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**Subject: Cross-border activities and transfers of pension funds under the
IORP II Directive**

Dear Mr Briganti,

Thank you for your letter of 11 March 2022 about ways to facilitate cross-border activities and transfers of occupational pensions in the internal market. The Commissioner has asked me to reply to your letter as the subject-matter falls within the remit of my unit.

You are complaining about obstacles to cross-border activities and transfers of pension funds under the IORP II Directive for which you primarily attribute responsibility to national measures taken in the context of the transposition of that Directive.

The IORP II Directive aims at facilitating the cross-border activity of IORPs and the cross-border transfer of pension schemes by clarifying the relevant procedures and removing unnecessary obstacles. However, at the same time, the Directive provides only for a limited set of minimum harmonisation rules and does not touch issues of national social, labour, tax or contract law. It thus leaves to the Member States a great deal of flexibility to design their occupational systems, resulting in a wide variety of different national standards. The issues raised in your letter regarding procedural requirements such as majority rules for cross-border transfers are situated in this area of Member State responsibility for the implementation of the procedures provided by the Directive.

My unit is currently carrying out a comprehensive compliance assessment to verify the correct transposition of the IORP II Directive by the Member States. In this context, we will carefully examine the correct and effective implementation of the procedures for cross-border activities and transfers of pension funds, taking into account the objectives

of the Directive as well as the freedom for Member States to determine the principles and rules for the functioning of their occupational pension systems.

The Commission is also preparing the process for a review of the implementation and effectiveness of the IORP II Directive provided for under Article 62 of the Directive. However, in view of the substantial delay in the transposition process in several Member States, it will not be possible to meet the timeframe set by the Directive. In this context, the Commission is currently issuing a call for technical advice to EIOPA regarding the evaluation and review of the IORP II Directive. This will include a mandate for EIOPA to assess the implementation and effectiveness of the rules on cross-border activities (Article 11) and cross-border transfers (Article 12) and analyse any obstacles identified.

We thank you for the remarks and suggestions contained in your letter, which we will take into account and pursue further within the framework of the aforementioned activities.

Yours sincerely,

(e-signed)

Didier Millerot
Head of Unit

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