

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 expires 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 proposed measure consists 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 explains the reason for proposing this measure is 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 and including whether some incentives for private shareholders will be provided or not, have not been officially disclosed until present. This has generated an apparent uncertainty to the investment community, since very important information on listed credit institutions seriously affecting the valuation of their securities, has not been made known yet, adding to both macroeconomic and market uncertainty.

14. Within this context the HCMC deems that not imposing a ban on short sales on bank shares would tend to strengthen price volatility on listed credit institutions that will perpetuate market uncertainty. HCMC also deems that adverse circumstances persist in the Greek capital market, as regards mainly to the recapitalisation of the systemic credit institutions that is expected to take place in the next two to three months and the relevant impact on the banking sector outlook, resulting mainly in persistent market uncertainty that poses threats to the financial stability and the general level of market confidence.
15. 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.
16. 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 is still in force at the time of the proposal of the present measure.

III. Opinion

17. 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, 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, 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 and the relevant restructuring process is important in order to safeguard the stability of the financial system and of the Greek capital market.

On the appropriateness and proportionality of the proposed measure

ESMA considers that the proposed measure means in practice a partial lifting of the previous ban on short selling, in terms of the instruments covered. ESMA considers that the proposed 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 upcoming recapitalisation of the Greek Banking system. Market volatility might render the recapitalization more difficult and more costly. At the same time, the proposed measure, relating only to Greek credit institutions, is clearly meant to accompany the gradual normalisation 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 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 measure is justified, taking into account the uncertainty surrounding the ongoing recapitalization and restructuring process of the systemic credit institutions in Greece. Under these circumstances, ESMA considers it is necessary and appropriate for HCMC to impose a short selling ban on the mentioned Greek credit institutions admitted to trading on the Athens Exchange and comprising the FTSE/Athex Banks Index that would last until the 9th of November 2015, with a view to reducing price volatility in the course of this 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 a renewal of the proposed measure in accordance with the provisions of the Regulation, should the recapitalisation and restructuring process not be concluded by its expiry date.