

OPINION OF THE EUROPEAN SECURITIES AND MARKETS AUTHORITY

of 19 March 2020

on a proposed emergency measure by the Hellenic Capital Market Commission 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. In accordance with 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 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 as further specified in Article 24 of Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012.

II. Background

2. On 18 March 2020, pursuant to Article 26 of Regulation (EU) No 236/2012, the Hellenic Capital Market Commission (HCMC) notified ESMA of its intention to make use of its powers of intervention in exceptional circumstances and to introduce an emergency measure under Article 20(2)(a) and (b) of that Regulation.
3. In particular, the concerned measure bans any legal or natural person from entering into transactions which might constitute or increase net short positions on all shares admitted to trading on the Athens Stock Exchange for which HCMC is the relevant competent authority under Directive (EU) No 2014/65 and Regulation (EU) No 236/2012, as well as to all related instruments relevant for the calculation of the net short position as determined in Annex I, part 1, Articles 5 and 6 of Commission Delegated Regulation (EU) No 918/2012. The proposed ban applies to transactions executed on any trading venue

¹ OJ L 86, 24.3.2012, p. 1–24.

and over the counter transactions, and explicitly includes sales of shares covered by subsequent intraday purchases.

4. The measure applies to any natural or legal person domiciled or established within the Union or in a third country.
5. The measure does not apply to the following:
 - a. Activities: market making activities, as defined in Articles 2(1)(k) and pursuant to Article 17 of Regulation (EU) No 236/2012, with respect to shares admitted to trading on the Athens Stock Exchange, stock derivatives on those shares, including warrants on those and index derivatives and ETFs having those shares as part of their underlying. All the above exemptions concerning market making apply as long as the transactions are undertaken for hedging purposes.
 - b. Instruments: the measure does not apply to index-related instruments if the shares represent more than 20% of the index weight.
6. The proposed measure is expected to enter into force on 18 March 2020 at 00:00:01 hours (CET) and to expire on 24 April 2020 at 24:00:00 (CET). The proposed measure may be lifted before the deadline or extended, taking into account market conditions. Pursuant to Article 26(3) of Regulation (EU) No 236/2012, HCMC notified ESMA less than 24 hours before the measure is intended to take effect.
7. HCMC considers that the measure is justified by the existence of specific adverse circumstances that constitute a serious threat to market confidence in Greece, especially regarding the confidence of a fair price determination.
8. Namely, following the outbreak of the COVID-19 pandemic, the Greek financial market has started a strong downside price movement with a high price volatility, whereby since the beginning of March 2020 the General Index of the Athens Stock Exchange lost about 37% of its value (from 766,32 points to 484,40).
9. Whereas HCMC reports not having observed any increase in the net short positions at the time of submitting their notification, they also note that if such circumstance occurs, it will encourage the downward spiral of the prices, trigger margin calls, devalue collateral and could also create some disruption in the clearing and settlement processes.
10. Within this context, HCMC considers that the ban on short sales, on the one hand, would tend to protect the Greek markets from substantial selling pressures associated with unusual high price volatility and, on the other hand, is not expected to significantly impair price recovery and therefore market efficiency. Based on the above, HCMC highlights that if the adverse circumstances persist in the comparatively illiquid Greek capital

market, it would prevent the market to recover from the significant crisis it has gone through over the recent years.

11. In addition to the above, HCMC highlights the uncertainty that the current market environment generates for the companies whose shares are admitted to trading in the Athens Stock Exchange. In this environment, the financial markets may have difficulty to properly price information that is becoming available in the upcoming annual financial statements.

III. Opinion

12. ESMA considered the information provided by HCMC and is adopting the following opinion on the notified measure, on the basis of Article 27(2) of Regulation (EU) No 236/2012:

On the adverse events or developments

13. First, as also indicated in ESMA Decision ESMA70-155-9546 and in the ESMA Opinions ESMA70-155-9556, ESMA70-155-9565 and ESMA70-155-9581, respectively on proposed emergency measures by the Comisión Nacional del Mercado de Valores (CNMV), the Commissione Nazionale per le Società e la Borsa (CONSOB) and the Autorité des marchés financiers (AMF), under Section 1 of Chapter V of Regulation (EU) No 236/2012, ESMA agrees that the outbreak of the COVID-19 pandemic is having serious adverse effects on the real economy and on the financial markets of the Union. As regards the latter, since 20 February 2020 the stock markets in the EU lost up to or more than 30% in value, and all sectors and types of issuers were affected by severe share price falls (details in the Annex I).
14. ESMA considers that the adverse situation linked to the COVID-19 with the consequent adoption by EU Member States of restrictive measures which impact all economic sectors has greatly increased the vulnerability of EU financial markets. There is a concrete risk that the observed downward trend will continue in the coming days and weeks.
15. Pursuant to Article 20(1)(a), the measure under Article 20(2) of Regulation (EU) No 236/2012 requires the presence of adverse events or developments which constitute a serious threat to financial stability or to market confidence in the Member State concerned.
16. HCMC considers in its notification that the measure is justified by the adverse circumstances which constitute serious threats to market confidence in Greece.
17. Namely, following the outbreak of the COVID-19 pandemic in Greece, Greek stocks were subject to severe downwards price movements and high price volatility, and the Greek main index (the FTSE ATHEX Large Caps) fell by 38.56% between 3 and 16 March

2020. Between 13 and 16 March 2020 the FTSE ATHEX Large Caps lost 13.89% (see the Annex for further information).

18. HCMC considers that the temporary prohibition of short selling of the shares admitted to trading on the Athens Exchange, for which the relevant Authority is the HCMC, as well as all related instruments relevant for the calculation of the net short position, is necessary for the protection of investors. Also, given that the main liquidity and trading activity on those instruments is normally located within Greece, according to the HCMC the proposed measure would not create disproportionate negative effects, since it would affect a fairly small part of the EU overall market on those instruments.
19. ESMA agrees with the HCMC that the severe losses observed, the incertitude as regards the spreading of the COVID-19 contagion and the possible consequent further volatility and downward price spirals risk the loss of market confidence. ESMA also notes that the losses concern also relevant Greek credit institutions. Namely, the FTSE ATHEX CSE Banks Index dropped by 48.41% between 3 and 16 March 2020 and 16.09% between 13 and 16 March (see the Annex). Such index includes banks such as Alpha Bank, Attica Bank, National Bank of Greece, Piraeus Bank and Eurobank Ergasias, which are important to the financial system in Greece.
20. This fall in prices of financial institutions that play important role in the Greek financial system meets the conditions described in Article 24(1)(c) of Commission Delegated Regulation (EU) No 918/2012. ESMA acknowledges that, as indicated by the HCMC, for the time being the net short positions in Greece did not increase. In this respect, ESMA considers that, should such increase occur, it could further exacerbate the downward price spirals, thereby further weakening market confidence in Greece and accelerating the risks to fair price formation. ESMA therefore agrees that the threats to market confidence in the Greek market amount to serious threats pursuant to Article 20(1)(a) of Regulation (EU) No 236/2012.
21. Furthermore, taking also into account that the losses are substantive and concern the most relevant Greek issuers as included in the FTSE ATHEX Large Caps, ESMA agrees that such circumstances impact market confidence in general, with consequences for all listed issuers.
22. ESMA agrees with the HCMC's assessment that the impact of COVID-19 and the extraordinary market conditions caused by it qualify as "adverse events or developments" under Article 24(1) of Commission Delegated Regulation (EU) No 918/2012 and agrees that there are serious threats to market confidence.
23. In line with that, ESMA deems that the prohibition to open or increase net short positions would eliminate a factor that could potentially play a role in exacerbating the fall of prices of shares of financial issuers admitted to trading on the Athens Stock Exchange and therefore threaten financial stability in Greece.

24. With reference to the broader EU-markets scenario, ESMA has assessed that there are existing threats to market integrity, orderly functioning of markets and to financial stability. On that basis, on 16 March 2020 ESMA has adopted a decision to temporarily lower the notification thresholds of net short positions to national competent authorities in accordance with point (a) of Article 28(1) of Regulation (EU) No 236/2012 (ESMA70-155-9546). ESMA considers that its decision will enable national competent authorities to better monitor the existing threats.
25. ESMA considers that the circumstances described above concerning Greek markets are adverse events or developments which constitute a serious threat to market confidence in Greece under Article 20(1) of Regulation (EU) No 236/2012.

On the appropriateness and proportionality of the measure

26. In order to assess whether the measure would be appropriate and proportionate in relation to the threat, ESMA has analysed how and the degree to which sharp price declines pose a risk to the orderly functioning, integrity and stability of the Greek market as a whole, looking not only at the range of shares affected by the latest market developments but also at the build-up of net short positions across the market.
27. From the analysis of the shares impacted by these sharp price declines, it becomes evident that the downfall spiral spreads across the Greek markets and across different sectors. Such widespread impact is consistent with the global nature of the outbreak of a global pandemic (COVID-19), as announced by the World Health Organisation², that has proven to be serious in Greece.
28. From that perspective, ESMA understands that limiting the scope of its measure to one or several sectors or to a subset of the issuers may not achieve the desired outcome. Without the broad scope applied by this measure, the HCMC may have to adopt additional restrictive measures in the near future at a time when their effectiveness may be limited.
29. As also indicated by the data submitted to ESMA by the HCMC, the latest developments in relation to COVID-19, have put a very wide range of Greek shares in a situation of vulnerability. In case short-selling strategies start targeting those shares, the prices may drop further, potentially triggering downward spirals and further 'runs' on the market.
30. ESMA considers that suspending the capacity of market participants in the Greek market to enter into short sales or into transactions with equivalent effect in relation to shares admitted to trading on regulated markets would not have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to its benefits.

² https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200310-sitrep-50-covid-19.pdf?sfvrsn=55e904fb_2

ESMA rather deems this measure appropriate to provide a uniform level of protection to all Greek issuers and investors and the wider Greek market as a whole.

31. ESMA considers that the measure is less stringent than other more intrusive measures that could adequately address the threat to confidence in the Greek market. At the same time, a temporary restriction on short selling according to Article 23 of the Regulation (EU) No 236/2012 would not address the threat to market confidence as it would remain applicable for a few days only and would be limited to short selling without covering any opening or increasing of net short positions.
32. Additionally, ESMA notes that the proposed measure does not extend the prohibition to index-related instruments composed by less than 20% of shares, to market makers performing transactions i) in the shares in scope, ii) in the stock derivatives of the shares in scope, iii) in warrants of the shares in scope and iv) in ETFs and index derivatives of which the above shares are part of their composition. All the above exemptions refer to permitted market making activities only when the relevant transactions are conducted for hedging purposes. This is with a view to limit the measure to the strictly necessary scope and not to be overly restrictive to trading strategies of market participants, with particular reference to those ones that provide an important service in terms of increasing liquidity and reducing volatility, which is particularly relevant in the current situation. ESMA agrees that the appropriateness and proportionality of the measure will be safeguarded by the HCMC's undertaking to re-evaluate these exemptions depending on market circumstances and to potentially amend the measure accordingly if the circumstances so require.
33. For the above reasons, ESMA considers that the emergency measure proposed by the HCMC under Article 20(2)(a) and (b) of Regulation (EU) No 236/2012 as further specified by Article 24(1)(c) of Commission Delegated Regulation (EU) No 918/2012 in relation to the shares in scope of the measure is appropriate and proportionate to address the existing threat to market confidence in the Greek market.

On the duration of the measure

34. In terms of duration of the measure, ESMA considers that maintaining the prohibition for slightly longer than five weeks is justified considering the information publicly available at the moment. While the HCMC expressed its intention to lift the ban as soon as the evolution of the situation allows, it does not discard the possibility of extending the measure if the situation so requires.

Conclusion: on the necessity of the measure

35. Having considered the adverse situation linked to the COVID-19, the appropriateness, proportionality and justified duration, ESMA considers the emergency measure proposed by the HCMC under Article 20(2)(a) and (b) of Regulation (EU) No 236/2012 in relation to Greek shares as necessary.



This opinion will be published on ESMA's website.

Done at Paris, 19 March 2020

For the Board of Supervisors

Steven Maijor

Chair

ANNEX

FIGURE 1 – MAIN GREEK INDICES

Index	% variation between 3 February and 16 March 2020	% variation between 3 and 16 March 2020	% variation between 13 and 16 March 2020
ATHENS GENERAL INDEX	-46.38%	-36.79%	-12.24%
FTSE ATHEX 20	-47.33%	-38.56%	-13.89%
FTSE Athex Market Index	-47.23%	-38.42%	-13.73%
FTSE ASE Mid Cap Index	-45.20%	-35.42%	-10.21%
FTSE ASE Small Cap Index	NA	NA	NA
FTSE ATHEX CSE Banks Index	-60.26%	-48.41%	-16.09%
Athens Stock Exchange FTSE Financial Services Index	-45.63%	-32.80%	-11.36%
Athens Stock Exchange FTSE Industrial Goods and Services Index	-45.16%	-32.23%	-7.28%
Athens Stock Exchange FTSE Oil and Gas Index	-41.63%	-32.75%	-9.88%
Athens Stock Exchange FTSE Telecommunications Index	-31.85%	-27.70%	-10.41%
Athens Stock Exchange FTSE Personal & Household Goods Index	-36.18%	-28.46%	-8.32%
Athens Stock Exchange FTSE Food & Beverage Index	-46.84%	-40.97%	-16.80%
Athens Stock Exchange FTSE Travel & Leisure Index	-48.74%	-41.80%	-21.77%