

FORMAL REQUEST TO ESMA FOR TECHNICAL ADVICE ON POSSIBLE
DELEGATED ACTS CONCERNING THE REGULATION ON SHORT SELLING AND
CERTAIN ASPECTS OF CREDIT DEFAULT SWAPS ((EC)No XX/2012)

With this formal mandate to ESMA, the Commission seeks ESMA's technical advice on possible delegated acts concerning the Regulation on Short Selling and certain aspects of Credit Default Swaps (the "**Regulation**")¹. These delegated acts should be adopted in accordance with Article 290 of the Treaty of the Functioning of the European Union (TFEU).

The Commission reserves the right to revise and/or supplement this formal mandate. The technical advice received on the basis of this mandate should not prejudice the Commission's final policy decision.

The mandate follows the Communication from the Commission to the European Parliament and the Council – Implementation of Article 290 of the Treaty on the Functioning of the European Union (the "**290 Communication**")², the Regulation of the European Parliament and the Council establishing a European Securities and Markets Authority (the "**ESMA Regulation**")³ and the Framework Agreement on Relations between the European Parliament and the European Commission (the "**Framework Agreement**")⁴.

This request for technical advice will be made available on DG Internal Market's website once it has been sent to ESMA.

The formal mandate focuses on technical issues which follow from the **Regulation**. The Commission is under the obligation to adopt delegated acts so they enter into application by 1 November 2012, taking into account the right of the European Parliament and Council to object to a delegated act within 3 months (which can be extended by a further 3 months), in relation to:

- the specification of the definitions laid down in Article 2(1) and in particular specifying when a natural or legal person is considered to own a financial instrument for the purposes of the definition of short sale in Article 2(1p) (Article 2(2)),
- the specification of: the cases in which a natural or legal person is considered to hold a share or debt instrument for the purposes of Article 3(2), the cases in which a natural or legal person has a net short position for the purposes of Article 3(4) and (5) and the method of calculation of such position and the method of calculating positions for the purposes of Article 3(4), (5) and (6) when different entities in a group have long or short positions or for fund management activities related to separate funds (Article 3(7)),
- the specification of: the cases in which a credit default swap transaction is considered to be hedging against a default risk and the method of calculation of an uncovered position in a credit default swap and the method of calculating positions where different entities in a group have long or short positions or for fund management activities related to separate funds (Article 4(2)),
- the specification of the amounts and incremental levels of notification thresholds referred to in Article 8(2) for net short positions relating to the issued sovereign debt of a sovereign issuer (Article 8(3)),
- the specification of the parameters and methods for calculating the threshold of liquidity referred to in Article 12a(1b) in relation to the issued sovereign debt for suspending restrictions on short sales of sovereign debt (Article 12a(1c)),
- the specification of what constitutes a significant fall in value for financial instruments other than liquid shares (Article 19(4b)),

¹ The text provisionally agreed by the Council and the European Parliament is available on the Council web site at this page: <http://register.consilium.europa.eu/pdf/en/11/st16/st16338.en11.pdf>

² Communication of 9.12.2009. COM(2009) 673 final.

³ 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. OJ L331/84, 15.12.2010, p.84.

⁴ OJ L304/47, 20.11.2010, p.47.

- and the specification of the criteria and factors to be taken into account by competent authorities and ESMA in determining when the adverse events or developments referred to in Articles 16, 16a, 17, 18 and 23 arise (Article 25).

The European Parliament and the Council have been duly informed about this mandate.

After the delivery of the technical advice by ESMA, in accordance with the Declaration 39 on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, the Commission will continue to consult experts appointed by the Member States in the preparation of possible delegated acts in the financial services area.

Also, the Commission will carry out appropriate consultations during its preparatory work, and will ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council when preparing and drawing up delegated acts in accordance with recital 34 of the Regulation.

In accordance with point 15 of the Framework Agreement, the Commission will provide full information and documentation on its meetings with national experts within the framework of its work on the preparation and implementation of Union legislation, including soft law and delegated acts. Upon request by the Parliament, the Commission may also invite Parliament's experts to attend those meetings.

The powers of the Commission to adopt delegated acts are subject to Articles 36, 39 and 39a of the Regulation. As soon as the Commission adopts a possible delegated act, the Commission will notify it simultaneously to the European Parliament and the Council.

1. Context.

1.1 Scope.

On 15 September 2010, the Commission published its proposal for a Regulation on short selling and certain aspects of Credit Default Swaps. On 18 October 2011 the European Parliament and the Council reached political agreement on a compromise text of the regulation in the trilogue. This compromise text was endorsed by COREPER on 10 November 2011. The Regulation was adopted by the European Parliament at first reading on 15 November 2011.

The Regulation has two main objectives: (i) to lay down a common regulatory framework with regard to the requirements and powers relating to short selling and credit default swaps, and (ii) to ensure greater coordination and consistency between Member States where measures have to be taken in exceptional situations.

As for this formal mandate, these principles taken up by the Regulation need to be further specified in delegated acts to be adopted by the Commission so that they enter into application by 1 November 2012, taking into account the right of the European Parliament and the Council to object to a delegated act within 3 months of adoption (which can be extended by 3 months):

- the specification of the definitions laid down in Article 2(1) and in particular specifying when a natural or legal person is considered to own a financial instrument for the purposes of the definition of short sale in Article 2(1p) (Article 2(2)),
- the specification of: the cases in which a natural or legal person is considered to hold a share or debt instrument for the purposes of Article 3(2), the cases in which a natural or legal person has a net short position for the purposes of Article 3(4) and (5) and the

method of calculation of such position and the method of calculating positions for the purposes of Article 3(4), (5) and (6) when different entities in a group have long or short positions or for fund management activities related to separate funds (Article 3(7)),

- the specification of: the cases in which a credit default swap transaction is considered to be hedging against a default risk and the method of calculation of an uncovered position in a credit default swap and the method of calculating positions where different entities in a group have long or short positions or for fund management activities related to separate funds (Article 4(2)),
- the specification of the amounts and incremental levels of notification thresholds referred to in Article 8(2) for net short positions relating to the issued sovereign debt of a sovereign issuer (Article 8(3)),
- the specification of the parameters and methods for calculating the threshold of liquidity referred to in Article 12a(1b) in relation to the issued sovereign debt for suspending restrictions on short sales of sovereign debt (Article 12a(1c)),
- the specification of what constitutes a significant fall in value for financial instruments other than liquid shares (Article 19(4b)),
- and the specification of the criteria and factors to be taken into account by competent authorities and ESMA in determining when the adverse events or developments referred to in Articles 16, 16a, 17, 18 and 23 arise (Article 25).

1.2 Principles that ESMA should take into account.

On the working approach, ESMA is invited to take account of the following principles:

- It should take account of the principles set out in the de Larosière Report and the Lamfalussy Report and mentioned in the Stockholm Resolution of 23 March 2001.
- The proper functioning of the internal market and to improve the conditions of its functioning, in particular with regards to the financial markets, and the high level of consumer and investor protection which are the objectives of this Regulation.
- The principle of proportionality: the technical advice should not go beyond what is necessary to achieve the objectives of the Regulation. It should be simple and avoid creating divergent practices by national competent authorities in the application of the Regulation.
- ESMA should respond efficiently by providing comprehensive advice on all subject matters covered by the mandate regarding the delegated powers included in the Regulation.
- While preparing its advice, ESMA should seek coherence within the regulatory framework of the Union.

- In accordance with the ESMA Regulation, ESMA should not feel confined in its reflection to elements that it considers should be addressed by the delegated acts but, if it finds it appropriate, it may indicate guidelines and recommendations that it believes should accompany the delegated acts to better ensure their effectiveness.
- ESMA will determine its own working methods, including the roles of ESMA staff or internal committees. Nevertheless, horizontal questions should be dealt with in such a way as to ensure coherence between different standards of work being carried out by ESMA.
- In accordance with the ESMA Regulation, ESMA is invited to widely consult market participants (practitioners, consumers and end-users) in an open and transparent manner. ESMA should provide advice which takes account of different opinions expressed by the market participants during their consultation. ESMA should provide a feed-back statement on the consultation justifying its choices vis-à-vis the main arguments raised during the consultation.
- The technical advice carried out should contain sufficient and detailed explanations for the assessment done, and be presented in an easily understandable language respecting current legal terminology used in the field of securities markets and company law at European level.
- ESMA should provide sufficient factual data backing the analyses and gathered during its assessment. To meet the objectives of this mandate, it is important that the presentation of the advice produced by ESMA makes maximum use of the data gathered and enables all stakeholders to understand the overall impact of the possible delegated acts.
- ESMA should provide comprehensive technical analysis on the subject matters described below covered by the delegated powers included in the relevant provision of the Regulation, in the corresponding recitals as well as in the relevant Commission's request included in this mandate.
- The technical advice given by ESMA to the Commission should not take the form of a legal text. However, ESMA should provide the Commission with an "articulated" text which means a clear and structured text, accompanied by sufficient and detailed explanations for the advice given, and which is presented in an easily understandable language respecting current terminology used in the field of securities markets in the Union.
- ESMA should address to the Commission any question they might have concerning the clarification on the text of the Regulation, which they should consider of relevance to the preparation of its technical advice.

2 Procedure.

The Commission would like to request the technical advice of ESMA in view of the preparation of the possible delegated acts to be adopted pursuant to the legislative act and in particular regarding the questions referred to in section 3 of this formal mandate.

The mandate takes into account the ESMA Regulation, the 290 Communication and the Framework Agreement.

The Commission reserves the right to revise and/or supplement this formal mandate. The technical advice received on the basis of this mandate should not prejudice the Commission's final decision.

In accordance with the Declaration 39 on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, and in accordance with the established practice, the Commission will continue to consult experts appointed by the Member States in the preparation of the delegated acts relating to the Regulation.

Moreover, in accordance with point 15 of the Framework Agreement, the Commission will provide full information and documentation on its meetings with national experts within the framework of its work on the preparation and implementation of Union legislation, including soft law and delegated acts. Upon request by the Parliament, the Commission may also invite Parliament's experts to attend those meetings.

The Commission has duly informed the European Parliament and the Council about this mandate. As soon as the Commission adopts delegated acts, it will notify them simultaneously to the European Parliament and the Council.

3. ESMA is invited to provide technical advice on the following issues:

With regard to all issues listed here, ESMA is asked to set out options where these are identified, to evaluate costs/benefits and explain the reasons for choosing or discarding a particular option where this choice is made, to assist the Commission in the preparation of the impact assessment for the delegated acts.

3.1 Specification of the definitions laid down in the Regulation and in particular of when a natural or legal person is considered to own a financial instrument for the purposes of the definition of short sale (Article 2(2))

A "short sale" in relation to a share or debt instrument means any sale of the share or debt instrument which the seller does not own at the time of entering into the agreement to sell including such a sale where at the time of entering into the agreement to sell the seller has borrowed or agreed to borrow the share or debt instrument for delivery at settlement.

There may be different legal and economic concepts of ownership that could be used to determine when a person is considered to own a financial instrument. For instance, ownership may be construed in an economic sense as the moment of risk transfer, or in a legal sense as the moment of transfer of ownership in a central securities depository. The appropriate concept would be one which ensures that a person cannot enter into a short position due, for instance, to instruments being held by a third party or by pending administrative procedures. The concept used would also need to allow for sellers from third countries, or , in other words, for market participants from countries with different legal structures.

Recital 16 notes the use of securities under collateral arrangements by the collateral taker as an arrangement currently used for covered short selling. It does not directly address the issue of whether or not a financial instrument being used as collateral can be considered to be

owned for the purposes of this article, given that the fact that it is used as collateral leads to potentially conflicting claims on the same instrument.

- ESMA is invited to provide its technical advice on specifying the definitions laid down in the Regulation, in particular specifying when a natural or legal person is considered to own a financial instrument for the purposes of the definition of short sale.

3.2 Specification of the cases in which a natural or legal person is considered to hold a share or debt instrument for the purposes of Article 3(2), cases in which a natural or legal person has a net short position for the purposes of Article 3(4) and (5) and the method of calculation of such position, the method of calculating positions for the purposes of Article 3(4), (5) and (6) when different entities in a group have long or short positions or for fund management activities related to separate funds (Article 3(7))

A position resulting from holding a share issued by the company or a debt instrument issued by the sovereign issuer, or entering into a transaction which creates or relates to a financial instrument where the effect or one of the effects of the transaction is to confer a financial advantage in the event of an increase in the price or value of the share or debt instrument shall be considered a long position relating to the issued share capital of a company or issued sovereign debt of a sovereign issuer.

The calculation of a short position and a long position shall, in respect of any position held by the relevant person indirectly, including through or by way of any index, basket of securities or any interest in any exchange traded fund or similar entity, be determined by the natural or legal person in question acting reasonably having regard to publicly available information as to the composition of the relevant index or basket of securities, or of the interests held by the relevant exchange traded fund or similar entity. For the avoidance of doubt, in calculating such a short or long position, no person shall be required to obtain any real-time information as to such composition from any person.

The method of calculation should take into account, in particular, whether different investment strategies are pursued in relation to a particular issuer through more than one separate fund managed by the same fund manager, whether the same investment strategy is pursued in relation to a particular issuer through more than one fund, and whether more than one portfolio within the same entity is managed on a discretionary basis pursuing the same investment strategy in relation to a particular issuer.

The calculation of a short position and a long position relating to sovereign debt shall include any sovereign credit default swap that relates to the sovereign issuer.

The position remaining after deducting any long position that a natural or legal person holds in relation to the issued share capital of a company from any short position that that natural or legal person holds in relation to that capital shall be considered a net short position in relation to the issued share capital of that company. The position remaining after deducting any long position that a natural or legal person holds in relation to the issued sovereign debt of a sovereign issuer and any long position in debt instruments of a sovereign issuer the pricing of which is highly correlated to the pricing of the given sovereign debt from any short position that that natural or legal person holds in relation to the same sovereign debt shall be considered a net short position in relation to the issued sovereign debt of that sovereign issuer.

While article 2 refers to the "owning" of a financial instrument, article 3 refers to "holding" a financial instrument. The term "holding" is also the wording used in the Transparency Directive, which requires notification of major holdings. Adopting a similar approach to calculating positions under both the Transparency Directive and this Regulation may minimise the administrative burden on shareholders. However, both the scope and the purpose of the notifications under both pieces of legislation are different. Differences therefore appear to be necessary, notably with regards to financial instruments which are held in the trading book, but also with regard to the contracts which are to be included, and the way in which they are accounted for.

Recital 9 clarifies that positions need to be calculated taking into account trading activity, both on and off platforms, as well as positions held through derivatives. Recital 10 adds that the purpose is to ensure complete and accurate information about a natural or legal person's positions. Recital 11 further clarifies that any economic interest needs to be taken into account. Also, recital 13 explicitly notes that CDS are to be taken into account.

Positions need to be notified when they reach or fall below a threshold. The Regulation does not specify whether this calculation needs to be made on a nominal or on a delta adjusted basis. Recital 14 clarifies that changes in positions also need to be notified. When positions are calculated on a delta adjusted basis, this would mean that the thresholds could also be crossed without a person having entered into a new transaction.

Also, baskets would need to be taken into account when calculating short positions in order to avoid market participants shorting parts of an index. This raises the issue of setting a threshold for the weight of an instrument in a basket in order for it to be required to be taken into account.

- ESMA is invited to provide its technical advice on specifying the cases in which a natural or legal person is considered to hold a share or debt instrument, cases in which a natural or legal person has a net short position and the method of calculation of such position, the method of calculating positions when different entities in a group have long or short positions or for fund management activities related to separate funds. The method of calculation should take into account, in particular, whether different investment strategies are pursued in relation to a particular issuer through more than one separate fund managed by the same fund manager, whether the same investment strategy is pursued in relation to a particular issuer through more than one fund, and whether more than one portfolio within the same entity is managed on a discretionary basis pursuing the same investment strategy in relation to a particular issuer.

3.3 Specification of the cases in which a credit default swap transaction is considered to be hedging against a default risk and the method of calculation of an uncovered position in a credit default swap and the method of calculating positions where different entities in a group have long or short positions or for fund management activities related to separate funds (Article 4(2))

A natural or legal person shall be considered to have an uncovered position in a sovereign credit default swap when the credit default swap does not serve to hedge against the risk of default of the issuer where the natural or legal person has a long position in the sovereign debt of that issuer to which the sovereign credit default swap relates, or the risk of a decline of the value of the sovereign debt where the natural or legal person holds assets or is subject to

liabilities, including but not limited to financial contracts, a portfolio of assets or financial obligations the value of which is correlated to the value of the sovereign debt.

In order for an instrument to act as a hedge, there needs to be a correlation between certain assets and sovereign instruments, both national and European. This correlation could either be specified in a qualitative sense, or by specifying a correlation in statistical terms, e.g. in terms of an adjusted R-squared.

Also, a statistical correlation measure would be needed for the purpose of calculating the total uncovered position.

Managers controlling different funds should not be allowed to hide their strategies by disaggregating their positions across different funds. Also, an investment firm should not be allowed to do so by structuring its positions across different legal entities. This reflects the fact that the investment decision is not always made at legal entity level.

- ESMA is invited to provide its technical advice on cases in which a credit default swap transaction is considered to be hedging against a default risk and the method of calculation of an uncovered position in a credit default swap, the method of calculating positions where different entities in a group have long or short positions or for fund management activities related to separate funds.

3.4 Specification of the amounts and incremental levels of notification thresholds referred to in Article 8(2) for net short positions relating to the issued sovereign debt of a sovereign issuer (Article 8(3))

A natural or legal person who has a net short position relating to the issued sovereign debt of a sovereign issuer shall notify the relevant competent authority whenever such position reaches or falls below the relevant notification thresholds for the Member State concerned or the Union. The relevant notification thresholds shall consist of an initial amount and then additional incremental levels in relation to each sovereign issuer, as specified in measures taken by the Commission.

The list of factors to be taken into account should be applicable to all member states. It should contain objectively quantifiable values. Such a list could include measures for liquidity, the total value of issued debt, the average duration of issued debt, the number of market makers active in a certain bond, and other measures. Also, these data should be retrieved from reliable sources.

In addition, the thresholds would need to be updated, notably when the total amount of issued debt changes over time. Increments may not be appropriate for all member states, but harmonisation does improve legal certainty and reduces the administrative burden for market participants.

- ESMA is invited to provide its technical advice on amounts and incremental levels of notification thresholds for net short position relating to the issued sovereign debt of a sovereign issuer.

3.5 Specification of the parameters and methods for calculating the threshold of liquidity referred to in Article 12a(1b) in relation to the issued sovereign debt for suspending restrictions on short sales of sovereign debt (Article 12a(1c))

The regulation places restrictions on entering into a short sale of sovereign debt. Where the liquidity of sovereign debt falls below a threshold to be defined by the Commission, these restrictions may be temporarily suspended by the relevant competent authority.

Recital 16d clarifies that a member state may lift the restrictions at the first initial signals that the sovereign market is not functioning properly. Such signals are likely to emerge ahead of or during the issuance of new debt, but are not necessarily limited to such situations. Notably, the indicative interest rates and prices obtained by market makers, and the coverage ratio of the proposed issue may serve as early indicators. Also, the expected duration of a new issue compared to average duration of issued debt could be one of the measures. In addition, the spread relative to other, more liquid, bonds could be used.

Further, the right level of decline needs to be established. This may be expressed as a percentage of the values mentioned above.

Finally, there is the issue of how to calculate average liquidity. Again, this may be expressed as a weighted average of the values mentioned above.

- ESMA is invited to provide its technical advice on the parameters and methods for calculating the threshold of liquidity for suspending restrictions on short sales of sovereign debt. The parameters and methods for Member States to calculate the threshold shall be set in such a way that when the threshold is reached, it represents a significant decline relative to the average level of liquidity for the sovereign debt concerned. This threshold shall be defined based on objective criteria specific to the relevant sovereign debt market, including the total amount of outstanding issued sovereign debt for each sovereign issuer.

3.6 Specification of what constitutes a significant fall in value for financial instruments other than liquid shares (Article 19(4b))

Where the price of a financial instrument on a trading venue has significantly fallen 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. The fall in value shall be 10 % or more in the case of a liquid share, as, and for illiquid shares and other classes of financial instruments an amount to be specified by the Commission.

In drafting this aspect of the proposal for a Regulation, the Commission had regard to the uptick rule in other jurisdictions. ESMA could consider whether these other jurisdictions distinguishes between liquid and illiquid shares in their uptick rules and if so, how.

ESMA could consider in its technical advice whether for instruments other than liquid shares the significant price fall should be measured by a percentage fall, or by another method such as a departure from the closing trading price of more than a certain number of standard deviations. If ESMA considers that a percentage different than the 10% for liquid shares should be determined, the elements used to arrive at such a percentage should be set out.

If that is the case, the granularity of asset classes needs to be further specified, in addition to the right level for each. Another possibility would be to set the thresholds in a dynamic way, such as by means of a formula conditional on certain quantifiable indicators.

Also, there needs to be an appropriate measure of volatility, which takes sufficient historical data into account. Finally, there may be a need to differentiate between request for quote and central limit order book systems.

- ESMA is invited to provide its technical advice on 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.

3.7 Specification of criteria and factors to be taken into account by competent authorities and ESMA in determining when adverse events or developments referred to in Articles 16, 16a, 17, 18 and 23 arise (Article 25)

Competent authorities 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 whenever the position reaches or falls below a notification threshold fixed by the competent authority, when 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.

Competent authorities 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 when there are adverse events or developments which constitute a serious threat to financial stability or to market confidence in the Member State concerned.

Competent authorities may prohibit or impose conditions relating to natural or legal persons entering into a short sale or 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 when 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.

Competent authorities may limit natural or legal persons from entering into sovereign credit default swap transactions or limit the value of sovereign credit default swap positions that may be entered into by natural or legal persons when 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.

ESMA shall perform a facilitation and coordination role in relation to such measures taken by competent authorities. ESMA shall require natural or legal persons who have net short positions in relation to a specific financial instrument or class of financial instruments to notify a competent authority or to disclose to the public details of any such position, prohibit natural or legal persons from entering, or impose conditions relating to natural or legal persons entering, into a short sale or a transaction which creates, or relates to, a financial instrument, and the effect or one of the effects of the 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, when such measures address a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union and there are cross-border implications.

The Commission considers that the criteria and factors to be taken into account by competent authorities in determining when adverse events or developments arise could be either qualitative in nature, or quantitative, or a combination of both.

It could be useful to take an assessment by the ESRB into account.

Further, it may be useful to come up with a list of indicators to determine market conditions. These may include the total number of shares the prices of which are falling, the impact of market developments on bank balance sheets, the extent to which short or long selling is driving prices, the size of CDS spreads, and other indicators.

Also, it may not be appropriate to disclose certain details to the market.

- ESMA is invited to provide its technical advice on criteria and factors to be taken into account by competent authorities and ESMA in determining when adverse events or developments arise.

4. Indicative timetable

This mandate takes into consideration the date of application of the Regulation, the fact that ESMA needs enough time to prepare its technical advice, and that the Commission needs to adopt the delegated acts according to Article 290 of the TFEU. The powers of the Commission to adopt delegated acts are subject to Articles 36, 39 and 39a of the Regulation.

In particular, the Commission is under the obligation to adopt delegated acts so they enter into application by 1 November 2012, taking into account the right of the European Parliament and the Council to object to a delegated act within 3 months (which can be extended by 3 months). Therefore it is of the utmost importance to start working on these measures as soon as possible.

The deadline set to ESMA to deliver the technical advice is **31 March 2012**. The establishment of the deadlines is based on the following timetable.

Deadline	Action
22 November 2011	Submission by the Commission of the formal mandate to ESMA.
01 January 2012 (estimated)	Entry into force of the Regulation (the day after publication in the Official Journal of the European Union).
31 March 2012	ESMA provides its technical advice.

November 2011 – October 2012	<p><i>Preparation, adoption of the delegated acts and objection period for the European Parliament and the Council:</i> In the preparation of the delegated acts, the Commission will consult with experts appointed by the Member States within the Expert Group of the European Securities Committee.</p> <p>The Commission will provide the European Parliament with full information and documentation on those meetings. If so requested by Parliament, the Commission may also invite Parliament's experts to attend those meetings.</p> <p>After formal adoption by the Commission of the delegated acts and notification to the European Parliament and the Council, there is an objection period for the European Parliament and the Council (three months which can be extended by another three months)</p>
October 2012	Publication in the Official Journal of the European Union.
1 November 2012	Date of application of the Regulation.