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Character of effet utile and interpretation of EU law through CJEU jurisprudence

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Summary: 1.Introductory premises; -2.The effet utile of EU interpretative methods; -3.The relationship between effet utile, and effectiveness of EU law; -4.Effet utile and competences of EU Institutions; -5.Effet utile and CJEU competences; -6.Effet utile and compliance with EU law; -7.Effet utile in case law on the functioning of the internal market and competition; -8.Effet utile and European Citizenship; -9.Effet utile and effectiveness of the directives; -10.Effet utile, direct effectiveness and protection of individual rights; -11.Effet utile and state responsibility for infringement in EU law; -12.Effet utile and primacy of EU law; -13.Concluding remarks; -14.References.

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.

Keywords: effet utile, European Union law, interpretation of EU treaties, CJEU.

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 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[3], 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

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

[3]V. DEGAN, *L'interprètation des accord en droit international*, Martinus Nijhoff Publishers, The Hague, 1963.

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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[4]. 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"[5].

Likewise in C-34/62, Germany v. Commission sentence of 15 July 1963 with reference to the common customs tariff, CJEU stated that "si la Commission devait en tout cas de laisser orienter par la seule nècessitè de promouvoir les èchanges commerciaux avec les pays tiers, la consèquence serait que toute demande de dèrogation devrait être satisfaite, ce qui priverait le tarif douanier commun de tout effet utile (...)"6. Already these two examples confirm the non terminological coincidence in different language versions of EU jurisprudence. Not every difference between the different language versions has been eliminated and the effet utile is often rendered in French with different terms, which obviously conditions the translation in different languages makes it less easy to analyze.

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[7]. 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[8] and C-6/64, Costa v. ENEL of 15 July 1964[9] or the same in the known Simmenthal sentence[10].

CJEU referred to effet utile in interpreting both primary and derivative law[11],

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[4]P. PESCATORE, *Monisme, dualisme et "effet utile" dans la jurisprudence de la Cour de justice de la communautè europèenne, in Une communautè de droit. Festscrhfit für Gil Carlos Rodriguez Iglesias*, Berlin, 2003, pp. 332ss, 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 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.

[5]CJEU, C-30/59, De Gezamenlijke Steenkolenmijnen of 23 February 1961, ECLI:EU:C:1961:2 I-00001

[6]ECLI:EU:C:1963:18, I-00131.

[7]J.L. DA CRUZ VILAÇA, "Le principe de l'effet utile du droit de l'Union dans la jurisprudence de la Cour", in A. ROSAS, E. LEVITS, Y. BOT,. *The Court of Justice and the construction of Europe. Analyses and perspectives on sixty years of case-law*, Springer, The Hague, 2013, pp. 280ss.

[8]CJEU, C-22/62, Van Gend en Loos of 5 February 1963, ECLI:EU:C:1963:1, I-00001.

[9]CJEU, C-6/64, Costa v. ENEL of 15 July 1964, ECLI:EU:C:1964:66, I-01141, par. 114.

[10]M. ACCETTO, S. ZLEPTNIG, "The principle of effectiveness. Rethinking its role in community law", in *European Public Law*, 11, 2005, pp. 382ss. H.G. SCHERMERS, D.F. WAELBROECK, *Judicial protection in the European Union*, Wolters Kluwer, The Hague, 2001, pp. 22ss.

[11]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

including recommendations[12], as well as EU treaties concluded with other international subjects[13], those concluded between its member states[14].

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[15], 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 Belastingen sentence of 27 March 1963[16] 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 from which has been produced resolves the litigation point in question, even in the absence of a strict identity between the disputed matters (...)"[17].

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in particular terms the effect of the norms of such acts.

[12]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 submitted to their judgment in particular when they are of assistance in interpreting national rules adopted for the purpose of ensuring their implementation or aim to complete Community rules having binding nature (...)".

[13]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 the access to any subordinate work of his choice, necessarily implies, unless he renders the right which it attributes to him totally ineffective, the existence at that time at least of a right of residence for the person concerned and adds that this also applies to Article 6 (2) of Decision 1/80, given that in the absence of the right of residence, recognition of the Turkish worker after one year to regulate work activities , of the right to renew the work permit at the first employer would be devoid of any effect (...)", parr. 29-30. For further details see: L.C. CONANT, *Justice contained: law and politics in the European Union*, Cornell University Press, Ithaca, 2018.

[14]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 V-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.

[15]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

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

[17]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, that provision cannot be interpreted restrictively and must not be deprived of its effet utile and adds that it cannot be relied upon on the basis of that judgment that the granting of the right of residence de quo is subject to a condition of economic self-sufficiency, given that the CJEU has in no way even implicitly based its reasoning on such a condition (...)", par. 67. For further details see: E. GUILD, S. PEERS, J. TOMKIN, *The EU citizenship directive. A commentary*, Oxford University press, oxford, 2014. M. JACOB, *Precedent and case-based reasoning in the European Court of Justice: Unfinished business*, Cambridge University Press, Cambridge, 2014.

Moreover, the use of effet utile is directly proportional to the degree of indeterminacy of the rule to be interpreted which explains its greater relevance in the first decades of European integration and with reference to acts not directly applicable, first of all to the provisions of treaties and above all to directives[18].

With reference to the "quantity" of the norms interpreted through the prism of effet utile[19], which in some cases CJEU does it evaluated with reference to a single provision[20], in others it referred to a group of complementary provisions used jointly or to the general principles[21] or the entire treaty[22] or the even broader way to the spirit of law that characterizes the process of European integration and derives from its general system[23].

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[18]K.LENAERTS, J.A. GUTIERREZ FONS, *Les mèthodes d'interprètation de la Cour de justice de l'Union europèenne*, ed. Larcier, Bruxelles, 2020.

[19]U. SADL, "The role of effet utile in preserving the continuity and authority of European Union law: Evidence form the citation web of the pre accession case law of the Cout of Justice of the EU", in *European Journal of Legal Studies*, 8, 2015, pp. 18ss., which is affirmed that: "(...) the court did not use effet utile (...) when the law was exhausted (...)".

[20]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 of various kinds granted according to the cases to male or female workers. The jurisdictional provision would be difficult to implement and the effective effect of article 119 (157 TFEU) would be equally reduced (...)". 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 (...)". For further analysis: K. LENAERTS, I. MASELIS, K. GUTMAN, *EU procedural law*, Oxford University Press, 2014, pp. 134ss. A. HARTKAMP, C. SIBURGH, W. DEVROE, *Cases, materials and text on European Union law and private law*, Hart Publishing, Oxford & Oregon, Portland, 2017, pp. 282ss.

[21]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. For further details see: S. PEERS, *EU justice and home affairs law*, Oxford University Press, Oxford, 2014. E. BERRY, M. J. HOMEWOOD, B. BOGUSZ, *Complete EU law: text, cases and materials*, Oxford University Press, Oxford, 2015. P. CRAIG, G. DE BÚRCA, *The evolution of EU law*, Oxford University Press, Oxford, 2011.

[22]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.

[23]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 general system of treaty, understood as inspired

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[24]. In C-22/70, Commission v. Council sentence of 31 March 1971[25], 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"26. And in joined cases C-3, 4 and 6/76 Kramer of 14 July 1976[27], 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"28.

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[29], n. 2/91 of 19 March 1993[30] and n. 2/92 of 24 March 1995[31]. A relevant exception is C-476/98, Commission v. Germany sentence of 5 November 2002[32] where CJEU recalls the previous jurisprudence (sentence

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by a federalist vesion. See in argument: R. ORMAND, "L'utilisation particulière de la mèthode d'interprètation des traitès selon leur "effet utile" par la Cour de Justice des communautès europèennes", in *Revue Trimestrielle de Droit Europèen*, 14, 1976, pp. 625ss, which is affirmed that. "(...) la Cour, simplement, considèrant le système du traitè sos une vision fèdèraliste en dèduit les règles qui sì'imposent et confronte alors la norme à ces dernières (...)".

[24]C. DE VISSCHER, "L'interprètation judiciaire des traitès d'organisation internationale", in *Rivista di Diritto Internazionale*, 1958, pp. 18ss, 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. See also: F. DUMON, *La jurisprudence de la Cour de justice. Examen critique des mèthodes d'interprètation, in rencontre judiciaire et universitaire, 27-28 septembre 1986*, Luxembourg, 1986, pp. 4ss.

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

[26]M.DERLÉN, J. LINDHOLM, *The Court of Justice of the European Union. Multidiciplinary perspectives*, Hart Publishing, Oxford & Oregon, Portland, 2018.

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

[28] F. MARTUCCI, *Droit de l'Union europèenne*, LGDG, Paris, 2019.

[29]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. The CJEU has concluded that whenever Community law has given certain powers internally to the institutions of the community, in order to achieve a certain objective the community is competent to assume the commitments internationals necessary to achieve this objective even in the absence of express provisions in this regard (...)", par. 3.

[30]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, in order to achieve a certain objective, the community is competent to assume the international commitments necessary to achieve this objective even in the absence of express provisions in this regard (...)", par. 7.

[31]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. refers to the hypothesis in which the stipulation of an international agreement is necessary to achieve treaty objectives that cannot be achieved with the adoption of autonomous norms (...)", par. 32

[32]ECLI:EU:C:2002:631, I-09855. See also: S. GARBEN, I GOVAERE, *The division o competences between the EU and the member states*, Hart Publishing, Oxford & Oregon, Portland, 2017. S. ANDERSEN, *The enforcement of EU law: the role of the European*

AETS) and declares that: "(...) 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 (...)"[33].

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[34] and competition[35] to those inherent to agriculture[36] and environment but also to issues relating to common commercial policy[37], immigration[38] and fundamental rights[39]. 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 (...)"[40]

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

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Commission, Oxford University Press, Oxford, 2012.

[33]CJEU, C-476/98, Commission v. Germany of 5 November 2002, op. cit., par. 136

[34]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 (...)".

[35]CJEU, C-46/87, Hoechst v. Commission of 21 September 1989, ECLI:EU:C:1989:737, I-02859

[36]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. The reference to special assessment criteria, typical of the legislation or of the constitutional structure of a member state would inevitably undermine the unity of the common market and compromise the cohesion of the community, since it would impair the unity and effectiveness of Community law (...)", par. 14.

[37]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 which, although not strictly customs duties, would nevertheless have the same effects on trade between the member states (...)", par. 18.

[38]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

[39]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, the directive it can also be applied to discriminations that originate as in the case in question in the sex change of the person concerned (...) tolerating such discrimination would amount to placing the respect of dignity and freedom in the face of such a person which it is entitled and which the court must protect (...)", parr. 20-22. For further analysis see: D. CHALMERS, G. DAVIES, G. MONTI, *European Union law*, Cambridge University Press, Cambridge, 2019.

[40]U. SADL, *The role of effet utile in preserving the continuity and authority of European Union law: evidence form the citation web of the pre accession case law of the Court of Justice of the EU,* op. cit., pp. 42ss. Whcih is affirmed that: "(...) the role of effet utile is to establise 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 (...)".

ruling. This circumstance is not surprising given that the appeal pursuant to art. 267 TFEU[41] is the one in CJEU that is most called to rule. Moreover, the effet utile is 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)). The Luxembourg judges recall the effet utile both in a positive sense by affirming that it is necessary to follow a certain interpretation in order to ensure the effet utile of EU law in a negative sense, that is to say in order to counter interpretations that would lead to failure or mitigating the EU effectiveness. 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 (...)"[42].

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. It is not just a criterion for the resolution of the conflict between internal rules and Union norms or more broadly a tool for defining the areas of Union and states competences, specifying that states are obliged to cooperate both by applying the direct effect norms both through the implementation of rules that do not have direct effect, ensuring to individuals an effective protection, in case of failure to implement.

2.THE EFFET UTILE OF EU INTERPRETATIVE METHODS

Numerous authors report the effet utile in the teleological interpretation method[43]. According to Kutscher: "(...) ce principe relève de l'interprètation tèlèologique"[44], 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 (...)"[45]. 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[46]. 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

[41]A. HATJE, J.P. TERHECHTE, P.C. MÜLLER-GRAFF, *Europarechtswissenschaft*, ed. Nomos, Baden-Baden, 2018. J. SCHWARZE, V. BECKER, A. HATJE, J. SCHOO, *EU-Kommentar*, ed. Nomos, Baden-Baden, 2019.

[42]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 of the act would be attenuated if the administrators were precluded from using it in court and the national judges to take it into consideration (...)", 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.

[43]G. BECK, *The legal reasoning of the court of justice of the EU*, Oxford University Press, Oxford, 2012, pp. 196ss.

[44]H. KUTSCHER, *Mèthodes d'interprètation vues par un juge à la Cour, in Rencontre judiciaire et universitaire, 27-28 septembre 1976*, Luxembourg, 1976, pp. 3ss.

[45]T. TRIDIMAS, "The Court of justice and judicial activism", in *European Law Review*, 2, 1996, pp. 206ss.

[46]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.

constitutional interpretation. The same Rasmussen[47] 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 (...)"[48]. 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[49].

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[50], 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 (...)"[51] is attributable to the teleological and systematic interpretation[52].

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.

We do not fully agree with the opinions just described because to what extent they underestimate or overestimate according to the perspective chosen part of the practice of which considered as a whole, the real nature of the effet utile emerges instead the cameleontic character of the effet utile also in the context of the interpretation of EU law, a character which has already emerged in relation to the interpretation of international treaties. In my opinion it does not lend itself to a rigid definition and is not a priori ascribable to a single interpretative method unless one ignores a part of the pertinent jurisprudence since it was used by CJEU in the context of different interpretative methods. Also with reference to the interpretation of EU law, the observation made in general terms is confirmed, according to which behind the argument of usefulness in appearance, technical and objective, lies a strong dose of value choice (and of judicial policy) a considerable creativity in the legal transaction.

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

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[47]H. RASMUSSEN, *On law and policy in the European Court of Justice*, ed. Springer, Dordrecht, 1986, pp. 178ss, which is affirmed that: "(...) most commentators quietly accept the court's constant recourse to the effet utile and the teleological method of interpretation (...)". in the same orientation see also: S. WEATHERILL, "Activism and restraint in the European court of justice", in P. CAPPS et al. (eds.), *Asserting jurisdiction. International and European legal perspectives*, Oxford University Press, Oxford, 2003, pp. 268ss. H.G. SCHERMERS, D.F. WAELBROECK, *Judicial protection in the European Union*, Wolters Kluwer, The Hague, 2001. M. POIARES MADURO, "Interpreting European law: judicial adjudication in the content of constitutional pluralism", in *European Journal of Legal Studies*, 1, 2007.

[48] J.C. DE CARVALHO MOITINHO DE ALMEIDA, "L'interpretation par la Cour de justice de l'Union du droit europèen de procèdure civile", in K. BRADLEY et al. (eds.), *Of courts and constitutions. Liber amicorum in honour of Nial Fennelley*, Hart Publishing, Oxford & Oregon, Portland, 2014, pp. 30ss

[49]F. SCHOCKWEILER, "La Cour de justice des communautès europèennes dèpasse-t-elle les limites de ses attributions?", in *Journal des Tribunaux. Droit europèen*, 1995, pp. 76ss.

[50]K. LENAERTS, J.A. GUTIÉRREZ-FONS, "To say what the law of the EU is: methods of interpretation and the European Court of Justice", in *EUI working paper*, 2013/9, pp. 28

[51]U. EVERLING, "Reflections on the reasoning in the judgments of the Court of justice of european communities", in K. THORUP, J. ROSENLOV, *Festkrift til Ole Due*, København, Gec Gads Forlag, Copenhagen, 1994, pp. 494ss.

[52]U. EVERLING, On the judge-made law o the european community's courts, in D. O'KEEFFE (ed.), *Judicial review in European Union law. Liber amicorum in honour of Lord Slynn of Hadley*, Kluwer Law International, The Hague, 2000, pp. 33ss

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 Charbonnière de Belgique v. High Authority sentence of 16 July 1956[53] 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[54].

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. With reference to the Union order a similar construction is found in the position in which the effet utile implies not only that the interpretation must provide meaning to the norm (which is obvious) but also that the provisions of the treaty must be interpreted so that they achieve their goals to the extent possible. 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[55].

The reconstruction that states that effet utile operates on higher levels is more complex and in our opinion fully consistent with jurisprudential practice: to avoid an absurd or improper result, to give the treaties a minimum of effectiveness and to give them maximum effectiveness. A tripartition having regard to its intensity, the effet utile can be traced back to the ab absurd reasoning (it demonstrates the truth of a proposition, through the absurd to which the contrary proposition would lead) or refers to the context and to the end, or still pursues the fullness of its effects (maximum effect)[56].

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[57]. In joined cases C-7/56 and 7/57, Algera sentence of 11 July 1957[58] 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 (...) any other interpretation would empty art. 78 (now 93 TFEU) of its content and must therefore be rejected (...)"59. 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. Starting from the aforementioned purposes of the agreement (relating to the transitional

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[53]CJEU, C-8/55, Fèdèration Charbonnière de Belgique v. High Authority of 16 July 1956, ECLI:EU:C:1956:7 I-00245.

[54]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 (...)".

[55]P. PESCATORE, *Les objectifs de la Communautè europèenne comme principles l'interpètation dans la jurisprudence de la Cour de justice, in W.J. Ganschof van der Mersch*, Bruylant, Bruxelles, pp. 328ss. K. BRADLEY et al. (eds.) *Of courts and constitutions. Liber amicorum in honour of Nial Fennelley,* Hart Publishing, Oxford & Oregon, Portland, 2014, pp. 30ss.

[56]As we can observed in case: CJEU: C-228/18, Budapest Bank and others of 2 April 2020, ECLI:EU:C:2020:678, not yet published.

[57]The effective effect operates in the context that the effects of EU law produce on the competences of the organization in relation to that of the member states, in order to exclude the interpretation of a provision that would make it lose all practical effectiveness. Effective effectiveness is accompanied by the necessary effect, the exclusion of which would have the consequence of mitigating or reversing the pursuit of the objectives of the treaty.

[58]CJEU, C-7/56 and 7/57, Algera of 11 July 1957, ECLI:EU:C:1957:7, I-00081.

[59]C. VIRSEDA FERNÁNDEZ, *Uniòn europea*, Editorial Aranzadi, Pamplona, 2020.

provisions) as set out in par. 2, n. 1, par. 12 must be interpreted as meaning that lett. 2 is also applicable to agreements entered into after the entry into force of the treaty but before the establishment of the common market. Only this interpretation makes it possible to avoid the absurd hypothesis of the arbitrary separation of the rules of art. 65, just proposed (...)"[60].

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 cannot therefore be deprived of fundamental power (...) to ensure compliance. If by means of a request for dispensation or it were possible to evade it, this would lose all effectiveness and in the substance it adds that the increases of certain import duties make presume the existence of a discrimination and a protection both in each contrast with the fundamental principle of the free movement of goods, which would become completely inoperative in the event of generalization of such practices (...) "61. 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 (...)"[62].

Finally, in case C-6/72, Continental Can of 21 February 1973[63] 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. This requirement is so essential that without it, numerous provisions of the treaty would become devoid of object (...) the restrictions of competition that the treaty admits in certain cases, for reasons inherent to the need to reconcile the various objectives to be reached therefore (...) a limit beyond which the weakening of competition could jeopardize the achievement of the common market goals (...)"[64].

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[65] 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 and this because (...) the argument to the contrary is admissible only when no other interpretation proves to be suitable to be compatible with the text, the context and their purposes. Any other solution would make it difficult, if not impossible, to exercise the right of appeal granted to companies and associations (...)". 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 (...)"[66].

In most cases CJEU has emphasized the extended notion of effet utile that

[60]CJEU, C-1/58, Stork & CO of 4 February 1959, ECLI:EU:C:1959:4, I-00043, par. 5.
[61]C. VIRSEDA FERNÁNDEZ, *Uniòn europea*, op. cit.,
[62]CJEU, joined cases C-2 and 3/62, Commission v. Belgium and Luxembourg of 14 December 1962, ECLI:EU:C:1962:45, I-00425.
[63]CJEU, C-6/72, Continental Can of 21 February 1973, ECLI:EU:C:1973:22, I-00215.
[64]CJEU, C-6/72, Continental Can of 21 February 1973, op. cit.,
[65]CJE, C-9/56, Meroni of 13 June 1958, ECLI:EU:C:1958:7, I-00133.
[66]CJEU, joined cases C-463/11, L. of 18 April 2013, ECLI:EU:C:2013:247, published in the electronic Reports of the cases.

time to the teleological interpretation that ensures the norm the greatest possible effectiveness, excluding the interpretations that diminish or compromise its purpose[67]. 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. In this regard, it has been highlighted that the effet utile, the teleological interpretation, also becomes a creative act. The effective effect entails the obligation for the judge to apply and interpret every provision of the treaty so that within the sphere of the powers assigned, EU law can produce all its legal or actual or potential consequences without being in any limited or altered way by any obstacle of domestic law or national jurisdiction not expressly established. The effet utile imposes on the judge not only a negative obligation, that of refusing any interpretation likely to deprive a text of its pruned or diminishing its relevance but also a positive obligation, consisting in obtaining from the provision all the reasonable consequences that it involves in function of his role and his attitude to the treaty[68].

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 (...)"69. In the subsequent joined cases C-56 and 48/64, Consten sentence of 13 July 1966[70] 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. To this end it is appropriate to consider not only the form of the act in question, but also its substance, as well as its function in the treaty system according to the political-economic purpose pursued by the Council (...)"[71].

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 before the final authorization for disposal itself allows the purpose of said standard to be realized. It is to such a suitable interpretation to safeguard the effet utile of the rule that priority must be given (...)"[72]. Consider, also in C-39/72, Commission v. Italy sentence of 7 February

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[67]J.M. SOREL, V. BORÉ EVENO, "1969 Vienna convention. Article 31. General rule of interpretation", in O. CORTEIN, P. KLEIN, *The Vienna convention on the law of treaties. A commentary*, Oxford University Press, Oxford, 2011, pp. 804ss which affirmed that: "(...) even though the ECJ has also invoked effectiveness in numerous cases it goes beyond the stage of merely applying this means to favour ends-focused interpretations (...)". See also in argument: I. BUGA, *Modification of treaties by subsequent practice*, Oxford University Press, Oxford, 2018. D. PEAT, *Comparative reasoning in international courts and tribunals*, Cambridge University Press, Cambridge, 2019.

[68]R. LECOURT, *L'Europe des juges*, Bruylant, Bruxelles, 1976, pp. 238ss, "(...) 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 (...)".

[69]C-34/62, Germany v. Commission, op. cit.,

[70]CJEU, C-56 and 48/64, Consten of 13 July 1966, ECLI:EU:C:1966:41, I-00458.

[71]CJEU, C-33/70, SACE of 17 December 1970, ECLI:EU:C:1970:118, I-01213, par. 13.

[72]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.

1973 which is affirmed that. "(...) for the practical application of the slaughter premium scheme, regulations of the Council and Commission have established precise terms. 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 at the time established according to the political and economic purpose pursued by the Council (...)"[73]. 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 of powers or from a transfer of powers from the states to the community itself. Consequently, only an express provision of the treaty could withdraw the powers thus conferred on the community and return them to individual member states (...)"[74]. 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 (...)"[75].

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 (...)"[76] while in C-440/00, Kühne & Nagel sentence of 13 January 2004[77] 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[78].

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. In particular, in interpreting a text we must have recourse to a teleological approach which goes beyond the rule of the effectiveness of the single provision since it considers that of the whole treatise.

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

The question of relationship between useful and effective effects is complex[79]. Frequently the two terms are considered synonyms[80] this is favored also by the fact

[73]CJEU, C-39/72, Commission v. Italy of 7 February 1973, ECLI:EU:C:1973:13, I-00101, par. 14.
[74]CJEU, C-7/71, Commission v. France of 14 December 1971, ECLI:EU:C:1971:121, I-01003, par. 18-20.
[75]CJEU, C-36/75, Rutili of 28 October 1975, ECLI:EU:C:1975:137, I-01219, parr. 27-28.
[76]CJEU, C-48/75, Royer of 8 April 1976, ECLI:EU:C:1976:57, I-00497, par. 74-75.
[77]CJEU, C-440/00, Kühne & Nagel of 13 January 2004, ECLI:EU:C:2004:16, I-00787.
[78]CJEU, C-62/99, Bofrost of 29 March 2001, ECLI:EU:C:2001:188, I-02579, par. 46
[79]J. BENGOETXEA, *The legal reasoning of the European Court of Justice,* Oxford University Press, Oxford, 1993, pp. 235ss. 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.
[80]N. FENNELLY, "Legal interpretation at the European Court of justice", in *Fordham International*

that in English the effet utile is often accompanied by effectiveness which does not seem completely inadequate[81].

The confusion increases if we consider that the meaning of the concept of effectiveness of EU law is vague and not unambiguous[82]. This it can detect: "(...) both as a whole and regards the interpretation of individual rules (effet utile) (...)"[83]. 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[84].

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[85]. If we consider the question of the application of EU law in such a context, effectiveness is a practical consequence of interpretation of EU law according to its effet utile[86]. The guiding star of all the reasoning is always represented by the effet utile, while the effectiveness is in this respect, a tool to ensure the effective application of Community law in member states.

The principle of effectiveness has long emerged in CJEU jurisprudence[87] 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

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Law Journal, 21, 1997, pp. 658ss P. NICOLAIDES, M. GEILMANN, "What is effective implementation of EU law?", in *Maastricht Journal of European and Comparative Law*, 19, 2012, pp. 40ss.

[81]J. BENGOETXEA, N. MACCORMICK, L. MORAL SORIANO, "Integration and integrity in the legal reasoning of the European court of justice", in G. DE BÚRCA, J.H.H. WEILER, *The European Court of Justice*, Oxford University Press, Oxford, 2001, pp. 65ss. G. BECK, *The legal reasoning of the European Court of Justice of the EU*, Hart Publishing, Oxford & Oregon, Portland, 2012. R.M. CHEVALLEIR, "Methods and reasoning of the European court in its interpretation of community law", in *Common Market Law Review*, 2, 1965, pp. 25,

[82]F. SNYDER, "The effectiveness of european community law. Institutions, processes, tools and tecniques", in *Modern Law Review*, 56, 1993, pp. 26ss. M. LASSER, *Judicial deliberations. A comparative analysis of judicial transparency and legitimacy*, Oxford University Press, Oxford, 2004, pp. 212ss. A. O'NEILL, *Decisions of the ECJ and their constitutional implications*, Butterworts, London, 1994.

[83]J. MAZÁK, M.K. MOSER, "Adjudication by reference to general principles of EU law: a second look at the Mangold case law", in M. ADAMS et al. (eds.), *Judging Europe's judges*, Oxford University Press, Oxford, 2013, pp. 62ss.

[84]K. LENAERTS, J.A. GUTIÉRREZ-FONS, *To say what the law of the EU is: Methods of interpretation and the European Court of Justice*, op. cit.

[85]K. LENAERTS, J.A. GUTIÉRREZ-FONS, *To say what the law of the EU is: methods of interpretation and the European Court of Justice*, op. cit.

[86]E. FINTON, "Strengthening the effectiveness of community law. Direct effect, article 5 EC and the European Court of Justice", in *New York University Journal of International Law and Politics*, 1999, pp. 308ss. J.L. DA CRUZ VILAÇA, *Le principe de l'effet utile du droit de l'Union dans la jurisprudence de la Cour, in the Court of Justice and the construction of Europe. Analyses* and perspectives on sixty years of case-law, op. cit.,

[87]S. PRECHAL, R. WIDDERSHOVEN, "Redefining the relationship between "Rewe-effectiveness" and effective judicial protection", in *Review of European Administrative Law*, 2011, pp. 32s. P. ROTT, "The court of justice's principle of effectiveness and its unforesseable impact on private law relationships", in D. LECZYKIEWICZ, S. WEATHERILL (eds), *The involvement of EU law in private law relationships*, Oxford University Press, Oxford, 2013, pp. 182ss.

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 (...)". Accordingly, the principle of loyal cooperation[88] they have "(...) the task of guaranteeing the jurisdictional protection of individuals under the provisions of EU law having direct effect (...)"89.

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 intended to guarantee the protection of the rights pertaining to individuals under the provisions of Community law having direct effect. These methods cannot be less favorable than those concerning similar domestic appeals, nor can they render the exercise of the rights conferred by the Community legal order practically or excessively difficult (...)"[90].

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) and do not make it practically impossible or excessively difficult to exercise the rights conferred by the Community legal system (principle of effectiveness) (...) "would be contrary to the effectiveness (of a directive on the subject of environmental impact) considering as the mere modification of an existing authorization the adoption of decisions that in similar circumstances to that of the main cause, they replace not only the terms but also the substance of a previous concession (...)"[91]. 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 affected by decisions of the contracting authorities and must not endanger the effectiveness of the directive (...)"[92].

The Rewe sentence of 1976 has also favored the emergence of a second very 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[93]. 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 (...)"[94].

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

[88]M. KLAMMERT, *The principle of loyalty in EU law*, Oxford University Press, Oxford, 2014.
[89]C. VIRSEDA FERNÁNDEZ, *Uniòn europea*, op. cit.,
[90]CJEU, joined cases C-430 and 431/93, Van Schijndel of 14 December 1995, ECLI:EU:C:1995:441, I-04705, par. 17
[91]CJEU, C-201/02, Wells of 7 January 2004, ECLI:EU:C:2004:12, I-00723, par. 67, par. 30. See also: S. WETHERILL, *Law and values in the EU*, Oxford University Press, Oxford, 2016.
[92]CJEU, C-406/08, Uniplex of 28 January 2010, ECLI:EU:C:2010:45, I-00817, par. 27. See also: P. CRAIG, *EU administrative law*, Oxford University Press, Oxford, 2012.
[93]J. TEMPLE LANG, "Basic princples of european law applying to national courts", in *Svensk Juristidning*, 2011, pp. 136ss. J.L. DA CRUZ DE VILAÇA, "Le principe reproduites aux articles 31 à 33 des Conventions de Vienne. Approche objectiviste ou approche volontariste de l'interprètation?", in *Revue Generale de Droit International Public*, 115, 2011, pp. 352ss.
[94]CJEU, C-14/83, Von Colson of 10 April 1984, ECLI:EU:C:1984:153, I-01891, par. 23

Giorgio case of 9 November 1983[95] 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 (...) the reimbursement can be requested only on the conditions of merit and form, established by the national air legislation on the subject, as shown by the constant jurisprudence of the court, such conditions cannot be less favorable to those concerning similar appeals of national law and which must not in any case make it practically impossible to exercise the rights conferred by Community law (...)"[96].

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 law provided that these methods comply with the principles of equivalence and effectiveness (...) a national rule under which the limitation period for lodging an appeal for damages begins on the day in which the agreement or concerted practice has been put in place could make it practically impossible to exercise the right to claim compensation for the damage caused by such a forbidden agreement or practice, in particular if this national provision also provides for a limitation period for drinking and this term cannot be suspended (...)"[97]. 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 legal order (principle of effectiveness) (...)"[98].

The reference to effectiveness has jurisprudential origin but has been followed recognized in the primary law according to art. 19, par. 1, lett. 2 TEU member states establish the necessary legal remedies to ensure effective judicial protection in the areas governed by EU law. Art. 197 TFEU[99] provides that the effective implementation of EU law is considered a matter of common interest while art. 47, lett. 1 of the Charter of Fundamental Rights of the European Union (CFREU) establishes rights to every person and freedoms guaranteed by EU law that have not been violated having the right to an effective remedy before a judge.

4.EFFET UTILE AND COMPETENCES OF EU INSTITUTIONS

CJEU has interpreted the rules of the treaty conferring jurisdiction on

[95]CJEU, C-199/82, San Giorgio of 9 November 1983, ECLI:EU:C:1983:318, I-03595.

[96]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 intended to guarantee the protection of the rights pertaining to individuals under Community law (...)", par. 39. It also affirms: "(...) even if in principle it is for national law to determine the legitimacy and the interest to act of an individual, Community law requires that the national legislation does not damage the right to an effective legal protection (...) ", par. 42.

[97]CJEU, joined cases C-295 to 298/04, Manfredi of 13 July 2006, ECLI:EU:C:2006:461, I-06619, parr. 77-78.

[98]CJEU, joined cases C-295 to 298/04, Manfredi of 13 July 2006, op. cit., par. 45-46. the CJEU is referred at 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

[99]N. FOSTER, Foster on EU law, Oxford University Press, Oxford, 2017

institutions "in such a way that they may fulfill their effet utile, that is the purpose to which they are destined (...)"[100]. In the joined cases C-6 and 11/69, Commission of the European Communities v. French Republic of 10 December 1969 is declared that: "(...) articles 108, n. 3 and 109, no. 3 (now 143 and 144 TFEU) grant the Community institutions powers of authorization and intervention which would have no sense if member states, on the pretext that their action falls solely within monetary policy, could derogate unilaterally and outside the control of those institutions, to their obligations under the provisions of the Treaty[101]. 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 (...)"[102].

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 (...) this conclusion is not affected by the fact that in accordance with art. 31, n. 1 of the framework decision starting from the 1st January 2004, the latter only replaces in the relations between member states the corresponding provisions of the previous conventions concerning extradition listed in this provision (...) other interpretation that you do not find supported in TEU provisions would risk depriving the essential aspect of its effet utile from the faculty recognized to the council of adopting framework decisions in sectors previously governed by international conventions (...)"[103].

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 adopted in the context of loyal cooperation under the conditions laid down by the general acts adopted in the context of such cooperation before such acts were modified to be adapted to the Treaty of Lisbon, this would actually complicate or even prevent the effective implementation of these acts, thus compromising the achievement of the objective pursued by the authors of the treaty (…). The interpretation of article 9 of Protocol on transitional provisions proposed by Parliament according to which this article only implies that the acts attributable to police and judicial cooperation in criminal matters are not automatically repealed following the entry into force of the Treaty of Lisbon would deprive the aforementioned article of any effet utile (...)"[104]. A passage is also reported in C-344/04, IATA and ELFAA case of 10 January 2006[105] 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. By adopting these methods of resolving the disagreement they have precisely tried to obtain that the approximation of the points of view of the Parliament and Council take place on the basis of an examination of all aspects such disagreement, and with the active participation of the Commission (...)"[106].

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[100]C-524/04, Test Claimants in the Thin Cap Group Litigation of 13 March 2007, op. cit.,
[101]CJEU, joined cases C-6 and 11/69, Commission of the European Communities v. French Republic of 10 December 1969, ECLI:EU:C:1969:68, not published, parr. 14-15.
[102]CJEU, C-125/76, Cremer of 11 October 1977, ECLI:EU:C:1977:148, I-01593, par. 21
[103]CJEU, C-303/05, Advocaten voor de Wereld of 3 May 2007, ECLI:EU:C:2007:261, I-03633, parr. 41-42.
[104]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.
[105]CJEU, C-344/04, IATA and ELFAA of 10 January 2006, ECLI:EU:C:2006:10, I-00403
[106]CJEU, C-307/14, Ivansson and others of 10 July 2014, ECLI:EU:C:2014:2058, published in the electronic Reports of the cases,

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: "(...) 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, it is necessary to provide the said regulations with an interpretation that ensures all their effet utiles (...)"[107].

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. This being the case, a limitation of the power of the Commission such as that considered by the Belgian government would lead to rendering practically ineffective art. 90, n. 3 (now, art. 106 TFEU)"[108].

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, which it therefore necessarily attributes to it the indispensable powers to perform that mission. This is the sense in which the 2nd sub-paragraph of art.118 should be interpreted in order to attribute to the Commission all the powers necessary to organize consultations. (...) Collaboration between states, contemplated by art. 118, can take place only in the context of organized consultations. If there were no initiative on this point, this collaboration, even if required by the treaty, would risk remaining a dead letter (...)"[109].

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 (...)"[110].

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 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 in which it was given its execution, which would be incompatible with the object itself of art. 88, n. 3 EC (now 108 TFEU) and would deprive this provision of its effet utile. The national judge cannot suspend the proceedings without depriving art. 88, n. 3 EC, of its effet utile (...)"[111].

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[107]CJEU, C-27/04, Commission v. Council of 13 July 2004, ECLI:EU:C:2004:436, I-06649, par. 74.

[108]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.

[109]CJEU, C-271/, 281 and 289/90, Spain and others v. Commission of 17 November 1992, op cit., par. 28-29.

[110]CJEU, C-433/03, Commission v. Germany of 14 July 2005, ECLI:EU:C:2005:462, I-06985, pp. 72

[111]CJEU, C-1/09, CELF II of 11 March 2010, ECLI:EU:C:2010:136, I-02099, parr. 31-32

In C-284/12, Deutsche Lufthansa case of 21 November 2013[112], 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 would have nullified (...) national judges could decide to suspend the execution of the measure in question and to order the recovery of the sums already paid (…) decide to order provisional measures in order to safeguard the interests of the parties involved and effet utile of the Commission decision to initiate the formal investigation procedure"[113].

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[114]

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 constitutes an indispensable measure to combat serious environmental violations, to take measures in relation to criminal law of member states and that it deems necessary to guarantee the full effectiveness of the name it issues in the matter of environmental protection (...)"[115]. 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 (...)"[116].

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-Werke case of 20 February 2001[117] 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 which the latter is aware and if necessary to communicate the relative documents of which it is in possession even if they can be used to ascertain that the same company or another company have behaved in an anti-competitive manner (...)"[118].

In other respects the right of access to documents is repeatedly referred to

[112]CJEU, C-284/12, Deutsche Lufthansa of 21 November 2013, ECLI:EU:C:2013:755, published in the electronic Reports of the cases.

[113]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. Any other interpretation would lead to the non-compliance by the member state concerned with the art. 88, n. 3 EC and would deprive the latter of its practical effectiveness (...)", par. 40.

[114]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. For further analysis see: L. NORMAN, *The mechanism of institutional conflict in the EU*, Routledge, New York, London, 2016.

[115]CJEU, C-176/03, Commission v. Council of 13 September 2005, op. cit., par. 48.

[116]CJEU, C-440/05, Commission v. Council of 23 October 2007, ECLI:EU:C:2007:625, I-09097, par. 66

[117]GC, T-112/98, Mannesmannröhren-Werke of 20 February 2001, ECLI:EU:T:2001:61, I-00729.

[118]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

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[119] 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. Such a requirement would deprive that general presumption of its effet utile, or allow the Commission to respond to a global access request in an equally global manner (...)"[120].

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)[121].

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 discretionary power, can in principle be the subject of an appeal for compensation damages (...) the treaty and general principles of Community law, both the applicable secondary law (...) a contrary approach would be incompatible with a community law and would deprive the appeal for damages of its practical effectiveness as it would prevent the judge from assessing the legitimacy of an act of an institution of such an appeal (...)"[122].

In this regard, in T-79/13, Accorinti case of 7 October 2015[123] 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, under assumptions conceived in view of its specific object (...) the appeal for compensation has as its object the request for reparation of a damage deriving from an act or from an unlawful conduct attributable to an institution or a EU organ (...)"[124]. 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. Such an interpretation would be contrary to the very principle of the autonomy of the remedies and would deprive

[119]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.
[120]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. See also in for further analysis: K. BACON, K. BACON QL, *European Union law of state aid,* Oxford University Press, Oxford, 2017, pp. 213ss.
[121]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.
[122]GC, T-440/03, Arizmendi and others v. Council and Commission of 18 December 2009, ECLI:EU:T:2009:530, I-04843.
[123]GC, T-79/13, Accorinti of 7 October 2015, ECLI:EU:T:2015:756, published in the electronic Reports of the cases
[124]GC, T-79/13, Accorinti of 7 October 2015, op. cit.,

of its effet utile art. 268 TFEU bed in conjunction with art. 340, lett. 3 TFEU[125].

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 (...) affect the exercise of the rights conferred by EU law, the practical effectiveness of this requires that CJEU can rule on questions of interpretation and validity which may arise in the context of such a dispute (...)"[126].

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[127] which gives effect to Union positions defined in the CFSP framework. Such regulations constitute Union acts adopted on the basis of TFEU, with regard to which EU judges, in accordance with the competences attributed to them by the treaties, must guarantee a control, in principle complete, of legitimacy (...)"[128].

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, the national judge would be prevented from submitting preliminary questions to the court and to immediately give an EU law application consistent with court's decision or jurisprudence (...)"[129]. 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 (...)"[130].

6.EFFET UTILE AND COMPLIANCE WITH EU LAW

In joined cases C-143/88 and 92/89, Zuckerfabrik of 21 February 1991 is affirmed that the impossibility for a national judge not to apply a Regulation in case of doubts about its legitimacy. "(...) The national judge called upon to apply Community rules within the sphere of his competence has the obligation to guarantee the full effectiveness of Community law and in case of doubts about the validity of the community regulations to take into account the interest of the community so that the same regulations are not excluded without a strict guarantee (...) if the controversial community act is not deprived of any practical effectiveness in the absence of immediate application (...)"[131]. In C-465/93, Atlanta case of 9 November

[125]GC, T-79/13, Accorinti of 7 October 2015, op. cit., par. 61
[126]CJEU, C-246/80, Broekmeulen of 6 October 1981, ECLI:EU:C:1981:218, I-03111, par. 16
[127]A. MANGAS MARTÍN, *Tratado de la Uniòn Europea, Tratado de Funcionamiento,* ed. Marcial Pons, Madrid, 2018
[128]CJEU, C-72/15, Rosneft of 28 March 2017, ECLI:EU:C:2017:236, published in the electronic Reports of the cases, par. 106.
[129]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
[130]CJEU, C-689/13, PFE of 5 April 2016, ECLI:EU:C:2016:199, published in the electronic Reports of the cases, par. 39.
[131]CJEU, C-143/88 and 92/89, Zuckerfabrik of 21 February 1991, ECLI:EU:C:1991:65, I-00415, parr. 30-31. For further details see: L. WOODS, P. WATSON, *Steiner & Woods European Union law,* Oxford University Press, Oxford, 2017, pp. 37ss E. BERRY, M.Y. HOMEWOOD, B. BOGUSZ, *Complete European Union law. Texts, cases and materials*, Oxford University Press, Oxford, 2013. G. CONWAY, *European Union law,* ed. Routledge, London & New York, 2015. R. SCHÜTZE, T. TRIDIMAS, *Oxford principles of European Union Law,* Oxford University Press, Oxford, 2018.

1995 recognizes the need for the deed not to be deprived of effet utile and adds that: "(...) the urgent provision may cause the legal regime established by such Regulation throughout the Community. It is required to take into consideration the cumulative effect caused in the event that a plurality of judges also issue urgent measures for similar reasons, and the specificity of applicant's situation that differentiates him from the other economic operators concerned (...)"[132]. With reference to the directive, it is possible to call C-157/11, Sibilio case of 15 March 2012 which CJEU firmly states that "(...) member states are not allowed to apply legislation that may jeopardize the achievement of the objectives pursued by a directive and consequently depriving the directive itself of its effet utile (...)"[133].

7.EFFET UTILE IN CASE LAW ON THE FUNCTIONING OF THE INTERNAL MARKET AND COMPETITION

Already in C-67/63, Sorema case of 19 March 1964 CJEU pronounced itself on an annulment appeal against a decision of the High Authority against an affirmed association of companies: "(...) any different interpretation would remove art. 65 by any practical effectiveness (...)"[134]. Similar is the approach in C-5/94, Völk case of 8 July 1969[135] which is affirmed that: "(...) the agreement can affect the trade between member states is necessary that based on a complex of objective elements in law or in fact it seems probable that it is capable of exerting a direct or indirect, actual or potential influence on exchanges between member states, in a way that could harm the achievement of the aims of a single market between states (...)"[136]. In C-68/94, France v. Commission case of 31 March 1998 establishing an appeal for the annulment of a decision of the Commission on the subject of competition, acknowledges that: "(...) a concentration transaction which creates or strengthens a dominant position of the interested parties with a third party entity to the transaction is likely to be incompatible with the system of undistorted competition aimed at by the treaty. (...) This Regulation would thus be deprived of a significant part of its effet utile, without this being necessary for the general economy of the Community regime for controlling operations of concentration (...)"[137]. In C-70/72, Commission v. Germany sentence of 12 July 1973, Luxembourg judges already had the opportunity to use the effet utile to affirm the obligation of member states to recover the illegitimate state aid "(...) for a effet utile the abolition or modification (of state aid granted) may imply the obligation to request reimbursement of aid granted in breach of the treaty (...)"[138].

Another consistent line of jurisprudence that values the effet utile for the purposes of compliance with EU law started with C-13/77, Inno v. ATAB sentence of 16 November 1977[139] which is affirmed that: "(...) the treaty obliges member states to refrain from issuing or maintaining in force provisions that can render practically ineffective (...)"[140].

In C-229/83, Leclerc case of 10 January 1985 is affirmed that: "(...) the full

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[132]CJEU, C-465/93, Atlanta of 9 November 1995, ECLI:EU:C:1995:369, I-03761, parr. 42-44.
[133]CJEU, C-157/11, Sibilio of 15 March 2012, ECLI:EU:C:2012:148, published in the electronic Reports of the cases
[134]CJEU, C-67/63, Sorema of 19 March 1964, ECLI:EU:C:1964:18, I-00293.
[135]CJEU, C-5/94, Völk of 8 July 1969, ECLI:EU:C:1969:205, I-02553.
[136]CJEU, C-5/94, Völk of 8 July 1969, op. cit., parr. 5-6. In the same spirit in case: C-1/71, Cadillon v. Höss of 6 May 1971, ECLI:EU:C:1971:48, I-00363.
[137]CJEU, C-68/94, France v. Commission of 31 March 1998, ECLI:EU:C:1998:148, I-01375, par. 171
[138]CJEU, C-70/72, Commission v. Germany of 12 July 1973, ECLI:EU:C:1973:87, I-00813, par. 13.
[139]CJEU, C-13/77, Inno v. ATAB of 16 November 1977, ECLI:EU:C:1977: I-02115.
[140]CJEU, C-13/77, Inno v. ATAB of 16 November 1977, op. cit., par. 31. In the same spirit of orientation in the next cases: C-136/86, BNCI v. Aubert of 3 December 1987, ECLI:EU:C:1987:524, I-04789. C-41/90, Höfner of 23 April 1991, ECLI:EU:C:1991:161, I-01979. C-55/96, Job Centre of 11 December 1997, ECLI:EU:C:1997:603, I-07119.

and uniform application of Community law and the effectiveness of its enforcement acts and to abstain from issuing or from maintain in force measures of a legislative or regulatory nature, which can render the competition rules to be applied to companies practically ineffective (...)"[141].

In the subsequent CJEU jurisprudence has also used the effet utile in order to allow member states to apply the competition rules aimed at companies. According to the same, although the articles of the treaty "(...) concern the behavior of the companies and not the legislative or regulatory provisions of member states, the treaty obliges the latter to abstain from enacting or maintaining in force measures that can practically render ineffective the rules on the prohibition of agreements (...)"[142].

An express reference to the effet utile is contained in C-35/99, Arduino sentence of 19 February 2002[143] which is stated that: "(...) the conduct of companies and not the legislative provisions or regulations issued by the member states that this it removes the fact that this article, in conjunction, obliges member states not to adopt or maintain in force measures of a suitable legislative or regulatory nature and eliminate the effet utile of the competition rules applicable to companies (...)"[144].

CJEU has applied the same argumentative scheme that values the effet utile also to contrast the regulations of member states limiting the right to free movement of workers. In C-149/79, Commission v. Belgium case of 17 December 1980 is declared that: "(...) the reference to provisions of the internal legal order to limit the scope of the rules of Community law would have the effect of diminishing the unity and effectiveness of this right (...) at the same time prevent the practical effectiveness and the scope of provisions of the treaty relating to the free movement of workers and equal treatment of citizens of all member states from being limited by interpretation of the concept of public administration drawn from the sole national law and which preclude the application of Community rules (...)"[145]. In another profile, in C-291/05, Eind of 11 December 2007 is affirmed that: "(...) the right of the migrant worker to return and reside in the member state of which he is a citizen after having carried out an activity subordinate employment in another member state is conferred by Community law as necessary to ensure the effet utile of the right to free movement of workers (...)"[146].

Another profile on which CJEU recognizes the need to preserve the effet utile of EU law in view of its uniform application relates to the notion of the state that according to CJEU is to be understood in a broad sense. In C-152/84, Marshall case of 26 February 1986 was affirmed that: "(...) it is incompatible with the mandatory nature (of a directive) to exclude in principle that the obligation that it imposes may be relied on by the interested parties against a member state regardless of the quality in which it acts as an employer or as a public authority (...)"[147]. In the subsequent C-282/10, Dominguez sentence of 24 January 2012[148] CJEU recalls that: "(...) the administrators, if they are able to enforce a directive not against an individual but a state can do so regardless of the role in which it acts, as an employer or as a public authority (...) it is advisable to prevent the state from benefiting from its non-

[141]CJEU, C-229/83, Leclerc of 10 January 1985, ECLI:EU:C:1985:1, I-0001, par. 14.
[142]CJEU, joined cases C-209 to 213/84, Asjes of 30 Aril 1986, ECLI:EU:C:1986:188, I-01425.
[143]CJEU, C-35/99, Arduino of 19 February 2002, ECLI:EU:C:2002:97, I-01529.
[144]CJEU, C-35/99, Arduino of 19 February 2002, op. cit., par. 34. the CJEU refers the precedent case: C-267/86, Van Eycke v. ASPA of 21 September 1988, ECLI:EU:C:1988:427, I-04769, inpar. 45 recall the joined cases: C-94 and 202/04, Cipolla of 5 December 2006, ECLI:EU:C:2006:758, I-11421.
[145]CJEU, C-149/79, Commission v. Belgium of 17 December 1980, ECLI:EU:C:1980:195, I-01845, par. 32.
[146]CJEU, C-291/05, Eind of 11 December 2007, ECLI:EU:C:2007:771, I-10719, par. 32.
[147]CJEU, C-152/84, Marshall of 26 February 1986, ECLI:EU:C:1986:84, I-00723, parr. 47-49
[148]CJEU, C-282/10, Dominguez of 24 January 2012, ECLI:EU:C:2012:33, published in the electronic Reports of the cases

compliance with EU law (...)"[149].

In the aforementioned Van Eycke sentence of 1988 taken up in numerous subsequent rulings CJEU recalling its constant jurisprudence according to which member states are obliged not to adopt or maintain in force measures also having the character of law or Regulation "(...) suitable to render the competition rules practically ineffective to be applied to companies (...) a member state imposes or facilitates the conclusion of agreements in contrast with art. 85 (now 101 TFEU) or reinforce the effects of such agreements, or take away from its own legislation its public character, delegating to private operators the responsibility for adopting economic intervention decisions[150].

In C-198/01, CIF sentence of 9 September 2003, CJEU recalls that the obligation "(...) to disapply national legislation in conflict with Community law is incumbent not only on the national judge but also on all the organs of the state, including administrative authorities (referring to Fratelli Costanzo case of 1989 paragraph 31) which implies the obligation to take all the necessary measures to facilitate the full effectiveness of Community law (...)"[151]. In C-280/06, ETI sentence of 11 Deecember 2007 is declared that: "(...) the fact that a disposal of the assets is decided not by individuals but by the legislator in the perspective of a privatization is also irrelevant. Restructuring or corporate reorganization measures adopted by the authorities of a member state cannot legitimately result in the impairment of the effectiveness of Community competition law (...)"[152].

The effet utile has also been used with reference to the free movement of workers seeking employment. In C-292/89, Antonissen case of 26 February 1991 which is affirmed that: "(...) a restrictive interpretation of art. 48, lett. 3 (now art. 45 TFEU) would compromise the actual possibilities of a citizen of a member state who is looking for a job to find a job in other member states would therefore deprive that provision of its effet utile, which is effective or art. 48 it is guaranteed if EU legislation or in the absence of it the legislation of a member state gives the interested parties a reasonable deadline that allows them to take notice of the job

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[149]CJEU, C-282/10, Dominguez of 24 January 2012, op. cit., par. 38. and in par. 31, refers to judgment C-103/88, Fratelli Costanzo of 22 June 1989, ECLI:EU:C:1989:256, I-01839, which is stated that: "(...) if the necessary conditions exist, according to the CJEU's jurisprudence so that the provisions of a directive may be invoked by individuals before national courts, all administrative bodies including those of local authorities, such as municipalities, are required to apply the aforementioned provisions (...)". See also: R. SCHÜTZE, T. TRIDIMAS, *Oxford principles of European Union Law*, op. cit.,

[150]See ex multis: C-2/91, Meng of 17 November 1993, ECLI:EU:C:1993:885, I-05751. C-185/91, Reiff of 17 November 1993, ECLI:EU:C:1993:886, I-05851. C-245/91, Ohra Sckadeverzekeringen ECLI:EU:C:1991:887, I-05851. joined cases C-401 and 402/92, Tankstation of 2 June 1994, ECLI:EU:C:1994:220, I-02119. C-153/93, Delta of 9 June 1994, ECLI:EU:C:1994:240, I-02517. C-379/92, Peralta of 14 July 1994, ECLI:EU:C:1994:296, I-03453. C-412/93, Leclerc-Siplec of 9 February 1995, ECLI:EU:C:1995:26, I-00179. joined cases C-140 and 142/94, DIP of 17 October 1995, ECLI:EU:C:1995:330, I-03257. C-134/94, Esso Espaňola of 30 November 1995, ECLI:EU:C:1995:299, I-04223, par. 18. C-70/95, Sodemare of 5 June 1997, ECLI:EU:C:1997:301, I-03395. C-35/96, Commission v. Italy of 18 June 1998, ECLI:EU:C:1998:303, I-03851. C-266/96, Corsica Ferries of ECLI:EU:C:1996:306, I-03949. C-38/97, Librandi of 1st October 1998, ECLI:EU:C:1998:454, I-05955, par. 44. C-67/96, Albany of 21 September 1999, ECLI:EU:C:1999:430, I-05751. joined cases C-115 to 117/97, Brentjens of 21 September 1999, ECLI:EU:C:1999:434, I-06025, par. 65. C-219/97, Maatschappij of 21 September 1999, ECLI.EU:C:1999:437, I-06121, par. 55. For further details see: F. NICOLA, B. DAVIES, *European Union law stories,* Cambridge University Press, Cambridge, 2017. J. USHERWOOD, S. PINDER, *The European Union. A very short introduction*, Oxford University Press, Oxford, 2018. J.L. DA CRUZ VILAÇA, *European Union law and integration. Twenty years of judicial application of European Union law*, Hart Publishing, Oxford & Oregon, Portland, 2014. T.H. FOLSOM, *Principles of European Union law, including Brexit*, West Academic, Minnesota, 2017, pp. 278ss. D. GERARDIN, A. LAYNE-FARRAR, N. PETIT, *EU competition law and economics*, Oxford University Press, Oxford, 2012.

[151]CJEU, C-198/01, CIF of 9 September 2003, ECLI:EU:C:2003:430, I-08055, par. 49.

[152]CJEU, C-280/06, ETI of 11 December 2007, ECLI:EU:C:2007:775, I-10893, par. 44.

offers on the territory of the member state in question, the necessary measures to be taken (…). This term does not therefore prejudice the effectiveness of the principle of free movement. If, after the deadline in question, he proves that he continues to look for work and can actually be hired, the person concerned cannot be obliged to leave the territory of the host Member State (...)"[153]. A similar approach to the free movement of goods has been with C-446/09, Phillips and Nokia case of 1st December 2011 in which CJEU rejects the comments presented to it by certain parts of the proceedings and by some governments, according to which "(...) each omission of destruction, resulting from the said requirement relating to the burden of proof, of imitation and copy goods found in the customs territory of the Union undermines the effet utile of Regulations no. 3295/94 and 1383/2003. (...) The effect of legal regulations must be considered that the effectiveness of the fight against illegal operations is not diminished by the fact that the customs authority that blocked the goods is obliged to put an end to this intervention whenever the authority competent to rule on the merits ascertains that it is not duly demonstrated that the goods are intended to be placed on EU market (...)"[154].

A further consequence of the reference to the effect useful for the purposes of compliance and uniform application of EU law emerges from C-453/00, Kühne & Heitz sentence of 13 January 2004 in which CJEU recognizes the obligation to withdraw an administrative act resulting from an internal judgment based on a misinterpretation of EU law. According to it the norm to be interpreted: "(...) must be applied by an administrative body in the sphere of its competences also to legal relationships arisen and established before the moment in which the judgment of the court arose on the request for interpretation (...) the principle of legal certainty applies to certain conditions and pursuant to the principle of loyal cooperation also to the administrative body which will have to re-examine a final decision in order to take into account the interpretation of the relevant provision of Community law in the meantime accepted from the court (...)"[155].

A final further relevant profile of the effet utile referring to the behavior of the state authorities in implementing EU law emerges in C-439/08, VEBIC case of 7 December 2010 which is stated that: "(...) is up to the national competition authorities to weigh the need and usefulness of their intervention for the effective application of EU competition law. Nevertheless, as the Commission rightly pointed out, an almost systematic non-appearance of those authorities would be liable to compromise the effet utile of articles 101 and 102 TFEU (...)"[156].

The reference to the effet utile for the purposes of compliance and uniform application of EU law is also present in various judgments on social rights of workers starting from C-75/63, Unger case of 19 March 1964 in which CJEU regarding the definition of an employed person believes that: "(...) the fact that art. 48, n. 2 (now 48 TFEU) mentions certain elements of the notion of worker as employment and remuneration, shows that the treaty attributes to this notion a community meaning (...)"[157]. Let us recall in case also C-93/89, Ciechelski case of 11 March 1982: "(...) given the difficulties it insists on the interpretation of these provisions it is necessary to examine them in the light of articles 48-51 of the Treaty, which constitute the foundation, and limitation of regulations adopted in the field of social security (...) were applied solely to domestic law. In case of doubt, these regulations must be interpreted bearing in mind the aforementioned purpose (...)"[158]. The C-34/69, Duffy case of 10 December 1969, which is observed that: "(...) have the purpose of

[153]CJEU, C-292/89, Antonissen of 26 February 1991, ECLI:EU:C:1991:80, I-00745, par. 21.
[154]CJEU, C-446/09, Phillips and Nokia of 1st December 2011, ECLI:EU:C:2011:796, I-12435, parr. 72-73.
[155]CJEU, C-453/00, Kühne & Heitz of 13 January 2004, ECLI:EU:C:2004:17, I-00837, par. 22.
[156]CJEU, C-439/08, VEBIC of 7 December 2010, ECLI:EU:C:2010:737, I-12471, parr. 60-61.
[157]CJEU, C-75/63, Unger of 19 March 1964, ECLI:EU:C:1964:19, I-00177
[158]CJEU, C-1/67, Ciechelski of 11 March 1982, ECLI:EU:C:1967:89, I-00951, par. 3.

guaranteeing the free movement of workers, giving them certain rights; one would place oneself outside the scope of these regulations if one were to impose on workers a reduction of their rights without the compensation of the advantages provided for by the regulations (...)"[159]. In C-3/70, Di Bella case of 17 June 1970, CJEU has affirmed that: "(...) they have the purpose of assuring the worker and his successors of the advantages corresponding to the various periods worked and insurance matured and do not allow regulation to be interpreted in such a way as to prevent interested parties from benefiting from certain benefits because of their residence (...)"[160]. In C-23/71, Janssen case of 27 October 1971 is stated that: "(...) would not be achieved, if the insurance periods accrued in accordance with the laws of a member state were lost by the worker taking advantage of freedom of movement guaranteed, moves to another place of work and is therefore subject to the social security system of another member state (...)"[161].

CJEU has used the effective effect to ensure the uniform application of EU law with particular reference to the directives (concerning the link between effectiveness and effectiveness of directives, including direct effectiveness) also in other areas. Among the most significant is the free movement of capital, on which in C-190/92, Emerging Market case of 10 April 2014 is declared that: "(...) the circumstance that non-resident investment funds are outside the uniform EU regulatory framework established by UCITS directive, which governs the methods of creating and operating investment funds within the Union (…) cannot in itself be sufficient to demonstrate the diversity of situations of said funds. Given that the UCITS Directive does not apply to funds subject to legislation identical to external investment funds it would deprive the freedom of movement of capital of any effet utile (...)"[162].

With reference to the freedom to provide services, we can refer to C-33/74, Von Binsbergen case of 3 December 1974, which is affirmed that: "(...) the residence requirement in the state in which the service must be provided may remove all practical relevance to art. 59 (now art. 56 TFEU), which instead proposes precisely the elimination of obstacles to the free provision of services by persons not resident in the state in whose territory the service is performed (...)"[163]. As well as in the Laval of 2007 and Rüffert of 2008 cases which in relation to the posting of workers carried out in this sector, they recognized that a directive cannot be interpreted as allowing the host member state: "(...) to subordinate the realization of a provision of services on its territory to the respect of working and employment conditions that go beyond the imperative norms of minimum protection explicitly the level of protection of which the host member state has the right to expect compliance by the companies established in other member states in favor of their workers posted on its territory. Such an interpretation would end up depriving the directive of effet utile (...)"[164].

I also remember the sector of motor vehicle traffic, where C-344/82, Gambetta Auto case of 9 February 1984, which CJEU dealt with a directive that "(...) aims to abolish the control of green card at the border. In this regard it is essential that the stationing status is easily identifiable, which is guaranteed by the issuing of an admission registration plate. To expect that this plate is valid, however, would be equivalent to replacing the control of the green card with the systematic control of

[159]CJEU, C-34/69, Duffy of 10 December 1969, ECLI:EU:C:1969:71, I-00169, par. 7.
[160]CJEU, C-3/70, Di Bella of 17 June 1970, ECLI:EU:C:1970:55, I-00415, parr. 10.11
[161]CJEU, C-23/71, Janssen of 27 October 1971, ECLI:EU:C:1971:101, I-00859, par. 13.
[162]CJEU, C-190/12, Emerging Market of 10 April 2014, ECLI:EU:C:2014:249, published in the electronic Reports of the cases, par. 67
[163]CJEU, C-33/74, Von Binsbergen of 3 December 1974, ECLI:EU:C:1974:131, I-01299, par. 11.
[164]CJEU, C-341/05, Laval un Partneri of 18 December 2007, ECLI:EU:C:2007:809, I-11767. CJEU, C-346/06 Rüffert of 3 April 2008, ECLI:EU:C:2008:189, I-01989. For further comments see: D. SACK, "Europeanization through law compliance and party differences. The ECJ's Rüffert judgment C-346/06 and amendments to public procurement laws in German Federal State", in *Journal of European Integration,* 34 (3), 2012, pp. 244ss.

registration, making the directive practically ineffective (...)"[165].

8.EFFET UTILE AND EUROPEAN CITIZENSHIP.

The effet utile has been enhanced by CJEU also with reference to European citizenship in various ways. First of all, the C-200/02, Zhu and Zhen case of October 19, 2004 which is declared that: "(...) the refusal to allow the parent, citizen of a member state or a third state, which actually has custody of a member state or a third state, which effectively has custody of a child (having) a right of residence to stay with that child in the host member state would deprive the latter of the right of residence of any effet utile (...)"[166]. In relation to the right to family reunification in joined cases C-356 and 357/11, O and S. of 25 July 2008[167], CJEU states that the discretion granted to member states in executing a directive "should not be used" by them in such a way as to prejudice the objective of the directive and its effet utile (...)"[168].

With regard to the right of residence of citizens of third family states of EU citizens in C-127/08, Metock sentence of 25 July 2008[169] is affirmed that: "(...) in consideration of the context and the aims pursued by the Directive 2004/38 the provisions of the same cannot be interpreted restrictively and must not be deprived of their practical effectiveness (...) that they have entered with the latter in the host member state and those who stay with him in this member state, without it being necessary to distinguish in this second case, according to whether third country nationals have entered the aforementioned member state before or after the Union citizen or before or after becoming his family member (...)"[170]. In this context, in C-34/09, Zambrano case of 8 March 2011, CJEU noted that: "(...) art. 20 TFEU precludes national measures that have the effet utile of depriving EU citizens of the actual and effective enjoyment of the rights attributed by their status as citizens (...) the refusal to stay opposite a person, a citizen of a third state, in the member state where his young children reside, citizens of that member state, which he has at his charge, as well as the refusal to grant that person a work permit produce such an effect (...)"[171]. In the subsequent C-256/11, Dereci and others sentence of 15 November 2011, CJEU acknowledges that: "(...) the criterion relating to the deprivation of the essential core of the rights conferred by the status of Union citizen refers to hypotheses marked by the fact that the Union citizen is obliged, in fact, to leave the territory not only of the member state of which he is a citizen, but also of the Union as a whole.

This criterion therefore has a very particular character in that it concerns the hypothesis in which, despite the fact that the derived secondary right of residence of

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[165]CJEU, C-344/82, Gambetta Auto of 9 February 1984, ECLI:EU:C:1984:50, I-00591, par. 13.
[166]CJEU, C-200/02, Zhu and Zhen, of 19 October 2004, ECLI:EU:C:2004:639 I-09925, par. 45.
[167]CJEU, C-356 and 357/11, O. and S., of 25 July 2008, ECLI:EU:C:2008:776, published in the electronic Reports of the cases.
[168]CJEU, C-356 and 357/11, O. and S., of 25 July 2008, op. cit., par. 74. nel par. 43 the CJEU referred also il case: C-578/08, Chakroun of 4 March 2010, ECLI:EU:C:2010:117, I-01839. See also: C. BARNARD, *The substantive law of the European Union. The four freedoms,* Oxford University Press, Oxford, 2016.
[169]CJEU, C-127/08, Metock of 25 July 2008, ECLI:EU:C:2008:449, I-06241.
[170]CJEU, C-127/08, Metock of 25 July 2008, op. cit., par. 84 and 93. In the same spirit the case: C-457/12, S. and G. of 12 March 2014, ECLI:EU:C:2014:136, published in the electronic Reports of the cases, which is declared that: "(...) the practical effectiveness of the right of free movement of workers may require that a right of residence be granted to the citizen of a third country, the worker's family, a citizen of the Union in the member state of which the latter owns citizenship (...)", par. 40.
[171]CJEU, C-34/09, Ruiz Zambrano of 8 March 2011, ECLI:EU:C:2011:124, I-01177, parr. 42-43, where in a situation purely internal to the member state in question (Belgium). The court of Justice finds a sufficient connecting factor between the concrete situation and Union's right to protection of the status of EU citizen.

third-country nationals is not applicable. A right of residence cannot, exceptionally, be denied to the citizen of a third state, a family member of a citizen of a member state, to the detriment of the effectiveness of citizenship of the Union enjoyed by the latter citizen (...)"[172].

Finally, with reference to the right of residence of a non-EU citizen with the family member, a European citizen of which the first is dependent in C-423/12, Reyes sentence of 16 January 2014 is stated that: "(...) non it may be required (...) by this descendant to prove that he has tried in vain to find a job or to receive support for the sustenance of the authorities of the country of origin and/or to have tried by any other means to ensure his livelihood. The requirement of such additional demonstration (...) is likely to make the possibility for the same descendant to benefit from the right of residence in the host Member State excessively difficult and risks depriving articles. 2, par. 2, lett. c) and 7 of Directive 2004/38 of their effet utile (...)"[173].

The importance of the continuity of family life connected to the need to protect the effet utile of the right of free movement of a Union citizen, brings CJEU in C-456/12, O case of 12 March 2014 to declare that: "(...) when, during an actual stay of the Union citizen in the host Member State (...) a family life has developed or consolidated in the latter member, the practical effectiveness of the rights to the citizen of the Union concerned derive from art. 21, par. 1 RFEU requires that the family life that the citizen has led in the host Member State may continue on his return to the member state of which he holds the citizenship, thanks to the granting of a derivative right to the family member concerned, a citizen of a third country. Indeed, in the absence of such a derivative right of residence, such a citizen of the Union would be deterred from leaving the member state of which he has the nationality in order to avail himself of his right of residence, pursuant to art. 21, par. 1 TFEU, in another member state (...) the practical effectiveness of art. 21, par. 1 TFEU requires that the EU citizen can continue on his return to the member state of which he owns the citizenship the family life he led in the host state if said citizen and the family member interested third-country national, have acquired, in this last member state, a right of permanent residence pursuant to art. 16, parr. 1 and 2 of Directive 2004/38 (...)"[174].

9.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 (...) imposed may be relied on by the persons concerned. Particularly in cases where the Community authorities have by directive imposed on member states to adopt a certain behavior, the effet utile of the act would be attenuated if the persons administered were precluded from using them in court and the national courts to take it into consideration (...)"[175]. Also significant

[172]CJEU, C-256/11, Dereci and others of 15 November 2011, ECLI:EU:C:2011:734, I-11315, parr. 66-67

[173]CJEU, C-423/12, Reyes of 16 January 2014, ECLI:EU:C:2014:16, published in the electronic Reports of the cases, parr. 25-26

[174]CJEU, C-456/12, O. of 12 March 2014, ECLI:EU:C:2014:135, published in the electronic Reports of the cases, parr. 54-55

[175]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, part. 69. C-

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 (...)"[176]. In C-176/12, Association de médiation sociale case of 15 January 2014[177] 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) and to deprive their employees of the recognized rights of the latter. Consequently it is capable of emptying these rights of their substance, thus removing its effet utile from the directive (...)"[178].

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[179]. In C-106/89, Marleasing case of 13 November 1990[180], 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 in the light of the letter and purpose of the directive in order to achieve the result pursued by the latter (...)"[181].

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 when they are required to apply national rules in order to adopt provisional measures for the protection of the rights deriving from a Community trademark, they are obliged to do so as far as possible in the light of the letter and the purpose of art. 50 of TRIPS agreement (...)"[182]. In relation to an act of the then third pillar of the Union in C-

287/98, Linster of 19 September 2000, ECLI:EU:C:2000:468, I-06917.

5888 [176]CJEU, C-61/11, El Dridi of 28 April 2011, ECLI:EU:C:2011:268, I-03015, par. 55.

[177]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,

[178]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 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 (...)". For further details see: M. BROBERG, N. FENGER, *Preliminary references to the European Court of Justice*, Oxford University Press, Oxford, 2014, pp. 402ss.

[179]The question of conforming interpretation has often been applied in applicative practice as an expedient to overcome this structural obstacle to the production of vertical and horizontal direct effects summarized in the expression of the unenforceability to individuals of norms contained in the directive that are not implemented or not correctly performed that the effective effect and compliant interpretation are mutually exclusive approaches. In the first one the supranational disposition to produce effects in the second is the internal rule, properly interpreted and that it is still reasonable the intuition that saw in the first sentences on the interpretation conforming to directive not implemented a solution that attenuated the scope of the orientation that denied and still strongly denies the enforceability to individuals of provisions of directive that are not implemented and / or are not correctly carried out, given that even if by different means we can guarantee the maximum possible effectiveness of the supranational nomad by overcoming in some cases the rigidity of the jurisprudence that it denies in relations inter-individual the effect useful to directives not correctly transposed.

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

[181]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 (...)".

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

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 (...)"[183].

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 (...) pending this deadline they must refrain from adopting provisions that could seriously compromise the result prescribed by the directive (...)"[184]; 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 directive. However, that obligation would be deprived of any effet utile if that Member State were allowed to adopt, during the period of implementation of the directive, measures incompatible with the objectives of that directive (...)"[185].

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 (...) the exhaustion of the latter's effects and that a member state remains obliged to effectively ensure the full application of the directive itself after the adoption of the said measures. (...) Individuals are entitled to invoke unconditional and sufficiently precise claims before the national court against the state, in all cases in which it was not actually tendered. The full application of this directive is required, that is to say not only in the case of mishandling or incorrect transposition of the latter but also in the event that the national measures which correctly transpose the directive in question are not applied in such a way as to achieve the result at which it is addressed (...)"[186].

10.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 use of these articles would risk being ineffective if it were to intervene only after the execution of an internal measure adopted in violation of the treaty rules. The vigilance of the individuals interested in safeguarding their rights, constitutes on the other hand an effective control that is added to the one that articles 169 and 170 rely on the diligence of the Commission and member states (...)"[187].

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 (...) can never

[183]CJEU, C-105/03, Pupino of 16 June 2005, ECLI:EU:C:2005:386, I-05285, par. 38.
[184]CJEU, C-129/96, Inter-Environment Wallonie of 18 December 1997, ECLI:EU:C:1997:628, I-07411, par. 45.
[185]CJEU, C-144/04, Mangold of 22 November 2005, ECLI:EU:C:2005:709, I-09981, par. 72.
[186]CJEU, C-62/00, Marks & Spencer of 11 July 2002, ECLI:EU:C:2002:435, I-06325, parr. 26-27.
[187]C. VIRSEDA FERNÁNDEZ, *Uniòn europea,* op. cit.,

produce similar effects (...) it would be contrary to the obligatory force attributed (...) to the decision to exclude, in general the possibility and the obligation imposed by it is asserted by any interested parties. of the act would be restricted if individuals could not assert its effectiveness in court and if the national courts could not take it into consideration (...)"[188].

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, if the nature, the spirit and the letter of the provision which the treaties allow to recognize it immediately in the relations between member states and individuals (...)"[189].

The same concept is reiterated in the subsequent jurisprudence. In C-148/78, Ratti sentence of 5 April 1979[190] is declared that: "(...) particularly in cases in which the community authorities have by directive imposed to member states to adopt a determined behavior, the effet utile of the act would be attenuated if the persons administered were precluded from using it in court and the national judges to take it into consideration (...)"[191]. 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, equally precise or unconditional, must be entitled to rely on the provisions which give it in a precise and unconditional manner the status of beneficiary of a directive once the discretion is fully used recognized to the member state in relation to other provisions of this directive and whose failure to implement it is the only obstacle to the exercise of the right conferred on the individual by the directive (...)"[192].

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[193]. 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 which, taking into account their specific object, are capable of being isolated from the context and applied as such. This minimum guarantee in favor of him administered affected by the failure to implement the directive derives from the binding nature of the obligation imposed on the member states which would be rendered completely inoperative if the member states were allowed to annul with their omission also the effects that certain provisions of a directive are capable of producing by virtue of their content (...) to deny any effect to those provisions which, having regard to their subject

[188]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.
[189]CJEU, C-41/74, Van Duyn of 4 December 1974, ECLI:EU:C:1974:133, I-01337, par. 12.
[190]CJEU, C-148/78, Ratti of 5 April 1979, ECLI:EU:C:1979:110, I-01629.
[191]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, it follows that the national court to which the individual who has complied with the provisions of a directive asks for disapplication of an internal rule incompatible with that directive not incorporated in the internal legal system of the non-complying state must accept this request, if the obligation in question is unconditional and sufficiently precise (...)", par. 21-23.
[192]CJEU, C-441/99, Gharehveran of 18 October 2001, ECLI:EU:C:2001:551, I-07687, par. 44.
[193]J.L. DA CRUZ VILAÇA, *Le principe de l'effet utile du droit de l'Union dans la jurisprudence de la Cour, in the Court of Justice and the construction of Europe. Analyses and perspectives on sixty years of case-law*, op. cit.,

matter, are capable of being usefully relied on in court despite the fact that the directive has not been implemented as a whole (...)"[194]. CJEU in C-453/99, Courage and Crehan case of 20 September 2001[195] 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 (...)"[196].

In the subsequent C-126/01, Pflücke case of 18 September 2001[197] 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 protection that the 80/987 Directive intends to guarantee him (...) is suitable to guarantee the effective effect of the protection guaranteed by the Directive 80/987 only on the condition that the competent authorities to apply the clause itself shall use themselves in order not to be excessively rigorous in the assessment if the interested party has shown proof of the necessary diligence to assert their rights (...)"[198]. 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[199] 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 (...)"[200].

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 (...)"[201]. 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 (...) in the light of the directive to guarantee its full effectiveness (...)"[202].

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

In the joined cases C-6 and 9/90 Francovich of 19 November 1991[203], CJEU

[194]CJEU, C-8/81, Becker of 19 January 1982, ECLI:EU:C:1982:7, I-00053, parr. 29-30.
[195]CJEU, C-453/99, Courage and Crehan of 20 September 2001, ECLI:EU:C:2001:465, I-06297.
[196]CJEU, C-453/99, Courage of 20 September 2001, op. cit., par. 26. 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.
[197]CJEU, C-125/01, Pflücke of 18 September 2003, ECLI:EU:C:2003:477, I-09375, arr. 17, 37 and 44.
[198]CJEU, C-125/01, Pflücke of 18 September 2003, ECLI:EU:C:2003:477, I-09375, arr. 17, 37 and 44.
[199]CJEU, C-560/13, Wagner-Raith of 21 May 2015, ECLI:EU:C:2015:347, published in the electronic Reports of the cases.
[200]CJEU, C-560/13, Wagner-Raith of 21 May 2015, op. cit., par. 42.
[201]CJEU, C-560/13, Wagner-Raith of 21 May 2015, op. cit., par. 16.
[202]CJEU, C-222/84, Johnston of 15 May 1986, ECLI:EU:C:1986:206, I-01651, parr. 26 and 53.
[203]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

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 "(...) 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 (…). The possibility of compensation from the member state is indispensable if as in the case in point the full effectiveness of the community rules is subordinated to the condition of an action by the state and consequently the individual in the absence of such action they cannot assert before the national courts (...)"204.

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 of the rights guaranteed by them and the obligation of cooperation incumbent on member states (...)"[205]. 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, obtain compensation when their rights are damaged by a violation of imputable Community law to a decision of a court of last instance of a member state the individuals can assert the rights recognized to them by Community law (...) in order to obtain in this way a legal protection of their rights (...)"[206]. 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 would be tantamount to depriving the principle enshrined in the aforementioned Köbler judgment, as regards the manifest violations of Community law which would be attributable to the national courts of last instance (...)"[207].

In C-212/04, Adeneler and others case of 4 July 2006[208] 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 (...)"[209].

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states are obliged to compensate the damage caused to individuals by violations of Community law attributable to them (...)". See also in argument: M. STRAND, *The pressing on problem in damages and restitution under EU law*, Edward Elgar Publishers, Cheltenham, 2017. D. ANAGNOSTOPOULOU, "Do Francovich and the principle of proportionality weaken Simmenthal (II) and confirm abuse of rights?", in *Common Market Law Review*, 38, 2001, pp. 772-774.

[204]C. VIRSEDA FERNÁNDEZ, Uniòn europea, op. cit.,

[205]CJEU, C-46/ and 48/93, Brasseire du pêcher of 5 March 1996, ECLI:EU:C:1996:79, I-01029, par. 39.

[206]CJEU, C-224/01, Köbler of 30 September 2003, ECLI:EU:C:2003:513, I-10239, par. 40.

[207]CJEU, C-173/03, Traghetti del Mediterraneo of 13 June 2006, ECLI:EU:C:2006:391, I-05177, par. 112.

[208]CJEU, C-212/04, Adeneler and others of 4 July 2006, ECLI:EU:C:2006:443, I-06057.

[209]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.

12.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 (...)"210. 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 (...) the conflicts between community norms and national rules on agreements must be resolved by applying the principle of the primacy of Community law (...)"[211].

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[212] 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 (...)"[213]. 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 (...)"[214]; 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 "(...) in order to be effective the prohibition to reserve certain denominations to the national products (...) must extend to the norms that make a distinction between national products (...)"[215]. 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 of the treaty from being excluded by unilateral provisions of member states (...)"[216].

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 to adopt provisional

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[210]C. VIRSEDA FERNÁNDEZ, Uniòn europea, op. cit.,

[211]CJEU, C-14/68, Walt Wilhelm and others of 13 February 1969, ECLI:EU:C.1069:4, I-00001, par. 6

[212]CJEU, joined cases C-2 and 3/69, Brachfeld of 1st July 1969, ECLI:EU:C:1969:30, I-00211.

[213]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. This requirement would remain unsatisfied if in the event of uncertainty about the customs classification of a commodity, each member state could autonomously determine this scope by interpretation (...)", par. 3.

[214]CJEU, C-39/72, Commission v. Italy of 7 February 1973, ECLI:EU:C:1973:13, I-00101, par. 21.

[215]CJEU, C-13/78, Eggers of 12 October 1978, ECLI:EU:C:1978:182, I-01935, par. 24.

[216]CJEU, C-2/74, Reyners of 21 June 1974, ECLI:EU:C:1974:68, I-00631, parr. 48-50.

measures in order not to apply an internal regulation in contrast with rights attributed by EU law (...) which leads to a reduction in the concrete effectiveness of Community law due to the fact that the competent judge refused to apply this right the power to do at the same time as such application is all that is necessary to disregard the national legislative provisions which may also preclude (...) the full effectiveness of the community rules (...)"[217].

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 right to grant provisional measures in order to guarantee the full effectiveness of the jurisdictional ruling on the existence of the rights invoked under Community law (...)[218]. 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 (...)"[219].

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 (...) guarantee the jurisdictional protection for individuals in the form of rules of Community law having direct effect (...)"[220].

In joined cases C-189/10, Melki and Abdeli of 22 June 2010[221] CJEU proposes with ample argument the link between effet utile 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, in contrast to any conflicting provisions of national legislation, even later, on its own initiative, without having to request or wait for the prior removal in via legislative or by any other constitutional procedure (...)"[222]. 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 (...)"[223].

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

[217]CJEU, C-792/79 R, Camera Care of 17 January 1970, ECLI:EU:C:1970:18, I-00119, parr. 12, 20.
[218]CJEU, C-213/89, Factortame of 19 June 1990, ECLI:EU:C:1990:257, I-02433.
[219]In the same spirit see il caso C-68/95, T. Port of 26 November 1996, ECLI:EU:C:1996:452, I-06065.
[220]The CJEU affirmed the case Rewe of 1976
[221]CJEU, C-189/10, Melki and Abdeli of 22 June 2010, ECLI:EU:C:2010:363, I-05667.
[222]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.
[223]CJEU, C-189/10, Melki and Abdeli of 22 June 2010, op. cit. par. 44.

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 (...)"[224].

13.CONCLUDING REMARKS

The investigation carried out in relation to the relief of effet utile showed the 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 utiles or even as maximum effet utile.

Furthermore, both the aforementioned characterization of the effet utile are connected, both positive and negative, above all the traceability of the same to the different interpretative methods elaborated by CJEU with reference to EU law. From the examination carried out it results that the effet utile is predominantly, but not exclusively, aimed at favoring its teleological and evolutionary interpretation thus confirming once again its extreme flexibility.

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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