

Flexibility in the European legal framework on air quality

Mireille Bogaart

PhD student at the Amsterdam Centre for Environmental Law and Sustainability

Abstract

Improvement of air quality has been and still is one of the most important objectives of the environmental policy of the European Union. The current 6th EAP¹ states that the objective of EU air policy is to attain ‘levels of air quality that do not give rise to significant negative impacts on, and risks to human health and the environment.’

As a result, there is a large amount of European measures, mostly directives, aimed at reducing exposure to air pollution, like the Ambient Air Quality Directive², the IPPC Directive³ and the NEC Directive⁴. These directives, notwithstanding the fact that they all pursue the general aim of improving air quality, have different specific objectives and lay down various regimes and instruments to attain these objectives. For instance, the IPPC directive aims at an integrated approach to pollution control⁵ and introduces a permit for installations, which should include emission limit values based on the best available technique⁶. A total different approach is adopted by the NEC Directive the aim of which is to limit emissions of acidifying and eutrophying pollutants and ozone precursors in order to improve the protection of the environment and human health against risks of adverse effects from acidification, soil eutrophication and groundlevel ozone⁷. In order to pursue this objective, the directive lays down emission ceilings for certain pollutants which must be attained by the Member States by 2010 at the latest and it lays down the obligation to draw action plans⁸.

In my paper, I will analyze and compare the legal obligations under the aforementioned directives. In this analysis, special attention will be paid to the freedom or flexibility MS have in implementing these obligations, since this flexibility is an important factor for the actual impact that these obligations could have on air quality. In this respect, one has to think of time extensions for deadlines, the possibility for lowering standards or the freedom to decide in which manner certain objectives like environmental quality objectives are set. Ultimately, it will be evaluated whether these directives are, considering the flexibility, actually capable to contribute to the environmental protection they seek to provide.

¹ COM (2001)31 final.

² Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, *OJ L* 152, 11-6-2008, p. 1-44.

³ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast), *OJ L* 334, 17-12-2010, p. 17-119.

⁴ Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants, *OJ L* 309, 22-11-2001, p. 22-30.

⁵ Art. 1 IPPC Directive.

⁶ Art. 9 (3) and (4) IPPC Directive.

⁷ Art. 1 NEC Directive.

⁸ Art. 6 NEC Directive.