

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 1*

*System of governance*

*Section 1*

**General provisions**

*Article 20*

**Responsibility of the management or supervisory body**

1 Member States shall ensure that the management or supervisory body of an IORP has ultimate responsibility under national law for the compliance, by the IORP concerned, with the laws, regulations and administrative provisions adopted pursuant to this Directive.

2 This Directive is without prejudice to the role of social partners in the management of IORPs.

*Article 21*

**General governance requirements**

1 Member States shall require all IORPs to have in place an effective system of governance which provides for sound and prudent management of their activities. That system shall include an adequate and transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information. The system of governance shall include consideration of environmental, social and governance factors related to investment assets in investment decisions, and shall be subject to regular internal review.

2 The system of governance referred to in paragraph 1 shall be proportionate to the size, nature, scale and complexity of the activities of the IORP.

3 Member States shall ensure that IORPs establish and apply written policies in relation to risk management, internal audit and, where relevant, actuarial and outsourced activities. 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.

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4 Member States shall ensure that IORPs have in place an effective internal control system. That system shall include administrative and accounting procedures, an internal control framework, and appropriate reporting arrangements at all levels of the IORP.

5 Member States shall ensure that IORPs take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To that end, IORPs shall employ appropriate and proportionate systems, resources and procedures.

6 Member States shall require IORPs to have at least two persons who effectively run the IORP. Member States may allow that only one person effectively runs the IORP, on the basis of a reasoned assessment conducted by the competent authorities. That assessment shall take into account the role of social partners in the overall management of the IORP, as well as the size, nature, scale and complexity of the activities of the IORP.

## 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, 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.

### *Article 23*

#### **Remuneration policy**

1 Member States shall require IORPs to establish and apply a sound remuneration policy for all those persons who effectively run the IORP, carry out key functions and other categories of staff whose professional activities have a material impact on the risk profile of the IORP in a manner that is proportionate to their size and internal organisation, as well as to the size, nature, scale and complexity of their activities.

2 Unless otherwise provided for in Regulation (EU) 2016/679, IORPs shall regularly disclose publicly relevant information regarding their remuneration policy.

3 When establishing and applying the remuneration policy referred to in paragraph 1, IORPs shall comply with the following principles:

- a the remuneration policy shall be established, implemented and maintained in line with the activities, risk profile, objectives, and the long-term interest, financial stability and performance of the IORP as a whole, and shall support the sound, prudent and effective management of IORPs;
- b the remuneration policy shall be in line with the long-term interests of members and beneficiaries of pension schemes operated by the IORP;
- c the remuneration policy shall include measures aimed at avoiding conflicts of interest;
- d the remuneration policy shall be consistent with sound and effective risk management and shall not encourage risk-taking which is inconsistent with the risk profiles and rules of the IORP;
- e the remuneration policy shall apply to the IORP and to the service providers referred to in Article 31(1), unless those service providers are covered by the Directives referred to in point (b) of Article 2(2);
- f the IORP shall establish the general principles of the remuneration policy, shall review and update it at least every three years, and shall be responsible for its implementation;

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- g there shall be clear, transparent and effective governance with regard to remuneration and its oversight.