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David W. Powell
(202) 861-6600
dpowell@groom.com

EU Launches New Association to Encourage Cross-Border Pension Arrangements

It has been a long-term goal of many at the European Commission (EC) and its agencies to promote cross-border pension arrangements within the EU, to promote the mobility of the European Union (EU) labor market, reduce costs and encourage savings. Employers in global industries have long complained about the inability to rationalize benefit structures or extend company culture in benefits across borders. We've written about the subject for years. For those employers who are interested in rationalizing their pension plans within the EU, some recent developments, including a new alliance to support cross-border pensions, may make such efforts more possible.

As background, efforts in this area originated with the first EU directive on the Institution for Occupational Retirement Provision (IORP I) in 2004, and continued with a subsequent revision known as IORP II in 2016. IORP II is to be enacted into local country social (labor) and tax laws by 2019. (See here for more information on IORP II.) As of today, there are only a relatively small number of cross-border plans (frequently referred to as IORPs), and they are primarily defined contribution (DC), where cross-border arrangements are arguably the most workable. But the area continues to expand incrementally. Use of cross-border pension investing, such as pooling of pension assets of multiple DB plans in investment funds such as the Irish Common Collective Fund (CCF), Luxembourg Fonds Commun de Placement (FCP) and Belgian Organisation for the Financing of Pensions OFP), has become more common, generally as a way of achieving economies of scale in investing, administration and regulation. Other EU cross-border collective investment has been gaining steam, such as the use of UCITS (Undertakings for Collective Investment in Transferable Securities) which are funds pursuant to an EU Directive that allows collective investment schemes to operate freely throughout the EU on the basis of a single authorization from one member state.

In this environment, the various EU interests, including the European Insurance and Occupational Pensions Authority (EIOPA) and other private and public sector organizations have now established a group to promote cross-border pensions and work to solve legislative and judicial obstacles that arise. The new organization, the Cross Border Benefits Alliance – Europe (CBBA-Europe) had its initial meeting in Brussels on Dec. 6. In its opening statements, the CBBA has declared that the current national barriers to the creation of cross-border are a useless burden and that it will advocate for the removal of such obstacles. This desire was clearly connected to ongoing concerns about the sufficiency of government social security-like (first pillar) pay-go systems, sufficient coverage of employees by occupational pensions (the second pillar), and the impact of the growing "gig economy", suggesting the need for more individual saving products (the third pillar).

The initial meeting of the new alliance reviewed the reasons for advocating for cross-border pensions and included a review of current cross-border arrangements. In addition to IORPs and a number of existing multi-employer (multiple employer in US terminology) arrangements, there was also discussion of the roll-out of a new cross-border plan pension fund aimed particularly at mobile workers in research organizations, such as higher education, known as the RESAVER pension fund (http://www.resaver.eu/), currently available in three countries, Austria, Hungary and Italy, and a recently issued EU regulation providing for Pan European Personal Pensions (PEPP), which would be akin to an IRA in the US. The PEPP is to be adopted in local country legislation and available in 2019.

Notably, both at the CBBA meeting and at the OECD Working Party on Private Pensions meeting held the day before in Paris, there were significant questions raised about language in the PEPP proposal that would require capital protection under the default investment. Requiring such capital protection guarantee has been criticized as an impediment to offering PEPP products. Both at the OECD and at the CBBA, however, EIOPA representatives seemed to be suggest that the guarantee requirement might be watered down.

It is clear that EIOPA and the EC are incrementally promoting cross-border pension arrangements in the EU, and the new CBBA is part of that effort. For many US employers with EU operations, the rationalization of benefits across borders has been of increasing interest, so those multinational plan sponsors may wish to support the CBBA in its efforts.

More information on the CBBA and its efforts can be found on its website at https://www.cbba-europe.eu/. If you have any questions about this area, please contact David Powell or your usual Groom lawyer.