

OPINION OF THE EUROPEAN SECURITIES AND MARKETS AUTHORITY

of 12 July 2017

on a proposed emergency measure by CNMV under Section 1 of Chapter V of Regulation (EU) No 236/2012

In accordance with Article 44(1) of Regulation (EU) No 1095/2010, the **Board of Supervisors** has adopted the following opinion:

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 swaps¹ (the Short Selling Regulation), the European Securities and Markets Authority (ESMA) shall within 24 hours of the notification made by a competent authority under Article 26 of that Regulation, issue an opinion on whether it considers the measure or proposed measure is 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 12 June 2017, ESMA issued an [opinion](#) on the emergency measure introduced by the Comisión Nacional del Mercado de Valores (CNMV) under Article 20(2)(a) and (b) of Regulation (EU) No 236/2012.
4. The emergency measure consisted of a ban on net short positions on shares issued by Liberbank, S.A. (ISIN ES0168675090, hereinafter "Liberbank"), either directly or through related instruments relevant for the calculation of the net short position determined in Annex I, part 1, articles 5 and 6 of Commission Delegated Regulation EU N° 918/2012,

¹ OJ L 86, 24.3.2012, p. 1–24.

and irrespectively of the trading venue or market in which the transactions leading to those positions are conducted.

5. The measure did not apply to trading in index-related instruments or baskets of financial instruments. Furthermore, the CNMV exempted from the measure the following activities:
 - a. market making activities, in accordance with the Short Selling Regulation;
 - b. the creation of, or increase in, net short positions when the investor that acquires a convertible bond has a delta-neutral position between the equity component of the convertible bond and the short position taken to cover that component; and
 - c. the creation of, or increase in, net short positions where the creation of, or increase in, the short position in shares is hedged by a purchase that is equivalent in terms of proportion on subscription rights.
6. The measure entered into force on 12 June 2017 at 08:15 (CET) and will be applicable until 23:59 (CET) of 12 July 2017.
7. The CNMV justified the original measure by the existence of specific adverse situations or circumstances that constitute a serious threat to market confidence in the Spanish banking sector. The original measure aimed at preventing this threat from materializing as it could have further implications in terms of financial stability in Spain.
8. That ban was introduced after the resolution of Banco Popular Español S.A. adopted by the Single Resolution Board and its sale to Banco Santander S.A, event that had increased greatly the sensitivity of the Spanish market and of the international investors to possible similar cases that could arise. Market confidence had deteriorated accordingly, especially on small financial institutions.
9. The CNMV highlighted that in the three weeks before the ban was adopted, Liberbank had already experienced a severe share price fall that resulted in losing 45% of its market capitalisation.
10. Since the ban was imposed, the price of the shares of Liberbank has stabilised. Nevertheless, the CNMV reported that the share price showed high volatility, compared to shares of comparable issuers and did not recover the price levels of the weeks previous to the resolution of Banco Popular Español, S.A.
11. In addition, the CNMV pointed out that the net balance of shares borrowed has significantly increased after the prohibition imposed on 12 June 2017, which could be indicative of anticipative borrowing by investors in order to create or increase their short positions once the ban has expired.
12. For the above reasons, on 12 July 2017, in accordance with Article 26 of the Short Selling Regulation, the CNMV has notified ESMA of its intention to make use of its powers of

interventions in exceptional circumstances and to renew the current emergency measure under Article 20(2)(a) and (b) of the Short Selling Regulation.

13. The proposed renewal of the emergency measure is entering into force on 12 July 2017 at 23:59 (CET) and will be applicable until 12 September 2017 at 23:59 (CET).

III. Opinion

14. ESMA is adopting the following opinion on the notified measure, on the basis of Article 27(2) of the Short Selling Regulation.

15. ESMA considers that the proposed measure is necessary to address the exceptional circumstances.

This opinion will be published on ESMA's website.

Done at Paris, 12 July 2017

For the Board of Supervisors

Steven Maijor

Chair