

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 III

CONDITIONS GOVERNING ACTIVITIES

CHAPTER 3

Depository

Article 34

Safekeeping of assets and depository liability

1 Where the assets of an IORP relating to a pension scheme consisting of financial instruments which can be held in custody are entrusted to a depository for safekeeping, the depository shall hold in custody all financial instruments which can be registered in a financial instruments account opened in the depository's books and all financial instruments which can be physically delivered to the depository.

For those purposes, the depository shall ensure that the financial instruments which can be registered in a financial instruments account opened in the depository's books are registered in the depository's books within segregated accounts in accordance with the rules laid down in Directive 2014/65/EU, opened in the name of the IORP, so that they can be clearly identified as belonging to the IORP or the pension scheme's members and beneficiaries at all times.

2 Where the assets of an IORP relating to a pension scheme consist of other assets than those referred to in paragraph 1, the depository shall verify that the IORP is the owner of the assets and shall maintain a record of those assets. The verification shall be carried out on the basis of information or documents provided by the IORP and, where available, on the basis of external evidence. The depository shall keep its record up-to-date.

3 Member States shall ensure that a depository is liable to the IORP and the members and beneficiaries for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.

4 Member States shall ensure that a depository's liability, as referred to in paragraph 3, shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

5 Where no depository is appointed for the safe-keeping of assets, IORPs shall, at least be required to:

- a ensure that financial instruments are subject to due care and protection;
- b keep records that enable the IORP to identify all assets at all times and without delay;
- c take the necessary measures to avoid conflicts of interest in relation to the safe-keeping of assets;

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- d inform the competent authorities, upon request, about the manner in which assets are kept.