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**– Florence Convention –**

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**COMPARATIVE STUDY OF LEGISLATION**  
**ON PUBLIC PARTICIPATION IN LANDSCAPE MATTERS**  
**IN THE CONTEXT OF IMPLEMENTATION OF**  
**THE EUROPEAN LANDSCAPE CONVENTION**

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## CONTENTS

|   |    |
|---|----|
| <b>Executive summary</b> .....  | 4  |
| <b>Introduction</b> .....   | 5  |
| <b>I. The requirements of the Florence Convention with regard to public participation</b> .....                                       | 5  |
| <b>II. The requirements of the Aarhus Convention with regard to public participation</b> .....  | 8  |
| <b>III. Applicable law regarding participation in certain European States</b> .....   | 10 |
| A. The public affected by the definition and/or implementation of landscape policies  |    |
| 1. The principles of participation in landscape matters.....  | 11 |
| 2. Those who are entitled to participate .....  | 12 |
| 3. Opening up to the public of structures with responsibility for landscape policy .....  | 13 |
| B. Public policy affected by participation procedures in Landscape matters .....  | 15 |
| C. Participation procedures specific to implementation of the requirements of Article 5c .....  | 16 |
| 1. The absence of instruments specific to landscape matters.....  | 16 |
| 2. The failure to distinguish between the framing and implication of landscape policy in relation<br>to participation procedures..... | 18 |
| 3. Forms of participation.....  | 21 |
| D. Participation procedures specific to the definition of landscape-quality objectives (Article 6d) .....                             | 23 |
| E. Participation procedures specific to a particular landscape or territory .....   | 25 |
| F. Provisions designed to foster the emergence of a landscape culture<br>among the authorities and the population .....               | 27 |
| G. Public influence on the final decision .....   | 29 |
| H. The effect of participation procedures on the integration of landscape concerns<br>in the implementation of public policies.....   | 30 |
| <b>IV. Proposals for improving public participation in landscape protection,<br/>    management and planning</b> .....                | 30 |
| A. Landscape awareness and education.....   | 30 |
| B. Training and research in landscape matters .....   | 33 |
| C. The procedures for participation in landscape matters .....  | 34 |
| D. The integration of landscape protection in different sectoral policies .....   | 35 |

**APPENDICES**

|   |    |
|---|----|
| Appendix 1: Landscape questionnaire: French version.....  | 37 |
| Appendix 2: Landscape questionnaire: English version.....   | 40 |
| Appendix 3: Article 6 of constitutional law No 2003-276 of 29 March 2003 on the decentralised organisation of the Republic, <i>Journal officiel de la République française n° 75 of 29 March 2003</i> p. 5568 ..... | 43 |
| Appendix 4: Directive No 2003/35/CE of 26 May 2003, providing for public participation, OJEC No L156 of 25 June 2003, Annexe II.....  | 44 |

## **Executive summary**

The Florence Convention will enter into force on 1 March 2004, requiring the respective Contracting parties to the Convention to ensure that their domestic regulations are compatible with the aims of the Convention.

With regard to public participation, such compatibility is particularly vital in so far as individuals participate in identifying, protecting, managing and developing the landscape. Procedures must be in place when required to provide the public with the means to be involved at every stage.

In pursuing the objectives set out in the Florence Convention, the Contracting parties are also complying with the provisions aimed at participation, which are clearly set out in the Aarhus Convention, and with the Council of Europe's commitment to develop local citizenship and reinforce the practice of democracy.

Our study of 12 European States – Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Spain, Sweden, Turkey – has revealed a number of trends.

In particular, participation is not a legally binding general principle for all the countries examined. Nevertheless, it does give rise to certain specific provisions in most countries.

Interpretation of the concept of “public” is not the same in all countries. On the whole, one can differentiate between those States for whom public means individuals and those for whom public also means, in the main, central government, regional and local authorities and professionals. Participation must be open to the public in general, including children, even where they are not directly or legally concerned. Similarly, with regard to the openness of structures responsible for landscape policy, either that openness is unrestricted, or it is essentially concentrated on local and regional authorities and associations.

In all cases, existing procedures reveal a failure to distinguish between institutions responsible for defining landscape policy and those responsible for implementing landscape policy. There is no provision for public participation at these two distinct stages. Similarly, there are no internal provisions to speak of in the States consulted specifically relating to the definition of landscape-quality objectives.

In addition, public policy generally takes account of the landscape, either directly or indirectly. This is particularly true of policy relating to the environment, nature conservation, regional planning, town planning and heritage protection.

However, there are very few instruments that are specific to landscape policy, and any procedures for participation that have been put in place are those associated with the formulation of other instruments. Provisions, which directly or indirectly influence the landscape, relate, in particular, to outstanding landscapes and urban landscapes. However, the subject of blighted landscapes or transfrontier landscapes is rarely dealt with.

Although participation procedures clearly encourage the inclusion of landscape concerns in the implementation of public policy, there is, nevertheless, a lack of such procedures and incomplete identification of landscape. The effect of public participation on the final decision is limited.

Accordingly, in order to overcome these shortcomings and gradually integrate the aims of the European Landscape Convention with regard to public participation, a number of approaches are possible. In the main, these are directed towards

- educating the public and raising awareness of the landscape;
- training and research;
- a review of arrangements for participation in landscape matters;
- a more systematic integration of landscape protection in the different sectoral policies.

## Introduction

The European Landscape Convention is the first and only international treaty devoted exclusively to the protection, management and enhancement of all European landscapes. Signed at Florence on 20 October 2000, it requires the states concerned to define a genuine landscape policy in partnership with the public. In particular, Article 5c of the Convention provides that “each Party undertakes to establish procedures for the participation of the general public, local and regional authorities, and other parties with an interest in the definition and implementation of the landscape policies mentioned in paragraph b above”. Article 6d adds that “Each Party undertakes to define landscape-quality objectives for the landscapes identified and assessed, after public consultation in accordance with Article 5c”

In this sense, the Florence Convention is an extension of the Aarhus Convention of 25 June 1988 on access to information, public participation in decision-making and access to justice in environmental matters, to which it refers in its preamble.

However, there are a number of comments that need to be made concerning the wording of Articles 5c and 6d of the Convention, which are specifically devoted to public participation.

In the first place, the term “public” should be taken to mean civil society in the broad sense, excluding local and regional authorities and other interested parties, referred to elsewhere.

Secondly, it is clear that the participation of the general public must be visible both in the definition of landscape policy and also in the implementation of this same policy. These are two quite distinct levels. Furthermore, the public must participate in the definition of landscape-quality objectives. The concept of consultation referred to in Article 6d must not be such that involvement will be minimal.

Bearing in mind these preliminary observations, this study on public participation in landscape matters in the context of the implementation of the European Landscape Convention will seek in turn to:

- identify the requirements of the Florence Convention with regard to public participation;
- study in parallel the requirements of the Aarhus Convention with regard to public participation;
- analyse the applicable legislation on participation in certain European States;
- put forward proposals to improve public participation in landscape protection, management and planning.

### I. The requirements of the Florence Convention with regard to public participation

The definition of landscape set out in the Florence Convention, in common with the definition used by some international bodies, stresses humankind’s relationship with the environment.

According to the Council of Europe, landscape means “an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors”<sup>1</sup>.

Similarly, for the World Conservation Union (IUCN), “the harmonious interaction of people and nature over time has produced an area of distinct character which makes it possible to identify the areas to be protected, in particular for their landscape interest”<sup>2</sup>.

Finally, applying the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage of 16 November 1972, “the term “cultural landscape” embraces a diversity of manifestations of the interaction between humankind and its natural environment”<sup>3</sup>.

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<sup>1</sup> Council of Europe, European Landscape Convention, Article 1, Definitions.

<sup>2</sup> The World Conservation Union (IUCN), “Management guidelines for IUCN category V protected areas – protected landscapes/seascapes”, September 2002.

It is therefore logical and indisputable that humankind, as a factor in the identification of landscape, should also be involved in its protection, management and enhancement. Indeed, in the preamble to the European Landscape Convention, the member states of the Council of Europe express their desire to “respond to the public’s wish to enjoy high quality landscapes and to play an active part in the development of landscapes”.

With this in mind, Articles 5c and 6d of the Florence Convention highlight the need to put in place procedures for participation. More specifically: “The reason for the Florence Convention’s insistence on the participative approach is a desire not so much to fall in with prevailing fashion as to give legal recognition to the special features of landscape. Landscape exists because it is visible. A landscape policy which involved only experts and administrators, who themselves are often specialists, would result in landscapes that were imposed on the public, just as in the days when landscape was produced by and for an elite. Democratisation of the landscape is not just a question of the new scope which the Florence Convention introduces; it is also reflected in this collective and individual appropriation of all landscapes, through the requirement that there be direct participation for all in all phases of decision-making regarding landscape alteration, supervision of landscape evolution and prevention of reckless landscape destruction”<sup>4</sup>.

The explanatory report annexed to the Florence Convention specifies the aims of this participation. With regard to Article 5c, it stresses the need to “lay down procedures for participation by the general public, local and regional authorities and other interested parties in the formulation and implementation of these policies. Landscape is an issue which affects the whole population and care for the landscape requires collaboration between a wide range of individuals and organisations”. In addition, with regard to Article 6d, the explanatory report states that “this paragraph requires parties to set quality objectives for the landscapes which have been identified and evaluated, and in doing so to consult the population concerned. Before any measure is taken for the protection, management and planning of a landscape, it is essential to make clear to the public what objectives are being pursued. These objectives should be laid down, explained and announced by the competent authority concerned after the general public and all relevant interests have been consulted. The objectives may be set within the more general framework of a policy conducted by the territorial or central authorities concerned. The decision setting the objectives should state clearly the special features and qualities of the landscape concerned, the general thrust of the policy for that landscape, and the specific components of the landscape to which protection, management or planning will apply. It should then say by what means the objectives are to be achieved.

There must be a clear relationship between the objectives, the findings of the identification and evaluation surveys, and the measures deemed necessary to achieve the objectives.”

The Convention therefore aims to involve the widest possible public in participation procedures during the definition of projects and discussion of individual requests continuing right up to the final decision, which it must be able to influence, including monitoring the implementation of a genuine landscape policy. Such public participation presupposes concomitant action on the part of the public authorities: informing the public and raising awareness of the issue of landscape, drawing up an inventory of landscapes of national, regional, local and even trans-border interest, adapting participation procedures, where these exist, and so on.

Thus, “it is clear that involving the public, first by means of a high-profile and ongoing campaign to raise awareness, and then by active public participation in decision-making in landscape matters, is the key element of the European Convention.

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<sup>3</sup> Cultural Landscapes from Operational Guidelines to the World HERITAGE Convention (UNESCO, 1999) paragraph 37.

<sup>4</sup> Michel PRIEUR, “Landscape policies: contribution to the well-being of European citizens and to sustainable development - social, economic, cultural and ecological aspects, Second Conference of the Contracting and Signatory States to the European Landscape Convention, Strasbourg, 10 October 2002, T-FLOR 2 (2002) 20.

Without this involvement, the landscape would probably lose its principal function and become either the expression of ugliness, and decay for the majority of people, or an artificial paradise for a privileged few”<sup>5</sup>.

The requirements of the Convention in terms of public participation in the definition and implementation of landscape policy can be found in other texts. The IUCN set out ten principles with which the authorities responsible for managing protected areas must comply. In particular, “people should be seen as stewards of the landscape”, “management must be undertaken with and through local people, and mainly for and by them”<sup>6</sup>.

Participation must be “effective”, as the Council of Europe has already stressed in Committee of Ministers Recommendation NoR (95) 9 of 11 September 1995: “The landscape appraisal procedure should: viii. Ensure the effective participation of the population in the processes of landscape appraisal and management”<sup>7</sup>.

Similarly, the Fifth European Conference of Ministers Responsible for the Cultural Heritage produced a number of resolutions<sup>8</sup>. For example, in Resolution No1, the ministers concerned call upon national, regional and local authorities to “Ensure the right of communities, their members and non-governmental organisations to participate adequately in consultation and decision-making processes affecting the heritage...”; to “involve the public and communities, alongside professionals, in identifying and protecting cultural heritage; establish the legal, financial and professional framework necessary for concerted action by experts, owners, investors, undertakings and civil society; develop the concept of shared responsibilities by incorporating the heritage dimension into economic, social and educational strategies, to facilitate sustainable management of the environment; since public funds are necessarily limited, encourage, by appropriate measures and incentives ... civil society to play an increasing role in the enlarged field of heritage now perceived by people...”.

More recently, in a recommendation on the Guiding principles for sustainable spatial development of the European Continent, the Ministers of the Council of Europe advocated the implementation of “Spatial development measures for different types of European regions”<sup>9</sup>.

This relates to landscapes, urban areas, rural areas, mountains, coastal and island regions, Eurocorridors, flood plains and water meadows, redundant industrial and military sites and border regions.

Among the guiding principles are “Strengthening of co-operation between the member states of the Council of Europe and participation of regions, municipalities and citizens”, in particular through “horizontal and vertical co-operation and broadly-based participation of society in the spatial planning process”.

The Convention on the Protection of the Alps (Alpine Convention) of 7 November 1991, in the Chambéry Protocol of Application of 20 December 1994, entitled nature protection and landscape conservation, also states in its preamble that “the local population must be able to define their own social, cultural and economic development project and play a part in implementing this project within the existing institutional framework”. In addition, the Protocol refers to the excessive pressures on nature and the landscape and concludes that “some problems can be resolved only in a transfrontier context and require common measures

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<sup>5</sup> Riccardo PRIORE, “Presentation at a study day on the European Landscape Convention on 18 January 2001”, *Revue européenne de droit de l’environnement*, October 2003, p 255.

<sup>6</sup> The World Conservation Union (IUCN), *Management guidelines for IUCN category V protected areas – protected landscapes/seascapes*, September 2002.

<sup>7</sup> Recommendation No R (95) 9 on the integrated conservation of cultural landscape areas as part of landscape policies.

<sup>8</sup> European Conference of Ministers Responsible for the Cultural Heritage, Slovenia, 5-7 April 2001, Resolution No 1 on the role of cultural heritage and the challenge of globalisation – Resolution No2 on the Council of Europe’s future activities in the cultural heritage field, 2002-2005 – Declaration on the role of voluntary organisations in the field of cultural heritage – Final resolution.

<sup>9</sup> Recommendation (2002) 1 of the Committee of Ministers of the Council of Europe of 30 January 2002 to Member States on the Guiding principles for sustainable spatial development of the European Continent.

to be taken by the Alpine States”. To this end, Article 5 of the protocol is devoted to the participation of local and regional authorities “so as to promote solidarity within responsibility, and in particular to develop co-operation in the application of nature protection and landscape conservation policies and in the implementation of the measures that result from them”. In addition, in accordance with Article 21 on training and information “the Contracting Parties shall encourage basic and further training and inform the public on the objectives, measures and implementation of this protocol.”

Lastly, the Pan-European Conference on Agriculture and Biodiversity stresses the need to “involve relevant stakeholders, in particular farmers and consumers, in policy making” and “develop policies to integrate biodiversity and landscape concerns into agricultural policies, fully involving all relevant stakeholders, including local communities”<sup>10</sup>.

What, then, does this public participation involve and when should it take place? The answers to this question may be found in a parallel study of the Aarhus Convention. Indeed, the principle of public participation in landscape matters ties in with the Council of Europe’s desire to develop local citizenship and reinforce the practice of democracy<sup>11</sup>. In order to maintain democratic societies, greater emphasis has to be placed on the role of education in promoting the active participation of all citizens. Active and effective participation is fully in keeping with the spirit of the Aarhus Convention to which reference is made in the preamble to the Florence Convention. It is a pre-condition of sustainable development and good governance, as underlined by the International Law Association in its resolution on the principles of international law on sustainable development<sup>12</sup>.

## **II. The requirements of the Aarhus Convention with regard to public participation**

The Aarhus Convention of 25 June 1998 on access to information, public participation in decision-making and access to justice in environmental matters entered into force on 30 October 2001. By the end of 2003, it had been signed by 40 states and ratified by 18.

Articles 6 to 8 of the Convention identify three occasions for participation:

- participation in decisions on specific activities;
- participation concerning plans, programmes and policies;
- participation during the preparation of executive regulations and/or generally applicable legally binding regulatory instruments.

The European Landscape Convention clearly draws heavily on this convention, making express mention of it in its preamble. Consequently, in so far as the States parties to the Aarhus Convention are also parties to the Florence Convention, the aims of the first convention in the field of participation determine the participation requirements of the second. The Aarhus Convention does provide some details, in particular those relating to deadlines for information and the extent of participation. In particular, the Aarhus Convention gives a definition of “public”, according to which “all the provisions of the Convention concern the public as a whole, without discrimination as to citizenship, nationality or domicile and, in the case of a non-governmental organisation, without discrimination as to where it has its registered seat or an effective centre of its activities”. This definition of public can be applied to the Florence Convention for the purposes of clarification. In fact, not only does the European Landscape Convention not define the term “public”, but the wording of its Article 5c raises certain questions by referring to the participation “of the general public, local and regional authorities and other parties with an interest”. Should we consider that participation concerns

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<sup>10</sup> Council of Europe, Pan-European Conference on Agriculture and Biodiversity, Paris, 5-6-7 June 2002, Final Declaration on the conservation and sustainable use of biological and landscape diversity in the framework of agricultural policies and practices.

<sup>11</sup> Recommendation (2002)12 of the Committee of Ministers of the Council of Europe to Member States on education for democratic citizenship, adopted on 16 October 2002; Council of Europe, Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the participation of citizens in local public life.

<sup>12</sup> Resolution of the International Law Association, New Delhi, 6 April 2002.

the general public in the broad sense, or simply a public “with an interest”? On this point, the definition of the public contained in the Aarhus Convention removes any doubt, and it is clear that “with an interest” relates solely to the other parties. In the same way as the right to information, the right to participation must be accessible to the general public, without any need to justify any legally-identified interest.

In addition, according to the Aarhus Convention, the parties to the convention must:

- “respond to any request for environmental information as soon as possible and at the latest within one month after the request has been submitted.
- Ensure that the public authorities possess and update environmental information and that they are informed of activities, which may significantly affect the environment (...).
- Ensure that environmental information progressively becomes available in electronic databases, which are easily accessible to the public.
- Publish and disseminate a national report on the state of the environment, including information on the quality of the environment and information on pressures on the environment.
- Inform people of decisions taken on proposed activities of all kinds, which are likely to affect them.
- Provide for early public participation, when all options are open.
- Ensure that, when the final decision is taken on any proposed activity, the results of the public participation procedure are taken into consideration by the competent authorities.
- Promote effective public participation during the preparation of projects, programmes and legal provisions concerning the environment (...)<sup>13</sup>.

In this way, the Aarhus Convention gives greater substance to the Florence Convention by specifying:

- what is included in the term “public”,
- participation in policy-making,
- participation in landscape policy-making through either landscape plans or landscape-quality objectives.

Under Article 6 of the Aarhus Convention, participation procedures must give priority to:

- informing the public “either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner”;
- public participation early on in the procedure, that is to say when all options are open and the public can exercise genuine influence;
- the opportunity for the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity;
- that in the decision due account shall be taken of the outcome of the public participation.

Consequently, with regard to transposing these provisions to the implementation of the Florence Convention, “At least as regards the identification and assessment phase and the setting of landscape-quality objectives the view must be taken that participation needs special, detailed provision since the objective is to identify the *“aspirations of the public”* (Article 1c) and *“the particular values”* which interested parties and the population concerned assign to landscapes (Article 6c 1b). An ordinary consultation, such as a public enquiry, is liable to be inadequate to identify the public’s expectations and needs with sufficient accuracy. Appointing an expert or, as in Switzerland, an independent mediator responsible for gathering in opinions and taking the necessary time over it is a worthwhile idea. The Aarhus Convention does not impose any particular participation arrangements either but its lengthy Article 6 spells out the various methods of

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<sup>13</sup> W. SCHRAGE, “La Convention sur l’accès à l’information, la participation du public au processus décisionnel et l’accès à la justice en matière d’environnement”, pp 5 to 7, in *“La Convention d’Aarhus”, Revue juridique de l’environnement 1999, édition spéciale.*

ensuring greater participation in the interests of better decisions and more effective implementation of them”<sup>14</sup>.

The Aarhus Convention has already led to a review of some community law with a view to integrating public demands more effectively into the decision-making process, including Directive 2003/4/EC of 28 February 2003 on public access to environmental information<sup>15</sup>, Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment<sup>16</sup> and Directive 2003/35 of 26 May 2003 making provision for public participation<sup>17</sup>.

In addition, on 24 October 2003, the Commission approved three proposed texts on consequences to be drawn from the Aarhus Convention:

- a proposal for a Regulation on the application of the provisions of the Aarhus Convention to EC institutions and bodies<sup>18</sup>. It aims to ensure effective access to environmental information (state of the environment, nature and public policy), the dissemination of environmental information on the internet, the authorities’ response at the earliest opportunity (one month or, in exceptional circumstances, two) to requests from the public and ecological organisations, an increase in public participation in the decision-making process (communication by the authorities of final decisions and the outcome of the participation process), the opportunity for European NGOs to call for a review of decisions of EU institutions and bodies which they deem to be contrary to European environmental law (appeal to the ECJ is possible if their calls are rejected);
- a proposal for a Directive on access to justice in environmental matters<sup>19</sup> with a view to affording interested parties and their representative organisations the opportunity to challenge the actions or failures of national public authorities who infringe community law;
- a proposal that the European Union ratify the Aarhus Convention.

However, “national administrative culture, which is a reflection of law and traditions, is firmly anchored in people’s minds and in some countries will be difficult to change rapidly, so constituting a real obstacle to implementation of the Aarhus Convention”<sup>20</sup>. This warning also applies to implementation of the Landscape Convention, because participation procedures are not defined with equal force in all States parties.

### III. Applicable law regarding participation in certain European States

This issue was dealt with by analysing the results of a questionnaire distributed to university lawyers of some Member States of the Council of Europe<sup>21</sup> : Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy<sup>22</sup>, the Netherlands Spain, Sweden and Turkey<sup>23</sup>. As at 9 December 2003, of the eleven States studied,

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<sup>14</sup> Michel PRIEUR, “Landscape policies: contribution to the well-being of European citizens and to sustainable development - social, economic, cultural and ecological aspects”, Second Conference of the Contracting and Signatory States to the European Landscape Convention, Strasbourg, 10 October 2002, T-FLOR 2 (2002) 20.

<sup>15</sup> OJEC, No L 41 of 14 February 2003.

<sup>16</sup> OJEC, No L 197 of 21 July 2001.

<sup>17</sup> OJEC, No L 156 of 25 June 2003.

<sup>18</sup> Proposal for a Regulation presented by the Commission, Com(2003)0622 final.

<sup>19</sup> Proposal for a Directive presented by the Commission, Com(2003)0624 final.

<sup>20</sup> Michel PRIEUR, « *Information et participation du public en matière d’environnement, influence du droit international et communautaire* » in *La protection de l’environnement au cœur du système juridique international et du droit interne. Acteurs, valeurs et efficacité*, under the direction of Michel Pâques and Michaël Faure, proceedings of the colloquy of 19 and 20 October 2002, University of Liège, Bruylant, Brussels, 2003.

<sup>21</sup> See Appendices 1 and 2.

<sup>22</sup> José Luis BERMEJO LATRE, « *La pianificazione del Paesaggio* », University of Study of Bologna, Maggioli Editore, 2002, 343 p.

<sup>23</sup> Ibrahim O KABOGLU, « *Le droit au paysage en droit turc* », *Revue européenne de droit de l’environnement*, No 3, October 2003, p. 321.

only Germany, Austria and the Netherlands had not signed the Convention. Two States had effectively ratified it: Ireland and Turkey.

The headings were chosen to reveal diversity in the implementation of the requirements set out in Articles 5c and 6d of the Florence Convention.

#### **A. The public affected by the definition and/or implementation of landscape policies**

This section was drawn up based on replies to questions II-1, I-1, I-3, III-1, IV-1.

##### **1. The principle of participation in landscape matters**

There is rarely a legally-binding general principle of participation.

In Finland, the Constitution (2000, paragraph20) states that everyone is responsible for the environment, biological diversity and the cultural heritage. A report has been drawn up for the Environment Ministry to assess the need for legislative reform in connection with the Florence Convention.

In Italy, a co-operation Agreement between the government and the regions on the exercise of power in landscape matters (given that the regions have responsibility for landscape planning) was signed on 19 April 2001 by the Ministry of Cultural Property and Activities and the Italian regions in the context of the Standing Conference of the Government and the Regions (a body in which co-operation takes place between the two principle levels of government in Italy). This is the first instrument to “follow up” the Convention. It makes provision, “awaiting ratification of the European Landscape Convention” (preamble), for guidelines for the exercise of powers in landscape matters “in conformity with the Convention”. The Agreement was published in Official Journal (*Gazzetta ufficiale*) No 114 of 18.5.2001 (to be referred to hereafter as agreement-2001).

Article 6 of agreement-2001 provides that “in landscape planning procedures, it is necessary to secure institutional co-operation and the widest participation of the public concerned and the associations that protect general interests”. It is, of course, a guideline of principle on which regional landscape planning policies in the future should be based.

In the absence of a general principle, participation does appear in some specific provisions.

This is the case in Austria, where participation in the context of administrative procedures is provided for by the law on general administrative procedure, the law on environmental impact studies and certain regional laws on nature conservation.

Article 105 a) of the Spanish Constitution (1978) leaves it to the law to regulate “consultation with citizens, directly or through organisations or associations recognised by law, in the process of drawing up the administrative provisions which affect them”. In fact, parliament introduced provisions for participation in relation to the landscape in the Nature Protection Act of 27 March 1989 and in the Land Act of 13 April 1998.

In France, Article L 110-1 of the *Code de l'environnement* (Environment Code), amended by Section 132 of the *loi démocratie de proximité* (Law on Local Democracy) of 27 February 2002, establishes a general principle of participation, whereby everyone must have access to information relating to the environment, including information on dangerous substances and activities and the public is to be involved in the process of defining projects which substantially affect the environment.

In Ireland, sections 9 to 13 and sections 34, 37, 50, 51 and 204 of the 2000 Planning and Development Act provide that anyone may participate in defining landscape protection objectives and in designating landscape

protection areas in the context of development programmes. The 2000 Wildlife Act also refers to this principle.

Similarly, in Italy, by virtue of Section 9 of Law No241 of 1990, the principle of intervention is merely procedural (“Anyone who has a public or private interest, or general interests as member of an association or committee, which may be prejudiced by the provision, is entitled to be involved in the procedure”). However, in planning law, Section 9 of Law No1150 of 1942 states that the draft land-use plan should be filed with the municipality for 30 days and made available to the public. The law does not explain whether individuals are able to submit comments but, in practice, this right is recognised for the owners of residential buildings. Likewise, trade union associations, public bodies and interested institutions may submit their comments on the draft plan within 30 days.

In addition, as Belgium has pointed out, the States Parties to the Aarhus Convention have to make provision for participation mechanisms as stipulated in the Convention. The European Community has already signed the Convention and enacted related Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, and Directive 2003/35/EC of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment, and amending, with regard to public participation and access to justice, Directives 85/337/EEC and 96/61EC.

The entry into force of the Florence Convention on 1 March 2004 should result in the modification of participation arrangements, in order to take account of landscape concerns.

On this point, Turkey is an exception, having ratified the Florence Convention but not the Aarhus Convention. Consequently, the articles of the Florence Convention are directly applicable, obliging the authorities to draw up the necessary implementing regulations. In particular, appropriate procedures will be needed in relation to public participation as referred to in Article 5c of the Convention and consultation in the context of defining landscape-quality objectives.

## **2. Those entitled to participate**

As the law stands, there is some public participation in landscape matters in all of the countries consulted. However, the concept of public is not interpreted in the same way in all countries. Overall, two types of state can be identified:

a) those where the term public means individuals: this is the case in Austria, France, Finland, Germany, Italy, the Netherlands and Sweden.

In Germany, when no formal participation has been provided for, farmers or similar associations are consulted.

In Austria, on the other hand, as a rule comments made by the public are taken into account when they are expressed in a formal context.

In France, numerous procedures make provision for involving individuals without their having to justify an interest, or in their capacity as inhabitants of the municipality in which the project is planned, or as owners, or taking account of professional qualifications. Associations are an essential intermediary, since they have additional rights, such as the right to receive administrative documents.

In Finland, regional planning law is based on the concept of public participation and interaction (1 paragraph). For instance, with planning procedures (62, 63, 65, 66, 67 paragraph), everyone is entitled to be informed and to express an opinion. The administrative authorities have a duty to respond to the opinions expressed. Members of the municipality and concerned legal persons can appeal against decisions taken.

In other legal systems, for example in the law on nature protection, the rules of the law on administrative procedure (434/2003) apply, and make provision for the participation of the public concerned. Environmental associations have a right of appeal (61 paragraph).

Italy draws a distinction between individuals, those who have a subjective right (for example owners of land or of the residential building concerned) and those who have a legitimate procedural interest recognised by the authorities. In addition, specifically in relation to public participation in landscape matters, regional legislation makes provision for different forms of participation (the opportunity to make written comments, the organisation of “planning lectures”), which involve different publics (sometimes only local authorities and professionals, sometimes the public, without specifying whether this is the public directly affected).

In Sweden, public participation is considerable, in particular in the context of the local administration of the Swedish Nature Conservation authority.

b) those for whom the public concerned means central, regional and local authorities, NGOs and professionals: this is the case in Austria, Belgium, Greece, Ireland, Spain and Turkey.

In Belgium, the participation procedure provided for in the context of a river agreement involves interested riverside residents, users and associations.

In Spain, landscape protection is dealt with through natural resources development plans. These are drawn up by the regions, which have to comply with a principle of public information and consultation of social interests (business associations, workers’ unions), of institutional interests (professional associations, chambers of commerce), and of environmental conservation associations identified to the regional authorities.

In Greece, individuals simply have the right to petition and forward requests to political parties and members of parliament.

In Ireland, those most directly and personally affected may play a part in designating Natural Heritage Areas (NHAs) in so far as the designation of such an area has the effect of imposing immediate restrictions and affects owners in particular.

The Heritage Council is closely involved in the development of landscape policy. It has scientific reporting responsibilities. It consults all interested parties.

In Turkey, a legislative decree of 1991 on the creation of the Ministry of the Environment encourages the participation of voluntary groups, ie, principally associations and foundations, including any authorised for environmental protection. With regard to local and regional authorities, the village, or rather the municipal council that represents it, may participate and request landscape considerations to be taken into account. Residents of villages and farmers may participate in informal procedures.

In general terms, it should be borne in mind that the term “public concerned” rarely takes account of professionals such as urban and landscape planners in formal participation procedures. Belgium is the only country to mention them as professionals.

### **3. Opening up to the public of structures with responsibility for landscape policy**

This should apply equally to local and regional authorities, the public and professionals. In reality, however, two different situations arise.

Access may be unrestricted, as in the Netherlands. In Ireland, public access is the result of what happens in practice. In particular, the organisation of public consultation is at the discretion of the public authorities.

Alternatively, access is essentially concentrated on the local and regional authorities and associations. This is the case in Germany, where regional and local authorities have considerable access, but the public less. With regard to associations, most States have established consultative councils at central or regional level with representatives whose responsibility is to defend nature protection. These councils must be consulted on measures concerning exceptional landscapes.

In Belgium, the *Conseil wallon de l'environnement et du développement durable* (CWEDD) (Walloon Environment and Sustainable Development Council) involves itself in projects for which impact studies have been carried out and may comment on the landscape-related aspects. The composition of the CWEDD includes members of the different committees, representatives of the *Union wallonne des Entreprises* (UWE) (Walloon Union of Businesses), agricultural professional organisations, trade union organisations, organisations representing small businesses, environmental protection associations, associations of consumer representatives, the *Union des villes et communes wallonnes* (Union of Walloon Towns and Municipalities) and French-speaking universities.

Similarly, in Greece, there is no binding legal framework for these institutions or structure other than at national level; there are simply a few administrative departments, which, together with public agencies and local authorities, are open principally to professionals and to associations.

In France, a *Conseil national du paysage* (National Landscape Council) was set up by a decree of 8 December 2000 to reinforce the government's capacity to lay down principles and guidelines for a coherent public landscape policy. The members of the council were appointed by a decree of the *Ministre de l'Aménagement du territoire et de l'environnement* (Minister for Regional Planning and the Environment) of 18 May 2001. The Council is made up of individuals with acknowledged competence in the field of landscape, whose remit it is to represent "local communities, civil society, Government departments". It meets at least once a year, or whenever one of its members requests the minister to call such a meeting. It is a consultative and debating body which must submit a report each year to the minister with responsibility for landscape on changes in the landscape, draw up a statement regarding the implementation of landscape law and propose any measures likely to improve the landscape situation. It can be consulted on draft laws and regulations, which have an impact on the landscape.

In Finland, the State is responsible for safeguarding the specific value of the landscape. The government sets planning objectives (paragraph 22), with which authorities at national and municipal level must comply.

In Italy, the State and the regions have joint powers to co-operate on regional planning, the optimisation of cultural and environmental property and promoting the organisation of cultural activities. This sharing of powers is a result of the reform of Title V of the Constitution (constitutional law No 3/2001), which amended Article 117 of the Constitution. New Article 118 provides for the introduction of the principle of subsidiarity, with extensive devolution of administrative and management functions, to the particular advantage of the municipalities, but also the provinces and regions, which as a result participate automatically in the formulation of landscape policy.

As a rule, it is the Directorate General for Architectural Property, which is responsible for defining the general criteria in landscape policy, whereas landscape planning is the responsibility of the regions. To this end, the Ministry has made provision for the creation of a national observatory for landscape-quality: this is a technical and consultative body, which co-ordinates the regional observatory correspondents. The national observatory was established by agreement-2001. Article 1.2 of this agreement, which was concluded to implement the European Landscape Convention, states that "landscape planning [referred to] in Article 149 of the code of 1999 will be implemented as determined herein". Consequently, the rules currently in force must be adapted to the principle laid down in the Florence Convention. To guarantee better co-ordination, provision was made for "guidelines for landscape protection" to be issued by central government, but these have not yet been drawn up.

Regional legislation normally involves minor territorial authorities (provinces, municipalities, etc.) in drawing up landscape plans. Under Article 57 of Decree 112/1998, a province may adopt a provincial co-ordination plan, although this has no binding force and does not constitute a town planning plan.

In Sweden, certain areas are areas of national interest for nature conservation within the meaning of chapter 3, section 6 of the Environment Code (SFS 1998: 808). The term “nature conservation” includes landscape protection. These areas are especially well protected against operations with a high impact on nature. The legislation does not identify the areas geographically, but the Swedish environmental protection agency (SEPA), pursuant to section 2 of the regulation on the protection of terrestrial and aquatic areas (SFS 1998: 896), assesses and selects areas of national interest for nature conservation. County councils are informed of the SEPA’s decisions. These decisions have no legal standing, but are taken into account in practice by the courts and authorities with responsibility for planning when such areas affect individual projects.

In terms of procedure, before submitting information to county councils, SEPA consults the national housing, building and planning council and the county councils concerned. In practice, the county councils play a vital role by providing SEPA with essential information. Municipal councils regularly consult their municipalities on this subject (although this is not required by law).

In addition, documents on landscape protection are occasionally produced by regional and municipal councils, which have no connection with legislation on the environment or town planning. The procedure is not regulated by law. There are several possibilities with regard to participation procedures and persons consulted.

In Turkey, town councils have been set up in line with Agenda 21. These councils have many members, the majority of whom are representatives of civil society. Town councils can play a role in implementing the Florence Convention.

It is worth mentioning at this point that the replies received reveal that no distinction is made between institutions with responsibility for formulating landscape policy and those responsible for implementing it. Public participation in these two stages is not clearly distinguished.

## **B. Public policy affected by participation procedures in landscape matters**

The replies to questions II-6 and II-7 form the basis of this section.

For two states –the Netherlands and Sweden – in principle, all public policies can be subject to participation procedures in relation to the landscape in so far as landscape protection constitutes an element of planning. In Sweden, in particular, a governmental commission studies the changes that will have to be made to Swedish legislation as a result of the Aarhus Convention. This may mean extending public participation rights, by including environmental associations.

In France, landscape is already taken into account to a considerable extent, not only by legislative and regulatory provisions, but also by administrative case-law. The law of 8 January 1993 on landscape protection and enhancement establishes taking landscape considerations into account as public policy. Overall, the landscape is part of public policy on the environment. More specifically, it is the subject of a large number of legal provisions relating to the environment, town planning and regional planning.

In Ireland, an effort is made to co-ordinate all sectoral policies, pursuant to the 2000 Planning and Development Act.

In more general terms, the public policies most often cited as being subject to participation procedures in landscape matters are environment policies and, more specifically, policies relating to nature conservation, regional planning, town planning and heritage protection.

Policies on tourism, agriculture, transport and culture are occasionally mentioned as policies, which make little provision for participation procedures.

Occasionally, landscape interests are taken into account in these policies in an indirect manner.

In town planning and regional planning matters in Germany, for instance, programmes and plans relating to landscape have to be taken into account (but not necessarily complied with) by the competent authorities. Consequently, landscape protection is taken into account above all as a result of the public interest and the political weight associated with the participation of associations, as permitted by the law on regional planning (open to all) and the law on infrastructure planning (limited to associations).

Likewise, in Belgium, agriculture and forestry policies are affected in that agricultural projects for which environmental or town planning permits are required have to undergo impact assessments.

Finland has no specific legislation for landscape protection, but landscape values are included in the different laws, such as the law on planning and construction (132/1999), one of the aims of which is to protect the landscape and environmental values (paragraphs 5, 22 and 24 of the law).

Similarly, the law on nature protection (1096/1996) applies to landscape areas, the law on mining (555/1981) contains rules on respecting landscape values which prohibit mining if it has a high impact on the landscape (paragraph 3); the law on the protection of the built environment (60/1985) applies not only to buildings, but also to the landscapes of which they form part. This type of environment may be protected by an individual decision of the regional environment centre. The instrument is complementary to regional planning.

### **C. Participation procedures specific to implementation of the requirements of Article 5c**

For a more detailed presentation of the replies received, refer to questions II-2, II-3, III-2, III-3, IV-2 and IV-3 in the questionnaire reproduced in the appendix.

#### **1. The absence of instruments specific to landscape matters**

The first thing to note is that there are no instruments specific to landscape policy. Germany highlights plans and programmes relating to the landscape, but they have their limitations in terms of having to tie in with other plans and programmes.

In Finland, the law on nature protection (1096/1996) created a new instrument “a landscape area”. This can be formed taking account of landscape qualities, historical and cultural features, etc. (paragraph 34). However, the protective provisions associated with it must not give rise to excessive restrictions for owners.

In France, Article L.110-1-I of the Environment Code explicitly includes “natural areas, resources and environments, sites and landscapes” within the “common national heritage”. Under II, which lists the cardinal principles of environment law, it includes “landscapes” as one of the elements “the protection, enhancement, restoration, rehabilitation and management of which are in the general interest and contribute to the aim of sustainable development”.

Article L.350-1 of the Environment Code, which is the sole article in a section devoted to landscapes, concerns instructions for the protection and enhancement of landscapes. Created by the “landscape” law of 1993, such instructions are drawn up by the State, on its own initiative or at the request of local authorities. They concern areas which are outstanding in terms of their landscape interest, but which have not yet been designated as such. In fact, since 1995, four instructions have been studied. One of these has been abandoned (*Côtes de la Meuse et Petite Woëvre* (order of 5 May 1995); the three others (*Alpilles* (order of

23 January 1995), *Vues sur la Cathédrale de Chartres* (order of 26 May 1997), *Mont Salève* (order of 3 April 1998)) are at the final consultation stage.

The decision to look into the feasibility of producing an instruction, taken by the *Ministère de l'environnement* (Environment Ministry), stipulates the consultation arrangements to be adhered to during the drafting process; ultimately, the instruction on the protection and enhancement of landscapes is approved by a decree of the *Conseil d'Etat*, without a public enquiry. It will then be effective against town planning documents and, in certain circumstances, against applications for permits for the clearance, occupation and use of land. In spite of the fact that no public enquiry takes place, public information and consultation are, nevertheless, guaranteed because of the formal presentation of the instruction. In fact, this consists of a presentation report, which analyses the initial state, sets out the objectives and establishes the content of the guidelines and fundamental principles for the protection and enhancement of “the characteristic elements constituting the structure of a landscape”. This is the document that contains the substantive provisions. It includes drawings, which show the perimeter, the different zones and other useful information. It may, optionally, be accompanied by a set of recommendations. Not only do the three instructions currently in preparation contain “a set of recommendations, a recognised example of soft law, to provide guidance”, but also the presentation report “has no less an aim than to have a further civilising influence on legal provisions in the context of the relationship between the authorities and the public, setting out for the public the inspiration and aims of the legal instrument. In this respect, the instruction on the protection and enhancement of the landscape is in complete harmony with the passage contained in the explanatory report to the Florence Convention, which states that “it is essential to make clear to the public what objectives are being pursued”<sup>24</sup>.

Italy also indicates the existence of landscape plans since 1939. However, the landscape is protected in that existing planning instruments and permits involve a procedure to take account of the landscape issue.

In the main, instruments are not, therefore, specific.

In France and in environment law in particular, all special arrangements for the protection of open spaces and nature also aim, among other things, to protect the landscape (directly or indirectly). This is the case with national parks, nature reserves, orders concerning habitats, protection forests and registration or classification measures contained in the law of 2 May 1930 on nature reserves and sites. For instance, in national parks, nature reserves and classified sites, electricity and telephone networks must be installed under the ground (Articles L.331-5, L.332-15 and L.334-11 of the Environment Code).

Under town planning law, a large number of supra-municipal provisions ensure that the landscape is taken into account. For example, Article L.110 of the *Code de l'urbanisme* (Town Planning Code) sets out, in particular, to “guarantee the protection of the natural environment and landscapes”. Similarly, some of the public utility easements listed in Article L.126-1 of the Town Planning Code apply to conservation of the natural and cultural heritage. The national regulations governing town planning referred to in Articles R.111-1 et seq of the Town Planning Code also apply to elements of the landscape (Article R.111-3-2: protection of archaeological sites and remains; Article R.111-14-2: prevention of harm to the environment; Article R.111-21: prevention of threats to the nature or interest of the area surrounding natural or urban landscapes or sites and on the conservation of monumental views).

Finally, in addition to provisions specific to the protection of mountains, the coastline and the town approaches<sup>25</sup>, *directives territoriales d'aménagement* (DTA) (territorial planning instructions), drawn up at the initiative of government or at the request of a region, determine, among other things “fundamental state

<sup>24</sup> CIDCE, CRIDEAU (CNRS-INRA) – University of Limoges, « *Etude d'impact sur le projet de loi autorisant la ratification de la Convention européenne du paysage* », *Commande du Ministère de l'Ecologie et du Développement Durable, Direction de la Nature et des Paysages, sous-Direction des Sites et Paysages*, December 2002, 141 p., in particular pp. 90-91.

<sup>25</sup> These provisions are set out in E, which is dedicated to participation procedures specific to a particular landscape or region.

guidelines on matters relating to planning and balancing the interests of development, protection and enhancement of land”. These “fundamental guidelines” call for the definition of the “principal objectives of the State in matters relating to [...] the conservation of open spaces, sites and landscapes”. No DTA procedure has yet been concluded.

The substance of the different supra-municipal provisions must be complied with by local authorities when town planning documents are being drawn up.

In Sweden, landscape policy is set out in a planning document referred to in chapter 4 (section 1) of the law on planning and construction (SFS 1987: 10). The plan sets out projected measures to be taken in terms of land and water use and conservation, including landscape policies, over the whole of the municipality’s territory.

In Ireland, too, the authority with responsibility for town planning has the power, within its area of competence, to designate any area as one to be protected in the interests of landscape conservation.

## **2. The failure to distinguish between the framing and implementation of landscape policy in relation to participation procedures**

As the law stands at present, no real distinction is made between the framing of landscape policy and its implementation in relation to participation procedures.

Some states (Belgium, Italy) make a distinction, considering that the formulation of landscape policy is effected by plans and drawings, whereas the implementation of landscape policy is effected by permits and authorisations, and by the creation of protected areas.

Consequently, where definition is concerned,

– in Belgium, a series of participation mechanisms has been provided for during the definition and (where appropriate) assessment of the impact of the principle tools used in environmental and regional planning matters, which may include landscape protection objectives.

Apart from supraregional strategic documents *Schéma de développement de l’espace communautaire* (European Spatial Development Perspective) and the *Deuxième Esquisse de Structure – Benelux* (Second Structural Outline - Benelux), the main regional planning tools are, in regional planning, the *Schéma de développement de l’espace régional* (Regional Spatial Development Perspective) – referred to hereafter as SDER<sup>26</sup>- and, in environmental matters, the *Plan d’environnement pour le développement durable* (Environment Plan for sustainable development) – hereafter PEDD<sup>27</sup>.

In addition, Wallonia is covered by “sector plans” (Articles 21 to 46 of the *Code wallon de l’aménagement du territoire, de l’urbanisme et du patrimoine* (CWATUP) (Walloon Code on Regional Planning, Town Planning and the Heritage), which are the main regional planning plans in the Walloon region. The plans are divided into areas according to land use, such as agricultural areas and forest areas, which *contribute to the conservation or formation of the landscape* (Articles 35 and 36 CWATUP). The green belt *contributes to the formation of the landscape or constitutes an appropriate green transition between areas, which are incompatible with one another* (Article 37.2 CWATUP), while *parkland is green belt which is managed to provide a pleasing landscape* (Article 39.1). Sector plans may also include areas of outstanding natural beauty or of landscape interest (Article 40. 1 and 3 CWATUP).

At local level, outlines and plans refer to certain other plans drawn up at a higher level (SDER at regional level, sector plans). In addition, with regard to landscape and management of the environment, the municipal

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<sup>26</sup> Order of the Walloon Government of 27 May (*Moniteur Belge* (M.B.) of 21/09/1995).

<sup>27</sup> Order of the Walloon Government of 9 March 1995 (M.B. of 21/04/1995).

environment and nature development plan (PCEDN) is one of the municipalities' sustainable development planning tools, while the municipal rural development plan is an operational planning instrument.

– in France, town planning documents amended by the *Loi solidarité et renouvellement urbain* (SRU) (Law on solidarity and Urban Renewal) of 13 December 2000 contain provisions which apply explicitly to the landscape or incidentally contribute to its protection<sup>28</sup>.

This is the case, for example, of the *Schéma de cohérence territoriale* (Land coherence outline Plan (Article L.122-1 of the Town Planning Code). This inter-municipal planning instrument covers both landscape protection and the enhancement of town approaches. It has a considerable influence on most other types of planning.

Similarly, at municipal level, the *plan local d'urbanisme* (local urban development plan) must consist of “*projet d'aménagement et de développement durable* (planning and sustainable development plan)” (PADD, Article L.123-1 of the Town Planning Code) and a regulation. The PADD may deal with town approaches and “landscapes” (same article, sub-paragraph 2), whereas the regulation may relate to landscape protection under 4 (“architectural quality” and “harmonious insertion of buildings into the environment”), under 5 (“planning or architectural reasons”) and under 7 (“identify and locate landscape elements and determine the districts, blocks, residential buildings, public spaces, monuments, sites and sectors to be protected and enhanced or to be reclassified on cultural, historical or ecological grounds and define, where appropriate, the steps to be taken to ensure their protection”).

With regard to environmental planning, the *Schéma départemental des carrières* (département quarrying outline plan) has to “take account of (...) the protection of vulnerable landscapes, sites and environments”, and set “the objectives to be achieved for the restoration and restructuring of sites” (Article L.515-3 of the Environment Code).

Regional natural parks “constitute an ideal framework for public authority action aimed at preserving the landscape and the natural and cultural heritage (Article L.333-1 C. env.), and their charter (subject to public enquiry since the SRU law) must be accompanied by a document setting out the fundamental guidelines and principles for protecting landscape structures in the park” (same article). It should be pointed out that, according to Article L.333-1.4 of the Environment Code “planning documents must be compatible with the guidelines and measures contained in the charter”.

Lastly, in the context of “*pays*”, a new territorial unit in rural areas, the final sub-paragraph of Section 25 of the law of 25 June 1999 stipulates that “when the “*pays*” charter prioritises preserving and reclassifying the natural, landscape and cultural heritage (...)” whereas territories are subjected to considerable town planning pressure and are not covered by a land coherence outline plan (SRU law, 2000), local town planning plans and *cartes communales* (municipal maps) (and documents which replace them) “must be compatible with the fundamental guidelines of the “*pays*” charter with regard to spatial organisation”. In the event of subsequent definition of an outline land coherence plan, the “*pays*” charter forms part of what has to be notified to the Prefect, and the planning document under preparation has to “take account” of it.

– in Italy, the Code on Cultural and Environmental Property of 1999 (in Italian “*testo unico*” No 490/1999, an “established law” code approved by legislative decree) deals with the different provisions on landscape plans in Articles 149-150.

There are two types of plan:

a) landscape plans in the narrow sense, which are not really town planning plans, but have major consequences for town planning plans because they must comply with landscape plans;

<sup>28</sup> Gérard MONEDIAIRE, « *La prise en compte du paysage dans les instruments de planification en droit français* », *Revue européenne de droit de l'environnement*, No 3, 2003, p. 278 et seq.

b) territorial plans which have landscape protection objectives, and which are genuine town planning plans (their scope is regional or infraregional).

Some elements of the landscape may be managed by sectoral plans, such as:

- Natural parks plans, for which provision is made by law 394/1991;
- Development of mountain communities plans, provided for by Section 6 of law 1102/1971 (several times amended).

With regard to implementation, the landscape protection instruments used in Belgium are regional planning regulations – in particular the *Règlement général sur les bâtisses en site rural* (RGBSR) (General Regulation on Building in rural Areas) –, municipal planning regulations, building permits and allotment permits, classification procedures, natural parks and active restructuring operations (regrouping rural land as permitted by law, urban renewal, revitalisation of residential areas, renewal of disused industrial sites, enhancement of the exterior of residential buildings).

Environmental impact assessments provide an opportunity to carry out a systematic study of the consequences of any project for the landscape, as a pre-emptive measure. All applications for permits<sup>29</sup> include either a notice of environmental impact or an environmental impact assessment (Article 7 of the decree of 11 September 1985; see below).

In France, with regard to the implementation of landscape policy, there are various planning permits which allow for the control of activities likely to affect the landscape: building permit, allotment permit, demolition permit, permits for camping, caravans, mobile holiday homes and permits relating to ski lifts and ski facilities. In addition, town-planning law includes a set of administrative controls in the form of prior notices, in particular notice of construction work and notice of enclosure.

For the building permit, which is the most common type of permit, apart from the fact that the applicant needs to submit architect's plans (Article L.421.2.2 and 3 of the Town Planning Code), the permit application must include a dossier which must contain a landscape element (Article R.421.2 of the Town Planning Code): plans, cross-sections, elevations, drawings, a landscape notice and an impact study, where one is required.

The obligation to take account of the landscape is reinforced by the obligation to use the services of an architect (Article L.421.2 of the Town Planning Code). However, this provision does make some exceptions, which have the effect of reducing its scope (Article R.421.2, B and C as to the contents of the dossier, Article R.421.1.2 as to the use of an architect's services)<sup>30</sup>.

For allotment permits, the SRU law has added a sub-paragraph to Article L.315-1-1 of the Town Planning Code, according to which “applications for allotment permits shall specify the overall landscape and architectural features of the planned residential development ...”.

In another example, Article L.442-2 of the Town Planning Code (introduced by the law on “landscapes” of 1993) lays down an obligation to obtain a permit in respect of “miscellaneous installations and works”

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<sup>29</sup> According to Article 1.4 of the decree of 11 September 1985, permit means:

- permits granted by virtue of the decree of 11 March 1999 on the environment permit;
- permits granted by virtue of Articles 84, 89 and 127 of the Walloon Code on Regional and Town Planning and the Heritage;
- permits for the development of refuse sites issued by virtue of the decree of 9 May 1985 on the development of refuse sites and administrative decisions, listed by the Government, in implementation of laws, decrees and regulations on the implementation or giving permission for the implementation of all or part of a project.

<sup>30</sup> Bernard DROBENKO, « *Le volet paysager du permis de construire* », *Revue européenne de droit de l'environnement* No 3, 2003, p. 301.

when a project which does not require a permit is likely to “destroy an element of the landscape identified by a local town planning plan”.

Under environment law, numerous activities are also subject to prior administrative checks. These include: classified buildings, quarries, nuclear activities, genetically modified organisms, water and advertising. One of the characteristics of environment law is to employ the principle of prevention by imposing the obligation to carry out a preliminary study (impact study, notice of impact). The landscape is referred to expressly in two fundamental texts governing impact studies: the decree of 12 October 1977 on the protection of nature in general and the decree of 21 September 1977 on classified buildings.

### **3. Forms of participation**

The third thing to note is that there are no specific procedures for participation in landscape policy matters. For instance, the principle conditions of participation are to be found in other policies, namely:

- public consultation to define the content of the impact study for projects where such a study is required: in Belgium, all applications for permits include either a notice of environmental impact or an environmental impact assessment (Article 7 of the decree of 11 September 1985).

For projects where an impact study is required, there is a public consultation phase before the application for a permit is made. The purpose of this phase is, above all, to identify the elements to be dealt with in the impact study and to present alternatives that the project initiator might reasonably envisage in the impact study (Article 12 of the decree of 11 September 1985). Prior public consultation is organised pursuant to chapter IV of the order of the Walloon Government of 4 July 2002 organising environmental impact assessments in the Walloon region. In addition, applications for permits, which require an impact study, are also subject to a public enquiry.

- an impact study, which must be communicated to the public. In France in particular, the impact study procedure, which must precede certain types of construction work, constitutes an important instrument for informing decision-makers and the public about the impact of a particular activity on the landscape. The study must, above all, analyse the direct and indirect, short-term and permanent effects of the project on sites and landscapes.

- a public enquiry procedure affording the opportunity to comment in writing on projected plans and schemes in relation to the landscape: Austria, Belgium, France, Germany, Ireland, Italy, the Netherlands, Spain, Sweden, Turkey.

In Spain, for example, in accordance with legislation on natural resource management plans, publication of the decision to open a public enquiry invites the public to study the draft plan at a public location specifically reserved for that purpose and allows them at least twenty days in which to submit any comments. Associations specifically consulted receive the draft plan and have 10 days in which to make comments.

In Italy, where natural parks are concerned, the parks plan is forwarded after its adoption to municipalities and mountain communities as well as to the regions concerned. Over a period of 40 days anyone may consult it and make copies in the regions, municipalities and mountain communities; over a subsequent 40-day period, anyone may submit comments in writing, and the park authorities are obliged to react;

- the opportunity to comment on projects during discussions at consultative meetings on nature protection and the contents of the landscape plan: Germany, Italy, the Netherlands, Sweden.

- consultation of the central authorities prior to the designation of a natural heritage protection area, the aim of which may be to protect the landscape. This concerns Ireland where, in accordance with the Wildlife Act of 2000, before publishing notification of a new natural heritage area, the Minister consults the Minister for Agriculture, Food and Rural Development, the Minister for the Environment and Local

Government, the Minister of Public Works, the Minister for Marine and Natural Resources and any other ministries whose consultation the circumstances appear to justify, as well as all authorities with responsibility for planning in the area.

- consultation of the municipalities concerned on the contents of the landscape plan drawn up at regional level: Italy, Sweden;
- consultation of bodies and persons qualified in measures in favour of landscapes in planning or town planning plans and schemes.

This is the case in Belgium, with consultation of the *Commission régionale de l'aménagement* (Regional Planning Commission), *Commission communale d'aménagement du territoire* (Municipal Spatial Planning Commission), and so on.

In France, application may be made to a *Commission nationale du débat public* (national commission for public debate) to organise a debate on planning or amenities projects of national interest to be undertaken by the state, local and regional authorities, public bodies and private individuals falling within the categories of investment operations and projects referred to in Article 1 of the decree of 22 October 2002. Similarly, referral to the national commission may be made for the organisation of a public debate on general environmental or planning options in application of Article L. 121-10 of the Environment Code<sup>31</sup>.

Referral is a matter for the developer or, where the latter is not identified, for the public corporation responsible for a project, for certain public authorities or even for the commission itself.

The developer or, in his absence, the public corporation responsible for the project, must then submit a dossier to the president of the commission for the purposes of the debate, to be available to the public. In addition, the record and outcome of the public debate are made available to the commissioner appointed to hold the enquiry or to the commission of enquiry by the developer and are appended to the public enquiry dossier.

Similarly, in Ireland where, before designating a landscape conservation area in its development plan, the competent local authority has to consult the central authorities concerned and notify councils and other authorities which, in the view of the planning authority, have an interest in notification, of the new designation.

- consultation of certain bodies (*Commission de gestion de parc naturel* (natural park management commission)) prior to undertaking specific major works which require a planning permit (assent) and for all permits relating to town planning, allotment and the environment and other single permits (notification): Belgium.
- organisation of procedures for collaboration between decentralised authorities (regions, municipalities) with responsibility for drawing up landscape plans and the associated bureaux with responsibility for landscape policy (Ministry for Cultural and Environmental Heritage): Italy.
- right of associations to use the services of an expert: Germany.
- public referral or initiative of a public directly concerned to set certain procedures in motion.

For instance, in Belgium, the government may decide to instigate an enquiry into the advisability of regrouping property, which it has provisionally delimited. The decision is taken either automatically, or at

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<sup>31</sup> Decree n° 2002-1275 of 22 October 2002 on the organisation of a public debate and the *Commission nationale du débat public*, OJ of 23 October 2002.

the request of at least twenty interested operators or owners (Section 4 of the law of 22 July 1970 on the regrouping of rural land by law). In addition, “public referral” to the regional government may set in motion the classification procedure to classify a site on the grounds of the beauty of its landscape (Article 196 to 204 of CWATUP). A public enquiry is then organised.

- powers for authorised associations to take legal action, giving the public authority to monitor the implementation of environmental and landscape policies: Italy.
- organisation of a local referendum. In Turkey, this is possible for matters associated with urban planning and, consequently, the landscape. However, it is a completely informal procedure. In France, a consultative referendum may be organised by the local authorities on matters for which the municipality is responsible. In particular, Section 6 of constitutional law No 2003-276 of 28 March 2003<sup>32</sup> amends Article 72 of the Constitution, which deals with local and regional authorities. It gives such authorities (regions, provinces, municipalities) the opportunity to organise a decision-making referendum on issues that fall within their competence. In particular, as the regions are responsible for drawing up the regional landscape inventory, they could organise a referendum on a landscape issue.
- the citizens’ right to petition. In Turkey, this right of petition is recognised in Article 74 of the Constitution in relation to personal or public matters. It consists of a written application or complaint and enables the petitioner to obtain information or appeal on a particular point. The reply is received within 15 days for personal matters, but there is no time limit for public matters. In France, the constitutional law of 28 March 2003 states that “the electors of each territorial authority may, by exercising their right of petition, request the inclusion on the agenda of the deliberative assembly of that authority of an issue that falls within its competence”. The legislature must specify the conditions.

#### **D. Participation procedures specific to the definition of landscape-quality objectives (Article 6d)**

This section is based on the replies to questions I-2, II-4, II-5, III-4, III-5, III-6 and III-7.

There are no internal provisions worth mentioning in any of the states consulted, which are specific to the definition of landscape-quality objectives.

Clearly, the public, which has an interest in the formulation and/or the implementation of landscape policies, is the same public, which has an interest in the definition of landscape-quality objectives. Similarly, the institutions responsible for the formalisation of landscape-quality objectives are, as a rule, the same institutions, which are responsible for formulating landscape policies.

When further details are provided, these identify the regions as having such competence.

For instance, in Greece, there are no institutions with specific responsibility for formalisation of the landscape, mainly due to a lack of resources. However, the Environment Minister has taken some sporadic initiatives, but the government is increasingly encouraging a transfer of powers and responsibilities to local and regional authorities.

For the time being, the structures responsible for defining landscape-quality objectives are those of the national centre for sustainable development and the Ministry for the Environment, Public Works and Regional Planning. There are indications that these structures may be opened up to local and regional authorities.

Likewise, in Italy, Article 2 of Agreement-2001, which does not have the force of law, identifies subjects in the regions with responsibility for determining quality objectives. Article 4 states that landscape-quality

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<sup>32</sup> See Appendix 3; Institutional law No 2003-705 of 1 August 2003 on the local referendum OJ n° 177 of 2 August 2003, page 13218.

objectives should be defined “according to the specific value attributed to each individual part of the territory”.

In addition, the regions are in the process of creating “regional landscape observatories” to define landscape-quality objectives. The Sicilian region, in particular, has already created an “Osservatorio per la qualità del paesaggio”, by regional decree, to apply the provisions of the 2001 agreement between central government and the regions, which replaces an earlier technical landscape commission. The regulations governing the observatory are being drawn up.

As far as the definition of landscape-quality objectives are concerned, as the law stands, there is no real distinction between the formulation of landscape policies and the definition of landscape-quality objectives. The requirements of Articles 5c and 6d are generally seen as associated requirements.

With regard to the concept of participation employed in Article 5 c and the concept of consultation employed in Article 6d, there are no significant legal differences, since the terms of the procedures in each of the two cases can be identical.

Only a few States responded to the question of any connection between the requirements of Article 5c and those of Article 6d.

In the Netherlands, in particular, landscape-quality objectives are formulated and defined at the planning stage, in the same way as the formulation and implementation of landscape policies. The requirements of Articles 5c and 6d, therefore, are brought together within the framework of planning policy. Public participation in the project and in drawing up these plans is guaranteed by planning law.

In Belgium, the Walloon Government created the Standing Conference for Territorial Development (CPDT) on 7 May 1988. The Government’s aim in setting up a pluri-annual research programme which involves not only most of the Region’s ministerial departments, but also the three major French-speaking universities (UCL, ULB, Ulg), was to have at its disposal a decision-making aid. The Standing Conference for Territorial Development is first and foremost an interdisciplinary meeting place, but it is also a major network for applied research, whose action will be directed and co-ordinated directly by the Government. It is a scientific, rather than legal, committee and is not open to the public.

According to the work of the CPDT<sup>33</sup>, the requirements of Article 5c and Article 6d are seen as independent requirements. The Walloon region has just completed its identification and classification of landscapes within the meaning of Article 6c of the Convention. The objectives are as follows:

- to form a dual reference framework for the territory of the Walloon region, so that development activities can take account of their natural or landscape context;
- to rehabilitate and recycle built areas, rather than using up new areas, by offering local stakeholders a range of practices encouraging improved management of built areas, including both built heritage and public spaces.

Five eco-regions have been distinguished in this way.

Only then, and after public consultation, will the landscape-quality objectives be defined for the landscapes, which have thus been identified and classified, in accordance with Article 6d of the Convention.

In Italy, the law does not yet refer to landscape-quality objectives, or to any connection with the requirements of Article 5c. Nevertheless, Article 4 of Agreement-2001 between central government and the

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<sup>33</sup> The deliberations of this body can be found at <http://www.cpkt.wallonie.be>.

regions states that the regions shall be responsible for the protection and enhancement of landscape values. They must identify quality objectives in relation to the different territories.

In addition, the Action Plan for the Cilento national park considers the provisions of Articles 5c and 6d separately, because it establishes landscape-quality objectives in agreement with the public, defining the landscape elements concerned and the instruments that must be used to achieve them<sup>34</sup>.

#### **E. Participation procedures specific to a particular landscape or territory**

The information provided in this section is gathered from the replies to questions II-9, II-10 and II-11.

Of the different landscapes identified (urban landscape, rural landscape, outstanding landscape, unexceptional landscape, damaged landscape), public participation procedures relate mainly to the urban landscape.

In Belgium, with regard to damaged landscapes and, more particularly, to disused industrial sites, the Walloon Government may provisionally decide, at the request of one or more owners, that a particular site, as delineated by it, is disused and must be cleaned up or rehabilitated (Article 168.1 of CWATUP).

Action 205 of the Walloon Environment Plan for Sustainable Development (PEDD) makes provision for a consultation procedure *Commission régionale d'aménagement du territoire* (Regional Spatial Planning Commission – hereafter referred to as CRAT – and a public enquiry) as an integral part of site renovation projects.

Concerning formal and informal practices in connection with landscape policy specific to a particular territory, in the Walloon Region the management of valley landscapes is provided for by river agreements, of which there are fourteen at present (Circular of 20 March 2001).

In France, there are legal provisions relating to the protection of mountain landscapes (Articles L.145-3-II and L.145-7-1 of the Town Planning Code) and the coastline (Article L.146-6 of the Town Planning Code). In particular, in overseas *départements*, “buildings and installations on hills close to the coastline are prohibited when their existence is prejudicial to the landscape character of the hills” (Article L.156.2 of the Town Planning Code). Where mountain areas are concerned, when a regional natural park is located in a mountainous area, the regional natural park bodies are represented on the committees of that area, to guarantee “the particular characteristics of mountain areas”.

Similarly, architectural, urban and landscape heritage protection areas fall under the scope of protecting the landscape interest of the historical and aesthetic heritages (Sections 70 to 72 of the law of 7 January 1983). These variable classifications of the landscape lead to increased protection, under the control of the courts.

In relation to urban landscapes, Article L.111-1-4 of the Town Planning Code, headed “town approaches” establishes a corridor on either side of a road where building is prohibited, its width depending on the road’s classification in the Highways Code. When a town planning plan fulfilling the objective of protection and aesthetic enhancement of town approaches is adopted, the prohibition on building is lifted. Consultation and participation procedures relating to the drawing up of a town planning plan provide the public with an opportunity to express their views on these provisions which are specific to town approaches. The SRU law of 13 December 2000 also makes provision for suspending the ban on construction in municipalities, which do not have a local town planning plan, in relation to projects which clearly show that they have taken account of protected interests.

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<sup>34</sup> Council of Europe, Observatory on the implementation of the European Landscape Convention in parks and protected spaces “*Cilento e Vallo di Diano National Park: Landscape Action Plan*”, 2003.

With regard to rural landscapes, the creation of regional natural parks is a favoured means of landscape conservation, because the charter must include a document setting out the guidelines and fundamental principles for protecting the landscape structures in the park (Article L333-1 of the Environment Code). Similarly, the creation of a *pays* gives municipalities the opportunity to preserve and reclassify their natural, landscape and cultural heritage, by drawing up a *pays* charter. These two instruments are fundamental in that they give the public a broad opportunity for participation (Section 22 of Law No99-533 of 25 June 1999, amended by Section 1-B-1 of Law No 2000-1208 of 13 December 2000 on urban social solidarity and renewal).

In Greece, the promotion of natural landscapes in mountain areas is particularly strong.

In Italy, Section 6 of Law 494/1993, which applies to the coastline, stipulates that the regions must, for the purposes of coastline management, prepare beach use plans (PUA: *piani di utilizzazione degli arenili*), which must be drawn up with the participation of the municipalities concerned and the major professional associations in the tourist sector at regional level. Policies for the informal consultation of local populations are also stipulated in the procedures for drawing up mountain plans.

In Sweden, local plans must specifically state how the protection of areas of national interest is implemented at local level. This concerns, in particular, “areas of national interest for nature conservation”, which are geographically identified and afforded direct protection under chapter 4 of the Environment Code (certain mountain areas, rivers, coastal areas, etc.).

In Turkey, the 1983 law on planning and protection of the Bosphorus is an example of the specific regulation of outstanding landscapes. It sets out certain criminal offences for damage caused to the natural and cultural beauty of the Bosphorus and imposes on the perpetrators an obligation to restore.

There are very few provisions requiring transfrontier landscapes to be taken into account.

However, under the *Convention Benelux en matière de conservation de la nature et de protection des paysages* (Benelux Convention on Nature Conservation and Landscape Protection) signed in Brussels on 8 June 1982, the Netherlands, Luxembourg and Belgium undertake to co-operate in the following areas:

- harmonisation of principles and instruments relating to the policies in question;
- organisation of co-ordinated information and education campaigns;
- co-ordinated implementation of agreements entered into in a wider international context, such as the Council of Europe.

An impact assessment on the transfrontier environment is organised when planning proposed by:

- the draft regional development scheme or the draft sector plan (Article 14.3 and Article 43.2 bis CWATUP);
- the project for which an application file for a permit is required (Walloon Decree of 11 September 1985, organising an impact assessment on the environment in the Walloon Region, Article 16) is likely to have a major impact on the environment of another region, another member state of the European Union or another State Party to the Espoo Convention of 25 February on environmental impact assessment in a transboundary context.

In Italy, a number of Italian natural parks, particularly those situated in the Alps, have made provision in the parks’ plans for specific transfrontier landscape management action. In Agreement-2001, there is no specific reference to Article 9 of the European Landscape Convention on transfrontier co-operation.

In France, regional spatial planning and development schemes, consisting of a diagnostic report, a charter (which details a sustainable development project) and drawings, are the equivalent of a regional plan. They

are valid for ten years and must define a “harmonious development of urban, peri-urban and rural areas”. They make provision for measures for the rehabilitation of derelict land and “the protection and enhancement of the environment, sites, landscapes and of the natural and urban heritage, taking account of inter-regional and transfrontier dimensions”.

More specifically, an experiment is being conducted by the *Conseil du Léman* (Leman Council) and by the cities of Strasbourg and Kehl. A spatial planning and environment committee, set up by the elected representatives, initiated a period of reflection on the landscape among the departments of the three territorial entities concerned (Ain and Haute-Savoie in France; Geneva, Vaud and Valais in Switzerland). Seminars involving exchanges between university staff, elected representatives and technical experts have been organised, with three days of site visits devoted to three themes of major importance for the landscape: natural environment; urban space; agriculture and the rural world. These have produced a sort of code of conduct with regard to the landscape. Commitments in key sectors have been made. Ultimately, this will take the form of a Landscape Charter, which is currently being drawn up.

Another experiment in transfrontier co-operation is the result of an initiative by two local authorities, Strasbourg and Kehl, on either side of the Rhine. They are undertaking a joint urban landscape planning project on both sides of the Rhine to create a space on either side of the river called “the Rhine riverbank gardens” covering 34 hectares in France and 22 hectares in Germany, using a common plan to include games areas, landscaped and recreational gardens, family gardens, aquatic features and development of the riverbank. A footbridge will connect the two riverbanks over the Rhine for pedestrians and cyclists. The work is due to be completed in 2004 in time for a six-month festival of landscape art, providing a unique Franco-German meeting place on the Rhine.

Lastly, in Sweden, there is a general measure which county councils have to comply with (SFS 2002:824), which involves “informing the authorities concerned in frontier Nordic countries about provisions made in the social plan (...) that fall within the competence of the regional council”. The “social plan” is a broad concept, which includes landscape policies. The authorities must be informed if the provisions of the plan could be of significance for the activities of the authorities of frontier states.

#### **F. Provisions designed to foster the emergence of a landscape culture among the authorities and the population**

The answers to questions III-8, III-9 and II-8 have provided some clarification on this subject.

A training and information provision either exists or is taking shape in most countries to foster the emergence of a landscape culture in the administration and among the general public. The content varies. These are often ad hoc provisions.

For instance, in Germany, those involved with the provision of information are federal agencies, state and private educational establishments, associations and private organisations.

Information is disseminated via the Internet, education, public campaigns, seminars and conferences for law professionals, planners and architects and for the general public.

In Belgium, the following examples were cited:

- in 1999, the *Centre permanent de formation en environnement pour le développement durable* (CePeFEDD) (Permanent Centre for environment training for sustainable development) organised a training course for officers working at municipal level on the Haute-Meuse river agreements, which was devoted principally to “elements of landscape analysis and management”;
- the 2001-2002 CPDT programme devoted one research theme to the landscape heritage;

— in 2002, the Walloon Region organised a colloquium on “Biodiversity and Landscape” in Liege.

In France, the Ministries of Agriculture, National Education and Culture offer numerous public “landscape” courses. Interest in these courses is growing.

In Greece, at present, there are only informal efforts and initiatives on the part of local communities and environmental protection associations, mainly through the organisation of public meetings or other events, or through local campaigns, which are raising public awareness and highlighting the need for public information.

In addition, there is a national trend towards government collaboration with associations to disseminate information on environmental matters. Associations are becoming major partners in the growing process of raising public awareness of the importance of the environment and the conservation of natural resources.

In Italy, in 1997, the Directorate General for architectural property and the landscape at the Ministry of Cultural Property and Activities inaugurated a public awareness campaign on landscape and environmental problems, which made provision for agreements with professional associations and NGOs. In this connection, we can cite an agreement signed on 20 March 2003 with *Italia Nostra*, one of Italy’s oldest environmental NGOs, which is part of the European Landscape Convention implementation process. Article 2 of the agreement provides for different activities, as follows:

- disseminating knowledge and awareness of landscape values;
- identifying original training methods in relation to landscape issues;
- promoting and favouring public participation in landscape matters;
- identifying the best means of implementing the ELC.

Mention could also be made of the National Landscape Conference, organised by the Ministry in 1999, with the participation of local and regional authorities, professional associations and NGOs. The Conference had identified the need to set up a committee to study new legislation on landscape matters in order to continue the work it had started.

Nevertheless, there is generally no provision for public participation in the implementation of soft law instruments, such as labels or awards. For the Netherlands, public participation in the context of soft law instruments is not desirable in that guarantees for effective public participation are more firmly established in official procedures.

Belgium, however, identifies three consultation instruments: the *plan communal de développement rural* (PCDR) (Municipal Rural Development Plan), the *plan communal de développement de la nature* (PCDN) (Municipal Plan for Nature Development) and the river agreement:

– The PCDR, which is able to promote the conservation of certain rural landscapes, attaches great importance to public consultation in accordance with the Walloon decree of 6 June 1991 on rural development and its implementing order of 20 November 1991. Within six months of its decision in principle to conduct a rural development operation, the municipality must set up a *Commission locale de développement rural* (CLDR) (local rural development commission). This is a consultative body available to the municipality, which answers all requests for opinions and expresses views, as necessary, on its own initiative.

– The PCDN (not to be confused with the PCEDN referred to above) is a voluntary programme for the municipality with the conservation and improvement of the natural and landscape heritage of its territory in mind. Throughout the drawing up process, the public must be widely informed (information sessions, mail shots of brochures, etc.) in order to encourage participation. In this way the municipality can establish as

wide a partnership as possible: schools, associations, businesses, farmers, the hunting fraternity, cultural centres, spatial planning consultative committees, all interested parties, etc<sup>35</sup>.

– According to the ministerial circular of 20 March 2001, the river agreement is a memorandum of understanding between as wide a body as possible of public and private stakeholders on objectives to reconcile the multiple functions and uses of watercourses, their banks and the water resources of the basin<sup>36</sup>.

France has several soft law instruments. Although they provide an opportunity for close collaboration between the central government and local authorities, in which action is taken as a result of “incentive, participatory and consensual policies”<sup>37</sup>, public participation in the context of these instruments is still somewhat hesitant. Two instruments can be identified:

– landscape plans<sup>38</sup>: these are reference documents drawn up by a “steering committee” and intended for the various public authorities (central government and local authorities). Starting with a cognitive phase designed to ensure a common landscape heritage shared by all actors, the procedure continues with the design of a project, which must be reflected in a shared programme of action, including regulations (using an appropriate existing law), an operational dimension and an educational element. It is envisaged that the landscape plan will evolve into a “landscape agreement”.

– the landscape agreement: this consists of a programme of specific action reflecting a landscape project, forming part of a sustainable overall approach. Drawn up as part of a broad consultation process and participatory approach involving landscape professionals, the agreement is signed by the Prefect on behalf of central government and by the local authorities concerned. The different government departments and the public bodies whose activities may have an impact on the landscape are invited to participate in the actual implementation of the plan, which entails technical monitoring by a steering committee and a project leader<sup>39</sup>.

## G. Public influence on the final decision

As stated in the replies to questions V-1 and V-2, although the authorities’ decision is not necessarily bound by the outcome of the public participation, the participation procedures do allow the public to influence the final decision to a certain extent, depending on the political context. For example, the authorities have to justify their decision in relation to the views expressed by the public.

In Belgium, for example, the public enquiry provided for by law is an essential formality, which cannot be replaced by informal consultation with the applicant or by a previous enquiry, which may have dealt with a similar project. The grounds on which decisions are based must make reference, at least globally, to the claims made and state the *de jure* and *de facto* reasons, which have led the authorities to reach their decision. In fact, as with all acts of administrative authorities, there has to be appropriate formal justification for these decisions (Articles 2 and 3 of the Federal Law of 29 July 1991 on the formal justification of administrative acts).

<sup>35</sup> [http://www.uvcw.be/cadredevie/guideju/pdf/II\\_I\\_7.pdf](http://www.uvcw.be/cadredevie/guideju/pdf/II_I_7.pdf).

<sup>36</sup>For an actual example, see Francis Rosillon, “Management of valley landscapes in the framework of the River Semois contract”, in contributions on theme 1: “Integration of Landscapes in International Policies and Programmes and Transfrontier Landscapes”, Council of Europe, Strasbourg, November 2003, T-FLOR 3 (2003) 12.

<sup>37</sup> Circular No 95-23 of 15 March 1995 (*Équipement-environnement*), *Bulletin Officiel* (Official Bulletin) No 13 of 20 May 1995.

<sup>38</sup> For a representative example, see a publication produced by the Ballons des Vosges regional natural park, “*Réussir un plan paysage*”, 1998.

<sup>39</sup> Environment Ministry Circular No 92-24 of 21 March 1995, Official Bulletin, *Ministère de l’équipement, du transports et du tourisme*, No 11, 30 April 1995.

Occasionally, there are different degrees of influence. For instance, in Germany, the public authorities and the municipalities concerned, as well as farmers and similar organisations, have more influence than associations.

In Spain, a distinction has to be made between public consultation and public information. Only persons with an interest are granted involvement in the procedure to draw up a natural resources plan. They are informed of its adoption and have a right of appeal to the administrative court in accordance with Section 19 of the law of 13 July 1998 on administrative courts. People who have had access to public information have no right of appeal, but have the right to a “reasoned response” from the competent authority, by virtue of Section 86 of the law on common administrative procedure of 26 November 1992.

In Sweden, the procedure in relation to the determination of areas of national interest may be described as a partnership between the county councils and the SEPA. In addition, with regard to landscape planning in the context of spatial planning, the county council and other central authorities can significantly influence the decision. In practice, private individuals and associations do not have significant influence.

In the countries where the concept of “public concerned” does not include individuals, such as Greece, there are no procedures to guarantee public influence, since the public is represented principally by the local authorities and the regional council. The public may exercise an indirect influence through participation in local councils or local or national associations, which are, more often than not, invited, to parliamentary hearings or to the consultations that take place on draft legislation.

#### **H. The effect of participation procedures on the integration of landscape concerns in the implementation of public policies**

The answers to question V-3 reveal that, in general, it is accepted that participation procedures provide an opportunity to reinforce the integration of landscape concerns in the implementation of public policies, because programmes and plans relating to the landscape in the formulation of which the public has been involved, must be taken into account when decisions on other plans and administrative procedures are being taken, and the regulations applying to protected areas have to be complied with.

However, the views of the public and the plans and programmes relating to the landscapes, which have been drawn up with their involvement, need only be taken into consideration. The socio-economic considerations at stake (the development of commerce, industry, communications, etc.) are often in conflict with landscape interests and may take precedence over them.

What is more, there are no evaluation procedures as such.

#### **IV. Proposals for improving public participation in landscape protection, management and planning**

In view of the fact that the Florence Convention enters into force in 2004, the States parties cannot delay any further enacting the provisions necessary to implement the Convention. In particular, as it involves public participation in accordance with the requirements of Articles 5c and 6d of the Convention, more than one proposal may be necessary. Although they are presented one after another, they will have to be applied simultaneously.

##### **A. Landscape awareness and education**

In the light of the replies to the questionnaire, a general principle of awareness and information on landscape matters needs to be established.

The public authorities must promote this awareness and information by compiling an inventory of landscapes, be they outstanding or unremarkable, of national, regional or local interest.

The inventory must culminate in a classification of landscapes. To this end, the ministers responsible for regional planning have proposed planning measures specifically to promote “the examination and general assessment of landscapes, the analysis of their characteristics, of their ecosystems and of the forces and pressures transforming them; the definition and use of landscape-quality objectives”<sup>40</sup>.

For the purposes of comparison, and to facilitate coherent transfrontier action, all States Parties should compile an inventory based on common indicators, presented in a uniform manner.

This detailed inventory must constitute a comprehensive information base for the public and a reference tool for the different stakeholders. In particular, it should make it possible to promote actions such as:

- conservation of the landscape in its present state;
- restoration and rehabilitation of damaged landscapes;
- penalties for intentional or accidental damage.

In order to take account of these different actions, the inventory must be monitored and updated on a regular basis.

Information and awareness must also be promoted by a civil society, which has been alerted to the issue of the landscape.

There are a number of methods for encouraging and increasing awareness:

- introducing the notion of landscape in concepts used to identify protected areas. In Sweden, for example, a nature conservation area may be classified as such on the grounds of its landscape interest. For the purposes of informing and raising awareness, ought we not to call this “a nature *and landscape* conservation area”?
- introducing the concept of landscape at all educational levels.

This objective can be achieved in a number of ways.

One way could be to organise outings for children and, quite simply, showing them the landscape. Outings of this kind may take place in a school context, but could also be family outings, taking advantage of guided routes, a partnership with farmers, wardens, associations, etc.

In the context of certain disciplines (history, geography, natural sciences, etc), it could involve highlighting the relationship between history, spatial planning and landscape<sup>41</sup>.

By way of example, at Bleijendijk (close to Vught, Netherlands), many schools take their pupils out for one day each season to let them experience the seasons in the landscape.

The Belgian Royal Geographical Society has created more than thirty one-day “Man and Landscape” routes, described in booklets of around 40 pages, each of which is devoted to a specific theme (rivers and forests of

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<sup>40</sup> European Conference of Ministers responsible for Regional Planning (CEMAT), Guiding Principles for Sustainable Spatial Development of the European Continent, recommendation to the member states Rec (2002) 1 adopted on 30 January 2002; on the question of public awareness and education, see also, Michel PRIEUR, “*Participation du public et rôle des organisations non gouvernementales dans le domaine du développement territorial durable*”, in proceedings of the international Seminar organised in Budapest on 26-27 March 2003, Council of Europe, European Regional Planning, No 69.

<sup>41</sup> For other examples, Council of Europe, European Youth Centre, “Keys to participation – a practitioners’ guide” Council of Europe Publishing, 112 pp, in particular, pp 40 to 47, two examples of municipal councils of children and young people, in the environment field in France.

the Ardennes, changes in rural areas, the traditional habitat in Famenne, and so on). These are accessible to the general public and give an intelligent explanation of the landscape, unrelated to the usual tourist approach.

- organising a network of available information by making use of the media.

An easily-identifiable website in each State party could list official documents, original initiatives and groups or individuals who are active on the subject of landscape.

Such a site could contain images and be available in different language versions.

At the same time, the Council of Europe website could direct users to these sites.

Using the press to relay official reports on the state of the environment, and the landscape in particular.

Produce an illustrated handbook, or maybe even a calendar, of the landscape, for wide distribution, on the initiative of the Council of Europe. It might be appropriate for the handbook or calendar to contain illustrations of good and bad practice in landscape matters.

- providing impetus for individual or collective private sector initiatives and encouraging co-operation between the public and private sectors.

This means considering tax measures to encourage sponsorship and the setting up of non-profit-making organisations in the landscape area.

It also means promoting consultative administration, such as consultative committees to encourage more frequent exchanges, etc.

Particular emphasis could also be placed on assistance for youth projects and initiatives, in particular, could be given preference, as a means of helping young people to develop a sense of responsibility and independence, and to become themselves social players. Local authorities should, therefore, make it possible for them to be supervised by professionals and facilitate access to financial, material and technical aid<sup>42</sup>.

By way of example, in Hungary, the Pagony studio in Budapest, which was set up in the early 1990s, is a landscape and garden architecture studio which invents ways of merging the phenomenological and environmental dimension of the landscape with the actual social structure of the site. For instance, it has created a forum of five villages in the Dörög basin, which brings together farmers, local authorities, environmentalists, hydrologists, ecologists, historians, etc and gives them the opportunity to share their preferences, objectives and points of view.

- creating a landscape award in order to reward good practices, identify and criticise bad practices and make the different players aware of their responsibilities.

A diploma equivalent to the *Diplôme européen des espaces protégés* (European Protected Areas Diploma), could be introduced in each State party.

In Armenia, a competition on landscape was organised in all schools throughout the country (primary and secondary), as a means of raising awareness. Each pupil had to draw a landscape. A panel of judges selected the best drawing in each category. An exhibition of the best of the children's landscape drawings was held in Yerevan on 23 October 2003 and later in Strasbourg at the Council of Europe on 27 November 2003.

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<sup>42</sup> Council of Europe, Congress of Local and Regional Authorities of Europe "Revised European Charter on the participation of Young People in Local and Regional Life", 21 May 2003.

In France, the Ministry for Culture launched a public awareness campaign on the quality of architecture from October 2002 to June 2003. This consists of:

- awarding a special public prize (at regional level) based on a selection of buildings put forward by the regional media. – a competition for young people with the participation of architects from Conseils en architecture, urbanisme et environnement (CAUE) (Architecture, planning and environment Councils) or schools of architecture. The professionals supervise the work of groups of young people on an architectural project;
- creating discovery trails in the form of exhibitions and public debates;
- publishing regional guides;
- creating a website [www.aimerlarchi.fr](http://www.aimerlarchi.fr).

Lastly, in an original initiative, a national environmental protection association (France nature environnement) organised a “prize” to be awarded to the least effective protector of the environment. The prize is awarded to a damaged landscape and also is intended to raise awareness.

## **B. Training and research in landscape matters**

All states need to identify, list and disseminate training procedures on landscape issues. These will assist in raising the awareness of young people by alerting them to these options when they are deciding on the direction their studies will take.

Three years ago, the European Union launched a network of themes on landscape architecture designed to encourage co-operation between universities and interested institutions in teaching and research in landscape planning and management, as a means of improving the quality of teaching and research on this subject<sup>43</sup>.

A further means of alerting young people is to include a landscape approach in certain single-discipline syllabuses.

In particular, the questionnaire revealed that only rarely were professionals (landscape planners, town planners) identified with the title “public concerned”. This kind of training, therefore, needs to be reinforced.

At the same time, training in the environment and, more specifically, in the landscape, ought to be offered to professionals and others engaged in tourism, agriculture, amenities, etc.

Training of this kind could use awareness-raising tools especially targeted on these professions.

For example, in Finistère (Brittany), in France, a photographic observatory on a farm has been in place since 1996 as part of an experiment with sustainable development plans. On this farm, the aim is to improve independence from inputs by reducing the proportion of maize in the crop rotation, by better and prolonged use of grass by maintaining water meadows and replanting hedges to shelter the animals. The buildings also have to be improved. Thirteen views, photographed on a regular basis since 1996, show the changes that have actually taken place, compared with what was forecast. The photos also make it possible to analyse the impact of agricultural production and practice on the landscape.

Interdisciplinary research needs to be encouraged in order to reveal the historical, environmental, economic, and other aspects of landscape; there should be broader dissemination of this research during colloquies open to a broad public.

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<sup>43</sup> Ingrid SARLOV-HERLIN, “New challenges in the field of spatial planning: landscapes”, in contributions to theme 1: “Integration of Landscapes in International Policies and Programmes and Transfrontier Landscapes” Council of Europe, Strasbourg, November 2003, T-FLOR 3 (2003) 12.

### C. The procedures for participation in landscape matters

One prior requirement is the effective implementation, in each state, of an ad hoc policy on the landscape, which stresses the combination of protection, management and planning. Once this aim has been clearly stated, the public participation instruments, which it is intended, will accompany the formulation and implementation of the landscape policy must then be strengthened.

Participation procedures must, therefore, ensure that these two stages can be carried out. Indeed, “it is during the actual implementation of projects in the field that decisions are taken to build or carry out works, the often irreversible character of which will have an impact on the environment, whether on the landscape, soil or biological diversity. The public, as a rule, is more sensitive to visible operations than to plans. Consequently, the conditions of participation and the effects of this on the public decision-making process call for procedures to be adapted to one or other of these situations. In many cases, national law has made better provision for participation procedures for individual permits than for more general and abstract plans”<sup>44</sup>. This imbalance will, therefore, have to be corrected.

With regard to the formulation of landscape policies, a number of proposals can be made:

- opening up the initiative to designate an area of landscape interest to local institutions and populations;
- extending preliminary evaluation procedures to any project that might have an impact on the landscape. Making the impact study available to the public;
- depending on the national, regional or local importance, setting up a committee to represent the different interests concerned or appointing an independent and competent person as a point of contact throughout the decision-making process;
- enabling the public to comment on projects within the framework of procedures offering guarantees of transparency and representativeness;
- deciding on the final project taking account of comments submitted by the public. Setting out the reasons for the final selection at a mandatory public meeting;
- publicising the final selected project and the measures, which will be necessary to implement it.

With regard to the measures necessary for implementation, a number of avenues could be explored:

- prioritising protection, management or enhancement measures involving the local population;
- setting a period for return of information on implementation of the project;
- setting a longer period to review the project. The initial participation procedures will then be resumed;
- identifying at national and regional level a reference service to provide support, where necessary, to local institutions and popular initiatives in implementing their landscape-related actions;
- putting in place a procedure or an institution for situations of conflict, negotiations, arbitration, etc.;
- encouraging professionals to improve public consultation techniques;
- promoting exchanges of experience on successful or failed landscape initiatives based on participation.

Measures may concern certain stakeholders more specifically. In the case of owners or farmers, an aid facility could be developed (advice, subsidy, tax reduction, and so on) to help them to conserve or improve the landscape.

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<sup>44</sup> Michel PRIEUR, « *Participation du public et rôle des organisations non gouvernementales dans le domaine du développement territorial durable* », in « *Développement territorial durable: renforcement des relations intersectorielles* », proceedings of the international Seminar organised in Budapest on 26-27 March 2003, European Regional Planning, 2003, No 69, Council of Europe Publishing.

Similarly, abandonment of ownership rights or entry onto an individual's private property could be facilitated by legal provisions when the protection, management and enhancement of the landscape are at stake.

For example, in France, the "Agriculture et paysage" (agriculture and landscape) association set up in 1996 in the area of Saint-Amarin (Alsace) brings together a number of municipal councillors and 30 farmers and looks after 1600 hectares of municipal land. The farmers are assisted by two executives and three officers who are specialists in landscape management, who are employed by the association. Most of the measures undertaken (rehabilitation of grassland, organising farmers' markets, implementing landscape plans in the regional natural park of the Ballon des Vosges, etc.) involve the farmers and local people. The farmers are compensated for their landscape management work partly by the local, regional and national authorities and the EU and partly by agro-environmental provisions.

With regard to the public concerned, the interpretation of public ought to be extended to its meaning in the broadest sense, including individuals regardless of their place of residence.

Specifically, before each project, the public concerned ought to be identified, namely owners, inhabitants, the associations which are present, the represented communities, the bodies from outside the area, but which are also affected by these limits. In each case, the origin of these different persons and their needs should be analysed.

In the case of border areas, participation should be open to residents and non-residents and participation procedures should be adapted to take account of linguistic considerations in border regions<sup>45</sup>.

For example, the Champlain-Richelieu valley (Quebec, Canada; Vermont and New-York) has been shaped over the course of two centuries by agriculture, forestry and water transport. The landscapes and historical sites of this border region are witness to an important part of the history of the United States and Canada, and the ancient links with British and French explorers and settlers, and constitute a natural landscape.

The valley is considered in both the United States and Canada as a national heritage area. On both the American and Canadian sides, professional and public meetings are organised in the different regions to obtain public consent and comments.

There is a political and linguistic barrier to the implementation of development projects. However, practice in the different regions of the Valley reveals that public participation can help to build and develop local links between the different communities, overcoming political barriers. The communities and the inhabitants are prepared to engage in voluntary action to protect natural and cultural resources, including private stakeholders (farmers) and a public-private partnership<sup>46</sup>.

#### **D. The integration of landscape protection in different sectoral policies**

The integration of landscape policies must involve all public policies with a view to co-ordinating the different actors and achieving consistency in the action undertaken.

In particular, integration must be visible in policies relating to spatial planning<sup>47</sup>, the economy, agriculture, forestry, fishing, town and infrastructure planning, culture, environment, social development, etc.

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<sup>45</sup> On this point, see also : Council of Europe, "The role of local and regional authorities in transnational co-operation in European spatial development programmes", Proceedings of the International Seminar organised in Dresden (Germany) on 15-16 May 2002, European Regional Planning, 2003, No 67, Council of Europe Publishing.

<sup>46</sup> The world Conservation Union (IUCN), "Management guidelines for IUCN category V protected areas – protected landscapes/seascapes", September 2002.

<sup>47</sup> Council of Europe, "Landscape heritage, spatial planning and sustainable development", proceedings of the international seminar organised in Lisbon (Portugal) on 26-27 November 2001, *European Regional Planning*, 2003, No 6, Council of Europe Publishing.

This aim of integration also imposes a need to view implementation of the Landscape Convention in the light of other international conventions, which aim to protect the environment. In particular, account should be taken of the results of implementation of these different conventions and existing networks (“Natura 2000”, which was set up in application of the “Habitats” and “Birds” directives; “Emerald”, set up under the Bern Convention, etc).

In the case of agriculture policy, where the link with the landscape is particularly obvious, several proposals can be made with a view to integrating landscape and increasing the involvement of farmers.

What is needed is to identify and encourage good agricultural practice, first by harvesting farmer’s knowledge, and then by disseminating this through training and advice and, finally, supporting substitution measures, with incentives if necessary.

With regard to the environmental conditions laid down for entitlement to certain subsidies, it is necessary to identify the conservation and enhancement of the landscape as a completely separate objective and prioritise agro-environmental measures, which favour the beauty of the landscape (conserving forests, planting hedges, extension of crop production, diversification of production, etc).

A partnership between farmers and the other players ought to be encouraged to raise awareness of the social role of the farmer. This could involve encouraging farm tourism or, more generally, green tourism, school visits, and so on.

For example in Great Britain, the Farming and Wildlife Advisory Group, FWAG is a British foundation whose objectives are to provide advice for farmers, owners and other actors to promote compatibility between agricultural practice and the conservation or creation of habitats for wildlife in agricultural areas.

The foundation was set up in 1969 on the direct initiative of a group of farmers and supporters of environmental protection. It endeavours to provide the best technical advice and the best principles on the development of landscapes, the heritage and wildlife, resource management and welcoming visitors through sustainable agriculture. It is operated by a network of professional advisers, each from 65 local groups led by a committee of volunteers.

The foundation opts for a whole farm approach, with advice based on a detailed analysis of the wildlife and the habitat on the farm and its environment, providing information on the consequences of the activity from the point of view of chemicals, waste and pollution. As a rule, the initial visit is free of charge, the amount of the fee depending on the work/advice requested. The farmer can expect a detailed report with recommendations for short-term and long-term management.

The foundation has a website ([www.fwag.org.uk](http://www.fwag.org.uk)) for promoting ideas and best practice. International exchanges are possible, using images to overcome the language barrier<sup>48</sup>.

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<sup>48</sup> The World Conservation Union (IUCN), “Management guidelines for IUCN category V protected areas – protected landscapes/seascapes”, September 2002.

## APPENDIX I

### CONVENTION EUROPEENNE DU PAYSAGE signée à FLORENCE le 20 octobre 2000 (disponible sur le site <http://www.coe.int/Conventioneuropennedupaysage>)

Questionnaire relatif à la mise en œuvre des articles 5 c et 6 d de la Convention

*réalisé par Sylvie DUROUSSEAU  
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Article 5c: Chaque Partie s'engage à mettre en place des procédures de participation du public, des autorités locales et régionales, et des autres acteurs concernés par la conception et la réalisation des politiques du paysage mentionnées à l'alinéa b ci-dessus.

Article 6d: Chaque Partie s'engage à formuler des objectifs de qualité paysagère pour les paysages identifiés et qualifiés, après consultation du public conformément à l'article 5c.

#### **I. Définition du public visé aux articles 5 c et 6 d de la Convention du paysage**

- I.1. De manière générale, quel est le public concerné par la conception et/ou la réalisation des politiques du paysage (article 5 c)?
- au titre des autorités locales et régionales?
  - au titre du public (ONG, représentants des intérêts économiques et sociaux...)?
  - au titre des autres acteurs (des professionnels, tels paysagiste, urbaniste, agriculteur...)?
- I.2. La formulation des objectifs de qualité paysagère (article 6 d) fait-elle intervenir le même public?
- I.3. Existe-t-il des exemples, dans le cadre de pratiques formelles ou informelles, pour lesquels la participation a été élargie à un autre public ?

#### **II. Champ d'application des procédures de participation du public en matière paysagère**

- II.1. Y-a-t-il un droit, un principe général de participation? Citez le texte.
- II.2. Quelles sont les procédures de participation spécifiques à la conception des politiques du paysage? Précisez les textes et les exemples.
- II.3. Quelles sont les procédures de participation spécifiques à la réalisation des politiques du paysage?
- II.4. Quelles sont les procédures de participation spécifiques à la formulation des objectifs de qualité paysagère ?
- II.5. Les exigences de l'article 5c et de l'article 6c sont-elles perçues comme des exigences autonomes ou liées? Précisez.
- II.6. Quelles sont les politiques publiques concernées par les procédures de participation en matière paysagère ?
- II.7. Quelles politiques publiques potentiellement concernées ne sont pas visées par ces procédures? Des évolutions sont-elles prévues ?

II.8. La participation du public est-elle prévue pour la mise en œuvre d'instrument de droit souple (label, prix...) ?

II.9. Existe-t-il des procédures de participation spécifiques au paysage urbain? au paysage rural? au paysage remarquable? au paysage banal? au paysage dégradé ?

II.10. Existe-il des pratiques formelles et/ou informelles particulières à certaines politiques publiques? à certains territoires (montagne, littoral, spécificités locales...) ? à certains paysages (remarquable, dégradé...)?

II.11. Les procédures de participation existantes sont-elles adaptées à la situation des paysages transfrontaliers ? Donnez un exemple.

### **III. Les procédures et les modalités de la participation du public à la conception des politiques du paysage**

III.1. Les institutions (fédérales, nationales, locales) qui ont en charge la conception des politiques du paysages sont elles ouvertes aux autorités locales et régionales? au public? aux professionnels ?

III.2. Par quelles procédures la participation s'exerce-t-elle en matière de conception des politiques du paysage ?

III.3. Quelles sont les modalités de ces procédures de participation du public (écrites et/ou orales; directes et/ou indirectes) ?

III.4. Les institutions (fédérales, nationales, locales) qui ont en charge la formalisation des objectifs de qualité paysagère sont elles ouvertes aux autorités locales et régionales? au public? aux professionnels ?

III.5. Des structures ont-elles été créées afin de formuler les objectifs de qualité paysagère ? Ces structures sont elles ouvertes aux autorités locales et régionales? au public? aux professionnels ?

III.6. Par quelles procédures la consultation s'exerce-t-elle en matière de formulation des objectifs de qualité paysagère? Y-a-t-il une différence juridique entre consultation et participation ?

III.7. Quelles sont les modalités de ces procédures de consultation du public (écrites et/ou orales; directes et/ou indirectes) ?

III.8. Existe-t-il un dispositif de formation et d'information pour favoriser l'émergence d'une culture administrative et citoyenne du paysage ?

III.9. Comment pouvez-vous le décrire? Quels acteurs (Etat, collectivités locales, écoles, ONG...)? Quels moyens (formation interne, circulaire interne, réunion publique...)?

### **IV. Les procédures et les modalités de la participation du public à la réalisation des politiques du paysage**

IV.1. Les institutions (fédérales, nationales, locales) qui ont en charge la réalisation des politiques du paysages sont elles ouvertes aux autorités locales et régionales? au public? aux professionnels ?

IV.2. Par quelles procédures la participation s'exerce-t-elle en matière de réalisation des politiques du paysage ?

IV.3. Quelles sont les modalités de ces procédures de participation du public (écrites et/ou orales; directes et/ou indirectes) ?

**V. Les effets procédures de participation du public en matière paysagère**

V.1. Les procédures de participation permettent-elles au public d'exercer une influence sur la décision finale? Dans le cas d'une participation directe à la prise de décision, quel est le public concerné (acteurs publics et/ou privé), quel peut-être le niveau d'influence sur la décision ?

V.2. Les procédures de consultation permettent-elles au public d'exercer une influence sur le choix des objectifs de qualité paysagère ?

V.3. Les procédures de participation contribuent-elles à renforcer l'intégration des préoccupations paysagères dans la mise en œuvre des politiques publiques ?

## APPENDIX 2

**European Landscape Convention**  
**signed in Florence on October 20<sup>th</sup> 2000**  
(available on: <http://coe.int/Europeanlandscapeconvention>)

Questionnaire relating to the implementation of Articles 5 C and 6 D of the European Landscape Convention

*Submitted by Sylvie DUROUSSEAU  
CRIDEAU, CNRS-INRA*

**Article 5 c:** Each Party undertakes to establish procedures for the participation of the general public, local and regional authorities, and other parties with an interest in the definition and implementation of the landscape policies mentioned in paragraph b above.

**Article 6d:** Each Party undertakes to define landscape-quality objectives for the landscapes identified and assessed, after public consultation in accordance with Article 5.c.

### **I. Definition of the public aimed at Articles 5 C and 6 D of the landscape Convention.**

I.1. In a general way, which is the public concerned with the definition and/or the implementation of the landscape policies (Article 5 c)?

- such as local and regional authorities?
- such as public (NGO, representatives of the economic and social interests...)?
- such as other actors (professionals, such as landscape designer, town planner, farmer...)?

I.2. Does the definition of the landscape-quality objectives (Article 6 d) utilize the same public?

I.3. Are there any examples, within the framework of formal or informal practices, for which the participation was widened in another public?

### **II. Field of application of the procedures of public participation in landscape matter**

II.1. Is there any law, a general principle of participation? Quote the text.

II.2. Which are the procedures of participation specific to the definition of the landscape policies? Specify the texts and the examples.

II.3. Which are the procedures of participation specific to the implementation of the landscape policies?

II.4. Which are the procedures of participation specific to the definition of the landscape-quality objectives?

II.5. Are the requirements of Article 5c and Article 6c perceived like autonomous or bound requirements? Specify.

II.6. Which are the public policies concerned with the procedures of participation in landscape matter?

II.7. Which public policies potentially concerned are not aimed by these procedures? Are there any evolutions envisaged?

II.8. Is the participation of the public planned for the placement of flexible instrument of right (label, price...)?

II.9. Are there any procedures of participation specific to the urban landscape? with the rural landscape? with the remarkable landscape? with the banal landscape? with the degraded landscape?

II.10. Are there any formal and/or informal practices particular to certain public policies? with certain territories (mountain, littoral, local specificities...)? with certain landscapes (remarkable, degraded...)?

II.11. Are the existing procedures of participation adapted to the situation of the transborder landscapes? Give an example.

### **III. Procedures and methods of the participation of the public in the definition of the landscape policies**

III.1. Are the institutions (federal, national, local), which have in load the definition of the landscape policies opened with the local and regional authorities? with the public? with the professionals?

III.2. By which procedures the participation is exerted in the definition of the landscape policies?

III.3. Which are the methods of these procedures of public participation (written and/or oral; direct and/or indirect)?

III.4. Are the institutions (federal, national, local), which have in load the definition of the landscape-quality objectives opened with the local and regional authorities? with the public? with the professionals?

III.5. Are there any structures created in order to formulate the landscape-quality objectives? Are these structures opened with the local and regional authorities? with the public? with the professionals?

III.6. By which procedures the consultation is exerted in the definition of the landscape-quality objectives? Is there a legal difference between consultation and participation?

III.7. Which are the methods of these procedures of public consultation (written and/or oral; direct and/or indirect)?

III.8. Is there any device of formation and information to support the emergence of an administrative and citizen culture of the landscape?

III.9. How can you describe it? Which actors (State, local communities, schools, NGOs...)? Which means (internal formation, internal circular, public meeting...)?

### **IV. Procedures and methods of public participation in the implementation of the landscape policies**

IV.1. Are the institutions (federal, national, local), which have in load the implementation of the landscape policies opened with the local and regional authorities? with the public? with the professionals?

IV.2. By which procedures the participation is exerted in the implementation of the landscape policies?

IV.3. Which are the methods of these procedures of public participation (written and/or oral; direct and/or indirect)?

**V. The procedures effects of public participation in the landscape matter**

V.1. Do the procedures of participation make it possible the public to exert an influence on the final decision? In is the case of a direct participation in the decision-making, which is the public concerned (actors public and/or private), which is the level of influence on the decision?

V.2. Do the consultation procedures make it possible the public to exert an influence on the choice of landscape-quality objectives?

V.3. Do the procedures of participation contribute to reinforce the integration of the landscape concerns in the implementation of the public policies?

**APPENDIX 3**

**Section 6 of constitutional law n° 2003-276 of 28 March 2003  
on the decentralised organisation of the Republic, *Journal officiel de la République française*  
(Official Gazette of the French Republic) No75 of 29 March 2003, page 5568.**

The following Article 72-1 shall be inserted after Article 72 of the Constitution, and shall read as follows:

“Article 72-1. – The law shall establish the conditions under which the electors in each territorial unit may, by exercising the right of petition, request the inclusion on the agenda of the deliberative assembly of that authority of an issue that falls within its competence.”

“In accordance with the conditions provided for by institutional act, draft decisions or acts falling within the competence of a territorial authority may, on its initiative, be submitted for a decision by referendum to the electors of that community.”

“Where there is a proposal to create a special status territorial unit or to make changes to the way in which it is organised, a decision may be taken by statute to consult the electors registered in the units concerned. Electors may also be consulted on changes to the boundaries of territorial units, under the conditions provided for by law.”

#### APPENDIX 4

**Directive n° 2003/35/EC of 26 May 2003,  
providing for public participation,  
OJEC, n° L 156 of 25 June 2003, Appendix II**

##### Public participation in decision-making

1. The public shall be informed (by public notices or other appropriate means such as electronic media where available) of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided:

(a) the application for a permit or, as the case may be, the proposal for the updating of a permit or of permit conditions in accordance with Article 15(1), including the description of the elements listed in Article 6(1);

(b) where applicable, the fact that a decision is subject to a national or transboundary environmental impact assessment or to consultations between member states in accordance with Article 17;

(c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;

(d) the nature of possible decisions or, where there is one, the draft decision;

(e) where applicable, the details relating to a proposal for the updating of a permit or of permit conditions;

(f) an indication of the times and places where, or means by which, the relevant information will be made available;

(g) details of the arrangements for public participation and consultation made pursuant to point 5.

2. member states shall ensure that, within appropriate time-frames, the following is made available to the public concerned:

(a) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned were informed in accordance with point 1;

(b) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information(1), information other than that referred to in point 1 which is relevant for the decision in accordance with Article 8 and which only becomes available after the time the public concerned was informed in accordance with point 1.

3. The public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken.

4. The results of the consultations held pursuant to this Appendix must be taken into due account in the taking of a decision.

5. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and consulting the public concerned (for example by written submissions or by way of a public enquiry) shall be determined by the member states. Reasonable time-

frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Appendix.