

Nitrates Directive

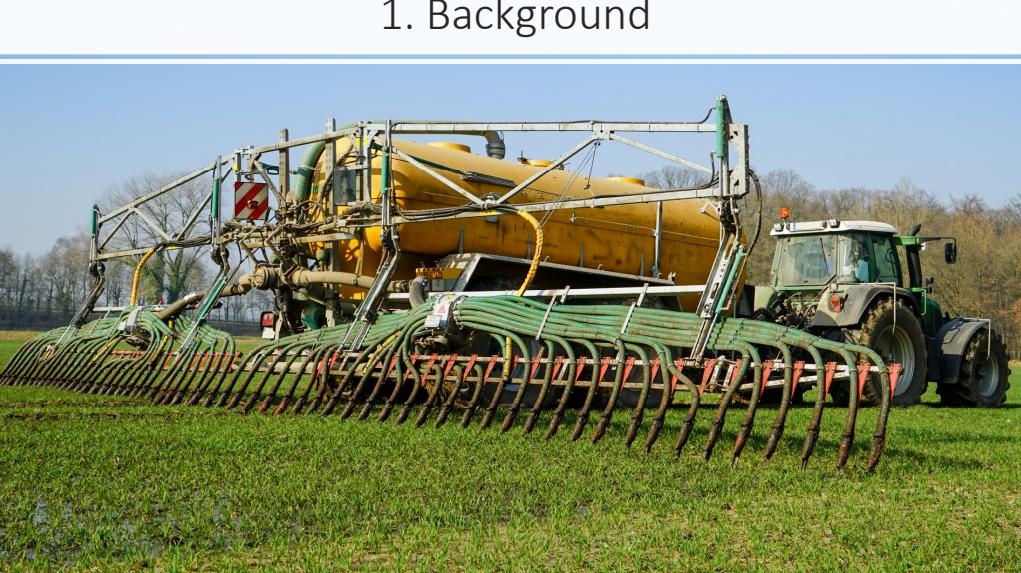
**National Judges and the EU Water legislation
– focus on access to justice**

Dr. Laura von Vittorelli | Berlin, 18.10.2022

Topics

1. Background
2. The regulation of nitrates in EU law
3. Overview of the Nitrates Directive
4. Requirements for the implementation of the Nitrates Directive in the MS
5. Access to justice

1. Background



A green tractor is pulling a yellow agricultural machine, likely a harrow or plow, across a green field. The machine has a large yellow tank and a green harrow with many tines. The background shows a line of trees under a clear blue sky.

<https://www.umweltbundesamt.de/themen/wasser/Grundwasser/nutzung-belaestigung/typ-zu-nutzen-Grundwasser#was-ist-der-unterschied-zwischen-trinkwasser-Grundwasser-und-Grundwasser-Grundtypen> / Fotolia.com

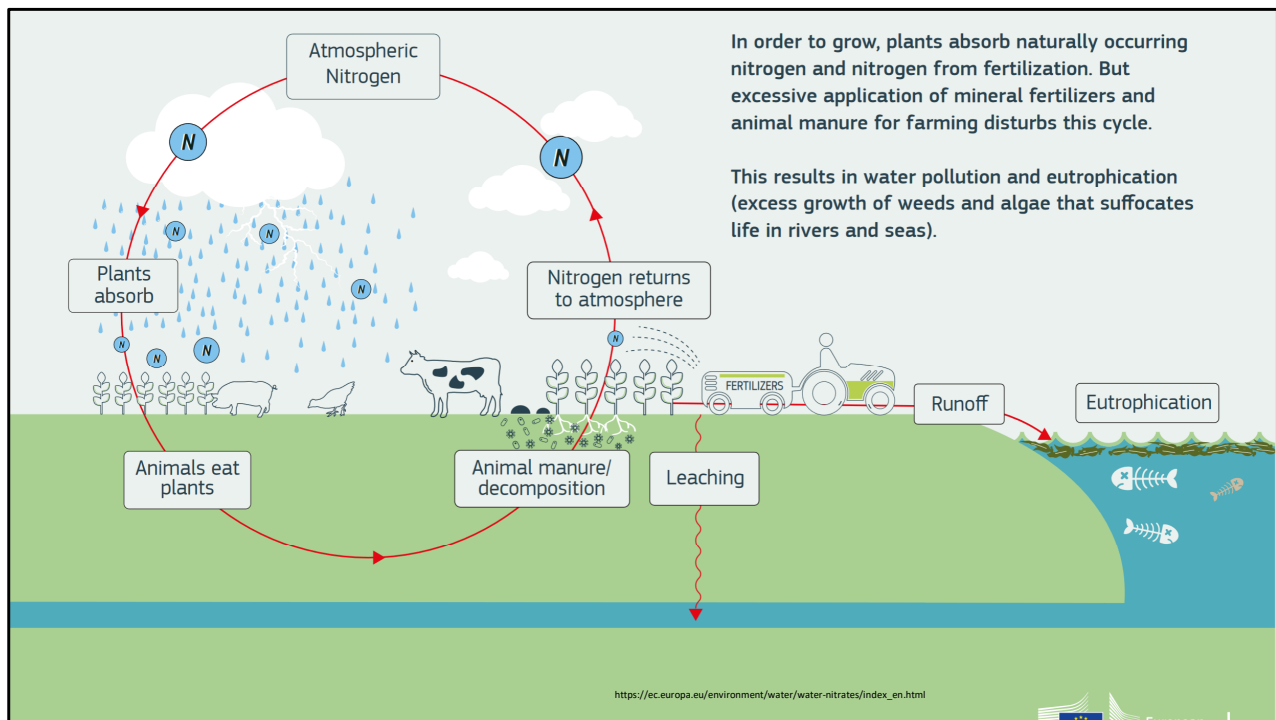
The EU Nitrates Directive was adopted in 1991 in response to concerns about the impacts of agricultural practices on water quality in the EU. The Directive aims to protect water quality by reducing nitrate pollution from agricultural sources.

The Directive was initially proposed by the European Commission in 1988, following a request by the Council of Ministers to develop a proposal for action on nitrate pollution. The proposal was subsequently reviewed and amended by the Council and the European Parliament before it was adopted in 1991.

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additional measures are required to reduce nitrate pollution from agricultural sources. The Directive also requires Member States to develop action programmes to reduce nitrate pollution and to report on their implementation of the Directive on a regular basis.

Since its adoption, the Nitrates Directive has been amended several times to reflect new scientific knowledge and changes in EU policy. The most recent amendment was adopted in 2018, which introduced new requirements for monitoring and reporting on nitrate pollution and revised the criteria for designating nitrate-vulnerable zones.



The EU Nitrates Directive is important because it aims to protect water quality from pollution caused by nitrates from agricultural sources. Nitrate pollution can cause eutrophication of water bodies, which can lead to a variety of environmental problems, including harmful algal blooms, oxygen depletion, and loss of biodiversity.

The Directive encourages sustainable agriculture practices that are more efficient in their use of nutrients and reduce the need for excess fertilization, which can be costly for farmers and harmful to the environment.



1. Background – Why did the EU regulate nitrate?

A. Health

- Our bodies change nitrates to nitrite, which can be very dangerous for the human health
- Especially for babies
- WHO recommendation: drinking water under 50 mg/l
 - = maximum amount set in the Drinking Water Directive
 - = maximum amount in the Nitrates Directive for all water bodies

By reducing nitrate pollution, the Nitrates Directive helps to protect human health, as well as the health of aquatic ecosystems and the biodiversity they support. It also helps to protect the quality of drinking water supplies, which can be impacted by nitrate pollution from agricultural sources.

1. Background – Why did the EU regulate nitrate?

B. Nature Protection

- Too much nitrate leads to eutrophication
- Dangerous algae can bloom
 - Bathing waters' quality
 - Death zones e.g. in the Baltic Sea
- Some protected species depend on nutrient-poor environments

Image: <https://www.nordkurier.de/ratgeber/baden-in-der-ostsee-was-ist-gefaehrlich-was-nicht-1143876206.html> Image: Swedish Coast Guard



2. The regulation of nitrates in EU Law

Most important Legislation

- Nitrates Directive
- Drinking Water Directive
- Water Framework Directive – Nitrates is now a daughter directive
 - Ground water - Directive 2006/118– chemical status
 - Surface water - river basin specific pollutants
 - Measures are mandatory under WFD
- Marine Strategy Framework Directive (MSFD) + Int. Treaties such as Helsinki convention, OSPAR
- Birds and Habitats Directive
- Urban Waste Water Directive

- See Common Implementation Strategy for the WFD Guidance Document 23 p. 25 for an overview



<https://de.wikipedia.org/wiki/Flussperlmuschel> Günter Jacki für das Bundesministerium der Finanzen und die Deutsche Post AG

Freshwater pearl mussel

3. Overview



Identification of
water bodies (Art.
3, Annex I)



Designation of nitrate
vulnerable zones (NVZ)
(Art. 3, Annex I)



Code(s) of good
agricultural conduct
(Art. 4, Annex II)



Action Programmes
(Art. 5, Annex III)



Monitoring (Art. 6,
Annex IV)



Reporting (Art. 10)



Definitions (Art. 2)

3. Overview

Most important definitions (Art. 2)



Fertilizer

Pollution

Land application

Vulnerable zone

A. Identification of water bodies

Art. 3 I, Annex I

Polluted or at risk of pollution

- (1) groundwater
- (2) surface freshwaters, in particular those used or intended for the abstraction of drinking water

→ Contain currently or at risk to contain (if no measures are taken) more than 50 mg/l of nitrates

Quelle: BKG / LAWA / UBA
<https://www.umweltbundesamt.de/themen/wasser/grundwasser/nutzung-belastungen/faqs-zu-nitrat-im-grund-trinkwasser#wie-ist-die-situation-in-deutschland>

The identification of water bodies under the Nitrates Directive is a key tool for managing the risk of nitrate pollution from agricultural sources, and for protecting the quality of water bodies and the ecosystems they support.

A. Identification of water bodies

Polluted or at risk of pollution

(3) freshwater bodies, estuaries, coastal waters and marine waters, found to be eutrophic or that could become eutrophic (if no action is taken to reverse the trend)

→ WFD, MSFD



Wera Leujak / UBA Image:
<https://www.umweltbundesamt.de/themen/wasser/gewaesser/meere/nutzung-belastungen/eutrophierung/eutrophierung-was-bedeutet-das>



A. Identification of water bodies C-258/00 Commission v France

Background:

France only applied the Nitrates Directive to surface waters:

- That were used as a source of drinking water
- Reg. Eutrophication: only coastal waters and shallow, brackish lagoons
France maintained that only there it was scientifically proven that nitrogen was the controlling factor for eutrophication

In this case, the European Commission brought an action against France for failing to designate nitrate vulnerable zones (NVZs) and failing to implement measures to control nitrate pollution from agricultural sources in designated NVZs, in breach of the EU Nitrates Directive.



A. Identification of water bodies C-258/00 Commission v France

ECJ:

„ When they carry out that identification, they are obliged to respect the objectives of the Directive, namely, the reduction of water pollution caused by nitrates from agricultural sources. “

„ Thus, the exercise of that discretion may not result, as in the present case, in a large portion of nitrogen-bearing waters falling outside the scope of the Directive. “ (at 54)

The Court held that the identification of NVZs was essential to the proper implementation of the Directive and that France had failed to take the necessary steps to identify such areas. The Court also found that France had not implemented adequate measures to control nitrate pollution in designated NVZs. As a result of the judgment, France was required to take steps to designate NVZs and to implement measures to control nitrate pollution in those areas. The case is significant because it demonstrates the importance of effective implementation of the EU Nitrates Directive in protecting water quality and the environment, and the role of the CJEU in enforcing EU environmental law.



A. Identification of water bodies

Does agriculture have to be the only source?

ECJ: No

- C-293/97 Standley e.a.
- C-149/14 Commission v Greece

At 36 «il n'est pas nécessaire que les composés azotés d'origine agricole contribuent de manière exclusive à la pollution. **Il suffit qu'ils y contribuent de manière significative** (voir, en ce sens, arrêt Standley e.a., C-293/97, EU:C:1999:215, points 30 et 35). »
- C- 221/03 Commission v Belgium

At 81 Even if agriculture only contributes to 17% of the nitrates in a given basin

