

**OPINION OF THE EUROPEAN SYSTEMIC RISK BOARD**

**of 15 November 2022**

**regarding the existing systemic risk buffer pursuant to Article 133 and the Norwegian notification of the setting or resetting of an O-SII buffer pursuant to Article 131 of Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions**

**(ESRB/2022/8)**

THE GENERAL BOARD OF THE EUROPEAN SYSTEMIC RISK BOARD,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area<sup>1</sup>, in particular Annex IX thereof,

Having regard to 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<sup>2</sup>, and in particular Article 3(2)(j) thereof,

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC<sup>3</sup>, and in particular Article 131(3), (5a), (7), (12) and (15) thereof,

Having regard to Decision ESRB/2015/4 of the European Systemic Risk Board of 16 December 2015 on a coordination framework for the notification of national macroprudential policy measures by relevant authorities, the issuing of opinions and recommendations by the ESRB, and repealing Decision ESRB/2014/2<sup>4</sup>.

Whereas:

- (1) The Norwegian Ministry of Finance, acting as the designated authority for the purpose of Article 131 of Directive 2013/36/EU, notified the European Systemic Risk Board (ESRB) on 4 October 2022 of its intention to require certain institutions to maintain an other systemically important institution (O-SII) buffer of Common Equity Tier 1 capital, in accordance with Article 131 of that Directive.
- (2) Article 131(3) of Directive 2013/36/EU establishes a set of criteria on the basis of which O-SIIs are identified. Pursuant to the second subparagraph of this Article, the European Banking Authority (EBA) issued Guidelines on the criteria to determine the conditions of application of Article 131(3) of

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<sup>1</sup> OJ L 1, 3.1.1994, p. 3.

<sup>2</sup> OJ L 331, 15.12.2010, p. 1.

<sup>3</sup> OJ L 176, 27.6.2013, p. 338.

<sup>4</sup> OJ C 97, 12.3.2016, p. 28.

Directive 2013/36/EU (CRD) in relation to the assessment of other systemically important institutions (O-SIIs) (EBA/GL/2014/10)<sup>5</sup>, in which it sets out mandatory and optional indicators for the scoring in Annexes I and II, respectively.

- (3) The Norwegian O-SII buffer will apply to three domestic credit institutions, one of which is a subsidiary whose parent entity is established in another European Economic Area country. The Norwegian Ministry of Finance has identified these credit institutions as O-SIIs pursuant to the following criteria: (i) total assets as share of Norway's gross domestic product (GDP) and/or (ii) loans to the private non-financial sector as share of total loans to the private non-financial sector in Norway. These criteria are listed as optional indicators in Annex 2 to the EBA Guidelines<sup>6</sup>. In addition to these two main criteria, the Norwegian Ministry of Finance considers the mandatory indicators of the EBA Guidelines in a second step when applying its supervisory judgement.
- (4) More specifically, the proposal maintains a buffer of 2 % applicable to one credit institution and a buffer of 1 % to two credit institutions. The measure is aimed at increasing the loss-absorbing capacity of the most systemically important credit institutions in Norway, as they have an especially significant role in Norwegian financial system, and for the Norwegian economy.
- (5) The differentiation in the applicable buffer rates stems from the fact that the largest credit institution, to which the 2 % O-SII buffer rate is applicable, is almost six times larger than the second largest credit institution in terms of the above-mentioned criteria.
- (6) It is anticipated that the Norwegian Ministry of Finance will take a final decision on the setting of the O-SII buffer after the notification period and will announce it as soon as it has been taken.
- (7) Additionally, pursuant to Article 131(15) of Directive 2013/36/EU, the O-SII buffer applicable to all three credit institutions will be cumulative with the existing systemic risk buffer (SyRB) rate of 4,5 % that these credit institutions are subject to<sup>7</sup>.
- (8) There is no change in the list of O-SIIs identified and the level of the O-SII buffer compared to the previous setting of O-SII buffers as notified on 1 June 2021. At the time when the SyRB and the last O-SII buffer were set the amendments to Directive 2013/36/EU introduced by Directive (EU) 2019/2034 of the European Parliament and of the Council<sup>8</sup> were not yet applicable in Norway. As a

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<sup>5</sup> Available on the EBA website at [www.eba.europa.eu](http://www.eba.europa.eu).

<sup>6</sup> According to the Compliance Table for EBA Guidelines EBA/GL/2014/10, 'The Norwegian Ministry of Finance adopted a regulation on the identification of systemically important financial institutions in Norway in May 2014. (...) As a general rule, an institution shall be designated as systemically important if it has total assets corresponding to at least 10 per cent of Mainland Norway's GDP, or a share of the Norwegian lending market of at least 5 per cent. (...) In addition to the two main criteria, the Regulation says that the FSA's advice also shall be based on an assessment of the institution's size, the institution's importance in Norway and other countries, the institution's complexity, the institution's role in the financial system infrastructure and to which degree the institution is interconnected with the rest of the financial system. To enlighten these criteria, the FSA will use the methodology in the EBA Guidelines.' Available on the EBA website at [www.eba.europa.eu](http://www.eba.europa.eu).

<sup>7</sup> On 5 November 2020, the Norwegian Ministry of Finance notified the ESRB, under Article 133(11) of Directive 2013/36/EU as applicable to and in Norway on 1 January 2020, of its intention to set a systemic risk buffer rate of 4,5 % applicable to credit institutions. On 4 December 2020, the ESRB adopted Recommendation of the European Systemic Risk Board of 4 December 2020 regarding Norwegian notification of its intention to set a systemic risk buffer rate in accordance with Article 133 of Directive (EU) 2013/36/EU (ESRB/2020/14), available on the ESRB website at [www.esrb.europa.eu](http://www.esrb.europa.eu), in which it recommended that the proposed systemic risk buffer rate to be applied in Norway should be considered justified, suitable, proportionate, effective and efficient in relation to the risk targeted by the Norwegian Ministry of Finance.

<sup>8</sup> Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).

result, the ESRB was not required to provide an opinion regarding the O-SII buffer rates.

- (9) Considering that the sum of the SyRB rate and the O-SII buffer rate will be higher than 5 % for each of the credit institutions that fall within the scope of the proposed measure, the ESRB will provide the European Free Trade Association Standing Committee and the Norwegian Ministry of Finance with an opinion as to whether the O-SII buffer is deemed appropriate, pursuant to Article 131(5a) and (15) of Directive 2013/36/EU and to Section II, Subsection (i), Point 14(q) of Annex IX to the EEA Agreement<sup>9</sup>,

HAS ADOPTED THIS OPINION:

1. The O-SII buffer rate applicable in Norway, as set by the Norwegian Ministry of Finance, will be cumulative with the existing SyRB to which certain credit institutions are already subject. This will lead to a cumulative SyRB and O-SII buffer higher than 5 %.
2. Under the current circumstances, the setting of an O-SII buffer by the Norwegian Ministry of Finance applicable to three credit institutions, which will be cumulative with the existing SyRB to which these credit institutions are already subject, is assessed as appropriate to address the identified risks. In particular, the proposed O-SII buffer rate does not entail disproportionate adverse effects on financial stability in Norway nor is it expected to form or create an obstacle to the proper functioning of the internal market.
3. The attached assessment note entitled 'Background note on the measure taken in Norway pursuant to Article 131 which is cumulative with the existing measure pursuant to Article 133 of the CRD' is an integral part of this Opinion.

Done at Frankfurt am Main, 15 November 2022.



*Head of the ESRB Secretariat, on behalf of the General Board of the ESRB*

Francesco MAZZAFERRO

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<sup>9</sup> According to the amendments introduced by Decision No 383/2021 of the EEA Joint Committee of 10 December 2021 amending Annex IX (Financial Services) to the EEA Agreement (not yet published in the Official Journal or in the EEA Supplement), which entered into force on 1 July 2022.