

The EU legislation

Sources of EU law

- primary law
- secondary law
- supplementary law.

Sources of primary law

- Sort of “constitution” of the EC
 - the ECSC Treaty of 1951 (Treaty of Paris)
 - the EEC Treaty of 1957 (Treaty of Rome)
 - the EURATOM Treaty of 1957 (Treaty of Rome)
 - the Merger Treaty of 1965
 - the Acts of Accession of the United Kingdom, Ireland and Denmark (1972)
 - the Budgetary Treaty of 1970
 - the Budgetary Treaty of 1975
 - the Act of Accession of Greece (1979)
 - the Acts of Accession of Spain and Portugal (1985)
 - the Single European Act of 1986
 - the Treaty of Maastricht of 1992 (Treaty on European Union)
 - the Acts of Accession of Austria, Sweden and Finland (1994)
 - the Treaty of Amsterdam of 1997
 - the Treaty of Nice of 2001
 - the Treaty of Accession 2003
 - the Treaty of Accession 2005

Sources of secondary law

- Unilateral acts:
 - See art. 249 ECT
 - Atypical acts
- In some sense also agreements:
 - interinstitutional agreements

Art. 249 ETC

- "In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.
- **A regulation** shall have general application. It shall be binding in its entirety and directly applicable in all Member States.
- **A directive** shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.
- **A decision** shall be binding in its entirety upon those to whom it is addressed.
- **Recommendations** and **opinions** shall have no binding force."

Regulations

- Regulations are legislative instruments of general application.
- binding in their entirety
- directly applicable
- Transposition is not necessary nor welcomed

Directives

- Reconcile two objectives:
 - secure the necessary uniformity of Community law
 - Allows respecting the diversity of national traditions and structures
- binding on Member States
- They are not directly applicable

Decisions

- individual act addressed to a specified person
- binding only on those to whom they are addressed
- No need to implement them

Recommendations and Opinions

- not binding and therefore arguably not law

Principles of application of the EC law

- **Direct applicability:** A legislative measure has legal consequences without state intervention (e.g. regulation)
- **Direct effect:** A legislative measure grants rights to individuals. Such rights must be upheld by national courts.
- The direct effect principle has been formed by the ECJ and is not stated in the EC/ EU Treaties.

Direct effect rationale

- Ensure that the fundamental aims of the EC legislation are fulfilled (effet utile/effectiveness principle)
- Special nature of EC law

"Van Gend criteria"

- The provision must:
 - be sufficiently clear and precisely stated,
 - be unconditional or non-dependent,
 - confer a specific right for the citizen to base his or her claim on.

Varieties of direct effect

- Vertical E. = against state (*Van Gend en Loos*)
- Horizontal = concerns the relationship between individuals (*Defrenne v. SABENA*)

EC Legislation and direct effect/applicability

- EC Treaty
- Regulations
- Directives
- Decisions
- Opinions/ recommendations
- International agreements

Directives

- **Grad v Finanzamt Traunstein** - D. could be directly effective
- **Becker** - *"wherever the provisions of a directive appear...to be unconditional and sufficiently precise, those provisions may, in the absence of implementing measures adopted within the prescribed period, be relied upon as against any national provision which is incompatible with the directive or insofar as the provisions define rights which individuals are able to assert against the State."*
- **Pubblico Ministero v. Ratti** - time limit for implementation must expire
- **Marshall** and **Dori**- directive can not have a horizontal direct effect

Why should a directive have the direct effect?

- A way to achieve the goal of the Community
- The effectiveness principle

Do not forget

- What is a state? – wide interpretation!

When could D. have DE?

- precise in its wording and
- grants rights to individuals, which may be pleaded before national courts,
- the member state has not abided by the set deadline.
- It cannot be invoked against but **only in favour of individuals**

Directives - indirect effect

- the national court must apply the legislation adopted for the implementation of the directive in conformity with EC law, in so far as it is given discretion to do so, under national law (*14/83 Von Colson*)
- The same principle applies as regards national case law

International Agreements

- International commitments of the Community should be respected in the member states
- They can, in certain circumstances, also be directly enforceable (*21-24/72 International Fruit* and *104/81 Küpferger*).
- Extent of flexibility and modifications needed, to be considered. Agreements with association countries have direct effect (*C-432/92 Anastassiou & C-192/89 Sevince*)
- The GATT provisions are not directly effective (*9/73 Schluter, 266/81 SIOT*)

Conclusion

- EC Treaty provisions Regulations/ Directives, Decisions and Agreements with third countries are in principle directly effective, provided they are clear unambiguous, unconditional and no further action is needed for their implementation. In this case, they may be invoked before national courts but not horizontally. However, a compensation for non-implementation may be asked from the state.

SUPREMACY

- created by the ECJ
- No reference in EC Treaty.
- based on the effet utile

Relevant ECJ judgments

- Implicitly mentioned in the *Van Gend en Loos* case.
- Explicitly mentioned in (6/64 *Costa v. Enel*)
 - *It follows from all these observations that the law stemming from the treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as community law and without the legal basis of the community itself being called into question*
- EC law is supreme even over constitutions (*Internationale Handelsgesellschaft*)

Consequences (I):

- (i) Legislation with direct effect is a source of rights and obligations.
- (ii) A national law contrary to a Community rule of direct effect will lack enforcing power.
- (iii) There is priority of application of EC law/ not cancellation of the contrary national law.
- (iv) National courts are obliged to abstain from applying contrary national law.
- (v) Not posterior national law, contrary to the EC law is allowed to be issued.
- (vi) National law is neither interpreted, not applied by the ECJ. National courts judgments may not be attacked there.
- (vii) Only exceptionally may national law supplement EC law.

Consequences (II)

- Since EC law overrides national laws, every national court is obliged to give immediate effect to EC law, irrespective of whether it has national jurisdiction.
- EC Law overrides national law if it is “directly effective
- If it is not directly effective, the national courts and authorities should interpret the national law provision by considering the spirit and rationale of this EC law provision (indirect effect)

Consequences (III)

- National provisions do not become void but they are not applied in the case in question. They may still be applied in other cases to the extent that they are not contrary to the EC law provisions.
- Member-states are obliged to repeal such laws to the extent that the community legislator aims at harmonising national laws in a given field

Third Pillar application of the supremacy and direct effect principles

- Direct effect is explicitly forbidden (art.34, 2 b EU Treaty) – this will, however, change with the LT
- Application only of indirect effect (no direct effect) in framework decisions. *C-105/03 Maria Pupino.*