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Future of Pensions Act

Focus on the envisaged transition

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Focus on the transition

- Scope
- Milestones
- Transition plan and implementation plan
- Effects
- Compensation
- Conversion of accrued pensions (“sailing in”)
- Co-determination rights in the transition
- Transitional law

Scope

The time path for the transition (§ 150b FPA):

- Starting position
- At 31 December 2022 a pension agreement applied
- This needs te be changed to fullfill the obligations under the FPA
- At earliest as of the date the FPA enters into force (1January 2023; or is this a to optimistic estimation?)
- At latest 1 January 2027
- Presumed transitional arrangements are not used

Milestones

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Milestone 1

1 January 2025
Transitional plan ready
Formal agreement between social partners (employees and employer(s organizations) about (i) the new scheme, (ii) the conversion of accrued rights, and (iii) possible compensation

Milestone 2

1 July 2025
Implementation plan ready
Formal agreement with the pension operator; containing amongst others a description of the technical aspects of implementation, costs and risks, risk management and a communication plan

Milestone 3

1 January 2027
Transition accomplished
No longer pension accrual allowed under defined benefit schemes and no longer age dependent premiums in respect of defined contribution schemes

Transition plan and implementation plan

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Transition plan

- Drawn up by employer, sent to DCB by pension operator
- Contains agreement between employer(sorganizations) and employees organizations
- Choices, considerations and financial calculations that substantiate the new pension scheme
- Whether or not accrued pension rights are being converted
- Accountability in respect of balance between employer(s) and employees interests, available on the pension operators website
- Effects for each age cohort of new scheme
- Effects for each age cohort of conversion of accrued rights
- Compensation, plan in respect of funding the compensation

Implementation plan

- Drawn up by pension operator and sent to DCB within two weeks after completion
- Contains agreement between social partners
- Contains the time line for the transition
- Contains technical feasibility study in respect of costs and risks
- Contains measures for risk management (at least for data quality and the fitness of the administration system)
- Legal check (specifically with regard to equal treatment legislation)
- Contains an analysis for financial and economic discontinuity
- Contains the communication plan

Effects

Mandatory analysis of the effects of the transition for the participants to the scheme (§150e FPA)

Starting point: net profit method

- Net profit of continuation of the existing pension agreement

compared to:

- the net-effect of the transition into the new pension scheme + the effects of the possible conversion of accrued pension rights
- Net profit = market value of the expected benefits under the new scheme -/- market value of the future premiums paid under the new pension scheme

Starting point: gross profit method

- Before the transition a capital based pension agreement or a defined contribution scheme was in place
- After the transition the pension contract is a “flexible contract (without solidarity reserve)”, a “defined contribution scheme with immediate conversion into defined benefits” or a “defined contribution scheme with immediate conversion into a guaranteed capital amount”
- Transitional law is not used
- Gross profit = cash value of future premiums paid into the new pension scheme

Compensation

Social partners decide whether compensation is required. Adequate compensation is the starting point for a balanced transition.

Conditions for compensation based on granting extra benefits (§150f FPA):

- All employees within one age cohort should be eligible for compensation if one of them is eligible for compensation
- Exclusion of new hires is not allowed
- Compensation period from 1 January 2027 to 1 January 2037
- Compensation needs to be granted time proportional during the transitional period
- Compensation needs to be funded if granted unconditionally
- This also applies for (former) employees that are entitled to non-contributory pension accrual (such as in case of employees who have been incapacitated for work for over two years, whose employment agreement was terminated for that reason and who received state disability benefits)

Conversion of accrued rights (“sailing in”)

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Did social partners decide to convert the existing rights?

NO

Pension fund informs social partners whether it agrees to social partners’ reasoning and informs the internal bodies of the fund

PF unhappy ☹

Legal procedure possible, but not promising since social partners in principle are responsible for collective employment terms

No agreement

Period prior to 2024: mediation by special Transition Committee

Period 2024-2025: binding advice by Transition Committee

Other ways of dispute resolution are also possible (legal procedure)

YES

Pension Fund accepts the conversion request unless the request is (i) in breach of the law, (ii) imbalanced, or (iii) is in breach of its business integrity

Social partners unhappy ☹

Legal procedure (no task for Transition Committee)

Co-determination during transition

No individual right to object…

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	Amendment of future pension accrual	Amendment of existing pension accrual ("sailing in")
Mandatory Sector-wide pension fund	Social partners decide as to how the new pension accrual shall take place. All employers and employees that fall within the scope of the mandatory sector-wide pension fund are legally bound by this decision.	Decision ibidem + negotiations with pension fund. - Accountability body of the pension fund has a right to advise the board - Association of (former) participants/pensioners has a right to be heard
Non-mandatory schemes	Industry-wide CLA: social partners decide. Company CLA: employer(s) and employee organizations decide Company with Works Council: Works Council has right of consent; individual consent (unless an unilateral change holds up)	Decision ibidem + negotiations with pension operator. In case of a pension fund, the following applies: - Accountability body of the pension fund has a right to advise the board - Internal stakeholder body (if any) has a right of consent - Association of (former) participants/pensioners has a right to be heard

Transitional law for existing DB and DC schemes

Important transitional law for pension arrangements that are in place as per years end 2022:

- Existing scheme of the type:
  - ✓ Defined contribution with age dependent premium ladder
  - ✓ Defined benefit with age dependent premium administered by an insurance company
- May be continued until the end of participation by the employee, if
  - ✓ Participation started before the new pension arrangement entered into force, ultimately until 31 December 2026
  - ✓ The as off ultimately 2027 introduced pension scheme is not of the type solidary pension contract

Note: action required ultimately in 2022

Ratio: prevent costs for compensation

Questions?