

## 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. 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 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.

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 have not created disproportionate negative effects, since it would have affected 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 3<sup>rd</sup> 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 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.

9. The renewal notified on the 3<sup>rd</sup> of August entered into force at 00:00:01 hours (CET) on the 4<sup>th</sup> of August 2015 and expires at 24:00:00 (CET) on the 31<sup>st</sup> of August 2015.
10. On the 31<sup>st</sup> of August 2015, in accordance with Article 26 of the Regulation, the HCMC has notified ESMA and other competent authorities 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 which is however of a different nature than the one previously introduced and renewed five times which is expiring on the 31<sup>st</sup> of August
11. The proposed measure consists 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 will also concern 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). This ban would include sales which are covered with subsequent intraday purchases.
12. The proposed short selling measure would apply to any natural or legal person, irrespective of their country of residence, but would be subject to the exemption for market making activities, provided that short selling transactions are conducted for hedging purposes.
13. The measure shall apply for a period of thirty calendar days and shall be in force until 24:00:00 (CET) on the 30<sup>th</sup> of September 2015.
14. In the notification, the HCMC explains that despite the reopening of the Athens Exchange and the MTF “EN.A” on the 3<sup>rd</sup> of August after a period of more than one month, there are still conditions on the Greek capital market which prevent its smooth functioning:
  - the imposition of capital controls and the restrictions of transfers in the acquisition of financial instruments (i.e. restrictions on the buy side) for Greek investors based on Article 5 of Law. 3606/2007 (A 195) through regulated markets and multilateral trading facilities or professionals who have such financial instruments as UCITS;
  - the political developments namely the forthcoming parliamentary elections that will take place on the 20<sup>th</sup> of September 2015;
  - the forthcoming recapitalisation of the four Greek “systemic” credit institutions.

15. The reason for proposing a temporary ban on short selling is that the HCMC deemed it necessary for the protection of investors and the preservation of financial stability. In fact, such prohibition is considered by the HCMC 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 the instruments concerned by the measures normally is located within the Hellenic Republic, the measure would not create disproportionate negative effects, since it would have affected a fairly small part of the EU overall market.

### **III. Opinion**

16. 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. Comparing the current situation in the Hellenic Republic with related events over the past few years, the threat to financial stability and investor protection at least in the Hellenic Republic is obvious. Despite the partial reopening of credit institutions on 20 July 2015, and 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, the situation of fragility in the financial system and in the Greek economy persists, as highlighted by the high volatility already experienced on the ATHEX in the course of the first days after reopening. However, ESMA considers that the severity of the market events is lower than in previous weeks.

#### ***On the appropriateness and proportionality of the measure***

ESMA considers that the measure means in practice a partial lifting of the previous ban on short position, both in terms of the instruments covered and of the general restriction to operate on Greek underlyings. Therefore, ESMA considers that the measure is appropriate and proportionate to address the above mentioned threats that persist in the Greek financial markets. Short sales in shares and units of ETFs could still exacerbate the threats to financial stability, especially as regards the financial sector. However the new measure, with a smaller scope, is not restricting the activities of the derivative markets. In that respect, ESMA understands that the measure accompanies the gradual normalization of financial conditions in Greece. 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 Greek shares and ETFs units, and contributing to the adequate functioning of Greek financial markets.

***On the duration of the measure***

ESMA considers that the duration of the measure is justified, taking into account that the capital controls are still in place, the on-going recapitalisation process and the electoral calendar. Under these circumstances, ESMA considers it is necessary and appropriate for HCMC to impose a short selling ban on shares and ETFs units that would last until the end of September, in view of supporting the proper functioning of the Greek financial markets in this transitional period. Besides, ESMA takes into consideration 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 Regulation (EU) No 236/2012 if circumstances that justified the imposition of the measure improve, persist or worsen.