

UCITS V- Giegold Proposals on Bonus and Remuneration Provisions

This note has been produced in reaction to the recent industry commentary on the proposed UCITS V Bonus and Remuneration Provisions and especially the so called "Giegold Proposals". It aims to put the Giegold Proposals in context, highlight notable features of the proposed UCITS V remuneration provisions and explain where these proposals will go from here.

What are the Giegold Proposals?

These are a set of proposals made by MEP Sven Giegold in March 2013 to the European Parliament's Economic and Monetary Affairs Committee (ECON) that included a proposal that the regulators in each EU Member State would be given the authority to set the appropriate ratios between the fixed and the variable ("bonus") component of the total remuneration of UCITS delegates. Perhaps the most controversial element of these proposals was the suggestion that regulators' discretion would be limited by having to cap bonuses for asset management staff at a 1:1 ratio with their annual salary (New proposed Article 14b(1)(ja)).

Other notable features of the remuneration provisions are set out below.

- The extension of the category of fund manager staff caught to be caught by the UCITS V remuneration policies ((Proposed Article 14a(3)); see below, "To Whom Will the Giegold Proposals Apply").
- Subject to a UCITS' legal structure and its fund rules or constitutional documents, at least 50% of any bonus amount should be paid in units of the UCITS concerned, unless the management of the relevant UCITS makes up less than 50% of the portfolio managed by the management company. (Proposed Article 14b(1)(m)).
- A "substantial portion", deemed to be at least 25%, of bonus amounts should be deferred over a period which is appropriate in the context of the lifecycle and redemption policy of the UCITS concerned and aligned with the nature of the risk profile of the relevant UCITS. This period would be at least 3-5 years unless the life cycle of the UCITS is shorter. Where a particularly high bonus amount is proposed, the portion to be deferred should increase to 60%(Proposed Article 14b(1)(n)).
- Performance fees (if any) must be calculated on the basis of a benchmark which reproduces as closely as possible the portfolio of the UCITS and must reflect performance in comparison to a benchmark symmetrically so that additional remuneration for out performance corresponds with deductions in the case of underperformance of the benchmark (Proposed Article 90).

Before the Giegold Proposals came into consideration, the UCITS V remuneration proposals reflected the remuneration provisions contained in AIFMD. Please click on this [link](#) to an A&L Goodbody In Focus article on AIFMD Remuneration Provisions for more information on these provisions.

What is the Status of the Giegold Proposals?

On 21 March 2013, ECON voted in favour of MEP Giegold's proposals as part of its final consideration of UCITS V.

The text adopted by ECON is available through the following [link](#) and will now go to be considered by the full European Parliament (the **Parliament**). Given the industry reaction, there is likely to be a large amount of lobbying against the Giegold Proposals before ECON's text goes to Parliament.

If the Parliament vote in favour of the proposals, thus amending the UCITS V text originally proposed by the European Commission, the proposals will form part of the Parliament's position during a process of negotiations between the European Council (which represents the governments of the individual EU member countries) and the European Commission to finalise the UCITS V text.

If the European Council approves the Parliament's position and does not change the original Commission proposal otherwise, the act is adopted by the Council, then signed and published.

If the European Council does not approve the Parliament's position in full or rejects it, the Council adopts its alternative position by qualified majority, which is then forwarded to the Parliament for its second reading. The European Council must provide a full explanation of its reasons for adopting its position. The European Commission become involved again at this stage and inform the Parliament of its opinion on the matter.

After two readings, if the Parliament and European Council cannot agree on a text, the proposal would be brought before a special committee made up of an equal number of representatives of the Council and the Parliament. Representatives of the Commission also attend the meetings of this committee and contribute to the discussions.

Once the final text is agreed, Member States will likely have a period of two years from publication to transpose the Directive into national law.

In summary, even though the Giegold Proposals have been passed by ECON they still have to survive a lengthy legislative process in order to make it into the final text of UCITS V and they may be softened along the way.

It is expected that the remuneration rules included in UCITS V will apply to remuneration paid after the UCITS V's designated implementation date. The current estimated implementation date is 1 January 2015, but this is not yet certain.

To Whom Will the Giegold Proposals Apply?

The UCITS V remuneration rules will apply to 'Identified Staff' as defined in the final text of the directive.

If the Giegold Proposals make it through to the final text of the UCITS V Directive then they would most likely apply to UCITS' delegates, including any non-EU delegate(s).

The proposed UCITS V definition of 'Identified Staff' is widely drafted and would potentially catch senior management, front, middle and back office in delegate firms including temporary and contractual staff (Proposed Article 14(a)(3)).

In the context of AIFMD, the AIFM must either (i) itself apply the remuneration policies contractually to the delegate; or (ii) get confirmation that the delegate is subject to very similar requirements and we expect the ultimate UCITS rules to provide likewise.

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