

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)

DIRECTIVE (EU) 2016/2341 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

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on the activities and supervision of institutions
for occupational retirement provision (IORPs)

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article
53, Article 62 and Article 114(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Acting in accordance with the ordinary legislative procedure⁽²⁾,

Whereas:

- (1) Directive 2003/41/EC of the European Parliament and of the Council⁽³⁾ has been substantially amended several times⁽⁴⁾. Since further amendments are to be made, that Directive should be recast in the interests of clarity.
- (2) In the internal market, institutions for occupational retirement provision (IORPs) should have the possibility to operate in other Member States while ensuring a high level of protection and security for members and beneficiaries of occupational pension schemes.
- (3) This Directive is aimed at minimum harmonisation and therefore should not preclude Member States from maintaining or introducing further provisions in order to protect members and beneficiaries of occupational pension schemes, provided that such provisions are consistent with Member States' obligations under Union law. This Directive does not concern issues of national social, labour, tax or contract law, or the adequacy of pension provision in Member States.
- (4) In order to facilitate further the mobility of workers between Member States, this Directive aims to ensure good governance, the provision of information to scheme members and the transparency and safety of occupational retirement provision.
- (5) The way in which IORPs are organised and regulated varies significantly between Member States. Both IORPs and life insurance undertakings manage occupational

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pension schemes. It is not appropriate, therefore, to adopt a ‘one-size-fits-all’ approach to IORPs. The Commission and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁽⁵⁾ should have regard to the various traditions of Member States in their activities and should act without prejudice to national social and labour law in determining the organisation of IORPs.

- (6) Directive 2003/41/EC represented a first legislative step on the way to an internal market for occupational retirement provision organised on a Union scale. A genuine internal market for occupational retirement provision remains crucial for economic growth and job creation in the Union and for tackling the challenge of an ageing society. That Directive, dating from 2003, has not been substantially amended to introduce a modern risk-based governance system for IORPs. Appropriate regulation and supervision at Union and national level remain important for the development of safe and secure occupational retirement provision across all Member States.
- (7) As a general principle, IORPs should, where relevant, take into account the objective of ensuring the intergenerational balance of occupational pension schemes, by aiming to have an equitable spread of risks and benefits between generations in occupational retirement provision.
- (8) Appropriate action is needed to further improve complementary private retirement savings such as occupational pension schemes. This is important since social security systems are coming under increasing pressure, which means that occupational retirement pensions are increasingly relied on to complement other retirement provisions. IORPs play an important role in the long-term financing of the Union's economy and in the provision of secure retirement benefits. They are a vital part of the Union economy, holding assets worth EUR 2,5 trillion on behalf of around 75 million members and beneficiaries. Occupational retirement pensions should be improved, without, however, calling into question the major importance of social security pension systems in terms of secure, durable and effective social protection, which should guarantee a decent standard of living in old age and should therefore be at the centre of the objective of strengthening the European social models.
- (9) In light of demographic developments in the Union and the situation regarding national budgets, occupational retirement provision is a valuable addition to social security pension systems. A resilient pension system includes a diverse product range, a diversity of institutions as well as effective and efficient supervisory practices.
- (10) Member States should protect workers from old-age poverty and promote supplementary pension schemes linked to employment contracts as additional coverage to public pensions.
- (11) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data, the freedom to conduct a business, the right to property, the right of collective bargaining and action and the right to a high level of consumer protection, in particular by ensuring a higher level of transparency of retirement provisioning, informed personal financial and retirement planning as well as

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facilitating the cross-border activity of IORPs and the cross-border transfer of pension schemes. This Directive is to be implemented in accordance with those rights and principles.

- (12) In particular, facilitating the cross-border activity of IORPs and the cross-border transfer of pension schemes by clarifying the relevant procedures and removing unnecessary obstacles could have a positive impact on the undertakings concerned and their employees, in whichever Member State they work, through the centralisation of the management of the retirement services provided.
- (13) The cross-border activity of IORPs should be without prejudice to national social and labour law, relevant to the field of occupational pension schemes of the host Member State, applicable to the relationship between the undertaking offering the pension scheme ('sponsoring undertaking') and members and beneficiaries. Cross-border activity and the cross-border transfer of pension schemes are distinct and should be governed by different provisions. If a cross-border transfer of a pension scheme leads to cross-border activity, the provisions on cross-border activity should then apply.
- (14) Where the sponsoring undertaking and the IORP are located in the same Member State, the mere fact that members or beneficiaries of a pension scheme have their residence in another Member State does not in itself constitute a cross-border activity.
- (15) Member States should take into account the need to protect the pension rights of workers temporarily sent to work in another Member State.
- (16) Despite the entry into force of Directive 2003/41/EC, cross-border activity has been limited due to the differences in national social and labour law. Furthermore, important prudential barriers remain which make it more expensive for IORPs to operate pension schemes across borders. In addition, the current minimum level of protection for members and beneficiaries needs to be improved. This is all the more important as longevity and market risks are increasingly borne by members and beneficiaries rather than the IORP or the sponsoring undertaking. In addition, the current minimum level of information provision to members and beneficiaries needs to be increased.
- (17) The prudential rules laid down in this Directive are intended both to guarantee a high degree of security for all future pensioners through the imposition of stringent supervisory standards, and to clear the way for the sound, prudent and efficient management of occupational pension schemes.
- (18) IORPs should be completely separated from any sponsoring undertaking and operate on a funded basis for the purpose of providing retirement benefits. IORPs which operate for that sole purpose should have the freedom to provide services and freedom of investment, subject only to coordinated prudential requirements, regardless of whether such IORPs are considered to be legal entities.
- (19) In accordance with the principle of subsidiarity, Member States should retain full responsibility for the organisation of their pension systems as well as for the decision on the role of each of the three pillars of the retirement system in individual Member States. In the context of the second pillar, they should also retain full responsibility for the role and functions of the various institutions providing occupational retirement benefits,

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such as industry-wide pension funds, company pension funds and life insurance undertakings. This Directive is not intended to call this prerogative of Member States into question, but rather encourage them to build up adequate, safe and sustainable occupational retirement provision and facilitate cross-border activity.

- (20) Taking into account the need to further improve occupational retirement provision, the Commission should provide significant added value at Union level by undertaking further steps in supporting Member States' cooperation with social partners in the improvement of second pillar pension schemes and by establishing a high level group of experts to enhance second pillar retirement savings in Member States, including the promotion of the exchange of best practices between Member States, in particular with regard to cross-border activity.
- (21) National rules concerning the participation of self-employed persons in IORPs differ. In some Member States, IORPs can operate on the basis of agreements with trade groups whose members act in a self-employed capacity or directly with self-employed and employed persons. In some Member States, a self-employed person can also become a member of an IORP where the self-employed person acts as employer or provides professional services to an undertaking. In some Member States, self-employed persons cannot join an IORP unless certain requirements, including those imposed by social and labour law, are met.
- (22) Institutions operating social security schemes which are already coordinated at Union level, should be excluded from the scope of this Directive. Account should nevertheless be taken of the specificity of IORPs which, in a single Member State, operate both social security schemes and occupational pension schemes.
- (23) Institutions operating on the principle of capital financing as part of mandatory social security schemes are not covered by this Directive.
- (24) Financial institutions which already benefit from a Union legislative framework should in general be excluded from the scope of this Directive. However, as such institutions may also in some cases offer occupational pension services, it is important to ensure that this Directive does not lead to distortions of competition. Such distortions can be avoided by applying the prudential requirements of this Directive to the occupational pension business of life insurance undertakings in accordance with point (a)(i) to (iii) of Article 2(3) and point (b)(ii) to (iv) of Article 2(3) of Directive 2009/138/EC of the European Parliament and of the Council⁽⁶⁾. The Commission should also carefully monitor the situation in the occupational pensions market and assess the possibility of extending the optional application of this Directive to other regulated financial institutions.
- (25) Since IORPs aim to ensure financial security in retirement, the retirement benefits paid by them should generally take the form of payments for life, payments to be made for a temporary period, lump sum payments, or any combination thereof.
- (26) It is important to ensure that older and disabled people are not placed at risk of poverty and can enjoy a decent standard of living. Appropriate cover for biometric risks in occupational pension arrangements is an important aspect of the fight against poverty

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and insecurity among elderly people. When setting up a pension scheme, employers and employees, or their respective representatives, should consider the possibility of the pension scheme including provisions for the coverage of the longevity risk and occupational disability risks as well as provision for surviving dependants.

- (27) Giving Member States the possibility to exclude from the scope of national implementing law IORPs which operate pension schemes which together have less than 100 members in total can facilitate supervision in those Member States, without undermining the proper functioning of the internal market in this field. However, this should not undermine the right of such IORPs to appoint investment managers established and duly authorised in another Member State for the management of their investment portfolio, and custodians or depositaries established and duly authorised in another Member State for the custody of their assets. In any event, Member States should apply certain provisions concerning investment rules and the system of governance to IORPs which operate pension schemes which together have more than 15 members in total.
- (28) Institutions such as ‘Unterstützungskassen’ in Germany, where the members have no legal rights to benefits of a certain amount and where their interests are protected by a compulsory statutory insolvency insurance, should be excluded from the scope of the Directive.
- (29) In order to protect members and beneficiaries, IORPs should limit their activities to those referred to in this Directive and to those arising therefrom.
- (30) In the event of the bankruptcy of a sponsoring undertaking, members face the risk of losing both their jobs and their acquired pension rights. This makes it necessary to ensure that there is a clear separation between the sponsoring undertaking and the IORP and that minimum prudential standards are laid down to protect members. Access of IORPs to pension protection schemes or similar mechanisms which protect the accrued individual entitlements of members and beneficiaries against the risk of default of the sponsoring undertaking should be taken into account when such standards are laid down.
- (31) The operation and supervision of IORPs differ significantly between Member States. In some Member States, supervision can be exercised not only over the IORP itself but also over the entities or companies which are authorised to manage such IORPs. Member States should be able to take such specificity into account as long as all the requirements laid down in this Directive are effectively met. Member States should also be able to allow insurance entities and other financial entities to manage IORPs.
- (32) IORPs are pension institutions with a social purpose that provide financial services. They are responsible for the provision of occupational retirement benefits and should therefore meet certain minimum prudential standards with respect to their activities and conditions of operation, taking into account national rules and traditions. However, such institutions should not be treated as purely financial service providers. Their social function and the triangular relationship between the employee, the employer and the IORP should be adequately acknowledged and supported as guiding principles of this Directive.

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- (33) Where, in accordance with national law, IORPs manage pension funds that have no legal personality and consist of pension schemes of individual members whose assets are separated from the assets of the IORPs, it should be possible for Member States to consider each pension fund as a single pension scheme within the meaning of this Directive.
- (34) The huge number of IORPs in certain Member States means a pragmatic solution is necessary as regards prior authorisation of IORPs. However, if an IORP wishes to manage a scheme in another Member State, a prior authorisation granted by the competent authority of the home Member State should be required.
- (35) Without prejudice to national social and labour law on the organisation of pension systems, including compulsory membership and the outcomes of collective bargaining agreements, IORPs should have the possibility of providing their services in other Member States upon receipt of the authorisation from the competent authority of the IORP's home Member State. IORPs should be allowed to accept sponsorship from undertakings located in any Member State and to operate pension schemes with members in more than one Member State. This would potentially lead to significant economies of scale for such IORPs, improve the competitiveness of Union industry and facilitate labour mobility.
- (36) The exercise of the right of an IORP established in one Member State to manage an occupational pension scheme contracted in another Member State should fully respect the provisions of the social and labour law in force in the host Member State insofar as it is relevant to occupational pension schemes, for example the definition and payment of retirement benefits and the conditions for transferability of pension rights. The scope of prudential rules should be clarified in order to ensure legal certainty for the cross-border activities of IORPs.
- (37) IORPs should be able to transfer pension schemes to other IORPs across borders within the Union in order to facilitate the organisation of occupational retirement provision on a Union scale. Transfers should be subject to authorisation by the competent authority in the home Member State of the receiving IORP after that competent authority has received the consent of the competent authority of the home Member State of the IORP transferring the pension scheme. The transfer and its conditions should be subject to prior approval by a majority of the members and a majority of the beneficiaries concerned or where applicable, by a majority of their representatives, such as the trustees of a trust-based scheme.
- (38) In the case of a transfer of part of a pension scheme, the viability of both the transferred part and the remaining part of the pension scheme should be ensured and the rights of all members and beneficiaries should be adequately protected after the transfer, by requiring both the transferring and the receiving IORPs to have sufficient and appropriate assets to cover the technical provisions for the transferred part and the remaining part of the scheme.
- (39) In order to facilitate the coordination of supervisory practices, EIOPA can request information from the competent authorities in accordance with the powers conferred on

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it by Regulation (EU) No 1094/2010. Furthermore, in the event of a whole or partial cross-border transfer of a pension scheme, where there is a disagreement between the competent authorities concerned, it should be possible for EIOPA to carry out mediation.

- (40) A prudent calculation of technical provisions is an essential condition to ensure that obligations to pay retirement benefits can be met both in the short and the long term. Technical provisions should be calculated on the basis of recognised actuarial methods and certified by an actuary or by another specialist in that field. The maximum interest rates should be chosen prudently according to any relevant national rules. The minimum amount of technical provisions should both be sufficient for benefits already in payment to beneficiaries to continue to be paid and reflect the commitments that arise out of members' accrued pension rights. The actuarial function should be carried out by persons who have knowledge of actuarial and financial mathematics commensurate with the size, nature, scale and complexity of the risks inherent in the activities of the IORP, and who are able to demonstrate their relevant experience with applicable professional qualifications or other standards.
- (41) Risks covered by IORPs vary significantly from one Member State to another. Home Member States should therefore have the possibility of making the calculation of technical provisions subject to additional and more detailed rules than those laid down in this Directive.
- (42) Sufficient and appropriate assets to cover the technical provisions should be required to protect the interests of members and beneficiaries of the pension scheme if the sponsoring undertaking becomes insolvent.
- (43) In order to promote a level playing field between domestic and cross-border IORPs, Member States should take into consideration the funding requirements for both domestic and cross-border IORPs.
- (44) In many cases, it could be the sponsoring undertaking and not the IORP itself that either covers any biometric risk or guarantees certain benefits or investment performance. However, in some cases, it is the IORP itself which provides such cover or guarantees and the sponsor's obligations are generally exhausted by paying the necessary contributions. In those circumstances, the IORP concerned should hold own funds based on the value of technical provisions and risk capital.
- (45) IORPs are very long-term investors. Redemption of the assets held by IORPs cannot, in general, be made for any purpose other than providing retirement benefits. Furthermore, in order to protect adequately the rights of members and beneficiaries, IORPs should be able to opt for an asset allocation that suits the precise nature and duration of their liabilities. Therefore, efficient supervision is required as well as an approach to investment rules that allows IORPs sufficient flexibility to decide on the most secure and efficient investment policy and obliges them to act prudently. Compliance with the prudent person rule therefore requires an investment policy geared to the membership structure of the individual IORP.

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- (46) By setting the prudent person rule as the underlying principle for capital investment and making it possible for IORPs to operate across borders, the redirection of savings into the sector of occupational retirement provision is encouraged, thereby contributing to economic and social progress.
- (47) Supervisory methods and practices vary among Member States. Therefore, Member States should be given some discretion on the precise investment rules that they wish to impose on IORPs located in their territories. However, those rules should not restrict the free movement of capital, unless justified on prudential grounds.
- (48) This Directive should ensure an appropriate level of investment freedom for IORPs. As very long-term investors with low liquidity risks, IORPs are in a position to invest in non-liquid assets such as shares and in other instruments that have a long-term economic profile and are not traded on regulated markets, multilateral trading facilities (MTFs) or organised trading facilities (OTFs) within prudent limits. They can also benefit from the advantages of international diversification. Investments in shares in currencies other than those of the liabilities and in other instruments that have a long-term economic profile and are not traded on regulated markets, MTFs or OTFs should therefore not be restricted, in line with the prudent person rule so as to protect the interest of members and beneficiaries, except on prudential grounds.
- (49) The understanding of what constitutes instruments with a long-term economic profile is broad. Such instruments are non-transferable securities and therefore do not have access to the liquidity of secondary markets. They often require fixed term commitments which restrict their marketability and should be understood to include participation and debt instruments in, and loans provided to, non-listed undertakings. Non-listed undertakings include infrastructure projects, unlisted companies seeking growth, real estate or other assets that could be suitable for long term investment purposes. Low carbon and climate resilient infrastructure projects are often non-listed assets and rely on long term credits for project financing.
- (50) IORPs should be allowed to invest in other Member States in accordance with the rules of their home Member States in order to reduce the cost of cross-border activity. Therefore, the host Member States should not be allowed to impose additional investment requirements on IORPs located in other Member States.
- (51) Individuals need to have a clear overview of their accrued pension rights stemming from statutory and occupational pension schemes, in particular where such rights are accrued in more than one Member State. That overview could be achieved through the establishment of pension tracking services across the Union, similar to those that have already been set up in some Member States following the Commission's White Paper of 16 February 2012 entitled 'An Agenda for Adequate, Safe and Sustainable Pensions', which promotes the development of such services.
- (52) Some risks cannot be reduced through quantitative requirements reflected in the technical provisions and funding requirements but can only be properly addressed through governance requirements. Ensuring an effective system of governance is therefore essential for the adequate management of risk and the protection of members

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and beneficiaries. Such systems should be proportionate to the size, nature, scale and complexity of the activities of the IORP.

- (53) Remuneration policies which encourage excessive risk-taking behaviour can undermine the sound and effective risk management of IORPs. Principles and disclosure requirements for remuneration policies applicable to other financial institutions in the Union should also be made applicable to IORPs, bearing in mind, however, the particular governance structure of IORPs in comparison to other financial institutions and the need to take account of the size, nature, scale and complexity of the activities of IORPs.
- (54) A key function is a capacity to undertake particular governance tasks. IORPs should have sufficient capacity to have a risk-management function, an internal audit function and, where applicable, an actuarial function. Unless otherwise specified in this Directive, the identification of a particular key function should not prevent an IORP from freely deciding how to organise that key function in practice. This should not lead to unduly burdensome requirements because account should be taken of the size, nature, scale and complexity of the activities of the IORP.
- (55) Persons who effectively run an IORP should collectively be fit and proper and persons who carry out key functions should have adequate knowledge and experience and, where applicable, adequate professional qualifications. However, only holders of the key functions should be subject to notification requirements to the competent authority.
- (56) With the exception of the internal audit function, it should be possible for a single person or organisational unit to carry out more than one key function. However, the person or organisational unit performing a key function should be different from the one performing a similar key function in the sponsoring undertaking. Member States should be able to allow the IORP to carry out key functions through the same single person or organisational unit as the sponsoring undertaking, provided that the IORP explains how it prevents or manages any conflict of interest with the sponsoring undertaking.
- (57) It is essential that IORPs improve their risk management while taking into account the aim of having an equitable spread of risks and benefits between generations in occupational retirement provision, so that potential vulnerabilities in relation to the sustainability of pension schemes can be properly understood and discussed with the relevant competent authorities. IORPs should, as part of their risk management system, produce a risk assessment for their activities relating to pensions. That risk assessment should also be made available to the competent authorities and should, where relevant, include, inter alia, risks related to climate change, use of resources, the environment, social risks, and risks related to the depreciation of assets due to regulatory change ('stranded assets').
- (58) Environmental, social and governance factors, as referred to in the United Nations-supported Principles for Responsible Investment, are important for the investment policy and risk management systems of IORPs. Member States should require IORPs to explicitly disclose where such factors are considered in investment decisions and how they form part of their risk management system. The relevance and materiality of environmental, social and governance factors to a scheme's investments and how such

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factors are taken into account should be part of the information provided by an IORP under this Directive. This does not preclude an IORP from satisfying the requirement by stating in such information that environmental, social and governance factors are not considered in its investment policy or that the costs of a system to monitor the relevance and materiality of such factors and how they are taken into account are disproportionate to the size, nature, scale and complexity of its activities.

- (59) Each Member State should require that every IORP located in its territory draw up annual accounts and annual reports taking into account each pension scheme operated by the IORP and, where applicable, annual accounts and annual reports for each pension scheme. The annual accounts and annual reports, reflecting a true and fair view of the IORP's assets, liabilities and financial position, taking into account each pension scheme operated by an IORP, and duly approved by an authorised person, are an essential source of information for members and beneficiaries of a scheme and the competent authorities. In particular, they enable the competent authorities to monitor the financial soundness of an IORP and assess whether the IORP is able to meet all its contractual obligations. Annual accounts and annual reports should be publicly disclosed on a website, where possible, or by other means such as making copies available upon request.
- (60) The investment policy of an IORP is a decisive factor for both the security and the long-term economic sustainability of occupational pension schemes. IORPs should therefore draw up and, at least every three years, review a statement of investment principles. Such statement should be made available to the competent authorities and, on request, also to members and beneficiaries of each pension scheme.
- (61) IORPs should be allowed to entrust any activity, including key functions, in whole or in part, to service providers operating on their behalf. IORPs should remain fully responsible for discharging all of their obligations under this Directive when they outsource key functions or any other activities. IORPs should enter into a written agreement with the service provider when outsourcing any activity. For the purposes of this Directive, this does not include agreements for operational type services for example, for security or maintenance personnel.
- (62) It should be possible for Member States to require the appointment of a depositary in relation to the safe-keeping of the assets of IORPs.
- (63) Taking into account the nature of the pension scheme established and the administrative burden involved, IORPs should provide clear and adequate information to prospective members, members and beneficiaries to support their decision-making about their retirement and ensure a high level of transparency throughout the various phases of a scheme comprising pre-enrolment, membership (including pre-retirement) and post-retirement. In particular, information concerning accrued pension entitlements, projected levels of retirement benefits, risks and guarantees, and costs should be given. Where projected levels of retirement benefits are based on economic scenarios, that information should also include an unfavourable scenario, which should be extreme but plausible. Where members bear an investment risk, additional information on the investment profile, any available options and past performance are also crucial.

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Information should be adequate to the needs of the user and should take into account the United Nations Convention on the Rights of Persons with Disabilities, in particular as regards accessibility and access to information, as provided for in Articles 3 and 21 thereof respectively. Member States can choose to further specify by whom the information to be given to prospective members, members and beneficiaries can be provided including through pension tracking services.

- (64) Given the specificities of schemes providing a given level of benefits, such benefits are, except under extreme circumstances, not affected by past performance nor by cost structure. Information thereon should therefore be provided only with respect to schemes where members bear investment risk or can take investment decisions.
- (65) Before joining a scheme, prospective members should be given all the necessary information to make an informed choice. Where prospective members do not have a choice and are automatically enrolled in a pension scheme, the IORP should provide them with the key relevant information about their membership promptly after enrolment.
- (66) For members, IORPs should draw up a Pension Benefit Statement containing key personal and generic information about the pension scheme. The Pension Benefit Statement should be clear and comprehensive and should contain relevant and appropriate information to facilitate the understanding of pension entitlements over time and across schemes and serve labour mobility.
- (67) IORPs should inform members sufficiently in advance before retirement about their pay-out options. Where the retirement benefit is not paid out as a lifetime annuity, members approaching retirement should receive information about the benefit payment products available, in order to facilitate financial planning for retirement.
- (68) During the phase when retirement benefits are paid, beneficiaries should continue to receive information on their benefits and corresponding pay-out options. This is particularly important when a significant level of investment risk is borne by beneficiaries in the pay-out phase. Beneficiaries should also be informed of any reduction in the level of benefits due, prior to the application of any such reduction, after a decision which will result in a reduction has been taken. As a matter of best practice, IORPs are recommended to consult beneficiaries in advance of any such decision.
- (69) The competent authority should exercise its powers having as its prime objectives the protection of the rights of members and beneficiaries and the stability and soundness of IORPs.
- (70) The scope of prudential supervision differs between Member States. This can cause problems where an IORP needs to comply with the prudential regulation of its home Member State whilst simultaneously complying with the social and labour law of its host Member State. Clarifying which areas are considered to be part of prudential supervision for the purpose of this Directive reduces legal uncertainty and the associated transaction costs.
- (71) An internal market for IORPs requires mutual recognition of prudential standards. An IORP's adherence to those standards should be supervised by the competent authorities

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of the IORP's home Member State. Member States should assign to competent authorities the necessary powers to use preventive or corrective measures if an IORP breaches any of the requirements of this Directive.

- (72) In order to ensure effective supervision of outsourced activities, including all subsequent re-outsourcing activities, it is essential that the competent authorities have access to all relevant data held by the service providers to whom activities have been outsourced, regardless of whether the latter is a regulated or unregulated entity, and have the right to conduct on-site inspections. In order to take account of market developments and to ensure continuous compliance with the conditions for outsourcing, competent authorities should have the necessary powers to request information from IORPs and service providers about any outsourced activities.
- (73) Provision should be made for exchanges of information between the competent authorities, other authorities and bodies tasked with strengthening of financial stability and the termination of pension schemes. It is therefore necessary to specify the conditions under which those exchanges of information should be possible. Moreover, where information may be disclosed only with the express agreement of the competent authorities, those authorities should be able, where appropriate, to make their agreement subject to compliance with strict conditions.
- (74) Any processing of personal data carried out pursuant to this Directive, such as the exchange or transmission of personal data by the competent authorities, should be in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council⁽⁷⁾, and any exchange or transmission of information by the European Supervisory Authorities pursuant to this Directive should be in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council⁽⁸⁾.
- (75) In order to ensure the smooth functioning of the internal market for occupational retirement provision organised on a Union scale, the Commission should, after consulting EIOPA, review and report on the application of this Directive and should submit that report to the European Parliament and to the Council by 13 January 2023.
- (76) In order to ensure fair competition between institutions, the transitional period allowing insurance undertakings falling within the scope of Directive 2009/138/EC to operate their occupational retirement provision business under the rules referred to in Article 4 of this Directive should be extended until 31 December 2022. Directive 2009/138/EC should therefore be amended accordingly.
- (77) The further development at Union level of solvency models, such as the holistic balance sheet (HBS), is not realistic in practical terms and not effective in terms of costs and benefits, particularly given the diversity of IORPs within and across Member States. No quantitative capital requirements, such as Solvency II or HBS models derived therefrom, should therefore be developed at the Union level with regard to IORPs, as they could potentially decrease the willingness of employers to provide occupational pension schemes.
- (78) Since the objective of this Directive, namely to create a Union legal framework covering IORPs, cannot be sufficiently achieved by the Member States, but can rather, by reason

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of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (79) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (80) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.
- (81) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex I, Part B,

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- (1) [OJ C 451, 16.12.2014, p. 109](#).
- (2) Position of the European Parliament of 24 November 2016 (not yet published in the Official Journal) and decision of the Council of 8 December 2016.
- (3) Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision ([OJ L 235, 23.9.2003, p. 10](#)).
- (4) See Annex I, Part A.
- (5) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC ([OJ L 331, 15.12.2010, p. 48](#)).
- (6) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([OJ L 335, 17.12.2009, p. 1](#)).
- (7) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ([OJ L 119, 4.5.2016, p. 1](#)).
- (8) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies on the free movement of such data ([OJ L 8, 12.1.2001, p. 1](#)).