Prepare for a legal assessment of your pension scheme this year

24 March 2021

As announced, the bill on the future of pensions (wet Toekomst Pensioenen) will be submitted to the Dutch Parliament in autumn 2021. The bill is the elaboration of the Pension Agreement (Pensioenakkoord)[1] between social partners from June 2019. Extensive public consultation on the proposed content took place in early 2021. Various pension experts and interest groups have contributed to this far-reaching revision of the Dutch pension system. Important legal and practical obstacles for the transition to the new system have been identified and possible solutions have been proposed. The Dutch parliament has the final say on this. According to the current proposed timeline, Dutch parliament should adopt the bill before 31 December 2021. This will allow the Act on Future Pensions to enter into force on 1 January 2022. The target date of 1 January 2026, by which all Dutch pension schemes must comply with the new pension system, will then also be feasible. Whether this tight timeline will be met has become somewhat uncertain due to the formation of a new Dutch government and the delayed submission. But there is no reprieve from any postponement. The current pension system has become unaffordable and therefore unsustainable for various reasons. The Pension Agreement needs to be converted into law .

Although 2026 still seems a long way off, time is running out for this major operation. Employers and employees are first in line to amend the pension agreement. Together with employee representatives, well-considered agreements on changes, possible transition and compensation will have to be made before 2024. This will be followed by consultations with the pension administrator who must implement the plans for transition and communication regarding the new pension scheme before 2026. Thereafter, a compensation period of 10 years (until 2036) will apply. During this period employers and pension administrators may compensate the possible disadvantages for the accrued and paid pensions as a result of the transition on a cost-neutral basis. The future pension system review does not aim to restrict the pension ambition of 75% of the average pensionable wage to be accrued during 40 years of service.

Depending on the type of pension scheme - ie Defined Benefit (DB) or Defined Contribution (DC)- the change and transition process can be far-reaching. For all new employees who enter into service on or after the target date of 1 January 2026, it will only be possible to offer a DC pension scheme with an equal contribution for young and old, which, for tax purposes, will not exceed 30% of the pensionable wage. For older employees, this means that under the new DC regime, they can build up less pension capital than is currently permitted. For younger employees, the reverse applies. The consequences for the existing and future pension rights of employees may therefore be drastic. If so, compensation is considered appropriate. These compensation schemes can take the form of temporarily allowing up to 3% increased pension contributions paid by employers to the pension provider. It is also possible to use the "released" pension contributions to fund pension compensation schemes for employees outside the pension scheme. For example, employees can use this compensation to finance early retirement or additional leave savings under the since 1 January 2021 tax-friendly regime for such arrangements[2].

For DC pension schemes with a progressive age-dependent contribution existing on 31 December 2021, transitional law applies. This means that these pension schemes do not need to be changed for employees who participate in them before 1 January 2026. However, the survivor's pension will have to be adjusted. In the event of death during employment, the survivor's pension that is co-insured on a risk basis, may be equal to 50% of the pensionable salary. It is noted that coexistence of the old DC and the new DC schemes may in the longer term lead to higher pension costs for employers.

Because of these many facets, it is advisable to start making preparations **in the autumn of 2021** to get the full understanding of the actions and costs of the coming pension scheme revision. Our Hogan Lovells Employment team will be happy to assist you.

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1. See "Towards a reform of our pension system with the Pension Agreement!" – June 2019.

2. See "Early retirement for older employees made more flexible for tax purposes as of 1 January 2021" – 21 January 2021.

Contacts

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