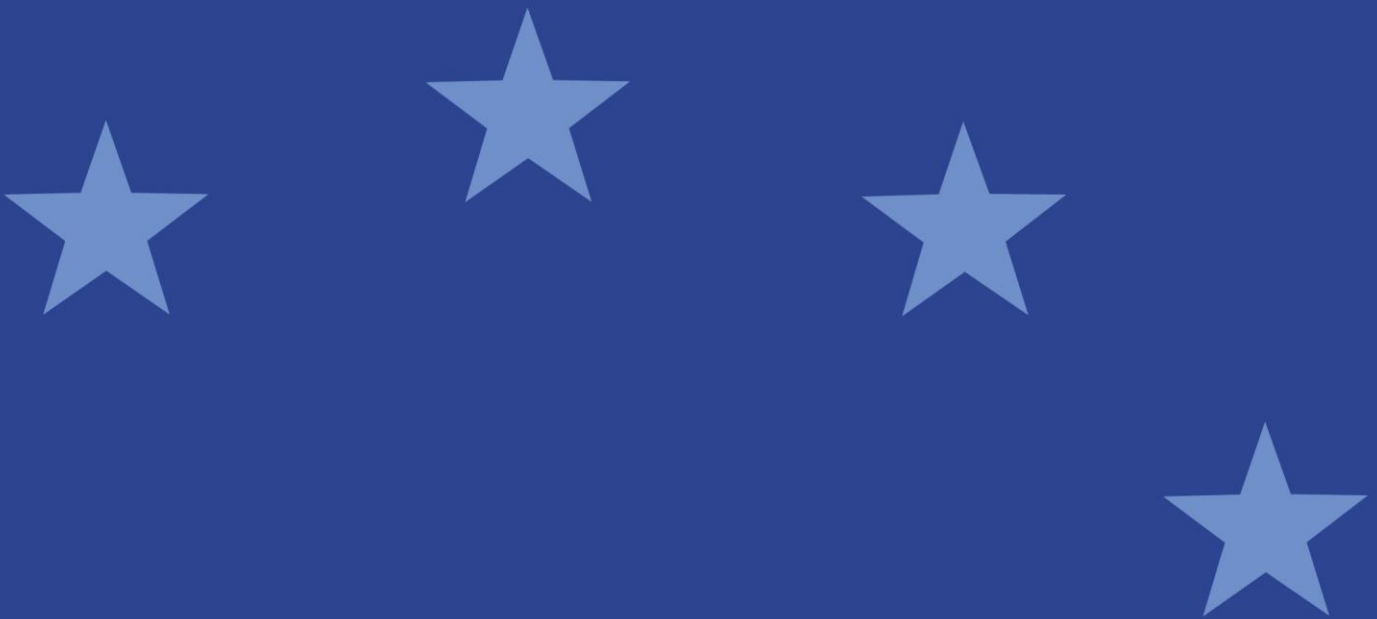


# **Follow-up Peer Review Money Market Fund Guidelines**



## Table of Contents

1. INTRODUCTION	_____
2. EXECUTIVE SUMMARY	_____
3. FINDINGS OF THE FOLLOW-UP PEER REVIEW	_____
3.1 Updating from the former peer review	
3.2 Findings of the targeted follow-up peer review	
3.3 Findings of the full follow-up peer review	
3.2.1 Background information	_____
3.2.2 General Guidelines	_____
3.2.3 Guidelines on Short-Term Money Market Funds	_____
3.2.4 Guidelines on Money Market Funds	_____
3.2.5 Transitional provisions	_____
4. SUPERVISORY PRACTICES	_____
ANNEX 1 MMF Follow-up Peer Review Questionnaire	
ANNEX 2 Date of Implementation/ Transition period	
ANNEX 3 Reasons for non-implementation of the guidelines	

## 1. INTRODUCTION

1. In December 2011, the ESMA Board of Supervisors mandated the Review Panel to carry out a peer review on the application of the CESR Guidelines on a common definition of European money market funds (CESR/10-049) (hereinafter, the “Guidelines on Money Market Funds”, or also 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.
2. The 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 funds: a) Short-term Money Market Funds (hereinafter, also “STMMF”), and b) Money Market Funds (hereinafter, also “MMF”). 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”. In February 2012, ESMA published Questions and Answers (ESMA/2012/113) in view to promote common supervisory approaches and practices in the application of the Guidelines by providing responses to questions posed by the general public and national competent authorities (NCAs).
3. The Guidelines apply to collective investment undertakings under the UCITS Directive (2009/65/EC) and 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.
4. The Peer Review Report was published on April 15, 2013. The Report sets out the result of the assessment by peers on the level of compliance with the Guidelines by those national competent authorities (NCAs) which had implemented the Guidelines as of August 2012. In 14 Member States (AT, CZ, DE, DK, EL, ES, FR, IE, IT, LV, RO, SI, SK, UK) the Guidelines had been implemented into national legal systems by means of mandatory provisions. In 6 Member States (BE, FI, LU, MT, NL, SI), they were implemented by means of measures that do not have the force of law but that NCAs are able to follow in all instances i.e. to consider there is a breach of a mandatory legal provision. In one Member State (LT) the Guidelines had been implemented but by means of measures that do not ensure compliance with the guidelines in all instances. Finally, in 10 countries (BG, CY, EE, HU, IS, LI, NO, PL, PT, SE) the guidelines had not been implemented within the review period.
5. The Report also describes the degree of convergence in supervisory and enforcement practices in ensuring application of the Guidelines and identifies possible good practices across the EU.
6. Since the Peer Review Report identified a number of competent authorities which did not implement in full or in part the Guidelines, this follow-up peer review has been conducted in accordance with Section 9 of the Review Panel Methodology (ESMA/2013/1709).
7. This Follow-up Peer Review Report provides an update on the findings of the first peer review and sets out the result of this second assessment by peers. The review period is from 1 May 2014 to 1 May 2015. NCAs who have implemented the Guidelines after the review period, but before the finalisation of this Follow-up Peer Review Report are earmarked as such.

8. In this regard, it is also noted that on August 22, 2014, ESMA issued an Opinion under Article 29(1)(a) of Regulation (EC) No 1095/2010 (the ‘Regulation’), amending the Guidelines in accordance with Article 5(b)(1) of the CRA Regulation (as amended by the CRA3 Regulation), in order to remove any potential trigger to sole or mechanistic reliance on credit ratings in particular with respect to the assessment of credit quality of money market instruments by managers of ST MMFs and MMFs.
9. In light of the above, the original Peer Review Questionnaire has been updated to take into account the above-mentioned amendments to the Guidelines in accordance with the ESMA Opinion of August 22, 2014.
10. Fourteen NCAs, which did not implement in full or in part the Guidelines at the time of the first peer review are listed in the following table with their country codes and acronyms.

**Table: Country codes and acronyms of national competent authorities**

Country Codes		National Competent Authorities’ Acronyms	
<b>BG</b>	Bulgaria	Financial Supervision Commission	FSC
<b>CY</b>	Cyprus	Cyprus Securities and Exchanges Commission	CySEC
<b>EE</b>	Estonia	Estonian Financial Supervision Authority	EFSA
<b>EL</b>	Greece	Capital Market Commission	HCMC
<b>HU</b>	Hungary	Magyar Nemzeti Bank <sup>1</sup>	MNB
<b>IS</b>	Iceland	Financial Supervisory Authority	FME
<b>LI</b>	Liechtenstein	Finanzmarktaufsicht	FMA
<b>LT</b>	Lithuania	Lietuvos Bankas	LB
<b>LV</b>	Latvia	Financial and Capital Markets Commission	FCMC
<b>MT</b>	Malta	Malta Financial Services Authority	MFSA
<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>SE</b>	Sweden	Finansinspektionen	Finansinspektionen

11. The remaining NCAs were already assessed fully compliant with the Guidelines in the course of the former peer review or were only late in the implementation of the Guidelines compared to the deadlines provided for in the Guidelines (see the section of the Guidelines related to the Entry into force and transitional provisions i.e. Box 4).

## **2. EXECUTIVE SUMMARY**

### **2.1 FOLLOW-UP PEER REVIEW**

<sup>1</sup> The Hungarian Financial Supervisory Authority (HFSA), which was mentioned in the original peer review report, has been merged into the Central Bank of Hungary (Magyar Nemzeti Bank - MNB) as of 2013.10.01.

12. The following assessment covers 8 out of 30 countries (BG, CY, HU, LI, LT, LV, MT, PT), whereby at the time of the previous peer review, the Guidelines were not fully applied (LT, LV, MT) or were not implemented at all (BG, CY, HU, LI, PT). This review assesses the 8 NCAs' position with respect to the implementation of the Guidelines as of 31 May 2015.
13. Conversely, this assessment does not cover those NCAs which, according to the previous peer review, did not fully apply the Guidelines or did not implement them at all, but have not as yet taken actions to address these failures (EE, EL, IS, NO, PL, SE), as of 31 May 2015. The reasons for not having taken actions presented by each of the above NCAs are reported in Annex III.
14. Out of the 8 countries subject to this follow-up peer review assessment, in 7 countries (BG, CY, LI, LT, LV, MT, PT) the Guidelines are now (LI, LT, LV, PT) or are about to be (CY, MT) fully applied. We note that all such NCAs but one (MT) have implemented with delay compared to the deadlines of the implementation and the transition period provided in the Guidelines (see also par. 16 below).
15. In the remaining Member State (HU) some shortcomings have still been identified, as described below.
16. By definition, having implemented the Guidelines with delay, all NCAs subject to the follow-up peer review, do not fully apply the provisions of the Guidelines related to the transitional period. These provisions are usually referred to as Box 4 of the Guidelines. There is however an exception with MT which already fully applied the transitional provisions of the Guidelines as of July 2012. In addition, in order to accelerate the application of the Guidelines no NCA, except MT, provided for the six months transition period foreseen in the Guidelines. It was therefore considered that the lack of a transition period should not affect the application of the relevant benchmark, taking also into account that the Guidelines were published almost 5 years ago. Therefore, most NCAs subject to this follow-up peer review (BG, CY, LI, LT, LV, PT), have been assessed as partially applying the transitional provisions of the Guidelines. However, in HU the Authority is assessed as "not applying", since it did not show its ability to ensure application of the transitional provision in all instances, as detailed in the following paragraphs.

### **Table 1. Overview of the application of the guidelines**

The Guidelines are divided in 4 parts that are usually referred to as box 1, box 2, box 3 and box 4. Each box contains a different set of provisions as follows:

- Box 1 includes general provisions such as the scope of application of the Guidelines, labelling rules, the indication of the nature of the fund i.e. Short Term Money Market Fund or Money Market Fund, the information to investors on the risk and reward profile of the fund;
- Box 2 covers rules related to Short-Term Money Market Funds;
- Box 3 is made of rules related to Money Market Funds; and
- Box 4 covers the transitional provisions of the Guidelines.

	<b>Box 1 General provisions</b>	<b>Box2 Short term MMF</b>	<b>Box 3 MMF</b>	<b>Box 4 Transitional Provisions</b>
<b>EL</b>	√	√	● <sup>2</sup> <b>No action taken</b>	√
<b>LV</b>	√	√	√	□
<b>MT</b>	√	√	√	√
<b>LT</b>	√	√	√	□
<b>BG</b>	√	√	√	□
<b>CY</b>	√	√	√	□
<b>LI</b>	√	√	√	□
<b>PT</b>	√	√	√	□
<b>HU</b>	●	●	●	●
<b>EE</b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>no</b>
<b>IS</b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>no</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>SE</b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>no</b>

Legend:

√: fully applied      ●: non applied      □: partially applied

**no:** Guidelines not complied with as of 31 May 2015

17. In summary, the follow-up peer review shows that some NCAs have taken steps to address shortcomings identified during the peer review, and gives a status on compliance with each set of provisions of the Guidelines.
18. The NCAs of LT, LV, and MT have taken steps to address the shortcomings identified in the previous peer review, as described below:
- LT: on 24 October 2013 the Bank of Lithuania adopted Resolution No. 03-173 implementing the Guidelines into their legal system. Considering that the adopted Resolution is a fully enforceable legal act and its content is consistent with the Guidelines, the NCA of LT has addressed the shortcomings identified in the previous peer review<sup>3</sup>.

<sup>2</sup> EL still allows the MMF 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 and residual maturity. The HCMC has introduced a specific exception (par. 6(b)(aa) of art. 30 Rule 6/587/2011 concerning investments of MMFs in Greek Government bonds (including Greek Treasury bills). Regarding residual maturity all Greek MMF have to comply with the relevant ESMA/CESR Guidelines on WAL/WAM for MMFs.

<sup>3</sup> It is understood that since in LT the Guidelines have been implemented with delay, Box 4 (dealing with the implementation date and transition period) is only partially applied.

- LV: in June 2013 the NCA of LV changed its regulation in order to achieve full compliance with Box 3 and Box 4 of the Guidelines. These amendments have addressed the shortcomings identified in the previous peer review, since the MMF Guidelines now apply in LV not only to STMMFs, but also to MMFs<sup>4</sup>.
  - MT: in March 2013 new rules were introduced in MT on MMFs with a view to including the omitted items from Box 1-3 under a separate provision. These new rules have addressed all the shortcomings identified in the previous peer review, except for the one reported paragraph 85 of the former Peer Review Report. In particular, it appears that in MT the CESR Guidelines concerning eligible assets for UCITS are not applicable to non-UCITS STMMFs, although the issue in practice is not considered material for the assessment. In fact, in this respect, the NCA further explained that currently there are no non-UCITS STMMF licenced in Malta. In addition, in June 2015 (just after the cut-off date established for this follow up peer review, i.e. May 2015) the NCA issued another Circular to inform the industry of a number of changes to the rules applicable to investment funds, including a reference to CESR's Guidelines on a common definition of European Money Market Funds [CESR/10-049] as amended by the opinion published by ESMA on 22 August 2014 (ESMA/2014/1103) with respect to the assessment of credit quality of money market instruments. However, although the introduction to the above-mentioned Circular makes reference the CESR Guidelines, the evidence provided on the rules applicable to non-UCITS fund does not seem to recall the explicatory notes of the Guidelines nor they clarify or ensure that the CESR Guidelines on eligible assets shall apply to non-UCITS STMMFs for which the use of CNAV is permitted.
19. Regarding the General provisions of the Guidelines (Box 1), in 4 countries (BG, CY, LI, PT) they are fully applied (in CY under condition that the CYSeC draft directive on non-UCITS will enter into force<sup>5</sup>). In 1 Member State (HU) they are not applied, since the NCA did not show its ability to ensure compliance with the Guidelines (see also par. 23 below). Moreover, in HU, the NCA reported that it may not “prohibit” in the strict sense the use of the label “money market” by funds not complying with the Guidelines.
20. Regarding provisions related to Short-Term Money Market Funds (Box 2), in 4 countries (BG, CY, LI, PT) they are fully applied (in CY under condition that the CYSeC draft directive on non-UCITS enters into force). In HU, they are not applied (see also par. 23 below).
21. Regarding provisions related to Money Market Funds (Box 3), in 4 countries (BG, CY, LI, PT) they are fully applied (in CY under condition that the CYSeC draft directive on non-UCITS will enter into force). In 1 Member State (HU) they are not applied. See also par. 23 below.
22. As mentioned above, having implemented the Guidelines with delay, all NCAs subject to the follow-up peer review have not fully applied the transitional provisions of the Guidelines (Box 4). In addition some of them have provided for a transition period shorter than the six months provided in the

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<sup>4</sup> As already assessed in the previous peer review the Guidelines under Box 4 (dealing with the implementation date and transition period) are partly applied, since the Guidelines have been implemented with delay and the transition period of six months was not provided (see par. 101 of the MMF Peer Review Report).

<sup>5</sup> CySEC reported that the initial deadline for the adoption of CySEC Directive on non-UCITS was September 2015. However, due to some practical delays, the deadline was extended. The final text has been presented to the Board of the CySEC and was published in the Official Gazette of the Republic on 31<sup>st</sup> December 2015.

Guidelines, whilst others have not provided for a transition period at all<sup>6</sup>. In HU, these provisions of the Guidelines are considered not applied since the NCA did not show its ability to ensure application of Guidelines in all instances.

23. In one Member State (HU), the provisions of the Guidelines have been implemented into the national legal system by means of "soft-law" measures which do not ensure that funds labelling themselves as MMFs/STMMFs comply with the Guidelines in all instances. In particular, the MNB explained that, although it has certain regulatory powers, the MNB Act strictly defines those topics where it may issue a legally binding Decree, and for this reason the NCA implemented the CESR Guidelines through MNB's non-binding Recommendations. Moreover, the NCA of HU, in case of infringements of these Recommendations, may not adopt any relevant supervisory and enforcement action to ensure compliance by the relevant fund to the Guidelines, as it may only make use of a "name and shame" mechanism. In addition, it did not provide any sufficient practical evidence to conclude that the MNB is able to ensure that funds labelling themselves as STMMFs/MMFs apply and comply in practice with the provisions established in the Guidelines. The above-mentioned means of implementation of the Guidelines into the Hungarian legal system and the related supervisory measures employed by the NCA of HU are not comparable to the practices and means of implementation and application of the Guidelines identified for other national competent authorities in the context of the MMF peer review. The Guidelines have therefore been assessed as "not applied" in HU, taking also into account the need to ensure consistency of the assessment across countries.

## 2.2 SUPERVISORY PRACTICES

24. This follow-up peer review confirms the main conclusions on supervisory practices outlined in the MMF Peer Review Report of April 2013. For more information on the supervisory practice employed by the 5 countries that had not implemented the Guidelines at the time of the peer review, please see Section 4 below.
25. As mentioned in the introductory section, the MMF Peer Review Report identified a list of possible good practices to favour converge across ESMA Members towards a common supervisory and enforcement approach across the EU. Following inputs from IMSC members, the Review Panel reviewed the good practices by introducing some improvements. These good practices have been endorsed by the ESMA Board in December 2013.

26.

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

CAs should establish organisational structures, ***electronic interfaces, analytical tools***, procedures and resources for the supervision of STMMFs and MMFs, both UCITS and non-UCITS, ***which is*** proportionate to the number of funds and the size of the local STMMF/MMF market aimed at detecting

<sup>6</sup> Most NCA justified the lack of a transposition period with the need to accelerate the entry into force of the Guidelines in the national framework, taking into account the fact that, given the delay, the funds concerned had enough time to prepare themselves for their application.



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.

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

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.

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

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.

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

Regardless of the type of supervisory approach followed (compliance-based **and/or** risk-based), CAs should be able to demonstrate that they possess adequate supervisory organisation for the review of the **data** they receive from the funds. In particular, CAs should receive periodic information, **including on the NAV of the STMM/MMF**, in addition to the annual and semi-annual report, that allows them to monitor the compliance of the funds' portfolio with the Guidelines. **CAs should also review reporting from other sources, including from depositories and auditors.**

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.

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

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.

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.

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.

Non-routine inspections should always be possible.

CAs should plan and periodically carry out thematic work, **including on a desk-based approach**, in order to examine issues specifically related to STMMFs/MMFs.

### **3. FINDINGS OF THE FOLLOW-UP PEER REVIEW**

27. This section of the report provides a summary of the main outcomes of the follow-up peer review.

#### **3.1 Update from the former peer review**

28. The Review Panel, in accordance with Section 9 of the Review Panel Methodology (ESMA/2013/1709), decided to undertake a follow-up exercise in order to monitor the actions taken by the NCAs which had not fully or partially implemented the Guidelines as of August 2012 and the progress made so far.

29. Therefore, the Review Panel Chair sent letters to the Chairman of the NCAs where the peer review report concluded that some short-comings existed. Letters were also sent to the Chairman of the NCAs of those Member States where the Guidelines had not been implemented by the cut-off period of August 2012.

30. On 5 September 2013 letters have been sent to the following NCAs, with responses requested by 10 October 2013:

- FSC, Bulgaria, Mr Mavrodiev,
- CySEC, Ms. Kalogerou,
- Finantsinspektsioon, Estonia, Mr Malmstein,
- HCMC, Greece, Mr Botoupoulos,
- HFSA, Hungary, Mr Szasz,

- FME, Iceland, Ms Gunnarsdottir,
  - FCMC, Latvia, Mr Zakulis,
  - FMA, Liechtenstein, Mr Gassner,
  - Central Bank, Lithuania, Mr. Valvonis,
  - MFSA, Malta, Mr Camilleri,
  - Finanstilsynet, Norge, Ms. Bellamy,
  - KNF, Poland, Mr Szuszkiewicz.
  - CMVM, Portugal, Mr Tavares,
  - SMA Slovenia, Mr Zugelj,
  - FI, Sweden, Mr. Andersson.
31. According to their replies, the following NCAs, have not yet taken actions to apply the Guidelines: the *FSA/Estonia, HCMC/Greece, FSA/Iceland, Finanstilsynet/Norway, KNF/Poland, FI/Sweden*. An explanation on the relevant reasons presented by each of the above NCAs is reported in Annex III. As a result, these NCAs are not covered in this follow-up review.
32. The NCA of SI provided additional information on their transition period and explained that all MMFs established in SI adjusted their investment policy to the Guidelines. Should they not, they would have used another designation. Therefore, lacking pending shortcomings, the NCA of SI was not subject to this follow-up peer review.
33. Based on the above, only the NCAs which mentioned to have introduced changes or made steps to ensure application of the Guidelines have been subject to this follow-up peer review.
34. The NCAs which have been covered by the former Peer Review Report have been reviewed within the limits of the identified shortcomings. This is the case for the FCMC/Latvia, Bank of Lithuania, MFSA/Malta.
35. The NCAs which had not implemented the Guidelines as of August 2012 and, thus, were not covered by the previous Peer Review Report have been asked to respond to the entire follow-up peer review questionnaire and be assessed by peers on the level of compliance with the Guidelines. This is the case for the FSC/Bulgaria, CySEC/Cyprus, Central Bank of Hungary, FMA/Liechtenstein, CMVM/Portugal. The Follow-up Peer Review Questionnaire was updated to take into account the amendments to the Guidelines introduced by the ESMA Opinion of August 22, 2014.
36. The following assessment covers 8 out of 30 countries (BG, CY, HU, LI, LT, LV, MT, PT), whereby at the time of the previous peer review, the Guidelines were not fully applied (LT, LV, MT) or were not implemented at all (BG, CY, HU, LI, PT). This review assesses the 8 countries position with respect to the implementation of the Guidelines as of 31 May 2015.

37. Conversely, this follow up full peer review does not cover those NCAs, which, according to the information provided to the Review panel, have not as yet taken actions to fully apply the Guidelines yet (EE, EL, IS, NO, PL, SE).

### **3.2 Findings related to NCAs where shortcomings had been identified at the time of the peer review**

#### **3.2.1 Lithuania**

38. The former Peer Review Report noted some shortcomings in the implementation of the Guidelines in Lithuania. The report stated (paragraph 21 of the Peer Review Report) that: *“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.”*
39. The Report (paragraph 60 of the Peer Review Report) further indicated that: *“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.”* Additional details regarding the reasons why the Guidelines had not been fully implemented in the Lithuanian legal system were provided in the Peer Review Report (see paragraphs no. 55, 61, 63, 65, 69 to 72, 79, 81, 88, 93, 97 to 99 of the Peer Review Report).
40. As mentioned above, on September 5, 2013, the Chair of the Review Panel sent a letter to the Chairman of the NCA of LT inviting him to provide information about the progress made after the end of the review period. In response to the above-mentioned letter, the NCA of LT informed us that draft rules implementing the CESR Guidelines were going to be presented to the Board of the Bank of Lithuania for approval in mid-October 2013. The Authority also reported that at that time there were no MMFs or STMMFs under the jurisdiction of the Bank of Lithuania.
41. In the course of the follow-up peer review, the NCA of LT updated us and confirmed that on 24 October 2013 the Guidelines had been implemented into the legal system of Lithuania by Resolution No. 03-173 adopted by the Bank of Lithuania. The NCA of LT provided an English version of such the Resolution.
42. Considering that the adopted Resolution is a fully enforceable legal act and its content is consistent with the Guidelines, the NCA of LT has addressed the shortcomings identified in the previous peer review.

#### **3.2.2 Latvia**

43. The former Peer Review Report noted some shortcomings in the implementation of the Guidelines in Latvia. The report stated that the Guidelines related to Money Market Funds (Box 3) and those related to the transitional provisions (Box 4) had not been implemented into the Latvian legal system within the review period i.e. by the end of July 2012 (see paragraph 26 of the Peer Review Report). In particular, the Report stated that: “*in LV, the Guidelines apply only to STMMF and not to MMF*” (see paragraph 88 of the Peer Review Report). In addition, it is specified that “*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*” (see under footnote no. 9 of the Peer Review Report).
44. In response to the letter from the Chair of the Review Panel, the NCA of LV reported that in June 2013 it approved amendments to the FCMC Regulation no. 250 governing the use of the name of a MMF in order to achieve compliance with the Guidelines. The FCMC provided an English translation of the mentioned Regulation.
45. In the course of the follow-up peer review the NCA of LV explained which parts of the mentioned Regulation have been amended and which parts have remained unchanged compared to the version analysed at the time of the peer review.
46. According to the evidence provided, these amendments have addressed the shortcomings identified in the previous peer review. In particular, since June 2013 the MMF Guidelines now apply in LV not only to STMMFs, but also to MMFs.

### **3.2.3 Malta**

47. The former Peer Review Report noted some shortcomings in the implementation of the Guidelines in Malta (see paragraph 26 of the Peer Review Report). It indicated that the Guidelines related to the General provisions (Box 1), to Short-term Money Market Funds (Box 2), and to Money Market Funds (Box 3) had not been implemented into the Maltese legal system within the review period i.e. by the end of July 2012. Nonetheless, “*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*” (see footnote no. 5 of the Peer Review Report),
48. In response to the letter from the Chair of the Review Panel, the NCA of MT reported a number of changes in its relevant rule books aimed at addressing the shortcomings identified in the Report.
49. In the course of the follow-up peer review it was noted that, based on the evidence provided, the NCA of MT have addressed all the shortcomings identified in the previous peer review, but the one reported paragraph 85 of the former Peer Review Report, namely the fact that in MT the Guidelines concerning eligible assets for UCITS are not applicable to non-UCITS STMMFs.
50. In this respect, it is noted that, further the NCA’s explanations, the issue is not considered material in practice, as there are no non-UCITS STMMF licenced in Malta. In addition, in June 2015 (just after the cut-off date established for this follow up peer review, i.e. May 2015) the NCA issued another Circular to inform the industry of a number of changes to the rules applicable to investment funds, including a reference to Guidelines on a common definition of European Money Market Funds [CESR/10-049] as amended by the opinion published by ESMA on 22 August 2014 (ESMA/2014/1103) with respect to the assessment of credit quality of money market instruments. How-

ever, although the introduction to the above-mentioned Circular makes reference the CESR Guidelines, the evidence provided on the rules applicable to non-UCITS fund does not seem to recall the explicatory notes of the Guidelines nor they clarify or ensure that the CESR Guidelines on eligible assets shall apply to non-UCITS STMMFs for which the use of CNAV is permitted.

### 3.3 Findings related to NCAs where Guidelines had not been implemented at the time of the Peer Review

51. Each of the paragraphs below summarises the requirements of each provision of the Guideline, as well as the outcome of the follow-up peer review and, where relevant, the main findings.
52. As mentioned above, the ESMA Opinion of August 22, 2014 has modified the Guidelines, removing all the references to any mechanistic reliance on credit ratings. In order to ensure consistency of assessment with the previous peer review, and considering at the same time that the provisions under CRA Regulation are directly applicable in the EU, the non-compliance to the Guidelines as modified by the Opinion will be mentioned in this Report, although it will not affect the application of the relevant benchmark (considering also that the date of implementation of the Guidelines in the reviewed jurisdictions falls before the date of the mentioned ESMA Opinion).

#### 3.3.1 Background information

53. In order to provide some background on the market size and general regulatory and supervisory framework, the NCAs 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 they supervise (cut off period September-October 2015). On this basis, a table is compiled which is separate 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 in the table also include funds labelling themselves as STMMF and MMF without necessarily complying with the Guidelines.
54. In terms of supervised STMMFs/MMFs, the biggest market is HU, although figures on the total amount of AUM are not available.

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

	STMM		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
BG	0	0	7	0	0	0	38.1	0
CY	0	0	0	0	0	0	0	0

HU	0	28	0	21	0	N/A	0	N/A
LI	2	0	1	0	3,180	0	340.8	0
PT <sup>7</sup>	1	2	3	1	16.3	338.7	1612.7	684.0

Legend:

STMM: Funds labelling themselves as short term money market funds

MMF: Funds labelling themselves as money market funds

### 3.3.2. General Provisions of the Guidelines (Box 1)

55. The Guidelines apply to UCITS and non-UCITS Money Market Funds, labelling or marketing themselves as money market funds. NCAs of the home countries are required to monitor that the above-mentioned funds comply with the Guidelines. Moreover, the Guidelines follow a two-tier approach, recognising the distinction between Short-Term Money Market Funds and Money Market Funds. They also provide for disclosure requirements in order to enable investors to identify any specific risks linked to the investment strategy of the funds.

#### 3.3.2.1 Application of the Guidelines

56. In 3 countries (BG, LI, PT) the Guidelines apply to both UCITS and non-UCITS money market funds.
57. In HU, the NCA is not able to achieve compliance with the Guidelines in all instances, as further explained below.
58. In CY, the Guidelines are currently applicable to UCITS funds, only, whilst as regards non-UCITS, the draft directive (draft CySEC Directive regulating AIF money market funds) has not been published yet. Therefore, in CY the NCA will be able to achieve compliance with the Guidelines on condition and by the time that its draft directive on non-UCITS will enter into force

#### 3.3.2.2 Means of implementation and level of compliance

59. In two Member States (CY<sup>8</sup>, PT<sup>9</sup>) the implementation of the Guidelines into national legislation has been carried out through a formal act of implementation (i.e. Regulation by the NCA), whilst in the other countries (BG<sup>10</sup>, HU<sup>11</sup>, LI<sup>12</sup>) it occurred through supervisory communications or other forms of “soft law” measures.

<sup>7</sup> As of the end of September 2015

<sup>8</sup> Directive DI-78-2012-35 for UCITS funds.

<sup>9</sup> CMVM Regulation 1/2013. This Regulation, which was in force during the Review Period (from May 2014 to May 2015) was repealed and substituted on 18<sup>th</sup> July 2015 by CMVM Regulation 2/2015, which is currently in force. This latter Regulation repeats (with minor changes) the same articles of the former in the subject matters relevant for the present peer review.

<sup>10</sup> FSC Instructions for applying the CESR Guidelines for funds that invest in money market instruments regarding the funds' names that include collocation referring to money market (of 22 August 2012).

60. Among those countries where the Guidelines have been implemented through non mandatory measures, two NCAs (BG, LI) showed their ability to achieve compliance in all cases of a breach of the measure. In particular, the achievement of compliance is ensured in those cases by a reference (a “hook”) to the national regulatory system whereby the NCAs acknowledge that a failure to comply with the Guidelines will be interpreted as a breach of a specific mandatory legal provision.
61. In HU, the NCA did not show its ability to ensure application of the Guidelines in all instances, since in HU the provisions of the Guidelines have been implemented into the national legal system by means of "soft-law" measures which do not ensure that funds labelling themselves as MMFs/STMMFs comply with the Guidelines in all instances. In particular, the MNB explained that, although it has certain regulatory powers, the MNB Act strictly defines those topics where it may issue a legally binding Decree, and for this reason the NCA implemented the CESR Guidelines through MNB's non-binding Recommendations. Moreover, the NCA of HU, in case of infringements of these Recommendations, may not adopt any relevant supervisory and enforcement action to ensure compliance by the relevant fund to the Guidelines, as it may only make use of a "name and shame" mechanism. In addition, it did not provide any sufficient practical evidence to conclude that the MNB is able to ensure that funds labelling themselves as STMMFs/MMFs apply and comply in practice with the provisions established in the Guidelines. The above-mentioned means of implementation of the Guidelines into the Hungarian legal system and the related supervisory measures employed by the NCA of HU are not comparable to the practices and means of implementation and application of the Guidelines identified for other competent authorities in the context of the MMF Peer Review. The Guidelines have therefore been assessed as “not applied” in HU, taking also into account the need to ensure consistency of the assessment across countries.

### **3.3.2.3 Use of the label**

62. According to the peer review, in 3 countries (BG, LI, PT), the NCAs require that any fund labelling or marketing itself as a money market fund shall comply with the Guidelines, whilst in HU the Authority is not able to ensure compliance with Guidelines in all instances, as explained under paragraph 65.
63. In CY, the Guidelines are currently applicable to UCITS funds, only, whilst as regards non-UCITS, the draft directive (draft CySEC Directive regulating AIF money market funds) has not been published yet. Therefore, in CY the NCA will be able to achieve compliance with the Guidelines on condition and by the time that its draft directive on non-UCITS will enter into force.
64. The monitoring by competent authorities takes place at the moment of and, in several cases, through on-going supervision. For additional details please see Section 4.4.

### **3.3.2.4 Monitoring the labelling by UCITS money market funds**

65. In 4 countries (BG, CY, LI, PT), the home NCA monitors that any UCITS labelling or marketing itself as a money market fund complies with the Guidelines, whilst in HU the Authority is not able to ensure compliance with Guidelines in all instances, as detailed under paragraph 65<sup>13</sup>.
66. The monitoring by NCAs takes place at the moment of authorisation and, in some cases, through on-going supervision. For additional details please see Section 4.4.

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<sup>11</sup> HFSA Recommendations 10/2012 (X.5.) on Money Market Funds

<sup>12</sup> FMA Communication 2013/06.

<sup>13</sup> It is noted that currently there are no UCITS MMFs and STMMFs in HU and CY.



### **3.3.2.5 Monitoring of the labelling by non-UCITS money market funds**

67. In 3 countries (BG, LI, PT), the home NCAs monitor that any non-UCITS labelling or marketing itself as a money market fund complies with the Guidelines, whilst in HU the Authority is not able to ensure compliance with Guidelines in all instances, as detailed under paragraph 59. In CY the NCA will be able to achieve compliance with the Guidelines on condition and by the time that its draft directive on non-UCITS will enter into force.
68. 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 4.4.

### **3.3.2.6 Prohibition to use the label “money market” where funds do not comply with Guidelines**

69. According to the peer review, funds not complying with the Guidelines are prohibited from having a reference to “money market” in their name in 4 countries (BG, CY, LI<sup>14</sup>, PT). In HU the Authority is not able to ensure compliance with the Guidelines in all instances, as detailed under paragraph 65. It is not able <sup>15</sup> to prohibit, nor sanction the wrong use of the label “money market” by funds not complying with the Guidelines.
70. As regards CY, the NCA reported that it would not authorise the Regulation or Instruments of Incorporation of any UCITS money market fund if it did not comply with the relevant CySEC communication incorporating the Guidelines. As for non-UCITS, the draft directive expressly provides for the above prohibition. Therefore, the NCA will be able to achieve compliance with the Guidelines on condition and by the time that its draft directive on non-UCITS will enter into force.

### **3.3.2.7 Distinction between Short Term Money Market Funds and Money Market Funds**

71. According to the peer review, in all countries, NCAs provide for a distinction between Short-Term Money Market Funds and Money Market Funds, however in HU the Authority is not able to ensure compliance with the Guidelines in all instances, as detailed under paragraph 65.
72. In one Member State (CY) the mentioned draft directive on non-UCITS expressly provides for the above distinction, but it has not entered into force yet. Therefore, in CY the NCA will be able to achieve compliance with the Guidelines on condition and by the time that its draft directive on non-UCITS will enter into force.

### **3.3.2.8 Indication of the label in the prospectus and KID**

73. According to the peer review, in 4 countries (BG, CY, LI, PT) it is required that Short-Term Money Market Funds (STMMFs) and Money Market Funds (MMFs) indicate in their prospectus and, in case

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<sup>14</sup> In LI, the NCA reported to carry out checks during the authorisation process and secondarily periodically reviews the entries in its list of registered funds and subfunds in order to detect non-compliance with the Guidelines.

<sup>15</sup> In HU, the NCA reported that, although it may not prohibit, nor sanction the wrong use of the label (since the NCA’s recommendation is not legally binding), it requires asset managers to comply with the relevant requirements set forth under the Guidelines and only use these labels if they fully comply. Moreover, the NCA refers to an industry instruction in this regard, which also requires the compliance with the Guidelines to use the label.

of UCITS, in their KIID whether they are STMMFs and MMFs, whilst in HU the Authority is not able to ensure compliance with the Guidelines in all instances, as detailed under paragraph 59.

74. In CY, the NCA will be able to achieve compliance with the Guidelines on condition and by the time that its draft directive on non-UCITS, which expressly provides for the above requirement, enters into force.

### **3.3.2.9 Indication of the risk and reward profile of the fund in the prospectus and KID**

75. According to the peer review, in 4 countries (BG, CY, LI, PT) it is required that Short-Term Money Market Funds or Money Market Funds indicate in their prospectus and, in case of UCITS, in their KI-ID 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, whilst in HU the Authority is not able to ensure compliance with the Guidelines in all instances, as detailed under paragraph 65.
76. However, in CY, the NCA will be able to achieve compliance with the Guidelines on condition and by the time that its draft directive on non-UCITS, which expressly provides for the above requirement, enters into force.

### **3.3.3 Guidelines on Short-Term Money Market Funds (Box 2)**

77. The Guidelines set forth the primary investment objective of Short-Term Money Market Funds.
78. 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 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. 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.
79. 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.

#### **3.3.3.1 Application of the Guidelines on Short-Term Money Market Funds ( Box 2)**

80. According to the peer review in 3 countries (BG, LI, PT) all the Guidelines on Short-Term Money Market Funds apply, whilst in HU the Authority is not able to ensure compliance with the Guidelines in all instances, as detailed under paragraph 65. In CY, the NCA will be able to achieve compliance with the Guidelines on condition and by the time that its draft directive on non-UCITS, which expressly provides for the above requirements, enters into force.

#### **3.3.3.2 Requirements on the management company on Short-Term Money Market Funds**

81. According to the peer review, in 4 countries (BG, CY, LI, PT) the management company of a Short-Term Money Market Fund shall identify the criteria to determine the quality of the money market in-

struments in which the Short-Term Money Market Fund invests, whilst in HU the Authority is not able to ensure compliance with the Guidelines in all instances, as detailed under paragraph 65.

82. In one Member State (CY), however, the requirements applicable to the management company do not make specific reference to the Guidelines.
83. According to the peer review, in those countries where the management company of a STMMF is required to identify the criteria to determine the quality of the money market instruments in which the STMMF invest, it shall also 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.
84. In this regard, it is noted that, in 3 countries (HU, LI, PT), the NCAs have implemented that part of the Guidelines taking into account their new wording, as amended by ESMA Opinion of August 22, 2014, while in one Member State (CY), the NCA' regulatory framework still makes reference to credit ratings. In BG, given that the Guidelines have been implemented into the national legal framework by incorporating them by reference in a decision of the NCA, the incorporation should be interpreted as referring to the text of the Guidelines in force (and therefore taking into account the ESMA Opinion's amendments).

### **3.3.3.3 Use of constant net asset value (C-NAV)**

85. According to the peer review, in 2 countries (HU, LI) CNAV is not allowed.
86. In 3 Member States (BG, CY, PT) competent authorities require in this case the application of the CESR Guidelines concerning eligible assets for UCITS.

### **3.3.4 Guidelines on Money Market Funds (Box 3)**

87. The Guidelines recognise the distinction between Short-Term Money Market Funds and Money Market Funds. They provide that Money Market Funds shall comply with most of the requirements provided for Short-Term Money Market Funds (see paragraphs 1, 2, 3, 4, 6, 9, 10 and 11 of the part of the Guidelines related to Short Term *Money Market Funds*) and in addition, set specific provisions for Money Market Funds, in some cases providing for exemptions to the applicable requirements for Short-Term Money Market Funds.
88. In particular, Money Market Funds may be allowed to hold sovereign issuance of a lower internally-assigned credit quality based on the MMF manager's own documented assessment of credit quality, having regard to, inter alia, any credit ratings issued by one or more credit rating agencies registered and supervised by ESMA in this regard, while avoiding any mechanistic reliance on them.
89. According to the Guidelines (as revised by the ESMA Opinion, as further detailed above), '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.

90. 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

#### **3.3.4.1 Application of the Guidelines on Money Market Funds**

91. According to the peer review, the Guidelines on Money Market Funds apply in 4 countries (BG, CY, LI, PT), whilst in HU the Authority is not able to ensure compliance with the Guidelines in all instances. In CY, the NCA will be able to achieve compliance with the Guidelines on condition and by the time that its draft directive on non-UCITS, which expressly provides for the above requirements, enters into force.

#### **3.3.4.2 Investment in sovereign debt**

92. According to the peer review, in 3 countries (BG, CY, LI) Money Market Funds are allowed, as an exception to the Guidelines on Short-Term Money Market Funds (see paragraph 40 of the Guidelines), to hold sovereign issuance of a lower internally-assigned credit quality based on the MMF manager's own documented assessment of credit quality. However, in this regard, it is noted that, in 2 Member States (CY, HU), the NCAs' regulatory framework still requires the investment grade quality of such instruments. In CY, the NCA reported that it is in the process of reviewing the relevant provisions in the regulation in order to reflect the amendments made by the ESMA Opinion. In HU, although the NCA's measure implementing the Guidelines allows the use of internal ratings, it still requires an investment grade quality.
93. In BG, given that the Guidelines have been implemented into the national legal framework by incorporating them by reference in a decision of the NCA, the incorporation should be interpreted as referring to the text of the Guidelines in force (and therefore taking into account the ESMA Opinion's amendments).
94. In this respect, in BG, CY, HU, LI "Sovereign issuance" is defined 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.
95. In PT the NCA reported that MMFs are not allowed to hold sovereign issuance of at least investment grade quality.

#### **3.3.4.3 Requirements on the management company of MMFs**

96. According to the peer review, in 4 countries (BG, CY, LI, PT) the management company of a Money Market Fund shall identify the criteria to determine the quality of the money market instruments in which the Money Market Fund invests according to the Guidelines. In HU the Authority is not able to ensure compliance with the Guidelines in all instances, as detailed under paragraph 65.
97. According to the peer review, in those countries where the management company of a MMF is required to identify the criteria to determine the quality of the money market instruments in which the MMF invests, it shall also 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.

98. In CY, the NCA will be able to achieve compliance with the Guidelines on condition and by the time that its draft directive on non-UCITS, which expressly provides for the above requirement, enters into force.

### **3.3.5 Transitional provisions (Box 4)**

99. 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 countries in order to apply the Guidelines.

100. 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 did not depend on the implementation of the UCITS Directive.

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

#### **3.3.5.1 Date of implementation of the Guidelines**

102. The Guidelines were implemented with a delay in the NCAs subject to this follow-up peer review. The implementation dates of the Guidelines in the NCAs under review are the following:

- In CY, the implementation dates for UCITS and non-UCITS are not aligned. In particular, as regards UCITS funds, the regulatory framework incorporating the Guidelines applies since February 1, 2013, while for non-UCITS, the draft NCA's communication has not yet been published;
- In BG, the Guidelines have been implemented into the national legal framework on August 22, 2012;
- In HU, the HFSA Recommendation was published on October 5, 2012;
- In LI, the date of implementation of the Guidelines is November 1, 2013;
- In PT, the Guidelines were transposed into the Portuguese legal framework on February 7, 2013.

103. According to the peer review, 3 countries (BG, LI, PT) require all money market funds which intend to operate as money market funds under the Guidelines to reflect this in their documentation as of the implementation date. In HU the Authority is not able to ensure compliance with the Guidelines in all instances, as detailed under paragraph 55.

104. In CY, however, the NCA will be able to achieve compliance with the Guidelines on condition and by the time that its draft directive on non-UCITS, which expressly provides for the above requirement, enters into force. As mentioned above, the envisaged timeline for the adoption of this Directive is mid-December 2015.

105. As regards the funds which do not intend to conform to the new guidelines, 3 Member States (BG, LI<sup>16</sup>, PT) require them to cease to call themselves money market funds as of the implementation date. In HU the Authority is not able to ensure compliance with the Guidelines in all instances. 1 Member State (CY) does not provide for the above-mentioned obligation. In particular, in CY, the above-mentioned requirement for non-UCITS has not entered into force yet since the draft directive has not been published to date.

### **III.3.5.2 Transposition period**

106. According to the peer review, 3 Member States (BG, HU, PT) granted a transition period after the guidelines entered into force, whilst 2 countries (CY, LI) did not provide for the above-mentioned transition period.

107. In PT, the NCA reported that, at the time the Guidelines were transposed, there were only two funds labelling themselves MMF, already complying with the Guidelines, therefore they did not need a transposition period of six months.

108. The approach taken in each country is set out in the table under Annex 2.

## **4. SUPERVISORY PRACTICES**

### **Preliminary information**

#### **4.1 Shared competences**

109. In all countries in the subject matters covered by the Guidelines, only the respondent NCAs, which are members of the Review Panel, are competent, and there is no sharing of competences with other authorities.

#### **4.2 Internal organization**

##### **4.2.1 General description of the units involved and relevant mission**

110. In 3 NCAs (BG, CY, HU) more than one unit is involved in the supervision, inspection and enforcement of the application of the Guidelines by UCITS and non-UCITS.

111. In particular, in the above-mentioned NCAs (BG, CY, HU) the authorisation process and the supervision are under the responsibility of two separate units in the competent authority, while in others (LI, PT) the same unit carries out both functions. In the latter case the unit could be split in several sub-units (LI).

112. Two NCAs (BG, HU) mentioned having units dedicated to inspections.

##### **4.2.2 The expertise of the technical staff**

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<sup>16</sup> In LI, the NCA reported that the only fund which did not comply with the Guidelines undertook the necessary steps to address the irregularities identified

113. Most NCAs (BG, HU, LI, PT) reported that they have staff with wide expertise and qualified backgrounds (e.g. some NCAs referred to at least a degree in economics, law, banking and finance, or accounting) and in some cases (LI) with specific experience in the Investment Management Industry sector and a minimum seniority
114. One NCA (CY) reported that it has staff with expertise gained “on the ground” in the authorisation and supervision of UCITS, although no STMMF or MMF has been established in their jurisdiction. This NCA also underlined that ongoing training, including seminars, is conducted in relation to the authorisation and supervision of UCITS/non-UCITS, however without any specific focus on STMMFs/MMFs.

#### **4.2.3 Technical staff**

115. Most NCAs (BG, CY, HU) 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 STMMF/MMFs only. In particular, in CY, figures are not available also because no STMMF/MMF is established in their jurisdiction to date.
116. In BG, the NCA reported that there is no dedicated staff also for the supervision of UCITS funds, since the units are organised in terms of type of activity and not in relation to supervised entities. In HU, the NCA is structured in a similar way, since there is one general unit in charge for the supervision of all market participants, including investment funds.
117. In LI, the NCA reported that 6 members of staff are involved in the authorisation and supervision of MMF and STMMF.
118. In PT, the NCA provided an estimate of the requested information by calculating it on the basis of the total staff supervising asset management companies (22% out of 23 members of the staff).

#### **4.2.4 Budget**

119. Most NCAs (BG, CY, HU, LI) did not provide details on the internal budget devoted only to the supervision of STMMF/MMF.
120. In particular, in CY, the NCA reported that there are no MMFs established in their jurisdiction. Therefore, the estimate only refers to the budget devoted to the supervision of the general asset management sector.
121. One NCA (PT) provided an estimate of the requested information by calculating it on the basis of both the total supervision fees (1.2%) and the total expenditure of the division in charge for the supervision of the asset management sector (20%).

#### **4.3.1 General supervisory approach**

122. The general supervisory approach on the monitoring of the Guidelines varies across NCAs to a significant extent.

123. In 4 NCAs (BG, HU, LI, PT), the supervisory approach developed for Money Market Funds does not differ from the regular approach (mainly risk-based) used by NCAs. NCAs 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.).
124. In HU, the NCA stated that it has developed a mixture of compliance-based and risk-based approach to supervision. In particular, in accordance with a compliance-based approach, it is provided that each type of financial services providers shall be supervised through regular comprehensive investigations (in the case of investment funds, at least every three years). Furthermore, a risk assessment tool has been developed in order to plan onsite-inspections (comprehensive, thematic or targeted inspections) in case a specific risk or issue emerges.
125. 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 in carrying out the monitoring.
126. In PT, the NCA developed an hybrid approach, involving a top-down risk-based supervision for the selection of entities to be subject to general or focused onsite inspections and regular desk-based controls (monthly) on the limits and characteristics of the assets in the portfolio of all supervised asset management companies/investment funds.
127. In LI, the NCA developed a two pillars approach, involving both the NCA and the external audits.
128. One NCA (CY) did not develop any supervisory approach in this regard, as no STMMF/MMF is established in their jurisdiction.

#### **4.3.2 Supervision and enforcement in relation to UCITS Money Market Funds**

129. In those countries where the Guidelines are applied, competent authorities review and pre-approve 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.
130. As regard the on-going supervision, in 4 countries (BG, CY, LI, PT) NCAs noted their ability to undertake a number of specific enforcement actions (recommendations or 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.
131. In HU, although there is no UCITS STMMF or MMF, the NCA reported that it would check the compliance with the Guidelines (with a future follow-up), and in case of identified non-compliance it would call upon compliance, while other enforcement measures are not available since the HFSA Recommendations are not legally binding (see further details under para. 65 above).

### **4.4 Monitoring the UCITS fund**

#### **4.4.1 Organization and resources dedicated thereto**



132. As mentioned, in all NCAs (BG, CY, HU, LI, PT) 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 NCAs where the number of MMF/STMMF and the volume of their assets is small or void, there are not always dedicated resources/staff for those funds.

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

- In CY, the review of UCITS funds' documentation is carried out by at least two resources within the Authorisation Department which are not specifically dedicated to verify compliance with the Guidelines, since they also perform other tasks;
- In HU, the Capital Markets supervisory department has 18 staff members (not specifically dedicated to the supervision of the compliance with the Guidelines), however it is not the only department dealing with this issue;
- In LI, the NCA reported that each management company and their respective funds are assigned to both a member of the legal section and a supervisor from the supervision section.

134. In 3 Member States (BG, HU, PT) NCAs developed a desk-based approach, which mainly relies on periodic reporting submitted by management companies and funds. Some NCAs (LI) also monitor reports submitted by auditors and by depositories. The information sources taken into account by the NCAs may also include questionnaires, advertisements, contact with investment firms, investor complaints, inputs from other competent authorities, media, and general/specialist publications.

135. In those countries where the Guidelines are complied with, NCAs 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.).

#### **4.4.2 Supervisory tools employed in monitoring the UCITS fund**

##### **4.4.2.1 Desk based monitoring**

136. As mentioned above, in most countries (BG, CY, HU, LI, PT), NCAs carry out desk-based monitoring on UCITS funds.

137. In CY, the NCA mainly reviews UCITS funds' compliance with the Guidelines at the moment of authorisation, while little information is provided on the supervisory tools employed for the ongoing monitoring. In particular, the NCA's main source of information is the fund Regulation or Instruments of Incorporation, whose changes shall also be subject to prior approval by the NCA, as well as any changes to other documentation of the fund (prospectus, KIID, etc.) shall be notified to the NCA.

138. In 4 countries (BG, HU, LI, PT), NCAs reported using periodic reporting as one of 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 countries.

139. From the responses it emerges that the desk-based approach mainly relies on periodic reporting by the management companies and/or the funds. In one country (LI), the reporting by the asset management companies and/or the funds is annually/half-yearly, whilst in other Member States (BG, HU, PT) the competent authority receives also periodic (in most cases monthly) reports on the composition of the fund's portfolio.
140. In particular, in BG, the NCA also receives: (i) daily reports containing information on issue price, net asset value and net asset value per share, (ii) monthly reports on the balance sheet and (iii) half-yearly reports in relation to financial statements, short-term receivables and payables breakdown, list of financial instruments, interest income and expenses breakdown. Ad hoc information is also requested in case of breach of investment restrictions.
141. In HU, the NCA specifically mentioned that, in addition to the quarterly data sent by fund managers, including among others the detailed portfolio holdings of MMFs, it may request the asset manager to provide data on the detailed portfolio holdings more frequently.
142. In PT, the NCA also receives daily information on the fund net assets value (NAV) and performs a proactive daily search of information through newspapers and company sites, as well as it also reviews investor complaints, information received by other authorities, internal auditing department reports and external auditing reports.
143. In addition, some competent authorities specifically mentioned periodic reporting by the funds' auditors (LI, PT).
144. In particular, in one country (LI), as mentioned above, the NCA's supervisory approach on funds is based on two pillars involving both the NCA and the external auditors, who are required to provide an annual report.

#### **4.4.2.2 On-site inspections**

145. In 2 countries (LI, PT), NCAs carry out routine and/or non-routine on-site inspections of management companies, including of UCITS STMMFs and MMFs, whilst in BG, CY and HU, to date, there are no UCITS STMMF/MMFs' management companies established, therefore these NCAs have not conducted any related on-site inspections yet.
146. In several cases (BG, HU, LI, PT) NCAs 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.
147. As mentioned, 4 NCAs (BG, HU, LI, PT) may select 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 NCAs 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. In BG, the NCA employs, for the classification, the information gathered from the annual audited financial statements of the entity.

148. In 2 countries (HU, LI) the NCAs inspect all the asset management companies within a cycle ranging from 3 to 5 years.

149. In one country (LI), routine inspections are carried out by both the NCA and third parties such as auditors. In particular, onsite inspections are carried out by the audit firms yearly, and their focus is determined on the basis of a risk-analysis, while the NCA directly carries out inspections in accordance with a risk-based multi-year inspection plan (providing that riskier asset managers are inspected on an annual basis, while those with low risk ratings are visited every 3/5 years). Joint onsite inspections by both the NCA and the auditors may also be organised, in order to supervise both the audit firms and the specific asset management company/investment fund. Non-routine inspections could also be carried out, and they are triggered by findings in the desk-based supervision, or as a consequence of an application for authorisation.

#### **4.4.2.3 Thematic reviews**

150. In all five countries the NCAs are able to carry out thematic reviews on the application of the Guidelines. In one Member State (PT), the NCA is planning to carry out thematic reviews on the application of the Guidelines by UCITS funds.

151. In CY, HU and LI the NCAs have not conducted any thematic review yet, since, to date, there are few or no UCITS STMMF/MMFs' management companies established in their jurisdiction. However, in HU, the NCA reported that it would carry out a thematic review in this respect if serious risks would arise or the market environment would require so.

#### **4.5 Enforcement actions against UCITS schemes labelling or marketing themselves as STMMF or MMF**

152. In just one case (LI), the NCA reported that it detected, during the review period, UCITS labelling or marketing themselves as a STMMF or a MMF in their jurisdiction, therefore not complying with the guidelines. In most of the Member States (BG, CY, HU, PT), competent authorities did not detect non-compliance in this respect.

153. In LI, the failures with the Guidelines were settled mainly by requiring the funds to implement the provisions of the Guidelines within a specific timeframe, without applying sanctions.

#### **4.5.1 Supervision and enforcement in relation to non-UCITS money market funds**

154. NCAs in general did not report any substantial differences compared to the approach they apply in monitoring UCITS funds (see section IV.3.3.).

155. However, one NCA (BG) reported that since at the present there are no non-UCITS STMMFs or MMFs it is therefore not able to provide specific information in this regard. However, if a fund is authorised as STMMF or MMF it would apply the same rules and procedures, as well as the same staff, applied to UCITS STMMFs and MMFs.

#### **4.5.2 Review of the non-UCITS STMMFs' and MMFs' documentation**

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

157. One NCA (PT) specified that out of 23 members of the relevant department, 3 members of the staff are dedicated to the review of non-UCITS funds' documentation.

#### **4.5.3 Monitoring the non-UCITS fund**

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

##### **4.5.3.1 Supervisory tools employed in monitoring the non-UCITS fund:**

###### Desk based monitoring

159. 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

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

161. However, in HU, as non-UCITS STMMFs and MMFs are established in the jurisdictions (while there is no UCITS STMMF and MMF), the NCA carries out both routine (on a 3 year basis) and non-routine inspections (in accordance with its annual inspection plan or in case of necessity). However, no specific information has been provided on whether management companies of non-UCITS STMMF and MMF have been actually inspected according to the inspection plan.

##### **4.5.3.2 Thematic reviews**

162. 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).

#### **4.6 Enforcement actions**

163. In all Member States, NCAs did not detect during the review period any case of non-compliance with the guidelines in relation to non-UCITS funds labelling or marketing themselves as STMMF or MMF, in addition to those reported under paragraph 4.5 above.

## **ANNEX 1**

### **MMF Follow-up Peer Review Questionnaire**

#### **Review Panel Follow-up Peer Review on Money Market Fund Guidelines**

##### **Introduction**

1. In December 2011, the ESMA Board of Supervisors mandated the Review Panel to carry out a peer review on the application of the CESR Guidelines on a common definition of European money market funds (CESR/10-049) (hereinafter, the “Guidelines on Money Market Funds”, or also 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.
2. The 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 funds: a) Short-term Money Market Funds (hereinafter, also “STMMF”), and b) Money Market Funds (hereinafter, also “MMF”). 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”. In February 2012, ESMA published Questions and Answers in view to promote 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).
3. The Guidelines apply to collective investment undertakings under the UCITS Directive (2009/65/EC) and 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.
4. The Peer Review Report was published on April 15, 2013.
5. The Review Panel is now conducting a follow-up peer review in accordance with Section 9 of the new Review Panel Methodology (ESMA/2013/1709), by asking the competent authorities which had not implemented the Guidelines as of August 2012 but have taken steps to do so to provide their responses to the peer review questionnaire, as amended following ESMA Opinion of August 22, 2014 (ESMA/2014/1103).

##### **Purpose of this document**

6. In accordance with the Review Panel Methodology, this document sets out the peer review Self-assessment questionnaire.
7. Competent authorities shall support their responses by evidence demonstrating what action the competent authorities have undertaken to implement and apply the Guidelines. The types of evi-

dence which may be provided includes all information described in para. 61<sup>17</sup> of the peer review methodology (and not limited to the indicative list in the appendix to the methodology).

8. In particular, this document establishes assessment criteria and sets the relevant benchmarks. The benchmark categories are those listed in par. 67 of the Review Panel Methodology. The benchmarks are granted by giving either a positive or a negative answer to the key questions.
9. The Key Issues and Benchmarks aim at enabling the Review Panel to assess competent authorities' day to day application of the Guidelines, taking into account that the Guidelines were established to provide a common definition of European Money Market Funds. The Key Issues have been developed on the basis of the Guidelines, the explanatory text and the relevant Q&A.
10. Information on pending legislative/regulatory amendments can be given by respondents in the text box. However, the rating will be assigned on the basis of the existing provisions. If a national implementing measure is not in force but has already been formally adopted, and a concrete date of its coming into force is stated in the correspondence table, it will be assessed as if it had been in force at the time of the review, provided that the national implementing measure comes into force within a reasonable period of time after the review process has started. If a national implementing measure relating to the provision under review is in the process of being drawn up, this has to be stated, provided that the implementing measure is already in a concrete stage (e.g. a proposal to Parliament or publication of a consultation paper).
11. The review period shall be from 1 May 2014 to 1 May 2015. Member States, if any, who will implement the Guidelines after the review period, but before the Final Report will be approved by the ESMA Board of Supervisors, will be earmarked as such.

### **Instructions to fill in the questionnaire**

12. The Key Questions are structured as yes or no questions. After responding to the questions, please fill in the "text" box in order to provide details supporting your response (including specific cross-references to the written material and other supporting information you will enclose pursuant to par. 5 above)<sup>18</sup>.
13. Certain Key Questions include non-specifically benchmarked sub-questions requesting additional information on specific topics. The purpose of these sub-questions is to analyse in details how the application of the Guidelines are supervised 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 identify good practices which might be of benefit for competent authorities (see art. 30 of ESMA Regulation and para 51 of the peer review methodology). If you wish to provide additional information on any of these subject matters, please fill the "other" box.

\* \* \*

### **Preliminary information**

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<sup>17</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"

<sup>18</sup> As indicated in the guidelines, in case of self managed investment companies, the reference to AMC are intended to apply to the investment company itself.

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>19</sup>?

(Yes/No)

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)**

<sup>19</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.

(text box)

DRAFT



## **General guidelines**

### **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?

**(Yes/No)**

**(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);

(Y/N)

(text box)

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);

(text box)

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

(text box)

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?

(Yes/No)

- 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?

**(Yes/No)**

- 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?

**(Yes/No)**

- 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?

**(Yes/No)**

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?

**(Yes/No)**

**(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?

**(Yes/No)**

**(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) ;

**(Yes/No)**

**text box**

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) ;

**(Textbox)**

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

**(text box)**

4.
  - a. organization and resources dedicated to the review of non-UCITS funds' documentation;

**(text box)**

5. 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**)?

**(text box)**

- 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?

**(Yes/No)**

- 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?

**(Yes/No)**

- 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?

**(Yes/No)**

- 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?

**Yes/No**

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>20</sup>?

**(Yes/No)**

**(text box)**

3. Do you prohibit that funds not complying with the guidelines have in their name any reference to “money market”?

<sup>20</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

**(Yes/No)**

**(text box)**

4. Do you provide for a distinction between Short Term Money Market Funds and Money Market Funds? If not please explain.

**(Yes/No)**

**(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:

- (a) whether it is a Short Term Money Market Fund or a Money Market Fund?

**(Yes/No)**

**(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?

**(Yes/No)**

**(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>21</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 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.
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 :

<sup>21</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.

- 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.

(Yes/No)

( 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?

(Yes/No)

(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>22</sup>?

(Yes/No)

(text box)

- b. the nature of the asset class represented by the instrument?

(Yes/No)

(text box)

c. for structured financial instruments, the operational and counterparty risk inherent within the structured financial transaction?

(Yes/No)

text box)

and  
d. the liquidity profile?

(Yes/No)

( text box)

- 4.a. Do you allow the use of constant net asset value in connection with Short Term Money Market Funds?

<sup>22</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 (CRAsIII) as well as the debate on shadow banking

(Yes/No)

(text box)

4.b. If yes, in this respect do you require application of CESR's guidelines concerning eligible assets for UCITS?

(Yes/No)

(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 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.
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 a lower internally-assigned credit quality based on the MMF manager's own documented assessment of credit 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?

(Yes/No)

(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?

(Yes/No)

(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?

(Yes/No)

**(text box)**

b. the nature of the asset class represented by the instrument?  
**(Yes/No)**

**(text box)**

c. for structured financial instruments, the operational and counterparty risk inherent within the structured financial transaction?

**(Yes/No)**

**(text box)** and

d. the liquidity profile?

**(Yes/No)**

**(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. Which was the date of implementation of the provisions contained in the guidelines in your jurisdiction?

**(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?

**(Yes/No)**

**(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?

**(Yes/No)**

**(text box)**

4. Are existing money market funds granted a transposition period of six months after the guidelines enter into force?

**(Yes/No)**

(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.

DRAFT

## ANNEX 2

### Date of Implementation/ Transition period

CA	Date of Implementation	Transition period
BG	22 August 2012	3 months
CY	For UCITS Funds: February 1, 2013 For non-UCITS Funds: draft directive not published yet.	No transition period
HU	3 December 2012	A period of two months between the publication of the NCA's recommendation (October 5, 2012) and its application was provided.
LI	1 November 2013	No transition period in the narrower sense was provided for since the three existing funds already complied with the Guidelines.
PT	7 February 2013	3 months



## ANNEX 3

### Reasons for non-implementation of the guidelines

CA	Reasons of NCAs for having not yet implemented the Guidelines
EE	Finantsinspeksioon does not possess the necessary legal vehicles to transpose the CESR MMF Guidelines in a manner that would allow proper enforcement of the rules and requirements established in the guidelines. The Estonian Ministry of Finance is aware of the situation and will consider making the necessary adjustments to Estonian investment fund law, which is in the process of being redrafted. Expectations for the relevant EU Regulation for MMFs have also been taken into consideration as that would strengthen the case for the necessity of amendments. Finantsinspeksioon emphasizes that as there have been no money market funds that would be subject to the CESR MMF Guidelines in Estonia, no rules or requirements established in the document have in practice been breached.
EL	The HCMC intends to address the identified shortcoming in the context of the forth coming regulation of the EP and Council on MMFs
IS	No specific reasons provided
NO	The ESA regulations are still not implemented in the EEA agreement. There are on-going negotiations between the Norwegian Ministry of Finance (together with the other EEA-countries) and the European Commission. Until these negotiations are completed, guidelines and recommendations from ESMA will not be legally binding, and Finanstilsynet will have limited powers to enforce all aspects of the guidelines. However, in the interim period Finanstilsynet will try to find practical solutions in order to minimise differences arising from the situation by implementing guidelines and recommendations on a voluntary basis to the extent possible within current laws and regulations
PL	The KNF believes that it is most beneficial to await any changes to the Polish legislation until the final decision has been taken on the key issues that the future EU Regulation will address
SE	The Swedish Finansinspektionen does not have the power to force MMF/STMMFs to amend their rules should they depart from the CESR Guidelines. Since the guidelines were not issued under the ESMA Regulation there are no underlying rules that give the guidelines formal legal status in the Swedish legal system. This has not changed since the peer review. The Authority has however been in contact with the Ministry regarding the expected new EU Regulation on MMFs which would address many of the issues dealt with in the Guidelines