FEEDBACK STATEMENT

Introduction

On 1 August 2016 the European Commission published a consultation seeking stakeholder feedback on its proposed review of the EU macro-prudential framework. The consultation closed on 24 October 2016.

The purpose of this consultation was to gather the views of all relevant stakeholders on what reforms might be needed to make the existing macro-prudential framework more effective. This proposed comprehensive review will cover all aspects of the framework, and therefore the scope of the consultation included the instruments enshrined in the Capital Requirements Directive (CRD) and the Capital Requirements Regulation (CRR), the role, mandate and composition of the European Systemic Risk Board (ESRB), as well as the role of the Single Supervisory Mechanism (SSM) in setting macro-prudential policy within the Banking Union. The consultation asked for responses to 38 questions across these different topics.

The Commission received 73 responses (of which 7 asked to remain confidential) from a range of stakeholders including national ministries, central banks, supra national authorities, private sector organisations, trade bodies, and individuals. Whilst responses from national regulatory and supervisory authorities, national central banks, and government ministries addressed all aspects of the consultation, those from industry were more targeted. These stakeholders predominantly, though not exclusively, responded to the questions most relevant to their sectors.

This feedback statement summarises the issues raised in the consultation. It seeks to provide a factual overview of the contributions received and examples provided. It is not an exhaustive list of all contributions and does not assess the validity of the respective claims. The contents of this document therefore cannot be regarded as reflecting the position of the Commission.

Whilst the responses to the consultation span a broad range of views, overall, stakeholders who responded believed there was scope for revising the macro-prudential framework, to remove some of the overlaps between specific instruments, whilst better delineating the scope of prudential tools intended for microprudential purposes, from those intended for macroprudential purposes. There was also broad support for simplifying the use of certain instruments within the toolset, which could be achieved by amending the pecking order of instruments, or the activation procedures themselves. Respondents gave some support to a potential expansion of the macro-prudential framework beyond the banking sector. There was also support for certain improvements to the role and function of the ESRB, including its role as a macro-prudential hub, with the aim of facilitating the implementation of macro-prudential policy across the EU.

Overview of respondents

The Commission received 73 responses from 22 different countries, only one of which from a third country. They are evenly split between the private and the public sector. The largest number of responses were from industry associations (41%), followed by national regulatory/supervisory authorities and central banks (27%), and national ministries (10%).

A large proportion of respondents are those directly involved in implementing the framework, i.e. national ministries, national central banks, and supra-national regulatory bodies. A number of responses were also received from providers of financial services, or associations representing them. This included both banks and non-bank financial institutions. By contrast, very few responses were received from consumers of financial services, or those bodies representing them.

Chart 1: respondents by category

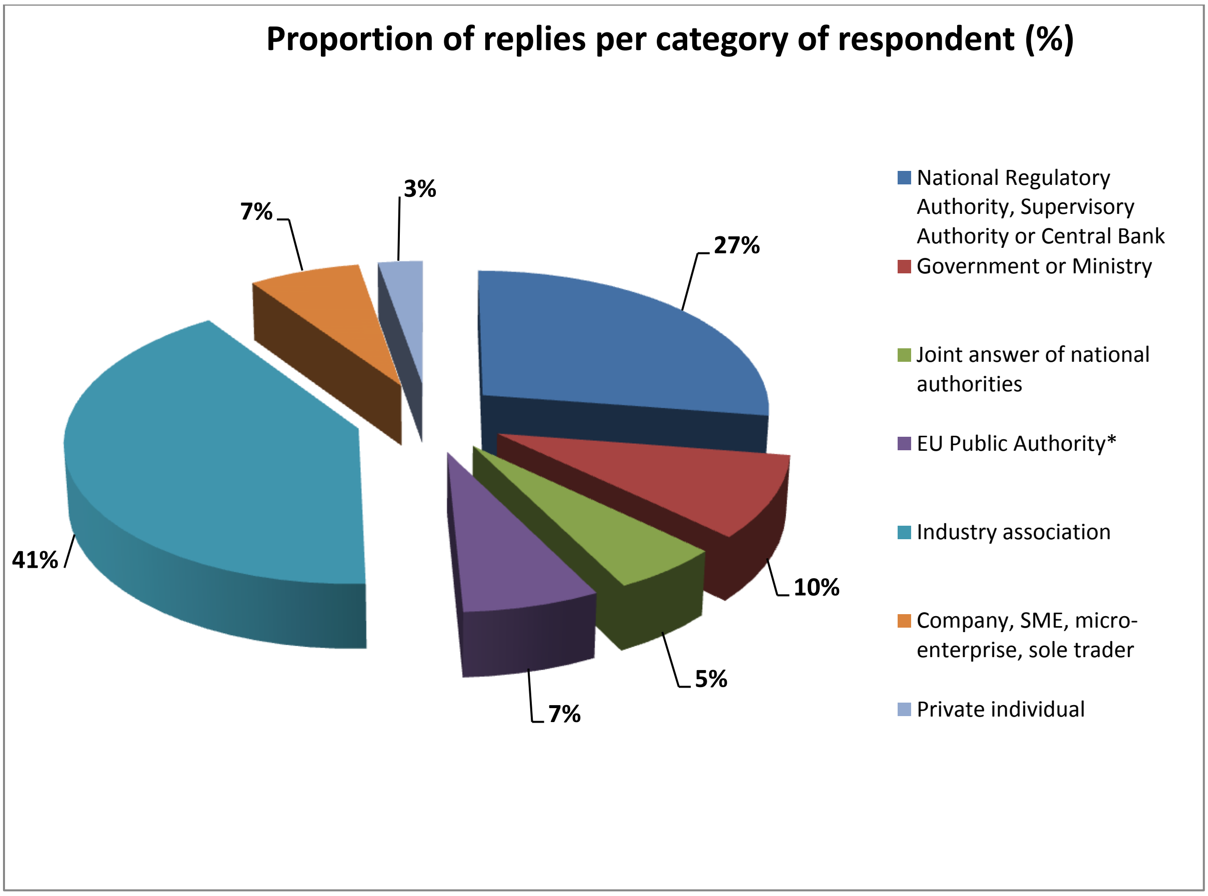

Table 1: Number of respondents and proportion of responses by category

Category of respondent	Number of responses	Percentage
National Regulatory Authority, Supervisory Authority or Central Bank	20	27%
Government or Ministry	7	10%
Joint answer of national authorities*	4	5%
EU Public Authority**	5	7%
Industry association	30	41%
Business	5	7%
Private individual	2	3%
Grand Total	**73**	**100%**

Note: *within the same Member State **EU Public Authority refers to ECB, EBA, ESRB, EIOPA, ESMA;

Table 2: List of responses by country

Responses by country

Country	**Number of responses**	**Percentage**
Austria	1	1.4%
Bulgaria	1	1.4%
Cyprus	1	1.4%
Czech Republic	1	1.4%
Denmark	2	2.7%
Estonia	1	1.4%
Finland	3	4.1%
France	2	2.7%
Germany	1	1.4%
Hungary	1	1.4%
Ireland	1	1.4%
Italy	1	1.4%
Latvia	1	1.4%
Malta	2	2.7%
Norway	1	1.4%
Poland	1	1.4%
Portugal	3	4.1%
Slovakia	1	1.4%
Spain	2	2.7%
Sweden	1	1.4%
The Netherlands	1	1.4%
United Kingdom	2	2.7%
EU Public Authority*	5	6.8%
EU Trade Association**	35	47.9%
Private individual	2	2.7%
Grand Total	**73**	**100.0%**

Note:*EU Public Authority refers to ECB, EBA, ESRB, EIOPA, ESMA; **EU Trade Association comprise the categories: "Industry Association" and "Company, SME, micro-enterprise, sole trader"

Overview of responses

The public consultation asked respondents to provide their views on all aspects of the macroprudential framework. In total 38 questions were posed. Contributors were not obliged to respond to every question.

Responses were well balanced across all aspects of the consultation, including questions on the macro-prudential instruments, on the role, powers, and organisational structure of the ESRB, issues relating to the Banking Union, and on the expansion of the macro-prudential framework beyond banks. The most detailed responses related to questions on the expansion of the framework to non-banks, on the coordination between authorities, and on the need for additional harmonised instruments.

This feedback statement first provides an overview of the responses regarding the instruments in CRD and the CRR. It then summarises the responses regarding the macro-prudential instruments in the CRR/CRD IV, the reciprocation requirements, the adequacy of macro-prudential instruments for banks, macro-prudential policy beyond banks, the pecking order and activation mechanism, the co-ordination between authorities, and the mandate and organisational structure of the ESRB.

Macro-prudential instruments in the CRR/CRD IV

Some respondents proposed to enhance the overall coherence of the framework by grouping together the macroprudential use of instruments as well as the powers of macroprudential authorities in dedicated macro-prudential articles in the CRR/CRDIV, in order to avoid confusion on the use of tools and their application by authorities. At the same time, merit was seen in introducing a regular review clause in both CRR/CRDIV, as the macroprudential framework is still in its early stages and flexibility to adjust the toolkit will be key as further experience is gained.

Activity based instruments

The consultation paper asked stakeholders to express their views on the effectiveness of a range of capital based tools, which target risks from specific exposures. The responses submitted focused mainly on the design of a new sectoral countercyclical capital buffer (CCyB), on the real estate measures under Art 124/164 CRR, and on the national flexibility measures outlined in Art 458 CRR.

Sectoral CCyB

The possibility of adding a sectoral CCyB to the macro-prudential toolbox, which would be applied to a subset of exposures in a country, rather than to all exposures, drew a positive response from a number of stakeholders, particularly from national regulatory authorities and central banks. Those in favour pointed to the benefits of an additional tool which would give national authorities additional flexibility in addressing excess credit growth in certain sectors. The most frequent example given was that of real estate exposures, where certain respondents felt an additional tool under the control of a macroprudential authority would help to build resilience against real estate risks, without raising the cost of credit for other sectors. These respondents believed the application of capital buffers at the sectoral exposure level should be subject to complementary measures to enhance the comparability and additivity of the buffer requirements, and the transparency of the combined buffer requirement.

Some stakeholders made a case for developing additional harmonised macro-prudential instruments. In their view, the toolkit should include targeted sectoral macroprudential instruments which would not be limited to the real estate sector. Designated authorities should have the power to impose sectoral exposure limits applicable for other exposure than the real estate, like requirements on risk-weights, or sectoral concentration limits to counterparties.

Other respondents pointed to the complexity of designing and calibrating a sectoral CCyB. The new tool would need to interact and dovetail with the existing CCyB, requiring careful calibration to ensure the identified risks were appropriately targeted without double counting others. An accurate assessment of which point in the cycle a particular asset class was in, would also complicate the decision to activate such a tool. A consistent application across jurisdictions would therefore be difficult to achieve without detailed guidance and assessments.

Meanwhile, some respondents from both industry associations and public authorities questioned the need for an additional exposure-based capital buffer, given that a number of real estate tools already exist (Art 124/164 and Art 458 CRR). The objective of a sectoral CCyB could be achieved by addressing some of the deficiencies identified with these tools. To the extent that the sectoral CCyB would be used for real estate assets, its introduction was not thought to be necessary. Indeed creating an additional tool would further complicate the framework, rather than simplify it, as was the intention.

Real estate measures under Art 124/164 CRR

Existing tools designed to address risks from the real estate sector, primarily Art 124/164 CRR, were also the subject of considerable interest in this consultation. Most respondents saw merit in having flexible instruments to address real estate risks, given the particularly important role real estate bubbles play in financial crises.

The existing tools allow competent authorities to alter the risk weights for residential real estate exposures for exposures where a standardised approach is used to calculate regulatory capital (Art 124 CRR), or to revise the LGD floors for exposures where an Internal Ratings Based model (IRB) approach is used to calculate regulatory capital (Art 164 CRR). Whilst support for maintaining these tools was broad, a number of respondents pointed to certain inconsistencies in the wording of the legal provisions governing these instruments.

Art 124 CRR allows competent authorities to alter risk weights for relevant exposures on the basis of historic loss data, and financial stability considerations. Whilst some respondents found these requirements too restrictive, favouring more national discretion on when to alter risk weights, others argue the definition of "financial stability considerations" is reasonable, although its definition could be further elaborated. A majority of respondents favoured an approach that allowed national authorities to activate this measure on the basis of financial stability concerns alone. Some other respondents ask for limiting the use of these articles to purely microprudential purposes (i.e. deleting "financial stability considerations") and to put these tools in the hands of competent authorities, whilst at the same time providing macro-prudential authorities with the relevant tools to address systemic risks in the real estate sector.

A significant number of respondents highlighted that the text of Art 164 CRR did not clearly allow for its use against all exposures, instead limiting its scope to retail RRE and CRE exposures. Art 124 CRR does not have this same apparent restriction, therefore respondents believed the two articles - which are often considered to address the same risk - should be fully aligned in this respect.

Some responses from industry warned against the over simplification of real estate measures, which tend to treat these exposures as one homogenous asset class, for which one particular regulatory approach is suitable. Respondents with this view argued that the current instruments focused on real estate lending, whereas in reality banks held a much broader range of assets that related to real estate. Respondents from this industry sector argued that delineations between these assets are not hard-edged, and there is frequently challenge and debate around how the line should be drawn in particular areas. As such, the current instruments were deemed not well suited to address such risks by these respondents.

National flexibility measures Art 458 CRR

Respondents provided a number of suggestions for the revision of Art 458 CRR, although there is no consensus on how this should be done. The majority of stakeholders want some of the provisions of Art 458 CRR to be more accessible to regulatory authorities, and point to the burdensome activation procedure currently in place to justify their use. Some respondents suggested carving out from this article tools for designated authorities to address real estate risks, arguing that there was a gap in the current toolset. The rest of Art 458 CRR could then remain unchanged, acting as a last resort measure for designated authorities to address financial stability risks which could not be addressed by any other measures in the macro-prudential toolset.

A greater number of respondents wanted to simplify the conditions for using all the measures under Art 458 CRR. This, it was argued, would increase the flexibility of national authorities to address risks which they had identified in their jurisdictions. A streamlining of the activation mechanisms could involve a less burdensome notification and approval process, and could remove the need to consider the full pecking order of other instruments. The very rare use of Art 458 CRR since its inception was presented as evidence that the current procedures are hindering its effectiveness.

Institution specific instruments

The responses submitted for this consultation identified two main weaknesses in the current framework for institution-specific instruments: the close interaction between the Systemic Risk Buffer (SRB) and the Other Systemically Important Institutions (O-SII) buffer; and excessive national discretion in the calibration of the O-SII buffer. The close interaction between the SRB and the O-SII buffer is in turn claimed to be caused by the excessive flexibility of use of the SRB and by the 2% cap to the O-SII buffer.

Interaction between SRB and O-SII buffers

Respondents pointed to a strong overlap between the SRB and the O-SII buffer, which have both been used to address too-big-to-fail risks. Indeed, the current O-SII cap of 2% can be too constraining when targeting systemic risk emanating from systemically important institutions. Several respondents highlighted that the current 2% cap leads to a suboptimal use of the instruments as the O-SII has effectively been circumvented by the SRB. Several stakeholders claimed that the flexibility of the SRB creates the risk of negatively affecting the use of other instruments, especially the O-SII buffer.

In fact, while G-SII, O-SII buffers and SRB all address structural systemic risks, the underlying risks may be significantly different. While G-SII and O-SII buffers have a clear scope in addressing the resilience of systemically important institutions, the SRB was seen to have too broad a scope, allowing it to be used to address very different types of risks. This may result in a lack of clarity about the purpose of the instrument. Under the current framework, the SRB is extensively used to supplement the O-SII buffer. On the one hand, this indicates that the O-SII buffer cap is constraining. On the other hand it prevents the SRB from being used to address structural risks other than those stemming from O-SIIs. For this reason, the application of the SRB should not interfere with the application of the G SII/O-SII regime. In addition, some stakeholders expressed the worry that these complex interactions can blur the capacity of public authorities to perform an overall assessment of the combined effect resulting from all buffer requirements. One suggestion was for the ESRB to issue guidance on the application of the SRB, as it currently does for the CCyB.

Overall, most respondents believed a clearer definition of the SRB was necessary. According to some of them, the type of risks addressed by the SRB and the buffers targeting systemically important institutions should be different. Moreover, many saw the need to increase the 2% cap of the O-SII buffer, as this cap acts as a constraint on its adequate use. According to them, the G-SII and O-SII buffers are effective in targeting systemic risks stemming from systemically important institutions, and it is the caps which can limit their effectiveness.

Several stakeholders - especially from industry - believed interplays and overlaps between instruments are causing the same risks to be being double counted, if more than one instrument is activated. These overlaps are seen occurring within the capital framework and in its interaction with the provisioning accounting standards. As such, clarifying the scope of each instrument, including Pillar 2, and the eventual elimination of the systemic risk buffer are seen as beneficial, by simplifying the framework whilst increasing transparency. Alternatively, an overall cap for buffers applied by regulators to an individual entity or sector would also improve transparency and help the industry with its capital planning. It was argued this would also help limit the potential for ring-fencing capital, especially at the subsidiary level.

Some stakeholders did not consider overlaps between instruments as being problematic *per se*. Indeed, given the current limited experience with the macro-prudential framework, overlaps between these instruments were seen as preferable to gaps. Macro-prudential authorities should be able to use the most appropriate policy response to address risks stemming from O-SIIs, regardless of the instrument chosen. The versatility of the SRB is particularly important as it ensures that such risks can be sufficiently addressed. It enables authorities to address risks arising from systemic institutions that are not fully captured by the scope of the O-SII buffer framework. However, one stakeholder argued that the current framework was too complex due to the high number of instruments and overlaps among them and suggested a reduction of complexity in order to improve the efficiency of the framework, by merging all the institution-specific instruments into one, addressing all issues currently addressed by three instruments and encompassing both an institution- and an activity-based component.

An additional weakness highlighted as regards the interaction between the O-SII buffer and the SRB related to the lower cap (1%) to the O-SII buffer in case of subsidiaries of institutions already subjected to an O-SII buffer on a consolidated basis. This was seen by many stakeholders as potentially insufficient to reduce risks, especially as the systemic importance of a subsidiary in a particular country is not dependent on the systemic importance of its parent on a global level. As such, the existing caps on the O-SII result in the more frequent use of the SRB for these purposes. At the same time, it has been pointed out that in order to ensure consistency with the resolution strategy, the O-SII buffer for multiple point of entry (MPE) banks should be established at an individual level and not at a consolidated level.

The second main weakness highlighted in the framework concerns the variation in the design and calibration of the O-SII buffer across Member States. Several stakeholders claimed that reducing this variation would ensure a level playing field as well as consistency and comparability in the application of the O-SII buffer. It has been suggested that new/additional EBA guidelines on the calibration and application of the O-SII could address this problem.

On the other hand, a smaller number of stakeholders judged that given the differences in cyclical as well as in structural positions of the different banking systems in the EU, and in particular in the euro area, it is important to allow enough room for national discretion in setting O-SIIs buffer rates.

Eventually, potential conflicts have been identified between competent and designated authorities, as the authority in charge of identifying G-SIIs or O-SIIs can be either the competent or the designated authority, while prescription of the capital requirement is often delegated to the designated authority. Some kind of notification or cooperation requirement between these two or with the SSM could also enhance the consistency of overall capital requirements.

Concerning the methodology to identify G-SIIs, a significant number of stakeholders highlighted room for improvement. Indeed, following the creation of the Banking Union and the implementation of the SSM and the SRM, the calculation of international transactions and exposures in the G-SIIs methodology should be revised and transactions within the euro area considered as transactions in one single jurisdiction when computing the score for each institution ("cross-jurisdictional activity" indicator). In order to foster consistency, this change should be carried out for G-SIIs as well as O-SIIs. Moreover, the measure of size (included in the methodology) may encompass the aggregation of entities in jurisdictions or regions which are not connected on a macroeconomic basis. This diversification is likely to act as a risk mitigant but this is not considered when evaluating regulatory capital requirements.

Caps on the O-SII buffer

Concerning the caps to the G-SII and O-SII buffer, several stakeholders saw these caps as appropriate with no need for revision.

As regards the 3.5% cap on the G-SII buffer, most of the respondents considered it as appropriate and not in need of revision. Moreover, it was claimed that the EU approach should continue to reflect the Basel Committee on Banking Supervision's (BCBS) framework for G-SIBs.

Many of the respondents mentioned that the scale of risks is clearly higher in a G-SII than in an O-SII, so the O-SII buffer at consolidated level should never be higher than the G-SII buffer at consolidated level so that the total systemic importance is adequately reflected. At the same time, it was considered appropriate that the cap on the sub-consolidated level is linked to the parent bank's requirement. Nevertheless, there may be merit in exploring the approach of creating empty buckets, in line with the G-SIB framework, should the last bucket, to which a 3.5% buffer rate is allocated, become increasingly populated. This could be also foreseen for the O-SII buffer framework. The interaction of O-SII and G-SII buffers when a credit institution belongs to both categories should be clarified. For credit institutions in this situation it might be worth evaluating whether, for the sake of simplicity and clarity, only a G-SII requirement should be used instead of applying overlapping rules.

However two-thirds of stakeholders intervening on the issue considered an upward revision of the O-SII buffer as necessary. The 2% limit (together with the 1% limit for subsidiaries of O-SIIs) seemed to be restrictive also based on empirical evidence, as currently authorities in several countries are requiring identified O-SIIs to hold an additional SRB up to 3% instead of applying only the O-SII buffer. These respondents argued that the cap largely ignores the fact that European O-SIIs are very diverse. Some of these institutions are potentially capable of posing similar risks for financial stability as G-SIIs. An evaluation should be made whether the 2%-cap for OSII-buffers is justified in the most concentrated banking markets. The 2% cap on the O-SII buffer should at least be substantially increased. This change would also need to apply to the case of O-SIIs that are subsidiaries of parent O-SIIs located in another Member State.

Several stakeholders saw merit in removing the cap completely. To address concerns that an O-SII buffer with no caps could lead to ring-fencing of capital, it could be considered that a cap is kept on an individual and sub-consolidated basis. For these stakeholders however, such a view presumes that the cap at the individual and sub-consolidated level is not conditioned on the level of the G-SII or O-SII buffer at the consolidated level.

Other stakeholders saw merit in aligning the O-SII cap with the G-SII cap at 3.5%. This increase would almost double the size of the O-SII buffer and would allow national authorities to adequately address the risk resulting from O-SIIs, without the risk that capital could be ring-fenced. The O-SII buffer for subsidiaries could be capped depending on the level of the buffer applied at the consolidated level (i.e. the cap could be expressed as buffer at consolidated level + x%).

Cumulation of buffers

Several stakeholders saw room for amending the current cumulation rules. However, significant changes need to be implemented in the institutions-specific instruments. Indeed, a cumulation of the buffers would be appropriate to the extent that they address different macro-prudential risks. When buffers address the same macro-prudential risk only the higher buffer should apply.

With slight differences in their views, almost all the stakeholders that responded to this question agreed in principle on the idea of having the SRB additive to the G-SII/O-SII buffers.

The non-cumulative nature of the SRB is somewhat inconsistent, because the rationale of the SII buffers is to address a situation where one large institution may pose a systemic risk, while the rationale of the SRB should be the vulnerability of the entire system indicated by other factors than the size of an individual institution or group. The additivity of the SRB is also claimed to potentially solve the issue of the currently unclear pecking order.

Some stakeholders would however prefer to see some amendments in the SRB definition, in order to clarify that it targets different risks with respect to the O-SII/G-SII buffers. Besides the need for clarification and separation, a notification and approval procedure should be prescribed whenever the sum of these buffers exceeds a certain threshold (e.g. 5 per cent). For these stakeholders, the SRB could be made a purely activity-based instrument in order to allow a more streamlined cumulation.

Reciprocation of macro-prudential instruments

Further to the responses received regarding the scope of individual instruments, respondents expressed their views regarding the mandatory reciprocation of these instruments. From these responses, a significant number of authorities supported a broadening of mandatory reciprocity of the instruments outlined in CRD and CRR. The case for mandatory reciprocity was considered to be strong, particularly for national exposure-based measures, where the risk of leakages across borders was more likely. Those in favour of mandatory reciprocity believed the framework should be adjusted accordingly, albeit with exceptions in certain justified cases.

For some authorities, mandatory reciprocity, whilst beneficial, could become a burden. Consequently, they stressed that it may be necessary to identify ex-ante both jurisdiction- and institution-level exceptions, to facilitate the process. Other authorities believed automatic reciprocity should follow the established "comply or explain" mechanism, with an opt-out clause for Member states by means of a notification process. It was also suggested that in order to address leakages, reciprocation should apply not only to branches, but to cross-border transactions as well.

Pecking order and activation mechanisms

The majority of national authorities responded that the existing pecking order reduces flexibility and induces inaction bias. This is because complex activation procedures or the need to follow a rigid hierarchy of instruments, for the mandatory sequencing of their activation, inhibit authorities from using these measures. In some instances, the pecking order can cause adverse incentives in the selection of an instrument.

A number of respondents believed that having a single activation procedure for all instruments, whilst removing the pecking order, would address this problem. A single activation procedure with no pecking order would make decisions simpler to communicate, and would enable authorities to select the most appropriate tool for the risk they had identified, without the need to consider the process for triggering that tool. It was argued this added flexibility is important given the different financial and economic conditions between Member States, and given the wide variety of possible risks that may emerge in the future. As such, respondents believed it important to have a flexible toolset which does not encourage inaction bias.

Others wanted to maintain elements of the pecking order, but argued for some streamlining, as the current pecking order listed both micro-prudential and macro-prudential measures. A mixed pecking order may prevent the designated authority from efficiently acting on financial stability risks, both because micro-prudential tools may not necessarily be appropriate for addressing systemic risks and because they are attributed to competent authorities. One proposed solution involved adjusting the pecking order by removing micro-prudential measures. This point was notably made in the context of the macro-prudential use of pillar 2 instruments, which some respondents saw as a micro-prudential tool that cannot be effectively used to address systemic risks, lacked transparency and should thus not feature in the pecking order.

A number of national ministries and regulatory authorities went further, arguing the pecking order should be removed completely, allowing national authorities to make an assessment of the risks faced, and select the most appropriate tool given the specific circumstances and national specificities. The rationale of the existing pecking order was also criticised as it required instruments to be considered in a particular order, even if the risks they address are not related. An example given by respondents was that the CCYB and SII buffers must be considered before the SRB is used, even if these buffers target different types of risks.

Without commenting on the efficacy of the pecking order itself, industry bodies were sceptical of its application, especially as instruments such as Pillar 2 are not transparent. As a result it was not certain if these had been considered before other instruments were imposed. Additionally, as certain instruments have a much simpler activation mechanism than others, some respondents were anxious that Art 124/164 CRR should not be used as a substitute for Art 458 CRR. This substitutability was seen to add to the opacity of the framework, and could bring into question whether instruments were being applied consistently across the EU.

Whilst some respondents did not see any problem with the current control mechanisms in the toolset, a significant majority of respondents believed that overlaps in the toolset did facilitate the circumvention of the pecking order of instruments. In this regard, many of the national authorities responding to this question again highlighted the overlaps between the SRB and the O-SII buffer, and their interchangeable use. Other respondents suggested that on occasions, the O-SII was in turn used to supplement the SRB, to stay within the 3% threshold which would otherwise trigger a more complex notification procedure. There was further evidence to suggest Pillar 2 measures were used instead of the SRB on some occasions, even where it did not optimally address the risk identified.

As such, a number of respondents believed the activation procedures should be streamlined as much as possible, and whilst coordination should be ensured, designated (or just national) authorities should have the autonomy to act to address risks, without burdens which could lead to inaction bias.

Other respondents believed circumvention could be avoided by better clarifying the risks to be targeted by each instrument, thereby eliminating major overlaps and removing the need for such a complex activation mechanism.

A significant minority of respondents wanted to remove the pecking order completely, in order to increase the flexibility of national authorities and reduce the risk of inaction bias. However these responses did not address the risks associated with uncoordinated activation of instruments.

Respondents from the industry recognised circumvention as a problem, arguing this can lead to several instruments being activated at the same time to address the same risk. This issue was further exacerbated by the macro-prudential use of Pillar 2, which allows for an opaque application of capital buffers, without the required level of control mechanisms. These respondents believed a streamlining of the pecking order for all instruments would alleviate the problem.

Some respondents wanted to remove the notification requirements completely, giving autonomy to national authorities to activate buffers as they saw fit.

However a number of respondents favoured keeping the notification requirements of the SRB unchanged, with a number of adjustments such as making it mandatory in all jurisdictions, and preventing any cross border arbitrage by ensuring mandatory recognition of its activation across the EU.

Others favoured an adjustment to the current notification requirements, whereby a combined buffer threshold would apply before any notification and approval process was needed, or even raising the notification threshold to 5%.

Respondents from industry favoured lowering the threshold for the notification requirements and for any activation of the SRB to have a longer lead in time, to allow banks to plan ahead.

Whilst some respondents were content with the current activation procedures for Art 458 CRR, seeing this as a measure of last resort, a greater number of respondents saw the need for a degree of simplification. This included extending the timeframe within which the EBA must give its opinion on any Art 458 CRR measure. Other authorities believed the threshold for justifying the need for this measure should be lowered, as this contributes to inaction bias. Several respondents were more concerned with the delays involved in activating this measure, and therefore wanted to see changes that would lead to a faster approval process by the relevant authorities.

A minority of respondents were in favour of removing the approval process completely, allowing Member States to activate Art 458 CRR without the involvement of the Council, the Commission or the EBA. For these respondents, the complexity of the current activation mechanism was seen as leading to inaction bias.

Whilst some respondents believed the current notification procedures were appropriate and did not require revision, the majority of stakeholders found the quarterly reporting requirement an unnecessary burden. For these respondents, the current requirement to notify the CCYB rate on a quarterly basis was not justified if the buffer rate itself had not changed in that quarter. Instead they favoured reducing the notification period to a semi-annual or annual frequency, unless the buffer rate itself is adjusted. In this event a notification should occur. Some respondents also supported the publication of corresponding indicators such as the credit-to-GDP gap on a quarterly basis, but without the need to notify CCyB rate itself. A minority of respondents highlighted the added burdens of notifying the CCyB rate within the banking union (FSC, Supervisory Board and Governing Council), in addition to the ESRB.

A significant majority of respondents did not believe there was a problem of these buffers being used for ring fencing purposes, and did not favour a change to the cap, although for a number of these respondents, their view was predicated on the O-SII cap being kept at 2%. An increase in the O-SII cap may change this assessment for some respondents, as national authorities would have greater scope to trap capital within national borders. However based on the current framework, national authorities are acting appropriately in setting capital requirements to reflect the systemic importance of institutions, and to protect their financial system.

Other respondents saw some evidence of ring-fencing, albeit limited, but did not believe this was widespread, and where it occurred it was in order to address specific financial stability risks. Therefore taking steps to limit the use of such tools would in their view, on balance, likely damage financial stability and increase inaction bias.

A few respondents believed ring-fencing by national authorities was a problem, and further community control was needed to address this. Amongst the proposals put forward, it was suggested that a formal notification by a Member State would first need to be approved by the EU Council on the basis of an opinion by the ESRB and the EBA.

A minority of respondents argued that whilst the O-SII cap should be removed at a consolidated level to enable risks to be addressed, maintaining a cap at an individual and sub-consolidated basis could be a compromise solution, whilst still addressing the problem of ring fencing.

A number of respondents from industry argued that current ring fencing was damaging, as it damaged the concept of a level playing field for banks, where various national authorities applied the O-SII buffer inconsistently. This could be avoided within the banking union if decisions on the setting of the O-SII and SRB were approved centrally by the consolidating supervisor, or by imposing an overall cap on buffers in place.

Co-ordination among national authorities

Regarding Art 124 and 164 CRR, a significant majority of contributors saw a need to provide for better coordination between competent and designated authorities. This coordination was needed both when deciding on the need for a macro-prudential use of Articles 124 and 164 CRR, as well as to ensure the use of the most appropriate instrument.

Some respondents also called for clarity in defining the objective and purpose of these tools. More clarity regarding the financial stability concerns to be addressed by these measures was called for, in order to avoid overlap with other measures. In this regard, a large number of respondents saw a need for further coordination between competent and designated authorities when using these instruments. This might involve the designated authority issuing an opinion advising the competent authorities on the application of these measures on the basis of financial stability concerns. Other suggestions included having a clearer separation of micro- and macroprudential measures to clarify the roles of each authority.

At the other end of the spectrum, a few institutions consider that these tools should be exclusively in the hands of the designated authority. Articles 124 and 164 CRR would thus become pure macroprudential tools implemented by macro-prudential authorities.

Meanwhile, some respondents expressed the view that these instruments should exclusively be used for micro-prudential purposes. They however noted that a new Article should be inserted in the CRR allowing macro-prudential authorities to apply targeted risk weights at a sectoral level and loss given default (LGD) floors for macro-prudential purposes on a system-wide basis.

Co-ordination between national authorities and the ECB/SSM

When assessing the shared responsibilities of the ECB/SSM and national authorities for macro-prudential policy within the Banking Union, the vast majority of respondents believe the current asymmetry of powers is appropriate. The main reason is that the macro-prudential tools are always driven by considerations of domestic risks, and changes to the current arrangement may give rise to inaction bias.

A small group of respondents believe the ECB/SSM should have symmetric power, i.e. be able to relax the measures taken by national authorities, taking into account the system-wide perspective and with the aim of preventing any ring-fencing of capital in Member States. For those respondents who supported symmetrical powers within the Banking Union, most did not express a strong view on whether an adjustment was needed to the timeframes for national authorities to notify a measure to the SSM. Of those who did express a view, a larger number were in favour of extending the current timeframes for notification, with suggestions of a 1-month notification period, or alternatively extending the period to 20 days for structural macro-prudential instruments.

Another small group of respondents believed that the ECB should have no macro-prudential powers at all. In this regard, the provisions of Art 5 of the SSM should be removed, and designated authority should have full discretion to undertake macro-prudential policy within their own jurisdiction.

Conversely, a number of industry respondents consider that all approvals as regards macro-prudential measures in the Banking Union should be centralised in the hands of the ECB.

Adequacy of EU macro-prudential instrument set for banks

Borrower based tools

The majority of stakeholders responding to these questions expressed a favourable view about developing additional harmonized macro-prudential instruments for the banking sector. However, the views about the urgency to proceed in this direction vary widely, notably depending on the type of instrument. Stakeholders mainly focussed on borrower-based measures, the macro-prudential use of the leverage ratio, of liquidity measures, and limits to sectoral exposures. Similarly, while generally in favour of allowing a more prominent role by the ESRB in drafting guidelines and standards on new instruments, stakeholders show a significant heterogeneity in how they see this role should be performed.

Some stakeholders were favourable to the immediate inclusion of new instruments to the current banking toolkit. This view is however stronger for borrower-based instruments (limits on loan-to-value (LTV), loan-to-income (LTI) and debt-service-to-income (DSTI) ratios), than for other instruments like liquidity instruments such as the Liquidity Coverage Ratio (LCR), Net Stable Funding

Ratio (NSFR), and the leverage ratio (LR). These respondents argue that, while these instruments should be available in EU law, in order to allow for a harmonised use of the instruments, their use should lie with national macro-prudential authorities.

Another group of stakeholders, despite being favourable to such expansion of the macro-prudential toolkit, expressed more caution on the timing. They see the case for additional macro-prudential instruments to be harmonised at European level in the medium term only. They argue that the experience with the recently established European macro-prudential tool-kit is currently still limited (some instruments have only entered into force at the beginning of 2016). Therefore, the development of additional harmonised macro-prudential instruments at the European level should be envisaged for prospective reviews.

Considering borrower-based measures, which are already used in a number of countries, based on national law, several stakeholders see no need for harmonisation at EU level. They argue that the use of these instruments rests on very different legal frameworks and market practices and highlight that tools of this nature have significant welfare and distributional effects. Responsible authorities must hence be accountable at the national level.

Meanwhile, a large share of stakeholders sees no need for developing additional harmonized macro-prudential instruments. The majority of private-sector stakeholders belong to this category. One of the main arguments put forward is that there is already much overlap of capital-based instruments in the current framework, which should be streamlined before adding new instruments. Fewer capital-based instruments that are well calibrated and very clear both to the regulators and the industry would constitute an improvement in this regard. Having too great a number of instruments ultimately reduces transparency and complicates the ex post evaluation of their respective impact. Moreover, it is considered to be too early to say if there is a need to develop a macro-prudential dimension for several instruments, like the LCR and NSFR, as these instruments have not yet been fully implemented and the micro-prudential implications should be checked first.

Considering borrower-based measures in more detail, many stakeholders welcome the possibility to harmonise them, or at least their definitions, as they consider these instruments to be particularly effective. Common definitions should mark the “cornerstones” of the instruments and shall leave enough room to tailor and calibrate the instruments to national specificities. The harmonisation of borrower-based instruments would increase the comparability, facilitate reciprocity and support coordination of the measures between the Member States and at the EU level. Since these instruments are currently not available in all Member States, they could be incorporated as macro-prudential instruments under EU law. Most of the respondents agreed, however, that their introduction should remain optional for Member States, as they can have significant distributional effects on housing markets. Moreover, for them it would be important to balance the incremental benefit of these additional tools against the resulting increase in complexity. In addition, it is mentioned that, when applied, these instruments should target loans regardless of whether they are provided by a bank or non-bank entity. Moreover, some argued that EU law should also allow for the indirect use of borrower-based measures by imposing higher requirements on banks that do not comply with activated borrower-based limits.

Leverage ratio

As regards the macro-prudential use of the leverage ratio, it is considered as a potentially good addition to the macro-prudential toolset by some stakeholders, in particular due to its additional power to influence banks behaviour besides risk weights. As a result of its lack of risk sensitivity, a static leverage ratio contributes towards addressing the potential for regulatory capital requirements to be pro-cyclical. Most of the respondents propose a higher minimum leverage ratio in order to prevent the excessive build-up of leverage through the cycle. The inclusion of a Pillar 1 leverage ratio in the CRR would raise the issue of the design of macro-prudential instruments to ensure the leverage ratio can act as an effective complement to risk-weighted capital rules, e.g. where a G-SII buffer applies in the risk-weighted capital framework. For this reason, some stakeholders focus on the use of the LR for G-SIIs. Therefore the introduction of a systemic surcharge in the LR for G-SIIs is suggested. In this case, it would be crucial to adapt the LR to different levels of systemic importance in order to be consistent with the different existing G-SIIs subcategories and their corresponding buffer requirements. Some support is shown for the option with a conversion factor of 35% between the LR G-SII surcharge and the risk-weighted G-SII surcharge. Otherwise, a LR of at least 4% for all systemically important banks could be envisaged. Some stakeholders, however, sound a note of caution and suggest further analysis before going forward with a macro-prudential LR.

LCR/NSFR

Eventually few stakeholders supported the development of macro-prudential instrument in the area of liquidity requirements, in particular regarding the liquidity coverage ratio (LCR) and the Net Stable Funding Ratio (NSFR), which are considered to provide a good basis for a macro-prudential framework to address systemic liquidity risk. Since these tools are already used for microprudential purposes, appropriate clarity on responsibilities and objectives of their macroprudential use should in their view be provided (different buffers or surcharges could be added to the instruments).

Overall, the majority of stakeholders expressed some support for the role of the ESRB in developing technical guidance in the sector. The ESRB is deemed to be well suited to conduct conceptual work regarding the operationalization of macro-prudential instruments. However, as many stakeholders cautioned that it is important to give sufficient national discretion and flexibility to national macro-prudential authorities when it comes to the actual use and calibration of instruments. Others suggested that the guidelines should anyway be non-binding.

Moreover, some stakeholders claimed that this guidance would be welcome, only once new instruments are harmonised in EU legislation. Similarly, other stakeholders claimed that the guidance on non-harmonised instruments is a second best solution with respect to their harmonisation. Others doubt that such an approach would be adequate and sufficient. If the guidance has to be provided on non-harmonised instruments, it should be limited to definitions.

On the other hand, some stakeholders, mainly from the private sector, rejected the possibility of an enhanced role by the ESRB in this sector. Others suggest caution given the complexity of the instruments involved and the wide range of national-specific institutional features which influence the design and calibration of such instruments.

Macro-prudential policy beyond banks

Responses received regarding the expansion of macro-prudential policy for the non-bank sector were mixed. Whilst a broad majority were in favour of some form of expansion to address these emerging risks, there remains a lack of consensus on the level of ambition needed.

Some respondents from national ministries, regulatory authorities and the banking sector strongly supported the expansion of the macroprudential framework and toolkit to non-banking entities. They notably pointed to the growing relevance of market-based finance as well as potential risks arising for example from insurance, securities markets, and asset management sectors. They argued that systemic risks can either originate or spill over to these sectors, warranting a broadening of the toolkit. Given the establishment of the Capital Markets Union, these instruments should be provided for in EU law.

A significant number of respondents across the full spectrum of respondents however supported a lesser form of expansion, focusing more on monitoring and analysis of risks beyond banking. These respondents suggested that macroprudential policy beyond banking should monitor risks arising from interconnectedness, Too-Big-To-Fail, and pro-cyclicality of non-banking institutions. An intermediary step like this is in their view needed before starting to design new macroprudential tools. These stakeholders stressed the vital need of ex-ante analyses to identify potential systemic risk sources from non-banks. In a similar vein, other respondents saw the need for a review of the existing regulation clauses at some point in the future, so that this issue could be reconsidered in 3-4 years.

A smaller number of industry based respondents, predominantly from the non-bank sector did not see a need to expand the framework at this stage. These argued that it was premature to identify an optimal set of macro-prudential tools beyond banking given that there is still no consensus regarding the effectiveness of the current macroprudential framework, and that we have limited experience on which to make such a judgment.

Mandate and capacity of the ESRB

A majority of respondents considered that the ESRB's mandate and tasks are, generally speaking, appropriately formulated to ensure the efficiency and effectiveness of macro-prudential policies. However whilst a number of functions are thought to be well carried out, most respondents believed the ESRB's work would benefit from certain changes to its working practices. These include improving its cooperation and communication with different authorities, in order to avoid excessive overlaps in the activation of instruments.

Some respondents emphasised that a revision of the ESRB mandate is necessary to reflect the establishment of the Banking Union. Together with the national designated authority the ECB conducts an assessment of systemic risk and macro-prudential policy measures for the SSM banking system at country and across countries level. This could allow the ESRB to rely more effectively on the ECB to prevent the build-up of systemic risks to the banking sector in the participating Member States, thus avoiding a duplication of tasks between the ECB and ESRB. Further, the ESRB’s mandate for cross-sectoral issues across jurisdictions in the EU should be further enhanced as the ESRB is best placed to ensure appropriate coordination of measures across jurisdictions and address structural matters.

Other proposed changes included increasing its role as a coordination hub for macro-prudential policy, coordinating the activation of instruments, acting as an information hub for macro-prudential policy, and facilitating reciprocity across borders as an operational hub. Some contributors believed the ESRB should further elaborate its quantitative risk assessment dashboard.

Most contributors favoured raising the ESRB's profile more generally. A small minority of respondents believed the ESRB should play a stronger role across the EU. This might include the review of regulatory measures and ensuring the consistent application of macro-prudential policies, and the resolution of disagreements between authorities by providing formal opinions.

Organisational structure of the ESRB

The consultation raised a number of issues regarding the organisational structure and governance of the ESRB. Central to these were the leadership of the ESRB, including the position of its Chair, the processes by which decisions are reached within the organisation, as well as the composition of its various committees.

With regards to its leadership, a significant majority of respondents stated that a new function of a full-time Managing Director in charge of day-to-day activities of the ESRB could be created.

Those who expressed support for such a two-tier managerial structure pointed to the increased visibility, the (analytical) independence and autonomy, the external representation, and the effectiveness of policy making of the ESRB. It was also noted that the two-tier managerial structure would strengthen the ability of the ESRB to frankly address warnings and recommendations to all financial supervisors, both within the Banking Union and outside it, and to address concerns to the ECB/SSM in its capacity as the banking supervisory authority.

Most respondents supported maintaining the ECB President as the Chair of the ESRB, and pointed out that a Managing Director would help ensure a sufficiently independent relationship between the ESRB and ECB. With this new structure in mind, a number of respondents expressed concern that a clear division of responsibilities was needed between a new Managing Director post, and the existing Head of the ESRB Secretariat, whilst ensuring control over the overall administrative burden to which ESRB members are subject.

A minority of stakeholders called for a reduction in the size of the ESRB General Board, and for shifting some of its tasks to the Steering Committee. These cited a general lack of effectiveness, and heavy administrative and decision-making burdens as a result of the current size of the General Board.

However most respondents did not see a need for extensive changes to the composition of the General Board. They highlighted the importance and strength of broad representation at the ESRB General Board, and wanted macro-prudential authorities to be represented, in addition to central banks and supervisory authorities (from banking, capital markets and insurance). While acknowledging that monetary policy and macro-prudential policy where separate policy domains, most respondents believed that central banks should continue to play key role. This would ensure a strong analytical basis for the ESRB given central banks' traditional role in the promotion of financial stability and maintains the links between monetary policy, macroeconomic developments, and macro-prudential policy. Some respondents rejected the idea of shifting some of the General Board's tasks to the Steering Committee, since not all Member States are represented in the Steering Committee. By contrast, it was suggested to delegate less important operational decisions to the Advisory Technical Committee. For this purpose, it was suggested a narrow composition of the Advisory Technical Committee, which would mirror the composition of voting members of the General Board, could be established.

Whilst most respondents thought it was warranted for national macro-prudential authorities to be represented at the ESRB General Board, there was little support for the radical streamlining of its composition, such as the idea of having one representative per Member State. By contrast, there was support for revising the voting rules, to assign one vote per Member State, with most respondents arguing this should rest with the Central Bank.

Some respondents argued that the establishment of the Banking Union has to be considered in the governance of the ESRB by formalising the participation of representatives of the SSM and of the Single Resolution Board. It was proposed that the two bodies should be formally represented in the ESRB General Board and the Advisory Technical Committee where they are currently invited as observers. It is also proposed that the SSM is represented at the Steering Committee.

In respect of the work and structure of the two advisory committees of the ESRB, the majority of respondents did not see any need for significant changes. However, a few suggestions to increase their efficiency and effectiveness were put forward including delegating some operational decisions from the General Board to the Advisory Technical Committee in order to simplify procedures. The composition of the Advisory Technical Committee could be divided into two, to the narrow composition mirroring the composition of voting members of the General Board. This composition could take over less significant operational decisions from the General Board.

Some respondents, particularly those from the industry, saw a clear need to ensure adequate sectoral expertise in the discussions, particularly at the level of the Advisory Technical Committee and the General Board. As the focus of the work of the ESRB could shift to include more activity on non-banking institutions, so its composition should reflect an expertise on these issues. As such, any potential expansion of the macro-prudential framework beyond banking should involve the relevant sectoral regulators (notably insurance and occupational pensions and securities markets). There was also support for including a representative of the Single Resolution Board and of the Single Supervisory Mechanism on the ESRB General Board and Advisory Technical Committee.