EU law seminar III – Enforcement of EU law in the Member States

7.04.2020

In the first seminar we learned about the development of the doctrine of direct effect of EU law by the CJEU and requirements applied to provisions of EU Treaties to be considered directly effective. In the second seminar we learned that also Directives enjoy direct effect, in spite of the fact that they are lacking direct applicability (Art 288(3) TFEU) if certain conditions are met (Van Duyn, para. 12). In particular, direct effect would only arise after the end of the transposition period of the Directive, a temporal limitation that does not apply to the direct effect of other EU legal act. Therefore, even if the provisions of a Directive are sufficiently precise, clear and unconditional, "*those provisions may be relied upon by an individual against the State where that State fails to implement the directive in national law by the end of the period prescribed or where it fails to implement the directive correctly"* (C-80/86 – Kolpinghuis, para. 7)

Depending on the person against whom the EU legal act is enforced, direct effect can be divided into: "vertical" (private individuals or companies enforcing EU legal acts against authorities of a Member State, see *van Duyn*); "horizontal" (enforcement against other individuals and companies, see *Dori*).

The CJEU eloquently summarised the conditions for direct effect of directives and exemplified "vertical" direct effect: Case C- 246/94 *Cooperative Agricola Zootecnica*, paras. 17-19:

"The Court has consistently held that, whenever the provisions of a directive appear, as far as their subject-matter is concerned, **to be unconditional and sufficiently precise, those provisions may be relied upon before the national courts by an individual against the State where that State has failed to implement the directive in national law by the end of the period prescribed or where it has failed to implement the directive correctly**. [vertical direct effect]

A Community provision is **unconditional** where it sets forth an obligation which is not qualified by any condition, or subject, in its implementation or effects, to the taking of any measure either by the Community institutions or by the Member States (see, in particular, Case 28/67 Molkerei-Zentrale Westfalen Lippe v Hauptzollamt Paderborn [1968] ECR 143, at 153).

Moreover, a provision is **sufficiently precise** to be relied on by an individual and applied by a national court where it sets out an obligation in unequivocal terms (Case 152/84 Marshall [1986] ECR 723 and Case 71/85 Netherlands v Federatie Nederlandse Vakbeweging [1986] ECR 3855)."

In this seminar we continue to explore the second limitation of direct effect of Directive: the normative one, that is would direct effect of Directives operate only as against State authorities or also against private individuals and companies?

1. **The lack of horizontal direct effect of Directives:**

   CJEU, *Marshall, para 48:* "With regard to the argument that a directive may not be relied upon against an individual, it must be emphasized that according to Article 189 of the EEC Treaty the binding nature of a directive, which constitutes the basis for the possibility of relying on the directive before a national court, exists only in relation to 'each Member State to which it is addressed'. **It follows that a directive may not of itself impose obligations on an individual and that a provision of a directive may not be relied upon as such against such a person**."

The case of *Marshall* clarifies that even if a directive fulfills the 3 general requirements of direct effect (clear, precise, unconditional), and the temporal condition is also fulfilled (that is: the Member State has failed to implement within the prescribed period or incorrectly transposed a Directive), directives are capable of only vertical direct effect and thus could only be used to bring actions against the State or "emanations of the state" .

Try now to shortly summarise what is the key principle developed by the CJEU in Marshall?

Key Principle: Directives are capable of creating direct effects vertically but not horizontally.

To identify the reasons why the CJEU denied horizontal direct effect, see for Case C-91/92 *Dori*, paras. 22-25 (first three conditions), and the fourth can be found in Case C-201/02, *Queen Secretary of State*, para. 56.

CJEU continues to deny horizontal direct effect:

Case C-443/98, *Unilever*, para 50: "a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against an individual."

Is Unilever still relevant?

Joined Cases C-569/16 and C-570/16, *Bauer*, para 77: "**even a clear, precise and unconditional provision of a directive seeking to confer rights on or impose obligations on individuals cannot of itself apply in a dispute exclusively between private person**s."

What domestic authorities qualify as "State authorities"?

Is there a general test to establish which authorities fall under the category of "State authorities" and who should establish this test?

The CJEU developed a functional test in Case C-188/89, *Foster*, para. 20: "*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 is included in any event among the bodies against which the provisions of a directive capable of having direct effect may be relied up*on."

Examples of 'state authorities':

- *Foster:* a nationalised undertaking such as British Gas would be a public body against which a directive may be enforced;
- *Marshall*: a public authority exercises private functions (concluding private contracts, employing private personnel).

CONSIDER: If a public authority exercising private functions qualifies as "State authority" for the vertical direct effect of Directive, would a private party exercising public functions qualify as well?

Case C-413/15 *Farrell,* para 30 and 31*: On the basis of those considerations, the Court has held that provisions of a directive that are unconditional and sufficiently precise may be relied upon by individuals, not only against a Member State and all the organs of its administration, such as decentralised authorities (see, to that effect, judgment of 22 June 1989, Costanzo, 103/88, EU:C:1989:256, paragraph 31), but also, as was stated in the answer to the first question, against organisations or bodies which are subject to the authority or control of the*

State or which possess special powers beyond those which result from the normal rules applicable to relations between individuals (judgments of 12 July 1990, Foster and Others, C-188/89, EU:C:1990:313, paragraph 18, and of 4 December 1997, Kampelmann and Others, C-253/96 to C-258/96, EU:C:1997:585, paragraph 46).

34 Such organisations or bodies can be distinguished from individuals and must be treated as comparable to the State, either because they are legal persons governed by public law that are part of the State in the broad sense, or because they are subject to the authority or control of a public body, or because they have been required, by such a body, to perform a task in the public interest and have been given, for that purpose, such special powers.

2. How to fill the gap in enforcement of EU law left by the lack of horizontal direct Directives?

1. Indirect (or incidental) effect:

In certain cases the vertical enforcement of an obligation imposed upon the Member States may have an incidental effect upon a private (third) party. *CIA Security* (C 194/94) and *Unilver (C-443/98)* involved civil proceedings among private parties, and although the Directive did not create rights or obligations for individuals, but was addressed to the Member States, nevertheless the end result was to force private parties to limit their national rights.

Case C- 443/98 *Unilever*, paras 50 and 51*:* "Whilst it is true, as observed by the Italian and Danish Governments, that a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against an individual (see Case C-91/92 Faccini I - 7584 UNILEVER Dori [1994] ECR I-3325, paragraph 20), that case-law does not apply where non-compliance with Article 8 or Article 9 of Directive 83/189, which constitutes **a substantial procedural defect, renders a technical regulation adopted in breach of either of those articles inapplicable**. 51 In such circumstances, and unlike the case of non-transposition of directives with which the case-law cited by those two Governments is concerned, Directive 83/189 does not in any way define the substantive scope of the legal rule on the basis of which the national court must decide the case before it. **It creates neither rights nor obligations for individuals."**

See also C-441/93 *Pafitis* – the duty to hold a general meeting of shareholders before raising company capital, again derived from a directive, could be enforced in litigation between two groups of private parties so as to se aside incompatible provisions of domestic law.

2. Principle of consistent interpretation

The principle of consistent interpretation was first set out by the CJEU in *Von Colson*, C-14/83, para 26: "the Member States' obligation arising from a directive to achieve the result envisaged by the directive and their **duty under [Article 4(3) TEU] to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation, is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts**. It follows that, in applying the national law and in particular the provisions of a national law specifically introduced in order to implement Directive No 76/207, **national courts are required to interpret their national law in the light of the wording and the purpose of the directive** in order to achieve the result referred to in the third paragraph of [Article 288]."

When a national legislator failed to implement a directive, the duty of consistent interpretation (or the *Von Colson principle*) ensures the directive is indirectly implemented via national courts.

Similarly as with Marshall, try to shortly summarise the key principle developed by the CJEU in Von Colson.

SOURCE OF THE DUTY OF CONSISTENT INTERPRETATION: As you can read from para 26 of Von Colson, the source for the consistent interpretation, according to the CJEU, is Article 4(3) TEU.

WHAT IS THE SCOPE of the duty of consistent interpretation?

- Does it apply to all national laws, or only those adopted after the adoption of the directive?
- When does the interpretative obligation apply: before or after the end of the transposition period (remember that the vertical direct effect of directives has a temporal limitation)?

In *Marleasing (para. 8),* the CJEU clarified that the duty of consistent interpretation applies to national laws adopted before and after the directive, regardless of whether the national law was intended or not to implement the directive.

In *Marleasing*, the CJEU traced the duty of conform interpretation which required, *in casu*, the Spanish referring court to not take into account a particular interpretation of the Civil Code insofar as it would produce a result not envisaged by the Directive.

Consistent interpretation is also a crucial tool for upholding the autonomous meaning of legal terms in EU law and finding a 'fit' between EU and national law. In the words of the UK High Court of Appeal,[1] the wording of EU rules is prone to "[…] being adapted to the legal systems of all Member States." (para. 89)

What is the key principle developed by the CJEU in Marleasing?

Key Principle: The obligation to interpret national law in conformity with a directive applies regardless of whether the national law was adopted before or after the directive.

But does consistent interpretation imposes upon national courts a duty to use this technique **even before the deadline of the transposition of the Directive has expired**?

In *Adeneler*, C-212/04, para 115, the CJEU held where a directive is transposed belatedly, the obligation on national courts to interpret domestic law in conformity with the directive exists only once period for transposition has expired **BUT in para 123 the CJEU also states that from the date of directive entering into force (publication in OJ or date of notification to addressee), national courts have a duty to REFRAIN form interpreting domestic law in a manner which might seriously compromise the attainment of the objective of the directive.** The CJEU refers to *Inter-Environment Wallonie* (C-126/96) principle that during period of transposition of a directive, a Member State may not take any measure liable seriously to compromise result of directive.

What is the dividing line between indirect effect and consistent interpretation and horizontal direct effect?

Some authors see no clear dividing line, see *S Prechal, Directives in EC, page 211*.

[1] *Bucnys and others. v. Lithuanian and Estonian Ministries of Justice* [2012] EWHC 2771 (Admin).

How far is a national court required to go on the basis of consistent interpretation?

C-397-403/01, Pfeiffer, para 118 – a national court is required to do" whatever lies within its jurisdiction having regard to the whole body of rules of national law".

However in certain cases, consistent interpretation might not be sufficient to bring the national legal provision in line with EU law (directive). This situations are known as a *contra legem* interpretation. If the national court is uncertain of whether consistent interpretation is or not possible in the case, it can refer a preliminary reference to the CJEU. For instance, the French supreme court (Cour de Cassation) asked the CJEU in **Dominguez**,[2] whether certain provisions of the French labour Code could be interpreted in conformity with EU Directive 2003/88 on the organisation of working time, or the French legislation had to be disapplied in favour of a direct applicability of the Directive regarding the right to paid annual leave. The CJEU suggested to the referring court to adopt an interpretation of the national provisions at issue that would be compatible with Article 7 of Directive 2003/88, making it unnecessary for the national court to disregard/disapply national law (**which is not possible in horizontal situations, that is between private parties**). The CJEU thus eliminated the case as a *contra legem* limitation on the use of consistent interpretation technique. The Court of Justice required the French supreme court to apply the full set of interpretative methods recognised by domestic law with a view to adopt an interpretation which "would allow the absence of the worker due to an accident on the journey to or from work to be treated as being equivalent to the absence of a worker due to a work-accident."[3]

Therefore, national courts are not required to amend the text! But just finding a conform interpretation of the national text.

3. EU Charter and general principles triggering the horizontality of Directives

The previous section showed how the CJEU developed consistent interpretation to ensure indirect horizontal effect of Directive through national law. Decades later the CJEU developed another avenue to ensure indirect horizontal effect of directive through EU primary law, which enjoys horizontal directive effect. In *Mangold* it was the general principle of non-discrimination based on age. In *Kücükdeveci* it is Article 21 of the EU Charter of Fundamental Rights and general principle of non-discrimination based on age

Mangold concerned a private dispute between an employer and an employee. A piece of German legislation was contrary to the dispositions of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation, namely regarding the prohibition of discrimination on grounds of age. At the time of Mangold, the transposition period for implementing the Directive into national law had not yet expired. Notwithstanding this temporal element, the Court circumvented its long-

[2] Case C-282/10, *Dominguez*, ECLI:EU:C:2012:33.

[3] See also L. Pech, 'Between Judicial Minimalism and avoidance: The Court of Justice's Sidestepping of Fundamental Constitutional Issues in Römer and Dominguez', *Common Market Law Review* (2012), p. 1–40.

standing case law on the impossibility of invoking the direct effect of a directive *contra legem*,[4] and horizontally[5], in a curious fashion:

"(…) above all, Directive 2000/78 does not itself lay down the principle of equal treatment in the field of employment and occupation. Indeed, in accordance with Article 1 thereof, the sole purpose of the directive is 'to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation' (…). **The principle of non-discrimination on grounds of age must thus be regarded as a general principle of Community law**." para. 74

"**observance of the general principle of equal treatment, in particular in respect of age, cannot as such be conditional upon the expiry of the period allowed the Member States for the transposition of a directive** intended to lay down a general framework for combating discrimination on the grounds of age, in particular so far as the organisation of appropriate legal remedies, the burden of proof, protection against victimisation, social dialogue, affirmative action and other specific measures to implement such a directive are concerned.

In those circumstances it is the responsibility of the national court, hearing a dispute involving the principle of non-discrimination in respect of age, to provide, in a case within its jurisdiction, the legal protection which individuals derive from the rules of Community law **and to ensure that those rules are fully effective, setting aside any provision of national law which may conflict with that law** (see, to that effect, Case 106/77 Simmenthal [1978] ECR 629, paragraph 21, and Case C-347/96 Solved [1998] ECR I-937, paragraph 30)." paras. 76-78

This back door recognition of indirect horizontal direct effect of Directive on the basis of general principle was later confirmed by *Kücükdeveci.*

Facts: In *Kücükdeveci* (C-555/07)[6] the ordinary judge needed to assess the legality of a provision from the German Civil Code allowing employees to give a comparatively shorter notice of dismissal to employees who have started working before the age of 25. The plaintiff maintained that this provision was discriminatory, because it arbitrarily affected early-workers. Discrimination in the workplace is regulated by the EU Directive 2000/78, which includes age among the prohibited grounds. However, directives are deprived of direct horizontal effects. That is, individuals cannot derive from them an enforceable right capable of setting aside domestic norms that can be relied upon by another private party, which was the case of the present dispute. On the other hand, the CJEU had previously stated that non-discrimination on grounds of age is a general principle of EU law.[7] In the meantime the EU Charter entered into force and Art. 21 of the Charter of Fundamental Rights provides the principle of non-discrimination: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited." Yet, in order to apply the EU Charter based principle of non-discrimination, it

[4] Judgment of the Court of 8 October 1987, Kolpinghuis Nijmegen, C-80/86, EU:C:1987:431; Judgment of the Court of 23 April 2009, Karampousanos and Michopoulos, C-380/07, EU:C:2007:675; Judgment of the Court of 16 July 2009, Mono Car Styling, C-12/08, EU:C:2009:466.

[5] Judgment of the Court of 26 February 1986, Marshall, C-152/84, EU:C:1986:84; Judgment of the Court of 14 July 1994, Faccini Dori, C-91/92, EU:C:1994:292; Judgment of the Court of 5 October 2004, Pfeiffer, C-397/01, EU:C:2004:584.

[6] Case C-555/07, *Kücükdeveci,* ECLI:EU:C:2010:21.

[7] Case C-144/04, *Mangold,* ECLI:EU:C:2005:709.

first had to be established that the facts of the case fall within the scope of application of EU law.(see Art 51 of the Charter).

Legal issues: The challenged national provision introduced a difference of treatment (different notice periods of dismissal) between persons with the same length of service, depending on the age at which they joined the undertaking. The national court was thus faced with the questions of: 1) with what EU law was the national provision in conflict: Directive 2000/76 or the general principle of non-discrimination on grounds of age, or both; 2) if there was a conflict could it be justified by a legitimate aim; 3) could the national judge disapply the national legislative measure if it was found to be incompatible with EU law in a dispute between private parties when according to the Marshall doctrine EU Directives do not have horizontal application.

The German court held that the difference in treatment provided by the national legislation (German Civil Code) did not raise an issue of constitutionality, but it did consider its possible incompatibility with EU law. It therefore, addressed a preliminary reference to the CJEU to determine exactly if there was a conflict with EU law and how to handle it.

Conclusions of the CJEU: The CJEU first confirmed its previous decision taken in *Mangold*, and noted that non-discrimination on grounds of age, as recognized in the EU Charter of Fundamental Rights, and in the Employment Equality Directive 2000/78, is a general principle of EU law, and requires judges to set aside conflicting legislation even in horizontal disputes.

By recognizing the horizontal direct effect of the general principle (a new doctrine) the CJEU strengthened its **alliance with ordinary courts**, and thus granted the opportunity to the national courts to set aside inconsistent national legislation without having first to obtain the constitutional courts' confirmation of the unconstitutionality of the challenged legislation.

In the present case the CJEU held that although the difference in treatment is justified on the basis of the personnel flexibility which falls under the employment and labour market aims provided by Art. 6(1) of the Employment Equality Directive, it is not necessary and proportionate with the aim, and it therefore permitted the national referring court to disapply the national legislative provision following an application of the proportionality test. It has to be noted that in another case referred by a German court, a measure resulting in discrimination on grounds of age (German law restricted applications to join the fire service to those under the age of 30) was found to be appropriate based on the aim of genuine occupational requirement because it promotes a better level of professionalism by encouraging long-term employment in certain critical positions (e.g., see *Wolf*). [8]

Alternative Use of EU law tools: The national court could have avoided the preliminary reference to the CJEU and disapplied the national provision based on the *Mangold* judgment. It should be noted that the *Mangold* case presented certain specific circumstances which were not present in *Kücükdeveci* and thus the preliminary reference was the optimal choice before proceeding to disapplication. Consistent interpretation was not possible in this particular context due to the wording of the provisions.

Shortly summarise what are the key principles developed by *Mangold* and *Kücükdeveci*

However, note that in spite of *Kücükdeveci, national supreme courts are still challenging this technique of indirect horizontal direct effect of Directive on the basis of general principles on*

[8] Case C-229/08, *Colin Wolf v. Stadt Frankfurt am Main*, para. 46.

the basis of being contrary to the principle of legal certainty, see the follow up judgment of the Danish Supreme Court in after the C-441/14 Ajos ECLI:EU:C:2016:278

Commentary here: https://verfassungsblog.de/legal-disintegration-the-ruling-of-the-danish-supreme-court-in-ajos/

Has the CJEU recognised the indirect horizontal effect of Directive only on the basis of the general principle on non-discrimination based on age as enshrined in the general principle of EU law and Article 21 of the EU Charter, or also on the basis of other general principles of EU Charter provisions?

See Joined Cases C-569/16 and C-570/16 (Grand Chamber) *Bauer*, ECLI:EU:C:2018:871

For a short and very good commentary, see Daniel Sarmiento, https://despiteourdifferencesblog.wordpress.com/2018/11/08/sharpening-the-teeth-of-eu-social-fundamental-rights-a-comment-on-bauer/

4. *Private individuals invoking the liability of Member States for infringement of EU law*

Another avenue to remedy the lack of horizontal direct effect of Directives is through vertical direct effect.The CJEU developed the principle of liability of Member States for the harm (loss) suffered as a result of a Member State's failure to transpose in good time or incorrectly tranpose a EU law (in casu a Directive) granting them personal rights. The principle, as the rest of the principles discussed in this seminar, is not expressly provided in the Treaties, however the legal basis, similarly as for developing the other remedies for the lack of horizontal direct effect is Article 4(3) TEU.

Cases C-6 & 9/90, *Francovich, Bonifaci and others v Italy*

Facts: Italy had failed to implement a Directive designed to protect employees in the event of their employer's insolvency. The Directive had required Member States to pass national legislation guaranteeing the payment of outstanding wages. Italy's breach was already established in *Commission v Italy* (C-22/87). Francovich had been employed by an Italian company but received few wages. Unable to recover from the company, he brought a separate action against the State before Italian courts. These courts asked the CJEU to determine the extent of a Member State's liability.

CJEU found: Member States are obliged to compensate individuals for breaches of EC law for which they are responsible if three conditions are satisfied:

1. EU law (in case Directive) must have been intended to grant individuals rights.
2. The content of the rights must be identifiable from the directive.
3. Any loss by that breach could be claimed

Key Principle: A Member State will be liable for non-implementation of a directive in certain circumstances.

NOTE: State liability under Francovich applies to obligations which may not be directly effective and provides a remedy in the event of non-implementation (or inadequate

implementation) of EC law. Thus it prevents a state from relying on its own default in implementing EC law.

This short test was confined to cases of flagrant non-implementation of a Directive, as in the Francovich. A new condition was added in later cases, such as:

Brasserie du Pecheur SA v Germany **(Case C-46/93) and** ***Factortame*** **Ltd (No.3) (Joined Cases C-46/93 and C-48/93)**

These cases both concerned the question of the extent of state liability where legislation had been adopted in contravention of directly effective rights. Brasserie du Pecheur arose out of a claim by a French brewery against Germany for losses incurred as a result of the German Beer Purity laws which had been found by the ECJ to infringe Art.28 (Case 178/84). Factortame No 1 had led to a finding that the Merchant Shipping Act 1988 infringed EC law. The Spanish trawler owners claimed compensation from the United Kingdom courts.

CJEU found: Where a Member State acts in a field where it has wide discretion, it will be liable to an individual for breach of EC law provided:

(1) the rule of law infringed is intended to confer rights on individuals;
(2) the breach is sufficiently serious;
(3) there is a direct causal link between the breach and the damage.

Key Principle: These cases added a new requirement to the ones set in Francovich : "the breach is sufficiently serious. And there is a direct causal link between the breach and the damage".

Follow-up judgment of the referring courts: German Federal Court applied the ruling of the ECJ in Brasserie du Pecheur v Germany in 1996. It held that there was no direct causal link between the breach of Art.28 and the applicant's loss. It also found that the infringement in relation to additives was not sufficiently serious. The brewer's claim against the German Government thus failed.

The United Kingdom Divisional Court in Factortame (No.5) held in 1997 that the trawler owners were entitled to damages, but not to punitive damages. The House of Lords upheld the earlier findings of fault by the British Govern¬ment, namely that there had been a sufficiently serious breach, leaving unchanged the earlier ruling on damages.

Limits to the principle of State liability, see *R. v H.M. Treasury Ex p. British Telecommunications Pic* (Case C-392/93) on the basis of a very narrow definition of "sufficiently serious breach"

Do Member States entail liability also for judgments delivered by national courts in breach of EU law?

C-224/01 *Köbler*

Supreme Administrative Court of Austria, as a last resort, had not referred a reference for a preliminary ruling to the CJEU, regarding the plaintiff claim that the Austrian legislation had breached his free movement rights. The Court did not refer on the ground that the answer to the question was clear and thus, according to the CILFIT criteria, it would be exempted from the obligation to refer (see Article 267(3) TFEU). This judgment being final, Köbler filed a separate action for damages against the Austrian State before a civil lower court which addressed preliminary questions to the CJEU.

CJEU held that the *Francovich* principle extended also to the judiciary, as one of the State branches of power, and thus wrong judgments could engage State liability under EU law. *In casu*, the incorrect application of EU treaties was considered by the CJEU as not manifest in nature and did not constitute a sufficiently serious breach to engage the State liability.

Mandatory reading:

1. Case C-152/84 *Marshall* ECLI:EU:C:1986:84:
2. Case C-443/98 *Unilever* ECLI:EU:C:2000:496
3. Case C-106/89 *Marleasing* ECLI:EU:C:1990:395
4. Case C-144/04 *Mangold* ECLI:EU:C:2005:709
5. Case C-6 & 9/90 *Francovich, Bonifaci and others v Italy ECLI:EU:C:1991:428*
6. Case C-46/93 *Brasserie du Pecheur SA v Germany*; Joined Cases C-46/93 and C-48/93 *Factortame* Ltd (No.3)
7. Case C-224/01 *Köbler* ECLI:EU:C:2003:513

Optional Reading (suggestions):

- Damian Chalmers, Gareth Davies, Giorgio Monti, European Union law [electronic resource] : text and materials, CUP 2019, Chapter 7 Rights and Remedies
- Dorota Leczykiewicz, "Effectiveness of EU Law before National Courts: Direct Effect, Effective Judicial Protection, and State Liability", in The Oxford Handbook of European Union Law Edited by Damian Chalmers and Anthony Arnull (attached)
- Once Upon a Time—Francovich: From Fairy Tale to Cruel Reality? Commentary by AF Colomer (Attached)
- Francovich and its aftermath – commentary (Attached)

After reading these notes and the related caselaw, you should be able to reply to the following questions:

1. What is "horizontal" direct effect and how does it differ from "vertical" direct effect?
2. Which EU legal acts benefits of horizontal direct effect?
3. What are the reasons for denying horizontal direct effect?
4. What were the ways developed by the CJEU to overcome the lack of horizontal direct effect of Directives?
5. What is indirect or incidental effect of directives and what does it achieve in practice?
6. What is consistent interpretation, its sources, scope and limitations?
7. What is the principle of State liability? In what conditions can an individual obtain a remedy by invoking State liability?
8. What is the principle of judicial liability and its requirements?
9. What are the key principles developed by each of the judgments in the mandatory reading?