Pensioenfederatie
Prinses Margrietplantsoen 90
2595 BR Den Haag
Postbus 93158
2509 AD Den Haag
T +31 (0)70 76 20 220
info@pensioenfederatie.nl
www.pensioenfederatie.nl

KvK Haaglanden 52988368

POSITION PAPER

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SUBJECT: Criteria for designation of critical ICT third-party service providers

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The Dutch Federation of Pension Funds finds itself compelled to respond to the ESA's consultation on criteria for critical ICT third-party service providers (CTPPs). We respond to this consultation, as we see a risk in applying the ESA's proposed minimum thresholds per type of financial entity to the pension sector. Considering the Dutch pension sector represents seventy percent of assets under management of EU 'institutions for occupational retirement provision' (IORPs), several pension fund service providers risk being classified as critical. We are convinced the spirit of the DORA does not intend to designate pension fund service providers as CTPPs.

With this position paper, we outline firstly that pension fund service providers are not ICT service providers. Secondly, that they are adequately supervised at the national level. Thirdly, a holistic assessment should lead to the conclusion that additional oversight is not justified.

1. Pension service providers are not ICT service providers

DORA pays special attention to pension funds. Recital 21 outlines that a proportionate approach should be maintained for pension funds, which "outsource a significant part of their core business, such as asset management, actuarial calculations, accounting and data management, to service providers." The large Dutch pension funds typically outsource their work to one pension fund service provider; or a few. Pension funds are typically very small organizations (in terms of FTE) that outsource comprehensive contracts regarding pension provision services.

Pension fund service providers use ICT services and hardware from third parties to fulfill their contracts with pension funds, but they do not provide ICT services to pension funds. They offer pension management services to the pension funds, which is much broader than just providing ICT services. We therefore do not recognize pension fund service providers to be ICT service providers, as defined in Article 3, definition 21.

2. Pension fund service providers are adequately supervised at the national level

Pension funds outsource a significant part of their core business. That is why, in practice, pension fund service providers are indirectly supervised, given that pension funds have to comply with DORA regulation. Furthermore, both pension funds and pension fund service providers have no or very limited

- cross-border affairs, due to diverging national social, labor and tax law between Member States. In principle, all Dutch pension service providers providing services solely in one Member State to financial entities that are only active in that Member State.

Some pension service providers have limited activities in other (non-EU) countries, such as investment offices which do not provide ICT services, but those activities are solely aimed at providing services in the home Member State. Pension funds have participants in other countries, but that does not mean they are active elsewhere, as these participants have accumulated pension in a labor contract in the home Member State. A handful of very small Dutch pension funds - ExxonMobil, Alcon, Johnson & Johnson, Euroclear, Pension & Co IBP and Hewitt Associates - have a Belgium scheme. Even in these cases, it means the service provider is active in the same country where prudential supervision on the pension fund takes place: Belgium.

We believe that the motivations and justifications for setting up an Oversight Framework for CTPPs provided in DORA's level 1 recitals do not apply to pension fund service providers. There is no "insufficiency of national mechanisms in providing financial supervisors" as motivated in Recital 31. We see no "added value of taking action at Union level", as justified in Recital 76. Nor do we see a potential for cyber incidents "to evolve into a systemic crisis/ endangering the financial stability and integrity of the Union" - as described in Recital 78 - as there are very limited international activities.

Considering pension fund service providers provide services solely in one Member State to pension funds that are only active in that Member State, their activities are adequately supervised by national competent authorities. Applying Union Oversight Framework would therefore be superfluous. It would only add costs to pension fund members and lead to lower pensions. We therefore think CTPP designation should not apply. Additionally, the biggest Dutch pension fund service provider, APG Groep, is an intra-group service provider to the biggest Dutch pension fund, APB, so that in this case there is also high internal control to manage risks.

3. Pension fund service providers do not merit CTPP designation

While we recognize that pension fund service providers do satisfy several CTPP designation criteria, we would argue they should nevertheless not be designated as CTPPs. Our major concern with the consultation is with the ESAs' application of minimum thresholds for various criteria based on market share per 'type of financial entity'. We assume they apply to each of the entities listed in the scope of Article 2 (a) to (t). One of them concerns 'institutions for occupational retirement provision' - IORPs.

The European occupational pension sector is diverse. It covers not only institutions subject to the IORP II Directive, but also those subject to Solvency II and those exempted from European legislation through clauses in their respective Member State's EU Accession Treaty. Still other pension institutions are considered as part of the same group as the employer providing pension.

- Large pension funds in Sweden, Denmark and Finland are therefore not considered 'IORPs'. That means the European IORP landscape is relatively small and consists mostly of Dutch pension funds.

The Netherlands has the largest funded pension system in the EU and almost all funded pensions are provided by IORPs. That means 70 per cent of assets under management in the EU IORP sector are with Dutch IORPs. The specificities of the European pension sector mean that Dutch IORPs are big fish in a small pond – and they are in no way systemically important financial institutions.

The Netherlands has 170 pension funds, that outsource most of their activities to 10 pension service providers. In several criteria, the ESAs propose a minimum threshold of 10% of assets under management (AuM) for a type of entity. That would translate to a 14% AuM market share in the Dutch pension fund market. Several Dutch pension fund service providers would hit the minimum thresholds for providing services to 10% of assets under management of all EU IORPs. We therefore signal the risk that on the basis of these minimum thresholds, pension fund service providers are characterized as CTPPs.

We believe a more holistic assessment of these entities will result in a different conclusion. The CTPP designation seems intended for some of the largest tech companies providing hardware and software to large numbers of large financial institutions. The impact of ICT related incidents at pension fund service providers is incomparably smaller than that of Big Tech. It would be unfortunate if the application of the proposed minimum thresholds in the pension sector would have unintended consequences in designating pension fund service providers as CTPPs.

Beyond the argument that pension fund service providers are not ICT service providers and the CTPP designation should not apply in the absence of significant cross-border activities, we would like to clarify why – in a holistic assessment – they do not meet the four criteria for CTPPs. Firstly, we see limited impact on provision of financial services. Pension fund service providers mainly provide services to Dutch pension funds, by which a ripple effect of an ICT-incident would be very limited. Secondly, pension funds do not have a systemic character, nor are they of systemic importance. Thirdly, pension funds have a high level of control over critical ICT service provision. DORA Recital 21 gives consideration to the special relation between pension funds and their service providers, which is well managed, regulated and supervised. A holistic assessment of criteria should render the conclusion that pension service providers are not CTPPs.