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Directorate General Internal Market and Services

FINANCIAL SERVICES POLICY AND FINANCIAL MARKETS
Securities markets

PUBLIC CONSULTATION ON

SHORT SELLING

Important comment: this document is a working document of the Internal Markets and Services Directorate General of the European Commission for discussion and consultation purposes. It does not purport to represent or pre-judge the formal proposal of the Commission.

INTRODUCTION

Short selling of financial instruments, that is, where a person sells a security (typically a share) he does not own with the intention of buying back an identical security at a later point in time, is an established and common practice in most financial markets.

Short selling plays an important role in financial markets and is undertaken by a variety of market participants and for a variety of different reasons. It can be viewed as contributing to more efficient price discovery, increasing market liquidity, facilitating hedging and other risk management activities and helping to mitigate price bubbles and acting as an early indicator of problems relating to an issuer.

It appears however that in some situations it can be used in an abusive fashion to drive down the price of financial instruments can contribute to disorderly markets and, especially in extreme market conditions, can amplify price falls and have an adverse effect on financial stability. It can also result in information asymmetries. In the case of uncovered short sales there may be an increased risk of settlement failures and price volatility.

During the financial crisis and more recently in the context of market volatility in Euro denominated sovereign bonds, Member States have reacted differently to short selling issues, with a variety of measures being put in place using differing powers. A fragmented approach can create additional costs and difficulties, lead to regulatory arbitrage and limit the effectiveness of measures imposed.

In April 2009 the Commission asked questions in its review of the Market Abuse Directive about the possibility of a new European short selling regime. The responses gave some support for a new regime. Many respondents argued however that any proposals should not be in the Market Abuse Directive but in separate stand alone legislation. This was on the basis that it was generally considered that most short selling is not market abuse and raises different issues and risks.

In March 2010 the Committee of European Securities Regulators (CESR) published a report recommending a Pan-European model for the disclosure of short positions in EU shares.¹

More recently in the Commission Communication of 2 June 2010 on "Regulating Financial Services for Sustainable Growth" the Commission indicated that it would propose appropriate measures relating to short selling and credit default swaps (CDS).² The Communication also highlighted other initiatives, such as new legislation on market infrastructure, the review of the Markets in Financial Instruments Directive and the review of the Market Abuse Directive, which will also affect the regulatory framework applicable to derivatives and credit default swaps.

¹ The relevant CESR reports can viewed at <http://www.cesr.eu/popup2.php?id=6487> and <http://www.cesr.eu/popup2.php?id=6487>

² Page 7 of the Communication of 2 June 2010 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the European Central Bank.

The Commission believes that working towards a more harmonised regime for short selling issues will increase the resilience and stability of financial markets in the European Union.

The purpose of this public document is to consult market participants, regulators and other stakeholders on possible provisions to be considered as part of the finalisation of the forthcoming proposal for stand alone legislation dealing with potential risks arising from short selling.

The approach would apply to all persons who engage in short selling whether regulated or unregulated and across all market sectors. The requirements will in most cases apply to the person who enters into the short sale or has a net short position rather than an intermediary executing a transaction for that person.

The policy options can be grouped into three types:

- Rules to increase transparency related to short sales.
- Rules to reduce risks of uncovered short selling.
- Emergency powers for Competent Authorities to impose temporary short selling restrictions (subject to coordination by ESMA).

The intention is that the new measures on short selling should:

- harmonise rules across the EU relating to short selling;
- harmonise tools that Member States may use in an emergency situation;
- facilitate co-ordination between Member States and by ESMA in emergency situations.

ESMA could be given a role in developing technical standards in this context.

This consultation is open until 10 July 2010.

Responses should be addressed to markt-consultations@ec.europa.eu.

The Commission services will publish all responses received on the Commission website unless confidentiality is specifically requested.

The responses to this consultation will provide important guidance to the Commission services to prepare a formal Commission proposal, which is scheduled for adoption in September 2010.

A. SCOPE

Introductory comments

This section presents high level options and questions relating to the scope of the proposal.

The Commission services set out options below about the scope of the proposals regarding types of financial instruments covered.

There will also be issues relating to trades carried on outside the European Union. To be effective it is anticipated that some requirements such as notification and disclosure rules relating to net short positions would need to apply irrespective of where the person is located (where the short position relates to an issuer with financial instruments admitted to trading on a trading venue in the European Union). Such rules, if they were to be introduced, would of course be in compliance with the EU's and Member States' international obligations.

Scope of financial instruments covered

Option A

Apply the rules uniformly to every type of financial instrument that is admitted to trading on a trading venue (i.e. a regulated market or an MTF) in the European Union and that can be the subject of short selling.

Option B

Apply requirements in relation to specific financial instruments which are admitted to trading on a trading venue in the European Union. For example, different rules would apply to different instruments such as:

- EU shares and derivatives relating to these shares;
- EU sovereign bonds and derivatives relating to those bonds; and
- credit default swaps relating to EU sovereign issuers.

Questions:

- (1) Which financial instruments give rise to risks of short selling and what is the evidence of those risks?**
- (2) What is your preferred option regarding the scope of instruments to which measures should be applied?**
- (3) In what circumstances should measures apply to transactions carried on outside the European Union?**

B. TRANSPARENCY

Introductory comments

This section presents possible proposals for increased transparency of net short positions relating to issuers of certain financial instruments.

The policy options are based on the two tier transparency model for EU shares recommended by CESR in its report in March 2010. The CESR model provides that at a lower threshold notification of a net short position should be made only to the regulator and at a higher threshold positions should be disclosed to the market. Notification to regulators will enable them to monitor and if necessary investigate short selling that may be abusive. Publication of information to the market will provide useful information to other market users.

The CESR model proposes that calculation of net short positions should include such positions created by trading on and off market and include economic net short positions in shares created by the use of derivatives such as options, futures, contracts for differences and spread bets.

This approach would also require notification or disclosure where a change in a net short position results in an increase or decrease above or below certain thresholds.

There are two possible policy options consulted on below regarding transparency:

Option A is to apply the approach suggested by CESR to all types of financial instruments that are admitted to trading on a trading venue in the EU. Excluded from this option would be instruments which due to their nature cannot be the subject of short selling.

Option B would be to apply the regime only to EU shares and to EU sovereign bonds (but in respect of EU sovereign bonds only require notification to regulators).

For EU sovereign bonds, Option B would introduce a regime for notification to regulators of significant net short positions relating to EU sovereign bond issuers. Disclosure to regulators of significant net short positions relating to EU sovereign bonds could provide important information to assist regulators to monitor whether such positions are creating disorderly markets or systemic risks or are being used for abusive purposes.

This approach would require the information to be disclosed only to regulators rather than to the market as the effect of public disclosure on the operation of sovereign bond markets still needs to be assessed. We ask a number of specific questions about the proposed regime at the end of this section. .

There has been significant debate in recent months about whether the use of credit default swaps has contributed in any way to volatility in European sovereign bond markets.

A credit default swap is a derivative which is sometimes regarded as a form of insurance against the risk of credit default of a corporate or government bond. In return for an annual premium, the buyer of a CDS is protected against the risk of default of the reference entity (stated in the contract) by the seller. If the reference entity defaults, the protection seller compensates the buyer for the cost of default. Apart from significant counterparty risks, there is the risk that a buyer of protection can have an interest in trying to bring about a default or the risk that the use of credit default swap transactions can lead to mispricing, disorderly markets or manipulation of the underlying bond markets and possibly equity markets.

Buying credit default swaps without having a long position in an underlying bond can economically speaking be equivalent to taking a short position on the underlying bond. Therefore the calculation of a net short position in relation to sovereign bonds should take into account credit default swaps relating to obligation of issuers of such bonds.

Option A – A transparency regime applied to all financial instruments admitted to trading on an EU trading venue.

This option would be as for the CESR two tier model for EU shares but the transparency rules for net short positions would be applied to every different type of financial instrument admitted to trading on a trading venue in the European Union that can be subject to short selling.

Under this option the two tier regime proposed for EU shares would need to be adapted for different types of financial instruments.

Option B – A transparency regime limited to EU shares and EU sovereign bonds

This option would be as follows:

Notification to competent authorities of significant net short positions in EU shares

This option could entail the following:

A person who has a net short position in relation to the issued share capital of a company that has shares admitted to trading on a trading venue would notify the relevant competent authority whenever the position reaches, exceeds or falls below a relevant notification threshold referred to below.

A relevant notification threshold could be a percentage that equals 0.2% and each 0.1% after that, of the value of the issued share capital of that company.³

Public disclosure of significant net short positions in EU shares

This option could entail the following:

A person who has a net short position in relation to the issued share capital of a company that has shares admitted to trading on a trading venue would disclose to the public details of the position whenever the position reaches, exceeds or falls below a relevant publication threshold referred to below.

A relevant publication threshold could be a percentage that equals 0.5% and each 0.1% after that, of the value of the issued share capital of that company.⁴

³ These thresholds have been suggested in the abovementioned report by CESR.

⁴ These thresholds have been suggested in the abovementioned report by CESR.

Notification to competent authorities of significant net short positions in EU sovereign bonds

This option could entail the following:

A person who has a net short position in relation to the issued sovereign bonds of a Member State or the European Union would notify the relevant competent authority whenever the position reaches, exceeds or falls below a relevant notification threshold for that Member State or the European Union.

The relevant notification threshold would consist of an initial amount and then additional incremental levels specified in relation to each Member State and the European Union, taking into account the total face value of outstanding sovereign bonds of the Member State or the European Union and the average size of positions held by market participants in relation to sovereign bonds for that Member State or the European Union.

Method of notification and disclosure

This option could entail the following: Any notification or disclosure under this section would set out details of the identity of the person who has the net short position, the size of the net short position, the issuer in relation to which the net short position is held and the date on which the net short position was created, changed or ceased to be held.

The relevant time for calculation of a net short position would be fixed, logically at midnight at the end of the trading day on which the person has the net short position. The notification or disclosure would need to be made not later than 3.30pm on the next trading day.

The notification of information to a relevant competent authority would be made in accordance with a method permitted for transaction reporting under MiFID.⁵

The disclosure of information to the public would be made in a manner ensuring fast access to information on a non-discriminatory basis. The information would be made available to the officially appointed mechanism of the home Member State of the issuer of the shares.⁶

Competent authorities to provide information to ESMA

This option could entail the following: A competent authority would provide summary information to ESMA at least quarterly about net short positions in markets for which it is the relevant competent authority. ESMA would also be able to request, at any time, additional information from a competent authority of a Member State about net short positions in markets for which it is the relevant competent authority.

⁵ See Article 12 of Commission Regulation EC 1287/2006.

⁶ See Article 21(2) of Directive 2004/109/EC.

Questions:

- (4) What is your preferred option in relation to the scope of financial instruments to which the transparency requirements should apply?**
- (5) Under Option A is it proportionate to apply transparency requirements to all types of instruments that can be subject to short selling?**
- (6) Under Option B do you agree with the proposals for notification to regulators and the markets of significant net short positions in EU shares?**
- (7) In relation to Option B do you agree with the proposals for notification to regulators of net short positions in EU sovereign debt (including through the use of CDS)? In addition to notification to regulators should there be public disclosure of significant short positions?**
- (8) Do you agree with the methods of notification and disclosure suggested?**
- (9) If transparency is required for short positions relating to sovereign bonds, should there be an exemption for primary market activities or market making activities?**
- (10) What is the likely costs and impact of the different options on the functioning of financial markets?**

C. UNCOVERED SHORT SALES

Introductory comments

This section presents options related to uncovered short selling of securities. Uncovered" short selling is where the seller has not borrowed the securities when the short sale occurs or ensured they can be borrowed.

It appears that sometimes uncovered short selling (also known as "naked" short selling) can increase the risks of settlement failure and result in increased price volatility.

To reduce these potential risks, conditions could be placed on uncovered short selling and trading venues could be required to ensure that there are adequate measures in place for the buying in of shares in certain situations if a short sale results in a settlement failure.

It should be noted that uncovered short selling in its usually understood sense relates to shares. However, recently, national decisions have also been taken regarding sovereign bonds.

The expression naked in the context of credit default swap transactions is a different concept that raises different issues. A "naked CDS" refers to the situation where the CDS is used by the buyer not to hedge a risk but to take a position (take risk). The buyer of the CDS would gain if the risk materializes or if the price of the CDS subsequently increases due to a perception by the market of an increased risk of default of the issuer.

Conditions for naked short sales

A person would not be allowed to enter into a short sale of any share admitted to trading on a trading venue unless when the person enters into the sale the person has borrowed the share, has entered into an agreement to borrow the share or has evidence of other arrangements which ensure that it will be able to borrow the shares at the time of settlement.

Buy in procedures

A trading venue that has shares admitted to trading would be required to ensure that it has rules in place, or that the central counterparty or settlement system that provides clearing or settlement services for the trading venue has rules in place, which ensure that if a person who enters into a short sale of the shares on the venue is not able to deliver the shares for settlement within a specified period of trading days after the day on which the trade takes place then procedures are triggered to buy in the shares for settlement.

Questions:

- (11) What are the risks of uncovered short selling and what is the evidence of those risks?**
- (12) Is there evidence of risks of uncovered short sales for financial instruments other than shares (e.g. bonds or sovereign bonds), which would justify extending the requirements to these instruments?**
- (13) Do you agree with the proposed rule setting out conditions for uncovered short selling? Do you consider that more stringent conditions could be put in place? If so please indicate which ones? Do you agree that arrangements other than formal agreements to borrow should be permitted if they ensure the shares are available for borrowing at settlement? If so, why?**
- (14) Do you consider that the risks of uncovered short selling are such that they should be subject to an upfront ban/permanent restrictions? If so, why?**
- (15) Do you agree with the proposal requiring buy in procedures for settlement failures due to short sales? If so, what is an appropriate base period that could be specified before buy in procedures are triggered (e.g. T + 4)? (16) Do you consider that there should be permanent limitations or a ban on entering into naked credit default swaps relating to EU sovereign issuers? If so, please explain why, including if possible any evidence relating to the use of naked CDS.**
- (17) Do you consider that in addition to the measures described above there should be marking of orders for shares that are short sales?**
- (18) What is the likely costs and impact of the different options on the functioning of financial markets?**

D. EXEMPTIONS

Introductory comments

This section discusses a number of specific exemptions from possible rules on short selling.

Market making activities

Consistent with CESR recommendations in its report and also the principles in the IOSCO report of June 2009 on the regulation of short selling, the Commission services consider it important to include appropriate exceptions for market making activities. Market making activities play a crucial role in providing liquidity to EU markets and have not been the subject of regulatory concerns. Imposing requirements on such activities could severely inhibit their ability to provide liquidity and have a significant adverse impact on the efficiency of European markets. The Commission services suggest that the exemption should be in the terms recommended by CESR in its report on Technical Details of the Pan European Short Selling Disclosure Regime,⁷ i.e. from transparency requirements (see Section B). However, the exemption for market makers could also be from the conditions for uncovered short-sales (see Section C) and there could be specific conditions for market makers in the buy-in procedures (see Section C).

Questions:

- (19) Do you agree with the proposed exemption for market making activities? Which requirements should it apply to?**
- (20) Do we need any exemption where the principal market for a share is outside the European Union⁸ ? Are any other special rules needed with regard to operators or markets outside the European Union?**
- (21) What would be the effects on the functioning of markets of applying or not applying the above exemptions?**

⁷ See paragraphs 30-33 of the CESR Report in May 2010 on Technical details of the Pan European Short Selling Disclosure Regime (Ref: CESR/10-453). <http://www.cesr.eu/popup2.php?id=6647>

⁸ CESR Report of 2 March 2010 on the Model for a Pan European Disclosure Regime (Ref: CESR/10-088).

E. EMERGENCY POWERS OF COMPETENT AUTHORITIES

Introductory comments

The options in this section would provide for Competent Authorities to be given powers to impose temporary restrictions on short selling and credit default swap transactions in an emergency. The options attempt to harmonise the conditions under which emergency action may be taken, the procedures for taking action and the scope of powers themselves (while still allowing flexibility in emergency situations).

As the need for close consultation and co-ordination between Competent Authorities is essential where an emergency extends beyond one Member State or has other cross border implications, the new European Securities Market Authority could perform a key coordination and facilitation role.

The roles suggested for ESMA under this section would not limit its powers or action it may take under the proposed ESMA Regulation. For example, under Article 10 of that Regulation ESMA may take action in an emergency situation which would take precedence over action taken under this possible proposal.

Also it is important to note that action taken under the present options would be intended to be temporary in nature only to deal with the emergency conditions.

Restrictions on short selling in an emergency

In the case of adverse developments which constitute a serious threat to financial stability or to market confidence in a Member State or the European Union, a competent authority of a Member State would be able to prohibit or impose conditions relating to persons entering into:

- (a) a short sale of a share or bond admitted to trading on a trading venue for which the Member State is the Home Member State; or
- (b) a transaction which creates, or relates to, another financial instrument and the effect or one of the effects of the transaction is to confer a financial advantage on the person in the event of a decrease in the price or value of a share or bond referred to in paragraph (a).

A measure could apply to transactions concerning all shares or bonds on the trading venue or shares or bonds of a specified class.

Restrictions on credit default swap transactions in an emergency

In the case of adverse developments which constitute a serious threat to financial stability or to market confidence in a Member State or the European Union, a competent authority would be able to prohibit or restrict the purposes for which persons may enter into credit default swap transactions relating to the default of an EU Member State or the European Union or restrict the value of such credit swap transactions that may be entered into.

A measure could apply to credit default swap transactions of a specified class.

Notification and coordination by ESMA

ESMA would perform a facilitation and coordination role in relation to action taken by competent authorities under emergency powers. In particular, ESMA would try to ensure that a consistent approach is taken by competent authorities regarding action under this section especially regarding when it is necessary to use emergency powers, the nature of measures imposed and the commencement and duration of any measures.

Before imposing or renewing any measure under this section a competent authority would have to notify ESMA and every other competent authority of the action it proposes.

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

The notification would 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 could be allowed to make the notification within that period if it is not possible to give 24 hours notice.

A competent authority that receives notification would be able to take action of a type described in [Restrictions on short selling in an emergency] or [Restrictions on credit default swap transactions in an emergency] if it considers the action is necessary to assist the other competent authority even though the conditions referred to in [Restrictions on short selling in an emergency] and [Restrictions on credit default swap transactions in an emergency] have not arisen in the Member State of the recipient competent authority. The recipient competent authority would also be required to give the notice referred to above if it proposes to take action.

After receiving notification under [Notification and coordination], ESMA would issue advice to the competent authority about the action that is proposed or taken. The advice could in particular address whether the conditions for taking action appear to be satisfied, whether the measures are appropriate and the proposed duration of the measures.

If a competent authority proposed to take action contrary to the ESMA advice referred to above or action that is inconsistent with measures imposed by other competent authorities it would have to publish a notice fully explaining its reasons for doing so.

ESMA emergency powers not affected

The emergency powers conferred on competent authorities would be without prejudice to the powers of ESMA in an emergency situation under Article 10 of Regulation .../... [ESMA Regulation]. In particular ESMA would be able to adopt individual decisions requiring competent authorities to take action or individual decisions addressed to financial market participants.

Notice of restrictions

A competent authority would be required to publish on its website notice of any decision to take action under [Restrictions on short selling in an emergency] and [Restrictions on credit default swap transactions in an emergency].

The notice would specify:

- (a) details of the measures imposed including the instruments and class of transactions to which they apply and the duration of the measures; and
- (b) the grounds upon which the competent authority believes it is necessary to take the action.

A measure under [Restrictions on short selling in an emergency] and [Restrictions on credit default swap transactions in an emergency] would not be effective until the notice is published and would only apply in relation to a transaction entered into after the publication of the notice.

Period of restrictions

Any measure imposed under [Restrictions on short selling in an emergency] and [Restrictions on credit default swap transactions in an emergency] would be for a period not exceeding three months from the date of publication of the notice.

In exceptional circumstances a measure could be renewed beyond the three month period referred to above for a further single period not exceeding three months. In such a case the relevant competent authority would inform ESMA and every other competent authority and publish a notice setting out in detail the exceptional reasons.

A competent authority would publish on its website notice of any decision to renew a measure imposed under [Restrictions on short selling in an emergency] and [Restrictions on credit default swap transactions in an emergency].

Questions:

- (22) Should the conditions for use of emergency powers be further defined?**
- (23) Are the emergency powers given to Competent Authorities and the procedures for their use appropriate?**
- (24) Should the restrictions be limited in time as suggested above?**
- (25) Are there any further measures that could ensure greater coordination between competent authorities in emergency situations?**
- (26) Should competent authorities be given further powers to impose very short term restrictions on short selling of a specific share if there is a significant price fall in that share (e.g. 10%)?**

F. POWERS OF COMPETENT AUTHORITIES

Introductory comments

Competent authorities could be given the necessary powers, as they exist in other EU legislation in the field of financial services, to enforce provisions in the new legislation.

In addition it is suggested that competent authorities could be given an additional power in individual cases to seek further information from a person about the purpose for which the person has entered into a credit default swap transaction (i.e. for hedging purposes or otherwise).

ESMA could be given a general ability to conduct an inquiry into an issue or practice relating to short selling to assess whether it poses any potential threat to the stability of the financial system or to market confidence. This could be followed by a report on the issue.

Question:

- (27) Should the power to prohibit or impose conditions on short-selling be limited to emergency situations (as set out in the previous section)?**
- (28) Are there any special provisions that are necessary to facilitate enforcement of the future legislation in this area?**
- (29) What co-operation powers should be foreseen for ESMA on an ongoing-basis?**

G. GLOSSARY OF DEFINITIONS

Introductory comments

This section presents draft definitions that are necessary to interpret the previous sections of the text in the consultative document.

"central counterparty" means an entity that interposes itself between the counterparties to the contracts traded within one or more financial markets, becoming the buyer to every seller and the seller to every buyer and which is responsible for the operation of a clearing system.

"competent authority" shall mean the competent authority designated for the purposes of the legislation.

"derivative" means financial instruments as defined by Annex 1 Section C numbers (4) to (10) of Directive 2004/39/EC.

"ESMA" means the European Securities and Markets Authority as established under Regulation .../.... [ESMA Regulation].

"financial instrument" means any of the instruments listed in Section C of Annex 1 to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

"Home Member State" in relation to a trading venue, means the Home Member State for that venue as referred to in Article 4(1)(20) of Directive 2004/39/EC.

"investment firm" means a person referred to in Article 4(1)(1) of Directive 2004/39/EC.

"Member State" in relation to sovereign bonds, means a Member State or any ministry, department, central bank, agency or instrumentality of the Member State that issues sovereign bonds.

"issued share capital" in relation to a company, means the total of ordinary and any preference shares issued by the company but does not include convertible debt securities.

"issued sovereign bonds" in relation to a Member State or the European Union, means the total face value of bonds issued by the Member State or the European Union that are admitted to trading on a trading venue and have not been redeemed.

"local" means a firm referred to in Article 2(1)(l) of Directive 2004/39/EC which deals for the account of other members of a market or make prices for them.

"multilateral trading facility (MTF)" means a system as defined in Article 4(1)(15) of Directive 2004/39/EC.

"principal market" in relation to a share, means the market for that share with the highest liquidity.

"regulated market" means a system as defined in Article 4(1)(14) of Directive 2004/39/EC.

"relevant competent authority" in relation to a share or bond means the competent authority for that financial instrument as defined in Article 2(7) of Commission Regulation 1287/2006.

"short sale" in relation to a security, means any sale of the security which the seller does not own at the time of the sale including such a sale where at the time of the sale the seller has borrowed or agreed to borrow the securities for delivery at settlement.

"trading day" means a trading day as defined in Article 4 of Commission Regulation 1287/2006.

"trading venue" means a regulated market or a MTF in the European Union.

For the purposes of the text, a "net short position" in relation to the issued share capital of a company means the position remaining after deducting any long position that a person holds in relation to the issued share capital of a company from any short position that the person holds in relation to the issued share capital of the company. The calculation of a net short position should take into account any form of economic interest, whether by virtue of a long or short position, which a person has in the issued share capital of the company. In particular, it should take into account such an interest obtained directly or indirectly through the use of derivatives.

For the purposes of the text, a "net short position" in relation to the issued sovereign bonds of a Member State or the European Union means the position remaining after deducting any long position that a person holds in relation to the issued sovereign bonds of the Member State or European Union from any short position that the person holds in relation to the same bonds. The calculation of a net short position should take into account any form of economic interest, whether by virtue of a long or short position, which a person has in relation to the issued bonds of the Member State or the European Union. In particular, it should take into account such an interest obtained directly or indirectly through the use of derivatives. For the purposes of this paragraph the calculation should also include any credit default swap that relates to the default of a Member State or the European Union. The calculation under this paragraph should be for each Member State or for the European Union even if separate entities within the Member State or European Union issue sovereign bonds.

Question:

(30) Do the definitions serve their intended purpose?