

11.



Review of the Budapest Protocol

EIOPA Occupational Pensions Stakeholder Group meeting
Frankfurt, 3 May 2018

- **Why is the topic on the agenda?**
 - A review of the collaboration between National Competent Authorities (NCAs) is carried out as a result of IORP II Directive taking effect from 13 January 2019
 - OPSG gave informal feedback on a draft version to EIOPA which will be addressed in a discussion during the meeting
- **What is expected from the OPSG?**
 - EIOPA seeks feedback on the templates
- **Next steps**
 - Decision to be adopted by EIOPA Board of Supervisors (BoS)

- Instrument
 - Legal text adopted by EIOPA BoS
 - Signatories are all national authorities competent for the supervision with regards to the IORP II Directive
- Purpose and scope
 - Facilitate the cross-border collaboration and exchange of information between NCAs
 - Comply with strict requirements of IORP II Directive mainly on the procedure for cross-border activities (Art.11) and cross-border transfers (Art.12)
- Out of scope
 - BoS Decision must **not** deviate from IORP II Directive

- Many thanks for valuable feedback on the draft version
- Clear steering to focus on: Art. 11 and 12 of the IORP II Directive (formal procedure)
- EIOPA can take on board feedback to clarify the following points: host MS depositary requirements for DC apply; transfers apply to Art.4 insurance business; completeness check in a timely fashion
- Next slides provide further detail on EIOPA's rationale regarding some of the issues highlighted in OPSG feedback

Duration of the notification procedure

- IORP II strict requirement for 3-month completion of procedure
- Preliminary exchange of information and informal pre-notification phase
 - Opportunity for IORPs to prepare before start of formal procedure pending national law of Home Member State
- Timings set outside IORP II Directive are subject to national administrative law
 - “without delay” applies to Art.12 (para 6)

Simplification of the notification procedure

- Simplified notification procedure not compatible with IORP II Directive
 - BoS Decision must comply with straightforward notification procedure detailed in Art.11
- Templates in Appendices
 - For smooth notification procedure with proportionate approach, IORPs with existing cross-border activity can make reference to information already provided to the home NCA

Responsibility of home/host Competent Authority (CA)



- Host CA to send Social and Labour Law (SLL) to IORP via home CA
 - SLL provided in the language of the host MS
 - Delay in transmission of SLL does not prevent start of cross-border activity subject to compliance
- Host CA to send depositary requirements (DC only) to home CA who is responsible for compliance
- Home CA to liaise with host CA at early stage on potential prudential impact of SLL

- IORPs seeking to operate cross-border activity require NCA's prior authorisation
 - e.g. Member States with registered IORPs not subject to authorisation by NCAs
- IORPs with no legal personality
- EIOPA Mediation
 - Detail is outside scope of BoS Decision
 - EIOPA Rules of Procedure: Mediation Panel to propose opinion for EIOPA BoS adoption