

OPINION

Renewal of emergency measure by the Greek HCMC under Section 1 of Chapter V of Regulation No 236/2012 on short selling and certain aspects of credit default swaps

I. Legal basis

1. According to Article 27(2) of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (the Regulation), the European Securities and Markets Authority (ESMA) shall within 24 hours of the notification having been made by a competent authority under Article 26 of the Regulation issue an opinion on whether it considers the measure or proposed measure necessary to address the exceptional circumstances.
2. ESMA's competence to deliver an opinion is based on Article 29(1) (a) of Regulation (EC) No 1095/2010 (ESMA Regulation). In accordance with Article 44(1) of the ESMA Regulation the Board of Supervisors has adopted this opinion.

II. Background

3. In accordance with Article 26 of the Regulation, the Hellenic Capital Market Commission (HCMC) originally notified ESMA and competent authorities on the 29th of June 2015 of its intention to make use of its powers of intervention in exceptional circumstances and to introduce an emergency measure under Article 20 of the Regulation.
4. The original emergency measure consisted of a temporary prohibition of transactions in any financial instrument that create, or increase, a net short position on any of the shares admitted to trading on the Athens Exchange and the Multilateral Trading Facility of "EN.A" (Alternative Market of the Athens Exchange) of which the relevant Competent Authority is HCMC.
5. The original measure concerned the following financial instruments: all shares admitted to trading on the Athens Exchange and the Multilateral Trading Facility of "EN.A", as well as all related instruments included in the calculation of the net short position in accordance with Regulation (EU) No 236/2012 and Commission Regulation (EU) No 918/2012 of 5 July 2012 (see in particular Annex I, Part I thereof). It applied to any person irrespective of their country of residence, and did not envisage any exemption for market maker activities.

6. In the original notification, the HCMC indicated that the measure was a complementary action to the ones already established on the 29th of June 2015 by the Greek Authorities, namely:
 - closure of the ATHEX regulated market and the Multilateral Trading Facility of “EN.A” until the 6th of July (included);
 - closure of The Electronic Secondary Market “HDAT” for government bonds operated for the same period;
 - suspension of redemption of mutual funds’ units;
 - suspension of operation of ATHEXClear for the securities traded on the Greek market and the MTF “EN.A”;
 - suspension of the settlement of securities traded on the Greek market by the Hellenic Central Securities Depository;
 - trading suspension of all the securities of listed companies covered by the above measures, as well as the related financial instruments (the trading suspension is effective also in other Member States).
7. The reason for proposing a temporary prohibition for the creation, or increase, of net short position on the shares admitted to trading on the Athens Exchange and on “EN.A” was that the HCMC deemed it necessary for the protection of the investors and the preservation of financial stability. In fact, such prohibition was considered a relevant component to ensure the effectiveness of the other measures adopted by the Greek authorities. The HCMC also stated that given that the main liquidity and trading activity on those instruments normally is located within Greece, the measure would have not created disproportionate negative effects, since it would have affected a fairly small part of the EU overall market.
8. Following the issuance by ESMA of a positive opinion pursuant to Article 27 of the Regulation on the 29th of June, the original measure by the HCMC entered into force at 00:00:01 hours (CET) on 30th June 2015, and applied for a period of seven days, ending at 24:00:00 (CET) on 6th July 2015.
9. On the 6th of July 2015, the measures described in paragraph 6 were renewed by the Greek authorities and the bank holiday in Greece was also extended. On the same day, the HCMC proposed a renewal of the short selling measure, notifying ESMA and competent authorities accordingly.
10. In the notification for the renewal, the HCMC explains that it believes the circumstances that justified the imposition of the original measure did not improve during the last week and therefore the measure should be renewed. Moreover, all the other measures adopted by the Greek authorities were renewed or extended, and the short selling measure remains a relevant component to ensure the effectiveness of the other ones.

11. The proposed renewal would concern the same financial instruments of the original measure (see paragraph 5), but the HCMC specified in the new notification that although the ban covers all transactions in the financial instruments listed in Part I of Annex I of Commission Regulation (EU) No 918/2012, transactions in index-related instruments and ETFs are included to the extent that the shares admitted to trading on the Athens Exchange and the Multilateral Trading Facility of “EN.A” of which the relevant Competent Authority is the HCMC represent more than 5% of the total value (or composition) of these instruments.
12. The renewed measure shall apply for a period of seven days and shall be in force as of 00:00:01 hours (CET) on 7th July 2015 until 24:00:00 (CET) on 13th of July 2015.

III. Opinion

13. ESMA is adopting the following opinion on the notified measure, on the basis of Article 27(2) of Regulation 236/2012 on Short selling and certain aspects of credit default swaps:

On the adverse events or developments

ESMA considers that adverse developments which constitute a serious threat to market confidence in the Greek market still persist.

On the appropriateness and proportionality of the measure

ESMA considers that the measure is appropriate and proportionate to address the above mentioned threats that persist in the Hellenic Republic.

On the duration of the measure

ESMA considers that the duration of the measure is justified and appreciates HCMC's statement in its notification of intent that the measure may be lifted before the end of the established period or renewed in accordance with the provisions of the Regulation (EU) No 236/2012 if circumstances that justified the imposition of the measure improve, persist or worsen.