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COVER NOTE

From:	Mr Mario DRAGHI, President of the European Central Bank
date of receipt:	25 August 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
Subject:	Opinion of the European Central Bank of 22 May 2014 on a proposal for a Regulation on Money Market Funds

Delegations will find attached the ECB Opinion (CON/2014/36).

Encl.: CON/2014/36

OPINION OF THE EUROPEAN CENTRAL BANK

of 22 May 2014

on a proposal for a regulation on money market funds

(CON/2014/36)

Introduction and legal basis

On 13 November 2013, the European Central Bank (ECB) received a request from the Council for an opinion on a proposal for a regulation of the European Parliament and of the Council on money market funds[1] (hereinafter the 'proposed regulation').

The ECB's competence to deliver an opinion on the proposed regulation is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed regulation contains provisions affecting the European System of Central Banks' contribution to the smooth conduct of policies relating to the stability of the financial system, as referred to in Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

General observations

1. The proposed regulation is part of a recent wider international effort to develop a regulatory framework for shadow banking entities. As emphasised in the Eurosystem's reply to the European Commission's Green Paper on shadow banking (hereinafter the 'Eurosystem reply'), the ECB is very interested in developments concerning shadow banking because of its potential importance for financial stability[2].

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1 COM(2013) 615 final.

2 See the Eurosystem's reply to the Commission's Green Paper on shadow banking, 5 July 2012, available on the ECB's website at www.ecb.europa.eu.

2. Specifically regarding the regulation of money market funds (MMFs), the International Organization of Securities Commissions (IOSCO) issued recommendations in October 2012[3], which were subsequently endorsed by the Financial Stability Board (FSB), while the European Systemic Risk Board (ESRB) adopted policy recommendations addressed to the Commission in December 2012[4]. The Committee of European Securities Regulators (CESR), the predecessor of the European Securities and Markets Authority (ESMA), adopted in 2010 guidelines on a common definition of European money market funds (hereinafter the 'CESR Guidelines')[5], which the ECB has followed, adjusting the definition of MMFs for statistical purposes[6].

Specific observations

1. Complementarity between the proposed regulation and the legal frameworks for undertakings for collective investment in transferable securities (UCITS) and alternative investment funds managers (AIFMs)

The regime for MMFs introduced by the proposed regulation is intended to supplement the existing rules relating to the operation of investment funds[7] as already set out in Directive 2009/65/EC of the European Parliament and of the Council[8] (hereinafter the 'UCITS Directive') and Directive 2011/61/EU of the European Parliament and of the Council[9] (hereinafter, the 'AIFM Directive'). The rules introduced by these two Directives are only binding on market participants after their transposition into national law[10]. Hence the ECB recommends that the proposed regulation clarifies the interaction between national provisions transposing the UCITS and AIFM Directives and the directly applicable provisions of the proposed regulation; and ensures a level playing field between different jurisdictions to the greatest extent possible. In particular, it should be ensured that MMFs are only granted authorisation where they comply with the full set of conditions for authorisation under either the UCITS or the AIFM Directives[11].

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3 See Policy recommendations for money market funds, Final report, FR07/12, 9 October 2012 (hereinafter the 'IOSCO recommendations'), available on the IOSCO's website at www.iosco.org.

4 See Recommendation of the European Systemic Risk Board of 20 December 2012 on money market funds (OJ C 146, 25.5.2013, p. 1) (hereinafter the 'ESRB recommendation').

5 See the CESR's Guidelines on a common definition of European money market funds, 19 May 2010, available on the ESMA's website at www.esma.europa.eu.

6 See Regulation (EU) No 1071/2013 of the European Central Bank of 24 September 2013 concerning the balance sheet of the monetary financial institutions sector (ECB/2013/33) (OJ L 297, 7.11.2013, p. 1).

7 Article 6 of the proposed regulation.

8 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

9 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

10 These rules are further specified in a number of non-binding guidelines adopted by ESMA. See for example ESMA Guidelines on key concepts of the AIFMD of 24 May 2013 (ESMA/2013/600) and CESR Guidelines concerning eligible assets for investment by UCITS of March 2007 (CESR/07-044), both available on the ESMA's website at www.esma.europa.eu.

11 See amendment 2.

2. Financial stability considerations

2.1 The proposed regulation is consistent with international policy standards promoted for MMFs[12]. As stated in the Eurosystem reply, the financial crisis highlighted specific financial stability and systemic risk-related concerns stemming from the MMF sector, which require careful consideration.

2.2 Similar to deposit-taking banks vis-à-vis their depositors, MMFs undertake towards their shareholders to provide immediate liquidity upon request, thereby potentially blurring the distinction with banks. Given that MMFs also engage in maturity transformation[13], a sudden and large redemption by shareholders can end up forcing MMFs to scale back their investment activities in money market instruments. Since MMFs, unlike banks, do not have access to public safety nets, such as central bank financing and deposit insurance, a worst-case scenario would entail a loss of confidence by MMF shareholders seeking first-mover advantage. This could eventually lead to a run on MMFs, with asset holdings required to be sold at a discount. This risk is particularly acute in the case of constant net asset value MMFs (CNAV MMFs) to the extent that, owing to their business model, they could eventually be perceived as failing to redeem their units or shares at par.

2.3 From a financial stability perspective, an investor run on MMFs would impair the functioning of money markets, contribute to spreading and amplification of financial risks throughout the system, and mainly impact those financial intermediaries, such as banks, that significantly rely on MMFs as a source of short-term funding.

2.4 In addition, a number of large European banks are sponsoring MMFs. This circumstance poses financial as well as reputational risks for the sponsoring institutions that may consequently need to support, and eventually bail out, these MMFs. This form of interconnectedness of MMFs with other financial intermediaries also provides the rationale to reform the MMF regulatory framework.

3. Constant Net Asset Value MMFs

3.1 Against this background, there is international consensus on the importance of addressing risks arising from CNAV MMFs[14]. The FSB endorsed the work by IOSCO[15], proposing two alternative options to address the above-mentioned risks: (a) removing the features of MMFs that increase their susceptibility to investor runs by requiring conversion of the CNAV model; or (b) allowing MMFs to use the CNAV model, provided that they comply with requirements functionally equivalent to prudential banking regulation.

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12 The proposed regulation was also welcomed in the Draft Report dated 15 November 2013 on the proposal for a regulation of the European Parliament and of the Council on Money Market Funds (COM(2013)0615 – C7-0263/2013 – 2013/0306(COD)), available on the European Parliament's website at: www.europarl.europa.eu.

13 MMFs play a maturity transformation role by investing the short-term cash they receive from corporates into, for example, commercial paper (typically with a maturities of one month or longer) issued by banks.

14 See recommendation 10 of the IOSCO recommendations and recommendation A of the ESRB recommendation.

15 See Consultative Document Strengthening Oversight and Regulation of Shadow Banking An Integrated Overview of Policy Recommendations, 18 November 2012, available on the FSB's website at www.financialstabilityboard.org.

3.2. In general, while concrete policy measures undertaken may differ depending on the specific features of the markets, it is important to achieve substantial convergence at the international level in order to avoid that differences in regulation across major jurisdictions, notably between the European Union and the United States (where a very large share of the world's MMF industry is established), give rise to potential regulatory arbitrage. In the United States, the responsible authorities are still assessing alternative approaches, ranging from mandatory conversion of CNAV funds to the introduction of liquidity fees and redemption gates[16].

3.3 In this context, the proposed regulation would introduce a net asset value buffer (NAV buffer) for CNAV MMFs to address financial stability risks, thus avoiding a conversion to a variable net asset valuation. The ECB notes that the NAV buffer required by the proposed regulation[17] is intended to improve the resilience of CNAV MMFs and their ability to repay investors requesting withdrawals at short notice. The ECB recalls that the ESRB earlier recommended a mandatory conversion of CNAV MMFs[18] and ruled out the alternative of applying capital requirements because the latter are likely to result in further consolidation of an already significantly concentrated industry, and therefore to a larger risk concentration from a macro-prudential point of view[19]. The ECB notes that the NAV buffer option is motivated by the Commission with the need to avoid that the general floating of all CNAV MMF's causes potential disruption to the financing of the real economy (and in particular to entities that depend on issuing short term debt held by MMFs)[20]. The ECB considers this proposal as a step to address the risks stemming from CNAV MMFs, which is consistent with the FSB-endorsed IOSCO recommendations, and notes that the foreseen review by the Commission of the adequacy of the proposed rules three years after the entry into force of the Regulation[21] provides an opportunity to reconsider the matter and the implementation of the ESRB recommendation.

16 A risk-based NAV buffer requirement has been put forward, as one policy option, by the United States Financial Stability Oversight Council (FSOC) in its proposed recommendations for money market mutual fund reform (See the Proposed Recommendations Regarding Money Market Mutual Fund Reform issued on 13 November 2012, available on the United States Treasury website at www.treasury.gov). Lately the United States Securities and Exchange Commission (SEC) issued a notice of proposed rulemaking that provides different options: (a) mandatory conversion to VNAV MMFs exempting low-risk profile CNAV MMFs (so-called government MMFs and retail MMFs); (b) introduction of liquidity fees and redemption gates, subject to fund's board's approval (See the proposed rule(s) for amending rules that govern money market mutual funds (or 'money market Funds') under the Investment Company Act of 1940, SEC Release No 33-9408 (5 June 2013), Federal Register Vol, 78, No 118, p. 36834 (19 June 2013), available on the SEC's website at www.sec.gov).

17 Article 30 of the proposed regulation.

18 See recommendation A of the ESRB recommendation.

19 See page 30 of the Annex to the ESRB Recommendation.

20 See page 47 of the Impact assessment report accompanying the proposal for a Regulation of the European Parliament and of the Council on money market funds (hereinafter the 'Impact assessment') (COM(2013) 615 final), .4.9.2013.

21 Article 45 of the proposed regulation.

3.4 Nevertheless, there are some aspects of the buffer that may warrant further assessment.

(a) With regard to the calculation of the buffer, the proposed regulation states that the buffer for CNAV MMFs would have to amount to at least 3% of the total value of assets, i.e. it is a non-risk-based buffer. The fact that this rule does not take into account the MMF's risk profile while facilitating its application may have undesired consequences on the investment policies of CNAV MMFs. Market pressure to rapidly build up or replenish the buffer may incentivise low-risk profile CNAV MMFs to step up their profitability objectives.

(b) With regard to the period granted to replenish the NAV buffer to its required minimum level, it should ideally be contingent on the extent of the NAV buffer's depletion as well as on the general market conditions hampering the replenishment. In the light of the short period of time provided in the proposed regulation[22] the ECB would suggest considering more flexible means for maintaining the NAV buffer, including an extension of the replenishment period.

4. External support

4.1 The ECB welcomes the fact that the proposed regulation confines the provision of external support for CNAV MMFs to the NAV buffer[23]. The ECB also welcomes that MMFs other than CNAV may only receive external support for guaranteeing their liquidity in certain exceptional circumstances with the agreement of the competent authority of the MMF concerned and, in the case where the support provider is subject to prudential regulation, the agreement of the prudential authority of the latter.

In this context, it should be ensured that risk management systems of parent companies receive proper and regular information from MMFs' managers of their group, and that any information about a relevant liquidity problem that could trigger the need for support is promptly disclosed to the competent prudential authorities.

The ECB considers that such external support should be strictly exceptional. In order to prevent contagion effects, difficulties with MMFs in the redemption of units or shares should be primarily addressed through other means, such as temporarily suspending redemption requests as provided for in the UCITS Directive[24], or through the so-called redemption gates[25].

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22 Article 33(2) of the proposed regulation.

23 Article 29(2)(g) of the proposed regulation.

24 See Article 84 of Directive 2009/65/EC.

25 For example, constraints on the redemption amounts to a specific proportion on any one redemption day. See recommendation 9 of the IOSCO recommendations.

4.2 In addition, national authorities may have a different appreciation of exceptional circumstances under which MMFs other than CNAV MMFs may be allowed to receive external support[26], specifically when the risk is supranational or wide in scope. For the MMF competent authority considerations with respect to the MMF's stability may prevail over those relating to the stability of the sponsor bank. In order to ensure consistency in the application of this provision across Member States, introducing an element of coordination at Union level may be considered.

5. Risk management of MMFs

The ECB generally welcomes the proposed regulation's objective of introducing sound risk management practices for MMFs, such as: (a) precise portfolio rules that go beyond the minimum requirements of the CESR Guidelines; (b) the requirement to establish 'know your customer' policies; and (c) conducting regular stress tests. While the portfolio rules will limit both potential liquidity risks and potential concentration risks stemming from the asset side of MMFs, the introduction of due diligence policies will improve an MMF's management's ability to identify potential risks, including 'run risks', originating from the liability side of MMFs. In addition, well-designed stress scenarios may be an important tool to assess the impact of specific crisis events, while the outcome of stress tests may provide valuable guidance for the management to safeguard the MMF against such adverse events.

6. The role of MMFs in intermediation

6.1 The ECB notes the exemptions in the eligibility criteria for high credit quality instruments that are issued or guaranteed by a central, regional or local authority or central bank of a Member State, the ECB, the Union, the European Stability Mechanism or the European Investment Bank[27]. These exemptions are also in line with similar ones for government-related entities advocated by the recent FSB proposals on minimum haircut standards to be applied to securities financing transactions[28]. The ECB notes that these exemptions will have to be consistently transposed in the managers' internal credit assessment procedures[29].

26 Article 36 of the proposed regulation.

27 Article 9(3) and Article 13(5)(a) of the proposed regulation.

28 Financial Stability Board, Policy Framework for Addressing Shadow Banking Risks in Securities Lending and Repos, 29 August 2013, available on the FSB's website at www.financialstabiltyboard.org.

29 Article 16 of the proposed regulation.

6.2 While welcoming the proposed regulation from a financial stability perspective, the ECB nevertheless points out the need for careful assessment of the combined impact of the proposed measures on the intermediation role of MMFs in the Union financial system. In particular, it is conceivable that the intermediation capacity of MMFs is potentially reduced, since MMFs will be required to hold a significant part of their assets (30%) in daily and weekly maturing assets[30] while currently no such limitations exist. In addition, the recently introduced Liquidity Coverage Ratio[31], which treats funding from corporates more favourably than funding raised through asset managers, may increase incentives for banks to raise funding from corporates directly. Future rules on net stable funding may also affect the link between banks and MMFs. In this context, the ECB suggests further assessment of the impact of the proposed regulation on the pattern of bank intermediation and the issues that may arise during the transition from one intermediation regime to another. In particular, it should be assessed whether the reallocation of funds from MMFs to the banking system is substantial and whether this would in fact impact short-term money markets[32].

6.3 Further, MMFs play an important role as one of the main investors in the market for short-term securitised assets, such as Asset Backed Commercial Papers (ABCPs). The ABCP market is important for the intermediation of short-term credit to the real economy, e.g. trade credit. The proposed regulation sets forth requirements for eligibility of securitised assets for investment by MMFs, including requirements for the underlying pool of assets regarding type, credit and liquidity risk and maturity limit[33]. While the ECB acknowledges that these requirements will increase the transparency of MMF investment portfolios and improve credit and liquidity risk management, it suggests evaluating the benefits of the contemplated restrictions to investment in ABCPs against their impact on the functioning and depth of the securitisation markets.

6.4 The Commission has already noted that the cost of implementing the reform may lead a number of existing funds to exit from the market[34], which in turn may lead to further concentration in an already concentrated market[35]. If such a situation materialises, the remaining MMFs may become more systemically important, particularly with regard to the monetary policy transmission mechanism, due to MMFs' involvement in short-term funding of banks. These aspects also warrant further assessment.

30 Articles 21 and 22(1) of the proposed regulation.

31 See the Basel Committee on Banking Supervision's 'Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools', dated January 2013 (and amended in January 2014), available on the Bank for International Settlements' website at www.bis.org.

32 MMFs currently hold 38% of short-term debt issued by the banking sector. See the Impact Assessment, p. 4.

33 Article 10 of the proposed regulation.

34 See the Impact assessment, p. 45.

35 See the Impact assessment, p. 44. In particular the Commission notes that in the Union CNAV market there are currently 23 providers of CNAV MMFs, the ten largest funds share 85% of the market and the five largest funds share 65% of the market.

7. Internal rating systems

The proposed regulation requires MMF managers to maintain an internal rating system[36] and prohibits MMFs and their manager from soliciting a credit rating agency to provide a rating for the MMF[37]. The ECB supports the objective to reduce excessive reliance on external ratings[38]. At the same time, the ECB notes that internal rating models may yield similar credit assessments to those of rating agencies, meaning that the number of highly-rated issuers would remain limited. Thus the risk of forced asset sales in the case of economic downturns is not necessarily mitigated. Overall, ethical issues should also be addressed to assure that internal ratings results are not influenced by vested interests.

8. Reporting requirements for MMFs

8.1 With the entry into force of the proposed regulation, only collective investment undertakings authorised in accordance with the regime may be established, marketed or managed in the Union as MMFs[39]. The current definition of MMFs for the purposes of collection of ECB monetary financial institutions statistics is aligned with the CESR Guidelines, which ensures consistent treatment of MMFs for statistical and supervisory purposes. Thus following the entry into force of the proposed regulation[40] and pending further amendments to the ECB's statistical framework, there may potentially be a period during which disparate definitions for supervisory and ECB statistical purposes apply. In this regard, Regulation (EU) No 1071/2013 (ECB/2013/33) contains criteria for identification of MMFs that are mandatory for statistical purposes, regardless of whether they are applied for supervisory purposes at a national level.

8.2 The proposed regulation requires MMF managers to report information to the competent authorities on a quarterly basis. This information would then be made available to ESMA for the purposes of creating a central database of all MMFs established, managed or marketed in the Union. The ECB shall have access to this database for statistical purposes only[41]. While the ECB supports this express reference, broader access to other MMF data may be necessary to ensure the European System of Central Banks' contribution to (i) the smooth conduct of policies relating to the stability of the financial system and (ii) the ECB's analytical and statistical support to the ESRB[42].

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36 Article 16(2) of the proposed regulation.
37 Article 23 of the proposed regulation.
38 See Opinion CON/2012/24. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.
39 Article 3(1) of the proposed regulation.
40 Article 46 of the proposed regulation.
41 Article 38(4) of the proposed regulation.
42 See amendment 8.

9. Other provisions

In addition to the specific observations above, the ECB suggests a number of technical amendments to the proposed regulation. These relate, in particular, to ensuring the appropriate involvement of ESMA in all relevant fields[43] but also to ensuring that definitions are consistent in Union financial services legislation[44], and ensuring legal certainty[45].

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 22 May 2014.

The President of the ECB

Mario DRAGHI

43 See amendments 6 and 7.
44 See amendment 3.
45 See amendments 4, 5 and 9.

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB[1]
Amendment 1 Recital 9	
‘(9) The MMF Guidelines adopted by the Committee of European Securities Regulators (CESR) to create a minimum level playing field for MMFs in the Union were implemented one year after their entry into force only by 12 Member States thus demonstrating the persistence of divergent national rules. Different national approaches fail to address the vulnerabilities of the Union money markets, as evidenced during the financial crisis, and to mitigate the contagion risks thereby endangering the functioning and stability of the internal market. These common rules on MMFs should therefore provide for a high level of protection of investors and should prevent and mitigate any potential contagion risks resulting from possible runs by investors in MMFs.’	‘(9) The MMF Guidelines adopted by the Committee of European Securities Regulators (CESR) to create a minimum level playing field for MMFs in the Union were **unevenly** implemented one year after their entry into force**, i.e. by 1 July 2012,** ~~only~~ by ~~12~~**20** Member States thus demonstrating the persistence of divergent national rules. Different national approaches fail to address the vulnerabilities of the Union money markets, as evidenced during the financial crisis, and to mitigate the contagion risks thereby endangering the functioning and stability of the internal market. These common rules on MMFs should therefore provide for a high level of protection of investors and should prevent and mitigate any potential contagion risks resulting from possible runs by investors in MMFs.’

1 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

<table>
<tr><td colspan="2"><u>Explanation</u>
The aim of this amendment is to better reflect the outcome of the peer review[2] undertaken by ESMA in late 2012 to examine the way in which national competent authorities have applied the CESR's Guidelines on a common definition of European money market funds.</td></tr>
<tr><td colspan="2">Amendment 2
Article 1(1)</td></tr>
<tr><td>'1. […]
This Regulation applies to collective investment undertakings that require authorisation as UCITS under Directive 2009/65/EC or are AIFs under Directive 2011/61/EU, invest in short term assets and have as distinct or cumulative objectives offering returns in line with money market rates or preserving the value of the investment.'</td><td>'1. […]
This Regulation applies to collective investment undertakings that require authorisation as UCITS under Directive 2009/65/EC or are AIFs managed by an AIFM authorised under Directive 2011/61/EU, invest in short term assets and have as distinct or cumulative objectives offering returns in line with money market rates or preserving the value of the investment.'</td></tr>
<tr><td colspan="2"><u>Explanation</u>
Within the definition of Article 4(1)(a) of Directive 2011/61/EU, 'AIFs' are all collective investment undertakings that do not require authorisation pursuant to Article 5 of Directive 2009/65/EC[3]. This definition also encompasses AIFs managed by AIFMs that are exempted entirely from the scope of Directive 2011/61/EU and may be subject to, for example, the rules of Regulation (EU) No 345/2013 of the European Parliament and of the Council[4]. The wording of Article 1(1) should be amended in order to clarify that AIFs managed by managers that are not authorised under Directive 2011/61/EU do not fall within the scope of the proposed regulation.</td></tr>
</table>

2 See ESMA's 'Peer Review, Money Market Funds Guidelines' of 15 April 2013 (ESMA/2013/476), available on the ESMA's website at www.esma.europa.eu.

3 This definition has been further specified in the ESMA Guidelines on key concepts of the AIFMD.

4 Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

Amendment 3 Article 2(22)	
'(22) "short selling" means the uncovered sale of money market instruments.'	'(22) "short selling" means ~~the uncovered sale of money market instruments~~ **any sale by the MMF of an instrument which the MMF 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 MMF has borrowed or agreed to borrow the money market instrument for delivery at settlement**.'
<u>*Explanation*</u> *For consistency reasons, it is preferable to align the definitions in the proposed regulation with definitions already established in Union legislation, in particular Article 2(1)(b) of Regulation (EU) No 236/2012 of the European Parliament and of the Council*[5].	

5 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 (OJ L 86, 24.3.2012, p. 1).

Amendment 4 Article 9	
‘Article 9 *Eligible money market instruments* 1. A money market instrument shall be eligible for investment by a MMF provided that it fulfils all of the following requirements: […] 2. Standard MMFs shall be allowed to invest in a money market instrument that undergoes regular yield adjustments in line with money market conditions every 397 days or on a more frequent basis while not having a residual maturity exceeding 2 years. 3. Paragraph 1(c) shall not apply to money market instruments issued or guaranteed by a central authority or central bank of a Member State, the European Central Bank, the Union, the European stability mechanism or the European Investment Bank.’	‘Article 9 *Eligible money market instruments* 1. A money market instrument shall be eligible for investment by a **short-term** MMF provided that it fulfils all of the following requirements: […] 2. ~~Standard MMFs shall be allowed to invest in a money market instrument that undergoes regular yield adjustments in line with money market conditions every 397 days or on a more frequent basis while not having a residual maturity exceeding 2 years.~~ **A money market instrument shall be eligible for investment by a standard MMF provided that it fulfils all of the following requirements:** **(a) it falls within one of the categories of money market instruments referred to in Article 50(1)(a), (b), (c) or (h) of Directive 2009/65/EC.** **(b) it undergoes regular yield adjustments in line with money market conditions every 397 days or on a more frequent basis while not having a residual maturity exceeding two years.** **(c) the issuer of the money market instrument has been awarded one of the two highest internal rating grades according to the rules laid down in Articles 16 to 19 of this Regulation.** **(d) where it takes exposure to a securitisation, it shall be subject to the additional**

	requirements laid down in Article 10. 3. Paragraph**s** 1(c) **and 2(c)** shall not apply to money market instruments issued or guaranteed by a central authority or central bank of a Member State, the European Central Bank, the Union, the European ~~s~~**S**tability ~~m~~**M**echanism**/European Financial Stability Facility** or the European Investment Bank.’

<u>*Explanation*</u>

The purpose of Article 9 is presumably to further specify the differences between ‘standard MMFs’ and ‘short-term MMFs’ which are defined in Article 2(13) and (14) by means of cross references to Article 9(1) and (2). Thus, Article 9(1) should refer to ‘short-term MMFs’, which must invest in money market instruments with a residual maturity of up to 397 days, whereas ‘standard MMFs’ must invest in money market instruments with a residual maturity of up to two years. In order to ensure that ‘standard MMFs’ also comply with conditions 1(a), 1(c) and 1(d), paragraph 2 must be expanded.

In addition, the ECB understands that the exemption set out in paragraph 3 is also applicable to money market instruments issued or guaranteed by the European Financial Stability Facility (EFSF). In general, all references to the European Stability Mechanism in the proposed regulation are deemed to implicitly apply to the EFSF as well.

<table>
<tr><td colspan="2">Amendment 5
Article 13(3)</td></tr>
<tr><td>‘3. Securitisations as defined in Article 10 shall not be received by the MMF as part of a reverse repurchase agreement. The assets received by the MMF as part of a reverse repurchase agreement shall not be sold, reinvested, pledged or otherwise transferred.’</td><td>‘3. Securitisations ~~as defined in Article 10~~ shall not be received by the MMF as part of a reverse repurchase agreement. The assets received by the MMF as part of a reverse repurchase agreement shall not be sold, reinvested, pledged or otherwise transferred.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB understands that the intended effect of this provision is to generally exclude securitisations from the list of assets that may be received by MMFs in a reverse repurchase agreement. The corresponding text should be adjusted in order to avoid ambiguity.</td></tr>
<tr><td colspan="2">Amendment 6
Article 29(2)</td></tr>
<tr><td>‘2. A CNAV MMF shall satisfy all the following additional requirements:
[…]
(b) the competent authority of the CNAV MMF is satisfied with a detailed plan by the CNAV MMF specifying the modalities of the use of the buffer in accordance with Article 31.’</td><td>‘2. A CNAV MMF shall satisfy all the following additional requirements:
[…]
(b) the competent authority of the CNAV MMF, after having consulted with ESMA, is satisfied with a detailed plan by the CNAV MMF specifying the modalities of the use of the buffer in accordance with Article 31.’</td></tr>
<tr><td colspan="2">Explanation
As it stands, this provision gives national competent authorities significant discretion, which may have the unintended consequence of incentivising supervisory leniency. In order to ensure a level playing-field across the Union, ESMA should be involved in the process.</td></tr>
</table>

<table>
<tr><td colspan="2" align="center">Amendment 7
Article 38(3)</td></tr>
<tr><td>‘3. ESMA shall develop draft implementing technical standards to establish a reporting template that shall contain all the information listed in paragraph 2. Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’</td><td>‘3. ESMA shall develop draft implementing technical standards to specify the uniform formats, frequencies, dates of reporting, definitions and the IT solutions to be applied in the Union for the reporting of <s>establish a reporting template that shall contain all</s> the information listed in paragraph 2. ESMA shall submit these implementing technical standards to the Commission by 1 January 2015. Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’</td></tr>
<tr><td colspan="2"> <u>Explanation</u> The proposed amendments are intended to formally align and clarify the scope of the mandate of ESMA on the basis of similar mandates of EBA in Regulation (EU) No 575/2013 of the European Parliament and of the Council[6]. Article 38(3) should provide a tentative deadline by which ESMA should deliver the draft technical standards to the Commission. This date should ideally be aligned with the entry into force of the proposed regulation, in order to ensure that ESMA can promptly create a central database of standardised and comparable information for all MMFs in the Union.</td></tr>
</table>

6 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

<table>
<tr><td colspan="2" align="center">Amendment 8
Article 38(4)</td></tr>
<tr><td>‘4. Competent authorities shall transmit to ESMA all information received pursuant to this Article, and any other notification or information exchanged with the MMF or its manager by virtue of this Regulation. Such information shall be transmitted to ESMA no later than 30 days after the end of the reporting quarter.
ESMA shall collect the information to create a central database of all MMFs established, managed or marketed in the Union. The European Central Bank shall have right to access this database for statistical purposes only.’</td><td>‘4. Competent authorities shall transmit to ESMA all information received pursuant to this Article, and any other notification or information exchanged with the MMF or its manager by virtue of this Regulation. Such information shall be transmitted to ESMA no later than 30 days after the end of the reporting <s>quarter</s> period.
ESMA shall collect the information to create a central database of all MMFs established, managed or marketed in the Union. The European Central Bank and the European Systemic Risk Board shall have the right to access this database <s>for statistical purposes only</s>.’</td></tr>
<tr><td colspan="2"> <u>Explanation</u> The ECB, together with the other central banks of the Eurosystem and the European System of Central Banks as well as the ESRB, systematically monitors and assesses cyclical and structural developments in the financial sectors of the euro area and the Union as a whole. Broader access to the database would therefore improve the ECB’s analytical work to identify any vulnerabilities originating from the money market funds sector.</td></tr>
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<table>
<tr><td colspan="2">Amendment 9
Article 46</td></tr>
<tr><td>‘Article 46
Entry into force
This Regulation shall enter into force on the twentieth day following 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.’</td><td>‘Article 46
Entry into force and application date
1. This Regulation shall enter into force on the twentieth day following its publication in the Official Journal of the European Union.
2. This regulation shall apply from 1 January 2015.
This Regulation shall be binding in its entirety and directly applicable in all Member States.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The application date of the Regulation is missing. For ease of implementation, it should be aligned with the calendar year.</td></tr>
</table>