

# Recent developments in French Labor & Employment Law: A Focus on Restructuring Webinar



# Recent Developments in French Labor & Employment Law: A Focus on Restructuring

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# Summary

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# Common rules for business restructuring in France

# 1. Reorganization operations concerned (1/2)

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- **No restrictive definition** in the Labor Code: operations concerning the general running of the company.
- **A very broad definition** that encompasses all operations likely to modify
  - Legal or economic organization of the company
  - Employee working or employment conditions.

Example of operation
Merger, sale of company, acquisition of company(ies) / business or assets, takeover bid
A plan to lay off several employees for economic reasons, with or without a site closure
A change of ERP
A move
Certain asset transactions (sale of real estate) or financial transactions (debt restructuring)

# 1. Reorganization operations concerned (2/2)

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- Consultation may be required when the **planned** transaction **is not decided by the** French company but by another company in the Group, whether French or foreign, or by its shareholders

## Example of operation

Disposal of a holding company that directly owns the French company and has no operating activities: treated as a "transparent" company

Disposal by a holding company that does not directly own the French company but sells it to a competitor

## 2. Prior consultation with IRP (1/4)

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- Companies concerned by consultation issues are those with at least 50 employees and which have set up a CSE.
- To consult in France means to **obtain an opinion from the CSE before taking a decision** on the project: consultation must be prior to the decision.

⇒ Depending on the operation, you need to check the consultation deadline for each case

**Example:** for a merger, consultation must be completed before the merger agreement is signed.

- **In companies with several establishments** (with a local CSE per establishment and a central CSE): some projects only require consultation with the central CSE, others only with the local CSE, and others with both the central and local CSEs.

⇒ The level of consultation must be checked each time

## 2. Prior consultation with IRP (2/4)

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- **The CSE's opinion is not binding on management:** the project can go ahead even if the opinion is negative.
- **Penalties** for non-compliance with the obligation to consult
  - **Criminal offence:** €7,500 fine for the individual employer (theoretical maximum prison sentence of one year), €37,500 for the company and same penalties for the author of the decision
  - **Damages** for the harm caused by non-compliance (rarely exceeds €10,000) in favour of each of the plaintiffs
  - **Suspension of operation** and prohibition to implement the operation, under penalty, as long as regular consultation has not been carried out.



## 2. Prior consultation with IRP (3/4)

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- **The consultation procedure is written:** management must submit a briefing note **in French** setting out
  - Current organization of the company and of the group if the project has a group dimension
  - The reasons for the project
  - Project details
  - Project consequences: on company organization, working conditions, employment, business plan (depending on the project)
  - Since September 2021, the consultation has also focused on **the environmental consequences of the project.**
- **The CSE** has the right to
  - **To ask questions and make alternative proposals:** they must obtain written, reasoned answers from management to their questions and proposals
  - **To be assisted by an expert of its choice**, at its own expense, except in certain cases where the expert is a chartered accountant whose expenses are paid in full or in part by the company  
**Example:** redundancies of 10 or more employees for economic reasons, takeover bids and projects involving a decision by the French or European competition authorities
  - **Refer the matter to the judge to obtain additional information** if he or she considers that he or she does not have sufficient information, and **request that the consultation be extended.**

## 2. Prior consultation with IRP (4/4)

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- **The chartered accountant**
  - Has **the right to request any documents it deems useful** for its work from the company, **the parent company and the subsidiaries**: the French company is required to provide any documents it is able to obtain
  - May not request the production of notes, reports or any other documents not required by law.
- Experts, like CSE members, are subject to a confidentiality obligation: **the employer cannot refuse to communicate a document because it is confidential.**
- Length of consultation
  - 1 month maximum,
  - 2 months maximum if an expert is appointed
  - 3 months maximum if expertise and consultation with both central and local CSEs.

⇒ **On expiry of the deadline, if the CSE has not issued an express opinion, it is presumed to have issued an opinion and the consultation procedure is deemed to have been completed**

### 3. The possibility for employees to submit a takeover bid in certain transactions (1/1)

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- An expressly provided hypothesis that follows specific rules and may be subject to employer sanctions
  - In the event of a planned sale of a majority shareholding or of the company's goodwill, including intra-group sales in
    - Companies with fewer than 50 employees
    - Companies with fewer than 250 employees and either total assets of less than €43 million or sales of less than €50 million.
  - The employer has a **duty to inform employees** when initiating the CSE information-consultation procedure.
  - Employees (any employees) can submit a takeover bid if they so wish.
  - **The employer is not obliged to accept the offer.**
  - Sanction
    - Civil fine not to exceed 2% of the amount of the sale of the business or majority interest
    - Damages and interest.



## 4. The employer's obligation to look for a buyer for certain operations (1/2)

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- An expressly provided hypothesis that follows specific rules and may be subject to employer sanctions
  - This concerns **plans to close or relocate** an establishment subject to the obligation to set up a local CSE
    - Involving at least 10 redundancies for economic reasons (i.e. a job protection plan)
    - In companies with **at least 1,000 employees** or belonging to a French/European group with at least 1,000 employees.
  - **The employer is obliged to look for a buyer**, and this search gives rise to a specific process for informing the CSE and the public authorities.
  - The CSE can ask to participate in the search for a buyer.
  - **The employer must examine the offers received and give a reasoned response.**
  - The employer is not obliged to accept the offer.
  - **Sanction: Refusal by the administration to approve the job protection plan.**
- ⇒ **The employer has to start the process all over again to get the green light from the administration and implement the project**

## 4. The employer's obligation to find a buyer in certain transactions (2/2)

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- In other cases of sale or closure, the employer is not obliged to find a buyer, but
    - Employees can still make a buyout offer.
    - The CSE can always propose another buyer.
    - The employer is not obliged to accept these proposals but must at least respond to the CSE's proposals (it is of course advisable to respond to employees as well, even if this is not compulsory).
- ⇒ **In practice, depending on the context, internal/external (political) pressure to accept a buyer's offer**



# Specific rules governing job eliminations and redundancies in France



# 1. The cost of redundancies in France (1/4)

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- **2 types of costs for all redundancies, whether for economic or non-economic reasons**
  - **A direct cost** (the cost of the redundancy itself) that can be accurately evaluated
    - **Advance notice**
      - The duration generally varies **between 1 and 3 months**, more rarely 6 months (the duration is determined by the labor code and the collective bargaining agreement for the sector in which the company operates)
      - Advance notice entitles to paid leave
      - Advance notice and paid leave are in the nature of wages: the sums are subject to employer contributions (at a rate of around 50%, depending on the company).
    - **Severance pay**
      - **The minimum amount is that stipulated by law** for employees with 8 months' seniority or more
      - The collective agreement or employment contract may provide for the payment of a **higher indemnity**
      - **The legal indemnity is equal to**  
1/4 month's salary per year of seniority up to 10 years + 1/3 month's salary per year of seniority after 10 years.
  - **Indirect costs** (in the event of a lawsuit by the employee after dismissal) that cannot be precisely evaluated
    - Action for nullity of dismissal (including discrimination)
    - Action for dismissal without cause.
- ⇒ **Damages to the employee or back pay**

# 1. The cost of redundancies in France (2/4)

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- **Damages for dismissal without real and serious cause**
  - Since 2017, a mandatory scale for the judge sets the minimum and maximum damages ("Macron scale").
  - The scale differs depending on whether or not the company employs more than 10 people.
  - The scale for companies with more than 10 employees
    - **Depends on** employee **seniority**
    - Is expressed in months of gross remuneration
    - Is **capped at 20 months' gross compensation.**

# 1. The cost of redundancies in France (3/4)

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Seniority (full year)	Minimum compensation	Maximum compensation
0	0	1
1	1	2
2	3	3,5
3	3	4
4	3	5
27	3	19
28	3	19,5
29	3	20
30 and over	3	20

\* in number of months of gross compensation



# 1. The cost of redundancies in France (4/4)

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- **Direct redundancy costs are much higher in the case of mass redundancies for economic reasons (10 or more employees)**
  - **The employer must take additional measures, and the associated costs are significant**
    - CSE expertise
    - Collective measures: psychological support unit
    - Individual measures
      - **An external outplacement scheme**, with the **cost of an external outplacement firm**, for companies or groups with 1,000 or more employees a 12-month "**outplacement leave**" (longer in certain cases) which includes the notice period, during which the employee is paid and receives training at the employer's expense, as well as assistance with professional and geographical mobility (e.g. relocation costs)
      - **An internal redeployment scheme within the company and the Group in France**, including the provision of the necessary training and, where appropriate, incentive and/or mobility allowances
      - **A voluntary scheme**, usually with an additional bonus to encourage employees to leave
      - **Additional severance pay.**
  - **In total, provide at least 12 months' gross salary per employee in addition to notice and severance pay (and for CSE expertise at least €100,000HT).**

## 2. Choosing the right reorganization tool (1/2)

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- **Two tools** when the project involves job cuts.
- **The job protection plan (« PSE »)**: when redundancies are compulsory in the short/medium term
  - For projects involving at least 10 job cuts
  - Employees who do not leave voluntarily or are not reclassified within the company or group will be dismissed.
- **Collective termination agreement (« RCC »)**: when job cuts are not mandatory in the short/medium term
  - Employees who do not leave voluntarily **will remain with the company**
  - The company **shall not make** these employees **redundant while the** agreement is in force.
- **In both cases, the labor authorities must authorize the project.**

## 2. Choosing the right reorganization tool (1/2)

Theme	Question	Impact
<b>Project scope</b>	French or European/global	Timing: In addition to local bodies, the European Works Council may also need to be consulted.
<b>Business rationale and "legal" reason for the project</b>	<p>Economic or not</p> <p>Economic reasons (assessed at the level of the business sector of the group to which the French company belongs):</p> <ul style="list-style-type: none"> <li>• Economic and financial difficulties</li> <li>• The need to safeguard competitiveness</li> <li>• Cessation of activity</li> <li>• Technological change</li> </ul>	<p>If no economic reason can be invoked, it is not possible to make a PSE.</p> <p>All that remains is the RCC</p>
<b>Project constraints</b>	Is it imperative for the employer to eliminate jobs in the short/medium term?	If yes PSE
<b>Possibility of implementing the project unilaterally</b>	Can the employer unilaterally set up the plan if negotiations fail?	Yes only for PSE Impossible for RCC
<b>Commitment to employment/state aid during covid (partial activity)</b>	Did the company commit itself to maintain employment during a certain period of time?	May prevent job cuts from being envisaged in the near future
<b>Redundancy and other precedents</b>	Did the company implement job cuts in the past?	Past negotiations will impact the future ones

### 3. The job protection plan (1/7)

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- **The employees occupying the job that may be eliminated are not necessarily the ones who will be made redundant**
  - The employer sets up employee categories to group together potentially interchangeable employees
  - Dismissed employees will be those designated according to criteria (known as "order criteria")
  - These criteria take into account age, seniority, family responsibilities and professional qualifications
  - The criteria are weighted,

Age criterion	Number of points
< 25 years	1 point
≥ 25 years < 35 years	3 points
≥ 35 years < 45 years	5 points
≥ 45 years < 55 years	7 points
≥ 55 years	9 points

### 3. The job protection plan (2/7)

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- The employees occupying the job that may be eliminated are not necessarily the ones who will be made redundant
  - In the case of a multi-establishment company, they may be applied in a geographical area smaller than that of the company under certain conditions
  - We look at the total number of points obtained by employees in the professional category
  - **Employees with the lowest number of points are laid off.**

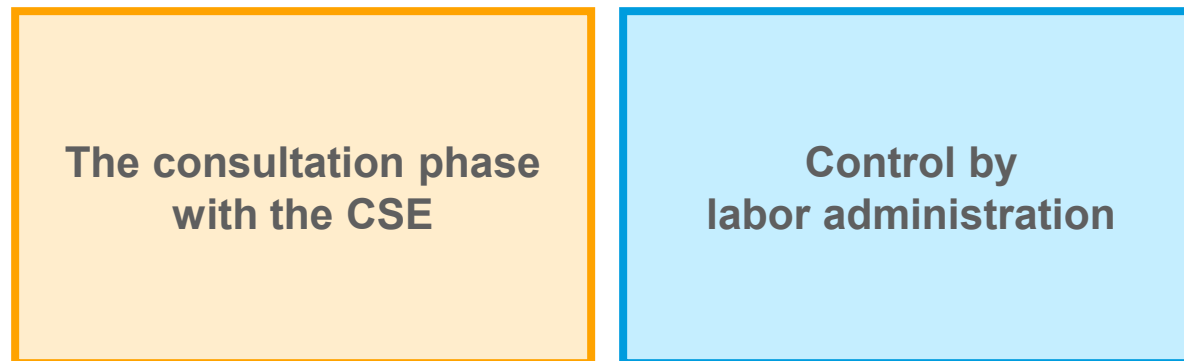
"Assistant" professional category	Total number of points
Mrs A	35
Mr B	42
Mr C	18
Mrs D	13



### 3. The job protection plan (3/7)

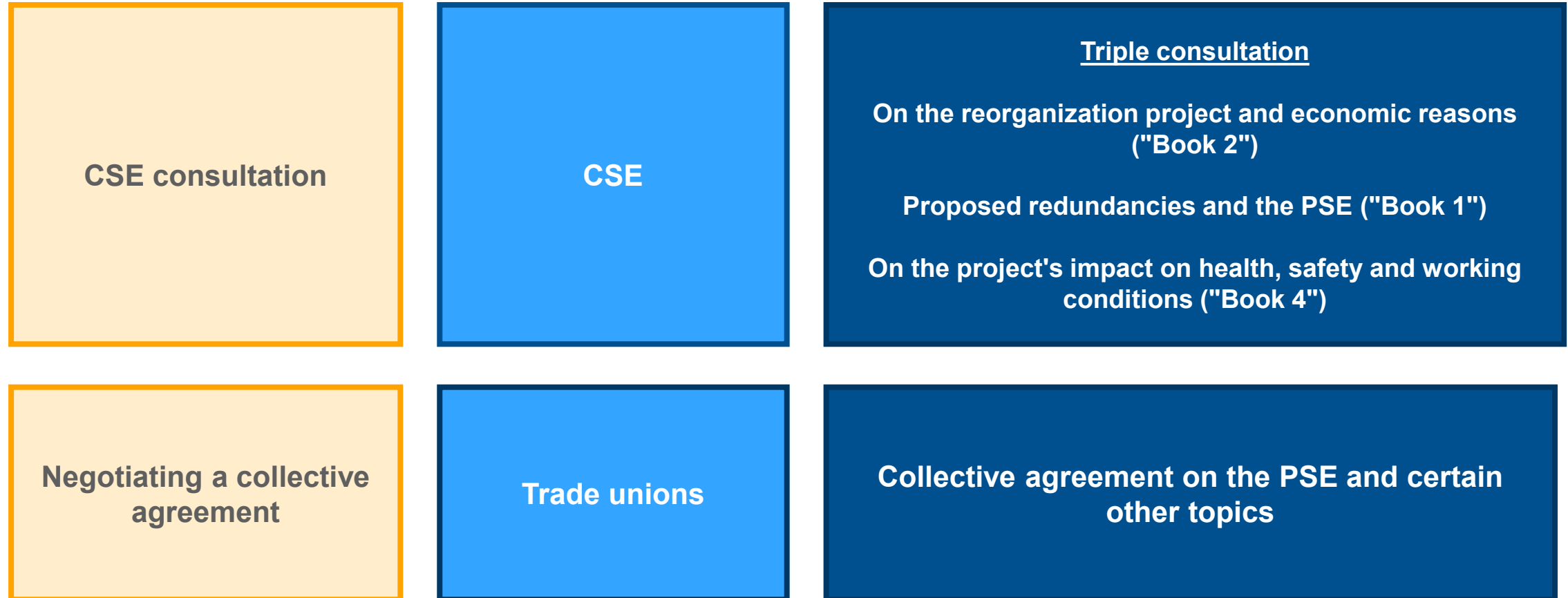
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- The PSE must contain **3 sets of measures**
  - **Measures to avoid** or reduce the number **of redundancies**: voluntary redundancies, internal redeployment, etc.
  - **Measures designed to support employees who have been made redundant**: assistance from an external outplacement agency, outplacement leave, assistance with retraining, business start-ups, finding a new job, additional severance pay, etc.
  - **Measures to prevent psychosocial risks** and workload problems associated with the project.
- The procedure consists of two parallel stages



### 3. The job protection plan (4/7)

- The consultation phase



### 3. The job protection plan (5/7)

- **Timeframe**

Consultation CSEC/CSEE	Duration	<ul style="list-style-type: none"><li>• 2 months maximum if number of redundancies &lt;100</li><li>• 3 months maximum if number of redundancies <math>\geq 100</math> and <math>&lt; 250</math></li><li>• 4 months maximum if number of redundancies <math>\geq 250</math><ul style="list-style-type: none"><li>• Possibility of negotiating different deadlines</li></ul></li></ul>
	Terms and conditions	<ul style="list-style-type: none"><li>• Minimum 2 meetings (as many as necessary)</li></ul>
	Experts	<ul style="list-style-type: none"><li>• Expertise on all 3 sections (Books 1, 2 and 4), but a single expertise report</li><li>• Rules on deadlines for expert's questions, management's answers and the expert's report</li></ul>

### 3. The job protection plan (6/7)

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- **After consultation, the employer must request authorization from the labor authorities.**
- **Administrative control covers**
  - The regularity of the consultation procedure with the CSE
  - The content of the PSE (limited control in the event of agreement with the unions)
  - The professional categories
  - The order criteria
  - The employer's assessment of psychosocial risks and the impact of the project on the workload of remaining employees
  - The measures taken by the employer to prevent these risks/impacts
  - If the project involves the obligation to look for a buyer, the employer's compliance with its obligations.
- **The administration has a period of 15 or 21 days, depending on whether or not an agreement has been reached with the unions: in practice, 1 to 1.5 months from the employer's request for authorization.**

### 3. The job protection plan (7/7)

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- In the end, the procedure itself takes at least 3 and a half to 4 months (if fewer than 100 redundancies), and about 6 months if at least 250 redundancies





## 4. The RCC (1/2)

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- Requires agreement with employee representatives.
- The agreement sets
  - Target number of employment contract terminations
  - Timeframe for reaching target
  - Commitment not to make employees concerned by the RCC redundant before the end of the agreement
  - Tie-breaking criteria
  - Information provided to the CSE
  - Support measures for volunteers: help in finding a new job, retraining for business creation/takeover, severance pay (at least redundancy pay + incentive bonus).

## 4. The RCC (2/2)

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- **A priori simpler and less expensive than a job-saving plan**
  - No consultation of the CSE, just information
  - No internal redeployment, no redeployment leave
  - No redundancy criteria: relative control over which employees can volunteer to leave
  - The administration's control concerns the agreement's compliance with the Labor Code (i.e. does the agreement provide for what the Labor Code requires) - verification period of 15 days from the employer's request for authorization.
- **Cannot be used if it appears that employees will be made redundant if they do not volunteer**, in which case they have no choice but to leave
  - Not possible for a site closure.
- Employees who do not volunteer remain with the company.
- Prohibition on economic layoffs during the RCC period to carry out job cuts.



# Key legal upcoming developments

# 1 The extension of the competences of the ER's to the environment (1/2)

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- **Since a law of August 2021**, the consultations of the CSE must now include an **analysis of the environmental consequences of the project**.
- **The notion of "environmental consequences" is not defined**
  - What are the factors, parameters or indicators?
  - Easy to identify for some projects (relocation) less for others (legal merger).
- There is a **risk of blocking the consultation** and/or lengthening the consultation deadlines (and therefore **delaying the implementation of the project**) on the ground that the relevant details were not sent to the CSE.
- For the moment, only a few litigation on the subject but it is reasonable to think that they will develop.

# 1. The extension of the competences of the ER's to the environment (2/2)

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- For industrial projects, I have established a grid of minimum information.

	Current organization Total sites within the perimeter	Target Organization
Electricity consumption	X kWh	Y kWh
Gas consumption	X kWh	Y kWh
Water consumption	X m3	Y m3
Volume of waste (in Tons)	X T	Y T
Total carbon emissions (carbon footprint)	X T	Y T



## 2. The proper use of group communication

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- As mentioned already, consultation must precede decision-making.
- Communication of foreign groups (to the market for instance) if it does not take the precaution of mentioning a "project", can put French management in difficulty.
- **A recent decision rendered in relation to collective redundancy plans** calls for the utmost vigilance
  - Pursuant to a Court decision rendered mid-November, the administration must ensure that no irreversible decision, express or revealed by any act whatsoever, has been taken before the end of the consultation
  - In case of such decision, the Administration shall refuse to give the green light.
  - ⇒ **It will be impossible to implement a redundancy plan** if the Administration considers that an irreversible decision on the project was made before the end of the consultation.
  - ⇒ The situation cannot be regularized
  - ⇒ **Great vigilance in the preparatory measures and also in the communication**



# Thank you

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Alexandra's practice covers the full range of contentious and advisory matters with regard to employment and social security law, including national, international and multi-jurisdictional issues. She regularly advises both French and international groups on complex transactions, with a particular focus on mergers, acquisitions and restructurings.

Alexandra received a business degree from ESCP Europe and law degrees from the University of Paris School René Descartes (Maîtrise in Business Law and Maîtrise in Public Law). She is a regular lecturer at the University of Paris I Law School Panthéon-Sorbonne, at the University of Paris 2 Law School Assas and to the Versailles Bar School.

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The Legal 500 Paris: Employment 2019-2022  
The Legal 500 EMEA: Employment 2020-2022  
Chambers Europe: France: Employment 2020-2022  
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