




Luxembourg UCITS V implementation and timeline

This document consolidates the position taken by ESMA, as outlined in its UCITS Q&A¹ ("ESMA UCITS Q&A"), with the approach taken by the CSSF, as provided in its press release 16/10² ("CSSF press release 16/10") and compares it with the legal provisions of the UCITS V Directive³ ("UCITS V"). In the column "Arendt advice" you will find a brief analysis of the situation as well as a recommendation on how to proceed further.

1. REMUNERATION


1.1. DELIVERY OF AN UPDATED REMUNERATION POLICY

UCITS V requires the establishment and implementation of a remuneration policy. Furthermore, it requires such remuneration policy to contain certain prescribed details. The timeline for the delivery of a remuneration policy in conformity with UCITS V may be summarised as follows:

Provision by UCITS V	ESMA Position	CSSF Position	Arendt Advice
→ To be made available as of 18 March 2016 (Article 1 § 4 of UCITS V).	→ To be made available on the website as soon as the management company's remuneration arrangements become available . <i>(Question 1a of the ESMA UCITS Q&A).</i>	→ No particular position.  CSSF questionnaire: During the course of 2016, the CSSF will send a questionnaire regarding the key aspects of the remuneration policies to be implemented to UCITS management companies and self-managed UCITS.	We recommend the continued development of a UCITS V compliant remuneration policy and strict observance of all regulatory developments, in particular the publication of ESMA's guidelines on sound remuneration for further guidance, which are expected to be published by the end of March 2016 and will enter into force as of 1 January 2017.

1.2. DELIVERY OF AN UPDATED PROSPECTUS AND KIID

UCITS V requires that the prospectus and the KIID include a prescribed statement in relation to remuneration policy. The regulatory positions as to the timeline for **updating the prospectus and the KIID** may be summarised as follows:

Provision by UCITS V	ESMA Position	CSSF Position	Arendt Advice
<p>→ To be updated as of 18 March 2016 (Art. 1 §§ 13 and 14 UCITS V).</p>	<p>→ KIIDs to be updated at the next annual update after 18 March 2016 (i.e. February 2017) or on the first occasion after 18 March 2016 on which the KIID is revised or replaced for another purpose, if the information is available at that point in time.</p> <p>→ Prospectus to be updated at the next occasion after 18 March 2016 if it is revised for another purpose or in any event by 18 March 2017 at the latest.</p> <p>(Question 1a of the ESMA UCITS Q&A)</p>	<p>→ Applies the timeline provided by ESMA.</p> <p> Fast-track procedure: The CSSF will put in place a fast-track procedure for the approval of changes which are limited to remuneration (and depositary aspects) under UCITS V, whereby UCITS can include in their prospectus a summary of the remuneration policy and a reference to a website where details of the remuneration policy are available, free of charge.</p> <p>(CSSF press-release 16/10, section II).</p>	<p>We recommend the continued development of a UCITS V compliant remuneration policy and strict observance of all regulatory developments, in particular the publication of ESMA's guidelines on sound remuneration for further guidance, which are expected to be published by the end of March 2016 and will enter into force as of 1 January 2017.</p>

1.3. DELIVERY OF AN UPDATED ANNUAL REPORT

UCITS V requires that the Annual Report of a UCITS include prescribed information on **remuneration aspects**.


The timeline for the delivery of an annual report in conformity with UCITS V remuneration requirements may be summarised as follows:

Provision by UCITS V	ESMA Position	CSSF Position	Arendt Advice
<p>→ To be updated as of 18 March 2016</p> <p>(Art. 1 §13 of UCITS V).</p>	<p>→ For annual reports covering a business year</p> <ul style="list-style-type: none"> • ending before 18 March 2016: no update required. • ending on or after 18 March 2016, but before the management company (or the UCITS if self-managed) has completed its first annual performance period, the remuneration related information should be included on a best effort basis, to the extent possible, explaining the basis for any omission. <p>(Question 1b of the ESMA UCITS Q&A).</p>	<p>→ Applies the timeline provided by ESMA.</p>	<p>For all business years ending on or after 18 March 2016, we recommend to include remuneration related information on a best effort basis and to closely follow all regulatory developments, in particular the publication of ESMA's guidelines on sound remuneration for further guidance.</p>

2. DEPOSITARY


2.1. DELIVERY OF AN UPDATED DEPOSITARY AGREEMENT

UCITS V requires that the depositary agreement include certain prescribed information. The timeline for the **delivery of a depositary agreement** in conformity with UCITS V may be summarised as follows:

Provision by UCITS V	ESMA Position	CSSF Position	Arendt Advice
<p>→ Appointment of a single depositary to occur as from 18 March 2016, and evidenced by a written agreement containing prescribed information as further set out in the delegated acts.</p> <p>(Art. 1 § 4 of UCITS V).</p>	<p>→ To be revised promptly in accordance with any transitional arrangements outlined in the delegated acts.</p> <p>(Question 1c of the ESMA UCITS Q&A).</p> <p>The level 2 measures as set out in the proposed delegated acts⁴ ("UCITS V Delegated Acts") provide for a transition period of 6 months.</p>	<p>→ Applies the timeline provided by ESMA.</p> <p>(CSSF press-release 16/10, section II).</p> <p> CSSF Circular 14/587 will enter into force on 18 March 2016 as currently drafted. In the event of conflicts between CSSF Circular 14/587 and Luxembourg UCITS V transposition law, the latter shall prevail.</p> <p>CSSF Circular 14/587 will be revised and the amended version will enter into force at the same time as the UCITS V Delegate Acts, i.e. September/October 2016</p> <p>(CSSF press-release 16/10, section III).</p>	<p>We recommend signing the depositary agreement before the end of the transition period for UCITS V Delegated Acts. Based on the information currently in our possession, it should be assumed that the UCITS V Delegated Acts will be published in the Official Journal of the European Union during course of March 2016. They will enter into force 20 days after publication. In light of the proposed transition period of 6 months, the depositary agreements will be required to be signed by September 2016 at the latest.</p> <p>We expect that the CSSF will not review the revised depositary agreements but instead request confirmation from the depositary that the content complies with UCITS V requirements.</p>

2.2. DELIVERY OF AN UPDATED PROSPECTUS

UCITS V requires that the prospectus include some prescribed information on the depositary. The timeline for **updating the prospectus** may be summarised as follows:

Provision by UCITS V	ESMA Position	CSSF Position	Arendt Advice
<p>→ To be updated as of 18 March 2016 (Art. 1 § 25 of UCITS V).</p>	<p>→ To be updated at the next occasion of revision of the prospectus for another purpose or in any event by 18 March 2017 at the latest. (Question 1a of the ESMA UCITS Q&A).</p>	<p>→ Applies the timeline provided by ESMA.</p> <p> Fast-track procedure: The CSSF will put in place a fast-track procedure for the approval of changes which are limited to (remuneration and) depositary aspects under UCITS V, whereby UCITS can include a reference to a website where a list of delegates and sub-delegates of the UCITS depositary is available.</p> <p>(CSSF press-release 16/10, section II).</p>	<p>We recommend drafting UCITS V compliant prospectus wordings as soon as the depositary agreement is finalised and advise that such wordings should be ready for the first subsequent revision of the prospectus.</p>

2.3. DELIVERY OF AN AUDITOR'S CONFIRMATION


CSSF Circular 14/587 relating to UCITS depositaries and UCITS requires under point i) of Annex II that the independent auditor shall report on the adequacy of the depositary's organisation (on an annual basis).

Provision by UCITS V	ESMA Position	CSSF Position	Arendt Advice
N/A	N/A	<p>For annual reports covering a business year</p> <ul style="list-style-type: none"> • ending before 18 March 2016: no update required. • ending on or after 18 March 2016: the auditor's report on the adequacy of the depositary's organisation will first have to be produced in relation to all full financial years that start after 18 March 2016, i.e. for the first time in 2017, or 2018 for UCITS with a financial year ending on 31 December. <p><i>(in application of point i) of Annex II of Circular 14/587 together with CSSF press-release 16/10, section II).</i></p>	<p>We recommend that depositaries ensure their compliance with CSSF Circular 14/587 as soon as possible as the review and update of internal processes and procedures may take some time.</p>

3. LUXEMBOURG UCIs

The Luxembourg UCITS V transposition law is expected to be adopted and to enter into force on or close to 18 March 2016. The bill of law⁵ aligns the depositary regime of UCIs established under Part II of the 2010 Law⁶ with the depositary regime for UCITS and thus introduces a single depositary regime applicable to all Part II UCIs. The UCITS V depositary regime shall be applicable to all Part II UCIs as defined under the Luxembourg UCITS V transposition law and their depositary banks as of the date of entry into force of the Luxembourg UCITS V transposition law.

The timeline for **updating the depositary agreement for UCIs** may be summarised as follows:

Provision by UCITS V	ESMA Position	CSSF Position	Arendt Advice
N/A	N/A	<p>→ UCITS V depositary regime to be applicable as of the entry into force of the Luxembourg UCITS V transposition law</p> <p>(CSSF press-release 16/10, section IV).</p> <p> Upon amendment of CSSF Circular 14/587, the CSSF will clarify to what extent the provisions of such Circular, as amended, are also applicable to Part II UCIs.</p> <p>(CSSF press-release 16/10, section IV).</p>	<p>We recommend that Part II UCIs with a Luxembourg AIFM (authorised or registered) appoint one single depositary as from 18 March 2016 and start with the review of the depositary agreements by aligning such agreements with the requirements set out in UCITS V and the UCITS V Delegated Acts, while closely following the developments regarding the forthcoming modification of CSSF Circular 14/587 and their possible impact on Part II UCIs.</p> <p>We recommend that Part II UCIs with a non-Lux AIFM wait for further clarification as to the scope of the extension of the UCITS V depositary regime before renegotiating their depositary agreement as the current draft Bill of law seems to only target Part II UCIs with a Lux AIFM.</p>

¹ Questions and Answers, Application of the UCITS Directive, 2016/ESMA/181, published 1 February 2016

² CSSF press release 16/10, Practical issues in relation to the UCITS V regime and depositary aspects in relation to part II UCIs, published on 2 March 2016

³ Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions

⁴ Commission Delegated Regulations (EU) [...] of 17 December 2015, supplementing Directive 2009/65/EC of the European Parliament and of the council with regard to obligations of depositaries, as submitted by the Commission on 17 December 2015 to the Council.

⁵ Bill of law no. 6845 transposing UCITS V in modifying the 2010 Law and the AIFM Law (*Projet de loi no 6845 portant transposition de la directive UCITS V et portant modification de la loi 2010 et la loi GFIA*).

⁶ Amended law of 17 December 2010 concerning undertakings for collective investment.



This publication is intended to provide information on recent legal developments and does not cover every aspect of the topics with which it deals. It was not designed to provide legal or other advice and it does not substitute for the consultation with legal counsel before any actual undertakings.

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