

Pursuant to Article 44 paragraph (2) item 3) of the Central Bank of Montenegro Law (OGM, 40/10, 6/13, 70/17), and Article 30 paragraph (3) of the Law on Resolution of Credit Institutions of Montenegro, the Council of the Central Bank of Montenegro, at its meeting held on 21 December 2020, passed the following

DECISION
ON DETAILED CRITERIA FOR DETERMINING MINIMUM REQUIREMENTS FOR OWN FUNDS AND ELIGIBLE LIABILITIES OF CREDIT INSTITUTIONS

Subject matter

Article 1

This Decision shall govern in more detail the criteria for determining the minimum requirement for own funds and eligible liabilities of a credit institution that is not part of a group (hereinafter: credit institution) and a group of credit institutions which is not a cross-border group (hereinafter: group).

Determining the amount needed to cover losses

Article 2

(1) The Central Bank of Montenegro (hereinafter: the Central Bank) shall determine the loss absorption amount which a credit institution or a group should be capable of absorbing.

(2) For the purpose of determining the amount to cover losses (hereinafter: loss absorption amount) in accordance with this Article and of any contribution of the deposit protection scheme to the resolution financing referred to in Article 8 of this Decision, the resolution function of the Central Bank shall require from the supervisory function of the Central Bank a summary of capital requirements currently applicable to a credit institution or a group, and in particular the following:

- 1) capital requirements from Article 134 of the Law on Credit Institutions (OGM 72/19) – (hereinafter: the Law on Credit Institutions), which include:
 - CET 1 capital adequacy ratio of 4.5% of the total risk exposure amount;
 - a Tier 1 capital adequacy ratio of 6 % of the total risk exposure amount;
 - a total capital adequacy ratio of 8 % of the total risk exposure amount;
- 2) capital requirements determined by the Central Bank pursuant to authorisations from Article 44 paragraph (2) item 10) of the Central Bank of Montenegro Law (OGM 40/10, 06/13, 70/17) – (hereinafter: Central Bank of Montenegro Law);
- 3) any requirements to hold additional own funds in excess of the statutory requirements, in particular requirements of the Central Banks in line with authorisations from Article 279 paragraph (1) item 1) of the Law on Credit Institutions;
- 4) combined buffer requirements as defined in Article 165 paragraph (7) of the Law on Credit Institutions; and
- 5) any applicable leverage ratio requirement.

(3) For the purposes of this Decision, when determining requirements referred to in paragraph (2) of this Article, relevant transitional periods for the fulfilment of these requirements as defined by the Law on Credit Institutions and relevant regulations of the Central Bank shall be taken into consideration.

(4) The loss absorption amount determined by the Central Bank shall be the sum of the requirements referred to in paragraph (2) items 1) or 2) (whichever is higher) and items 3) and 4) of this Article or any higher amount necessary to comply with the requirements referred to in paragraph (2) item 5) of this Article.

(5) The Central Bank may set a loss absorption amount using either of the following methods:

- 1) a loss absorption amount equal to the default loss absorption amount determined in accordance with paragraph (4) of this Article;
- 2) a loss absorption amount, which may be either higher or lower than the default loss absorption amount determined pursuant to paragraph (4) of this Article, where:
 - higher than the default loss absorption amount determined pursuant to paragraph (4) of this Article, shall be determined when:
 - a) the default absorption amount does not fully reflect the need to absorb losses in resolution, taking into account information related to the credit institution's business model, funding model, and risk profile pursuant to Article 6 of this Decision, or
 - b) it is necessary to reduce or remove an impediment to resolvability or absorb losses on holdings of instruments to which minimum requirements for own funds and eligible liabilities of the credit institution and group (hereinafter: MREL) apply, and which are issued by other group entities;
 - lower than the default loss absorption amount determined pursuant to paragraph (4) of this Article, to the extent that, taking into account information relating to the credit institution's business model, funding model, and risk profile pursuant to Article 6 of this Decision, the Central Bank finds that:
 - a) additional own funds requirements referred to in paragraph (2) item 2), which have been determined on the basis of the outcome of stress tests or to cover macroprudential risks, are assessed not to be relevant to the need to ensure losses can be absorbed in resolution, or
 - b) part of the combined buffer requirement referred to in paragraph 2 item 3) of this Article is assessed by the resolution authority not to be relevant to the need to ensure losses can be absorbed in resolution.

(6) Where the option in paragraph (5) item 2) of this Article is applied, the reasoned explanation of the loss absorption amount shall be submitted to the supervisory function of the Central Bank.

Determination of the amount necessary to continue to comply with the conditions for authorisation and to carry out activities of the credit institution

Article 3

(1) The Central Bank shall determine an amount of recapitalisation which would be necessary to implement the preferred resolution strategy, as identified in the resolution planning process.

(2) Where Central Bank, based on the resolvability assessment performed in line with the regulation of the Central Bank from Article 14 paragraph (8) of the Law on resolution of credit institutions (OGM 72/19) – (hereinafter: the Law), concludes that bankruptcy of the credit institution is feasible and credible, the recapitalisation amount shall be zero, unless the Central Bank determines that a positive amount is necessary on the grounds that liquidation would not achieve the resolution objectives to the same extent as an alternative resolution strategy.

(3) When estimating the credit institution's regulatory capital requirements after implementation of the preferred resolution strategy, the Central Bank shall use the most recent reported values for the relevant total risk exposure amount or leverage ratio denominator, as applicable, unless all the following factors apply:

- 1) the resolution plan identifies, explains, and quantifies any change in regulatory capital needs immediately as a result of resolution action; and
- 2) the change referred to in item 1) of this paragraph is considered in the resolvability assessment to be both feasible and credible without adversely affecting the provision of critical functions by the credit institution, and without recourse to extraordinary financial support other than contributions from the Resolution fund, consistently with Article 147 paragraphs (3) and (4) of the Law and the principles governing the use of funds from the Resolution fund set out in Article 96 paragraphs (2) and (6) of the Law.

(4) Where the changes referred to in paragraph (3) of this Article are dependent on the actions of a purchaser of assets or business lines of the credit institution under resolution, or of third parties, the resolution function of the Central Bank shall prepare a reasoned explanation to the supervisory function of the Central Bank regarding the feasibility and credibility of that change.

(5) The recapitalisation amount shall be at least equal to the amount necessary to satisfy applicable capital requirements necessary to comply with the conditions for authorisation after the implementation of the preferred resolution strategy, or higher than that amount.

(6) The capital requirements referred to in paragraph (5) of this Article shall include the following:

- 1) own funds requirements pursuant to Article 134 of the Law on Credit Institutions, which include:
 - a CET1 capital ratio of 4,5 % of the total risk exposure amount;
 - a Tier 1 capital ratio of 6 % of the total risk exposure amount;
 - a total capital ratio of 8 % of the total risk exposure amount;

- 2) any own funds requirement as established by the Central Bank pursuant to authorisations from Article 44 paragraph (2) item 10) of the Central Bank of Montenegro Law;
- 3) any additional own funds requirement in excess of the statutory requirement, in particular requirements of the Central Bank in line with authorisations from Article 279 paragraph (1) item 1) of the Law on Credit Institutions;
- 4) any applicable leverage ratio requirement.

Determination of the amount necessary to sustain market confidence in the credit institution

Article 4

(1) In addition to the amount from Article 2 of this Decision, the recapitalisation amount of the credit institution shall also include any additional amount that the Central Bank deems necessary to maintain sufficient market confidence after resolution.

(2) The default additional amount shall be equal to the combined buffer requirement calculated in line with the Law on Credit Institution, which would apply to the credit institution after the application of resolution tools.

(3) The additional amount required by the Central Bank may be lower than the default amount from paragraph (2) of this Article, if the Central Bank determines that a lower amount would be sufficient to sustain market confidence and ensure both the continued provision of critical economic functions by the credit institution and the access to funding without recourse to extraordinary financial support other than contributions from the Resolution Fund, consistently with Article 96 paragraphs (2) and (6) and Article 147 paragraphs (3) and (4) of the Law.

(4) The assessment of the amount necessary to support market confidence shall take into account whether the capital position of the credit institution after the resolution would be appropriate in comparison with the current capital position of peer credit institutions.

(5) The Central Bank may determine, taking into account information received relating to the credit institution's business model, funding model, and risk profile pursuant to Article 6 of this Decision, that, notwithstanding the provisions of Article 3 paragraph (3) of this Decision, it would be feasible and credible for all or part of any additional own funds requirement or buffer requirements currently applicable to the entity not to apply after implementation of the resolution strategy. In this case that part of the requirement may be disregarded for the purposes of determining the recapitalisation amount.

(6) The assessment referred to in paragraph (1) of this Article shall take account of capital resources in other group entities which would credibly and feasibly be available to support market confidence in the credit institution following resolution, in the case of group member which:

- 1) are subsidiaries of a group subject to a consolidated MREL;
- 2) would continue to fulfil the conditions referred to in item 1) of this paragraph following implementation of the preferred resolution strategy; and

- 3) would not be expected to maintain market confidence and access to funding on an individual basis following implementation of the preferred resolution strategy.

(7) Where the assets, liabilities or business lines of the credit institution are to be split between more than one entity following implementation of the preferred resolution strategy, references to risk exposure amounts and capital requirements in Article 3 of this Decision and paragraphs (1) to (6) of this Article should be understood as the aggregate amounts across these entities.

Exclusions from bail-in or transfers which are an impediment to resolvability

Article 5

- (1) The Central Bank shall identify any liabilities of a credit institution which:
 - 1) are excluded from bail-in instrument in line with Article 94 paragraph (3) of the Law;
 - 2) are reasonably likely to be fully or partially excluded from bail-in pursuant to Article 95 of the Law, or
 - 3) will be transferred to a recipient in full, using other resolution tools, based on the resolution plan of the credit institution.
- (2) Without prejudice to Article 8 of this Decision, if any liability which qualifies for inclusion in MREL is identified as being potentially fully or partially excluded pursuant to paragraph (1) of this Article, the Central Bank shall ensure that the MREL is sufficient for purposes of the loss absorption amount determined pursuant to Article 2 of this Decision and for achieving the amount of recapitalisation determined pursuant to Articles 3 and 4 of this Decision without write down or conversion of those liabilities.
- (3) The Central Bank shall determine whether liabilities identified in accordance with paragraph (1) of this Article rank equally or junior in the insolvency creditor hierarchy to any class of liabilities which includes liabilities that qualify for inclusion in MREL and, for each such class, whether the amount of liabilities identified totals more than 10 % of that class.
- (4) Where the Central Bank determines that conditions referred to in the paragraph (3) of this Article are met, it shall also assess whether the need to absorb losses and to contribute to the recapitalisation which would be borne by the liabilities referred to in that paragraph, were they not excluded from bail-in, can be satisfied by liabilities which qualify for inclusion in MREL and are not excluded from loss absorption or recapitalisation without breaching the creditor safeguards provided in Article 137 of the Law.
- (5) The Central Bank shall keep a record of any assumptions, valuations or other information used to determine that the MREL meets the conditions set out in paragraph (3) of this Article.

Business model, funding model and risk profile

Article 6

(1) For purposes of Article 30 paragraph (1) item 4) of the Law, the Central Bank shall take into account information received in the process of performing its supervisory function, including the summary and explanation of the outcomes of the supervisory review and evaluation process conducted pursuant to Article 245 of the Law on Credit Institutions, and in particular:

- 1) a summary of the assessment of each of the business model, funding model, and overall risk profile of the credit institution;
- 2) a summary of the assessment of whether capital and liquidity held by a credit institution ensure sound coverage of the risks posed by the business model, funding model, and overall risk profile of the credit institution;
- 3) information on how risks and vulnerabilities arising from the business model, funding model, and overall risk profile of the credit institution identified in the supervisory review and evaluation process are reflected, directly or indirectly, in the additional own fund requirements applied to a credit institution pursuant to Article 279 paragraph (1) item 1) of the Law on Credit Institutions, based on the outcomes of the supervisory review and evaluation process;
- 4) information on other prudential requirements applied to a credit institution to address risks and vulnerabilities arising from the business model, funding model and overall risk profile of the credit institution identified in the supervisory review and evaluation process.

(2) The information referred to in paragraph (1) of this Article shall be taken into account by the Central Bank where it makes any adjustments to the default loss absorption and recapitalisation amounts, as described in Article 2 paragraph (5) and Article 4 paragraph (5) of this Decision, in order to ensure that the adjusted MREL, adequately reflects risks affecting resolvability arising from the credit institution's business model, funding profile and overall risk profile.

(3) As part of the cooperation referred to in Article 8 of the Law, the resolution function of the Central Bank shall submit to supervisory function of the Central Bank a reason explanation on how the information referred to in paragraph (1) of this Article has been taken into account in any adjustment referred to in paragraph (2) of this Article,.

(4) In the case of entities which are subsidiaries of a group subject to a consolidated MREL, the Central Bank may exclude from its assessment of the loss absorption amount and recapitalisation amount any buffer which is set only on a consolidated basis.

Size and systemic risk

Article 7

For other systemically important credit institutions (O-SIIs) and for any other credit institution which the Central Bank considers reasonably likely to pose a systemic risk in case of failure and which does not fall within Article 3 paragraph (2) of this Decision, the Central Bank shall take into account the requirements set out in Articles 94 to 96 of the Law.

Contributions by the deposit guarantee scheme to the financing of resolution

Article 8

(1) The Central Bank may reduce the MREL to take account of the amount which a Deposit Protection Fund is expected to contribute to the financing of the preferred resolution strategy in accordance with Article 154 of the Law.

(2) The size of any reduction referred to in paragraph (1) of this Article shall be based on a credible assessment of the potential contribution from the Deposit Protection Fund, and in establishing such contribution, the following rules shall apply:

- 1) the amount of contributions should be less than a prudent estimate of the potential losses which the Deposit Protection Fund would have had to bear in case of bankruptcy proceedings, taking into account the priority ranking from the law governing bankruptcy and liquidation of credit institutions;
- 2) the amount of contributions should be less than the limit on deposit guarantee scheme contributions set out in Article 154 paragraph (9) of the Law;
- 3) when determining the amount of contributions, take account of the overall risk of exhausting the available financial means of the Deposit Protection Fund due to contributing to multiple bank failures or resolutions; and
- 4) determining contributions should be consistent with any other relevant provisions applied in Montenegro and the duties and responsibilities of the authority responsible for the deposit guarantee scheme.

(3) The Central Bank shall, after consulting the Deposit Protection Fund, document its approach as regards the assessment of the overall risk of exhausting the available financial means of the Deposit Protection Fund and apply reductions in accordance with paragraph (1) of this Article, provided that that risk is not excessive.

Combined assessment of MREL

Article 9

(1) The Central Bank shall ensure that MREL is sufficient to allow the write down or conversion of an amount of own funds and qualifying eligible liabilities at least equal to the sum of loss absorption and the recapitalisation amounts, as determined in accordance with Articles 2, 3 and 4 of this Decision, subject to provisions laid down in Articles 5 to 8 of this Decision.

(2) The Central Bank shall express the calculated MREL as a percentage of total liabilities and own funds of the credit institution, with derivative liabilities included in the total liabilities on the basis that full recognition is given to counterparty netting rights.

(3) The Central Bank shall establish a schedule or process for updating the MREL, taking into account:

- 1) the need to update the MREL in parallel with the assessment of resolvability;
- 2) whether the volatility of the credit institution or group's total liabilities and own funds as a result of its business model would be likely to result in the MREL no longer being appropriate at an earlier date.

Transitional period for reaching the final MREL

Article 10

(1) By way of derogation from Article 9 of this Decision, the Central Bank may determine an appropriate transitional period to reach the final MREL or for a credit institution or entity to which resolution tools have been applied.

(2) For the purposes of paragraph (1) of this Article, the Central Bank shall determine an appropriate transitional period which is as short as possible. They shall also communicate to the credit institution a planned MREL for each 12 month period during the transitional period. At the end of the transitional period, the final MREL shall be equal to the amount determined under Article 9 of this Decision.

(3) The Central Bank shall not be prevented from subsequently revising either the transitional period or any planned MREL.

Entry into force

Article 11

This Decision shall enter into force on the 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

No. 0101-7571-7/2020
Podgorica, 21 December 2020

CHAIRMAN
G U V E R N E R,
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