

## APPENDIX 5

### **Appendix 5a : Examples of cross-border transfers resulting in cross-border activity**

*The SLL applicable to the cross-border activity corresponds to the SLL of the home Member State of the Transferring IORP.*

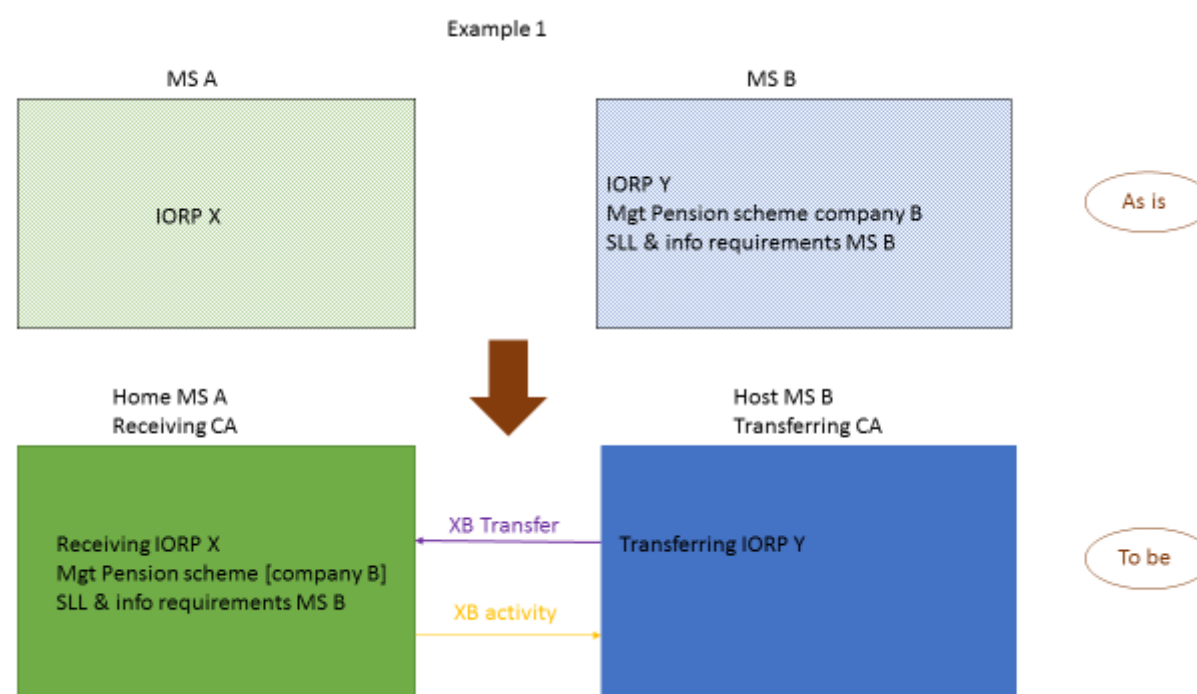
#### Example 1

IORP X operates in Member State A.

IORP Y operates in Member State B an existing pension scheme for the employees of company B, the SLL applicable to the relationship between company B and its members or beneficiaries being the SLL of Member State B.



The pension scheme's B liabilities, technical provisions and corresponding assets are planned to be transferred from IORP Y to IORP X resulting in IORP X operating a cross-border activity for the accrued and future benefits of pension scheme B.

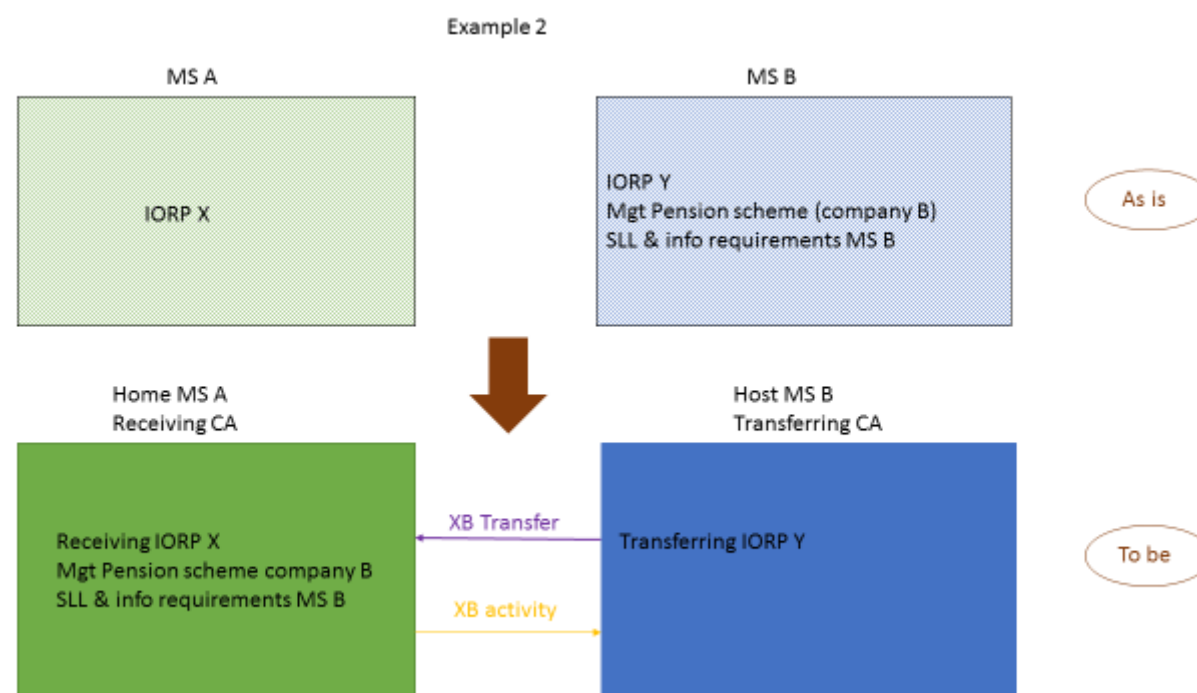


Example 2

IORP X operates in Member State A. IORP Y operates an existing pension scheme B for the employees of company B that no longer acts as a sponsoring undertaking, the SLL applicable to the accrued benefits being the SLL of Member State B.



The pension scheme's B accrued liabilities, technical provisions and corresponding assets are planned to be transferred from IORP Y to IORP X resulting in IORP X operating a cross-border activity for the accrued rights of pension scheme B.



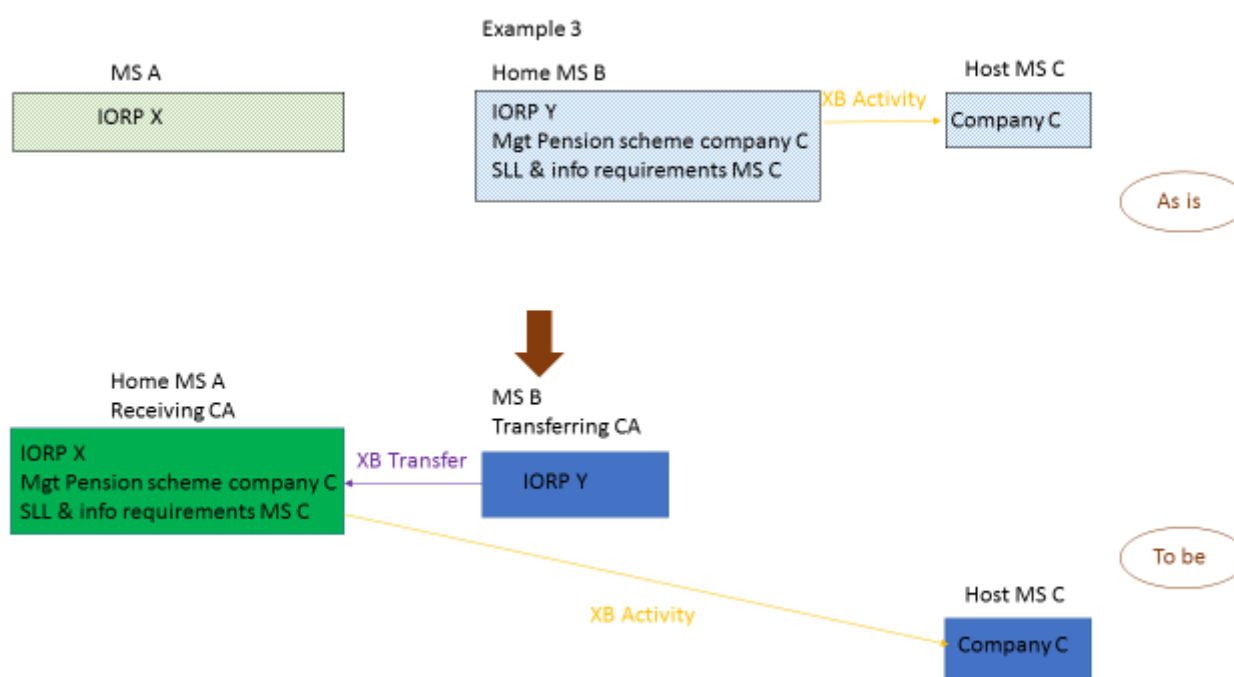
The SLL applicable to the cross-border activity differs from the SLL of the home Member State of the Transferring IORP.

Example 3

IORP X operates in Member State A. IORP Y operates in Member State B a cross-border pension scheme C for the employees of company C, the SLL applicable to the relationship between company C and its members or beneficiaries being the SLL of Member State C.



The pension scheme's C liabilities, technical provisions and corresponding assets are planned to be transferred from IORP Y to IORP X resulting in IORP X operating a cross-border activity for pension scheme C.

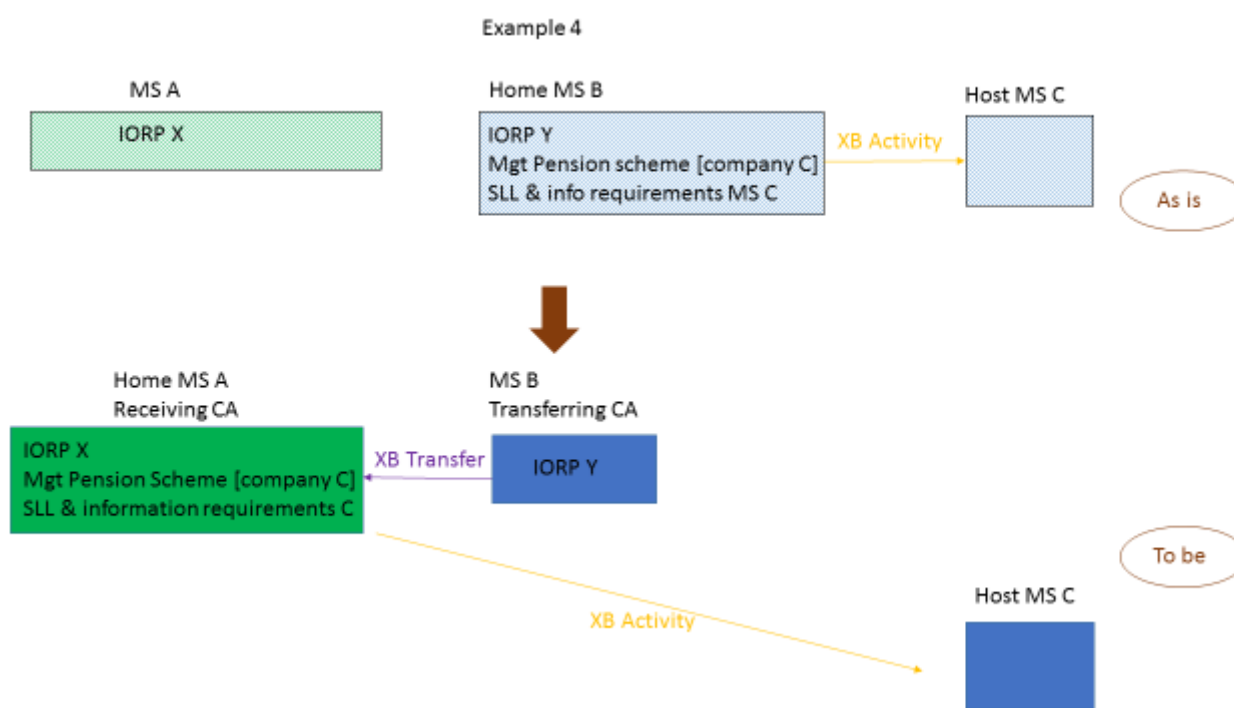


Example 4

IORP X operates in Member State A. IORP Y operates in Member State B an existing pension scheme C for the former employees of a company that no longer acts as a sponsoring undertaking, the SLL applicable to accrued pension benefits being the SLL of Member State C.



The pension scheme's liabilities, technical provisions and corresponding assets are planned to be transferred from IORP Y to IORP X resulting in IORP X operating a cross-border activity for pension scheme C.



**Appendix 5b - Flowchart Cross-border transfer resulting in a cross-border activity**

If appropriate, preliminary and informal phase of preparation :

Receiving CA invites the Receiving and Transferring IORPs, Transferring CA and Host CA (if SLL and information requirements different from MS transferring IORP) for an informal and interactive exchange of information:

- Receiving CA and Transferring CA clarify expectations with regard to information IORP must provide in order to start the authorisation procedure and expectations with regard to the assessment criteria;
- Transferring CA (or host CA) clarifies its SLL and information requirements with particular attention to financial prudential implications.

If appropriate, possibility of a pre-application phase.

3.3

1. Receiving IORP submits application for authorisation (see Appendix 6a) . Receiving CA checks formal completeness within 10 working days and indicates, where appropriate, which information must still be provided in accordance with Article 12(5). Receiving CA forwards the application for authorisation without delay to Transferring CA. In the case the Receiving CA requests missing information to complete the application for authorisation, it promptly forwards the missing information to the Transferring CA upon receipt. Receiving CA informs the Receiving IORP of the date when the complete application for authorisation has been received.

3.4.2.

2.a Transferring CA starts assessment to determine whether or not to give its consent . If Transferring CA needs further information necessary for its assessment, it transmits the request and the rationale to Receiving CA.

Transferring CA communicates results of the assessment to Receiving CA within 8 weeks of receipt of the complete application for authorisation. The result of the assessment is: consent or no consent.

2.b Receiving CA starts assessment to determine whether or not to give its authorisation. Where appropriate, Receiving IORP provides information relating to the cross-border activity (see Appendix 6b). Receiving CA can request further information necessary for the assessment on its own request or on request of Transferring CA. Receiving CA promptly forwards after its receipt the requested information to Transferring CA .

The result of the assessment, taking into account the result of the assessment of the Transferring CA, is:

3.4.3.

1

3.1. Authorisation granted (prior consent was given).

Receiving CA communicates the granting of the authorisation to Receiving IORP within 3 months of receipt of the complete application for authorisation.

2

3.2. Authorisation refused (prior consent was given or not). Receiving CA communicates the refusal of the authorisation and the reasoning for the refusal within 3 months of receipt of the complete application for authorisation to Receiving IORP and to Transferring CA and Transferring IORP within two weeks of the refusal date. Receiving IORP has a right of appeal to the courts in its home MS .

3

3.3. No decision (Failure to act). Receiving IORP has a right of appeal to the courts in its home MS. Receiving IORP may start to carry out cross-border activity upon expiry of the time period of 3 months and 7 weeks.

Max. 2 weeks

4. Receiving CA communicates the granting of the authorisation to Transferring CA and to Transferring IORP within 2 weeks of the authorisation date.

Max. 4 weeks

5. Transferring CA must inform Receiving CA (\*1) of Host MS SLL, information requirements and where applicable depositary requirement within 4 weeks of receipt of the authorisation by the Transferring CA .

\*1 = in specific cases this might lead to the Transferring CA having to forward the Authorisation File to the Host CA of the new cross-border activity with a request to provide him with the applicable SLL, information and depositary requirements before the expiry of the four-week period.

3.4.4.

1

7.1. Transferring CA does not provide Host MS SLL, information requirements and where applicable depositary requirement ,within 4 weeks of receipt of the authorisation.

2

7.2. Transferring CA does provide Host MS SLL, information requirements and where applicable depositary requirement within 4 weeks of receipt of the authorisation.

Receiving IORP may start to carry out cross-border activity upon the receipt of the authorisation or upon expiry of the time period of 3 months and 7 weeks

Receiving CA communicates Host MS SLL and info requirements and where applicable depositary requirement, within 1 week to Receiving IORP. Receiving IORP may start to carry out cross-border activity upon the receipt of the authorisation or upon expiry of the time period of 3 months and 7 weeks

3.4.5.

8. Receiving IORP promptly informs Home CA about execution of cross-border transfer and launch of the cross-border activity. This information shall be shared between CAs and EIOPA.

8. Receiving IORP promptly informs Home CA about execution of cross-border transfer and launch of the cross-border activity. This information shall be shared between CAs and EIOPA.

Max. 3 months from the receipt of the complete application for authorisation

**Appendix 5c Intermediary decisions at each stage of the process for a cross-border transfer resulting in a cross-border activity**

