

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;

- 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.

## CHAPTER 2

### *Professional secrecy and exchange of information*

#### *Article 52*

##### **Professional secrecy**

1 Member States shall lay down rules to ensure that all persons who are working or who have worked for the competent authorities, as well as auditors and experts acting on behalf of those authorities, are bound by the obligation of professional secrecy. Without prejudice to cases covered by criminal law, those persons shall not divulge confidential information received by them in the course of their duties to any person or authority, except in summary or aggregate form ensuring that individual IORPs cannot be identified.

2 By derogation from paragraph 1, where a pension scheme is being wound up, Member States may allow confidential information to be divulged in civil or commercial proceedings.

#### *Article 53*

##### **Use of confidential information**

Member States shall ensure that competent authorities which receive confidential information under this Directive use it only in the course of their duties and for the following purposes:

- (a) to check that the conditions for taking up occupational retirement provision business are met by IORPs before commencing their activities;
- (b) to facilitate the monitoring of the activities of IORPs, including the monitoring of the technical provisions, the solvency, the system of governance, and the information provided to members and beneficiaries;
- (c) to impose corrective measures, including administrative sanctions;
- (d) where permitted by national law, to publish key performance indicators for all individual IORPs, which may assist members and beneficiaries in taking financial decisions regarding their pension;
- (e) in appeals against decisions of the competent authorities taken in accordance with the provisions transposing this Directive;
- (f) in court proceedings regarding the provisions transposing this Directive.

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#### Article 54

### European Parliament right of inquiry

Articles 52 and 53 shall be without prejudice to the right of inquiry conferred on the European Parliament by Article 226 of the Treaty on the Functioning of the European Union.

#### Article 55

### Exchange of information between authorities

- 1 Articles 52 and 53 shall not preclude any of the following:
  - a the exchange of information between competent authorities in the same Member State in the discharge of their supervisory functions;
  - b the exchange of information between competent authorities in different Member States in the discharge of their supervisory functions;
  - c the exchange of information, in the discharge of their supervisory functions, between competent authorities and any of the following which are situated in the same Member State:
    - (i) authorities responsible for the supervision of financial sector entities and other financial organisations and the authorities responsible for the supervision of financial markets;
    - (ii) authorities or bodies charged with responsibility for maintaining the stability of the financial system in Member States through the use of macro-prudential rules;
    - (iii) bodies involved in the winding up of a pension scheme and in other similar procedures;
    - (iv) reorganisation bodies or authorities aiming at protecting the stability of the financial system;
    - (v) persons responsible for carrying out statutory audits of the accounts of IORPs, insurance undertakings and other financial institutions;
  - d the disclosure, to bodies which administer the winding up of a pension scheme, of information necessary for the performance of their duties.
- 2 The information received by the authorities, bodies and persons referred to in paragraph 1 shall be subject to the rules on professional secrecy laid down in Article 52.
- 3 Articles 52 and 53 shall not preclude Member States from authorising exchanges of information between the competent authorities and any of the following:
  - a the authorities responsible for overseeing the bodies involved in the winding up of pension schemes and other similar procedures;
  - b the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of IORPs, insurance undertakings and other financial institutions;
  - c independent actuaries of IORPs carrying out supervision of those IORPs and the bodies responsible for overseeing such actuaries.

### Article 56

#### **Transmission of information to central banks, monetary authorities, European Supervisory Authorities and the European Systemic Risk Board**

1 Articles 52 and 53 shall not prevent a competent authority from transmitting information to the following entities for the purposes of the exercise of their respective tasks:

- a central banks and other bodies with a similar function in their capacity as monetary authorities;
- b other public authorities responsible for overseeing payment systems, where appropriate;
- c the European Systemic Risk Board, EIOPA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>(1)</sup> and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>(2)</sup>.

2 Articles 55 to 58 shall not prevent the authorities or bodies referred to in points (a), (b) and (c) of paragraph 1 of this Article from communicating to the competent authorities such information as the competent authorities may need for the purposes of Article 53.

3 Information received in accordance with paragraphs 1 and 2 shall be subject to professional secrecy requirements at least equivalent to those as set out in this Directive.

### Article 57

#### **Disclosure of information to government administrations responsible for financial legislation**

1 Articles 52(1), 53 and 58(1) shall not preclude Member States from authorising the disclosure of confidential information between competent authorities and other departments of their central government administrations responsible for the enforcement of legislation on the supervision of IORPs, credit institutions, financial institutions, investment services and insurance undertakings, or inspectors acting on behalf of those departments.

That disclosure shall be made only where necessary for reasons of prudential control, and prevention and resolution of failing IORPs. Without prejudice to paragraph 2 of this Article, persons having access to the information shall be subject to professional secrecy requirements at least equivalent to those set out in this Directive. Member States shall, however, provide the information received under Article 55, and information obtained by means of on-site verification may only be disclosed with the express consent of the competent authority from which the information originated or of the competent authority of the Member State in which the on-site verification was carried out.

2 Member States may authorise the disclosure of confidential information relating to the prudential supervision of IORPs to parliamentary enquiry committees or courts of auditors in their Member State and other entities in charge of enquiries in their Member State, where all of the following conditions are fulfilled:

- a the entities have the competence under national law to investigate or scrutinise the actions of authorities responsible for the supervision of IORPs or for laws on such supervision;
- b the information is strictly necessary for fulfilling the competence referred to in point (a);

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- c the persons with access to the information are subject to professional secrecy requirements under national law at least equivalent to those set out in this Directive;
- d if the information originates from another Member State, that information is disclosed with the explicit agreement of the originating competent authorities and solely for the purposes for which those authorities gave their agreement.

#### *Article 58*

### **Conditions for the exchange of information**

1 For exchanges of information under Articles 55, transmission of information under Article 56 and disclosure of information under Article 57, Member States shall require that at least the following conditions are met:

- a the information shall be exchanged, transmitted or disclosed for the purpose of carrying out oversight or supervision;
- b the information received shall be subject to the obligation of professional secrecy laid down in Article 52;
- c where the information originates from another Member State, it shall not be disclosed without the express agreement of the competent authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

2 Article 53 shall not preclude Member States from authorising, with the aim of strengthening the stability, and integrity, of the financial system, the exchange of information between the competent authorities and the authorities or bodies responsible for the detection and investigation of breaches of company law applicable to sponsoring undertakings.

Member States which apply the first subparagraph shall require that at least the following conditions are met:

- a the information must be intended for the purpose of detection, and investigation and scrutiny as referred to in point (a) of Article 57(2);
- b information received must be subject to the obligation of professional secrecy laid down in Article 52;
- c where the information originates from another Member State, it shall not be disclosed without the express agreement of the competent authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

3 Where, in a Member State, the authorities or bodies referred to in the first subparagraph of paragraph 2 perform their task of detection or investigation with the aid of persons appointed, in view of their specific competence, for that purpose and not employed in the public sector, the possibility of exchanging information provided for in Article 57(2) shall apply.

#### *Article 59*

### **National provisions of a prudential nature**

1 Member States shall report to EIOPA their national provisions of a prudential nature relevant to the field of occupational pension schemes, which are not covered by national social and labour law on the organisation of pension systems as referred to in Article 11(1).

2 Member States shall update that information on a regular basis and at least every two years and EIOPA shall make that information available on its website.



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- (1) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC ([OJ L 331, 15.12.2010, p. 12](#)).
- (2) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ([OJ L 331, 15.12.2010, p. 84](#)).