



European Securities and  
Markets Authority

# Guidelines

**Guidelines on sound remuneration policies under the UCITS Directive**



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# 1 Scope

## Who?

1. These guidelines apply to management companies as defined under Article 2(1)(b) of the UCITS Directive and competent authorities. They also apply to investment companies that have not designated a management company authorised pursuant to the UCITS Directive.<sup>1</sup>
2. UCITS having designated a management company authorised pursuant to the UCITS Directive are not subject to the remuneration principles established in the UCITS Directive, nor to these guidelines. However, the remuneration principles set out in the *Recommendation* are relevant to those UCITS, to the extent that they fall within the definition of 'financial undertaking' provided in paragraph 2.1 of the *Recommendation*. Annex I of these guidelines provides for a correlation table highlighting those principles of the *Recommendation* which are reflected in the UCITS Directive.

## What?

3. These guidelines apply in relation to the remuneration policies and practices for management companies and their *identified staff*. Annex II of these guidelines provides details on which guidelines apply to management companies as a whole and which apply to their *identified staff* only.

## When?

4. These guidelines apply from 1 January 2017.
5. Without prejudice to the application of Directive 2014/91/EU by 18 March 2016, the guidance on the rules on variable remuneration provided under Sections 12 (Guidelines on the general requirements on risk alignment) and 13 (Guidelines on the specific requirements on risk alignment) of these guidelines, should first apply for the calculation of payments relating to new awards of variable remuneration to *identified staff* for the first full performance period after 1 January 2017. For example, a management company whose accounting period ends on 31 December should apply the guidance on the rules on variable remuneration provided in these guidelines to the calculation of payments relating to the 2017 accounting period.

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<sup>1</sup> The remuneration principles in Article 14a and 14b of the UCITS Directive apply *mutatis mutandis* to these investment companies, based on the provisions of Article 30 of the UCITS Directive.

## 2 Definitions

Unless otherwise specified, terms used in the 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) have the same meaning in these guidelines. In addition, the following definitions apply for the purposes of these guidelines:

*Recommendation* Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector.<sup>2</sup>

*performance fees* a variable fee linked to the “performance of the UCITS”.

The “performance of the UCITS” includes capital appreciation as well as any income linked to the UCITS’s assets (e.g. dividends). It may be assessed with reference to a target ‘performance’.

A performance fee can be based on elements such as a share of the capital gains or the capital appreciation of the UCITS’ net asset value or any portion of the UCITS’ net asset value as compared to an appropriate index of securities or other measure of investment performance.

*Performance fees* are performance-related payments made directly by the management company or the UCITS itself for the benefit of *identified staff*.

*identified staff* categories of staff, including senior management, risk takers, *control functions* and any employee receiving total remuneration that falls into the *remuneration bracket* of senior management and risk takers, whose professional activities have a material impact on the management company’s risk profile or the risk profiles of the UCITS that it manages and categories of staff of the entity(ies) to which investment management activities have been delegated by the management company, whose professional activities have a material impact on the risk profiles of the UCITS that the management company manages.

*control functions* staff (other than senior management) responsible for risk management, compliance, internal audit and similar functions within a management company (e.g. the CFO to the extent that he/she is responsible for the preparation of the financial statements).

*remuneration* the range of the total remuneration of each of the staff members in the

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<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:120:0022:0027:EN:PDF>.



*bracket*

senior manager and risk taker categories – from the highest paid to the lowest paid in these categories.

*instruments*

units or shares of the UCITS managed by the management company, equivalent ownership interests (including – for UCITS issuing only units – unit-linked instruments), subject to the legal structure of the UCITS concerned and its fund rules or instruments of incorporation, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this definition.

*malus*

arrangement that permits the management company to prevent the vesting of all or part of the amount of a deferred remuneration award in relation to risk outcomes or performances of the management company as a whole, the business unit, the UCITS and, where possible, the staff member. Malus is a form of ex-post risk adjustment.

*clawback*

contractual agreement in which the staff member agrees to return ownership of an amount of remuneration to the management company under certain circumstances. This can be applied to both upfront and deferred variable remuneration. When related to risk outcomes, clawback is a form of ex-post risk adjustment.

*supervisory function*

the relevant persons or body or bodies responsible for the supervision of the management company's senior management and for the assessment and periodical review of the adequacy and effectiveness of the risk management process and of the policies, arrangements and procedures put in place to comply with the obligations under the UCITS Directive. For those management companies that, given their size, internal organisation and the nature, scope and complexity of their activities or their legal structure, do not have a separate supervisory function, the supervisory function should be understood to be the members of the management body.

*retention period*

period of time during which variable remuneration that has already vested and paid out in the form of *instruments* cannot be sold.

*accrual period*

period during which the performance of the staff member is assessed and measured for the purposes of determining his or her remuneration.

*deferral period*

the deferral period is the period during which variable remuneration is withheld following the end of the *accrual period*.

*vesting point*

an amount of remuneration vests when the staff member receives payment and becomes the legal owner of the remuneration. Once the remuneration vests, no explicit ex-post adjustments can occur apart

from *clawback* clauses.

### 3 Purpose

6. The purpose of these guidelines is to ensure common, uniform and consistent application of the provisions on remuneration in Articles 14a and 14b of the UCITS Directive.

## 4 Compliance and reporting obligations

### 4.1 Status of the guidelines

7. This document contains guidelines issued under Article 16 of the ESMA Regulation. In accordance with Article 16(3) of the ESMA Regulation competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.
8. Competent authorities to whom the guidelines apply should comply by incorporating them into their supervisory practices, including where particular guidelines within the document are directed primarily at financial market participants.

### 4.2 Reporting requirements

9. Competent authorities to which these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, with reasons for non-compliance, within two months of the date of publication by ESMA. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website.
10. Management companies are not required to report to ESMA whether they comply with these guidelines.

## 5 Guidelines on which remuneration is covered by these guidelines

11. Solely for the purposes of the guidelines and Article 14b of the UCITS Directive, remuneration consists of one or more of the following:
  - (i) all forms of payments or benefits paid by the management company,
  - (ii) any amount paid by the UCITS itself, including any portion of *performance fees* that are paid directly or indirectly for the benefit of *identified staff*, or
  - (iii) any transfer of units or shares of the UCITS,

in exchange for professional services rendered by the management company's *identified staff*.

Whenever payments, excluding reimbursements of costs and expenses, are made directly by the UCITS to the management company for the benefit of the relevant categories of staff of the management company, or directly by the UCITS to the relevant categories of staff of the management company, for professional services rendered, which may otherwise result in a circumvention of the relevant remuneration rules, they should be considered remuneration for the purpose of the guidelines and Article 14b of the UCITS Directive.

12. All remuneration can be divided into either fixed remuneration (payments or benefits without consideration of any performance criteria) or variable remuneration (additional payments or benefits depending on performance or, in certain cases, other contractual criteria). Both components of remuneration (fixed and variable) may include monetary payments or benefits (such as cash, shares, options, cancellation of loans to staff members at dismissal, pension contributions) or non (directly) monetary benefits (such as, discounts, fringe benefits or special allowances for car, mobile phone, etc.). Ancillary payments or benefits that are part of a general, non-discretionary, management company-wide policy and pose no incentive effects in terms of risk assumption can be excluded from this definition of remuneration for the purposes of the risk alignment remuneration requirements that are specific to the UCITS Directive.
13. A "retention bonus" is a form of variable remuneration and can only be allowed to the extent that risk alignment provisions are properly applied.
14. Management companies should ensure that variable remuneration is not paid through vehicles or that methods are employed which aim at artificially evading the provisions of the UCITS Directive and these guidelines. The management body of each management company has the primary responsibility for ensuring that the ultimate goal of having sound and prudent remuneration policies and structures is not improperly circumvented. Circumstances and situations that may pose a greater risk under this perspective may be: the conversion of parts of the variable remuneration into benefits that normally pose no incentive effect in respect of risk positions; the outsourcing of professional services to firms that fall outside the scope of the UCITS Directive (unless these firms are subject to regulatory requirements on remuneration that are equally as effective as those applicable under these guidelines, according to the provisions of paragraph 16); the use of tied agents or other persons not considered "employees" from a legal point of view; transactions between the management companies and third parties in which the risk takers have material interests; the setting up of structures or methods through which remuneration is paid in the form of dividends or similar pay outs and non-monetary material benefits awarded as incentive mechanisms linked to the performance.
15. Consideration should also be given to the position of partnerships and similar structures. Dividends or similar distributions that partners receive as owners of a management company are not covered by these guidelines, unless the material outcome of the payment of such dividends results in a circumvention of the relevant remuneration rules, any intention to circumvent such rules being irrelevant for such purpose.

16. When delegating investment management functions (including risk management) according to Article 13 of the UCITS Directive, where the remuneration rules would otherwise be circumvented, management companies should ensure that:

- a) the entities to which investment management activities have been delegated are subject to regulatory requirements on remuneration that are equally as effective as those applicable under these guidelines; or
- b) appropriate contractual arrangements are put in place with entities to which investment management activities have been delegated in order to ensure that there is no circumvention of the remuneration rules set out in the present guidelines; these contractual arrangements should cover any payments made to the delegates' *identified staff* as compensation for the performance of investment management activities on behalf of the management company.

17. For the purpose of letter a) under the previous paragraph, an entity can be considered subject to regulatory requirements on remuneration that are equally as effective as those applicable under these guidelines, inter alia, where the following conditions are met:

- i) the entity with whom the delegation arrangement is concluded is subject to the remuneration rules under either Directive 2013/36/EU (CRD IV) or Directive 2011/61/EU (AIFMD), and
- ii) the staff of the entity who are *identified staff* for the purpose of these guidelines are subject to the CRD IV or AIFMD rules.

## **6 Guidelines on how to identify the categories of staff covered by these guidelines**

18. Management companies should identify the *identified staff*, according to these guidelines and any other guidance or criteria provided by competent authorities. Management companies should be able to demonstrate to competent authorities how they have assessed and selected identified staff.

19. The following categories of staff, unless it is demonstrated that they have no material impact on the management company's risk profile or on a UCITS it manages, should be included as the identified staff:

- Executive and non-executive members of the management body of the management company, depending on the local legal structure of the management company, such as: directors, the chief executive officer and executive and non-executive partners.
- Senior management
- Control functions

- Staff responsible for heading the investment management, administration, marketing, human resources
- Other risk takers such as: staff members, whose professional activities – either individually or collectively, as members of a group (e.g. a unit or part of a department) – can exert material influence on the management company’s risk profile or on a UCITS it manages, including persons capable of entering into contracts/positions and taking decisions that materially affect the risk positions of the management company or of a UCITS it manages. Such staff can include, for instance, sales persons, individual traders and specific trading desks.

When assessing the materiality of influence on a management company’s risk profile or on a UCITS it manages, management companies should define what constitutes materiality within the context of their management companies and the UCITS they manage. Criteria that management companies may follow to check whether they are capturing the correct staff members include an assessment of staff members or a group, whose activities could potentially have a significant impact on the management company’s results and/or balance sheet and/or on the performance of the UCITS they manage.

An analysis of job functions and responsibilities at the management company should be undertaken for a proper assessment of those roles that could materially affect the risk profile of the management company or of the UCITS it manages. There could be cases where a staff member does not earn a high amount of total remuneration but could have a material impact on the risk profile of the management company or of the UCITS it manages given the individual’s particular job function or responsibilities.

Staff members such as administrative or logistical support staff that, given the nature of their job functions, clearly do not have any connection with the risk profile of the management company or the UCITS, should not be considered risk takers. However, such exclusion only applies to support staff whereas, as mentioned in the fourth bullet point in the present paragraph, staff heading the administration should be included as the *identified staff*.

20. Additionally, if they have a material impact on the risk profile of the management company or of the UCITS it manages, other employees/persons, whose total remuneration falls into the remuneration bracket of senior managers and risk takers should be included as the *identified staff*, such as: high-earning staff members who are not already in the above categories and who have a material impact on the risk profile of the management company or of the UCITS it manages. It is likely that in some cases, those staff members whose remuneration is as high as or higher than senior executives and risk takers will be exerting material influence in some way on the risk profile of the management company or of the UCITS it manages. In other management companies, this may not be the case.

21. The examples mentioned in paragraphs 19 and 20 above are not definitive. The greater the assumption that there may be risk-takers in certain business units, the more in-depth

the risk analysis must be to assess whether a person is to be considered a material risk-taker or not.

## 7 Guidelines on proportionality

### 7.1 Proportionality in general

22. According to the Recommendation, when taking measures to implement remuneration principles Member States should take account of the size, nature and scope of financial undertakings' activities. In taking measures to comply with the remuneration principles management companies should comply in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities. In this way Article 14b of the UCITS Directive and the Recommendation envisage that provisions should operate in a way to enable a management company to take a proportionate approach to compliance with a remuneration principle.
23. Not all management companies should have to give substance to the remuneration requirements in the same way and to the same extent. Proportionality should operate both ways: some management companies will need to apply more sophisticated policies or practices in fulfilling the requirements; other management companies can meet the requirements of the UCITS Directive in a simpler or less burdensome way.
24. It is primarily the responsibility of the management company to assess its own characteristics and to develop and implement remuneration policies and practices which appropriately align the risks faced and provide adequate and effective incentives to its staff. Competent authorities should review the ways management companies actually implement proportionality, taking into account the achievement of regulatory objectives and the need to preserve a level playing field among different management companies and jurisdictions.

### 7.2 Proportionality with respect to the different characteristics of management companies

25. The different risk profiles and characteristics among management companies justify a proportionate implementation of the remuneration principles. Criteria relevant to the application of proportionality are the size of the management company and of the UCITS it manages, its internal organization and the nature, scope and complexity of its activities.
  - a) Size: the size criterion can relate to the value of the management company capital and to the value of the assets under management (including any assets acquired through the use of leverage) of the UCITS that the management company manages; liabilities or risks exposure of the management company and of the UCITS that it manages; as well as the number of staff, branches or subsidiaries of a management company. The size of a management company and of the UCITS it manages should not be considered in isolation when applying proportionality. A management company might be considered "small" in terms of number of staff or subsidiaries, but be

engaged in a high level of risk taking. A management company should adhere strictly to the remuneration principles where the aggregate set of UCITS that it manages - each of them considered “small” - becomes potentially systemically important (e.g. in terms of total assets under management) or leads to complex investment management activities.

The general obligation to have sound remuneration policies and practices applies to all management companies, regardless of their size or systemic importance.

- b) Internal organization: this can relate to the legal structure of the management company or the UCITS it manages, the complexity of the internal governance structure of the management company, the listing on regulated markets of the management company or the UCITS it manages.

This criterion should be assessed having regard to the entire organisation of the management company including all the UCITS it manages, meaning that for instance the listing of one UCITS should not by itself be sufficient for considering the management company as having a complex internal organisation.

- c) Nature, scope and complexity of the activities: in considering this criterion, the underlying risk profiles of the business activities that are carried out, should be taken into account. Relevant elements can be:

- the type of authorized activity (collective portfolio management of UCITS only or also the additional services listed in Article 6(3) of the UCITS Directive);
- the type of investment policies and strategies of the UCITS the management company manages;
- the national or cross-border nature of the business activities (management company managing and/or marketing UCITS in one or more EU or non-EU jurisdictions); and
- the additional management of AIFs.

26. In assessing what is proportionate, the focus should be on the combination of all the mentioned criteria (size, internal organization and the nature, scope and complexity of the activities) and, as this is not an exhaustive list, of any other relevant criteria. For instance, a management company’s business may well be small-scale but could still include complex risk-profiles because of the nature of its activities or the complexity of the managed UCITS.

### 7.3 Proportionality with respect of the different categories of staff

27. Proportionality should also operate within a management company for some of the specific requirements. The categories of staff whose professional activities have a material impact on their risk profile should comply with specific requirements which aim to manage the risks their activities entail. The same criteria of size, internal organisation and

the nature, scope and complexity of the activities should apply. In addition, the following non-exhaustive elements should be taken into account, where relevant:

- The size of the obligations into which a risk taker may enter on behalf of the management company;
- The size of the group of persons, who have only collectively a material impact on the risk profile of the management company;
- The structure of the remuneration of the staff members (e.g. fixed salary with a variable remuneration vs. profit sharing arrangements), in particular, the following elements:
  - the amount of variable remuneration;
  - the percentage of variable remuneration over the fixed remuneration.

## **8 Guidelines for management companies being part of a group**

28. These guidelines apply in any case to any management company. In particular, there should be no exception to the application to any of the management companies which are subsidiaries of a credit institution of the sector-specific remuneration principles set out in the UCITS Directive and in the present guidelines.

29. It may be the case that in a group context, non-UCITS sectoral prudential rules applying to group entities may lead certain staff of the UCITS management company which is part of that group to be 'identified staff' for the purpose of those sectoral remuneration rules.

## 9 Guidelines on the application of different sectoral rules

### 9.1 General guidelines

30. Without prejudice to the guidance in paragraphs 28 and 29 of these guidelines, where some employees or other categories of personnel of management companies perform services subject to different sectoral remuneration principles, they should be remunerated either:
- a) based on the activities carried out and on a pro rata basis, to the extent that it is possible to single out an individual activity; or
  - b) by applying the sectoral remuneration principles which are deemed more effective for achieving the outcomes of discouraging inappropriate risk taking and aligning the interest of the relevant individuals with those of the investors in the funds or other portfolios they manage.
31. The approach under item a) of paragraph 30 means that, for instance, the remuneration of an individual which performs services subject to the UCITS Directive and services subject to CRD IV and/or the AIFMD, should be determined applying the remuneration principles under the UCITS Directive, CRD IV and AIFMD on a pro rata basis based on objective criteria such as the time spent on each service or the assets under management for each service.
32. The approach under item b) of paragraph 30 means that, for instance, where the remuneration of an individual which performs services for various entities (including management companies and/or AIFMs) that are subsidiaries of a parent company that is subject to the CRD IV, is determined – on a voluntary basis – in compliance with all the remuneration principles under the CRD IV for all the services performed by such an individual, this should be deemed to also satisfy the requirements on remuneration under the UCITS Directive and AIFMD. However, where specific CRD requirements – such as those relating to the payment of variable remuneration in *instruments* – conflict with the requirements under the AIFMD or UCITS Directive, the remuneration of the individual concerned should in any event follow the relevant specific sectoral legislation conflicting with the CRD requirements. This means that, for instance, for individuals performing services subject to the AIFMD or UCITS Directive the variable remuneration should always be paid in the AIF *instruments* or UCITS *instruments* (Annex II (1) (m) of AIFMD and Article 14(b)(m) of UCITS V).
33. For the avoidance of doubt, the guidance under paragraphs 30 to 32 above applies to employees or other categories of personnel of management companies (including, for instance, secondees from parent undertakings subject to different sectoral remuneration rules such as CRD IV). Whenever employees or other categories of personnel of other entities perform investment management activities under delegation according to Article 13 of the UCITS Directive, the guidance under paragraphs 16 and 17 above should apply.

34. For management companies engaging in activities covered by the AIFMD (subject to authorisation under the AIFMD), compliance with the sectoral remuneration principles applying firm-wide – based on the relevant sectoral guidelines issued under the AIFMD and UCITS Directive – should be sufficient to consider that at individual level each of the sectoral remuneration principles are complied with. For example, compliance with the requirement under Article 14b(1)(e) of the UCITS Directive – which applies firm-wide – should at the same time satisfy the equivalent requirement under paragraph 1(e) of Annex II of the AIFMD for management companies engaging in activities covered by the AIFMD.

## 9.2 Specific guidelines on ancillary services

35. For the performance of ancillary services under Article 6(3) of the UCITS Directive or under Article 6(4) of the AIFMD, personnel of a management company or an AIFM should be subject to (i) the remuneration rules under the UCITS Directive or AIFMD, as applicable and (ii) the relevant MiFID rules, including the ESMA Guidelines on remuneration policies and practices (MiFID) (ESMA/2013/606).

## 10 Guidelines on the financial situation of the management company

36. In order to guarantee ongoing compliance with the requirements of Article 7(1) of the UCITS Directive, management companies should ensure that they maintain a prudent balance between sound financial situation and the award, pay out or vesting of variable remuneration.

37. The management company should ensure that its financial situation will not be adversely affected by:

- 1) the overall pool of variable remuneration that will be awarded for that year; and
- 2) the amount of variable remuneration that will be paid or vested in that year.

38. The fact that a management company is or risks becoming unable to maintain a sound financial situation, should be a trigger for, inter alia: a) reducing the variable remuneration pool for that year and b) the application of performance adjustment measures (i.e. *malus* or *clawback*) in that financial year<sup>3</sup>. Instead of awarding, paying out the variable remuneration or allowing it to vest, the net profit of the management company for that year and potentially for subsequent years should be used to strengthen its financial situation. The management company should not compensate for this at a later date by awarding, paying out or vesting a greater amount of variable remuneration than it otherwise would have done, unless it becomes evident in subsequent years that the management company's financial results justify such actions.

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<sup>3</sup> See also Section XII (Guidelines on the specific requirements on risk alignment).

## 11 Guidelines on governance of remuneration

39. The general requirements on governance of remuneration should apply to the management company as a whole.

### 11.1 Management body

#### 11.1.1 Design, approval and oversight of the remuneration policy

40. A management company's remuneration policy should encourage the alignment of the risks taken by its staff with those of the UCITS it manages, the investors of such UCITS and the management company itself; in particular, the remuneration policy should duly take into consideration the need to align risks in terms of risk management and exposure to risk.

41. The *supervisory function* should be responsible for approving and maintaining the remuneration policy of the management company, and overseeing its implementation. The remuneration policy should not be controlled by any executive members of the *supervisory function*. The *supervisory function* should also approve any subsequent material exemptions or changes to the remuneration policy and carefully consider and monitor their effects. Procedures to determine remuneration should be clear, well-documented and internally transparent. For example, proper documentation should be provided on the decision-making process, the determination of the *identified staff*, the measures used to avoid conflicts of interest, the risk-adjustment mechanisms used etc.

42. In the design and oversight of the management company's remuneration policies, the *supervisory function* should take into account the inputs provided by all competent corporate functions (i.e. risk management, compliance, human resources, strategic planning, etc.). As a result, those functions should be properly involved in the design of the remuneration policy of the management company.

43. Ultimately, the *supervisory function* should ensure that a management company's remuneration policy is consistent with and promotes sound and effective risk management. The remuneration policy should:

- be in line with the business strategy, objectives, values and interests of the management company,
- not encourage excessive risk taking as compared to the investment policy of the UCITS the management company manages, and
- enable the management company to align the interests of the UCITS and their investors with those of the *identified staff* that manages such UCITS, and to achieve and maintain a sound financial situation.

44. The *supervisory function* should ensure that the management company's overall corporate governance principles and structures, as well as their interactions with the

remuneration system are considered within the design and implementation of a management company's remuneration policies and practices. The *supervisory function* should ensure that the following elements are taken into account: the clear distinction between operating and *control functions*, the skills and independence requirements of members of the *management body*, the role performed by internal committees, including the remuneration committee, the safeguards for preventing conflicts of interests and the internal reporting system and the related parties' transactions rules.

#### 11.1.2 Remuneration of members of the management body and supervisory function

45. The remuneration of the members of the *management body* should be consistent with their powers, tasks, expertise and responsibilities.

46. Where appropriate considering the size of the management company, its internal organisation and the nature, scope and complexity of its activities, the *management body* should not determine its own remuneration. The *supervisory function* should determine and oversee the remuneration of the members of the *management body*. To the extent compatible with national law, the *supervisory function* should also specifically approve and oversee the remuneration of senior executives and staff members who receive the highest amounts of total remuneration within the management company.

47. For management companies which have a separate *supervisory function*, in order to properly address conflicts of interests, it may be more appropriate for members of the *supervisory function* to be compensated only with fixed remuneration. When incentive-based mechanisms are in place, they should be strictly tailored to the assigned monitoring and control tasks, reflecting the individual's capabilities and the achieved results. If *instruments* are granted, appropriate measures should be taken, such as *retention periods* until the end of the mandate, in order to preserve the independence of judgment of those members of the *management body*. For those management companies that given their size, internal organisation and the nature, scope and complexity of their activities do not have a separate *supervisory function*, the principle according to which members of the *supervisory function* may more appropriately be compensated only with fixed remuneration should apply only to the non-executive members of the *management body* that perform the tasks of the *supervisory function*.

#### 11.1.3 Shareholders' involvement

48. The approval of a management company's remuneration policy and decisions relating to the remuneration of members of the *management body*, may be assigned to the meeting of the shareholders of the management company, depending on the management company's characteristics or on the national rules in the jurisdiction in which the management company is established. The shareholders' vote may be either consultative or binding. To this end, shareholders should be provided with adequate information in order that they can make informed decisions.

49. The *supervisory function* remains responsible for the proposals submitted to the meeting of the shareholders of the management company, as well as for the actual implementation and oversight of any changes to the remuneration policies and practices.

#### 11.1.4 Review of the remuneration policy and its implementation

50. The *supervisory function* should ensure that the remuneration policy of the management company and its implementation will be reviewed on an annual basis at a minimum. Such central and independent reviews should assess whether the overall remuneration system:

- operates as intended (in particular, that all agreed plans/programs are being covered; that the remuneration payouts are appropriate, and that the risk profile, long-term objectives and goals of the management company are adequately reflected); and
- is compliant with national and international regulations, principles and standards.

51. The relevant internal *control functions* (i.e. internal audit, risk management, compliance functions, etc.) as well as other key *supervisory function* committees (i.e. audit, risk, and nominations committees) should be closely involved in reviewing the remuneration system of the management company.

52. Where periodic reviews reveal that the remuneration system does not operate as intended or prescribed, the *supervisory function* should ensure that a timely remedial plan is put in place.

53. The periodic review of the implementation of the remuneration policies and practices may be, partially or totally, externally commissioned when appropriate according to proportionality. Larger and more complex management companies should have sufficient resources to conduct the review internally, though external consultants may complement and support the management company in carrying out such tasks where appropriate. In line with proportionality, smaller and less complex management companies may decide to outsource the entire review. In all cases, the *supervisory function* should remain responsible for the review of remuneration policies and practices and for ensuring that the results of the review are followed up; moreover, the relevant *control functions* should be closely involved.

## 11.2 Remuneration committee

### 11.2.1 Setting up a remuneration committee

54. The setting up of a remuneration committee should be considered, as a matter of good practice, even by those management companies that are not obliged to set up such a committee under Article 14b(4) of the UCITS Directive.

55. In order to identify whether a remuneration committee is expected to be set up, the factors mentioned in Section 7 (Guidelines on proportionality) need to be considered. When assessing whether or not a management company is significant, a management company should consider the cumulative presence of all the three factors (i.e. its size or the size of the UCITS it manages, its internal organisation and the nature, scope and complexity of its activities). A management company which is significant only with respect to one or two of the three above factors should not be required to set up a remuneration committee.

56. Without prejudice to the previous paragraph, specific (non-exhaustive) elements to be taken into account when determining whether or not to establish a remuneration committee are:

- whether the management company is listed or not;
- the legal structure of the management company;
- the number of employees of the management company;
- the management company's assets under management;
- whether the management company is also an AIFM;
- the provision of the services mentioned under Article 6(3) of the UCITS Directive.

57. Taking into account the above principles and having regard to all circumstances, the following are examples of management companies which may not need to establish a remuneration committee:

- management companies for which the value of the portfolios of UCITS that they manage does not exceed EUR 1.25 billion and not having more than 50 employees, including those dedicated to the management of AIFs and the provision of the services mentioned under Article 6(3) of the UCITS Directive;
- management companies which are part of banking, insurance, investment groups or financial conglomerates within which an entity is obliged to set up a remuneration committee which performs its tasks and duties for the whole group, provided that the rules governing such remuneration committee's composition, role and competences are equivalent to the ones set out in these guidelines and the existing remuneration committee takes responsibility for checking the compliance of the management company with the rules set out in these guidelines.

58. It should also be understood, as mentioned above under paragraph 54, that management companies falling within the examples set out above may choose to set up a remuneration committee at their own initiative as a matter of good practice.

59. Management companies that fall outside the above examples should not be automatically required to set up a remuneration committee. For this purpose, management companies that are above the thresholds set out in paragraph 57 should be considered significant in terms of their size or the size of the UCITS they manage; in order to decide whether or not they need to set up a remuneration committee, however, such management companies should still assess whether or not they are significant in terms of their internal organisation and the nature, the scope and the complexity of their activities.

#### 11.2.2 Composition of the remuneration committee

60. In order to operate independently from senior executives, the remuneration committee should comprise members of the *supervisory function* who do not perform executive functions, at least the majority of whom qualify as independent.

61. The chairperson of the remuneration committee should be an independent, non-executive member.

62. An appropriate number of the members of the remuneration committee should have sufficient expertise and professional experience concerning risk management and control activities, namely with regard to the mechanism for aligning the remuneration structure to management companies' risk and capital profiles.

63. The remuneration committee should be encouraged to seek expert advice internally (e.g. from risk management) and externally. The chief executive officer should not take part in the remuneration committee meetings which discuss and decide on his/her remuneration.

#### 11.2.3 Role of the remuneration committee

64. The remuneration committee should:

- be responsible for the preparation of recommendations to the *supervisory function*, regarding the remuneration of the members of the *management body* as well as of the highest paid staff members in the management company;
- provide its support and advice to the *supervisory function* on the design of the management company's overall remuneration policy;
- have access to advice, internal and external, that is independent of advice provided by or to senior management;
- review the appointment of external remuneration consultants that the *supervisory function*, may decide to engage for advice or support;
- support the *supervisory function* in overseeing the remuneration system's design and operation on behalf of the *supervisory function*;
- devote specific attention to the assessment of the mechanisms adopted to ensure that:

- the remuneration system properly takes into account all types of risks and liquidity and assets under management levels, and
- the overall remuneration policy is consistent with the business strategy, objectives, values and interests of the management company and the UCITS it manages and the investors of such UCITS; and
- formally review a number of possible scenarios to test how the remuneration system will react to future external and internal events, and back test it as well.

65. The remuneration committee itself may be in charge of overseeing the central and independent review of the implementation of the remuneration policies and practices.

#### 11.2.4 Process and reporting lines of the remuneration committee

66. The remuneration committee should:

- have unfettered access to all data and information concerning the decision-making process of the *supervisory function*, on the remuneration system's design and implementation;
- have unfettered access to all information and data from risk management and *control functions*. Such access should not hinder the management company's ordinary activities;
- ensure the proper involvement of the internal control and other competent functions (e.g. human resources and strategic planning). The remuneration committee should collaborate with other board committees whose activities may have an impact on the design and proper functioning of remuneration policy and practices (e.g. risk audit, and nomination committees); and
- provide adequate information to the *supervisory function*, and, where appropriate, to the management company's shareholders' meeting about the activities performed.

### 11.3 Control functions

#### 11.3.1 Roles of control functions

67. Management companies should ensure that *control functions* have an active role in the design, ongoing oversight and review of the remuneration policies for other business areas.

68. Working closely with the remuneration committee and the *supervisory function* and *management body*, the *control functions* should assist in determining the overall remuneration strategy applicable to the management company, having regard to the promotion of effective risk management.

69. The risk management function should assess how the variable remuneration structure affects the risk profile of the management company. It is good practice for the risk management function to validate and assess risk adjustment data, and to attend a meeting of the remuneration committee for this purpose.
70. The compliance function should analyse how the remuneration structure affects the management company's compliance with legislation, regulations and internal policies.
71. The internal audit function should periodically carry out an independent audit of the design, implementation and effects of the management company's remuneration policies.

### 11.3.2 Remuneration of control functions

72. The remuneration level of staff in the *control functions* should allow the management company to employ qualified and experienced personnel in these functions.
73. If staff in *control functions* receives variable remuneration, it should be based on function-specific objectives and should not be determined solely by the management company-wide performance criteria.
74. The remuneration structure of *control functions* personnel should not compromise their independence or create conflicts of interest in their advisory role to the remuneration committee, *supervisory function* and/or *management body*. If remuneration of the *control functions* includes a component based on management company-wide performance criteria, the risk of conflicts of interest increases and, therefore, should be properly addressed.
75. For management companies which are required to have a remuneration committee, the remuneration of the senior staff responsible for heading the *control functions* should not be solely left to the *supervisory function*, but should be directly overseen by the remuneration committee. The remuneration of those staff members in compliance and risk management functions must be designed in a way that avoids conflict of interests related to the business unit they are overseeing and, therefore, should be appraised and determined independently. The remuneration committee should make recommendations to the *management body* on the remuneration to be paid to the senior officers in the risk management and compliance functions.
76. For management companies which are not required to have a remuneration committee, the remuneration of the senior staff responsible for heading the *control functions* should be overseen by the *supervisory function*.
77. Conflicts of interest which might arise if other business areas had undue influence over the remuneration of staff within *control functions* should be adequately managed. The need to avoid undue influence is particularly important where staff members from the *control functions* are embedded in other business areas. However, the views of other business areas should be sought as an appropriate part of the assessment process.

78. *Control functions* should not be placed in a position where, for example, approving a transaction, making decisions or giving advice on risk and financial control matters could be directly linked to an increase or decrease in their performance-based remuneration.

## 12 Guidelines on the general requirements on risk alignment

79. The general requirements on risk alignment should be applied by management companies only to the individual remuneration packages of the *identified staff*, but a voluntary management company-wide application is strongly recommended as indicated in Annex II. Management companies should make an assessment on whether these requirements should be applied to the management company as a whole and, if required, be able to demonstrate to competent authorities why they have applied these requirements to the *identified staff* only.

### 12.1 The general remuneration policy, including the pension policy

80. The long-term strategy of the management company should include the overall business strategy and quantified risk tolerance levels with a multi-year horizon, as well as other corporate values such as compliance culture, ethics, behaviour towards investors of the UCITS it manages, measures to mitigate conflicts of interest etc. The design of the remuneration systems should be consistent with the risk profiles, rules or instruments of incorporation of the UCITS the management company manages and with the objectives set out in the strategies of the management company and the UCITS it manages and changes that could be decided in the strategies must be taken into account. Management companies should, therefore, ensure that their remuneration systems are well designed and implemented. This includes, in particular, a proper balance of variable to fixed remuneration, the measurement of performance as well as the structure and, where appropriate, the risk-adjustment of the variable remuneration. Even a smaller or less sophisticated management company should ensure it makes the best possible attempt to align its remuneration policy with its interests and the interests of the UCITS it manages and their investors.

81. When developing their remuneration policy, management companies should give due consideration to how remuneration contributes to the prevention of excessive risk-taking, the efficiency of the management company and the UCITS it manages and the consistency of the remuneration policy with effective risk management.

82. Managers should consider conservative valuation policies and should not ignore concentration risks and risk factors, such as liquidity risk and concentration risk that could place the UCITS that the management company manages under stress at some point in the future. There are strong incentives not to follow such obligations if the variable part of the remuneration consists predominantly of *instruments* that are paid out immediately, without any deferral or ex post risk adjustment mechanisms (*malus* or *clawback*), and/or are based on a formula that links variable remuneration to current year revenues rather than risk-adjusted profit.

83. In order to counterbalance the dangers mentioned, risk management elements should be connected to the remuneration policy. When properly structured and implemented, variable remuneration can be an efficient tool to align the staff's interests with the interests of the UCITS that the management company manages. Having regard to the nature, scale and complexity of a management company, alternative approaches exist for connecting risk management elements to a remuneration policy.

## 12.2 Discretionary pension benefits

84. Remuneration policy should cover all aspects of remuneration including fixed components, variable components, pension terms and other similar specific benefits. The pension policy (the fixed as well as the variable pension payments) should be aligned with the long term interests of the management company and the UCITS it manages.

85. In case of discretionary pension benefits, as part of the variable remuneration, a staff member should not retire or leave the management company with such benefits vested, with no consideration of the economic situation of the UCITS that the management company manages or risks that have been taken by the staff member in the long term.

86. In order to align this specific kind of pension benefits with the economic situation of the UCITS that the management company manages, discretionary pension benefits, where legally possible according to the relevant pension legislation, should be paid in the form of *instruments*.

87. In the context of a retirement, the discretionary pension benefits vested to the staff member should be subject to a five years *retention period*.

88. Where a staff member leaves the management company before retirement, the discretionary pension benefits should not be vested before a period of five years and should be subject to performance assessment and ex post risk adjustment before pay out.

## 12.3 Severance pay

89. "Golden parachute" arrangements for staff members who are leaving the management company and which generate large payouts without any performance and risk adjustment should be considered inconsistent with the principle in Article 14b(1)(k) of the UCITS Directive. Any such payments should be related to performance achieved over time and designed in a way that does not reward failure. This should not preclude termination payments in situations such as early termination of the contract due to changes in the strategy of the management company or of the UCITS it manages, or in merger and/or takeover situations.

90. Management companies should set up a framework in which severance pay is determined and approved, in line with the management company's general governance structures for employment. The framework should ensure that there is no reward for failure.

91. Management companies should be able to explain to competent authorities the criteria they use to determine the amount of severance pay. It is good practice to defer any outstanding variable payments or long-term incentive plans and for these to mirror the original deferral schemes.

## 12.4 Personal hedging

92. Staff could be considered to have hedged away the risk of a downward adjustment in remuneration if the staff member enters into a contract with a third party which requires the third party to make payments directly or indirectly to the staff member that are linked to or commensurate with the amounts by which the staff member's variable remuneration has been reduced. The contract could for instance take the form of an option or any other derivative contract or other form of contract which provides any type of hedging for the staff member's variable remuneration.

93. In order to ensure the effectiveness of risk alignment, staff members should not buy an insurance contract which compensates them in the event of a downward adjustment in remuneration. As a general rule, however, this would not prohibit insurance designed to cover personal payments such as healthcare and mortgage instalments (provided that the mortgage coverage concerns health-related circumstances that would render the staff member unable to work in an equivalent position), although each case should be judged on its merits.

94. The requirement not to use personal hedging strategies or insurance to undermine the risk alignment effects embedded in their remuneration arrangements should apply to deferred and retained variable remuneration. Management companies should maintain effective arrangements to ensure that the staff member complies with this requirement.

## 13 Guidelines on the specific requirements on risk alignment

95. The specific requirements on risk alignment should be applied by management companies only to the individual remuneration packages of the *identified staff*, but management companies may always consider an management company-wide application (or, at least, a "broader than strictly necessary" application) of all or some of the specific requirements. Annex II indicates the specific requirements for which this voluntary management company-wide application is strongly recommended.

### 13.1 Fully flexible policy on variable remuneration

96. Having a fully-flexible policy on variable remuneration implies not only that variable remuneration should decrease as a result of negative performance but also, that it can go down to zero in some cases. For its practical implementation, it also implies that the fixed remuneration should be sufficiently high to remunerate the professional services rendered, in line with the level of education, the degree of seniority, the level of expertise and skills required, the constraints and job experience, the relevant business sector and

region. Individual levels of fixed remuneration should be indirectly impacted by the basic principle on risk alignment.

## 13.2 Risk alignment of variable remuneration

### 13.2.1 Risk alignment process

97. To limit excessive risk taking, variable remuneration should be performance-based and risk adjusted. To achieve this aim, a management company should ensure that incentives to take risks are constrained by incentives to manage risk. A remuneration system should be consistent with effective risk management and governance processes within the management company.

#### 13.2.1.1 Performance and risk measurement process

98. Setting up a remuneration system should start by defining the objectives of the management company, the unit, as well as the staff and the investment strategy of the UCITS concerned. These objectives should be derived from the business plan of the management company, if any, and should be in line with the risk appetite of the management company and the investment strategy of the UCITS concerned. The performance criteria, which should be used to assess the staff member's achievement of his/her objectives during the *accrual period*, can be directly derived from these objectives. The right to receive the variable remuneration is earned ("awarded") at the end of the *accrual period* or during the *accrual period*, which should be at least one year, but it may be longer. In some cases different *accrual periods* may overlap. If properly designed, the performance assessment links the remuneration with the achievement of the investment strategy of the UCITS concerned and the business plan, if any, or the objectives of the management company. On the contrary, performance criteria which are badly designed can be an incentive for taking too much risk. When assessing performance, only the effective results should be taken into account. Risk alignment during performance measurement can be achieved by using risk adjusted performance criteria or by adjusting performance measures for risk afterwards. The risk adjustment may differ according to the activity of the staff member and the business line or UCITS concerned.

#### 13.2.1.2 Award process

99. After the *accrual period*, the management company should use a specified award process in order to translate performance assessment into the variable remuneration component for each staff member. This should usually be carried out through so-called "pools" of variable remuneration that are first determined and later on allocated. As not all performance and risk measures are suitable to be applied at the level of the management company, the business unit and the staff member, the management company should identify the risks at each level and ensure that a risk correction adequately captures the magnitude and the duration of the risk at each level. This so-called "ex-ante risk adjustment" should adjust remuneration for potential adverse developments in the future.

### 13.2.1.3 Payout process

100. In order to align the actual payment of remuneration to the holding period recommended to the investors of the UCITS managed by the management company and their investment risks, the variable remuneration should partly be paid upfront (short-term) and partly deferred (long-term). The short-term component should be paid directly after the award and rewards staff for performance delivered in the *accrual period*. The long-term component should be awarded to staff during and after the *deferral period*. It should reward staff for the sustainability of the performance in the long term, which is the result of decisions taken in the past. Before paying out the deferred part, a reassessment of the performance and, if necessary, a risk adjustment should be required in order to align variable remuneration to risks and errors in the performance and risk assessments that have appeared since the staff members were awarded their variable remuneration component. This so-called *ex post* risk adjustment should always be necessary, because at the time remuneration is awarded, the ultimate performance cannot be assessed with certainty.

## 13.2.2 Common requirements for the risk alignment process

### 13.2.2.1 Time horizon

101. Management companies, when assessing risk and performance, should take into account both current and future risks that are taken by the staff member, the business unit, the UCITS concerned or the management company as a whole. For this exercise, management companies should examine what the impact of the staff member's activities could be on the UCITS they manage and management company's short and long term success. To be able to do so, the management company should align the horizon of risk and performance measurement with the holding period recommended to the investors of the UCITS managed by the management company and their investment risks. The requirement of a management company to assess the performance of its staff in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the management company implies the *accrual period* and the payout period for short-term and long-term remuneration covering an appropriate period in total.

102. The right balance between accrual and payout periods should depend on the type of UCITS managed by the management company and on the type of business and activity developed by the staff member. However, the use of multi-year *accrual periods* is more prudent since the assessment of the performance can take into account with certainty more risks that have materialized since the beginning of the *accrual period*.

### 13.2.2.2 Levels of risk and performance measurement

103. Performance-related remuneration should include parameters linked to the risks and performance of the UCITS concerned and of the business unit of the management company in addition to the risks and performance of the individual activities. Thus, the amount of variable remuneration a staff member is eligible for should be determined by his/her individual performance, the performance of his/her business line or the UCITS

concerned and the performance of the management company. The relative importance of each level of the performance criteria should be determined beforehand and adequately balanced to take into account the position or responsibilities held by the staff member.

104. To have the greatest impact on staff behaviour, the variables used to measure risk and performance should be linked as closely as possible to the level of the decisions made by the staff member that is subject to the risk adjustment. Performance criteria should include achievable objectives and measures on which the staff member has some direct influence. For example, for senior executives, management companies may design the remuneration policies to include financial measures based on the performance of all the UCITS managed by the management company or the entire management company, or for performance and risks of units, or decisions that were determined by senior executive strategy. In contrast, variables for the manager of a business unit ideally would be for performance and risk of that unit.

#### 13.2.2.3 Quantitative and qualitative measures

105. The risk alignment process should use a mix of quantitative and qualitative approaches (e.g. measurement of performance or risk; setting of the pool and adjustment to risks).

106. Quantitative measures may have some advantages in terms of transparency if they are pre-defined. They can, therefore, influence the behaviour of staff more directly. However, quantitative measures or criteria are not sufficient to measure all risk or performance or to risk adjust remuneration. To complete the measurement and adjustment of risk or performance, management companies should also rely on qualitative approaches.

#### 13.2.2.4 Judgemental measures

107. Whenever judgement is used for a risk and performance measurement or risk adjustment, there should be:

- a clearly written policy outlining parameters and key considerations on which the judgement will be based;
- clear and complete documentation of the final decision regarding risk and performance measurement or risk adjustment;
- involvement of relevant *control functions* experts;
- appropriate levels of approval obtained, e.g. of the *management body* or *supervisory function*, or of the remuneration committee; and
- consideration of the personal incentives of the manager making the judgement, e.g. by using scorecards.

108. For both quantitative and qualitative measures, management companies should be prepared to disclose and reproduce any judgmental elements incorporated into their risk alignment process. Management companies should also provide detailed information to the competent authority if the final outcome after applying judgmental measures is significantly different from the initial outcome using pre-defined measures.

### 13.2.3 Risk measurement

109. Management companies should take into account all risks, whether on or off balance sheet, differentiating amongst risks affecting the management company, the UCITS it manages, business units and individuals. Risk identification and quantification at the UCITS level can be found in the risk management policy that the management company is required to establish, implement and maintain and which identifies all the relevant risks to which the UCITS they manage are or might be exposed to. Management companies should also determine whether measures they are using for risk adjustment include 'difficult-to-measure' risks, such as reputational and operational risk.

110. In order to take into account all material risks, management companies should use the same risk measurement methods as used in the risk management policy established for the UCITS managed by the management company. Furthermore, management companies should also take into account the risks arising from the additional management of AIFs and from the services provided under Article 6(3) of the UCITS Directive.

111. Taking proportionality into account, the risk management calculations should be transparent and the management companies should be able to demonstrate how the risk calculations can be broken down by UCITS and related to the management company's business units and different types of risk positions throughout the organisation. The quality of methods and models used should influence the extent to which a management company should implement a more sophisticated variable remuneration policy based on performance measurements.

### 13.2.4 Performance measurement

#### 13.2.4.1 Qualitative/Quantitative measures

112. Management companies should use both quantitative (financial) as well as qualitative (non-financial) criteria for assessing individual performance.

113. The appropriate mix of quantitative and qualitative criteria should depend on the tasks and responsibilities of the staff member. In all cases, the quantitative and qualitative criteria and the balance between them should be specified and clearly documented for each level and category of staff.

114. Quantitative measures should cover a period which is long enough to properly capture the risk of the staff member's actions. Examples of quantitative performance measures used in the asset management sector which fulfil the abovementioned

provisions are the internal rate of return (IRR), earnings before interest, taxes, depreciation and amortization (EBITDA), Alpha Ratio, absolute and relative returns, Sharpe Ratio and assets raised.

115. In addition to quantitative performance measures, variable remuneration awards should also be sensitive to the staff's performance with respect to qualitative (non-financial) measures. Examples are the achievement of strategic targets, investor satisfaction, adherence to risk management policy, compliance with internal and external rules, leadership, management, team work, creativity, motivation and cooperation with others business units and with *control functions*. Such determined qualitative criteria could rely on compliance with risk control measures such as limits and audit results. Negative non-financial performance, in particular unethical or non-compliant behaviour, should override any good financial performance generated by a staff member and should diminish the staff member's variable remuneration.

#### 13.2.4.2 Relative/absolute and internal/external measures

116. Absolute performance measures are measures set by the management company on the basis of its own strategy, which includes the risk profile and risk appetite of the management company and of the UCITS it manages, as further developed down through the chain of business levels. Such measures help to minimize the risk that remuneration is awarded that is not justifiable by the management company's or UCITS' performance. They also tend to create long term incentives. However, it may be difficult to calibrate absolute performance measures, especially for new entrants or for new kinds of financial activities (with difficult-to-measure risks) linked to the management of UCITS.

117. Relative performance measures are measures that compare performance with peers, either 'internal' peers (i.e. within the organization) or 'external' (similar management companies). Relative performance measures are easier to set because the benchmark is readily available. However, such measures pose the risk that variable remuneration that is not supported by long-term success of the business unit or the management company or the UCITS it manages will be paid out anyway. In a period of sector wide positive financial performances, it could lead to 'raising the bid' and/or 'herd' mentality, providing incentives to take on excessive risk. In a downturn economic cycle where most management companies and UCITS may perform poorly, relative measures may nonetheless lead to positive outcomes (and thus to an insufficient contraction of the management company's total variable remuneration) even if absolute performance has deteriorated compared to previous periods.

118. Internal (e.g. profits) and external (e.g. share price) variables come with both advantages and disadvantages that should be balanced carefully. Internal performance measures are able to generate more involvement of the staff members if they can influence the outcome by their own behaviour. This is especially true if the performance measures are fixed at the level of the business unit (rather than on the management company-wide level). Furthermore, it is easier to introduce risk adjustment features for internal measures, because the link with in-house risk management techniques is more readily available. On the other hand, such measures can be manipulated and can create

distorted outcomes on a short-term basis. External performance measures are less subject to this danger of manipulation, although attempts to artificially increase the stock price (probably only relevant for top executives) may still occur.

### 13.3 Award process

#### 13.3.1 Setting and allocation of pools

119. Management companies should adopt a documented policy for the award process and ensure that records of the determination of the overall variable remuneration pool are maintained.

#### 13.3.2 The risk adjustment in the award process

120. In determining remuneration pools or individual awards, management companies should consider the full range of current and potential (unexpected) risks associated with the activities undertaken. Performance measures used in setting the remuneration pool may not fully or adequately capture risks undertaken, thus, ex-ante adjustments should be applied to ensure that the variable remuneration is fully aligned with the risks undertaken. Management companies should establish whether the risk adjustment criteria they are using take into consideration severe risks or stressed conditions.

121. Management companies should determine to what level they are able to risk adjust their variable remuneration calculations quantitatively – whether to the business unit level or further down the line such as to a trading desk level, if any, or even to an individual level. Management companies should determine the level of granularity that is suitable for each level.

##### 13.3.2.1 Quantitative ex ante risk adjustment

122. In order to have a sound and effective remuneration scheme, management companies should use a number of different quantitative measures for their risk adjustment process. Normally, these measures should be based on an overarching risk adjustment framework.

123. When measuring the profitability of the management company and its business units as well as the UCITS it manages, the measurement should be based on net revenue where all direct and indirect costs related to the activity are included. Management companies should not exclude IT costs, research costs, legal fees, marketing costs, and costs for outsourced activities. Management companies should make sure that remuneration pools are not being “back-fitted” to meet remuneration demands.

124. The quantitative ex-ante risk adjustments made by management companies should largely rely on existing measures within the management companies, generally used for other risk management purposes. As a result, the limitations and potential issues related to these measures should also be relevant for the remuneration process. The risk adjustments used should benefit from the experience gained when dealing with these

risks in other contexts and should be challenged like any other component of the risk management process.

### 13.3.2.2 Qualitative measures for ex-ante risk adjustment

125. Qualitative risk elements should be considered by management companies. Qualitative ex-ante adjustments could take place while setting management company-wide and business unit remuneration pools or when determining or allocating individuals' remuneration. Qualitative ex-ante risk adjustments are common at pool and individual levels, contrary to quantitative adjustments which tend to be mostly observed only at the pool level.

126. Management companies make qualitative risk adjustments when allocating/determining individuals' remuneration through assessments that may explicitly include risk and control considerations such as compliance breaches, risk limit breaches and internal control breakdowns (e.g. based on internal audit results).

## 13.4 Pay-out process

### 13.4.1 Non-deferred and deferred remuneration

127. Although remuneration is aligned through ex-ante risk adjustments, due to uncertainty, ex-post risk adjustments should be put in place to keep incentives fully aligned. This can only be done if part of the remuneration has been deferred.

128. A deferral schedule is defined by different components: (a) the time horizon of the deferral, (b) the proportion of the variable remuneration that is being deferred, (c) the speed at which the deferred remuneration vests (*vesting point*), (d) the time span from accrual until the payment of the first deferred amount and (e) the form of the deferred variable remuneration. Management companies can differentiate their deferral schedules by varying these five components. A stricter than necessary application for one component may influence the supervisory scrutiny for another component. In any case, the way in which a management company combines these components should lead to a meaningful deferral schedule, in which the long-term risk alignment incentives are clear.

#### 13.4.1.1 Time horizon and vesting

129. The *deferral period* always starts at the moment the upfront part of the variable remuneration is paid out and can be coupled either to cash variable remuneration or variable remuneration in *instruments*. It ends when the last variable remuneration has vested. The minimum *deferral period* is three years. Management companies should set the *deferral period* which should be calculated on the basis of the holding period recommended to the investors of the UCITS and depending on the potential impact of the staff on the risk profile of the UCITS. The actual *deferral period* should be further tailored to the responsibilities and tasks performed by the staff and expected fluctuations in the value of the assets of the UCITS, which in many cases will imply longer time horizons.

The management company should consider longer *deferral periods* for at least members of the *management body*.

#### 13.4.1.2 Vesting point

130. Pro rata vesting (or payment) means that for a *deferral period* of, for example, three years one-third of the deferred remuneration vests at the end of each of the years  $n+1$ ,  $n+2$  and  $n+3$ , where 'n' is the moment at which performance is measured to determine the variable remuneration. Annex III includes a diagram showing an example of a pro rata spreading for a deferral scheme in which 60% of the variable remuneration is deferred (first diagram).

131. In any case, vesting should not take place more frequently than on a yearly basis (e.g. not every six months).

#### 13.4.1.3 Proportion to be deferred

132. The proportion of the variable remuneration that should be deferred ranges from 40 to 60 %, depending on the impact the staff member (or category of staff) can have on the risk profile of the UCITS managed by the management company and the responsibilities and tasks performed, and depending on the amount of variable remuneration. If management companies decide to determine the proportion that is being deferred by a cascade of absolute amounts (rather than percentages of the total variable remuneration - e.g. part between 0 and 100: 100% upfront, part between 100 and 200: 50% upfront and rest is deferred, part above 200: 25% upfront and rest is deferred ...), on an average weighted basis, such management companies should respect the 40 to 60 % threshold.

#### 13.4.1.4 Time span between end of accrual and vesting of deferred amount

133. In order to ensure a proper assessment of the performance outcome and, thus, to undertake a proper ex-post risk adjustment, the first deferred portion should not be paid out too soon after the *accrual period*. For the deferral to be really effective with regard to the staff's incentives, the first amount should not vest sooner than 12 months after the accrual.

### 13.4.2 Cash vs. instruments

#### 13.4.2.1 Types of instruments

134. Staff should only be remunerated using *instruments* if it does not trigger interest misalignment or encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the relevant UCITS. A misalignment of interests might arise in relation to *identified staff* that are not directly involved in investment management. Rewarding those individuals with *instruments* of UCITS might represent a conflict of interest with their duty to perform independently their functions relating to those UCITS.

135. For management companies managing several UCITS, in order to align the interests of the *identified staff* with those of the relevant UCITS, when possible according to the organisation of the management company and the legal structure of the managed UCITS, the *identified staff* should receive *instruments* related mainly to the UCITS in relation to which they perform their activities, provided that no excessive concentration in the holding of the *instruments* – facilitating an excessive risk-taking by the *identified staff* – is created. E.g. if one member of the staff of a management company which manages three UCITS (x, y and z) performs his/her activities for UCITS x only, in principle that member of the staff should receive *instruments* related mainly to UCITS x; however, should the application of such principle lead to a situation where the *identified staff* has too strong an interest in the UCITS for which they perform their activities, the management company should consider enlarging the spectrum of *instruments* paid in order to prevent an excessive risk-taking from the *identified staff* in relation to the relevant UCITS.
136. The availability of *instruments* is dependent on the legal structure of the UCITS concerned and their fund rules or instruments of incorporation. For UCITS in the legal form of a corporate fund, shares or share-linked instruments should be able to align the interests of the investors and staff. Share-linked instruments are those whose value is based on a market value appreciation of the stock and that have the share price as a reference point, e.g. stock appreciation rights, types of synthetic shares. Without prejudice to the guidance in paragraphs 135 and 136, where it is appropriate to ensure a better alignment of interest with investors, it may be possible to remunerate the *identified staff* with non-cash instruments whose performance is correlated with the performance of the portfolios they manage, provided that these instruments feature equally effective incentives as any of the instruments referred to in Article 14b(1)(m) of the UCITS Directive.
137. For UCITS which are common funds, *instruments* should consist of units of the UCITS concerned, or equivalent ownership interests; for many of these UCITS, share-linked instruments are not an option due to their legal form.
138. Neither dividends nor interest should be paid on *instruments* before vesting.

#### 13.4.2.2 Retention policy

139. A retention policy should be determined by the management company in the remuneration policy. The management company should be able to explain how the retention policy relates to other risk alignment measures in the total remuneration policy and should explain whether and how they differentiate between *instruments* paid upfront and deferred *instruments*.
140. *Retention periods*, as the most important element of the retention policy, should be coupled with the vesting of *instruments*. The *retention period* is independent from the *deferral period*. This means that, in order to meet the requirement of a minimum *deferral period* of three years, the *retention period* counts for nothing. The *retention period* can

last for a shorter or longer period than the *deferral period* applied to the *instruments* that are not paid up front.

141. In the case of upfront *instruments*, *retention periods* are the only mechanism available to emphasize the difference between cash paid upfront and *instruments* awarded upfront in order to align incentives with the longer-term interests of the management company and the UCITS it manages and the investors of such UCITS.
142. In the case of deferred *instruments*, the *retention periods* come after every vested portion (the second diagram in Annex III illustrates these concepts). Competent authorities may determine whether the *retention periods* proposed by the management company are sufficient and appropriate.
143. The minimum *retention period* should be sufficient to align incentives with the longer term interests of the management company, of the UCITS it manages and of their investors. Different factors may tend to suggest that this period could be longer or shorter. Longer *retention periods* should be applied for staff with the most material impact on the risk profile of the management company and the UCITS it manages.
144. It is possible that a *retention period* lasts for a shorter period than the *deferral period* applied to the *instruments* that are not paid up front. However, as an example of proportionality, for their most senior staff, large and complex management companies should consider the use of a *retention period* for upfront paid *instruments* that goes beyond the *deferral period* for the deferred *instruments*.
145. *Instruments* should be valued on the date of the award (at the end of the *accrual period*) of these *instruments*. This value is the basis for the determination of the initial number of *instruments* and for later ex-post adjustments to the number of *instruments*.
146. The upfront payment of *instruments*, even with a minimum *retention period* of, for example, three years, is not equivalent to deferred *instruments*. Deferred *instruments* are subject to an ex-post risk adjustment due to the back-testing of the underlying performance, possibly leading to a reduction in the number of *instruments* that will eventually be paid out (second diagram in Annex III).

#### 13.4.2.3 Minimum portion of instruments and their distribution over time

147. The requirement in Article 14b(1)(m) of the UCITS Directive to apply the minimum of 50% (where applicable) to both the portion of the variable remuneration component that is deferred and the portion of the variable remuneration component not deferred means that the 50% minimum threshold for *instruments* should be applied equally to the non-deferred and the deferred part; in other words, management companies should apply the same chosen ratio between *instruments* and cash for their total variable remuneration to both the upfront and deferred part.

Examples:

- Good practice: For a certain category within its *identified staff*, a management company establishes a 50 *instruments* / 50 cash ratio for the variable remuneration, combined with a 60% deferral schedule (that is, 40% is non-deferred variable remuneration). This results in an upfront payment in *instruments* of 20 (i.e. 50% of 40) and 20 in cash. The deferred part consists of 30 in *instruments* and 30 in cash.
- Good practice: For a certain category within its *identified staff*, a management company establishes a 70 *instruments* / 30 cash ratio for the variable remuneration, combined with a 40% deferral schedule (that is, 60% is non-deferred variable remuneration). This results in an upfront payment in *instruments* of 42 (i.e. 70% of 60) and 18 in cash. The deferred part consists of 28 in *instruments* and 12 in cash.
- Poor practice: If for a certain category within its *identified staff*, a management company were to establish a 50 *instruments* / 50 cash ratio for the variable remuneration, combined with a 40 % deferral scheme, the management company cannot decide to pay 50 in cash up front and 10 in *instruments*, leading to a deferred pay out of 40 in *instruments*.
- Poor practice: If for a certain category within its *identified staff*, a management company were to establish a 70 *instruments* / 30 cash ratio for the variable remuneration, combined with a 50% deferral scheme, the management company cannot decide to pay 50 upfront in *instruments* and 0 in cash, leading to a deferred pay out of 20 in *instruments* and 30 in cash.

148. The second diagram in Annex III provides an example of this equal distribution of *instruments* over the non-deferred and deferred parts of remuneration.

149. For the purposes of the requirement to pay at least 50% of variable remuneration in *instruments* unless the management of UCITS accounts for less than 50% of the total portfolio managed by the management company, the 50% threshold should be based on the total net asset value of all the UCITS managed by the management company. For the purposes of the same requirement, the total portfolio managed by the management company should be the portfolios collectively and individually managed by the management company under its authorisation under the UCITS Directive and its authorisation under the AIFMD, if any.

### 13.4.3 Ex post incorporation of risk for variable remuneration

#### 13.4.3.1 Explicit ex-post risk adjustments

150. An “ex-post risk adjustment” should imply that once an initial variable remuneration component has been awarded to the staff member, and an upfront part has already been paid, the management company is still able to adjust, by way of a reduction, the variable remuneration as time goes by and the outcomes of the staff member’s actions materialize.

151. An ex-post risk adjustment is an explicit risk alignment mechanism through which the management company itself adjusts remuneration of the staff member by means of *malus* or *clawback* clauses (e.g. by lowering cash remuneration or by awarding a lower number of *instruments*). Ex-post risk adjustment should always be performance-related: techniques that are, for example, based on the amount of dividends or the evolution of the share price are not sufficient because the link to the performance of a staff member is not sufficiently direct. Therefore, ex-post risk adjustments are frequently also called “performance adjustments” because they are a response to the actual risk outcomes of the staff member's actions. Performance measures taken at this stage should allow the management company to perform an analysis (similar to back testing) as to whether its initial ex-ante risk adjustment was correct. Management companies should ensure there is a link between the initial performance measurement and the back-testing. Thus, the extent to which an ex-post risk adjustment is needed depends on the quality (accuracy) of the ex-ante risk adjustment.
152. The effect of *maluses* should not be inflated by paying out artificially high interest (above market rates) on the cash deferred parts to the staff member. *Maluses* operate by affecting the *vesting point* and cannot operate after the end of the *deferral period*. Furthermore, *clawback* can be a method for achieving an ex-post risk adjustment on variable remuneration.
153. Management companies may utilize specific criteria whereby *malus* (to both the cash portion and the *instruments* portion of deferred remuneration) and *clawbacks* would apply. Such criteria should, for example, include:
- a. evidence of misbehaviour or serious error by the staff member (e.g. breach of code of conduct, if any, and other internal rules, especially concerning risks);
  - b. whether the UCITS and/or the management company and/or the business unit subsequently suffers a significant downturn in its financial performance (specific indicators should be used);
  - c. whether the UCITS and/or the management company and/or the business unit in which the staff member works suffers a significant failure of risk management;
  - d. significant changes in the management company's overall financial situation.
154. A *clawback* should typically operate in the case of established fraud or misleading information. Where applicable, management companies should include *clawback* clauses in addition to these cases e.g. for remuneration received in breach of the UCITS Directive and/or these guidelines.
155. Ex-post risk adjustment could be based on both quantitative measures and informed judgment.

156. To have the greatest impact on staff's incentives, the variables should measure outcomes as close as possible to the level of the decisions made by the staff member that is subject to the ex-post explicit adjustment. For example, variables for senior executives probably should be for outcomes for the management company as a whole, or for outcomes of units or decisions that were determined by senior executive strategy. In contrast, variables for the head responsible for a business unit ideally would reflect outcomes of that unit.

#### 13.4.3.2 Implicit adjustments

157. When the variable remuneration takes the form of *instruments*, the final payout to the staff member will depend partly on market prices due to fluctuations during the *deferral* or *retention period*. This implicit adjustment of remuneration is not related to any explicit decision of the management company, but is inherent to the form that is used for paying out. Under no circumstances should the evolution of the net asset value of the UCITS or, for listed UCITS, the evolution of the share price be considered sufficient as a form of ex-post risk adjustment. There should always be a form of explicit risk adjustment on the initiative of the management company. For non-senior staff in particular, there may be no direct relation between their decisions and the value of the UCITS.

158. A *retention period* on its own can never be sufficient to design an ex-post risk adjustment for *instruments* and should not be a substitute for a longer *deferral period*.

#### 13.4.3.3 Possibility of upward revisions

159. The market price of *instruments* can go up, so implicitly they are subject to movements in their value in both directions.

160. Under no circumstances should the explicit ex- post risk adjustment (both for cash and *instruments*) lead to an increase of the deferred part.

## 14 Guidelines on disclosure

### 14.1 External disclosure

#### 14.1.1 Specific and general requirements on disclosure

161. Management companies should consider the additional disclosure on remuneration required under paragraph (8) of the *Recommendation*, to the extent that the latter may also be relevant to them. Management companies should have the flexibility to disclose the information mentioned in the *Recommendation* through an independent remuneration policy statement, a periodic disclosure in the annual report or any other form. In all cases, however, the management company should ensure that the disclosure is clear and easily understandable and accessible.

162. Without prejudice to confidentiality and applicable data protection legislation, management companies should disclose detailed information regarding their remuneration policies and practices for members of staff whose professional activities have a material impact on the risk profile of the UCITS the management company manages.
163. The *Recommendation's* remuneration disclosures may be made on a proportionate basis and the overall remuneration proportionality principle will apply to the type and amount of information disclosed. Small or non-complex management companies/UCITS should only be expected to provide some qualitative information and very basic quantitative information where appropriate. In practice, this could mean that such management companies/UCITS are not expected to provide all the information under paragraph (8) of the *Recommendation*. Management companies should disclose how they have applied proportionality.
164. The disclosure should be published on at least an annual basis and as soon as practicable after the information becomes available.

#### 14.1.2 Policy and practices

165. The disclosure report should set out the decision-making process used to determine the remuneration policy for the individuals to which it applies. This may include the governance procedure relating to the development of the remuneration policy and should include information about the bodies (including their composition and mandate), such as the remuneration committee or external consultants, which played a significant role in the development of the remuneration policy. Management companies should outline the role of all relevant stakeholders involved in the determination of the remuneration policy. Additionally, the disclosure should include a description of the regional scope of the management company's remuneration policy, the types of staff considered as material risk takers and the criteria used to determine such staff.
166. The report should include information on how pay and performance are linked. Such information should include a description of the main performance metrics used for: the management company, top-level business lines, and for individuals (i.e. scorecards). Management companies should disclose information relating to the design and structure of remuneration processes, such as the key features and objectives of the remuneration policy and how the management company ensures that staff members in *control functions* are remunerated independently of the businesses they oversee. The report should also include a description of the different forms of variable remuneration used (i.e. cash, equity, options, other capital instruments, and long-term incentive plans) and should include the rationale for using these different forms and for allocating them to different categories of staff. Additionally, the report should include a discussion of the parameters used to allocate deferred and non-deferred remuneration for different staff categories.
167. Disclosure reports should describe how the management company takes into account current and future risks to which they are exposed when implementing remuneration

methodologies and what these risks are. Also, management companies should describe the measures used to take account of these risks and the ways in which these measures affect remuneration. In addition, management companies should disclose the ways in which they seek to adjust remuneration to take account of longer-term performance - as in the management company's policy on deferral, vesting and performance adjustment.

168. The quantitative (financial) as well as qualitative (non-financial) criteria used by management companies for assessing individual performance which are relevant for determining the remuneration policies and practices and are described under Section 13.2.4.1 (Qualitative/Quantitative measures) should also be disclosed in the disclosure reports.

169. The disclosure should be produced and owned by the *management body* that has the ultimate sign-off on remuneration decisions.

## 14.2 Internal disclosure

170. The remuneration policy of a management company should be accessible to all staff members of that management company. Management companies should ensure that the information regarding the remuneration policy disclosed internally reveals at least the details which are disclosed externally. Therefore, according to the size, internal organisation and the nature, scope and complexity of the activities of the management company, the information provided to staff members might contain some of the elements listed in Section III (Disclosure) of the *Recommendation*. The staff members should know in advance the criteria that will be used to determine their remuneration. The appraisal process should be properly documented and should be transparent to the member of staff concerned. Confidential quantitative aspects of the remuneration of staff members should not be subject to internal disclosure.

## Annex I

### Correlation table Recommendation/UCITS Directive

|     | <b>Recommendation</b>          | <b>UCITS Directive</b> |
|-----|--------------------------------|------------------------|
| 1.  | Section II, par. 3.1.          | Art. 14b(1)(a)         |
| 2.  | Section II, par. 3.2. and 6.1. | Art. 14b(1)(b)         |
| 3.  | Section II, par. 6.2.          | Art. 14b(1)(c)         |
| 4.  | Section II, par. 6.5.          | Art. 14b(1)(d)         |
| 5.  | Section II, par. 6.6.          | Art. 14b(1)(e)         |
| 6.  | Section II, par. 5.1. and 5.4. | Art. 14b(1)(g)         |
| 7.  | Section II, par. 5.2.          | Art. 14b(1)(h)         |
| 8.  | Section II, par. 4.1. and 4.2. | Art. 14b(1)(j)         |
| 9.  | Section II, par. 4.5.          | Art. 14b(1)(k)         |
| 10. | Section II, par. 5.3.          | Art. 14b(1)(l)         |
| 11. | Section II, par. 4.4.          | Art. 14b(1)(m)         |
| 12. | Section II, par. 4.3.          | Art. 14b(1)(n)         |
| 13. | Section II, par. 6.4.          | Art. 14b(4)            |

## Annex II

### Mapping of the remuneration principles included in the UCITS Directive

| UCITS Directive requirements - Article 14b |   | Paragraphs of these Guidelines relating to the relevant requirement | Scope   |
|--|---|---|---|
| Art. 14b(1)(a)                             | the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that the management company manages;  | 80 – 83   | Only to the <i>identified staff</i> , but management company-wide strongly recommended and management companies, if required, should be able to demonstrate why the applied the requirement to the <i>identified staff</i> only   |
| Art. 14b(1)(b)                             | the remuneration policy is in line with the business strategy, objectives, values and interests of the management company and the UCITS that it manages and of the investors in such UCITS, and includes measures to avoid conflicts of interest;   | 80 – 83<br>40 – 53  | Paragraphs 80 – 83 → Only to the <i>identified staff</i> , but management company-wide strongly recommended and management companies, if required, should be able to demonstrate why the applied the requirement to the <i>identified staff</i> only<br><br>Paragraphs 40 – 53 → management company-wide obligatory |
| Art. 14b(1)(c)                             | the remuneration policy is adopted by the management body of the management company in its supervisory function, and that body adopts, and reviews at least annually, the general principles of the remuneration policy and is responsible for, and oversees, their implementation; the tasks referred to in this point shall be undertaken only by members of the management body who do not perform any | 40 – 53   | Management company-wide obligatory  |

|                |   |                        |  |
|----------------|---|------------------------|--|
|                | executive functions in the management company concerned and who have expertise in risk management and remuneration;   |                        |  |
| Art. 14b(1)(d) | the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;  | 50 – 53                | Management company-wide obligatory   |
| Art. 14b(1)(e) | staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independently of the performance of the business areas that they control;  | 72 – 78                | Management company-wide obligatory   |
| Art. 14b(1)(f) | the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee, where such a committee exists;  | 72 – 78                | Management company-wide obligatory   |
| Art. 14b(1)(g) | where remuneration is performance-related, the total amount of remuneration is based on a combination of the assessment as to the performance of the individual and of the business unit or UCITS concerned and as to their risks and of the overall results of the management company when assessing individual performance, taking into account financial and non-financial criteria; | 103 – 108<br>112 – 115 | Only to the <i>identified staff</i> , but management company-wide strongly recommended                     |
| Art. 14b(1)(h) | the assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the   | 101 – 103<br>129 – 133 | Only to the <i>identified staff</i> , but voluntary management company-wide application is always possible |

|                |  |                        |   |
|----------------|--|------------------------|---|
|                | management company in order to ensure that the assessment process is based on the longer-term performance of the UCITS and its investment risks and that the actual payment of performance-based components of remuneration is spread over the same period ;   |                        |   |
| Art. 14b(1)(i) | guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement;  | None                   | Management company-wide obligatory  |
| Art. 14b(1)(j) | fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component; | 96                     | Only to the <i>identified staff</i> , but management company-wide strongly recommended  |
| Art. 14b(1)(k) | payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;   | 89 – 91                | Only to the <i>identified staff</i> , but management company-wide strongly recommended and management companies, if required, should be able to demonstrate why the applied the requirement to the <i>identified staff</i> only |
| Art. 14b(1)(l) | the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;  | 109 – 111<br>119 – 126 | Only to the <i>identified staff</i> , but management company-wide strongly recommended  |
| Art.           | subject to the legal structure of the UCITS and its fund rules or  | 134 – 149              | Only to the <i>identified staff</i> , but voluntary management  |

|                       |  |                  |  |
|-----------------------|--|------------------|--|
| <p>14b(1)(m)</p>      | <p>instruments of incorporation, a substantial portion, and in any event at least 50 %, of any variable remuneration component consists of units of the UCITS concerned, equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this point, unless the management of the UCITS accounts for less than 50 % of the total portfolio managed by the management company, in which case the minimum of 50 % does not apply.</p> <p>The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the management company and the UCITS that it manages and the investors of such UCITS. Member States or their competent authorities may place restrictions on the types and designs of those instruments or ban certain instruments as appropriate. This point shall be applied to both the portion of the variable remuneration component deferred in line with point (n) and the portion of the variable remuneration component not deferred;</p> |                  | <p>company-wide application is always possible</p>   |
| <p>Art. 14b(1)(n)</p> | <p>a substantial portion, and in any event at least 40 %, of the variable remuneration component, is deferred over a period which is appropriate in view of the holding period recommended to the investors of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in</p>   | <p>127 – 133</p> | <p>Only to the <i>identified staff</i>, but voluntary management company-wide application is always possible</p> |

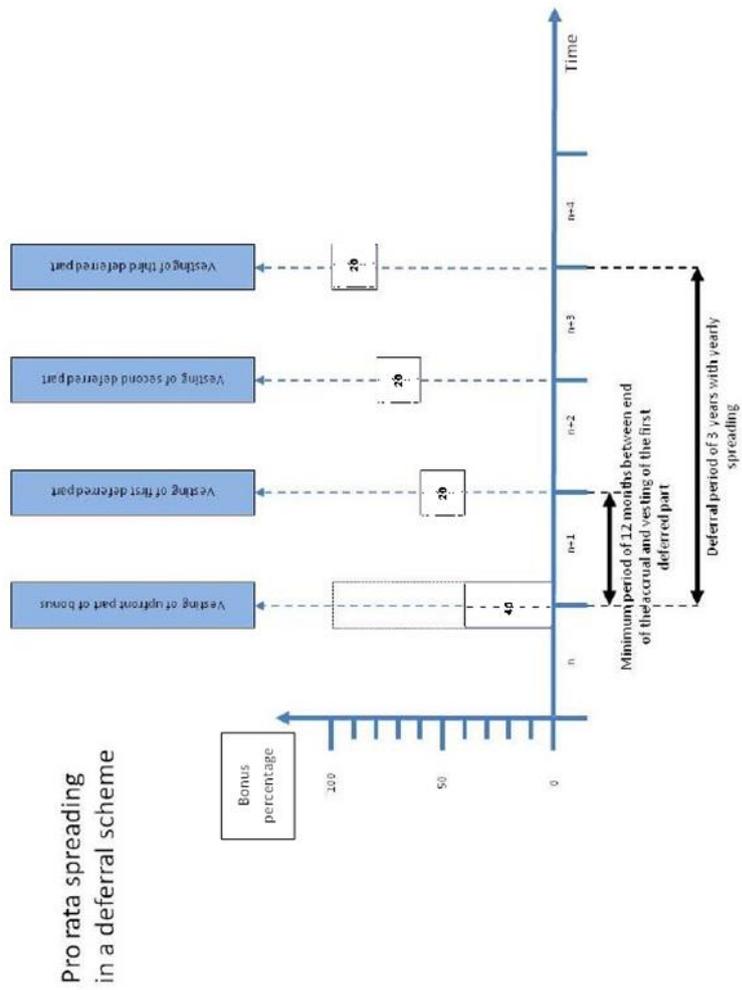
|                |  |  |   |
|----------------|--|--|---|
|                | <p>question.</p> <p>The period referred to in this point shall be at least three years; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount shall be deferred;</p>  |  |   |
| Art. 14b(1)(o) | <p>the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the management company as a whole, and justified according to the performance of the business unit, the UCITS and the individual concerned.</p> <p>The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;</p> | <p>36 – 38</p> <p>119 – 126</p> <p>150 – 160</p> | <p>Only to the <i>identified staff</i>, but voluntary management company-wide application is always possible</p>  |
| Art. 14b(1)(p) | <p>the pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and the UCITS that it manages.</p> <p>If the employee leaves the management company before retirement, discretionary pension benefits shall be held by the management company for a period of five years in the form of</p>  | <p>80 – 88</p>                                   | <p>Only to the <i>identified staff</i>, but management company-wide strongly recommended and management companies, if required, should be able to demonstrate why the applied the requirement to the <i>identified staff</i> only</p> |

|                 |   |         |   |
|-----------------|---|---------|---|
|                 | instruments defined in point (m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments defined in point (m), subject to a five-year retention period;  |         |   |
| Art. 14b(1)(q)  | staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;  | 92 – 94 | Only to the <i>identified staff</i> , but management company-wide strongly recommended and management companies, if required, should be able to demonstrate why the applied the requirement to the <i>identified staff</i> only |
| Art. 14b (1)(r) | variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements laid down in this Directive.  | 14 – 17 | Management company-wide obligatory  |
| Art. 14b(2)     | <p>In accordance with Article 35 of Regulation (EU) No 1095/2010, ESMA may request information from competent authorities on the remuneration policies and practices referred to in Article 14a of this Directive.</p> <p>ESMA shall, in close cooperation with EBA, include in its guidelines on remuneration policies provisions on how different sectoral remuneration principles, such as those set out in Directive 2011/61/EU of the European Parliament and of the Council and in Directive 2013/36/EU of the European Parliament and of the Council, are to be applied where employees or other categories of personnel perform services subject to different sectoral remuneration</p> | 30 – 35 |   |

|             |  |         |                                    |
|-------------|--|---------|------------------------------------|
|             | principles.  |         |                                    |
| Art. 14b(3) | <p>The principles set out in paragraph 1 shall apply to any benefit of any type paid by the management company, to any amount paid directly by the UCITS itself, including performance fees, and to any transfer of units or shares of the UCITS, made for the benefit of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket of senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profiles of the UCITS that they manage.</p>   | 11 – 21 | Management company-wide obligatory |
| Art. 14b(4) | <p>Management companies that are significant in terms of their size or of the size of the UCITS they manage, their internal organisation and the nature, scope and complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.</p> <p>The remuneration committee that is, where appropriate, set up in accordance with the ESMA guidelines referred to in Article 14a(4) shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the management company or the</p> | 54 – 66 | Management company-wide obligatory |

|  |   |  |  |
|--|---|--|--|
|  | <p>UCITS concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the management company concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the management company concerned.</p> <p>If employee representation on the management body is provided for by national law, the remuneration committee shall include one or more employee representatives. When preparing its decisions, the remuneration committee shall take into account the long-term interest of investors and other stakeholders and the public interest.</p> |  |  |
|--|---|--|--|

Schematic overview of some deferral mechanisms



### Accrual vs. deferral vs. retention

