Feedback statement of the targeted consultation on improving the EU's macroprudential framework for the banking sector

Objective of the targeted consultation

The objective of the targeted consultation was to gather the views of relevant stakeholders views on, and their experience with the EU's macroprudential rules for banks. The targeted consultation is part of the Commission's ongoing legislative review of the macroprudential framework as mandated by Article 513 of Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/876 ('CRR'). The information provided by stakeholders will contribute to an evaluation and an impact assessment for a possible legislative proposal that will be submitted to the European Parliament and to the Council possibly in the first half of 2023. It complements the responses to a call for advice that had been addressed by the Commission to the ESRB, the EBA and the ECB.

The macroprudential toolkit for banks has been applicable since 2014. It refers primarily to a set of prudential tools designed to limit systemic risks and safeguard financial stability. Systemic risks refers to the risks of disruption to financial services caused by a significant impairment of all or parts of the Union's financial system that have the potential to have serious negative consequences for the internal market and the real economy.[1]

Article 513 CRR envisages a broad scope for the review, requiring the Commission to assess the effectiveness, efficiency, and transparency of the macroprudential framework overall, and to consider a number of specific issues in view of a possible legislative proposal. These issues must be analysed considering ongoing discussions at the international level, in particular in the Basel Committee on Banking Supervision (BCBS). It is also necessary to take into account the COVID-19 crisis experience, which has been the first time many macroprudential instruments were utilised during a crisis, internal market considerations, and emerging systemic risks such as climate change and cybersecurity.

The questions in this online consultation covered four thematic areas:

1. The buffer framework
2. Missing or obsolete instruments and scope for reducing complexity
3. Internal market considerations
4. Global and emerging risks

There were both multiple-choice and open-ended questions in the consultation, inviting respondents to assess how the framework has operated so far and to make proposals for its improvement. Respondents could contribute to all or some of the sections or questions, and they had the possibility to submit

[1] Recital (27) of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board ('ESRB Regulation').

additional papers/material. Not all respondents replied to all questions, so the total number of respondents varies between and within sections. For this reason, for each question, the percentages indicated are always the share of the actual respondents (which also includes those who answered 'don't know'). For the open-ended questions the number of responses, or an indication of the broad sentiment, is presented where it was possible to group similar opinions.

Who replied to the consultation?

The consultation targeted all interested stakeholders from the public and private sectors, including finance ministries, central banks, macroprudential authorities, financial regulators, banks, other commercial and non-commercial organisations, experts, academics and citizens.

In total, 51 contributions were received, of which 22 were from public authorities (regulators, central banks, ministries), 28 from companies or business organisations and one response was from a non-governmental organisation.

Amongst the 28 companies / business organisations, about one-third was from banks. Overall, about 94% of the replies came from within the EU-27 and EEA. There was a wide geographical coverage with 20 countries represented.

19 papers were submitted, either in addition to questionnaire answers or as stand-alone contributions. These papers have been analysed and have been considered together with the statistical analysis of the multiple-choice questions and replies to the open-ended questions in the summary provided below.

10 respondents asked to remain anonymous. All the responses are published on the targeted consultation webpage.

Main findings

Responses to the consultation brought to light a number of issues that can be summarised under three headings: (i) buffer usability, (ii) consistency in the use of macroprudential toolsand streamlined oversight, and (iii) missing or obsolete instruments.

Section 1: Buffer usability

Ensuring that banks are able and willing to use capital buffers to support lending and absorb losses in a crisis was one key issue raised in the responses and attracted most of the attention by respondents in their written interventions to the open-ended questions. The COVID-19 experience brought the issue of buffer usability to the fore and triggered a discussion about whether the capital buffer framework is optimally designed not only to provide sufficient resilience, but also to act counter-cyclically when necessary, allowing banks to maintain their supply of credit after an economic shock.

More than twice the number of respondents (around 48%) felt that the capital buffers had been effective/highly effective in providing sufficient resilience against systemic risks (by ensuring that banks were sufficiently capitalised) than those who viewed the framework has been ineffective/highly ineffective (around 22%).

By contrast, only about a fifth of respondents believed that the framework had been effective/highly effective in its (secondary) "counter-cyclical" role, i.e. smoothening financial cycles (reducing peaks and troughs), particularly through the release of buffer requirements during a crisis to stimulate credit supply, or addressing systemic shocks that emanate from risks that go beyond the build-up of domestic financial cycle imbalances, e.g. due to geopolitical or health crises. The limited build-up of releasable buffers before the COVID-19 crisis was identified as hampering the ability of macroprudential authorities to respond to disruptive systemic shocks by most respondents. 19 respondents argued that the existing balance between structural and releasable buffers may need to be reconsidered given that releasable buffers were limited in size.

It was mentioned in several responses that banks may be reluctant to dip into their buffers, notably due to potential stigma effects linked to the restrictions on pay-out distributions or maximum distributable amount (MDA) that apply when banks fall below their combined buffer requirement. In this sense, the combined buffer requirement may act like a hard capital requirement that banks will aim to avoid breaching at all costs. Ten responses argued that targeted changes to MDA rules could help lessen this issue. Another factor that could explain banks' reluctance to use their capital held in buffers or released from buffers may be the lack of guidance and transparency as regards the replenishment pathway of buffers and the uncertainty about possible supervisory actions, an issue that was discussed in 12 responses.

Banks may also be prevented from using their buffers because of overlaps between different prudential and resolution requirements. 20 respondents to the consultation argued that overlaps between capital buffers and minimum requirements (Leverage Ratio (LR) and TLAC/MREL in particular) may constrain the usability of buffers. The interaction between (micro- and macro-) prudential and resolution frameworks is mentioned more generally as an issue that would require further attention. Indeed, several respondents to the consultation highlighted the lack of coordination between authorities, that can result in conflicting policy measures or double counting (e.g., for instance, some respondents mentioned the potential overlap between Pillar 2 requirements and Pillar 2 guidance calibrations, on one hand, and some macroprudential buffers on the other).

Different options for fostering a shift towards more releasable buffers have been mentioned in the responses to the targeted consultation. There was no consensus on whether the increase in macroprudential space should be achieved in a capital neutral way or through a net increase in overall capital buffer requirements. A variety of proposals were made:

- Allowing for a more (pro-)active and timely use of the CCyB: the credit-to-GDP gap as the main quantitative indicator for the buffer guide may not have been effective in addressing credit

imbalances in a timely manner, as other indicators seem to have better early-warning properties. This would allow for a more (pro-)active and timely use. Moreover, the current timeframe for rate setting and releases (i.e., quarterly setting and 12-month lead) is considered too rigid and not fit for purpose.

- Allowing, recommending or requiring a positive neutral rate of the countercyclical capital buffer (CCyB) or a core systemic risk buffer (SyRB) rate, with or without adjustment to other prudential requirements to be held in the steady state to enhance the overall share of capital held in releasable buffers and thus the overall macroprudential space available.
- Releasability of the CCoB: Making the capital conservation buffer (CCoB) partially or fully releasable in exceptional circumstances and under strict conditions.
- Governance issues: Respondents to the consultation supported greater transparency around the use of buffers.
- More information about the timing of buffer releases and replenishment paths: Better coordination between micro- macro-prudential authorities and EU institutions.
- Overlapping requirements: Several respondents argued that the leverage ratio and MREL could present material obstacles to buffer usability, but that further analysis would be necessary before considering mitigation options. While extending the G-SII leverage ratio buffer to O-SIIs could reduce overlaps for some banks, most respondents do not consider such a measure appropriate at the current juncture.

Section 2: Consistency in the use of macroprudential tools and streamlined oversight

The calibration and application of macroprudential tools differ across Member States. Most respondents suggested that the use of buffers (i.e., O-SII buffer, systemic risk buffer, countercyclical buffer) and other macroprudential measures (e.g., risk weight measures under Art 458 CRR) by national authorities can be inconsistent and creates an uneven playing field across the EU and reduces the effectiveness of macroprudential measures by national authorities. The heterogeneity in O-SII buffer rates across banks and across Member States is not fully justified by fundamentals according to several respondents. A more coherent EU-wide approach to O-SII identification and buffer rate calibration is widely seen as necessary. Several respondents claimed that administrative burdens linked to activation, reciprocation, authorisation and extension procedures for the use of macroprudential tools can contribute to an inaction bias and result in systemic risks not being addressed appropriately, or at all, by national authorities.

Many respondents argued that the existing toolkit is too complex and that some of the instruments should be either significantly streamlined or even removed to make the framework more effective. About two-thirds of respondents confirmed that there are instruments in the current framework that are redundant or need to be redesigned to make them fit for purpose.

Proposals emerged from the responses to the consultation to address inconsistency and reduce complexity in the macroprudential framework, including:

- Further clarity on the calibration and application of buffers: most responses called for further clarity on the distinction between instruments to promote a more consistent use of tools by national authorities and to reduce overlaps.
- In particular, an EU-wide methodology on identifying O-SIIs and calibrating their buffer rates to foster consistency, market integration and reduce undue heterogeneity could be developed.
- The use of a common denominator for sectoral and general SyRB rates before applying the additivity rules and activation thresholds was suggested by several respondents.
- Reducing administration burdens: there was general support for streamlining notification, authorisation, extension, and reciprocation procedures, and several suggestions were made to increase the use of mandatory instead of voluntary reciprocity.
- EU-monitoring of macroprudential stance: some respondents called for strengthened EU-level monitoring and oversight of the overall macroprudential stance of Member States within the current allocation of responsibilities between national and EU authorities.
- Streamlining or removal of current provisions: several suggestions were presented, such as creating a single risk weight instrument for addressing residential real estate risk from a macroprudential perspective that allows authorities to set floors or tighten risk weights for exposures secured by real estate on macroprudential grounds. Bank respondents advocated a removal of the SyRB. Some respondents called for removing Articles 138 and 139 CRD (third-country countercyclical buffers) as they consider the SyRB better suited to address risks emanating from third countries.

Section 3: Missing tools and new risks

Only about one-fifth of respondents believe that the EU macroprudential toolkit is comprehensive and presents no major gaps. There is broad support for the introduction of borrower-based measures (BBMs) in the macroprudential toolkit, but with a high degree of flexibility for Member States, who should remain fully responsible for the use of these instruments. There appears to be a strong consensus also that BBMs should therefore remain outside the scope of the ECB's top-up powers for macroprudential measures. Some respondents also argued that the scope of borrower-based measures should be extended to non-bank lenders. Only a few questioned the need for harmonized minimum standards on BBMs, indicating that the presence of these in EU law will not ensure that rules are applied homogenously, and/or that differences across national mortgage markets would not justify common standards.

Some respondents consider that the unique features of climate change may have a systemic dimension (e.g., feedback loops, second round effects, complexity, long time horizons) but 23 respondents believe it is too early to introduce new, dedicated macroprudential tools. Many suggest to first explore the use of existing tools in the CRR/CRD, notably the sectoral systemic risk buffer and large exposure limits, before introducing new macroprudential measures. Yet, some respondents suggest considering new tools, such as concentration limits or charges, or continuing the work on these tools with a high priority, also if proposals are considered after this review.

For wider Environmental, Social, and Governance (ESG) risks and cyber-security, most respondents did not seem convinced that new, dedicated macroprudential instruments are needed to address systemic risks emerging from these areas, or think that more analysis and data are required, taking into account what can already be achieved with the existing or forthcoming micro- and macroprudential instruments.

Given the systemic aspects of cyber risks, some respondents point to considering, now or at a later stage, systemic cyber resilience scenario stress testing and further requirements, for instance to avoid operational concentration at one point of failure.

17 respondents supported "activity-based" regulation to ensure that non-banks (particularly Bigtech or Fintechs) are covered by the same macroprudential requirements if they pose similar systemic risks. According to these respondents, there is a need to address systemic risks in the non-bank area in the respective entity-based regulatory frameworks or via activity-based regulation, taking into account growing relevance and market shares. However, no specific reform proposals emerged for exposures of banks to non-banks.

Next steps

This targeted consultation complements a Call for Advice to the European Banking Authority, European Systemic Risk Board and the European Central Bank which closed on 31 March 2022. The Commission services will prepare an evaluation of the functioning of the macroprudential framework, as well as an impact assessment of various policy options that emerge from the consultation and the call for advice. A decision on whether to submit legislative proposals to the European Parliament and the Council will be taken on the basis of this impact assessment.