EUROPEAN
COMMISSION

Brussels, 5.1.2024
C(2024) 10 final

COMMISSION IMPLEMENTING DECISION

of 5.1.2024

authorising the adoption of a systemic risk buffer rate, and combined O-SII buffer and systemic risk buffer rates, notified by the Danish Ministry for Business, Industry and Financial Affairs under Article 133(9) of Directive 2013/36/EU of the European Parliament and of the Council

(Text with EEA relevance)

COMMISSION IMPLEMENTING DECISION

of 5.1.2024

authorising the adoption of a systemic risk buffer rate, and combined O-SII buffer and systemic risk buffer rates, notified by the Danish Ministry for Business, Industry and Financial Affairs under Article 133(9) of Directive 2013/36/EU of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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[1], and in particular Article 133(12), third subparagraph, in combination with Article 131(15) thereof,

Having regard to the opinions of the European Systemic Risk Board[2] and of the European Banking Authority[3],

Whereas:

(1) On 10 October 2023, the Danish Ministry for Business, Industry and Financial Affairs ('the Ministry'), which is the national designated authority in charge of the application of Article 133 of Directive 2013/36/EU in Denmark, notified the Commission of its intention to apply a systemic risk buffer as referred to in Article 133 of Directive 2013/36/EU as of 30 June 2024. In accordance with Article 133(5), point (f), of that Directive, the Ministry intends to require all institutions authorised in Denmark to maintain a systemic risk buffer of Common Equity Tier 1 capital of 7 % applicable to a subset of sectoral exposures located in Denmark (sectoral systemic risk buffer or 'sSyRB').

(2) Pursuant to Article 133(9) of Directive 2013/36/EU, the competent authority or designated authority, as applicable, is to notify the European Systemic Risk Board (ESRB) before the publication of a decision setting a systemic risk buffer rate. The ESRB is to forward such notifications to the Commission, to the European Banking Authority (EBA) and to the competent and designated authorities of the Member States concerned without delay. Pursuant to Article 133(12), first subparagraph, of Directive 2013/36/EU, where a decision to set or reset a systemic risk buffer rate or

1 OJ L 176, 27.6.2013, p. 338, ELI: http://data.europa.eu/eli/dir/2013/36/oj.

2 Opinion of the European Systemic Risk Board of 16 November 2023 regarding Danish notification of the setting or resetting of a systemic risk buffer rate pursuant to Article 133 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 institution (ESRB/2023/12).

3 Opinion of the European Banking Authority on measures in accordance with Articles 131 and 133 of Directive 2013/36/EU (EBA/Op/2023/12), 21 November 2023.

rates on any set or subset of exposures results in a combined systemic risk buffer rate higher than 5 % of the risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[4] on any of those sets or subsets of exposures, the competent authority or the designated authority, as applicable, is to seek the authorisation of the Commission before implementing a systemic risk buffer. Pursuant to Article 133(12), second subparagraph, of Directive 2013/36/EU, the ESRB is to provide the Commission with an opinion on whether the systemic risk buffer is appropriate within 6 weeks of receipt of a notification as referred to in paragraph 9 of that Article. The EBA may also provide the Commission with its opinion on that systemic risk buffer in accordance with Article 34(1) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[5].

(3) Pursuant to Article 131(15) of Directive 2013/36/EU, in combination with paragraph 5a of that Article, an authorisation by the Commission is also required for decisions that would result in the sum of systemic risk buffer and other systemically important institutions (O-SII) buffer rates exceeding 5 % for a given credit institution and for a set or subset of exposures. Pursuant to Article 131(5a), second subparagraph, of Directive 2013/36/EU, in combination with paragraph 15 of that Article, the ESRB is to provide the Commission within 6 weeks of receipt of a notification as referred to in Article 131(7) of Directive 2013/36/EU with an opinion on whether the sum of the systemic risk buffer and O-SII buffer rates is appropriate. The EBA may also provide the Commission with its opinion in accordance with Article 34(1) of Regulation (EU) No1093/2010.

(4) According to the notification of the Ministry of 10 October 2023, the sSyRB rate will be set at 7 % for all institutions authorised in Denmark and will cover all types of exposures to non-financial companies located in Denmark engaged in real estate activities and in the development of building projects (hereafter, 'real estate companies'). The economic activity sectors have been identified according to the statistical classification of economic activities in the Union (NACE Rev.2 codes L and F41.1.)[6]. Exposures to social housing associations and housing cooperative associations are excluded from the measure as their business model and risks profile differ significantly from real estate companies. The decision applying the sSyRB is to be reviewed at the latest after 2 years.

(5) At the time of the notification, nine credit institutions would be subject to combined O-SII buffer and sSyRB buffer rates exceeding 5 %. The combined O-SII and sSyRB buffer rate for the targeted subset of exposures held by the nine O-SII credit institutions ranges between 8 % and 10 %.

[4] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1, ELI: http://data.europa.eu/eli/reg/2013/575/oj).

[5] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12, ELI: http://data.europa.eu/eli/reg/2010/1093/oj).

[6] NACE Rev.2 Statistical classification of economic activities in the European Community KS-RA-07-015-EN.PDF (europa.eu). The specific subsets of sectoral exposures to which the sSyRB will be applied are based on the EBA Guidelines on the appropriate subsets of sectoral exposures to which competent or designated authorities may apply a systemic risk buffer in accordance with Article 133(5)(f) of Directive 2013/36/EU, (EBA-GL-2020-13).

(6) On 16 November 2023, the ESRB adopted its opinion on the notified systemic risk buffer and its combination with the existing O-SII buffers (’ESRB opinion’). The EBA adopted its opinion on 21 November 2023 (’EBA opinion’). In their opinions, both the ESRB and the EBA stated that the notified systemic risk buffer is appropriate. Both the ESRB and the EBA also concluded that the sums of the systemic risk buffer and O-SII buffer rates are appropriate for the nine O-SIIs concerned.

(7) Article 133(9) of Directive 2013/36/EU requires that an authority that wishes to set a systemic risk buffer rate provides in the notification sent to the ESRB the information set out in that paragraph. Pursuant to Article 133(12), third subparagraph, of Directive 2013/36/EU, the Commission, taking into account the opinions of the ESRB and the EBA, has to be satisfied that systemic risk buffer rates exceeding 5 % of a set or subset of exposures do not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the proper functioning of the internal market. Additionally, pursuant to Article 131(5a), third subparagraph, and Article 131(15) of Directive 2013/36/EU, the Commission has to be satisfied, taking into account the opinions of the ESRB and the EBA, that any combinations of systemic risk buffer and O-SII buffer rates exceeding 5 % do not entail such disproportionate adverse effects.

(8) The Commission has first to ascertain whether there is sufficient evidence of a systemic risk and whether such risk poses a threat to the stability of the national financial system of the Member State concerned, justifying the systemic risk buffer rate. The Commission has also to consider the effectiveness and proportionality of the systemic risk buffer in mitigating the identified risk. Moreover, the Commission has to take into account the likely positive or negative impact of the systemic risk buffer on the internal market.

(9) The decision of the Ministry to impose the sSyRB follows a recommendation of the Danish Systemic Risk Council to activate such a macroprudential measure. According to the notification, lending to real estate companies accounts for 14 % of total lending by credit institutions and 37 % of total corporate lending as of the first quarter of 2023. The notification informs that those percentages have been increasing for several years. In the past, credit exposures to real estate companies have recorded large losses. In Denmark, real estate companies account for a significant share of economic activity and the developments in the real estate sector have contributed to increasing cyclical fluctuations in economic activity. Furthermore, the exposure of the Danish pension funds to the real estate market increases the risk of contagion.

(10) According to the notification, the current macroeconomic conditions indicate a risk of a significant downward correction in commercial real estate markets. The income of real estate companies and the valuation of such real estate assets are sensitive to rises in interest rates, and the economic activity of real estate companies is cyclical. A general correction in market prices has not been observed yet; however, there are unusually low transaction volumes which may indicate a likely general correction in prices. In addition, according to data from the first quarter of 2023, 80 % of real estate company loans were with variable interest rates, exposing those companies to a risk of further increases in interest rates and in their debt service burden. Furthermore, a weakening of macroeconomic conditions could put additional pressure on the rental income of real estate companies, thereby also increasing risks with regard to servicing loans.

(11) According to the analysis provided in the notification, Danish credit institutions, and particularly medium-sized institutions, have significant exposures to real estate companies, therefore inflation and interest rate increases, in combination with falling commercial real estate prices, could lead to difficulties in the real estate sector and losses above those observed in previous periods of economic downturn. That situation points to elevated and systemic risks in exposures to real estate companies. A materialisation of those risks would lead to significant losses for Danish credit institutions.

(12) The Commission notes that, in September 2022, the ESRB issued a general warning on potential vulnerabilities in commercial real estate markets in the Union[7]. Following that warning, the ESRB issued a recommendation on commercial real estate in December 2022[8]. The ESRB pointed out that falling real estate prices and debt servicing capacity, impaired by rising financing costs as well as declining profitability, represent severe challenges for commercial real estate companies and could lead to losses for credit institutions. Some of the financial stability risks outlined in those documents seem to be also present in Denmark. The Commission concurs with the ESRB observations which support the analysis provided by the Danish authorities regarding the systemic risk in the exposures targeted by the notified measure.

(13) After carefully considering the evidence provided by the Ministry, as well as the ESRB and the EBA opinions, the Commission agrees that the systemic risk related to the Danish credit institutions' exposures to real estate companies is high and could pose a threat to the financial system in Denmark and its real economy. The Commission recalls that past developments, both in the Union and outside the Union, have illustrated that real estate risks - when left unaddressed- can result in significant costs to the real economy and potential adverse spill-over effects in other countries. By enhancing the resilience of Danish credit institutions, the notified measure aims to cushion any adverse impacts if systemic risks were to materialise.

(14) The notified measure is calibrated to ensure that sufficient capital is available to cover potential losses that might follow in a scenario of higher interest rates, a fall in income for the real estate companies, and price decreases in commercial and residential real estate. The notified measure takes into account the existing capacity of Danish credit institutions to absorb losses, including existing impairments, countercyclical capital buffers (CCyBs) and management buffers. While the sSyRB rate is high in nominal terms, its impact relative to existing capital requirements is contained; according to the Ministry, that rate will increase capital requirements by about 0,5 % of Total Risk Exposure Amount overall. According to the Danish authorities, credit institutions have sufficient capacity to meet macroprudential requirements and their profitability is high, and therefore the Danish authorities do not expect the increased capital requirement to lead to a tightening of credit conditions.

(15) The Commission, after having examined the arguments and evidence put forward by the Ministry and after having given careful consideration to the ESRB and EBA opinions, has considered the effectiveness and proportionality of the planned introduction of the sSyRB. The notified measure is considered effective as it will

[7] "Warning of the European Systemic Risk Board of 22 September on vulnerabilities in the Union financial system (ESRB/2022/7)", ESRB, September 2022.

[8] "Recommendation of the ESRB of 1 December 2022 on vulnerabilities in the commercial real estate sector in the EEA (ESRB/2022/9)", ESRB, December 2022. See also Vulnerabilities in the EEA commercial real estate sector", ESRB, January 2023.

increase the Danish credit institutions’ resilience *vis-à-vis* the systemic risks stemming from the activities of the real estate companies in the Danish real estate market. Furthermore, the notified measure is deemed effective as it targets the type of economic activity posing the systemic risk and it provides credit institutions with greater capacity to absorb unexpected losses. The buffer rate balances the need to conserve capital due to the increase in uncertainty and to build up capital rapidly before risks materialise. The Danish credit institutions affected by the application of the notified measure have sufficient earnings in 2023 to increase their capital buffer levels and still maintain management buffers large enough to absorb losses in a stress situation. The Commission considers the notified measure as proportionate as its design does not go beyond what is necessary to address the identified systemic risk. The notified measure will have a bigger impact on credit institutions with riskier portfolios which command higher risk weights.

(16) Article 133(8), point (c), of Directive 2013/36/EU requires that the systemic risk buffer not be used to address risks that are already covered by a CCyB or O-SII buffers. The Commission, in line with the ESRB and the EBA opinions, considers that, while O-SII buffers increase the resilience of credit institutions, those buffers are not meant to deal with sectoral risks, including real estate risks. The objectives of a CCyB and O-SII buffers are clearly different from the notified measure and there is no obvious overlap between them. The sSyRB covers risks of exposures to Danish real estate companies, whereas the O-SII buffer addresses the systemic footprint of specific credit institutions. The indicators used to identify the O-SII buffers do not specifically reflect lending activities to real estate companies. The Commission did not find evidence to suggest that the risk targeted by the notified measure is already covered by the O-SII buffer requirements that apply to some of the credit institutions that fall within the scope of the notified measure.

(17) The Commission notes that the notified measure does not cover risks covered by the CCyB referred to in Article 130 of Directive 2013/36/EU. A CCyB rate of 2,5 % is currently active in Denmark. The proposed sSyRB specifically targets risks stemming from the real estate market rather than broad-based build-up of cyclical systemic risks. In addition, the calibration explicitly offsets the potential losses to be covered by the sSyRB against the existing CCyB of 2,5 %. In that regard, the sSyRB covers specific losses that may arise on the exposures targeted beyond what is already covered by the existing CCyB.

(18) Article 133(12), third subparagraph, of Directive 2013/36/EU, in combination with Article 131(15) of that Directive, require the Commission to assess whether the notified measure and its combination with existing O-SII buffer rates could have disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the proper functioning of the internal market. The aim of the already existing O-SII buffers is to reduce risks posed by institutions whose failure would have a significant negative impact on the domestic financial system or the real economy. Capital buffers reduce the probability of failure of O-SIIs, which is desirable given the high economic and social cost of their failure. The Danish authorities have identified nine O-SIIs which are of domestic systemic importance. O-SII buffer rates range between 1 to 3 % and are amongst the highest in the Union. Those rates are applied at the highest level of consolidation and therefore apply also to all exposures covered by the sSyRB.

(19) The Commission notes that the ESRB assesses the combined O-SII buffer and sSyRB buffer rates as being appropriate, and that the EBA considers that those combined

buffer rates should not entail disproportionate adverse effects on the financial systems of other Member States or of the Union as a whole. The Commission is not aware of any robust, strong, and detailed evidence that the notified measure, in isolation or in combination with the O-SII buffer, might have a negative impact on the internal market that outweighs the financial stability benefits due to a reduction of the systemic risk. Therefore, the Commission considers that the notified measure is not expected to lead to significant and disproportionate negative cross-border spill-over effects to other Member States or the Union as a whole forming or creating an obstacle to the proper functioning of the internal market. Moreover, the increased resilience of the domestic credit institutions should reduce the likelihood of negative spill-over effects to other Member States, should the systemic risk addressed by the notified measure materialise.

(20) The Commission notes that the sSyRB applies to exposures identified at a level more granular than the first level of economic activity as provided for in paragraph 24 of the EBA "Guidelines on the appropriate subsets of sectoral exposures in the application of a systemic risk buffer"[9]. That may, according to the EBA, lead to complexity in the implementation and monitoring of the measure. However, the Commission also takes note of the ESRB's view that a more detailed targeting of economic activity increases the effectiveness of the measure which would outweigh that complexity.

(21) The effectiveness of the notified measure could be reduced if not recognised by the Member States whose credit institutions have significant exposures in Denmark. The Commission acknowledges that the Ministry requested the ESRB to recommend recognition of the notified measure by other Member States with material exposures and considers that such recognition is important to prevent leakages and regulatory arbitrage and to ensure a level playing field in the Union.

(22) The Commission invites the Ministry and the relevant Danish authorities to assess the proportionality of the measure in the regular reviews of the sSyRB, particularly taking into account further developments regarding the evolution of systemic risks and the existing macroprudential buffers in place.

(23) The Commission, after having examined the notification by the Ministry and taking account of the assessment of the ESRB and the EBA, is satisfied that the notified sSyRB rate, and the combinations of the notified sSyRB rate and the O-SII buffers in place for the credit institutions concerned, do not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the proper functioning of the internal market,

HAS ADOPTED THIS DECISION:

Article 1

The Danish Ministry for Business, Industry and Financial Affairs is hereby authorised to implement a systemic risk buffer at 7 % for all type of exposures to non-financial companies engaged in real estate activities and in the development of building projects, as notified on 10 October 2023 in accordance with Article 133(9) of Directive 2013/36/EU, for a period of up

[9] EBA Guidelines of 30 September 2020 on the appropriate subsets of sectoral exposures to which competent or designated authorities may apply a systemic risk buffer in accordance with Article 133(5)(f) of Directive 2013/36/EU (EBA/GL/2020/13).

to 2 years starting on 30 June 2024, provided that the conditions for applying that systemic risk buffer rate remain fulfilled.

Article 2

The Danish Ministry for Business, Industry and Financial Affairs is hereby authorised to implement the following combined sSyRB and O-SII buffer rates in excess of 5 % for the following credit institutions, for a period of up to 1 year starting on 30 June 2024, provided that the conditions for applying that sSyRB rate and the O-SII buffer rates remain fulfilled:

Credit institution	**Combined O-SII buffer and sectoral systemic risk buffer rates for exposures to real estate companies**
Danske Bank	10 %
Nykredit Realkredit	9 %
Jyske Bank	8,5 %
Nordea Kredit	8,5 %
Sydbank	8%
DLR Kredit	8 %
Arbejdernes Landsbank	8 %
Saxo Bank	8 %
Spar Nord Bank	8 %

Article 3

This Decision is addressed to the Danish Ministry for Business, Industry and Financial Affairs.

Done at Brussels, 5.1.2024

For the Commission
Mairead McGUINNESS
Member of the Commission

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION