

Global Benefits & Compensation Roundtable

Cross-border Pension Plans in Europe
September 24, 2015



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Roundtable Mission

- The mission of the Roundtable is to:
 - ✓ provide education in an area that is becoming increasingly important and where knowledge is not concentrated in a small number of source materials or among a discreet group of professionals; and
 - ✓ address current topics that inherently involve cross-border considerations as contrasted with a country by country review.



Presenters' Bios



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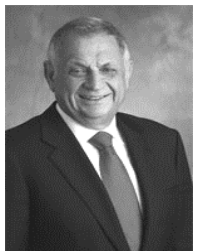
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Cross-border pension plans in Europe

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24 September 2015



Overview

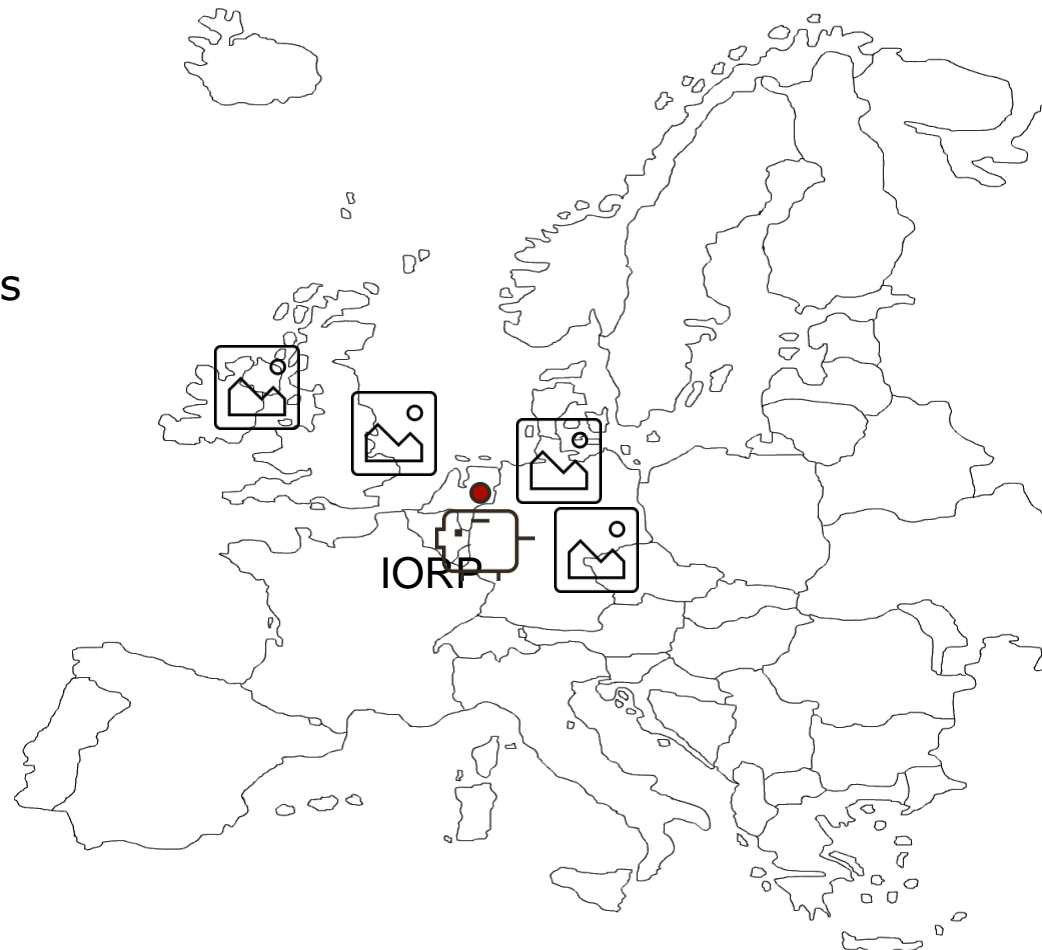
1. Background to the EU provisions on cross-border pension plans
2. Concept of a cross-border pension plan (IORP) & the applicable legislation
3. Why set up a cross-border pension plan?
4. Funding and financing
5. Where to set up a cross-border pension plan?
6. How to set up a cross-border pension plan?
7. Multinationals that have set up a cross-border pension plan
8. What are the challenges/risks?
9. Conclusions

1. EU provisions on cross-border pension plans

- ▶ Fundamental principles of the EU Treaty : freedom to provide services & freedom of movement of workers
- ▶ EU Directive 2003/41 of 3 June 2003 : “a first step on the way to an internal market for occupational retirement provision organised on a European scale”
- ▶ Each EU Member-State had to comply with the Directive before 23 September 2005 – 28 Member States
- ▶ As a rule: similar rules throughout the EU Member States (but there are differences!)

2. Concept of a cross-border pension plan

For example:
A global multinational
with separate businesses
in Ireland, UK, the
Netherlands, Germany
and Belgium



2. Concept of a cross- border pension plan

- ▶ One pension plan, several employers in different jurisdictions
- ▶ Choice between one EU-wide pension arrangement or several national pension arrangements
- ▶ Prudential framework of the Home Member State
- ▶ Social & labor law provisions of the Host Member State + additional information requirements (if any) + investment requirements (if any)
- ▶ Supervision by the regulator of the Home Member State – in close cooperation with the regulator of the Host Member State

2. Concept of a cross-border pension plan

- ▶ **Home Member State:** the Member State in which the IORP has its registered office and its main administration
- ▶ **Host Member State:** the Member State whose social & labor law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking (~ the employer) and members

2. Concept of a cross-border pension plan

Applicable legislation:

- ▶ Prudential framework:
 - Corporate structure
 - Funding requirements
 - Investment requirements
 - Governance

- ▶ Social & labor law provisions:
 - Vested rights
 - Portability
 - Indexation
 - Protection of pension

3. Why set up a cross-border pension plan?

- ▶ Governance
- ▶ Investment
- ▶ Cash contribution flexibility
- ▶ Tax reasons (taxation of the pension fund)
- ▶ International pension plan for mobile employees
- ▶ Tactical – support corporate transaction activity

3. Why set up a cross-border pension plan?

- ▶ Centralization
 - Fewer service providers
 - Less personnel / management time involved
 - Highly qualified / experienced trustees

- ▶ Operational cost reduction through economies of scale
 - Better investment fees (but ...)
 - More investment options (but ...)
 - Less administration cost (but ...)
 - Less legal costs (but ...)
 - Less operational costs

4. Funding and financing

- ▶ Home country regulations apply
 - Funding target
 - Assumptions and technical provisions

- ▶ Pace of funding
 - Fully funded at all times

- ▶ Investment strategy in line with Home Country requirements

5. How to select a Home Member State

- ▶ Looking for a Home Member State that meets a number of key points:
 - Favorable taxation regime for pension funds (zero taxation?)
 - Clear legislation on IORPS
 - Good governance (prudent but not too heavy?)
 - Appropriate funding requirements
 - Flexible investment rules
 - Relationship with the regulator
 - Double tax agreements

5. How to select a Home Member State

- ▶ Most attractive locations:
 - Belgium
 - Ireland
 - Luxembourg

6. How to set up a cross-border pension plan?

- ▶ Only for future pension accrual :
 - No transfer of past service, assets or liabilities
 - Set up a pension plan in one Member State (Home MS)
 - Notification procedure with the Host MS – involving the regulators in Home and Host MS

- ▶ For past and future accrual :
 - Transfer of past service, assets and liabilities
 - Set up a pension plan in one MS or use an existing pension plan
 - Notification procedure with the Host MS
 - Transfer procedure between the pension plans in Home and Host MS
 - Liquidate the pension plan in the Host MS

7. Multinationals that have set up a cross-border pension plan

- ▶ Alcon
- ▶ BP
- ▶ Chevron
- ▶ Citco
- ▶ Intel
- ▶ J&J
- ▶ Nestlé
- ▶ Pfizer
- ▶ Swiss Life
- ▶ The Associated Press
- ▶ Unilever

8. What are the challenges/risks?

- ▶ Set-up cost

- ▶ Administrative procedures
 - EU notification procedure
 - Approval of regulator of Host Member State with transfer
 - Sometimes approval of Host Member State tax authorities → exempt scheme

- ▶ Tax obstacles
e.g.
 - Tax authorities of the Host Member State do not recognize the IORP as an exempt scheme
 - EET; ETT; TEE systems: tax obstacle for international mobile employees

8. What are the challenges/risks?

- ▶ “Fully-funded at all times” (currently under debate)

- ▶ Some legal challenges – but practical solutions
e.g.
 - Contradiction between social & labor provisions (Host Member State) and prudential rules (Home Member State)
 - Definition of cross-border activities

8. What are the challenges/risks?

- ▶ Engagement of members and trade unions
 - Information
 - Communication
 - Involvement at an early stage
 - Understanding differences in pension systems
- ▶ Engagement of trustees
 - Benefit security
 - Future governance

9. Conclusions

- ▶ Some hurdles to overcome
 - Technical
 - Legal
 - Set up cost
 - Stakeholder engagement and consent

- ▶ But worth it for some companies
 - Governance
 - Centralization
 - Cash contribution flexibility
 - Economies of scale

Questions?



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