

# MANAGING A SOCIAL PLAN IN FRANCE:

## A BRIEF GUIDE FOR INTERNATIONAL GROUPS CONSIDERING REDUCTIONS IN WORKFORCE IN FRANCE

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## INTRODUCTION



To prevent a deep and long-lasting economic crisis, the French Government issued several measures such as a reinforced furlough scheme or State-guaranteed loans. As these measures came to an end, we are witnessing a rise in the number of insolvencies. Between February 2022 and January 2023, the French Bank (la Banque de France) counted 42,640 insolvencies compared with 28,124 a year earlier.

Even though the Covid crisis seems to be over, we are currently dealing with a period of economic uncertainty for business. Global inflation, European energy crisis, surge in interests rates, war in Ukraine, the collapse of significant financial institutions, etc. : these are only a few of the many reasons to anticipate potential economic difficulties.

However smoothly they may have sailed through the different crises, the need to reorganise the workforce may someday become more important for companies, including companies operating in France (where State subsidies have been generous to protect employment over the last three years).

If the main tool available to companies is the job protection plan, French Employment law has created several schemes that companies can implement to reorganise: (i.) the collective mutually agreed termination of the employment agreements (« Rupture conventionnelle collective ») and (ii.) the collective performance agreement (« *Accord de performance collective* »).

- **Collective mutually agreed terminations of the employment agreements** (« *Rupture conventionnelle collective* »): through the negotiation and execution of a collective agreement with trade union representatives, this scheme allows French companies to conclude mutually agreed termination agreements with individual employees volunteering.

The benefits of such a scheme are the following:

- The company does not need to document specific economic reasons to conclude such a scheme;
- The individual termination of the employment agreements are rather secured and difficult to challenge by the employees.

On the other hand, this scheme comes with some significant drawbacks:

- The collective agreement must be negotiated with the company's trade union representatives, which may prove difficult depending on the social atmosphere;
- If the workforce reduction target set by the company is not reached through voluntary terminations, the company will not be able to let additional employees go through redundancies for a certain period of time (usually several months);
- The collective agreement typically needs to provide for specific supporting measures aimed at encouraging employees to volunteer, which comes at a financial cost.

- **Collective performance agreement** (« *Accord de performance collective* »): a collective performance agreement may be negotiated and executed to implement salary cuts, working time arrangements or geographical mobility.

The benefits of such a scheme are the following:

- The company does not need to establish nor document specific economic reasons to implement such a scheme;
- Such a collective agreement may be negotiated not only with trade union representatives but also with members of the social and economic committee. It was recently ruled that the collective performance agreement can be concluded by mandated employees when there is no trade union representative in the company;
- In the event individual employees refuse the contractual changes stemming from the company-level agreement, the company may dismiss them for this very reason (with no specific severance required) and such terminations are considered lawful.

Such a collective agreement is suitable for companies that need to implement structural changes without contemplating redundancies. The employees who are terminated because they refused the individual consequences of the collective agreement must indeed be replaced.

## INTRODUCTION

➔ These tools are well adapted to anticipate and prevent financial and economic difficulties. In the upcoming crisis, they may not be suitable any longer, especially for companies wishing to profoundly restructure their operations.

The purpose of this training session is thus to lead you through the broad principles and steps of French law's the job-protection plan, « *plan de sauvegarde de l'emploi* », a specific and mandatory procedure required for large collective redundancies.

Although some of the principles presented today also apply to less far-reaching restructurings, our focus today is mainly to address job-protection plans, which are only mandatory in companies with 50 employees or more, contemplating 10 redundancies or more.

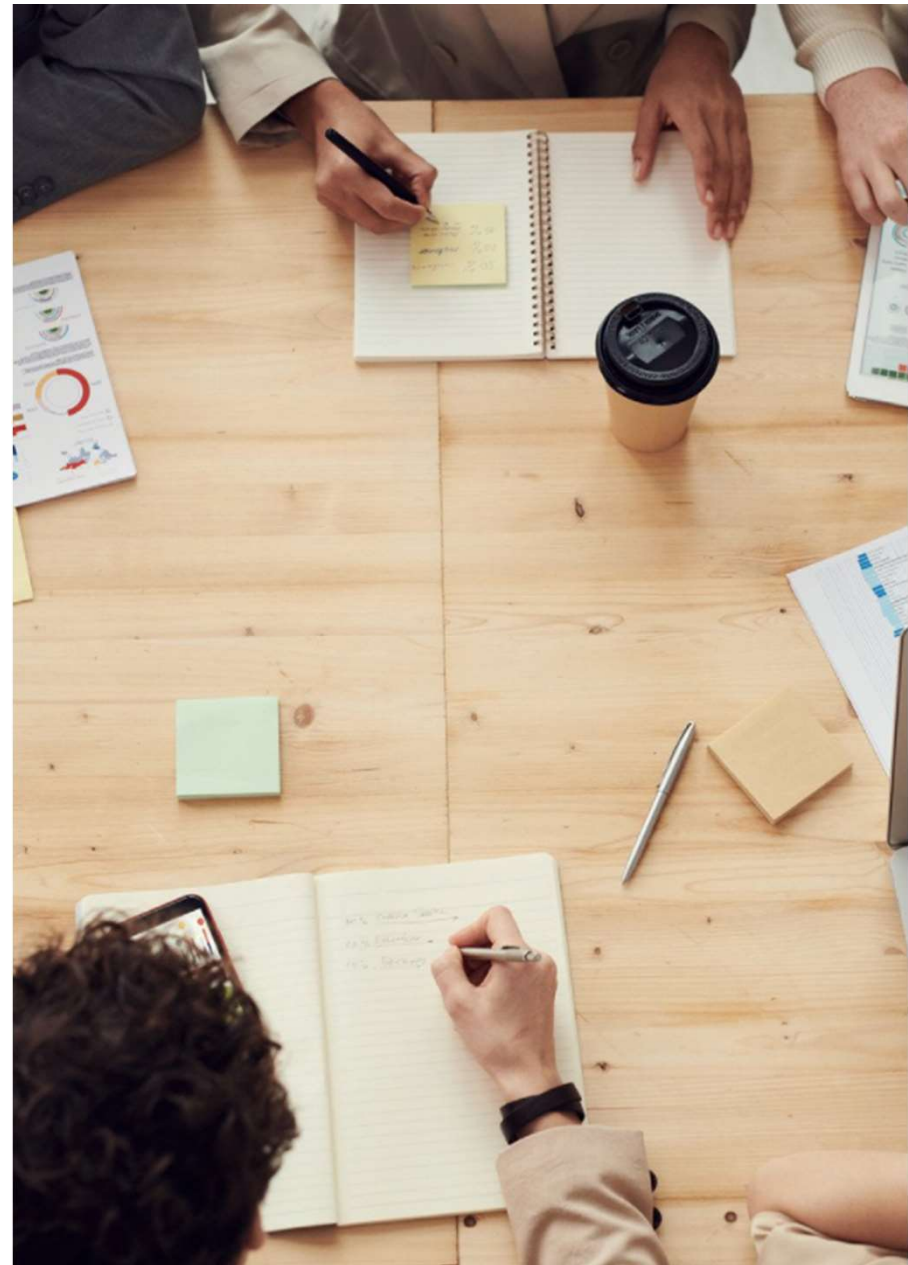


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01

## STEP 1: CHARACTERISING ECONOMIC REASONS



French statutes and caselaw explicitly set down four different types of economic reasons, on which redundancies may be based:

1. **Economic difficulties** (article L.1233-3 1° of the French Labour Code or « FLC »), characterised by the significant evolution of at least one economic indicator such as a decline in orders or turnover, operating losses or deterioration of the cashflow or the revenues, or by any other financial or economic KPI substantiating economic difficulties (article L.1233-3 FLC).

According to statutes, a significant decline in orders or turnover is characterised where it spans at least **3 consecutive quarters** for companies between 50 and less than 300 employees and **4 consecutive quarters** for companies over 300 employees

2. **Technological changes** (art. L.1233-3 2° FLC), such as the implementation of a new software that makes positions redundant.
3. **Closing down of the company** (art. L.1233-3 3° FLC), provided that this winding-up is total and definitive and does not result from the employer's fault.
4. **Safeguard of the company's competitiveness** (art. L.1233-3 4° FLC), where economic, commercial and marketing challenges hint at future economic difficulties.



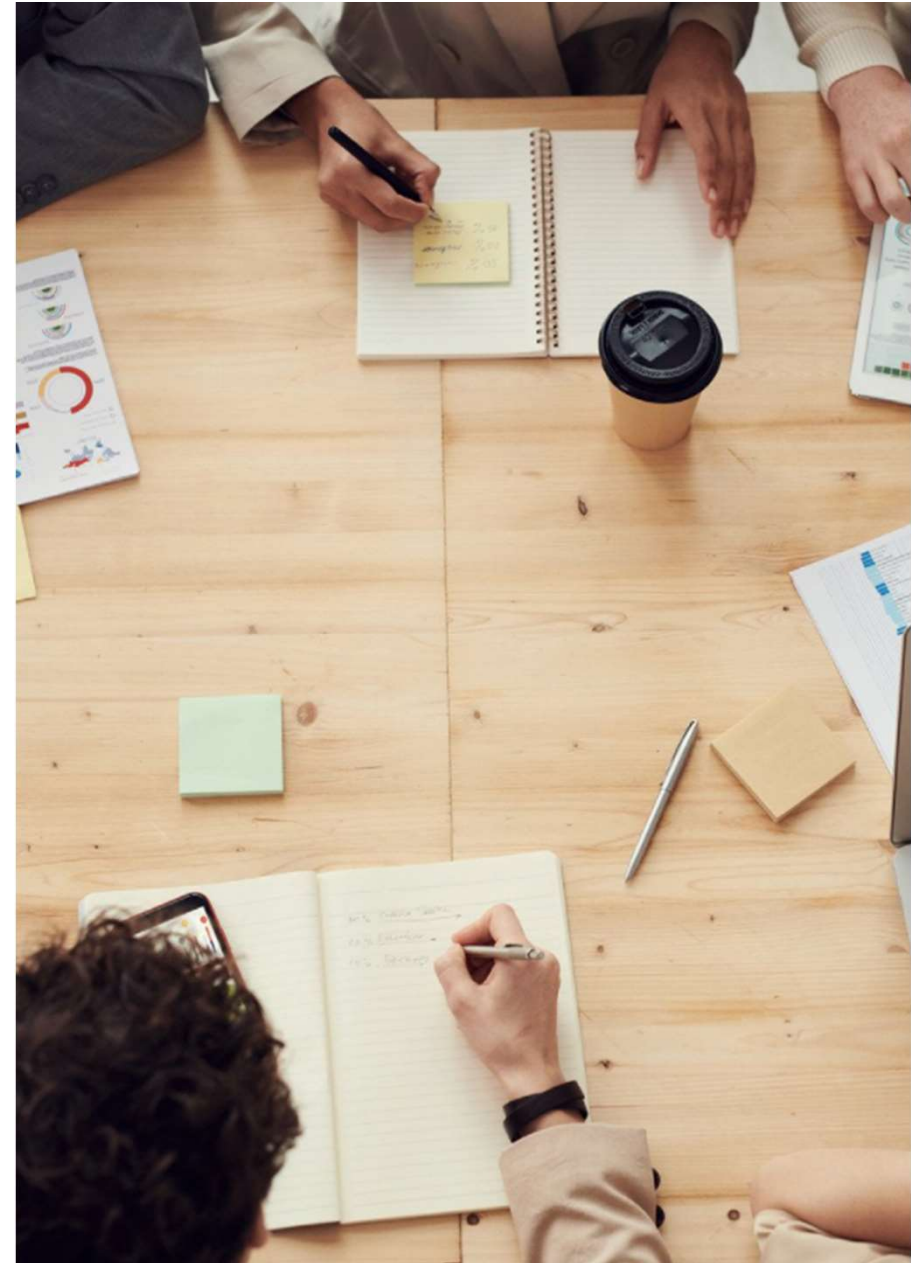
Except in case of the company's closing-down, the economic reason is assessed at the level of the **business sector** common to the company itself and, if applicable, to the companies of the same group operating on the French territory.

The business sector that is used to assess the economic reason may be characterised by the nature of the products manufactured or the services supplied, the client targeted and the distribution channels used to address the relevant market (article L. 1233-3 FLC, 7<sup>th</sup> section).

It is therefore important to accurately assess the scope of the economic justification, otherwise the individual redundancies resulting from the restructuring will likely be held unfair by French courts.

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## STEP 2: DETERMINING THE APPLICABLE PROCEDURE



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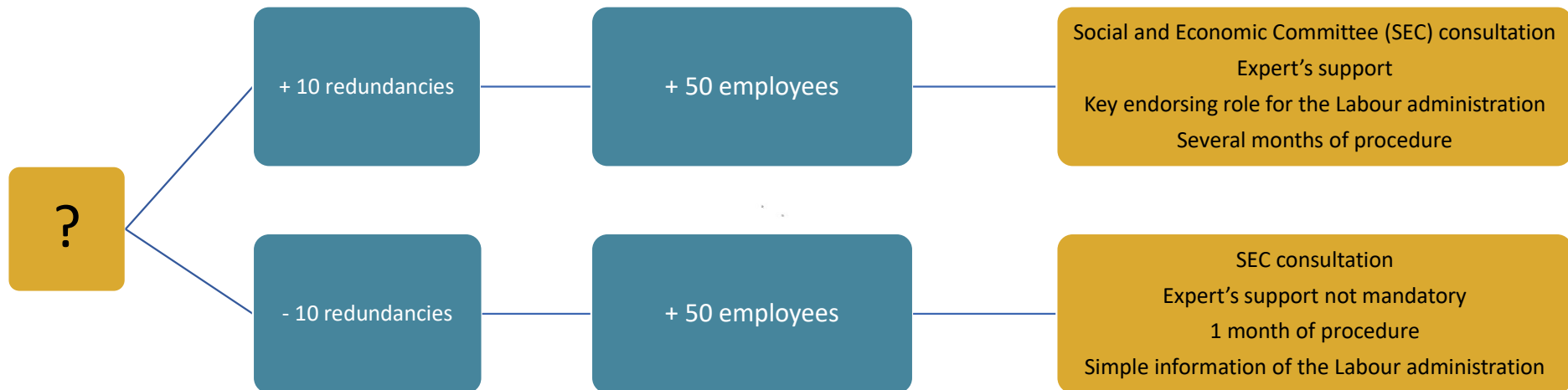
- Headcount threshold

A job protection plan is only mandatory in companies **with 50 employees or more**.

This condition is assessed at company level, as of the day the redundancy procedure is initiated.

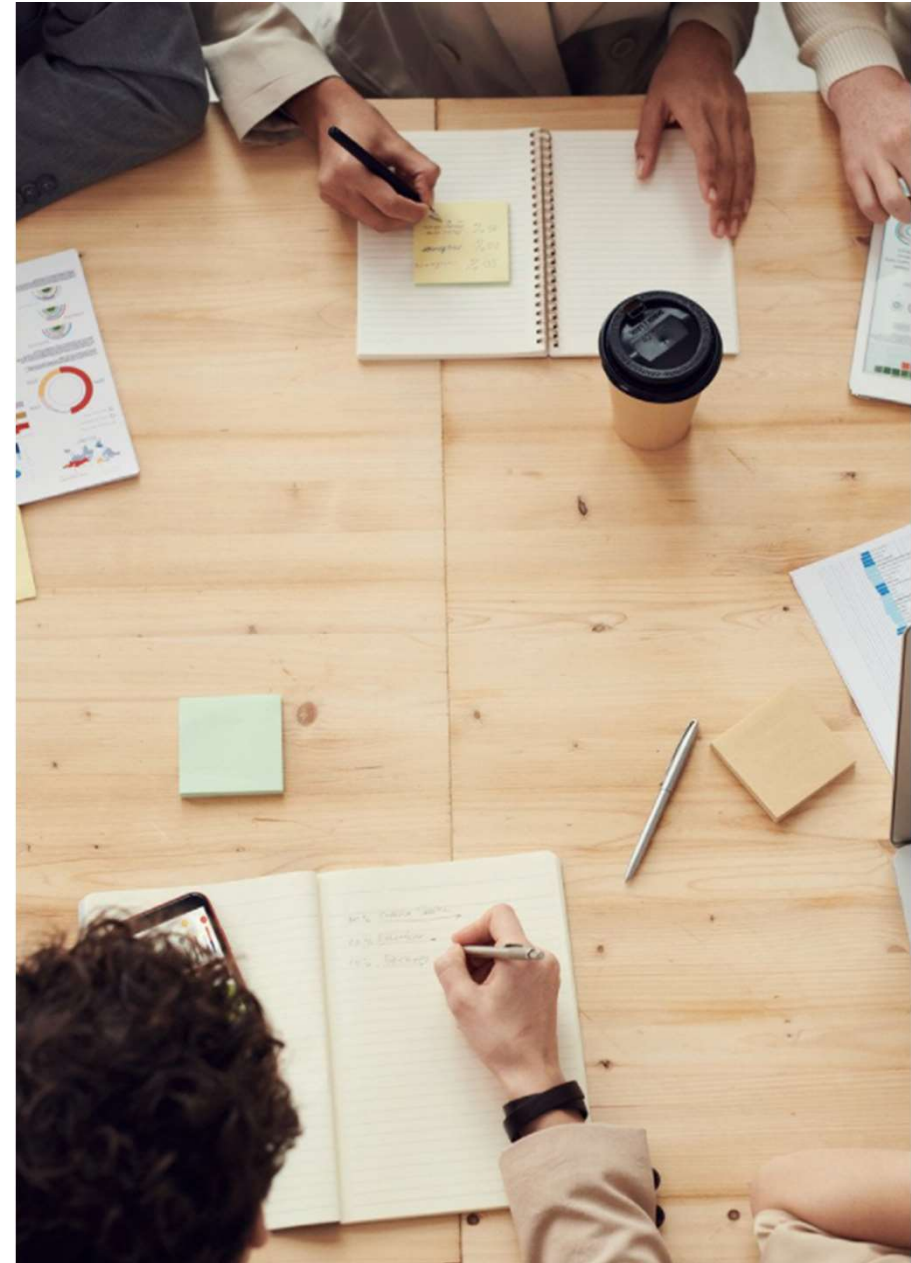
- Number of redundancies

A job protection plan must be implemented as soon as (i.) **at least 10 redundancies** are contemplated (ii.) over a **30-day period**.



# 03

## STEP 3: BUILDING UP THE DELIVERABLES



The deliverables required for a collective redundancy procedure impacting 10 employees or more in companies over 50 employees are structured in two main parts:

- First Part (aka “*Livre 2*” or Book 2, based on the relevant section of the French Labour Code), on the restructuring project itself, which must set out the economic and operational rationale for the restructuring, as well as the details of the new organization targeted.
- Second part (aka “*Livre 1*” or Book 1), the job protection plan itself, which must include:
  - The professional categories impacted by the job eliminations;
  - The selection criteria;
  - The internal redeployment measures;
  - The supporting measures for the employees who will eventually be made redundant;
  - The redundancies’ timetable.

## STEP 3: BUILDING UP THE DELIVERABLES

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The “*Book 2*”, which must lay out the economic and operational reasons for the restructuring, includes 3 main parts:

- The economic reasons (macro and micro) calling for the restructuring;
- The new organization designed to address the economic challenges described: the company must explain the current organisation and the targeted organisation and how the latter should prove a relevant response to the economic challenges identified. It describes the positions to be eliminated (or substantially changed) and, for each such position, an explanation as to why its elimination is required and how such an elimination is a valid response.
- The impact of the project on the employees’ health and safety: this part details the impact on the remaining employees’ workload. This part (sometimes known as “Book 4”) must also address the impact of the transition between the “as is” organization to the “to be” on the employees, especially on the psychological level. The part must also address the consequences the restructuring may have on the environment, if any..

BOOK 2		
<b>PART I</b> The economic reasons calling for the restructuring	<b>PART II</b> The new organisation designed to address the economic challenges described (and the operational reasons for such a reorganisation)	<b>PART III (“Book 4”)</b> The impact of the project on the employees’ health and safety and the environmental impact, if any.

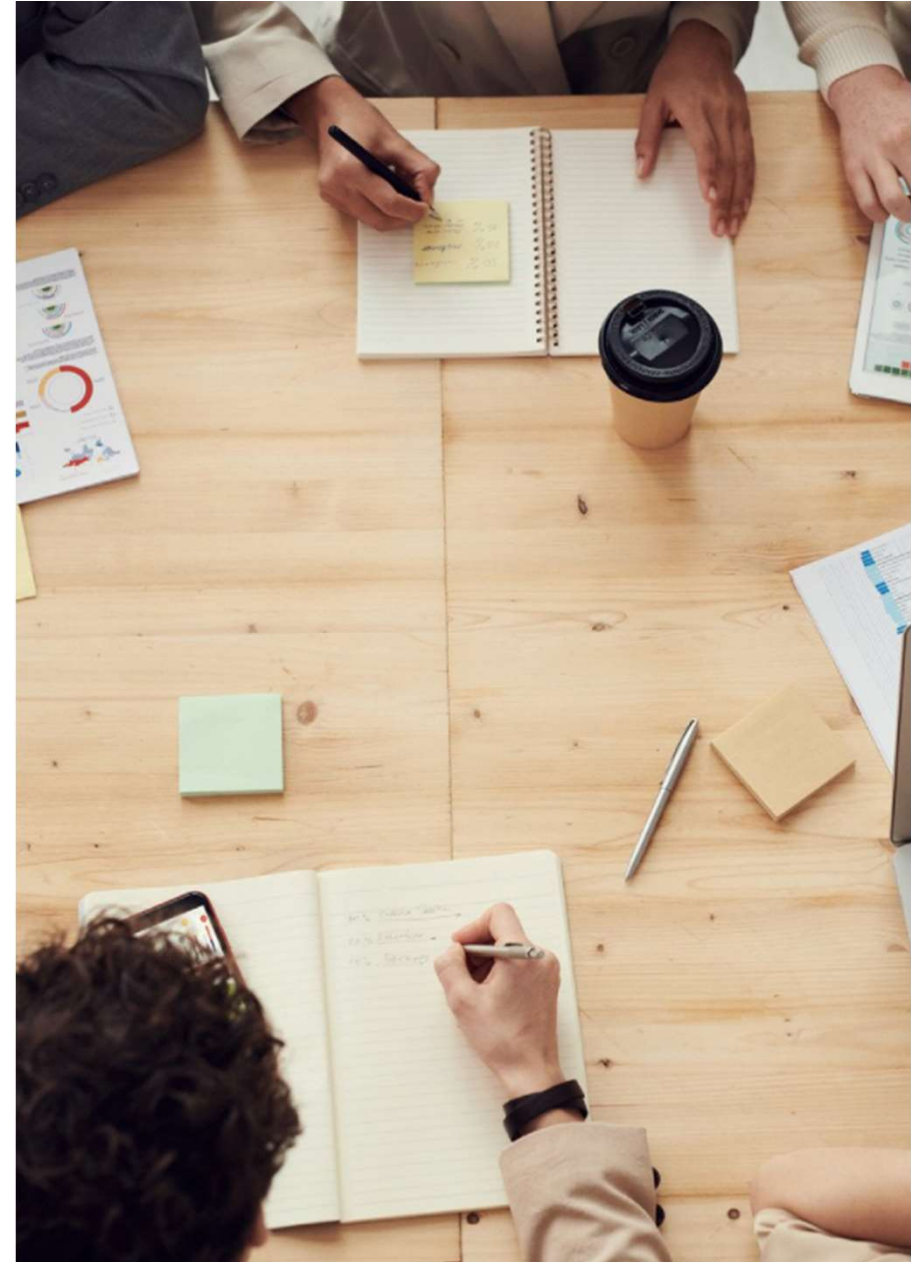
The “*Book 1*” (i.e. the job protection plan itself) may take several forms:

- A majority company agreement **endorsed** by the DREETS (i.e., the French Labour administration);
- A unilateral document drafted by the employer and **certified** by the DREETS;
- A combination of both.

The employer has the choice: there is **no obligation to prefer the negotiation of a company agreement over the unilateral document but the negotiated option is highly recommended : the control carried out by the Labour administration over a company agreement is much lighter than the in-depth review it is expected to perform over a unilateral document.** This is why it is generally worth pushing for a company agreement with trade union representatives, although it may entail granting additional means to the trade unions for taking part of the negotiation.

# 04

## STEP 4: IDENTIFYING THE MAIN STAKEHOLDERS

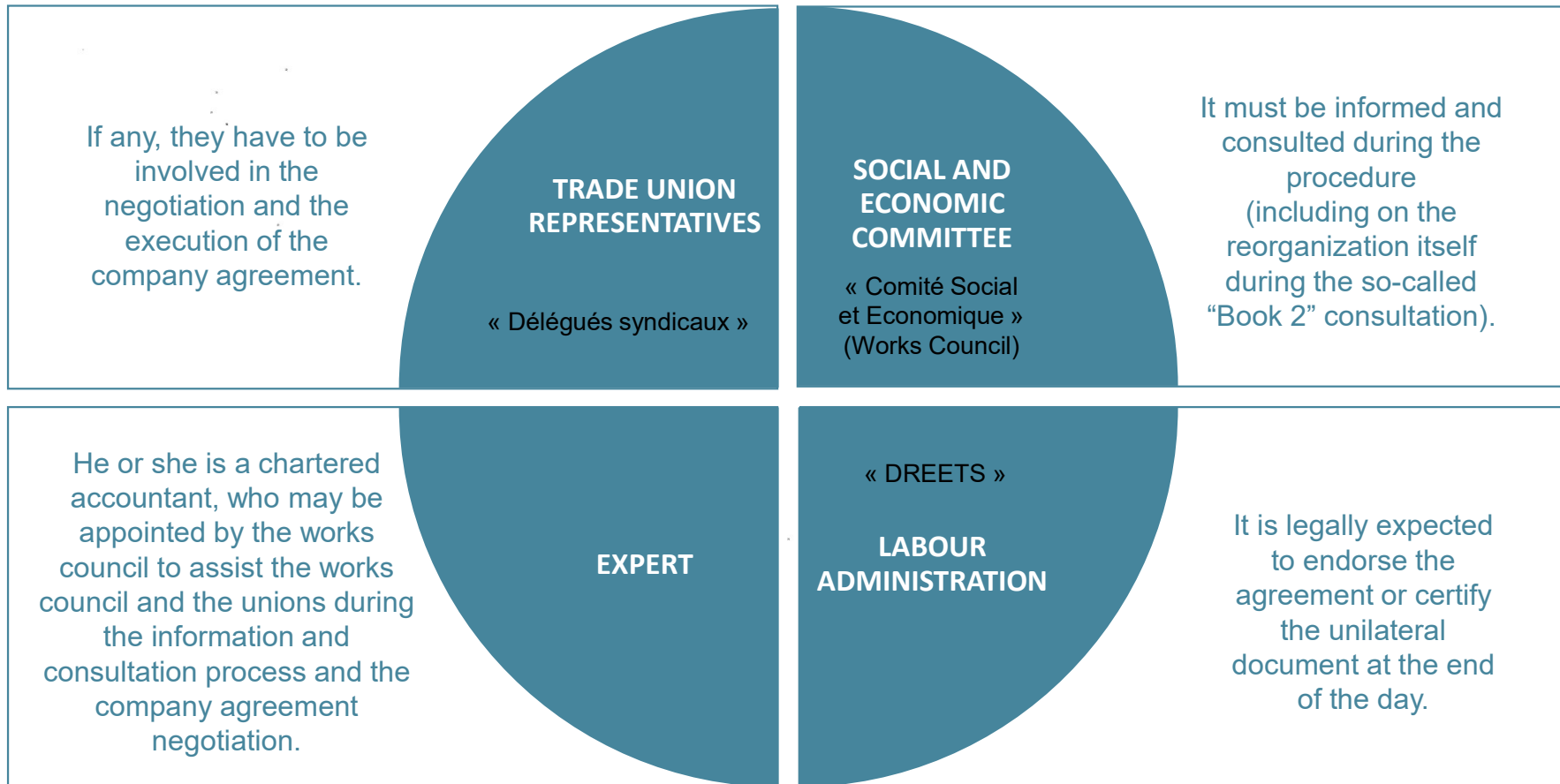




## STEP 4: IDENTIFYING THE MAIN STAKEHOLDERS

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During the preparation, negotiation and endorsement of a job protection plan, the employer is in contact with the following main stakeholders:



### 1. Trade union representatives

The trade union representatives (“*Délégués syndicaux*”) are the company’s partners to negotiate and execute the majority company job-protection plan agreement.

To be valid, this agreement must be executed by one or several representative trade unions that secured at least 50% of the ballots at during the first round of the last works council elections.

Even before the company job-protection plan agreement, it is possible to conclude with the trade union representatives an agreement on the ways and means, called “*accord de méthode*”, setting out the ways in which the works council will be consulted (and the timeline) and the works council’s expert will carry out their mission.

## 2. The Social and Economic Committee

- Preliminary information

The employer must communicate all relevant information on the collective redundancies project as well as the job protection plan project from the beginning of the works council's consultation procedure. Failing this, the time period set by law within which the works council must give an opinion does not start counting.

- Consultation items

The works council is consulted on:

- The restructuring and staff reduction project (including the economic rationale and the operational aspects);
- The collective redundancies project:
  - Number of job eliminations,
  - The professional categories involved,
  - The selection criteria,
  - The provisional timetable,
  - The supporting social measures of the job protection plan.
- The consequences of the restructuring in terms of health, security and work conditions (and the environmental consequences, if any).
- The redeployment leave in companies belonging to large groups.

## 2. The Social and Economic Committee (cont'd)

- Consultation timetable (unless a company agreement provides otherwise)

The works council holds at least 2 meetings at least 15 days apart (in practice we recommend to hold more meetings).

From the date of the first meeting, the works council is legally supposed to give an opinion within a period of time that cannot be more than:

- 2 months where the number of redundancies is below 100;
- 3 months where the the number of redundancies is between 100 and below 250;
- 4 months where the number of redundancies is over 250.

The opinion given by the works council may be positive or negative. In any case, its opinion is not binding: a negative opinion does not prevent the employer from implementing the projected reorganization nor the associated redundancies. Put differently, the works council has no veto right.

### 3. The works council's expert

The works council may request the assistance of an expert (whose costs must be borne by the employer). The trade union representatives may also benefit from the expert's assistance during the negotiation of the company job-protection plan agreement.

The works council's expert is supposed to formally put to the employer, within 10 days of their appointment, a request for all information necessary to analyse the projects (i.e., economic, financial, commercial or operational data). The employer heeds such request within 8 days.

The expert's report is presented no later than 15 days before the end of the consultation period.

Given the short period of time within which the communication of the documents must be made, and to avoid any interim order from the DREETS, it is recommended to anticipate as much as possible the expert's possible requests.

# STEP 4: IDENTIFYING THE MAIN STAKEHOLDERS

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### 4. The Labour administration

The DREETS is informed in real time of the procedure and is legally authorized to audit at any stage.

This entails sending electronically to the DREETS any document related to the procedure (invitations, agenda, minutes, information documents, the expert's report, etc).

The communication is made through an online platform called « RUPCO ». It is important (i.) to request that a dedicated access be opened on the platform before starting the procedure and (ii.) to upload any relevant document on a regular basis.

<b>Observations (article L. 1233-57-6 FLC)</b>	<b>Injunctions (article L. 1233-57-5 FLC)</b>
The administration may, at any time during the procedure, issue observations or propositions to the employer related to the ongoing procedure or the social measures.	These are formal requests from the Labour administration to the employer to communicate information related to the ongoing procedure or to comply with a procedural rule.

#### 4. The Labour administration (cont'd)

The employer notifies the project to the DREETS on the day following the first official meeting of the works council and, at the end of the consultation procedure, files an official request with the DREETS to:

- Either certify the employer's unilateral document within 21 days; or
- Endorse the job-protection plan company agreement within 15 days.

At the end of these periods, an absence of response is deemed to a certification/endorsement.



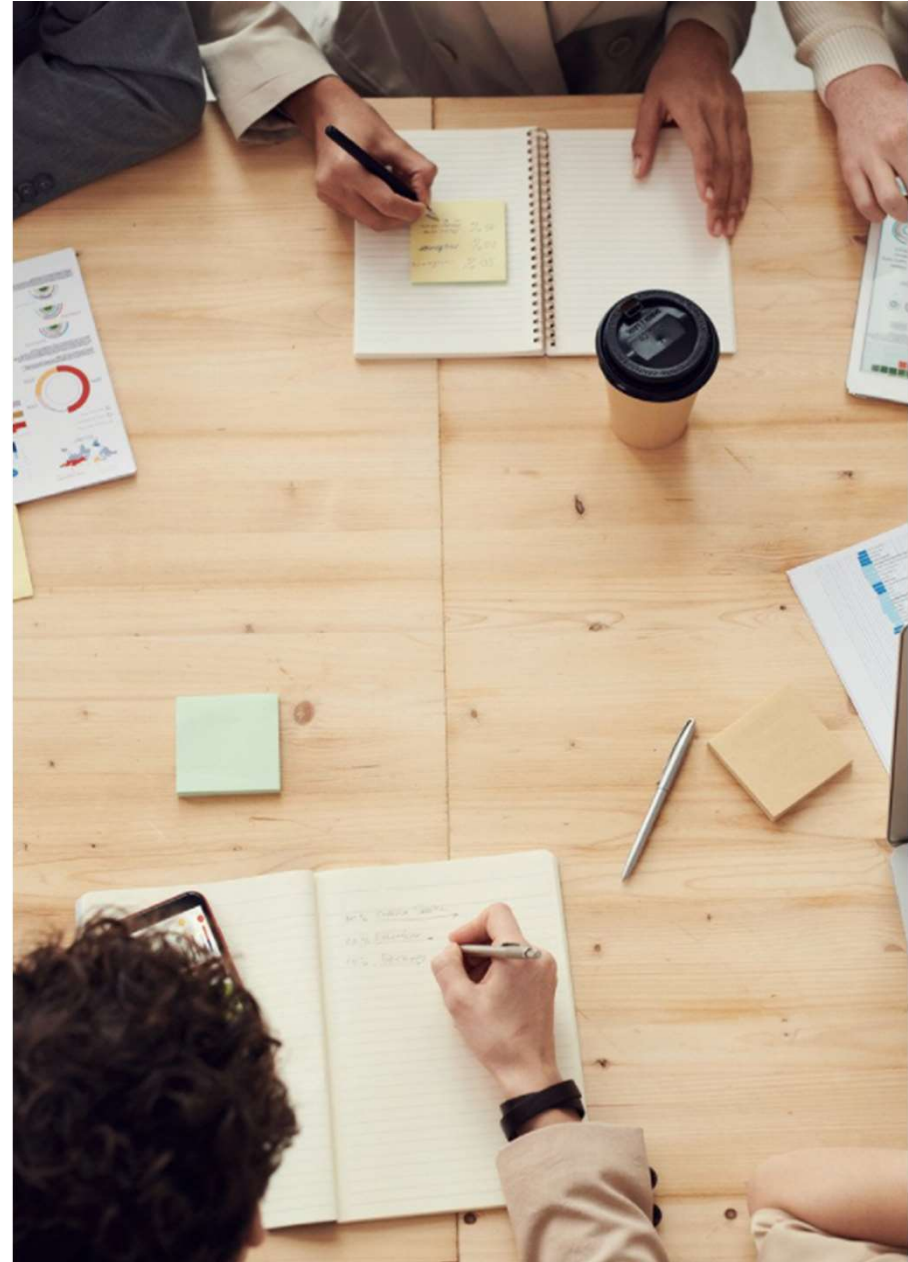
The DREETS does not officially monitor the economic reasons for the redundancies. It must mainly make sure that the consultation has been properly handled (including on the economic reasons and the impact of the project on the employees' health). The control of the economic reasons and the lawfulness of the redundancies lays with Labour Courts before which individual disputes may be brought after the notices of redundancies have been served.

The level of the Labour administration's control varies depending on the nature of the document: (i.) heavy control in case of a unilateral document, (ii.) light control in case of a company agreement with the unions representatives.

It is also important to combine this procedure with the one related to the employees with special status (i.e. staff representatives) for whom a distinct consultation of the works council must be carried out and a redundancy authorization request must be made to the Labour administration. Only for those employees will the Labour administration control the economic reasons put forward by the employer. Please note that making protected employees redundant does require a formal authorization from the Labour administration.

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## STEP 5: SELECTING THE EMPLOYEES TO BE MADE REDUNDANT





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French employment law prohibits any « pick and choose » of the employees to be made redundant.

The employees must be selected within pools – aka professional categories – through the application of selection criteria.

### ➤ Professional categories

**A professional category puts together all employees who perform responsibilities of the same nature which imply a common professional training.** The State Supreme Court (« *Conseil d'Etat* ») considers that the employer should also take into account professional experience and that the Labour administration should make sure that the professional categories were not designed by the employer **to target specific employees** (French State Supreme Court, 7 February 2018, n°403.001). This is especially true in case of a unilateral job-protection plan.

Selection criteria are then applied within those professional categories to determine which employees must be selected for termination.

The way professional categories are designed has become one of the first points of control for the Labour Inspection. It is therefore necessary to determine beforehand these categories and build a clear reasoning to justify the scope and boundaries of each category.

➤ Selection criteria

Except where all positions of a given professional category are eliminated, the employer must select the employees who will be made redundant. This is the purpose of the selection criteria.

Selection criteria must take into account (article L.1233-5 FLC):

- Family obligations;
- Specific difficulties to find a new role (including based on age or handicap);
- Length of service;
- Professional qualities (which is often challenged by the Labour administration, in particular where this criterion may not be objectively substantiated).

There is no priority order between these criteria and the employer (or the negotiators in case of a company agreement) may weigh each criterion differently.

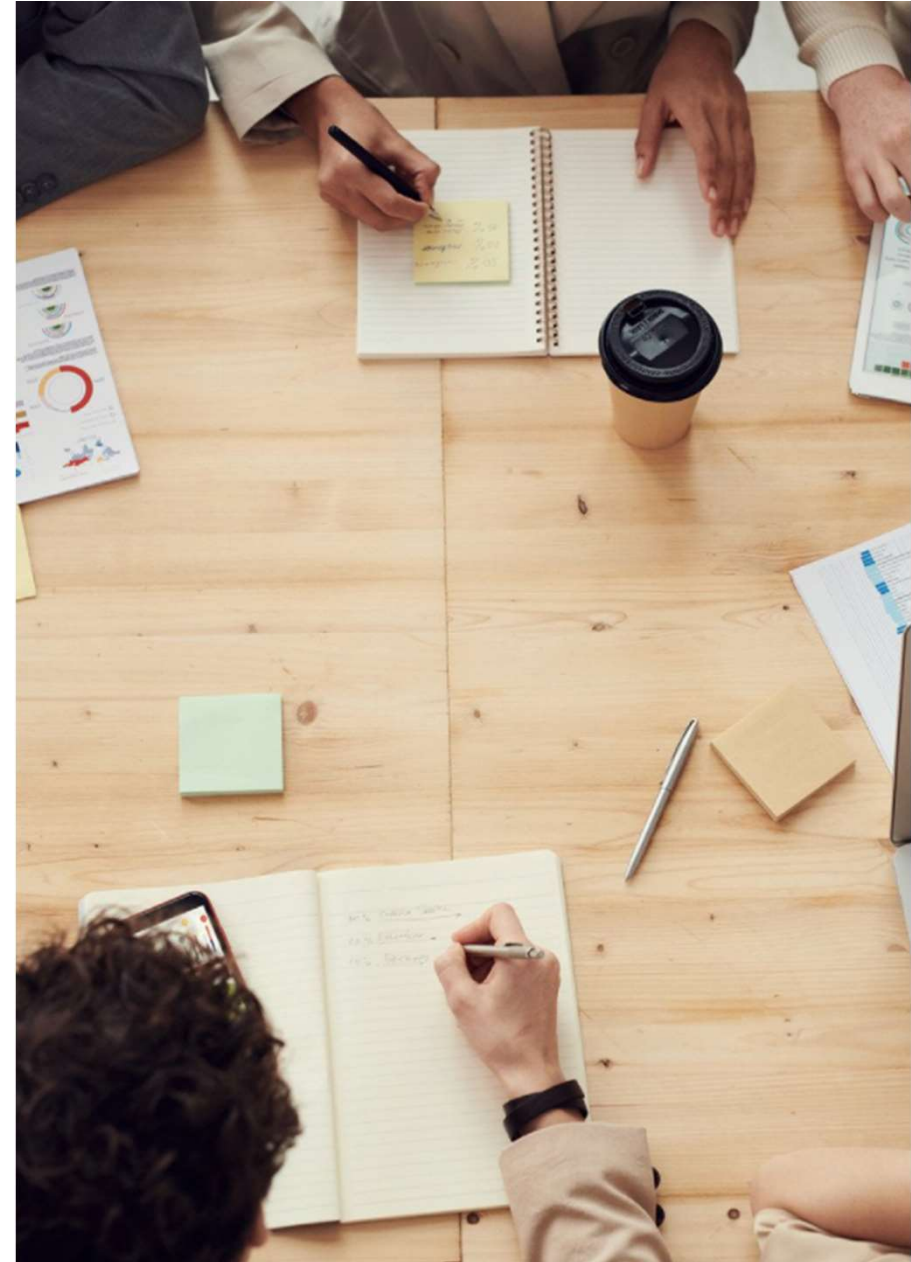
The only limit to this is that all criteria must be taken into account and the same rules must be applied to all professional categories alike. It is therefore not possible not to use one criterion.

- **Geographical application of the selection criteria:**
  - In the company agreement: the parties to the company job-protection plan agreement may freely define the relevant geography where selection criteria are to be applied (it may be the company as a whole, some local scope or even at the level of each company site).
  - In the employer's unilateral document: the perimeter is set by the employer but it cannot be narrower than each employment area (as defined by the French Bureau for Statistics) in which one or several company sites impacted by the redundancies are located.
- **Material application of the selection criteria:**
  - The selection criteria are applied in each professional category that includes positions to be eliminated.

**There is a specific risk related to the selection criteria and their application, even in case a company job-protection plan is executed.**

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## STEP 6: TRYING TO REDEPLOY INTERNALLY



Under French law, the job-protection plan must endeavour to avoid or limit the number of redundancies and facilitate the redeployment of those employees whose redundancy cannot be avoided (article L.1233-32 FLC).

In the information note provided to the works council, the employer must demonstrate that it has analysed every alternative to the implementation of a job protection plan (i.e. reduction of working time, end of fixed-term contracts and temporary work, etc).

The job protection plan must above all include a **redemption plan**. Failing this, the job protection plan would not be endorsed/certified by the Labour administration, and the redundancy would be deemed unfair.

In its efforts to find redeployment positions, the employer must require the assistance of the industry committee where the national collective bargaining agreement so provides.

The redeployment plan must in particular include measures for the **internal redeployment of employees** within all the companies of the same group as the employer company (at least all the group entities operating in France).

Examples of internal redeployment measures:

- Training budgets to facilitate professional mobility;
- Measures to facilitate the geographical mobility (discovery trip, authorised leaves of absence, moving expenses, relocation allowance, etc);
- Allowance compensating a salary reduction.

## STEP 6: TRYING TO REDEPLOY INTERNALLY

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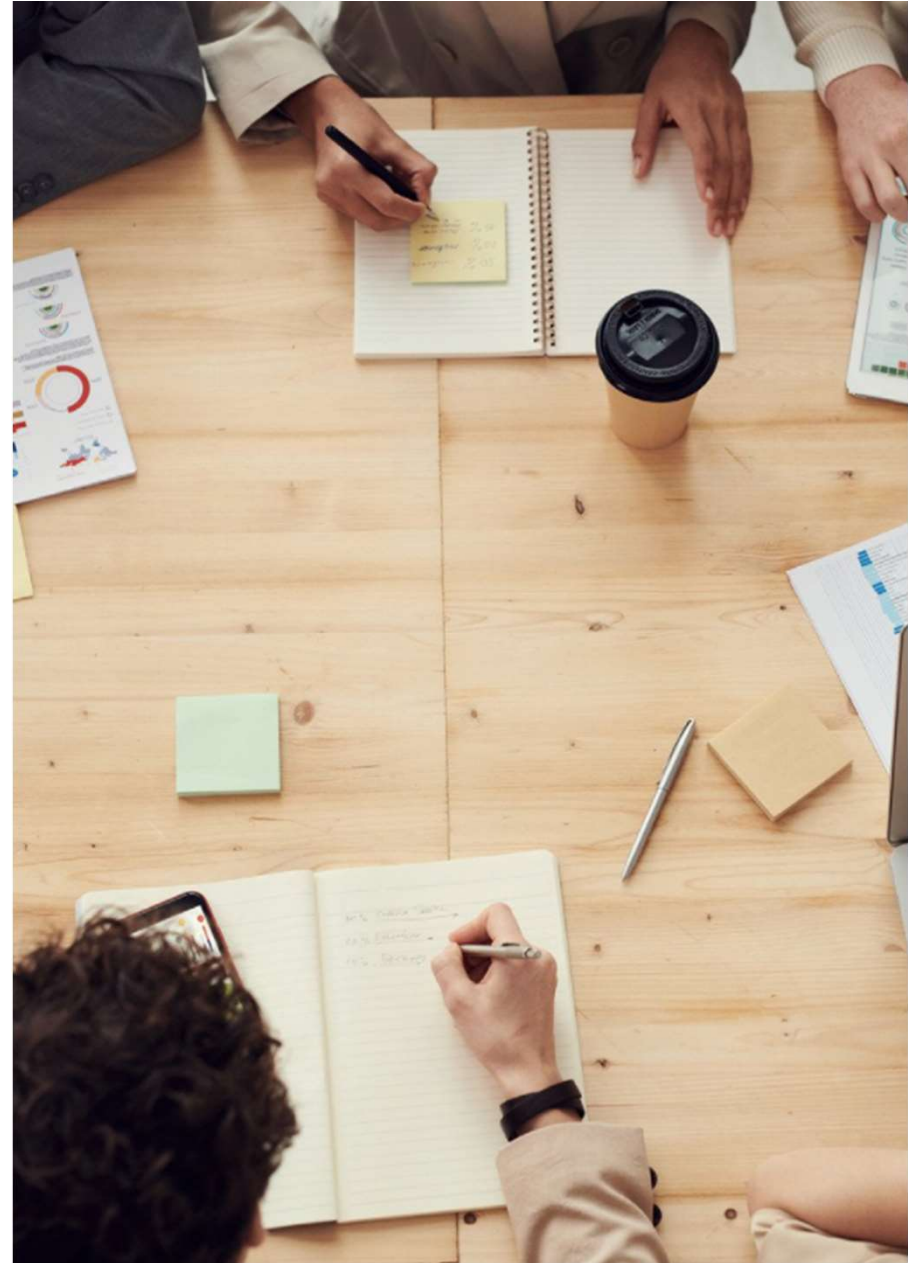
French law's internal redeployment obligation means that prior to any redundancy, the employer must search for (and document said search) all available positions on the French territory which may be opened in the company and also, if the company is part of a group, in the other group companies in France.

- Geographical scope: France (but, in some cases, the extension of the geographical scope abroad for international groups may be recommended).
- Operational perimeter: the group, such as defined by the French Commercial Code (capitalistic definition of the dominant company and the companies it controls).
- Content of the redeployment obligation: (i) a collective obligation, whereby the employer must search and list in the job-protection plan all the redeployment positions available (and update such list on a regular basis) and (ii) an individual obligation, whereby the employer must offer each employee – before they are made redundant – any available position of the same category or of the same nature that is consistent with the employee's profile.
- Presentation of the redeployment offers: the redeployment offer is made to each employee through an individual letter or through the communication of a list of available positions.

**In large international groups, the Labour administration will particularly monitor this aspect. It is therefore important to monitor recruitments that may be done before and during the consultation process, in order to offer these positions an internal redeployment.**

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## STEP 7: POST-TERMINATION EXTERNAL REDEPLOYMENT MEASURES



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07

If no internal redeployment position is found for (or accepted by) the selected employees, the employer may make them redundant (subject to the Labour administration's authorization for protected employees and after the maternity leave for pregnant employees).

However, external redeployment measures must be provided in the job-protection plan, in order to support the employees made redundant.

Category of measures	Examples of measures
Training	<ul style="list-style-type: none"><li>▪ Training allowances</li></ul>
Business creators support program	<ul style="list-style-type: none"><li>▪ Allowance when the business is set up</li><li>▪ Allowance upon presentation of the first balance sheet</li><li>▪ Allowance for the hiring of a former colleague also made redundant</li><li>▪ Training support by the outplacement firm</li></ul>
Mobility package	<ul style="list-style-type: none"><li>▪ Coverage of the travel expenses</li><li>▪ Coverage of part of the rent if the employee must have two housing solutions during some time</li><li>▪ Coverage of the moving expenses</li><li>▪ Payment of a mobility premium</li></ul>
Compensation top-up	<ul style="list-style-type: none"><li>▪ Top-up severance (in addition to the statutory or CBA severance)</li><li>▪ Compensation in case of difference between the previous and the new position or if the employee accepts a part-time job</li></ul>



In addition to the measures voluntarily provided for in the job protection plan, the employer is under the obligation to implement one of the following specific programs, depending on the size of the company:

- **The redeployment leave** (« *congé de reclassement* »): this is mandatory in companies with at least 1,000 employees or that belong to a group which is supposed to set up a Group Committee or a European Works Council and counts over 1,000 employees.

Redeployment leave mainly consists in providing employees with training and the assistance of a specialised outplacement team (whose costs are borne by the company).

The duration of the leave is between 4 and 12 months (but the Labour administration or the unions or works council may demand a longer duration especially for the most-exposed employees). During that period, the employees continue to be paid at least 65% of their average compensation (100% during the first few months corresponding to the notice period).

- **The professional security contract** (« *contrat de sécurisation professionnelle* »): this is mandatory in companies that are not bound to offer a redeployment leave (i.e., companies between 50 and 1,000 employees).

This program is managed by the French Unemployment Agency, which provides employees with a set of measures to facilitate their finding a new job (through training for instance). The employees receive enhanced unemployment benefits during 12 months.

**Thanks for your attention!**



**Q&A**

