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)

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 'Commission Nacional de Valores' (CNV)'s supervision of CRAs, the CNV cannot ask for any information related to rating outlooks.

(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