



AUTORITÉ
DES MARCHÉS FINANCIERS

Print from the website of the AMF

17 October 2022

Transfer of a retirement savings plan (PER): when incomplete information results in a blockage situation

The PACTE Law of 2019 made it possible to transfer various existing retirement savings products, e.g. from an old scheme to the new retirement savings plan (PER), including the collective corporate PER (called PERECO or PERCOL), which replaces the former PERCO.

Precise information is demanded regarding the history and category of the amounts saved, to enable calculation of their tax treatment. Failing that, the transfer cannot be made to the new manager. These extra delays can be detrimental to the saver, as occurred in this case of the month.

The facts

Ms R. was the holder of a personal PER plan opened with insurance company X. In order to group her retirement savings products together, she asked for it to be transferred to her PERCOL held with her employee savings account manager Y, on 2 February 2021.

Failing any news from this manager, and after contacting the insurer, on 7 July 2021 Ms R. informed the manager that, on 22 March 2021, insurance company X had indeed transferred the amount of €27,846.71 to employee savings account manager Y.



Between 7 July 2021 and 25 December 2021, employee savings account manager Y told Ms R. that it was still waiting for a further response from insurance company X in order to

finalise her transfer request.

On 25 December 2021, the transfer was finally effective, entailing a significant loss of earnings for Ms R. because, as of 2 February 2021, she had requested that the transferred amount be invested in FCPE fund Z, which proved to be very high-performing.

It is in these circumstances that Ms R. referred the case to me. Specifically, according to her calculations, between 25 March and 25 December 2021, FCPE fund Z had posted a performance of 12.63%. She therefore considers that she incurred an equivalent loss of earnings, for which she wants to be compensated by account manager Y, which she holds responsible for the delay, and to which she had made a preliminary claim.

The investigation

I questioned account manager Y which confirmed to me that on 2 February 2021 it received a transfer request form from Ms R. concerning her assets held by insurance company X.

Although the amount itself was transferred by the insurance company on 24 March 2021, the wording of the transfer did not make it possible to know sufficient references related to the investment of the employee in question. The staff of account manager Y sent insurance company X a reminder only on 9 September 2021, then several times by email, until 30 November 2021. On 4 December 2021, insurance company X made a reply, but information was missing, although it was essential for application of the appropriate tax treatment, and in particular:

- The nature of the source compartments (voluntary contribution, employee savings scheme or else a compulsory contribution);
- The net amount and gross amount transferred.

On 15 December 2021, insurance company X indicated to account manager Y that the funds came from a PER contract and that all the payments were allocated to the compartment of deductible voluntary contributions. Only then could the investment be made.

In light of these factors, account manager Y considered that no dysfunction in the handling of this transaction was imputable to its staff and told me that it refused to cover the loss of earnings claimed by Ms R.

Recommendation



I have examined the details of this case.

Article L. 224-40 of the Monetary and Financial Code, based on the PACTE Law, obliges the source manager to inform the recipient account manager of the precise breakdown of the source of the transferred amounts. Now, depending on their source (voluntary contributions [deductible/non-deductible], compulsory contributions, employee savings schemes), the amounts are lodged in three different compartments, which each have their own tax treatment. Information concerning the source of the amounts invested in a PER plan is therefore compulsory for the recipient institution.

It therefore appeared to me that in the absence of this information, it was effectively impossible for account manager Y to finalise transfer of the plan.

However, I also observed that, while numerous reminders had been sent by account manager Y between September and December 2021, none had been sent during the period from March to September 2021, i.e. during around six months, and this despite numerous reminders sent by Ms R., I therefore considered that account manager Y had failed in its obligation of diligence.

In light of these facts, I therefore considered that shared responsibility should be decided for this case and I carried out a precise assessment of the damage, based on the performance of the FCPE Z fund.

To do so, I made sure to select only the period in which I consider that account manager Y lacked diligence, i.e. from the transfer of the funds until the time when reminders began to be sent (from 22 March 2021 to 9 September 2021), giving a 10.5% performance for the FCPE Z fund.

Adopting this performance, I therefore assessed the damage as follows:

$$€27,846.71 \times 10.5\% / 2 = €1,500$$

I informed Ms R. and account manager Y of this, and they accepted my proposal.

Finally, I reminded Ms R. that company X was a mutual insurance company, an entity that is not regulated by the AMF, and that for this reason I was not authorised to refer to this institution to collect its observations and, where appropriate, obtain compensation via a mediation procedure with the AMF Ombudsman.



REMINDER *

Article 71 of the PACTE Law of 22 May 2019, which came into force on 1 October 2019, established an arrangement for transfer of rights from one PER plan to another, stipulated in new Article L 224-6 of the Monetary and Financial Code.

It is possible to transfer personal rights currently being established corresponding to voluntary contributions or to amounts coming from an employee savings scheme to any other PER plan at any time.

The transfer entails no change in the conditions of their redemption or their liquidation (Monetary and Financial Code, Art. L 224-6 para. 1). This rule assumes that every PER plan consists of 3 compartments corresponding to the 3 types of contributions defined in Article L 224-2 of the Monetary and Financial Code, in order that the differentiated conditions of redemption, liquidation, transfer and the various social and tax regimes may be applied to them.

The idea is that the rights of the holders are not "captives" of the plans in which they were established, but that the interested parties may shift them easily from one scheme to another depending on the events of their working life and the respective performances of various PER plans.

Note, however, that Article L. 224-40-III of the Monetary and Financial Code stipulates that this type of transfer is foreseen only within the limit of one transfer every three years.

** Éditions Francis Lefebvre - Feuillet Rapide Social 19/19 (retirement savings reform): published on 12/09/19*

Lesson to be learned

The possibility of transferring retirement savings products is one of the key provisions of the PACTE Law. Depending on their source, the amounts are invested in three different compartments (voluntary contributions, employee savings schemes and compulsory contributions), which each have their own tax treatment.

The source account manager must provide the new account manager with precise information, notably concerning the source and category of the amounts invested in the PER plan. Barring this, the transfer cannot be completed, and this may result in a loss for the saver.

It is also important that the new account manager should inform the source account manager in the event of a blockage situation.

Finally, this case is an opportunity to recall the jurisdiction of the AMF Ombudsman, who can in no case take action when the implicated party is an insurance company, but only vis-à-vis the account manager regulated by the AMF.



ON THE SAME TOPIC



NEWS

ASSET MANAGEMENT

16 June 2021

Employee investment undertakings: the AMF modifies its General Regulation and policy



OMBUDSMAN'S BLOG

EMPLOYEE SAVINGS SCHEME

10 May 2021

Employee savings: what is the trigger event date for early release on the grounds of a marriage outside France?



HOUSEHOLD SAVINGS NEWSLETTER

EQUITY SAVINGS PLAN

09 March 2021

AMF Household Savings Observatory Newsletter - No.42 - March 2021



Legal information:

Head of publications: The Executive Director of AMF Communication Directorate. Contact: Communication Directorate – Autorité des marchés financiers 17 place de la Bourse – 75082 Paris cedex 02