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'I' ITEM NOTE

From: Presidency/General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)

Subject: Addendum - Proposal for a Directive Of The European Parliament and of the Council amending Directives (EU) 2016/2341 and 2016/97 as regards the strengthening of the framework for occupational retirement provision

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directives (EU) 2016/2341 and 2016/97 as regards the strengthening of the
framework for occupational retirement provision

(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 Committee¹,

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C [...], [...], p. [...].

² Position of the European Parliament of and decision of the Council of

Whereas:

- (1) In view of the ageing population of the European Union and the rising dependency ratio, strengthening complementary sources of retirement income has become indispensable to preserve intergenerational solidarity, social cohesion and the long-term stability of pension systems across the Union.
- (2) While the organisation of pension systems remains a national competence, the adequacy and financial sustainability of pensions are of common concern for the stability and cohesion of the Union. Ensuring that citizens have access to well-designed personal pension products contributes both to individual financial security and to the resilience of the Union's economy.
- (3) Despite being among the world's highest savers, Union households still hold a large share of their financial wealth in short-term bank deposits with limited returns. Developing attractive occupational and personal pension products can help mobilise those savings for long-term investment, generating higher returns for savers and channelling capital towards productive uses that support growth, innovation and the green and digital transitions.

- (4) 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. Directive (EU) 2016/2341 of the European Parliament and of the Council³ has contributed to a more harmonised prudential framework for institutions for occupational retirement provision (IORPs). However, the supplementary pension sector remains underdeveloped in many Member States, which could jeopardise the financial security of citizens, in particular in light of ongoing demographic trends within the Union. As part of strong multi-pillar pension systems, developed in dialogue with social partners, it is essential to support the further uptake of supplementary pensions such as IORPs and to help deliver better outcomes for long-term savers. This requires policy action both at national and at Union level.

³ 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) (OJ L 354, 23.12.2016, p. 37, ELI: <http://data.europa.eu/eli/dir/2016/2341/oj>).

- (5) The Savings and Investments Union (SIU) announced by the Commission in its Communication of 19 March 2015⁴ aims to enable citizens to save and invest for their future, channel investments towards the priorities of the Union, deepen integration and scale in the Union's capital markets, and ensure effective supervision across the single market. Among those four strands, helping citizens save and invest for their future is at the heart of the SIU's ambition. Ensuring that Union citizens can build adequate retirement income is one of the most concrete ways in which the Union can make a difference in people's lives. The work on supplementary pensions, and in particular on occupational pensions, embodies this citizen-centred approach.
- (6) With approximately three trillion euros in assets under management, institutions for occupational retirement provision ('IORPs') play an essential role in the Union's financial system but tend to be less active in listed equity, private equity, venture capital and infrastructure markets. Provided that investments in equity and alternative asset classes are prudently managed, such investments can be a valuable component of their portfolios, offering diversification, higher long-term returns for pension savers and protection against inflation, while also providing crucial funding for the real economy. It is therefore important to ensure that there are no undue regulatory barriers to such investments.

⁴ Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions of 19 March 2015, COM(2015) 124 final.

- (7) The review of Directive (EU) 2016/2341 builds on the European Insurance and Occupational Pensions Authority (EIOPA)'s 2023 technical advice for the review of the IORP II Directive⁵ and its 2025 'technical input on the review of the IORP II Directive and the PEPP Regulation in the context of the Savings and Investments Union'⁶. It also takes into account recent findings and recommendations from the Special Report 14/2025 of the European Court of Auditors concerning the development of supplementary pensions in the Union⁷, as well as the OECD Core Principles of Private Pension Regulation⁸, which set out internationally recognised standards for the governance, transparency and supervision of occupational pensions.
- (8) Achieving sufficient scale is often a prerequisite for the efficient and sustainable functioning of IORPs. Smaller IORPs may face higher administrative and investment costs, limited diversification, and difficulties in attracting or retaining the necessary professional expertise. Greater scale can help mitigate those constraints by improving risk pooling, governance capacity, and access to a broader range of investment opportunities, thereby contributing to more stable and cost-effective outcomes for members and beneficiaries.

⁵ See EIOPA's Technical advice for the review of the IORP II Directive

⁶ See EIOPA's Technical input for the reviews of the IORP II Directive and the PEPP Regulation in the context of the Savings and Investments Union.

⁷ See the Special report 14/2025 of the European Court of Auditors

⁸ See OECD Core Principles of Private Pension Regulation

- (9) Directive (EU) 2016/2341, however, has not been sufficiently effective in fostering economies of scale, resulting in pension providers that are often too small to benefit from diversification or efficiency gains, and therefore expose members and beneficiaries to higher costs and lower net returns. It is therefore necessary to facilitate such economies of scale.
- (10) Directive (EU) 2016/2341 should apply to all IORPs, unless they are expressly excluded pursuant to Article 2(2). Its application should reflect the objectives pursued by that Directive and the diversity of arrangements within Member States, and should be implemented in a manner that recognises the full spectrum of existing occupational pension provision.
- (11) In some Member States, national law provides that IORPs, despite having legal personality, are to be operated by authorised entities responsible for acting on their behalf. It is therefore appropriate that Article 2(1) of Directive (EU) 2016/2341 refers explicitly not only to situations where IORPs do not have legal personality, which should continue to be covered, but also to those cases where IORPs have legal personality yet, in accordance with national law, are to be operated by such authorised entities.

- (12) In certain Member States, responsibility for the operation of an IORP may be shared between the IORP itself and **an** authorised entity **operating it and** acting on its behalf, each performing distinct but complementary functions. The application of Directive (EU) 2016/2341 should be coherent with that allocation of responsibilities under national law and ensure that all those responsible are fully subject to its requirements, irrespective of the legal form of the IORP. This situation should however be distinguished from outsourcing as referred to in Article 31 of that Directive, since the shared exercise of responsibilities in these instances stems from the institutional structure of the IORP as defined under national law and not from a contractual outsourcing of functions. Member States should also ensure that the assets of IORPs are legally separate from those of the authorised entities operating them, **in a manner that precludes any transfer of assets between them, so as to ensure that those assets remain exclusively available to meet the obligations of the IORPs.**

Member states shall not prevent an authorised entity established in another Member State from operating an IORP authorised in their territory, provided that in accordance with national law, IORPs in that Member State are constituted in a form under which authorised entities are responsible for operating them and acting on their behalf, the entity is authorised under harmonised Union rules and such same entities are allowed by the Member State to operate IORPs in their territory. In such case, the authorised entity operating and acting on behalf of an IORP, in the Member State where the IORP is authorised and supervised by the competent authority of that MS, shall decide and should be responsible for ensuring the compliance of the IORP with the rules which relate to its constitution and functioning and its obligations set out in the IORP's rules of operation or in its instruments of incorporation, as well as with the IORP's obligations set out in this Directive. The competent authorities of the Member State in which the entity is authorised, should supervise the adequacy of the organisation of the authorised entity, so that the authorised entity is in a position to comply with the obligations and rules which relate to the constitution and functioning and the rules of operation or instruments of incorporation, of all the IORPs it manages, including the IORPs in the other MSs.

- (13) The determination of whether an institution qualifies as an IORP should depend on the activities carried out, irrespective of its legal form or designation under national law. In several Member States, employment-related retirement provision is provided by funded institutions which are excluded from the scope of Directive (EU) 2016/2341 pursuant to its Article 2(2), or are otherwise not covered by that Directive without being subject to any other Union prudential legislation. Some of those institutions are already covered by Regulation (EU) 2018/231 of the European Central Bank⁹ on statistical reporting requirements for pension funds, reflecting their economic importance and the need for comprehensive and consistent information across all types of pension institutions. Taken together, such institutions excluded from the scope of Directive (EU) 2016/2341 hold very substantial assets and constitute an important component of the overall employment-related retirement landscape alongside IORPs. In view of their scale and their relevance for financial stability and pension adequacy, it is important for Member States to ensure that all institutions managing retirement savings, whether occupational or personal, are subject to sound governance, effective supervision and prudential requirements commensurate with the nature and magnitude of the risks they bear. In light of the solid framework provided by Directive (EU) 2016/2341 and to promote consistency in supervisory practices, ensure a level playing field and high standards of governance and risk management across all forms of retirement provision, while respecting the diversity of national pension systems and existing institutional arrangements, Member States should have the option to apply that Directive to institutions otherwise excluded from its scope and not covered by any other Union prudential framework.

⁹ Regulation (EU) 2018/231 of the European Central Bank of 26 January 2018 on statistical reporting requirements for pension funds (ECB/2018/2) (OJ L 45, 17.2.2018, p. 3, ELI: <http://data.europa.eu/eli/reg/2018/231/oj>).

This is particularly relevant where the level of benefits offered to members and beneficiaries depends on the performance of the institution in managing assets and is not guaranteed by a public authority. Member States should notify the Commission and the European Insurance and Occupational Pensions Authority of their use of this option.

- (14) **Some Member States allow IORPs to carry out personal retirement provision activities without being subject, in respect of those activities, to all the requirements laid down in Directive (EU) 2016/2341. In order to accommodate such national arrangements, Member States should retain the possibility not to apply the provisions of that Directive to non-occupational personal retirement provision activities carried out by IORPs. However, in order to ensure an appropriate level of protection for members and beneficiaries in other Member States, in a situation where an IORP or an authorised entity referred to in Article 2(1) authorised pursuant to this Directive is not subject to all of the provisions of this Directive in respect of personal retirement provision business that offers guarantees or covers biometric risk, Member States should ensure that the IORP or the authorised entity managing it does not allow transfer of assets, liabilities or other financial resources between its occupational and its personal retirement businesses. Member States should also ensure that no assets or financial resources allocated to the occupational retirement provision business are used to cover any losses arising from the personal retirement provision business.**

However, in the interest of protecting members and beneficiaries in other Member States, an IORP not constituted in a form under which a separate authorised entity is responsible for operating it and acting on its behalf, or, in any event, where the liabilities arising from the personal retirement provision business are also liabilities of the IORP, such IORP should only operate occupational or personal, in the Member State in which it has been authorised. Articles 11 and 11a lay down harmonised procedures for cross-border activities in the field of occupational retirement provision. Where IORPs provide the PEPP, the cross-border provision of that product is governed by Regulation (EU) 2019/1238, in particular Articles 14 and 15 thereof.

- (15) The organisation of occupational retirement provision may benefit from greater flexibility in how IORPs structure and manage pension schemes and sponsorship arrangements. Therefore, Member States should ensure that IORPs are allowed to operate different pension schemes, including those with distinct investment policies, and to accept sponsorship from multiple sponsoring undertakings, including within the same pension scheme. That flexibility can facilitate the achievement of greater scale, thereby enhancing cost efficiency, risk diversification and governance capacity, to the benefit of members and beneficiaries.

- (16) Directive (EU) 2016/2341 distinguishes between the authorisation and registration of IORPs but does not define either concept, while requiring Member States to maintain a national register of IORPs. This has resulted in divergent supervisory practices, including cases where competent authorities do not conduct an ex ante prudential assessment, or, in certain cases, where no prudential assessment is carried out at all. The absence of a prudential assessment as part of the registration or authorisation process may undermine the proper functioning of the internal market and the protection of the rights of members and beneficiaries. To avoid regulatory arbitrage and safeguard the interests of pension savers, all IORPs should be subject to an authorisation procedure that includes an appropriate prudential assessment by the competent authority. In line with EIOPA's technical advice on the review of the IORP II Directive and with the Implementing Guidelines of the OECD Recommendation on Core Principles of Private Pension Regulation, the authorisation process should also require IORPs to establish and maintain a **scheme of operation** for all planned activities.

- (17) To enhance effective and adaptable occupational retirement provision, as well as economies of scale, IORPs should be allowed to operate several pension schemes, including those with distinct investment approaches, and to accept sponsorship from several undertakings within the same scheme, while ensuring proper management and the protection of members and beneficiaries. **The possibility to operate different pension schemes and to accept sponsorship from multiple undertakings within the same scheme should be without prejudice to compliance with the requirements laid down in the laws of the home Member State for the operation of different schemes or schemes with multiple sponsoring undertakings. Any IORP which, due to the nature of its activities as laid down in its articles of association, operates a single scheme or can accept sponsorship from only a single sponsor should be able to convert into a type of IORP that can accept multiple sponsors or operate multiple schemes. Any national laws in a host Member State that require a certain legal form for the operation of such schemes shall not apply to multi-sponsor or multi-scheme IORPs incorporated in another Member State in compliance with that Member State's rules. This should also be without prejudice to the option for the home Member State to require that schemes with multiple sponsoring undertakings be operated under Directive 2009/138/EC.**

- (18) Experience with the functioning of Directive (EU) 2016/2341 has shown that the procedures governing the authorisation and supervision of IORPs, in particular in the context of cross-border activities, can give rise to delays and inconsistencies across Member States, which may discourage IORPs from engaging in or expanding their cross-border activities. To improve the functioning and supervision of cross-border activities of IORPs, the procedural steps for authorisation and cross-border activities should therefore be elaborated and streamlined. The timelines should be made clearer and exchanges of information between home and host competent authorities should be made faster, allowing closer coordination including, where appropriate, through the involvement of the European Insurance and Occupational Pensions Authority ('EIOPA').

- (19) It is unnecessarily burdensome to impose on an IORP that is carrying out cross-border activities in a host Member State full initial cross-border **notification** procedures where such IORP wishes to extend those activities to additional sponsoring undertakings or schemes in the same host Member State. Such an approach could lead to duplication of procedures, increased administrative costs and delays, without improving the protection of members and beneficiaries. To facilitate proportionate and efficient supervision and ensure effective cooperation between the competent authorities of the home and host Member States, such extensions should be made subject to a simplified notification procedure to be completed within one month. That timeline ensures that competent authorities can carry out the necessary coordination and oversight without creating undue delays or burdens for IORPs. **The simplified notification procedure should also apply with respect to non-material amendments. These are changes which do not affect the core characteristics of the notified pension scheme, including its benefit structure, members' rights or risk profile, and which do not have a significant impact on members or beneficiaries. The competent authority of the Home Member State may require an IORP not to use the simplified notification procedure where it considers the intended amendments as being in fact material.**

- (20) The rules governing collective transfers of all or part of a pension scheme's liabilities, technical provisions, and other obligations and rights play a key role in supporting consolidation and the achievement of scale in occupational retirement provision. Where such rules are overly strict, they create undue obstacles to achieving scale and facilitating consolidation, which can be detrimental to the long-term interests of savers. At the same time, it is important that members and beneficiaries, or their representatives, can effectively express their views on proposed cross-border transfers. To facilitate such transfers, it is therefore appropriate to clarify and simplify the applicable Union rules, ensuring that procedures remain transparent, proportionate and consistent with the protection of members and beneficiaries, while enabling greater efficiency and integration in the internal market. This should include provisions for timely notification, approval by the sponsoring undertaking where applicable, and the possibility for members and beneficiaries to formally express opposition.
- (21) For domestic collective transfers from one IORP to another, Member States should ensure that simple, transparent and operationally efficient procedures are in place to enable consolidation and restructuring of pension schemes within their territories. Such procedures should facilitate the attainment of scale and cost efficiency and should not be more restrictive than the procedures applicable to cross-border transfers.

- (22) Member States have the option to allow temporary underfunding of occupational pension schemes. Different Member States have implemented that option in varying ways, while others have chosen not to use it, resulting in inconsistencies that may affect the protection of members and beneficiaries. While preventing underfunding is important, an absolute prohibition could, in some cases, force abrupt reductions in pension promises, which may be detrimental to members and beneficiaries. To ensure a balanced and proportionate approach and an adequate protection of members and beneficiaries, Member States should allow temporary underfunding for a limited period, determined by national law, which in any case should not exceed ten years.
- (23) Certain technical parameters in Directive (EU) 2016/2341 stem from Council Directive 79/267/EEC¹¹, the first Life Insurance Directive, and have remained unchanged since their introduction. It is therefore appropriate to provide for the possibility of their adjustment ■ , should this be considered necessary to ensure that they remain appropriate in light of market developments and supervisory practices.

¹¹ First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (OJ L 63, 13.3.1979, p. 1, ELI: <http://data.europa.eu/eli/dir/1979/267/oj>)

- (24) Directive (EU) 2016/2341 requires IORPs to hold an adequate available solvency margin. That solvency margin does not fully capture exposures to market and longevity risks, including where the IORP underwrites biometric risk or guarantees a given investment performance or level of benefits. Some Member States require IORPs to hold additional risk-based regulatory own funds above the required solvency margin. In Member States where such risk-based requirements do not exist, comparable protection for savers and beneficiaries should be ensured. In particular, IORPs covering biometric risk or offering guarantees and which are not subject to risk-based capital requirements, should carry out regular stress tests to assess their ability to remain funded over a long-term horizon, including under adverse market and demographic scenarios, and competent authorities should have the power to require remedial actions where an underfunding is identified. **Where this Directive provides that parameters, scenarios, or horizons for internal stress tests are to be specified at national level, Member States should retain the flexibility to determine the appropriate vehicle for such specifications, whether through a formal decision or guidance issued by the competent authority, or other national regulatory instruments.**

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- (26) Experience has shown that the governance requirements set out in Directive (EU) 2016/2341 do not always ensure consistent standards of sound management and effective oversight across IORPs. In particular, differences in internal control functions, the handling of conflicts of interest, and the composition and effectiveness of administrative, management or supervisory bodies may weaken the protection of members and beneficiaries and the integrity of pension scheme management. To enhance the resilience, transparency and accountability of IORPs, the system of governance should therefore be further specified, and competent authorities should be equipped with the powers necessary to assess and, where appropriate, strengthen IORPs' governance systems.
- (27) The effective and prudent management of an IORP depends on the fitness and propriety of the persons who effectively run the IORP, its administrative, management or supervisory bodies, and key function holders, including those to whom functions have been outsourced. Directive (EU) 2016/2341 refers to the concept of collective fitness for those who effectively run the IORP. Further clarification is needed to ensure that this concept is applied in a manner consistent with the diversity of governance structures across Member States. In particular, collective fitness should apply where the administrative, management or supervisory body operates as a collegiate body whose members jointly perform strategic or oversight functions. Where functions are distinct or exercised individually, the assessment of fitness should relate to each person's specific role, responsibilities and decision-making powers. Furthermore, the current provisions do not explicitly provide for █ monitoring or timely notification of changes, which may also result in gaps in governance, insufficient oversight of risks, or unaddressed conflicts of interest. To ensure adequate protection of members and beneficiaries and effective supervision by competent authorities, the requirements for fitness and propriety should be laid down, competent authorities should be given the responsibility to assess suitability █ , and they should have the power to require the removal of individuals who no longer meet those requirements.

- (28) Effective risk management is essential to ensure the sound and prudent operation of IORPs and to protect members and beneficiaries. Operational and structural choices of IORPs, including participation in pooled investment structures, shared services, or transfers, can affect their overall risk profile. To ensure sound and prudent management, IORPs should assess the risks they are or could be exposed to against the risk tolerance limits approved by their management or supervisory body, taking into account the capacity and appetite for risk of members and beneficiaries. ■
- (29) In line with the OECD Core Principles of Private Pension Regulation and their Implementing Guidelines, it is appropriate to further strengthen the requirements of the statement of investment policy principles by ensuring that it sets out clear investment objectives consistent with each scheme's retirement income goal, liabilities and risk tolerance, defines performance objectives and monitoring methods, and addresses the use of complex or alternative asset classes and related counterparty risk. Where members may choose investments, the statement should also provide for an appropriate range of options, including, **where appropriate**, a default one.

- (30) The pooling of assets can deliver economies of scale, improve investment performance and reduce costs for members and beneficiaries. However, Article 31 of Directive (EU) 2016/2341 allows Member States to prohibit the outsourcing of activities by IORPs, including the outsourcing of investment management. The use of that option has resulted in regulatory barriers to efficiency gains and economies of scale. A more risk-based approach would ensure that outsourcing is generally permitted or required, provided that it does not impair the quality of governance, unduly increase operational risk, undermine the continuous and satisfactory service to members and beneficiaries, or hinder effective supervisory oversight. It should therefore be laid down that that Member States should allow, or where appropriate require, outsourcing by such institutions, without prejudice to **the respective legal responsibilities of the management and depositary entities or supervisory bodies regarding their respective oversight and monitoring duties as set out in Articles 20 and 35 of this Directive and without prejudice to** opposing specific outsourcing arrangements on a case-by-case basis on duly justified prudential grounds **when continued compliance with Articles 20 and 35 cannot be established.**

- (31) Depositories provide a convenient remedy for safeguarding assets and overseeing the management of occupational pension schemes, particularly in defined contribution schemes where members and beneficiaries fully bear the investment risk **■**. Members and beneficiaries of IORPs, who similarly entrust their retirement savings to professional managers, should benefit from no less protection than investors covered by Directive 2009/65/EC. Therefore, to ensure consistent protection of members and beneficiaries, enhance trust in the pension system, and facilitate cross-border activities, Directive (EU) 2016/2341 should require the appointment of a professional depository for occupational pension schemes where members and beneficiaries fully bear the investment risk. The amendments should set out clear rules for such depository on the safekeeping of assets and oversight duties for depositories, while allowing greater flexibility for other schemes and ensuring that competent authorities may not unduly restrict the choice of depositories established in another Member State. However, to avoid unnecessary burden for IORPs, Member States may maintain existing **arrangements** providing a level of protection comparable with depositories.

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- (33) The Pension Benefit Statement (PBS) is an essential instrument enabling members and beneficiaries to understand their pension entitlements over time and across different schemes. It should provide clear, comprehensive, and relevant information that enables members and beneficiaries to assess their financial situation and take any necessary action to secure an adequate pension. Currently, the absence of a uniform approach at Member State level, together with the fact that most members accrue pensions with multiple IORPs during their careers, results in PBSs that vary in format and presentation, thereby limiting comparability and aggregation. Current rules also do not require the inclusion of information on the costs, the performance of investments or on any investment options available and their corresponding risks. To enhance transparency and support informed decision-making, it is necessary to introduce requirements for the design of the PBS and on the provision of information on costs, investment returns and investment options. For the same reason, it is necessary to ensure greater standardisation and, where possible, alignment with the PEPP Benefit Statement referred to in Article 36 of Regulation (EU) 2019/1238, while taking into account the defined benefit or defined contribution characteristics of the pension schemes, and the specificities of occupational pension provision.

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- (35) With increasing life expectancy, members and beneficiaries may face greater need to manage longevity risk, and retirement savings need to be managed effectively to provide adequate income during the decumulation phase. Directive (EU) 2016/2341 requires IORPs to provide general information during the pre-retirement and pay-out phases but does not specify the type of information needed to support members and beneficiaries in making informed choices during decumulation. To enhance transparency, comparability, and informed decision-making, IORPs should therefore be subject to minimum disclosure requirements for the decumulation phase. Such disclosures should be clear, accessible, and proportionate, taking into account national specificities, and should cover pay-out options, associated costs and charges, applicable taxes, risks, and projections, including for variable annuities.

- (36) The shift from defined benefit pension schemes to defined contribution pension schemes places greater financial risk on members and beneficiaries, as variable benefits replace previously guaranteed benefits. Members and beneficiaries are often faced with complex choices regarding benefits or investments, and their ability to make appropriate decisions can be impaired by information asymmetries, limited knowledge or understanding, behavioural biases, or complex and inadequate choice environments. Combining multiple choices further increases the difficulty for members and beneficiaries to assess the potential effects of their decisions. IORPs play a key role in safeguarding the long-term interests of members and beneficiaries through prudent management of assets and sound governance. To strengthen confidence in the system and ensure that investment decisions remain aligned with members' best interests, fiduciary duties relating to risk management and investment policy should be reinforced. To enhance protection and ensure that pension schemes deliver outcomes that members and beneficiaries might reasonably expect, IORPs should be subject to a general duty of care. Such duty should require institutions to act honestly, fairly, and professionally in the best interests of members and beneficiaries **as a whole**, to seek adequate, risk-adjusted **■** returns over the long term, and to provide **assistance, provided that such assistance does not constitute investment advice**, to support informed and suitable decision-making, taking into account the nature of the pension scheme, the risks borne by members and beneficiaries, the responsibilities of the institution, and, where relevant, the role of social partners and sponsors.

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- (38) To ensure that members and beneficiaries can effectively exercise their rights and have access to fair and timely redress, IORPs should establish effective complaints-handling procedures and provide information on available alternative dispute resolution mechanisms. For the same reason, Member States should have in place adequate, independent and impartial alternative dispute resolution bodies, including for cross-border cases, and ensure that competent authorities can receive and respond to complaints alleging infringements of Directive (EU) 2016/2341.
- (39) Differences in the powers, tools, and practices available to competent authorities across Member States may hinder effective supervision of IORPs and the timely prevention or correction of infringements. Without the powers to obtain necessary information, to require compliance with applicable laws and regulations, to review and evaluate IORPs' strategies, processes, and reporting procedures, or to impose sanctions, competent authorities may be unable to ensure that IORPs maintain sufficient financial resources, comply with governance and risk management requirements, or can withstand adverse events or changes in economic conditions. To address those risks, Member States should ensure that competent authorities have all necessary powers to obtain information, conduct systematic and risk-based reviews and assessments, monitor deteriorating financial conditions, engage in █ supervisory dialogue, take preventive and corrective measures in a timely manner, and impose effective, proportionate, and dissuasive administrative sanctions.

- (40) IORPs vary significantly in terms of scale, operational efficiency, and organisational structure. Smaller or fragmented IORPs may face difficulties in achieving economies of scale, engaging in effective asset pooling, or optimising operational and investment efficiency. Early identification of structural challenges and vulnerabilities is therefore essential to ensure that IORPs can deliver value for members and beneficiaries over the long term. Competent authorities play an important role in fostering strategic reflection by IORPs on their long-term sustainability, including on aspects such as scale, organisational configuration, and potential for consolidation or cooperation where those are ways to address identified shortcomings. Competent authorities should therefore conduct, **on a risk based basis**, supervisory dialogues with IORPs, during which IORPs can identify potential weaknesses and consider strategic options, including measures to enhance efficiency, scale, and resource sharing, while retaining primary responsibility for ensuring that members and beneficiaries receive adequate retirement benefits.
- (41) Without timely, complete, and comparable information, competent authorities may be unable to assess compliance, monitor risks, or take preventive and corrective measures effectively. To address that issue, Member States should ensure that competent authorities have the powers to require IORPs to submit all information necessary for supervision, to carry out on-site inspections, and to obtain detailed reporting on costs, charges, and investment returns.

(42) The outsourcing of key functions or other activities by IORPs can generate economies of scale and bring value or lower costs to members and beneficiaries. However, it may also create additional risks and hinder effective supervision. Without access to relevant information and business premises, and without cooperation from service providers, competent authorities may be unable to monitor outsourced activities or ensure compliance. To address those risks, Member States should ensure that IORPs enable competent authorities to access data and premises of service providers and to carry out on-site inspections directly or through delegated authorities. IORPs should also fully cooperate during supervision. ■

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(44) Where cross-border activities are significant with respect to the market of the host Member State and require close collaboration between the competent authorities of the home Member State and the host Member State, especially where an IORP might risk being in financial difficulties to the detriment of members and beneficiaries, EIOPA should be able to ■ coordinate collaboration platforms, in a similar manner as under Directive 2009/138/EC of the European Parliament and of the Council¹³.

¹³ 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, ELI: <http://data.europa.eu/eli/dir/2009/138/oj>).

- (45) Insurance undertakings and insurance intermediaries can also distribute occupational pension products. To ensure that all prospective members, members and beneficiaries receive equivalent information and protection, such undertakings and intermediaries should be subject to rules related to information consistent with those applicable to IORPs. **However, to avoid unnecessary administrative burdens and the duplication of information requirements, any information already provided to them pursuant to other provisions of Union law - such as Directive (EU) 2016/97 (IDD) or Directive 2009/138/EC (Solvency II) - does not need to be provided again, provided that it covers the required substance and meets equivalent conditions.**

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(48) Directives (EU) 2016/97 and (EU) 2016/2341 should therefore be amended accordingly.

(49) Amendments to Directive (EU) 2016/2341 regarding the authorisation of IORPs should replace the current regime of registration or authorisation in order to ensure consistent supervisory standards across the Union. However, it would be too burdensome to require all IORPs to apply for a new authorisation. IORPs already registered or authorised under that Directive should be given Therefore, Member States should provide for automatic recognition of IORPs which were already registered or authorised under that Directive.

- (50) Regulation (EU) 2016/679 of the European Parliament and of the Council applies to the processing of personal data for the purposes of this Directive. Member States should ensure that processing of data carried out in application of this Directive fully respects Directive 2002/58/EC of the European Parliament and of the Council¹⁴ where that Directive is applicable.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive (EU) 2016/2341

Directive (EU) 2016/2341 is amended as follows:

- (1) the words ‘registered or authorised’ are replaced by ‘authorised’ throughout the Directive;

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- (4) Article 2 is amended as follows:

- (a) in paragraph 1, the second sentence is replaced by the following:

‘Where, in accordance with national law, IORPs are constituted in a form under which authorised entities are responsible for operating them and acting on their behalf, Member States shall apply this Directive either to those IORPs or, subject to paragraph 2, to such authorised entities, or to both, as appropriate.’

- (b) the following paragraph 3 is added:

¹⁴ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, p. 37, ELI: <http://data.europa.eu/eli/dir/2002/58/oj>)

- ‘3. Where, pursuant to paragraph 1, authorised entities are responsible for operating IORPs and acting on their behalf, Member States shall ensure that the assets of the IORPs are legally separate from those of the authorised entities **in a manner that precludes any transfer of assets between them, so as to ensure that those assets remain exclusively available to meet the obligations of the IORPs.**

By way of derogation from paragraph 2, where entities authorised under EU prudential legislation intend to operate such IORPs on a cross-border basis, Articles 11 and 11a shall apply. █

- (5) Articles 3 and 4 are replaced by the following:

‘Article 3

Application to IORPs operating social security schemes

IORPs which also operate pension schemes that 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 **occupational** retirement provision business not covered by those Regulations. In that case, the liabilities and corresponding assets shall be ring-fenced, and it shall not be possible to transfer those liabilities and corresponding assets to the pension schemes which are considered to be social security schemes, or vice versa.

Article 4

Optional application

1. Member States may **decide to apply in whole or in part** the provisions of this Directive to:
- (a) **institutions, irrespective of their legal form, operating on a funded basis for the purpose of providing retirement benefits:**
 - (i) **that are excluded from the scope of this Directive pursuant to Article 2(2), points (a) and (d); or**
 - (ii) **that are not covered by this Directive or by Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU and 2014/65/EU**
 - (b) **IORPs in respect of their personal retirement provision business when pursuant to national law they are authorised to provide personal pension products.**

In the case of institutions referred to in Article 2(2), point (a), **the application of this Directive in whole or in part shall be without prejudice to the obligations arising from** Regulations (EC) No 883/2004 and (EC) No 987/2009.

Where, in accordance with national law, the institutions referred to in **■** paragraph 1, **point (a)** are operated by authorised entities responsible for acting on their behalf, Member States may decide to apply this Directive either to those institutions or to the authorised entities responsible for operating them and acting on their behalf, or to both, as appropriate.

Member States may decide to apply Articles 11 and 11a, **to entities referred to in paragraph 1, point (a), in respect to occupational retirement provision business, and** only if all the provisions of this Directive apply.

Member States shall notify the Commission and EIOPA where they make use of the options referred to in **■** the first and second **subparagraphs**, indicating the types of institutions or, where applicable, authorised entities covered by the use of those options and the provisions of this Directive that apply to them.

The Commission shall make that information publicly available.;

- 2. Where an IORP or an authorised entity referred to in Article 2(1), authorised to manage an IORP pursuant to this Directive, is not subject to all of the provisions of this Directive in respect of personal retirement provision business that offers guarantees or covers biometric risk, Member States shall ensure that the IORP or the authorised entity managing it complies with the following conditions:**

- (a) The liabilities, corresponding assets and financial resources related to the above-mentioned personal retirement provision business are fully ring-fenced from those related to its occupational retirement provision business, and no transfer of assets, liabilities or financial resources between the two businesses shall be permitted, and the assets or financial resources allocated to the occupational retirement provision business shall not be used to cover any losses arising from the personal retirement provision business;**
- (b) where, in accordance with national law, the IORP is separate from the authorised entity responsible for operating the IORP and acting on its behalf, and that entity is an entity referred to in Article 2(1) authorised pursuant to this Directive, that authorised entity operates the above-mentioned personal retirement provision business only in the Member State in which it has been authorised; In this case, Articles 11 and 11a shall apply only in respect of the IORP's occupational retirement provision business;**

- (c) where, in accordance with national law, the IORP is not constituted in a form under which an authorised entity is responsible for operating it and acting on its behalf, or, in any event, where the liabilities arising from the above-mentioned personal retirement provision business are liabilities of the IORP separate from the authorised entity responsible for operating the IORP, the IORP only operates the retirement provision business, whether occupational or personal, in the Member State in which it has been authorised.

Notwithstanding the first subparagraph, an IORP providing or distributing a pan-European Personal Pension Product registered in accordance with Regulation (EU) 2019/1238, shall in all cases be subject to the application of all of the provisions of this Directive, with the exception of Title IV, without prejudice to article 44a thereof.

- 3. For the purposes of paragraph 1, point (b), where an IORP carries out personal retirement provision business and is subject to this Directive in respect of that business, this Directive shall apply to that business, subject to the adaptations set out in this paragraph.**

Those adaptations shall not affect the scope, conditions or limits of application of this Directive in respect of any other business, activity or institution.

- (a) References in this Directive to “members” and “beneficiaries” shall encompass personal pension savers and beneficiaries in respect of personal pension schemes.**
- (b) References in this Directive to “occupational pension schemes” shall encompass personal pension schemes.**
- (c) References in this Directive to “occupational retirement business”, “occupational retirement provision” and “occupational retirement provision business” shall encompass personal retirement business, personal retirement provision and personal retirement provision business, respectively.**

- (d) The provisions of this Directive governing the activities that an IORP is authorised or permitted to pursue, including the operation, administration and management of retirement provision business and activities arising therefrom, shall encompass the IORP's personal retirement provision business, so that such business falls within those activities.**
- (e) The provisions of this Directive that presuppose the existence of a sponsoring undertaking, or reliance on the support, guarantee, contributions, covenant or other financial commitment of a sponsoring undertaking, shall not apply to the personal retirement provision business to the extent that they cannot be applied in the absence of such sponsoring undertaking.**

References to the “sponsoring undertaking” shall be disregarded in respect of that business, unless an equivalent person or entity is expressly identified under applicable national law.

- (f) IORPs which provide personal pension schemes other than the pan-European Personal Pension Product as defined in Article 2, point (1), of Regulation (EU) 2019/1238, shall provide to prospective personal pension savers, personal pension savers and beneficiaries information that is equivalent to that required under national law for comparable personal pension schemes or plans provided by other entities or institutions, including pre-contractual information, information during the accumulation phase, pre-retirement information, information during the pay-out phase and information to be provided on request.**

The provisions of Title IV shall not apply to that business, and the requirements referred to in this point shall apply in their place.

- (g) The liabilities, technical provisions, other obligations and rights, and corresponding assets relating to the personal retirement provision business shall be identifiable and separately recorded from those relating to the occupational retirement provision business. Member States may require the ring-fencing of assets and liabilities relating to the personal retirement provision business where necessary to protect members, personal pension savers and beneficiaries.**

- (h) The powers of the competent authorities under this Directive shall cover the entire retirement provision business of the IORP, including its personal retirement provision business.**
- (i) With regard to the information that is publicly disclosed by Member States or competent authorities, including the texts of laws, regulations, administrative rules and general guidance in the field of occupational pension schemes, corresponding information shall also be disclosed in relation to the personal retirement provision business of IORPs.**
- (j) For the purposes of applying this Directive to the personal retirement provision business of an IORP, and without prejudice to the other provisions of this paragraph, any term, expression or provision of this Directive shall, where necessary, encompass that business, insofar as this is compatible with its nature and with the protection of personal pension savers and beneficiaries.**

Articles 11 and 11a shall apply to institutions referred to in paragraph 1, point (b), when the IORP carries out personal retirement provision business and is subject to this Directive in respect of that business, only in respect of the IORP's occupational retirement provision business.'

(6) Article 5 is amended as follows:

(a) the title is replaced by the following:

'Small IORPs;'

(b) the second paragraph is deleted;

(7) Article 6 is amended as follows:

(a) in point (1), the wording 'and which carries out activities directly arising therefrom;' is replaced by 'and which carries out activities directly arising therefrom, and, where permitted under national law, **activities arising from** personal retirement provision;';

(b) point (3) is replaced by the following:

'(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, a professional association or body, or in a self-employed capacity or any combination thereof and which offers a pension scheme or pays contributions to an IORP;';'

(c) point (5) is replaced by the following:

‘(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.’

(d) the following points (20) **■** and (21) are added:

‘(20) ‘service provider’ means an undertaking to which an IORP has outsourced activities covered by this Directive;

(21) ‘personal pension product’ means a personal pension product as defined in Article 2, point (1), of Regulation (EU) 2019/1238 of the European Parliament and of the Council*.

■

* Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (OJ L 198, 25.7.2019, p. 1, ELI: <http://data.europa.eu/eli/reg/2019/1238/oj>.);’

(8) in Article 7, the second paragraph is replaced by the following:

‘Where, pursuant to national law, IORPs are authorised to provide personal pension products, **and without prejudice to Article 4(2)(a), Member States may decide to require that** all assets and liabilities corresponding to the personal pension provision business shall be ring-fenced, without any possibility to transfer those assets and liabilities to the other retirement provision business of the institution.;

For the purposes of this paragraph, in case Member States decide to apply the requirement for ring-fencing and the requirement not to transfer assets between occupational and non-occupational personal pension product schemes, this shall not prevent asset pooling among several retirement schemes at the level of external asset managers.’

(9) the following Article 8a is inserted:

‘Article 8a

Right of establishment and freedom to provide services

1. IORPs shall be allowed to provide **occupational retirement** services throughout the Union in accordance with Articles 11 and 11a.
2. Member States shall not restrict IORPs from establishing in their territory.;

(10) Article 9 is amended as follows:

(a) the title is replaced by the following:

‘Authorisation;’

(b) paragraph 1 is replaced by the following:

‘1. Member States shall in respect of every IORP the main administration of which is located in their territory ensure that the IORP is authorised by the competent authority and included in a national register.

The location of the main administration shall be the place where the main strategic decisions of an IORP are made.

Member States shall require competent authorities to perform a prudential assessment as part of the authorisation of IORPs. The assessment shall take into account the **size**, nature, scale and complexity of the activities of the IORP concerned.

IORPs seeking authorisation shall prepare and submit to the competent authority a **scheme of operations** for all their planned activities, detailing the financial resources available to cover current and future operating costs. The **scheme of operations** shall contain projections of at least three years of the IORP's income and expenses and a breakdown of the IORP's operational costs, including where relevant, the distribution and acquisition costs and any other elements to assist the competent authorities to assess compliance with the operating requirements.



An IORP seeking authorisation to extend its activities, including, where applicable, to accept sponsorship from multiple sponsoring undertakings, other than undertakings belonging to the same group as the sponsoring undertaking for which the IORP had already obtained authorisation, shall be required to submit a scheme of operations covering those planned activities.

The subsequent acceptance of one or more sponsoring undertakings shall not require the IORP to undergo a new authorisation procedure where its authorisation covers the acceptance of sponsorship from multiple sponsoring undertakings.'

(c) the following paragraph 1a is inserted:

‘1a. Any decision to refuse an authorisation shall state full reasons and shall be notified to the IORP concerned.

Without prejudice to Article 48(9), each Member State shall make provision for a right of appeal to the courts where its competent authorities have not dealt with an application for an authorisation within six months of the date of **receipt of a complete application file.**

1b. Without prejudice to other conditions of general application laid down by national law, Member States shall ensure that the competent authority grants authorisation only where it is satisfied that the IORP is capable of operating in a sound and prudent manner, taking into account the nature, scale and complexity of its activities.

For that purpose, the home Member State shall ensure that the competent authority assesses at least whether the IORP:

(a) has submitted a credible and comprehensive scheme of operations covering its intended activities;

- (b) has shown evidence that it will be in a position to comply on an ongoing basis with the requirements of this Directive**
- (c) has shown evidence that it will be in a position to comply with the system of governance referred to in Title III, Chapter 1;**
- (d) has shown evidence that the persons who will effectively run the IORP and those responsible for key functions are fit and proper;**
- (e) has shown evidence that it will be in a position to hold adequate financial resources to support its operations and meet its obligations;
and**
- (f) has shown evidence that the rules of the pension schemes to be operated are duly established and, where the sponsoring undertaking guarantees the payment of retirement benefits, supported by appropriate financing arrangements.'**

(11) the following Article 9a is added:

‘Article 9a

Multi-sponsor IORPs

Member States shall ensure that IORPs are allowed to operate different pension schemes, including those with different investment policies, and to accept sponsorship from multiple sponsoring undertakings within the same pension scheme.

The first paragraph shall be without prejudice to a decision by **the home** Member State to require that schemes with multiple sponsoring undertakings be operated under Directive 2009/138/EC.’

(12) **In Article 10 paragraph 1, the following point (c) is added**

(a) █

‘(c) the IORP has sufficient financial resources to cover its current and future operating costs.’

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(13) Article 11 is amended as follows:

- ‘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 authorised in their territories to carry out cross-border activities, including accepting sponsorship from undertakings in other Member States. Member States shall also allow undertakings located in their territories to sponsor IORPs which propose to or carry out cross-border activities.**

Member States shall ensure that IORPs may accept sponsorship from one or several undertakings located in a Member State other than the home Member State of the IORP as soon as the conditions laid down in this Article are met.

- 2. An IORP intending to carry out cross-border activity, including by accepting sponsorship from one or several sponsoring undertakings located in another Member State, shall notify its intention to the competent authority of its home Member State.**

Where, in accordance with national law, IORPs are constituted in a form under which authorised entities are responsible for operating them and acting on their behalf, the notification may be submitted by that authorised entity.

- 3. Member States shall require the notification referred to in paragraph 2 to include the following information:**
- (a) the name of the host Member State(s), which shall, where applicable, be identified by the sponsoring undertaking or undertakings;**
 - (b) the name and the location of the main administration of the sponsoring undertaking(s);**
 - (c) the main characteristics of the pension scheme or schemes to be operated for the sponsoring undertaking(s).**

4. **The competent authority of the home Member State shall, no later than 2 months after the date of receipt of the complete notification file referred to in paragraph 3, transmit that file to the competent authority of the host Member State or Member States, and inform the IORP accordingly, 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.**

The competent authority of the home Member State shall enclose a statement that the IORP, or where applicable, the authorised entity responsible for operating the IORP and acting on its behalf, is subject to its national provisions implementing this Directive.

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 when it concludes 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. It shall also give the reasons for this to the IORP concerned within the same deadline of two months from receipt of all that information. That non-communication of information shall be subject to a right of appeal to the courts in the home Member State.

- 5. Where the competent authority of the home Member State transmits the notification file referred to in paragraph 3, it shall notify the IORP or, where applicable, the authorised entity responsible for operating the IORP and acting on its behalf, without delay.**

Where the competent authority of the home Member State of the authorised entity responsible for operating the IORP and acting on its behalf is different from the competent authority of the home Member State of the IORP, the latter shall also inform the former that the IORP may start accepting sponsoring undertakings in the host Member State or Member States of the IORP.

- 6. IORPs carrying out cross-border activity shall be subject to the requirements of social and labour law of the host Member State relevant to the field of occupational pension schemes.**

They shall also 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.

The competent authority of the host Member State shall, within 6 weeks after having received the information referred to in paragraph 3, through the means referred to in Article 59(3), communicate to the competent authority of the home Member State the legal provisions referred to in Article 59(1) which are applicable in its territory. The competent authority of the home Member State shall immediately communicate that information to the IORP or, where applicable, to the authorised entity referred to in paragraph 2 and the IORP or, where applicable, the authorised entity may start carrying out cross border activity upon receipt of that communication.

- 7. The competent authority of the host Member State shall supervise compliance with the requirements of social and labour law relevant to the field of occupational pension schemes and with the information requirements referred to in paragraph 6.**

- 8. The competent authority of the host Member State shall inform the competent authority of the home Member State of the IORP 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.**

It shall also inform the competent authority of the home Member State of any significant change in the host Member State's information requirements referred to in paragraph 6.

The competent authority of the home Member State shall communicate that information to the IORP or, where applicable, to the authorised entity referred to in paragraph 2.

- 9. Member States shall ensure that all procedures and formalities relating to cross-border activities, and related procedures can be easily completed through electronic means.**

Member States shall ensure that electronic transmission and filing of the documents referred to in this Article are accepted by their competent authorities.

- 10. The competent authority of the host Member State that has reasons to consider that an IORP conducting activities in its territory is not complying with the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes, or with the host Member State's applicable information requirements, 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 ends 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 applicable information requirements, 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.**

Member States shall ensure that in their territories it is possible to serve the legal documents necessary for such measures on IORPs.

In addition, the competent authority of the home or the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

- 12. Paragraphs 10 and 11 are without prejudice to the power of host Member States to take appropriate and non-discriminatory emergency measures to prevent or penalise irregularities within their territory, in situations where immediate action is strictly necessary in order to protect the rights of members and beneficiaries, and where equivalent measures of the home Member State are inadequate or lacking.**

That power shall include the possibility of preventing IORPs, insofar as is strictly necessary, from operating in the host Member State for the sponsoring undertaking.

13. Any measure adopted under paragraphs 10 to 12 involving restrictions on the activities of IORPs shall be properly reasoned and communicated to the IORP concerned without undue delay.'

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(14) the following Article 11a is inserted:

‘Article 11a

Changes in the information notified

1. Member States shall ensure that in the event of a change in any of the particulars communicated under Article 11(3), points (b) or (c), an IORP gives written notice of the change to the competent **authority** of the home Member State one month before making the change. **The competent authority of the home Member State shall inform the competent authorities of the host Member States of the change without delay**, in order to enable the competent authorities of the home and the host Member States to fulfil their respective obligations under Article 11.
2. **By way of derogation from paragraph 1**, Member States shall ensure that, where members and beneficiaries fully bear the investment risk, the **acceptance** of one or more additional sponsoring undertakings **in respect of a pension scheme already notified under Article 11(3)**, or **non-material amendments to the characteristics of such a scheme, shall not be subject to prior notification. Any requirement to notify such acceptance or amendment after it has taken effect shall be limited to what is necessary to verify compliance with the provisions referred to in Article 11, and shall not constitute a prior condition for the IORP to extend its cross-border activities.**

(14a) The following article 11b is inserted:

‘Article 11b

Operation of IORPs by authorised entities established in another Member State

- 1. Member states shall not prevent an authorised entity established in another Member State from operating an IORP authorised in their territory, provided that:**
 - (a) in accordance with national law, IORPs in that Member State are constituted in a form under which authorised entities are responsible for operating them and acting on their behalf;**
 - (b) the entity is authorised under harmonised Union rules, being either an institution referred to in point (b) of Article 2(2) or another entity authorised pursuant to this Directive to operate IORPs;**
 - (c) such same entities are allowed by the Member State to operate IORPs in their territory.**

- 2. Where an authorised entity operates an IORP on a cross-border basis under paragraph 1, supervisory responsibilities shall be allocated as follows:**
- (a) the competent authority of the Member State in which the IORP, which will be operated by such entity, is authorised, shall be responsible for the prudential supervision of the IORP's activities and for supervising its compliance with the rules of that Member State relating to its constitution, organisational structure, functioning and operation. Those rules, shall include rules on authorisation, operating requirements, quantitative requirements and the conditions governing the IORP's activities, and where applicable, the rules relating to the information to be given to prospective members, members and beneficiaries. The authorised entity shall comply with, and be responsible for adopting and implementing, all organisational decisions necessary to ensure that the operation of the IORP complies with those rules, as well as with the IORP's obligations set out in this Directive.**

The authorised entity operating an IORP and acting on its behalf shall decide and be responsible for adopting and implementing all the organisational decisions which are necessary to ensure compliance with the rules which relate to the constitution, organizational structure, functioning and operation of the IORP, with the obligations set out in the IORP's rules or in the instruments of incorporation, and with the obligations set out in this Directive.

- (b) the competent authority of the Member State in which the above-mentioned authorised entity is authorised shall be responsible for supervising the authorised entity and the adequacy of its organisation, so that it is in a position to comply with the obligations and rules relating to the operation of the IORPs it operates, as well as with the IORPs' obligations set out in this Directive. That supervision shall include the supervision of the rules and policies relating to the organisation of the authorised entity, including delegation of activities and responsibilities, organisational and operational requirements, fit and proper requirements, risk-management systems and internal controls. Those rules, shall be no stricter than the respective rules applicable to authorised entities operating IORPs only in their home Member State.**

The competent authority of the Member State in which the IORP is authorised may require directly from the authorised entity any information, records, documents or explanations necessary for the supervision of the IORP. Where the authorised entity fails to comply with the rules referred to in the previous subparagraphs, that competent authority shall require it to put an end to the breach and shall inform the competent authority of the authorised entity's home Member State. Where the authorised entity does not put an end to the breach, the competent authority of the authorised entity's home Member State shall take all appropriate measures to ensure that it does so, and shall communicate those measures to the competent authority of the Member State in which the IORP is authorised. Where, despite those measures, or because they prove inadequate, the breach persists, the competent authority of the Member State in which the IORP is authorised may, after informing the competent authority of the authorised entity's home Member State, take the necessary measures, including the imposition of sanctions and preventing the authorised entity from operating the IORP in its territory.

The competent authorities referred to in subparagraphs (a) and (b) of paragraph 2, shall cooperate closely, exchange all information necessary for the performance of their duties under this Directive, and provide each other with assistance in relation to inspections, investigations and enforcement. In the event of disagreement about the procedure, content or absence of any action by either competent authority under this paragraph, either authority may refer the matter to EIOPA, which may act in accordance with Article 19 of Regulation (EU) No 1094/2010.

- 3. This Article shall be without prejudice to the right of an IORP authorised in one Member State, including where it is operated by an authorised entity established in that Member State, to carry out cross-border occupational retirement activities in another Member State in accordance with Article 11(1) to (13) . It shall not be construed as requiring an IORP to be authorised in the host Member State in order for those cross-border activities to be carried out there in accordance with Article 11(1) to (13) .**

4. **By way of derogation from Article 6(10), where in accordance with national law, IORPs are constituted in a form under which authorised entities are responsible for operating them and acting on their behalf, the home Member State of the IORP shall be the Member State in which the IORP is authorised.'**

(15) Article 12 is amended as follows:

- (a) the following paragraph 2a is inserted:

'2a. Member States shall ensure that the transferring IORP makes available to the members and beneficiaries concerned and, where applicable, to their representatives, the information on the conditions of the transfer **to be made available at least one month in advance** and before the application referred to in paragraph 4 is submitted.;

- (b) paragraph 3 is replaced by the following:

- ‘3. The cross-border transfer shall be subject to prior approval by:
- (a) a simple majority of the members and beneficiaries concerned, or where applicable, a simple majority of their representatives; and
 - (b) the sponsoring undertaking, where applicable.

For the purposes of the first subparagraph, point (a), the simple majority shall be calculated based on the received responses.

Member States may provide that, for a transfer to be approved, a participation threshold of up to 25 % of the members and beneficiaries concerned shall be reached.;

Member States may allow that the requirement for approval by a simple majority of the members and beneficiaries concerned or, where applicable, their representatives, shall not apply where the decision approving the transfer is taken in accordance with procedures laid down in the rules of the pension scheme or in any applicable collective agreement requiring a higher level of approval than a simple majority, provided that such higher level of approval does not exceed 75% of the members and beneficiaries concerned or, where applicable, their representatives, together with proportionate safeguards necessary to ensure adequate member engagement and protection. In such cases, the participation threshold referred to in the third subparagraph shall not apply.'

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(16) the following Article 12a is inserted:

‘Article 12a

Domestic transfers

Member States shall ensure that transfers between IORPs authorised within the same Member State of all or a part of a pension scheme’s liabilities, technical provisions, and other obligations and rights, and corresponding assets or cash equivalent thereof, are governed by simple and transparent procedures that ensure the protection of members and beneficiaries and the continued sound management of the pension schemes concerned.

■

Member States shall ensure that competent authorities have appropriate supervisory powers with regard to such transfers.

Member States shall ensure that the transferring IORP makes available to the members and beneficiaries concerned and, where applicable, to their representatives, the information on the conditions of the transfer in a timely manner.

Where a Member State makes domestic transfers subject to the prior approval of the members and beneficiaries concerned, the approval procedure shall not be more stringent than the procedure set out in Article 12(3).;’

(17) in Article 13, paragraphs 1 and 2 are replaced by the following:

- ‘1. The home Member State shall ensure that IORPs operating pension schemes establish at all times in respect of the total range of their occupational pension schemes ■ an adequate amount of liabilities corresponding to the financial commitments which arise out of their portfolio of existing pension contracts.
2. The home Member State shall ensure that IORPs operating pension schemes, where they provide cover against biometric risks or guarantee either an investment performance or a given level of benefits, establish sufficient technical provisions in respect of the total range of such schemes.;

(18) Article 14 is amended as follows:

(a) paragraph 2 is amended as follows:

- (i) in the first subparagraph, the introductory wording is replaced by the following:

‘Home Member States shall ensure that their competent authorities have the necessary powers to allow an IORP, for a limited period of time, to have insufficient assets to cover the technical provisions. In this case, the competent authorities shall require the IORP to adopt a concrete and realisable recovery plan with a timeline in order to ensure that the requirements of paragraph 1 are met again. The plan shall be subject to the following conditions:’

- (ii) the following subparagraph is added:

‘The limited period of time referred to in the introductory wording of the first subparagraph shall be determined by national law and **Member States shall be responsible for setting a maximum recovery period at national level, taking into account local practices and circumstances in a justified and transparent manner .** █

(b) paragraph 3 is replaced by the following:

‘In the event of cross-border activity, the technical provisions shall at all times be fully funded, in respect of the total range of pension schemes operated.

In case an IORP which carries out cross-border activity gets in a position of having insufficient assets to cover the technical provisions the competent authorities of the home Member State shall promptly intervene and require the IORP to immediately draw up appropriate measures and implement them without delay in a way that members and beneficiaries are adequately protected.

In case an IORP makes a notification requesting permission for carrying out a cross-border activity, the competent authorities of the home Member State shall not grant permission if at that point in time the IORP has insufficient assets to cover the technical provisions’

(19) Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall require that every IORP referred to in Article 15(1) which is authorised in their territory maintains at all times an adequate available solvency margin in respect of its entire business which is at least equal to the requirements in this Directive in order to ensure long-term sustainability of occupational retirement provision ■ ;’

(b) in paragraph 4, the second subparagraph is replaced by the following:

‘The figure referred to in point (a) of the first subparagraph shall not exceed 3,5 % of the sum of the differences between, on the one hand, the relevant capital sums of life insurance, occupational ■ retirement provision activities and, on the other hand, the mathematical provisions for all policies for which Zillmerising is possible. The difference shall be reduced by the amount of any undepreciated acquisition costs entered as an asset.’

(20) in Article 17, the following paragraph 7 is added:

‘7. **█** The numbers and percentages in Articles 17 and 18 shall be amended, after a relevant appropriate and comprehensive study based on public sources is carried out by the Commission and accompanied by a legislative proposal, within a period of 18 months after the entry into force of this Directive;’

(21) the following Article 18a is inserted:

‘Article 18a

Internal stress testing

1. The competent authorities of the home Member States shall require that IORPs operating pension schemes, where the IORP itself, and not the sponsoring undertaking, underwrites the liability to cover against biometric risk, or guarantees a given investment performance or a given level of benefits, carry out a **multi-year scenario analysis, in the form of an internal** stress test, at least every three years to assess their ability to meet their obligations towards members and beneficiaries, **taking in consideration the** scenarios representing adverse market and **other** developments.

Notwithstanding the first subparagraph, the competent authority of the home Member State shall have the power to require an IORP to carry out the **internal** stress test exercise more frequently, at least where the results of the **internal** stress tests of previous years identify a risk of not having sufficient and appropriate assets to cover the technical provisions within a **midterm to long term time horizon**.

The competent authority may also require the IORP to assess whether its projected available solvency margin exceeds its required solvency margin, or, where applicable, any higher level of regulatory own funds required under national law pursuant to Article 15.

2. For the purposes of paragraph 1, IORPs shall make **multi-year** projections, **based on a midterm to long term time horizon, defined for this purpose by the Member States**, from the date of the most recent financial statements, of assets and liabilities under each of the following scenarios **to be specified at national level**:
- (a) a baseline scenario extending the economic conditions prevailing at the date of the most recent financial statements;
 - (b) an adverse scenario **relating to** interest rates **■** ;
 - (c) an **additional** adverse scenario **relating to** investment returns on non-depreciable assets;
 - (d) a **change** in the mortality rates of members and beneficiaries at all ages **■** .

By way of derogation from the first subparagraph, **the competent authority** may require **an IORP** to:

- (a) make projections over **a longer period than the regular multi-year time horizon defined at Member State level**;
- (b) carry out projections under adverse scenarios that are more severe than the scenarios set out in the first subparagraph, points (b), (c) or (d);
- (c) carry out projections under additional stressed scenarios.
3. Where the results of the **internal** stress test referred to in paragraph 1 indicate that, under any of the scenarios referred to in paragraph 2, an IORP would either **not meet the obligations towards members and beneficiaries or would** have insufficient assets to cover the technical provisions or, where applicable, **would** have an insufficient available solvency margin to meet the required solvency margin or any higher level of regulatory own funds required under national law pursuant to Article 15 for any projected year, Member States shall ensure that the competent authority requires the IORP to **demonstrate which precautions are taken and which tools or measures have been identified, in order to be prepared for the case that the scenario occurs, and in order to mitigate the risks arising from that scenario and to increase the overall resilience of the IORP.**

If the situation described in the first subparagraph occurs under the baseline scenario, in this case the IORP shall submit a convergence plan to the competent authority. In addition to the requirement under the baseline scenario, Member States may require an IORP to submit a convergence plan under any or all of the other scenarios referred to in paragraph 2. The convergence plan shall set out the measures that the IORP intends to take to restore, over the projection horizon, its ability to maintain sufficient assets to cover the technical provisions, or where applicable, to have an available solvency margin exceeding the required solvency margin.

Member States shall ensure that the IORP submits the convergence plan to the competent authority within three months from the date of carrying out the stress test.

Where no convergence plan is submitted within three months, or where the convergence plan does not contain credible actions to address the underfunding identified or, where applicable, the insufficient level of available solvency margin in the stress test, Member States shall ensure that competent authorities have the power to require the IORP to hold a higher available solvency margin.

4. Paragraph 3 shall not apply where an IORP is permitted, pursuant to Article 14(2), to have insufficient assets to cover the technical provisions for a limited period of time. In that case, Member States shall ensure that the recovery plan adopted under Article 14(2) reflects the outcome of the stress test referred to in paragraph 1 of this Article and, where necessary, is updated accordingly, in particular when determining the measures and the period for restoring full funding.
5. Member States may decide not to apply paragraphs 1 to 3 where they require IORPs located in their territory to hold regulatory own funds, in excess of the required solvency margin referred to in Article 17, provided that such regulatory own funds requirements are risk-based, at least in relation to market and longevity risks.;

(22) Article 19 is amended as follows:

(a) paragraph 1 is amended as follows:

(a) the introductory wording is replaced by the following:

‘1. Member States shall require IORPs authorised in their territory to invest in accordance with the prudent person principle and in particular in accordance with the following rules:;’

(b) point (b) is replaced by the following:

‘(b) within the prudent person principle, IORPs shall take into account sustainability risks, as defined in Article 2, point (22), of Regulation (EU) 2019/2088 of the European Parliament and of the Council* in their investment decisions and for that purpose, IORPs shall take into account the potential long-term impact of their investment strategy and decisions on sustainability factors, as defined in Article 2, point (24), of Regulation (EU) 2019/2088. That shall be done in a proportionate manner, taking into account the nature, scale and complexity of the activities of IORPs.’

(c) point (d) is replaced by the following:

‘(d) ■ the assets shall be predominantly invested on regulated markets, MTFs or OTFs;’

(b) the following paragraphs 1a **and** 1b are inserted:

- ‘1a. Member States shall require that, with respect to the whole portfolio of assets, IORPs only invest in assets and instruments whose risks the IORP concerned is able to properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall funding needs and the assessment of the risks to members and beneficiaries relating to the paying out of their retirement benefits in accordance with Article 28.
- 1b. Member States shall require that assets held to cover the technical provisions are also invested in a manner appropriate to the nature and duration of the liabilities entered into by the IORP.

■

(c) paragraph 6 is replaced by the following:

- ‘6. In accordance with the provisions of paragraphs 1 to 5, Member States may ■ , for **the** IORPs authorised in their territories, ■ lay down more detailed **rules, including quantitative** rules, provided they are prudentially justified.

■ However, in such cases, IORPs shall not be prevented from:

- (a) investing up to **100 %** of the assets **■** of the whole portfolio **■** in shares, negotiable securities treated as shares and corporate bonds admitted to trading on regulated markets, or through MTFs or OTFs, and deciding on the relative weight of those securities in their investment portfolio. **However, provided that it is prudentially justified, Member States may apply a lower limit of no lower than 40 % to IORPs which operate pension schemes with a long-term interest rate guarantee, bear the investment risk and themselves provide for the guarantee;**
- (b) investing up to 30 % of the assets **of the whole portfolio** in assets denominated in currencies other than those in which the liabilities are expressed;
- (c) investing in instruments that have a long-term investment horizon and are not traded on regulated markets, MTFs or OTFs **and in the case of schemes where members bear the investment risks, investing up to 20% of the assets of the whole portfolio in such instruments;**
- (d) investing in instruments that are issued or guaranteed by the EIB provided in the framework of the European Fund for Strategic Investments, European Long-term Investment Funds, European Social Entrepreneurship Funds and European Venture Capital Funds.;

Where rules laid down pursuant to this paragraph establish maximum levels of investment by asset class, Member States shall ensure that there are procedures for addressing departures from such limits, including where they result from market movements, valuation changes or changes in the value of the portfolio as a whole, within specified time limits, providing however, sufficient flexibility to avoid forced disposals of assets under unfavourable market conditions.

6a. Member States that lay down quantitative rules or other limits or conditions pursuant to paragraph 6 may ensure that national competent authorities are able to grant derogations from those rules, if an IORP can demonstrate that the derogation is required by, or consistent with, the prudent person principle. ’

(d) paragraph 8 is deleted;

‘
_____’
* Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1, ELI: <http://data.europa.eu/eli/reg/2019/2088/oj>);

** Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13, ELI: <http://data.europa.eu/eli/reg/2020/852/oj>).

(23) Article 21 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall require all IORPs to have in place an effective system of governance which provides for the sound and prudent management of their activities. That system shall at least have:

- (a) an adequate and transparent organisational structure with a clear allocation and appropriate segregation of responsibilities;
- (b) an effective system for ensuring the transmission of information and management of conflicts of interest.

That system of governance shall ensure that environmental, social and governance factors related to investment assets are considered in investment decisions and shall be subject to regular internal reviews.

Such internal reviews shall assess the adequacy of the composition, effectiveness and internal governance of the administrative, management or supervisory body, taking into account the **size**, nature, scale and complexity of the risks inherent in the activities of the IORP.;

(b) paragraphs 3 and 4 are replaced by the following:

- ‘3. Member States shall ensure that IORPs establish **■** apply **and review** written policies in relation to risk management, internal control, internal audit, remuneration and, where relevant, actuarial and outsourced activities, and that those policies are implemented. Those written policies shall be subject to prior approval by the management or supervisory body of the IORP and shall be reviewed at least every three years and adapted in view of any significant change in the system or area concerned.
4. Member States shall ensure that IORPs have in place an effective internal control system. That system shall have administrative and accounting procedures, an internal control framework **including compliance**, and appropriate reporting arrangements at all levels of the IORP **■** .?’

■

■

(d) in paragraph 6, the second and third sentences are deleted;

(e) the following paragraphs 7 to 10 are added:

- ‘7. Where there is potential or actual conflict of interest arising from the relationship between the IORP and a service provider of the IORP, Member States shall require that the persons who effectively run the IORP take independent decisions in the sole interest of members and beneficiaries.
8. Member States shall require IORPs and, where applicable, their respective nomination committees to engage a broad set of qualities and competencies when selecting members to the **administrative**, management or supervisory body, **promoting** a balanced representation of women and men.

Member States shall require that IORPs and, where applicable, their respective nomination committees, put in place a policy that promotes diversity and inclusion in the **administrative**, management or supervisory body. That policy shall ■ be applied in a manner that is proportionate to the nature, **size**, scale and complexity of the activities of IORPs.

The first and second subparagraph shall not apply where members of the administrative, management or supervisory body are elected by the ■ members and beneficiaries of the IORPs or by the representatives of social partners who have set up the IORP.

10. Member States shall ensure that the competent authorities have appropriate means, methods and powers for verifying the system of governance of the IORPs and for evaluating emerging risks identified by those IORPs which may affect their financial soundness.

Member States shall ensure that their competent authorities have the powers necessary to require that the system of governance be improved and strengthened to ensure compliance with the requirements set out in Articles 20 to 32.;

(24) Article 22 is amended as follows:

(a) paragraph 1 is replaced by the following:

- ‘1. Member States shall require IORPs to ensure that persons who effectively run the IORP, the administrative, management or supervisory bodies, persons who carry out key functions and, where applicable, persons or entities to which a key function has been outsourced in accordance with Article 31 fulfil the following requirements when carrying out their tasks:

(a) the requirement to be fit:

- (i) for persons who effectively run the IORP, this means their **professional** qualifications, knowledge and experience are adequate to enable them to ensure a sound and prudent management of the IORP, which shall include the knowledge and competencies enabling them to address the different levels of risk that members and beneficiaries are exposed to, depending on the nature of the schemes they are part of;
- (ii) for persons who carry out the actuarial or internal audit key functions this means their professional qualifications, knowledge and experience are adequate to properly carry out their key functions;
- (iii) for persons who carry out other key functions this means their **professional** qualifications, knowledge and experience are adequate to properly carry out their key functions;

- (iv) for the administrative, management or supervisory bodies, this means that the **professional** qualifications, knowledge and experience of their members are collectively adequate to enable them to perform their duties;
- (b) the requirement to be proper: they are of good repute and integrity.;
- (b) the following paragraphs 1a and 1b are inserted:
- ‘1a. Member States shall require that IORPs notify their competent authorities of any changes to the identity of the persons referred to in paragraph 1, along with the reasons for the changes and all information needed to assess whether the new persons appointed are fit and proper, **except where the respective person is subject to prior approval by the competent authority.**
- 1b. Member States shall require that IORPs notify their competent authorities where any of the persons referred to in paragraph 1 no longer fulfil the requirements laid down in that paragraph or have been replaced for that reason.;

(c) paragraph 2 is replaced by the following:

‘2. Member States shall ensure that the competent authorities **have the powers** to assess whether the persons referred to in paragraph 1 **fulfil** the requirements laid down in paragraph 1 **■** and whether there are any actual or potential conflicts of interest and how these are prevented or managed.’

(d) the following paragraph 2a is inserted:

‘2a. Where **the persons referred to in paragraph 1 do** not fulfil the requirements set out in paragraph 1, the competent authorities shall have the power to require the IORP to remove such person from that position.’

(25) in Article 23(3), the following **point (h)** is added:

■

(h) remuneration policies and practices shall be objective and non-discriminatory, and shall be based on the principle of equal pay for male and female employees for equal work or work of equal value for women and men.’

(26) in Article 25(2), the introductory wording is replaced by the following:

‘The risk-management system shall cover, in a manner that is proportionate to the **size**, nature, scale and complexity of the IORPs’ activities, risks which can occur in IORPs or in undertakings to which tasks or activities of an IORP have been outsourced, at least in the following areas, where applicable;’

(27) Article 26 is replaced by the following:

‘Article 26

Internal audit function

1. Member States shall require IORPs in a manner that is proportionate to the **size**, nature, scale and complexity of their activities to provide for an effective internal audit function.

The internal audit function shall include an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance, including, where applicable, outsourced activities.

2. Any findings and recommendations of the internal audit shall be reported to the administrative, management or supervisory body which shall determine what actions are to be taken with respect to each of the internal audit findings and recommendations and shall ensure that those actions are carried out.;

(28) Article 28 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

‘Member States shall ensure that IORPs establish a written policy for own-risk assessment containing the processes and procedures for carrying out the assessment, the frequency of the assessment and the methods.;

(b) paragraph 2 is amended as follows:

(i) the introductory wording is replaced by the following:

‘Member States shall ensure that the risk assessment referred to in paragraph 1, having regard to the **size**, nature, scale and complexity of the IORP’s activities, includes the following:;

(ii) the following **point (i)** is added:

‘(i) **█** an assessment of how the risks to which the IORP is or could be exposed compare to the risk tolerance limits approved by the administrative, management or supervisory body of the IORP. **The risk tolerance limits of members and beneficiaries may be taken into account at collective level**

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(iii) the following subparagraph is added:

‘For the purposes of the first subparagraph, point (i), Member States shall require that where, in accordance with the conditions of the pension scheme, members and beneficiaries bear risks, the risks and risk tolerance limits from the perspective of members and beneficiaries shall be considered, taking into account their capacity to bear risk and their risk appetite.’

(29) in Article 30, the following paragraphs are added:

‘Member States shall require that the statement identifies clear investment objectives for each pension scheme that are consistent with its retirement income objective, the overall performance objectives for the scheme and the means of monitoring performance. The statement shall also identify when deviations from the asset allocation strategy and performance objectives may be tolerated and to what extent. The investment policy shall also include any overarching decisions regarding tactical asset allocation, security selection and trade execution.

The statement shall also address whether, why, to what extent and how more complex classes of assets, including alternative asset classes, will be used, and shall specify the appropriate extent of exposure to counterparty risk.

Member States shall ensure that the IORP establishes procedures and criteria for reviewing the effectiveness of the investment policy and for determining whether amendments are required to the policy, its implementation procedures or the decision-making structure.

The statement shall be adopted by the administrative, management or supervisory body of the IORP. Where an IORP manages different pension schemes **that are subject to different investment policies**, separate statements of investment policy shall be prepared for each **different investment policy**.

Member States shall ensure that, for pension schemes in which members are entitled to make investment choices, the statement provides for an appropriate range of investment options, including a default option, **where appropriate**, classifies those options according to the nature and extent of the investment risk borne by members, and ensures that sufficient information is made available to enable informed investment decisions. ■

Member States shall ensure that an IORP is fully compliant with its Statement of Investment Principles and that the instructions an IORP gives to its external investment managers follow the Statement of Investment Policy Principles.

Member States shall ensure that IORPs regularly review the appropriateness of their performance benchmarks contained in their Statement of Investment Policy Principles or elsewhere, including internally used benchmarks. Member States shall ensure that an IORP compares its performance against such relevant benchmarks, on a multi-year annualized basis in gross and net terms.

Member States shall ensure that, where an IORP identifies that its performance, over a multi-year horizon using a rolling reference period, materially deviates from the above performance benchmarks, it takes action to assess the reasons for deviation and takes the appropriate action to remedy the deviation.'

(30) Article 31 is amended as follows:

(a) paragraph 1 is replaced by the following:

- ‘1. Member States shall permit or require IORPs authorised in their territory to entrust any activities including key functions and the management of those IORPs, in whole or in part, to service providers operating on behalf of those IORPs, provided that the outsourcing arrangements comply with paragraphs 2 to 6.;

The outsourcing envisaged in the first subparagraph is without prejudice to the respective legal responsibilities of management and depositary entities and supervisory bodies regarding their oversight and monitoring duties for the protection of IORP members according to national law.’;

(b) paragraph 5 is replaced by the following:

‘5. Member States shall ensure that IORPs outsourcing key functions, the management of those IORPs, or other activities covered by this Directive enter into a legally enforceable written agreement with the service provider. Such agreement shall include a breakdown of direct and indirect costs and shall clearly define the rights and obligations of the IORP and the service provider. In case of a potential conflict of interest with the service provider, IORPs shall document and implement procedures to prevent or manage conflicts of interest.’

(c) paragraph 7 is deleted;

(31) Article 33 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

‘1. In the case of a pension scheme where members and beneficiaries fully bear the investment risk, **■** the home Member State shall require the IORP to appoint a depositary per pension scheme for the safe-keeping of assets and oversight duties in accordance with Articles 34 and 35 or, if the IORP itself keeps the assets in accordance with Article 34(2), require the IORP to have a trustee who performs the oversight duties in accordance with Article 35 and is notified to the competent authority.

The first subparagraph shall be without prejudice to the possibility for an IORP to appoint the same depositary to act for one or more of the pension schemes it operates or to appoint more than one depositary per pension scheme.

For the purposes of the first subparagraph, the IORP or, where applicable, the authorised entity referred to in Article 2(1), shall not act as depositary for that scheme.

2. For pension schemes in which the members and beneficiaries do not fully bear the investment risk, the home Member State may require the IORP to appoint a depositary per pension scheme for safe-keeping of assets or for safe-keeping of assets and oversight duties in accordance with Articles 34 and 35.

The first subparagraph shall be without prejudice to the possibility for an IORP to appoint the same depositary to act for one or more of the pension schemes it operates or to appoint more than one depositary per pension scheme.

3. Unless otherwise provided for in this Chapter, for the appointment of the depositary, Chapter IV of Directive 2009/65/EC shall apply accordingly.

Member States shall not restrict IORPs from appointing depositaries established in another Member State.;

By derogation from paragraph 1, Member States may maintain alternative measures instead of requiring an IORP to appoint a depositary, provided that such measures existed prior to the entry into force of this Directive and ensure a comparable level of protection.'

- (32) Article 34 is replaced by the following:

‘Article 34

Safekeeping of assets and depositary liability

1. Unless otherwise provided for in this Chapter, for the execution of the tasks of the depositaries in relation to the safe-keeping of assets and the depositary liability, Chapter IV of Directive 2009/65/EC shall apply accordingly.
2. Where no depositary is appointed for the safe-keeping of assets, IORPs shall, at least be required to:

- (a) ensure that financial instruments are subject to due care and protection;
- (b) keep records that enable the IORP to identify all assets at all times and without delay;
- (c) take the necessary measures to avoid conflicts of interest in relation to the safe-keeping of assets;
- (d) inform the competent authorities, upon request, about the manner in which assets are kept.;

(33) in Article 35, paragraph 1 is replaced by the following:

‘1. Unless otherwise provided for in this Chapter, for the oversight duties of the depositary, Chapter IV of Directive 2009/65/EC shall apply accordingly.;

(34) the heading of Title IV is replaced by the following:

‘TITLE IV

INFORMATION TO BE GIVEN TO PROSPECTIVE MEMBERS, MEMBERS AND BENEFICIARIES AND BUSINESS CONDUCT RULES;’

(35) Article 36 is amended as follows:

(a) paragraph 1 is replaced by the following:

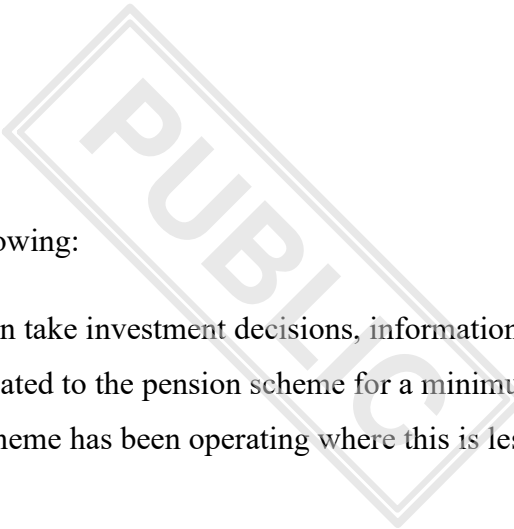
‘1. Taking into account the nature of the pension scheme established, Member States shall ensure that every IORP authorised in their territory operating occupational pension schemes provides to:

(a) prospective members: at least the information set out in Article 41;

(b) members: at least the information set out in Article 37 to 40, 42 and 44; and

(c) beneficiaries: at least the information set out in Article 37, 43 and 44.

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(36) in Article 37(1), point (g) is replaced by the following:

‘(g) where members bear investment risk or can take investment decisions, information on the past performance of investments related to the pension scheme for a minimum of ten years, or for all the years that the scheme has been operating where this is less than ten years;’

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(38) in Article 38 paragraphs 1, 2 and 3 are replaced by the following

(a) █

1. Member States shall require IORPs to draw up a concise document containing key information for each member. That document shall provide information on the level of risk borne by the member and take into consideration the specific nature of national pension systems and of relevant national social, labour and tax law (‘Pension Benefit Statement’). The title of the document shall contain the words ‘Pension Benefit Statement’.
2. The exact date and period to which the information in the Pension Benefit Statement refers to shall be stated prominently.

3. Members States shall require that the information contained in the Pension Benefit Statement is accurate, up to date, consistent with the choices made and complete. To facilitate understanding, the information presented shall be layered and follow principles of good design. The Pension Benefit Statement shall be made available to each member free of charge on paper or through electronic means, including on a durable medium or by means of a website, at least annually, in accordance with the member's preference. Preference shall be obtained at least at the beginning of membership;'

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■

(39) in Article 39, paragraph 1 is amended as follows:

(a) the following point (ba) is inserted:

‘(ba) the Member State in which the IORP is authorised and the names of the competent authorities of that Member State;’

(b) point (d) is replaced by the following:

‘(d) information on pension benefit projections based on the retirement age as specified in point (a), and a disclaimer that those projections may differ from the final value of the benefits received, including, where applicable, that the retirement benefit may be variable;;’

(c) point (g) is replaced by the following:

‘(g) where members bear investment risk or can take investment decisions, **and bear all or part of the costs**, information on the costs imposed **■**, including:

(i) a breakdown of all costs incurred, directly and indirectly, by members and beneficiaries over the previous 12 months **■**, indicating at least the costs of administration, **■** and the investment costs incurred in connection with the management of assets, **for each investment option, where applicable, in which the members invested;**

■

(d) the following points (i) and (j) are added:

‘(i) where members bear investment risk, information on the past performance of the pension scheme or, where applicable, the investment selection made, covering performance of a minimum of 10 years or, in cases where the scheme or the relevant investment option have been provided for less than 10 years, covering all the years for which the pension scheme or the relevant investment option have been provided;’;

- (j) where members bear investment risk and are able to select between investment options, a brief indication of the investment selection made, including the number of options selected, the proportion of assets invested in each option and an indication of the risk level of the selection made in summary form.’;
- (e) the following subparagraphs are added:

‘For the purposes of point (d), where the pension benefit projections are based on economic scenarios, that information shall include at least a best estimate scenario, a favourable scenario and an unfavourable scenario. The estimated future value of retirement benefits shall be shown in real terms together with a short narrative explanation.

■

For the purposes of point (i), information on past performance shall be accompanied by the statement ‘past performance is not indicative of future performance’.’;

- (40) in Article 40(1), point (c) is replaced by the following:

- ‘(c) information about the assumptions used for the pension benefit projections, and where applicable, information about the assumptions used for amounts expressed in annuities, in particular with respect to the annuity rate, the type of provider and the duration of the annuity;’

(41) Article 41 is amended as follows:

(a) in paragraph 1, point (a) is replaced by the following:

‘(a) any relevant options available to them including investment options, and their risks;’

(b) paragraph 2 is replaced by the following:

‘2. **Where members bear investment risk or can take investment decisions**, prospective members as referred to in paragraphs 1 and 3 shall be provided with the following:’

(a) information on the past performance of investments related to the pension scheme **or to each investment option, if any**, for a minimum of ten years, or for all the years that the scheme has been operating where that is less than ten years;

(b) information on all direct and indirect costs that members and beneficiaries have borne over the previous **calendar year**, including the costs of each investment option separately, **where such options are available, ;**

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(c) in paragraph 3, point (a) is replaced by the following:

‘(a) any relevant options available to them including investment options, and their risks and costs;’

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(43) Article 42 is replaced by the following:

‘Article 42

Information to be given to members during the pre-retirement phase

In addition to the Pension Benefit Statement, IORPs shall provide each member, in due time before the retirement age as specified in Article 39(1), point (a), or at the request of the member, with information about the upcoming start of the pay-out phase and the benefit pay-out options available in taking their retirement benefits, including the costs and charges associated with each option and the applicable tax treatment.

Member States shall ensure that the information referred to in the first subparagraph is accompanied by a concise explanatory **document** that includes all of the following information:

- (a) the main features, implications and potential effects of each benefit pay-out option available on the member and, where applicable, on the beneficiaries;
- (b) the risks and factors that could adversely affect the level, stability or duration of retirement income;
- (c) the circumstances and criteria for members to take into account when assessing the suitability of the different benefit pay-out options for their individual situation. ■

Member States shall ensure that where one of the benefit pay-out options offered by the IORP is a variable annuity, the IORP provides each member, in due time before the retirement age as specified in Article 39(1), point (a), with projections to illustrate the potential variation in the amount of the pay-out over time.;

(44) Article 43 is amended as follows:

(a) paragraph 1 is replaced by the following:

- ‘1. Member States shall require IORPs to ■ provide beneficiaries **at least every five years and the earlier where benefits are adjusted**, with information about ■ benefits **still** due, the corresponding pay-out options, and **where beneficiaries bear investment risk or can take investment decisions and bear all or part of the costs**, a breakdown of all costs incurred **as referred to in Article 39, point (g), and where beneficiaries bear investment risk or can take investment decisions**, information on the past performance as referred to in Article 39, **point (i)**.

The information shall also describe the main factors that could affect the level or duration of retirement income, including investment and life-expectancy risks, and shall indicate, where relevant, the right to change the pay-out option.;

(b) paragraph 3 is replaced by the following:

‘3. Where beneficiaries continue to make contributions or to bear investment risk during the pay-out phase, Member States shall ensure that IORPs continue to provide the Pension Benefit Statement, which shall also contain the information referred to in paragraph 1.;

(45) in Title IV, the following chapter is added:

‘CHAPTER 4

Business conduct rules

Article 44a

Duty of care

1. Member States shall, taking into account the nature of the pension scheme, ensure that every IORP authorised in their territory always acts honestly, fairly and professionally, and in accordance with the best interests of their members and beneficiaries **as a whole**. Those interests shall include the objective of providing adequate **and** risk-adjusted **■** returns over the long term, consistent with the long-term nature of pension obligations.

2. Member States shall ensure that IORPs put in place **appropriate measures** , including **information** to support prospective members, members and beneficiaries when they are deciding on the options available to them, and inform them about the potential consequences of their decisions.



Article 44c

Complaints

1. Member States shall require that IORPs put in place and apply effective procedures and arrangements that are appropriate for the settlement of complaints lodged by members and beneficiaries concerning their rights and obligations laid down in this Directive.
2. The procedures and arrangements referred to in paragraph 1 shall be available in **at least one of** the official languages of the Member State concerned, or, **in accordance with national legislation**, in another language accepted by the competent authorities of that Member State, or agreed between the IORP and its members and beneficiaries.
3. Member States shall require that IORPs reply, either electronically or on another durable medium, to the complaints of members and beneficiaries. The reply shall address all points raised within maximum 40 working days.

4. Member States shall ensure that IORPs inform members and beneficiaries who lodge a complaint about at least one alternative dispute resolution (ADR) body which is competent to deal with disputes concerning the rights and obligations of members and beneficiaries laid down in this Directive.
5. Member States shall ensure that the information on the procedures referred to in paragraph 1 is available free of charge to members and beneficiaries in a clear, comprehensive and easily accessible manner through electronic means, including on a durable medium or by means of a website, or on paper. That information shall specify how further information on the ADR body concerned and on the conditions for using it can be accessed.
6. Member States shall ensure that the competent authorities set up procedures which allow members, beneficiaries and other interested parties, including consumer associations, to submit complaints to the competent authorities with regard to alleged infringements of this Directive by IORPs. Member States shall ensure that in all cases, complainants receive replies.

7. Member States shall ensure that, **where** a case **■** concerns more than one Member State, the complainant may choose to lodge his or her complaint through the competent authorities of his or her Member State of residence, regardless of where the infringement occurred.
8. **By way of derogation from paragraphs 1 to 7, Member States may provide that existing national redress mechanisms, including those involving social partners, are deemed to satisfy the requirements of this Article, provided they ensure an equivalent level of protection and avoid unnecessary duplication of procedures.**

Article 44d

Out-of-court redress

1. Member States shall establish adequate, independent, impartial, transparent and effective ADR procedures for the settlement of disputes between IORPs and their members and beneficiaries concerning the rights and obligations laid down in this Directive. **■** Member States shall ensure that such ADR procedures are applicable, and the relevant ADR body's competence shall effectively extend, to IORPs against whom the procedures are initiated.
2. The bodies referred to in paragraph 1 shall cooperate effectively for the resolution of cross-border disputes concerning rights and obligations arising under this Directive.;

2a. Member States may provide that existing national redress frameworks, including those established and managed by social partners, satisfy the requirements of this Article. The obligations under paragraph 1 shall apply only in the absence of such existing equivalent mechanisms.";

(46) the heading of Title V is replaced by the following:

‘TITLE V

SUPERVISION’

(47) in Title V, the heading of Chapter 1 is replaced by the following:

‘CHAPTER 1

General rules on supervision’

(48) Article 45 is replaced by the following:

‘Article 45

Powers, resources and main objective of supervision by competent authorities

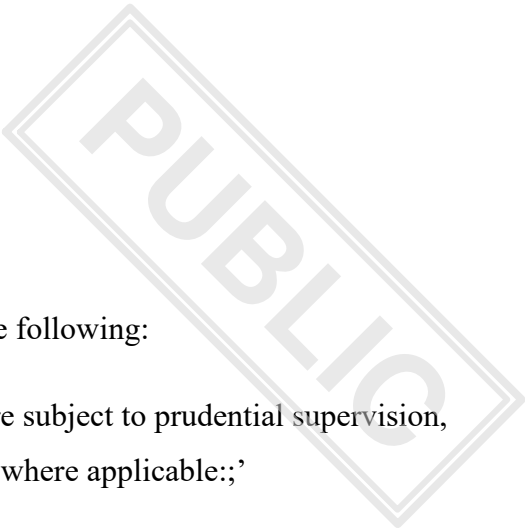
Member States shall ensure that their competent authorities possess all the necessary means and powers for the performance of their duties under this Directive, and have the relevant expertise, capacity, and mandate to achieve the main objective of supervision, namely the protection of the rights of members and beneficiaries and ensuring the stability and soundness of IORPs.;

(49) the following Article 45a is inserted:

‘Article 45a

Competent authorities

1. Member States shall designate the competent authorities empowered to ensure the implementation of this Directive. They shall inform the Commission thereof, indicating any division of those duties.
2. Where there is more than one competent authority in its territory, a Member State shall ensure that those authorities collaborate closely so that they can discharge their respective duties effectively.
3. Member States shall ensure that competent authorities have a sufficient number of qualified staff and resources that are necessary for the effective performance of their duties.;



(50) Article 46 is amended as follows:

(a) the title is replaced by the following:

‘Scope of supervision;’

(b) the introductory wording is replaced by the following:

‘Member States shall ensure that IORPs are subject to prudential supervision, including the supervision of the following where applicable;’

(c) the following second paragraph is added:

‘Member States shall also ensure supervision of the compliance with all other provisions of this Directive.’

(51) Article 47 is amended as follows:

(a) the title is replaced by the following:

‘General principles of supervision’

(b) in paragraph 2, the following sentence is added:

“It shall include the **monitoring on a risk based** basis of the proper operation of the IORPs’ activities and of the compliance with supervisory provisions by IORPs.’;’

(c) paragraph 4 is replaced by the following:

‘4. Supervisory powers shall cover the entire retirement provision business of the IORP █ . Member States shall ensure that those powers are applied in a manner which is timely and which is proportionate to the nature, scale and complexity of the activities of the IORP.;’

█

█

(52) Article 48 is amended as follows:

(a) the following **paragraph 1a** is inserted:

‘1a. Member States shall ensure that their competent authorities have the power to require all information necessary to conduct supervision in accordance with Article 50.

█

(b) paragraph 2 is replaced by the following:

‘2. Member States shall ensure that their competent authorities have the power:

(a) to take preventive and corrective measures to ensure that IORPs comply with the laws, regulations and administrative provisions with which they have to comply in each Member State;

(b) to take any necessary measures, including where appropriate, those of an administrative or financial nature, with regard to IORPs, and the members of their administrative, management or supervisory body.

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 those sanctions and other measures are implemented. Member States shall ensure that their administrative sanctions and other measures are effective, proportionate and dissuasive.’

(53) Article 49 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is replaced by the following:

‘Member States shall ensure that competent authorities review and evaluate 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 nature, scale and complexity of the activities of the IORP.’;

(ii) the following subparagraph is added:

‘The assessments referred to in the second subparagraph, points (b) and (c), shall take into account the risk of the IORP not having sufficient financial resources to cover its current and future operating costs **with due consideration of the liabilities that are underwritten or guarantees given by the IORP itself, and not the sponsoring undertaking, as referred to in Article 15(1).**’;

(b) the following paragraphs 1a and 1b are inserted:

‘1a. Member States shall ensure that competent authorities **monitor, in accordance with the risk profile of the IORP**, compliance with all elements referred to in Article 46(1).

1b. As part of the review process, the competent authority and each IORP shall conduct a supervisory dialogue **following a risk-based assessment by the competent authority.** ■

(c) paragraph 2 is replaced by the following:

‘2. Member States shall ensure that IORPs have procedures in place to identify **material** deteriorating financial conditions and immediately notify the competent authorities when such deterioration **is reasonably expected to have a significant impact on members' and beneficiaries' entitlements or the IORP's sustainability. Short-term fluctuations in investment returns that do not threaten the fulfilment of long-term obligations shall not, of themselves, be considered material.**

Member States shall ensure that competent authorities have in place appropriate monitoring tools ■ that enable them to identify deteriorating financial conditions in an IORP and to monitor how that deterioration is remedied.’

(d) the following paragraph 2a is inserted:

‘2a. The competent authorities shall assess the adequacy of the methods and practices of the IORP designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of the IORP concerned.

The supervisory authorities shall assess the ability of the IORP to withstand those possible events or future changes in economic conditions.’

(e) paragraph 4 is replaced by the following:

‘4. The reviews, evaluations and assessments referred to in paragraphs 1 and 1a shall be conducted regularly.

The competent authorities shall establish the minimum frequency and the scope of the reviews, evaluations and assessments having regard to the nature, scale and complexity of the activities of the IORP concerned.’

(54) the following **Article 49b** is inserted:■

Article 49b

Withdrawal of authorisation

1. The competent authority of the home Member State may withdraw an authorisation granted to an IORP in the following cases:
 - (a) the IORP concerned does not use its authorisation within 12 months, expressly renounces that authorisation or ceases to pursue activities for more than six consecutive months, unless the Member State concerned has made provision for authorisation to lapse in such cases;
 - (b) the IORP concerned no longer fulfils the conditions for authorisation;
 - (c) the IORP concerned fails seriously in its obligations under the regulations to which it is subject.
2. In the event of the withdrawal or lapse of authorisation, the competent authority of the home Member State shall notify the competent authorities of the other Member States accordingly, and those authorities shall take appropriate measures to prevent the IORP from commencing new operations within their territories.

The competent authority of the home Member State shall, together with those authorities, take all measures necessary to safeguard the interests of members and beneficiaries and, in particular, shall restrict the free disposal of the assets of the IORP.

3. Any decision to withdraw authorisation shall state the full reasons and shall be communicated to the IORP concerned. Every withdrawal of authorisation shall be notified to EIOPA.;

(55) Article 50 is amended as follows:

- (a) the following paragraphs are inserted after the title:

‘Member States shall require IORPs to submit to the competent authorities the quantitative and qualitative information which is necessary for the purposes of supervision, taking into account the objectives of supervision laid down in Article 45, the scope of supervision laid down in Article 46, and the general principles of supervision laid down in Article 47, in particular the principle of proportionality.

Member States shall ensure that the competent authorities have the following powers:

- (a) to determine the nature, the scope and the format of the information referred to in the first subparagraph, which they require IORPs to submit on a regular or ad hoc basis;
- (b) to obtain any information regarding contracts which are entered into with third parties; and
- (c) to require information from external experts, such as auditors and actuaries.;
- (b) the third subparagraph is amended as follows:
- (i) in point (d), the following point is added:
- ‘(vii) **scheme of operations** referred to in Article 9; █
- (ii) the following point (g) is added:

‘(g) **where necessary, request from IORPs** ■ quantitative **information** and supplementing the information ■ referred to in points (c) and (d), including, **where applicable, for the purposes of cooperation with EIOPA** in accordance with Article 35 of Regulation (EU) No 1094/2010’;

(iii) the following paragraphs are added:

‘Member States shall ensure that IORPs report on annual basis to the competent authorities information on investment returns, net of investment costs, and all costs and charges incurred in connection with their activities. **That information shall be provided only where relevant and only if relevant for supervisory purposes as decided by the competent authorities.**

■

(56) the following Article 50a is inserted:

‘Article 50a

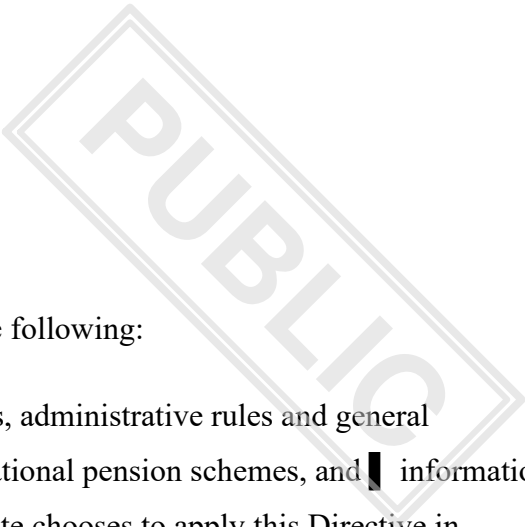
Supervision of outsourced functions and activities

1. Member States shall ensure that IORPs which outsource a function or an activity take the necessary steps to ensure that the following conditions are satisfied:
 - (a) the service provider cooperates with the **competent** authorities of the IORP to ensure supervision of the outsourced function or activity;
 - (b) the IORP, its auditors and the competent authorities have effective access to data related to the outsourced functions or activities, including the power to request information from IORPs and from service providers about outsourced key functions or any other activities at any time;
 - (c) the competent authorities have effective access to the business premises of the service provider and must be able to exercise those rights of access.

2. The Member State where the service provider is located shall permit the competent authorities of the IORP to carry out themselves, or through the intermediary of persons they appoint for that purpose, on-site inspections at the premises of the service provider. The competent authorities of the IORP shall inform the appropriate authority of the Member State of the service provider prior to conducting the on-site inspection. In the case of a non-supervised entity the appropriate authority shall be the competent authority.

The competent authorities of the Member State of the IORP may delegate such on-site inspections to the competent authorities of the Member State where the service provider is located.

3. Where a competent authority has informed the appropriate authority of the Member State of the service provider that it intends to carry out an on-site inspection in accordance with this paragraph, or where it carries out an on-site inspection in accordance with the first subparagraph where that competent authority is unable in practice to exercise its right to carry out that on-site inspection, the competent authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.



■

(57) Article 51 is amended as follows:

(a) paragraph 2 is amended as follows:

(a) points (a) and (b) are replaced by the following:

‘(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) the general criteria and methods used in the supervisory review process as set out in Article 49, including, in particular, an overview of their risk assessment framework.’

(b) point (d) is replaced by the following:

‘(d) the main objective of supervision, information on the main functions and an annual report on the activities of their competent authorities;’

(c) the following **subparagraph** is added: ■

█
The information referred to in the first subparagraph, points (a) to (e), shall be accessible at a single electronic location in each Member State.;

(b) in paragraph 3, the following subparagraph is added:

“The members of the governing and managing bodies of the competent authorities shall have the qualifications, experience and skills required to perform their duties and exercise their powers █ . The conditions required for the performance of their duties, and what constitutes serious misconduct, shall be laid down in advance in national law.”

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(58) the following Article 55a is inserted:

‘Article 55a

Collaboration platforms

1. EIOPA may, in the case of justified concerns about negative effects on members and beneficiaries, **■** or at the request of one or more of the relevant competent authorities, set up and coordinate a collaboration platform to strengthen the exchange of information and to enhance collaboration between the relevant competent authorities where an IORP carries out, or intends to carry out, cross-border activities, where such activities are of relevance with respect to the host Member State's market.
2. Paragraph 1 shall be without prejudice to the right of the relevant competent authorities to set up a collaboration platform where they all agree to do so.
3. The setting up of a collaboration platform pursuant to paragraphs 1 and 2 is without prejudice to the supervisory mandate of the competent authorities of the home Member State and host Member State provided for in this Directive.
4. Without prejudice to Article 35 of Regulation (EU) No 1094/2010, at the request of EIOPA, the relevant competent authorities shall provide all necessary information in a timely manner.

5. Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, EIOPA may, at the request of any relevant competent authority **■**, assist the competent authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1094/2010.

■

(59) Article 59 is replaced by the following:

‘Article 59

Publication of national rules

1. Member States shall ensure appropriate publication by their competent authorities of **the** requirements of social and labour law relevant to the field of occupational pension schemes **and the information requirements of Title IV** under which a pension scheme sponsored by an undertaking in the host Member State must be operated which shall apply to cross-border activities of IORPs as referred to in Article 11(1).
2. EIOPA shall include on its website the hyperlinks to the websites of competent authorities where information on such rules is published. Such information shall be up-to-date and EIOPA shall make the information available on its website, with all such rules categorised into different relevant areas of law.

3. Member States shall establish a single point of contact responsible for providing information on 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 which shall apply to cross-border activities of IORPs in their respective Member State. Such a point of contact should be an appropriate competent authority.

■

- (60) Articles 61 and 62 are replaced by the following:

‘Article 61

Processing of personal data

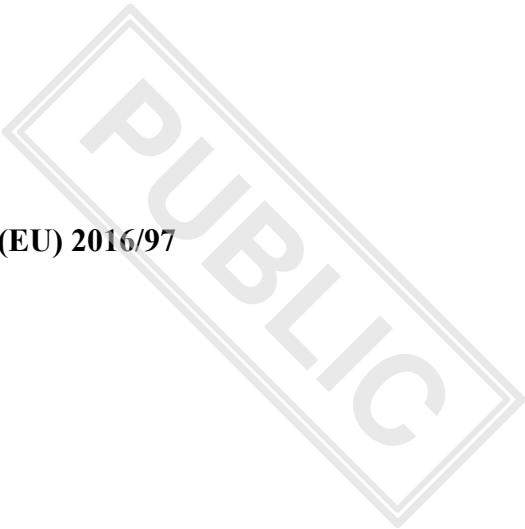
With regard to the processing of personal data within the framework of this Directive, IORPs and competent authorities shall carry out their tasks in accordance with Regulation (EU) 2016/679. With regard to the processing of personal data by EIOPA within the framework of this Directive, EIOPA shall comply with Regulation (EU) 2018/1725.

Article 62

Evaluation

By [PO please insert date = four years after the date of application of this Directive], EIOPA shall submit a report to the Commission, the European Parliament and the Council on the implementation of this Directive, in particular regarding the following aspects:

- (a) the extent to which this Directive contributes to the integration, efficiency and scale-up of occupational retirement provision within the internal market, including trends in consolidation and cooperation between IORPs;
- (b) the experience acquired in applying this Directive, including its impact on the size, cost-efficiency, **investment policies**, consolidation and professionalisation of IORPs, and its role in fostering trust, transparency and sound risk management in the interests of members and beneficiaries;
- (c) **the feasibility and suitability of** the optional extension of the scope of application of this Directive in accordance with Article 4, and its effect on the market for supplementary pensions.;



Article 2

Amendments to Directive (EU) 2016/97

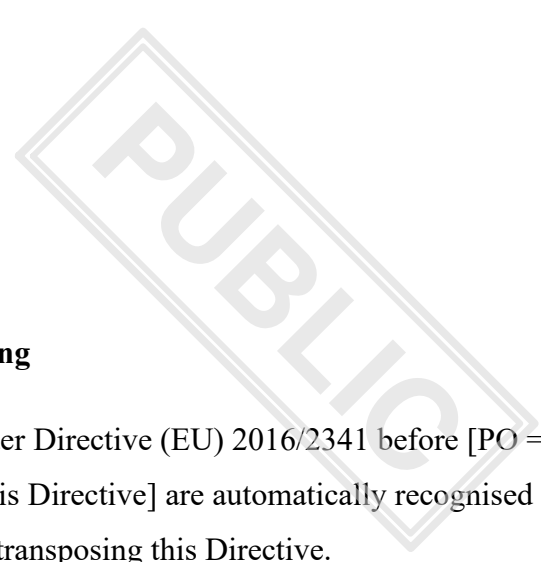
Directive (EU) 2016/97 is amended as follows:

(2) Article 22 is amended as follows:

- (a) in paragraph 5, the word ‘mandatory’ is deleted;
- (b) the following paragraph is added:

‘6. Member States shall ensure that, where the insurance distributor is responsible for the provision of occupational pension arrangements, prospective members, members and beneficiaries of such arrangements receive, at least, the information referred to in Articles 36 to 44 of Directive (EU) 2016/2341.;

Member States may provide that information already provided to them pursuant to other provisions of Union law needs not to be provided again, to the extent it covers the information referred to in the first subparagraph and meets the conditions laid down in those Articles.’;



Article 3

Grandfathering

1. IORPs which were registered or authorised under Directive (EU) 2016/2341 before [PO = please insert 1 day before application date of this Directive] are automatically recognised as IORPs authorised under national provisions transposing this Directive.

2. **By way of derogation from paragraph 1, Member States may require IORPs which were registered, but not authorised, before the date referred to in paragraph 1, to obtain authorisation in accordance with national provisions transposing this Directive.”**

Article 4

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [PO = 2 years after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 5

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 6

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President