

TOWARDS FLEXIBLE WORKING IN FRANCE ?

Opportunities for growth

Bruce Dévernois
Avocat à la Cour
Consultant in working time organisation
Economist
Member of JURITEAM
Master of Sociology
Training at FLF, CEDIP, EFE

In the UK, employers, can easily vary their overall work force and work volume on short notice and at their own initiative (overtime, opt out, dismissals,...).

In this environment, some new rules are progressively implemented to give more choices to employees, and in particular the possibility to adjust their schedules according to their wishes like part-time, time offs, ..., which is commonly known as « work life balance and flexible working ».

In France, the labour laws concerning working time are relatively rigid, and employers have difficulties to vary quickly their work force and volume at their own initiative while, on the employee side, many rights exist (part-time, rest days, maternity and post maternity time adjustments, parental time off, ...).

However, provided a collective agreement is signed, there are a great number of derogation granted by the labour laws to implement very large variations of working time according to business needs (without modifying the number of employees).

In those conditions a collective agreement aims at organising the « flexible working market » inside a company.

On one hand a company demands a certain working volume (varying each year or at any time) for its business needs ...

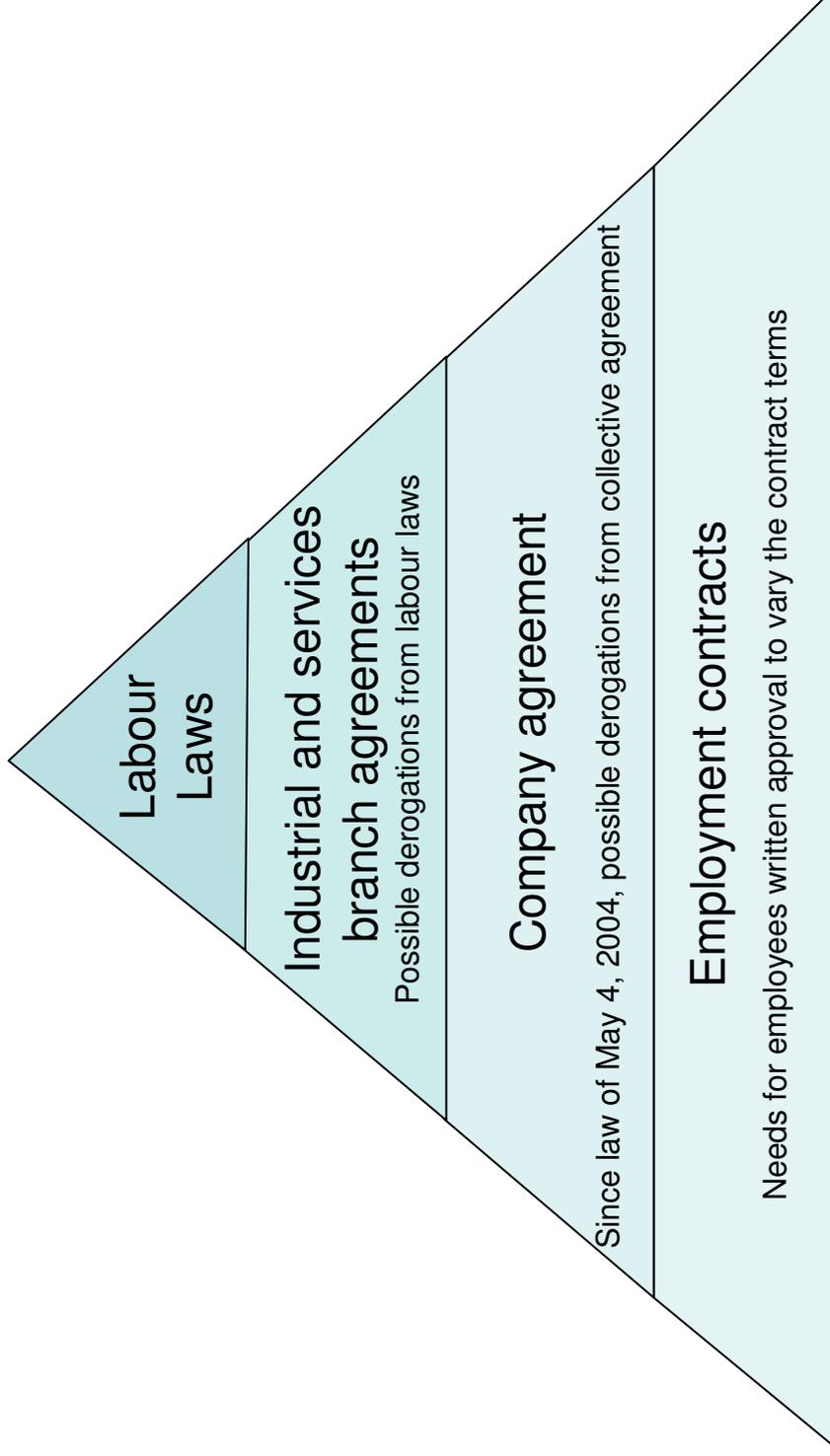
... and on the other, employees can offer a varying working volume according to their wishes, their family or financial situation, their ages, their investments, ...

The present slides shows how to proceed to adjust supply and demand of flexible working inside a french company in a « win-win » arrangement (win for the company and win for the employees).

This « work life balance and flexible working » « piloting » is relatively new and is not widely known, although it gives new opportunities for growth and results.

This kind of « flexibility piloting » is not really organised in the UK. It could also be an opportunity for British companies to improve labour relations and so increase productivity and results.

The hierarchy of norms in France



➔ **Legal working time : 35 hours per week or 1607 hours annually**

Main working time rules

- Possibility of flexitime : with core times and flexible bands at the initiative of the employee. Employees can carry forward up to 3 hours per week (more with a collective agreement) and up to 10 hours per month. No overtime pay as long as 35 hours are not exceeded in average per week
- Possibility to combine weekly time + annual « rest days » :
eg. : 39 hours per week with 24 « rest days » per year (equivalent to 35 hours weekly), or 38 hours with 18 « rest days », and so on ... No overtime pay as long as 35 hours are not exceeded in average per week
- Possibility of modulation : weekly working time is flexible but limited to 1607 hours annually - no overtime pay nor premium if hours worked in excess of 35 hours per week do not exceed 1607 hours annually

- ➔ Overtime : maximum of 220 hours per year (except for managers or employees whose working time is accounted by days or hours on a yearly basis). Possibility to fix a different number by a branch or a company agreement or develop specific contracts (see following slides n° 11, 12 and 15)
- 41 hours a week or more : granting of an half hour « rest hour » for each additional hour.
- where limit of 220 hours exceeded with the authorisation of the works inspector : granting of one « rest hour » for each additional hour.
- « rest hours » must be taken as time off, unless put in a

« Time-Banking Account ».

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tél : 06 09 76 39 85 fax : 01 47 09 10 56 – bdevernois@easynet.fr

- ➔ **Overtime pay :**
 - ❖ **First 8 hours overtime paid at hourly rate + 25 % (except for companies with less than 20 employees : hourly rate + 10 % only for first 4 hours until december 2008, or by a collective agreement for all other companies : hourly rate + minimum 10 %)**
 - ❖ **Following additional hours overtime paid at hourly rate + 50 %**
- ➔ **Maximum working day is 10 hours – except if agreed in collective agreement up to a max of 12 hours a day (48 hours a week and 44 hours on average for 12 successive weeks).**

➔ How to work overtime ?

- Up to 220 hours per year at the initiative of the employer on short notice in the general case (see slides n° 9 and 10)
- « Convention de forfait mensuel incluant le paiement d'heures supplémentaires » : weekly overtime employee/employer agreement (provided overtime is equally distributed over the weeks). This agreement can be temporary.
- « Temps Choisi » : overtime employee/employer agreement over the yearly limit of 220 hours (or different limit fixed in a collective agreement) without the works inspector authorisation if allowed by a collective agreement - No « rest hours », but overtime paid at hourly rate + at least 25 %.

➔ How to work overtime ?

- « Repos compensateur de remplacement du paiement des heures supplémentaires » (RCR) : Overtime payment in « rest hours » – to be implemented by collective agreement

Overtime hours replaced by rest hours are not accounted in the limit of 220 overtime yearly hours

Executive Managers are not governed by working time regulations, except paid holidays.

Neither a collective agreement nor a specific provision in the employment contract is compulsory. However some branch agreements enforce a provision in the employment contract called « agreement without any working time reference » a.k.a. « **convention de forfait sans référence à un horaire** »

- ➔ « **Convention de forfait annuel en jours** » : annual working time account in days (possible if a collective agreement allows it) – not more than 218 days per year with approximately 10 « rest days » per year. The days in the working time account are distributed all along the year according to business needs.
- ➔ This regime is governed by the European standards of resting times (11 hours rest per day and 35 hours rest per weekend). No application of the rules pertaining to maximal duration of work (10 hours a day, 48 hours a week, a.s.o.).
- ➔ « **Temps choisi** » : possibility to work overtime above 218 days by written agreement between employer and employee if a branch or company agreement allows it. Overtime premium to be negotiated.

Staff managers or mobile employees

- « Convention de forfait annuel en heures » : annual working time account in hours (possible if a collective agreement allows it) – not more than 1980 hours per year. The hours in the working time account are distributed all along the year according to business needs, notably with the possibility to have « rest days ».
- This regime is governed by the rule of maximum 10 or 12 hours a day, 48 hours a week and 44 hours on average for 12 successive weeks.
- « Temps choisi » : possibility to work overtime above the yearly limit fixed in the contract provided the maximal duration of work is not exceeded (1980 hours par year) by written agreement between employer and employee if a branch or company agreement allows it. Overtime premium to be

negotiated
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Le « Compte Épargne-Temps » (TBA) :

Need for a collective agreement. This agreement specifies the items that can be added and the conditions of their utilisation (in cash and/or in paid time off, possibly for retirement, the terms of notice, ...)

- ➔ **The employer adds to the TBA:**
 - « rest hours »
 - « rest days »
 - the replacement of the payment of extra hours by « rest compensated hours »
 - « holidays above five weeks per year »
 - « holidays above four weeks per year » if utilised in time off
- ➔ **The employer adds to the TBA :**
 - the collective extra-hours (to manage its working time requirements over several years)

- ➡ They may be signed for a non fixed term
- ➡ They may be signed for a fixed term. If the negotiators want to stop the effects of the agreement at the end of the term, a specific provision must specify it. Otherwise, the fixed term agreement becomes a non fixed term agreement at its end

WORKING TIME SUMMARY

Executive managers
No application of the working time regulations, except paid holidays



Only in certain branch, need for a specific provision in the employment contract
a.k.a. « convention sans référence à un horaire »



No specific working time agreed upon
Wages are not based on the number of working days or hours carried out.
If they fail, they cannot be penalised on a working time basis, but rather on a task not carried out.

Staff managers and employees with self-governed schedules



Compulsory provision in the employment contract a.k.a. « convention de forfait annuel en jours »
This arrangement is governed by the european rule of 11 hours daily rest and 35 hours weekend rest



Maximum 218 days worked per year with 10 « rest days ».
Need for a branch or a company agreement to implement such provision in the contract. **No account in hours**

Managers and mobile employees (either with self-governed schedules or with non pre-determined schedules)



Compulsory provision in the employment contract a.k.a. « convention de forfait annuel en heures »
This arrangement is governed by the european rule of daily (10) and weekly (48-44) maximum worked hours



Maximum 1980 hours per year, variable according to branch agreements.
Need for a branch or a company agreement to implement such provision in the contract. **Adjustable allocation of hours each week according to business needs (« rest days » possible)**

Managers (with a fixed schedule) or Employees (mobile or sedentary)

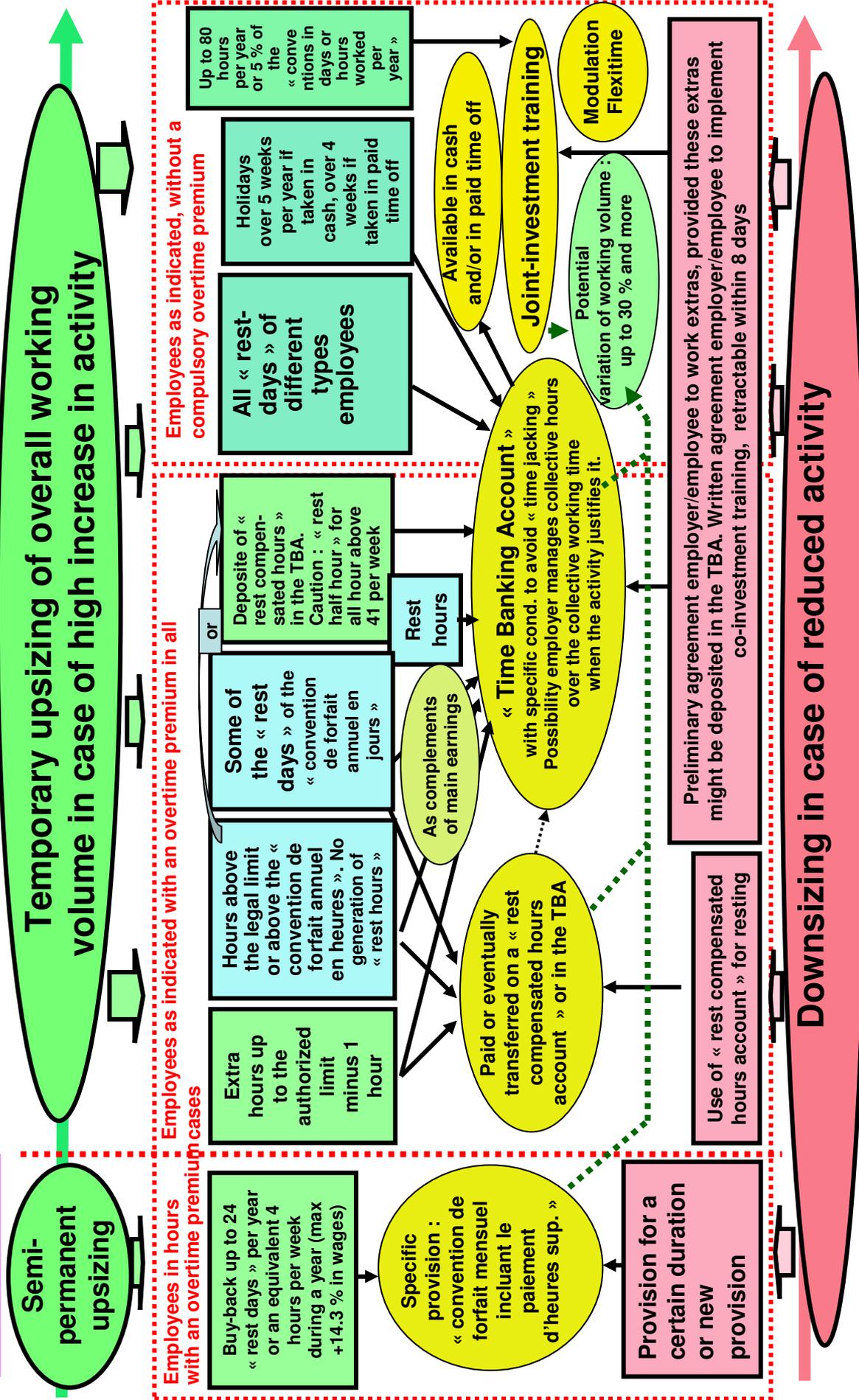


35 hours per week
Possibility of extra hours per week, with a premium of 25 % in the general case. If steadily carried out, payment averaged per month possibly with a provision in the contract a.k.a. « convention de forfait mensuel incluant heures sup. »

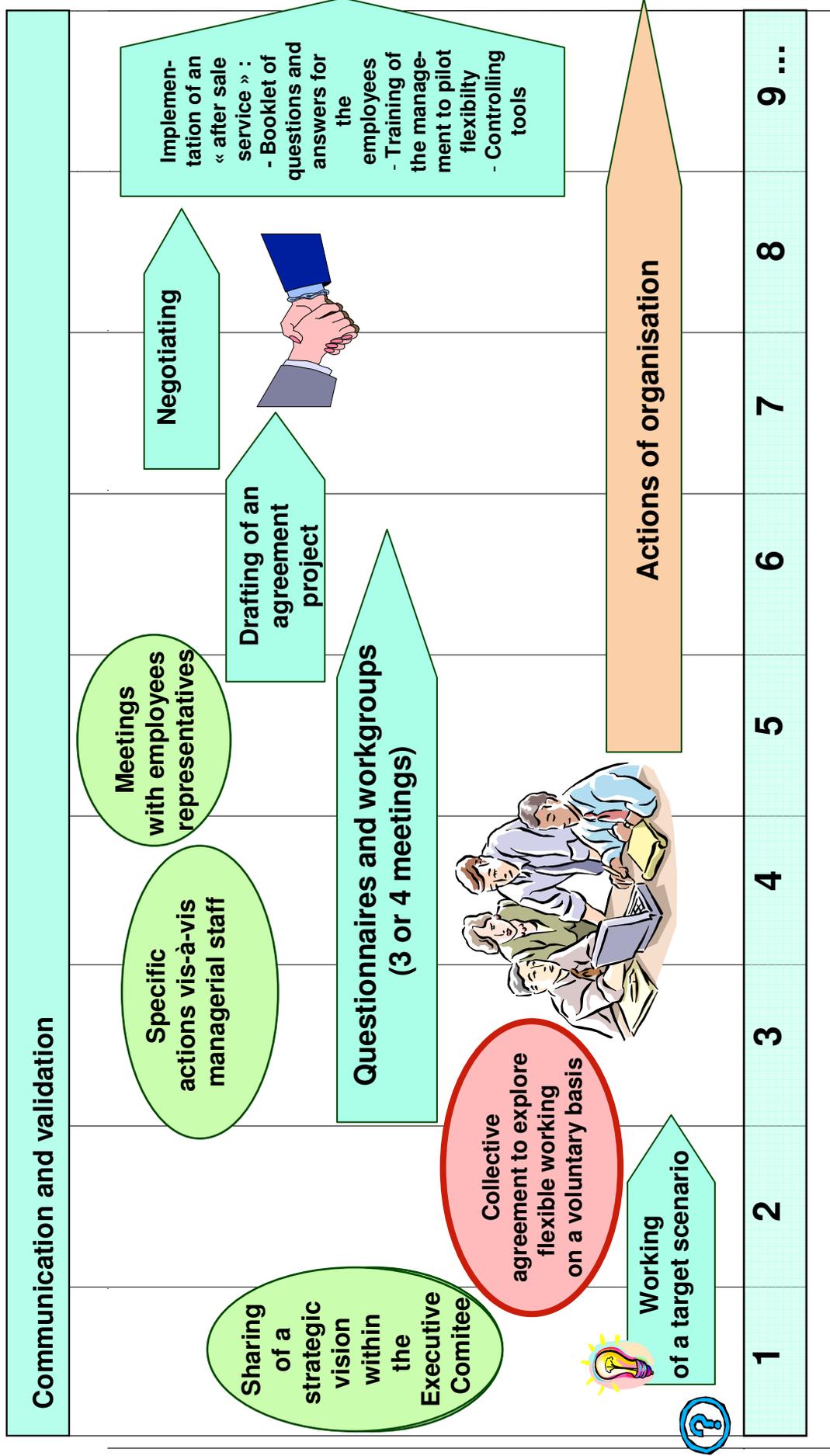


Extra hours limited to 220 hours per year. Possibility to lay down a different limit (higher or lower) by branch or company agreements.
Possibility to work more hours a week with a compensation limited at 23/24 « rest days » per year

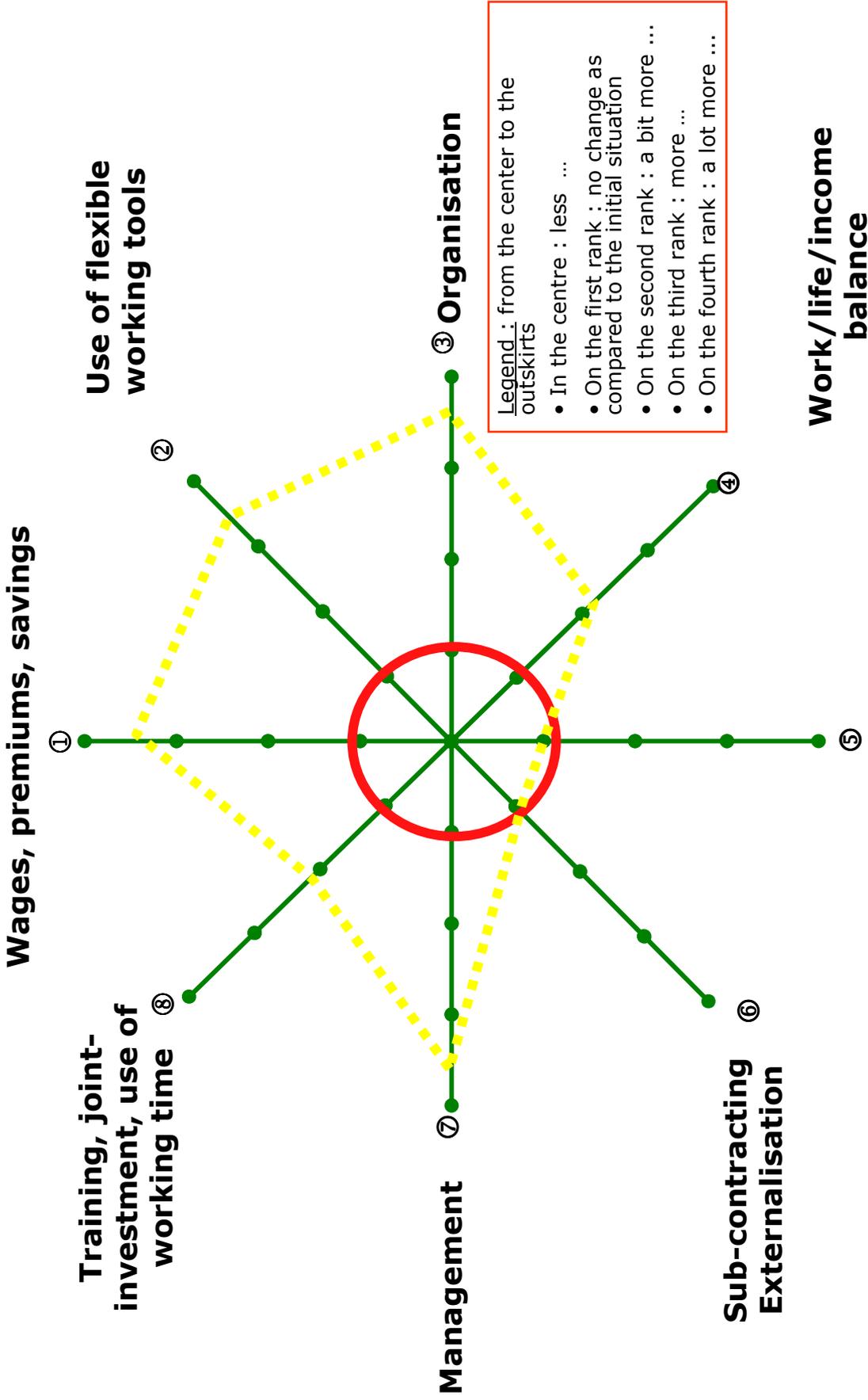
SUMMARY OF THE MAIN LEGAL TOOLS TO IMPLEMENT FLEXIBLE WORKING



STRATEGY OF IMPLEMENTATION



A TOOL TO SYNTHESIZE THE EMPLOYEES PERCEPTIONS



**A tool to
measure the
opinion of
employees**

1st QUESTIONNAIRE :
**The opinion of
employees concerning
the running of the
company**

2nd QUESTIONNAIRE :
**The wishes of the
employees concerning
their work/life/income
balance**

**Anonymous questionnaires
with, eventually a
segmentation according to
age, function, etc...**

**Around 200 questions
per questionnaire**

1.1 CUSTOMERS DEMAND

	<u>YES</u>	<u>RY</u>	<u>RN</u>	<u>NO</u>	<u>WO</u>	<u>DNK</u>
1- demand is seasonal	16%	28%	14%	40%	0%	2%
2- demand varies in a random way	26%	36%	24%	12%	0%	2%
3- customers ask for more and more services	46%	42%	6%	2%	0%	4%
4- pressure of customers is high concerning dead lines	56%	40%	2%	0%	0%	2%
5- pressure of customers is high concerning quality	48%	46%	2%	2%	0%	2%
6- pressure of customers is high concerning safety	29%	27%	14%	6%	6%	18%

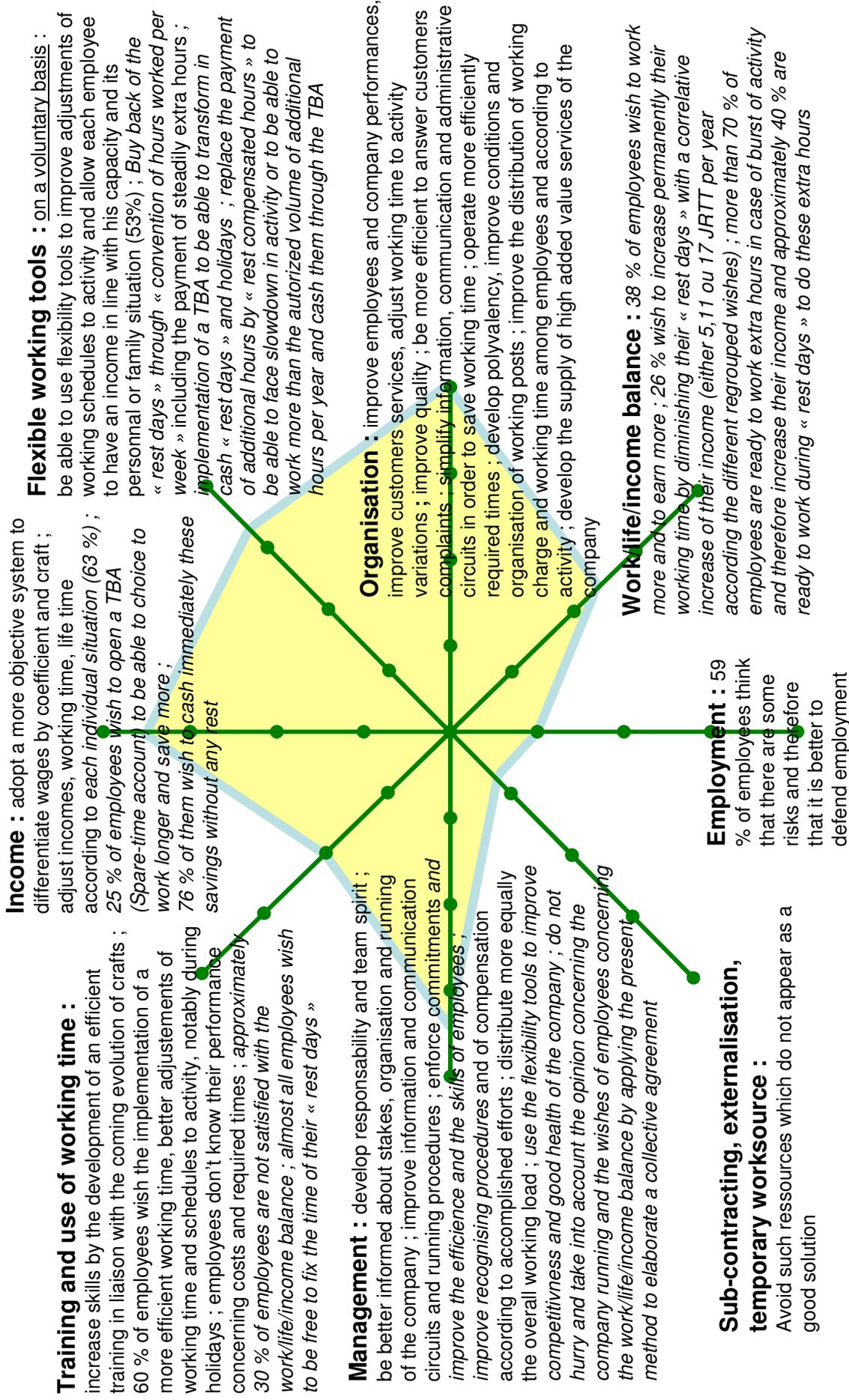
1.2 EMPLOYEES ROLE IS IMPORTANT:

10- to keep the costs under control	32%	42%	8%	6%	2%	10%
11- to manage the required times	40%	30%	8%	12%	0%	10%
12- to offer a good quality to customers	50%	46%	0%	2%	0%	2%
13- to face the emergency cases	48%	24%	2%	10%	2%	14%
14- to minimize the absenteeism	16%	24%	22%	16%	2%	20%
15- to give the customers a good welcome	22%	40%	10%	10%	0%	18%
16- to be able to listen to customers and understand their requirements	52%	44%	0%	2%	0%	2%

1.3 OVERALL WORKING LOAD :

20- overall working load is felt to be acceptable	30%	36%	18%	12%	0%	4%
21- overall working load is equally distributed among employees	6%	28%	30%	30%	0%	6%
22- overall daily working load is steady	6%	52%	24%	18%	0%	0%
23- overall working load varies a lot from one month to the other	20%	32%	28%	18%	0%	2%
24- there are periods with more overall working load than others	42%	36%	10%	12%	0%	0%
25- overall working load is difficult to cover during holidays	22%	39%	24%	14%	0%	0%
26- priorities are well defined and well established	16%	38%	20%	16%	0%	10%
27- overall working load varies differently according to the type of work	48%	44%	2%	0%	0%	6%

EXAMPLE : RESULTS OF QUESTIONNAIRES AND WORKGROUPS IN A COMPANY



A BUSINESS CASE

- ➔ « A » manages 80 % of the installation and maintenance market of petrol pumps in petrol stations throughout France.
- ➔ « A » employs 1000 staff of which 650 are mobile high technical staff.
- ➔ In 2000, working time has been reduced from 39 to 35 hours by granting 23 « rest days » per year, a normal week of five working days staying at 39 hours.
- ➔ In 2002, the implementation of a program to secure payments by credit cards at the pumps means a significant increase of the work load of the mobile technical staff.

- ➔ Two options envisaged :
 1. Hiring new technical staff
 2. sub-contracting
- ➔ Issues with hiring new staff:
 1. Long and costly training for non skilled employees (about 6 months)
 2. Cost of collective dismissals of the previously hired staff by the end of the program is costly. Moreover it damages social relations
- ➔ Issues with sub-contracting:
 1. No available skills
 2. Divulging the company's know-how could transform sub-contractors into competitors.

- ➔ So, the company chose to explore with the employees, in their mutual interest, the introduction of flexible working on a voluntary basis, provided that it could allow a significant worked overtime for the company (potentially up to 30 % above the actual overall working hours) together with increased incomes for employees.
- ➔ The employer knew the trade unions represented in the company (FO, CFDT, CGC) were reluctant to increase the working time, the 35 hours being a « vested right ».

- ➔ In those conditions, the company had the idea, rather than increasing the general working time, to explore the possibilities to work overtime on a voluntary basis in exchange of a pay rise.
- ➔ A collective agreement to explore these possibilities is then signed with all employees representatives.

- ➔ This agreement lays down the working method : a letter to all employees calling for the constitution of workgroups on the basis of 2 questionnaires, one concerning the company dysfunctions as perceived by employees (waiting time, quality, safety, information systems, management, organisation, ...) the other concerning the wishes of the work/life/income balance so that the raw materials for negotiation can be gathered together.
- ➔ In fact, neither the representatives nor the employer know the exact opinion and wishes of the employees and therefore which regime to propose and implement. With this working method agreement, the company could open discussions and identify the possible proposals while avoiding social movements and potential strikes.

- ➔ The results of the questionnaires and the workgroups showed notably :
- 38 % of the employees wanted to work more to earn more, 26 % wanting it on a permanent basis by a decrease of the number of rest days (around 14 days in average out of 23)
 - 70 % of the employees were saying to be ready to work extra-hours if necessary
 - 25 % wanted to open a « Time Banking account » to be able to work during « rest days » in case of business needs and cash them immediately without taking any rest

- ➔ Nevertheless, unions were hesitating to sign a flexible working agreement, fearing that increase in wages and promotion of careers will be reserved to employees ready to work overtime. So they proposed, in a first step, to see if an improvement of the organisation could allow the absorption of overtime and therefore avoid the implementation of a flexible working agreement.
- ➔ A break of 3 months allowed to implement productivity gains, but not sufficient to match the effective needs.

A BUSINESS CASE

- ➔ Finally, due to the number of employees wishing the implementation of flexible working, the unions accepted to sign an agreement, but on a fixed-term basis (one year) in order to test the employer's behaviour regarding the distribution of rise of wages and promotions.
- ➔ During the first year, finally a bit more than 50 % of employees choose to work more to earn more on a « semi » permanent basis, 20 % accepting to work extra hours during the year (that is to say finally more than recorded in the questionnaires) and all rights on the TBA were cashed. At the end of each following years, a new negotiation was engaged, a strong majority of employees wishing to have the choice to work more in case of business needs.

- ➔ Three successive one-year-term agreements have been signed respectively in 2004, 2005 and 2006. In those conditions, flexible working tools were adjusted to the business needs forecast for the year to come.
- ➔ In particular, the last agreement has organised a massive overtime for training, still on a voluntary basis (95 % of employees have accepted this paid overtime) to match the technological evolutions in order to avoid lay-offs.

➔ Another interesting result after 3 years of implementation is the relatively unchanged volume of « semi-permanent » overtime given by employees. Considering the composition of this volume from one year to the other, a steadily turnover of around 20 % of the employees is observed. This permitted to conclude that it is possible to reconcile to a certain extent needs of overtime for a company and chosen working time for the employees.

- ➔ Moreover, thanks to unions reactions in the above examined case, not only flexible working tools have been implemented in this company, but the way to utilise these tools is redefined every year collectively, which allows a fine tuning of flexibility
- ➔ The results are improved competitiveness, increased financial results together with the défenses of employment and increased incomes for employees (and finally the acceptance of the unions concerning the implementation of flexible working on a voluntary basis)

- ➔ Implementing flexible working appears nowadays as a new frontier for companies together with quality, just-in-time production, safety, information systems, permanent search of productivity gains, a.s.o...

- ➔ A quick glance at the program of the new President Nicolas Sarkozy concerning the labour market can be resumed as follows :
- promote an increase of working time on a voluntary basis by suppressing social and income taxes on overtime (considering extra-hours). Moreover, all first 8 extra hours will be granted a premium of 25 % whereas actual premium for small companies up to 20 employees is standing at 10 % for the first 4 hours
 - implement a flexi-security regime (comparable to the danish one) together with a unique non fixed term employment contract. In those conditions, the right to refuse a job proposal would be limited to two times only, but the duration of allocations for unemployment would not be subject to a limit
 - implement a « Training Banking Account» to allow real adjustments in the career of any employee
 - allow everybody to participate in the first run of the « works council » elections (whereas today it is reserved to present known trade unions) and grant the representativity (and therefore the right to sign collective agreement) to the winners. Moreover, to continue a strike after 8 days will be subject to a majority vote among employees.

- ➔ President Sarkozy's program concerning the labour market does not change the fundamental need to implement a flexible working system with a chosen work/life/income balance for each employee.
- ➔ Moreover, the implementation of a « win-win » collective agreement appears necessary if a company looks after an increase of its potential growth (that is to say the possibility to carry out easily more added value), together with a maximisation of results for shareholders as well as incomes for stakeholders.
- ➔ To implement such « win-win » agreements without social disturbances involves a specific method described in this presentation and successfully tested in a number of companies over the past years.