

Proposal for a Directive of the European Parliament and of the Council on the activities of institutions for occupational retirement provision

(2001/C 96 E/06)

(Text with EEA relevance)

COM(2000) 507 final — 2000/0260(COD)

(Submitted by the Commission on 13 November 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

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⁽¹⁾ 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 not subject to a coherent Community legislative framework allowing them to fully benefit from the advantages of the internal market.
- (5) Institutions that are completely separated from any sponsoring undertaking and that 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.
- (6) Member States should retain full responsibility for the organisation of their social protection systems.
- (7) 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 schemes.
- (8) Financial institutions that 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.
- (9) Giving Member States the possibility to exclude from the scope of national implementing legislation institutions managing schemes with less than 100 members or beneficiaries can facilitate supervision in some Member States without undermining the proper functioning of the internal market in this field.
- (10) 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.
- (11) In order to protect members and beneficiaries, institutions for occupational retirement provision should limit their activities to the activities, and operations arising therefrom, referred to in this Directive.

⁽¹⁾ COM(1999) 232 final.

- (12) In case of bankruptcy of an undertaking which pays contributions into an institution, a sponsoring undertaking, the member faces the risk of losing both his job and his acquired pension rights. This makes it necessary to ensure that there is a clear separation between that undertaking and the institution.
- (13) 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 on the institution itself but also on the companies that 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.
- (14) Institutions for occupational retirement provision are financial service providers and therefore should meet certain minimum prudential standards with respect to their activities and conditions of operation.
- (15) 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 wants to manage a scheme in another Member State, a prior authorisation granted by the competent authority of the home Member State should be required.
- (16) The annual accounts and annual report, reflecting a true and fair view of the institution's assets, liabilities and financial position duly approved by an authorised person responsible for auditing the annual accounts, are an essential source of information for members and beneficiaries of the 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.
- (17) Proper information of members and beneficiaries of the pension scheme is crucial. This is of particular relevance for information requests 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.
- (18) The investment policy of an institution is a decisive factor for both security and affordability of occupational pensions. The institutions should therefore draw up, at least every three years, a statement of investment principles. It should be sent to the competent authority and made available on request also to members and beneficiaries of the scheme.
- (19) To fulfil their statutory function, competent authorities should be provided with adequate rights to information and powers of intervention with respect to the institution and the persons who effectively run the institution. In case the institution for occupational retirement provision has transferred functions of material importance such as investment management, informatics or accounting to other companies (outsourcing), it should be possible for the rights to information and powers of intervention to be enlarged to these outsourced functions to check if activities are carried out in accordance with the supervisory rules.
- (20) 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 interest rate should be chosen prudently according to national rules. The amount of technical provisions should both reflect an actuarial value of accrued pension rights of members and be sufficient for benefits already in payment to beneficiaries to continued to be paid.
- (21) Risks covered by institutions vary significantly from one Member State to another. Member States should therefore have the possibility to make the calculation of technical provisions subject to additional and more detailed rules than those laid down in this Directive.
- (22) 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.
- (23) 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 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⁾.

⁽¹⁾ OJ L 283, 28.10.1980, p. 23; Directive as last amended by Directive 87/164/EEC (OJ L 66, 11.3.1987, p. 11).

- (24) In many cases, it is 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-insurance companies and the institutions concerned should hold the same additional own funds as life-assurance companies.
- (25) Institutions are very long-term investors. Redemption of the assets held by these institutions cannot, in general, be made for another purpose than providing retirement benefits. Furthermore, in order to adequately protect 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 a qualitative approach towards investment rules, obliging institutions to act prudently but also allowing them sufficient flexibility to decide on the most secure and efficient investment policy.
- (26) Supervisory methods and practises vary among Member States. Therefore, Member States should be given some discretion on the precise investment rules that they wish to require from the institutions established in their territories. However, these rules must not restrict the free movement of capital, unless justified on prudential grounds.
- (27) 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. 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 unduly restricted.
- (28) Restrictions regarding the free choice of approved asset managers and custodians limit competition in the internal market and should therefore be eliminated.
- (29) Institutions should have the possibility to provide their services in other Member States. This would potentially lead to significant economies of scale for these institutions, improve the competitiveness of the Community industry and facilitate labour mobility. This requires mutual recognition of prudential standards.
- (30) The right for an institution in one Member State to manage an occupational pension scheme concluded in another Member State should be exercised while fully respecting the provisions of the local social and labour law in force in the host Member State.

- (31) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely to create a Community legal framework covering institutions for occupational retirement provisions, 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. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject-matter

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

Article 2

Scope

This Directive shall apply to institutions for occupational retirement provision.

It shall not apply to:

- (a) institutions managing social security schemes that are covered by Council Regulation (EEC) No 1408/71 ⁽¹⁾, or are listed in Annex II thereto, and Council Regulation (EEC) No 574/72 ⁽²⁾;
- (b) institutions that are covered by Council Directive 79/267/EEC ⁽³⁾, Council Directive 85/611/EEC ⁽⁴⁾, Council Directive 93/22/EEC ⁽⁵⁾ and Directive 2000/12/EC of the European Parliament and of the Council ⁽⁶⁾;
- (c) institutions that operate on a pay-as-you-go basis;
- (d) German 'Unterstützungskassen' and other institutions rating in a similar way;
- (e) companies using book-reserve schemes with a view to paying-out pension benefits to their employees.

⁽¹⁾ OJ L 149, 5.7.1971, p. 2.

⁽²⁾ OJ L 74, 27.3.1972, p. 1.

⁽³⁾ OJ L 63, 13.3.1979, p. 1.

⁽⁴⁾ OJ L 375, 31.12.1985, p. 3.

⁽⁵⁾ OJ L 141, 11.6.1993, p. 27.

⁽⁶⁾ OJ L 126, 26.5.2000, p. 1.

Article 3

Application to institutions operating social security schemes

Institutions for occupational retirement provision that 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 activities.

Article 4

Optional application to institutions covered by Directive 79/267/EEC

Member States may choose to apply Articles 11 to 16, 18 to 19 of this Directive to the occupational retirement provision business of activities of institutions that are covered by Directive 79/267/EEC, provided that the relevant assets and liabilities are managed in a separate legal entity. In this case, such separate legal entity shall not be made subject to Articles 17 and 21 of Directive 79/267/EEC and to Articles 19 to 24 and 31 of Council Directive 92/96/EEC ⁽¹⁾.

Article 5

Small pension schemes and statutory schemes

1. Member States may choose not to apply this Directive, in whole or in part, to institutions running pension schemes of which less than 100 persons are members and beneficiaries. Article 20 may only be applied if a Member State chooses to apply all the provisions of this Directive to such institutions.

2. Member States may choose not to apply Articles 9 to 17 to institutions where occupational retirement provision is made under statute and which is guaranteed by a public authority.

Article 6

Definitions

For the purposes of this Directive:

(a) 'institution for occupational retirement provision', or 'institution', means an institution operating on a funded basis, established separately from any sponsoring undertaking or trade for the sole 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 between the institution and the individual, both self-employed and employed;

(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 which pays contributions into an institution;

(d) 'retirement benefits' means benefits in the form of payments, whether for life time, a temporary period or as a lump sum, paid on death, disability, cessation of employment or when a defined age is reached, or support payments or services in case of sickness, indigence or death when they are supplementary to those benefits;

(e) 'members' means the persons entitled, or who will be entitled, to receive retirement benefits;

(f) 'beneficiaries' means the persons receiving retirement benefits;

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

(h) 'biometrical risks' means risks linked to human life. This includes death, disability and longevity risks;

(i) 'risk capital markets' means markets providing equity financing to a company during its early growth stages;

(j) 'home Member State' means the Member State in which the institution is located;

(k) 'host Member State' means the Member State where the sponsoring undertaking or the individual member(s) are located;

(l) 'location':

— where an institution is concerned, the Member State where it has its registered office or its main administration;

— where a sponsoring undertaking is concerned, the Member State in which it has its registered office or its main administration if that sponsoring undertaking is a legal person, a branch or an agency or the Member State in which its head office is situated if that sponsoring undertaking is a natural person;

— where an individual is concerned, the Member State in which he or she has his or her residence.

⁽¹⁾ OJ L 360, 9.12.1992, p. 1.

*Article 7***Activities of the institution**

Member States shall require institutions located within their territories to limit their activities to retirement benefits related operations and activities directly arising therefrom, including activities arising from their investment policy.

*Article 8***Legal separation between the sponsoring undertaking and the institution for occupational retirement provision**

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

*Article 9***Conditions of operation**

1. Member States shall ensure that:
 - (a) the institution is registered;
 - (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) proper constituted rules regarding the functioning of the pension scheme have been implemented and members have been adequately informed of these rules;
 - (d) all technical provisions are computed and certified by an actuary or other specialist in this field on the basis of recognised actuarial methods;
 - (e) if the sponsoring undertaking guarantees the payment of the retirement benefits it must be committed to regular financing;
 - (f) the members are sufficiently informed of the conditions of the pension scheme, in particular concerning:
 - (i) the contractual rights and obligations of the parties involved in the pension scheme;
 - (ii) the financial, technical and other risks embedded in the pension contract;
 - (iii) the distribution of the risks embedded in the pension contract to the contractual parties.

2. Member States may make the conditions of operation of an institution subject to other requirements, with a view to ensuring that the interests of members and beneficiaries are adequately protected.

3. In 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 authority of the home Member State.

*Article 10***Annual accounts and annual report**

Member States shall require that institutions located in their territories draw up annual accounts and an annual report. The annual accounts and the annual report shall give a true and fair view of the institution's assets, liabilities and financial position. They shall be consistent and duly approved by an authorised person responsible for auditing the annual accounts.

*Article 11***Information to be given to the members and beneficiaries of the scheme**

1. Depending on the nature of the pension scheme established, Member States shall ensure that the information set out in paragraphs 2, 3 and 4 is provided.
2. Members and beneficiaries shall receive:
 - (a) on request, the annual accounts and the annual report;
 - (b) within a reasonable time, any relevant information regarding changes to the pension scheme rules.
3. Each member shall receive on request, detailed and substantial information on:
 - (a) if applicable, the target level of the benefits;
 - (b) the actual financing of accrued pension entitlements;
 - (c) the level of benefits in case of termination of employment;
 - (d) where the member bears the investment risk, the range of investment possibilities and the actual investment portfolio as well as information on risk exposure and costs related to the investments.

Information on issues set out in the first subparagraph shall be provided together with the annual accounts and the annual report as mentioned in paragraph 2(a).

4. Each beneficiary shall be provided with the appropriate information on the retirement benefits that are due and the corresponding payment options.

Article 12

Disclosure of investment policy principles

1. Member States shall ensure that every three years, as well as without delay after any significant change in the investment policy, all institutions located in their territories disclose their investment policies to the competent authority of the home Member State. This shall be done by sending a statement of investment policy principles containing the risk measurement methods and risk management processes implemented and the strategic asset allocation with respect to the nature and duration of pension liabilities.

2. The statement of investment policy principles shall also be made available to members and beneficiaries of the scheme on request.

Article 13

Information to be provided to the competent authority

Every Member State shall ensure that the competent authority has the necessary powers and means:

- (a) to require the institution, the members of their boards of directors and other managers or directors or persons controlling the institution to supply information about all business matters or forward all business documents;
- (b) to supervise contracts regulating relationships between the institution and other companies, transferring functions to other companies (outsourcing), influencing the financial situation of the institution or being in a material way relevant for effective supervision;
- (c) to obtain regularly, in addition to the annual accounts and the annual report, all the documents necessary for the purposes of supervision in particular:
 - (i) internal interim reports;
 - (ii) actuarial valuations;
 - (iii) asset-liability studies;
 - (iv) evidence of coherence with the investment policy principles;

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

(vi) report of the statutory auditor;

(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 of the competent authority

1. The competent authority shall require every institution to have sound administrative and accounting procedures and adequate internal control mechanisms.

2. The competent authority may take any measures, with regard to the institution or the persons running the institution, that are appropriate and necessary to prevent or remedy any irregularities prejudicial to the interests of the members and beneficiaries.

It may also restrict or prohibit the free disposal of the institution's assets when:

- (a) the institution has failed to establish sufficient technical provisions in respect of the entire business or 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 scheme members and beneficiaries, the competent authority may transfer the powers which the persons running the institution hold in accordance with the law or its statutes wholly or partly to a special representative who is fit to execute these powers.

4. The competent authority may prohibit or restrict the activities of the institution in particular if:

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

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

5. In case of cross-border activity as referred to in Article 20, the institution shall be subject to ongoing supervision by the competent authority of the host Member State as to the compliance of its activities with the labour and social law requirements of the host Member State referred to in Article 20(5).

6. 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. Member States shall ensure that institutions operating occupational pension schemes establish at all times the adequate amount of liabilities to reflect the financial commitments that arise out of their portfolio of existing pension contracts.

2. Member States shall ensure that institutions operating occupational pension schemes that provide cover against biometric risks and/or where the benefits include a guarantee of either investment performance or 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, Member States may allow a calculation once every three years if the institution provides the competent authority with a certification of adjustments for the intervening years. The certification 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 other specialist in this field on the basis of recognised actuarial methods according to the following principles:

(a) the minimum amount of the technical provisions shall be calculated by a sufficiently prudent actuarial valuation. It must be sufficient both for pensions and benefits already in payment to beneficiaries to continue to be paid, and to provide members with an actuarial value of their accrued pension rights;

(b) the rate of interest used shall be chosen prudently and determined in accordance with the rules of the competent authority of the home Member State;

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

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

Article 16

Funding of technical provisions

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

2. Member States may permit institutions for a limited period, to derogate from the provisions of paragraph 1. In order to ensure that the requirements of paragraph 1 are met again, derogation 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 fully cover the technical provisions in due time. The plan is subject to approval by the competent authority;

(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 persons entitled to receive retirement benefits, start-up schemes and schemes changing from non- or partial funding to full funding;

(c) the institution shall establish and disclose to the competent authority a procedure in order to transfer the assets to another financial institution or a similar body in the event of the termination of the pension scheme during the derogation period.

3. In the event of cross-border activity as referred to in Article 20, the technical provisions must be fully funded at all times.

*Article 17***Regulatory own funds**

1. Member States shall ensure that institutions operating pension schemes where the institution itself underwrites the liability to cover a biometric risk and/or where the institution itself guarantees an investment performance or a given level of benefits hold, on a permanent basis, additional assets above the technical provisions in respect of the total range of schemes operated. These assets shall be free of all foreseeable liabilities and serve as a safety capital to absorb discrepancies between the anticipated and the actual expenses and profits.

2. For the purposes of calculating the amount of the additional assets, the rules laid down in Directive 79/267/EEC shall apply.

*Article 18***Investment rules**

1. Member States shall require institutions established within their jurisdiction to invest in a prudent manner.

2. Assets held in relation to schemes where the members bear the investment risks shall be invested in accordance with the following rules:

- (a) the assets shall be invested in a manner to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
- (b) the assets shall be properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole;
- (c) investment in the sponsoring undertaking shall be no more than 5 % of the portfolio as a whole. When the institution is sponsored by a group of undertakings, investment in these sponsoring undertakings shall be made prudently, taking into account the need for proper diversification.

3. Member States shall require institutions established within their jurisdiction to invest assets held to cover the technical provisions in accordance with the following rules:

- (a) the assets shall be invested in a manner appropriate to the nature and duration of the expected future retirement benefits and to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
- (b) the assets shall be properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole;

(c) investment in the sponsoring undertaking shall be no more than 5 % of the technical provisions. When the institution is sponsored by a group of undertakings, investment in these sponsoring undertakings shall be made prudently, taking into account the need for proper diversification.

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

5. Member States shall not subject the investment decisions of an institution or its investment manager to any kind of prior approval or systematic notification requirements.

6. In accordance with the provisions of paragraphs 1 to 5, Member States may, for the institutions established in their jurisdiction, lay down more detailed rules to reflect the total range of schemes operated by these institutions.

However, these institutions shall be given the possibilities to:

- (a) invest 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 and decide on the relative weight of these securities in their investment portfolio;
- (b) hold assets denominated in non-matching currencies to cover an amount of at least 30 % of their technical provisions;
- (c) invest in risk capital markets.

7. The second subparagraph of paragraph 6 does not preclude the right for Member States to require the application of more stringent investment rules on an individual basis provided they are prudentially justified, in particular in light of the liabilities entered into by the institution.

*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 92/96/EEC, 93/22/EEC and 2000/12/EC.

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 depository for the purposes of Directive 85/611/EEC.

Article 20

Cross-border activities

1. Member States shall allow the undertakings and individuals 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 territory to accept sponsorship by sponsors located within the territories of other Member States.

2. If an undertaking or individuals wish to sponsor an institution authorised in another Member State, this institution shall notify the competent authorities of the Member State where it is authorised.

3. The Member States shall require institutions proposing to be sponsored by an undertaking or individuals located in the territory of another Member State to provide the following information when effecting the notification:

- (a) the Member State within the territory of which the sponsoring undertaking or the individuals are located;
- (b) the name of the sponsoring undertaking;
- (c) the conditions of the scheme that the institution proposes to manage in the host Member State.

4. Unless the competent authorities of the home Member State have reason to doubt that the administrative structure, the financial situation of the institution or the good repute and professional qualifications or experience of the persons running the institution is not compatible with the operations proposed in the host Member State, they shall within three months of receiving all the information referred to in paragraph 3 communicate that information to the competent authorities of the host Member State.

5. Before the institution starts managing a scheme in the host 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 authority of the home Member State, if appropriate,

of the relevant social and labour law requirements under which this scheme must be managed in the host Member State. 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 them on expiry of the period provided for in paragraph 5, the institution may start to manage the scheme in the host Member State in accordance with the provisions of the relevant local social and labour law.

7. The competent authorities of the host Member State shall inform the competent authorities of the home Member State of any change regarding the characteristics of the scheme that is managed in the host Member State.

Article 21

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2003 at the latest. They shall forthwith inform the Commission thereof.

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

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

Article 22

Entry into force

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

Article 23

Addressees

This Directive is addressed to the Member States.