

The Limits of the Direct Effect of Directives

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I. The Member States' Obligations Deriving from International Agreements

Although the direct effect of directives is considered to be one of the cornerstones of the European Community judicial system or one of its characteristic features, the former is not sacrosanct as the direct effectiveness of European Community law and, implicitly, of directives¹, it has a series of limitations.

The first among the limitations mentioned above has relatively recently been laid emphasis on and it is the result of the enforcement of the conflicting rule established by article 234 from the CEE Treaty. According to the first paragraph of this provision, 'the rights and obligations deriving from the agreements settled before the coming into effect of this treaty between one or more member states, on the one hand, and one or more third parties, on the other hand, shall not be affected by the stipulations of this treaty'.

In two French cases² related to the prohibition of women's night labour, the Court of Law considered that, as long as night labour was permitted for men workers, such a prohibition infringes on the principle of equality of treatment regarding working conditions, stipulated by article 5 of Directive no. 76/207 (equality of treatment at work). Moreover, it had already been settled through legal channels that these stipulations had a direct effect. As a matter of principle³, this

meant that the National Court was under the obligation to ensure the full effect of this rule by not enforcing any contrary provision from the Domestic Law⁴. However, the problem was that the contrary provisions as far as the matter is concerned had been promulgated so as to enforce Convention no. 89ILO that prohibited women's night labour. France had ratified this Convention by means of a law from September 21st 1953, therefore before the coming into effect of the CEE Treaty and at that time it had not condemned it. In a thorough justification of the cases⁵, the High Court concluded that the National Court was not under the obligation of not enforcing the domestic legal stipulations which contravened the Directive, as the enforcement of the provisions in question was necessary in order to ensure that the respective state discharged the obligations derived from an agreement anterior to the Treaty, as stipulated by article 234. According to the Court of Law, it is the State Court that must verify the concrete duties settled by means of the agreement, with a view to establishing the limit from which these could represent an obstacle in the way of the enforcement of article 5 of the Directive. At the same time, the same court must verify whether the domestic legal stipulations in question are such as to implement the above mentioned obligations.

II. The General Principles of European Community Law

To settle the direct effect of a stipulation is a matter of interpretation. As a rule, the interpretation of the European Community

Law⁶ dispositions by the Court of Law has a retroactive effect; thus, as interpreted by the Court, the stipulation is to be enforced from

the moment it comes into effect⁷. Regarding the direct effect of directives, this means that the stipulation declared as directly effective produces this effect from the expiry of the period stipulated for its implementation, even if the process through which this is settled takes place at a subsequent date. Nevertheless, in exceptional cases, the Court has limited the rule's general retroactive effect, the basis of this limitation being represented by 'important considerations of juridical certainty'⁸.

One of the few cases in which the Court of Law resorted to this exceptional measure concerned the finding that article 141 (the former article 119 CEE) was directly effective in *Defrenne II*. In this instance, there are no reasons for which the Court might not proceed in the same manner when the stipulations of a directive are concerned. *Defrenne II* clearly stated that the principle of juridical certainty might, in certain special circumstances, limit the direct effect of the stipulations in the European Community Law. Nevertheless, it is important to emphasize the fact that only the Court of Law is able to settle whether the circumstances are such as to compromise this principle. Moreover, it is precisely due to this line of reason that the principle of juridical certainty, which applies in these circumstances, is the community one, as to allow the direct effect to be limited by a national principle would contravene the supremacy rule.

Defrenne II was related to the limitation of the direct effect as such, situation that needs to be distinguished from the case when the Court allows for the enforcement of national principles within the state procedures involved in the implementation of European Community Law. Therefore, if *Defrenne II*

restricts the direct effect as such, the second hypothesis limits the 'effects of the direct effect'. In other words, national principles⁹ may not infringe upon the individuals' procedural right to appeal to stipulations in the European Law, but they may restrict the exercise of this right.

The distinction is sometimes difficult to make, as illustrated in the *Cotter and McDermott II Case*¹⁰. At the basis of this stood the fact that the direct effect of the prohibition of sexual discrimination settled by Directive 79/7 (equality of treatment in social security systems) was in some cases that dependent wives and children were paid certain benefits although they were not actually dependent, and, furthermore, there was the possibility of paying these benefits twice for the same household. In this case, allowing for such requests was considered to encroach upon the rule which prohibits the unjust enrichment¹¹, which, according to the national law in question, which represent good reason to restrict or decline the benefit in certain circumstances. The Court rejected this argument, considering that allowing the national authorities to rely on this national principle would permit them to use their own illicit demeanour¹² as a ground for depriving the directive from its full effect.

The difference between the direct effect as such and the 'effects of the direct effect' is, as evident from the jurisprudence of the Court of Law, a decisive criterion. The direct effect can only be limited by the principles of European Community Law, whereas the effects¹³ of the direct effect may be restricted, under certain circumstances, by the enforcement of the principles of National Law.

III. The Direct Horizontal Effect of Directives

1. The Debate Anterior to the *Marshall I Case*

The most important limitation of the direct effect of directives is represented by the absence of the direct horizontal effect, sanctioned by the Court in the ruling from *Marshall I*. By **direct horizontal effect**¹⁴ we understand the possibility to invoke and

enforce incidental stipulations by an individual against other private persons. This must not be mistaken for the **reverse direct vertical effect**, which stands for the possibility of a member state to set a stipulation against a private person.

The issue of the direct horizontal effect has been a long-running dispute and has generated a considerable literature¹⁵ both before and after the trial of the *Marshall I* Case, the main arguments for and against remaining for a long time unchanged.

The first argument invoked against the direct horizontal effect derives from the way directives are defined by article 249(3) from the Treaty which establishes the European Community, and consists in the directives' mandatory nature for the member states and, therefore, not for private persons, which means that they cannot impose obligations on individuals, but only on states. However, other theorists have called our attention to the Court's jurisprudence as far as the direct effect of the stipulations of treaties is concerned. The main outcome of these findings was that those that the provision in question is intended for did not condition the direct effect. According to some of the authors, it is the obligation to make legal corrections, as settled in *Case VNO* and *Enka*, that especially indicates the fact that the nature of the juridical relation involved is irrelevant in this matter. *Defrenne II* is another case frequently mentioned when this issue is addressed. Notwithstanding the fact that, according to the wording of article 141, the provision is intended for the member states, the Court has ruled in favour of the direct horizontal effect. Nevertheless¹⁶, the opponents of this effect in the case of directives have indicated that the definition in article 249(3) is too explicit to allow for an analogy.

The cases regarding the direct effect¹⁷ of the stipulations from treaties have clarified the fact that, when determining the legal effects, it is the content of the measure that is decisive and not its form. Moreover, it did not result from the cases related to the direct effect in general – therefore the direct effect of directives as well –, that the direct effect was conditioned by the legality of the document which contains the relevant stipulations.

More recently, attorney general Jacobs has voiced the opinion that the textual argument is neither persuasive, nor decisive, as the wording of article 249 TCE does not

specifically exclude the possibility of certain obligations assigned to other individuals (not member states). Richter has expressed a similar point of view, as he argued that a distinction must be made between the obligations¹⁸ of the member states (the implementation of the directive) and the duties stipulated by the directive itself. The mere fact that the states¹⁹ are under the obligation to implement the directive does not clarify as such the issue of the potential juridical effects of the substantive law provisions²⁰.

The second argument against the direct horizontal effect of directives is related to the difference between regulations and directives. According to article 249, only the former can be directly enforced and, therefore, impose obligations on private persons. The acknowledgement of the direct horizontal effect for directives would lead to their being assimilated to regulations, which would deprive the directives of their original status and would contravene article 249. It has been noticed that this argument is the one invoked against the direct effect of directives in general (rejected by the Court of Law), and, in addition, that the acknowledgement of the horizontal effect would neither change anything as far as the obligation to implement directives is concerned²¹, nor would it infringe upon the member states' right to choose forms and methods²².

The third argument regards the juridical certainty and is based on two distinct lines of judgment. Firstly, there was no legal requirement that directives should be published in The Official Journal²³. Under the circumstances of publishing directives in practice with a few exceptions, the argument has been viewed as purely formal by some authors, whereas others have considered it important. In this line of thought, attorney general Lenz has made a distinction between the publication of a directive with a constitutive effect and the publication of a directive with a declarative effect. In his opinion, 'the fundamental condition on imposing an obligation on the citizen by means of legislation is the latter's publication with a constitutive effect'²⁴. According to the

former regulation, the coming into effect of directives was conditioned by their notification, and not by their publication. Nevertheless, amending article 191 by means of the Maastricht Treaty resolved this issue. Secondly, it has further been maintained that allowing parties to invoke this series of community laws against private persons would lead to juridical uncertainty. As a matter of principle, as far as obligations are concerned, individuals should be entitled to rely on the national law. In the event that the direct horizontal effect was acknowledged, those in question would be confronted with a conflict between the requirements of the state's domestic law and the obligations imposed on them by the directive. Furthermore, in order to determine the exact content of the obligation, they should keep in mind both regulations, national and European, which might be a very difficult task for those in question.

The fourth argument against the direct horizontal effect emerged in the *Ratti* Case, the Court laying down by statute the fact that a member state which had not adopted the implementation measures required by the respective directive could not invoke – in relation to individuals – the state's guilt in discharging its obligations – the so-called 'legal hindrance principle'. On the contrary, it has been considered that an individual can invoke the state's guilt regarding the implementation of the directive as a ground for him/her being exonerated of accountability. The best counter-argument in this respect is the fact that the High Court²⁵ has never acknowledged the legal hindrance principle as a really important fundamental concept; it was the doctrine that turned the above mentioned rule into the rationale behind the direct effect of directives.

Consequently, neither one of the arguments against the direct horizontal effect has proven conclusive, nor those in favour of this effect have proven decisive. However, some theorists²⁶ have stated that the consistent enforcement of the European Community law and its 'useful effect' cause this direct horizontal effect. The acknowledgement of the horizontal effect would undoubtedly bring

about the increase in the effectiveness of directives and would represent a new incentive for the states when taking into consideration their implementation on time, and the enforcement of European Community law as consistent as possible, and the protection of the individuals' rights deriving from these norms. There have even been voices to say that denying the direct horizontal effect would lead to denying the supremacy of the European Community law.

Other authors have suggested that at least a *restricted form*²⁷ of the direct horizontal effect might be acknowledged, which would consist in an analysis of the lawfulness of the national measures as far as a dispute between two private parties is concerned. Thus, without requesting for the enforcement of the stipulations of the directive in the given case, the individuals in question could still invoke the respective provision before the national court in order to oppose the enforcement of the domestic law, which does not correspond to the former, even in a 'horizontal' juridical relation.

There have been voices to advocate the exclusion of the restricted horizontal effect²⁸ as well, since its outcome could be the lack of enforcement not only of the domestic law, due to its incompatibility, but also of the stipulations of the directive, which do not have a direct horizontal effect, thus severely jeopardizing the legal stability and leading to an inconsistent enforcement²⁹ of European Community law.

Other authors³⁰ have sustained the idea that the restricted horizontal effect is possible, as 'the normal enforcement of the illegality exception, while there being a balanced tackling of the issue'³¹. From this point of view, the acknowledgement of the illegality exception without further specification in the dispute regarding 'the horizontal nature' of the direct effect of directives is difficult to accept, as the lack of enforcement of certain national legal provisions could lead to the appearance of some obligations incumbent upon individuals. In this line of thought, we notice that the lack of enforcement of an interdiction stipulated by a national law that contravenes

the directive is different from the lack of enforcement of a national law that entitles an individual to something. These aspects must be taken into consideration and, for this

reason, the National Court considers for each concrete case the real effect of acknowledging the illegality exception.

2. Views on the Direct Horizontal Effect of Directives Subsequent to the *Marshall I* Case

In the *Marshall I* Case, the Court of Law ruled in favour of a textual argument, laying down by statute that, since article 249(3) TCE establishes the compulsory nature of directives only with respect to the member states – those which the directives are intended for –, directives cannot by themselves impose obligations on an individual and, consequently, the stipulations of a directive cannot be invoked against a private person.

According to some authors, an important role in this ruling has been played by a political rather than juridical argument, more precisely the difficulty which some national courts evinced when accepting the direct effect of directives. The ruling has been severely criticized, not only by some theorists, but also by the members of the Court of Law, as it was considered that arbitrary distinctions were thus being created between member states, depending on the size of the state system, and within the member states, between the public and the private sector, as regards the employees, the consumers and the providers of goods and services. Moreover, it has also been brought to relief that conflicting situations might arise when an individual is at the same time the employee of a private company and of a public body, all these leading to discriminations and inequality, which cannot be viewed as compatible with the principles of European Community law.

The evolution of the jurisprudence of the Court of Law has brought again into attention the debate over the direct horizontal effect of directives. In the first place, the 'state' concept has been enlarged as to encompass all public bodies and, at the same time, a series of public companies which were prevented from invoking the state's guilt to their defense, even though they could not be held accountable for the non-implementation of the directive in question. This evolution has evidently encroached upon the legal hindrance principle

to the extent to which the latter might be considered the basis of the direct effect of directives. In addition, to determine whether an institution emanates from the state or not is not at all devoid of difficulty.

On the other hand, the obligation of a thorough and comprehensive interpretation imposed on national courts has determined them to act according to their prerogatives in order to render a full effect to the European Community law. In some cases, a comprehensive interpretation is very close to the acknowledgement of the direct horizontal effect of directives.

The third important element related to this matter is the Court's ruling in the *Francovich* Case, according to which the state is responsible, under certain circumstances, for the damage suffered by an individual as a result of the non-implementation of some directive. Nevertheless, the ruling cannot successfully replace the direct enforcement of a directive and, in particular, it does not cover the inequitable conditions under which different the subjectives of law are faced with.

Fourthly, the more recent jurisprudence of the High Court has been substantially influenced by the aspiration that the national courts might offer effective and full protection to the individuals' rights deriving from the European Community regulations, protection which is seriously infringed upon by the Court's denial to grant a direct horizontal effect to directives.

In conclusion, the Court's juridical construction referring to the domestic effects of directives is extremely complex³² not only for the national courts, but also for individuals, as it implies difficult tasks for courts, it may lead to confusion, and there is the inherent risk that the outcomes of the rulings made for a case or another might be inequality and inconsistency.

A possible solution, especially for those who consider the requirement of publication as an essential one, might be the direct horizontal effect of those directives that will be published, according to article 191, as modified by the Maastricht Treaty³³. The issue is that the directives adopted (and published, although not obligatorily) on the basis of the old text can cause effects long after being adopted, as evinced in the *Ponente Carni Case*³⁴. Moreover, some doctrine-setters and practitioners have advocated the Court of Law's return to the 'useful effect' of directives and the renunciation of the strict and literal interpretation of article 249 or the taking into consideration of the 'legal hindrance principle', while others have opted in favour of granting the horizontal effect only to *some* of the stipulations of the directives. However, among all the more or less convincing arguments brought into discussion, the one the entire debate is based on is the *juridical certainty*.

In the *Faccini Dori Case*³⁵, the issue of the direct horizontal effect re-emerged as an invitation to reanalyze the ruling in the *Marshall I Case*. Paola Faccini Dori invoked the stipulations of Directive no. 85/577/CEE (the house-to-house canvassing), which had not been implemented yet, against a trader who had not acted according to them. The court found that the community law was liable to direct effect upon verifying whether the conditions for the exertion of the direct effect are met, since the directive clearly settled who is granted rights and who is imposed obligations on, and – regarding the content of the right – that a period of seven days was established for annulment and that, although the member states were granting a larger protection, this did not encroach upon the seven days limit. This finding opened the possibility of reconsidering the issue of the direct horizontal effect. Two of the Court's attorney general, attorney general Van Gerven in the *Marshall II Case*³⁶ and attorney general Jacobs in the *Le Foyer versus Vaneetveld Case*³⁷, had already spoken in favour of the direct horizontal effect. In the *Faccini Dori Case*, the opinion of attorney general Lenz

was in favour of acknowledging the direct horizontal effect and rejecting the *Marshall I* ruling in this matter. In Lenz' view, in addition to the arguments based on the equality among and within states, the development of the domestic market, with strong contacts between private persons from various member states, implied giving them the possibility to appeal to the rights directly granted them by the directives.

After explaining the fact that the jurisprudence related to the direct effect aims to prevent the state from taking advantage of its own guilt as far as the observance of the European Community law is concerned and from depriving individuals of the benefit of the rights granted them by means of directives, the Court laid down by statute that 'the effect of the extension of the legal practice to the domain of the relations between individuals will be the acknowledgement of the Community's ability to impose immediately effective obligations upon individuals, taking into consideration the fact that it is within the competence of the Community to do so when it is entitled to adopt regulations'. What this standpoint does is to reinforce an argument against the direct effect of directives in general: the Community may only create 'direct' rights and obligations for individuals by means of regulations.

Although the ruling from the *Faccini Dori Case* has irrevocably confirmed the lack of the direct effect of directives, the issue has again been raised several times, partly as a consequence of the questions related to this aspect sent by the state courts and, partly through the rulings made by the Court of Law in the analyzed cases. The *El Corte Ingles SA Case*³⁸, coming from a Spanish court represents an example for the first circumstance; it is the dispute between Cristina Blasquez Rivero and a travel agency on the matter of Directive no 87/102/CEE regarding the consumer credit (non-implemented). The issue raised subsequently to the coming into effect of the Maastricht Treaty which, by means of article 129A (the former article 153), created an explicit basis for the European Community policy regarding consumer protection.

Indicating that the protection measures in question were generally taken by means of directives and that the consumer usually needed to be protected against other private persons, the national court inquired whether the principle of a high level of consumer protection infringed upon the Court of Law's doctrine related to the direct effect of directives. The Court formed of a panel of five judges returned to *Marshall I* as a ground for its judgement, reconsidered the main aspect of the *Faccini Dori* ruling and settled that article 153 CE did not encroach upon the acknowledged standpoint even though directives regarding consumer protection were involved.

The High Court represented by a panel of three judges reiterated the grounds of judgement in the *Arcaro Case*³⁹, sent by an Italian court with the inquiry whether Directives no. 76/464/CEE and 83/513/CEE regarding water pollution and cadmium waste, which had not been entirely implemented, could be invoked against the individual polluter.

Moreover the ruling in the *Daihatsh-Handler Case*⁴⁰, related to the First Directive no 68/151/CEE, regarding trading companies, reiterated the idea that the stipulations of a directive cannot by themselves impose obligations on individuals.

While rulings similar to those previously mentioned have consolidated the rejection of the direct horizontal effect, other rulings of the European Court of Law have kept open the issue whether directives can, under certain circumstances, be invoked by an individual against another individual. The best example in this matter is given by the *CIA Security*

Case⁴¹, related to a Directive regarding technical standards (1983) – litigation between CIA Security and another two Belgian security firms. Thus, CIA had promoted the Andromede security system, about which the competitors had said that it did not observe the requirements stipulated by the Belgian legislation. In reply to this, CIA claimed that the decree and the law taken into consideration contravened the stipulations of the Directive regarding technical standards, by introducing new conditions on products without having given prior notice to the Committee. First of all, the Court established that the Belgian measures represented technical regulations, analyzing then whether the directive was sufficiently clear and precise so as to allow an individual to invoke it. Finding that these requirements were met, the Court ruled against the argument that the directive only evinced procedural implications and that it did not encroach upon the validity of the technical standards which had not been notified. The ruling thus implied that the general lack of enforcement of the technical regulations that had not been previously notified prevents them from being invoked by an individual against other individuals.

The outcome of the ruling is that an individual can use a directive against another individual before the national court, as a means of defense. On the other hand, the outcome of the ruling made in the *Faccini Dori* case is that a directive cannot, in a similar procedure, be a direct source of such a request.

Conclusions

Adopting a comparative approach to the International law and the European Community law, it becomes apparent that as far as the former is concerned it is not impossible for certain provisions of international conventions to convey, under certain circumstances, a *self-executing* effect, if this has been the intention of the contracting

parties. However, this possibility evinces an exceptional character and only regards those stipulations intended for individuals. As far as European Community law is concerned, the situation is completely different qualitatively and quantitatively, since the entire European Community law system benefits from the virtual ability to produce direct effects.

In relation to the classical international law, this difference becomes even more important as the direct effect is not established *in terminis* by the wording of the treaties, but it is the result of a juridical construct. On the one hand, it is obvious that the Court of Law has taken into consideration the essential characteristics of the establishing treaties when acknowledging this fact, as: the latter's objective is the establishment of a single market whose functioning directly concerns the justiciable (reparatory); the treaties' preamble does not only address the governments of the member states but also the Community's peoples; the European Community mechanisms do not only affect the states but also their citizens; the individuals are decision – making partners by means of the European Parliament and of the Social and Economic Committee; article 234 TCE confirms the fact that the states have undertaken to acknowledge the authority of the European Community law, liable to be invoked before the national courts; the provisions of the treaties create rights for justiciable (reparatory) who are to be protected by the national courts.

Even though none of these arguments is by itself conclusive, in addition to the explicit justifications the reasoning elaborated by the Court allows for giving prominence to the latent reasons in favour of the acknowledgement of a direct effect of community norms. From the way in which it is conceived, the direct effect has the aim not only to protect individual rights, but also to guarantee the effectiveness of enforcing the European Community law in the domestic legal system of the states.

Regarding the direct effectiveness of directives, this is accepted by the doctrine and acknowledged by the jurisprudence of the Court of Law, but, as mentioned in the previous chapter, it has a series of limitations. More precisely, it is the **direct vertical effect** that is accepted – in other words, the ability of

justiciable (reparatory) to invoke the directive with a view to constrain the member state in question to comply with the obligations incumbent upon it and to enforce the rights created for the benefit of the private persons.

However, the aspiration to guarantee the obligatory effect and the useful effect of directives has led to a substantial extension of the notion of direct vertical effect. With this in mind, we mention the existence of the '**dismembered vertical effect**' (which regards the directives' ability to oppose not only a member state, but all the public communities, and the corporate bodies, independent of any organic criterion, as well), and the **direct oblique effect** (i.e. the possibility of invoking the directives against the state seen both as an employer and as a public power).

This move towards the '**dismembered vertical effect**' and the of the **direct oblique effect** vertical effect, together with the possibility of cumulating the two extensions of the term, could but only raise new questions about the appropriateness of acknowledging a **direct horizontal effect** of directives, as far as litigation among private persons is concerned. In spite of the legitimate questions raised by the doctrine, the European Community Court has constantly denied extension along this line of the direct effect of directives. The reason behind this denial was the necessity of maintaining the distinction made by the Treaty between regulations and directives. These grounds do not, however, prevent directives from producing legal effects in litigation between private persons. Thus, a justiciable is allowed to invoke the provisions of such an European Community law against an administrative ruling.

Furthermore, we mention the acknowledgement by the more recent jurisprudence of a form of **procedural effect of directives** in the litigation with a horizontal effect, which indisputably reinforces their opposability nature in the relations established between private persons.

NOTES:

¹ The specific character of directives lies in the type of obligation, which they impose upon addressees. Directives amount only to obligations of result, not obligations of conduct. However, the implementation of directives is a positive for the Member States, and the effective implementation of directives is one of the Keys to the realization of the EU's objective sphere.

² Case C-345/89 *Stoechel* [1991] ECR I-4047, and Case C-158/91 *Levy* [1993] ECR I-4287

³ In practice, the miss-implementation of directives is as serious a problem as the failure to implement, and the Court of Justice is frequently faced with preliminary reference regarding the interpretation of particular directives where national implementing measures.

⁴ Case C-158/91 *Levy* [1993] ECR I-4287, paragraph 9.

⁵ For more details, see Case C-13/93 *Minne* [1994] ECR I-371.

⁶ The Member States have discretion as to how they implement directives. This normally involves either adopting or changing legislation is sufficient.

⁷ As settled in Case 61/79 *Denkavit Italiana* [1980] ECR 1205.

⁸ According to the rulings from Cases: 43/75 *Defrenne II* [1976] ECR 455; 24/86 *Blaizot* [1988] ECR 379; and C-262/88 *Barber* [1990] ECR I-1889.

⁹ It should however be noted that the requirement that national law should be interpreted in the light of community law so as to give effect to the aims of the latter is not to direct or to non-directly effective law: see Case C-165/91, *Van Munster v. Rijksdienst for Pensionen* [1994] ECR -4661.

¹⁰ Case C-377/89 [1991] ECR I-1155.

¹¹ Paul Craig, Grainne de Burca – *EU LAW, Text, Cases, and Materials* Oxford University Press 1st edition 1998

¹² The non-implementation of the directive in the prescribed time.

¹³ Jo Shaw – *Law of the European Union*, Macmillan 1996 1st edition p. 200.

¹⁴ J Coppel – *Horizontal Direct effect of directives* 1997 28 ILJ 69, p. 73.

¹⁵ D.Simon et A.Rigaux – *L'arrêt Marshall II et l'effect des directives: une solution d'especé à une question de principe ?* Europe 1993 p. 1.

¹⁶ See P.Craig – *Directives: Direct Effect, Indirect Effect and the and the Construction of National Legislation* 1997 22 EL Rev. 519.

¹⁷ But the explanation for the direct effect of regulations was less teleological and more straightforwardly textual: Article 249 (old 189) specifically provided for their direct applicability, which the Court largely treated as being synonymous with direct effectiveness.

¹⁸ It follows that, in applying the national law and in particular the provisions of a national law specifically introduced in order to implement Directive No 76/207 national courts are required to interpret their national law in the light of the wording and the purpose of the Directive in order to achieve to in the third paragraph of Article 189.

¹⁹ Denys Simon – *L'application des directives par les tribunaux nationaux* Bulletin de la Cour de Cassation, oct. 1993.

²⁰ See P.M.Eiseman – *L'integration du droit international et communautaire dans l'ordre juridique national*, La Haye, Kluwer Law International, 1996, p. 587.

²¹ According to Jacobs' opinion expressed in Case C-316/93 *Vaneetveld* [1994] ECR I-763, paragraph 25.

²² The opinion of attorney general Lenz in Case C-91/92 *Faccini Dori*, February 9th 1994, [1994] ECR I-3325, paragraph 59.

²³ According to article 191 CEE Treaty, before it was modified by the Treaty concerning the European Union

²⁴ Opinion expressed in Case C-91/92 *Faccini Dori* [1994], ECR I-3325, paragraph 64.

²⁵ See F.Hervouet -*Politique jurisprudentielle de la Cour de Justice et des juridictions nationales. Receptions du droit communautaire par le droit interne des Etats*, RDP Paris 5/1992 p. 1257.

²⁶ See D Simon- *La directive européenne*, Dalloz, Paris 1997.

²⁷ The idea of "passive" horizontal direct effect which does not amount to appositive obligation was suggested by Stuyck and Wytinck in their early comment on the *Marleasing Case* 1991 28 CML Rev. p. 205.

²⁸ Timmermans, *Directives: their Effect within the National Legal Systems*, CML Rev. 1979, p. 543.

²⁹ Leo Flynn – *Enforcement of EC Law. Protection of Individual's Right in National Courts*, UNIDEM Campus, Trieste, Italy, 2001.

³⁰ Louis, Vandersanden, Waelbrock & Waelbrock, *Commentaire Megret*, vol. 10, La Court de Justice. Les actes des institutions, 2nd edition de l'Université de Bruxelles, 1993.

³¹ Sacha Prechal – *Directives in European Community Law. A Study of Directives and their Enforcement in National Courts*, Clarendon Press, Oxford, 1995 p. 299.

³² Denys Simon – *Le système normatif communautaire*, troisième édition, Presses Universitaires de France, 1997

³³ In lawyer Lenz' opinion, Case C-91/92 *Faccini Dori* [1994] ECR I-3325, paragraph 65. Lenz also accepts the direct horizontal effect of the directives prior to the Maastricht Treaty, on condition that the latter should be effective only the future.

³⁴ Cases C-71/91 and C-178/91 [1993] ECR I-1915.

³⁵ Case C-91/92 [1994] ECR I-3325.

³⁶ Case C-271/91 [1993] ECR I-4367.

³⁷ Case C-316/93 [1994] ECR I-763.

³⁸ Case C-192/94 [1996] ECR I-281.

³⁹ Case C-168/95 [1996] ECR I-4705.

⁴⁰ Case C-97/96 [1997] ECR I-6843.

⁴¹ Case C-194/94 [1996] ECR I-2201.