

Directive (EU) 2016/2341 of the European Parliament and of the Council
of 14 December 2016 on the activities and supervision of institutions for
occupational retirement provision (IORPs) (recast) (Text with EEA relevance)

TITLE I

GENERAL PROVISIONS

Article 11

Cross-border activities and procedures

1 Without prejudice to national social and labour law on the organisation of pension systems, including compulsory membership and the outcomes of collective bargaining agreements, Member States shall allow an IORP registered or authorised in their territories to carry out cross-border activity. Member States shall also allow undertakings located in their territories to sponsor IORPs which propose to or carry out cross-border activity.

2 An IORP proposing to carry out cross-border activity and to accept sponsorship from a sponsoring undertaking shall be subject to prior authorisation by the relevant competent authority of its home Member State.

3 An IORP shall notify its intention to carry out cross-border activity to the competent authority of the home Member State. Member States shall require IORPs to provide the following information when effecting the notification:

- a the name of the host Member State(s), which shall, where applicable, be identified by the sponsoring undertaking;
- b the name and the location of the main administration of the sponsoring undertaking;
- c the main characteristics of the pension scheme to be operated for the sponsoring undertaking.

4 Where the competent authority of the home Member State is notified under paragraph 3, and unless it has issued a reasoned decision that the administrative structure or the financial situation of the IORP or the good repute or professional qualifications or experience of the persons running the IORP are not compatible with the proposed cross-border activity, that competent authority shall within three months of receiving all the information referred to in paragraph 3 communicate that information to the competent authority of the host Member State and inform the IORP accordingly.

The reasoned decision referred to in the first subparagraph shall be issued within three months of receiving all the information referred to in paragraph 3.

5 Where the competent authority of the home Member State does not communicate the information referred to in paragraph 3 to the competent authority of the host Member State, it shall give the reasons for this to the IORP concerned within three months of receiving all that information. That non-communication of information shall be subject to a right of appeal to the courts in the home Member State.

6 IORPs carrying out cross-border activity shall be subject to the information requirements referred to in Title IV imposed by the host Member State in respect of the prospective members, members and beneficiaries which that cross-border activity concerns.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

7 Before the IORP starts to carry out a cross-border activity, the competent authority of the host Member State shall, within six weeks of receiving the information referred to in paragraph 3, inform the competent authority of the home Member State, of the requirements of social and labour law relevant to the field of occupational pension schemes under which the pension scheme sponsored by an undertaking in the host Member State must be operated and of the information requirements of the host Member State referred to in Title IV which shall apply to the cross-border activity. The competent authority of the home Member State shall communicate this information to the IORP.

8 On receiving the communication referred to in paragraph 7, or if no communication is received from the competent authority of the home Member State on expiry of the period provided for in paragraph 7, the IORP may start to carry out a cross-border activity in accordance with the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes and with the host Member State's information requirements as referred to in paragraph 7.

9 The competent authority of the host Member State shall inform the competent authority of the home Member State of any significant change in the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes which may affect the characteristics of the pension scheme insofar as it concerns the cross-border activity, and any significant change in the host Member State's information requirements as referred to in paragraph 7. The competent authority of the home Member State shall communicate that information to the IORP.

10 The IORP shall be subject to on-going supervision by the competent authority of the host Member State as to the compliance of its activities with the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes and of the host Member State's information requirements as referred to in paragraph 7. Should this supervision bring irregularities to light, the competent authority of the host Member State shall inform the competent authority of the home Member State immediately. The competent authority of the home Member State shall, in coordination with the competent authority of the host Member State, take the necessary measures to ensure that the IORP puts a stop to the detected breach.

11 If, despite the measures taken by the competent authority of the home Member State or because appropriate measures are lacking in the home Member State, the IORP persists in breaching the applicable provisions of the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes or the host Member State's information requirements as referred to in paragraph 7, the competent authority of the host Member State may, after informing the competent authority of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, insofar as is strictly necessary, preventing the IORP from operating in the host Member State for the sponsoring undertaking.