

Business report  
2010

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# The Wage Guarantee Scheme: a central component in the receivership processes

## The missions of the AGS guarantee scheme

Created in 1973 at the initiative of employers, for purposes of inter-professional solidarity, AGS assists employees and employers involved in a receivership process. It intervenes in case the company is in receivership or liquidation or sometimes, under certain conditions, in protection proceedings and ensures, as early as possible, the amounts due to employees.

Pursuant to the provisions of a management agreement between AGS and Unédic, the assignments entrusted by the legislator to AGS have been implemented by the Délégation Unédic AGS.

At the heart of receivership proceedings, AGS fulfils three basic missions as part of the employee claim guarantee scheme:

- Advancing, via judicial representatives, the funds required to settle employee's claims;
- Recovering the sums advanced on the basis of monitoring protection proceedings, receivership proceedings and the liquidation of company assets;
- Defending the legal interests of the guarantee scheme.

## Financing

The French insolvency fund is financed from contributions paid by employers. The AGS Board of Directors sets the amount of contribution employers must pay and is responsible for ensuring the fund balances. It does this by ensuring advances, recoveries and contributions remain on an even keel.



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## A return to balance as the economy



2010 saw a steady drop in company claims, confirming the slow-down in the recession in France after two years of sharp rises in the number of defaults. The improved economic environment has brought the French insolvency fund back into balance after the suddenness and depth of the recession tipped it into a downward spiral.

The number of new cases is now dropping - particularly as regards companies with over 100 employees - while beneficiary numbers and AGS business indicators have improved. Although the total amount advanced remains close to an all-time high, it has nevertheless fallen slightly,

marking the end of a worrying trend.

The support provided by business has contributed significantly to the rebalance of the fund, contributions remaining exceptionally high at 0.40% throughout 2010 to enable us to deal with the enormity of the situation.

The French insolvency fund received effective operating support from Délégation Unédic AGS, whose management mandate enabled it to examine carefully the position of companies in difficulty and requests for the payment of priority preference claims. This has helped protect work and jobs at a difficult period for the economy, while also keeping recovery levels high, a major factor in AGS's financial equilibrium.

As a result and in the light of the new economic forecasts, the AGS Board of Directors decided to drop contributions to 0.30% from 1 April 2011.

The adjustment and the exceptional measures adopted over the last two years indicate employers' determination to ensure the fund remains operational over the long term while at the same time meeting the competitive demands of the companies that finance it.

The measures also show that despite rapid change and economic upheaval, our ability to adapt is the key to our success, as Délégation Unédic AGS's Ambition 2013 project makes clear, its strategic aims having been approved by the AGS Board of Directors.

**Jean-Charles Savignac,  
Chairman of AGS**

## improves, but remains fragile



The return to balance of the French insolvency fund thanks to the increased support provided by contributing companies, receivers and Délégation Unédic AGS staff in recovering advances, nevertheless remains vulnerable to the possibility of economic downturn.

Our continuing ability to help businesses and employees ride out the crisis relies on advances, recovery and contributions remaining in harmony. This has been made harder by changes in the law that have extended the scope of our action and by new company case law that has resulted in a rising number of disputes.

The number of class actions is going up. These have the primary aim of challenging all redundancy whether economic or under a redundancy scheme (*Plan de Sauvegarde de l'Emploi*) and are leading to the award of extremely high damages against AGS. In the long run the operation of our solidarity fund could be compromised along with the extent to which we are able to assist companies.

AGS must also recover the funds it advances and deal with changes in the law and case law that could affect its status as a priority preferential creditor.

In the light of the financial and social challenges it is likely to have to face in the future, in 2010 Délégation Unédic AGS began to reconsider its role and built the strategic foundations of Ambition 2013, a 3-year project that will give us greater exposure to our environment and expand our range of services to meet our partners' new needs.

The Ambition, which is shared by everyone working with Délégation, forms part of our commitment to continuous development.

**Thierry Méteyé,**  
National Director of Délégation Unédic AGS

### Company defaults are falling but numbers still remain high

The slowdown in company defaults in 2010 confirms that the French economy is coming out of the recession after its peak in the 1st half of 2009. The number of new cases fell steadily over 2010. Although AGS's primary business indicators are pointing in the right direction, they remain high, except for businesses with over 100 employees, whose indicators are falling sharply.

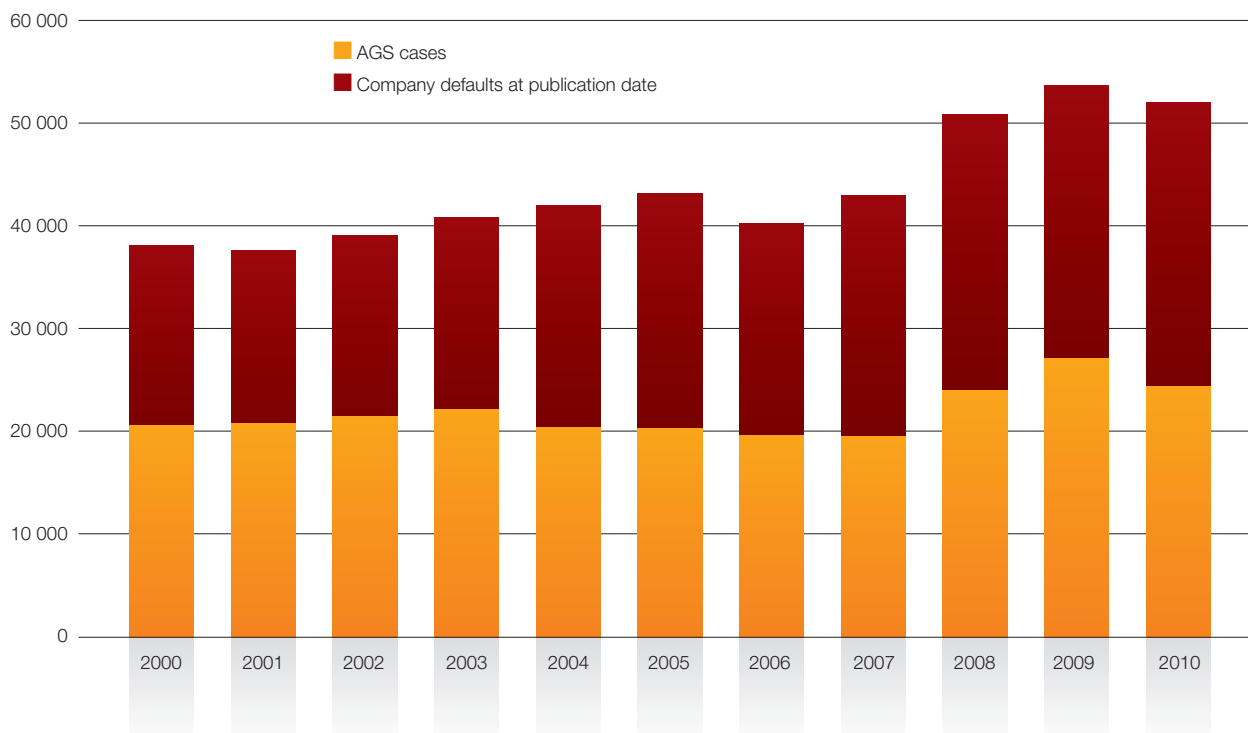
#### ● Company defaults: -3.1%

Starting in the 3rd quarter of 2009, the number of company default fell gradually but steadily throughout 2010.

The change was the result of the upturn in the economy, which moved into the black in 2010 (GDP +1.5% according to INSEE) after the 2009 drop (-2.2%), the biggest in the post-war period. 2008-2009 the recession also pushed many already fragile companies over the brink, triggering legal procedures that would not otherwise have begun until the end of 2009/start of 2010.

Although the trend is now positive, the still extremely high number of defaulting companies (over 52 000 in 2010, the second highest in ten years after the 2009 record) means we are not yet out of the woods. In the next few years we will also be feeling the impact of the 6.3% increase in start-ups in 2010 (source: INSEE) since new companies have a high default rate in the first 2-3 years after formation.

**Comparison of company defaults and AGS business 2000-2010**





### ● Administration orders: the first 5 years

Since 2006 when the Company Administration Act came into force, Délégation Unédic AGS has been recording statistics for administration orders and AGS work in connection with them.

Administration orders	Procedures	AGS action
2006	507	229
2007	519	238
2008	708	303
2009	1420	514
2010	1312	256

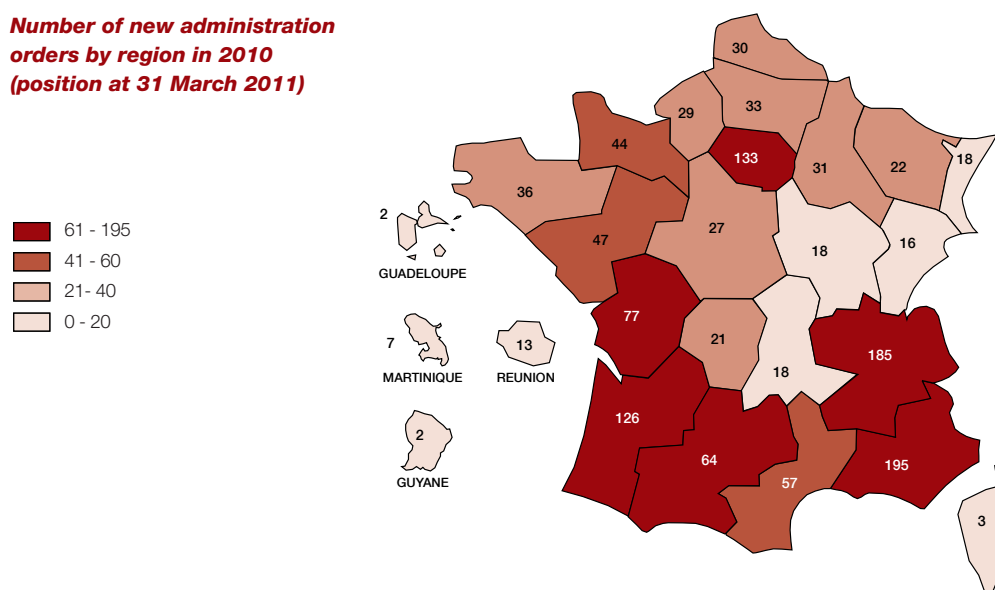
#### Sharp rise from end 2008 until the 3rd quarter of 2009

The relative rise in the number of administration orders in the first two years of implementation of the new Act speeded up (+36.4%) in 2008 as a result of the recession, worsening to +100.5% in 2009 before beginning to slow down in the 4th quarter of 2009, when the recession began to ease.

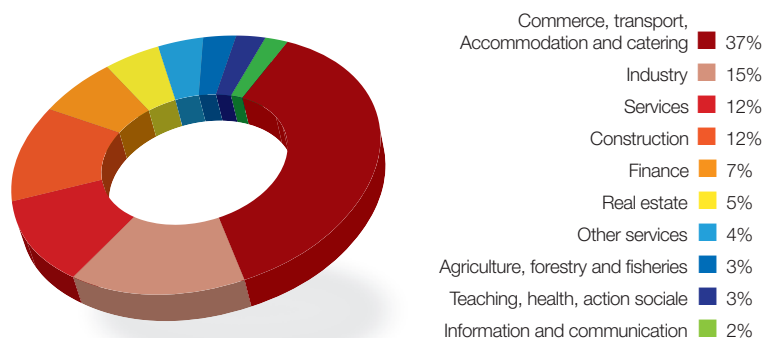
The slowdown continued through 2010, causing the number of administration orders to fall 8.2%, in line with the decrease in all other similar procedures.

In the first 5 years of application of the Act 4466 new administration orders were made, 1540 of which involved action by AGS.

#### Number of new administration orders by region in 2010 (position at 31 March 2011)



#### New administration orders 2010 by sector





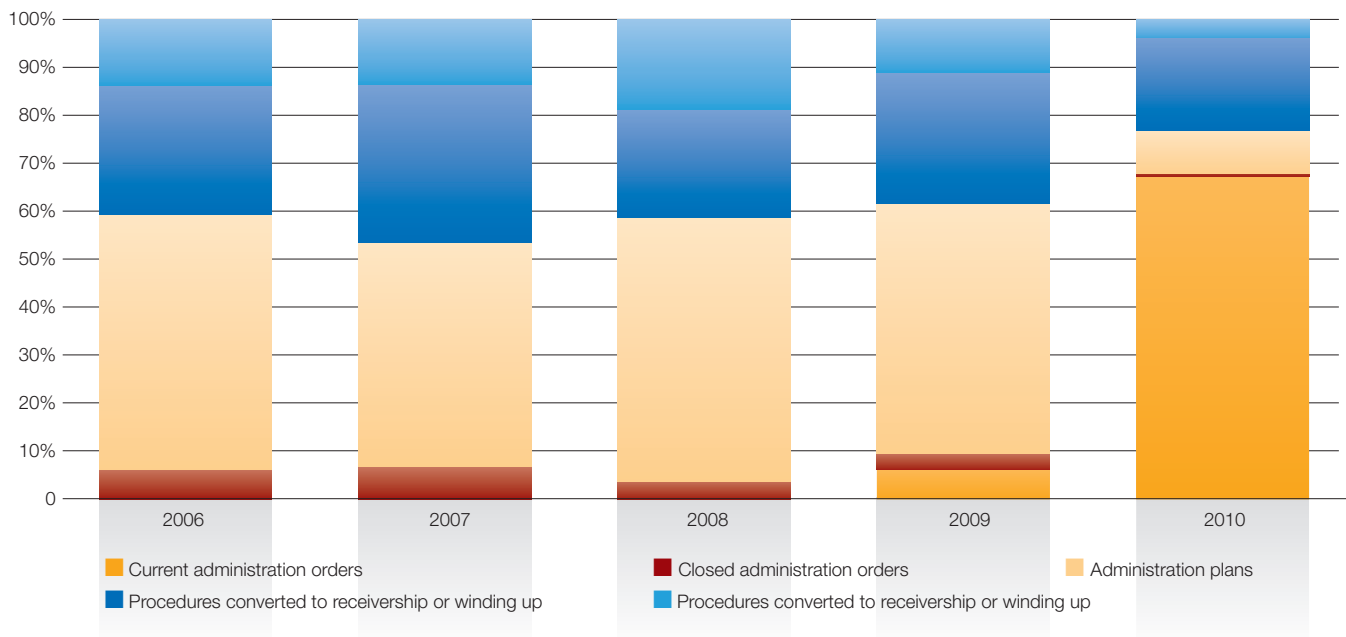
### 2010: 48% of all AGS action is after winding up

Most requests (48%) are received after companies receive winding up orders (32% in 2009) and these account for 29% of all sums advanced (17% in 2009) 37% of all action (50% in 2009) and 27% of advances

(33% in 2009) occur during the supervision period.

AGS undertakes almost no actions once administration plans have been approved.

### Administration orders since 2006 (position at 31 March 2011)



**New procedures 2006:** 54.6% led to administration plans after on average 18 months; 41% were converted into receiverships or windings up; and 5.9% were closed.

**New procedures 2007:** the proportion of administration plans fell to 47.3%; conversions into receiverships/windings up combined remained essentially the same at 46.5%.

**New procedures 2008:** the proportion of administration plans (54.8%) was higher than in 2007 (46%). Conversions into receiverships/windings up stood at 41.5%.

**New procedures 2009:** 6.2% remained at the supervisory stage owing to the time taken to draw up administration plans and make conversions into receiverships/windings up.

**2006-2009** the average time taken to draw up an administration plan was 19 months after the administration order. Conversions were faster, on average 9 months for administrative receiverships and 11 months for windings up.

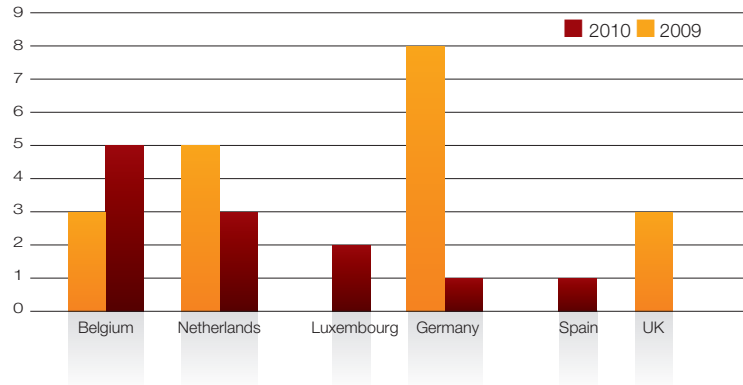
**New procedures 2010:** 2/3 remain at the supervisory stage owing to the time taken to draw up administration plans/make conversions. 9.1% are subject to administration plans and 22.9% have been converted to receiverships/windings up. The figures for March 2010 and March 2009 (8.2% and 24.6%) show that the supervisory stage is shortening but the time taken to convert into receivership or winding up is lengthening.

### Fewer transnational cases

AGS assistance was requested for 19 transnational cases in 2010 (-34% on 2009). AGS took action in 12 of the cases for a total of €503 858, a significant fall when compared with 2009. Action was as follows: Belgium 5, Netherlands 3, Luxembourg 2, Germany 1 and Spain 1.

Since 2003, AGS has advanced €10.8 million for 439 employees. Recovery was 7.5% and slightly over €810 000.

**AGS actions in transnational bankruptcies 2009 and 2010**



### ● New insolvency procedures 2008 and 2010

Figures at 31 March 2011 show how insolvency procedures begun in this and previous years have developed.

#### Over 3/4 of all new receiverships in 2008 failed

Two years after they started, 76.9% of all administrative receiverships begun in 2008 were converted to windings up. Of the 22.6% that resulted in a rehabilitation plan, 27.9% failed.

One year after they started, 23% of all administrative receiverships begun in 2009 resulted in a rehabilitation plan, compared with 20% at 31 March 2010 covering 2008. The rise reflects the changes in insolvency practice during a recession to look at all possible ways of keeping businesses open and protecting jobs.

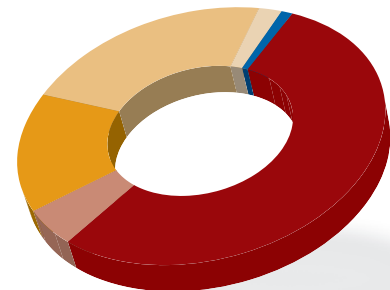
2010, 56.3% of all administrative receiverships have already been converted into windings up, a figure that is unchanged since 2009 (56.5% at 31 March 2010).

#### Quicker completion

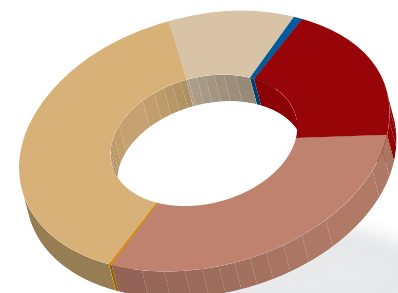
Of all new winding up procedures in 2008, 62% were closed by 31 March 2011. Closures were 41% for windings up started in 2009 and 9% for those started in 2010. Compared with results at 31 March 2010 for 2009 (36% and 7%) this would seem to indicate quicker completion times.

**Insolvency procedures by year of opening order: 2008 and 2010 (position at 31 March 2011)**

**2010 opening orders**



**2008 opening orders**



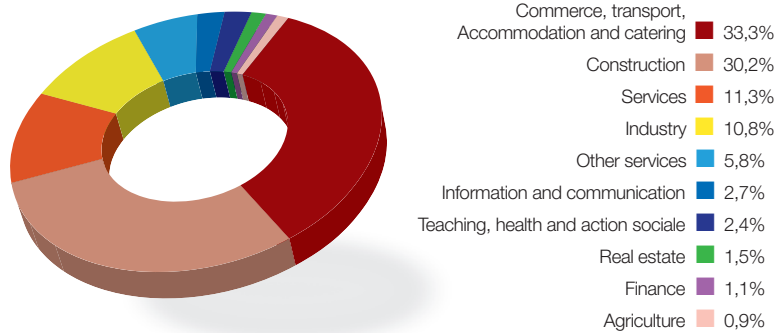
### ● Action for the first time more common for services than for industry

Unchanged over the last 3 years, commerce and construction have accounted for almost 2/3 of all AGS actions. Commerce/transport/accommodation and catering remains the neediest sector (33% of AGS cases), followed by construction (30.2%).

For the first time services have overtaken industry in AGS action terms (over 11%). Action for industry has continued to fall over the last few years, from 12.3% in 2007 to 11.2% in 2008, with a slight blip (11.9%) caused by the recession in 2009.

AGS opened fewer cases in 2010 in all sectors.

**New cases in 2010 by sector**  
(based on NAF nomenclature rev. 2, 2008)



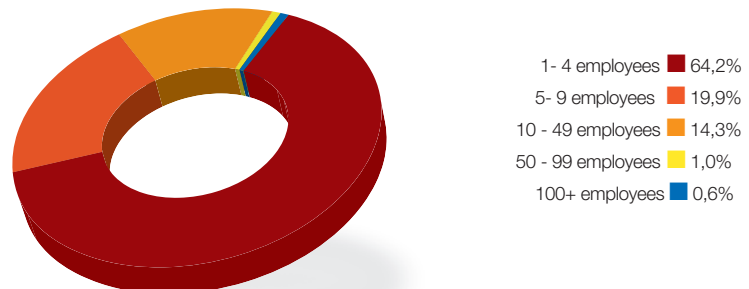
### ● Most AGS action is for SARLs and companies with under 10 employees

#### Companies with under 10 employees: 84.1% of all AGS actions

Of all defaulting companies requiring action by AGS, companies with under 10 employees, always accounting for over 80% of all action, rose in 2010 to 84.1% from 82.7% in 2009. Within this class, the proportion of companies with 1-4 employees is rising

steadily and is now 64.2% of the total (62.5% in 2009 and 61.7% in 2008). At the same time, actions involving companies with 10-49 employees fell one point against 2009. Proportions in other classes were either virtually unchanged or slightly down.

**New cases in 2010 based on company personnel numbers**

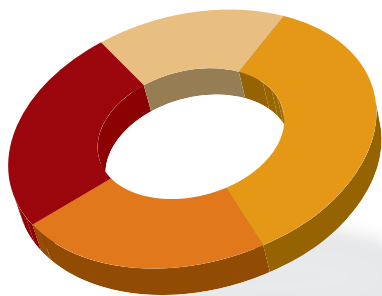


### Companies under 5 years old: 52.4% of all AGS actions

Most action by AGS concerned, although to a lesser extent than in previous years, companies under 5 years old: 52.4% in 2010 vs 53.9% in 2009 and 55.5% in 2008. Companies over 10 years old account for a shrinking proportion of all actions and, unlike in previous years, now represent only 50% of all administration procedures.

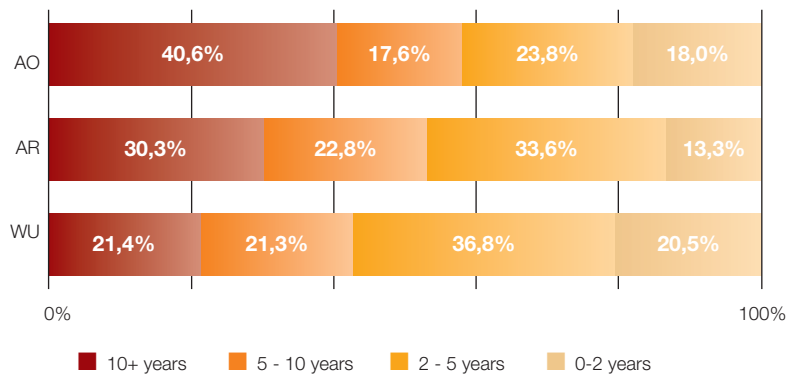
Of all winding up procedures begun in 2010, over half concerned companies under 5 years old. Administrative receiverships and administration orders were on the other hand made mainly against older companies.

### New cases in 2010 by company age



0-2 years 17,4%  
 2-5 years 35,1%  
 5-10 years 22,0%  
 10+ years 25,5%

### Company age at start of procedure in 2010



10+ years 5 - 10 years 2 - 5 years 0-2 years

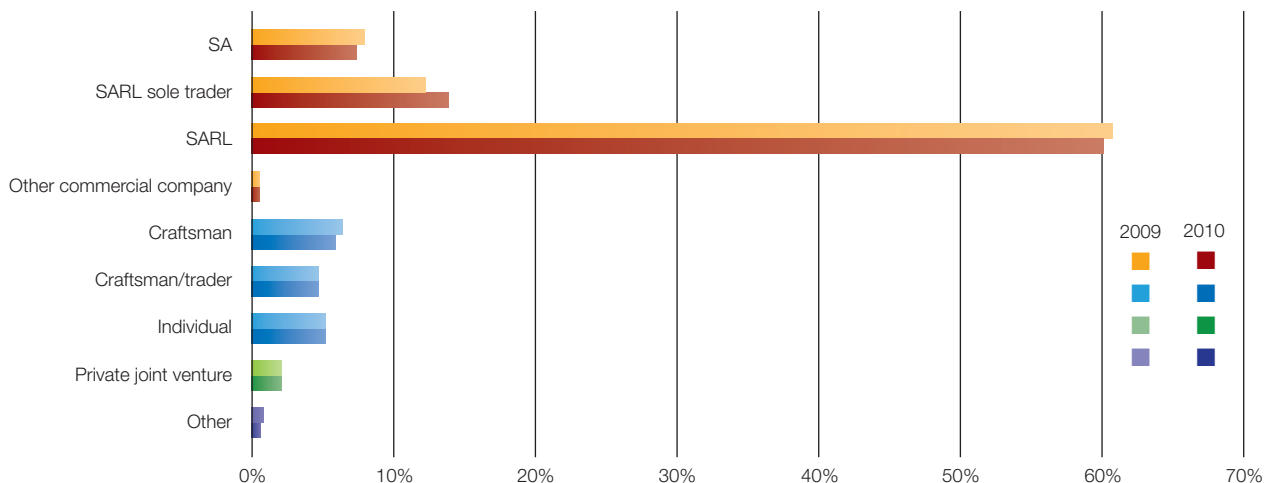
### SARLs (private limited companies): over 70% of all AGS actions

Unchanged since 2009, 82% of new AGS cases in 2010 - based on company legal status (INSEE regulations) - concerned commercial companies, compared with 80% in 2009 and 77% in 2008. 70% of all action taken for commercial companies concerned SARLs (private limited companies) including

sole traders, and is higher than SARLs as a proportion of companies as a whole (INSEE figures).

The proportion of action taken with respect to craftsmen and craft traders continues to fall and was 11% of all procedures started in 2010 vs 13% in 2008.

### New AGS cases in 2009 and 2010 by company legal status



### ● Companies with over 100 employees: 169 AGS cases (-25%)

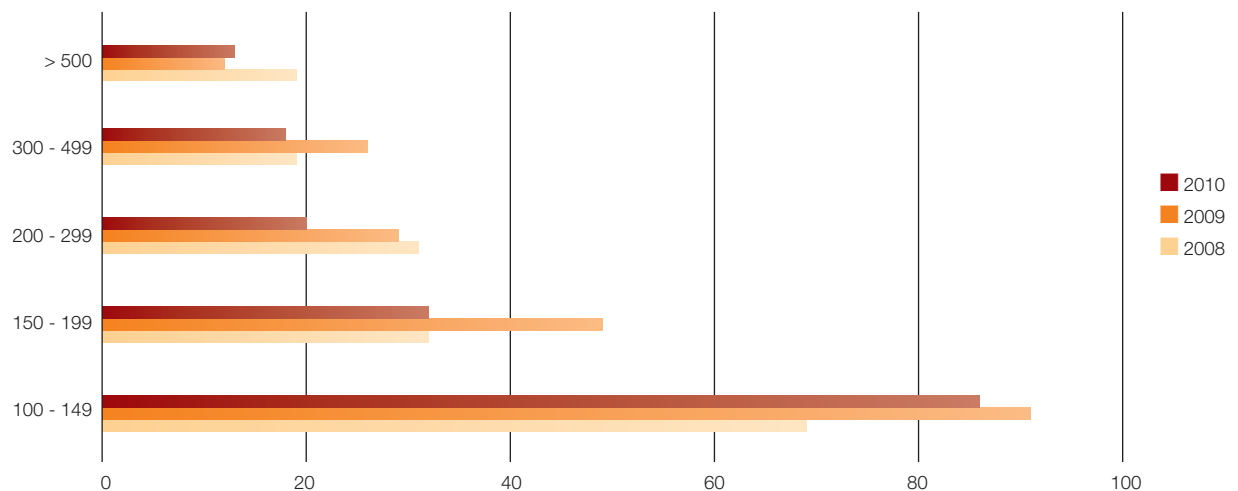
On average, the number of cases involving companies with over 100 employees continued to fall throughout 2010 when compared with 2009, although they were higher in all 3 first quarters than in 2008, the year in which the number of such cases rocketed by 80%. The trend suddenly reversed in the 4th quarter of 2010, falling 27.1% against the 4th quarter of 2009 and 54.5% against the 4th quarter of 2008. The 169 case total in 2010 was 25% down on 2009.

The number of cases involving over 100 employees fell across all personnel classes except companies with

over 500 employees (13 new cases), which rose 7.7% over 2009. The biggest drop was in companies with 150-199 employees (32 new cases vs 49 in 2009 or -34.7%) followed by companies with 200-299 employees and those with 300-499 employees (-31.0% and -30.8% vs 2009).

The rise in the proportion of action involving companies with 100-149 remains the highest, at 50.9% of all cases in 2010 vs 44% in 2009.

#### Cases involving companies with over 100 employees

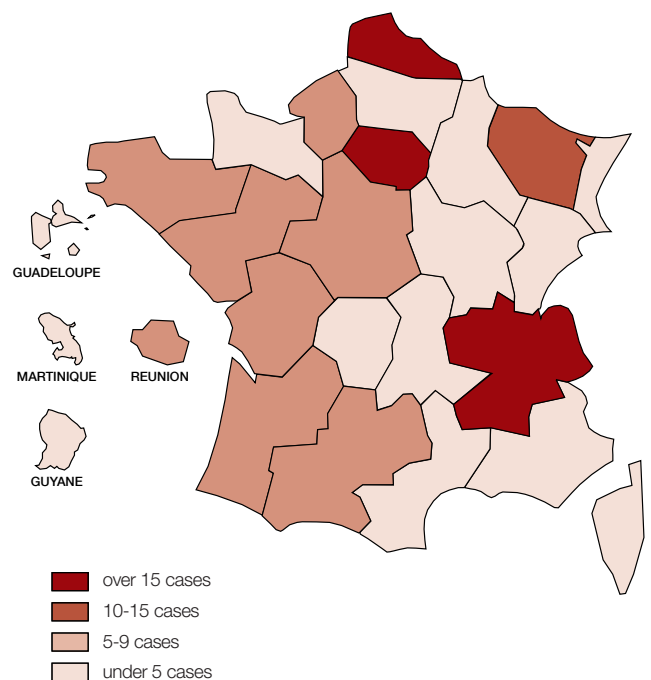


#### Three regions account for over 45% of such cases

At 27.2%, Ile-de-France continues to account for the largest number of cases involving over 100 employees (29% in 2009 and 28% in 2008), followed by Rhône-Alpes at 9.5% (11% in 2009 and 10% in 2008) and Nord-Pas-de-Calais also at 9.5% (8% in 2009 and 6% in 2008). These figures are the result of the high concentrations in these areas of businesses and registered offices involved in class actions brought against establishments in other regions.

In 2010, the number of such cases rose in 3 regions: Poitou-Charentes (4 additional cases), Haute-Normandie (3 additional cases) and Lorraine (3 additional cases). Réunion suffered a sharp rise with 6 additional cases.

#### Cases by region, companies with over 100 employees in 2010



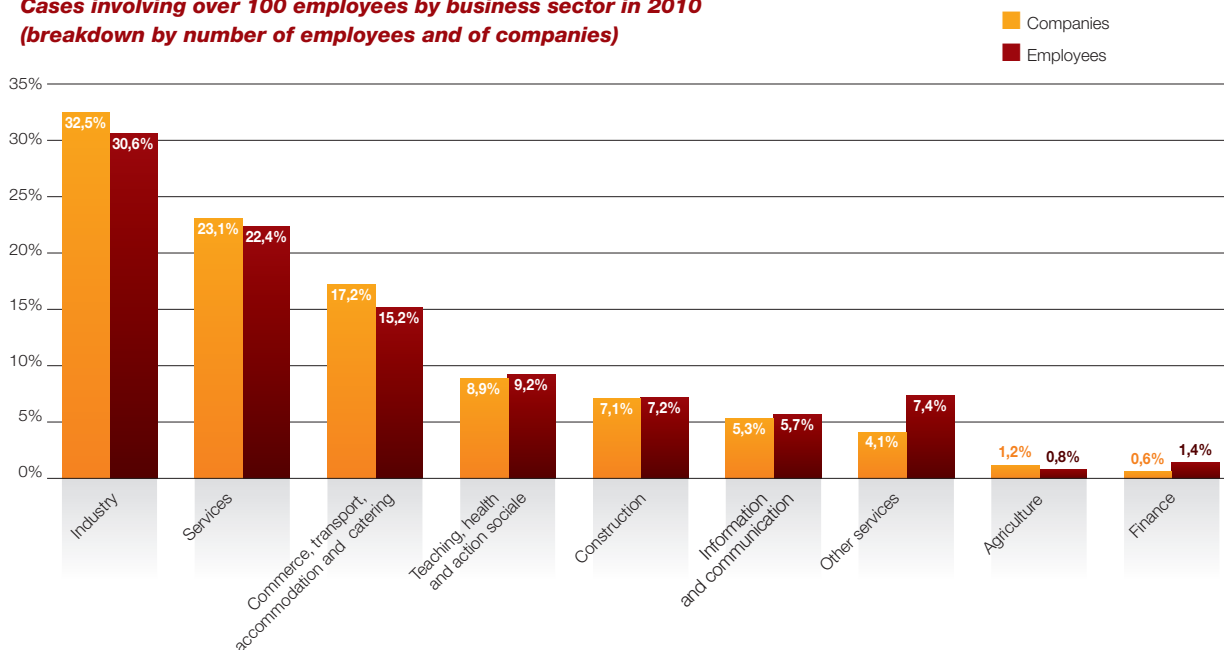
### Cases are rising for construction and services

Construction and services are the only sectors in which cases are still rising vs last year for companies with over 100 employees (+12.2% and +9.1% in 2010).

In 2010 the sectors with the biggest number of cases involving companies with over 100 employees remained industry and services.

Figures for industry as a whole continued to fall however: -11 points vs 2009 and -16 points vs 2008. 30.6% of all actions concerned employees in this sector: -9 points vs 2009 and -22 points vs 2008. Of the 13 cases involving over 500 employees, 4 were in industry and 4 in services.

**Cases involving over 100 employees by business sector in 2010 (breakdown by number of employees and of companies)**



### Features of cases involving over 100 employees

These cases share a number of common features. In 2010, 71% of all cases involving over 100 employees were administrative receiverships and only 8% windings up. Almost 59% of all new cases in 2010 however, whatever the size of company personnel, were windings up.

The high proportion of administrative receiverships involving over 100 employees is mainly because of the age of the companies concerned, 59% of which were over 10 years old.

The time taken to convert administrative receivership or administration into winding up is on average 7.2 months: 1/3 of all new cases involving over 100 employees in 2010 were converted during the course of the year.

### facts

#### AGS as inspector

AGS automatically asks bankruptcy judges to appoint it as inspector in insolvency procedures involving over 100 employees where economic and social impacts are significant and also in administrative receiverships and administration orders in which over 50 employees are involved. AGS aims to help maintain jobs and to satisfy creditors as far as is possible while ensuring the long-term sustainability of the solution decided.

In 2010 AGS was appointed inspector in 277 new cases, including 147 with 50-99 employees and 130 with at least 100 employees (-24% on 2009 and in line with the 25% drop in the number of new such cases).

### FACTS



*"Once appointed inspector, AGS aims to work with bankruptcy judges, administrators and receivers to make insolvency procedures more effective "*

**Valérie Dutreuilh is a lawyer with Cabinet 67 Lannes in Paris specialising in companies in difficulty and represents AGS in its capacity as inspector. She talked to us about what AGS does as inspector in insolvency procedures.**

**You have been representing AGS for over 2 years. How do the other parties perceive its role when it is appointed inspector during a procedure?**

*AGS's aim as inspector is to work with the officers involved to find ways of keeping the company afloat as a going concern, to protect jobs and to satisfy creditors to the greatest extent possible.*

*The more good quality, full information an inspector receives and the greater the involvement the administrator and receivers expect from him, the more effective he will be. This means bids will be higher, rehabilitation plans will be easier to implement, assets will be preserved, assistance will be forthcoming before redundancy plans are put into practice etc.*

*Because of its work alongside receivers to set up the measures needed for company rehabilitation as early as possible and to prevent case-specific risks, AGS's effectiveness as an inspector is now widely recognised by all procedural bodies and the courts.*

*The partnership with the courts and receivers could of course be improved. It would probably be a good idea to have AGS present at the preparatory and stage meetings held before the bankruptcy judge. Not enough administrators do this yet.*

**What are the main problems when preparing for hearings and at the hearings themselves before the commercial courts?**

*Bids for bankrupt companies are often mediocre in terms of both maintaining existing jobs and of satisfying creditors. In some cases they raise serious doubts about the future of the company as a going concern because of who the bidder is, its own solvency and the guarantees it is offering. At meetings with bidders AGS has worked with some administrators and liquidators to improve bids. These meetings have also anticipated problems at the hearing itself.*

*Another area of major concern is how the proceeds of non-plan asset realisation should be used during the inspection period. Should they be used to satisfy creditors under a plan or to finance the company's working capital requirement if we have no idea how the procedure will end? Each case needs to be examined on its merits. Company restructuring cannot be compromised but at the same time company assets cannot be used up before a plan has been presented. We have already seen a lot of long-term asset disposals that directors wanted to allocate to current cash to pay expenses during the inspection period. AGS stepped in to make sure the proceeds of the disposals were put into escrow until the company presented its plan, future application depending on what the company needed to implement its plan. Proceeds can also be used to satisfy creditors if a sale order is made, instead of wasting them during the inspection period if, despite directors best efforts, no credible rehabilitation plan is presented.*

## Sums advanced have fallen slightly but remain close to their historic high

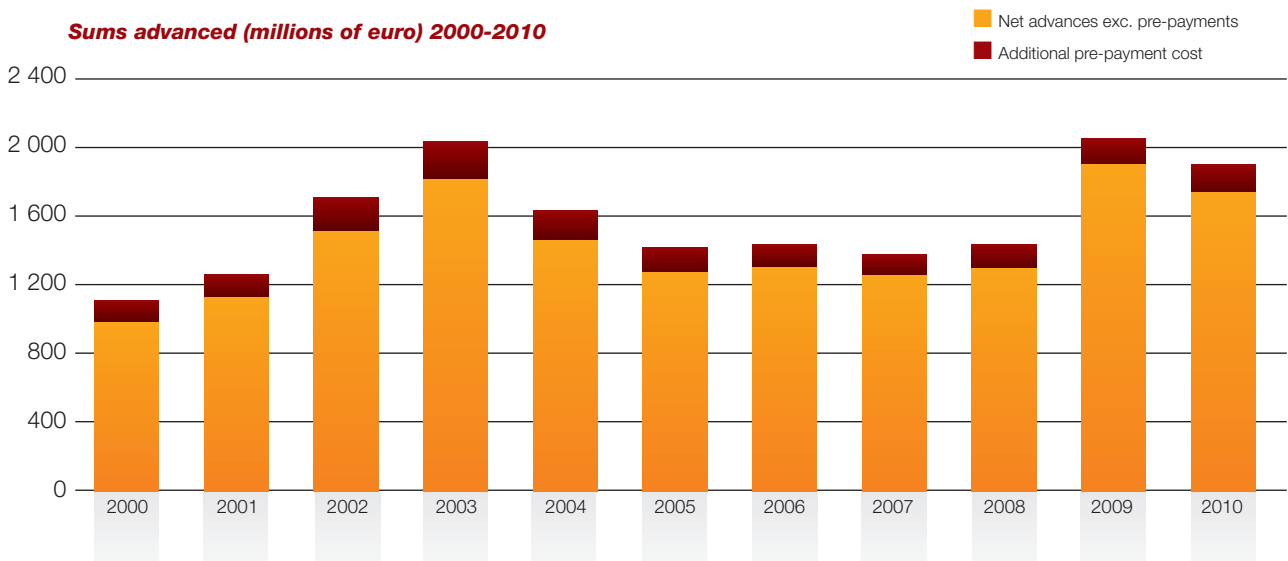
The scale of company default during the 2009 recession and their still high number in 2010 mean that the number of beneficiaries has fallen only slightly, causing an as yet moderate slide in the sums advanced, which remain high in historic terms.

### ● €1.95 billion advanced

After the unprecedented 44.5% increase in 2009, amounts advanced in 2010 have not yet returned to pre-recession levels and remain close to the €2.1 billion record high of last year (€1.46 billion in 2008). Down 8% against 2009, advances were €1.945 billion (+32.8% on 2008).

11.4% higher in the 1st quarter of 2010 than in the same period 2009, amounts advanced dropped consistently throughout the year, speeding up in the 4th quarter when they fell 20.9% against the same quarter in 2009.

Sums advanced (millions of euro) 2000-2010



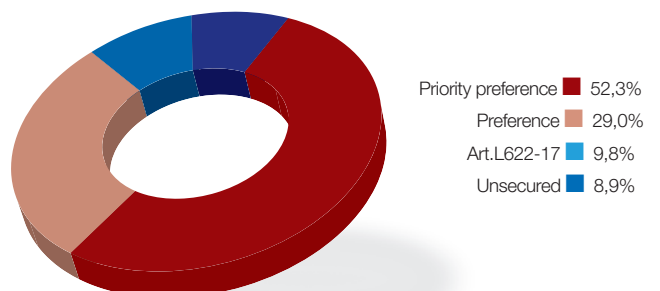
Total advances = net advances to meet employment contract liabilities and payroll prepayment liabilities. In accordance with article 36 of the Law of 27 December 199, statutory and contract wage contributions are guaranteed by AGS. This accounts for 9% of all amounts advanced during the year and breaks down into: 61.9% social security, 20.1% pensions and 18% unemployment insurance.

### Seniority: 52.3% of advances are to meet priority preference claims

After many years of relative stability, the proportion of priority preference claims lifted slightly in 2010 to 52.3% of the total advanced (50.5% in 2009).

The proportion of claims within the scope of article L622-17 Commercial Code rose 2008-2009 from 7.3% to 9.3% and continued to increase to 9.8% of total claims.

Amounts advanced 2010 by seniority





## Limits of AGS cover

Articles L3253-17 and D3253-5 Labour Code limit the amounts AGS can advance. Cover for salary liabilities to a single employee cannot exceed:

**6 times the monthly ceiling** on unemployment insurance contributions (€69 240 in 2010 or €70 704 in 2011) if the employment contract was made at least two years before the order opening the procedure;

**5 times the monthly ceiling** on unemployment insurance contributions (€57 700 in 2010 or €58 920 in 2011) if the employment contract was made at least six months and less than two years before the order opening the procedure;

**4 times the monthly ceiling** on unemployment insurance contributions (€46 160 in 2010 or €47 136 in 2011) if the employment contract was made under six months before the order opening the procedure.

## ● 270 449 beneficiaries of cover in 2010

As the number of new AGS cases fell, so did the number of beneficiaries of cover - by 6.7% in 2010 after two consecutive years of increase: +23% in 2009 with 289 780 beneficiaries; and +12.9% in 2008 with 235 062 beneficiaries.

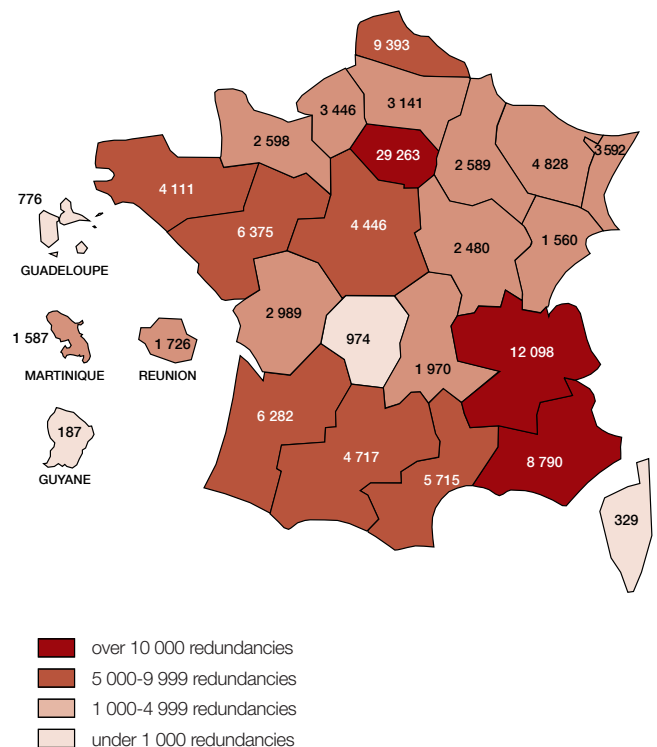
Employees may benefit from pay-outs for two consecutive years, depending on the progress of the insolvency procedure. As beneficiaries, employees eligible for several payments over two consecutive years can be registered just once since receivers usually make requests for advances by type of claim (one list for salaries and another for redundancy pay, for example).

## 125 648 redundancies in 2010 (at 31 March 2011)

In line with the fall in the number of new procedures, 2010 economic redundancies also went down 23.1% (provisional figures at 31 March 2011). These figures may change owing to the time the receiver needs to produce and send claim lists to Délégation AGS, which may be received after the reference period.

The disparity between the number of beneficiaries and the number of redundancies, despite a slight time difference, shows that administrative receiverships have been managing to preserve jobs.

**Redundancies by region in 2010 (figures at 31 March 2011)**

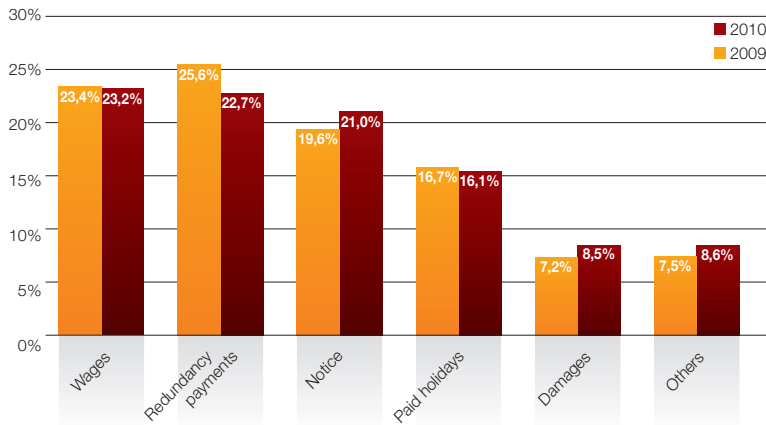


### ● Types of claim and compensation amounts

The biggest proportion of all AGS advances for pay in 2010 was salaries and wages (23.2%), followed by redundancy pay (22.7%), notice of contract termination (21% including CRP/CTP contribution) and

paid leave (16.1%). Compensation claims totalled 8.5%, in line with other liabilities (including cooling off period and DIF for CRP/ CTP).

**Sums advanced by type of claim 2009 and 2010**



Advances for execution of decisions by the courts and other authorities paid out in 2010 were 18% of total advances, slightly over €330 million, breaking down into: compensation 35.5%, redundancy pay 17.9%, and salary/wage liabilities 13.6%. The breakdown is the same as in 2009.

Advances for compensation were over 50% for unlawful terminations of employment contracts.

### ADVICE



*"Given the strict rules on economic redundancy and redundancy plans in insolvency procedures, administrators need to make sure the action they take is flawless."*

**Philippe Jeannerot is an insolvency administrator in Versailles. He talked to us about good practice when restructuring companies during insolvency procedures.**

*Making collective redundancies for economic reasons during administrative receiverships is a minefield since administrators have to comply with both French ordinary law on redundancy and the AGS cover period. The job is made harder by the fact that full information is not always available, particularly when a group of companies is concerned or when the insolvency procedure does not cover the whole group. In this example, the administrator needs to persuade management to prepare a Plan de Sauvegarde de l'Emploi (redundancy plan) using resources appropriate not to the company covered by the plan but to the group as a whole. The financial consequences in terms of employee compensation are extremely high if the part of the group that is still viable obtains no, or very few, financial resources.*

*The second set of problems is that professional classifications are rarely up to date. But the Court of Cassation interpretation means that the company's own classifications have to be reorganised while at the same time taking account of the obligations contained in collective contracts. If this is done properly with the workers' representative bodies, the redundancy criteria applied are harder to challenge, particularly if they are supported by a methodology. You need to be sure that professional qualifications have been considered objectively. If in doubt, the same classification should be applied to all employees.*

*Finally, the third set of hurdles is regrading. It is hard for an administrator to apply internal regrades if only part of a group is in difficulty and if the management is more concerned about its profitable companies and does not realise that it needs to regrade, particularly since in the event of default, it's the company in difficulty and AGS (indirectly) that need to compensate employees for the loss they have suffered.*

## Rise in recoveries and maintenance of global recovery rate

Total claims recovery increased for the second consecutive year in line with the rise in advances over the last few years. Recovery rates for amounts advanced over the last three years also increased.

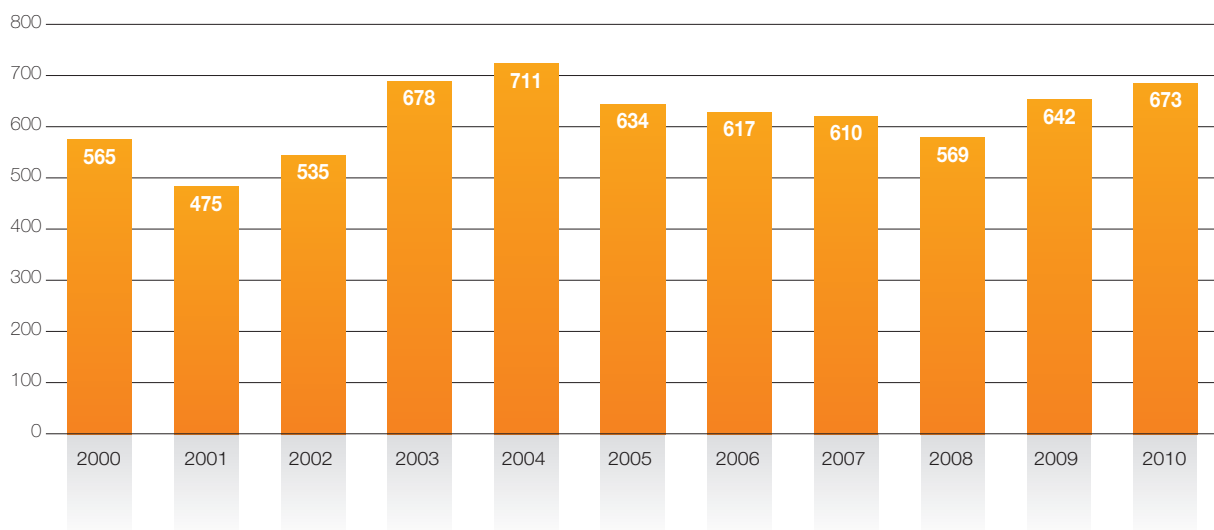
### ● €673 million recovered

Recoveries at constant rates rose in 2010 (+4.8%) in line with rises in advances. A large proportion of all recoveries were of amounts advanced during the year and the two previous years (2008-2010) when total advances reached a record high.

2010 recoveries matched the highest levels achieved 2003-2004.

The outcome was achieved thanks to the active recovery steps taken by Délégation AGS and to the essential assistance provided by receivers who included in their daily routines a calculation of the consequence a cash shortfall would have on the French insolvency fund. This meant that the average recovery rate was maintained and the recovery rate for amounts advanced during the year improved.

Recoveries (millions of euro) 2000-2010



### 4 claim levels

- **Priority preferential**  
These legally subrogate to employees' rights and must be repaid first.
- **Article L622-17 Commercial Code**  
These must be repaid before other claims but after priority preferential claims.
- **Preferential**  
These are secured against property and other assets and are repaid under a plan or in the event of winding up, based on the seniority of the security on the asset sold.
- **Unsecured**  
These are not secured and are repaid under a plan or the event of winding up after secured claims.

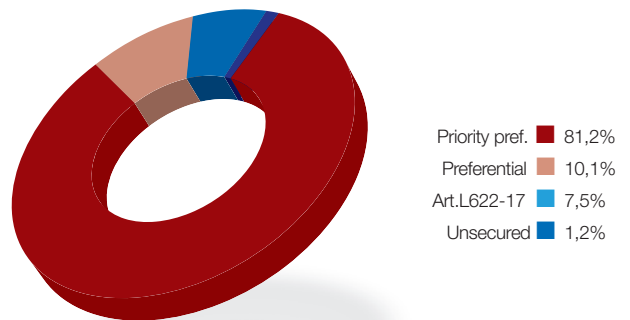
## RECOVERIES

### Priority preferential claims remain the vast majority

Priority preferential remains by far the biggest class of claim recovered. Three years of consecutive falls were followed by a rise in 2009 to 79.8% (77% in 2008) and again in 2010 to bring it over 81%. The proportion of preferential claims recovered fell however over the years to only 10% of total amounts recovered.

The proportion of L622-17 claims recovered went up from 6.9% in 2008 and 2009 to 7.5% in 2010, in line with the proportion of advances made on the same basis (7.7% in 2008, 9.3% in 2009, and 9.8% in 2010).

Recoveries in 2010 by seniority of claim



### ● Average recovery rate stable at 36.2%

Average recovery rates for all new cases 1 January 1986- 31 December 2010 were stable at 36.2%. Depending on claim seniority, the average rate always

varies significantly, from 4% for unsecured claims to 54.4% for priority preference claims.

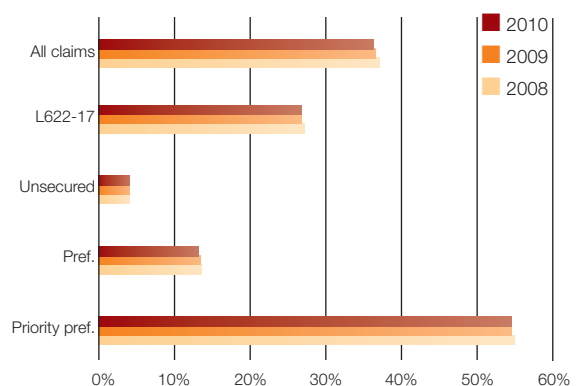
### 3-year recovery rates improve

65% of all amounts recovered in 2010 were advanced during the year or the two previous years. Recovery rates on 2010 advances were 9%: 2 points above 2009, 18% up on 2009 and 37% up on 2008.

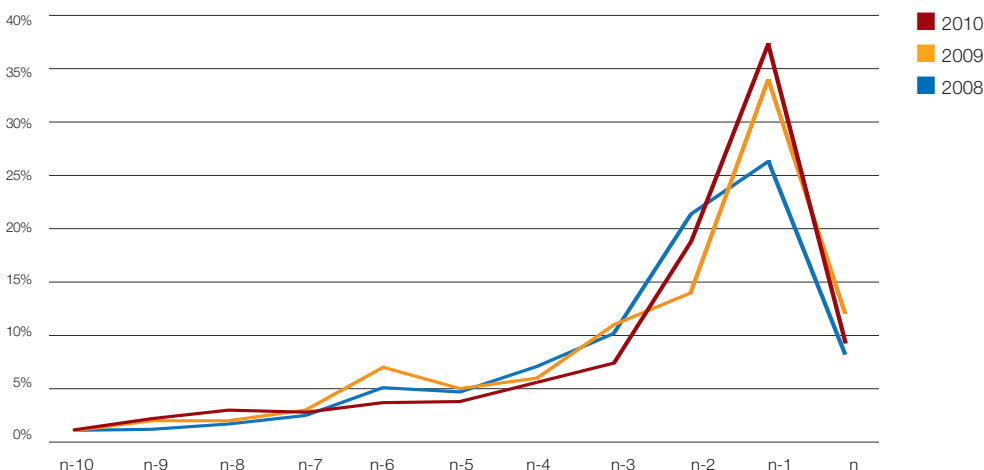
Recovery rates over the last 3 years have therefore improved and are now close to their 2003 and 2004 peaks.

Statistics for the last few years produced in 2009 show that 2 years after procedures open, recovery rates are generally around 20%, rising to 25%-30% 3 years afterwards. In 2010, the average recovery rate after 8 years was approximately 35%.

Recovery rates compared with new cases since 1 January 1986



### Recoveries by year



## A gradual return to balance

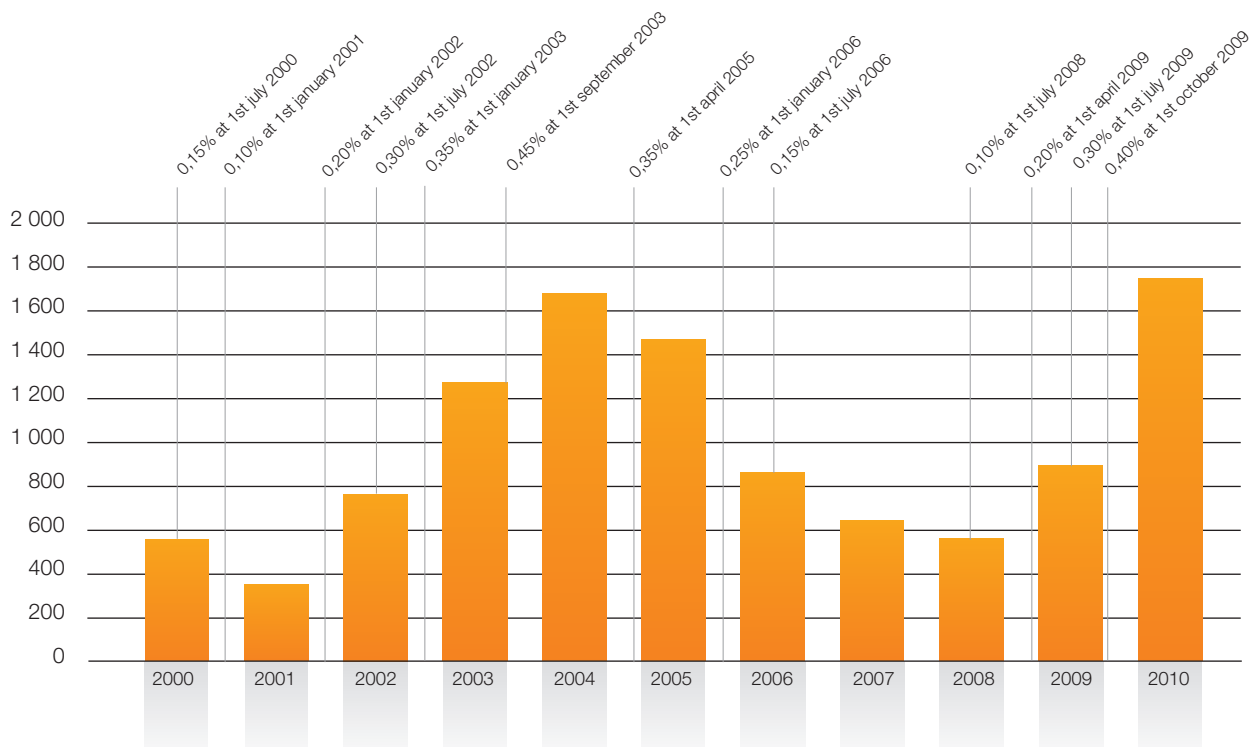
Thanks to a 0.40% contribution rate throughout 2010 and in the 1st quarter of 2011, the insurance fund's cash balance is once again able to meet the fund's commitments.

### ● €1756 million in contributions

The fast draining of the fund's cash reserves during the 2009 recession required three increases in the contribution rate to put an end to the spiralling deficit. The new 0.40% rate effective 1 October 2009 was confirmed in January 2010 and maintained throughout the year, bringing the fund's finances back into balance by year end. Total contributions reached record levels in 2010 as a result, supported by the increase in the number of contributing companies.

Given the economic forecasts and the drop in the number of company defaults, AGS's Board of Directors dropped the contribution rate to 0.30% from 1 April 2011. As the adjustment shows, AGS is at all times concerned to show its solidarity with its contributing businesses and to keep its contribution rates in line with the challenges facing business and the long-term future of the French insolvency fund.

**Contribution amount (millions of euro)  
rates 2000-2010**



The equilibrium of the salary insurance fund is maintained by ensuring advance, recovery and contribution levels are in harmony at all times. The fund is financed by employer contributions that are based on unemployment insurance contributions. Under an agreement between Pôle emploi, Unédic and ACOSS, payment of AGS contributions was transferred from 1 January 2011 to the URSSAF network.

## More actions before the labour courts and more AGS challenges

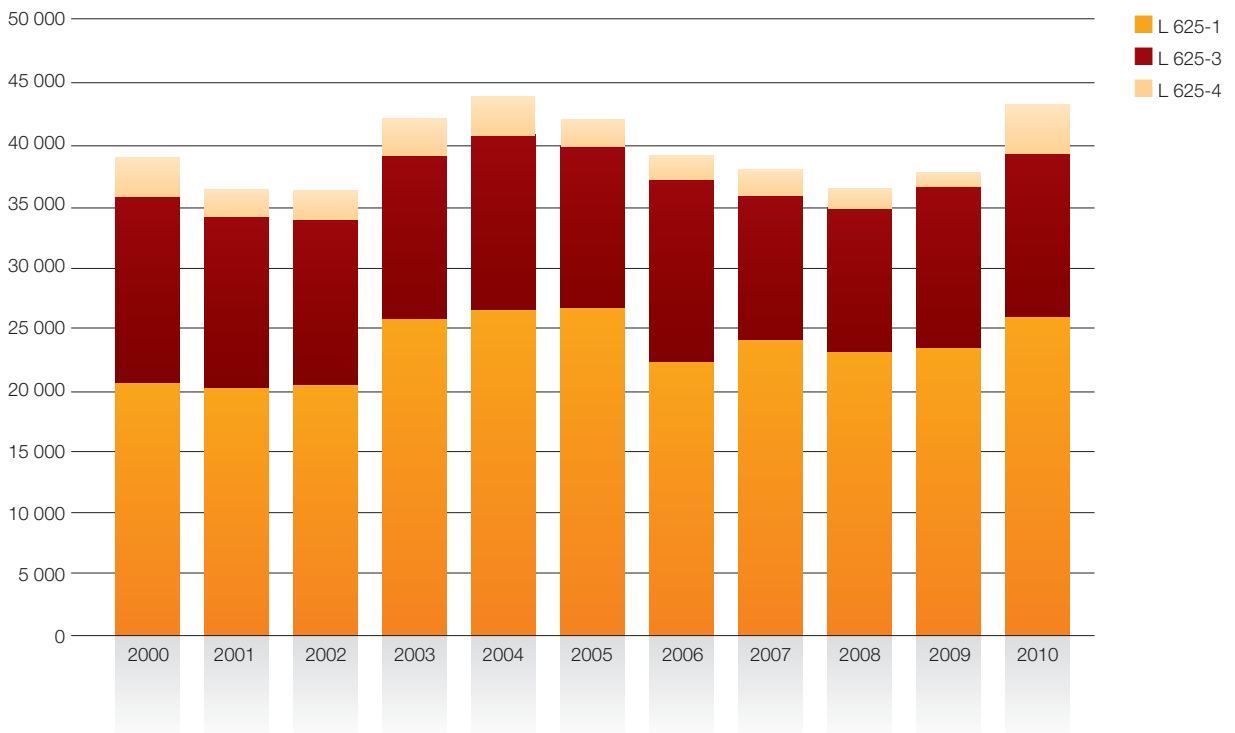
The number of disputes is rising fast in line with the high number of beneficiaries and the increase in cases with over 100 employees in 2009 and triggering class actions over the same case. Generally brought to try and benefit from the increased scope of the fund, class actions are the reason for the higher number of AGS challenges in 2010.

### ● 42 758 cases before the labour courts

The number of proceedings before the labour courts went up for the second consecutive year: +15% in 2010 and +2% in 2009. The big increase is mainly the result of the sharp rise in the number of beneficiaries in 2009 (+23.3%). The figures themselves continue to change owing to the time taken by the courts to record proceedings. The increase itself is also the result of the increase in the number of insolvency procedures concerning companies with over 100 employees in 2009 (+10%), which has led to more class actions.

The breakdown of proceedings by type has been relatively stable for many years: over 61% of all disputes begin before the insolvency procedure (62% in 2009) and 32% because of the receiver's refusal to enter all or any of an employee's claims on the list of the company's liabilities (35% in 2009). Disputes arising from challenge by AGS of all or any claims this year increased proportionately to concern 7% (under 5% in 2009) of total employees. This was because of two class actions involving over 500 employees in which AGS challenged unsecured claims.

**Labour court proceedings by type**



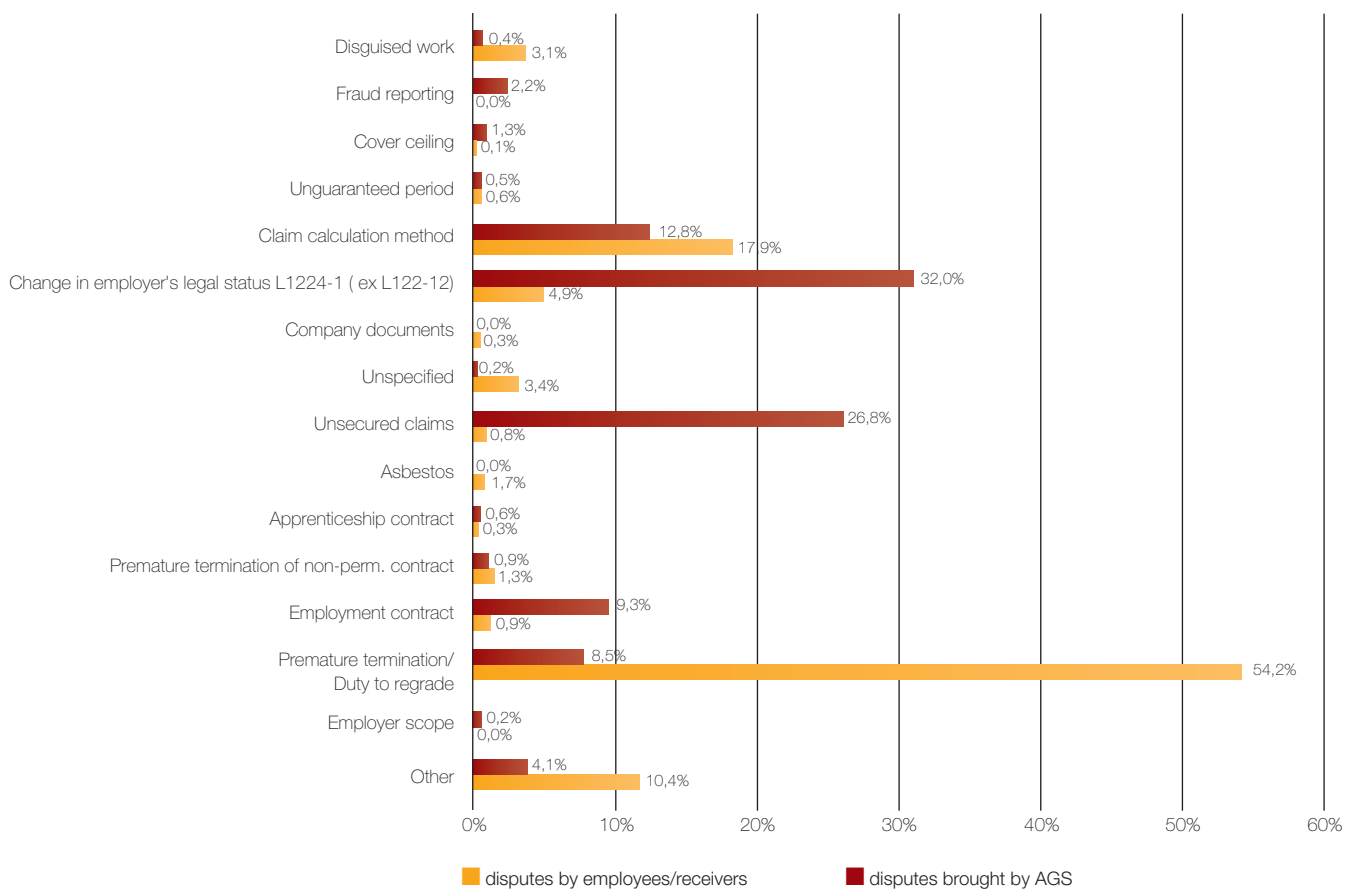
### ● Grounds: over 50% for premature termination of employment contract

As in previous years, over half of all disputes brought by employees or receivers are for premature termination of employment contract and almost 1 in 5 concern the method used to calculate the claim.

AGS challenges have a different breakdown: 32% are based on change in the employer's legal status under

L1224-1, 27% are over unsecured claims and 13% over the method used to calculate the claim. Of the two class actions involving over 500 employees brought against AGS, one is for change in the employer's legal status under L1224-1 and the other for unsecured claims.

#### Grounds for disputes 2010



### ● alert

#### Class actions

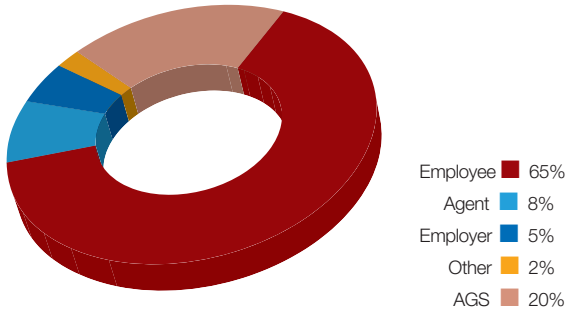
In 2010 over 23 000 employees were involved in class actions brought by between 2 and 500 employees. Disputes involving over 20 employees accounted for under 1% of all proceedings before the labour courts but 60% of total compensation claimed through the courts. They are therefore being particularly carefully monitored owing to the financial risk involved and the risk of abuse of the salary insurance system.

### ● Judgments, appeal court judgments and appeals on points of law

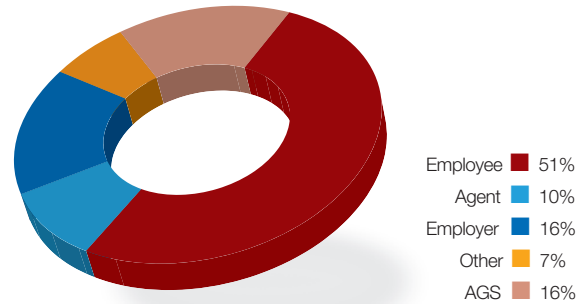
28 820 judgments were made in 2010 by the labour courts (+26% on 2009) and recorded by AGS: 17% were appealed, 65% by the employee. The proportion

of appeals was unchanged. 8 556 appeal court judgments were made: 8% were appealed on a point of law, 56% of which by the employee.

**Bringers of appeals**



**Bringers of appeals on a point of law**



## MANAGE



*"Délégation AGS has developed internal training to improve dispute management"*

**Céline Angenault, Case Manager at CGEA Orleans, talks about the dispute training given to management centre staff in which she is involved as co-designer and trainer.**

#### On which parts of the dispute process does the training focus?

Management of labour court disputes now depends on the challenges and specifics of the case concerned. Class actions and actions involving current legal questions, for example, require AGS and the lawyer to work closely together on the drafting of pleadings and analysis of court decisions. Training therefore focuses on the main challenges within disputes and sensitive case types but it also looks at how to react in procedural terms to vexatious claims and huge amounts of case law. Reactions include joint representation for AGS and the receiver and attempts at amicable settlements that can sometimes avoid proceedings that are long and costly to both sides.

The second aspect of our training deals with recent case law, particularly on the duty to regrade and asbestos compensation. Theory is supplemented by practical work analysing court decisions and identifying and monitoring cases that may be fraudulent.

#### What do you foresee will be the focuses in future training sessions?

Class actions present a major financial risk to the French insolvency fund. Future courses will have to go into how to approach them and will have to make staff aware of the new rules on economic redundancy that the law and case law have introduced, including how to produce a valid PSE (redundancy plan) and how to comply with the external regrading duty. Changes in the law on asbestos ought to make it easier for AGS to manage dispute costs and prevent automatic court action to obtain higher and higher damages.



## Insolvency procedures - social implications and the law

**Délégation Unédic AGS continued and deepened discussions with its partners and all professionals directly and otherwise involved in insolvency procedures. Openness allows AGS to contribute to legal thinking and to solutions providing effective answers to the social and economic problems raised by insolvency procedures.**

AGS has become a key player in insolvency procedures. Legal professionals faced with the many forms of company default are eager for information on what AGS can do and what it covers. National and regional meetings are held to

discuss technical aspects of the law on defaulting companies, to explain the practices of all involved and to adopt common approaches as class actions change. The following were some of the main meetings attended by Délégation AGS in 2010.

### ● Partnership and discussions with CNAJMJ and IFPPC

*Entretiens de la Sauvegarde* (administration discussions) organised by IFPPC and the *Association des Avocats Conseils d'entreprises* (association of corporate lawyers) offer unrivalled opportunities for comparing notes with all insolvency procedure professionals (receivers, commercial court judges, prosecutors, lecturers in law, lawyers, senior public servants, chartered accountants, auditors etc.) The 5th meeting on 25 January 2010 covered what the recession has taught us about effective and efficient solutions for dealing with insolvency procedures.

The CNAJMJ *Journées de Formation* (training days) are another major event, bringing together receivers and other professionals. Social problems raised by insolvency procedures was the key topic on 17 and 18 June 2010 at La Colle-sur-Loup. Attendance at the event of the professionals who check pay liabilities and

prepare claims lists led to extremely practical and useful discussions. The Director of Délégation Unédic AGS spoke at the workshop on company law and the role played by the bodies representing employees in preventing and dealing with company problems. Speakers focused on problems encountered and what can be done to prevent redundancy challenges.



## ● AGS and universities

When invited to speak at universities, Délégation AGS helps make students and professionals understand what AGS does and offers food for thought. 19-20 March 2010 AGS spoke on the topic **Creditors holding charges on property and insolvency procedures** at the CRAJEFE - CERDP conference organised by Professor Pierre-Michel Le Corre at the University of Nice-Sophia Antipolis. On 10 September at the University of Toulouse the Director of Délégation Unédic AGS gave a presentation on the extent of AGS cover, entitled "From legal security to legal and economic insecurity" at a conference on **The scope of the law on economic default**. He also gave presentations about **AGS at a comparative law conference** at the University of Strasbourg on 3 September, and about the French insolvency fund to English universities at a conference organised by Professor François-Xavier Lucas at the Faculty of Law, University of Oxford on 25 June 2010 **comparing French and English insolvency law**.

## ● facts

Délégation Unédic AGS aims to remain at all times aware of its legal, financial and social environment and to work together with the other players in its field. It helps organise discussions with prosecutors, senior public servants, legal academics etc. It is consulted by public authorities to assess and anticipate the outcomes of planned reforms. It regularly seeks opinions from the commercial courts on matters concerning insolvency procedures.

## ● Training of labour court judges with EDS

2010 saw closer partnership with EDS (*Entreprises et Droit social* - companies and company law), an association that organises the training of employer labour court judges. Five regional sessions dealt with insolvency procedures and action by AGS, during

which Délégation AGS representatives explained the work of the fund and what it does in actions before the labour courts. Discussions and questions contribute to a better understanding of what AGS does during proceedings.

### Discussions with regional and local partners

**Regional Délégation Centre-West** at the invitation of the Clermont-Ferrand bar took part in a conference on security trusts and organised a two-day immersion course for one member of staff at the office of a Rouen administrator to find out about his job. It also attended meetings with the labour courts, commercial courts and receivers in its territory.

**Regional Délégation South-West** worked on its relations with receivers at new meetings to exchange information and discuss matters. Staff immersion courses at the offices of one receiver and one lawyer were intended to provide a more comprehensive understanding of the environment in which AGS works and to improve the effectiveness of insolvency procedures.

**Regional Délégation South-East** took part in meetings and training courses organised by DDTEFP of Vaucluse at the offices of work inspectors and controllers, and by MEDEF of Bourgogne at the offices of labour court judges, company heads and management executives. It worked on its anti-fraud contacts in company bodies, offices of public prosecutors and the département anti-fraud operating committees.

**Regional Délégation North-East** gave a presentation to over 70 employer labour court judges in the region about the salary guarantee fund and its scope and invited discussion about the types of dispute in which AGS gets involved and how our lawyers represent us before labour courts.

**Regional Délégation Ile-de-France** gave a presentation on AGS and its duties to the Versailles Commercial Court that was attended by all ranks of the legal profession and was chaired by the First President of the Cour d'appel and by the State Prosecutor at the Versailles Tribunal de Grande Instance. It was also involved in training courses and seminars held at the universities of the Sorbonne and Villetaneuse on insolvency law.

## Discussions with our opposite numbers and technical co-operation within the framework of the European Commission

**While remaining in contact with insolvency funds in other EU Member States, AGS also attended information meetings organised by the European Commission's Enlargement Directorate at the request of companies seeking admission to the Union. It is also involved in work to assess the application of EU laws and regulations.**

### ● Meetings with our European opposite numbers

In 2010, meetings were organised (16 March) in Madrid with the Spanish insolvency fund, FOGASA (*Fondo de Garantía Salarial*), and in Nuremberg (27 April) with the German insolvency fund at the *Bundesagentur für Arbeit* (federal employment agency)

of which it is part. The meetings were particularly useful in outlining how procedures might be harmonised, in discussing our various views on the main areas of interest and in obtaining a better understanding of common practices.

### ● Further discussions with the Spanish insolvency fund



Discussions with FOGASA continued in 2011, with a meeting on 11 March in Paris to develop with our Spanish opposite numbers new bases for technical co-operation and a common presence at the European Commission.

*Left to right: Anne-Sophie Texier, Head of the Company Law Office at the Ministry of Justice, Francisco Perez-Flores, Representative of the General Employment, Social Affairs and Inclusion Directorate at the European Commission, Aurora Dominguez, Social Counsellor at the Spanish Embassy, Juan Pedro Serrano Arroyo, Secretary General of FOGASA, Thierry Méteyé, National Director of DUA, Enrique Moya-Angeler Cabrera, Department Head, FOGASA*

### ● Shared expertise in Turkey and Macedonia



*Yves Roussel, DUA auditor, in Turkey*

In 2010, Délégation Unédic AGS was asked to give a presentation in Turkey and Macedonia of the French model and of other models used in the European Union (European Directive 2008/94/EC on the protection of employed workers in cases of

employer insolvency and Regulation 1346/2000 of 29 May 2000 on insolvency procedures).

On 21 January in Ankara, along with its Swedish opposite number, Délégation gave a presentation to the Labour Ministry and Iskur, the Turkish insolvency fund set up in 2003, on European laws and the systems applied in many States of the Union.

On 25 October at the Labour Ministry in Skopje Délégation gave a presentation alongside its Dutch and Slovene opposite numbers. Macedonia (former Yugoslavia) wishes to join the Union and must now develop rules and create an insurance fund, just as its neighbour, Slovenia, did in 2006.

# Continuous improvement to deal with our economic, legal and social challenges

**Délégation Unédic AGS' service strategy continued throughout 2010, rolling out new management and communication tools to improve our service and performance.**

A number of major projects (service quality commitments, new management tools, an extranet, a new website, electronic document management etc.) were completed in 2010 as part of our commitment to im-

proving our service to defaulting companies, beneficiary employees and our partners in insolvency procedures.

## ● Improved service

Our commitment to quality is monitored using indicators to ensure service levels remain high, standard and under constant improvement. The indicators are available at [www.ags-garantie-salaires.org](http://www.ags-garantie-salaires.org) and show service quality in terms of attention and discussion of needs, procedure simplification, professional information and processing speed.

In 2010 Délégation launched an extranet for receivers, administrators and AGS legal consultants giving secure access to their current cases 6 days a week.

AGS' new website launched 1 June 2010 offers our partners in insolvency procedures, employees and employers more comprehensive and better services, including many new functionalities such as dedicated user sections with changing content that is regularly updated and is intended to support our move towards a more public face in our field.



## ● Increased resources for action

Service quality, which is essential to our work, was improved with the deployment in 2010 of new e-tools for our staff: a digital legal document database (ags.doc) of all the Délégation's sources of laws, regulations and case law, a portal (agSid) for decision-makers providing management data and a new intranet portal giving common access to all business applications.

The training and skills improvement programme begun in 2008 to support the development of the organisation has been consolidated on a network basis with the pooling of staff experience and expertise.

Position at 31 March 2011	New cases with opening order in 2010	Region (% of new cases)	Number of employees in new cases in 2010	Region (% of beneficiaries for the year)	Amount advanced (€K) for new cases in 2010	Region (% of total advanced)	New cases with over 100 employees in 2010*	Region (% of new cases with over 100 employees)
Alsace	739	3,0%	4 610	2,6%	41 098	3,4%	4	2,4%
Aquitaine	1 260	5,2%	7 618	4,3%	43 463	3,6%	6	3,6%
Auvergne	379	1,6%	2 759	1,6%	19 161	1,6%	2	1,2%
Basse Normandie	502	2,1%	3 917	2,2%	25 654	2,1%	3	1,8%
Bourgogne	519	2,1%	3 501	2,0%	27 707	2,3%	2	1,2%
Bretagne	1 091	4,5%	6 401	3,6%	35 475	3,0%	5	3,0%
Centre	889	3,6%	6 204	3,5%	39 269	3,3%	5	3,0%
Champagne Ardenne	450	1,8%	2 985	1,7%	19 579	1,6%	4	2,4%
Corse	83	0,3%	477	0,3%	2 540	0,2%	0	0,0%
DOM	707	2,9%	6 008	3,4%	39 551	3,3%	10	5,9%
Franche Comté	363	1,5%	2 327	1,3%	13 319	1,1%	3	1,8%
Haute Normandie	638	2,6%	6 054	3,4%	35 181	2,9%	8	4,7%
Ile-de-France	4 584	18,8%	41 423	23,4%	327 622	27,4%	46	27,2%
Languedoc Roussillon	1 299	5,3%	6 930	3,9%	40 015	3,4%	1	0,6%
Limousin	249	1,0%	1 824	1,0%	10 636	0,9%	1	0,6%
Lorraine	929	3,8%	7 665	4,3%	51 252	4,3%	10	5,9%
Midi-Pyrénées	1 073	4,4%	7 484	4,2%	41 385	3,5%	7	4,1%
Nord Pas-de-Calais	1 682	6,9%	13 608	7,7%	84 551	7,1%	16	9,5%
PACA	1 978	8,1%	10 987	6,2%	67 389	5,6%	4	2,4%
Pays de la Loire	1 166	4,8%	7 979	4,5%	56 760	4,8%	6	3,6%
Picardie	628	2,6%	4 329	2,4%	27 560	2,3%	4	2,4%
Poitou Charentes	646	2,6%	4 277	2,4%	28 486	2,4%	6	3,6%
Rhône-Alpes	2 586	10,6%	17 442	9,9%	116 700	9,8%	16	9,5%

\*companies or establishments

At 31 March 2011

	2005	2006	2007	2008	2009	2010
<b>Advances during the year</b> (millions of euro)	1 452	1 458	1 400	1 463	2 117	1 948
<b>Recoveries during the year</b> (millions of euro)	634	616	610	570	642	672
<b>Recovery rate</b> <b>at 31 December</b> <b>on cases</b> <b>under the 1985 Act</b>	35,9%	36,3%	36,7%	36,8%	36,4%	36,2%
<b>Contributions during</b> <b>the year (millions of euro)</b>	1 469	873	657	574	916	1 756
<b>Contribution rate</b>	0,45% at 01/01 then 0,35% at 01/04	0,25% at 01/01 then 0,15% at 01/07	0,15%	0,15% then 0,10% at 01/07	0,10% then 0,20% at 01/04 0,30% at 01/07 0,40% at 01/10	0,40%
<b>Company defaults</b> <b>(source: INSEE)</b>	42 799	40 157	42 607	50 920	53 576	52 110
<b>New AGS cases</b> <b>(order date)</b>	20 357	19 655	19 577	24 046	27 113	27 463
<b>Cases involving</b> <b>over 100 employees</b> <b>(order date)</b>	161	171	120	203	223	172
<b>Employee beneficiaries</b> <b>during the year</b>	227 805	220 812	208 233	235 062	289 780	270 449
<b>Labour court procedures</b>	41 896	38 936	38 435	36 448	37 342	43 481
<b>Cours d'appel</b> <b>orders</b>	11 333	10 884	9 801	9 982	10 240	8 887
<b>Court of Cassation</b> <b>rullings involving AGS</b>	45	15	14	16	10	8



## Délégation Unédic AGS

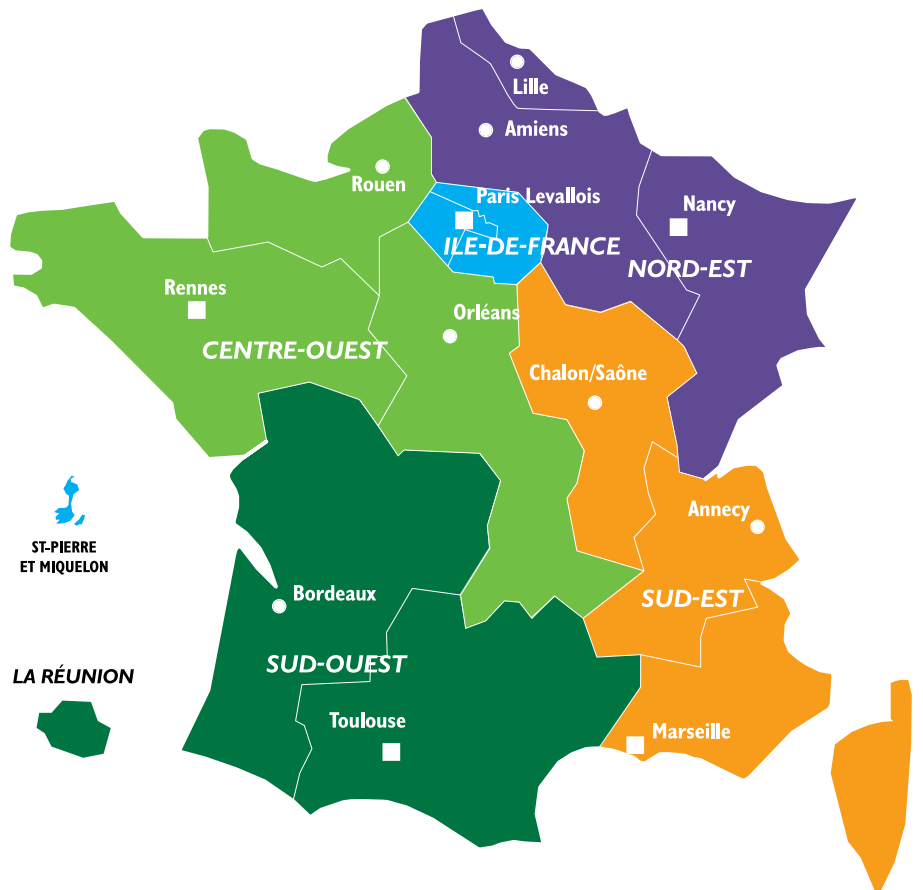
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