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International Scientific Conference

## LEGAL TRADITION AND NEW LEGAL CHALLENGES

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#### THE LEGAL CHALLENGES OF IMPLEMENTATION OF THE NITRATES DIRECTIVE

Agricultural production can be observed from various aspects, when it comes to environmental issues and climate change. On one hand, it is contributing to climate change through greenhouse gasses emission, land degradation and different activities that can also lead to environmental pollution. Having that in mind, it can be an important mitigation factor as well. On the other hand, agricultural production is affected by climate change and it has to be adapted to the new and forthcoming circumstances.

One of the numerous EU directives in this field, which is of special importance when it comes to potential pollution from agricultural sources is *Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (Nitrates Di-*

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*rective*). According to its provisions Member States should designate vulnerable zones where waters are affected or could be affected by pollution. After that, special action programmes and codes of good agricultural practice should be established, including all measures related to the use and application of fertilizers prescribed by the Directive. Provisions of the Nitrates Directive are quite restrictive regarding the use of fertilizers, introducing numerous limitations that are beneficial for environmental protection and reduction of greenhouse gasses emission. Although it has been more than two decades since it was enacted, many Member States had problems to meet the requirements. One of the examples is the case C-543/16 *European Commission v Federal Republic of Germany*. It started with Nitrates Report that Germany sent to the European Commission in 2012 which showed that water quality had not improved enough since the previous reporting period and that there is a higher level of nitrates than allowed at some monitoring stations, especially in groundwater. As Germany did not meet the requirements prescribed by the Directive, the Commission brought the case before the Court of Justice of the European Union which ruled in its judgment of 21 June 2018 that Germany has failed to fulfill its obligations under Article 5 (5) and (7), Annex II A, points 1 to 3 and 5, and Annex III (1) (1) to (3) and (2) of Council Directive 91/676/EEC. Apart from Germany, there are other Member States that also struggled with its implementation. One of the rare examples of good practice in this field can be found in Denmark, which introduced measures that led to the decrease of nitrate levels in the water and prevented an excessive use of fertilizers in general.

From the Serbian perspective, implementation of Nitrates Directive will be a novelty and a challenge in the process of the EU accession negotiations within the Chapter 27, which is related to Environment and Climate Change. First steps were made and next years will be crucial for the harmonization of legislation. In this regard, the aim of the research, which is based on a comparative legal approach, is to analyze practice of other countries and to try to avoid some difficulties that they had along the way. That could be beneficial for the future requirements that Serbia will face in this field. Apart from harmonization of legislation, special focus should be on an adequate application in practice as that was problematic in some countries, especially having in mind previous experiences and tendencies in Serbia.

**Keywords:** agriculture, European Union, Nitrates directive, fertilizers, environment