

**COMMISSION DECISION****of 28 September 2010****on the recognition of the legal and supervisory framework of Japan as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies***(notified under document C(2010) 6418)***(Text with EEA relevance)**

(2010/578/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<sup>(1)</sup>, 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) requesting their technical advice with regard to the technical assessment of the legal and supervisory framework of Japan in respect of credit rating agencies.
- (2) In its advice delivered on 21 May 2010, CESR suggested that the Japanese legal and supervisory framework in respect of credit rating agencies be considered equivalent to the Regulation.
- (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 are subject to effective supervision and enforcement on an ongoing basis. The Japanese legal and supervisory framework for credit rating agencies consists of the Financial Instruments and Exchange Act (Act No 25 of 1948) related to the Regulation of Credit Ratings Agencies; the Cabinet Office Ordinance on Financial Instruments Business (Ordinance No 52 of 2007)

related to the Regulation of Credit Rating Agencies; the Cabinet Office Ordinance on Definitions under Article 2 of the and Exchange Act (Ordinance of the Ministry of Finance No 14 of 1993) related to the Regulation of Credit Rating Agencies, as well as the Comprehensive Guidelines for Supervision of Financial Instruments Business Operators (Supplement) and the Guidelines for Supervision of Credit Rating Agencies. In June 2009, the Japanese Parliament (the Diet) passed legislation introducing a new regulatory framework for credit rating agencies, which was followed by the release in December 2009 of Cabinet Orders and Cabinet Office Ordinances laying out the details of the terms and conditions of this framework. The framework, which became effective in April 2010, requires a credit rating agency to be registered with the Financial Services Agency of Japan (JFSA) in order for its credit ratings to be used for regulatory purposes in Japan and imposes legally binding obligations on credit rating agencies and their supervision on an ongoing basis. The JFSA is endowed with a wide and comprehensive range of powers and is able to take a number of measures, including sanctions, against credit rating agencies for breach of the provisions of the Financial Instruments and Exchange Act related to the Regulation of Credit Ratings Agencies.

- (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 and Annex I of Regulation (EC) No 1060/2009. The Japanese regime is based on: the duty of good faith, the obligation of a credit rating agency to establish operational control systems for the fair and appropriate performance of the credit rating business through a large number of detailed and prescriptive requirements, extensive provisions in relation to avoidance, management and disclosure of conflicts of interests, and the duty to record and disclose information both to the JFSA and the public. The Japanese 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 Japanese framework provides for equivalent protections in terms of integrity, transparency, good governance of credit rating agencies and reliability of the credit rating activities.

<sup>(1)</sup> OJ L 302, 17.11.2009, p. 1.

- (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, the JFSA is prohibited by law from interfering with the substance of credit ratings and credit 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 Japanese legal and supervisory framework for credit rating agencies. Therefore, the Japanese 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.
- (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 Japanese 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 is addressed to the Member States.

Done at Brussels, 28 September 2010.

*For the Commission*

Michel BARNIER

*Member of the Commission*

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