

**AIMA Update Note**  
**on the draft EU Short Selling Regulation**  
**following the Hungarian Presidency and the**  
**European Parliament's plenary vote of 5**  
**July 2011**

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## 1. Background

On 15 September 2010, the European Commission published its 'Proposal for a Regulation on Short Selling and certain aspects of Credit Default Swaps'. The key drivers behind this were the divergent measures adopted by Member States at the height of the financial crisis and the role which some observers felt was played by Credit Default Swaps in respect of the Greek sovereign bond prices early in 2010.

As part of the European ordinary legislative procedure, the European Parliament (EP), through its ECON Committee and the Council of Ministers (the Council) adopted separate amendments to the Commission's proposal and since May 2011, these institutions, along with the Commission, have been engaged in a series of trialogue negotiations in order to find a compromise acceptable to all parties.

## 2. End of trialogues under the Hungarian Presidency

On 28 June 2011, the final trialogue scheduled by the outgoing Hungarian Presidency concluded with a number of significant issues still dividing the parties:

- uncovered sovereign CDS - the Commission proposal itself contained no restrictions on entering into uncovered sovereign CDS positions. However, the EP's amendments would introduce a ban on such behaviour and there is considerable political pressure - now increased following the EP's plenary vote referred to below - from MEPs for this to be retained in the final Regulation. However, the majority of Member States within the Council (with the principal exceptions of Germany and, perhaps, Austria) remain opposed to the idea of any restriction and the Council's position on this issue is supported by the Commission;
- the powers of ESMA - the EP wishes to extend ESMA's powers, allowing ESMA to impose additional restrictions and/or disclosure provisions where (among other conditions) ESMA perceives there to be a threat to the orderly functioning of the EEA's financial markets, as well as giving ESMA powers to conduct on site inspections. The majority of Member States in the Council, on the other hand, oppose this position and would seek to require, at worst, the consent of the Member State's national regulators before any proposed emergency action by ESMA were to become effective within that jurisdiction;
- uncovered short sales (shares and sovereign cash debt) - the EP favours a definition which contains an obligation that the holder of a short position must, at very least, have a third party's prior agreement to reserve the relevant financial instrument, whereas the Council's preferred wording would allow for the position holder to have a 'reasonable expectation' that settlement can be effected when due; and
- public disclosure - the EP text would permit significant short positions (i.e., those above an initial 0.5% threshold or an additional incremental band) to be made public on an anonymised basis. Council, though, is pushing for the individual position holder to be named, a position on which MS have the Commission's support.

## 3. European Parliament plenary vote and implications

On 5 and 6 July 2011, the EP held a plenary session at which ECON's amendments to the Commission's draft proposal were adopted (and an ALDE/ECR sponsored amendment on Article 12(1), which would have resulted in a 'soft locate' provision was rejected).



However, because the EP did not vote on a legislative resolution following the adoption of the amendments, the vote is not regarded as a formal first reading of the ECON Text. This has a number of implications, not the least of which is that a final agreement is likely to be reached faster than under a second reading process. Not sending the text to a second reading is a sign of good will on the part of the EP, which was welcomed by the Council and the Commission.

#### 4. Next steps

A meeting of the Council Working Group is to be held on 6 July 2011 to consider again the Council's position and, although some discussions may be held in the next fortnight with the incoming Polish Presidency, it seems more likely that the trialogues will now not seriously resume until September.

Since the proposed Regulation remains on track to be passed at first, rather than second, reading, if an agreement has been reached between the parties, the EP will vote through the joint agreed text in a future plenary session and Council will subsequently adopt it.

Time would then be needed to develop detailed delegated acts and technical standards (formerly termed 'level 2' measures).

At present, the aim remains for the Regulation to come into effect from 1 July 2012.

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