

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 3*

*Depositary*

*Article 33*

**Appointment of a depositary**

1 In the case of an occupational pension scheme where members and beneficiaries fully bear the investment risk, the home Member State may require the IORP to appoint one or more depositaries for the safe-keeping of assets and oversight duties in accordance with Articles 34 and 35. The host Member State may require such IORPs to appoint one or more depositaries for the safe-keeping of assets and oversight duties in accordance with Articles 34 and 35 when carrying out cross-border activity in accordance with Article 11, provided that the appointment of a depositary is required under its national law.

2 For occupational 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 one or more depositaries for safe-keeping of assets or for safe-keeping of assets and oversight duties in accordance with Articles 34 and 35.

3 Member States shall not restrict IORPs from appointing depositaries established in another Member State and duly authorised in accordance with Directive 2013/36/EU or Directive 2014/65/EU, or accepted as a depositary for the purposes of Directive 2009/65/EC or Directive 2011/61/EU.

4 Member States shall take the necessary steps to enable competent authorities under their national law to prohibit, in accordance with Article 48, the free disposal of assets held by a depositary or custodian located within their territory at the request of the competent authority of the IORP's home Member State.

5 The depositary shall be appointed by means of a written contract. The contract shall stipulate the transmission of the information necessary for the depositary to perform its duties as set out in this Directive and in other relevant laws, regulations or administrative provisions.

6 When carrying out the tasks laid down in Articles 34 and 35, the IORP and the depositary shall act honestly, fairly, professionally, independently and in the interest of the scheme's members and beneficiaries.

7 A depositary shall not carry out activities with regard to the IORP which may create conflicts of interest between the IORP, the scheme's members and beneficiaries and itself, unless the depositary has functionally and hierarchically separated the performance of its

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depository tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the scheme's members and beneficiaries and to the administrative, management or supervisory body of the IORP.

8 Where no depository is appointed, IORPs shall make arrangements to prevent and resolve any conflict of interest in the course of tasks otherwise performed by a depository and an asset manager.