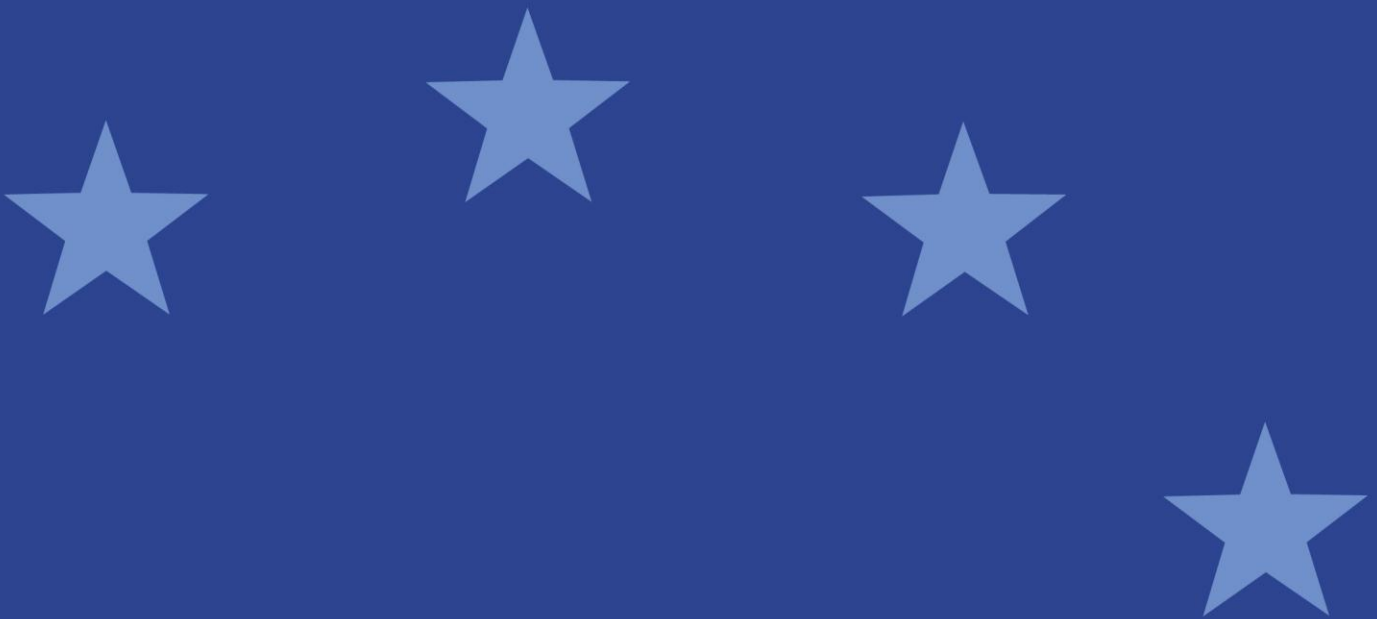




European Securities and  
Markets Authority

# Peer Review - Money Market Fund Guidelines



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## I. Introduction

1. The Committee of European Securities Regulators (CESR) Guidelines on a common definition of European money market funds (CESR/10-049) (Guidelines on Money Market Funds or Guidelines) set out a common definition of European Money Market Funds, with the objective to improve investor protection in this area. In particular, the Guidelines distinguish between two categories of money market fund: a) Short-Term Money Market Funds (STMMF), and b) Money Market Funds (MMF). For both categories, CESR established a list of criteria with which funds must comply if they want to use the label “Money Market Fund”. In February 2012, ESMA published Questions and Answers aimed at promoting common supervisory approaches and practices in the application of the Guidelines by providing responses to questions posed by the general public and competent authorities (ESMA/2012/113).
2. The Guidelines apply to collective investment undertakings under the UCITS Directive (2009/65/EC) as well as to non-harmonised collective investment undertakings regulated under the national law of a Member State and which are subject to supervision and comply with risk-spreading rules.
3. The European Central Bank has referred to the CESR Guidelines in its Regulation No. 883/2011 (ECB/2011/12), adopted on August 25, 2011 and amending Regulation (EC) No 25/2009 concerning the balance sheet of the monetary financial institutions sector (ECB/2008/32). In particular, the above-mentioned Regulation has introduced new identification criteria in relation to MMFs for European System of Central Banks statistical purposes aligned with those provided by the CESR Guidelines expected to apply for supervisory purposes.
4. In December 2011, the ESMA Board of Supervisors mandated the Review Panel to carry out a peer review on the application of the Guidelines. The proposal for this work stream followed the input received from ESMA’s Securities and Markets Stakeholder Group and is in line with ESMA’s objective to promote convergence of supervisory outcomes.
5. In line with the Review panel methodology (ESMA/2012/33), the peer review was conducted in two phases: the first phase was a self-assessment in which Members answered a number of questions on the implementation and application of the Guidelines. The questions were developed against a set of benchmarks. The questionnaire is enclosed hereto under Annex 1. The second stage was the peer review assessment which involved each Member’s self-assessment being reviewed by peers.
6. The questionnaire also included questions on the use of constant net asset value (CNAV) which is currently dealt with by the European Commission in relation to the shadow banking debate. There is a concern that the use of CNAV by Money Market Funds may have systemic implications of potential investor runs on Money Market Funds. One purpose of the peer review was to review the use of CNAV which is allowed only for Short-Term Money Market Funds on the condition that the fund is subject to the requirements on credit quality, sensitivity to market parameters, diversification and maturity of holdings and the regular marked-to-marketing of portfolio set forth in the Guidelines, as implemented by the ESMA Members.
7. In line with the mandate received, the questionnaire included certain sub-questions which were not specifically benchmarked. The purpose of these sub-questions was to analyse in detail how the application of the Guidelines is supervised and enforced on a day to day basis, with a view to

assessing the degree of convergence of practices across the EU and possibly identifying good practices which might be of benefit for competent authorities (see art. 30 of ESMA Regulation and paragraph 51 of the peer review methodology).

8. A self-assessment questionnaire was circulated on 8 August 2012. Responses to the questionnaire were sent by 21 September 2012. Members were required to provide supporting evidence for the responses to the self-assessment questionnaire in order to demonstrate what action was undertaken to implement and apply the Guidelines. The type of evidence which could be provided included all information described in paragraph 61<sup>1</sup> of the peer review methodology (and was not limited to the indicative list in the appendix to the methodology).

9. On 10 October 2012 ESMA staff asked Review Panel members to provide additional information and members were asked to provide evidence supporting their responses.

10. As a first step, a report was drafted summarising the outcome of the responses provided by competent authorities to the Key Questions which were subject to a benchmark. The responses to the Questions which were not specifically benchmarked were reported in table form.

11. As a second step, the information gathered in the course of the self-assessment was reviewed by peers on the basis of the written evidence provided by the competent authorities.

12. For those national competent authorities (NCAs) which had implemented the Guidelines as of August 2012, this peer review report sets out the result of the assessment by peers on the level of compliance with the Guidelines, describes the degree of convergence in supervisory and enforcement practices across the EU in ensuring application of the Guidelines and identifies possible good practices.

13. The peer review thus identifies a number of possible good practices in relation to issues such as internal organization and supervisory tools, ex-ante supervisory requirements on MMFs, off-site and on-site inspection cycles. These good practices can be further analysed by the relevant ESMA Standing Committees, in order to assess the merits of their being adopted more widely across the EU.

14. All NCAs represented within ESMA contributed to this peer review. The country codes and acronyms of competent authorities are listed in the following table.

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<sup>1</sup> “The RP shall agree on what types of evidence should be provided (...) such as relevant data, copies of laws, regulations and supervisory guidance, internal procedure and other written material that might be relevant”

**Table: Country codes and acronyms of Competent Authorities/Member States**

<b>Country codes Member States EC/EEA</b>		<b>Competent Authorities Acronyms</b>	
<b>AT</b>	Austria	Finanzmarktaufsicht	FMA
<b>BE</b>	Belgium	Financial Services and Markets Authority	FSMA
<b>BG</b>	Bulgaria	Financial Supervision Commission	FSC
<b>CY</b>	Cyprus	Cyprus Securities and Exchange Commission	CySEC
<b>CZ</b>	Czech Republic	Czech National Bank	CNB
<b>DE</b>	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht	BaFin
<b>DK</b>	Denmark	Finanstilsynet	Finanstilsynet
<b>EE</b>	Estonia	Estonian Financial Supervision Authority	EFSA
<b>EL</b>	Greece	Capital Market Commission	HCMC
<b>ES</b>	Spain	Comision Nacional del Mercado de Valores	CNMV
<b>FI</b>	Finland	Finanssivalvonta	FIN-FSA
<b>FR</b>	France	Autorité des Marchés Financiers	AMF
<b>HU</b>	Hungary	Hungarian Financial Supervisory Authority	HFSA
<b>IE</b>	Ireland	Central Bank of Ireland	CBoI
<b>IS</b>	Iceland	Financial Supervisory Authority	FME
<b>IT</b>	Italy	Commissione Nazionale per le Società e la Borsa	Consob
<b>LI</b>	Liechtenst ein	Finanzmarktaufsicht	FMA
<b>LT</b>	Lithuania	Lietuvos Bankas	LB
<b>LU</b>	Luxembou rg	Commission de Surveillance du Secteur Financier	CSSF
<b>LV</b>	Latvia	Financial and Capital Markets Commission	FCMC
<b>MT</b>	Malta	Malta Financial Services Authority	MFSA
<b>NL</b>	Netherlan ds	Autoriteit Financiële Markten	AFM
<b>NO</b>	Norway	Finanstilsynet	Finanstilsynet
<b>PL</b>	Poland	Polish Financial Supervision Authority	KNF
<b>PT</b>	Portugal	Comissão do Mercado de Valores Mobiliários	CMVM
<b>RO</b>	Romania	Romanian National Securities Commission	CNVMR
<b>SE</b>	Sweden	Finansinspektionen	Finansinspek- tionen
<b>SI</b>	Slovenia	Securities Market Agency	SMA
<b>SK</b>	Slovakia	National Bank of Slovakia	NBS
<b>UK</b>	United Kingdom	Financial Services Authority	FSA

## II. Executive Summary

### A. Peer Review

15. This report reflects the peer review on the application of the CESR Guidelines on Money Market Funds, describes the degree of convergence in supervisory and enforcement practices across the EU in ensuring application of the Guidelines and identifies good practices. The proposal for this work stream followed the input received from ESMA's Securities and Markets Stakeholder Group and is in line with ESMA's objective to promote convergence of supervisory outcomes.

16. Following the financial crisis, at national and international level there has been an increasing focus on the regulation and oversight of money market funds, due to the potential risks they may pose in terms of investor protection and financial stability. In particular, recent international work on shadow banking, coordinated by the Financial Stability Board (FSB), has identified that the area of money market funds deserves closer scrutiny. The issue is under review also by other international bodies, including IOSCO, and by the ESRB, the European Commission (see the Commission's Green Paper on Shadow Banking published on 19 March 2012 and the Consultation Document of 26 July 2012) and the EU Parliament (see ECON Report on Shadow Banking of 25 October, 2012). This confirms the importance of the Guidelines; in this context it is a priority for ESMA to promote common supervisory practices regarding their application.

17. The analysis under this peer review has been conducted on the basis of the written evidence provided by the responding Competent Authorities demonstrating the actions undertaken to implement and apply the Guidelines during the review period. The written evidence included a wide range of documents (e.g. excerpts from national implementing measures, guidelines and circulars by the regulators, internal procedures etc.) and had to be translated into English.

18. Whenever the Guidelines, compliance with which is not as such mandatory, have been implemented through non-mandatory measures, such as recommendations, guidelines, circulars or instructions, Competent Authorities have been asked to provide evidence in English showing their ability to achieve compliance with the Guidelines in their jurisdiction and an indication of the action they are able to undertake if the implementing measures are breached (for example, and without limitation, copy or web link to supervisory circulars, implementation instructions, excerpt of internal supervisory policies concerning the ability to comply, and letters to the funds).

19. From the written evidence received, it appears that in 14 Member States (AT, CZ, DE, DK, EL, ES, FR, IE, IT, LV, RO, SI, SK, UK<sup>2</sup>) the Guidelines have been implemented into national legal systems by means of mandatory provisions (e.g. a regulation) implementing primary legislation.

20. In six Member States (BE, FI, LU, MT, NL, SI) the Guidelines have been implemented into national legal systems by means of measures which do not have the force of law, but which nonetheless Competent Authorities are able to follow in all instances. In this case, compliance with the Guidelines has been ensured in most instances by a statement or a reference (hook) to the national regulatory system whereby the Competent Authority acknowledges that a failure to fulfil the Guidelines will be interpreted as a breach of a specific mandatory legal provision.

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<sup>2</sup> The FSA implemented the guidelines as rules; while these are not "primary legislation" in UK domestic terms, they are subordinate legislation and therefore mandatory requirements which have the force of law.

21. In one Member State (LT) all the provisions of the Guidelines have been implemented into the national legal system by means of measures which do not ensure ability to comply with the Guidelines in all instances. In this case, the Competent Authority is able to apply only those parts of the Guidelines which reflect or are aligned with its existing mandatory regulatory system (e.g. national legal provisions transposing the UCITS Directive). The Guidelines have therefore been assessed as “not applied” in LT in some respects.

22. From the responses to the self-assessment questionnaire it emerged that in 10 jurisdictions (BG, CY, EE, HU, IS, LI, NO, PL, PT, SE) the Guidelines had not been implemented into national legal systems within the review period (by the end of July 2012). As a consequence, the Review Panel did not include these jurisdictions in this peer review assessment under Section 3 (responses provided by these countries, as the case may be, have been taken into account in the development of Sections 4 and 5). These jurisdictions are evidenced in the summary table below. However, it is important to note that, among the above authorities, some (BG, CY, HU, PT) have issued implementing measures of the Guidelines which entered into force after the review period or will enter into force in the near future (for additional information see par. III.5.1 below). In other countries, such as NO, SE, PL<sup>3</sup>, the non-implementation is due to a lack of legal power; however the authorities and/or local industry associations have been informed about the existence of the guidelines. It should also be noted that in some of the non-implementing countries (CY, EE) the number of funds which could be assimilated to STMMF/MMF is very low (see Table 2). Explanations from Competent Authorities of these non-implementing countries are enclosed under Annex III.

23. The Guidelines are organised in the following four boxes:

- Box 1: General guidelines;
- Box 2: Guidelines on Short-Term Money Market Funds;
- Box 3: Guidelines on Money Market funds;
- Box 4: Entry into force and transitional provisions.

24. A summary table with tick boxes showing the application of the Guidelines across all Members according to the peer review is provided below.

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<sup>3</sup>The implementation of the guidelines should be made together with the transposition of the UCITSIV directive due in the first quarter of 2013.

**Table 1. Summary table – application of the guidelines**

	<b>Box 1</b>	<b>Box 2</b>	<b>Box 3</b>	<b>Box 4</b>
<b>AT</b>	√	√	√	□
<b>BE</b>	√	√	√	√
<b>BG</b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>no</b>
<b>CY</b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>no</b>
<b>CZ</b>	√	√	√	√
<b>DE</b>	√	√	√	√
<b>DK</b>	√	√	√	√
<b>EE</b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>no</b>
<b>EL</b>	√	√	● <sup>4</sup>	√
<b>ES</b>	√	√	√	□
<b>FI</b>	√	√	√	√
<b>FR</b>	√	√	√	√
<b>HU</b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>no</b>
<b>IE</b>	√	√	√	√
<b>IS</b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>no</b>
<b>IT</b>	√	√	√	√
<b>LI</b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>no</b>
<b>LT</b>	●	●	●	●
<b>LU</b>	√	√	√	√
<b>LV</b>	√	√	●	●
<b>MT<sup>5</sup></b>	●	●	●	√
<b>NL</b>	√	√	√	√
<b>NO</b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>no</b>
<b>PL</b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>no</b>
<b>PT</b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>no</b>
<b>RO</b>	√	√	√	□
<b>SE</b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>no</b>
<b>SI</b>	√	√	√	●
<b>SK</b>	√	√	√	√
<b>UK</b>	√	√	√	√

25. B1, B2, B3 and B4: Outcome from the application of the benchmarks respectively to Box 1, Box 2, Box 3 and Box 4.

<sup>4</sup> EL allows the Money Market Funds authorised in its jurisdiction to hold sovereign debt instruments of at least an investment grade quality, with a specific exception for Greek Government Bonds irrespective of their credit quality (as this is assessed by CRAs) and residual maturity. The HCMC has introduced a specific exception (par. 6(b)(aa) of art. 3 of Rule 6/587/2011 concerning investments of MMFs in Greek Government bonds (including Greek Treasury bills). Regarding residual maturity all Greek MMFs have to comply with the relevant ESMA/CESR Guidelines on WAL/WAM for MMFs.

<sup>5</sup> The MFSA reported that in MT new rules were introduced on MMFs in March 2013 with a view to including the omitted items from Box 1-3 under a separate provision. Since these new rules were published after the review period, they are not subject to this assessment.



√: fully applied ●: non applied □: partially applied **no**: Guidelines not complied with as of 1 August 2012 – jurisdiction not included in Section 3 of the peer review, see however para. 22 above and Sections 4 and 5 as well as Annexes II and III.

26. In summary, the peer review shows that:

a. In ten Member States (BG, CY, EE, HU, IS, LI, NO, PL, PT, SE) the Guidelines had not been implemented into national legal systems within the review period (by the end of July 2012). Therefore, as mentioned, these Member States are not subject to the analysis under section III (Findings of the Peer Review) of this report.

b. Guidelines under Box 1: in 18 Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, NL, RO, SI, SK, UK) they are fully applied; in two Member States (LT, MT<sup>6</sup>) they are not applied;

c. Guidelines under Box 2: in 18 Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, NL, RO, SI, SK, UK) they are fully applied; in two Member States (LT, MT) they are not applied;

d. Guidelines under Box 3: in 16 Member States (AT, BE, CZ, DE, DK, ES, FI, FR, IE, IT, LU, NL, RO, SI, SK, UK) they are fully applied; in four Member States (EL, LT, LV, MT) they are not applied;

e. Guidelines under Box 4: in 14 Member States (BE, CZ, DE, DK, EL, FI, FR, IE, IT, LU, MT, NL, SK, UK) they are fully applied, in three Member States (AT, ES, RO) they are partially applied; in three Member States (LT, LV, SI) they are not applied.

27. It should be noted that in EL and SI, MMFs can only be set up as UCITS funds; therefore the Guidelines relating to non-UCITS funds are not applicable to them. In ES a recent regulation (12 July 2012) requires that STMMFs/MMFs can only be set up as UCITS. The former non-UCITS STMMFs/MMFs will need to adapt their portfolio by 1 July 1 2013.

28. Even in those jurisdictions where the compliance with the Guidelines has not been achieved, a number of funds label themselves as STMMFs or MMFs, as is evidenced in Table 2.

## **B. SUPERVISORY PRACTICES**

### **Main Findings**

29. Based on the responses to the non-benchmarked questions, the general supervisory approach on the monitoring of the Guidelines varies across Member States to a significant extent. This part of the report also takes into account the responses provided by those countries that have not yet implemented the Guidelines, but nonetheless have practical experience in the supervision of MMF (even if they do not match the ESMA definition).

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<sup>6</sup> Malta will be including the omitted items from Box 1-3 under a separate provision.

30. In the large majority of Member States where the Guidelines have been implemented, the Guidelines apply to both UCITS and non-UCITS Money Market Funds and the relevant Competent Authorities adopted internal procedures irrespective of the distinction between UCITS and non-UCITS, as well as between Short-Term Money Market Funds and Money Market Funds. The assessment of the compliance with the Guidelines is usually included in the ordinary supervisory tasks during the authorisation process and/or the on-going supervision of UCITS and non-UCITS funds and their asset management companies.

31. In relation to the licensing process, all Member States that have implemented the Guidelines review the UCITS and non-UCITS MMFs' documentation in order to check compliance with the Guidelines and ask for amendments where a case of failure to comply with the Guidelines is detected. However, the relevant process varies from Member State to Member State to a significant extent. For instance, while some Competent Authorities pre-approve some or all fund documentations, others mostly rely on ex-post monitoring.

32. With reference to the on-going supervision, several Member States (DE, DK, ES, FR, IE, IT, LT, MT, SE, SK, UK) did not develop a specific supervisory approach for Money Market Funds. Therefore, they apply the regular approach (mainly risk-based) used for the monitoring of investment funds. In LU the risk-based supervisory approach is complemented by dedicated reporting developed for the main MMFs. A compliance-based approach is used by those Member States (AT, BE, CZ, EL, NL, SI) who have a limited number of authorised Money Market Funds.

33. Among those competent authorities endorsing mainly a risk-based supervision there are a variety of different approaches applying in practice. In particular, the type and frequency of periodic reporting by supervised entities (e.g. some rely on annual/semi-annual reports whilst others require more frequent reporting), the parameters triggering alerts to identify the risks and prioritise actions, the level of reliance on external auditors and depositories in carrying out the monitoring are areas where differences are detected.

34. Regardless of the supervisory approach, Competent Authorities usually avail themselves of quantitative and qualitative information from several different sources, including periodic reporting by supervised entities, investor complaints, information from other authorities and other non-routine sources (e.g. press, media, web).

35. In relation to quantitative information, the annual and half-yearly financial statements of the funds are sometimes the basic source of information. For some Authorities information is provided on an annual or semi-annual basis, whilst other Authorities receive additional and more frequent reports (in most of the cases monthly) which are employed to analyse the structure and the composition of the Money Market Fund's portfolio, the flows of fund units' subscriptions/redemptions and the performance of the funds.

36. Moreover, information by funds' depositories and external auditors is also an important additional source of information.

### **C. IDENTIFICATION OF POSSIBLE GOOD PRACTICES**

37. The need to converge in relation to supervisory and enforcement practices on

STMMFs/MMFs is an issue of great relevance in the current debate on the reform of the MMF sector worldwide. ESMA believes that the practices analysed in this Report could be the starting point for the identification of a common supervisory approach. The good practices identified can be further analysed by the relevant ESMA Standing Committees, in order to assess the merits of their being adopted more widely across the EU.

38. It is understood that supervisory practices should duly take into account the structure of the supervised industry. Particular care should be taken in those markets where the supervised STMMFs/MMFs can have a systemic impact and could also lead to contagion effect with serious implications for markets other than the domestic market. Where competent authorities determine that STMMFs/MMFs represent a material risk, the practices identified in this section could assist in supervising the sector, thus using the same approach endorsed also by other competent authorities.

### **Internal organisation and supervisory tools**

39. Competent Authorities (CAs) should establish organisational structures, procedures and resources for the supervision of STMMFs and MMFs, both UCITS and non-UCITS, proportionate to the number of funds and size of their local STMMF/MMF market in order to detect possible breaches of the Guidelines. IT systems should be considered helpful in order to generate alerts and identify possible breaches. Another important supervisory tool is the performance of stress tests.

### **Ex-ante review of STMMFs/MMFs documentation (prospectus and marketing material)**

40. When reviewing the documentation of a fund labelling itself as a STMMF or MMF, a purely box-ticking approach should be avoided and the vetting process should be complemented by a substantive assessment of the documentation collected from the STMMF/MMF.

CAs should have the power to ask for amendments of the documentation before licensing the STMMF or MMF in case of non-compliance with the Guidelines.

### **Ex-post review of STMMFs/MMFs documentation (prospectus and marketing material)**

41. In case ex-ante review of fund documentation is not carried out, CAs should be able to justify how supervision is performed and should have the power to require changes to the fund documentation in case of ex-post revision.

### **On-going supervision of MMFs**

42. Regardless of the endorsed supervisory approach (compliance-based or risk-based), CAs should be able to demonstrate that they possess adequate supervisory organisation for the review of the reporting they receive from the funds.

CAs should receive, in addition to the annual and semi-annual report, periodic information, that allows monitoring of the compliance of the funds' portfolio with the Guidelines.

Where CAs adopt a risk-based supervisory approach, the CAs should be able to demonstrate how the material risks and relevant mitigating factors are identified and analysed. Upon the occurrence of a

triggering event CAs should be able to assess and prioritise actions to address these risks. The risk analysis could include assessments of the composition of the fund's portfolio and the compliance with the Guidelines as well as the rules on risk management, risk measurement, risk spreading, of the quality of the risk management process and the capacity to carry out proactive stress-tests.

### **Off-site and On-site inspection cycles**

43. Regardless of the endorsed supervisory approach CAs should plan and carry out periodically off-site and/or on-site inspections on STMMFs/MMFs.

CAs should define the frequency of ordinary on-site inspections on STMMFs/MMFs, management companies and fund service providers. In this regard CAs should take into account at least the time of the last visit.

44. Where a risk-based approach is endorsed CAs should define appropriate criteria/parameters (i.e. alerts, warnings) for prioritising on-site inspections on the basis of the risk rating assigned to the funds. The level of frequency and the intensity of the engagement should be defined taking into account both investor protection and systemic risk. Where a compliance-based approach is applied all funds and relevant providers should be subject to on-site inspections during the appropriate supervisory cycle taking into account the size of the market.

Non-routine inspections should always be possible.

CAs should plan and periodically carry out thematic work in order to examine issues specifically related to STMMFs/MMFs.

## **III. FINDINGS OF THE PEER REVIEW**

The following section of the report provides a summary of the outcome of the peer review.

45. As mentioned above, the following analysis covers 20 out of 30 Member States, since in ten Member States (BG, CY, EE, HU, IS, LI, NO, PL, PT, SE) the Guidelines were not implemented as of 1 August 2012.

46. Each of the paragraphs below summarises the requirements of each guideline, as well as the outcome of the peer review and, where relevant, the major findings.

### **III. 1 Background information**

47. In order to provide some background on the market size and general regulatory and supervisory framework, the competent authorities have made available preliminary information on the number and size of UCITS and non-UCITS funds marketing themselves as Short-Term Money Market Funds and Money Market Funds in their jurisdictions (cut off period June-September 2012).

**Table 2: Short-Term Money Market Funds (UCITS and Non-UCITS) and Money Market Funds (UCITS and Non-UCITS)**

**STMMF: Funds labelling themselves as short-term money market funds**

**MMF: Funds labelling themselves as money market funds**

	STMMF		MMF		Amount of assets under management STMMF (in millions of Euros, unless otherwise specified)		Amount of assets under management MMF (in millions of Euros unless otherwise specified)	
	UCITS	Non-UCITS	UCITS	Non-UCITS	UCITS	Non-UCITS	UCITS	Non-UCITS
AT	0	0	7	0	0	0	405	0
BE	2	0	4	3	165	0	411	96
BG	0	0	7	0	0	0		0
CY	0	N/A	0	N/A	0	N/A	0	N/A
CZ	0	0	1	2	0	0	3	101
DE	0	0	24	0	0	0	4,089	0
DK	0	0	1	1	0	0	185	6
EE	0	0	0	0	0	0	0	0
EL	5	N/A	17	N/A	52	N/A	673	N/A
ES	1	3	36	31	47	160	4,630	4,127
FI	3	0	10	0	843	0	2,925	0
FR	91	204	90	256	140,465	81,471	132,090	43,298
HU	0	32 <sup>7</sup>	0	25				
IE	89	8	4	1	295,741	7,769	1,037	929
IS	0	0	0	0	0	0	0	0
IT	0	0	12	0	0	0	7.9	0

<sup>7</sup> Before the HFSA Recommendation enters into force, short-term money market funds cover 'liquidity funds'; therefore, this data refers to 'liquidity funds'.

LI	Info not provided	Info not provided	Info not provided	Info not provided	Info not provided	Info not provided	Info not provided	Info not provided
LT	0	0	1	0	0	0	12	0
LU	60	35	70	38	214,204	32,963	39,506	12,677
LV	0	0	2	0	0	0		0
MT	0	4	0	2	0	32,5	0	197
NL	0	0	1	0	150	0	150	0
NO	0	0	32	14	0	0	10,085	1,456
PL	0	0	2	0	0	0	196	0
PT	0	0	0	9	0	0	0	275
RO	0	0	1	0	0	0	3,690	0
SE	10	3	10	1	18,78bn SEK	220 mn SEK	52 billion SEK	1,14 bn SEK
SI	0	0	3	0	0	N/A	23	0
SK	0	0	2	0	0	0	172	0
UK	7	3	7	1	£2,638m	£380m	£785m	£42m

48. This table is compiled separately from the assessment on the level of compliance with the Guidelines. This means that in the jurisdictions where the Guidelines are not applied, the figures above also include funds labelling themselves as STMMF and MMF without necessarily complying with the Guidelines. In NO none of the funds labelling themselves as MMF have notified cross-border activities.

49. On the basis of the above, it appears that most of the UCITS and non-UCITS fund labelling themselves as money market funds are located in FR (641), followed by LU (203), IE (102), ES (71) and HU (57). A range of between 16 and 25 funds are located in SE, DE, UK and EL. A range of between seven and 15 funds are located in IT, BE, PT, BG and AT. A range of between one and six are located in CZ, DK, FI, LV, MT, NL, PL, RO and SK. No STMMFs or MMFs are located in CY, EE and LT.

50. In terms of overall amount of managed assets, the biggest market is FR, followed by LU and IE.

51. In IT, in the subject matters covered by the Guidelines, competences are shared between the securities regulator (Consob) and the Bank of Italy. For further details see Section IV.

### **III.2. General Guidelines - Box 1**

52. CESR's Guidelines apply to UCITS and non-UCITS Money Market Funds, labelling or marketing themselves as money market funds. Competent Authorities of the home Member States are required to monitor that the above-mentioned funds comply with the Guidelines.

53. Moreover, the Guidelines follow a two-tier approach, recognising the distinction between Short-Term Money Market Funds and Money Market Funds.

54. The Guidelines also provide for disclosure requirements in order to enable investors to identify any specific risks linked to the investment strategy of the funds.

#### **III.2.1 Application of the Guidelines**

55. In the majority (17) of Member States (AT, BE, CZ, DE, DK, ES, IE, FI, FR, IT, LU, LV, MT, NL, RO, SK, UK) the Guidelines apply in their jurisdiction to both UCITS and non-UCITS money market funds. In LT the Authority is not able to achieve compliance with the Guidelines in all instances.

56. In two Member States (EL, SI) the Guidelines are not applicable to non-UCITS funds, since non-UCITS funds may not be authorised as Money Markets Funds in these jurisdictions. In EL and SI the Guidelines thus only apply to money market funds that are UCITS.

57. In ES, with the approval on July 21, 2012 of new regulatory provisions, all Money Market Funds have to be UCITS and have to adapt their portfolio before 1 July 2013.

#### **III.2.2 Means of implementation and level of compliance**

58. In 14 Member States the implementation of the Guidelines into national legislation has been carried out through a formal act of implementation (AT, CZ, DE, DK, EL, ES, FR, IE, IT, LV, RO, SI, SK, UK), whilst in the other Member States it occurred through supervisory communications or other forms of "soft law" measures.

59. Among those Member States where the Guidelines have been implemented through non-mandatory measures, in a number of them (BE, FI, LU, MT, NL, SI) Competent Authorities are able to show their ability to achieve compliance in all cases of a breach of the measure. The achievement of compliance is usually ensured by a reference (a "hook") to the national regulatory system whereby the Competent Authority acknowledges that a failure to comply with the Guidelines will be interpreted as a breach of a specific mandatory legal provision. For instance, in NL the Competent Authority published the final guidelines on its website and stated that it subscribes to the specific CESR Guidelines in their entirety and that the regulation in those guidelines is adopted without any reservation for UCITS Money Market Funds as well as for non-UCITS Money Market Funds as an integral part of the Netherlands financial regulation.

60. Conversely, in one Member State (LT) the Guidelines have been implemented into national legal systems by means of soft law measures, with which the relevant Competent Authority is not able to comply in all instances. In particular, in LT where the Guidelines are applied on the basis of a mere comply or explain approach, the Competent Authority has recognised difficulties in achieving compliance and is planning to undertake corrective measures in the near future.

### **III. 2.3 Use of the label**

61. According to the peer review, the majority (19) of Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, MT, NL, RO, SK, SI, UK) require that any fund labelling or marketing itself as a money market fund shall comply with the Guidelines, whilst in LT the Authority is not able to ensure compliance with Guidelines in all instances.

62. The monitoring by competent authorities takes place at the moment of authorisation and, in several cases, through on-going supervision. For additional details please see Section IV.

### **III.2.4 Monitoring the labelling by UCITS money market funds**

63. In the majority of Member States (19), the home competent authority monitors that any UCITS labelling or marketing itself as a money market fund complies with the Guidelines (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, MT, NL, RO, SK, SI, UK), whilst LT does not.

64. The monitoring by competent authorities takes place at the moment of authorisation and, in several cases, through on-going supervision. For additional details please see Section IV.

### **III.2.5 Monitoring of the labelling by non-UCITS money market funds**

65. In the majority of Member States (18), the home competent authority monitors that any non-UCITS labelling or marketing itself as a money market fund complies with the Guidelines (AT, BE, CZ, DE, DK, ES, FI, FR, IE, IT, LU, LV, MT, NL, RO, SK, UK). In two Member States the Guidelines are not applicable, since STMMF and MMF can only be set up as UCITS funds. In LT the Authority is not able to ensure compliance with the Guidelines in all instances.

66. The monitoring by competent authorities takes place at the moment of authorisation and, in several cases, through on-going supervision. For additional details please see Section IV.

67. As far as Non-UCITS Short Term Money Market Funds in ES are concerned, with the approval on 21 July, 2012 of the RD 1082/2012, new CIS regulation, all the Short Term Money Market Funds have to be UCITS and have to adapt their portfolio before 1 July, 2013.

### **III.2.6 Prohibition on use of the label “money market” where funds do not comply with the Guidelines**

68. According to the peer review, funds not complying with the Guidelines are prohibited from having a reference to “money market” in their name in the majority (18) of Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, NL, RO, SI, SK, UK). In FI the competent authority requires that the name of the fund not be misleading.

69. In LT there is no formal prohibition on the use of the label “money market” by funds not complying with the Guidelines.

### **III.2.7 Distinction between Short-Term Money Market Funds and Money Market Funds**

70. According to the peer review, in the majority (19) of Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LT, LU, LV, MT, NL, RO, SI, UK) competent authorities provide for a distinction between Short-Term Money Market Funds and Money Market Funds. In LT the Authority



is not able to ensure compliance with Guidelines in all instances.

### **III.2.8 Indication of the label in the prospectus and Key Investor Information Document (KIID)**

71. According to the peer review, in the majority (19) of Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, MT, NL, RO, SK, SI, UK) the regulatory system requires that Short-Term Money Market Funds and Money Market Funds indicate in their prospectus and, in case of UCITS, in their KIID whether they are STMMFs and MMFs, while LT the regulatory system does not provide the above-mentioned obligation.

### **III.2.9 Indication of the risk and reward profile of the fund in the prospectus and KIID**

72. According to the peer review, in the majority (19) of Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, MT, NL, RO, SK, SI, UK) the regulatory system requires that Short-Term Money Market Funds or Money Market Funds indicate in their prospectus and, in case of UCITS, in their KIID the risk and reward profile of the fund, including any special risks linked to the investment strategy of the fund and the implications of investment in the type of money market fund involved, while in LT the regulatory system does not provide the above-mentioned obligation.

### **III.3. Guidelines on Short-Term Money Market Funds - Box 2**

73. The Guidelines set out the primary investment objective of Short-Term Money Market Funds, namely to maintain the principal of the fund and aim to provide a return in line with money market rates.

74. Moreover, according to the Guidelines, the management company of a Short-Term Money Market Fund must be responsible for identifying criteria to determine whether the money market instruments in which the Short-Term Money Market Fund invests are of high quality according to the guidelines. In this regard, the Guidelines establish an indicative range of factors to be taken into account in the assessment of the level of quality of the money market instruments.

75. Management companies of Short-Term Money Market Funds are also required to employ a prudent approach to the management of currency, credit, interest rate and liquidity risk and a proactive stress-testing regime.

76. Furthermore, the Guidelines include a reference to the Net Asset Value to be used by Short-Term Money Market Funds, providing that it shall be constant or fluctuating.

#### **III.3.1 Application of the Guidelines in Box 2**

77. According to the peer review in the majority (18) of Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, NL, RO, SK, SI, UK) all the Guidelines in Box 2 apply.

78. As mentioned, in EL and SI STMMF can be set up only as UCITS.

79. Member States in which the Guidelines in Box 2 are not complied with responded as follows: LT stated that the provisions under Box 2 of the Guidelines are recommendations, not requirements; in MT paragraph 1 of Box 2 of the Guidelines is the only one which has not been

included, but will be included under a separate provision.

### **III.3.2 Requirements on the management company of STMMFs**

80. According to the peer review, in the majority (18) of Member States (AT, BE, CZ, DE, EL, ES, FI, FR, IE, IT, LU, LV, MT, NL, RO, SK, SI, UK) the regulatory system requires that the management company of a Short-Term Money Market Fund identify the criteria to determine the quality of the money market instruments in which the Short-Term Money Market Fund invests according to the Guidelines. In DK, however, the requirements applicable to the management company do not make specific reference to the Guidelines. In IE, it is provided that the obligations imposed on UCITS/non-UCITS are obligations of the self-managed company or of the relevant management company, as the case may be.

81. According to the peer review, in the majority (19) of Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, MT, NL, RO, SI, SK, UK) the home competent authority requires management companies of STMMFs to take into account, among others:

- the credit quality of the instrument;
- the nature of the asset class represented by the instrument;
- for structured financial instruments, the operational and counterparty risk inherent within the structured financial transaction;
- the liquidity profile.

As mentioned, in LT the Guidelines have the status of recommendations, not requirements.

### **III.3.3 Use of CNAV**

82. The use of CNAV is a particularly critical issue in the context of the current shadow banking discussion. As mentioned in the European Commission Green Paper on Shadow Banking of 19 March 2012 and in its Consultation Paper of 26 July 2012, CNAV MMFs are sometimes considered as substitutes to bank deposits and may be vulnerable to massive redemption. In particular, the low or almost non-existent fluctuation of the net asset value and regular sponsor support to maintain a stable NAV may give the impression to investors that CNAV MMFs contain a capital guarantee. This has been held to give rise to a run once investors fear that the CNAV MMF is prone to 'break the buck' and no longer able to offer redemption at par. The issue of CNAV has also been recently tackled by the EU Parliament, whose Committee on Economic and Monetary Affairs has recognized that CNAV makes money market funds particularly vulnerable to massive runs and called for additional safeguards in this respect (see par. 31 of the ECON Report on Shadow Banking issued on 25 October 2012). Finally, the ESRB Recommendation on Money Market Funds of December 2012<sup>8</sup>, meanwhile, calls for a mandatory move to variable net asset value by money market funds.

83. Under the Guidelines, only STMMF may have a CNAV.

84. According to the peer review, in ten Member States (AT, BE, CZ, DE, EL, ES, FI, IT, RO, SK) CNAV is not allowed.

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<sup>8</sup> [http://www.esrb.europa.eu/pub/pdf/recommendations/2012/ESRB\\_2011\\_1.en.pdf?15854da0159acb028dc768684d7e920a](http://www.esrb.europa.eu/pub/pdf/recommendations/2012/ESRB_2011_1.en.pdf?15854da0159acb028dc768684d7e920a)

85. In the remaining ten Member States (DK, FR, IE, LT, LU, LV, MT, NL, SI, UK), nine Competent Authorities require in this case the application of the CESR Guidelines concerning eligible assets for UCITS. In MT the CESR Guidelines concerning eligible assets for UCITS are not applicable to non-UCITS STMMFs.

#### **III.4. Guidelines on Money Market Funds – Box 3**

86. The Guidelines recognise the distinction between Short-Term Money Market Funds and Money Market Funds, providing that Money Market Funds shall comply with most of the requirements provided for Short-Term Money Market Funds (paragraphs 1, 2, 3, 4, 6, 9, 10 and 11 of Box 2). In addition, the Guidelines set out specific provisions for Money Market Funds, in some cases providing for exemptions to the applicable requirements for Short-Term Money Market Funds.

87. In particular, Money Market Funds may be allowed to hold sovereign issuance of at least investment grade quality. Moreover, they shall only use a fluctuating net asset value, as these funds are more sensitive to interest rate changes than Short-Term Money Market Funds. Finally, with regard to the maturity of securities, the Guidelines adapt the requirements provided for Short-Term Money Market Funds to the specific features of Money Market Funds.

##### **III.4.1 Application of the Guidelines in Box 3**

88. According to the peer review, the Guidelines in Box 3 apply in the majority (17) of Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, NL, RO, SI, SK, UK). In MT paragraph 1 of Box 2 of the Guidelines is the only one which will be included under a separate provision. In EL, MMFs are allowed to invest in Greek Government Bonds irrespective of their credit quality and residual maturity (see below). In LV, the Guidelines apply only to STMMF and not to MMF<sup>9</sup>. In LT the Authority is not able to ensure compliance with Guidelines in all instances.

##### **III.4.2 Investment in sovereign debt**

89. According to the peer review, in the majority (18) of Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IT, LU, LV, MT, NL, RO, SI, SK, UK) Money Market Funds are allowed, as an exception to paragraph 4 of Box 2, to hold sovereign issuance of at least investment grade quality.

90. In this respect, 17 of the above-mentioned Member States where the above exception to paragraph 4 of Box 2 is allowed define “Sovereign issuance” as money market instruments issued or guaranteed by a central, regional or local authority or central bank of Member State, the European Central Bank, the European Union or the European Investment Bank (AT, BE, CZ, DE, DK, ES, FI, FR, IT, LU, LV, MT, NL, RO, SI, SK, UK), whilst EL does not.

91. In particular, EL allows the Money Market Funds authorised in its jurisdiction to hold sovereign debt instruments of at least an investment grade quality, with a specific exception for Greek Government Bonds which can be invested in irrespective of the rating and of their residual maturity.<sup>10</sup>

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<sup>9</sup> In LV the Competent Authority stated that the two MMF registered with them are complying with the Guidelines on a voluntary basis and that amendments are undergoing to formally extend the application of the Guidelines also to MMFs.

<sup>10</sup> EL allows the Money Market Funds authorised in its jurisdiction to hold sovereign debt instruments of at least an investment grade quality, with a specific exception for Greek Government Bonds irrespective of their credit quality (as this is assessed by CRAs) and residual maturity. The HCMC has introduced a specific exception (par. 6(b)(aa) of art. 30f Rule 6/587/2011 concerning investments

### **III.4.3 Requirements on the management company of MMFs**

92. According to the peer review, in 19 Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, MT, NL, RO, SI, SK, UK) the regulatory system requires that the management company of a Money Market Fund identify the criteria to determine the quality of the money market instruments in which the Money Market Fund invests according to the Guidelines. In one Member State (DK), however, the requirements applicable to the management company do not make specific reference to the Guidelines. In IE, it is provided that the obligations imposed on UCITS/non-UCITS are obligations of the self-managed company or of the relevant management company, as the case may be.

93. According to the peer review, in (19) Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, MT, NL, RO, SI, SK, UK) the home competent authority requires management companies of MMFs to take into account, among others:

- the credit quality of the instrument;
- the nature of the asset class represented by the instrument;
- for structured financial instruments, the operational and counterparty risk inherent within the structured financial transaction;
- the liquidity profile.

As mentioned, in LT the Authority is not able to ensure compliance with Guidelines in all instances.

### **III.5. Transitional provisions – Box 4**

94. The Guidelines entered into force on the same date as the transposition deadline of Directive 2009/65/EC (1 July 2011). CESR saw merit in aligning the date of application of the Guidelines with the transposition deadline for the revised UCITS Directive, since legislative changes could have been needed in some Member States in order to apply the Guidelines.

95. Nonetheless, Money Market Funds created after 1 July 2011 have to comply with the Guidelines immediately. Therefore, it shall be noted that the implementation of the Guidelines does not depend on the implementation of the UCITS Directive.

96. The Guidelines granted Money Market Funds a transitional period of six months for investments acquired prior to 1 July 2011.

#### **III.5.1 Date of implementation of the Guidelines**

97. According to the peer review, the date of implementation of the provisions of the Guidelines was 1 July 2011 in 13 Member States (BE, CZ, DE, DK, EL, FI, FR, IE, LU, MT, NL, SK, UK), while in the remaining Member States the Guidelines were implemented with a delay (AT, ES, IT, LV, RO, SI) or have not been implemented with measures ensuring compliance (LT).

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of MMFs in Greek Government bonds (including Greek Treasury bills). Regarding residual maturity all Greek MMFs have to comply with the relevant ESMA/CESR Guidelines on WAL/WAM for MMFs.

98. According to the peer review, the majority (19) of Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, MT, NL, RO, SI, SK, UK) require all money market funds which intend to operate as money market funds under the new guidelines to reflect this in their documentation as of the implementation date, whilst LT does not provide for the above-mentioned obligation.

99. As regards the funds which do not intend to conform to the new guidelines, the majority (18) of Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, MT, NL, RO, SK, UK) require them to cease to call themselves money market funds as of the implementation date, whilst two Member States (LT, SI) do not provide for the above-mentioned obligation.

100. As regards the status of implementation in the jurisdictions which have not implemented the Guidelines within the review period, the relevant Competent Authorities reported the following:

- in BG, the Guidelines entered into force on 22 November 2012;
- in CY, the Guidelines entered into force (as regards UCITS funds) on the 1 February 2013. At the moment non-UCITS are under the supervision of the Central Bank of Cyprus, but around mid-2013 they should move under the competence of the CySEC;
- in HU, the Guidelines have been implemented through recommendations and entered into force on 5 December 2012;
- in SE information on the adoption of the Guidelines by CESR was published on the Competent Authority's website on 16 June 2010 and the Guidelines are considered best practices.

#### **III.2.4 Transitional period**

101. According to the peer review, (17) of the Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, MT, NL, RO, SK, UK) granted a transitional period of six months after the guidelines entered into force, whilst some Member States did not provide for the above-mentioned transitional period (SI, LV). The approach taken in each country is set out in the table under Annex 2.

## **IV. SUPERVISORY PRACTICES**

### **Preliminary information**

#### **IV.1 Shared competences**

102. In two Member State (IT, PT) in the subject matters covered by the Guidelines, competences are shared with the Central Bank.

103. In IT Consob is responsible for the transparency and correctness of conduct, while the Bank of Italy is responsible for risk containment, asset stability and the sound and prudent management of the funds and relevant management companies. The Bank of Italy and Consob shall operate in a coordinated manner with a view to minimizing the costs incurred by authorised intermediaries, and shall notify each other of the measures adopted and the irregularities discovered in carrying out their supervisory activity.

104. In PT the Portuguese Securities Market Commission, CMVM, shares competences with the Central Bank. CMVM is in charge of the supervision of Undertakings for Collective Investment, UCI, while the Central Bank supervises the prudential requirements of credit institutions, which in PT own the majority of UCIs management companies. The two supervisors are legally obliged to cooperate.

#### **IV.2 Internal organisation**

##### **IV.2.1 General description of the units involved and relevant mission**

105. In almost all Member States more than one unit is involved in the supervision, inspection and enforcement of the application of the Guidelines by UCITS and non-UCITS.

106. In some Member States (BG, CZ, EL, ES, IE, LU, MT, NL, PL, RO, SI, SK, UK) the authorisation process and the supervision are under the responsibility of two separate units in the Competent Authority, while in others (BE, DE, DK, EE, FI, FR, IT, LT, LV, PT) the same unit carries out both the functions. In the latter case the unit could be split in several sub-units (DE).

107. Some Member States (FR, IT, LU) mentioned having units dedicated to inspections and some Member States having separated enforcement units (LU, PL).

##### **IV.2.2 The expertise of the technical staff**

108. Competent Authorities reported that they had staff with wide expertise and qualified backgrounds (e.g. at least a degree in economics, law, banking and finance, or accounting) and in some cases with specific experience in the Investment Management Industry sector and a minimum seniority.

##### **III.2.3 Technical staff**

109. Most of the Competent Authorities did not provide figures on resources exclusively dedicated to the monitoring of STMMFs/MMFs and the related Guidelines, since the supervision on STMMFs/MMFs is included in the general supervision of UCITS/non-UCITS. Therefore it is very difficult to estimate the number of technical staff that is, in proportion, dedicated to the supervision of

MMFs.

### **III.2.4 Budget**

110. The majority of the Member States did not provide details on the internal budget devoted to the supervision of this sector for a number of reasons. In many Competent Authorities the internal budgets do not usually distinguish on the basis of the sectors or the functions performed within the authority. In some jurisdictions there are no or very few MMFs, and/or the internal organisation of the supervision does not allow for identification of data on MMFs, or the data is simply not assessed.

111. Some Competent Authorities provided an estimate of the requested information by calculating it on the basis of the total supervision fees (ES, UK) or on the size of the MMF sector (SK) or as a percentage of the total budget of the authority (FR, LU, LV, PT). The figures therefore are not comparable.

### **IV.3.1 General supervisory approach**

112. The general supervisory approach on the monitoring of the Guidelines varies across Member States to a significant extent.

113. In 11 Member States (DE, DK, ES, FR, IE, IT, LT, MT, SE, SK, UK), the supervisory approach developed for Money Market Funds does not differ from the regular approach (mainly risk-based) used by Competent Authorities. Competent Authorities use the Guidelines to screen the information collected during the on-going supervision, and eventually to plan off-site and on-site inspections, in addition to any other supervisory tool developed (such as supervisory visits not leading to sanctions, thematic reviews etc.).

114. Among those competent authorities applying mainly risk-based supervision there are a variety of different approaches applied in practice, as better specified in the following sections. In particular, differences have been detected in the following areas: the type and frequency of periodic reporting by supervised entities (e.g. some rely on annual/semi-annual reports whilst others require more frequent reporting), the parameters triggering alerts to identify the risks and prioritise actions and the level of reliance on external auditors and depositories in carrying out the monitoring.

115. In seven Member States (AT, BE, CY, CZ, EL, NL, SI) the limited numbers of authorised Money Market Funds discouraged the development of a risk-based approach for monitoring compliance with the Guidelines, even where the Competent Authority usually keeps a risk-based approach in the supervision of other areas. In these cases the Member States generally developed a compliance-based approach.

116. One Member State (LU) states that the supervision of funds is based on two pillars involving both the Competent Authority (CSSF) and the external auditors in accordance with the applicable laws and circulars. In particular, the audit report on the annual report of the UCITS constitutes an important source of information for the Authority in the performance of its supervisory function. This is because the auditing shall cover the financial as well as the organisational aspects and the verification of the procedures applied by the UCITS. LU uses a risk-based supervisory approach specifically developed for the main Money Market Funds.

#### **IV.3.2 Supervision and enforcement in relation to UCITS Money Market Funds**

#### **IV.3.3 Review of the UCITS STMMFs' and MMFs' documentation**

117. In those Member States where the Guidelines are applied, Competent Authorities review the fund's documentation for each UCITS STMMF and MMF for which they are the home authority and ask for amendments where a case of failure to comply with the Guidelines is detected. In terms of the specific process, the approaches vary significantly across Member States. While some Competent Authorities pre-approve some fund documentations (e.g. fund rules, by-laws), other Competent Authorities carry out exclusively or mainly ex-post monitoring.

118. As regard the on-going supervision, in several Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, LU, IT, LT, PL, RO, SI, UK) Competent Authorities noted their ability to undertake a number of specific enforcement actions (order to amend the documentation, application of administrative sanctions, publication of reprimands/warnings, penalty payment, withdrawal of the license) in case the fund's documentation fails to comply with the Guidelines.

119. As mentioned in the Peer Review section, in a number of Member States the Competent Authority can undertake actions only in limited cases of non-compliance with the Guidelines (for example in SE the CA can only take action where a fund labelling itself as a money market fund has inserted a reference to the Guidelines in its fund rules).

### **IV.4 Monitoring the UCITS fund**

#### **IV.4.1 Organisation and resources**

120. As mentioned, in most of the Member States the monitoring of UCITS funds' compliance with the Guidelines is embedded into the general supervisory framework on investment funds and their management companies. As a consequence, only a limited number of competent authorities provided more detailed information than in the preliminary information section, or gave figures on the resources/number of staff specifically dedicated thereto. In particular, in those Member States where the number of MMF/STMMF and the volume of their assets are small, there are not always dedicated resources/staff for those funds.

121. Those competent authorities contributing to this section provided the following information:

- In one Member State (FI), the Competent Authority has two people dedicated to reviewing the monthly reporting by funds. The monitoring is conducted on the basis of deviation reports and ad hoc risk-based monitoring of the portfolio.
- In one Member State (IE), the Competent Authority has a team of five supervisors who are supported by other departments.
- In two Member States (LT, MT), Competent Authorities gave the number of resources without any details.



122. In 20 Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, MT, NL, RO, SE, SI, SK, UK) Competent Authorities developed a desk-based approach, which mainly relies on periodic reporting submitted by management companies and funds. Some Competent Authorities also monitor reports submitted by auditors and by depositories. The information sources taken into account by the Competent Authorities may also include questionnaires, advertisements, contacts with investment firms, investor complaints, inputs from other competent authorities, media, and general/specialist publications.

123. In those Member States where the Guidelines are complied with, Competent Authorities use the Guidelines to screen the information collected during the on-going supervision, and eventually to plan off-site and on-site inspections, in addition to any other supervisory tool (such as supervisory visits not leading to sanctions, thematic reviews, etc.).

#### **IV.4.2 Supervisory tools employed in monitoring the UCITS fund**

##### **IV.4.2.1 Desk-based monitoring**

124. As mentioned above, in the large majority (20) of the Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, MT, NL, RO, SE, SI, SK, UK), Competent Authorities carry out desk-based monitoring on UCITS funds.

125. In 18 Member States (AT, BE, CZ, DE, DK, EL, ES, FI, FR, IE, IT, LU, LV, RO, SE, SI, SK, UK), Competent Authorities reported using periodic reporting as the main source of information for desk-based monitoring of UCITS. Advertisements, investor complaints, input from other authorities or other non-routine sources (e.g. press, web) are also used as available. The type and frequency of reporting vary significantly across Member States.

127. From the responses it emerges that the desk-based approach mainly relies on periodic reporting by the management companies and/or the funds. In most of the Member States, the reporting by the asset management companies and/or the funds is annually/half-yearly, whilst in other Member States (AT, ES, FI, IT, LU, LV, RO, SK) the Competent Authority receives also periodic (in most cases monthly) reports on the composition of the fund's portfolio.

128. In addition, some Competent Authorities specifically mentioned periodic reporting by the depository (ES, IE and IT) and the funds' auditors (AT, DE, IE, IT, LU). For instance in ES the UCITS' depository has the duty to inform the Authority of any relevant incident/anomaly detected in the supervision of the UCITS fund and relevant failure in complying with the investment policy. In IT reporting by the depository is received on a monthly basis. In IE the depository is obliged to notify promptly the Authority of any material breach of the UCITS regulation since national regulation obliges the depository to inquire into the conduct of the management company in its management of the MMF.

129. In another Member State (LU) the supervisory approach on funds is based on two pillars involving both the Competent Authority and the external auditors, who are required to provide an annual report.

#### **IV.4.2.2 On-site inspections**

130. In most (18) of the Member States (AT, BE, CZ, DE, DK, EL, ES, FR, IE, IT, LU, LV, MT, NL, RO, SE, SK, UK), Competent Authorities carry out routine and/or non-routine on-site inspections of management companies of UCITS STMMFs and MMFs, whilst in a few Member States (FI, LT, SI), Competent Authorities do not do so.

131. In several cases (AT, CZ, DE, ES, IT, LU, RO, SK, UK) Competent Authorities mentioned that routine inspections are carried out according to a (in some cases yearly) planned agenda that does not single out MMFs. In addition, non-routine on-site inspections may be carried out where deemed necessary.

132. As mentioned, the majority of Competent Authorities select the funds/managers to be inspected on the basis of a risk-based approach. The entities to be included in the inspection plan are selected by Competent Authorities on the basis of various criteria which vary from jurisdiction to jurisdiction, such as the time of the last visit, the associated risks, the size and systemic importance of the entity, the changes in the organisation or control or complaints data.

133. In DE all the asset management companies are inspected on an annual basis, while in two other Member States (DK, SK) Competent Authorities inspect all the asset management companies within a 4/5 or 2/3 year cycle.

134. In one Member State (LU), routine inspections are carried out by both the Competent Authority and third parties such as auditors. Non-routine inspections could be thematic and therefore focused on MMFs, motivated by different reasons (i.e. abnormal variation of the NAV).

#### **IV.4.2.3 Thematic reviews**

135. In several (12) Member States (BE, DK, EL, ES, FI, FR, IE, IT, LU, RO, SE, UK), Competent Authorities carry out or are planning to carry out thematic reviews on the application of the Guidelines by UCITS funds, whilst in nine Member States (AT, CZ, DE, LV, LT, MT, NL, SK, SI), Competent Authorities do not.

136. In ES, the Competent Authority carried out in the course of 2012 a review of the general compliance with the investment policy, including the requirements for UCITS STMMF and MMF. Moreover, periodical reviews are carried out on market prices of the illiquid assets belonging to CIS portfolio and systematic analysis of the daily yields of mutual funds with a view to detecting atypical yields. The majority of atypical yields are the result of errors in NAV calculations or, sometimes, violations of the requirements such as assets in the portfolio of the funds that do not comply with the Guidelines.

137. In FI, the Competent Authority conducted a thematic review on MMFs in the fourth quarter of 2011 in order to ensure the compliance with, among others, CESR's Guidelines. The review consisted of an assessment of the STMMF and MMF portfolio (based on the monthly portfolio reporting), fund rules and other fund material (prospectus, simplified prospectus or KIID). As a result, some management companies were required to change the STMMF and MMF fund rules and other fund material in order to comply with the Guidelines.

138. In FR, the Competent Authority undertook several periodic reviews of MMFs e.g. in autumn 2011 it analysed the behaviour of STMMFs and MMFs (UCITS and non-UCITS) in order to detect the funds whose return was negative or “too good to be true”. Twelve STMMFs or MMFs presented negative returns, 38 offered positive and pretty high returns, which were suspected not to be in line with money market rates. This led to on-site inspections.

139. In UK, the Competent Authority conducted a thematic review on unit-linked money market funds in 2010.

140. In IE thematic reviews are widely used to assess general compliance within a sector with business conduct rules, regulatory rules and consumer protection requirements.

141. Due to the relatively small MMF sector in DE the Competent Authority does not carry out thematic reviews on MMFs.

#### **IV.5 Enforcement actions against UCITS schemes labelling or marketing themselves as STMMF or MMF**

142. In a few (4) Member States (DK, ES, LT, LU), Competent Authorities reported that they detected during the review period UCITS labelling or marketing themselves as a STMMF or a MMF in their jurisdiction not complying with the guidelines, whilst in most of the Member States (AT, BE, CZ, DE, EL, FI, FR, IE, IT, LV, MT, NL, RO, SE, SI, SK, UK), Competent Authorities did not.

143. In the above-mentioned four Member States, the failures with the Guidelines were settled mainly by requiring the funds to change their label, without applying sanctions. In ES, where the failures were related to the credit quality of the instruments in the funds’ portfolio, some funds regularized themselves but for those still failing the Competent Authority issued a notice.

##### **IV.5.1 Supervision and enforcement in relation to non-UCITS money market funds**

##### **IV.5.2 Review of the non-UCITS STMMFs’ and MMFs’ documentation**

144. Competent Authorities did not report any substantial differences compared to the approach they apply in monitoring UCITS funds (see section IV.3.3.)

##### **IV.5.3 Monitoring the non-UCITS fund**

145. As mentioned, Competent Authorities did not report any substantial differences compared to the approach they use in monitoring UCITS funds (see section IV.4).

##### **IV.5.3.1 Supervisory tools employed in monitoring the non-UCITS fund**

###### Desk based monitoring

146. As mentioned, Competent Authorities did not report any substantial differences compared to the approach they endorse in monitoring UCITS funds (see section IV.4.2.1).

###### Routine and/or non-routine on-site inspections

147. As mentioned, Competent Authorities did not report any substantial differences compared to the approach they endorse in monitoring UCITS funds (see section IV.4.2.2).

#### **IV.5.3.2 Thematic reviews**

148. As mentioned, Competent Authorities did not report any substantial differences compared to the approach they apply in monitoring UCITS funds (see section IV.4.2.3).

#### **IV.6 Enforcement actions**

149. In only two Member States (ES, LU), Competent Authorities detected during the review period that non-UCITS funds labelling or marketing themselves as STMMF or MMF did not comply with the guidelines.

150. In ES, where the failures were related to the credit quality of the instruments in the funds' portfolio, some funds regularised themselves, while for the others the Competent Authority issued a notice.

151. In LU, non-UCITS funds/sub-funds not fully compliant with the Guidelines were detected after the transitional period. The cases were resolved in the course of the first quarter of 2012 without triggering enforcement actions. In one case fund was asked to change its name.

## V. IDENTIFICATION OF POSSIBLE GOOD PRACTICES

152. The questionnaire included a number of questions which were not specifically benchmarked, in order to analyse in detail how the application of the Guidelines is monitored and enforced on a day-to-day basis, with a view to assessing the degree of convergence of the practices across the EU and possibly identifying good practices which might be of benefit for Competent Authorities (see Article 30 of ESMA Regulation and paragraph 51 of the peer review methodology).

153. The need to converge in relation to supervisory and enforcement practices on STMMFs/MMFs is an issue of great relevance in the current debate on the reform of the sector of STMMF/MMF worldwide. ESMA believes that the practice analysed in this Report could be the starting point for the identification of a common supervisory approach.

154. It is understood that supervisory practices should duly take into account the structure of the supervised industry. Particular care should be taken in those markets where the supervised STMMFs/MMFs can have a systemic impact and could also lead to contagion effect with serious implications for markets other than the domestic market. Where Competent Authorities determine that STMMFs/MMFs represent a material risk, the practices identified in this section could assist in supervising the sector, being the same approach endorsed also by other Competent Authorities. The good practices identified can be further analysed by the relevant ESMA Standing Committees, in order to assess the merits of their being adopted more widely across the EU.

155. Supervision is usually a mixture of ex-ante reviews, which take place when the fund is set up and relevant documentations are approved/service providers appointed, and on-going monitoring, which takes place after approval/appointment on the basis of routine information collected from supervised entities, and non-routine information from different sources, assessment of risks, on-site visits and inspections etc.

156. Two main approaches (or a mix thereof) are followed by Competent Authorities (CAs) for supervising the compliance with the Guidelines on an on-going basis:

i) A compliance-based approach where supervisors check adherence to all of the rules at a given point in time by each and any regulated entity: all funds get the same degree of attention and the focus tends to be retrospective; and

ii) A risk-based approach whereby a structured, dynamic and forward-looking process is designed to identify the most critical risks faced by each regulated entity and, through a focused review by the supervisors, to assess proper management of those risks by the entity, vulnerability to potential adverse events and mitigating factors.

157. Since the risk-based approach allows for scarce supervisory resources to be targeted at funds seen as most at risk, it is more appropriate for on-going supervision of the funds in larger markets. Nonetheless, an element of compliance monitoring is desirable to increase the likelihood that essential standards are met. The following good practices acknowledge the differences between the above approaches.

158. The following good practices apply to UCITS/non-UCITS STMMFs and MMFs regardless

of the form they take (contractual or corporate) and should be proportionate in line with the considerations detailed in paragraph 157 above.

#### **V.1 Internal organisation and supervisory tools**

159. CAs should establish organisational structures, procedures and resources for the supervision of STMMFs and MMFs, both UCITS and non-UCITS, proportionate to the number of funds and the size of the local STMMF/MMF market aimed at detecting possible breaches of the Guidelines. IT systems should be considered helpful in order to generate alerts and identify possible breaches. Another important supervisory tool is the performance of stress tests.

#### **V.2 Ex-ante review of STMMFs/MMFs documentation (prospectus and marketing material)**

160. When reviewing the documentation of a fund labelling itself as a STMMF or MMF, a purely box-ticking approach should be avoided and the vetting process should be completed by a substantive assessment of the documentation collected. CAs should have the power to ask for amendments of the documentation before licensing the STMMF or MMF in case of non-compliance with the Guidelines.

#### **V.3 Ex-post review of STMMFs/MMFs documentation (prospectus and marketing material)**

161. In case an ex-ante review of fund documentation is not carried out, CAs should be able to justify how supervision is performed and should have the power to require changes to the fund documentation in case of ex-post review.

#### **V.4 On-going supervision of MMFs**

162. Regardless of the type of supervisory approach followed (compliance-based or risk-based), CAs should be able to demonstrate that they possess adequate supervisory organisation for the review of the reporting they receive from the funds. In particular, CAs should receive periodic information, in addition to the annual and semi-annual report, that allows them to monitor the compliance of the funds' portfolio with the Guidelines.

163. Where CAs adopt a risk-based supervisory approach, they should be able to demonstrate how the material risks and relevant mitigating factors are identified and analysed. Upon the occurrence of a triggering event CAs should be able to assess and prioritise actions to address these risks. The risk analysis could include assessments of the composition of the fund's portfolio and the compliance with the Guidelines and the rules on risk management, risk measurement, risk spreading, of the quality of the risk management processes and its capacity to carry out proactive stress-tests.

#### **V.5 Off-site and On-site inspections cycles**

164. Regardless of the type of supervisory approach followed, CAs should plan and periodically carry out off-site and/or on-site inspections on STMMFs/MMFs.

165. CAs should define the frequency of ordinary on-site inspections on STMMFs/MMFs, management Companies and fund service providers. For this purpose CAs should take into account at least the time of the last visit.

166. Where a risk-based approach is applied, CAs should define appropriate criteria/parameters (i.e. alerts, warnings) for prioritising on-site inspections on the basis of the risk rating assigned to the funds. The level of frequency and the intensity of the engagement should be defined taking into account both investor protection and the systemic risk. Where a compliance-based approach is used all funds and relevant providers should be subject to on-site inspections during the appropriate supervisory cycle taking into account the size of the market.

167. Non-routine inspections should always be possible.

168. CAs should plan and periodically carry out thematic work in order to examine issues specifically related to STMMFs/MMFs.

## ANNEX I

### MMF Peer Review Questionnaire

#### **Preliminary information**

In order to provide some background on your market size and general regulatory and supervisory framework, please respond to the following questions:

1. How many UCITS Short Term Money Market Funds do you supervise? **(text box)**
2. How many non-UCITS Short Term Money Market Funds do you supervise? **(text box)**
3. How many UCITS Money Market Funds do you supervise? **(text box)**
4. How many non-UCITS Money Market Funds do you supervise? **(text box)**
5. In the subject matters covered by the Guidelines, do you share competences with other national authorities<sup>11</sup>? **(Y/N)**
6. If yes please provide details on respective roles/ functions and means for coordination **(text box)**
7. Please provide the following information on how the competent authority(ies) is (are) internally structured to supervise, inspect and enforce the application of the Guidelines by UCITS and non-UCITS funds and relevant management companies:
  - a. a general description of the units involved and relevant mission **(text box)**,
  - b. the expertise of the technical staff **(text box)**,
  - c. an estimate of the number of technical staff that, in proportion (i.e.: based on the relative size of the STMMF/MMF sector) are dedicated thereto, out of the total number of staff in the authority(ies) which is responsible for the sector of investment funds **(text box)**,
  - d. an estimate of the budget that, in proportion (i.e.: based on the size of the STMMF/MMF sector, relative to the whole asset management sector) are dedicated thereto out of the total budget of the authority(ies) which is provided for the sector of investment funds **(text box)**,
  - e. other information, if any. **(text box)**
8. What is your supervisory approach to ensure application of the Guidelines? (e.g., is it risk-based? please explain in summary) **(text box)**

#### **General guidelines**

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<sup>11</sup> In case the ESMA member shares competences with another domestic regulator the responses to all relevant questions should include the relevant rules and practice. The outcome of the exercise shall refer to the implementation at the level of each country. The explanatory text to the assessment shall provide sufficient explanation to make the assessment understandable.



**Box 1**

1. These guidelines apply to:

- a collective investment undertaking authorized under Directive 2009/65/EC; or
- collective investment undertaking regulated under the national law of a Member State and which is subject to supervision and complies with risk-spreading rules.

2. Any collective investment undertaking labelling or marketing itself as a money market fund must comply with the guidelines.

3. A money market fund must indicate in its prospectus and, in the case of a UCITS in its Key Investor Information Document (KID), whether it is a Short-Term Money Market Fund or a Money Market Fund.

4. A money market fund must provide appropriate information to investors on the risk and reward profile of the fund so as to enable them to identify any specific risks linked to the investment strategy of the fund.

**Key issues**

1. Both UCITS and non-UCITS money market funds shall comply with the guidelines.
2. The competent authority of the home Member State who supervises the composition of the fund's portfolio and approve the fund's documentation shall be responsible for monitoring that any collective investment undertaking labelling or marketing itself as a money market fund apply the guidelines.
3. Only funds complying with the guidelines can have in their name a reference to "money market".
4. There shall be a distinction between Short Term Money Market Funds, which operate a very short weighted average maturity and weighted average life, and Money Market Funds, which operate a longer weighted average maturity and weighted average life.
5. A Money Market Fund shall indicate in its prospectus and, in the case of a UCITS in its Key Investor Information Document:
  - whether it is a Short Term Money Market Fund or a Money Market Fund;
  - the risk and reward profile of the fund, including any special risks linked to the investment strategy of the fund and the implications of investment in the type of money market fund involved.

**Key questions**

1. Do the guidelines in your jurisdiction apply to both UCITS and non-UCITS money market funds?  
**(Y/N+ text box)**
- 2.a. Does your regulatory system require that any UCITS labelling or marketing itself as a money market



fund complies with the guidelines? **(Y/N+ text box)**

The following questions are intended to identify modalities according to which relevant different authorities monitor compliance with the guidelines (see preamble). The responses are not subject to benchmarks. Possible good practice shall be discussed by the RP and subsequently forwarded to the IMSC before being finalised:

A. Review of the UCITS STMMFs' and MMFs' documentation:

1. do you review the fund's documentation for each UCITS STMMF and MMF for which you are the home authority? Please provide details on the relevant process, including the point in time when this occurs (i.e.: during authorization and/or on-going);
2. if no to the previous question, on which basis do you select the UCITS STMMFs and MMFs? Please provide details on the review process, including the point in time when this occurs (i.e.: during authorization and/or on-going);
3. what actions do you undertake in case the funds' documentation does not comply with the Guidelines?
4. organization and resources dedicated to the review of UCITS funds' documentation **(text box)**
5. other information (if any) **(text box)**.

B. Monitoring the UCITS fund:

- a. organization and resources dedicated thereto
  - b. (i.e. internal units y involved in the monitoring);
  - c. number of staff proportionally dedicated thereto out of the total number of staff in each relevant unit)?**(text box)**;
  - d. other information (if any) **(text box)**;
2. supervisory tools employed in monitoring the UCITS fund:
- a. do you carry out desk based monitoring? **Y/N**
  - b. if yes, please include details on the information you look to and relevant sources, e.g. period reporting from management companies/funds, proactive search of information through newspapers etc., investors complaints, inputs from other authorities, etc. **(text box)**;
  - c. do you carry out routine and/or non-routine on-site inspections of UCITS STMMFs management company and MMFs management company? **Y/N**
  - d. if yes, please include details on your inspections plans and on which basis and frequency you select UCITS STMMFs and MMFs **(text box)**;



e. do you carry out thematic reviews on UCITS STMMFs and MMFs? **Y/N**

f. if yes, please provide details **(text box)**;

3. other information (if any) **(text box)**.

C. Enforcement actions:

1. Have you ever detected during the review period that a UCITS collective investment scheme labelling or marketing itself as a STMMF or a MMF does not comply with the guidelines? **Y/N**

2. If yes, what enforcement actions have you taken against such funds? **(text box)**.

2.b. In your capacity as the home competent authority do you monitor that any UCITS labelling or marketing itself as a money market fund complies with the guidelines? **(Y/N+ text box)**

2.c. Does your regulatory system require that any non-UCITS labelling or marketing itself as a money market fund complies with the guidelines? **(Y/N+ text box)**

The following questions are intended to identify modalities according to which relevant different authorities monitor compliance with the guidelines (see preamble). The responses are not subject to benchmarks. Possible good practice shall be discussed by the RP and subsequently forwarded to the IMSC before being finalised:

A. Review of the non-UCITS STMMFs' and MMFs' documentation:

1. do you review the fund's documentation for each EU-based non-UCITS STMMF and MMF for which you are the home authority? Please provide details on the relevant process, including the point in time when this occurs (i.e.: during authorization and/or on-going) ;

2. if no to the previous question, on which basis do you select the non-UCITS STMMFs and MMFs? Please provide details on the relevant process, including the point in time when this occurs (i.e.: during authorization and/or on-going) ;

3. what actions do you undertake in case the funds' documentation does not comply with the Guidelines?

a. organization and resources dedicated to the review of non-UCITS funds' documentation;

4. other information (if any) **(text box)**.

B. Monitoring the non-UCITS fund:

a. organization and resources dedicated thereto (i.e. the internal units involved in the monitoring the number of staff proportionally dedicated thereto out of the total number of staff in each relevant unit?

b. other information (if any) **(text box)**;

2. supervisory tools employed in monitoring the non-UCITS fund:

a. do you carry out desk based monitoring? **Y/N**

b. if yes, please include details on the information you look to and relevant sources, e.g. period reporting from management companies/funds, proactive search of information through newspapers etc., investors complaints, inputs from other authorities, etc. **(text box)**;

c. do you carry out routine and/or non-routine on-site inspections of non-UCITS STMMFs management company and MMFs management company? **Y/N**

d. if yes, please include details on your inspections plans and on which basis and frequency you select non-UCITS STMMFs and MMFs **(text box)**;

e. do you carry out thematic reviews on non-UCITS STMMFs and MMFs? **Y/N**

f. if yes, please provide details **(text box)**;

g. other information (if any) **(text box)**.

C. Enforcement actions:

1. have you ever detected during the review period that a non-UCITS collective investment scheme labelling or marketing itself as a STMMF or a MMF does not comply with the guidelines? **Y/N**

2. if yes, what enforcement actions have you taken against such funds? **(text box)**.

2.d. In your capacity as the home competent authority do you monitor that any non-UCITS collective investment undertaking labelling or marketing itself as a money market fund complies with the guidelines<sup>12</sup>? **(Y/N+ text box)**

3. Do you prohibit that funds not complying with the guidelines have in their name any reference to “money market”? **(Y/N+ text box)**

4. Do you provide for a distinction between Short Term Money Market Funds and Money Market Funds? If not please explain. **(Y/N+ text box)**

5. Does your regulatory system require that Short Term Money Market Funds and Money Market Funds indicate in their prospectus and, in the case of UCITS in their Key Investor Information Document?

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<sup>12</sup> The question is not for immediate benchmarking. It is however necessary to respond to the purposes set out in para 51 of the official methodology for peer reviews. This applies to all non-benchmarked questions throughout the paper

(a) whether it is a Short Term Money Market Fund or a Money Market Fund? **(Y/N+ text box)**

(b) the risk and reward profile of the fund, including any special risks linked to the investment strategy of the fund and the implications of investment in the type of money market fund involved? **(Y/N+ text box)**

### **Benchmark**

*Fully applied*

If a positive answer is given to questions 1, 2.a, 2.c, 3, 4, 5(a) and (b).

*Partially applied*

If a positive answer is given to questions 1, 2.a, 2.c, 3, 5(a) and (b) and a negative answer is given to question 4.

*Not applied*

Inability to give a positive answer to questions 1, 2.a, 2.c, 3, or 5.

### **Short-Term Money Market Funds**

#### **Box 2**

A Short-Term Money Market Fund must:

1. Have the primary investment objective of maintaining the principal of the fund and aim to provide a return in line with money market rates.
2. Invest in money market instruments which comply with the criteria for money market instruments as set out in Directive 2009/65/EC, or deposits with credit institutions. Non-UCITS money market funds must ensure that the liquidity and valuation of the portfolio is assessed on an equivalent basis.
3. Ensure the money market instruments it invests in are of high quality, as determined by the management company<sup>13</sup>. In making its determination, a management company must take into account a range of factors including, but not limited to:
  - a. the credit quality of the instrument;
  - b. the nature of the asset class represented by the instrument;
  - c. for structured financial instruments, the operational and counterparty risk inherent within the structured financial transaction; and
  - d. the liquidity profile.
4. For the purposes of point 3) a), consider a money market instrument not to be of high quality unless it has been awarded one of the two highest available short-term credit ratings by each recognised credit rating agency that has rated the instrument or, if the instrument is not rated, it is

<sup>13</sup> All references to 'Management Company' in these guidelines should be understood as including self-managed investment companies and operators of non-UCITS collective investment undertakings.

- of an equivalent quality as determined by the management company's internal rating process.
5. Limit investment in securities to those with a residual maturity until the legal redemption date of less than or equal to 397 days.
  6. Provide daily NAV and price calculation, and daily subscription and redemption of units. A non-UCITS money market fund marketed solely through employee savings schemes and to a specific category of investor that is subject to divestment restrictions may provide weekly subscription and redemption opportunities to investors in accordance with its home state regulation.
  7. Ensure its portfolio has a weighted average maturity (WAM) of no more than 60 days.
  8. Ensure its portfolio has a weighted average life (WAL) of no more than 120 days.
  9. When calculating the WAL for securities, including structured financial instruments, base the maturity calculation on the residual maturity until the legal redemption of the instruments. However, when a financial instrument embeds a put option, the exercise date of the put option may be used instead of the legal residual maturity only if the following conditions are fulfilled at all times :
    - the put option can be freely exercised by the management company at its exercise date;
    - the strike price of the put option remains close to the expected value of the instrument at the next exercise date; and
    - the investment strategy of the UCITS implies that there is a high probability that the option will be exercised at the next exercise date.
  10. Take into account, for both the WAL and WAM calculations, the impact of financial derivative instruments, deposits and efficient portfolio management techniques.
  11. Not take direct or indirect exposure to equity or commodities, including via derivatives; and only use derivatives in line with the money market investment strategy of the fund. Derivatives which give exposure to foreign exchange may only be used for hedging purposes. Investment in non-base currency securities is allowed provided the currency exposure is fully hedged.
  12. Limit investment in other collective investment undertakings to those which comply with the definition of a Short-Term Money Market Fund.
  13. Have either a constant or a fluctuating net asset value.

### **Key issues**

1. Short Term Money Market Funds must comply with each provision of Box 2.
2. The management company of a Short Term Money Market Fund must be responsible to identify criteria to determine whether the money market instruments invested by the Short Term Money Market Fund are of high quality according to the guidelines.

In carrying out its due diligence, the management company of a Short Term Money Market Fund must take into account, among others:

- a. the credit quality of the instrument;
  - b. the nature of the asset class represented by the instrument;
  - c. for structured financial instruments, the operational and counterparty risk inherent within the structured financial transaction; and
  - d. the liquidity profile.
3. Management companies of Short Term Money Market Funds must employ a prudent approach to the management of currency, credit, interest rate and liquidity risk and a proactive stress-testing regime. In addition, managers of STMMFs should have appropriate expertise and experience in managing these types of funds.
4. The use of constant net asset value should only be allowed provided that the fund is subject to the requirements on credit quality, sensitivity to market parameters, diversification and maturity of holdings and regular marked-to-market of portfolio set forth in the CESR's guidelines concerning eligible assets for UCITS, as implemented under the law of the jurisdiction in which the fund is authorized or supervised.

### Key questions

1. Does your regulatory system require that Short Term Money Market Funds must apply all the provisions of Box 2? Please provide a response in relation to each of the 13 items of Box 2. In case of a negative answer, please explain which provisions do not apply and why.

**(Y/N+ text box)**

2. Does your regulatory system require that the management company of a Short Term Money Market Fund identifies the criteria to determine the quality of the money market instruments invested by the Short Term Money Market Fund according to the guidelines? **(Y/N+ text box)**
3. In your capacity as the competent authority of the home Member State of a management company of a Short Term Money Market Fund, do you require that such management company takes into account, among others:
- a. the credit quality of the instrument<sup>14</sup>? **(Y/N+ text box)**
  - b. the nature of the asset class represented by the instrument? **(Y/N+ text box)**
  - c. for structured financial instruments, the operational and counterparty risk inherent within the structured financial transaction? **(Y/N+ text box)** and
  - d. the liquidity profile? **(Y/N+ text box)**

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<sup>14</sup> The intention is not to place mechanistic reliance on rating. Due diligence should always be performed by the AM in line with the most recent developments in discussion at the EU Council and the EP (CRAs III) as well as the debate on shadow banking



4.a. Do you allow the use of constant net asset value in connection with Short Term Money Market Funds? (Y/N + text box)

4.b. If yes, in this respect do you require application of CESR's guidelines concerning eligible assets for UCITS? (Y/N+ text box)

### **Benchmark**

*Fully applied*

If a positive answer is given to questions 1 to 3 and a negative answer is given to 4.a, or a positive answer is given to both 4.a and 4.b.

*Partially applied*

If a positive answer is given to questions 1 to 4.a and a negative answer is given to question 4.b.

*Not applied*

Inability to give a positive answer to questions 1, 2, 3(a), 3(b), 3(c), or 3(d).

*Not applicable*

In case a negative answer is given to question 4 of box 1 and the regulatory system contemplates only MMF.

### **Money Market Funds**

#### **Box 3**

A Money Market Fund must:

1. Comply with paragraphs 1, 2, 3, 4, 6, 9, 10 and 11 of Box 2.

In addition, a Money Market Fund:

2. May, as an exception to the requirement in point 4 of Box 2, hold sovereign issuance of at least investment grade quality. 'Sovereign issuance' should be understood as money market instruments issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank.

3. Must have a fluctuating net asset value.

4. Must limit investment in securities to those with a residual maturity until the legal redemption date of less than or equal to 2 years, provided that the time remaining until the next interest rate reset date is less than or equal to 397 days. Floating rate securities should reset to a money market rate or index.

5. Must ensure its portfolio has a weighted average maturity (WAM) of no more than 6 months.

6. Must ensure its portfolio has a weighted average life (WAL) of no more than 12 months.



7. Must limit investment in other collective investment undertakings to those which comply with the definitions of a Short-Term Money Market Fund or a Money Market Fund.

### Key issues

1. Money Market Funds must comply with paragraphs 1, 2, 3, 4, 6, 9, 10 and 11 of Box 2 and paragraphs 3, 4, 5, 6, and 7 of Box 3.
2. As an exception to paragraph 4 of Box 2, Money Market Funds may be allowed to hold sovereign issuance of at least investment grade quality. 'Sovereign issuance' should be understood as money market instruments issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank.
3. Key issue 2 on Short Term Money Market Funds shall apply, *mutatis mutandis*, to the management companies of Money Market Funds.
4. Key issue 3 on Short Term Money Market Funds shall apply, *mutatis mutandis*, to the management companies of Money Market Funds.
5. Key issue 4 on Short Term Money Market Funds shall apply, *mutatis mutandis*, to the management companies of Money Market Funds.

### Key questions

1. Does your regulatory system require that Money Market Funds must apply paragraphs 1, 2, 3, 4, 6, 9, 10 and 11 of Box 2 and paragraphs 3, 4, 5, 6, and 7 of Box 3? Please provide details in relation to each of the aforementioned paragraphs. In case of a negative answer, please explain which provisions do not apply and why. **(Y/N+ text box)**
  - 2.a. Do you allow that, as an exception to paragraph 4 of Box 2, Money Market Funds hold sovereign issuance of at least investment grade quality? **(Y/N+ text box)**
  - 2.b. If yes, do you define 'Sovereign issuance' as money market instruments issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank? **(Y/N+ text box)**



3. Does your regulatory system require that the management company of a Money Market Fund identifies the criteria to determine the quality of the money market instruments invested by the Money Market Fund according to the guidelines? **(Y/N+ text box)**
4. In your capacity as the competent authority of the home Member State of a management company of a Money Market Fund, do you require that such management company takes into account, among others:
- a. the credit quality of the instrument? **(Y/N+ text box)**
  - b. the nature of the asset class represented by the instrument? **(Y/N+ text box)**
  - c. for structured financial instruments, the operational and counterparty risk inherent within the structured financial transaction? **(Y/N+ text box)** and
  - d. the liquidity profile? **(Y/N+ text box)**

### **Benchmark**

*Fully applied*

If a positive answer is given to questions 1 to 4, or a positive answer is given to questions 1, 3, 4 and negative answer to 2.a.

*Partially applied*

If a positive answer is given to questions 1, 2.a., 3 and 4 and a negative answer is given to question 2.b.

*Not applied*

Inability to give a positive answer to questions 1, 3, 4.a., 4.b., 4.c., or 4.d.

*Not applicable*

In case a negative answer is given to question 4 of box 1 and the regulatory system contemplates only STMMF.

### **Transitional provisions**

#### **Box 4**

1. The guidelines will enter into force on the same date as the transposition deadline of Directive 2009/65/EC (1 July 2011).
2. Money market funds created after 1 July 2011 will have to comply with these guidelines immediately.
3. Money market funds in existence at 1 July 2011 must comply from that date with Box 1 of these guidelines, and with either Box 2 or Box 3 as appropriate in respect of any new investment made on or after 1 July 2011. However, in respect of all investments acquired prior to 1 July 2011, such funds are allowed a 6-month transitional period (until 31 December 2011) to comply with either Box 2 or Box 3 of these guidelines as appropriate.

### **Key issues**

1. The date of application of the guidelines shall be aligned with the transposition deadline for the revised UCITS Directive (1 July 2011).
2. All new money market funds that intend to operate as money market funds under the new guidelines shall reflect this in their documentation as of the implementation date.
3. Any funds that do not intend to conform to the new guidelines shall cease to call themselves as money market funds as of the implementation date.
4. Existing money market funds are granted a transposition period of six months after the guidelines enter into force.

### **Key questions**

1. Was the date of implementation of the provisions contained in the guidelines 1 July 2011 as provided for the transposition of Directive 2009/65/EC? **(Y/N+ text box)**
2. Are all money market funds that intend to operate as money market funds under the new guidelines required to reflect this in their documentation as of the implementation date? **(Y/N+ text box)**
3. Are any funds that do not intend to conform to the new guidelines required to cease to call themselves as money market funds as of the implementation date? **(Y/N+ text box)**
4. Are existing money market funds granted a transposition period of six months after the guidelines enter into force? **(Y/N+ text box)**

### **Benchmark**

#### *Fully applied*

If a positive answer is given to questions 1 to 4.

#### *Partially applied*

If a positive answer is given to questions, 2, 3 and 4 and a negative answer is given to question 1.

#### *Not applied*

Inability to give a positive answer to questions 2, 3 or 4.

## ANNEX II

### 170. Date of Implementation/ Transition period

CA	Date of Implementation	Transition period
AT	September 1, 2011	Until December 31, 2011 (for investments made before September 1, 2011) – September 1, 2011 (for investments made as of September 1, 2011)
BE	July 1, 2011	Six months of the date of implementation of the Guidelines
CZ	July 1, 2011	Until December 31, 2011
DE	July 1, 2011	Until December 31, 2011
DK	July 1, 2011	Until December 31, 2011
EL	June 16, 2011	Until December 31, 2011
ES	August 9, 2011	Until December 31, 2011
FI	July 1, 2011	Until December 31, 2011 (to comply with the recommendation) – September 1, 2011 (to change the name appropriately)
FR	July 1, 2011	Until December 31, 2011
IE	July 1, 2011	Until December 31, 2011
IT	May 9, 2012	Until November 8, 2012
LT	July 25, 2012	No answer
LU	July 1, 2011	Until December 31, 2011
LV	November 24, 2011	Until December 31, 2011
MT	July 1, 2011	Until December 31, 2011
NL	July 1, 2011	No answer
RO	January 31, 2012	Until June 30, 2012
SI	July 1, 2012	Until December 31, 2013 (18 months from the date of implementation of the Guidelines)
SK	July 1, 2011	Until December 31, 2011
UK	July 1, 2011	Until December 31, 2011

## ANNEX III

### 171. Reasons for non-implementation of the guidelines

CA	Reasons of 10 CAs for having not yet implemented the guidelines
BG	BG has implemented the CESR MMF Guidelines in the form of Instructions by the FSC, which oblige the funds investing in money market instruments to apply CESR's Guidelines. This document has been adopted by a decision of the FSC on its Members' meeting on 22 August 2012. A transposition period of 3 months after the publication of the instructions had been given to the funds under the scope of the Guidelines for starting applying it. Therefore, the Guidelines have entered into force on 22 November 2012.
CY	In CY, the Guidelines have entered into force (as regards UCITS funds) on 1 February 2013. At the moment Non-UCITS are under the supervision of the Central Bank of Cyprus, but around mid-2013 they should move into the competence of the CySEC. At the moment there are no MMFs in CY.
EE	In Estonia there are no STMMF or MMF. MMF and STMMF may come into being in Estonia only by means of establishing a new fund – approval of a new fund rules or changing the rules of an existing fund, both procedures will be carried out by EFSA. Thus, EFSA would be sufficiently prepared to react appropriately to the new MMF and STMMF and the latter ones would be able to meet the conditions of the guidelines. The amendments for Investment Act are in the pipeline in 2013.
HU	In HU the implementation of the CESR MMF Guidelines started in H1 2012. The CESR MMF Guidelines are implemented in the form of an HFSA Recommendation, which was adopted on 5 October 2012 and entered into force on 3 December 2012 <sup>45</sup> . Two issues should be highlighted: 1) in Hungary C-NAV is not allowed; 2) the HFSA Recommendation further enhances the use of internal credit risk assessment procedures in line with the IOSCO Policy Recommendations for Money Market Funds, which declares the importance of avoiding mechanistic reliance on external credit ratings.
IS	Regulation No. 1095/2010 establishing ESMA contains supranational authority, authorizing the making of binding decisions vis-à-vis Icelandic surveillance authorities and binding decisions that have direct and onerous legal consequences vis-à-vis Icelandic corporations without Iceland's right to participate in decision-making, is flawed with regard to the Icelandic constitution. This system differs from the two-pillar system of the European Economic Area (EEA) agreement to which Iceland is a party, whereby legislation is implemented into Icelandic domestic law by the Icelandic Parliament. Until a solution is found to this problem, the Guidelines will not be

<sup>45</sup> HU: the adoption of HFSA Recommendations is a complex process, which normally takes several months, including separate rounds of internal and public consultation.

	transposed into the Icelandic legal system.
LI	Liechtenstein has not implemented the CESR Guidelines on Money Market Funds yet. The Guidelines are dated 19 May 2010. The accession of Liechtenstein to ESMA took place in May 2011. The FMA is currently examining, whether and to what extent the national laws, regulations or administrative provisions relating to the Guidelines must be amended. This examination is a complex process, which takes significant time, including separate rounds of internal and public consultation. Nevertheless, it is FMA's internal supervisory practice that new created money market funds must comply with these Guidelines.
NO	The guidelines are posted on the web site of Finanstilsynet to inform the market participants, but Finanstilsynet has no legal basis to enforce the guidelines. Enforcement of the guidelines would require a change in the legislation. The Norwegian market for short term bonds/certificates is very small, and Norway has no funds that fall under the definition Short-Term Money Market Fund. There are only 46 Money Market Funds in Norway. Many of the Money Market funds approved have broader classifications in their fund rules than the Guideline provides for. As the money market in Norway is very limited, the guidelines provisions on maturity and weighted average will be very difficult to implement. The Norwegian Fund and Asset Management Association has issued standards for classification of funds and standard for the fund rules. The standard for classification of money market fund is broader in scope and has a wider definition of money-market funds than the Guidelines. Contrary to the guidelines, a weighted average maturity up to one year and a weighted average life up to 1,5 years is allowed. Finanstilsynet possess the authority to approve all new security funds. This procedure includes the assessment of the funds rules. Finanstilsynet also approves changes to the fund rules. When practicing the regulation Finanstilsynet use the standard issued by the Norwegian Fund and Asset Management Association as a basis in our assessment.
PL	Pursuant to the Polish Act of 27 May 2004 on Investment Funds, only those funds which strictly comply with the requirements of the Polish legislation may be defined as money market funds. Even though some definitions from the Polish legislation and the Money Market Fund Guidelines partially overlap, different approach towards the criteria of qualification of funds as money market funds in the MMF Guidelines results in the fact that currently the Polish legislation defines the money market funds in a way which is partially different from the one described in the MMF Guidelines, preventing the KNF from full implementation of the MMF Guidelines. However, the KNF uses the MMF Guidelines in its on-going supervisory practice by treating them as useful interpretative directive in the process of application of the Polish legislation in-force.
PT	PT approved at the end of 2012 a Regulation, which formally implements the Guidelines into the Portuguese legal framework. This Regulation will be published in the Portuguese Official Journal by the end of the first quarter of 2013, entering into force on the day following its publication. The forthcoming PT Regulation sets forth money market funds and short-term money markets funds as defined and construed under the Guidelines and relevant FAQ. As regards the requirements on external credit ratings, PT highlights that the forthcoming Regulation anticipates the natural evolution of the Guidelines

	<p>inasmuch as it advocates that risks of an over-reliance on external credit ratings should be avoided.</p>
SE	<p>Finansinspektionen does not have the legal basis to force MMF/STMMF to amend their fund rules if they should deviate from the guidelines. This is the reason for not formally implementing the guidelines. Instead Finansinspektionen has informed the market of the guidelines and encourages investment funds to comply. Also, when authorizing new funds, Finansinspektionen considers the guidelines as best practice and any deviation from the guidelines would have to be explained by the management company in question. Finansinspektionen applies a risk based approach to all supervisory activities. We have not received any indications to date that there are any issues related to MMFs/STMMFs.</p>