Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (Text with EEA relevance)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) Money market funds (MMFs) provide short-term finance to financial institutions, corporations and governments. By providing finance to those entities, MMFs contribute to the financing of the economy of the Union. Those entities use their investments in MMFs as an efficient way to spread their credit risk and exposure, rather than relying solely on bank deposits.

(2) On the demand side, MMFs are short-term cash management tools that provide a high degree of liquidity, diversification and stability of value of the principal invested, combined with a market-based yield. MMFs are mainly used by corporations seeking to invest their excess cash for a short time frame. MMFs, therefore, represent a crucial link bringing together demands and offers of short-term cash.

(3) Events that occurred during the financial crisis have shed light on several features of MMFs that make them vulnerable when there are difficulties in financial markets in which case MMFs could spread or amplify risks throughout the financial system. When the prices of the assets in which an MMF has invested start to decrease, especially during stressed market situations, the MMF cannot always maintain its promise to redeem immediately and to preserve the principal value of a unit or share issued by the MMF to investors. That situation, which according to the Financial Stability Board (FSB) and the International Organisation of Securities Commissions (IOSCO) can be particularly

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serious for constant or stable net asset value MMFs, could trigger substantial and sudden redemption requests, potentially triggering broader macroeconomic consequences.

(4) Large redemption requests could force MMFs to sell some of their investment assets in a declining market, potentially fuelling a liquidity crisis. In those circumstances, money market issuers can face severe funding difficulties if the markets for commercial paper and other money market instruments dry up. That in turn could lead to contagion within the short-term funding market and result in direct and major difficulties in the financing of financial institutions, corporations and governments, and thus the economy.

(5) Asset managers, backed by sponsors, can decide to provide discretionary support to maintain the liquidity and the stability of their MMFs. Sponsors are often forced to support their sponsored MMFs that are losing value due to reputational risk and fear that panic could spread into sponsors' other businesses. Depending on the size of the MMF and the extent of the redemption pressure, sponsor support could reach proportions that exceed their readily available reserves. Therefore, an MMF should not receive external support.

(6) In order to preserve the integrity and stability of the internal market, it is necessary to lay down rules regarding the operation of MMFs, in particular on the composition of the portfolio of MMFs. Those rules are intended to make MMFs more resilient and limit contagion channels. Uniform rules across the Union are necessary to ensure that MMFs are able to honour redemption requests from investors, especially during stressed market situations. Uniform rules on the portfolio of an MMF are also required to ensure that MMFs are able to face substantial and sudden redemption requests by a large group of investors.

(7) Uniform rules on MMFs are furthermore necessary to ensure the smooth operation of the short-term funding market for financial institutions, corporate issuers of short-term debt and governments. They are also required to ensure the equal treatment of investors in an MMF and to avoid late redeemers being disadvantaged if redemptions are temporarily suspended or if an MMF is liquidated.

(8) It is necessary to provide for the harmonisation of prudential requirements related to MMFs by setting out clear rules that impose direct obligations on MMFs and the managers of MMFs throughout the Union. Such harmonisation would enhance the stability of MMFs as a source of short-term finance for governments and the corporate sector across the Union. It would also ensure that MMFs remain a reliable tool for the cash management needs of industry in the Union.

(9) The Guidelines on a common definition of European money market funds adopted by the Committee of European Securities Regulators on 19 May 2010 to create a minimum level playing field for MMFs in the Union were, one year after their entry into force, applied by only 12 Member States, thus demonstrating the persistence of divergent national rules. Different national approaches fail to address the vulnerabilities of money markets in the Union and fail to mitigate contagion risks, thereby endangering the functioning and stability of the internal market, as evidenced during the financial crisis. The common rules on MMFs provided for in this Regulation therefore aim to provide a

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high level of protection for investors and to prevent and mitigate any potential contagion risks resulting from possible runs by investors on MMFs.

(10) In the absence of a regulation setting out rules on MMFs, diverging measures might continue to be adopted at national level. Such measures would continue to cause significant distortions of competition resulting from significant differences in essential investment protection standards. Diverging requirements on portfolio composition, eligible assets, their maturity, liquidity and diversification, as well as on credit quality of issuers and of money market instruments, lead to different levels of investor protection because of the different levels of risk attached to the investment proposition associated with an MMF. It is therefore essential to adopt a uniform set of rules in order to avoid contagion of the short-term funding market which would put at risk the stability of the Union's financial market. In order to mitigate systemic risk, constant net asset value MMFs (CNAV MMFs) should only operate in the Union as public debt CNAV MMFs.

(11) The new rules on MMFs build upon Directive 2009/65/EC of the European Parliament and of the Council[(4)], which forms the legal framework governing the establishment, management and marketing of undertakings for collective investment in transferable securities (UCITS) in the Union, and also upon Directive 2011/61/EU of the European Parliament and of the Council[(5)], which forms the legal framework governing the establishment, management and marketing of alternative investment funds (AIFs) in the Union.

(12) In the Union, collective investment undertakings can operate as UCITS, managed by UCITS management companies or UCITS investment companies authorised under Directive 2009/65/EC, or as AIFs, managed by alternative investment fund managers (AIFMs) authorised or registered under Directive 2011/61/EU. The new rules on MMFs build on the existing legal framework established by those Directives, including the acts adopted for their implementation, and should therefore apply in addition to those Directives. Furthermore, the management and marketing rules laid down in the existing legal framework should apply to MMFs taking into account whether they are UCITS or AIFs. Equally, the rules on the cross-border provision of services and freedom of establishment laid down in Directives 2009/65/EC and 2011/61/EU should apply correspondingly to the cross-border activities of MMFs. At the same time, a number of rules in relation to the investment policies of UCITS laid down in Chapter VII of Directive 2009/65/EC should be explicitly disapplied.

(13) Harmonised rules should apply to collective investment undertakings whose characteristics correspond to those associated with an MMF. For UCITS and AIFs that have the objective of offering returns in line with money market rates, or of preserving the value of the investment, and that seek to achieve those objectives by investing in short-term assets such as money market instruments or deposits, or entering into reverse repurchase agreements or certain derivative contracts with the sole purpose of hedging risks inherent to other investments of the fund, compliance with the new rules on MMFs should be mandatory.

(14) The specificity of MMFs results from the combination of the assets in which they invest and the objectives they pursue. The objective of offering returns in line with money

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market rates and the objective of preserving the value of an investment are not mutually exclusive. An MMF can have either one of those objectives or both objectives jointly.

(15) The objective of offering returns in line with money market rates is to be understood in a broad sense. The anticipated return does not need to be perfectly aligned with EONIA, Libor, Euribor or any other relevant money market rate. An objective which seeks to outperform the money market rate by a slight margin is not to be considered to take a UCITS or AIF outside the scope of the new uniform rules provided for in this Regulation.

(16) The objective of preserving the value of the investment is not to be understood to be a capital guarantee promised by an MMF. It is to be understood as an aim that a UCITS or AIF seeks to pursue. A decrease in value of the investments does not imply that the collective investment undertaking has changed its objective of preserving the value of an investment.

(17) It is important that UCITS and AIFs that have the characteristics of MMFs be identified as MMFs and that their capacity to comply on an ongoing basis with the new uniform rules on MMFs be explicitly verified. For that purpose, competent authorities should authorise MMFs. For UCITS, their authorisation as MMFs should be part of the authorisation as UCITS in accordance with the harmonised procedures under Directive 2009/65/EC. For AIFs, as they are not subject to harmonised authorisation and supervision procedures under Directive 2011/61/EU, it is necessary to provide for common basic rules on authorisation that mirror the existing harmonised rules for UCITS. Such procedures should ensure that the manager of an AIF authorised as an MMF is an AIFM authorised in accordance with Directive 2011/61/EU.

(18) In order to ensure that all collective investment undertakings displaying the characteristics of MMFs are subject to the new common rules on MMFs, the use of the designation ‘MMF’, or any other term that suggests that a collective investment undertaking shares the characteristics of MMFs, should be prohibited unless that undertaking is authorised as an MMF under this Regulation. To prevent circumvention of the rules in this Regulation, competent authorities should monitor the market practices of collective investment undertakings established or marketed in their jurisdiction to verify that they do not misuse the MMF designation or suggest that they are an MMF without complying with the new legal framework.

(19) Given that UCITS and AIFs can take different legal forms that do not necessarily endow them with legal personality, the provisions in this Regulation requiring MMFs to take action are to be understood to refer to the manager of the MMF in cases where the MMF is constituted as a UCITS or as an AIF that is not in a position to act by itself because it has no legal personality of its own.

(20) Rules on the portfolio of MMFs should clearly identify the categories of assets that are eligible for investment by MMFs and the conditions under which they are eligible. To ensure the integrity of MMFs, MMFs should also be prohibited from engaging in certain financial transactions that would endanger their investment strategy and objectives.

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(21) Money market instruments are transferable instruments normally dealt in on the money market and include treasury and local authority bills, certificates of deposits, commercial papers, bankers' acceptances, and medium- or short-term notes. Money market instruments should be eligible for investment by MMFs only insofar as they comply with maturity limits and are considered by an MMF to be of high credit quality.

(22) In addition to the case in which an MMF invests in bank deposits in accordance with its fund rules or its instruments of incorporation, it should be possible to allow an MMF to hold ancillary liquid assets, such as cash in a bank account accessible at any time. The holding of such ancillary liquid assets could be justified, inter alia, in order to cover current or exceptional payments, in the case of sales, for the time necessary to reinvest in eligible assets.

(23) Securitisations and asset-backed commercial paper (ABCPs), should be considered to be eligible to the extent that they respect certain requirements. Due to the fact that during the financial crisis certain securitisations were particularly unstable, certain quality criteria should be imposed on securitisations and ABCPs so that only those securitisations and ABCPs that perform well should be eligible. Until such time as the Regulation of the European Parliament and of the Council for simple, transparent and standardised (STS) securitisations that is proposed (the proposed Regulation on STS securitisations) is adopted and becomes applicable for the purposes of this Regulation, MMFs should be allowed to invest in securitisations and ABCPs up to a limit of 15 % of their assets. The Commission should adopt a delegated act to ensure that the criteria identifying STS securitisations apply for the purposes of this Regulation. Once that delegated act applies, MMFs should be allowed to invest in securitisations and ABCPs up to a limit of 20 % of their assets, whereby up to 15 % should be able to be invested in securitisations and ABCPs which are not STS.

(24) An MMF should be allowed to invest in deposits to the extent that it is able to withdraw the money at any time. The effective possibility of withdrawal would be impaired if the penalties associated with early withdrawal are so high as to exceed the interest accrued prior to withdrawal. For that reason, an MMF should take due care not to make deposits with a credit institution that requires above average penalties or to engage in too long deposits where that results in too high penalties.

(25) In order to take account of the differences in banking structures across the Union, particularly in smaller Member States or in Member States where there is a highly concentrated banking sector, and where it would be uneconomical for an MMF to use the services of a credit institution in another Member State, such as where that would necessitate a currency exchange with all the associated costs and risks, some flexibility in the diversification requirement for deposits with the same credit institution should be allowed.

(26) Financial derivative instruments eligible for investment by an MMF should only serve the purpose of hedging interest rate and currency risk and should only have as an underlying instrument interest rates, foreign exchange rates, currencies or indices representing those categories. Any use of derivatives for another purpose or on other underlying assets should be prohibited. Derivatives should only be used as a