Commission Implementing Decision (EU) 2018/2031 of 19 December 2018 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

COMMISSION IMPLEMENTING DECISION (EU) 2018/2031

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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[(1)] and in particular Article 25(6) thereof,

Whereas:

(1) On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom') submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or failing that, two years after that notification, i.e. from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.

(2) As announced in the Commission Communication of 13 November 2018'Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan'[(2)] ('the Contingency Action Plan'), a withdrawal without an agreement may pose risks to the financial stability of the Union and its Member States. To prevent such risks, it is justified and in the interests of the Union and its Member States to ensure, for a limited period of time, that central counterparties ('CCPs') that have already been authorised in the United Kingdom ('UK CCPs') may continue to provide clearing services in the Union after 29 March 2019.

(3) Central clearing increases market transparency, mitigates credit risks and reduces the risks 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 ensuring financial stability. A disruption in the provision of clearing services could also affect the implementation of central banks' monetary policy where transactions are cleared in the currency issued by a Union central bank. Moreover, financial instruments cleared by CCPs are also essential for financial intermediaries and their clients, e.g. to hedge interest rate risks,

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and a disruption in the provision of clearing services could therefore also create risks for the real economy of the Union.

(4) As of 31 December 2017, the outstanding notional amount of OTC derivatives is more than EUR 500 trillion worldwide, of which interest rate derivatives represent more than 75 % and foreign exchange derivatives almost 20 %. About 30 % of all OTC derivatives are denominated in euro and other Union currencies. The market for central clearing of OTC derivatives is highly concentrated, in particular the market for central clearing of OTC interest rate derivatives of which about 97 % are cleared in one UK CCP[(3)].

(5) From 30 March 2019, UK CCPs will be 'third-country CCPs' and, as such, may only provide clearing services if they are recognised by the European Securities and Markets Authority ('ESMA') in accordance with Article 25 of Regulation (EU) No 648/2012. In the absence of the recognition of UK CCPs, counterparties established in the Union may not clear OTC derivatives that are subject to the clearing obligation pursuant to Article 4 of Regulation (EU) No 648/2012 in UK CCPs. That situation may result in temporary challenges for those counterparties to fulfil their clearing obligations, which in turn, may pose risks to the financial stability and the implementation of the monetary policy of the Union and its Member States. As announced in the Contingency Action Plan, it is therefore necessary that, in that exceptional situation, the legal and supervisory arrangements governing UK CCPs are determined as equivalent for a strictly limited period of time and under specific conditions so that those CCPs may continue to provide clearing services in the Union.

(6) In accordance with Article 25(6) of Regulation (EU) No 648/2012, three conditions must be fulfilled in order 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.

(7) First, the legal and supervisory arrangements of a third country must 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. Until 29 March 2019, Regulation (EU) No 648/2012 is directly applicable in the United Kingdom and UK CCPs authorised under Article 14 of that Regulation therefore must comply with its requirements. As part of the European Union (Withdrawal) Act 2018, the United Kingdom incorporated on 26 June 2018 the provisions of Regulation (EU) No 648/2012 into United Kingdom domestic law with effect from the date of the United Kingdom's withdrawal from the Union.

(8) Second, the legal and supervisory arrangements of the third country must ensure that CCPs established in the third country are subject to effective supervision and enforcement on an ongoing basis. Until 29 March 2019, UK CCPs are under the supervision of the Bank of England, as determined by United Kingdom domestic law in accordance with Regulation (EU) No 648/2012[(4)]. 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 and its supervisory and enforcement powers regarding CCPs will remain essentially unchanged.

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(9) Third, the legal framework of the third country must provide for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes. This is ensured by the incorporation of the equivalence system in Article 25 of Regulation (EU) No 648/2012 into United Kingdom domestic law.

(10) The Commission concludes that the legal and supervisory arrangements of the United Kingdom applicable to UK CCPs on the day after its withdrawal from the Union meet the conditions laid down in Article 25(6) of Regulation (EU) No 648/2012.

(11) However, this Decision is based on the legal and supervisory arrangements applicable to UK CCPs on the day after the withdrawal of the United Kingdom from the Union. Those legal and supervisory arrangements should only be considered equivalent where the requirements applicable to CCPs in United Kingdom domestic law are maintained and continue to be effectively applied and enforced on an ongoing basis. The effective exchange of information and coordination of supervisory activities between ESMA and the Bank of England is therefore an essential condition for maintaining the determination of equivalence.

(12) That exchange of information requires the conclusion of comprehensive and effective cooperation arrangements in accordance with Article 25(7) of Regulation (EU) No 648/2012. Those cooperation arrangements should also ensure the possibility to share 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.

(13) In the event of the exceptional situation of the withdrawal of the United Kingdom from the Union without an agreement, cooperation arrangements established pursuant to Article 25(7) of Regulation (EU) No 648/2012 must ensure that ESMA has immediate access, on an ongoing basis, to all information requested by it. That information includes but is not limited to information allowing for the assessment of any material risks posed by UK CCPs to the Union or its Member States, either directly or indirectly. The cooperation arrangements should therefore 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, trading venues, clearing participants as well as 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, liquid resources and collateral portfolios including haircut calibrations and to stress tests; the prompt notification of any change affecting UK CCPs or the United Kingdom legal and supervisory arrangements applicable to UK CCPs; as well as the mechanism for the prompt notification of ESMA of any developments with regard to UK CCPs that could affect the monetary policy in the Union.

(14) The Commission, in cooperation with ESMA, will monitor any changes introduced in the legal and supervisory arrangements affecting UK CCPs, market developments as well as the effectiveness of supervisory cooperation, including prompt information