

OPSG Feedback Statement to EIOPA about the Budapest Protocol: Cross border authorization process and the need to change the Protocol

The Budapest Protocol was approved on 30 October 2009. It provides a framework for the cooperation of competent authorities in the implementation of the IORP Directive (2003/41/EC) in relation to the supervision of IORPs that operate cross-border. The Protocol sets out the agreement between competent authorities to cooperate in the supervision of cross-border activities of IORPs.

There are three main reasons why the Budapest Protocol needs to be reviewed:

- There have been several problems with the current Protocol (see below);
- The IORP II Directive clarifies the IORPs' cross-border procedures, including the roles of authorities in home and host Member State and how they shall communicate with each other;
- The Protocol should have been already reviewed, as its Article 1.8.2. states: "The role of the Protocol in the satisfactory supervision of cross-border activities will be subject to periodic review, with the next review starting *not later than five years after the introduction of the current text.*"

The OPSG points out following issues about the current Budapest Protocol:

- 1) When an authorised IORP wishes to commence a cross-border activity for a new sponsoring undertaking, it must be agreed *a priori*, whereas in comparison the agreement is *a posteriori* for insurance companies according to the insurance regulation;
- 2) There are risks for misunderstanding and mistakes when home and host authorities are exchanging documents. These can be due to the fact that they don't use a common language in their communications;
- 3) In the case where a multinational corporation has a cross-border plan in place with a country section which contains a plan which is sponsored by multiple subsidiaries in the same country then when a subsidiary is sold, purchased or reorganised and ceases/becomes a sponsor of the cross-border plan then the whole section must re-apply for permission to operate as a cross-border plan;
- 4) Some important parts of the Protocol have not always been followed in practice. These have included the following parts of the Protocol:
 - Article 2.1.1: Only authorised IORPs can start operating cross-border. Such authorisation has to be granted only once, not for each cross-border activity;
 - Article 2.4.1: An IORP can commence a cross-border activity unless the home Member State Competent Authority has reason to doubt that
 - the administrative structure of the IORP or
 - the financial situation of the IORP or
 - the good repute and professional qualifications or experience of the persons running the IORPare compatible with the operations proposed in the host Member State.
 - Article 2.5.5: The information in paragraph 2.5.4. must be provided to the home Member State Competent Authority within two months (the 'Expiry Date') of the host Member State Competent Authority receiving the information referred to in paragraph 2.3.1.

Various problems result from non-compliance and these have in practice lead to administrative delays of up to 6 months or even more in the process of adding a new sponsoring undertaking to a cross-border pension scheme. This has resulted in dissatisfaction and delayed the development of cross-border IORPs.

It is clear that many issues about the need to change the current Budapest Protocol will be defined later during the transposition phase of the new IORP II directive, as the directive will change the legislation about cross border operations and procedures.

The OPSG suggests to EIOPA that the reviewed Protocol should:

- Include a simplified procedure when an authorised IORP wishes to commence a cross-border activity for a new sponsoring undertaking;
- Contain a requirement that the authorities should have a physical meeting instead of only changing documents. A meeting can contribute to the understanding and increased trust between the authorities leading to a faster process;
- Propose that the authorities should strive communicate with each other in a common language in order to improve their understanding;
- Specify the role of EIOPA in case of disagreement between the authorities;
- Develop a procedure to be followed by both authorities in case of non-compliance with social and labour law;
- Be in place after the transposition period of the IORP II Directive¹.

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Adopted by the EIOPA Occupational Pensions Stakeholder Group on 30 November 2016

The Chairperson of the EIOPA Occupational Pensions Stakeholder Group

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¹ The IORP II Directive shall enter into force on the twentieth day following that of its publication in the Official Journal. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the IORP II Directive by 24 months after the entry into force of the Directive.