

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 (Text with EEA relevance)

CHAPTER V

POWERS OF INTERVENTION OF COMPETENT AUTHORITIES AND OF ESMA

SECTION 1

Powers of competent authorities

Article 18

Notification and disclosure in exceptional circumstances

1 Subject to Article 22, a competent authority may require natural or legal persons who have net short positions in relation to a specific financial instrument or class of financial instruments to notify it or to disclose to the public details of the position where the position reaches or falls below a notification threshold fixed by the competent authority and where:

- a there are adverse events or developments which constitute a serious threat to financial stability or to market confidence in the Member State concerned or in one or more other Member States; and
- b the measure is necessary to address the threat and will not have a detrimental effect on the efficiency of financial markets which is disproportionate to its benefits.

2 Paragraph 1 of this Article shall not apply to financial instruments in respect of which transparency is already required under Articles 5 to 8. A measure under paragraph 1 may apply in circumstances or be subject to exceptions specified by the competent authority. Exceptions may in particular be specified to apply to market making activities and primary market activities.

Article 19

Notification by lenders in exceptional circumstances

1 Subject to Article 22, a competent authority may take the measure referred to in paragraph 2 of this Article where:

- a there are adverse events or developments which constitute a serious threat to financial stability or to market confidence in the Member State concerned or in one or more other Member States; and
- b the measure is necessary to address the threat and will not have a detrimental effect on the efficiency of financial markets which is disproportionate to its benefits.

2 A competent authority may require natural or legal persons engaged in the lending of a specific financial instrument or class of financial instruments to notify any significant change in the fees requested for such lending.

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Article 20

Restrictions on short selling and similar transactions in exceptional circumstances

1 Subject to Article 22, a competent authority may take one or more of the measures referred to in paragraph 2 of this Article where:

- a there are adverse events or developments which constitute a serious threat to financial stability or to market confidence in the Member State concerned or in one or more other Member States; and
- b the measure is necessary to address the threat and will not have a detrimental effect on the efficiency of financial markets which is disproportionate to its benefits.

2 A competent authority may prohibit or impose conditions relating to natural or legal persons entering into:

- a a short sale; or
- b a transaction other than a short sale which creates, or relates to, a financial instrument and the effect or one of the effects of that transaction is to confer a financial advantage on the natural or legal person in the event of a decrease in the price or value of another financial instrument.

3 A measure taken under paragraph 2 may apply to transactions concerning all financial instruments, financial instruments of a specific class or a specific financial instrument. The measure may apply in circumstances or be subject to exceptions specified by the competent authority. Exceptions may in particular be specified to apply to market making activities and primary market activities.

Article 21

Restrictions on sovereign credit default swap transactions in exceptional circumstances

1 Subject to Article 22, a competent authority may restrict the ability of natural or legal persons to enter into sovereign credit default swap transactions or may limit the value of sovereign credit default swap positions that those persons are permitted to enter into where:

- a there are adverse events or developments which constitute a serious threat to financial stability or to market confidence in the Member State concerned or in one or more other Member States; and
- b the measure is necessary to address the threat and will not have a detrimental effect on the efficiency of financial markets which is disproportionate to its benefits.

2 A measure taken under paragraph 1 may apply to sovereign credit default swap transactions of a specific class or to specific sovereign credit default swap transactions. The measure may apply in circumstances or be subject to exceptions specified by the competent authority. Exceptions may in particular be specified to apply to market making activities and primary market activities.

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Article 22

Measures by other competent authorities

Without prejudice to Article 26, a competent authority in relation to a financial instrument for which it is not the relevant competent authority may impose or renew a measure under Article 18, 19, 20 or 21 only with the consent of the relevant competent authority.

Article 23

Power to restrict short selling of financial instruments temporarily in the case of a significant fall in price

1 Where the price of a financial instrument on a trading venue has fallen significantly during a single trading day in relation to the closing price on that venue on the previous trading day, the competent authority of the home Member State for that venue shall consider whether it is appropriate to prohibit or restrict natural or legal persons from engaging in short selling of the financial instrument on that trading venue or otherwise limit transactions in that financial instrument on that trading venue in order to prevent a disorderly decline in the price of the financial instrument.

Where the competent authority is satisfied under the first subparagraph that it is appropriate to do so, it shall in the case of a share or a debt instrument, prohibit or restrict natural and legal persons from entering into a short sale on that trading venue or in the case of another type of financial instrument, limit transactions in that financial instrument on that trading venue in order to prevent a disorderly decline in the price of the financial instrument.

2 The measure under paragraph 1 shall apply for a period not exceeding the end of the trading day following the trading day on which the fall in price occurs. If, at the end of the trading day following the trading day on which the fall in price occurs, there is, despite the measure being imposed, a further significant fall in value of at least half of the amount specified in paragraph 5 of the financial instrument from the closing price of the first trading day, the competent authority may extend the measure for a further period not exceeding 2 trading days after the end of the second trading day.

3 The measure under paragraph 1 shall apply in circumstances or be subject to exceptions specified by the competent authority. Exceptions may in particular be specified to apply to market making activities and primary market activities.

4 A competent authority of the home Member State of a venue where a financial instrument has during a single trading day fallen by the value referred to in paragraph 5 shall notify ESMA about the decision taken under paragraph 1 at the latest 2 hours after the end of that trading day. ESMA shall immediately inform the competent authorities of the home Member States of venues which trade the same financial instrument.

If a competent authority disagrees with the action taken by another competent authority on a financial instrument traded on different venues regulated by different competent authorities, ESMA may assist those authorities in reaching an agreement in accordance with Article 19 of Regulation (EU) No 1095/2010.

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The conciliation shall be completed before midnight at the end of the same trading day. If the competent authorities concerned fail to reach an agreement within the conciliation phase, ESMA may take a decision in accordance with Article 19(3) of Regulation (EU) No 1095/2010. The decision shall be taken before the opening of the next trading day.

5 The fall in value shall be 10 % or more in the case of a liquid share, as defined in Article 22 of Regulation (EC) No 1287/2006, and for illiquid shares and other classes of financial instruments an amount to be specified by the Commission.

6 ESMA may issue and send to the Commission an opinion on adjusting the threshold referred to in paragraph 5, taking into account the developments in financial markets.

The Commission shall be empowered to adopt delegated acts in accordance with Article 42 modifying the thresholds referred to in paragraph 5 of this Article, taking into account the developments in financial markets.

7 The Commission shall adopt delegated acts in accordance with Article 42 specifying what constitutes a significant fall in value for financial instruments other than liquid shares, taking into account the specificities of each class of financial instrument and the differences of volatility.

8 In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the method of calculation of the 10 % fall for liquid shares and of the fall in value specified by the Commission as referred to in paragraph 7.

ESMA shall submit those draft regulatory technical standards to the Commission by 31 March 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 24

Period of restrictions

A measure imposed under Article 18, 19, 20 or 21 shall be valid for an initial period not exceeding 3 months from the date of publication of the notice referred to in Article 25.

The measure may be renewed for further periods not exceeding 3 months if the grounds for taking the measure continue to apply. If the measure is not renewed by the end of such a 3-month period, it shall automatically expire.

Article 25

Notice of restrictions

1 A competent authority shall publish on its website notice of any decision to impose or renew any measure referred to in Articles 18 to 23.

2 The notice shall specify at least details of:

- a the measures imposed including the instruments and classes of transactions to which they apply and their duration;

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- b the reasons why the competent authority believes it is necessary to impose the measures including the evidence supporting those reasons.

3 A measure under Articles 18 to 23 shall take effect when the notice is published or at a time specified in the notice that is after its publication and shall only apply in relation to a transaction entered into after the measure takes effect.

Article 26

Notification to ESMA and other competent authorities

1 Before imposing or renewing any measure under Article 18, 19, 20 or 21 and before imposing any restriction under Article 23, a competent authority shall notify ESMA and the other competent authorities of the measure it proposes.

2 The notification shall include details of the proposed measures, the classes of financial instruments and transactions to which they will apply, the evidence supporting the reasons for those measures and when the measures are intended to take effect.

3 Notification of a proposal to impose or renew a measure under Article 18, 19, 20 or 21 shall be made not less than 24 hours before the measure is intended to take effect or to be renewed. In exceptional circumstances, a competent authority may make the notification less than 24 hours before the measure is intended to take effect where it is not possible to give 24 hours notice. A notification of a restriction under Article 23 shall be made before the measure is intended to take effect.

4 A competent authority that receives notification under this Article may take measures in accordance with Articles 18 to 23 in that Member State where it is satisfied that the measure is necessary to assist the competent authority making the notification. The competent authority that receives notification shall also give notice in accordance with paragraphs 1 to 3 where it proposes to take measures.

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Changes and effects yet to be applied to :

- Regulation power to modify conferred by 2023 c. 29 s. 3 Sch. 1 Pt. 1
- Regulation revoked by 2023 c. 29 Sch. 1 Pt. 1

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Ch. 5 heading words omitted by S.I. 2018/1321 reg. 11(1)
- Ch. 7 heading substituted by S.I. 2018/1321 reg. 14(1)
- s. 2 heading words substituted by S.I. 2018/1321 reg. 12(1)
- Art. 1(1)(a) words substituted by S.I. 2018/1321 reg. 4(1)(a)
- Art. 1(1)(b)(c) words substituted by S.I. 2018/1321 reg. 4(1)(b)
- Art. 1(1)(c) words substituted by S.I. 2018/1321 reg. 4(2)
- Art. 2(1)(a) words substituted by S.I. 2018/1321 reg. 5(2)(a)
- Art. 2(1)(d) substituted by S.I. 2018/1321 reg. 5(2)(b)
- Art. 2(1)(i)(j) omitted by S.I. 2018/1321 reg. 5(2)(c)
- Art. 2(1)(k) words inserted by S.I. 2018/1321 reg. 5(2)(d)(ii)
- Art. 2(1)(k) words substituted by S.I. 2018/1321 reg. 5(2)(d)(i)
- Art. 2(1)(k) words substituted in earlier amending provision S.I. 2018/1321, reg. 5(2)(d)(ii) by S.I. 2020/1301 reg. 3Sch. para. 9(a)(i)
- Art. 2(1)(l) substituted by S.I. 2018/1321 reg. 5(2)(f)
- Art. 2(1)(p) substituted by S.I. 2018/1321 reg. 5(2)(g)
- Art. 2(1)(q) substituted by S.I. 2018/1321 reg. 5(2)(h)
- Art. 2(1)(r)-(x) inserted by S.I. 2018/1321 reg. 5(2)(i)
- Art. 2(1)(s)(ii)(iii) words substituted in earlier amending provision S.I. 2018/1321, reg. 5(2)(i) by S.I. 2020/1301 reg. 3Sch. para. 9(a)(ii)
- Art. 2(1)(ka) inserted by S.I. 2018/1321 reg. 5(2)(e)
- Art. 7(3)(b) words substituted by S.I. 2018/1321 reg. 8(3)(c)(iii)(aa)
- Art. 7(3)(b) words substituted by S.I. 2018/1321 reg. 8(3)(c)(iii)(bb)
- Art. 7(3)(c) words substituted by S.I. 2018/1321 reg. 8(3)(c)(iv)
- Art. 16(4)(b) omitted by S.I. 2018/1321 reg. 10(1)(d)(i)(bb)
- Art. 16(4)(c) words substituted by S.I. 2018/1321 reg. 10(1)(d)(i)(cc)
- Art. 17(6A) inserted by S.I. 2018/1321 reg. 10(2)(e)
- Art. 17(6A) words substituted in earlier amending provision S.I. 2018/1321, reg. 10(2)(e) by S.I. 2020/1301 reg. 3Sch. para. 9(c)(ii)
- Art. 18(1)(a) words omitted by S.I. 2018/1321 reg. 11(2)(a)(ii)(bb)
- Art. 18(1)(a) words substituted by S.I. 2018/1321 reg. 11(2)(a)(ii)(aa)
- Art. 19(1)(a) words omitted by S.I. 2018/1321 reg. 11(3)(a)(ii)(bb)
- Art. 19(1)(a) words substituted by S.I. 2018/1321 reg. 11(3)(a)(ii)(aa)
- Art. 20(1)(a) words omitted by S.I. 2018/1321 reg. 11(4)(a)(ii)(bb)
- Art. 20(1)(a) words substituted by S.I. 2018/1321 reg. 11(4)(a)(ii)(aa)
- Art. 21(1)(a) words omitted by S.I. 2018/1321 reg. 11(5)(a)(ii)(bb)
- Art. 21(1)(a) words substituted by S.I. 2018/1321 reg. 11(5)(a)(ii)(aa)
- Art. 25(2)(b) words substituted by S.I. 2018/1321 reg. 11(8)(b)