Question ID

2024_7242

Legal act

Directive 2013/36/EU (CRD)

Topic

Other issues

Article

133, 134

COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations

Not applicable

Article/Paragraph

/

Name of institution / submitter

National Bank of Belgium

Country of incorporation / residence

Belgium

Type of submitter

Competent authority

Subject matter

Application of recognised SyRB on a consolidated basis

Question

May or shall a competent or a designated authority from a Member State, that recognises a systemic risk buffer rate set by another Member State in accordance with Article 133 of the CRD, require its domestically authorised institutions to apply that rate on a consolidated basis, covering all exposures targeted by the recognised systemic risk buffer held through subsidiaries, branches or through cross-border lending, in accordance with Article 134 of the CRD ? Does the legal framework permit or require that exposures of domestically authorised institutions held through subsidiaries located in the Member State that sets the buffer rate as well as in other Member States are also included in the scope of recognition?

Background on the question

The CRD allows a Member State that recognises a systemic risk buffer (SyRB) to apply the SyRB rate set by another Member State, to domestically authorised institutions, for exposures located in the Member State that sets that rate. In accordance with Article 134(5) of the CRD, Member States that set a SyRB may also ask the ESRB to issue a recommendation as referred to in Article 16 of Regulation (EU) No 1092/2010 to one or more Member States which may recognise the SyRB rate. The ESRB Recommendation on voluntary reciprocity ESRB/2015/2 was issued to support effective macroprudential policy in Europe and to set out the procedure for voluntary recognition of measures such as the SyRB, measures under Article 458 of the Capital Requirements Regulation (CRR) and other national measures that have not been harmonised under Union law.

Authorities have to decide whether and how to recognise a macroprudential measure activated in another Member State. Recently, due to different views regarding the interpretation of the relevant CRD provisions, the question arose as to whether competent or designated authorities in a Member State that recognised a systemic risk buffer, may require domestically authorised parent institutions to comply with the recognised SyRB rate set by another Member State on a consolidated basis, thereby including the exposures held by their subsidiaries established in the activating Member State.

Article 133(4) of the CRD states that the relevant competent or designated authority, as applicable, may require institutions to maintain a SyRB on an individual, consolidated, or sub-consolidated basis. With regard to the recognition of a SyRB doubts were raised whether, as Article 134 of the CRD does not give any guidance on the level of consolidation of a recognised SyRB rate, Article 133(4) of the CRD is also applicable when recognising a SyRB set by authorities of another Member State.

By not recognising macroprudential requirements at the highest level of consolidation (group level), namely excluding the exposures held by subsidiaries in the Member State that sets the buffer rate, systemic risks which may have an unwarranted impact on the resilience of banking groups are not taken into account and competition in the internal market may also be distorted. First, a banking group may not only be exposed to a macroprudential or systemic risk in another Member State through branches and direct cross-border activity but also through its subsidiaries, as the parent institutions may be effectively obliged to ensure the adequate capitalisation of their subsidiaries or to absorb losses incurred by their subsidiaries. If the scope of reciprocation does not include macroprudential requirements applied to subsidiaries in the Member State that sets the buffer rate, systemic or macroprudential risks from those exposures may not be reflected in the consolidated loss-absorbing requirements of the parent institution in the home country.

As an example, consider bank A authorised in Member State X with a subsidiary B authorised in Member State Y that has introduced a SyRB. The SyRB in Member State Y applies to domestically authorised institutions on a consolidated basis. Bank A has the following exposures which are potentially relevant for the recognition of the SyRB set by Member State Y:

- through branches and direct lending in Member State Y: 100 EUR
- through subsidiary B authorised in Member State Y: 500 EUR

When the macroprudential authority in country Y asks for reciprocity for the SyRB, and the macroprudential authority in country X decides to reciprocate, a question arises whether the measure should apply (i) only to bank A’s exposures through branches and direct lending (100 EUR), or (ii) also to Bank A’s exposures through the subsidiary (500 EUR). If not applied on a consolidated basis, the recognition of the SyRB would cover only the exposures of bank A held through branches and direct lending in Member State Y, i.e. 100 EUR. In other words, bank A in Member State X would not be subject to any capital requirement on a consolidated basis for its exposures to systemic or macroprudential risk in Member State Y incurred via its subsidiary B (amounting to 500 EUR). Hence, bank A would face a lower capital requirement at group level than if the exposures had instead been held through branches or direct lending in country Y and a lower consolidated capital requirement than when both parent and subsidiary were authorised in Member State Y. In addition, such discrepancies might trigger strategic asset allocation decisions within groups amplifying abovementioned issues in terms of loss absorbing capacity at consolidated level.

Moreover, if the authorities in Member State X were not able to require the application of the recognised SyRB of Member State Y on a consolidated basis and on the basis of all exposures held by a banking group irrespective of the legal status and location of the intragroup financial service provider that holds the respective exposure, there would be no authority in the internal market able to impose such a requirement, as the authorities of Member State Y clearly have no jurisdiction over a banking group authorised in Member State X. As a result, it would not be possible, within the internal market, to ensure an equal treatment of banking groups operating only within Member States and banking groups operating across borders.

Not applying a recognising measure at the same level of consolidation could thus distort competition in the internal market and result in insufficient resilience of banking groups that do not apply a SyRB recognising a SyRB in another Member State on a consolidated basis. The ESRB therefore started to specify in its Recommendations amending Recommendation ESRB/2015/2 whether Member States should recognise another Member States’ macroprudential measure on an individual basis, on a sub-consolidated basis, and/or on a consolidated basis (at group level). It has done so, for the first time, in Recommendation ESRB/2023/13 in relation to national measures activated by Denmark and Portugal and in Recommendation ESRB/2024/2 on the recognition of the Italian SyRB, by recommending Member States to recognise the respective measure by applying it also on a consolidated basis, hence also including exposures through subsidiaries. The implementation of those Recommendations would ensure that capital requirements at the group level are adequate in view of the systemic or macroprudential risks to which the parent is exposed through its subsidiaries.

Against this background, clarification is sought through the Single Rulebook Q&A tool, whether the current legal framework of the CRD permits national authorities to require the application of recognised macroprudential measures also on a consolidated basis. Such a requirement would be in line with Article 133(4) of the CRD, which states that a SyRB can be applied on an individual, sub-consolidated or consolidated basis.

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23/05/2025

Final answer

The recognition of a systemic risk buffer (SyRB) is primarily governed by Article 134(1) CRD, according to which "[o]ther Member States may recognise a systemic risk buffer rate set in accordance with Article 133 and may apply that rate to domestically authorised institutions for exposures located in the Member State that sets that rate." Under this voluntary recognition framework established by Art.134 CRD, the national authorities of a Member State are granted the discretion to recognize a SyRB set by another Member State, by requiring domestically authorised institutions to apply that rate. The text of Article 134(1) of the CRD should nevertheless be read in conjunction with Article 133(4) of the CRD, which explicitly indicates that a SyRB can be applied on an individual, sub-consolidated or consolidated basis, as decided by the relevant authority designated in accordance with Art.133. Accordingly, the recognition of a SyRB follows the same regime and enables the designated authorities of other Member States to recognize a SyRB as well as to decide whether the recognized SyRB will apply to domestically authorized institutions at individual, sub-consolidated or consolidated. A decision to recognize a SyRB at consolidated level will result in the inclusion of all relevant exposures, including those of all subsidiaries located in the Member State that sets the buffer.

It remains, however, entirely within the discretion of a Member State to decide whether or not to recognise a SyRB of another Member State and determine the level at which the SyRB is reciprocated. If the ESRB issues a recommendation on the reciprocation of a SyRB specifying that a measure should be recognised, at a certain level (e.g., at individual and consolidated level) and for certain types of exposures, Member States are encouraged to reciprocate in accordance with this recommendation or explain their decision to not follow such an ESRB recommendation.

Disclaimer: The answer clarifies provisions already contained in the applicable legislation. It does not extend in any way the rights and obligations deriving from such legislation, nor does it introduce any additional requirements for the concerned operators and competent authorities. The answer is merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

Status

Final Q&A

Answer prepared by

Answer prepared by the European Commission because it is a matter of interpretation of Union law.