

Ius Laboris Webinar

Checklist for restructuring in France

Thursday, 12 January 2023

3:00 – 4:00pm CET



SPEAKERS



Fadi SFEIR, Counsel
Capstan Avocats



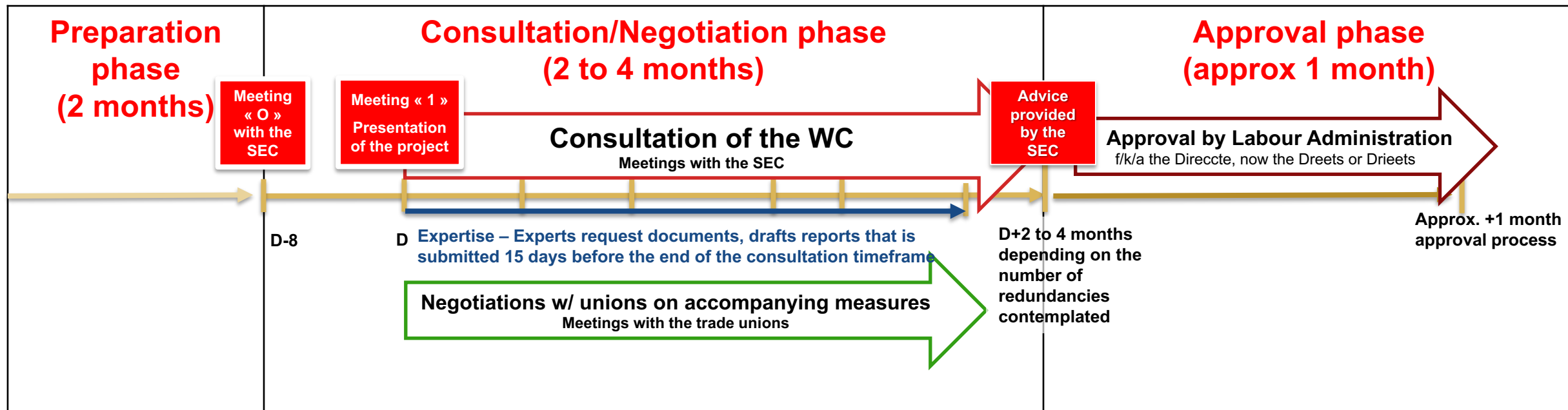
Stéphanie Poussou, Senior Associate
Capstan Avocats

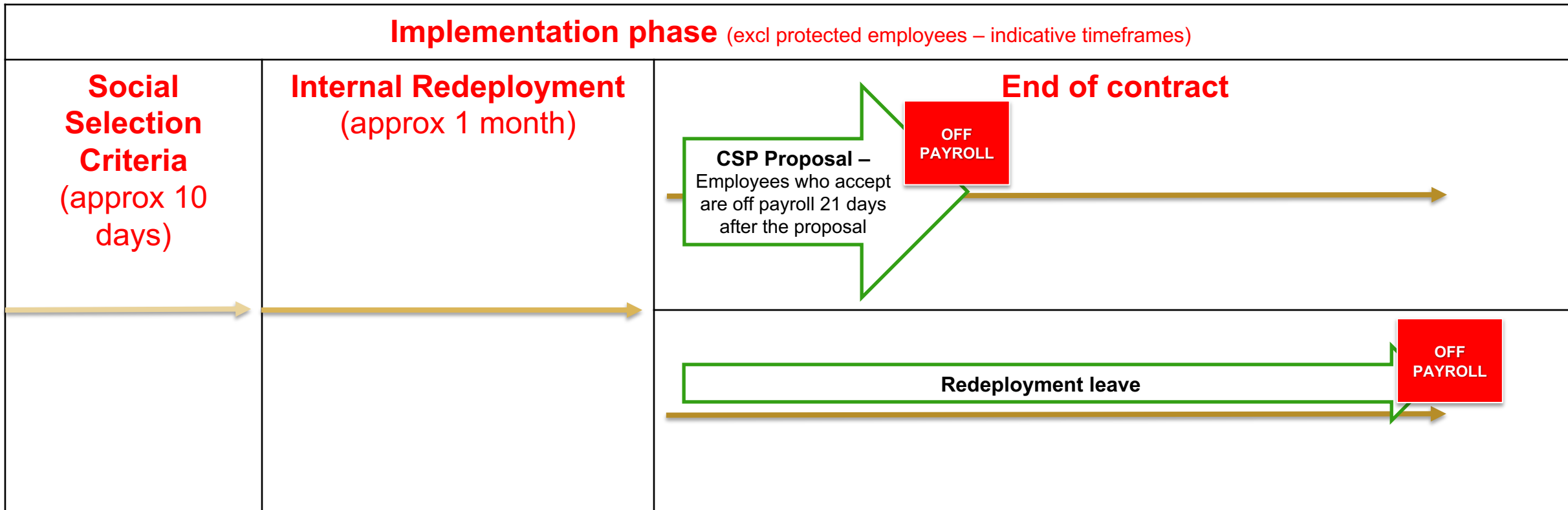
Agenda

1. Introduction
2. Timeline of a restructuring process
3. Main documents that need to be prepared
4. Recent focus of attention
5. Other tools that may be considered
6. Q&A

Introduction

Timeline of a restructuring process





CSP (*Contrat de Sécurisation Professionnelle*)

Applicable to companies or group below 1,000 employees across Europe

- Enhanced unemployment benefits scheme
- No notice period. Paid to the insurance instead.
- 21 days reflection period
- If accepted, employees are off payroll at the end of the reflection period

OR

Redeployment leave (*Congé de reclassement*)

Applicable to companies or group above 1,000 employees across Europe

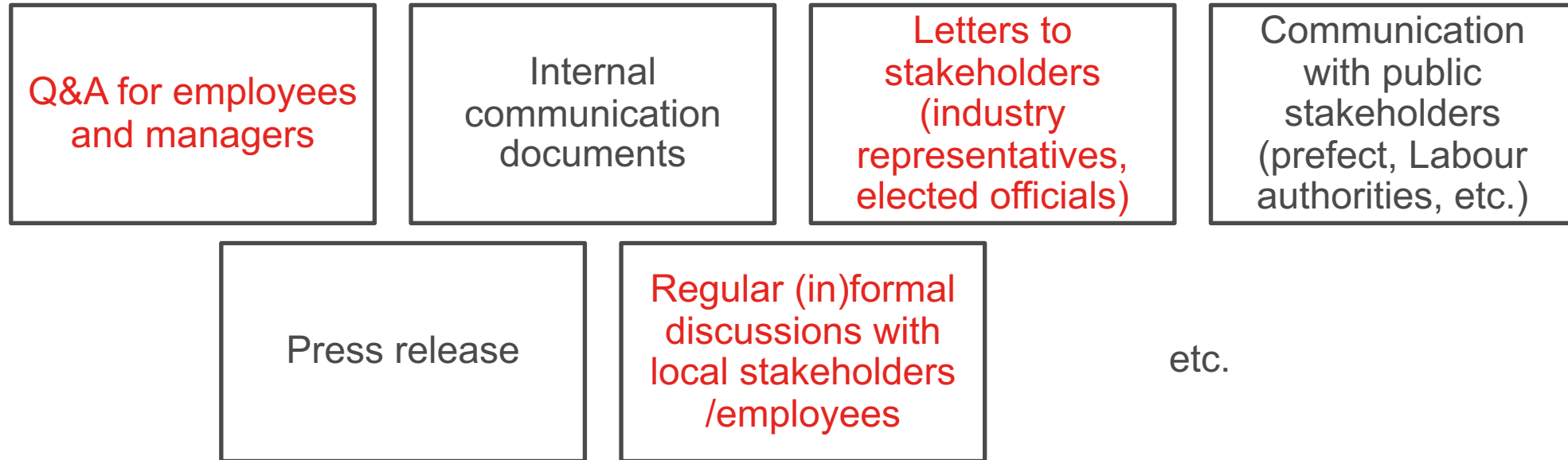
- 4 to 12 months (possibly more) **including** the notice
- Paid by the employer at least 65% of their latest salary with a minimum of 85% of the minimum wage
- Remain on payroll but on garden leave
- Assisted by an outplacement agency

Documents that need to be prepared

Documents for the SEC

<p>Book 1</p> <p><i>Plan de Sauvegarde de l'Emploi</i></p>	<p>Negotiated with unions or unilaterally set by management with a consultation of the SEC</p> <ul style="list-style-type: none">• Accompanying measures• Consultation of the SEC• Social selection criteria and professional categories• Timeline for redundancies
<p>Book 2</p> <p><i>Economic note</i></p>	<ul style="list-style-type: none">• Economic grounds for redundancies (has to be appreciated in France at the level of the Group or its business sector)• Content of the project – comparison between before the project and after the project• Environmental impact of the project
<p>Health and Safety note</p>	<ul style="list-style-type: none">• Impact of the project (and the consultation phase of the project) on health and safety, both physical and mental• Contemplated mitigation measures

Other documents



The SEC experts (economic and health & safety) can request as much documents as the external statutory auditors, including if these are within the group/mother entity

All documents referred to in the documents prepared to the SEC will have to be provided to them

This is often a litigious point, especially for French subsidiaries of foreign entities

Recent focus of attention

Recent point of focus

SEC consultation on strategic orientations of the company (and the group) ?

Which content?

Training plan for the last 3 years

Report on the actions incl. the training plan, for the current and previous year

Need to inform and/or consult the Group Committee?

The EWC?

How to articulate?

Specific measures for vulnerable populations (seniors, isolated, disabled, etc.) in Book 1

Elaboration of the socio-professional diagnosis showing the possible obstacles to a rapid return to employment

Updating the Risk Assessment document of the Company (DUERP)

Health and safety risk, identification and assessment grid

Preparation of documentation on the representativity of the trade unions within the company (in the case of a signature of a collective agreement)

Filling of the mandatory reports regarding the previous collective redundancies with the Labour administration

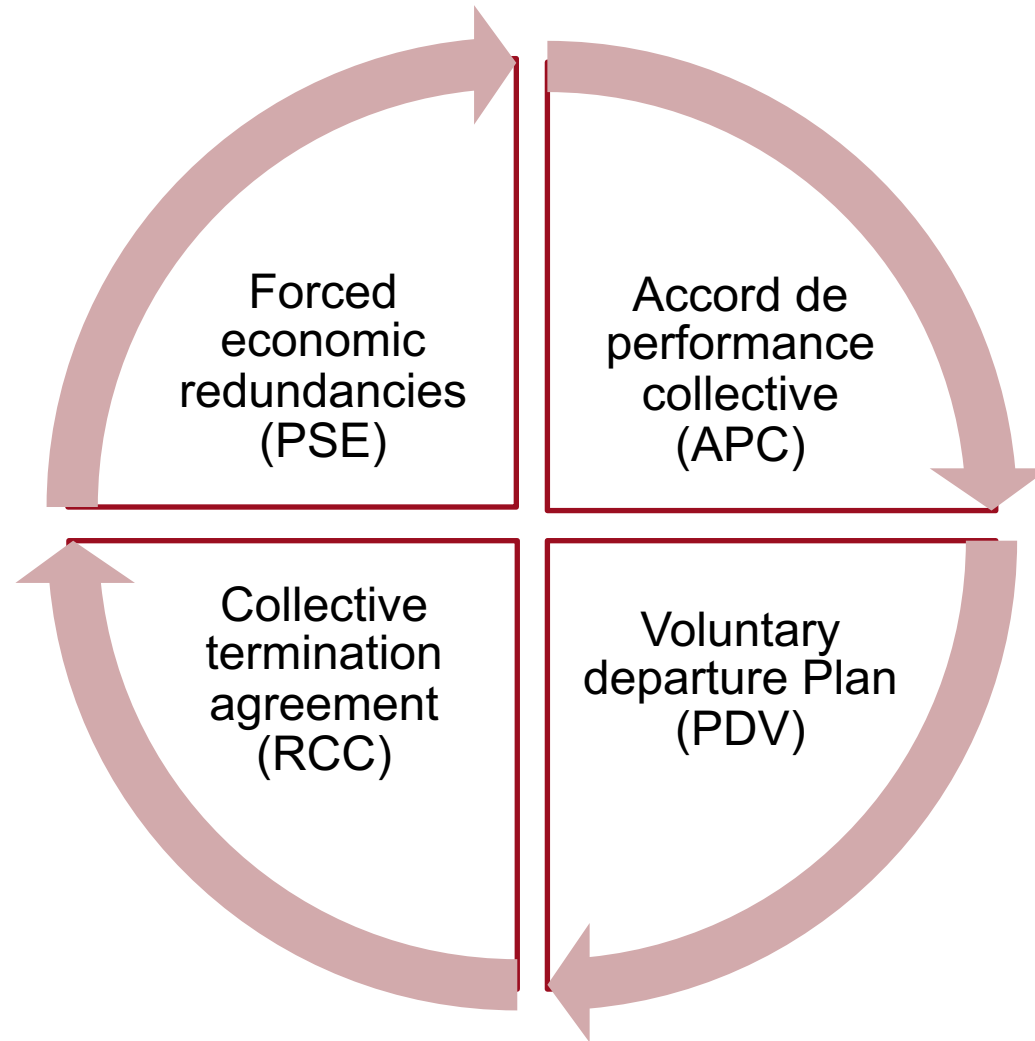
Gathering relevant documentation for the SEC' expert appointed

Harmonisation of job titles and correspondence table for the construction of professional categories

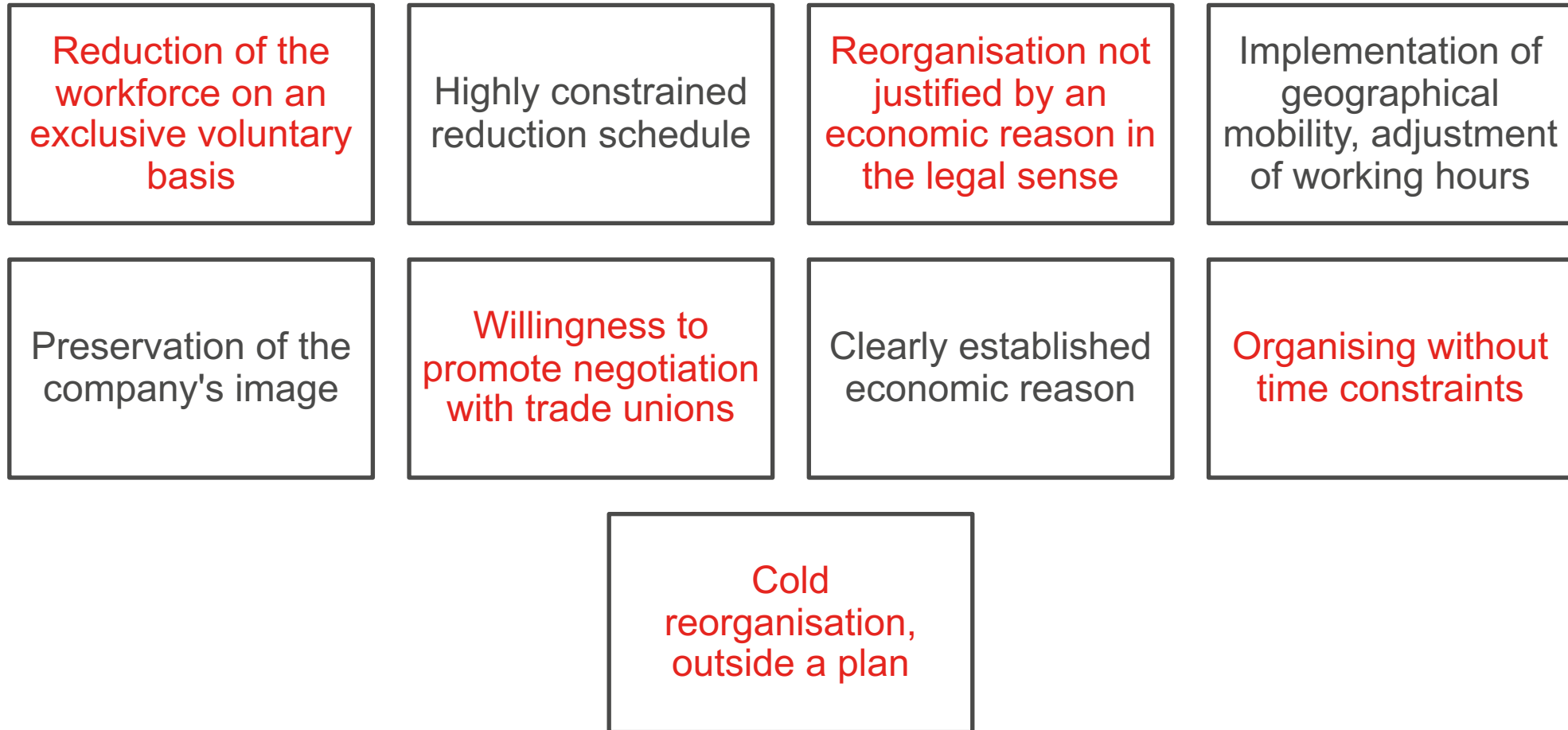
Social selection criteria
Annual professional interviews (3 last years)

**Other tools that need to
be considered**

Which tools (short-term): high level presentation



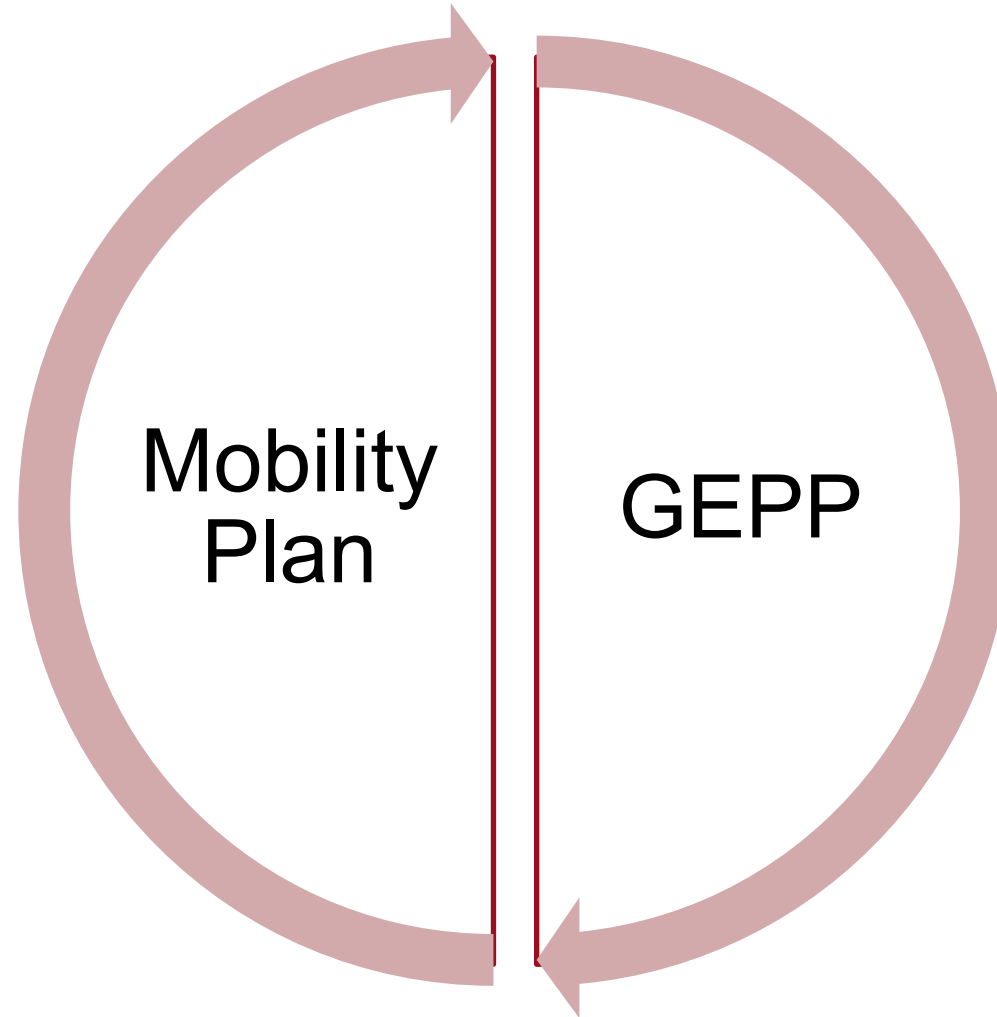
Which tools (short-term): corresponding objective



Which tools (short-term): pros and cons of the main tools

	FORCED ECONOMIC REDUNDANCIES of more than 10 employees (PSE)	VOLUNTARY DEPARTURE PLAN (<i>plan de départs volontaires</i> - PDV)	COLLECTIVE TERMINATION AGREEMENT (<i>rupture conventionnelle collective</i> – RCC)	ACCORD DE PERFORMANCE COLLECTIVE
PROS	<p>Allows for a reduction in the number of employees within a limited timeframe by controlling the overall schedule</p> <p>Does not require the employee's consent or the agreement of the unions</p> <p>Social dialogue protected in case of a majority agreement with the unions</p> <p>Unilateral PSE possible if no agreement with the unions</p>	<p>Low risk of litigation with employees</p> <p>Better image for the company</p> <p>Social dialogue protected</p> <p>Unilateral PDV possible if no agreement with the unions</p>	<p>Reducing the workforce without having to invoke an economic reason</p> <p>Low risk of litigation with employees</p> <p>No expertise paid by the Company</p> <p>Better image of the company</p> <p>Social dialogue protected</p>	<p>Can be implemented through an agreement, without any approval by the Labour Administration</p> <p>Better image of the company</p> <p>Social dialogue protected</p>
CONS	<p>Trade union agreement is not necessary but approval by the Labour Administration is easier to obtain with the agreement</p> <p>Time-consuming for management</p> <p>Risk of litigation</p> <p>Reputational risk for the company.</p> <p>Costs (social measures + expertise)</p>	<p>Trade union agreement is not necessary, but approval by the Labour Administration is easier to obtain with the agreement</p> <p>Risk of having the best employees leaving</p> <p>Difficulty in targeting volunteers for departure</p> <p>Risk of not achieving the workforce reduction objective through the PDV alone</p>	<p>Requires an agreement with trade unions</p> <p>Risk of having the best employees leaving</p> <p>Difficulty in targeting volunteers for departure.</p> <p>Risk of not achieving the workforce reduction target through the RCC. Going through the RCC route means relinquishing the forced redundancy route. The Labour Administration position is that there cannot be a forced redundancy project within the same scope as a RCC that did not achieve its target</p> <p>Difficult to implement quickly, given the uncertainty of the negotiation process.</p>	<p>Technically speaking, may not include a reduction in workforce – can only include modifications of the employment contract</p> <p>Requires an agreement with trade unions - Difficult to implement quickly, given the uncertainty of the negotiation process</p> <p>Difficulty in targeting the right persons for departure</p> <p>Risk of not achieving the workforce reduction target through the APC. Could require the implementation of a forced redundancy plan afterwards – it would be difficult to justify it from an operational standpoint though and you would probably have to wait before doing so</p>

Which tools (medium / long-term)



Our feedback and litigation risk

An increase in the
number of forced
economic redundancies
in France

Significant litigation risk
on forced redundancies

A sharp increase in the
number of RCC

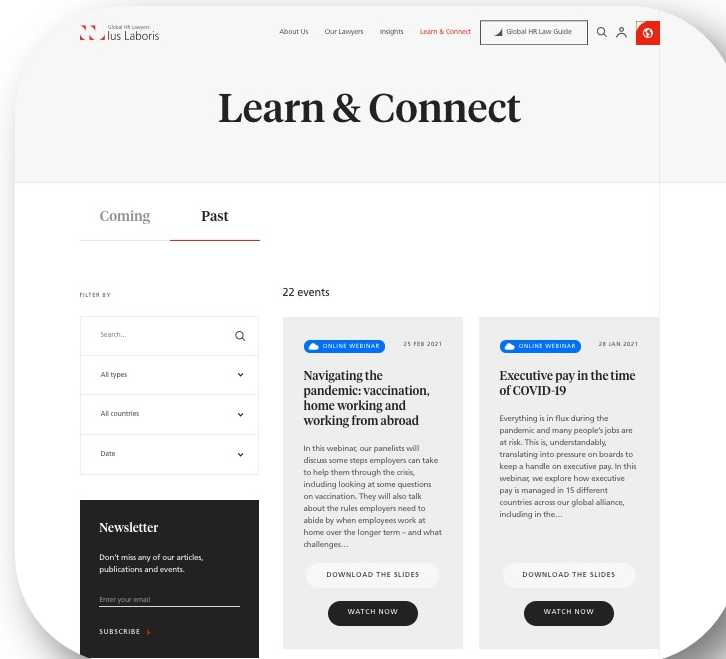
Agreements with unions
(PSE, PDV, RCC) are
highly favoured by the
Labour Administration
and the government

A requirement to tackle
with short-term needs
(forced redundancies?)
but also with the long-
term (GPEC, mobility
plan, etc.)

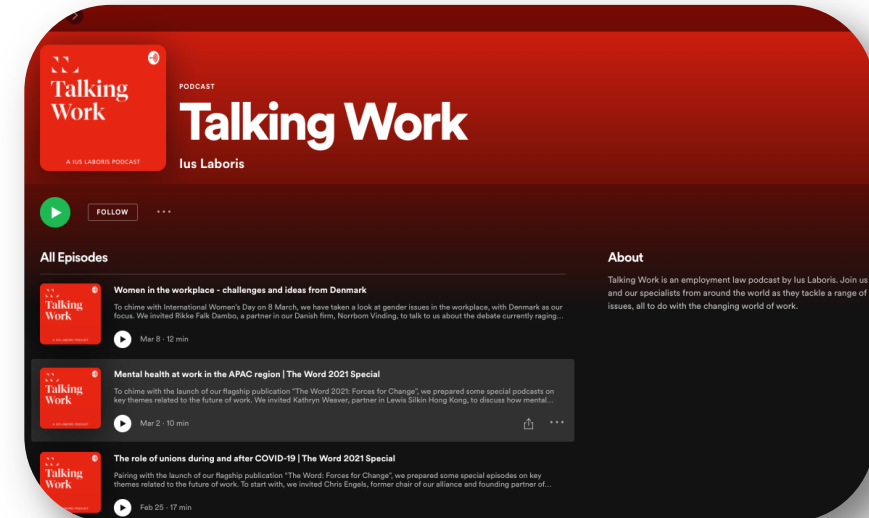
Q&A

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https://open.spotify.com/show/0NpiCVfvpZrjPiVJLeEXmv?si=Xe5nbn2hToWe9uR4pK_Jjg





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