2022-03-16 European Commission

# Targeted consultation on improving the EU's macroprudential framework for the banking sector

## 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)
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?*

It is hard to say if the capital buffer requirement has been effective or not since it has not been tested in a deep economic downturn. Indeed, the covid-crisis to some extent tested the framework. However, the economic downturn during the covid-crisis was not deep enough. Also, the MDA-structure were put out of play when national authorities communicated that dividend were not to be made during the covid-crisis.

The application of the different macro-prudential tools is seemingly often highly subjective and seems to sometimes go beyond the intention of the tools set in regulation. In addition the application and calibration of the different tools are usually not evidenced with transparent assessments why it is difficult to assess how and to what extent the different tools are covering different parts of systemic risk or not. Hence, it is our view that the framework is overly complex, not sufficiently clear and not transparent enough and thereby lacks the needed predictability. The tools needs to be better harmonised and coordinated, with stronger mandates for EU authorities ensuring tools are used appropriately and uniformly.

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Regarding interaction of the individual components of the buffer requirements the framework must be clearer, stating which risk each buffer is covering. In the current framework there are overlaps across buffers, different buffers are covering the same risk. These overlaps create a regulatory framework that is neither transparent nor predictable. It is not possible for banks to foresee how the different buffers will be applied by the designated authority. Consequently, banks capital planning is negatively affected since they cannot forecast their capital requirements.

*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?*

The objective for the counter cyclical capital buffer (CCyB) is to dampen financial or economic cycles. As stated under Q1 the buffer requirements effectiveness hasn't really been tested. Hence, it is hard to say if the CCyB has been effective in dampening financial or economic cycles.

The use of the countercyclical buffer differs significantly between countries and the transparency on the need for increases to the buffer rate is missing. Several countries has to a large extent used the possibility to set the buffer rate based on subjective measures which makes it very difficult for banks to predict and anticipate the coming changes.

As an example of the differing applications, the Swedish FSA has implemented an approach to apply a positive neutral rate of 2%. This means that the buffer rate is set to 2% during normal economic growth, "i.e. even when we make the assessment that the credit supply is not associated with elevated systemic risks".
Hence, the application of the countercyclical capital buffer rate needs to be harmonised to improve transparency and to increase the predictability of the buffer. It is also our view that the P2G should be calculated as the outcome of the stress test reduced with both the capital conservation buffer and the countercyclical capital buffer. Reason being that the countercyclical buffer can be expected to be released in a stressed situation which was evidenced in the Covid-19 pandemic.

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

(1 = highly ineffective, 5 = highly effective)

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, 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.*

In general, we are of the opinion that the O-SII buffer framework is more transparent and predictable for banks compared with the framework for other buffers, especially the SyRB. This is due to the O-SII guidelines issued by the EBA. The guidelines contribute to a more uniform application within EU. But there are still room for subjectivity in the decisions made by the designated authorities and that raises the question to what extent systemic risks are addressed by the framework. The O-SII framework could also be improved since it currently seems to be penalising for large banks in smaller countries, why the framework should be amended to ensure it does not constrain the consolidation of banking groups to smaller countries.

We are also of the view that the overlaps in systemic buffers should be removed. With the improvements made in the EU since the implementation of the SyRB in 2014 and with the increased cap of the O-SII in CRD V, the O-SII buffer should be sufficient to cover for the systemic risk and thus the SyRB should be removed. This would also reduce the complexity of the framework and further avoid the risks for overlap in the different requirements.

## *1.2. POSSIBLE IMPROVEMENTS OF THE BUFFER FRAMEWORK*

*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.*

We are of the opinion that the buffer framework would be significantly improved by the removal of the systemic risk buffer (SyRB) . First of all, this would reduce the complexity and improve the predictability of the buffer framework as a whole. Second, since the SyRB was introduced in 2014 regulatory changes have been made leading to the SyRB no longer is fulfilling its purpose. For instance, the crisis management framework has been implemented and the applicable level for the O-SII buffer have been raised.

Third, we see that the SyRB are applied in different ways within the EU, therefore prevents a level playing field. The scope of the buffer in CRD is verry wide, giving the designated authorities a lot of room for subjectivity in their judgements. Still, there

are no guidance at all to the designated authorities from the EU regarding the application of the buffer. Finally, we advocate a framework that reflects the global standards from BCBS. The SyRB is an EU-specific buffer and not a buffer stemming from the Basel framework.

*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 countercyclical capital buffer is the only buffer with the intention to be a releasable buffer. The countries with activated countercyclical buffers realeased them in the initial stages of the Covid pandemic. With the use of the countercyclical buffer the current framework already has the needed tool with the potential to increase the use without making the framework more complex. In addition, the capital conservation buffer should be releasable during the crisis.

The release of either CCyB or CCoB will not be effective if there is a perception that they will be reinstated soon after a crisis has occurred. The framework should specify a sufficiently long implementation period, e.g., 2 to 3 years, for reinstatement following a release of a buffer requirement to have a desired effect of a releasable buffer.

*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?*

The stigma associated to restrictions on distribution (MDA) prevents banks from drawing down capital buffers in times of stress. In this regard, a solution on how to lower the MDA threshold in periods of stress, while safeguarding financial stability and effectively supporting lending, should be further discussed and analysed. To reduce MDA stigma, the following can be considered:
- Removing/reducing cliff effects by reducing the “penalty function” of the upper MDA buckets.
- Recognising AT1 as more senior than equity, while maintaining its loss-absorbing capacity. Currently, the MDA framework is seen as impacting dividends, bonus and AT1 in the same way and there are strong concerns from debt investors that there is no hierarchy, contrary to the relative seniority of AT1 investors on equity investors.

Also, as stated under Q1 the buffer framework has not been tested in a crisis. Indeed, the covid crises to some extent tested the framework. However, the economic downturn during the covid-crisis was not deep enough. Also, the MDA-

structure were put out of play when national authorities communicated that dividend were not to be made during the covid-crisis.

*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?*

For a capital relief on risk-based capital requirement to be effective, institutions should not be otherwise constrained by MREL or LR requirements.

Another important aspect is that the different requirements are decided by different authorities and there is a tendency that each authority is building up high requirements within their mandate. No one is appointed responsible for the totality and overall level of the requirements. The framework must be more harmonised in order to avoid overlaps.

Also, requirements are based on different metrics which will react differently in a crisis context. Without coordination in a crisis there is a risk that a relief granted by one authority will translate in even more binding constraints on the other indicators.

*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?*

Yes, there should be more EU-level guidance. However, for such guidance to be effective other buffer requirements also has to be more harmonised. In the current framework there is too much room for discretionary assessments by the authority making their decisions. Especially with regard to the systemic risk buffer, therefore the SyRB should be abolished.

The LR requirement and the G-SII should not have any additional buffers on top. Also, the LR requirement should be a true back stop.

Too much complexity, such as several capital stocks to manage, hinders the use of the buffers. According to CRD the buffers are soft requirements that should be usable for banks. However, the authorities apply the framework in a way that gives the buffers the nature of "hard" requirements.

## 2. MISSING OR OBSOLETE INSTRUMENTS, REDUCING COMPLEXITY

### *2.1. ASSESSMENT OF THE CURRENT MACROPRUDENTIAL TOOLKIT AND ITS USE*

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

(1 = major gaps, 5 = fully comprehensive)
1 2 3 4 5 Don't know/no opinion

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

We do not experience any gaps in the current framework. However, the framework is overly complex and overlapping.

*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:*

As mentioned above the SyRB is assessed as being redundant given the development of other tools to reduce systemic risk, e.g., recovery and resolution framework. With the increased level of the O-SII buffer and the highly differentiated application and calibration of the SyRB, the risks for overlaps between these buffers are seen as high since it is not clear which buffer should be used to cover which parts of the systemic risk. This could become an even larger challenge if the sectoral SyRB is used in some countries while some countries use the SyRB more widely and where the bank is also subject to an O-SII buffer, how to define any overlaps in such a situation.
Another macroprudential tool that is assessed as being redundant is the possibility to set risk weight floors according to article 458 of CRR. With the suggested output floor in the coming CRR3 increased risk weights, as in article 458, will already be included.

The CCoB is an extra layer of protection over the minimum requirements but the level of 2.5% is excessive when considering the overall sum capital requirements applying to EU financial institutions. Beyond a certain level, capital requirements do not enhance financial stability, but rather weaken it. As such, the CCoB should be partially reduced to allow greater headroom for the CCyB.

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

(1 = major gaps, 5 = fully comprehensive)
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:*

As stated in previous answers the macroprudential toolkit were not really tested during the Covid crisis since the economic downturn were not deep enough. Still, the decision from the Swedish FSA to lower the CCyb to 0 was an important signal from the authority, although we find it difficult to see that it was of significant importance.

*2.2. POSSIBLE IMPROVEMENTS OF THE BUFFER FRAMEWORK*

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

From our point of view, it is better with borrower-based measures than capital requirements. However, it is not clear that this type of requirement can be harmonised at EU level. Still, it is reasonable for the competent authority to have a toolbox of measures.

*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?*

This would go against Swedish company law. The shareholders' legal right to make decisions would be put out of play.

Further, general bans on distribution create perverse incentives since prudent banks that have managed their capitalisation will be restricted for paying dividends in the same way as less prudent banks in stress scenarios, that will incentivise shareholders to invest in the riskier banks since the expected return could be higher. But even more importantly. If the equity market could expect general bans on distributions to apply for the banks in future down turns, and that shareholders will not be able to expect distributions if they inject capital to maintain a prudent

capitalisation, that risk making it more difficult to recapitalise banks in the future by private means.

*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?*

More clarity is needed regarding how different requirements can be used, for example P2G.

## 3. INTERNAL MARKET CONSIDERATIONS

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

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

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

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

There are unjustified disparities in application of the SyRB, CcyB and also when it comes to the application of article 458 in CRR.

*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:*

We believe that these are blunt processes that have so far not contributed to better harmonisation. Stricter notification processes could lead to greater accuracy and compliance from national competent authorities.

*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:*

Reciprocity does not automatically lead to a level playing field. Reciprocity contributes to an overlap of requirements because of national differences in calculations and assessments by competent authorities. The requirements become unpredictable for the banks, and they do not always understand which risk to cover. We are not in favour of increased mandatory reciprocity.

*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):*

It is our opinion that the allocation of the responsibilities is seemingly correct. However, there is a need for further mandates for the EU authorities to ensure increased harmonisation and level playing field by issuing clearer standards/guidelines to:

- require the use of quantitative and verifiable metrics for the activation and calibration of the measures
- require the assessment and avoidance of overlaps by the different NCAs in cooperation with other relevant micro and macro prudential authorities, including clear reciprocation guidance

To ensure coordination and enforcement of the common EU rules, the EU authorities should also ensure that:

• the local authorities comply with European standards before recommending any measures
• level playing field and internal market considerations are explicitly taken into account in all recommendations
The decision to operate releasable buffers should remain at the national level, although the tools as mentioned above should ensure that there is a level playing field across Member States. NCAs could have a deeper understanding of the MS financial cycle and its evolution when making decisions. Furthermore, the nature of the coronavirus crisis is very different from the 2008 crisis, it has been a macroeconomic external shock affecting all countries at the same time. However, not all MS have been affected in the same way and there is no need to release buffers uniformly.

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

*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)?*

On EU-level more monitoring and control would be desirable as it should lead to more harmonisation and level playing field. It is not as important which EU-body does the monitoring and control as that the mandates given to one in charge are clear. However, it would be appropriate giving these mandates to EU-body consisting of several member states. Such as EBA or ESRB.

*Question 13.3 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.)?*

Reciprocity does not automatically lead to a level playing field. Reciprocity contributes to an overlap of requirements because of national differences in calculations and assessments by competent authorities. The requirements become unpredictable for the banks, and they do not always understand which risk to cover. We are not in favour of increased mandatory reciprocity.

**4. GLOBAL AND EMERGING RISKS**

*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?*

Every risk should not be addressed by a targeted macroprudential tool. In this context, we strongly oppose to establish an (endless) list of risks that banks could be exposed to, and that would justify the creation of additional layers of capital. On the contrary, we believe that a clearer and more predictable framework would benefit financial stability

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