

# Direct effect of european union law

[Parts of the World](#), [European Union](#)



## Introduction

Direct effect seeks to ensure that the rights of individuals are being protected under EU Law[1]. This is not always achievable since EU Law is generally only directly effective against national authorities. As such, individuals cannot usually invoke EU Law against other individuals unless the EU Law provisions are horizontally directly effective. This suggests that the concept of direct effect is not that effective in protecting an individual's European Union Law rights. In light of recent case law, the courts are now using vertical direct effect as a way of invoking EU Law by demonstrating that the provisions give effect to general principles of EU law. This essay will critically discuss the extent to which individual rights are being protected by reviewing the case law in this area.

### European Union Law

Parliamentary sovereignty renders Parliament the most supreme legal authority in the UK. The courts are unable to overrule any decisions made by Parliament and no Parliament is capable of passing laws that future Parliaments will be unable to change[2]. Since the UK's entry into the European Union (EU) in 1972 and the implementation of the Human Rights Act 1998, the sovereignty of parliament has been significantly weakened. This is primarily due to the fact that EU Law has direct effect under the European Communities Act 1972. EU Law can be used to dis-apply acts of parliament and overturn previous decisions[3]. This protects individual rights by allowing them to use the direct effect principle to invoke EU Law.

The principle of direct effect confers rights on individuals which all Member States must recognise and enforce and although the principle is not explicitly provided for under any of the Treaties of the EU, it has been recognised through various case law such as *Van Gend en Loos v Netherlands Inland Revenue Administration*[4]. Here, it was made clear that in the event of a confliction between EU Law and national legislation, EU Law will always prevail. This decision recognised for the first time that the supremacy of the EU would always be upheld through the principle of direct effect.

### Direct Effect

The decision in *Van Gend en Loos* focused upon the rights of individuals against the state and not against other individuals. This issue was subsequently addressed in *Defrenne v SABENA*[5] when it was noted that there exists two different types of direct effect; vertical and horizontal. The distinction between the two would depend upon the person or entity the right was being enforced against. Vertical direct effect is concerned with the relationship between EU Law and national law, whilst horizontal direct effect is concerned with the relationship between individuals[6]. It was identified in the case that if a particular provision of EU Law is horizontally directly effective, then individuals will be able to rely upon that provision to enforce EU Law against another individual. Although this is necessary in ensuring that the rights of individuals are being protected by all, there are only limited EU Law provisions that are horizontally directly effective. The rights of individuals may still be violated by other individuals and companies. This shows that the principle of direct effect may not always be an effective

means of protecting an individual's EU Law rights. Consequently, the principle is only effective when it comes to EU regulations and is not that effective when trying to enforce directives. This is due to the fact that directives are not generally given horizontal direct effect.

The lack of directives that have horizontal direct effect was identified by AG Jacobs in *Nicole Vanneetveld v Le Foyer SA* [7] when he argued that there would exist greater legal certainty and a more coherent system “ if the provisions of a Directive were held in appropriate circumstances to be directly enforceable against individuals”. Arguably, because directives do not always have horizontal direct effect, it cannot be said that the rights of individuals are being fully protected under EU law as violations can still occur. In *Van Duyn v Home Office* [8] the courts made it clear that vertical direct effect would apply to Directives if “ individuals were prevented from taking it into consideration as an element of Community law”. In addition, it is declared under Article 249 EC (now Art 288 of the Treaty on the Functioning of the European Union) that Directives should be binding upon Member States, though the decision is left for the courts to decide based upon the particular facts and circumstances of the case. Individuals thus have the ability to invoke Directives before the courts, yet their rights cannot always be guaranteed. Furthermore, if the Directive is “ sufficiently clear and precise, unconditional, leaving no room for discretion in implementation” [9] it is unlikely that the courts will be able to make a decision by weighing up the particular circumstances of the case. Only if a Directive is not sufficiently precise and deemed unworkable by the court, will national authorities be able to intervene.

Essentially, it is evident that direct effect will not always apply to directives and as asserted by Tovey; “ some policy decisions needed to be developed and articulated for Directives to be accorded direct effect”[10]. In *Marshall v Southampton and South-West Hampshire Area Health Authority* (Teaching) [11] it was held that a Directive cannot be directly enforceable against individuals, however in *Grad v Finanzamt Traunstein* [12] it was signified that because Directives imposed obligations which were to achieve a desired result, they could be directly effective. Moreover, in *Pubblico Ministero v Ratti* [13] it was stated that Directives would not have direct effect if Member States had not implemented the Directive within the time allowed for its implementation. The conflicting case law decisions in this area are likely to cause confusion as to whether directives are capable of having direct effect, though it seems as though the decision will be made on a case by case basis. Whether this limits the protections under EU Law is likely as the provisions will not always be able to be invoked. Recent case law surrounding the direct effect of EU Law has prompted even more confusion. This is because, whilst the courts have made many attempts to reject extending horizontal direct effect to directives (*Faccini Dori v Recreb Srl* [14]), it is now questionable whether this is still the case since the decisions of *Mangold v Helm* [15] and *Kucukdeveci v Swedex GmbH & Co KG* [16].

### Individuals EU Law Rights

In *Mangold* the court held that national courts were under a duty to adopt the provisions of a Directive and set aside conflicting national law even if the time limit for transposition had not yet expired. It seemed that a new

principle was being established by the court as Directives were originally only capable of having direct effect after the transposition date.

In *Kucukdeveci* it was held that although Directives did not have horizontal direct effect, they were not prepared to apply national legislation as this would infringe the individuals rights under EU Law. Instead, it was found that the principle of non-discrimination was a general principle of EU Law and that the national court was therefore under a duty to dis-apply national legislation that violated this principle. This case seemed to suggest that even when a directive is not horizontally directive effective, an individual can still invoke EU Law against another individual by applying the general principles of EU Law. The court in *Re Honeywell* [17] questioned whether the *Mangold* decision was ultra vires, yet because age discrimination fell within the competencies of EU Law, it was found that no new competencies had been created.

Consequently, whilst it generally depends upon the nature of the case as to whether direct effect will be applicable, it is capable of being used as an effective means of protecting an individual's rights whether this be via horizontal or vertical direct effect. The case law in this area suggests that if a Directive gives effect to general principles of EU law, national legislation which conflicts with the Directive must be dis-applied by national courts.

## Conclusion

In light of recent case law decisions, the protection that is being afforded to individuals under EU Law is now more effective through the principle of direct effect than it ever was. Previously, if an EU Law provision did not have horizontal direct effect, individuals could not invoke EU Law against another

individual such as their employer. This resulted in discriminatory treatment and prevented individuals from relying upon their rights under EU Law. Since *Mangold and Kucukdeveci*, individuals will be capable of invoking Directives that give effect to general principles of EU law against other individuals.

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