

Directive (EU) 2016/2341 of the European Parliament and of the Council
of 14 December 2016 on the activities and supervision of institutions for
occupational retirement provision (IORPs) (recast) (Text with EEA relevance)

TITLE III

CONDITIONS GOVERNING ACTIVITIES

CHAPTER I

System of governance

Section 1

General provisions

Article 22

Requirements for fit and proper management

1 Member States shall require IORPs to ensure that persons who effectively run the IORP, 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 qualifications, knowledge and experience are collectively adequate to enable them to ensure a sound and prudent management of the IORP;
 - (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 qualifications, knowledge and experience are adequate to properly carry out their key functions; and
- b the requirement to be proper: they are of good repute and integrity.

2 Member States shall ensure that the competent authorities are able to assess whether the persons who effectively run the IORP or carry out key functions fulfil the requirements laid down in paragraph 1.

3 Where a home Member State requires proof of good repute, proof of no previous bankruptcy, or both, from the persons referred to in paragraph 1, that Member State shall accept as sufficient evidence in respect of nationals of other Member States the production of an extract from the judicial record of the other Member State or, in the absence of a judicial record in the other Member State, an equivalent document, showing that those requirements have been met,

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issued by a competent judicial or administrative authority either in the Member State of which the concerned person is a national or in the home Member State.

4 Where no competent judicial or administrative authority in either the Member State of which the concerned person is a national or in the home Member State issues an equivalent document as referred to in paragraph 3, that person shall be allowed to produce in its place a declaration on oath.

However, in home Member States where there is no provision for declarations on oath to be made the nationals of other Member States concerned shall be allowed to produce a solemn declaration made by him or her before a competent judicial or administrative authority in the home Member State or the Member State of which they are a national or before a notary in one of those Member States. Such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.

5 The proof in respect of no previous bankruptcy referred to in paragraph 3 may also be provided in the form of a declaration made by the national of the other Member State concerned before a competent judicial, professional or trade body in that other Member State.

6 The documents referred to in paragraphs 3, 4 and 5 shall be presented within three months of their date of issue.

7 Member States shall designate the authorities and bodies competent to issue the documents referred to in paragraphs 3, 4 and 5 and shall immediately inform the other Member States and the Commission thereof.

Member States shall also inform the other Member States and the Commission of the authorities or bodies to which the documents referred to in paragraphs 3, 4 and 5 are to be submitted in support of an application to pursue the activities referred to in Article 11 in the territory of that Member State.