

Lewiatan lists drawbacks of the governmental bill with changes to the Polish open fund (OFE)

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Government bill with changes to be introduced to the pension scheme does not provide for the principles of inheritance of the part of the contribution credited to the Social Insurance Company's (ZUS) sub-account analogous to the ones applicable to the open fund, no significant changes to the open pension plan investment policy were introduced, too restrictive conditions for individual pension security accounts maintained by open funds were established – that is the opinion of Polish Confederation of Private Employers Lewiatan (PKPP Lewiatan).

Lewiatan can accept that part of the pension contribution transferred to the open fund is reduced to 3.5 per cent, but only for the period of two years. It does not agree to accept the far reaching changes to the principles of the pension scheme and it does see numerous drawbacks in the proposed government bill with the changes:

1. Contrary to some previous announcements, the bill does not provide for the principles of inheritance of the part of the contribution credited to the Social Insurance Company's (ZUS) sub-account analogous to the ones applicable to the open fund. The contribution is to be credited to the beneficiary's account and not payable in cash, on conditions similar to the ones applicable to the open fund.

2. The bill introduces unequal conditions for individual pension security accounts (IKZE) maintained by open funds in respect to other entities, it clearly overstates the requirements for open funds which will be obliged to undertake the activity.

3. The provision that funds collected on individual pension security accounts become part of open fund's assets (and thereby are subject to the same restrictions when it comes to investments) while for the funds there should be a separate sub-fund created with different conditions of investment policy. The bill does not provide for the possibility of diversifying open funds' investment policy within the frames of investments for the needs of maintaining individual pension security accounts – since payments made to individual pension security accounts are fund's assets all investment limits and restrictions provided for open funds should apply to them respectively.

4. Restrictive regulations towards open funds also includes the need to guarantee a return rate for additional payments. Such regulations are in breach of the constitutional principle of equality under the law, since there are no such restrictions in case of financial institutions other than open funds.

5. The proposed solutions are in breach of the constitutional rules of protection of acquired rights and confidence in the state and the law it establishes because they:

- In case of individuals born after 31st December 1948 and before 1st January 1969 – who entered into a fund membership contract with open funds at will and agreed for a given amount to be paid to their open fund – drastically reduce the amount and thereby significantly change the conditions the individuals had accepted. The individuals had the right to expect that the choice of a specified capital pension plan they made at the time would accordingly result in application of permanent legal solutions in long standing perspective and would make it possible to receive pension from the very pension plan,

- In case of other members of open funds – who entered into a fund membership contract with open funds with the contribution to open fund set at the statutorily determined level of 7.3 per cent of the assessment basis – impose a new rate, reduced by 5 per cent, depriving them of the possibility of deciding whether they want to stick to the previous conditions, or accept the new ones,

- Are in breach of the constitutional citizens' right to social security referred to in Article 67 section 1 of the Constitution of the Republic of Poland – because by creating new legal regulations within the principles of the pension scheme it deprives members of open funds of the right to take advantage of the scheme on the same terms and conditions as before in a way which thwarts the conditions they accepted and which assumed that over years they would gain the right to capital pension.

6. Contrary to some previous announcements, the bill does not provide for any significant changes in the open funds' investment policy. It maintains current benchmark (minimum required return rate) which has been criticized as the fundamental reason for imitation of open funds' investment policy and lack of competing with results. What is vital, both reduction of the contribution paid to open funds and lack of decisive changes in open funds' investment policy will make Polish market more dependent on short-term risk capital.

7. Proposed rise in the limit of maximum engagement in shares will cause raise in changeability of open funds' investment results and thereby increase in financial risk. However, no parallel change in the principles of the minimum required return rate has been provided for while if the permissible return rate deviation remains unchanged and the at the same time changeability of the rates increases this may, as opposed to the expectations – will make the investment results of open funds more similar.

8. It cannot be accepted that the mechanism for keeping record of the funds from pension contributions kept on Social Insurance Company's (ZUS) sub-account which is being developed was classified as part of the "capital pension" scheme. Contrary to the suggestions of drafters who point out that the part which include the funds kept on the Social Insurance Company's (ZUS) sub-account belong to the capital model when it comes to financing payment of pension, in fact financing of the sub-accounts lies within the PAYG system where payment of pension benefits takes for today's pensioners is made from contributions paid today by all working insured individuals. The amount of due contributions will only be recorded on the insured person's sub-account and will constitute the basis for calculating the amount of the person's future pension, however, such being the case, we cannot talk about – as the case is in case of the 2nd pillar – about the contributions paid to open funds being collected and multiplied (capitalized) with the entire amount, increased by the profit from investing them (the contributions) on the capital market (while reduced by the costs connected with membership in an open fund) creating a real capital which will be paid in the form of a pension.

Polish Confederation of Private Employers Lew is aware of the difficult condition of the Polish public finance. It does share the government's fear that exceeding public debt statutory limit of 55 per cent is highly possible. In order to avoid this threat, decisive precautionary steps must be undertaken. This scenario cannot be changed without in-depth, system reforms. However, it do not approve of the far-reaching changes to the principles of the pension scheme.

If the government bill is implemented, pensions paid from Social Insurance Company will constitute app. 80 per cent of all benefits and this means that the role of capital pensions will be marginalized, the hidden debt will increase, the country's debt will increase in the future and the intergenerational imbalance will get deeper. Creating sub-accounts which would be

indexed with nominal GDP growth is additionally equal with paying a greater price for the hidden debt than the open one. Transferring part of pension contribution from open funds to Social Insurance Company makes a risky precedent and undermines citizens' trust in the pension scheme.

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