

Brussels, XXX  
[...] (2025) XXX draft

**COMMISSION IMPLEMENTING DECISION (EU) .../...**

**of XXX**

**determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council**

(Text with EEA relevance)

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**COMMISSION IMPLEMENTING DECISION (EU) .../...**

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**determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> and in particular Article 25(6) thereof,

Whereas:

- (1) The procedure for recognition of central counterparties ('CCPs') established in third countries set out in Article 25 of Regulation (EU) No 648/2012 aims to allow CCPs established and authorised in third countries whose regulatory standards are equivalent to those laid down in that Regulation to provide clearing services to clearing members or trading venues established in the Union. That recognition procedure and the equivalence decisions provided for therein thus contribute to the achievement of the overarching aim of Regulation (EU) No 648/2012 to reduce systemic risk by extending the use of safe and sound CCPs to clear over-the-counter ('OTC') derivative contracts, including where those CCPs are established and authorised in a third country.
- (2) For a third-country legal regime to be considered equivalent to the legal regime of the Union in respect of CCPs, the substantive outcome of the applicable legal and supervisory arrangements should be equivalent to Union requirements in respect of the regulatory objectives they achieve. The purpose of such equivalence assessment is therefore to verify whether the legal and supervisory arrangements of the third country concerned ensure that CCPs established and authorised therein do not expose clearing members and trading venues established in the Union to a higher level of risk than the latter could be exposed to by CCPs authorised in the Union and, consequently, do not pose unacceptable levels of systemic risk in the Union.
- (3) The assessment whether the legal and supervisory arrangements of the United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom') are equivalent to those of the Union should therefore not only be based on a comparative analysis of the legally binding requirements applicable to CCPs in the United Kingdom, but also on an assessment of the outcome of those requirements, and their adequacy to mitigate

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1, ELI: <http://data.europa.eu/eli/reg/2012/648/oj>.

the risks that clearing members and trading venues established in the Union may be exposed to.

- (4) Central clearing increases market transparency, mitigates credit risk, and reduces the risk of contagion in the event of the default of one or more participants in a CCP. The provision of such services is therefore critical for safeguarding financial stability. Moreover, financial instruments cleared by CCPs are also essential for financial intermediaries and their clients, for example, to hedge interest rate risks, with implications for the functioning of the real economy of the Union.
- (5) As of 31 December 2023, according to the Bank for International Settlements, the outstanding notional amount of OTC derivatives was about EUR 603 trillion worldwide, of which interest rate derivatives represent about 80 % and foreign exchange derivatives almost 18 %. More than 30 % of all OTC derivatives are denominated in euro and other currencies of the Member States. The market for central clearing of OTC derivatives is highly concentrated, in particular the market for central clearing of euro-denominated OTC interest rate derivatives, of which more than 90 % are cleared in one single CCP established in the United Kingdom ('UK CCP').
- (6) In the context where a significant volume of financial transactions denominated in euro and other currencies of the Member States was cleared through UK CCPs, the withdrawal of the United Kingdom from the internal market and from the associated Union framework of regulation, supervision and enforcement in the financial sector created major challenges for Union and Member States' authorities in safeguarding financial stability.
- (7) To address the possible risks to financial stability that could arise as a consequence of an abrupt disruption in the provision of clearing of derivatives by UK CCPs to Union clearing members and clients, the Commission adopted on 21 September 2020 Implementing Decision (EU) 2020/1308<sup>2</sup>. That Decision determined that the regulatory framework applicable to UK CCPs is considered to be equivalent to the requirements laid down in Regulation (EU) No 648/2012. That Decision applied only for a limited period and expired on 30 June 2022.
- (8) Over the course of 2021, the Commission established a Working Group (together with the European Central Bank, the European Supervisory Authorities and the European Systemic Risk Board) to explore the opportunities and challenges involved in transferring derivatives from the United Kingdom to the Union. The discussions at the Working Group showed that a combination of different measures to improve the attractiveness of clearing, to encourage infrastructure development, and to reform supervisory arrangements were needed to build strong and attractive central clearing capacity in the Union in the years to come. The timeframe of June 2022 was too short to achieve that aim. Therefore, on 8 February 2022, the Commission adopted Implementing Decision (EU) 2022/174<sup>3</sup>. That Decision will expire on 30 June 2025.

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<sup>2</sup> Commission Implementing Decision (EU) 2020/1308 of 21 September 2020 determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 306, 21.9.2020, p. 1, ELI: [http://data.europa.eu/eli/dec\\_impl/2020/1308/oj](http://data.europa.eu/eli/dec_impl/2020/1308/oj)).

<sup>3</sup> Commission Implementing Decision (EU) 2022/174 of 8 February 2022 determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United

- (9) According to Article 25(6) of Regulation (EU) No 648/2012, three conditions are to be fulfilled to determine that the legal and supervisory arrangements of a third country regarding CCPs authorised therein are equivalent to those laid down in that Regulation.
- (10) First, the legal and supervisory arrangements of a third country are to ensure that CCPs in that third country comply with legally binding requirements, which are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012. The United Kingdom incorporated the relevant provisions of Regulation (EU) No 648/2012 into its domestic law with effect from the date of the United Kingdom's withdrawal from the Union<sup>4</sup> and therefore United Kingdom domestic law can be considered equivalent to the requirements laid out in Title IV of Regulation (EU) No 648/2012.
- (11) Second, the legal and supervisory arrangements of the third country are to ensure that CCPs established in that third country are subject to effective supervision and enforcement on an ongoing basis. Until 31 December 2020, UK CCPs were under the supervision of the Bank of England, as determined by United Kingdom domestic law in accordance with Regulation (EU) No 648/2012<sup>5</sup>. As part of the incorporation of Regulation (EU) No 648/2012 into United Kingdom domestic law, the Bank of England remains responsible for the supervision of CCPs after that date and no significant changes to that supervision are planned or expected.
- (12) Third, the legal framework of the third country must provide for an effective equivalent system for the recognition of CCPs authorised under that third country's legal regime. The United Kingdom has incorporated the key elements of the equivalence system in Article 25 of Regulation (EU) No 648/2012 into United Kingdom domestic law. However, the United Kingdom has introduced a Temporary Recognition Regime, which suspends key amendments to Regulation (EU) No 648/2012 for a period of at least three years. That Temporary Recognition Regime also gives the Bank of England wide discretionary powers to withdraw the "temporary deemed recognition", which creates legal uncertainty for CCPs recognised under that regime. Notwithstanding that uncertainty, the third condition can be considered as fulfilled at this point in time.
- (13) As the three conditions are considered to be fulfilled, the legal and supervisory arrangements of the United Kingdom, which are applicable to UK CCPs that were already established and authorised on 31 December 2020, should be considered to be equivalent to the requirements laid down in Regulation (EU) No 648/2012.
- (14) This Decision is based on the information currently available to the Commission on the legal and supervisory arrangements applicable to UK CCPs. Those arrangements

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Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 28, 9.2.2022, ELI: [http://data.europa.eu/eli/dec\\_impl/2022/174/oj](http://data.europa.eu/eli/dec_impl/2022/174/oj)).

<sup>4</sup> After the end of the transition period, several pieces of United Kingdom legislation provide the regulatory and supervisory framework covering clearing services in the United Kingdom. This includes, but is not limited to, the European Union (Withdrawal) Act 2018, The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020, the Financial Services (Consequential Amendments) Regulations 2020 and the Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019.

<sup>5</sup> Part 5 of The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013.

should be considered equivalent only insofar as the requirements applicable to CCPs in United Kingdom domestic law are maintained, applied, and enforced. The recognition of equivalence can only be maintained if any future changes to the United Kingdom regulatory and supervisory framework do not negatively affect equivalence in terms of regulation or supervision, leading to an un-level playing field between UK CCPs and CCPs established in the Union or to risks to financial stability of the Union. As the Commission may decide to amend, suspend, review, or revoke this Decision at any time, in particular if developments occur which affect the equivalence determination, an effective exchange of information and coordination of supervisory activities between the European Securities Markets Authority ('ESMA') and the Bank of England is a prerequisite for maintaining the recognition of equivalence up until the expiry date of this Decision.

- (15) The exchange of information between ESMA and the Bank of England requires the conclusion of comprehensive and effective cooperation arrangements in accordance with Article 25(7) of Regulation (EU) No 648/2012. Those cooperation arrangements are to ensure the pro-active sharing of all relevant information with the authorities referred to in Article 25(3) of Regulation (EU) No 648/2012, including the European Central Bank and the other members of the European System of Central Banks, for the purpose of consulting those authorities about the recognised status of UK CCPs or where that information is necessary for those authorities to carry out their supervisory tasks.
- (16) The cooperation arrangements established pursuant to Article 25(7) of Regulation (EU) No 648/2012 are to ensure that ESMA has immediate and ongoing access to all information, including information allowing for the assessment of any material risks posed by UK CCPs to the Union or its Member States, either directly or indirectly. Those cooperation arrangements are to specify the mechanisms and procedures for the prompt exchange of information related to the clearing activities of UK CCPs with respect to financial instruments denominated in Union currencies, to trading venues, to clearing participants and subsidiaries of Union credit institutions and investment firms; to interoperability arrangements with other CCPs, to own resources, to default funds composition and calibration, to margins, to liquid resources, to collateral portfolios, including haircut calibrations, and to stress tests. Those cooperation arrangements are also to specify the mechanisms and procedures for the prompt notification of any change affecting UK CCPs or the United Kingdom legal and supervisory arrangements applicable to UK CCPs and for the prompt notification of ESMA of any developments with regard to UK CCPs that could affect monetary policy in the Union. The Bank of England is also to cooperate closely with Union authorities in accordance with Article 25(7) of Regulation (EU) No 648/2012. In particular, it is important that there are effective cooperation arrangements between ESMA and the responsible United Kingdom authorities regarding the coordination of their supervisory activities, including, in particular, procedures to deal with any emergency situations related to the recognised UK CCPs which have or may have an adverse effect on market liquidity or the stability of the financial system of the Union.
- (17) The United Kingdom authorities are expected to inform the Union about all changes to the United Kingdom's regulatory or supervisory framework affecting the provision of clearing services in the United Kingdom. The Commission, in cooperation with ESMA, will monitor any changes introduced in the legal and supervisory arrangements affecting the provision of clearing services in the United Kingdom, market developments and the effectiveness of supervisory cooperation, including



prompt information exchange between ESMA and the Bank of England. The Commission may undertake a review at any time where relevant developments make it necessary to re-assess the equivalence granted by this Decision, including where the United Kingdom authorities do not effectively cooperate, do not allow for an effective assessment of the risk that UK CCPs pose to the Union or its Member States or the actions taken by UK CCPs or the Bank of England promote undue and unfair competition.

- (18) The impact of the withdrawal of the United Kingdom from the Union has been the subject of several communications from the Commission to the European Parliament, the Council and the European Central Bank, including a Communication on fostering openness, strength and resilience<sup>6</sup>. In that Communication, there was a clear expectation that Union clearing members would reduce their exposures and reliance on UK CCPs that are systemically important for the Union, in particular OTC derivative exposures that are denominated in euro and other currencies of the Member States. Thereafter, the Commission called on Union market participants to reduce their excessive exposures to systemic CCPs outside the Union in the medium term. The Commission reiterated that call in its communication “The European economic and financial system: fostering openness, strength and resilience” in January 2021<sup>7</sup>.
- (19) On 7 December 2022, the Commission adopted a proposal to amend Regulation (EU) No 648/2012 to make Union clearing services more attractive and resilient, supporting the Union's open strategic autonomy and preserving financial stability. That proposal aimed to boost the attractiveness of Union clearing markets and develop the supply of clearing services in the Union, including by streamlining the process for bringing new products to the market. That proposal also aimed to address the financial stability risks associated with excessive exposures of Union clearing members and clients to systemically important third-country CCPs (‘Tier 2 CCPs’) that provide clearing services that have been identified by ESMA as clearing services of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012.
- (20) Regulation (EU) 2024/2987 of the European Parliament and of the Council<sup>8</sup> which introduced those new rules into Regulation (EU) No 648/2012, was published in the

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<sup>6</sup> Communication from the Commission to the European Parliament, the Council and the European Central Bank of 4 May 2017, ‘Responding to challenges for critical financial market infrastructures and further developing the Capital Markets Union’ (COM (2017) 225 final), Communication from the Commission to the European Parliament, the European Council, the Council, The European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank of 19 July 2018, ‘Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019’ (COM(2018) 556 final) and Communication from the Commission to the European Parliament, the European Council, the Council, The European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank of 13 November 2018, ‘Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan’ (COM(2018) 880 final), Communication from the Commission to the European Parliament, the Council, The European Central Bank, the European Economic and Social Committee, the Committee of the Regions of 19 January 2021, ‘The European economic and financial system: fostering openness, strength and resilience’ (COM(2021) 32 final).

<sup>7</sup> Communication from the Commission of 19 January 2021 to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: “The European economic and financial system: fostering openness, strength and resilience” (COM(2021) 32 final).

<sup>8</sup> Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures

*Official Journal of the European Union* on 4 December and entered into force on 24 December 2024. Those new rules will contribute to making Union clearing services more attractive and robust, preserving financial stability, and supporting a well-functioning capital markets union. The new rules will enable Union CCPs to bring new products to the Union market faster, giving market participants an incentive to clear and build liquidity at Union CCPs. The new rules will also allow for a safer and more resilient clearing system by improving the Union supervisory framework for CCPs, reinforcing the role of ESMA. The new framework will also contribute to reducing excessive reliance on systemic CCPs in third countries by requiring all market participants concerned to hold active accounts at Union CCPs and clear a representative portion of certain systemic derivative contracts within the single market.

- (21) According to Regulation (EU) No 648/2012, as amended by Regulation (EU) 2024/2987, the active account requirements apply from 24 December 2024, while the obligation to clear a certain number of trades in those active accounts applies only from 24 June 2025. By 25 June 2026, ESMA, in close cooperation with the European System of Central Banks and the European Systemic Risk Board, and after having consulted the Joint Monitoring Mechanism, is to assess the effectiveness of that Regulation in mitigating the financial stability risks for the Union represented by the exposures of EU counterparties to those Tier 2 CCPs offering services of substantial systemic importance. Under that Regulation, the Commission is required to prepare its own report within six months thereafter.
- (22) It is therefore appropriate to adopt a Decision which recognises that the regulatory framework applicable to central counterparties in the United Kingdom is equivalent to the framework established by Regulation (EU) No 648/2012, while limiting the application of that Decision to three years after its date of application. This would give sufficient time for the active account requirements to take effect as well as for ESMA and the Commission to assess its impact on the exposure of EU counterparties to Tier 2 CCPs.
- (23) To avoid any disruption in the recognition of UK CCPs by ESMA, this Decision should apply from the day following that on which Implementing Decision (EU) 2022/174 expires.
- (24) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

#### *Article 1*

For the purposes of Article 25 of Regulation (EU) No 648/2012, the legal and supervisory arrangements of the United Kingdom of Great Britain and Northern Ireland applicable to central counterparties already established and authorised in the United Kingdom of Great Britain and Northern Ireland on 31 December 2020 shall be considered to be equivalent to the requirements laid down in Regulation (EU) No 648/2012.

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to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets (OJ L 2024/2987, 4.12.2024, ELI: <http://data.europa.eu/eli/reg/2024/2987/oj>).

## *Article 2*

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 July 2025.

It shall expire on 30 June 2028.

Done at Brussels,

*For the Commission*  
*The President*  
*Ursula VON DER LEYEN*