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Mireille Bogaart (m.m.bogaart@uva.nl)



**Flexibility in the European legal framework on air quality.
The Ambient Air Directive and the NEC Directive.**



Outline

- Background & research question
- Analysis of flexibility in the two directives
- Risks of flexibility & recommendations



Background

- Improving air quality= important focus of EU
- (Current) feature of env. directives: flexibility
- Member States: 'no gold plating' policy
- Concern that flexibility might negatively affect the effectiveness of the directives



Research question

What are the risks of flexibility in the NEC Directive and Directive on Ambient Air for the effectiveness of these directives?



European objective for air quality

- 'Achieving levels of air quality that give not rise to significant negative impacts on and risks to human health and the environment' (6th EAP, COM(2001)31 final)

Factors determining flexibility

- Multi-interpretable (unclear) terms
- Type of instrument (elv's, eqo's, plans)
 - Set at EU or national level?
 - Expression (quantitative, qualitative)
- Deadline
- Exemptions
- (...)



NEC Directive & Ambient Air Directive

- Two obligations:
 1. Quality standards (Emission ceilings/limit values respectively)
 2. Plans/programmes

1. Quality standards

- Emission ceilings & limit values
 - Set at EU level
 - Obligation of result, binding legal character
 - Apply throughout territory
 - Deadline (postponements)
 - Quantitative formulation
 - Assessment strictly regulated

Generally: Not flexible 😊.

2. Plan/programme

- Obligation of result (deadline)
- In order to achieve the ceilings/limit values OR
- If limit values are exceeded (D. Ambient Air) : so that the exceedance period can be kept *as short as possible*
- Content = for the Member States (effective!)
- No obligation to monitor/revise (Ambient Air)
- No obligation to make the plan operational

So: content = flexible, but it must be effective. Risk remains that Member States are not pushed enough to actually act on time.

Flexibility & ECJ

- Quality standards: Stringent assessment (C-479/10)
- Plans/programmes: Member States enjoy wide flexibility
 - Two limitations:
 1. A Member State cannot allow measures liable seriously to compromise the attainment of the result prescribed by the directive
 2. All policies and measures together should be capable of reducing emissions so as to comply with the ceilings on time (C-237/07 & C-165/09 to C-167/09)

Risks & recommendations

Generally: 😊 objectives are concrete and strict,
plans/programmes must be effective

Risk:

- ☹ Questionable whether MSs will actually do enough on time (9 warnings + 1 conviction)
- > Inclusion of an obligatory interim evaluation and monitoring of the plan or (and)
- > an obligation to make the plan operational within a certain period of time



Thank you for your attention!

Mireille Bogaart (LL.M)

Amsterdam Centre for Environmental Law & Sustainability

m.m.bogaart@uva.nl