



Brussels, 17.10.2014
C(2014) 7484 final

COMMISSION DELEGATED REGULATION (EU) No .../..

of 17.10.2014

**correcting Delegated Regulation (EU) No 918/2012 as regards the notification of
significant net short positions in sovereign debt**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Commission Delegated Regulation (EU) No 918/2012 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 regard 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 was adopted on 5 July 2012.

Article 13(3) of Commission Delegated Regulation (EU) No 918/2012 requires to be corrected by means of a correcting act so as to ensure legal certainty to the market on the method of calculating positions for legal entities within a group that have long or short positions in relation to a particular issuer.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

This Commission Delegated Regulation takes into consideration the technical advice provided by ESMA on 19 April 2012 (ESMA/2012/263). This initiative aims to correct a specific provision of Commission Delegated Regulation (EU) No 918/2012 in order to provide legal clarity following a Request for clarification submitted by ESMA on 23 October 2013 (ESMA/2013/1395).

The measures concerned by the present Commission Delegated Regulation contribute to the achievement of further legal clarity. The proposed correction of Article 13(3) of Commission Delegated Regulation (EU) No 918/2012 will benefit market participants and national supervisors in terms of legal certainty when applying the relevant provision and the provision of Article 3 of Regulation (EU) No 236/2012, which Article 13 of Commission Delegated Regulation (EU) No 918/2012 specifies, according to the empowerment provided in Article 3(7) of Regulation (EU) No 236/2012.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

According to letter (c) of Article 3(7) of Regulation (EU) No 236/2012, the Commission shall be empowered to adopt delegated acts specifying the method of calculating positions for the purposes of paragraphs 3, 4 and 5 of that Article when different entities in a group have long or short positions of for fund management activities relating to separate funds. Paragraphs (3) and (5) of Article 3 of Regulation (EU) No 236/2012 refer not only to the calculation of positions in shares but also to the calculation of positions in relation to the issued sovereign debt of a sovereign issuer. Article 13 of Commission Delegated Regulation (EU) No 918/2012 specifies according to the empowerment provided in Article 3(7)(c) of Regulation (EU) No 236/2012 the method of calculating positions for legal entities within a group that have long or short positions in relation to a particular issuer. Nevertheless, while Article 13 of Commission Delegated Regulation (EU) No 918/2012 provides the method of calculating positions both for issued share capital and issued sovereign debt, Article 13(3) refers explicitly only to the case of reaching or crossing the notification threshold of Article 5 of Regulation (EU) No 236/2012 (i.e. the threshold for the notification to competent authorities of significant net short positions in shares) while it should also explicitly refer to the notification threshold of Article 7 of Regulation (EU) No 236/2012 (i.e. the threshold for the notification to competent authorities of significant net short positions in sovereign debt).

Furthermore, the necessity for the correction is also evident from the fact that the same Article 13(3) of Commission Delegated Regulation (EU) No 918/2012 refers, later in the text, explicitly to notifications and disclosures in accordance with Articles 5 to 11 of Regulation (EU) No 236/2012, including thus Article 7 of the same Regulation which refers to net short positions in sovereign debt.

It is therefore necessary to correct Article 13(3) of Commission Delegated Regulation (EU) No 918/2012 by replacing "Article 5" with "Articles 5 and 7" in order to avoid any negative consequences arising from legal uncertainty.

4. BUDGETARY IMPLICATION

There are no budgetary implications for the EU budget.

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THE EUROPEAN COMMISSION,

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

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 swaps¹, and in particular Article 3(7) thereof,

Whereas:

- (1) Article 13 of Commission Delegated Regulation (EU) No 918/2012² specifies, according to the empowerment provided in Article 3(7)(c) of Regulation (EU) No 236/2012, the method of calculating positions for legal entities within a group that have long or short positions in relation to a particular issuer. Article 13 of Delegated Regulation (EU) No 918/2012 provides the method of calculating positions both for issued share capital and issued sovereign debt. However, Article 13(3) of Delegated Regulation (EU) No 918/2012 currently only refers to the notification threshold of Article 5 of Regulation (EU) No 236/2012, on significant net short positions in shares, while it should also refer to the notification threshold of Article 7 of Regulation (EU) No 236/2012 on significant net short positions in sovereign debt.
- (2) To avoid legal uncertainty, Delegated Regulation (EU) No 918/2012 should therefore be corrected accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

In Article 13(3) of Delegated Regulation (EU) No 918/2012, the first sentence is replaced by the following:

"3. When a net short position reaches or crosses the notification threshold in accordance with Articles 5 and 7 or the disclosure threshold in accordance with Article 6 of Regulation (EU) No 236/2012, a legal entity within the group shall report and disclose in accordance with Articles 5 to 11 of Regulation (EU) No 236/2012 the net short position in a particular issuer calculated according to paragraph 1 provided that no net short position at group level calculated according to paragraph 2 reaches or crosses a notification or disclosure threshold."

¹ OJ L 86, 24.3.2012, p. 1.

² 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 regard 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 (OJ L 274, 9.10.2012, p. 1).

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, 17.10.2014

For the Commission
The President
José Manuel BARROSO