



European Securities and
Markets Authority

Update to the Technical Advice to the European Commission on the Equivalence between the Argentinean Regulatory and Supervisory Framework and the EU Regulatory Regime for Credit Rating Agencies

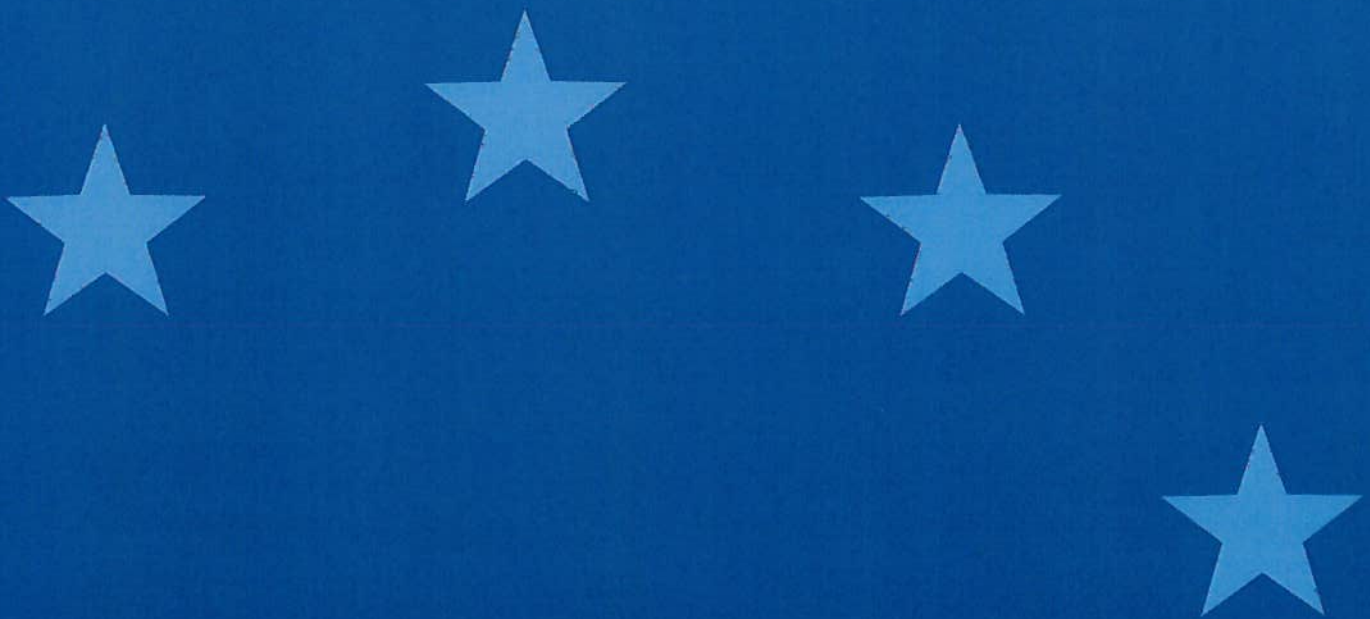


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I. Executive Summary

This report updates the Technical Advice to the European Commission on the equivalence between the legal and supervisory framework in Argentina and the EU regulatory regime for credit rating agencies issued by ESMA on 30 May 2013 (ESMA/2013/626). It updates the content of that Technical Advice by taking into account the innovations and amendments of the Executive Power Decree No 1023/2013 approved in August 2013 and the Comisión Nacional de Valores' (CNV) regulations adopted by General Resolution N° 622/2013 in September 2013.

In May 2013, the Technical Advice concluded that the legal and supervisory framework in Argentina was equivalent to the EU regulatory regime for credit rating agencies. The equivalence assessment conducted by ESMA follows an objective-based approach, where the capacity of the regime in the third country to meet the objectives of the EU Regulation is assessed from a holistic perspective.

ESMA considers that the requirements introduced by the Decree No 1023/2013 and the CNV's regulations N° 622/2013 provide a solid background for maintaining a positive advice on the equivalence of the Argentinean legal and supervisory framework for credit rating agencies. The new legal and regulatory framework does not reduce or jeopardise the level of protection to users of ratings in the EU. On the contrary, the new legislation introduces provisions which should increase protection to users of ratings.

In light of the above, ESMA believes that the legal and supervisory framework in Argentina is still equivalent to the EU Regulation on CRAs.

A positive equivalence decision is required to enable a third country credit rating agency to apply for certification. However, ESMA reiterates that a determination of equivalence is one of the criteria that have to be met as set out in Article 5(1) of the Regulation (EC) No. 1060/2009. Other relevant requirements include the authorisation or registration of the CRA and its supervision in that third country. A positive equivalence determination should not be understood as meaning that a third country credit rating agency will automatically be granted certification and as such its credit ratings issued from such a third country may be used in the EU for regulatory purposes.

ESMA will keep monitoring the evolution of the Argentinean legal and supervisory framework for credit rating agencies on an ongoing basis, also via the cooperation agreements that the two Authorities have signed in that field. It will update the European Commission in the event of future amendments to the Argentinean regime that may necessitate a change in the conclusions of this report.

II. Introduction

1. On 22 October 2012, the European Commission mandated ESMA to provide with the technical advice on the equivalence between Argentina, Brazil, Hong Kong, Mexico and Singapore with the EU regulatory regime for credit rating agencies (Regulation (EC) No. 1060/2009 of the European Parliament and the Council on credit rating agencies¹).
2. On 30 May 2013, ESMA published its Technical Advice to the European Commission on the equivalence between the legal and supervisory frameworks on Argentina, Brazil, Hong Kong, Mexico and Singapore and the EU regulatory regime for credit rating agencies (ESMA/2013/626).
3. The Technical Advice² concluded that the Argentinean legal and supervisory framework was “*equivalent*” to the EU regulatory regime for credit rating agencies in terms of achieving what ESMA considers to be the overall objective of: “*assuring that users of ratings in the EU would benefit from equivalent protection in terms of credit rating agencies integrity, transparency, good governance and reliability of the credit rating activities*”.
4. In coming to this conclusion, ESMA grouped the requirements of the EU Regulation into seven areas, and assessed the ability of the Argentinean legal and supervisory framework to achieve the main objectives of the relevant EU requirements in each of those areas. The seven areas are:
 - (i) Scope of the regulatory and supervisory framework
 - (ii) Corporate Governance
 - (iii) Conflicts of interests management
 - (iv) Organisational requirements
 - (v) Quality of methodologies and of credit ratings
 - (vi) Disclosure of:
 - credit ratings
 - the activities of the credit rating agency
 - (vii) Effective supervision and enforcement.
5. On 29 July 2013, the President of Argentina signed the Executive Power Decree No 1023/2013 to develop further Law No 26.831 on “Capital Markets” adopted in November 2012. Decree No 1023/2013 establishes general principles on the Argentinean capital markets including high-level principles to be applied to CRAs (Articles 57 and 58) and empowers Comision Nacional de Valores (CNV) to implement those principles throughout CNV’s implementing regulations.

¹ Regulation (EC) No. 1060/2009 of the European Parliament and the Council on credit rating agencies, hereinafter, “the EU Regulation”.

² Any reference in this report to ESMA’s Advice refers to the Technical Advice to the European Commission on the equivalence between the regulatory and supervisory framework in Argentina, Brazil, Hong Kong, Mexico and Singapore with the EU regulatory regime for credit rating agencies (ESMA/2013/626) published on 30 May 2013.

6. On 9 September 2013, the new CNV's regulations were adopted by the General Resolution N° 622/2013. Title IX of the CNV's regulations comprises the regulatory framework for credit rating agencies.
7. In ESMA's technical advice, ESMA stated it would monitor the evolution of the Argentinian legal and supervisory framework for credit rating agencies on an on-going basis and cooperate with the Argentinian Authorities via the Memorandum of Understanding signed with the Comisión Nacional de Valores of Argentina in this field in April 2012 (ESMA/2012/256). In the event of changes into the Argentinian regulatory and supervisory regime, ESMA should appropriately inform the European Commission.
8. On 11 October 2013, taking into account the information on the latest developments in the Argentinean legal framework, the European Commission requested ESMA to update its technical advice on the equivalence between the legal and supervisory framework in Argentina in relation to the EU regulatory regime for credit rating agencies.
9. ESMA has issued this report with the purpose to update the Technical Advice provided in May 2013 by taking into account the innovations and amendments of the Argentinean regulatory regime introduced by the Executive Power Decree No 1023/2013 and the CNV's regulations adopted by the General Resolution N° 622/2013.
10. The analysis presented in this report is based upon ESMA's understanding of the amendments of the Argentinean legislative and regulatory framework for credit rating agencies. ESMA has been in contact with staff member of the Argentinean CNV in order to get a better understanding on the new legislation in place.

III. Update to the assessment of the equivalence on the new Argentinian framework to that of the EU

11. The regime adopted in Argentina was tested against the objectives pursued by the EU Regulation grouped into seven areas, as detailed in ESMA's Guidelines on Endorsement (ESMA/2011/139, Annex II). These areas are as follows:
 - (i) the scope of the regulatory and supervisory framework;
 - (ii) corporate governance;
 - (iii) management of conflicts of interest;
 - (iv) organisational requirements;
 - (v) quality of methodologies and of ratings;
 - (vi) general disclosure and presentation of ratings;
 - (vii) effective supervision and enforcement.
12. In relation to each of those areas, ESMA assessed the ability of the Argentinian legal and supervisory framework to achieve the main objectives of the relevant EU requirements. At that time, the main Argentinean legal texts in relation to credit rating agencies were (i) Chapter XVI – Credit Rating Agencies – and Chapter XXVI – Autopista de la Información

Financiera or Financial Information Highway of CNV Regulation adopted in 2001 (amended by CNV Regulation 605/12) and (ii) the Law No. 26.831 on “Capital Markets Law” adopted in November 2012.

13. The Decree No 1023/2013 adopted on 29 July 2013 and the CNV’s regulations adopted by the General Resolution N° 622/2013 on 9 September 2013 do not reduce the requirements established in the prior CNV’s Regulation 2001 as amended by Regulation No 605/2012. Requirements for the assessed areas remain the same but they have been relocated in a different structure and different articles.
14. In addition, the new Argentinean regulatory regime includes requirements which reinforce the equivalence of some areas. The following material requirements have been introduced:
 - Exclusive use of the CRA name/title: only CRA registered within the CNV shall be able to be called or use the name of Credit Rating Agency (CRA);
 - Mandatory rotation of CRAs: credit rating contracts with the same client cannot last more than four years. After that period, the CRA cannot work with that client for another four years (cooling off periods);
 - The IOSCO Code of Conduct is included in the Regulation as an Annex and consequently, mandatory to CRAs;
 - CRAs are not allowed to make any sort of recommendations on the sovereign policies when issuing sovereign ratings;
 - Board members or analysts are not allowed to provide any recommendation or proposal, formal or informal, to the rated entity on their activities or financial instruments;
 - CRAs are not allowed to provide audit services (in addition to consultancy or advisory services) to the rated entity or any company of the group;
 - CRAs need to obtain prior authorisation from the CNV in order to carry out ancillary services;
15. Finally, the new Argentinean legal and regulatory regime also tries to increase the players in the CRA market allowing public universities to operate as CRAs. Public universities are entitled to act as CRAs provided that they are registered within the CNV and comply with all applicable regulations.

IV. Overall conclusions

ESMA concludes that the revised Argentinean legal and supervisory framework is overall still equivalent to the EU regulatory regime for CRAs in terms of what ESMA considers being the overall objective:

“assuring that users of ratings in the EU would benefit from equivalent protections in terms of the credit rating agencies integrity, transparency, good governance and reliability of the credit rating activities”

ESMA has also concluded that, while introducing the improvements mentioned above, neither the Decree No 1023/2013 adopted on 29 July 2013, nor the CNV’s regulations adopted by the General Resolution N° 622/2013 on 9 September 2013, have reduced any existing rules upon which the Technical Advice relied in May 2013. On the contrary, part of the provisions introduced by those pieces of legislation regarding credit rating agencies have reinforced even further some of the areas where ESMA had already considered the Argentinean regime equivalent.

