

## POSSIBLE QUESTIONS

1. What is the legal value of the EUCFR and of the European Social Charter?
2. What is the European Social Pillar?
3. What is/are the main legal basis of EU Labour law?
4. What do we mean by «social dialogue»?
5. What do we mean by workers' free movement?
6. Can you briefly describe the main regulation of the posting of workers? What are its main scopes and rationale? What was the scope of the 2018 amendments? How would you describe the EU approach towards the problem of social dumping? Do you remember the main content and principles held by the EUCJ in *Laval*?
7. Can you identify the main criteria used to identify the national law applicable to an employment contract with cross border elements? (Conflict of Laws; short exercises and examples are possible.
8. What are the fundamental sources of EU Equal treatment?
9. Can you distinguish between direct and indirect discrimination? Can an employer justify a discrimination? If yes, in what circumstances? What are the discriminatory factors? What is the legal value of Article 21 EUCFR and how has it been used by the EUCJ and by national courts? In case of disability, what do we mean by "duty of reasonable accommodation"?
10. Can you describe the EU Regulation of Fixed-term work? What are the main scopes and rationale? What do we mean and how the principle of effectiveness has been used by Courts? What do we mean by "non regression clause"?
11. Can you describe the EU Regulation of Agency work? What is the structure of agency work? Does the principle of equality of treatment between agency workers and the employees of the user-undertaking exist at EU level?
12. What do we mean by Transnational or International Framework Agreements? What are the legal basis for European collective bargaining?
13. Collective bargaining and competition law: *Albany* and *Kunsten*. Problems and evolution.
14. Right to strike and Competition law: the *Viking* judgment. Legal value of Article 28 EUCFR.
15. Can you briefly explain the EU Regulation of Collective Redundancy? Is there a EU definition of Collective Redundancy? Is it possible, in case of a collective redundancy, to choose to make redundant a pregnant worker or a disabled employee according to EU law? What is the legal value of Article 16 of the EUCFR?
16. What do we mean by «transfer of undertaking»? Can an employee refuse to be transferred to the transferee? What do we mean by "continuity of employment" and "safeguarding of employees' rights"? To what extent and within what limits the transferee can be bound to observe and apply the

collective agreement that was applied to the workers before even after the transfer of undertaking (Reference to *Alemo Herron*)?

17. Information and consultation rights at domestic level: Directive 2002/14 (Reference to AMS will be appreciated)

18. Information and consultation rights at transnational level: EWC and SE. What is a EWC? Do you remember the different mechanisms that can be used to establish a EWC? What do we mean by "Central Management"? What is the Principle Before/After in the case of SE?

19. Due diligence and Human Rights in Global Supply Chains (only a general understanding of the problem in the light of the class discussion)

1. What is the legal value of the EUCFR and of the European Social Charter?

The Charter of Fundamental Rights was approved in 1999-2000 and it was meant to be the constitution of the European Union, but the project failed because of negative referendum in France/Netherlands.

Then, Art 6 of the Lisbon Treaty held that the Charter has the same legal value of the Treaty: "The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties."

The Charter, as the Treaty, creates a new legal order with rights and obligations directly applicable upon the individuals. The idea is that Union law is a separate legal order that prevails over the national legal order according to the principle of EU law supremacy.

More specifically, Member States are bound by the Charter when it deals with the National legislation that falls within the field of application of EU law. In other words, Member States are bound by the Charter when they are implementing EU law.

On the other hand, the European Social Charter concerns the social side of the European Convention of Human Rights adopted by The Council of Europe: it contains a very important, detailed and complex list of socio-economic rights, including right to minimum wage, right to protection against unfair dismissal with the provision concerning the need for equitable relief in case of unfair dismissal, right to decent wage, right to association, right to strike, right to collective bargaining, etc...etc...

As opposed to the Treaty and the Charter, the European Social Charter is an international act binding for those states who have ratified it. Legal value in Italy is found in Art 117 of the Italian Constitution, according to which Italy accepts and respects the international constraints. As a result, if a national judge finds that a national law is inconsistent with the ESC, the national judge might refer the question to the Italian Constitutional Court.

## 2. What is the European Social Pillar?

The 2017 New Social Pillar was strongly wanted by former president of EU Commission Juncker.

It has the appearance of a new Charter containing a list of fundamental social rights, but it does not have such legal status: it's rather a mere "working program":

§ 17 of the Preamble: "Delivering on the European Pillar of Social Rights is a shared political commitment and responsibility"

§ 18: "At Union level, the European Pillar of Social Rights does not entail an extension of the Union's powers and tasks as conferred by the Treaties. It should be implemented within the limits of those powers"

According to the words used in the New Social Pillar it does not seem to be a new legal basis on the ground of which it could be possible to adopt new social rules, but one of the challenges is to make it happen (challenge launched by EU Trade Unions Confederation)

Chapter 1 concerns Equal opportunities, 2<sup>nd</sup> Chapter Fair working conditions and the third Social inclusion

Even if the legal value remains far from clear, in recent social directives the Social Pillar is mentioned in the preamble as one of the legal bases. This is very important because it

shows that EU Institutions, despite the wording used in the Social Pillar, are mainly turned to consider it a sort of source of law and tend to grant to the Social Pillar a minimum binding and legal value.

### 3. What is/are the main legal basis of EU Labour law?

In 1957 EU started to elaborate a law structure but there was no labor law.

First laws concerning labor were elaborated in the 70s and it's possible to mention the 1974 Social Action Programme that has the following objectives: full and better employment, improvement of living and working conditions, increased involvement of management and labor in the economic and social decisions of the Community. The legal basis in achieving these objectives is the Treaty of Rome and the primarily objective remains the common market. Then in 1986 is adopted the Single European Act. In 1989 Eu charter of fundamental rights of the workers is implemented. In 1991 is important the Agreement on Social Policies, which will be later named EU Social Charter. It's the legal basis that made it possible for several directives in the labor law field to be adopted: through this agreement several directives were implemented such as the ones concerning parental leave, part-time work or EWC. Labor law continues to be implemented in decade 2000-2010 and is followed the European Employment Strategy that is an ambitious project aimed at developing a coordinated European approach in the field of economic, employment, social policy

It's based on the OMC and it provides guidelines that MS decide how to implement. The objectives pursued by the strategy are mainly four: employability (reinforcement of the employability of workers by education and training), entrepreneurship (stimulation of entrepreneurship through the removal of administrative barriers and burdens), adaptability (increasing the adaptability of workers and companies to changing economic circumstances), equal opportunities (promotion of equal opportunities for disadvantaged groups in the labor market).

In 2006 is adopted the Green Paper, which is focused on: flexible labor contracts, lifelong learning strategies, active labor market policies, modern social security systems.

After 2010, because of the crisis, there is an increasing in hard law guidelines.

2017 New social pillar contains a list of fundamental social rights that reinforce main points of labor law.

Recently there are two huge events that affect EU labor point of view: Brexit that improves competitiveness and try to avoid social dumping and nowadays Coronavirus that caused new view for the workers framework

### 4. What do we mean by «social dialogue»?

Social dialogue is the dialogue between European social parties and European Union institutions, it's a sort of social collective bargaining at transnational level.

It was introduced in the 1980s, when the involvement of the social partners in the EU level was addressed by the former president of the EU Commission Jacques Delors

Then the role of social parties was consolidated in the Single European Act

Legal basis of Social Dialogue is found in Art 154-155 TFEU: these articles of the Treaty encourage social

dialogue and negotiation as one of the fundamental tool by which introducing EU regulation and directives: social partners can formulate binding regulation/ raise question as to condition under which they can influence the EU law policy making. It's on the basis of this legal path In 1997 and 1999 the European Social Partners start dealing with proposals on Part-Time Work and Fixed-Term contracts: they concluded 2 cross-industry agreements on part-time and on fixed-term work, the 1<sup>st</sup> signed in 1997 was then implemented through directive 1997/81, while the 2<sup>nd</sup> signed on March 1999 was then implement through the directive 1999/70 (fixed-term work directive). Agency work directive was successive (2008).

Art 154-155 TFEU provides different types of social dialogue: the first consists in an agreement between social partners based on TFEU and initiated by the Commission, negotiation on agreement that will be transposed into law (directive). The 2<sup>nd</sup> concerns an agreement initiated and concluded without the interference of the Commission. The third is only a mere consultation of social partners by the Commission that has the aim to reduce future litigations.

## 5. What do we mean by workers' free movement?

Free movement of workers is at the core of EU. It's one of the fundamental economic freedoms through which the EU integration and EU labor market have been established. The EU Sources of Freedom of Movement of Workers at EU level are in the Treaty for the functioning of European Union Art 45-48 and in the European Union Charter of Fundamental Rights Art 45 Freedom of movement and residence Art 15.2 Right to move freely in order to seek employment and Art 21 Prohibition of discrimination. There is also a list of EU directives that are turned to facilitate the exercise of free movement of workers highlighting both economic and social dimension of this freedom: Directive 2014/54/EU On measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, Regulation 492/2011 on Freedom of Movement of Workers within the EU, Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community. Free movements of worker is used to open up the EU labor market, providing transnational firms with transnational workforce. In order for free movement to be effective it must be accompanied by social rights and rights of family members, for this reason free movement is a matter that combines both economic and social dimensions. Free Movement limit is that in time of crisis one risk is the excessive numbers of migrant workers from low-wage countries which undercut internal competition (due to excessive economic and financial burdens on National social security systems). For example, after the Eastern enlargement in 2004 and 2007 the number of posted workers from acceding Member States to the old Member States has grown considerably. Free Movement has different contents: Right to accept offers of employment, Right to seek employment, Right to move freely in the territory of the MS for this scope (seek employment), Right to stay in the MS for the purpose of employment 'in accordance with the provisions governing the employment of nationals of that State', Right to remain in the territory of the MS even after having been employed in that State, 'subject to conditions that shall be embodied in regulations to be drawn up by the Commission', Right to entry, Right to exit, Right to residence, Right for family members is an important component of free movement right that concerns family members who are not economically active or are TCN (Third Countries Nationals). This might turn out to be in conflict with: social security national budgets; immigration policies and restrictions. Broadly speaking MS are required to 'facilitate' entry and residence of family members (spouse, registered partner, children under the age of 21, dependent parents and grandparents) (Articles 2-3 Dir. 2004/38/EC). Right to residence is another essential component of free movement, it also applies to job seekers and family members. Free movement at the beginning was linked to the fact of 'being economically active': in this perspective EU struck a balance between free movement and the financial budget limits of MS. Later EU approach turned to be more focused on Free Movement link with EU Citizenship rather than with the requirement to be economically active.

6. Can you briefly describe the main regulation of the posting of workers? What are its main scopes and rationale? What was the scope of the 2018 amendments? How would you describe the EU approach towards the problem of social dumping? Do you remember the main content and principles held by the EUCJ in *Laval*?

Posting of workers is an economic activity in which an undertaking located in a country A sends the employee to work temporarily in country B in the interest of another undertaking, because of the existence of commercial links existing between the two undertakings.

At the beginning regulation of Posting of workers was based on Regulation Rome I Art 8, according to which if the posting did not exceed 24 months the home country law would have been applied to the posted workers temporarily sent to work in the host country: this rule caused problem of regulatory competition and social dumping. For this reason, a Directive was implemented in 1996: according to Art 3 of the Directive posted workers are guaranteed employment terms and condition set forth by host country national law and collective agreements (declared universally applicable). It caused many problems in countries like Italy in which collective agreements are not declared universally applicable: social dumping problems had not been resolved. For this reason, in 2018 directive has been amended: it allows application of generally applicable agreements concluded by the most representative organizations and not only in the absence of but also in addition to universally applicable ones. Also, if the posting exceeds 12 months all the legal provisions existing in the host Member State shall apply. This latter rule could have been circumvented calling back the posted workers and replacing them with other posted workers before reaching 12 months of posting: 2018 amendment stated that additional set of terms and conditions of employment also cover workers who are posted to replace other posted workers performing the same task at the same place, to ensure that such replacements are not used to circumvent the otherwise applicable rules.

In *Laval* basically ECJ held that Art 3 sets, with regard to working terms and conditions guaranteed to the posted workers by the host state, a maximum and not a minimum of conditions: host country cannot go beyond this maximum, otherwise it would be inconsistent with freedom to provide services and it would discourage foreign investors, for this reason Swedish Unions that wanted the undertaking to go beyond this maximum are not consistent with the aim of the Directive.

In the ECJ judgements is also underlined how in the conflict between collective rights and economic freedom the strike is balanced in favor of the individual right one, right to provide services: collective action is considered to be an obstacle to this fundamental freedom.

7.

8. What are the fundamental sources of EU Equal treatment?

The main sources are contained in the Charter Art 21 and in the Treaty Art 19 and Art 157.

There are also different Directives that have to be distinguished according to their born period.

First Wave of Directives concerns discrimination on the grounds of sex and equal pay between men and women: Directive 75/117 and Directive 76/207 .

Second Wave of Directives (so-called "Second Generation") that enlarges the possible grounds of discrimination to race, religion, disability, ethnical origin and so on and contains the definition of moral and sexual harassment: Directive 2000/78, Directive 2002/73, Directive 2006/54.

**9. Can you distinguish between direct and indirect discrimination? Can an employer justify a discrimination? If yes, in what circumstances? What are the discriminatory factors? What is the legal value of Article 21 EUCFR and how has it been used by the EUCJ and by national courts? In case of disability, what do we mean by "duty of reasonable accommodation"?**

A direct discrimination occurs specifically when there is a causal link between the applied less favorable treatment and the protected characteristic (sex, ethnic origin and so on) of the individual, while a indirect discrimination occurs when an apparently provision/practice/rules that apply in the same way to all persons, creates disadvantage for particular group of persons in possession of protected characteristics.

In the case of direct discrimination, the justification is constituted by genuine occupational requirement, according to which protected characteristic could be regarded as an essential condition of the job. On the other hand, indirect discrimination is justified if the employer provides first of all that the apparently neutral rule that caused discrimination is necessary and notably pursues a legitimate objective, and then that the means used to achieve that legitimate objective are appropriate and necessary.

The legal value of EUCFR Art 21, principle of non-discrimination, is well addressed in Mangold and Kukukdeveci cases. In Mangold is held that the fact that there is a link between Directive 2000/78 and EUCFR Art 21 enables to overcome the vertical effect of the Directive: it's possible for the Directive 2000/78 to be invoked by a private citizen against another private citizen even though it has not been implemented yet by the State, this is because of the relevance of EUCFR Art 21 according to EU Institutions.

In Kukukdeveci ECJ goes even further providing decentralization in judicial system: whenever in front of a national court is taken the question on the compatibility between a national law with Directive 2000/78 (that is linked to EUCFR Art 21), if national court thinks that the national law is incompatible with anti-discriminatory directives, the solution is not (as it usually happened) referring the question to the National Constitutional court or to the ECJ: solution is that national court is authorized immediately to decline the application of the national law.

These cases underline the importance of EUCFR Art 21 that provides a core right of the EU law and show how Directive 2000/78 is characterized by a particular link to that fundamental right.

With “duty of reasonable accommodation” are meant the measures taken by the employer to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training. In other words, the duty of the employer to enable a person with disability to work in a condition of the equality of others, in all different stages of the employment relationship, from recruiting to promotion.

The limit is that these measures cannot impose to the employer an excessive and disproportionate economic burden and the breach of this duty leads to the classification of the employer acts in terms of direct discrimination.

### **10. Can you describe the EU Regulation of Fixed-term work? What are the main scopes and rationale? What do we mean and how the principle of effectiveness has been used by Courts? What do we mean by “non regression clause”?**

EU regulation on fixed-term work is the result of social dialogue and negotiation between social parties in accordance with the procedure laid down by TFUE Art 154-155, the agreement is transposed in Directive 1999/70 and its fundamental principles are mainly two: first of all there has to be equal treatment and no discrimination between part-time workers/workers with a fixed term contract and full-time workers/workers with a permanent employment contract, then the other aim of the directive is to prevent the abuse that derives from the use of successive fixed term employment contracts: with respect to this second objective it's underlined how fixed term employment contracts are regarded as an exception to the permanent employment contract, which remains the general rule for employment relationship and which is one of the major element in protection of workers.

The focus is on the successive use of fixed-term employment contract while the single/first fixed-term contract is not regarded as abuse.

The possible alternatives measures that have to be introduced in order to prevent the abuse from a successive use of fixed-term employment contracts can be found in Clause 5 of the Directive, then is up to each Member State to decide which to adopt, what matters is that the measure or measures implemented by the state result to be effective in preventing such abuse. The measures can be both quantitative (maximum of total duration and maximum number of possible renewals) and qualitative (objective reason).

The principle of effectiveness in Fixed-term work is characterized by three different dimension: at first has to be effective the protection against abuses deriving from the use of successive contracts, then the remedies/sanctions introduced by the different legislations of the Member States have to be effective, proportionate and dissuasive and, last, workers have the right for an effective judicial protection, that makes it possible for them to enjoy an effective and simple access to justice. A case law concerning the effectiveness of the measures introduced by the State in order to prevent abuses deriving from the use of successive fixed-term contracts is Adeneler: in that case is underlined the importance of the scrutiny of the ECJ in order to ascertain that those measure are effectively capable to achieve the prevention of abuses (in that case Greek provisions were

not capable to achieve such objective). In Angelidaki case is addressed the question about the remedies implemented by the Member States: in that case ECJ underlines that Member States are not bound to introduce the conversion of the fixed-term contract into a permanent contract as sanction: what matters is that remedies and sanctions are effective, an economic sanction could achieve that objective. Procedural judicial rules effectiveness is addressed in Martinez-Andres case: the ECJ states that Member States provisions must preclude procedural disadvantages for workers in terms of cost, duration and rules of representation, that would render difficult the exercise of workers' rights.

"Non-regression clause" states that the implementation of the Directive does not constitute a valid ground for reducing the general level of protection of the worker.

According to the opinion of the AG Tizzano delivered with regard to Mangold case, this clause has to be considered more as a "transparency clause": Member States have to remain free in lowering the protection of workers in fields regulated by EU law (Directive in this case): what matters is that the reduction is due to significant economic circumstances and that the implementation of the Directive is not an excuse to reduce workers' level of protection in the area of the Directive. This clause is not referred only to the Directive but also to its future amendments.

### **11. Can you describe the EU Regulation of Agency work? What is the structure of agency work? Does the principle of equality of treatment between agency workers and the employees of the user-undertaking exist at EU level?**

Agency work is regulated by Directive 2008/104 that had the aim to find a compromise between different legal traditions of the Member States, that could consider agency work a type of employment relationship well-accepted on the one hand (yes-unless countries), or not accepted and admitted only in determined circumstances, on the other hand (no-but countries). Agency work structure is characterized by a triangular relationship: at first there is a commercial link between an agency and a "user" firm, then there is a worker that is formally hired by the agency but is sent by the latter to work under the control and in the interest of the "user" firm for a certain period of time. Last there is the "user" firm that is the employer *de facto* of the agency worker during the period in which this worker is assigned to the "user" undertaking. Directive on agency work approach seems to be the opposite to the approach of EU Directive that regulated fixed-term work: in case of agency work prohibitions and restrictions to this kind of employment relationship introduced by the Member States have to be justified (while fixed-term work was considered to be an exception to the general rule that provided for permanent employment contracts).

The main scopes of the directive are mainly two. First of all equality of treatment between agency workers and full-time permanent employees. Equality of treatment was not applied in all the Member States with respect to agency work, for this reason equality of treatment provides for specific derogation by each Member State (German derogation, British derogation and so on). The second aim concerns the limits introduced by Member States surrounding Agency work: those limits cannot be incompatible with fundamental freedom to provide services, mainly for what concerns cross-border situations. Also a minimum protection against abuses is provided: agency work is based on the concept of "temporary", a national law authorizing a number of the agency worker to the same user

undertaking with no limits could be considered as circumventing the provision of the Directive that holds that Agency work is temporary.

## 12. What do we mean by Transnational or International Framework Agreements? What are the legal basis for European collective bargaining?

Transnational Framework agreements are the result of companies' internationalization and concern transnational bargaining at company level. It's necessary to distinguish in International/Global framework agreements and European framework agreements. IFA/GFA are the result of relationship between multinational enterprises and Global Union Federation, their aim is to set a standard that has to be guaranteed in every country in which the multinational undertaking operates, with the focus on both the fight to social dumping and on the increase of social responsibility. EFA are usually with the aim to establish the European Work Council or these agreements concerns social features such as parental leave or inclusive labor market and often it happened that they were transposed into EU Directives according to the procedure set forth by TFUE Art 154-155. Legal basis for European collective bargaining are found in Art 11 EU Convention on Human Rights and Art 28 EUCFR and mainly provide for right to organize, to strike, to join and not to join a Union. Another legal basis is found in Art 27 of the EUCFR that provides Information and Consultation right that has also been implemented by 2002/14 Directive.

## 13. Collective bargaining and competition law: *Albany* and *Kunsten*. Problems and evolution.

Competition law concerns the safeguard of market competition by regulating anti-competitive conduct by different actors operating in the market. When collective bargaining falls within the field of application of competition law is usually subject to an exemption: this is due to the fact that collective bargaining pursues an important social function that has the aim to avoid the risk for workers to be exploited by employers' bargaining power.

The fact that collective bargaining has to be taken outside the scope of competition law is well addressed in *Albany* case, in which the ECJ had to strike a balance between Collective bargaining and competition law set by TFUE Art 85 (now TFUE Art 101.1): in this case ECJ basically stated that social policy objectives would be undermined if competition law would be applied to collective bargaining, for this reason collective agreements should be regarded as falling outside the scope of competition law because of their nature and their purpose.

In *Kunsten*, unlike *Albany*, collective agreements exception from the scope of competition law did not occur because in that case the agreement concerned also self-employed workers: exclusion from competition law is accepted only if negotiation of the agreement is concluded in the name of ordinary employees and not self-employed workers. There would be an exception in the case in which the self-employed workers have to be considered "false" self-employed workers, that are not genuine self-employed and that are used as ordinary employees by the employer.

#### 14. Right to strike and Competition law: the Viking judgment. Legal value of Article 28 EUCFR.

- UK, Germany → right to strike is not an human right(/constitutional right in Germany) because strike is a tool in the hand of labor organizations, not an individual right → collective and economic right used by organizations to fight capitalism and economic organizations. This also influences the regulation of the right to strike
- France, Italy, Spain → right to strike provided by constitution is understood as individual human right → a strike could be called at any moment by a group of individuals. it's not even needed that is a Union/ labor organization to call a strike → procedures have not to be followed

#### 15. Can you briefly explain the EU Regulation of Collective Redundancy? Is there a EU definition of Collective Redundancy? Is it possible, in case of a collective redundancy, to choose to make redundant a pregnant worker or a disabled employee according to EU law? What is the legal value of Article 16 of the EUCFR?

16. What do we mean by «transfer of undertaking»? Can an employee refuse to be transferred to the transferee? What do we mean by “continuity of employment” and “safeguarding of employees’ rights”? To what extent and within what limits the transferee can be bound to observe and apply the collective agreement that was applied to the workers before even after the transfer of undertaking (Reference to Alemo Herron)?

#### 17. Information and consultation rights at domestic level: Directive 2002/14 (Reference to AMS will be appreciated)

Workers and their representatives have Information and consultation rights with regard to important decision-making processes of the undertaking. The legal basis for this procedure is contained in the Art 27 of European Charter of Fundamental and the information and consultation rights have been also transposed into a directive: Directive 2002/14 about information and consultation rights of workers at national level. This Directive provides a minimum of harmonization in the framework for information and consultation rights of workers in business undertakings with more than 50 employees.

Article 27 EUCFR must be considered as a right or principle? The answer is provided in the case law, specifically in Association de Médiation Sociale Case. In Association de Médiation Sociale the ECJ holds that information and consultation right (Article 27 of the Charter) is a principle and not a right.

Therefore, unlike in Mangold Article 21, it cannot be invoked in private disputes as to confer a “higher values” to EU Directives (Directive 2002/14 in this case) and to allow National judges to decline the application of national provisions incompatible with them. Incompatibility between national legislation and EU law allows the private party only to seek economic compensation for the loss sustained because of the breach of the Member State of the duty to implement EU Directives: Mangold and Kukuckdeveci reasoning is not

applied to information and consultation rights, the ECJ has denied the possibility to invoke Directive 2002/14 in a private dispute in order to ask for the disapplication of a national law considered to be incompatible with this directive

This judgement shows clearly that ECJ has many difficulties in considering collective rights in terms of rights: the ECJ rather tends to consider trade unions (collective) rights in terms of general principles rather than in terms of directly enforceable rights. For this reason Association de Médiation Sociale case is usually mentioned in order to underline the different consideration that ECJ has between individual rights (like the right to not to be discriminated that is the basis of Mangold and Kükükdeveci reasoning) and collective rights considered mere principles rather than rights.

**18. Information and consultation rights at transnational level: EWC and SE. What is a EWC? Do you remember the different mechanisms that can be used to establish a EWC? What do we mean by "Central Management"? What is the Principle Before/After in the case of SE?**

**19. Due diligence and Human Rights in Global Supply Chains (only a general understanding of the problem in the light of the class discussion)**