



EUROPEAN COMMISSION

LEGAL SERVICE

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Opinion of the Legal Service¹

**NOTE TO THE ATTENTION OF MR. GUERSENT
DIRECTOR GENERAL, DG FISMA**

Subject: Compliance of Reverse Distribution Mechanisms with Regulation (EU) 2017/1131 on money market funds

Reference: Ares(2017)5554487

1. The Legal Service has been consulted on the compatibility of a particular way of structuring Money Market Funds (MMFs) with the rules contained in Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds² (MMF Regulation).
2. The Legal Service's understanding of the particular MMF structure submitted for assessment is the following:
 - the relevant funds invest in short-term assets within the meaning of the MMF Regulation;
 - those funds have the objective of offering returns in line with money market rates or preserving the value of the investment or both;
 - those funds use a constant net asset value (NAV) for redemption purposes;
 - those funds apply a valuation and redemption policy whereby any decrease of the fund's NAV is never reflected in a corresponding decrease of the price of its units but leads instead to the cancellation of an appropriate number of units from the

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² OJ L 169, 30.6.2017.

investors' accounts in order to ensure a constant redemption price. This policy is known as 'Reverse Distribution Mechanism' (RDM).

3. This note reflects the views of the Legal Service as already conveyed to DG FISMA by e-mail dated 13 November 2017, and confirms the Legal Service's opinion that, for the reasons explained below, the structure described in point 2 would not be compatible with the MMF Regulation.
4. The MMF Regulation undertakes an exhaustive and exclusive harmonisation of the relevant activity, i.e. collective investment carried out by MMFs.
5. In this sense, Article 1 of the Regulation explicitly provides that (i) it applies to any fund investing in short-term assets with the objectives of offering returns in line with money market rates or preserving the value of the investment or both and (ii) Member States cannot add any additional requirement in the field covered by the Regulation. At the same time, Article 4 clearly states that no fund may be established, marketed or managed in the Union as an MMF unless it has been authorised in accordance with the Regulation. Finally, Article 3 sets out the —only three— types of MMFs that may be authorised in accordance with the Regulation, two of them allowing issuance and redemption at a price that is equal to the constant NAV by way of derogation to the general rule laid down in Article 33(1) of the Regulation.
6. The funds described in point 2 fall under the scope of the MMF Regulation.
7. From the note sent by DG FISMA it can be inferred that those funds fulfil the characteristics described in Article 1 of the Regulation and that they intend to get the necessary authorisation under that Regulation. Those funds would not however be able to comply with all relevant provisions and requirements concerning constant NAV MMFs since those provisions set out detailed rules on the operation of the constant NAV and none of those rules envisage the RDM; on the contrary, those rules are built on the assumption that the number of issued units or shares remains unchanged until an investor's request for redemption. It follows that the RDM is simply not available as a way of structuring the operation of a MMF because it would imply the breach of certain provisions of the MMF Regulation, in particular of Chapters IV and V therein.

8. This view is also supported by the preparatory work of the MMF Regulation.
9. The RDM seems to have been considered at some point in the negotiations of the Regulation but finally not retained in the legislative text. Since the MMF Regulation carries out an exhaustive and exclusive harmonisation of MMF activities, it is clear that the co-legislators did not intend to allow for structures of MMF other than the three set out in Article 3 which, as explained above, are incompatible with the RDM.
10. Finally, accepting the RDM as a valid way of structuring a MMF would not only represent an enlargement of the scope of an exception regarding the use of the constant NAV but also, and more importantly, would render all safeguards attached to the use of such constant NAV inapplicable, in clear circumvention of those safeguards. This result would run against the main objective of the MMF Regulation, i.e. ensuring the integrity and stability of the internal market as explained *inter alia* in Recitals 3, 4, 6, 7, 10 and 58.
11. For the reasons explained above, the Legal Service is of the opinion that the RDM, as a way of structuring MMFs, is not compatible with the MMF Regulation and funds using it cannot be therefore authorised in accordance with that Regulation nor can they be otherwise established, marketed or managed in the Union suggesting or pretending to be a MMF.



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