

COMMISSION IMPLEMENTING DECISION (EU) 2022/900
of 8 June 2022
amending Implementing Decision (EU) 2015/2039 as regards the evolution of the regulatory framework of South Africa for central counterparties

(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) In Commission Implementing Decision (EU) 2015/2039 ⁽²⁾, which was adopted on 13 November 2015, it was decided that for the purposes of Article 25 of Regulation (EU) No 648/2012, the legal and supervisory arrangements of South Africa consisting of the Financial Markets Act, (Act No 19 of 2012) ('FMA') and applicable to licensed clearing houses authorised therein, are to be considered to be equivalent to the requirements laid down in Regulation (EU) No 648/2012.
- (2) Since 13 November 2015, however, the regulatory framework of South Africa for central counterparties ('CCPs') has evolved through the entry into force of the Financial Sector Regulations Act, (Act No 9 of 2017) ⁽³⁾ ('FSRA'), which amended the FMA, and the promulgation of the FMA Regulations of 2018 ⁽⁴⁾. It is therefore necessary to assess the equivalence of that amended South African regulatory framework.
- (3) The assessment of the equivalence of the amended South African regulatory framework should not only be based on a comparative analysis of the legally binding requirements applicable to CCPs that are licensed in South Africa in the abstract, but also on an assessment of the effects of those requirements. That assessment should check the adequacy of those requirements to mitigate the risks that clearing members and trading venues established in the Union may be exposed to, taking into account the size of the financial markets in which CCPs that are licensed in South Africa operate. More stringent risk mitigation requirements are necessary for CCPs carrying out their activities in larger financial markets whose inherent level of risk is higher than for CCPs carrying out their activities in smaller financial markets.
- (4) Article 25(6), points (a), (b) and (c), of Regulation (EU) No 648/2012 lists three conditions that need 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.
- (5) According to Article 25(6), point (a), of Regulation (EU) No 648/2012, CCPs authorised in a third country must comply with legally binding requirements that are equivalent to the requirements laid down in Title IV of that Regulation.

⁽¹⁾ OJ L 201, 27.7.2012, p. 1.

⁽²⁾ Commission Implementing Decision (EU) 2015/2039 of 13 November 2015 on the equivalence of the regulatory framework of South Africa for central counterparties to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 298, 14.11.2015, p. 29).

⁽³⁾ Republic of South Africa, Act No 9 of 2017: Financial Sector Regulation Act, 2017

⁽⁴⁾ South African National Treasury, NO.R. 98 Financial Markets Act, 2012 : Regulations

- (6) In Implementing Decision (EU) 2015/2039, the legally binding requirements for CCPs authorised in South Africa were deemed equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012. The amended South African regulatory framework for CCPs authorised in South Africa maintains the assessment of compliance of licensed clearing houses and licensed CCPs against the Principles for financial market infrastructures ('PFMIs'), issued in April 2012 by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions (IOSCO).⁽³⁾
- (7) The legally binding requirements for CCPs and clearing houses authorised in South Africa currently consist of the FMA, as amended by the FSRA, and of the Financial Markets Act Regulations 2018. This legal framework is supplemented by the set of Conduct Standards issued by the Financial Sector Conduct Authority ('FSCA'). The amended FMA and the Financial Markets Act Regulations 2018 set out additional duties and requirements with which clearing houses and CCPs authorised in South Africa must comply. In addition, under the amended FMA, the Prudential Authority ('PA'), and the FSCA take over the role of 'The Registrar of Services' and jointly grant the authorisation to operate in South Africa as a licensed independent clearing house or as a licensed CCP, provided that the applicant complies with those requirements and contributes to the achievement of the objectives specified in the FMA, including systemic risk mitigation.
- (8) The total value of derivative transactions cleared in South Africa still represents less than 1 % of the total value of derivative transactions cleared in the Union. The participation in South African licensed clearing houses or CCPs thus exposes clearing members and trading venues established in the Union to significantly lower risks than their participation in CCPs authorised in the Union.
- (9) The Commission concludes that the legal and supervisory arrangements of South Africa ensure that CCPs authorised jointly by the PA and the FSCA comply with legally binding requirements that are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.
- (10) Article 25(6), point (b), of Regulation (EU) No 648/2012, also requires that the legal and supervisory arrangements in respect of CCPs authorised in a third country provide for effective supervision and enforcement of CCPs on an ongoing basis. The adapted legal framework for CCPs and clearing houses in South Africa equips the PA and the FSCA with a comprehensive set of powers to oversee, monitor and investigate clearing houses and CCPs authorised to operate in South Africa. The PA and the FSCA annually assess whether licensed clearing houses and licensed CCPs comply with the FMA and their internal rules and procedures. The PA and the FSCA have the power to revoke or suspend the authorisation of a licensed independent clearing house or a licensed CCP where they fail to comply with the FMA or with the FMA Regulations 2018 or subordinate legislation such as the requirements contained in Conduct Standards. The PA and the FSCA are also empowered to request information or documents from licensed clearing houses and licensed CCPs and to conduct on-site inspections. An annual supervisory programme for CCPs which includes risk reviews, analysis and assessment is also conducted by the supervisory authorities. The PA monitors and assesses the capital adequacy and capital management practices of CCPs.
- (11) The Commission concludes that the legal and supervisory arrangements in respect of CCPs authorised by the PA and the FSCA provide for effective supervision and enforcement on an ongoing basis.
- (12) In accordance with Article 25(6), point (c), of Regulation (EU) No 648/2012, the legal framework of a third country must provide for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes ('third-country CCPs').
- (13) The amended FMA sets out the conditions for the equivalence recognition of foreign jurisdictions. The FSCA may, together with the South African Reserve Bank and the PA, determine that the regulatory framework of a specified foreign country is equivalent to the South African financial sector regulatory framework.

⁽³⁾ Committee on Payment and Settlement Systems/Technical Committee of the International Organization of Securities Commissions, Principles for financial market infrastructures, April 2012, CPMI Papers No 101, Principles for Financial Market Infrastructures (bis.org).

- (14) The Commission concludes that the legal framework of South Africa provides for an effective equivalent system for the recognition of third-country CCPs.
- (15) The Commission therefore considers that the legal and supervisory arrangements of South Africa applicable to CCPs meet the conditions laid down in Article 25(6) of Regulation (EU) No 648/2012. Consequently, those legal and supervisory arrangements should be considered equivalent to the requirements laid down in that Regulation.
- (16) Implementing Decision (EU) 2015/2039 should be amended accordingly.
- (17) To ensure that the European Securities and Markets Authority carries out the tiering and the recognition of CCPs established in South Africa without delay, this Decision should enter into force as a matter of urgency.
- (18) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

Article 1 of Implementing Decision (EU) 2015/2039 is replaced by the following:

'Article 1

For the purposes of Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of South Africa consisting of the Financial Markets Act, Act No 19 of 2012, and the Financial Markets Act Regulations and applicable to licensed clearing houses authorised therein shall be considered to be equivalent to the requirements laid down in Regulation (EU) No 648/2012.'

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, 8 June 2022.

For the Commission
The President
Ursula VON DER LEYEN
