

Changing the industry-wide pension funds: between pension fund board and social partners

“Compulsory pension funds not obliged to implement changes agreed upon by social partners”

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Two recent examples in Dutch case law illustrate the lack of clarity about who is authorised to implement changes in compulsory industry-wide pension funds: the social partners or the pension fund. Such clarity is needed because pension schemes will have to change with the switch from the current to the new pension system. This issue has two key questions: Is an industry-wide pension fund obliged to implement the pension scheme that social partners have agreed upon? And if it refuses to do so, can social partners exert an enforceable influence? This study investigates possible routes out of this quagmire.

Principal Findings

- Unlike the Pensions Act, the law covering industry-wide pensions funds (Wet Bpf) contains no provisions about the content of the pension scheme or amending powers.
- This means industry-wide pension funds are not obliged to implement any changes that social partners agree upon.
- Social partners can exert a legal influence on the pension fund by appealing to the minister, but that is a measure of last resort.
- Granting social partners a statutory power to exert influence such as a veto right is rigid and not easily amendable as circumstances change.
- A contractual right of social partners to ensure that a pension fund implements changes is the most flexible route, but has limited enforceability and can disturb the healthy balance of interests between all parties involved.

“The power to amend the pension plan has been transferred in principle to the pension fund as a result of the decision for mandatory participation.”

Key Takeaways for the Industry

- Social partners currently lack legally enshrined amending powers in industry-wide pension funds.
- Future impasses can be avoided via one of three routes: 1) give social partners the legal authority to initiate changes, 2) ensure no pension changes can be legally implemented without industry-wide approval, or 3) provide clear legislation that enables social partners and pension funds to jointly realise the necessary changes.



Want to know more? Read the paper **‘Wijzigen van de bedrijfstakpensioenregeling: tussen pensioenfondsbestuur en sociale partners’** (Dutch only)