

OPINION

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) notified ESMA and competent authorities on 29 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 concerned emergency measure consists of 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. It will concern 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) N0 236/2012 and Commission Regulation (EU) No 918/2012 of 5 July 2012 (see in particular Annex I, Part I thereof). The concerned emergency measure shall apply to any person irrespective of their country of residence.

6. The proposed measure does not envisage any exemption for market maker activities.
7. The measure would apply for a period of seven days and shall be in force as of 00:00:01 hours (CET) on 30th June 2015 until 24:00:00 (CET) on 6th July 2015 .
8. HCMC has indicated that the proposed measure will complement the measures already in place, described in the next paragraphs.
9. On Monday 29 June 2015 the HCMC issued an announcement¹ disclosing the decisions taken during its 715th / 29.06.215 Board of Directors meeting. These are:
 - a. The ATHEX regulated market and the Multilateral Trading Facility of “EN.A” (Alternative Market of the Athens Exchange) shall remain closed, throughout the period of bank holiday as prescribed in the Legislative Act of 28 June 2015 i.e. from the 28th of June until the 6th of July (included), taking also into account the relevant decision of the Athens Exchange Decision Committee.
 - b. The Electronic Secondary Market “HDAT”, for government bonds operated by the Bank of Greece shall remain closed, throughout the above period, taking also into account the relevant decision of the Bank of Greece.
 - c. The suspension of redemption of mutual funds’ units during the above period,
 - d. The suspension of operation of ATHEXClear for the securities traded on the Greek market and the Multilateral Trading Facility “EN.A” and
 - e. The suspension of the settlement of securities traded on the Greek market by the Hellenic Central Securities Depository (CSD), approving the relevant CSD Board of Directors’ decision.
10. Following such announcement, the HCMC declared the trading suspension of all the securities of listed companies covered by the announcement, as well as the related financial instruments, in accordance with point (j) of Article 50(2) of the Directive 2004/39/EC (MiFID). The HCMC informed ESMA and all the Competent Authorities of the trading suspension (SARIS notification) so that Article 41(2) of the Directive 2004/39/EC can be applied and the trading suspension is effective also in other Member States.
11. Taking into account all the above, HCMC believes that the temporary prohibition of transactions in any financial instrument that create an increase in net short position of natural or legal person on the shares admitted to trading on the Athens Exchange and the Multilateral Trading Facility of “EN.A” (Alternative Market of the Athens Exchange) is necessary for the protection of the investors and the preservation of financial stability.

¹ The announcement is publicly available on HCMC’s website: http://www.hcmc.gr/en_US/web/portal/home

12. Given that the main liquidity and trading activity on those instruments normally is located within Greece, the proposed measure would not create disproportionate negative effects, since it would affect a fairly small part of the EU overall market on those instruments but a relevant component to ensure the effectiveness of the other measures adopted so far by the Greek authorities.

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 have arisen.

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.