

Cross-border pensions



IORPS

Crossing borders: Clearing the hurdles

The evermore frustrating obstacles that need to be tackled when setting up a cross-border pension plan was a hot topic at this year's European Pensions Conference, with one panel raising some of the major challenges and missed opportunities in this area. We look at the key messages from the discussion

WRITTEN BY FRANCESCA FABRIZI

The merits of cross-border pension plans are well-versed, yet the complications that go with setting them up are multiple. This was the theme of a 'cross-border pensions' session at the recent European Pensions Conference. Setting the scene, panel chair and CBBA-Europe secretary general, Francesco Briganti, explained how we currently have two vehicles with which one can create cross-border pensions: "One is the IORP Directive, for occupational pensions; and we have a newer regulation, the Pan-European Personal Pension Product (PEPP) – an individual product."

Focusing initially on the former, he asked the panellists what they felt the main obstacles were to having cross-border activities within the IORP Directive.

Aon partner, and risk manager of several pan-European pension funds, Thierry Verkest, began by highlighting the importance of terminology in this area: "When we say cross-border pensions, we also mean pan-European pensions. Terminology here is important; and the aim of these pan-European plans is that across Europe, instead of having separate arrangements in each country – these days generally each country has its own pension funds/

insurance companies – instead, the whole idea is that you centralise most of that into one single pension fund."

If one considers multi-national companies with locations all across Europe, he added, "they have all these different arrangements, but it is possible to centralise them all, bring them all together into one single pension fund, working with one regulator, having one trustee board – it's an obvious thing to do".

So why aren't more people doing it, was the next question Briganti posed. Verkest explained: "I have personally been working on cross-border pensions for 10-15 years, helping companies set up and manage these funds, and back in the day we could all see this was a great concept. We could see it was a great solution for the future of many multi-national companies, and it was all based on a European directive



*Chair: CBBA-Europe
secretary general,
Francesco Briganti*

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– the IORP Directive. We had IORP I and now we are talking about IORP II, and one of the intentions of IORP II was to facilitate cross-border pensions.

“It should be easy to develop these pan-European structures but it has, unfortunately, been the opposite.”

So what is blocking this? Why has there not been a big bang of pan-European plans? Verkest offered his view: “In the directive they introduced the concept, or at least the possibility to member states, to introduce individual consent in order to decide to move assets from one country to another. Remember, we are gathering, collecting everything into one central pension fund, moving assets from one country to another. We are creating a big size of assets, that is the intention, but now, in many countries, you need to ask the individual members, ‘do you agree to move your assets from country A to country B?’”

“Can you imagine? A lot of these pan-European plans are based in Belgium and there are many good reasons for that, but you are asking perhaps a member of a pension fund in Ireland, or whatever country it may be, whether they agree to move their assets to Belgium. You might be asking a pensioner of 80 years old, ‘do you agree to move your assets?’ That’s hardly achievable, and yet you need a majority of members to agree with that.”

Consequently, he continued, for many corporates, the project of pan-European plans has been stopped because of the risk of not achieving that majority in transferring the assets from one country to another.

“As a result, we have been lobbying, alongside CBBA and others, to replace that individual consent with at least the consent of the representatives of these pension funds, therefore not asking the individuals to make such an

emotional decision. Today, for me, that is the main obstacle.”

Picking up on these challenges, EIOPA OPSG vice-chairperson, Falco Valkenburg (speaking at the event in a personal capacity), commented: “In the early days, in the Netherlands, there was a fear that Dutch pension assets would move to Belgium, so a majority of the politicians voted against cross-border pensions and tried to find ways of preventing them. One of the ways was to set a higher bar for the



*Panellist:
Aon partner and
risk manager of several
Pan-European pension
funds, Thierry Verkest*

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transfer of a pension fund to an international pension fund or a pan-European pension, a higher bar than for a transfer within the country. So, if a pension fund wants to transfer their assets and liabilities to an insurance company, the bar in the Netherlands is lower than going to Belgium or any other European state with an IORP.”

That is a big issue, he stressed, “and we have written that into social and labour law, and the point with cross-border schemes is that if you have a cross-border scheme, the prudential law of the home state, in this example Belgium, prevails and is supervised by the Belgian supervisor, but the pension scheme is still a Dutch one and is supervised from a social and labour law perspective by the Dutch supervisor”.

So, he added, “the plan for the beneficiaries doesn’t change – it is

executed in another country, but social and labour law is from the host state and the responsibility of the host state, and some countries, including the Netherlands, have amended these social and labour laws in such a way that it creates obstacles to go to another country. Thus against the European idea of creating better movement of people’s assets and financial needs in the European community.”

Continuing on this point, LifeGoals CEO, Michael Hadjihannas, agreed that, on the occupational pensions front, there is no unitary pension market in Europe, as in the US or Australia. “While the IORP II Directive provides a general framework and sets minimum standards for running an IORP, workplace pensions are in essence still regulated by the national competent authorities of each member state, which creates a diverse cultural and regulatory framework across member states.”

The process of passporting to offer cross-border services outside an IORP’s own member state, he added, requires the collaboration of both the home and host member states, with the cross-border authorisations and transfers being an unwanted headache for both national authorities. “Even if successful, the process can be cumbersome with excessive timeframes for any independent sponsoring undertaking to wait on.”

Cross-border licencing for independent multi-sponsor IORP providers (MIPs) is even more challenging since, he argued, conflicts of interest are considered an inherent risk in the case of an independent provider.

“It is therefore no wonder that cross-border IORPs represent just 0.2 per cent of the total number of members and beneficiaries, and 0.4 per cent of assets of all European

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IORPs. According to EIOPA's 2022 report, the number of cross-border IORPs has stopped expanding since 2010 and is not expected to grow substantially in the near future."

Therefore, he argued, while EIOPA has concluded a consultation on the review of the IORP II Directive, which has addressed some of the core challenges for cross-border activity and transfers, the revision is not expected to result in any meaningful improvements for the industry.

As a final reflection on the challenges question, Verkest highlighted the important point that, while implementation might be challenging, once a pan-European plan is in place, it is an excellent vehicle. "We are helping a whole number of companies today with their pan-European plans and they work perfectly well. I have not seen one of them disappearing so far! I would like to stress that. So, it is the implementation that is challenging, but once you are there, it works perfectly well."

Pan-European Personal Pension Product (PEPP) regulation

When asked about the different options in the marketplace today, Hadjihannas commented: "An alternative approach to a pan-European pension scheme, which we hope will drive a faster track to a pan-European product offering, is proposed by the PEPP regulation.

"In contrast to the IORP II Directive, by electing to enact as a regulation, the EU legislator leaves hardly any room for member states to manoeuvre, while at the same time allowing each member state to set its tax and decumulation phase policies. Member states will undoubtedly try to impose other national requirements on PEPP, but that is prevented by harmonising PEPP product requirements in underlying standards.

"Just like MIFID services, under PEPP, providers can sign up cross-border 'retail' investors with a simple notification procedure. That, compared to IORPs that need approximately five months to sign up cross-border 'knowledgeable institutional' investors under the current IORP II passporting process."

Provider related conflicts of interest are also not a factor under PEPP, he argued, since the provider is a vital part of the structure.

"The PEPP product approach



*Panellist:
EIOPA OPSPG
vice-chairperson,
Falco Valkenburg*

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presents a fresh approach for European pensions cross-border and consolidation and we believe that the cross-border occupational pensions front has a lot to benefit from a similar structure."

Additionally, he added, under current circumstances, a so-called 'group PEPP' setup could present a more efficient framework for work-related pensions, where employers

do not play a role in establishing or sponsoring a PEPP but may pay contributions to an individual pension product on behalf, or for the benefit, of the employee.

Current appetite

The next question Briganti asked related to the general appetite in the marketplace for pan-European pensions: "We understand the legal framework is complicated. We understand there is some resistance and protectionism from member states, but in the real economy – companies, sectors, providers – is there an appetite? That is a very important question because those who are against cross-borders argue that there is no market appetite. But we know that there is."

Valkenburg made reference to an EIOPA report from 2017 that lists the barriers but also confirms that there is appetite, "but because it so difficult, it is not the highest priority".

Verkest agreed that the appetite is definitely there: "Two years ago we went through a full feasibility study for multiple countries in Europe for a big US company, and we were about to set up the biggest pan-European plan in Europe, exceeding €10 million, then IORP II came up with the complications we have been talking about, and the whole project was put on hold, because it was too complicated. We really hope that regulators will be more aware of these complications, that they make the necessary changes to the directives, rules and guidelines to make this happen, because the appetite is definitely there."

IORP III

Briganti next asked panellists for their thoughts on the future outcome of the IORP II Directive: "We know that it is under revision. Do we think that it could improve cross-border activities? Or will we need IORP III

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for this?”

Verkest commented: “I don’t expect IORP III to come any time soon, so we need to go forward with IORP II. That means you need to stick to what’s in the directive, and then it’s about interpretation of the directive in issuing guidelines. We have suggested that the individual consent point is addressed – sorry to come back to that but that’s really a broken factor. If that explicit consent could at least be replaced by an implicit consent, whereby you work on your communication, you inform all your people in these pension funds that what you are doing is making their pensions more sustainable as you’re creating a European pot – and really explain the benefits, and you leave in your communication at the end something open like, ‘you do not need to respond, and if you do not respond we assume you approve’ – that would be a signed consent.”

Something like that, he argued, would truly facilitate cross-border transfers. “That’s what I would suggest doing. Of course, an IORP III would be even better, but that always takes years and we want to move forward now.”

IORP III will come, argued Valkenburg, but he acknowledged it will take some time. “Whether it will solve the problem that we are discussing, I’m not so sure.”

Product development

Briganti went on to ask about product innovation in the market. Verkest commented: “We have been working for 10 to 15 years on a contractual basis with the European Commission on a project called Resaver – the Retirement Savings Vehicle for European Research Institutions. This is a pan-European pension fund which is operational today, and has been since 2016 or so.

“The whole idea here is to facilitate the mobility of researchers, PHD fellows, students, and professors across Europe – people tend to stay in their own organisations for fear that they’ll lose their pension, so to avoid that



*Panellist:
Michael Hadjihannas,
CEO, LifeGoals*

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we have helped set up this option so people can move easily across Europe without losing their pension rights.”

Verkest also highlighted the problem of companies struggling in managing their own pension funds due to increased regulations and reporting requirements. “As a result, there is currently a clear trend of transferring self-administered pension funds to multi-employer master trusts. This is also possible on a multi-country basis by transferring DB and DC plans to a cross-border multi-employer solution like, for example, United Pensions – Aon’s multi-employer multi-country pension solution.”

Continuing on the topic of market development, Valkenburg flagged up current discussions taking place within the EIOPA stakeholder group on the possibility of a regulation for a Pan-European Occupational

Pension (PEOP) as an alternative to what is possible under the IORP Directive. “So, in a similar vein to the PEPP but for occupational pensions.”

One of the things that they also need to do here, he argued, is think of a new name, “because the acronym PEOP is not very sexy”.

“We need to find a catchy name. That is one of the most important things in order to attract the attention of members of the European Parliament, for example, perhaps even the European Commission.”

He concluded: “I think there can be a lot of support from both the commission and parliament. I’m not so sure about the council, and the member state governments. Are they willing to give up what they have? Are they really wanting to come up with European solutions going forward? But when you look at the demographic changes, the first pillar pensions in many countries will not deliver enough pension, so adequacy is going down, and second pillar pensions are not always well developed, at least not in all member states. So, that could be an additional reason to come up with something like a PEOP.

“It would also fit with the European plan for social rights, the action plan that they have, where one of the principles – principle 15 – is that everybody should be entitled to good means for their retirement.”

