OPSG

# OCCUPATIONAL PENSIONS STAKEHOLDER GROUP

Advice on upcoming IORP II review / cross-border activities

OPSG - 22-18

29 March 2022

European Insurance and Occupational Pensions Authority

# CONTENTS



## 1. EXECUTIVE SUMMARY

One of the main goals of the IORP II Directive[1] (later "the Directive") was to remove obstacles faced by occupational pension funds operating across borders in Europe. Member States had to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 13 January 2019. This deadline hasn't been respected by many Member States. The Directive also foresaw that the Commission would review the Directive by 13 January 2023 and report on its implementation and effectiveness to the European Parliament and to the Council (Art. 62 of the Directive). In the meantime, the Commission has decided to postpone this review, in part because of the delayed transposition of the Directive in many Member States. As the first step of the process, the Commission is expected to issue soon a Call for Advice to EIOPA.

The cross-border activity of IORPs was explicitly mentioned as one of four elements that the review of the Directive should consider. The OPSG has previously highlighted its concerns about the implementation of cross-border provisions of the Directive[2]. These concerns have unfortunately now been confirmed by the results of the report "Cross-Border IORPs" published by EIOPA in December 2021[3], and also by market research and observations collected by OPSG members.

Despite the continued strong interest of many IORPs and their sponsors to operate cross-border in Europe cross-border activities in the EEA were carried out by only 33 institutions by the end of 2020. Together these institutions represent less than 0.2% of the total number of IORPs' members and beneficiaries and only 0.4% of the total amount of assets of IORPs in the EEA.

[1] Legislative act, 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) EUR-Lex - 32016L2341 - EN - EUR-Lex (europa.eu)

[2] OPSG Advice, OPSG advice on cross-border transfers of pension schemes -IORP II implementation | EIOPA (europa.eu), June 30th 2020.

[3] The EIOPA report is available by clicking here.

While recognizing that many IORPs function perfectly well without undertaking cross-border activities, in particular because their sponsor companies have their workforce solely or mainly at national level and/or outside the European Union, **the OPSG regrets that the Directive has failed to promote cross-border activities** because there are sponsor companies and IORPs that would like to be able to operate on a cross-border basis in an easy and efficient way without any unnecessary burden.

In this preliminary advice about the IORP II Review, the OPSG wishes to alert EIOPA and the Commission to the problem and recommend that solutions be found to better facilitate the cross-border activities of IORPs. The forthcoming review of the Directive offers the ideal opportunity to progress in that direction.

## 2. CROSS-BORDER REPORT OF EIOPA

EIOPA's latest report shows that there were only 33 active cross-border IORPs with EUR 11.3 billion assets and around 70,000 scheme members and beneficiaries at the end of 2020. This represents respectively 0.4% of assets and 0.2% of scheme members and beneficiaries of all IORPs in the EEA. These numbers show a significant decline from the levels of activity observed in EIOPA's previous report[4]. EIOPA highlights that this reduction is explained by the UK exit from the EU (cross-border schemes run between the UK and other EU countries have been taken out) and change to the methodology used in the two reports.

Cross-border IORPs operate from eight different home countries providing their services in 16 different host countries.

Because EIOPA has modified its methodology, direct comparisons with the previous report showing the status quo at the end of 2016 are not possible. Nevertheless, EIOPA's report points out that existing cross-border IORPs continued to expand their activities to new host countries.

EIOPA explains the low number of active cross-border IORPs (33) in the following way: *"This confirms the conclusion from the 2017 Market Development report that the number of cross-border IORPs has stopped increasing since 2010 and was not expected to grow substantially. One of the main reasons highlighted in the 2017 report was that the application of the Social and Labour Law of the host country, increases the costs, complexity and operational risks of managing cross-border IORPs, thereby outweighing the benefits of operating a cross-border activity and its probability of success."* [5]

[4] EIOPA's 2016 report showed 73 active cross-border IORPs with EUR 63 billion or 1.65% of total assets and 777,000 of members and beneficiaries but it counted both domestic and cross-border activity.

[5] The total number of IORPs in Europe exceeds 40,000.

## 3. OPSG MEMBERS' OWN OBSERVATIONS AND MARKET RESEARCH

The OPSG welcomes EIOPA's report and broadly agrees with its detailed findings. EIOPA's report is mainly quantitative and often draws on conclusions from the much broader 2017 report. As many OPSG members have experience with cross-border activities of IORPs, we believe the Group is well placed to assess and complement the findings of EIOPA's report.

**Based on the statistics included in the EIOPA report and on OPSG members' own observations, the OPSG considers that the Directive failed in delivering on its goal to facilitate cross-border activities of IORPs.** Although some cross-border IORPs extended their activities, the current level of cross-border activity remains marginal in relation to the size of the total market. Moreover, since the introduction of the Directive, there is no evidence of new cross-border transfers, even not between Member States where such transfers were happening previously. Projects are being abandoned due to regulatory hurdles. Multiple such cases came to the attention of OPSG members.

**Even if many IORPs do not face these barriers because they operate only locally, the interest for cross-border activities remains strong.**

Firstly, the OPSG confirms EIOPA's observation that many existing cross-border IORPs, included in both 2017 and 2021 reports, expanded their operations by starting new cross-border activities in new host countries like Germany or France (Art. 11 of the Directive).

Some other IORPs completed cross-border transfers from the host countries like the Netherlands and Ireland in 2017 and 2018. These transfers occurred ahead of the new prohibitive conditions imposed by the Directive concerning approval by the majority of members and beneficiaries in case of cross-border transfers coming into force.

Secondly, many employers without existing cross-border arrangements are keen to explore more efficient management of occupational pensions in the EEA. Low-interest rates put increased pressure on financing of legacy defined-benefit plans and encourage cross-border consolidation. The transition from defined-benefit to defined-contribution plans continues, and social partners seek ways to improve defined-contribution plans to make them fit for purpose for the next generations of employees. Whereas a cross-border delivery model is often considered in feasibility studies performed by sponsors with operations in multiple European countries, this solution is rarely chosen due to inherent complexities.

## 4. WAY FORWARD

**The OPSG is committed to advising EIOPA on the preparation of its response to the upcoming Call for Advice.** Last year the OPSG Working Group *IORP II Review* completed an OPSG Member Survey documenting various issues relating to the implementation of the Directive. This survey has recently been updated to highlight issues in the cross-border market. The legislative efforts of the last two decades have effectively failed to create a sizeable internal market for occupational retirement provision organized on a European scale. The directive's implementation in national law created substantial additional hurdles.

A thorough analysis of the existing barriers for cross-border activities and transfers could help to better understand what is missing to develop this market. This analysis should, however, not be limited to the Directive itself but should also look at its implementation in the different Member States and assess whether other rules and regulations prevent the facilitation of cross-border activities and cross-border transfers within the EU.

**As EIOPA is best placed to lead the work in this area, the OPSG strongly believes that the Commission's Call for Advice should invite EIOPA to analyse all the obstacles that hinder, or may hinder, cross-border activities and transfers within the EU, and to offer new innovative solutions to break down those barriers.** However, such solutions would have to ensure that IORPs having no need to undertake cross-border activities do not suffer any disadvantages against cross-border IORPs and that no potential for any kind of regulatory arbitrage is resulting out of them.

In the meantime, the OPSG will continue its work, not only by assessing the extent to which the implementation of the Directive facilitates cross-border activities and transfers but also by analysing what hurdles IORPs encounter when performing cross-border activities and what obstacles sponsors encounter when they want to offer their pension plan in another Member State.

There is a wide range of solutions that could be envisaged to encourage more cross-border pension provision. **The OPSG with its broad representation of the industry, members and beneficiaries, academics and associations, is well placed to advise EIOPA on these various possible approaches, on the back of a Call for Advice that would stimulate an open and unconstrained debate on the future of cross-border activities and transfers by IORPs.**