

I

(Resolutions, recommendations and opinions)

RECOMMENDATIONS

EUROPEAN SYSTEMIC RISK BOARD

RECOMMENDATION OF THE EUROPEAN SYSTEMIC RISK BOARD

of 11 December 2015

on recognising and setting countercyclical buffer rates for exposures to third countries

(ESRB/2015/1)

(2016/C 97/01)

THE GENERAL BOARD OF THE EUROPEAN SYSTEMIC RISK BOARD,

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 ⁽¹⁾, and in particular Article 3(2)(b), (d) and (f) and Articles 16 to 18 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 and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ⁽²⁾, and in particular Article 138 and 139 thereof,

Having regard to Decision ESRB/2011/1 of the European Systemic Risk Board of 20 January 2011 adopting the Rules of Procedure of the European Systemic Risk Board ⁽³⁾, and in particular Article 15(3)(e) and Articles 18 to 20 thereof,

Whereas:

- (1) The pro-cyclical amplification of financial shocks to the real economy through the banking system and financial markets has been one of the most destabilising elements of the global financial crisis. An economic downturn following a period of excessive credit growth can lead to large losses in the banking sector and spark a vicious circle. In such a situation, measures taken by credit institutions to strengthen their balance sheets can constrain credit supply to the real economy, exacerbating the economic downturn and further weakening their balance sheets.
- (2) The countercyclical capital buffer is designed to work against these pro-cyclical dynamics by increasing the resilience of the banking sector. The rules requiring the maintenance of countercyclical capital buffers form part of the new global regulatory standards on bank capital adequacy (the Basel III framework) issued by the Basel Committee on Banking Supervision (BCBS) in December 2010 and implemented in the Union by Directive 2013/36/EU. By increasing the countercyclical buffer rate, designated public authorities or bodies can require the banking sector to build up additional capital in periods when system-wide risks from excessive credit growth are increasing. When such risks materialise, authorities can set the countercyclical buffer rate at a lower rate and allow this buffer of additional capital to be used to absorb unexpected losses. This enables the banking sector to continue providing credit to the real economy and to comply with regulatory capital requirements.

⁽¹⁾ OJ L 331, 15.12.2010, p. 1.

⁽²⁾ OJ L 176, 27.6.2013, p. 338.

⁽³⁾ OJ C 58, 24.2.2011, p. 4.

- (3) Cross-border lending brings an international dimension to the countercyclical capital buffer. Losses can arise from exposures of Member States' domestic banking sectors to third countries. Such losses could be significant if a third country to which a Member State's domestic banking sector has material exposures entered an economic downturn following a period of excessive credit growth.
- (4) The Basel III framework on the countercyclical capital buffer is designed to capture this international dimension. In particular, under the framework, jurisdictions should recognise each other's countercyclical buffer rates. If an authority in one jurisdiction increases the countercyclical buffer rate to protect its domestic banking sector from excessive credit growth, authorities in other jurisdictions should apply the same countercyclical buffer rate to the exposures of their domestic banks to that country. Under the framework, banks calculate their buffer requirements on the basis of the geographic location of their exposures. The Basel III framework provides for mandatory jurisdictional reciprocity for countercyclical buffer rates of up to 2,5 %, subject to transitional provisions. If applied in a consistent manner across jurisdictions, such jurisdictional reciprocity would help protect the banking sector in a given jurisdiction from risks associated with excessive credit growth in other jurisdictions.
- (5) As the BCBS standards are not legally binding, jurisdictions across the world might not implement the countercyclical capital buffer in the same manner. They might delay its implementation or might not implement it at all. In the Union, Article 136 of Directive 2013/36/EU sets out the way in which designated authorities must set countercyclical buffer rates for domestic exposures. Further guidance on setting countercyclical buffer rates for domestic exposures, as required by Article 135 of Directive 2013/36/EU, is provided in Recommendation ESRB/2014/1 of the European Systemic Risk Board⁽¹⁾. In the Union, a common legal framework designed to overcome the bias for inaction is thus in place, and the quarterly setting of countercyclical buffer rates for domestic exposures will be mandatory from 2016. However, there is uncertainty as to whether and to what extent third countries that are not members of the BCBS will implement the countercyclical capital buffer.
- (6) Designated authorities have legal powers to protect their banking sectors from risks arising from excessive credit growth in third countries. In particular, Article 139 of Directive 2013/36/EU allows designated authorities in certain circumstances to set a countercyclical buffer rate for exposures to a third country that domestically authorised institutions have to apply to calculate their institution-specific countercyclical capital buffer. A designated authority can act in situations where a countercyclical buffer rate has not been set and published by the relevant third-country authority for that third country, or if it considers that the countercyclical buffer rate set by the relevant third-country authority for that third country is not sufficient to protect the Member States' domestic banking sectors from potential losses associated with excessive credit growth in the third country in question.
- (7) Setting countercyclical buffer rates for exposures to third countries can, if done in an uncoordinated manner, result in different capital requirements within the Union for exposures to the same third country and the same risks. When analysing developments in a third country, designated authorities might reach different conclusions as to whether or not credit growth in that country is excessive and poses a risk to their domestic banking system that needs to be mitigated. Even if designated authorities arrive at the same risk assessment, they might reach different conclusions as to the level of the appropriate countercyclical buffer rate necessary to mitigate that risk.
- (8) Recognition of countercyclical buffer rates for exposures to third countries can, if done in an uncoordinated manner, also result in different capital requirements within the Union. Recognition of countercyclical buffer rates set by other designated authorities or by relevant third-country authorities is required by Union law for rates up to 2,5 %, subject to transitional provisions between 2016 and 2019 as set out in Article 160 of Directive 2013/36/EU. While, in accordance with Recommendation ESRB/2014/1, designated authorities should generally recognise countercyclical buffer rates beyond mandatory levels, this applies only to countercyclical buffer rates set by designated authorities in other jurisdictions within the Union, and not to those set by relevant third country authorities for third countries. This means that the way in which countercyclical buffer rates set by relevant third country authorities are recognised might differ across jurisdictions within the Union. In particular, prior to 2019, some designated authorities might opt to apply the transitional provisions, while other designated authorities might opt to deviate from them. In addition, from 2019, some designated authorities might opt to voluntarily recognise countercyclical buffer rates in excess of 2,5 %, while others might opt not to do so.

⁽¹⁾ Recommendation ESRB/2014/1 of the European Systemic Risk Board of 18 June 2014 on guidance for setting countercyclical buffer rates (OJ C 293, 2.9.2014, p. 1).

- (9) Different capital requirements within the Union for exposures to the same third country and the same risks would typically be undesirable, as they would undermine a level playing field within the Union and provide an opportunity for regulatory arbitrage. Credit institutions in Union jurisdictions where a lower countercyclical buffer rate applies to the exposures to a given third country than that applicable in other Union jurisdictions would have an incentive to gain market share by increasing their lending to that third country. Such an increase in lending could lead to large, concentrated exposures to a particular third country by credit institutions in a particular jurisdiction. Ultimately, such an uneven playing field and the resulting incentives for regulatory arbitrage could threaten financial stability in the Union.
- (10) The European Systemic Risk Board (ESRB) has a role to play in ensuring that, with respect to a particular third country, the same countercyclical buffer rates for exposures to third countries would typically apply across the Union. The ESRB has an explicit mandate to achieve coherence on this under Article 139(3) of Directive 2013/36/EU. The ESRB considers that it can best fulfil this mandate by promoting a coherent approach across the Union for recognising and setting countercyclical buffer rates for exposures to third countries.
- (11) This Recommendation is designed to ensure that the same countercyclical buffer rate for exposures to a particular third country would typically apply across the Union. It covers: (a) the recognition by designated authorities of a countercyclical buffer rate set by a relevant third-country authority for that third country; (b) the setting by designated authorities of a countercyclical buffer rate for exposures to a third country; (c) the setting by designated authorities of the countercyclical buffer rate at a lower rate when risks in a particular third country abate or materialise; and (d) the communication by designated authorities of the countercyclical buffer rate for exposures to a third country.
- (12) Recommendation A is designed to ensure that designated authorities will typically recognise the same rate of the countercyclical capital buffer set by a particular third-country authority for that third country. To achieve this, it builds on the requirement laid down in Union law to recognise in full countercyclical buffer rates up to 2,5 %, subject to transitional arrangements. It is recommended that designated authorities coordinate their recognition of countercyclical buffer rates set in excess of 2,5 % through the ESRB. Where this occurs, the ESRB will issue a recommendation to provide guidance to designated authorities on whether and to what extent the higher countercyclical buffer rate set by a third country should be recognised. While the setting of countercyclical buffer rates by third countries that are members of the BCBS will be monitored by the ESRB Secretariat, designated authorities should inform the ESRB when a third country that is not a member of the BCBS sets a countercyclical buffer rate in excess of 2,5 %. It is further recommended that designated authorities notify the ESRB when they are unclear as to whether a particular measure adopted by a third country should be recognised under Directive 2013/36/EU as a countercyclical capital buffer. In such cases, the ESRB will issue a recommendation to provide guidance.
- (13) Recommendation B is designed to ensure that designated authorities, when exercising their powers to set a countercyclical buffer rate for exposures to a particular third country, set this rate at the same level. Designated authorities are encouraged to exercise their powers under Article 139 of Directive 2013/36/EU. In particular, designated authorities should establish to which third countries the banking system in their jurisdiction has material exposures. Further, they should monitor developments in those third countries for signs of excessive credit growth. If designated authorities discover such signs in one of those third countries they monitor and they consider that setting a countercyclical buffer rate for exposures to that third country is needed, they should inform the ESRB. If the ESRB considers that mitigating actions should be coordinated across the Union, it will issue a recommendation to designated authorities on setting the appropriate countercyclical buffer rate for exposures to the third country in question.
- (14) Recommendation C is designed to ensure that, where setting the countercyclical buffer rate for exposures to a particular third country at a lower rate is warranted because risks have either abated or materialised, the same lower countercyclical buffer rate applies across the Union. To this end, it is recommended that, when setting the countercyclical buffer rate for exposures to a particular third country at a lower rate, designated authorities should follow the same route they followed when the countercyclical buffer rate was increased. This means that, if designated authorities have recognised or set a countercyclical buffer rate for exposures to a third country in accordance with an ESRB recommendation, they should work with the ESRB to determine the appropriate level of the countercyclical buffer rate for exposures to the third country when the third country in question sets the countercyclical buffer rate at a lower rate. Where this occurs, the ESRB will adopt a recommendation to provide

guidance to designated authorities on the appropriate countercyclical buffer rate for exposures to the third country in question. While the setting of countercyclical buffer rates by third countries that are members of the BCBS will be monitored by the ESRB, designated authorities should inform the ESRB when a third country that is not a member of the BCBS sets the countercyclical buffer rate at a lower rate. It is further recommended that, if, following an ESRB recommendation, designated authorities have recognised or set a countercyclical buffer rate for exposures to a third country, they should notify the ESRB if they consider that risks in that third country have abated or are materialising.

- (15) Recommendation D is designed to ensure that decisions on countercyclical buffer rates for exposures to third countries are clearly communicated within the Union. This should help manage public expectations, ensure that actions between designated authorities can be coordinated and that the credibility, accountability and effectiveness of macroprudential policy are enhanced. To achieve this, designated authorities should apply the same principle set out in Recommendation ESRB/2014/1 for communicating countercyclical buffer rates for domestic exposures to the process of recognising, setting and reducing countercyclical buffer rates for exposures to third countries.
- (16) Under Article 136 of Directive 2013/36/EU, each Member State is required to designate a public authority or body that will be responsible for setting and recognising countercyclical buffer rates. In addition, Council Regulation (EU) No 1024/2013 ⁽¹⁾ assigns specific tasks to the European Central Bank (ECB). In particular, the ECB may apply higher requirements for countercyclical capital buffers than those applied by the national designated authorities participating in the Single Supervisory Mechanism, and has all the powers and obligations that designated authorities have under relevant Union law. For this exclusive purpose, the ECB is considered a designated authority.
- (17) ESRB recommendations are published after the General Board has informed the Council of its intention to do so and provided the Council with an opportunity to react,

HAS ADOPTED THIS RECOMMENDATION:

SECTION 1

RECOMMENDATIONS

Recommendation A – Recognition of countercyclical buffer rates set by third-country authorities

1. When a relevant third-country authority sets a countercyclical buffer rate for that third country in excess of 2,5 %, designated authorities are recommended to promptly inform the ESRB with a view to seeking guidance on uniform recognition across the Union, unless the rate applies to a country that is a member of the BCBS or the ESRB has already been informed about the particular countercyclical buffer rate by another designated authority. Designated authorities are recommended to use the template in Annex I to this Recommendation to inform the ESRB.
2. When designated authorities are unclear as to whether a particular measure adopted by a third-country authority should be recognised under Directive 2013/36/EU as a countercyclical buffer rate, designated authorities are recommended to promptly inform the ESRB, unless the ESRB has already been informed by another designated authority. Designated authorities are recommended to use the template in Annex I to this Recommendation to inform the ESRB.

Recommendation B – Setting of countercyclical buffer rates for exposures to third countries

1. Designated authorities are recommended to identify material third countries on an annual basis. Such identification should be based on, but not necessarily limited to, quantitative information on the exposures of domestically authorised institutions to third countries. Designated authorities are recommended to submit a list of such material third countries to the ESRB in the second quarter of each year using the template in Annex II to this Recommendation.
2. Designated authorities are recommended to monitor risks from excessive credit growth in material third countries identified in accordance with paragraph 1, at a minimum, at annual intervals, except for countries which are already monitored by the ESRB in accordance with Decision ESRB/2015/3 ⁽²⁾. Designated authorities are recommended to notify the ESRB of cases where they decide not to monitor a material third country because that country is already being monitored by the ESRB in accordance with Decision ESRB/2015/3. Designated authorities are recommended to use the template in Annex II to this Recommendation to notify the ESRB of such cases.

⁽¹⁾ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

⁽²⁾ The English version is available on the ESRB website at www.esrb.europa.eu

3. Designated authorities are recommended to notify the ESRB of situations where they consider that a relevant third-country authority should set and publish a countercyclical buffer rate for that third country, or where the level of the countercyclical buffer rate set and published by a relevant third-country authority for that third country is not considered sufficient to protect domestic financial institutions from the risks of excessive credit growth in the third country in question. Designated authorities are recommended to use the template in Annex I to this Recommendation to notify the ESRB thereof.

Recommendation C – Setting of countercyclical buffers rates for exposures to third countries at a lower rate

1. If a countercyclical buffer rate set by a relevant third-country authority for that third country is recognised on the basis of an ESRB recommendation, and the relevant third-country authority sets the countercyclical buffer rate at a lower rate, designated authorities are recommended to promptly inform the ESRB with a view to seeking guidance on uniform recognition or setting of the new lower countercyclical buffer rates, unless the rate in question applies to a country that is a member of the BCBS, or the ESRB has already been informed of the new lower countercyclical buffer rate by another designated authority. Designated authorities are recommended to use the template in Annex I to this Recommendation to inform the ESRB thereof.
2. If the relevant third-country authority sets the countercyclical buffer rate at a lower rate and the countercyclical buffer rate applying to exposures to that third country was set on the basis of an ESRB recommendation, designated authorities are recommended to promptly inform the ESRB thereof with a view to seeking guidance as to whether a lower countercyclical buffer rate should be applied to exposures to that third country, unless the rate in question applies to a country that is a member of the BCBS or the ESRB has already been informed of the new lower countercyclical buffer rate by another designated authority. Designated authorities are recommended to use the template in Annex I to this Recommendation to inform the ESRB thereof.
3. If the countercyclical buffer rate applying to exposures to a third country was set on the basis of an ESRB recommendation, and a designated authority considers that the risks are materialising or abating, that designated authority is recommended to promptly notify the ESRB thereof with a view to seeking guidance as to whether a lower countercyclical buffer rate should be applied to exposures to that third country, unless the ESRB has already been informed thereof by another designated authority. Designated authorities are recommended to use the template in Annex I to this Recommendation to notify the ESRB thereof.

Recommendation D – Communication of decisions on recognition and setting of countercyclical buffer rates for exposures to third countries

Designated authorities are recommended to amend their strategies and frameworks for communication, developed in accordance with Principle 5 of Recommendation A of Section 1 of Recommendation ESRB/2014/1, to encompass decisions on recognising and setting countercyclical buffer rates for exposures to third countries.

SECTION 2

IMPLEMENTATION

1. Interpretation

For the purposes of this Recommendation, the following definitions apply:

- (a) 'countercyclical buffer rate' has the same meaning as in Article 128(7) of Directive 2013/36/EU;
- (b) 'designated authority' has the same meaning as in Recommendation ESRB/2014/1;
- (c) 'domestically authorised institution' means an institution that has been authorised in the Member State for which a particular designated authority is responsible for setting the countercyclical buffer rate;
- (d) 'material exposures' means exposures which could potentially result in substantial losses to the domestically authorised institutions in a given jurisdiction, negatively affecting financial stability in that jurisdiction;
- (e) 'material third country' means a third country to which domestically authorised institutions have material exposures;
- (f) 'relevant third-country authority' means the public authority or body responsible for setting countercyclical buffer rates in a third country;
- (g) 'third country' means any jurisdiction outside the European Economic Area.

2. Criteria for compliance

Addressees should report on the actions they take in response to this Recommendation, or to adequately justify any inaction. The reports should contain as a minimum:

- (a) information on the type of action taken and its timing;
- (b) an assessment as to whether the actions taken achieved the objectives of this Recommendation;
- (c) detailed justification of any inaction or departure from this Recommendation, including any reasons for delay in reporting.

3. Timeframe for the follow-up

1. Addressees are requested to report to the ESRB, the Council and the Commission the actions they have taken in response to this Recommendation, or justify any inaction, in accordance with the deadlines set out below.
2. *Recommendation A* – Designated authorities are requested to promptly implement Recommendation A(1) and A(2) in the event that the situation envisaged by the relevant Recommendation occurs, and to submit a report to the ESRB by 31 December 2020 on the implementation of Recommendation A(1) and A(2).
3. *Recommendation B* – Designated authorities are requested to:
 - (a) report to the ESRB by 31 December 2016 a list of criteria established for the materiality assessment of the relevant third countries in order to implement Recommendation B(1);
 - (b) promptly implement Recommendation B(1) in the event that the situation envisaged by that Recommendation occurs and, by 31 December 2020, to submit a report to the ESRB on the implementation of Recommendation B(1);
 - (c) report to the ESRB by 31 December 2016 on how they monitor risks from excessive credit growth in material third countries in order to implement Recommendation B(2);
 - (d) promptly implement Recommendation B(3) in the event that the situation envisaged by that Recommendation occurs and, by 31 December 2020, to report to the ESRB on the implementation of Recommendation B(3).
4. *Recommendation C* – Designated authorities are requested to promptly implement Recommendation C(1), C(2) and C(3) in the event that the situation envisaged by the relevant Recommendation occurs and, by 31 December 2020, to report to the ESRB on the implementation of Recommendation C(1), C(2) and C(3).
5. *Recommendation D* – Designated authorities are requested to report to the ESRB by 31 December 2016 on the implementation of Recommendation D.
6. The General Board will decide when this Recommendation needs to be reviewed or updated in light of experience gained in setting and recognising countercyclical buffer rates for exposures to third countries in accordance with Directive 2013/36/EU or in light of developments in internationally agreed practices.

4. Monitoring and assessment

- (a) The ESRB Secretariat:
 - (i) assists the addressees, including by facilitating coordinated reporting, providing relevant templates and detailing where necessary the procedure and the timeframe for compliance;
 - (ii) verifies compliance by the addressees, including by assisting them at their request, and submits compliance reports to the General Board.
- (b) The General Board assesses the actions and the justifications reported by the addressees and decides whether or not this Recommendation has been complied with, and whether or not the addressees have adequately justified their inaction.

Done at Frankfurt am Main, 11 December 2015.

The Chair of the ESRB

Mario DRAGHI

ANNEX I

ESRB TEMPLATE FOR RECOGNITION OR SETTING OF COUNTERCYCLICAL BUFFER RATES

[NAME OF THE THIRD COUNTRY]

COMMUNICATING AUTHORITY	[NAME OF THE DESIGNATED AUTHORITY]
DESCRIPTION OF COUNTERCYCLICAL CAPITAL BUFFER MEASURE	<p>Please describe the countercyclical capital buffer measure that is the subject matter of this communication as well as the countercyclical buffer rate that was set by the relevant third-country authority.</p> <p>(Example: countercyclical buffer rate set at 0,625 % in THIRD COUNTRY XYZ with an implementation date of DD/MM/YYYY)</p>
PURPOSE OF COMMUNICATION	<p><input type="checkbox"/> Recognition of a countercyclical buffer rate set by a relevant third-country authority in excess of 2,5 %, as provided in Recommendation A(1)</p> <p><input type="checkbox"/> Recognition of a countercyclical buffer rate set by a relevant third-country authority when it is unclear whether or not it can be recognised under the Union framework, as provided in Recommendation A(2)</p> <p><input type="checkbox"/> Setting of a countercyclical buffer rate for exposures to a third country in the event of inaction/insufficient action by the relevant third-country authority, as provided in Recommendation B(3)</p> <p><input type="checkbox"/> Setting of a countercyclical buffer rate for exposures to a third country that is higher than the countercyclical buffer rate set by the relevant third-country authority, as provided in Recommendation B(3)</p> <p><input type="checkbox"/> Setting or recognition of a countercyclical buffer rate at a lower rate by the relevant third-country authority when an ESRB recommendation had already been issued for recognition of the previous rate, as provided in Recommendation C(1)</p> <p><input type="checkbox"/> Setting or recognition of a countercyclical buffer rate at a lower rate by the relevant third-country authority when an ESRB recommendation had already been issued for setting a rate for exposures to that third country, as provided in Recommendation C(2)</p> <p><input type="checkbox"/> Setting of a countercyclical buffer rate for exposures to a third country at a rate lower than the previous rate already established by an ESRB recommendation and where there are signs of risks from excessive credit growth materialising or abating, as provided in Recommendation C(3).</p>
HAS THE DESIGNATED AUTHORITY OF THE THIRD COUNTRY ASKED FOR RECOGNITION?	<p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO</p> <p><input type="checkbox"/> DO NOT KNOW</p> <p><input type="checkbox"/> N/A</p>
DESIRED TIMEFRAME FOR THE ESRB TO REACH A DECISION	
OTHER RELEVANT INFORMATION	
CONTACT DETAILS OF THE AUTHORITY	Please provide an e-mail address and telephone number for the relevant contact in your institution.

The designated authority representing a Union jurisdiction should notify/inform the ESRB by sending the completed template to notifications@esrb.europa.eu

ANNEX II

**ESRB TEMPLATE TO IDENTIFY
MATERIAL THIRD COUNTRIES FOR
[NAME OF THE UNION JURISDICTION]**

NOTIFYING AUTHORITY	
MATERIAL THIRD COUNTRIES	
METHODOLOGY USED FOR IDENTIFYING A MATERIAL THIRD COUNTRY	<i>Please describe the methodology used pursuant to Articles 3 and 4 of Decision ESRB/2015/3</i> [COUNTRY 1] – ___% [...] – ___% [COUNTRY ...N] – ___%
MATERIAL THIRD COUNTRIES NOT BEING MONITORED	<i>Please provide details of cases where the notifying authority decided not to monitor a material third country because the ESRB is already monitoring it pursuant to Decision ESRB/2015/3</i> [COUNTRY 1]
OTHER RELEVANT INFORMATION USED TO IDENTIFY A MATERIAL THIRD COUNTRY	
CONTACT DETAILS AT THE NOTIFYING AUTHORITY	<i>Please provide an e-mail address and telephone number for the relevant contact in your institution.</i>

The designated authority representing a Union jurisdiction should notify the ESRB by sending the completed template to notifications@esrb.europa.eu

This information should be provided annually during the second quarter of the year.