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No forced cuts before 2012

In a letter dated 25 March 2009, Minister Donner announced that forced cuts of pension rights and entitlements will be possible before 2012. That rule is part of the Social Accord. Mid-2010, the parties will consider the question of whether the deferral offered now is then still sensible, based on current circumstances.

On 5 March 2009, the Lower House of Dutch Parliament approved Minister Donner's plans as set out in the [ministerial regulation](#) announced in the Minister's letter of 20 February 2009. This regulation provided for an extension of the recovery period for pension funds with insufficient funding from three to five years. This solution was offered subject to the condition that those pension funds must indicate in the recovery plans they submit what measures will be taken if it becomes apparent during the recovery process that the level of Minimum Required Own Funds (i.e. funding ratio of approximately 105%) is not expected to be achieved by the end of 2013.

A revised version of the regulation responds to the resistance to the scheme put forward by both the umbrella organisations and the Labour Foundation, which was initially ignored. Where the version of the regulation published previously made forced cuts possible starting on 1 August 2010, this will now basically be impossible before 2012.

The recovery plans of most funds are now in an advanced stage. The deadline for their submission remains 1 April, after which *De Nederlandsche Bank* will assess the plans before 1 July. The documents to be submitted by 1 April must be based on management resolutions. Other financial documents required may be submitted after 1 April, but no later than 1 July.

Phase II of the API

In his letter dated 11 November 2008, Minister Donner announced the envisioned approach to Phase II of the introduction of the General Pension Institution (*Algemene Pensioeninstelling*, API) scheme. It had previously been

announced that the API system would be implemented in three phases. This letter provided additional information about Phase II. Holland Financial Centre (HFC) put forward a series of suggestions and comments for further details of this phase, which were discussed by the permanent committee for Social Affairs and Employment. The minister recently responded to HFC's letter in his own letter dated 16 March 2009.

During this phase, the extent to which amendments to the Pensions Act will facilitate collaboration between company pension funds (CPFs) will be examined. This represents a change to the definition of responsibilities (*viz.* definition of domains), which was the reason why the Minister asked the Labour Foundation to prepare its recommendations together with the parties that were also involved in defining the separate responsibilities.

During Phase II of the API system, CPFs will be able to work more closely together. However, such collaboration will not constitute APIs as much as an altered form of the existing pension fund vehicle – a multi-CPF (i.e. a single pension fund in which the various schemes are financially ringfenced and in which companies from multiple domains can work together). This means that the proposal abandons the current requirement for multi-CPFs laid down in Section 123 of the Pensions Act that all schemes administered by a fund must form a single financial unit. As such, Phase II only has any relevance in a domestic context.

It is difficult to predict what multi-CPFs will do in the future. However, it is important that a balance be found between the best possible scale (expressed in the number of CPFs that are combined and the size of those funds) and the retention of each scheme's identity.

Minister Donner has indicated that the introduction of a multi-CPF need not have dramatic implications from a legislative perspective. Considering the urgent demand from the national market, it would seem logical to realise the multi-CPF system as quickly as possible. Accordingly, it is important that the scope of the multi-CPF system not be expanded, as the background memorandum proposes. Expansion will lead to an in-depth discussion on the sensitive subject of the definition of the respective responsibilities of pension funds and insurers, which might cause enormous delays to the development of Phase II.

In his letter dated 9 February 2009, the Minister stated that he has already started work on the legislative details of Phase II of the API system. In his response to HFC, he indicated that he was aware of the urgent need for Phase II.

Proposal for Premium Pension Institutions (Introduction) Act

On 13 March 2009, the Minister of Finance submitted the legislative proposal for the Premium Pension Institutions (Introduction) Act to the Lower House of Parliament.

The proposal forms the basis for the introduction of premium pension institutions (PPIs), which are pension vehicles that may operate on the Dutch market, but whose introduction is aimed primarily at developing European pension activities. What makes PPIs different is that they may only administer pension schemes that do not include insurance for risks or offer guarantees about yields. As a result, PPIs are suitable for administering defined contribution (DC) schemes, under which the premiums are set, but not the amount of the eventual pension.

The proposal incorporates the Council of State's recommendations. The Council had indicated, among other things, that the relatively weak position of PPI participants required further substantiation. Parts of the Dutch Pensions Act will be amended to ensure that the participants' position becomes similar to that of participants whose schemes are insured directly. The Council also recommended that the proposed Section 98a of the Pensions Act be replaced by a statutory regulation. This recommendation has been adopted, with the explicit description in a new subsection of Section 2 of the Pensions Act of the clauses that are deemed to fall under social and employment law. On the tax side, to meet the Council's request, the manner in which other Member States deal with Section 5 of the Dutch Corporate Income Tax Act has been clarified further. In addition, the Council's suggestion has been adopted that the requirements set out in the Dutch Financial Supervision Act for structuring custodians of collective investment schemes also be declared applicable to pension custodians. Finally, the request to include more details about the restrictions on legal form was also granted.

The legislative proposal and the explanatory memorandum are available in Dutch online (<http://www.minfin.nl/dsresource?objectid=63072&type=org>).

Ban on transfers of accrued benefits: what about life cover?

Pursuant to the Pensions Act, pension administrators have an obligation to cooperate with statutory individual transfers of accrued benefits. However, if a pension administrator's financial situation is poor ('the technical provisions are no longer fully covered by assets'), the Pensions Act temporarily suspends that obligation. A pension administrator's financial position qualifies as poor if its funding ratio is 100% or less (pension fund) or in situations involving an emergency facility or bankruptcy (insurer).

As soon as a pension fund becomes aware that its funding ratio is 100% or less, individual transfers of accrued benefits must be ceased, regardless of whether

the pension fund is the transferring or the receiving party. This also applies to pending procedures. Since many pension funds currently find themselves in a situation in which transfers are no longer possible, it must be asked whether the total life cover in the form of partner pensions and orphan pensions at the former and new pension administrators is still at the appropriate level. Minister Donner addressed this situation on 16 March 2009, following questions in Parliament. For example, an employee has only insured a risk-based partner pension. Part of the old-age pension accrued with the previous pension administrator was not converted into a savings-based partner pension upon dismissal. If the employee dies before retiring, the life cover benefits will only be based on the years of service with the new employer. Section 61 of the Pensions Act offers this possibility when the participation ends. The question is whether that possibility can still be utilised in all cases. Given the protracted processes involved, participation may have been terminated some time ago. In addition, the pension administrator has to be willing to cooperate. A flexible application of the statutory deadlines for converting old-age pension into partner pension may offer a solution.

The longer the funding deficiency lasts, the greater the difference between the targeted life cover and the actual life cover may also become, including if the employee accrued partner pension rights in a previous job. Another possible solution to this problem is to include a facility in the pension scheme that allows risk cover over the years of service at previous employer.

It is important that discontinuation of individual transfers be communicated properly. Life cover during the period until the moment that actual transfer is possible cannot be given enough attention.

Pension training courses

In the spring of 2009, Watson Wyatt will offer pension training courses intended for various groups within the structure of pension funds. Each of those groups has specific requirements in terms of the level of expertise, such as courses for fund managers and for members of accountability bodies. Another course on offer provides training to reach Expertise Level 2.

Further information

If you would like further information about the matters addressed in this issue of the Watson Wyatt Update, please contact Wichert Hoekert (No forced cuts before 2012), Rick Crauwels (Phase II of the API; Proposal for Premium Pension Institution (Introduction) Act), Paul de Koning (Ban on transfers of accrued benefits: what about life cover?) or Fionne Huernink (Pension training courses).