

Financial markets: short selling and certain aspects of credit default swaps

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OPINION OF THE EUROPEAN CENTRAL BANK on a proposal for a regulation of the European Parliament and of the Council on short selling and certain aspects of credit default swaps.

General observations: the ECB welcomes the main aim of the proposed regulation, which is to establish a Union regulatory framework to cover short selling and equivalent practices based on the use of credit default swaps (CDSs).

Specific observations

Scope: the ECB recommends that sovereign debt instruments covered by the proposed regulation are defined as those which are issued or guaranteed by the entities belonging to the public sector of the Member States or of the Union, where the applicable definition of the 'public sector' should be the one already present in the Union secondary legislation. This will ensure that the debt instruments issued by the ESCB central banks as part of the implementation of the monetary policy are not classified as sovereign debt instruments, which would be contrary to the prohibition of the central bank financing of the public sector expressed in Article 123 of the Treaty.

Furthermore, certain specified market making and primary market activities are exempted from the transparency and regulatory interventions regime envisaged by the proposed regulation. Potential abuses of the market making exemption should be avoided, in particular by ensuring that the proprietary business of a market maker does not benefit from this exemption. The ECB **recommends that powers are delegated to the Commission to adopt relevant technical standards**, on the basis of a proposal by ESMA which would adequately balance the above considerations. Such technical standards may consider: (a) detailed features of the market making activities benefiting from this exemption; (b) reporting procedures to disclose the market making activity to the competent authorities; and (c) portfolio structures and booking procedures to be used by market makers with a view to clearly identifying the character of a transaction as either market making or another type of transaction, and excluding the rebooking of transactions without a notification to the competent authority.

The ECB also **recommends that powers are delegated to the Commission to adopt, on the basis of a proposal by ESMA, the implementing technical standards ensuring uniform application of the exemption for stabilisation measures under the short selling regime**. Such technical standards would complement the technical standards developed with regard to the exemption for stabilisation measures under the market abuse regime.

Reporting and public disclosure standards: under the proposed regulation, powers are delegated to the Commission to adopt (a) regulatory technical standards specifying the details of the information to be provided to the competent authorities with respect to net short positions exceeding the specified reporting threshold; and (b) implementing technical standards specifying the means by which information will be provided to the public with respect to net short positions exceeding the specified public disclosure threshold. The ECB recommends **specifying the legislative delegation to the Commission to the effect that the formats used for the purposes of reporting and public disclosure in such cases should allow for timely Union-wide consolidation and assessment** of short selling positions affecting specific issuers.

Consistency of reporting formats will be crucial for ensuring an effective response to potential market disturbances by ESMA and the competent national authorities, as well as, in relation to their respective competences, by the ESCB and the European Systemic Risk Board (ESRB).

Regarding the specific issue of the **public disclosure obligations imposed on entities engaged in short selling**, the ECB understands that the proposed regulation envisages that such disclosure will be performed through the use of **officially appointed mechanisms for the central storage of regulated information**, introduced as part of the Union's transparency regime for securities. In principle the ECB supports this method of disclosure, while recommending that it should be based on interactive reporting, using standard data formats, so as to allow efficient consolidation and flexible access to Union-wide information on an integrated basis. For instance, all disclosed information could be available through ESMA by way of centralised access to officially appointed mechanisms. This would reflect the cross-border implications of risks generated by short selling and the coordination role envisaged for ESMA under the proposed regulation.

Information sharing: the proposed regulation establishes information sharing arrangements between the competent national authorities and ESMA with respect to net short positions reported to those competent authorities. The ECB makes the following recommendations in this respect:

- as a minimum, the proposed modalities for information sharing between the competent authorities and ESMA should become more efficient, in particular by allowing ESMA to make requests for real-time information sharing where this is necessary for it to perform its tasks effectively. In the longer term ESMA should obtain automatic access to all information reported under the proposed regulation. Hence, the ECB recommends that ESMA initiates work on establishing centralised Union information collection mechanisms that apply a common identifier of reporting entities and a minimum common taxonomy; such mechanisms should allow for flexible real-time access to information for policy purposes, while ensuring the confidentiality of the received data. The ECB considers that the establishment of such centralised mechanisms would help to overcome the limits inherent in the usage of uncoordinated micro-data pools and would also allow the information collected under the proposed regulation to be used in connection with other available datasets, minimising the administrative burden for the reporting entities and public authorities;
- the proposed regulation should also expressly provide for information sharing between ESMA and ESCB central banks in order to facilitate performance of the ESCB functions of collecting statistical data and monitoring and assessing financial stability;
- the proposed regulation should provide for information sharing between the ESMA and the ESRB, with a view to facilitating the ESRB's collection of information for the performance of its tasks and identifying and prioritising systemic risks that may arise from developments within the financial system.

Intervention powers: the ECB recommends that ESMA should also have the right to consult the ESRB when it is notified of measures introduced by the competent national authorities. Appropriate time constraints could be laid down to ensure the efficient handling of ESRB consultations. Moreover, the European Supervisory Authorities (ESA), including ESMA, must cooperate closely with the ESRB and provide it with all information necessary for the fulfilment of its tasks in a regular and timely manner, while the ESRB may request additional information from the ESA. . Provisions envisaging the consultation of the ESRB by ESMA on contemplated short selling interventions will allow the ESRB (i), to make an informed and timely assessment if a request for further information is needed in a specific situation in view of the potential systemic risks, and (ii) to formulate such requests, if any, in a pragmatic and consistent manner.