



ARTICLE

RETIREMENT-SAVINGS AS SEEN BY THE PACTE BILL: EVERYTHING IS CHANGING!

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In the chapter "More Innovative Companies" in the section "Improving and Diversifying Financing", the very ambitious PACTE bill presented on last June 19 before the National Assembly makes official the launch of the retirement-savings reform.

1. Schedule

It may seem strange to first take care of the last tier of the French retirement system (retirement-savings) when:

- discussions have just been initiated on the foundations of this same system (with the creation of a universal primary retirement system) the implementation of which is not planned for several years.
- the merger of the Arcco Agirc retirement schemes (the system's intermediate tier) enters into force on next January 1.

But, looking at it closely, the schedules are not that far apart and each reform, given its content, may go forward without completely needing the other reform.

For the primary retirement reform, after the concertation phases, the bill should be presented in Parliament in 2019 for adoption (and, therefore, transparency of the system) likely in 2020. The measures taken will progressively enter into force over several years, beginning in 2025.

For the PACTE bill, parliamentary debates will begin next September and, in an optimistic scenario, could be completed before the end of 2018. Some measures related to the retirement-savings system are announced by this bill as having to be part of the finance and social security financing acts (in principle those passed in December 2018). In addition, the PACTE bill refers, for a certain number of subjects impacted by this reform, to decrees and, above all, to orders to appear within 6 to 12 months after the act's publication. Lastly, it is expressly provided that the principal measures of the PACTE act involving retirement-savings will enter into force no later than January 1, 2020.

2. Initial observation

Starting with the observation that in France the retirement-savings system is fragmented and compartmentalized, Article 20 of the bill provides a very strong symbolic act: the creation in a single code (here the French Monetary and Financial Code) of a chapter dedicated to "retirement-savings plans" and applicable to all individuals regardless of their status.

The PACTE bill, therefore, goes much further than the very general, disconnected definition of any other text than the act of November 9, 2010, had set forth in its Article 107 pertaining to the retirement-savings system.

It creates a veritable legal foundation shared by all retirement-savings plans and carries out a full revamping of the architecture of offerings for retirement on the French market.

Today, the retirement-savings system is complex and struggles to find its place between employees' savings plans and life insurance.

It designates a variety encompassing companies' collective and mandatory contracts (referred to as "Article 83"), the PERPs, the Madelin and agricultural Madelin contracts (for freelance workers), the PERCOs and also the PREFON, CRH and COREM contracts.

They have diverse and distinctive characteristics:

- The affected public (employees, non-employees, civil servants, individuals "without a category"),
- The tax and social environment,
- The benefits (capital or pension),
- The savings' financial management,
- The cases of early disbursement (for example, in case of the death of the insured party's spouse/civil union partner; in case of disability; in case of the end of unemployment or 2 years after revocation of a corporate office; in case of over-indebtedness; and, for employees, in case of court-ordered liquidation),

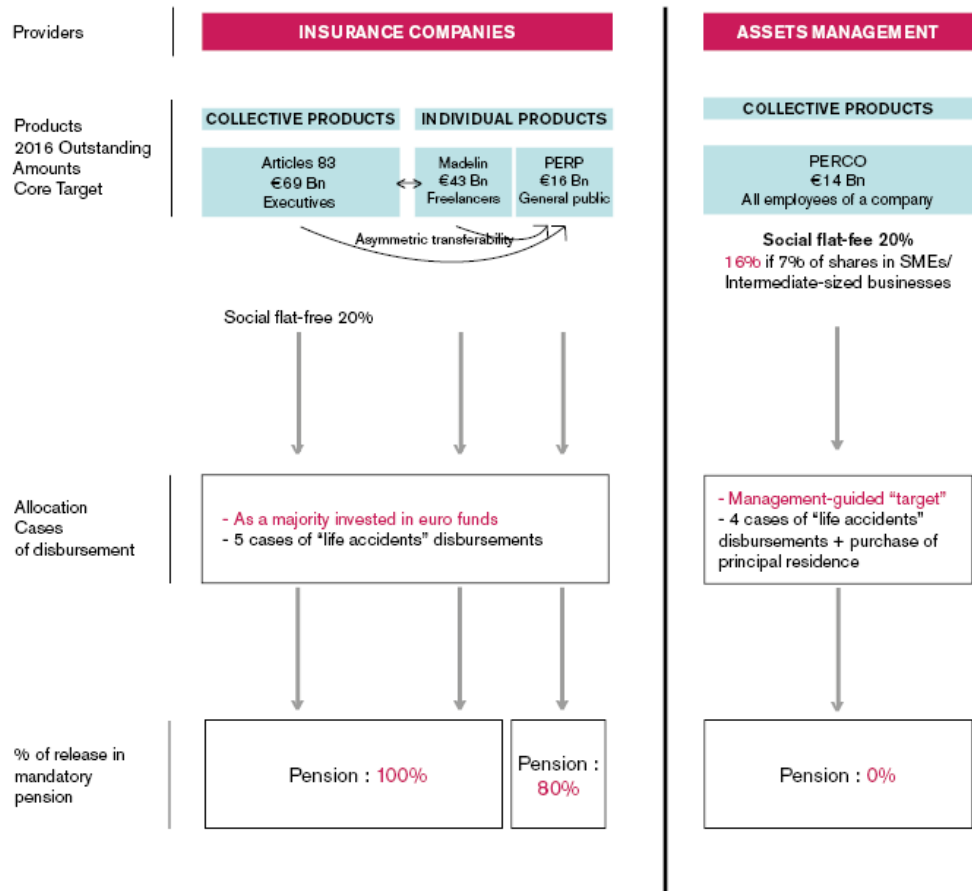


- The actors carrying and managing these products: insurer organizations (insurance companies, provident fund institutions, supplementary health insurance), assets management companies, supplementary retirement pension funds (FRPSs).

Their heterogeneity is such that it has never allowed—despite European incentives—true portability of an individual's vested rights in one system to another, throughout his career path—although the stated purpose of all these offerings is to create supplemental income during retirement.

[Graph below]

Before the reform, a complex universe with limited transferability between products



3. General new architecture

The new architecture set forth by the PACTE bill removes many of these differences. As this stage the PREFONS, CRHs, COREMs and other contracts of the same type are not affected.

The new retirement-savings systems may be proposed **indistinctly** by insurers and assets management companies.

There would be a **single individual product: the PERin**, which would be the successor to the PERP and the "Madelin". More than an individual product, it is in reality a collective system with optional/individual membership, with the governance involving a subscribers' association representing the insured parties' interests.

Then **two collective products** would exist together. This means two systems implemented in a company for a group of employees:

- A **universal product** for all employees (therefore, close to a PERCO)
- A **categorical product** for an "objective" category of employees (therefore, close to the "Article 83" contracts).

4. A foundation and common points written into the act

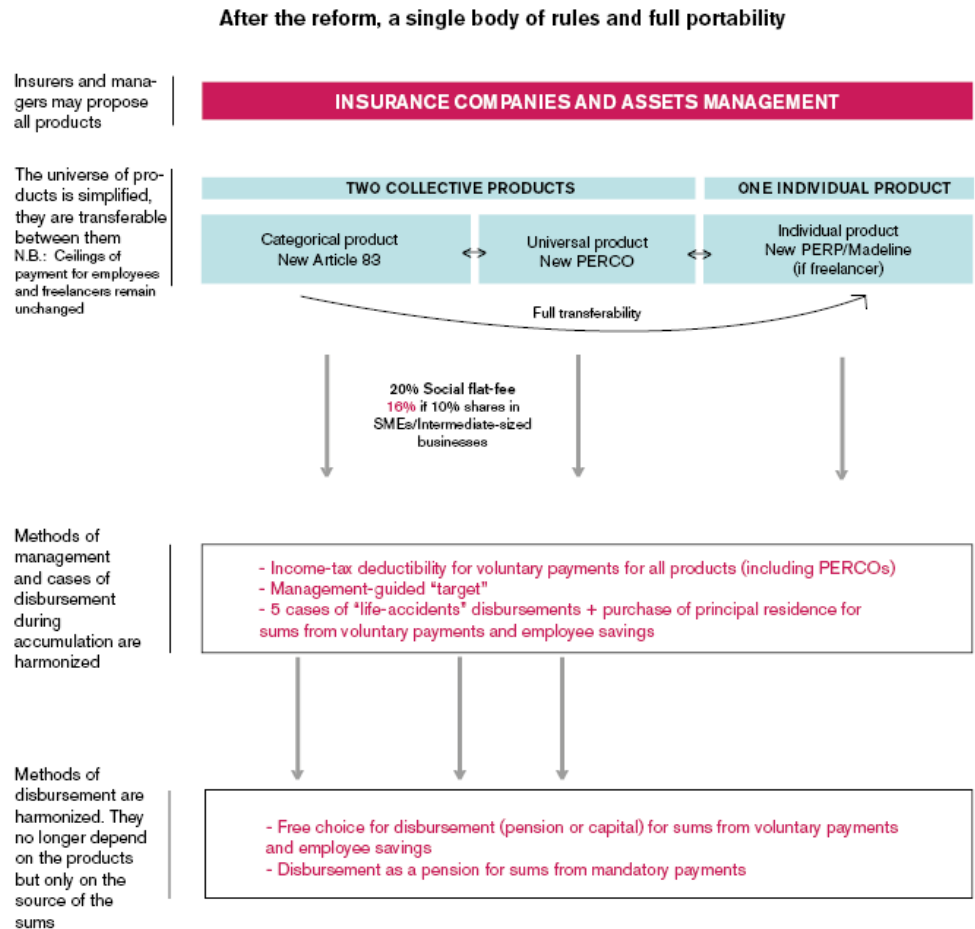
All of these products will have to comply with a certain number of common elements:



- Possibility for each person to **individually transfer** their savings from one vehicle to another and indistinctly, involving transfer fees not exceeding 3% of vested rights;
- Application of a reduced rate of a **social flat-fee** for the employer's payments for the collective products: based on the rule applied to the PERCO, the social flat-fee will be 16% (instead of 20%) if the savings are allocated to investments including a certain proportion of shares (10%) to finance SMEs/Intermediate-sized businesses;
- An advantageous **tax environment** is retained with income-tax deductibility of individual voluntary payments on all the products (including the PERCOs)
- By default, the **financial management** of the savings will be guided by targets (allocation of payments to riskier investments in the beginning and less and less risky investments as the term approaches)
- Added to the cases of early disbursement for all the systems is a case provided for the PERCO, i.e., the acquisition of the principal resident (only the sums from voluntary payments and employee savings can then be disbursed);
- **The disbursement as a pension** will remain the rule for the sums from mandatory payments; on the other hand, for voluntary payments and employee savings, the insured party will have the choice between disbursement as a pension or capital.

This common foundation is set forth in the PACTE act in the chapter dedicated to the French Monetary and Financial Code and for the social flat-fee in the French Social Security Code.

[Graph below]



5. Roadmap for the future additional order on the retirement-savings system

Within 12 months of the publication of the PACTE act, the Government is authorized to take the following measures through an order:



- For collective products: the governance and methods for involving the company's employees in decision-making concerning the management of savings; the rules for implementation in the company and the obligations to provide information and advice within this framework; the methods for managing the employees' rights in case of a modification in the company's legal situation; the legal regime of the universal product involving all employees (with a possible seniority condition) and, in particular, on the source of the payments and eligible assets; the regulations for the categorical product on the eligible categories of employees (now the criteria provided in Article L. 242-1, paragraphs 6 to 8 of the French Social Security Code and in Article 83 of the French Tax Code), on the source of the sums and the eligible assets.

- For the individual product: subscription and governance by an association and the obligations to provide information and advice.

- For all: force the insurers and other authorized entities to establish an accounting restriction for the allocation of retirement-savings commitments they have.

In parallel or subsequently, decrees are promised on certain points of the PACTE act previously mentioned.

These measures are going to generate a large number of texts to be amended in employment law, social security law, tax law, insurance law and finance law.

6. Future of existing contracts

All of them should come into being no later than January 1, 2020.

Although it seems complicated to apply this reform from the outset to the existing schemes and contracts, it is possible that there will be an interim period for the existing systems to bring them into compliance and transform them due to strong pressure.

The PACTE bill asks the Government to define in its order the conditions on which the new measures are applicable, in whole or in part, to existing retirement-savings products and current contracts.

7. And also... regarding retirement...

We cannot talk about retirement-savings without thinking of:

- An old system, which has a bad image, although it is useful and unique in companies: these are the defined retirement benefits schemes, referred to as "Article 39" schemes;

- More recent actors in this market who up to now have not had great success in France: the "institutions for occupational retirement provision", or "IORPs" (for the European version) or pension funds (for the less legal version).

The PACTE bill is also concerned about their future. As these subjects are supposed to evolve spearheaded by European directives, they are, therefore, found in the part of the PACTE bill devoted to the implementation, adjustment and adaptation to European law.

For defined retirement benefits schemes, there are plans to **implement directive 2014/50/EU of April 16, 2014**, on the minimum requirements for enhancing worker mobility in the European Union. This text had to be implemented before May 21, 2018, in the Member States, and, to facilitate this mobility, it requires an improvement in the acquisition of retirement rights, and maintaining them.

Let us say here that the directive excludes the following from its scope:

- The schemes which, on the date on which the directive enters into force (May 2014), have stopped accepting new active members and are closed to new members;

- Employment periods completed before the directive's implementation.

Such an implementation in France obviously puts in the legislature's crosshairs the **schemes known as "random rights" schemes**, meaning those whose promised retirement pension is related to the condition of the beneficiary completing his career (often an executive or corporate officer).

This condition and the architecture of these schemes were created by the act of August 21, 2003, on retirements, in exchange for which a favorable social environment was provided by Article L. 137-11 of the French Social Security Code. Of course, over the years this environment deteriorated, increasing the companies' commitments and the contributions due by the pensioners.

For example, the employer must pay social contributions at the rate of:

- 24% of payments when management is outsourced with an insurer (initially 6%)/48% of allocations to provisions or of the sums booked in the schedule to the balance sheet, when management is internal (originally 12%);



or

- 32% of pensions paid (originally between 0% and 8% per pension bracket).

But, many still exist, representing in 2016 205,000 beneficiaries for a total amount of €40 billion.

In Article 65, the PACTE bill contemplates authorizing the Government to take the following measures through an order within 6 months of the act's publication:

- Prohibiting making acquisition of retirement rights subject to more than 3 years of presence in the company;
- Adapting the social scheme applicable to the company's payments coherently with the other collective retirement-savings systems;
- Adapting the tax and social scheme applicable to pensions paid and to the employer's financing;
- Establishing the framework linking the introduction of these schemes to the implementation of other schemes benefiting all employees;
- For benefits, defining the ceilings for acquisition of retirement rights paid in the form of pensions, determining the tax and social scheme that will be applicable;
- For benefits, allowing and providing a framework for the terms linking the benefit of the pension to conditions related to the beneficiary's professional performance or to any other criterion that may be individualized;
- Taking any coordination measures in the 6 codes involved (insurance, mutual insurance, social security, labor, commercial and tax codes).

Interim provisions will be provided by this same order for the existing retirement schemes with random rights. In other words, a radical transformation of these schemes is already in the works.

Lastly, the PACTE bill concludes the subject of supplementary retirement by implementing, in Article 67, Directive 2016/2341/EU on the activities and supervision of IORPs and which, on the European level, revises the framework for the operation of these organizations dedicated to occupational retirement (excluding mandatory statutory retirement funds), notably abrogating the original directive 2003/41/EC.

This issue is aimed at placing actors other than insurer organizations on the retirement-savings market.

This has a dual objective: carrying out this implementation and also organizing (already!) the framework of French pension funds (the "FRPSs") instituted with the order of April 6, 2017.

As none have been created yet, certainly due to the numerous regulatory constraints (and despite a streamlined prudential environment), this involves developing these organizations' activity by simplifying the rules applicable to them and promoting transfers of insurers' portfolios to these new organizations.

In parallel, as the first attempt in France for this dedicated occupational retirement activity (outside of the framework of insurance), with the order of March 23, 2006, regarding RPSs (implementing the IORP directive, 2003/41), did not completely cover the logic of the European texts, the post-PACTE act order will be aimed at broadening their scope to be able to manage retirement systems on a cross-border basis.

In addition, in the same spirit, and to complete the retirement-savings system, we note the draft regulation presented on June 29, 2017, by the European Commission and aimed at creating the PEPP (Pan-European Pension Product).

This text, which will be directly applicable in Member States (and mentioned in the impact study of the PACTE act) lays down the bases of a product that will not be substituted for the local products. More precisely, it involves the bases of a label to be given by the EIOPA (European Insurance and Occupational Pensions Authority) on retirement-savings products proposed by insurers, banks, IORPs and management companies. They will have to respect required minimum specifications that will notably include true portability of vested retirement rights if the policyholder moves to another Member State. As for the tax framework of this PEPP, the Commission recommends not implementing a specific tax treatment: it asks Member States to apply the same tax treatment as the one existing for their national products even if the PEPP label does not satisfy all the national conditions laid down by their tax law.

The draft regulation led to some trade-offs and is being discussed before the European Parliament.

After numerous substantial debates before the National Assembly and Senate, the PACTE act will nevertheless be a true advance for retirement-savings.

It will allow retirement-savings actors to apply the precepts of the directive on insurance distribution implemented not long ago by an order (its entry into force is scheduled for October 1, 2018).



For companies and employers these are new deferred remuneration mechanisms for their employees that can be combined with employee savings systems. The act will lead to a period for reflection and transformation for companies that had already put into place retirement-savings systems.

Lastly, for individuals (whether or not employees) the act will provide a more comprehensible and attractive system for retirement-savings and, above all, one more in line with all the stages of their professional or non-professional lives.
