

OPINION

Emergency measure by the Greek HCMC under Section 1 of Chapter V of Regulation (EU) 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. On the 29th of June 2015, ESMA issued an opinion on the emergency measure introduced by the Hellenic Capital Market Commission (HCMC) under Article 20 of the Regulation. The 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 and was applied from 30th June 2015 at 00.00.01 CET to the 6th July 2015 at 24:00:00 (CET).
4. The 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 the Regulation 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 making activities.

5. In the original notification to ESMA, 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).
6. The reason for proposing a temporary prohibition for the creation, or increase, of a 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 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 the Hellenic Republic, the measure would not create disproportionate negative effects, since it would affect a fairly small part of the EU overall market.
7. On the 6th, the 13th, the 20th and the 27th of July and on the 3rd of August 2015, some of the measures described were renewed by the Greek authorities. On the same days, the HCMC notified ESMA and competent authorities of its intention to renew the short selling measure and ESMA issued in all cases a positive opinion concerning these renewals pursuant to Article 27 of the Regulation.
8. The renewals concerned the same financial instruments of the original measure (see paragraph 4), but the HCMC specified in the related notifications that although the ban covered 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 were 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, represented more than 5% of the total value (or composition) of these instruments.

9. On the 31st of August 2015, in accordance with Article 26 of the Regulation, the HCMC introduced a new emergency measure under Article 20 of the Regulation consisting in a ban on short selling of shares and units of Exchange Traded Funds (ETFs) 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 the HCMC. It also concerned all depository receipts (ADRs, GDRs) representing shares admitted to trading on the Athens Exchange and the Multilateral Trading Facility of “EN.A” (Alternative Market of the Athens Exchange). The short selling measure applied to any natural or legal person, irrespective of their country of residence, but contained the exemption for market making activities, provided that short selling transactions are conducted for hedging purposes. The ban adopted on August 31st expired at 24:00:00 (CET) on the 30th of September 2015.
10. On the 30th of September 2015, in accordance with Article 26 of the Regulation, the HCMC notified ESMA and other competent authorities of its intention to make use of its powers of intervention in exceptional circumstances and introduced a new emergency measure under Article 20 of the Regulation.
11. The measure consisted in a ban on short selling of shares of five credit institutions admitted to trading on the Athens Exchange and comprising the FTSE/Athex Banks Index, irrespective of the venue where the transaction is executed. The temporary prohibition includes sales of shares covered by subsequent intraday purchases. The temporary prohibition of short selling applies to all depository receipts (ADRs, GDRs) and warrants representing shares of such credit institutions admitted to trading on the Athens Exchange and comprising the FTSE/Athex Banks Index.
12. The above mentioned credit institutions are:
 - Alpha Bank A.E. (ISIN GRS015013006)
 - Attica Bank S.A. (ISIN GRS001003003)
 - National Bank of Greece S.A. (ISIN GRS003003019)
 - Eurobank Ergasias S.A. (ISIN GRS323003004)
 - Piraeus Bank S.A. (ISIN GRS014003008)
13. In the notification, the HCMC explained the reason for the measure was that in July 2015 the Eurogroup agreed on a specific package of measures regarding the development of the Greek Economy, the most important element of the Eurogroup agreement being that 25 billion euros would be earmarked for the recapitalisation needs of the Greek Banking

system. Nevertheless, the amount of funds needed to secure the capital adequacy of the Greek banks, and most importantly, the legal framework that would apply in relation to such recapitalisation, including whether some incentives for private shareholders will be provided or not, had not been officially disclosed at the time.

14. On the 30th of September 2015, ESMA issued a positive opinion regarding this new emergency measure. The measure entered into force as of 00:00:01 hours (CET) on the 1st of October 2015 and the original expiring date was the 9th of November 2014 24:00:00 hours (CET).
15. On the 9th of November 2015, the HCMC notified ESMA and other competent authorities of its intention to make use of its powers of intervention in exceptional circumstances and to renew the current emergency measure introduced on the 30th of September 2015.
16. The proposed renewal would concern exactly the same instruments as the original measure (see paragraph 11 and 12), foreseeing an exemption for market making activities in the affected financial instruments.
17. In the notification for the renewal, the HCMC explains that although the Greek Parliament voted on October 31th the relevant law 4340/2015 regarding the re-capitalisation of the Greek Banking System, the allocation between private investors and the Hellenic Financial Stability Fund of the amount needed for the re-capitalisation of the credit institutions, as well as the offering prices of the new shares, have not been established, since the book building procedures are still on-going. Within this context, the HCMC argues that the lifting of the ban on short sales would tend to increase price volatility on listed credit institutions and will increase market uncertainty. Taking into consideration that the market behaviour of banking sector securities has traditionally played a very important role in driving overall market valuations, concerns remain as regards unexpected sudden and significant swings in market confidence and therefore in relevant asset prices. The successful conclusion of the aforementioned bank re-capitalisation process is thus necessary, in order to safeguard the stability of the financial system and of the Greek capital market.
18. Based on the above, the HCMC believes that adverse circumstances persist in the Greek capital market in connection with the re-capitalisation of the systemic credit institutions, expected to take place until the end of the year, and its impact on the banking sector outlook. This situation results in persistent market uncertainty that poses threats to the financial stability and the general level of market confidence.
19. In the notification, the HCMC also explains that the proposed limited temporary ban of short-selling concerning shares of credit institutions admitted to trading on the Athens Exchange is not expected to significantly impair price discovery and therefore market efficiency. Given that the main liquidity and trading activity on those instruments normally is located within Greece, the HCMC believes the proposed renewal would not create

disproportionate negative effects, since it would affect a fairly small part of the EU overall market.

20. The proposed renewal of the emergency measure should be in force as of 00:00:01 hours (CET) on the 10th November 2015 until 24:00:00 (CET) on the 7th, December 2015.

III. Opinion

21. ESMA is adopting the following opinion on the notified measure, on the basis of Article 27(2) of the Regulation:

On the adverse events or developments

ESMA considers that adverse developments which constitute a serious threat to market confidence in Greece still persist. Despite the partial reopening of credit institutions on 20 July 2015, the reopening on 3 August 2015 of the ATHEX regulated market, the Multilateral Trading Facility of “EN.A”, and of the Electronic Secondary Market “HDAT” for government bonds, and the approval by the Greek Parliament of the law 4340/2015 regarding the re-capitalisation of the Greek Banking System, fragility in the financial system and in the Greek economy still persists due to the situation of the banking sector in Greece. The successful conclusion of the Greek banks’ recapitalisation is important in order to safeguard the stability of the financial system and of the Greek capital market, as well as the protection of investors.

On the appropriateness and proportionality of the proposed measure

ESMA considers that the renewal of the emergency measure is appropriate and proportionate to address the above mentioned threats that persist in the Greek financial markets. Short sales in the shares of the five Greek credit institutions admitted to trading on the Athens Exchange and comprising the FTSE/Athex Banks Index could still exacerbate the threats to financial stability, especially considering the re-capitalisation of the Greek banking system. Market volatility might render the re-capitalisation more difficult and more costly. The exemption foreseen for market making activities is justified by the fact that market makers should be allowed to properly carry out their activity, thus enhancing the liquidity on the above mentioned shares and contributing to the adequate functioning of Greek financial markets.

On the duration of the proposed measure

ESMA considers that the duration of the proposed renewal is justified, taking into account that the ongoing recapitalisation of the systemic credit institutions in Greece is expected to take place until the end of the year. Under these circumstances, ESMA considers it is necessary and appropriate for HCMC to renew the short selling ban on the mentioned Greek credit institutions admitted to trading on the Athens Exchange and comprising the

FTSE/Athex Banks Index until the 7th of December 2015, with a view to reducing price volatility in the course of the re-capitalisation process. Besides, ESMA takes into consideration HCMC's statement in its notification of intent that the proposed measure may be lifted before the end of the established period should the circumstances allow for it, though not excluding an additional renewal of the measure in accordance with the provisions of the Regulation, should the re-capitalisation process not be concluded by the expiry date of this renewal.