Brussels, the 29th of November 2019

CBBA-Europe Communication on the withdrawal of United Pensions from The Netherlands due to the Dutch provisions aimed at hampering the cross-border activities in its territory

Preamble about the Cross Border Benefits Alliance-Europe (CBBA-Europe)

The Cross Border Benefits Alliance-Europe (CBBA-Europe), is a Brussels based advocacy organization (Belgian AISBL) promoting the creation of cross border and pan-European social benefits in the European Economic Area (EEA), including pensions (occupational and individual), healthcare insurance, unemployment benefits, long term care insurance, etc.

Indeed, CBBA-Europe considers the current excessive fragmentation of national social systems as detrimental to the creation of a European common market based on economies of scale and on the removal of costly and burdensome barriers in particular for citizens; but also detrimental to free movement of services, capitals and persons; and to the potential accumulation of huge capitals to be invested in the European economy, in accordance with the Capital Markets Union (CMU) to foster much needed growth and employment.

More generally, CBBA-Europe wishes the European Union to become a more interconnected economic and social area, where both economic competitiveness, with more efficiency in delivering benefits, and the protection of social rights assured to companies and citizens.

As for its structure, CBBA-Europe is a transversal Alliance made up of stakeholders with different backgrounds, including multinational companies, trade unions, asset managers, pension funds, insurance companies, consumers' organizations, national and international trade associations. Just created in October 2017, CBBA-Europe already has twenty-five members, and is still rapidly growing.

CBBA-Europe also relies on a Scientific Council made up of well-known experts and professors from the most prestigious Universities of Europe. The Scientific Council provides content for the half-yearly CBBA-Europe Review, which is available on the website of the Association.

Finally, in addition to its activities of monitoring and publication of position papers, CBBA-Europe organizes several public meetings throughout Europe with national and European decision makers and stakeholders.

For more information about CBBA-Europe, please visit our website: www.cbba-europe.eu

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Communication: the new Dutch provisions referred to cross-border activities of IORPs produced their first victim and hence urgently need to be challenged by the EU Institutions

The facts:

This week, a Dutch newspaper officially reported that United Pensions, the AON cross-border pension vehicle, stopped its activities in The Netherlands; and even the AON's company pension fund will not move to Belgium, but will have to remain in The Netherlands.

United Pensions was established in 2014 in Belgium as a cross-border multi-employer pension fund (IORP). This vehicle was created as a solution for multinationals, in order to bring together pensions from several countries.

However, AON lately experienced more and more difficulties in convincing Dutch based employers (sponsoring plans companies), to move the management of their pension schemes to Belgium.

One of the most important reasons of this failure, as explicitly reported by AON, is the requirement of two-thirds majority of both members and beneficiaries to approve cross-border pension transfers.
Such restrictive requirement was introduced by the Dutch legislation implementing the IORP 2 directive since the beginning of this year.

Other factors that caused the decision of AON to stop new cross-border activities between Belgium and The Netherlands are the prevailing mistrust of cross-border pensions widespread in The Netherlands towards the Belgian IORPs and the uncertainty surrounding the rules of the Dutch system. In particular, the Dutch constant changes in pension regulation made long-term choices to difficult.

Comments and recommendations from CBBA-Europe

CBBA-Europe already produced two position papers on the Dutch problematic and (according to CBBA-Europe) legally inconsistent implementation of the IORP 2 directive with regards to the cross-border activities and transfers:

- The first CBBA-Europe paper just dealt with the legal inconsistency of the two-thirds majority of both members and beneficiaries for the approval of cross-border transfers of pension schemes required by the Dutch legislation. Indeed, such requirement is too high, and it would make very difficult, if not impossible to approve a cross-border transfer from The Netherlands;

- The second CBBA-Europe paper faced the additional requirement imposed to foreigner pension funds operating in the Netherlands within a cross-border activity, to provide a double reporting on coverage ratio, not only according to the national

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rules where those IORPs are based, but also according to the local Dutch criteria. This double reporting not only represents a burdensome and complicated duty for foreigner pension funds operating in The Netherlands; but it would also cause confusion among the receivers of such double information. Moreover, such double reporting could also contribute to spread a useless panic or mistrust towards foreigner pension funds just because a reporting made according to Dutch parameters on coverage ratio -but regulated according to different criteria in other national jurisdictions- might appear misleading to a Dutch reader.

In other words, it was immediately clear that such strict and burdensome requirements were made in order to discourage -if not even to totally block- cross-border transfers and activities with The Netherlands, while the new IORP 2 directive aimed at easing, and not at making more complicated the cross-border transfers and activities of pension funds.

Therefore, the Dutch provisions were not only against the spirit of the IORP 2 directive, but against the main principles of the EU Treaties (the EU principle of non-discrimination based on the nationality; the principle of mutual recognition; the EU fundamental freedoms of services and capitals).

Now, the case of AON/United Pensions might be considered as the first real victim of the new Dutch legal framework.

At this point, **CBBA-Europe urgently claims the intervention of the European Authorities to take the necessary measures to oblige The Netherlands to modify its legislation, also in order to avoid a dangerous domino effect**, where other EU member states could emulate The Netherlands in the lack of any deterrent actions carried out by the EU.
In such a worst scenario, the cross-border activities provided by the IORP directive(s) would be definitely cancelled.

In conclusion, after highlighting the potential risks for cross-border activities deriving from the Dutch legislation implementing the IORP 2 directive, CBBA-Europe deems it necessary to act as soon as possible: it is now clear that those risks were not only virtual but concrete, and **the Dutch provisions are concretely producing their outcomes in hampering cross-border activities.**

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