Summary note on the renewal of the Dutch pension system
23 April 2019

This note is intended as a guide for the meeting with the European Commission (DG EMPL and DG FISMA) on 2 May 2019, regarding the proposed renewal of the pension system in The Netherlands.

The pension system

- The Dutch pension system is built on three pillars: (1) a basic old-age statutory pension (2) the supplementary occupational pension and (3) private individual pension. This note concerns the description and proposed changes to the second pillar.
- In The Netherlands, the occupational pensions are a responsibility of social partners. Employers and employees can capture agreements relating to pension in pension schemes: a defined benefit (DB), a defined capital or a defined contribution (DC) agreement. It is not mandatory to provide a pension scheme. The pension schemes are usually carried out by (mandatory) pension funds, insurance companies and some premium pension institutions (IORP's dedicated to defined contribution schemes). The Dutch Pension Act sets out the framework and financial rules for IORP's. The majority of the 6 million employees participates in an occupational pension scheme.
- The current Pension Act requires for defined benefit and defined capital agreements that all participants in the same scheme acquire the same accrual rates. Each year, a member of a pension scheme accrues future pension entitlements equivalent to a fixed percentage of the salary.
- For defined contribution agreements with progressive premiums this principle is laid down in the fiscal framework. The accrual rates are expressed as a percentage of the income. In addition, mandatory sectoral and occupational pension funds are obliged to pay for all employees in the pension fund the same (percentage-) premium. Individual differences such as age, gender, health and income are not taken into account when determining the amount of contribution to be paid.
  Medical examinations on joining the scheme are not allowed.
- The fiscal framework also applies the time proportionate-system of the Pensions Act. For defined benefit agreements the fiscal framework fixes the (age-independent) accrual rate on a maximum percentage of 1,875% of the average wage per year. This is also realized for defined contribution agreements through a progressive tax rate; to pay for the same pension accrual, more premium is needed for an older employee compared to his younger colleague, because the premiums render less profit in a shorter period of time.
- With regard to solidarity and collective participation the government is able to require mandatory participation in a pension fund (or scheme for occupational pension funds) at the request of social partners in a specific sector. All employers and employees in the sector are obliged to join the mandatory sector-wide pension fund. Furthermore there are company-specific funds, general pension funds and insured pension schemes.
- The system of mandatory participation has, for decades, ensured that the vast majority of the employees in the Netherlands have built up a supplementary pension. Nevertheless, it is shown that the share of employees that does not acquire occupational pension rights (the so-called 'white spots') is greater than was previously assumed (research CBS: in 2016, 13% of the employees).

The proposed changes
The Netherlands has a strong pension system. However, changes in the labour market, the increasing life expectancy, the financial crisis and persistent low interest rates, have also contributed to our system's vulnerabilities. Together with the social partners and the Social and Economic Council of the Netherland (SER), the Government wants to renew the pension system, while preserving the strong elements: mandatory participation, collectivity, risk sharing and tax support. This has resulted in the following proposed measures. The Council of State, the government's advisory body on legislation, has already advised on the proposal for degressive pension accrual.

Degressive pension accrual
The Government proposes to change the pension accrual system to a more neutral system. To that end, the above mentioned system of proportionate accrual will be replaced by a system of age-independent premiums and age-dependent degressive accrual. There will be a more direct and actuarial fair relationship between premium and pension accrual. This makes the pension system more transparent and personal. For self-employed workers it should be more attractive to participate in supplementary pension schemes. The transition to the proposed system will lead to substantial transition effects and costs for employers and employees, which can differ by age cohort, by company and by type of pension scheme. At this moment the CPB (Netherlands Bureau for Economic Policy Analysis) is calculating for these effects and costs. The government will provide for legislation to ensure a balanced transition for all parties involved (legal transition framework, transition plan, decision-making process).

Fiscal framework changed to defined contribution
Part of the transition to degressive pension accrual is an adaptation of the fiscal framework. As described above, the current fiscal framework fixes a maximum yearly pension accrual rate. In the proposed pension system all pension schemes will have a defined contribution character (see also below). The fiscal framework will provide a maximum age-independent premium for all pension schemes.

Dealing with accrual in existing defined contribution schemes
The government aims for a pension system in which all pension schemes will become defined contribution-agreements with collective risk sharing. The government wants to facilitate this transition by allowing combining already obtained pension-entitlements with entitlements to be acquired based on the new agreement. Therefore, a rating-framework will be drafted and adjustment of the conditions for collective value transfer (f.e. individual objection right) will be examined. If social partners do not choose to merge the existing and future entitlements, the different schemes can be managed separately. The government will consider if current requirements such as 'one financial whole' and a ban on ringfencing should remain.

More legal guidance for customization in investment policy
It is of importance to the government that investment policies of pension funds are in line with the age composition and the risk attitude of the participants. The government therefore plans to legally ensure the principle that pension administrators in all contracts take investment risks in accordance with a lifecycle pattern, in which investment risks and returns vary by age. Pension funds will have implementation-space.

Enlarge the scope of the pension system
The government is worried about the size of the 'white spots' mentioned above and wants to review possible measures. For example: remove waiting periods for the temporary employment-agencies sector. The government would also examine how the self-employed can voluntarily join a pension fund, even if they were not previously participant of the pension fund in the sector or the company. Furthermore the government has asked the social partners to make proposals for improvements of the survivor's pension.

The European legislative framework

Competition law
In the proposed renewal of the pension system the government aims to preserve the mandatory participation in pension funds and schemes, with regard to the European competition law based on the TFEU. From established case law of the European Court, it appears that the mandatory participation is a permitted restriction of competition law because mandatory participation is regarded as necessary for the performance of the duties of public interest assigned to pension funds. The justification for this restriction is laid in the high level of solidarity in pension schemes. In the opinion of the government there will be sufficient elements of solidarity in the proposed new pension system:

- Risks are collectively carried, in the accrual and/or the payout phase.
- There will be a duty of acceptance: a mandatory sector-wide pension fund is not allowed to refuse "bad risks" (individuals or companies) to join the collective circle.
- It is not allowed to charge a different premium: the contributions do not reflect the risk.
- The premium-exemption during incapacity for work and the taking-over of overdue pension contributions in the event of bankruptcy of the employer, shall be continued.

Equal treatment (age, m/f)
The supplementary pension is subject to the concept of remuneration and is part of employment conditions, to which the equal treatment legislation (age, m/f) applies.
The proposed pension system with degressive pension accrual contains differences in treatment on the ground of age. As the age increases, the pension accrual diminishes. However, this is in accordance with accepted actuarial principles. The government believes that an objective and reasonable justification can be given for the differences in treatment on the ground of age. A legitimate aim is found in a better connection to the labour market and in restoring confidence in the pension system. A more neutral way of pension accrual contains appropriate and necessary means to achieve that aim. There are no alternatives with none or less differences in treatment on the grounds of age, or alternatives that mitigate any of the disadvantages. A system with progressive premiums also contains differences in treatment on the grounds of age and has adverse consequences for the labour market-position of older workers.
Regarding the principle of equal treatment between men and women, in the proposed defined contribution schemes (as in the current situation) either the pension benefit for men and women must be equal or the premium should be determined in a way that the size of the pension benefits for men and women are equal.
The government intends to consult the Netherlands Institute for Human Rights on the aspects of equal treatment in a legislative proposal concerning the renewal of the pension system.

Protection of property
The transition to a degressive pension accrual and merging the existing and future pension accrual in a new contract may result in a limitation of property rights (control the use of property). This limitation can be expected to be justified, as this limitation will be in the public interest (as described above) and subject to the conditions provided by law. Whether this limitation is appropriate and does not constitute an individual and excessive burden, can only be established in individual cases. Since the changes relate to the supplementary pension (and not the basic old-age statutory pension), the chance that individuals will suffer an excessive burden is in the opinion of the government particularly small. In the Netherlands we have, after all, the social security scheme (AOW) that forms in principle a safety-net for earnings reduction and guarantees a basic income. The conversion of pension accrual and rights into a new contract, will be as much as possible actuarial fair and balanced. The conversion will be subject to judicial review by the supervisory authority on pensions.

Transition and compensation

To ensure that the redistribution and sharing of costs that will result from the transition to a new pension system, turns out appropriate and balanced for all relevant parties and age categories, a transition-framework will be laid down in the legislation. The government will (fiscally) facilitate possibilities for compensation for a certain transitional period. Social partners can also agree on a compensation scheme (with targeted compensation for specific age cohorts), which will also have to comply with the equal treatment legislation.