SII buffer rates.

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?**

**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 already mentioned in our response to question 1, we see merit in better clarifying which risks each component of the framework is meant to address, notably in order to avoid overlapping. In our view, there should indeed be no overlap, either within the macroprudential framework or across the different prudential frameworks (P1/P2; risk-based/leverage, etc.).

In this context, we would like to underline that every buffer is established to cover losses incurred in times of stress, as explicitly stated in the Basel framework and CRD IV. As such, additional layer(s) of capital on top of P1 and P2 requirements should be required only for banks whose buffers are not sufficient to absorb stress test losses.

In addition, as mentioned in our response to question 2, we consider it is key to provide certainty and simplicity related to the timeline for rebuilding buffers.

**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.**

The problem with the idea of releasable buffers is that everyone knows that they are released temporary only. Banks do not believe this situation can be maintained in longer period. The capital planning must be organized in the longer period. That is the reason why it is difficult to believe that short term release may be efficient.

Looking at possibility of an increase of buffers in capital-neutral way over cycle it is also difficult to believe it is possible. The buffers are set up for all banks in the same time and the supply of capital is limited. In that situation it is difficult to believe that this goal may be achieved.

The buffer framework should strike a better balance between its objectives to absorb losses and support lending. This can be achieved by making more buffers – or a larger proportion of some buffers – “releasable”: in periods of stress. This solution allows to be more flexible for authorities and for banks. The stable buffers have lower chance to achieve this goal. In present regulation environment bigger impact should be on countercyclical buffer than other buffers included in the combined buffer requirements. Another option would consist in making the combined buffer requirements (partially) more flexible or redeemable. Both approach may be efficient. In the time of last pandemia many regulators have released the systemic risk buffer, particularly when the countercyclical buffer was not introduced.

We recommend also not only inform better about the time of an increase of buffers but also to analyze the banks need with the supply of capital. The shortage of capital on the market and short time for an increase will make the requirements impossible to achieve or it will be very expensive for banks. In both scenarios banks will be reluctant in the future to use capital in the period of a release.

An increase of the countercyclical buffer should be also analyzed if the same risk is not covered by other capital requirement and proportionally revise the level of other requirements, other buffers.

**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 optimizing the MDA restrictions and capital conservation rules as laid down in Articles 141 to 142 CRD?**

As already mentioned in our response to question 2, uncertainty about timing and strength of economic recovery coupled with time constrained measures contribute to the industry concerns on the usability of buffers. In this respect, authorities should allow for a sufficient period for banks to replenish buffers, to avoid unwarranted counter cyclical-effects that may occur particularly at times of low profitability or impaired access to markets.

Transparency on the usability of the buffers, combined with flexibility in their replenishment, will lead to planning security for banks and ensure buffers can be effectively drawn in times of stress to support lending.

Also, an important distinction has to be made between releasable and non-releasable buffers in terms of replenishment. More specifically:

* Concerning the CCyB: under the current definition, its objective is to be set at 0% except in times of excessive credit growth. To be noted, credit growth linked to a recovery from a crisis should not be considered as “excessive” and therefore should not trigger increases in the CCyB.
* In case all or part of the CCoB could be releasable, in particular in case of an exogenous shock or major systemic crisis, the restoration of the buffer should not start before the return to the pre-crisis level.
* For non-releasable buffers, the issue is the capacity of banks to replenish those buffers, based on earnings capacity and given MDA restrictions. Existing regulation already includes the need for banks to produce a capital conservation plan approved by authorities. In order to ensure predictability, MDA rules should be strictly respected by authorities (i.e. banks should be allowed to distribute a growing proportion of their earnings as they progressively replenish their buffers).

In order to reduce MDA stigma, the following would be considered:

* Removing/reducing cliff effects by reducing the “penalty function” of the upper MDA buckets. In the US, the 23 March 2020 FRB & FDIC joint interim final rule revised the definition of Eligible Distributable Income, enlarging the base to the four last quarters of income gross of distributions and associated tax (rather than net of distributions). The rule also made any automatic limitations on capital distributions less binding, and applied to both capital and TLAC restrictions.
* Avoiding retroactivity: MDA triggered in year N should not apply to profits generated in year N-1.

**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?**

It is very important point for banking industry. The scope of risk that is covered by buffers should be clearly defined to avoid overlaps. In the current framework the risk covered by the buffers have interactions with other buffers, P2R, P2G and RWA add-ons (eg. pursuant CRR art. 458 and 124). These requirements are applied by the competent authorities inconsistently, leading to overlaps of risk covered by the these measures. We observe such situation in Poland where P2R are used parallelly with other requirements creating the situation where higher risk on foreign-currency mortgage loans to residents are covered two times. That is the reason why we recommend to simplify the framework. A good step in simplifying the framework would be to stop imposing RWA add-on, and solely reflect macroprudential or systemic risk through buffers, P2R and P2G. Furthermore, it would be helpful to avoid overlaps of measures if competent authorities are required to provide a fully reasoned decision to impose these measures. This would also allow for the competent authorities to review and revise the measure if the risk for which the measure was applied changes materially.

Other topic in this area is the proposal that institutions should not be otherwise constrained by MREL or LR requirements when capital relief in form of buffer is implemented. Such approach is counterproductive.

Since the three requirements are based on different metrics which will react differently in a crisis context, it is important to ensure timely coordination among authorities. Otherwise, the risk is that a relief granted by one authority will translate in even more binding constraints on the other indicators.

On the leverage ratio constraint, we underline that the dynamics of the leverage ratio is very different from the ones of risk-based capital constraints. The leverage ratio is tightly dependent on balance sheet size, which itself is affected by liquidity reserves provided by the central bank in times of stress.

We have to remember that any changes in the capital buffer levels have the direct impact on the MREL requirements. It is particularly important when the buffers are be increased. All authorities have to look carefully at the consequences of their decision on other requirements. Today there is a lack of understanding. Each authority is responsible for other regulations and do not look carefully at broader results for banking industry and economy. The reason of such situation may be a lack of differentiation between supervisory risk – reflected in buffers – and resolution-related risk. Any supervision-induced buffer movement disproportionally affects MREL more or less twice as much, even though from a resolution point of view, risk may not have changed.

The increasing complexity of MREL calibration has hurt comparability to a point where external participants can no longer understand the individual composition of MREL for banks. A “step back” from a highly cumbersome individual calibration of MREL targets to a more macroprudential approach could effectively achieve similar results in terms of sufficient loss-absorbing capacity, using simpler means. Setting general MREL targets, sufficiently high to cover the largest portion of risk would not only break the link between prudential buffers and MREL, but also increase transparency on resolution preparedness across banks by defining clear-cut.

**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?**

In our view, a consistent treatment of O-SIIs buffers in all EU Members States should be assured. Such EU-level guidance will help in transparency of identification and calibration of additional requirements for O-SIIs. It will useful for banks, investors and market analytics.

We do not see the need to apply the higher leverage ratio buffer requirement to O-SIIs. The scale of their activity is different in comparison to the G-SIIs. The local authorities have the power to monitor and mobilize the O-SIIs to act in more prudent way. The supervision of supranational financial institution is more complicated. We have also to remember that banking supervisor supervises the O-SIIs more carefully and additional LR requirements are not needed. We express this position knowing that Polish O-SIIs might meet higher requirements in the LR today.

**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?**

Due to the fact that a calibration of SyRB remains challenging, we recommend a removal of the SyRB. SyRB is used only in exceptional cases in practice, and may conflict with other requirements (e.g. double counting of risks because of overlapping of sectoral risks and other dependencies as used within the business model analysis for the determination of P2R).

In general, we believe national actions with regards to SyRB should be taken with a sense of proportion: especially with regards to materiality (e.g. volume of exposures concerned), the costs for implementation of any macroprudential tool should be considered and adoption take place only if strictly necessary in the Member state.

Additional complication is created when a SyRB is to be recognize by another Member State. Art. 133 CRD governs the EU-specific SyRB. This system of recognition is very complicated, not automatic and it is not clear leaving room for different interpretation. This regulation should be accompanied by the specific EU guidelines.

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)

Response: 1

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

We see the different tools applied by the different authorities in area of macroprudential policy. The toolkit is not closed. We see also that some authorities use the macroprudential tool in specific situation, other do not use in the same circumstances. That is the reason to express our position that the gap is very deep. As we explain earlier, it is necessary to create the EU-guidelines covering the best practices in Europe.

Also, and as already mentioned in our general remarks, we consider the current toolkit as too complex, and we see merit in better clarifying which risks each component of the framework is meant to address, notably in order to avoid overlapping either within the macroprudential framework or across the different prudential frameworks (P1/P2; risk-based/leverage, etc.).

**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.

**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:**

Some buffers do not play a clear role, but rather seem redundant or not useful. We can repeat many arguments mentioned above. They concern the construction and idea of the CCoB and SyRB.

G-SII / O-SIIs buffers should be reviewed. More arguments are expressed in our response to question 3.

There is also an overlap between P2G and the combined buffer requirements (please see our earlier response).

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

Response varies depending the defintion of crisis. Looking at the crisis in real economy the macroprudential tools may help to make the cycle less deep. In area of managing a crisis in banking sector we do not have the experience but we do not believe that this toolkit may made the managing more efficient.

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

This being said, the framework has not been really tested, even during the Covid-19 crisis, thanks to public support which avoided significant asset quality deterioration. Regulatory authorities at international and European level also made significant decisions to alleviate the burden of the crisis. However, it should be noted that the complexity of EU governance let those measures being taken at a later stage and in most cases not fully aligned with international guidance.

In terms of coordination among EU authorities, we also would like to signal that, while some capital relief was provided at the beginning of the crisis by the supervisors, MREL requirements have been left unchanged. This shows how important it is that all relevant authorities be coordinated in periods of stress, so that relief can be granted in a harmonized way across the different dimensions (leverage, risk-based, resolution).

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?**

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

Also, we do not believe that simply granting a common minimum set of borrower-based measures will ensure that rules are applied homogeneously across Member States. Borrower based measures are too small-scale and rather secondary instruments, and can only play a subordinate role.

Borrower-based measures such as LTV caps or residential real estate loans to private households, which are linked to a maximum loan-to-income-ratio, should not be analyzed carefully. It would be not correct to establish to many limits that can destabilize the bank,s risk strategy and may cause also the situation where all banks have to have similar approach to clients and it would limit the access of clients to the bank credit.

We have to remember that actual proposed amendements to the CRR will introduce the connection between the level of LTV and the RW and this tool should be sufficient to limit bank risk.

The LTV caps over 100% may be introduced in order to stabilize the situation on the market and limiting the risk apetite in banks.

Our experience indicate also that the general ban for granting the credit in foreing currency for clients which have income in other currency is good solution. It can be used on national level and it does not have to be implemented on the EU-level. We can imagine that the local markets vary and different approach can be applied. The lack of common solution allows for local regulators to act in elastic and agile way.

**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?**

Many competent authorities in the European Union impose dividend recommendations to banks under their supervision. This practice hamper the usability of buffers. The EU, Basel Committee, framework has a scheme in place to avoid distribution having a too detrimental effect on bank’s capital – the MDA. This framework is designed and suitable for this purpose. Hence, additional dividend restrictions or recommendations are not only unnecessary but also undermine the well-designed legislative framework in this regard.

In this context, we would like to add that the EU capital requirements are calibrated in a way that allows banks to withstand extremely severe losses, while still maintaining sufficient capital to keep lending. This has been repeatedly evidenced with the outcomes of the stress test exercises.

**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, and in order to allow banks to both absorb losses and provide sufficient lending, relaxation of prudential requirements would be welcome.

To support the recovery after a shock, flexibility on the timeline for the restoration and replenishment of buffers should be provided. This relaxation may be only temporary in order not to lower the market discipline and fair competition.

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, thus increasing risk weights. This is complemented by several ongoing ECB (TRIM) and EBA (Future or IRB) initiatives, such that any further adjustment is 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)

no opinion

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

The banks in Poland provide only very limited financial services in other EU countries. Our knowledge is limited in this area.

However, in our view, macroprudential measures should be generally covered by EU level provisions specifying the applicable types of measures and their EU-wide benchmark levels, keeping the opportunity of Member States’ derogation limited to cases of strict necessity. These country specific add-ons should also be temporary in nature and a mechanism (i.e. recurring obligation for Member States authority to review and verify the necessity of maintaining specific measures) that serves the return to the EU’s benchmark established.

Otherwise, country specific macroprudential measures foster the fragmentation of the EU’s financial (banking) markets.

**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:**

**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):**

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 13.1 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)?**

We recommend to introduce the regular assessments of the macroprudential requirements in each Member State. These tools are introduces and it would be good to know how efficient they are and which costs they generate. This approach will be more transparent for market and can improve our knowledge about the usibility of macroprodutential measures.

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

**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:**

In our view, banks’ exposures to third countries are not a source of systemic risk, but something that has to be addressed at individual level as part of the SREP and, as the case may be, or by the CCyB. The existing regulatory toolkit sufficient to address this risk.

We believe that the powers set out in CRD Articles 138 and 139 are excessive and that they would likely create fragmentation.

**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 exposure 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 and ICAAP process) adequately address such risks:

* Market risk framework: this framework is developed and newest conclusion how to measure and cover the risk are implemented in the text of the CRR,
* As part of EU-wide EBA stress testing, and more specifically concerning counterparty risk, banks are required to simulate the demise of two of their ten greatest financial institution clients (which are mainly funds). In addition, we consider the market and macroeconomic scenarios used by the EBA as severe enough that they already capture “second round effects” (i.e. the consequences of fire sales triggered by liquidity and/or regulatory pressure).
* As part of their ICAAP process, banks also factor in counterparty stress and market dysfunctions linked to concentration effects and herd behaviour on markets.

Risks arising from “global market-based finance” and “other financial institutions” are thus already captured via P1 and P2 (P2G from stress tests and P2R via the ICAAP process) capital requirements. Introducing a new macroprudential buffer would only create overlaps and raise overall capital requirements, which are already very high.

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?**

As already underlined in our general remarks, all kind of risk should not (and cannot) be addressed by a targeted macroprudential tool. In this context, we strongly oppose to the temptation to establish an (endless) list of risks that banks could be exposed to, and that would justify the creation of additional layers of capital. We can always add new kind of risk as the ESG risk, cybersecurity risk. They should be covered by the existing regulation, eg. cyber security is part of the operational risk.

Although there is no consensus on what the “optimal level” of capital for financial institutions is, it should be at least recognized that capital accumulation beyond a certain level reduces investments and deteriorates institutions’ revenue generation capacity: in other words, higher capital requirements can act against EU financial stability, not in favour of it.

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 banks’ ability to provide funding to the economy. As such, there is no need to add any new element/tool to the current macroprudential framework.

**Question 16.1. Financial innovation: What risks to financial stability could result from banks’ new competitors (FinTech and Big Tech) 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?**

We express our point of view, that increasing the capital requirements for banks would not address the problem of risks generated by new competitors (FinTech and Big Tech). In order to protect financial stability, a level playing field between regulated and non-regulated entities should be ensured. The risks to financial stability resulting from banks’ new competitors entering the market should be addressed by regulating such new entrants, making sure they are subject to financial regulation and financial supervision as soon as they start providing financial services, as well as adequately monitoring their operational resilience.

In addition, banks should not be penalized when investing in digital transformation. This requires being able to deploy existing capital, as well as modifying the current EU prudential treatment of intangible assets, which still discourages investments in software.

We have to look very carefully at new products, eg. crypto-based products. They can generate new kind of credit or operational risk for banks. The situation should be carefully analyzed by regulators before some negative experiences occur on the market.

With regards to crypto-assets, and considering their complexity, variety, borderless nature and the legal and prudential questions they raise, we believe the elaboration of a global framework is necessary to ensure a level playing field within Europe and internationally.

In this regard, we support a common classification and taxonomy of crypto assets. It should be based on clear definitions of the respective assets, capture the different kinds of crypto assets and determine their characteristics in relation to comparable assets, according to a “substance over form” approach. First steps in this direction were made by the Basel Committee publishing the consultative document on this subject.

As a result, it would allow to examine to what extent the existing regulatory framework can be applied to those assets, and ensure the principle “same risk, same activity, same treatment” is applied.

Moreover, article 461b CRR3 mandates the Commission to propose a prudential treatment of crypto assets, based on the opinions of the EBA and taking into account international progress on the subject: « 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 […] ». CRR3 also mentions “While crypto assets share certain common characteristics with more traditional financial assets, some of their features are significantly different. As a consequence, it is unclear whether the existing prudential rules would adequately capture the risks inherent in those assets.”

Consequently, and before assessing whether a dedicated macroprudential treatment should be developed for those assets, it would be more appropriate that the Commission first consults and addresses questions in the scope of CRR3.

**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?**

From our point of view, the current prudential framework already addresses risks generated by cybersecurity threats:

1. The scope of operational risk capital requirements calculation includes risks related to information and communication technologies and security, such as cybersecurity.
2. These risks are already addressed by the European Commission proposal for regulation on digital operational resilience for the financial sector (DORA).

1. Cyber risk is already addressed by banks through:

- The losses which directly impact P&L;

- Massive investments to ensure cyber security;

- P1 capital (today AMA, SMA when CRR3 will enter into force);

- P2 capital.

The prudential treatment of cybersecurity risk is already ensured via the operational risk. Banks include the cyber risk in both their current Pillar 1 Advanced Models Approach (AMA) and in Pillar 2 scenarios in order to address, among others, the following risks: intrusion and contamination of critical IT assets, unavailability of workstations due to a malware, hacking, phishing, unavailability of an IT service following the execution of a threat.

When the Pillar 1 Operational risk standard approach (SMA) will enter into force, the CET1 capital requirement will substantially increase for European banks. In addition, banks will continue to include cyber risk in their pillar 2 scenarios.

Also, cyber risk is taken into operational risk events stressed in the internal risk management framework (internal capital and internal stress tests) of the bank and it is also part of the operational risk coverage of EBA regulatory stress tests.

1. As an example of regulatory response, the Digital Operational Resilience Act (DORA, 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.

Moreover, the CRD establishes governance requirements for institutions being ‘outsourcing’ one of the specific aspects of institutions’ governance arrangements.

To conclude, with regards to the extension of the macroprudential framework to deal with cybersecurity threats, we believe that, for the time being, the regulatory response is sufficiently sound and our understanding is that certain room for implementation should be allowed before exploring whether the macroprudential tool would be an effective tool to address these kind of risk.

**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?**

Let us to start with general remarks:

* Banks are part of the solution to achieve the objective of net-zero greenhouse gas emissions in the EU economy by 2050, but they should not be considered as the primary enforcers of the EU climate policy. There is a political responsibility in defining the relevant industrial and tax policies that could ensure an orderly transition and limit transition risk levels, for both climate and financial stability purposes. The investement decision are not taken by the banks. Banks play only servicing role in this regard.
* Banks have a major role to play in the green transition. They are committed to accompany their clients throughout their transition journey, including in sectors that are most challenged by climate risk. We believe that increasing banks' capital requirements is not the right approach as banks need to be able to finance the transition of their clients in a context of increasing transition risks. This is particular important in the EU where the financing of companies remains mostly bank loan based. It is better to create positive incentives to finance green investment and green project. Some pending investments have to continued or are in the loan repayment period and banks should not penalised for engangement in these kind of activity. The transistion requires time. The prudential rules can be changed in one moment.
* In a global economy, increasing capital requirements for EU banks will not mean that targeted assets will stop being financed. Punitive changes to EU banks' prudential requirements would only result in a substitution of the financing, which will be taken over by non-EU banks and/or non-bank players, subject to less stringent regulatory standards. This may put the related risks beyond the reach of EU regulators and supervisors.

The following answer addresses both questions 16.3 and 16.4, to globally include climate and other ESG risks in the same response.

The current capital framework already addresses, at least indirectly, risks arising from climate risk and other ESG risks:

* 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 an aggravating factor 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, from our understanding, the EBA, shall, as per the mandate given by:
  + - * CRR3, submit a report on its findings on the prudential treatment of exposures related to ESG objectives to the European Parliament, to the Council and to the Commission by June 2023;
      * CRD6, specify further the criteria for the assessment of ESG risks, including how they should be identified, measured, managed and monitored as well as how credit institutions should draw concrete plans to address and internally stress test resilience and long-term negative impacts to the ESG risks.

We therefore 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 ESG factors would be justified and in which form it should be implemented (if necessary).

Instead of adding a new layer of capital, we believe there should rather be incentives to invest in the understanding of these risks and their integration in Pillar 2:

* In order to contribute effectively to the transition, banks need to develop capabilities that allow them to better understand and manage climate-related risks.
* This in turn requires adequate regulation. So far, we believe that the approach taken by EU financial authorities, which incentivizes banks to invest in risk evaluation capabilities (with consequences on P2 capital requirements/guidance), is the right one.
* Banks and supervisors/regulators are investing a lot of resources to understand the transmission channels of climate risk drivers to prudential risk categories (including through exploratory supervisory scenario analysis/stress testing exercises - cf. ACPR 2020 and SSM 2022). A progressive and iterative development of methodologies and data availability will enable banks to strengthen their risk assessment framework (e.g. building of risk and IT infrastructure, development of climate-specific scenarios) and smoothly include climate drivers in their Pillar 2 framework.
* As long as robust risk-based methodologies have not been established and experienced (reliable counterparty data being not available and the results of supervisory exercises not stabilised), it would be premature to foresee any additional capital requirement.
* The potential interplay between macroeconomic cycles and climate risk factors has not been clearly established yet. Therefore, macro-prudential buffers would not be the right tools at this stage. In addition, regulators need to be very cautious not to double count the impacts of the climate drivers in the different layers of the prudential framework.
* On the contrary, an additional buffer introduced as part of the EU macroprudential framework would likely be counterproductive as it would both dis-incentivize banks to invest in their own risk management capabilities and "freeze" capital resources that are much-needed for such investments.

**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?**

Please see our response to question 16.3

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?**

Please see our general remarks indicated at the beginning of our response to this consultation.