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Committee on Economic and Monetary Affairs

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15.11.2013

*****I**

DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council
on Money Market Funds
(COM(2013)0615 – C7-0263/2013 – 2013/0306(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Saïd El Khadraoui

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on Money Market Funds (COM(2013)0615 – C7-0263/2013 – 2013/0306(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0615),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0263/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Recital 25

Text proposed by the Commission

(25) Financial derivative instruments eligible for investment by a MMF should only serve the purpose of hedging interest rate and currency risk and should only have as an underlying instrument interest rates, exchange currencies or indices representing these categories. Any use of derivatives for another purpose or on other underlying assets should be prohibited. Derivatives should only be used as a complement to the fund strategy but not as

Amendment

(25) Financial derivative instruments eligible for investment by a MMF should only serve the purpose of hedging interest rate and currency risk and should only have as an underlying instrument interest rates, exchange currencies or indices representing these categories. Any use of derivatives for another purpose or on other underlying assets should be prohibited. Derivatives should only be used as a complement to the fund strategy but not as

the main tool for achieving the fund's objectives. Should a MMF invest in assets labelled in another currency than the currency of the fund, it is expected that the MMF manager would hedge the entire currency risk exposure, including via derivatives.

the main tool for achieving the fund's objectives. Should a MMF invest in assets labelled in another currency than the currency of the fund, it is expected that the MMF manager would hedge the entire currency risk exposure, including via derivatives. ***MMFs should be entitled to invest in financial derivative instruments if that instrument is traded on a regulated market as referred to in Article 50(1)(a), (b) or (c) of Directive 2009/65/EC or on an organised venue as defined in [new MiFID]^{4a}.***

.

^{4a} OJ L....

Or. en

Amendment 2

Proposal for a regulation Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) MMFs should be entitled to invest in units or shares of other MMFs to avoid the risk of narrowing the choice of eligible assets to a non-optimal level for the investor.

Or. en

Amendment 3

Proposal for a regulation Recital 39

Text proposed by the Commission

Amendment

(39) It is important that the risk management of MMFs not be biased by

(39) For ensuring appropriate liquidity management it is necessary that the MMFs

short-term decisions influenced by the possible rating of the MMF. Therefore, it is necessary to prohibit a MMF or its manager from requesting that the MMF is rated by a credit rating agency in order to avoid that this external rating is used for marketing purposes. The MMF or its manager should also refrain from using alternative methods for obtaining a rating of the MMF. Should the MMF be awarded an external rating, either on the own initiative of the credit rating agency or following request by a third party that is independent of the MMF or the manager and does not act on behalf of any of them, the MMF manager should refrain from relying on criteria that would be attached to that external rating. For ensuring appropriate liquidity management it is necessary that the MMFs establish sound policies and procedures to know their investors. The policies that the manager has to put in place should help understanding the MMF's investor base, to the extent that large redemptions could be anticipated. In order to avoid that the MMF faces sudden massive redemptions, particular attention should be paid to large investors representing a substantial portion of the MMF's assets, as with one investor representing more than the proportion of daily maturing assets. In this case the MMF should increase its proportion of daily maturing assets to the proportion of that investor. The manager should whenever possible look at the identity of the investors, even if they are represented by nominee accounts, portals or any other indirect buyer.

establish sound policies and procedures to know their investors. The policies that the manager has to put in place should help understanding the MMF's investor base, to the extent that large redemptions could be anticipated. In order to avoid that the MMF faces sudden massive redemptions, particular attention should be paid to large investors representing a substantial portion of the MMF's assets, as with one investor representing more than the proportion of daily maturing assets. In this case the MMF should increase its proportion of daily maturing assets to the proportion of that investor. The manager should whenever possible look at the identity of the investors, even if they are represented by nominee accounts, portals or any other indirect buyer.

Or. en

Amendment 4

Proposal for a regulation Recital 42 a (new)

(42a) The financial crisis is evidence of the fact that the conduct and nature of constant net asset value MMFs make them more vulnerable to destabilising investor runs, which can spread quickly among funds, impairing liquidity and the availability of short-term credit, in particular for banks. Against this background, CNAV MMF should not be offered to retail investors.

Or. en

Amendment 5

Proposal for a regulation

Recital 43

Text proposed by the Commission

Amendment

(43) To allow for the specificities of CNAV MMFs it is necessary that CNAV MMFs be permitted to use also the amortised cost accounting method for the purpose of determining the constant net asset value (NAV) per unit or share. This notwithstanding, for the purpose of ensuring at all times the monitoring of the difference between the constant NAV per unit or share and the NAV per unit or share, a CNAV MMF should also calculate the value of its assets on the basis of the marking to market or marking to model methods.

(43) To allow for the specificities of CNAV MMFs it is necessary that CNAV MMFs be permitted to use also the amortised cost accounting method for the purpose of determining the constant net asset value (NAV) per unit or share.

Amortised cost accounting should be applied only where it is deemed to allow for an appropriate approximation of the price of the instrument.

As the risk of mispricing increases with longer term underlying assets, the use of amortisation should be restricted to instruments with low residual maturity

and in the absence of any particular sensitivity of the instruments to market factors. A residual maturity of 90 days should generally be considered to be the maximum.

Materiality thresholds and escalation procedures should be in place to ensure that corrective actions are promptly taken when the amortised cost no longer provides a reliable approximation of the price of the instruments: at the level of the overall portfolio, thresholds of 10 basis points would generally be deemed to be appropriate.

This notwithstanding, for the purpose of ensuring at all times the monitoring of the difference between the constant NAV per unit or share and the NAV per unit or share, a CNAV MMF should also calculate the value of its assets on the basis of the marking to market or marking to model methods.

Or. en

Amendment 6

Proposal for a regulation

Recital 45

Text proposed by the Commission

(45) In order to be able to absorb day-to-day fluctuations in the value of a CNAV MMF's assets and allow it to offer a constant NAV per unit or share, the CNAV MMF should have at all times a NAV buffer amounting to at least 3% of its assets. The NAV buffer should serve as an absorbing mechanism for maintaining the constant NAV. All differences between the constant NAV per unit or share and the NAV per unit or share should be neutralized by using the NAV buffer. During stressed market situations, when

Amendment

(45) In order to be able to absorb day-to-day fluctuations in the value of a CNAV MMF's assets and allow it to offer a constant NAV per unit or share, the CNAV MMF should have at all times a NAV buffer amounting to at least 3% of its assets. The NAV buffer should serve as an absorbing mechanism for maintaining the constant NAV. All differences between the constant NAV per unit or share and the NAV per unit or share should be neutralized by using the NAV buffer. During stressed market situations, when

the differences can rapidly increase, a procedure should ensure that the whole chain of management is involved. This escalation procedure should permit the senior management to take rapid remedy actions.

the differences can rapidly increase, a procedure should ensure that the whole chain of management is involved. This escalation procedure should permit the senior management to take rapid remedy actions.

Five years after the entry into force of this regulation, all CNAV MMF established, managed or marketed in the Union should be converted into variable net asset value MMF.

Or. en

Amendment 7

Proposal for a regulation Recital 47

Text proposed by the Commission

(47) External support provided to a MMF other than a CNAV MMF with the intention of ensuring either liquidity or stability of the MMF or de facto having such effects increases the contagion risk between the MMF sector and the rest of the financial sector. Third parties providing such support have an interest in doing so, either because they have an economic interest in the management company managing the MMF or because they want to avoid any reputational damage should their name be associated with the failure of a MMF. Because these third parties do not commit explicitly to providing or guaranteeing the support, there is uncertainty whether such support will be granted when the MMF needs it. In these circumstances, the discretionary nature of sponsor support contributes to uncertainty among market participants about who will bear losses of the MMF when they do occur. This uncertainty likely makes MMFs even more vulnerable to runs during periods of financial instability,

Amendment

(47) External support provided to a MMF other than a CNAV MMF with the intention of ensuring either liquidity or stability of the MMF or de facto having such effects increases the contagion risk between the MMF sector and the rest of the financial sector. Third parties providing such support have an interest in doing so, either because they have an economic interest in the management company managing the MMF or because they want to avoid any reputational damage should their name be associated with the failure of a MMF. Because these third parties do not commit explicitly to providing or guaranteeing the support, there is uncertainty whether such support will be granted when the MMF needs it. In these circumstances, the discretionary nature of sponsor support contributes to uncertainty among market participants about who will bear losses of the MMF when they do occur. This uncertainty likely makes MMFs even more vulnerable to runs during periods of financial instability,

when broader financial risks are most pronounced and when concerns arise about the health of the sponsors and their ability to provide support to affiliated MMFs. For these reasons, MMFs should not rely on external support in order to maintain their liquidity and the stability of their NAV per unit or share unless the competent authority of the MMF has specifically allowed the external support in order to maintain stability of financial markets.

when broader financial risks are most pronounced and when concerns arise about the health of the sponsors and their ability to provide support to affiliated MMFs. For these reasons, MMFs should not rely on external support in order to maintain their liquidity and the stability of their NAV per unit or share unless the competent authority of the MMF has specifically allowed the external support in order to maintain stability of financial markets.

In order to avoid putting at risk tax payers' money, Member States should ensure that external support is not given by any sovereign, regional or local public authority.

Against this background, ESMA should elaborate detailed guidelines by 31 July 2015 on:

- the maximum amount that sponsors may grant and the applicable conditions;***
- the characteristics of the financial sponsorship provided in accordance with this Regulation;***
- the maximum duration of the sponsorship;***

Or. en

Amendment 8

Proposal for a regulation

Recital 50

Text proposed by the Commission

(50) The competent authority of the MMF should verify whether a MMF is able to comply with this Regulation on an on-going basis. As the competent authorities are already provided with extensive powers under Directives 2009/65/EC and 2011/61/EU, it is necessary that such powers be extended in order to be

Amendment

(50) The competent authority of the MMF, ***and ESMA where MMF exceed the threshold,*** should, ***in accordance with this Regulation,*** verify whether a MMF is able to comply with this Regulation on an on-going basis. As the competent authorities are already provided with extensive powers under Directives 2009/65/EC and

exercised by reference to the new common rules on MMFs. The competent authorities for the UCITS or AIF should also verify compliance of all collective investment undertakings that display the characteristics of MMFs that are in existence at the time this Regulation enters into force.

2011/61/EU, it is necessary that such powers be extended in order to be exercised by reference to the new common rules on MMFs. The competent authorities for the UCITS or AIF should also verify compliance of all collective investment undertakings that display the characteristics of MMFs that are in existence at the time this Regulation enters into force.

Or. en

Amendment 9

Proposal for a regulation Recital 51

Text proposed by the Commission

(51) The Commission should adopt ***the delegated acts in the area of the internal assessment procedure pursuant to Article 290 of the Treaty on the Functioning of the European Union***. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

Amendment

(51) ***In order to, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union, should be delegated to the Commission in respect of the internal assessment.*** The Commission should adopt ***that delegated act by 31 July 2015***. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

Or. en

Amendment 10

Proposal for a regulation Recital 52

Text proposed by the Commission

(52) The Commission should also be empowered to adopt implementing technical standards by means of

Amendment

(52) The Commission should also be empowered to adopt ***by 31 July 2015,*** implementing technical standards by

implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union and in accordance with Article 15 of Regulation (EU) No 1095/2010⁷. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to a reporting template containing information on MMFs for competent authorities.

⁷ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

means of implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union and in accordance with Article 15 of Regulation (EU) No 1095/2010⁷ **of the European Parliament and of the Council**. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to a reporting template containing information on MMFs for competent authorities.

⁷ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Or. en

Amendment 11

Proposal for a regulation Recital 53

Text proposed by the Commission

(53) ESMA should be able to exercise all the powers conferred under Directives 2009/65/EC and 2011/61/EU with respect to this Regulation. It is also entrusted with developing draft regulatory and implementing technical standards.

Amendment

(53) ESMA should be able to exercise all the powers conferred under Directives 2009/65/EC and 2011/61/EU with respect to this Regulation. It is also entrusted with developing draft regulatory and implementing technical standards **by 31 July 2015**.

Or. en

Amendment 12

Proposal for a regulation Article 1 – paragraph 2

Text proposed by the Commission

2. Member States shall not add any additional requirements in the field covered by this Regulation.

Amendment

2. Member States shall not add any additional requirements in the field covered by this Regulation.

Member States in which CNAV MMF may be offered, shall apply Chapter V.

Or. en

Amendment 13

Proposal for a regulation Article 2 – paragraph 1 – point 7 a (new)

Text proposed by the Commission

Amendment

(7a) 'retail investors' means:

(i) retail clients as defined in [new MIFID] ^{10a};

(ii) customers within the meaning of Directive 2002/92/EC ^{10b};

^{10a} ***[new MiFID].***

^{10b} ***Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15.1.2003, p. 3).***

Or. en

Amendment 14

Proposal for a regulation Article 3 – paragraph 1 – subparagraph 1

Text proposed by the Commission

No collective investment undertaking shall be established, marketed or managed in the Union as MMF unless it has been authorised in accordance with this Regulation.

Amendment

No collective investment undertaking shall be established, marketed or managed in the Union as MMF unless it has been authorised in accordance with this Regulation.

An MMF or an MMF manager may be established in a third country provided that that third country is not a country:

- where there are no or nominal taxes,***
- where there is a lack of effective exchange of information with foreign tax authorities,***
- where there is a lack of transparency in legislative, judicial or administrative provisions,***
- where there is no requirement for a substantive local presence, or***
- which acts as an offshore financial centre.***

Or. en

Amendment 15

**Proposal for a regulation
Article 4 – paragraph 1**

Text proposed by the Commission

1. An AIF shall be authorised as a MMF only if its competent authority has approved the application of an AIFM authorised under Directive 2011/61/EU to manage the AIF, the fund rules and the choice of the depositary.

Amendment

1. An AIF shall be authorised as a MMF only if its competent authority has approved the application of an AIFM authorised under Directive 2011/61/EU to manage the AIF, the fund rules and the choice of the depositary.

An AIF MMF or an AIFM of a MMF may be established in a third country provided that the third country is not a country:

- *where there are no or nominal taxes,*
- *where there is a lack of effective exchange of information with foreign tax authorities,*
- *where there is a lack of transparency in legislative, judicial or administrative provisions,*
- *where there is no requirement for a substantive local presence,*
- *which acts as an offshore financial centre.*

Or. en

Amendment 16

Proposal for a regulation Article 8 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) units or shares of other MMFs.

Or. en

Amendment 17

Proposal for a regulation Article 10 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission *by [...]*.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission *by 31 December 2014.*

Or. en

Amendment 18

Proposal for a regulation

Article 12 – paragraph 1 – introductory part

Text proposed by the Commission

A financial derivative instrument shall be eligible for investment by a MMF if it is dealt in on a regulated market referred to in Article 50(1)(a), (b) or (c) of Directive 2009/65/EC or ***over-the-counter (OTC)***, ***provided that all of the following conditions are in any case fulfilled:***

Amendment

A financial derivative instrument shall be eligible for investment by a MMF if it is dealt in on a regulated market referred to in Article 50(1)(a), (b) or (c) of Directive 2009/65/EC or ***on an organised venue as defined in [new MiFID].***

Or. en

Amendment 19

Proposal for a regulation

Article 16 – paragraph 3 – point d

Text proposed by the Commission

(d) where a credit rating agency registered with the European Securities and Market Authority (ESMA) assigns a credit rating to an issuer of money market instruments, the downgrade below the two highest short term credit ratings used by that agency shall be considered to be material change for the purposes of point (c) and require the manager to undertake a new assignment procedure;

Amendment

(d) where a credit rating agency registered with the European Securities and Market Authority (ESMA) assigns a credit rating to an issuer of money market instruments, the downgrade below the two highest short term credit ratings used by that agency shall be considered to be material change for the purposes of point (c) and require the manager to undertake a new assignment procedure ***of the credit quality of the money market instrument to ensure it continues to be of high quality.***

Or. en

Amendment 20

Proposal for a regulation

Article 19 – paragraph 1 – introductory part

Text proposed by the Commission

The Commission shall be empowered to adopt delegated acts in accordance with Article 44 specifying the following points:

Amendment

ESMA shall, by 31 July 2015, draft regulatory technical standards specifying the following points:

Or. en

Amendment 21

Proposal for a regulation Article 22 – paragraph 3 – introductory part

Text proposed by the Commission

3. Notwithstanding the individual limit laid down in paragraph 2, a standard MMF may combine, where this would lead to investment of up to 15% of its assets in a single body, any of the following:

Amendment

3. Notwithstanding the individual limit laid down in paragraph 2, **and as a derogation from Article 14**, a standard MMF may combine, where this would lead to investment of up to 15% of its assets in a single body, any of the following:

Or. en

Amendment 22

Proposal for a regulation Article 23 – paragraph 1

Text proposed by the Commission

The MMF or the manager of the MMF shall not solicit or finance a credit rating agency for rating the MMF.

Amendment

deleted

Or. en

Amendment 23

Proposal for a regulation Article 25 – paragraph 7

Text proposed by the Commission

7. ESMA shall issue guidelines with a view to establishing common reference parameters of the stress test scenarios to be included in the stress tests taking into account the factors specified in paragraph 1. The guidelines shall be updated at least every year taking into account the latest market developments.

Amendment

7. ESMA shall issue guidelines **by 31 July 2015** with a view to establishing common reference parameters of the stress test scenarios to be included in the stress tests taking into account the factors specified in paragraph 1. The guidelines shall be updated at least every year taking into account the latest market developments.

Or. en

Amendment 24

**Proposal for a regulation
Article 26 – paragraph 5**

Text proposed by the Commission

5. In addition to the marking to market method referred to in paragraphs 2 and 3 and marking to model method referred to in paragraph 4, the assets of a CNAV MMF may also be valued by using the amortised cost method.

Amendment

5. In addition to the marking to market method referred to in paragraphs 2 and 3 and marking to model method referred to in paragraph 4, the assets of a CNAV MMF may also be valued by using the amortised cost method.

Amortised cost accounting shall be applied only where it is deemed to allow for an appropriate approximation of the price of the instrument.

As the risk of mispricing increases with longer term underlying assets, the use of amortisation shall be restricted to instruments with low residual maturity and in the absence of any particular sensitivity of the instruments to market factors. A residual maturity of 90 days shall be considered to be the maximum.

Materiality thresholds and escalation procedures shall be in place to ensure that corrective actions are promptly taken when the amortised cost no longer provides a reliable approximation of the price of the instruments: at the level of the

overall portfolio, thresholds of 10 basis points shall be deemed to be appropriate.

Or. en

Amendment 25

Proposal for a regulation Article 29 a (new)

Text proposed by the Commission

Amendment

Article 29 a

CNAV MMF shall not be offered to retail investors.

Or. en

Amendment 26

Proposal for a regulation Article 30 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Each CNAV MMF shall establish and maintain a NAV buffer amounting at all times to at least 3% of the total value of the CNAV MMF's assets. The total value of the CNAV MMF's assets shall be calculated as the sum of the values of each asset of the MMF determined in accordance with Article 26(3) or (4).

Each CNAV MMF shall establish and maintain ***by 31 December 2014*** a NAV buffer amounting at all times to at least 3 % of the total value of the CNAV MMF's assets. The total value of the CNAV MMF's assets shall be calculated as the sum of the values of each asset of the MMF determined in accordance with Article 26(3) or (4).

By [OJ please insert date: five years after entry into force of this Regulation], all CNAV MMF established, managed or marketed in the Union shall be converted into VNAV MMF.

Or. en

Amendment 27

Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

1. The competent authority of the CNAV MMF shall be immediately notified of any decrease below 3% in the amount of the NAV buffer.

Amendment

1. The competent authority of the CNAV MMF **and ESMA** shall be immediately notified of ***the necessary documents proving the existence of the buffer and of*** any decrease below 3 % in the amount of the NAV buffer.

Or. en

Amendment 28

Proposal for a regulation Article 35 – paragraph 3 – subparagraph 1

Text proposed by the Commission

External support shall mean a direct or indirect support offered by a third party that is intended for or in effect would result in guaranteeing the liquidity of the MMF or stabilising the NAV per unit or share of the MMF.

Amendment

External support shall mean a direct or indirect support offered by a third party that is intended for or in effect would result in guaranteeing the liquidity of the MMF or stabilising the NAV per unit or share of the MMF. ***External support shall not be given by any sovereign, regional or local public authority.***

Or. en

Amendment 29

Proposal for a regulation Article 36 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(c a) External support shall not be given by any sovereign, regional or local public authority.

Amendment 30

Proposal for a regulation Article 36 a (new)

Text proposed by the Commission

Amendment

Article 36a

ESMA guidelines

ESMA shall elaborate detailed guidelines on financial sponsorship by 31 July 2015 in regard to:

- the maximum amount that sponsors can provide and the applicable conditions,***
- the characteristics of the sponsorship,***
- the duration of the sponsorship.***

Or. en

Amendment 31

Proposal for a regulation Article 37 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

A CNAV MMF shall indicate clearly that it is a CNAV MMF in any external or internal document, report, statement, advertisement, letter or any other written evidence issued by it or its manager, addressed to or intended for distribution to prospective investors, unit-holders, shareholders or competent authorities of the MMF or its manager.

A CNAV MMF shall indicate clearly that it is a CNAV MMF in any external or internal document, report, statement, advertisement, letter or any other written evidence issued by it or its manager, addressed to or intended for distribution to prospective investors, unit-holders, shareholders or competent authorities of the MMF or its manager.

Upon the request of the investor, the CNAV MMF shall communicate the NAV.

Or. en

Amendment 32

Proposal for a regulation Article 37 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The remuneration policy of MMFs shall be transparent. Accordingly, , MMFs shall establish and apply remuneration policies and practices that are consistent with and that promote sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the MMF they manage.

2. The remuneration policies and practices shall cover fixed and variable components of salaries and discretionary pension benefits.

3. The remuneration policies and practices shall apply to those categories of staff, including employees and other members of staff such as, but not limited to, temporary or contractual staff, at fund or subfund level who are:

(a) fund managers;

(b) persons other than fund managers, who take investment decisions that affect the risk position of the fund;

(c) persons other than fund managers, who have the power to exercise influence on staff, including investment policy advisors and analysts;

(d) senior management, risk takers, personnel in control functions; and

(e) any other employee or member of staff such as, but not limited to, temporary or contractual staff receiving total remuneration that falls within the remuneration bracket of senior management and decision takers and

whose professional activities have a material impact on the risk profiles of the management companies or of the MMF they manage.

Or. en

Amendment 33

Proposal for a regulation Article 38 – paragraph 1

Text proposed by the Commission

1. For each MMF managed, the manager of the MMF shall report information to the competent authority of the MMF, at least on a quarterly basis. The manager shall **upon request** provide the information also to the competent authority of the manager if different from the competent authority of the MMF.

Amendment

1. For each MMF managed, the manager of the MMF shall report information to the competent authority of the MMF, at least on a quarterly basis. The manager shall provide the information also to the competent authority of the manager if different from the competent authority of the MMF.

Or. en

Amendment 34

Proposal for a regulation Article 39 – paragraph 1

Text proposed by the Commission

1. **The competent authorities** shall **supervise** compliance with this Regulation on an on-going basis.

Amendment

1. **MMF with more than EUR 10 billion of assets under management** shall **be supervised by ESMA on the** compliance with this Regulation on an **on-going basis**.
Other funds shall fall under the supervision of the competent authorities on an on-going basis.

Or. en

Amendment 35

Proposal for a regulation Article 39 – paragraph 3

Text proposed by the Commission

3. The competent authority of the MMF shall be responsible for supervising compliance with the obligations set out in the fund rules or in the instruments of incorporation, and the obligations set out in the prospectus, which shall be consistent with this Regulation.

Amendment

3. **ESMA and** the competent authority of the MMF, **as appropriate depending on the type of MMF which they are responsible for supervising**, shall be responsible for supervising compliance with the obligations set out in the fund rules or in the instruments of incorporation, and the obligations set out in the prospectus, which shall be consistent with this Regulation.

Or. en

Amendment 36

Proposal for a regulation Article 39 – paragraph 4

Text proposed by the Commission

4. The competent authority of the manager shall be responsible for supervising the adequacy of the arrangements and organisation of the manager so that the manager of the MMF is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the MMFs it manages.

Amendment

4. **ESMA and** the competent authority of the manager, **as appropriate, depending on the type of MMF which they are responsible for supervising**, shall be responsible for supervising the adequacy of the arrangements and organisation of the manager so that the manager of the MMF is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the MMFs it manages.

Or. en

Amendment 37

Proposal for a regulation Article 39 – paragraph 5

Text proposed by the Commission

5. Competent authorities shall monitor UCITS or AIFs established or marketed in their territories to verify that they do not use the MMF designation or suggest that they are a MMF unless they comply with this Regulation.

Amendment

5. ***ESMA and the*** competent authorities, ***as appropriate, depending on the type of MMF which they are responsible for supervising,*** shall monitor UCITS or AIFs established or marketed in their territories to verify that they do not use the MMF designation or suggest that they are a MMF unless they comply with this Regulation.

Or. en

Amendment 38

Proposal for a regulation Article 40 – paragraph 1

Text proposed by the Commission

1. Competent authorities shall have all supervisory and investigatory powers that are necessary for the exercise of their functions pursuant to this Regulation.

Amendment

1. ***ESMA and the*** competent authorities, ***as appropriate, depending on the type of MMF which they are responsible for supervising,*** shall have all supervisory and investigatory powers that are necessary for the exercise of their functions pursuant to this Regulation.

Or. en

Amendment 39

Proposal for a regulation Article 43 – paragraph 3

Text proposed by the Commission

3. By way of derogation from the first sentence of Article 30(1), an existing UCITS or AIF that meets the criteria for

Amendment

deleted

the definition of a CNAV MMF set out in Article 2(10) shall establish a NAV buffer of at least

(a) 1% of the total value of the CNAV MMF's assets, within one year from the entry into force of this Regulation;

(b) 2% of the total value of the CNAV MMF's assets, within two years from the entry into force of this Regulation;

(c) 3% of the total value of the CNAV MMF's assets, within three years from the date of entry into force of this Regulation

Or. en

Amendment 40

Proposal for a regulation Article 43 – paragraph 4

Text proposed by the Commission

Amendment

4. For the purposes of paragraph 3 of this Article, the reference to 3% in Articles 33 and 34 shall be interpreted as referring to the amounts of the NAV buffer mentioned in points (a), (b) and (c) of paragraph 3 respectively.

deleted

Or. en

Amendment 41

Proposal for a regulation Article 44 – paragraph 2

Text proposed by the Commission

Amendment

2. The power to adopt delegated acts referred to in Articles 13 and 19 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

2. The power to adopt delegated acts referred to in Articles 13 and 19 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation. **The**

*Commission will adopt the delegated acts
as referred to in articles 13 and 19 at the
latest by 31 July 2015.*

Or. en

EXPLANATORY STATEMENT

Background:

Shadow banking is the system of credit intermediation that involves entities and activities that are outside the regular banking system. Shadow banks are not regulated like banks, yet engage in bank-like activities. The Financial Stability Board (FSB) has roughly estimated the size of the global shadow banking system at around €51 trillion in 2011. This represents 25-30% of the total financial system and half the size of bank assets. Shadow banking is therefore of great systemic importance for Europe's financial system.

MMF should be considered as an important shadow banking entity.

A Money Market Fund (MMF) is a mutual fund that invests in short-term debt such as money market instruments issued by banks, governments or corporations. Money market instruments traditionally include treasury bills, commercial paper or certificates of deposit

Because of the systemic interconnectedness of Money Market Funds (MMF) with the banking sector and with corporate and government finance, they have been identified by the Financial Stability Board (FSB), the International Organisation of security committees (IOSCO), the European Systemic Risk Board (ESRB), the European Commission (EC) and the European Parliament (EP) as an important entity acting as shadow banks.

As underlined by the European Parliament in its report on shadow banking as adopted on the 20th of November 2012, MMF should, as a priority, be subjected to measures necessary to reduce the specific risks of runs to make the financial system more stable.

Role and importance of MMF:

MMFs are an important source of short-term financing for financial institutions, corporations and governments. In Europe, around 22% of short-term debt securities issued by governments or by the corporate sector are held by MMF. They hold 38% of short-term debt issued by the banking sector. In total, MMF have around 1 trillion euro assets in portfolio in the EU.

MMF played an important role in the financial crisis of 2007-08.

In Europe, a number of so-called “enhanced MMF” were hit by the fallout in the US subprime mortgage market during the summer of 2007, and either had to be supported by sponsor banks or suspended. By comparison, the US experienced a crisis of far greater proportions when one leading fund, the Reserve Primary Fund, “broke the buck”: i.e. was unable to keep its net asset value at one US dollar, in the wake of the collapse of Lehman Brothers. This event triggered a run on MMFs, with around USD 310 billion – about 10% of the total assets under management – withdrawn from such funds in just a few days, creating a dislocation of the commercial paper (CP) market and forcing the US authorities to step in, including the creation of two liquidity facilities and an extension of the deposit guarantee (ESRB paper 2012 on MMF).

Given this important role in the crisis, MMF prompted regulators on both sides of the Atlantic to extensively review the regulatory framework applicable to them. In Europe, new guidelines were adopted in 2010, imposing strict standards in terms of the credit quality and maturity of underlying securities and better disclosure to investors. Although these initiatives are considered to have considerably improved MMF regulation, discussions are still ongoing, both in the United States (US) and at the international level, as to how to reduce the systemic risks associated with MMF and, in particular, their vulnerability to investor runs.

It is therefore your rapporteur's opinion that given this systemic importance of the MMF and given the huge role they played during the financial crisis, the legislative proposal of the EC to regulate the sector of MMF is to be welcomed.

The EC proposal and the rapporteur's suggestions:

Given these structural vulnerabilities and the fact that investors often perceive money put in a MMF as a guaranteed investment, a strict regulatory framework is needed so as to tackle the liquidity and maturity transformation and to make the MMF more stable without putting their important short term financing role of the real economy into danger. The EC proposal strengthens the liquidity, diversification and concentration requirements and makes them more transparent and more stable.

The rapporteur welcomes these steps, but is of the opinion we should go further on the following points.

First, in order to tackle potential runs as efficiently as possible and to make the financial system more stable, additional measures on CNAVS need to be adopted. As stated by the EP in its report on shadow banking, the rapporteur believes that MMFs that offer a stable net asset value (NAV) should be subject to measures designed to reduce the specific risks associated with their stable NAV feature and internalise the costs arising from these risks; It is the rapporteur's opinion that this internalisation of the costs is best organised via a capital buffer of 3 % which needs to be established by the end of 2014. By the end of 2019, all CNAVS need to be transformed into VNAVS as such a transformation will make MMF more transparent around the real value of the underlying assets and therefore less susceptible to runs.

Further, as tax havens are highly detrimental to the international economy and as the fight against tax havens is at the heart of the international agenda, as evoked by the G20 in Saint Petersburg in September 2013 and by the finance ministers and Central Banks Governors of the G20 in February 2013, and as recognized by the European Parliament in its May 2013 report on the fight against tax fraud, tax evasion and tax havens, and as a huge part of the shadow banking activities and entities operate from tax havens, it is the rapporteur's conviction that measures need to be adopted to make sure MMFs are not established in a tax haven.

Further, it is the rapporteur's opinion that the eligible assets in which MMF can invest in should be extended for a certain percentage towards parts of other MMF provided some strict conditions are fulfilled.

The rapporteur welcomes the other measures proposed by the EC to increase the transparency, but believes that this transparency should also be extended towards the remuneration policies and practice of the MMF. Further, CNAVS should be able to give at any moment the NAV of the units to the investors.

In order to have a reliable view on the value of assets of the MMF and on its taken risk policy, a rating given by a recognised rating agency could be helpful. Although the rapporteur is against any form of mechanic reliance on an external rating, he is however not in favour of forbidding to a MMF to solicit or to finance a rating by an agency recognised by ESMA, as far as all the dispositions of the CRA regulations are respected. In this perspective, it is also crucial that the internal evaluation method is reliable, workable and free from potential conflict of interest.

To evaluate the financial products the MMF have invested in, it is crucial the valuation method is solid and reliable. The rapporteur believes therefore that the amortised cost model as used by the CNAV is useful, provided more detailed conditions are fulfilled, in particular the maximum of the residual maturity should be limited to 90 days and when the amortised cost method does not provide any longer a reliable approximation of the price of the instruments, corrective actions should be taken.

Sponsor support of CNAVS has to be limited to the building up of the capital buffer. In exceptional cases VNAVS can also apply for external support, but this will not be given by any sovereign, regional or local public authority. Further, more transparency is needed around the maximum amount a VNAV can be supported for, the maximal time and the form this sponsoring can take. ESMA will elaborate therefore the needed detailed guidelines.

Given the systemic importance of several of the MMF, and in line with the upcoming direct supervision by the ECB on systemic banks in the framework of the banking Union, the rapporteur believes that ESMA should be made responsible for the direct supervision of biggest systemic MMF, in cooperation with the competent authority.