

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 12

Cross-border transfers

1 Member States shall allow IORPs registered or authorised in their territories to transfer all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a receiving IORP.

2 Member States shall ensure that the costs of the transfer are not incurred by the remaining members and beneficiaries of the transferring IORP or by the incumbent members and beneficiaries of the receiving IORP.

3 The transfer shall be subject to prior approval by:

- a a majority of members and a majority of the beneficiaries concerned or, where applicable, by a majority of their representatives. The majority shall be defined in accordance with national law. The information on the conditions of the transfer shall be made available to the members and beneficiaries concerned and, where applicable, to their representatives, in a timely manner by the transferring IORP before the application referred to in paragraph 4 is submitted; and
- b the sponsoring undertaking, where applicable.

4 The transfer of all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, between transferring and receiving IORPs shall be subject to authorisation by the competent authority of the home Member State of the receiving IORP after obtaining the prior consent of the competent authority of the home Member State of the transferring IORP. The application for authorisation of the transfer shall be submitted by the receiving IORP. The competent authority of the home Member State of the receiving IORP shall grant or refuse the authorisation and communicate its decision to the receiving IORP within three months of receipt of the application.

5 The application for the authorisation of transfer referred to in paragraph 4 shall contain the following information:

- a the written agreement between the transferring and the receiving IORPs setting out the conditions of the transfer;
- b a description of the main characteristics of the pension scheme;
- c a description of the liabilities or technical provisions to be transferred, and other obligations and rights, as well as corresponding assets or cash equivalent thereof;
- d the names and the locations of the main administrations of the transferring and the receiving IORPs and the Member States in which each IORP is registered or authorised;
- e the location of the main administration of the sponsoring undertaking and the name of the sponsoring undertaking;

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- f evidence of the prior approval in accordance with paragraph 3;
- g where applicable, the names of the Member States whose social and labour law relevant to the field of occupational pension schemes is applicable to the pension scheme concerned.

6 The competent authority of the home Member State of the receiving IORP shall forward the application referred to in paragraph 4 to the competent authority of the transferring IORP, without delay following its receipt.

7 The competent authority of the home Member State of the receiving IORP shall only assess whether:

- a all the information referred to in paragraph 5 has been provided by the receiving IORP;
- b the administrative structure, the financial situation of the receiving IORP and the good repute or professional qualifications or experience of the persons running the receiving IORP are compatible with the proposed transfer;
- c the long term interests of the members and beneficiaries of the receiving IORP and the transferred part of the scheme are adequately protected during and after the transfer;
- d the technical provisions of the receiving IORP are fully funded at the date of the transfer, where the transfer results in a cross-border activity; and
- e the assets to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred, in accordance with applicable rules in the home Member State of the receiving IORP.

8 The competent authority of the home Member State of the transferring IORP shall only assess whether:

- a in the case of a partial transfer of the pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, the long term interests of the members and beneficiaries of the remaining part of the scheme are adequately protected;
- b the individual entitlements of the members and beneficiaries are at least the same after the transfer;
- c the assets corresponding to the pension scheme to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred, in accordance with the applicable rules in the home Member State of the transferring IORP.

9 The competent authority of the home Member State of the transferring IORP shall communicate the results of the assessment referred to in paragraph 8 within eight weeks of receipt of the application referred to in paragraph 6 in order to allow the competent authority of the home Member State of the receiving IORP to take a decision in accordance with paragraph 4.

10 Where the authorisation is refused, the competent authority of the home Member State of the receiving IORP shall provide the reasoning for such refusal within the three month period referred to in paragraph 4. That refusal, or a failure to act by the competent authority of the home Member State of the receiving IORP shall be subject to a right of appeal to the courts in the home Member State of the receiving IORP.

11 The competent authority of the home Member State of the receiving IORP shall inform the competent authority of the home Member State of the transferring IORP of the decision referred to in paragraph 4, within two weeks of taking that decision.

Where the transfer results in a cross-border activity, the competent authority of the home Member State of the transferring IORP shall also inform the competent authority of the home Member State of the receiving IORP of the requirements of social and labour law

relevant to the field of occupational pension schemes under which the pension scheme 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. This shall be communicated within a further four weeks.

The competent authority of the home Member State of the receiving IORP shall communicate this information to the receiving IORP within one week of its receipt.

12 Upon receipt of a decision to grant an authorisation as referred to in paragraph 4, or if no information on the decision is received from the competent authority of the home Member State of the receiving IORP on expiry of the period referred to in the third subparagraph of paragraph 11, the receiving IORP may start to operate the pension scheme.

13 In the case of a disagreement about the procedure or content of an action or inaction of the competent authority of the home Member State of the transferring or receiving IORP, including a decision to authorise or refuse a cross-border transfer, EIOPA may carry out non-binding mediation in accordance with point (c) of the second paragraph of Article 31 of Regulation (EU) No 1094/2010 upon request of either of the competent authorities or on its own initiative.

14 Where the receiving IORP carries out a cross-border activity, Article 11(9), (10) and (11) shall apply.