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AMENDMENTS 001-001

by the Committee on Economic and Monetary Affairs

Report

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A8-0011/2016

Activities and supervision of institutions for occupational retirement provision

Proposal for a directive (COM(2014)0167 – C7-0112/2014 – 2014/0091(COD))

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the activities and supervision of institutions for occupational retirement provision

(recast)

(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,

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■** .

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 Committee,

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2003/41/EC of the European Parliament and of the Council¹ has been substantially amended several times². Since further amendments are to be made, it should be recast in the interests of clarity.
- (2) *In the internal market institutions should have the possibility to operate in other Member States while ensuring a high level of protection and security for members and beneficiaries of occupational pension schemes. This Directive lays down the procedures required to carry out cross-border activity.*
 - (2a) *This Directive aims to provide for minimum harmonisation and should not preclude Member States from maintaining or introducing further provisions in order to protect members and beneficiaries, provided that such provisions are consistent with Member States' obligations under Union law. This Directive does not concern issues of national social, labour, tax, and contract law, nor the adequacy of pension provisions in Member States, other than the rules concerning occupational retirement provision as laid down in this Directive.*
 - (2b) *In order to facilitate further the mobility of workers between Member States, this Directive aims to ensure good governance, provision of information to scheme members, transparency and safety of occupational retirement provision. This Directive should facilitate the development of new and innovative pension products within collective systems which aim to guarantee adequate retirement provisions for all.*
 - (2c) *The way in which institutions for occupational retirement provision are organised and regulated varies significantly between Member States. Both institutions for occupational retirement provision and life insurance undertakings manage occupational pension schemes. It is not appropriate, therefore, to adopt a 'one-size-fits-all' approach to institutions for occupational retirement provision. The Commission and the European Supervisory Authority (European Insurance and*

¹ Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).

² See Annex I, Part A.

Occupational Pensions Authority) ('EIOPA'), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council¹ should take account of the various traditions of the Member States in their activities and should act without prejudice to national social and labour law in determining the organisation of institutions for occupational retirement provision.

- (3) Directive 2003/41/EC represented a first legislative step on the way to an internal market for occupational retirement provision organised on a European scale. A genuine internal market for occupational retirement provision remains crucial for economic growth and job creation in the European Union and for tackling the challenge of an ageing European society. The Directive, dating from 2003, has not been substantially amended to introduce a modern risk-based governance system also for institutions for occupational retirement provision. ***Appropriate regulation and supervision at national and Union level remains important for the development of safe and secure occupational retirement provision across all Member States. Member States should take into account the objective for all institutions of ensuring the intergenerational balance of occupational pension schemes, by aiming to have an equitable spread of risks and benefits between generations.***
- (3a) ***The activities of the institutions for occupational retirement provision should safeguard the intergenerational balance by ensuring equitable spread of risks and benefits between generations.***
- (4) ***Appropriate*** action is needed to further ***improve*** complementary private retirement savings such as occupational ***pension schemes***. This is important since social-security systems are coming under increasing pressure, which means that citizens ***could*** increasingly rely on occupational retirement pensions ***to complement future retirement savings. Institutions for occupational retirement provision play an important role in the long-term financing of the Union's economy and in providing secure retirement benefits for citizens of the Union.*** Occupational retirement pensions should be ***improved***, without, however, calling into question the ***fundamental*** importance of social-security pension systems in terms of secure, durable and effective social protection, which should ***for all citizens*** guarantee a decent standard of living in old age and should therefore be at the centre of the objective of strengthening the European social model.
- (4a) ***In view of demographic developments in the Union and the situation regarding national budgets, occupational retirement provision is a valuable addition to the social security pension system, but cannot replace the fundamental importance of the latter with regard to the provision of adequate, safe and sustainable retirement benefits.***
- (4b) ***Member States should ensure the social protection of workers with regard to pensions by providing public pensions sufficient to maintain a decent standard of living and to protect from old-age poverty and by promoting supplementary pension schemes linked to employment contracts as additional coverage.***

¹ OJ L 331, 15.12.2010, p. 48.

- (5) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, notably, the right to protection of personal data, the *freedom* to conduct a business, *the right to property*, *the right of collective bargaining and action* and the right to a high level of consumer protection, in particular by ensuring a higher level of transparency of retirement provisioning, informed personal financial and retirement planning as well as facilitating cross-border *activities* of *institutions* for occupational retirement provision and *the transfer of pension schemes*. This Directive must be implemented in accordance with these rights and principles.
- (5a) *One of the objectives of Directive 2003/41/EC was to facilitate cross-border activity of institutions for occupational retirement provision, but it should be recognised that such activity has been limited because of the restrictions laid down in national social and labour law and other barriers to the proper functioning of the internal market.*
- (5b) *In order to improve the functioning of the internal market in the field of occupational retirement provision, it is important that the procedures enabling institutions to carry out cross-border activity be clarified and that unnecessary obstacles, which hamper such cross-border activity, be removed. Based on an adequate Union prudential framework, the facilitation of cross-border activity could have a positive impact on affiliated undertakings and their employees, in whichever Member State they work, through the centralisation of the management of the occupational retirement provision business.*
- (5c) *Member States should enhance the protection of pension rights of workers temporarily sent to work in another Member State.*
- (6) Despite the entry into force of Directive 2003/41/EC important prudential barriers remain which make it more expensive for institutions to operate pension schemes across borders. Moreover, the current minimum level of protection for members and beneficiaries needs to be increased. This is all the more important as the number of Europeans relying on schemes that shift longevity and market risks from the institution or the undertaking offering the occupational scheme ("sponsoring undertaking") to the individual has increased significantly. In addition, the current minimum level of information provision to members and beneficiaries needs to be increased. ■
- (7) The prudential rules laid down in this Directive are intended both to guarantee a high degree of security for *all* future pensioners through the imposition of stringent supervisory standards, and to clear the way for the *sound, prudent and* efficient management of occupational pension schemes.
- (8) Institutions which are completely separated from any sponsoring undertaking and which operate on a funded basis for the sole purpose of providing retirement benefits should have freedom to provide services and freedom of investment, subject only to coordinated prudential requirements, regardless of whether these institutions are considered as legal entities.
- (9) In accordance with the principle of subsidiarity, Member States should retain full responsibility for the organisation of their pension systems as well as for the decision on the role of each of the three "pillars" of the retirement system in individual Member

States. In the context of the second pillar, they should also retain full responsibility for the role and functions of the various institutions providing occupational retirement benefits, such as industry-wide pension funds, company pension funds and life-assurance companies. This Directive *does not* call this prerogative *of Member States* into question. *Rather, this Directive seeks to encourage Member States to build up safe and adequate occupational pension provision and facilitate cross-border activity.*

- (9a) Taking into account the need to improve occupational retirement provision further, the Commission should provide significant added value at Union level by undertaking further steps in supporting Member States' cooperation with social partners in the improvement of second pillar pension schemes and by establishing a High Level Group of experts to enhance second pillar retirement savings in the Member States, including the promotion of the exchange of best practices between the Member States, in particular with regard to cross-border activity.*
- (9b) In some Member States a shift has happened in private pensions from defined benefit (DB) to defined contribution (DC), leading to a coverage gap between men and women.*
- (9c) Given the importance of ensuring adequate pension levels and closing the gender pension gap, the Commission should study extensively the impact of different pillars, pensions systems and their structures on both women and men. Based on the results, the Commission should propose actions and possible structural changes that are needed in order to ensure equal levels of pensions for women and men across the Member States.*
- (9d) Taking into account that the gender pension gap in the Union is 39 % on average, the Commission should not just rely on prudential rules but should also encourage Member States to develop top-up schemes, with monitoring mechanisms to control their effects, to contribute to the second pillar pension as a way to close the gender pension gap and to guarantee women's access to a decent pension.*
- (10) National rules concerning the participation of self-employed persons in institutions for occupational retirement provision differ. In some Member States, institutions for occupational retirement provision can operate on the basis of agreements with trade or trade groups whose members act in a self-employed capacity or directly with self-employed and employed persons. In some Member States a self-employed person can also become a member of an institution when the self-employed person acts as employer or provides professional services to an undertaking. In some Member States self-employed persons cannot join an institution for occupational retirement provision unless certain requirements, including those imposed by social and labour law, are met.
- (11) Institutions managing social-security schemes, which are already coordinated at Union level, should be excluded from the scope of this Directive. Account should nevertheless be taken of the specificity of institutions which, in a single Member State, manage both social-security schemes and occupational pension schemes.

- (12) Financial institutions which already benefit from a Union legislative framework should in general be excluded from the scope of this Directive. However, as these institutions may also in some cases offer occupational pension services, it is important to ensure that this Directive does not lead to distortions of competition. Such distortions may be avoided by applying the prudential requirements of this Directive to the occupational pension business of life-assurance ***undertakings in accordance with points (i) to (iii) of Article 2(3)(a) and points (ii) to (iv) of Article 2(3)(b) of Directive 2009/138/EC of the European Parliament and of the Council^{1a}***. The Commission should also carefully monitor the situation in the occupational ***pension schemes*** market and assess the possibility of extending the optional application of this Directive to other regulated financial institutions.
- (13) ***Since institutions for occupational pension schemes aim to ensure*** financial security in retirement, the ***retirement*** benefits paid by institutions for occupational retirement provision should generally provide for the payment of a lifelong pension, ***payments*** for a temporary period, ***payment of a lump sum, or any combination thereof***.
- (14) It is important to ensure that older and disabled people are not placed at risk of poverty and can enjoy a decent standard of living. Appropriate cover for ***biometric*** risks in occupational pension arrangements is an important aspect of the fight against poverty and insecurity among elderly people. When setting up a pension scheme, employers and employees, or their respective representatives, should consider the possibility of the pension scheme including provisions for the coverage of the longevity risk and occupational disability risks as well as provision for surviving dependants.
- (15) Giving Member States the possibility to exclude from the scope of national implementing legislation institutions managing schemes which together have less than 100 members ***or where the total of the institution's technical provisions does not exceed EUR 25 million*** can facilitate supervision in some Member States, without undermining the proper functioning of the internal market in this field. However, this should not undermine the right of such institutions to appoint for the management of their investment portfolio ***investment managers established and duly authorised in another Member State, and custodians or depositaries for the custody of their assets*** established in another Member State and duly authorised.
- (16) Institutions such as "Unterstützungskassen" in Germany, where the members have no legal rights to benefits of a certain amount and where their interests are protected by a compulsory statutory insolvency insurance, should be excluded from the scope of the Directive.
- (17) In order to protect members and beneficiaries, institutions for occupational retirement provision should limit their activities ***■***, and those arising therefrom, ***to those*** referred to in this Directive ***and provide clear and relevant information to members and beneficiaries for the purpose of ensuring good governance and risk management***.

^{1a} ***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).***

- (18) In the event of the bankruptcy of a sponsoring undertaking, a member faces the risk of losing both his/her job and his/her acquired pension rights. This makes it necessary to ensure that there is a clear separation between that undertaking and the institution and that minimum prudential standards *through assurances* are laid down to protect members. *The access of the institution to pension protection schemes or similar mechanisms which provide protection to accrued individual entitlements of members and beneficiaries against the risk of default of the sponsoring undertaking should be taken into account when prudential standards are laid down and specified.*
- (19) Institutions for occupational retirement provision operate and are supervised with significant differences in Member States. In some Member States, supervision can be exercised not only over the institution itself but also over the entities or companies which are authorised to manage these institutions. Member States should be able to take such specificity into account as long as all the requirements laid down in this Directive are effectively met. Member States should also be able to allow insurance entities and other financial entities to manage institutions for occupational retirement provision.
- (19a) A resilient system builds on the diversification of products, the diversity of institutions and the sizes of institutions as well as effective and converging supervisory practices.*
- (20) Institutions for occupational retirement provision are financial service providers which bear a heavy responsibility for the provision of occupational retirement benefits and therefore should meet certain minimum prudential standards with respect to their activities and conditions of operation, *taking into account national rules and traditions. However, such institutions should not be treated as purely financial service providers as they serve an important social function due to the central role played by social partners in the running of the institutions.*
- (20a) An institution's social function and the triangular relationship between the employee, the employer and the institution for occupational retirement provision should be adequately acknowledged and supported as a guiding principle of this Directive.*
- (20b) Institutions for occupational retirement provision are a vital part of the European economy, holding assets worth EUR 2.5 trillion on behalf of around 75 million citizens of the Union.*
- (21) The huge number of institutions in certain Member States means a pragmatic solution is necessary as regards prior authorisation of institutions. However, if an institution wishes to manage a scheme in another Member State, a prior authorisation granted by the competent authority of the home Member State should be required.
- (22) Without prejudice to national social and labour legislation on the organisation of pension systems, including compulsory membership and the outcomes of collective bargaining agreements, institutions should have the possibility of providing their services in other Member States upon receipt of the authorisation from the competent authority of the institution's home Member State. Institutions should be allowed to

accept sponsorship from undertakings located in any Member State and to operate pension schemes with members in more than one Member State. This would potentially lead to significant economies of scale for these institutions, improve the competitiveness of the Union industry and facilitate labour mobility.

- (23) The exercise of the right of an institution *established* in one Member State to manage an occupational pension scheme contracted in another Member State should fully respect the provisions of the social and labour law in force in the host Member State insofar as it is relevant to occupational *pension schemes*, for example the definition and payment of retirement benefits and the conditions for transferability of pension rights. The scope of prudential rules should be clarified in order to ensure legal certainty for the cross-border activities of the *institutions*.
- (24) Institutions should be able to transfer pension schemes to other institutions across borders within the Union in order to facilitate the organisation of occupational retirement provision on a Union scale, subject only to authorisation from the competent authority in the home Member State of the institution receiving the pension scheme (the "receiving institution"). ■ The transfer and its conditions should be subject to prior approval by members and beneficiaries concerned or, where applicable, their representatives. *In the case of a transfer of a pension scheme, the members and beneficiaries concerned should give prior approval for such transfer. Representatives of the members and beneficiaries, such as the trustees of a trust-based scheme, should be able to give prior approval on their behalf.*
- (24a) *In the case of a transfer of part of a pension scheme, the viability of both the transferred part and the remaining part of the pension scheme should be ensured and the rights of all members and beneficiaries should be adequately protected after the transfer, by requiring both the transferring and the receiving institutions to have sufficient and appropriate assets to cover the technical provisions for the transferred part and the remaining part of the scheme.*
- (25) A prudent calculation of technical provisions is an essential condition to ensure that obligations to pay retirement benefits can be met *both in the short and the long term*. Technical provisions should be calculated on the basis of recognised actuarial methods and certified by *an actuary or by another specialist in that field*. The maximum interest rates should be chosen prudently according to any relevant national rules. The minimum amount of technical provisions should both be sufficient for benefits already in payment to beneficiaries to continue to be paid and reflect the commitments that arise out of members' accrued pension rights. *The actuarial function should be carried out by persons who have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the activities of the institution for occupational retirement provision, and who are able to demonstrate their relevant experience with applicable professional and other standards.*
- (26) Risks covered by institutions vary significantly from one Member State to another. Home Member States should therefore have the possibility of making the calculation of technical provisions subject to additional and more detailed rules than those laid down in this Directive.

- (27) Sufficient and appropriate assets to cover the technical provisions ***should be required to*** protect the interests of members and beneficiaries of the pension scheme if the sponsoring undertaking becomes insolvent. ***Future support from sponsoring undertakings could be included in the assets where their valuation is independently audited and takes prudent account of the sponsors' default risk.***
- (27a) ***Member States should exchange best practices on cross-border institutions for occupational retirement provisions and encourage bilateral supervisory cooperation between competent authorities to address national barriers and to stimulate cross-border pensions.***
- (28) █ Member States should be able to ***allow institutions to be underfunded for a limited period of time***, provided that a proper ***recovery plan with a clear timeline*** is established to restore full funding and without prejudice to the requirements of Council Directive 80/987/EEC¹
- (29) In many cases, it could be the sponsoring undertaking and not the institution itself that either covers any biometric risk or guarantees certain benefits or investment performance. However, in some cases, it is the institution itself which provides such cover or guarantees and the sponsor's obligations are generally exhausted by paying the necessary contributions. In these circumstances, the products offered are similar to those of life-assurance companies and the institutions concerned should hold at least the same additional own funds as life-assurance companies.
- (30) Institutions are very long-term investors. Redemption of the assets held by these institutions cannot, in general, be made for any purpose other than providing retirement benefits. Furthermore, in order to protect adequately the rights of members and beneficiaries, institutions should be able to opt for an asset allocation that suits the precise nature and duration of their liabilities. These aspects call for efficient supervision and an approach towards investment rules allowing institutions sufficient flexibility to decide on the most secure and efficient investment policy and obliging them to act prudently. Compliance with the "prudent person" rule therefore requires an investment policy geared to the membership structure of the individual institution for occupational retirement provision.
- (31) By setting the "prudent person" rule as the underlying principle for capital investment and making it possible for institutions to operate across borders, the redirection of savings into the sector of occupational retirement provision is encouraged, thus contributing to economic and social progress.
- (32) Supervisory methods and practices vary among Member States. Therefore, Member States should be given some discretion on the precise investment rules that they wish to impose on the institutions located in their territories. █ These rules ***should also allow for the development of individual pension products within a collective system and*** should not restrict the free movement of capital █.
- (33) ***This Directive should ensure that there is an appropriate level of investment freedom for institutions.*** As very long-term investors with low liquidity risks ***and a***

¹ OJ L 283, 28.10.1980, p. 23.

social function, institutions for occupational retirement provision are in a position to invest in non-liquid assets such as shares as well as in instruments that have a long-term economic profile and are not traded on regulated markets, multilateral trading facilities (**MTF**) or organised trading facilities (**OTF**) within prudent limits. They can also benefit from the advantages of international diversification. Investments in shares in currencies other than those of the liabilities and in instruments that have a long-term economic profile and are not traded on regulated markets, **MTF** or **OTF** should therefore not be restricted, **in line with the 'prudent person' rule so as to protect the interest of members and beneficiaries**, except on prudential grounds.

- (34) The understanding of what constitutes instruments with a long-term economic profile is broad. These instruments are non-transferable securities and therefore do not have access to the liquidity of secondary markets. They often require fixed term commitments which restrict their marketability. These instruments should be understood to include participations, debt instruments in non-listed undertakings and loans provided to them. Non-listed undertakings include infrastructure projects, unlisted companies seeking growth, real estate or other assets that could be suitable for long term investment purposes. Low carbon and climate resilient infrastructure projects are often non-listed assets and rely on long term credits for project financing.
- (35) Institutions should be allowed to invest in other Member States in accordance with the rules of their home Member States in order to reduce the cost of cross-border activity. Therefore the host Member States should not be allowed to impose additional investment requirements on institutions located in other Member States.
- (35a) ***Union citizens working in another Member State need to have a clear overview of their accrued pension rights stemming from statutory and occupational pension schemes. That overview could be achieved through the establishment of pension tracking services across the Union, similar to those that have already been set up in some Member States following the Commission's White Paper of 16 February 2012 entitled 'An Agenda for Adequate, Safe and Sustainable Pensions', which promoted the development of such services.***
- (36) Some risks cannot be reduced through quantitative requirements reflected in the technical provisions and funding requirements but can only be properly addressed through governance requirements. Ensuring an effective system of governance is therefore essential for the adequate management of risk **and the protection of members and beneficiaries**. Those systems should be proportionate to the nature, scale and complexity of the activities **of the institution**.
- (37) Remuneration policies which encourage excessive risk-taking behaviour can undermine sound and effective risk management of institutions. Principles and disclosure requirements for remuneration policies applicable to other financial institutions in the Union should be made applicable also to institutions, bearing in mind, however, the particular governance structure of institutions in comparison to other types of financial institutions and the need to take account of the nature, scale and complexity of the activities of institutions.
- (38) A key function is **a** capacity to undertake particular governance tasks. Institutions should have sufficient capacity to have a risk-management function, an internal audit

function and, where applicable, an actuarial function. The identification of a particular key function does not prevent the institution from freely deciding how to organise that key function in practice save where otherwise specified in this Directive. This should not lead to unduly burdensome requirements because account should be taken of the nature, scale and complexity of the activities of the institution.

- (39) *Persons who effectively run the institution should collectively be fit and proper and persons who perform key functions should have adequate professional qualifications, knowledge and experience.* However, only the key function holders should be subject to notification requirements to the competent authority.
- (40) Furthermore, with the exception of the internal audit function, it should be possible for a single person or organisational unit to carry out more than one key function. However, the person or *organisational* unit performing a key function should be different from the one performing a similar key function in the sponsoring undertaking. *Member States should be able to authorise the institution to conduct key functions through the same person or through an organisational unit provided that no conflict of interest exists and the institution has adequate measures to address and prevent any conflict of interest.*
- (41) It is essential that institutions improve their risk management *taking into account the objective of ensuring the intergenerational balance of the pension scheme*, so that potential vulnerabilities in relation to the sustainability of the pension scheme can be properly understood and discussed with the competent authorities. Institutions should, as part of their risk management system, produce a risk *assessment* for their activities relating to pensions. That risk *assessment* should also be made available to the competent authorities *and should include, inter alia, risks related to climate change, use of resources, the environment, social risks, and risks related to the depreciation of assets due to regulatory change ('stranded assets')*. ■
- (42) Each Member State should require that every institution located in its territory draw up annual accounts and annual reports taking into account each pension scheme operated by the institution and, where applicable, annual accounts and annual reports for each pension scheme. The annual accounts and annual reports, reflecting a true and fair view of the institution's assets, liabilities and financial position, taking into account each pension scheme operated by an institution, and duly approved by an authorised person, are an essential source of information for members and beneficiaries of a scheme and the competent authorities. In particular, they enable the competent authorities to monitor the financial soundness of an institution and assess whether the institution is able to meet all its contractual obligations.
- (43) The investment policy of an institution is a decisive factor for both *the security and the long-term economic sustainability* of occupational *pension schemes*. The institutions should therefore draw up and, at least every three years, review a statement of investment principles. It should be made available to the competent authorities and on request also to members and beneficiaries of each pension scheme.
- (44) Institutions should be allowed to entrust *any activity including key functions*, in whole or in part, to *service providers* operating on their behalf. Institutions should

remain fully responsible for discharging all of their obligations under this Directive when they outsource key functions or any other activities.

- (45) The safe-keeping and oversight duties related to the assets of institutions should be strengthened by clarifying the depositary's roles and duties. **█** Institutions operating schemes where members and beneficiaries bear all the risks ***and where equivalent protections are not already in place***, should be required to appoint a depositary.
- (46) Institutions should provide clear and adequate information to prospective members, members and beneficiaries to support their decision-making about their retirement and ensure a high level of transparency throughout the various phases of a scheme comprising pre-enrolment, membership (including pre-retirement) and post-retirement. In particular, information concerning accrued pension entitlements, projected levels of retirement benefits, risks and guarantees, and costs should be given. Where members bear an investment risk, additional information on the investment profile, any available options and past performance are also crucial. ***All information should be adequate to the needs of the user and in compliance with the United Nations Convention on the Rights of Persons with Disabilities, in particular as regards accessibility and access to information, as provided for in Articles 3 and 21 thereof respectively.***
- (47) Before joining a scheme, prospective members should be given all the necessary information to make an informed choice such as possibilities to opt out, contributions, costs and investment options, where applicable. ***Where prospective members do not have a choice and are automatically enrolled in a pension scheme, the institution should provide them with the key relevant information about their membership immediately after enrolment.***
- (48) For the **█** members that have not yet retired, institutions should draw up a **█** pension benefit statement containing key personal and generic information about the pension scheme. The pension benefit statement should ***be clear and comprehensible and should contain relevant and appropriate information*** to facilitate the understanding of pension entitlements over time and across schemes and serve labour mobility.
- (49) Institutions should inform members sufficiently in advance before retirement about their pay-out options. Where the retirement benefit is not paid out as a lifetime annuity, members that approach retirement should receive information about the benefit payment products available, in order to facilitate financial planning for retirement.
- (50) During the phase when retirement benefits are paid, beneficiaries should continue to receive information on their benefits and corresponding payment options. This is particularly important when a significant level of investment risk is borne by beneficiaries in the pay-out phase. ***Beneficiaries should also be informed of any potential reduction in the level of benefits due, prior to any decision on such a potential reduction.***
- (51) The competent authority should exercise its powers having as its prime objective the protection of ***the rights of*** members and beneficiaries ***and the stability and soundness of the institutions.***

- (52) The scope of prudential supervision differs between Member States. This can cause problems where an institution needs to comply with the prudential regulation of its home Member State whilst simultaneously comply with the social and labour law of its host Member State. Clarifying which areas are considered to be part of prudential supervision for the purpose of this Directive reduces legal uncertainty and the associated transaction costs.
- (53) An internal market for institutions requires mutual recognition of prudential standards. The institution's adherence to those standards should be supervised by the competent authorities of the institution's home Member State. Member States should attribute to competent authorities the necessary powers to use preventive or corrective measures if institutions breach any of the requirements of this Directive.
- (54) In order to ensure effective supervision of outsourced activities, including all subsequent re-outsourcing activities, it is essential that the competent authorities have access to all relevant data held by the service providers to whom activities have been outsourced, regardless of whether the latter is a regulated or unregulated entity, and have the right to conduct on-site inspections. In order to take account of market developments and to ensure continuous compliance with the conditions for outsourcing, *competent authorities* should *have the necessary powers to request information from institutions about any outsourced* activities.
- (55) Provision should be made for exchanges of information between the competent authorities, other authorities and bodies tasked with strengthening of financial stability and the termination of pension schemes. It is therefore necessary to specify the conditions under which those exchanges of information should be possible. Moreover, where information may be disclosed only with the express agreement of the competent authorities, those authorities should be able, where appropriate, to make their agreement subject to compliance with strict conditions.
- (56) Directive 95/46/EC of the European Parliament and of the Council¹ governs the processing of personal data carried out in the Member States in the context of this Directive and under the supervision of the competent authorities. Regulation (EC) No 45/2001 of the European Parliament and of the Council², governs the processing of personal data carried out by the European Supervisory Authorities pursuant to this Directive and under the supervision of the European Data Protection Supervisor. Any processing of personal data carried out within the framework of this Directive, such as the exchange or transmission of personal data by the competent authorities should be in accordance with national rules which implement Directive 95/46/EC, and any exchange or transmission of information by the European Supervisory Authorities should be in accordance with Regulation (EC) No 45/2001.

¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p.31)

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies on the free movement of such data (OJ L 8, 12.01.2001, p. 1)

(57) In order to ensure the smooth functioning of the internal market for occupational retirement provision organised on a **Union** scale, the Commission should, after consulting EIOPA, review and report on the application of this Directive and should submit that report to the European Parliament and to the Council *on ...*[six years after the date of entry into force of this Directive]. .* ■

■

(60) Since the objective of the proposed action, namely to create a Union legal framework covering institutions for occupational retirement provision, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(60a) The further development at Union level of solvency models, such as the holistic balance sheet (HBS), is not realistic in practical terms and not effective in terms of costs and benefits, particularly given the diversity of institutions within and across Member States. No quantitative capital requirements - such as Solvency II or HBS models derived therefrom - should therefore be developed at the Union level with regard to institutions for occupational retirement provision, as they could potentially decrease the willingness of employers to provide occupational pension schemes.

(61) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(62) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(63) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

Title I

¹ OJ C 369, 17.12.2011, p. 14.

GENERAL PROVISIONS

Article 1

Subject matter

This Directive lays down rules for the taking-up and pursuit of activities carried out by institutions for occupational retirement provision.

Article 2

Scope

1. This Directive shall apply to institutions for occupational retirement provision. Where, in accordance with national law, institutions for occupational retirement provision do not have legal personality, Member States shall apply this Directive either to those institutions or, subject to paragraph 2, to those authorised entities responsible for managing them and acting on their behalf.

2. This Directive shall not apply to:

(a) institutions managing social-security schemes which are covered by Regulations (EC) No 883/2004¹ and (EC) No 987/2009 of the European Parliament and of the Council²;

(b) institutions which are covered by Directives **2009/65/EC³, 2009/138/EC⁴, 2011/61/EU⁵, 2013/36/EU⁶ and 2014/65/EU⁷ of the European Parliament and of the Council;**

(c) institutions which operate on a pay-as-you-go basis;

¹ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

² Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

³ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

⁴ **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)**

⁵ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

⁶ Directive 2013/36/EU of European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁷ **Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).**

(d) institutions where employees of the sponsoring undertakings have no legal rights to benefits and where the sponsoring undertaking can redeem the assets at any time and not necessarily meet its obligations for payment of retirement benefits;

(e) companies using book-reserve schemes with a view to paying out retirement benefits to their employees.

Article 3

Application to institutions operating social-security schemes

Institutions for occupational retirement provision which also operate compulsory employment-related pension schemes which 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 non-compulsory occupational retirement provision business. In that case, the liabilities and the corresponding assets shall be ring-fenced and it shall not be possible to transfer them to the compulsory pension schemes which are considered as social-security schemes or vice versa.

Article 3a

Duty of Care

1. Where a cross-border transfer in accordance with Article 13 (1) has been approved by members and beneficiaries of a pension scheme in accordance with Article 13(3), and where the transferring institution provides cover against biometric risks or guarantees either an investment performance or a given level of benefits, EIOPA shall, at the request of the competent authorities of the home Member State of the transferring institution, assess whether there could be any systemic risk to the Union financial system arising from the transfer and, without prejudice to Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU), whether the long-term interests of members and beneficiaries are negatively affected if the scheme were to be operated in the home Member State of the receiving institution.

2. The assessment of EIOPA referred to in paragraph 1, which shall not undermine cross-border activity, shall be completed by EIOPA within three months of receiving the request from the competent authorities of the home Member State of the transferring institution and shall be communicated to the competent authorities of the home Member State of the receiving institution.

The competent authorities of the home Member State of the receiving institution shall ensure that members and beneficiaries are adequately protected having regard to the recommendations set out in the assessment of EIOPA.

3. The assessment of EIOPA and any remedial action taken by the home Member State of the receiving institution on the basis of the assessment shall be publicly disclosed.

Article 4

Optional application to institutions covered by Directive 2009/138/EC

Home Member States may choose to apply the provisions of Articles 9 to 15, Articles 20 to 24(2), Articles 25 to 29, Articles 31 to 53 and Articles 55 to 71 of this Directive to the occupational retirement provision business of life insurance undertakings *in accordance with points (i) to (iii) of Article 2(3)(a) and points (ii) to (iv) of Article 2(3)(b) of Directive 2009/138/EC*. In that case, all assets and liabilities corresponding to the said business shall be ring-fenced, managed and organised separately from the other activities of the life insurance undertakings, without any possibility of transfer.

In such case, and only as far as their occupational retirement provision business is concerned, life insurance undertakings shall not be subject to Articles 76 to 86, Article 132, Article 134(2), Article 173, Article 185(5), Article 185(7) and (8) and Article 209 of Directive 2009/138/EC.

The home Member State shall ensure that either the competent authorities, or the authorities responsible for supervision of life insurance undertakings covered by Directive 2009/138/EC, as part of their supervisory work, verify the strict separation of the relevant occupational retirement provision business.

Article 5

Small pension institutions and statutory schemes

With the exception of Articles *20(1), (3)-(7), 22(1-5), and 34 to 37*, Member States may choose not to apply this Directive, in whole or in part, to any institution located in their territories which operates pension schemes which together have less than 100 members in total, *or where the total of the institution's technical provisions does not exceed EUR 25 million*. Subject to Article 2(2), such institutions shall nevertheless be given the right to apply this Directive on a voluntary basis. Article 12 may be applied only if all the other provisions of this Directive apply.

Member States may choose to apply Articles 1 to 8, Article 12, Article 20 and Articles 34 to 37 to institutions where occupational retirement provision is made under statute, pursuant to legislation, and is guaranteed by a public authority. Article 12 may be applied only if all the other provisions of this Directive apply.

Article 6

Definitions

For the purposes of this Directive:

(a) 'institution for occupational retirement provision', or 'institution', means an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed:

- individually or collectively between the employer(s) and the employee(s) or their respective representatives, or

- with self-employed persons, in compliance with the legislation of the home and host Member States,

and which carries out activities directly arising therefrom;

(b) ‘pension scheme’ means a contract, an agreement, a trust deed or rules stipulating which retirement benefits are granted and under which conditions;

(c) ‘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 or in a self-employed capacity or any combination thereof and which pays contributions into an institution for occupational retirement provision***;

(d) ‘retirement benefits’ means benefits paid by reference to reaching, or the expectation of reaching, retirement or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments on death, disability, or cessation of employment or in the form of support payments or services in case of sickness, indigence or death. In order to facilitate financial security in retirement, these benefits usually take the form of payments for life. They may, however, also be payments made for a temporary period or as a lump sum.

(e) ‘member’ means a person whose occupational activities entitle or will entitle him/her to retirement benefits in accordance with the provisions of a pension scheme;

(f) ‘beneficiary’ means a person receiving retirement benefits;

(g) ‘competent authorities’ means the national authorities designated to carry out the duties provided for in this Directive;

(h) ‘*biometric risks*’ mean risks linked to death, disability and longevity;

(i) ‘home Member State’ means the Member State in which the institution has ***its registered office or, if it does not have a registered office, its main administration*** **█**;

(j) ‘host Member State’ means the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the ***pension scheme operated by the institution***;

(k) ‘transferring institution’ means an institution transferring all or a part of a pension ***scheme's liabilities, technical provisions, other obligations and rights and corresponding assets, and cash equivalent thereof***, to an institution ***established within the Union***;

(l) ‘receiving institution’ means an institution receiving all or a part of a pension ***scheme's liabilities, technical provisions, other obligations and rights and corresponding assets, and cash equivalent thereof***, from an institution ***established within the Union***;

(m) ‘regulated market’ means a ***regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU***;

(n) 'multilateral trading facility' *or* '**MTF**' means a multilateral *trading facility or MTF as defined in point (22) of Article 4(1) of Directive 2014/65/EU*;

(o) 'organised trading facility' *or* '**OTF**' means *an organised trading facility or OTF as defined in point (23) of Article 4(1) of Directive 2014/65/EU*;

(p) 'durable medium' means *any* instrument which enables a member or a beneficiary to store information addressed personally to that member or beneficiary in a way that is accessible for future reference *and* for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

(q) 'key function', within a system of governance, means *a* capacity to undertake practical tasks *comprising* the risk management function, the internal audit function, and **■** the actuarial function.

(qa) 'cross-border activity' means operating a pension scheme governed by the social and labour law relevant to the field of occupational pension schemes of a Member State other than the home Member State.

Article 7

Activities of an institution

Member States shall require institutions located within their territories to limit their activities to retirement-benefit related operations and activities arising therefrom.

When, in accordance with Article 4, a life insurance undertaking manages its occupational retirement provision business by ring-fencing its assets and liabilities, the ring-fenced assets and liabilities shall be restricted to retirement-benefit related operations and activities directly arising therefrom.

Article 8

Legal separation between sponsoring undertakings and institutions **■**

Member States shall ensure that there is a legal separation between a sponsoring undertaking and an institution for occupational retirement provision in order that the assets of the institution are safeguarded in the interests of members and beneficiaries in the event of bankruptcy of the sponsoring undertaking.

Article 9

Registration or authorisation

1. Member States shall, in respect of every institution located in their territories, ensure that **■** the institution is registered in a national register, *or authorised*, by the competent authority **■**.

2. *The location of the main administration refers to the place where the main strategic decisions of an institution are made. In* the case of cross-border activities referred to in

Article 12, the register shall also indicate the Member States in which the institution is operating.

3. *That* information shall be communicated to *EIOPA* which shall publish it on its website.

4. *Member States shall require an institution to have its main administration in the same Member State as its registered office.*

Article 10

Operating requirements

1. Member States shall, in respect of every institution located in their territories, ensure that:

(a) *the institution has implemented* properly constituted rules regarding the *operation* of any pension scheme ■;

(b) ■ where the sponsoring undertaking guarantees the payment of the retirement benefits, it is committed to regular financing.

Ia. In accordance with the principle of subsidiarity and taking due account of the scale of pension benefits offered by the social-security regimes, Member States may provide that *additional benefits such as* the option of longevity and disability cover, provision for surviving dependants and a guarantee of repayment of contributions *are* offered to members *with the agreement of the* employers and *the* employees ■ or their respective representatives ■

Article 12

Cross-border activities and procedures

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 undertakings located within their territories to sponsor institutions which propose to or carry out cross-border activity. *Member States* shall also allow institutions authorised in their territories to carry out cross-border activity by accepting sponsorship *of any undertaking* located within the territories of *another* Member State.

2. An institution proposing to carry out cross-border activity and to accept sponsorship from a sponsoring undertaking shall be subject to a prior authorisation by the competent authorities of its home Member State. It shall notify its intention to accept sponsorship from a sponsoring undertaking to the competent authorities of the home Member State.

3. Member States shall require institutions ■ in their territories and proposing to receive sponsorship to provide the following information when effecting a notification under paragraph 2:

(a) the host Member State(s);

(a) the name and the location of the *main* administration of the sponsoring undertaking;

(b) the main characteristics of the pension scheme to be operated for the sponsoring undertaking.

4. Where a competent authority of the home Member State is notified under paragraph 2, and unless it has issued a *reasoned* decision that the administrative structure or the financial situation of the institution or the good repute or professional qualifications or experience of the persons running the institution are not compatible with the proposed *cross-border activity*, it shall within three months of receiving all the information referred to in paragraph 3 communicate that information to the competent authorities of the host Member State and inform the institution accordingly.

The *reasoned* decision referred to in the first subparagraph shall be *issued within three months of receipt of all of the information referred to in paragraph 3*.

Where the competent authority of the home Member State refuses to communicate the information referred in the first subparagraph to the competent authorities of the host Member State, it shall give the reasons for its refusal to the institution concerned within three months of receiving all the information referred to in paragraph 3. That refusal or a failure to act shall be subject to a right *of appeal* to the courts in the home Member State.

5. Before the institution starts to carry out a cross-border activity, the competent authorities of the host Member State shall, within *two weeks* of receiving the information referred to in paragraph 3, inform the competent authorities of the home Member State, of 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. The competent authorities of the home Member State shall communicate this information to the institution.

6. On receiving the communication referred to in paragraph 5, or if no communication is received from the competent authorities of the home Member State on expiry of the period provided for in paragraph 5, the institution may start to carry out a cross-border activity in accordance with the host Member State's requirements of social and labour law relevant to the field of occupational *pension schemes*.

7. The competent authorities of the host Member State shall inform the competent authorities of the home Member State 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. *The competent authorities of the home Member State shall communicate that information to the institution.*

8. The institution shall be subject to on-going supervision by the competent authorities of the host Member State as to the compliance of its activities with the host Member State's requirements of labour and social law relevant to the field of occupational pension schemes referred to in paragraph 5. Should this supervision bring irregularities to light, the competent authorities of the host Member State shall inform the competent authorities of the home Member State immediately. The competent authorities of the home Member State shall, in coordination with the competent authorities of the host Member State, take the necessary measures to ensure that the institution puts a stop to the detected breach of social and labour law.

9. If, despite the measures taken by the competent authorities of the home Member State or because appropriate measures are lacking in the home Member State, the institution 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, the competent authorities of the host Member State may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, insofar as is strictly necessary, preventing the institution from operating in the host Member State for the sponsoring undertaking.

Article 13

Transfers of pension schemes

1. ***Without prejudice to Article 12***, Member States shall allow institutions authorised or registered in their territories to transfer all or a part of ***a pension scheme's liabilities, technical provisions, other obligations and rights and corresponding assets, and cash equivalent thereof***, to ***a receiving institution***. ***In the event of a transfer of part of a pension scheme, Member States shall require the transferring and the receiving institution to have sufficient and appropriate assets to cover the technical provisions for the transferred part and the remaining part of the scheme, in accordance with Article 15(1)***.
2. The transfer of all or part of a pension ***scheme's liabilities, technical provisions, other obligations and rights and corresponding assets, and cash equivalent thereof***, between transferring and receiving institutions authorised or registered in different Member States shall be subject to prior authorisation by the competent authority of the home Member State of the receiving institution. The application for authorisation of the transfer shall be submitted by the receiving institution.
3. ***The*** transfer and its conditions shall be made subject to prior approval by ***a majority of*** members and ***a majority of the*** beneficiaries concerned or, where applicable, ***by a majority of*** their representatives. ***The*** information on the conditions of the transfer shall be made available to the members and beneficiaries concerned or, where applicable, ***to*** their representatives at least four months before the application referred to in paragraph 2 is submitted.
4. The application referred to in paragraph 2 shall contain the following information:
 - a) the written agreement between the transferring and the receiving institutions setting out the conditions of the transfer **■**;
 - aa) a description of the main characteristics of the pension scheme;***
 - ab) a description of the transferred liabilities or technical provisions, as well as other obligations and rights and corresponding assets, or cash equivalent thereof;***
 - ac) approval by the sponsoring undertaking and the members and beneficiaries of the transferring institution or, where applicable, their representatives.***

b) the name and the *locations of the main administrations* of the transferring *and receiving institutions and the name of the Member State in which the transferring institution is registered or authorised*;

c) the location of the *main* administration of the sponsoring undertaking and the name of the sponsoring undertaking;

d) *where applicable, the name of the host* ■ Member States *where the social and labour law relevant to the field of occupational pension schemes is applicable to the pension scheme concerned* ■.

5. Where a competent authority of the home Member State of the receiving institution ■ has not issued a *reasoned decision in accordance with Article 12(4)* ■, it shall within three months of receiving all the information referred to in paragraph 4 communicate its decision authorising the transfer to the receiving institution and to the competent authority of the home Member State of the transferring institution. The competent authority of the home Member State of the transferring institution shall inform the transferring institution of that decision, *together with the reasons therefor*.

■ Where the competent authority of the home Member State of the receiving institution refuses to communicate the *authorisation decision* referred to in the first subparagraph to the competent authorities of the home Member State of the transferring institution, it shall give reasons for its refusal to the *receiving institution* ■ within three months of receiving all the information referred to in paragraph 4. That refusal or a failure to act shall be subject to a right of the receiving institution *of appeal* to the courts in the home Member State of the receiving institution.

6. The competent authority of the home Member State of the transferring institution shall, within *two weeks* of receiving the *authorisation decision* referred to in paragraph 5, inform the competent authority of the home Member State of the receiving institution of the requirements of social and labour law relevant to the field of occupational *pension schemes* of the host Member State under which the pension scheme *is* operated. The competent authority of the home Member State of the receiving institution shall communicate this information to the receiving institution.

7. Upon receiving the communication referred to in paragraph 6, or if no communication is received from the competent authority of the home Member State of the receiving institution on expiry of the period laid down in paragraph 6, the receiving institution may start to operate the pension scheme in accordance with the requirements of social and labour law relevant to the field of occupational *pension schemes* of the host Member State.

8. *Institutions shall not impose a requirement on beneficiaries to hold a bank account with the IBAN code of the Member State in which they are located.*

Title II

QUANTITATIVE REQUIREMENTS

Article 14

Technical provisions

1. The home Member State shall ensure that institutions operating occupational pension schemes establish at all times in respect of the total range of their 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 institutions operating occupational 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 these schemes.
3. The calculation of technical provisions shall take place every year. However, the home Member State may allow a calculation once every three years if the institution provides members or the competent authorities with a certification or a report of adjustments for the intervening years. The certification or the report shall reflect the adjusted development of the technical provisions and changes in risks covered.
4. The calculation of the technical provisions shall be executed *by an actuary* and certified by an actuary or by another specialist in this field, including an auditor, according to national legislation, on the basis of actuarial methods recognised by the competent authorities of the home Member State, according to the following principles:
 - (a) the minimum amount of the technical provisions shall be calculated by a sufficiently prudent actuarial valuation, taking account of all commitments for benefits and for contributions in accordance with the pension arrangements of the institution. It must be sufficient both for pensions and benefits already in payment to beneficiaries to continue to be paid, and to reflect the commitments which arise out of members' accrued pension rights. The economic and actuarial assumptions chosen for the valuation of the liabilities shall also be chosen prudently taking account, if applicable, of an appropriate margin for adverse deviation;
 - (b) the maximum rates of interest used shall be chosen prudently and determined in accordance with any relevant rules of the home Member State. These prudent rates of interest shall be determined by taking into account:
 - (i) the yield on the corresponding assets held by the institution and the *projected* future investment returns and/or
 - (ii) the *current* market yields of high-quality *bonds*, government bonds *European Stability Mechanism (ESM) bonds, European Investment Bank (EIB) bonds or European Financial Stability Facility (EFSF) bonds, or;*
 - (*ii*a) *a combination of points (i) and (ii);*
 - (c) the biometric tables used for the calculation of technical provisions shall be based on prudent principles, having regard to the main characteristics of the group of

members and the pension schemes, in particular the expected changes in the relevant risks;

(d) the method and basis of calculation of technical provisions shall in general remain constant from one financial year to another. However, discontinuities may be justified by a change of legal, demographic or economic circumstances underlying the assumptions.

(da) where the institution changes the method and basis of calculation of technical provisions, it shall provide a full explanation of the impact of the changes on technical provisions to members and beneficiaries.

5. The home Member State may make the calculation of technical provisions subject to additional and more detailed requirements, with a view to ensuring that the interests of members and beneficiaries are adequately protected.

Article 15

Funding of technical provisions

1. The home Member State shall require every institution to have at all times sufficient and appropriate assets to cover the technical provisions in respect of the total range of pension schemes operated.

2. The home Member State may allow an institution, for a limited period of time, to have insufficient assets to cover the technical provisions. In this case the competent authorities shall require the institution to adopt a concrete and realisable recovery plan ***with a clear timeline*** in order to ensure that the requirements of paragraph 1 are met again. The plan shall be subject to the following conditions:

(a) the institution shall set up a concrete and realisable plan to re-establish the required amount of assets to cover fully the technical provisions in due time. The plan shall be made available to members or, where applicable, to their representatives and/or shall be subject to approval by the competent authorities of the home Member State;

(b) in drawing up the plan, account shall be taken of the specific situation of the institution, in particular the asset/liability structure, risk profile, liquidity plan, the age profile of the members entitled to receive retirement benefits, start-up schemes and schemes changing from non-funding or partial funding to full funding;

(c) in the event of ***winding up*** of a pension scheme during the period referred to in the first sentence of paragraph 2, the institution shall inform the competent authorities of the home Member State. The institution shall establish a procedure in order to transfer ***all*** assets and ***all*** corresponding liabilities to another financial institution or a similar body. ■

In the event of cross-border activity of an institution, and where the competent authorities of the host Member States concerned take the view that the interests of members and beneficiaries are not fully protected by the decisions taken by the competent authorities of the home Member State under this paragraph, EIOPA shall assist in settling any

disagreements in accordance with Article 19(1) and(2) of Regulation (EU) No 1094/2010.

3. **The conditions laid down in paragraphs 1 and 2 shall also apply in the event of cross-border activity referred to in Article 12, provided that the interests of members and beneficiaries are fully protected.**

Article 16

Regulatory own funds

1. The home Member State shall ensure that institutions operating pension schemes, where the institution 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, hold on a permanent basis additional assets above the technical provisions to serve as a buffer. The amount thereof shall reflect the type of risk and *the portfolio of assets* in respect of the total range of schemes operated. These assets shall be free of all foreseeable liabilities and serve as a safety capital to absorb discrepancies between the anticipated and the actual expenses and profits.

2. For the purposes of calculating the minimum amount of additional assets, the rules laid down in Articles 17, 18 and 19 shall apply.

3. Paragraph 1 shall, however, not prevent Member States from requiring institutions located in their territory to hold regulatory own funds or from laying down more detailed rules provided that they are prudentially justified.

Article 17

Available solvency margin

1. **In order to ensure long-term sustainability of occupational pension provision**, Member States shall require of every institution referred to in Article 16(1) which are located in their territories an adequate available solvency margin in respect of its entire business at all times which is at least equal to the requirements in this Directive.

2. The available solvency margin shall consist of the assets of the institution free of any foreseeable liabilities, less any intangible items, including:

(a) the paid-up share capital or, in the case of an institution taking the form of a mutual undertaking, the effective initial fund plus any accounts of the members of the mutual undertaking which fulfil the following criteria:

(i) the memorandum and articles of association must stipulate that payments may be made from those accounts to members of the mutual undertaking only in so far as this does not cause the available solvency margin to fall below the required level or, after the dissolution of the undertaking, where all the undertaking's other debts have been settled;

(ii) the memorandum and articles of association must stipulate, with respect to any payments referred to in point (i) for reasons other than the individual termination of membership in the mutual undertaking, that the competent

authorities must be notified at least one month in advance and can prohibit the payment within that period; and

(iii) the relevant provisions of the memorandum and articles of association may be amended only after the competent authorities have declared that they have no objection to the amendment, without prejudice to the criteria stated in points (i) and (ii);

(b) reserves (statutory and free) not corresponding to underwriting liabilities;

(c) the profit or loss brought forward after deduction of dividends to be paid; and

(d) in so far as authorised under national law, profit reserves appearing in the balance sheet where they may be used to cover any losses which may arise and where they have not been made available for distribution to members and beneficiaries.

The available solvency margin shall be reduced by the amount of own shares directly held by the institution.

3. Member States may provide that the available solvency margin may also comprise:

(a) cumulative preferential share capital and subordinated loan capital up to 50 % of the lesser of the available solvency margin and the required solvency margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital, provided that binding agreements exist under which, in the event of the bankruptcy or liquidation of the institution, the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled;

(b) securities with no specified maturity date and other instruments, including cumulative preferential shares other than those referred to in point (a), to a maximum of 50 % of the available solvency margin, or the required solvency margin, whichever the lesser, for the total of such securities, and the subordinated loan capital referred to in point (a) provided they fulfil the following conditions:

(i) they must not be repaid on the initiative of the bearer or without the prior consent of the competent authority;

(ii) the contract of issue must enable the institution to defer the payment of interest on the loan;

(iii) the lender's claims on the institution must rank entirely after those of all non-subordinated creditors;

(iv) the documents governing the issue of the securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the institution to continue its business; and

(v) only fully paid-up amounts must be taken into account.

For the purposes of point (a), subordinated loan capital shall also fulfil the following conditions:

- (i) only fully paid-up funds shall be taken into account;
- (ii) for loans with a fixed maturity, the original maturity shall be at least five years. No later than one year before the repayment date, the institution shall submit to the competent authorities for their approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the five years before the repayment date. The competent authorities may authorise the early repayment of such loans provided application is made by the issuing institution and its available solvency margin will not fall below the required level;
- (iii) loans the maturity of which is not fixed shall be repayable only subject to five years' notice unless the loans are no longer considered as a component of the available solvency margin or unless the prior consent of the competent authorities is specifically required for early repayment. In the latter event the institution shall notify the competent authorities at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment. The competent authorities shall authorise repayment only where the institution's available solvency margin will not fall below the required level;
- (iv) the loan agreement shall not include any clause providing that in specified circumstances, other than the winding-up of the institution, the debt will become repayable before the agreed repayment dates; and
- (v) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment.

4. Upon application, with supporting evidence, by the institution to the competent authority of the home Member State and with the agreement of that competent authority, the available solvency margin may also comprise:

- (a) where Zillmerising is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-Zillmerised or partially Zillmerised mathematical provision and a mathematical provision Zillmerised at a rate equal to the loading for acquisition costs included in the premium;
- (b) any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature;
- (c) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the available or required solvency margin, whichever is the lesser.

The figure referred to in point (a) shall not exceed 3,5 % of the sum of the differences between the relevant capital sums of life assurance and occupational retirement provision

activities and 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.

Article 18

Required solvency margin

1. The required solvency margin shall be determined as laid down in paragraphs 2 to 6 according to the liabilities underwritten.

2. The required solvency margin shall be equal to the sum of the following results:

(a) the first result:

a 4 % fraction of the mathematical provisions relating to direct business and reinsurance acceptances gross of reinsurance cessions shall be multiplied by the ratio, which shall not be less than 85 %, for the previous financial year, of the mathematical provisions net of reinsurance cessions to the gross total mathematical provisions;

(b) the second result:

for policies on which the capital at risk is not a negative figure, a 0,3 % fraction of such capital underwritten by the institution shall be multiplied by the ratio, which shall not be less than 50 %, for the previous financial year, of the total capital at risk retained as the institution's liability after reinsurance cessions and retrocessions to the total capital at risk gross of reinsurance.

For temporary assurances on death of a maximum term of three years, that fraction shall be 0,1 %. For such assurance of a term of more than three years but not more than five years, that fraction shall be 0,15 %.

3. For supplementary insurances referred to in Article 2(3)(a)(iii) of Directive 2009/138/EC the required solvency margin shall be equal to the required solvency margin for institutions as laid down in Article 19.

4. For capital redemption operations referred to in Article 2(3)(b)(ii) of Directive 2009/138/EC, the required solvency margin shall be equal to a 4 % fraction of the mathematical provisions calculated in compliance with paragraph 2(a).

5. For operations referred to in Article 2(3)(b)(i) of Directive 2009/138/EC, the required solvency margin shall be equal to 1 % of their assets.

6. For assurances covered by Article 2(3)(a)(i) and (ii) of Directive 2009/138/EC linked to investment funds and for the operations referred to in Article 2(3)(b)(iii), (iv) and (v) of Directive 2009/138/EC, the required solvency margin shall be equal to the sum of the following:

(a) in so far as the institution bears an investment risk, a 4 % fraction of the technical provisions, calculated in compliance with paragraph 2(a);

(b) in so far as the institution bears no investment risk but the allocation to cover management expenses is fixed for a period exceeding five years, a 1 % fraction of the technical provisions, calculated in compliance with paragraph 2(a);

(c) in so far as the institution bears no investment risk and the allocation to cover management expenses is not fixed for a period exceeding five years, an amount equivalent to 25 % of the net administrative expenses of the previous financial year pertaining to such business;

(d) in so far as the institution covers a death risk, a 0,3 % fraction of the capital at risk calculated in compliance with paragraph 2(b).

Article 19

Required solvency margin for the purpose of Article 18(3)

1. The required solvency margin shall be determined on the basis either of the annual amount of premiums or contributions, or of the average burden of claims for the past three financial years.

2. The amount of the required solvency margin shall be equal to the higher of the two results as set out in paragraphs 3 and 4.

3. The premium basis shall be calculated using the higher of gross written premiums or contributions as calculated below, and gross earned premiums or contributions.

The premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of direct business in the previous financial year shall be aggregated.

To that sum there shall be added the amount of premiums accepted for all reinsurance in the previous financial year.

From that sum there shall then be deducted the total amount of premiums or contributions cancelled in the previous financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.

The amount so obtained shall be divided into two portions, the first extending up to EUR 50 million, the second comprising the excess; 18 % of the first portion and 16 % of the second shall be added together.

The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the previous three financial years between the amount of claims remaining to be borne by the institution after deduction of amounts recoverable under reinsurance and the gross amount of claims. That ratio shall be no less than 50 %.

4. The claims basis shall be calculated, as follows:

The amounts of claims paid in respect of direct business (without any deduction of claims borne by reinsurers and retrocessionaires) in the periods specified in paragraph 1 shall be aggregated.

To that sum there shall be added the amount of claims paid in respect of reinsurances or retrocessions accepted during the same periods and the amount of provisions for claims outstanding established at the end of the previous financial year both for direct business and for reinsurance acceptances.

From that sum there shall be deducted the amount of recoveries effected during the periods specified in paragraph 1.

From the sum then remaining, there shall be deducted the amount of provisions for claims outstanding established at the commencement of the second financial year preceding the last financial year for which there are accounts, both for direct business and for reinsurance acceptances.

One third of the amount so obtained shall be divided into two portions, the first extending up to EUR 35 million and the second comprising the excess; 26 % of the first portion and 23 % of the second, shall be added together.

The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the previous three financial years between the amount of claims remaining to be borne by the institution after deduction of amounts recoverable under reinsurance and the gross amount of claims. That ratio shall be no less than 50 %.

5. Where the required solvency margin as calculated in paragraphs 2 to 4 is lower than the required solvency margin of the preceding year, the required solvency margin shall be at least equal to the required solvency margin of the preceding year, multiplied by the ratio of the amount of the technical provisions for claims outstanding at the end of the previous financial year and the amount of the technical provisions for claims outstanding at the beginning of the previous financial year. In those calculations technical provisions shall be calculated net of reinsurance but the ratio may be no higher than 1.

Article 20

Investment rules

1. Member States shall require institutions located in their territories to invest in accordance with the 'prudent person' rule and in particular in accordance with the following rules:

(a) the assets shall be invested in the best *long-term* interests of members and beneficiaries *as a whole*. In the case of a potential conflict of interest, the institution, or the entity which manages its portfolio, shall ensure that the investment is made in the sole interest of members and beneficiaries;

(aa) the 'prudent person' rule shall not prevent institutions from taking into account the potential long-term impact of investment decisions on environmental, social, governance or ethical factors;

(b) the assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole.

Assets held to cover the technical provisions shall also be invested in a manner appropriate to the nature and duration of the expected future retirement benefits,

taking into account the objective of ensuring the intergenerational balance of the pension scheme;

(c) the assets shall be predominantly invested on regulated markets. Investment in assets which are not admitted to trading on a regulated financial market must in any event be kept to prudent levels;

(d) investment in derivative instruments shall be possible insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of the institution's assets. The institution shall also avoid excessive risk exposure to a single counterparty and to other derivative operations;

(e) the assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole.

Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose the institution to excessive risk concentration;

(f) investment in the sponsoring undertaking shall be no more than 5 % of the portfolio as a whole and, when the sponsoring undertaking belongs to a group, investment in the undertakings belonging to the same group as the sponsoring undertaking shall not be more than 10 % of the portfolio.

When the institution is sponsored by a number of undertakings, investment in these sponsoring undertakings shall be made prudently, taking into account the need for proper diversification.

Member States may decide not to apply the requirements referred to in points (e) and (f) to investment in government bonds.

2. Taking into account the nature, scale and complexity of the activities of the institutions supervised, Member States shall ensure that the competent authorities monitor the adequacy of the institutions' credit assessment processes, assess the use of references to credit ratings issued by credit rating agencies as defined in Article 3(1)(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council ¹, in their investment policies and, where appropriate, encourage mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on such credit ratings.

3. The home Member State shall prohibit the institution from borrowing or acting as a guarantor on behalf of third parties. However, Member States may authorise institutions to carry out some borrowing only for liquidity purposes and on a temporary basis.

4. Member States shall not require institutions located in their territory to invest in particular categories of assets

5. Without prejudice to Article 32, Member States shall not subject the investment decisions

¹ Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1.)

of an institution located in their territory or its investment manager to any kind of prior approval or systematic notification requirements.

6. In accordance with the provisions of paragraphs 1 to 5, Member States may, for the institutions located in their territories, lay down more detailed rules, including quantitative rules, provided they are prudentially justified, to reflect the total range of pension schemes operated by these institutions.

However, Member States shall not prevent institutions from:

(a) investing up to 70 % of the assets covering the technical provisions or of the whole portfolio for schemes in which the members bear the investment risks in shares, negotiable securities treated as shares and corporate bonds admitted to trading on regulated markets, or through multilateral trading facilities or organised trading facilities, and deciding on the relative weight of these securities in their investment portfolio. ;

(b) investing up to 30 % of the assets covering technical provisions in assets denominated in currencies other than those in which the liabilities are expressed;

(c) investing in instruments that have a long *investment horizon* and are not traded on regulated markets, *MTFs* or *OTFs*.

(ca) investing in instruments that are issued or guaranteed by the EIB provided in the framework of the European Fund for Strategic Investments (EFSI), European Long-term Investment Funds (ELTIFs), European Social Entrepreneurship Funds (EuSEFs) and European Venture Capital Funds (EuVECAs).

7. **Without prejudice to paragraph 6**, Member States *may* require the application to institutions authorised or registered in their territory of more stringent investment rules on an individual basis provided they are prudentially justified, in particular in the light of the liabilities entered into by the institution.

8. The competent authorities of the host Member State of an institution carrying out cross-border activity as referred to in Article 12 shall not lay down investment rules in addition to those set out in paragraphs 1 to 6 for the part of the assets which cover technical provisions for cross-border activity.

Title III

CONDITIONS GOVERNING ACTIVITIES

CHAPTER 1

System of governance

Section 1

General provisions

Article 21

Responsibility of the management or supervisory body

1. Member States shall ensure that the management or supervisory body of the institution has the ultimate responsibility under national law for the compliance, by the institution 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 the institutions.

Article 22

General governance requirements

1. Member States shall require all institutions 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 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 be subject to regular internal review. ***The system of governance shall require environmental, social and governance factors related to investment assets to be considered in investment decisions, shall involve relevant stakeholders and shall be subject to regular internal review.***
2. The system of governance shall be proportionate to the nature, scale and complexity of the activities of the institution.
3. ***Institutions shall establish and apply*** written policies in relation to risk management, internal audit and, where relevant, ***actuarial activities*** and outsourcing. ***The institutions shall ensure*** that those policies are implemented. ***Those written*** policies shall be ***subject to prior approval by the management or supervisory body of the institution and shall be reviewed at least every three years*** and shall be adapted in view of any significant change in the system or area concerned.
4. Member States shall ensure that institutions shall 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 institution.
5. Member States shall ensure that institutions shall take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To that end, the institution shall employ appropriate and proportionate systems, resources and procedures.
6. Member States shall require institutions to have at least two persons who ***are effectively in charge of the operations of the institution. Member States may allow that only one person effectively runs the institution, on the basis of a reasoned assessment conducted by the***

competent authorities. The assessment shall take into account the role of social partners in the overall management of the institutions, as well as the size, nature, scale and complexity of the activities of the institutions.

Article 23

Requirements for fit and proper management

1. Member States shall require institutions to ensure that all persons who effectively run the institution *and persons who* have █ key functions fulfil the following requirements when carrying out their tasks:

(a) *the requirement to be fit:*

- *persons who effectively run the institution: their* qualifications, knowledge and experience are *collectively* adequate to enable them to ensure a sound and prudent management of the institution and

- *persons who carry out key functions: their professional 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 █ competent authorities █ assess whether the persons who effectively run the institution or have █ key functions fulfil the requirements laid down in paragraph 1.

3. Where a *home* Member State requires of its own nationals proof of good repute, proof of no previous bankruptcy, or both, 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 in the home Member State *of which* the concerned person is *a national or by the home Member State*.

4. Where the █ Member State or the Member State *of which* the concerned person is *a national* does not issue 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 Member States where there is no provision for declarations on oath the national of the other Member State 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 nationals of the other Member State concerned before a competent judicial, professional or trade body in that other Member State

concerned.

6. The documents and certificates referred to in paragraphs 3, 4 and 5 shall not be presented more than three months after 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 forthwith 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 to 5 are to be submitted in support of an application to pursue the activities referred to in Article 12 in the territory of that Member State.

Article 24

Remuneration policy

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

1a. This Article shall not apply to institutions authorised under Directives 2011/61/EU, 2013/36/EU, 2014/65/EU and 2014/91/EU.

2. Institutions shall regularly disclose publicly relevant information regarding the remuneration policy unless otherwise provided in the laws, regulations and administrative provisions transposing Directive 95/46/EC of the European Parliament and of the Council.¹

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

- the remuneration policy **is** in line with the **activities**, **risk profile**, **objectives** and the long-term **interest, financial stability** and performance of the institution as a whole, **and the remuneration policy supports sound, prudent and effective management of institutions;**
- **the remuneration policy is in line with the risk profile and the long-term interests of members and beneficiaries of pension schemes operated by the institution;**
- the remuneration policy **incorporates** measures aimed at avoiding conflicts of interest;

¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

- the remuneration policy *is consistent with* sound and effective risk management and *does* not encourage risk-taking that exceeds the risk tolerance limits *set*;
- the remuneration policy shall apply to the institution and to the parties performing the institution’s key functions or any other activities, including outsourced and subsequently re-outsourced key functions or any other activities;
- █
- the *institution’s* management or supervisory body *establishes and periodically reviews* the general principles of *its* remuneration policy █ *and is* responsible for *overseeing* its implementation;
- █
- there shall be clear, transparent and effective governance with regard to remuneration and its oversight.

█

Section 2

Key functions

Article 25

General provisions

1. Member States shall require institutions to incorporate *the following key functions*: a risk-management function, an internal audit function, and, where applicable, an actuarial function. *Institutions shall enable the holder of a key function* █ *to undertake its duties effectively in an objective, fair and independent manner.*

2. Institutions may allow a single person or organisational unit to carry out more than one key function. *The internal audit* function shall be *carried out by a single* person or organisational unit █.

3. *The single* person or organisational unit carrying out the key function shall be different from the one carrying out a similar key function in the sponsoring undertaking. On the basis of a reasoned request from the institution, the competent *authorities may authorise the institution to conduct key functions through the same person or organisational unit, provided that no conflict of interest with the sponsoring undertaking exists. Member States shall allow competent authorities to take appropriate measures in the event that a conflict of interest is identified.*

█

5. Any findings and recommendations *by holders of a key function* shall be reported to the █ management or supervisory body of the institution which shall determine what actions are to be taken.

6. The **holder of a key function** shall inform the competent authority of the institution **of any finding that could have a significant impact on the interests of members and beneficiaries**:

■

7. Member States shall ensure legal protection of persons informing the competent authority in accordance with paragraph 6.

Article 26

Risk management ■

1. Member States shall require institutions, **in a manner that is appropriate to their size and internal organisation, as well as the nature, scale and complexity of their activities**, to have in place an effective risk-management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report on a continuous basis **to competent authorities** the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies.

That risk-management system shall be **effective and** well-integrated into the organisational structure and in the decision-making processes of the institution.

2. The risk-management system shall cover appropriately to their size, internal organisation and the nature, scope and complexity of their activities risks which can occur in the institutions or in undertakings to which tasks or activities have been outsourced at least in the following areas:

- (a) underwriting and reserving;
 - (b) asset–liability management;
 - (c) investment, in particular derivatives, **securitisations** and similar commitments;
 - (d) liquidity and concentration risk management;
 - (e) operational risk management;
 - (f) insurance and other risk-mitigation techniques.
- (fa) social and environmental risks relating to the investment portfolio and the management thereof.**

3. Where, in accordance with the conditions of the pension scheme, members and beneficiaries bear risks, the risk management system shall also consider those risks from the perspective of members and beneficiaries.

4. Institutions shall provide for a risk-management function structured in such a way as to facilitate the **functioning** of the risk-management system.

Article 27

Internal audit ■

1. Member States shall require institutions *in a manner that is appropriate to their size and internal organisation, as well as the 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 ■.

2. Member States shall require institutions to designate at least one independent person, inside or outside of the institution, who is responsible for the internal audit function. ■

■

Article 28

Actuarial function

1. *Where an institution itself provides cover against biometric risks or guarantees either an investment performance or a given level of benefits, Member States shall require that institution to* provide for an effective actuarial function to:

- (a) co-ordinate and oversee the calculation of technical provisions;
- (b) *ensure* the appropriateness of the methodologies and underlying models used in the calculation of technical provisions and the assumptions made for this *purpose*;
- (c) assess the sufficiency and quality of the data used in the calculation of technical provisions;
- (d) compare *the assumptions underlying the calculation of the technical provisions* with the experience;
- (e) inform the ■ management or supervisory body of the institution of the reliability and adequacy of the calculation of technical provisions;
- (f) express an opinion on the overall underwriting policy in the event of the institution having such a policy;
- (g) express an opinion on the adequacy of insurance arrangements in the event of the institution having such arrangements; and
- (h) contribute to the effective implementation of the risk management system.

2. Member States shall require institutions to designate at least one independent person, inside or outside the institution, who is responsible for the actuarial function.

Section 3

Documents concerning governance

Article 29

Own risk assessment

1. As part of *its* risk-management system, **and in a manner that is appropriate to its size and internal organisation, as well as to the nature, scale and complexity of its activities, every institution shall conduct its** own risk assessment.

The risk *assessment* shall be performed regularly and without delay following any significant change in the risk profile of the institution or of the pension *schemes operated by the institution*.

2. The risk *assessment* referred to in paragraph 1 shall cover, *where appropriate to the nature, scale and complexity of the institution's activities*:

- (a) the effectiveness of the risk-management system;
- (b) the overall funding needs of the institution;
- (c) the *risks inherent to the sufficiency of* technical provisions *in respect of the total range of pension schemes operated*;
- (d) **the risks to members and beneficiaries relating to their entitlements being paid out and the effectiveness of any remedial action**;
- (e) a qualitative assessment of *any financial* support, *including guarantees, pension protection schemes or covenants*, accessible to the institution, *or to members and beneficiaries*;
- (f) a qualitative assessment of the operational risks;
- (g) *an* assessment of new or emerging risks, *including risks related* to climate change, use of resources and the environment, *social risks and risks related to the depreciation of assets due to regulatory change*.

3. For the purposes of paragraph 2, the institutions shall have in place methods to identify and *assess* the risks they are or could be exposed to in the short and in the long term. Those methods shall be proportionate to the nature, scale and complexity of the risks inherent in its activities. The methods shall be described in the *assessment*.

4. The risk *assessment referred to in paragraph 3* shall *take into account the objective of ensuring the intergenerational balance of the pension scheme, shall be performed regularly and form* an integral part of the operational strategy and shall be taken into account in the strategic decisions of the institution. *It shall be made available to the members of the scheme*.

Article 31

Annual accounts and annual reports

Member States shall require every institution located in their territories to draw up **and publicly disclose** annual accounts and annual reports taking into account each pension scheme operated by the institution and, where applicable, annual accounts and annual reports for each pension scheme. The annual accounts and the annual reports shall give a true and fair view of the institution's assets, liabilities and financial position, **and include disclosure of major investment holdings**. The annual accounts and information in the reports shall be consistent, comprehensive, fairly presented and duly approved by authorised persons, in accordance with national law.

Article 32

Statement of investment policy principles

Member States shall ensure that every institution located in their territories prepares and, at least every three years, reviews a written statement of investment-policy principles. That statement is to be revised without delay after any significant change in the investment policy. Member States shall provide for this statement to contain, at least, such matters as the investment risk measurement methods, the risk-management processes implemented and the strategic asset allocation with respect to the nature and duration of pension liabilities **and how the investment policy takes environmental, social and governance issues into account. The statement shall be made publicly available on a website.**

CHAPTER 2

Outsourcing and investment management

Article 33

Outsourcing

1. Member States may permit or require institutions located in its territory to entrust management of those institutions, in whole or in part, to other entities operating on behalf of those institutions.
2. Member States shall ensure that institutions remain **fully** responsible for compliance with their obligations under this Directive when they outsource key functions or any other activities.
3. Outsourcing of key functions or any other activities shall not be undertaken in such a way as to lead to any of the following:
 - (a) impairing the quality of the system of governance of the institution concerned;
 - (b) unduly increasing the operational risk;

(c) impairing the ability of the competent authorities to monitor the compliance of the institution with its obligations;

(d) undermining continuous and satisfactory service to members and beneficiaries.

4. The institution shall ensure the proper functioning of the outsourced activities through the process of selecting *a* service provider and the on-going monitoring of the activities *of that service provider*.

5. Member States shall ensure that institutions outsourcing *any activity* enter into a written agreement with the service provider. The agreement shall be legally enforceable and shall clearly define the rights and obligations of the *institution* and the service provider.

6. Member States shall ensure that institutions notify, in a timely manner, competent authorities in advance of *any activity* as well as of any subsequent important developments with respect *those* activities.

7. Member States shall ensure that competent authorities have the necessary powers to request information from institutions about *any outsourced* activities.

Article 34

Investment management

Member States shall not restrict institutions from appointing, for the management of the investment portfolio, investment managers established in another Member State and duly authorised for this activity, in accordance with *Directives* 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU and 2014/65/EU, as well as those *institutions* referred to in Article 2(1) of this Directive.

CHAPTER 3

Depositary

Article 35

Appointment of a depositary

1. For each occupational pension scheme in which members and beneficiaries fully bear the investment risk, *where the national law of the home Member State does not provide protection for safe-keeping assets and oversight duties equivalent to Articles 36 and 37, and where a depositary has not already been appointed in relation to pension scheme assets in financial products in accordance with Directives 2011/61/EU or 2009/65/EU, Member States may* require the institution to appoint a single depositary *or depositaries* for safe-keeping of assets and oversight duties in accordance with *Articles* 36 and 37.

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 institution to appoint a depositary for safe-keeping of assets or for safe-keeping of assets and oversight duties in accordance with Articles 36 and 37. *Without prejudice to Article 36(5), that requirement shall not apply to those assets of an institution in as far as that institution has invested*

those assets directly in one or more entities on whose behalf a depositary for safekeeping of assets and oversight duties of the pension scheme is appointed in accordance with Directive 2011/61/EU or 2014/91/EU.

3. Member States shall not restrict institutions from appointing, [] depositaries established in another Member State and duly authorised in accordance with Directive [] 2013/36/EU *or* 2014/65/EU, or accepted as a depositary for the purposes of Directive 2009/65/EC *or* 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 62, the free disposal of assets [] located within their territory at the request of *the competent authorities in* the institution'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 [].

6. When carrying out the tasks laid down in Articles 36 and 37, the institution 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 institution which may create conflicts of interest between the institution, the scheme's members and beneficiaries and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the *institution and the scheme* members and beneficiaries.

8. Where no depositary is appointed *and when the institution has not invested all pension assets in the financial products covered by Directive 2011/61/EU or 2009/65/EU and no depositary has been appointed in accordance with those Directives*, institutions shall make arrangements to prevent and resolve any conflict of interest in the course of tasks otherwise performed by a depositary and an asset manager.

Article 36

Safekeeping of assets and depositary liability

1. Where the assets of a pension scheme consisting of financial instruments which can be held in custody are entrusted to a depositary for safekeeping, the depositary shall hold in custody all financial instruments which can be registered in a financial instruments account opened in the depositary's books and all financial instruments which can be physically delivered to the depositary.

For those purposes, the depositary shall ensure that the financial instruments which can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the rules laid down in Directive 2004/39/EC, opened in the name of the institution, so that they can be clearly identified as belonging to the institution or the pension scheme's members and beneficiaries at all times.

2. Where the assets of *an institution* consist of other assets than those referred to in paragraph 1, the depositary shall verify that the institution *is the owner* of the assets and shall maintain a record of their assets. The verification shall be carried out on the basis of information or documents provided by the institution and, where available, on *the basis of* external evidence. The depositary shall keep its record up-to-date.

3. Member States shall ensure that a depositary is liable to the institution *and* the members and beneficiaries for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.

4. Member States shall ensure that a depositary's liability, as referred to in paragraph 3, shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

5. Where no depositary is appointed for the safe-keeping of assets *and when the institution has not invested all pension assets in the financial products covered by Directive 2011/61/EU or 2009/65/EU and no depositary has been appointed in accordance with those Directives*, institutions shall, at least be required to:

- (a) ensure that financial instruments are subject to due care and protection;
- (b) keep records that enable the institution 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.

Article 37

Oversight duties

1. *At least one of the depositaries appointed in accordance with Article 35 shall also carry out* the following *tasks*:

- (a) carry out instructions of the institution, unless they conflict with national law or the institution's rules;
- (b) ensure that in transactions involving the assets of an institution **■** any consideration is remitted to the institution within the usual time limits;
- (c) ensure that income produced by assets is applied in accordance with the institution's rules.

2. Notwithstanding paragraph 1, the home Member State of the institution may establish other oversight duties to be performed by the depositary.

3. Where no depositary is appointed for oversight duties *and where the institution has not invested all pension assets in the financial products covered by Directive 2011/61/EU or*

2009/65/EU and no depositary has been appointed in accordance with those Directives, the institution shall implement procedures which ensure that the tasks, otherwise subject to oversight by depositaries, are being duly performed within the institution.

Title IV

INFORMATION TO BE GIVEN TO PROSPECTIVE MEMBERS, MEMBERS AND BENEFICIARIES

CHAPTER 1

General provisions

Article 38

Principles

1. **Taking into account** the nature of the pension scheme established **and the administrative burden involved**, Member States shall ensure that every institution located in their territories provides:

(a) **to prospective members at least the information set out in Article 55;**

(b) **to members at least the information set out in Articles 40a and 58; and**

(c) **to beneficiaries at least the information set out in Articles 57 and 58.**

2. The information shall fulfil all the following requirements:

(a) it shall be regularly updated **and adapted to the needs of prospective members, members and beneficiaries;**

(b) it shall be written in a clear manner, using clear, succinct and comprehensible language, avoiding the use of jargon and avoiding technical terms where everyday words can be used instead;

(c) it shall not be misleading and consistency shall be ensured in the vocabulary and content;

(d) it shall be presented in a way that is easy to read, using characters of readable size.

(da) **it shall be available in an official language of the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the pension scheme concerned;**

(db) **the information shall be made available to prospective members, members and beneficiaries free of charge through any electronic means, including on a durable medium or by means of a website, or on paper.**

Colours shall not be used where they may diminish the comprehensibility of the information

if the pension benefit statement is printed or photocopied in black and white.

Article 39

Conditions of the pension scheme

1. Member States shall, in respect of every institution located in their territories, ensure that members are sufficiently informed of the conditions of the pension scheme, in particular concerning:

- (a) the rights and obligations of the parties involved in the pension scheme;
- (b) the risks borne by members and beneficiaries associated with the pension scheme;

2. For schemes in which members bear an investment risk and which provide for more than one option with different investment profiles, the members shall be informed of the conditions regarding the range of investment options available, the default investment option and, where applicable, the pension scheme's rule to allocate a particular member to an investment option.

3. Members and beneficiaries or, where applicable, their representatives shall receive within a reasonable time, any relevant information regarding changes to the pension scheme rules.

4. Institutions shall publish the conditions of the pension scheme.

CHAPTER 2

Pension Benefit Statement *and other information*

Article 40a

Pension benefit statement

1. Member States shall require institutions to draw up a concise document containing key relevant information for each member. The title of the document shall contain the words 'pension benefit statement'.

2. Member States shall require that the information contained in the pension benefit statement is accurate, and updated and sent to each member, free of charge, at least annually.

3. Any material change to the information contained in the pension benefit statement compared to the previous year shall be clearly indicated.

4. When laying down rules for the pension benefit statement, Member States shall require

that it contains the key relevant information for the members, taking into consideration the specific nature of national pension systems and of relevant national social, labour and tax law.

5. Within the framework of this Directive, key relevant information for members shall include:

- (a) personal details of the member, including a clear indication of the date of statutory retirement or the date when retirement benefits are due;*
- (b) identification of the institution and identification of the pension scheme of the member;*
- (c) where applicable, any information on full or partial guarantees under the pension scheme. (d) information on pension projections, taking into consideration the specific nature and organisation of the pension scheme, and a disclaimer that those projections may differ from the final value of the benefits received;*
- (e) information on the investment profile, including a clear indication of the risks borne by the member under a best estimate scenario and an extreme but plausible worst case scenario, taking into consideration the specific nature of the pension scheme;*
- (f) information on the accumulated entitlements, contributions and a breakdown of costs of the pension scheme, taking into consideration the specific nature and organisation of the pension scheme;*
- (g) information on the past performance of the pension scheme, taking into account the specific nature of the pension scheme.*
- (i) where and how to obtain further information relating to the institution or pension scheme, including the information specified in Articles 31 and 32;*

For the purposes of point (c) of the first subparagraph, where no guarantee is provided under the pension scheme, the pension benefit statement shall include a statement to that effect. Where a guarantee is provided, the pension benefit statement shall briefly explain the nature of the guarantee and provide information on the current level of financing of the member's accrued individual entitlements.

5. Member States shall exchange best practices with regard to the format and the content of the pension benefit statement.

I

Article 55

Information to be given to prospective members

Member States shall require institutions to ensure that prospective members are informed, before they join a pension scheme, about the relevant features of the pension scheme and

any options *available to members*, including information on how environmental, climate, social and corporate governance issues are considered in the investment approach.

Where prospective members do not have a choice and are automatically enrolled in a pension scheme, the institution shall provide them with the key relevant information about their membership immediately after enrolment.

Article 56

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

In addition to the pension benefit statement, institutions shall provide each member, at least two years before the retirement age provided for in the scheme, or at the request of the member, with the following information:

- (a) information about the options available to members in taking their retirement income;
- (b) where the pension scheme is not paid out as a lifetime annuity, information about the benefit payment products available.

Article 57

Information to be given to beneficiaries during the pay-out phase

1. *Member States* shall **require institutions to** provide periodically beneficiaries with information about the benefits due and the corresponding payment options.

1a. Institutions shall inform beneficiaries of any potential reduction in the level of benefits due, prior to any decision on such a potential reduction.

2. When a significant level of investment risk is borne by beneficiaries in the pay-out phase, Member States shall ensure that beneficiaries receive appropriate information **regularly and in a timely manner**.

Article 58

Additional information to be given on request to members and beneficiaries

1. On request of a member, a beneficiary or their representatives, the **institution** shall provide the following additional information:

- (a) the annual accounts and the annual reports referred to in Article 31, or where an institution is responsible for more than one scheme, those accounts and reports relating to their particular pension scheme;
- (b) the statement of investment policy principles, referred to in Article 32
- (c) **any further** information about the assumptions used to generate the projections referred to **in Article 40a(4)(d)**.

2. The institution shall also provide information on:

- (a) the target level of the retirement benefits, if applicable;
- (b) the level of benefits in case of cessation of employment.

Title V

PRUDENTIAL SUPERVISION

Chapter 1

General rules on prudential supervision

Article 59

Main objective of prudential supervision

1. The main objective of prudential supervision is the protection of *the rights of* members and beneficiaries *and the stability and soundness of the institutions*.
2. Member States shall ensure that the competent authorities *are provided with the necessary means, and have the relevant expertise, capacity, and mandate to achieve the main objective of supervision referred to in paragraph 1*.

Article 60

Scope of prudential supervision

Member States shall ensure that institutions are subject to prudential supervision including the supervision of the following:

- (a) conditions of operations;
- (b) technical provisions;
- (c) funding of technical provisions;
- (d) regulatory own funds;
- (e) available solvency margin;
- (f) required solvency margin;
- (g) investment rules *and management*;

(ha) *intergenerational balance of pension schemes*;

(i) *system of governance*; and

(j) information to be provided to *members and beneficiaries*.

Article 61

General principles of prudential supervision

1. The competent authorities of the home Member State shall be responsible for the prudential supervision of institutions ▯.
2. Member States shall ensure that supervision is based on a prospective and risk-based approach.
3. Supervision of institutions shall comprise an appropriate combination of off-site activities and on-site inspections.
4. Supervisory powers shall be applied in a *manner which is* timely and proportionate *to the nature, scale and complexity of the risks inherent in operating pension schemes by an institution*.
5. Member States shall ensure that the competent authorities duly consider the potential impact of their actions on the stability of the financial systems in the European Union, in particular in emergency situations.

Article 62

Powers of intervention and duties of the competent authorities

1. The competent authorities shall require every institution located in their territories to have sound administrative and accounting procedures and adequate internal control mechanisms.
2. *Member States shall lay down rules on and ensure that their competent authorities may impose administrative penalties and other administrative measures applicable to all infringements of the national provisions transposing this Directive, and shall take all measures necessary to ensure that they are implemented. Member States shall ensure that their administrative penalties and other administrative measures are effective, proportionate and dissuasive.*
 - 2a. *Member States shall provide that the competent authority publishes without undue delay any administrative penalty or other administrative measure that has been imposed for an infringement of the national provisions transposing this Directive, and against which no appeal was lodged in time, including information on the type and nature of the infringement and the identity of persons held responsible. Where the publication of that information is considered by the competent authority to be disproportionate following a case-by-case assessment of the proportionality of the publication of such data or where publication would jeopardise the stability of financial markets or an on-going investigation, the competent authority may decide to defer publication, not publish or publish on an anonymous basis.*
3. Any decision to prohibit or restrict the activities of an institution shall contain detailed reasons and be notified to the institution in question. *That decision* shall also be notified to EIOPA *which shall communicate it to all competent authorities in the Union*.

4. Competent authorities may also restrict or prohibit the free disposal of the institution's assets when, in particular:

- (a) the institution has failed to establish sufficient technical provisions in respect of the entire business or has insufficient assets to cover the technical provisions;
- (b) the institution has failed to hold the regulatory own funds.

5. In order to safeguard the interests of members and beneficiaries, the competent authorities may transfer the powers which the persons running an institution located in their territories hold in accordance with the law of the home Member State wholly or partly to a special representative who is fit to exercise these powers.

6. The competent authorities may prohibit or restrict the activities of an institution located in their territories in particular if:

- (a) the institution fails to protect adequately the interests of scheme members and beneficiaries;
- (b) the institution no longer fulfils the conditions of operation;
- (c) the institution fails seriously in its obligations under the rules to which it is subject;
- (d) in the case of cross-border activity, the institution does not respect the requirements of social and labour law of the host Member State relevant to the field of occupational *pension schemes*.

7 Member States shall ensure that decisions taken in respect of an institution under laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right *of appeal* to the courts.

Article 63

Supervisory review process

1. Member States shall ensure that competent authorities review, *where in the competent authorities opinion it is appropriate*, the strategies, processes and reporting procedures which are established by institutions 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 institution*.

That review shall take into account the circumstances in which the institutions are operating, and, where relevant, the parties carrying out outsourced key functions or any other activities for them. The review shall comprise the following elements:

- (a) an assessment of the qualitative requirements relating to the system of governance;
- (b) an assessment of the risks the institution faces;
- (c) an assessment of the ability of the institution to assess *and manage* those risks.

2. Member States shall ensure that competent authorities have monitoring tools, including

stress-tests, that enable them to identify deteriorating financial conditions in an institution and to monitor how a deterioration is remedied.

3. The competent authorities shall have the necessary powers to require institutions to remedy weaknesses or deficiencies identified in the supervisory review process.

4. The competent authorities shall establish the minimum frequency and the scope of the review laid down in paragraph 1 having regard to the nature, scale and complexity of the activities of the institutions concerned.

Article 64

Information to be provided to the competent authorities

1. Member States shall ensure that the competent authorities, in respect of any institution located in their territories, have the necessary powers and means:

(a) to require the institution, the members of its board of directors and other managers or directors or persons **who effectively run** the institution **or have key functions** to supply **at any time** information about all business matters or forward all business documents;

(b) to supervise relationships between the institution and other companies or between institutions, when institutions **outsource** key functions or any other activities to those other companies or institutions ■ and all subsequent re-outsourcing ■, influencing the financial situation of the institution or being in a material way relevant for effective supervision;

(c) to obtain regularly the following documents: ■ the **own risk assessment**, the statement of investment-policy principles ■, the annual accounts and the annual reports ■ and all other documents necessary for the purposes of supervision.

(d) to lay down which documents are necessary for the purposes of supervision, including:

(i) internal interim reports;

(ii) actuarial valuations and detailed assumptions;

(iii) asset-liability studies;

(iv) evidence of consistency with the investment-policy principles;

(v) evidence that contributions have been paid in as planned;

(vi) reports by the persons responsible for auditing the annual accounts referred to in Article 31;

(e) to carry out on-site inspections at the institution's premises and, where appropriate, on outsourced and all subsequent re-outsourced activities to check if activities are carried out in accordance with the supervisory rules.

(f) to request information from institutions about outsourced and all subsequent re-outsourced activities at any time.

Article 65

Transparency and accountability

1. Member States shall ensure that the competent authorities conduct the tasks laid down in *this Directive* in a transparent, *independent* and accountable manner with due respect for the protection of confidential information.
2. Member States shall ensure that the following information is publicly disclosed:
 - (a) the texts of laws, regulations, administrative rules and general guidance in the field of occupational *pension schemes*, and information about whether the Member State chooses to apply this Directive in accordance with Articles 4 and 5;
 - (b) information regarding the supervisory review process as set out in Article 63;
 - (c) aggregate statistical data on key aspects of the application of the prudential framework;
 - (d) the main objective of prudential supervision and information on the main functions and activities of the *competent authorities*;
 - (e) the rules on administrative sanctions applicable to breaches of national provisions adopted pursuant to this Directive.
3. Member States shall ensure that they have in place and apply transparent procedures regarding the appointment and dismissal of the members of the governing and managing bodies of their competent authorities.

Chapter 2

Professional secrecy and exchange of information

Article 66

Professional secrecy

1. Member States shall lay down rules to ensure that all persons who are working or who have worked for the competent authorities, as well as auditors and experts acting on behalf of those authorities, are bound by the obligation of professional secrecy.

Without prejudice to cases covered by criminal law, those persons shall not divulge confidential information received by them in the course of their duties to any person or authority, except in summary or aggregate form *such that individual institutions cannot be identified*.

2. By derogation from paragraph 1, where a pension scheme is *being wound up*, Member

States may allow confidential information *to* be divulged in civil or commercial proceedings.

Article 67

Use of confidential information

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

- (a) to check that the conditions for *taking up* occupational retirement provision *business* are met by institutions before commencing their activities;
- (b) to facilitate the monitoring of the activities of institutions, including the monitoring of the technical provisions, the solvency, the system of governance, and the information provided to members and beneficiaries;
- (c) to impose corrective measures, including sanctions;
- (d) *in* appeals against decisions of the competent authorities taken in accordance with the provisions transposing this Directive;
- (e) in court proceedings regarding the provisions transposing this Directive.

Article 67a

European Parliament powers of investigation

Articles 66 and 67 shall be without prejudice to the powers of investigation conferred on the European Parliament by Article 226 TFEU.

Article 68

Exchange of information between authorities

1. ***Articles 66 and 67*** shall not preclude any of the following:

- (a) the exchange of information between competent authorities in the same Member State in the discharge of their supervisory functions;
- (b) the exchange of information between competent authorities in different Member States in the discharge of their supervisory functions;
- (c) the exchange of information, in the discharge of their supervisory functions, between competent authorities and any of the following which are situated in the same Member State:
 - (i) authorities responsible for the supervision of financial sector entities and other financial organisations and the authorities responsible for the supervision of financial markets;

- (ii) authorities or bodies charged with responsibility for maintaining the stability of the financial system in Member States through the use of macro-prudential rules;
 - (iii) bodies involved in the *winding up* of a pension scheme and in other similar procedures;
 - (iv) reorganisation bodies or authorities aiming at protecting the stability of the financial system;
 - (v) persons responsible for carrying out statutory audits of the accounts of institutions, insurance undertakings and other financial institutions;
- (d) the disclosure, to bodies which administer the *winding up* of a pension scheme, of information necessary for the performance of their duties.

2. The information received by the authorities, bodies and persons referred to in paragraph 1 shall be subject to the rules on professional secrecy laid down in Article 66.

3. **Articles 66 and 67** shall not preclude Member States from authorising exchanges of information between the competent authorities and any of the following:

- (a) the authorities responsible for overseeing the bodies involved in the *winding up* of pension schemes and other similar procedures;
- (b) the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of institutions, insurance undertakings and other financial institutions;
- (c) independent actuaries of institutions carrying out supervision of those institutions and the bodies responsible for overseeing such actuaries.

Article 69

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

1. **Articles 66 and 67** shall not prevent a competent authority from transmitting information to the following entities for the purposes of the *exercise* of their respective tasks:

- (a) central banks and other bodies with a similar function in their capacity as monetary authorities;
- (b) where appropriate, other public authorities responsible for overseeing payment systems;
- (c) the European Systemic Risk Board **and** EIOPA.

2. Articles 68 to 71 shall not prevent the authorities or bodies referred to in paragraph 1 (a), (b) and (c) from communicating to the competent authorities such information as the competent authorities may need for the purposes of Article 67.

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

Article 70

Disclosure of information to government administrations responsible for financial legislation

1. Articles 66 (1), 67 and 71 (1) shall not preclude Member States from authorising the disclosure of confidential information *between competent authorities and* other departments of their central government administrations responsible for the enforcement of legislation on the supervision of institutions, credit institutions, financial institutions, investment services, insurance undertakings and to inspectors acting on behalf of those departments.

Such disclosure shall be made only where necessary for reasons of prudential control, and prevention and resolution of failing institutions. Without prejudice to paragraph 2 of this Article, persons having access to the information shall be subject to professional secrecy requirements at least equivalent to those set out in this Directive. Member States shall, however, provide that information received under Article 68, and information obtained by means of on-site verification may only be disclosed with the express consent of the competent authority from which the information originated or of the competent authority of the Member State in which the on-site verification was carried out.

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

- (a) the entities have the competence under national law to investigate or scrutinise the actions of authorities responsible for the supervision of institutions or for laws on such supervision;
- (b) the information is strictly necessary for fulfilling the competence referred to in point (a);
- (c) the persons with access to the information are subject to professional secrecy requirements under national law at least equivalent to those set out in this Directive;
- (d) if the information originates from another Member State, this information is disclosed with the explicit agreement of the originating competent authorities and solely for the purposes for which those authorities gave their agreement.

Article 71

Conditions for the exchange of information

1. For exchanges of information under Articles 68, transmission of information under Article 69 and disclosure of information under Article 70, Member States shall require that at least the following conditions are met:

- (a) the information shall be exchanged, transmitted or disclosed for the purpose of carrying out the oversight or **■** supervision;

- (b) the information received shall be subject to the obligation of professional secrecy laid down in Article 66;
- (c) where the information originates from another Member State, it shall not be disclosed without the express agreement of the competent authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

Article 72

National provisions of a prudential nature

1. Member States shall report to EIOPA their national provisions of prudential nature relevant to the field of occupational pension schemes, which are not covered by the national social and labour law *on the organisation of pension systems as referred to* in Article 12(1).
2. Member States shall update that information on a regular basis and at least every two years and EIOPA shall make that information available on its website.

Title VI

FINAL PROVISIONS

Article 73

Cooperation between Member States, EIOPA and the Commission

1. Member States shall ensure, in an appropriate manner, the uniform application of this Directive through regular exchanges of information and experience with a view to developing best practices in this sphere and closer cooperation *with the involvement of the social partners*, and by so doing, preventing distortions of competition and creating the conditions required for unproblematic cross-border membership.
2. The Commission and the competent authorities of the Member States shall collaborate closely with a view to facilitating supervision of the operations of institutions for occupational retirement provision.
3. The competent authorities shall cooperate with EIOPA for the purposes of this Directive, in accordance with Regulation (EU) No 1094/2010.

The competent authorities shall without delay provide EIOPA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No 1094/2010, in accordance with Article 35 of that Regulation.

4. Each Member State shall inform the Commission and EIOPA of any major difficulties to which the application of this Directive gives rise.

The Commission, EIOPA and the competent authorities of the Member States concerned shall examine such difficulties as quickly as possible in order to find an appropriate solution.

Article 74

Processing of personal data

With regard to the processing of personal data within the framework of this Directive, institutions and competent authorities shall carry out their tasks for the purposes of this Directive in accordance with national law implementing Directive 95/46/EC. With regard to the processing of personal data by EIOPA within the framework of this Directive, EIOPA shall comply with the provisions of Regulation (EC) No 45/2001.

Article 75

Evaluation and review

1. By...*[six years after the date of entry into force of this Directive], the Commission shall review this Directive and report on its implementation and effectiveness to the European Parliament and *to* the Council.

2. The review referred to in paragraph 1 shall in particular consider:

- a) the adequacy of this Directive from a prudential and governance point of view;*
- b) cross-border activity,*
- c) the experience acquired in applying this Directive and its impact on the stability of the institutions,*
- d) quantitative requirements applicable to institutions,*
- e) the pension benefit statement.*

3. The results of the review shall be communicated to the European Parliament and to the Council.

Article 76

Amendment of Directive 2009/138/EC

1. In Directive 2009/138/EC the following Article 306a is inserted:

"Article 306a

Where, on the entry into force of this Directive, home Member States applied provisions referred to in Article 4 of Directive .../.../EU of the European Parliament and of the Council¹, such home Member States may continue to apply the laws, regulations and administrative provisions that had been adopted by them with a view to complying with Articles 1 to 19, Articles 27 to 30, Articles 32 to 35 and Articles 37 to 67 of Directive 2002/83/EC as in force on 31 December 2015 for a transitional period expiring on 31 December 2022.

Where a home Member State continues to apply those laws, regulations and administrative

¹ OJ

provisions, insurance undertakings in that home Member State shall calculate their solvency capital requirement as the sum of the following:

- (a) a notional solvency capital requirement with respect to their insurance activity, calculated without the occupational retirement provision business under Article 4 of Directive ..././EU,
- (b) the solvency margin with respect to the occupational retirement provision business, calculated in accordance with the laws, regulations and administrative provisions that have been adopted to comply with Article 28 of Directive 2002/83/EC.

By 31 December 2017, Commission shall submit a report to the European Parliament and to the Council, on whether the period referred to in the first paragraph should be extended, ***taking account of changes to Union or national law resulting from Directive 2009/138/EC of the European Parliament and of the Council¹.***"

2. In Directive 2009/138/EC, point (7) of Article 13 is replaced by the following:

(7) 'reinsurance' means one of the following:

(a) the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country reinsurance undertaking;

(b) in the case of the association of underwriters known as Lloyd's, the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's;

(c) the provision of cover by a reinsurance undertaking to an institution for occupational retirement provision that falls within the scope of Directive ..././EU [IORP II].

■

Article 78

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 6(c), (i) to (p), Article 12(4) second and third subparagraph, Article 12(10), Article 13, Article 20(6) and (8), Articles 21 to 30, Article 33, Article 35(1) and (2), Article 35(4) to (7), Article 36 to 38, Articles 39(1) and (3), Articles 40 to 53, Articles 55 to 57, Article 58(1), Articles 59 to 61, Article 63, Article 64(1)(b) to (d) and (f), Articles 65 to 71 of this Directive by...****[18 months after the date of entry into force of this Directive]***. 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. They shall also include a statement that references in existing laws, regulations and administrative

¹ *OJ L 335, 17.12.2009, p. 1*

provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

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 79

Repeal

Directive 2003/41/EC, as amended by the Directives listed in Annex I, Part A, is repealed with effect from ... ***[18 months after the date of entry into force of this Directive]*** without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex I, Part B.

References to the repealed Directive 2003/41/EC shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 80

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*.

Articles 1 to 5, Article 6(a), (b), (d) to (h) and (j), Articles 7 to 11, Article 12(1) to (9), Articles 14 to 19, Article 20(1) to (5) and (7), Articles 31 and 32, Article 34, Article 35(2) and (3), Article 39(1) and (3), Article 58(2), Article 62, Article 64(1)(a) and (e) and Article 64(2) shall apply from ... ***[18 months after the date of entry into force of this Directive]***.

Article 81

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

ANNEX I

Part A

Repealed Directive with list of its successive amendments (referred to in Article 79)

Directive 2003/41/EC of the European Parliament
and of the Council

(OJ L 235, 23.9.2003, p.10)

Directive 2009/138/EC of the European Parliament and of the Council (OJ L 335, 17.12.2009, p. 1)	Article 303 only
Directive 2010/78/EU of the European Parliament and of the Council (OJ L 331, 15.12.2010, p. 120),	Article 4 only Article 62 only
Directive 2011/61/EU of the European Parliament and of the Council (OJ L 174, 1.7.2011, p.1),	Article 1 only
Directive 2013/14/EU of the European Parliament and of the Council (OJ L 145, 31.5.2013, p. 1),	

Part B

List of time-limits for transposition into national law and application (referred to in Article 79)

Directive	Time-limit for transposition	Date of application
2003/41/EC	23.09.2005	23.09.2005
2009/138/EC	31.03.2015	01.01.2016
2010/78/EU	31.12.2011	31.12.2011
2011/61/EU	22.07.2013	22.07.2013
2013/14/EU	21.12.2014	21.12.2014

ANNEX II

Correlation Table

Directive 2003/41/EC	This Directive
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6(a) and (b)	Article 6(a) and (b)
Article 6(c)	Article 6(c)
Article 6(d) to (h)	Article 6(d) to (h)
Article 6(i)	Article 6(i)
Article 6(j)	Article 6(j) to (p)
Article 7	Article 7
Article 8	Article 8
Article 9(1)(a)	Article 9
Article 9(1)(b) and (c)	Article 10
Article 9(1)(d)	Article 11(1)
Article 9(1)(e)	Article 11(2)
Article 9(2)	
Article 9(3)	
Article 9(5)	
Article 20(1) to (9)	Article 12(1) to (8)
Article 20(10)	Article 12(9)
	Article 12(10)
Article 15(1) to (5)	Article 13
Article 15(6)	Article 14(1) to (5)
Article 16	Article 15
Article 17	Article 16
Article 17a(1) to (4)	Article 17(1) to (4)
Article 17a(5)	
Article 17b	Article 18
Article 17c	
Article 17d	Article 19
Article 18(1)	Article 20(1)
Article 18(1a)	Article 20(2)
Article 18(2) to (4)	Article 20(3) to (5)
Article 18(5), first subparagraph	Article 20(6), first subparagraph
Article 18(5), second and third subparagraphs	Article 20(6), second subparagraph

Article 18(6)
Article 18(7)

Article 10
Article 12
Article 9(4)

Article 19(1)

Article 19(2), first subparagraph
Article 19(2), second subparagraph
Article 19(3)

Article 11(1)

Article 9(1)(f)

Article 11(2)(a)
Article 11(2)(b)

Article 20(7)

Article 20(8)

Article 21

Article 22

Article 23

Article 24

Article 25

Article 26

Article 27

Article 28

Article 29

Article 30

Article 31

Article 32

Article 33(1)

Article 33(2) to (7)

Article 34

Article 35(1) and (2)

Article 35(3)

Article 35(4)

Article 35(5) to (8)

Article 36

Article 37

Article 38(1)

Article 38(2)

Article 39(1)

Article 39(2)

Article 39(3)

Article 39(4)

Article 40

Article 41

Article 42

Article 43

Article 44

Article 45

Article 46

Article 47

Article 48

Article 49

Article 50

Article 51

Article 52

Article 53

Article 54

Article 55

Article 56

Article 11(3)
Article 11(4)(a) and (b)
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