

## THE RE-STATEMENT OF DIRECT EFFECT. REMARKS ON DANIELE GALLO'S DIRECT EFFECT IN EU LAW (OUP, 2025)

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There are few legal doctrines as debated and dissected as the direct effect of EU law. Even “just” in the light of this, Daniele Gallo’s re-statement of the sources, scholarship and case law surrounding such doctrine deserves praise. *Direct Effect in EU Law* offers the first comprehensive monograph in decades devoted exclusively to the evolution, logic, and contemporary redefinition of direct effect, a foundational yet persistently contested element of EU’s constitutional identity. Gallo’s central claim is that direct effect has never been a static judicial technique but a constitutional principle whose transformative capacity has in more recent years gradually been obscured by formalism and by the Court of Justice’s turn toward what he calls judicial argumentative minimalism.

In the introductory chapter, Gallo situates direct effect as a cornerstone and a defining feature of the EU legal order. The introduction explains the book’s aims: to provide a comprehensive and critical reappraisal of the doctrine’s evolution, coherence, and practical application across the spectrum of EU law sources. Gallo highlights that despite six decades of jurisprudential consolidation, the concept remains dogmatically unsettled and methodologically fragmented, calling for a reconstruction that balances judicial creativity with constitutional principle. He advances the thesis that the traditional conditions for direct effect – clarity, unconditionality, and precision – are both historically contingent and increasingly obsolete. Instead, he proposes a functional test anchored in *unconditionality* and the *individual advantage* generated by EU norms. The Introduction also situates direct effect within its dual function as both a means of individual empowerment and a mechanism of constitutional integration. Gallo claims that the doctrine has become too judicially minimalist in recent decades, urging a rediscovery of its original transformative role as established in *Van Gend & Loos*.

Chapter I reconstructs the birth of the doctrine through a historical and teleological lens, reading *Van Gend & Loos* as the

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moment of “subjectification” of the European Treaties. Gallo shows how the Court of Justice transformed what appeared as a conventional international obligation into an autonomous, rights-generating norm. He traces precursors in early case law but argues that only *Van Gend & Loos* fully detached EC law from traditional intergovernmental paradigms by introducing individuals as subjects immediately relevant to that legal order. The analysis highlights the teleological interpretation that allowed the Court to link direct effect to the broader aims of integration and uniformity, and to reinforce it through the companion principle of primacy later articulated in *Costa v. ENEL*. Here, the central claim is that direct effect was not simply a judicial technique but a *constitutional* act – an assertion of autonomy and self-referential legality that founded the EU legal order. He further argues that this process of constitutionalization through adjudication was politically strategic, emerging amid institutional fragility and weak political guidance. The chapter closes by connecting direct effect to later developments – the recognition of fundamental rights and EU citizenship – as the continuation of that same process of “subjectivization”, thereby grounding the EU’s normative legitimacy in individual legal capacity.

In chapter II, Gallo explores the well-known procedural engine that sustained the doctrine’s evolution: Article 267 TFEU and the preliminary ruling system. He argues that direct effect and the reference procedure are symbiotic, forming an integration duet through which private enforcement became the motor of EU legality. The Court’s rulings acquired a *de facto* erga omnes authority, enabling a form of judicially induced harmonization that blurred the boundaries between interpretation and constitutional adjudication. Gallo analyses how preliminary references allowed the CJEU to perform an indirect legality review of national legislation without encroaching formally upon state sovereignty. His key claim is that the dynamic interplay between direct effect and the reference procedure transformed domestic judges into European judges, institutionalizing multi-level constitutional dialogue long before the formal recognition of judicial cooperation. This “evolutive direct effect,” as he calls it, gradually expanded its reach beyond clear and unconditional norms to embrace principles and objectives of EU law, producing a presumption of direct effect whenever the effectiveness of Union law required it. The chapter concludes that the doctrine became chameleon-like – iridescent and

adaptable – sustained less by fixed conditions than by the functional logic of integration and effectiveness, turning the CJEU into a *de facto* constitutional court even in the absence of explicit treaty authority.

In chapter III, Gallo reassesses the current meaning of direct effect in light of six decades of case law. He frames *direct effect* as both a normative test and a systemic principle that has progressively merged with other foundational doctrines such as primacy, effectiveness, and effective judicial protection. His argument is that the original multi-criteria test has become outdated, as the condition of *unconditionality* alone captures the normative sufficiency of EU provisions capable of self-execution. Direct effect, in Gallo's view, operates today as a "subjective-substitutive" mechanism that grants individuals the capacity to act as decentralized enforcers of Union law when state compliance fails. He reconstructs the shifting jurisprudence on EU sources – from Treaty articles to regulations, decisions, directives, and general principles – arguing that the Court's reasoning has increasingly blurred the line between *direct effect* and *direct applicability*. The author claims that proportionality of sanctions and procedural effectiveness have become new testing grounds for selective disapplication of national norms, concluding that the doctrine's vitality lies in its adaptability, but warns against excessive judicial restraint: the CJEU should reaffirm a bold constitutional reading of *Van Gend & Loos*, treating direct effect not as a marginal technicality but as a principle ensuring both individual rights and systemic coherence in the Union's constitutional architecture.

Gallo begins chapter IV by interrogating the conventional assumption that direct effect necessarily depends on the conferral of individual rights. He argues that the doctrine, while historically linked to subjective entitlement, has progressively evolved toward an "objective" dimension based on the justiciability and invocability of EU norms. Drawing on case law and scholarship, he distinguishes between *subjective-substitutive* direct effect, which empowers individuals, and *objective-exclusionary* direct effect, which functions as a constitutional control over national legislation. His central claim is that the true scope of direct effect cannot be reduced only to a rights-based narrative but must be understood as a structural principle that ensures the supremacy and effectiveness of Union law regardless of subjective entitlement. Gallo explores

the judicial expansion of invocability, demonstrating how national courts, guided by the CJEU, have applied EU provisions even when no explicit rights were at stake. This process, he argues, transformed direct effect into a multifaceted instrument of legal integration that fills lacunae in the absence of express enforcement mechanisms. While he acknowledges the limited practical utility of taxonomies distinguishing “objective” and “subjective” effects, Gallo maintains that such categories are conceptually valuable in revealing the dual nature of direct effect – as both a vehicle of individual justice and a systemic guarantee of constitutional supremacy. The chapter thus deepens his broader thesis that direct effect operates less as an exception and more as the ordinary mode of Union normativity.

In chapter V, Gallo examines the connection between direct effect, primacy, and the duty of national courts to disapply conflicting domestic law. He argues that primacy and direct effect are not distinct doctrines but complementary facets of a single normative logic: the supremacy of Union law. Against interpretations that derive the disapplication duty from national constitutional frameworks, Gallo claims that only EU law itself – through its inherent direct effect – can legitimately generate this obligation. He systematically revisits the CJEU’s jurisprudence on vertical, horizontal, and inverse vertical relationships, proposing that *unconditionality* and the *individual advantage* derived from the EU norm form the two cumulative premises of direct effect. The discussion extends to exceptions and derogations, distinguishing “physiological” limits – necessary to preserve legitimate expectations or legal certainty – from “pathological” deviations that undermine uniformity, such as in *Lucchini*. Gallo’s normative claim is that inverse vertical direct effect, especially concerning directives, remains problematic but can be reconciled with constitutional principles through *pro futuro* rulings and the principle of legitimate expectations. He also revisits controversial cases like *Taricco*, defending the idea of a context-sensitive, proportionate disapplication of national law in criminal matters. Ultimately, Gallo presents direct effect as the conceptual source of the disapplication duty and calls for a refined typology distinguishing admissible from unjustifiable derogations, thereby reaffirming the constitutional coherence of the doctrine within multilevel judicial governance.

Chapter VI tackles one of the most contested issues in EU constitutional law: whether directives can produce horizontal direct effect between private parties. Gallo surveys the CJEU's case law, from *Defrenne* and *Marshall* to *Faccini Dori* and *Kücükdeveci*, arguing that the Court's solutions have been inconsistent, evasive, and methodologically unsatisfactory. He dissects the judicial strategies devised to circumvent the *no-horizontal-direct-effect* rule, including the expansive interpretation of "public authority," reliance on State liability, and the increasing use of consistent interpretation. Gallo identifies a trend toward what he terms "disguised horizontality," whereby private relationships are indirectly governed by EU norms through fundamental rights and general principles. He examines the interaction between directives, the EU Charter of Fundamental Rights, and general principles, emphasizing the *Mangold-Kücükdeveci-Dansk Industri* line as the high point of this transformation. His key claim is that these developments reveal the inadequacy of the formal rejection of horizontal direct effect: the Court, while denying it explicitly, has created functional equivalents that blur the distinction between vertical and horizontal relations. Gallo advocates for a transparent acknowledgment of this reality, proposing a re-conceptualization of horizontal direct effect grounded in the indivisibility of fundamental rights and effectiveness. The chapter concludes by arguing that the so-called NHDE rule has become "unbearably light" – a doctrinal fiction that the CJEU should abandon in favor of a principled and coherent recognition of horizontality as part of EU constitutional identity.

Turning to the external dimension in chapter VII, Gallo analyzes the uncertain status of international law within the EU legal order. He explores how the CJEU has inconsistently addressed the incorporation and direct effect of international agreements, from the pre-WTO era to modern trade and non-trade treaties. His argument is that "external direct effect" lacks a coherent doctrinal foundation and is marked by fluctuating judicial approaches oscillating between autonomy and openness. Through detailed examination of key cases on WTO agreements, customary law, and mixed treaties, Gallo shows how the Court has adopted a guarded stance, often denying direct effect to safeguard institutional prerogatives. He revisits the *Fediol-Nakajima* doctrine, arguing that it exemplifies a hybrid model of conditional direct effect tied to legality review rather than individual invocation. Gallo's major

claim is that the CJEU's current position reveals an asymmetry between the internal and external dimensions of direct effect: while the former is constitutive of EU constitutionalism, the latter remains prudential and politically constrained. Yet he warns that excessive judicial self-restraint risks undermining the EU's credibility as a rule-based global actor. The chapter concludes by calling for a rebalancing of autonomy and international engagement through a more principled framework for assessing the direct effect of external norms, thereby restoring the Court's role as a constitutional "gatekeeper" of both integration and international legality.

In the concluding chapter, Gallo synthesizes his findings into a normative proposal for reinvigorating the doctrine of direct effect. He laments the rise of what he terms "judicial argumentative minimalism," whereby the CJEU increasingly avoids principled reasoning in favor of pragmatic and case-specific justifications. Against this trend, he calls for a return to the bold constitutional vision of *Van Gend & Loos*, urging the Court to articulate a coherent, transparent, and simplified test for direct effect. This test should rest on two pillars: the *unconditionality* of the EU norm and the *advantage conferred upon the individual*, reflecting both the objective and subjective dimensions of the doctrine. Gallo argues that such a reconstruction would restore the balance between the effectiveness of Union law and the democratic legitimacy of its judicial enforcement. He emphasizes that direct effect is not merely a technical doctrine but a constitutional principle embodying the Union's commitment to legality, rights, and integration. The conclusion reiterates his plea for judicial candor and intellectual ambition, proposing that the Court reclaim its constitutional role in defining the contours of direct effect. Ultimately, Gallo envisions the doctrine as a dynamic interface between supranational authority and national autonomy – a living expression of Europe's legal pluralism and of the enduring promise of the rule of law within the European project.

Structurally, the volume unfolds in seven substantive chapters framed by an introduction and a conclusion. The first chapter retraces the historical genesis of direct effect through *Van Gend & Loos*, read as an act of constitutional creation through which the Court of Justice transformed the EEC Treaty into a self-referential legal order conferring rights directly on individuals. The following chapter shows how the preliminary reference procedure

under Article 267 TFEU became the procedural engine of this transformation: the *direct-effect/preliminary-reference duet* institutionalized a multi-level judicial dialogue that allowed private litigants to drive integration from below. Chapter III modernizes this analysis, portraying direct effect as a “subjective-substitutive” mechanism of enforcement whose conceptual boundaries have blurred with those of primacy, effectiveness, and direct applicability. Gallo argues that the old multi-criteria test—clarity, precision, and unconditionality—has lost normative coherence and should give way to a more functional standard focusing on unconditionality and the protection of individual rights.

Chapters IV and V extend this reasoning. Gallo broadens the concept beyond its rights-based genealogy, demonstrating that direct effect also operates in an *objective-exclusionary* dimension securing the supremacy of Union law itself. He reconceives the duty of disapplication as deriving solely from EU law, not from domestic constitutional mediation, and develops a refined typology of permissible and impermissible derogations. His treatment of *inverse vertical* and *pro futuro* effects in cases such as *Taricco* shows a nuanced concern for proportionality and legitimate expectations within criminal and administrative contexts.

The sixth chapter turns to horizontal direct effect and the ambiguous case law on directives. Gallo demonstrates that, despite the Court’s formal denials, horizontality has emerged *de facto* through doctrines of consistent interpretation, state liability, and the joint application of fundamental rights and general principles. He calls for explicit acknowledgment of this judicial practice, arguing that transparency and conceptual integrity would better serve the constitutional role of direct effect. Chapter VII expands the inquiry to the *external* sphere, criticizing the Court’s oscillation between openness and autonomy regarding international agreements. Here, Gallo warns that excessive restraint undermines the EU’s credibility as a normative power and advocates a principled framework for assessing the direct effect of international law within the Union legal order.

The conclusion crystallizes the book’s normative thrust. Gallo urges the CJEU to recover the constitutional ambition of *Van Gend & Loos* and to reject minimalist, case-by-case reasoning. Direct effect, he argues, must be reaffirmed as a structural principle that binds together effectiveness, legality, and individual empowerment—the essential triad of European constitutionalism.

His proposal reduces the doctrine's analytical complexity while restoring its constitutional dignity: the CJEU should openly articulate the rationale for direct effect as the mechanism that ensures the supremacy and self-sufficiency of EU law, not merely its procedural enforceability. In sum, Gallo's study re-centres direct effect within the broader theory of European integration. By blending doctrinal reconstruction, comparative insight, and normative critique, he portrays the doctrine as the living hinge between supranational authority and domestic autonomy – a principle that continues to define the EU's constitutional distinctiveness and its evolving rule-of-law identity.

*Direct effect in EU law* is doctrinal legal scholarship at its best. While it does not focus on the geopolitical implications and historical trajectory of the European integration process, it stays grounded in (the critique of) positive texts and judicial decisions, while simultaneously offering an ambitious (re-)systematization – a veritable re-statement, in the sense of US scholarship – a field central to the understanding of EU, both as a legal order and a supranational organization. Based on extremely rich, multi-lingual literature, it is an intellectually nuanced and argumentatively vibrant work, equally useful to the scholar, the practitioner, and the student of EU law. Furthermore, it posits itself within the tradition of Italian-style EU law scholarship, that is, it highlights the genetic imprinting of international law norms and doctrines, notably the law (and theory) of international organizations. In this regard, however, it seems that the possibility to fully exploit the discursive potential of Italian legal thought is not fully exploited. For example, and somehow provocatively, Gallo could have attempted a re-reading of the “objective-exclusionary” direct effect through the lenses of the all-Italian – and admittedly hard to “sell” abroad – administrative law concept of *interesse legittimo*, which shares with the situations underlying the exclusionary objective direct effect the blurred legal status of the protected legal good in the context of legitimately exercised lawmaking and administrative functions. In that sense, the issue of the classification and dogmatics of subjective legal positions in EU law – a matter traditionally left to national courts by the Court of Justice – seems more relevant than what emerges from the book, especially when it comes to whether or not duties (upon public actors) always imply correlative claim-rights.

From another perspective, while Gallo's endeavor starts from the premise of the intrinsically constitutional quality of EU's

legal order, it does not always bring such premise to its full analytical and normative consequences, for example by engaging with the multiple theories of EU's constitutional integration and federalizing process. Put otherwise, while the direct effect is analyzed as a privileged field to reconstruct the trajectory of EU's integration from a legal point of view, the book hardly establishes a conversation with broader frameworks and debates concerning EU's constitutional qualities.

In this regard, the absence of a deeper engagement with these issues makes the work less relevant to analyze, "by-analogy-and-contrast", the different trajectories of the European Communities and the European Union, on the one hand, and other international organizations established with integrative goals, on the other hand. In other words, the book does not take the final steps to contribute to the literature on international organizations law, comparative politics, and the so-called constitutionalization of international law, especially in the light of both older and more recent studies on the role of the individual claims in (both supra- and international) constitutionalizing processes. Similarly, the crucial role of individual claims (of the "subjectivification") grounded in norms enjoying direct effect could have been put in conversation with past and current trends towards the "objectivification" of EU values, along similar lines as those marking the emergence of different kinds of *objektive Wertordnung* in postwar European constitutional systems.

That absence is also relevant insofar as the critique of the Court of Justice alleged minimalism is concerned. The deep – both theoretical and doctrinal – debates concerning the role and limits of judicial activism in constitutional systems are mentioned largely in passing. Within the same lines, the book is traversed by a subtle difficulty – if not a contradiction: Gallo is adamant in recognizing that *Van Gend & Loos's* decision to interpret EC law in the sense of conferring rights on individual was ultimately the result of a *political* choice (p. 2). At the same time, he holds that it was not the result of much-execrated judicial activism (p. 32). It is exactly in this crack, that is, in the fine line that separates "physiologically" political decisions of top courts and their activism that the book leaves the reader somehow dissatisfied.

One last observation. The reluctance of the Court of Justice to embark in "big" conceptual reconstructions is well known, and Gallo's book is, among many other things, a major and ambitious

attempt to compensate for (and ideally overcome?) this reluctance. The book is an explicit attempt to “re-state” the doctrine of direct effect. At the same time, he recognizes that the doctrine could play its crucial role *also* thanks to its conceptual ambiguity, elusive character and wandering judicial application. This recognition, however, begs the question of whether the clarification and conceptual “solidification” of the doctrine pursued with the book – besides undeniable gains in terms of legal certainty and protection of States’ prerogatives – runs contrary to Gallo’s invocation that the Court of Justice re-vives the doctrine’s transformative capacity. In fact, the legal doctrines that have shaped the evolution of constitutional orders have often played such role not *despite* but precisely *because of* their ambiguity and under-clarification.

These observations do not take anything away from the overall assessment of this work: a long-awaited, much needed, and intellectually refined research that sets the standard for current and future research in EU legal scholarship, well beyond the relatively narrow field of direct effect.