

THE HIGH COURT

2021 Record No.

COS

IN THE MATTER OF EUROBEN LIFE & PENSION DESIGNATED ACTIVITY COMPANY

AND IN THE MATTER OF SPP PENSION & FÖRSÄKRING AB (PUBL)

AND IN THE MATTER OF THE ASSURANCE COMPANIES ACT 1909

AND THE INSURANCE ACT 1989

AND IN THE MATTER OF THE EUROPEAN UNION (INSURANCE AND REINSURANCE)
REGULATIONS 2015

PETITION

TO THE HIGH COURT

The Humble Petition of the directors of Euroben Life & Pension Designated Activity Company (“Euroben”) (whose respective names and addresses are set out in **Schedule 1** hereto) shows as follows:

Section 1: Euroben

1. Euroben was incorporated in the State on 28 October 1999, under the laws of Ireland as a private limited company under registered number 314239.
2. Euroben was initially registered as a private company limited by shares. On 4 May 2016, Euroben converted to a designated activity company under part 16 of the Companies Act 2014.
3. The registered office of Euroben is at Block 4, Regus Harcourt Centre, Harcourt Road, Dublin 2, Ireland, D02 T677.
4. The objects for which Euroben is established are detailed in clause 3 of its memorandum of association as, *inter alia*, “[to] carry on the business of life assurance in the class(es) as authorised by the Minister of Enterprise, Trade and Employment as are defined by the European Communities (Life Assurance) Framework Regulations, 1994 as the same may be at any time modified by statute regulations or otherwise.”
5. Euroben is empowered by clause 3(h) of its memorandum of association to “sell or otherwise dispose of the whole or any part of the business, undertaking, property or

investments of the Company, either together or in portions for such consideration and on such terms as may be considered expedient.”

6. Euroben is authorised by the Central Bank of Ireland (the “**Central Bank**”) to carry on life insurance business under Classes 1, 3, 4 and 7 as set forth in Schedule 2 to the European Union (Insurance and Reinsurance) Regulations 2015 (the “**2015 Regulations**”).
7. The authorised share capital of Euroben is EUR €30,000,000 divided into 30,000,000 Ordinary Shares of €1.00 each.
8. The issued share capital of Euroben is 23,025,350 Ordinary Shares of €1.00.
9. SPP Pension & Försäkring AB (publ) (“**SPP**”) (a company registered under the laws of Sweden having its registered office at Vasagatan 10, 105 39 Stockholm, Sweden) holds the entire issued share capital of Euroben.

Section 2: SPP

10. SPP is a life insurance company organised under the laws of Sweden under Swedish company registration number 516401-8599. It has its registered office at Vasagatan 10, 105 39 Stockholm, Sweden.
11. SPP was incorporated in Sweden as a public limited company on 5 December 1995.
12. The objects for which SPP was incorporated are detailed in Article 2 of its Articles of Association as, *inter alia*, to directly and indirectly issue life insurance in classes Ia, Ib, III and IV, and non-life insurance class 1, as set forth in the section 1 and section 12 of the Insurance Business Act (2010: 2043).
13. SPP is licensed by Finansinspektionen (“**FI**”), the Swedish Financial Supervisory Authority, in classes Ia, Ib, III and IV as set forth in the section 1 and section 12 of the Insurance Business Act (2010: 2043), and is therefore authorised to carry on the business described in its Articles of Association.
14. SPP’s licence from FI is sufficiently wide to entitle it to acquire and carry on the Euroben Business that has heretofore been carried on by Euroben pursuant to the

2015 Regulations.

15. SPP is authorised to acquire the Euroben Business pursuant to the Swedish Insurance Business Act Chapter 11, Section 31-37.
16. SPP's issued share capital is SEK280,000,000 divided into 2,800 ordinary shares with a nominal value of SEK100,000. SPP is a wholly-owned subsidiary of Storebrand Holding AB, a limited liability holding company domiciled in Sweden (registration number 556734-9815 having its registered office at Vasagatan 10, 105 39 Stockholm).

Section 3: Background

17. Euroben has agreed to transfer the economic risks, benefits, legal title and primary gross exposure of the Euroben Business (as defined in the Scheme) to its parent company, SPP. The terms of the transfer of the Euroben Business are set out in the Scheme of transfer, a copy of which is scheduled to this petition at **Schedule 2** (the "**Scheme**").
18. It is intended that the transfer of the Euroben Business to SPP will take effect from 00:00:01 Swedish Standard Time (UTC +1) on 1 November 2021 (or at such other time as the Merger shall be registered by the Swedish Companies Registration Office, the *Bolagsverket*) (the "**Scheme Effective Date**").

Section 4: The Proposed Transfer

19. The primary commercial purpose of the Scheme is to make provision for the transfer of the Euroben Business (as defined in the Scheme) from Euroben, as legal and beneficial owner, to SPP such that SPP shall succeed to the rights and obligations of Euroben under the Euroben Policies (as defined in the Scheme), with effect from the Scheme Effective Date. The transfer permits SPP to complement its existing book of business and will enable Euroben to cease carrying on insurance business and surrender its authorisation to the Central Bank.
20. As the proposed Scheme is intra-group, and forms part of a wider intra-group merger, a business transfer agreement has not been deemed necessary by Euroben or SPP.

21. It has been resolved by the board of directors of Euroben on 2 June 2021 and by the board of directors of SPP on 27 May 2021, in accordance with their respective internal governance requirements, that subject to the sanction of this Honourable Court, the Euroben Business will be transferred from Euroben to SPP with effect from the Scheme Effective Date.
22. The Euroben Policies to be transferred pursuant to the Scheme consist entirely of policies of life insurance within classes 1 and 4 as set forth in Schedule 2 to the 2015 Regulations. The Policyholders are corporate entities with insured pension scheme arrangements for their current and past employees.
23. The proposed transfer of the Euroben Business to SPP will not cause prejudice to any of the Policyholders, nor will it cause prejudice to any other third parties, including the insured lives and beneficiaries.

Section 5: Report of Independent Actuary

24. Pursuant to section 13(3)(b) of the 1909 Act, Olive Gaughan of Mazars an independent actuary (the “**Independent Actuary**”) has prepared a report dated 21 May 2021 (the “**Report**”). The Report sets out the Independent Actuary’s opinion of the likely effects of the Scheme on Euroben and SPP (referred to collectively in the Report as the “**Scheme Companies**”) and which includes (i) transferring Euroben policyholders and (ii) the existing SPP policyholders. As the Euroben policyholders are corporate entities, the Independent Actuary looked through to consider the interests of the insured lives and beneficiaries and therefore the Independent Actuary’s references to “policyholder(s)” include those insured lives and beneficiaries. The Report is for the benefit of the Central Bank, this Honourable Court and the policyholders of Euroben and SPP.
25. In section 1 of the Report, the Independent Actuary notes that, in parallel with the Scheme, Euroben and SPP will merge by way of a cross-border merger by absorption pursuant to the European Communities (Cross Border Merger) Regulations 2008 (the “**Merger**”). All remaining assets and liabilities of Euroben other than the Euroben Policies will transfer to SPP pursuant to the Merger and Euroben will be dissolved without going into liquidation following the completion of the Merger.
26. The Independent Actuary refers to the combined event of the Scheme and the Merger

as the “**Transaction**”, and notes that the Report describes the proposed Transaction and its potential impact on the relevant policyholder groups within both Euroben and SPP.

Conclusions (page 49 of the Report)

27. The conclusions of the Independent Actuary are set out at section 8 of the Report. The Independent Actuary concludes that, in her opinion, the proposed Scheme “*should not generate any material adverse impact (direct or indirect) to the affected policyholders, namely the Policyholders and associated insured lives and beneficiaries of Euroben and SPP.*” More specifically, the Independent Actuary concludes that the Scheme should not generate any material adverse impact to the benefit security of the affected policyholders; to the policyholder reasonable expectations of the affected policyholders; or to the customer service provided to the affected policyholders. .

Assessment (page 40 of the Report)

28. In order to assess the proposed transfer, the Independent Actuary has assessed whether or not the proposed Scheme generates any material adverse impacts (direct or indirect) to the affected policyholders in relation to the key criteria:
- (i) **Benefit Security:** This means security of guaranteed benefits and is largely based upon the financial strength of the insurer.
 - (ii) **Policyholder Reasonable Expectations (“PRE”):** This means a reasonable interpretation of policyholder expectations regarding future discretionary benefits and is largely based upon the policyholder contract terms and conditions (“**T&C**”), policyholder communications and prior practice in relation to distribution of discretionary benefits.
 - (iii) **Customer Service:** This means all aspects of the relationship between the policyholder and the insurer, other than the benefit amounts covered above, and would cover matters such as responsiveness to queries and complaints handling.

Benefit Security (page 44 of the Report)

29. The Independent Actuary considered the following factors in determining the impact

of the Scheme on the benefit security of the Euroben policyholders, noting the following in respect of each factor:

- (i) **No change:** There is no change to the Euroben policyholder T&C or tax and no Transaction costs are borne by Euroben policyholders.
- (ii) **Solvency position of SPP:** The solvency ratio of SPP is strong and the Transaction has an immaterial impact on the solvency position of SPP.
- (iii) **Solvency outlook of SPP:** With or without the Transaction, the solvency outlook for SPP is strong. SPP regularly pays dividends equal to its yearly earnings and in most adverse scenarios can maintain healthy solvency by delaying such distributions.
- (iv) **Surplus in pension plans:** Overall, pension plan segregation, surpluses and sustainability effectively insulate the Euroben policyholders from each other; the Transaction does not change this.
- (v) **Risk profile:** Overall, moving to a larger more diversified (and sufficiently capitalised) entity with a strong risk and capital management policy is a positive step for Euroben's policyholders.
- (vi) **Comparable levels of regulation:** The regulatory environments of Euroben and SPP are largely equivalent.
- (vii) **Comparable levels of governance:** The governance, i.e. policies and practice of Board and Executive oversight, is largely common to Euroben and SPP, being cascaded down from the Storebrand Group.
- (viii) **No expected impact from other plans:** SPP has confirmed that the Storebrand Group does not currently have any other plans which would materially affect the policyholders of Euroben and SPP.
- (ix) **Gradually declining security in the absence of the Transaction:** The long term unviability of Euroben effectively means that ultimately there might be detriment from not proceeding with the Transaction.

Policyholder Reasonable Expectations ("PRE") (page 46 of the Report)

30. The Independent Actuary considered the following factors in determining the impact of the Scheme on PRE of Euroben's policyholders:
- (i) **Benefit security:** The arguments supporting benefit security (as summarised herein at paragraph 29 above) provide an underpin to PRE. The point concerning the surplus in the pension plan is particularly important, i.e. the surplus is significant and is not available to support other pension plans.
 - (ii) **Merger:** The Merger acts to put SPP in the place of Euroben in respect of all of its rights and obligations. In effect SPP takes on all of Euroben's history and future. There is no contract stipulating limits to SPP's responsibilities in this regard. This provides a legal underpin to the manner in which SPP is expected to manage the Euroben Business.
 - (iii) **No change to discretionary practice:** The commitment of SPP to maintain discretionary practice is important. It is also very natural given the context of the Transaction whereby SPP is already providing the majority of services to Euroben within the Storebrand Group governance environment.
 - (iv) **Fees:** The fees payable by the occupational pension plan client are subject to periodic renegotiation. A similar argument applies for the "EuroPlan" annuity business, where the fee is variable at the discretion of Euroben. Insofar as the Transaction acts to improve efficiency thus reducing pressure to increase fees, the Scheme should be a positive step for these policyholders.

Customer Service (page 47 of the Report)

31. The Independent Actuary notes in her Report that the preservation of T&C, comparable ongoing external regulation and internal governance, and maintenance of discretionary practice are relevant and positive for customer service.
32. The Independent Actuary considered the following other factors in determining the impact of the Transaction on customer service:
- (i) **Customer contact:** Customers will continue to deal with the same team in Sweden.
 - (ii) **Customer related policies and procedures:** Behaviours towards customers will

continue to be governed by the Storebrand Group standards.

- (iii) **Operational arrangements:** There are no current plans to change the operational arrangements (including outsourcing) on account of the Transaction.
- (iv) **Investment opportunities:** Euroben Policies will benefit from access to a wider investment universe.
- (v) **Tax:** There is no change to tax, i.e. the Transaction changes neither the amount of tax borne by policyholders nor any administrative aspects associated with this.

SPP Policyholders (page 47 of the Report)

33. The Independent Actuary concluded that while the situation for Euroben policyholders is relatively straightforward and largely unchanged, this is even more the case for SPP policyholders:

- (i) **Benefit Security:** There are no changes to the T&C of SPP policyholders and the solvency impact on SPP of the Scheme is immaterial.
- (ii) **Policyholder Reasonable Expectations (“PRE”):** The Transaction has no impact on discretionary practice or charges for SPP policyholders.
- (iii) **Customer Service:** The Transaction has no impact on customer service arrangements or standards.

Summary of Impacts (Page 43 of the Report)

34. The Independent Actuary notes that the following points summarise the impact of the Transaction:

- There are no changes to the Policyholder T&C. This applies to both Euroben and SPP policyholders (and the absence of change for the policyholders also implies no change for the associated insured lives and beneficiaries). However, there will be minor changes in the EuroPlan T&C in the future because of the outdated Irish regulation which is referred to in the T&C and brought into line with Swedish practice. This change is being made because EuroPlan will be migrated to the new IT-system.

- All Transaction costs will be borne by the shareholder i.e. none shall be borne by the policyholders. This will cause a small cost to SPP, immaterial relative to its solvency position, and offset by longer term expense savings (at least in respect of the Euroben Business).
- SPP has provided assurances that it has no intention of changing management of discretionary practice regarding the business transferring from Euroben. This does not mean that there can never be any change to such matters, rather it means that the Transaction is not being used as an opportunity to make any such changes.
- Avoidance of the diseconomies of scale will mitigate pressure to increase fees which should be positive for Euroben policyholders (while having no impact on SPP policyholders).
- There will be no tax impact on policyholders, who will continue to be taxed under Swedish rules. There will be some frictional shareholder tax differences due to elimination of the Irish corporation tax applicable to Euroben but these will not affect policyholders.
- Euroben is already wholly owned by SPP, if Euroben were to encounter financial problems its first recourse would be to SPP.
- The Transaction has an immaterial impact on the solvency position of SPP, given the relatively small size of Euroben and the fact that it was already included in the balance sheet as a wholly owned subsidiary.
- Appropriate communications are planned to notify Policyholders of the Transaction and allow them to participate in the Court process should they so wish.

Covid-19 (Page 48 of the Report)

The Independent Actuary also considered whether the pandemic has any bearing on the Transaction and concludes that it is not relevant for the following reasons:

- i. **Service arrangements:** Euroben is already largely serviced by SPP so there is

virtually no change due to the Transaction in this regard.

- ii. **Financial impacts:** The SPP ORSA considers an adverse scenario due to extension of the pandemic and indicates that SPP has the resources to maintain robust solvency throughout.

Section 6: Regulatory Matters

35. Euroben notified the Central Bank of the transfer proposed by the Scheme on 14 May 2021.
36. Pursuant to Regulation 41(3)(a) of the 2015 Regulations, the proposed Scheme cannot be effected without obtaining the certification of FI (as the EEA Member State supervisory authority of SPP) that, taking the proposed Scheme into account, SPP possesses the necessary eligible own funds to cover its solvency capital requirement thereafter.
37. Pursuant to Regulation 41(3)(b) of the 2015 Regulations, the proposed Scheme cannot be effected without also obtaining the agreement of the competent authority of each EEA Member State where the contracts "*were concluded, either under the right of establishment or the freedom to provide services*". The only EEA Member State in which the Euroben Policies "*were concluded, either under the right of establishment or the freedom to provide services*" was Sweden.
38. If FI does not respond to the Central Bank within 3 months, the Central Bank shall be entitled to deem consent to the proposed Scheme.
39. SPP directly notified the FI about the transfer on 20 January 2021.

Section 7: Notification / Advertisements

40. A detailed communications plan has been prepared to ensure that all interested parties are made aware of the proposed Scheme.
41. As of 6 May 2021, Euroben had approximately 63 policies in issue which will transfer to SPP pursuant to the terms of the Scheme. In circumstances where the Euroben Business comprises life assurance business, there is a requirement under section 13 of the 1909 Act to transmit the documents specified by section 13(3)(b) of the 1909

Act to the individual policyholders of Euroben and SPP.

42. For the purposes of section 13 of the 1909 Act, Euroben has prepared a letter (the **“Policyholder Circular”**) in the form of a circular which sets out the material facts relating to the Scheme and explains the nature of the Scheme and, subject to the approval of this Honourable Court, will include a summary (rather than the entire) of the Report (ie, the IA Summary Report), approved by the Independent Actuary. The IA Summary Report has been approved by the Independent Actuary and she is satisfied that a summary of the Report should be furnished to the Policyholders rather than the full text of the Report as set out in section 2.5 of the Report. In accordance with section 13(3)(b) of the 1909 Act, the Policyholder Circular is to be transmitted to each policyholder of Euroben and SPP at their last known address unless this Honourable Court gives a direction to the contrary. The Policyholder Circular will be issued in the same language used in the policy documentation provided to that policyholder by Euroben.
43. In the present case and in circumstances where the Independent Actuary has confirmed in her Report that the Scheme will have no material adverse effect on the SPP policyholders, it is proposed that the Policyholder Circular should not be transmitted to the existing SPP policyholders. It is instead proposed that the Policyholder Circular should be transmitted only to the transferring Euroben policyholders. The Independent Actuary has confirmed in her Report that she is satisfied that it is appropriate to proceed in this way. It is therefore proposed, subject to the directions of this Honourable Court, that the Policyholder Circular should only be transmitted to the Euroben policyholders. Additional reasons why it is considered that this proposal is appropriate are set out below:
- given the number of the total number of Policyholders involved, the additional cost and expense of sending the Policyholder Circular to the existing SPP Policyholders would be circa €600,000 and as such, it would be disproportionate to any benefit that might be obtained by the SPP Policyholders in having the documentation transmitted to them;
 - the transmission of such documentation to the SPP Policyholders may cause unnecessary concern and confusion on their part – namely that their rights and entitlements under their policies might in some way be

undermined by the proposed Scheme, when in fact this is not the case;

- no further action is required by the SPP Policyholders;
- it is clear from the Report of the Independent Actuary that the transfer does not expose the existing SPP policyholders to any new kinds of risks;
- the Independent Actuary concludes that the proposed transfer has no impact on the T&C of SPP policyholders, no impact on the discretionary practice or charges for SPP policyholders and no impact on customer service arrangements or standards for SPP policyholders; and
- in accordance with the other direction sought from the Court, the proposed Scheme and hearing of the Petition will be advertised in a number of publications as well as on the Euroben website and further any Policyholder who is concerned that they might be affected by the proposed Scheme will be entitled to avail of the applicable and relevant helplines which will be operated by both Euroben and SPP.

44. In compliance with section 13(3)(a) of the 1909 Act and subject to the directions of this Honourable Court, a notice of intention to make this application together with the hearing date (the “**Pre-Transfer Notice**”) shall be published in (i) Iris Oifigiúil; (ii) the Irish Independent; and (iii) the Irish Examiner.

45. Furthermore, in accordance with the requirements of section 13(3)(c) of the 1909 Act, the Report together with the Petition and the Scheme (the “**Transfer Documents**”) will be available for inspection, Monday to Friday (public holidays excepted) between the hours of 9:00 a.m. to 5:00 p.m. at (i) the offices of Euroben at Block 4, Regus Harcourt Centre, Harcourt Road, Dublin 2, Ireland, D02 T677; (ii) the offices of Euroben’s solicitors, Matheson, 70 Sir John Rogerson’s Quay, Dublin 2; and (iii) the registered office of SPP Pension & Försäkring AB (publ) at Vasagatan 10, 105 39 Stockholm, Sweden, for not less than 15 clear working days between the date of the advertisement of the Petition in Iris Oifigiúil, the Irish Examiner and the Irish Independent and the date fixed for the hearing of the Petition. In addition, the Transfer Documents will be available online at euroben.ie/merger. Given the current situation with COVID-19, any Policyholders intending to review the documents must

make an appointment in order to do so.

46. Copies of this Petition and its schedules will be served on the Central Bank following the Directions Hearing.
47. In accordance with Regulation 41(5)(b) of the 2015 Regulations, a notice of the proposed Scheme (being in the same form as the Pre-Transfer Notice) should be published in the Member State in which the risks are situated or which is the Member State of the commitment in accordance with the laws of that Member State.
48. Pursuant to Directive 2009/138/EC, and in accordance with Regulation 41(5)(b) of the 2015 Regulations, the "*Member State in which the risks are situated*" and the "*Member State of the commitment*" (each, as defined by Regulation 3 of the 2015 Regulations) is the Member State in which the Policyholders are established.
49. The Policyholders are all established in Sweden. Counsel in Sweden has confirmed that there is no separate requirement to advertise in accordance with their local laws. However, as an act of good faith, the proposed Transfer will be published in 2 daily newspapers published in Sweden, *Svenska Dagbladet* and *Post- och Inrikes Tidningar*.

Section 8: Costs & Expenses

50. Except as otherwise agreed in writing, all costs and expenses relating to the preparation of the Scheme and application for the sanction of the Scheme, including the costs of the Independent Actuary and complying with the Order shall be borne by SPP. No costs or expenses shall be borne by the Policyholders.

YOUR PETITIONER THEREFORE HUMBLY PRAYS AS FOLLOWS:

- (1) An Order pursuant to the provisions of section 13 of the 1909 Act (as amended) and the 2015 Regulations sanctioning the Scheme (annexed hereto).
- (2) An Order directing that notice of said transfer be published once in each of *Iris Oifigiuil*, *The Irish Independent*, *The Irish Examiner* and be further published in 2 daily newspapers published in Sweden, *Svenska Dagbladet* and *Post- och*

Inrikes Tidningar.

(3) Such further or other Order as to this Honourable Court shall appear proper.

NOTE

It is intended to serve a copy of this Petition (together with the Schedules) on such parties as this Honourable Court may direct and upon the Central Bank of Ireland.

SCHEDULES

1. Directors of Euroben
2. Scheme

Signed: _____

Matheson
Solicitors for the Petitioner
70 Sir John Rogerson's Quay
Dublin 2

This Petition is filed on behalf of the Petitioner by Matheson, Solicitors, 70 Sir John Rogerson's Quay, Dublin 2.

Filed this 3rd day of June 2021

SCHEDULE 1

NAMES AND ADDRESSES OF THE DIRECTORS OF EURO BEN LIFE & PENSION DESIGNATED ACTIVITY COMPANY

- (1) Paul Cutter, 422 Richmond Court, Richmond Avenue South, Dublin 6, Ireland
- (2) Nils Robert Hodnesdal, Blabaervingen 40, Oslo, 0789, Norway
- (3) Brendan McCarthy, 50 Lambourn Avenue, Clonsilla, Dublin 15, Ireland
- (4) Kai Niemi, Humalistonmaki 10, Kantvik , 02460, Finland
- (5) Frederic Ottesen, Solvien 42C, Oslo, Norway

SCHEDULE 2

Scheme

THE HIGH COURT
2021 Record No. **COS**

**IN THE MATTER OF EUROBEN LIFE &
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COMPANY**

AND

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ASSURANCE COMPANIES ACT 1909**

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**AND IN THE MATTER OF THE
EUROPEAN UNION (INSURANCE AND
REINSURANCE) REGULATIONS 2015**

PETITION

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