

Protocol

Relating to the Collaboration of the Relevant Competent Authorities of the Member States of the European Union in particular in the Application of the Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the Activities and Supervision of Institutions for Occupational Retirement Provision (IORPs) Operating Cross-Border Activity

October 2009

Table of Contents

Executive summary	4
Part 1: General considerations	6
1.1. General aims and principles.....	6
1.2. Participating Authorities	6
1.3. Cooperation between Competent Authorities	7
1.4. Additional Cooperation	7
1.5. Harmonisation of documents used.....	8
1.6. Language	9
1.7. Rules on confidentiality	9
1.8. Power to amend the Protocol	9
1.9. Exemption from legal liability.....	10
Part 2: Authorised IORPs and the exchange of information for the notification process.....	11
2.1. IORPs with prior authorisation	11
2.2. Requirements for an initial dialogue when an IORP expresses its intention to commence cross-border activity – the notification process.....	11
2.3. Initial dialogue between the IORP and its home Member State Competent Authority	11
2.4. Home Member State Competent Authority’s doubts as to an IORP’s proposed cross-border activity	12
2.5. Dialogue during the notification process between the Competent Authorities, and between the home Member State Competent Authority and the IORP.....	13
Part 3: Ongoing supervision and the exchange of additional information after the notification process	16
3.1. Ongoing supervision	16
3.2. Changes to information previously supplied about IORPs or pension schemes	16
3.3. Changes to information about relevant social and labour law, investment restrictions and information requirements	17
3.4. Home or host Member State Competent Authority identifies non- compliance or has other concerns	17
3.5. Dialogue between the home and host Member State Competent Authorities	19
3.6. Sharing information about interventions.....	19

3.7. Ring fencing of an IORP’s assets and liabilities 19

3.8. Interaction with the Life Directive..... 20

Part 4: Complaints from members and beneficiaries 22

4.1. Complaints handling systems in Member States 22

4.2. Complaints handling procedures..... 22

4.3. Dispute over responsibilities 23

4.4. Information to be made available to the public..... 24

Appendices

Appendix 1: Summary of terms usedI/1

Appendix 2: Information regarding the IORP and/or pension scheme to be notified to the host stateII/1

Appendix 3: Legal form of the IORP III/1

Appendix 4: Flowcharts..... IV/1

Appendix 5: Home Member State Competent Authorities for the purposes of the Directive V/1

Appendix 6: Host Member State Competent Authorities for the purposes of the Directive VI/1

Appendix 7: The information about national complaints handling systems to be made available to the public by signatories to the Budapest Protocol.....VII/1

Appendix 8: Joinder AgreementVIII/1

Executive summary

This Protocol provides a framework for the cooperation of competent authorities in the implementation of Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (IORPs) in relation to the supervision of IORPs that operate cross-border.

It sets out the agreement between competent authorities to cooperate in the supervision of cross-border activities of IORPs.

The competent authorities which are Members of CEIOPS, and other competent authorities who are not CEIOPS Members but who have adhered to the Budapest Protocol, are referred to as the Competent Authorities throughout this document.

The Protocol is in four parts and has eight appendices.

Part 1 covers general considerations and sets out:

- the origins and general aims;
- the general principles for cooperation between the Competent Authorities and aspirations for furthering effective supervision; and
- the power to amend the Protocol.

Part 2 covers the notification process. It includes:

- reference to the requirement that only authorised IORPs can operate cross-border;
- the exchanges of information required in the notification process between the home Member State Competent Authority and the IORP, and between the home and host Member State Competent Authorities; and
- the exchanges of information expected when the Competent Authorities find that there is incompatibility in their legal frameworks as to the existence of cross-border activity.

Part 3 covers the ongoing supervision and the exchange of additional information after the notification process between the Competent Authorities for ongoing supervision of IORPs including the following:

- the respective roles of the home Member State Competent Authority and the host Member State Competent Authority;
- changes to the information previously provided in the notification process;
- changes to a host Member State's requirements in respect of social and labour law, investment restrictions and the provision of information; and
- non-compliance.

Part 4 covers the roles of Competent Authorities in dealing effectively with complaints from members and beneficiaries. It includes:

- the respective roles of the home Member State Competent Authority and the host Member State Competent Authority;
- dealing with disputes over which body is the responsible body; and
- information to be made available to the public by each Competent Authority.

Part 1: General considerations

1.1. General aims and principles

1.1.1. Directive 2003/41/EC (the Directive) sets out the principles for the activities and supervision of IORPs. The Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) considers that the adoption of the Directive makes necessary the agreement of a framework for their cooperation in the area of cross-border activity. This Protocol sets out the framework.

1.1.2. This Protocol shall enter into force on 30th October 2009.

1.1.3. This Protocol describes how practical cooperation between the Competent Authorities can take place.

1.1.4. The Protocol is to be followed by the Competent Authorities. The Protocol relates to the exchange of the information, actions required for the supervision of cross-border arrangements and the handling of member and beneficiary complaints.

1.1.5. Nothing in this Protocol is to be taken as hindering in any way the free exchange of general information for use in the supervision of IORPs, either specifically or generally between Competent Authorities.

1.1.6. In the case of divergent views, the relevant Competent Authorities shall strive to agree on a viable solution; in cases where no such solution can be reached, each Authority may make recourse to the CEIOPS Mediation Mechanism. Information on the Mediation Mechanism is available on the CEIOPS website.

1.2. Participating Authorities

1.2.1. CEIOPS considers that all aspects of the cooperation between Member States regarding cross-border activities should be addressed. This could not be achieved by limiting the Protocol to Members of CEIOPS.

1.2.2. If certain supervisory tasks according to the Directive fall under the competence of other authorities that are not Members of CEIOPS, those national authorities may, subject to approval by Members of CEIOPS, join the Protocol, if this contributes to further strengthening cross-border cooperation. The term 'Competent Authorities' shall therefore include those authorities which have

adhered to the Protocol. The Protocol may be joined by signing the Joinder Agreement (Appendix 8) or by a letter from a competent authority informing CEIOPS of their willingness to adhere to the Budapest Protocol.

1.2.3. This Protocol applies to the competent authorities of non-EU Member States that are parties to the European Economic Area (EEA) agreement as if they were the competent authorities of EU Member States.

1.2.4. Consequently, where in the Protocol the term 'Member States' is used, this includes the non-EU Member States that are parties to the EEA Agreement. Where the terms 'European Union' ('EU') is used, this should be understood to apply to the whole European Economic Area (EEA). 'Member of CEIOPS' shall include the Competent Authorities of non-EU countries which are parties to the EEA Agreement and formally Observers of CEIOPS.

1.3. Cooperation between Competent Authorities

1.3.1. The Competent Authorities will cooperate in all cases where it is required under the Directive.

1.3.2. The Competent Authorities agree there should be a constructive and open dialogue between the home and host Member State Competent Authorities with a view to developing best practices in this sphere and closer cooperation, and by so doing, preventing distortions of competition and creating the conditions required for unproblematic cross-border membership.

1.3.3. The Competent Authority of the home Member State retains the responsibility for principal supervisory control over an IORP operating cross-border.

1.3.4. Where Competent Authorities encounter incompatibilities in their legal frameworks, they will deal with these incompatibilities in cooperation, as far as legal limits and competencies allow. Through this cooperation, they will endeavour to protect the rights of members and beneficiaries, as appropriate. The Authorities will ensure that relevant parties in their respective Member States are adequately informed.

1.4 Additional cooperation

1.4.1. Given the importance to supervision of the good repute, competence and professional experience of the persons running the IORP, the Competent

Authorities shall endeavour to share with other Competent Authorities the information available to them in those fields.

1.4.2. The principles of cooperation described in this Protocol do not limit or restrict the ability of Competent Authorities to exchange information or otherwise cooperate in their supervision of IORPs operating cross-border. Competent Authorities are encouraged to initiate spontaneous exchanges of information where they consider a matter may be of concern or interest to one or more other Competent Authorities.

1.4.3. Where an IORP outsources a function to an entity in another Member State, the Competent Authority in the other Member State shall, upon request, undertake its best effort to provide assistance to the IORP's Competent Authority, even where the IORP is not operating cross-border. Assistance shall be provided to the extent reasonable and subject to national legislation of a requested Member State.

1.4.4. In addition, the Competent Authorities agree that their cooperation may extend to areas not expressly covered by the Directive or this Protocol where they consider it appropriate for the effective supervision of an IORP.

1.5. Harmonisation of documents used

1.5.1. The Protocol recognises that each home Member State Competent Authority will use a variety of supervisory methods and these will differ between Competent Authorities as will their practices in relation to documents, reporting, statistics and record keeping.

1.5.2. However, through the regular exchange of information and experience necessary for effective cooperation and the development of best practice, it is anticipated that there will be a gradual harmonisation of supervision and supervisory approaches.

1.5.3. The supervision of IORPs operating cross-border is facilitated by using a standard document for the exchange of the information Competent Authorities need to share, such as the information described in Article 20 (3) of the Directive.

1.5.4. Hence the Competent Authorities have developed a standard document to share information regarding the IORP and/or pension scheme to be operated cross-border (see Appendices 2 and 3). This document will not restrict Competent Authorities that require or wish to share additional information, and its content will be reviewed periodically in the light of experience and use.

1.6. Language

1.6.1. The Competent Authorities agree that communications between any two Competent Authorities should be conducted in a manner conducive to effective supervision of IORPs operating cross-border. Bearing this in mind they have agreed the languages that they will normally use for the exchange of information.

1.6.2. They agree that

- the information regarding the IORP and/or pension scheme provided by the home Member State Competent Authority to the host Member State Competent Authority during the notification process shall be in the language of the host Member State or such other language as they agree;
- relevant social and labour law and all communications relating to it will be conducted in the language of the host Member State;
- the information requirements and potential investment restrictions shall be communicated in the language of the host Member State requiring them to be applied.

The host Member State Competent Authority may additionally provide a full or summary version of the applicable social and labour law and information requirements and investment restrictions translated into the language of the home Member State or other agreed language.

1.7. Rules on confidentiality

1.7.1. The Competent Authorities agree to exchange relevant confidential information where necessary and as permitted by their national law, where it may be useful to facilitate effective supervision of IORPs operating cross-border.

1.7.2. The Competent Authorities agree that when they exchange confidential information they will each respect its confidentiality.

1.8. Power to amend the Protocol

1.8.1. The Protocol may be altered by CEIOPS at any time. If it is altered, Competent Authorities, which are not Members of CEIOPS and which wish to continue to accept it, will need to sign the altered Protocol on an individual basis.

1.8.2. 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.

1.9. Exemption from legal liability

No Competent Authority shall incur any legal liability in respect of the accuracy or completeness of the information it provides under this Protocol.

Part 2: Authorised IORPs and the exchange of information for the notification process

2.1. IORPs with prior authorisation

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.

2.2. Requirements for an initial dialogue when an IORP expresses its intention to commence cross-border activity – the notification process

2.2.1. In this Protocol an authorised IORP which commences cross-border activity is called a Guest IORP in the host Member State.

2.2.2. When an authorised IORP wishes to commence a cross-border activity, the IORP shall inform its home Member State Competent Authority of its intention. This notification starts a process of exchanging information between

- the IORP and its home Member State Competent Authority; and
- the home Member State Competent Authority and the host Member State Competent Authority.

2.2.3. These requirements will apply on each occasion that an authorised IORP wishes to commence a cross-border activity for a new sponsoring undertaking and/or a new host state.

2.2.4. The matters to be addressed in the exchange of information are described in paragraphs 2.3. and 2.5. of the Protocol.

2.3. Initial dialogue between the IORP and its home Member State Competent Authority

2.3.1. The home Member State Competent Authority shall receive from the IORP information regarding the IORP and/or pension scheme to be operated for the sponsoring undertaking in the host Member State(s) (see paragraph 1.5.4 and Appendices 2 and 3).

2.3.2. The date the home Member State Competent Authority receives this information is called the 'Start Date' in this Protocol. If the information required is not all supplied at the same time, the date on which it receives the last item of information will be the Start Date.

2.4. Home Member State Competent Authority's doubts as to an IORP's proposed cross-border activity

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 IORP

are compatible with the operations proposed in the host Member State.

2.4.2. It is recognised that each home Member State Competent Authority will have its own procedures to satisfy itself about each of these requirements.

2.4.3. If, during the notification process, the home Member State Competent Authority has reason to doubt that these requirements are met, the IORP shall not be permitted to engage in the proposed cross-border activity. The home Member State Competent Authority will make its own arrangements to inform the IORP and, where it considers it appropriate, the intended host Member State Competent Authority.

2.4.4 The home Member State Competent Authority has a maximum period of three months from the Start Date to decide whether it has reason to doubt that the IORP meets the requirements to operate cross-border as proposed in the host Member State(s).

2.5. Dialogue during the notification process between the Competent Authorities, and between the home Member State Competent Authority and the IORP

2.5.1. If the home Member State Competent Authority has no reason to doubt that the IORP meets the requirements to operate cross-border as proposed, then, within three months from the 'Start Date', it must

- pass in writing the information described in paragraph 2.3.1 to the host Member State Competent Authority;
- inform the host Member State Competent Authority in writing whether the home Member State's Competent Authority requires that the IORP's assets and liabilities should be subject to ring fencing;
- inform the IORP in writing that it has passed the information to the host Member State Competent Authority and of the date it did so.

2.5.2. The host Member State Competent Authority shall acknowledge receipt of the information described in paragraph 2.3.1. as soon as possible. The date the information is received by the host Member State Competent Authority starts the two months time limit in which it shall provide, if appropriate, the home Member State Competent Authority with any information noted in paragraph 2.5.4.

2.5.3. Having regard to the principle of cooperation between Competent Authorities as described in paragraphs 1.3 and 1.4, but without affecting the Start Date, in addition to the initial information requirements described in paragraph 2.3.1.,

- the home Member State Competent Authority may at its discretion supply such other information, where it is competent to do so, that it considers will be helpful to the host Member State Competent Authority;
- the host Member State Competent Authority may ask the home Member State Competent Authority to supply further information.

2.5.4. Having received the information described in paragraph 2.3.1. from the home Member State Competent Authority, the host Member State Competent Authority shall, if appropriate, notify the home Member State Competent Authority in writing of its requirements for compliance with any

- social and labour law relevant to the field of occupational pensions under which a pension scheme must be operated in the host Member State;
- investment restrictions (if any) that are to apply to those assets of the Guest IORP attributable to activities carried out in the host Member State, as allowed by Article 18 (7) of the Directive (investment rules); and

- information requirements to be met by IORPs operating in the host Member State in accordance with Article 11, as required by Article 20 (7) of the Directive (information to be given to the members and beneficiaries).

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.

2.5.6. The host Member State Competent Authority will provide the requirements described in paragraph 2.5.4. in sufficient time for the home Member State Competent Authority to pass the information about the host Member State's requirements to the IORP by the Expiry Date at the latest.

2.5.7. If the IORP's intended host Member State Competent Authority is of the opinion that there is not a cross-border activity, the IORP's intended host Competent Authority will inform the home Member State Competent Authority in writing about this opinion within two months from the date of receipt of the information referred to in paragraph 2.3.1.

2.5.8. Notwithstanding this difference of opinion, the intended host Member State Competent Authority may provide the information referred to in paragraph 2.5.4 to the home Member State Competent Authority within two months of the date of receipt of the information referred to in paragraph 2.3.1.

2.5.9. If the intended host Member State Competent Authority identifies incompatibility with its social and labour law, it will inform the home Member State Competent Authority about this incompatibility and, if appropriate, suggest possible solutions within two months from the date of receipt of the information referred to in paragraph 2.3.1.

2.5.10. After receiving the information described in this section, the home Member State Competent Authority will pass it to the IORP. The date the information as referred to in paragraphs 2.5.4 or 2.5.8 is received by the IORP is called the 'Information Date' in this Protocol.

2.5.11. In the event that the host Member State Competent Authority has not provided the information described in paragraph 2.5.4. to the home Member State Competent Authority before the Expiry Date, the home Member State Competent Authority will pass the information to the IORP when it has been received.

2.5.12. An IORP can operate as a Guest IORP on the earlier of

- the Information Date; or

- the Expiry Date.

2.5.13. However, irrespective of the time taken by the Competent Authorities for this exchange of information, it remains the responsibility of the IORP to ensure compliance with the required provisions at all times.

Part 3: Ongoing supervision and the exchange of additional information after the notification process

3.1. Ongoing supervision

The Competent Authorities confirm that

- the home Member State Competent Authority will be responsible for supervision of the IORP as a whole, including the appropriate governance of, and compliance generally by, the Guest IORP, and enforcement, in accordance with the Competent Authority's normal supervisory practices. This will include supervision of compliance with the investment restrictions (if applied);
- the host Member State Competent Authority will supervise the activities of the Guest IORP in the host Member State in relation to compliance with its social and labour law relevant to the field of occupational pensions, and in relation to information requirements applied in accordance with Article 11, as required by Article 20 (7) of the Directive (information to be given to the members and beneficiaries), and report to the home Member State Competent Authority any suspected breaches or issues about which it is concerned.

3.2. Changes to information previously supplied about IORPs or pension schemes

3.2.1. The Competent Authorities recognise that events or significant changes to IORPs or pension schemes will give rise to a need for the Competent Authorities to exchange information. Significant changes could include changes to the information passed between the Competent Authorities during the notification process.

3.2.2. Where any information about such changes may be needed by either Competent Authority for supervision purposes or could result in significant risk to the interests of members or beneficiaries, the information about the event or change will be shared.

3.2.3. On receiving information about events or significant changes, the home Member State Competent Authority will take any supervisory actions it considers necessary and which it is competent to perform, informing the host Member State Competent Authority as appropriate.

3.2.4. Such actions may include those set out under Articles 14 and 19 (3) of the Directive.

3.3. Changes to information about relevant social and labour law, investment restrictions and information requirements

3.3.1. The host Member State Competent Authority will inform the home Member State Competent Authority in writing of any significant changes in respect of the

- social and labour law relevant to the field of occupational pensions under which a pension scheme must be operated in the host Member State;
- investment restrictions (if any) that are to apply to those assets of the Guest IORP attributable to activities carried out in the host Member State, as allowed by Article 18 (7) of the Directive (investment rules); and
- information requirements to be met by IORPs operating in the host Member State in accordance with Article 11, as required by Article 20 (7) of the Directive (information to be given to the members and beneficiaries);

as soon as possible and in any event by the later of the date the changes take effect or the date that the host Member State Competent Authority has been able to give full and due consideration to the changes.

3.3.2. Upon being advised of a change to the information it has been given, the home Member State Competent Authority will

- as soon as possible pass on the information to the IORP;
- confirm to the host Member State Competent Authority, in writing, that it has passed on the information to the IORP and the date it did so.

3.3.3. However, irrespective of the time taken by the Competent Authorities for this exchange of information, it remains the responsibility of the IORP to ensure compliance with the required provisions at all times.

3.4. Home or host Member State Competent Authority identifies non-compliance or has other concerns

3.4.1. The Competent Authorities recognise that there can be instances of a Guest IORP failing to comply with the requirements for the operation of cross-border arrangements:

- social and labour law relevant to the field of occupational pensions under which the pension scheme must be operated in the host Member State;
- investment restrictions (if any) that are to apply to those assets of the Guest IORP attributable to activities carried out in the host Member State, as allowed by Article 18 (7) of the Directive (investment rules); and
- information requirements to be met by IORPs operating in the host Member State in accordance with Article 11, as required by Article 20 (7) of the Directive (information to be given to the members and beneficiaries); and
- any requirements, including full funding requirements and, where appropriate, the requirement for regulatory own funds as provided for in Article 17 of the Directive, determined by the home Member State.

Those instances will give rise to the need for communication between host and home Member State Competent Authorities.

3.4.2. The Competent Authorities also recognise that there can be other instances which give rise to general concerns that threaten the security of

- the benefits being or to be provided by the Guest IORP; or
- the assets of the Guest IORP.

These instances could include, but are not limited to, activity in non-authorised areas, e.g., non-retirement related activities.

Those instances will give rise to the need for communication between host and home Member State Competent Authorities.

3.4.3. If the home Member State Competent Authority identifies non-compliance with the applicable investment restrictions or any of its own requirements, as described in paragraph 3.4.1., or if it has concerns of the type described in paragraph 3.4.2., it will take appropriate action, and, depending on the nature of the matter at hand, notify in writing the host Member State Competent Authority of the details of that event, the name of the Guest IORP, and sponsoring undertaking involved.

3.4.4. If a host Member State Competent Authority identifies non-compliance with its relevant social and labour law or information requirements, described in

paragraph 3.4.1., or if it has concerns of the type described in paragraph 3.4.2, it will immediately notify in writing the home Member State Competent Authority of the details of the matter and the name of the Guest IORP involved. The notification will include

- its concerns on the situation or activities of the Guest IORP in the host Member State; and,
- if appropriate, any request that enforcement action should be taken against the IORP.

3.4.5. The home Member State Competent Authority will – in coordination with the host Member State Competent Authority – take action to ensure future compliance, including, where appropriate, any actions set out under Article 14 of the Directive.

3.4.6. Where, in respect of the host Member State’s relevant social and labour law, actions as referred to in paragraph 3.4.5. prove ineffective, or because appropriate measures are lacking in the home Member State, then, and only after informing the home Member State Competent Authority of its intentions, the host Member State Competent Authority may take action against the Guest IORP, but only in the circumstances and to the extent permitted by the Directive.

3.4.7. Any action taken under paragraph 3.4.6. by the host Member State Competent Authority to penalise a Guest IORP must be notified to the home Member State Competent Authority before it is taken.

3.5. Dialogue between the home and host Member State Competent Authorities

The Competent Authorities agree there may be a need for additional communications between the home Member State and host Member State Competent Authorities.

3.6. Sharing information about interventions

3.6.1. The home Member State Competent Authority will advise the host Member State Competent Authority of any action taken under Article 14 of the Directive in respect of an IORP in so far as it may significantly affect the operation of the Guest IORP in the host Member State.

3.6.2. The host Member State Competent Authority will inform the home Member State Competent Authority of any action to be taken in respect of a Guest IORP under Article 20 (10) of the Directive before such action is taken.

3.7. Ring fencing of an IORP's assets and liabilities

3.7.1. Under Article 21 (5) of the Directive the host Member State Competent Authority may ask the home Member State Competent Authority to decide on "ring-fencing" of the assets and liabilities of a Guest IORP which are attributable to its activities in the host Member State, so that these assets are kept separate from the remaining assets and liabilities of the IORP.

3.7.2. If the home Member State Competent Authority decides that the assets and liabilities of a Guest IORP should be ring-fenced, the home Member State Competent Authority will notify

- the IORP that appropriate forms of ring-fencing, as envisaged in Articles 16 (3) and 18 (7) of the Directive apply. It will also notify the IORP of which parts of its assets and liabilities are to be kept separate under the appropriate forms of ring-fencing; and
- the host Member State Competent Authority that ring-fencing is to apply to the assets and liabilities of the Guest IORP and the date from which the ring-fencing will apply.

3.7.3. If the home Member State Competent Authority decides that the assets and liabilities of a Guest IORP should not be ring-fenced, the home Member State Competent Authority will notify the host Member State Competent Authority of that decision and the underlying reasons for that decision.

3.7.4. Where ring-fencing applies to some or all of the assets and liabilities of an IORP, this Protocol will apply individually to each part that is ring fenced, if appropriate.

3.8. Interaction with the Life Directive

3.8.1. Member States may choose to apply Article 4 of the Directive to the occupational retirement pensions business of insurance undertakings, which are covered by Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance.

3.8.2. Where an insurance undertaking to which this applies wishes to operate a cross-border arrangement in accordance with Article 20 of the Directive, the provisions outlined in this Protocol will apply in respect of the assets and liabilities of the business which have been identified by the home Member State Competent Authority as ring-fenced in accordance with the specific requirements of Article 4 of the Directive.

3.8.3. The home Member State Competent Authority will notify the host Member State Competent Authority that Article 4 of the Directive applies.

3.8.4. The home Member State Competent Authority shall ensure there is verification of the insurance undertaking's separation of its relevant occupational retirement provision business from its other business as part of the authorisation and notification procedures and ongoing supervision.

Part 4: Complaints from members and beneficiaries

4.1. Complaints handling systems in Member States

4.1.1. In the context of the development of the single market for financial services, it is important that all complaints from members and beneficiaries are dealt with by the relevant complaints handling body, irrespective of whether the complaint involves cross-border activity. However, references to complaints in this Protocol refer to complaints from members and beneficiaries of pension schemes operated by IORPs engaging in cross-border activity.

4.1.2. The manner in which complaints handling is organised within a Member State is a matter for each Member State and therefore not subject to this Protocol. There are a wide variety of complaints handling systems in Member States. In some Member States, complaints are dealt with by Competent Authorities, whilst others have developed Ombudsman services or other systems, or have a combination of both. The ways in which these systems operate vary considerably across the Member States.

4.1.3. Where complaints have a cross-border component, it is important for individual members and beneficiaries and for consumer confidence generally, that the differences in complaints handling systems do not prevent or deter complaints from being directed to the relevant bodies and subsequently dealt with.

4.1.4. The procedures outlined in this part of the Protocol are intended to facilitate the process of identifying the relevant complaints handling body and ensure that complaints filed with a Competent Authority are addressed and arrive at the body that is competent to deal with the complaint.

4.2. Complaints handling procedures

4.2.1. It is important that a complaint is assessed by the Competent Authority which initially receives it, to establish which body is responsible for dealing with the complaint.

4.2.2. In cases where the Competent Authority that receives the complaint is competent to deal with the complaint, it shall inform the complainant, as soon as possible, of applicable national procedures.

4.2.3. In cases where the Competent Authority that receives the complaint is not competent to deal with the complaint, but another body in the same Member State is, the Competent Authority shall, as soon as possible:

- if legally possible, pass the complaint directly to the body competent to deal with the complaint and inform the complainant of the referral;
- if legally not possible, provide the complainant with any relevant information about the body competent to deal with the complaint, to facilitate the referral of the complaint by the complainant.

4.2.4. In cases where the Competent Authority that receives the complaint is not competent to deal with the complaint and feels that the complaint needs to be addressed in another Member State, the Competent Authority that receives the complaint shall, as soon as possible:

- if it knows who the competent body in the other Member State is and it is legally possible, pass the complaint directly to the competent body and inform the complainant of the referral;
- if it knows who the competent body in the other Member State is but it is legally not possible to directly pass the complaint to the competent body, provide the complainant with any relevant information about the competent body in the other Member State, in order to facilitate the referral of the complaint by the complainant;
- if it does not know who the competent body in the other Member State is, inform the Competent Authority of the other Member State of the complaint and inform the complainant of the referral.

4.2.5. If a complaint contains issues relevant to the supervision of an IORP, the host Competent Authority that receives the complaint shall, as soon as possible, and if legally possible, provide the home Competent Authority with relevant information on the complaint.

4.2.6. In the cases referred to in paragraphs 4.2.3. to 4.2.4., the Competent Authority that initially receives the complaint shall explain to the complainant why it considers itself not to be competent to deal with the complaint, and why it considers the other Competent Authority or body to be competent.

4.2.7. If a complaint contains issues that are known by the home Competent Authority to be relevant to the supervision by the host Competent Authority, the home Competent Authority shall, as soon as possible, and if legally possible, provide the host Competent Authority with relevant information on the complaint.

4.3. Dispute over responsibilities

4.3.1. Where differences of opinion exist as to who assumes responsibility for the complaint, every best endeavour shall be made by the Competent Authorities to

resolve the issue in good faith within four weeks from the date on which the complaint was initially received from the complainant.

4.4. Information to be made available to the public

4.4.1. The Competent Authorities shall make information about their national complaints handling systems, including updates as necessary, available to the public. This information would include, at a minimum, contact details of bodies involved in the complaints handling systems.

4.4.2. Each Competent Authority shall make the aforementioned information available through their public website. The Public Area of the CEIOPS website shall provide links to the relevant national websites.