

Nitrates Directive Case study

National Judges and the EU Water legislation
– focus on access to justice

Dr. Laura von Vittorelli | Berlin, 18.10.2022

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Group Work

5 Groups:

Every group makes an outline on how to solve the whole case

+ gets one special question. Special questions are in italics.

Please divide into 5 groups and choose one rapporteur to present your solution at the end.

If you have time left, feel free to solve all the questions.

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Case study (1) - Content

- Small lake (55ha) in a mountain area
- Three severe eutrophication events in the last three years.

Claimants:

- Environmental NGO
- **Group A: Local fisherman, who owns the fishing rights of the lake**

Want:

- NVZ + special action programme

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Case study (2) – Challenged provisions

Current State's action programme

Group B: No provisions on

- *Limit of 170 kg/n/ha*
- *Applying manure in steep areas*

Group C: "It is prohibited to apply liquid manure, slurry and liquid sewage sludge between 15 October and 1 March to covered land other than grassland and pasture. "

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Case study (3) Administration's response

- I. Nitrates Directive not applicable
Group E Unusual hot, dry summers in those years
According to 2010 report: main problem sewage water overflow, agriculture only on place 2
- II. No standing
- III. No need to designate a NVZ
Group D especially not immediately
- IV. Cannot demand a special action programme
Group D: especially not immediately

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Case study – solution

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Outline

- I. Is the Nitrates Directive applicable?
- II. Do the claimants have standing?
- III. Can they ask for the designation of an NVZ?
- IV. Can they ask for an updated action programme?

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I. Is the Nitrates Directive applicable?

- A. Size
- B. Eutrophication
- C. Agriculture as the main source
- D. Climate change

} Group E

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I. Is the Nitrates Directive applicable?

A. Size – there are no limitations in the Nitrates Directive. According to the WFD, the minimal size to designate a lake is 0,5 km²

B. Eutrophication:

- According to Art. 2 (i) (+) and (if no action is taken) problem will continue in the future
- Member States need to monitor water bodies regularly

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I. Is the Nitrates Directive applicable?

Art. 3 I, Annex I A 3

“natural freshwater lakes, other freshwater bodies, estuaries, coastal waters and marine waters [that] **are found to be eutrophic or in the near future may become eutrophic** if action pursuant to Article 5 is not taken.”

Art 2 “(i) eutrophication: means the enrichment of water by nitrogen compounds, **causing an accelerated growth of algae and higher forms of plant life to produce an undesirable disturbance** to the balance of organisms present in the water and to the quality of the water concerned;

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I. Is the Nitrates Directive applicable?

Group E: Agriculture not the main source + climate change as a problem

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I. Is the Nitrates Directive applicable?

C. Link to agriculture/nitrogen

- Report is too old, there has been a recent increase in animal numbers and measures have been taken to reduce sewage water overflow
- C- 221/03 Commission v Belgium - 17% is enough
- Case C-396/01 Commission v Ireland “**at risk of eutrophication in the near future**”

D. Climate change

- No court cases yet
- Objective of the Nitrates Directive: Prevent pollution and eutrophication

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II. Standing

Individuals can rely on the Directive if they are “directly concerned”

--> objectives of the Directive, look at singular provisions

- Art. 3 I, Annex I A Water affected by pollution – including eutrophication

→ ECJ Case C-197/18 Wasserleitungsverband at 30 seq

→ NGOs (+) See ECJ Case C-197/18, at 34

→ **Local fisherman? Group A**

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II. Standing

Individuals

- Local Fisherman (+/-)

Art. 2 (j) Pollution [...] the results of which are such as to cause hazards to human health, **harm to living resources and to aquatic ecosystems**, damage to amenities or **interference with other legitimate uses of water**;

Art. 2 (i) 'eutrophication': means the enrichment of water by nitrogen compounds, causing an accelerated growth of algae and higher forms of plant life to produce **an undesirable disturbance to the balance of organisms present in the water and to the quality of the water concerned**

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III. Need to designate a NVZ immediately

- NVZ necessary – see above
- Immediate action necessary? Group D

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III. Need to designate a NVZ immediately

- NVZ necessary – see above
- Generally immediate action necessary – see Commission/Germany C-543/16, Commission/Netherlands C-322/00 but those judgments were about reviewing the action programmes – Art. 5 V 1 has a different wording than Art. 3 IV
- Reg. the designation of NVZ – according to Art. 3 IV
 - Member States shall review if necessary revise or **add to the designation of vulnerable zones as appropriate, and at last every four years**, to take into account changes and factors unforeseen at the time of the previous designation.
 - Depends on the circumstances of the case

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IV. Action programme

ECJ Case C-197/18 Wasserleitungsverband

1. There is a breach of the obligations
2. Those obligations are clear, precise and unconditional

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IV. Action programme

ECJ Case C-197/18 Wasserleitungsverband

1. There is a breach of the obligations
 - (1) NVZ (see above)
 - (2) State's action programme is insufficient

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IV. Action programme

ECJ Case C-197/18 Wasserleitungsverband

(2) State's action programme is insufficient

Group C: They remark, that in the State's action programme there are no provisions regarding applying manure on steep slopes and no provision applying more than 170 kg/n/ha.

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IV. Action programme

(2) State's action program is insufficient

No provision on applying manure in steep areas

See Art. 5 IV a, Annex III

"3. limitation of the land application of fertilizers, consistent with good agricultural practice and taking into account the characteristics of the vulnerable zone concerned, in particular:

(a) soil conditions, soil type and slope;"
→ needs a provision

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IV. Action programme

(2) State's action programme is insufficient

No limit of 170 kg/n/ha

See Art. 5 IV a, Annex III 2 „The specified amount per hectare be the amount of manure containing 170 kg N”

→ there can be an exception, but the MS has to take it (see C-543/16 Commission v Germany at 140 seq)

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IV. Action programme

(2) State's action programme is insufficient

“It is prohibited to apply liquid manure, slurry and liquid sewage sludge between 15 October and 1 March to covered land other than grassland and pasture. ”

→ **Group D**

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IV. Action programme

(1) State's action programme is insufficient

→ Are grasslands and pastures missing?

Yes, see ECJ C-526/08 Commission v Luxembourg at 55 seq

- Compare to Art. 5 IV a, Annex III 1.1 "periods when the land application of certain types of fertilizer is prohibited;" --> no exception for different types of lands, grassland and pasture is missing. See ECJ C-526/08 Commission v Luxembourg at 55 seq

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IV. Action programme

(1) State's action programme is insufficient

→ Does it need to apply to all fertilizers?

Yes, see ECJ C-526/08 Commission v Luxembourg at 53 seq

„It must also be pointed out, first, **that Article 2(e)** of that directive defines 'fertiliser' as any substance containing a nitrogen compound or nitrogen compounds utilised on land to enhance the growth of vegetation, including livestock manure. Secondly, Article 2(f) of that directive defines 'chemical fertiliser' **as any fertiliser which is manufactured by an industrial process. It follows that the term 'fertiliser' covers, within the meaning of Directive 91/676, chemical fertiliser.**“

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IV. Action programme

1. There is a breach of the obligations
2. Those obligations are clear, precise and unconditional

See ECJ C-197/18 Wasserleitungsverband At 70 seq

→ Action Programme immediately?

Group D

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IV. Action programme

Art. 5 (1)

1. Within a two-year period following the initial designation referred to in Article 3 (2) **or within one year of each additional designation referred to in Article 3 (4)**, Member States shall, for the purpose of realizing the objectives specified in Article 1, establish action programmes in respect of designated vulnerable zones.

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