Pursuant to Article 44 paragraph (2) item 3) of the Central Bank of Montenegro Law (OGM 40/10, 6/13, 70/17) and Article 124 paragraph (5) of the Law on Credit Institutions (OGM 72/19), the Council of the Central Bank of Montenegro, at its meeting held on 28 December 2020, passed the following

DECISION
ON REMUNERATION IN CREDIT INSTITUTIONS

I. GENERAL PROVISIONS

Subject matter

Article 1

(1) This Decision governs the basic principles for the remuneration policies, the rules, procedures and criteria related to remuneration policies in a credit institution, including also criteria for determining categories of employees who have a material impact on the risk profile of the credit institution and the manner of reporting to the Central Bank of Montenegro (hereinafter: the Central Bank) on the remuneration.

Employees who have a material impact on the risk profile of the credit institution

Article 2

(1) An employee who has a material impact on the risk profile of the credit institution (hereinafter: the employee), within the meaning of this Decision, shall be a natural person who, based on an employment contract or other contract concluded with the credit institution, performs certain activities for the credit institution, including also a member of the supervisory board of the credit institution, and for whom it has been identified based on the criteria set out in this Decision that may have material impact on the risk profile of the credit institution.

(2) The provisions of this Decision shall also apply to a persons who are, based on the employment contract or other contract concluded with the outsourcing provider that is a member of the group of credit institutions, directly involved in the provision of such services, and who may have material impact on the risk profile of that credit institution.

Remuneration

Article 3

(1) Remuneration, within the meaning of this Decision, means all forms of payments and benefits on gross basis, monetary or non-monetary, awarded directly to an employee by the credit institution, and they shall also include indirect payments and benefits provided to an employee of the credit institution by the parent undertaking of the credit institution or other related undertakings of the credit institution.

(2) Dividends received by an employee as shareholder of a credit institution shall not be considered remuneration within the meaning of paragraph (1) of this Article.

(3) Remuneration shall consist of fixed and variable remuneration.

Deferral and retention of remuneration

Article 4

(1) Remuneration deferral, within the meaning of this Decision, means a contractual clause under which variable remuneration is not paid immediately after the assessment period.

(2) Remuneration shall be deemed to be deferred, within the meaning of paragraph (1) of this Article, if:

1) remuneration is not paid out or instruments are not vested to the employee, and
2) a malus clause has been contracted.

(3) Deferral period shall mean the period of time between the award and the vesting of the variable remuneration during which an employee is not the legal owner of the remuneration awarded.

(4) A deferral period shall start with the payment of the portion of the variable remuneration component that is not deferred or the vesting of instruments that are not subject to deferral, if the total payment of variable remuneration is deferred, a deferral period starts on the date of the award of variable remuneration, and a deferral period shall end with the payment of the last portion of the deferred variable remuneration component or the last vesting of instruments that are subject to deferral.

(5) Remuneration retention, within the meaning of this Decision, means a contractual clause under which an employee agrees not to sell or otherwise access variable remuneration that has been already vested and paid out in the form of instruments during a prearranged period.

(6) Retention period, within the meaning of this Decision, means a period of time during which an employee shall retain variable remuneration paid out in the form of instruments.

(7) A retention period referred to in paragraph (6) of this Article shall start with the vesting of instruments, and if instruments are subject to deferral, a retention period starts with the vesting of these instruments for each deferred portion of remuneration, and during the retention period, an employee may not sell or otherwise access those instruments.

Definitions

Article 5

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

1) **bonus pool** means the highest amount of variable remuneration that may be awarded in the remuneration award process set at the level of the credit institution or a credit institution's organisational unit;
2) **accrual period** means a period for which performance of an employee, an organisational unit and a credit institution is assessed and measured for the purpose of determining the variable remuneration of employees;
3) **award** means the granting of variable remuneration for a specific performance accrual period independently of the actual point in time when the awarded amount is paid;
4) **instruments** means those financial instruments or other instruments referred to in Article 39 paragraph (3) of this Decision;
5) **share-linked instruments** means those instruments whose value is based on the market price, or where market price is unavailable, the value of such instruments is based on their fair value;
6) **malus** means a contractual clause under which an employee agrees that a credit institution is not obliged to pay out or vest a part of the deferred unpaid variable remuneration or the whole of the deferred unpaid variable remuneration if the previously assumed risks lead to a downturn in performance or subdued financial performance of the credit institution;
7) **clawback** means a contractual clause under which an employee is obliged to return ownership of an amount of variable remuneration, either paid out or vested, to the credit institution if the previously assumed risks lead to a downturn in performance or subdued financial performance, and such provision may be contracted for deferred and non-deferred variable remuneration;
8) **vesting** means the effect by which the employee becomes the legal owner of the variable remuneration awarded, independent of the instrument which is used for the payment or if the payment is subject to additional retention periods or clawback arrangements;
9) **risk profile** means the measure or assessment of all risks a credit institution is or might be exposed to in its operation;
10) **risk culture** means norms, attitudes, competencies and behaviour related to risk awareness, risk taking and risk management as well as controls based on which risk related decisions are adopted;
11) **risk appetite** means the level and type of risk a credit institution is willing to take within its ability of risk taking to accomplish its strategic objectives;
12) **extraordinary public financial support** means state financial support which is granted in accordance with the law governing the control of public financial support for the purpose of maintaining or restoring sustainability, liquidity or solvency of a credit institution or a group of which the credit institution is a part.

II. ESTABLISHMENT, IMPLEMENTATION AND REVIEW OF REMUNERATION POLICY

Principle of proportionality

Article 6

(1) A credit institution shall, when establishing the remuneration policy, apply the principle of proportionality when meeting the obligations set out in Articles 7 to 42 and Article 45 of this Decision, taking into account its size, internal organisation, nature, scale and complexity of its business activities.

(2) When applying the principle of proportionality, a credit institution shall establish remuneration policy which is aligned to its business strategy, objectives, values and long-term interest of the credit institution considering its risk profile, risk appetite and financial position of the credit institution.

(3) Before remuneration policy is established in accordance with paragraphs (1) and (2) of this Article, a credit institution shall determine employees that have a material impact on the risk profile of the credit institution, the maximum ratio between the variable and fixed components of total remuneration in accordance with Article 22 of this Decision having its head office in Montenegro and which is in the scope of prudential consolidation, including employees in the subsidiaries which are not subject to the application of this Decision, provided that these employees have a material impact on the group's risk profile.

Powers in the implementation of remuneration policy

Article 7

(1) With regard to the remuneration policy, the supervisory board of a credit institution (hereinafter: the supervisory board) shall:

1) approve exemptions from the established remuneration policy rules made for employee,
2) adopt the decision on the maximum amount of variable remuneration which is determined for all employees in the business year for a certain accrual period,
3) on individual basis, adopt the decision on the remuneration for the members of the management board of the credit institution (hereinafter: the management board) and adopt the decisions and oversees the implementation of the decisions on incentive schemes for senior management in the credit institution,
4) adopt the decision on the reduction or non-payment of variable remuneration to employees, including the application of malus or clawback clauses in case of a significant downturn in performance or losses of the credit institution in accordance with Article 37 of this Decision;
5) adopt the decision on awarding the severance payments, including the maximum amount or criteria for the determination of such amounts that may be awarded as severance payments to employees.

(3) The management board may, in accordance with the remuneration policy establish remuneration for the employees on group basis.

Information for the general meeting of credit institution

Article 8

(1) By way of derogation from Article 7 this Decision, where a credit institution's Articles of Association established that the general meeting of a credit institution approves the remuneration policy and that it adopts the decisions related to the remuneration of management board members, including the amounts of severance payments which may be awarded to management board members or the criteria for the determination of such amounts, the supervisory board shall provide the general meeting of the credit institution with the decision proposals and information necessary for the adoption of that decision.

(2) In case referred to in paragraph (1) of this Article, for the purposes of determining the maximum amount of variable remuneration, the supervisory board shall submit to the general meeting in timely fashion a detailed information regarding remuneration policies and decision-making processes, particularly regarding the types, main characteristics and objectives of remuneration and their alignment with the business strategy and risk management strategy.

(3) The information referred to in paragraph (2) of this Article shall in particular contain data on the following:
1) individual remuneration components;
2) features and objectives of the award packages and their alignment with the business strategy and the risk management strategy, including risk appetite, as well as information needed for adjustment of variable remuneration with risks referred to in Article 31 of this Decision.

Roles of credit institution’s control functions and other organisational units in the establishment and implementation of remuneration policy

Article 9

(1) Organisational unit responsible for the human resources shall participate in the drawing up and the evaluation of the remuneration policy including the remuneration structure, remuneration levels and incentive schemes, in order to ensure adequate structure of employees of the credit institution, and give adequate proposals and reports thereof to the credit institution's relevant bodies and functions for the decision-making purposes.

(2) The risk control function shall participate in the following:
1) the determination of appropriate criteria for the adjustment of variable remuneration depending on the performance of the credit institution and risks to which it is exposed, including malus and clawback;

2) the assessment of the manner in which the variable remuneration structure affects the credit institution's risk profile and culture; and
3) the assessment of risk adjustment data together with the remuneration committee.

(3) The compliance function shall analyse the impact of the remuneration policy on the credit institution's compliance with legislation and risk culture.

(4) The internal audit function shall carry out an independent review of the implementation and effects of the credit institution's remuneration policy on risk profile of the credit institution and the way remuneration policy is implemented.

Remuneration policies in group

Article 10

(1) A parent credit institution having its head office in Montenegro which is a parent undertaking in a group of credit institutions in Montenegro shall establish for that group a remuneration policy at group level.

(2) A credit institution member of the group referred to in paragraph (1) of this Article shall establish a remuneration policy in line with the remuneration policy at a group level.

(3) When establishing a remuneration policy referred to in paragraph (1) of this Article, a parent credit institution in Montenegro shall take account of the following:

1) the size, internal organisation and the nature, scale and complexity of activities of subsidiaries, taking account of the level of risk that an individual subsidiary poses for that group of credit institutions;
2) possible differences between business models of the parent credit institution and its subsidiaries;
3) possible differences between management systems of the parent credit institution and its subsidiaries;
4) business activities in other financial sectors, if members of the group of credit institutions in Montenegro perform activities outside the scope of the Law on Credit Institutions (OGM, 72/19) (hereinafter: the Law); and
5) other circumstances which the credit institution deems relevant.

(4) If provisions of other regulations which a subsidiary in the scope of consolidation is subject to regulate remuneration policy requirements in a manner other than provided for in this Decision, the provisions of this Decision shall apply to that subsidiary only in the part governing the ratio between the variable and fixed components of total remuneration.

Policy implementation review and compliance assessment

Article 11

(1) Supervisory board or remuneration committee of the supervisory board shall review at least on an annual basis the compliance of the remuneration policy with the credit institution's policies and procedures for remuneration, and monitor its implementation.

(2) When reviewing and monitoring the remuneration policy referred to in paragraph (1) of this Article, the following shall be in particular considered:

1) whether remuneration pay-outs are aligned with the remuneration policy and whether they adequately reflect the credit institution's risk profile, long-term interests and other objectives;
2) whether they are in line with Article 167 paragraph (2) of the Law and whether they limit the credit institution's ability to maintain or increase its capital;
3) whether employees meet the criteria based on which they have been identified as employees that have a material impact on the risk profile of the credit institution in line with the provisions of this Decision; and

(3) In addition to the activities referred to in paragraph (2) of this Article, the supervisory board or remuneration committee of parent credit institution in group of credit institution in Montenegro shall at least on annual basis review whether the established remuneration policy at the group level is consistently applied across the group.

(4) If deficiencies in the remuneration policy or its implementation are identified in the course of the review of the remuneration policy, the supervisory board shall adopt a remedial plan without delay, and the management board shall implement such plan.

(5) By way of derogation from paragraph (1) of this Article, a supervisory board of the credit institution that is not significant may entrust the activities referred to in paragraph (1) of this Article to an outsourcing provider based on the outsourcing agreement in accordance with the Law and the regulation governing the outsourcing.

(6) The internal audit function of the parent credit institution in Montenegro shall review the compliance of the remuneration policy with regulations, policies of the group, procedures and internal rules, and assess the compliance of its implementation for a group of credit institutions in Montenegro.

(7) A credit institution that is not significant, but is a subsidiary in a group of credit institutions in Montenegro may entrust the review referred to in paragraph (6) of this Article to the internal audit function of the parent credit institution in Montenegro, provided that the following conditions are met:

1) the subsidiary is included in the review on a consolidated basis; and
2) review results are available to the supervisory board of the subsidiary.

(8) A significant credit institution means a significant credit institution specified in a separate regulation of the Central Bank.

III. REMUNERATION POLICY PRINCIPLES AND RULES

Remuneration policy rules

Article 13

(1) The remuneration policy in a credit institution should be clear, well-documented and available to all employees, as well as it should:

1) be consistent with and promote sound and effective risk management or it should not encourage risk-taking that exceeds the level of its tolerated risk;
2) be in line with the credit institution's general strategy, objectives, values and long-term interests and incorporate measures to prevent conflicts of interest;
3) encourage the credit institution's ability to maintain or increase the amount of its capital; and
4) provide for an effective framework for performance measurement, risk adjustment and the linkages of performance to reward of employees;
5) be in line with long-term interests of credit institution's shareholders.

(2) It shall be deemed that the remuneration policy encourages risk-taking that exceeds the level of tolerated risk of the credit institution referred to in paragraph (1) item 1) of this Article if:

1) there is an inappropriate ratio between variable and fixed components of total remuneration; or
2) payments related to the early termination of an employment contract do not reflect overall performance results of the employees or do not take account of the behaviour of the employees contrary to regulations or internal acts of the credit institution.

(3) A credit institution's remuneration policy shall contain the following:

1) the performance objectives for the credit institution, business areas and employees;
2) the methods for the measurement of performance, including the performance criteria for control functions, organisational units and employees;
3) all types of remuneration, including the structure of variable remuneration;
4) instruments in which variable remuneration is awarded, including the potential conflicts of interest that might be caused by the pay-out of instruments as part of the variable remuneration;
5) measures to reduce variable remuneration; and
6) remuneration framework for persons in charge of concluding contracts and performing legal acts in the name and for the account of the credit institution to ensure that remuneration pay-outs do not encourage excessive risk taking or mis-selling of products of that credit institution in any manner whatsoever.

(4) A credit institution shall identify circumstances and situations that may lead to potential conflicts of interest with regard to the remuneration policy, particularly with regard to the pay-out of variable remuneration in instruments, and take measures to prevent such conflicts of interest, including in particular:

1) the establishing of objective award criteria based on the internal reporting system and appropriate controls; and
2) acting in line with regulations governing the capital market, particularly the provisions prohibiting insider dealing and market manipulation.

(5) A credit institution shall introduce employees with the provisions of the remuneration policy and implementing procedures.

Criteria for determining fixed and variable remuneration

Article 14

In its remuneration policy, a credit institution shall establish the criteria for determining fixed and variable remuneration components whereby:

1) fixed remuneration primarily reflects adequate experience and responsibilities arising from a description of an employee's job position,
2) variable remuneration reflects employee' performance that is within the level of risk acceptable to the credit institution and which exceeds the standard expected in performing that job position.

Fixed remuneration

Article 15

(1) Remuneration shall be considered fixed if:

1) it is based on predetermined criteria;
2) it reflects the level of adequate experience, seniority of employees in accordance with the Law and other criteria set out in the credit institution's internal acts;
3) it is transparent in case of the award to the individual employee;
4) it is paid out on a continual basis over a period tied to the position of employees in the organisational structure, the powers and responsibilities arising from that position;
5) it is permanent, and it is changed due to the changes of regulations governing the employment relationships or the employment contract;
6) it cannot be reduced, temporarily suspended in full or partially except in accordance with regulations governing the employment relationships and other regulations;
7) it does do not provide incentives for risk assumption;
8) it does not depend solely on performance; and
9) it does not depend on a discretionary decision.

(2) The following types of remuneration shall also be considered fixed:

1) additional remuneration that most employees may receive on the basis of predetermined criteria including, employees' insurance policies, travel allowances and similar remuneration;

2) remuneration paid to expatriate employees considering the cost of living and tax rates in a different country;
3) allowances used to increase fixed remuneration of the employee in situations where employees work abroad on account of the differences in the amount of remuneration that they would receive for a comparable position in Montenegro, if:
   - the allowance is paid to other employees in a similar situation,
   - the allowance is awarded for the purpose of its adjustment to the amount of remuneration the relevant market,
   - it is based on predetermined criteria.

Allowances

Article 16

(1) Allowances, within the meaning of this Decision, shall mean additional and ancillary payments or other benefits which are part of fixed or variable remuneration.

(2) Where a credit institution allocates allowances to the fixed remuneration, it shall duly document the reasons for establishing allowances as fixed remuneration if:
1) they are paid to employees;
2) the ratio between the variable and fixed components of total remuneration would exceed the allowed ratio referred to in Article 22 paragraphs (5) and (6) of this Decision; and
3) they are not paid based on the performance assessment criteria.

(3) Allowances which are paid to an employee based on its position in the credit institution and its powers and responsibilities, they may be allocated to the fixed remuneration, provided that they meet, in addition to the requirements referred to in Article 15 of this Decision, all of the following requirements:
1) they are awarded until the occurrence of material changes occur regarding the position of the employee and its powers and responsibilities,
2) the amount of allowances depends solely on powers and responsibilities; and
3) employee having the same position and the same powers and responsibilities would be entitled to a comparable allowance.

Variable remuneration

Article 17

(1) Variable remuneration means remuneration depending on the performance of employees, an organisational unit, a credit institution or on other contractual criteria.

(2) Variable remuneration referred to in paragraph (1) of this Article shall include severance payments exceeding the amount prescribed by the law, discretionary pension benefits referred to in Article 41 of this Decision, retention bonuses, compensation or buyout from a contractual obligation based on the termination of contractual relationship

with the previous employer in accordance with the law, long-term incentive plans and all other forms of remuneration which are not fixed.

(3) The award of variable remuneration, including long-term incentive plans, which are based on a past assessment period of at least one year, but also depends on future performance conditions, a credit institution shall:

1) set additional performance conditions that have to be met after the award for the variable remuneration to be vested;
2) assess that the conditions for the vesting of variable remuneration have been met;
3) apply provisions regarding malus, including the reduction of variable remuneration up to 100% if the additional performance criteria referred to in item 1) of this paragraph have not been met;
4) set the end of the deferral period at the earliest one year after the end of the last assessment period;
5) for the calculation of the ratio between the variable and fixed components of total remuneration, take into account the total amount of the variable remuneration awarded in the business year for which the variable remuneration, including long-term incentive plans, was awarded.

(4) Where a remuneration plan, including long-term incentive plans, is exclusively based on future performance conditions, variable remuneration shall be awarded after the conditions referred to in paragraph (3) items 1) and 2) of this Article have been met.

(5) When determining the ratio between the variable and fixed components of total remuneration, remuneration referred to in paragraph (4) of this Article shall be included in the business year prior to their award, and the value of variable remuneration awarded in instruments shall be determined according to their market price or the fair value identified at the time of the adoption of potential variable remuneration payment.

Severance pay

Article 18

(1) Severance pay shall be payments related to the termination of the employment contract as prescribed by the law governing the employment relationships, the collective agreement and other regulations governing the employment relationships.

(2) Severance pay, within the meaning of this Decision, shall also refer to payments made by the credit institution in cases when the credit institution:

1) terminates the employment contract with an employee due of a failure of the credit institution;
2) terminates the employment contract with an employee following a material reduction of the credit institution’s activities or where a credit institutions transfers certain activities to other undertaking without taking over such employee; and

3) agrees with an employee on an out-of-court settlement, including an agreement between the employee and the credit institution on the termination of employment relationship.

(3) The following cases shall be considered as a failure of a credit institution referred to in paragraph (2) item 1) of this Article:

1) the credit institution has benefited from extraordinary public financial support or is subject to an early intervention or resolution measures;
2) a bankruptcy or winding up proceedings have been opened in the credit institution; and
3) the credit institution has sold business area or has reduced the business activity due to significant losses in operations.

(4) When determining the amount of severance pay, a credit institution shall take into account the performance of the employee during a specific period and appropriately apply provisions on the reduction of variable remuneration referred to in Article 37 of this Decision.

(5) A credit institution shall not award severance pay to the employee if the employee:

1) as member of a management or supervisory board of a credit institution no longer meets the requirements for membership in these bodies prescribed by the Law;
2) has participated in activities or is responsible for conduct for such activities which resulted in significant losses for the credit institution; and
3) deliberately or by gross negligence contrary to internal rules, policies or procedures.

(6) The following types of severance pay shall not be considered to be variable remuneration employees, within the meaning of this Decision:

1) severance pay in the amount not exceeding the amount mandatory under the law governing employment relationships,
2) severance pay in the amount which is determined in the collective agreement or an internal act, and that is not granted on a discretionary basis;
3) indemnity arising from the unpaid severance pay paid out on the basis of a final judgment;
4) remuneration paid out in the case of termination of employment on the basis of contractual provision on the prohibition of competition, during the period of the prohibition, in the amount which does not exceed the amount of fixed remuneration that would be paid out during that time if the employee was employed in the credit institution; and
5) indemnity in case of judicial cancellation of employment contract on the basis of a final judgment.

Retention bonuses

Article 19

(1) Retention bonuses mean variable non-performance based remuneration awarded under the condition that employees remain employed with the credit institution for a predetermined period of time or period that could be determined by the occurrence of established circumstances.

(2) A credit institution may use retention bonuses referred to in paragraph (1) of this Article during restructuring and resolution of a credit institution.

(3) Where a credit institution awards retention bonuses to retain employees, it must comply with the provisions of this Decision on variable remuneration, including pay-out, deferral, award of variable remuneration in instruments and variable remuneration retention and reduction (malus and clawback), except in the part referring to the adjustment of variable remuneration to risks when measuring performance prior to award.

(4) Retention bonuses may not be awarded to compensate for performance-related remuneration.

(5) Retention bonuses shall be awarded after the expiry of the period referred to in paragraph (1) of this Article.

(6) For the purpose of setting the ratio between the variable and fixed components of total remuneration, the amount of the retention bonus shall be taken into account for each year during the period referred to in paragraph (1) of this Article and this ratio shall be calculated by applying the principle of a pro-rata basis.

Guaranteed variable remuneration

Article 20

(1) Guaranteed variable remuneration means variable remuneration which can be awarded when hiring new employees and where the credit institution has a sound and strong capital base, taking into account own funds, combined capital buffer requirements and the result of internal capital adequacy assessment, and it shall be limited to the first year of employment.

(2) Guaranteed variable remuneration can be awarded either in cash or in instruments.

(3) A contractual obligation which obliges a credit institution to pay out to the employee a specific amount of variable remuneration, independent of performance, exclusively under the condition of maintaining the contractual relationship up to a specific date, shall be considered guaranteed payment of a specific amount of variable remuneration.

(4) A credit institution may only award the guaranteed variable remuneration to the same single employee once, and this requirement shall also apply to situations where an employee receives a new contract from the same or another undertaking in the group within the scope of prudential consolidation.

(5) The provisions of this Decision on malus and clawback arrangements shall not apply to the guaranteed variable remuneration nor shall they be taken into account when calculating the ratio between the variable and fixed components of the total remuneration for the first assessment period, and a credit institution may pay out the full amount of guaranteed variable remuneration in cash, without delay.

Compensation or buyout from previous employment contract

Article 21

(1) If remuneration related to compensation or buyout from a contractual obligation based on the employment contract with the previous employer is contracted by a credit institution with an employee, the credit institution shall align such remuneration with its long-term interests and take into account the conditions referred to in Article 20 paragraph (1) of this Decision.

(2) The provisions on variable remuneration specified in this Decision on deferral, retention, pay-out in instruments and clawback shall apply *mutatis mutandis* to remuneration related to compensation and buyout from contractual obligation referred to in paragraph (1) of this Article.

Ratio between the variable and fixed components of total remuneration

Article 22

(1) A credit institution shall set in its remuneration policy a maximum ratio between variable and fixed component of total remuneration.

(2) A credit institution shall ensure a sufficiently high portion of fixed component in total remuneration of employees to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component.

(3) The maximum ratio between the variable and fixed components of total remuneration of employees shall be calculated as the ratio between the variable component of remuneration that may be awarded as a maximum in a given assessment period and the fixed part of remuneration to be awarded in relation to the same assessment period.

(4) To set an appropriate ratio between the variable and fixed components of total remuneration of employees, a credit institution shall take into account:

1) the performance measurement and associated risk adjustments referred to in Article 31 of this Decision;

2) the length of the deferral and retention periods;
3) the nature, scale and complexity of its activities;
4) the types of risks to which it is exposed;
5) the category of an employee;
6) the position of an employee in the organisational structure and their powers and responsibilities; and
7) other elements the credit institution consider relevant for setting adequate ratio between the variable and fixed components of total remuneration.

(5) The ratio between the variable and fixed components of total remuneration shall be set independently of any potential variable remuneration reductions referred to in Article 37 of this Decision or changes in the prices of instruments in which variable remuneration may be paid out.

(6) A credit institution may set different ratios between the variable and fixed components of total remuneration for different organisational units, control and functions and different categories of employees and in exceptional and duly justified cases, for individual employees belonging to the same category.

(7) A credit institution shall set the ratio between the variable and fixed components of the total remuneration of an employee so that the amount of the variable remuneration component does not exceed 100% of the fixed remuneration component, if more stringent ratio between the variable and fixed components of the total remuneration has not been set in this Decision for certain categories of employees.

(8) The actual ratio between the variable and fixed components of total remuneration shall be calculated as the sum of all variable components of remuneration that have been awarded for the last assessment period divided by the sum of fixed components of remuneration awarded for the same period, and when the performance assessment is based on a multi-year assessment period, a credit institution may divide the maximum amount awarded at the end of the assessment period by the number of years of the assessment period.

(9) Remuneration awarded on the basis of a multi-year assessment period, within the meaning of paragraph (8) of this Article, means remuneration awarded on the basis of the performance assessment that is not performed every year.

Remuneration of employees engaged in control functions

Article 23

(1) Variable remuneration of employees engaged in control functions depends on the achievement of the results of their functions, independent of the performance of the business areas they control.

(2) The remuneration of employees engaged in control functions shall be determined as follows:

1) fixed remuneration may not account for less than two thirds of the employee's total remuneration; and
2) total fixed annual remuneration of the employee may not be less than the two-year average of the total fixed annual remuneration of the credit institution's employees included in the same remuneration group or employees performing activities of comparable scope, complexity and level of responsibility.

(3) Remuneration group referred to in paragraph (2) item 2) of this Article means the range between the lowest and the highest remuneration amount of a specific group of employees.

(4) The provision of paragraph (2) of this Article shall apply to a management board member or a senior management member who is also a person responsible for the operation of a control function.

(5) The criteria used for assessing the performance of employees engaged in control functions may be the tier 1 capital ratio, the non-performing loan ratio, the non-performing loan recovery rate, audit findings and other similar criteria and may be based, to some extent, on the performance of the credit institution as a whole.

Remuneration of the members of the supervisory board

Article 24

(1) A member of the credit institution’s supervisory board shall receive fixed remuneration, which shall include the fee for participating in the work and attending particular supervisory board meetings, including the related expenses.

(2) A credit institution may award and pay out variable remuneration to supervisory board member, whereby the award of variable remuneration and the risk adjustment procedure must be in line with the powers and responsibilities assigned to individual supervisory board members, the work tasks and the achievement of objectives linked to their functions.

(3) Where variable remuneration is awarded in instruments, a credit institution should undertake appropriate measures to ensure the independence of the supervisory board members, including setting retention periods up to the end of their terms of office.

Hedging against variable remuneration reduction or loss

Article 26

(1) A credit institution shall require employees to undertake not to carry out activities concerning hedging against variable remuneration reduction or loss, including

remuneration deferred and paid out for which the retained remuneration has been arranged, or make variable remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements.

(2) Employees shall be considered to have hedged against risk referred to in paragraph (1) of this Article if they:

1) enter into a contract which requires a counterparty to make direct or indirect payments to the employee that are linked to or commensurate with the amounts by which the employee's variable remuneration has been reduced; or
2) purchase or hold derivatives that are intended to hedge against losses associated with financial instruments received as part of variable remuneration.

(3) Employee shall be considered to have hedged against risk if they take out an insurance contract which enables remuneration based on the occurrence of the insured event.

(4) A credit institution shall establish and maintain efficient mechanisms to prevent hedging referred to in paragraph (1) of this Article, which in particular include a declaration of the employee that he or she will refrain from carrying out hedging activities or concluding insurances for the purpose of undermining the risk alignment effects in its operations

Ratio between variable remuneration and capital

Article 26

(1) A credit institution shall ensure that the total variable remuneration does not limit its ability to maintain or increase the amount of its capital taking into account its overall own funds, in particular the common equity tier 1 capital and the combined buffer requirement referred to in Article 165 of the Law and the restrictions on distributions referred to in Article 167 of the Law as well as the results of the internal capital adequacy assessment process.

(2) Variable remuneration referred to in paragraph (1) of this Article shall also include variable remuneration that may be awarded for a particular year and variable remuneration that will be paid out or vested in that year.

(3) A credit institution shall adequately include the impact of variable remuneration in its capital and liquidity planning and in its overall internal capital adequacy assessment process.

(4) A credit institution where the capital adequacy is at risk shall take the following measures:

1) reduce the maximum amount of variable remuneration, including the possibility of non-payment;
2) apply the provisions regarding malus; and

3) withhold the pay-out of net profit for that year and as needed for subsequent years.

(5) A credit institution taking measures referred to in paragraph (4) of this Article in a particular year may not compensate for the reduction of variable remuneration in later years.

Avoiding remuneration provisions

Article 27

(1) A credit institution may not pay out variable remuneration by avoiding the application of policies and procedures for paying out variable remuneration specified in this Decision, including the arrangements between the credit institution and third parties in which an employee has a financial or personal interest (hereinafter: avoidance of remuneration policies).

(2) Avoidance of remuneration provisions is considered to take place where:

1) variable remuneration other than guaranteed variable remuneration is awarded or vested although there has been no sustainable and risk-adjusted (ex-ante and ex-post adjustment) performance by an employee, organisational unit or credit institution or are inappropriate with regard to the financial position of the credit institution;
2) an employee receives payments from the credit institution or an undertaking within the scope of prudential consolidation which do not fall under the definition of remuneration within the meaning of this Decision, but are remuneration that incentivise risk assumption and avoid remuneration provisions;
3) fixed remuneration components are awarded as a fixed number of instruments;
4) adjustments to fixed remuneration components are frequently negotiated and adjustments are in fact made to align the remuneration with the performance of an employee;
5) allowances are awarded in an amount that is not justified in the underlying circumstances;
6) remuneration is labelled as payment for early retirement although that payment has the character of a severance pay, or the employee remains employed with the credit institution after such award is made; and
7) an employee is awarded fees in instruments or is enabled to purchase instruments which are not valued at market value or fair value in case of instruments which are not listed, and the added value is not taken into account in variable remuneration.

(3) Avoidance of remuneration provisions occurs also when a credit institution reduces or restructures variable remuneration in a particular year (e.g. in the context of recovery and resolution measures or other), provides compensation to employees for that reduction or restructuring in later years or by other payments, instruments or methods.

Criteria for identifying employees that have a material impact on the credit institution’s risk profile

Article 28

(1) An employee shall be deemed to have a material impact on a credit institution's risk profile where any of the following qualitative criteria are met:

1) the employee is a member of the supervisory board;
2) the employee is a member of the management board;
3) the employee is a member of senior management of the credit institution;
4) the employee is responsible and accountable for the activities of the individual control function;
5) the employee has responsibility for risk management within an organisational unit that represents at least 2% of the internal capital of the credit institution (hereinafter: material business unit);
6) the employee heads a material business unit;
7) the employee has managerial responsibility in one of the control functions referred to in item 4) of this paragraph or in a material business unit and reports directly to the employee referred to in item 4) or 5) of this paragraph;
8) the employee has managerial responsibility in a material business unit and reports directly to the employee who heads that unit;
9) the employee heads a function responsible for legal affairs, finance including budgeting, human resources, remuneration policy, information technology, or economic analysis;
10) the employee is responsible for, or is a member of, a body responsible for the management of individual risks other than credit risk and market risk;
11) with regard to credit risk exposures of a nominal amount per transaction which represents 0.5 % of the credit institution's Common Equity Tier 1 capital and is at least EUR 500,000, the employee:
    - is responsible for initiating new services or credit products, or their structuring, which can result in such credit risk exposures;
    - has authority to take or approve the decisions; or
    - is a member of a body which has authority to take the decisions referred to in indents 1 or 2 of this item;
12) the employee has authority to take or approve a decision on transactions on the trading book which in aggregate meet one of the following thresholds:
    - where the standardised approach is used, an own funds requirement for market risks which represents 0.5 % or more of the credit institution's Common Equity Tier 1 capital;
    - where an internal model-based approach is approved for regulatory purposes, 5% or more of the credit institution's internal value-at-risk limit for trading book exposures at a 99th percentile (one-tailed confidence interval);
13) the employee is a member of a body which has authority to take decisions set out in item 12) of this paragraph;

14) the employee has managerial responsibility for a group of employees who have individual authorities to commit the credit institution to transactions and either of the following conditions is met:
    - the sum of those authorities equals or exceeds a threshold set out in item 11) indent 1 and indent 2 or item 12 indent 1) of this paragraph;
    - where an internal model-based approach is approved for regulatory purposes, in accordance with the decision governing capital adequacy of credit institutions, those authorities amount to 5% or more of the credit institution's internal value-at-risk limit for trading book exposures at a 99th percentile (one-tailed confidence interval), while where the credit institution does not calculate a value-at-risk at the level of that employee the value-at-risk limits of all employees under the management of this employee shall be added up;
15) the employee has the authority to take or is a member of a body which has the authority to take decisions to approve or veto the introduction of new products;
16) the employee has managerial responsibility for an employee who meets one of the criteria set out in items 1) to 15) of this paragraph.

(2) Employees shall be deemed to have a material impact on a credit institution's risk profile where any of the following quantitative criteria are met:

1) the employee has been awarded total remuneration of EUR 35,000 or more in the preceding business year;
2) the employee is within the 3% of the number of employees, rounded up to the next integer, who have been awarded the highest total remuneration in the preceding business year;
3) the employee was in the preceding business year awarded total remuneration that is equal to or greater than the lowest total remuneration awarded in that business year to a member of senior management or meets any of the criteria in paragraph (2), items 1), 3), 5), 6), 8), 11), 12), 14) and 15) of this Article.

(3) At the request of the Central Bank, a credit institution shall explain the manner in which it determined employees based on the qualitative and quantitative criteria set out in paragraphs (1) and (2) of this Article and submit all relevant documentation.

(4) By way of derogation from paragraph (2) of this Article, an employee shall not have a material impact on the credit institution's risk profile who:

1) works and has authorities in an organisational unit which is not a material business unit; and
2) has no material impact on the risk profile of a material business unit through the activities carried out.

(5) When determining the material impact referred to in paragraph (4) item 2) of this Article, a credit institution shall take the objective criteria which take into account all relevant risk and performance indicators used by the credit institution to manage risks to which it is exposed, and the duties and authorities of the employee or category of employees and their impact on the credit institution's risk profile when compared with the

impact of the activities of employees identified by the criteria set out paragraph (1) of this Article.

(6) For the purpose of determining employees who have a material impact on credit institution's risk profile at the beginning of the current business year based on the quantitative criteria referred to in paragraph (2) of this Article, a credit institution shall take into account all monetary and non-monetary remuneration components awarded to an individual employee in the preceding business year, independent of the fact when remuneration was paid out.

Re-identification of employees having material impact of credit institution's risk profile

Article 29

(1) A credit institution shall annually perform and properly document the process of re-identification of employees having material impact on credit institution's risk profile in accordance with the qualitative and quantitative criteria set out in Article 28 of this Decision.

(2) The documenting of the process referred to in paragraph (1) of this Article shall include in particular:

1) the rationale underlying the re-identification of employees and the scope of its application;
2) the approach used to assess the risks emerging from adequate credit institution's strategies and activities;
3) the approach used to assess employees working in credit institution and subsidiaries within the scope of consolidation and branches of the credit institution, including branches located in third countries;
4) the powers and responsibilities of the different credit institution bodies and functions involved in the design, oversight, review and application of the re-identification process of employees;
5) results of the re-identification, including the number of employees, the number of employees identified for the first time as employees having material impact on the credit institution's risk profile, business tasks and activities and organisational unit in which employees work, personal information of employees; and
6) the rationale for employees for which the credit institution assessed that do not have a material impact on its risk profile in line with Article 28 paragraph (4) of this Decision.

(3) A credit institution shall periodically during the year review the fulfilment of the requirements for identifying potential new employees having a material impact on the credit institution's risk profile with regard to the qualitative criteria referred to in Article 28 paragraph (1) of this Decision, whereby employees identified on the basis of those criteria to have a material impact on the credit institution's risk profile for a period of at least three months in a business year shall be considered employees for that business year.

Employees’ identification process on an individual and consolidated basis

Article 30

(1) A credit institution which is a parent undertaking in a group of credit institutions in Montenegro shall ensure that employees are identified on a consolidated basis that have material impact on the group's risk profile by applying the criteria set out in Article 28 of this Decision and on the basis of consolidated information.

(2) The parent credit institution referred to in paragraph (1) of this Article shall ensure that all subsidiaries in the scope of prudential consolidation, including subsidiaries that are not credit institutions, and subsidiaries in third countries:

1) implement group remuneration policy and actively participate in the employees identification process at group level; and
2) submit information necessary to perform the identification of all employees at group level.

(3) The parent credit institution referred to in paragraph (1) of this Article shall perform the employees’ identification process for subsidiaries which are not credit institutions on an individual basis based on the information submitted by these subsidiaries.

(4) A credit institution which is not significant credit institution, but is included in the employees’ identification process on a consolidated basis, may delegate the employees’ identification process on an individual basis to the parent credit institution referred to in paragraph (1) of this Article.

Risk adjustment of variable remuneration

Article 31

(1) A credit institution shall adjust the variable remuneration for current and future risks taken (ex ante and ex post adjustments) to ensure that the incentives to take risks are balanced by incentives to manage risk.

(2) A credit institution shall perform the process of risk adjustment of variable remuneration when:

1) carrying out the performance measurement;
2) variable remuneration award; and
3) variable remuneration pay-out.

(3) For the purpose of adjusting variable remuneration referred to in paragraph (1) of this Article, a credit institution shall set appropriate criteria for assessing the performance, taking into account its strategy, risk profile and risk appetite as well as the results of comparison of performance with peers.

(4) Where a credit institutions determines the criteria referred to in paragraph (3) of this Article using the judgemental approaches, it shall:

1) outline parameters on which the judgement will be based;
2) document the risk adjustment process;
3) include control functions into that process;
4) take measures to prevent any potential conflict of interest;
5) conduct adequate checks and adjustments within a group of employees form the same organisational unit and control function; and
6) approve the assessments made by a control function or at an appropriate hierarchical level above the function making the assessment (e.g. at the remuneration committee, management board or supervisory board).

(5) A credit institution should adjust the time horizon of the risk and performance measurement with the business cycle of the credit institution in a multi-year framework.

(6) A credit institution should set the assessment period and the pay-out periods for remuneration at an appropriate length, differentiating between the remuneration which should be paid upfront and remuneration that should be paid after deferral and retention periods, taking into account the business activity and position of the category of employees.

Criteria for risk adjustment of variable remuneration

Article 32

The criteria for risk adjustment of variable remuneration shall include indicators that a credit institution uses for risk management purposes, taking into account methods applied in its internal capital adequacy assessment process (ICAAP) and internal liquidity adequacy assessment process (ILAAP), as well as information on complying with regulations and internal acts and results and findings of the internal audit.

Criteria for assessing performance with regard to variable remuneration

Article 33

(1) A credit institution shall set appropriate performance criteria for individual employees, organisational unit and the credit institution which do not incentivise excessive risk taking or mis-selling of products of that credit institution.

(2) Quantitative criteria for performance assessment may be:

1) risk-adjusted capital, liquidity and profit indicators;
2) capital indicators based on the data from financial statements;
3) data on risks from the internal capital adequacy assessment process;
4) budgets of individual organisational units, including the legal and human resources functions; and
5) other similar indicators.

(3) Quantitative criteria that refer to the operating efficiency (e.g. net profits, total revenues, productivity, expenses) or market indicators such as share price or return on equity may not be used, as a rule, as the only quantitative criteria for performance assessment.

(3) Qualitative criteria for performance assessment may be:

1) achievement of strategic targets;
2) customer satisfaction;
3) adherence to the risk management policy;
4) compliance with regulations and internal acts;
5) leadership;
6) team work;
7) creativity;
8) motivation and cooperation with other business units, internal control and corporate functions; and
9) other similar criteria.

Performance measurement and assessment

Article 34

(1) A credit institution shall adjust performance measurement to all risks it is or may be exposed, and it shall consider the costs of capital and liquidity, and where quantification of risk exposure is difficult (such as in the case of reputational or operational risk), the credit institution shall base its risk assessment on risk indicators, capital requirements or scenario analysis or other suitable proxies.

(2) In the case referred to in paragraph (1) of this Article, a credit institution shall differentiate between the risks which may be considered material to credit institution, organisational units and its employees.

(3) Where variable remuneration depends on performance, a credit institution shall base total amount of variable remuneration of employees on a combination of the assessment of the performance of an individual employee, taking into account quantitative and qualitative criteria and of the organisational unit concerned as well as on the overall results of the credit institution.

(4) A credit institution shall ensure that the performance assessment referred to in paragraph (3) of this Article includes a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the payment of variable remuneration takes place during a period which takes into account the credit institution's business cycle and any risks that the credit institution is or might be exposed to in its operation.

Award of variable remuneration

Article 35

(1) A credit institution shall set a maximum amount of variable remuneration for the period for which variable remuneration is awarded.

(2) Variable remuneration shall be awarded after the end of the assessment period, which shall be at least one year.

(3) When setting the maximum amount of variable remuneration referred to in paragraph (1) of this Article and awarding variable remuneration, a credit institution shall consider all types of risks, expected and unexpected losses and the ratio between the variable and fixed remuneration, the criteria for performance and risk assessment, the financial situation of the credit institution, including its capital adequacy and liquidity.

(4) The performance indicators referred to in paragraph (3) of this Article used by a credit institution to calculate the maximum amount of variable remuneration shall include long-term performance indicators and realised financial results.

Payment of variable remuneration

Article 36

(1) Prior to paying out variable remuneration, a credit institution shall perform a reassessment of performance in order to adjust variable remuneration to any risks that may have been identified after variable remuneration award.

(2) A credit institution may not pay out variable remuneration or vest right from instruments, including the deferred portion, unless it is sustainable and justified.

(3) Variable remuneration, within the meaning of paragraph (2) of this Article, shall be deemed to be sustainable if its payment does not jeopardise the credit institution's financial situation and the safety and stability of the credit institution's operation.

(4) Variable remuneration shall be considered justified, within the meaning of paragraph (2) of this Article, if it is based on the performance of the credit institution, the business unit and the individual employee concerned.

Variable remuneration reduction

Article 37

(1) In case of a significant performance deterioration or incurred losses, a credit institution shall reduce the total amount of variable remuneration and it shall consider the following:

1) reduction of remuneration in the current business year;

2) reduction of previously awarded remuneration which have been deferred and are still not paid out (by applying the malus arrangement); and
3) subsequent reduction of remuneration which have been previously awarded and paid out (by applying the clawback arrangement).

(2) Variable remuneration may be reduced through the application of the malus and clawback arrangements, whereby up to 100 % of the total variable remuneration may be subject to malus or clawback arrangements.

(3) In its remuneration policy and in the contract concluded with the employee, a credit institution shall define in more detail the terms under which malus and clawback arrangements apply, and it shall include in particular the following cases:

1) an employee has participated in activities that created significant losses for the credit institution or was responsible for such activities;
2) an employee has failed to meet the prescribed or internally set suitability standards;
3) there is an evidence of misconduct or serious error by the employee;
4) the credit institution or the business unit in which the employee works has subsequently suffered a significant downturn in its financial performance;
5) the credit institution and/or the business unit in which the employee works has suffered a significant failure of risk management;
6) there has been a significant increase in the credit institution's capital requirements; and
7) the employee's conduct contributed to the imposing of supervisory measures.

(4) Developments in the prices of shares or instruments related to the shares may not constitute a criterion for the application of malus and clawback arrangements.

(5) A credit institution may not perform ex post risk adjustment in order to increase initially awarded variable remuneration or, in case when malus or clawback arrangements have already been implemented in the past, in the increase in the previously reduced variable remuneration.

(6) A credit institution shall define a period for the application of malus or clawback arrangements, and this period may not be shorter than deferral and retention periods.

(7) Clawback shall in particular be applied when the employee contributed significantly to the subdued or negative financial performance and in cases where damage has been caused with intent or severe negligence.

IV ADDITIONAL PRINCIPLES AND RULES OF THE REMUNERATION POLICY FOR SIGNIFICANT CREDIT INSTITUTIONS

Variable remuneration deferral

Article 38

(1) A significant credit institution shall defer a substantial portion of the variable remuneration component over a period of time which shall be set taking into consideration:

1) business cycle and nature of credit institution’s operations;
2) expected fluctuations in the credit institution's operations and performance and the impact of employees on these fluctuations;
3) the risks to which the credit institution and organisational unit is or may be exposed to;
4) the powers and responsibilities of employees and the tasks they perform;

(2) A credit institution referred to in paragraph (1) of this Article shall defer at least 40% of the variable remuneration component, except in the case of a variable remuneration component of a particularly high amount, a credit institution shall defer at least 60% of the variable remuneration component.

(3) A particularly high amount referred to in paragraph (2) of this Article means variable remuneration in the amount of EUR 150,000 on an annual basis or variable remuneration that is equal to or exceeds 100% of fixed remuneration.

(4) The length of the deferral period for the variable remuneration component may not be shorter than three years or five years for the members of the management board and senior management.

(5) The deferred remuneration shall be paid out or rights from the instruments shall be vested in its entirety at the end of the deferral period or on multiple occasions during the deferral period by applying the principle of a pro-rata basis.

(6) The principle of a pro-rata basis during the pay put of deferred remuneration referred to in paragraph (5) of this Article requires that when remuneration is deferred over a certain number of years (“*n*” number of years), starting from the end of the assessment period, remuneration paid at the end of each year starting from the end of the assessment period equals the deferred remuneration multiplied by *1/n*.

(7) A significant credit institution shall pay out the first deferred portion no sooner than one year after the start of the deferral period.

Award of variable remuneration in instruments

Article 39

(1) A significant credit institution shall pay a portion of the variable remuneration component that may not be lower than 50% including the deferred and the non-deferred part, in the form of instruments.

(2) The portion of the variable remuneration component referred to in paragraph (1) of this Article to be paid in the form of instruments shall be determined in accordance with the position and responsibilities of the employee concerned, the amount of variable remuneration payable to that employee and the amount of risks the employee may take.

(2) Instruments that may be used by a significant credit institution may use the following instruments for awarding variable remuneration:

1) ordinary shares of the credit institution,
2) instruments linked to ordinary shares of the credit institution which have an embedded clause that limits the maximum allowed value of instruments to their value on the date the remuneration was awarded,
3) ordinary shares of the credit institution which is a direct or indirect parent of the credit institution that meets the requirements referred to in this Decision,
4) instruments linked to ordinary shares of the credit institution referred to in item 3) of this paragraph which have an embedded clause that limits the maximum allowed value of instruments to their value on the date the remuneration was awarded, and
5) other classes of instruments that adequately reflect the credit quality of the credit institution and are appropriate to be used for awarding variable remuneration.

(4) Types of instruments referred to in paragraph (3) of this Article and the write down or write up and conversion of those instruments shall be regulated in more detail in the guidelines provided in the Annex 1 which makes an integral part of this Decision.

(5) A significant credit institution may use instruments referred to in paragraph (3) items 3) and 4) of this Article for awarding variable remuneration only if the management of capital at the level of the group of credit institutions of which the credit institution is a member prevents or significantly hinders the use of instruments issued by the credit institution itself.

(5) The instruments shall be priced at the market price or their fair value on the date of the award of these instruments, and this price is the basis for the determination of the initial number of instruments and for later possible reduction in the number of instruments or their value.

(7) A significant credit institution may pay to an employee any amount of the variable remuneration based on dividend or interest on instruments before vesting.

Retention of variable remuneration paid in instruments

Article 40

(1) A significant credit institutions shall establish the retention of deferred and non-deferred portion of variable remuneration paid in instruments, taking into account that the incentives of the employees are in line with the long-term interests of the credit institution.

(2) When setting the retention period referred to in paragraph (1) of this Article, a significant credit institution shall consider the overall length of the deferral and the planned retention period as well as the impact of the employees on the credit institution's risk profile and the length of the business cycle relevant for those employees.

(3) The length of the retention period referred to in paragraph (2) of this Article may not be shorter than six months of the date of vesting for each deferred portion of remuneration or it shall not be shorter than one year for members of the management board and senior management of credit institution.

(4) Employees may not sell or otherwise access the instruments until the end of the deferral and the retention period of variable remuneration paid in instruments.

Discretionary pension benefits

Article 41

(1) Discretionary pension benefits, within the meaning of this Decision, mean pension benefits granted on a discretionary basis by a credit institution to an employee as part of that employee's variable remuneration, which do not include accrued benefits granted to an employee by the credit institution in accordance with the law.

(2) A significant credit institution shall align the payment of discretionary pension benefits with its strategy, objectives, values and long-term interests.

(3) In the case of termination of employment relationship before retirement, the significant credit institution shall convert the amount of discretionary pension benefits into instruments.

(4) In the case referred to in paragraph (3) of this Article, a significant credit institution may not vest the rights from these instruments before the expiry of a period of five years, counting from the date on which the employment relationship with the credit institution has been terminated.

(5) In the case of termination of employment relationship due to retirement, a significant credit institution shall pay the discretionary pension benefits to the employee in the form of instruments subject to a five-year retention period.

Application of rules on variable remuneration in a significant credit institution

Article 42

(1) The provisions of Articles 39 to 41 of this Decision shall be applied to employees whose variable remuneration on an annual basis exceed:

1) the amount of EUR 30,000; and
2) 30% of their fixed remuneration on an annual basis.

(2) A significant credit institution may prescribe in its remuneration policy the amounts lower than the amounts prescribed in paragraph (1) of this Article.

V. REMUNERATION IN CASE OF EXTRAORDINARY PUBLIC FINANCIAL SUPPORT

Remuneration in case of extraordinary public financial support

Article 43

(1) In the case of credit institution benefitting from extraordinary public financial support, in accordance with the regulation governing state aid rules to support measures in favour of banks in the context of financial crisis, a credit institution shall assess the impact of variable remuneration on:

1) the maintenance of an adequate level of capital;
2) the timely repayment of the funds received; and
3) the objectives of the restructuring plan developed in accordance with the state aid rules.

(2) If the assessment shows that variable remuneration has a negative impact on the requirements referred to in paragraph (1) of this Article, a credit institution shall limit variable remuneration as a percentage of its net revenue.

(3) The Central Bank may require a credit institution that received extraordinary public financial support referred to in paragraph (1) of this Article to limit variable remuneration in accordance with the Law.

VI. PUBLIC DISCLOSURE AND REPORTING TO THE CENTRAL BANK

Public disclosure

Article 44

A credit institution shall disclose publicly information on remuneration policy in the manner and deadlines specified in the regulation of the Central Bank governing the public disclosure of data by credit institutions.

Documentation on remuneration

Article 45

(1) A credit institution shall keep the documentation related to employees' remuneration, including in particular:

1) the remuneration policy and procedures for its implementation,
2) decisions of the supervisory board and management board regarding employees' remuneration in accordance with the provisions of this Decision;
3) the results of performance measurements in determining the variable remuneration of employees; and
4) the procedures for setting the maximum amount of variable remuneration awarded to employees for a particular assessment period, including the determining of the maximum ratio between the variable and fixed components of total remuneration referred to in Article 22 of this Decision.

(2) At the request of the Central Bank, a credit institution shall explain the manner in which it has performed the following activities and submit all relevant documentation:

1) allocation of allowances to the fixed remuneration component referred to in Article 16 of this Decision;
2) pay-out of severance pay, the adequacy of the awarded amount and the criteria applied in the determination of that amount within the meaning of Article 18 of this Decision;
3) award of retention bonuses for particular employees within the meaning of Article 19 of this Decision;
4) risk adjustment of variable remuneration referred to in Article 31 of this Decision; and
5) other similar activities proving that the remuneration policy and practices are consistent with effective risk management.

Reporting to the Central Bank of remuneration

Article 46

(1) With regard to employees whose total annual remuneration in a financial year amounts to or exceeds the equivalent of EUR 50,000, a credit institution shall report to the Central Bank:

1) on the number of such employees;
2) on the description of job positions and responsibilities of such employees;
3) on the organisational units in which such employees are employed; and
4) on the amount of the total remuneration of such employees allocated to the fixed remuneration component, the variable remuneration component payable in cash, instruments, discretionary pension benefits and other remuneration.

(2) Data on remuneration that amounts to or exceeds EUR 50,000 referred to in paragraph (1) of this Article shall be submitted to the Central Bank in remuneration groups that are increased up to EUR 25,000 from the maximum amount of the previous group.

(3) The remuneration in a business year referred to in paragraph (1) of this Article shall cover variable remuneration awarded for that year, irrespective of when as fixed remuneration paid out for that year.

(3) A credit institution shall submit the report referred to in paragraph (1) of this Article once a year in accordance with the decision governing reporting of the credit institutions to the Central Bank.

VII FINAL PROVISION

Entry into force

Article 47

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

THE COUNCIL OF THE CENTRAL BANK OF MONTENEGRO

Decision no.0101-7725-5/2020

Podgorica, 28 December 2020

CHAIRMAN,

GOVERNOR

Radoje Žugić, m.p.

ANNEX I

GUIDELINES
for establishing instruments for awarding variable remuneration and writing down, writing up and converting those instruments

I. Classes of instruments

1. Instruments referred to in Article 39 paragraph (3) item 5) of this Decision that significant credit institutions may use for awarding variable remuneration shall be:

1) Additional Tier 1 instruments where they have the characteristics referred to in items 2 and 3 of these Guidelines, and items 17 and 21 sub-item 3 of these Guidelines;
2) Tier 2 instruments where they have the characteristics referred to in items 2 and 4 of these Guidelines, and items 9 to 22 of these Guidelines;
3) instruments which can be fully converted to Common Equity Tier 1 instruments or written down and which are neither Additional Tier 1 instruments nor Tier 2 instruments (hereinafter: Other Instruments) in cases referred to in items 5 to 8 of these Guidelines where they have the characteristics referred to in item 2 and items 9 to 22 of these Guidelines.

2. Instruments referred to in item 1 of these Guidelines should have the following characteristics:

1) instruments shall not be secured or subject to a guarantee that enhances the seniority of the claims of the holder;
2) where the act governing an instrument allows its conversion, that instrument may only be used for awarding variable remuneration where the rate or range of conversion is set at a level that ensures that the value of the instrument into which the instrument initially awarded is converted is not higher than the value of the instrument initially awarded at the time it was awarded as variable remuneration;
3) the act governing convertible instruments which are used for the sole purpose of variable remuneration shall ensure that the value of the instrument into which the instrument initially awarded is converted is not higher than the value, at the time of that conversion, of the instrument initially awarded;
4) the act governing the instrument shall provide that any distributions are paid on at least an annual basis and are paid to the holder of the instrument;
5) instruments shall be priced at their value at the time the instrument is awarded, in accordance with the applicable accounting standard and taking into account the credit rating of the credit institution established by an independent review;
6) the act governing the instruments issued for the sole purpose of variable remuneration shall require a valuation to be carried out in accordance with the applicable accounting standard in the event that the instrument is redeemed, called, repurchased or converted.

II. Additional Tier 1 instruments

3. In addition to characteristics referred to in item 2 of these Guidelines, Additional Tier 1 instruments referred to in item 1 sub-item 1) of these Guidelines should have the following characteristics:

1) the act governing the instrument shall specify an event referred to in Article 42 paragraph (1) item 14) of the Decision on Capital Adequacy;
2) the event referred to in sub-item 1) of this item occurs when the Common Equity Tier 1 capital ratio of the credit institution issuing the instrument referred to in Article 101 paragraph (1) item 1) of the Decision on Capital Adequacy falls below either of the following:
   - 7%; or
   - a level higher than 7%, where determined by the credit institution and specified in the act governing the instrument;
3) have one of the following characteristics:
   - the instruments are issued for awarding variable remuneration and the act governing the instrument ensures that any distributions are paid at a rate which is consistent with market rates for similar instruments issued by the credit institution or by institutions of comparable nature, scale, complexity and credit rating and which is, at the time the remuneration is awarded, no higher than 8 percentage points above the annual average rate of change for the Union published by the MONSTAT in its Harmonised Indices of Consumer Prices, and where the instruments are awarded to employees who perform the predominant part of their professional activities outside Montenegro, a credit institution may use an index of consumer prices produced in respect of another country;
   - at the time of the award of the instruments as variable remuneration, at least 60% of the instruments in issuance were issued for other purposes and are not held by the following entities or by any connected undertaking:
     a) credit institution or its subsidiaries,
     b) the parent undertaking of the credit institution or its subsidiaries,
     c) the parent financial holding company or its subsidiaries,
     d) the mixed activity holding company or its subsidiaries,
     e) the mixed financial holding company and its subsidiaries.

III. Tier 2 instruments

4. In addition to characteristics referred to in item 2 of these Guidelines, Tier 2 instruments referred to in item 1 sub-item 2) of these Guidelines should have the following characteristics:

1) at the time of the award of the instruments as variable remuneration, the remaining period before maturity of the instruments shall be equal to or exceed the sum of the deferral periods and retention periods that apply to variable remuneration;
2) the act governing the instrument provides that, upon the occurrence of an event referred to in item 3 sub-item 1) of these Guidelines, the principal amount of the

instruments shall be written down on a permanent or temporary basis or the instrument shall be converted to Common Equity Tier 1 instruments;

3) the event referred to in sub-item 2) of this item occurs where the Common Equity Tier 1 capital ratio of the credit institution issuing the instrument, referred to in Article 101 paragraph (1) item 1) of the Decision on Capital Adequacy, falls below either of the following:
   - 7%;
   - a level higher than 7%, where determined by the credit institution and specified in the act governing the instrument;
4) have one of the characteristics referred to item 3 sub-item 3) of these Guidelines.

IV. Other Instruments

5. Other Instruments referred to in item 1 sub-item 3) of these Guidelines may be used for awarding variable remuneration referred to in Articles 39 and 40 of this Decision, where they have, in addition to characteristics referred to in item 2 of these Guidelines, the following characteristics:

1) characteristics referred to item 6 of these Guidelines;
2) they are linked to an Additional Tier 1 instrument or Tier 2 instrument and have the characteristics referred to in item 7 of these Guidelines;
3) they are linked to an instrument which would be an Additional Tier 1 instrument or Tier 2 instrument but for the fact that it is issued by a parent undertaking of the credit institution which is outside the scope of consolidation pursuant to the Law and in accordance with item 8 of these Guidelines.

6. Other instruments should have also the following characteristics:

1) they shall be issued directly or through an entity included within the group consolidation pursuant to the Law, provided that a change to the credit rating of the issuer of the instrument can lead to a similar change to the credit rating of the credit institution using the Other Instruments for awarding variable remuneration;
2) the act governing the Other Instruments does not give the holder the right to make payment or distributions of principal before scheduled deadline other than in the case of bankruptcy or liquidation of the credit institution;
3) at the time of the award of the Other Instruments as variable remuneration the remaining period before maturity of those Instruments is equal to or exceeds the sum of the deferral periods and retention periods that apply in respect of the award of those instruments;
4) the act governing the instrument provides that, upon the occurrence of an event referred to in item 3 sub-item 1) of these Guidelines the principal amount of the instruments shall be written down on a permanent or temporary basis or the instrument shall be converted to Common Equity Tier 1 instruments;
5) the event referred to in sub-item 4) of this item occurs when the Common Equity Tier 1 capital ratio of the credit institution issuing the instrument referred to in Article 101 paragraph (1) item 1) of the Decision on Capital Adequacy falls below either of the following:

- 7%; or
- a level higher than 7%, where determined by the credit institution and specified in the act governing the instrument;

6) have one of the characteristics referred to in item 3 sub-item 3) of these Guidelines.

7. Other Instruments referred to in item 5) sub-item 2) of these Guidelines shall also have the following characteristics:

1) they meet the conditions referred to in item 6) sub-items 1) to 5) of these Guidelines;
2) they are linked to an Additional Tier 1 or Tier 2 instrument issued through an entity included within the group prudential consolidation pursuant to the Law (hereinafter: the reference instrument);
3) the reference instrument meets the conditions of item 6 sub-items 3) and 6) of these Guidelines at the time that the instrument is awarded as variable remuneration;
4) the value of an Other Instrument is linked to the reference instrument such that it is at no time more than the value of the reference instrument;
5) the value of any distributions paid after the Other Instrument has vested is linked to the reference instrument such that distributions paid are at no time more than the value of any distributions paid under the reference instrument;
6) the act governing the Other Instruments provides that if the reference instrument is called, converted, repurchased or redeemed within the deferral or retention period the Other Instruments shall be linked to an equivalent reference instrument which fulfils the conditions referred to in items 5 to 8 of these Guidelines such that the total value of the Other Instruments does not increase.

8. Other Instruments referred to in item 5) sub-item 3) of these Guidelines shall be appropriate where:

1) the Central Bank has determined that the credit institution that issues the instrument to which the other instruments are linked is subject to consolidated supervision by a third-country supervisory authority which is equivalent to that specified the Law;
2) they have the characteristics referred to in item 7 sub-item 1) and sub-items 3) to 6) of these Guidelines.

V. Write down, write up and conversion procedures

9. For the purpose of item 4 sub-item 2) and item 6 sub-item 4) of these Guidelines, Tier 2 instruments and Other Instruments must comply with the procedures and timing laid down in items 10 to 22 of these Guidelines for calculating the Common Equity Tier 1 capital ratio and the amounts to be written down, written up or converted. The act governing Additional Tier 1 instruments must comply with the procedures laid down in item 17 and item 21 sub-item 3) of these Guidelines in the part regarding to the amounts to be written down, written up or converted.

10. Where the act governing Tier 2 and Other Instruments requires the instruments to be converted into Common Equity Tier 1 instruments upon the occurrence of a trigger event, those provisions shall specify the following:

1) the rate of that conversion and a limit on the permitted amount of conversion; and/or
2) a range within which the instruments will convert into Common Equity Tier 1 instruments.

11. Where the act governing the instruments provides that their principal amount shall be written down upon the occurrence of an event referred to in item 3 sub-item 1) of these Guidelines, the write-down shall permanently or temporarily reduce all the following:

1) the claim of the holder of the instrument in the bankruptcy or liquidation of the credit institution;
2) the amount to be paid in the event of the call or redemption of the instrument; and
3) the distributions made on the instrument.

12. Any distributions payable after a write-down of an instrument shall be based on the reduced amount of the principal.

13. Write-down or conversion of the instruments shall, under the applicable accounting framework, generate items that qualify as Common Equity Tier 1 items.

14. Where the credit institution has established that the Common Equity Tier 1 ratio has fallen below the level that activates conversion or write-down of the instrument the competent authority of the credit institution shall be required to determine without delay that a trigger event has occurred and there shall be an irrevocable obligation to write-down or convert the instrument.

15. The aggregate amount of instruments that is required to be written down or converted upon the occurrence of an event referred to in item 3 sub-item 1) of these Guidelines shall be no less than the lower of the following:

1) the amount required to fully restore the Common Equity Tier 1 ratio of the institution to the percentage set as the event in the act governing the instrument;
2) the full principal amount of the instrument.

16. Where an event referred to in item 3 sub-item 1) of these Guidelines occurs, a credit institution shall:

1) inform the employees who have been awarded the instruments as variable remuneration and the persons who hold such instruments;
2) write down the principal amount of the instruments, or convert the instruments into Common Equity Tier 1 instruments as soon as possible and within a maximum period of 30 days in accordance with items 9 to 15 and items 17 to 22 of these Guidelines.

17. Where Additional Tier 1 instruments, Tier 2 instruments and Other Instruments include an identical level of events referred to in item 3 sub-item 1) of these Guidelines, the

principal amount shall be written down or converted on a pro rata basis to all holders of such instruments which are used for the purposes of variable remuneration.

18. The amount of the instrument to be written down or converted shall be subject to independent review, which must be completed as soon as possible and shall not create impediments for the credit institution to write-down or convert the instrument.

19. A credit institution issuing instruments that convert to Common Equity Tier 1 on the occurrence of an event referred to in item 3 sub-item 1) of these Guidelines shall be required to ensure that its authorised share capital is at all times sufficient to convert all such convertible instruments into shares if such event occurs. The credit institution shall maintain at all times the necessary prior authorisation to issue the Common Equity Tier 1 instruments into which such instruments would convert upon the occurrence of such event.

20. A credit institution may issue instruments that convert to Common Equity Tier 1 on the occurrence of an event referred to in item 3 sub-item 1) of these Guidelines where it has been prescribed in the act of incorporation of the credit institution, articles of association or contract on issuing the instrument.

21. The write-down of an instrument shall be considered temporary where an instrument has the following characteristics:

1) write-ups are based on profits after the issuer of the instrument has taken a decision confirming the final profits;
2) any write-up of the instrument or payment of coupons on the reduced amount of the principal shall be operated at the discretion of the credit institution subject to the constraints arising from sub-items 3), 4) and 5) of this item and the credit institution shall not be obliged to operate or accelerate a write-up of an instrument under specific circumstances;
3) a write-up shall be operated on a pro rata basis among Additional Tier 1 instruments, Tier 2 instruments and Other Instruments used for the purpose of variable remuneration that have been subject to a write-down;
4) the maximum amount to be attributed to the sum of the write-up of Tier 2 and Other Instruments together with the payment of coupons on the reduced amount of the principal shall be equal to the profit of the credit institution multiplied by the amount obtained by dividing the following amounts:
    - the sum of the nominal amount of all Tier 2 instruments and other instruments of the credit institution before write-down that have been subject to a write-down;
    - the sum of own funds and of the nominal amount of Other Instruments used for the purpose of variable remuneration of the credit institution; and
    - the sum of any write-up amounts and payments of coupons on the reduced amount of the principal shall be treated as a payment that results in a reduction of Common Equity Tier 1 and shall be subject, together with other distributions on Common Equity Tier 1 instruments, to the restrictions relating to the

Maximum Distributable Amount as laid down in Articles 166 and 167 of the Law.

22. For the purposes of item 21 sub-item 4) of these Guidelines, the calculation shall be made at the moment when the write-up is operated.