

DECISIONS

COMMISSION IMPLEMENTING DECISION

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

(Text with EEA relevance)

(2012/630/EU)

THE EUROPEAN COMMISSION,

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

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

Whereas:

(1) On 12 June 2009 the Commission granted a mandate to the Committee of European Securities Regulators (CESR), whose tasks have been assumed by the European Securities and Markets Authority established on 1 January 2011 pursuant to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) ⁽²⁾ (ESMA), requesting their advice with regard to the technical assessment of the legal and supervisory framework of Canada in respect of credit rating agencies.

(2) In its advice delivered on 18 April 2012, ESMA suggested that the Canadian legal and supervisory framework in respect of credit rating agencies be considered equivalent to the EU regulatory regime for credit rating agencies.

(3) Pursuant to the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009, the fulfilment of three conditions needs to be assessed in order to consider a third country legal and supervisory framework equivalent to Regulation (EC) No 1060/2009.

(4) According to the first condition, credit rating agencies in the third country must be subject to authorisation or registration and subject to effective supervision and enforcement on an ongoing basis. Canada has a comprehensive and legally binding framework in relation to CRAs and the use of credit ratings. National Instrument 25-101 Designated Rating Organizations (DRO) was introduced on 27 January 2012 and became effective from 20 April 2012. This framework requires a credit rating agency to be registered with the Canadian Securities Administrators (CSA) and provides for ongoing supervision of the credit rating agency by the CSA. For the purposes of carrying out its oversight tasks, the CSA is endowed with a wide and comprehensive range of powers. The CSA has the power to require access to books, records and documents kept by credit rating agencies, and to request other relevant information, including telephone records and data traffic. The CSA is also empowered to conduct on-site inspections and inquire into and examine books and records. Moreover, the CSA may bring proceedings against a credit rating agency in the event of a breach of National Instrument 25-101 using any of the powers which are available in the event of a breach of securities' legislation. Among other powers, the CSA may make an order revoking the designated status of a DRO, impose a fine up to 1 000 000 CAD for each failure to comply with its legal obligations, and require a DRO to rectify any past non-compliance. All CRAs based in Canada were registered as DROs by the CSA on 30 April 2012 and have since then been subject to the CSA's ongoing supervision. The Ontario Securities Commission which acts as lead supervisor within the CSA intends to conduct on-site inspections at least every two years. The cooperation agreement concluded between ESMA and the CSA 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⁾ OJ L 331, 15.12.2010, p. 84.

- (5) According to the second condition, credit rating agencies in the third country must be subject to legally binding rules which are equivalent to those set out in Articles 6 to 12 of and Annex I to Regulation (EC) No 1060/2009. The Canadian legal and supervisory framework meets the objectives of Regulation (EC) No 1060/2009 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 Canadian framework provides for equivalent protection in terms of integrity, transparency, good governance of credit rating agencies and reliability of the credit rating activities.
- (6) According to the third condition, the regulatory regime in the third country must prevent interference by the supervisory authorities and other public authorities of that third country with the content of credit ratings and methodologies. In this respect, Section B of Appendix A to National Instrument 25-101 requires credit rating agencies to establish a committee responsible for implementing a rigorous and formal process for issuing and reviewing the methodologies, models and key rating assumptions they use. Neither the CSA nor any other public authority is empowered to interfere in this process or with the content of credit ratings, or rating methodologies.
- (7) In view of the factors examined, the conditions laid down in the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009 can be considered to be met by the Canadian legal and supervisory framework for credit rating agencies. Therefore, the

Canadian legal and supervisory framework for credit rating agencies should be considered equivalent to the legal and supervisory framework established by Regulation (EC) No 1060/2009. The Commission, in cooperation with ESMA, will continue monitoring the evolution of the Canadian legal and supervisory framework for credit rating agencies and the fulfilment of the conditions on the basis of which this decision has been taken.

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

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 5 of Regulation (EC) No 1060/2009, the Canadian legal and supervisory framework for credit rating agencies shall be considered as equivalent to the requirements of Regulation (EC) No 1060/2009.

Article 2

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

Done at Brussels, 5 October 2012.

For the Commission

The President

José Manuel BARROSO
