

## **Law of 13 July 2005 on the activities and supervision of institutions for occupational retirement provision**

**(Mém. A 2005, No. 108)**

as amended by:

- the Law of 12 July 2013 on alternative investment fund managers and
  - transposing Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;
  - amending:
    - the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
    - the Law of 13 February 2007 relating to specialised investment funds, as amended;
    - the Law of 15 June 2004 relating to the Investment company in risk capital (SICAR), as amended;
    - the Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs), as amended;
    - the Law of 13 July 2005 concerning the activities and supervision of the institutions for occupational retirement provision;
    - the Law of 5 April 1993 on the financial sector, as amended;
    - the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
    - the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
    - the Law of 10 August 1915 on commercial companies, as amended;
    - the Law of 19 December 2002 on the Commercial and Companies Registry and the accounting practices and annual accounts of undertakings, as amended;
    - the Commercial Code;
    - the Law of 4 December 1967 on income tax, as amended;
    - the Law of 1 December 1936 on business tax, as amended;
    - the Law on tax adaptation of 16 October 1934, as amended;
    - the Law of 16 October 1934 on the assessment of properties and values, as amended;
    - the Law of 12 February 1979 on value added tax, as amended;

**(Mém. A 2013, No 119)**

- by the Law of 15 December 2019 amending:
  1. in view of the transposition of 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)
    - a) the Law of 13 July 2005 on institutions for occupational retirement provision in the form of SEPCAVs and ASSEPs, as amended;
    - b) the Law of 13 July 2005 on the activities and supervision of institutions for occupational retirement provision, as amended;
    - c) the Law of 7 December 2015 on the insurance sector, as amended;
  2. the Law of 17 April 2018 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

(Mém. A 2019, No 859

We Henri, Grand Duke of Luxembourg, Duke of Nassau,

Having heard our State Council;

With the consent of the Chamber of Deputies;

Having regard to the decision of the Chamber of Deputies of 29 June 2005 and that of the State Council of 5 July 2005 that a second vote is not required;

Ordered and order:

## **Chapter 1: *Definitions and scope***

### **Article 1. Definitions**

For the purposes of this law, the following definitions shall apply:

1. “institution for occupational retirement provision “or “IORP””<sup>1</sup>” 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 employee(s) or their respective representatives, or

<sup>1</sup> Law of 15 December 2019

- with self-employed persons “individually or collectively”<sup>1</sup>, in compliance with the legislation of the home and host States (...)<sup>2</sup>;

(Law of 15 December 2019)

“and which carries out activities directly arising therefrom.”

(Law of 15 December 2019)

“1a. “transferring IORP” means “an IORP transferring all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to an IORP registered or authorised in another Member State;

1b. “receiving IORP” means “an IORP receiving all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from an IORP registered or authorised in another Member State”;

2. “pension savings company with variable capital” or “SEPCAV” means “an institution for occupational retirement provision

- which has adopted the form of a *société coopérative organisée sous forme d'une société anonyme* (cooperative in the form of a public limited company) governed by Luxembourg law, and
- the corporate purpose of which is the collection of assets and their investment in order to spread the investment risks and to optimise the results of the management of its assets by granting its members, in their capacity as shareholders, entitlement to a lump sum or a temporary pension paid by reference to reaching, or the expectation of reaching, retirement, and
- whose shares are reserved to a circle of members defined by the articles of incorporation, and
- whose articles of incorporation provide that the share capital amount is equal, at any time, to the net asset value of the company.”;

3. “pension savings association” or “ASSEP” means “an institution for occupational retirement provision

- which has adopted the form of a pension savings association, and
- the corporate purpose of which is the collection of assets and their investment in order to spread the investment risks and to optimise the results of the management of its assets by granting its members and beneficiaries entitlement to a lump sum or a temporary or lifelong pension paid by reference to reaching, or the expectation of reaching, retirement and, where appropriate, ancillary benefits, in the form of payments on death, disability,

<sup>1</sup> Law of 15 December 2019

<sup>2</sup> Law of 15 December 2019

or cessation of employment or in the form of support payments or services in case of sickness, indigence or death, and

- whose circle of members and beneficiaries is defined by the articles of incorporation, and
- whose articles of incorporation provide that it shall establish at all times, in respect of the total range of its pension schemes, an adequate amount of technical provisions corresponding to the financial commitments which arise out of its portfolio of existing pension contracts.”;

4. “pension fund subject to the supervision of the Commissariat aux Assurances” means “an institution for occupational retirement provision within the meaning of “point 14. of Article 32(1) of the Law of 7 December 2015 on the insurance sector, as amended”<sup>1</sup>”;

5. “pension scheme” means “a contract, an agreement, a trust deed or rules stipulating which retirement benefits are granted and under which conditions”;

6. “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 “offers a pension scheme or”<sup>2</sup> pays contributions into an institution for occupational retirement provision”;

7. “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; these benefits may be in the form of payments for life, for a temporary period “, a lump sum, or any combination thereof”<sup>3</sup>”;

8. “member” means “a person “other than beneficiaries or prospective members”<sup>4</sup> whose “past or present”<sup>5</sup> occupational activities entitle or will entitle them to retirement benefits in accordance with the provisions of a pension scheme”;

*(Law of 15 December 2019)*

“8a. “prospective member” means “a person who is eligible to join a pension scheme”;

9. “beneficiary” means “a person receiving retirement benefits”;

“10. “Directive 2009/138/EC” means “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)”<sup>6</sup>”;

<sup>1</sup> Law of 15 December 2019

<sup>2</sup> Law of 15 December 2019

<sup>3</sup> Law of 15 December 2019

<sup>4</sup> Law of 15 December 2019

<sup>5</sup> Law of 15 December 2019

<sup>6</sup> Law of 15 December 2019

“11. “Directive 2009/65/EC” means “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)”;<sup>1</sup>

“12. “Directive 2014/65/EU” means “Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU”;<sup>2</sup>

“13. “Directive 2013/36/EU” means “Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC”;<sup>3</sup>

(...)<sup>4</sup>

“15. “Directive (EU) 2016/2341” means “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)”;<sup>5</sup>

*(Law of 12 July 2013)*

“15a. “Directive 2011/61/EU” means: “Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010”;

“16. “Regulation EU No 883/2004” means “Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems”;<sup>6</sup>

“17. “Regulation EU No 987/2009” means “Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems”;<sup>7</sup>

*(Law of 15 December 2019)*

“17a. “durable medium” means “an instrument which enables a member or a beneficiary to store information addressed personally to that member or beneficiary in a way that is accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored”;

<sup>1</sup> Law of 15 December 2019

<sup>2</sup> Law of 15 December 2019

<sup>3</sup> Law of 15 December 2019

<sup>4</sup> Law of 15 December 2019

<sup>5</sup> Law of 15 December 2019

<sup>6</sup> Law of 15 December 2019

<sup>7</sup> Law of 15 December 2019

18. “Member State” means “a Member State of the European Union”. “The States that are contracting parties to the European Economic Area Agreement other than the Member States of the European Union are deemed equivalent to Member States of the European Union, within the limits set forth by this agreement and related acts.”<sup>1</sup>

“19. “home Member State” means “the Member State in which the institution for occupational retirement provision has been registered or authorised and in which its main administration is located”;<sup>2</sup>

20. “host “Member”<sup>3</sup> State” means “the “Member”<sup>4</sup> 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 “or beneficiaries”<sup>5</sup>;

*(Law of 15 December 2019)*

“20a. “cross-border activity”: “operating a pension scheme where the relationship between the sponsoring undertaking, and the members and beneficiaries concerned, is governed by the social and labour law relevant to the field of occupational pension schemes of a Member State other than the home Member State”;

21. “competent authorities” means “the national authorities designated to carry out the duties provided for in Directive “(EU) 2016/2341”<sup>6</sup>;

22. “home authorities” means “the national authorities designated by the home “Member”<sup>7</sup> State to carry out the duties provided for in Directive “(EU) 2016/2341”<sup>8</sup> as home Member State of the institution for occupational retirement provision”;

23. “host authorities” means “the national authorities designated by the host “Member”<sup>9</sup> State to carry out the duties provided for in Directive “(EU) 2016/2341”<sup>10</sup> as home Member State of the institution for occupational retirement provision”;<sup>11</sup>

*(Law of 15 December 2019)*

“24. “EIOPA” means “European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC”.”

<sup>1</sup> Law of 15 December 2019

<sup>2</sup> Law of 15 December 2019

<sup>3</sup> Law of 15 December 2019

<sup>4</sup> Law of 15 December 2019

<sup>5</sup> Law of 15 December 2019

<sup>6</sup> Law of 15 December 2019

<sup>7</sup> Law of 15 December 2019

<sup>8</sup> Law of 15 December 2019

<sup>9</sup> Law of 15 December 2019

<sup>10</sup> Law of 15 December 2019

<sup>11</sup> Law of 15 December 2019

## **Article 2. Subject matter and scope**

1. This law lays down the rules relating to the taking-up and pursuit in Luxembourg of activities carried out by institutions for occupational retirement provision.

It shall apply to any institution for occupational retirement governed by Luxembourg law as well as any institution for occupational retirement provision governed by foreign law operating for sponsoring undertakings established in Luxembourg.

2. Institutions for occupational retirement provision shall limit their activities to retirement-benefit related operations and activities arising therefrom.

3. This law shall not apply to:

- “a) institutions operating social security schemes which are covered by Regulations (EC) No 883/2004 and (EC) No 987/2009 of the European Parliament and of the Council;”<sup>1</sup>
- “b) institutions which are covered by Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/65/EU of the European Parliament and of the Council;”<sup>2</sup>
- 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 the payment of retirement benefits;
- e) undertakings using book-reserve schemes with a view to paying out retirement benefits to their employees.

<sup>1</sup> Law of 15 December 2019

<sup>2</sup> Law of 15 December 2019

**Chapter 2: *Taking-up of business and conditions of operation for institutions for occupational retirement provision governed by Luxembourg law***

**Article 3. Authorisation requirement**

No Luxembourg institution can carry out its activities of institution for occupational retirement provision without holding an authorisation.

The authorisation as institution for retirement can only be granted to institutions governed by Luxembourg law which have adopted the form of:

- a pension savings company with variable capital or a pension savings association, or
- a pension fund subject to the supervision of the Commissariat aux Assurances.

**Article 4. Authorisation and operating conditions for institutions for occupational retirement provision governed by Luxembourg law**

1. The authorisation and operating conditions for pension savings companies with variable capital or pension savings associations are governed by the law applicable to institutions for occupational retirement provision in the form of SEPCAV and ASSEP.

2. The authorisation and operating conditions for pension funds subject to the supervision of the Commissariat aux Assurances are governed by the “Law of 7 December 2015 on the insurance sector, as amended”<sup>1</sup>.

**Article 5. Cross-border activities of institutions for occupational retirement provision governed by Luxembourg law and competent authorities**

1. The provisions relating to the cross-border activities of pension savings companies with variable capital or pension savings associations are governed by the law applicable to institutions for occupational retirement provision in the form of SEPCAV and ASSEP.

The Commission de Surveillance du Secteur Financier is the home authority of institutions for occupational retirement provision in the form of SEPCAV and ASSEP.

2. The provisions relating to cross-border activities of pension funds subject to the supervision of the Commissariat aux Assurances are described in the “Law of 7 December 2015 on the insurance sector, as amended”<sup>2</sup>.

The Commissariat aux Assurances is the home authority of the institutions for occupational retirement provision subject to the law on the insurance sector.

<sup>1</sup> Law of 15 December 2019

<sup>2</sup> Law of 15 December 2019



### **Chapter 3: *Taking-up of business and conditions of operation for EU institutions for occupational retirement provision***

#### **Article 6. Taking-up of business and conditions of operation for institutions for occupational retirement provision authorised in other Member States**

“1.”<sup>1</sup> Any institution for occupational retirement provision which obtained the authorisation and is supervised by a competent authority of another Member State can accept sponsorship from sponsoring undertakings established in Luxembourg as laid down “in paragraph (2), in Articles 7 and 9 to 15”<sup>2</sup> of this law and in compliance with the provisions of the Law of 8 June 1999 relating to supplementary pension schemes “, as amended”<sup>3</sup>. Exercising these activities is not subject to authorisation by the Luxembourg competent authorities.

*(Law of 15 December 2019)*

“2. In the case of an occupational pension scheme where members and beneficiaries fully bear the investment risk, the institution for occupational retirement provision shall appoint a depositary established in a Member State and duly authorised, in accordance with Directive 2013/36/EU or Directive 2014/65/EU, or accepted as a depositary for the purposes of Directive 2009/65/EC or Directive 2011/61/EU, for the safe-keeping of assets and oversight duties in accordance with Articles 34(1) to (4) and 35(1) and (2) of Directive (EU) 2016/2341.”

#### **Article 7. Notification and cooperation procedure between the competent authorities in the context of cross-border activities in Luxembourg by institutions for occupational retirement provision authorised in other Members States**

1. The Inspection Générale de la Sécurité Sociale or “IGSS” is the host authority in the context of sponsorship accepted by institutions for occupational retirement provision authorised in other Member States to sponsoring undertakings established in Luxembourg.

2. Where an institution for occupational retirement provision authorised in another Member State wishes to accept sponsorship from a Luxembourg sponsoring undertaking, the IGSS is competent to receive from the home authority the notification file which shall include at least the following information:

- (a) the name of the sponsoring undertaking “and the location of its main administration”<sup>4</sup>;

<sup>1</sup> Law of 15 December 2019

<sup>2</sup> Law of 15 December 2019

<sup>3</sup> Law of 15 December 2019

<sup>4</sup> Law of 15 December 2019

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

“3. Before the institution for occupational retirement provision starts to operate a pension scheme for a Luxembourg sponsoring undertaking, the IGSS shall, within six weeks of receiving the information referred to in paragraph (2), inform the competent authority of the home Member State, of the requirements of Luxembourg social and labour law relevant to the field of occupational pension schemes under which the pension scheme shall be operated for a Luxembourg sponsoring undertaking, of the requirements of the depositary referred to in Article 6(2) and of the information requirements referred to in Chapter 5.”<sup>1</sup>

“4. Where a cross-border transfer, as provided for in Article 98-2 of the Law of 13 July 2005 on institutions for occupational retirement provision in the form of SEPCAVs and ASSEPs, as amended, or in Article 256-9 of the Law of 7 December 2015 on the insurance sector, as amended, results in a cross-border activity within the meaning of paragraph (1), the IGSS shall 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, of the requirements of the depositary referred to in Article 6(2) and of the information requirements referred to in Chapter 5.

This information shall be communicated within four weeks of the receipt by the Commission de Surveillance du Secteur Financier or the Commissariat aux Assurances of the notification of the decision referred to in the first subparagraph of Article 98-2(7) of the Law of 13 July 2005 on institutions for occupational retirement provision in the form of SEPCAVs and ASSEPs, as amended, or in the first subparagraph of Article 256-9(7) of the Law of 7 December 2015 on the insurance sector, as amended, which shall forward it to the IGSS without delay.”<sup>2</sup>

5. The IGSS shall inform the home “authority”<sup>3</sup> of any significant change in the requirements of social and labour law relevant to the field of occupational pension schemes which may affect the characteristics of the pension scheme insofar as it concerns “the cross-border activity and any significant change in the depositary’s information requirements as referred to in Article 6(2) and of the information requirements referred to in Chapter 5.”<sup>4</sup>

“(6) The institution for occupational retirement provision shall be subject to ongoing supervision by the IGSS as to the compliance of its activities with the requirements of

<sup>1</sup> Law of 15 December 2019

<sup>2</sup> Law of 15 December 2019

<sup>3</sup> Law of 15 December 2019

<sup>4</sup> Law of 15 December 2019

Luxembourg labour and social law relevant to the field of occupational pension schemes, with the depositary's requirements referred to in Article 6(2) and with the information requirements referred to in Chapter 5.

Should the supervision by the IGSS as regards compliance with the provisions of Article 6(2) and of Chapter 5 and of the Law of 8 June 1999 relating to supplementary pension schemes, as amended, bring irregularities to light, the IGSS shall inform the competent authority of the home Member State without delay.”<sup>1</sup>

7. The home authority shall, in coordination with the IGSS, take the necessary measures to ensure that the institution for occupational retirement provision puts a stop to the detected breach (...)”<sup>2</sup>.

8. If, despite the measures taken by the home authority or because appropriate measures are lacking in the home Member State, the institution for occupational retirement provision persists in breaching the provisions “of Article 6(2), the provisions of Chapter 5 or the provisions of the Law of 8 June 1999”<sup>3</sup> relating to supplementary pension schemes, the IGSS may, after informing the home “authority”<sup>4</sup>, take appropriate measures to prevent or penalise further irregularities, including, insofar as is strictly necessary, preventing the institution for occupational retirement provision from operating in Luxembourg for the sponsoring undertaking.

9. The IGSS may ask the home authority to decide on the ring-fencing of the assets and liabilities of the institution for occupational retirement provision (...)”<sup>5</sup>.

*(Law of 15 December 2019)*

“10. Where the IGSS is informed by the competent authority of a receiving IORP of a cross-border transfer, other than that provided for in paragraph (4), paragraphs (5) to (8) shall apply to cross-border activities in Luxembourg.”

#### **Chapter 4: *Taking-up of business and operating conditions for non-EU institutions for occupational retirement provision***

##### **Article 8. Activities carried out in Luxembourg by non-EU institutions for occupational retirement provision**

The non-EU institutions for occupational retirement provision may provide their services to Luxembourg undertakings provided that they have been authorised in the home State

<sup>1</sup> *Law of 15 December 2019*

<sup>2</sup> *Law of 15 December 2019*

<sup>3</sup> *Law of 15 December 2019*

<sup>4</sup> *Law of 15 December 2019*

<sup>5</sup> *Law of 15 December 2019*

pursuant to the laws providing that these institutions are subject to supervision considered by the IGSS to be equivalent to that laid down by EU law and cooperation between the competent authority of the home country and the IGSS is sufficiently ensured in order to guarantee compliance with the provisions of the “Law of 8 June 1999 relating to supplementary pension schemes, as amended, and of the depositary’s requirements referred to in Article 6(2) and information requirements referred to in Chapter 5 of this law”<sup>1</sup>.”

*(Law of 15 December 2019)*

**“Chapter 5: Information requirements applicable to institutions for occupational retirement provision authorised in another Member State**

**Article 9. Principles**

1. Without prejudice to the pension rules of the pension scheme, and taking into account the nature of the pension scheme established, each IORP shall provide:
  - a) prospective members with at least the information set out in Article 13;
  - b) members with at least the information set out in Articles 11, 12, 14 and 15;
  - c) beneficiaries with at least the information set out in Articles 11, 15(1) and (16).
2. The information referred to in paragraph (1) shall be:
  - a) regularly updated;
  - b) written in a clear manner, using clear, succinct and comprehensible language, avoiding the use of jargon and avoiding technical terms where everyday words can be used instead;
  - c) not misleading, and consistency shall be ensured in the vocabulary and content;
  - d) presented in a way that is easy to read;
  - e) available in an official language of the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the pension scheme concerned;
  - f) made available to prospective members, members and beneficiaries free of charge through electronic means, including on a durable medium or by means of a website, or on paper.

**Article 10. Communication to members and beneficiaries**

1. Within the month of the IORP’s authorisation, each member or beneficiary shall be notified by mail of the entry of his/her full name, address and capacities in a register of members and beneficiaries, and shall receive an updated copy of the pension rules the minimum content of which is reflected in Article 11.
2. Any new member shall be informed in the same way within one month of his/her joining the IORP.
3. The IORP shall provide any members and beneficiaries concerned, who so request, and likewise their representatives, where applicable, with an up-to-date version of the pension rules.

<sup>1</sup> *Law of 15 December 2019*

4. When the pension rules are amended, each member and beneficiary, or, where applicable, their representative, shall receive any relevant information within one month. IORPs shall make available to them an explanation of the impact on members and beneficiaries of significant changes to technical provisions.

#### **Article 11. Pension rules**

For each pension scheme, the pension rules shall contain the following indications, at least:

- a) the name of the IORP, the Member State in which it is authorised and the name of its competent authority;
- b) the group of persons eligible to become members and beneficiaries;
- c) a definition of the contributors and, where applicable, the financial institutions assuming liabilities vis-à-vis the IORP;
- d) the rights and obligations of the parties involved in the pension scheme, including:
  - i) all the obligations of the contributor(s), including, in the event of a pension scheme being underfunded, and where applicable, the obligations of the financial institutions assuming liabilities vis-à-vis the IORP;
  - ii) the IORP's obligations in regard to providing information to the members and beneficiaries, and, where applicable, their representatives;
  - iii) the members' rights when they retire, in the event of disability, cessation of employment and in the event of insolvency of the contributing undertaking, as well as the dependants' rights upon a member's death;
- e) the calculation method for, and frequency of calculation of, the accrued entitlements of each member and each beneficiary, and the rules on the disclosure of information on those entitlements;
- f) the conditions for joining and leaving for members and beneficiaries and, where applicable, an indication of the vesting period;
- g) the mechanisms protecting accrued entitlements or the benefit reduction mechanisms, if any;
- h) the terms and conditions relating to the maintenance, transfer and redemption of the members' acquired entitlements, including in the event of cessation of employment and non-acceptance of the pension rules or a clause thereof or an amendment thereto;
- i) information on the investment profile;
- j) information on the financial and technical risks and other risks associated with the pension scheme, and the nature and distribution of such risks, including the statement of the investment-policy principles referred to in Article 30 of Directive (EU) 2016/2341;
- k) the conditions regarding full or partial guarantees under the pension scheme or of a given level of benefits or, where no guarantee is provided under the pension scheme, a statement to that effect;
- l) for schemes where members bear investment risk or can take investment decisions:
  - i) the definition of investment policy, its specific objectives and the criteria on which it is based;
  - ii) in case of options between several investment profiles, the information of the conditions regarding the range of investment options available, and, where applicable, the default investment option and, the pension scheme's rules to allocate a particular member to an investment option;

- iii) where information on the past performance of investments can be found, which is related to the pension scheme for a minimum of five years, or for all the years that the scheme has been operating where this is less than five years;
- m) the structure of costs borne by members and beneficiaries, for schemes which do not provide for a given level of benefits;
- n) the options available to members and beneficiaries in receiving their retirement benefits;
- o) the terms and conditions for drawing up and amending the pension rules and the Pension Benefit Statement, as determined in the articles of association;
- p) where appropriate, a description of the principles governing the allocation of any surplus remaining after liquidation of the pension scheme.

#### **Article 12. Pension Benefit Statement**

1. IORPs shall draw up a concise document containing key information for each member taking into consideration the specific nature of national pension systems and of relevant national social, labour and tax law, hereinafter referred to as “Pension Benefit Statement”. The title of the document shall contain the words “Pension Benefit Statement”.
2. The exact date to which the information in the Pension Benefit Statement refers to shall be stated prominently.
3. The information contained in the Pension Benefit Statement shall be accurate, updated and made available to each member free of charge through electronic means, including on a durable medium or by means of a website, or on paper, at least annually. A paper copy shall be provided to members on request in addition to any information through electronic means.
4. Any material change to the information contained in the Pension Benefit Statement compared to the previous year shall be clearly indicated.
5. The Pension Benefit Statement shall include, at least, the following key information for members:
  - a) personal details of the member, including a clear indication of the statutory retirement age, the retirement age laid down in the pension scheme or estimated by the IORP, or the retirement age set by the member, as applicable;
  - b) the name of the IORP and its contact address and identification of the pension scheme of the member;
  - c) where applicable, information on full or partial guarantees under the pension scheme and if relevant, where further information can be found;
  - d) information on pension benefit projections based on the retirement age as specified in letter a), and a disclaimer that those projections may differ from the final value of the benefits received. If the pension benefit projections are based on economic scenarios, that information shall also include a best estimate scenario and an unfavourable scenario, taking into consideration the specific nature of the pension scheme;
  - e) information on the accrued entitlements or accumulated capital taking into consideration the specific nature of the pension scheme;
  - f) information on the contributions paid by the sponsoring undertaking and the member into the pension scheme, at least over the last 12 months, taking into consideration the specific nature of the pension scheme;
  - g) a breakdown of the costs deducted by the IORP at least over the last 12 months;
  - h) information on the funding level of the pension scheme as a whole.

For the purposes of determining the assumptions of the projections referred to in letter d) of the first subparagraph, the IORPs funds shall take into account the following rules:

- a) they shall favour official sources;
- b) they shall choose their sources, taking account of the quality and timeliness of the data;
- c) they shall take appropriate measures to identify and manage any possible conflicts of interest related to the choice of sources;
- d) they shall be able to provide information on the sources, the methods and procedures they use.

Those rules shall be applied by IORPs to determine, where relevant, the annual rate of nominal investment returns, the annual rate of inflation and the trend of future wages.

6. The Pension Benefit Statement shall specify where and how to obtain supplementary information including:

- a) further practical information about the member's options provided under the pension scheme;
- b) the information referred to in Articles 29 and 30 of Directive (EU) 2016/2341;
- c) 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;
- d) information on the level of benefits, in case of cessation of employment.

7. For pension schemes where members bear investment risk and where an investment option is imposed on the member by a specific rule specified in the pension scheme, the Pension Benefit Statement shall indicate where additional information is available.

### **Article 13. Information to be given to prospective members**

1. IORPs shall ensure that prospective members of a pension scheme are informed about:

- a) any relevant options available to them including investment options;
- b) the relevant features of the pension scheme including the kind of benefits;
- c) information on whether and how environmental, climate, social and corporate governance factors are considered in the investment approach;
- d) where further information is available.

2. The information referred to in paragraph (1) shall be provided to prospective members:

- a) before joining a scheme if they are not automatically enrolled in a pension scheme;  
or
- b) promptly after their enrolment if it takes place automatically.

3. Where members bear investment risk and can take investment decisions, the IORP shall provide prospective members with information on the past performance of investments related to the pension scheme for a minimum of five years, or for all the years that the scheme has been operating where this is less than five years and information on the structure of costs borne by members and beneficiaries.

### **Article 14. 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 letter a) of Article 12(6), with information

about the benefit pay-out options available in taking their retirement benefits.

The information referred to in the first subparagraph shall be provided to each member that requests it.

**Article 15. Additional information to be given on request to members, beneficiaries and sponsoring undertakings**

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

- a) the annual accounts and the annual reports referred to in Article 29 of Directive (EU) 2016/2341;
- b) the statement of investment-policy principles referred to in Article 30 of Directive (EU) 2016/2341;
- c) any further information about the assumptions used to generate the projections appearing in the Pension Benefit Statement.

2. Without prejudice to more binding provisions in the pension rules of the pension scheme or the Pension Benefit Statement, each member shall also, on request, receive detailed 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 IORP in the event of termination of the employment relationship.

3. Sponsoring undertakings may also, on request, be provided with the annual accounts and annual reports of the IORP.

**Article 16. Information to be given to beneficiaries during the pay-out phase**

1. IORPs shall periodically provide beneficiaries with information about the benefits due and the corresponding pay-out options.

2. IORPs shall inform beneficiaries without delay after a final decision has been taken resulting in any reduction in the level of benefits due, and three months before that decision is implemented.

3. When a significant level of investment risk is borne by beneficiaries in the pay-out phase, beneficiaries shall receive appropriate information regularly.”

*(Law of 15 December 2019)*

**“Chapter 6: Professional secrecy and exchange of information**

**Article 17. Professional secrecy**

1. All persons acting, or having acted, on behalf of the IGSS, as well as the *réviseurs d'entreprises agréés* (approved statutory auditors) or experts appointed by the CSSF, are bound by the professional secrecy.

Such secrecy means that the confidential information they receive in the performance of their duties may not be divulged to any person or authority, except in summary or



consolidated form, thus ensuring that no IORP, no asset manager, liability manager, or no depositary can be identified individually, without prejudice to cases covered by criminal law.

2. Paragraph (1) shall not preclude the IGSS from divulging, within the European Union, confidential information in civil or commercial proceedings when a pension scheme is being wound up.

#### **Article 18. Use of confidential information**

The IGSS receiving confidential information under this law, may use it only in the course of its functions and only for the following purposes:

- a) to check that the conditions for taking up occupational retirement provision business under this law are met by IORPs before commencing their activities;
- b) to facilitate the monitoring of compliance with the provisions of Article 6(2) and of Chapter 5 of this law;
- c) to impose corrective measures, including administrative sanctions;
- d) in administrative appeals against decisions taken by the IGSS; or
- e) in court proceedings regarding the provisions of this law.

#### **Article 19. Exchange of information between authorities**

1. Articles 17 and 18 shall not preclude any of the following:

- a) in Luxembourg, in the discharge of their supervisory functions, the exchange of information between the IGSS and
  - i) the Commission de Surveillance du Secteur Financier and the Commissariat aux Assurances;
  - ii) the Comité du risque systémique (Systemic Risk Committee);
  - iii) bodies involved in the winding up of a pension scheme and in other similar procedures;
  - iv) reorganisation bodies or authorities aiming at protecting the stability of the financial system;
  - v) persons responsible for carrying out statutory audits of the accounts of IORPs, insurance undertakings and other financial institutions;
- b) the exchange of information between the IGSS and the asset managers and liability managers of IORPs;
- c) within the European Union, the exchange of information between the IGSS and the competent authorities of other Member States, in the discharge of their supervisory functions under Directive (EU) 2016/2341;
- d) the transmission of information necessary for the bodies involved in the winding up of a pension scheme to perform their duties.

2. Articles 17 and 18 shall not preclude the exchange of information, within the European Union, between the IGSS and the following authorities or persons:

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

### **Article 20. Conditions for the exchange of information**

1. The exchange of information under Article 19 and the transmission of information under Article 21 shall be subject to the following conditions:

- a) the information shall be exchanged or transmitted for the purpose of carrying out oversight or supervision;
- b) the information shall be subject to the obligation of professional secrecy, which offers guarantees equivalent to that laid down in Article 17;
- c) where the information originates from another Member State, it shall not be disclosed without the express agreement of the competent authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

2. Article 18 shall not preclude the IGSS from exchanging, with the aim of strengthening the stability, and integrity, of the financial system, information with the authorities or bodies responsible for the detection and investigation of breaches of company law applicable to sponsoring undertakings.

The following conditions must at least be fulfilled:

- a) the information must be intended for the purpose of detection of breaches and investigation as referred to in the first subparagraph;
- b) the information received must be subject to the obligation of professional secrecy which offers guarantees equivalent to that referred to in Article 17;
- c) where the information originates from another Member State, it shall not be disclosed without the express agreement of the competent authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

3. Where, in Luxembourg, the authorities or bodies referred to in the first subparagraph of paragraph (2) perform their task of detection or investigation with the aid of persons appointed, in view of their specific competence, for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph of paragraph (2) may be extended to such persons under the conditions specified in the second subparagraph of paragraph (2).

### **Article 21. Transmission of information to central banks, monetary authorities, European Supervisory Authorities and the European Systemic Risk Board**

1. Articles 17 and 18 shall not prevent the IGSS from transmitting information to the following entities for the purposes of the exercise of their respective tasks:

- a) central banks and other bodies with a similar function in their capacity as monetary authorities;
- b) other public authorities responsible for overseeing payment systems, where appropriate;
- c) the European Systemic Risk Board, EIOPA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

2. Moreover, this chapter shall not prevent the authorities referred to in paragraph (1) from communicating to the IGSS such information as they may need for the purposes of Article 18.

3. Information received by the IGSS, in accordance with paragraphs (1) and (2) shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 17.

**Article 22. Applicability**

This chapter shall apply to the IGSS as host authority of IORPs.

It shall apply without prejudice to Articles 20 and 30 of the Law of 8 June 1999 relating to supplementary pension schemes, as amended.”.