

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 1

Subject matter

This Directive lays down rules for the taking-up and pursuit of activities carried out by institutions for occupational retirement provision (IORPs).

Article 2

Scope

1 This Directive shall apply to IORPs. Where, in accordance with national law, IORPs do not have legal personality, Member States shall apply this Directive either to those IORPs or, subject to paragraph 2, to those authorised entities responsible for operating them and acting on their behalf.

2 This Directive shall not apply to:

- a institutions operating social security schemes which are covered by Regulations (EC) No 883/2004⁽¹⁾ and (EC) No 987/2009⁽²⁾ of the European Parliament and of the Council;
- b institutions which are covered by Directives 2009/65/EC⁽³⁾, 2009/138/EC, 2011/61/EU⁽⁴⁾, 2013/36/EU⁽⁵⁾ and 2014/65/EU⁽⁶⁾ of the European Parliament and of the Council;
- c institutions which operate on a pay-as-you-go basis;
- d institutions where employees of the sponsoring undertaking have no legal rights to benefits and where the sponsoring undertaking can redeem the assets at any time and not necessarily meet its obligations for payment of retirement benefits;
- e companies using book-reserve schemes with a view to paying out retirement benefits to their employees.

Article 3

Application to IORPs operating social security schemes

IORPs which also operate compulsory employment-related pension schemes which are considered to be social security schemes covered by Regulations (EC) No 883/2004 and (EC) No 987/2009 shall be covered by this Directive in respect of their non-compulsory occupational retirement provision business. In that case, the liabilities and corresponding assets shall be ring-fenced and it shall not be possible to transfer them to the compulsory pension schemes which are considered as social security schemes or vice versa.

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Article 4

Optional application to institutions covered by Directive 2009/138/EC

Home Member States may choose to apply the provisions of Articles 9 to 14, Articles 19 to 22, Article 23(1) and (2), and Articles 24 to 58 of this Directive to the occupational retirement provision business of life insurance undertakings in accordance with points (a)(i) to (iii) of Article 2(3) and points (b)(ii) to (iv) of Article 2(3) of Directive 2009/138/EC. In that case, all assets and liabilities corresponding to the occupational retirement provision business shall be ring-fenced, managed and organised separately from the other activities of the life insurance undertakings, without any possibility of transfer.

In the case referred to in the first paragraph of this Article, and only insofar as their occupational retirement provision business is concerned, life insurance undertakings shall not be subject to Articles 76 to 86, Article 132, Article 134(2), Article 173, Article 185(5), Article 185(7) and (8) and Article 209 of Directive 2009/138/EC.

The home Member State shall ensure that either the competent authorities, or the authorities responsible for supervision of life insurance undertakings covered by Directive 2009/138/EC, as part of their supervisory work, verify the strict separation of the relevant occupational retirement provision business.

Article 5

Small IORPs and statutory schemes

With the exception of Articles 32 to 35, Member States may choose not to apply this Directive, in whole or in part, to any IORP registered or authorised in their territories which operates pension schemes which together have less than 100 members in total. Subject to Article 2(2), such IORPs shall nevertheless be given the right to apply this Directive on a voluntary basis. Article 11 may be applied only if all the other provisions of this Directive apply. Member States shall apply Article 19(1) and Article 21(1) and (2) to any IORP registered or authorised in their territories which operates pension schemes which together have more than 15 members in total.

Member States may choose to apply any of Articles 1 to 8, Article 19 and Articles 32 to 35 to institutions where occupational retirement provision is made under statute, pursuant to national law, and is guaranteed by a public authority.

Article 6

Definitions

For the purposes of this Directive:

- (1) ‘institution for occupational retirement provision’, or ‘IORP’, means an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed:

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- (a) individually or collectively between the employer(s) and the employee(s) or their respective representatives, or
 - (b) with self-employed persons, individually or collectively, in compliance with the law of the home and host Member States,
- and which carries out activities directly arising therefrom;
- (2) ‘pension scheme’ means a contract, an agreement, a trust deed or rules stipulating which retirement benefits are granted and under which conditions;
 - (3) ‘sponsoring undertaking’ means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer or in a self-employed capacity or any combination thereof and which offers a pension scheme or pays contributions to an IORP;
 - (4) ‘retirement benefits’ means benefits paid by reference to reaching, or the expectation of reaching, retirement or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments on death, disability, or cessation of employment or in the form of support payments or services in case of sickness, indigence or death. In order to facilitate financial security in retirement, these benefits may take the form of payments for life, payments made for a temporary period, a lump sum, or any combination thereof;
 - (5) ‘member’ means a person, other than a beneficiary or a prospective member, whose past or current occupational activities entitle or will entitle him/her to retirement benefits in accordance with the provisions of a pension scheme;
 - (6) ‘beneficiary’ means a person receiving retirement benefits;
 - (7) ‘prospective member’ means a person who is eligible to join a pension scheme;
 - (8) ‘competent authority’ means a national authority designated to carry out the duties provided for in this Directive;
 - (9) ‘biometric risks’ mean risks linked to death, disability and longevity;
 - (10) ‘home Member State’ means the Member State in which the IORP has been registered or authorised and in which its main administration is located in accordance with Article 9;
 - (11) ‘host Member State’ means the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and members or beneficiaries;
 - (12) ‘transferring IORP’ means an IORP transferring 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 an IORP registered or authorised in another Member State;
 - (13) ‘receiving IORP’ means an IORP receiving 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, from an IORP registered or authorised in another Member State;
 - (14) ‘regulated market’ means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU;

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- (15) ‘multilateral trading facility’ or ‘MTF’ means a multilateral trading facility or MTF as defined in point (22) of Article 4(1) of Directive 2014/65/EU;
- (16) ‘organised trading facility’ or ‘OTF’ means an organised trading facility or OTF as defined in point (23) of Article 4(1) of Directive 2014/65/EU;
- (17) ‘durable medium’ means an instrument which enables a member or a beneficiary to store information addressed personally to that member or beneficiary in a way that is accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- (18) ‘key function’, within a system of governance, means a capacity to undertake practical tasks comprising the risk management function, the internal audit function, and the actuarial function;
- (19) ‘cross-border activity’ means operating a pension scheme where the relationship between the sponsoring undertaking, and the members and beneficiaries concerned, is governed by the social and labour law relevant to the field of occupational pension schemes of a Member State other than the home Member State.

Article 7

Activities of an IORP

Member States shall require IORPs registered or authorised within their territories to limit their activities to retirement-benefit related operations and activities arising therefrom.

When, in accordance with Article 4, a life insurance undertaking manages its occupational retirement provision business by ring-fencing its assets and liabilities, the ring-fenced assets and liabilities shall be restricted to retirement-benefit related operations and activities directly arising therefrom.

As a general principle, IORPs shall, where relevant, have regard to the aim of having an equitable spread of risks and benefits between generations in their activities.

Article 8

Legal separation between sponsoring undertakings and IORPs

Member States shall ensure that there is a legal separation between a sponsoring undertaking and an IORP registered or authorised in their territories in order that the assets of the IORP are safeguarded in the interests of members and beneficiaries in the event of bankruptcy of the sponsoring undertaking.

Article 9

Registration or authorisation

1 Member States shall, in respect of every IORP, the main administration of which is located in their territories, ensure that the IORP is registered in a national register, or authorised, by the competent authority.

The location of the main administration refers to the place where the main strategic decisions of an IORP are made.

2 In the case of cross-border activities undertaken in accordance with Article 11, the register shall also indicate the Member States in which the IORP is operating.

3 The information from the register shall be communicated to EIOPA which shall publish it on its website.

Article 10

Operating requirements

1 Member States shall, in respect of every IORP registered or authorised in their territories, ensure that:

- a the IORP has implemented properly constituted rules regarding the operation of any pension scheme;
- b where the sponsoring undertaking guarantees the payment of the retirement benefits, it is committed to regular financing.

2 In accordance with the principle of subsidiarity and taking due account of the scale of pension benefits offered by the social security regimes, Member States may provide that additional benefits such as the option of longevity and disability cover, provision for surviving dependants and a guarantee of repayment of contributions are offered to members with the agreement of the employers and the employees or their respective representatives.

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

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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.

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.

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;
- 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.

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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.

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- (1) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ([OJ L 166, 30.4.2004, p. 1](#)).
- (2) Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems ([OJ L 284, 30.10.2009, p. 1](#)).
- (3) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ([OJ L 302, 17.11.2009, p. 32](#)).
- (4) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 ([OJ L 174, 1.7.2011, p. 1](#)).
- (5) Directive 2013/36/EU of European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ([OJ L 176, 27.6.2013, p. 338](#)).
- (6) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([OJ L 173, 12.6.2014, p. 349](#)).