MREL: Gone Concern Loss Absorbing Capacity

Martina Mišková, Lucia Országhová[1]
Národná banka Slovenska

A number of regulatory reforms have been initiated to address misjudgements revealed by the recent financial crisis. This article reviews the recently adopted European framework for resolution regimes, addressing the lack of a coherent approach in dealing with the insolvency of complex cross-border financial institutions. A particular attention is given to the resolvability of a financial institution together with the on-going discussion regarding the calibration of the MREL ratio, raising the questions from the perspective of Central and Eastern European region. The underlying reform objective is to create a safer, more transparent and more responsible financial system, which is working for the economy and society as a whole and which is able to finance the real economy, as an indispensable precondition for sustainable growth.

A LONG PATH TO MREL

During the last decades, as a result of the liberalisation processes of financial services worldwide, the banking sector has significantly grown in its size and complexity. The banks´ business models have evolved beyond traditional retail domain and the credit institutions became increasingly engaged in trading and capital market activities. Moreover, the financial sector became more integrated across the borders than in the past. The institutions became systematically important for the sovereigns, resulting in their increased risk-taking and moral hazard. The notion of a "Too Big to Fail" (TBTF) emerged. The TBTF implies that systematically important financial institutions cannot be allowed to fail by state because of the potential adverse impact of their failure on the financial system and the economy at large. As a result, when the crisis hit the financial market in Europe, during the period 2008-11 the Member States committed in total to **€4.5 trillion (36.7% of EU GDP)** of state aid measures to stabilize financial institutions.[2] The magnitude of actions taken to support the banking system has been unprecentented. Taxpayer´s money was put at risk in order to avoid widespread bankruptcies of financial institutions and to restore a normal functioning of financial intermediation. In response to the crises, a vast number of reforms have been adopted to strengthen global financial markets. However, neither stronger prudential rules nor closer supervision introduced by these reforms can exclude any future bank failures. Therefore, the authorities introduced a set of new rules in order to ensure that such failures can be managed without any systemic disruptions to the stability of other financial institutions or financial markets, and without any recourse to public sources. One of the intentions behind those initiatives was to terminate the TBTF doctrine.

At the global level, the Key Attributes for effective resolutions regimes of financial institutions were initiated by the G20 and prepared by FSB in 2011, closely followed by the Bank Recovery and Resolution Directive (BRRD) proposed by the European Commission in 2013. This Directive is designed to provide adequate tools at EU level to effectively deal with unsound or failing credit institutions and investment firms. It aims to make sure that an institution can be resolved speedily and with minimal risk to financial stability. It focuses on preserving critical functions of a failing bank. Moreover, on failure, shareholders and creditors, rather than taxpayers, bear the losses.

The new legislation includes a requirement for all institution[3] (at entity and group level) to draw up and maintain a credible recovery plans, providing the resolution authorities with essential information on how to assess the resolvability of an institution. In a nutshell, the assessment of the resolvability of an institution aims at isolating critical functions, which needs to be continued, and liquidation of the remainder. If not deemed necessary in the public interest, the institution should be considered resolvable through liquidation in accordance with normal insolvency procedures. So through the recovery plans, critical functions of institutions will be specified but the decision, whether and how the institutions would be resolved, remains with the resolution authority.

Therefore, resolution authorities' possess all necessary legal powers and tools including a power of sale, powers to write off or cancel shares and/or debt, the power to replace senior management and impose a temporary moratorium on the payment of claims. A harmonised minimum set of resolution tools available includes a sale of business tool, bridge institution tool (transfer of the business to an entity owed by the authorities), an asset separation tool (transfer of 'bad' assets to a 'bad bank') and a bail-in tool (unsecured creditors of an institution bear appropriate losses). In order to avoid institutions structuring their liabilities in a way that impedes the effective usage of the resolution powers and tools, and to avoid the risk of contagion or a bank run, the institutions are

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2 The majority of those were attributable to guarantees (€ 3290 billion) and further to liquidity measures (€198 billion), recapitalisation (€598 billion) and impaired assets (€4506 billion) (Source: High-level Expert Group report, 2 October 2012)

3 The rules apply to both credit institutions (i.e. banks) and larger investment firms with initial shared capital of at least 730 000 EUR. The regime will also apply to EU-based parent and intermediate financial holding companies and mixed financial holding companies (within remit of the Financial Conglomerates Directive); and to subsidiary financial institutions of an EU credit institution or an investment firm.

required to meet at all times a newly introduced ratio – the minimum requirements for own funds and eligible liabilities (MREL).

Main criteria for MREL: Loss absorption and recapitalisation perspectives

In addition to public interest, the triggers for entry into resolution are twofold: first, an institution is failing or likely to fail; second, it is apparent that no action is available to remedy the situation within a reasonable timeframe. The resolution authority must act when all of them are hit.[4]

The complex structure of significant institutions nowadays means that their activities cannot be immediately shut down. Furthermore, it is broadly recognised that following a reorganisation or an orderly wind-down, institutions must be recapitalized to sustain their critical functions and to stabilise the situation in order to become viable and to operate on a going concern basis again. MREL addresses these concerns: First, it requires the institutions to achieve a liability structure that allows them to absorb losses. Second, it sets requirements on own funds and eligible liabilities so that institutions, following the resolution, are able to restore solvency to the point that they can be re-authorized by the supervisory authority and that they can regain market confidence as well as the access to normal central bank facilities.

MREL is calculated as a simple mathematic formula (Figure 1). The BRRD does not establish a common minimum MREL, but the ratio is calibrated by the resolution authority on a case-by-case basis. This approach ensures level playing field and better reflects the resolvability, risk profile, systemic importance and any other characteristic of an institution without jeopardizing the consistency across the EU. Thus, the process requires resolution authority to assess matters which are also considered either in the calibration of prudential regulatory requirements or in the case-by-case judgment made by the supervisory authority. It shall be noted that once the resolution authority made the decision on the MREL level, institutions have to comply with the set ratio at all times.

If a failing institution did not have sufficient loss absorbing capacity and recapitalisation potential,

4 *It may also act, outside the resolution, if only one of them is met. See also Article 59 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 stablishing a framework for the recovery and resolution of credit institutions and investment firms (OJ L 173, 12.6.2014).*

Box 1

Legal basis for the MREL requirement and its Slovak application

Minimum requirements for own funds and eligible liabilities (MREL) are introduced in Article 45 of the BRRD.[1] The directive sets the basic principles for MREL, however, as with all recent initiatives, the detail is left to regulatory technical standards. As regards the MREL, the European Banking Authority (EBA) has been mandated by the directive to further specify the MREL calibration criteria. The aim of these standards is to achieve an appropriate degree of convergence in how the criteria set in the BRRD are interpreted and applied across the whole EU. The underlying idea is that institutions with similar characteristics and risk profiles in different EU Member States have similar levels of MREL. The first draft of the regulatory technical standards (RTS) on MREL was open to public consultation for three months (until 27 February 2015). A public hearing has taken place on 19 January 2015. The EBA is now analysing the responses, whereas the draft RTS needs to be submitted to the European Commission by 3 July 2015. The final document will be adopted by the European Commission as an implementing regulation, directly applicable in all EU Member States. It is foreseen that MREL will be applied across Europe as of 1 January 2016.

The resolution framework in Slovakia is fully operational from 1 January 2015, when the Act on resolution in the financial market (the Act)[2] entered into force, transposing thus the BRRD into the Slovak legal framework. The MREL requirements have been implemented in Article 31 of the Act. At the very same day, the Resolution Council, which represents the national resolution authority in the Slovak Republic, was created.

Given the magnitude of new regulatory requirements imposed on the financial sector, one of the top priorities of the Resolution Council is to maintain active and effective communication with the financial market about the latest developments. With respect to MREL, two meetings with the credit institutions and investment firms have been organised to discuss the draft proposal in calibrating MREL (in early December 2014 and in February 2015). These regular meetings are aimed to involve banking professionals to discuss the upcoming regulatory changes from its early drafting stage and to encourage them to participate and raise their comments and suggestions in the public consultation organised by the EBA. The design and calibration periods are critical in setting the optimal resolution regime and to ensure resolvability without duly penalising financial stability and intermediation.

1 *Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (OJ L 173, 12.6.2014).*
2 *Act No 371/2014 Coll. Of 26 November 2014 on resolution in the financial market and on amendments to certain laws.*

Figure 1 MREL calculation

% MREL = The amount of own funds and eligible liabilities[1] / The amount of total liabilities and own funds of the institutions	
[1]Eligible liabilities must comply with following conditions[3]	the instruments is issued and fullly paid up
	the liability is not owed to, secured by or guaranteed by the institution itself
	the purchase was not funded directly or indirectly by the institutions
	the remaining maturity is at least one year
	the liability does not arise from a derivative
	the liability does not arise from a deposit covered by the national insolvency hierarchy

[3] *BRRD Article 45 (4)*

the resolution authority would have to draw on public funds to stabilise it. This would lead again to the pernicious problem of a "Too big to fail" institution and the vicious cycle between a bank and a sovereign would not be broken. However, one can ask: How much of MREL is enough to avoid such a situation? This depends above all on the size and systemic importance of a credit institution. The critical function of a small bank is limited to the covered deposits taking, given the 100 000 EUR level provided by a deposit guarantee scheme, one can assume that most of deposits are safe in case of bank failure. It follows that the cessation of its services will very unlikely cause any financial instability (although it is vital to ensure that depositors are able to quickly recover their funds). On the other hand, a more complex institution could pose a higher risk to the system as a whole. Therefore, it is important to ensure that the bank is stabilized without disrupting its critical functions. As such, there must be sufficient capacity to restore minimal capital requirements.

This prompt a second question: How much of what kind of instruments exactly is enough? The viability of recapitalisation is ensured through eligible liabilities (MREL) and bail-in able liabilities (BAIL-IN tool). In practise, the resolution authority will base its decision, on a fair, prudent and realistic valuation conducted during the resolution process. The valuation provides for a more précised idea on both actual losses and recapitalising needed further specifying the amount of bail-in able liabilities available.

However, the MREL ratio is to be calibrated before a bank is failing (in so-called "good times"), addressing the hypothetical scenario "when the things go wrong." Thus it represents a sort of a "living will" of the financial institution, calibrated by the bank (through recovery scenarios), by the competent and macro-prudential authority (through prudential regulatory requirements) and by the resolution authority (MREL level set-up).

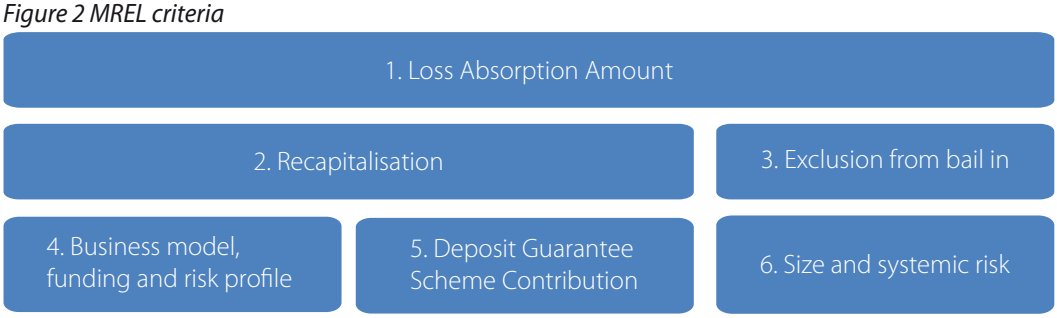
This leads us to the last question: How much will it cost? It is necessary to take into account that there will be certain costs incurred at present, in particular related to necessary changes in banks' liability structure and higher costs of funding. Therefore, it is essential that the design maximises the benefits while minimising the costs.

Regulatory Technical Standard on MREL – A common approach that might not fit all size?

As stipulated by the BRRD, the European Banking Authority (EBA) is mandated to prepare the draft regulatory technical standards (RTS) on criteria for determining the MREL (Figure 2). The draft RTS, which has been recently subject to a public consultation, seeks to clarify how the assessment by the resolution authority of the amount of MREL (needed to absorb losses and, where necessary, to recapitalise a firm after resolution ("gone" concern) is linked to the institution's capital requirements ("going" concern)). The guidelines provide that the resolution authority should, as a default, seek to rely on supervisory assessments of the degree of loss that a bank might need to absorb if in difficulties and of the amount of capital it will need in order to operate again, following the resolution process.

In addition, the resolution authority should consider any additional MREL needed to success-

Figure 2 MREL criteria



fully implement the resolution plan. In particular, where the resolution plan identifies that some liabilities might be unlikely to contribute to the loss absorption or recapitalisation in the resolution process, the resolution authority is entitled to increase the MREL ratio or it could take some alternative measures. Furthermore, if the resolution authority considers that the Deposit Guarantee Scheme might be required to contribute to the costs of the resolution, this might be taken into account when setting the MREL level. Lastly, the draft RTS proposes that at least those institutions which are identified as Globally Systemically Important Institutions (G-SIIs) or Other Systemically Important Institutions (O-SIIs) for the purposes of the CRR/CRD IV[5] should be identified as systemic for the purpose of the MREL calibration. For these institutions, resolution authorities should consider the potential need to be able to access the resolution financing arrangement in the event that it is not possible to implement a resolution plan relying solely on the institution's own resources. The resolution authority should assess whether the MREL would be sufficient to enable the preconditions set in the BRRD to be met, namely the minimum burden-sharing requirements, which allow the access to these arrangements.

Discussion on the draft RTS is currently ongoing, involving different groups of stakeholders, such as the EBA, resolution (and supervisory) authorities, credit institutions, researchers as well as banking associations. A common principle needs to be agreed, which allows for an effective application of the main criteria, however without jeopardising the principle of proportionality and by reflecting the high diversity of bank business model in Europe. A careful calibration of the aforementioned criteria is the key in order to ensure that the resolution is feasible and credible.

In what follows, a detailed review of the approach to each criterion, as proposed by the RTS, will be presented, complemented by an assessment by the authors of their implications for the emerging market. The arguments presented by the authors are made from a perspective of a "conservative" deposit taking banking model, which is prevailing in the Central, Eastern and South-Eastern Europe.

Loss absorption amount. The current draft is based on the default that loss absorption is the maximum of both, the leverage ratio and the capital ratio requirements. Moreover, the capital ratio requirements enter the calculation in its entirely, including Pillar 2, Basel 1 floor and combined buffer requirements.[6]

In other words, it assumes that a bank has depleted its entire capital in the resolution proceeding. This maximum approach to the loss absorption appears rather conservative, in particular with respect to the capital requirements. The draft RTS is based on an automatic assumption that all institutions are subject to systemic risks arising from trading activities or complex market activities, thus activities which have a direct implication to higher amount of potential loss. However, with respect to credit institutions with a classical deposit taking business model, one could expect, in particular given the new prudential rules and enhanced supervisory effort introduced by the CRDIV/CRR, that any worsening of their financial position and any excessive risk taking by such an institution will be detected by the supervisory or resolution authority in due time, thus before the entire capital is gone.

Furthermore, the draft RTS does not provide for any flexibility to address idiosyncratic single risk only, such as the plausible loss. On the other hand, the introduction of the leverage ratio rightly recognizes the diversity of business models within Europe. A bank with a low density of its risk-weighted assets (RWA) will more likely breach the leverage ratio first, contrary to a bank with a more risky profile.

Recapitalisation. The EBA acknowledges that the resolution plan may not imply that the entire group is recapitalised in the same way as the part of the group that enters into the resolution process. In other words, the preferred resolution strategy of a group may involve discontinuing or winding down of some subsidiaries, business lines or activities rather than continuing the entire business. Moreover, and similar, to the loss absorption amount, the current draft assumes the inclusion of the pillar 2 capital requirements as well as the combined buffers in the calculation of the minimum recapitalisation amount.

It shall be recognised that a sufficient recapitalisation amount is crucial in order to regain market confidence after the resolution process. However, although driven by a good rationale, the draft RTS seems to take a rather strict approach in defining the minimum recapitalisation amount. In other words, the application of the proposed requirement would lead to higher standards than those of the TLAC (Box 2). This would thus penalize European banks vis-à-vis their peers in other regions.

Moreover, the combined buffers serve different purposes, namely they ensure that bank has capacity to withstand shocks and raise resilience under distress periods. They are built up in "good times" and therefore the assumption of a bank fully complying with them following a resolution seems to create unnecessary burden and biases towards the institution. The same arguments broadly apply to Pillar 2 requirements as well. In this respect, and in line with the general approach, it is worth considering that the RTS sets minimum capital requirements only, whereas the resolution authorities are given the discretion to deviate from those, based on an expert judgement.

Table 1 presents a stylised example of application of the capital and resolvability criteria to hypothetical banks with simple business models, but applying different resolution plans. Please note that only capital requirements are used to determine the required degree of loss absorbency.

5 Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV) and Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (CRR).

6 The buffer requirements include capital conservation, countercyclical, systemic entities (both the G-SIIs and the O-SIIs) as well as systemic risk buffers.

7 Covered deposits, secured liabilities, liabilities with a remaining maturity of less than seven days owed to settlement systems, tax and social security authorities, liabilities raised by virtue of fiduciary relationship protected under applicable insolvency law.

Exclusion from bail-in. Article 44(2) of the BRRD in stipulates the classes of liabilities that shall not be subject to write-down or conversion powers.[7] Furthermore, in case the bail-in is applied, Article 44(3) provides the resolution authority with an option to further exclude liabilities or group of liabilities where the bail-in would not possible or its cost would be higher than benefits. This refers in particular to liabilities which are related to critical functions, with a risk of contagion effect and of destruction in value to comprise no creditor worse off principle.

The draft RTS introduces a principle that MREL should be set at such levels to avoid any risk of compensation, but it leaves it up to the resolution authority to determine how to address this issue, namely whether this is best done by increasing the MREL, requiring part of the MREL to be met through contractual bail-in instruments as permitted under Article 45(13) of the BRRD, or through alternative measures to remove impediments to resolvability and propose to introduce de minimis derogation for excluded liabilities which account for less than 10% of a given insolvency class.

The proposal seems reasonable at the first view; however it is difficult to comment on it in more detail without a more comprehensive analysis of the liabilities structures, including the excluded liabilities and different group of liabilities. Such an analysis will be conducted in the preparatory process of the resolution planning. Therefore, the draft RTS should provide more flexibility so that

Table 1 Stylised examples of application of the capital and resolvability criteria
The example includes only institution's capital requirements to determine the required degree of loss absorbency

BANK A	Small Bank		
Scenario: Bank A is a small bank, risk weighted assets of 35%, total capital requirement of 10,5% (8,5 + 2,5 combined buffer requirement, no pillar 2 or discretionary buffer requirement).			
Simplified balance sheet			
RWA	35	Other liabilities	96,3
Other Assets	65	Eligible liabilities	0
		Own funds	3,7
Total Assets	**100**	**Total liabilities**	**100**

RESOLUTION → POST-RESOLUTION

BANK AA

Normal insolvency proceedings.

MREL	3,7%
Loss absorbtion amount	3,7
Capital adequacy	10,5%

BANK B	Medium size bank		
Scenario: Bank B has risk weighted assets of 35%, total capital requirement of 10,5% (8,5 + 2,5 combined buffer requirement, no pillar 2 or discretionary buffer requirement).			
Simplified balance sheet			
RWA	35	Other liabilities	94,5
Other Assets	65	Eligible liabilities	1,8
		Own funds	3,7
Total Assets	**100**	**Total liabilities**	**100**

→

BANK BB

Liquidation is not feasible and credible because bank carries out some critical functions. Resolution strategy is transfer of critical functions to bridge bank and liquidiation of the remaining assets and liabilities therefore recapitalisation amount is set as 1,8% of total liabilities and own funds.

Simplified balance sheet					
RWA	17,5	Other liabilities	48,2	MREL	5,5%
Other Assets	32,5	Eligible liabilities	0	Loss absorbtion amount	3,7
		Own funds	1,8	Capital adequacy	10,5%
Total Assets	**50**	**Total liabilities**	**50**		

BANK C	Systemically important bank		
Scenario: Bank C has risk weighted assets of 35%, total capital requirement of 15% (8,5 + 2,5 capital conservation + 2,5% OSII buffer and 2% pillar 2).			
Simplified balance sheet			
RWA	35	Other liabilities	89,2
Other Assets	65	Eligible liabilities	5,4
		Own funds	5,4
Total Assets	**100**	**Total liabilities**	**100**

→

BANK CC

Feasible and credible resolution strategy is a bail-in due to complexity of bank, recapitalisation is set to 5.4% of total liabilities and own funds.

Simplified balance sheet					
RWA	35	Other liabilities	89,6	MREL	10,8%
Other Assets	60	Eligible liabilities	0,0	Loss absorbtion amount	5,4
		Own funds	5,4	Capital adequacy	15,5%
Total Assets	**95**	**Total liabilities**	**95**		

Box 2

Total Loss-Absorbing Capacity (TLAC) – a global equivalent to the European MREL

On 10 November 2014, the Financial Stability Board (FSB) released a draft consultation document on adequacy of loss absorbing capacity of global systemically important banks (G-SIBs) in resolution. The FSB proposes to achieve the availability of adequate loss-absorbing capacity for G-SIBs in resolution by setting a new minimum requirement for "total loss-absorbing capacity" (TLAC). The minimum Pillar 1 TLAC requirement is a requirement for loss absorbing capacity on both a going concern and gone concern basis, incorporating existing Basel 3 minimum capital requirements and excluding Basel 3 capital buffers. The TLAC requirement strives to ensure adequate availability of loss-absorbing capacity in resolution. The aim is to establish a framework that is consistent with the Basel capital framework and continues to set appropriate incentives for firms to be well capitalised. The kinds of instruments that count towards satisfying existing minimum regulatory capital requirements would therefore also count towards satisfying the common minimum Pillar 1 TLAC requirement.

Despite seeking the same purpose, TLAC and MREL are based on different rationales. First, the TLAC is applicable for G-SIBs only. Second, the ratio is calibrated using Pillar 1 minimum TLAC requirement, which is set as 16-20% of RWA (or 6% of leverage assets plus a Pillar 2 firm-specific requirement). Third, TLAC does not include capital buffers. As a consequence, the two ratios are not easy to compare.

However, G-SIBs domiciled in the EU will be obliged to comply with both TLAC and MREL requirements. The compliance with the two requirements is relevant for 14 institutions out of 30 G-SIBs (as of November 2014)[1], which have their headquarters in one of the EU Member States.[2] TLAC will be phased in from 1 January 2016 for all G-SIBs (its full implementation is foreseen by 1 January 2019), whereas the MREL will be applicable as of 2016. Moreover, the G-SIBs will also be subject to resolution requirements by the FSB, alongside a similar exercise imposed on them by the SRB (or a respective national resolution authority) to resolving future banking crisis and thereby reducing moral hazard.

1 For a detailed list of institutions, please refer to FSB list of G-SIBs (November 2014).
2 Germany, France, United Kingdom, Italy, Netherlands, Spain and Sweden.

the calibration of this criterion could be supported by practical experience when drafting the resolution plans.

Business model, funding model and risk profile. In this regard the RTS propose that the resolution authority shall request from the competent authority, a summary and explanation of the outcome of the supervisory review and evaluation process (SREP) taking into account business and funding model, risk profile, governance. Based on the SREP's outcome, MREL could be adjusted, if there is any weakness identified by the resolution authority.

Including the results of the SREP review into calibration of the MREL requirement appears to be reasonable; however the contrary is true for the option to adjust the MREL ratio upwards only, if any risks and vulnerabilities are identified. The MREL requirement should be fully aligned to the SREP results both upwards and downwards and there shouldn't be an option to calibrate beyond the SREP outcome. We would recommend rigorous precision of the RTS wording that neither of the two authorities should put in question a binding decision of the other authority given the different principle they follow (Box 3).

Deposit Guarantee Scheme contribution. The resolution authority shall determine the amount of potential losses to the deposit guarantee scheme (DGS) if an institution was liquidated under normal insolvency proceeding. The resolution authority ensures that MREL is set at a sufficient level to ensure that if met, the estimated contribution would be lower than 50% of the target level of the DGS. In this respect, it is worth highlighting that new risk-based contributions to DGSs will be introduced as of January 1, 2016, including new target level set for the national DGSs.

Size and systemic risk. Any use of external financing to absorb losses or recapitalise a credit institution will be exceptional and used only in cases where there is a strong public interest. The requirement in the BRRD stipulates that the resolution financing arrangement may only be used to absorb losses and recapitalise a bank once shareholders and creditors have made a contribution to the loss absorption and recapitalisation which equals to at least 8% of the total liabilities of the bank, including its own funds. The draft RTS introduced 8% of total liabilities as a MREL floor for systemic institutions, in order to ensure that they would have an access to the resolution financing

Box 3

Going concern & Gone concern

One could ask why two separate authorities are needed to monitor the same institution. The rationale behind this is the different approach they take, the so called "going concern" and "gone concern". The supervisory authority is concerned about keeping an institution running ("going"), whereas the resolution authority takes a differentiated approach. It focusses on what needs to be done in order to manage the consequences if institutions get into or close to a default (once the institution is "gone"). It follows that different quantitative and qualitative measures are applied by the two authorities.

To better understand the difference between these two concepts, an example from maritime law could be used. The supervisory authority represents an authority that oversees a ship, being responsible for its safe and efficient operation, ensuring that the vessel complies with local and international laws, as well as company and flag state policies. All persons on board, including its management, staff members as well as passengers are under the captain's authority and subject to safeguards by the overseeing authority. The resolution authority responsibility lies with a shipwreck (in the maritime terminology: flotsam, jetsam, lagan and derelict), deciding on whether the whole ship, its part or its cargo should be kept or cast overboard to lighten the load in time of distress. Moreover, special attention is given to the safeguards to all passengers and a fair treatment of all stakeholders.

The recent regulatory changes introduced a new set of requirements, addressing both the "going" concern[1] and the "gone" concern. As regards the "gone" concern, the most prominent feature of the new resolution framework is to allow absorption of capital losses at the point of non-viability of an institution, which was – in the European context – complemented by the new recapitalisation requirements. For this purpose, contractual terms of all capital instruments will include a clause that will allow their write-off or conversion to common shares if a bank is judged as non-viable by the resolution authority. This principle will thus increase the contribution of the private sector to resolving future banking crisis and thereby reducing moral hazard.

1 New global Basel III requirements, implemented at the EU level within the framework of CRDIV/CRR, introduce new supervisory measures (addressing thus the "going" concern), ensuring in particular higher levels and better quality of the capital as well as new leverage and liquidity ratios. Moreover, further requirements were imposed respect to securitisations, trading book, counterparty credit risk as well as to bank exposures to central counterparties

arrangements. The proposed threshold of 8% corresponds to the RWA density of 35, 5%.

The EBA proposal refers to systemic institutions (GSIIs and OSIIs) only. For the other institutions, the threshold of 8% should be considered as a reference, although when calibrating this measure it is worth to honour the principle of proportionality.

As a general remark, the current wording of the RTS raises the main concern with respect to the application of the principle of proportionality. In particular, the implications of the proposed requirements on a traditional deposit taking business model, when the funding sources are predominantly based on the primary/retail deposits, seem not to be taken properly into account. In this specific case, an institution, in order to comply with the proposed requirements, would need to raise high level of eligible liabilities, mostly unsecured long-term liabilities. It is recognized that it is difficult to find the right balance between a flexible approach that rewards resolvability and the need to apply harmonised rules, however at the same time the current wording seems to be biased towards penalising the traditional deposit taking business models prevailing in the CEE to the benefit of bigger risk-taking approaches.

In order to ensure a harmonised application of the MREL's discretional criteria, the EBA will submit a report to the European Commission by 21 October 2016 analysing whether there have been any divergences in the levels set for comparable institutions in Europe. This report will be critical to maintain the level-playing field and to enhance transparency among European banks.

Conclusions

The introduction of MREL represents a response of the European regulatory authorities to the financial crisis, which addresses to the absence of any efficient measures – at both the national and European level, to deal with failing large cross-border credit institutions. This situation resulted in unprecedented state aid to the sector as a whole. In this perspective, MREL represents a safety net for cases when everything else is "gone". It could be seen as a reserve parachute, which could efficiently mitigate any spread of the panic and thus prevent any contagion effect on other market participants or financial sectors in other European countries. Lastly and most importantly, it is the end of the too-big-to-fail myth. In other words, the requirement to structure bank's liabi-

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lities in an appropriate way and to keep enough resources for any possible recapitalisation means that each and every financial intermediary can fail or be wound down in an orderly fashion and without any (or limited) impact on other market participants. Furthermore, the introduction of the bail-in concept provides an additional clarity with respect to the creditor hierarchy and thus the position of bail-in instruments within the hierarchy of debt commitments in a bank´s balance sheet. As such, the investors could better understand the eventual treatment of their respective instruments in the case of a resolution process. Overall, this approach is based on the premises that the bail-in will be the rule, and the bail-out a rare exception in the future.

However, there is a significant work ahead of the regulators and authorities related to the effective calibration of the minimum requirements for own funds and eligible liabilities (MREL) or the "gone" concern loss absorbing capacity. This article identifies several drawbacks of the approach, recently proposed by the EBA. The draft document appears not to be well balanced, in particular when its implications on the less developed financial markets in the Central, Eastern and South-Eastern Europe are considered.

Webové sídlo Rady pre riešenie krízových situácií

(www.rezolucnarada.sk)

Vo februári 2015 bolo verejnosti sprístupnené webové sídlo Rady pre riešenie krízových situácií (ďalej len „rada"). Záujemcovia tu nájdu základné informácie o úlohách rady, jej členoch, ako aj o jej aktivitách vrátane vybraných rozhodnutí a oznámení rady z jej zasadaní. Webová stránka zároveň ponúka (v slovenskej aj anglickej mutácii) stručné vysvetlenie, ako funguje rámec riešenia krízových situácií na národnej úrovni a v eurozóne. Poskytuje tiež odpovede na najčastejšie otázky týkajúce sa rezolučných nástrojov a rezolučného fondu, ktorý slúži na zhromažďovanie finančných príspevkov od finančného sektora. Okrem toho tu návštevník nájde prehľad súvisiacich právnych aktov dotýkajúcich sa problematiky riešenia krízových situácií.

Rada pre riešenie krízových situácií vznikla 1. januára 2015 ako národný rezolučný orgán pre riešenie krízových situácií vybraných inštitúcií vo finančnom sektore v Slovenskej republike. Jej hlavným cieľom je predchádzať krízovým situáciám vybraných inštitúcií a skupín vo finančnom sektore a v prípade ich vzniku efektívne riešiť krízovú situáciu so zreteľom na zachovanie finančnej stability a zabezpečenie ochrany majetku klientov danej inštitúcie a skupiny. Rada bola založená ako samostatná právnická osoba v oblasti verejnej správy, pričom vykonávanie úloh potrebných na odborné a organizačné zabezpečovanie výkonu pôsobnosti a právomocí rady zabezpečuje Národná banka Slovenska.