►B **DIRECTIVE 2003/41/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of 3 June 2003

on the activities and supervision of institutions for occupational retirement provision

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DIRECTIVE 2003/41/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 3 June 2003

on the activities and supervision of institutions for occupational retirement provision

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2), Article 55 and Article 95(1) thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the European Economic and Social Committee ([2]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([3]),

Whereas:

(1) A genuine internal market for financial services is crucial for economic growth and job creation in the Community.

(2) Major achievements have already been made in the establishment of this internal market, allowing financial institutions to operate in other Member States and ensuring a high level of protection for the consumers of financial services.

(3) The communication from the Commission 'Implementing the framework for financial markets: action plan' identifies a series of actions that are needed in order to complete the internal market for financial services, and the European Council, at its meeting in Lisbon on 23 and 24 March 2000, called for the implementation of this action plan by 2005.

(4) The action plan for financial services stresses as an urgent priority the need to draw up a directive on the prudential supervision of institutions for occupational retirement provision, as these institutions are major financial institutions which have a key role to play in ensuring the integration, efficiency and liquidity of the financial markets, but they are not subject to a coherent Community legislative framework allowing them to benefit fully from the advantages of the internal market.

(5) Since social-security systems are coming under increasing pressure, occupational retirement pensions will increasingly be relied on as a complement in future. Occupational retirement pensions should therefore be developed, without, however, calling into question the importance of social-security pension systems in terms of secure, durable and effective social protection, which should guarantee a decent standard of living in old age and should therefore be at the centre of the objective of strengthening the European social model.

([1]) OJ C 96 E, 27.3.2001, p. 136.
([2]) OJ C 155, 29.5.2001, p. 26.
([3]) Opinion of the European Parliament of 4 July 2001 (OJ C 65 E, 14.3.2002, p. 135), Council common position of 5 November 2002 (not yet published in the Official Journal) and decision of the European Parliament of 12 March 2003 (not yet published in the Official Journal) and decision of the Council of 13 May 2003.

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(6) This Directive thus represents a first step on the way to an internal market for occupational retirement provision organised on a European scale. By setting the 'prudent person' rule as the underlying principle for capital investment and making it possible for institutions to operate across borders, the redirection of savings into the sector of occupational retirement provision is encouraged, thus contributing to economic and social progress.

(7) The prudential rules laid down in this Directive are intended both to guarantee a high degree of security for future pensioners through the imposition of stringent supervisory standards, and to clear the way for the efficient management of occupational pension schemes.

(8) Institutions which are completely separated from any sponsoring undertaking and which operate on a funded basis for the sole purpose of providing retirement benefits should have freedom to provide services and freedom of investment, subject only to coordinated prudential requirements, regardless of whether these institutions are considered as legal entities.

(9) In accordance with the principle of subsidiarity, Member States should retain full responsibility for the organisation of their pension systems as well as for the decision on the role of each of the three 'pillars' of the retirement system in individual Member States. In the context of the second pillar, they should also retain full responsibility for the role and functions of the various institutions providing occupational retirement benefits, such as industry-wide pension funds, company pension funds and life-assurance companies. This Directive is not intended to call this prerogative into question.

(10) National rules concerning the participation of self-employed persons in institutions for occupational retirement provision differ. In some Member States, institutions for occupational retirement provision can operate on the basis of agreements with trade or trade groups whose members act in a self-employed capacity or directly with self-employed and employed persons. In some Member States a self-employed person can also become a member of an institution when the self-employed person acts as employer or provides his professional services to an undertaking. In some Member States self-employed persons cannot join an institution for occupational retirement provision unless certain requirements, including those imposed by social and labour law, are met.

(11) Institutions managing social-security schemes, which are already coordinated at Community level, should be excluded from the scope of this Directive. Account should nevertheless be taken of the specificity of institutions which, in a single Member State, manage both social-security schemes and occupational pension schemes.

(12) Financial institutions which already benefit from a Community legislative framework should in general be excluded from the scope of this Directive. However, as these institutions may also in some cases offer occupational pension services, it is important to ensure that this Directive does not lead to distortions of competition. Such distortions may be avoided by applying the prudential requirements of this Directive to the occupational pension business of life-assurance companies. The Commission should also carefully monitor the situation in the occupational pensions market and assess the possibility of extending the optional application of this Directive to other regulated financial institutions.

(13) When aiming at ensuring financial security in retirement, the benefits paid by institutions for occupational retirement provision should generally provide for the payment of a

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lifelong pension. Payments for a temporary period or a lump sum should also be possible.

(14) It is important to ensure that older and disabled people are not placed at risk of poverty and can enjoy a decent standard of living. Appropriate cover for biometrical risks in occupational pension arrangements is an important aspect of the fight against poverty and insecurity among elderly people. When setting up a pension scheme, employers and employees, or their respective representatives, should consider the possibility of the pension scheme including provisions for the coverage of the longevity risk and occupational disability risks as well as provision for surviving dependants.

(15) Giving Member States the possibility to exclude from the scope of national implementing legislation institutions managing schemes which together have less than 100 members in total can facilitate supervision in some Member States, without undermining the proper functioning of the internal market in this field. However, this should not undermine the right of such institutions to appoint for the management of their investment portfolio and the custody of their assets investment managers and custodians established in another Member State and duly authorised.

(16) Institutions such as 'Unterstützungskassen' in Germany, where the members have no legal rights to benefits of a certain amount and where their interests are protected by a compulsory statutory insolvency insurance, should be excluded from the scope of the Directive.

(17) In order to protect members and beneficiaries, institutions for occupational retirement provision should limit their activities to the activities, and those arising therefrom, referred to in this Directive.

(18) In the event of the bankruptcy of a sponsoring undertaking, a member faces the risk of losing both his/her job and his/her acquired pension rights. This makes it necessary to ensure that there is a clear separation between that undertaking and the institution and that minimum prudential standards are laid down to protect members.

(19) Institutions for occupational retirement provision operate and are supervised with significant differences in Member States. In some Member States, supervision can be exercised not only over the institution itself but also over the entities or companies which are authorised to manage these institutions. Member States should be able to take such specificity into account as long as all the requirements laid down in this Directive are effectively met. Member States should also be able to allow insurance entities and other financial entities to manage institutions for occupational retirement provision.

(20) Institutions for occupational retirement provision are financial service providers which bear a heavy responsibility for the provision of occupational retirement benefits and therefore should meet certain minimum prudential standards with respect to their activities and conditions of operation.

(21) The huge number of institutions in certain Member States means a pragmatic solution is necessary as regards prior authorisation of institutions. However, if an institution wishes to manage a scheme in another Member State, a prior authorisation granted by the competent authority of the home Member State should be required.

(22) Each Member State should require that every institution located in its territory draw up annual accounts and annual reports taking into account each pension scheme operated by the institution and, where applicable, annual accounts and annual reports for each

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pension scheme. The annual accounts and annual reports, reflecting a true and fair view of the institution's assets, liabilities and financial position, taking into account each pension scheme operated by an institution, and duly approved by an authorised person, are an essential source of information for members and beneficiaries of a scheme and the competent authorities. In particular, they enable the competent authorities to monitor the financial soundness of an institution and assess whether the institution is able to meet all its contractual obligations.

(23) Proper information for members and beneficiaries of a pension scheme is crucial. This is of particular relevance for requests for information concerning the financial soundness of the institution, the contractual rules, the benefits and the actual financing of accrued pension entitlements, the investment policy and the management of risks and costs.

(24) The investment policy of an institution is a decisive factor for both security and affordability of occupational pensions. The institutions should therefore draw up and, at least every three years, review a statement of investment principles. It should be made available to the competent authorities and on request also to members and beneficiaries of each pension scheme.

(25) To fulfil their statutory function, the competent authorities should be provided with adequate rights to information and powers of intervention with respect to institutions and the persons who effectively run them. Where an institution for occupational retirement provision has transferred functions of material importance such as investment management, information technology or accounting to other companies (outsourcing), it should be possible for the rights to information and powers of intervention to be enlarged so as to cover these outsourced functions in order to check whether those activities are carried out in accordance with the supervisory rules.

(26) A prudent calculation of technical provisions is an essential condition to ensure that obligations to pay retirement benefits can be met. Technical provisions should be calculated on the basis of recognised actuarial methods and certified by qualified persons. The maximum interest rates should be chosen prudently according to any relevant national rules. The minimum amount of technical provisions should both be sufficient for benefits already in payment to beneficiaries to continue to be paid and reflect the commitments that arise out of members' accrued pension rights.

(27) Risks covered by institutions vary significantly from one Member State to another. Home Member States should therefore have the possibility of making the calculation of technical provisions subject to additional and more detailed rules than those laid down in this Directive.

(28) Sufficient and appropriate assets to cover the technical provisions protect the interests of members and beneficiaries of the pension scheme if the sponsoring undertaking becomes insolvent. In particular in cases of cross-border activity, the mutual recognition of supervisory principles applied in Member States requires that the technical provisions be fully funded at all times.

(29) If the institution does not work on a cross-border basis, Member States should be able to permit underfunding provided that a proper plan is established to restore full funding and without

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prejudice to the requirements of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer [1].

(30) In many cases, it could be the sponsoring undertaking and not the institution itself that either covers any biometric risk or guarantees certain benefits or investment performance. However, in some cases, it is the institution itself which provides such cover or guarantees and the sponsor's obligations are generally exhausted by paying the necessary contributions. In these circumstances, the products offered are similar to those of life-assurance companies and the institutions concerned should hold at least the same additional own funds as life-assurance companies.

(31) Institutions are very long-term investors. Redemption of the assets held by these institutions cannot, in general, be made for any purpose other than providing retirement benefits. Furthermore, in order to protect adequately the rights of members and beneficiaries, institutions should be able to opt for an asset allocation that suits the precise nature and duration of their liabilities. These aspects call for efficient supervision and an approach towards investment rules allowing institutions sufficient flexibility to decide on the most secure and efficient investment policy and obliging them to act prudently. Compliance with the ‘prudent person’ rule therefore requires an investment policy geared to the membership structure of the individual institution for occupational retirement provision.

(32) Supervisory methods and practices vary among Member States. Therefore, Member States should be given some discretion on the precise investment rules that they wish to impose on the institutions located in their territories. However, these rules must not restrict the free movement of capital, unless justified on prudential grounds.

(33) As very long-term investors with low liquidity risks, institutions for occupational retirement provision are in a position to invest in non-liquid assets such as shares as well as in risk capital markets within prudent limits. They can also benefit from the advantages of international diversification. Investments in shares, risk capital markets and currencies other than those of the liabilities should therefore not be restricted except on prudential grounds.

(34) However, if the institution works on a cross-border basis, it may be asked by the competent authorities of the host Member State to apply limits for investment in shares and similar assets not admitted to trading on a regulated market, in shares and other instruments issued by the same undertaking or in assets denominated in non-matching currencies provided such rules also apply to institutions located in the host Member State.

(35) Restrictions regarding the free choice by institutions of approved asset managers and custodians limit competition in the internal market and should therefore be eliminated.

(36) Without prejudice to national social and labour legislation on the organisation of pension systems, including compulsory membership and the outcomes of collective bargaining agreements, institutions should have the possibility of providing their services in other Member States. They should be allowed to accept sponsorship from undertakings located in other Member States and to operate pension schemes with members in more than one Member State. This would potentially lead to significant economies of scale for these institutions, improve the competi-

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[1] OJ L 283, 28.10.1980, p. 23. Directive as last amended by Directive 2002/74/EC of the European Parliament and of the Council (OJ L 270, 8.10.2002, p. 10).

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tiveness of the Community industry and facilitate labour mobility. This requires mutual recognition of prudential standards. Proper enforcement of these prudential standards should be supervised by the competent authorities of the home Member State, unless specified otherwise.

(37) The exercise of the right of an institution in one Member State to manage an occupational pension scheme contracted in another Member State should fully respect the provisions of the social and labour law in force in the host Member State insofar as it is relevant to occupational pensions, for example the definition and payment of retirement benefits and the conditions for transferability of pension rights.

(38) When a scheme is ring-fenced, the provisions of this Directive apply individually to that scheme.

(39) It is important to make provision for cooperation between the competent authorities of the Member States for supervisory purposes and between those authorities and the Commission for other purposes. For the purposes of carrying out their duties and of contributing to the consistent and timely implementation of this Directive, competent authorities should provide each other with the information necessary to apply the provisions of the Directive. The Commission has indicated its intention to set up a committee of supervisors in order to encourage cooperation, coordination and exchanges of views between national competent authorities, and to promote the consistent implementation of this Directive.

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

HAVE ADOPTED THE FOLLOWING DIRECTIVE:

Article 1

Subject

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

Article 2

Scope

1. This Directive shall apply to institutions for occupational retirement provision. Where, in accordance with national law, institutions for occupational retirement provision do not have legal personality, Member States shall apply this Directive either to those

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institutions or, subject to paragraph 2, to those authorised entities responsible for managing them and acting on their behalf.

2. This Directive shall not apply to:

(a) institutions managing social-security schemes which are covered by Regulation (EEC) No 1408/71 [1] and Regulation (EEC) No 574/72 [2];

(b) institutions which are covered by Directive 73/239/EEC [3], Directive 85/611/EEC [4], Directive 93/22/EEC [5], Directive 2000/12/EC [6] and Directive 2002/83/EC [7];

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

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

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

Article 3

Application to institutions operating social-security schemes

Institutions for occupational retirement provision which also operate compulsory employment-related pension schemes which are considered to be social-security schemes covered by Regulations (EEC) No 1408/71 and (EEC) No 574/72 shall be covered by this Directive in respect of their non-compulsory occupational retirement provision business. In that case, the liabilities and the corresponding assets shall be ring-fenced and it shall not be possible to transfer them to the compulsory pension schemes which are considered as social-security schemes or vice versa.

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(1) Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social-security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ L 149, 5.7.1971, p. 2). Regulation as last amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council (OJ L 187, 10.7.2001, p. 1).
(2) Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social-security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ L 74, 27.3.1972, p. 1). Regulation as last amended by Commission Regulation (EC) No 410/2002 (OJ L 62, 5.3.2002, p. 17).
(3) First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ L 228, 16.8.1973, p. 3). Directive as last amended by Directive 2002/13/EC of the European Parliament and of the Council (OJ L 77, 20.3.2002, p. 17).
(4) Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 375, 31.12.1985, p. 3). Directive as last amended by Directive 2001/108/EC of the European Parliament and of the Council (OJ L 41, 13.2.2002, p. 35).
(5) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ L 141, 11.6.1993, p. 27). Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).
(6) Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking-up and pursuit of the business of credit institutions (OJ L 126, 26.5.2000, p. 1). Directive as amended by Directive 2000/28/EC (OJ L 275, 27.10.2000, p. 37).
(7) Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19.12.2002, p. 1).

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Article 4

Optional application to institutions covered by Directive 2002/83/EC

Home Member States may choose to apply the provisions of Articles 9 to 16 and Articles 18 to 20 of this Directive to the occupational-retirement-provision business of insurance undertakings which are covered by Directive 2002/83/EC. In that case, all assets and liabilities corresponding to the said business shall be ring-fenced, managed and organised separately from the other activities of the insurance undertakings, without any possibility of transfer.

In such case, and only as far as their occupational retirement provision business is concerned, insurance undertakings shall not be subject to Articles 20 to 26, 31 and 36 of Directive 2002/83/EC.

The home Member State shall ensure that either the competent authorities, or the authorities responsible for supervision of insurance undertakings covered by Directive 2002/83/EC, as part of their supervisory work, verify the strict separation of the relevant occupational retirement provision business.

Article 5

Small pension institutions and statutory schemes

With the exception of Article 19, Member States may choose not to apply this Directive, in whole or in part, to any institution located in their territories which operates pension schemes which together have less than 100 members in total. Subject to Article 2(2), such institutions should nevertheless be given the right to apply this Directive on a voluntary basis. Article 20 may be applied only if all the other provisions of this Directive apply.

Member States may choose not to apply Articles 9 to 17 to institutions where occupational retirement provision is made under statute, pursuant to legislation, and is guaranteed by a public authority. Article 20 may be applied only if all the other provisions of this Directive apply.

Article 6

Definitions

For the purposes of this Directive:

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

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

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

and which carries out activities directly arising therefrom;

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

(c) ‘sponsoring undertaking’ means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer or in a self-employed capacity or any combination thereof and which pays contributions into an institution for occupational retirement provision;

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

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

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

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

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

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

(j) ‘host Member State’ means the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and members.

Article 7

Activities of an institution

Each Member State shall require institutions located within its territory to limit their activities to retirement-benefit related operations and activities arising therefrom.

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

Article 8

Legal separation between sponsoring undertakings and institutions for occupational retirement provision

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

Article 9

Conditions of operation

1. Each Member State shall, in respect of every institution located in its territory, ensure that:

(a) the institution is registered in a national register by the competent supervisory authority or authorised; in the case of cross-border activities referred to in Article 20, the register shall also indicate the Member States in which the institution is operating;

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(b) the institution is effectively run by persons of good repute who must themselves have appropriate professional qualifications and experience or employ advisers with appropriate professional qualifications and experience;

(c) properly constituted rules regarding the functioning of any pension scheme operated by the institution have been implemented and members have been adequately informed of these rules;

(d) all technical provisions are computed and certified by an actuary or, if not by an actuary, by another specialist in this field, including an auditor, according to national legislation, on the basis of actuarial methods recognised by the competent authorities of the home Member State;

(e) where the sponsoring undertaking guarantees the payment of the retirement benefits, it is committed to regular financing;

(f) the members are sufficiently informed of the conditions of the pension scheme, in particular concerning:

(i) the rights and obligations of the parties involved in the pension scheme;

(ii) the financial, technical and other risks associated with the pension scheme;

(iii) the nature and distribution of those risks.

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

3. A Member State may make the conditions of operation of an institution located in its territory subject to other requirements, with a view to ensuring that the interests of members and beneficiaries are adequately protected.

4. A Member State may permit or require institutions located in its territory to entrust management of these institutions, in whole or in part, to other entities operating on behalf of those institutions.

5. In the case of cross-border activity as referred to in Article 20, the conditions of operation of the institution shall be subject to a prior authorisation by the competent authorities of the home Member State.

Article 10

Annual accounts and annual reports

Each Member State shall require that every institution located in its territory draw up annual accounts and annual reports taking into account each pension scheme operated by the institution and, where applicable, annual accounts and annual reports for each pension scheme. The annual accounts and the annual reports shall give a true and fair view of the institution's assets, liabilities and financial position. The annual accounts and information in the reports shall be consistent, comprehensive, fairly presented and duly approved by authorised persons, according to national law.

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Article 11

Information to be given to the members and beneficiaries

1. Depending on the nature of the pension scheme established, each Member State shall ensure that every institution located in its territory provides at least the information set out in this Article.

2. Members and beneficiaries and/or, where applicable, their representatives shall receive:

(a) on request, the annual accounts and the annual reports referred to in Article 10, and, where an institution is responsible for more than one scheme, those relating to their particular pension scheme;

(b) within a reasonable time, any relevant information regarding changes to the pension-scheme rules.

3. The statement of investment policy principles, referred to in Article 12, shall be made available to members and beneficiaries and/or, where applicable, to their representatives on request.

4. Each member shall also receive, on request, detailed and substantial information on:

(a) the target level of the retirement benefits, if applicable;

(b) the level of benefits in case of cessation of employment;

(c) where the member bears the investment risk, the range of investment options, if applicable, and the actual investment portfolio as well as information on risk exposure and costs related to the investments;

(d) the arrangements relating to the transfer of pension rights to another institution for occupational retirement provision in the event of termination of the employment relationship.

Members shall receive every year brief particulars of the situation of the institution as well as the current level of financing of their accrued individual entitlements.

5. Each beneficiary shall receive, on retirement or when other benefits become due, the appropriate information on the benefits which are due and the corresponding payment options.

Article 12

Statement of investment policy principles

Each Member State shall ensure that every institution located in its territory prepares and, at least every three years, reviews a written statement of investment-policy principles. This statement is to be revised without delay after any significant change in the investment policy. Member States shall provide that this statement contains, at least, such matters as the investment risk measurement methods, the risk-management processes implemented and the strategic asset allocation with respect to the nature and duration of pension liabilities.

Article 13

Information to be provided to the competent authorities

Each Member State shall ensure that the competent authorities, in respect of any institution located in its territory, have the necessary powers and means:

(a) to require the institution, the members of its board of directors and other managers or directors or persons controlling the institution to

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supply information about all business matters or forward all business documents;

(b) to supervise relationships between the institution and other companies or between institutions, when institutions transfer functions to those other companies or institutions (outsourcing), influencing the financial situation of the institution or being in a material way relevant for effective supervision;

(c) to obtain regularly the statement of investment-policy principles, the annual accounts and the annual reports, and all the documents necessary for the purposes of supervision. These may include documents such as:

(i) internal interim reports;

(ii) actuarial valuations and detailed assumptions;

(iii) asset-liability studies;

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

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

(vi) reports by the persons responsible for auditing the annual accounts referred to in Article 10;

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

Article 14

Powers of intervention and duties of the competent authorities

1. The competent authorities shall require every institution located in their territories to have sound administrative and accounting procedures and adequate internal control mechanisms.

2. The competent authorities shall have the power to take any measures including, where appropriate, those of an administrative or financial nature, either with regard to any institution located in their territories or against the persons running the institution, which are appropriate and necessary to prevent or remedy any irregularities prejudicial to the interests of the members and beneficiaries.

They may also restrict or prohibit the free disposal of the institution's assets when, in particular:

(a) the institution has failed to establish sufficient technical provisions in respect of the entire business or has insufficient assets to cover the technical provisions;

(b) the institution has failed to hold the regulatory own funds.

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

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

(a) the institution fails to protect adequately the interests of members and beneficiaries;

(b) the institution no longer fulfils the conditions of operation;

(c) the institution fails seriously in its obligations under the rules to which it is subject;

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(d) in the case of cross-border activity, the institution does not respect the requirements of social and labour law of the host Member State relevant to the field of occupational pensions.

Any decision to prohibit the activities of an institution shall be supported by precise reasons and notified to the institution in question.

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

Article 15

Technical provisions

1. The home Member State shall ensure that institutions operating occupational pension schemes establish at all times in respect of the total range of their pension schemes an adequate amount of liabilities corresponding to the financial commitments which arise out of their portfolio of existing pension contracts.

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

3. The calculation of technical provisions shall take place every year. However, the home Member State may allow a calculation once every three years if the institution provides members and/or the competent authorities with a certification or a report of adjustments for the intervening years. The certification or the report shall reflect the adjusted development of the technical provisions and changes in risks covered.

4. The calculation of the technical provisions shall be executed and certified by an actuary or, if not by an actuary, by another specialist in this field, including an auditor, according to national legislation, on the basis of actuarial methods recognised by the competent authorities of the home Member State, according to the following principles:

(a) the minimum amount of the technical provisions shall be calculated by a sufficiently prudent actuarial valuation, taking account of all commitments for benefits and for contributions in accordance with the pension arrangements of the institution. It must be sufficient both for pensions and benefits already in payment to beneficiaries to continue to be paid, and to reflect the commitments which arise out of members' accrued pension rights. The economic and actuarial assumptions chosen for the valuation of the liabilities shall also be chosen prudently taking account, if applicable, of an appropriate margin for adverse deviation;

(b) the maximum rates of interest used shall be chosen prudently and determined in accordance with any relevant rules of the home Member State. These prudent rates of interest shall be determined by taking into account:

— the yield on the corresponding assets held by the institution and the future investment returns and/or

— the market yields of high-quality or government bonds;

(c) the biometric tables used for the calculation of technical provisions shall be based on prudent principles, having regard to the main characteristics of the group of members and the pension schemes, in particular the expected changes in the relevant risks;

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

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demographic or economic circumstances underlying the assumptions.

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

6. With a view to further harmonisation of the rules regarding the calculation of technical provisions which may be justified — in particular the interest rates and other assumptions influencing the level of technical provisions — the Commission shall, every two years or at the request of a Member State, issue a report on the situation concerning the development in cross-border activities.

The Commission shall propose any necessary measures to prevent possible distortions caused by different levels of interest rates and to protect the interest of beneficiaries and members of any scheme.

Article 16

Funding of technical provisions

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

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

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

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

(c) in the event of termination of a pension scheme during the period referred to above in this paragraph, the institution shall inform the competent authorities of the home Member State. The institution shall establish a procedure in order to transfer the assets and the corresponding liabilities to another financial institution or a similar body. This procedure shall be disclosed to the competent authorities of the home Member State and a general outline of the procedure shall be made available to members or, where applicable, to their representatives in accordance with the principle of confidentiality.

3. In the event of cross-border activity as referred to in Article 20, the technical provisions shall at all times be fully funded in respect of the total range of pension schemes operated. If these conditions are not met, the competent authorities of the home Member State shall intervene in accordance with Article 14. To comply with this requirement the home Member State may require ring-fencing of the assets and liabilities.

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Article 17

Regulatory own funds

1. The home Member State shall ensure that institutions operating pension schemes, where the institution itself, and not the sponsoring undertaking, underwrites the liability to cover against biometric risk, or guarantees a given investment performance or a given level of benefits, hold on a permanent basis additional assets above the technical provisions to serve as a buffer. The amount thereof shall reflect the type of risk and asset base in respect of the total range of schemes operated. These assets shall be free of all foreseeable liabilities and serve as a safety capital to absorb discrepancies between the anticipated and the actual expenses and profits.

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2. For the purposes of calculating the minimum amount of additional assets, the rules laid down in Articles 17a to 17d shall apply.

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

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Article 17a

Available solvency margin

1. Each Member State shall require of every institution referred to in Article 17(1) which is located in its territory an adequate available solvency margin in respect of its entire business at all times which is at least equal to the requirements in this Directive.

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

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

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

  (ii) the memorandum and articles of association must stipulate, with respect to any payments referred to in point (i) for reasons other than the individual termination of membership in the mutual undertaking, that the competent authorities must be notified at least one month in advance and can prohibit the payment within that period; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) only fully paid-up funds shall be taken into account;

(ii) for loans with a fixed maturity, the original maturity shall be at least five years. No later than one year before the repayment date, the institution shall submit to the competent authorities for their approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the five years before the repayment date. The competent authorities may authorise the early repayment of such loans provided application is made by the issuing institution and its available solvency margin will not fall below the required level;

(iii) loans the maturity of which is not fixed shall be repayable only subject to five years' notice unless the loans are no longer considered as a component of the available solvency margin or unless the prior consent of the competent authorities is specifically required for early repayment. In the latter event the institution shall notify the competent authorities at least six months before the date of the proposed repayment, specifying the available solvency margin and the required

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solvency margin both before and after that repayment. The competent authorities shall authorise repayment only where the institution's available solvency margin will not fall below the required level;

(iv) the loan agreement shall not include any clause providing that in specified circumstances, other than the winding-up of the institution, the debt will become repayable before the agreed repayment dates; and

(v) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment.

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

(a) where Zillmerising is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-Zillmerised or partially Zillmerised mathematical provision and a mathematical provision Zillmerised at a rate equal to the loading for acquisition costs included in the premium;

(b) any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature;

(c) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the available or required solvency margin, whichever is the lesser.

The figure referred to in point (a) shall not exceed 3,5 % of the sum of the differences between the relevant capital sums of life assurance and occupational retirement provision activities and the mathematical provisions for all policies for which Zillmerising is possible. The difference shall be reduced by the amount of any undepreciated acquisition costs entered as an asset.

5. The Commission may adopt implementing measures relating to paragraphs 2 to 4 in order to take account of developments that justify a technical adjustment of the elements eligible for the available solvency margin.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 21b.

Article 17b

Required solvency margin

1. Subject to Article 17c, the required solvency margin shall be determined as laid down in paragraphs 2 to 6 according to the liabilities underwritten.

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

(a) the first result:

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

(b) the second result:

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

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

3. For supplementary insurances referred to in Article 2(3)(a)(iii) of Directive 2009/138/EC 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) [1] the required solvency margin shall be equal to the required solvency margin for institutions as laid down in Article 17d.

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

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

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

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

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

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

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

Article 17c

Guarantee fund

1. Member States may provide that one third of the required solvency margin as specified in Article 17b shall constitute the guarantee fund. That fund shall comprise the items listed in Article 17a(2) and (3) and, subject to the agreement of the competent authority of the home Member State, in Article 17a(4)(b).

2. The guarantee fund shall not be less than EUR 3 million. Any Member State may provide for a 25 % reduction of the minimum guarantee fund in the case of mutual and mutual-type undertakings.

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(1) OJ L 335, 17.12.2009, p. 1.

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Article 17d

Required solvency margin for the purpose of Article 17b(3)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Where the required solvency margin as calculated in paragraphs 2 to 4 is lower than the required solvency margin of the preceding year,

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

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Article 18

Investment rules

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Without prejudice to Article 12, Member States shall not subject the investment decisions of an institution located in their territory or its investment manager to any kind of prior approval or systematic notification requirements.

5. In accordance with the provisions of paragraphs 1 to 4, Member States may, for the institutions located in their territories, lay down more detailed rules, including quantitative rules, provided they are prudentially justified, to reflect the total range of pension schemes operated by these institutions.

In particular, Member States may apply investment provisions similar to those of Directive 2002/83/EC.

However, Member States shall not prevent institutions from:

(a) investing up to 70 % of the assets covering the technical provisions or of the whole portfolio for schemes in which the members bear the investment risks in shares, negotiable securities treated as shares and corporate bonds admitted to trading on regulated markets and deciding on the relative weight of these securities in their investment portfolio. Provided it is prudentially justified, Member States may, however, apply a lower limit to institutions which provide retirement products with a long-term interest rate guarantee, bear the investment risk and themselves provide for the guarantee;

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

(c) investing in risk capital markets.

6. Paragraph 5 shall not preclude the right for Member States to require the application to institutions located in their territory of more stringent investment rules also on an individual basis provided they are prudentially justified, in particular in the light of the liabilities entered into by the institution.

7. In the event of cross-border activity as referred in Article 20, the competent authorities of each host Member State may require that the rules set out in the second subparagraph apply to the institution in the home Member State. In such case, these rules shall apply only to the part of the assets of the institution that corresponds to the activities carried out in the particular host Member State. Furthermore, they shall only be applied if the same or stricter rules also apply to institutions located in the host Member State.

The rules referred to in the first subparagraph are as follows:

(a) the institution shall not invest more than 30 % of these assets in shares, other securities treated as shares and debt securities which are not admitted to trading on a regulated market, or the institution shall invest at least 70 % of these assets in shares, other securities treated as shares, and debt securities which are admitted to trading on a regulated market;

(b) the institution shall invest no more than 5 % of these assets in shares and other securities treated as shares, bonds, debt securities and other money and capital-market instruments issued by the same undertaking and no more than 10 % of these assets in shares and other securities treated as shares, bonds, debt securities and other money and capital market instruments issued by undertakings belonging to a single group;

(c) the institution shall not invest more than 30 % of these assets in assets denominated in currencies other than those in which the liabilities are expressed.

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To comply with these requirements, the home Member State may require ring-fencing of the assets.

Article 19

Management and custody

1. Member States shall not restrict institutions from appointing, for the management of the investment portfolio, investment managers established in another Member State and duly authorised for this activity, in accordance with Directives 85/611/EEC, 93/22/EEC, 2000/12/EC and 2002/83/EC, as well as those referred to in Article 2(1) of this Directive.

2. Member States shall not restrict institutions from appointing, for the custody of their assets, custodians established in another Member State and duly authorised in accordance with Directive 93/22/EEC or Directive 2000/12/EC, or accepted as a depositary for the purposes of Directive 85/611/EEC.

The provision referred to in this paragraph shall not prevent the home Member State from making the appointment of a depositary or a custodian compulsory.

3. Each Member State shall take the necessary steps to enable it under its national law to prohibit, in accordance with Article 14, the free disposal of assets held by a depositary or custodian located within its territory at the request of the institution's home Member State.

Article 20

Cross-border activities

1. Without prejudice to national social and labour legislation on the organisation of pension systems, including compulsory membership and the outcomes of collective bargaining agreements, Member States shall allow undertakings located within their territories to sponsor institutions for occupational retirement provision authorised in other Member States. They shall also allow institutions for occupational retirement provision authorised in their territories to accept sponsorship by undertakings located within the territories of other Member States.

2. An institution wishing to accept sponsorship from a sponsoring undertaking located within the territory of another Member State shall be subject to a prior authorisation by the competent authorities of its home Member State, as referred to in Article 9(5). It shall notify its intention to accept sponsorship from a sponsoring undertaking located within the territory of another Member State to the competent authorities of the home Member State where it is authorised.

3. Member States shall require institutions located within their territories and proposing to be sponsored by an undertaking located in the territory of another Member State to provide the following information when effecting a notification under paragraph 2:

(a) the host Member State(s);

(b) the name of the sponsoring undertaking;

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

4. Where a competent authority of the home Member State is notified under paragraph 2, and unless it has reason to doubt that the administrative structure or the financial situation of the institution or the good repute and professional qualifications or experience of the persons running the institution are compatible with the operations proposed in the host Member State, it shall within three months of receiving all the information referred to in paragraph 3 communicate that information to

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the competent authorities of the host Member State and inform the institution accordingly.

5. Before the institution starts to operate a pension scheme for a sponsoring undertaking in another Member State, the competent authorities of the host Member State shall, within two months of receiving the information referred to in paragraph 3, inform the competent authorities of the home Member State, if appropriate, of the requirements of social and labour law relevant to the field of occupational pensions under which the pension scheme sponsored by an undertaking in the host Member State must be operated and any rules that are to be applied in accordance with Article 18(7) and with paragraph 7 of this Article. The competent authorities of the home Member State shall communicate this information to the institution.

6. On receiving the communication referred to in paragraph 5, or if no communication is received from the competent authorities of the home Member State on expiry of the period provided for in paragraph 5, the institution may start to operate the pension scheme sponsored by an undertaking in the host Member State in accordance with the host Member State's requirements of social and labour law relevant to the field of occupational pensions, and any rules that are to be applied in accordance with Article 18(7) and with paragraph 7 of this Article.

7. In particular, an institution sponsored by an undertaking located in another Member State shall also be subject, in respect of the corresponding members, to any information requirements imposed by the competent authorities of the host Member State on institutions located in that Member State, in accordance with Article 11.

8. The competent authorities of the host Member State shall inform the competent authorities of the home Member State of any significant change in the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes which may affect the characteristics of the pension scheme insofar as it concerns the operation of the pension scheme sponsored by an undertaking in the host Member State and in any rules that have to be applied in accordance with Article 18(7) and with paragraph 7 of this Article.

9. The institution shall be subject to ongoing supervision by the competent authorities of the host Member State as to the compliance of its activities with the host Member State's requirements of labour and social law relevant to the field of occupational pension schemes referred to in paragraph 5 and with the information requirements referred to in paragraph 7. Should this supervision bring irregularities to light, the competent authorities of the host Member State shall inform the competent authorities of the home Member State immediately. The competent authorities of the home Member State shall, in coordination with the competent authorities of the host Member State, take the necessary measures to ensure that the institution puts a stop to the detected breach of social and labour law.

10. If, despite the measures taken by the competent authorities of the home Member State or because appropriate measures are lacking in the home Member State, the institution persists in breaching the applicable provisions of the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes, the competent authorities of the host Member State may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, insofar as is strictly necessary, preventing the institution from operating in the host Member State for the sponsoring undertaking.

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Article 21

Cooperation between Member States and the Commission

1. Member States shall ensure, in an appropriate manner, the uniform application of this Directive through regular exchanges of information and experience with a view to developing best practices in this sphere and closer cooperation, and by so doing, preventing distortions of competition and creating the conditions required for unproblematic cross-border membership.

2. The Commission and the competent authorities of the Member States shall collaborate closely with a view to facilitating supervision of the operations of institutions for occupational retirement provision.

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

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

4. Four years after the entry into force of this Directive, the Commission shall issue a report reviewing:

(a) the application of Article 18 and the progress achieved in the adaptation of national supervisory systems, and

(b) the application of the second subparagraph of Article 19(2), in particular the situation prevailing in Member States regarding the use of depositaries and the role played by them where appropriate.

5. The competent authorities of the host Member State may ask the competent authorities of the home Member State to decide on the ring-fencing of the institution's assets and liabilities, as provided for in Article 16(3) and Article 18(7).

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Article 21a

Review of the amount of the guarantee fund

1. The amount in euro as laid down in Article 17c(2) shall be reviewed annually starting on 31 October 2012, in order to take account of changes in the Harmonised Indices of Consumer Prices of all Member States as published by Eurostat.

That amount shall be adapted automatically, by increasing the base amount in euro by the percentage change in that index over the period between 31 December 2009 and the review date and rounded up to a multiple of EUR 100 000.

If the percentage change since the last adaptation is less than 5 %, no adaptation shall take place.

2. The Commission shall inform the European Parliament and the Council annually of the review and the adapted amount referred to in paragraph 1.

Article 21b

Committee procedure

1. The Commission shall be assisted by the European Insurance and Occupational Pensions Committee established by Commission Decision 2004/9/EC ([1]).

([1]) OJ L 3, 7.1.2004, p. 34.

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2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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Article 22

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 23 September 2005. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

3. Member States may postpone until 23 September 2010 the application of Article 17(1) and (2) to institutions located in their territory which at the date specified in paragraph 1 of this Article do not have the minimum level of regulatory own funds required pursuant to Article 17(1) and (2). However, institutions wishing to operate pension schemes on a cross-border basis, within the meaning of Article 20, may not do so until they comply with the rules of this Directive.

4. Member States may postpone until 23 September 2010 the application of Article 18(1)(f) to institutions located in their territory. However, institutions wishing to operate pension schemes on a cross-border basis, within the meaning of Article 20, may not do so until they comply with the rules of this Directive.

Article 23

Entry in force

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

Article 24

Addressees

This Directive is addressed to the Member States.