

Official Journal of the European Union

L 116



English edition

Legislation

Volume 63

15 April 2020

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2020/523

of 7 April 2020

amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff as regards subheading 9021 10 10 (orthopaedic appliances)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ⁽¹⁾, and in particular Article 9(1)(e) thereof,

Whereas:

- (1) Regulation (EEC) No 2658/87 establishes a goods nomenclature (hereinafter referred to as the ‘Combined Nomenclature’), which is reproduced in Annex I to that Regulation.
- (2) In the interest of legal certainty, it is necessary to clarify the classification of orthopaedic appliances of subheading 9021 10 10 of the Combined Nomenclature.
- (3) In accordance with the judgment of the Court of Justice in Joined Cases C-260/00 to C-263/00 ⁽²⁾, the Harmonized System Explanatory Notes to heading 9021 and Note 6 to Chapter 90, orthopaedic appliances are defined as products specially designed for a particular orthopaedic purpose.
- (4) In that judgment, the Court of Justice explained that orthopaedic appliances have a specific medical purpose in distinction to ordinary (simple) products that are for general use. The criteria for distinguishing orthopaedic appliances from ordinary products also include the method of manufacture, the materials of which they are made, their method of operation, their adjustability to the patient's specific handicaps.
- (5) Note 6 to Chapter 90 provides that orthopaedic appliances serve either to prevent or correct bodily deformities or to support or hold parts of the body following an illness, operation or injury.
- (6) Section (I) of the Harmonized System Explanatory Notes to heading 9021 provides examples of a number of orthopaedic appliances covered by the heading together with examples of products that are not covered by heading 9021. The product scope established by these explanatory notes is in line with the new Additional note.

⁽¹⁾ OJ L 256, 7.9.1987, p. 1.⁽²⁾ Judgment of the Court of Justice of 7 November 2002, *Lohmann and Medi Bayreuth*, Joined Cases C-260/00 to C-263/00, ECLI:EU:C:2002:637.

- (7) For reasons of legal certainty, it is necessary to provide examples of medical purposes that certain products might serve which distinguish them from orthopaedic appliances that are designed for a particular orthopaedic purpose.
- (8) For reasons of legal certainty, explanations should be provided on the method of operation (high degree of precision) of orthopaedic appliances that are meant to prevent further injuries or bodily deformities in distinction to ordinary products that are not considered to be designed with the same high degree of precision and, thus, are not able to prevent completely undesired movements.
- (9) A new Additional note should therefore be added to Chapter 90 of Part Two of the Combined Nomenclature to ensure its uniform interpretation.
- (10) The new Additional note is in line with Commission Implementing Regulation (EU) 2018/787 ⁽³⁾ classifying an ankle bandage (so-called 'lace-orthosis'), with the existing Explanatory Notes to the Combined Nomenclature to subheading 9021 10 10, and reflects the established classification practice of the Member States.
- (11) Regulation (EEC) No 2658/87 should therefore be amended accordingly.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Chapter 90 of Part Two of Annex I to Regulation (EEC) No 2658/87 is amended as follows:

- (1) the heading 'Additional note' after note 7 is replaced by the heading 'Additional notes';
- (2) the following Additional note is added:
 2. For the purposes of subheading 9021 10 10, the expression "orthopaedic appliances" means appliances which are specially designed for a particular orthopaedic purpose, in distinction to products that might be used for various purposes (for example, products for overstrained joints, ligaments or tendons caused by sporting activities, type writing, and products which simply alleviate pain in the defective or disabled part of the body, for example, caused by inflammation).The "orthopaedic appliances" must completely prevent a specific movement of the defective or disabled part of the body (for example, joints, ligaments, tendons) in order to exclude further injuries or bodily deformities or an aggravation of such injuries or deformities, as distinct from other products that cannot prevent specific movements, yet prevent reflex movements (movements carried out subconsciously) through the relative inflexibility of those products due to, for example, flexible splints, pressure pads, non-elastic textile material, restrictions through "Velcro-type" straps.'

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 April 2020.

*For the Commission,
On behalf of the President,
Stephen QUEST
Director-General
Directorate-General for Taxation and Customs Union*

⁽³⁾ Commission Implementing Regulation (EU) 2018/787 of 25 May 2018 concerning the classification of certain goods in the Combined Nomenclature (OJ L 134, 31.5.2018, p. 1).

COMMISSION IMPLEMENTING REGULATION (EU) 2020/524**of 8 April 2020****repealing Implementing Regulation (EU) No 863/2013 concerning the classification of certain goods in the Combined Nomenclature**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ⁽¹⁾, and in particular Article 57(4) and Article 58(2) thereof,

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to Council Regulation (EEC) No 2658/87 ⁽²⁾, it is necessary to adopt measures concerning the classification of certain goods.
- (2) By Commission Implementing Regulation (EU) No 863/2013 ⁽³⁾, a product consisting of a monolithic integrated circuit and a quartz crystal assembled together on a metal frame and embedded in a plastic housing, used in various apparatus as the source of a clock signal for determining intervals of time, was classified under CN code 9114 90 00 as other watch or clock parts. Classification under heading 8542 was excluded as the product contained both a monolithic integrated circuit and a quartz crystal.
- (3) By Commission Implementing Regulation (EU) 2016/1821 ⁽⁴⁾, the definition of electronic integrated circuits laid down for the purposes of headings 8541 and 8542 in Note 9(b) to Chapter 85 of the Combined Nomenclature was expanded to include multi-component integrated circuits as defined in point (4) of Note 9(b) to Chapter 85, with effect from 1 January 2017. As a result, goods within the scope of Implementing Regulation (EU) No 863/2013 are to be classified under heading 8542 as an electronic integrated circuit.
- (4) Implementing Regulation (EU) No 863/2013 should therefore be repealed in order to avoid potential divergences in tariff classification of such goods and to ensure the uniform application of the Combined Nomenclature within the Union.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 863/2013 is repealed.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

⁽¹⁾ OJ L 269, 10.10.2013, p. 1.

⁽²⁾ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

⁽³⁾ Commission Implementing Regulation (EU) No 863/2013 of 5 September 2013 concerning the classification of certain goods in the Combined Nomenclature (OJ L 240, 7.9.2013, p. 17).

⁽⁴⁾ Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 294, 28.10.2016, p. 1).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 April 2020.

For the Commission
On behalf of the President,
Stephen QUEST
Director-General
Directorate-General for Taxation and Customs Union

DECISIONS

EUROPEAN SECURITIES AND MARKETS AUTHORITY DECISION (EU) 2020/525

of 16 March 2020

to require natural or legal persons who have net short positions to temporarily lower the notification thresholds of net short positions in relation to the issued shares capital of companies whose shares are admitted to trading on a regulated market above a certain threshold to notify the competent authorities in accordance with point (a) of Article 28(1) of Regulation (EU) No 236/2012 of the European Parliament and of the Council

THE EUROPEAN SECURITIES AND MARKETS AUTHORITY BOARD OF SUPERVISORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, in particular Annex IX thereof,

Having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ⁽¹⁾, and in particular Article 9(5), 43(2) and 44(1) thereof,

Having regard to 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 ⁽²⁾, and in particular Article 28 thereof,

Having regard to Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regards to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events ⁽³⁾, and in particular Article 24 thereof,

Whereas:

1. INTRODUCTION

- (1) This ESMA Decision requires natural or legal persons who have net short positions in relation to a share admitted to trading on a regulated market to notify to a competent authority details of any such position if the position reaches or exceeds 0,1 % of the issued share capital.
- (2) The measure imposed by the ESMA Decision addresses the necessity for national competent authorities and ESMA to be aware of the net short positions that market participants have entered into in relation to shares admitted to trading on a regulated market, given the recent exceptional developments in financial markets.

2. ABILITY OF THE MEASURE TO ADDRESS RELEVANT THREATS AND CROSS-BORDER IMPLICATIONS (ARTICLE 28(2)(A) OF REGULATION (EU) NO 236/2012)

(a) Threat to the orderly functioning and integrity of the financial markets

- (3) The outbreak of the COVID-19 pandemic is having serious adverse effects on the real economy and on EU financial markets. As regards the latter, since 20 February 2020 the stock markets in the EU lost 30 % [Figure 1], and all sectors and types of issuers were affected by severe share price falls.

⁽¹⁾ OJ L 331, 15.12.2010, p. 84.

⁽²⁾ OJ L 86, 24.3.2012, p. 1.

⁽³⁾ OJ L 274, 9.10.2012, p. 1.

- (4) ESMA considers that this adverse situation constitutes a serious threat to the orderly functioning and integrity of the financial markets. Namely, the price movements are linked to the spreading of the COVID-19 pandemic in the EU, which has greatly increased the sensitivity of EU financial markets. There is a clear risk that such downward trend will continue in the coming days and weeks. Such severe price falls undermine the price-formation mechanism, thereby threatening the integrity and orderly functioning of the markets.
- (5) At the same time, the severe losses also have the effect of prejudicing market confidence. A decrease of the latter threatens the orderly functioning and integrity of the markets, as it may result in further volatility and downward price spirals.
- (6) In this context, as further explained in Section 3 below, short sales can contribute to accelerate price volatility and to exacerbate market losses.
- (7) Within the limit of ESMA's mandate, the proposed measure obliges natural or legal persons who have a net short position in shares admitted to trading on a regulated market to report to national competent authorities at a lower thresholds than the one established in Article 5 of Regulation (EU) No 236/2012. This should improve the capacity of national competent authorities and ESMA to assess the situation adequately and react if the integrity, orderly functioning and stability of the markets require more stringent actions.

(b) Threat to the stability of the whole or part of the financial system in the Union

- (8) As explained by the ECB in its Financial Stability Review ⁽⁴⁾, financial stability is a condition in which the financial system – which comprises financial intermediaries, markets and market infrastructures – is capable of withstanding shocks and the unravelling of financial imbalances. Substantial selling pressure and unusual volatility in the price of shares is already ongoing and could continue to occur. In such situation market participants may take new short positions in order to profit from further price falls, which may in turn exacerbate the falls experienced in the past weeks. ESMA considers that the current market circumstances are substantially threatening the financial stability in the Union.
- (9) Those price declines have left the vast majority if not all shares admitted to trading on a regulated market in a situation of uncertainty in which further price declines not triggered by additional fundamental information could have highly detrimental consequences.
- (10) It is at this stage of the developments, where there is an increasing amount of information flowing to the market in relation to Covid-19, that the measure may be most effective, as it will allow national competent authorities to better monitor the market trends and fine-tune further regulatory responses.
- (11) ESMA considers that lowering the reporting thresholds is a preliminary action that under these exceptional circumstances is essential to monitor developments in markets. This measure can be used to evaluate and potentially gradually implement further regulatory responses if those prove necessary.

(c) Cross-border implications

- (12) The threats to market integrity, orderly functioning and financial stability described above have a pan-EU character. Since 20 February 2020, the EUROSTOXX 50 INDEX, which covers 50 blue-chip issuers from 11 ⁽⁵⁾ Eurozone countries, fell by approximately 30 % [Figure 1]. In addition, the effect of the unusual selling pressure was apparent in the main indices of EU markets [Figure 2].
- (13) Given the fact that the financial markets of each EU Member State are affected by the threats, the cross border implications are particularly serious.

⁽⁴⁾ <https://www.ecb.europa.eu/pub/financial-stability/fsr/html/ecb.fsr201911~facad0251f.en.html>.

⁽⁵⁾ Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain.

3. NO COMPETENT AUTHORITY HAS TAKEN MEASURES TO ADDRESS THE THREAT OR ONE OR MORE OF THE COMPETENT AUTHORITIES HAVE TAKEN MEASURES THAT DO NOT ADEQUATELY ADDRESS THE THREAT (ARTICLE 28(2)(B) OF REGULATION (EU) NO 236/2012)

- (14) One of the conditions for ESMA to adopt the measure in this Decision is that a competent authority or competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat.
- (15) The market integrity, orderly functioning and financial stability concerns described in this Decision have led some national competent authorities to consult on or take national actions aimed at restricting the short selling of shares.
- (16) In Spain, the Comisión Nacional del Mercado de Valores imposed a temporary ban on short sales concerning 69 shares ⁽⁶⁾ listed on several Spanish trading venues. The prohibition was adopted pursuant to Article 23 of Regulation (EU) No 236/2012, considering the price drop, higher than 10 % and, for illiquid shares, higher than 20 %, recorded by the relevant shares on 12 March 2020. The ban applied for the trading session of the 13 March 2020, and was not extended.
- (17) In Italy the Commissione Nazionale per le Società e la Borsa imposed a temporary ban on short sales concerning 85 shares ⁽⁷⁾ listed on the MTA market of Borsa Italiana. The prohibition was adopted pursuant to Article 23 of Regulation (EU) n. 236/2012, considering the price drop, higher than 10 %, recorded by the shares on 12 March 2020. The ban applied for the trading session of the 13 March 2020 and was not extended.
- (18) The two measures were followed on 13 March 2020 also in Germany, on the Tradegate Exchange, and in the United Kingdom of Great Britain and Northern Ireland ⁽⁸⁾, where the temporary ban concerned 154 instruments.
- (19) Such temporary restrictions on short selling according to Article 23 of the Regulation (EU) No 236/2012 could not address the continuing threats as they are applicable for one trading day only.
- (20) Following the expiration of the abovementioned temporary measures taken in Italy and Spain, no further measures based on Regulation (EU) No 236/2012 have been taken in the EU, and as of the date of this Decision there are no such measures in force.
- (21) At the time of adoption of this Decision, no competent authorities have adopted measures to increase their visibility of the evolution of net short positions activity through the establishment of lower reporting thresholds.
- (22) In light of the abovementioned pan-EU threats, it has become evident that the information received by national competent authorities is not sufficient under the current stressed market conditions. ESMA considers that lowering the reporting thresholds should ensure that all national competent authorities across the EU and ESMA have the best possible data set available to monitor the market trends and enable themselves and ESMA to take, if necessary, further measures.
- (23) In taking this measure, ESMA has also considered that the new notification threshold shall become applicable immediately after its publication on the ESMA website, as foreseen in Article 28(9) of Regulation (EU) No 236/2012.

4. EFFICIENCY OF THE MEASURE (ARTICLE 28(3)(A) OF REGULATION (EU) NO 236/2012)

- (24) ESMA also has to take into account to which extent the measure significantly addresses the threats identified.
- (25) ESMA has analysed the circumstances in recent trading days on trading venues, in particular since 9 March 2020 [Figure 1], in how far they constitute threats to the integrity of markets and to financial stability in the Union and whether the ESMA measure is efficient in addressing such threats by taking a forward-looking approach.

⁽⁶⁾ <https://www.cnmv.es/portal/verDoc.axd?t={2ac24be5-78d8-4360-8199-c181c951e1e9}>.

⁽⁷⁾ http://www.consob.it/web/consob-and-its-activities/news-in-detail/-/asset_publisher/kcxlUuOyjO9x/content/press-release-12-march-2020-short-selling-hp/718268.

⁽⁸⁾ <https://www.fca.org.uk/news/news-stories/temporary-prohibition-short-selling>.

(a) The measure significantly addresses the threat to the orderly functioning and integrity of financial markets

- (26) ESMA considers that despite the extraordinary losses that were incurred in the trading of shares on regulated markets since 20 February 2020 and particularly since 9 March 2020, markets have functioned orderly and that the integrity of markets has been largely preserved.
- (27) On that basis and as of this date ESMA deems this Decision to be proportionate given current circumstances.
- (28) However, due to the consistent selling pressure caused by subsequent developments affecting an extremely large range of issuers from all kinds of sectors in all Member States, markets are nonetheless in a fragile state.
- (29) At times of extreme selling pressure and market volatility engaging in short selling and the building up of short positions can amplify downward trends already present in financial markets. While short selling at other times may serve positive functions in terms of determining the correct valuation of issuers, in current market circumstances it poses an additional threat to the orderly functioning and integrity of markets.
- (30) ESMA considers that, without such a measure being taken at this point in time, national competent authorities and ESMA would not have the capacity to monitor adequately the market in the current market environment, where the substantial selling pressure and unusual volatility [Figure 1] in the price of Union shares admitted to trading on a regulated market could further be amplified by the taking of short positions. In particular, given the horizontal impact of the current emergency situation that affects a broad set of shares across the Union, the fall in share prices may be due to additional selling pressure resulting from short selling activity and increased net short positions that, being below the current thresholds for notification to the national competent authorities, are therefore undetected.
- (31) Therefore, national competent authorities and ESMA need to be aware as soon as possible of market participants engaging in short sales and building up significant net short positions to prevent, if necessary, that those positions become signals leading to a cascade of selling orders causing a further significant fall in value. On the same grounds, ESMA considers adequate to maintain the publication threshold in Article 6 of Regulation (EU) No 236/2012, but is monitoring on an ongoing basis the market conditions and will take further measures if the market conditions make it necessary.

(b) The measure significantly addresses the threat to the stability of the whole or part of the financial system in the Union

- (32) As described above, trading in shares since 20 February 2020 and particularly since 9 March 2020 was characterised by substantial selling pressure and unusual volatility leading to significant downward spirals affecting issuers from all types of sectors.
- (33) Unabated selling pressure on the shares of banks and other financial institutions as well as a wide range of issuers from all sectors can put the financial stability of one or several Member States and ultimately the financial system in the Union at risk.
- (34) In addition, ESMA considers that the significant falls in value and extreme volatility particularly since 9 March 2020 can cause a lack of trust in the functioning of the financial system by market participants and the public at large.
- (35) The existence of such risks is also evident by the multiple measures taken at Member State and Union level in the past few days to stabilise the financial system and the economy as a whole.
- (36) As evidenced above, engaging in short selling and building up significant net short positions can amplify selling pressure and downward trends which at the present time poses a threat which can have highly detrimental effects on the financial stability of financial institutions and companies from other sectors. In that context, data limitations for national competent authorities and ESMA would restrict their capacity to address any potential negative effects on the economy and ultimately the financial stability of the Union as a whole.
- (37) ESMA's measure to temporarily lower the reporting thresholds of net short positions to national competent authorities addresses this threat posed to the stability of parts or ultimately the whole of the Union financial system.

(c) **Improvement of the ability of the competent authorities to monitor the threat**

- (38) In ordinary market conditions national competent authorities monitor any threat that may derive from short selling and the building up of net short positions with supervisory tools established in Union legislation, in particular the reporting obligations concerning net short positions established in Regulation (EU) No 236/2012 ⁽⁹⁾.
- (39) However, the existing market conditions render it necessary to intensify the monitoring activity of national competent authorities and ESMA of the aggregated net short positions in shares admitted to trading on regulated markets. To that end, it is essential not only to ensure that the national competent authorities are getting reports at an earlier stage of the build-up of a net short position and not at the current level of 0,2 % but also that such revised reporting obligation enters into effect with immediate effect.
- (40) Therefore, ESMA's measure improves the ability of national competent authorities to deal with the threats identified and to overall monitor and manage threats to the orderly functioning of markets and to financial stability at times of market stress.

5. THE MEASURES DO NOT CREATE A RISK OF REGULATORY ARBITRAGE (ARTICLE 28(3)(B) OF REGULATION (EU) NO 236/2012)

- (41) In order to adopt a measure under Article 28 of Regulation (EU) No 236/2012 ESMA should take into account whether the measure creates a risk of regulatory arbitrage.
- (42) Since ESMA's measure concerns the reporting obligations of market participants with respect to all shares admitted to trading on regulated markets, it will ensure a unique reporting threshold for all national competent authorities, ensuring a level-playing field among market participants from in- and outside of the Union in respect of trading of shares admitted to trading on a regulated market.

6. ESMA'S MEASURE DOES NOT HAVE A DETRIMENTAL EFFECT ON THE EFFICIENCY OF FINANCIAL MARKETS, INCLUDING BY REDUCING LIQUIDITY IN THOSE MARKETS OR CREATING UNCERTAINTY FOR MARKET PARTICIPANTS, THAT IS DISPROPORTIONATE TO ITS BENEFITS (ARTICLE 28(3)(C) OF REGULATION (EU) NO 236/2012)

- (43) ESMA has to assess whether the measure has detrimental effects which would be considered disproportionate compared to its benefits.
- (44) ESMA considers it appropriate that national competent authorities closely monitor the evolution of the market and any evolution of net short positions before considering adopting any further measure. ESMA notes that the current reporting thresholds (0,2 % of the issued share capital) may not be adequate in the current exceptional market conditions to timely identify trends.
- (45) Although the enhanced reporting obligation laid down in this decision may add additional burden to reporting entities, it will not limit the capacity of market participants to enter into or increase their short positions in shares. As a result, the efficiency of the market will not be affected.
- (46) The current measure should not affect the liquidity in the market as the increased reporting obligation for a limited set of market participants should not change their trading strategies and therefore, their participation in the market. Additionally, the exception foreseen for market making activities and stabilisation programs is meant not to increase the burden for entities that provide an important service in terms of providing liquidity and reducing volatility, particularly relevant in the current situation.
- (47) ESMA believes that limiting the scope of its measure to one or several sectors or to a subset of issuers may not achieve the desirable outcome. The magnitude of the price declines, the wide range of shares (and sectors) affected and the degree of interconnection between the EU economies and trading venues, suggest that an EU-wide measure is likely to be more effective than sectorial national measures.
- (48) In terms of creating market uncertainty, the measure does not introduce new regulatory obligations, as it only modifies the existing reporting obligation that has been in force since 2012, by lowering the threshold. It applies to all trading in shares admitted to trading on a regulated market and therefore does not create any uncertainty.

⁽⁹⁾ Cf. Article 5 of Regulation (EU) No 236/2012.

- (49) ESMA also highlights that the measure is limited to the reporting of shares that are admitted to trading on a regulated market to capture those positions where additional reporting appears most relevant. The measure only applies if positions reach or exceed the 0,1 % threshold after the entry into force.
- (50) Therefore, ESMA does not consider that such enhanced transparency obligation can have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to its benefits.
- (51) In terms of duration of the measure, ESMA considers that a duration of three months is justified considering the information available at the moment. ESMA is aware of the increasing administrative burden this decision implies for certain market participants and intends to revert to the regular reporting obligation as soon as the situation improves, but at the same time cannot discard the possibility of extending the measure where the situation should worsen.

7. CONSULTATION AND NOTICE (ARTICLE 28(4) AND (5) OF REGULATION (EU) NO 236/2012)

- (52) ESMA has consulted the ESRB. The ESRB has not raised any objections to the adoption of the proposed Decision.
- (53) ESMA has notified national competent authorities of this proposed Decision.
- (54) ESMA's measure will apply once this decision is published on the ESMA website.

HAS ADOPTED THIS DECISION

Article 1

Definition

For the purposes of this Decision, a 'regulated market' means a regulated market as referred to in Article 4(1)(21) of Directive 2014/65/EU of the European Parliament and of the Council ⁽¹⁰⁾.

Article 2

Temporary additional transparency obligations

1. A natural or legal person who has a net short position in relation to the issued share capital of a company that has its shares admitted to trading on a regulated market shall notify the relevant competent authority, in accordance with Articles 5 and 9 of Regulation (EU) No 236/2012 where the position reaches or falls below a relevant notification threshold referred to in paragraph 2 of this Article.
2. A relevant notification threshold is a percentage that equals 0,1 % of the issued share capital of the company concerned and each 0,1 % above that threshold.

Article 3

Exemptions

1. In accordance with Article 16 of Regulation (EU) No 236/2012, the temporary additional transparency obligations referred to in Article 2 shall not apply to shares admitted to trading on a regulated market where the principal venue for the trading of the shares is located in a third country.
2. The temporary additional transparency obligations referred to in Article 2 shall not apply to market making activities.

⁽¹⁰⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

3. The temporary additional transparency obligations referred to in Article 2 shall not apply to a net short position in relation to the carrying out of a stabilisation under Article 5 of Regulation (EU) No 596/2014 of the European Parliament and of the Council ⁽¹⁾.

Article 4

Entry into force and application

This Decision enters into force immediately upon its publication on ESMA's website. It shall apply from the date of its entry into force for a period of three months.

Done at Paris, 16 March 2020.

For the Board of Supervisors

Steven MAIJOOR

The Chair

⁽¹⁾ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

ANNEX

Figure 1

Economic indicators

	Changes since		Level
	1W	20 Feb	
Equity market performance (in %)			
Eurostoxx 50	− 17	− 29	2 495
US S&P500	− 9	− 20	2 711
JP Nikkei	− 16	− 26	17 431
Global	− 13	− 23	179
European banks	− 20	− 38	93
IT financials	− 21	− 40	23
ES financials	− 24	− 38	62
DE financials	− 22	− 34	94
FR financials	− 22	− 40	108
Volatility (in bps, level in %)			
VSTOXX	31	60	74,3
VIX	16	42	57,8
Credit Default Swaps (in bps)			
Europe corporate	36	61	101
Europe high yield	123	303	501
Europe financials	40	87	131
Europe financials subordinate	52	142	240
10Y Government bonds (in bps, level in %)			
DE10Y	14	− 14	− 0,59
IT10Y	73	89	1,81
US10Y	25	− 57	0,95
GB10Y	18	− 17	0,41
JP10Y	14	4	0,00

Note: Data as of 15 Mar 2020.
Sources: Refinitiv EIKON; ESMA.

Figure 2

European stock indices performance

	Percentage change since 20 Feb 2020	1W percentage change
Eurostoxx50	- 32,36	- 19,99
AT	- 36,96	- 23,50
BE	- 33,65	- 20,44
BG	- 18,26	- 15,47
HR	- 25,18	- 16,88
CY	- 22,47	- 15,33
CZ	- 24,79	- 14,30
DK	- 22,42	- 14,19
EE	- 20,92	- 14,25
FR	- 32,07	- 19,87
DE	- 32,44	- 20,02
GR	- 39,34	- 20,17
HU	- 25,34	- 16,99
IE	- 28,85	- 17,85
IT	- 36,39	- 23,30
LV	- 10,87	- 7,28
LT	- 16,65	- 9,98
LU	- 35,66	- 19,27
MT	- 9,05	- 7,55
NL	- 30,42	- 18,52
NO	- 29,25	- 17,39
PL	- 33,04	- 21,68
PT	- 29,08	- 17,85
RO	- 22,30	- 16,55
SK	- 5,69	- 5,02
SI	- 22,37	- 13,61
ES	- 33,24	- 20,84
SE	- 27,51	- 15,50

Sources: Refinitiv Datastream

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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