

*Brussels, the 11<sup>th</sup> of March 2022*

Mrs Mairead McGuinness  
Rue de la Loi, 200  
1049 Brussels  
Belgium

**Letter requesting (urgent) measures aiming to ease the cross-border activities and transfers of occupational pensions in Europe**

Dear Mrs McGuinness,

As you probably know, the last figures about cross-border activities of pension funds (IORPs) in Europe dropped dramatically after Brexit<sup>1</sup>. Such update was of course expected, considering that a large number of those activities were occurring between the UK and Ireland exclusively.

Most of the cross-border activities between those two Countries started even before the entry into force of the first IORP Directive of 2003 under a previous bi-lateral agreement. In other words, by excluding the pre-existing UK/Ireland cases we can see that the development new cross-border activities of pension funds within Europe over the after 19 years from the introduction of the Directive has been remarkably poor.

Such low take-up in consolidating pension funds on a cross-border basis is often justified as a “lack of market appetite” from employers (in particular, large multinationals) and financial service providers for cross-border activities.

The reality is somewhat different: according to the same EIOPA report, the existing cross-border IORPs (especially the multi-employer ones) did increase their capacity in terms of assets under management, members and Countries covered.

The problem with cross-border activities is not the market appetite but the current legislative framework, which substantially leaves too much room to Member States to adopt a “protectionist” position and require conditions which are almost impossible to meet before permitting the consolidation of existing pension funds with those in another Member State.

As an example, article 12 of the IORP 2 Directive on cross-border transfers of pension schemes provides for a previous approval of the majority of both the members and beneficiaries of those schemes. The same article also states that such majority should be established by Member States. Such a *carte blanche* left to Member States might imply that some Member States can require such

---

<sup>1</sup> “Cross-border IORPs” report published by EIOPA in December 2021, 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. It is a significant decline from the levels of activity observed in EIOPA’s previous report from 2017 and EIOPA from highlights that it can be explained by the effects of Brexit and changes to methodology (where 73 cross-border activities; EUR 63 billion or 1.65% of total assets, and 777.000 members and beneficiaries were reported).  
[https://www.eiopa.europa.eu/media/news/eiopa-analyses-trends-cross-border-iorps\\_en](https://www.eiopa.europa.eu/media/news/eiopa-analyses-trends-cross-border-iorps_en)

high majorities (like 2/3 majorities, but potentially even a 9/10 majority) that no cross-border transfers would ever practically be approved in their jurisdictions.

Importantly, transfers and pension fund consolidations within certain Member States are treated differently and with less onerous conditions when compared with cross-border transfers. In our view this is a clear case of discrimination against cross-border activity enabled by IORP 1 and IORP 2 legislations.

Specifically, some Member States require majorities to cross-border transfers of pension schemes higher than those requested for domestic transfers where the majority/success criteria are lower.

Additionally, it seems quite paradoxical that the approval of those cross-border transfers is requested from members and beneficiaries of the pension scheme individually even where an elected trustee body exists within the pension scheme to make other decisions on behalf of the members collectively for domestic transfers. The individual members are less familiar with advantages arising from cross-border consolidation of pension schemes and in cases unable to take such a decision coherently and may be worse off as a result.

With this regard, it should be reminded that some national legislations provide for the sole approval of those elected bodies for domestic transfers, and the same article 12 of the IORP 2 Directive allows this possibility as well, by stating that the approval from the majority of members and beneficiaries to cross-border transfers can be also expressed *“where applicable, by a majority of their representatives”*.

Local rules governing transfer of assets cross-border are not the only obstacle erected by some Member States to protect their domestic markets. Other examples include pension funding rules within social and labour law which results in double application of pension funding rules, and also the requirement that cross-border IORPs are fully funded at all times when the same is not necessarily required for locally domiciled IORPs.

In summary, a number of multinational companies and financial service providers ready to start new cross-border activities have been severely delayed or literally blocked due to complications or local requirements imposed by the targeted host Member States. This situation should be solved, and the obstacles removed.

The requirement of stricter requirements for cross-border pension transfers and complying with national and social laws should never represent a tool for Member States to undermine or block cross-border activities in their territories by practicing protectionism. Unfortunately, the IORP Directive unintentionally allows such practices resulting in the effective violation of other EU legal principles such as the non-discrimination based on nationality, free movement of services and capitals, mutual recognition, etc.

On behalf of the Cross Border Benefits Alliance-Europe (CBBA-Europe) and its members, we therefore ask you to please consider the following proposals:

- To interpret the provisions on cross-border transfers of the IORP 2 Directive in a way that the requirements by national legislations for those transfers cannot be more burdensome to those required for domestic ones in order to avoid unjustified discriminations based on the nationality of the pension fund (for example, requirement of different majorities between cross-border and national transfers; or requests to get individual approvals from all the members and beneficiaries for cross-border transfers where the sole involvement of their representatives is required for national transfers, etc.);

- More in general, when hearing about measures taken by some Member States to hamper or block cross-border activities or transfers, to treat such matters as potential infringement procedures from the European Commission or as cases at the European Court of Justice in a timely manner;
- When reviewing the IORP 2 Directive, to amend and limit as more as possible the discretionary power of member states in creating direct or indirect barriers to cross-border activities of IORPs, when not fully and consistently justified;
- To seriously consider the possibility to work on a new European optional legal framework for occupational pensions as a corresponding tool to the existing PEPP Regulation in order to benefit from economies of scale in the single market <sup>2</sup>.

Yours Sincerely,



Francesco Briganti  
Secretary General at the Cross Border Benefits Alliance-Europe (CBBA-Europe)

### **Contacts:**

Francesco Briganti, Secretary General of CBBA-Europe  
[Francesco.briganti@cbba-europe.eu](mailto:Francesco.briganti@cbba-europe.eu)

CBBA-Europe Offices:  
Tel +32 2 401 87 92  
[info@cbba-europe.eu](mailto:info@cbba-europe.eu)

Cross Border Benefits Alliance-Europe (CBBA-Europe)  
Square de Meeûs 38-40  
B - 1000 Brussels  
Belgium  
Tel: +32 2 401 87 92  
Fax: +32 2 401 6868  
Website: [www.cbba-europe.eu](http://www.cbba-europe.eu)  
ID number in the Transparency Register: 373927140186-43

---

<sup>2</sup> In February 2021 this proposal was also made by the former Chair of EIOPA, Gabriel Bernardino, in his keynote speech at EIOPA's 10<sup>th</sup> Anniversary Conference, when he suggested to create an optional pan-European framework for occupational pensions in order to benefit from economies of scale in the single market in the same spirit of the PEPP Regulation.  
[https://www.eiopa.europa.eu/gabriel-bernardino-speech-10th-anniversary-conference\\_en](https://www.eiopa.europa.eu/gabriel-bernardino-speech-10th-anniversary-conference_en)