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)

COMMISSION IMPLEMENTING DECISION (EU) 2019/1280

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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 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 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