

# Wage guarantee **a central component of insolvency proceedings**

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  - Organisation
  - Scope
  - Implementing the wage guarantee

This document presents the missions and activities of the Délégation Unédic AGS (DUA), the scope and the implementation methods of the wage guarantee in the context of insolvency proceedings regulated by French law.

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## Presentation Délégation Unédic AGS

### The philosophy of the French guarantee scheme

- The French compensation scheme for workers with employers placed under insolvency proceedings is based on the principle of interprofessional solidarity of employers. Its organisation and management method are guided by the rules of private law.
- To keep the expenditures of the guarantee scheme in balance, the AGS has to adapt the contribution rates of the AGS levy to prevailing economic conditions and harness resources to optimise the recovery of the advanced amounts for which the AGS is subrogated in employee rights.
- In the same way, the guarantee is implemented regardless of the prospects of a company in difficulty and regardless of the company's assets and liabilities. However, the law allows the guarantee scheme to refuse to guarantee all or part of the sums claimed for the benefit of each employee.
- The AGS' intervention method is based on the prior presentation of a statement of wage claims drafted by the receiver specifically appointed for each proceeding. The guarantee fund then proceeds to advance the sums due to employees to that same court-appointed receiver.
- Lastly, employees are paid even if their employers are overdue in the payment of their contributions to the AGS.

## 1973

Birth of the wage guarantee scheme

### The Law of 27 December 1973 : creation of the wage guarantee scheme

Law no. 73-1194 of 27 December 1973 introduced the payment of wage claims resulting from employment contracts in the event of receivership or liquidation of the employer's assets. It was introduced to deal with the inadequate protection of employees during company defaults, resulting from three factors:

- The length of the time required to process the liquidation of assets.
- The existence of priority claims.
- The limits imposed by the available funds.

# 1996

Creation of the Délégation Unédic AGS (DUA)

## The reform of 1st September 1996

Since 1996, the technical and financial management of the AGS is entrusted to a Unédic institution fully dedicated to performing this task: the Délégation Unédic AGS.

## The role of the DUA in insolvency proceedings

The Délégation Unédic AGS, in liaison with the AGS authorities carries out the three essential tasks of advances, recoveries and litigations with:

- The release to receivers of the funds required to settle employee claims.
- The recovery of the advanced sums by monitoring protection and receivership proceedings and the liquidation of the assets of companies.
- The legal defense of the interests of the guarantee scheme.
- The accounting management of all transactions.

Since 1st January 2011, the ACOSS, through the URSSAF network, is in charge of recovering and collecting the AGS contributions from companies.

## Creation of the Association for Managing the Employee Wage Guarantee Scheme: AGS

Pursuant to the law of 27 December 1973, an employee association, the AGS, was created by the French National Council of Employers (CNPF, now MEDEF), the General Confederation of Small and Mid-sized companies (CGPME) and the Confédération Nationale de la Mutualité de la Coopération du Crédit Agricole (CNMCCA).

## Mandatory contributions from companies

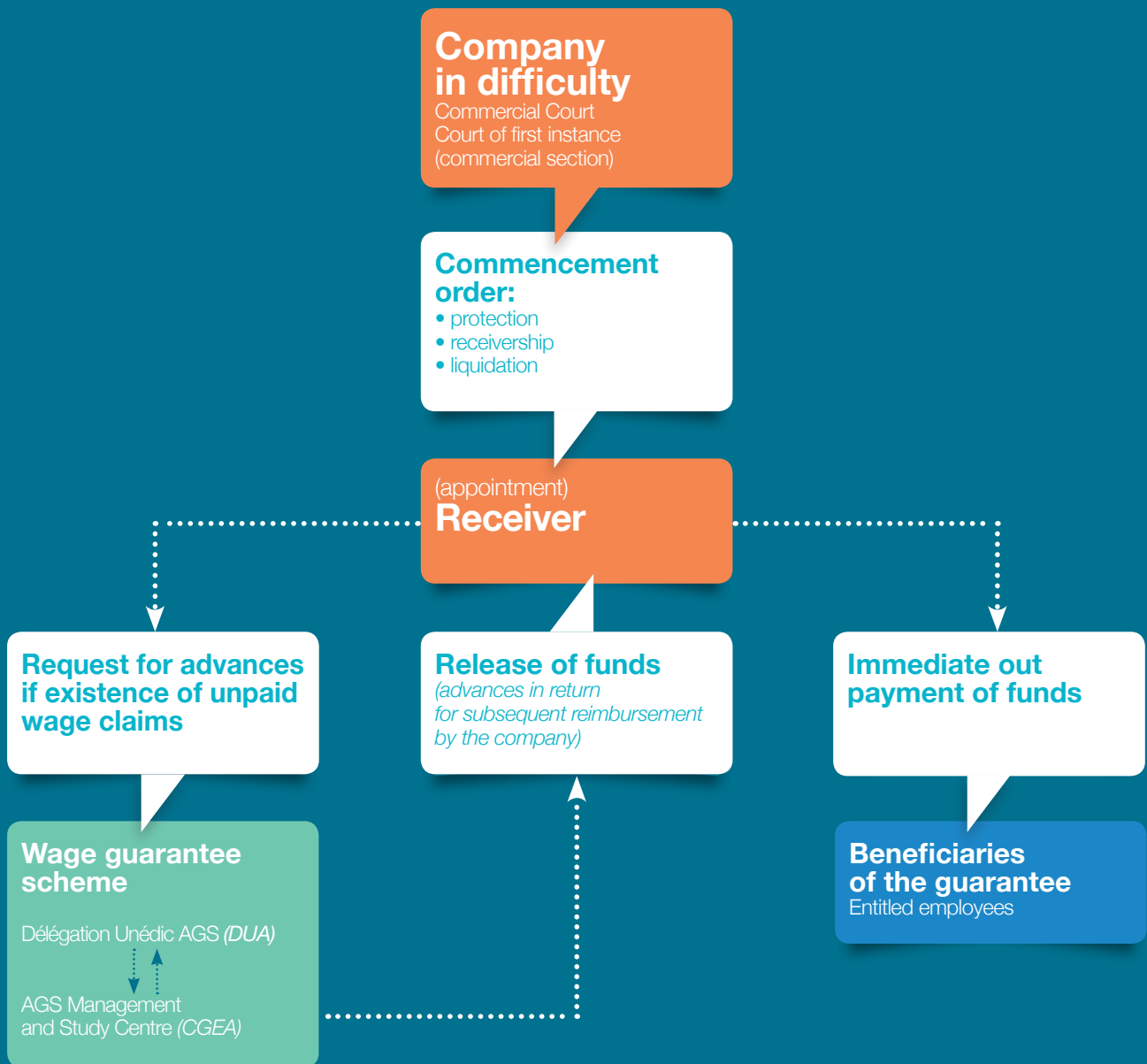
Built on the principle of intercompany solidarity, this association is financed by a mandatory contribution in the form of levy, based on the total payroll and paid by companies. The rate of this levy is fixed and revised by the Board of Directors of the AGS.

## The operational management of the guarantee scheme entrusted to the Unédic by the AGS

The missions entrusted under a management agreement:

- Recovering and collecting levies from companies.
- Releasing to court-appointed receivers the funds required to settle employee wage claims.
- Recovering the advanced sums.
- Defending the legal interests of the scheme.
- Handling the accounts for all transactions.

## A central mechanism in insolvency proceedings



Organisation  
of the Délégation Unédic AGS

The Délégation Unédic AGS harnesses all the resources required to ensure the optimum operation of the wage guarantee scheme and the well-being of its beneficiaries. Involved in the insolvency proceedings, it conducts its missions in response to four permanent objectives:

- Constantly adapting to legal, economic and social changes.
- Optimising the processing and notification procedures for parties in the proceedings.
- Strengthening the quality of service to beneficiaries.
- Maintaining the financial balance of the guarantee scheme.

Centralising missions within the same institution, with a single Board, helps to ensure the application of identical procedures, the use of consistent processing methods, the coordination of interventions and relations with the different parties in the insolvency proceedings.

• The National Direction (Direction Nationale)  
Internal missions:

- Coordination, in order to ensure consistent management at all levels of the organisation.
- Monitoring the fulfilment of AGS missions, through budget management and auditing.
- Technical support and advice on legal issues, definition of the AGS strategy.
- Liaising with AGS governing bodies.

External missions:

- Cooperation with national partners.
- Seeking the opinion of public authorities.
- Raising the awareness of the parties involved in insolvency proceedings.
- Information with drafting of legal publications and circulation of exclusive statistical data.

• Network Management

It is in charge of guiding and coordinating the CGEAs in order to:

- Coordinate the production activity with a comprehensive and consolidated vision of the company.
- Ensure consistent practices between the different CGEAs.
- Centralise production activities.
- Simplify working processes between CGEAs and Support Functions.

• AGS Management and Study Centres (CGEA)

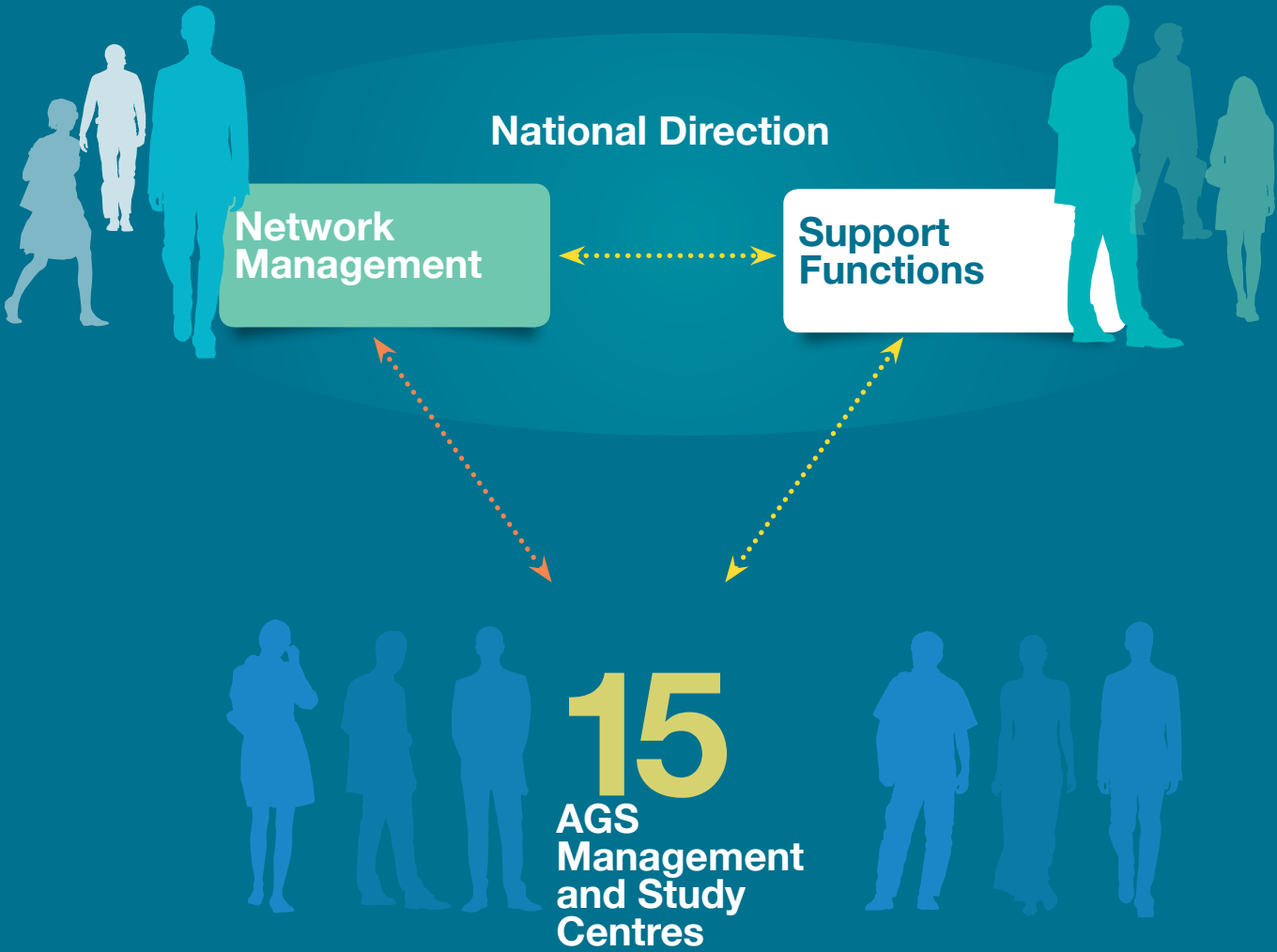
The mission of the CGEAs is based on the operation execution of the missions of advances, recoveries and litigation, with mainly:

- The release to court-appointed receivers of the funds required to settle wage claims.
- Legal defence of the interests of the wage guarantee scheme.
- Optimising the reimbursement of the advanced sums.
- Representing the AGS in dealings with court-appointed receivers, lawyers, third parties, and court registries.

Organisation

- 1 National Direction (Direction Nationale)
- 1 network Management
- 13 AGS Management and Study Centres (mainland France)
- 2 Sites (Overseas Departments)
- 240 Employees

Organisation



—•••••— Hierarchical link

-••••- Functional link

# Scope of the wage guarantee scheme

The scope of the wage guarantee scheme is defined by Article L. 3253-6 of the Labour Code.

## Employers liable to the payment of the AGS contribution

All private law employers are required to contribute to the employee wage claim guarantee scheme:

- Merchants (*individuals or entities performing usual commercial acts in the context of their professional activity*).
- Artisans.
- Farmers.
- Self-employed professionals (since 1st January 2006).
- Private-law legal entities.
- Temporary employment firms that are liable at an adapted contribution rate.
- Commercial companies where the French government is the majority shareholder.

## Employer categories not subject to the AGS contribution

- Public-law legal entities.
- Condominium management companies.
- Employers of home help.

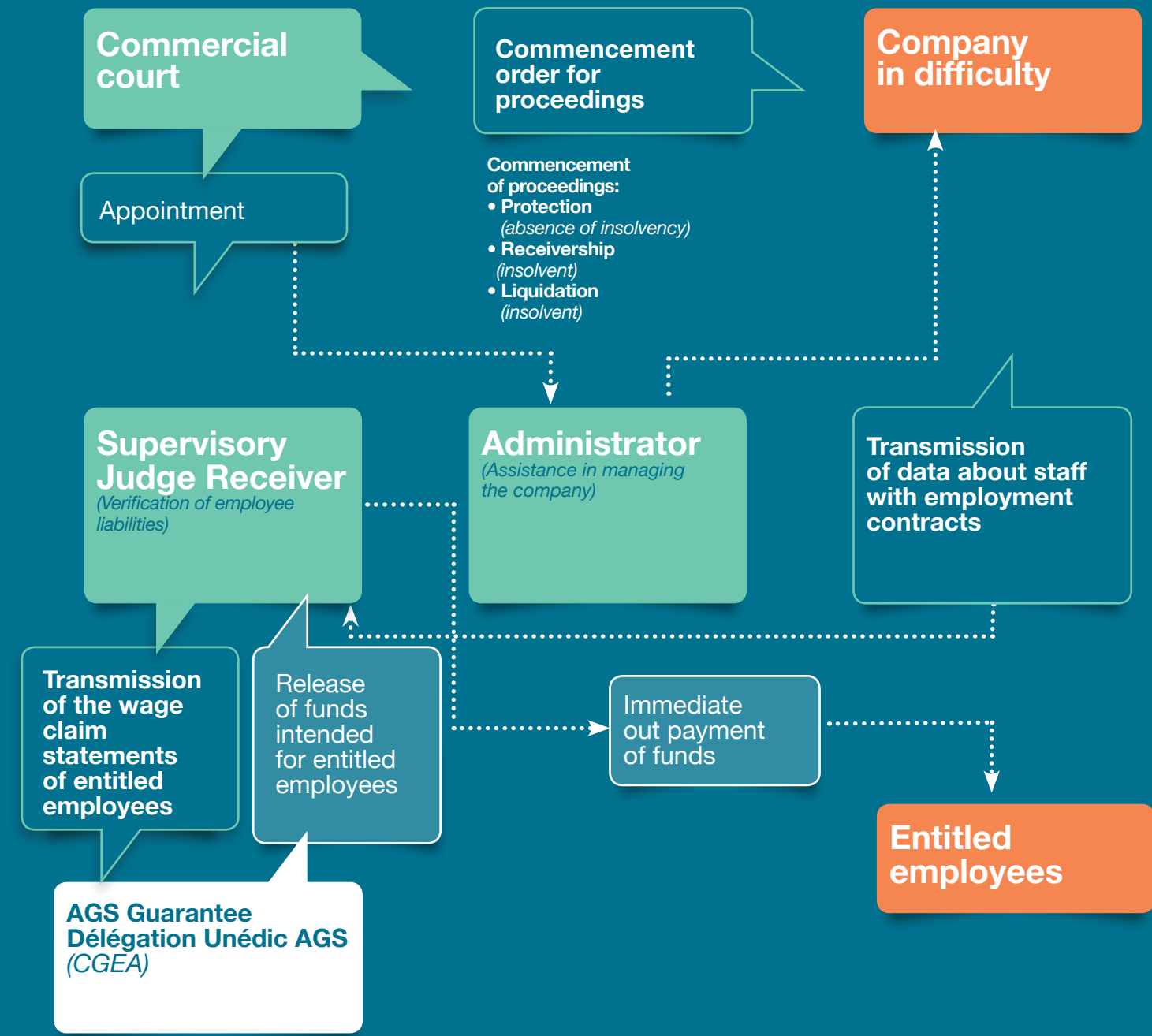
## Beneficiaries of the AGS guarantee

- Employees: any person who is legally subordinated to an employer, regardless of the form of employment contract signed, is considered as entitled to the AGS guarantee.
- Employees of foreign companies operating in France (transnational defaults of European companies): pursuant to Article 8 bis of Directive 2002/74 of 23 September 2002 relative to the protection of employees in case of the insolvency of their employer, transposed by the law of 30 January 2008, employees, working in a European Union member State for an employer based in another EU member State, are entitled to the guarantee scheme of the country in which they carry out their professional activity.

## The main claims guaranteed by the law

- Any kind of compensation owed to employees and apprentices.
- Benefits resulting from the severance of employment contracts.
- Profit sharing and incentives insofar as the sums owed are due.
- Arrangements under redundancy plans resulting from legal and statutory stipulations.

**Implementation of the AGS guarantee**  
Implementing the AGS guarantee implies the commencement of protection, receivership or liquidation proceedings and the transmission of statements to the CGEA specifying the employee wage claims due to employees, through a court-appointed receiver.





# Interventions of the guarantee scheme

The DUA performs three fundamental missions to optimise the performance of the employee wage guarantee scheme:

- **Advances**  
It releases to court-appointed receivers the funds required to settle the wage claims of beneficiaries.
- **Recoveries**  
It recovers the funds advanced by monitoring the protection, receivership or disposal plans, the liquidation of the assets of companies through court-ordered liquidation procedures.
- **Litigation**  
It handles the legal defence of the interests of the scheme before all jurisdictions: labour courts, appeal courts, Cour de Cassation, commercial courts, supervisory judges. It monitors the publication of new laws, decrees and judicial decisions in order to implement them under the guarantee.

If the company lacks the funds required to meet such claims, the court-appointed receiver then requests the intervention of the wage guarantee scheme by presenting the statements that he has prepared to the AGS Management and Study Centre (CGEA). It is then the duty of the court-appointed receiver to immediately pay out the advanced sums to the employees.

In the event that the court-appointed receiver is no longer in service, the court registrar or the plan inspector sends an additional statement to the CGEA and becomes the intermediary for the employees.

## Ceilings of the AGS guarantee

Articles L. 3253-17 and D. 3253-5 of the Labour Code stipulate the principle of a limit to the sums advanced by the AGS.

The applicable ceiling is determined according to the length of service of the employment contract. If the contract ended before the commencement order, the applicable ceiling is the one in force on that date.

In 2014, the maximum amount of the ceiling for the AGS guarantee for all claims for all employees was €75,096. The ceilings are recalculated every year in light of the increase of the social security ceiling, which is set by decree.

Amounts of the ceilings  
for the current year  
can be viewed  
on the AGS website.

## 1 - Advances

### Application for advance

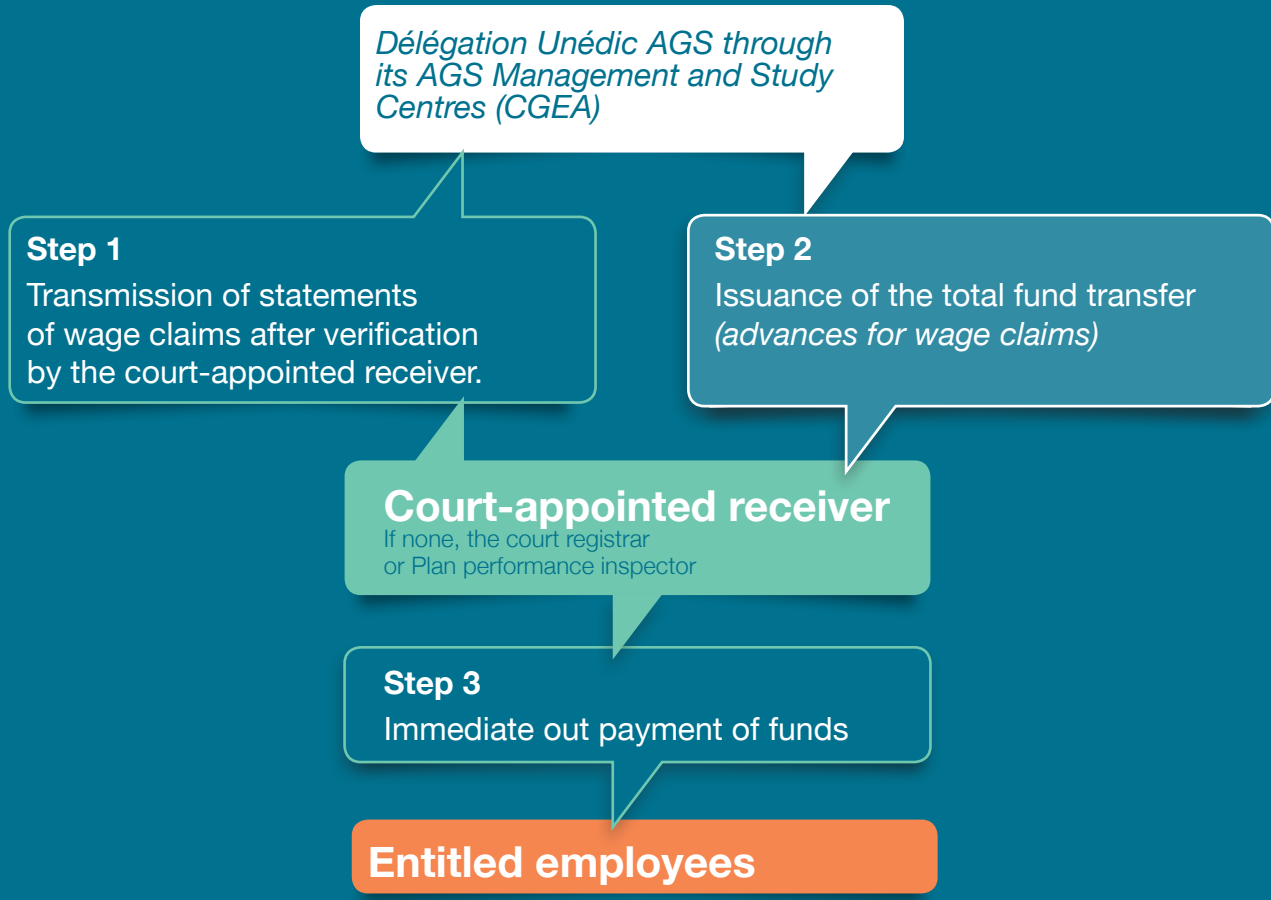
At the commencement of protection, receivership or liquidation proceedings, the debtor's creditors are required to report their claims. However, this requirement does not apply to employees.

The receiver appointed at the commencement of insolvency proceedings checks the claims of employees and records the amounts owed on statements of claims which are later submitted to the supervisory judge for validation.

## Missions of the Délégation Unédic AGS

Advances	Guaranteeing the sums owed as early as possible
Disputes	Defending the interests of the guarantee scheme in case of disputed claims
Recoveries	Helping to keep the guarantee scheme in balance

## Process for advancing wage claims by the DUA



Interventions  
of the guarantee scheme

Intervention scope  
of the AGS guarantee

The protection law for companies

Law no. 2005-845 on the protection of companies of 26 July 2005, in force since 1st January 2006, reformed the insolvency proceedings law by introducing the protection plan, applicable to companies that are still solvent. It is completed by the ordinance of 18 December 2008 which makes the protection procedure more attractive and more accessible and significantly emphasizes the differences between protection and receivership.

**The purpose of the protection procedure is to forestall corporate defaults in order to maintain activity and save jobs.**

Although the protection procedure is set to become the common law procedure, receivership and liquidation procedures are still applicable in situations where the company has become insolvent.

Technical provisions relating  
to the protection scheme

The protection procedure is a full-fledged judiciary procedure which allows early management through the judiciary system of the difficulties of companies.

**The commencement of a protection procedure, set in motion at the initiative of the head of the company seeks to promote the restructuring of the company in order to help it cope with the difficulties it is facing. Thus the commencement of a protection procedure is an option available to solvent companies only.**

Technical provisions of the protection law

The protection decision taken by the court sets in motion an observation period of six months that can be renewed once.

During this same period, different scenarios may occur:

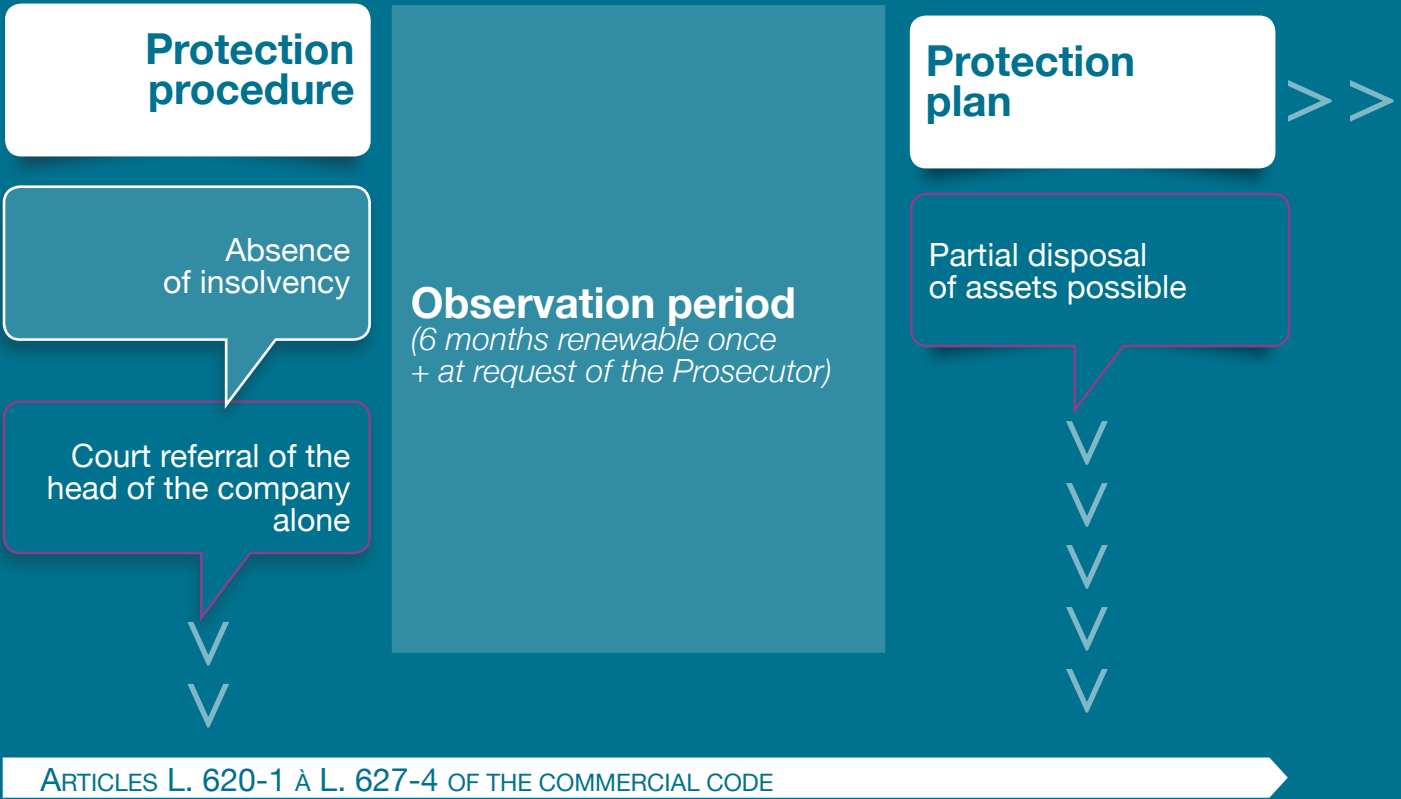
- The court defines the protection plan:
  - The plan confirms the continuation of the company's activity with, as appropriate, the discontinuation, addition or disposal or one or several activities according to rules applicable to liquidation procedures.
  - A plan performance inspector is appointed to monitor the repayment of liabilities.
- The protection procedure can end without a plan.
- The protection procedure can be converted into a receivership or liquidation procedure.
- The protection plan may be cancelled for two reasons:
  - Failure to comply with commitments: creditors recover their rights.
  - Stoppage of payments: the court orders the liquidation of assets.

AGS auditor

As a substantial creditor of the insolvency proceedings, due to the advances made to guarantee employee wage claims, the AGS applies to be appointed as auditor in cases where the financial stakes are very high. The auditor is vested with extensive advisory powers and issues a detailed opinion on a number of major topics. In this way, the DUA seeks to contribute to the preservation of jobs while allowing the optimum satisfaction of creditors and protecting the permanence of the solution under consideration.

For procedures opened on or after 01/07/2014, the AGS has been, insofar as it submits an application, appointed auditor in the protection, receivership and liquidation procedures.

Protection  
procedure



Interventions  
of the guarantee scheme

The AGS guarantee under  
the company protection law

The AGS guarantee and the specific features of the  
protection procedure

Under the protection procedure, the intervention of the AGS is limited to only claims resulting from economic redundancies that occur during the observation period or during the months following the protection plan order.

- Claims guaranteed under the protection procedure:  
These include termination benefits (*layoff notice, benefits owed for paid leave, severance pay*). The guarantee is applied within the limit of ceilings (*article D. 3253-5 of the Labour Code*) of the AGS guarantee.
- Advances:  
The AGS guarantee is not automatically applied and the principle of subsidiarity is reinforced by the obligation of the court-appointed receiver to produce with each statement of claims, a certificate justifying the insufficiency of available funds. Any sums outstanding on the commencement date of the protection procedure is not guaranteed by the AGS.
- Rank of claims:  
The guaranteed sums are fully considered as entitled to priority payment as set out in Article L. 622-17 of the Commercial Code.

Claims and period guaranteed in case of a  
protection, receivership or liquidation plan

Receivership and liquidation procedures are maintained in the context of the law on the protection of companies.

However, limits to the guarantee have been defined depending on the nature of the claim or the occurrence of certain events.

Pursuant to Article L. 3253-8 of the Labour Code, the scheme may guarantee:

- subparagraph 1. Sums owed to employees on the date the commencement order for any receivership or liquidation procedure is issued, as well as the contributions due by the employer under the professional security contract.
- subparagraph 2. Claims resulting from the termination of employment contracts occurring:
  - During the observation period.
  - In the months following the court order that defines the protection, receivership or disposal plan.

- Within 15 days, or 21 days where a job protection plan has been drafted, following the liquidation order.
- During the provisional activity authorised by the court liquidation order and within 15 days, or 21 days when a job protection plan has been drafted, following the end of the continuation of activity.

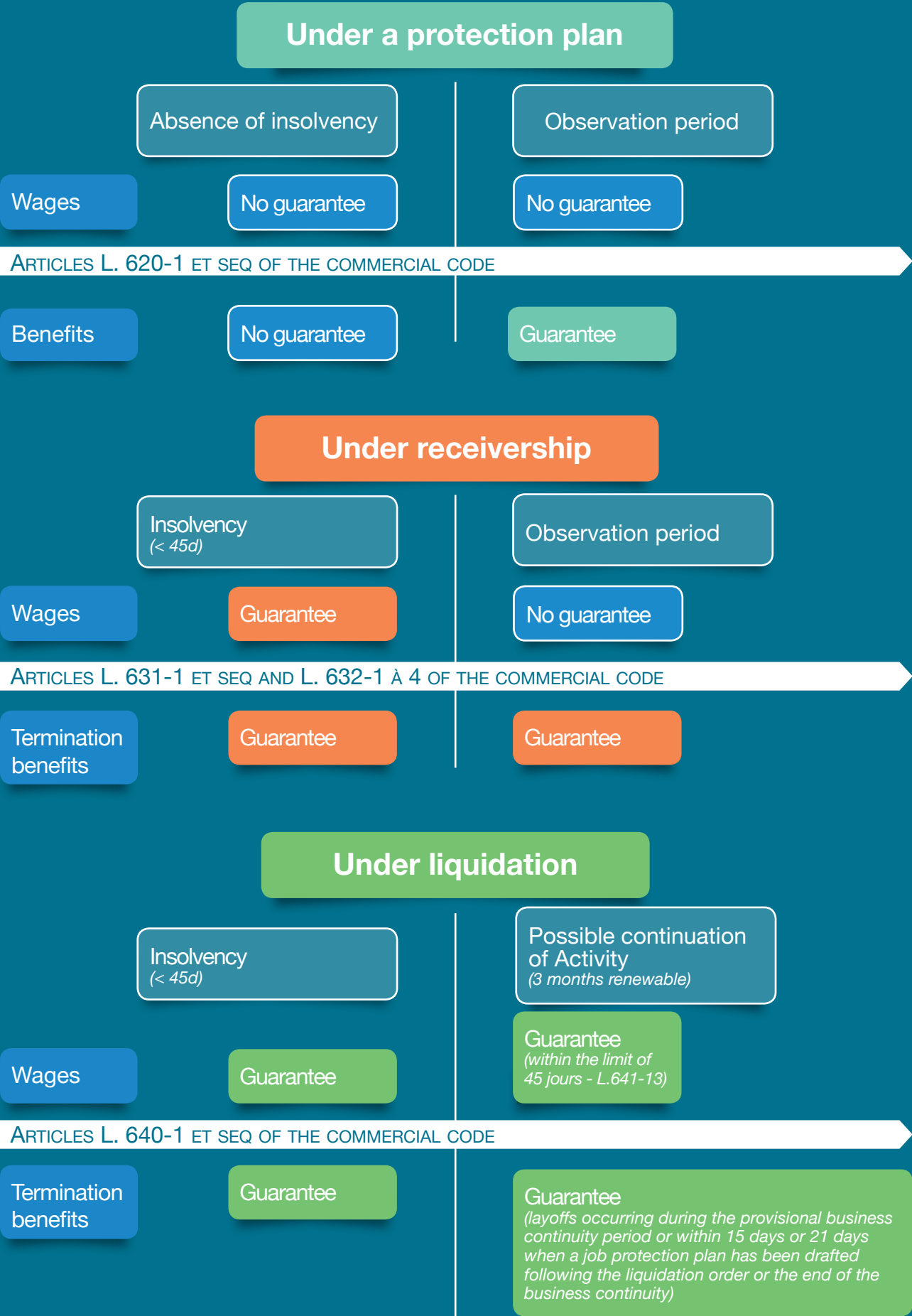
- subparagraph 3. Claims resulting from the termination of the employment contracts of employees to whom the professional security contract has been proposed, provided that the administrator, employer or liquidator, as the case may be, proposed this contract to the interested parties during one of the periods indicated in 2°, including the contributions owed by the employer under this contract and the wages owed during the employee's thinking-over period.

- subparagraph 4. Assistance measures resulting from a job protection plan determined by a majority collective agreement or by a document drafted by the employer, in accordance with Articles L. 1233-24-1 to L. 1233-24-4, insofar as it has been validated or approved under the conditions set out in Article L. 1233-58 before or after the commencement of the receivership or liquidation process.

- subparagraph 5. Where the court orders the liquidation, within the limit of a maximum amount corresponding to 1.5 months of work, the sums owed :
  - During the observation period.
  - During 15 days or 21 days where a job protection plan has been drafted, following the liquidation order.
  - In the month following the liquidation order for the representatives of those employees described by Articles L. 621-4 and L. 631-9 of the Commercial Code.
  - During the provisional continuation of activity as instructed by the liquidation order and during 15 days or 21 days when a job protection plan has been drafted, following the end of this continuation of activity.

Guarantee of the sums and claims mentioned in 1°, 2° and 5° include social security and wage taxes and contributions required by law or the statutes imposed by law.

Intervention methods  
of the AGS (*advances*)





Interventions  
of the guarantee scheme

Law on Securing Employment  
(LSE): conditions for the  
intervention of AGS

Goals of the Law on Securing Employment (LSE)

The Law on Securing Employment of 14 June 2013, amended by ordinance No. 2014-326 of 12/03/14, stems from negotiations between labour and management, the signing of the National Inter-professional Agreement on 11/01/2013 for a new economic and social model to enhance the competitiveness of companies, secure employment and the professional careers of employees.

Article 18 of the law presents the new provisions applicable since 1/07/ 2013 to companies with 50 or more employees which launch mass redundancy plans under a job protection plan (10 employees or more during the same 30-day period).

This law which seeks to facilitate social dialogue, gave supervisory power to the Administration. Henceforth, no mass redundancy procedure can be implemented if it has not led to a majority collective agreement or a unilateral document from the employer, either of which has to be validated or approved by the Administration.

The new procedure for economic redundancies

These new common law provisions have been transposed, with a few adjustments to reflect the specific features of insolvency proceedings, companies under a protection plan, in receivership or liquidation.

- Applicable common provisions:
  - Protection plan integrated in a majority agreement or unilateral document.
  - Majority agreement or employer's unilateral document subject to the validation/approval of the Direccte (L.1233-57-1 of the labour code). Lack of an answer within the allotted time means agreement.

- If refused by the administration: another request from the employer to the administration after the necessary changes and another consultation of the Works Council.

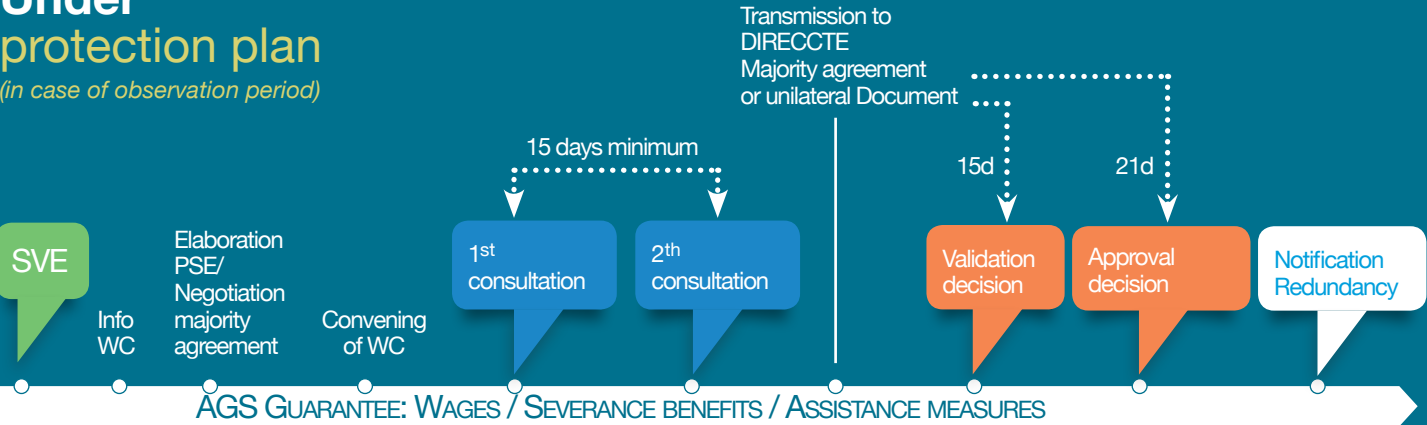
- The provisions specific to each procedure:
  - 1/ The protection procedure
    - Holding of two meetings within at least 15 days.
    - Answer from the Direccte within 15 or 21 days from the receipt of the majority agreement or the employer's unilateral document by the administrative authority.
    - If job protection under a protection plan: time allotted for approval/validation shortened to 8 days from the receipt of the approval/validation plan.
  - 2/ Receivership and liquidation procedures
    - Provisions about the obligations of the WC to hold two meetings within a period of at least 15 days do not apply.
    - The WC must issue an opinion.
    - Answer from the Direccte within 8 days in receivership and 4 days in liquidation as from the last WC meeting.
    - Authorisation for layoffs issued by the supervisory judge during the receivership observation period or during the temporary continuation of activity during liquidation subsequent to the decision of the Direccte.
    - If job protection under a receivership or disposal plan, opinion of the WC given no later than 1 day before the hearing. The approval/ liquidation time (8 days for receiverships and 4 days for liquidation) starts from the receipt, by the Direccte, of the request, subsequent to the order to stop the plan.

Sole jurisdiction of the administrative judge

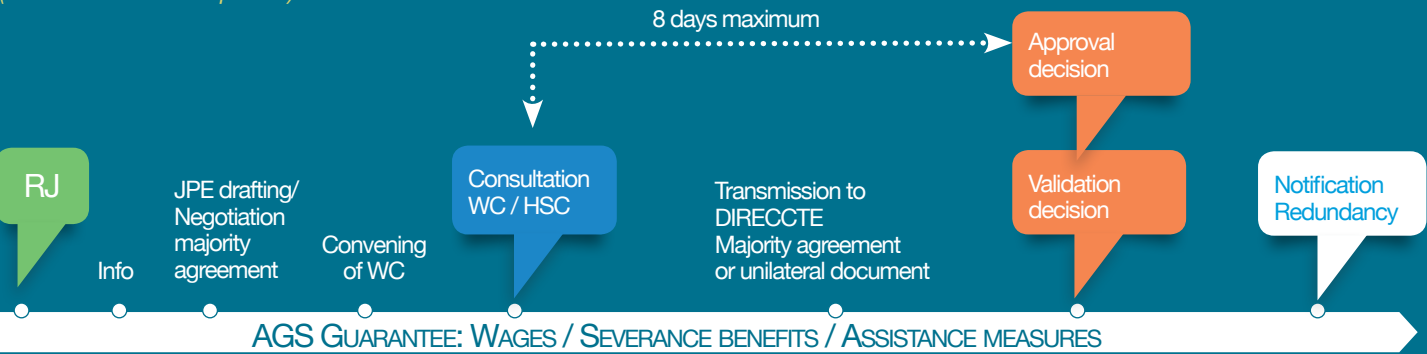
Any dispute linked to the challenging of the job protection plan and the proper implementation of the WC consultation formalities shall be settled exclusively by the administrative judge.

Redundancy  
procedures

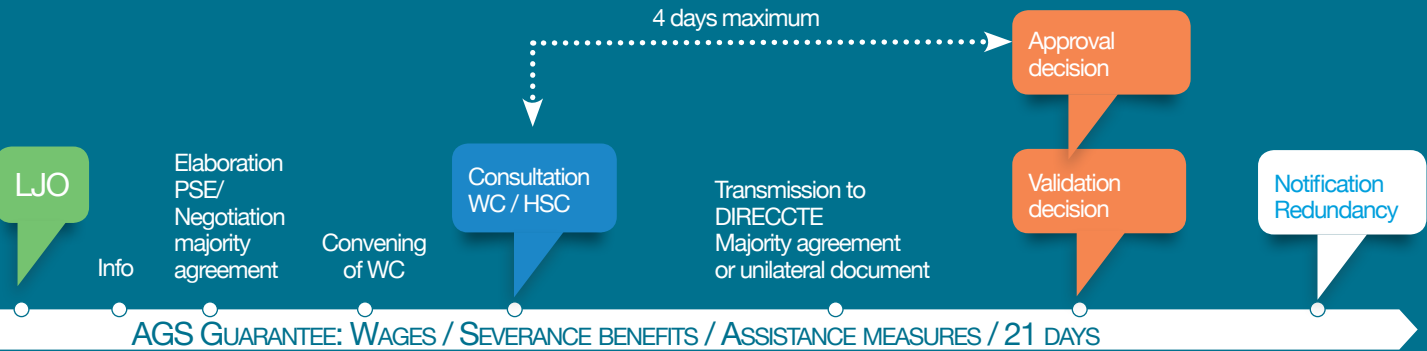
Under  
protection plan  
(in case of observation period)



Under  
receivership  
(case of observation period)



Under  
automatic liquidation



Interventions  
of the guarantee scheme

General principles governing the AGS guarantee

The intervention of the AGS guarantee is strictly governed by the five major principles below:

- Legal principle of subsidiarity: the AGS intervention is not automatic. The company must prove that it does not have the necessary funds to finance the measures set up in the job protection plan.
- The AGS advances are limited to overdue individual wage claims.
- Payment of the AGS advance exclusively to the court-appointed receiver to be ultimately paid out to employees only.
- AGS guarantee limited, for any and all employee claims, to an amount determined by the guarantee ceiling applicable to a given employee.
- The AGS cannot be a party to litigation proceedings that fall under the jurisdiction of the administrative judge.

The new provisions of Article L.3253-8 of the Labour Code

Provisions of Article L.3253-8 of the Labour Code regarding the AGS guarantee, have been amended to create a new time period of 21 days for liquidation procedures and allow the organisation of assistance measures.

- Creation of a new guarantee time period (article L.3253-8 2° and 5°)

Considering the specific nature of this new procedure involving the implication of the Direccte, Article 18 of the law provides for, when a job protection plan has been drafted in the context of a liquidation procedure, a new guarantee time period for wage claims and severance benefits due during the 21 days following the liquidation order, within the limit of an amount corresponding to 45 days of work.

Concerning protected employees, the rules on the manifestation of the intent to lay off remain the same (article L.3253-9 of the Labour Code).

The start date of the time period is fixed on the date of the decision ordering the liquidation or the date of the provisional continuation of activity.

- Guarantee of assistance measures (article L.3253-8 4°)

Article L.3253-8 4° now provides for the intervention of the AGS guarantee in case of receivership or liquidation, the for acceptance of a new type of claim: assistance measures resulting from a job protection plan validated or approved within the guarantee time periods, insofar as the economic redundancies, to which they are related, occur during those same periods and are implemented during the validity period of the job protection plan.

AGS cannot guarantee these packages in case of the commencement of a protection procedure.

The assistance package is not the same as the redeployment package of the job protection plan linked to a mass redundancy plan.

The assistance package includes any secondary measures taken to help the employee return to the work and therefore the reintegration into the workplace employees laid off for economic reasons, in the implementation of a protection plan.

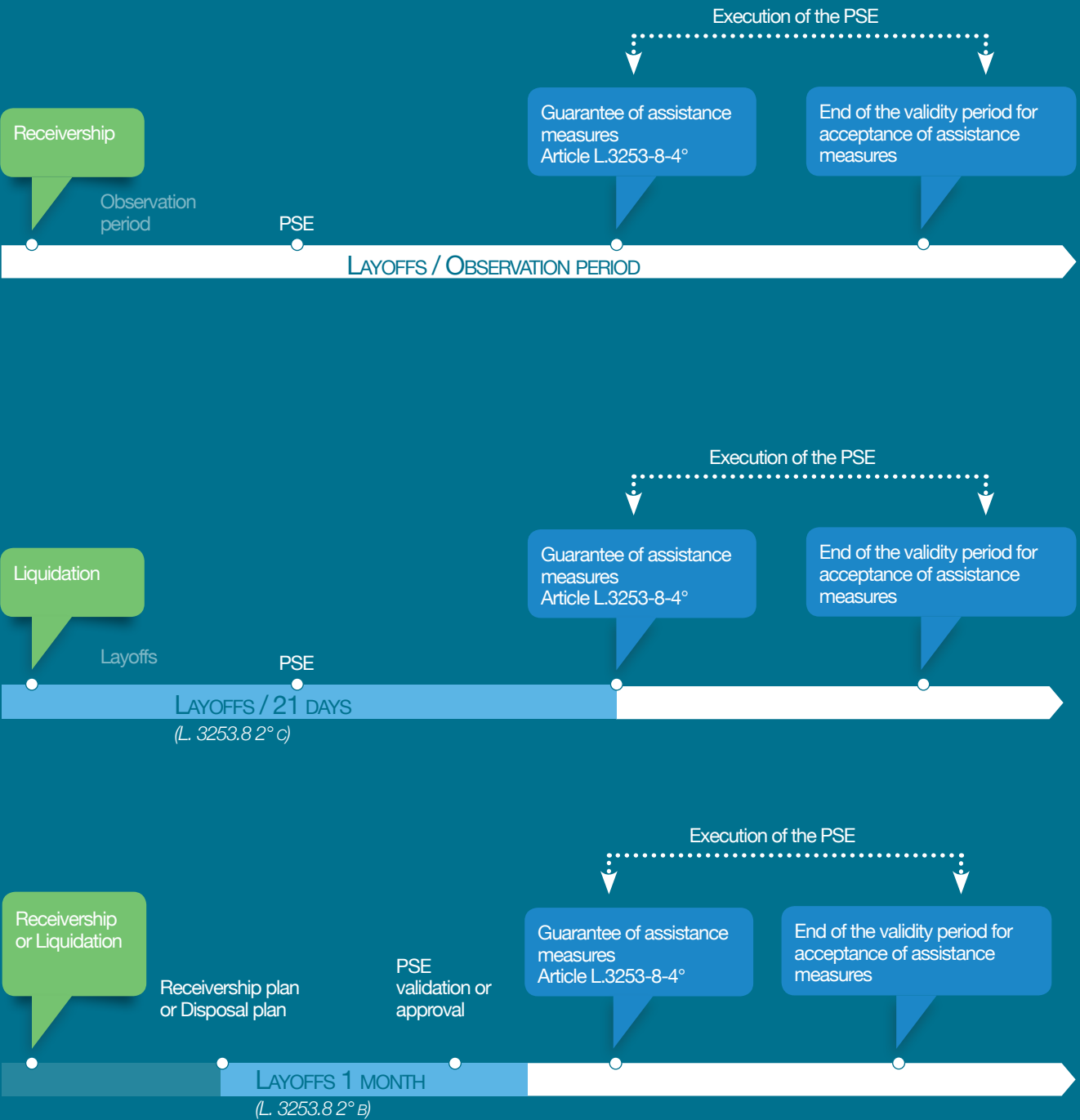
The AGS' intervention is conditional on the transmission, by the court-appointed receiver, of the necessary justifications for these measures, at the time of presenting the statement of claims.

- The sums used to compensate the prejudice: extension of the unenforceability against the AGS (article L.3253-13 of the Labour Code)

The novel idea introduced by this article lies in the fact that the AGS does not guarantee the sums used to compensate the prejudice caused by the termination of the employment contract in the context of an economic redundancy plan, in application of an agreement entered into after the commencement of protection, receivership or liquidation proceedings.

The provisions of this article were also extended to the validated collective agreements or to approved unilateral decisions, less than 18 months or subsequent to commencement order.

AGS intervention methods  
for assistance measures



Interventions  
of the guarantee scheme

2- Recoveries

A guarantee based on advances  
for reimbursement

The principle of reimbursement is specified in Article L.3253-16 of the Labour Code. Since the AGS becomes a creditor of the defaulted company when it makes advances on claims to employees. The terms of reimbursement of these claims by the company will differ according to the rank of the claim and stage of the insolvency proceedings. The wage guarantee scheme is nevertheless a special creditor since it benefits from priorities granted by the law to employees. Thus the wage guarantee scheme legally subrogates the superpriority rights of employees

Types of claims covered by AGS  
advances

**Claims of Article L. 622-17 of the Commercial Code and post-protection plan claims in case of protection proceedings**  
Claims due in connection with severance benefits owed as a result of economic redundancies ordered during the observation period of the protection plan or in the months following the protection plan order.

**Superpriority claims – Article L.3253-16-2 of the Labour Code**  
These claims legally subrogate to employee rights and must be repaid first.

**Claims of Article L. 622-17 and L. 641-13 of the Commercial Code**  
Sums owed during the observation period in the context of receivership proceedings and within the limit of 1.5 months of work, with respect to wages if the plan is converted into a liquidation plan. The wage guarantee scheme benefits from a priority right. These claims must be repaid before other claims but after repay superpriority claims

**Priority claims – Articles 2331-4° and 2375-2° of the Civil Code**  
Claims secured by a over moveable and immoveable assets and are repaid, either per plan or in the event of liquidation, based on type of charge over the sold asset.

**Unsecured claims**  
Claims that enjoy no security and are repaid either per plan or, in the event of liquidation, after preferential claims.

Reimbursement of claims

**Protection procedure**  
The AGS enjoys the rank attached to the nature of the guaranteed claim. This involves a claim arising after the commencement order for the protection procedure, which is not reported in the claims included in the protection plan forecasts.

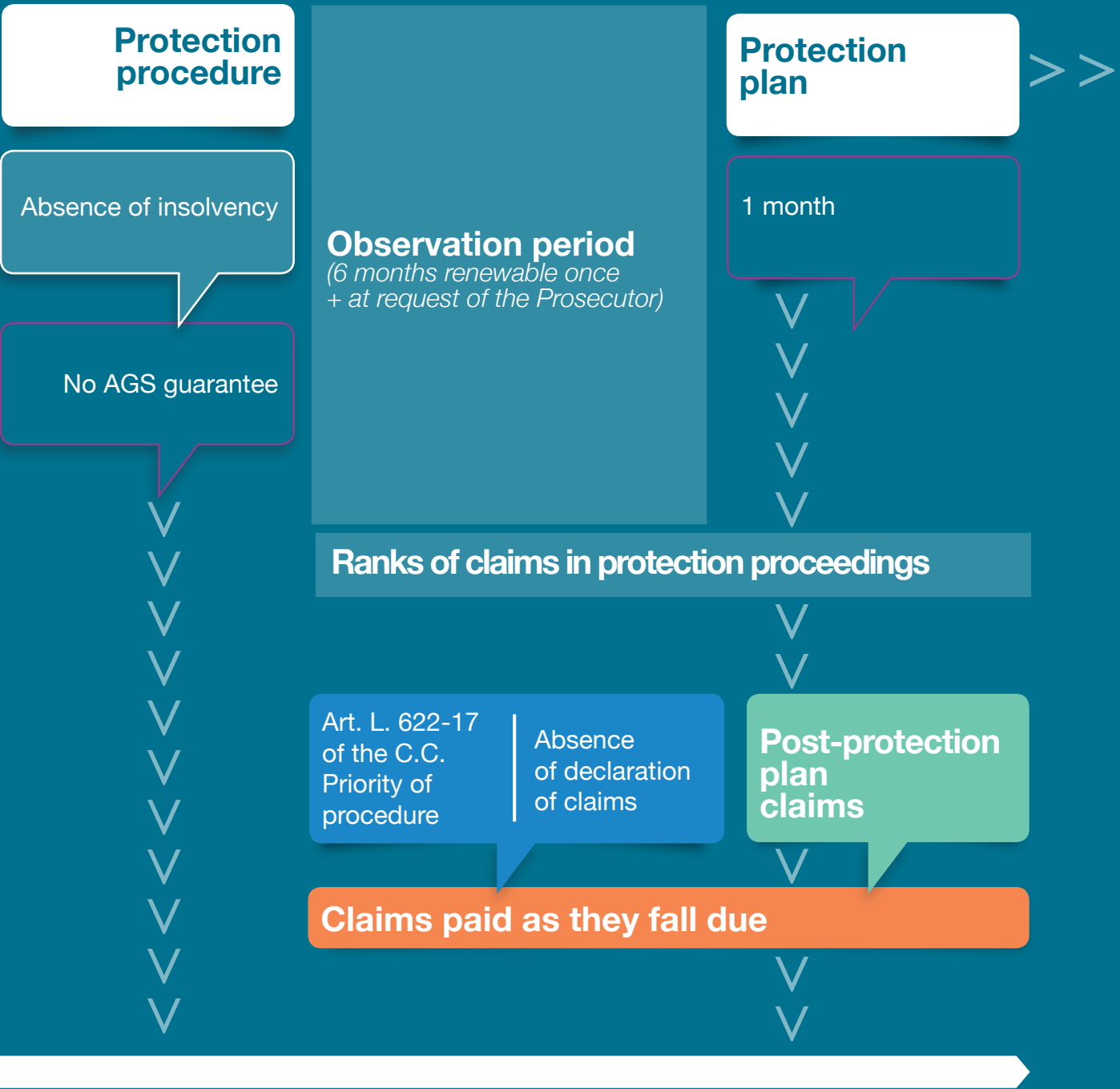
Claims that arise as a result of the needs of the proceedings shall be paid as they fall due (article L. 622-17 of the Commercial Code).

**Receivership and liquidation procedures**  
The AGS is repaid depending on the outcome of the insolvency proceedings.

- In case of receivership, the solution may be either a receivership plan providing for the full repayment of liabilities, or a disposal plan for the full or partial sale of assets together with a conversion into liquidation, with the proceeds of the disposal used to repay creditors according to their ranking.
- In case of liquidation, the repayment of creditors depend on the disposal of the debtor's moveable and immovable assets and the sharing of the funds obtain according to the ranks of creditors.

The AGS holder of a superpriority claim is entitled to the priority repayment of claims enjoying this rank.

Ranks of claims  
during protection proceedings





Interventions  
of the guarantee scheme

3- Litigations

Since its creation in 1996, the DUA is called each year in more than 40,000 labour court proceedings as a result of disputes between employers and employees.

During receiverships or liquidations

The AGS intervenes before the Labour Court in three cases:

Article L. 625-1  
of the Comm.  
Code

The receiver objects to all or part of the employee's wage claim

Article L. 625-3  
of the Comm.  
Code

Labour proceedings are in progress on the day of the commencement order for the insolvency proceedings

Mandatory AGS intervention

Article L. 625-4  
of the Comm.  
Code

AGS objects to a claim on the statement of claims

AGS  
as  
defendant

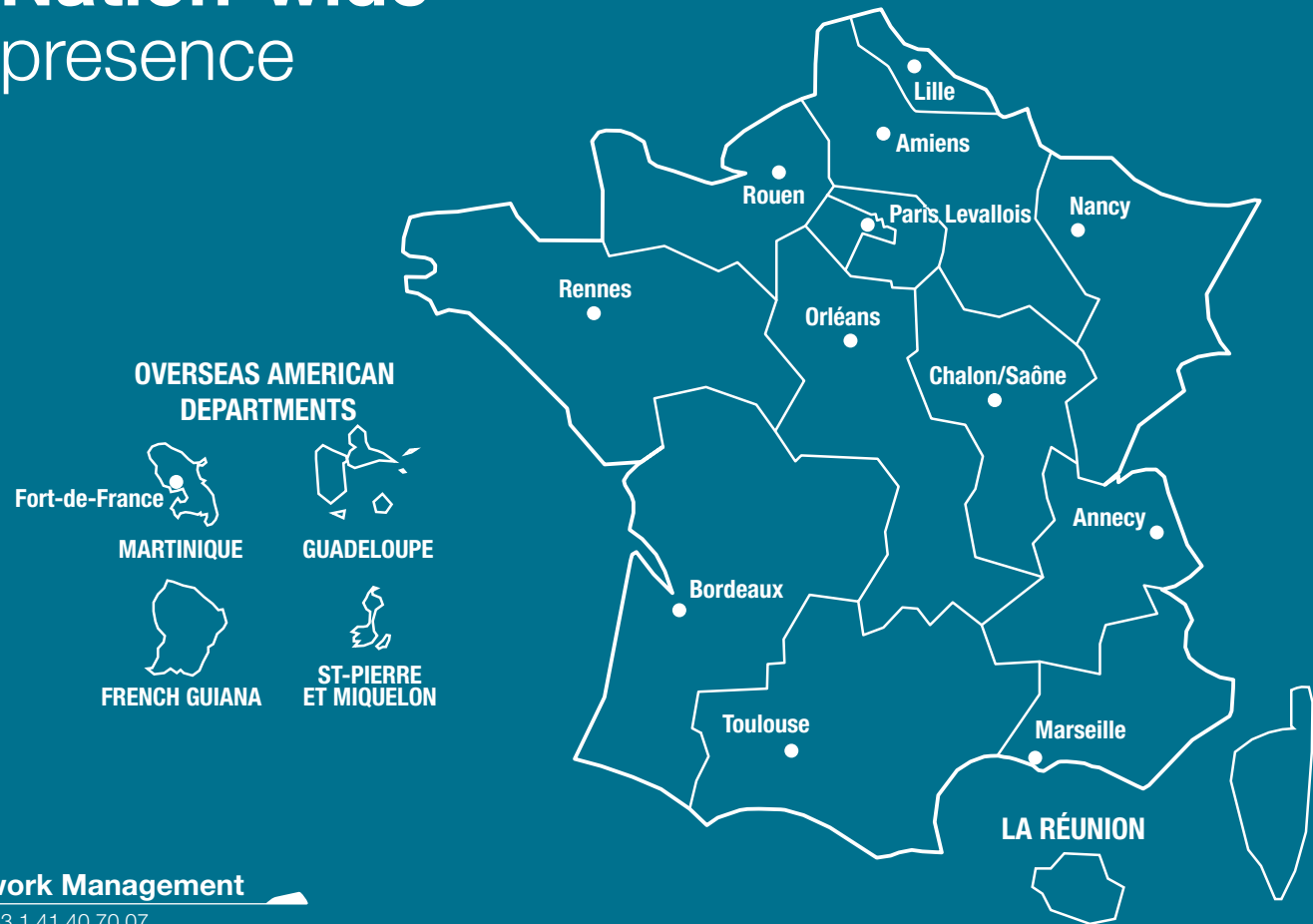
During protection procedures

AGS intervenes before the Labour Court only in the event of disputes following its refusal to accept to guarantee severance benefits resulting from an economic redundancy that occurs during an observation period or in the months following the protection plan order

Therefore in protection procedures, the AGS is not systematically called as a party to the proceedings.

Délégation Unédic AGS  
handles the legal defence of the interests of the guarantee scheme before all jurisdictions: labour courts, appeal courts, Cour de Cassation...

Nation-wide  
presence



Network Management

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