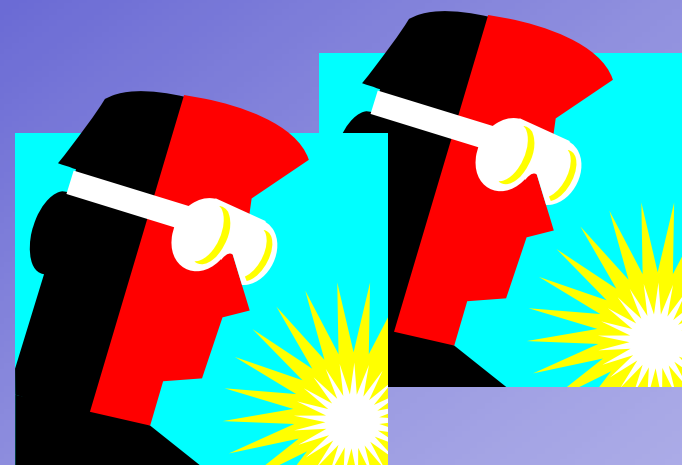


March 12th., 2015

INFPREVENTA Final Conference



**“Critical Analysis of the Impact of
EU Information, Consultation and
Participation Legislation”**

María Pons Carmena

**“Critical Analysis of the Impact of EU Information,
Consultation and Participation Legislation”**

**1.- WORKERS’ PARTICIPATION RIGHTS:
EUROPEAN LEGAL FRAMEWORK**

**2.- CONTENT, SCOPE & LIMITS OF WORKERS’
PARTICIPATION RIGHTS**

**3.- RULES OF PROCEDURE FOR THE EXERCISE OF
WORKERS’ PARTICIPATION RIGHTS**

**4.- LEGAL PROTECTION/TUTELAGE OF WORKERS’
PARTICIPATION RIGHTS**

5.- CONCLUDING REMARKS

1.- WORKERS' PARTICIPATION RIGHTS: EUROPEAN LEGAL FRAMEWORK



DIRECTIVE 2001/86/EC supplementing the Statute for a European Company with regard to the Involvement of Workers

SE Directive 2001



DIRECTIVE 2002/14/EC establishing a General Framework for Informing and Consulting Employees in the European Community

Framework Directive 2002



DIRECTIVE 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purpose of Informing and Consulting Employees

Recast

EWC Directive 2009

1.- WORKERS' PARTICIPATION RIGHTS: EUROPEAN LEGAL FRAMEWORK

SE Directive 2001



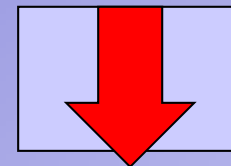
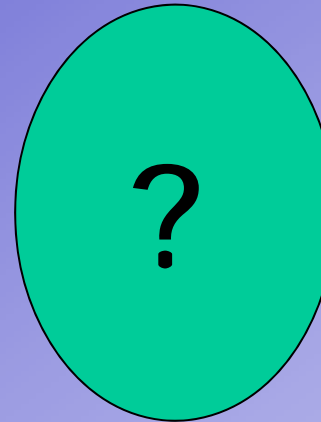
Framework Directive
2002



Recast



EWC Directive 2009



***WORKERS' PARTICIPATION
RIGHTS***

***RIGHT TO
INFORMATION***

***RIGHT TO
CONSULTATION***

***RIGHT TO
INTERNAL
PARTICIPATION***

DIFFERENT
SCOPES OF APPLICATION OF THE
WORKERS' PARTICIPATION DIRECTIVES

SE

NATIONAL CO.

TRANSNATIONAL CO.

SE Directive 2001

- ❖ *Definition, legal regime, constitution & structure of the SE*

**Framework Directive
2002**

- ❖ *Definition of "undertaking" & "establishment"*

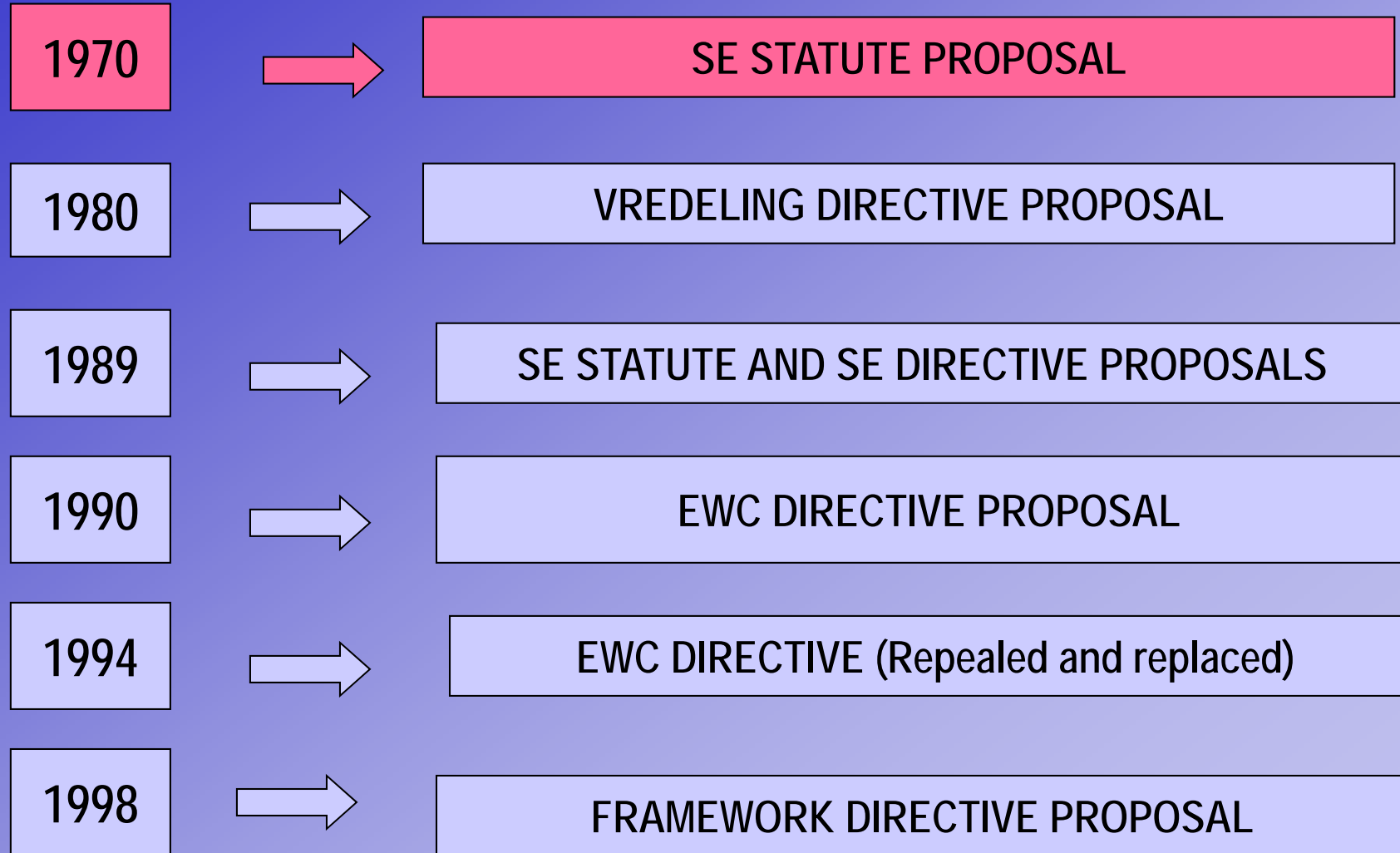
EWC Directive 2009

- ❖ *Definition of "group of undertakings"*

ADECUACY OF THE CRITERIA?

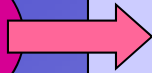
?

1.- WORKERS' PARTICIPATION RIGHTS: EUROPEAN LEGAL FRAMEWORK



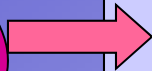
1.- WORKERS' PARTICIPATION RIGHTS: EUROPEAN LEGAL FRAMEWORK

1st. Generation
PROPOSALS



SE Statute 1970 & 1972
5Th Directive 1972
Vredeling/Vredeling Richards 1980 & 1983

2nd.
Generation



Proposals SE Directives 1989 & 1991
Proposals EWC Directives 1990 & 1991
EWC Directive 1994
Proposal Framework Directive 1998

3rd.
Generation

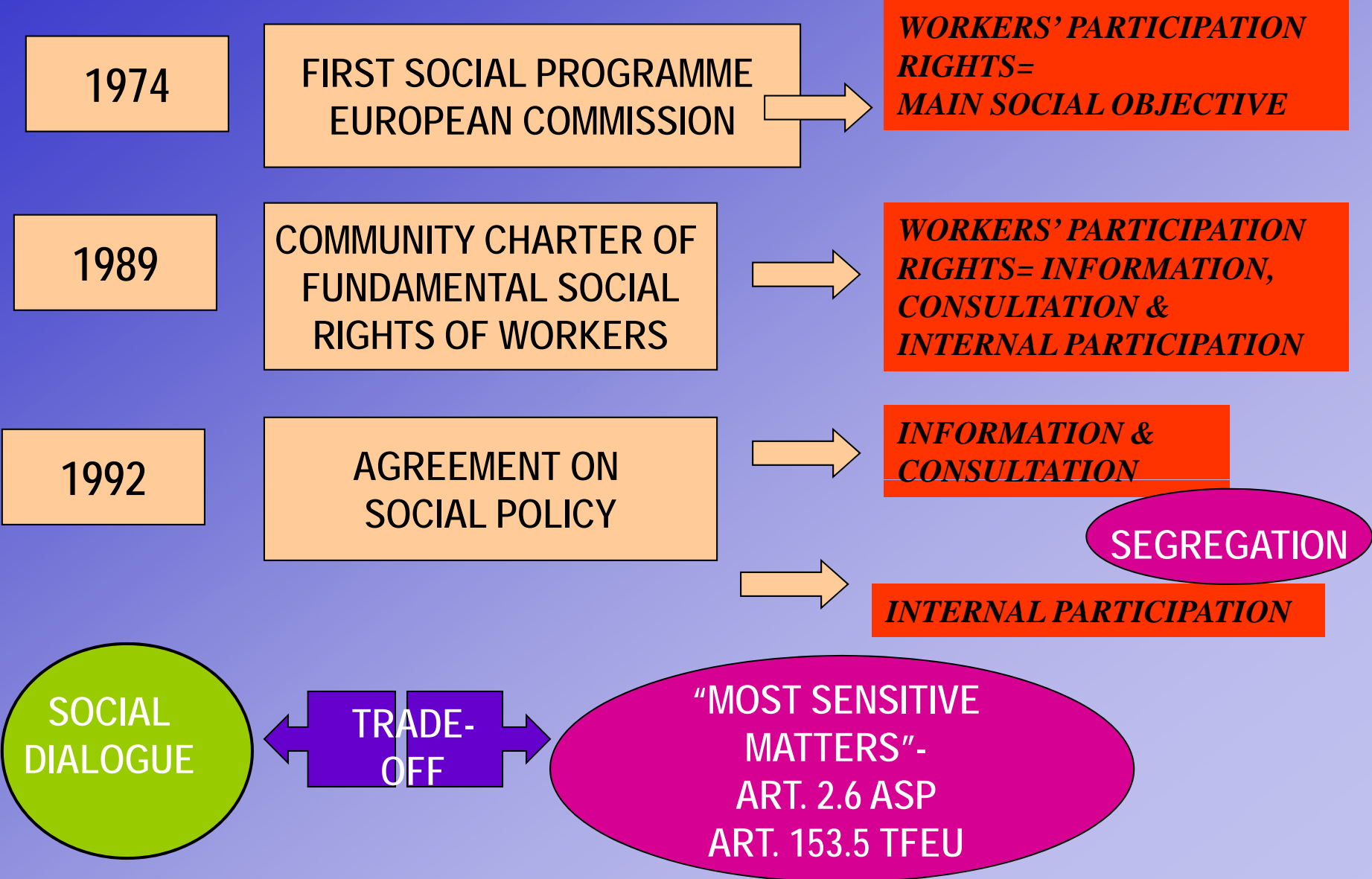


SE Directive 2001

Framework Directive 2002

EWC (Recast) Directive 2009

1.- WORKERS' PARTICIPATION RIGHTS: LEGAL FRAMEWORK



EWC DIRECTIVE 1994 (Repealed and replaced)

SE Directive 2001

Framework Directive 2002

EWC (Recast) Directive 2009

2009

LISBON TREATY

EXPLANATIONS?

ART. 6.1 TEU- CHARTER OF
FUNDAMENTAL RIGHTS

ART. 6.2 TEU- ADHESION TO
EUROPEAN CONVENTION
HUMAN RIGHTS

**ART. 27
INFORMATION &
CONSULTATION AS
FUNDAMENTAL
RIGHTS**

?

THERE IS NOT A
EUROPEAN COMMON
STANDARD ON
COLLECTIVE LABOUR
RIGHTS

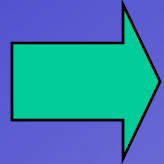
ADHESION TO
EUROPEAN SOCIAL
CHAPTER?

MULTILEVEL
JUDICIAL SYSTEMS?

INTERNATIONAL, EUROPEAN & NATIONAL

2.- CONTENT, SCOPE & LIMITS OF WORKERS' PARTICIPATION RIGHTS

RIGHT TO INFORMATION



DIFFERENT CONCEPTS

BASIC LEGAL CONCEPTS ARE EXCESSIVELY UNDETERMINED, SUBJECT TO EXTENSIVE INTERPRETATION

GREAT FLEXIBILITY & LAXITY OF PROVISIONS



SOCIAL PARTIES

NATIONAL LEGISLATORS

"INFORMATION IN SUCH A TIME, IN SUCH FASHION AND WITH SUCH A CONTENT.."

"APPROPRIATE CONTENT"
"IN SUCH A WAY"

2.- CONTENT, SCOPE & LIMITS OF WORKERS' PARTICIPATION RIGHTS

LIMITS TO THE RIGHT TO INFORMATION:

REAL DUTY OF SECRECY FOR REPRESENTATIVES/
EXPERTS IN RESPECT TO
CONFIDENTIAL INFORMATION

"EXPRESSLY
PROVIDED.. TO
THEM IN
CONFIDENCE"

TOTAL IMMUNITY OF BUSINESS IN RESPECT TO
THEIR OBLIGATION TO TRANSMIT VERY
SENSITIVE INFORMATION

"SERIOUSLY HARM
THE FUNCTIONING
/OR BE PREJUDICIAL
TO THE
UNDERTAKING"

2.- CONTENT, SCOPE & LIMITS OF WORKERS' PARTICIPATION RIGHTS

***RIGHT TO
CONSULTATION***



NOT A COMMON CONCEPT

BASIC LEGAL CONCEPTS ARE
EXCESSIVELY UNDETERMINED,
SUBJECT TO EXTENSIVE
INTERPRETATION

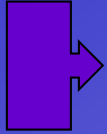
IT IS NOT BINDING/
NO OBLIGATION TO REACH AN
AGREEMENT

***RIGHT TO
INTERNAL
PARTICIPATION***



ONLY FOR SEs

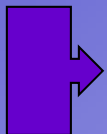
3.- RULES OF PROCEDURE FOR THE EXERCISE OF WORKERS' PARTICIPATION RIGHTS



FLEXIBILITY OF THE REGULATION (GREATER ON

Framework Directive 2002

WIDE MARGIN OF PERFORMANCE /AVAILABILITY TO
BOTH MEMBER STATES' LEGISLATORS
& SOCIAL PARTIES



COLLECTIVE AUTONOMY PREDOMINANCE AS SOURCE OF
REGULATION

SE Directive 2001

EWC (Recast) Directive 2009

3.- RULES OF PROCEDURE FOR THE EXERCISE OF WORKERS' PARTICIPATION RIGHTS

Framework Directive 2002

THERE IS NOT
MANDATORY MINIMUM RIGHTS

SE Directive 2001

IN TERMS OF WORKERS'
PARTICIPATION RIGHTS CAN BE
CONSIDERED A FAILURE

EWC (Recast) Directive 2009

DEFINITION OF TRANSNATIONAL

LEGAL STATUS OF
EWC AGREEMENTS

4.- LEGAL PROTECTION/TUTELAGE OF WORKERS' PARTICIPATION RIGHTS

COMPARABLE STANDARDS in sanctions and enforcement regulations should be in place in all Member States

EXTRA JUDICIAL / INDUSTRIAL RELATIONS MECHANISMS SHOULD BE PROMOTED

"EFFECTIVENESS",
"DISSUASIVENESS",
"PROPORTIONALITY"

LEGAL INVALIDATION OF MANAGERIAL DECISIONS taken in violation of information and consultation rights should be introduced

MOST DISSUASIVE & EFFICIENT SANCTION

MANAGERIAL DECISIONS NULL & VOID

4.- LEGAL PROTECTION/TUTELAGE OF WORKERS' PARTICIPATION RIGHTS

To ensure REAL ACCESS TO MANAGEMENT and BOARD LEVEL MEMBERS that are responsible of Workers' Participation obligations.

LABOUR COURTS

To ensure ACCESS of EWC, LABOUR REPRESENTATIVES & TRADE UNIONS to the judicial mechanisms designed to protect Workers' Participation rights

LEGAL PERSONALITY, CAPACITY TO ACT IN COURTS, FINANCE, ETC.

5.- CONCLUDING REMARKS

The existent European legislation on Workers' Participation is poor and deficient.
It should be **MODIFIED OR AMENDED**.

The most outstanding problems are:



the enormous flexibility, laxity and minimum enforceability of many of the provisions



the mistaken foundation of these provisions on a false collective autonomy



the need for a better articulation between the three Directives / and their relationship with the internal market Directives

HOWEVER, It happens that nowadays Workers' Participation rights are NOT a matter of concern neither at European level, nor at member states level.

5.- CONCLUDING REMARKS

1.- No concern towards legal regulation of Collective Bargaining at European level:

It appears to be a general prevention and rejection of rules that would clarify collective bargaining areas, effectiveness, scope and enforcement of the agreed

2.- No interest towards internal participation:

It appears to be a tendency towards keeping labour outside company boards

5.- CONCLUDING REMARKS

3.- Tendency to greater protection on business information:

Exerted by: 1.- converting the duty of confidentiality of workers Representatives into an authentic duty of secrecy and 2.- by expanding Management competence related to qualifying an information as confidential

4.- European Commission Immobility:

The design of Social Europe took place in a 15- years- time (1987-2000). Since then, no transcendental changes have occurred

5.- CONCLUDING REMARKS



**TO RECUPERATE THE SPIRIT OF THE SE
STATUTE OF 1970**



**A COHERENT REFORM OF CURRENT
WORKERS' PARTICIPATION CANNOT BE
EXPECTED WITHOUT AFFECTING THE
INSTITUTION OF COLLECTIVE BARGAINING AT
EUROPEAN LEVEL**



**IT CANNOT BE PRETENDED TO REGULATE
EMPLOYEE PARTICIPATION IN COMPANIES
OUTSIDE EUROPEAN CORPORATE LAW**