Act on the Future of Pensions

Summary of important aspects for companies with a pension scheme with an insurer or PPI.

On 30 March 2022, the proposal for a Pensions (Future) Act was submitted to the Lower House of Parliament. This bill implements the agreements made by the government and social partners in the Pension Agreement in May 2019. In parts, these agreements were already known from the 'Outline Memorandum on the Implementation of the Pension Agreement' (hereinafter: outline memorandum) of June 2020 and the consultation legislation published in December 2020. The full legislative proposal can be viewed here (in Dutch).
https://www.rijksoverheid.nl/documenten/kamerstukken/2022/03/30/memorie-van-toelichting-wet-toekomst-pensioenen

Below, we provide an overview of a number of important aspects that pension schemes will have to comply with in the future. The intended effective date of the bill is 1 January 2023.

1. A new way of building up pensions

The core of the legislative proposal is that the average and final pay schemes (referred to as benefit agreements in the Pensions Act) as we know them now will disappear.
The legislative proposal namely stipulates that, after the legislation comes into effect, all new pension schemes may only be defined contribution schemes. From now on, an age-independent (flat) premium will be used. In most existing defined contribution schemes, a premium scale that increases with age applies. The starting point in the new legislation will therefore no longer be the accrual of pension entitlements, but only the deposit of pension contributions.
In the bill, the flat premium is set at a maximum of 30%. For the purpose of compensation, the premium limit will be increased by 3% during the transition period until 2037.

2. Contribution agreement

The bill has 3 types of premium agreements:

- Solidary premium agreement (all pension providers)
- Flexible premium agreement (all pension providers)
- Premium-payment agreement (only for insurers)

In premium agreements, accrual takes place through the formation of personal pension assets.

2a Projection return

In order to provide insight into how much pension can be expected in the future on the basis of the accrued pension assets, the new pension system uses a projection method for five functions. For the first four functions, this is the uniform scenario set, for the fifth a capped projection return applies.
The projection method is used for:

1. **Communicating the expected pension benefits in scenarios**
   In order to give participants a picture of the expected pension, it is calculated in three scenarios: an optimistic, an expected and a pessimistic scenario.

The uniform calculation method (URM) is already legally prescribed for this information and will be continued unchanged.

2. **The fiscal premium limit**
Also for determining the maximum fiscal framework, an expected return is assumed. The proposed contribution limit is a maximum of 30% of the pension base. With this, the (maximum) pension ambition formulated in the Pension Agreement of 75% of average salary in 40 service years of accrual (80% in 42 service years) will be fiscally facilitated in the new pension system. If the expected return changes, the contribution limit will be adjusted. The bill includes a table for this purpose. Until 2037, the contribution limit will be fixed at 30% (unless there are differences of more than 5%; this will be communicated 3 years in advance).

3. **Establishing the balance between the target and the premium**
Employers and employees are jointly responsible for an adequate pension scheme. They determine whether the promised contribution is sufficient for the formulated pension objective. To this end, the pension administrator provides them with calculations based on the uniform scenario set. This projection method offers a good handle for assessing the balance between the contribution and the pension objective, including the probability of achieving this objective.

4. **Testing the risk attitude**
Every pension administrator is obliged to periodically (at least once every five years) conduct a risk preference survey among its participants. This survey examines the degree of risk appetite of the participants. Insurers are allowed to combine comparable pension schemes for this survey. Part of this survey is the risk attitude per age cohort. Here, too, the scenarios are used.
Based on the prudent person principle, a periodical assessment is made whether the investment policy matches the established risk attitude. Depending on the scheme, this assessment will also include the allocation of investment results and the design of the solidarity and risk-sharing reserves. Since the criteria for the risk attitude are based on the pensions communicated in scenarios and the desired stability therein, this assessment is also based on the URM methodology.

5. **Determining the level of the pension in the benefits phase**
For the pension payment, after the pension commences, each month a part is withdrawn from the reserved capital. The level of the projection yield determines the level of the monthly payment. With a higher projection return, the pension payment starts out high, but there is more chance of setbacks thereafter. With a lower projection return, the pension benefit starts out low, but there is a greater chance of windfalls.

3. Solidarity premium agreement

In the Solid Premium Agreement, the premium (or contribution) is collectively invested in both the accrual and the benefit phase. The returns and risks are allocated to age cohorts. The pension assets earmarked for benefits are used for a variable pension payment on the retirement date. A variable pension payment that is effective can increase in the event of good results, but also decrease if there are setbacks.

Pension accrual in the form of a personal pension capital set aside for payment is combined with the retention of the collective and solidarity-based elements that have proven themselves in the current pension schemes in pension funds.
An important element of the solidarity contract is the mandatory solidarity reserve.
From this reserve, pension assets and pension benefits can be supplemented and risks can be shared collectively. The bill lays down a statutory upper limit for the solidarity reserve of 15% of the total assets. In the case of an individual value transfer, participants only receive the current pension capital reserved for the payment and no part of the solidarity reserve.

4. Flexible contribution agreement

In the Flexible Premium Agreement, the premium (or contribution) is invested individually.
This contribution agreement is also known today and is often referred to as the "improved premium scheme". The pension capital earmarked for benefits is used on the retirement date with a pension administrator to be chosen at that time for variable or fixed benefits. In the case of a variable payment, the pension capital is invested further to a certain extent risk-bearing in the payment phase. The accrual and benefit phases are thus separated in the Flexible Contribution Agreement.
However, it is possible to share the investment risk and the longevity risk in the benefit phase collectively via a collective allocation circle, whereby gradual accession to this circle is possible at the latest 10 years before the retirement date.

The investment policy is based on specific investment mixes per age cohort (life cycles).
The investment policy will be designed on the basis of specific investment mixes for each age cohort (life cycles). Financial ups and downs are incorporated directly into the individual pension assets on the basis of the returns achieved.
into the individual pension assets. Depending on the design, participants may or may not have the freedom to choose investment profiles.
With this bill, additional risk sharing via the optional risk-sharing reserve will become possible for the non-compulsory pension funds and insurers.

5. Premium-payment agreement

In the Premium-payment Agreement, the contribution is invested individually, just like in the Flexible Contribution Agreement. In the last 15 years before the retirement age, at the participant's request, (part of) the contribution or the accrued pension capital can be used to purchase a guaranteed nominal pension benefit (fixed or variable) from the retirement date. Both the longevity risk and the interest and investment risk are taken over by the insurer when purchasing a fixed benefit.
A defined benefit agreement can only be implemented by insurers because they can guarantee nominal pensions. No risk-sharing or solidarity reserve is possible.

6. Surviving Dependants Pension

The proposed changes to the survivor's pension (partner's pension and orphan's pension) ensure that the survivor's pension is more standardized, more adequate and easier to understand and that the risks for survivors are reduced.

This concerns in particular to cover the risk of death before the retirement date. The bill does not propose any substantive changes with regard to the partner's pension intended to cover the risk of death after the retirement date.

The bill provides that a (tax-facilitated) partner's pension to cover the risk of death before the retirement date can only be provided on a risk basis. The level of coverage will have a different fiscal maximum, namely 50% of the pensionable salary instead of 70% of the retirement pension to be achieved. In determining the amount of the pensionable salary (fiscally maximized at EUR 114,866 in 2022), a franchise is no longer taken into account. The coverage of the partner's pension will thus become independent of the period of service. The premium may be paid in addition to the maximum premium.

To reduce the risks after the end of employment, it has been determined that in some situations the risk coverage for partner's pension must be continued by the old pension administrator. This applies during;

- the run-off period of three months or the moment that the employee accepts another employment contract within rei months;

- the period that there is a benefit from the Unemployment Insurance Act;

In addition, a choice is given to voluntarily continue risk coverage for longer by means of an exchange of part of the accrued pension capital. Voluntary continuation of the pension scheme also remains possible.

The tax allowance for orphans' pensions has been increased to 20% of pensionable salary for semi-orphans and 40% for full orphans. The basis for coverage is, as with the partner's pension, the pensionable salary, whereby no franchise is taken into account, and the coverage is also independent of the period of service. The bill stipulates that the orphan's pension will always end at the age of 25 in the future, without any further conditions such as following a course of study.

In the new system for surviving dependent’s pensions, it will remain possible for tax purposes to offer a temporary partner's pension in the form of a surviving dependent’s bridging pension (often known in the market as ANW gap insurance) in addition to a lifelong partner's pension. The bill proposes a limited change in this respect by removing the premium compensation from the maximum survivor's bridging pension to be insured. After all, the grossing up of the premium compensation depends, among other things, on the size of the pension income after reaching the state pension age. As a result of the amendments introduced by this bill, the size will become less fixed. As a result, it is often not possible to calculate a grossed up contribution compensation in advance.

The proposed transitional law allows existing accrued pension entitlements to be maintained. The partner pensions accrued up to the moment of transition must remain available to the (ex) partners.

7. Partner concept

The bill defines who is considered a partner in pension schemes.
In the case of unmarried and unregistered cohabiting couples, there are often differences in the coverage of the partner's pension in the various pension schemes.
It can happen that partner A is regarded as a partner in the pension scheme of partner B, but that, conversely, partner B is not regarded as a partner in the pension scheme of A. This can lead to undesirable situations and creates uncertainty for participants and their partners.
From now on, the following will be regarded as partners: the spouse, registered partner or the person who runs a joint household with the employee.

There is a joint household if the persons involved:

- have entered into a cohabitation contract, executed before a civil-law notary, in which they have mutually committed themselves to contribute to the costs of living; or

- have signed a declaration of cohabitation in which they declare to live at the same address and to take care of each other

It is possible to test whether there is a joint household before or after the death. If a pension administrator only tests after death whether a surviving relative is eligible for a partner's pension and there is no cohabitation declaration signed by both parties involved, a partner may still be eligible for the partner's pension if they were registered at the same address for at least six months at the time of death and at least one of the additional requirements is met.

8. Transitional law

After the entry into force of this bill (as of 2023), a transitional period of four years (2023 - 2027) will occur. During this period, employers and employees must agree on a conditional pension scheme that fits within the new legal framework. Pension administrators must then implement these new (or adjusted) pension schemes. Within this transitional phase, the parties involved can choose the date on which the new pension scheme will take effect. During the transition phase, the old and the new statutory pension framework will therefore apply simultaneously.

No later than January 1, 2027, the pension scheme must be adjusted to the new fiscal framework. In the period between January 1, 2023 and January 1, 2027, a transition period applies. During that period, it is still possible to build up pension rights within the current tax framework provided this pension build-up takes place in a pension scheme that existed on 31 December 2022.

Transitional law for progressive premiums (retroactive effect)
The bill includes transitional law for existing pension schemes with progressive contributions. This deferral effect is specifically intended for situations in which, on the day prior to the entry into force of this bill, there are:
(1) a defined contribution scheme with a progressive premium scale (irrespective of the type of pension administrator with which it has been placed); or
(2) a final pay or average pay scheme that is implemented by an insurer.

For the transitional law, a fiscal maximum premium scale has been included in the bill. This way, there is clarity regarding the maximum premium scales for this respectful effect. For this premium scale, there is no event test as is currently the case for the market rate scales (3% and lower). A contribution scale may be used until the transition date (no later than 31 December 2026) for employees who are members of the existing pension schemes referred to above.

Assuming the intended date of entry into force of the legislation is 1 January 2023, 31 December 2022 will be the reference date for the existence of the pension scheme with progressive contributions. After 1 January 2023, no new pension schemes with progressive contributions can be agreed but all new pension schemes must be defined contribution schemes with age-dependent (flat) contributions.

9. Net pension

The net pension provides for pension accrual on income above the tax capping limit of EUR 114,866 (2022). This pension is built up from net income. For the net retirement pension and net partner's pension in the event of death on or after the retirement date, the same contribution limit is proposed as for the 'gross' pension but corrected by the net factor. The net pension does not require existing premium scales to be respected as is the case with the 'gross' pension. The requirement for age independent contributions does not apply to voluntary schemes such as the net pension.

10. Adjustments in the third pillar

The Cabinet proposes to remove the difference in fiscal contribution margin between the second pillar (pension accrual through the employer) and the third pillar (annuities).
To this end, the percentage of the maximum contribution margin for the third pillar will be increased to 30%.

Also, the AOW-offset in the second and third pillar will be equalized. This means that the annuity space will be considerably higher. Temporary annuities will also remain possible.

11. Communication

In a premium scheme, many risks lie with the participant. Therefore, much emphasis will be placed on legislation and regulations in order to better enable (former) participants and pensioners to actually make the necessary choices. There will also be clear **information requirements** with regard to the transition. In many cases, a transition plan will be compulsory.

The pension administrator will be obliged to provide information about the premium and the capital that has been reserved for the pension benefit. There will be further regulations on this. The uniform pension overview and the Pension 1-2-3 as we know it now will no longer be required. The implementation is free, but the information must be correct, clear and balanced and fit the characteristics and needs of the administrator. Thus, a pension statement remains mandatory, with an overview of the elements that must be included. Pension providers may fill this in themselves. This also applies to the stop letter.

The rules regarding making choices that follow from the law or pension scheme will be **strengthened**. The open norm for choice guidance is introduced. Pension providers are required to provide insight into the consequences and risks of the choices that follow from the law or pension scheme for the participant or pensioner. They must endeavor to provide adequate guidance to participants and are obliged to set up a (digital) choice environment. The pension administrator may provide information on the choices a participant has, but may not give any product-related advice. The **duty of care** of the pension administrator is particularly important in respect of choices on the retirement date.

With this bill, pension administrators will have the obligation that the information they provide will incite the recipient to take the most concrete possible action. This is called the "call to action" and may take place in writing as well as electronically.

Closing

The bill was sent to the Lower House of Parliament at the end of March 2022. At the beginning of April, the details of this proposal in regulations in a General Administrative Order (AMvB) were offered for consultation. The parliamentary debate will take place in the course of 2022. The intended effective date of the Act on the Future of Pensions is 1 January 2023.