

COMMISSION IMPLEMENTING DECISION (EU) 2022/985**of 22 June 2022****on the equivalence of the regulatory framework for central counterparties in Israel to the requirements of 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) 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 decision 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) In order 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 in that third country do not expose clearing members and trading venues established in the Union to a higher level of risk than those clearing members and trading venues 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 of whether the legal and supervisory arrangements of Israel are equivalent to those of the Union should not only be based on a comparative analysis of the legally binding requirements applicable to CCPs in Israel, but also on an assessment of the outcome of those requirements. The Commission should also assess 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 market in which CCPs in Israel operate. In order to achieve an equivalent risk mitigation outcome, 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 whose inherent level of risk is lower.
- (4) Article 25(6), points (a), (b) and (c), of Regulation (EU) No 648/2012 lays down 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) In accordance with Article 25(6), point (a), CCPs authorised in a third country are to 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.

- (6) The legally binding requirements applicable to CCPs authorised in Israel consist of the Securities Law 5728-1968 ^(?) ('SL'), in particular Sections 50A, 50B, 50B19 and 50C, thereof. The Securities Law applies Section 10 of the Payment Systems Law 5768-2008 ^(?) ('PSL'), which determines the criteria for carrying out the supervision of the clearing houses established in Israel (ensuring stable and efficient clearing houses) by the Israel Securities Authority ('ISA'). That legal framework is supplemented by the set of directives instructed by ISA to CCPs established in Israel. The SL, the PSL and ISA's directives ensure the full implementation of the international standards set out under the Principles for financial market infrastructures ('PFMIs') issued in April 2012 by the Committee on Payment and Market Infrastructure ('CPMI') and the International Organization of Securities Commissions ^(*).
- (7) CCPs established in Israel must be authorised by the Israeli Minister of Finance after consultation of ISA and following the approval of the Knesset Finance Committee. In order to provide clearing services, CCPs are required to fulfil the specific provisions laid down in the SL and have internal rules and procedures in place that notably ensure compliance with all relevant standards of the PFMIs. In particular, CCPs established in Israel must operate safely and effectively and manage prudently the risks associated with their business and operations. As instructed by ISA on 15 December 2015 in a directive to CCPs authorised in Israel, CCPs are also required to have sufficient financial, human, risk management, information technology, systems and infrastructure resources to perform their function as a CCP. In addition, each CCP authorised in Israel is responsible for the formulation of its internal rules except for a change in the rules on membership which requires ISA's formal approval pursuant to Section 50B(a)(1) of SL. Notwithstanding that provision, ISA may, under Section 50C(b) of SL, order changes in the rules of a CCP authorised in Israel if those rules do not comply with the Israeli legal framework for CCPs and with the PFMIs.
- (8) The Israeli financial market is significantly smaller than the Union financial market. In particular, since 2015 the total value of derivative transactions cleared in Israel represented less than 1 % of the total value of the derivative transactions cleared in the Union. Therefore, participation in CCPs authorised in Israel 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 Israel ensure that CCPs authorised in Israel 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, 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.
- (11) Pursuant to Section 50C of the SL, ISA is empowered to supervise the operations of CCPs authorised in Israel. The objectives of ISA's supervision consist of ensuring the stability and the efficiency of the CCPs and control the compliance of the Israeli CCPs to their obligations. In addition, provisions from Section 10 of the PSL, Sections 56A and 50C(d) of the SL supplement the set of powers granted to ISA which may audit a CCP, carry out on-site inspections, and require documents proving the adequate implementation of the legally binding requirements for CCPs authorised in Israel. ISA may impose internal rules to the established CCPs if an infringement is suspected as laid down in Section 50C(b) of the SL.
- (12) The Commission concludes that the legal and supervisory arrangements in respect of CCPs authorised in Israel provide for effective supervision and enforcement on an ongoing basis.
- (13) In accordance with Article 25(6), point (c), of Regulation (EU) No 648/2012, the legal framework of a third country is to provide for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes ('third-country CCPs').

^(?) Securities Law 5728-1968.

^(?) Payment Systems Law 5768-2008.

^(*) 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.

- (14) Non-Israeli CCPs which want to clear derivatives in Israel have to apply for a license to the Chairman of ISA and obtain the approval of the Israeli Minister of Finance. Pursuant to Section 50A(a8) of SL, if the Chairman of ISA deems that ISA can cooperate with the competent authority of the authorised non-Israeli CCPs, considers that the legal requirements for that CCP are equivalent to the Israeli framework and that delivering a licence to that CCP would not damage the interest of the of investors in Israel, ISA may decide to exempt that CCP from the regulatory provisions of the Israeli legal framework for CCPs. In these conditions, the recognition of a non-Israeli CCP is therefore possible.
- (15) The Commission concludes that the legal framework of Israel provide for an effective equivalent system for the recognition of third-country CCPs.
- (16) The Commission therefore considers that the legal and supervisory arrangements of Israel 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 Regulation (EU) No 648/2012.
- (17) This Decision is based on the legally binding requirements applicable to CCPs in Israel at the time of the adoption of this Decision. The Commission and the European Securities and Markets Authority, will continue monitoring the evolution of the legal and supervisory framework applicable to CCPs in Israel and the fulfilment of the conditions on the basis of which this Decision has been taken.
- (18) The Commission may decide to amend or repeal this Decision at any time, in particular where the regulatory and supervisory developments in Israel affect the conditions on the basis of which this Decision is adopted.
- (19) 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(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of Israel applicable to central counterparties laid down in the Securities Law 5728-1968, in the Payment Systems Law 5768-2008 and supplemented by the Israel Securities Authority directives to central counterparties in Israel, shall be considered equivalent to the requirements laid down in Regulation (EU) No 648/2012.

Article 2

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

Done at Brussels, 22 June 2022.

For the Commission
The President
Ursula VON DER LEYEN
