

**EWPPC Conference 2015:
Variations on a Theme:
Understanding information, consultation and
negotiation at the workplace across Europe**

PANEL 2

**Information and consultation in EU
legislation:
How does it work in real life?**

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STRUCTURE

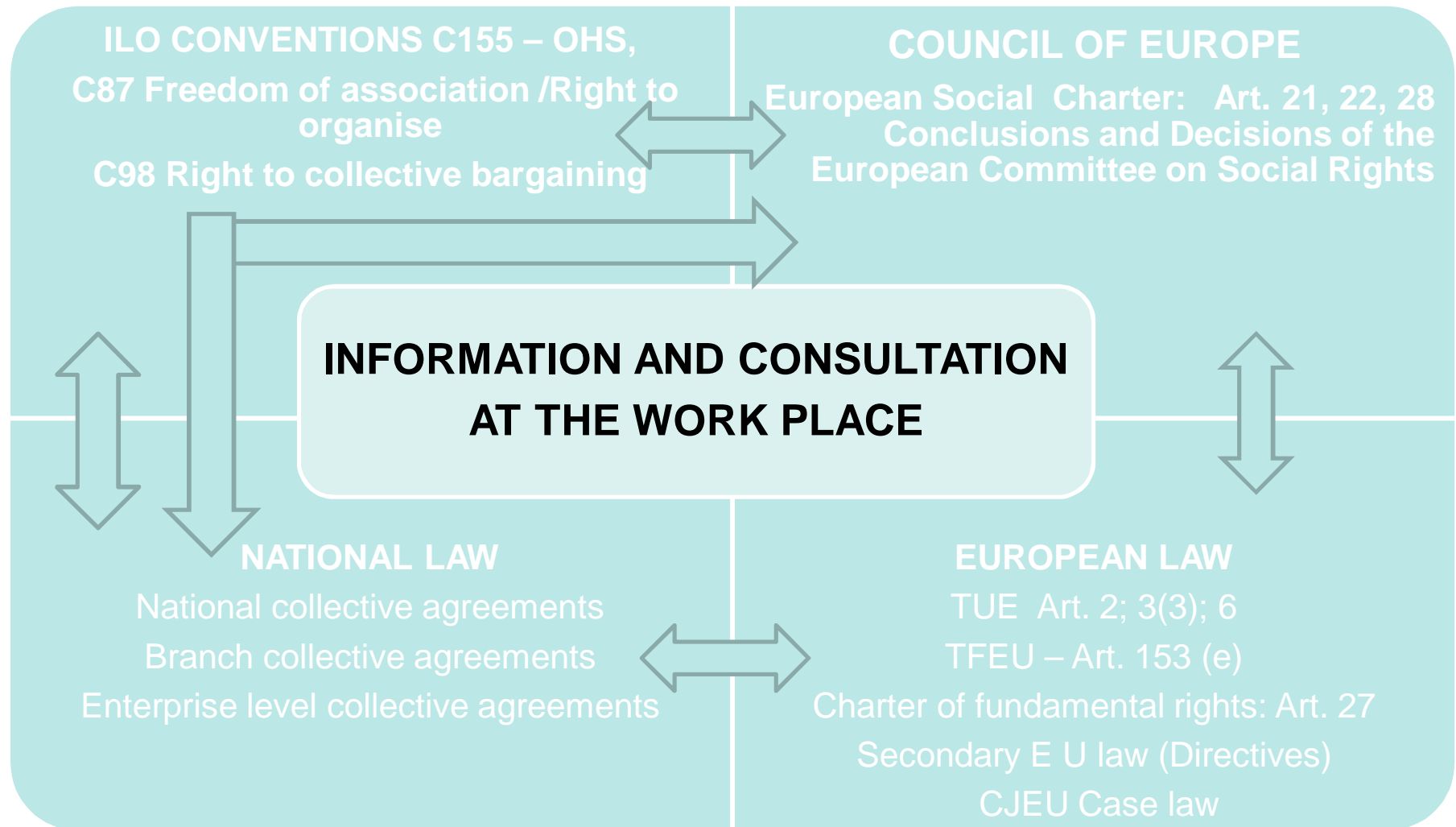
INTERNATIONAL AND EUROPEAN LEGAL SOURCES OF INFORMATION AND CONSULTATION RIGHTS

- WHAT are they?
 - ILO
 - Council of Europe
 - European Union
- HOW do they influence national law and practice?

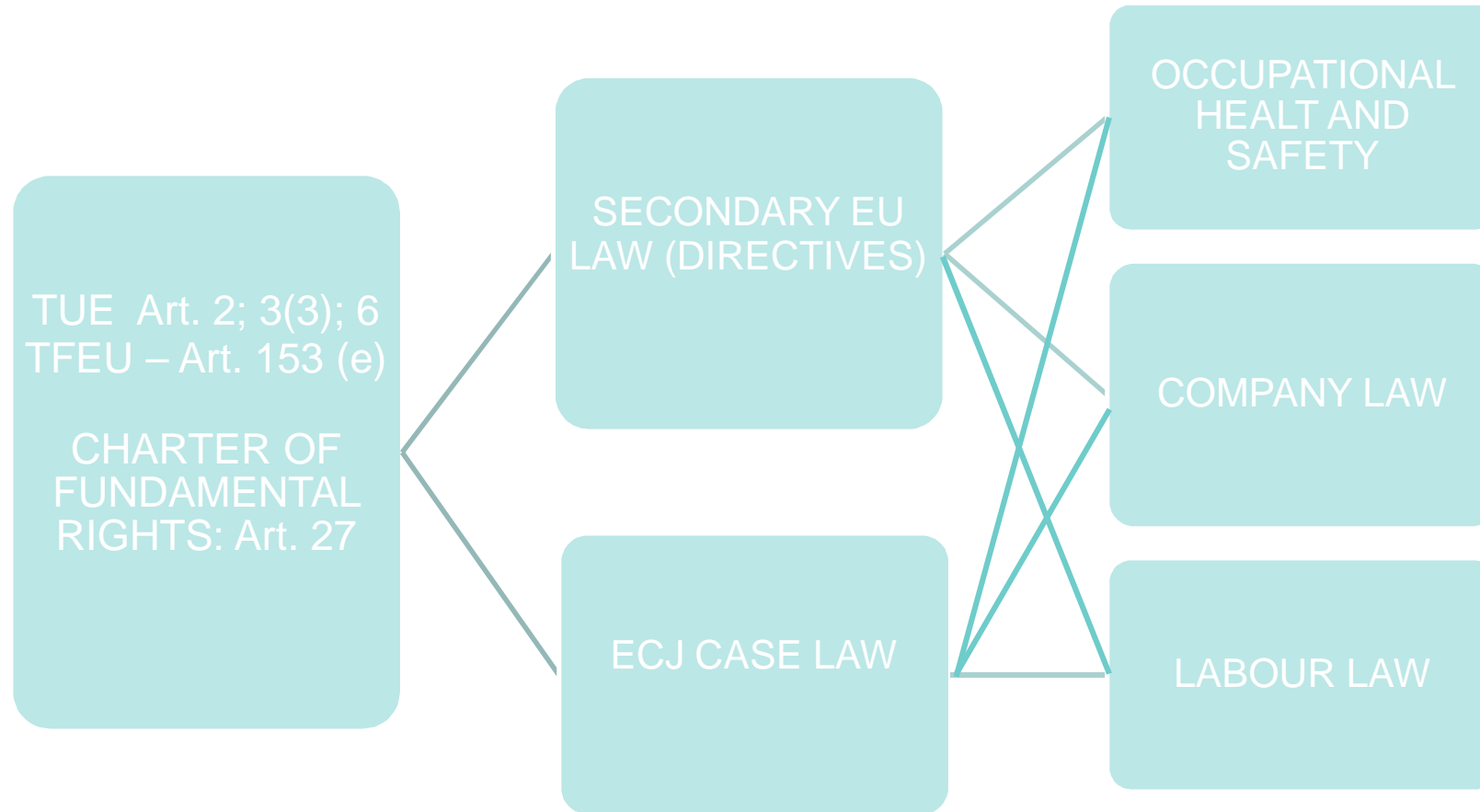
INFORMATION AND CONSULTATION RIGHTS

- FOR WHOM?
- WHAT KIND of information and consultation rights?
- HOW to use them?

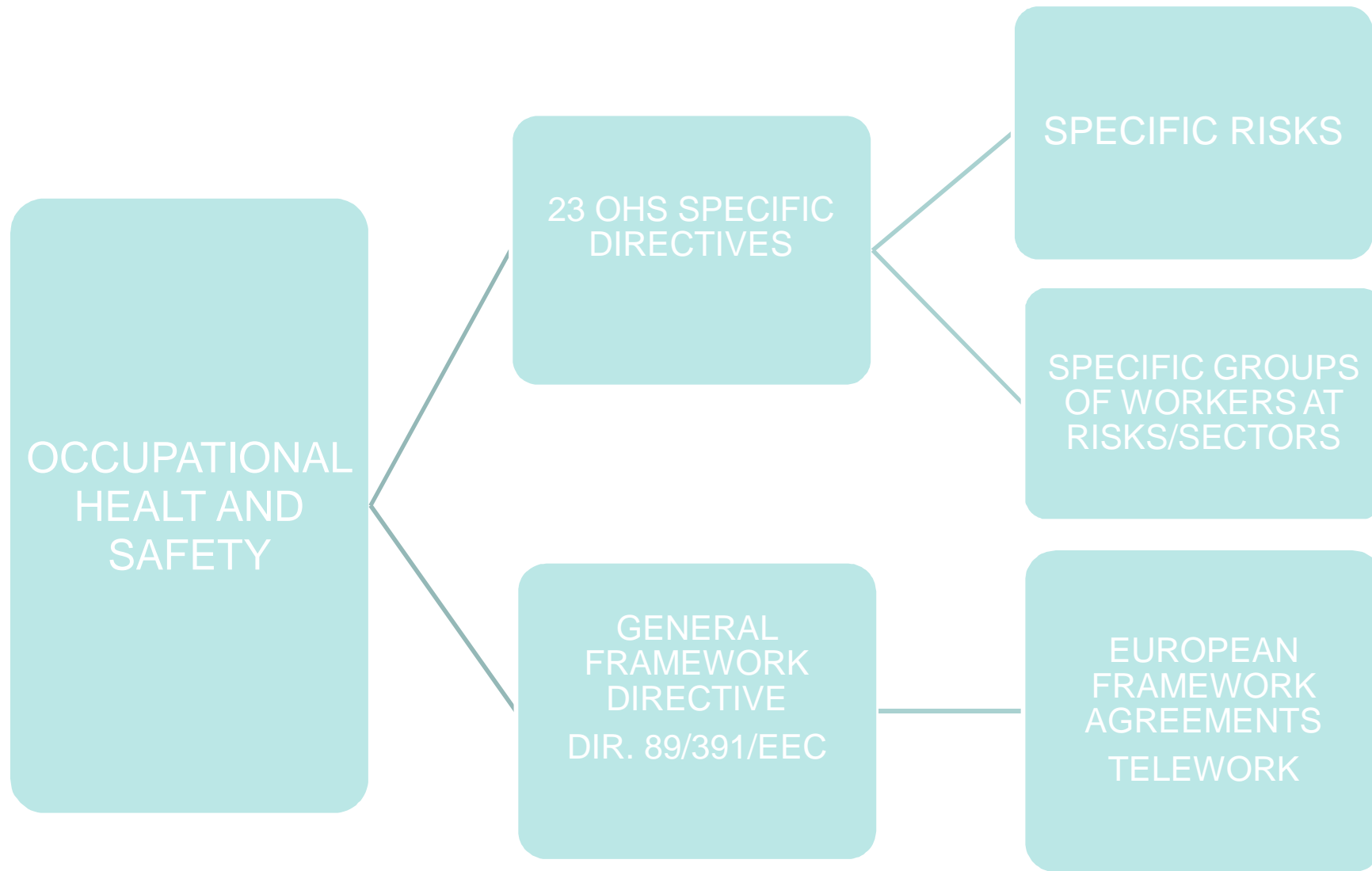
SOURCES OF INFORMATION AND CONSULTATION RIGHTS



EUROPEAN UNION LAW



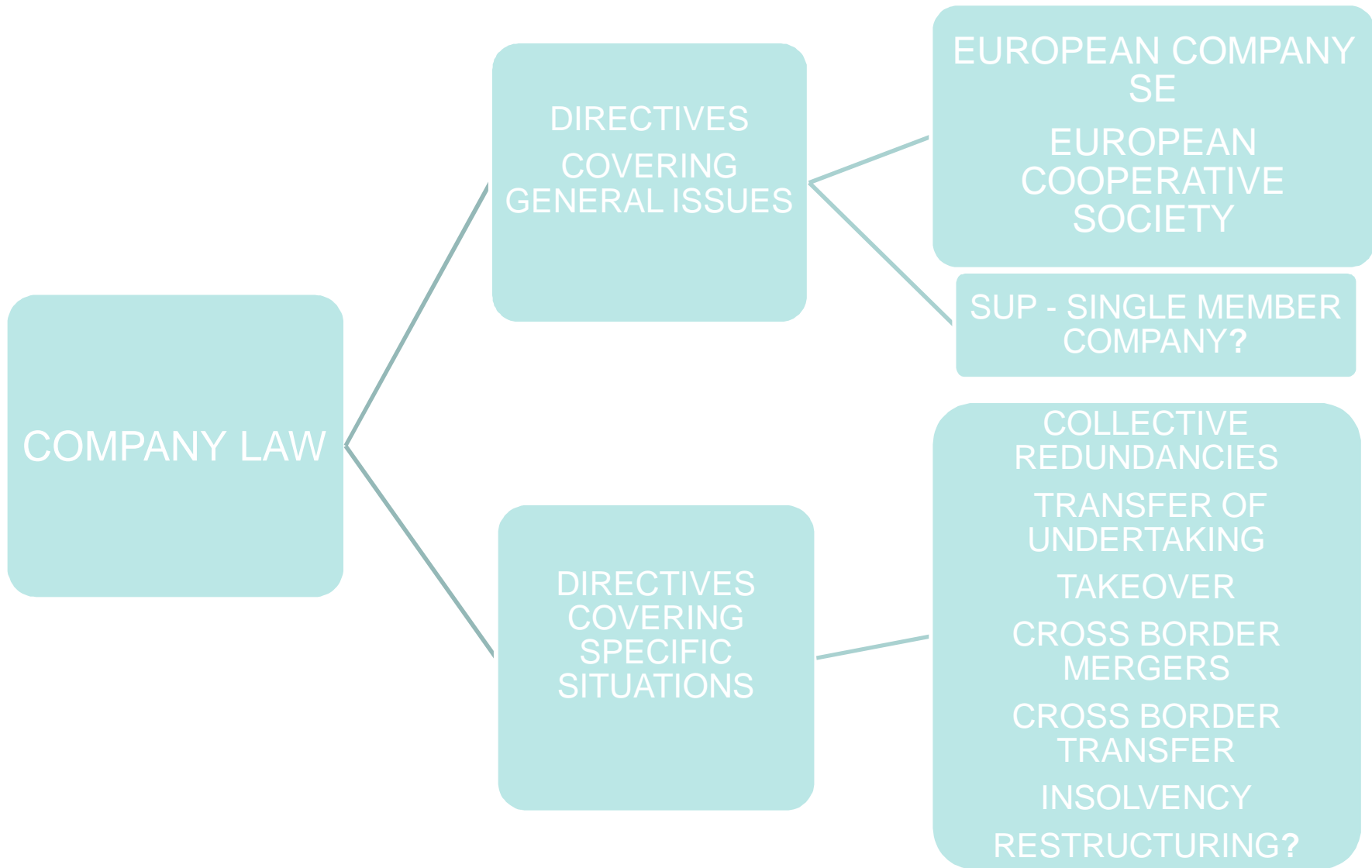
EUROPEAN UNION LAW



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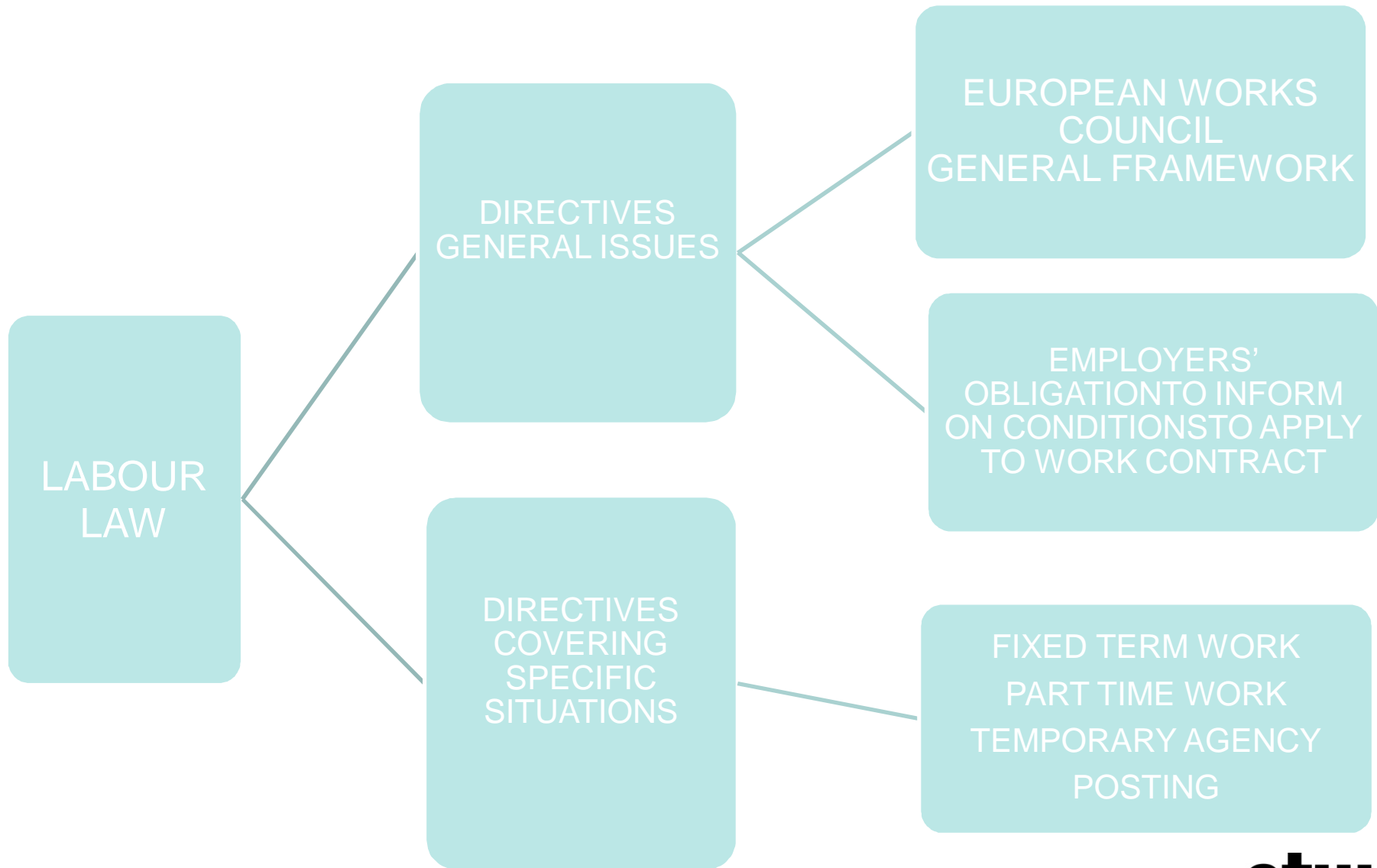
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EUROPEAN UNION LAW

HOW DO THEY INFLUENCE NATIONAL LAW AND PRACTICE?

- **TRANSPOSITION IN DOMESTIC LEGISLATION** (within 2 years after adoption)
 - **AND / OR COLLECTIVE AGREEMENT WITH *ERGA OMNES* EFFECT**
- **AS MINIMUM RIGHTS** = Member states have the possibility to maintain or provide more and better national protection. Minimum EU rules = fallback provisions/standard provisions
- **INFRINGEMENT PROCEDURE**
- **LITIGATION -> CASE LAW AS SOURCE OF INTERPRETATION OF EU LAW**

STRUCTURE

INTERNATIONAL AND EUROPEAN LEGAL SOURCES OF INFORMATION AND CONSULTATION RIGHTS

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INFORMATION AND CONSULTATION RIGHTS

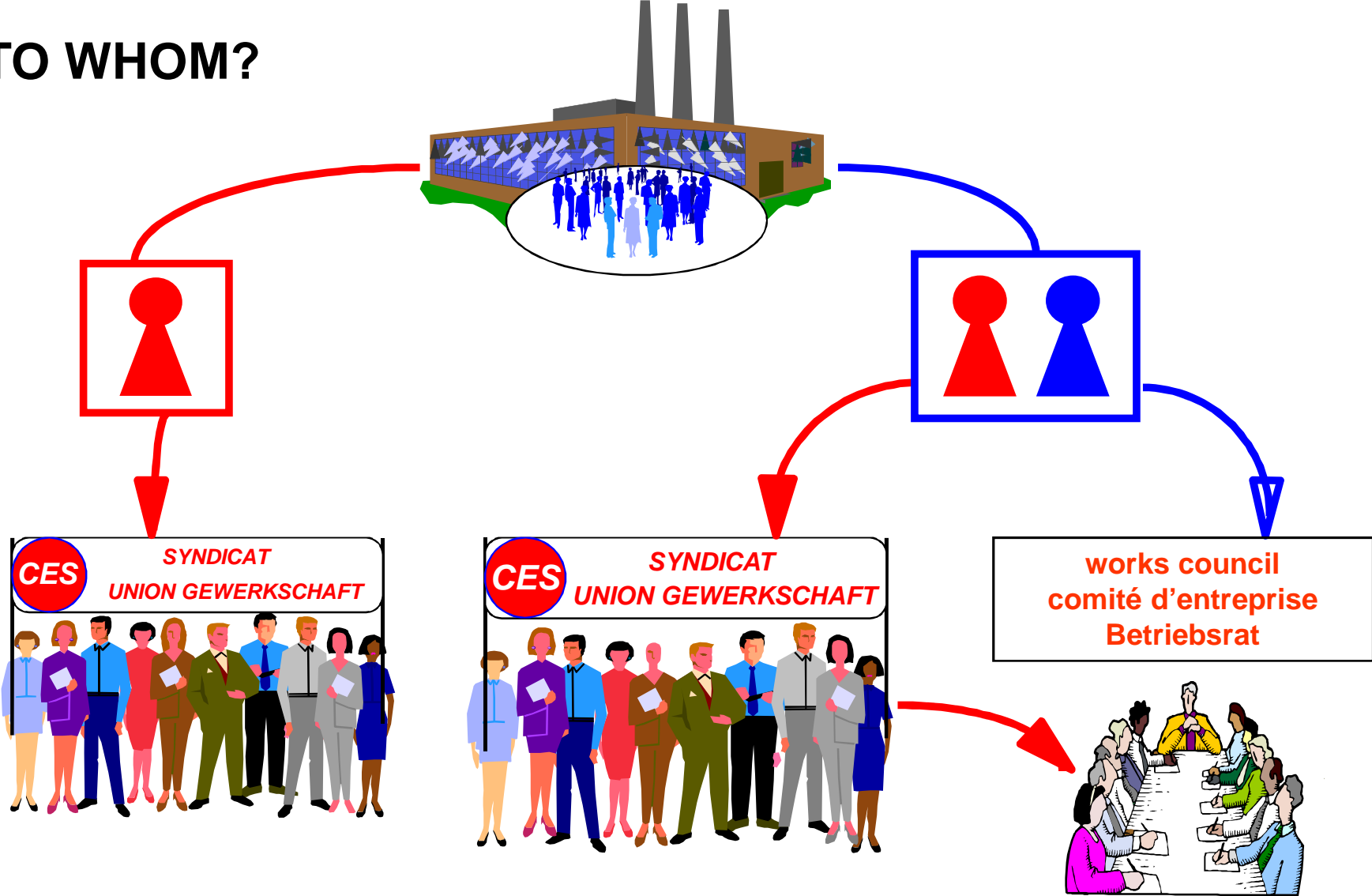
- FOR WHOM?
- WHAT KIND of information and consultation rights?
- HOW to use them?

INFORMATION AND CONSULTATION RIGHTS

- Long-standing law in continental Europe
 - Universal legal basis
 - Information and consultation are general, permanent and binding
 - Monistic model: trade union or elected representation v. dualistic model: elected and trade union representation
- Major innovation in the common law countries
 - Voluntary model
 - Minimalist legal basis stemming from Community law
 - ⇒ CJEC, C-382 and 383/92: staff representation is compulsory

INFORMATION AND CONSULTATION RIGHTS

TO WHOM?

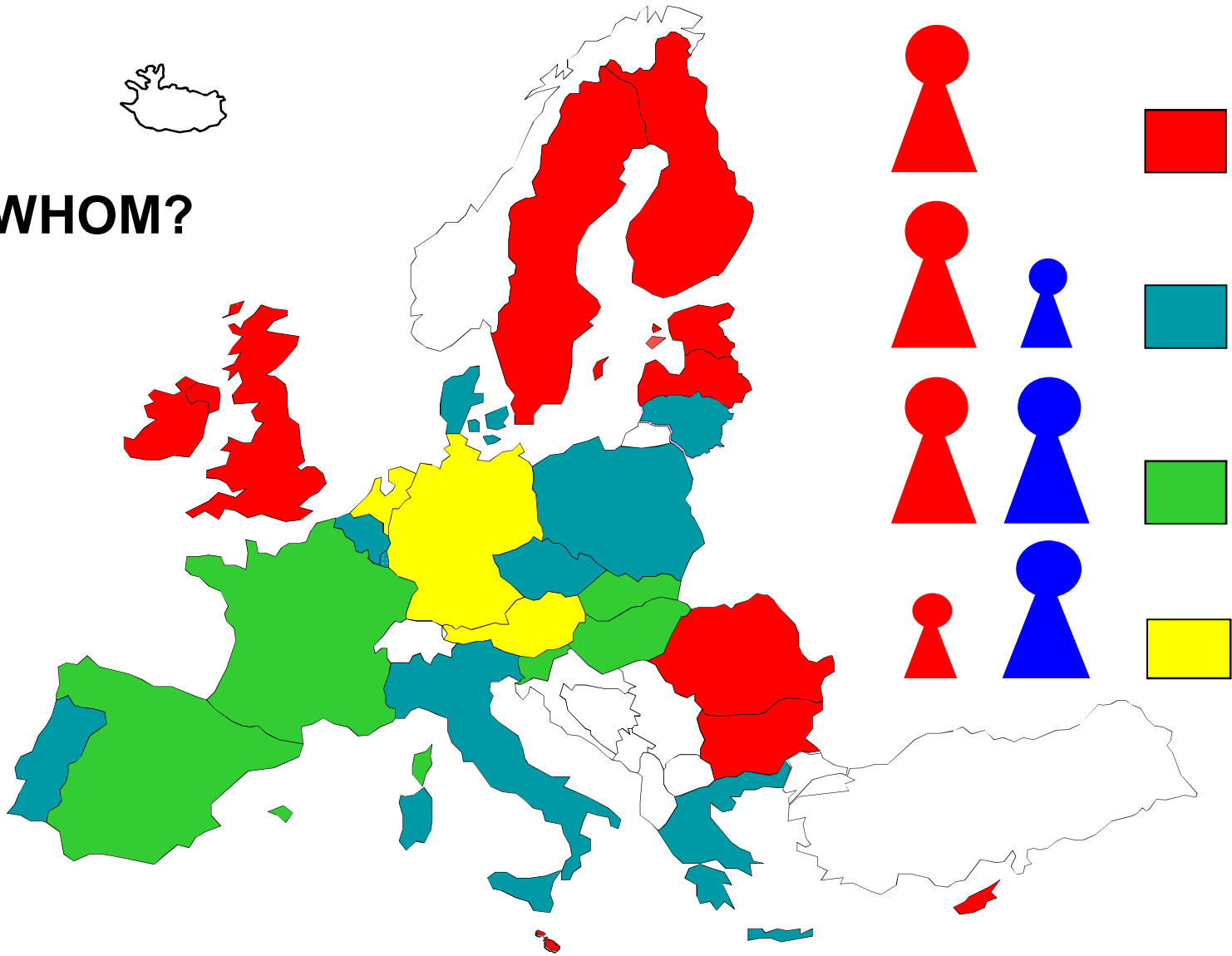


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INFORMATION AND CONSULTATION RIGHTS

TO WHOM?



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INFORMATION AND CONSULTATION RIGHTS

TO WHOM?

- **Employees' representatives'** means the employees' representatives provided for by national laws and/or practices:
 - Workers and/or their representatives
 - Workers' rep
 - Works Council, I&C committee
 - Trade unions
 - HS reps: 'any person elected, chosen or designated in accordance with national laws and/ or practices to represent workers where problems arise relating to the safety and health protection of workers at work'

INFORMATION AND CONSULTATION RIGHTS

TO WHOM?

- **Thresholds:**

- In undertakings employing at least 50 employees in any one Member State,
- Or in establishments employing at least 20 employees in any one Member State.
- Member States shall determine the method for calculating the thresholds of employees employed

- **Trigger mechanism?**

- No = employer must inform and consult
- In practice: formal request by at least 10% of workforce demonstrated by petition, agreement, etc...

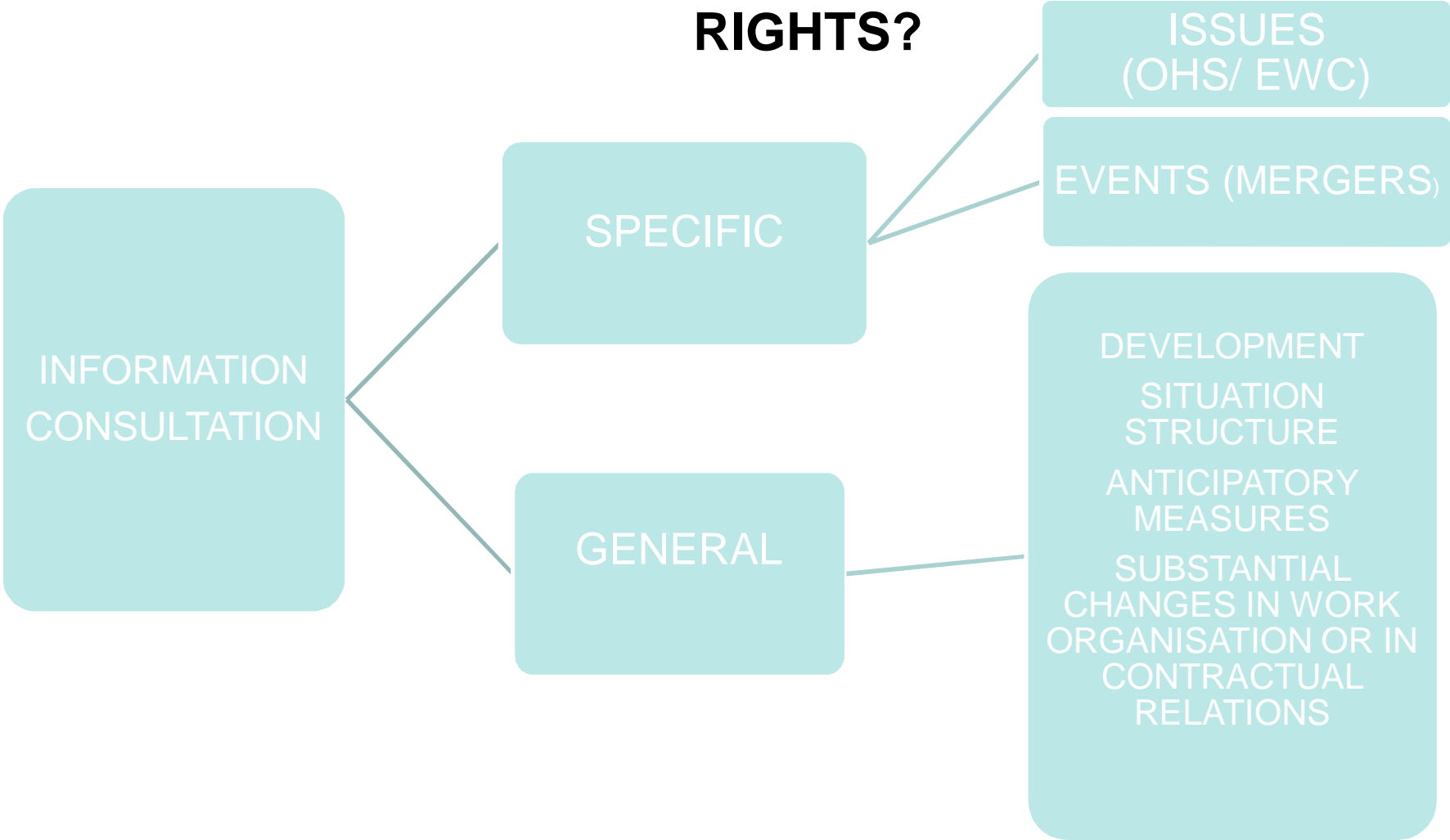
INFORMATION AND CONSULTATION RIGHTS

WHAT KIND OF INFORMATION AND CONSULTATION RIGHTS?

- INFORMATION
 - Transmission by the employer to the employees' representatives of data in order to enable them to acquaint themselves with the subject matter and to examine it;
- INFORMATION AND CONSULTATION
 - the exchange of views and establishment of dialogue between the employees' representatives and the employer
- INFORMATION AND CONSULTATION IN THE VIEW OF REACHING AN AGREEMENT

INFORMATION AND CONSULTATION RIGHTS

WHAT KIND OF INFORMATION AND CONSULTATION RIGHTS?



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- INFORMATION

I. General Rules

- (a) on **recent and probable development** of the undertaking's or the establishment's activities and economic situation;
- (b) information and consultation on the **situation, structure and probable development of employment** within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;
- (c) information and consultation on **decisions likely to lead to substantial changes in work organisation or in contractual relations,**
- **Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.**

II. Specific Rules

Collective redundancies (art. 2):

- (i) the **reasons** for the projected redundancies;
- (ii) the **number of categories of workers** to be made redundant;
- (iii) the number and categories of workers normally employed;
- (iv) the **period** over which the projected redundancies are to be effected;
- (v) the **criteria** proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefor upon the employer;
- (vi) the **method for calculating** any redundancy payments other than those arising out of national legislation and/or practice.

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CONSULTATION shall take place:

- (a) while ensuring that the **timing, method and content** thereof are appropriate;
- (b) **at the relevant level of management and representation**, depending on the subject under discussion;
- (c) **on the basis of information supplied** by the employer (...) and of the **opinion which the employees' representatives are entitled to formulate**;
- (d) in such a way as to enable employees' representatives to **meet the employer and obtain a response**, and the reasons for that response, to any opinion they might formulate;
- (e) with a view to reaching an agreement on decisions within the scope of the employer's powers.

INFORMATION AND CONSULTATION RIGHTS

WITH A VIEW TO REACHING AN AGREEMENT ON DECISIONS WITHIN THE SCOPE OF THE EMPLOYER'S POWERS on:

I. General rules

- recent and probable development
- situation, structure and probable development of employment
- on decisions likely to lead to substantial changes in work organisation or in contractual relations
- on decisions likely to lead to substantial changes in work organisation or in contractual relations

II. Specific rules

- Collective redundancies
- Transfer of undertaking
- European Works Council,

INFORMATION AND CONSULTATION RIGHTS

Transfer of undertaking:

- Transferor and transferee shall be required to inform the representatives of their respective employees affected by the transfer of:’ (Art. 7):
 - the date or proposed date of the transfer,
 - the reasons for the transfer,
 - the legal, economic and social implications of the transfer for the employees,
 - any measures envisaged in relation to the employees
- Where the transferor or the transferee envisages measures in relation to his employees, he **shall consult** the representatives of this employees in good time on such measures **with a view to reaching an agreement** (Art. 7 -3)

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Collective redundancies (Art. 2-1; 2-2):

- Where an employer is contemplating collective redundancies, he shall begin consultations with the workers' representatives in good time **with a view to reaching an agreement.**
- These consultations **shall**, at least, cover ways and means of **avoiding collective redundancies** or **reducing the number** of workers affected, and of mitigating the consequences by recourse to accompanying **social measures** aimed, inter alia, at aid for redeploying or retraining workers made redundant.

INFORMATION AND CONSULTATION RIGHTS

HOW to use them? = your input required!

- Generalisation of an effective, permanent and regular worker information and consultation procedure?
- Limits?
 - Transposition 'a minima'
 - Without as such including SMEs and micro enterprises
 - Recourse to direct representation
 - Difficult linkage/coordination between
 - the different levels of legal obligations (EU, national, sector)
 - different branches of Community law
 - depending on the situation of the undertaking, in time, in space

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http://www.worker-participation.eu/EU-Framework-for-I-C-P

The screenshot shows a web browser window with the address bar displaying "http://www.worker-participation.eu/EU-Framework-for-I-C-P". The browser's title bar reads "EU Framework for I-C-P / Home - WORKER PARTICIPATION.eu - Hacked by Godzilla". The website header features the logo "worker-participation.eu" and "etui." with the tagline "the gateway to information on worker participation issues in europe". A navigation menu includes "About WP", "National Industrial Relations", "European Works Councils", "European Company", "Company Law and CG", "EU Framework for I-C-P", and "EU Social Dialogue". The main content area is titled "EU Framework for Information, Consultation and Participation rights". It contains a list of three directives: 1. European works councils (EWC) (94/45 EC), 2. Employee involvement in the European Company (SE) (2001/86/EC) / European Cooperative Society (SCE) (2003/72/EC), and 3. European Framework directive on information and consultation (2002/14/EC). A quote on the right side reads: "The type of labour needed by European companies – skilled, mobile, committed, responsible, and capable of using technical innovations and of identifying with the objective of increasing competitiveness and quality – cannot be expected simply to obey the employers' instructions. Workers must be closely and permanently involved in decision-making at all levels of the company." The footer of the page includes the text "I.Schomann@2015 etui.org".

EU Framework for I-C-P / Home - WORKER PARTICIPATION.eu - Hacked by Godzilla

http://www.worker-participation.eu/EU-Framework-for-I-C-P

worker-participation.eu
the gateway to information on worker participation issues in europe

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About WP | National Industrial Relations | European Works Councils | European Company | Company Law and CG | **EU Framework for I-C-P** | EU Social Dialogue

Home / EU Framework for I-C-P

EU Framework for I-C-P

- Fundamental right
- Information and Consultation
- Participation
- Legal Texts
- Research & Publications

EU Framework for Information, Consultation and Participation rights

The existing Community rights of employees to be informed and consulted and to be represented on the company's organs (supervisory or administrative board) is still fragmented. Currently three major European directives form the social acquis in this regard:

- [European works councils \(EWC\)](#) (94/45 EC)
- [Employee involvement in the European Company \(SE\)](#) (2001/86/EC) / [European Cooperative Society \(SCE\)](#) (2003/72/EC)
- [European Framework directive on information and consultation](#) (2002/14/EC)

The **EWC directive** and the **SE/SCE** follow the aim to improve employee involvement rights in Community-scale companies. Whereas the EU directive on European works councils has played a pioneering role in the field of European legislation on information and consultation, the SE/SCE-directive introduced for the first time obligatory participation rights at board level. Both directives do not substitute national rights but supplement them by adding an additional transnational dimension to worker interest representation thereby reflecting the internationalisation of business.

Contrary to this, the **Framework directive** lays down a European standard of information and consultation rights in national companies. This is particularly relevant for countries (such as the UK and Ireland) where no such rules existed before. This minimum standard is complemented by specific rights in 'exceptional circumstances affecting the workers to a considerable extent': for example, collective redundancies (directive 98/59/EC) and transfers of undertakings (directive 2001/23/EC).

The existing directives are a clear expression of the willingness at European level to make employees citizens at their workplace. This is also mirrored in the EU Charter of Fundamental rights (integrated in the draft EU constitution) which gives information and consultation rights the status of a basic right of European citizens.

The European Union learns from its setbacks: exploitation of the loopholes in Community law, together with the deliberate misconceptions of national law on worker information and consultation on the part of companies such as Renault, have helped to persuade even those most reluctant to support the Community project of providing general protection for the fundamental right of workers to be informed and consulted.

European directive 2002/14/EC is the first in which the EU has extended to every Member State the obligation to provide a procedure for effective, ongoing and regular information and consultation for workers on recent and probable developments in the undertaking's activities, financial and economic situation, the evolution of employment and in particular of decisions that might lead to major changes in the organisation of labour.

"The type of labour needed by European companies – skilled, mobile, committed, responsible, and capable of using technical innovations and of identifying with the objective of increasing competitiveness and quality – cannot be expected simply to obey the employers' instructions. Workers must be closely and permanently involved in decision-making at all levels of the company."

Final report of the 'High-level expert group on workers' involvement' (Davignon group), 1997

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