

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

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The Commission presents a report on the evaluation of the Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps (CDS).

This Report was prepared in light of discussions with the competent authorities and ESMA. On the basis of this work, ESMA issued its technical advice on the evaluation of the SSR on 3 June 2013.

The Commission is therefore of the view that it is **too early, based on available evidence, to draw firm conclusions on the operation of the SSR framework which would warrant a revision of the legislation at this stage**. The Commission considers that, based on the limited data available so far, it can be said that the SSR has had a positive impact in terms of greater transparency of short sales and reduced settlement failures, and a relatively mixed economic impact.

Overall, the empirical evidence available shows that the SSR has had some **beneficial effects on volatility**, **mixed effects on liquidity** and led to a **slight decrease in price discovery**.

Notification and public disclosure of significant net short positions in shares: the Commission concurs with ESMA's conclusion that the notification and public disclosure thresholds of significant net positions in shares appear to be well-calibrated and appropriate and sees, at this stage, no compelling evidence for the need to change them or the current methodology for calculating the net short positions in shares.

Reporting of significant net short positions in sovereign debt and notification of uncovered positions in sovereign CDS: the Commission takes note of the relatively low level of short selling notifications in sovereign debt compared to the number of notifications received on shares, as well as the pros and cons of both the duration adjusted and nominal methods.

However, given the limited period of time since the application of the SSR and the consequent lack of data, the Commission sees, at this stage, no compelling evidence justifying revisions of the SSR framework in this area.

Impact of individual disclosure requirements: ESMA reports that 224 holders publicly disclosed 1090 short positions on 427 shares, with the bulk of disclosures from the UK, followed by France and Sweden. Among the 3 508 notifications made public by these 224 holders, 90% were from holders domiciled in the UK or the US, and the ten biggest holders accounted for 37.5% of those published notifications.

Competent authorities considered the individual reporting thresholds to be appropriate, but they received mixed views from market participants. ESMA also comments that market participants may tend to avoid crossing the notification threshold so as to remain under the 0.5% thresholds to avoid disclosing information on short selling activities.

ESMA's Report does not recommend any changes to the disclosure thresholds. The Commission agrees with ESMA that no changes in the individual disclosure requirements are required.

Settlement discipline including buy-in procedures: market participants reported a general improvement in settlement discipline in shares since the entry into application of the SSR. Overall, the number of buy-ins and buy-in attempts across the Union has increased by 35% since the application of the SSR. However this increase could largely be attributed to one particular Member State.

ESMA considers that the settlement discipline requirements, notably the buy-in procedures, could be more appropriately addressed in a single, horizontal piece of legislation. In particular, ESMA is of the view that the forthcoming [Regulation on central securities depositories \(CSD\)](#) provides a more efficient tool to set out a more detailed regime and to ensure a level-playing field in the application of the buy-in and settlement penalties procedures. The Commission shares this opinion.

New evaluation of the Regulation: although ESMA has made some recommendations for adjustments to the SSR, notably concerning the locate rule, market making exemption and the power of competent authorities to impose short term bans, **ESMA has advised the Commission to revisit the assessment of the SSR and its implementing texts at a later stage**, once more data and greater experience will be available. ESMA has also drawn the Commission's attention to the cost implications that changes in the legislative framework so soon after its entry into application might have on investors and on competent authorities.

The Commission will, therefore, continue monitoring the application of the SSR. In order to ensure a smooth functioning of the short selling legal framework, the Commission considers that a new evaluation of the appropriateness and impact of the SSR could be carried out based on more empirical data and evidence and once the competent authorities have accumulated sufficient regulatory experience of applying the SSR. **Such an evaluation could be concluded by 2016**, *i.e.* three years after the entry into application of the SSR. It should be based on the input of ESMA, the analysis of available data and the feedback of competent authorities and market participants.