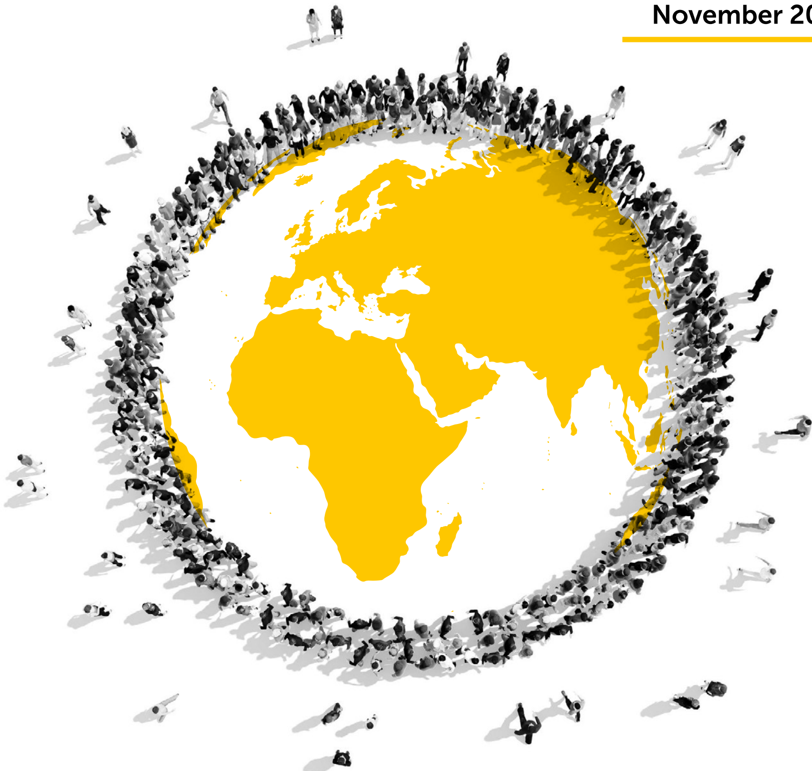
EVERSHEDS SUTHERLAND



A global view
Global Pensions Agenda

Belgium

Practical guidelines on governance rules and risk management for IORPs

The FSMA, the Belgian supervisory authority for IORPs, published a practice guide in early 2022 setting out its expectations on the application of the statutory governance rules for IORPs, with a particular focus on risk management. This guide underlines the importance of ESG and ESG risks. The guide is non-binding and also mentions examples of good practice. It is expected that the FSMA will use this guide as a basis when exercising its supervision and performing inspections of IORPs on compliance with governance and ESG requirements.

Action: When applying governance rules and risk management, it is recommended that Belgian IORPs take into account the FSMA's practice guide and expectations.

Legal Entity Identifier code for large IORPs

EIOPA has issued revised guidelines on the use of the identification code for legal entities. This has led to new recommendations issued by the FSMA, the Belgian supervisory authority for IORPs.

Action: On the basis of these new guidelines, as a minimum, IORPs with a balance sheet total of EUR 1 billion or more must have a Legal Entity Identifier code and tell the FSMA about it.

Germany

Stricter obligation to inform employees about company pension plans

The new evidence Act (**NachweisG**) reforms set out what information the employer has to provide to the employee in the context of company pension plans with effect from 1 August 2022. Employers that do not provide this information explicitly and in writing (usually within the employment contract) may receive a fine.

Action: Employers should review employment contracts in light of this requirement. An adjustment may be required to eliminate the risk of sanctions.

New tax case regarding CTAs

The German Fiscal High Court recently ruled that - depending on the agreement - the income received by a contractual trust arrangement (**CTA**) is to be allocated to the trustor/settlor, even if the "security case" applies.

Action: German trustees who filed their tax return by considering the CTA income as their own should review the contract. If the recent ruling applies, they may correct their tax return. Additionally, they may consider obtaining a reimbursement from the trustor/settlor of tax paid.

Ireland

IORP II compliance

1 January 2023 is the deadline for compliance by Irish pension plans with local Irish IORP II requirements, which are onerous and costly. There is a race by Irish defined contribution (**DC**) plans to wind up and transition to master trusts and severe capacity issues are emerging.

Irish defined benefit plans have no consolidating vehicle available, and unless they can fund an insurance buy-out they must move to full IORP II compliance. Plans are finding that there is a severe shortage of personnel available to act as key function holders under the new regime. It remains to be seen whether the Pensions Authority will recognise these capacity constraints and grant latitude to plans which cannot meet the 1 January 2023 deadline.

Action: Consider IORP II compliance generally. Make decisions urgently on what to do with DC plans.

Netherlands

The Future Pensions Act

The pension system in the Netherlands will be reformed significantly. Legislation has not yet passed through parliament but the expected date of introduction has been postponed and it is expected to enter into force on 1 July 2023. From that point, all new pensions will be defined contribution. In addition, existing pension pots have to be transferred and several groups of employees have to be compensated for the decline in accruals. Unions and/or works councils must be involved.

Action: Be prepared! The transfers will be a time-consuming and complex process. Start in time and do not wait until your pension provider informs you.

Indexation policy

With inflation increasing, many pension plan members are worrying about their indexation. On the other hand, employers are concerned about the large amounts they have to pay for indexation. Amending indexation arrangements is a very sensitive and complex process. There have been many court decisions regarding those amendments, explaining how they can be made.

Action: Review your indexation policies and speak to your pension provider about how these affect future costs. It may be possible to make amendments to change this - we can help you with this process.

Norway

Minimum position and salary no longer required for membership of pension plans

Membership of Norwegian collective pension plans has historically been conditional on being employed in a position equivalent to a minimum 20% of full time. Pensions accrual has further been subject to a deduction of 1G (G = the National Insurance base amount, currently NOK 111, 477), meaning that pension contributions are only calculated on the part of the salary exceeding 1G. As of 1 July 2022 this changed. Pension contributions are now calculated based on the full salary without deductions and participation in the pension plan is no longer conditional upon having a position equivalent to 20% of full time.

Action: Ensure that all employees (as of 1 July 2022) are included in the employer's collective pension plans.

United Kingdom

New defined benefit funding proposals

The UK government has published draft regulations on how defined benefit (**DB**) plans will need to be funded. The draft regulations say that DB plans must aim to be fully funded on a low risk basis by the time they are significantly mature. They also say that any funding deficit must be recovered as soon as the employer can reasonably afford. We await a response to the consultation (which closed on 17 October 2022) and a new accompanying draft code of practice from the UK Pensions Regulator. The new regime is unlikely to be confirmed and in place until late 2023 at the earliest.

Action: Employers sponsoring DB plans should be aware that these proposals, if implemented in their current form, may require funds to be paid into some DB plans to make up deficits more quickly than under the current regime.

USA

Retirement plan legislation: SECURE 2.0

Significant retirement plan legislation may pass Congress later this year. The legislation, generally referred to as "SECURE 2.0" because it is a successor to the SECURE Act of 2019, would make a number of changes aimed at expanding and improving US retirement plans. Some key provisions include increased catch-up contributions for employees age 50+, coordination of retirement plan contributions with student debt assistance and additional automatic enrollment mandates.

Action: Employers should monitor the legislation and be prepared to discuss key provisions with company stakeholders and employees if and when the bill passes.

This Global Pensions Agenda is a very broad overview. You should not rely on this summary when making decisions - always check up to date details in each country.

For more information on how we can help you please contact:

François Barker
Partner and
Head of Pensions
T: +44 20 7919 0675
M: +44 782 534 1131
francoisbarker@
eversheds-sutherland.com

Follow us
@ESpensionlaw

Follow us
LinkedIn

eversheds-sutherland.com

DTUK004360_10/22