

## ON THE EROSION OF THE LIMITS OF THE DIRECT EFFECT OF EU DIRECTIVES

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**Abstract:** *The article identifies and assesses the different ways in which the Court of Justice of the EU (CJEU) has eroded its own general limits of the direct effect of EU directives. The article argues that while these different ways of erosion extend the admissibility of the direct effect of EU directives, they do so at the cost of significantly weakening legal certainty of the persons concerned, making these erosions highly questionable. The article highlights and criticises the most questionable form of such erosion, that emanating from the Mangold and Küçükdeveci line of case law of the CJEU. The article concludes that an adequate response to these questionable erosions should not be the acceptance of a general admissibility of the horizontal direct effect of EU directives. Rather, the response should be based on various efforts to reduce the occurrence of situations of improper transposition of EU directives – the main trigger for the direct effect of EU directives. These efforts should be accompanied by a comprehensive review of the Mangold and Küçükdeveci line of case law and a further clarification by the CJEU of the limits of the (in)admissibility of the direct effect of EU directives, which would considerably increase legal certainty for the persons concerned.*

**Keywords:** *EU directives, direct effect, legal certainty*

### INTRODUCTION

The admission of the direct effect of EU directives by the Court of Justice of the EU (CJEU) in the van Duyn<sup>1</sup> case was followed by the establishments of three general limits of this effect in the Becker<sup>2</sup> and Marshall<sup>3</sup> cases. The first general limit is the inadmissibility of the direct effect of EU directives before the expiry of the transposition period.<sup>4</sup> The second is the inadmissibility for a directive to impose of itself obligations on an individual.<sup>5</sup> The third, which largely but not entirely overlaps with the second, is the inadmissibility of the horizontal direct effect of EU directives, which means that an EU directive cannot of itself be applied in proceedings exclusively between private parties.<sup>6</sup>

The very existence of these limits, and in particular the inadmissibility of the horizontal direct effect of EU directives, has been repeatedly challenged both by advocates general (AG)<sup>7</sup> and academics.<sup>8</sup> While, on the one hand, the CJEU has consistently resisted the chal-

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<sup>1</sup> Case 41/74 *Yvonne van Duyn v Home Office*, ECLI:EU:C:1974:133.

<sup>2</sup> Case 8/81 *Ursula Becker v Finanzamt Münster-Innenstadt*, ECLI:EU:C:1982:7.

<sup>3</sup> Case 152/84 *M. H. Marshall v Southampton and South-West Hampshire Area Health Authority (Teaching)*, ECLI:EU:C:1986:84.

<sup>4</sup> Case *Becker* supra note 2, par. 20 and 24.

<sup>5</sup> Case *Marshall* supra note 3, par. 48.

<sup>6</sup> Case *Marshall* supra note 3, par. 48. See also joined cases C-397/01 to C-403/01 *Bernhard Pfeiffer and Others*, ECLI:EU:C:2004:584, par. 109.

<sup>7</sup> See opinion of AG Lenz in case C-91/92 *Paola Faccini Dori v Recreb Srl*, ECLI:EU:C:1994:45, par. 47, see also opinion of AG Sharpston in case C-413/15 *Elaine Farrell v Alan Whitty and Others*, ECLI:EU:C:2017:492, par. 150.

lenges to the very existence of these general limits,<sup>9</sup> on the other hand, it has significantly eroded and relativised all of the three general limits. The purpose of this article is therefore to identify and assess the various forms of such erosion and relativisation, as they emerge from the relevant CJEU case law.

## I. FORMS OF EROSION OF THE GENERAL LIMITS

It is submitted that the above three general limits of the direct effect of EU directives, as established by the early CJEU case law, have been significantly eroded and relativised by the subsequent CJEU case law in at least five different ways. First, by a very extensive interpretation of what is meant by the term “the State or an emanation of the State” for the purposes of the direct effect of EU directives. Secondly, by a restrictive interpretation of what is meant by an obligation which cannot be imposed by the directive of itself on an individual. Thirdly, by the exceptional admissibility of the exclusionary horizontal direct effect of EU directives. Fourthly, by the direct effect of general principles of EU law as given expression by EU directives. Fifthly, by the limited “blocking” effect of EU directives even before the expiry of the transposition period.

### I.1 The first form of erosion

It is evident that the broader the interpretation of “the State or an emanation of the State” for the purposes of the direct effect of EU directives, the more the restrictive effect of the second and third limits of the direct effect of EU directives mentioned above is eroded. In other words, the more entities are covered by the term “the State or an emanation of the State”, the fewer entities are covered by the term individual or non-State entity against which the direct effect of EU directives is not admissible.

In particular, the CJEU has notably extended the interpretation of the concept “the State or an emanation of the State” in the *Foster*<sup>10</sup> and *Farrell*<sup>11</sup> cases. In the former, the CJEU held that “the State or an emanation of the State” against which a directive may be directly invoked must cover not only state bodies, but also “*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*”.<sup>12</sup> Subsequently, in the *Farrell* case, the CJEU further extended the notion of the emanation of a State, clarifying that the above-mentioned *Foster* conditions for considering certain bodies or organizations as emanation of a State cannot be conjunctive.<sup>13</sup> As a result, the definition of an emanation of the State is now very broad. On the one hand, emanations of the State are all organizations or bodies that are under the authority or control of the

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<sup>8</sup> See e.g. CRAIG, Paul. *The legal effects of directives: policy, rules, and exceptions*. European Law Review, 2009, p. 349.

<sup>9</sup> See e.g., Case C-413/15 *Elaine Farrell v Alan Whitty and Others*, ECLI:EU:C:2017:745, par. 31.

<sup>10</sup> Case C-188/89 A. *Foster and others v British Gas plc.*, ECLI:EU:C:1990:313.

<sup>11</sup> Case *Farrell* supra note 9.

<sup>12</sup> Case *Foster* supra note 10, par. 20.

<sup>13</sup> Case *Farrell* supra note 9, par. 28.

State, even if they do not perform tasks in the public interest and have not been granted special powers for this purpose.<sup>14</sup> On the other hand, emanations of the State are all organizations or bodies to which the State has delegated (outsourced) the performance of tasks of public interest and which, to this end, have special powers exceeding those resulting from the normal rules applicable to relations between private individuals, even if they are governed by private law and are not placed under the authority or control of the State.<sup>15</sup>

## 1.2 The second form of erosion

The CJEU's restrictive interpretation of what is meant by an obligation that cannot be imposed by the directive itself on an individual, i.e., the second form of eroding the general limits of the direct effect of EU directives, can be nicely demonstrated on the Wells case.<sup>16</sup> This case concerns the limits of vertical direct effect in triangular situations, i.e., situations in which an individual invokes against a state (public) authority an obligation imposed on that authority by an unimplemented EU directive, and where this invocation adversely affects the legal position of a third party.<sup>17</sup>

The facts of the Wells case were as follows. The UK authorities granted a new mining authorisation to the Conygar Quarry without first carrying out an environmental impact assessment (EIA). The obligation for the competent authorities to carry out such an environmental assessment was laid down by the EIA Directive,<sup>18</sup> which at the time had not yet been properly transposed into UK national legislation. In this circumstances, Ms Delena Wells, who objected to the resumption of mining because her house was situated next to the quarry, contested the mining authorisation by directly invoking the EIA Directive in proceedings against the public authorities that had granted the mining authorisation to the owners of the Conygar Quarry.

Clearly, if such a direct invocation of the EIA Directive was admitted, it would result in the annulment of the mining authorisation and consequently in the imposition of an obligation on a third party – the owners of the Conygar Quarry. At the very least, the owners would be obliged to suspend mining operations pending the results of an additional environmental impact assessment. Despite this, the CJEU accepted the direct application of the EIA Directive, primarily on the basis of the argument that the obligation to suspend mining operations is not an obligation incumbent on a third party under the EIA directive, but represents “*mere adverse repercussions on the rights of third parties*”.<sup>19</sup>

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<sup>14</sup> In the Czech legal environment e.g. Czech brewery Budweiser Budvar, National Corporation is now apparently covered by such expanded definition of emanation of a state.

<sup>15</sup> In the Czech legal environment e.g. private stations responsible for car technical inspections (STK – stanice technické kontroly) are now apparently covered by such expanded definition of emanation of a state.

<sup>16</sup> Case C-201/2 *The Queen, on the application of Delena Wells v Secretary of State for Transport, Local Government and the Regions*, ECLI:EU:C:2004:12.

<sup>17</sup> For more on triangular situations see KRÁL, R. Questioning the limits of invocability of EU Directives in triangular situations. *European Public Law*. 2010, Vol. 16, No. 2, pp. 239–47.

<sup>18</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.

<sup>19</sup> Case *Wells* supra note 16, par. 57.

This implies that an obligation which cannot be imposed by the directive of itself on an individual must be understood restrictively as an obligation which the directive itself lays down, i.e., which it seeks to impose on individuals. If the direct application of a directive results in the imposition on individuals of an obligation other than that laid down by the directly applied directive (such as the obligation to stop mining, which is clearly not the obligation that the EIA Directive seeks to impose on individuals), this no longer constitutes a case of impermissible imposition of an obligation on individuals by the directive itself, but rather a case of admissible adverse repercussions on the rights of individuals.

The CJEU therefore, through this restrictive interpretation based on the distinction between obligations arising from the directive and the adverse repercussions on individuals' rights caused by the direct application of the directive, significantly reduced and thus eroded the limiting impact of the second general limit of the direct effect of EU directives.

### 1.3 The third form of erosion

The absolute prohibition of the horizontal direct effect of EU directives was lifted by the CJEU in its *CIA*<sup>20</sup> and *Unilever*<sup>21</sup> judgments. In both cases, the CJEU accepted the direct exclusionary application of the Notification Directive 83/189<sup>22</sup> in proceedings between individuals.

In those rulings, the CJEU drew a clear distinction between classic EU directives, which create rights and obligations for individuals, and specific EU directives, such as Directive 83/189, which create neither rights nor obligations for individuals, as they only create obligations for the Member States (such as the obligation to notify national technical regulations under Article 8 of Directive 83/189, or the obligation to observe the postponement periods for the adoption of a draft technical regulation under Article 9 of Directive 83/189).<sup>23</sup> While the CJEU confirmed the inadmissibility of horizontal direct effect in the case of classic EU directives,<sup>24</sup> it accepted the direct exclusionary application of the above-mentioned specific EU directives in proceedings between individuals, thus lifting the absolute prohibition of the horizontal direct effect of EU directives.

In the *Unilever* case, the direct exclusionary application of Directive 83/189 resulted in the inapplicability of the Italian technical regulation on the labelling of olive oil, which had been adopted in breach of the obligation to observe the postponement periods pursuant to Article 9 of Directive 83/189. The consequence of this inapplicability was the obligation for the company Central Food to pay Unilever for the delivery of olive oil which was not labelled in accordance with the Italian technical regulation, i.e., the obligation which Central Food would not have had if the Italian technical regulation on the labelling of olive oil had not been rendered inapplicable.

<sup>20</sup> Case C-194/94 *CIA Security International SA v Signalson SA and Securitel SPRL*, ECLI:EU:C:1996:172.

<sup>21</sup> Case C-443/98 *Unilever Italia SpA v Central Food SpA*, ECLI:EU:C:2000:496.

<sup>22</sup> Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations.

<sup>23</sup> Case *Unilever* supra note 21, par. 51.

<sup>24</sup> Case *Unilever* supra note 21, par. 50 and 51. See also case *Pfeiffer* supra note 7, par. 109.

It should be added, however, that in line with the above-mentioned distinction between an obligation arising from a directive and mere adverse repercussions, the obligation to pay for the delivery of olive oil was not an obligation under Directive 83/189 (this directive created neither rights nor obligations for individuals), but an obligation based on Italian contract law. The payment obligation was thus not a case of inadmissible imposition of an obligation on an individual by the directive itself, but a case of permissible adverse repercussions on the rights of individuals caused by the direct horizontal application of the directive.

#### 1.4 The fourth form of erosion

Whereas in the CIA and Unilever cases, the CJEU lifted the absolute prohibition of direct horizontal effect by establishing a special category of EU directives that create neither rights nor obligations for individuals, in the Mangold<sup>25</sup> and Küçükdeveci<sup>26</sup> line of cases, the CJEU circumvented this prohibition by establishing a special category of EU directives that give expression to general principles of EU law by importing their content into the content of the general principle concerned.<sup>27</sup> These EU directives, such as Directive 2000/78,<sup>28</sup> which gives expression to the general principle of non-discrimination on grounds of age, make the general principles to which they give expression directly applicable, in an exclusionary fashion, even in proceedings between individuals.<sup>29</sup> These EU “super”-directives capable of giving expression to general principles of EU law by importing their content into the content of the general principle concerned are not, strictly speaking, directly applicable in the Member States; they are applicable indirectly, through the direct application of the general principle of EU law as fleshed out, i.e. as given expression by these directives. However, the effect of their indirect application in this way is the same as if their exclusionary horizontal direct effect was admitted. In other words, their indirect application materially represents their disguised horizontal direct effect. This indirect application of EU super-directives can therefore rightly be seen as a means of circumventing the prohibition of the horizontal direct effect of EU directives, and thus as a means of eroding this prohibition.

I consider the creation of a special category of super-directives, which give expression to general principles of EU law by importing their content into the content of the general principle concerned and which are consequently (indirectly) horizontally applicable in the Member States through the direct horizontal application of the general principles of EU law concerned, to be highly problematic and conceptually flawed. In this respect, I share the very strong criticism and arguments against the explicit or implicit importation of the content of EU directives into the content of general principles of EU law, as ex-

<sup>25</sup> Case C-144/04 *Werner Mangold v Rüdiger Helm*. ECLI:EU:C:2005:709.

<sup>26</sup> Case C-555/07 *Seda Küçükdeveci v Swedex GmbH & Co. KG*, ECLI:EU:C:2010:21.

<sup>27</sup> For detailed analysis of Mangold and Küçükdeveci line of cases including analysis and criticism of importation of the content of EU directives into the content of general principle of EU law concerned see BOBEK, M., BRÍZA, P., HUBKOVÁ, P. *Vnitrostátní aplikace práva Evropské unie. 2. vydání*. Praha: C. H. Beck, 2022, pp. 269–278.

<sup>28</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>29</sup> Case *Küçükdeveci* supra note 26, par. 43.

pressed by AG Bobek in his Opinion in the *Cresco* case.<sup>30</sup> In addition to the arguments of AG Bobek, I would raise another one.

It is my understanding that EU directives were conceived as specific EU acts that can be (indirectly) horizontally applied in the Member States only through national laws, that is, not through general principles of EU law. Extending the possibility of indirect horizontal application of EU directives in the Member States also via the general principles of EU law thus seems to me not only as conceptually flawed, but also as a very strong case of competence creep on the part of the CJEU. In other words, extending the possibility of transposing (importing) EU directives into the general principles of EU law as well, would be to recognize a power invested in the European Union to transpose EU directives, whereas such competence remained within exclusive competence of the Member States.<sup>31</sup>

I firmly believe that EU directives should not be imported (transposed) into general principles of EU law, as was the case, materially, in the *Mangold* and *Kücükdeveci* line of case law. They can, of course, be applied in combination with the directly applied general principles of EU law. However, in such a case, it is conceptually correct that EU directives do not acquire the effects and properties of the general principles of EU law in combination with which they are applied, but retain their own inherently limited direct effects.

### 1.5 The fifth form of erosion

The limited “blocking” effect of EU directives even before the transposition deadline has expired was established by the CJEU in the *Inter-Environnement Wallonie* case.<sup>32</sup> In this case, the CJEU specified that a directive, combined with the EU principle of loyalty and Article 288 TFEU, “require[s] the Member States to which that directive is addressed to refrain, during the period laid down therein for its implementation, from adopting measures liable seriously to compromise the result prescribed”.<sup>33</sup> Consequently, if a Member state adopts a measure before the expiry of the deadline for transposition of a directive which hinders the proper and timely implementation of the directive, then the directive, combined with the EU principle of loyalty and Article 288 TFEU, can be directly invoked for the purpose of excluding (blocking) the application of the hindering national measure.<sup>34</sup>

Although the blocking effect represents a very specific form, certainly not a fully-fledged one, of exclusionary direct effect of EU directives, which is invocable only when the Member State adopts measures liable to seriously compromise the proper and timely implementation of the EU directive concerned, it is nevertheless an effect that can be con-

<sup>30</sup> Opinion of AG Bobek in case C-193/17 *Cresco Investigation GmbH v Markus Achatzi*, ECLI:EU:C:2018:614, par. 142–144. The importation of the content of EU directives into the content of general principles of EU Law, including those codified in the EU Charter of Fundamental Rights is also very strongly criticized in BOBEK, M., BŘÍZA, P., HUBKOVÁ, P. *Vnitrostátní aplikace práva Evropské unie. 2. vydání*, pp. 282–291.

<sup>31</sup> Here of course is paraphrased the mantra of the CJEU regarding inadmissibility of horizontal direct effect of EU directives. See e.g. case *Farrell* supra note 9, par. 31.

<sup>32</sup> Case C-129/26 *Inter-Environnement Wallonie ASBL v Région wallonne*, ECLI:EU:C:1997:628.

<sup>33</sup> Case *Inter-Environnement Wallonie*, supra note 32, par. 50.

<sup>34</sup> Apparently, although very confusingly and unconvincingly, the CJEU in the *Mangold* case used the blocking effect of EU directives before their deadline for transposition as an argument for a direct effect of a general principle of EU law as given expression by a directive whose period for transposition has not yet expired. See case *Mangold* supra note 25, par. 67–72.

sidered as a very limited and specific exception to the general rule that directives cannot have direct effect before the expiry of the transposition period.

## II. GENERAL ASSESSMENT OF THE EROSION AND THE ADEQUATE RESPONSE

All the forms of erosion of the general limits of the direct effect of EU directives described above have undoubtedly widened the possibilities of invoking directives directly. These forms of erosion have certainly enlarged both the group of possible beneficiaries of the direct effect of EU directives and the group of those to whose detriment EU directives can be directly invoked.

The question is, however, at what cost this erosion takes place. I am not the only one to be convinced<sup>35</sup> that the continuing tendency to widen the possibilities of invoking EU directives directly is achieved at the cost of increased complexity and ambiguity of the limits of the direct effect of EU directives, i.e., at the cost of a significant weakening of legal certainty for the persons concerned. Due to this erosion, it is now more often difficult and complicated to determine clearly whether the person concerned can actually invoke the directive directly, and when, against whom and for what reason. For the potential beneficiaries of the direct effect of EU directives, for those against whom the directive can be potentially relied upon, and for third parties for whom the (triangular) direct effect of EU directives may potentially have adverse repercussions, it can be increasingly more difficult (sometimes indeed a real conundrum) to ascertain correctly what their legal position is under the directive concerned. That is because they not only need to ascertain whether the directive was improperly transposed and whether its relevant provisions are unconditional and sufficiently precise, but they also need to properly delineate between emanations of the State and individuals, between obligations and mere adverse repercussions, between a directive that creates rights and obligations for individuals and a directive that does not, and between super-directives and other directives.

Personally, I therefore consider the extension of the direct effect of EU directives by the aforementioned means of eroding the general limits of this effect to be highly questionable.

In the light of the fact that there is a direct causal link between the erosion of the general limits of the direct effect of EU directives and the significant weakening of legal certainty of the persons concerned – coupled with the fact that it is the relativisation of the general prohibition of the horizontal direct effect of EU directives that particularly compromises legal certainty of the persons concerned – it is not surprising that some academics<sup>36</sup> and AGs<sup>37</sup> have proposed and pleaded for the general admission of the horizontal direct effect

<sup>35</sup> See e.g. CRAIG, P. supra note 8, see also BOBEK, M., BŘÍZA, P., HUBKOVÁ, P. *Vnitrostátní aplikace práva Evropské unie. 2. vydání.* p. 249.

<sup>36</sup> CRAIG, P. supra note 8.

<sup>37</sup> See e.g. opinion of AG Sharpston in case C-413/15 *Elaine Farrell v Alan Whitty and Others*, ECLI:EU:C:2017:492, par. 150, see also opinion of AG Bobek in case C-193/17 *Cresco Investigation GmbH v Markus Achatzi*, par. 145. Here AG Bobek submits that “*In the end, it is that problem of predictability and legal certainty, coupled, admittedly, with a distinct flavour of circumvention of one’s own previously imposed limits, that brings me to the final point: ... it would perhaps be advisable to revisit the issue of horizontal direct effect of directives. The persistence in formally denying horizontal direct effect to directives while moving heaven and earth to ensure that that restriction has no practical consequences whatsoever, such as importing the content of a directive into a Charter provision, appears increasingly questionable.*”

of EU directives. This would considerably increase both the effects of improperly transposed directives, as well as legal certainty of those concerned. They would know that, in the event of improperly transposed directives, their legal position would be governed primarily by sufficiently clear provisions of the improperly transposed directive. Correctly determining their legal position in the case of improperly transposed directives would no longer require making the not-always-easy delineation between emanations of the State and individuals, between obligations and mere adverse repercussions, between super-directives and other directives, and between a directive that creates rights and obligations for individuals and one that does not.

The problem is, however, that general admission of the horizontal direct effect of EU directives clearly collides with the CJEU's mantra that *"the effect of extending the possibility of relying on directives that are not transposed to the sphere of relations between individuals would be to recognize a power invested in the European Union to enact obligations for individuals with immediate effect, whereas it has competence to do so only where it is empowered to adopt regulations"*.<sup>38</sup>

I am also not in favour of a general admission of the horizontal direct effect of EU directives, and thus of the total elimination of the second and third general limits of the direct effect of EU directives outlined above. Not only would such an admission most likely be *ultra vires*, it would also trigger the beginning of the end of EU directives. They would become almost entirely interchangeable, and thus substitutable for the so-called limping EU regulations.<sup>39</sup> There would no longer be any convincing reason to maintain the existence of EU directives.

In my opinion, the adequate reaction to the erosion of the general limits of the direct effect of EU directives, that is, to the erosion which, on the one hand, extends their direct effect and, on the other hand, significantly weakens legal certainty for the persons concerned, should not be based on the general admission of the horizontal direct effect of EU directives. The response should be more refined and complex. It should include the following components.

First, the conceptually flawed importation of the content of a "super"-directive into the content of general principles of EU law, including those codified in the EU Charter of Fundamental Rights, should be completely abandoned.

Secondly, the delineation between emanations of the State and individuals, as well as the delineation between obligations and adverse repercussions should be further refined by the CJEU. The refinement should aim to eradicate as far as possible situations where it is unclear whether a subject concerned is to be classified as an emanation of the State or as an individual, as well as situations where it is unclear whether the detrimental consequences possibly caused by the direct effect of EU directives are

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<sup>38</sup> Case *Farrell*, supra note 9, par. 31.

<sup>39</sup> As limping regulations are considered such EU regulations which require national level concretization or adaptation (like GDPR regulation) in order to become fully directly effective in Member States. Such regulations therefore usually set different deadline for their entering into force and for their applicability, thus giving Member States sufficient time to concretize them. For details see KRÁL, R. National normative implementation of EC Regulations: An exceptional or rather common matter? *European Law Review*. 2008, Vol. 33, No. 2, pp. 243–256.



to be classified as an inadmissible imposition of obligations or as a permissible adverse repercussion.

Thirdly, efforts should be made to reduce as far as possible situations of improper transposition of EU directives – the main trigger for the direct effect of EU directives. This could possibly include reinforced efforts to increase the clarity, unambiguity and quality of enacted EU directives, making their proper transposition a less complicated task. The frequency of situations involving improper transposition of EU directives could also be significantly reduced by the adoption, at the EU level, of a harmonized, workable and effective procedure for claiming damages caused by improper transposition of EU directives. A further reduction in such situations could also be achieved if the accelerated procedure for imposing financial sanctions on Member States, as provided for in Article 260(3) TFEU could be used not only in cases of non-transposition (non-notification) of EU directives, but also in cases of their incorrect transposition.

## CONCLUSIONS

This article shows that the general limits of the direct effect of EU directives, as originally laid down by the CJEU, have subsequently been significantly eroded, in at least five different ways.

While this erosion extended the admissibility of the direct effect of EU directives, it has done so at very high price: at the cost of significantly weakening legal certainty for those concerned, which makes the erosion very questionable.

The adequate reaction to this dubious erosion should not be the acceptance of a general admissibility of the horizontal direct effect of EU directives. Rather, the reaction should include the explicit abandonment of the conceptually flawed importation of the content of “super”-directives into the content of general principles of EU law. In addition, the reaction should include various efforts aimed at reducing the occurrence of the situations of improper transposition of EU directives. These efforts should be accompanied by a continuing clarification by the CJEU of the limits of the (in)admissibility of the direct effect of EU directives, which would significantly increase legal certainty of those concerned.