

Worker Involvement in EU-Directives

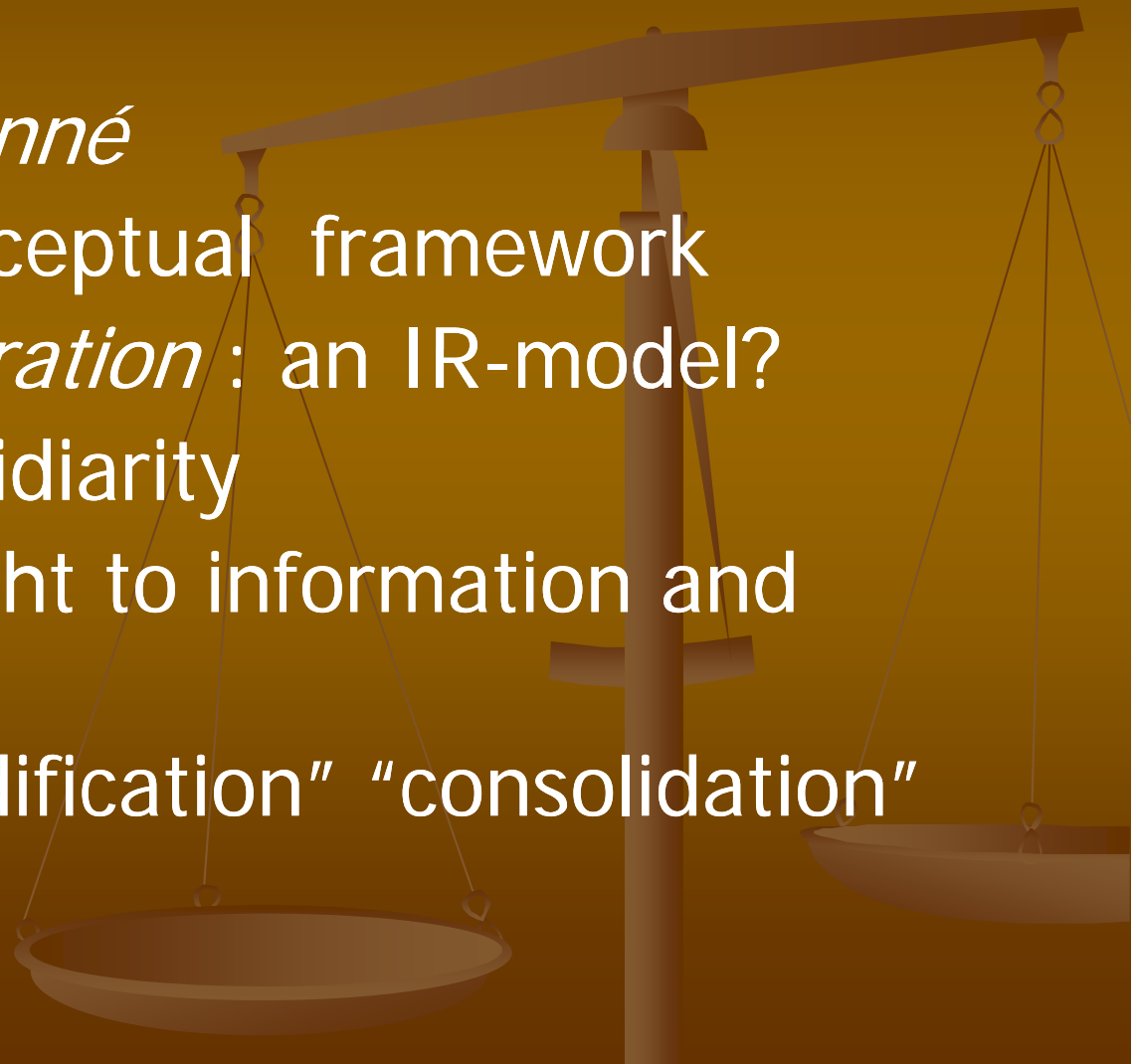


*Information, Consultation (and
participation)*

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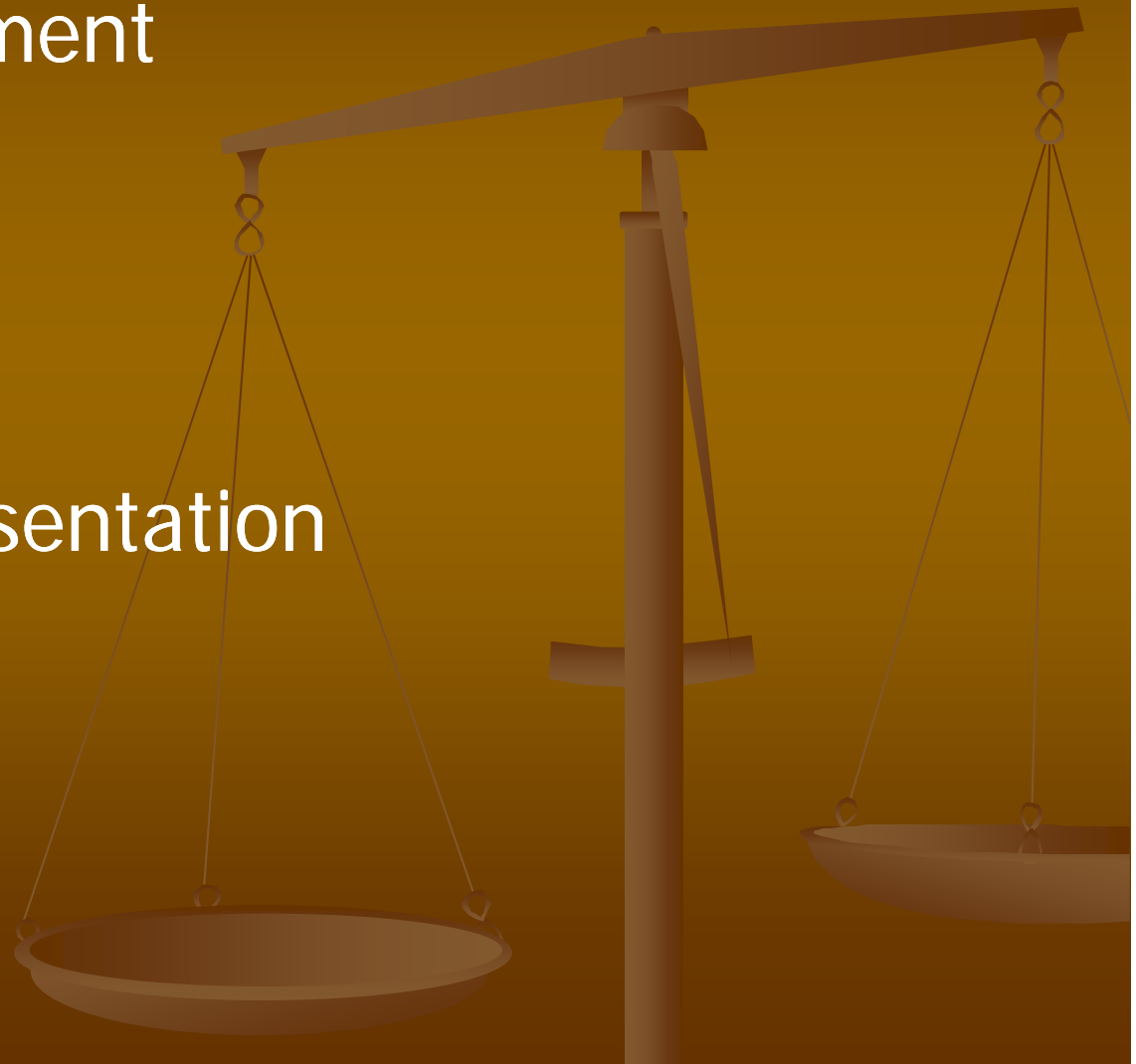
Worker Involvement

- Glossary
- *Catalogue raisonné*
- Legal Basis/conceptual framework
- *Spirit of co-operation*: an IR-model?
- Horizontal Subsidiarity
- Scope of the right to information and consultation
- The lack of "codification" "consolidation"



Glossary

- Worker involvement
- Information
- Consultation
- Participation
- Workers' representation



Glossary



■ Information

- definition : *informing* "at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact" **SE Directive 2001/86**
- Transmission of data (Recast EWC Directive) → knowledge, assessment
- standards of quality : Time, Form and Substance (Recast EWC Directive)

Glossary



- Consultation

- "exchange of views", "dialogue"

- Consultation \leftrightarrow Bargaining

- *quid* in view to reach an agreement? (98/59, 2001/23, 2001/86, 2002/14, 2009/38 sr)

- regarding "circumstances" (i.e. a managerial decision)

- Quid consultation regarding an omission to act?
(Cf. C-284/83 *Dansk Metalarbejderforbund II* /
Case C-12/08 *Mono Car Styling SA*)

Glossary



■ Participation

-organic, at Company level

-SE-Directive :

“means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of:

- the right to elect or appoint some of the members of the company's supervisory or administrative organ, or
- the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.”

-not recognised as a fundamental workers' right in international human rights instruments

Glossary

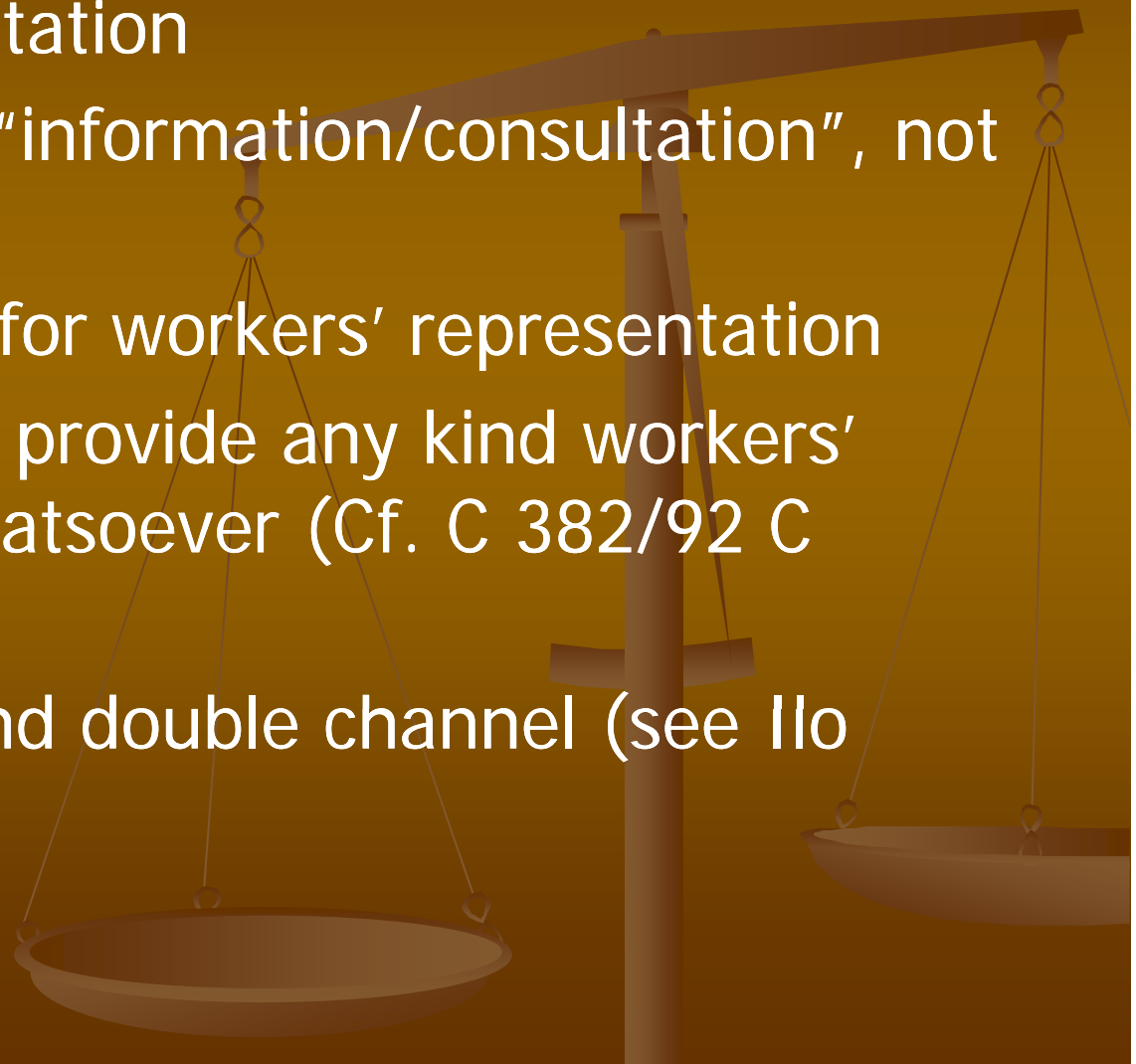
- Workers' representation

- distinguished from "information/consultation", not inseparable

- Cf. EWC-→ a body for workers' representation

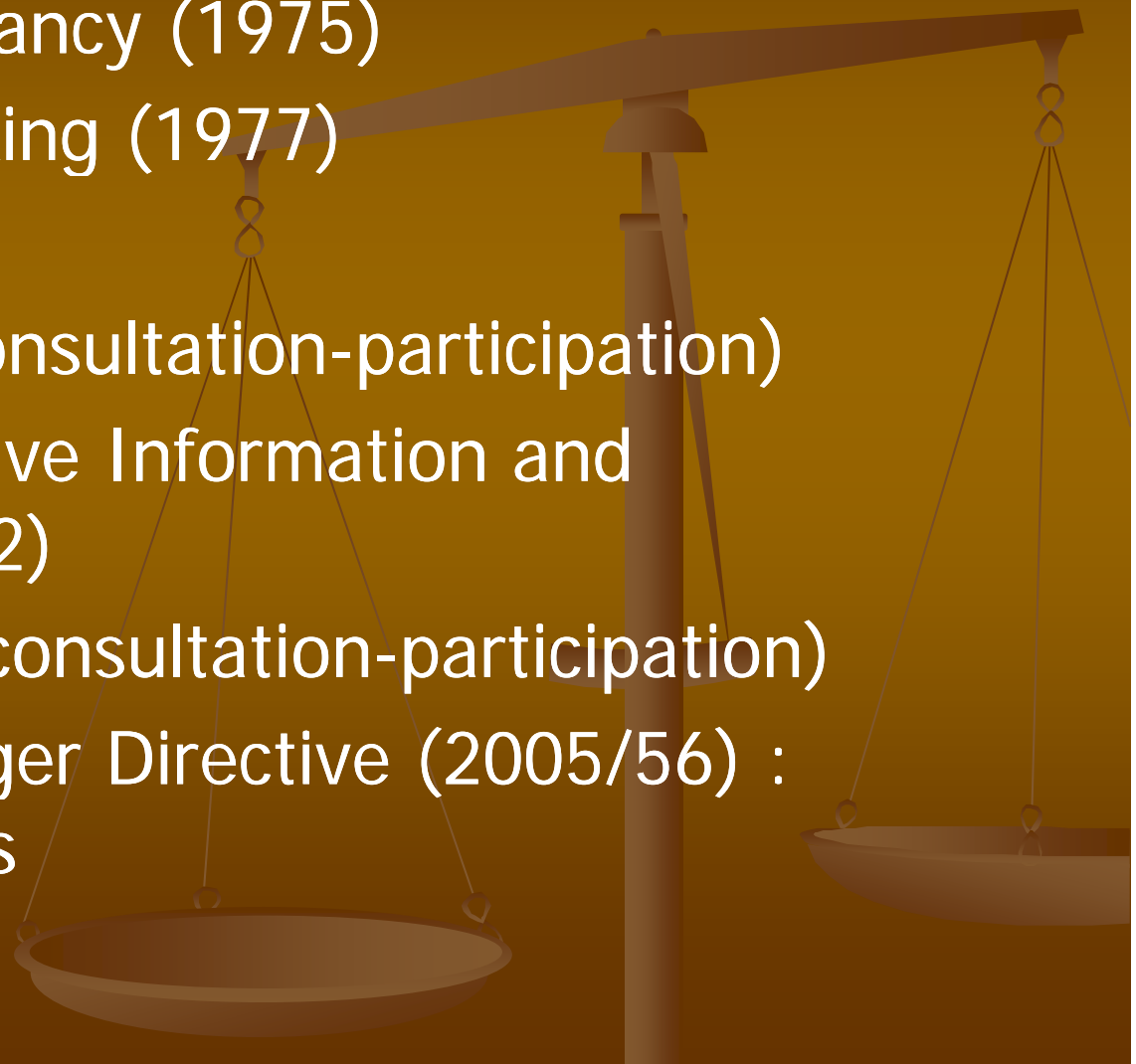
- Cf. the necessity to provide any kind workers' representation whatsoever (Cf. C 382/92 C 383/92)

- Cf. debate single and double channel (see Ilo convention C 135)

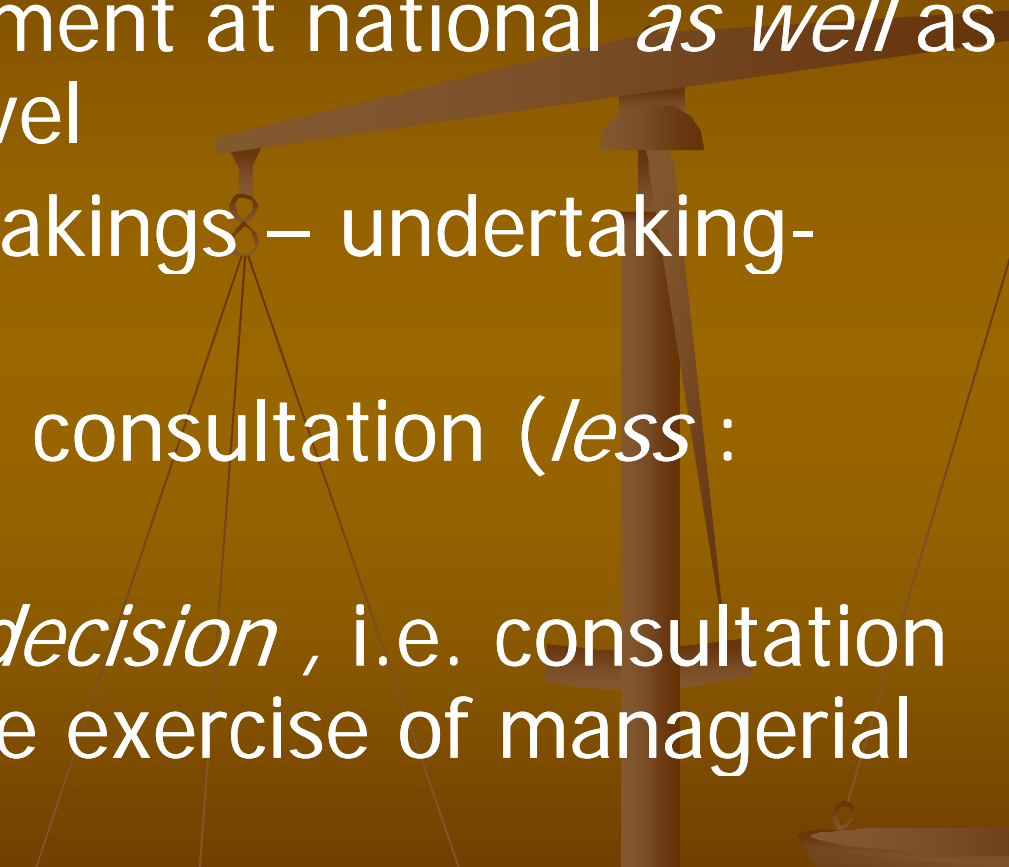


Catalogue raisonné

- Collective Redundancy (1975)
- Transfer Undertaking (1977)
- EWC (1994-2009)
- SE (2001) (info-consultation-participation)
- Framework Directive Information and Consultation (2002)
- SCE (2003) (info-consultation-participation)
- Cross border merger Directive (2005/56) : participation rights

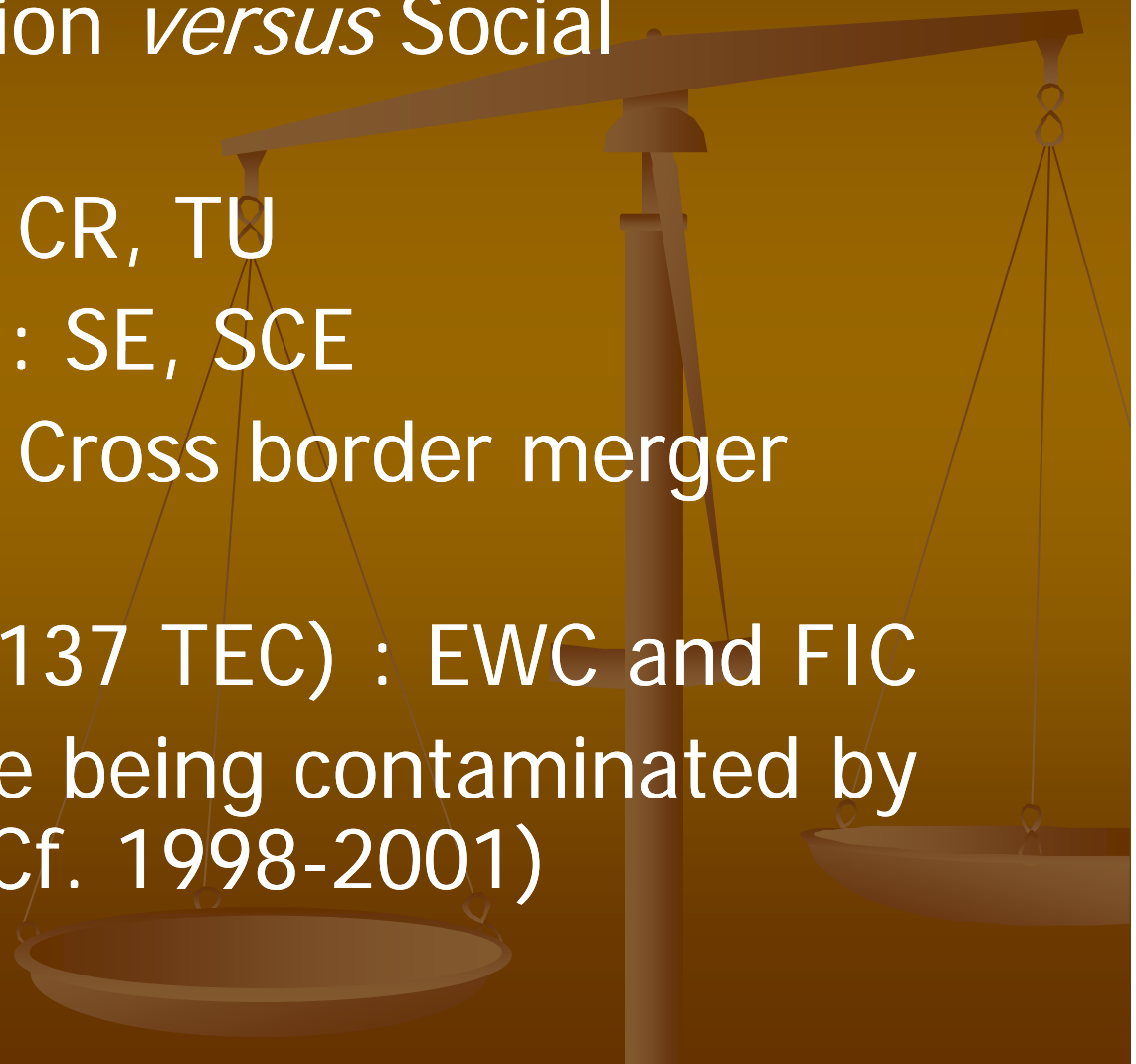


Catalogue raisonné

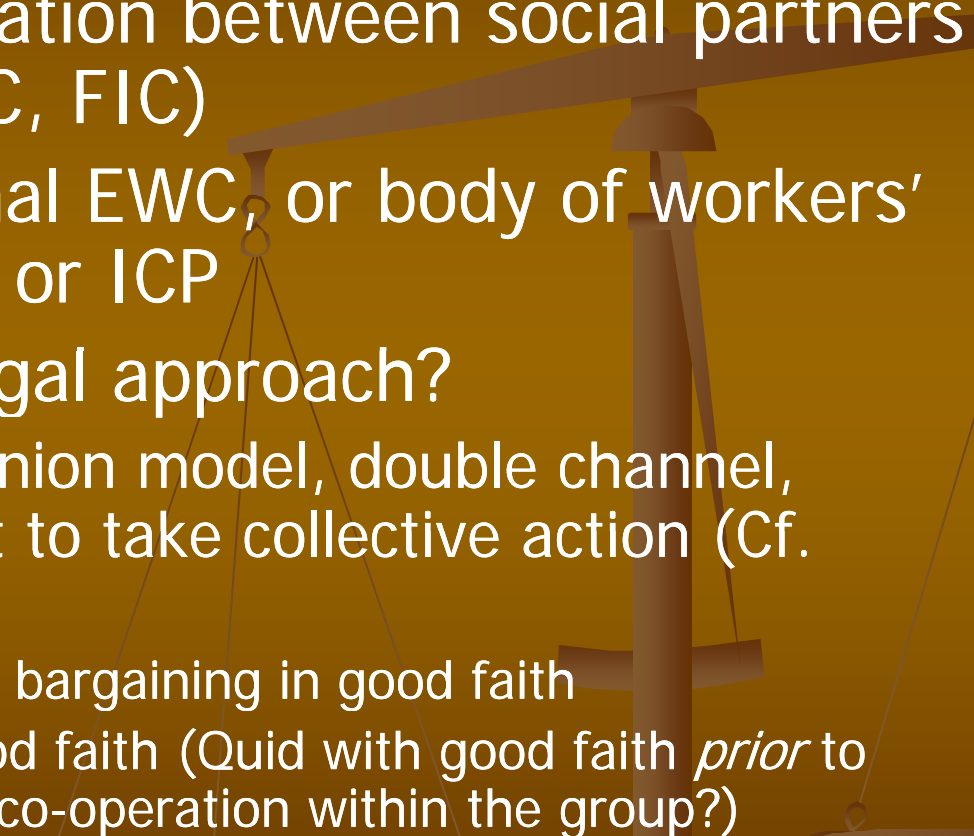
- Worker involvement at national *as well as* transnational level
 - Group of undertakings – undertaking-establishment
 - Information and consultation (*less* : participation)
 - Blind spot : *co-decision* , i.e. consultation which affects the exercise of managerial prerogative
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Legal basis /Conceptual Framework

- Market Integration *versus* Social Citizenship
- Article 94 TEC : CR, TU
- Article 308 TEC : SE, SCE
- Article 44 TEC : Cross border merger Directive
- ASP (Cf. article 137 TEC) : EWC and FIC
- MI-directives are being contaminated by the "SC" virus (Cf. 1998-2001)

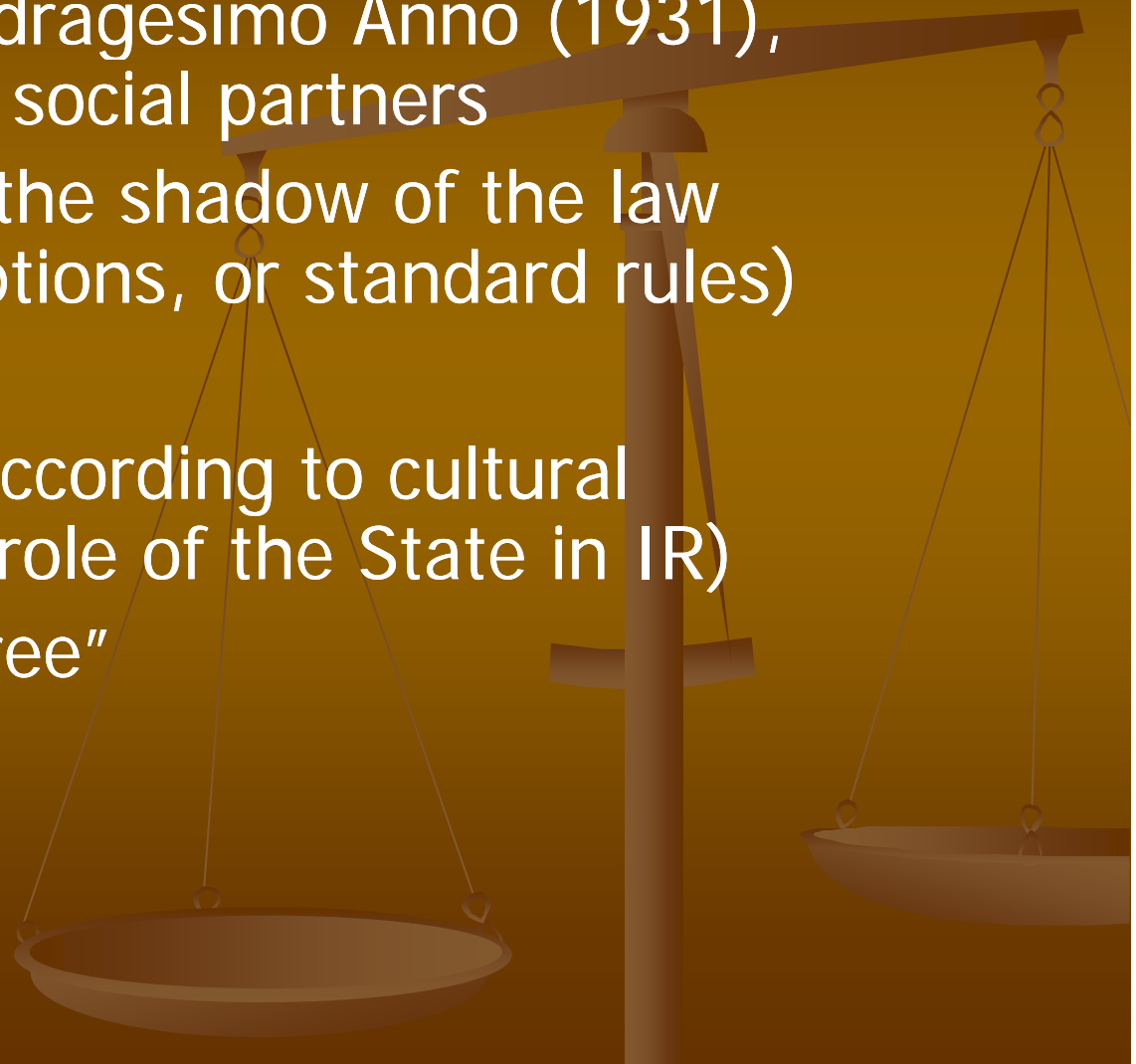


Spirit of co-operation

- Spirit of co-operation between social partners (Cf. EWC, SE, SC, FIC)
 - SNB, conventional EWC, or body of workers' representatives, or ICP
 - Ideological or legal approach?
 - a) *Ideological* : anti-union model, double channel, restricting the right to take collective action (Cf. German model)
 - b) *Legal* : pre-contractual bargaining in good faith
- Or a kind of institutional good faith (Quid with good faith *prior* to bargaining? Quid with co-operation within the group?)
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Horizontal Subsidiarity

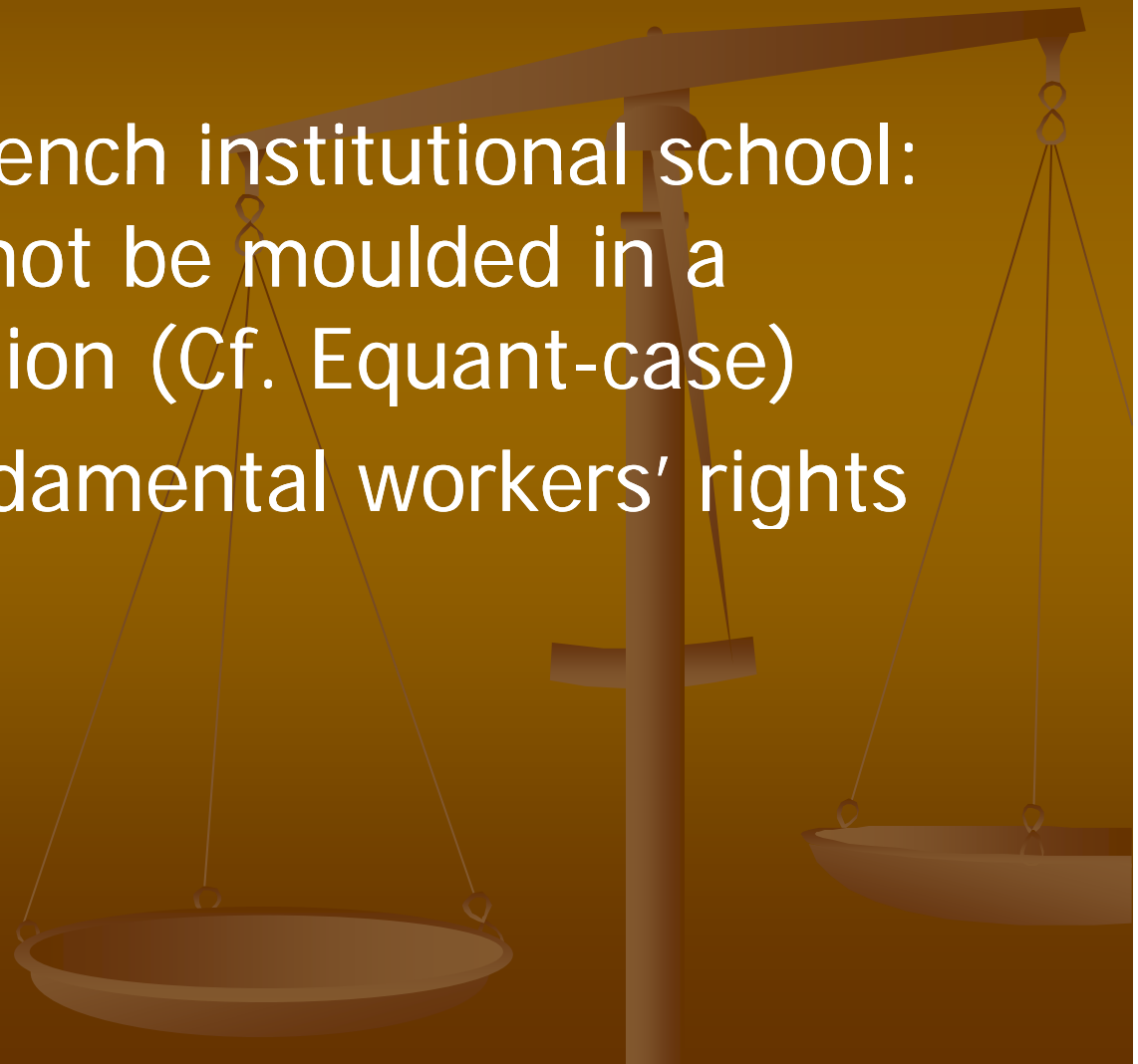
- Subsidiarity : Quadragesimo Anno (1931), relation State and social partners
- Bargaining under the shadow of the law (subsidiary prescriptions, or standard rules)
- Pro's
 - Tailored solutions according to cultural divergencies (f.e. role of the State in IR)
 - “we agree to disagree”



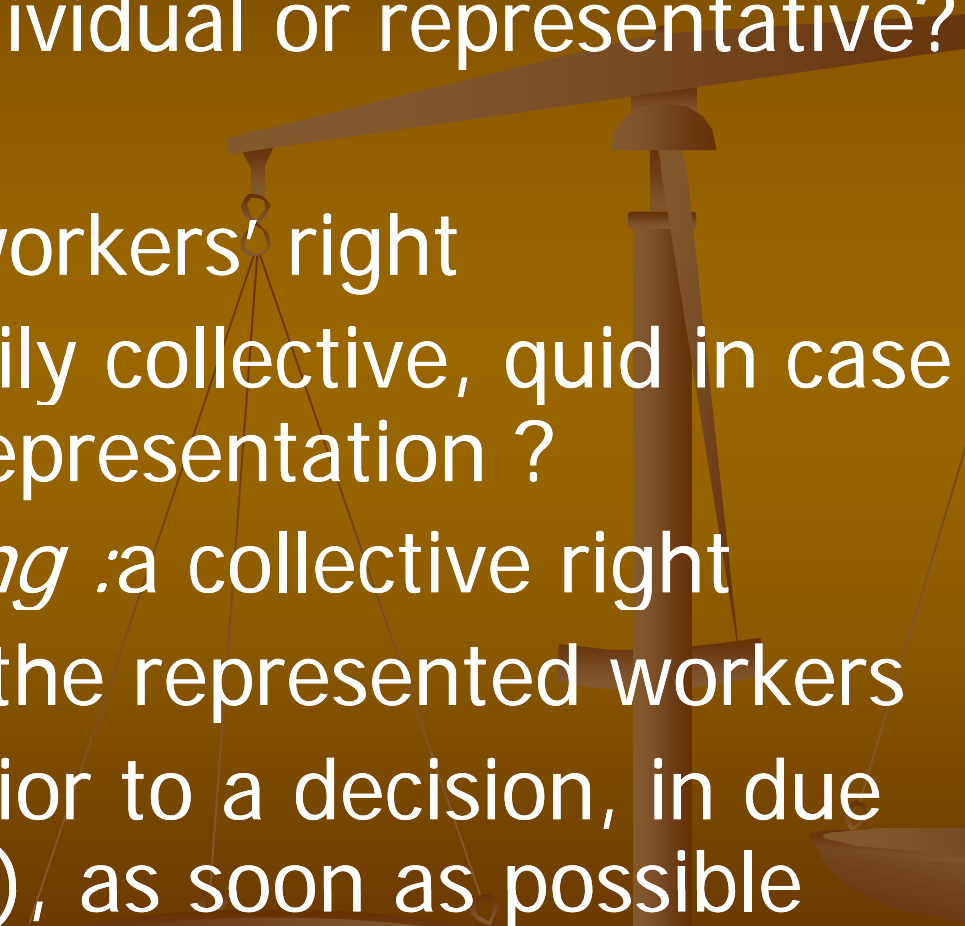
Horizontal subsidiarity

- Con's

- critique of the French institutional school:
institutions cannot be moulded in a
contractual fashion (Cf. Equant-case)
- Alienation of fundamental workers' rights

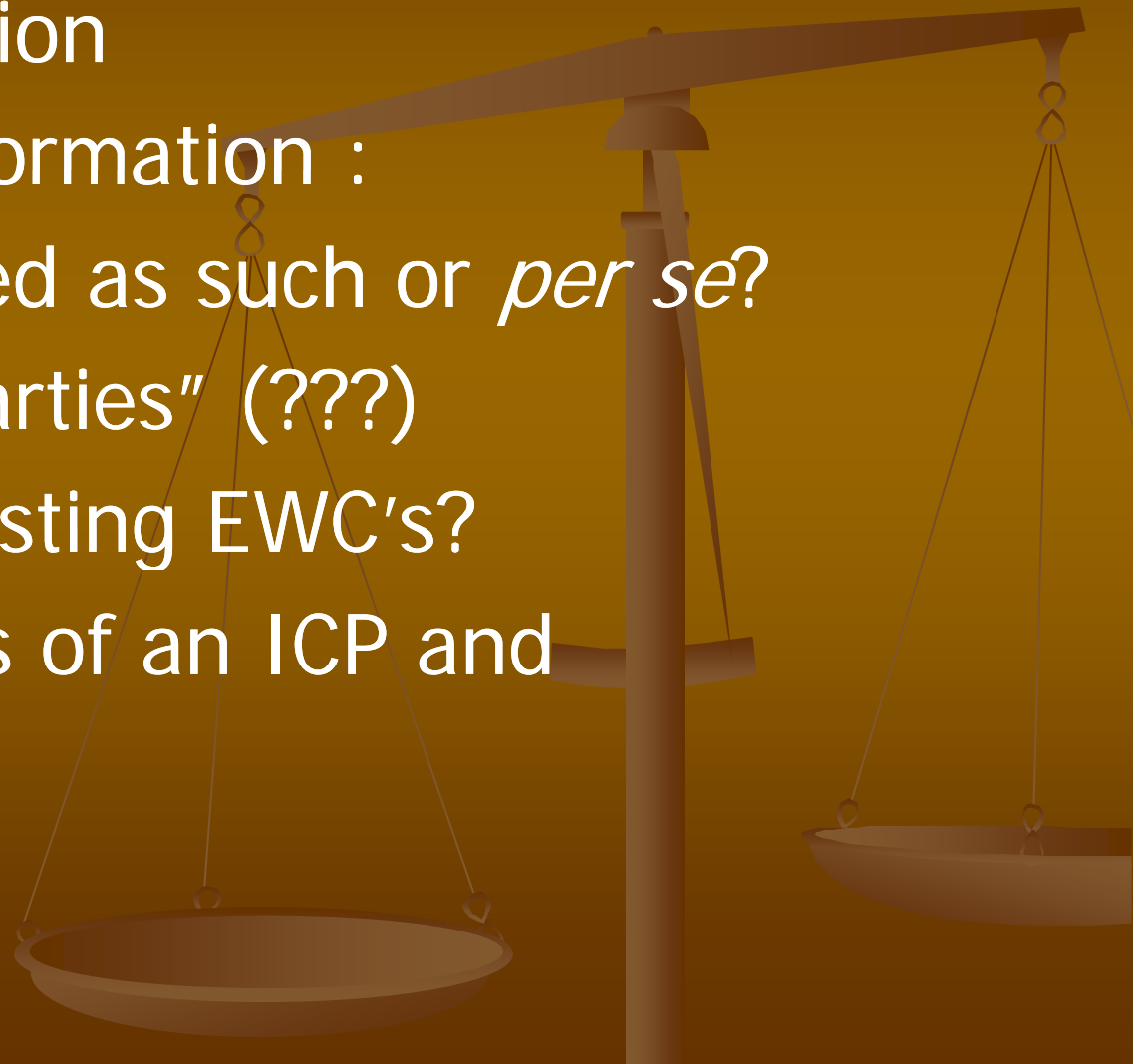


Scope right to information and consultation

- Holdership : individual or representative?
 - fundamental workers' right
 - exercise primarily collective, quid in case of absence of representation ?
 - *Mono Car Styling* : a collective right
 - duty to inform the represented workers
 - Chronology : prior to a decision, in due time (effet utile), as soon as possible
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Scope of the right to information and consultation

- Secret Information
- Confidential Information :
 - Explicitly qualified as such or *per se*?
 - *vis à vis* "third parties" (???)
 - *quid* with pre-existing EWC's?
 - *quid* with experts of an ICP and translators?



The lack of “codification” “consolidation”

- **Patch-work** : no concordantia
 - Exception : EWC and SE Directive
 - Problems : articulation between local and group level Information and Consultation
 - Example : Is the decision to transfer subject to Consultation?
 - Lack of uniform definitions
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