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From:	Presidency
To:	Working Party on Financial Services and Banking Union (IORP) Financial Services Attachés
Subject:	Working Party on Financial Services and the Banking Union (IORP) 22.5.2026 - First Draft Compromise Text

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Brussels, 20.11.2025
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2025/0362 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives (EU) 2016/2341 and 2016/97 as regards the strengthening of the framework for occupational retirement provision

(Text with EEA relevance)

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives (EU) 2016/2341 and 2016/97 as regards the strengthening of the framework for occupational retirement provision

(Text with EEA relevance)

PUBLIC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53, Article 62 and Article 114(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure[2],

Whereas:

(1) In view of the ageing population of the European Union and the rising dependency ratio, strengthening complementary sources of retirement income has become indispensable to preserve intergenerational solidarity, social cohesion and the long-term stability of pension systems across the Union.

(2) While the organisation of pension systems remains a national competence, the adequacy and financial sustainability of pensions are of common concern for the stability and cohesion of the Union. Ensuring that citizens have access to well-designed personal pension products contributes both to individual financial security and to the resilience of the Union's economy.

(3) Despite being among the world's highest savers, Union households still hold a large share of their financial wealth in short-term bank deposits with limited returns. Developing attractive occupational and personal pension products can help mobilise those savings for long-term investment, generating higher returns for savers and channelling capital towards productive uses that support growth, innovation and the green and digital transitions.

(4) Appropriate regulation and supervision at Union and national level remain important for the development of safe and secure occupational retirement provision across all Member States. Directive (EU) 2016/2341 of the European Parliament and of the Council[3] has

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1 OJ C […], […], p. […].

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

3 Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast) (OJ L 354, 23.12.2016, p. 37, ELI: http://data.europa.eu/eli/dir/2016/2341/oj).

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

(5) The Savings and Investments Union (SIU) announced by the Commission in its Communication of 19 March 2015[4] aims to enable citizens to save and invest for their future, channel investments towards the priorities of the Union, deepen integration and scale in the Union's capital markets, and ensure effective supervision across the single market. Among those four strands, helping citizens save and invest for their future is at the heart of the SIU's ambition. Ensuring that Union citizens can build adequate retirement income is one of the most concrete ways in which the Union can make a difference in people's lives. The work on supplementary pensions, and in particular on occupational pensions, embodies this citizen-centred approach.

(6) With approximately three trillion euros in assets under management, institutions for occupational retirement provision ('IORPs') play an essential role in the Union's financial system but tend to be less active in listed equity, private equity, venture capital and infrastructure markets. Provided that investments in equity and alternative asset classes are prudently managed, such investments can be a valuable component of their portfolios, offering diversification, higher long-term returns for pension savers and protection against inflation, while also providing crucial funding for the real economy. It is therefore important to ensure that there are no undue regulatory barriers to such investments.

(7) The review of Directive (EU) 2016/2341 builds on the European Insurance and Occupational Pensions Authority (EIOPA)'s 2023 technical advice for the review of the IORP II Directive[5] and its 2025 'technical input on the review of the IORP II Directive and the PEPP Regulation in the context of the Savings and Investments Union'[6]. It also takes into account recent findings and recommendations from the Special Report 14/2025 of the European Court of Auditors concerning the development of supplementary pensions in the Union[7], as well as the OECD Core Principles of Private Pension Regulation[8], which set out internationally recognised standards for the governance, transparency and supervision of occupational pensions.

(8) Achieving sufficient scale is often a prerequisite for the efficient and sustainable functioning of IORPs. Smaller IORPs may face higher administrative and investment costs, limited diversification, and difficulties in attracting or retaining the necessary professional expertise. Greater scale can help mitigate those constraints by improving risk pooling, governance capacity, and access to a broader range of investment

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4 Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions of 19 March 2025, COM(2025) 124 final.

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

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

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

8 See OECD Core Principles of Private Pension Regulation

opportunities, thereby contributing to more stable and cost-effective outcomes for members and beneficiaries.

(9) Directive (EU) 2016/2341, however, has not been sufficiently effective in fostering economies of scale, resulting in pension providers that are often too small to benefit from diversification or efficiency gains, and therefore expose members and beneficiaries to higher costs and lower net returns. It is therefore necessary to facilitate such economies of scale.

(10) Directive (EU) 2016/2341 should apply to all IORPs, unless they are expressly excluded pursuant to Article 2(2). Its application should reflect the objectives pursued by that Directive and the diversity of arrangements within Member States, and should be implemented in a manner that recognises the full spectrum of existing occupational pension provision.

(11) In some Member States, national law provides that IORPs, despite having legal personality, are to be operated by authorised entities responsible for acting on their behalf. It is therefore appropriate that Article 2(1) of Directive (EU) 2016/2341 refers explicitly not only to situations where IORPs do not have legal personality, which should continue to be covered, but also to those cases where IORPs have legal personality yet, in accordance with national law, are to be operated by such authorised entities.

(12) In certain Member States, responsibility for the operation of an IORP may be shared between the IORP itself and the authorised entity acting on its behalf, each performing distinct but complementary functions. The application of Directive (EU) 2016/2341 should be coherent with that allocation of responsibilities under national law and ensure that all those responsible are fully subject to its requirements, irrespective of the legal form of the IORP. This situation should however be distinguished from outsourcing as referred to in Article 31 of that Directive, since the shared exercise of responsibilities in these instances stems from the institutional structure of the IORP as defined under national law and not from a contractual outsourcing of functions. Member States should also ensure that the assets of IORPs are legally separate from those of the authorised entities operating them. *In Member States where, in accordance with national law, IORPs are operated by authorised entities acting on their behalf, authorised entities established in another Member State should be able to carry out the activities of operating an IORP and acting on its behalf under the conditions laid down by the Member State in which the IORP is authorised. Those conditions should ensure equal treatment between domestic and cross-border authorised entities. This should apply only to entities harmonised at Union level, provided that such entities are permitted, under the laws of the Member State where the IORP is authorised, to operate an IORP and act on its behalf. Member States should also ensure that the assets of IORPs are legally separate from those of the authorised entities operating them, in a manner that precludes any transfer of assets between them, so as to ensure that those assets remain exclusively available to meet the obligations of the IORPs.*

(13) The determination of whether an institution qualifies as an IORP should depend on the activities carried out, irrespective of its legal form or designation under national law. In several Member States, employment-related retirement provision is provided by funded institutions which are excluded from the scope of Directive (EU) 2016/2341 pursuant to its Article 2(2), or are otherwise not covered by that Directive without being subject to any other Union prudential legislation. Some of those institutions are already covered

by Regulation (EU) 2018/231 of the European Central Bank[9] on statistical reporting requirements for pension funds, reflecting their economic importance and the need for comprehensive and consistent information across all types of pension institutions. Taken together, such institutions excluded from the scope of Directive (EU) 2016/2341 hold very substantial assets and constitute an important component of the overall employment-related retirement landscape alongside IORPs. In view of their scale and their relevance for financial stability and pension adequacy, it is important for Member States to ensure that all institutions managing retirement savings, whether occupational or personal, are subject to sound governance, effective supervision and prudential requirements commensurate with the nature and magnitude of the risks they bear. In light of the solid framework provided by Directive (EU) 2016/2341 and to promote consistency in supervisory practices, ensure a level playing field and high standards of governance and risk management across all forms of retirement provision, while respecting the diversity of national pension systems and existing institutional arrangements, Member States should have the option to apply that Directive to institutions otherwise excluded from its scope and not covered by any other Union prudential framework. This is particularly relevant where the level of benefits offered to members and beneficiaries depends on the performance of the institution in managing assets and is not guaranteed by a public authority. Member States should notify the Commission and the European Insurance and Occupational Pensions Authority of their use of this option.

(14) In some Member States, IORPs may also be allowed to provide personal pension products, including the pan-European Personal Pension Product, as reflected in Regulation (EU) 2019/1238 of the European Parliament and of the Council[10]. To ensure a clear and sound organisation of such activities, and coherent and effective supervision across different forms of retirement provision, it is therefore appropriate to reflect this within Directive (EU) 2016/2341. *In some Member States, IORPs may also be allowed to provide personal pension products, including the pan-European Personal Pension Product (PEPP), as defined in Article 2(2) of Regulation (EU) 2019/1238 of the European Parliament and of the Council. To ensure a clear and sound organisation of such IORPs, and to protect the interests of members and beneficiaries, as well as personal pension savers, it is therefore necessary that the whole activity of the IORP be subject to prudential supervision regarding solvency and governance requirements set out in Directive (EU) 2016/2341. Directive (EU) 2016/2341 concerns the operation and supervision of IORPs as institutions and is not intended to regulate personal pension products as such. Member States should therefore retain responsibility for determining the applicable conditions and conduct rules for the distribution of such products. Articles 11 and 11a lay down harmonised procedures for cross-border activities in the field of occupational retirement provision. Where IORPs provide the PEPP, the cross-border provision of that product is governed by Regulation (EU) 2019/1238, in particular Articles 14 and 15 thereof, while the cross-border personal retirement provision other than the PEPP Product, where IORPs are authorised to carry out such activities under national law, should continue to be subject to the applicable rules of the home and the host Member State. In this case, an IORP would have to apply and get a*

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

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

full personal pension product authorisation from the other Member States, provided the other Member States has a personal pension product regime.

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

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

(17) To enhance effective and adaptable occupational retirement provision, as well as economies of scale, IORPs should be allowed to operate several pension schemes, including those with distinct investment approaches, and to accept sponsorship from several undertakings within the same scheme, while ensuring proper management and the protection of members and beneficiaries. *The possibility to operate different pension schemes and to accept sponsorship from multiple undertakings within the same scheme should be without prejudice to compliance with the requirements laid down in the laws of the home Member State for the operation of different pension schemes or schemes with multiple sponsoring undertakings. Where those laws require a certain legal form for the operation of such schemes, any IORP should be able to adapt its legal form in accordance with those laws. This should also be without prejudice to the option for the home Member State to require that schemes with multiple sponsoring undertakings be operated under Directive 2009/138/EC.*

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

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

(20) The rules governing collective transfers of all or part of a pension scheme's liabilities, technical provisions, and other obligations and rights play a key role in supporting consolidation and the achievement of scale in occupational retirement provision. Where such rules are overly strict, they create undue obstacles to achieving scale and facilitating consolidation, which can be detrimental to the long-term interests of savers. At the same time, it is important that members and beneficiaries, or their representatives, can effectively express their views on proposed cross-border transfers. To facilitate such transfers, it is therefore appropriate to clarify and simplify the applicable Union rules, ensuring that procedures remain transparent, proportionate and consistent with the protection of members and beneficiaries, while enabling greater efficiency and integration in the internal market. This should include provisions for timely notification, approval by the sponsoring undertaking where applicable, and the possibility for members and beneficiaries to formally express opposition.

(21) For domestic collective transfers from one IORP to another, Member States should ensure that simple, transparent and operationally efficient procedures are in place to enable consolidation and restructuring of pension schemes within their territories. Such procedures should facilitate the attainment of scale and cost efficiency and should not be more restrictive than the procedures applicable to cross-border transfers.

(22) Member States have the option to allow temporary underfunding of occupational pension schemes. Different Member States have implemented that option in varying ways, while others have chosen not to use it, resulting in inconsistencies that may affect the protection of members and beneficiaries. While preventing underfunding is important, an absolute prohibition could, in some cases, force abrupt reductions in pension promises, which may be detrimental to members and beneficiaries. To ensure a balanced and proportionate approach and an adequate protection of members and beneficiaries, Member States should allow temporary underfunding for a limited period, determined by national law, which in any case should not exceed ten years.

(23) Certain technical parameters in Directive (EU) 2016/2341 stem from Council Directive 79/267/EEC[11], the first Life Insurance Directive, and have remained unchanged since their introduction. It is therefore appropriate to provide for the possibility of their adjustment through delegated acts, should this be considered necessary to ensure that they remain appropriate in light of market developments and supervisory practices.

(24) Directive (EU) 2016/2341 requires IORPs to hold an adequate available solvency margin. That solvency margin does not fully capture exposures to market and longevity risks, including where the IORP underwrites biometric risk or guarantees a given investment performance or level of benefits. Some Member States require IORPs to hold additional risk-based regulatory own funds above the required solvency margin. In Member States where such risk-based requirements do not exist, comparable protection for savers and beneficiaries should be ensured. In particular, IORPs covering biometric risk or offering guarantees and which are not subject to risk-based capital requirements, should carry out regular stress tests to assess their ability to remain funded over a long-term horizon, including under adverse market and demographic scenarios, and competent authorities should have the power to require remedial actions where an underfunding is identified.

(25) Private assets, including private equity, private debt and venture capital, can improve the risk-return characteristics of investment portfolios by enhancing diversification and potentially delivering higher long-term returns. However, such assets are often more complex to value and to assess in terms of risk, hence requiring substantial professional expertise. Pursuant to Article 19 of Directive (EU) 2016/2341, IORPs should invest in the best long-term interests of members and beneficiaries and in accordance with the prudent person rule. That rule, however, is not sufficiently specified, and several Member States have introduced, in line with that Article, detailed and sometimes restrictive investment limits. Such across-the-board constraints may prevent well-governed institutions with adequate risk-management capacity from investing efficiently in alternative assets. It should therefore be laid down that the key investment framework is a risk-based prudent person principle, allowing institutions to invest in any type of asset, provided that they can properly identify, measure, monitor, manage and report the associated risks. Accordingly, as a safeguard for members and beneficiaries, the possibility for Member States to apply investment restrictions should be limited to cases where the investment risk is borne by members and beneficiaries, and, those restrictions should not result in a blanket prohibition on investing in certain asset classes.The chapeau communication of 19 November 2025[12] provides further non-binding guidance on the application of the prudent person principle, including on how it should support the efficient allocation of long-term savings.

(26) Experience has shown that the governance requirements set out in Directive (EU) 2016/2341 do not always ensure consistent standards of sound management and effective oversight across IORPs. In particular, differences in internal control functions, the handling of conflicts of interest, and the composition and effectiveness of administrative, management or supervisory bodies may weaken the protection of

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

[12] Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Commitee and the Committee of the Regions – Enhancing the capacity of the EU supplementary pension sector to improve retirement income and supply long-term capital to the EU economy. [PO = please include the number of the document and the internet link].

members and beneficiaries and the integrity of pension scheme management. To enhance the resilience, transparency and accountability of IORPs, the system of governance should therefore be further specified, and competent authorities should be equipped with the powers necessary to assess and, where appropriate, strengthen IORPs' governance systems.

(27) The effective and prudent management of an IORP depends on the fitness and propriety of the persons who effectively run the IORP, its administrative, management or supervisory bodies, and key function holders, including those to whom functions have been outsourced. Directive (EU) 2016/2341 refers to the concept of collective fitness for those who effectively run the IORP. Further clarification is needed to ensure that this concept is applied in a manner consistent with the diversity of governance structures across Member States. In particular, collective fitness should apply where the administrative, management or supervisory body operates as a collegiate body whose members jointly perform strategic or oversight functions. Where functions are distinct or exercised individually, the assessment of fitness should relate to each person's specific role, responsibilities and decision-making powers. Furthermore, the current provisions do not explicitly provide for ~~ongoing~~ monitoring or timely notification of changes, which may also result in gaps in governance, insufficient oversight of risks, or unaddressed conflicts of interest. To ensure adequate protection of members and beneficiaries and effective supervision by competent authorities, the requirements for fitness and propriety should be laid down, competent authorities should be given the responsibility to assess suitability ~~on an ongoing basis,~~ and they should have the power to require the removal of individuals who no longer meet those requirements.

(28) Effective risk management is essential to ensure the sound and prudent operation of IORPs and to protect members and beneficiaries. Operational and structural choices of IORPs, including participation in pooled investment structures, shared services, or transfers, can affect their overall risk profile. To ensure sound and prudent management, IORPs should assess the risks they are or could be exposed to against the risk tolerance limits approved by their management or supervisory body, taking into account the capacity and appetite for risk of members and beneficiaries. ~~Economies of scale and efficiency options can reduce operational and investment risks for members and beneficiaries and should therefore be considered in the own risk assessment.~~

(29) In line with the OECD Core Principles of Private Pension Regulation and their Implementing Guidelines, it is appropriate to further strengthen the requirements of the statement of investment policy principles by ensuring that it sets out clear investment objectives consistent with each scheme's retirement income goal, liabilities and risk tolerance, defines performance objectives and monitoring methods, and addresses the use of complex or alternative asset classes and related counterparty risk. Where members may choose investments, the statement should also provide for an appropriate range of options, including a default one.

(30) The pooling of assets can deliver economies of scale, improve investment performance and reduce costs for members and beneficiaries. However, Article 31 of Directive (EU) 2016/2341 allows Member States to prohibit the outsourcing of activities by IORPs, including the outsourcing of investment management. The use of that option has resulted in regulatory barriers to efficiency gains and economies of scale. A more risk-based approach would ensure that outsourcing is generally permitted or required, provided that it does not impair the quality of governance, unduly increase operational risk, undermine the continuous and satisfactory service to members and beneficiaries, or hinder effective supervisory oversight. It should therefore be laid down that that Member States should

allow, or where appropriate require, outsourcing by such institutions, without prejudice to opposing specific outsourcing arrangements on a case-by-case basis on duly justified prudential grounds.

(31) Depositaries provide a convenient remedy for safeguarding assets and overseeing the management of occupational pension schemes, particularly in defined contribution schemes where members and beneficiaries fully bear the investment risk. ~~Under Directive (EU) 2016/2341, Member States have discretion to require, as a general rule, a depositary or to allow IORPs to perform these functions themselves. That discretion has led to inconsistencies and supervisory challenges in cross-border activities. Differences in national rules on the types of entities that may act as depositaries and the scope of their responsibilities may undermine effective prudential oversight, reduce transparency, and increase the risk of conflicts of interest or operational failures. In recent years, the rules on depositaries laid down in Directive 2009/65/EC of the European Parliament and of the Council[13] have been updated and strengthened to ensure a high level of investor protection~~. Members and beneficiaries of IORPs, who similarly entrust their retirement savings to professional managers, should benefit from no less protection than investors covered by Directive 2009/65/EC. Therefore, to ensure consistent protection of members and beneficiaries, enhance trust in the pension system, and facilitate cross-border activities, Directive (EU) 2016/2341 should require the appointment of a professional depositary for occupational pension schemes where members and beneficiaries fully bear the investment risk. The amendments should set out clear rules for such depository on the safekeeping of assets and oversight duties for depositaries, while allowing greater flexibility for other schemes and ensuring that competent authorities may not unduly restrict the choice of depositaries established in another Member State. However, to avoid unnecessary burden for IORPs, Member States may maintain existing ~~safe-keeping measures~~ *arrangements* providing a level of protection comparable with depositaries.

(32) Fragmented and incomplete information on accrued and projected pension entitlements makes it difficult for members and beneficiaries to obtain a clear overview of their future retirement income, particularly when they participate in several supplementary pension schemes. That lack of transparency can undermine engagement with retirement planning and trust in the pension system. To ensure that savers receive comprehensive, reliable and up-to-date information, Member States should require IORPs to provide data to national pension tracking systems, where such systems exist, in a standardised and interoperable format. Such systems should allow members and beneficiaries to access, in a coherent and comparable manner, information on their accrued rights, accumulated capital and projected benefits, while ensuring that IORPs remain responsible for the accuracy and completeness of the data transmitted. To avoid duplication of reporting requirements for IORPs, the format and structure of information should be consistent with the information included in the pension benefit statements.

(33) The Pension Benefit Statement (PBS) is an essential instrument enabling members and beneficiaries to understand their pension entitlements over time and across different schemes. It should provide clear, comprehensive, and relevant information that enables members and beneficiaries to assess their financial situation and take any necessary action to secure an adequate pension. Currently, the absence of a uniform approach at Member State level, together with the fact that most members accrue pensions with

[13] 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, p. 32, ELI: http://data.europa.eu/eli/dir/2009/65/oj)

multiple IORPs during their careers, results in PBSs that vary in format and presentation, thereby limiting comparability and aggregation. Current rules also do not require the inclusion of information on the costs, the performance of investments or on any investment options available and their corresponding risks. To enhance transparency and support informed decision-making, it is necessary to introduce requirements for the design of the PBS and on the provision of information on costs, investment returns and investment options. For the same reason, it is necessary to ensure greater standardisation and, where possible, alignment with the PEPP Benefit Statement referred to in Article 36 of Regulation (EU) 2019/1238, while taking into account the defined benefit or defined contribution characteristics of the pension schemes, and the specificities of occupational pension provision.

(34) Persistent underperformance of IORPs may reduce the value of members' and beneficiaries' accrued rights and undermine trust in supplementary pensions. In line with the Implementing Guidelines of the OECD Recommendation on Core Principles of Private Pension Regulation, performance should be comparably disclosed and assessed against clear and objective benchmarks reflecting the investment policy. There is currently no harmonised framework to inform members and beneficiaries of underperformance. To address that, IORPs should be required to promptly inform their competent authority and provide evidence that the scheme's costs and charges are justified and proportionate, and that the scheme is in line with the risk tolerance of its members and beneficiaries. Where the competent authority is not satisfied with such justification or underperformance persists for at least three years, IORPs should communicate clearly to members and beneficiaries about such underperformance, explain its causes, and outline measures to remedy the situation. Member States should ensure the establishment of objective benchmarks for assessing underperformance.

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

(36) The shift from defined benefit pension schemes to defined contribution pension schemes places greater financial risk on members and beneficiaries, as variable benefits replace previously guaranteed benefits. Members and beneficiaries are often faced with complex choices regarding benefits or investments, and their ability to make appropriate decisions can be impaired by information asymmetries, limited knowledge or understanding, behavioural biases, or complex and inadequate choice environments. Combining multiple choices further increases the difficulty for members and beneficiaries to assess the potential effects of their decisions. IORPs play a key role in safeguarding the long-term interests of members and beneficiaries through prudent management of assets and sound governance. To strengthen confidence in the system and ensure that investment decisions remain aligned with members' best interests, fiduciary duties relating to risk management and investment policy should be reinforced. To enhance protection and ensure that pension schemes deliver outcomes that members

and beneficiaries might reasonably expect, IORPs should be subject to a general duty of care. Such duty should require institutions to act honestly, fairly, and professionally in the best interests of members and beneficiaries, to seek adequate~~,~~ and risk-adjusted ~~and cost-efficient~~ returns over the long term, and to provide ~~guidance and~~ *assistance, provided that such assistance does not constitute investment advice,* ~~safeguards~~ to support informed and suitable decision-making, taking into account the nature of the pension scheme, the risks borne by members and beneficiaries, the responsibilities of the institution, and, where relevant, the role of social partners and sponsors.

(37) ~~Occupational pensions are long-term arrangements on which workers rely to secure an adequate retirement income. Members in defined contribution schemes face specific risks, including retirement income risk, investment risk, costs and charges, administrative and governance risks, and gaps in knowledge. To design appropriate investment strategies and offer suitable investment options that align with members' capacity to bear losses and their risk-return preferences, IORPs have a central role in assessing these risks from the perspective of members and beneficiaries. To support informed decision-making and safeguard members' interests, IORPs should conduct long-term risk assessments, provide relevant investment choices, and deliver key information, including all costs and charges and projections, taking into account national specificities~~.

(38) To ensure that members and beneficiaries can effectively exercise their rights and have access to fair and timely redress, IORPs should establish effective complaints-handling procedures and provide information on available alternative dispute resolution mechanisms. For the same reason, Member States should have in place adequate, independent and impartial alternative dispute resolution bodies, including for cross-border cases, and ensure that competent authorities can receive and respond to complaints alleging infringements of Directive (EU) 2016/2341.

(39) Differences in the powers, tools, and practices available to competent authorities across Member States may hinder effective supervision of IORPs and the timely prevention or correction of infringements. Without the powers to obtain necessary information, to require compliance with applicable laws and regulations, to review and evaluate IORPs' strategies, processes, and reporting procedures, or to impose sanctions, competent authorities may be unable to ensure that IORPs maintain sufficient financial resources, comply with governance and risk management requirements, or can withstand adverse events or changes in economic conditions. To address those risks, Member States should ensure that competent authorities have all necessary powers to obtain information, conduct systematic and risk-based reviews and assessments, monitor deteriorating financial conditions, engage in ~~regular~~ supervisory dialogue, take preventive and corrective measures in a timely manner, and impose effective, proportionate, and dissuasive administrative sanctions.

(40) IORPs vary significantly in terms of scale, operational efficiency, and organisational structure. Smaller or fragmented IORPs may face difficulties in achieving economies of scale, engaging in effective asset pooling, or optimising operational and investment efficiency. Early identification of structural challenges and vulnerabilities is therefore essential to ensure that IORPs can deliver value for members and beneficiaries over the long term. Competent authorities play an important role in fostering strategic reflection by IORPs on their long-term sustainability, including on aspects such as scale, organisational configuration, and potential for consolidation or cooperation where those are ways to address identified shortcomings. Competent authorities should therefore conduct*, on a risk based basis,* ~~regular structured~~ supervisory dialogues with IORPs,

during which IORPs can identify potential weaknesses and consider strategic options, including measures to enhance efficiency, scale, and resource sharing, while retaining primary responsibility for ensuring that members and beneficiaries receive adequate retirement benefits.

(41) Without timely, complete, and comparable information, competent authorities may be unable to assess compliance, monitor risks, or take preventive and corrective measures effectively. To address that issue, Member States should ensure that competent authorities have the powers to require IORPs to submit all information necessary for supervision, to carry out on-site inspections, and to obtain detailed reporting on costs, charges, and investment returns.

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

(43) ~~Transparent, comparable, and easily accessible information on the total annual costs, past performance, and risk profiles of pension schemes operated by IORPs is essential for members and beneficiaries to make informed decisions about their retirement savings. Such disclosure could foster efficiency, cost-effectiveness, and the potential to achieve economies of scale, ultimately benefiting members and beneficiaries. To ensure comparability and accessibility, competent authorities should publish that information on a single public website for all relevant pension schemes or investment options, covering at least the previous ten years.~~

(44) Where cross-border activities are significant with respect to the market of the host Member State and require close collaboration between the competent authorities of the home Member State and the host Member State, especially where an IORP might risk being in financial difficulties to the detriment of members and beneficiaries, EIOPA should be able to ~~set up and~~ coordinate collaboration platforms, in a similar manner as under Directive 2009/138/EC of the European Parliament and of the Council[14].

(45) Insurance undertakings and insurance intermediaries can also distribute occupational pension products. To ensure that all prospective members, members and beneficiaries receive equivalent information and protection, such undertakings and intermediaries should be subject to rules related to information consistent with those applicable to IORPs~~, including obligations relating to the transmission of information to pension tracking systems~~.

(46) In order to attain the objectives set out in Directive (EU) 2016/2341 and this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of certain

[14] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1, ELI: http://data.europa.eu/eli/dir/2009/138/oj).

technical parameters in Directive (EU) 2016/2341 stemming from Council Directive 79/267/EEC, which have remained unchanged since their introduction, as well as on the Pension Benefit Statement. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(47) In order to ensure uniform conditions for the implementation of the provisions on reporting of investment returns, net of investment costs, and all costs and charges incurred in connection with the IORPs' activities, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 180/2011 of the European Parliament and of the Council[15].

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

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

(50) Regulation (EU) 2016/679 of the European Parliament and of the Council applies to the processing of personal data for the purposes of this Directive. Member States should ensure that processing of data carried out in application of this Directive fully respects Directive 2002/58/EC of the European Parliament and of the Council[16] where that Directive is applicable.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive (EU) 2016/2341

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

(1) the words 'registered or authorised' are replaced by 'authorised' throughout the Directive;

~~(2) the words 'size, nature, scale and complexity' are replaced by 'nature, scale and complexity' throughout the Directive;~~

~~(3) the words 'their size and internal organisation, as well as to the size, nature, scale and complexity of their activities' are replaced by 'the nature, scale and complexity of their activities' throughout the Directive;~~

[15] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13, ELI: http://data.europa.eu/eli/reg/2011/182/oj).

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

(4) Article 2 is amended as follows:

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

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

(b) the following paragraph 3 is added:

'3. Where, pursuant to paragraph 1, authorised entities are responsible for operating IORPs and acting on their behalf, Member States shall ensure that the assets of the IORPs are legally separate from those of the authorised entities.

~~For the purposes of the first subparagraph, where the authorised entities referred to in paragraph 2, point (b), operate IORPs and act on their behalf, Member States shall not restrict such authorised entities established in another Member State from carrying out those activities.~~';

(c) the following paragraph 4 is added:

'In the case of entities which are authorised based on Union prudential legislation, Member States shall ensure that these entities apply the relevant IORP provisions, to the extent that they do not duplicate respective requirements under their sectoral Union prudential legislation.

Member States shall not restrict entities authorised based on Union prudential legislation and authorised in another Member State from carrying out those activities, with the exception of activities relating to the provision of personal pension products which are authorised under national law, other than pan-European Personal Pension Product, as defined in Article 2(2) of Regulation (EU) 2019/1238.

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

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

'Article 3

Application to IORPs operating social security schemes

IORPs which also operate pension schemes that are considered to be social security schemes covered by Regulations (EC) No 883/2004 and (EC) No 987/2009 shall be covered by this Directive in respect of their retirement provision business not covered by those Regulations. In that case, the liabilities and corresponding assets shall be ring-fenced, and it shall not be possible to transfer those liabilities and corresponding assets to the pension schemes which are considered to be social security schemes, or vice versa. [*drafting of Article 3 to be adjusted depending on the option chosen*]

Article 4

Optional application

Member States may *decide to* apply *in whole or in part* ~~some or all of~~ the provisions of this Directive to institutions, irrespective of their legal form, operating on a funded basis for the purpose of providing retirement benefits:

(a) that are excluded from the scope of this Directive pursuant to Article 2(2), points (a) and (d); or

(b) that are not covered by this Directive or by Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU and 2014/65/EU.

In the case of institutions referred to in Article 2(2), point (a), ***the application of this Directive in whole or in part shall be without prejudice to the obligations arising from*** ~~Member States may decide on the application of provisions of this Directive only insofar as that application is compatible with~~ Regulations (EC) No 883/2004 and (EC) No 987/2009.

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

Member States may decide to apply Articles 11 and 11a under this Article only if all the provisions of this Directive apply.

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

The Commission shall make that information publicly available.';

(6) Article 5 is amended as follows:

(a) the title is replaced by the following:

'Small IORPs';

(b) the second paragraph is deleted;

(7) Article 6 is amended as follows:

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

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

'(3) 'sponsoring undertaking' means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer, a professional association or body, or in a self-employed capacity or any combination thereof and which offers a pension scheme or pays contributions to an IORP;';

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

‘(5) ‘member’ means a person, other than a beneficiary or a prospective member, whose past or current occupational activities entitle or will entitle him/her to retirement benefits in accordance with the provisions of a pension scheme, except that for the purposes of Titles I, II, III, V and VI, ‘member’ also means personal pension saver where personal pension provision by IORPs is permitted under national law;’

(d) the following points (20), (21) and (22) are added:

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

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

~~(22) ‘pension tracking system’ means a digital tool, typically a secure web portal or mobile application, that provides individuals with an overview of their individual accrued pension entitlements, and projections of future benefits, across the pension schemes of which the individual is a member or beneficiary.~~

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

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

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

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

(9) the following Article 8a is inserted:

‘Article 8a

Right of establishment and freedom to provide services

1. IORPs shall be allowed to provide *occupational retirement* services throughout the Union in accordance with Articles 11 and 11a.

2. Member States shall not restrict IORPs from establishing in their territory.’;

(10) Article 9 is amended as follows:

(a) the title is replaced by the following:

‘Authorisation’;

(b) paragraph 1 is replaced by the following:

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

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

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

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

The subsequent acceptance of one or more sponsoring undertakings shall not require the IORP to undergo a new authorisation procedure.

An IORP seeking authorisation to extend its activities, including, where applicable, to accept sponsorship from multiple sponsoring undertakings, shall be required to submit a scheme of operations covering those planned activities.

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

(c) the following paragraph 1a is inserted:

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

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

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

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

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

(b) has shown evidence that it will be in a position to comply on an ongoing basis with the requirements of this Directive;

(c) has shown evidence that it will be in a position to comply with the system of governance referred to in Title III, Chapter 1;

(d) has shown evidence that the persons who will effectively run the IORP and those responsible for key functions are fit and proper;

(e) has shown evidence that it will be in a position to hold adequate financial resources to support its operations and meet its obligations; and

(f) *has shown evidence that the rules of the pension schemes to be operated are duly established and, where the sponsoring undertaking guarantees the payment of retirement benefits, supported by appropriate financing arrangements.*';

(11) the following Article 9a is added:

'Article 9a

Multi-sponsor IORPs

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

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

(12) *in* Article 10 *paragraph 1, the following point (c) is added* ~~is amended as follows~~:

~~(a) in paragraph 1, the following point (c) is added:~~

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

~~(b) the following paragraph 3 is added:~~

~~'3. EIOPA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1094/2010, on the prudential assessment to be carried out as part of the authorisation of IORPs, as well as on the requirements laid down in Titles II and III.';~~

(13) Article 11 is amended as follows:

(a) paragraph 2 is deleted;

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

'3. Home Member States shall ensure than an IORP notifies its intention to carry out cross-border activity to its competent authority.

Member States shall require IORPs to provide the following information in effecting the notification:

(a) the name of the host Member State(s), which shall, where applicable, be identified by the sponsoring undertaking or undertakings;

(b) the name and the location of the main administration of the sponsoring undertaking(s);

(c) the main characteristics of the pension scheme or schemes to be operated for the sponsoring undertaking(s).

4. Member States shall ensure that a competent authority of the home Member State that is notified under paragraph 3 and has not issued a reasoned decision that the administrative structure or the financial situation of the IORP or the good repute or professional qualifications or experience of the persons running the IORP are not

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compatible with the proposed cross-border activities, communicates the information referred to in paragraph 3 to the competent authority of the host Member State within two months of receiving the ~~at~~ *complete* information *referred to in paragraph 3*. Member States shall ensure that the competent authority of the host Member State acknowledges receipt of that information without delay. Member States shall ensure that the competent authority of the home Member State informs the IORP in writing that the information has been received by the competent authority of the host Member State.

Member States shall ensure that the competent authority of the home Member State issues the reasoned decision referred to in the first subparagraph within ~~one~~ *two* month*s* of receiving all the information referred to in paragraph 3.';

(c) paragraphs 6 and 7 are replaced by the following:

'6. IORPs carrying out cross-border activity shall be subject to the information requirements referred to in Title IV imposed by the host Member State in respect of the prospective members, members and beneficiaries which that cross-border activity concerns~~, with the exception of the Pension Benefit Statement referred to in Article 38, which shall be subject to harmonised Union rules in accordance with paragraph 6 of that Article~~.

7. Before the IORP starts to carry out a cross-border activity, the competent authority of the host Member State shall, within one month after having received the information referred to in paragraph 3, prepare for the supervision of the relevant cross-border activities. That preparation shall relate to the requirements of social and labour law that are 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 and of the information requirements of the host Member State referred to in Title IV which shall apply to the cross-border activity. In addition, the competent authority of the host Member State shall through the means referred to in Article 59(3) and (4), communicate to the competent authority of the home Member State the legal provisions referred to in Article 59(1) which are applicable in its territory. The competent authority of the home Member State shall immediately communicate that information to the IORP.';

(d) the following paragraph 9a is inserted:

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

(e) paragraph 10 is replaced by the following:

'10. The competent authority of the host Member State that has reasons to consider that an IORP which conducts activities in its territory is not complying with the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes *and of the host Member State's information requirements as referred to in paragraph 6,* shall inform the competent authority of the home Member State thereof immediately.

The competent authority of the home Member State shall, in coordination with the competent authority of the host Member State, take the necessary measures to ensure that the IORP ends the detected breach.';

(f) in paragraph 11, the following subparagraphs are added:

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

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

(g) the following paragraphs 12 and 13 are added:

‘12. Paragraphs 10 and 11 are without prejudice to the power of host Member States to take appropriate and non-discriminatory emergency measures to prevent or penalise irregularities within their territory, in situations where immediate action is strictly necessary in order to prevent the rights of members and beneficiaries, and where equivalent measures of the home Member States are inadequate or lacking. That power shall include the possibility of preventing IORPs, insofar as is strictly necessary, from operating in the host Member State for the sponsoring undertaking.

13. Any measure adopted under paragraphs 10 to 13 involving restrictions on the activities of IORPs shall be properly reasoned and communicated to the IORP concerned without undue delay. The competent authority of the host Member State that adopts such measure shall also communicate the measure to the competent authority of the home Member State, and in the context of paragraph 11, third subparagraph, to EIOPA.’;

(14) the following Article 11a is inserted:

‘Article 11a

Changes in the information notified

1. Member States shall ensure that in the event of a change in any of the particulars communicated under Article 11(3), points (b) or (c), an IORP gives written notice of the change to the competent authorit*y*~~ies~~ of the home ~~and the host~~ Member State~~s~~ at least one month before making the change*. The competent authority of the home Member State shall inform the competent authorities of the host Member States of the change without delay,* in order to enable the competent authorities of the home and the host Member States to fulfil their respective obligations under Article 11.

2. Member States shall ensure that where members and beneficiaries fully bear the investment risk, the notification of one or more additional sponsoring undertakings to a previously notified pension scheme, or of non-material amendments to the characteristics of that scheme, is subject to a simplified notification procedure.’;

(15) Article 12 is amended as follows:

(a) the following paragraph 2a is inserted:

‘2a. Member States shall ensure that the transferring IORP makes available to the members and beneficiaries concerned and, where applicable, to their representatives, the information on the conditions of the transfer in a timely manner and before the application referred to in paragraph 4 is submitted.’;

(b) paragraph 3 is replaced by the following:

‘3. The cross-border transfer shall be subject to prior approval by:

(a) a simple majority of the members and beneficiaries concerned, or where applicable, a simple majority of their representatives; and

(b) the sponsoring undertaking, where applicable.

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

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

(c) in paragraph 11, the second subparagraph is replaced by the following:

'Where the transfer results in a cross-border activity, the competent authority of the home Member State of the transferring IORP shall also inform the competent authority of the home Member State of the receiving IORP of the requirements of social and labour law relevant to the field of occupational pension schemes under which the pension scheme must be operated and of the information requirements of the host Member State referred to in Title IV which shall apply to the cross-border activity. This shall be communicated within a further four weeks.'; [*drafting of art 12 to be adjusted depending on the option chosen*]

(16) the following Article 12a is inserted:

'Article 12a

Domestic transfers

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

~~Such transfers shall be subject to prior approval by the competent authority, which shall verify at least all of the following:~~

~~(a) that the information submitted is complete and accurate;~~

~~(b) that the administrative structure, financial situation, and the good repute or professional qualifications and experience of the persons who effectively run the IORPs concerned are compatible with the proposed transfer;~~

~~(c) that the long-term interests of members and beneficiaries are adequately protected;~~

~~(d) that the assets to be transferred are sufficient and appropriate to cover the related liabilities, technical provisions, and other obligations and rights.~~

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

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

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

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

‘1. The home Member State shall ensure that IORPs operating pension schemes establish at all times in respect of the total range of their occupational pension schemes and, where permitted under national law, of personal pension schemes distributed through IORPs, an adequate amount of liabilities corresponding to the financial commitments which arise out of their portfolio of existing pension contracts.

2. The home Member State shall ensure that IORPs operating pension schemes, where they provide cover against biometric risks or guarantee either an investment performance or a given level of benefits, establish sufficient technical provisions in respect of the total range of such schemes.’;

(18) Article 14 is amended as follows:

(a) paragraph 2 is amended as follows:

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

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

(ii) the following subparagraph is added:

‘The limited period of time referred to in the introductory wording of the first subparagraph shall be determined by national law and *Member States shall be responsible for setting a maximum recovery period at national level, taking into account local practices and circumstances in a justified and transparent manner* ~~shall in any case not exceed ten years~~.’;

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

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

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

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

(19) Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

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

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

'7. ~~The Commission is empowered to adopt delegated acts in accordance with Article 64a to amend the numbers and percentage values referred to in this Article and in Article 18.~~' *The numbers and percentages in Articles 17 and 18 shall be amended, after a relevant appropriate and comprehensive study based on public sources is carried out by the Commission and accompanied by a legislative proposal, within a period of 18 months after the entry into force of this Directive.';*

(21) the following Article 18a is inserted:

'Article 18a

Internal stress testing

1. The competent authorities of the home Member States shall require that IORPs operating pension schemes, where the IORP itself, and not the sponsoring undertaking, underwrites the liability to cover against biometric risk, or guarantees a given investment performance or a given level of benefits, carry out a stress test at least every three years to assess their ability to meet their obligations towards members and beneficiaries, including under scenarios representing adverse market and demographic developments.

Notwithstanding the first subparagraph, the competent authority of the home Member State shall have the power to require an IORP to carry out the stress test exercise more frequently, at least where the results of the stress tests of previous years identify a risk of not having sufficient and appropriate assets to cover the technical provisions within the *number of years defined in relevant decision issued by the competent authority* ~~next ten years~~.

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

2. For the purposes of paragraph 1, IORPs shall make projections, over the next ten financial years from the date of the most recent financial statements, of assets and liabilities under each of the following scenarios:

(a) a baseline scenario extending the economic conditions prevailing at the date of the most recent financial statements;

(b) an adverse scenario of permanent relative decrease in interest rates of *using the relevant decrease rate as a percentage or an absolute decrease in percentage points, as defined in relevant decision issued by the competent authority* ~~40 % or absolute decrease of 0,75 percentage points~~, whichever is more severe, without interest rates falling below *a minimum level* ~~0 %~~ or exceeding *a maximum level, as these are also defined for this purpose by the competent authority* ~~3,5 %~~;

(c) an adverse scenario of decline in investment returns on non-depreciable assets by *the relevant rate defined by the competent authority* ~~30 %~~;

(d) a decrease in the mortality rates of members and beneficiaries at all ages by *the relevant rate defined by the competent authority* ~~10 %~~.

By way of derogation from the first subparagraph, Member States may require IORPs to:

(a) make projections over more than *the number of years defined in relevant decision by the competent authority* ~~ten financial years~~;

(b) carry out projections under adverse scenarios that are more severe than the scenarios set out in the first subparagraph, points (b), (c) or (d);

(c) carry out projections under additional stressed scenarios.

Member States shall ensure that the competent authority is responsible for defining all the above-mentioned parameters by issuing a relevant decision for the purposes of these internal stress tests, at least every two years, and inform the supervised entities accordingly.

3 Where the results of the stress test referred to in paragraph 1 indicate that, under any of the scenarios referred to in paragraph 2, an IORP would either have insufficient assets to cover the technical provisions or, where applicable, have an insufficient available solvency margin to meet the required solvency margin or any higher level of regulatory own funds required under national law pursuant to Article 15 for any projected year, Member States shall ensure that the competent authority requires the IORP to submit a convergence plan.

That convergence plan shall set out the measures that the IORP intends to take to restore, over the projection horizon, its ability to maintain sufficient assets to cover the technical provisions, or where applicable, to have an available solvency margin exceeding the required solvency margin, under all the scenarios referred to in paragraph 2.

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

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

4. Paragraph 3 shall not apply where an IORP is permitted, pursuant to Article 14(2), to have insufficient assets to cover the technical provisions for a limited period of time. In that case, Member States shall ensure that the recovery plan adopted under Article 14(2) reflects the outcome of the stress test referred to in paragraph 1 of this Article and, where necessary, is updated accordingly, in particular when determining the measures and the period for restoring full funding.

5. Member States may decide not to apply paragraphs 1 to 3 where they require IORPs located in their territory to hold regulatory own funds, in excess of the required solvency margin referred to in Article 17, provided that such regulatory own funds requirements are risk-based, at least in relation to market and longevity risks.';

(22) Article 19 is amended as follows:

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(a) paragraph 1 is amended as follows:

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

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

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

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

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

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

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

‘1a. Member States shall require that, with respect to the whole portfolio of assets, IORPs only invest in assets and instruments whose risks the IORP concerned is able to properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall funding needs and the assessment of the risks to members and beneficiaries relating to the paying out of their retirement benefits in accordance with Article 28.

1b. Member States shall require that assets held to cover the technical provisions are also invested in a manner appropriate to the nature and duration of the liabilities entered into by the IORP.

~~1c. Member States shall require that investment decisions of IORPs reflect the sustainability preferences of members and beneficiaries, where IORPs are able to gauge those membership preferences and to the extent those preferences are consistent with the investment principles set out in paragraph 1.~~

~~1d. For the purposes of paragraph 1c, sustainability preferences shall mean a member’s, beneficiary’s, or prospective member’s choice as to whether and, if so, to what extent, one or more of the following financial instruments are to be integrated into his or her investment:~~

~~(a) a financial instrument for which the customer or potential customer determines that a minimum proportion is to be invested in environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/852 of the European Parliament and of the Council**;~~

~~(b) a financial instrument for which the customer or potential customer determines that a minimum proportion shall be invested in sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088;~~

~~(c) a financial instrument that considers principal adverse impacts on sustainability factors, as defined in Article 2, point (24), of Regulation (EU) 2019/2088, where~~

~~qualitative or quantitative elements demonstrating that consideration are determined by the customer or potential customer.';~~

(c) paragraph*s* 6*, 6a and 7 are* ~~is~~ replaced by the following:

'In accordance with the provisions of paragraphs 1 to 5, Member States may ~~empower the competent authority~~, for *the* IORPs authorised in their territories, ~~to~~ lay down more detailed rules, *including quantitative rules,* provided they are prudentially justified. *Such rules must, however, be set in accordance with the following principles:*

a) Portfolio limits should not inhibit adequate diversification or impede the use of asset-liability matching or other widely-accepted risk management techniques and methodologies

b) Portfolio limits should not impede investments in foreign assets as long as currency matching requirements between the IORP's, or where appropriate, the pension scheme's assets and liabilities are met.

~~Any such rules shall be applied only where the investment risk is borne by the members and beneficiaries.~~ However, in such cases, IORPs shall not be prevented from:

(a) investing up to ~~70~~100 % 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 MTFs or OTFs, and deciding on the relative weight of those 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 *up to 20% of the assets covering the whole portfolio for schemes in which the members bear the investment risks* in instruments that have a long-term investment horizon and are not traded on regulated markets, MTFs or OTFs;

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

(e) investing in a particular asset class.

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

Member States shall ensure that any quantitative limits laid down pursuant to this paragraph are reviewed at regular intervals, in order to assess whether they remain prudentially justified and do not unnecessarily restrict the ability of IORPs to implement investment strategies consistent with paragraphs 1 to 5.

6a. Member States that lay down quantitative rules or other limits or conditions pursuant to paragraph 6 shall ensure that there are procedures for IORPs to request derogations from those rules, if the applicant IORP can demonstrate that the derogation is required by, or consistent with, the prudent person principle.

7. Paragraph 6 shall not preclude the right for Member States to require the application to IORPs authorised in their territory of more stringent investment rules also on an individual basis provided they are prudentially justified, in particular in light of the liabilities entered into by the IORP.';

(d) paragraph~~s 7 and~~ 8 *is* ~~are~~ deleted;

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

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

(23) Article 21 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

(a) an adequate and transparent organisational structure with a clear allocation and appropriate segregation of responsibilities;

(b) an effective system for ensuring the transmission of information and management of conflicts of interest.

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

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

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

'3. Member States shall ensure that IORPs establish ~~and~~ apply *and review* written policies in relation to risk management, internal control, internal audit, remuneration and, where relevant, actuarial and outsourced activities, and that those policies are implemented. Those written policies shall be subject to prior approval by the management or supervisory body of the IORP and shall be reviewed at least every three years and adapted in view of any significant change in the system or area concerned.

4. Member States shall ensure that IORPs have in place an effective internal control system. That system shall have administrative and accounting procedures, an internal control framework *including compliance*, and appropriate reporting arrangements at all levels of the IORP ~~and a compliance function~~.';

~~(c) the following paragraph 4a is inserted:~~

~~'4a. The compliance function shall include advising the administrative, management or supervisory body on compliance with the laws, regulations and administrative~~

~~provisions adopted pursuant to this Directive. It shall also assess the possible impact of any changes in the legal environment on the operations of the IORP concerned and shall identify and assess compliance risk.'~~

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

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

'7. Where there is potential or actual conflict of interest arising from the relationship between the IORP and a service provider of the IORP, Member States shall require that the persons who effectively run the IORP take independent decisions in the sole interest of members and beneficiaries.

8. Member States shall require IORPs and, where applicable, their respective nomination committees to engage a broad set of qualities and competencies when selecting members to the *administrative,* management or supervisory body, ensuring a balanced representation of women and men.

Member States shall require that IORPs and, where applicable, their respective nomination committees, put in place a policy that promotes diversity and inclusion in the *administrative,* management or supervisory body. That policy shall~~, where relevant, take into account that the administrative, management or supervisory body includes representatives of social partners, and~~ be applied in a manner that is proportionate to the nature, scale and complexity of the activities of IORPs.

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

~~Member States shall also require that the policy sets individual quantitative objectives related to gender balance in a manner that is proportionate to the nature, scale and complexity of the activities of the IORPs. The target shall consider the members of the management or supervisory body that are selected by the sponsor of the IORP and shall not apply to IORPs where the number of members of the management or supervisory body that are selected by the sponsor of the IORPs is three or fewer.~~

~~9. Member States shall require IORPs to publicly disclose the target for the gender-balanced representation of the underrepresented gender in the management or supervisory body, the policy on how to increase the number of the underrepresented gender in the management or supervisory body and its implementation in the annual reports.~~

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

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

(24) Article 22 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall require IORPs to ensure that persons who effectively run the IORP, the administrative, management or supervisory bodies, persons who carry out key functions and, where applicable, persons or entities to which a key function

has been outsourced in accordance with Article 31 fulfil the following requirements when carrying out their tasks:

(a) the requirement to be fit:

(i) for persons who effectively run the IORP, this means their *professional* qualifications, knowledge and experience are adequate to enable them to ensure a sound and prudent management of the IORP, which shall include the knowledge and competencies enabling them to address the different levels of risk that members and beneficiaries are exposed to, depending on the nature of the schemes they are part of;

(ii) for persons who carry out the actuarial or internal audit key functions this means their professional qualifications, knowledge and experience are adequate to properly carry out their key functions;

(iii) for persons who carry out other key functions this means their *professional* qualifications, knowledge and experience are adequate to properly carry out their key functions;

(iv) for the administrative, management or supervisory bodies, this means that the *professional* qualifications, knowledge and experience of their members are collectively adequate to enable them to perform their duties;

(b) the requirement to be proper: they are of good repute and integrity.';

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

'1a. Member States shall require that IORPs notify their competent authorities of any changes to the identity of the persons referred to in paragraph 1, along with the reasons for the changes and all information needed to assess whether the new persons appointed are fit and proper*, except where the respective person is subject to prior approval by the competent authority*.

1b. Member States shall require that IORPs notify their competent authorities where any of the persons referred to in paragraph 1 no longer fulfil the requirements laid down in that paragraph or have been replaced for that reason.';

(c) paragraph 2 is replaced by the following:

'2. Member States shall ensure that the competent authorities ~~are able~~ *have the powers* to assess whether the persons referred to in paragraph 1 *fulfil* the requirements laid down in paragraph 1 ~~on an ongoing basis,~~ and whether there are any actual or potential conflicts of interest and how these are prevented or managed.';

(d) the following paragraph 2a is inserted:

'2a. Where ~~a person~~ *the persons referred to in paragraph 1* ~~who effectively runs the IORP or has other key functions~~ ~~does~~ not fulfil the requirements set out in paragraph 1, the competent authorities shall have the power to require the IORP to remove such person from that position.';

(25) in Article 23(3), the following point~~s~~ (h) ~~and (i) are~~ *is* added:

'(h) ~~the remuneration policy shall specify how the IORP takes into account the integration of sustainability risks, as defined in Article 2, point (22), of Regulation (EU) 2019/2088 of the European Parliament and of the Council, in the risk management system;~~

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

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

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

(27) Article 26 is replaced by the following:

'Article 26
Internal audit function

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

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

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

(28) Article 28 is amended as follows:

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

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

(b) paragraph 2 is amended as follows:

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

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

(ii) the following points ~~(i), (j) and (k) are~~ *is* added:

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

~~(j) the assessment referred to in Article 44b(2);~~

~~(k) an assessment of the economies of scale and efficiency options, including the participation in pooled investment structures, shared services or transfers, and of their impact on members and beneficiaries~~.';

(iii) the following subparagraph is added:

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

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

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

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

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

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

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

Member States shall ensure that an IORP adheres to its Statement of Investment Principles. In this respect, Member States shall ensure that the investment manager of an IORP follows the investment strategy set out in the Statement of Investment Policy and that the instructions an IORP gives to its external investment managers follow the Statement of Investment Policy Principles.

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

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

(30) Article 31 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall permit or require IORPs authorised in their territory to entrust any activities including key functions and the management of those IORPs, in whole or in part, to service providers operating on behalf of those IORPs, provided that the outsourcing arrangements comply with paragraphs 2 to *6*~~7~~.';

(b) paragraph 5 is replaced by the following:

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

(c) paragraph 7 is deleted;

(31) Article 33 is amended as follows:

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

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

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

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

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

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

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

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

Member States may maintain alternative measures to the appointment of a depositary, provided that such measures existed prior to the entry into force of this Directive and ensure a comparable level of protection.';

(32) Article 34 is replaced by the following:

'Article 34

Safekeeping of assets and depositary liability

1. Unless otherwise provided for in this Chapter, for the execution of the tasks of the depositaries in relation to the safe-keeping of assets and the depositary liability, Chapter IV of Directive 2009/65/EC shall apply accordingly.

2. Where no depositary is appointed for the safe-keeping of assets, IORPs shall, at least be required to:

(a) ensure that financial instruments are subject to due care and protection;

(b) keep records that enable the IORP to identify all assets at all times and without delay;

(c) take the necessary measures to avoid conflicts of interest in relation to the safe-keeping of assets;

(d) inform the competent authorities, upon request, about the manner in which assets are kept.';

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

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

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

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

(35) Article 36 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

(b) members: at least the information set out in Article 37 to 40, 41a, 42 and 44; and

(c) beneficiaries: at least the information set out in Article 37, 41a, 43 and 44.

Where, pursuant to national law, IORPs are authorised to provide personal pension products, Member States shall ensure that every IORP authorised in their territory, which provides those products other than the pan-European Personal Pension Product as defined in Article 2, point (1), of Regulation (EU) 2019/1238, provides to prospective savers and personal pension savers and beneficiaries information that is *equivalent to that required by national law for the distribution of personal pension products by other entities or institutions* ~~clear, fair, not misleading, and appropriate to the nature of the product, the distribution channel and the characteristics of the saver or beneficiary. That information shall ensure a level of transparency and protection equivalent to that required under national law for the distribution of personal pension products by other entities or institutions, at least in respect of the following elements:~~

~~(a) the identity, legal form and authorisation status of the IORP;~~

~~(b) the main characteristics, costs and risks of the personal pension product offered;~~

~~(c) the existence and nature of any advice or recommendation provided;~~

~~(d) the nature of any remuneration received in relation to the product;~~

~~(e) the procedures for complaints and redress.~~

~~Member States may adapt those requirements to reflect the specific features of IORPs and the diversity of personal pension distribution channels~~.’;

~~(b) the following paragraph 4 is added:~~

~~‘4. EIOPA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1094/2010, on the information that is to be provided in accordance with Articles 41, 42 and 43.’;~~

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

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

~~(37) the following Article 37a is inserted:~~

~~*'Article 37a*~~

~~**Pension tracking systems**~~

~~1. Member States shall ensure that, where pension tracking systems are in place, they cover the pension entitlements administered by IORPs.~~

~~2. For the purposes of paragraph 1, Member States shall ensure that IORPs transmit to pension tracking systems, where such systems have been established, all information necessary to provide members and beneficiaries with a comprehensive, reliable and up-to-date overview of their occupational and personal pension entitlements, insofar as those entitlements are administered by the IORP.~~

~~3. Member States shall ensure that the information referred to in paragraph 2 is transmitted in a standardised, machine-readable and interoperable format enabling pension tracking systems to aggregate data on accrued rights, accumulated capital and projected benefits in a coherent and comparable manner.~~

~~4. Member States shall ensure that IORPs remain fully responsible for the completeness and accuracy of the data transmitted and for the fulfilment of all communication obligations provided for in this Article.~~

~~5. Member States shall ensure that competent authorities monitor and enforce compliance with this Article and take corrective measures where IORPs fail to provide complete, accurate or timely information.~~

~~6. The format and structure of the information to be transmitted to pension tracking systems shall be consistent with the format and structure laid down in the Delegated Regulation adopted pursuant to Article 38.';~~

~~(38)~~ *in* Article 38 paragraphs 1, 2 and 3 are replaced by the following ~~is amended as follows:~~

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

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

2. The exact date and period to which the information in the Pension Benefit Statement refers to shall be stated prominently.

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

~~(b) the following paragraph 6 is added:~~

~~'6. The format and structure of the Pension Benefit Statement shall be provided to members and beneficiaries using a Union standardised format, while also taking into account the characteristics of different types of pension schemes.~~

~~EIOPA shall, after conducting consumer testing and industry testing, develop draft regulatory technical standards specifying the details of the presentation of the information referred to in Articles 38 to 40. In relation to the presentation of the information on past performance as referred to in Article 39(1), point (i), EIOPA shall take into account the characteristics of different types of schemes when drafting those regulatory technical standards, in particular if members and beneficiaries bear investment risk or where the investment strategy is age-dependent or includes duration matching.~~

~~In order to minimise duplication of reporting requirements, when developing the draft regulatory standards, EIOPA shall, to the maximum extent possible, ensure alignment with Commission Delegated Regulation (EU) 2021/473*, and aim at facilitating the insert of the information of the Pension Benefit Statement into pension tracking systems and at ensuring usability for members and beneficiaries.~~

~~EIOPA shall submit those draft regulatory technical standards to the Commission by [PO = please insert date 18 months after the date of entry into force].~~

~~Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the third subparagraph in accordance with Article 10 of Regulation (EU) No 1094/2010.~~

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* Commission Delegated Regulation (EU) 2021/473 of 18 December 2020 supplementing Regulation (EU) 2019/1238 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements on information documents, on the costs and fees included in the cost cap and on risk-mitigation techniques for the pan-European Personal Pension Product (OJ L 99, 22.3.2021, p. 1, ELI: http://data.europa.eu/eli/reg_del/2021/473/oj).';

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

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

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

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

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

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

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

(i) a breakdown of all costs incurred, directly and indirectly, by members and beneficiaries over the previous 12 months ~~and on compounded basis since the member joined the scheme concerned~~, indicating at least the costs of administration, ~~the costs of safekeeping the assets,~~ and the investment costs incurred in connection with the management of assets ~~and portfolio transactions~~;

(ii) ~~an estimation of the impact of the costs on the final capital accumulated;'~~;

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

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

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

(e) the following subparagraphs are added:

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

~~For the purposes of point (g)(ii), the costs shall be shown at least in monetary terms and as a percentage of contributions over the previous 12 months and since the member joined the scheme, respectively.~~

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

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

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

(41) Article 41 is amended as follows:

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

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

(b) paragraph 2 is replaced by the following:

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

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

(b) information on all direct and indirect costs that members and beneficiaries have borne over the previous ~~12 months~~ *calendar year*, including the costs of each investment option separately, *where such options are available,* ~~presented at least in monetary terms, and an estimation of the impact of the costs on the final capital accumulated;~~

~~(c) information on the investment options available and their risks.’;~~

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

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

~~(42) the following Article 41a is inserted:~~

~~*‘Article 41a*~~

~~**Information to be given to members and beneficiaries in the case of underperformance**~~

~~1. Member States shall ensure that IORPs regularly monitor their performance against benchmarks established by their competent authority in accordance with paragraph 4. Member States shall ensure that, where an IORP identifies that its performance materially deviates from the applicable benchmark, it promptly informs its competent authority and provides evidence that the costs and charges of the scheme are justified and proportionate and that the scheme is in line with the risk tolerance of its members and beneficiaries.~~

~~Where the competent authority concludes that the evidence that the costs and charges of the scheme are not justified and proportionate or that the scheme is not in line with the risk tolerance of its members and beneficiaries, or where the underperformance persists for at least three years, Member States shall ensure that the IORP promptly informs its members and beneficiaries of that situation in a clear, fair and understandable manner.~~

~~2. Member States shall ensure that the information referred to in paragraph 1, second subparagraph, enables members and beneficiaries to understand how the scheme is performing in relation to comparable IORPs. Member States shall ensure that the information provided explains in a simple manner the reasons for the underperformance, how the costs and charges are proportionate and justified, and the actions being taken to improve results and to protect the value of members’ accrued rights. Member States shall ensure that the information remains easily accessible until the IORP demonstrates sustained improvement.~~

~~3. Member States shall require that IORPs ensure that the information referred to in paragraph 1, second subparagraph, is made available through the same channels normally used for providing the Pension Benefit Statement and other regular communications, and that members and beneficiaries are informed of how to obtain further details if they so wish.~~

~~4. Member States shall ensure that clear, objective and transparent benchmarks are developed by their competent authority for assessing underperformance, including with respect to administrative, investment and transaction costs, gross and net investment returns and funding outcomes over specified periods.~~

~~5. For the purposes of this Article, EIOPA shall adopt guidelines, in accordance with Article 16 of Regulation (EU) No 1094/2010, on methodologies for determining underperformance across Member States.’;~~

(43) Article 42 is replaced by the following:

‘Article 42

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

In addition to the Pension Benefit Statement, IORPs shall provide each member, in due time before the retirement age as specified in Article 39(1), point (a), or at the request of the member, with information about the upcoming start of the pay-out phase

and the benefit pay-out options available in taking their retirement benefits, including the costs and charges associated with each option and the applicable tax treatment.

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

(a) the main features, implications and potential effects of each benefit pay-out option available on the member and, where applicable, on the beneficiaries;

(b) the risks and factors that could adversely affect the level, stability or duration of retirement income;

(c) the circumstances and criteria for members to take into account when assessing the suitability of the different benefit pay-out options for their individual situation.

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

(44) Article 43 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall require IORPs to ~~annually~~ provide beneficiaries *at least every five years and the earlier where benefits are adjusted,* with information about ~~the~~ benefits *still* due, the corresponding pay-out options, and a breakdown of all costs incurred and information on the past performance as referred to in Article 39, points (g) and (i). [*This point would be affected according to MS responses on options for point 39 (g)*]

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

(b) paragraph 3 is replaced by the following:

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

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

'CHAPTER 4
Business conduct rules

Article 44a
Duty of care

1. Member States shall, taking into account the nature of the pension scheme, ensure that every IORP authorised in their territory always acts honestly, fairly and professionally, and in accordance with the best interests of their members and beneficiaries *as a whole*. Those interests shall include the objective of providing

adequate~~,~~ and risk-adjusted ~~and cost-efficient~~ returns over the long term, consistent with the long-term nature of pension obligations.

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

~~*Article 44b*~~

~~**Appropriate structure and implementation of the pension schemes**~~

~~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 require that:~~

~~(a) IORPs ensure that the structure, design and implementation of pension schemes are appropriate in view of the identified needs, characteristics and risk profile of the members and beneficiaries, in a manner that is proportionate to the nature, scale and complexity of the scheme.~~

~~(b) IORPs regularly review and, where necessary, adapt the structure, design and implementation of the pension scheme, taking into account any material developments, in order to ensure that the scheme remains appropriate and consistent with the needs, characteristics and risk profile of members and beneficiaries, in a manner that is proportionate to the nature, scale and complexity of the scheme.~~

~~The IORP shall document the assessment of whether the structure, design and implementation of pension schemes are appropriate as referred to in the first subparagraph, point (a).~~

~~2. Member States shall ensure that, where members bear investment risk, IORPs assess the long-term risk from the perspective of members and beneficiaries, including:~~

~~(a) the determination of the risk tolerance of members and beneficiaries bearing risks;~~

~~(b) the introduction of the use of pension projections in the risk assessment from the perspective of members and beneficiaries;~~

~~(c) where the IORP offers multiple investment options, the periodical review of the suitability of the investment options for the members according to their risk tolerance, and where there is a default option, the review of the suitability of that default option;~~

~~(d) where IORPs do not offer multiple investment options, the periodical review of the investment strategy to consider the long-term risk assessment from the perspective of the members and beneficiaries.~~

Article 44c

Complaints

1. Member States shall require that IORPs put in place and apply effective procedures and arrangements that are appropriate for the settlement of complaints lodged by members and beneficiaries concerning their rights and obligations laid down in this Directive.

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2. The procedures and arrangements referred to in paragraph 1 shall be available in *at least one of* the official languages of the Member State concerned, or, *in accordance with national legislation,* in another language accepted by the competent authorities of that Member State, or agreed between the IORP and its members and beneficiaries.

3. Member States shall require that IORPs reply, either electronically or on another durable medium, to the complaints of members and beneficiaries. The reply shall address all points raised within maximum 40 working days.

4. Member States shall ensure that IORPs inform members and beneficiaries who lodge a complaint about at least one alternative dispute resolution (ADR) body which is competent to deal with disputes concerning the rights and obligations of members and beneficiaries laid down in this Directive.

5. Member States shall ensure that the information on the procedures referred to in paragraph 1 is available free of charge to members and beneficiaries in a clear, comprehensive and easily accessible manner through electronic means, including on a durable medium or by means of a website, or on paper. That information shall specify how further information on the ADR body concerned and on the conditions for using it can be accessed.

6. Member States shall ensure that the competent authorities set up procedures which allow members, beneficiaries and other interested parties, including consumer associations, to submit complaints to the competent authorities with regard to alleged infringements of this Directive by IORPs. Member States shall ensure that in all cases, complainants receive replies.

7. Member States shall ensure that were a case that concerns more than one Member State, the complainant may choose to lodge his or her complaint through the competent authorities of his or her Member State of residence, regardless of where the infringement occurred.

8. Notwithstanding paragraphs 1 to 7, Member States may provide that existing national redress mechanisms, including those involving social partners, are deemed to satisfy the requirements of this Article, provided they ensure an equivalent level of protection and avoid unnecessary duplication of procedures.

Article 44d

Out-of-court redress

1. Member States shall establish adequate, independent, impartial, transparent and effective ADR procedures for the settlement of disputes between IORPs and their members and beneficiaries concerning the rights and obligations laid down in this Directive. ~~Where appropriate, those procedures shall be applied by existing competent bodies.~~ Member States shall ensure that such ADR procedures are applicable, and the relevant ADR body's competence shall effectively extend, to IORPs against whom the procedures are initiated.

2. The bodies referred to in paragraph 1 shall cooperate effectively for the resolution of cross-border disputes concerning rights and obligations arising under this Directive.'

3. Member States may provide that existing national redress frameworks, including those established and managed by social partners, satisfy the requirements of this

Article. The obligations under paragraph 1 shall apply only in the absence of such existing equivalent mechanisms.";

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

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‘TITLE V
SUPERVISION’

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

‘CHAPTER 1
General rules on supervision’

(48) Article 45 is replaced by the following:

‘Article 45

Powers, resources and main objective of supervision by competent authorities

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

(49) the following Article 45a is inserted:

‘Article 45a

Competent authorities

1. Member States shall designate the competent authorities empowered to ensure the implementation of this Directive. They shall inform the Commission thereof, indicating any division of those duties.

2. Where there is more than one competent authority in its territory, a Member State shall ensure that those authorities collaborate closely so that they can discharge their respective duties effectively.

3. Member States shall ensure that competent authorities have a sufficient number of qualified staff and resources that are necessary for the effective performance of their duties.’;

(50) Article 46 is amended as follows:

(a) the title is replaced by the following:

‘**Scope of supervision’**;

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

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

(c) the following second paragraph is added:

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

(51) Article 47 is amended as follows:

(a) the title is replaced by the following:

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'General principles of supervision'

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

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

(c) paragraph 4 is replaced by the following:

'4. Supervisory powers shall cover the entire retirement provision business of the IORP, including, where pursuant to national law IORPs are allowed to provide personal pension products, their personal pension provision business. Member States shall ensure that those powers are applied in a manner which is timely and which is proportionate to the nature, scale and complexity of the activities of the IORP.';

~~(d) the following paragraph 6 is added:~~

~~'6. Member States shall ensure that competent authorities monitor market developments relating to the scale of IORPs.';~~

(52) Article 48 is amended as follows:

(a) the following paragraph~~s~~ 1a and ~~1b are~~ *is* inserted:

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

~~1b. Member States shall ensure that their competent authorities apply supervisory powers in a timely and proportionate manner.'~~;

(b) paragraph 2 is replaced by the following:

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

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

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

Without prejudice to the supervisory powers of competent authorities and the right of Member States to provide for and impose criminal sanctions, Member States shall ensure that their competent authorities may impose administrative sanctions and other measures applicable to all infringements of the national provisions implementing this Directive, and shall take all measures necessary to ensure that those sanctions and other measures are implemented. Member States shall ensure that their administrative sanctions and other measures are effective, proportionate and dissuasive.';

(53) Article 49 is amended as follows:

(a) paragraph 1 is amended as follows:

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

'Member States shall ensure that competent authorities review and evaluate the strategies, processes and reporting procedures which are established by IORPs to comply with the laws, regulations and administrative provisions adopted pursuant to

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this Directive, taking into account the nature, scale and complexity of the activities of the IORP.';

(ii) the following subparagraph is added:

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

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

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

1b. As part of the review process, the competent authority and each IORP shall conduct~~, at least every three years,~~ a ~~regular~~ supervisory dialogue *following a risk-based assessment by the competent authority*.

~~*Member States shall ensure that the risk-based assessment by the competent authority includes an assessment of whether the investment strategy reflects the risk appetite and tolerance of members and beneficiaries.';*~~

(c) paragraph 2 is replaced by the following:

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

Member States shall ensure that competent authorities have in place appropriate monitoring tools~~, including stress tests,~~ that enable them to identify deteriorating financial conditions in an IORP and to monitor how that deterioration is remedied.';

(d) the following paragraph 2a is inserted:

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

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

(e) paragraph 4 is replaced by the following:

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

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

(54) the following Article~~s 49a and~~ 49b ~~are~~ *is* inserted:

'Article 49a

Regular supervisory dialogue

1. The regular supervisory dialogue referred to in Article 49(1b) shall cover the early identification of vulnerabilities, inefficiencies and structural challenges, and to encourage strategic reflection on the long-term adequacy, efficiency and sustainability of the IORP, including the adequacy of its scale, its capacity for consolidation, cooperation or asset pooling, and the appropriateness of its organisational configuration to operate efficiently and deliver value for members and beneficiaries.

2. Member States shall ensure that the regular supervisory dialogue referred to in Article 49(1b) is based on a set of early warning parameters, including at least all of the following:

(a) the level and evolution of administrative, transaction and investment costs of the IORP;

(b) the net and risk-adjusted rate of return on assets of the IORP;

(c) any shortfall or deviation from promised or targeted benefit levels;

(d) the number and evolution of active members and beneficiaries;

(e) indicators of operational efficiency, risk concentration and institutional resilience.

3. Member States shall ensure that, where the outcome of the regular supervisory dialogue indicates potential weaknesses or deficiencies, their competent authorities invite the IORP concerned to consider strategic options that are appropriate at strengthen its long-term viability and the effective delivery of retirement benefits to members and beneficiaries, including measures that enhance operational scale, consolidation, cooperation, asset pooling or resource-sharing arrangements.

4. Member States shall ensure that the, where material deficiencies are identified, or where there is an underperformance as referred to in Article 41a(1), their competent authority shall require the IORP to draw up a plan for remedial action that sets out the measures, timelines and governance arrangements to address the identified material deficiencies or that underperformance. Such a plan shall consider structural measures to improve efficiency and sound management, including, where appropriate, possible consolidation, cooperation, asset pooling or resource-sharing arrangements.

Member States shall ensure that the IORP's administrative, management or supervisory body adopts the plan referred to in the first subparagraph and submits that plan to the competent authority for review and approval.

Member States shall ensure that the IORP reports periodically on the implementation of the plan referred to in the first subparagraph and on any progress achieved in implementing that plan when requested to do so by the competent authority.

5. Member States shall ensure that the competent authority:

(a) documents the outcome of each regular supervisory dialogue;

(b) may issue recommendations to the IORP concerned.

The recommendations referred to in point (b) of the first subparagraph shall be without prejudice to the powers of the competent authority to adopt binding supervisory measures.

Article 49b

Withdrawal of authorisation

1. The competent authority of the home Member State may withdraw an authorisation granted to an IORP in the following cases:

(a) the IORP concerned does not use its authorisation within 12 months, expressly renounces that authorisation or ceases to pursue activities for more than six consecutive months, unless the Member State concerned has made provision for authorisation to lapse in such cases;

(b) the IORP concerned no longer fulfils the conditions for authorisation;

(c) the IORP concerned fails seriously in its obligations under the regulations to which it is subject.

2. In the event of the withdrawal or lapse of authorisation, the competent authority of the home Member State shall notify the competent authorities of the other Member States accordingly, and those authorities shall take appropriate measures to prevent the IORP from commencing new operations within their territories.

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

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

(55) Article 50 is amended as follows:

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

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

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

(a) to determine the nature, the scope and the format of the information referred to in the first subparagraph, which they require IORPs to submit on a regular or ad hoc basis;

(b) to obtain any information regarding contracts which are entered into with third parties; and

(c) to require information from external experts, such as auditors and actuaries.';

(b) the third subparagraph is amended as follows:

(i) in point (d), the following point is added:

'(vii) business plans referred to in Article 9;';

(ii) the following point (g) is added:

'(g) *where necessary,* requ*est*~~ire~~ *from* IORPs ~~to submit regularly~~ quantitative ~~templates specifying in greater detail~~ *information* and supplementing the information ~~contained in the reports~~ referred to in points (c) and (d), including,

where applicable, for the purposes of cooperation with EIOPA ~~information requested~~ in accordance with Article 35 of Regulation (EU) No 1094/2010 ~~necessary for the performance of duties entrusted to EIOPA under that Regulation and under this Directive~~';

(iii) the following paragraphs are added:

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

~~Member States shall ensure that competent authorities require IORPs to apply a look-through approach, ensuring that all costs and charges incurred at the level of investment funds, asset managers and transactions are included, and that the no-netting principle is applied.~~

~~In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards on the procedures, formats and templates, which shall, where applicable, distinguish between occupational and personal pensions.~~

~~Power is conferred to the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with Article 15 of Regulation (EU) 1094/2010.';~~

(56) the following Article 50a is inserted:

Article 50a

Supervision of outsourced functions and activities

1. Member States shall ensure that IORPs which outsource a function or an activity take the necessary steps to ensure that the following conditions are satisfied:

(a) the service provider cooperates with the *competent* ~~supervisory~~ authorities of the IORP to ensure supervision of the outsourced function or activity;

(b) the IORP, its auditors and the competent authorities have effective access to data related to the outsourced functions or activities, including the power to request information from IORPs and from service providers about outsourced key functions or any other activities at any time;

(c) the competent authorities have effective access to the business premises of the service provider and must be able to exercise those rights of access.

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

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

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

~~In accordance with Article 21 of Regulation (EU) No 1094/2010, EIOPA shall be entitled to participate in on-site examination where they are carried out jointly by two or more supervisory authorities.~~';

(57) Article 51 is amended as follows:

(a) paragraph 2 is amended as follows:

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

'(a) the texts of laws, regulations, administrative rules and general guidance in the field of occupational pension schemes, and, where applicable, personal pension products, and information about whether the Member State chooses to apply this Directive in accordance with Articles 4 and 5;'

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

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

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

(c) the following subparagraph~~s are~~ *is* added:

'~~The disclosure provided for in the first subparagraph shall be sufficient to enable a comparison of the supervisory approaches adopted by the competent authorities of the different Member States.~~

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

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

'The members of the governing and managing bodies of the competent authorities shall have the qualifications, experience and skills required to perform their duties and exercise their powers ~~and shall not be dismissed for reasons related to the proper performance of their duties or to the proper exercise of their powers. They may be dismissed only if they no longer fulfil the conditions required for the performance of their duties or if they have been found guilty of serious misconduct under national law~~. The conditions required for the performance of their duties, and what constitutes serious misconduct, shall be laid down in advance in national law.';

~~(c) the following paragraph 4 is added:~~

~~'4. Member States shall ensure that competent authorities publish, on a single public website, clear, comparable and easily accessible information on the total annual costs, past performance and risk profile for all pension schemes operated by IORPs.~~

~~For each pension scheme and, where applicable investment option, the published information shall include at least:~~

~~(a) the classification of the scheme by risk profile;~~

~~(b) total costs and charges reported to national competent authorities in accordance with Article 50(7), expressed as a single annual percentage of total contributions of the previous twelve months; and~~

~~(c) past performance for completed financial years, including the most recent year.~~

~~The information referred to in the second subparagraph, points (b) and (c), shall be provided for at least the previous 10 years or, in cases where the scheme has been provided for less than 10 years, covering all years for which the scheme has been provided.~~

~~Competent authorities shall verify the accuracy and timeliness of the information, and ensure its publication without delays once such verification has been completed.~~

(58) the following Article 55a is inserted:

'Article 55a
Collaboration platforms

1. EIOPA may, in the case of justified concerns about negative effects on members and beneficiaries, ~~on its own initiative~~ or at the request of one or more of the relevant competent authorities, set up and coordinate a collaboration platform to strengthen the exchange of information and to enhance collaboration between the relevant competent authorities where an IORP carries out, or intends to carry out, cross-border activities, where such activities are of relevance with respect to the host Member State's market.

2. Paragraph 1 shall be without prejudice to the right of the relevant competent authorities to set up a collaboration platform where they all agree to do so.

3. The setting up of a collaboration platform pursuant to paragraphs 1 and 2 is without prejudice to the supervisory mandate of the competent authorities of the home Member State and host Member State provided for in this Directive.

4. Without prejudice to Article 35 of Regulation (EU) No 1094/2010, at the request of EIOPA, the relevant competent authorities shall provide all necessary information in a timely manner.

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

~~6. In the event of disagreement within the platform and where there are serious concerns about negative effects on members and beneficiaries or about the content of an action or inaction to be taken in relation to an IORP, EIOPA may call for the competent authority of the home Member State to launch an on-site inspection of the IORP. The competent authority of the home Member State shall launch the on-site inspection without delay and shall invite EIOPA and other competent authorities concerned to participate in it~~.';

(59) Article 59 is replaced by the following:

'Article 59

Publication of national rules

1. Member States shall ensure appropriate publication by their competent authorities of requirements of social and labour law relevant to the field of occupational pension schemes under which a pension scheme sponsored by an undertaking in the host Member State must be operated which shall apply to cross-border activities of IORPs as referred to in Article 11(1).

2. EIOPA shall include on its website the hyperlinks to the websites of competent authorities where information on such rules is published. Such information shall be up-to-date and EIOPA shall make the information available on its website, with all such rules categorised into different relevant areas of law.

3. Member States shall establish a single point of contact responsible for providing information on the requirements of social and labour law relevant to the field of occupational pension schemes under which the pension scheme sponsored by an undertaking in the host Member State must be operated which shall apply to cross-border activities of IORPs in their respective Member State. Such a point of contact should be an appropriate competent authority.

~~4. EIOPA shall examine in a report, and inform the Commission about the rules published by Member States as referred to in this Article in the context of the proper functioning of this Directive and of the internal market before [PO = *please insert 6 months after the application date of this directive]*.~~;

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

'Article 61

Processing of personal data

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

Article 62

Evaluation

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

(a) the extent to which this Directive contributes to the integration, efficiency and scale-up of occupational retirement provision within the internal market, including trends in consolidation and cooperation between IORPs;

(b) the experience acquired in applying this Directive, including its impact on the size, cost-efficiency, consolidation and professionalisation of IORPs, and its role in fostering trust, transparency and sound risk management in the interests of members and beneficiaries;

(c) the optional extension of the scope of application of this Directive in accordance with Article 4, and its effect on the market for supplementary pensions.';

~~(61) the following Article 64a is inserted:~~

~~*'Article 64a*~~
~~**Exercise of delegation**~~

~~1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.~~

~~2. The power to adopt delegated acts referred to in Articles 17(7) and 38(6) shall be conferred on the Commission for an indeterminate period of time from [PO = please insert date of entry into force].~~

~~3. The delegation of powers referred to in Articles 17(7) and 38(6) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.~~

~~4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.~~

~~5. A delegated act adopted pursuant to Articles 17(7) and 38(6) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.'.~~

Article 2
Amendments to Directive (EU) 2016/97

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

(1) in Article 2(1), the following point~~s~~ 19 *is* ~~and 20 are~~ added:

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

~~(20) 'pension tracking system' means a digital tool, typically a secure web portal or mobile application, that provides individuals with an overview of their individual accrued pension entitlements, and projections of future benefits, across the pension schemes of which the individual is a member or beneficiary.~~

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

(2) Article 22 is amended as follows:

(a) in paragraph 5, the word 'mandatory' is deleted;

(b) the following paragraph is added:

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

~~(3) the following Article 22a is inserted:~~

~~*‘Article 22a*~~

~~**Pension tracking systems**~~

~~1. Member States shall ensure that, where pension tracking systems are in place, they cover the pension entitlements administered by insurance undertakings and insurance intermediaries.~~

~~2. For the purposes of paragraph 1, Member States shall ensure that insurance undertakings and insurance intermediaries transmit to pension tracking systems, where such system have been established, all information necessary to provide customers with a comprehensive, reliable and up-to-date overview of their personal and occupational entitlements, insofar as those entitlements arise from occupational pension arrangements or personal pension products provided or distributed by insurance undertakings or insurance intermediaries.~~

~~3. Member States shall ensure that the information referred to in paragraph 2 is transmitted in standardised and interoperable format enabling pension tracking systems to aggregate data on accumulated value, accrued rights and projected benefits in a coherent and comparable manner.~~

~~4. Member States shall ensure that insurance undertakings and insurance intermediaries remain fully responsible for the completeness and accuracy of the data transmitted and for the fulfilment of all communication obligations provided for in this Article.~~

~~5. Member States shall ensure that competent authorities monitor and enforce compliance with this Article and take corrective measures where insurance undertakings or insurance intermediaries fail to provide complete, accurate or timely information.~~

~~6. The format and structure of the information to be transmitted to pension tracking systems shall be consistent with Article 29.’.~~

Article 3

Grandfathering

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

Article 4

Transposition

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

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

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

Article 5
Entry into force

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

Article 6
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

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