

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 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. Previous measures adopted by the Hellenic Capital Market Commission (HCMC)

3. On the 29th of June 2015, ESMA issued an opinion on an emergency measure proposed by the 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 HCMC indicated that the measure was a complementary action to the ones already established on the 29th of June 2015 by the Greek Authorities in order to tackle the broader Greek financial system crisis.
5. On the 6th, the 13th, the 20th and the 27th of July and on the 3rd of August 2015, some of the measures adopted by the Greek authorities were renewed until the 30th of August 2015.

6. 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 were conducted for hedging purposes. The emergency measure adopted on August 31st expired at 24:00:00 (CET) on the 30th of September 2015.
7. In respect of all the above cases, the HCMC notified ESMA and other competent authorities of its intention to impose/renew the relevant short selling measures in accordance with Article 26 of the Regulation and ESMA issued in all cases a positive opinion concerning the imposition/renewal of the relevant short selling measure pursuant to Article 27(2) of the Regulation.

III. Present measure

8. 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 to introduce a new emergency measure under Article 20 of the Regulation.
9. The 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.
10. 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)

11. 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 re-capitalisation 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 re-capitalisation, including whether some incentives for private shareholders will be provided or not, had not been officially disclosed at the time.
12. On the 30th of September 2015, ESMA issued a positive opinion (ESMA/2015/1489) 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).
13. 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 emergency measure originally introduced on the 30th of September 2015. On the same day ESMA issued a positive opinion regarding this new emergency measure (ESMA/2015/1638), which expired on the 7th of December 2015 at 24:00:00 (CET).
14. On the 7th of December 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 emergency measure introduced on the 30th of September 2015.
15. The proposed renewal concerned exactly the same instruments as the original measure (see paragraph 9 and 10), foreseeing an exemption for market making activities in the affected financial instruments.
16. In the notification for the renewal, the HCMC explained that the re-capitalisation of the Greek Banking System, that the law voted by the Greek Parliament on October 31st provides for, was actually in progress and had not been yet concluded for all credit institutions. Moreover, trading in the new shares issued from the relevant capital raising had not yet been started in all cases and thus the effect on the share price of credit institutions and on the volatility it might impose, had not yet been fully evaluated by market participants.
17. In particular, the re-capitalisation process was completed for two out of four bank institutions, namely ALPHA BANK and EUROBANK. However, trading of the new shares in these two banks was initiated on December 2nd and since then increased volatility had been observed, indicating that the share prices had not fully incorporated all material information regarding the prospects of said banking institutions. Moreover, trading in the new shares of PIRAEUS BANK and NATIONAL BANK OF GREECE was expected to commence on December 8th and December 14th, respectively. Finally, Attica Bank rights' subscription period was scheduled to end on December 10th and, subject to the

successful completion of the issue, trading of the new shares would be expected for around December 14th, 2015. Consequently, the process of the banks' re-capitalisation, including the listing of the new shares was expected to be fully finalized by mid-December.

18. Within this context, the HCMC argued that the lifting of the ban on short sales would tend to increase price volatility on listed credit institutions and would 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 remained as regards unexpected sudden and significant swings in market confidence and therefore in relevant asset prices. The HCMC added that the successful conclusion of the aforementioned bank re-capitalisation and restructuring process as well as the commencement of trading of the new shares of all credit institutions were thus absolutely necessary, in order to safeguard the stability of the financial system and of the Greek capital market.
19. Based on the above, the HCMC believed that adverse circumstances were persisting in the Greek capital market, including also the existence of capital controls in respect of stock exchange transactions, but mainly in connection with the re-capitalisation of the systemic credit institutions that was not finalised yet, resulting in persistent market uncertainty that posed threats to the financial stability and the general level of market confidence.
20. In the notification of 7th December, the HCMC also explained that the proposed limited temporary ban of short-selling was not expected to significantly impair price discovery and therefore market efficiency. As a result, according to the HCMC, the renewal would not create disproportionate negative effects, given that the main liquidity and trading activity on those instruments normally is located within Greece.
21. On the 7th of December 2015, ESMA issued a positive opinion regarding the renewal of the emergency measure (ESMA/2015/1854), which is expiring on the 21st of December 2015 at 24:00:00 (CET).
22. On the 21st December 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 once more, but this time with a limited scope.
23. The measure to be renewed would consist of a ban on short selling limited to the shares of Attica Bank S.A. (ISIN GRS001003011) admitted to trading on the Athens Exchange, irrespective of the venue where the transaction is executed. The temporary prohibition would include sales of shares covered by subsequent intraday purchases. The temporary prohibition of short selling would apply to all depository receipts (ADRs, GDRs) and warrants representing shares of Attica Bank S.A. (ISIN GRS001003011)

admitted to trading on the Athens Exchange. As for previous bans, an exemption for market making activities in the affected financial instruments would be foreseen.

24. In the notification for the partial renewal, the HCMC explains that the re-capitalisation of the Greek Banking System, based on the law 4340/2015 voted by the Greek Parliament on October 31st, is still not fully concluded. Re-capitalisation of Attica Bank is still on-going. HCMC indicates that the capital increase will be concluded at the latest by the 31st of December 2015 and that, subject to the successful completion of the issue, the trading of the new shares of Attica Bank is expected early January 2016, and thus the effect on the share price of this credit institution and on the volatility this trading might impose, had not yet been fully evaluated by market participants.
25. The HCMC considers that the lifting of the ban on short sales on Attica Bank shares would tend to increase price volatility on the institution and would increase market uncertainty. Within this context, the HCMC argues that, as done previously for the other banks for which the short selling ban applied during the re-capitalisation process and also covered a few trading days of the new shares, the proposed renewal should be limited to Attica Bank and should expire on the 11th of January 2016.
26. In the notification, the HCMC also explains that the proposed limited temporary ban of short-selling concerning shares of Attica Bank 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.
27. The proposed renewal of the emergency measure should be in force as of 00:00:01 hours (CET) on the 22nd of December 2015 until 24:00:00 (CET) on the 11th January 2016.

IV. Opinion

28. ESMA is adopting the following opinion on the measure notified on the 21 December 2015, 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 could be understood to still persist due to the fragility in the financial system and in the Greek economy resulting from the situation of the banking sector in Greece. The successful and full conclusion of all the Greek banks' re-capitalisation is important in order to safeguard the stability of the financial system as a whole and of the Greek capital market, as well as the protection of investors. ESMA considers that given that the re-capitalisation of Attica Bank is still on-going, the trading of the new issued

shares, if the capital increase is successful, has not started yet and that the consequences of that have not been evaluated by market participants, the financial stability of the concerned bank is still threatened and there is a risk of high volatility in the relevant market. The question of whether that risk would endanger the orderly functioning of the whole Greek financial market and its integrity is less evident, due to the small size of this particular institution. In any case, it is clear that confidence in the concerned bank could be affected if price movements were extreme in the wake of the finalisation of the re-capitalisation process.

On the appropriateness and proportionality of the proposed measure

ESMA considers that the renewal of the emergency measure limited to the shares of Attica Bank is appropriate and proportionate to address the above mentioned threats that persist in the Greek financial markets. Restricting short sales in the shares of Attica Bank admitted to trading on the Athens Exchange would facilitate the successful conclusion of the re-capitalisation of the Greek banking system. The measure is also aimed at reducing market volatility which might render the re-capitalisation of Attica Bank 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

Based on HCMC evidence, ESMA considers that the duration of the proposed renewal is justified, taking into account that the ongoing re-capitalisation of Attica Bank, including the listing of the new shares, is expected to be finalized soon. Under these circumstances, ESMA considers it is necessary and appropriate for HCMC to renew the short selling ban on only Attica Bank until the 11th of January 2016. However, ESMA considers that it would not be justified to prolong this measure once the new shares arising from the capital increase trade normally. In this respect, ESMA urges the HCMC to lift the measure as soon as trading of the new shares in normal conditions is resumed, without waiting to the end of the announced period of the ban, unless renewed risks are identified.