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