



Main characteristics of EU Law

Relations between EU Law and National Legal Systems

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Introduction

Key questions:

- **Can private individuals rely on EU law before national courts? If yes, what are the conditions to do so?**
- **How are conflicts between national law and EU law resolved?**



Direct Effect

Direct Effect of EU Law

- **EU Treaties do not contain any general rule on the effect of the EU law provisions**
- **Principle of Direct Effect introduced by Court of Justice in landmark case of *Van Gend en Loos***

Direct Effect of Treaty provisions

Van Gend & Loos (case 26/62)

Facts

- Appeal by individual before Dutch administrative tribunal against payment of a newly-increased import duty charged by the Netherlands contrary to Art. 12 of the EEC Treaty (now Art. 30 TFEU)

Issue

- Clearly an infringement of Article 12 TEEC, which specifically prohibits the introduction of new customs duties in the common market, but could individuals rely on this before national courts?

Judgment

- Treaty more than an agreement which merely creates mutual obligations between contracting states
- Also confers rights on individuals, which arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way on individuals as well as on Member States and EU institutions
- Therefore, Article 12 TEEC interpreted as being directly effective, as this was a means of ensuring uniform application in all MS

The Conditions for Direct Effect

■ Problem:

- Some Treaty provisions drafted in general terms and
- Not all are designed to be applied directly by national courts

■ Solution:

Court of Justice established **criteria for direct effect**
(refined since)

Essentially, the provision must be **self-executing** i.e.:

- ✓ **Intended to confer rights to individuals**
- ✓ **Sufficiently clear and precise**
- ✓ **Unconditional**

Direct Effect of EU Law

EU law provisions matching criteria?

Citizenship Directive

Art. 6.1. Union citizens shall have the right of residence on the territory of another MS for a period of up to 3 months without any conditions or any formalities other than the requirement to hold a valid ID card or passport.

Services Directive

Art. 5.1. MS shall examine the procedures and formalities applicable to access to a service activity and to the exercise thereof. Where procedures and formalities examined under this para. are not sufficiently simple, MS shall simplify them.

Direct Effect of EU Law

- **All of the different binding EU legal acts:**

- Treaty provisions
- regulations
- directives
- decisions

may be recognised as having direct effect!

Direct Effect of Regulations

- Article 288 TFEU:
A regulation is of *general application...binding in its entirety and directly applicable in all Member States*
- NB Direct applicability v. Direct effect
- i.e. Regulations to take immediate effect in domestic law of MS without need for further transposition (direct applicability), so as long as provision in regulation satisfies other criteria for direct effect (i.e. sufficiently precise/ unconditional), can be enforced before national courts
- Direct applicability confirmed by ECJ in C-39/72, *Commission v. Italy*

Direct Effect of Directives

- Article 288 TFEU:

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+

- i.e. Directives not directly applicable but rather conditional on implementation, and do not have to be addressed to all MS (unlike Regulations)
- *Van Duyn* (case 41/74): directives can be directly effective if MS fail or refuse to implement them (on time / properly), provided they satisfy other conditions for direct effect
 - i.e. directives are binding and will be more effectively enforced if individuals can rely on them!

Limitations to the Direct Effect of Directives

- 1) The provisions of directives cannot be pleaded directly by individuals before the implementation date has expired and only if the State has not properly implemented them . i.e. only in pathological cases where directive not properly transposed . otherwise effects of directive would apply through national implementing law!

(Case 148/78, *Pubblico Ministero v. Tullio Ratti*)

BUT before the period of implementation of a directive has expired MS must refrain from adopting any measures liable to seriously compromise the result prescribed by the directive (C-129/96, *Inter-Environnement Wallonie ASBL v. Région Wallone*) .
Standstill obligation

Limitations to the Direct Effect of Directives

2) Direct Effect of directives - solely vertical, not horizontal!

i.e. Unimplemented directives can only be invoked against the MS to which they are addressed and not against private individuals

Reason: *“according to article 249 [now art. 288], the binding nature of a directive...exists only in relation to the each MS to which it is addressed.”*

(Case 152/84, *Marshall*)

BUT Notion of State here has been interpreted very broadly:

“a body, whatever its legal form, which has been made responsible, pursuant to a measure adopted by the State, for providing a public service under the control of the State and has for that purpose special powers beyond those which result from the normal rules applicable in relations between individuals” +

(C-188/89, *Foster v British Gas*)

Horizontal v. Vertical Direct Effect

So there exist **two types of direct effect**:

1. Vertical direct effect:

- between MS and individuals

2. Horizontal direct effect:

- between individuals

Direct Effect of Decisions

- Article 288 TFEU:

A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them+

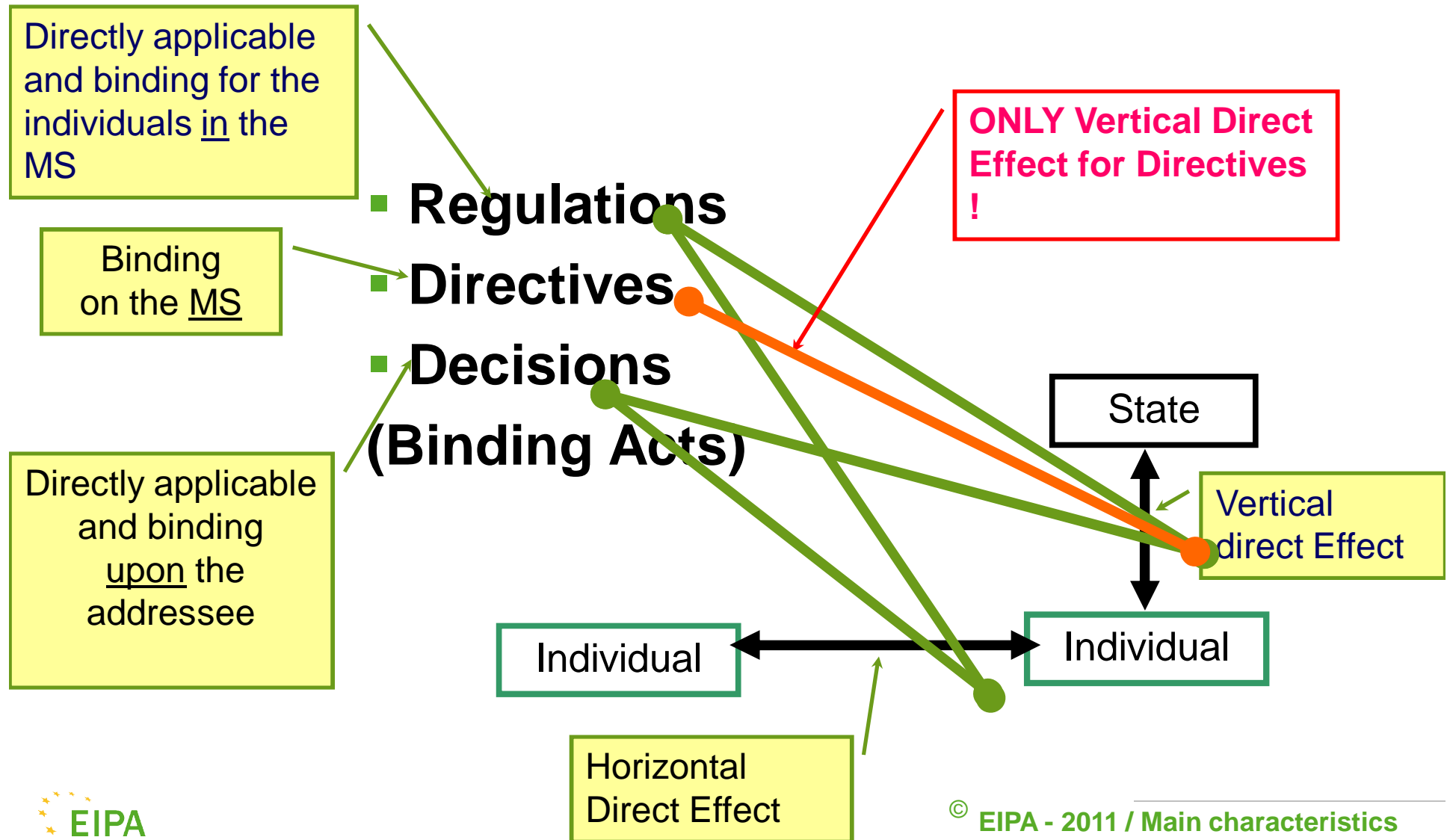
i.e. Decisions usually specific rather than general measures addressed to particular MS or individuals, and not described as being directly applicable

- BUT, decisions can also be directly effective, provided they meet aforementioned conditions

(Case 9/70, *Franz Grad*)

- Reason: decision could only ever be relied on against particular addressee(s) to whom it is addressed, therefore if no implementation on the part of the addressee(s), which may be private individuals, it should be possible to invoke it against them

Direct Effect of Secondary Legislation (Overview)

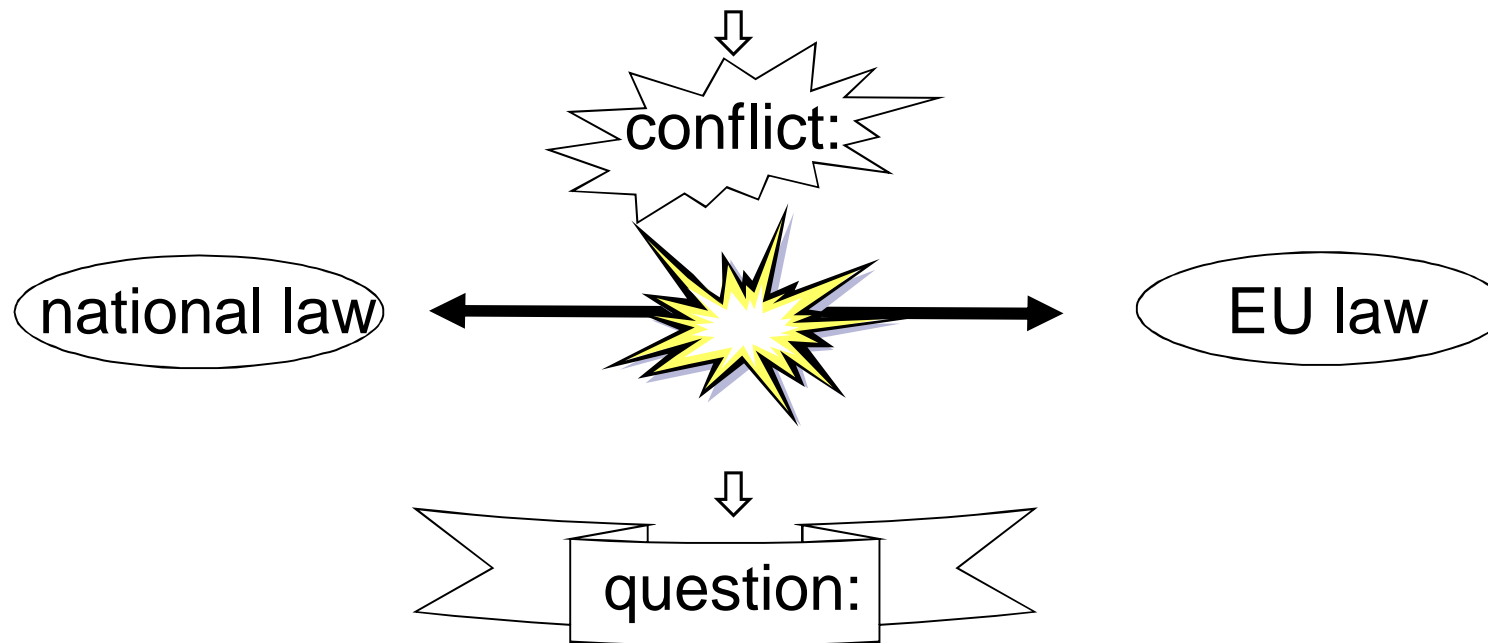




Primacy

Primacy of EU Law

extensive field of application of EU law



which law takes precedence?

Primacy of EU Law

- **Treaties did not (and still do not) address the issue**
- **Doctrine of primacy of EU law developed by CJEU**
case *Costa v. E.N.E.L.* (Case 6/64)
- **BUT the Treaty of Lisbon - Declaration No. 17**
(not the same value as the Treaty itself, but political value)

para.] in accordance with well settled case law of the CJEU, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of MS, under the conditions laid down by the said case law.+

Primacy of EU law

Costa v. ENEL (case 6/64)

Facts

- Apparent incompatibility between various Treaty provisions and a subsequent Italian law which, by reason of the rule of *lex posterior*, should have taken priority over the previous Italian Ratification Act which incorporated the then EC Treaty into Italian law

Issue

- Could EU law be overridden by the subsequent Italian law?

Judgment

- ¶ [T]he law stemming from the Treaty cannot, 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.+
- i.e. Primacy = precondition for very existence of EU law, as objective of establishing common market between MS would be defeated if EU law could be subordinated to the different laws of the Member States
- So any ¶ subsequent unilateral act incompatible with the concept of the Community cannot prevail.+

Primacy of EU Law

- Thus, any EU norm is superior in value to any national norm, even where the latter postdates the former
- If national legislation is drafted in such a way that it does not appear possible to interpret it in a manner that complies with binding EU law, the primacy enjoyed by the latter compels the national judge to refuse to apply it or to ~~disapply~~ it.

The national court however, is not obliged to invalidate, annul or declare non-existent an incompatible national law .

(cf. Cases C-10-22/97, *IN.CO.GE.* ~~90~~)

- This primacy applies whatever may be the nature or status, respectively, of the national legislation (constitution, act, decree or order) and the EU legislation (treaty, regulation, directive or decision) in question

(cf. Case 11/70, *Internationale Handelsgesellschaft*)

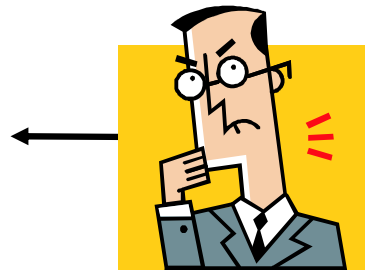
Primacy of EU Law

- BUT What if the national court has no domestic jurisdiction to question or to set aside national legislative acts?
- Case 106/77, *Simmenthal*:
 - National judge with task of ensuring full effect of particular EU provisions cannot be obliged to ask or wait for their prior repeal through legislation or any other constitutional procedure (such as a declaration of incompatibility by a constitutional court, as was the case here)
 - i.e. Necessary because otherwise aim of uniform application and effectiveness of EU law would be undermined

Primacy of EU Law v. National Perspective

Supremacy of EU law
as viewed by:

the Court of Justice
& other EU institutions



Constitutional Courts
of the MS

National courts often:

- accept the requirements of the supremacy of EU law in practice but not unconditionally
- regard supremacy as flowing from their constitutions and not from the authority of the Treaties or the CJEU
- *Kompetenz-Kompetenz*
- e.g. Germany, Poland etc.

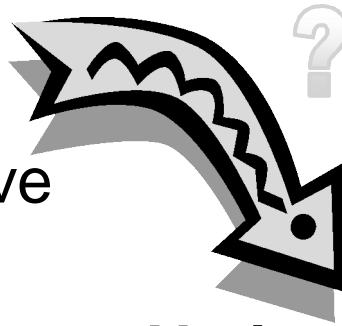


Indirect Effect

Indirect Effect

What if...

EU law provision
not fulfilling criteria
to be directly effective



National law provision
not in line with EU law
provision aims, function,
objectives etc.

Is there any impact of unenforcable EU law over
applicable national law?

Indirect Effect

- Even in the case of provisions which do not have direct effect, Court of Justice introduced another principle whereby such provisions could nevertheless be relied on before national courts to a certain extent . Indirect effect!
- Essentially an interpretive tool which requires national law to be interpreted *in the light of* EU legal acts, and more specifically of their wording and purpose, so as to ensure achievement of their objectives (thus, also called principle of consistent interpretation)
- Case 14/83, *Von Colson* . Equal Treatment Directive 76/207 inadequately implemented into German law, but national courts nevertheless under obligation to interpret national law harmoniously with Directive
- Principle applies even in a case between individuals (horizontal indirect effect), and even where the national law predates the directive

Indirect Effect

- BUT NB National Courts must read national law in conformity with a relevant directive only in so far as possible (Case 106/89, *Marleasing*)
+ only when the time limit for implementation of the directive has expired (Case C-212/04, *Adeneler*)
- Still, from the date upon which a directive has entered into force, the courts of the Member States must refrain as far as possible from interpreting domestic law in a manner which might seriously compromise, after the period for transposition has expired, attainment of the objective pursued by that directive+

Indirect Effect

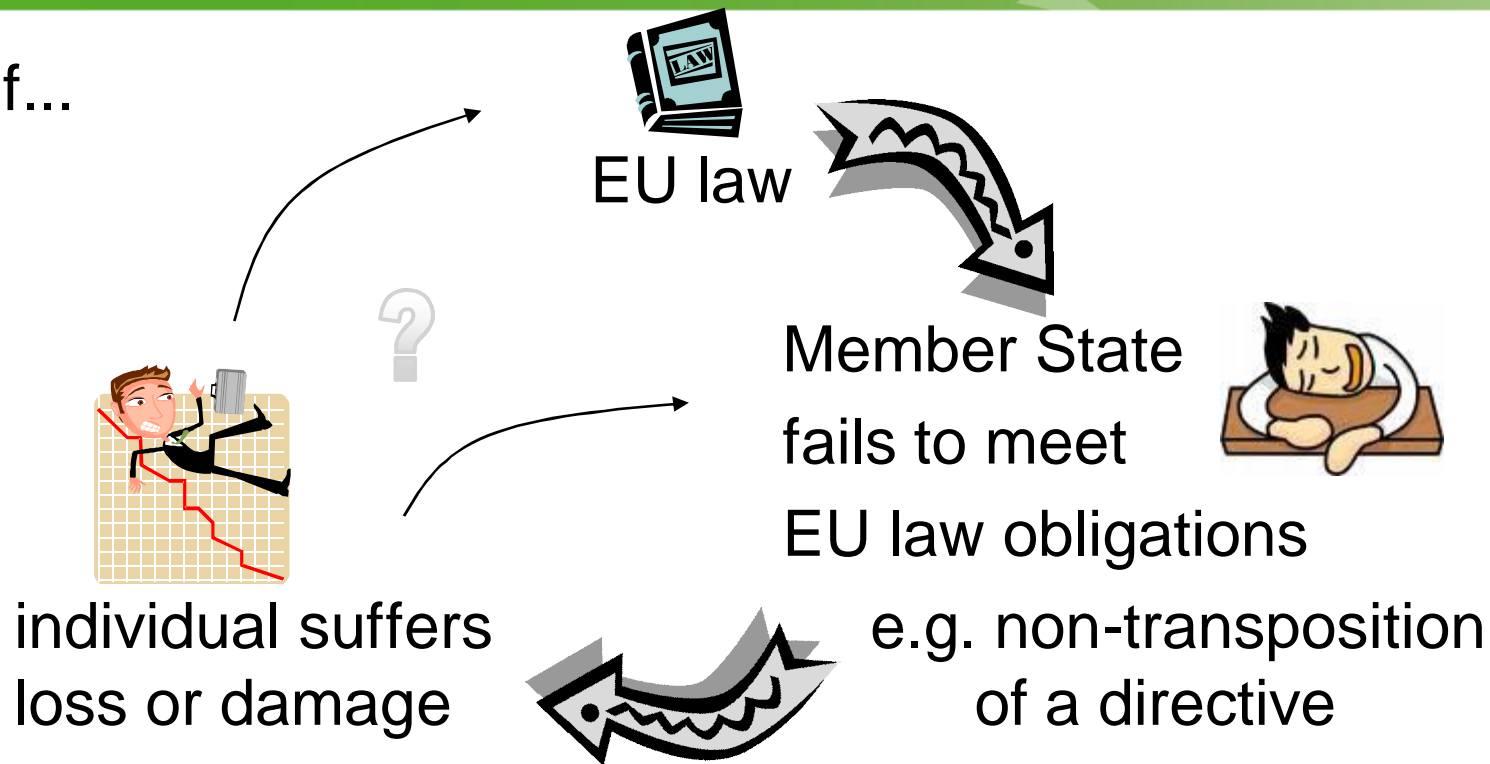
- +NB Other limits to indirect effect:
 - Non-retroactivity of penal liability
(Case 80/86, *Criminal proceedings against Kolpinghuis Nijmegen*)
 - On the other hand, obligation of conform interpretation can extend to situations in which this results in the imposition of civil (as opposed to criminal) liability on an individual which would not otherwise have been imposed (C-456/98, *Centrosteeel*)



State liability

State liability

What if...



Can individual rely on EU law? Seek compensation from non-compliant MS?

State liability

- Again, no express Treaty provisions dealing with the liability of Member States

i.e. Third mechanism established by Court of Justice

- individuals may rely on EU law before national courts to seek redress (i.e. compensation) if they suffered loss or damage as a result of a failure of a MS to meet EU obligations (e.g. incorrect transposition of a directive)

(*Francovich*, Joined Cases C-6/90 and C-9/90)

State liability

Francovich & Bonifaci v Italy (cases 6 & 9/90)

Facts

- Applicants brought proceedings against Italian State for failure to transpose Directive 80/987 on protection of employees in the event of employer's insolvency
- Provisions invoked by applicants to support their claim for unpaid wages (the payment of which would have been guaranteed had Directive been duly implemented) not sufficiently precise and unconditional to be directly effective, and consistent interpretation of national law with directive (indirect effect) not possible
- Nevertheless, provisions in question were clearly intended to confer rights on individuals, meaning State's failure had deprived applicants of Community rights

Issue

- Could the Italian State be held liable to pay compensation to the applicants for this failure?

Judgment

- *%6 the full effectiveness of Community rules would be impaired and the protection of the rights which they grant would be weakened if individuals were unable to obtain redress when their rights are infringed by a breach of Community law for which a Member State can be held responsible+*
- So a general requirement of EU law that national courts must make available an action for compensation against MS in the event of infringement of EU law

The Conditions for State liability

In *Francovich* judgment itself, Court of Justice laid down 3 fundamental conditions for liability:

- a) the result prescribed by the directive should entail the grant of rights to individuals;
 - b) the content of these rights must be identifiable on the basis of the provisions of the directive;
 - c) the existence of a causal link between the breach of the State's obligation and the loss and damage suffered by the injured parties must be shown
- ECJ subsequently clarified these conditions in Joined Cases *Brasserie du Pêcheur* and *ex p. Factortame (III)*:

Conclusion

2 key questions:

- **How far, and under what conditions, can private individuals rely on EU law against public bodies or other individuals before national courts?**
- **How are conflicts between national law and EU law resolved?**

EU law – Methods of Enforcement (Summary)

So (in contrast to other international organisations)
EU Member States can be made to fulfil their
obligations under EU law by means of:

A) Public Enforcement

- The Infringement Procedure

BUT ALSO

B) Private Enforcement

- Direct Effect, Indirect Effect and Supremacy
- State Liability



Do You Have Any Questions?

**We would be happy to
help.**



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