

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

Luxembourg, le 2 décembre 2014

A tous les organismes de placement collectif luxembourgeois et à tous les fonds d'investissement spécialisés luxembourgeois ainsi qu'à ceux qui interviennent dans le fonctionnement et le contrôle de ces organismes.

CIRCULAIRE CSSF 14/598

Concerne : Avis de l'Autorité Européenne des Marchés Financiers (AEMF-ESMA) concernant la revue des lignes de conduite « *CESR's Guidelines on a common definition of European money market funds* » (CESR/10-049)

Mesdames, Messieurs,

La présente circulaire vise à implémenter dans la réglementation luxembourgeoise applicable aux organismes de placement collectif qui relèvent de la loi du 17 décembre 2010 (ci-après « OPC ») et aux fonds d'investissement spécialisés qui relèvent de la loi du 13 février 2007 (ci-après « FIS ») les modifications introduites par l'Opinion de l'AEMF-ESMA (ci-après « l'Avis ») du 22 août 2014 (Ref. ESMA/2014/1103) concernant les lignes de conduite « *CESR's Guidelines on a common definition of European money market funds (Ref. CESR/10-049)* » (ci-après « les lignes de conduite MMF »).

A titre de rappel, les lignes de conduite MMF ont été publiées le 19 mai 2010 par le *Committee of European Securities Regulators* (désormais l'AEMF-ESMA) et ont été implémentées dans la réglementation luxembourgeoise à travers la circulaire CSSF 11/498. Ces lignes de conduite, en application de l'encadré 1, s'appliquent à tous les OPC et FIS qui se désignent ou se commercialisent comme un organisme de placement collectif monétaire (« money market fund »).

L'Avis de l'AEMF-ESMA répond des exigences de l'article 5ter (1) du Règlement (CE) N° 1060/2009 du Parlement Européen et du Conseil du 16 septembre 2009 sur les agences de notation de crédit (ci-après « règlement »), tel que modifié par le Règlement (UE) N° 462/2013 du Parlement Européen et du Conseil du 21 mai 2013, selon lesquelles les autorités européennes de surveillance doivent réexaminer et supprimer, le

cas échéant, toutes les références aux notations de crédit dans les orientations et recommandations existantes lorsque de telles références sont susceptibles d'entraîner un recours exclusif ou mécanique à ces notations de crédit.

En application du règlement modifié précité, l'AEMF-ESMA a procédé à une évaluation des lignes de conduite MMF lui permettant de conclure à l'existence de références aux notations de crédit susceptibles d'entraîner un recours exclusif ou mécanique à des notations de crédit en relation avec l'évaluation de la qualité de crédit des instruments du marché monétaire dans lesquels les organismes de placement collectif monétaires peuvent investir.

En conséquence, l'AEMF-ESMA est d'avis que les lignes de conduite MMF doivent être modifiées au point 4 de l'encadré 2 concernant les organismes de placement collectif monétaires à court terme (« short-term money market funds ») et au point 2 de l'encadré 3 concernant les organismes de placement collectif monétaires (« money market funds ») ainsi qu'au niveau des textes explicatifs associés.

Ces modifications prévoient notamment que les sociétés de gestion (respectivement sociétés d'investissement n'ayant pas désigné de société de gestion) appliquent un processus d'évaluation interne de la qualité de crédit des instruments du marché monétaire documenté leur permettant de déterminer si un instrument du marché monétaire est d'une qualité élevée (« high quality »).

Plus particulièrement, les points tels que repris ci-avant des lignes de conduite ont été remplacés par les textes suivants :

a) Point 4 de l'encadré 2 :

“4. For the purposes of point 3a), ensure that the management company performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality. Where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the management company’s internal assessment should have regard to, inter alia, those credit ratings. While there should be no mechanistic reliance on such external ratings, a downgrade below the two highest short-term credit ratings by any agency registered and supervised by ESMA that has rated the instrument should lead the manager to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of high quality.”

b) Point 2 de l'encadré 3 :

“2. May, as an exception to the requirement of point 4 of Box 2, hold sovereign issuance of a lower internally-assigned credit quality based on the MMF manager’s own documented assessment of credit quality. Where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the management company’s internal assessment should have regard to, inter alia, those credit ratings. While there should not be mechanistic reliance on such external ratings, a downgrade below investment grade or any other equivalent rating grade by any agency registered and supervised by ESMA that has rated the instrument should lead the manager to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of appropriate 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.”

La présente circulaire entre en vigueur avec effet immédiat.

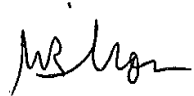
L’Avis comprenant la nouvelle version consolidée des lignes de conduite est joint en annexe de la présente circulaire. Il est également disponible sur le site Internet de l’AEMF-ESMA à l’adresse <http://www.esma.europa.eu/>.

Veillez recevoir, Mesdames, Messieurs, l’assurance de nos sentiments très distingués.

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER



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Annexe 1 : *ESMA Opinion : Review of the CESR guidelines on a Common Definition of European Money Market Funds (Ref. ESMA/2014/1103)*

OPINION

Review of the CESR guidelines on a Common Definition of European Money Market Funds

1. Legal basis

1. ESMA's competence to deliver an opinion is based on Article 29(1)(a) of Regulation (EC) No 1095/2010 (the 'Regulation'). In accordance with Article 44(1) of the Regulation the Board of Supervisors has adopted this opinion.

2. Background

2. Article 5(b)(1) of the CRA Regulation – as amended by the CRA3 Regulation¹ – states:

[ESMA, EBA and EIOPA], shall not refer to credit ratings in their guidelines, recommendations and draft technical standards where such references have the potential to trigger sole or mechanistic reliance on credit ratings by the competent authorities, the sectorial competent authorities, the entities referred to in the first subparagraph of Article 4(1) of the CRA Regulation or other financial market participants. Accordingly, EBA, EIOPA and ESMA shall review and remove, where appropriate, all such references to credit ratings in existing guidelines and recommendations by 31 December 2013.

3. In May 2010, the Committee of European Securities Regulators (CESR) adopted the guidelines on a Common Definition of European Money Market Funds (Ref. CESR/10-049, hereafter the 'CESR guidelines')². The CESR guidelines entered into force on 1 July 2011 at the same time as the deadline for transposition of the revised version of the UCITS Directive. The CESR guidelines distinguish between Short-Term Money Market Funds (ST MMFs) and Money Market Funds (MMFs) on the basis of certain key characteristics, such as the weighted average maturity and weighted average life. ESMA is the legal successor of CESR.
4. The CESR guidelines also set out criteria that money market instruments should respect in order to be considered as eligible investments for ST MMFs and MMFs. In particular, ST MMFs and MMFs should only invest in high quality money market instruments. According to the CESR guidelines, a money market instrument should not be considered to be of high quality by managers of ST MMFs and MMFs 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.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:146:0001:0033:EN:PDF>

² http://www.esma.europa.eu/system/files/10_049.pdf

5. Having reviewed the CESR guidelines against the provisions of the CRA3 Regulation, ESMA concluded that they had the potential to trigger sole or mechanistic reliance on credit ratings. As a consequence, the Authority decided to review the CESR guidelines as required by Article 5(b)(1) of the CRA Regulation; this led to the publication on 6 February 2014 by ESMA, EIOPA and EBA of the joint final report on Mechanistic Reference to Credit Ratings in the ESA's Guidelines and Recommendations³ (JC 2014 004). This report sets out the manner in which the CESR guidelines were to be amended, in particular with respect to the assessment of credit quality of money market instruments by managers of ST MMFs and MMFs. The purpose of this opinion is to explain how national competent authorities should apply the modifications set out in the aforementioned report when monitoring the application of the CESR guidelines by the relevant financial market participants.

3. Modification of the provisions on the assessment of credit quality of money market instruments

6. ESMA is of the view that national competent authorities should take into account the amendments set out in paragraphs 7 and 8 below when they monitor the application of the CESR guidelines on a Common Definition of European Money Market Funds. For ease of reference, an informal consolidated version of the CESR guidelines that reflects the modifications of the provisions on the assessment of the credit quality of money market instruments is annexed to the opinion.

7. ESMA believes that paragraph 4 of Box 2 of the original CESR guidelines should be replaced by the following paragraph:

“4. For the purposes of point 3a), ensure that the management company performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality. Where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the management company's internal assessment should have regard to, inter alia, those credit ratings. While there should be no mechanistic reliance on such external ratings, a downgrade below the two highest short-term credit ratings by any agency registered and supervised by ESMA that has rated the instrument should lead the manager to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of high quality.”

8. In addition, the Authority is of the view that paragraph 2 of Box 3 of the original CESR guidelines should be replaced as follows:

“2. May, as an exception to the requirement of point 4 of Box 2, hold sovereign issuance of a lower internally-assigned credit quality based on the MMF manager's own documented assessment of credit quality. Where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the management company's internal assessment should have regard to, inter alia, those credit ratings. While there should not be mechanistic reliance on such external ratings, a downgrade below investment grade or any other equivalent rating grade by any agency registered and supervised by ESMA that has rated the instrument should lead the manager to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of appropriate quality. ‘Sovereign issuance’ should be understood as money market instruments issued or guaranteed by a central, regional or local authority or cen-

³ http://www.esma.europa.eu/system/files/jc_2014_004_final_report_mechanistic_references_to_credit_ratings_rect.pdf

tral bank of a Member State, the European Central Bank, the European Union or the European Investment Bank.”

9. Furthermore, to ensure consistency with the new version of paragraph 4 of Box 2 of the CESR guidelines, national competent authorities should not take into account the last sentence of paragraph 10 of the explanatory text under Box 2 of the original CESR guidelines. Similarly, national competent authorities should not take into account paragraph 25 of the explanatory text under Box 3 of the original CESR guidelines since this paragraph deals with the minimum credit rating of money market instruments.
10. ESMA will not (re)issue the CESR guidelines on a Common Definition of European Money Market Funds as ESMA guidelines under Article 16 of the Regulation. This means that national competent authorities will not have to notify ESMA whether or not they comply or intend to comply with the amended version of the CESR guidelines. However, ESMA will monitor the application of this opinion by national competent authorities.

Annex – Consolidated version of the CESR guidelines on Common Definition of European Money Market Funds (not issued under Article 16 of ESMA Regulation)

Executive Summary

This paper sets out CESR's guidelines on a common definition of European money market funds. The key purpose behind a harmonised definition of 'money market fund' is improved investor protection. This reflects the fact that investors in money market funds expect the capital value of their investment to be maintained while retaining the ability to withdraw their capital on a daily basis. A common definition will also help provide a more detailed understanding of the distinction between funds which operate in a very restricted fashion and those which follow a more 'enhanced' approach.

CESR's guidelines set out a two-tiered approach for a definition of European money market funds:

- Short-Term Money Market Funds
- Money Market Funds

This approach recognises the 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 with a longer weighted average maturity and weighted average life.

The guidelines apply to collective investment undertakings authorised under the UCITS Directive (2009/65/EC) and collective investment undertakings regulated under the national law of a Member State and which are subject to supervision and comply with risk-spreading rules.

In both cases specific disclosure should be required to draw attention to the difference between the money market fund and investment in a bank deposit. It should be clear, for example, that an objective to preserve capital is not a capital guarantee. Money Market Funds should be required to provide sufficient information to explain the impact of the longer duration on the risk profile.

The guidelines will enter into force in line with the transposition deadline for the revised UCITS Directive (1 July 2011). However, money market funds that existed before 1 July 2011 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 in respect of all investments acquired prior to that date.

Introduction

1. In the light of market events in 2008, CESR agreed in December of that year that better co-ordination between its members on funds in general and money market funds in particular was needed, as well as an improved understanding of the categorisation of money market funds, given the lack of a harmonised definition.
2. Indeed, a review by CESR of the situation of money market funds in the EU has indicated that practice varies widely. Some Member States provide a definition or classification system in domestic law or regulation. In other jurisdictions, local industry associations have developed a definition. In the majority of cases, recognition as a money market fund requires predominant investment in money market instruments and compliance with restrictions on the maturity of investments.
3. Following its initial work, CESR has been developing guidelines with a view to establishing a common definition of European money market funds. CESR issued a consultation paper (Ref. CESR/09-850) in October 2009 with a proposal for a common definition.
4. This paper sets out CESR's guidelines, which create two categories of money market fund: 'Short-Term Money Market Funds' and 'Money Market Funds'. For both categories, CESR has established a list of criteria with which funds must comply if they want to use the label 'Money Market Fund'.

Definitions

Constant NAV Money Market Funds: A constant or stable NAV money market fund seeks to maintain an unchanging face value NAV (for example \$1/€1 per unit/share). Income in the fund is accrued daily and can either be paid out to the investor or used to purchase more units in the fund. Assets are generally valued on an amortised cost basis which takes the acquisition cost of the security and adjusts this value for amortisation of premiums (or discounts) until maturity.

As stated by CESR's guidelines concerning eligible assets for UCITS⁴, the UCITS must ensure that such a method will not result in a material discrepancy between the market value of the instruments held by the fund and the value calculated according to the amortisation method, whether at the individual instrument level or at the UCITS level. The fund must periodically calculate both the market value of its portfolio and the amortised cost valuation and take action if any discrepancy between them becomes material.

The constant NAV is not guaranteed and where a discrepancy between the market value and the amortised cost value of the portfolio becomes material, the money market fund can no longer issue and redeem units at the stable NAV of \$1/€1 per unit (this is often known as 'breaking the buck'). This may occur, for example, where there is a default by the issuer of an instrument in the portfolio.

Weighted Average Maturity: WAM is a measure of the average length of time to maturity of all of the underlying securities in the fund weighted to reflect the relative holdings in each instrument, assuming that the maturity of a floating rate instrument is the time remaining until the next interest rate reset to the money market rate, rather than the time remaining before the principal value of the security must be repaid. In practice, WAM is used to measure the sensitivity of a money market fund to changing money market interest rates.

Weighted Average Life: WAL is the weighted average of the remaining life (maturity) of each security held in a fund, meaning the time until the principal is repaid in full (disregarding interest and not discounting). Contrary to what is done in the calculation of the WAM, the calculation of the WAL for floating rate securities and structured financial instruments does not permit the use of interest rate reset dates and instead only uses a security's stated final maturity. WAL is used to measure the credit risk, as the longer the reimbursement of principal is postponed, the higher is the credit risk. WAL is also used to limit the liquidity risk.

⁴ UCITS money market funds are, subject to applicable national law, permitted to use an amortised cost method of valuation under Commission Directive 2007/16/EC and the related CESR guidelines concerning eligible assets for investment by UCITS (Ref. CESR/07-044b).

Guidelines

General guidelines

Box 1

1. These guidelines apply to:
 - a collective investment undertaking authorised under Directive 2009/65/EC; or
 - a 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.

Explanatory Text

1. CESR's guidelines apply to harmonised (UCITS) European money market funds and non-UCITS money market funds. Other money market-type funds can continue to be authorised as UCITS but will not be able to use the money market fund label following the introduction of the guidelines. Responsibility for monitoring the application of these guidelines will lie with the competent authority of the home Member State. This reflects the responsibilities of the home state authority in relation to the composition of the portfolio and the approval of the fund's documentation.
2. CESR does not expect collective investment undertakings with so-called enhanced money market fund strategies to be able to comply with the guidelines.
3. Although CESR does not prescribe that non-UCITS money market funds should follow the same regulatory requirements applicable to money market funds that are UCITS, CESR does expect the operator of a non-UCITS money market fund to maintain sound risk management processes and procedures and ensure an appropriate diversification of its portfolios.
4. CESR's guidelines are based on a two-tier approach for a definition of European money market funds. The two-tier approach recognises the 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. CESR recognises the risk that funds may use names containing terms similar or analogous to 'Short-Term Money Market Fund' and 'Money Market Fund' so as to have greater freedom in the composition of the portfolio, while marketing the fund as having features equivalent to those that fall within the scope of the guidelines. CESR feels, however, that it would not be proportionate to

target funds using similar labelling, nor would it be easy to define the scope of such a requirement. Therefore, CESR members have agreed to address this issue by taking steps at the national supervisory level where appropriate. In order to avoid any confusion among investors, CESR also decided to require that only funds that comply with these guidelines may have in their name any reference to ‘money market’.

6. In order to help ensure a uniform application of the guidelines across the EEA, a list of translations of the terms ‘Short-Term Money Market Fund’ and ‘Money Market Fund’ are included in Annex 1.
7. When disclosing information to investors on the risk and reward profile of the fund, money market funds (as for all UCITS) should ensure that they identify any specific risks linked to the investment strategy of the fund. This disclosure should clearly explain the implications of investment in the type of money market fund involved. For Money Market Funds, for example, this means taking account of the longer weighted average maturity and weighted average life of such funds. For both types of money market fund, this means taking into account, if relevant, any investment in new asset classes, financial instruments or investment strategies with unusual risk and reward profiles.

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 company⁵. 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 3a), ensure that the management company performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality. Where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the management company’s internal assessment should have regard to, inter alia, those credit ratings. While there should be no mechanistic reliance on such external ratings, a downgrade below the two highest short-term credit ratings by any agency registered and supervised by ESMA that has rated the in-

⁵ 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.

strument should lead the manager to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of high quality.

- ~~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 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.

Explanatory Text

8. The responsibility for the assessment of the quality of a money market instrument lies with the management company. In making its assessment, the management company should take into account a range of factors such as the liquidity profile and the nature of the asset class represented by the instrument. In carrying out its due diligence, the management company should not place undue weight on the credit rating of the instrument.

9. When investing in structured financial instruments in particular, the due diligence should include a review of the specific risks attaching to such securities, including information on the underlying assets, on the entities involved in the vehicle and their respective role, and on the legal framework of the vehicle. In July 2009, IOSCO published a report on 'Good practices in relation to investment managers' due diligence when investing in structured finance instruments'. Management companies should consider taking account of that report when assessing the quality of a money market instrument.
10. In relation to the credit quality of money market instruments, the two highest available short-term credit ratings should be understood as the two highest ratings of the rating scale. It should be noted that for some of the recognised credit rating agencies, the two highest short-term ratings are commonly considered as a single category and therefore as the highest rating available.⁶ ~~The rating must have been awarded by each recognised credit rating agency that has rated the instrument.~~
11. The credit quality of money market instruments should be monitored on an on-going basis and not only at the moment of the purchase. If the rating of a money market instrument no longer complies with the guidelines at a given moment after the purchase, corrective action should be taken by the management company taking into account the best interests of the unit-holders.
12. In the case of a non-rated security, the assessment of its credit quality must be carried out in accordance with the Directive implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company.
13. When a fund invests in securities including structured financial instruments, the residual maturity until the legal redemption date must be less than or equal to 397 days. As an example, therefore, an ABS with a residual maturity until the legal redemption of 5 years but with an expected maturity of 8 months would not be eligible for Short-Term Money Market Funds because its residual maturity until the legal redemption exceeds the 397-day limit.
14. CESR considers that requirements on settlement can be addressed at a national level according to local practices. However, CESR expects as a matter of best practice that for UCITS money market funds, settlement should not exceed T+3.
15. CESR notes that the requirement for daily subscription and redemption of units may be inconsistent with the functioning of some non-UCITS money market funds marketed through employee savings schemes, in which investments are made on a long-term basis. Therefore, a non-UCITS money market fund marketed through an employee savings scheme may provide weekly subscription and redemption opportunities to investors in accordance with its home state regulation.
16. The maturity used for calculating the WAL (and assessing compliance with the guidelines on maximum maturity) is the residual maturity until legal redemption, since this is the only date at which the management company can be assured that the instrument will have been reimbursed. In some very specific cases, the instrument may embed a put option which enables the management company to redeem its investment at a given date at a predefined price. This does not automatically allow the management company to consider that the exercise date corresponds to the maturity of that put, since the strike price of the put may not be in line with the valuation of the instrument and it may therefore not be in the best interests of the fund to exercise that put. However, the exercise date may be used instead of the residual maturity until the legal redemption if the conditions in Box 2, paragraph 9 are satisfied at all times. This derogation relates only to the calculation of the WAL and is without prejudice to the requirement on maturity of instruments in Box 2, paragraph 5 and the accompanying Explanatory Text (paragraph 13).

⁶ Where a rating agency divides its highest short-term rating into two categories, these two ratings should be considered as a single category and therefore the highest rating available.

17. In all other cases, the residual maturity until legal redemption of the instrument must be used. This includes the following cases:
- Asset-backed securities (ABS) with a short expected maturity but a longer residual maturity until the legal redemption. Since the expected maturity is based on a cash-flow hypothesis at the level of the underlying assets of these ABS which might not be fulfilled, it should not be used as a proxy for the maturity of the ABS. For example, if a fund manager invests in an ABS with a 1-year residual maturity until the legal redemption but a 3-month expected maturity, the WAL calculation should be based on 1 year rather than 3 months.
 - So-called ‘callable bonds’, where the issuer has a right to redeem prior to the maturity date of the bond. Since this early redemption decision is in the hands of the issuer and not of the fund manager, there is no certainty that the underlying call option will be exercised. Thus, the exercise date of the call option cannot be taken as a proxy for the maturity of the bond.

These examples should not be understood as implying that all ABS or callable bonds will meet the criteria to be eligible assets for money market funds.

18. With regard to investment in non-base currency securities, CESR is of the view that all risks incurred by these investments, such as interest rate risk on a foreign market, must be appropriately disclosed to investors in the prospectus of the fund. In the case of a UCITS, the Commission Regulation implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information requires disclosure in the KID if the risk is material.
19. As set out in point 10 of Box 2, management companies must take into account the impact of financial derivative instruments, deposits and efficient portfolio management techniques when calculating the WAM and the WAL. This is in order to reflect the roles of these calculations in limiting the interest rate risk and credit risk respectively and avoid, for example, the possibility for a fund holding a floating rate instrument to gain exposure to a fixed rate instrument through a swap.
20. According to Article 51 of the UCITS Directive, a management company is required to employ a risk management process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio. For a money market fund, this should include a prudent approach to the management of currency, credit, interest rate and liquidity risk and a proactive stress-testing regime. In addition, managers of money market funds should have appropriate expertise and experience in managing these types of fund.
21. There are currently two valuation approaches used by money market funds in Europe – funds with a constant or stable net asset value and those with a fluctuating or variable net asset value. A constant NAV money market fund accounts for portfolio holdings at amortised cost. As set out in CESR’s guidelines concerning eligible assets for UCITS, strict requirements apply to credit quality, sensitivity to market parameters, diversification and maturity of these holdings and the portfolio must be marked to market on a regular basis. Variable net asset value money market funds account for portfolio holdings at market value, although instruments which comply with the amortisation method requirements specified in CESR’s guidelines concerning eligible assets for UCITS may be valued at amortised cost.
22. CESR expects that the use of a constant net asset value should only be allowed provided the fund is subject to the requirements mentioned in the previous paragraph under the law of the jurisdiction in which it is authorised or supervised.

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 of point 4 of Box 2, hold sovereign issuance of a lower internally-assigned credit quality based on the MMF manager's own documented assessment of credit quality. Where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the management company's internal assessment should have regard to, inter alia, those credit ratings. While there should not be mechanistic reliance on such external ratings, a downgrade below investment grade or any other equivalent rating grade by any agency registered and supervised by ESMA that has rated the instrument should lead the manager to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of appropriate 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.
- ~~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.

23. As noted above, CESR's two-tier approach to the definition of money market funds recognises the 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 with a longer weighted average maturity and weighted average life. This distinction is reflected in the detailed criteria for Money Market Funds set out in Box 3.
24. Money Market Funds must comply with paragraphs 1, 2, 3, 4, 6, 9, 10 and 11 of Box 2. The relevant sections of the explanatory text under Box 2 should also be taken into account in applying these criteria to Money Market Funds.

~~25. With regard to credit quality, the general rule for both Short-Term Money Market Funds and Money Market Funds is that the money market instruments in which they invest must have been awarded one of the two highest available credit ratings by each recognised credit rating agency that has rated that instrument. However, as an exception to this principle, Money Market Funds may hold sovereign issuance of at least investment grade as awarded by one or more recognised credit rating agencies. This flexibility for Money Market Funds takes into account the possible difficulties that would arise for funds based in certain Member States if they were no longer able to invest in the sovereign debt of that jurisdiction, and the need for financing of short term sovereign debt across the EU.~~

26. With regard to the maturity of securities, the approach for Short-Term Money Market Funds set out in paragraph 13 above should be adapted to Money Market Funds in such a way that the limit is 2 years rather than 397 days. For example, an ABS with a residual maturity until the legal redemption of 10 years but with an expected maturity of 18 months would not be eligible for Money Market Funds as its residual maturity until the legal redemption exceeds the 2-year limit.

27. CESR is of the view that Money Market Funds should not be allowed to use a constant net asset value, as these funds are more sensitive to interest rate changes than Short-Term Money Market Funds.

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.

28. CESR sees merit in aligning the date of application of the guidelines with the transposition deadline for the revised UCITS Directive. This takes account of the fact that legislative changes may be needed in some Member States in order to apply the guidelines. In addition, CESR expects that some existing money market funds may need some time to adjust to the new criteria due to the prevailing conditions in the money, bond and securitisation markets. In order to take advantage of potential improvements in market conditions in the coming years, CESR believes that existing money market funds should be granted a longer transitional period. Moreover, a more flexible transitional process may help reduce the risk of correlated sales in the market. Therefore, existing money market funds are granted a transposition period of six months (until 31 December 2011) after the guidelines enter into force.

29. However, all funds that intend to operate as money market funds under the new guidelines should reflect this in their documentation from 1 July 2011; similarly, any funds that do not intend to conform (i.e. those that will cease to call themselves money market funds) should make this clear in their documentation from the original implementation date of 1 July 2011.

Annex to the guidelines – Table of translated terms for each CESR member

	Member	Short-Term Money Market Fund	Money Market Fund
1.	Austria	Geldmarktfonds mit kurzer Laufzeitstruktur	Geldmarktfonds
2.	Belgium	fonds monétaire à court terme / geldmarktfonds op korte termijn / Geldmarktfonds mit kurzer Laufzeitstruktur	fonds monétaire / geldmarktfonds / Geldmarktfonds
3.	Bulgaria	Краткосрочен фонд на паричния пазар	Фонд на паричния пазар
4.	Cyprus	ΟΣΕΚΑ ΔΙΑΧΕΙΡΙΣΗΣ ΔΙΑΘΕΣΙΜΩΝ ΒΡΑΧΥΠΡΟΘΕΣΜΗΣ ΔΙΑΡΚΕΙΑΣ	ΟΣΕΚΑ ΔΙΑΧΕΙΡΙΣΗΣ ΔΙΑΘΕΣΙΜΩΝ
5.	Czech Republic	Krátkodobý fond peněžního trhu	Fond peněžního trhu
6.	Denmark	Kort Pengemarkedsforening	Pengemarkedsforening
7.	Estonia	Lühiajaline Rahaturufond	Rahaturufond
8.	Finland	Lyhyt Rahamarkkinarahasto	Rahamarkkinarahasto
9.	France	fonds monétaire à court terme	fonds monétaire
10.	Germany	Geldmarktfonds mit kurzer Laufzeitstruktur	Geldmarktfonds
11.	Greece	Αμοιβαίο Κεφάλαιο Διαχείρισης Διαθεσίμων Βραχείας Διάρκειας	Αμοιβαίο Κεφάλαιο Διαχείρισης Διαθεσίμων
12.	Hungary	Rövid pénzpiaci alap	Pénzpiaci Alap
13.	Iceland	Peningamarkaðssjóður stutur	Peningamarkaðssjóður
14.	Ireland	N/A	N/A
15.	Italy	Fondi monetari a breve termine	Fondi monetari
16.	Latvia	Īstermiņa naudas tirgus fonds	Naudas tirgus fonds
17.	Lithuania	Trumpalaikių pinigų rinkos priemonių fondas	Pinigų rinkos fondas
18.	Luxembourg	organisme de placement collectif (OPC) monétaire à court terme	organisme de placement collectif (OPC) monétaire
19.	Malta	Fond tas-suq tal-flus għal zmien qasir	Fond tas-suq tal-flus
20.	Netherlands	Geldmarktfonds op korte termijn	Geldmarktfonds
21.	Norway	Korte pengemarkedsfond	Pengemarkedsfond
22.	Poland	fundusz inwestycyjny krótkoterminowego rynku pieniężnego	fundusz inwestycyjny rynku pieniężnego
23.	Portugal	Fundo de Investimento do Mercado Monetário de Curto Prazo	Fundo de Investimento do Mercado Monetário
24.	Romania	Fonduri monetare pe termen scurt	Fonduri monetare
25.	Slovak Republic	Fond krátkodobého peňažného trhu	Fond peňažného trhu
26.	Slovenia	kratkoročni sklad denarnega trga	sklad denarnega trga
27.	Spain	Fondo monetario a corto plazo	Fondo monetario
28.	Sweden	Kort penningmarknadsfond	Penningmarknadsfond
29.	UK	N/A	N/A