



Talking about the future

IORP II Q&A with Amundi

We spoke to our international pensions team alongside Christian Lemaire and Florent Gauthier of Amundi Asset management on the topic of IORP II. We discussed the directive's requirements, its processes, international factors and future implications.

Interview with Amundi:

1. Do you think IORP II will help or hinder the cross border pensions market?

We think that the IORP II Directive should help the development of the cross border pensions market. This directive states: "In particular, facilitating the cross-border activity of IORPs and the cross-border transfer of pension schemes by clarifying the relevant procedures and removing unnecessary obstacles could have a positive impact on the undertakings concerned and their employees, in whichever Member State they work, through the centralisation of the management of the retirement services provided". At a time, Member States are transposing IORP II; we have to carefully monitor how they will do it because some of them could be inclined to adopt unnecessary more restrictive regulations to protect their local pension market. We must be vigilant against these local protectionism regulations, which could violate the EU principles of non-discrimination based on nationality of the pension scheme. This would not only particularly affect European actors, but also could end up finally leaving room to large US and Asian players.

2. Tell us about your experience in relation to operating pension funds cross-border in Europe and how that works?

Amundi Pension Fund is developing well. It is the only cross border Pension Fund for multi unrelated employers operational in 9 European countries. Our clients appreciate that our IORP, combined with our digital administrative platform, help them to manage more efficiently and less costly their local pension schemes with a better global monitoring and oversight. Working with multinational clients confirmed us the need to be also multi local. Therefore, we have to follow the evolution of local regulations to ensure to our clients that we remain compliant with all taxes, social or labor laws constraints. This regular legal monitoring is part of the services Amundi Pension Fund provides to its clients, with the support of specialized pension lawyers in each country like Eversheds Sutherland.

3. Have the various country compartments of the Amundi cross-border pension fund dealt with IORP II implementation in the same way, or has each one taken a country-specific approach?

The approach is similar for the 9 compartments, dedicated to each country where our cross border Pension Fund operates. Amundi Pension Fund is an ASSEP under Luxembourg law, therefore, the transposition of IORP 2 into Luxembourg law will be applied to all our compartments which, moreover, will have to remain compliant with the local social and tax law. However, we have seen a significant disparity in the interpretation and application of the IORP I Directive. Even if we have been able to manage that, our analysis of IORP II current discussions in few member states, subject to the up-coming local transposition, suggests that there would be specific interpretations and therefore implications, particularly in the context of cross-border transfers of pension schemes.

4. How will you be approaching the new IORP II requirements around environmental, social and governance factors?

Most of our clients already include ESG criteria in the investment policy of their pension schemes. In 2013, when we created our Multi-Company cross border Pension Fund, we decided to integrate Environmental, Social and Governance criteria into all of Amundi Pension Fund’s investment policies. Therefore, we are already compliant with most of the IORP II guidelines. In addition, with its long standing and strong expertise (€300 billion of asset managed under ESG), Amundi is well positioned to assist its clients for IORP 2.

5. Looking to the future, do you think harmonisation of pension rules across Europe might become a reality any time soon?

This would require the harmonisation of Social & Labor Laws and taxes. As these topics remain the decision of each Member State, we can’t expect a full harmonisation of pension rules across Europe to become a reality soon. However, the current transposition of the IORP II Directive and the future PEPP (Pan European personal Pension product) that Europe has been working on for 2 years and could finalise soon (final vote expected in February), should foster the development of cross border pensions and help corporate groups to implement locally more harmonised pension benefits and investment policies. However, it is important to ensure that the EU’s pension regulations apply similarly to all stakeholders managing the pension system: insurers, pension funds, asset managers, etc. These regulations should allow a fair level playing field between domestic and foreign players and avoid competitive distortions in compliance with EU law.

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Thoughts from Eversheds Sutherland:

1. There was a proposal to include strict new requirements around pension scheme solvency and funding in IORP II. What happened to that?

Work on IORP II started some years ago, with the first draft of the directive being published by the European Commission in 2014. The draft directive did not originally include a new solvency requirement but, in tandem with its development, the European Insurance and Occupational Pensions Authority (EIOPA) began a consultation in 2014 on the solvency of IORPs. This included a proposal to introduce a new “holistic balance sheet”, a tool for assessing the solvency of IORPs on a harmonised EU-wide basis. Within the EIOPA consultation, there was a suggestion that IORPs should be funded on a more onerous insurance type basis within a year. This caused significant concern in member states with a tradition of non-insured defined benefit pension provision – the UK in particular, though other member states also had concerns. This could have led to companies being forced to fund their defined benefit plans to an insurance type standard extremely quickly – the huge cost was likely to be unaffordable for many.

After much discussion, EIOPA decided in 2016 not to recommend the introduction of a new Europe-wide solvency standard. IORP II now expressly says that “[n]o quantitative capital requirements, such as Solvency II or [holistic balance sheet] models derived therefrom, should therefore be developed at the Union level with regard to IORPs, as they could potentially decrease the willingness of employers to provide occupational pension schemes”. A proposal for the review of IORP II (after 6 years) to include a review of the quantitative requirements applicable to IORPs was also dropped from the final text.

2. What is the Pension Benefit Statement under IORP II and have EU member states all decided to approach it the same way?

The Pensions Benefit Statement (PBS) is an annual statement that must be sent to all active and deferred members of an IORP. The detailed requirements are set out at Article 36 to 40 of IORP II. The PBS must, among other things, be concise, contain key information for each member, take into consideration the specific nature of the national pension system and relevant social, labour and tax law. Key information to be included includes personal details and retirement age, name and contact details of the pension plan, information on guarantees provided (if any), pension benefit projections, accrued entitlements or accumulated capital, contributions paid in the last 12 months, a breakdown of costs deducted by the pension plan over the last 12 months and funding level. In addition, members must be told where and how to find supplementary information on various topics.

EIOPA published a report on the PBS in November 2018 emphasising that it should be “effective, attractive and easy to read” and be comparable with statements in other member states so as to allow for financial planning.

In the UK, many pension plan members are already entitled to receive an annual statement similar to the PBS but some (notably deferred members of defined benefit schemes) are not. We understand the UK government plans to address the PBS via a forthcoming “pensions dashboard” project but how (and when) that will come to fruition remains to be seen. Other EU member states have taken different approaches, with many still deciding exactly how they will roll out the PBS.

3. With Brexit looming on the horizon, surely the UK will take a very “light touch” approach to IORP II implementation...?

Some of the requirements of IORP II are already met by existing UK law and regulatory guidance. In addition, the UK has brought into force new regulations designed to implement the governance and cross-border strands of IORP II. However, much of the detail in relation to the new governance requirements (including the key “own risk assessment”) has been left to a future Pensions Regulator code of practice. That code of practice is expected to be issued for consultation this year and will probably not come into force until late this year or, more likely, 2020.

So, it is probably fair to say that the UK has taken a reasonably “light touch” approach. However, that approach does not appear to be greatly out of step with approaches taken in other EU jurisdictions, with many also leaving the detailed implementation to forthcoming regulations, orders or supervisory guidance.

4. Is there a country where IORP II will involve particularly significant changes to the way in which pension schemes are run?

Ireland is an example of a country where IORP II is likely to have a significant impact overall. IORP II provides for a forward looking and risk based approach to the supervision of pension plans. Effectively, the Irish Pensions Authority will be moving from a rules based regulatory system (compliance with the Pensions Act) to a risk based approach, where issues such as culture and the quality and substance of the trustees’ performance of their duties will come to the fore. By comparison, in other jurisdictions such as the UK, national regulators already take a proactive approach to overseeing pension plan trustee performance.

IORP II will involve significant cultural change for Irish pension plans, including a lot more evidencing of processes and procedures and the substance of decision making by scheme trustees.

5. In a UK context, the previous IORP directive caused problems for some defined benefit schemes that had members in other EU/EEA jurisdictions and did not wish to go through the cross-border authorisation process. Has this problem been addressed under IORP II?

The requirement in relation to “cross-border activity” under the previous 2003 IORP Directive caused significant practical issues for UK defined benefit pension plans. Those with members living in other EEA countries were concerned that this meant they could be carrying out “cross-border activity”, triggering among other things a requirement for the plan to be “fully funded at all times”. This requirement has, however, now been relaxed under IORP II which says that “the mere fact that members or beneficiaries of a pension scheme have their residence in another Member State does not in itself constitute a cross-border activity”. It appears that pension plans carrying out “cross-border activity” may now also have a recovery plan, rather than having to be fully funded at all times.

So, the original problem has largely gone away. However, assuming the UK does not remain in the EEA for much longer, the easing of the cross-border requirements are likely to be of limited practical application to the vast majority of UK schemes. Most UK pension schemes have historically taken steps to ensure that they do not engage in “cross-border activity”. Only a handful of UK schemes currently operate cross-border, mostly between Ireland and the UK – those schemes will need to take steps to address these changes as well as the wider implications of Brexit.

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