



THE NATIONAL COMMITTEE FOR MACROPRUDENTIAL OVERSIGHT

REGULATION No. 2 of 9 October 2017

on the methodology and procedures used for setting capital buffers and the scope of these instruments

Pursuant to the provisions of Art. 3 para. (2) let. b) and para. (3) of Law No. 12/2017 on the macroprudential oversight of the national financial system,

The National Committee for Macroprudential Oversight issues the following regulation:

CHAPTER I

Scope

Art. 1. – (1) This Regulation governs the methodology and procedures used by the National Committee for Macroprudential Oversight (hereinafter referred to as “Committee”) for setting capital buffers as well as the scope of these instruments, in order for recommendations to be issued in this regard, according to the provisions of Art. 4 of Law No. 12/2017 on the macroprudential oversight of the national financial system (hereinafter referred to as “Law”).

(2) The addressees of the recommendations issued by the Committee under this Regulation are the National Bank of Romania (hereinafter “NBR”), and the Financial Supervisory Authority (hereinafter “FSA”) respectively, referred to as national sectoral financial supervisory authorities.

(3) The Committee’s recommendations shall comply with the legal regime indicated in Art. 4 para. (2) of the Law.

(4) The Committee may recommend the national sectoral financial supervisory authorities to exempt, by way of derogation, those institutions recording exposures below a certain threshold recommended by the Committee from the reciprocal application of certain capital buffer requirements.

(5) Where the Committee decides to act in accordance with para. (4), it shall report to the European Systemic Risk Board (ESRB) the derogations granted by the national sectoral financial

supervisory authorities and shall recommend them to implement ongoing monitoring, in order to make the necessary adjustments.

Art. 2. – (1) The terms and expressions “Member State”, “third country”, “systemic risk”, “systemically important institution” used in this Regulation shall have the meaning set out in Art. 7 of Government Emergency Ordinance No. 99/2006 on Credit Institutions and Capital Adequacy, approved with amendments and supplements by Law No. 227/2007, as subsequently amended and supplemented (hereinafter referred to as “GEO No. 99/2006”).

(2) The terms and expressions “institution”, “credit institution”, “subsidiary”, “financial holding company”, “parent financial holding company”, “mixed financial holding company”, “parent mixed financial holding company”, “parent institution”, “competent authority”, “consolidated basis”, “sub-consolidated basis”, “own funds” shall have the meaning set out in Art. 4 para. (1) of 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 (hereinafter referred to as “Regulation (EU) No. 575/2013”).

(3) The terms and expressions “capital conservation buffer”, “credit institution-specific countercyclical capital buffer”, “investment firm-specific countercyclical capital buffer”, “global systemically important institutions buffer (G-SII buffer)”, “other systemically important institutions buffer (O-SII buffer)”, “systemic risk buffer”, “countercyclical buffer rate” shall have the meaning set out in NBR Regulation No. 5/2013 on prudential requirements for credit institutions, with amendments and supplements (NBR Regulation No. 5/2013) and Regulation No. 3/2014 of the Financial Supervisory Authority on certain matters related to the application of Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy and 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, with amendments and supplements (FSA Regulation No.3/2014).

(4) The wording “institution-specific countercyclical capital buffer” shall mean “credit institution-specific countercyclical capital buffer” and “investment firm-specific countercyclical capital buffer” respectively.

(5) The wording “buffer guide” shall mean the benchmark rate of the institution-specific countercyclical capital buffer, calculated in accordance with Art. 4 para. (1) let. a) and para. (2).

(6) The wording “investment firm” (hereinafter referred to as “IF”) shall have the meaning set out in Art. 2 para. (1) let. x) of Regulation No. 32/2006 on financial investment services, approved by the National Securities Commission Order No.121/2006, as subsequently amended and supplemented.

(7) The wording “domestically authorised institution” shall have the meaning of either the

wording “domestically authorised credit institution”, as set out in NBR Regulation No. 5/2013, as subsequently amended and supplemented, or the wording “domestically authorised investment firm”, as stipulated by Regulation No. 3/2014 of the Financial Supervisory Authority, as subsequently amended and supplemented, as applicable.

CHAPTER II

The capital conservation buffer

Art. 3. – (1) The Committee may recommend the FSA to exempt small and medium-sized investment firms from the requirement to maintain a capital conservation buffer if such an exemption does not threaten the stability of the national financial system.

(2) The recommendation of the Committee for the purpose set forth in para. (1) shall include an explanation as to why the exemption does not threaten the stability of the financial system and shall also contain the Committee’s understanding of the exact definition of the small and medium-sized investment firms which are exempt.

(3) Where the FSA decides to exempt small and medium-sized investment firms from the requirement to maintain an investment firm-specific countercyclical capital buffer, following the Committee’s recommendation, the Committee shall notify the European Commission (hereinafter referred to as “Commission”), the European Systemic Risk Board (hereinafter referred to as “ESRB”), the European Banking Authority (hereinafter referred to as “EBA”) and the competent authorities of the Member States concerned accordingly. The Committee shall publish the recommendation on its website.

(4) In order to frame a definition of small and medium-sized investment firms which are exempt, the Committee shall consider Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, transposed into domestic law via Government Ordinance No. 27/2006 amending and supplementing Law No. 346/2004 on stimulating SME creation and development.

CHAPTER III

The countercyclical capital buffer

Section 1

The countercyclical buffer rate

Art. 4. – (1) The Committee shall assess and set on a quarterly basis the countercyclical buffer rate applicable to institutions with credit exposures in Romania, taking into account:

a) the buffer guide as a reference for the countercyclical capital buffer calculated by the

Committee to guide its exercise of judgement in setting countercyclical buffer rates;

b) the ESRB guidelines issued in compliance with Art. 135 para. (1) let. a), c) and d) 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 and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (hereinafter referred to as “Directive 2013/36/EU”), as well as the ERSB recommendations on setting countercyclical buffer rates;

c) other variables considered relevant for addressing cyclical systemic risk.

(2) Within the meaning of para. (1) let. a), the buffer guide shall reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in Romania and shall take into account specificities of the national economy accordingly. The buffer guide shall be based on the deviation from long-term trend of the ratio of credit to gross domestic product (hereinafter referred to as “GDP”), taking into account, *inter alia*:

a) an indicator of growth in lending in Romania and, in particular, an indicator reflective of the changes in the credit-to-GDP ratio in Romania;

b) ESRB guidance currently in force issued in accordance with Art. 135 para. (1) let. b) of Directive 2013/36/EU.

(3) The Committee shall recommend the national sectoral financial supervisory authorities to impose the countercyclical buffer rate set in accordance with para. (1).

Art. 5. – (1) In order to set the countercyclical buffer rate, expressed as a percentage of the total risk exposure amount calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013, applicable to institutions that have credit exposures in Romania, the Committee shall consider this rate to be between 0% and 2.5%, calibrated in steps of 0.25 percentage points or multiples of 0.25 percentage points.

(2) Where justified on the basis of the considerations set out in Art. 4 para. (1), the Committee may decide to recommend a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013.

(3) Where the Committee decides to recommend a countercyclical buffer rate above zero for the first time, or where it sets a countercyclical buffer rate higher than that applicable at the time, it shall also decide the date from which the national sectoral financial supervisory authorities must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer.

(4) The Committee shall recommend that the date referred to in para. (3) be 12 months after the date when the increased buffer setting is announced in accordance with Articles 7-8.

(5) By way of exception from para. (4), the Committee may recommend that the date referred to in para. (3) be less than 12 months after the increased buffer setting is announced, which means that the shorter deadline for application shall be justified on the basis of exceptional circumstances.

Art. 6. – The Committee shall notify the national sectoral financial supervisory authorities on a quarterly basis of its recommendation on the appropriate countercyclical buffer rate.

Art. 7. – (1) The Committee shall announce quarterly the setting of the recommended countercyclical buffer rate by publication on its website.

(2) The announcement shall include at least the following information:

a) the recommended countercyclical buffer rate;

b) the credit-to-GDP ratio and its deviation from the long-term trend;

c) the buffer guide for the countercyclical capital buffer as a reference, calculated in accordance with Art. 4 para. (1) let. a) and para. (2);

d) the justification for that buffer rate;

e) where the buffer rate is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;

f) where the date referred to in let. e) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application;

g) where the buffer rate is decreased, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period. Setting the indicative period shall not bind the Committee.

(3) The Committee shall take all reasonable steps to coordinate the timing of that announcement with the national sectoral financial supervisory authorities.

(4) Within three working days following the receipt of the information referred to in Art. 40 para. (1), the Committee shall announce on its website the publication in *Monitorul Oficial al României, Part I* of the legal acts based on which the recommended measure was imposed on institutions by the national sectoral financial supervisory authorities.

Art. 8. – (1) The Committee shall quarterly notify the ESRB of setting the countercyclical buffer rate on its recommendation. The Committee shall include in the respective notification all information mentioned in Art. 7 para. (2).

(2) Where the Committee deems necessary that, for the effective application of the countercyclical capital buffer, other Member States should recognise the buffer rate set in Romania, it shall submit to the ESRB, together with the notification under para. (1), a reciprocation request.

Art. 9. – (1) The Committee may recommend the FSA to exempt small and medium-sized investment firms from the requirement to maintain an investment firm-specific countercyclical capital buffer if such an exemption does not threaten the financial stability of Romania.

(2) The recommendation shall include an explanation as to why the exemption does not threaten the stability of the financial system and the Committee's understanding of the exact definition of the small and medium-sized investment firms that are exempt.

(3) Where the FSA decides to exempt small and medium-sized investment firms from the requirement to maintain an investment firm-specific countercyclical capital buffer, on the Committee's recommendation, the Committee shall notify the Commission, the ESRB, EBA and the competent authorities of the Member States concerned accordingly. The Committee shall publish the recommendation on its website.

(4) In order to frame a definition of small and medium-sized investment firms which are exempt, the Committee shall consider Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, transposed into domestic law via Government Ordinance No. 27/2006 amending and supplementing Law No. 346/2004 on stimulating SME creation and development.

Section 2

Recognition of countercyclical buffer rates in excess of 2.5%

Art. 10. – (1) Where the designated authority in another Member State has set a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013, the Committee may recognise that buffer rate for the purposes of the calculation by domestically authorised institutions of their institution-specific countercyclical capital buffers.

(2) Where the Committee decides to recognise a countercyclical buffer rate according to para. (1), it shall issue a recommendation to the national sectoral financial supervisory authorities

to impose the recognised buffer within three months at the latest after the publication in the *Official Journal of the European Union* of the ESRB recommendation on the buffer rate recognition, where such a recommendation was published and provided that no other date is indicated therein.

(3) The Committee shall announce the recognition of the countercyclical buffer rate by publication on its website and shall notify the ESRB thereof within one month at the latest after the adoption by the national sectoral financial supervisory authorities of its recommendation on reciprocating measure.

(4) The announcement shall include at least the following information:

a) the recommended countercyclical buffer rate;

b) the Member State to which it applies;

c) where the buffer rate is increased, the date from which the domestically authorised institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;

d) where the date referred to in let. c) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

(5) Within three working days of receipt of the notification under Art. 40 para. (1), the Committee shall announce on its website the publication in *Monitorul Oficial al României*, Part I of the legal acts based on which the recommended measure was imposed on institutions by the national sectoral financial supervisory authorities.

(6) Where the Committee decides to not recognise a countercyclical buffer rate set by the designated authority in another Member State, as appropriate, it shall formulate a recommendation indicating the buffer rate deemed appropriate and/or other measures that can contribute to safeguarding financial stability.

(7) In the case specified in para. (6), the Committee shall notify within one month after the adoption of the decision:

a) the ESRB;

b) the designated authority in the Member State which set the countercyclical buffer rate;

c) the European Central Bank, where the authority that set the countercyclical buffer rate is from a Member State participating in the Single Supervisory Mechanism, in compliance with 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.

Section 3

The decision on countercyclical buffer rates for exposures in third countries

Art. 11. – (1) Where the ESRB issues a recommendation on setting countercyclical buffer rates for exposures in third countries, the Committee shall consider this recommendation in its decision to issue a recommendation on those rates.

(2) The Committee's decision to issue a recommendation on countercyclical buffer rates for exposures in third countries is not conditional on the existence of an ESRB recommendation in this respect, the provisions of this Section being applicable as such in the absence of that recommendation as well.

(3) For the purposes of applying the provisions herein, the Committee shall identify annually material third countries, based on, but not necessarily limited to, quantitative information on the exposures of domestically authorised institutions to third countries. To this end, the Committee shall use the Procedure on countercyclical buffers for third countries, which has in view the assessment indicators set out in the ESRB Decision of 11 December 2015 on the assessment of materiality of third countries for the Union's banking system in relation to the recognition and setting of countercyclical buffer rates (ESRB/2015/3).

(4) During the second quarter of each year, the Committee shall submit to the ESRB the list of third countries identified as material.

(5) The Committee shall monitor the risks stemming from the excess credit growth in material third countries at least on an annual basis.

(6) The Committee shall notify the ESRB when it considers that, for the exposures located in a material third country, it is necessary:

a) to set a countercyclical buffer rate in line with Art. 12 or Art. 13;

b) to take a decision on the recognition or, as applicable, non-recognition of a countercyclical buffer rate set by the relevant authority in that third country, according to Art. 13.

Art. 12. – (1) Where the relevant authority in a third country has not set and has not published a countercyclical buffer rate for that country and one or several domestically authorised institutions have credit exposures in that third country, the Committee may set the level of the countercyclical buffer rate to be recommended to the national sectoral financial supervisory authorities, for the purpose of calculating the institution-specific countercyclical capital buffer.

(2) When deciding to set a countercyclical buffer rate according to para. (1), the Committee shall issue a recommendation to national sectoral financial supervisory authorities.

Art. 13. – (1) Where the relevant authority in a third country sets a countercyclical buffer rate of up to or equal to 2.5% of the total risk exposure amount calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013, the Committee may recognise that rate for the purposes of calculating the institution-specific countercyclical capital buffer by domestically authorised institutions.

(2) Where the relevant authority in a third country sets a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013, the Committee may recognise that rate for the purposes of calculating the institution-specific countercyclical capital buffer by domestically authorised institutions, as follows:

a) after the Committee has informed the ESRB about that rate, for the purpose of obtaining assistance and after the ESRB has issued a recommendation or

b) after the ESRB has issued a recommendation, if the ESRB had already been informed of that rate by another designated authority.

(3) Where it decides to recognise a countercyclical buffer rate according to para. (1) and para. (2), the Committee shall issue a recommendation in this respect to the national sectoral financial supervisory authorities.

(4) By exception from para. (1), the Committee may set a countercyclical buffer rate for a third country in excess of that imposed by the relevant third-country authority, but no higher than 2.5% of the total risk exposure amount calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013 if it reasonably considers that the buffer rate set by the relevant third-country authority is not sufficient to appropriately protect the institutions in Romania with credit exposures in the third country from the risks of excessive credit growth in that country.

(5) The Committee may not set a countercyclical buffer rate applicable to institutions with credit exposures in the third country below the level set by the relevant third-country authority unless that buffer rate exceeds 2.5% of the total risk exposure amount calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013.

(6) Where the Committee decides, pursuant to para. (4) and para. (5) to set a different countercyclical buffer rate than that published by the relevant third-country authority, it shall issue a recommendation to the national sectoral financial supervisory authorities indicating the buffer rate deemed appropriate.

(7) Where the Committee decides to recommend a countercyclical buffer rate for exposures located in a third country in excess of that set by the relevant third-country authority, it shall also recommend the date from which the national sectoral financial supervisory authorities must

impose that buffer rate on domestically authorised institutions for the purposes of calculating their institution-specific countercyclical capital buffer.

(8) The Committee shall recommend that the date referred to in para. (7) be 12 months from the date when the increased buffer rate is announced in accordance with Art. 14.

(9) The Committee may recommend that the date referred to in para. (7) be less than 12 months after the increased buffer setting is announced, in which case the shorter deadline for application shall be justified on the basis of exceptional circumstances.

Art. 14. – (1) The Committee shall announce the recommendation on the countercyclical buffer rate for a third country, set pursuant to the provisions in this section, by publication on its website, within three days after its issuance.

(2) The announcement shall include the following information:

a) the recommended countercyclical buffer rate and the third country to which it applies;

b) a justification for that buffer rate;

c) where the buffer rate is set above zero for the first time or increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;

d) where the date referred to in let. c) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

(3) Within three working days after the receipt of the information referred to in Art. 40 para. (1), the Committee shall announce on its website the publication in *Monitorul Oficial al României*, Part I of the legal acts based on which the recommended measure was imposed on institutions by the national sectoral financial supervisory authorities.

(4) The Committee shall notify the ESRB in accordance with the deadline and the conditions set out in para. (3).

CHAPTER IV

Global systemically important institutions (G-SII) and other systemically important institutions (O-SII)

Section 1

Global systemically important institutions – G-SII

Art. 15. – (1) The Committee shall identify, on a consolidated basis, global systemically important institutions, hereinafter referred to as G-SIIs, Romanian legal entities.

(2) A G-SII shall be an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution. G-SIIs shall not be an institution that is a subsidiary of an EU parent institution, of an EU parent financial holding company or of an EU parent mixed financial holding company.

(3) An institution shall be subject to the identification process for G-SIIs if the leverage ratio exposure measure exceeds the threshold specified in point 2 of EBA Guidelines GL/2016/01 on the specification of the indicators of global systemic importance and their disclosure.

Art. 16. – (1) During the identification process for G-SIIs, the Committee shall use the methodology specified in Commission Delegated Regulation (EU) No. 1222/2014 of 8 October 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for the specification of the methodology for the identification of global systemically important institutions and for the definition of sub-categories of global systemically important institutions and EBA Guidelines GL/2016/01 on the specification of the indicators of global systemic importance and their disclosure. The methodology shall be based on the following categories of indicators:

- a) size of the group;
- b) interconnectedness of the group with the financial system;
- c) substitutability of the services or of the financial infrastructure provided by the group;
- d) significance of the group;
- e) cross-border activity of the group, including cross-border activity between Member States and between a Member State and a third country.

(2) Each category shall consist of quantifiable indicators with equal weighting. By applying the methodology under para. (1) an overall score for each entity assessed shall be produced, which allows G-SIIs to be identified and allocated into a sub-category as described in Articles 17-18.

(3) With a view to fulfilling its tasks under Art. 15 para. (1), the Committee may require the national sectoral financial supervisory authorities to report data (indicators and ancillary data) and to annually collect data and the values of indicators of G-SIIs, complying with the identification methodology set out in para. (1) and using the template published on EBA website.

(4) The Committee may require that the data reported by the national sectoral financial supervisory authorities should be identical to those presented to the Basel Committee on banking supervision, where applicable.

(5) The Committee shall submit to EBA the values reported by the national sectoral financial supervisory authorities in regard to the indicators for G-SIIs used to set their score according to the identification methodology set out in para. (1) for centralisation purposes on EBA website.

Art. 17. – During the identification process for G-SIIs, the Committee shall allocate the G-SIIs into one of the five sub-categories set by Commission Delegated Regulation (EU) No. 1222/2014 of 8 October 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for the specification of the methodology for the identification of global systemically important institutions and for the definition of sub-categories of global systemically important institutions.

Art. 18. – (1) The lowest sub-category shall be assigned a G-SII buffer of 1% of the total risk exposure amount calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013 and the buffer assigned to each sub-category shall increase in gradients of 0.5% of the total risk exposure amount calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013 up to and including the fourth sub-category.

(2) The highest sub-category shall be assigned a G-SII buffer of 3.5% of the total risk exposure amount calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013.

(3) The Committee shall recommend the national sectoral financial supervisory authorities to require G-SIIs to maintain a G-SII buffer set in accordance with this section.

Art. 19. – (1) In the discharge of its duties specified under Art. 3 para. (1) let. c) of the Law and without prejudice to Articles 15, 17 and 18 in this Regulation, the Committee may:

a) re-allocate a G-SII from a lower sub-category to a higher sub-category;

b) allocate an entity as referred to in Art. 15 that has an overall score that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, thereby designating it as a G-SII.

(2) Where the Committee takes a decision in accordance with para. 1 let. b), it shall notify EBA accordingly, providing reasons underlying the decision.

Art. 20. – (1) The Committee shall notify the names of the G-SIIs and the respective sub-category to which each G-SII is allocated to the Commission, the ESRB and EBA, and shall publish their names on its website.

(2) The Committee shall review annually the G-SIIs identified and their allocation into the respective sub-categories and report the result to the institutions concerned, to the Commission, the ESRB and EBA.

(3) The Committee shall notify by publication on its website of the updated list of identified G-SIIs and the respective sub-category to which each G-SII is allocated.

Section 2

Other systemically important institutions – O-SII

Art. 21. – (1) The Committee shall identify on an individual, sub-consolidated or consolidated basis, as applicable, other systemically important institutions, hereinafter referred to as O-SIIs, Romanian legal entities.

(2) O-SIIs can either be an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution.

Art. 22. – (1) With a view to identifying the O-SIIs, the Committee shall use a methodology in accordance with EBA Guidelines GL/2014/10 on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU in relation to the assessment of other systemically important institutions (O-SIIs) and is based on at least one of the following criteria:

a) size;

b) importance for the economy of the Union or of the relevant Member State;

c) significance of cross-border activities;

d) interconnectedness of the institution or group with the financial system.

(2) The Committee shall publish a summary of the methodology specified in para. (1), including a summary of the optional indicators, as applicable, used in the process of identification of O-SIIs, as well as to set the requirement for the O-SII buffer.

(3) As a rule, by 1 December of every year, the Committee shall publish the scores of the institutions identified as O-SIIs. This shows the institutions having a score higher than the threshold set in accordance with the methodology set out in para. (1) and which, hence, are automatically designed as O-SIIs. Where applicable, the Committee shall also publish the buffer rate applicable to various O-SIIs.

(4) When an institution with a score of less than the threshold chosen pursuant to the methodology set out in para. (1) is designated as an O-SII, the Committee shall publish a brief statement with the following motivation:

a) which optional indicator(s) are used to inform the designation as an O-SII;

b) why this indicator is relevant to the financial system in Romania;

c) why the institution is systemically important in terms of the particular indicator(s).

Art. 23. – (1) Based on the criteria for the identification of O-SIIs, the Committee may recommend the national sectoral financial supervisory authorities to require O-SIIs to maintain an O-SII buffer of up to 2% of the total risk exposure amount calculated in accordance with

Art. 92 para. (3) of Regulation (EU) No. 575/2013. The Committee's recommendation shall also contain the level of applicability of each buffer, on a consolidated, sub-consolidated or individual basis, as applicable.

(2) When requiring an O-SII buffer to be maintained, the Committee shall envisage the following:

a) the O-SII buffer must 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 functioning of the internal market;

b) the O-SII buffer must be reviewed by the Committee at least annually.

(3) In the process of setting the O-SII buffer rate that the Committee recommends, it shall take account that where an O-SII is a subsidiary of either a G-SII or an OSII which is an EU parent institution and subject to an O-SII buffer on a consolidated basis, the O-SII buffer rate recommended that applies at individual or sub-consolidated level shall not exceed the higher of:

a) 1% of the total risk exposure amount calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013; and

b) the G-SII or O-SII buffer rate applicable to the group at consolidated level.

(4) After issuing a recommendation for an O-SII buffer, the Committee shall notify the Commission, the ESRB, EBA and the competent authority or, as applicable, the designated authority in the respective Member States one month before publishing the recommendation on its own website.

(5) Until the expiry of the one-month response period, the recommendation shall not take effect.

(6) Insofar as the opinions of the Commission, the ESRB, EBA and the competent authorities or, as applicable, the designated authorities in the respective Member States make no change of substance to the recommendation by the Committee, the recommendation shall be deemed as issued and shall take effect as of the date of expiry of the response period. The Committee shall notify the national sectoral financial supervisory authorities of the expiry of the period to provide an opinion and shall submit to the latter the final version of the recommendation.

(7) Where the responses from the Commission, the ESRB, EBA and the competent authorities or, as applicable, the designated authorities in the respective Member States shall make changes of substance to the recommendation by the Committee, the recommendation shall be deemed as not issued.

(8) The notification under para. (4) shall describe in detail:

a) the justification for why the O-SII buffer is considered likely to be effective and proportionate to mitigate the risk;

b) an assessment of the likely positive or negative impact of the O-SII buffer on the internal

market, based on information which is available to the Committee;

c) the O-SII buffer rate that the Committee decided to recommend.

(9) The press release concerning the recommendation issued by the Committee and the recommendation shall be published in accordance with Art. 10 para. (3) of the Law, namely within three days of the date when the recommendation takes effect.

(10) Within three working days of receipt of the information specified in Art. 40 para. (1), the Committee shall announce on its website the publication in *Monitorul Oficial al României* of the legal acts imposing the recommended measure on the institutions by the national sectoral financial supervisory authorities.

Art. 24. – (1) The Committee shall submit to the Commission, the ESRB and EBA the names of the institutions identified as O-SIIs.

(2) The Committee shall revise annually the identified O-SIIs and shall report the result to the institutions concerned, to the Commission, the ESRB and EBA. Moreover, the Committee shall notify EBA of the scores of all identified O-SIIs and of the values of indicators for the respective institutions.

(3) The Committee shall notify by publication on its website the updated list of identified O-SIIs.

CHAPTER V

Systemic risk buffer

Section 1

Setting the systemic risk buffer

Art. 25. – With a view to preventing and mitigating long-term non-cyclical systemic or macroprudential risks not covered by Regulation (EU) No. 575/2013, where there is a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy, the Committee may recommend that the systemic risk buffer should apply to all the financial institutions, or to one or more subsets of those institutions.

Art. 26. – (1) The systemic risk buffer may apply to exposures located in Romania, exposures located in third countries, as well as to exposures located in other Member States, in the last case in accordance with Articles 28 and 31.

(2) The Committee may recommend that a systemic risk buffer rate of at least 1% of the exposures to which it applies should be applied in accordance with para. (1).

(3) The Committee may recommend that the systemic risk buffer should be maintained on an individual basis, on a sub-consolidated basis and on a consolidated basis, as appropriate.

(4) The Committee may recommend that the national sectoral financial supervisory authorities should impose the systemic risk buffer to all financial institutions or to one or more subsets of those institutions. Moreover, the Committee may recommend that different systemic risk buffer rates should apply to different subsets of financial institutions.

(5) The Committee may recommend that the systemic risk buffer should be applied in gradual or accelerated steps of adjustment of 0.5 percentage points.

(6) When deciding to recommend the national sectoral financial supervisory authorities to impose the systemic risk buffer, the Committee shall consider:

a) the systemic risk buffer must 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 functioning of the internal market;

b) the systemic risk buffer must be reviewed by the Committee at least every second year.

Art. 27. – (1) After issuing a recommendation on imposing a systemic risk buffer rate of up to or equal to 3%, for exposures located in Romania, as well as for exposures located in other Member States, the Committee shall notify thereof the Commission, the ESRB, EBA and the competent authorities of the Member States concerned one month before the publication of the announcement under Art. 34.

(2) Where a systemic risk buffer rate of up to or equal to 3% applies to exposures located in third countries, the Committee shall notify thereof both the addressees under para. (1) and the supervisory authorities of the third countries concerned.

(3) Until the expiry of the one-month period under para. (1), the recommendation shall not take effect.

(4) Insofar as the responses from the Commission, the ESRB, EBA, the competent authorities of the Member States concerned and of the third countries, as the case may be, make no change of substance to the recommendation by the Committee, the recommendation shall be deemed as issued and shall take effect as of the expiry date of the period under para. (1). The Committee shall notify the national sectoral financial supervisory authorities of the expiry date of the period under para. (1) and shall submit to the latter the final version of the recommendation.

(5) Where the responses from the Commission, the ESRB, EBA, the competent authorities of the Member States concerned and of the third countries, as the case may be, make changes of substance to the recommendation by the Committee, the recommendation shall be deemed as not issued.

(6) The notifications under para. (1) and para. (2) shall describe in detail:

- a)** the systemic or macroprudential risk at national level;
- b)** the reasons why the dimension of the systemic and macroprudential risks threatens financial stability at national level;
- c)** the justification for why the systemic risk buffer is considered to be effective and proportionate to mitigate the risk;
- d)** an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on the available information;
- e)** the justification for why none of the existing measures in Regulation (EU) No. 575/2013, excluding Articles 458 and 459 of that Regulation or in Directive 2013/36/EU, transposed via GEO No. 99/2006, NBR Regulation No. 5/2013, FSA Regulation No. 3/2014, as well as the present Regulation, alone or in combination, will be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures;
- f)** the systemic risk buffer rate set by the Committee, that it decided to recommend.

Art. 28. – After the expiry date of the one-month period under Art. 27 para. (1), the Committee may recommend that the national sectoral financial supervisory authorities should apply the systemic risk buffer rate to all the exposures. Where the Committee recommends a systemic risk buffer rate of up to or equal to 3% for exposures located in other Member States, then it shall recommend the same rate for all exposures located in all EU Member States to which the respective buffer applies.

Art. 29. – **(1)** After issuing a recommendation for the first time or after revising a recommendation on imposing a systemic risk buffer rate above 3% for exposures located in other Member States, the Committee shall notify thereof the Commission, the ESRB, EBA and the designated authorities or competent authorities of the Member States concerned.

(2) If the systemic risk buffer rate above 3% applies to exposures located in third countries, the Committee shall notify thereof both the addressees under para. (1) and the supervisory authorities of the third countries concerned.

Art. 30. – The notification under Art. 29 shall describe in detail the following:

- a)** the systemic or macroprudential risk at national level;
- b)** the reasons why the dimension of the systemic or macroprudential risks threatens financial stability at national level justifying the systemic risk buffer rate;
- c)** the justification for why the recommended systemic risk buffer is considered to be effective

and proportionate to mitigate the risk;

d) an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on the available information;

e) the justification for why none of the existing measures in Regulation (EU) No. 575/2013, excluding Articles 458 and 459 of that Regulation or in Directive 2013/36/EU, transposed via GEO No. 99/2006, NBR Regulation No. 5/2013, FSA Regulation No. 3/2014, as well as the present Regulation, alone or in combination, will be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures;

f) the systemic risk buffer rate set by the Committee that it decided to recommend.

Art. 31. – (1) The Recommendation issued for the first time by the Committee or the revision of a recommendation issued with regard to imposing a systemic risk buffer rate above 3%, in accordance with the provisions of Art. 29, shall not take effect until the Commission provides an opinion.

(2) The recommendation under para. (1) shall be deemed as issued and shall take effect after the adoption by the Commission of a legal act for its enforcement.

Art. 32. – (1) Without prejudice to para. (2), where the Committee issues for the first time a recommendation or revises a recommendation on a buffer rate between 3% and 5% for exposures located in Romania, as well as for exposures located in third countries, it shall notify the Commission thereof in accordance with the provisions in Art. 29.

(2) Until an opinion is provided by the Commission, the recommendation shall not take effect.

(3) The recommendation shall be deemed as issued and shall take effect after an opinion is provided by the Commission.

(4) Where the opinion of the Commission is negative, the Committee shall comply with that opinion, in which case the recommendation by the Committee is deemed as not issued, or shall give the Commission the reasons for not so doing. The Committee shall notify the national sectoral financial supervisory authorities of the decision on the Commission's opinion and shall submit the final version of the recommendation to them.

(5) Where the Committee recommends the setting for the first time or resets the systemic risk buffer rate between 3% and 5% for exposures located in Romania, and the subset of financial sector in Romania, to which the respective rate applies, is a subsidiary of a parent undertaking headquartered in another Member State, the Committee shall submit a notification as provided for in Art. 29 to the competent authority or, as appropriate, to the the designated authority of the Member State concerned, as well as to the Commission and the ESRB.

(6) Until the Commission and the ESRB provide an opinion, the recommendation under para. (5) shall not take effect.

(7) Except for the situation referred to in para. (9), the recommendation under para. (5) shall be deemed as issued and shall take effect only after an opinion is provided by the Commission and the ESRB respectively.

(8) Where the Committee and the competent authority or, as the case may be, the designated authority in the respective Member State disagree and a negative opinion is issued by both the Commission and the ESRB, the Committee may refer the matter to EBA for binding mediation in accordance with Art. 19 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Banking Authority) amending Decision No. 716/2009/EC and repealing Decision 2009/78/EC of the Commission.

(9) In the case referred to in para. (8), the recommendation for the national sectoral financial supervisory authorities on imposing a systemic risk buffer to the respective exposures shall not take effect until EBA takes a decision.

Art. 33. – (1) After issuing a recommendation for the first time or after revising a recommendation issued with regard to maintaining a systemic risk buffer above 5% for exposures located in Romania, the Committee shall comply with the notification procedures under Articles 29-31 and, as appropriate, with the procedure under Art. 32 para. (5).

(2) Where the systemic risk buffer above 5% applies to exposures located in third countries, the Committee shall notify thereof both the addressees under Art. 29, and the supervisory authorities of the third countries concerned.

Art. 34. – (1) The Committee shall announce by publication on its website the systemic risk buffer rate recommended based on the provisions of this chapter.

(2) The announcement shall include at least the following information:

a) the recommended systemic risk buffer rate;

b) the institutions to which the systemic risk buffer applies;

c) a justification for the systemic risk buffer rate;

d) the date from which the institutions are recommended to apply the systemic risk buffer that was set or reset; and

e) the names of the countries where exposures located in those countries are recognised in the systemic risk buffer.

(3) Without prejudice to para. (1) and (2), the Committee shall not include in the announcement the information under para. (2) let. c) as the respective justification could jeopardise financial

stability.

(4) Within three working days of receipt of the information under Art. 40 para. (1), the Committee shall announce on its website the publication in *Monitorul Oficial al României*, Part I of the legal acts imposing the recommendation on institutions by national sectoral financial supervisory authorities.

Section 2

Recognition of the systemic risk buffer rate

Art. 35. – (1) The Committee may recognise a systemic risk buffer rate set in accordance with Section 1 of this Chapter by the designated authorities or, as applicable, the competent authorities of other Member States and may recommend that national sectoral financial supervisory authorities impose that buffer rate onto the institutions, Romanian legal entities, for the exposures located in the Member State that sets that buffer rate.

(2) When deciding to recognise the systemic risk buffer rate set in another Member State, the Committee shall issue a recommendation to the national sectoral financial supervisory authorities to impose the recognised buffer within three months from the publication date in the *Official Journal of the European Union* of the ESRB recommendation to Member States on the recognition of the said rate or within the deadline stipulated in the ESRB recommendation.

(3) The decision to recognise a systemic risk buffer shall take into consideration the information on the requirement to maintain the systemic risk capital buffer presented by the competent authorities or the designated authorities of other Member States.

(4) Within one month at the latest from the date of imposing the systemic risk buffer rate by the national sectoral financial supervisory authorities, the Committee shall notify the Commission, the ESRB, EBA and the competent authority or the designated authority of the Member State that set the systemic risk buffer rate. The date of imposing the systemic risk buffer rate shall be the date of the publication in *Monitorul Oficial al României*, Part I of the legal act imposing the buffer.

(5) Within 3 working days after receipt of the notification under Art. 40 para. (1), the Committee shall inform on its website of the publication in *Monitorul Oficial al României*, Part I of the legal acts imposing the recommendation on the institutions by the national sectoral financial supervisory authorities.

(6) The Committee may ask the ESRB to issue a recommendation as referred to in Art. 16 of Regulation (EU) No. 1092/2010 to one or more Member States which may recognise the systemic risk buffer set in accordance with Section 1 of this Chapter, so that it may be applied by the authorised institutions in those Member States for the exposures located in Romania.

CHAPTER VI

The setting and scope of macroprudential tools during the transitional period

Art. 36. – The Committee shall recommend the national sectoral financial supervisory authorities to require institutions to maintain a capital conservation buffer as follows:

a) equal to 1.25% of the total of the risk-weighted exposure amounts of the institution, calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013, for the period from 1 January 2017 until 31 December 2017;

b) equal to 1.875% of the total of the risk-weighted exposure amounts of the institution, calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013, for the period from 1 January 2018 until 31 December 2018.

Art. 37 – The Committee shall recommend the national sectoral financial supervisory authorities to require institutions to maintain a countercyclical capital buffer as follows:

a) no more than 1.25% of the total of the risk-weighted exposure amounts of the institution, calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013, for the period from 1 January 2017 until 31 December 2017;

b) no more than 1.875% of the total of the risk-weighted exposure amounts of the institution, calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013, for the period from 1 January 2018 until 31 December 2018.

Art. 38. – **(1)** The Committee may recognise a decision taken by a competent authority or designated authority of another Member State on imposing a shorter transitional period for implementing the capital conservation buffer and the countercyclical capital buffer and shall issue a recommendation in this respect to the national sectoral financial supervisory authorities.

(2) The Committee shall notify the Commission, the ESRB, EBA and the relevant supervisory college accordingly of the recognition decision taken in line with para. (1).

Art. 39. – Where, during the transitional period, the designated authority in another Member State sets a countercyclical capital buffer rate below 2.5%, yet in excess of the rate specified under Art. 37 for the considered year in the transitional period, the Committee:

a) may recognise that countercyclical capital buffer rate set by the designated authority in another Member State, in which case the Committee shall recommend the national sectoral

financial supervisory authorities to require domestically authorised institutions to use the recognised rate, for the purposes of calculating their institution-specific countercyclical capital buffer, following the procedure under Art. 10 para. (3) and para. (4);

b) may decide not to recognise that countercyclical capital buffer rate set by the designated authority in another Member State, in which case the Committee shall recommend the national sectoral financial supervisory authorities to require domestically authorised institutions, for the purposes of calculating their institution-specific countercyclical capital buffer to use the maximal rates specified under Art. 37 for the considered year in the transitional period, following the procedure under Art. 10 para. (6).

CHAPTER VII

Final provisions. Entry into force

Art. 40. – (1) The Committee shall require the national sectoral financial supervisory authorities, where they decide to adopt the recommendations issued by the former in accordance with this Regulation, to inform the Committee within 10 working days of the adoption of the decision.

(2) Where the national sectoral financial supervisory authorities decide to adopt the recommendations issued by the Committee, the latter shall require a notification of the publication in *Monitorul Oficial al României*, Part I of the legal act imposing the recommended measures on the institutions by the national sectoral financial supervisory authorities.

(3) The Committee shall require the national sectoral financial supervisory authorities, where they decide not to adopt the recommendations issued by the former in accordance with this Regulation, to inform the Committee within 10 working days of the adoption of the respective decision and substantiate it.

(4) Where the Committee issues a recommendation in accordance with the provisions of Articles 23, 27, 31 and 32 and notifies thereof the Commission, the ESRB, EBA, the authorities in other Member States, the 10-working day period for the national sectoral financial supervisory authorities to submit to the Committee the decision mentioned in para. (1) or para. (3) shall run from the expiry date of the response period.

Art. 41 – The recommendations issued by the interinstitutional cooperation structure for macroprudential oversight (National Committee for Financial Stability) pursuant to the provisions of Art. 126¹ of GEO No. 99/2006 shall be recognised by the Committee and shall remain valid.

Art. 42. – The provisions of this Regulation shall enter into force at the date of its publication in *Monitorul Oficial al României*, Part I.

MUGUR ISĂRESCU

Chairman