

Legal aspects of macroprudential regulation in the EU

Abstract

Even though the term macroprudential regulation is regularly used in scientific literature, attempts to define this term are scarce. Clear delineation of macroprudential regulation enables the distinction of macroprudential tools from other policy tools, such as microprudential supervision tools or capital controls. Moreover, it allows the determination of essential macroprudential tools and their current application in light of the crisis related to the COVID-19 pandemic and the transition towards the CRR2/CRD5 framework.

As part of the EU legal order, macroprudential regulation interacts with the principles of internal market functioning. As a matter of principle, macroprudential measures should not contradict rules governing the internal market, even though some tensions with the free movement of capital may emerge.

Uncertainties about the judicial review of macroprudential regulation may also exist. Macroprudential measures should be subject to a less rigorous judicial review inspired by CJEU monetary policy case law. The rationale behind this lies in the highly complex economic decision-making process accompanying the adoption of macroprudential regulation.

There is vast heterogeneity amongst EU member states concerning the application of macroprudential tools. There may be many objective factors such as diversity in financial cycles, distinct structural characteristics of the national financial systems and unequal distribution of systemic risk among the EU member states that contribute to this phenomenon, it is necessary, however, to take a similar approach when dealing with systemic risk in comparable situations. That may, however, improve with further experience in macroprudential policymaking, which may give rise to the best practice and consequently lead to more consistent macroprudential regulation.

Keywords: macroprudential regulation, judicial review, CRR2/CRD5