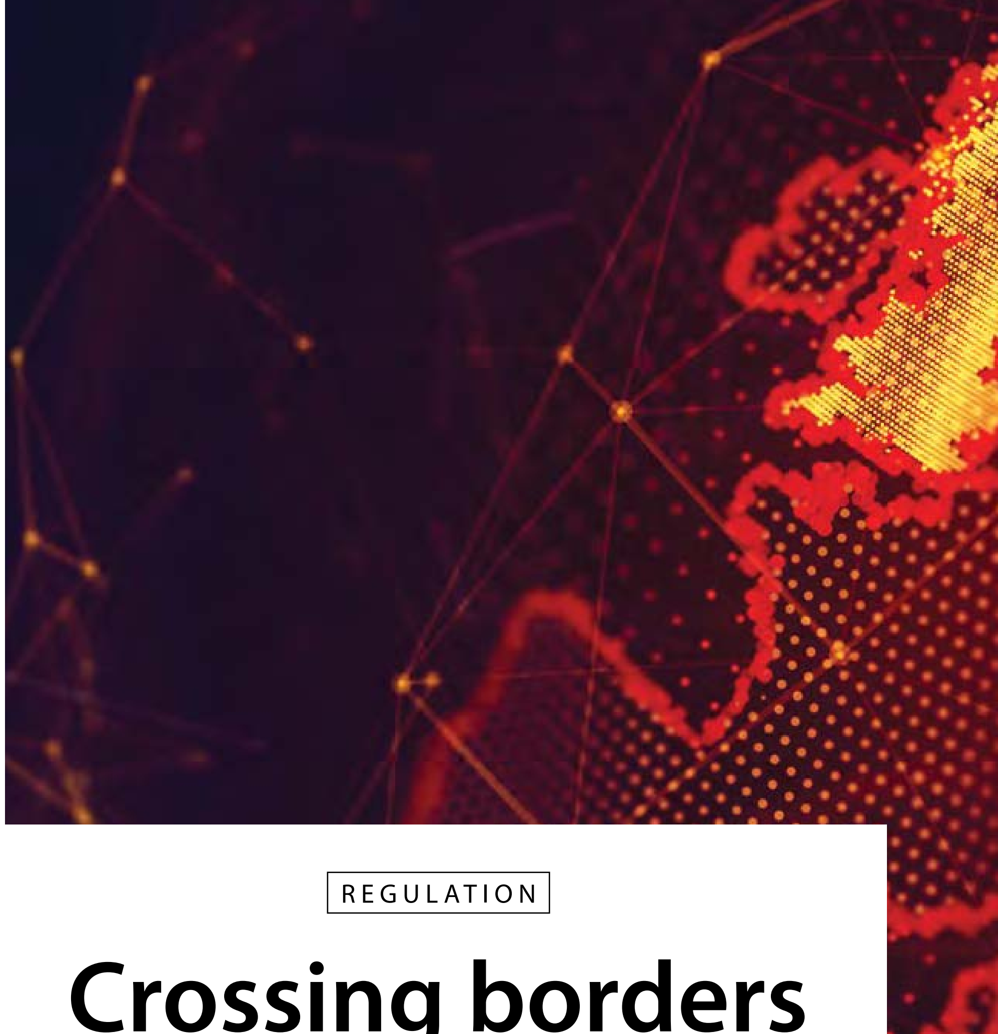

REGULATION

Crossing borders

The IORP II Directive is still awaiting finalisation as it passes through varying levels of scrutiny. Adam Cadle **looks at why the directive has stalled and the state of current cross-border pension provision across Europe**

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Aims and ideals

Finalised legislation surrounding the new EU pensions directive has the potential to be an absolute defining influence on the future of pension provision in Europe. The aim of the 2003 IORP Directive was to create an internal market for occupational pension provision at EU level The idea of standardised pension provision for a multinational company's entire EU workforce is an attractive prospect, with economies of scale achievable on investment fees, governance under one roof and simpler administration when employees move between countries.

Reality

Over a decade later however, and reality has struck. Things are not so simple with a great deal of complication arising concerning cross-border pension provision. A great number of employers are now turning their heads away from the idea of implementing cross-border pension plans for their workforces. So much so, that the European Parliament's Economic and Monetary Affairs committee (Econ) rapporteur Brian Hayes recently stated at a PensionsEurope conference in Brussels that the current dearth of cross-border pension funds needs to be resolved as soon as possible.

Hayes said the cross-border situation was a "heritage nightmare" and a case of "regulatory framework that is bizarre". He argued that the growing number of cross-border workers would warrant the growth of cross-border pension provision.

According to EIOPA's latest report on cross-border IORPs, during the 12 month period from June 2014 to June 2015, the number of active cross-border IORPs increased by one to 76 active ones. Four UK IORPs operated in cross-border activities with the number of IORPs now totalling 109,173. The UK and Ireland account for more than 96 per cent of the IORPs reported. While the UK market showed a decrease of more than 1,500 IORPs, the Irish market did not change substantially compared to the data provided last year.

The European Commission's aim is to bring the text from the first directive into line with the insurance industry's Solvency II Directive. This principally involves 'holistic balance sheet'- approach to pension scheme funding, which has been met with criticism by a host of industry bodies across Europe, including the UK's NAPF and PensionsEurope.

"Requiring cross-border pension schemes to be fully funded at all times so they can't run a deficit is not a workable basis for most employers," the NAPF's Policy Lead: EU and International James Walsh says.

"There are also tax barriers of course. Even if you reform the IORP

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different tax rules in each member state and there is no easy way around that." Walsh also points out the issues concerning multinational acquisitions and mergers.

"My conversations with some of our members from multinational employers suggest that in an ideal world it would be nice to have simplicity of providing a single pension scheme across all your European operations. In practice, life is not so simple," he adds. "Multinationals will have grown partly by acquisitions and they will have tried to merge schemes. This is legally complex in one country never mind across borders. If you reform the full funding at all times rule that would alleviate the situation to some extent but we don't know how much."

PensionsEurope has proposed a host of middle way suggestions to the 'full funding requirement at all industry body said a recovery plan should be possible for cross-border IORPs based on national law (of the home member state). A maximum recovery period could also eventually be set. Furthermore, it argues that the requirement that cross-border schemes 'be fully funded at the time of set-up' seems fairer.

"However we note that it is usually the case that multinationals set up cross-border schemes with a couple of countries and then invite other countries to join over the years," PensionsEurope secretary general/CEO Matti Leppälä underlines.

"In such a case where an application is made to the home country regulator to enter a scheme into a cross-border scheme, it may take more than a year for the application to be approved, during which time the transferring scheme's funding position may have materially changed.

"In such cases it may be better for the requirement to be that the transferring scheme is fully funded either at the beginning of the process (or at the end) i.e. there is some leeway in case the funding position worsens during the application process."

Leppälä argues that cross-border schemes would have to complete an extra section in the new risk evaluation for pensions, identifying any risks arising from cross-border status and showing how they were managing them.

According to the 'passport-approach' of the IORP Directive, the cross-border IORP shall be subject to ongoing supervision by the competent authorities of the home member state. The competent authorities of the home member state shall, in coordination with the competent authorities of the host member state, take the necessary measures to ensure that the IORP puts a stop to a detected breach on risk evaluation.

He also accentuates the complexities and barriers surrounding social and labour laws.

"IORPs are institutions strongly embedded within national social systems and primarily governed by social and labour law. This social purpose is reflected in the triangular relationship between employees, as

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contributors and beneficiaries (pensioners), employers, as sponsors, and the IORP, as managers, often through the involvement of social partners in the governance structure," Leppälä comments.

"IORPs are linked to an employment relationship. Social partner involvement in the governance of the IORPs is effective and efficient. Workplace pensions are an initiative – often collective – as part of an employer-employee relationship and not a financial product offered to the individual. Necessary flexibility is required and standardisation has its limits. Every increase in the costs of providing occupational pensions decreases an employer's willingness to provide this important social benefit, especially where it is done on a voluntary basis.

"Harmonisation of the 28 EU member states pension regulation is therefore impossible, would create too much of an administrative burden and it would not recognise the role of the social partners," he adds.

The future cross-border environment

The finalised IORP Directive will play a major part in determining how the cross-border environment looks in the near future. Whilst Leppälä believes there are "some provisions about cross-border activities that are a step in the right direction" such as the mutual recognition of information requirement, he argues it is unlikely to "drastically encourage cross-border activity".

Previnet senior manager Martino Braico is more optimistic.

"We are experiencing a real interest for cross-border solutions. tax, social and labour law issues are managed through a co-operation with locally based consultants and a well-known network of consultancy firms acting in the European and international space. Through a phased approach (by country, by activity, by local regulation) IORPs became feasible.

"We have real cases in place and several ongoing projects. Previnet has been administering the NATO DC arrangement since 2007 and this pension scheme is multicurrency and multilingual. Members and employers are spread across Europe, Scandinavia, the US and Canada with the scheme offering 11 investment vehicles with four different investment managers. Members have different investment choices available either through pre-determined lifestyle or individual investment options."

Based on general sentiments in the industry however, it is not surprising that a large proportion of the pensions industry remains sceptical over cross-border pension take-up improving any time soon. The complexities inherent within the cross-border space are proving to be a firm barrier thus quashing any further encouragement of cross-border pension provision at this moment in time. ■