

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 V

PRUDENTIAL SUPERVISION

CHAPTER 1

General rules on prudential supervision

Article 45

Main objective of prudential supervision

1 The main objective of prudential supervision is to protect the rights of members and beneficiaries and to ensure the stability and soundness of the IORPs.

2 Member States shall ensure that the competent authorities are provided with the necessary means, and have the relevant expertise, capacity, and mandate to achieve the main objective of supervision referred to in paragraph 1.

Article 46

Scope of prudential supervision

Member States shall ensure that IORPs are subject to prudential supervision including the supervision of the following where applicable:

- (a) conditions of operation;
- (b) technical provisions;
- (c) funding of technical provisions;
- (d) regulatory own funds;
- (e) available solvency margin;
- (f) required solvency margin;
- (g) investment rules;
- (h) investment management;
- (i) system of governance; and
- (j) information to be provided to members and beneficiaries.

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Article 47

General principles of prudential supervision

- 1 The competent authorities of the home Member State shall be responsible for the prudential supervision of IORPs.
- 2 Member States shall ensure that supervision is based on a forward-looking and risk-based approach.
- 3 Supervision of IORPs shall comprise an appropriate combination of off-site activities and on-site inspections.
- 4 Supervisory powers shall be applied in a manner which is timely and proportionate to the size, nature, scale and complexity of the activities of the IORP.
- 5 Member States shall ensure that the competent authorities duly consider the potential impact of their actions on the stability of the financial systems in the Union, in particular in emergency situations.

Article 48

Powers of intervention and duties of the competent authorities

- 1 The competent authorities shall require every IORP registered or authorised in their territories to have sound administrative and accounting procedures and adequate internal control mechanisms.
- 2 Without prejudice to the supervisory powers of competent authorities and the right of Member States to provide for and impose criminal sanctions, Member States shall ensure that their competent authorities may impose administrative sanctions and other measures applicable to all infringements of the national provisions implementing this Directive, and shall take all measures necessary to ensure that they are implemented. Member States shall ensure that their administrative sanctions and other measures are effective, proportionate and dissuasive.
- 3 Member States may decide not to lay down rules on administrative sanctions under this Directive for infringements which are subject to criminal sanctions under their national law. In that case, Member States shall communicate to the Commission the relevant criminal law provisions.
- 4 Member States shall ensure that the competent authorities publish any administrative sanction or other measure that has been imposed for breaches of the national provisions implementing this Directive and against which no appeal was lodged in time, without undue delay, including information on the type and nature of the breach and the identity of persons responsible for it. However, where the publication of the identity of the legal persons, or identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data or where publication jeopardises the stability of financial markets or an ongoing investigation, the competent authority may decide to defer publication, not to publish, or to publish the sanctions on an anonymous basis.
- 5 Any decision to prohibit or restrict the activities of an IORP shall contain detailed reasons and be notified to the IORP in question. That decision shall also be notified to EIOPA

which shall communicate it to all competent authorities in the case of cross-border activity as referred to in Article 11.

6 Competent authorities may also restrict or prohibit the free disposal of the IORP's assets when, in particular:

- a the IORP has failed to establish sufficient technical provisions in respect of the entire business or has insufficient assets to cover the technical provisions;
- b the IORP has failed to hold the regulatory own funds.

7 In order to safeguard the interests of members and beneficiaries, the competent authorities may transfer the powers which the persons running an IORP registered or authorised in their territories hold in accordance with the law of the home Member State wholly or partly to a special representative who is fit to exercise those powers.

8 The competent authorities may prohibit or restrict the activities of an IORP registered or authorised in their territories in particular if:

- a the IORP fails to protect adequately the interests of scheme members and beneficiaries;
- b the IORP no longer fulfils the conditions of operation;
- c the IORP fails seriously in its obligations under the rules to which it is subject;
- d in the case of cross-border activity, the IORP does not respect the requirements of social and labour law of the host Member State relevant to the field of occupational pension schemes.

9 Member States shall ensure that decisions taken in respect of an IORP under laws, regulations and administrative provisions adopted in accordance with this Directive are subject to a right of appeal to the courts.

Article 49

Supervisory review process

1 Member States shall ensure that competent authorities have the necessary powers to review the strategies, processes and reporting procedures which are established by IORPs to comply with the laws, regulations and administrative provisions adopted pursuant to this Directive, taking into account the size, nature, scale and complexity of the activities of the IORP.

That review shall take into account the circumstances in which the IORPs are operating, and, where relevant, the parties carrying out outsourced key functions or any other activities for them. The review shall comprise the following elements:

- a an assessment of the qualitative requirements relating to the system of governance;
- b an assessment of the risks the IORP faces;
- c an assessment of the ability of the IORP to assess and manage those risks.

2 Member States shall ensure that competent authorities have monitoring tools, including stress-tests, that enable them to identify deteriorating financial conditions in an IORP and to monitor how a deterioration is remedied.

3 The competent authorities shall have the necessary powers to require IORPs to remedy weaknesses or deficiencies identified in the supervisory review process.

4 The competent authorities shall establish the minimum frequency and the scope of the review laid down in paragraph 1 having regard to the size, nature, scale and complexity of the activities of the IORP concerned.

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Article 50

Information to be provided to the competent authorities

Member States shall ensure that the competent authorities, in respect of any IORP registered or authorised in their territories, have the necessary powers and means to:

- (a) require the IORP, the administrative, management or supervisory body of the IORP or the persons who effectively run the IORP or carry out key functions to supply at any time information about all business matters or forward all business documents;
- (b) supervise relationships between the IORP and other companies or between IORPs, when IORPs outsource key functions or any other activities to those other companies or IORPs and all subsequent re-outsourcing, influencing the financial situation of the IORP or being in a material way relevant for effective supervision;
- (c) obtain the following documents: the own-risk assessment, the statement of investment-policy principles, the annual accounts and the annual reports, and all other documents necessary for the purposes of supervision;
- (d) lay down which documents are necessary for the purposes of supervision, including:
 - (i) internal interim reports;
 - (ii) actuarial valuations and detailed assumptions;
 - (iii) asset-liability studies;
 - (iv) evidence of consistency with the investment-policy principles;
 - (v) evidence that contributions have been paid in as planned;
 - (vi) reports by the persons responsible for auditing the annual accounts referred to in Article 29;
- (e) carry out on-site inspections at the IORP's premises and, where appropriate, on outsourced and all subsequent re-outsourced activities to check if activities are carried out in accordance with the supervisory rules;
- (f) request information from IORPs about outsourced and all subsequent re-outsourced activities at any time.

Article 51

Transparency and accountability

1 Member States shall ensure that the competent authorities conduct the tasks laid down in this Directive in a transparent, independent and accountable manner with due respect for the protection of confidential information.

- 2 Member States shall ensure that the following information is publicly disclosed:
- a the texts of laws, regulations, administrative rules and general guidance in the field of occupational pension schemes, and information about whether the Member State chooses to apply this Directive in accordance with Articles 4 and 5;
 - b information regarding the supervisory review process as set out in Article 49;

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- c aggregate statistical data on key aspects of the application of the prudential framework;
- d the main objective of prudential supervision and information on the main functions and activities of the competent authorities;
- e the rules on administrative sanctions and other measures applicable to breaches of national provisions adopted pursuant to this Directive.

3 Member States shall ensure that they have in place and apply transparent procedures regarding the appointment and dismissal of the members of the governing and managing bodies of their competent authorities.