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The legal, regulatory and conventional framework of paritarian social funds

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Overview

- Social funds are based on negotiation and thus respect
- Where ?
- Why ?
- Two main forms of organising social funds
- Elements
- What is the effect of social funds ?
- Limitations of social funds
- Regulations of social funds



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Social funds are based on negotiation and thus respect





Negotiation

- Respect
 - equality of power
 - higher legal force if the social partners agree
- Relation of 1 on 1
- In M-S with social funds
 - the government respects the relation 1 on 1
 - the role of the government is one of “public notary”
- **Negotiation =**
 - cost for the employer**
 - +**
 - income for the employee**
- Social funds are a means of streamlining the negotiations



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Where ?





Where

- Several theoretical possibilities
 - Nationwide
 - Multi-sectoral
 - Sectoral
 - Multi-employer
 - Employer



advantages
disadvantages



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Why ?





Why ?

- cohesion
- the need of a common policy
- deal with specificities of the sector that are not dealt with on a national level
 - Social elements such as e.g. bad weather: less important for certain sectors; so it is easier to solve on a sectoral based social fund
 - Competition elements within the sector
 - The “fraude sensitivity” of certain sectors



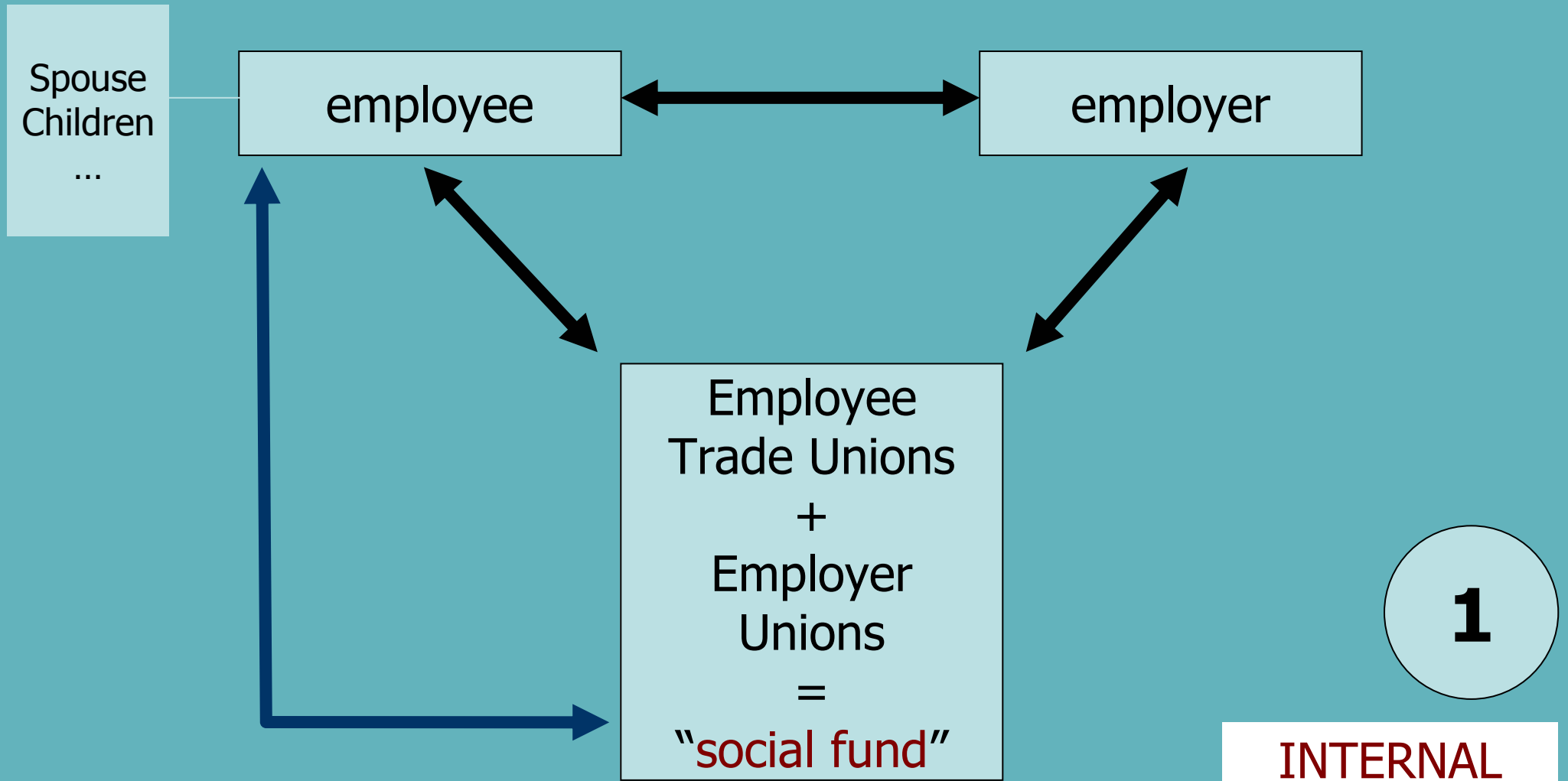
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Two main forms of organizing social funds



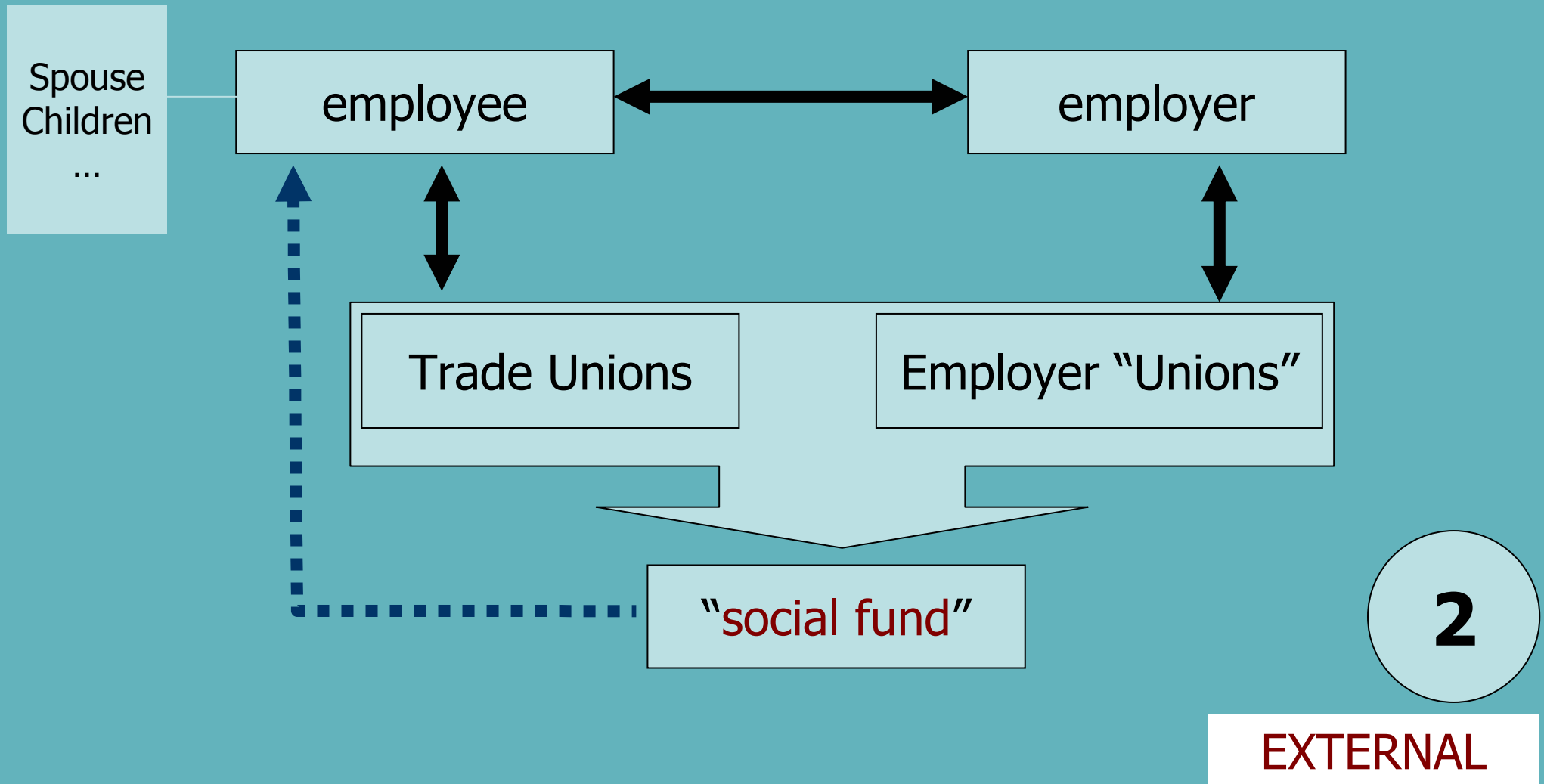


To a collective level: mainly two ways



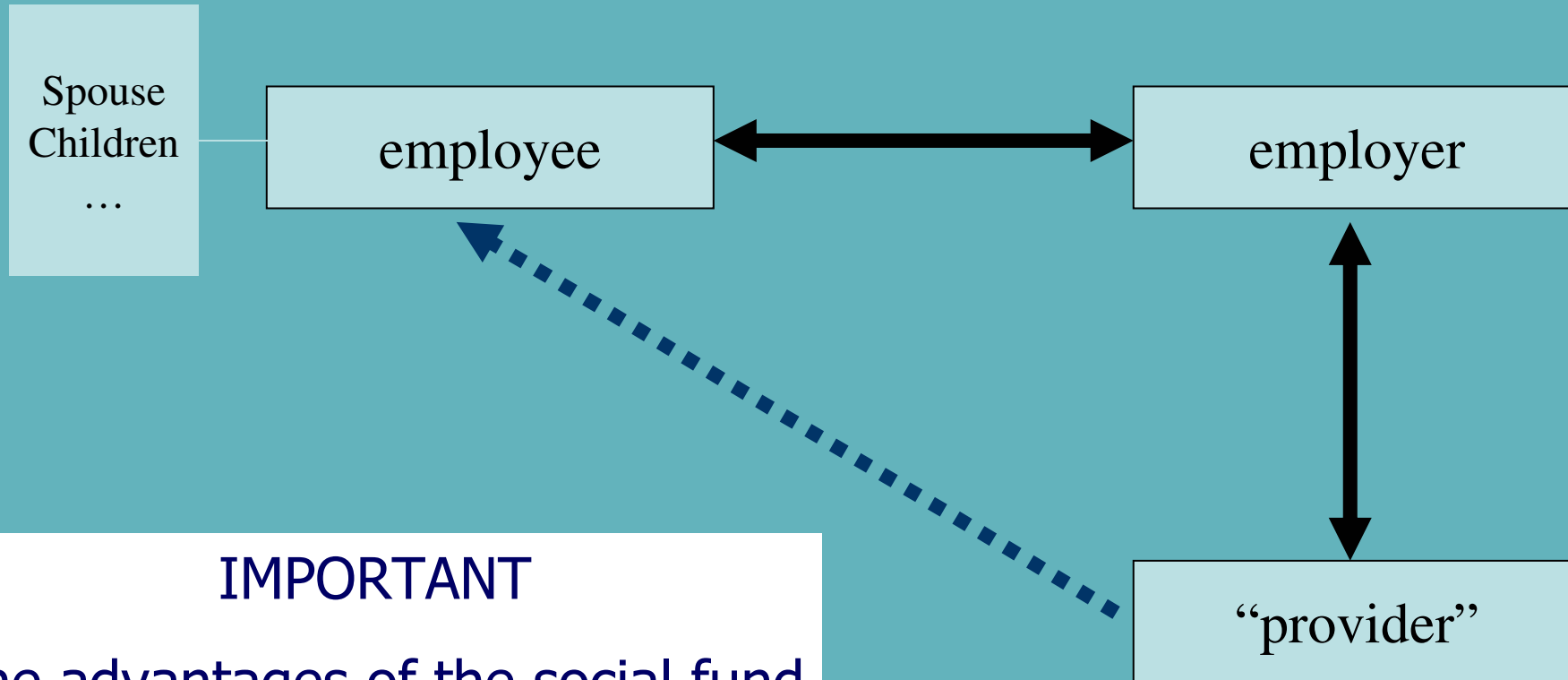


To a collective level: mainly two ways





The individual employee



IMPORTANT

The advantages of the social fund are in most MS considered to be an integral part of the individual labour contract



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Elements





Elements

- Often firstly based on wage elements that should be paid by individual employers
e.g. remuneration for public holidays
- All kinds of benefits: wages for bad weather, public holidays, holidays, additional unemployment, vocational training, pensions, hospitalisation, ...
- Mainly payments as a percentage of the total wage mass within the sector



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What's the effect of social funds ?





Effects

- Social responsibility through financial solidarity
- Financial streams managed in a paritarian way changes the nature of the negotiation because there is always a required common policy on the streams
- Compulsion leads to solidarity
- Changes the social structure of a sector
- Leads to long term stability
- No antagonism on all points but requirement of a common policy on at least one point
- Enhances the common belief in a democratic ratification process



Effects

- Social funds
 - Allow social partners to respond to changes in
 - The production situation of the workforce
 - Companies requiring more flexibility and offer alternatives in the classical wage bargaining
 - Without altering the essence of collective bargaining



Effects

Advantages

- Less standardized pay form
- More efficiency
- Better equality of power
- Enhanced legal force
- Impasse resolution
- Open communication
- Mutual understanding
- Common definition of policy
- Sectoral self-determination
- Institutional loyalty
- Increased executive authority
- No unbalanced information streams and hence no dependency

Disadvantages

- Increased costs for
 - The negotiation
 - The implementation of the fund
 - The administrative cost of the fund (quite small however)
- Increased bureaucracy
- Unfavorable power shifts
- Standardized pay
- Funding problems
- Loss of some diversity in the sector
- Possibilities of fraud if not sufficiently transparent



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Limitations of social funds





Limitations

- Restricted goal : not just any social purpose
- MS restrict activities to certain elements
- Legal constraints inherent to the activity
 - Pension
 - Death
 - Sickness



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Regulations of social funds





Regulations

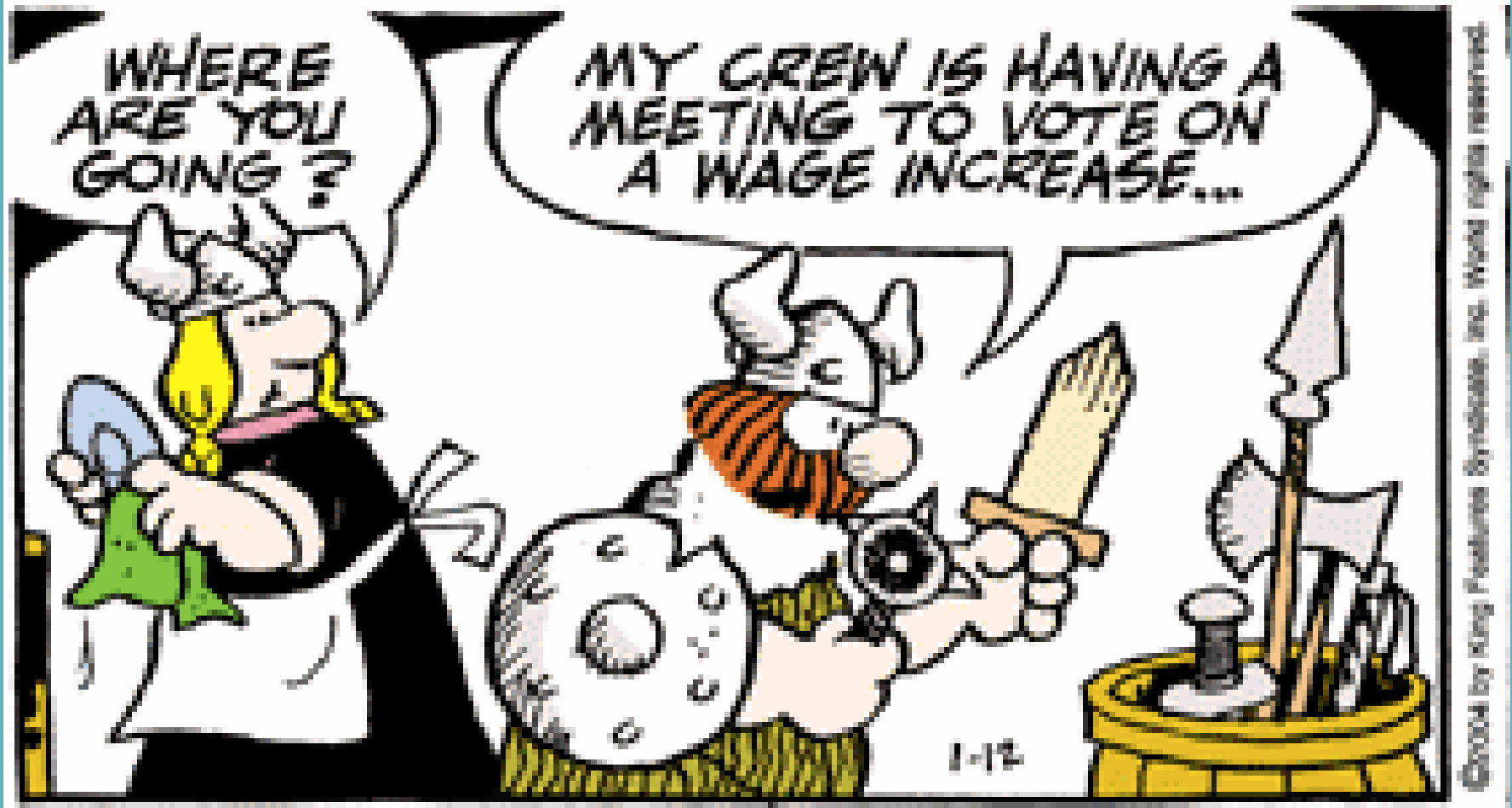
- Mainly M-S national social law
 - very broad and very flexible
 - no strict rules but a lot of freedom for the social partners
 - In some M-S recognized as part of “public order”
 - Mainly “imperative law” that is *erga omnes*
- A lot of national and cultural diversity between the M-S. There are very few common legal bargaining practices concerning social funds. Diversity rules.
- Very few direct European rules, mainly indirect regulations affecting social funds.
- Mainly: Private institutions with public goals
- Beware of
 - the fiscal rules : state aid to certain sectors under European law
 - certain M-S that are willing to “nationalize” certain social funds : money can always attract “wrong” attention



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Conclusion



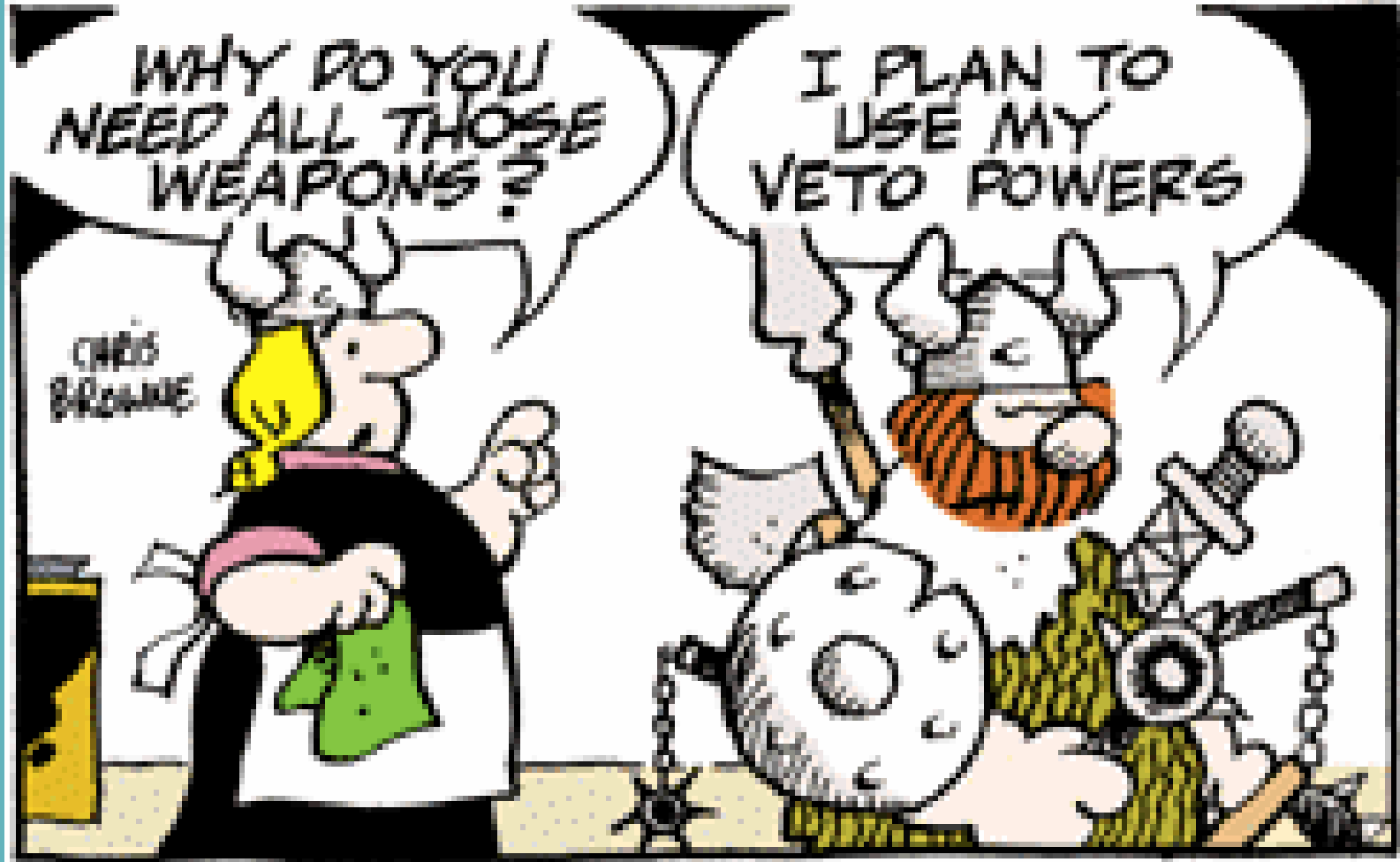




Conclusion: social funds

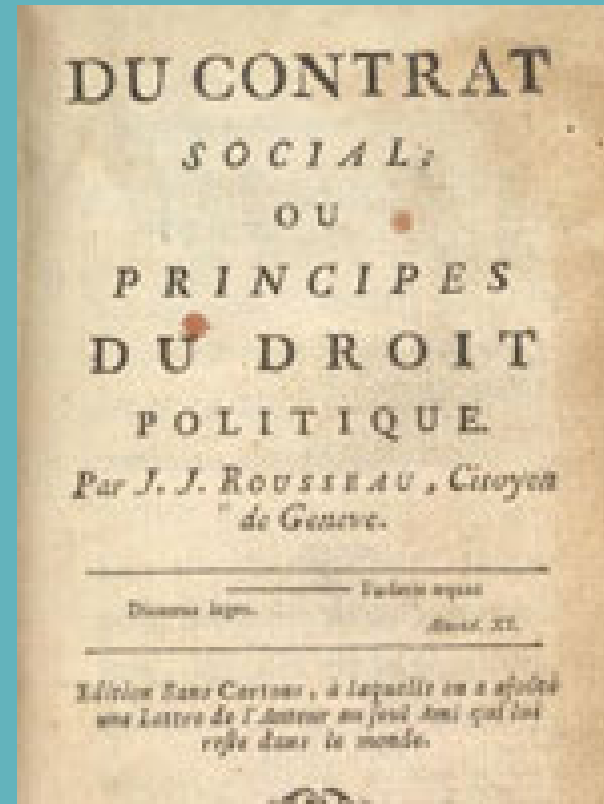
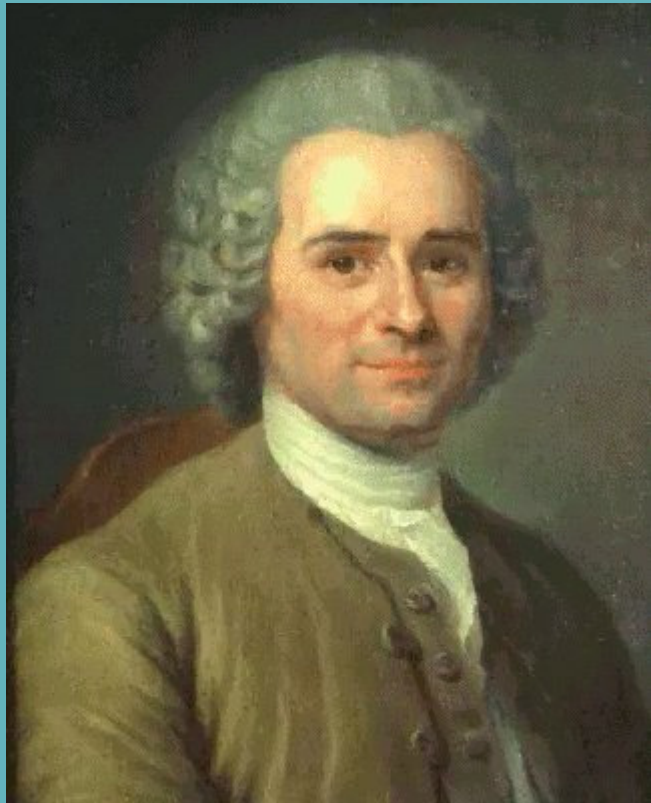
- Social funds lead to social cohesion
 - ≠ monolithic
 - ≠ inflexible
- Social funds
 - cement
 - social cohesion leading to responsibility
 - need to develop a continuing common policy
 - evolution and never revolution

Social funds reflect mature bargaining relationships promoting trust and respect whereby mutual interests are addressed together out of fairness.





Jean-Jacques Rousseau



In my opinion :

Social funds are social instruments made by social contracts.



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Thank you for your attention !
Questions ?



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