

Pursuant to Article 44 paragraph (2) item 3) of the Central Bank of Montenegro Law (OGM 40/10, 06/13, 70/17), and in connection with Article 14 paragraph (8) of the Law on Resolution of Credit Institutions (OGM 72/19), the Council of the Central Bank of Montenegro, at its meeting held on 8 December 2020, passed the following

**DECISION  
ON THE CRITERIA FOR ASSESSING RESOLVABILITY OF A CREDIT  
INSTITUTION AND A GROUP**

**Subject matter**

**Article 1**

This Decision governs in more detail the criteria for assessing the resolvability of a credit institution and a group and the impact assessment of the implementation of the resolution of the credit institution on financial markets, other institutions or financing conditions.

**Stages of the assessment of resolvability**

**Article 2**

(1) The Central Bank of Montenegro (hereinafter: the Central Bank), in pursuing its mandate as the resolution authority for the credit institutions, shall assess the resolvability of a credit institution or a group based on the following consecutive stages:

- 1) assessment of the feasibility and credibility of opening bankruptcy proceedings in the credit institution, which is performed in accordance with Article 3 of this Decision;
- 2) selection of a preferred resolution strategy, which is performed in accordance with Article 4 of this Decision;
- 3) assessment of the feasibility of the selected resolution strategy, which is performed in accordance with Articles 5 to 10 of this Decision;
- 4) assessment of the credibility of the selected resolution strategy, which is performed in accordance with Article 11 of this Decision.

(2) Where the Central Bank considers that it is clear that credit institutions or groups pose similar risks to the financial system or that the circumstances in which their bankruptcy proceedings is unlikely to be feasible are similar, the Central Bank may conduct the assessment of the feasibility and credibility of the bankruptcy proceedings of those credit institutions or groups in a similar or identical manner.

(3) The Central Bank may determine the types of credit institutions referred to in paragraph (2) of this Article applying the criteria for assessing the systemic risk as specified by the law governing the founding and operations of the credit institutions.

(4) Where the Central Bank concludes that it may not be feasible or credible to open the bankruptcy proceedings, or that resolution action may otherwise be necessary in the public interest because the bankruptcy proceedings would not meet the resolution

objectives to the same extent, it shall identify a preferred resolution strategy which is appropriate for the credit institution or group, and to the extent necessary, it shall also identify variant strategies to address circumstances in which the preferred strategy would not be feasible or credible.

(5) The assessments of the feasibility or credibility of the preferred resolution strategy shall include assessment of any changes proposed to that strategy.

(6) The Central Bank may request from the credit institution or group such additional information as is necessary to carry out the assessments of the preferred and its changes.

(7) Where appropriate, the Central Bank shall revise the preferred resolution strategy or consider alternative strategies on the basis of a completed assessment of feasibility and of the credibility of a preferred resolution strategy.

(8) Where the Central Bank revises the preferred resolution strategy it shall assess the feasibility and the credibility of that revised preferred resolution strategy in accordance with Articles 5 or 6 of this Decision.

### **Feasibility and credibility of opening bankruptcy proceedings**

#### **Article 3**

(1) The Central Bank shall assess the feasibility and credibility of bankruptcy proceedings of a credit institution or a group and the impact that bankruptcy proceedings would have in the reliance on extraordinary public financial support as compared to the resolution.

(2) When assessing the credibility of bankruptcy proceedings, the Central Bank shall consider the likely impact of the bankruptcy proceedings of the credit institution or group on the financial system to ensure the continuity of access to critical functions carried out by the credit institution or group and achieving the resolution objectives, and for this purpose, the Central Bank shall take into account the functions performed by the credit institution or group and assess whether bankruptcy proceedings would be likely to have a material adverse impact on any of the following:

- 1) financial market functioning and market confidence;
- 2) financial market infrastructures, in particular:
  - whether the sudden cessation of activities of the credit institution would constrain the normal functioning of financial market infrastructures in the manner which negatively impacts the financial system as a whole;
  - whether and to what extent financial market infrastructures could serve as contagion channels in the bankruptcy proceedings process;
- 3) other financial institutions, in particular:
  - whether bankruptcy proceedings would raise the funding costs of or reduce the availability of funding to other financial institutions in the manner which presents a risk to financial stability;
  - the risk of direct and indirect contagion and macroeconomic feedback effects;
- 4) the real economy and in particular the availability of critical financial services.

(3) If the Central Bank concludes that bankruptcy proceedings are credible, it shall assess the feasibility of bankruptcy proceedings, and for this purpose, the Central Bank shall consider whether the credit institution's or group's systems are able to provide the information required by the Deposit Protection Fund for the purposes of providing payment to covered deposits in the amounts and time frames specified in law governing the deposit protection, or where relevant in accordance with equivalent third country deposit guarantee schemes, including on covered deposit balances.

(4) The Central Bank shall also assess whether the credit institution or the group has the capability required to support the Deposit Protection Fund's operations, in particular by distinguishing between covered and non-covered balances on deposit accounts.

### **Identification of resolution strategy**

#### **Article 4**

(1) The Central Bank shall assess whether a candidate resolution strategy is appropriate to achieve the resolution objectives given the structure and business model of the credit institution or group, and the resolution regimes applicable to legal persons in a group.

(2) A resolution action may be taken in the public interest if it is necessary for the achievement of and is proportionate to one or more of the resolution objectives and bankruptcy proceedings of the credit institution would not meet those resolution objectives to the same extent.

(3) In particular for groups, the Central Bank shall assess whether it would be more appropriate to apply a single point of entry or a multiple point of entry strategy and for these purposes the Central Bank shall consider at least the following matters:

- 1) what resolution tools would be used under the preferred resolution strategy and whether those resolution tools are available for legal persons to which the resolution strategy proposes to apply them;
- 2) the amount of qualifying eligible liabilities under the proposed resolution strategy, the risk of not contributing to loss absorption or recapitalisation of the legal persons issuing those qualifying eligible liabilities, taking into account that:
  - single point of entry is more likely to be appropriate if sufficient externally issued eligible liabilities, or liabilities expected to contribute to loss absorption and recapitalisation under the proposed resolution strategy are issued by the top parent or group holding company; and
  - multiple point of entry is more likely to be appropriate if the group's eligible liabilities or liabilities expected to contribute to loss absorption and recapitalisation under the proposed resolution strategy are issued by more than one entity or regional or functional subgroup in the group which would be resolved;
- 3) the contractual or other arrangements in place for losses to be transferred between legal persons in a group;
- 4) the operational structure and business model of the credit institution or group, and in particular whether it is highly integrated or has a decentralised structure with a high degree of separation between different parts of the credit institution or group, taking into account that:

- single point of entry is more likely to be appropriate if a group operates in a highly integrated manner, including by having centralised liquidity management, risk management, treasury functions, or IT and other critical shared services; and
  - multiple point of entry is more likely to be appropriate if a group's operations are divided into two or more clearly identifiable subgroups, each of which is financially, legally or operationally independent from other parts of the group, and any critical operational dependencies on other parts of the group are based on robust arrangements that ensure their continued operation in the event of resolution;
- 5) the enforceability of resolution tools which would be applied, in particular in third countries;
  - 6) whether the resolution strategy requires supporting action by other authorities, in particular in third countries, or requires such authorities to refrain from independent resolution actions; and whether any such actions are feasible and credible for those authorities.

(4) The Central Bank shall assess whether variants of the resolution strategy are necessary to address scenarios or circumstances where the resolution strategy cannot be feasibly and credibly implemented.

(5) The Central Bank shall consider the extent to which any variant strategy is likely to achieve the resolution objectives and in particular ensure the continuity of critical functions.

(6) Measures to remove impediments to variants of the resolution strategy shall only be implemented if they do not impair the feasible and credible implementation of the preferred resolution strategy.

### **Assessment of feasibility of a resolution strategy**

#### **Article 5**

(1) The Central Bank shall assess whether it is feasible to apply the selected resolution strategy effectively in an appropriate time frame and shall identify potential impediments to the implementation of the selected resolution strategy.

(2) The Central Bank shall consider impediments to the short-term stabilisation of the institution or group, and any foreseeable impediments to a business reorganisation which is required by the reorganisation plan, or otherwise likely to be required if the resolution strategy envisages all or part of the credit institution or group being restored to long-term viability.

(3) Impediments referred to in paragraph (2) of this Article shall be classified in at least the following categories:

- 1) structure and operations of the credit institution;
- 2) financial resources;
- 3) information;
- 4) cross-border issues, and
- 5) legal issues.

## **Assessment of feasibility: structure and operations**

### **Article 6**

The Central Bank shall consider at least the following issues in assessing whether there are potential impediments to resolution related to the structure and operations of the institution or group:

- 1) matters addressed in Article 14 paragraph (6) items 1) to 7), items 16) and 18) of the Law on Resolution of Credit Institutions (OGM 72/19) – (hereinafter: the Law);
- 2) dependencies of material entities and core business lines on infrastructure, information technology, treasury or finance functions, employees or other critical shared services;
- 3) whether governance, control, and risk management arrangements are consistent with any planned changes to the structure of the credit institution or group;
- 4) whether the legal and franchise structure of the credit institution or group is consistent with any planned changes to the business structure of the credit institution or group;
- 5) whether appropriate resolution tools are available with respect to each legal person as required to deliver the resolution strategy.

## **Assessment of feasibility: financial resources**

### **Article 7**

The Central Bank shall consider at least the following issues in assessing whether there are potential impediments to resolution related to financial resources:

- 1) matters addressed in Article 14 paragraph (6) items 13), 14), 15) and 17) of the Law;
- 2) the need to identify and quantify the amount of any liabilities which are likely under the preferred resolution strategy not to contribute to loss absorption or recapitalisation, considering at a minimum the following factors:
  - maturity;
  - subordination ranking;
  - the types of holders of the instrument, or the instrument's transferability;
  - legal impediments to loss absorbency such as lack of recognition of resolution tools under foreign law or existence of set-off rights;
  - other factors creating risk that the liabilities would be exempted from absorbing losses in resolution;
  - the amount and issuing legal persons of qualifying eligible liabilities or other liabilities which would absorb losses;
- 3) the size of funding needs in the run-up to and during resolution, the availability of sources of funding, and impediments to the transfer of funds as required within the credit institution or group;
- 4) whether appropriate arrangements are specified for losses to be transferred to legal entities to which resolution tools would be applied from other group companies, including where relevant an assessment of the amount and loss-absorbency of intragroup funding.

## **Assessment of feasibility: information**

### **Article 8**

The Central Bank shall consider at least the following issues in assessing whether there are potential impediments to resolution related to information:

- 1) matters addressed in Article 14 paragraph (6) items 8) to 12) of the Law;
- 2) the capability of the credit institution or group to provide information on the amount, and location within the group, of assets which would be expected to qualify as collateral for the Central Bank facilities;
- 3) the capability of the credit institution or group to provide information to carry out a valuation to determine the amount of write-down or recapitalisation required.

## **Assessment of feasibility: cross-border issues**

### **Article 9**

The Central Bank shall consider at least the following issues in assessing whether there are potential impediments to resolution related to cross-border issues:

- 1) matters addressed in Article 14 paragraph (6) item 19) of the Law;
- 2) existence of adequate processes for coordination and communication and assurances on actions to be taken between other countries, to enable delivery of the resolution strategy;
- 3) whether law in relevant third country overrides contractual termination rights in financial contracts that are triggered solely by the failure and resolution of an affiliated company.

## **Assessment of feasibility: other potential impediments**

### **Article 10**

The Central Bank shall consider the following legal issues in assessing potential impediments to resolution:

- 1) whether requirements for regulatory approvals or authorisations necessary to deliver the resolution strategy can be met in a timely manner;
- 2) whether significant contractual documentation permits termination of contracts on entry into resolution;
- 3) whether contractual obligations which cannot be disapplied by the Central Bank prohibit any transfer of assets or liabilities envisaged in the resolution strategy.

## **Assessment of credibility of a resolution strategy**

### **Article 11**

(1) After assessing the feasibility of the selected resolution strategy, the Central Bank shall assess its credibility, taking into consideration the likely impact of resolution on the financial system and real economy, with a view to ensuring the continuity of critical functions carried out by the credit institution or group, whereby the assessment shall include assessment of matters addressed in Article 14 paragraph (6) items 20) to 27) of the Law.

(2) In conducting assessment referred to in paragraph (1) of this Article, the Central Bank shall consider the likely impact of the implementation of the resolution strategy on the financial systems of other countries, and for this purpose, the Central Bank shall take into account the functions performed by the credit institution or group and assess

whether implementation of the resolution strategy would be likely to have a material adverse impact on any of the following:

- 1) financial market functioning, and in particular market confidence;
- 2) financial market infrastructures, and in particular:
  - whether the sudden cessation of activities would constrain the normal functioning of financial market infrastructures in the manner which negatively impacts the financial system as a whole;
  - whether and to what extent financial market infrastructures could serve as contagion channels in the liquidation process;
- 3) other financial institutions, and in particular:
  - whether liquidation would raise the funding costs of or reduce the availability of funding to other financial institutions in a manner which presents a risk to financial stability;
  - the risk of direct and indirect contagion and macroeconomic feedback effects;
- 4) the real economy and in particular on the availability of financial services.

#### **Article 12**

This Decision shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro, and it shall apply from the date of application of the Law on Resolution of Credit Institutions (OGM 72/19).

### **THE COUNCIL OF THE CENTRAL BANK OF MONTENEGRO**

Decision number: 0101-7285- 2/2020  
Podgorica, 8 December 2020

**CHAIRMAN  
GOVERNOR,**

**Radoje Žugić, m.p.**