

COMMISSION IMPLEMENTING DECISION**of 28 April 2014****on the recognition of the legal and supervisory framework of Mexico 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)****(2014/247/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 Mexico in respect of credit rating agencies (CRAs).
- (2) In its technical advice delivered on 31 May 2013, ESMA indicated that in its outcomes, the Mexican legal and supervisory framework in respect of CRAs 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. CRAs have been regulated and supervised by the Mexican Banking and Securities Commission (Comisión Nacional Bancaria y de Valores, CNBV) since July 1993. Since December 1999, they have to obtain prior authorisation of the CNBV in order to operate and provide credit rating services. On 17 February 2013, the currently applicable amended Regulation on credit rating agencies (Disposiciones Aplicables a las Instituciones Calificadoras de Valores) was published by CNBV in its official journal and has entered into force. The CNBV is empowered to investigate any actions or issues that might constitute or could constitute a breach of the law. The CNBV has the power to request any type of information and documents, carry out on-site inspections and summon before it any person who might contribute to the investigation. CRAs can be permanently or temporarily barred, suspended or have their license revoked. The CNBV is also empowered to impose administrative fines. The CNBV has implemented annual compliance reviews of the registered CRAs, on the basis of which it has made observations and imposed sanctions. The cooperation agreement concluded between ESMA and CNBV 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 Mexico are subject to authorisation or registration requirements equivalent to those laid down in Regulation (EC) No 1060/2009 and the Mexican 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 ⁽²⁾ in respect of the date of application of certain provisions of Regulation (EC) No 1060/2009. The Mexican framework with regard to corporate governance requires CRAs to have a board of directors, consisting of maximum 21 directors and of which at

⁽¹⁾ OJ L 302, 17.11.2009, p. 1.

⁽²⁾ 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).

least 25 % shall meet the requirements of independence. The independent directors shall amongst others be competent for the development of the credit rating policy and the methodologies, the effectiveness of the internal control system and monitoring the compliance and governance processes. Conflicts of interest must be identified and eliminated and, if applicable, the compliance officer is to be informed of any potential conflict of interest that could influence ratings. When a CRA identifies conflicts of interest that might influence its ratings, it must abstain from providing its services. The Mexican framework contains extensive organisational requirements concerning record keeping and confidentiality, and provides that CRAs remain fully liable for any outsourced activities. Entities providing outsourcing services to CRAs are also subject to supervision by the CNBV. CRAs are required to establish a formal review function for reviewing rating methodologies and models and the Mexican framework contains a wide range of disclosure requirements with regard to credit ratings and rating activities. Therefore, the Mexican 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. It thus provides for equivalent protection in terms of integrity, transparency, good governance of credit rating agencies 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. The Mexican Constitution establishes that administrative authorities are only allowed to act when they have an express authority or power set forth under applicable law. As far as it can be ascertained there is no legal provision empowering CNBV 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 Mexican legal and supervisory framework for CRAs. Therefore, the Mexican 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 Mexican 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 Mexico shall be considered as equivalent to the requirements of Regulation (EC) No 1060/2009.

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