

COMMISSION IMPLEMENTING DECISION**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****(Text with EEA relevance)****(2014/248/EU)**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) On 22 October 2012 the Commission granted a mandate to the European Securities and Markets Authority (ESMA), requesting its advice with regard to the technical assessment of the legal and supervisory framework of Singapore in respect of credit rating agencies (CRAs).
- (2) In its technical advice delivered on 31 May 2013, ESMA indicated that in its outcomes, the Singaporean legal and supervisory framework in respect of CRAs is comparable to that laid down in Regulation (EC) No 1060/2009.
- (3) Pursuant to the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009, three conditions need to be fulfilled in order to consider a third country legal and supervisory framework equivalent to the requirements of that Regulation.
- (4) According to the first condition, CRAs in third countries must be subject to authorisation or registration and to effective supervision and enforcement on an ongoing basis. The Singaporean legal and regulatory framework for CRAs came into force on 17 January 2012. The Monetary Authority of Singapore (MAS), which is the central bank of Singapore, has the power to issue secondary legislation on the basis of the Securities and Futures Act (SFA). CRAs are required to obtain a capital markets services (CMS) licence under the SFA to carry out credit rating services in Singapore and are supervised on an ongoing basis by MAS. MAS regulations applicable to CRAs, as CMS licensees, include the Securities and Futures (Licensing and Conduct of Business) Regulations and the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licenses) Regulations, as well as a legally binding Code of Conduct for CRAs. The Singaporean legal and supervisory framework endows MAS with a comprehensive range of powers allowing it to investigate whether CRAs comply with their legal obligations, in addition to the obligations of the CRAs to inform MAS of any changes in its particulars on an ongoing basis and to file financial information with MAS. The MAS has the power to inspect a CMS licensee and CRAs must allow MAS full access to their books, accounts and documents and give such information and facilities as may be required to conduct the inspection. The MAS has the authority to make copies or take possession of any of the books produced and can invoke investigation powers to require the production of documents. By April 2012, three CRAs were licensed in Singapore and in the first eight months of 2013, MAS carried out one on-site inspection. In addition, MAS is empowered to issue written instructions to a CRA not pertaining to the content of a credit rating, rating outlook or methodologies, if it considers it necessary or expedient in the interests of the public or for the protection of investors, revoke the licence or suspend the activities of a CRA, publish information relating to any breach by a CRA of its regulatory obligations. MAS can refer matters to the relevant national authorities for criminal investigation and prosecution. The cooperation agreement concluded between ESMA and MAS provides for information exchange with regard to enforcement and supervisory

⁽¹⁾ OJ L 302, 17.11.2009, p. 1.

measures taken against cross border CRAs. On this basis, it should be considered that CRAs in Singapore are subject to authorisation or registration requirements equivalent to those laid down in Regulation (EC) No 1060/2009 and the Singaporean supervisory and enforcement arrangements applicable to CRAs are effectively applied and enforced.

- (5) According to the second condition, CRAs in the third country must be subject to legally binding rules which are equivalent to those set out in Articles 6 to 12 and Annex I to Regulation (EC) No 1060/2009, with the exception of Articles 6a, 6b, 8a, 8b, 8c and 11a, point (ba) of point 3 and points 3a and 3b of Section B of Annex I to that Regulation. When assessing the fulfilment of this condition due regard should be paid to Article 2(1) of Regulation (EU) No 462/2013 of the European Parliament and of the Council ⁽¹⁾ in respect of the date of application of certain provisions of Regulation (EC) No 1060/2009. With regard to corporate governance, the Singaporean legal and supervisory framework provides for a general obligation for the CRAs, their officers and staff to fulfil their tasks independently and the effective independence of directors is achieved through requirements for specific policies and shall be demonstrated to the MAS. CRAs have to seek the approval of MAS for the appointment of a CEO or director, whereby MAS takes into account the individual's experience, expertise and past performance. MAS also has the power to demand the removal of the CEO, directors or other officers of the CRA if it considers that those persons failed to discharge their duties, such as with regard to conflicts of interest and the review and compliance function. Extensive provisions are in place in the Singaporean legal and supervisory framework regarding the identification, elimination, management and disclosure of actual or potential conflicts of interest. That framework also requires CRAs to establish a rigorous and formal review function for reviewing rating methodologies and contains a number of organisational requirements to ensure compliance with the laws and rules applicable as well as disclosure requirements such as on the information to be published when issuing credit ratings and annual disclosures concerning its rating activities. Therefore, the Singaporean legal and supervisory framework should achieve the same outcomes as Regulation (EC) No 1060/2009 in respect of the management of conflicts of interest, the organisational processes and procedures that a CRA needs to have in place, the quality of ratings and of rating methodologies, the disclosure of credit ratings and the general and periodic disclosure of credit rating activities. It thus provides for equivalent protection in terms of integrity, transparency, good governance of CRAs and reliability of the credit rating activities.
- (6) According to the third condition, the regulatory regime in the third country must prevent interference by the supervisory authorities and other public authorities of that third country with the content of credit rating and methodologies. As far as it can be ascertained there is no legal provision empowering MAS or any other public authority to influence the content of credit rating or methodologies. Any act by MAS outside of its powers may be subject to judicial review.
- (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 Singaporean legal and supervisory framework for CRAs. Therefore, the Singaporean legal and supervisory framework for CRAs should be considered equivalent to the legal and supervisory framework established by Regulation (EC) No 1060/2009. The Commission, informed by ESMA, should continue to monitor the evolution of the Singapore legal and supervisory framework for CRAs and the fulfilment of the conditions on the basis of which this decision has been taken.
- (8) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

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

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

Article 2

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

Done at Brussels, 28 April 2014.

For the Commission
The President
José Manuel BARROSO
