COMMISSION IMPLEMENTING DECISION (EU) 2019/2211

of 19 December 2019

amending Implementing Decision (EU) 2018/2031 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 ([1]), and in particular Article 25(6) thereof,

Whereas:

(1) Commission Implementing Decision (EU) 2018/2031 ([2]) is to apply from the date following that on which the Treaties cease to apply to and in the United Kingdom unless a withdrawal agreement has entered into force by that date. It provides for its expiration on 30 March 2020.

(2) On 29 October 2019, in agreement with the United Kingdom, the European Council adopted Decision (EU) 2019/1810 ([3]) extending the period provided for in Article 50(3) of the Treaty on European Union until 31 January 2020. Due to that further extension, the period of application of Implementing Decision (EU) 2018/2031 would not be sufficiently long to provide clearing members and clients established in the Union with the necessary legal certainty and predictability in the case that the United Kingdom withdraws from the Union without an agreement.

(3) As of 31 December 2018, 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 euro-denominated OTC interest rate derivatives, of which more than 90 % are cleared in one CCP established in the United Kingdom. In 2017, 97 % of euro-denominated OTC interest rate derivatives were cleared in that CCP, which underlines that market participants are taking steps to prepare themselves for the UK's withdrawal.

(4) However, the reasons underlying Implementing Decision (EU) 2018/2031 remain. In particular, potential risks persist in relation to the financial stability of the Union and its Member States in case of a withdrawal without an agreement and are likely to persist after 30 March 2020. Moreover, clearing members and clients established in the Union need legal certainty and predictability for a sufficient period of time following a potential withdrawal of the United Kingdom from the Union without an agreement. However, also the reasons for the limited duration of that Decision persist, in particular as regards the uncertainties surrounding the future relationship between the United Kingdom and the Union, as well as the potential impact on the financial stability of the Union and its Member States and on the integrity of the Single Market. Implementing Decision (EU) 2018/2031 should therefore remain of a limited duration.

(5) Implementing Decision (EU) 2018/2031 should therefore be amended to provide for an application period of one year.

([1]) OJ L 201, 27.7.2012, p. 1.

([2]) 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 (OJ L 325, 20.12.2018, p. 50).

([3]) European Council Decision (EU) 2019/1810 taken in agreement with the United Kingdom of 29 October 2019 extending the period under Article 50(3) TEU (OJ L 278I , 30.10.2019, p. 1).

(6) The Commission will continue to monitor whether the conditions underlying Implementing Decision (EU) 2018/2031 continue to be met during the application of that Implementing Decision.

(7) Considering moreover the amendments to Regulation (EU) No 648/2012 adopted by the European Parliament and the Council, which will have entered into force before this Decision ceases to apply, any potential further decision will take into account financial market conditions and developments, as well as the exposure of clearing members and clients established in the Union to the concentration risk posed by CCPs established in the United Kingdom. In the event that such exposure is considered to be detrimental to the financial stability of the Union, any potential further Decision might seek to mitigate the systemic risk to the Union by limiting the access of those clearing members and clients to certain products, activities or services provided by CCPs established in the United Kingdom. To this end, the Commission plans to make its intention known at the latest, six months before the expiry date.

(8) This Decision should enter into force as a matter of urgency to ensure legal certainty to clearing members and clients established in the Union.

(9) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Implementing Decision (EU) 2018/2031, the fourth paragraph is replaced by the following:

'It shall expire one year after the date referred to in the second paragraph.'.

Article 2

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

Done at Brussels, 19 December 2019.

For the Commission

The President

Ursula VON DER LEYEN