

Herman Kappelle IORP compliance

A question of conformity

Compared with its European neighbours, the more stringent Dutch pensions legislation has hampered its ability to compete with other IORPs

The General Pension Institution (API) is based on the Institutions for Occupational Retirement Provision (IORP) directive. However, the API as such is not defined in the directive, which describes an IORP as "an institution for occupational retirement provision", or simply "institution". This means an institution operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreed contract.

All pension funds established in the Netherlands conform to this interpretation and are therefore an institution for occupational retirement provision in the true sense of the IORP. This does not apply to pension insurance companies in the Netherlands, which fall under the life insurance directive. Based on this directive, cross-border trading within Europe has already been possible and permitted for some time.

Although pension funds are institutions according to the IORP's definition, the Dutch cabinet holds that they are not sufficiently able to compete with foreign IORP institutions because Dutch national legislation sets more severe requirements for pension funds than those the directive calls for.

For example, in the Netherlands, the demarcation between pension fund activities and single-industry requirements applies, as does the prohibition on offering multiple pension schemes simultaneously by separating them from each other. Demarcation of pension fund activities

means that a pension fund may only execute pensions in the second pillar. The single-industry requirement means that a pension fund may only execute pension schemes for its own company or within its sector.

This means that the financial accounts may no longer be arranged per individual employer, but there has to be one financial accounting system for all pension schemes executed by the pension fund.

In addition, the rules for financial and management supervision over pension funds and insurers are more strict. Many other countries in Europe have implemented the far less stringent rules contained in the IORP directive without setting such additional requirements.

According to the Dutch government, the API should be a vehicle that can optimally use the room provided by the IORP directive. The API may, for instance, employ the broader product demarcation laid down in the directive. An IORP may also make a lump-sum payment or a temporary periodic payment. Furthermore, the requirements of one financial accounting system does not have to apply to the API.

In addition, in 2007 the Dutch government formulated the following major starting points for the introduction of the API:

- Competition with foreign institutions: the objective for the introduction of the API is that within the framework of the IORP directive it is able to compete with foreign institutions;
- Application of Dutch supervisory legislation: another starting point is that the API may not result in the exploitation of differences in standards of supervision. In other words, circumventing the requirements of Dutch legislation and regulations on spurious grounds is to be avoided. These requirements remain applicable in full to the API, as is the case with the financial supervision by the Nederlandsche Bank and market conduct supervision by the Netherlands Authority for the Financial Markets;
- Maintaining of compulsory nature: the current practice of compulsory membership of a pension fund will remain unaltered.

Meanwhile, a phased introduction was agreed. Initially, there will only be an institution for the execution of a pure defined contribution scheme, whereby no insurance

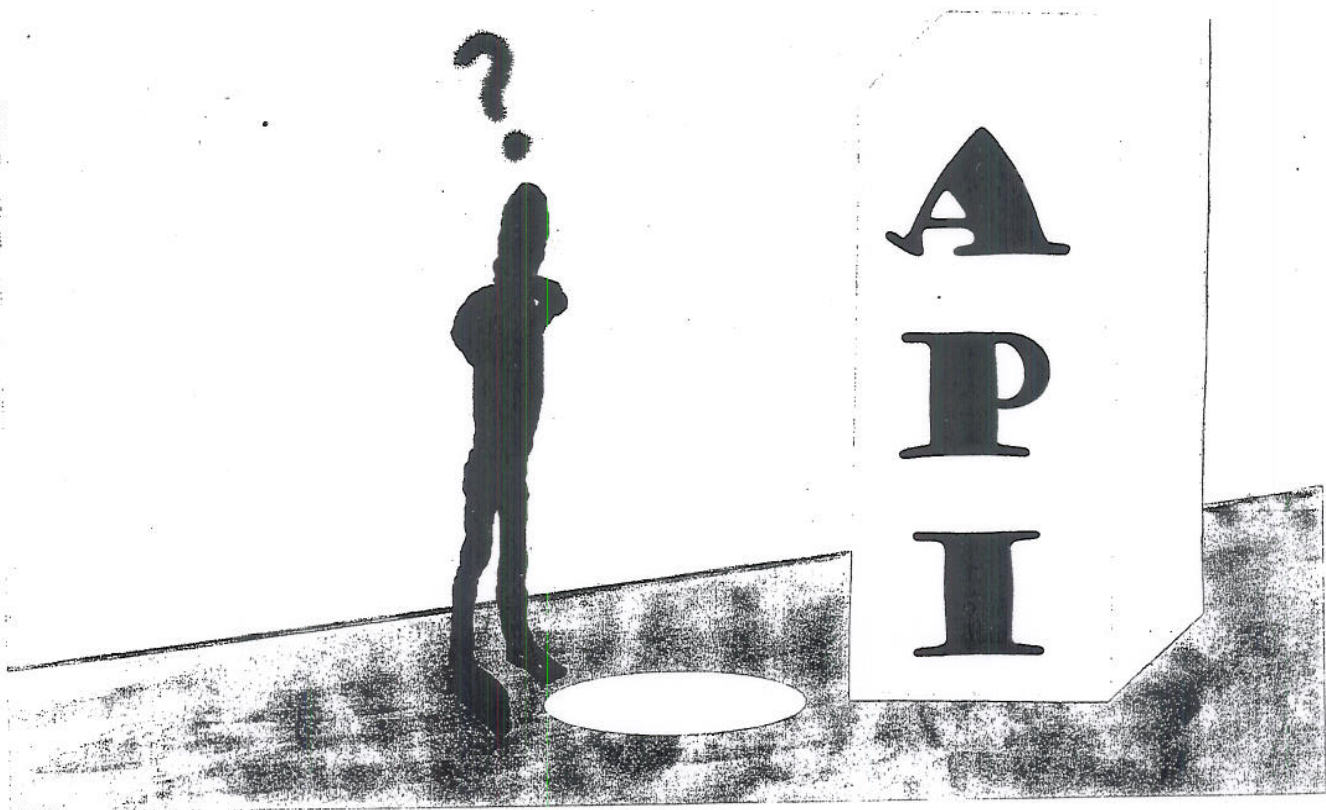


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risk whatsoever is run and no guarantees may be given. This Premium Pension Institution (PPI) only builds up a savings fund from the defined contributions. Upon retirement, this fund is to be transferred to an insurer to purchase an immediately commencing pension. For example, risk cover for a partner's pension cannot be accommodated in a PPI, but would have to be insured separately.

In the second phase, the extent to which company pension funds need to co-operate with one another further will be examined, as well as what amendments to the Pensions Act are necessary in this context. Finally, the last phase will examine how an API that can also execute defined benefit schemes can be introduced into the Pensions Act.

Dutch pension institutions should be able to compete with foreign institutions. The same supervisory regime and solvency requirements should apply to cross-border and local pension schemes. An API should also meet these requirements. The primary argument for competing with foreign IORPs is not a less expensive product, but a future-proof and qualitatively better one. In order to convince foreign employers that a Dutch pension provider is the best choice, the focus should be on organised associations of employees.

However, the framework within which the API is to be offered already exists for insurers, based on the life insurance directive. According to the government, this framework would consist of making use of a broader IORP product demarcation and by not having to meet the obligation for pension funds to have one financial accounting system. For insurers, this is already possible within the current legislation and regulations. Therefore, certainly a PPI, but also an API, offer no extra opportunities from the perspective of an insurer.

Nevertheless, it turns out that various parties – often

based more on instinct than on rational grounds – prefer a pension fund to a commercial insurer. If, and in so far as the market shows a demand for an API or a PPI as a vehicle for the execution of cross-border pension schemes, the pension insurers, as major players on the pension market, will of course have to respond to these changes.

However, the question is whether the introduction of the API will solve all the problems employers and pension providers currently face when setting up cross-border pension schemes. This is unlikely: ever since the introduction of the life insurance directive in the early 1990s, pension insurers have been able to operate across borders. Yet this hardly ever occurs.

There are other obstacles, such as the duty to apply the local law of the state in which the employer is established and to provide the required information in the employer's language. In addition, there are quite a few tax problems to be solved in the field of wages and salaries tax and value-added tax (VAT). The challenge is to develop a workable cross-border pension scheme, while observing the rules laid down in the IORP.

The introduction of the API alone is insufficient to ensure a prominent position for the Netherlands on the international pension map and to improve its international position. More is required for this, such as a more flexible supervisory

KEY FACTS

- All pension funds established in the Netherlands hold that IORPs should operate on a funded basis and be established separately from any sponsored undertaking
- An IORP is an institution for occupational retirement provision

regime and the easing of a number of tax measures. □

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