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⁽¹⁾ Text with EEA relevance.

EN

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⁽¹⁾ Text with EEA relevance.

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1271

of 25 July 2019

amending Implementing Regulation (EU) 2018/1848 as regards the amount available to Romania for the reimbursement, in accordance with Article 26(5) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council, of the appropriations carried over from financial year 2018

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 ⁽¹⁾, and in particular Article 26(6) thereof,

After consulting the Committee on the Agricultural Funds,

Whereas:

- (1) Commission Implementing Regulation (EU) 2018/1848 ⁽²⁾ sets the amounts made available to the Member States for reimbursement to the final recipients in financial year 2019. Those amounts correspond to the financial discipline reduction actually applied by the Member States in financial year 2018 on the basis of the Member States' declarations of expenditure for the period from 16 October 2017 to 15 October 2018.
- (2) In respect of Romania, the detailed declaration of expenditure did not fully take into account the threshold of EUR 2000 that applies to financial discipline in accordance with Article 8(1) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council ⁽³⁾. Therefore, for reasons of sound financial management, in Implementing Regulation (EU) 2018/1848 no amount was made available to Romania for reimbursement.
- (3) Romania has subsequently informed the Commission about the correct amount of financial discipline which should have been applied in Romania in financial year 2018 when fully taking into account the threshold of EUR 2 000. In order to ensure that the reimbursement of the relevant amounts to Romanian farmers can take place, the Commission should determine the corresponding amount that is made available to Romania.
- (4) Implementing Regulation (EU) 2018/1848 should therefore be amended accordingly.
- (5) As the amendment provided for in this Regulation affects the application of Implementing Regulation (EU) 2018/1848, which applies from 1 December 2018, this Regulation should also apply from that date; therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

⁽¹⁾ OJ L 347, 20.12.2013, p. 549.

⁽²⁾ Commission Implementing Regulation (EU) 2018/1848 of 26 November 2018 on the reimbursement, in accordance with Article 26(5) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council, of the appropriations carried over from financial year 2018 (OJ L 300, 27.11.2018, p. 4).

⁽³⁾ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

HAS ADOPTED THIS REGULATION:

Article 1

In the table set out in the Annex to Implementing Regulation (EU) 2018/1848, the following entry is inserted after the row concerning Portugal:

'Romania	16 669 111'
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Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply from 1 December 2018.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 July 2019.

*For the Commission,
On behalf of the President,
Jerzy PLEWA*

*Director-General
Directorate-General for Agriculture and Rural Development*

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1272**of 29 July 2019****correcting Implementing Regulation (EU) 2017/2470 establishing the Union list of novel foods and Implementing Decision (EU) 2017/2078 authorising an extension of use of yeast beta-glucans as a novel food ingredient under Regulation (EC) No 258/97 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) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 ⁽¹⁾, and in particular Articles 8 and 12 thereof,

Whereas:

- (1) Pursuant to Article 8 of Regulation (EU) 2015/2283, the Commission was to establish, by 1 January 2018, the Union list of novel foods authorised or notified under Regulation (EC) No 258/97 of the European Parliament and of the Council ⁽²⁾.
- (2) The Union list of novel foods authorised or notified under Regulation (EC) No 258/97 was established by Commission Implementing Regulation (EU) 2017/2470 ⁽³⁾.
- (3) Commission Implementing Regulation (EU) 2018/1023 ⁽⁴⁾ corrected Implementing Regulation (EU) 2017/2470 establishing the Union list of novel foods in order to include a number of authorised or notified novel foods not included in the initial Union list.
- (4) After the publication of Implementing Regulation (EU) 2017/2470 and Implementing Regulation (EU) 2018/1023, the Commission identified additional errors in the Annex to Implementing Regulation (EU) 2017/2470.
- (5) Corrections are needed in order to provide clarity and legal certainty to food business operators and to Member States' competent authorities, thus providing for the proper implementation and use of the Union list of novel foods.
- (6) On 22 November 2018, the competent authority of Italy made a request to the Commission for the correction in the Union list relating to the designation and the specific labelling requirement of the novel food *Echinacea purpurea* extract from cell cultures. This novel food was authorised through notification procedure pursuant to Article 5 of Regulation (EC) No 258/97. The competent authority of Italy has made an error by notifying the wrong name for the cell cultures and therefore, the request asks to replace the name of the cell cultures HTN®Vb with the name EchiPure-PC™ in the designation of the novel food as listed in the Union list and in the specific labelling requirement of foods containing it, as well as in the specifications of the novel food.
- (7) A correction of the designation and of the specific labelling requirement in Table 1 and a correction of the specifications in Table 2 of the Annex to Implementing Regulation (EU) 2017/2470 of the novel food *Echinacea purpurea* extract from cell cultures are therefore necessary.

⁽¹⁾ OJ L 327, 11.12.2015, p. 1.

⁽²⁾ Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients (OJ L 43, 14.2.1997, p. 1).

⁽³⁾ Commission Implementing Regulation (EU) 2017/2470 of 20 December 2017 establishing the Union list of novel foods in accordance with Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods (OJ L 351, 30.12.2017, p. 72).

⁽⁴⁾ Commission Implementing Regulation (EU) 2018/1023 of 23 July 2018 correcting Implementing Regulation (EU) 2017/2470 establishing the Union list of novel foods (OJ L 187, 24.7.2018, p. 1).

- (8) The novel foods yeast beta-glucans were authorised under certain conditions of use by Commission Implementing Decision 2011/762/EU ⁽⁵⁾. Use of yeast beta-glucans in additional food categories was later authorised by Commission Implementing Decision (EU) 2017/2078 ⁽⁶⁾. In the specifications of yeast beta-glucans in Implementing Decision (EU) 2017/2078, the measurement units for heavy metals are wrongly expressed in mg/g instead of mg/kg. This error was transferred in the Union list established by Implementing Regulation (EU) 2017/2470. Therefore, the specifications of the yeast beta-glucans relating to heavy metals in Annex I to Implementing Decision (EU) 2017/2078 and in Table 2 of the Annex to Implementing Regulation (EU) 2017/2470 should be corrected accordingly.
- (9) Implementing Regulation (EU) 2017/2470 and Implementing Decision (EU) 2017/2078 should be corrected accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Implementing Regulation (EU) 2017/2470 is corrected in accordance with the Annex to this Regulation.

Article 2

Annex I to Implementing Decision (EU) 2017/2078 is corrected in accordance with the Annex to this Regulation.

Article 3

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 July 2019.

For the Commission
The President
Jean-Claude JUNCKER

⁽⁵⁾ Commission Implementing Decision 2011/762/EU of 24 November 2011 authorising the placing on the market of yeast beta-glucans as a novel food ingredient under Regulation (EC) No 258/97 of the European Parliament and of the Council (OJ L 313, 26.11.2011, p. 41).

⁽⁶⁾ Commission Implementing Decision (EU) 2017/2078 of 10 November 2017 authorising an extension of use of yeast beta-glucans as a novel food ingredient under Regulation (EC) No 258/97 of the European Parliament and of the Council (OJ L 295, 14.11.2017, p. 77).

(1) The Annex to Implementing Regulation (EU) 2017/2470 is corrected as follows:

(a) the entry for *Echinacea purpurea* extract from cell cultures in Table 1 (Authorised novel foods) is replaced by the following:

Authorised novel food	Conditions under which the novel food may be used		Additional specific labelling requirements	Other requirements
'Echinacea purpurea extract from cell cultures'	<i>Specified food category</i>	<i>Maximum levels</i>	The designation of the novel food on the labelling of the foodstuffs containing it shall be 'dried extract of <i>Echinacea purpurea</i> from cell cultures EchiPure-PC™'	
	Food Supplements as defined in Directive 2002/46/EC	In line with normal use in food supplements of a similar extract from florets within the flower head of <i>Echinacea purpurea</i>		

(b) the entry for *Echinacea purpurea* extract from cell cultures in Table 2 (Specifications) is replaced by the following:

Authorised novel food	Specification
'Echinacea purpurea extract from cell cultures'	Description/Definition: Dried extract of <i>Echinacea purpurea</i> from cell cultures EchiPure-PC™'

(c) the entries for Yeast beta-glucans in Table 2 (Specifications) under the heading *Heavy metals for insoluble in water, but dispersible in many liquid matrices* are replaced by the following:

	'Lead: < 0,2 mg/kg Arsenic: < 0,2 mg/kg Mercury: < 0,1 mg/kg Cadmium: < 0,1 mg/kg'
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(2) Annex I to Implementing Decision (EU) 2017/2078 is corrected as follows:

The entries for Lead, Arsenic, Mercury and Cadmium in the Table Specifications of Yeast (*Saccharomyces cerevisiae*) beta-glucans are replaced by the following:

Lead	< 0,2 mg/kg
Arsenic	< 0,2 mg/kg
Mercury	< 0,1 mg/kg
Cadmium	< 0,1 mg/kg'

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2019/1273

of 26 July 2019

concerning certain interim protective measures relating to African swine fever in Slovakia

(notified under document C(2019) 5777)

(Only the Slovak text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(3) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary checks applicable in intra-Union trade in certain live animals and products with a view to the completion of the internal market ⁽²⁾, and in particular Article 10(3) thereof,

Whereas:

- (1) African swine fever is an infectious viral disease affecting domestic and feral pig populations and can have a severe impact on the profitability of pig farming causing disturbance to trade within the Union and exports to third countries.
- (2) In the event of an outbreak of African swine fever, there is a risk that the disease agent might spread to other pig holdings and to feral pigs. As a result, it may spread from one Member State to another Member State and to third countries through trade in live pigs or their products.
- (3) Council Directive 2002/60/EC ⁽³⁾ lays down minimum measures to be applied within the Union for the control of African swine fever. Article 9 of Directive 2002/60/EC provides for the establishment of protection and surveillance zones in the event of outbreaks of that disease where the measures laid down in Articles 10 and 11 of that Directive are to apply.
- (4) Slovakia has informed the Commission of the current African swine fever situation on its territory, and in accordance with Article 9 of Directive 2002/60/EC, it has established protection and surveillance zones where the measures referred to in Articles 10 and 11 of that Directive are applied.
- (5) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade by third countries, it is necessary to describe at Union level the areas established as protection and surveillance zones for African swine fever in Slovakia in collaboration with that Member State.
- (6) Accordingly, pending the next meeting of the Standing Committee on Plants, Animals, Food and Feed, the areas identified as protection and surveillance zones in Slovakia should be set out in the Annex to this Decision and the duration of that regionalisation fixed.
- (7) This Decision is to be reviewed at the next meeting of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever (OJ L 192, 20.7.2002, p. 27).

HAS ADOPTED THIS DECISION:

Article 1

Slovakia shall ensure that the protection and surveillance zones established in accordance with Article 9 of Directive 2002/60/EC comprise at least the areas listed as the protection and surveillance zones in the Annex to this Decision.

Article 2

This Decision shall apply until 30 October 2019.

Article 3

This Decision is addressed to the Slovak Republic.

Done at Brussels, 26 July 2019.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

Slovakia	Areas as referred to in Article 1	Date applicable until
Protection zone	Municipality of Strážne	30 October 2019
Surveillance zone	Municipalities of Viničky, Ladmovce, Zemplín, Streda n./B., Svätá Mária, Svinice, Rad časť Hrušov, Svätuše, Somotor, M. Kamenec, V. Kamenec, V. Horeš, M. Horeš, Pribeník	30 October 2019

COMMISSION IMPLEMENTING DECISION (EU) 2019/1274**of 29 July 2019****on the equivalence of the legal and supervisory framework applicable to benchmarks in Australia in accordance with Regulation (EU) 2016/1011 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) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 ⁽¹⁾, and in particular Article 30 thereof,

Whereas:

- (1) Regulation (EU) 2016/1011 introduces a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts, or to measure the performance of investment funds in the Union.
- (2) That Regulation applies as of 1 January 2018 and non-Union administrators benefit from a transitional period allowing for the use of third-country benchmarks in the Union. Following the expiry of the transitional period, a benchmark or a combination of benchmarks provided by an administrator located in a third country may only be used in the Union where the benchmark and the administrator are included in the register maintained by the European Securities and Markets Authority ('ESMA') following the adoption of an equivalence decision by the Commission, or a recognition or endorsement by competent authorities.
- (3) The Commission is empowered to adopt implementing decisions stating that the legal and supervisory framework of a third country with respect to specific administrators or specific benchmarks or families of benchmarks are equivalent to the requirements under Regulation (EU) 2016/1011. When assessing such equivalence, the Commission takes into account whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO principles for financial benchmarks or, where applicable, with the IOSCO principles for Oil Price Reporting Agencies ('PRAs'), and that such specific administrators or specific benchmarks or families of benchmarks are subject to effective supervision and enforcement on an on-going basis in that third country.
- (4) Benchmarks such as the Australian Bank Bill Swap Rate and the S&P/ASX 200 Index are administered in Australia and used in the Union by a number of supervised entities. As a result, the Commission undertook an assessment of the benchmarks regime in Australia.
- (5) The legislative framework for establishing, supervising and administering benchmarks in Australia comprises a licensing scheme and confers powers on the Australian Securities and Investments Commission ('ASIC'). It also requires administrators of significant benchmarks to obtain a benchmark administrator licence from ASIC. For benchmarks that are not declared significant by ASIC, the legislative framework in Australia allows administrators to opt-in to the national regulatory framework by applying for a licence from ASIC in accordance with section 908BD of the Corporations Act and, as a result, renders them subject to ASIC rules for administrators and contributors.
- (6) ASIC Licensees are subject to the conditions of the licence as well as a range of legislative requirements. Legally binding requirements for administrators are set forth in the Corporations Act 2001 ('Corporations Act'), the ASIC Financial Benchmark (Administration) Rules 2018 and the ASIC Financial Benchmark (Compelled) Rules 2018. The ASIC Regulatory Guide 268 entitled- Licensing regime for financial benchmark administrators ('RG 268') — provides further guidance for benchmark administrators. Part 7.5B of the Corporations Act (as amended by the Treasury Laws Amendment (2017 Measures No 5) Act 2018) implements the legislative framework for the regulation of financial benchmarks.

⁽¹⁾ OJ L 171, 29.6.2016, p. 1.

- (7) In accordance with section 908AC of the Corporations Act, ASIC may, by legislative instrument, declare a financial benchmark to be a significant benchmark. Only those benchmarks meeting the criteria laid down in the Act can be designated as significant benchmarks. ASIC shall be satisfied that: (i) the benchmark is systemically important to the Australian financial system; or (ii) there is a material risk of financial contagion, or systemic instability, in Australia if the availability or integrity of the benchmark is disrupted; or (iii) there would be a material impact on retail or wholesale investors in Australia if the availability or integrity of the benchmark is disrupted.
- (8) ASIC has declared a number of financial benchmarks to be significant benchmarks by means of the ASIC Corporations (Significant Financial Benchmarks) Instrument 2018/420. This decision is limited to the administrators of those benchmarks listed in the latest applicable version of the ASIC Corporations (Significant Financial Benchmarks) Instrument 2018/420. This decision does not cover administrators of financial benchmarks that qualify for exemption from the scope of Regulation (EU) 2016/1011 in accordance with Article 2(2) of that regulation.
- (9) ASIC may grant a licence to a benchmark administrator with regard to one or several financial benchmarks. ASIC must consider the factors set out in section 908BO(2) of the Corporations Act when deciding whether to grant a licence, impose, vary or revoke conditions on a licence, vary a licence, or suspend or cancel a licence. A person is considered to be committing an offence if it administers (or holds out that they administer) a significant benchmark but does not hold a benchmark administrator licence specifying the financial benchmark.
- (10) ASIC adopted the ASIC Financial Benchmark (Administration) Rules 2018 ('Administration Rules') under section 908CA of the Corporations Act and the ASIC Financial Benchmark (Compelled) Rules 2018 ('Compelled Rules') under section 908CD of the Corporations Act. The Administration Rules lay down requirements for benchmark administrator licensees and contributors including governance and oversight requirements, outsourcing requirements, requirements to guard against conflicts of interest, benchmark design and method requirements and input data requirements. The Compelled Rules regulate the mandatory generation or administration of a significant benchmark or mandatory submissions to a significant financial benchmark.
- (11) In drafting the Administration Rules, ASIC had regard to the IOSCO 'Principles for Financial Benchmarks' as required under section 908CK of the Corporations Act. In addition, ASIC considered the legal and supervisory frameworks with respect to benchmarks in third countries including Regulation (EU) 2016/1011, as well as other Australian financial licensing regimes.
- (12) The explanatory statement to the Administration Rules outlines how ASIC's Administration Rules and Compelled Rules reflect the IOSCO Principles. More specifically, the Administration Rules state that Rule 2.1.2 corresponds to the IOSCO Principles on governance arrangements for financial benchmarks. Rule 2.1.3 corresponds to the IOSCO Principles on the oversight of third parties that are involved in generating or administering each financial benchmark specified in the licensee's benchmark administrator licence. Rule 2.1.4 corresponds to the IOSCO Principles on conflicts of interest for administrators of financial benchmarks. Rule 2.2.1 corresponds to the IOSCO Principles on benchmark design. Rule 2.2.2 corresponds to the IOSCO Principles on data sufficiency and internal controls over data collection. Rule 2.2.3 corresponds to the IOSCO Principles on the content of the methodology used to make financial benchmark determinations. Sub-rule 2.2.4(1) corresponds to the IOSCO Principles on changes to the methodology used to make financial benchmark determinations. Rule 2.3.1 corresponds to the IOSCO Principles on the control framework for administrators as it relates to the management of risk, as well as core requirements of other Australian licensing regimes. Rule 2.4.1 corresponds to the IOSCO Principles on planning for the transition or cessation of a licensed benchmark. Rule 2.5.1 corresponds to the IOSCO Principles on a 'Submitter Code of Conduct'. Finally, Rule 2.6.1 corresponds to the IOSCO Principles on transparency of benchmark determinations.
- (13) In addition, ASIC provides regulatory guidance (RG 268) for entities subject to the Administration Rules and the Compelled Rules. It sets out ASIC's interpretation of the law and gives practical guidance of how entities may meet their obligations under the law.
- (14) The Commission therefore concludes that the binding requirements with respect to the administrators of significant benchmarks as designated in the ASIC Corporations (Significant Financial Benchmarks) Instrument 2018/420 are equivalent to the corresponding requirements under Regulation (EU) 2016/1011.

- (15) Article 30 of Regulation (EU) 2016/1011 also requires that the requirements are subject to effective supervision and enforcement on an on-going basis in the third country.
- (16) Benchmark administrators licensed in Australia are subject to ongoing supervision and oversight by ASIC. Section 908AF of the Corporations Act provides that ASIC is responsible for supervising financial benchmarks that are licenced. ASIC is also responsible for enforcing benchmark administrators' compliance with their obligations under the Corporations Act, the Administration Rules and the Compelled Rules, and in this respect, it conducts periodic assessments of compliance by benchmark administrators with their licence obligations.
- (17) Section 908BQ of the Corporations Act and rule 2.8.1 of the Administration Rules require benchmark administrators to notify ASIC of certain matters, including where the licensee has failed to comply with or may no longer be able to comply with any of their regulatory obligations. ASIC is able to assess licensees' compliance with the Corporations Act and the Administration Rules, in accordance with sections 908BR and 908BS of the Corporations Act and rules 2.8.2 and 2.8.3 of the Administration Rules. ASIC may also ask for a report on any matter in accordance with Section 908BV of the Corporations Act, and ask for an audit statement on the licensee's report on those matters. Section 908BW of the Corporations Act empowers ASIC to produce assessment reports, share those reports with certain Australian Government agencies where necessary, and publish such reports.
- (18) Should a benchmark administrator fail to comply with their regulatory obligations, under section 908BT of the Corporations Act, ASIC may issue a licensee with a written direction to take specific actions that ASIC believes will ensure the licensee's compliance with those obligations. If the licensee fails to comply with that written direction, ASIC may bring the matter to a court, which may then order that the licensee comply with ASIC's guidance. Under sections 908CH and 908CI of the Corporations Act, ASIC may issue infringement notices or accept commitments from administrators who have failed to comply with their regulatory requirements. Section 908CG of the Corporations Act provides a framework whereby an administrator who is alleged to have not complied with the Administration Rules may, as an alternative to civil proceedings, pay a penalty, undertake or institute remedial measures (including education programs), or accept sanctions other than the payment of a penalty. ASIC may also suspend or cancel a licence in certain circumstances under sections 908BI and 908BJ of the Corporations Act.
- (19) The Compelled Rules enable ASIC, if it considers it to be in the public interest, to compel a licensee to continue to generate or administer a significant benchmark, or generate or administer a significant benchmark in a particular way, including by changing the method used to generate or administer a significant benchmark. The Compelled Rules also enable ASIC to compel a contributor to contribute data or information to a licensee for the generation or administration of a significant benchmark, or to ASIC for purposes related to the generation or administration of a significant benchmark.
- (20) The Commission therefore concludes that the binding requirements with respect to the administrators of any benchmark declared to be a significant financial benchmark by the ASIC Corporations (Significant Financial Benchmarks) Instrument 2018/420 are subject to effective supervision and enforcement on an on-going basis.
- (21) EU Benchmark administrators do not need to obtain a license for their benchmarks to be used in Australia, unless a benchmark is designated as a significant benchmark by ASIC, or where a benchmark administrator voluntarily seeks to be licensed in Australia. ASIC informed the Commission that it has no intention to designate EU benchmarks as significant.
- (22) This Decision will be complemented by cooperation arrangements to ensure the effective exchange of information and coordination of supervisory activities between ESMA and ASIC.
- (23) This Decision is based on the assessment of the applicable legally binding requirements relating to benchmarks in Australia at the time of the adoption of this Decision. The Commission will continue to monitor, on a regular basis, the market developments, the evolution of the legal and supervisory framework of benchmarks and the effectiveness of supervisory cooperation in relation to the monitoring and enforcement of those requirements to ensure the on-going fulfilment of the requirements on the basis of which this Decision has been adopted.
- (24) This Decision is without prejudice to the Commission's power to undertake a specific review at any time, where relevant developments make it necessary for the Commission to re-assess this Decision.

- (25) 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 30 of Regulation (EU) 2016/1011, the legal and supervisory framework of Australia applicable to the administrators of financial benchmarks that are declared significant benchmarks by means of the ASIC Corporations (Significant Financial Benchmarks) Instrument 2018/420, as determined in its latest applicable version, shall be considered to be equivalent to the requirements laid down in Regulation (EU) 2016/1011 and to be subject to effective supervision and enforcement on an ongoing basis.

Article 2

This Decision shall enter into force 20 days after its publication in the *Official Journal of the European Union*.

Done at Brussels, 29 July 2019.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING DECISION (EU) 2019/1275**of 29 July 2019****on the equivalence of the legal and supervisory framework applicable to benchmarks in Singapore in accordance with Regulation (EU) 2016/1011 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) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 ⁽¹⁾, and in particular Article 30 thereof,

Whereas:

- (1) Regulation (EU) 2016/1011 introduces a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts, or to measure the performance of investment funds in the Union.
- (2) That Regulation applies as of 1 January 2018 and non-Union administrators benefit from a transitional period allowing for the use of third-country benchmarks in the Union. Following the expiry of the transitional period, a benchmark or a combination of benchmarks provided by an administrator located in a third country may only be used in the Union where the benchmark and the administrator are included in the register maintained by the European Securities and Markets Authority ('ESMA') following the adoption of an equivalence decision by the Commission, or a recognition or endorsement by competent authorities.
- (3) The Commission is empowered to adopt implementing decisions stating that the legal and supervisory framework of a third country with respect to specific administrators or specific benchmarks or families of benchmarks are equivalent to the requirements under Regulation (EU) 2016/1011. When assessing such equivalence, the Commission takes into account whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO Principles for Financial Benchmarks or, where applicable, with the IOSCO Principles for Oil Price Reporting Agencies ('PRAs'), and that such specific administrators or specific benchmarks or families of benchmarks are subject to effective supervision and enforcement on an on-going basis in that third country.
- (4) Benchmarks such as the Singapore Interbank Offered Rates (SIBOR) and the Singapore Dollar Swap Offer Rate (SOR) are administered in Singapore and used in the Union by a number of supervised entities. As a result, the Commission undertook an assessment of the benchmark regime in Singapore.
- (5) The Securities and Futures Act ('SFA') and the Securities and Futures (Financial Benchmarks) Regulations 2018 ('SFA Benchmarks Regulations') set out the legal and supervisory framework in Singapore for administrators of designated benchmarks and contributors to those benchmarks. When developing requirements under the SFA and SFA Benchmarks Regulations, the Monetary Authority of Singapore ('MAS') considered the benchmark regimes in overseas regimes, including the Regulation (EU) 2016/1011.
- (6) Part VIAA of the SFA introduces a regulatory regime whereby all benchmark administrators and contributors in relation to a designated benchmark must obtain authorisation from the MAS as an Authorised Benchmark Administrator ('ABA') or Authorised Benchmark Submitter ('ABS'). There are specific obligations for ABA and ABS, and requirements applicable to compelled administration of, and submission to, a designated benchmark. In addition, the SFA confers rule-making powers on MAS. The rules as implemented by MAS are legally binding.

⁽¹⁾ OJ L 171, 29.6.2016, p. 1.

- (7) Section 2 of the SFA defines a financial benchmark as any price, rate, index or value that is (i) determined periodically by the application (whether direct or indirect) of a formula or any other method of calculation to information or expressions of opinion concerning transactions in, or the state of, the market in respect of one or more underlying things; (ii) made available to the public (whether free of charge or for payment); and (iii) used for reference to determine the interest payable or other sums due on deposits or credit facilities; to determine the price or value of any investment product; or to measure the performance of any product offered by a person prescribed by regulations.
- (8) In accordance with section 123B of the SFA, MAS may designate, by Order in the Government Gazette, a financial benchmark as a designated benchmark. MAS may do so if it is satisfied that (i) the financial benchmark has systemic importance in the financial system of Singapore, (ii) a disruption in the determination of the financial benchmark could affect public confidence in the benchmark or financial system of Singapore, (iii) the determination of the financial benchmark could be susceptible to manipulation or (iv) it is otherwise in the interests of the public to do so.
- (9) MAS has designated financial benchmarks by means of the Securities and Futures (Designated Benchmarks) Order 2018 issued pursuant to section 123B of the SFA. This decision is limited to the administrators of those benchmarks listed in the latest applicable version of the Securities and Futures (Designated Benchmarks) Order. This decision does not cover administrators of financial benchmarks that qualify for exemption from the scope of Regulation (EU) 2016/1011 in accordance with Article 2(2) of that regulation.
- (10) Under the SFA (in particular sections 123D and 123ZC), both the administrators and submitters of designated benchmarks are required to be authorised, unless otherwise exempted. MAS may consider the factors set out in sections 123F(5), 123F(6), 123F(8), 123J(1), 123J(6) of the SFA, and regulation 4(1) of the SFA Benchmarks Regulations when deciding whether to grant an authorisation or suspend or revoke an authorisation in relation to an ABA. MAS may also impose, vary or revoke conditions or restrictions on an ABA under sections 123F(2) and 123F(3) of the SFA. A person commits an offence if he administers or holds himself out as administering a designated benchmark without obtaining authorisation, unless he is exempted from such requirement.
- (11) According to section 123O of the SFA, benchmark administrators must issue a code in respect of each designated benchmark, which sets out the standards to be maintained by every submitter to the designated benchmark. This also requires the establishment of an oversight committee under regulation 8 of the SFA Benchmarks Regulations, which shall conduct periodic reviews on the scope, design and methodology of the designated benchmark and arrangements to facilitate the administration of a designated benchmark.
- (12) Sections 123J(4) and 123ZZB of the SFA allow MAS to compel an ABA to continue to administer a designated benchmark. Sections 123F(2) and 123F(3) of the SFA allow MAS to impose conditions on the ABA relating to the process for the determination of the designated benchmark. Sections 123ZI(1) and 123ZJ(1) of the SFA allow MAS to compel any person to be a submitter to a designated benchmark by designating the person as a designated benchmark submitter ('DBS'). MAS must consider the factors set out in sections 123ZI(2) and 123ZI(3) of the SFA when deciding whether to designate a person as a DBS or to withdraw such designation. A DBS is subject to the same ongoing obligations as an ABS.
- (13) Part VIAA of the SFA and the SFA Benchmarks Regulations generally reflect the IOSCO Principles for Financial Benchmarks. An administrator is primarily responsible for all aspects of administering a designated benchmark, and subject to regulatory requirements under the SFA and SFA Benchmarks Regulations. Where an administrator outsources any functions to a third party, it is required to comply with the Guidelines on Outsourcing issued by MAS. All this reflects the IOSCO Principles on Overall Responsibility of the Administrator and Oversight of Third Parties.
- (14) Section 123A of the SFA states the objectives of the regulatory regime are to promote fair and transparent determination of financial benchmarks and to reduce systemic risks. In line with this, Section 123P of the SFA requires the maintenance of governance arrangements that are adequate for the designated benchmark to be determined in a fair and efficient manner reflecting the general Principle on avoiding Conflicts of Interest for Administrators. Furthermore, it needs to be ensured that the systems and controls concerning performing the activity of administering a designated benchmark are adequate and appropriate for the scale and nature of its operations, reflecting the IOSCO Principle on Control Framework for Administrators.

- (15) As the SFA also requires a code in respect of each designated benchmark, for which the administrator must obtain MAS's written approval, and the establishment of an oversight committee that must carry out periodic reviews of the scope and adequacy of the definitions, design and methodology of the designated benchmark, the Principles on Transparency, Methodology, on Internal Oversight and on Periodic Review and on the Submitter Code of Conduct are thus also reflected.
- (16) Considering the IOSCO Principle on Transition, Section 123J enables MAS to refuse to withdraw the authorisation of an ABA if this was not in the public interest. Section 123S of the SFA, together with Regulation 13 of the SFA Benchmarks Regulations and the Notice on Submission of Periodic Reports for Benchmark Administrators, correspond with IOSCO Principle on Audits. Section 123R of the SFA and Regulation 12 of the SFA Benchmarks Regulations in relation to benchmark administrators and section 123ZN(1) of the SFA and regulation 20 of the SFA Benchmarks Regulations in relation to benchmark submitters correspond with IOSCO Principle on Audit Trail. Sections 123V and 123ZR of the SFA correspond with IOSCO Principle on Cooperation with Regulatory Authorities.
- (17) It can therefore be concluded that the binding requirements with respect to the administrators of financial benchmarks designated as 'designated benchmarks' under the Securities and Futures (Designated Benchmarks) Order are equivalent to the corresponding requirements under Regulation (EU) 2016/1011.
- (18) Article 30 of Regulation (EU) 2016/1011 also requires the binding requirements to be subject to effective supervision and enforcement on an on-going basis in the third country.
- (19) Regulated administrators and submitters are subject to ongoing supervision and oversight by MAS in Singapore. MAS is responsible for enforcing the regulated administrators and submitters' compliance with their obligations under SFA and the SFA Benchmarks Regulations, and in this respect, it conducts periodic assessments of compliance by the regulated administrators and submitters. In their assessment, MAS may take into account any information and reports that it considers appropriate. Sections 123O to 123V of the SFA outline the general obligations and sections 123F(4) and 123K(6) of the SFA provide that administrators must comply with any conditions attached to their authorisation or exemption. Sections 123ZZA and 123ZZB of the SFA allow MAS to make further regulations and directions with which administrators are required to comply.
- (20) Sections 123Q(1) and 123S of the SFA and Regulations 11, 13(1) and 13(2) of the SFA Benchmarks Regulations require administrators to notify MAS of certain matters, including where the administrator has failed to comply with any of its regulatory obligations. MAS has information gathering powers to enable it to assess licensees' compliance with the SFA.
- (21) Section 123ZZB of the SFA empowers MAS to issue directions to administrators, which may include directing the administrator to give MAS a report on any specified matter, including an audit statement on the report of those matters. Sections 150 and 150A of the SFA empower MAS to inspect an administrator and to share the report with foreign regulators, where appropriate.
- (22) Should a benchmark administrator fail to comply with its regulatory obligations, MAS may issue directions under section 123ZZB of the SFA to undertake specified measures to rectify the matter. MAS may reprimand an administrator under section 334 of the SFA and/or impose conditions or restrictions on the benchmark administrator's business or activity under sections 123F(3) and 123K(4) of the SFA. MAS may also suspend or revoke an authorisation or exemption in certain circumstances [see sections 123J(1), 123J(2), 123J(6), 123N(1) and 123N(3)]. In addition, MAS may issue a prohibition order against an administrator under section 123ZZC(1) of the SFA. Further, failure to comply with requirements under the SFA is an offence. The SFA provides for penalties for contraventions of the requirements.
- (23) Finally, Article 4(n) of Form 7 issued under section 123E(2) of the SFA 'Application for Authorisation as an Authorised Benchmark Administrator' requires compliance with the IOSCO Principles as one of the criteria to being an Authorised Benchmark Administrator. MAS reviews the benchmark administrator's policies and procedures, framework and control as part of the review process for an application for authorisation or exemption by a benchmark administrator. Section 123P(1)(a) of the SFA also requires an administrator of a designated benchmark to manage any risks associated with its business and operations prudently.
- (24) The Commission therefore concludes that the binding requirements with respect to the administrators of financial benchmarks designated as 'designated benchmarks' under the Securities and Futures (Designated Benchmarks) Order are subject to effective supervision and enforcement on an on-going basis.

- (25) EU Benchmark administrators do not need to obtain a license for their benchmarks to be used in Singapore, unless a benchmark is designated as a designated benchmark by MAS. MAS has informed the Commission of its assessment that none of the EU benchmarks meets the criteria to be a designated benchmark in Singapore.
- (26) This Decision will be complemented by cooperation arrangements to ensure the effective exchange of information and coordination of supervisory activities between ESMA and MAS.
- (27) This Decision is based on the assessment of the applicable legally binding requirements relating to benchmarks in Singapore at the time of the adoption of this Decision. The Commission will continue to monitor, on a regular basis, the market developments, the evolution of the legal and supervisory framework for benchmarks and the effectiveness of supervisory cooperation in relation to the monitoring and enforcement of those requirements to ensure the on-going fulfilment of the requirements on the basis of which this Decision has been adopted.
- (28) This Decision is without prejudice to the Commission's power to undertake a specific review at any time, where relevant developments make it necessary for the Commission to re-assess this Decision.
- (29) 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 30 of Regulation (EU) 2016/1011, the legal and supervisory framework of Singapore applicable to the administrators of financial benchmarks that are designated as designated benchmarks by means of the Securities and Futures (Designated Benchmarks) Order 2018, as determined in its latest applicable version, shall be considered to be equivalent to the requirements laid down in Regulation (EU) 2016/1011 and to be subject to effective supervision and enforcement on an ongoing basis.

Article 2

This Decision shall enter into force 20 days after its publication in the *Official Journal of the European Union*.

Done at Brussels, 29 July 2019.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING DECISION (EU) 2019/1276**of 29 July 2019****repealing Commission Implementing Decision 2012/627/EU on the recognition of the legal and supervisory framework of Australia 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)**

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) Article 5(6) of Regulation (EC) No 1060/2009 empowers the Commission to adopt an equivalence decision, stating that the legal and supervisory framework of a third country ensures that credit rating agencies ('CRAs') authorised or registered in that third country comply with legally binding requirements which are equivalent to the requirements set out in that Regulation and which are subject to effective supervision and enforcement in that third country. In order to be considered as equivalent the legal and supervisory framework is to fulfil at a minimum the conditions set out in Article 5(6) of Regulation (EC) No 1060/2009.
- (2) On 5 October 2012, the Commission adopted Implementing Decision 2012/627/EU ⁽²⁾, observing these three conditions are fulfilled and considering the Australian legal supervisory framework for CRAs as equivalent to the requirements of Regulation (EC) No 1060/2009 in force at that time.
- (3) The Australian legal and supervisory framework still fulfils the three conditions originally laid down in Article 5(6) of Regulation (EC) No 1060/2009. Regulation (EU) No 462/2013 of the European Parliament and of the Council ⁽³⁾ introduced additional requirements for CRAs registered in the Union making the legal and supervisory regime for those CRAs more stringent. These additional requirements include rules on rating outlooks, conflicts of interest management, confidentiality requirements, quality of rating methodologies, and the presentation and disclosure of credit ratings.
- (4) Pursuant to point (1)(b) of the second paragraph of Article 2 of Regulation (EU) No 462/2013, the additional requirements apply for the purposes of assessing the equivalence of third country legal and supervisory frameworks from 1 June 2018.
- (5) Against this background, on 13 July 2017 the Commission requested advice to European Securities and Markets Authority ('ESMA') on the equivalence of the legal and supervisory framework of *inter alia* Australia with these additional requirements introduced by Regulation (EU) No 462/2013 and its judgement on the material importance of any differences.
- (6) In its technical advice published on 17 November 2017, ESMA concluded that the Australian legal and supervisory framework does not include sufficient provisions, which could meet the objectives of the additional requirements introduced by Regulation (EU) No 462/2013.
- (7) Article 3(1)(w) introduces a definition of a rating outlook and Regulation (EC) No 1060/2009 now extends certain requirements applicable to credit ratings to rating outlooks. The Australian legal and supervisory framework does not explicitly recognise rating outlooks, but the Australian Securities and Investment Commission considers rating outlooks to fall within the definition of 'financial product advice' and thus subject to the same requirements as credit ratings.

⁽¹⁾ OJ L 302, 17.11.2009, p. 1.

⁽²⁾ Commission Implementing Decision 2012/627/EU of 5 October 2012 on the recognition of the legal and supervisory framework of Australia as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 274, 9.10.2012, p. 30).

⁽³⁾ 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).

- (8) With a view to enhancing the perception of independence of credit rating agencies vis-à-vis the rated entities, Regulation (EU) No 462/2013 extends in Article 6(4), 6a and 6b of Regulation (EC) No 1060/2009 the rules on conflicts of interest to those caused by shareholders or members holding a significant position within the CRA. The Australian legal and supervisory framework requires a CRA to have in place adequate arrangements for the management of conflicts of interest that arise in the course of their business. However, it does not address explicitly conflicts of interests relating to shareholders. Consequently, there are no similar requirements to prohibit a CRA from issuing a credit rating on an entity, which holds more than 10 % of its shareholding or from providing consulting or advisory services on an entity, which holds more than 5 % of its shareholding.
- (9) Regulation (EU) No 462/2013 introduces new provisions to ensure that confidential information is only used for purposes related to credit rating activities and is protected from fraud, theft or misuse. To that effect, Article 10(2a) of Regulation (EC) No 1060/2009 requires CRAs to treat all credit ratings, rating outlooks and information relating thereto as inside information up until the point of disclosure. The Australian legal and supervisory framework sets out detailed requirements regarding the steps CRAs must take to protect confidential information in their possession relating to issuers. There is thus a credible framework in place to protect against the misuse of confidential information.
- (10) Regulation (EU) No 462/2013 aims to increase the level of transparency and quality of rating methodologies. It introduces in Annex I, Section D, Subsection I paragraph 3 of Regulation (EC) No 1060/2009 an obligation for CRAs to provide a rated entity with the opportunity to indicate any possible factual errors ahead before publication of the credit rating or the rating outlook. The Australian legal and supervisory framework does not have an explicit requirement for a CRA to inform a rated entity about a credit rating prior to its publication. Instead, under the Australian legal and supervisory framework, a CRA would only notify a rated entity when 'feasible and appropriate' without prescribing a minimum time to respond.
- (11) Regulation (EU) No 462/2013 introduces safeguards in Article 8(5a), (6) aa and ab and (7) of Regulation (EC) No 1060/2009 to ensure that any modification to rating methodologies does not result in less rigorous methodologies. The Australian legal and supervisory framework requires that rated entities affected by any change to a methodology be informed. However, there is no requirement for CRAs to consult with market participants prior to making a material change to a methodology, to notify the supervisor, or to disclose on the CRA's website about any errors identified in a rating methodology.
- (12) Regulation (EU) No 462/2013 strengthens the requirements regarding the presentation and disclosure of credit ratings. Pursuant to Article 8(2) and Annex I, Section D, Subsection I paragraph 2a of Regulation (EC) No 1060/2009 a CRA shall accompany the disclosure of rating methodologies, models and key rating assumptions with clear and easily comprehensible guidance, which explains any assumptions, the parameters, limits and any uncertainties surrounding the models and rating methodologies used in credit rating process. Under the Australian legal and supervisory framework, although CRAs are required to disclose whether a credit rating was solicited and whether the rated entity participated and to provide information on any limitations of credit ratings, there is no requirement to provide such guidance to the public on the methodology behind a credit rating.
- (13) With the aim of strengthening competition and limiting the scope for conflicts of interest in the CRA sector, Regulation (EU) No 462/2013 introduces a requirement in Annex I, Section E, Subsection II of Regulation (EC) No 1060/2009 that fees charged by CRAs for credit ratings and ancillary services should be non-discriminatory and based on actual costs. It requires CRAs disclose certain financial information. The Australian legal and supervisory regime requires CRAs to disclose information about the revenue streams to the public and certain information to the supervisor by means of an annual report, with the exception of small CRAs. In addition, there is no requirement for CRAs to disclose to the public preliminary ratings and to report their fees schedules or fees charged to clients to the supervisor. Furthermore, there is no requirement that fees charged to clients are to be cost based and non-discriminatory.
- (14) In view of the factors examined, the Australian legal and supervisory framework for CRAs does not satisfy all the conditions for equivalence laid down in the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009. Therefore, it cannot be considered as equivalent to the legal and supervisory framework established by that Regulation.
- (15) Implementing Decision 2012/627/EU should therefore be repealed.

- (16) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision 2012/627/EU is repealed.

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, 29 July 2019.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING DECISION (EU) 2019/1277**of 29 July 2019****repealing Implementing Decision 2012/630/EU on the recognition of the legal and supervisory framework of Canada 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)**

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) Article 5(6) of Regulation (EC) No 1060/2009 empowers the Commission to adopt an equivalence decision, stating that the legal and supervisory framework of a third country ensures that credit rating agencies ('CRAs') authorised or registered in that third country comply with legally binding requirements which are equivalent to the requirements set out in that Regulation and which are subject to effective supervision and enforcement in that third country. In order to be considered as equivalent the legal and supervisory framework is to fulfil at a minimum the conditions set out in Article 5(6) of Regulation (EC) No 1060/2009.
- (2) On 5 October 2012, the Commission adopted Implementing Decision 2012/630/EU ⁽²⁾, observing these three conditions are fulfilled and considering the Canadian legal supervisory framework for CRAs as equivalent to the requirements of Regulation (EC) No 1060/2009 in force at that time.
- (3) The Canadian legal and supervisory framework still fulfils the three conditions originally laid down in Article 5(6) of Regulation (EC) No 1060/2009. Regulation (EU) No 462/2013 of the European Parliament and of the Council ⁽³⁾ introduced additional requirements for CRAs registered in the Union making the legal and supervisory regime for those CRAs more stringent. These additional requirements include legally binding rules for CRAs on rating outlooks, conflicts of interest management, confidentiality requirements, quality of rating methodologies, and the presentation and disclosure of credit ratings.
- (4) Pursuant to point (1)(b) of the second paragraph of Article 2 of Regulation (EU) No 462/2013, the additional requirements apply for the purposes of assessing the equivalence of third country legal and supervisory frameworks from 1 June 2018.
- (5) On 6 July 2017, the Canadian Supervisory Authority published a 'Notice with proposed amendments to National Instrument 25-101 regarding Designated Rating Organisations', stating that those amendments were needed in order to reflect new requirements for CRAs in the EU in order for the Union to continue to recognize the Canadian regulatory regime as equivalent for regulatory purposes in the Union.
- (6) On 13 July 2017, the Commission requested advice to European Securities and Markets Authority ('ESMA') on the equivalence of the legal and supervisory framework of *inter alia* Canada with these additional requirements introduced by Regulation (EU) No 462/2013 and its judgement on the material importance of any differences.
- (7) In its technical advice published on 17 November 2017, ESMA indicated that the Canadian legal and supervisory framework in relation to CRAs would include sufficient provisions to meet the objectives of the additional requirements introduced by Regulation (EU) No 462/2013 in case the proposed rule change were implemented into law before 1 June 2018.

⁽¹⁾ OJ L 302, 17.11.2009, p.1

⁽²⁾ Commission Implementing Decision 2012/630/EU of 5 October 2012 on the recognition of the legal and supervisory framework of Canada as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 278, 12.10.2012, p. 17).

⁽³⁾ 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).

- (8) On 29 March 2018, the Canadian Supervisory Authority published on its website that is still considering the comments received during the comment period and plans to delay the amendments to NI 25-101 until a later date in 2018. However, the Canadian Supervisory Authority informed the Commission services that plans to amend National Instrument 25-101 regarding Designated Rating Organisations are currently on hold, without giving any new time indication. Consequently, the assessment underlying this decision disregards any anticipated amendments.
- (9) Regulation (EU) No 462/2013 introduces in Article 3(1)w a definition of a rating outlook and Regulation (EC) No 1060/2009 now extends certain requirements applicable to credit ratings to rating outlooks. The Canadian framework does not recognise rating outlooks as a separate and distinct item from a credit rating, although there are certain references to actions, opinions and reports that are broad enough to include ratings outlooks on an implicit basis.
- (10) With a view to enhancing the perception of independence of credit rating agencies vis-à-vis the rated entities, Regulation (EU) No 462/2013 extends in Article 6(4), 6a and 6b of Regulation (EC) No 1060/2009 the rules on conflicts of interest to those caused by shareholders or members holding a significant position within the CRA. The Canadian framework is not as detailed or prescriptive as the Union regime. Although there is a generic requirement to design reasonable internal mechanisms whose adequacy and effectiveness would be monitored and evaluated to address any deficiency, there is no so detailed, explicit requirement to address conflicts of interest relating to significant shareholders. In addition, there is no prohibition from issuing a credit rating on an entity if a board member of the CRA or a shareholder holding more than 10 % of shares or voting rights of the CRA also holds more than 10 % of the shares in the rated entity. There is also no prohibition on an individual or entity holding more than 5 % of the shares or the voting rights of a CRA from providing consultancy or advisory services to a rated entity of that CRA.
- (11) Regulation (EU) No 462/2013 introduces new provisions to ensure that confidential information is only used for purposes related to credit rating activities and is protected from fraud, theft or misuse. To that effect, Article 10(2a) of Regulation (EC) No 1060/2009 requires CRAs to treat all credit ratings, rating outlooks and information relating thereto as inside information up until the point of disclosure. The Canadian legal and supervisory framework contains a definition of inside information, but credit ratings and information related thereto are not automatically recognised as such.
- (12) Regulation (EU) No 462/2013 aims to increase the level of transparency and quality of rating methodologies. It introduces in Annex I, Section D, Subsection I paragraph 3 of Regulation (EC) No 1060/2009 an obligation for CRAs to provide a rated entity with the opportunity to indicate any possible factual errors ahead before publication of the credit rating or the rating outlook. The Canadian legal and supervisory framework contains a requirement for a CRA to inform a rated entity, without specifying whether during its business hours, about the critical information and principal considerations upon which a rating will be based prior to its publication although no time framework was set up within which the rated entity can respond.
- (13) Regulation (EU) No 462/2013 introduces safeguards in Article 8(5a), (6) aa and ab and (7) of Regulation (EC) No 1060/2009 to ensure that any modification to rating methodologies does not result in less rigorous methodologies. Although the Canadian legal and supervisory framework requires that credit ratings are issued in accordance with methodologies that are rigorous, systematic, continuous and subject to validation, there is no explicit requirement that credit rating changes are issued in accordance with published methodologies. There is no obligation for CRAs to consult market participants on changes to or to correct errors in their methodologies. There is also no explicit requirement to notify the supervisor, other authorities or affected entities of any error to a methodology that could have an impact on its ratings.
- (14) Regulation (EU) No 462/2013 strengthens the requirements regarding the presentation and disclosure of credit ratings. Pursuant to Article 8(2) and Annex I, Section D, Subsection I paragraph 2a of Regulation (EC) No 1060/2009 a CRA shall accompany the disclosure of rating methodologies, models and key rating assumptions with clear and easily comprehensible guidance, which explains any assumptions, the parameters, limits and any uncertainties surrounding the models and rating methodologies used in credit rating process. Under the Canadian legal and supervisory framework, there is no a strict requirement to ensure adequate guidance accompanies a credit rating action and methodology. There is also no explicit requirement for a CRA to highlight in the credit rating that the rating is the agency's opinion and should be relied upon to a limited degree.
- (15) With the aim of strengthening competition and limiting the scope for conflicts of interest in the CRA sector, Regulation (EU) No 462/2013 introduces a requirement in Annex I, Section E, Subsection II of Regulation (EC) No 1060/2009 that fees charged by CRAs for credit ratings and ancillary services should be non-discriminatory

and based on actual costs. It requires CRAs disclose certain financial information. The Canadian legal and supervisory framework contains no systematic requirements for CRAs to provide pricing policies to either the supervisor or the rated entities, although the supervisor may request this information in case of investigation. Furthermore, there is no requirement that fees charged to clients are to be cost based and non-discriminatory.

- (16) In view of the factors examined, the Canadian legal and supervisory framework for CRAs does not satisfy all the conditions for equivalence laid down in the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009. Therefore, it cannot be considered as equivalent to the legal and supervisory framework established by that Regulation.
- (17) Implementing Decision 2012/630/EU should therefore be repealed.
- (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

Implementing Decision 2012/630/EU is repealed.

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, 29 July 2019.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING DECISION (EU) 2019/1278**of 29 July 2019****repealing Implementing Decision 2014/248/EU on the recognition of the legal and supervisory framework of Singapore 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)**

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) Article 5(6) of Regulation (EC) No 1060/2009 empowers the Commission to adopt an equivalence decision, stating that the legal and supervisory framework of a third country ensures that credit rating agencies ('CRAs') authorised or registered in that third country comply with legally binding requirements which are equivalent to the requirements set out in that Regulation and which are subject to effective supervision and enforcement in that third country. In order to be considered as equivalent the legal and supervisory framework is to fulfil at least the conditions set out in Article 5(6) of Regulation (EC) No 1060/2009.
- (2) On 28 April 2014, the Commission adopted Implementing Decision 2014/248/EU ⁽²⁾, observing these three conditions are fulfilled and considering the Singaporean legal supervisory framework for CRAs as equivalent to the requirements of Regulation (EC) No 1060/2009 in force at that time.
- (3) The Singaporean legal and supervisory framework still fulfils the three conditions originally laid down in Article 5(6) of Regulation (EC) No 1060/2009. However, Regulation (EU) No 462/2013 of the European Parliament and of the Council ⁽³⁾ introduced additional requirements for CRAs registered in the Union making the legal and supervisory regime for those CRAs more stringent. These additional requirements include legally binding rules for CRAs on rating outlooks, conflicts of interest management, confidentiality requirements, quality of rating methodologies, and the presentation and disclosure of credit ratings.
- (4) Pursuant to point (1)(b) of the second paragraph of Article 2 of Regulation (EU) No 462/2013, the additional requirements apply for the purposes of assessing the equivalence of third country legal and supervisory frameworks from 1 June 2018.
- (5) Against this background, on 13 July 2017 the Commission requested advice to European Securities and Markets Authority ('ESMA') on the equivalence of the legal and supervisory framework of *inter alia* Singapore with these additional requirements introduced by Regulation (EU) No 462/2013 and its judgement on the material importance of any differences.
- (6) In its technical advice published on 17 November 2017, ESMA indicated that the Singaporean legal and supervisory framework does not include sufficient provisions, which could meet the objectives of the additional requirements introduced by Regulation (EU) No 462/2013.
- (7) Regulation (EU) No 462/2013 introduces in Article 3(1)(w) of Regulation (EC) No 1060/2009 a definition of a rating outlook and extends certain requirements applicable to credit ratings to rating outlooks. The Singaporean legal and supervisory framework does not recognise rating outlooks.

⁽¹⁾ OJ L 302, 17.11.2009, p.1

⁽²⁾ Commission Implementing Decision 2014/248/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Singapore as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 73).

⁽³⁾ 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).

- (8) With a view to enhancing the perception of independence of credit rating agencies vis-à-vis the rated entities, Regulation (EU) No 462/2013 extends in Article 6(4), 6a and 6b of Regulation (EC) No 1060/2009 the rules on conflicts of interest to those caused by shareholders or members holding a significant position within the CRA. The Singaporean legal and supervisory framework is not as detailed or prescriptive as the Union regime. There is a requirement to establish an internal control function and internal procedures for identifying, mitigating and preventing conflicts of interest. However, there is no explicit requirement to address conflicts of interest relating to shareholders. Consequently, there is no prohibition from issuing a credit rating on an entity if a board member of the CRA, or a shareholder holding more than 10 % of shares or voting rights of the CRA, holds more than 10 % of the shares in the rated entity. There is also no prohibition on an individual or entity holding more than 5 % of the shares or the voting rights of a CRA from providing consultancy or advisory services to a rated entity of that CRA.
- (9) Regulation (EU) No 462/2013 introduces new provisions to ensure that confidential information is only used for purposes related to credit rating activities and is protected from fraud, theft or misuse. To that effect, Article 10(2a) of Regulation (EC) No 1060/2009 requires CRAs to treat all credit ratings, rating outlooks and information relating thereto as inside information up until the point of disclosure. The Singaporean legal and supervisory framework contains a definition of inside information, but credit ratings and information related thereto are not automatically recognised as such.
- (10) Regulation (EU) No 462/2013 aims to increase the level of transparency and quality of rating methodologies. It introduces in Annex I, Section D, Subsection I paragraph 3 of Regulation (EC) No 1060/2009 an obligation for CRAs to provide a rated entity with the opportunity to indicate any possible factual errors ahead before publication of the credit rating or the rating outlook. The Singaporean legal and supervisory framework contains no explicit requirement for a CRA to inform a rated entity about a credit rating prior to its publication. A CRA is to notify a rated entity only when feasible and appropriate.
- (11) Regulation (EU) No 462/2013 introduces safeguards in Article 8(5a)(6) aa and ab and (7) of Regulation (EC) No 1060/2009 to ensure that any modification to rating methodologies does not result in less rigorous methodologies. The Singaporean legal and supervisory framework requires a CRA to establish and implement a rigorous and formal review function for periodically reviewing the rating methodologies. However, it does not contain an explicit requirement for a CRA to correct errors and to conduct a consultation on any changes to methodologies. While CRAs must publicly disclose any material change to its methodologies, there is no requirement to notify either the supervisor or all affected entities in such case.
- (12) Regulation (EU) No 462/2013 strengthens the requirements regarding the presentation and disclosure of credit ratings. Pursuant to Article 8(2) and Annex I, Section D, Subsection I paragraph 2a of Regulation (EC) No 1060/2009 a CRA shall accompany the disclosure of rating methodologies, models and key rating assumptions with clear and easily comprehensible guidance, which explains any assumptions, the parameters, limits and any uncertainties surrounding the models and rating methodologies used in credit rating process. Under the Singaporean legal and supervisory regime, there is a requirement to ensure adequate guidance accompanies a credit rating action and methodology.
- (13) With the aim of strengthening competition and limiting the scope for conflicts of interest in the CRA sector, Regulation (EU) No 462/2013 introduces a requirement in Annex I, Section E, Subsection II of Regulation (EC) No 1060/2009 that fees charged by CRAs for credit ratings and ancillary services should be non-discriminatory and based on actual costs. It requires CRAs disclose certain financial information. The Singaporean legal and supervisory regime contains no systematic requirements for CRAs to provide pricing policies to either the supervisor or the rated entities, although the supervisor may request this information as part of its supervisory activities. Furthermore, there is no requirement that fees charged to clients are to be cost based and non-discriminatory.
- (14) In view of the factors examined, the Singaporean legal and supervisory framework for CRAs does not satisfy all the conditions for equivalence laid down in the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009. Therefore, it cannot be considered as equivalent to the legal and supervisory framework established by that Regulation.
- (15) Implementing Decision 2014/248/EU should therefore be repealed.
- (16) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision 2014/248/EU is repealed.

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, 29 July 2019.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING DECISION (EU) 2019/1279**of 29 July 2019****on the recognition of the legal and supervisory framework of the United States of America 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)**

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) Article 5(6) of Regulation (EC) No 1060/2009 empowers the Commission to adopt an equivalence decision where the legal and supervisory framework of a third country ensures that credit rating agencies ('CRAs') authorised or registered in that third country comply with legally binding requirements set out in that Regulation and which are subject to effective supervision and enforcement in that third country.
- (2) The purpose of this equivalence decision is to allow CRAs from the United States (US), as far as they are not systemically important for the financial stability or integrity of the financial markets of one or more Member States, to apply for certification with the European Securities and Market Authority ('ESMA'). This equivalence decision offers the possibility for ESMA to assess those CRAs on a case-by-case basis and to grant an exemption from some of the organisational requirements for CRAs active in the European Union, including the requirement of a physical presence in the European Union.
- (3) In order to be considered as equivalent the legal and supervisory framework of a third country is to fulfil at a minimum the three conditions set out in Article 5(6) of Regulation (EC) No 1060/2009.
- (4) On 5 October 2012, the Commission adopted Implementing Decision 2012/628/EU ⁽²⁾, observing these three conditions are fulfilled and considering the US legal and supervisory framework for CRAs as equivalent to the requirements of Regulation (EC) No 1060/2009 in force at that time.
- (5) According to the first condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, CRAs in a third country must be subject to authorisation or registration and must be also subject to effective supervision and enforcement on an ongoing basis. The US legal and supervisory framework requires CRAs to register as Nationally Recognized Statistical Ratings Organizations (NRSRO) with the Securities and Exchange Commission (SEC) in order to allow the use of their ratings for regulatory purposes. They are subsequently supervised by the SEC on an ongoing basis. The SEC is endowed with a comprehensive range of supervisory powers allowing it to investigate whether credit rating agencies comply with their legal obligations. Those powers include the power to access documents, to conduct investigations and to carry out on-site inspections, as well as the power to require access to records of telephone recordings and electronic communication. The SEC can exercise these powers not only in respect of credit rating agencies, but also in respect of other persons involved in credit rating activities. The US legal and supervisory framework requires the SEC to conduct an examination of each NRSRO at least annually and to report on the findings of these examinations. Where the SEC has established that an NRSRO is in breach of any obligation arising from the relevant rules, it may adopt a wide range of supervisory measures in order to stop the infringement. Those measures include the power to withdraw the registration, to suspend the use of ratings for regulatory purposes and to order the credit rating agencies to stop the infringement. The SEC can also impose severe penalties on credit rating agencies for breaches of the relevant requirements. Therefore, NRSROs are subject to effective supervision and enforcement on an ongoing basis. The cooperation agreement concluded between ESMA and the SEC provides for information exchange with regard to enforcement and supervisory measures taken against cross border CRAs.

⁽¹⁾ OJ L 302, 17.11.2009, p. 1.

⁽²⁾ Commission Implementing Decision 2012/628/EU on the recognition of the legal and supervisory framework of the United States of America as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 274, 9.10.2012, p. 32)

- (6) According to the second condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, CRAs in a third country must be subject to legally binding rules which are equivalent to those set out in Articles 6 to 12 of Regulation (EC) No 1060/2009 and Annex I to that Regulation. The US legal and supervisory framework is considered as equivalent to the CRA Regulation in respect of the management of conflicts of interest, the organisational processes and procedures, that a credit rating agency 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. Therefore, the US legal and supervisory framework provides for equivalent protection in terms of integrity, transparency, good governance of credit rating agencies and reliability of the credit rating activities.
- (7) According to the third condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, the regulatory regime in a third country must prevent interference by supervisory authorities and other public authorities of that third country with the content of credit ratings and methodologies. In this respect, the SEC and any other public authority in the US are prohibited by law from interfering with the substance of credit ratings and credit rating methodologies.
- (8) The US legal and supervisory framework still fulfils the three conditions originally laid down in Article 5(6) of Regulation (EC) No 1060/2009. However, Regulation (EU) No 462/2013 of the European Parliament and of the Council ^(*) introduced additional requirements for CRAs registered in the Union making the legal and supervisory regime for those CRAs more stringent. These additional requirements include legally binding rules for CRAs on rating outlooks, conflicts of interest management, confidentiality requirements, changes to ratings methodologies, and the presentation and disclosure of credit ratings.
- (9) Pursuant to point (1)(b) of the second paragraph of Article 2 of Regulation (EU) No 462/2013, the additional requirements apply for the purposes of assessing the equivalence of third country legal and supervisory frameworks from 1 June 2018.
- (10) Against this background, on 13 July 2017 the Commission requested advice to the European Securities and Market Authority ('ESMA') on the equivalence of the legal and supervisory framework of *inter alia* the US with these additional requirements introduced by Regulation (EU) No 462/2013 and its judgement on the material importance of any differences.
- (11) In its technical advice published on 17 November 2017, ESMA indicated that the US legal and supervisory framework in relation to CRAs includes sufficient provisions to meet the additional requirements introduced by Regulation (EU) No 462/2013.
- (12) Regulation (EU) No 462/2013 introduces in Article 3(1)(w) a definition of a rating outlook and Regulation (EC) No 1060/2009 now extends certain requirements applicable to credit ratings to rating outlooks. The US legal and supervisory framework recognises rating watches, which are a type of rating outlook within the meaning of Regulation (EC) No 1060/2009, as being included within its scope.
- (13) With a view to enhancing the perception of independence of credit rating agencies vis-à-vis the rated entities, Regulation (EU) No 462/2013 extends in Article 6(4), 6a and 6b of Regulation (EC) No 1060/2009 the rules on conflicts of interest to those caused by shareholders or members holding a significant position within the CRA. Similarly, the US legal and supervisory framework includes provisions to provide protection in a situation where shareholders of a NRSRO could create conflicts of interests for CRAs.
- (14) Regulation (EU) No 462/2013 introduces new provisions to ensure that confidential information is only used for purposes related to credit rating activities and is protected from fraud, theft or misuse. To that effect, Article 10(2a) of Regulation (EC) No 1060/2009 requires CRAs to treat all credit ratings, rating outlooks and information relating thereto as inside information up until the point of disclosure. The US legal and supervisory framework recognises that a non-published rating action may constitute inside information. A NRSRO must have policies and procedures to avoid selective and inappropriate disclosure of material non-public information obtained in connection with the performance of credit rating services. There is thus a credible framework in place to protect against the misuse of confidential information.
- (15) Regulation (EU) No 462/2013 aims to increase the level of transparency and quality of rating methodologies. It introduces in Annex I, Section D, Subsection I paragraph 3 of Regulation (EC) No 1060/2009 an obligation for CRAs to provide a rated entity with the opportunity to indicate any possible factual errors ahead before

^(*) 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).

publication of the credit rating or the rating outlook. The US legal and supervisory framework does not have the same requirement, but a NRSRO shall have procedures for informing rated obligors and issuers of rated securities or money market instruments about credit rating decisions and for appeals for final and pending credit rating decisions.

- (16) Regulation (EU) No 462/2013 introduces safeguards in Article 8(5a)(6) aa and ab and (7) of Regulation (EC) No 1060/2009 to ensure that any modification to rating methodologies does not result in less rigorous methodologies. The US legal and supervisory framework requires each NRSRO to establish, maintain, enforce, and document policies reasonably designed to ensure that material changes to the procedures and methodologies are promptly published on an easily accessible portion of the NRSRO's website. There is no specific obligation to correct an identified error in a methodology, but it follows from more general provisions regarding the quality of methodologies.
- (17) Regulation (EU) No 462/2013 strengthens the requirements regarding the presentation and disclosure of credit ratings. Pursuant to Article 8(2) and Annex I, Section D, Subsection I paragraph 2a of Regulation (EC) No 1060/2009 a CRA shall accompany the disclosure of rating methodologies, models and key rating assumptions with clear and easily comprehensible guidance, which explains any assumptions, the parameters, limits and any uncertainties surrounding the models and rating methodologies used in credit rating process. The US legal and supervisory framework does include requirements to ensure adequate guidance accompanies a credit rating action and methodology. There are also requirements to ensure a credit rating reflects all information believed to be relevant.
- (18) With the aim of strengthening competition and limiting the scope for conflicts of interest in the CRA sector, Regulation (EU) No 462/2013 introduces a requirement in Annex I, Section E, Subsection II of Regulation (EC) No 1060/2009 that fees charged by CRAs for credit ratings and ancillary services should be non-discriminatory and based on actual costs. It requires CRAs disclose certain financial information. The US legal and supervisory framework contains general obligations to record and store information pertaining to fees and client communication that contribute to achieving the objective of transparency, competition and mitigating of conflicts of interests and requires NRSROs to annually file a number of financial reports with the SEC.
- (19) The principle of proportionality and a risk-based approach guide the Commission in the assessment of a third country regulatory regime. In view of the factors jointly examined and the technical advice provided by ESMA, the US legal and supervisory framework for CRAs satisfies the conditions laid down in the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009 and should continue to be considered as equivalent to the legal and supervisory framework established by that Regulation.
- (20) For reasons of legal certainty, a new Implementing Decision should be adopted and Implementing Decision 2012/628/EU should therefore be repealed.
- (21) The Commission, assisted by ESMA, should continue to monitor on a regular basis the evolution of the legal and supervisory arrangements applicable to CRAs, the market developments and the effectiveness of supervisory cooperation in relation to monitoring and enforcement in United States of America to ensure on-going compliance.
- (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 5 of Regulation (EC) No 1060/2009, the US legal and supervisory framework for credit rating agencies shall be considered as equivalent to the requirements of Regulation (EC) No 1060/2009.

Article 2

Implementing Decision 2012/628/EU is repealed.

Article 3

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, 29 July 2019.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING DECISION (EU) 2019/1280**of 29 July 2019****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)**

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) Article 5(6) of Regulation (EC) No 1060/2009 empowers the Commission to adopt an equivalence decision where the legal and supervisory framework of a third country ensures that credit rating agencies ('CRAs') authorised or registered in that third country comply with legally binding requirements set out in that Regulation and which are subject to effective supervision and enforcement in that third country.
- (2) The purpose of this equivalence decision is to allow CRAs from Mexico, as far as they are not systemically important for the financial stability or integrity of the financial markets of one or more Member States, to apply for certification with the European Securities and Market Authority ('ESMA'). This equivalence decision offers the possibility for ESMA to assess those CRAs on a case-by-case basis and to grant an exemption from some of the organisational requirements for CRAs active in the European Union, including the requirement of a physical presence in the European Union.
- (3) In order to be considered as equivalent the legal and supervisory framework of a third country is to fulfil at a minimum the three conditions set out in Article 5(6) of Regulation (EC) No 1060/2009.
- (4) On 28 April 2014, the Commission adopted Implementing Decision 2014/247/EU ⁽²⁾, observing that these three conditions are fulfilled and considering the Mexican legal and supervisory framework for CRAs as equivalent to the requirements of Regulation (EC) No 1060/2009 in force at that time.
- (5) According to the first condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, CRAs in a third country must be subject to authorisation or registration and subject to effective supervision and enforcement on an ongoing basis. The Mexican framework requires a CRA to be authorised and supervised by the Mexican Banking and Securities Commission (Comisión Nacional Bancaria y de Valores, CNBV) in order to operate and provide credit rating services. 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 empowered to impose administrative fines. The CNBV has implemented annual compliance reviews of the registered CRAs, and where needed, 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.
- (6) According to the second condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, CRAs in a third country must be subject to legally binding rules which are equivalent to those set out in Articles 6 to 12 of Regulation (EC) No 1060/2009 and Annex I to that Regulation. The Mexican legal and supervisory framework with regard to corporate governance requires CRAs to have a board of directors, consisting of maximum 21 directors and of which at least 25 % are to meet the requirements of independence. The independent directors amongst others are to 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 legal and supervisory framework

⁽¹⁾ OJ L 302, 17.11.2009, p. 1.

⁽²⁾ Commission Implementing Decision 2014/247/EU 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 (OJ L 132, 3.5.2014, p. 71)

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 is considered as equivalent to Regulation (EC) No 1060/2009 in respect of the management of conflicts of interest, the organisational requirements, 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.

- (7) According to the third condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, the regulatory regime in a third country must prevent interference by supervisory authorities and other public authorities of that third country with the content of credit ratings and methodologies. The Mexican Constitution establishes that administrative authorities may only act when they have an express authority or power set forth under applicable law. There is no legal provision empowering CNBV or any other public authority to influence the content of credit rating or methodologies.
- (8) The Mexican legal and supervisory framework still fulfils the three conditions originally laid down in Article 5(6) of Regulation (EC) No 1060/2009. However, Regulation (EU) No 462/2013 of the European Parliament and of the Council ⁽³⁾ introduced additional requirements for CRAs registered in the Union making the legal and supervisory regime for those CRAs more stringent. These additional requirements include legally binding rules for CRAs on rating outlooks, conflicts of interest management, confidentiality requirements, quality of rating methodologies, and the presentation and disclosure of credit ratings.
- (9) Pursuant to point (1)(b) of the second paragraph of Article 2 of Regulation (EU) No 462/2013, the additional requirements apply for the purposes of assessing the equivalence of third country legal and supervisory frameworks from 1 June 2018.
- (10) Against this background, on 13 July 2017 the Commission requested advice to ESMA on the equivalence of the legal and supervisory framework of *inter alia* Mexico with these additional requirements introduced by Regulation (EU) No 462/2013 and its judgement on the material importance of any differences.
- (11) In its technical advice published on 17 November 2017, ESMA indicated that the Mexican legal and supervisory framework in relation to CRAs includes sufficient provisions to meet the additional requirements introduced by Regulation (EU) No 462/2013.
- (12) Regulation (EU) No 462/2013 introduces in Article 3(1)w a definition of a rating outlook and Regulation (EC) No 1060/2009 now extends certain requirements applicable to credit ratings to rating outlooks. The Mexican legal and supervisory framework does not explicitly recognise rating outlooks as a separate and distinct item from a credit rating, but if a CRA produces rating outlooks, the CNBV expects it to abide by the same transparency, independence and disclosure requirements as for credit ratings. Furthermore, the CNBV includes in their supervisory monitoring the appropriateness of rating outlooks in conjunction with their associated credit ratings.
- (13) With a view to enhancing the perception of independence of credit rating agencies vis-à-vis the rated entities, Regulation (EU) No 462/2013 extends in Article 6(4), 6a and 6b of Regulation (EC) No 1060/2009 the rules on conflicts of interest to those caused by shareholders or members holding a significant position within the CRA. The Mexican legal and supervisory framework includes a general prohibition for shareholders and board members to hold, directly or indirectly, any share of the rated entity. Additionally, CRAs cannot provide any service to clients with more than 5 % of their capital.
- (14) Regulation (EU) No 462/2013 introduces new provisions to ensure that confidential information is only used for purposes related to credit rating activities and is protected from fraud, theft or misuse. To that effect, Article 10(2a) of Regulation (EC) No 1060/2009 requires CRAs to treat all credit ratings, rating outlooks and information relating thereto as inside information up until the point of disclosure. The Mexican legal and supervisory framework sets out detailed requirements regarding the steps CRAs must take to protect the confidential information relating to issuers. There is thus a credible framework in place to protect against the misuse of confidential information.

⁽³⁾ 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).

- (15) Regulation (EU) No 462/2013 aims to increase the level of transparency and quality of rating methodologies. It introduces in Annex I, Section D, Subsection I paragraph 3 of Regulation (EC) No 1060/2009 an obligation for CRAs to provide a rated entity with the opportunity to indicate any possible factual errors ahead before publication of the credit rating or the rating outlook. The Mexican legal and supervisory framework requires a CRA to inform a rated entity about a credit rating prior to its publication. It allows the CRA and the rated entity to agree for themselves on whether the CRA has to provide prior notice to the client and if so, the time for providing comments prior to publication.
- (16) Regulation (EU) No 462/2013 introduces safeguards in Article 8(5a)(6) aa and ab and (7) of Regulation (EC) No 1060/2009 to ensure that any modification to rating methodologies does not result in less rigorous methodologies. The Mexican legal and supervisory framework requires CRAs to publish on its website methodologies and procedures used for the research, analysis, opinion, evaluation and consideration of credit quality, before they are used, and must disclose any material change to their methodologies, so they can be consulted by the investing public. In the same way, CRAs are required to review their methodologies and models, although there is no an explicit requirement to conduct a consultation with market participants prior to a change in their methodology and to address errors identified in their methodologies. However, in case the CRA introduces significant changes to the rating methodologies, the CRA has to notify to CNBV regarding the amendments introduced into the rating methodology and disclose them to the public without revealing the reason thereof. In case there is an amendment to the CRA's rating models and methodologies, the CRA has to review all ratings previously issued.
- (17) Regulation (EU) No 462/2013 strengthens the requirements regarding the presentation and disclosure of credit ratings. Pursuant to Article 8(2) and Annex I, Section D, Subsection I paragraph 2a of Regulation (EC) No 1060/2009 a CRA shall accompany the disclosure of rating methodologies, models and key rating assumptions with clear and easily comprehensible guidance, which explains any assumptions, the parameters, limits and any uncertainties surrounding the models and rating methodologies used in credit rating process. The Mexican legal and supervisory framework requires a CRA to highlight in a credit rating that it is the agency's opinion and contains safeguards to ensure that only information relevant to the credit rating are presented in the credit ratings. There are also requirements to ensure that CRAs provide sufficient guidance to enable users of credit ratings to understand them.
- (18) With the aim of strengthening competition and limiting the scope for conflicts of interest in the CRA sector, Regulation (EU) No 462/2013 introduces a requirement in Annex I, Section E, Subsection II of Regulation (EC) No 1060/2009 that fees charged by CRAs for credit ratings and ancillary services should be non-discriminatory and based on actual costs. It requires CRAs disclose certain financial information. The Mexican legal and supervisory framework requires a CRA to provide to the CNBV data on fees charged to individual clients pointing out the revenue from each of them and detailing all services provided to each one during immediately preceding year. CRAs shall disclose publicly whether they have received from the same rated entity fees relating to services different from rating services and the percentage in connection with the rating services fees. Furthermore, there is a general requirement for CNBV to guarantee fair treatment of all clients of CRAs.
- (19) The principle of proportionality and a risk-based approach guide the Commission in the assessment of a third country regulatory regime. In view of the factors examined, the Mexican legal and supervisory framework for CRAs satisfies the conditions laid down in the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009 and should continue to be considered as equivalent to the legal and supervisory framework established by that Regulation.
- (20) For reasons of legal certainty, a new Implementing Decision should be adopted and Implementing Decision 2014/247/EU should therefore be repealed.
- (21) The Commission, assisted by ESMA, should continue to monitor on a regular basis the evolution of the legal and supervisory arrangements applicable to CRAs, the market developments and the effectiveness of supervisory cooperation in relation to monitoring and enforcement in Mexico to ensure on-going compliance.
- (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 5 of Regulation (EC) No 1060/2009, the Mexican legal and supervisory framework for credit rating agencies shall be considered as equivalent to the requirements of Regulation (EC) No 1060/2009.

Article 2

Implementing Decision 2014/247/EU is repealed.

Article 3

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, 29 July 2019.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING DECISION (EU) 2019/1281**of 29 July 2019****repealing Implementing Decision 2014/245/EU 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)**

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) Article 5(6) of Regulation (EC) No 1060/2009 empowers the Commission to adopt an equivalence decision, stating that the legal and supervisory framework of a third country ensures that credit rating agencies ('CRAs') authorised or registered in that third country comply with legally binding requirements which are equivalent to the requirements set out in that Regulation and which are subject to effective supervision and enforcement in that third country. In order to be considered as equivalent the legal and supervisory framework is to fulfil at a minimum the conditions set out in Article 5(6) of Regulation (EC) No 1060/2009.
- (2) On 28 April 2014, the Commission adopted Implementing Decision 2014/245/EU ⁽²⁾, observing these three conditions are fulfilled and considering the Brazilian legal supervisory framework for CRAs as equivalent to the requirements of Regulation (EC) No 1060/2009 in force at that time.
- (3) The Brazilian legal and supervisory framework still fulfils the three conditions originally laid down in Article 5(6) of Regulation (EC) No 1060/2009. However, Regulation (EU) No 462/2013 of the European Parliament and of the Council ⁽³⁾ introduced additional requirements for CRAs registered in the Union making the legal and supervisory regime for those CRAs more stringent. These additional requirements include legally binding rules for CRAs on rating outlooks, conflicts of interest management, confidentiality requirements, quality of rating methodologies, and the presentation and disclosure of credit ratings.
- (4) Pursuant to point (1)(b) of the second paragraph of Article 2 of Regulation (EU) No 462/2013, the additional requirements apply for the purposes of assessing the equivalence of third country legal and supervisory frameworks from 1 June 2018.
- (5) Against this background, on 13 July 2017 the Commission requested advice to European Securities and Markets Authority ('ESMA') on the equivalence of the legal and supervisory framework of *inter alia* Brazil with these additional requirements introduced by Regulation (EU) No 462/2013 and its judgement on the material importance of any differences.
- (6) In its technical advice published on 17 November 2017, ESMA concluded that the Brazilian legal and supervisory framework does not include sufficient provisions, which could meet the objectives of the additional requirements introduced by Regulation (EU) No 462/2013.
- (7) Regulation (EU) No 462/2013 introduces in Article 3(1)w a definition of a rating outlook and Regulation (EC) No 1060/2009 now extends certain requirements applicable to credit ratings to rating outlooks. The Brazilian framework does not explicitly recognise rating outlooks as a separate and distinct item from a credit rating, but the Securities and Exchange Commission of Brazil ('Comissão de Valores Mobiliários') expects the production of rating outlooks to adhere to all of the same requirements for the corresponding credit ratings.

⁽¹⁾ OJ L 302, 17.11.2009, p.1

⁽²⁾ Commission Implementing Decision 2014/245/EU 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 (OJ L 132, 3.5.2014, p. 65).

⁽³⁾ 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).

- (8) With a view to enhancing the perception of independence of credit rating agencies vis-à-vis the rated entities, Regulation (EU) No 462/2013 extends in Article 6(4), 6a and 6b of Regulation (EC) No 1060/2009 the rules on conflicts of interest to those caused by shareholders or members holding a significant position within the CRA. The Brazilian legal and supervisory framework requires a CRA to establish adequate and effective organisational and administrative procedures to prevent, detect, eliminate, correct and disclose every conflict of interest. However, the Brazilian legal and supervisory framework does not explicitly require CRAs to account for conflicts of interests relating to shareholders. Consequently, there is no prohibition from issuing a credit rating on an entity if a board member of the CRA, or a shareholder holding more than 10 % of shares or voting rights of the CRA, holds more than 10 % of the shares in the rated entity. There is also no prohibition on an individual or entity holding more than 5 % of the shares or the voting rights of a CRA from providing consultancy or advisory services to a rated entity of that CRA.
- (9) Regulation (EU) No 462/2013 introduces new provisions to ensure that confidential information is only used for purposes related to credit rating activities and is protected from fraud, theft or misuse. To that effect, Article 10(2a) of Regulation (EC) No 1060/2009 requires CRAs to treat all credit ratings, rating outlooks and information relating thereto as inside information up until the point of disclosure. The Brazilian legal and supervisory framework thus provides protection against the misuse of confidential information.
- (10) Regulation (EU) No 462/2013 aims to increase the level of transparency and quality of rating methodologies. It introduces in Annex I, Section D, Subsection I paragraph 3 of Regulation (EC) No 1060/2009 an obligation for CRAs to provide a rated entity with the opportunity to indicate any possible factual errors ahead before publication of the credit rating or the rating outlook. The Brazilian legal and supervisory framework does not require CRAs to inform the rated entity before publication of a credit rating.
- (11) Regulation (EU) No 462/2013 introduces safeguards in Article 8(5a)(6) aa and ab and (7) of Regulation (EC) No 1060/2009 to ensure that any modification to rating methodologies does not result in less rigorous methodologies. Although the Brazilian legal and supervisory framework states that a CRA should disclose to the regulator and the market any material change to its methodologies, it does not have requirements for CRAs to consult on changes to methodologies or to correct any errors in their methodologies. While there is a requirement to communicate the scope of rated entities affected by a change to a methodology, there is no requirement to explain the reason thereof or to notify the supervisor.
- (12) Regulation (EU) No 462/2013 strengthens the requirements regarding the presentation and disclosure of credit ratings. Pursuant to Article 8(2) and Annex I, Section D, Subsection I paragraph 2a of Regulation (EC) No 1060/2009 a CRA shall accompany the disclosure of rating methodologies, models and key rating assumptions with clear and easily comprehensible guidance, which explains any assumptions, the parameters, limits and any uncertainties surrounding the models and rating methodologies used in credit rating process. The Brazilian legal and supervisory framework requires credit rating reports to include methodologies used to determine the credit rating to ensure outside parties can understand the reasons behind a rating. Moreover, there is no requirement to indicate that a credit rating is the agency's opinion and that it is only to be relied upon to a limited degree.
- (13) With the aim of strengthening competition and limiting the scope for conflicts of interest in the CRA sector, Regulation (EU) No 462/2013 introduces a requirement in Annex I, Section E, Subsection II of Regulation (EC) No 1060/2009 that fees charged by CRAs for credit ratings and ancillary services should be non-discriminatory and based on actual costs. It requires CRAs disclose certain financial information. Although the Comissão de Valores Mobiliários may request information as part of its supervisory activities, the Brazilian legal and supervisory framework does not systematically require CRAs to provide pricing policies either to the supervisors or to the public. Furthermore, there is no requirement that fees charged to clients are to be cost based and non-discriminatory.
- (14) In view of the factors examined, the Brazilian legal and supervisory framework does not satisfy all the conditions for equivalence laid down in the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009. Therefore, it cannot be considered as equivalent to the legal and supervisory framework established by that Regulation.
- (15) Implementing Decision 2014/245/EU should therefore be repealed.
- (16) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision 2014/245/EU is repealed.

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, 29 July 2019.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING DECISION (EU) 2019/1282**of 29 July 2019****repealing Implementing Decision 2014/246/EU on the recognition of the legal and supervisory framework of Argentina 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)**

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) Article 5(6) of Regulation (EC) No 1060/2009 empowers the Commission to adopt an equivalence decision, stating that the legal and supervisory framework of a third country ensures that credit rating agencies ('CRAs') authorised or registered in that third country comply with legally binding requirements which are equivalent to the requirements set out in that Regulation and which are subject to effective supervision and enforcement in that third country. In order to be considered as equivalent the legal and supervisory framework of a third country is to fulfil at least the three conditions set out in Article 5(6) of Regulation (EC) No 1060/2009.
- (2) On 28 April 2014, the Commission adopted Implementing Decision 2014/246/EU ⁽²⁾, observing these three conditions to be fulfilled and considering the Argentinian legal supervisory framework for CRAs as equivalent to the requirements of Regulation (EC) No 1060/2009 in force at that time.
- (3) The Argentinian legal and supervisory framework still fulfils the three conditions originally laid down in Article 5(6) of Regulation (EC) No 1060/2009. However, Regulation (EU) No 462/2013 of the European Parliament and of the Council ⁽³⁾ introduced additional requirements for CRAs registered in the Union making the legal and supervisory regime for those CRAs more stringent. These additional requirements include legally binding rules for CRAs on rating outlooks, conflicts of interest management, confidentiality requirements, quality of rating methodologies, and the presentation and disclosure of credit ratings.
- (4) Pursuant to point (1)(b) of the second paragraph of Article 2 of Regulation (EU) No 462/2013, the additional requirements apply for the purposes of assessing the equivalence of third country legal and supervisory frameworks from 1 June 2018.
- (5) Against this background, on 13 July 2017 the Commission requested advice to European Securities and Markets Authority ('ESMA') on the equivalence of the legal and supervisory framework of *inter alia* Argentina with these additional requirements introduced by Regulation (EU) No 462/2013 and its judgement on the material importance of any differences.
- (6) In its technical advice published on 17 November 2017, ESMA concluded that the Argentinian legal and supervisory framework does not include sufficient provisions, which could meet the objectives of the additional requirements introduced by Regulation (EU) No 462/2013.
- (7) Regulation (EU) No 462/2013 introduces in Article 3(1)(w) of Regulation (EC) No 1060/2009 a definition of a rating outlook and extends certain requirements applicable to credit ratings to rating outlooks. Although rating outlooks are a feature of the market for credit ratings, the Argentinian legal and supervisory framework does not include any such provisions. As rating outlooks are not included within the scope of the 'Comisión Nacional de Valores' (CNV)'s supervision of CRAs, the CNV cannot ask for any information related to rating outlooks.

⁽¹⁾ OJ L 302, 17.11.2009, p. 1.

⁽²⁾ Commission Implementing Decision 2014/246/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Argentina as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 68).

⁽³⁾ 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).

- (8) With a view to enhancing the perception of independence of credit rating agencies vis-à-vis the rated entities, Regulation (EU) No 462/2013 extends in Article 6(4), 6a and 6b of Regulation (EC) No 1060/2009 the rules on conflicts of interest to those caused by shareholders or members holding a significant position within the CRA. The Argentinian legal and supervisory framework does require a CRA to establish adequate and effective organisational and administrative procedures to prevent, detect, eliminate, correct and disclose every conflict of interest. However, the Argentinian legal and supervisory framework does not explicitly require CRAs to account for conflicts of interests relating to shareholders. Consequently, there are no requirements to prohibit a CRA from issuing a credit rating on an entity, which holds more than 10 % of its shareholding or from providing consulting or advisory services on an entity, which holds more than 5 % of its shareholding.
- (9) Regulation (EU) No 462/2013 introduces new provisions to ensure that confidential information is only used for purposes related to credit rating activities and is protected from fraud, theft or misuse. To that effect, Article 10(2a) of Regulation (EC) No 1060/2009 requires CRAs to treat all credit ratings, rating outlooks and information relating thereto as inside information up until the point of disclosure. The Argentinian legal and supervisory framework sets out detailed requirements regarding the steps CRAs must take to protect confidential information in their possession relating to issuers. There is thus a credible framework in place to protect against the misuse of confidential information.
- (10) Regulation (EU) No 462/2013 aims to increase the level of transparency and quality of rating methodologies. It introduces in Annex I, Section D, Subsection I paragraph 3 of Regulation (EC) No 1060/2009 an obligation for CRAs to provide a rated entity with the opportunity to indicate any possible factual errors ahead before publication of the credit rating or the rating outlook. The Argentinian legal and supervisory framework does not oblige CRAs to give the rated entity an opportunity to provide for a factual check of a credit rating before its publication. A rating must be published as soon as it is approved by the rating committee in view of investor protection and to ensure that the market is informed without delay as to any change in the credit rating.
- (11) Regulation (EU) No 462/2013 introduces safeguards in Article 8(5a)(6) aa and ab and (7) of Regulation (EC) No 1060/2009 to ensure that any modification to rating methodologies does not result in less rigorous methodologies. There are some notable differences between the Argentinian legal and supervisory framework and the Union framework. Although the Argentinian legal and supervisory framework contains the requirements that credit ratings are only issued in accordance with published methodologies and that methodologies are reviewed on a periodic basis, there is no explicit requirement for CRAs to consult on changes to or to correct errors in their methodologies. There is also no requirement to inform all affected rated entities of errors in a rating methodology.
- (12) Regulation (EU) No 462/2013 strengthens the requirements regarding the presentation and disclosure of credit ratings. Pursuant to Article 8(2) and Annex I, Section D, Subsection I paragraph 2a of Regulation (EC) No 1060/2009 a CRA shall accompany the disclosure of rating methodologies, models and key rating assumptions with clear and easily comprehensible guidance, which explains any assumptions, the parameters, limits and any uncertainties surrounding the models and rating methodologies used in credit rating process. The Argentinian legal and supervisory framework contains provisions to ensure that CRAs provide sufficient guidance to enable users of credit ratings to understand them. However, there is no explicit requirement for CRAs to only include information relevant to the credit assessment of the entity in a credit rating. There is also no requirement for the CRA to highlight in the credit rating that the rating is the agency's opinion and should be relied upon to a limited degree.
- (13) With the aim of strengthening competition and limiting the scope for conflicts of interest in the CRA sector, Regulation (EU) No 462/2013 introduces a requirement in Annex I, Section E, Subsection II of Regulation (EC) No 1060/2009 that fees charged by CRAs for credit ratings and ancillary services should be non-discriminatory and based on actual costs. It requires CRAs disclose certain financial information. The Argentinian legal and supervisory regime only requires CRAs to provide information to the regulator on fees charged for their rating services for each client, differentiating the entity and/or instrument and security. CRAs are to disclose on their websites the minimum and maximum fees for their rating services in order to ensure clients are fairly treated, but there is no requirement that fees charged to clients are to be cost based and non-discriminatory.
- (14) In view of the factors examined, the Argentinian legal and supervisory framework for CRAs does not satisfy all the conditions for equivalence laid down in the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009. Therefore, it cannot be considered as equivalent to the legal and supervisory framework established by that Regulation.

- (15) Implementing Decision 2014/246/EU should therefore be repealed.
- (16) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision 2014/246/EU is repealed.

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, 29 July 2019.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING DECISION (EU) 2019/1283**of 29 July 2019****on the recognition of the legal and supervisory framework of Japan 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)**

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) Article 5(6) of Regulation (EC) No 1060/2009 empowers the Commission to adopt an equivalence decision where the legal and supervisory framework of a third country ensures that credit rating agencies ('CRAs') authorised or registered in that third country comply with legally binding requirements set out in that Regulation and which are subject to effective supervision and enforcement in that third country.
- (2) The purpose of this equivalence decision is to allow CRAs from Japan, as far as they are not systemically important for the financial stability or integrity of the financial markets of one or more Member States, to apply for certification with the European Securities and Market Authority ('ESMA'). This equivalence decision offers the possibility for ESMA to assess those CRAs on a case-by-case basis and to grant an exemption from some of the organisational requirements for CRAs active in the European Union, including the requirement of a physical presence in the European Union.
- (3) In order to be considered as equivalent the legal and supervisory framework of a third country is to fulfil at a minimum the three conditions set out in Article 5(6) of Regulation (EC) No 1060/2009.
- (4) On 28 September 2010, the Commission adopted Decision 2010/578/EU ⁽²⁾, observing that these three conditions are fulfilled and considering the Japanese legal and supervisory framework for CRAs as equivalent to the requirements of Regulation (EC) No 1060/2009 in force at that time.
- (5) According to the first condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, CRAs in a third country must be subject to authorisation or registration and must be also subject to effective supervision and enforcement on an ongoing basis. The Japanese legal and supervisory framework requires a CRA to be registered with the Financial Services Agency of Japan ('JFSA') in order for its credit ratings to be used for regulatory purposes in Japan. JFSA imposes legally binding obligations on CRAs and supervises CRAs on an ongoing basis. JFSA has a wide and comprehensive range of powers and is able to take a number of measures, including sanctions, against CRAs for breach of the provisions of the Financial Instruments and Exchange Act related to the Regulation of Credit Ratings Agencies.
- (6) According to the second condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, CRAs in a third country must be subject to legally binding rules which are equivalent to those set out in Articles 6 to 12 of Regulation (EC) No 1060/2009 and Annex I to that Regulation. The Japanese legal and supervisory framework is based on the duty of good faith. A CRA shall establish operational control systems for the fair and appropriate performance of the credit rating business through a large number of detailed and prescriptive requirements, extensive provisions in relation to avoidance, management and disclosure of conflicts of interests, and the duty to record and disclose information both to the JFSA and to the public. The Japanese legal and supervisory framework is considered as equivalent to Regulation (EC) No 1060/2009 in respect of the management of conflicts of interest, the organisational requirements, the safeguards to ensure the quality of ratings and of rating methodologies, the obligation to disclose credit ratings and the obligation for general and periodic disclosure of credit rating activities. Therefore, the Japanese legal and supervisory framework provides for equivalent protection in terms of integrity, transparency, good governance of CRAs and reliability of the credit rating activities.

⁽¹⁾ OJ L 302, 17.11.2009, p. 1.

⁽²⁾ Commission Decision 2010/578/EU of 28 September 2010 on the recognition of the legal and supervisory framework of Japan as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 254, 29.9.2010, p. 46)

- (7) According to the third condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, the regulatory regime in a third country must prevent interference by supervisory authorities and other public authorities of that third country with the content of credit ratings and methodologies. In this respect, the JFSA is prohibited by law from interfering with the substance of credit ratings and credit rating methodologies.
- (8) The Japanese legal and supervisory framework still fulfils the three conditions originally laid down in Article 5(6) of Regulation (EC) No 1060/2009. However, Regulation (EU) No 462/2013 of the European Parliament and of the Council ⁽³⁾ introduced additional requirements for CRAs registered in the Union making the legal and supervisory regime for those CRAs more stringent. These additional requirements include rules on rating outlooks, conflicts of interest management, confidentiality requirements, quality of rating methodologies, and the presentation and disclosure of credit ratings.
- (9) Pursuant to point (1)(b) of the second paragraph of Article 2 of Regulation (EU) No 462/2013, the additional requirements apply for the purposes of assessing the equivalence of third country legal and supervisory frameworks from 1 June 2018.
- (10) Against this background, on 13 July 2017 the Commission requested advice to ESMA on the equivalence of the legal and supervisory framework of *inter alia* Japan with these additional requirements introduced by Regulation (EU) No 462/2013 and its judgement on the material importance of any differences.
- (11) In its technical advice published on 17 November 2017, ESMA indicated that the Japanese legal and supervisory framework in relation to CRAs includes sufficient provisions to meet the additional requirements introduced by Regulation (EU) No 462/2013.
- (12) Regulation (EU) No 462/2013 introduces in Article 3(1)w a definition of a rating outlook and Regulation (EC) No 1060/2009 now extends certain requirements applicable to credit ratings to rating outlooks. The Japanese legal and supervisory framework substantively recognises rating outlooks. It considers a rating outlook to be part of the credit rating and empowers the JFSA to monitor the appropriateness of rating outlooks in conjunction with their associated credit ratings.
- (13) With a view to enhancing the perception of independence of credit rating agencies vis-à-vis the rated entities, Regulation (EU) No 462/2013 extends in Article 6(4), 6a and 6b of Regulation (EC) No 1060/2009 the rules on conflicts of interest to those caused by shareholders or members holding a significant position within the CRA. The Japanese legal and supervisory framework requires CRAs to put in place measures to ensure that the CRA does not harm the interests of investors in the process of determining a credit rating, in particular when a rated entity has a 5 % or more shareholding in the CRA. Furthermore, a CRA is prohibited from carrying out a rating altogether if the CRA has an interest in the rated entity.
- (14) Regulation (EU) No 462/2013 introduces new provisions to ensure that confidential information is only used for purposes related to credit rating activities and is protected from fraud, theft or misuse. To that effect, Article 10(2a) of Regulation (EC) No 1060/2009 requires CRAs to treat all credit ratings, rating outlooks and information relating thereto as inside information up until the point of disclosure. The Japanese legal and supervisory framework sets out detailed requirements regarding the steps CRAs must take to protect the confidential information relating to issuers. There is thus a credible framework in place to protect against the misuse of confidential information.
- (15) Regulation (EU) No 462/2013 aims to increase the level of transparency and quality of rating methodologies. It introduces in Annex I, Section D, Subsection I paragraph 3 of Regulation (EC) No 1060/2009 an obligation for CRAs to provide a rated entity with the opportunity to indicate any possible factual errors ahead before publication of the credit rating or the rating outlook. The Japanese legal and supervisory framework requires CRAs to establish a rating policy setting out the methodology for determining and disclosing its credit ratings. The rating policy should provide guidelines and methods to enable a rated entity to verify whether there is any factual misrepresentation in a credit rating prior to its publication and to express its opinions on the credit rating in a reasonable amount of time.
- (16) Regulation (EU) No 462/2013 introduces safeguards in Article 8(5a)(6) aa and ab and (7) of Regulation (EC) No 1060/2009 to ensure that any modification to rating methodologies does not result in less rigorous methodologies. Similarly, the Japanese legal and supervisory framework requires that a CRA have measures to ensure that the information used in determining a credit rating is of sufficient quality and that rating methodologies are rigorous and systematic.

⁽³⁾ 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).

- (17) Regulation (EU) No 462/2013 strengthens the requirements regarding the presentation and disclosure of credit ratings. Pursuant to Article 8(2) and Annex I, Section D, Subsection I paragraph 2a of Regulation (EC) No 1060/2009 a CRA shall accompany the disclosure of rating methodologies, models and key rating assumptions with clear and easily comprehensible guidance, which explains any assumptions, the parameters, limits and any uncertainties surrounding the models and rating methodologies used in credit rating process. The Japanese legal and supervisory framework does include requirements to ensure that CRAs provide sufficient guidance to enable users of credit ratings to understand them. In addition, there are requirements to ensure that CRAs maintain the accuracy of their disclosures to stakeholders.
- (18) With the aim of strengthening competition and limiting the scope for conflicts of interest in the CRA sector, Regulation (EU) No 462/2013 introduces a requirement in Annex I, Section E, Subsection II of Regulation (EC) No 1060/2009 that fees charged by CRAs for credit ratings and ancillary services should be non-discriminatory and based on actual costs. It requires CRAs disclose certain financial information. With regard to the protection of clients of CRAs and the requirement that the fees are cost-based and non-discriminatory, the Japanese legal and supervisory framework contains similar requirements to ensure that CRAs perform their business in a fair and accurate manner. It requires that, each business year, CRAs prepare a business report for the supervisor containing the top 20 clients' names and the fees paid by each of them during the fiscal year and empowers the supervisor to request relevant information regarding their pricing policies and specific charged fees.
- (19) The principle of proportionality and a risk-based approach guide the Commission in the assessment of a third country regulatory regime. In view of the factors examined, the Japanese legal and supervisory framework for CRAs satisfies the conditions laid down in the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009 and should continue to be considered as equivalent to the legal and supervisory framework established by that Regulation.
- (20) For reasons of legal certainty, a new Implementing Decision should be adopted and Decision 2010/578/EU should therefore be repealed.
- (21) The Commission, assisted by ESMA, should continue to monitor on a regular basis, the evolution of the legal and supervisory arrangements applicable to CRAs, the market developments and the effectiveness of supervisory cooperation in relation to monitoring and enforcement in Japan to ensure on-going compliance.
- (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 5 of Regulation (EC) No 1060/2009, the Japanese legal and supervisory framework for credit rating agencies shall be considered as equivalent to the requirements of Regulation (EC) No 1060/2009.

Article 2

Decision 2010/578/EU is repealed.

Article 3

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, 29 July 2019.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING DECISION (EU) 2019/1284**of 29 July 2019****on the recognition of the legal and supervisory framework of Hong Kong 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)**

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) Article 5(6) of Regulation (EC) No 1060/2009 empowers the Commission to adopt an equivalence decision where the legal and supervisory framework of a third country ensures that credit rating agencies ('CRAs') authorised or registered in that third country comply with legally binding requirements set out in that Regulation and which are subject to effective supervision and enforcement in that third country.
- (2) The purpose of this equivalence decision is to allow CRAs from Hong Kong, as far as they are not systemically important for the financial stability or integrity of the financial markets of one or more Member States, to apply for certification with the European Securities and Market Authority ('ESMA'). This equivalence decision offers the possibility for ESMA to assess those CRAs on a case-by-case basis and to grant an exemption from some of the organisational requirements for CRAs active in the European Union, including the requirement of a physical presence in the European Union.
- (3) In order to be considered as equivalent the legal and supervisory framework of a third country is to fulfil at a minimum the three conditions set out in Article 5(6) of Regulation (EC) No 1060/2009.
- (4) On 28 April 2014, the Commission adopted Implementing Decision 2014/249/EU ⁽²⁾, observing these three conditions are fulfilled and considering the Hong Kong legal and supervisory framework for CRAs as equivalent to the requirements of Regulation (EC) No 1060/2009 in force at that time.
- (5) According to the first condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, CRAs in a third country must be subject to authorisation or registration and must be also subject to effective supervision and enforcement on an ongoing basis. The Hong Kong legal and supervisory framework requires CRAs and their rating analysts who provide credit rating services in Hong Kong must have a license for providing credit rating services and are subject to supervision by the Securities and Futures Commission (SFC) of Hong Kong. The Hong Kong legal and supervisory framework endows SFC with a comprehensive range of powers allowing it to investigate whether CRAs comply with their legal obligations. The SFC can compel both unregulated and regulated persons to produce information and documents relevant to the investigation, including trade records, bank records, telephone records, internet records and beneficial ownership information. This power applies to both persons under investigation or whom the SFC has reasonable cause to believe are in possession of information relevant to the investigation. In addition, where there is fear of destruction or removal of evidence, flight of target or other concerns, the SFC has the power to access private premises of both unregulated and regulated persons upon the grant of a search warrant by a judicial authority. In addition, the SFC has a full range of powers to take criminal, civil, administrative and other actions. This includes the administrative power to impose disciplinary sanctions against persons licensed or registered with the SFC, to impose restrictions on licensed or registered persons regarding their business activities, to revoke or suspend a licensed or registered person's licence or registration and to reprimand, impose obligations or fine the licensed or registered person. The SFC has the power to apply to the relevant court for injunctive or remedial orders. The SFC conducts, in addition to onsite inspections, offsite supervision through interactions with licensed CRAs to understand their

⁽¹⁾ OJ L 302, 17.11.2009, p. 1.

⁽²⁾ Commission Implementing Decision 2014/249/EU of 28 April 2014 on the recognition of the legal and supervisory framework of Hong Kong as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 132, 3.5.2014, p. 76)

business models and plans and the risks inherent in such activities, with a view to identifying and assessing the risks arising from their business activities. Information on licensed CRAs is collected through filings with the SFC, including but not limited to annual audited accounts and annual control review reports. The SFC follows up on complaints and self-reported breaches. The cooperation agreement concluded between ESMA and SFC provides for information exchange with regard to enforcement and supervisory measures taken against cross border CRAs.

- (6) According to the second condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, CRAs in a third country must be subject to legally binding rules which are equivalent to those set out in Articles 6 to 12 of Regulation (EC) No 1060/2009 and Annex I to that Regulation. The Hong Kong legal and supervisory framework lays down detailed corporate governance requirements. The board of directors and responsible officers for the regulated activities bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the CRA. CRAs must have two responsible officers, both of whom have to be approved by the SFC, and at least one of them has to be an executive director under the SFO. Extensive provisions are in place regarding conflicts of interest, requiring CRAs to identify and eliminate or manage conflicts of interest and to be organised in a manner that ensures its business interest does not impair the independence and accuracy of its credit ratings as well as organisational requirements, including outsourcing, record keeping and confidentiality. In terms of organisational requirements, CRAs must fulfil such as those regarding policies and procedures for ensuring compliance with legal obligations and a permanent and effective compliance function. CRAs are also required to establish a review function responsible for periodically reviewing rating methodologies and models and significant changes thereto. The Hong Kong legal and supervisory framework contains a broad range of disclosure requirements, such as public disclosure of the ratings and annual public disclosures on the rating and ancillary activities. Therefore, the Hong Kong legal and supervisory framework is considered as equivalent to the CRA Regulation in respect of the management of conflicts of interest, the organisational requirements, 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 should provide for equivalent protection in terms of integrity, transparency, good governance of CRAs and reliability of the credit rating activities.
- (7) According to the third condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, the regulatory regime in a third country must prevent interference by supervisory authorities and other public authorities of that third country with the content of credit ratings and methodologies. There is no legal provision empowering SFC or any other public authority to influence the content of credit rating or methodologies.
- (8) The Hong Kong legal and supervisory framework still fulfils the three conditions originally laid down in Article 5(6) of Regulation (EC) No 1060/2009. However, Regulation (EU) No 462/2013 of the European Parliament and of the Council ⁽³⁾ introduced additional requirements for CRAs registered in the Union making the legal and supervisory regime for those CRAs more stringent. These additional requirements include legally binding rules for CRAs on rating outlooks, conflicts of interest management, confidentiality requirements, quality of rating methodologies, and the presentation and disclosure of credit ratings.
- (9) Pursuant to point (1)(b) of the second paragraph of Article 2 of Regulation (EU) No 462/2013, the additional requirements apply for the purposes of assessing the equivalence of third country legal and supervisory frameworks from 1 June 2018.
- (10) Against this background, on 13 July 2017 the Commission requested advice to ESMA on the equivalence of the legal and supervisory framework of *inter alia* Hong Kong with these additional requirements introduced by Regulation (EU) No 462/2013 and its judgement on the material importance of any differences.
- (11) In its technical advice published on 17 November 2017, ESMA indicated that the Hong Kong legal and supervisory framework in relation to CRAs includes sufficient provisions to meet the additional requirements introduced by Regulation (EU) No 462/2013.
- (12) Regulation (EU) No 462/2013 introduces in Article 3(1)(w) a definition of a rating outlook and Regulation (EC) No 1060/2009 now extends certain requirements applicable to credit ratings to rating outlooks. Although the Hong Kong legal and supervisory framework does not explicitly recognise rating outlooks as a separate and distinct item from a credit rating, the SFC expects, considering the broad nature of the term 'credit rating' under the Hong Kong legal and supervisory framework, the production of rating outlooks to adhere to all of the same requirements for credit ratings.

⁽³⁾ 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).

- (13) With a view to enhancing the perception of independence of credit rating agencies vis-à-vis the rated entities, Regulation (EU) No 462/2013 extends in Article 6(4), 6a and 6b of Regulation (EC) No 1060/2009 the rules on conflicts of interest to those caused by shareholders or members holding a significant position within the CRA. The Hong Kong legal and supervisory framework requires CRAs to establish appropriate and effective arrangements as to prevent, identify and eliminate or manage and disclose conflicts of interest and to ensure they are not affected by business relationships. Although there is no explicit reference to shareholders in the Hong Kong legislation, if there is potentially a conflict of interest then the CRA is prohibited from carrying out that business.
- (14) Regulation (EU) No 462/2013 introduces new provisions to ensure that confidential information is only used for purposes related to credit rating activities and is protected from fraud, theft or misuse. To that effect, Article 10(2a) of Regulation (EC) No 1060/2009 requires CRAs to treat all credit ratings, rating outlooks and information relating thereto as inside information up until the point of disclosure. By establishing detailed requirements, the Hong Kong legal and supervisory framework requires CRAs to adopt procedures and mechanisms to protect the confidential information relating to issuers. There is thus a credible framework in place to protect against the misuse of confidential information.
- (15) Regulation (EU) No 462/2013 aims to increase the level of transparency and quality of rating methodologies. It introduces in Annex I, Section D, Subsection I paragraph 3 of Regulation (EC) No 1060/2009 an obligation for CRAs to provide a rated entity with the opportunity to indicate any possible factual errors ahead before publication of the credit rating or the rating outlook. By placing a higher priority on the rating being communicated to the market without delay, the Hong Kong legal and supervisory framework contains no strict requirement for CRAs to inform a rated entity about a credit rating prior to its publication. Instead, CRAs are to only inform a rated entity of the critical information and principal considerations upon which a rating will be based when feasible and appropriate.
- (16) Regulation (EU) No 462/2013 introduces safeguards in Article 8(5a)(6) aa and ab and (7) of Regulation (EC) No 1060/2009 to ensure that any modification to rating methodologies does not result in less rigorous methodologies. The Hong Kong legal and supervisory framework requires that CRAs fully and publicly disclose any material modification to its methodologies. In addition, it requires that where feasible and appropriate the CRA is to disclose such material modifications prior to their going into effect. Should there be any change to methodologies, models or key rating assumptions used in preparing any of its credit ratings, the CRA is required to immediately disclose the likely scope of credit ratings to be affected using the same means of communication as was used for the distribution of the affected credit ratings.
- (17) Regulation (EU) No 462/2013 strengthens the requirements regarding the presentation and disclosure of credit ratings. Pursuant to Article 8(2) and Annex I, Section D, Subsection I paragraph 2a of Regulation (EC) No 1060/2009 a CRA shall accompany the disclosure of rating methodologies, models and key rating assumptions with clear and easily comprehensible guidance, which explains any assumptions, the parameters, limits and any uncertainties surrounding the models and rating methodologies used in credit rating process. The Hong Kong legal and supervisory regime does have requirements to ensure that CRAs provide sufficient guidance to enable users of credit ratings to understand them. There is also a requirement to provide the supervisor every 6 months information regarding its business activities.
- (18) With the aim of strengthening competition and limiting the scope for conflicts of interest in the CRA sector, Regulation (EU) No 462/2013 introduces a requirement in Annex I, Section E, Subsection II of Regulation (EC) No 1060/2009 that fees charged by CRAs for credit ratings and ancillary services should be non-discriminatory and based on actual costs. It requires CRAs disclose certain financial information. The Hong Kong legal and supervisory framework requires CRAs to keep business records in line with all statutory requirements for a determined period, to publicly disclose the general nature of its compensation arrangements with rated entities and to report the aggregate income arising from the provision of credit rating services empowering the supervisor to request this information. Regarding the measures to protect clients and ensure they are fairly treated, there is a general requirement to treat clients fairly.
- (19) The principle of proportionality and a risk-based approach guide the Commission in the assessment of a third country regulatory regime. In view of the factors jointly examined and the technical advice provided by ESMA, the Hong Kong legal and supervisory framework for CRAs satisfies the conditions laid down in the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009 and should continue to be considered as equivalent to the legal and supervisory framework established by that Regulation.

- (20) For reasons of legal certainty, a new Implementing Decision should be adopted and Implementing Decision 2014/249/EU should therefore be repealed.
- (21) The Commission, assisted by ESMA, should continue to monitor on a regular basis, the evolution of the legal and supervisory arrangements applicable to CRAs, the market developments and the effectiveness of supervisory cooperation in relation to monitoring and enforcement in Hong Kong to ensure on-going compliance.
- (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 5 of Regulation (EC) No 1060/2009, the Hong Kong legal and supervisory framework for credit rating agencies shall be considered as equivalent to the requirements of Regulation (EC) No 1060/2009.

Article 2

Implementing Decision 2014/249/EU is repealed.

Article 3

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, 29 July 2019.

For the Commission
The President
Jean-Claude JUNCKER

