

## ■ **POSITION PAPER**

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SUBJECT: AML/CFT legislation and pension funds

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### **The EU should consider the impact of AML/CFT legislation on pension funds**

The Federation of the Dutch Pension Funds is strongly committed to the EU policy on Anti-Money Laundering and Financing of Terrorism (AML/CFT). The integrity of the financial markets within the European Union and the safety of European Union's citizens is paramount. A continuous evaluation of the regulatory framework is necessary. A coherent and effective approach is needed indeed.

On the other hand, AML/CFT legislation is leading to an administrative burden for Dutch pension funds. We strongly feel that Dutch pension funds are organized, regulated, governed and supervised in such a manner that they entail very little to no risk of being used for the purposes of anti-money laundering or terrorist financing. We are not aware of any incidents involving a Dutch pension fund.

### **Take low risks into account when drafting the reinforced rulebook**

As a result, we ask to the European Commission to consider the impact of AML/CFT legislation on these types of entities. In the future, it could be considered whether it is disproportionate to impose existing or new AML/CFT requirements on IORPs.

### **Why Pension Funds entail little risk**

Although between 0.7–1.28% of the European Union's (EU) annual Gross Domestic Product is 'detected as being involved in suspect financial activity' and although the collection and transfers of funds through non-profit organizations are considered a threat, IORPs are considered to be low risk entities.

- It is extremely difficult to launder money and/to finance terrorism through a pension fund, for the following reasons:
  - In the Netherlands, pension schemes do not allow transfers and/or payment up until the scheme’s retirement age. These premiums and investments are in fact ‘frozen assets’. The premiums are limited/have a ceiling in accordance with tax law. In the Netherlands, it is legally required to pay out pensions as an annuity.
  - The payments of retirement benefits are transferred by electronic means of banks under supervision of the European Union supervision authorities. Individual board members or trustees of IORPs have to meet fit and proper requirements overseen by national pension supervisors.
  - Both the payment of premiums and benefits is reported to the tax authorities. Records are being kept to meet OECD–guidelines in order to inform tax authorities of other Member States and/or foreign states. This is important, as paying benefits abroad, particularly to non–EU countries, is potentially the most realistic scenario for tax evasion with pension benefits. In practice, only a tiny share of benefits is collected by beneficiaries in non–EU countries.
  - For most companies, it is obligatory to be part of a sectoral pension fund, run by the social partners. The money is being managed at arm’s length, so the company has very limited or no influence over how the money is being managed. While it is possible for a company to set up their own scheme, the high costs and scrutiny by regulators (fit–and–proper requirements) involved make this a very illogical choice for companies seeking to launder money.
  - The cross–border activities are limited and highly regulated by the IORP II–directive.
  - Asset management is outsourced to asset managers, which execute transactions on the financial markets.

The abovementioned results in the conclusion that IORP’s are being low risk entities for AML/CFT. The flows of money are visible to tax authorities, individuals responsible for the management of the schemes are vetted and known by the Dutch central bank and the assets are frozen for decades. IORPs themselves take international sanctions into account. The sanctions regulations in force are dispersed and may be issued by the United Nations, the European Union and in the Netherlands by the Dutch central government (such as list of persons and organizations with frozen assets). If at retirement

- age pension benefits must be paid an asset freeze will occur in case persons are listed in sanctions regulations.

We strongly feel that the objectives of the European Union's AML/CFT-agenda will be met in case all efforts – including those of financial institutions – are focused on actual risks.

#### **AML/CTF rules for pension schemes should be subjected to a thorough risk and impact assessment**

Furthermore, the European Commission's action plan aims at working both within and outside the financial sector yet pointed out that recent incidents were caused by flawed supervision of non-financial entities. It is in our view therefore reasonable that the regulated institutions do not carry the burden of the unregulated and/or insufficiently supervised entities, especially since the European Union's capacity for fighting crime is enhanced including the proposed 'enhanced funding abilities' and additionally the development of 'technical facilities'.

We are very concerned that the burden of these types of requirements will increase when the EU sets out to harmonize and reinforce the AML/CFT rulebook. In case a future proposal for a Regulation should impact IORPs, a risk and impact assessment should clarify the merits for applying the following types of rules to pension schemes:

- Customer due diligence
- Electronic identification and verification
- Record keeping (except for the pension administration itself)
- Delivering 'structured' reports and filling out 'templates' and
- Beneficial ownership registers.

#### **Financing AML/CFT is public responsibility which makes public funding not only reasonable but required**

The European Commission states that: 'a strong case could be made for ensuring funding of the supervisory activities through contribution by the supervised private sector entities, as is already the case for several EU bodies'. We feel, however, that an important duty as AML/CFT supervision requires public funding.

- In case the European Union's budget should be insufficient, we feel direct Member States contributions (as in the case of the European Supervisory Authorities for the financial sector) is the most reasonable option. This is particularly the case since the single rulebook largely aims for better cooperation between Member States and the various competent authorities (FIUs, supervisors, law enforcement and customs and tax authorities). Without the burden of the costs for Member States or the European Commission as public entities there is no reasonable driver or necessity (austerity-feedback-loop) to fundamentally aim for an effective and coherent approach.

In case the European Commission aims to prevent fraudulent persons and entities will find loopholes in the regulatory and oversight framework, the approach of the AML/CFT-action and its funding should both encourage effectiveness and efficiency without increasing the costs for institutions which are under national and EU supervision already.

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