

COMMISSION IMPLEMENTING DECISION (EU) 2022/1683**of 28 September 2022****on the equivalence of the regulatory framework for central counterparties in Colombia 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 that 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. The significantly lower risks inherent in clearing activities carried out in financial markets that are smaller than the Union financial market should therefore be taken into account.
- (3) The assessment of whether the legal and supervisory arrangements of Colombia 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 Colombia, 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 that are authorised in Colombia 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 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 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.
- (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.

- (6) The legally binding requirements applicable to CCPs authorised in Colombia are laid down in Law no. 964 of 2005 regulating clearing and settlement of financial instruments ('the primary rules') as well as in the general rules laid down in Decree 2555 of 2010 in Book 13 of Part 2 and circulars issued by the Superintendencia Financiera ('SFC') ('the secondary rules'). Those rules together set out the standards and requirements that CCPs authorised in Colombia have to comply with on an ongoing basis.
- (7) The primary rules set out, among others, rules on governance arrangements, shareholders and members with qualifying holdings, default fund and settlement, and establish the minimum requirements the operating rules CCPs must comply with. Moreover, pursuant to Circular Básica Jurídica – CE 29 of 2014, authorised CCPs must apply and implement the relevant international standards concerning clearing and settlement systems, in particular the Principles for financial market infrastructures ('PFMIs') issued by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions^(?).
- (8) To be authorised in Colombia, a CCP must submit to the SFC its operating rules, as well as a study on the adequacy of each of the systems it manages. The operating rules of a CCP must provide prescriptive detail about the way in which the CCP is to meet the high-level standards and requirements set out in the primary rules as well as the PFMIs. The operating rules must include provisions on participation requirements, communication systems, the type of financial instruments which may be cleared, risk management procedures, procedures for timely settlement, collateral to be provided by participants, measures to be taken in case of breach by participants of their obligations, organisation and operation of the audit and risk committees and operational continuity. Once the operating rules are approved by the SFC, the latter assesses the capacity of the CCP to start operations, in terms of facilities, professional and technological resources, procedures and controls. Once the CCP has been authorised, its operating rules become legally binding upon it. Any amendments to the operating rules have to be approved by the SFC.
- (9) The legally binding requirements applicable to CCPs authorised in Colombia therefore comprise a two-tiered structure. The first tier consists of Law no. 964 of 2005, as well as the general rules and circulars issued by the SFC, which together set out the high-level standards and requirements, including the PFMIs, which authorised CCPs must comply with, and prescriptive detail about the way in which the CCP is to meet those high-level standards and requirements. The second tier consists of the operating rules of the CCPs.
- (10) The financial market of Colombia is significantly smaller than the financial market in which CCPs established in the Union are active. Over the past 3 years, the total value of OTC derivative transactions cleared in Colombia represented less than 1 % of the total value of OTC derivative transactions cleared in the Union. Therefore, participation in CCPs authorised in Colombia exposes clearing members and trading venues established in the Union to significantly lower risks than their participation in CCPs authorised in the Union. The primary and secondary rules applicable to CCPs authorised in Colombia, complemented by the binding operating rules, which together implement the PFMIs, adequately mitigate the lower level of risk that clearing members and trading venues established in the Union may be exposed to and can therefore be considered to achieve a risk-mitigation outcome equivalent to that pursued by Regulation (EU) No 648/2012.
- (11) The Commission concludes that the legal and supervisory arrangements of Colombia ensure that CCPs authorised in Colombia comply with legally binding requirements that are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.
- (12) 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.
- (13) Pursuant to Article 6 of Law no. 964 of 2005, the SFC is empowered to supervise the operations of CCPs in Colombia and to monitor those CCPs to ensure compliance on an ongoing basis with the primary rules and with the internal rules and procedures of the CCPs. The SFC has a comprehensive set of powers to control and penalise an authorised CCP, including, inter alia, the power to request information and data, conduct on-site and off-site inspections and request an authorised CCP to make corrections, issue orders and instructions. In accordance with Article 53 of Law no. 964 of 2005, the SFC may impose warnings, fines, suspension or disqualification of the appointed managers of an authorised CCP. It may also suspend the operations of a CCP or withdraw a CCP's

^(?) Committee on Payments and Market Infrastructures, Paper No 101 of 16 April 2012.

authorisation in case of infringement of a mandatory legal requirement. Moreover, CCPs have to make a self-assessment of their compliance with the PFMI at least every three years and deliver a report which is published and reviewed periodically by the SFC in accordance with its supervision plan.

- (14) The Commission concludes that the legal and supervisory arrangements in respect of CCPs authorised in Colombia provide for effective supervision and enforcement on an ongoing basis.
- (15) 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').
- (16) In Colombia, in accordance with External Circular No 019 of 2022, an 'equivalent third-country CCP' is a CCP operating in a jurisdiction in which the SFC observes material compliance with the PFMI, is subject to effective supervision and with which a cooperation arrangement between the third-country supervisor and the SFC exists. Third-country CCPs recognised as equivalent by the SFC are listed in a public record that is assessed in order to check the compliance with the PFMI. Pursuant to External Circular No 019 of 2022, exposures of Colombian banks to equivalent third-country CCPs benefit from a preferential capital treatment, while exposures to third-country CCPs which are not considered equivalent are subject to a punitive risk-weight. In practice, such a high risk-weight for non-equivalent third-country CCPs is prohibitive and very few, if any, Colombian banks can be expected to clear at non-equivalent third-country CCPs. Moreover, if Colombian banks decided to clear in a non-equivalent third-country CCP, the high risk-weight would mitigate any risks related to its exposures. In light of the capital treatment applicable to exposures to non-equivalent CCPs under External Circular No 019 of 2022, the Colombian regime can be considered to provide an effective equivalent system for the recognition of third-country CCPs.
- (17) The Commission concludes that the legal framework of Colombia provides for an effective equivalent system for the recognition of third-country CCPs.
- (18) The Commission therefore considers that the legal and supervisory arrangements of Colombian 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.
- (19) This Decision is based on the legally binding requirements applicable to CCPs in Colombia at the time of its adoption. The Commission, based, *inter alia*, on information provided by the European Securities and Markets Authority (ESMA) pursuant to Article 25(6b) of Regulation (EU) No 648/2012, will continue to monitor on a regular basis the evolution of the legal and supervisory framework applicable to CCPs in Colombia and the fulfilment of the conditions on the basis of which this Decision is adopted.
- (20) Based on the findings arising from a regular or specific review, the Commission may decide to amend or repeal this Decision at any time, in particular where developments affect the conditions on the basis of which this Decision is adopted.
- (21) To ensure that ESMA can start the recognition procedure for CCPs authorised in Colombia without delay, this Decision should enter into force as a matter of urgency.
- (22) 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 the Republic of Colombia applicable to central counterparties, consisting of the Law no. 964 of 2005 as complemented by the general rules and circulars issued by the Superintendencia Financiera, 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 day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 28 September 2022.

For the Commission
The President
Ursula VON DER LEYEN
