The Need for Flexibility and Differentiation in the Protection of Vulnerable Areas in EU Environmental Law: The Implementation of the Nitrates Directive in the Netherlands

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Abstract
The Nitrates Directive (91/676/EEC) offers EU Member States the unique choice to apply the nitrate regime in either designated areas or on their entire territory. The Netherlands has opted for a whole territory approach but is tempted to change this policy. This article investigates the legal options of the Netherlands to switch from a whole territory approach to a designated area approach. It also investigates two alternative possibilities to create a more area-based implementation of the Nitrates Directive in the Netherlands within a whole territory approach. The alternatives are (i) a further differentiation of the current manure policy and (ii) the possibility to integrate the implementation of the Nitrates Directive and the Water Framework Directive. The results of the research are placed in a European perspective.

Keywords
implementation, Nitrates Directive, policy change, the Netherlands, area based, Water Framework Directive, differentiation, water quality, fertilizers

1. Introduction

Many European environmental directives oblige the Member States to designate specific areas to protect nature and the environment. Well known
examples are the Habitat Directive,\(^1\) the Birds Directive,\(^2\) the Bathing Water Directive,\(^3\) the Marine Strategy Framework Directive\(^4\) and the Nitrates Directive.\(^5\) The protection of vulnerable areas by means of designation combined with a special protection regime often leads to implementation problems because of uncertainty concerning designation criteria, the scope of the relevant obligations for the designated area and the room for policy discretion, flexibility and differentiation.\(^6\)

In this regard the Nitrates Directive is unique as it explicitly allows for an alternative way of implementation. EU Member States have the choice to apply nitrate action programmes (NAPs) either in designated areas (Nitrate Vulnerable Zones; NVZ) or on their whole territory (WT). Currently, 9 out of 27 EU Member States have adopted the WT approach, while the remaining ones have designated NVZ areas. The Nitrates Directive has been effective since 1993 and thus constitutes an excellent opportunity to investigate the consequences of a choice for one of the two ways of implementation in terms of goal achievement and administrative costs and the room for policy discretion, flexibility and differentiation with regard to the area-based protection of vulnerable areas in European environmental law.\(^7\)

Since the Nitrates Directive entered into force, Ireland changed its initial NVZ approach into a WT approach in 2003 and the region of Northern Ireland in the UK and the region of Flanders in Belgium did the same in 2004.

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