

Relevant legal provisions that apply to the Belgian second pillar pension schemes in case of a cross-border activity of a foreign IORP in Belgium

Pursuant to Article 11 of *Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORP II)* these institutions are permitted to carry out cross-border activities within the limits of the applicable provisions of the social and labour law in the host Member State.

An activity is considered to be a cross-border activity in Belgium if an institution for occupational retirement provision (hereafter IORP), authorized in another Member State than Belgium, manages occupational pension schemes which, in respect of the relationship between the sponsoring undertaking and the members and/or beneficiaries, are subject to the provisions of Belgian social and labour law applicable to pension schemes.

In accordance with Article 11 (7) of IORP II, the competent authority of the host Member State¹ is required to inform the competent authority of the home Member State of the *provisions of social and labour law* relevant to the field of occupational pensions in the host Member State and of the *information requirements* referred to in Title IV of IORP II which apply to the cross-border activity. In addition, in the framework of a cross-border activity, Article 33 (1) of IORP II also includes an implicit obligation for the competent authorities of the host and home Member States to exchange information. Pursuant to this provision, the host Member State may require IORPs, who manage occupational pension schemes where members and beneficiaries fully bear the investment risk, to appoint one or more depositaries for the safe-keeping of assets and oversight duties when carrying out cross-border activities. In the framework of cross-border activity, it is therefore appropriate that the supervisory authority of the host Member State informs the supervisory authority of the home Member State of such a *requirement to designate a depositary*.

The information on the three aforementioned topics is provided in accordance with the "[Annex to the Board of Supervisors Decision on collaboration of the competent authorities of the Member States of the European Economic Area \(EEA\) with regard to IORP II](#)".

Article 11 (7) of IORP II and the implicit information obligation arising from Article 33 (1) of IORP II were transposed into Belgian law by Article 143 of the LIRP/WIBP².

¹ The host Member State is the Member State, other than the home Member State of the IORP, whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and the members and/or beneficiaries. The FSMA is the competent authority in Belgium pursuant to Article 143 of the Law of 27 October 2006 on the supervision of institutions for occupational retirement provision.

² Law of 27 October 2006 on the supervision of institutions for occupational retirement provision.

In order to inform the authority of the home Member State in the case of cross-border activities of a foreign IORP in Belgium, this document contains an overview of:

- I. the provisions of social and labour law applicable to Belgian second pillar pension schemes;
- II. information requirements as referred to in Title IV of IORP II;
- III. the provisions on the safe-keeping of assets.

These provisions apply to foreign IORPs that carry out activities in Belgium. As regards Belgian pension schemes, individual or collective relationships among organisers, employers and employees are governed exclusively by Belgian law, even if the pension scheme is managed by a foreign IORP.

The FSMA stresses that, pursuant to Article 54 of the WAP/LPC³, Article 22 of the WAPW/LPCS⁴, Article 62 of the WAPZ/LPCI⁵, Article 18 of the WAPZNP/LPCIPP⁶ and Article 51 of the WAPBL/LPCDE⁷, pension institutions may not cooperate in pension schemes that are contrary to these laws or their implementing decrees. Those provisions, the violation of which may result in penal sanctions being imposed on, among others, directors of IORPs, apply equally to foreign IORPs in respect of any Belgian pension scheme they may manage.

This overview is not exhaustive and is without prejudice to the obligation, when carrying out activities in Belgium, to respect the applicable provisions of Belgian law that are not mentioned therein (for example provisions of civil law, commercial law, criminal law, tax law or data protection laws, or other social and labour law provisions than those applicable to the management or execution of occupational pension schemes).

The complete Belgian legislation may be consulted on http://www.ejustice.just.fgov.be/cgi_loi/loi.pl.

The legislation that applies specifically to the Belgian second pillar pension schemes can also be consulted via the links provided below.

Finally, the following information can be consulted on the website of the FSMA:

- general information about the second pension pillar in Belgium in the form of [FAQs](#);
- [information intended for the pension institutions](#) about the applicable legislation, as well as circulars, communications, reports and positions issued by the FSMA.

The FSMA can neither be held liable for any inaccuracies in or incompleteness of this overview, nor for the use made of it. No rights can be derived from this overview.

³ Law of 28 April 2003 on supplementary pensions and on the tax regime applicable to such pensions and to certain additional social security benefits (see list below).

⁴ Law of 6 December 2018 establishing a voluntary supplementary pension for employees and containing various provisions regarding supplementary pensions (see list below).

⁵ Title II, Chapter I, Section 4, of the Programme Law (I) of 24 December 2002 (see list below).

⁶ Law of 18 February 2018 containing various provisions on supplementary pensions and establishing a supplementary pension for self-employed natural persons, for assisting spouses and for self-employed assistants (see list below).

⁷ Title 4 of the Law of 15 May 2014 containing various provisions (see list below).

I. PROVISIONS OF SOCIAL AND LABOUR LAW APPLICABLE TO THE BELGIAN SECOND PILLAR PENSION SCHEMES

A. Legislation applicable to all pension schemes
A.1. DB2P Database of supplementary pensions
<ul style="list-style-type: none">• Title XI, Chapter VII, of the Programme Law (I) of 27 December 2006.• Royal Decree of 25 April 2007 implementing Article 306 of the Programme Law of 27 December 2006. <p>Information regarding the obligations of pension institutions in respect of the DB2P database is available on the following site: http://www.db2p.be</p>
A.2. General anti-discrimination legislation
<ul style="list-style-type: none">• Law of 30 July 1981 designed to sanction certain actions motivated by racism and xenophobia.• Law of 10 May 2007 designed to fight certain forms of discrimination.• Law of 10 May 2007 designed to fight discrimination between women and men.
A.3. Other legislation
<ul style="list-style-type: none">• Article 54 of the Law on mandatory health care insurance and indemnities, consolidated on 14 July 1994.
B. Supplementary pensions for employees
B.1. Legislation specifically regarding supplementary pensions for employees
<ul style="list-style-type: none">• Title II of the Law of 28 April 2003 on supplementary pensions and on the tax regime applicable to such pensions and to certain additional social security benefits (abbreviated WAP/LPC).• Royal Decree of 14 November 2003 implementing the Law of 28 April 2003 on supplementary pensions and on the tax regime applicable to such pensions and to certain additional social security benefits (abbreviated KBWAP/ARLPC).• Royal Decree of 14 November 2003 establishing the solidarity benefits linked to social supplementary pension schemes.• Royal Decree of 14 November 2003 establishing the rules concerning the financing and management of solidarity commitments.
B.2. Legislation specifically regarding voluntary supplementary pensions for employees (abbreviated VAPW/PLCS)
<ul style="list-style-type: none">• Law of 6 December 2018 establishing a voluntary supplementary pension for employees and containing various provisions regarding supplementary pensions (abbreviated WAPW/LPCS).

B.3. Legislation specifically regarding supplementary pensions for employees of a public employer (public pension commitments)

- Law of **30 March 2018** disqualifying the services of non permanently appointed personnel from counting towards a public sector pension, amending the individual accountability of the provincial and local authorities within the Combined Pension Fund, adapting the rules on supplementary pensions, amending the arrangements for financing the Combined Pension Fund of the provincial and local authorities, and providing supplementary finance for the Combined Pension Fund of the provincial and local authorities.

B.4. The most important other laws

a) Labour legislation

- Law of **20 September 1948** organizing economic activity.
- Law of **7 January 1958** on social security funds.
- Law of **12 April 1965** on the protection of employee remuneration.
- Law of **5 December 1968** on collective labour agreements and joint committees.
- Collective Labour Agreement no. 32bis of **7 June 1985** on the safeguarding of employees' rights in the event of a change of employer resulting from the legal transfer of an undertaking and regulating the rights of employees who are taken over in the event of a transfer of assets following a bankruptcy, rendered mandatory by the Royal Decree of **25 July 1985**.

b) Anti-discrimination legislation

In addition to the general anti-discrimination provisions referred to under point A.2 and in addition to the specific provisions of the WAP/LPC regarding discrimination⁸, the following legislation also applies:

- Collective Labour Agreement no. 25 of **15 October 1975** on equal pay for male and female employees, rendered mandatory by the Royal Decree of **9 December 1975**.
- Law of **5 March 2002** on the principle of non-discrimination toward part-time employees.
- Law of **5 June 2002** on the principle of non-discrimination toward employees with a fixed-term employment contract.

c) Language legislation

- Royal Decree of **18 July 1966** consolidating the laws on the use of languages for administrative purposes.
- Decree of **19 July 1973** on the use of languages in relations between employers and employees, as well as in company documents and papers that are required by law and by regulation, adopted by the Cultural Council of the Flemish Community.
- Decree of **30 June 1982** on protecting the freedom of language use and of the use of the French language in relations between employers and employees, as well as in company documents and papers that are required by law and by regulation, adopted by the French Community.

⁸ Articles 14, 14/1, 14/2, 14/3, and 14/4 of the WAP/LPC.

C. Supplementary pensions for the self-employed

C.1. Legislation specifically regarding voluntary supplementary pensions for the self-employed (VAPZ/PLCI)

- Title II, Chapter 1, Section 4, of the [Programme Law \(I\) of 24 December 2002](#) (abbreviated WAPZ/LPCI).
- [Royal Decree of 15 December 2003](#) establishing the solidarity benefits linked to social supplementary pension agreements.
- [Royal Decree of 15 December 2003](#) establishing the rules for the financing and management of a solidarity scheme linked to a social pension agreement.
- [Royal Decree of 12 January 2007](#) on supplementary pension agreements for self-employed workers.

C.2. Legislation specifically regarding voluntary supplementary pensions for self-employed natural persons (abbreviated VAPZNP/PLCIPP)

- [Law of 18 February 2018](#) containing various provisions on supplementary pensions and establishing a supplementary pension for self-employed natural persons, for assisting spouses and for self-employed assistants (abbreviated WAPZNP/LPCIPP).

C.3. Legislation specifically regarding supplementary pensions for self-employed company directors

- Title 4 of the [Law of 15 May 2014](#) containing various provisions (abbreviated WAPBL/LPCDE).

C.4. The most important other laws

- Royal Decree no. 38 of **27 July 1967** organizing social security for self-employed workers.
- Royal Decree no. 72 of **10 November 1967** on retirement pensions and survivors' pensions for self-employed workers.
- Royal Decree of **19 December 1967** laying down general rules for the implementation of Royal Decree no. 38 of 27 July 1967 organizing social security for self-employed workers.
- Royal Decree of **20 July 1981** implementing Article 52bis, § 1, of Royal Decree no. 72 of 10 November 1967 on retirement and survivors' pensions for self-employed workers.
- Royal Decree of **31 July 1981** on the organization of the supplementary pension scheme for self-employed workers.

II. INFORMATION REQUIREMENTS AS REFERRED TO IN TITLE IV OF IORP II

A. Information requirements in prudential legislation

- Title II, Chapter VI “*Information*” of the [Law of 27 October 2006](#) on the supervision of institutions for occupational retirement provision.

B. Information requirements in social legislation

- [Law of 28 April 2003](#) on supplementary pensions and on the tax regime applicable to such pensions and to certain additional social security benefits (WAP/LPC), more specifically Articles 5, §2/3, 26, 28, § 1, and 42).
- Chapter IIIter “*Information and Transparency*” of the [Royal Decree of 14 November 2003](#) implementing the Law of 28 April 2003 on supplementary pensions and on the tax regime applicable to such pensions and to certain additional social security benefits (KBWAP/ARLPC).
- [Law of 6 December 2018](#) establishing a voluntary supplementary pension for employees and containing various provisions regarding supplementary pensions (WAPW/LPCS), more specifically Articles 5, §2, 10 and 14.
- [Programme Law \(I\) of 24 December 2002](#) (WAPZ/LPCI), more specifically Article 44, §1, last paragraph, 48, 50, §1, and 53.
- Chapter IV “*Transparency*” of the [Royal Decree of 12 January 2007](#) on supplementary pension agreements for self-employed workers (KBWAPZ/ARLPCI).
- [Law of 18 February 2018](#) containing various provisions on supplementary pensions and establishing a supplementary pension for self-employed natural persons, for assisting spouses and for self-employed assistants (WAPZNP/LPCIPP), more specifically Articles 3, §3, 6 and 10.
- [Law of 15 May 2014](#) containing various provisions (WAPBL/LPCDE), more specifically Articles 36, §3, 39 and 42.

III. PROVISIONS ON THE SAFE-KEEPING OF ASSETS

- [Law of 27 October 2006](#) on the supervision of institutions for occupational retirement provision, more specifically Articles 92 and 141/1.
