

## The direct effect of European law

The principle of direct effect enables individuals to immediately invoke a European provision before a national or European court. This principle only relates to certain European acts. Furthermore, it is subject to several conditions.

The direct effect of European law is, along with the principle of [precedence](#), a fundamental principle of European law. It was enshrined by the Court of Justice of the European Union (CJEU). It enables individuals to immediately invoke European law before courts, independent of whether national law test exist.

The direct effect principle therefore ensures the **application** and **effectiveness** of European law in EU countries. However, the CJEU defined several conditions in order for a European legal act to be immediately applicable. In addition, the direct effect may only relate to relations between an individual and an EU country or be extended to relations between individuals.

### Definition

The direct effect of European law has been enshrined by the Court of Justice in the judgement of **Van Gend en Loos** of 5 February 1963. In this judgement, the Court states that European law not only engenders obligations for EU countries, but also rights for individuals. Individuals may therefore take advantage of these rights and **directly invoke European acts** before national and European courts. However, it is not necessary for the EU country to adopt the European act concerned into its internal legal system.

### Horizontal and vertical direct effect

There are two aspects to direct effect: a vertical aspect and a horizontal aspect.

**Vertical direct effect** is of consequence in relations between individuals and the country. This means that individuals can invoke a European provision in relation to the country.

**Horizontal direct effect** is consequential in relations between individuals. This means that an individual can invoke a European provision in relation to another individual.

According to the type of act concerned, the Court of Justice has accepted either a **full direct effect** (i.e. a horizontal direct effect and a vertical direct effect) or a **partial direct effect** (confined to the vertical direct effect).

### Direct effect and primary legislation

As far as primary legislation is concerned, i.e. the texts at the top of the European legal order, the Court of Justice established the principle of the direct effect in the Van Gend & Loos judgment. However, it laid down the condition that the obligations must be **precise, clear and unconditional** and **that they do not call for additional measures**, either national or European.

In the Becker judgment (Judgment of 19 January 1982), the Court of Justice rejected the direct effect where the countries have a margin of discretion, however minimal, regarding the implementation of the provision in question (Judgment of 12 December 1990, Kaefer & Procacci).

### Direct effect and secondary legislation

The principle of direct effect also relates to acts from secondary legislation, that is those adopted by institutions on the basis of the founding Treaties. However, the application of direct effect depends on the type of act:

- the [regulation](#): regulations always have direct effect. In effect, Article 288 of the Treaty on the Functioning of the EU specifies that regulations are directly applicable in EU countries. The Court of Justice clarifies in the judgement of Politi of 14 December 1971 that this is a complete direct effect;
- the [directive](#): the directive is an act addressed to EU countries and must be transposed by them into their national laws. However, in certain cases the Court of Justice recognises the direct effect of directives in order to protect the rights of individuals. Therefore, the Court laid down in its case-law that a directive has direct effect when its provisions are unconditional and sufficiently clear and precise and when the EU country has not transposed the directive by the deadline (Judgement of 4 December 1974, Van Duyn). However, it can only have direct vertical effect; EU countries are obliged to implement directives but directives may not be cited by an EU country against an individual (Judgement of 5 April 1979, Ratti);
- the [decision](#): decisions may have direct effect when they refer to an EU country as the addressee. The Court of Justice therefore recognises only a direct vertical effect (Judgement 10 November 1992, Hansa Fleisch);
- [international agreements](#): in the Demirel Judgement of 30 September 1987, the Court of Justice recognised the direct effect of certain agreements in accordance with the same criteria identified in the Judgement Van Gend en Loos;
- opinions and recommendations: opinions and recommendations do not have legal binding force. Consequently, they are not provided with direct effect.

14.01.2015