

LAW

ON RESOLUTION OF CREDIT INSTITUTIONS

(OGM 072/19 of 26 December 2019, 082/60 of 6 August 2020, 008/21 of 26 January 2021)

BASIC PROVISIONS

Subject matter

Article 1

This Law governs the resolution of credit institutions, the establishment, financing, management and use of funds of the Fund for the resolution of credit institutions, and other matters relevant for the resolution of credit institutions.

Resolution of credit institution

Article 2

The resolution of a credit institution shall be the application of resolution actions taken against the credit institution in order to achieve resolution objectives referred to in Article 12 of this Law.

Application of the Law

Article 3

This Law shall apply to the following entities:

- 1) credit institution;
- 2) financial holding company and mixed financial holding company with their head offices in Montenegro;
- 3) parent financial holding company in Montenegro, EU parent financial holding company with its head office in Montenegro, parent mixed financial holding company in Montenegro and EU parent mixed financial holding company with its head office in Montenegro;
- 4) financial institution with head office in Montenegro when the financial institution is a subsidiary undertaking of a credit institution or an entity referred to in item 2) or 3) of this Article and is covered by the supervision on a consolidated basis in accordance with the law governing the operations of credit institutions; and
- 5) branch of third-country credit institution where branch has its head office in Montenegro.

Selection of resolution action

Article 4

- (1) The Central Bank of Montenegro (hereinafter: the Central Bank) shall decide on taking and selecting the actions for implementing this Law pursuant to the previously determined financial situation, the nature, scope and complexity of the activities, its shareholding structure, legal form, risk profile, size and legal status of a person referred to in Article 3 of this Law, as well as interconnectedness of a credit institution and other person with other organizational forms and financial system in general.
- (2) The regulations governing the operations of credit institutions and forms of performing economic activity shall

apply to credit institution under resolution, unless otherwise prescribed by this Law.

Use of gender sensitive language

Article 5

The terms used of this Law used for natural persons in masculine gender shall imply the same terms in feminine gender.

Meaning of terms

Article 6

The terms used in this Law shall have the following meanings:

- 1) institution means a credit institution and an investment firm;
- 2) credit institution means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant loans for its own account;
- 3) investment firm means any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis, and is subject to initial capital requirements laid down in the law governing capital market, excluding the following:
 - credit institutions;
 - local firm dealing for its own account on the markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivative markets, or dealing for the accounts of other members of those markets and being guaranteed by clearing members of the same markets, where responsibility for ensuring the performance contracts entered into by such a firm is assumed by clearing members of the same markets;
 - firms which are not authorised to provide the ancillary service, which provide only one or more investment services or activities laid down in law governing the capital market and which are not permitted to hold money or securities belonging to their clients and which for that reason may not at any time place themselves in debt with those clients;
- 4) financial institution means a legal person, other than an institution, the principal or predominant activity of which is to acquire holdings in capital or to provide one or more core financial services set forth by this Law, including a financial holding company, a mixed financial holding company, a payment institution and an asset management company, but excluding insurance holding companies and mixed-activity insurance holding companies;
- 5) financial holding company means a financial institution, the subsidiary undertakings of which are exclusively or mainly institutions or financial institutions, whereby at least one of such undertakings being an institution, and which is not a mixed financial holding company;
- 6) mixed financial holding company means a parent undertaking in a financial conglomerate, other than a credit institution, insurance undertaking or investment firm, which together with its subsidiary undertakings, at least one of which is a credit institution, insurance undertaking or investment firm, and other entities, constitutes a financial conglomerate;
- 7) mixed-activity holding company means a parent undertaking, other than a financial holding company or an institution or a mixed financial holding company, the subsidiary undertakings of which include at least one an institution;
- 8) parent financial holding company means a financial holding company with head office in a certain State which is not itself a subsidiary undertaking of an institution authorised in the same State, or of a financial holding company or mixed financial holding company set up in that State;
- 9) EU parent financial holding company means a parent financial holding company in a Member State which is not a subsidiary undertaking of an institution authorised in any Member State or of another financial holding company or mixed financial holding company set up in any Member State, other than parent financial holding company in Montenegro;

- 10)parent mixed financial holding company means a mixed financial holding company with head office in a certain State which is not a subsidiary undertaking of an institution authorised in the same State, or of a financial holding company or mixed financial holding company set up in that State;
- 11)EU parent mixed financial holding company means a parent mixed financial holding company in a Member State which is not a subsidiary undertaking of an institution authorised in any Member State or of another financial holding company or mixed financial holding company set up in any Member State, other than parent mixed financial holding company in Montenegro;
- 12)institution under resolution means a credit institution, a financial institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, an EU parent financial holding company, a parent mixed financial holding company in a Member State, or an EU parent mixed financial holding company, in respect of which a resolution action is taken;
- 13)member state means an EU Member State and signatory country of the Agreement on European Economic Area;
- 14)third country means a foreign country other than the Member State;
- 15)branch means an organisational part of the credit institution, without a legal person status, and which carries out all or some of transactions inherent in the business of the credit institution;
- 16)significant branch means a branch of a credit institution in a Member State that has been designated as significant pursuant to regulations governing the operations of the credit institutions for the Member State where the head office of such a branch is located;
- 17)competent authority means a public or other authority officially recognised by national law and empowered by national law to supervise credit institutions as part of the supervisory system in operation in that State;
- 18)competent ministry means the finance ministry of the Member State or other ministries of the Member States which are responsible for economic, financial and budgetary decisions at the national level according to national competencies which have been designated to exercise the functions of a competent ministry in line with the regulations of that State governing the resolution of credit institutions;
- 19)management body means body or bodies of the legal person, which are, in accordance with the regulations, empowered to set the strategy, objectives and overall direction of the legal person, and which oversee and monitor the management decision-making, and include the persons who effectively direct the business of the legal person;
- 20)senior management means those natural persons who exercise executive functions within credit institution and who are responsible and accountable to the management body, for the day-to-day management of the credit institution;
- 21)group means a parent undertaking and its subsidiary undertakings;
- 22)member of the group means a legal person that is part of a group;
- 23)cross-border group means a group having members of the group in more than one country;
- 24)emergency liquidity assistance means the provision of the liquidity by the Central Bank or any other assistance that may result in an increase of liquidity assistance by the Central Bank, to a solvent credit institution, or group of solvent credit institutions, that is facing temporary liquidity problems, without such an operation being part of monetary policy;
- 25)consolidating supervisor means a competent authority responsible for the exercise of supervision on a consolidated basis of parent credit institutions and of credit institutions controlled by parent financial holding companies or parent mixed financial holding companies;
- 26)consolidated basis means: on the basis of the consolidated situation;
- 27)sub-consolidated situation means: on the basis of consolidated situation of a parent credit institution, financial holding company or mixed financial holding company, excluding a sub-group of entities or on the basis of the consolidated situation of a parent credit institution, financial holding company or mixed financial holding company that is not the ultimate parent institution, financial holding company or mixed financial holding company;
- 28)group resolution authority means the resolution authority in the Member State of the competent

- consolidating authority;
- 29)core business lines means business lines and associated services which represent material sources of revenue, profit or franchise value for a credit institution or for a group of which an institution forms part;
- 30)resolution action means the decision to initiate resolution proceedings against a credit institution or a legal person referred to in Article 3 items 2), 3) and 4) of this Law, the application of resolution tools, or the exercise of one or more resolution powers;
- 31)resolution tool means an instrument referred to in Article 68 paragraph (1) of this Law;
- 32)group resolution means taking of resolution action at the level of a parent undertaking or of a credit institution subject to consolidated supervision, or the coordination of the application of resolution tools and the exercise of resolution powers by resolution authorities in relation to group members that meet the condition for resolution;
- 33)bankruptcy proceedings means collective insolvency proceedings which entail partial or total divestment of a debtor and the appointment of bankruptcy administrator;
- 34)winding up means liquidation and separation of assets of a credit institution or a legal person referred to in Article 3 items 2), 3) and 4) of this Law;
- 35)parent credit institution means a credit institution with head office in a certain State which has a credit institution or a financial institution as a subsidiary undertaking, or which holds a significant holding in such a credit institution or financial institution, and which is not itself a subsidiary undertaking of another credit institution authorised in the same State, or of a financial holding company or mixed financial holding company set up in that State;
- 36)EU parent credit institution means a parent credit institution in a Member State which is not a subsidiary undertaking of another credit institution authorised in any Member State, or of a financial holding company or mixed financial holding company set up in any Member State;
- 37)supervisory college means a body established by the consolidating supervisor in accordance with the regulations governing the operations of credit institutions;
- 38)instruments of ownership means shares, other instruments that confer ownership, instruments that are convertible into or give the right to acquire shares or other instruments of ownership, and other instruments representing interests in shares or other instruments of ownership;
- 39)shareholder means shareholder or holder of other instruments of ownership;
- 40)own funds instruments means capital instruments issued by the credit institutions and which meet requirements for Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments;
- 41)Additional Tier 1 instruments means capital instruments that qualify as Additional Tier 1 instruments of the credit institution in accordance with the law governing the operations of credit institutions;
- 42)Tier 2 instruments means capital instruments or subordinated loans that qualify as Tier 2 instruments of the credit institution in accordance with the law governing the operations of credit institutions;
- 43)relevant capital instruments means Additional Tier 1 instruments and Tier 2 instruments;
- 44)affected creditor means a creditor whose claim relates to a liability that is reduced or converted to shares or other instruments of ownership by the exercise of the write down or conversion power pursuant to the use of the bail-in tool;
- 45)recipient undertaking means a legal person to which shares or other instruments of ownership, debt instruments and/or assets, rights, and liabilities are transferred from a credit institution under resolution;
- 46)termination right means a right to terminate a contract, right to accelerate, close out, set-off or net obligations or any similar provision that suspends, modifies or extinguishes any obligation of a party to the contract or a provision that prevents an obligation under the contract from arising that would otherwise arise;
- 47)working day means every day other than Saturday, a Sunday or a public holiday;
- 48)EU subsidiary undertaking means a credit institution which is established in a Member State and which is a subsidiary of a third-country credit institution or a third-country parent undertaking;
- 49)EU parent undertaking means an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company;

- 50)third-country credit institution means a legal person, the head office of which is established in a third country, that would, if it were established within the EU, be covered by the definition of a credit institution;
- 51)third-country parent undertaking means a parent undertaking, a parent financial holding company or a parent mixed financial holding company, with a head office in a third country;
- 52)EU branch means a branch located in a Member State of a third-country credit institution;
- 53)relevant third-country authority means a third-country authority responsible for exercising the powers comparable to those of resolution authorities or competent authorities pursuant to this Law;
- 54)group financing arrangement means the financing arrangement or arrangements of the Member State of the group-level resolution authority;
- 55)back-to-back transaction means a transaction entered into between two group entities for the purpose of transferring, in whole or in part, the risk generated by another transaction entered into between one of those group entities and a third party;
- 56)covered deposit means the part of the eligible deposits that does not exceed the coverage level;
- 57)eligible deposit means every deposit in a credit institution which is eligible for the deposit guarantee scheme as defined in the law governing deposit protection;
- 58)covered bonds means bonds which meet the conditions specified for covered bonds, which are issued by a credit institution with its head office in the Member State and is subject by special public supervision designed to protect the bond-holders;
- 59)netting arrangement means an arrangement under which a number of claims or obligations can be converted into a single net claim, including close-out netting arrangements under which, on the occurrence of an enforcement event (however or wherever defined) the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim, including: close-out netting provisions and netting;
- 60)close-out netting provisions mean a provision of a financial collateral arrangement, or of an arrangement including a financial collateral, or, in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event whether through the operation of netting or set-off or otherwise:
- the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or
 - an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party;
- 61)netting means the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or other participants either issue to, or receive from one or more other participants with the result that only a net claim can be demanded or a net obligation be owed;
- 62)set-off arrangement means an arrangement under which two or more claims or obligations owed between the credit institution under resolution and a counterparty can be set off against each other;
- 63)crisis prevention measure means the exercise of powers to direct removal of deficiencies or impediments to recoverability in accordance with the law governing the operations of credit institutions, the exercise of powers to address or remove impediments to resolvability in accordance with this Law, the application of an early intervention measure including a measure of the appointment of temporary administration pursuant to the law governing the operations of credit institutions or the exercise of the write down and conversion powers of relevant instruments of capital in accordance with this Law;
- 64)crisis management measure means a resolution action or the appointment of a resolution administration, and persons responsible for drawing up the reorganisation plan in accordance with this Law;
- 65)depositor means the holder, or in the case of a joint account, each of the holders, of a deposit, in a credit institution;
- 66)regulated market means a multilateral system operated by a market operator, which creates conditions for bringing together multiple third-party interests in concluding contracts on buying and selling of the financial instruments admitted to trading under the rules of that system and which functions regularly in accordance with the law governing the capital market;

67)parent undertaking means a parent undertaking as defined in the law governing the operations of credit institutions;

68)subsidiary undertaking means a subsidiary as defined in the law governing the operations of credit institutions.

II. AUTHORISATIONS IN THE RESOLUTION PROCESS

Resolution authority

Article 7

- (1) The Central Bank shall be the resolution authority empowered to apply the resolution tools and exercise the resolution powers in accordance with the powers as provided for in this Law.
- (2) The Central Bank shall ensure operational independence to avoid conflicts of interest between the powers exercised by the Central Bank as the resolution authority in accordance with the provisions of this Law and the powers it exercises as a supervisory authority of the credit institutions in accordance with the law governing the operations of credit institutions.
- (3) Operational independence referred to in paragraph (2) of this Article shall be ensured by establishing a separate reporting system and drawing up proposal of decisions and other acts within the resolution function and decisions and other acts within the supervisory function.
- (4) Resolution function or supervisory function referred to in paragraph (3) of this Article shall comprise of the employees of the Central Bank, who, in accordance with the internal organisation of the Central Bank, carry out the activities with regard to the drafting of decisions, opinions and other acts passed by the Central Bank bodies in pursuing its supervisory or resolution function of the credit institutions, including persons empowered by the Statute of the Central Bank in the area of supervision or resolution of credit institution and propose acts to be passed by the Central Bank bodies.
- (5) The Central Bank may, for performing specific activities with regard to the resolution, engage auditor or other professionally eligible person that is not employed by the Central Bank, provided that the conditions on the confidentiality of information have been met.
- (6) The Central Bank shall ensure that, in accordance with the internal organisation and other internal acts, employees involved in carrying out the activities with regard to the credit institution resolution pursuant to the provisions hereof are separated structurally and functionally from the employees involved in carrying out the activities with regard to the credit institution supervision and are subject to separate reporting lines.
- (7) The Central Bank shall publish on its web site a summary form on any relevant internal acts of the Central Bank governing the organisation of activities from the area of the credit institution resolution, including rules on professional secrecy and exchange of information between the resolution function and supervisory function of credit institutions.
- (8) The Central Bank may determine guidelines for the application of this Law in accordance with the guidelines of the European Banking Authority governing the resolution of credit institutions.

Resolution activities

Article 8

- (1) The resolution function and the supervisory function referred to in Article 7 paragraph (4) of this Law shall cooperate closely in drafting acts, planning and performing other activities in accordance with this Law.
- (2) The following shall be drawn up in exercising the activities and achieving the cooperation referred to in paragraph (1) of this Article:
 - 1)in the event referred to in Article 68 paragraph (6) of this Law, within the resolution function, proposals for making decision on revoking the license from credit institution under resolution;
 - 2)within the supervisory function, the following shall be drawn up:
 - a proposal for deciding on initiating the resolution proceedings against the credit institution and

financial institutions and holding companies referred to in Article 43 of this Law;

-a proposal of actions referred to in Article 71 paragraph (2) of this Law, with the consent of the resolution function;

3) resolution function and supervisory function shall jointly:

-make an assessment of reorganisation plan referred to in Article 106 paragraph (1) of this Law, and amended reorganisation plan referred to in Article 106 paragraph (3) of this Law;

-make an assessment and prepare proposal for making decision on accepting reorganisation plan referred to in Article 105 paragraph (1) of this Law, and the proposal for ordering the amendments to the approved plan within the meaning of Article 106 paragraph (6) of this Law;

-draw up proposals of the Central Bank's positions with regard to the assessment of the fulfilment of the conditions referred to in Article 109 paragraph (4) items 1) and 3) of this Law;

4) resolution function, shall draw up the proposal, after consulting the supervisory function, for making decision on:

-resolution plan referred to in Article 18 of this Law;

-measures to address or remove impediments for resolution referred to in Article 25 of this Law;

-minimum requirement for own funds and eligible liabilities referred to in Article 30 of this Law;

-revocation of license for bridge credit institution within the meaning of Article 88 paragraph (5) of this Law,

-completion of the resolution proceedings referred to in Article 71 paragraph (2) of this Law;

5) resolution function shall submit to the supervisory function the following:

- notification of the credit institution referred to in Article 18 paragraph (8) of this Law;

- resolution plans of the credit institutions;

-notification referred to in Article 36 paragraph (5) of this Law on initiating the resolution proceedings against the credit institution,

-in the event of the refusal of the proposal to initiate the resolution proceedings referred to in Article 35 paragraph (1) of this Law, the notification on the refusal of the proposal, for the purpose of further compliance with the law governing the operations of the credit institutions;

-decision referred to in Article 79 paragraphs (2) and (3) of this Law;

-document of the credit institution under resolution referred to in Article 82 paragraph 2 of this Law governing the strategy and risk profile of the bridge credit institution;

-notification referred to in Article 106 paragraph (3) of this Law;

-quarterly reports of the resolution authority referred to in Article 106 paragraph (5) of this Law governing the implementation of the reorganisation plan;

-decisions referred to in Articles 120, 121 and 122 of this Law;

6) supervisory function shall submit to the resolution function the following:

-available information necessary for drawing up and implementation of resolution plans;

-notification referred to in Article 35 paragraph (4) of this Law governing the fulfilment of the requirements referred to in paragraph (1) of that Article,

-a document passed in accordance with Article 48 paragraph (4) governing the existence of circumstances referred to in Article 48 paragraph (2) items 1) and 2) of this Law;

-decision on the application for granting authorisation to acquire qualifying holding referred to in Article 75 paragraph (6) of this Law.

Liability for damage

Article 9

The Central Bank, employees of the Central Bank, members of the resolution administration and its assistants, auditors or any other person authorised by the Central Bank shall not be held liable for the damage arising in the course of performance of their duties in line with this Law, unless it is proven that they acted or failed to act intentionally or as a result of gross negligence.

Competent ministry

Article 10

- (1) The government authority responsible for the finance affairs (hereinafter: the Ministry) shall implement government financial stabilisation tools referred to in this Law.
- (2) The Central Bank shall notify the Ministry of the decisions adopted in accordance with the provisions of this Law.

Cooperation with the resolution authority for investment firms

Article 11

- (1) The Central Bank shall cooperate with resolution authority for investment firms in Montenegro in exercising its tasks and powers pertaining to the resolution of groups and ensure efficient planning of the decisions and application of resolution actions of the institutions.
- (2) The Central Bank and the resolution authority for the investment firms shall establish, to the greatest extent possible, single practices with regard to the resolution planning and resolution actions against the institutions and harmonise resolution methods.
- (3) The Central Bank and the resolution authority for investment firms shall mutually exchange all information needed for performing their duties and powers with regard to the resolution or termination of institutions.

III. RESOLUTION PLANNING

Resolution objectives

Article 12

- (1) When applying the resolution tools or exercising the resolution powers, the Central Bank shall have regard to the resolution objectives referred to in paragraph (2) of this Article, and choose the tools and powers that best achieve the objectives that are relevant in the circumstances of the case.
- (2) The resolution objectives of a credit institution shall be the following:
 - 1) to ensure the continuity of critical functions of the credit institution;
 - 2) to avoid a significant adverse effect on the financial system stability, in particular to prevent contagion to the financial system, including to market infrastructure, and by maintaining market discipline;
 - 3) to protect budget and other public funds by minimising reliance on extraordinary public financial support to resolution of credit institutions;
 - 4) to protect depositors that have covered deposits in the credit institution; and
 - 5) to protect client funds and client assets.
- (3) Critical functions referred to in paragraph (2) item 1) of this Law shall be the activities, services or operations the discontinuance of which in Montenegro or any Member State is likely to lead to the disruption of services that are essential to the real economy or to disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of a credit institution or group, with particular regard to the substitutability of those activities, services or operations.
- (4) The resolution objectives referred to in paragraph (2) of this Article shall be of equal significance and shall be mutually balanced in the resolution proceedings of a credit institution as appropriate to the nature and circumstances of each case.

- (5) When pursuing the resolution objectives referred to in paragraph (2) of this Article, the Central Bank shall seek to minimise the cost of resolution and avoid destruction of value of assets of a credit institution unless necessary to achieve the resolution objectives.

Principles governing resolution

Article 13

- (1) When applying the resolution tools and exercising the resolution powers, the Central Bank shall ensure that the resolution action is taken in accordance with the following principles:
- 1) the shareholders of the credit institution under resolution bear first losses, and other creditors of the credit institution under resolution bear losses after the shareholders in accordance with the reverse order of priority of their claims in relation to the order of priority for the collection of claims referred to in the law governing bankruptcy proceedings of credit institutions;
 - 2) members of the supervisory board, management board and senior management of the credit institution under resolution are removed from office, except in those cases where the full or partial retention of those members is necessary for the achievement of the resolution objectives;
 - 3) supervisory board, management board and senior management of the credit institution under resolution shall provide all necessary assistance for the achievement of the resolution objectives;
 - 4) natural and legal persons responsible for the failure of the credit institution shall be held liable in accordance with the provisions of applicable regulations governing compensation for damages and/or criminal liability;
 - 5) except where otherwise prescribed by this Law, creditors who, in accordance with the law governing bankruptcy proceedings fall within the same class of priority are treated in an equitable manner;
 - 6) no creditor shall incur greater losses than would have been incurred if bankruptcy proceedings had been opened against a credit institution in accordance with the safeguards stipulated in this Law;
 - 7) covered deposits are fully protected against the implementation of resolution tools and exercising resolution powers;
 - 8) resolution actions are taken in accordance with the safeguards referred to in this Law.
- (2) Resolution action referred to in paragraph (1) of this Article shall be the decision to place a credit institution or legal person referred to in Article 3, items 2), 3) and 4) of this Law under resolution the application of resolution tools, or the exercise of one or more resolution powers in accordance with this Law.
- (3) Where a credit institution is a member of the group the Central Bank shall, without prejudice to the achievement of resolution objectives, apply resolution tools and exercise resolution powers in a way that minimises the impact on other members of the group and on the group as a whole and minimises the adverse effects on financial stability in the European Union and its Member States, in particular, in the countries where the group operates.
- (4) The application of the resolution tools and the exercise of the resolution powers shall be subject to the European Union State aid framework, where applicable.
- (5) Where the sale of business tool, the bridge credit institution tool or the asset separation tool is applied to a credit institution or legal person referred to in Article 3 item 2), 3) and 4) of this Law, the rights of employees transferred to new employers may be reduced.
- (6) When implementing the resolution actions and enforcing the resolution proceedings, the Central Bank shall inform employee representatives of the credit institution under resolution, where appropriate.

Assessment of resolvability of a credit institution which is not part of a group

Article 14

- (1) When drawing up and updating the resolution plan for a credit institution which is not member of a group, the Central Bank shall assess the feasibility of the bankruptcy proceedings or the resolvability of a credit institution and identify and analyse impediments for the resolution or determine the measures that might be taken to remove those impediments.

- (2) The resolution proceedings of a credit institution shall be deemed possible, if bankruptcy is feasible or if resolution is feasible, provided that the implementation of these proceedings, to the extent possible, does not lead to any adverse effects to the financial system and its implementation ensures the continuity of critical functions of the members of the group.
- (3) The assessment of resolvability of a credit institution shall not be based on the assumption of providing any extraordinary public financial support from the State Budget or other public revenues except the use of funds of the Resolution Fund, nor on any emergency liquidity assistance or liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.
- (4) Extraordinary public financial support referred to in paragraph (3) of this Article shall be a state aid, granted in accordance with the law governing the control of state aid provision, provided with the aim to preserve or restore sustainability, liquidity or solvency of a credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law or a group that is composed of that institution or legal person.
- (5) If a credit institution has a significant branch in a Member State, the Central Bank shall, in relation to that branch, prior to the assessment referred to in paragraph (1) of this Article, cooperate with the resolution authority of that country.
- (6) When assessing the resolvability of the credit institution which is not part of a group, the Central Bank shall consider the following:
 - 1)the ability of a credit institution to map core business lines and critical functions to other legal persons;
 - 2)the ability of the legal and corporate structures of a credit institution to align with core business lines and critical functions;
 - 3)the organisational, staffing, financial and infrastructural capacities and the level of liquidity and capital to support and maintain the core business lines and critical functions of a credit institution;
 - 4)the sustainability of service agreements in place and their enforceability in the event of the resolution of the credit institution;
 - 5)the adequacy of the governance structure of the credit institution for managing and ensuring compliance of the service agreements with the credit institution's policies;
 - 6)the ability of the credit institution to have a process for transitioning the services provided under service agreements to third parties in the event of the separation of critical functions or core business lines;
 - 7)the existence and adequacy of the business continuity plans and contingency measures to provide continuity in the access to the payment and settlement systems;
 - 8)the capacity of information system of credit institution to provide access to accurate and complete information relating to core business lines and critical functions for the purpose of facilitating rapid decision-making linked to resolution;
 - 9)the capacity of management information systems to continuously provide the information essential for the effective resolution of the credit institution, even under rapidly changing conditions relevant for the resolution of the credit institution;
 - 10)the results of the testing of the management information systems under stress scenarios;
 - 11)the ability of credit institution to ensure the continuity of management information systems both for the affected credit institution or new legal person in the event that the critical functions and core business lines are separated from the rest of the functions and business lines of the credit institution;
 - 12)the established adequate process to ensure that it provides updated and complete information to identify creditors of the credit institution, including information necessary to identify depositors with covered deposits and the amounts of covered deposits;
 - 13)the conditions under which intra-group guarantees are issued, and whether they were issued at market conditions and the resilience of the risk management systems concerning those guarantees;
 - 14)the compliance and the volume of back-to-back transactions within the group, the level of compliance of those transactions with market conditions and the resilience of the risk management system concerning those transactions;
 - 15)the impact that the use of intra-group guarantees or back-to-back booking transactions has on the contagion across the group;

- 16) the impact of the legal structure of the group on the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in mapping the business lines to members of the group;
 - 17) the amount and type of eligible liabilities of the credit institution;
 - 18) the existence and robustness of the service level agreement;
 - 19) whether there is another authority where subsidiary of a group operates have the resolution tools necessary to apply the resolution actions equivalent to those measures stipulated by this Law, and whether there is a possibility for a coordinated action between the Central Bank and that authority;
 - 20) the feasibility of using resolution actions in such a way which meets the resolution objectives referred to in Article 12 of this Law, with regard to the possibility of their application and the structure of credit institution;
 - 21) whether the group structure allows the Central Bank the resolution of the whole group or one or more of its members without causing a significant direct or indirect adverse effect on the financial system, market confidence or the economy and with a view to maximising the value of the group as a whole;
 - 22) the arrangements and means through which resolution is facilitated in the cases of groups that have subsidiary undertakings operating in different jurisdictions;
 - 23) the credibility of using resolution tools in such a way which meets the resolution objectives, given the possible impacts on creditors, counterparties, customers and employees and possible actions that another-country authorities may take;
 - 24) the adequacy of the assessment of the impact of credit institution resolution on financial system and market confidence;
 - 25) the resolution effect (positive or negative) on the financial system stability and market confidence and the possibility of effects evaluation;
 - 26) the application of resolution actions and powers to contain the contagion of adverse effects to other credit institutions or to the financial markets; and
 - 27) the effect on credit institution resolution on the operation of payment and settlement systems.
- (7) By way of derogation from paragraph (6) of this Article, the Central Bank may simplify the assessment of the feasibility of bankruptcy proceedings or of the resolvability without assessing all elements referred to in paragraph (6) of this Article, if bankruptcy proceedings or resolution of the credit institution or group would not have, due to the nature, scope and complexity of its activities, its shareholding structure, its risk profile, size, legal form and status, its interconnectedness to other credit institutions or to the financial system in general, an adverse effect on financial markets, on other credit institutions or funding conditions.
- (8) The Central Bank shall prescribe the resolvability criteria of the credit institution and the group and the impact assessment of the enforcement of the resolution proceedings of the credit institution on financial markets, other institutions or financing conditions.

Assessment of resolvability for a group from Montenegro

Article 15

- (1) The assessment of the resolvability at group-level where all members have their head offices in Montenegro shall be made by applying Article 14 of this Law.
- (2) When assessing the resolvability referred to in paragraph (1) of this Article, the Central Bank shall, in addition to the assessment elements referred to in Article 14 paragraph (6) of this Law, assess the following elements:
 - 1) where the group uses intra-group guarantees, whether those guarantees are given at market conditions and whether those transactions are negotiated under market conditions and whether the risk management system concerning those transactions is effective and sound;
 - 2) where a group concluded back-to-back transaction agreements, whether those transactions are concluded at market conditions and the risk management system concerning those transactions are effective and sound;
 - 3) the extent to which guarantees or transactions referred to in items 1) and 2) of this Article may increase the risk of contagion of adverse effects across the group;
 - 4) the extent to which the legal structure of the group inhibits the application of the resolution tools as a result

- of the number of legal persons, the complexity of the group structure or the difficulty in mapping business lines to legal persons;
- 5) the extent of adverse effect of the resolution of a group member which is credit institution or financial institution on the non-financial part of the group, if such assessment covers also mixed-activity holding company;
 - 6) where the assessment involves a mixed-activity holding company, the extent to which the resolution of a member of the group that is an institution or a financial institution could have a negative impact on the non-financial part of the group;
 - 7) the arrangements and means through which resolution is facilitated in the cases of groups that have subsidiaries in territories under different jurisdictions; and
 - 8) the extent to which the group structure allows the resolution of the whole group or one or more of its members without causing a significant adverse effect on the financial system, market confidence or the economy and with a view to maximising the value of the group as a whole.
- (3) Intra-group guarantee referred to in paragraph (2) item 1) of this Article shall be a contract by which one member of the group guarantees the obligations of another member of the group to a third party.

Assessment of resolvability of an EU group where the Central Bank is the group-level resolution authority

Article 16

- (1) Where the Central Bank is the EU group-level resolution authority it shall assess the feasibility of bankruptcy proceedings of the EU group or its resolvability for the purpose of drawing up and updating the resolution plan referred to in Article 19 of this Law together with the resolution authorities of subsidiary undertakings.
- (2) The bankruptcy proceedings or resolution proceedings of an EU group shall be deemed possible if the bankruptcy proceedings are feasible and credible or if resolution is feasible and credible, in order to avoid any adverse effect on the financial system of Montenegro, another Member State or the European Union as a whole and with a view to ensuring the continuity of critical functions carried out by the members of the group.
- (3) The resolvability of a credit institution shall not be based on the assumption of providing any extraordinary public financial support from the State Budget or other public revenues except the use of funds of the Resolution Fund, nor on any emergency liquidity assistance or liquidity assistance of the Central Bank provided under non-standard collateralisation, tenor and interest rate terms.
- (4) The assessment of resolvability of a cross-border group shall be carried out in accordance with the procedure referred to in Article 22 of this Law regulating the adoption of the group-level resolution plan.
- (5) When carrying out the assessment referred to in paragraph (1) of this Article, the Central Bank shall consult the competent authorities of subsidiary undertakings and resolution authorities of other Member States where significant branches of members of the group are located insofar as is relevant to the branch.
- (6) The assessment referred to in paragraph (2) of this Article shall be considered by a resolution college referred to in Article 127 of this Law.
- (7) The assessment referred to in paragraph (1) of this Article for a cross-border group shall be taken into consideration by a resolution college referred to in Article 125 of this Law.
- (8) The assessment referred to in paragraph (1) of this Article shall consider in particular the elements listed in Article 19 paragraph (2) of this Law.
- (9) By way of derogation from paragraph (8) of this Article, the resolution authorities referred to in paragraph (1) of this Article may simplify the assessment of the feasibility of bankruptcy proceedings or of the resolvability of a credit institution or an EU group by not assessing all listed elements referred to in paragraph (8) of this Article, where bankruptcy proceedings or resolution of that group would not have, due to the nature, scope and complexity of its activities, its shareholding structure, its risk profile, size, legal form and status, its interconnectedness to other institutions or to the financial system in general, a negative effect on the financial markets, on other institutions or funding conditions.

Assessment of the resolvability of an EU group where the Central Bank is not the group-level resolution authority

Article 17

- (1) The Central Bank shall assess the feasibility of bankruptcy proceedings or the resolvability of each credit institution with its head office in Montenegro or of a Montenegro group of institutions which is part of an EU group of institutions, the group-level resolution authority of which is not the Central Bank.
- (2) For the purpose of drawing up and updating the resolution plan referred to in Article 24 of this Law, the Central Bank shall assess the resolvability of an EU group of institutions together with the group-level resolution authority and resolution authorities of other subsidiary undertakings.
- (3) The assessment of resolvability of a cross-border group shall be carried out in accordance with the procedure referred to in Article 22 of this Law regulating the adoption of the group-level resolution plan.
- (4) When carrying out the assessment referred to in paragraph (2) of this Article, the Central Bank shall consult the competent authorities of subsidiary undertakings and resolution authorities of other Member States where significant branches of members of the group of institutions are located insofar as is relevant to the branch.
- (5) The assessment referred to in paragraph (2) of this Article shall be taken into consideration by a resolution college referred to in Article 127 of this Law.
- (6) The assessment referred to in paragraph (1) of this Article shall consider in particular the elements listed in Article 19 paragraph (2) of this Law.

Resolution plan for a credit institution and group in Montenegro

Article 18

- (1) The Central Bank shall draw up a draft of resolution plan for:
 - 1) each credit institution with its head office in Montenegro which is not part of a group, and
 - 2) a group which parent credit institution and members of the group have its head office in Montenegro.
- (2) The resolution plan shall ensure resolution action the Central bank may take if a credit institution meets the conditions for resolution.
- (3) When drawing up the resolution plan, the Central Bank shall determine all substantive impediments for resolution and if needed, it shall determine relevant measures to remove those impediments in accordance with the provisions of this Law governing the removal of impediments to resolution.
- (4) When drawing up a resolution plan, different scenarios underlying the occurrence or spreading of serious macroeconomic or financial disruptions important for the financial system as a whole shall be taken into consideration.
- (5) The resolution plan referred to in paragraph (1) of this Article shall not assume any of the following:
 - 1) any extraordinary public financial support for the budget of the State or public revenues except from the use of the funds of the Resolution Fund established in line with this Law;
 - 2) any emergency liquidity assistance; or
 - 3) any liquidity assistance of the Central Bank provided under non-standard collateralisation, tenor or interest rate terms.
- (6) The Central Bank shall review and update the resolution plans at least annually and after any changes to the legal or organisational structure of the credit institution or to its business or its financial position that could have a material effect on the effectiveness of the plan or otherwise necessitates its revision.
- (7) The Central Bank shall deliver to a credit institution a summary of key elements of the resolution plan referred to in Article 19 paragraph (2) item 1) of this Law.
- (8) A credit institution shall notify the Central Bank on any changes that may require the revision or updating of the resolution plan.

Content of the resolution plan of a credit institution

Article 19

- (1) The resolution plan of a credit institution shall prescribe the implementation of adequate resolution tools and powers of the Central Bank after adopting the decision to initiate resolution proceedings.
- (2) The resolution plan of a credit institution shall include in particular the following:
 - 1) a summary of the key elements of the resolution plan;
 - 2) a summary of the material changes to the credit institution that have occurred after the adoption of the last change of the resolution plan;
 - 3) a demonstration of how critical functions and core business lines could be legally and economically separated from other functions and core business lines so as to ensure business continuity upon initiating the resolution proceedings against the credit institution;
 - 4) timeframes for executing each material part of the resolution plan;
 - 5) a detailed description of the assessment of resolvability in line with Article 14 of this Law;
 - 6) a description of any actions referred to in Article 25 of this Law removing the impediments for carrying out the resolution proceedings;
 - 7) a description of processes for determining the value and marketability of the critical functions, core business lines and assets of the credit institution;
 - 8) a detailed description of the arrangements for ensuring that the updated information and data is provided from the credit institution;
 - 9) a description of possible manners of financing of various resolution strategies taking into consideration restrictions specified in Article 18 paragraph (5) of this Law;
 - 10) a detailed description of different resolution strategies that could be applied to different possible scenarios, as well as an assessment of time limits for their implementation, based on the review of different scenarios in which serious macroeconomic and financial disruptions relevant for the operation of the credit institution may occur;
 - 11) a description of potential systemic effects of the resolution of credit institution;
 - 12) a description of different options for preserving access to payment and clearing systems and an assessment of the transferability of client assets;
 - 13) an analysis of the impact of the resolution plan on the employees of the credit institution, including an assessment of any associated costs, and a description of envisaged procedures to consult employees during the resolution proceedings, including also the dialogues with social partners, where applicable;
 - 14) a plan for communicating with the media and the public with regard to the resolution of the credit institution;
 - 15) minimum requirements for own funds of the credit institution in accordance with the law governing the operations of credit institutions and minimum requirements for eligible liabilities referred to in Article 29 of this Law and time limits the credit institution is required to meet these requirements, where applicable;
 - 16) minimum requirements for own funds and contractual bail-in tools referred to in Article 31 paragraph (6) of this Law and the time limits the credit institution is required to meet these requirements, where applicable;
 - 17) a description of activities and systems in the credit institution needed for continuous functioning of the credit institution's operational processes;
 - 18) a description of essential procedures and systems for maintaining the continuity of operational processes of the credit institution;
 - 19) where applicable, an opinion expressed by the credit institution in relation to the resolution plan;
 - 20) an analysis of how and when the credit institution may, under the conditions specified by the plan, apply for the use of the Central Bank assistance and identify assets that might be considered collateral.
- (3) By way of derogation from paragraph (2) of this Article, the Central Bank may simplify the content of the resolution plan where bankruptcy proceedings or resolution of the credit institution would not have, due to the nature, scope and complexity of its activities or group to which it belongs, its shareholding structure, its risk profile, size, legal form and status, its interconnectedness to other credit institutions or to the financial system in general, a negative effect on financial markets, on other credit institutions or funding conditions.

- (4) The Central Bank shall prescribe in more detail the content of the credit institutions' resolution plans and group's resolution plans. Information for the

Purpose of Resolution Plans

Article 20

- (1) Credit institution shall, at the request of the Central Bank, deliver any assistance and information necessary to draw up, revise or implement resolution plan.
- (2) The Central Bank may, for the purposes of drawing up and updating resolution plans, request credit institutions to provide the following information:
- 1) a detailed description of the credit institution's organisational structure including a list of all legal persons;
 - 2) identification of the direct holders and the percentage of shared with voting and non-voting rights of each legal person;
 - 3) head office, jurisdiction of incorporation, licensing and key members of management bodies associated with each legal person;
 - 4) a mapping of credit institution's critical operations and core business lines, including material asset holdings and liabilities relating to such operations and operations, by reference to legal persons;
 - 5) a detailed description of the components of the credit institution's and all its legal persons' liabilities, separating, at a minimum by types and amounts of short term and long-term debt, secured, unsecured and subordinated liabilities;
 - 6) details of those liabilities of the credit institution that are eligible liabilities;
 - 7) an identification of the processes needed to determine whether the credit institution has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;
 - 8) a description of the off-balance sheet exposures of the credit institution and its legal persons, including a mapping to its critical operations and core business lines;
 - 9) the material hedges of the credit institution including a mapping to legal persons;
 - 10) identification of the major or most critical counterparties of the credit institution as well as an analysis of the impact of the failure of major counterparties in the credit institution's financial situation;
 - 11) systems within which the credit institution conducts a material number or value amount of trades, including a mapping to the credit institution's legal persons, critical operations and core business lines;
 - 12) each payment, clearing or settlement system of which the credit institution is directly or indirectly a member, including a mapping to the credit institution's legal persons, critical operations and core business lines;
 - 13) a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the credit institution including a mapping to the credit institution's legal persons, critical operations and core business lines;
 - 14) an identification of the owners of the systems referred to in item 13) of this paragraph, service level agreements related thereto, and any software and systems or licenses, including a mapping to credit institution's legal persons, critical operations and core business lines;
 - 15) an identification and mapping of the legal persons and the interconnections and interdependencies among the different legal persons such as:
 - common or shared personnel, facilities and systems;
 - capital, funding or liquidity arrangements;
 - existing or contingent credit exposures;
 - the existence of cross-guarantee agreements, cross-collateral arrangements, cross-default provisions or cross-affiliate netting arrangements;
 - risks transfers and back-to-back trading arrangements and service level agreements;
 - 16) the competent and resolution authority for each legal person;

- 17) the member of the management body responsible for providing the information necessary to prepare the resolution plan of the credit institution as well as those responsible, if different, for the different legal persons, critical operations and core business lines of credit institution;
 - 18) a description of the arrangement that the credit institution has in place to ensure that, in the event of resolution, the Central Bank will have all the necessary information for deciding upon and applying the resolution powers;
 - 19) the agreements entered into by the credit institutions and their legal persons with third parties the termination of which may be triggered by a decision to apply a resolution tool and whether the consequences of termination may affect the application of that resolution tool;
 - 20) a description of possible liquidity sources for supporting resolution; and
 - 21) information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.
- (3) Credit institution shall notify the Central Bank of any change to the legal or organisational structure, to the business or to the financial position, or any other change which could require a change to the resolution plan, in particular if it could have a material effect on the effectiveness of the plan, no later than within eight days following that of the occurrence of the change.
 - (4) Credit institution or legal persons referred to in Article 3 items 2), 3) and 4) of this Law shall prepare and on a regular basis update records of all financial contracts to which they are a party.
 - (5) Financial contracts referred to in paragraph (4) of this Article shall be:
 - 1) securities contracts, including:
 - contracts for the purchase, sale or loan of security, a group or index of securities,
 - options on a security or group or index of securities, and
 - repurchase or reverse repurchase transactions on any such security, group or index;
 - 2) commodities contract, including:
 - contracts for the purchase, sale or loan of a commodity, a group or index of commodities for future delivery,
 - options on a commodity or group or index of commodities, and
 - repurchase or reverse repurchase transactions on any such commodity, group or index of commodities;
 - 3) futures and forwards contracts, including contracts (other than commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
 - 4) swap agreements, including:
 - swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation,
 - total return swap, credit spread or credit swaps,
 - any agreements or transactions that are similar to the agreement referred to in indents 1 or 2 which is the subject of recurrent dealing in the swaps or derivatives markets;
 - 5) interbank-borrowing agreements where the term of the borrowings is three months or less; or
 - 6) master agreement for any of the contracts or agreements referred to in items 1) to 5) of this Article;
 - (6) A parent credit institution in the group shall meet the requirements referred to paragraphs (1) and (4) of this Article for all members of its group.

Content of EU group resolution plan

Article 21

- (1) The group resolution plan referred to in Articles 22 and 24 of this Law shall include a plan for resolution of the group the parent credit institution of which is an EU parent credit institution and which is carried out by the resolution through the resolution at the level of the EU parent credit institution or resolution of parts of the group or individual members of the group.
- (2) The group resolution plan shall contain measures for the resolution of:
 - 1) EU parent undertaking;
 - 2) EU subsidiary undertakings that are part of the group;
 - 3) the legal persons referred to in Article 3 items 2), 3) and 4) of this Law; and
 - 4) the subsidiary undertakings that are part of the group, with their head office outside the European Union in accordance with the Chapter X of this Law.
- (3) The group resolution plan shall include:
 - 1) the resolution actions to be taken in relation to members of the group, including resolution actions to be taken in relation to legal persons referred to in Article 3, items 3) and 4) of this Law, the parent undertaking and subsidiary credit institutions and coordinated resolution actions in relation to subsidiary institutions, taking into account the scenarios referred to in Article 18, paragraph (4) of this Law;
 - 2) the assessment of the possibility of taking coordinated activities and actions by the EU group resolution authorities, including actions to facilitate the sale to third parties of the group as a whole, or separate business lines or operations performed by one or more members of the group, and identify any potential impediments to a coordinated activities of the group resolution authorities;
 - 3) appropriate arrangements for cooperation and coordination with the relevant authorities of third countries in which the members of the group have its head office and their implications for the resolution of the group;
 - 4) a description of measures, including the legal and economic separation of particular functions or business lines necessary to implement group resolution when conditions for resolution referred to in Article 35 paragraph (1) of this Law are met;
 - 5) the ways for financing group resolution actions and, where the use of the financing arrangements for the group is envisaged, set out principles for sharing financing responsibilities among different Member States, whereas the ways of financing shall not assume any extraordinary public financial support, any central bank emergency liquidity assistance or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms;
 - 6) a description of other actions and activities to be taken for the resolution of the group that are not explicitly provided for under this Law.
- (4) The group resolution plan shall contain the results of the assessment referred to in Articles 16 or 17 of this Law and their detailed explanation.
- (5) The ways for financing group resolution actions referred to in paragraph (3) item 5) of this Article should be set out on the basis of equitable and balanced criteria and shall take into account the impact on the financial stability in all Member States where the head offices of members of the group are located.
- (6) The group resolution plan shall not have a disproportionate impact on any of the Member States.

Resolution plan for an EU cross-border group where the Central Bank is the group-level resolution authority

Article 22

- (1) Where the Central Bank is the EU group-level resolution authority, it shall draw up a resolution plan for such a group together with the resolution authorities of subsidiary undertakings of that group.
- (2) The resolution plan for the EU group of credit institutions shall be drawn up on the basis of all information available to it, and in particular the information obtained pursuant to Article 20 of this Law.
- (3) The Central Bank shall, provided that the confidentiality requirements laid down in Article 129 of this Law are met, transmit the information required for the drawing up of the group resolution plan to:
 - 1) European Banking Authority;

- 2) The resolution authorities of subsidiary undertakings;
 - 3) The resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch;
 - 4) The competent authorities participating in the supervisory colleges for such a group; and
 - 5) The resolution authorities of the Member States where the head offices of the legal persons referred to in Article 3 items 2), 3) and 4) of this Law are located.
- (4) The information referred to in paragraph (3) of this Article shall include in particular information relevant for subsidiary undertakings or significant branches.
 - (5) The information provided to the European Banking Authority shall include information that is relevant to its role in relation to the drawing up and adoption of the group resolution plan.
 - (6) In the case of information relating to third-country subsidiary undertakings, the Central Bank shall not be obliged to transmit that information without the consent of the relevant third-country supervisory authority or resolution authority.
 - (7) The Central Bank shall, acting with the resolution authorities referred to in paragraph (1) of this Article, in resolution colleges referred to in Article 125 of this Law and after consulting the relevant competent authorities, including the competent authorities of the jurisdictions of Member States in which any significant branch is located, draw up and revise group resolution plans.
 - (8) The Central Bank may, at its discretion, and subject to it meeting the confidentiality requirements laid down in Article 129 of this Law, involve in the drawing up and revision of group resolution plans third-country resolution authorities of jurisdictions in which the group has established subsidiary undertakings or financial holding companies or significant branch in accordance with the law governing the operations of credit institutions.
 - (9) The group resolution plan shall be reviewed, and if appropriate updated, at least annually, and after any change to the legal or organisational structure, to the business or to the financial position of the group or individual member of the group that could have a material effect on or require a change to the plan.
 - (10) The revision of the resolution plan shall be carried out in the procedure stipulated under this Law.
 - (11) The Central Bank shall submit the group resolution plan and its revisions to all relevant competent authorities.

The process of adopting the resolution plan for an EU group where the Central Bank is the group-level resolution authority

Article 23

- (1) Prior to drawing up the group resolution plan, the resolution authorities shall consult the resolution authorities of the countries where significant branches of the credit institutions that are members of that group operate insofar as is relevant to the branch.
- (2) The Central Bank and the resolution authorities of subsidiary undertakings shall, within four months following the date of the transmission of the information referred to in Article 22 paragraph (3) of this Law, make a joint decision for the adoption of the group resolution plan, which may involve all or individual members of the group and which must be fully reasoned.
- (3) The Central Bank may request the assistance of the European Banking Authority in reaching a joint decision.
- (4) In the absence of joint decision within the deadline referred to in paragraph (2) above, the Central Bank shall make its own decision on the group resolution plan, and it shall take into account the views and reservations of other resolution authorities and the summary of the key elements of the group resolution plan taken shall be provided to the parent credit institution.
- (5) By way of derogation from paragraph (4) of this Article, if, within the deadline referred to in paragraph (2) of this Article and prior to making joint decision, the Central Bank or a resolution authority from another Member State where the member of the group is located has referred the matter to the European Banking Authority, the Central Bank shall defer its decision on group resolution plan.
- (6) Subject to paragraph (5) of this Article, if the European Banking Authority has taken its decision within one month, the Central Bank shall adopt group resolution plan pursuant to that decision and where not the Central

Bank shall make its own group resolution plan.

- (7) Where joint decisions are taken pursuant to paragraph (2) of this Article and where a resolution authority assesses under paragraph (6) that the subject matter of a disagreement regarding group resolution plan impinges on the fiscal responsibilities of its Member State, the Central Bank shall initiate a reassessment of the group resolution plan, including the minimum requirement for own funds and eligible liabilities.

The process of adopting the resolution plan for an EU group where the Central Bank is not the group-level resolution authority

Article 24

- (1) Where the Central Bank is not the group-level resolution authority, it shall, acting jointly with the group resolution authority and the resolution authorities for the members of the group, in resolution colleges referred to in Article 127 of this Law and after consulting the relevant competent authorities, including the competent authorities of the Member States where the head offices of significant branches are located, participate in reaching a joint decision on the group resolution plan and its revisions.
- (2) Where the joint decision referred to in paragraph (1) of this Article has not been reached within four months of the receipt by the Central Bank of the information referred to in Article 22 paragraph (3) of this Law from the group-level resolution authority, the Central Bank shall make its own decision on the resolution plan for the member of the group within its competence, and it shall take into account the views and reservations of other resolution authorities and inform all members of the resolution college thereof.
- (3) The decision referred to in paragraph (2) of this Article shall be fully reasoned specifying the reasons for disagreement with the proposed group resolution plan.
- (4) By way of derogation from paragraph (2) of this Article, if, within four months of the receipt by the Central Bank of the information referred to in Article 22 paragraph (3) of this Law from the group-level resolution authority and prior to the reaching of a joint decision, the Central Bank or any resolution authority of other Member State where the head offices of other members of the group are located refers the matter to the European Banking Authority and request its assistance, the Central Bank shall defer the adoption of the resolution plan for the member of the group within its competence.
- (5) In the case referred to in paragraph (4) of this Article, if the European Banking Authority reaches a decision within one month from receiving request for assistance, the Central Bank shall adopt a decision in conformity with that decision, and if this is not the case, the Central Bank shall adopt its own resolution plan for the member of the group within its competence.
- (6) The Central Bank may, together with the resolution authorities that have not acted in the manner referred to in paragraph (2) of this Article, reach a joint decision on a group resolution plan covering group members under their jurisdictions.
- (7) The joint decisions referred to in paragraphs (1) and (6) of this Article, as well as decisions of the Central Bank, which, in the absence of a joint decision, are adopted in accordance with paragraphs (2) and (5) of this Article shall be deemed final and the Central Bank shall act in accordance with those decisions.
- (8) Where the joint decision referred to in paragraph (1) of this Article is reached and the Central Bank deems that the group resolution plan has a negative impact on the fiscal responsibility of Montenegro, it may request the group-level resolution authority to reassess the group resolution plan, including minimum requirements for own funds and eligible liabilities.

Removal of impediments to the resolvability of credit institution which is not part of a group or which is not a cross-border group

Article 25

- (1) Where the Central Bank, pursuant to an assessment of the feasibility of bankruptcy proceedings or the resolvability of a credit institution in Montenegro which is not part of the group or which is not a part of the cross-border group in accordance with Articles 14 and 15 of this Law, determines that there are substantive impediments to the implementation of the bankruptcy proceedings or to resolvability of that credit institution or group, it shall notify the credit institution or parent credit institution in Montenegro thereof and order to draw up and deliver, within four months, the proposal of measures to address or remove the said impediments containing

time limits for their implementation that are proportionate to the need to remove impediments.

- (2) The Central Bank shall without delay notify the resolution authority of the country where the head office of the significant branch of the credit institution is located that there are substantive impediments to the resolvability of the credit institution or group referred to in paragraph (1) of this Article.
- (3) Where the Central Bank assesses that the proposed measures referred to in paragraph (1) of this Article to address or remove the impediments to the resolvability proposed by the credit institution or a group are effective, it shall without delay notify the credit institution thereof, which shall implement the proposed measures within the proposed time limit.
- (4) Where the Central Bank, taking into account the threat to financial stability and on the business and the stability of the credit institution, assesses that measures proposed by the credit institution in accordance with paragraph (1) of this Article cannot effectively reduce or remove impediments to resolvability, it shall adopt a decision to:
 - 1) require the credit institution:
 - to revise group financial support agreements or review the possibility of signing such an agreement, or draw up service level agreements, whether with members of the group or with third parties, to cover the provision of critical functions,
 - to limit its maximum aggregate exposures,
 - to provide regularly additional information and data relevant for the resolution purposes, or members of the group to provide specific information and data relevant for resolution in each individual case,
 - to divest specific assets, or
 - to limit or cease specific business activity, to restrict or prevent the development of new or existing business lines or sale of new or existing products;
 - 2) require changes to legal or operational structures of the credit institution and/or other member of the group under its control, so as to reduce the complexity of that credit institution and/or group to which that credit institution belongs in order to ensure that its critical functions are separated from other functions during the resolution proceedings;
 - 3) require the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law assume eligible liabilities to meet the requirements of Article 29 of this Law;
 - 4) require the credit institution or a parent undertaking to set up a parent financial holding company in Montenegro;
 - 5) require the credit institution or a parent undertaking to set up a parent financial holding company in European Union;
 - 6) require the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law to take other steps to meet the minimum requirement for own funds and eligible liabilities referred to in Article 29 of this Law, including activities to renegotiate any eligible liability, Additional Tier 1 instruments or Tier 2 instruments, with a view to ensuring the implementation of the decision of the Central Bank to write down or convert that liability or relevant capital instruments into capital in accordance with the law;
 - 7) where a credit institution is the subsidiary undertaking of a mixed-activity holding company, requiring that the mixed-activity holding company set up a separate financial holding company to control the institution, if necessary in order to facilitate the resolution and to avoid the application of the resolution tools and powers having an adverse effect on the non-financial part of the group.
- (5) Before imposing any measure referred to in paragraph (4) of this Article, the Central Bank may consult the Financial Stability Council and duly consider the potential effect of those measures on the particular credit institution, market for financial services and on the financial stability.
- (6) In the decision referred to in paragraph (4) of this Article, the Central Bank shall demonstrate how the measures proposed by the credit institutions would not be effective and how the measures the Central Bank imposed are proportionate to the need to remove impediments.
- (7) In the case of establishing impediments to the feasibility of bankruptcy proceedings or to the resolvability, the procedure for adopting the resolution plan referred to in Article 18 of this Law shall be deferred until the delivery of the notification referred to in paragraph (3) of this Article or until the imposition of measures referred to in paragraph (4) of this Article.

- (8) Credit institution shall, within one month of the receipt of the decision referred to in paragraph (4) of this Article, deliver to the Central Bank a plan to comply with the imposed measures.

Additional measures to remove the impediments to the resolvability of the credit institution which is not a part of the group or which is not a cross-border group

Article 26

- (1) Where the resolution plan envisages the application of the bail-in tools for the purpose of exercising the powers referred to in Article 113 paragraph (1) items 6) and 7) of this Law in relation to a credit institution or a legal person referred to in Article 3 items 2), 3) and 4) of this Law or any of its subsidiary undertakings, the Central Bank may, by way of a decision referred to in Article 25 paragraph (4), where it deems necessary, order the credit institution or a legal person referred to in Article 3 items 2), 3) and 4) of this Law to provide the sufficient amount of authorised Tier 1 capital or other Common Equity Tier 1 instruments in order to ensure the issuance of the sufficient number of new shares or other instruments of ownership in case of the conversion of the liabilities in the Common Equity Tier 1 instruments.
- (2) In the case referred to in paragraph (1) of this Article, the Central Bank shall verify whether the authorised Tier 1 capital or other Common Equity Tier 1 instrument may cover the sum of the amounts referred to in Article 98 paragraph (4) items 2) and 3) of this Law.
- (3) In the case referred to in paragraph (1) of this Article, the Central Bank shall, in the decision referred to in Article 25 paragraph (4) of this Law order the exclusion of the provisions representing impediments to the conversion of liabilities into shares or other instruments of ownership from their Articles of Association or other instruments of incorporation of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law.
- (4) For the purpose of resolvability of a credit institution or group by applying bail-in instruments, the Central Bank may employ the measures referred to in Article 25 paragraph (4) of this Law to limit the credit institution's placements in eligible liabilities or the receipt of eligible liabilities from other institutions, except intra-group placements.

Removal of impediments to the resolvability of the EU cross-border group where the Central Bank is the group-level resolution authority

Article 27

- (1) Where the Central Bank is the EU group-level resolution authority, it shall, together with the resolution authorities of subsidiary undertakings and after consulting the members of the supervisory college and the resolution authorities of the countries where significant branches of the members of that group operate, insofar as is relevant to that branch, consider the assessment referred to in Article 16 of this Law within the resolution college, and reach a joint decision to impose measures referred to in Article 25, paragraph (4), and Article 26 paragraphs (1) and (3) of this Law in relation to credit institutions that are members of the cross-border group.
- (2) The Central Bank shall, in cooperation with the European Banking Authority, after consulting the supervisory college, prepare and submit a report including:
- 1) an analysis of substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the cross-border group;
 - 2) an analysis of the impact on the business model of the credit institutions members of the group;
 - 3) recommendations of necessary measures that are proportionate and appropriate to remove those impediments.
- (3) The Central Bank shall deliver report referred to in paragraph (2) of this Article to the EU parent undertaking and the resolution authorities of subsidiary undertakings in other Member States, and the resolution authorities of the countries where significant branches of the parent undertaking or dependent legal persons with their head offices in Montenegro.
- (4) The EU parent undertaking referred to in paragraph (3) of this Article shall deliver the report under paragraph (2) of this Article to all members of the group.
- (5) Within four months of receipt of the report referred to in paragraph (2) of this Article, the parent undertaking

referred to in paragraph (3) of this Article shall submit observations and propose alternative measures to remove the impediments identified in the report.

- (6) The Central Bank shall communicate any measure proposed by the parent undertaking referred to in paragraph (3) of this Article to the European Banking Authority and resolution authority of the countries where the significant branch operates insofar as is relevant to that branch.
- (7) The Central Bank shall, together with the resolution authorities of subsidiaries and after consulting the members of the supervisory college and the resolution authorities of the countries where significant branches of the members of that group operate, reach a joint decision within the resolution college regarding the identification of the substantive impediments to the implementation of bankruptcy proceedings or to resolvability, and if necessary, the assessment of the measures proposed by the parent undertaking and the measures required by the resolution authorities in order to address or remove the impediments, which shall take into account the potential impact of the measures in all the Member States where the group operates.
- (8) The decision referred to in paragraph (7) of this Article shall be reached within four months of submission of any observations by the parent undertaking or at the expiry of the time limit referred to in paragraph (5) of this Article in the absence of an observation.
- (9) If the decision referred to in paragraph (7) of this Article is not reached within the time limit referred to in paragraph (8) of this Article, the Central bank shall reach its own decision on the measures referred to in Article 25 paragraph (4) of this Law to be taken by the parent undertaking on a consolidated basis or measures to be taken by the member of the group with its head office in Montenegro.
- (10) By way of derogation from paragraph (9) of this Article, if, within the four-month period of submission of the report referred to in paragraph (2) of this Article and prior to the reaching of a joint decision, the Central Bank or resolution authority of a Member State where the head office of other member of the group is located refers the matter to the European Banking Authority and requests its assistance, the Central Bank shall defer the reaching of the decision to impose measures to remove impediments on a consolidated basis or for the member of the group within its competence.
- (11) If, upon the request referred to in paragraph (10) of this Article, the European Banking Authority reaches a decision within one month following the receipt of the request, the Central Bank shall reach a decision in accordance with the decision of the European Banking Authority.
- (12) If, upon the request referred to in paragraph (10) of this Article, the European Banking Authority failed to reach a decision within one month following the receipt of the request, the Central Bank shall reach a decision to impose measures on a consolidated basis or for the member of the group within its competence.

Removal of impediments to the resolvability of an EU cross-border group of institutions where the Central Bank is not the group-level resolution authority

Article 28

- (1) Where the Central Bank is not the EU group-level resolution authority, it shall, together with the group-level resolution authority and the resolution authorities of subsidiary undertakings, and after consulting the members of the supervisory college and the resolution authorities of the countries where significant branches of the credit institutions of members of that group operate, insofar as is relevant to those branches, consider the assessment referred to in Article 17 of this Law within the resolution college in order to participate in reaching a joint decision to impose measures referred to in Article 25, paragraph (4) and Article 26 paragraphs (1) and (3) of this Law in relation to credit institutions that are members of the cross-border group.
- (2) The Central Bank shall deliver the report on the analysis of substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers received from the group-level resolution authority, which contains the proposed measures necessary to remove these impediments, to the subsidiary within its competence.
- (3) The Central Bank shall, together with the group-level resolution authority, the resolution authorities of subsidiary undertakings, after consulting the members of the supervisory college and the resolution authorities of the countries where significant branches of the members of that group operate, reach a decision within the resolution college regarding the identification of the substantive impediments to the implementation of bankruptcy proceedings or resolvability, and if necessary, the assessment of the measures proposed by the EU parent undertaking and the measures required by the resolution authorities in order to remove the impediments, with the assessment of potential impact of the measures in Member States where the group operates.

- (4) The decision referred to in paragraph (3) of this Article shall be reached within four months of submission of any observations by the EU parent undertaking on the report of the group-level resolution authority or at the expiry of the four-month time limit to submit an observation in the absence of an observation.
- (5) If the decision referred to in paragraph (3) of this Article is not reached within the time limit referred to in paragraph (4) of this Article, the Central Bank shall, where it deems it necessary, reach its decision on the appropriate measures referred to in Article 25, paragraph (4) and Article 26 paragraphs (1) and (3) of this Law to be taken by the member of the group with its head office in Montenegro.
- (6) If, within the four-month period of receipt of the report of the group-level resolution authority and prior to the reaching of a joint decision, the Central Bank, or any resolution authority of Member States where the head offices of other members of the group are located, refers the matter to the European Banking Authority and requests its assistance, the Central Bank shall defer the reaching of the decision to impose measures for the member of the group within its competence until the passing of the decision by the European Banking Authority.
- (7) If the European Banking Authority reaches a decision referred to in paragraph (6) of this Article within one month following that of the submission of the mediation request, the Central Bank shall reach a decision in conformity with that decision.
- (8) If the European Banking Authority, upon the request referred to in paragraph (7) of this Article, does not reach a decision within one month following that of the receipt of the request, the Central Bank shall reach its decision to impose measures on consolidated basis or for the member of the group within its competence.

Minimum requirements for own funds and eligible liabilities

Article 29

- (1) The minimum requirement for own funds and eligible liabilities (hereinafter: the minimum requirement) shall be calculated as the sum of own funds and eligible liabilities expressed as a percentage of the sum of own funds and eligible liabilities and sum of own funds and other total liabilities of the credit institution not included in own funds.
- (2) Own funds referred to in paragraph (1) of this Article means a sum of Tier 1 capital and Tier 2 capital of a credit institution, calculated in accordance with the law governing the operations of credit institutions.
- (3) Eligible liabilities referred to in paragraph (1) of this Article means the liabilities and capital instruments other than Common Equity Tier 1 instruments, Additional Tier 1 or Tier 2 instruments of a credit institution or a legal person referred to in Article 3 items 2), 3) and 4) of this Law that are not excluded from the scope of the bail-in tool by virtue of Article 94 paragraph (3) and Article 95 paragraph (1) of this Law.
- (4) Eligible liabilities shall be included in the calculation of the minimum requirement only if they satisfy the following conditions:
 - 1) the instrument is issued and fully paid up;
 - 2) the liability is not owed to, secured by or guaranteed by the credit institution itself;
 - 3) the purchase of the instrument was not funded directly or indirectly by the credit institution;
 - 4) the liability has a remaining maturity of at least one year and where a liability confers upon its holder a right to early reimbursement, the remaining maturity of that liability shall be calculated as the remaining maturity until the day when such creditor could exercise the right to early reimbursement;
 - 5) liability does not arise from a derivative; and
 - 6) the liability does not arise from a deposit which benefits from preference in the bankruptcy hierarchy of the credit institution.
- (5) Derivatives referred to in paragraph (4) item 5) of this Article mean transferable securities giving the right to acquire or sell any such transferrable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields.
- (6) When calculating other total liabilities referred to in paragraph (1) of this Article, derivative liabilities shall be included on the basis that full recognition is given to counterparty netting rights and that derivative liabilities are determined in their net amounts.
- (7) When calculating the minimum requirement, credit institution may not in eligible liabilities include liabilities

arising from obligation relations governed by third-country laws, where according to the national law of that third country the decision of the Central Bank to write down or convert that liability is not enforceable, having regard to the terms of the contract governing that liability and international agreements on the recognition of resolution proceedings.

- (8) The Central Bank may request from the credit institution that included in the calculation of minimum requirement the liabilities arising from obligation relations governed by third-country law to prove enforceability of that liability.

Minimum requirement for credit institution which is not a part of the group and group which is not a cross-border group

Article 30

- (1) The Central Bank shall determine the minimum requirement for a credit institution and a group which is not a cross-border group in particular on the basis of the following criteria:

- 1) the need to ensure that the credit institution can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;
- 2) the need to ensure that the credit institution has sufficient eligible liabilities to ensure that, if the bail-in tool were to be applied, losses could be absorbed and the Common Equity Tier 1 ratio of the credit institution could be restored to a level necessary to enable it to continue to comply with the requirements specified by the law governing the operations of credit institutions and sustaining required market confidence in the credit institution;
- 3) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under Article 95 paragraph (1) item 1) of this Law or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer, that the credit institution has sufficient eligible liabilities to ensure that losses could be absorbed and the Common Equity Tier 1 ratio of the credit institution could be restored to a level necessary to enable it to continue to comply with the requirements specified by the law governing the operations of credit institutions;
- 4) the size, the business model, the funding model and the risk profile of the credit institution;
- 5) the extent to which the Deposit Protection Fund could contribute to the financing of resolution; and
- 6) the extent to which the failure of the credit institution would have adverse effects on financial stability, including, due to its interconnectedness with other credit institutions or with other entities of the financial system through contagion to other credit institutions.

- (2) The Central Bank may order the application of the minimum requirement laid down in this Article to legal entity referred to in Article 3 items 2), 3) and 4) of this Law.

- (3) The Central Bank shall prescribe detailed criteria for determining minimum requirement referred to in paragraph (1) of this Article.

Maintaining minimum requirement on an individual and on a consolidated basis

Article 31

- (1) The credit institution shall comply with the minimum requirements laid down in Article 29 paragraph (1) of this Law on an individual basis at a minimum specified by the decision of the Central Bank.

- (2) By way of derogation from paragraph (1) of this Article, the Central Bank may fully waive the application of the minimum requirement on an individual basis to the credit institution which is a subsidiary undertaking of the credit institution with its head office in Montenegro, where:

- 1) licenses to both the credit institution and its parent credit institution are issued in Montenegro and are subject to the supervision by the Central Bank;
- 2) the credit institution is included in the supervision on a consolidated basis of the group in accordance with the law governing the operations of credit institutions;
- 3) parent credit institution meets the minimum requirement on a consolidated basis;

- 4) there are no current or foreseen material practical or legal impediments to the prompt transfer of own funds or meeting liabilities to the credit institution by its parent credit institution;
 - 5) the parent credit institution:
 - manages with due care, in the opinion of the supervisory function, that subsidiary credit institution; and
 - with the consent of the Central Bank provides a written statement that it will meet all the commitments entered into by the subsidiary credit institution, or the risks in that credit institution are of no significance for the operations of parent credit institution;
 - 6) the risk evaluation, measurement and control procedures of the parent credit institution cover that credit institution;
 - 7) the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the credit institution or has the right to appoint or remove a majority of the members of the supervisory board of the subsidiary credit institution; and
 - 8) the Central Bank competent for the credit institutions, waived that application of capital requirements on an individual basis to that credit institution in accordance with the law governing the operations of credit institutions.
- (3) Capital requirements referred to in paragraph (2) item 8) of this Law shall be requirements for minimum rates of Common Equity Tier 1 capital, Tier 1 capital and total capital of credit institution as laid down in the law governing the operations of credit institutions.
 - (4) The parent credit institution with its head office in Montenegro or the credit institution having its head office in Montenegro, which is the subsidiary undertaking of a parent financial holding company, parent mixed-activity holding company or parent mixed financial holding company in Montenegro shall, pursuant to the law governing the operations of credit institutions, meet the capital requirement for that group, and in addition to meeting the minimum requirements on individual basis, also meet continuously the minimum requirement as specified in this Article on a consolidated basis for its group.
 - (5) By way of derogation from paragraph (1) of this Article, the Central Bank may waive the application of the minimum requirement on an individual basis to the credit institution referred to in paragraph (3) of this Article if it has waived the application of capital requirements on an individual level to that credit institution in accordance with the law governing the operations of the credit institutions.
 - (6) The Central Bank may order by way of decision that the minimum requirement be met on an individual or on a consolidated basis through instruments for which the credit institution contracted the following terms:
 - 1) when bail-in tools are applied to that credit institution, the instrument shall be written down or converted to shares or other instruments of ownership before other eligible instruments are written down or converted; and
 - 2) in the event that bankruptcy proceedings are opened against the credit institution, it ranks below other eligible liabilities and cannot be repaid until other eligible liabilities outstanding at the time have been settled.
 - (7) The Central Bank shall verify the maintenance of the minimum requirement referred to in Articles 29 and 30 of this Law and the requirements referred to in paragraph (6) of this Article.
 - (8) The decision on minimum requirement shall be reached in parallel with the drawing up and revision of the resolution plan and shall constitute its integral part.
 - (9) The Central Bank shall notify the European Banking Authority of the minimum requirement and where relevant the requirement referred to in paragraph (6) of this Article that are set for each individual credit institution.

Minimum requirement for an EU group of institutions where the Central Bank is the group-level resolution authority

Article 32

- (1) Where the Central Bank is the EU group-level resolution authority, it shall draw up a proposal of the minimum requirement on a consolidated basis based on the criteria referred to in Article 30 paragraph (1) of this Law and whether the third-country subsidiary undertakings is to be resolved separately according to the resolution plan.

- (2) For the purpose of reaching a joint decision on the minimum requirement on a consolidated basis, the Central Bank shall deliver the proposal referred to in paragraph (1) of this Article to the resolution authorities of the Member States where the head offices of subsidiaries are located.
- (3) The Central Bank shall cooperate with the Member States' resolution authorities of the subsidiary undertakings in order to reach a joint decision on the level of the minimum requirement applied on a consolidated basis.
- (4) The decision referred to in paragraph (3) of this Article must be in written form and fully reasoned, it shall be reached within four months of delivery of the proposal referred to in paragraph (2) of this Article and shall be delivered to the parent undertaking of the group.
- (5) Where the decision referred to in paragraph (3) of this Article is reached, the Central Bank shall, in conformity with that decision, issue a decision on the level of the minimum requirement on a consolidated basis.
- (6) If the decision referred to in paragraph (3) of this Article is not reached within four months following that of the submission of the Central Bank's proposal, the Central Bank shall reach its decision on the minimum requirement on a consolidated basis, taking into consideration the assessments of subsidiary undertakings carried out by the resolution authorities of the Member States where the head offices of subsidiary undertakings are located.
- (7) If within four months of delivery of the proposal referred to in paragraph (1) of this Article and prior to reaching a joint decision, the Central Bank, or any resolution authority of Member State where the head office of a subsidiary undertaking is located refers the matter to the European Banking Authority, the Central Bank shall defer its decision on the minimum requirement on a consolidated basis until the European Banking Authority reaches a decision.
- (8) If the European Banking Authority reaches a decision within one month following that of the reception of the request referred to in paragraph (7) of this Article, the Central Bank shall reach a decision in accordance with the decision of the European Banking Authority.
- (9) If the European Banking Regulator has not reached a decision within one month following the day of the reception of the request referred to in paragraph (7) of this Article, the Central Bank shall decide independently on the minimum requirement on a consolidated basis.
- (10) The Central Bank shall reach a decision on the minimum requirement on an individual basis for EU parent undertakings and subsidiary undertaking with their head office in Montenegro that are part of EU groups having regard to:
 - 1) the criteria specified in Article 30 paragraph (1) of this Law, in particular the size, business model and risk profile of the subsidiary undertaking, including its own funds; and
 - 2) the minimum requirement on a consolidated basis that has been set for the group in accordance with this Article.
- (11) By way of derogation from paragraph (10) of this Article, the Central Bank may fully waive the application of the minimum requirement on an individual basis to the EU parent undertaking with its head office in Montenegro which complies with the minimum requirement on a consolidated basis if it has fully waived the application of capital requirements on an individual basis to such an undertaking in accordance with the law governing the operations of credit institutions.

Minimum requirement for subsidiary undertakings of the EU parent undertaking

Article 33

- (1) Where the Central Bank is the EU group-level resolution authority, it shall participate in the reaching of a joint decision on the minimum requirement to be applied to each respective subsidiary undertakings in other Member States on an individual basis.
- (2) The joint decision referred to in paragraph (1) of this Article shall be reached within four months of the delivery by the group-level resolution authorities to the Central Bank of the proposal of the minimum requirement for individual members of the group.
- (3) Within four months of delivery of the proposal of the minimum requirement for individual members of the group referred to in paragraph (2) of this Article and prior to reaching a joint decision, the Central Bank may refer the matter to the European Banking Authority and request its assistance.

- (4) The matter shall not be referred to the European Banking Authority where the minimum requirement on individual basis proposed by the resolution authority of the subsidiary undertaking does not differ more than one percentage point from the percentage level of the minimum requirement set on the consolidated level.
- (5) The decision on the minimum requirement for individual group members that has been reached in accordance with this Article shall be reviewed on a regular basis and where relevant updated.
- (6) By way of derogation from paragraph (1) of this Article, the Central Bank may fully waive the application of the minimum requirement on an individual basis to the subsidiary undertaking with its head office in Montenegro, where all of the criteria laid down in Article 31 paragraph (2) of this Law have been met.
- (7) The decision referred to in paragraph (1) of this Article may provide that the minimum requirement on a consolidated or on an individual basis is partially met through instruments regulated pursuant to the provisions of Article 31 paragraph (6) of this Law.

IV. DECIDING ON RESOLUTION

Fulfilment of conditions for resolution

Article 34

- (1) The Central Bank, when supervising the credit institutions, shall determine that the credit institution may not or will not be able to continue its operations where one or more of the following conditions are met:
 - 1) for revoking license from the credit institution or elements have occurred indicating that the reasons for revoking license from the credit institution will occur including the circumstances indicating that the credit institution has incurred or is likely to incur losses that will deplete all or significant amount of its own funds;
 - 2) the assets of the credit institution are lower than its liabilities or there are objective elements to support a determination that the assets of credit institution will, in the near future, be lower than its liabilities;
 - 3) the credit institution is unable to pay its liabilities or there are facts indicating that the credit institution will not, in the near future, be able to pay its liabilities as they fall due;
 - 4) extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy and preserve financial stability, the extraordinary public financial support takes any of the following forms:
 - a State guarantee to back liquidity assistance provided by the Central Bank, according to the statutory conditions;
 - a State guarantee of newly issued liabilities of the credit institution; or
 - an injection of own funds or purchase of capital instruments at market prices and on market terms, where neither the circumstances referred to in item 1), 2) and 3) of this paragraph nor the circumstances for write down and conversion of capital referred to in Article 48 paragraph 2) of this Law are present at the time of the extraordinary public financial support granted.
- (2) The extraordinary public financial support referred to in paragraph (1) item 4) indent 3) of this Article pertains to investments necessary to address own funds shortfall established in stress tests or asset quality reviews conducted or ordered by the Central Bank in pursuing its supervisory function of the credit institutions.
- (3) The following conditions must be met for the extraordinary public financial support referred to in paragraph (1) item 4) of this Article:
 - 1) it shall be confined to the support to a solvent credit institution granted in accordance with the regulations governing State aid;
 - 2) the measures applied are of temporary nature and shall be proportionate to remedy the consequences of a serious financial disruption, and
 - 3) the measures applied shall not be used to offset losses that the credit institution has incurred or is likely to incur in the near future.

Conditions for resolution

Article 35

- (1) The Central Bank shall open the resolution proceedings against a credit institution where:
 - 1) it has been determined that the credit institution is unable or will not be able to continue its regular operations, in accordance with Article 34 of this Law;
 - 2) financial institutions support measures, any alternative private sector actions, including by an institutional protection scheme, or supervisory action in the early intervention phase, or the write down or conversion of relevant capital instruments in accordance with this Law would not, in a reasonable timeframe, remove reasons for which credit institution may or may not continue its operations; and
 - 3) the resolution of the credit institution is necessary in the public interest.
- (2) An institutional protection scheme referred to in paragraph (1) item 2) of this Article is a contractual or statutory liability arrangement which protects credit institutions and in particular ensures their liquidity and solvency to avoid bankruptcy proceedings against the participant in that scheme where necessary if, in accordance with the regulation governing the calculation of own funds of the credit institutions, the requirements are met that the exposures to counterparties with which the institution has entered into an institutional protection scheme are excluded from the exposures to which risk weights are applied.
- (3) It shall be deemed that the enforcement of the resolution proceedings is in the public interest where it is necessary for the achievement of and if proportionate to one or more of the resolution objectives specified in Article 12 of this Law and where bankruptcy proceedings or compulsory winding-up proceedings would not meet those resolution objectives to the same extent.
- (4) The credit institution and/or an legal person referred to in Article (3) paragraphs 2), 3) and 4) of this Law shall notify the Central Bank within three working days following that of the fulfilments of the conditions referred to in Article 34 paragraph (1) of this Law.
- (5) The notification on the fulfilment of the conditions referred to in paragraph (1) of this Article shall include the list of measures taken against the credit institution in accordance with the law governing the operations of the credit institutions.
- (6) The proposal for opening resolution proceedings shall include explanation of the fulfilment of the conditions referred to in paragraph (1) of this Article.
- (7) The Central Bank shall without delay and in the manner that ensures the confidentiality of information notify the following institutions:
 - 1) the Ministry;
 - 2) the Deposit Protection Fund;
 - 3) the competent supervisory and resolution authorities of the members of the group which the credit institution is a member, including the consolidating supervisor;
 - 4) the supervisory authority of the branch of the credit institution in other Member State;
 - 5) the European Systemic Risk Board.
- (8) For the credit institution for which it determines in accordance with paragraph (1) of this Article that is not able or that it will not be able to continue its regular operations, the Central Bank, shall adopt a decision on imposing measures in accordance with the law governing the operations of credit institutions where the resolution plan established that the resolution of that credit institution is not necessary in the public interest.
- (9) The Central Bank shall prescribe the notification manner referred to in paragraph (7) of this Article and Article 36 of the Law.

Deciding on resolution of a credit institution or a group which is not a cross-border group

Article 36

- (1) The Council of the Central Bank shall decide on the proposal to initiate the resolution proceedings referred to in Article 35 paragraph (1) of this Law within three working days following that of the receipt of the proposal.
- (2) The decision to initiate the resolution proceedings against the credit institution shall include:
 - 1) the reasons for initiating resolution proceedings;

- 2) the explanation of how the criteria for resolution are met, including the results of the valuation;
 - 3) the resolution actions to be taken;
 - 4) the appointment of a resolution administration; and
 - 5) the date, hour and minute of initiating the resolution proceedings.
- (3) Where one or more credit institutions or business undertakings of the members of the same group that does not have members with head offices in another states meet the conditions for resolution or bankruptcy and are supervised by the Central Bank, one decision which will cover all members of the group that meet the conditions for resolution may be adopted and the same resolution administration may be appointed to these entities.
- (4) When selecting the resolution action, the Central Bank shall take into account and follow the actions provided for in the resolution plan which has been adopted for the credit institution or a group in question, unless the Central Bank considers that the resolution objectives referred to in Article 12 of this Law will be achieved more effectively by taking actions which are not provided for in the resolution plan.
- (5) The Central Bank shall without delay deliver the decision to initiate the resolution proceedings to:
- 1) the credit institution concerned;
 - 2) the Ministry;
 - 3) the Deposit Protection Fund,
 - 4) the supervisory and resolution authorities of the members of the group to which the credit institution is a member in other countries, including the consolidating supervisor of parent institutions and institutions controlled by parent financial holding companies or parent mixed-activity holding companies in which they have their head offices;
 - 5) the supervisory authorities of the credit institutions where a branch of the credit institution operates;
 - 6) the operators of the systems in which credit institution participates;
 - 7) the European Systemic Risk Board;
 - 8) the European Commission, the European Central Bank, the European Banking Authority, the European Securities and Markets Authority (ESMA), the European Insurance and Occupational Pensions Authority (EIOPA).
- (6) Prior adoption of actions in the early intervention phase does not represent the condition for initiating the resolution proceedings in accordance with the law governing the operations of credit institutions.
- (7) On the date of adoption of the decision to initiate resolution proceedings against a credit institution all measures imposed on credit institution in accordance with the law governing the operations of credit institutions shall cease to have effect.

Drawing up an EU group resolution scheme where the Central Bank is the group-level resolution authority

Article 37

- (1) Where the Central Bank, as the EU group-level resolution authority, receives a notification from resolution authority for the subsidiary undertaking containing the information that the subsidiary undertaking meets the conditions for initiating resolution proceedings or opening bankruptcy proceedings and on the resolution action that the resolution authority concerned intends to take in relation to the subsidiary undertaking or the intention to open bankruptcy proceedings against that undertaking, it shall, after consulting the other members of the resolution college referred to in Article 125 of this Law, assess the impact of the proposed resolution actions or of opening bankruptcy proceedings on the group and on the members of the group in other Member States, and, in particular, whether the resolution actions or bankruptcy proceedings would make it likely that the conditions for resolution would be met in relation to other members of the group.
- (2) Where the Central Bank assesses that the proposed resolution actions or implementation of bankruptcy proceedings referred to in paragraph (1) of this Article would not make it likely that the conditions for implementation of resolution referred to in Article 35 paragraph (1) of this Law or bankruptcy proceedings are met in relation to other members of the group, it shall without delay, and no later than 24 hours after receiving

- the notification referred to in paragraph (1) of this Article, notify the members of the resolution college thereof.
- (3) Where the Central Bank assesses that the proposed resolution action or implementation of bankruptcy proceedings referred to in paragraph (1) of this Article would make it likely that the conditions for implementation of resolution referred to in Article 35 paragraph (1) of this Law or bankruptcy proceedings are met in relation to other members of the group, it shall, no later than 24 hours after receiving the notification referred to in paragraph (1) of this Article or longer with the consent of the resolution authority which made the notification, draw up a group resolution scheme and deliver it to the members of the resolution college.
- (4) The group resolution scheme referred to in paragraph (3) of this Article shall take into account and follow the group resolution plan adopted in accordance with Article 22 of this Law, unless resolution authorities assess, taking into account the circumstances of the case, that resolution objectives referred to in Article 12 of this Law will be achieved more effectively by taking actions which are not provided for in the resolution plan and it shall:
- 1) outline the resolution actions that should be taken by the relevant resolution authorities in relation to the EU parent undertaking or members of the group with the aim of meeting the resolution objectives referred to in Article 12 and principles referred to in Article 13 of this Law;
 - 2) specify how those resolution actions should be coordinated;
 - 3) establish a financing plan which is based on the group resolution plan, principles for sharing responsibility for financing in the manner referred to in Article 21 paragraph (3) item 5) of this Law and the general principles of mutualisation determined in accordance with Article 153 of this Law.
- (5) Where the Central Bank intends to adopt a decision on the resolution of the EU parent undertaking within its competence, it shall without delay notify the members of the resolution college thereof and the notification shall contain the information referred to in paragraph (1) of this Article.
- (6) In the case referred to in paragraph (5) of this Article, the Central Bank may propose resolution actions in the form of a group resolution scheme referred to in paragraph (5) of this Article where:
- 1) resolution actions at parent level lead to the conditions for resolution being met in relation to a member of the group in other Member States;
 - 2) resolution actions at parent level only are not sufficient or are not likely to provide an optimum outcome of the resolution;
 - 3) according to the assessment of the competent resolution authority one or more subsidiary undertakings meet the conditions for resolution or opening of bankruptcy proceedings; or
 - 4) resolution actions at parent level will benefit other members of the group thus justifying the adoption of the group resolution scheme.
- (7) In the case referred to in paragraph (5) of this Article, where the Central Bank, after consulting other members of the resolution college, assesses that the group resolution scheme is not necessary, the Central Bank shall reach, in accordance with Article 18 of this Law, its own decision in relation to the parent undertaking of which it is the resolution authority and notify other members of the resolution college thereof.
- (8) When taking the decision referred to in paragraph (7) of this Article, the Central bank shall take into account:
- 1) the coordination of the decision with the group resolution plan adopted in accordance with Article 22 of this Law unless it assesses taking into account the circumstances of the case, that resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plan; and
 - 2) the financial stability of the Member States concerned.

Adopting joint decision on an EU group resolution scheme where the Central Bank is a group-level resolution authority

Article 38

- (1) The Central Bank and the resolution authorities, which agree with the group resolution scheme for their group referred to in Article 37 paragraph (3) of this Law shall adopt a joint decision on the group resolution scheme.
- (2) The Central Bank shall reach, in accordance with joint decision referred to in paragraph (1) of this Article and in the manner specified in Article 36 of this Law, a decision in relation to the member of the group of which it is the resolution authority.

- (3) The Central Bank may request assistance of the European Banking Authority in reaching a joint decision on the group resolution scheme.
- (4) All actions in accordance with articles 37 and 38 of this Law shall be performed without delay.
- (5) In the absence of a joint decision on the group resolution scheme, the Central Bank shall cooperate closely within the resolution college referred to in Article 125 of this Law with a view to achieving, to the extent possible, a coordinated resolution strategies for all members of the group for which it has been established that they are not able or will not be able to continue their regular operations.
- (6) The Central Bank shall inform the members of the resolution college regularly and fully about the resolution actions and their results in accordance with this Article.

Adopting joint decision on the resolution for an EU group where the Central Bank is not a group-level resolution authority

Article 39

- (1) Where the Central Bank is not the EU group-level resolution authority, it shall, prior to reaching a decision referred to in Article 36 paragraph (1) of this Law in relation to a subsidiary undertaking with head office in Montenegro, notify without delay the group-level resolution authority, the consolidating supervisor, if different, and the other members of the resolution college of the group in question that the subsidiary undertaking meets the conditions referred to in Article 35 paragraph (1) of this Law and of the resolution action it intends to take in relation to that undertaking.
- (2) By way of derogation from Article 36 paragraph (1) of this Law, where the Central Bank is not the EU group-level resolution authority, it shall defer the adoption of its decision to initiate resolution proceedings against a subsidiary undertaking of an EU group with its head office in Montenegro and shall await the notification from the group-level resolution authority referred to in paragraph (4) of this Article, no later than 24 hours after receiving the notification referred to in paragraph (1) of this Article or until the adoption of the joint decision referred to in paragraph (8) of this Article.
- (3) Exceptionally, the 24-hour time limit referred to in paragraph (2) of this Article may be extended with prior consent of the Central Bank.
- (4) Where the group-level resolution authority, after consulting other members of the resolution college referred to in Article 127 of this Law, assesses that the proposed action referred to in paragraph (1) of this Article would impact one or more members of the group in another Member State in such a way that they meet the conditions for initiating resolution or opening bankruptcy proceedings and notifies thereof the Central Bank, the Central Bank shall adopt decision referred to in Article 36 paragraph (1) of this Law.
- (5) Where the group-level resolution authority, after consulting other members of the resolution college, assesses that the initiating of resolution proceedings or the action referred to in paragraph (1) of this Article would impact one or more members of the group in another Member State in such a way that they meet the conditions for initiating the resolution proceedings and where within 24 hours of receipt of the notification referred to in paragraph (1) of this Article it proposes a group resolution scheme and submits it to the resolution college, the Central Bank shall participate in the adoption of a joint decision on the group resolution scheme.
- (6) The Central Bank may request assistance of the European Banking Authority in reaching a joint decision on the group resolution scheme.
- (7) Where the Central Bank agrees with the group resolution scheme referred to in paragraph (5) of this Article, it shall together with the group-level resolution authority and the resolution authorities of other members of the group reach a joint decision on the group resolution scheme for that group.
- (8) In accordance with joint decision referred to in paragraph (7) of this Article, the Central Bank shall, in accordance with Article 36 paragraph (1) of this Law, reach a decision on resolution in relation to the member of the group for which it is the resolution authority.

Deciding of the Central Bank in the case of disagreement with the EU group resolution scheme where the Central Bank is not the group-level resolution authority

Article 40

- (1) Where the Central Bank disagrees with the group resolution scheme referred to in Article 39 paragraph (5) of this Law or it intends to take different measures for reasons of financial stability, it shall reach, in accordance with Article 36 of this Law, its own decision in relation to the member of the group of which it is the resolution authority and deliver it without delay to the group-level resolution authority and other resolution authorities participating in the reaching of a joint decision on the group resolution scheme.
- (2) The Central Bank shall deliver, together with the decision referred to in paragraph (1) of this Article, the explanation of the reasons for disagreement with the group resolution scheme or actions proposed by it.
- (3) When setting out the reasons for disagreement referred to in paragraph (2) of this Article, the Central Bank shall take into account the adopted group resolution plan referred to in Article 24 of this Law and the potential impact on the financial stability of other Member States or on members of the group in other Member States.
- (4) In case referred to in paragraph (1) of this Article, the Central Bank shall cooperate closely within the resolution college referred to in Article 127 of this Law with a view to achieving, to the extent possible, a coordinated resolution strategy for all members of the group for which it has been established that they are failing or are likely to fail.
- (5) The Central Bank shall notify the members of the resolution college regularly about the resolution actions and progress of the resolution proceedings.

Public disclosure and delivery of decisions in the resolution proceedings

Article 41

- (1) The Central Bank shall publish on its website the decision to initiate resolution proceedings and all subsequent decisions implementing the decision to initiate the resolution proceedings or notification containing key elements of the resolution action and its effects on natural persons, micro, small and medium enterprises.
- (2) Credit institution shall publish, the day of the receipt of the decision, on its website the decision to initiate the resolution proceedings and all subsequent decisions implementing the decision to initiate the resolution proceedings.
- (3) Where shares or other instruments of ownership or debt instruments of the credit institution under resolution are admitted to trading on a stock exchange, the credit institution shall notify the stock exchange in question of the initiating of the resolution proceedings and the stock exchange shall publish the information in accordance with its rules.
- (4) Where shares or other instruments of ownership or debt instruments of the credit institution under resolution are not admitted to trading on a stock exchange, the publication referred to in paragraph (1) of this Article shall be the delivery of the decision to initiate the resolution proceedings to the holders of these instruments.
- (5) Where the decision to initiate resolution proceedings or subsequent decisions implementing the decision to initiate resolution proceedings provide for a suspension or restriction referred to in Articles 120, 121 and 122 of this Law, the notification on the conditions and the time limits relating to the suspension or restriction shall be disclosed in the manner referred to in paragraph (1) of this Article.
- (6) The Central Bank shall deliver the decisions referred to in Articles 120, 121 and 122 of this Law to the Deposit Protection Fund and the Central Securities Depository and Clearing Company of Montenegro.
- (7) The Central Bank shall deliver to the credit institution under resolution all decisions it adopted for the purpose of implementing the decision to initiate the resolution proceedings and the credit institution under resolution shall without delay notify thereof the persons the decision pertains to in the part relevant to them.
- (8) The legal effects of the decisions referred to in paragraph (6) of this Article shall come into force on the day of its adoption and the right to legal remedy referred to in Article 42 paragraph (1) of this Law shall apply.

Right to challenge a decision to initiate resolution proceedings

Article 42

- (1) No complaint shall be allowed against the decision to initiate resolution proceedings referred to in Article 41 paragraph (1) of this Law or all decisions adopted by the Central Bank for the purpose of implementing the decision to initiate resolution proceedings, but a person whose rights or legal interests are infringed upon by the adoption of such decision may initiate an administrative appeal within 20 days of the delivery of the decision in

question.

- (2) The time limit referred to in paragraph (1) of this Article shall start to run at the end of the eight-day period of the date of the public disclosure referred to in Article 41 paragraph (1) of this Law.
- (3) The lodging of an appeal referred to in paragraph (1) of this Article shall not postpone the execution of the decision to initiate resolution proceedings or of other decisions adopted by the Central Bank in order to implement the decision to initiate resolution proceedings and the competent court may not issue a temporary measure of stay of execution.
- (4) The competent court shall decide on the appeal referred to in paragraph (1) of this Article under an emergency procedure and at the latest within 30 days of its receipt.
- (5) When deciding on the appeal, the competent court shall make use of the detailed and comprehensive assessment of the credit institution's financial situation carried out until initiating the resolution against the credit institution.
- (6) Where the competent court adopts a decision by which it, in whole or in part, declares the decision on initiating the resolution proceedings or another individual decision adopted pursuant to that decision annulled, the effects of such decision shall remain in force until a new decision is reached to replace the decision that has been annulled, and the Central Bank may, upon the receipt of the decision from the court, adopt measures aimed at mitigating the damage that would arise from further implementation of the decision that has been annulled.
- (7) The compensation for damages referred to in paragraph (6) of this Article shall be covered from the Resolution Fund.

Conditions for resolution with regard to the financial institutions and holding companies

Article 43

- (1) When the conditions for resolution referred to in Article 35, paragraph (1) of this Law are met with regard to both the financial institution referred to in Article 3 item 2) of this Law and with regard to its parent undertaking subject to consolidated supervision, the Central Bank shall adopt the decision to initiate the resolution proceedings against the financial institution.
- (2) When the conditions for resolution referred to in Article 35 paragraph (1) of this Law are met with regard to both the legal person referred to in Article 3 items 3) or 4) of this Law and with regard to one or more credit institutions which are subsidiary undertakings of that entity, the Central Bank may adopt a decision to initiate the resolution proceedings against that entity.
- (3) Where the legal person referred to in Article 3 items 3) and 4) of the Law has a subsidiary credit institution which has its head office in a third country and the third-country authority has determined that it meets the conditions for resolution, the resolution authority may adopt a decision to initiate the resolution proceedings against the legal person whose subsidiary it is.
- (4) Where the subsidiary credit institution of a mixed-activity holding company is held directly or indirectly by an intermediate financial holding company, the Central Bank may, for the purpose of resolution actions within a group of institutions, adopt a decision to initiate resolution proceedings against the intermediate financial holding company.
- (5) When the legal person referred to in Article 3, item 3) or 4) of this Law does not meet the conditions specified in Article 34 paragraph (1) of this Law and Article 35 paragraph (1) of this Law, the Central Bank may adopt a decision to initiate the resolution proceedings against the entity if the following conditions are met:
 - 1) one or more subsidiary credit institutions of the legal person meet the conditions specified in Article 34 paragraph (1) of this Law and Article 35 paragraph (1) of this Law;
 - 2) the assets and liabilities of credit institutions referred to in item 1) of this paragraph are such that their discontinued operations threaten the discontinuance of regular operations of the group as a whole; and
 - 3) the resolution action with regard to the legal person referred to in Article 3 items 3) or 4) of this Law is necessary for the resolution of such subsidiary credit institutions of that entity or for the resolution of the group as a whole.
- (6) In cases referred to in paragraphs (2), (3) and (5) of this Article, when assessing whether the conditions referred to in Article 34 paragraph (1) and Article 35 paragraph (1) of this Law are met with regard to one or more subsidiary credit institutions, the resolution authorities may decide to disregard any intra-group capital or loss

transfers between the entities, including of the power to write down or convert relevant capital instruments.

V. VALUATION OF ASSETS AND LIABILITIES

Objectives of assets and liabilities valuation

Article 44

- (1) Before taking resolution action or exercising the power to write down or convert relevant capital instruments, the Central Bank shall ensure a fair, prudent and realistic valuation of the assets and liabilities of the credit institution or legal person referred in Article 3 items 2), 3) and 4) of this Law.
- (2) The valuation referred to in paragraph (1) of this Article shall be performed for the purpose of assessing the value of the assets and liabilities of the credit institution or legal person referred in Article 3 items 2), 3) and 4) of this Law that meets the conditions for resolution of Article 34 paragraph (1) and Article 35 paragraph (1) of this Law.
- (3) The purposes of the valuation referred to in paragraph (1) of this Article shall be:
 - 1) to inform the determination of whether the conditions for resolution referred to in Article 35 paragraph (1) of this Law or the conditions for the write down or conversion of capital instruments are met;
 - 2) if the conditions referred to in Article 35 paragraph (1) of this Law for resolution are met, to inform the decision on the appropriate resolution action to be taken in respect of the credit institution or legal person referred to paragraph (2);
 - 3) when the power to write down or convert relevant capital instruments is applied, to inform the decision on the extent of the cancellation or dilution of shares or other instruments of ownership, and the extent of the write down of relevant capital instruments or their conversion into Common Equity Tier 1 capital;
 - 4) when the bail-in tool is applied, to inform the decision on the extent of the write down or conversion of eligible liabilities;
 - 5) when the bridge credit institution tool or asset separation tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and the decision on the value of any consideration to be paid to the credit institution under resolution or to the owners of the shares or other instruments of ownership;
 - 6) when the sale of business tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and to inform the Central Bank's understanding of what constitutes commercial terms referred to in Article 73 of this Law;
 - 7) to provide the data on losses for which it is necessary to write down the assets of the credit institution or other legal person referred to in Article 3 items 2), 3) and 4) of this Law at the moment the resolution tools are applied or the power to write down or convert relevant capital instruments is exercised.
- (4) Power to write down or convert relevant capital instruments referred to in paragraph (3) item 3) of this Article shall be powers of the Central Bank referred to in Articles 48 to 54 and Article 113 paragraph (1) items 6) to 10) and paragraph (3) items 1) and 2) of this Law.
- (5) The Central Bank shall prescribe a more detailed method for valuation of assets and liabilities referred to in paragraph (1) of this Article.

PUBLISHER'S NOTE:

The corrigendum of the Law on Resolution of Credit Institutions (OGM 82/20) in Article 44 paragraph 2 item 2) the words: "referred to in Article 2 of this Law" shall be replaced by the following: "referred to in paragraph (2) of this Article".

The text of the regulation has NOT been consolidated in accordance with the mentioned provisions, because there is no item 2) and the mentioned words in Article 44 paragraph (2). The mentioned words exist in Article 44 paragraph (3) item 2).

Obligations of independent valuer

Article 45

- (1) The valuation of the assets and liabilities of the credit institutions may be carried out by a legal person and natural person who is independent from state authorities, organisations entrusted to carry out public powers, credit institution and legal persons referred to in Article 3 items 2), 3) and 4) of this Law (hereinafter: the independent valuer).
- (2) The independent valuer carrying out the valuation referred to in paragraph (1) of this Article, shall base the valuation on prudent assumptions, including as to rates of default or severity of losses, provisions of paragraphs (3) through (7) of this Article and rules of profession.
- (3) The valuation referred to in paragraph (1) of this Article shall not assume any potential future provision of extraordinary public financial support or emergency liquidity assistance or any Central Bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms to the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law from the point at which resolution action is taken or the power to write down or convert relevant capital instruments is exercised.
- (4) The independent valuer shall, when drafting the valuation report, take account of the following:
 - 1) the Central Bank and the Resolution Fund may recover any reasonable and properly incurred expenses from the credit institution under resolution in accordance with Article 72 of this Law; and
 - 2) the Resolution Fund may charge interest or fees for any loans or guarantees provided to the credit institution in accordance with this Law.
- (5) The valuation report shall contain information from accounting books and records of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law, in particular:
 - 1) an updated balance sheet and report on financial position;
 - 2) an analysis and an estimate of the accounting value of the assets;
 - 3) the list of outstanding balance sheet and off-balance sheet liabilities with an indication of the respective credits and priority levels under the regulations governing the bankruptcy proceedings against the credit institutions; and
 - 4) other information relevant for the valuation.
- (6) The Central Bank may for the purpose of adopting the decision referred to in Article 44 paragraph (3) items 5) and 6) of this Law request from the independent valuer to complement the information referred to in paragraph (5) item 2) of this Article by an analysis and estimate of the market value of assets and liabilities of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law.
- (7) The valuation report referred to in Article 44 paragraph (1) of this Law must contain information on the priority levels of individual claims in accordance with the regulations governing bankruptcy proceedings of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law and an estimate of the outcome for each shareholder or creditor of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law in cases where bankruptcy proceedings against the credit institution or legal person are implemented, whereas the estimate of the outcome shall not affect the application of safeguard measure referred to in Article 139 of this Law.
- (8) Based on the definitive valuation referred to in Article 44 paragraph (1) or based on the provisional valuation referred to in Article 46 paragraphs (1) and (2) of this Law, the Central Bank may take resolution action and write down or convert relevant capital instruments, including taking control of a credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law against which resolution proceedings have been initiated.
- (9) The valuation report referred to in paragraph (7) of this Article shall be an integral part of the decision to initiate resolution proceedings or the decision to exercise the write down or convert relevant capital instruments.
- (10) An appeal may not be lodged against the valuation report with the competent court but it can be contested by an appeal against the decision referred to in paragraph (9) of this Article, in accordance with Article 42 of this Law.
- (11) The Central Bank shall prescribe the conditions to be met by the independent valuer.

Provisional valuation

Article 46

- (1) Exceptionally, where the circumstances of the case require due urgency which renders it impossible to carry out an independent valuation in the manner referred in Article 45 of this Law, the Central Bank shall ensure that the provisional valuation of the assets and liabilities of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law is carried out independently.
- (2) By way of derogation from paragraph (1) of this Article, where due to urgency an independent valuation is not possible, the Central Bank may carry out its own provisional valuation of the assets and liabilities of the credit institution or another legal person referred to in Article 3 of this Law.
- (3) The provisional valuation referred to in paragraphs (1) and (2) of this Article shall be carried out in accordance with Article 45 paragraphs (2), (3) and (4) of this Law to the extent possible and practicable in accordance with Article 45 paragraphs (1), (5) and (7) of this Law and it shall include an estimate of Additional Tier 1 capital for additional losses, with appropriate justification.

Ex-post valuation

Article 47

- (1) Where the provisional valuation was carried out by an independent valuer in accordance with Article 46 paragraph (1) of this Law or the Central Bank in accordance with Article 46 paragraph (2) of this Law and the decision to initiate resolution proceedings against the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law was adopted on the basis of that valuation, the Central Bank shall, as soon as practicable, ensure that an ex-post valuation of the assets and liabilities of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law is carried out by the independent valuer.
- (2) Where the provisional valuation was carried out by an independent valuer in accordance with Article 46 paragraph (1) of this Law or the Central Bank in accordance with Article 46 paragraph (2) of this Law, and no decision to open resolution proceedings against the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law was adopted but capital instruments were written down or converted, the Central Bank shall, as soon as practicable, ensure that an ex-post valuation of the assets and liabilities of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law.
- (3) The ex-post valuation referred to in paragraphs (1) and (2) of this Article and the valuation referred to in Article 138 of this Law may be carried out by the same independent valuer.
- (4) The ex-post valuation referred to in paragraphs (1) and (2) of this Article must:
 - 1) ensure that any losses by which the assets of the credit institution or the legal person referred to in Article 3 items 2), 3) and 4) of this Law are to be written down are identified and that these losses are fully recognised in their business books; and
 - 2) inform the decision referred to in paragraph (5) of this Article to write back creditors' claims or to increase the value of the consideration paid.
- (5) Where the decision to initiate resolution proceedings against the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law was adopted and the ex-post valuation's estimate referred to in this Article of the net asset value of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law was higher than the provisional valuation's estimate of the net asset value that was carried out pursuant to Article 46 of this Law, the Central Bank may:
 - 1) increase the value of the claims of creditors or holders of relevant capital instruments which have been written down under the bail-in tool or by the exercise of powers in accordance with this Law; or
 - 2) instruct a bridge credit institution or asset management company to make a further payment of consideration in respect of the assets, rights and liabilities to the credit institution under resolution, or as the case may be, in respect of the shares or instruments of ownership to shareholders.
- (6) Where no decision to initiate resolution proceedings against the institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law was adopted, and the Central Bank wrote down or converted relevant capital instruments and the ex-post valuation's estimate referred to in paragraphs (3), (4) and (5) of this Article of the net asset value was higher than the provisional valuation's estimate of the net asset value referred to in Article 46 of this Law, the Central Bank may increase the value of the claims of creditors or affected holders.
- (7) Affected holder referred to in paragraph (6) of this Article means a holder of shares or other instruments of

ownership whose instruments of ownership are cancelled by means of the power referred to in Article 113 paragraph (3) item 1) of this Law.

VII. WRITE DOWN OR CONVERSION OF RELEVANT CAPITAL INSTRUMENTS

Conditions to write down or convert relevant capital instruments

Article 48

- (1) Power to write down or convert relevant capital instruments may be exercised before the implementation of the resolution action or in combination with the resolution actions, provided that the conditions for resolution referred to in Article 35 paragraph (1) of this Law are met.
- (2) The Central Bank may write down or convert the relevant capital instruments into shares or other instruments of ownership of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law, when the following circumstances apply:
 - 1) unless the write down or conversion power is exercised in relation to relevant capital instruments the credit institution will no longer be viable;
 - 2) the group will no longer be viable unless the write down or conversion power is exercised in relation to relevant capital instruments in case of the capital instrument issued at the level of the subsidiary undertaking in the group with its head office in Montenegro that are recognised for the purposes of meeting capital requirements by the subsidiary undertaking also on a consolidated basis;
 - 3) a joint decision was reached in accordance with Article 39 paragraphs (5) and (7) of this Law determining that the group will no longer be viable unless the write down or conversion power is exercised in relation to relevant capital instruments in case of capital instruments issued by a subsidiary undertaking with its head office in Montenegro that are recognised for the purposes of meeting capital requirements by the subsidiary undertaking also on a consolidated basis;
 - 4) the group will no longer be viable unless the write down or conversion power is exercised in relation to relevant capital instruments in the case of capital instruments issued at the level of the parent undertaking with its head office in Montenegro that are recognised for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis at group level: or
 - 5) extraordinary public financial support is required by the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law, except in the case referred to in Article 34 paragraph 1 item 4) indent 3) of this Law.
- (3) A credit institution, group or legal person referred to in Article 3 items 2), 3) and 4) of this Law shall be deemed to be no longer viable unless the write down or conversion power is exercised in relation to relevant capital instruments if the conditions are met in relation to:
 - 1) credit institution, where:
 - the Central Bank in pursuing its supervisory function determined, in accordance with Article 34 paragraph (1) of this Law, that the credit institution or the legal person referred to in Article 3 items 2), 3) and 4) of this Law may not or will not be able to continue its regular operations in near future; and
 - having regard to the timing and other relevant circumstances, there is no reasonable prospect that any measure, including alternative private sector measure or supervisory measures including early intervention measures, would prevent the failure of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law;
 - 2) group, where:
 - the Central Bank, as the consolidating supervisor, determined that the group infringes or there are objective elements to support a determination that the group, in the near future, will infringe its consolidated requirements and elements to support a determination that the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds to the extent that would justify supervisory measures; and
 - having regard to the timing and other relevant circumstances, there is no reasonable prospect that any measure, including alternative private sector measure or supervisory measures including early

intervention measures, would prevent the failure of the credit institution, group or legal person referred to in Article 3 items 2), 3) and 4) of this Law.

- (4) Where relevant capital instruments are used for the purposes of meeting own funds requirements (Common Equity Tier 1 capital, Tier 1 capital and Additional Tier 1 capital) of the credit institution with its head office in Montenegro on an individual basis and for the group in Montenegro in accordance with the law governing the operations of credit institutions, the Central Bank shall determine, in pursuing its supervisory function, the existence of the circumstances referred to in paragraph (2) items 1) and 2) of this Article.
- (5) Where relevant capital instruments are issued by the credit institution or legal person referred to in Article 3, items 2), 3) and 4) of this Law with its head office in Montenegro which is a subsidiary undertaking of the EU parent undertaking and the instruments are used for the purpose of meeting own funds requirements on an individual and on a consolidated basis:
 - 1) the Central Bank shall determine, in pursuing its supervisory function, the existence of circumstances referred to in paragraph (2) item 1) of this Article;
 - 2) the Central Bank shall participate, in pursuing its supervisory function, in reaching a joint decision to determine the existence of circumstances referred to in paragraph (2) item 3) of this Article.
- (6) Where relevant capital instruments are issued by the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law which is an EU parent undertaking with its head office in Montenegro and the instruments are used for the purpose of meeting own funds requirements on an individual and on a consolidated basis, the Central Bank shall determine the existence of circumstances referred to in paragraph (2) item 4) of this Article.
- (7) In the case of a write down or conversion of relevant capital instruments referred to in paragraph (2) item 2) of this Article, the value of capital instruments issued by a subsidiary undertaking with its head office in Montenegro that are recognised for the purposes of meeting own funds requirements also on a consolidated basis shall not be written down to a greater extent or converted on worse terms than equally ranked capital instruments at the level of the parent undertaking which have been written down or converted.

Exercise of power to write down or convert capital instruments

Article 49

- (1) Before exercising the power to write down or convert the relevant capital instruments, the Central Bank shall ensure that a valuation of the assets and liabilities of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law is carried out in accordance with Article 44 paragraph (1) of this Law.
- (2) The valuation referred to in paragraph (1) of this Article shall form the basis of the calculation of the write down to be applied to the relevant capital instruments in order to absorb losses and the level of conversion to be applied to relevant capital instruments in order to establish adequate level of capital of the credit institution or the legal person referred to in Article 3 items 2), 3) and 4) of this Law.
- (3) The Central Bank shall exercise the write down or conversion power in relation to the relevant capital instruments in the following way:
 - 1) the losses determined by the valuation referred to in Article 44 paragraph (1) of this Law shall be covered first by reducing the Common Equity Tier 1 capital items to the extent required and the extent of their capacity in the manner referred to in Article 53 paragraphs (1) and (2) of this Law;
 - 2) the losses determined by the valuation referred to in Article 44 paragraph (1) of this Law that are not covered in the manner specified in item 1) of this paragraph shall be covered by writing down the principal amount of Additional Tier 1 instruments and converting these instruments into Tier 1 capital instruments to the extent required and the extent of their capacity in order to achieve the resolution objectives referred to in Article 12 of this Law;
 - 3) the losses determined by the valuation referred to in Article 44 paragraph (1) of this Law that are not covered in the manner specified in items 1) and 2) of this paragraph shall be covered by writing down the principal amount of Tier 2 instruments and converting these instruments into Common Equity Tier 1 instruments to the extent required and the extent of their capacity in order to achieve the resolution objectives referred to in Article 12 of this Law.
- (4) Where the principal amount of relevant capital instruments has been written down in accordance with paragraph

- (3) of this Article, this shall have the following effects:
- 1) the reduction shall be permanent, subject to any write up in accordance with the reimbursement procedure referred to in Article 47 paragraph (6) or Article 97 paragraph (4) of this Law;
 - 2) the holder of the relevant capital instrument shall have no rights in connection with that amount of the instrument which has been written down or converted except for the right(s):
 - to interest and other claims arising from the instrument accrued as at the date of the write down or conversion of the relevant capital instrument;
 - to appeal to the competent court in accordance with Article 42 of this Law; and
 - referred to in paragraphs (5) and (6) of this Article.
- (5) The Central Bank may request from the credit institution or legal person referred to in Article 3, items 2), 3) and 4) of this Law to issue new Common Equity Tier 1 instruments to the holders of the relevant capital instruments the value of which has been written down for the purpose of converting these instruments in accordance with paragraph (3) of this Article.
- (6) Relevant capital instruments may only be converted into Common Equity Tier 1 instruments only if:
- 1) they are issued by a credit institution or a legal person referred to in Article 3 items 2), 3) and 4) of this Law or by a parent undertaking of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law with prior authorisation of the Central Bank or, where relevant, of the resolution authority of the parent undertaking;
 - 2) they are issued prior to the issuance of shares or other instruments of ownership by the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law for the purposes of the provision of state aid through investments in own funds;
 - 3) they are awarded and transferred without delay following the exercise of the write down or conversion powers in relation to the relevant capital instruments;
 - 4) the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument complies with the principles referred to in Article 54 of this Law.
- (7) For the purposes of the provision of Common Equity Tier 1 instruments referred to in paragraph (2) of this Article, the Central Bank may require the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law to obtain all necessary prior authorisations for the issuance of the relevant number of Common Equity Tier 1 instruments.

Decision to write down or convert relevant capital instruments

Article 50

- (1) A decision to write down or convert relevant capital instruments shall be adopted by the Council of the Central Bank.
- (2) The decision referred to in paragraph (1) of this Article shall contain:
- 1) the amount of loss by which all reserves and retained profit of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law are reduced;
 - 2) the amount of the reduction of Common Equity Tier 1 capital of the credit institution or legal person referred to in Article 3 of this Law;
 - 3) a decision to write down the principal amount of relevant capital instruments; or
 - 4) a decision to increase the Tier 1 capital.
- (3) The decision to reduce Common Equity Tier 1 capital referred to in paragraph (2) item 2) of this Article shall be adopted as a decision on Common Equity Tier 1 capital reduction by cancelling shares and specifying the exact amount of Tier 1 capital related to the cancelled shares and the amount of Tier 1 capital after the reduction.
- (4) Where the amount of loss exceeds the amount of Tier 1 capital of the credit institution, a decision shall be reached to write down paragraph (2) item 3) of this Article.
- (5) The decision to increase Tier 1 capital referred to in paragraph (2) item 4) of this Article shall contain the amount by which the Tier 1 capital will be increased, the nominal value of shares, their class and the amount of

their issue, that is, the amount of new capital contributions, the rights invested, the persons who are investing them and the number of shares to be so acquired.

Consequences of the decision to write down or convert relevant capital instruments

Article 51

- (1) The Tier 1 capital shall be deemed to be reduced or increased as of the date of the adoption of the decision referred to in Article 50 paragraph (1) of this Law.
- (2) Upon the adoption of the decision to increase the Tier 1 capital referred to in paragraph (1) of this Article, new shares shall be deemed transferred to the holder of relevant capital instruments being converted, whereby shares or contributions are paid in and the increase in Tier 1 capital is executed.
- (3) The Central Bank shall, at the latest on the next working day following the adoption of the decision referred to in paragraph (1) of this Article, submit the decision to the Central Registry of Business Entities for the entry of the decision to change the capital.
- (4) The decision referred to in paragraph (1) of this Article shall be treated as the amendments to the Articles of Association of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law in the part relating to the amount of the Tier 1 capital, the number of issued shares and their nominal value.
- (5) The Central Registry of Business Entities shall without delay decide on the application for entry referred to in paragraph (4) of this Article, regardless of the order of other received applications for the entry.
- (6) The decision referred to in Article 50 paragraph (1) of this Law, the Central Bank shall deliver at the latest on the next working day following its adoption to the Central Securities Depository and Clearing Company of Montenegro which shall effect the entry without delay.
- (7) In order to issue new shares pursuant to the decision to increase Tier 1 capital, referred to in Article 50 paragraph (2) of this Law, the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law shall not be required to publish a prospectus, and the holders of shares in relation to which the reduction in Tier 1 capital was carried out shall not have the subscription priority.

Write down and conversion of relevant capital instruments in relation to cross-border groups

Article 52

- (1) Before adopting the decision on the existence of the circumstances referred to in Article 48 paragraph (2) of this Law in relation to a credit institution with its head office in Montenegro which is a subsidiary undertaking of an EU parent undertaking with its head office in another Member State that issues relevant capital instruments that are recognised for the purpose of meeting own funds requirements on an individual and on a consolidated basis, the Central Bank shall:
 - 1) notify, without delay, the consolidating supervisor and the appropriate authority in that Member State of the existence of the circumstances referred to in Article 48 paragraph (2) item 1) of this Law;
 - 2) notify, without delay, the competent and the appropriate authorities of each institution or legal person referred to in Article 3, items 2), 3) and 4) of this Law that issued the capital instruments in relation to which write down or conversion power is to be executed of the existence of the circumstances referred to in Article 48, paragraph (2), item 2) of this Law.
- (2) Appropriate authority referred to in paragraph (1) of this Article means the authority of the Member State that is responsible under the national law of that State for determining the conditions for write down or conversion of relevant capital instruments, and in Montenegro it means the Central Bank in pursuing its supervisory function.
- (3) When determining the existence of the circumstances referred to in Article 48 paragraph (2) items 2), 3) and 4) of this Law in relation to the credit institution which is a member of an EU group, the Central Bank shall take into account the potential impact of this decision in all Member States where the credit institution or group operates.
- (4) The Central Bank shall enclose with the notification referred to in paragraph (1) of this Article an explanation of the reasons why it is considering making the determination of their circumstances referred to in Article 48 paragraph (2) of this Law.

- (5) The Central Bank shall consult with the authorities referred to in paragraph (1) of this Article, and after the consultation assess the following:
- 1) if an alternative measure to write down or convert relevant capital instruments referred to in Article 48 paragraph (2) of this Law is available;
 - 2) if such an alternative measure referred to in item 1) of this paragraph is available, whether it can feasibly be applied, and
 - 3) if such an alternative measure referred to in item 1) of this paragraph could feasibly be applied, whether there is a realistic prospect that it would address, in an adequate timeframe, the circumstances that would otherwise require the determination referred to in Article 48 paragraph (2) of this Law to be made.
- (6) Alternative measures referred to in paragraph (5) of this Article mean:
- 1) supervisory measures in the early intervention phase and other supervisory measures specified in the law governing the operations of the credit institutions; or
 - 2) the transfer of funds or capital instruments from the parent undertaking.
- (7) The Central Bank shall apply one or more alternative measures referred to in paragraph (5) of this Article if their application may remove the requirement to write down or conversion of relevant instruments of capital referred to in Article 48 paragraph (2) of this Law.
- (8) Where, in the case referred to in paragraph (5) of this Article the Central Bank assesses that the alternative measure that would deliver the outcome referred to in paragraph (5) item 3) of this Article is not available, the Central Bank shall determine the existence of conditions referred to in Article 48 paragraph (2) of this Law.
- (9) Where the Central Bank decides to determine the existence of the circumstances referred to in Article 48 paragraph (2) item 2) of this Law, it shall without delay notify the appropriate authorities of the Member State in which the head offices of the affected subsidiary undertakings are located.
- (10) The Central Bank shall determine the application of alternative measures referred to in paragraph (7) of this Article by way of decision to initiate the resolution proceedings.
- (11) The Central Bank shall, immediately upon the adoption, implement a decision to write down or convert relevant capital instruments.
- (12) The Central Bank shall, upon the invitation of the appropriate authority of the Member State participate in reaching a joint decision on the existence of the conditions referred to in Article 48 paragraph (2) item 2) of this Law.

Treatment of shareholders in relation to write down or conversion of relevant capital instruments

Article 53

- (1) When writing down or converting the relevant capital instruments, the Central Bank shall, in respect of shareholders, have the power to take the following actions:
- 1) carry out Tier 1 capital reduction by cancelling the existing shares or other instruments of ownership;
 - 2) provided that, in accordance with the valuation carried out pursuant to Article 44 of this Law, the assets of the credit institution under resolution exceeds its liabilities, dilute the existing shareholder structure by converting Common Equity Tier 1 instruments issued by the credit institution in accordance with the power referred to in Article 113 paragraph (1) item 7) of this Law.
- (2) The dilution referred to in paragraph (1) item 2) of this Article shall be carried out at the conversion rate that severely dilutes the existing shareholder structure.
- (3) The actions referred to in paragraph (1) of this Article shall also be taken in respect of shareholders that are owners of Common Equity Tier 1 instruments that were issued or conferred:
- 1) pursuant to conversion of debt instruments to shares or other instruments of ownership in accordance with contractual terms of the original debt instruments on the occurrence of an event that preceded or occurred at the same time with the adoption of the decision to initiate the resolution proceedings; and
 - 2) pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments referred to in Article 49 of this Law.

- (4) When deciding which action to take in accordance with paragraph (1) of this Article, the Central Bank shall take into account:
- 1) whether the valuation was carried out in accordance with Article 44 of this Law;
 - 2) the amount by which, in accordance with the assessment of the Central Bank, the Common Equity Tier 1 items must be reduced and relevant capital instruments must be written down or converted in accordance with Article 49 paragraph (3) of this Law; and
 - 3) the aggregate amount it assessed in the way referred to in Article 97 of this Law.
- (5) Where the conversion of relevant capital instruments would result in the acquisition of or increase in a qualifying holding above the level in relation to which the authorisation was made, the Central Bank shall, ex officio, for the purpose of creating conditions for faster implementation of the conversion of relevant capital instruments and enabling the achievement of its objections by applying the resolution action, carry out the decision-making procedure in the shortest timeframe regarding prior authorisation to acquire a qualifying holding in accordance with the law governing the operations of credit institutions.
- (6) If the decision-making procedure regarding prior authorisation to acquire qualifying holding has not been completed on the date of the commencement of the conversion of relevant capital instruments or such a procedure results in the refusal to grant authorisation to acquire a qualifying holding, all acquisitions or increases in a qualifying holding by an acquirer resulting from the conversion of relevant capital instruments shall be subject to the provisions of Article 75 paragraphs (5) to (8) and Article 76 paragraphs (1) and (2) of this Law.
- (7) In the case referred to in paragraph (6) of this Article, the Central Bank shall have the voting and other management rights arising from the instruments of ownership, whereby it shall have no obligation to exercise such right and shall have no liability of it refrained from exercising such right during resolution.

Conversion rate

Article 54

- (1) Conversion rate means the rate at which a single instrument of a specific class or a specified unit of value of eligible liability is converted into the nominal value of shares or other instruments of ownership.
- (2) In the case referred to in Article 48 paragraph (2) of this Law, the Central Bank may apply different conversion rate to different classes of relevant capital instruments and liabilities in accordance with rules referred to in paragraphs (3) and/or (4) of this Article.
- (3) The conversion rate shall represent appropriate compensation to the affected creditor for any loss incurred due to the write down or conversion referred to in paragraph (1) of this Article.
- (4) Where the Central Bank applies different conversion rates referred to in paragraph (1) of this Article, the conversion rate applicable to liabilities that are classified into higher priority claims in bankruptcy proceedings and have seniority in settlement, shall be higher than the conversion rate applicable to liabilities classified into lower priority claims.
- (5) The Central Bank shall regulate detailed conditions for determining the conversion rates.

VII. RESOLUTION ADMINISTRATION

Appointment of resolution administration

Article 55

- (1) The Central Bank shall appoint the resolution administration by way of a decision to initiate resolution proceedings.
- (2) The resolution administration shall have at least two members, one of which shall be appointed as the chairperson of the resolution administration.
- (3) Only persons who meet the requirements specified under the law governing operations of the credit institutions may be appointed as members of the management board of a credit institution.

Content of the decision on the appointment of resolution administration

Article 56

- (1) The decision to initiate resolution proceedings shall, in the part appointing the resolution administration, contain the following in particular:
 - 1) names of the chairperson and members of the resolution administration;
 - 2) duration of the term of office of the resolution administration; and
 - 3) content and time limits for the submission of the reports to the Central Bank by the resolution administration on financial position of the credit institution and actions taken in conduct of the resolution administration.
- (2) The decision referred to in paragraph (1) of this Article shall be posted on the web site of the Central Bank.

Assistants to the resolution administration

Article 57

- (1) The decision to initiate resolution proceedings may also contain the appointment of assistants to the resolution administration.
- (2) The assistants to the resolution administration shall perform, by the order of the resolution administration, ancillary operations, administrative and technical operations in the resolution proceedings.

Term of office of resolution administration

Article 58

- (1) The resolution administration and its assistants shall be appointed for a period not exceeding 12 months.
- (2) Where it is determined that the conditions of the resolution administration continue to be met, the Central Bank may renew this period for a period no longer than 12 months.

Entry into Central Registry of Business Entities

Article 59

- (1) A decision to appoint resolution administration and the change of the persons authorised to represent the credit institution under resolution shall be entered into the Credit Registry of Business Entities.
- (2) The application for entry of the data referred to in paragraph (1) of this Article shall be submitted by the resolution administration within two working days of the adoption of the decision to initiate resolution proceedings.

Legal effects of the appointment of a resolution administration

Article 60

- (1) On the day of the adoption of the decision to initiate resolution proceedings, powers of members of the credit institution's management board and supervisory board and of its general shareholders assembly shall cease.
- (2) All powers of the general shareholders assembly, supervisory board and management board of the credit institution under resolution shall be exercised by the resolution administration under the supervision of the Central Bank.
- (3) On the day of the adoption of a decision to initiate the resolution proceedings, term of office of the former members of the supervisory board and management board shall cease, and all contracts pursuant to which former supervisory board and management board members were employed with the credit institution shall be terminated.
- (4) In the case referred to in paragraph (3) of this Article, former management board and supervisory board

members of the credit institution under resolution shall not be entitled to the payment of severance pay and variable remuneration.

Rights and responsibilities of the members of the resolution administration

Article 61

- (1) Rights and responsibilities of the members of the resolution administration shall begin on the day of the adoption of the decision referred to in Article 55 paragraph (1) of this Law.
- (2) Members of the resolution administration shall individually represent credit institution under resolution.
- (3) Members and assistants of the resolution administration shall have the right to receive remuneration determined by the Central Bank for work to be paid by the credit institution under resolution.
- (4) If the remuneration referred to in paragraph (3) of this Article may not be paid by the credit institution under resolution, the payment of remuneration shall be made from the Resolution Fund.

Duties of the resolution administration

Article 62

- (1) The resolution administration shall take measures that are necessary to achieve resolution objectives referred to in Article 12 of this Law and implement resolution actions in accordance with the decision to initiate resolution proceedings.
- (2) The measures referred to in paragraph (1) of this Article shall include in particular: an increase of capital, reorganisation of the ownership structure of the credit institution or takeover of its assets, rights or liabilities of the credit institution under resolution by the credit institutions that are financially and organisationally sound in accordance with the selected resolution tool.
- (3) If the duties of the resolution administration, specified under this Law, are arranged in the manner that is different from the manner in which the duties of the managing body are arranged in the internal documents of the credit institution, the provisions of this Law shall apply.
- (4) The duties that arise in accordance with other rules or internal documents of the credit institution, shall be exercised by the resolution administration immediately after the reasons for which their exercise jeopardised the exercise of the duties referred to in paragraph (1) of this Article.

Orders and instructions to a resolution administration

Article 63

- (1) The Central Bank shall issue written orders and instructions to the resolution administration.
- (2) The resolution administration shall act on the orders and instructions of the Central Bank and regularly notify it of the execution of orders and instructions, in particular of the economic and financial situation of the credit institution and of the measures it has taken in the conduct of its duties, within the timeframe determined in the decision to initiate resolution proceedings.
- (3) The resolution administration shall without delay notify the Central Bank of all circumstances which might have a negative effect on the achievement of resolution objectives referred to in Article 12 of this Law and implementation of resolution actions in accordance with the decision to initiate the resolution proceedings.

Duty to cooperate with the resolution administration

Article 64

- (1) Former members of the credit institution's supervisory board and management board and other authorised persons with special powers and responsibilities in the credit institution under resolution shall provide the resolution administration and its assistants the immediate access to all business and other documentation of the credit institution and prepare a report on the transfer of operations to the resolution administration.

- (2) Persons referred to in paragraph (1) of this Article shall provide the resolution administration or its individual members with all explanations and additional reports on the credit institution's operations.
- (3) All employees of the credit institution shall be required to cooperate with the resolution administration and its assistants.
- (4) Members of the resolution administration shall have the right to dismiss persons who hinder their work and, as circumstances may require, request the assistance of the competent body of the Ministry of the Interior Affairs.

Removal from office appointed members of the resolution administration

Article 65

- (1) The Central Bank shall remove from office appointed member or assistant of the resolution administration who fail to perform their duties or who fail to perform their duties in a satisfactory manner and it appoint new member or assistant to the resolution administration whose term of office may not exceed the term of office of the member or assistant to the resolution administration.
- (2) Where the supervisory function of the Central Bank determines that a member of the resolution administration does not meet the criteria for appointment or does not ensure the legal operation of the credit institution under resolution, it shall without delay notify the Council of the Central Bank in order to enable it to take actions in accordance with paragraph (1) of this Article.

Termination of term of office of resolution administration

Article 66

- (1) The term of office of the chairperson and members of the resolution shall be terminated on the date:
 - 1) of delivery of the decision on the completion of resolution proceedings;
 - 2) of expiry of the period to which it was appointed; or
 - 3) of the adoption of the decision to revoke the licence from credit institution under resolution.
- (2) The term of office of assistants to the resolution administration shall be terminated on the date of termination of term of office of the resolution administration.

Appointment of group resolution administration

Article 67

Where it is necessary to appoint resolution administration to several members of the group with its head office in Montenegro, the resolution authority may appoint the same resolution administration for individual or all members of the group under resolution in order to facilitate solution redressing the financial soundness of the group members concerned.

VIII. RESOLUTION TOOLS

Types and application of resolution tools

Article 68

- (1) The Central Bank shall apply the following resolution tools to credit institutions under resolution:
 - 1) the sale of business tool, which covers the process of transferring individual business lines, shares or other instruments of ownership issued by a credit institution under resolution, or assets, rights or liabilities of a credit institution under resolution to a purchaser that is not bridge credit institution;
 - 2) bridge credit institution tool, which covers the process of transferring shares or other instruments of ownership issued by a credit institution under resolution or assets, rights or liabilities of a credit institution under resolution to a bridge credit institution;

- 3) asset separation tool, which covers the process of transferring assets, rights or liabilities of a credit institution under resolution by the resolution authority to an asset management company; and
 - 4) bail-in tool, which covers the process of effecting the exercise of the power to write-down or convert relevant capital instruments by the resolution authority in relation to liabilities of a credit institution under resolution.
- (2) The bridge credit institution referred to in paragraph (1) item 2) of this Article shall be a legal person which is wholly or partially state owned which may be created also by the Central Bank for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by a credit institution under resolution or some or all of the assets, rights and liabilities of one or more credit institutions under resolution with a view to maintaining access to critical functions and selling credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law.
 - (3) The resolution tools referred to in paragraph (1) of this Article shall be applied individually or in combination with other resolution tools.
 - (4) Resolution tools referred to in paragraph (1) items 1) and 2) of this Article shall be used to transfer assets, rights or liabilities of the credit institution under resolution.
 - (5) By way of derogation from paragraph (1) item 3) of this Article, assets separation tool shall be applied only together with another resolution tool.
 - (6) In case of partial transfer referred to in paragraph (4) of this Article, the Central Bank shall, by the day of the adoption of the decision on the completion of the resolution proceedings at the latest, withdraw license and open bankruptcy proceedings against the residual credit institution.
 - (7) For the purpose of achieving resolution objectives and in accordance with Article 12 of this Law, the bankruptcy administrator shall carry out the proceedings referred to in paragraph (6) of this Article within a reasonable timeframe and in the manner enabling the recipient undertaking to continue carrying out the transferred activities or services.

Application of additional resolution tools and resolution powers

Article 69

- (1) Where the resolution proceedings have been initiated against a credit institution or other legal person referred to in Article 3 of this Law, the Central Bank may apply additional resolution tools and resolution powers that are consistent with Articles 12 and 13 of this Law, in the manner that the application of those additional powers does not pose obstacles to effective resolution of the cross-border group.
- (2) The Central Bank may seek funding from alternative financing sources through the use of government financial stabilisation tools in accordance with this Law, exceptionally in the situation of a systemic crisis, when:
 - 1) the shareholders and the holders of relevant capital instruments and eligible liabilities contributed to the coverage of losses and recapitalisation through write down, conversion or otherwise, in the amount equal to an amount not less than 8% of total liabilities, including own funds of the credit institution under resolution, in accordance with the calculation at the time when the resolution action was taken pursuant to the valuation carried out referred to in Article 44 of this Law, and
 - 2) such financing is in line with the law governing the state aid.
- (3) Systemic crisis referred to in paragraph (1) of this Article means a disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy.

Exclusion of application of other regulations

Article 70

- (1) When applying resolution tools, the provisions of the following regulations shall not apply:
 - 1) law governing the operation of business undertakings in the part relating to:
 - audit requirements in relation to capital contributions in objects and rights, as well as special capital contributions for the increase in share capital by contributions in objects and rights without the audit that increase the initial capital;

- the obligation to convene the general shareholders assembly;
 - the obligation of the general shareholders assembly to adopt a decision to increase or reduce the share capital and the disclosure of such decision;
 - the approval of the shareholders of each class of shares converting the right to vote in relation to the decision of the general shareholders assembly to increase or reduce the share capital of the company;-
 - the right of priority of the existing shareholders in relation to the acquisition of new shares of the credit institution under resolution;
 - the protection of creditors in relation to the reduction of the share capital of credit institution;
 - the cancellation of shares.
- 2)the law governing the financial collaterals, in the part relating to the foreclosure of financial collateral, the right of use pledged financial collateral, the recognition of title transfer financial collateral arrangements and the conditions for early foreclosure of collateral; and
- 3)the law governing the takeover of joint stock companies in the part relating to the mandatory takeover bids.

Status of credit institution under resolution and shareholders

Article 71

- (1) The Central Bank, in pursuing its supervisory function, may allow the credit institution under resolution not to meet one or more requirements arising from the regulations governing operations of credit institutions for a certain period of time.
- (2) After the grounds for initiating resolution proceedings cease to exist or after all necessary resolution action has been taken, the Central Bank shall adopt a decision on the completion of the resolution proceedings.
- (3) Unless otherwise prescribed in this Law, for the duration of the resolution proceedings, shareholders or other persons shall have no rights arising from shares or other instruments of ownership of the credit institution under resolution.
- (4) Where the bankruptcy proceedings have been opened against a credit institution under resolution, the legal acts of the transfer of title, rights or liabilities from the credit institution under resolution to another entity by virtue of the application of a resolution tool or exercise of resolution power or use of a government financial stabilisation tools may not be challenged or declared null and void.

Right to recovery of expenses when applying the resolution tools

Article 72

The Central Bank, the Ministry and the Resolution Fund shall be entitled to the recovery of any reasonable expenses in relation to the application of the resolution tools, carrying out of the resolution proceedings or the application of government financial stabilisation tools in one of the following ways:

- 1) as a deduction from any consideration paid by a recipient undertaking to the credit institution under resolution or holders of shares or other instruments of ownership;
- 2) from the credit institution under resolution as a preferred creditor; or
- 3) from any proceeds generated as a result of the termination of the status of a bridge credit institution, or the winding up or bankruptcy of a bridge credit institution or the asset management company, as a preferred creditor in relation to all other creditors of the credit institution in the bankruptcy proceedings.

Use of the sale of business tool

Article 73

- (1) The Central Bank may transfer to the purchaser that is not a bridge institution:
 - 1)all or any assets, rights or liabilities of a credit institution under resolution; and/or

- 2) shares or other instruments of ownership issued by a credit institution under resolution.
- (2) Where the decision to initiate resolution proceedings specifies that resolution is to be carried out by means of the sale of assets, rights or liabilities of the credit institution under resolution in whole or in part, the Central Bank shall reach a decision and shall empower the resolution administration to effect the sale.
 - (3) Where the decision on the resolution specifies that resolution is to be carried out by means of the sale of shares or other instruments of ownership issued by the credit institution under resolution, the Council of the Central Bank shall reach a decision to sell these instruments of ownership to a particular purchaser.
 - (4) The sale referred to in paragraph (1) of this Article shall not be subject to the approval of the shareholders of the credit institution under resolution, its creditors or third parties.
 - (5) The credit institution under resolution shall notify, without any delay, the persons the decision pertains in the part relevant to them of the decision of sale referred to in paragraphs (2) and (3) of this Article.
 - (6) The Central Bank may carry out the sale referred to in paragraph (2) and (3) of this Article in whole or in parts.
 - (7) The acquirer who acquired instruments of ownership of the credit institution under resolution in accordance with this Article shall have all property rights arising from such instruments of ownership.

Terms of sale

Article 74

- (1) The sale referred to in Article 73 paragraphs (2) and (3) of this Law shall be carried out at market terms, and the Central Bank shall take all reasonable steps to obtain the possible terms of the sale, starting from the valuation conducted in accordance with this Law.
- (2) The amount obtained through the sale, reduced by the considerations specified under Article 72 of this Law, shall be paid out to:
 - 1) The owners of shares or other instruments of ownership, where the sale of shares or instruments of ownership has been effected by transferring those instruments from the holder of those instruments to the purchaser; and
 - 2) the credit institution under resolution, where the sale of assets, rights or liabilities of the credit institution under resolution has been effected in full or partially by transferring from the credit institution under resolution to the purchaser.
- (3) Following the application of the sale referred to in Article 73 paragraphs (2) and (3) of this Law, the Central Bank may reach a decision to conclude a contract with the purchaser by which the purchaser transfers the assets, rights and/or liabilities back to the credit institution under resolution, or transfers shares or other instruments of ownership back to the shareholders, and the credit institution under resolution or shareholders shall take back such assets, rights or liabilities, or shares or other instruments of ownership.

Obligations of purchasers

Article 75

- (1) In the case of the sale of assets, rights or liabilities of the credit institution under resolution, the purchaser shall have all appropriate authorisations to carry out the business that is the subject of the sale.
- (2) In the case of the sale of the existing shares and in the case of subscription of newly issued shares or other instruments of ownership of the credit institution under resolution, the purchaser acquiring the qualifying holding in the credit institution under resolution shall at the moment of sale have the authorisation to acquire qualifying holding in accordance with the law governing the operations of credit institutions.
- (3) The Central Bank shall decide on the application to acquire a qualifying holding referred to in paragraph (2) of this Article within 15 days of submission of valid application.
- (4) By way of derogation from paragraph (3) of this Article, if the delay in the sale would prevent the achievement of resolution objectives, the sale may be effected before the expiry of the time limit for deciding on the application referred to in paragraph (3) of this Article, and the Central Bank shall decide on the application to acquire a qualifying holding at a later time.

- (5) Where the purchaser has not met the requirement referred to in paragraph (2) of this Article, no actions shall be undertaken against that person that are provided for in law governing the operations of credit institutions in case of the acquisition of qualifying holding in a credit institution without prior authorisation of the Central Bank.
- (6) The Central Bank shall, in accordance with the law, without delay, deliver to the applicant the decision regarding the authorisation to acquire a qualifying holding.
- (7) Where the purchaser has acquired a qualifying holding in accordance with paragraph (4) of this Article, the sales contract shall produce legal effect and the transfer of ownership may be carried out, and the purchaser shall acquire property rights arising from those instruments of ownership and voting and other management rights in relation to the instruments of ownership shall be transferred to the Central Bank which shall not have a voting right.
- (8) In case referred to in paragraph (7) of this Article, upon obtaining the authorisation to acquire a qualifying holding, or where this is not necessary upon the adoption of the decision on the sale, the voting rights arising from these instruments of ownership shall be transferred from the Central Bank to the acquirer.

Consequences of the refusal of application for granting authorisation to acquire qualifying holding

Article 76

- (1) Where the Central Bank, in accordance with the law governing the operations of credit institutions, refuses by way of decision referred to in Article 75 paragraph (6) of this Article the application for granting the authorisation to acquire a qualifying holding in the credit institution, the voting rights and other management rights arising from these shares shall continue to be held by the Central Bank, which may order the sale of the shares within the set time limit.
- (2) Where the acquirer, within the period set by the Central Bank fails to sell the shares or other instruments of ownership, the Central Bank shall take measures that are taken in line with the law governing the operations of credit institutions in case of the acquisition of qualifying holding in credit institution without prior authorisation of the Central Bank.
- (3) The transfers arising from the sale of business tools shall be subject to the safeguard measures referred to in Articles 137 to 144 of this Law.

Rights of purchasers, shareholders and creditors

Article 77

- (1) The purchaser referred to in Article 75 paragraph (1) of this Law may continue to exercise the rights of membership and access to payment and settlement systems, stock exchange, and deposit guarantee scheme of the credit institution under resolution, provided that it meets the criteria for participation in such systems, whereby the access to those systems cannot be denied on the ground that the purchaser does not possess a rating from a credit rating agency or that rating is not commensurate to the rating level required to be granted access to such systems.
- (2) Where the purchaser does not meet the membership or participation criteria for access to the systems referred to in paragraph (1) of this Article, the authorities competent for approving the membership and access to those systems may grant that the rights are exercised for such a period of time as specified, not exceeding 24 months from the sale of assets, rights and liabilities of the credit institution under resolution and the time limit may be extended for another 12 months at the request of the purchaser.
- (3) The shareholders or creditors of the credit institution under resolution and other third parties whose assets, rights or liabilities are not sold by means of the sale of business tool shall not have any rights over or in relation to the assets, rights or liabilities sold, except the right to safeguard measures referred to in Articles 137 of 144 of this Law.
- (4) The purchaser shall be considered the legal successor of the credit institution under resolution and may continue to exercise any right that was exercised by the credit institution under resolution in relation to transferred assets, rights or liabilities for the purpose of providing services or establishments in another Member State.

Procedural requirements in relation to the sale

Article 78

- (1) The sale of assets, rights or liabilities, shares or other instruments of ownership of the credit institution under resolution shall be carried out by the Central Bank and parts of rights, assets and liabilities may be sold separately.
- (2) The sale referred to in paragraph (1) of this Article shall be carried out in accordance with the following criteria:
 - 1) transparency and, to the extent possible, accurate representation of the assets, rights, liabilities, shares or other instruments of ownership of the credit institution under resolution, having regard to the need to maintain financial stability;
 - 2) equality between potential buyers;
 - 3) avoidance of any conflict of interest;
 - 4) urgency of the resolution proceedings; and
 - 5) acting as with a due diligence of a prudent businessperson.
- (3) The Central Bank may, if it contributes to more effective implementation of the resolution proceedings, offer the sale of assets, rights or obligations or shares and other instruments of ownership of the credit institution under resolution proceedings to a certain category of purchasers or arrange the sale directly with a particular purchaser, and such a sale shall not constitute a breach of the principle of equality between the potential purchasers referred to in paragraph (2) item 2) of this Article.
- (4) In order to ensure financial stability, any disclosure of the information on the sale of the credit institution under resolution and the negotiations with potential buyers prior to the sale may be delayed for a period required to the plan and carry out the resolution of the credit institution.
- (5) The Central Bank may carry out the sale without the public disclosure when it determines that such disclosure would undermine or make it difficult to meet one or more of the resolution objectives and in particular if it considers that there is a material threat to financial stability arising from the likely failure of the credit institution under resolution and, if it considers that public disclosure would be likely to undermine the effectiveness of the sale or achieving the resolution objectives referred to in Article 12 paragraph (2) item 2) of this Law.

Bridge credit institution tool

Article 79

- (1) The transfer of shares or other instruments of ownership issued by one or more credit institutions under resolution and/or assets, rights or liabilities of one or more credit institutions under resolution in whole or in part shall be effected to a bridge credit institution in accordance with the decision of the Council of the Central Bank for the purpose of achieving resolution objectives referred to in Article 12 of this Law.
- (2) Where the decision to initiate the resolution proceedings specifies that the resolution is to be carried out by means of bridge credit institution tools through the transfer of shares or other instruments of ownership issued by one or more credit institutions under resolution, the Central Bank shall reach a decision to establish bridge credit institution through the transfer of the instruments of ownership of the credit institution under resolution.
- (3) Where the decision to initiate the resolution proceedings specifies that the resolution is to be carried out by means of the transfer of assets, rights or liabilities of the credit institution under resolution in full or in part to the bridge credit institution, the Central Bank shall reach a decision to separate the credit institution under resolution by establishing a bridge credit institution with the assets, rights and liabilities of the credit institution under resolution and authorise the resolution administration to effect the transfer to the bridge credit institution established for this purpose.
- (4) The bridge credit institution referred to in paragraph (2) of this Article shall be established as a joint stock company for the purpose of carrying out the activities of a holding company and whose shares or other instruments of ownership shall be subscribed in full or in part by the Central Bank.
- (5) The bridge credit institution shall be a legal person that has a status of a credit institution under resolution.
- (6) The Central Bank shall, without delay, deliver the decision referred to in paragraphs (2) and (3) of this Article to the credit institution under resolution and the Central Securities Depository and Clearing Company of Montenegro.

- (7) The bridge credit institution shall, without delay, notify the persons decision pertains to in the part relevant to them of the decision referred to in paragraphs (2) and (3) of this Article.
- (8) The powers of the general assembly of the bridge credit institution shall be carried out by the Central Bank and the resolution administration shall have the powers of supervisory board and management board of the bridge credit institution.
- (9) The consent of the shareholders of the credit institutions under resolutions or other persons shall not be required for the transfers referred to in paragraph (1) of this Article or the compliance and action in accordance with the requirements of the procedure referred to in the law governing the operations of business undertakings or capital markets which are contrary to this Article in the part regulating the restructuring of the joint stock companies.
- (10) The decision referred to in paragraph (1) of this Article shall be challenged in the manner specified in Article 42 of this Law.

Capital of the bridge institution

Article 80

- (1) The decision referred to in Article 79 paragraphs (2) and (3) of this Law shall contain the decision on the issuance of shares or other instruments of ownership of the bridge credit institution and pursuant to this decision, the Central Bank shall authorise the resolution administration of the credit institution to carry out the issue of shares.
- (2) The capital of the bridge credit institution shall be subscribed by the Central Bank and it shall be created by:
 - 1) a transfer of surplus of assets over liabilities; or
 - 2) a payment from the Resolution Fund.
- (3) The provisions of the law governing the granting of the authorisation to acquire qualifying holding in credit institutions shall not apply to the subscription of capital by Central Bank.

License of bridge credit institution

Article 81

- (1) The decision to issue provisional license to a bridge credit institution shall be adopted by the Council of the Central Bank.
- (2) The Central Bank shall issue a provisional license at least for the operations that are transferred to the bridge credit institution and specify the time limit in which the bridge credit institution is not required to meet the conditions for obtaining the license prescribed by the law.

Acts of the bridge credit institution

Article 82

- (1) The Central Bank shall adopt the Articles of Association of a bridge credit institution.
- (2) Resolution administration shall, within time limits specified by the Central Bank and with its approval, adopt and deliver to the Central Bank, the strategy and risk profile of the bridge credit institution.

Registration of bridge credit institution into the Central Registry of Business Entities

Article 83

- (1) The Central Bank shall, within 24 hours of passing the decision to establish a bridge credit institution at the latest, submit an application for entry of the establishment of the bridge credit institution in the Central Registry of Business Entities, which shall, under emergency procedures, and no longer than 24 hours, make the appropriate entry into the Registry.
- (2) The following documents shall be enclosed with the application for entry of the bridge credit institution into the Central Registry of Business Entities:

- 1)the decision to initiate resolution proceedings referred to in Article 36 paragraph (1) of this Law;
- 2)the decision to establish bridge credit institution through the transfer of shares or other instruments of ownership of the credit institution under resolution referred to in Article 79 paragraph (2) of this Law, or a decision to separate a credit institution under resolution by establishing bridge credit institution referred to in Article 79 paragraph (3) of this Law;
- 3)provisional license referred to in Article 81 of this Law; and
- 4)the Articles of Association of the bridge credit institution.

Application of the bridge institution tool to the bridge credit institution

Article 84

- (1) The total value of liabilities transferred to the bridge credit institution shall not exceed the total value of the rights and assets transferred from the credit institution under resolution or rights and assets provided by other sources.
- (2) After establishing the bridge institution, the Central Bank may alter the decision referred to in Article 79 paragraphs (2) and (3) of this Law by which it:
 - 1)transfers the rights, assets or liabilities back from the bridge credit institution to the credit institution under resolution or the shares or other instruments of ownership back to the shareholders of the credit institution under resolution, and the credit institution under resolution or shareholders of the credit institution under resolution shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership, provided that the conditions referred to in paragraph (3) of this Article are met;
 - 2)transfers shares or other instruments of ownership, or assets, rights or liabilities from the bridge credit institution to a third party.
- (3) The amendment to the decision referred to in paragraph (2) item 1) of this Article may be exercised provided that:
 - 1)such a possibility is stated expressly in the enacting terms of the decision referred to in Article 79 paragraphs (2) and (3) of this Law;
 - 2)the specific shares or other instruments of ownership, assets, rights or liabilities do not meet the conditions or fall within the classes of shares or other instruments of ownership, assets, rights or liabilities specified in the contract by which the transfer was made.
- (4) The Central Bank may make the transfer referred to in Article 79 paragraph (1) of this Law to the bridge credit institution at once or more than once.
- (5) The transfer back referred to in paragraph (2) item 1) of this Article may be made until the adoption of the decision on the completion of resolution proceedings and shall comply with the conditions referred to in paragraph (4) of this Article and other conditions specified in the decision establishing the bridge credit institution or amendments to such decision.
- (6) The transfer between the credit institution under resolution or shareholders of the credit institution under resolution on the one hand, and the bridge credit institution on the other, shall be subject to safeguard measures in accordance with Articles 137 to 144 of this Law.

Status of bridge credit institution

Article 85

- (1) The bridge credit institution shall be considered to be the legal successor of the credit institution under resolution in respect of the transferred assets, rights or liabilities and it shall step in the place of the credit institution under resolution with regard to all procedures in which the credit institution under resolution participated in respect of the transferred assets, rights and liabilities irrespective of the consent of the counterparty.
- (2) The right necessary for the provision of services or the establishment of a branch in a foreign country in relation to the transferred assets, rights or liabilities shall be transferred from the credit institution under resolution to the bridge credit institution.

- (3) The bridge credit institution may continue to exercise the rights of membership and access to payment and settlement systems, stock exchange and deposit guarantee scheme of the credit institution under resolution, provided that it meets the criteria for participation in the systems, whereby the access cannot be denied on the ground that the bridge credit institution does not possess a rating from a credit rating agency, or that rating is not commensurate to the rating levels required to be granted access to such systems.
- (4) Where the bridge credit institution does not meet the criteria referred to in paragraph (3) of this Article, the authorities competent to grant access to such systems may, within the framework of their competence, grant that the rights are exercised for such a period of time as specified, not exceeding 24 months of reaching the decision to establish bridge credit institution and this time limit may be extended at the request of bridge credit institution for another 12 months.
- (5) The shareholder or creditor of the credit institution under resolution and other third party whose assets, rights or liabilities are not transferred to the bridge credit institution shall not have any rights over or in relation to the transferred assets, rights or liabilities, its management bodies or senior management.

Operation of a bridge credit institution

Article 86

- (1) The bridge credit institution must meet the requirements specified by the law and implementing regulations governing the operations of credit institutions and shall be subject to the supervision in accordance with these regulations.
- (2) By way of derogation from paragraph (1) of this Article, the Governor of the Central Bank may, at the request of the bridge credit institution, allow the bridge credit institution to meet the specific requirement referred to in paragraph (1) of this Article within a particular time limit.
- (3) The resolution administration shall manage the bridge credit institution in the manner which ensures the continuity of critical functions with a view to sell the bridge credit institution or their assets, rights or liabilities in accordance with the conditions referred to in Article 87 of this Law in the time limits referred to in Article 88 of this Law and in accordance with the law governing the protection of free market competition.

Sale of bridge credit institution

Article 87

- (1) The Central Bank shall effect the sale of the bridge credit institution or its assets, rights or liabilities under market conditions following the principle of transparency and to present, to the largest extent possible, accurately assets, rights, and liabilities, and follow the principle of equality between potential purchasers.
- (2) The amount obtained through the sale of the bridge credit institution reduced by the consideration specified under Article 72 of this Law, shall be paid out to:
 - 1) the shareholders of the credit institution under resolution, where the bridge credit institution has been established by the transfer of their shares or other instruments of ownership;
 - 2) the credit institution under resolution, where the bridge credit institution has been established through the transfer, in full or in part, of the assets, rights or liabilities of the credit institution under resolution.

Termination of a bridge credit institution

Article 88

- (1) The bridge credit institution shall cease to exist as bridge credit institution within the meaning of Article 68 paragraph (2) of this Law where:
 - 1) the Central Bank reached a decision on the termination of the bridge credit institution in the following cases:
 - assets, rights or liabilities of the bridge credit institution under resolution, or the majority thereof, are sold, or
 - its assets are fully paid up and its liabilities are completely discharged.

- 2) the bridge credit institution no longer meets the requirements referred to in Article 68 paragraph (2) of this Law;
 - 3) the bridge credit institution merges with another business undertaking, or
 - 4) the bridge credit institution is merged by acquisition with another business undertaking.
- (2) If none of the circumstances referred to in paragraph (1) of this Article have occurred, the Central Bank shall reach a decision on the termination of the status of a bridge credit institution at the latest two years of the last decision on transfer from or to the bridge credit institution, shares or other instruments of ownership issued by the credit institution under resolution and/or assets, rights or liabilities of one or more credit institutions under resolution.
 - (3) The Central Bank may extend the period referred to in paragraph (2) of this Article by 12 months where such an extension:
 - 1) supports the occurrence of the circumstances referred to in paragraph (1) of this Article; or
 - 2) ensures the continuity of critical functions of the bridge credit institution.
 - (4) The decision referred to in paragraph (3) of this Article must be fully reasoned and contain a detailed assessment of the situation, including market conditions and reasons for the extension of the period.
 - (5) In the case referred to in paragraph (1) item 1) and paragraph (2) of this Article, the Central Bank shall revoke the license referred to in Article 81 of this Law and open the bankruptcy or winding-up proceedings of the bridge credit institution.
 - (6) The amount remaining after the winding up or bankruptcy of the bridge credit institution referred to in paragraph (5) of this Article shall be paid to the Central Bank which shall, reduced by the consideration specified under Article 72 of this Law, credit the amount to the shareholders of the bridge credit institution.
 - (7) Where the bridge credit institution is used for the transfer of assets and liabilities of more than one credit institution under resolution, the obligation referred to in paragraph (6) of this Article shall refer to the assets and liabilities transferred from each of the credit institutions under resolution and not to the bridge credit institution itself.

Application of asset separation tool

Article 89

- (1) Where the decision on the initiation of the resolution proceedings specifies that resolution is to be carried out also by means of the asset separation tool, the Central Bank shall reach a decision on the transfer of assets, rights or liabilities of the credit institution under resolution or of the bridge credit institution to one or more asset management companies, established in accordance with Article 90 of this Law.
- (2) The Central Bank shall reach a decision referred to in paragraph (1) of this Article only if:
 - 1) the condition of the particular market for those assets is of such a nature that the sale of such assets within the framework of bankruptcy proceedings would have an adverse effect on one or more financial markets;
 - 2) transfer is necessary to ensure the proper functioning of the credit institution under resolution or bridge credit institution; or
 - 3) transfer is necessary to maximise liquidation proceeds.
- (3) The transfer referred to in paragraph (1) of this Article shall not require the consent of the shareholders, depositors and other creditors of the credit institution under resolution or any third party.
- (4) The shareholder or creditor of the credit institution under resolution or any third party whose assets, rights or liabilities are not transferred to the asset management company shall have no right in relation to the transferred assets, rights or liabilities other than those safeguard measures referred to in Articles 137 to 144 of this Law.
- (5) The provisions of Article 42 of this Law shall be applied to the decision on transfer referred to in paragraph (1) of this Article.

Establishing asset management company

Article 90

- (1) The asset management company referred to in Article 89 paragraph (1) of this Article shall be a business undertaking established by the Central Bank for the purpose of receiving some or all of the assets, rights and liabilities of one or more credit institutions under resolution or a bridge credit institution.
- (2) The initial capital of the asset management company may be paid up:
 - 1) from the funds of the Resolution Fund;
 - 2) by converting instruments of capital or eligible liabilities of the credit institution under resolution when, in accordance with this Law, shares or equities of the asset management company are provided, within the instruments of conversion of capital or eligible liabilities, to the holders of those instruments,
 - 3) from budgetary funds.
- (3) The Central Bank shall:
 - 1) adopt articles of incorporation of the asset management company;
 - 2) appoint management bodies of the asset management company;
 - 3) approve the strategy and risk profile of the asset management company;
 - 4) approve remuneration to the members of the management bodies, determine their duties, rights and responsibilities.

Status of the asset management company

Article 91

- (1) The asset management company shall be a legal successor of the credit institution under resolution or bridge credit institution in relation to the transferred assets, rights and liabilities.
- (2) Asset management company, management body and senior management of the asset management company shall have no liability to a shareholder or creditor of the bridge credit institution for their actions or omissions in the discharge of their duties unless the damage has been caused intentionally or by gross negligence.
- (3) The asset management company shall step in the place of the credit institution under resolution or of the bridge credit institution with regard to all procedures in which the credit institution under resolution or the bridge credit institution participated in respect of the transferred assets, rights and liabilities irrespective of the consent of the counterparty.

Operation with transferred assets

Article 92

- (1) The asset management company shall manage assets and rights transferred to it with a due diligence of a prudent businessperson with a view to maximising their value through liquidation of assets and rights.
- (2) When applying the asset separation tool, the Central Bank shall, based on the valuation carried out in accordance with Article 44 of this Law, determine the consideration for which assets, rights and liabilities are transferred to the asset management and this provision does not prevent the possibility to determine the consideration in nominal or negative value.
- (3) The asset management company in respect of the assets, rights or liabilities acquired directly from the credit institution under resolution shall pay to Central Bank the consideration which, reduced by the amount specified in Article 72 of this Law, is paid to the credit institution under resolution and that consideration may be paid in the form of debt instrument issued by the asset management company.
- (4) Where the asset separation tool is used together with the bridge credit institution tool, the asset management company may, subsequent to the application of the bridge credit institution tool, acquire assets, rights or liabilities from the bridge credit institution and in that case the consideration referred to in paragraph (3) of this Article shall be paid to the bridge credit institution.
- (5) When using asset separation tool, the Central Bank may reach more than one decision on the transfer of assets, rights or liabilities from the credit institution under resolution to one or more asset management companies, or

more than decision on the transfer of assets, rights or liabilities back from one or more asset management companies to the credit institution under resolution under the conditions referred to in paragraph (6) of this Article and the credit institution under resolution shall take back any such assets, rights or liabilities specified in such decision.

- (6) The Central Bank may reach a decision on the transfer of assets, rights or liabilities back from the asset management company to the credit institution under resolution, if:
- 1) such a possibility of the transfer back is stated expressly in the contract by which the transfer of assets, rights or liabilities was made; or
 - 2) the specific rights, assets or liabilities do not fall within the classes of, or meet the conditions for transfer of, rights, assets or liabilities specified in the contract by which the transfer was made.
- (7) In the cases referred to in paragraph (6) of this Article, the transfer back of assets may be made within any period and shall comply with conditions stated in the contract by which the transfer was made.

Bail-in tool

Article 93

- (1) Where the decision on initiating the resolution proceedings specifies that the resolution is to be carried out using the bail-in tool, the Central Bank shall specify in this decision that the bail-in tool shall be applied by:
- 1) a recapitalisation of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law to the extent sufficient for credit institution or other legal person referred to in Article 3 items 2), 3) and 4) of this Law to restore its ability to comply with the conditions for obtaining the license, to continue to carry out the activities for which it is licensed and to sustain market confidence; or
 - 2) to convert claims or debt instruments to shares or other instruments of ownership or to reduce the principal amount of claims or debt instruments that are transferred:
 - to a bridge credit institution with a view to providing capital for that bridge credit institution; or
 - by applying the sale of business tool or the asset separation tool.
- (2) For the implementation of the bail-in tool referred to in paragraph (1) of this Article, the Central Bank shall use the resolution powers referred to in Article 113 paragraph (1) of this Law.
- (3) The Central Bank shall reach a decision referred to in paragraph (1) item 1) of this Article if there is a reasonable prospect that the application of that tool, together with other measures, including measures implemented in accordance with the business reorganisation plan referred to in Article 102 of this Law, will restore the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law to financial soundness and long-term viability.
- (4) Where there is no reasonable prospect that the application of tools referred to in paragraph (1) of this Article, together with other measures, including measures implemented in accordance with the business reorganisation plan referred to in Article 102 of this Law, will restore the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law to financial soundness and long-term viability, the Central Bank shall reach a decision referred to in paragraph (1) item 2) of this Article.
- (5) When applying the bail-in tool to the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law, the Central Bank may change legal form of such persons.

Eligible liabilities

Article 94

- (1) Bail-in tool shall be applied to eligible liabilities of the credit institution or other legal person referred to in Article 3 items 2), 3) and 4) of this Law.
- (2) Eligible liabilities referred to in paragraph (1) of this Article mean the liabilities and instruments of capital that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of a credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law, that are not excluded from the application of the bail-in tool referred to in paragraph (3) of this Article and Article 95 paragraph (1) of this Law.

(3) By way of derogation from paragraph (1) of this Article, the Central Bank shall not write down or convert:

- 1) deposits covered in accordance with the law governing the deposit protection up to the amount of covered deposit;
- 2) secured liabilities, in the part covered by collateral, including covered bonds and liabilities in the form of financial instruments used for hedging purposes which form an integral part of the cover pool, and which are secured in a way similar to covered bonds, whereas the Central Bank shall ensure that all secured assets relating to a covered bond cover pool remain unaffected, segregated and with enough funding to cover such liabilities;
- 3) liabilities that arise by virtue of the management of client's assets and money by the credit institution, provided that such client assets do not enter the bankruptcy estate of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law, should the credit institution or entity be subject to bankruptcy proceedings;
- 4) liabilities secured by virtue of a fiduciary relationship between the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law as debtor and another person as creditor, provided that such a creditor is protected under the law governing bankruptcy proceedings or under other laws;
- 5) liabilities to credit institutions, excluding liabilities to members of the same group, with an original maturity of less than seven days;
- 6) liabilities with a remaining maturity of less than seven days, owed to the settlement systems, operators of these systems or their participants in accordance with the regulations governing settlement finality in payment systems and settlement systems, arising from the participation in such systems;
- 7) a liability to any one of the following:
 - an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a law or collective bargaining agreement and variable remuneration of employees whose professional activities have a significant influence on the risk profile of the credit institution in accordance with the regulations governing the operations of credit institutions;
 - a creditor, pursuant to the contract on the provision of goods or services to the credit institution or other legal person referred to in Article 3 items 2), 3) and 4) of this Law, that are critical to the daily functioning of operations, including IT services, utilities and the rental, servicing and upkeep of premises;
 - tax authorities and authorities competent for health insurance, pension insurance and other benefits under the umbrella of social insurance, provided that such liabilities are preferred in accordance with the law governing bankruptcy proceedings; and
 - Deposit Protection Fund based on the contributions due in accordance with the regulations governing deposit protection.

(4) Secured liability referred to in paragraph (3) item 2) of this Article means a liability where the right of the creditor to payment or other form of performance is secured by a charge, pledge or lien, or financial collateral arrangements including liabilities arising from repurchase transactions and other title transfer collateral arrangements.

Exclusion or partial exclusion of liabilities from the scope of bail-in tool

Article 95

(1) By way of derogation from Article 94 of this Law, the Central Bank may exclude or partially exclude certain liabilities from the application of the bail-in tool where:

- 1) it is not possible to write down or convert the liability within a reasonable time notwithstanding the good faith efforts of the Central Bank;
- 2) the exclusion is necessary to achieve the continuity of critical functions and core business lines in a manner that enables the continuation of the provision of critical operations, services and transactions;
- 3) the exclusion is necessary to avoid giving rise to contagion of adverse effects to the financial system, in particular as regards deposits which are eligible for protection in accordance with the law governing the

deposit protection in excess of the amount of coverage, which would severely disrupt the functioning of financial markets, including of financial market infrastructures, in a manner that could cause a serious disruption in the economy of Montenegro; or

- 4) the application of the bail-in tool to those liabilities would cause a destruction in value such that the losses borne by other creditors would be higher than if those liabilities were excluded from the bail-in tool.
- (2) Where the Central Bank decides to exclude or partially exclude a certain liability or a group of liabilities under the conditions specified in paragraph (1) of this Article, the level of write-down or conversion applied to other liabilities may be increased to take account of such exclusions, provided that the level of write down or conversion applied to other liabilities complies with Article 13 paragraph (1) item 7) of this Law.
- (3) When reaching the decision referred to in paragraph (1) of this Article, the Central Bank shall particularly take into account:
 - 1) the rule that losses are first to be absorbed by the shareholders and then the creditors of the credit institution under resolution in accordance with the order of priority of settlement provided for in the law governing bankruptcy proceedings of credit institutions;
 - 2) the ability of the credit institution under resolution to absorb the losses it would sustain in case of the exclusion of liabilities; and
 - 3) the need to ensure appropriate funding for the resolution.
- (4) Prior to reaching the decision referred to in paragraph (1) of this Article, the Central Bank shall notify the European Commission thereof.

Use of funds of the Resolution Fund where liabilities are excluded or partially excluded

Article 96

- (1) Where the Central Bank, in accordance with Article 95 paragraphs (1) and (2) of this Law, decides to exclude or partially exclude liabilities from the scope of application of bail-in tool, and the losses in relation to these liabilities have not been passed on fully to other creditors, the Central Bank may cover the difference to the credit institution under the resolution from the funds of the Resolution fund in order to:
 - 1) absorb any losses which have not been passed on fully to other creditors to reduce net value of assets of the credit institution under resolution to zero in accordance with Article 97 paragraph (1) item 1) of this Law; or
 - 2) purchase of instruments of ownership or other instruments of capital in the credit institution under resolution in order to recapitalise the credit institution in accordance with Article 97 paragraph (1) item 2) of this Law.
- (2) The funds of the Resolution Fund may be used for the purposes referred to in paragraph (1) of this Article only if:
 - 1) the shareholders and other creditors, through write down, conversion or otherwise, participated in the loss absorption and the recapitalisation in the amount not less than 8% of the total liabilities, including own funds items of the credit institution under resolution, measured at the time of resolution action in accordance with the valuation referred to in Article 44 of this Law; and
 - 2) the amount of funds from the Resolution Fund does not exceed 5% of the total liabilities of the credit institution under resolution, including own funds items of the credit institution under resolution, measured at the time of resolution action in accordance with the valuation referred to in Article 44 of this Law.
- (3) The funds of the Resolution Fund used in accordance with paragraph (1) of this Article are:
 - 1) ex-ante contributions paid in accordance with Article 146 paragraph (2) item 1) and Article 149 of this Law;
 - 2) ex-post contributions which cannot exceed the three-year period in accordance with Article 146 paragraph (2) item 2) and Article 150 of this Law; and
 - 3) the amounts raised from alternative financing sources in accordance with Article 151 of this Law, where the contributions referred to in items 1) and 2) of this paragraph are insufficient.
- (4) In extraordinary circumstances, the Central Bank may seek further funding referred to in paragraph (3) item 3) of this Article, only where:
 - 1) the amount of 5% has reached specified in paragraph (2) item 2) of this Article; and

- 2)all unsecured liabilities, other than eligible deposits, that are non-preferred liabilities under the law governing bankruptcy proceedings of credit institutions, have been written down in or converted to capital instruments in full.
- (5) Where the conditions referred to in paragraph (4) of this Article are met, the Central Bank may subsequently contribute the funds from the Resolution Fund to the credit institution under resolution and if the funds which have been raised through ex-ante contributions have not yet been fully used.
- (6) By way of derogation from paragraph (2) item 1) of this Article, the Central Bank may, for the purpose of paragraph (1) of this Article, make a contribution from the funds of the Resolution Fund to the credit institution under resolution provided that:
- 1)the persons referred to in paragraph (2) item 1) of this Article contributed to the loss absorption and the recapitalisation in the amount not less than 20% of the risk weighted assets of the credit institution under resolution;
 - 2)the Resolution Fund has at its disposal an amount which is higher than 3% of covered deposits of all credit institutions licensed by the Central Bank; and
 - 3)according to the valuation referred to in Article 44 of this Law, the assets of the credit institution under resolution on a consolidated basis are below EUR 900 billion.
- (7) The decision of the Central Bank on the use of funds from the Resolution Fund in the case of the exclusion referred to in Article 95 of this Law is enforceable where the European Commission has not, within 24 hours of receipt of the notification, prohibited or required amendments to the decision.

Assessment of the amount of bail-in tool

Article 97

- (1) When applying the bail-in tool, the resolution authority shall determine, on the basis of a valuation in accordance with Article 44 of this Law, where relevant:
- 1)the amount by which eligible liabilities must be written down in order to ensure that the asset value of the credit institution under resolution is equal to the value of its liabilities; and
 - 2)the amount by which eligible liabilities must be converted into shares or other types of instruments of ownership in order to ensure the required Common Equity Tier 1 capital ratio of the credit institution under resolution or the bridge credit institution.
- (2) When determining the amount referred to in paragraph (1) of this Article, the Central bank shall take into account:
- 1)any contribution of capital in accordance with Article 147 paragraph (1) item 4) of this Law;
 - 2)the amount of capital required by the credit institution under resolution or the bridge credit institution to enable it to continue to meet for the next 12 months, the conditions for obtaining license n in accordance with the law governing the operations of credit institutions; and
 - 3)the capital required to sustain sufficient market confidence.
- (3) Where the Central Bank intends to use the asset separation tool referred to in Article 89 of this Law, when determining the amount referred to in paragraph (1) item 1) of this Article it shall estimate, with due professional care and diligence, the capital needs of the asset management company.
- (4) Where the Central Bank, by applying the bail-in tool in accordance with Article 93 paragraph (1) of this Article, wrote down liabilities in part or in full, and where, in accordance with this Law capital instruments have been written down, and the level of write down based on the preliminary valuation referred to in Article 44 of this Law exceeds requirements when assessed against the ex-post valuation referred to in Article 47 of this Law, the Central Bank may write up the amount of liabilities and subsequently the value of capital instruments in order to reimburse the creditors and shareholders to the extent necessary.
- (5) The Central Bank shall carry out, with due professional care and diligence, the ex-post valuation based on information about the assets and liabilities of the credit institution under resolution that is up to date and comprehensive to the extent possible.

Treatment of shareholders when applying bail-in tools

Article 98

- (1) When applying the bail-in tool referred to in Article 93 paragraph (1) of this Law, the Central Bank shall in respect of shareholders:
 - 1) carry out a simplified share capital reduction and cancellation of the existing shares or other instruments of ownership or transfer the existing shares or other instruments of ownership to creditors of the credit institution under resolution; or
 - 2) where, in accordance with the valuation carried out under Article 44 of this Law, the assets of the credit institution under resolution has positive net value, dilute the existing shareholder structure by converting the following into Common Equity Tier 1 instruments:
 - relevant capital instruments issued by the credit institution in accordance with the power referred to in Article 48 paragraph (1) of this Law;
 - to which bail-in tool is applied, which are issued by the credit institution under resolution in accordance with powers referred to in Article 113 paragraph (1) item 7) of this Law.
- (2) The dilution referred to in paragraph (1) item 2) of this Article shall be carried out at the conversion rate that severely dilutes the existing shareholder structure.
- (3) The actions referred to in paragraph (1) of this Article shall also be taken in respect of shareholders that are holders of Common Equity Tier 1 instruments that were issued or conferred:
 - 1) pursuant to conversion of debt instruments to shares or other instruments of ownership in accordance with contractual terms of the original debt instruments on the occurrence of an event that preceded or occurred at the same time as the adoption of the decision to initiate the resolution proceedings; and
 - 2) pursuant to the conversion of relevant instruments of capital to Common Equity Tier 1 instruments referred to in Article 49 of this Law.
- (4) When deciding on taking the action referred to in paragraph (1) of this Article, the Central Bank shall take into account:
 - 1) the valuation referred to in Article 44 of this Law;
 - 2) the amount by which, in accordance with its assessment, Tier 1 capital items must be reduced and relevant capital instruments must be written down or converted in accordance with Article 49 of this Law; and
 - 3) the aggregate amount by which the Central Bank has assessed that eligible liabilities are to be written down or converted, in accordance with Article 97 of this Law.
- (5) Where the conversion of relevant capital instruments would result in the acquisition of or increase in a qualifying holding in a credit institution, the Central Bank shall carry out the decision-making procedure regarding prior approval to acquire a qualifying holding in accordance with the law governing the operations of credit institutions as soon as possible in order to prevent any delays in the application of the bail-in tool and enable the achievement of relevant resolution objectives through the application of resolution actions.
- (6) The Central Bank shall notify new holders of qualifying holdings on the requirement to submit the application to open the decision-making procedure regarding granting of the authorisation to acquire a qualifying holding in the cases referred to in paragraph (5) of this Article and the consequences that would otherwise be suffered in accordance with that liability.
- (7) If the Central Bank has not completed the decision-making procedure regarding granting of the authorisation to acquire a qualifying holding referred to in paragraph (5) of this Article on the date of the application of the bail-in tool or refuses to grant the authorisation to acquire a qualifying holding, all acquisitions or increases in a qualifying holding by an acquirer resulting from the application of the bail-in tool shall be subject to the provisions of Articles 75 and 76 of this Law.

Sequence of write down and conversion

Article 99

- (1) When applying the bail-in tool, the Central Bank may write down or exercise the conversion of the instrument or liabilities that are not excluded pursuant to this Law in the following manner:
 - 1) Tier 1 capital items are reduced in accordance with Article 49 of this Law to the extent required and to the

extent of their capacity;

- 2) if the total reduction referred to in item 1) of this Article is less than the sum of the amounts referred to in Article 98 paragraph (4) items 2) and 3) of this Law, the principal amount of Additional Tier 1 instruments shall be reduced to the extent required and to the extent of their capacity and in accordance with the characteristics of the instrument;
 - 3) if the total reduction referred to in items 1) and 2) of this paragraph is less than the sum of the amounts referred to in Article 98 paragraph (4) items 2) and 3) of this Law, the principal amount of Additional Tier 1 instruments shall be reduced to the extent required and to the extent of their capacity and in accordance with the characteristics of the instrument;
 - 4) if the total reduction referred to in items 1), 2), and 3) of this paragraph is less than the sum of the amounts referred to in Article 98 paragraph (4) items 2) and 3) of this Law, to produce such sum of the amounts along with the write down, the principal amount of subordinated debt that is not included in Tier 1 or Tier 2 capital in accordance with the hierarchy of settlements in bankruptcy proceedings shall be reduced to the extent required and to the extent of their capacity;
 - 5) if the total reduction referred to in items 1) to 4) of this paragraph is less than the sum of the amounts referred to in Article 98 paragraph (4) items 2) and 3) of this Law, to produce such sum, the principal amount of, or outstanding amount payable in respect of the rest of eligible liabilities shall be reduced, to the extent required and to the extent of their capacity, in accordance with the hierarchy of settlements in bankruptcy proceedings, including the ranking of deposit settlements in the bankruptcy proceedings, pursuant to the provisions of the law governing the bankruptcy proceedings of credit institutions, unless a different sequence of loss absorption has been defined based on Article 95 of this Law.
- (2) When applying the write-down or conversion powers, the Central Bank shall proportionately allocate the losses referred to in Article 98 paragraph (4) items 2) and 3) of this Law on shares or other instruments of ownership and liabilities to which the bail-in tool is applied of the same rank except where a different allocation has been specified in Article 95 of this Law.
 - (3) The provisions of paragraph (2) of this Article shall not affect the Central Bank's power to give a more favourable treatment to liabilities which have been excluded from bail-in in accordance with Article 95 of this Law than to other liabilities within the scope of bail-in instrument which are of the same rank in bankruptcy proceedings.
 - (4) Before write-down or conversion of the instrument or liabilities referred to paragraph (1) of this Article, the Central Bank shall write down or convert the principal amount on instruments referred to in paragraph (1) items 2), 3) and 4) of this Article when those instruments contain the following terms:
 - 1) the principal amount of the instrument shall be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of own funds of the credit institution or other legal person referred to in Article 3 items 2), 3) and 4) of this Law;
 - 2) the conversion of the instruments to instruments of ownership shall be allowed on the occurrence of the event referred to in item 1) of this paragraph.
 - (5) Where the principal amount of an instrument has been reduced, but not to zero, in accordance with paragraph (4) item 1) of this Article the Central Bank may write down or convert the residual amount of that principal in accordance with paragraph 1) of this Article.
 - (6) When deciding on whether liabilities are to be written down or converted into Common Equity Tier 1 instruments, one class of liabilities may not be converted, while a class of liabilities that is subordinated to that class remains substantially unconverted into Common Equity Tier 1 instruments or not written down, unless otherwise permitted under Articles 94 and 95 of this Law.

Derivatives

Article 100

- (1) The write-down and conversion of liabilities arising from a derivative contract shall be performed only after their netting.
- (2) Upon entry into resolution, the Central Bank shall be empowered to terminate and close out any derivative contract as at the date of the decision to initiate resolution proceedings.

- (3) By way of derogation from paragraph (2) of this Article, where a liability arising from derivative contract has been excluded from the application of the bail-in tool under Article 95 of this Law, the Central Bank shall not be obliged to terminate or close out the derivative contract.
- (4) Where the derivative contract is subject to a netting arrangement, the Central Bank or an independent valuer in accordance with Article 44 of this Law shall determine the liability arising from that transaction on a net basis in accordance with the terms of that arrangement.
- (5) The Central Bank shall determine the value of liabilities arising from derivatives in accordance with the following:
 - 1) methodology for determining the value of classes of derivatives, including transactions that are subject to netting arrangements;
 - 2) criteria for establishing the relevant point in time at which the value of a derivative should be established; and
 - 3) methodology for comparing the write down that arises from the close out and bail-in of derivatives with the amount of losses that would be borne by counterparties in the derivatives contract that are included in the bail-in.
- (6) The Central Bank shall prescribe the methodologies and the criteria referred to in paragraph (5) of this Article.

Rate of conversion of debt to equity

Article 101

- (1) When applying the powers to write down and convert relevant capital instruments referred to in Article 113 paragraph (1) item 7) of this Law, the Central Bank shall not be obliged to apply the same conversion rate to different classes of capital instruments and liabilities in accordance with both of the principles referred to in paragraphs (2) and/or (3) of this Article.
- (2) Within the meaning of paragraph (1) of this Article, the conversion rate shall represent appropriate compensation to the affected creditor for any loss incurred due to the write-down or conversion referred to in paragraph (1) of this Article.
- (3) Where the Central Bank applies different conversion rates in accordance with paragraph (1) of this Article, the conversion rate applicable to liabilities that have seniority in the hierarchy of settlements in bankruptcy proceedings, shall be higher than the conversion rate applicable to liabilities classified into other priority settlements.
- (4) The Central Bank shall adopt an implementing regulation to further regulate the manner of determining the conversion rates.

Recovery and reorganisation measures to accompany bail-in and business reorganisation plan

Article 102

- (1) A credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law that is subject to the application of the bail-in tool for the purpose of recapitalisation in accordance with Article 93 paragraph (1) item 1) of this Law shall, within one month of the application of the bail-in tool, draw up a business reorganisation plan in accordance with Article 104 of this Law and deliver it to Central Bank.
- (2) The reorganisation plan referred to in paragraph (1) of this Article shall be prepared by the resolution administration of the credit institution.
- (3) By way of derogation from paragraph (1) of this Article, where the Central Bank deems it necessary for the achievement of the resolution objectives, the Central Bank may, upon a proposal by the resolution administration, extend the time limit referred to in paragraph (1) of this Article up to a maximum of two months of the application of the bail-in tool.

Requirements for planning state aid

Article 103

- (1) Where the reorganisation plan referred to in Article 102 paragraph (1) of this Law provides for the state aid which is subject to the European Union regulations governing the state aid, the business reorganisation plan must be compatible with the reorganisation plan submitted to the European Commission in line with those regulations.
- (2) For the reorganisation plan referred to in paragraph (1) of this Article, the Central Bank may extend the time limit referred to in Article 102 paragraph (1) of this Law up to a maximum of two months of the application of the bail-in tool, or up to the time limit set in accordance with the European Union state aid legal framework, whichever is shorter.

Group business reorganisation plan

Article 104

- (1) Where the bail-in tool referred to in Article 93 paragraph (1) item 1) of this Law is applied to a group in Montenegro, the business reorganisation plan shall be drawn up by the parent credit institution in the group in accordance to the rules applied to drawing up recovery plans as provided for in the law governing the operations of credit institutions and delivered to the Central Bank.
- (2) Where the bail-in tool referred to in Article 93 paragraph (1) item 1) of this Law is applied to two or more members of the group, the parent credit institution in the EU group for which the Central Bank is the competent resolution authority will draw up the business reorganisation plan, which covers all of the members of the group in accordance to the rules applied to drawing up group recovery plans as provided for in the law governing the operations of credit institutions and deliver it to the Central Bank.
- (3) The Central Bank shall deliver the reorganisation plan referred to in paragraph (2) of this Article to other authorities competent for the resolution of credit institutions in the Member States where the head offices of the members of the group are located and to the European Banking Authority.

Content of business reorganisation plan

Article 105

- (1) The business reorganisation plan shall define measures aiming to restore the long-term viability of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law or parts of its business within a reasonable time and which measures shall be based on realistic assumptions as to the economic and financial market conditions under which the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law will operate.
- (2) The business reorganisation plan shall take account of the current state and future prospects of the financial markets, reflecting best-case and worst-case assumptions, including a combination of events allowing the identification of the main vulnerabilities of the credit institution under resolution, whereby the assumptions shall be compared with appropriate sector-wide benchmarks.
- (3) A business reorganisation plan shall cover at least the following:
 - 1) an analysis of the factors and problems that led to the circumstances that credit institution or legal person referred to in Article 3, items (2), (3) and (4) of this Law may not or will not be able to continue its operations; and
 - 2) a description of activities and measures that the credit institution under resolution will undertake to restore its long-term viability and a timetable for the implementation of those activities.
- (4) Activities and measures referred to in paragraph (3) item 2) of this Article may cover:
 - 1) the reorganisation of the operations of the credit institution or legal person referred to in Article 3 items 2), 3) and 4) of this Law, under resolution;
 - 2) changes to the organisational structure, operational systems and infrastructure of the credit institution under resolution;
 - 3) the withdrawal from providing loss-making services;
 - 4) the restructuring of existing activities with a view to increasing competitiveness;
 - 5) the sale of assets or business lines; or

- 6) other activity that restores long-term viability of operations.
- (5) The Central Bank shall prescribe in detail the content of a business reorganisation plan of a credit institution under resolution and the manner of reporting to the Central Bank on the implementation of the reorganisation plan.

Assessment of the business reorganisation plan

Article 106

- (1) The Central Bank shall assess the business reorganisation plan within one month of its submission and approves it if it assesses that the implementation of the plan would restore the long-term viability of the operations of the credit institution or other legal person referred to in Article 3 items 2), 3), and 4) of this Law.
- (2) Where the Central Bank assesses that the reorganisation plan will not restore the long-term viability referred to in paragraph (1) of this Article, it shall notify the resolution administration of established deficiencies and order it to draw up and deliver an amended plan addressing the established deficiencies within a period not longer than 15 working days.
- (3) The Central Bank shall, within five working days of delivery of the amended business reorganisation plan, assess whether the established deficiencies have been removed and if it determines that the established deficiencies have been removed, it shall notify the resolution administration thereof and carry out the approval of such a plan referred to in paragraph (1) of this Article.
- (4) Where the Central Bank assesses that the established deficiencies referred to in paragraph (2) of this Article have not been removed, it shall order the resolution administration to implement further amendments to the business reorganisation plan referred to in paragraph (2) of this Article.
- (5) The resolution administration shall implement the approved business reorganisation plan and it shall, at least on a quarterly basis or upon request or more frequently, notify the Central Bank on the progress in the implementation of the plan.
- (6) Where the Central Bank decides that it is necessary to amend the approved reorganisation plan in order to restore the long-term viability of the operation of the credit institution, it shall order the resolution administration to draw up and deliver the amended plan in line with paragraphs (2) and (4) of this Article.

Effects of the application of bail-in tools

Article 107

- (1) The decision of the Central Bank passed within the exercise of the powers referred to in Articles 48 to 54, and Article 113 paragraph (1) items 6) to 10) of this Law, shall have legal effects by virtue of the use of bail-in tools as of the date specified in the decision.
- (2) With a view to exercising the powers referred to in Articles 48 to 54 and Article 113 paragraph (1) items 6) to 10) of this Law, the Central Bank shall be empowered to:
- 1) submit to the Central Registry of Business Entities and the Central Securities Depository and Clearing Company of Montenegro requests for entering the amendments into the registers kept by these entities;
 - 2) submit to the Capital Market Authority requests for the implementation of procedures referring to the following:
 - temporary suspension of trading, removal from trading or delisting of shares or other instruments of ownership or debt instruments from the stock market;
 - listing or inclusion of new shares and other instruments of ownership in the stock market;
 - relisting or inclusion of debt instruments which have been written down in the stock market, without the requirement for the issuing of a prospectus in accordance with the law regulating the capital market.
- (3) Competent entities who receive the application referred to in paragraph (2) of this Article from the Central Bank shall act upon it without delay.
- (4) Where the Central Bank reduces to zero the principal amount or outstanding amount payable of a liability by

means of the power referred to in Article 113 paragraph (1) item 6) of this Law, that liability and any claims arising in relation to it, including those that have not been accrued at the time when the power is exercised, shall be treated as discharged and meeting of this requirement may not be required in any subsequent proceedings in relation to the credit institution under resolution or its legal successor, including winding-up and bankruptcy proceedings.

- (5) Where the Central Bank reduces in part the principal amount of or outstanding amount payable of a liability by means of the power referred to in Article 113 paragraph (1) item 6) of this Law, that liability shall be considered to be discharged to the extent of the amount reduced, the terms of the instruments or contracts that created the original liability shall continue to apply in relation to the principal amount reduced and ancillary claims in this way and any modification of the terms that the Central Bank might make by means of the power referred to in Article 113 paragraph (1) item 9) of this Law.
- (6) The content and the effects of passing a decision referred to in paragraph (1) of this Article shall be subject to the provisions of Article 50 and 51 of this Law.

Contractual recognition of bail-in tools in relation to liabilities governed by the law of a third country

Article 108

- (1) The credit institution and the legal person referred to in Article 3 items 2), 3), and 4) of this Law shall ensure that a contract concluded with the third country person include a provision by which the liability arising from that contractual relationship may be subject to write-down or conversion power and that the creditor or counterparty agrees to the reduction of the principal or outstanding amount due, by virtue of conversion or cancellation of that liability in case of the application of bail-in tool.
- (2) The provisions of paragraph (1) of this Article shall be applied to liabilities that:
 - 1) are not excluded under Article 94 paragraph (2) of this Law;
 - 2) are not:
 - part of eligible deposit which exceeds the amount of covered deposit;
 - deposits which would be eligible if they had not been deposited via third country branch;
 - 3) are in accordance with the law of a third country; and
 - 4) have been incurred after the entry into force of this Law.
- (3) The provision under paragraph (1) of this Article shall not apply where, in pursuing its mandate as the supervisory authority of credit institutions, the Central Bank assesses that the liabilities referred to in paragraph (2) of this Article may be written down or converted pursuant to the law of the third country or pursuant to a confirmed international agreement concluded with that third country.
- (4) For the purpose of the assessment referred to in paragraph (3) of this Article, the Central Bank may require credit institution or other legal person referred to in Article 3 items 2), 3), and 4) of this Law to provide it with an opinion relating to the enforceability of the provision referred to in paragraph (1) of this Article under the law of the third country.
- (5) The Central Bank may exercise the write-down or conversion power in relation to a liability of a credit institution or other legal person referred to in Article 3 items 2), 3), and 4) of this Law, even if that credit institution or legal person fails to include the provision referred to in paragraph (1) of this Article in the contract with a third-country person.
- (6) The Central Bank shall regulate in more detail the liabilities referred to in paragraph (2) of this Article.

Government financial stabilisation tools

Article 109

- (1) The government financial stabilisation tools shall be used for the purpose of participating in the resolution of the credit institution or legal person referred to in Article 3 items 2), 3), and 4) of this Law, including by intervening directly, with a view to meeting the resolution objective referred to in Article 12 paragraph (2) of this Law.

- (2) The government financial stabilisation tools shall be:
- 1) the public equity support tool referred to in Article 111 of this Law; and
 - 2) the temporary public ownership tool referred to in Article 112 of this Law.
- (3) The government financial stabilisation tools shall be used exceptionally, after having exploited other resolution tools, in order to maintain financial stability.
- (4) The decision to initiate resolution proceedings referred to in Article 36 of this Law or its subsequent amendments shall provide for a government financial stabilisation tool only where:
- 1) the Ministry, after consulting the Central Bank in pursuing its mandate as the supervisory authority of credit institutions, determines that the application of other resolution tools would not suffice to avoid significant adverse effects on the financial stability;
 - 2) the Ministry determines that the application of other resolution actions would not suffice to protect the public interest, where emergency liquidity assistance from the Central Bank has been previously given to the credit institution; or
 - 3) in respect of the temporary public ownership tool referred to in Article 111, where the Ministry, after consulting the Central Bank, determines that the application of other resolution actions would not suffice to protect the public interest, where the equity support has previously been given to the credit institution in accordance with Article 110 of this Law.
- (5) When using financial stabilisation tools, the Ministry shall act in accordance with the law governing the state aid control.

Approval of using state aid tools

Article 110

- (1) Where the conditions referred to in Article 109 paragraphs (3) and (4) and Article 69 paragraph (2) of this Law are met, and prior to reaching a decision to use government financial stabilisation tools which is the integral part of the decision to initiate the resolution proceedings, the Ministry shall, in accordance with the European Union State aid legal framework and the rules governing state aid to the financial sector and in cooperation with the credit institution under resolution as the beneficiary of the state aid, report it to the European Commission for the purpose of obtaining its approval.
- (2) After obtaining the approval referred to in paragraph (1) of this Article, the Ministry shall ensure and oversee the application of extraordinary public financial support through the use of government financial stabilisation tools referred to in Article 109 paragraph (2) of this Law.
- (3) When using financial stabilisation tools, the Ministry shall act in accordance with the European Union State aid legal framework and the rules governing state aid to the financial sector.

Public equity support tool

Article 111

- (1) In accordance with the law governing the operations of business undertakings, the Government of Montenegro (hereinafter: the Government) on behalf of Montenegro, shall participate in the increase of the Tier 1 capital of the credit institution or other legal person referred to in Article 3 of this Law by paying in Tier 1 instruments or Tier 2 instruments that meet the requirements of the regulations governing the capital adequacy of credit institutions.
- (2) To the extent permitted by the shareholding of the state in the credit institution under resolution that is subject to the application of the tool referred to in paragraph (1) of this Article, the Government shall ensure that it is managed with a due diligence of a prudent businessperson.
- (3) Where the tool referred to in paragraph (1) of this Article has been applied, the Government shall ensure that the holding of the state in the credit institution under resolution is sold as soon as commercial and financial circumstances allow.

Temporary public ownership tool

Article 112

- (1) The Government may take the credit institution or a legal person referred to in Article 3, items 2), 3), and 4) of this Law into temporary public ownership.
- (2) In the case referred to in paragraph (1) of this Article, the Government shall issue one or more transfer orders for the transfer of shares to the Central Securities Depository and Clearing Company of Montenegro and the Central Securities Depository and Clearing Company of Montenegro shall execute the order without delay.
- (3) The transfer referred to in paragraph (2) of this Article may be executed to a state-owned undertaking or other person designated by the Government.
- (4) The Government shall ensure that the legal person under resolution that is subject to the tool referred to in paragraph (1) of this Article is managed with a due diligence of a prudent businessperson.
- (5) Where the tool referred to in paragraph (1) of this Article has been applied, the Government shall ensure that the transferred holding in capital is sold as soon as commercial and financial circumstances allow.

IX. RESOLUTION POWERS

General resolution powers

Article 113

- (1) The Central Bank shall be empowered to:
 - 1) apply the resolution tools to the credit institutions and legal persons referred to in Article 3 items 2), 3), and 4) of this Law that meet the conditions for resolution;
 - 2) require any person to provide information required to decide upon and prepare a resolution action, including update and supplements of information provided in the resolution plans and including requiring information to be provided during on-site examination carried out in line with the law governing the operations of credit institutions;
 - 3) take control of a credit institution under resolution, including the control of the exercise of all the rights and powers conferred upon the shareholders, supervisory and management boards of the credit institution under resolution by the resolution administration;
 - 4) transfer instruments of ownership issued by the credit institution under resolution;
 - 5) transfer rights, assets or liabilities of the credit institution under resolution to another person with the approval of that person;
 - 6) in part or in full reduce the principal amount of or outstanding amount due in respect of eligible liabilities of the credit institution under resolution;
 - 7) convert eligible liabilities of the credit institution under resolution or legal person referred to in Article 3 items 2), 3), and 4) of this Law into ordinary shares or other instruments of ownership of the credit institution under resolution, the relevant parent undertaking or a bridge credit institution to which assets, rights or liabilities of the credit institution under resolution or legal person referred to in Article 3 items 2), 3), and 4) of this Law are transferred;
 - 8) cancel debt instruments issued by the credit institution under resolution except for secured liabilities referred to in Article 94 paragraph (2) of this Law;
 - 9) alter the maturity of debt instruments issued by the credit institution under resolution and other eligible liabilities, the interest rate payable on the basis of these instruments and other eligible liabilities, the date on which the interest becomes payable and suspending payment for a temporary period, except for payments arising from secured liabilities referred to in Article 94 paragraph (2) of this Law;
 - 10) close out and terminate financial contract or derivative contract for the purposes of applying Article 100 of this Law;
 - 11) remove or replace the members of the supervisory board and management board and senior management of the credit institution under resolution; and
 - 12) require that the assessment of fulfilment of conditions for acquiring a qualifying holding in a credit

institution under resolution is performed within the shortest period possible.

- (2) Debt instruments referred to in paragraph (1) items 8) and 9) of this Article mean bonds and other forms of transferrable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments.
- (3) In addition to powers specified in paragraph (1) of this Article, the Central Bank shall also be empowered to:
 - 1) reduce the nominal amount of instruments of ownership of the credit institution under resolution or cancel them;
 - 2) require the credit institution under resolution or the relevant parent undertaking to issue new instruments of ownership, including preference shares and instruments convertible into shares;
 - 3) when applying the resolution tools or exercising the resolution powers, not be subject to any approvals or consents by any person, including government bodies, shareholders or creditors of the credit institution subject to the exercise of these powers, unless otherwise provided for in this Law; and
 - 4) when applying the resolution tools or exercising the resolution powers, not be subject to any requirement to publish any public notice or prospectus or to deliver or submit any document with any authority, unless:
 - in cases referred to in Article 35 paragraph (7) and Article 41 of this Law, and
 - in line with requirements under the European Union State aid legal framework.
- (4) Relevant parent undertakings referred to in paragraph (1) item 7) and paragraph (3) item 2) of this Article are the following:
 - 1) parent credit institution and financial holding company, mixed financial holding company mixed-activity holding company, parent financial holding company in Montenegro and parent mixed financial holding company in Montenegro; and
 - 2) parent credit institution in the European Union, parent financial holding company in the European Union and parent mixed financial holding company in the European Union.
- (5) The powers referred to in paragraph (3) of this Article shall be exercised irrespective of any restriction on, or requirement for consent for, transfer of the financial instruments, rights, assets or liabilities that might apply to such transfers in the case when the resolution actions are not applied to the credit institution.
- (6) Where the resolution power referred to in paragraphs (1) and (3) of this Article cannot be applied to a legal person referred to in Article 3 of this Law as a result of its specific legal form, powers which achieve the similar effect shall be exercised.
- (7) When exercising the resolution powers referred to in paragraph (5) of this Article to natural and legal persons affected by them, including shareholders, creditors and other counterparties, the safeguard measures referred to in Articles 137 to 144 of this Law shall be applied.

Ancillary resolution powers

Article 114

- (1) When carrying out resolution and in order to achieve the resolution objectives, the Central Bank shall be empowered to:
 - 1) provide for a transfer taking effect pursuant to Article 141 of this Law to be free from any additional liability or encumbrance affecting the transferred financial instruments, rights, assets or liabilities, whereby any right to compensation pursuant to this Law shall not be considered an encumbrance or a liability;
 - 2) remove rights to acquire further instruments of ownership of the credit institution under resolution;
 - 3) require the relevant authority to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments of the credit institution under resolution;
 - 4) provide for the recipient undertaking to be treated in an equal manner as the credit institution under resolution for the purposes of any rights, obligations or actions taken in the application of the sale of business tool and bridge credit institution tool under this Law, including rights and obligations relating to the participation in the market;
 - 5) require the credit institution under resolution or the recipient undertaking to provide each other with

information and assistance; and

- 6)cancel or modify the terms of a contract to which the credit institution under resolution is a party or ensure that the recipient undertaking steps in its place as a party.
- (2) For the purpose of continuity of the business transferred, the Central Bank shall have the power to ensure to the recipient undertaking:
- 1)the continuity of contracts entered into by the credit institution under resolution, in such manner that the recipient undertaking assumes the rights and liabilities relating to any financial instrument, right, asset or liability and steps into the place of the credit institution under resolution as a contracting party; and
 - 2)to step in the place of the credit institution under resolution as a party in any legal proceedings relating to any financial instrument, right, asset or liability that has been transferred irrespective of the consent of the counterparty.
- (3) The powers referred to in paragraph (1) item 4) and paragraph (2) item 2) of this Article shall not affect the following:
- 1)the right of an employee of the credit institution under resolution to terminate a contract of employment; and
 - 2)the right of a contracting party, including the right to terminate a contract, referred to in Articles 120, 121 and 122 of this Law, where so contracted in case of an act or omission by the credit institution under resolution prior to the transfer of assets, rights or liabilities, in accordance with this Law or by the recipient undertaking after the transfer.

Power to require the provision of services and facilities

Article 115

- (1) The Central Bank may order the credit institution under resolution, or a specific member of the group, to continue providing any services or facilities and equipment that are necessary to enable a recipient undertaking to operate effectively the business transferred to it.
- (2) Where bankruptcy proceedings have been opened against the credit institution under resolution or against a specific member of that group, the Central Bank may order the bankruptcy administrator to continue providing any services or facilities and equipment that are necessary to the recipient undertaking to operate effectively the business transferred to it.
- (3) The provision of services or facilities referred to in paragraphs (1) and (2) of this Article shall not include any form of financial support.
- (4) The services and facilities referred to in paragraphs (1), (2) and (3) of this Article shall be provided:
 - 1)under the terms of the agreement on the provision of services or facilities in force immediately before the resolution action was taken and for the duration of that agreement; or
 - 2)where there is no agreement on the provision of services or facilities, or where the agreement has expired before the resolution action was taken, on reasonable terms.
- (5) The minimum list of services, facilities and equipment referred to in paragraph (1) of this Article to the recipient undertaking to operate effectively the business transferred to it shall be prescribed by the Central Bank.
- (6) The Central Bank may act in accordance with paragraph (1) of this Article in relation to members of the group with its head office in Montenegro where so requested by the resolution authority of another Member State.

Crisis management or crisis prevention powers of the resolution authority of another Member State in the territory of Montenegro

Article 116

- (1) Where the competent resolution authority of another Member State exercises the power to transfer instruments of ownership, assets, rights or liabilities that are located in the territory of Montenegro or rights and liabilities subject to the Montenegrin law, the transfer shall be deemed to have legal effect.
- (2) Where the resolution authority of another Member State intends to or exercises the power to transfer instruments of ownership, assets, rights or liabilities in the territory of Montenegro, the Montenegrin authorities

shall enable the transfer to the recipient undertaking in accordance with the Montenegrin law.

- (3) Shareholders, creditors and third parties that are affected by the transfer of instruments of ownership, assets, rights or liabilities referred to in paragraph (1) of this Article may not challenge the transfer by referring to Montenegrin regulations.
- (4) Where the resolution authority of another Member State exercises the write-down or conversion powers in relation to capital instruments in the manner provided for in the regulations of that Member State, and to eligible liabilities or relevant capital instruments of the credit institution under resolution, the write-down or conversion powers shall also apply to the following:
 - 1) instruments or liabilities that are subject to the Montenegrin law;
 - 2) liabilities owed to creditors from Montenegro.
- (5) The reduction of the principal amount, liabilities or capital instruments or conversion of liabilities or capital instruments referred to in paragraph (4) of this Article shall be carried out in accordance with the instruments of capital write-down or conversion powers of the competent resolution authority of another Member State.
- (6) Creditors that are affected by the exercise of the write-down or conversion powers referred to in paragraph (4) of this Article, may not be entitled to challenge the write down or conversion.
- (7) Where the competent resolution authority of another Member State exercises the power of transferring, in whole or in part, or the power of write-down or conversion of capital instruments, assets, rights and liabilities, in whole or in part, in the territory of Montenegro, the right to legal remedy and safeguard measures shall be exercised in the Member State where the head office of that resolution authority is located and in accordance with the law of that Member State.

Crisis management or crisis prevention powers of the Central Bank

Article 117

- (1) Where the Central Bank exercises the write-down or conversion powers in relation to capital instruments and to eligible liabilities or relevant capital instruments of the credit institution under resolution, the power of write down or conversion of capital instruments shall also apply to the following:
 - 1) instruments or liabilities that are subject to regulations of other Member States;
 - 2) liabilities owed to creditors from other Member States.
- (2) The reduction of the principal amount of liabilities or capital instruments or conversion of liabilities or capital instruments referred to in paragraph (1) of this Article shall be carried out in accordance with the write-down or conversion powers of the Central Bank set out in this Law.
- (3) Where the Central Bank exercises the power of transferring or the power of write down or conversion of the capital instruments, assets, rights and liabilities, in whole or in part, in the territory of another Member State, the right to legal remedy and safeguard measures shall be exercised in accordance with this Law.

Resolution powers in respect of assets, rights, liabilities, and instruments of ownership located in third countries

Article 118

- (1) Where the resolution action includes an action taken in respect of assets located in a third country or instruments of ownership, rights or liabilities subject to the law of a third country, the Central Bank shall be empowered to require that:
 - 1) the resolution administration and the recipient undertaking take all necessary steps to ensure that the transfer, write down, conversion or actions taken become effective;
 - 2) the resolution administration holds the shares or other instruments of ownership, assets or rights or discharges the liabilities on behalf of the recipient undertaking until the transfer, write down, conversion of relevant instruments of capital or actions taken become effective;
 - 3) the reasonable expenses incurred by the recipient undertaking in carrying out any action referred to in items 1) and 2) of this paragraph are compensated for in the manner referred to in Article 72 of this Law.

- (2) Where the Central Bank assesses that, in spite of steps taken by the resolution administration and the recipient undertaking, the effectiveness is low, it shall not proceed with the transfer, write down, conversion or other action in relation to assets located in a third country, or shares or other instruments of ownership, rights or liabilities subject to the law of a third country, and if it has already requested the transfer, write down, conversion or other action, it shall revoke that order in the part referring to the assets located in the third country.

Exclusion of certain contractual terms in resolution

Article 119

- (1) In respect of the contractual obligations of the legal person subject to the application of crisis prevention measures or crisis management measures in accordance with this Law, the application of these measures, including the occurrence of any event directly linked to the application of such measures, shall not be deemed to be an assumption for the enforcement of financial collateral arrangements in accordance with the law governing financial collateral arrangements or ground for bankruptcy in accordance with the law governing bankruptcy proceedings, if the obligations under the contract, including payment or delivery of obligations, and the acquisition, use and the provision of financial collateral arrangements, continue to be performed to a significant extent.
- (2) The provision of paragraph (1) of this Article shall also be applied to contracts entered into by:
- 1) a subsidiary of the legal person referred to in paragraph (1) of this Article, if the legal person or another member of the group guarantee for or otherwise support the contractual obligations of that subsidiary;
 - 2) member of the group to which the legal person referred to in paragraph (1) of this Article belongs, if the contract includes cross-default provisions.
- (3) Where the other country resolution proceedings are recognised in accordance with Article 132 of this Law or when the Central Bank adopts a decision on resolution, such proceedings shall be deemed to be a crisis management measure in accordance with this Law.
- (4) Where the substantive obligations under the contract, or delivery, acquisition, use and the provision of financial collateral arrangement continue to be performed, the application of a crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such measures shall not make it possible for anyone to:
- 1) exercise termination, suspension, modification, netting or set-off rights in relation to the agreement, including:
 - contractual obligations of the subsidiary of the legal person referred to in paragraph (1) of this Article, where the legal person or another member of the group guarantee for or otherwise support the contractual obligations of that subsidiary;
 - contractual obligations of the member of the group to which the legal person referred to in paragraph (1) of this Article belongs, if the contract contains cross-default provisions;
 - 2) obtain possession, exercise control or enforce security over property of the legal person referred to in paragraph (1) of this Article, including the contractual obligations of the member of the group to which the legal person referred to in paragraph (1) of this Article belongs, if the contract contains cross-default provisions;
 - 3) influence on contractual rights of the legal person referred to in paragraph (1) of this Article, including contractual obligations of any member of the group to which the legal person referred to in paragraph (1) of this Article belongs, if the contract contains cross-default provisions.
- (5) The provisions of paragraphs (1), (2), and (3) of this Article shall not affect the right of a natural or legal person to take the action referred to in paragraph (4) of this Article where that right arises by virtue of an event other than the crisis prevention measure or the crisis management measure including the occurrence of any event directly linked to the application of these measures.
- (6) A suspension or restriction referred to in Articles 120, 121 or 122 of this Law shall not constitute non-performance of a contractual obligation referred to in paragraphs (1), (2), and (3) of this Article.

Suspension of payment or delivery obligations

Article 120

- (1) The Central Bank may reach a decision on suspension of any payment or delivery of obligations pursuant to any contract to which a credit institution under resolution is a party and immediately publish it in the manner referred to in Article 41 of this Law.
- (2) The Central Bank shall specify, in the enacting terms of the decision referred to in paragraph (1) of this Article and in its publication referred to in Article 41 of this Law, the day, the hour and the minute when the suspension enters into force.
- (3) The suspension referred to in paragraph (1) of this Article may be provided for in the decision to initiate resolution proceedings referred to in Article 36 of this Law.
- (4) The suspension referred to in paragraph (1) of this Article shall be applied as of the moment specified in the enacting terms of the decision on suspension and shall last until midnight of the next working day.
- (5) Where a payment or delivery obligation of a credit institution is due during the suspension period, the payment or delivery obligation shall be due immediately upon expiry of the suspension period.
- (6) Where payment or delivery obligations of the credit institution under resolution under a contract are suspended in accordance with paragraph (1) of this Article, the payment or delivery obligations of counterparties under that contract shall be suspended for the same period of time.
- (7) By way of derogation from paragraph (1) of this Article the decision on suspension shall not apply to:
 - 1) eligible deposits;
 - 2) payment and delivery obligations owed to systems or operators of systems specified in the laws governing settlement finality in payment systems, and netting finality in the system of financial instruments; and
 - 3) claims of clients subject to investor compensation schemes in the manner specified in the law governing the capital market.
- (8) Investor referred to in paragraph (7) item 3) of this Article means a person that has entrusted money or instruments to an investment firm in relation with the investment business.
- (9) When reaching the decision referred to in paragraph (1) of this Article, the Central Bank shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

Suspension of enforcement

Article 121

- (1) The Central Bank may reach a decision on suspension of the enforcement in relation to assets of the credit institution under resolution by the creditors of the credit institution and shall immediately publish it in the manner referred to in Article 41 of this Law.
- (2) The Central Bank shall specify, in the enacting terms of the decision referred to in paragraph (1) of this Article and in its publication referred to in Article 41 of this Law, the day, the hour and the minute when the suspension referred to in paragraph (1) of this Article enters into force.
- (3) The suspension referred to in paragraph (1) of this Article may also be provided for in the decision to initiate the resolution proceedings referred to in Article 36 of this Law.
- (4) The suspension referred to in paragraph (1) of this Article shall be applied as of the moment specified in the enacting terms of the decision on suspension and shall last until midnight of the next working day.
- (5) By way of derogation from paragraph (1) of this Article, the decision on suspension shall not apply to systems or operators of systems referred to in the regulation governing settlement finality in payment systems and netting finality in the system of financial instruments.
- (6) In the case referred to in Article 143 of this Law, the Central Bank shall, when reaching decision referred to in paragraph (1) of this Article, take account that the restrictions referred to in paragraph (1) of this Article are consistent for all members of the group subject to a resolution action.
- (7) When reaching the decision referred to in paragraph (1) of this Article, the Central Bank shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

Temporary suspension of termination rights

Article 122

- (1) Provided that the contractual obligations continue to be performed, except where the power to suspend payment or delivery of obligations referred to in Article 120 of this Law has been exercised, including payments and the provision of collateral, the Central Bank may reach a decision on the temporary suspension of termination rights of the counterparty to a contract with the credit institution under resolution.
- (2) The decision on suspension referred to in paragraph (1) of this Article may be an integral part of the decision to initiate resolution proceedings referred to in Article 36 of this Law.
- (3) Pursuant to Article 41 of this Law, the Central Bank shall immediately publish the notification on the decision referred to in paragraph (1) of this Article specifying the day, the hour and the minute when the suspension referred to in paragraph (1) of this Article enters into force.
- (4) The suspension referred to in paragraph (1) of this Article shall be applied as of the moment specified in the enacting terms of the decision on suspension and shall last until midnight of the next working day including the day specified in the enacting terms of the decision on suspension.
- (5) The power referred to in paragraph (1) of this Article may also pertain to contractual relations entered into by a counterparty with a subsidiary of the credit institution under resolution where:
 - 1) the contractual obligations are guaranteed or otherwise supported by the credit institution under resolution;
 - 2) the termination right under the contract is based solely on the insolvency or financial condition of the credit institution under resolution; and
 - 3) in the case of a transfer power that has been or may be exercised in relation to the credit institution under resolution, either all the assets and liabilities of the subsidiary relating to that contract have been or may be transferred to the recipient that has or will assume them, or the competent resolution authority guarantees for such obligations.
- (6) The transfer power referred to in paragraph (5) item 3) of this Article means the powers specified in Article 113 paragraph (1) items 4) and 5) of this Law to transfer shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of transfer of those instruments from a credit institution under resolution to a recipient.
- (7) The suspension referred to in paragraph (5) of this Article shall be applied as of the moment specified in the enacting terms of the decision on suspension and shall last until midnight of the next working day counting from the day specified in the enacting terms of the decision on suspension.
- (8) By way of derogation from paragraphs (1) and (5) of this Article the decision on suspension shall not apply to systems and operators of systems referred to in the laws governing settlement finality in payment systems and netting finality in the system of financial instruments.
- (9) By way of derogation from paragraphs (1) to (8) of this Article, a party may terminate a contract before the expiry of the suspension period where it receives notice from the Central Bank that the rights and liabilities covered by the contract shall not be transferred to the recipient, written down or converted when applying the bail-in tool in accordance with Article 93 paragraph (1) item 1) of this Law.
- (10) The termination right under the contract referred to in paragraphs (1) and (5) of this Article may be exercised on the expiry of the suspension period in the following way:
 - 1) where the rights or liabilities covered by the contract have been transferred to the recipient, a counterparty may terminate the contract only on the occurrence of the conditions for termination of the contract in respect of the recipient;
 - 2) when the rights or liabilities covered by the contract remain with the credit institution under resolution and the resolution authority has not applied the bail-in tool in accordance with Article 93 paragraph (1) item 1) of this Law to that contract, a counterparty may terminate the contract if after the expiry of the suspension period the conditions for termination of the contract arise.
- (11) When reaching the decision referred to in paragraphs (1) and (5) of this Article, the Central Bank shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

Control over the credit institution under resolution

Article 123

- (1) When taking a resolution action, the Central Bank may exercise control over the credit institution under resolution, so as to:
 - 1) operate the credit institution under resolution with all the powers of its shareholders, supervisory and management boards; and
 - 2) manage and dispose of the assets and property of the credit institution under resolution.
- (2) The Central Bank shall exercise control referred to in paragraph (1) of this Article through a resolution administration in the credit institution under resolution.
- (3) When reaching the decision on the exercise of the power referred to in paragraph (1) of this Article, the Central Bank shall take into account whether it is appropriate to exercise that power, having regard to the objectives and general principles of the resolution, the specific circumstances of the credit institution under resolution and the need to facilitate the effective resolution of cross-border groups.

X CROSS-BORDER GROUP RESOLUTION

General principles regarding decision-making involving more than one Member State

Article 124

- (1) The Central Bank and the Ministry shall base the measures which may have an impact in one or more other Member States, on the following general principles:
 - 1) the efficacy of decision-making and of keeping resolution costs at a minimum when taking the resolution action;
 - 2) that decisions are reached and action taken in a timely manner, having regard to due urgency;
 - 3) cooperation with other authorities, in order to ensure harmonised and efficient decision-making and undertaking of measures;
 - 4) clear definition of the roles and responsibilities of relevant authorities in Montenegro;
 - 5) that due consideration is given to the interests of individual Member States where EU parent undertakings have their head office, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund and deposit guarantee scheme;
 - 6) that due consideration is given to the interests of the Member State where a subsidiary undertaking has a head office, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States;
 - 7) that due consideration is given to the impact of the decisions or actions or inaction on the financial stability of those Member States;
 - 8) balancing the interests of the Member States involved and avoiding unfairly prejudicing or unfairly protecting the interests of particular Member States, including avoiding unfair burden allocation across Member States;
 - 9) consulting with the competent authorities prior to decision-making particularly regarding the parts of the proposed decision or action which have or which are likely to have:
 - an effect on the EU parent undertaking, the subsidiary undertaking or the branch; and
 - an impact on the stability of the Member State where the EU parent undertaking, the subsidiary undertaking or the branch has its head office;
 - 10) basing the resolution actions on resolution plans referred to in Articles 23 and 24 of this Law, unless it is assessed that the resolution objectives specified in Article 12 of this Law will be achieved more effectively by taking actions which are not provided for in the resolution plans;
 - 11) transparency whenever a proposed decision or action is likely to have implications on the financial stability, fiscal resources, resolution fund or deposit guarantee scheme; and

- 12) higher probability of achieving the results which lower the overall cost of resolution, if there is harmonisation and cooperation between relevant authorities.
- (2) Deposit guarantee scheme referred to in paragraph (1) item 5) of this Article means the deposit insurance scheme applied and recognised in the territory of a Member State.

Resolution college when the Central Bank is the group-level resolution authority

Article 125

- (1) Where the Central Bank is the competent group-level resolution authority, it shall establish a resolution college to carry out the obligations referred to in Articles 16, 21, 22, 27, 32 and 37 of this Law, and, where appropriate, to ensure the cooperation and coordination with third-country resolution authorities.
- (2) By way of derogation from paragraph (1) of this Article, the Central Bank as the group-level resolution authority is not obliged to establish a resolution college if other groups or colleges perform the same functions and carry out the same tasks specified in this Article and comply with all the conditions and procedures, including those covering membership and participation in resolution colleges, established in this Article and in Article 128 of this Law, and in such cases, all references to resolution colleges in this Law shall be understood as reference to those groups or colleges.
- (3) The members of the college referred to in paragraph (1) of this Article shall at the resolution college:
- 1) exchange information significant for drawing up group resolution plans, for the application of preparatory and preventive powers to groups and for group resolution;
 - 2) draw up group resolution plans in accordance with Articles 21 and 22 of this Law;
 - 3) assess the resolvability of the group in accordance with Article 16 of this Law;
 - 4) decide on exercising powers to remove impediments to the resolvability of the group in accordance with Article 27 of this Law;
 - 5) decide on the need to establish a group resolution scheme as provided for in Article 37 of this Law;
 - 6) decide on the group resolution scheme proposed in accordance with Article 37 of this Law;
 - 7) coordinate plans for communicating with the media and the public in relation to group resolution strategies and schemes;
 - 8) coordinate the use of financial arrangements for resolution;
 - 9) set the minimum requirements for the group at consolidated level and the level of individual group members referred to in Article 32 of this Law;
 - 10) consider issues relating to cross-border group resolution.
- (4) The members of the resolution college referred to in paragraph (1) of this Article shall be:
- 1) Central Bank;
 - 2) Ministry;
 - 3) Deposit Protection Fund;
 - 4) the resolution authorities of each Member State in which a subsidiary undertaking covered by consolidated supervision has its head office;
 - 5) the resolution authorities of Member States in which the parent financial holding or parent mixed financial holding company which is the parent undertaking of one or more group members has its head office;
 - 6) the resolution authorities of Member States in which significant branches of group members are located;
 - 7) representatives of the Central Bank's supervisory function;
 - 8) the competent authorities of the Member States where the resolution authority is a member of the resolution college;
 - 9) the representatives of central banks of the Member States where the members of the group are located, if the competent authorities of these Member States are not central banks;
 - 10) the competent ministries of the Member States where the members of the group are located, which are not

at the same time resolution authorities of those Member States;

11) the authorities responsible for deposit guarantee schemes of other Member States, where the resolution authority of the Member State is a member of the resolution college; and

12) the European Banking Authority in the manner referred to in paragraph (6) of this Article.

- (5) Where a member of the group with its head office in the European Union has a subsidiary undertaking or a significant branch in a third country, the Central Bank may, where it deems that the duty to protect the confidentiality of information is equivalent to the duty to protect the confidentiality of information referred to in Article 129 of this Law, at their request allow the third-country resolution authority to participate in the resolution college as an observer.
- (6) The European Banking Authority shall participate in the resolution college in order to promote the efficiency, effectiveness and consistent functioning of resolution colleges but shall not have any voting rights.

Obligations of the Central Bank as a chair of the resolution college

Article 126

- (1) The resolution college shall be chaired by the Central Bank as the group-level resolution authority and it shall:
- 1) establish rules of operations of the resolution college, after consulting other members of the resolution college;
 - 2) coordinate activities of the resolution college;
 - 3) convene the resolution college;
 - 4) notify the members of the resolution college of the time and venue of the meetings and of the main issues to be discussed at the meetings and of the activities to be considered;
 - 5) decide which authorities referred to in Article 125 paragraphs (3) and (4) of this Law shall attend the meetings or participate in particular activities of the college, taking into account the relevance of the issues to be considered for those authorities, in particular their potential impact on financial stability in the Member States;
 - 6) keep all of the members of the resolution college informed of the decisions and conclusions of those meetings.
- (2) By way of derogation from paragraph (1) item 5) of this Article, the Central Bank shall invite the resolution authority to the meetings of the resolution college whenever joint decisions or issues relating to the member of the group with its head office in their Member State are to be discussed.

Resolution colleges when the Central Bank is not the group-level resolution authority

Article 127

Where the Central Bank is not the group-level resolution authority, it shall, together with the Ministry and other members of the resolution college, participate in the work of the resolution college for the purpose of:

- 1) exchanging information significant for drawing up group resolution plans, for the application of preparatory and preventive powers to a group and for group resolution;
- 2) drawing up group resolution plans in accordance with Articles 21 and 23 of this Law;
- 3) assess the resolvability of the group in accordance with Article 16 of this Law;
- 4) deciding on exercising powers to remove impediments to the resolvability of the group in accordance with Article 27 of this Law;
- 5) deciding on the need to develop a group resolution scheme as provided for in Article 37 of this Law;
- 6) deciding on the group resolution scheme proposed in accordance with Article 37 of this Law;
- 7) coordinating the plans for communicating with the media and the public in relation to group resolution strategies and schemes;
- 8) coordinating the use of financial arrangements for the resolution;

- 9) set the minimum requirements for the group at consolidated level and the level of individual group members in accordance with Article 32 of this Law;
- 10) discussing any issues relating to cross-border group resolution.

European resolution college

Article 128

- (1) Where a third-country credit institution or third-country parent undertaking has subsidiary undertakings with head offices in Montenegro and one or more other Member States or where the third-country credit institution or the third-country parent undertaking has two or more branches in the European Union and the branch in Montenegro is considered significant, the Central Bank shall establish a European resolution college with the resolution authorities of other Member States in which those subsidiary undertakings or significant branches have their head offices.
- (2) By way of derogation from paragraph (1) of this Article, the Central Bank and the relevant resolution authorities of other Member States are not obliged to establish a European resolution college if other groups or colleges, including the resolution college established pursuant to Article 125 or 127 of this Law, perform the same functions and carry out the same tasks specified in this Article and comply with all the conditions and procedures, including those covering membership, participation in activities and exchange of information in resolution colleges in accordance with this Article and Article 102 of this Law and in such cases, all references to the resolution colleges in this Law shall be understood as reference to those groups or colleges.
- (3) The European resolution college shall be established for the purpose of performing the activities and carrying out the tasks specified in Articles 125 and 126 or Article 127 of this Law with respect to the subsidiary undertakings and, in so far as those tasks are relevant, to the branches referred to in paragraph (1) of this Article.
- (4) The members of the European resolution college shall nominate the chair of that college among themselves.
- (5) By way of derogation from paragraph (4) of this Article, where the parent undertaking of a subsidiary undertaking in Montenegro is a financial holding company or where this holding company has significant branch in Montenegro and where the Central Bank is a consolidating supervisor in accordance with the regulations governing operations of credit institutions, the Central Bank shall chair the European resolution college.
- (6) In addition to the provisions of this Article, the provisions of Articles 125 and 126 or Article 127 of this Law shall apply *mutatis mutandis* to the work of the European resolution college.

Obligation to protect the confidentiality of information

Article 129

- (1) Information obtained within the framework of this Law shall be protected as confidential by:
 - 1) the Central Bank and the Ministry;
 - 2) resolution authorities of the Member States;
 - 3) the competent authorities of Member States and third countries to whom confidential information has been delivered;
 - 4) competent ministries of Member States and third countries to whom confidential information has been delivered;
 - 5) the European Banking Authority;
 - 6) resolution administrations;
 - 7) the potential acquirers of instruments of ownership, assets, rights and liabilities of the credit institution under resolution that received confidential information from the Central Bank, regardless of whether the transfer was finalised or not;
 - 8) audit firms, auditors, legal and professional advisors, valuers and other experts that receive confidential information from the persons referred to in item 1) or 5) of this paragraph;
 - 9) Deposit Protection Fund;

- 10) bridge credit institution or asset management company;
 - 11) central banks and other authorities involved in the process of resolution;
 - 12) any other persons who provide or have provided services directly or indirectly, permanently or occasionally to persons referred to in items 1) to 7) of this paragraph;
 - 13) members of the management bodies, senior management and employees of the bodies or persons referred to in items 1) to 8) of this Article, during and after their employment or appointment.
- (2) The authorities referred to in paragraph (1) items 1), 7) and 9) of this Article shall, for the purpose of securing the confidentiality of information, adopt and implement rules to secure the confidentiality of information referred to in paragraph (1) of this Article.
 - (3) The persons referred to in paragraph (1) of this Article shall be prohibited from disclosing confidential information received during the course of professional activities from a competent authority or resolution authority to any person or authority unless it is in summary or collective form such that the individual credit institutions or resolution entities cannot be identified or with the express prior consent of the resolution authority, credit institution or other resolution entity under resolution which provided the information.
 - (4) The authorities referred to in paragraph (1) of this Article shall carry out an assessment of the effects of disclosing confidential information, in order to assess the impact that such disclosure might have on the public interest (financial, monetary or economic policy, commercial interests, supervision, investigations, and audits).
 - (5) The assessment procedure referred to in paragraph (4) of this Article shall include an assessment of individual effects of disclosure of the contents and details of resolution plans and the result of the assessment carried under this Law.
 - (6) By way of derogation from paragraphs (1) to (5) of this Article, confidential information may be exchanged by:
 - 1) the employees of the authorities and persons referred to in paragraph (1) of this Article;
 - 2) the Central Bank, including its employees, with the employees of resolution authorities and competent authorities of Member States, competent ministries, central banks, deposit guarantee schemes, judicial, judiciary and other authorities competent for the implementation of the bankruptcy or winding-up proceedings and the European Banking Authority, in accordance with Article 136 of this Law, third-country authorities that carry out equivalent functions to resolution authorities, and with a potential acquirer.
 - (7) The provisions paragraphs (1), (3), and (6) of this Article shall not include the disclosure of information for the purpose of legal proceedings.
 - (8) The method of disclosing confidential information referred to in paragraph (1) of this Article shall be laid down by the Central Bank.

Information exchange

Article 130

- (1) Resolution authorities and competent authorities shall provide one another on request with all the information relevant for the exercise of the other authorities' tasks in accordance with this Law, complying with the requirements on the duty to protect the confidentiality of information referred to in Article 129 of this Law.
- (2) Where the Central Bank is the group-level resolution authority, it shall coordinate the flow of all relevant information between resolution authorities and, in particular, it shall provide the resolution authorities of other Member States with all the relevant information in a timely manner with a view to facilitating the exercise of the tasks referred to in Article 125 paragraph (3) items 2) to 10) of this Law.
- (3) Where the Central Bank is requested to provide information received from the third-country resolution authority, the Central Bank may divulge such information only with the express agreement of the authority which has provided the information.
- (4) The Central Bank shall exchange information with the Ministry where this is provided for in this Law, and information on the decisions and activities which may have implications for fiscal resources.
- (5) The Central Bank may, in order to facilitate the implementation of this Law, conclude written agreements with the relevant authorities of other Member States and third countries regulating mutual cooperation and the exchange of information in more detail.

Cooperation agreements

Article 131

- (1) The Central Bank may enter into a non-binding bilateral agreement with a third country resolution authority for the purpose of information exchange in relation to resolution planning regarding credit institutions, financial institutions and parent undertakings in the following situations:
 - 1) where a third-country parent undertaking has a subsidiary credit institution or a significant branch in Montenegro;
 - 2) where a parent undertaking with its head office in Montenegro has a subsidiary undertaking in a third country;
 - 3) where a credit institution with its head office in Montenegro has a branch in a third country.
- (2) The agreement referred to in paragraph (1) of this Article shall, in particular, seek to ensure the establishment of processes and arrangements between the Central Bank and the third country resolution authorities for cooperation in carrying out some or all of the tasks and exercising some or all of the powers referred to in Article 113 of this Law.
- (3) The agreement shall not contain provisions in relation to individual institutions, financial institutions, parent undertakings or third-country institutions.
- (4) The agreement referred to in paragraph (1) of this Article may be entered into until the entry into force of the international agreement concluded by the European Commission with one or more third countries regarding the means of cooperation between the resolution authorities and the relevant third-country authorities.

Recognition and enforcement of third-country resolution proceedings

Article 132

- (1) This Article shall apply in respect of third-country resolution proceedings where an international agreement as referred to in Article 131 paragraph (4) of this Law has not entered into force with relevant third country and until such agreement enters into force.
- (2) The third-country resolution proceedings referred to in paragraph (1) of this Article means an action under the law of a third country for the purpose of resolution of a third-country credit institution or a third-country parent undertaking that is comparable, in terms of objectives and anticipated results, to resolution actions under this Law.
- (3) The provisions of this Article shall also apply in respect of third-country resolution proceedings following the entry into force of the international agreement referred to in Article 131 paragraph (4) of this Law where the recognition and enforcement of third-country resolution proceedings is not covered by this agreement.
- (4) Where a European resolution college is established in accordance with Article 128 of this Law and the Central Bank is a participant in its activities, the college shall reach a joint decision on whether to recognise, except in the cases provided for in Article 133 of this Law, third-country resolution proceedings relating to a third-country credit institution or a parent undertaking that:
 - 1) has subsidiary undertaking or significant branches in two or more Member States; or
 - 2) has assets, rights or liabilities in two or more Member States or that are subject to the law of those Member States.
- (5) Where the joint decision on the recognition of the third-country resolution proceedings is reached, the Central bank shall enable the enforcement of the recognised third-country resolution proceedings in accordance with the national law.
- (6) Where the joint decision referred to in paragraph (4) of this Article on the recognition of the third-country resolution proceedings is not reached, the Central Bank shall reach a decision on whether to recognise and enforce, except in the cases provided for in Article 133 of this Law, third-country resolution proceedings relating to a third-country credit institution or a third-country parent undertaking, which have effect in Montenegro.
- (7) When reaching the decision referred to in paragraph (5) of this Article, the Central Bank shall give due

consideration to the interests of each individual Member State where the third-country credit institution or parent undertaking operates, and in particular to the potential impact of the recognition and enforcement of the third-country resolution proceedings on the other members of the group and the financial stability in those Member States.

(8) The Central Bank shall be empowered to:

1) exercise the resolution powers in relation to:

-assets of a third-country credit institution or parent undertaking that are located in Montenegro or are subject to the Montenegrin law,

-rights or liabilities of a third-country credit institution that are booked in the balance sheet of the branch in Montenegro or are subject to the Montenegrin law, or where claims in relation to such rights and liabilities are enforceable in Montenegro;

2) carry out or require another person to carry out a transfer of shares or other instruments of ownership in a subsidiary undertaking in Montenegro;

3) exercise the powers referred to in Articles 120, 121 and 122 of this Law in relation to the rights of any party to a contract with legal person referred to in paragraph (4) of this Article, where such powers are necessary in order to enforce resolution proceedings by third-country resolution authority; and

4) revoke any contractual right to terminate, seek fulfilment or accelerate contractual obligations, or affect the contractual rights of legal persons referred to in paragraph (4) of this Article and other members of the group, where such a right arises from resolution action taken in respect of the third-country credit institution or third-country parent undertaking referred to in paragraph (4) of this Article and other members of the group, whether by the third-country resolution authority or otherwise pursuant to legal or regulatory requirements connected to resolution arrangements in that country, provided that the substantive obligations under the contract, including payment and delivery of obligations and the provision of collateral, continue to be performed.

(9) Where the relevant third-country authority determines that a credit institution with its head office in that third country meets the conditions for resolution under the law of that third country, the Central Bank may, when this is in the public interest, take resolution action and exercise any resolution power referred to in this Law, and in such cases, the provisions of Article 119 of this Law shall apply.

(10) The recognition and enforcement of third-country resolution proceedings shall be without prejudice to the possibility of opening of any bankruptcy proceedings in accordance with the regulations governing insolvency proceedings.

Right to refuse recognition or enforcement of third-country resolution proceedings

Article 133

The Central Bank may, after consulting other resolution authorities, where a European resolution college is established in accordance with Article 128 of this Law, refuse to recognise or to enforce third-country resolution proceedings in accordance with Article 132 of this Law if it considers that:

1) third-country resolution proceedings would have adverse effects on financial stability in Montenegro or that the proceedings would have adverse effects on the financial stability in another Member State;

2) independent resolution action in accordance with Article 134 of this Law in relation to a European Union branch is necessary to achieve one or more of the resolution objectives;

3) creditors, including in particular depositors located or payable in Montenegro, would not receive the same treatment as third-country creditors and depositors with similar legal rights under the third-country home resolution proceedings;

4) recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for Montenegro; or

5) the effects of such recognition or enforcement would be contrary to the Montenegrin regulations.

Resolution of branches belonging to European Union cross-border group

Article 134

- (1) The Central Bank shall be empowered to act in relation to European Union branches regardless of whether they are subject or not subject to third-country resolution proceedings in the event of the circumstances specified in Article 132 of this Law.
- (2) The Central Bank may exercise the powers referred to in paragraph (1) of this Article where it considers that action is necessary to protect the public interest and where one of the following conditions is met:
 - 1) the European Union branch no longer meets, or is likely not to meet, the conditions for its authorisation and operation in Montenegro and there is no prospect that any private sector, supervisory or relevant third-country action would restore the branch to compliance or prevent its failure in a reasonable timeframe;
 - 2) the third-country credit institution is, in the opinion of the Central Bank, unable or unwilling, or is likely to be unable, to pay its obligations to creditors or obligations that have been created or booked through the branch, as they fall due and the Central Bank is convinced that no resolution proceedings or bankruptcy proceedings have been or will be opened in relation to that third-country credit institution in a reasonable timeframe;
 - 3) the relevant third-country authority has imitated resolution proceedings in relation to the third-country credit institution, or has notified the Central Bank of its intention to initiate the resolution proceedings against the third-country credit institution.
- (3) When the Central Bank takes an independent action in relation to a European Union branch, it shall have regard to the resolution objectives and take the action in accordance with the applicable principles laid down in Article 13 of this Law and requirements relating to the application of the resolution tools referred to in this Law insofar as they are relevant.

Cooperation with the competent authorities of third countries

Article 135

- (1) The provisions of this Article shall apply until the entry into force of an international agreement with a third country in accordance with Article 131, paragraph (1) of this Law, as well as following the entry into force of that agreement to the extent that the subject matter of this Article is not covered by that agreement.
- (2) The Central Bank shall, where necessary, conclude non-binding cooperation agreements in accordance with the framework agreement of the European Banking Authority with the relevant third-country authorities.
- (3) The provisions of this Article shall not affect bilateral or multilateral agreements concluded by the Central Bank as the supervisor of credit institutions with third countries in accordance with the law governing the operations of credit institutions.
- (4) The cooperation agreements concluded between the Central Bank and third countries in accordance with the provisions of this Article may include provisions on:
 - 1) the exchange of information necessary for the preparation and maintenance of resolution plans;
 - 2) the consultation and cooperation in the development of resolution plans, including principles for the exercise of powers in accordance with Articles 132 and 134 of this Law and similar powers in accordance with the regulations of the relevant third countries;
 - 3) the exchange of information necessary for the application of resolution tools and exercise of resolution powers and similar powers that may be exercised by the relevant third-country authorities;
 - 4) early warning to or consultation of parties to the cooperation agreement before taking any significant action in accordance with the provisions of this Law or relevant third-country regulations affecting the credit institution or group to which the agreement relates;
 - 5) the coordination of public communication in the case of joint resolution actions;
 - 6) procedures and arrangements for the exchange of information and cooperation in accordance with the provisions of items 1) to 5) of this paragraph, including, where appropriate, through the establishment and operation of crisis management groups.
- (5) The Central Bank shall notify the European Banking Authority of any cooperation agreement that it has concluded in accordance with the provisions of this Article.

Exchange of confidential information with third countries

Article 136

- (1) The Central Bank shall exchange confidential information, including recovery plans, with relevant third-country authorities only if the following conditions are met:
 - 1) those third-country authorities are subject to requirements and standards of professional secrecy at least considered to be equivalent to those specified in Article 129 of this Law and the exchange of information relating to personal data protection shall be exercised in accordance with the provisions of the regulations governing the personal data protection which are in accordance with the applicable European Union regulations relating to the protection of personal data;
 - 2) the information is necessary for the exercising of the resolution powers and obligations by the relevant authorities of third countries whose national law is comparable to the provisions of this Law and is, in accordance with the provisions of item 1) of this paragraph, not used for other purposes.
- (2) The information referred to in paragraph (1) of this Article is deemed to be confidential if it is subject to confidentiality requirements under the applicable European Union regulations.
- (3) The Central bank shall disclose confidential information received from another Member State to the relevant third-country authorities only if the following conditions are met:
 - 1) the relevant authority of the State where the information originated agrees to that disclosure;
 - 2) the information is disclosed to the third country only for the purposes permitted by the originating authority.

XI. SAFEGUARD MEASURES

Treatment of shareholders and creditors in the case of partial transfers and application of the bail-in tool

Article 137

- (1) Where the Central Bank, by applying one or more resolution tools, transfers only parts of the rights, assets and liabilities of the credit institution under resolution, it shall, by applying Article 139 of this Law, ensure that shareholders and those creditors whose claims have not been transferred receive in satisfaction of their claims at least as much as what they would have received if bankruptcy proceedings have been carried out against the credit institution under resolution at the time when the decision referred to in Article 36 of this Law was adopted.
- (2) Where the Central Bank applies the bail-in tool, it shall, by applying Article 139 of this Law, ensure that shareholders and creditors whose claims have been written down or converted to Common Equity Tier 1 instruments do not incur greater losses than they would have incurred if bankruptcy proceedings have been carried out against the credit institution under resolution at the time when the decision referred to in Article 36 of this Law was adopted.

Effects of difference in treatment

Article 138

- (1) After carrying out the transfer of a part of the rights, assets and liabilities or after applying the bail-in tool, the Central Bank shall without delay, ensure the performance of an independent asset valuation, which shall be distinct from the valuation referred to in Article 44 of this Law, and which shall determine the following:
 - 1) the effect that bankruptcy proceedings would have had on shareholders, creditors and the Deposit Protection Fund if it had been opened at the time when the decision referred to in Article 36 of this Law was adopted;
 - 2) the effect of the resolution of the credit institution on shareholders and creditors; and
 - 3) the difference between the effects referred to in items 1) and 2) of this paragraph.
- (2) The independent valuer shall carry out the valuation referred to in paragraph (1) of this Article using the assumptions that:

- 1)the bankruptcy proceedings had been opened against the credit institution under resolution at the time when the decision referred to in Article 36 of this Law was adopted;
 - 2)the resolution action had not been effected; and
 - 3)no extraordinary public financial support has been provided to the credit institution under resolution.
- (3) The asset valuation methodology referred to in paragraph (1) of this Article shall be prescribed by the Central Bank.

Safeguard measures for shareholders and creditors

Article 139

- (1) Where the valuation carried out in accordance with Article 138 of this Law determines that a shareholder or a creditor referred to in Article 137 of this Law or the Deposit Protection Fund referred to in Article 154 paragraph (1) of this Law has incurred greater losses than it would have incurred if bankruptcy proceedings had been carried out against the credit institution under resolution at the time when the decision to initiate the resolution proceedings against the credit institution was adopted, the shareholder, the creditor or the Deposit Protection Fund shall be entitled to the payment of the difference from the Resolution Fund.
- (2) The Central Bank shall prescribe the manner of payment of the difference referred to in paragraph (1) of this Article.

Safeguard measures for counterparties in partial transfers

Article 140

- (1) Where only a partial transfer of the assets, rights or liabilities of the credit institution under resolution to another person is effected or, when, in the exercise of a resolution tool, only a partial transfer of the assets, rights or liabilities of the credit institution under resolution is effected from a bridge credit institution or asset management company to another person and, in exercising the powers of the Central Bank referred to in Article 113 paragraph (1) item 7) of this Law the counterparties shall be protected in:
 - 1)security arrangements under which a person has by way of guarantee an actual or contingent interest in the assets or rights that are subject to transfer, irrespective of whether that interest is secured by specific assets or rights or by way of a floating charge or similar arrangement;
 - 2)title transfer financial collateral arrangements under which collateral to secure or cover the performance of specific obligations by a transfer of full ownership of assets from the collateral provider to the collateral taker in case of default by the collateral provider;
 - 3)set-off agreements under which two or more claims or obligations owed between the credit institution under resolution and a counterparty can be set off against each other;
 - 4)netting agreements;
 - 5)covered bonds arrangements;
 - 6) structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to the covered bonds, which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.
- (2) Title transfer financial collateral arrangement referred to in paragraph (1) item 2) of this Article means an arrangement, including repurchase agreements, under which a collateral provider transfers full ownership of financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations.
- (3) The form of protection of the arrangements referred to in paragraph (1) of this Article is specified in Articles 141 to 144 of this Law and is subject to the restrictions referred to in Articles 119 to 122 of this Law.
- (4) The provisions of paragraphs 1) and 2) of this Article shall be applied irrespective of the number of counterparties and of whether:
 - 1)the legal arrangements are created by contracts, through transfer of title as collateral or by other means, or

arise by operation of law;

2) the legal arrangements are in whole or in part subject to the law of another Member State or of a third-country.

Protection for financial collateral arrangements, set-off and netting agreements

Article 141

- (1) The Central Bank may not, by applying ancillary resolution powers, effect a partial transfer of rights and liabilities nor modify or terminate rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off agreement or a netting agreement concluded between the institution under resolution and another person.
- (2) The rights and liabilities referred to in paragraph (1) of this Article protected under an agreement or arrangement where the right of contractual parties to set-off or net rights and liabilities has been established.
- (3) By way of derogation from paragraph (1) of this Article, in order to ensure availability of the covered deposits, the Central Bank may:
 - 1) transfer covered deposits which are part of the arrangements referred to in paragraph (1) of this Article without transferring other assets, rights or liabilities that are part of the same arrangement, or
 - 2) transfer, convert or liquidate assets, rights or liabilities without transferring the covered deposits.

Protection for security arrangements

Article 142

- (1) For the purpose of protection of liabilities secured under security arrangements, the Central Bank may not:
 - 1) transfer assets against which the liability is secured unless the liability and benefit of the security are also transferred;
 - 2) transfer secured liabilities unless the benefit of the security is also transferred;
 - 3) transfer the benefit of the security unless the secured liability is also transferred;
 - 4) modify or terminate a security arrangement by applying ancillary resolution powers, where the effect of that modification or termination is that the liability ceases to be secured.
- (2) By way of derogation from paragraph (1) of this Article, in order to ensure availability of the covered deposits, the Central Bank may:
 - 1) transfer covered deposits which are part of any of the arrangements referred to in paragraph (1) of this Article without transferring other assets, rights or liabilities that are part of the same arrangement; or
 - 2) transfer, convert or liquidate assets, rights or liabilities without transferring the covered deposits.

Protection of structured finance arrangements and covered bonds

Article 143

- (1) In order to ensure the protection of structured finance arrangements, including arrangements referred to in Article 140 paragraph (1) items 5) and 6) of this Law, the Central Bank may not, by applying ancillary resolution powers, effect a partial transfer of rights and liabilities nor modify or terminate rights and liabilities that are an integral part of the structured finance arrangement, including arrangements referred to in Article 140 paragraph (1) items 5) and 6) of this Law concluded between the credit institution under resolution and another person.
- (2) By way of derogation from paragraph (1) of this Article, the Central Bank in order to ensure availability of the covered deposits may:
 - 1) transfer covered deposits which are part of any of the arrangements referred to in paragraph (1) of this Article without transferring other assets, rights or liabilities that are part of the same arrangement; or

2)transfer, convert or liquidate assets, rights or liabilities without transferring the covered deposits.

Protection of trading, clearing and settlement systems

Article 144

- (1) The Central Bank shall not, by applying resolution tools, affect the operation of systems and rules of systems governed by the regulation governing the settlement finality in payment and settlement systems, where it effects a partial transfer of assets, rights or liabilities of a credit institution under resolution to another entity, or where by applying ancillary resolution powers it amends or cancels the terms of a contract to which a credit institution under resolution is a party or ensures that the recipient undertaking steps in the place of the credit institution under resolution as a party.
- (2) The transfer, amendment or cancellation of conditions referred to in paragraph (1) of this Article shall not revoke, modify or negate the enforceability of transfer orders and settlement as required in payment and settlement systems, the use of funds, securities or credit facilities as prescribed.

XII. RESOLUTION FUND

Establishment of the Resolution fund

Article 145

- (1) A Resolution Fund shall be established in order to provide the funds required for the application of resolution tools and the exercise of resolution powers defined in this Law.
- (2) The funds of the Resolution Fund shall be used to achieve resolution objectives referred to in Article 12 of this Law and in accordance with the principles referred to in Article 13 of this Law.
- (3) The Resolution Fund shall be managed by the Central Bank in accordance with this Law.
- (4) The funds of the Resolution Fund shall be held at the separate account with the Central Bank.
- (5) The Central Bank shall maintain the assets of the Resolution Fund separately from the assets and liabilities of the Central Bank.

Raising of funds for the resolution fund

Article 146

- (1) The Resolution Fund shall have available sufficient funds to achieve the resolution objectives referred to in Article 12 of this Law.
- (2) The Central Bank shall, in the name and for the account of the Resolution Fund:
 - 1)raise ex-ante contributions in accordance with Article 149 of this Law for the purpose of reaching the target level referred to in Article 148 of this Law;
 - 2)raise ex-post contributions in accordance with Article 150 of this Law where the contributions specified in item (1) of this paragraph are not sufficient; and
 - 3)contract borrowings and other alternative financing sources in accordance with Articles 151 and 152 of this Law.
- (3) The funds raised in accordance with this Article shall constitute the assets of the Resolution Fund whose use is approved by the Central Bank for the purposes specified in Article 147 paragraph (1) of this Law.

Use of Funds by the Resolution Fund

Article 147

- (1) The funds by the Resolution Fund may be used:

- 1) to guarantee the assets or the liabilities of the credit institution under resolution, its subsidiaries, a bridge credit institution or an asset management company;
 - 2) to grant loans to the credit institution under resolution, its subsidiaries, a bridge credit institution or an asset management company;
 - 3) to purchase assets of the credit institution under resolution;
 - 4) to pay in capital and ensure other necessary funds to a bridge credit institution or an asset management company;
 - 5) to pay the difference in accordance with Article 139 of this Law;
 - 6) to compensate the credit institution under resolution the amount arising due to the exclusion of eligible liabilities of specific creditors from the application of the bail-in tool in accordance with Articles 95 and 96 of this Law;
 - 7) to take any combination of the actions referred to in items 1) to 6) of this paragraph;
 - 8) to pay any justified costs incurred by the Central Bank in relation to the application of the resolution tools which are not compensated in accordance with Article 72 of this Law,
 - 9) to pay compensations for managing the Resolution Fund, and
 - 10) for other purposes specified in this Law.
- (2) When applying the sale of business tool, the funds of the Resolution Fund may also be used to take actions referred to in paragraph (1) items 1) to 6) of this Article with respect to the acquirer.
 - (3) The funds of the Resolution Fund shall not be used directly to absorb the losses of or recapitalise a credit institution or a legal person referred to in Article 3 items 2), 3), and 4) of this Law.
 - (4) Where the use of the funds of the Resolution Fund for the purposes of paragraphs (1) and (2) of this Article indirectly results in part of the losses of the credit institution or a legal person referred to in Article 3 items 2), 3), and 4) of this Law being absorbed by the Resolution Fund, the principles governing the use of the funds of the Resolution Fund specified in Articles 95 and 96 of this Law shall apply.

Resolution Fund level

Article 148

- (1) The funds of the Resolution Fund shall reach at least 1% of the amount of covered deposits of all credit institutions, based on the balances determined in accordance with the audited financial statements for the previous year.
- (2) Where the funds of the Resolution Fund diminish below the amount referred to in paragraph (1) of this Article to the amount constituting more than two thirds of the target level referred to in paragraph (1) of this Article, the contributions raised in accordance with Article 149 of this Law shall resume to be raised at the regular pace until the level referred to in paragraph (1) of this Article is reached.
- (3) By way of derogation from paragraph (2) of this Article, if the funds of the Resolution Fund diminish to below two thirds of the target level referred to in paragraph (1) of this Article, the contribution shall be set at a level allowing for reaching the target level referred to in paragraph (1) of this Article within six years.
- (4) By way of derogation from paragraph (3) of this Article, the Central Bank may decide different payment of contributions where this is justified in view of the phase of the business cycle and the impact procyclical contributions may have when setting annual contributions.

Ex-ante contributions

Article 149

- (1) With a view to reaching the Resolution Fund target level referred to in Article 148 paragraph (1) of this Law, the credit institutions shall pay in ex-ante contributions once a year, specifically by 30 June for the current year.
- (2) The contribution referred to in paragraph (1) of this Article of individual credit institutions shall be pro rata to the amount of their liabilities (excluding own funds) less covered deposits, with respect to the aggregate

liabilities of all credit institutions (excluding own funds) less covered deposits of all credit institutions.

- (3) The amount of individual contributions referred to in paragraph (2) of this Article shall be adjusted in proportion to the risk profile of credit institutions in accordance with the criteria for calculating the risk profile of credit institutions prescribed by the Central Bank.
- (4) In pursuing its mandate of Resolution Fund management, the Central Bank shall, having consideration for the amount of aggregate liabilities less own funds items and input parameters for the calculation of the risk profile, calculate the amount of contributions referred to in paragraph (1) of this Article for each credit institution.
- (5) Upon a request from the credit institution, the Central Bank may grant the obligation of paying contributions referred to in paragraph (1) of this Article to be met through irrevocable payment commitments which are fully backed by collateral of low risk unencumbered by any third party rights, and are at the disposal of and are allocated exclusively for the purposes referred to in Article 147 paragraphs (1) and (2) of this Law, whereat the aggregate share of such irrevocable payment commitments shall not exceed 30% of the total amount of contributions raised in accordance with this Article.
- (6) The funds raised from ex-ante contributions shall only be used for the purposes specified in Article 147 of this Law.
- (7) The amounts received from the credit institution under resolution or the bridge credit institution, the interest and other earnings on investments and other earnings arising from the application of the resolution tool in accordance with this Law shall be the earnings of the Resolution Fund.
- (8) The Central Bank shall regulate in more detail the manner of meeting the obligation to pay in contributions, reporting and meeting other obligations referring to the payments of ex-ante contributions.

Ex-post contributions

Article 150

- (1) Where available funds of the Resolution Fund are not sufficient to absorb the losses, costs and other expenses incurred, the Central Bank, shall introduce an obligation to pay ex-post contributions.
- (2) Credit institutions shall pay ex-post contributions in the amounts and within the time limits set by the Central Bank.
- (3) The ex-post contributions shall not exceed three times the annual amount of contributions set in accordance with Article 149 of this Law.
- (4) The ex-post contributions shall be subject to the provisions of Article 149 paragraphs (2) to (7) of this Law.
- (5) The Central Bank may, upon a request from the credit institution, in whole or in part, suspend the application of the requirement to pay ex-post contributions, where doing so would jeopardise its liquidity or solvency.
- (6) The suspension referred to in paragraph (5) of this Article shall not be granted for a period longer than six months but may, exceptionally, where upon the expiry of that period, the reasons for the suspension still exist, be renewed by another six months.
- (7) The obligation to pay ex-post contributions shall arise even before the expiry of the period referred to in paragraph (6) of this Article where the reasons for the suspension referred to in paragraph (5) of this Article cease to exist.
- (8) The Central Bank shall regulate in more detail the conditions for granting a suspension of payment of ex-post contributions to a credit institution within the meaning of paragraph (5) of this Article.

Contracting borrowings and other alternative financing sources

Article 151

The Resolution Fund may borrow from credit institutions or other persons where the available funds raised in accordance with Article 149 of this Law or ex-post contributions referred to in Article 150 of this Law are not sufficient or accessible to cover the losses, costs or other expenses.

Borrowing between the Resolution Fund and Member States financing arrangements

Article 152

- (1) The Resolution Fund may make a request to borrow from financing arrangements of other Member States in the event that:
 - 1) the amounts raised in accordance with Article 149 of this Law are not sufficient to cover the losses, costs or other expenses;
 - 2) the ex-post contributions referred to in Article 150 of this Law are not immediately accessible; and
 - 3) borrowings and other alternative financing sources provided for in Article 151 of this Law are not accessible on reasonable terms.
- (2) The Resolution Fund may lend to financing arrangements of other Member States when such financing arrangements are subject to the circumstances specified in paragraph (1) of this Article.
- (3) The Central Bank shall, under an emergency procedure, decide on a request to lend to a financing arrangement of another Member State from the Resolution Fund.
- (4) The Resolution Fund shall grant the loan under the same terms and conditions as other financing arrangements participating in the financing of the financing arrangement of one Member State, unless the financing arrangements agree otherwise.
- (5) The amount lent by the Resolution Fund to the financing arrangement of another Member State shall be pro rata to the share of the amount of covered deposits in Montenegro in the aggregate of covered deposits in the Member States of participating financing arrangements, whereat the participation rates determined in this way may vary upon agreement of all participating financing arrangements.
- (6) An outstanding loan granted by the Resolution Fund to a resolution financing arrangement of another Member State shall represent the assets of the Resolution Fund and is counted towards its target level.

Mutual financial support between the Resolution Fund and financing arrangements of other Member States in the case of a group resolution

Article 153

- (1) In the case of a group resolution in accordance with Articles 38 and 39 of this Law, the Resolution Fund shall participate in the financing of the group resolution.
- (2) In the case where the Central Bank is the group-level resolution authority, it shall, after consulting the resolution authorities of credit institutions that are the members of the group under resolution, propose a financing plan as part of the group resolution scheme in accordance with Article 38 of this Law.
- (3) The financing plan referred to paragraph (2) of this Article shall include:
 - 1) a valuation of assets and liabilities of members of the group in accordance with Article 44 of this Law;
 - 2) the amount of losses sustained by each member of the group under resolution at the moment the resolution tools are exercised;
 - 3) the amount of losses suffered by each class of shareholders and creditors of individual members of the group under resolution;
 - 4) the amount of loss that would be charged to the Deposit Protection Fund and other deposit guarantee schemes of other members of the group in accordance with Article 147 paragraph (1) of this Law;
 - 5) the aggregate amount of the funds required by the Resolution Fund and other financing arrangements included in the resolution of the group and the purpose and form of the financing;
 - 6) the criteria for calculating the share of the Resolution Fund and financing arrangements of other Member States in which the members of the group under resolution are located in aggregate amount of the funds referred to in item 5) of this paragraph;
 - 7) the amount of the share of the Resolution Fund and financing arrangements of other Member States in which the members of the group under resolution are located in the aggregate amount of the funds referred to in item 5) of this paragraph;
 - 8) the amounts that the Resolution Fund and other financing arrangements included in the resolution of the group will borrow in accordance with Article 152 of this Law;

- 9) a time limit for the use of the funds of the Resolution Fund and of the financing arrangements of the Member States included in the resolution of the group, which can be extended where appropriate.
- (4) The criteria for calculating the share of the Resolution Fund and other financing arrangements of the Member States included in the group resolution in the aggregate amount referred to in paragraph (3) item 5) of this Article shall be consistent with paragraph (5) of this Article and with the rules set out in Article 21 paragraph (3) item 5) and paragraph (5) of this Law, unless otherwise agreed.
- (5) Unless otherwise agreed in the financing plan, when determining the criteria for calculating the share of the Resolution Fund and other financing arrangements of the Member States included in the resolution of the group regard shall be taken of the following:
- 1) the share of the risk-weighted assets of the credit institution and legal persons referred to in Article 3 items 2), 3), and 4) of this Law with their head office in the Member State of that financing arrangement relative to the amount of their group's risk-weighted assets;
 - 2) the share of the assets of credit institution and legal persons referred to in Article 3 items 2), 3), and 4) of this Law with their head office in the Member State of that financing arrangement relative to the amount of assets of the group they belong to;
 - 3) the share of the losses of all members of the group supervised by the same competent authorities of a Member State, which have led to group resolution;
 - 4) the estimated share of the funds of the Resolution Fund and any other financing arrangement included in the resolution of the group, the use of which would directly benefit the members of the group under resolution with their head office in the Member State of that financing arrangement.
- (6) Pursuant to the adopted rules and procedures and without derogation from the provisions of paragraph (2) of this Article the Resolution Fund shall without delay effect its contribution to the financing of group resolution.
- (7) In the case of group resolution and for the purpose of mutual support among the Resolution Fund and resolution financing arrangements of other Member States, the Resolution Fund may contract a loan or other forms of support under the conditions specified in Article 152 of this Law.
- (8) The Resolution Fund may guarantee for loans contracted by resolution financing arrangements of other Member States included in the group resolution.
- (9) All proceeds and other benefits that arise from the use of the Resolution Fund and resolution financing arrangements of other Member States included in the group resolution shall be distributed in accordance with their contributions under the financing plan referred to in paragraph (2) of this Article.

Use of deposit guarantee schemes in the context of resolution

Article 154

- (1) In the case of the application of the resolution action that continues to enable depositors to have access to deposits, the Central Bank may, after obtaining an opinion from the Deposit Protection Fund, decide that the Deposit Protection Fund shall be liable for:
- 1) when the bail-in tool is applied, the amount by which depositors' covered deposits would have been written down in order to absorb the losses in a credit institution in accordance with Article 97 paragraph (1) item 1) of this Law, had the covered deposits been included within the scope of bail-in and been written down to the same extent as creditors with the same level of priority in accordance with the law governing bankruptcy proceedings of credit institutions; or
 - 2) the amount of losses that covered depositors would have suffered had their loss been proportionate to the losses suffered by creditors with the same level of priority in accordance with the regulations governing bankruptcy proceedings of credit institutions when one or more resolution tools are applied, with the exception of the bail-in tool.
- (2) When carrying out resolution proceedings, the liability of the Deposit Protection Fund shall not be greater than the amount of losses it should incur in the case of bankruptcy proceedings against the credit institution.
- (3) When the bail-in tool is applied, the Deposit Protection Fund shall not be required to recapitalize the credit institution or bridge credit institution in accordance with Article 97 paragraph (1) item 2) of this Law.
- (4) Where the valuation referred to in Article 138 of this Law determine that the Deposit Protection Fund's

contribution was greater than the net losses it would have incurred in bankruptcy proceedings, the Deposit Protection Fund shall be entitled to the payment of the difference from the Resolution Fund in accordance with Article 139 of this Law.

- (5) The amount by which the Deposit Protection Fund is liable in accordance with paragraphs (1) and (2) of this Article shall be determined by the application of the provisions of Article 44 of this Law.
- (6) Contribution of the Deposit Protection Fund for the purposes of paragraph (1) of this Article shall be paid in cash.
- (7) Where eligible deposits of the credit institution under resolution are transferred to another entity through the sale of business tool or the bridge credit institution tool, the depositors shall have no claim against the Deposit Protection Fund in relation to any part of their deposits not transferred from the credit institution under resolution, provided that the amount of funds transferred is equal or greater than the aggregate coverage level provided for in accordance with the regulation governing deposit protection.
- (8) Where the funds of the Deposit Protection Fund are used in accordance with paragraphs (1) to (7) of this Article and are subsequently reduced to less than two thirds of the target level of the Deposit Protection Fund, the rate of the premium shall be increased to the level allowing for reaching the target level referred to in Article 148 paragraph (1) of this Law within six years.
- (9) When carrying out resolution proceedings, the liability of the Deposit Protection Fund may not be exceed 50% of the target level set in accordance with the law governing deposit protection, or the losses that would be incurred in bankruptcy proceedings against the credit institution under resolution.

XIII. PENALTY PROVISIONS

Misdemeanours by credit institutions and group members

Article 155

- (1) A pecuniary fine ranging between 1% and 10% of the infringed protected value shall be imposed for a misdemeanour against a legal person, where:
 - 1)it fails to provide, upon the Central Bank's request, all necessary assistance and submit all information necessary for drawing up, revision and implementation of resolution plan (Article 20 paragraph (1));
 - 2)it fails, within 8 days as of the date the change was made, to notify the Central Bank of any change to the legal or organisational structure, to the business or to the financial position or any other change which could require a change to the plan (Article 20 paragraph (3));
 - 3)it fails to prepare or update on a regular basis a list of all financial contracts to which it is a party (Article 20 paragraph (4));
 - 4)it fails to meet the obligations referred to in Article 20 paragraphs (1) and (4) of this Law for the members of that group (Article 20 paragraph (6));
 - 5)it fails to deliver to the Central Bank, within one month as of the receipt of the decision referred to in Article 25 paragraph (4) of this Law, a plan to comply with the imposed action (Article 25 paragraph (8));
 - 6)it fails to, within three days as of the date that the requirements laid down in Article 34 paragraph (1) of this Law have been met, inform the Central Bank thereof (Article 35 paragraph (4));
 - 7)it fails to publish the decision to initiate resolution proceedings and each subsequent decision implementing the decision to initiate resolution proceedings on its website on the same day of the receipt of such resolution or decision (Article 41 paragraph (2));
 - 8)it fails to ensure that a contract concluded with a third-country person includes a provision by which the liability arising from that contractual relationship may be subject to write down or conversion and that a creditor or a counterparty agrees to the reduction of the principal or outstanding amount due, by means of conversion or cancellation of that liability in case of bail-in tool (Article 108 paragraph (1));
 - 9)it fails to pay, within a prescribed time limit, ex-ante contributions to the Resolution Fund (Article 149 paragraph (1));
 - 10)it fails to pay ex-post contributions to the Resolution Fund within the amount and time limits prescribed by

the Central Bank (Article 150 paragraph (2));

- (2) Within the meaning of paragraph (1) of this Article, the infringed protected value means maintaining financial system stability and protecting client assets, which is, for the purposes of misdemeanour proceedings expressed as net income of the credit institution recorded in the business year preceding the year when the misdemeanour was committed, and is disclosed in the annual financial statement of that credit institution.
- (3) By way of derogation from paragraph (2) of this Article, if a misdemeanour has been committed by a credit institution which is a subsidiary undertaking of a parent undertaking in Montenegro, the relevant net income shall be determined based on consolidated annual financial statement of the ultimate parent undertaking in Montenegro.
- (4) For the misdemeanour specified in paragraph (1) of this Article, a responsible person in a legal person shall also be imposed a pecuniary fine in the amount ranging from EUR 5,000 to EUR 20,000.
- (5) For misdemeanours committed for gain that resulted in property benefit, a legal person and a responsible person in a legal person shall be imposed a pecuniary fine in the amount which is twice the amount of the fine prescribed for that misdemeanour.

Misdemeanours by other persons

Article 156

- (1) A pecuniary fine in the amount ranging from EUR 5,000 to EUR 20,000 shall be imposed against an independent valuer-legal person where it fails to update the report referred to in Article 45 paragraph (5) item 2) of this Law with an analysis and an estimate of the market value of the assets and liabilities of the credit institution or a legal person referred to in Article 3 items 2), 3) and 4) of this Law (Article 45 paragraph 6);
- (2) A pecuniary fine in the amount ranging from EUR 1,000 to EUR 2,000 shall be also imposed against an independent valuer-natural person for the offence specified in paragraph (1) of this Article.
- (3) A pecuniary fine in the amount ranging from EUR 1,000 euros to EUR 2,000 shall be imposed against members of the supervisory board, management board and other persons with special powers and responsibilities in a credit institution who have been removed from office, where:
 - 1) they fail to provide the resolution administration and its assistants immediate access to all business and other documentation of the credit institution and fail to prepare a report on the transfer of operations to the resolution administration (Article 64 paragraph (1));
 - 2) they fail to provide the resolution administration or its individual members with all explanations or additional reports on the operations of the credit institution (Article 64 paragraph (2)).

Public disclosure of information on misdemeanours by credit institutions and responsible persons in credit institutions

Article 157

- (1) The Central Bank shall, without delay, publish on its official website information on any final and binding penalties imposed on a credit institution and responsible persons in a credit institution, in a misdemeanour proceedings for infringing the provisions of this Law or regulations adopted pursuant to this Law, initiated upon a request of the Central Bank as the responsible authority and misdemeanours for which the Central Bank has issued a misdemeanour warrant in accordance to the law governing the misdemeanours.
- (2) By way of derogation from paragraph (1) of this Article, the Central Bank shall publish the decisions on penalties imposed on a credit institution and responsible persons in a credit institution on an anonymous basis, in any of the following circumstances:
 - 1) where the penalty is imposed on a responsible person in a credit institution, and the Central Bank assesses that the publication of personal data is disproportionate to the determined misdemeanour;
 - 2) where publication would jeopardise the stability of financial markets or there is an ongoing criminal investigations;
 - 3) where publication would cause disproportionate damage that can be determined to the credit institutions or responsible persons.

- (3) By way of derogation from paragraph (2) of this Article, where it assesses that the conditions for publication of the decision in the manner referred to in paragraph (1) of this Article will be met within a reasonable period of time, the Central Bank may postpone the publication of the decision on misdemeanour penalties imposed on credit institutions and responsible persons in credit institutions until such conditions are met.
- (4) Information referred to in paragraphs (1) and (3) of this Article shall remain on the official website of the Central Bank for a period of at least five years as of the day of publication.
- (5) Information that are deemed confidential in accordance to this Law shall not be published in the manner laid out in paragraphs (1) and (2) of this Article.

XIV TRANSITIONAL AND FINAL PROVISIONS

Implementing regulations

Article 158

The regulations for the implementation of this Law shall be adopted by 30 April 2021.

Transitional period for reaching the target level of the resolution fund

Article 159

- (1) Credit institutions shall make the first payment of ex-ante annual contribution to the Resolution Fund no later than 31 July 2022.
- (2) The assets of the Resolution Fund in accordance with Article 148 paragraph (1) of this Law shall reach at least 1% of the amount of covered deposits of all the credit institutions licensed by the Central Bank, in accordance with the audited financial statements for the previous year until 31 July 2031 at the latest.
- (3) During the period referred to in paragraph (1) of this Article the contributions to the Resolution Fund raised in accordance with Article 146 of this Law shall be spread out in time as evenly as possible until the target level is reached.
- (4) By way of derogation from paragraph (3) of this Article, the Central Bank may opt, given the phase of the business cycle and the impact procyclical contributions may have on the financial position of contributing credit institutions, for some other way of spreading out the contributions to reach the target level of the resolution fund over the period referred to in paragraph (1) of this Article.
- (5) By way of derogation from paragraph (1) of this Article, the Central Bank may extend the period referred to in paragraph (1) of this Article for a maximum of four years if the Resolution Fund has in the period referred to in paragraph (1) of this Article made cumulative disbursements in excess of 0.5% of covered deposits of all the credit institutions licensed by the Central Bank, in accordance with the audited financial statements for the previous year.

Establishment of records on financial contracts

Article 160

Credit institutions shall establish records on all financial contracts referred to in Article 20 paragraph (4) of this Law within six months following the entry into force of this Law.

Resolution plans

Article 161

The Central Bank shall draw up the initial resolution plans in line with the provisions of this Law within six months as of the day of application of this Law.

Resolution of investment firms

Article 162

- (1) The provisions of this Law governing the resolution of credit institutions shall apply to the resolution of investment firms until a law governing the resolution of investment firms is adopted.
- (2) The resolution authority of investment firms shall be the Capital Market Authority.

Transitional period for conditions for funding from alternative financing sources

Article 163

By way of derogation from Article 69 paragraph (2) and Article 96 paragraph (2) of this Law, during the period from the commencement of application of this Law up to the end of 2024, it shall be considered that the conditions for funding from alternative financing sources through the use of government financial stabilisation tools or the use of the Resolution Fund under Article 69 paragraph (2) item 1) or Article 96 paragraph (2) item 1) of this Law have been met, where the shareholders, the holders of relevant capital instruments and eligible liabilities contributed to the coverage of losses and recapitalisation through write down, conversion or otherwise, in the amount equal to an amount not less than:

- 1) 5% of total liabilities, including own funds of the credit institution under resolution in accordance with the calculation at the time when the resolution action was taken pursuant to the valuation carried out in accordance with Article 44 of this Law – for the period from the commencement of the application of this Law up to the end of 2022;
- 2) 6% of total liabilities, including own funds of the credit institution under resolution in accordance with the calculation at the time when the resolution action was taken pursuant to the valuation carried out in accordance with Article 44 of this Law – for 2023;
- 3) 7% of total liabilities, including own funds of the credit institution under resolution in accordance with the calculation at the time when the resolution action was taken pursuant to the valuation carried out in accordance with Article 44 of this Law – for 2024.

Deferred application

Article 164

Provisions of Article 13 paragraphs (3) and (4), Article 14 paragraph (5), Article 16, Article 17, Articles 21 to 24, Article 25 paragraph (4) item 5), Article 27, Article 28, Article 31 paragraph (9), Article 32, Article 33, Article 35 paragraph (7) item 5), Article 36 paragraph (5) items 7) and 8), Articles 37 to 40, Article 48 paragraph (2) item 3) and paragraphs (5), (6) and (7), Article 52, Article 77 paragraph (4), Article 95 paragraph (4), Article 96 paragraph (7), Article 104, Article 110, Article 113 paragraph (3) item 4) indent 2) and paragraph (4) item 2), Article 115 paragraph (6), Article 116, Article 117, Articles 124 to 128, Article 130, Article 131 paragraph (4), Articles 132 to 135, Article 152 and Article 153 of this Law shall apply as of the date of Montenegro's accession to the European Union.

Entry into force

Article 165

This Law shall enter into force on the eighth day following the day of its publication in the Official Gazette of Montenegro, and it shall apply as of 1 January 2022.