Set up in 1990, the Czech Banking Association (CBA) is the voice of the Czech banking sector. The CBA represents the interests of 40 banks and foreign branches operating in the Czech Republic: large and small, wholesale and retail institutions. The CBA is committed to supporting quality regulation and supervision and consequently the stability of the banking sector. It advocates free and fair competition and supports the banks' efforts to increase their efficiency and competitiveness.

We appreciate the opportunity to comment on **REPORT ON THE IMPLEMENTATION AND DESIGN OF THE MREL FRAMEWORK** (EBA-Op-2016-12).

We provide answers to EBA specific questions and also bring further comments to other topics mentioned in the EBA Interim report on MREL.

1. Answers to EBA specific questions (p.7 of the EBA interim report)

1.1. Reference base for MREL requirement (denominator)

We agree with the proposed change of the reference base of MREL to RWA as there would be a clear link between capital and MREL requirement. Further, the change would align the MREL requirement with TLAC.

We are not in favour of the alternative solution – i.e. changing the reference base of MREL from total liabilities and own funds to the leverage ratio exposure. Leverage ratio is a relatively new ratio (i.e. short history and low experience) which would increase the overall complexity. Full harmonisation of leverage ratio is required in 2018 (based on EU Regulation 575/2013). Thus, comparative studies might not show comparable results. Furthermore, there might be differences in including/excluding intra-group exposures which would again lead to incomparable results.

1.2. Relationship with regulatory requirements

We support stacking capital buffers on top of MREL requirement (Loss Absorption Amount and Recapitalisation Amount) as it should be possible to use capital buffers on a going concern basis (without a breach of MREL). This should apply to both G-SIB and other institutions.

Further, we would like to propose to:

a) Improve the clarity of the link between MREL requirement and capital requirement

The clarity should be improved in the area of setting targets and decision making (e.g. annual decisions of SREP and Resolution colleges should be aligned).

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b) Clarify usage of instruments for MREL and capital requirements

MREL requirement ´takes priority´ as a minimum requirement. However, this should not mean that CET1 would be automatically used for MREL requirements. The decision what instruments would be used for MREL requirement and whether to use CET1 should depend on the decision of each bank.

In case CET1 is (partially) used for fulfilment of MREL requirement, only the excess of CET1 can be used for capital buffers. However, capital buffers must be covered solely by CET1 instruments. Thus, if the excess of CET1 is not sufficient it should be made clear what the consequences are. The consequences should be harmonized in all relevant regulation (BRRD, RTS on MREL and CRD).

We would recommend using examples of (in)correct fulfilment of capital and MREL requirements in EBA guidelines.

1.3. Breach of MREL

Generally, a breach of MREL might have different consequences than a breach of capital requirements. Thus, we agree that in case of a MREL breach Resolution authority is the responsible/relevant authority to address the issue.

A breach of MREL requirement should **not** be an indication of failing or likely to fail as it does not necessarily indicate that the bank is not sound - the bank can still be well capitalised, profitable and very liquid. It only shows that the bank is not prepared for an eventual resolution.

In the case of a breach of MREL trigger (requirement) the bank should prepare a strategy to restore the MREL requirement and should inform the Resolution authority about the strategy and its fulfilment. We agree that measures and solutions should reflect the situation. Automatic consequences might limit the potential tools and potentially worsen the situation.

We believe that the competences of Resolution authority set in BRRD are adequate to address the issue (monitor development of MREL, require solution if MREL is not sufficient and escalate the problem) as Resolution authorities are obliged to require and verify that institutions meet the MREL requirement and shall take any decision in parallel with the development and the maintenance of resolution plans (BRRD, Art 45 (15)).

1.4. Adequacy and calibration

The EBA provisionally recommends that calibration of MREL should in all cases be closely linked to and justified by the institution's resolution strategy. Business models may be worth considering when calibrating MREL to the extent they translate into/lead to differences in resolution strategies.

We agree that business models should translate to resolution strategy. Besides, the resolution strategy should respect the business model, e.g. deposit-based banks should not be forced to change their strategy and significantly change their funding profile.

Concerning Pillar 1 MREL requirement, further clarification is necessary. The concept is suitable mostly for G-SIB as it might smooth the harmonization with TLAC requirements. In case there is a Pillar 1 requirement the EBA recommends to set MREL as max(Pillar1 MREL, Pillar2 MREL). However, this recommendation would mean that the assessment of Resolution authorities can only increase the MREL requirement.

We propose that in case the concept of Pillar1/Pillar2 MREL is generally introduced (i.e. not only to G-SIBs) Pillar 1 MREL should serve as the target requirement for relevant banks while Pillar 2 MREL requirement should serve as a warning level for MREL and not cause a breach of MREL requirement.

1.5. Eligibility

CBA fully supports the EBA's view that relevant information should be available to bank creditors and that banks' creditor hierarchies should be clear and in line with national insolvency law.

The clarity of the creditor hierarchy would help not only in resolution or going concern but also in standard market operations as it is a part of pricing features (for both issuers and investors).

Generally, MREL eligible liabilities may not be subordinated to other senior liabilities but it must be clearly stated whether the relevant liabilities are considered as MREL eligible.

Even though further harmonization would be welcomed member states should be allowed to have their discretions till the impact of MREL fulfilment and different forms of subordination on banking sectors and financial markets (especially in small and less developed economies) is clearer.

The impact of different subordination on pricing and also market/investor understanding should be further monitored and analysed.

We agree that all potential investors should have relevant information with regards to creditor hierarchy. The information should be available mainly at issue and purchase of MREL eligible instruments. Some of the proposed disclosures might thus not necessarily improve the situation.

Disclosure of information

a) Bank´s balance-sheet structure
   - We do not think that the disclosure of bank balance-sheet structure would help to increase the clarity of insolvency ranking. On the other hand, it may increase the complexity for potential investors/debtors as the disclosure itself does not lead to harmonized and comparable information.

b) Bank´s MREL requirement
   - Even though MREL requirement disclosure would enable to understand the bank´s MREL needs it still keeps the analysis rather complex for less-qualified investors. The information about the hierarchy should be available directly when buying the product (e.g. in term&conditions, bilateral agreement, law, etc.).
   - There might a difference between internal and external MREL. In case the disclosures are obligatory it should be clear for which MREL requirement (internal/external).

c) Availability of standardised information on statutory creditor hierarchies
   - As mentioned above - there should be a clear understanding of the product. The requirement of statutory credit hierarchies is not the optimal solution in case the information is published without the knowledge of MREL requirement. Similarly to the point above, requirements for further disclosures would help mostly well-qualified investors and might not increase the understanding among all potential investors/creditors.

1.6. Third country recognition

The problem with third party recognition is not considered as significant in the Czech Republic. However, it should be made clear what would happen in case some country leaves the EU.

2. Other comments to the EBA interim report

2.1. EBA interim report includes several proposals with regards to approval for redemption of MREL eligible liabilities

- Extending approval for redemption to all external MREL-eligible instruments
  - This might be too strict - especially for banks with a very high amount of MREL eligible liabilities (especially corporate term deposits). In case banks would have to ask for an approval of redemption of any MREL liability it may significantly

worsen the flexibility towards clients and limit interest rate and liquidity (IR and LQ) management.

- Further extending approval for redemption to internal TLAC / MREL
  - We recommend not including an obligatory approval of the redemption for internal MREL targets by the competent authority. Internal targets may often be fulfilled by internal deals which may flexible react to situation. Obligatory approvals decrease the flexibility and independence of institutions and significantly limit IR and LQ management.

- Powers for resolution authorities to monitor, and potentially enforce, the MREL maturity structure
  - In general, resolution authorities should monitor the maturity structure and comment it if necessary. However, the proposal that the resolution authority might enforce the maturity structure is far too strict. MREL eligible liabilities are an important part of the funding structure of the bank and help to manage interest rate and liquidity position. Decision of the resolution authority might not be fully complex and might potentially harm the bank.

- Requiring approval from competent authority only if a breach of the MREL requirement would occur as a result of the redemption of the instruments (as in TLAC term sheet)
  - **We recommend that banks will have to inform resolution authorities in case any redemption would cause a breach of the MREL requirement**. In such case the bank would have to include also solution of this situation (e.g. a prepared issue of new MREL eligible instruments).

2.2. Transitional period

The EBA interim report brings out the problem of obtaining required MREL for deposit-funded banks if there are difficulties in accessing debt markets and proposed e.g. a longer transitional period. We agree that the resolution authority should have the possibility to increase the transitional period in case there are obvious reasons for it (such as the market access).

It should be clear when the transitional period starts (after the resolution authority announces the targeted MREL).

2.3. Analysis

The EBA interim report includes an analysis that assesses the impact on EU banks.

In 2015, CBA analysed the impact of MREL on Czech banking sector and the result indicated worse results than indicated in the EBA study.

Even though the EBA analysis included the impact on deposit-funded banks the definition of deposit-funded banks may significantly change the results (some banks have more than 50% of its funding from retail deposits and almost completely missing non-capital MREL eligible liabilities).

Further, the analysis does not show the worst case of potential scenarios and does not include an assessment of readiness of financial markets for new MREL eligible instruments. We would recommend including the analysis of the above mentioned issues to the quantitative impact study before the regulation takes effect.

We hope that our response is sufficiently clear and our views are helpful.