

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 II

QUANTITATIVE REQUIREMENTS

Article 19

Investment rules

1 Member States shall require IORPs registered or authorised in their territories to invest in accordance with the ‘prudent person’ rule and in particular in accordance with the following rules:

- a the assets shall be invested in the best long-term interests of members and beneficiaries as a whole. In the case of a potential conflict of interest, an IORP, or the entity which manages its portfolio, shall ensure that the investment is made in the sole interest of members and beneficiaries;
- b within the prudent person rule, Member States shall allow IORPs to take into account the potential long-term impact of investment decisions on environmental, social, and governance factors;
- c the assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
- d the assets shall be predominantly invested on regulated markets. Investment in assets which are not admitted to trading on a regulated financial market must in any event be kept to prudent levels;
- e investment in derivative instruments shall be possible insofar as such instruments contribute to a reduction in investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of an IORP's assets. IORPs shall also avoid excessive risk exposure to a single counterparty and to other derivative operations;
- f the assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole.

Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose an IORP to excessive risk concentration;

- g investment in the sponsoring undertaking shall be no more than 5 % of the portfolio as a whole and, when the sponsoring undertaking belongs to a group, investment in the undertakings belonging to the same group as the sponsoring undertaking shall not be more than 10 % of the portfolio.

Where an IORP is sponsored by a number of undertakings, investment in those sponsoring undertakings shall be made prudently, taking into account the need for proper diversification.

Member States may decide not to apply the requirements referred to in points (f) and (g) to investment in government bonds.

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2 Taking into account the size, nature, scale and complexity of the activities of the IORPs supervised, Member States shall ensure that the competent authorities monitor the adequacy of the IORPs' credit assessment processes, assess the use of references to credit ratings issued by credit rating agencies as defined in point (b) of Article 3(1) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council⁽¹⁾, in their investment policies and, where appropriate, encourage mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on such credit ratings.

3 The home Member State shall prohibit IORPs from borrowing or acting as a guarantor on behalf of third parties. However, Member States may authorise IORPs to carry out some borrowing only for liquidity purposes and on a temporary basis.

4 Member States shall not require IORPs registered or authorised in their territory to invest in particular categories of assets.

5 Without prejudice to Article 30, Member States shall not subject the investment decisions of an IORP registered or authorised in their territory or its investment manager to any kind of prior approval or systematic notification requirements.

6 In accordance with the provisions of paragraphs 1 to 5, Member States may, for the IORPs registered or authorised in their territories, lay down more detailed rules, including quantitative rules, provided they are prudentially justified, to reflect the total range of pension schemes operated by those IORPs.

However, Member States shall not prevent IORPs from:

- a investing up to 70 % of the assets covering the technical provisions or of the whole portfolio for schemes in which the members bear the investment risks in shares, negotiable securities treated as shares and corporate bonds admitted to trading on regulated markets, or through MTFs or OTFs, and deciding on the relative weight of those securities in their investment portfolio. However, provided that it is prudentially justified, Member States may apply a lower limit of no lower than 35 % to IORPs which operate pension schemes with a long-term interest rate guarantee, bear the investment risk and themselves provide for the guarantee;
- b investing up to 30 % of the assets covering technical provisions in assets denominated in currencies other than those in which the liabilities are expressed;
- c investing in instruments that have a long-term investment horizon and are not traded on regulated markets, MTFs or OTFs;
- d investing in instruments that are issued or guaranteed by the EIB provided in the framework of the European Fund for Strategic Investments, European Long-term Investment Funds, European Social Entrepreneurship Funds and European Venture Capital Funds.

7 Paragraph 6 shall not preclude the right for Member States to require the application to IORPs registered or authorised in their territory of more stringent investment rules also on an individual basis provided they are prudentially justified, in particular in light of the liabilities entered into by the IORP.

8 The competent authority of the host Member State of an IORP carrying out cross-border activity as referred to in Article 11 shall not lay down investment rules in addition to those set out in paragraphs 1 to 6 for the part of the assets which cover technical provisions for cross-border activity.

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- (1) Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies ([OJ L 302, 17.11.2009, p. 1](#)).