

Newsletter:

▶▶ Amendment AOP strengthening transparency in the context of the second pension pillar

FEBRUARY 2023



Dear reader,

On 2 February 2023, the Act of 26 December 2022 amending several provisions to strengthen transparency in the context of the second pension pillar, called the “Transparency Act” for short, was published. The Transparency Act reforms the communication to plan members about their occupational pension and this at the time of affiliation, during the period of affiliation, at the time of exit and at the time of pay-out. These amended rules are of practical importance for all pension plans (group insurance or pension funds – see *below*) and apply to both employees and self-employed persons.

This legislative amendment is an offshoot of the 2019 enrolment of the additional information requirements from the European IORP II Directive in the prudential legislation for institutions for occupational retirement provision (IORPs) or pension funds, more specifically in Articles 96 to 96/8 of the Act of 27 October 2006 on the supervision of institutions for occupational retirement provision (Act on IORPs).

TABLE OF CONTENTS

| | | |
|---|--|----|
| 1 | Scope | 3 |
| 2 | Main thrusts | 3 |
| 3 | Pension benefit statement | 4 |
| 4 | Pay-out Phase (retirement / death) | 6 |
| 5 | General information requirements | 9 |
| 6 | Administrative simplification | 10 |
| 7 | Phased entry into force | 11 |

In Belgium, there are two categories of pension providers, namely insurance companies and IORPs. Previously, the common rules (such as those on providing information) were always included in the social legislation applicable to both insurance companies and IORPs.¹ Since the transposition of the IORP II Directive, this was no longer the case and, for IORPs, additional information requirements were included in the prudential legislation (Act on IORPs), making them applicable only to IORPs but not to insurers.

In concrete terms, this means that those affiliated to a pension plan managed by an IORP will receive more information via the annual pension benefit statement than those affiliated to a group insurance plan (managed by an insurer). Since these additional IORP II information requirements are included in a detail sheet made available to plan members via the second pillar database (DB2P), this also means that plan members will receive different information via the DB2P database or mypension.be depending on whether their pension rights are accrued at an IORP or an insurer. This does not improve comprehensibility or comparability.

In order to ensure a *level playing field* between pension funds and insurers and to guarantee

the right of every plan member of an occupational pension commitment to the same information, regardless of the pension provider that manages it, the Transparency Act now prescribes the additional IORP II information requirements in the Social Legislation on Occupational Pensions.

The main objective of the Transparency Act is to strengthen confidence in (occupational) pensions through quality information that should give plan members a clearer understanding of the occupational pension they can expect later.

Specifically, the Transparency Act changes the rules on the information that plan members must receive from their (former) employer or pension provider, with an enhanced role for Sigedis and mypension.be. The information one can consult about one's occupational pension on mypension.be will be expanded. The legislator is going one step further by simultaneously introducing administrative simplification for pension providers, with a view to reducing management costs.

We would like to give you an overview of the main changes introduced by the Transparency Act below.

Enjoy the read!

¹ Social legislation here refers to the following laws: the Act of 28 April 2003 on occupational pensions (AOP), the Program Act (I) of 24 December 2002, i.e. the act on occupational pensions for the self-employed, the Act of 15 May 2014 containing various provisions, i.e., the act on occupational pensions for self-employed business executives, the Act of 18 February 2018 containing various provisions on occupational pensions and establishing an

occupational pension for the self-employed active as natural persons, for assisting spouses and for self-employed helpers, and the Act of 6 December 2018 establishing a free occupational pension for employees and containing various provisions on occupational pensions – hereinafter collectively “**Social Legislation on Occupational Pensions**”.

1 Scope

The Transparency Act amends not only the Act on Occupational Pensions (AOP) but also the other Social Legislation Occupational Pensions (*see above – footnote no. 1*). In addition, the Transparency Act also makes some minor adjustments to the Act on IORPs and to the Program Act (I) of 27 December 2006 in the provisions on the creation, objectives and operation of DB2P.

In this *newsletter*, we focus on the changes to the AOP for pension plans or group insurance plans. These also apply *mutatis mutandis* to individual pension promises, and more generally, to other Social Legislation on Occupational Pensions.

2 Main thrusts

The legislator has taken the opportunity to give information on occupational pensions a thorough *facelift*.

The aim is to provide, through quality information, a clearer understanding of the occupational pension one can expect and, in this way, also to ensure greater confidence in the pension system in general and in occupation pensions in particular. The following guidelines apply here:

- It should be **correct, clear and understandable information** that provides the plan member² with simple answers to the following questions:
 - How is my occupational pension set up?
 - How much occupational pension have I already accrued?
 - How much occupational pension can I expect later?
 Plan members should have a clear understanding of their occupational pension based on this information – unlike today – which should boost confidence.
- This information must be **uniform, recognisable and comparable**, which means that the same rules must apply to all pension providers. Today, information differs not only between insurance companies and IORPs, but also among insurance companies and among IORPs. The new rules aim to make occupational pensions more easily recognisable and thus also provide a better insight into the total pension accrual across the various pension pillars.
- Only the principles are included in the Social Legislation on Occupational Pensions. **Royal decrees and regulations issued by the FSMA** may impose methodological rules and standardised presentation methods (e.g., layout of the membership document). For the pension benefit statement, the layout is entrusted to Sigedis in order to ensure maximum comparability of information and recognition of the second pillar (*see point 3 below*).
- The information should be **concise and to the point** and provide clear answers to the plan member's questions. The intention is to work through **layered information**, with the pension benefit statement as the first layer in which reference can be made to other documents (e.g., pension plan rules, transparency report) for more detailed information.

² In the context of the Transparency Act, "the plan member" refers not only to the active or passive member, but additionally to the beneficiaries within the meaning of the Act on IORPs.

- Information should be better **tailored to the information needs of the plan member** including through pension projections that give an estimate of the expected pension, as well as clear information on when one can actually draw one's occupational pension.

3 Pension benefit statement

One of the most important changes in the Transparency Act concerns the **pension benefit statement**. This is the new name for the annual statement, which must also be explicitly mentioned in the title.

The pension benefit statement should provide the plan member with concise, understandable and clear answers to the following questions:

- How much occupational pension have I already accrued?
- What can I expect when I retire?
- What will my beneficiaries/relatives receive if I should die?
- Where can I find more information on my occupational pension?
- Who can I contact with my questions?

3.1 Content of the pension benefit statement

The information requirements in terms of content are largely maintained but are extended and completed on the basis of the changes that IORP II has introduced into the Belgian Act on IORPs. An overview of the main modifications is given below:

- The exact date to which the information in the pension benefit statement refers shall be added on **1 January**. However, according to the parliamentary work, this is the date and therefore also the data and parameters at 00.00 on 1 January (or at midnight on 31 December) and the events of 1 January (salary indexations, transfer in or out of reserves, etc.) are not included in the pension benefit statement of the year in question but in that of the following year. At present, many pension providers do include these events in the statement for the year in question, which would lead to a change in practice. The expected Royal Decree on the calculation methodology will eventually provide clarity on this point.
- The **guaranteed amount on the basis of the legal minimum guaranteed return of Article 24** of the AOP must now always be mentioned, as well as the place where additional information can be found. Previously, this amount had to be disclosed only if the vested reserves were lower than this amount.
- The reference to the **vested benefits** is maintained but not “the date on which the benefit earned is due”. This is replaced by the reference to the legal retirement age in the (variable) elements.
- As is already the case today, information must be provided on the **expected pension lump sum** (or annuity), but the calculation of the latter changes substantially. It must now be calculated on the basis of the plan member's **legal retirement age** and no longer on the basis of the “contractual” pension age provided for in the pension plan rules. This change will mainly have an impact on those pension plans that still provide for a contractual pension age of 60 as regards the amounts communicated and, potentially, also on the calculation of the 80% rule. Since it has to be calculated on the basis of the (higher) legal retirement age and the continued

payment of the contribution or premium until that time, the expected pension lump sum increases. The 80% limit is checked against this expected pension lump sum, which may lead to the 80% limit being exceeded (more quickly). In addition, the calculation of the 80% limit also uses a lower correction coefficient for the conversion of the annuity into a lump sum from the age of 65 onwards, which will further strengthen this effect.

- If economic scenarios have an influence on the expected pension lump sum (or annuity), then **three pension benefit projections** must be mentioned on the pension benefit statement. In practice, this will be the case for all defined contribution or DC plans and possibly also for all cash balance plans; but also in the case of a defined benefit or DB plan in which a possible profit share which is not used to finance the defined benefit is exceptionally granted. Where previously only the “**most realistic scenario**” and an “**unfavourable scenario**” were included to for IORPs (Article 96/6 of the Belgian law on IORPs), a third “**favourable scenario**” is now added by the Transparency Act. A warning must also be added in this context that these pension benefit projections may differ from the final value of the occupational pension that the person will receive. The Transparency Act only establishes the principle of pension benefit projections but not the underlying assumptions for the calculation of these projections, which will be determined by Royal Decree and on which consultation is currently taking place between insurance companies, pension funds, Sigedis and the FSMA.
- The pension benefit statement should mention both the **legal retirement age** and the **contractual pension age** as set out in the pension plan rules. In this way, the pension benefit statement should provide clearer information about when a person can take his/her occupational pension;
- For the vast majority of pension plans, the final occupational pension depends on **contributions, returns** and **costs**, i.e., three elements that should not be mentioned on current annual statements.

The Transparency Act changes this. From 2024 onwards, the **contributions** of the previous calendar year must be mentioned, with a differentiation on the basis of source and destination. This implies a differentiation between employee and employer contributions (=source of contributions). In the case of DB plans, only the employee contribution must be mentioned. This refers not only to the contributions that were actually paid to the pension fund in the year in question, but also to the contributions from the financing fund, the buffer, to the plan member’s individual account, to the contributions from the solidarity section to the member’s individual account in the case of a social plan and to the contributions on the basis of premium-free cover. Finally, other incoming and outgoing amounts, such as a result of a transfer of reserves, should also be mentioned. It is also important to note that if a part of these contributions is used for premium taxes/social security contributions, for the financing of additional cover (death, disability) or solidarity benefits (social plan), this must also be explicitly mentioned (= destination of contributions).

For defined contribution plans, cash balance plans, pension reserves managed by a welcome structure or an RD69 institution, the **allocated costs** that the IORP or the insurer has withheld in the previous calendar year and that have an impact on the pension rights must also be mentioned. Furthermore, for these pension plans, the **net** (contractual) **return** that was granted to the plan member in the previous calendar year must also be disclosed in the pension benefit statement.

The precise manner in which the contributions, costs and net return are to be presented (e.g., whether or not the guaranteed interest rate(s) and/or the profit-sharing should be mentioned separately) will be further developed in a Royal Decree.

- Finally, a number of **additional information requirements** must be included, such as the mention of the fact that gross amounts are involved, the contact details to which the person can address questions or complaints, the place where the pension plan rules can be requested, a reference to mypension.be and the place where additional information can be obtained.

3.2 Preparing and sending of the pension benefit statement

Where currently the pension provider (or organiser) is obliged to draw up this statement and send it to the active plan members, albeit with the possibility of transferring this obligation to Sigedis, from 2024 onwards Sigedis will, by default be responsible for drawing up pension benefit statements. Sigedis will draw up a separate (standard) pension benefit statement per affiliation (i.e., per pension plan), which should, over time, make the information on the various pension plans more comparable.

If the plan member has registered his or her e-mail address on mypension.be or via his or her e-Box (i.e., the secure electronic inbox of the social security), Sigedis will then also be involved in the communication, by means of a notification that the pension benefit statement of the plan member concerned is available on mypension.be. All pension benefit statements will be placed on mypension.be. For active plan members who have not registered their e-mail address, the pension provider (or organiser) must communicate the pension benefit statement to them. Sigedis will send all pension benefit statements to the pension provider and will also inform them whether the member has received a notification and whether he/she has left the pension plan. If pension providers want to make the most of this reduction in administrative costs and charges in the future, they can encourage plan members to register their e-mail address on mypension.be in their communication from 2023 onwards.

This can and will have a positive impact on pension providers in the future with regard to administrative costs and expenses.

4 Pay-out Phase (retirement / death)

4.1 Pay-out procedure at retirement and additional information requirements

The existing double obligation to provide information, on the one hand for the organiser and on the other hand for the pension provider when the plan member retires (or dies), is abolished for reasons of administrative simplification. From now on, the (only) obligation to provide information lies with the pension provider, which must rely on the information obtained through Sigedis, in accordance with the *Only Once principle*.

Sigedis is indeed considered as an authentic source. Therefore, no additional certificates or documents can, as a rule, be requested from the plan member to confirm this information.

There are three possible situations that can trigger the pay-out procedure:

- The pension provider receives a notification from Sigedis that a plan member is about to retire (cf. date of the pension via push notifications). In this case, the pension provider must communicate a pay-out proposal to the plan member either sixty days before his/her retirement if the pension provider has received the notification from Sigedis at least ninety days before the retirement or, if not, within thirty days after receiving the notification from Sigedis;
- The plan member makes a request to the pension provider her/himself. In this case, the pension provider must send a pay-out proposal within thirty days following the request;
- If the pension provider does not receive any notification or request, it must, on its own initiative, no later than sixty days before the legal retirement age is reached, communicate a pay-out proposal to the plan member.

Within thirty days of retirement or after the pension provider has received all the information necessary to proceed with payment, the payment must be made.

For pension providers managing sectoral pension plans, which draw data from the social security network, a temporary exception applies until 1 January 2027, under which the 30-day deadline is extended to a maximum of six months.

These deadlines are very important. The Transparency Act stipulates that if these deadlines are not met, statutory interest (5.25%) will automatically and by right start to accrue (i.e., without formal notice). It is in the interests of the pension provider therefore to scrupulously respect these deadlines.

The pay-out proposal must contain the following information:

- The benefits due (lump sum and/or annuity), with a mention of the fact that the amount is only an estimation and that it will only be definitive at the time of retirement;
- The possible pay-out options;
- The possibility of converting a lump sum into an annuity and the estimated amount of the annuity;
- Which information is necessary for the pay-out. The pension provider must also take into account that the information it receives from Sigedis is authentic data that it must rely on. It cannot therefore ask for additional proof. The necessary information is, in our view, among others: an account number and a bank certificate, a copy of the identity card, etc;
- In the case of a sectoral pension plan that operates with data taken from the social security network, it should be mentioned that the pension provider can only pay out once it has received all the necessary data, with an indication of the presumed pay-out period.

The Transparency Act provides for a simplified pay-out procedure in the event that:

- The vested benefit (or vested reserves) would amount to less than EUR 150 (indexed amount as of 21 December 2022: EUR 175.75);
- The account number on which the State Pension will be paid is available.

This simplified pay-out procedure for small pension rights provides for a reduced information obligation, where only the benefit has to be communicated and it is mentioned that it will be paid to this account number unless the plan member informs the pension provider within thirty days that the payment should be made to another account number. Moreover, if this plan member has also registered his or her e-mail address, this information flow is fully realised by Sigedis. This is also an administrative simplification for the pension provider.

4.2 Pay-out procedure in case of death & additional information requirements

In the context of death and the payment of death benefits, the Transparency Act also provides for a new procedure:

- In principle, Sigedis notifies the pension provider of a plan member's death (cf. date of death via so-called “push messages”). In addition, the pension provider can also be notified by someone else such as the employer or a beneficiary;
- As soon as the pension provider is notified, it must transmit a pay-out proposal to the beneficiary or beneficiaries within thirty days. In principle, the pension provider therefore has thirty days to trace the beneficiary or beneficiaries. This period is suspended should the pension provider not have sufficient information to identify and locate the beneficiary or beneficiaries. Here, however, the pension provider must take all reasonable measures to receive the information as soon as possible and can also request the identification data from Sigedis;
- In that pay-out proposal the necessary information will be requested. If the pension provider considers that it needs additional information to proceed to payment, it must notify the beneficiary or beneficiaries within thirty days;
- Once the pension provider has then received all the necessary information to proceed with payment, it has thirty days to effectively pay out. Again, the law provides for a suspension if the pension provider cannot proceed with payment due to external circumstances.

Failure to meet these deadlines is also subject to the sanction that statutory interest runs automatically and by right (i.e., without notice of default). The pension provider must therefore scrupulously respect these deadlines as well.

The pay-out proposal to be transmitted by the pension provider to the beneficiary or beneficiaries must contain the following information:

- The benefits due;
- The possible pay-out methods;
- The right to convert a lump sum into an annuity;
- Information necessary for pay-out. Again, this must be reasonable and relevant information, with the pension provider bearing in mind that the information it receives from Sigedis is authentic data on which it must rely and therefore may not request additional evidence.

Specifically, therefore, the pension provider may not request proof of death of the plan member from the beneficiary if it has received a date of death through Sigedis.

5 General information requirements

5.1 General

The Transparency Act inserts the new Article 41 *ter* into the AOP, with the general principles on the new transparency obligations (see point 2). Among other things, this requires information to be given in a transparent manner, in clear, concise and understandable language, avoiding jargon and technical terms. The information should be easy to read and drafted taking into account language legislation in social affairs.

Moreover, the Transparency Act makes an important distinction between “making available” and “communicating”. Personal information must be communicated and consequently requires an active action by the pension provider addressed personally (via letter or e-mail) to the plan member. This applies to the pension benefit statement, the exit letter, information on retirement (pay-out proposal), etc. More general information, on the other hand, need only be made available in a place where plan members can consult it easily and without request.

In this context, the Transparency Act introduces the concept of a “durable medium”, which is defined as a device that enables a plan member or pensioner (receiving a pension annuity) to store information personally communicated or made available to him or her in such a way that it can be consulted for a period of time sufficient for the purpose of the information and that allows the stored information to be reproduced unchanged. This could, for example, be a secure platform or an intranet, but mypension.be also meets this definition.

Finally, the new Article 41 *quinquies* AOP includes general information obligations towards plan members and pensioners. It lists various elements to be made available to plan members and pensioners, mainly information on the pension plan itself.

5.2 Information before or upon affiliation

In line with the Act on IORPs, the new Article 41 *quater* AOP provides for new information obligations before or at the time of affiliation. This information must be made available by the pension provider (or by the person designated in the pension plan rules) to plan members as soon as they are affiliated (if it is an automatic affiliation) or before affiliation (if it is not an automatic affiliation).

This information should include the following:

- If the plan member can make certain investment decisions: the relevant options as provided for in the pension plan rules;
- The relevant features of the pension plan, including the type of benefit;

- Whether and how environmental, climate, social and corporate governance (ESG) factors are taken into account as part of the investment strategy;
- Where further information is available, including a reference to mypension.be.

If the pension plan rules provide that the plan member bears investment risk or can make investment decisions, information should also be given on the past performance of those investments for at least the past 5 years (if possible) and the structure of the costs borne by the plan member.

It remains to be seen if and when the FSMA will provide a standardised mode of presentation for this affiliation document.

5.3 Transparency report

New information obligations are also registered in the existing Article 42 AOP on the transparency report. The transparency report already existed and had to be made available to plan members upon request. Now, the Transparency Act provides that it must be made available by the pension provider to the organiser, the plan member and the pensioners (i.e., without any request – see section 5.1). It will therefore have to be loaded on a durable medium described above.

The content also changes and is brought in line with the Act on IORPs. For instance, in the context of investments, not only information must be given on the long-term and short-term investment strategy and the extent to which ESG factors are taken into account, but the investment profile (including the strategy) must be included, as well as the nature of the financial risks borne by the plan members and the pensioners. If members bear an investment risk or can make investment decisions, information on past investment performance for at least the past five years (if possible) should also be provided. Plan members, pensioners and their representatives can also request information on the assumptions used to prepare projections as part of the pension benefit statement.

5.4 Additional information to pensioners

In addition to the general information that must now also be made available to pensioners, additional information must also be communicated to them about the benefits due and the pay-out options. We can think here, for example, of an indexation or increase in current interest rates. In that case, the pension provider will have to inform the pensioners accordingly.

If a pensioner bears a significant investment risk during the pay-out phase (e.g., if the interest rate depends on the return of the underlying investment funds), the pension provider should regularly communicate appropriate information to the pensioner in this regard.

6 Administrative simplification

Besides the enhanced role for Sigedis and the administrative simplification for pension providers it brings, the Transparency Act provides for a few more administrative simplifications for the employer or organiser:

- For example, it is no longer mandatory to annually submit the number of individual pension promises and proof that all employees benefit from an occupational pension commitment to the FSMA: this information is available in the DB2P database;
- It is also no longer mandatory to inform the FSMA in case of a change of pension provider and transfer of reserves. Once again, the FSMA has these data at its disposal via the DB2P database;
- The prior information and consultation requirement of Article 39 AOP no longer applies to the pension benefit statement, which makes sense as pension benefit statements will be prepared by Sigedis.

7 Phased entry into force

The Transparency Act provides for a phased entry into force.

The general provisions that do not relate to specific documents (such as the pension benefit statement, the affiliation document, the transparency report, etc.) will enter into force on **1 January 2023**. However, most of the provisions require some time to elaborate further regulations or technical standards by royal decree or a standardised presentation via an FSMA regulation.

The provisions on the pension benefit statement will enter into force on **1 January 2024**. The same applies generally to the information to be communicated on retirement and death (pay-out procedure).

The provisions relating to the affiliation document will come into force on **1 January 2025**.

The provisions relating to the transparency report first have an impact on the transparency reports for the year **2025**, which are due in 2026.



It will take some time before most of the new provisions enter into force. Thus, we are still awaiting the further elaboration of a number of regulations and technical standards by RD, the intervention of Sigedis for the proposal for the layout of the pension benefit statement and possibly the FSMA for a standardised presentation of the (new) affiliation document.

Nevertheless, we already see an action point for both employers and pension providers: we recommend encouraging employees/plan members to register their e-mail address via mypension.be or their e-Box. This will ensure that from 2024 the pension provider (or employer) will no longer have to intervene in the annual communication of the pension benefit statement.

Another important thing to note is that employers no longer have to submit the number of individual pension promises and proof that all employees benefit from an occupational pension commitment to the FSMA annually (which must now be done annually via the AOP 4 form).

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