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THE "EFFET UTILE" IN CJEU JURISPRUDENCE

O "EFEITO ÚTIL" NA JURISPRUDÊNCIA DO TJUE

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ABSTRACT

In the context of EU law interpretation, the reference to effet utile has contributed to the construction of EU order as a new legal order due to the lack of uniformity between laws of different member states characterized by autonomy, direct applicability and primacy over national rights. As we can see from the analysis of CJEU jurisprudence the effet utile is not only a criterion for the resolution of conflict between internal rules and Union norms or more broadly a tool for defining the areas of EU and states competence.

Key words: effet utile, European Union law, interpretation of EU treaties, CJEU

RESUMO

No contexto da interpretação do direito da UE, a referência ao effet utile contribuiu para a construção da ordem da UE como uma nova ordem jurídica devido à falta de uniformidade entre as leis dos diferentes estados membros caracterizadas por autonomia, aplicabilidade direta e primazia sobre os direitos nacionais. Como podemos ver pela análise da jurisprudência do TJUE, o effet utile não é apenas um critério para a resolução de conflitos entre regras internas e normas da União ou, mais amplamente, uma ferramenta para definir as áreas de competência da UE e dos estados.

Palavras-chave: effet utile, direito da União Europeia, interpretação de tratados da UE, TJUE

1 INTRODUCTORY PREMISES

A recurring element in the interpretation of EU law by the Court of Justice of the European Union (CJEU) is the reference to the concept of effet utile[2]. I speak of notion

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[2]In all the text we use the term in french language.

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and not of expression as, Ormand pointed out in 1975. It is possible to see that alongside some sentences that since the first years of activity of CJEU contain the expression effet utile (DEGAN, 1963), in many others the same concept is inserted, made through similar expressions, such as "reasonable and useful application", "effectiveness", "real scope", "practical effectiveness", "full effectiveness", "concrete effectiveness", etc. in other pronouncements, even though there is no express reference to terminology, it is the objective of ensuring the effet utile of Union's law to guide the reasoning of CJEU.

The use of different formulas but all referable to the notion of effet utile is due to multiple reasons, among which the most significant are the context of the various rulings, with reference to the subject matter being examined, the type of act considered, the competence exercised; the plurilingualism present in the European legal system, where French is usually the working language of CJEU and the expression effet utile (and related ones like pleine effectivitè, pleine applicaton, plein effet, peine effectivitè, efficacitè) have been variously translated in the other official languages of EU (PESCATORE, 2003, pp. 332ss)[3]. The nationality and training of the rapporteur judge has the task of proposing to CJEU the draft text of what will become the pronunciation of the organ.

Given the aforementioned linguistic diversity and referring to French jurisprudence, the first sentence in which the expression effet utile is shown in case C-30/59, De Gezamenlijke Steenkolenmijnen of 23 February 1961, in which the CJEU justified an extension of powers of the then community in a sector that remained the responsibility of the member states, so that “l'effet utile du traitè bne soit pas grandement diminuè et sa finalitè gravement compromise”[4].

Likewise in C-34/62, Germany v. Commisison sentence of 15 July 1963[5] with reference to the common customs tariff, CJEU stated that “si la Commission devait en tout cas de laisser orienter (…) le tarif douanier commun de tout effet utile (...)”.

[3]For example the expression effet utile does not have a correspondent in English or German or in other languages, which is probably incorrect. In German the concept is rendered as Effektivitätsgrundsatz, Wirksamkeit or praktische Wirksamkeit, in English on utilize as effectiveness, full effect, efficacy, practical effect, full effectiveness or effet utile. This also raises the question whether and to what extent the English effectiveness is the effet utile.
[4]CJEU, C-30/59, De Gezamenlijke Steenkolenmijnen of 23 February 1961, ECLI:EU:C:1961:2, I-00001
[5]ECLI.EU:C:1963:18, I-00131.

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In the context of EU law interpretation, the reference to effet utile has contributed to the construction of EU legal order due to the lack of uniformity between laws of different member states characterized by autonomy, direct applicability and primacy over national rights, to the point that the Cruz Vilaça judge considers the effet utile as the guarantor of integrity of this legal system (DA CRUZ VILAÇA, 2013, pp. 280ss). Suffice it to consider the reference to effet utile in fundamental sentences such as C-22/62, Van Gend en Loos of 5 February 1963[6] and C-6/64, Costa v. ENEL of 15 July 1964[7] or the same in the known Simmenthal sentence (ACCETTO, ZLEPTNIG, 2005, pp. 382ss; SCHERMERS, WAELBROECK, 2001, pp. 22ss).

CJEU referred to effet utile in interpreting both primary and derivative law[8], including recommendations[9], as well as EU treaties concluded with other international subjects (CONANT, 2018)[10], those concluded between its member states[11].

It is also significant to recall how CJEU attributed value to its own jurisprudence. In C-283/81, Srl CILFIT and Lanificio di Gavardo SpA v. Ministry of Health sentence of 06 October 1981[12], it affirms its interpretative effectiveness. After referring to joined cases C-20 to 30/62, from Costa en Schaake NV and others v. Administratie der

[6]CJEU, C-22/62, Van Gend en Loos of 5 February 1963, ECLI:EU:C:1963:1, I-00001.
[7]CJEU, C-6/64, Costa v. ENEL of 15 July 1964, ECLI:EU:C:1964:66, I-01141, par. 114.
[8]In particular, with reference to the directive, the relationship between the characteristic obligation of result that connects the directive and the purpose immanent in the treaty qualifies in particular terms the effect of the norms of such acts.
[9]CJEU, C-322/88, Grimaldi of 13 December 1989 ECLI:EU:C:1989:646, I-00407, the CJEU after recalling the non-binding nature of the recommendations, adds that: "(...) to comprehensively understand the question raised by the national court, it must be emphasized that the acts in question cannot be considered for this reason devoid of any effect Legal: National judges are obliged to take into account the recommendations for the purpose of settling disputes (...)".
[10]As for example the CJEU acknowledged the effet utile of a decision adopted under the association agreement between the European economic community and Turkey. See case: C-237/91, Kus v. Landeshauptsdath Wiesbaden of 12 December 1992, ECLI:EU:C:1992:527, I-06781, par. 29. C-192/89, Sevince v. Staatsecretaris van Justice of 20 September 1990, ECLI:EU:C:1990:322, I-03461, declared that: "(...) in the context of Article 6 (1) of Decision No. 1/80 (...) although this provision limits itself to regulating the situation of the Turkish worker from the point of view of employment and not of the right of residence, these two aspects of the personal situation of the Turkish worker are intimately connected and that the aforementioned provision, recognizing to such a worker, after a certain period of regular employment in the member state (...)", parr. 29-30.
[11]For example with reference to the Brussels Convention of 27 September 1968 on the juridical competence and the execution of decisions in civil and commercial matters, the CJEU in the judgment C-21/76, Bier v. Mines de Potasse d'Alsace of 30 November 1976, ECLI.EU:C:1976:166, I-01735, states that adopting as the sole criterion that of the place where the event generating the damage occurred would risk depriving of any effet utile a provision of the Convention. In case C-145/86, Hoffmann of 4 February 1988, ECLI:EU:C:1988:61, 1988: I-00645, the CJEU acknowledges that: "(...) the application in the field of enforcement of procedural rules of the requested state cannot prejudice the practical effectiveness of the Convention's system with regard to exequatur (...)", par. 29.
[12]CJEU, C-283/81, Srl CILFIT and Lanificio di Gavardo SpA v. Ministry of Health of 06 October 1981, ECLI:EU:C:1981:335, I-03415

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Belastingen sentence of 27 March 1963[13] declares: "(...) the loss of the obligation for the judges of last resort to effect a preliminary reference can result from a constant CJEU jurisprudence that independently from the nature of the proceedings (…)" (GUILD, PEERS, TOMKIN, 2014; JACOB, 2014)[14].

With reference to the "quantity" of the norms interpreted through the prism of effet utile (SADL, 2015, pp. 18ss)[15], which in some cases CJEU does it evaluated with reference to a single provision (LENAERTS, MASELIS, GUTMAN, 2014; HARTKAMP, SIBURGH, DEVROE, 2017, pp. 282ss)[16], in others it referred to a group of complementary provisions used jointly or to the general principles (PEERS, 2014; BERRY, HOMEWOOD, BOGUSZ, 2015; CRAIG, DE BÚRCA, 2011)[17] or the entire treaty[18] or the even broader way to the spirit of law that characterizes the process of European integration and derives from its general system (ORMAND, 1976, pp. 625ss)[19].

[13]ECLI:EU:C:1963:6, I-00061.

[14]In the same spirit of orientation the case: C-480/08, Teixeira of 23 February 2010, ECLI:EU:C:2010:83, I-01107, where the CJEU refers to par. 74 of the previous case C-413/99, Baumbast and R. of 17 September 2002, ECLI:EU:C:2002:493, I-07091, observed that: "(...) taking into account the context and the aims pursued by Regulation No. 1612/68 and in particular by Article 12 thereof (...)", par. 67.

[15]which is affirmed that: "(...) the court did not use effet utile (...) when the law was exhausted (...)".

[16]CJEU, C-9/61, Netherlands v. High Authority of 12 July 1962, ECLI:EU:C:1962:27, I-00413, which the court declared that: "(...) the measures that the member states must adopt in order to fulfill the obligations deriving from the (...) treaty, measures indicated in the first article of the recommendation, would risk to remain ineffective in the absence of any control on their observance or of penal provisions (...)". In the judgment C-262/88 INT, Barber of 17 May 1990, ECLI:EU:C:1990:209, I-001889, the court declared that: "(...) the method of adopting to verify the observance of the principle of equal pay should be noted that if the national courts they were obliged to proceed to an evaluation and a comparison of all the advantages (...)". In the case C-415/93, Bosman of 15 December 1995, ECLI:EU:C:1995:463, I-04921, the court observed that: "(...) the rules on citizenship cannot be considered compliant with (...) treaty. This standard would otherwise be deprived of its effet utile and the fundamental right to freely access an occupation that it individually confers to every worker of the community, would be established (...)", par. 29. In this respect the CJEU refers to the case C-222/86, Unectef v. Heylens of 15 October 1987, ECLI:EU:C:1987:442, I-04097, which is affirmed that: "(...) since free access to employment constitutes a decision of a national authority with which the benefit of this right is refused is essential to ensure the individual the effective protection of his right (...)".

[17]CJEU, C-4/69, Lütticke of 28 April 1971, ECLI:EU:C:1971:4, not published, which the court declares: "(...) the action of damages (...) is conceived as an autonomous remedy (...) would be contrary to this autonomy, as well as with the whole system of legal remedies established by the treaty, the consideration of damages can have unfortunate consequences to those of the action due to failure (...)", par. 6. Also in sentence C-245/01, RTL Television of 23 October 2003, ECLI:EU:C:2003:580, I-12489, the court states that "(...) it is necessary to interpret the provision in question according to the ratio and of the purpose of the legislation of which it is part (...)", par. 99, here the CJEU refers to par. 37 the case C-257/00, Givane and others of 9 January 2003, ECLI:EC:C:2003:8, I-00345, parr. 102-103. .

[18]CJEU, joined cases C-46/87 and 227/88, Hoeechst v. Commission of 21 September 1989, ECLI:EU:C:1989:337, I-02859, in which it establishes that the article of a regulation "(...) cannot receive an interpretation that leads to results contra with the general principles of Community law in particular fundamental rights (...)", par. 12; and the case C-30/59, De Gezamenlijke Steenkolenmijnen of 23 February 1961, op. cit.

[19]CJEU, C-9/70, Grad v. Finanzamt Transtein of 6 October 1970, ECLI:EU:C:1970:78, I-00825, the effective effect no longer corresponds to the notion of international law when the CJEU refers to the spirit of law deriving from the

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With regard to this last point, it should be pointed out that especially with reference to the external action of the then EEC, CJEU offered such an extensive interpretation of EU competences itself to cross over into the theory of implicit powers that had previously been evoked (DE VISSCHER, 1958, pp. 18ss) (DUMON, 1986, pp. 4ss)[20]. In C-22/70, Commission v. Council sentence of 31 March 1971[21], CJEU declares that "if community norms are adopted for the attainment of treaty purposes, the member states cannot outside the ambit of common institutions, assume engagements acts to affect such rules or to alter the effectiveness".

And in joined cases C-3, 4 and 6/76 Kramer of 14 July 1976[22], it states that the member states "are not from now on held not only to avoid assuming (...) commitments that could hinder the community in the accomplishment of the assigned task of art. 102 of the Act of Accession but also to conduct a joint action within the Commission for Fisheries".

Unlike these first two judgments, the relevance of the effet utile does not seem to emerge in the subsequent jurisprudence concerning the parallelism of competences, characterized by a clear reference to implicit powers. We refer to the opinions n. 1/76 of 26 April 1976[23], n. 2/91 of 19 March 1993[24] and n. 2/92 of 24 March 1995[25]. A relevant exception is C-476/98, Commission v. Germany sentence of 5 November 2002 (GARBEN, GOVAERE, 2017; ANDERSEN, 2012)[26] where CJEU recalls the previous jurisprudence (sentence AETS) and declares that:

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general system of treaty, understood as inspired by a federalist version. According to Ormand is affirmed that. "(...) la Cour, simplement, considèrant le système du traitè sos une vision fèdèraliste en dèduit les règles qui si'imposent et confronte alors la norme à ces dernières (...)".

[20]Compared the reasoning followed by the International Court of Justice in order to derive the theory of implicit powers to that of the CJEU in the judgment Fèdèchar of 1956 (CJEU, C-8/55, Fèdèration Charbonnière de Belgique v. High Athority of 16 July 1956, op. cit.) concluding that the latter has no need to resort to the implicit powers, by referring to two "classical" criteria such as that of effet utile and that of logical-systematic integration.

[21]ECLI:EU:C:1971:32, I-00263.

[22]ECLI:EU:C:1976:114, I-01279.

[23]The CJEU refers to the Kramer judgment and declares: "(...) the competence of the community to conclude such an agreement is not expressly provided for in the treaty. The CJEU has had the opportunity to state (...) that the competence to undertake international commitments can not only to be explicitly attributed by the treaty but may also derive implicitly from its provisions (...)", par. 3.

[24]According to the CJEU: "(...) the competence to undertake international commitments can not only be attributed directly by the treaty, but can also be derived implicitly from its provisions. The CJEU has concluded that whenever Community law has attributed to the institutions of the community certain poems on the internal level (...)", par. 7.

[25]The CJEU has affirmed that: "(...) it is true that like the court stated in the aforementioned opinion 1/76 the external competence based on the powers of internal action of the community can be exercised without the prior issue of an internal legislative act, and thus become exclusive (...)", par. 32

[26]ECLI:EU:C:2002:631, I-09855.

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> (...) in the field of external relations, the court has ruled that EU tasks and aims of the treaty would be compromised in the case in which member states could enter into international commitments including provisions designed to affect the provisions adopted by the community or to alter their scope (...)[27].

It should also be stressed that the effet utile has been recalled and applied by CJEU with reference to numerous matters within EU competence from those relating to numerous profiles of the single market[28] and competition[29] to those inherent to agriculture[30] and environment but also to issues relating to common commercial policy[31], immigration[32] and fundamental rights (CHALMERS, DAVIES, MONTI, 2014)[33]. In the light of jurisprudential practice, Sadl's opinion according to which: “(...) the function of effet utile has been narrower than commonly assumed in the literature (...)” (SADL, 2015, pp. 42ss)[34]

Having regard to the different CJEU competences, references to the effet utile are present above all in the interpretative judgments which it made as a preliminary ruling. This circumstance is not surprising given that the appeal pursuant to art. 267 TFEU (HATJE, TERHECHTE, MÜLLER-GRAFF, 2018; SCHWARZE, BECKER, HATJE, SCHOO, 2019) is the one in CJEU that is most called to rule. Moreover, the effet utile is

[27]CJEU, C-476/98, Commission v. Germany of 5 November 2002, op. cit., par. 136.
[28]CJEU, C-28/67, Molkerei of 3 April 1968, ECLI:EU:C:1968:17, I-00181, with regard to the issue of intra-community duties, where the CJEU stated that: "(...) the prohibition established by Article 95 would lose its effectiveness deriving from the treaty if it depended on national enforcement measures not covered by the treaty without the which the prohibition itself would remain ineffective (...)".
[29]CJEU, C-46/87, Hoechst v. Commission of 21 September 1989, ECLI:EU:C:1989:737, I-02859
[30]CJEU, C-44/79, Hauer of 13 December 1979, ECLI:EU:C:1979:290, I-03727, in which the CJEU observes that "(...) any questions relating to the violation of fundamental rights by acts emanating from the institutions of the community can be assessed solely on the basis of Community law (...)", par. 14.
[31]CJEU, C-260/90, Leplat v. Territory of French Polynesia of 12 February 1992, ECLI:EU:C:1992:66, I-00643, with reference to the interpretation of a decision by the Council on customs duties, he stated: "(...) an interpretation of Article 133 TEEC (200 TFEU) which limits its scope of application to customs duties strictly speaking would lead to deprive the system of this article of meaning and render it practically ineffective in so far as it is possible to elude the application by establishing taxes (...)", par. 18.
[32]CJEU, joined cases C-281, 283, 284, 285 and 287/85, Germany and others v. Commission of 9 July 1987, ECLI:EU:C:1987:351, I-03203, as well as the case of the joined cases C-643 and 647/15, Hungary v. Council of 6 September 2017, ECLI:EU:C:2017:618, published in the electronic Reports of the cases, where it is stated that "(...) a restrictive interpretation of the concept of temporary measures contained in Article 78, paragraph 3 TFEU (...) would also reduce significantly the effet utile of this rule (...)", par. 75
[33]CJEU, C-13/94, P. and S. And Cornwall County Council of 30 April 1996, ECLI:EU:C:1996:170, I-02143, which the CJEU has affirmed that: "(...) the scope of the directive cannot be reduced only to discrimination due to belonging to one or other sex. Given its purpose and the nature of the rights it seeks to protect (...)", parr. 20-22.
[34]Which is affirmed that: "(...) the role of effet utile is to stablise the law (...) and also to convey am impression of doctrinal continuity, effectivennes and relevance. At the same time the rethorical appeal to effet utile or the effectiveness and relevance. At th same time, the rethorical appeal to effet utile or the effectiveness of EU law is detached form the question of de facto effectivennes in terms of compliance with the rulings (...)".

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also referred to in various judgments given following appeals for infringement and cancellation as well as in some CJEU opinions and to a lesser extent also in the judgment of the Tribunal of First Instance (now General Court (GC)). A clear statement in C-51/76, VNO case of 1st February 1977 which CJEU notes that:"(...) the effet utile of the act (a directive) would be attenuated if the persons administered were, moreover, to use them in court and national courts to take it into consideration as an element of Community law (...)"[35].

In the end, the effet utile understood as a general duty to adapt national laws to EU interpretation, in order to render effective the EU order created, constitutes the link between the principle of primacy and effectiveness of protection.

2. THE EFFET UTILE OF EU INTERPRETATIVE METHODS

Numerous authors report the effet utile in the teleological interpretation method (BECK, 2012, pp. 196ss). According to Kutscher: “(...) ce principe relève de l'interprètation tèlèologique” (KUTSCHER, 1976, pp. 3ss), while Tridimas affirmed that:“(...) the need to ensure the effectiveness of community has derives form the objectives of the treaty and its is a specific application of the teleological method of interpretation (...)” (TRIDIMAS, 1996, pp. 206ss).

We share this opinion and we believe that the interpretation according to the criterion of effet utile can be considered as a branch or rather as a reflection of the teleological interpretation of which implies a particular nuance that pertains to the practicability of a decision[36]. It is considered with effet utile as a synonym of functional or purposive teleological interpretation which, when it concerns the treaties, assumes the name of constitutional interpretation. The same Rasmussen (RASMUSSEN, 1986, pp.

[35]C-51/76, VNO of 1st February 1977, ECLI:EU:C:1977:12, I-00113, par. 23, similar assertion was repeated in numerous other sentences. We recall the case C-38/77, Enka of 23 November 1977, ECLI:EU:C:1977:190, I-02203, in which the CJEU recalls that in the previous VNO judgment it has already stated that “in cases where the Community authorities have, by directive, imposed on the member states to adopt a certain behavior, the effet utile (...)", par. 9. and that of C-127/78, Spitta of 31 January 1979, ECLI:EU:C:1979:22, I-00171, which is affirmed that: "(...) the establishment of a transitory period would probably have pushed the operators to import large quantities of meat (...) which would have diminished the practical effectiveness of the measure adopted by the Commission (...)", par. 9.
[36]In the light of the effet utile linked to the teleological criterion, every rule of the Union must have a meaning that is coherent and at the same time serving the objectives outlined in the treaty.

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178ss)[37] even though in a highly critical sense, keeps effet utile and teleological interpretation, while for some others: “(...) le recours à l'effet est une manifestaton spèciale de l'interpètation tèlèologiche (...)”(WEATHERILL, 2003, pp. 268ss; SCHERMERS, WAELBROECK, 2001; POIARES MADURO, 2007; DE CARVALHO MOITINHO DE ALMEIDA, 2014, pp. 30ss). The Schockweiler approach is also similar, according to which the teleological method must necessarily give rise to the theory of effet utile and lead to the affirmation of implicit powers (SCHOCKWEILER, 1995, pp. 76ss).

The effet utile should not instead be traced back, in whole or in part, to the teleological method. Recourse to the criterion of effet utile is a hermeneutical tool that goes beyond mere teleological interpretation. Thus we include the effect useful in systematic interpretation (LENAERTS, GUTIÉRREZ-FONS, 2013/9, pp. 28), while in Everling's opinion the interpretation according to the effet utile defined as that “(...) according to which provisions are to be interpreted in such a way that they may fulfil the objective for which they are established (...)” (EVERLING, 1994, pp. 494ss) is attributable to the teleological and systematic interpretation (EVERLING, 2000, pp. 33ss).

According to our opinion we can thus connect the effet utile to the functional argument within the dynamic criteria of interpretation, described as that which in case of doubt prescribes that the normative disposition is interpreted or of an institute to function effectively. Instead the teleological argument requires that in case of doubt the normative disposition is interpreted in a manner consistent with the aims explicitly or implicitly pursued by a norm or set of rules of the Union legal order.

If it is true that in most of the cases in which CJEU's jurisprudence is referred to, effet utile has been valued in the context of the dynamic and teleological interpretation of EU law on other occasions it has used it in more restrictive terms, referable to to a mere literal interpretation or a systematic interpretation. Consider the first sentence in which the notion of effet utile was used although with different words. In C-8/55, Fèdèration

[37]which is affirmed that: "(...) most commentators quietly accept the court's constant recourse to the effet utile and the teleological method of interpretation (...)".

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Charbonnière de Belgique v. High Athority sentence of 16 July 1956[38] CJEU stated that "(...) without making an extensive interpretation it is permissible to apply an interpretative norm" according to which a juridical rule implicitly includes also the norms without which it would not make sense or could not be applied in a reasonable and useful way (...)"[39].

The examination of the pertinent jurisprudence confirms the distinction between a minimum effet utile, preparatory to practice to reject a proposed argument (a certain interpretation of a rule cannot be accepted because it would mean depriving the text of its effet utile) and a maximum effet utile, which is usually the result of an autonomous choice of the legal operator. It is possible to include in the notion of useful efficacy the idea that the interpretation that allows the interpreted arrangement to prevail and that assures the greatest practical utility must prevail (PESCATORE, 2003, pp. 328ss; BRADLEY et al. (eds.), 2014, pp. 30ss).

In some cases CJEU uses the effet utile in the strict sense in order to avoid that EU law rule produces an absurd or improper result. In joined cases C-7/56 and 7/57, Algera sentence of 11 July 1957[40] CJEU has observed that "(...) the control provided by the treaty would be ineffective if each institution had the power to adopt internal regulations to establish the number or scale of salaries of its employees. Such an interpretation would lead to absurd results (...)".

And in the subsequent C-1/58, Stork sentence of 4 February 1959 it states that "(...) it cannot be assumed that the compilers of the treaty wanted n. 1 of art. 65 TEEC had application and had not instead-and for an indefinite period-n. 2 of the same article, despite the close connection between the two provisions (...)"[41].

Other examples of this first way of using the effet utile are derived from the sentence: joined cases C-2 and 3/62, Commission v. Belgium and Luxembourg of 14 December 1962, which CJEU in the matter of admissibility of an appeal, states that “(...) the Commission is required to monitor the application of the provisions of the treaty and

[38]CJEU, C-8/55, Fèdèration Charbonnière de Belgique v. High Authority of 16 July 1956, ECLI:EU:C:1956:7, I-00245.
[39]CJEU, C-20/59, Italy v. High Authority of 15 July 1960, ECLI:EU:C:1960:33, I-00325, which is affirmed that: "(...) doctrine and jurisprudence agree unanimously that the norm sanctioned by a treaty implicitly foresee other norms without which the former cannot find suitable and reasonable application (...)".
[40]CJEU, C-7/56 and 7/57, Algera of 11 July 1957, ECLI:EU:C:1957:7, I-00081.
[41]CJEU, C-1/58, Stork & CO of 4 February 1959, ECLI:EU:C:1959:4, I-00043, par. 5.

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cannot therefore be deprived of fundamental power (...) to ensure compliance (...)"42.

According to CJEU, if the defendants' thesis were accepted, it would inevitably lead to an absurd result in that it is diametrically opposed to that of the treaty and the exceptions, admitted in the agricultural sector, to the rules established for the establishment of the common market, constitute exceptional provisions to be interpreted strictly. It is therefore not possible to extend the scope of application to the point of transforming the exception into a rule and making the treaty inapplicable to most processed products[43].

Finally, in case C-6/72, Continental Can of 21 February 1973[44] concerning an appeal for annulment of a Commission decision on abuse of dominant position, CJEU states "(...) since it contemplates the creation of a scheme to ensure that competition is not altered in the common market (treaty) makes it all the more imperative that competition is not eliminated (...)"[45].

In other cases CJEU uses the effet utile in a broader sense in order not to deprive the norm of most of its value or to recognize a minimum of effectiveness. This approach also emerges in case C-9/56, Meroni of 13 June 1958[46] in which CJEU recognized that "(...) from the express mention made of it, no valid argument can be drawn to exclude the possibility that this faculty exists in the hypothesis in which the express mention is lacking (...)".

A combination of this approach and the more restrictive one emerges in the sentence of joined cases C-463/11, L of 18 April 2013, which is precised that "(...) the question raised refers to the consequences that a cumulative application the two national provisions (...) could have on the effectiveness of the directive (...)"[47].

In most cases CJEU has emphasized the extended notion of effet utile that time to the teleological interpretation that ensures the norm the greatest possible effectiveness, excluding the interpretations that diminish or compromise its purpose

[42]CJEU, joined cases C-2 and 3/62, Commission v. Belgium and Luxembourg of 14 December 1962, ECLI:EU:C:1962:45, I-00425.
[43]CJEU, joined cases C-2 and 3/62, Commission v. Belgium and Luxembourg of 14 December 1962, op. cit.,
[44]CJEU, C-6/72, Continental Can of 21 February 1973, ECLI:EU:C:1973:22, I-00215.
[45]CJEU, C-6/72, Continental Can of 21 February 1973, op. cit.,
[46]CJE, C-9/56, Meroni of 13 June 1958, ECLI:EU:C:1958:7, I-00133.
[47]CJEU, joined cases C-463/11, L. of 18 April 2013, ECLI:EU:C:2013:247, published in the electronic Reports of the cases.

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(SOREL, BORÉ EVENO, 2011, pp. 804ss)[48]. In this way CJEU maximizes its evolutionary character in which the usefulness of effectiveness is oriented in the sense of attributing the greatest possible powers and competences to the organization (LECOURT, 1976, pp. 238ss)[49].

Among the first examples of this approach is C-34/62, Germany v. Commission sentence of 15 July 1963 in which CJEU affirmed that "(...) the restrictive interpretation of the notion of market proposed by the appellant would artificially isolate the markets of the single goods, in full contrast with the economic reality in which the interdependence of markets (...)".

In the subsequent joined cases C-56 and 48/64, Consten sentence of 13 July 1966[50] CJEU states that an expression contained in a Regulation should be interpreted taking into account its purpose and economy. The Grad sentence of 1970 also points out, where the reference to effet utile according to CJEU: "(...) would not (...) comply with the purpose of the directives in question (...)", as well as that C-33/70, SACE sentence of 17 December 1970 which is affirmed that "(...) the effectiveness of Directive 68/31 must be assessed in the light of this complex of provisions. (...)"[51].

Other examples are given by C-187/87, Saarland case of 22 September 1988 which the court affirmed that "(...) only the interpretation according to which it places the obligation to communicate to the Commission the general data relating to a project for the disposal of radioactive waste (...)"[52].

Consider, also in C-39/72, Commission v. Italy sentence of 7 February 1973 which is affirmed that "(...) The observance of these terms was essential for the effectiveness of the measures in question, given that they could fully achieve their purpose only on the condition that they be applied simultaneously in all member states

[48]Which affirmed that: "(...) even though the CJEU has also invoked effectiveness in numerous cases it goes beyond the stage of merely applying this means to favour ends-focused interpretations (...)".
[49]"(...) il doit leur donner tout leur sens et faire porter à leurs dispositions toutes les consèquences utiles, explicites ou implicites que la lettre et l'esprit commandent (...)".
[50]CJEU, C-56 and 48/64, Consten of 13 July 1966, ECLI:EU:C:1966:41, I-00458.
[51]CJEU, C-33/70, SACE of 17 December 1970, ECLI:EU:C:1970:118, I-01213, par. 13.
[52]CJEU, C-187/87, Saarland of 22 September 1988, ECLI:EU:C:1988:439, I-05013, par. 24. In the same spirit of orientation see also the case: C-434/97, Commission v. France of 24 February 2000, ECLI:EU:C:2000:98, I-01129 which the court when examining an appeal against two directives it refers to par. 19 of the aforementioned judgment in Saarland states that according to its settled case-law. "(...) when a provision of Community law is susceptible to multiple interpretations, priority must be given to that which is suitable for safeguarding the effet utile of the provision (...)", par. 21.

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(...)"[53].

In C-7/71, Commission v. France case of 14 December 1974 which CJEU recognized that "(...) the frailty of the provisions of the treaty cannot be presumed (…) The member states have agreed to establish a community of unlimited duration with permanent bodies vested with effective powers, deriving from a limitation (...)"[54].

In C-36/75, Rutili case of 28 October 1975 CJEU with reference to the notion of public order as a limit to the free movement of workers has affirmed that:

> (...) as it authorizes an exception to the fundamental principles of equality of treatment and free movement of workers, must be understood in a restrictive sense so that its scope cannot be determined unilaterally by each member state without the control of Community institutions (...)[55].

In C-48/75, Royer case of 8 April 1976 CJEU has declared that "(...) the freedom left to member states (...) as regards the choice of forms and means of implementation of the directive does not detract from their obligation to choose the most suitable forms and means to guarantee the real effectiveness of the directives (...)"[56]; while in C-440/00, Kühne & Nagel sentence of 13 January 2004[57] CJEU recalling paragraphs 32-33 of C-62/99, Bofrost sentence of 29 March 2001 reiterates that:

> (...) in order for the directive to have a effet utile, it is essential to guarantee the workers concerned access to the information that they allow to establish whether they have the right to request negotiations between the central management and workers' representatives (...)[58].

The teleological interpretation, valuing the criterion of effet utile, has allowed CJEU to affirm some of the most important principles of EU law such as its uniform application, the primacy over national rights of member states of the direct effect of Treaty and directives norms.

[53]CJEU, C-39/72, Commission v. Italy of 7 February 1973, ECLI:EU:C:1973:13, I-00101, par. 14.
[54]CJEU, C-7/71, Commission v. France of 14 December 1971, ECLI:EU:C:1971:121, I-01003, par. 18-20.
[55]CJEU, C-36/75, Rutili of 28 October 1975, ECLI:EU:C:1975:137, I-01219, parr. 27-28.
[56]CJEU, C-48/75, Royer of 8 April 1976, ECLI:EU:C:1976:57, I-00497, par. 74-75.
[57]CJEU, C-440/00, Kühne & Nagel of 13 January 2004, ECLI:EU:C:2004:16, I-00787
[58]CJEU, C-62/99, Bofrost of 29 March 2001, ECLI:EU:C:2001:188, I-02579, par. 46

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3 THE RELATIONSHIP BETWEEN EFFET UTILE, AND EFFECTIVENESS OF EU LAW

The question of relationship between useful and effective effects is complex (BENGOETXEA, 1993, pp. 235ss)[59]. Frequently the two terms are considered synonyms (FENNELLY, 1997, pp. 658ss; NICOLAIDES, GEILMANN, 2012, pp. 40ss) this is favored also by the fact that in English the effet utile is often accompanied by effectiveness which does not seem completely inadequate (BENGOETXEA, 1993; BENGOETXEA, MACCORMICK, MORAL SORIANO, 2001, pp. 65ss; BECK, 2012; CHEVALLEIR, 1965, pp. 25).

The confusion increases if we consider that the meaning of the concept of effectiveness of EU law is vague and not unambiguous (SNYDER, 1993, pp. 26ss; LASSER, 2004, pp. 212ss; O'NEILL, 1994). This it can detect: "(...) both as a whole and regards the interpretation of individual rules (effet utile) (...)" (MAZÁK, MOSER, 2013, pp. 62ss). A more articulated opinion leads to effet utile to an alleged static dimension of the principle of effectiveness (relating to the definition of the methods of entry of EU rules into national laws) which also includes the primacy the direct effect on teleological interpretation while its dynamic dimension (relative to the procedures for the recognition of the rights that derive from the European norms) includes the principles of equivalence of effectiveness in the strict sense and of responsibility of the community institutions (LENAERTS, GUTIÉRREZ-FONS, 2013).

According to our opinion, in some cases useful efficacy and effectiveness are relatively synonymous, as long as it remains on the interpretative level. In these cases the effectiveness is attributable to what we have indicated as the maximum size of the effet utile according to which when a EU law rule is susceptible to multiple interpretations, preference should be given to the one that ensures greater effectiveness (LENAERTS, GUTIÉRREZ-FONS, 2013. FINTON, 1999, pp. 308ss. J.L. DA CRUZ VILAÇA, 2013).

[59]Which in the context of the functional argument of dynamic interpretation states that teleology is sometimes expressed with the ut ut ut magis valeat quam pereat, but speaking immediately afterwards of effet utile and effectiveness (useful effet) which would be the most usual functional criterion to which the court resorts in its interpretations.

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The principle of effectiveness has long emerged in CJEU jurisprudence (PRECHAL, WIDDERSHOVEN, 2011, pp. 32ss; ROTT, 2013, pp. 182ss) up to find a recognition in primary law with the Treaty of Lisbon. Starting with C-33/76, Rewe case of 16 December 1976 CJEU states that the procedural autonomy of member states states that their procedural legislation with reference to rights conferred by Community rules must be equivalent to that provided for in relation to to the application of rights conferred by the national legal systems and for what is most effective here in recognizing the rights deriving from the Union. CJEU declares that a prohibition sanctioned by the treaty and that provided for by a Regulation: "(...) have direct effect and give individuals rights that the national courts must protect "(...) the task of guaranteeing the jurisdictional protection of individuals under the provisions of EU law having direct effect (…)" (KLAMMERT, 2014).

In the following joined cases C-430 and 431/93, Van Schijndel of 14 December 1995 is affirmed that"(...) in the absence of community discipline it is up to the internal legal order of each member state to designate the competent judges and establish the procedural procedures of judicial appeals (...)"[60].

The evolution and further crystallization of these statements have been confirmed by the C-201/02, Wells case of 7 January 2004 which is affirmed that:

> (...) the procedural rules applicable fall within the legal order internal of each member state by virtue of the principle of procedural autonomy of member states provided that they are no less favorable than those concerning similar appeals of an internal nature (and principle of equivalence) (…) (WEATHERILL, 2016)[61].

In a different context, CJEU follows a similar interpretation in a directive relating to public procurement procedures, and in C-406/08, Uniplex case of 28 January 2010 is affirmed that "(...) the procedural methods of appeal in proceedings intended to ensure the protection of rights conferred by Community law on candidates and tenderers (…)" (CRAIG, 2012)[62].

The Rewe sentence of 1976 has also favored the emergence of a second very

[60]CJEU, joined cases C-430 and 431/93, Van Schijndel of 14 December 1995, ECLI:EU:C:1995:441, I-04705, par. 17
[61]CJEU, C-201/02, Wells of 7 January 2004, ECLI:EU:C:2004:12, I-00723, par. 67, par. 30.
[62]CJEU, C-406/08, Uniplex of 28 January 2010, ECLI:EU:C:2010:45, I-00817, par. 27.

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well-known jurisprudential vein in which the effectiveness of the right of the union refers to a substantial question that is the effective jurisdictional protection of the rights of individuals deriving from EU law (TEMPLE LANG, 2011, pp. 136ss; DA CRUZ DE VILAÇA, 2011, pp. 352ss). In C-14/83, Von Colson case of 10 April 1984 CJEU observed that "(...) the complete implementation of the directive although it does not impose (...) a specific form of sanction (...) implies nonetheless that the sanction itself is such as to guarantee effective and effective jurisdictional protection (...)"[63].

By interpreting the right of the union through the prism of effet utile and the objective of ensuring its effective application, CJEU recognizes the right to restitution of unduly paid sums or to compensation for damage. In this regard, in C-199/82, San Giorgio case of 9 November 1983[64] affirmed that"(...) the right to obtain reimbursement of taxes collected by a member state contrary to Community law rules is the consequence and the complement of the rights recognized to individuals by the community rules (...)"[65].

In the following CJ-295 to 298/04, Manfredi case of 13 July 2006, CJEU after having recalled that "it is up to the internal legal system of each member state to establish procedural procedures of appeals intended to guarantee the protection of rights due to individuals by virtue of the direct effect of EU (...)"[66].

In the absence of a Community regulation on the repetition of unduly collected national taxes, it is up to the internal legal system of each member state to designate the competent judges and establish procedural procedures and jurisdictional appeals intended to guarantee the protection of rights pertaining to individuals under Community law rules, provided that these methods are no less favorable than those concerning similar domestic appeals (principle of equivalence) nor do they make it practically impossible or excessively difficult to exercise the rights conferred by the Community

[63]CJEU, C-14/83, Von Colson of 10 April 1984, ECLI:EU:C:1984:153, I-01891, par. 23
[64]CJEU, C-199/82, San Giorgio of 9 November 1983, ECLI:EU:C:1983:318, I-03595.
[65]CJEU, C-432/05, Unibet of 13 March 2007, ECLI:EU:C:2007:163, I-02271, the CJEU recalls its consolidated jurisprudence starting from the aforementioned Rewe ruling and reiterates that it is the duty of national judges by virtue of the duty of sincere cooperation to guarantee the legal protection of telling you that you are entitled to individuals in the law of Community law and that "(.. .) in the absence of a Community regulation on the matter, it is for the internal legal system of each member state to designate the competent judges and to establish the procedural procedures for appeals (...) ", par. 42.
[66]CJEU, joined cases C-295 to 298/04, Manfredi of 13 July 2006, ECLI:EU:C:2006:461, I-06619, parr. 77-78.

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legal order (principle of effectiveness)[67].

4 EFFET UTILE AND COMPETENCES OF EU INSTITUTIONS

In C-125/76, Cremer sentence of 11 October 1977 on agricultural policy it acknowledges that "the council had to be unable to do otherwise and to ensure the practical effectiveness of regulation, to resort to approximate and flat-rate evaluation criteria (...)"[68].

In C-303/05, Advocaten voor de Wereld case of 3 May 2007 is declared that:"(...) the European arrest warrant could also have been regulated by an agreement in the discretion of the council includes the possibility of privileging the legal instrument of the framework decision (...)"[69].

Similarly in C-540/13, European Parliament v. Council case of 16 April 2015, CJEU acknowledged that:

> if Parliament's argument according to which the abrogation by the Lisbon Treaty of the specific procedures for the adoption of measures related to police and judicial cooperation in criminal matters would make it impossible to adopt similar measures in the conditions provided for by the general acts (...)[70].

A passage is also reported in C-344/04, IATA and ELFAA case of 10 January 2006[71] in which CJEU with reference to the conciliation committee established under the codecision procedure (now ordinary legislative procedure) declares “(...) the authors of the treaty wanted to attribute a effet utile to the chosen procedure and to attribute to the conciliation committee a wide discretionary power (...)"[72].

With reference to institutions' obligation to comply with EU law, a passage from C-27/04, Commission v. Council sentence of 13 July 2004 which CJEU in the matter of decisions of the Council in the matter of excessive public deficits, declares "(...)

[67]CJEU, joined cases C-295 to 298/04, Manfredi of 13 July 2006, op. cit., par. 45-46. the CJEU richiama ai parr. 110-111, the precedent sentence of C-524/04, Test Claimants in the Thin Cap Group Litigation of 13 March 2007, ECLI.EU:C:2007:161, I-02107
[68]CJEU, C-125/76, Cremer of 11 October 1977, ECLI:EU:C:1977:148, I-01593, par. 21
[69]CJEU, C-303/05, Advocaten voor de Wereld of 3 May 2007, ECLI:EU:C:2007:261, I-03633, parr. 41-42.
[70]CJEU, C-540/13, European Parliament v. Council of 16 April 2015, ECLI:EU:C:2015:224, published in the electronic Reports of the cases, parr. 45-46.
[71]CJEU, C-344/04, IATA and ELFAA of 10 January 2006, ECLI:EU:C:2006:10, I-00403
[72]CJEU, C-307/14, Ivansson and others of 10 July 2014, ECLI:EU:C:2014:2058, published in the electronic Reports of the cases,

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characterized by the importance that the authors of the treaty reserve to the respect of the budget discipline and the purpose of norms envisaged for the implementation of this discipline (...)"[73].

In a different aspect in joined cases C-271/281 and 289/90, Spain and others v. Commission of 17 November 1992 (in a dispute concerning the telecommunications sector) before an appeal for the annulment of a directive, it declares that "(...) the Commission for the purpose of favoring the effective exercise of the right to free performance of services could specify the obligations deriving from this article without the need for a legislative budget of the Council (…) "[74].

A further example is provided in joined cases C-281, 283, 284, 285 and 287/85, Germany and others v. Commission of 8 July 1987 concerning an action for annulment concerning the coordination of migration policies. In this judgment CJEU observes that"(...) when an article of TEEC in this case art. 118 (now art. 156 TFEU) entrusts the Commission with a specific task, it must be admitted if one does not want to deprive the provision of any effectiveness(...)"[75].

CJEU protected Commission's powers in a dispute that saw it opposed to a member state and based on the notion of effet utile, recognized the violation of the duty of loyal cooperation. In C-433/03, Commission v. Germany case of 14 July 2005 acknowledged that the fact that the German government has committed itself to denounce bilateral agreements since the conclusion of a multilateral agreement on behalf of the community

> is not such as to demonstrate that the obligation of loyal cooperation (...) has been respected. Such a complaint, intervening after the negotiation and conclusion of the aforementioned agreement would be devoid of any effet utile since it would in no way facilitate the multilateral negotiations conducted by the Commission (...)[76].

With reference to competences of the Commission in the field of competition, the relevance of the effet utile emerges in C-1/09, CELF II case of 11 March 2010 which is

[73]CJEU, C-27/04, Commission v. Council of 13 July 2004, ECLI:EU:C:2004:436, I-06649, par. 74.
[74]CJEU, C-271/, 281 and 289/90, Spain and others v. Commission of 17 November 1992, ECLI:EU:C:1992:440, I-05833, par. 21.
[75]CJEU, C-271/, 281 and 289/90, Spain and others v. Commission of 17 November 1992, op cit., par. 28-29.
[76]CJEU, C-433/03, Commission v. Germany of 14 July 2005, ECLI:EU:C:2005:462, I-06985, pp. 72

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affirmed that "(...) a decision to suspend the proceeding would produce de facto the same result of a decision rejecting the application for safeguard measures (...) would be tantamount to maintaining the benefit of an aid during the period (...)"[77].

In C-284/12, Deutsche Lufthansa case of 21 November 2013[78], is affirmed that:

> (...) national judges could consider that a measure does not constitute an aid within the meaning of art. 107, par. 1 TFEU and consequently not suspend the execution when instead in the decision to start the formal investigation procedure the Commission has contacted that this measure can present elements of aid, the effet utile of art. 108, par. 3 TFEU (...)[79]
> .

Following the increase in EU competence, CJEU has used the effet utile in order to recognize certain attributions to the institutions in further areas of action. As we see in C-176/03, Commission v. Council case of 13 September 2005 (NORMAN, 2016)[80] concerning an appeal for the annulment of a framework decision that is enforceable to the protection of environment through criminal law, after having recalled that the criminal legislation does not fall in principle within EU competence, adding that "(...) consultation may not, however, prevent EU legislature, when the application of effective, proportionate and dissuasive penalties by the competent national authorities(...)"[81].

In C-440/05, Commission v. Council case of 23 October 2007 concerning an appeal for annulment of a framework decision aimed at reinforcing the criminal for the repression of pollution caused by ships, CJEU reiterates and affirming that EU legislator "(...) it can impose on member states the obligation to introduce such sanctions to guarantee the full effectiveness of the rules it emanates in this area (...)"[82].

Another relevant line of jurisprudence that relates the effet utile with the competent institutions relates to access to information in the context of the exercise of control powers in the field of competition. For example in T-112/98, Mannesmannröhren-

[77]CJEU, C-1/09, CELF II of 11 March 2010, ECLI:EU:C:2010:136, I-02099, parr. 31-32
[78]CJEU, C-284/12, Deutsche Lufthansa of 21 November 2013, ECLI:EU:C:2013:755, published in the electronic Reports of the cases.
[79]CJEU, C-284/12, Deutsche Lufthansa of 21 November 2013, op. cit.. in the same spirit of orientation see also the case C-199/06, CELF of 12 February 2008, ECLI:EU:C:2008:79, I-00469, which the CJEU declares that: "(...) the decision of the Commission cannot have the effect of remedying the invalid acts of execution for the fact that they were adopted in breach of the prohibition laid down in that article (...)", par. 40.
[80]CJEU, C-176/03, Commission v. Council of 13 September 2005, ECLI:EU:C:2005:542, I-07879, in the same spirit see also: T-517/12, Alro of 16 October 2014, ECLI:EU:T:2014:890, published in the electronic Reports of the cases.
[81]CJEU, C-176/03, Commission v. Council of 13 September 2005, op. cit., par. 48.
[82]CJEU, C-440/05, Commission v. Council of 23 October 2007, ECLI:EU:C:2007:625, I-09097, par. 66

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Werke case of 20 February 2001[83] is affirmed that "(...) to preserve the effet utile (of a regulation the Commission can oblige the enterprise to furnish her all the necessary information with regard to the facts of (...)"[84].

In other respects the right of access to documents is repeatedly referred to CJEU in relation to the obligations of the institutions and the effet utile. As we can see in joined cases C-514 and 605/11, P, LPN of 14 November 2013[85] is affirmed that the need to verify if the general presumption, inherent to the circumstance that the disclosure of the documents related to a proceeding for non-fulfillment during the pre-litigation phase of the same risk of altering the nature of this procedure as well as modifying its performance is effectively applied "(...) cannot be interpreted in the sense that the Commission should individually examine all the documents requested in the case in question (...)"[86].

5 EFFET UTILE AND CJEU COMPETENCES

According to C-514/11 P, API case of 21 September 2010 with reference to the secrecy of the memoirs filed by an institution in the context of a jurisdictional proceeding which damages the request to renounce it, states that “such disclosure would disregard the specificities of such category of documents and would be tantamount to submitting a substantial part of the judicial procedure to the principle of transparency. This would lead to depriving the exclusion of CJEU from the number of institutions to which the principle of transparency applies, in accordance with art. 255 EC (now art. 15 TFEU) (BACON, BACON QL, 2017, pp. 213ss)[87].

With reference to EU legal system judicial competences and the various means of redress available, in T-440/03, Arizmendi and others v. the tribunal sentence has ruled that "(...) any act of an institution, although adopted by the same in the exercise of a

[83]GC, T-112/98, Mannesmannröhren-Werke of 20 February 2001, ECLI:EU:T:2001:61, I-00729.
[84]GC, T-112/98, Mannesmannröhren-Werke of 20 February 2001, op. cit., par. 65. which states the case C-347/87, Orkem of 18 October 1989, ECLI:EU:C:1989:129, I-01083, par. 34
[85]CJEU, joined cases C-514 and 605/11, P, LPN of 14 November 2013, ECLI:EU:C:2013:738, published in the electronic Reports of the cases.
[86]CJEU, joined cases C-271/15 P, Sea Handling of 14 July 2016, ECLI:EU:C:2016:557, published in the electronic Reports of the cases, par. 69.
[87]CJEU, C-514/11 P, API of 21 September 2010, ECLI:EU:C:2010:738, published in the electronic Reports of the cases, par. 95.

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discretionary power, can in principle be the subject of an appeal for compensation damages (...)"[88].

In this regard, in T-79/13, Accorinti case of 7 October 2015[89] is affirmed that "(...) the appeal for compensation constitutes an autonomous jurisdictional remedy, endowed with its own particular function in the system of means of appeal and subordinate as for its exercise (...)"[90].

This autonomy of the appeal for compensation cannot be called into question due to the simple fact that a claimant decides to file an appeal for annulment and a claim for compensation in succession. The inadmissibility of an action for annulment does not render inadmissible a claim for compensation subsequently proposed for the simple fact that similar or even identical grounds of illegality are deducted with these appeals[91].

As regards jurisdiction, the reference to effet utile characterizes C-246/80, Broekmeulen sentence of 6 October 1981 which is stated that "(...) it is up to member states to adopt, each in its own territory the necessary measures to ensure the full implementation of rules adopted by EU institutions (...)"[92].

In C-72/15, Rosneft sentence of 28 March 2017 CJEU rejects the Council's argument that it would not be competent to check the legitimacy of the provisions of a Regulation, as the grounds of illegality inferred in court would essentially be to challenge the principle decisions taken in CFSP area. In this regard it states that its competence "(...) has no limit as regards a Regulation adopted on the basis of art. 215 TFEU (MANGAS MARTÍN, 2018) which gives effect to Union positions defined in the CFSP framework (...)"[93].

The statement contained in C-5/14, Kernkraftwerke Lippe-Ems case of 4 June 2015 which CJEU after recalling its consolidated jurisprudence reaffirms that "(...) the effectiveness of EU law would risk to be compromised and the effet utile of art. 267 TFEU would be diminished if, due to the pending procedure of constitutional verification

[88]GC, T-440/03, Arizmendi and others v. Council and Commission of 18 December 2009, ECLI:EU:T:2009:530, I-04843.
[89]GC, T-79/13, Accorinti of 7 October 2015, ECLI:EU:T:2015:756, published in the electronic Reports of the cases
[90]GC, T-79/13, Accorinti of 7 October 2015, op. cit.,
[91]GC, T-79/13, Accorinti of 7 October 2015, op. cit., par. 61
[92]CJEU, C-246/80, Broekmeulen of 6 October 1981, ECLI:EU:C:1981:218, I-03111, par. 16
[93]CJEU, C-72/15, Rosneft of 28 March 2017, ECLI:EU:C:2017:236, published in the electronic Reports of the cases, par. 106.

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(...)"[94].

Similarly in C-689/13, PFE case of 5 April 2016 is affirmed that:

> (...) the effet utile of art. 267 TFEU would be attenuated if the national court were prevented from immediately applying EU law in a manner consistent with a ruling or with court jurisprudence (…) (NICOLA, DAVIES, 2017; USHERWOOD, PINDER, 2018; DA CRUZ VILAÇA, 2014; FOLSOM, 2017, pp. 278ss; GERARDIN, LAYNE-FARRAR, PETIT, 2012)[95]

6 EFFET UTILE AND EFFECTIVENESS OF THE DIRECTIVES.

With reference to the directive that CJEU has obtained through the interpretative prism of effet utile the major consequences. In VNV case of 1977, by resorting to a formula with the most correct answer in the subsequent jurisprudence, is declared that "(...) it would be incompatible with the binding effect (of a directive) to exclude in principle that the obligation (...)"[96].

Also significant is C-61/11 PPU, El Dridi case of 28 April 2011 which is affirmed that: "(...) they cannot apply a regulation even of criminal law, such as to compromise the achievement of the objectives pursued by a directive and so to deprive the latter of its effet utile (...)"[97].

In C-176/12, Association de médiation sociale case of 15 January 2014[98] CJEU has observed that "(...) excludes from the calculation of the company staff a certain category of workers, produces the consequence of subtracting some employers of work to the obligations envisaged (by a directive) (…)" (BROBERG, FENGER, 2014, pp. 402ss)[99].

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[94]CJEU, C-5/14, Kernkraftwerke Lippe-Ems of 4 June 2015, ECLI:EU:C:2015:354, published in the electronic Reports of the cases, par. 36

[95]CJEU, C-689/13, PFE of 5 April 2016, ECLI:EU:C:2016:199, published in the electronic Reports of the cases, par. 39.

[96]Parr. 52-53. In par. 24 the CJEU adds that it is the responsibility of the national judge: "(...) if the competent authorities, within the exercise of their right reserved to them in terms of the form and means for implementing the directive, have remained within the limits of discretion traced by the directive itself (...)". This formula, including the reference to effet utile, was reiterated in almost identical terms, ex multis in environmental judgments, for example in case: C-72/95, Kraaijeveld of 24 October 1996, ECLI:EU:C:1996:404, I-05403, par. 56. C-435/97, WWF and others of 16 September 1999, ECLI:EU:C:1999:418, I-05613, par. 69. C-287/98, Linster of 19 September 2000, ECLI:EU:C:2000:468, I-06917.

5888 [97]CJEU, C-61/11, El Dridi of 28 April 2011, ECLI:EU:C:2011:268, I-03015, par. 55.

[98]CJEU, C-176/12, Association de mèdiation sociale of 15 January 2014, ECLI:EU:C:2014:2, published in the electronic Reports of the cases,

[99]CJEU, C-176/12, Association de mèdiation sociale of 15 January 2014, op. cit., par. 25. the CJEU referred in par. 38 of the previous judgment C-385/05, Confèdèration gènèrale du travail of 18 January 2007, ECLI:EU:C:2007:37, I-00611, which is declared that: "(...) a national regulation which has the consequence of exempting certain employers

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According to CJEU, the need to ensure the effet utile of a non-transposed directive imposes the obligation to interpret national law in accordance with its provisions. In C-106/89, Marleasing case of 13 November 1990[100], after recalling par. 26 of Von Colson sentence of 1984, is stated that "(...) it follows that in applying national law, regardless of whether it is a matter of rules before or after the directive, the national court must interpret its own national law (...)"[101].

CJEU has extended the obligation of interpretation in accordance with other acts. With reference to an international treaty concluded by EU (treaty TRIPS) in C-53/96, Hermès case of 16 June 1998 is observed that "(...) since the community is a contracting party to the TRIPS agreement and this agreement regards the community trademark, the courts under art. 99 of Regulation n. 40/94 (...)"[102].

In relation to an act of the then third pillar of the Union in C-105/30, Pupino case of 16 June 2005 its recognized "(...) that its preliminary jurisdiction would be deprived of the essential aspect of its effet utile whether individuals did not have the right to enforce framework decisions in order to obtain a conforming interpretation of national law before the courts of member states (...)"[103].

The effet utile of a directive according to CJEU must be preserved even before the member state executes it. In C-129/96, Inter-Environment Wallonie case of 18 December 1997 the duty of loyal cooperation and its affirmed that is recalled "(...) if the member states are not obliged to adopt (the measures of implementation of a directive) before the deadline for transposition (...)"[104]; while in C-144/04, Mangold case of 22 November 2005 its declared that "(...) the member state which thus benefits exceptionally from a longer transposition term gradually adopts concrete measures in order to bring it closer from that moment its legislation to the result prescribed by this

from the obligations envisaged (by a directive) and to deprive their employees of the rights they have recognized, is such as to nullify these rights and thus neutralize the effectiveness of the directive (...)".

[100]CJEU, C-106/89, Marleasing of 13 November 1990, ECLI:EU:C:1990:395, I-04135.

[101]CJEU, C-106/89, Marleasing of 13 November 1990, op. cit., par. 8. in par. 20 which is referred to the case: C-334/92, Wagner Miret of 16 December 1993, ECLI:EU:C:1993:945, I-06911, which is affirmed that: "(...) any national judge, when interpreting and applying national law, must assume that the state has intended to fully comply with the obligations deriving from the directive in question (...)".

[102]CJEU, C-53/96, Hermès of 16 June 1998, ECLI:EU:C:1998:292, I-03603, par. 28

[103]CJEU, C-105/30, Pupino of 16 June 2005, ECLI:EU:C:2005: I- par. 38.

[104]CJEU, C-129/96, Inter-Environment Wallonie of 18 December 1997, ECLI:EU:C:1997:628, I-07411, par. 45.

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directive (...)"[105].

The effet utile of a different directive also emerges in C-62/00, Marks & Spencer case of 11 July 2002, CJEU after recalling the obligation for the national judge descending from the duty of loyal cooperation to apply his own internal law interpreting it as far as possible in the light of the letter and the spirit of a directive (referring to the Marleasing case) and after recalling the effet utile of the directives adds that "(...) results from a constant jurisprudence that the transposition of a directive must effectively ensuring the latter's application (...)"[106].

7 EFFET UTILE, DIRECT EFFECTIVENESS AND PROTECTION OF INDIVIDUAL RIGHTS

In Van Gend & Loos case of 1963, CJEU after recognizing the effectiveness of the provisions of the treaty, he recalled also the effet utile stating:

> (...) the guarantees against the violation of art. 12 (now art. 28 TFEU) by the member states were limited to those offered by articles 169 and 170 (now 258 and 259 TFEU), the individual rights of the administrated would remain without direct jurisdictional protection (...).

The effet utile is used by CJEU also in relation to the recognition of the direct effect of a decision. In Grad case of 1970 is declared that: "(...) if it is true that the regulations (...) are directly applicable and therefore acts by nature to produce direct effects, from this it cannot be inferred that the other categories of acts (...)"[107].

The effet utile was also used by CJEU in order to attribute direct (vertical) effectiveness to directives. In C-41/74, Van Duyn case of 4 December 1974 which CJEU uses a formula almost identical to that of Grad sentence, and recalling the effet utile, affirms the need not to restrict the scope of the act by adding that: "(...) implies the fact that individuals can enforce such acts before the said judges. It is therefore appropriate to examine case by case (...)"[108].

[105]CJEU, C-144/04, Mangold of 22 November 2005, ECLI:EU:C:2005:709, I-09981, par. 72
[106]CJEU, C-62/00, Marks & Spencer of 11 July 2002, ECLI:EU:C:2002:435, I-06325, parr. 26-27.
[107]In the same spirit see also: C-20/70, Lesage of 21 October 1970, ECLI:EU:C:1970:84, I-00861. C-23/70, Haselhorst of 21 October 1970, ECLI:EU:C:1970:85, I-00881, par. 5.
[108]CJEU, C-41/74, Van Duyn of 4 December 1974, ECLI:EU:C:1974:133, I-01337, par. 12.

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The same concept is reiterated in the subsequent jurisprudence. In C-148/78, Ratti sentence of 5 April 1979[109] is declared that:"(...) particularly in cases in which the community authorities have by directive imposed to member states to adopt a determined behavior (...)"[110].

In C-441/99, Gharehveran case of 18 October 2001 is recognized that: "(...) an individual must be able to assert the right that derives from a precise and unconditional provision of a directive if this provision is separable from different provisions of the same directive which are not as to them (...)" (DA CRUZ VILAÇA, 2013).

The interpretation according to the effet utile of a directive aimed at protecting the rights of individuals has been identified as one of its most significant applications (DA CRUZ VILAÇA, 2013). In C-8/81, Becker sentence of 19 January 1982, CJEU has recognized that, although the directive:"(...) unquestionably implies a more or less wide margin of discretion for the implementation of the member states of some of its provisions, individuals cannot be denied the right to apply those provisions (...)"[111].

CJEU in C-453/99, Courage and Crehan case of 20 September 2001[112] referred to the principle of loyal cooperation and declared that:

> (...) the effectiveness or art. 85 (now 101 TFEU) and in particular the effet utile of the prohibition established in n. 1 of said article would be called into question if it were impossible for anyone to claim compensation for the damage caused to him by a contract or by a behavior suitable to restrict or distort competition (...)[113].

In the subsequent C-126/01, Pflücke case of 18 September 2001[114] is affirmed that:

> (...) the payment of salary credits which by their very nature are of great importance for the interested party must, from the brevity of the term of forfeiture it does not result from the consequence that the interested party himself is unable to comply with this deadline and is therefore not able to benefit from the

[109]CJEU, C-148/78, Ratti of 5 April 1979, ECLI:EU:C:1979:110, I-01629.
[110]In the case of Ratti of 1979, the CJEU has declared that: "(...) the member state which has not adopted the implementing provisions imposed by the directive within the time limits cannot oppose to individuals the non-fulfillment on its part, of the obligations arising by the directive itself (...)", par. 21-23.
[111]CJEU, C-8/81, Becker of 19 January 1982, ECLI:EU:C:1982:7, I-00053, parr. 29-30.
[112]CJEU, C-453/99, Courage and Crehan of 20 September 2001, ECLI:EU:C:2001:465, I-06297.
[113]CJEU, C-453/99, Courage of 20 September 2001, op. cit., par. 26. il par. 60 restated the case C-199/11, Otis of 6 November 2012, ECLI:EU:C:2012:684, published in the electronic Reports of the cases. C-557/12, Kone of 5 June 2014, ECLI:EU:C:2014:1317, published in the electronic Reports of the cases.
[114]CJEU, C-125/01, Pflücke of 18 September 2003, ECLI:EU:C:2003:477, I-09375, arr. 17, 37 and 44.

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protection that the 80/987 Directive intends to guarantee him (...)[115].

With reference to the effet utile in relation to possible drugs to EU law, the statement made by CJEU in C-560/13, Wagner-Raith case of 21 May 2015[116] is also relevant on the free movement of capital is declared that:"(...) with regard to the scope of the derogation envisaged in art. 64, par. 1 TFEU it must be remembered that the restrictive interpretation of this derogation aims at preserving the effet utile of art. 63 TFEU (...)"[117].

CJEU uses the effet utile in order to reinforce the obligation imposed on member states to execute a directive in the interest of the beneficiaries. In Von Colson case of 1984 is declared that "(...) the member states are obliged to take measures that are sufficiently effective to achieve the purpose of the directive and to ensure that such measures can be effectively enforced before national judgments by interested parties (...)"[118].

The same concept is reiterated in C-222/84, Johnston case of May 15, 1986 which is affirmed that: "(...) we consider every provision of Community law subject to a general reserve, regardless of the specific conditions established by the treaty, there would be a risk of compromising the binding force and uniform application of Community law (...)"[119].

7. EFFET UTILE AND STATE RESPONSIBILITY FOR INFRINGEMENT IN EU LAW

In the joined cases C-6 and 9/90 Francovich of 19 November 1991 (STRAND, 2017; ANAGNOSTOPOULOU, 2001, pp. 772-774)[120], CJEU elaborated the theory that in order to reconstruct the compensation obligation of a member state responsible for having violated an obligation of EU law it is necessary the effect useful and that

[115]CJEU, C-125/01, Pflücke of 18 September 2003, op. cit., arr. 17, 37 and 44.
[116]CJEU, C-560/13, Wagner-Raith of 21 May 2015, ECLI:EU:C:2015:347, published in the electronic Reports of the cases.
[117]CJEU, C-560/13, Wagner-Raith of 21 May 2015, op. cit., par. 42.
[118]CJEU, C-560/13, Wagner-Raith of 21 May 2015, op. cit., par. 16.
[119]CJEU, C-222/84, Johnston of 15 May 1986, ECLI:EU:C:1986:206, I-01651, parr. 26 and 53.
[120]CJEU, joined cases C-6 and 9/90 Francovich of 19 November 1991, ECLI:EU:C:1991:428, I-05357, par. 37: "(...) Community law imposes the principle according to which the member states are obliged to compensate the damage caused to individuals by violations of Community law attributable to them (...)".

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> (...) the full effectiveness of the community rules would be jeopardized and the protection of rights they recognized would be invalidated if the individuals did not have the possibility of obtaining a compensation if their rights are damaged by a violation of Community law attributable to a member state (...).

This jurisprudence has subsequently consolidated itself always accompanied by the reference to the effet utile in joined cases C-46 and 48/93, Brasseire du pêcher of 5 March 1996, CJEU after recalling the Francovich case observes that to determine the conditions under which the responsibility of the state gives rise to a right to compensation "(...) it is necessary first of all to take into account the principles of the Community legal order which constitute the basis for the responsibility of the state, i.e. the full effectiveness of the rules and the effective protection (...)"[121].

In the subsequent C-224/01, Köbler case of 30 September 2003 CJEU emphasized the role of national judicial bodies in particular those of last resort in the protection of rights that individuals derive from Union rules and declared that: "(...) the full effectiveness of the latter would be called into question and the protection of the rights they recognize would be weakened if it were excluded that individuals could, under certain conditions (...)"[122].

In the subsequent C-173/03, Mediterranean Ferries sentence of 13 June 2006 is declared that: "(...) to exclude any possibility of existence of the responsibility of the state since the violation disputed to the national judge regards the evaluation carried out by this last on facts or evidence (...)"[123].

In C-212/04, Adeneler and others case of 4 July 2006[124] CJEU highlights the link between the interpretation and compensation of the damage recalling the Francovich sentence and observed that: "(...) the prescribed result from a directive cannot be achieved by interpretation (...) Community law requires member states to compensate the damage they cause to individuals because of the failure to implement this directive (...)"[125].

[121]CJEU, C-46/ and 48/93, Brasseire du pêcher of 5 March 1996, ECLI:EU:C:1996:79, I-01029, par. 39.
[122]CJEU, C-224/01, Köbler of 30 September 2003, ECLI:EU:C:2003:513, I-10239, par. 40.
[123]CJEU, C-173/03, Traghetti del Mediterraneo of 13 June 2006, ECLI:EU:C:2006:391, I-05177, par. 112.
[124]CJEU, C-212/04, Adeneler and others of 4 July 2006, ECLI:EU:C:2006:443, I-06057.
[125]CJEU, C-212/04, Adeneler and others of 4 July 2006, op. cit., par. 112. See also in the same spirit the case: joined cases C-378 to 380/07, Angelidaki of 23 April 2009, ECLI:EU:C:2009:250, I-03071.

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8. EFFET UTILE AND PRIMACY OF EU LAW

CJEU in reconstructing the notion of primacy of EU law made reference to effet utile and it is not surprising that it has used it in order to oppose the attempts of member states and/or Institutions to limit the scope of the EU right.

The link between profit and effect emerges in the aforementioned Costa v. ENEL sentence of 1964 which is affirmed that: "(...) if the effectiveness of the community law varied from one state to another according to the later internal laws this would jeopardize the implementation of the aims of the treaty (...)".

In the subsequent C-14/68, Walt Wilhelm and others sentence of 13 February 1969 the effet utile is recalled in order to ensure the proper functioning of the internal market by declaring that: "(...) it would be contrary to the nature of such a system to admit that member states can adopt or maintain measures to severely impair the effectiveness of the treaty (...)"[126].

The effet utile in connection with the prevalence and the need for uniform application of EU law is also evident in some recent rulings on the subject of the common customs tariff, including that made in joined cases C-2 and 3/69, Brachfeld of 1st July 1969[127] which is affirmed that: "(...) the achievement of the goals pursued by the uniform application by all member states of the common customs tariff in relations with third countries, could be hindered by unilateral adoption or by the retention by a member state of the aforementioned measures, especially by a member state (...)"[128].

A similar approach is found in C-39/72, Commission v. Italy case of 7 February 1973 which is stated that: "(...) the provisions of his due (established by a Regulation) affect the effectiveness of the common provision while procuring due to the free movement of goods an undue advantage to the detriment of the other member states (...)"[129];

and in C-13/78, Eggers sentence of 12 October 1978 concerning the prohibition of reserving to national products certain denominations, in which CJEU asserts that "(...)

[126]CJEU, C-14/68, Walt Wilhelm and others of 13 February 1969, ECLI:EU:C.1069:4, I-00001, par. 6
[127]CJEU, joined cases C-2 and 3/69, Brachfeld of 1st July 1969, ECLI:EU:C:1969:30, I-00211.
[128]CJEU, joined cases C-2 and 3/69, Brachfeld of 1st July 1969, op. cit., 30. In the same spirit see: C-14/70, Bakels of 8 December 1970, ECLI:EU:C:1970:102, I-01001, which is declared that: "(...) the very existence of the common customs tariff implies that its entries must have the same scope in all member states (...)", par. 3.
[129]CJEU, C-39/72, Commission v. Italy of 7 February 1973, ECLI:EU:C:1973:13, I-00101, par. 21.

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in order to be effective the prohibition to reserve certain denominations to the national products (...)"[130].

The statement held in C-2/74, Reyners case of 21 June 1974 on the right of establishment where CJEU declared that: "(...) must, however, take into account the Community character of the limits placed on the exceptions permitted to the principle of freedom of establishment in order to prevent the effectiveness (...)"[131].

The reference to effet utile in relation to the primacy of EU law allows CJEU to recognize the Commission to adopt provisional measures regarding competition as we can see in C-792/79 R, Camera Care case of 17 January 1970 which is declared that "(...) precautionary provisions as they may appear indispensable to prevent the exercise of the decision-making power provided for by the regulation does not end up becoming ineffective but above all allows national judge (...)"[132].

In C-213/89, Factortame case of 19 June 1990 CJEU affirmed that: "(...) the full effectiveness of Community law would also be reduced if a provision of national law could prevent the judge called to settle a regulated dispute from the Community (...)[133].

This interpretation is confirmed by the system whose effet utile would be reduced if the national court suspending the proceeding pending the pronouncement of the court on its preliminary question could not grant provisional measures until the moment in which it pronounces itself following the solution provided by CJEU[134].

The Factortame case of 1990 is referred in the next cases of CJEU trying to affirm the obligation of the national judges to raise an issue of compatibility of national law with EU right. In Van Schijndel case of 1995 is confirmed that: "(...) the judges must ex officio raise legal reasons based on an internal rule of a binding nature that have not been adduced by the parties, such obligation is imposed even if traits of binding Community rules (...)"[135].

In joined cases C-189/10, Melki and Abdeli of 22 June 2010[136] CJEU proposes

[130]CJEU, C-13/78, Eggers of 12 October 1978, ECLI:EU:C:1978:182, I-01935, par. 24.
[131]CJEU, C-2/74, Reyners of 21 June 1974, ECLI:EU:C:1974:68, I-00631, parr. 48-50.
[132]CJEU, C-792/79 R, Camera Care of 17 January 1970, ECLI:EU:C:1970:18, I-00119, parr. 12, 20.
[133]CJEU, C-213/89, Factortame of 19 June 1990, ECLI:EU:C:1990: 257, I-02433.
[134]In the same spirit see the case: C-68/95, T. Port of 26 November 1996, ECLI:EU:C:1996:452, I-06065.
[135]The CJEU affirmed the case Rewe of 1976
[136]CJEU, C-189/10, Melki and Abdeli of 22 June 2010, ECLI:EU:C:2010:363, I-05667.

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with ample argument the link between effet utileiveness and primacy of EU law:"(...) national judge in charge of applying within the scope of its competence, the provisions of EU law have the obligation to guarantee the full effectiveness of these rules (...)"[137].

Any provision forming part of the legal system of a member state or any legislative, administrative or judicial practice which leads to a reduction in the effective effectiveness of the right of the union leads to a reduction in the effective effectiveness of EU law due to the fact that the judge, who is competent to apply this rule, is denied Since the power to do, at the very time of such application, all that is necessary to disregard the national legislative provisions that may temporarily prevent the full effectiveness of the Union rules: "(...) a body other than the judge is entrusted with the task of guaranteeing the application of Union law and having an independent power of assessment even if the obstacle in such a way to the full effect of this right was only temporary (...)"[138].

In the same sentence just quoted, CJEU declares that a national court has jurisdiction in a dispute concerning EU law, which considers that a national law is not only in conflict with it but is also vitiated by defects of unconstitutionality and is not deprived of faculty neither exempted from the obligation to submit to CJEU questions relating to the interpretation or the validity of EU right for the fact that the finding of the unconstitutionality of a rule of national law is subject to compulsory appeal before the constitutional court. Indeed,

> (...) the effectiveness of EU law would risk being compromised if the existence of a mandatory appeal before the constitutional court could prevent the national court to which a dispute was regulated under EU law to exercise the faculty attributed to him by art. 267 TFEU (...)[139].

9 CONCLUDING REMARKS

The investigation carried out in relation to the relief of effet utile showed the

[137]CJEU, C-189/10, Melki of 22 June 2010, op. cit., 43. The CJEU was referred also to the precedent cases: C-187/00, Kutz-Bauer of 20 March 2003, ECLI:EU:C:2003:168, I-02741, par. 73. joined cases C-387, 391 and 403/02, Berlusconi of 3 May 2005, ECLI:EU:C:2005:270, I-03565. C-314/08, Filipiak of 19 November 2009, ECLI:EU:C:2009:719, I-11049.
[138]CJEU, C-189/10, Melki and Abdeli of 22 June 2010, op. cit. par. 44.
[139]CJEU, C-189/10, Melki and Abdeli of 22 June 2010, op. cit., parr. 44-45. The CJEU has richiama the case: C-348/89, Mecanarte of 27 June 1991, ECLI:EU:C:1991:278, I-03277.

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flexible nature of this notion that could be modified depending on how the interpreter intends to use it, based on the tripartition that we indicated through the rich CJEU jurisprudence. In order to avoid absurd or unreasonable interpretation or as minimum effet utile or even as maximum effet utile.

We believe that the differences with regard to the importance given to the effect useful in the interpretation referring to the Union order do not follow its notion that it is indeed sufficiently broad to include its various meanings. Rather, it is a matter of difference concerning the privileged interpretative strategy. What changes is the way in which the effet utile is sometimes used by the interpreter to pursue a more or less broad interpretation. And this is also evident in relation to the examined traceability of the effet utile to the notions of efficacy and effectiveness present in the interpretation of EU treaties and more generally of the European legal system.

The principle of effet utile has assumed in the diachronic invention an increasingly less expansive and more balancing connotation. Without losing the creative peculiarity which resides in the dual nature of ruthless force in normative conflicts and at the same time of interpretative light with the help of CJEU. All this so that the development of the Union is effectively harmonious on its way.

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