

COMMISSION IMPLEMENTING DECISION**of 28 April 2014****on the recognition of the legal and supervisory framework of Brazil as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies****(Text with EEA relevance)****(2014/245/EU)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies ⁽¹⁾, and in particular Article 5(6) thereof,

Whereas:

- (1) On 22 October 2012 the Commission granted a mandate to the European Securities and Markets Authority (ESMA), requesting its advice with regard to the technical assessment of the legal and supervisory framework of Brazil in respect of credit rating agencies (CRAs).
- (2) In its technical advice delivered on 31 May 2013, ESMA indicated that in its outcomes, the Brazilian legal and supervisory framework in respect of credit rating agencies is comparable to that laid down in Regulation (EC) No 1060/2009.
- (3) Pursuant to the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009, three conditions need to be fulfilled in order to consider a third country legal and supervisory framework equivalent to the requirements of that Regulation.
- (4) According to the first condition, CRAs in third countries must be subject to authorisation or registration and to effective supervision and enforcement on an ongoing basis. The Brazilian legal and regulatory framework for credit rating agencies consists of Regulation ICVM 521 of the Securities and Exchange Commission of Brazil (Comissão de Valores Mobiliários, CVM), adopted on 25 April 2012 on the basis of Law no. 6.385 of 1976. The regulatory framework obliges CRAs to comply with all provisions of the International Organisation of Securities Commissions (IOSCO) Code of Conduct. All relevant laws and regulations have entered into force. According to this regulatory framework, CRAs have to be registered and are supervised on an ongoing basis by the CVM. The Brazilian legal and supervisory framework endows CVM with a comprehensive range of powers allowing it to investigate whether CRAs comply with their legal obligations. The CVM may examine and extract examples of accounting records, books or documents as well as any other files and it may request information or clarifications under penalty of a fine, without prejudice to other penalties. The CVM's powers also include carrying out inspections, with or without previous notice, to enable effective supervision and enforcement of CRAs and the power to sanction CRAs in breach of the applicable rules. The CVM may impose a number of penalties to CRAs and anyone directly involved in the rating process, ranging from warnings, fines and suspensions to de-registration of the CRA. Should the CVM verify that a crime has been committed, it must refer the matter to the Public Attorney's Office ('Ministério Público'). The CVM, upon request, may also take part in legal disputes involving the securities market, where its activities can range from the collection of evidence to the issuance of legal opinions. CRAs must submit to the CVM an annual reference form, as well as event based information, such as where a significant change in methodology occurs; the decision to discontinue a credit rating; or where a preliminary opinion was not used by an issuer when disclosing a transaction. As of September 2013, all CRAs have submitted their updated reference forms to CVM and it has received event-driven information submissions. CVM reviewed

⁽¹⁾ OJ L 302, 17.11.2009, p. 1.

the documents and has asked one CRA to clarify an identified conflict of interest, which the CRA complied with. The cooperation agreement concluded between ESMA and CVM provides for information exchange with regard to enforcement and supervisory measures taken against cross border CRAs. On this basis, it should be considered that CRAs in Brazil are subject to authorisation or registration requirements equivalent to those laid down in Regulation (EC) No 1060/2009 and the Brazilian supervisory and enforcement arrangements applicable to CRAs are effectively applied and enforced.

- (5) According to the second condition, CRAs in the third country must be subject to legally binding rules which are equivalent to those set out in Articles 6 to 12 and Annex I to Regulation (EC) No 1060/2009, with the exception of Articles 6a, 6b, 8a, 8b, 8c and 11a, point (ba) of point 3 and points 3a and 3b of Section B of Annex I to that Regulation. When assessing the fulfilment of this condition due regard should be paid to Article 2(1) of Regulation (EU) No 462/2013 of the European Parliament and of the Council ⁽¹⁾ in respect of the date of application of certain provisions of Regulation (EC) No 1060/2009. With regard to corporate governance, the Brazilian legal and supervisory framework requires CRAs as part of their registration procedure to have a corporate governance structure with a minimum of two directors, one of which must be independent and responsible for compliance with the rules. The Brazilian legal and supervisory framework, which requires mandatory compliance with the IOSCO code, obliges CRAs to have in place adequate arrangements for the management of conflicts of interest. A CRA's code of conduct must provide for the adoption of mechanisms to identify, eliminate, manage and disclose situations involving conflicts of interest. The Brazilian framework also contains detailed rules on outsourcing, record keeping and confidentiality. CRAs are required to establish a review function for reviewing rating methodologies and the Brazilian framework contains a wide range of disclosure requirements with regard to credit ratings and rating activities, for example the requirement to distribute in a timely manner its ratings decisions, to publish a document based on the historical performance of ratings and to make public an annual report including information on its activities. Therefore, the Brazilian legal and supervisory framework should achieve the same outcomes as Regulation (EC) No 1060/2009 in respect of the management of conflicts of interest, the organisational processes and procedures that a CRA needs to have in place, the quality of ratings and of rating methodologies, the disclosure of credit ratings and the general and periodic disclosure of credit rating activities and. It should provide for equivalent protection in terms of integrity, transparency, good governance of CRAs and reliability of the credit rating activities.
- (6) According to the third condition, the regulatory regime in the third country must prevent interference by the supervisory authorities and other public authorities of that third country with the content of credit rating and methodologies. Any such interference would be contrary to the lawfulness principle, enshrined in the Brazilian Constitution, which provides that public authorities can only act if established by law. As far as it can be ascertained there is no legal provision empowering CVM or any other public authority to influence the content of credit rating or methodologies.
- (7) In view of the factors examined, the conditions laid down in the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009 can be considered to be met by the Brazilian legal and supervisory framework for credit rating agencies. Therefore, the Brazilian legal and supervisory framework for CRAs should be considered equivalent to the legal and supervisory framework established by Regulation (EC) No 1060/2009. The Commission, informed by ESMA, should continue to monitor the evolution of the Brazilian legal and supervisory framework for CRAs and the fulfilment of the conditions on the basis of which this decision has been taken.
- (8) 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 5 of Regulation (EC) No 1060/2009, the legal and supervisory framework for credit rating agencies in force in Brazil shall be considered as equivalent to the requirements of Regulation (EC) No 1060/2009.

⁽¹⁾ Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies (OJ L 146, 31.5.2013, p. 1).

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, 28 April 2014.

For the Commission
The President
José Manuel BARROSO
