REGULATION OF THE EUROPEAN CENTRAL BANK (EU) No 883/2011

of 25 August 2011

amending Regulation (EC) No 25/2009 concerning the balance sheet of the monetary financial institutions sector (ECB/2008/32)

(ECB/2011/12)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to Article 5 of the Statute of the European System of Central Banks and of the European Central Bank,

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank [1], and in particular to Articles 5(1) and 6(4),

Having regard to the opinion of the European Commission [2],

Whereas:

(1) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC [3] allowed legal persons to issue electronic money without needing to obtain the status of credit institutions.

(2) As a consequence and in order to continue the collection of statistics in the monetary financial institutions (MFI) sector on electronic money institutions that are principally engaged in financial intermediation in the form of issuing electronic money, it is necessary to adjust the definition of MFIs, and therefore also to update the definitions of 'electronic money institution' and 'electronic money' in this Regulation. Electronic money institutions within the MFI sector should be classified under the category of 'other MFIs'.

(3) The amendments to the definition of and the requirements placed on electronic money institutions pursuant to Directive 2009/110/EC have made the provisions of Regulation (EC) No 25/2009 of the European Central Bank (ECB/2008/32) [4] on the granting of derogations from reporting requirements to electronic money institutions obsolete and therefore the respective provisions of Regulation (EC) No 25/2009 (ECB/2008/32) should be deleted.

(4) The guidelines on a common definition of European money market funds (MMFs) issued on 19 May 2010 by the Committee of European Securities Regulators (CESR), the predecessor of the European Securities and Markets Authority, aim to improve investor protection by setting out criteria to be applied by any fund that wishes to market itself as an MMF and serve as a recommendation for European national legislators for supervisory purposes. In light of this, it is appropriate to introduce into Regulation (EC) No 25/2009 (ECB/2008/32) corresponding new identification criteria for MMFs for European System of Central Banks statistical purposes so that the population of MMFs is aligned with the identification criteria expected to apply for supervisory purposes following the abovementioned CESR Guidelines. At the same time, this change aims to increase market transparency and facilitate management reporting on funds,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 25/2009 (ECB/2008/32) is amended as follows:

(1) Article 1 is amended as follows:

(a) the first indent is replaced by the following:

'— "monetary financial institution" (MFI) means a resident undertaking that belongs to any of the following sectors:

(i) central banks;

(ii) credit institutions as defined in Article 4(1) of Directive 2006/48/EC;

(iii) other MFIs, i.e. (1) other financial institutions whose business is (i) to receive deposits and/or close substitutes for deposits from entities other than MFIs; and (ii) for their own account, at least in economic terms, to grant credits and/or make investments in securities; or (2) such electronic money institutions that are principally engaged in financial intermediation in the form of issuing electronic money;

(iv) money market funds (MMFs) as defined in Article 1a.

Concerning the criterion under point (iii)(1)(i) above, the degree of substitutability between the instruments issued by other MFIs and the deposits placed with credit institutions shall determine their classification as MFIs, provided they fulfil the criterion under point (iii)(1)(ii),';

[1] OJ L 318, 27.11.1998, p. 8.
[2] C(2011) 5090 final.
[3] OJ L 267, 10.10.2009, p. 7.
[4] OJ L 15, 20.1.2009, p. 14

(b) the eighth indent is replaced by the following:

'— "electronic money institution" and "electronic money" mean electronic money institution and electronic money as defined in Article 2(1) and 2(2) of Directive 2009/110/EC of the European Parliament and of the Council, (*).

(*) OJ L 267, 10.10.2009, p. 7.';

(2) the following Article 1a is inserted:

'*Article 1a*

Identification of MMFs

For the purpose of this legal act, collective investment undertakings complying with all the following criteria shall be treated as MMFs, where they:

(a) pursue the investment objective of maintaining a fund's principal and providing a return in line with the interest rates of money market instruments;

(b) invest in money market instruments which comply with the criteria for money market instruments set out in Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (*), or deposits with credit institutions or, alternatively, ensure that the liquidity and valuation of the portfolio in which they invest is assessed on an equivalent basis;

(c) ensure that the money market instruments they invest in are of high quality, as determined by the management company. The quality of a money market instrument shall be considered, inter alia, on the basis of the following factors:

— the credit quality of the money market instrument,

— the nature of the asset class represented by the money market instrument,

— for structured financial instruments, the operational and counterparty risk inherent within the structured financial transaction,

— the liquidity profile;

(d) ensure that their portfolio has a weighted average maturity (WAM) of no more than 6 months and a weighted average life (WAL) of no more than 12 months;

(e) provide daily net asset value (NAV) and a price calculation of their shares/units, and daily subscription and redemption of shares/units;

(f) 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 whereby floating rate securities should reset to a money market rate or index;

(g) limit investment in other collective investment undertakings to those complying with the definition of MMFs;

(h) do 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;

(i) have either a constant or fluctuating NAV.

(*) OJ L 302, 17.11.2009, p. 32.';

(3) in Article 8, paragraph 4 is deleted;

(4) without prejudice to Article 2 of this Regulation, in Part 1 of Annex I, Section 2 is replaced by the following:

'Section 2: Specifications for the MMFs' identification criteria

For the purpose of Article 1a of this Regulation:

(a) the money market instrument shall be considered to be of a high credit quality, if it has been awarded one of the two highest available short-term credit ratings by each recognised credit rating agency that has rated the instrument or, if the instrument is not rated, it is of an equivalent quality as determined by the management company's internal rating process. Where a recognised credit rating agency divides its highest short-term rating into two categories, these two ratings shall be considered as a single category and therefore the highest rating available;

(b) the money market fund may, as an exception to the requirement in paragraph (a), hold sovereign issuance of at least investment grade quality, whereby 'sovereign issuance' means money market instruments issued or guaranteed by a central, regional or local authority or central bank of a Member State, the ECB, the European Union or the European Investment Bank;

(c) when calculating WAL for securities, including structured financial instruments, the maturity calculation is based on the residual maturity until the legal redemption of the instruments. However, when a financial instrument embeds a put option, the exercise date of the put option may be used instead of the legal residual maturity only if the following conditions are fulfilled at all times:

— the put option may 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,

— the investment strategy of the MMF implies that there is a high probability that the option will be exercised at the next exercise date;

(d) when calculating both WAL and WAM, the impact of financial derivative instruments, deposits and efficient portfolio management techniques shall be taken into account;

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

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

(g) 'money market instruments' means instruments normally traded on the money market which are liquid and have a value which can be accurately determined at any time;

(h) 'management company' means a company, the regular business of which is the management of the portfolio of an MMF.'.

Article 2

Transitional provision

National central banks (NCBs) may continue to collect statistical information under Regulation (EC) No 25/2009 (ECB/2008/32) from the MMFs resident in their Member States identified in accordance with the former Section 2 of Part 1 of Annex I to Regulation (EC) No 25/2009 (ECB/2008/32) until 31 January 2012 at the latest. They shall notify all MMFs concerned of their decision to apply this transitional provision. NCBs shall start collecting statistical information from MMFs identified in accordance with Article 1a of Regulation (EC) No 25/2009 (ECB/2008/32) from 1 February 2012 at the latest.

Article 3

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 25 August 2011.

For the Governing Council of the ECB

The President of the ECB

Jean-Claude TRICHET