# Direct Effect EU Law: Benefits And Limitations

This essay will refer to the benefits and limitations of direct effect as a legal concept referring to the individuals' ability to invoke their rights against the state, challenging incorrect implementation of directives and the detriment of only vertical direct effect being applicable. Moreover, directives are a form of secondary legislation which attempts to establish goals that all EU countries must attempt to achieve. Nonetheless, it is up to the individual countries to devise their own laws on how to transpose directives into national law. Furthermore, directives are binding, according to Article 288, upon the Members States to whom they are addressed to. There are three conditions that must be satisfied in order for a provision of a directive to have a direct effect which includes being 'sufficiently clear, precise and unconditional, the deadline for transposition into national law must have passed and the defendant must be an emanation of the State. The direct effect is subject to satisfaction of the Van Gend criteria as well as the Ratti criteria, which I will further discuss.

Direct effect ultimately arises from EU directives, and as a result, there are requirements that must be satisfied in order to establish this legal concept. Provisions must be clear, precise and unconditional. Individuals can exercise vertical direct effect where rights conferred by a directive are violated by the State or by emanations of the State. Vertical direct effect concerns the relationship between EU law and national law and as such the State are obliged to ensure that all legislation is compatible with EU; EU law is a supreme body. Citizens can invoke their rights under EU as defined in Foster v Gas. The claim was implemented to solve whether Gas was deemed an organ of the state. This case epitomized what the test is for determining what an 'emanation of the state' is. As such, the requirements that had to be satisfied included having a statutory duty to provide a public service, the defendant must be under state regulation and have 'special powers'. An emanation of the State could include privatized industries of services that formerly provided public services, therefore, by applying the above requirement, Gas, despite formerly being considered as an employer, was deemed an industry under state regulation The concept of direct effect in relation to directives was first established through Van Duyn v Home Office.

Van Duyn relied on a directive against the UK and the European Court of Justice ruled that one could do so on the basis of the satisfied requirements. This reinforces the binding nature of directives whereby direct effect will be effectively enforced in individuals can rely upon them. Ultimately, vertical direct effect is applicable to EU directives due to the courts' expansion on the concept of 'the State' and therefore outlines the benefit on citizens. Arguably, one could suggest that this gives rise to faulty implementation of direct effect, as such the concept of 'the state' was interpreted broadly and solely for the purposes of vertical direct effect. The limitation caused by such concept led to the blurring of clarity between the line of horizontal and direct effect. As demonstrated by the Van Gend criteria, direct effect cannot apply to directives, however, can when a member state does not transpose the directive. Horizontal direct effect cannot be applied to direct effect and therefore limits EU directives. In Marshall v Southampton, a reference was made under Article 234 on the issue of whether different retirement ages for men and women in the UK amounted to discrimination under Directive 76/207, of the 'Equal Access Directive.' The European Court of Justice identified that Marshall could use the directive against her employer, as the employer was an organ of the state, a health service.

Contrary to the ruling of Marshall v Southampton, in the case of Duke v GEC reliance, the employers were not found to be an emanation of the State. The House of Lords ruled that it was not bound to apply the directive, despite including identical points of the prior case, as the employer was not the State, but that of a private company. In regard to the requirements need to satisfy an emanation of the State, not all three had to be satisfied. Therefore, arguably once could suggest that vertical direct effect is a limitation against EU directives and if horizontal direct effect were to be applicable, such injustices may not occur. If the horizontal direct effect was applicable, it would have prevented the undermining of the entire principle.

Member States have the authority to propose delays in transposing EU laws. As such, this prevents citizens as well as businesses from enjoying the law's benefits and creates uncertainty as to what rules apply. Each separate directive contains a deadline for transition, by then the country must have sent the Commission the text of the national implementing measures, which incorporate the provisions of the directive into their legislation. The Commission, as a result, checks whether they meet the objectives of the directive. It is mandatory for transposition to occur and must take place by the deadline set when the directive is adopted, which is normally within two years. If a country does not transpose a directive within such a time frame, the Commission may imitate infringement proceedings and as a result, bring proceedings against the country before the Court of Justice of the EU. With reference to the case of Ratti, Member States should have implemented the directive in order for the individual to reply on national implementing law. Directives already are obliged to satisfy the Van Gend criteria. The case of Ratti stresses that as an individual it is necessary to wait until the Member State has implemented the Directive to then rely upon it or even use it. This case, thus, highlights that the Member State has ultimately done wrong as it has failed to follow the requirements of implementing EU directives. Directives are binding and can be more effectively implemented if individuals can rely on them, as such by preventing individuals from invoking their rights poses a detriment to the overall efficiency. Ultimately, this case beheld the estoppel principle, as such states should not be able to profit from their own failure to implement a directive. A requirement was implemented as such to prevent this and therefore should not be overturned by such ruling.

According to the case of Francovich, an individual is entitled to seek compensation from a Member State which is not complying with Union law. Again, this is only the case whereby the directive has not yet been transposed or which has otherwise been transposed inadequately, as previously mentioned. There are three requirements to be met for this condition to apply which include the directive is intended to confer rights on individuals, the content of the rights can be identified on the basis of the provision of the directive and there is a casual link between the breach of the obligation to transpose and the loss and damage suffered by the injured parties. This gives rise to the exercise of power from individuals in an attempt to prevent member states from incorrectly implementing directives. Directive [2008/94/EC] gave protection to employees, which allowed them to make privileged claims against insolvent employers yet Italy failed to implement this directive. Francovich, as a result of the above criteria, is able to claim money from the Member State as they are obliged to implement EU law. As such this is beneficial to individuals because it ensures that they are given the compensation they are entitled to as a direct result of the fault of Member States. As a result of this, the UK Damages Directive was implemented in order to prevent such a problem from occurring. It established a doctrine of state liability, whereby an individual could claim from the Member State, again this shows the limitations Member States face. Arguably, this is not entirely beneficial for the Member States, however, it is important to ensure that individuals can enforce their rights.

Direct effect and its application to EU directives creates both benefits and limitations. Member States are limited due to the implementation of directives to ensure that individuals can invoke their rights in accordance with the law. Moreover, individuals are limited due to the capacity Member States hold in the implementation and transposition of directives.