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Working Paper

Public participation in the establishment and management of the Natura 2000 network: Legal framework and administrative practices in selected member states

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UFZ-Diskussionspapiere

Department Environmental and Planning Law

1/2008

**Public Participation in the Establishment and Management of the
Natura 2000 Network:
Legal Framework and Administrative Practices in Selected
Member States**

Herwig Unnerstall

January 2008

Public Participation in the Establishment and Management of the Natura 2000 Network: Legal Framework and Administrative Practices in Selected Member States*

*Herwig Unnerstall***

* The Author thanks Sylvie Vanpeene (Cemagref, France), Rob van Apeldoorn (Alterra, Netherlands), Cristiana Cocciufa (CONECOFOR, Italy) and Stella From (Syke, Finland) for filling in and/or organising (additional) filling in of a questionnaire on public participation in Natura 2000 Implementation. The author also thanks Charlotte Moy (France) for collecting information on the public participation in different German states. The report was funded within ALTER-Net – A Long-Term Biodiversity, Ecosystem and Awareness Research Network, a “Network of Excellence” funded by the EU’s 6th Framework Programme.

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1 Introduction

The Habitats Directive (HD)¹ is one of the most important, powerful and controversial legislative instruments within the EU for the Conservation of Biodiversity. But unlike other directives, e.g. the EIA-Directive², it did not pay much attention to the issue of public participation. Even after many protests by stakeholders in many Member States against the implementation of the HD the 1998 conference on “Natura 2000 and people: a partnership”³ (Anonymous 1998) did not systematically discuss public participation in the implementation of the HD. The crucial role of public participation in nature conservation policy and especially in the implementation of the HD and the establishment of the Natura 2000 network has only been acknowledged in the Declaration of El Teide (European Community 2002):

“Recognising that the success of Natura 2000 will require the support of European citizens, especially of local people and landowners, and their participation in the decisions on the implementation of the conservation and management of the areas involved.”

However the HD itself has not been adapted to this insight and public participation remains a task of the Member States.

The following article deals with public participation in national decision procedures implementing the Natura 2000 network. It gives a short overview of the political and international legal context of the debate on public participation in environmental decision-making (sec. 2). For analytical purposes some remarks on the terminological framework of “participation” follow (sec. 3). Sec. 4 recapitulates the procedural steps of establishing the Natura 2000 network and the requirements of the Habitats-Directive on public participation and related European environmental legislation. The main part describes the legal framework for the different steps of (administrative) implementation in different Member States (sec. 5). The analysis of the different approaches and the discussion of the comparison follow in (sec. 6).

* The Author thanks Sylvie Vanpeene (Cemagref, France), Rob van Apeldoorn (Alterra, Netherlands), Cristiana Coccia (CONECOFOR, Italy) and Stella From (Syke, Finland) for filling in and/or organising (additional) filling in of a questionnaire on public participation in Natura 2000 Implementation. The author also thanks Charlotte Moy (France) for collecting information on the public participation in different German states. The report was funded within ALTER-Net –A Long-Term Biodiversity, Ecosystem and Awareness Research Network, a “Network of Excellence” funded by the EU’s 6th Framework Programme.

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; Official Journal L 206, 22/07/1992 p. 7 - 50.

² Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment; OJ L 175, 5.7.1985, p. 40–48.

³ The conference was organized by the United Kingdom Presidency of the European Council and Unit for Nature Protection, coastal zones and tourism of the European Commission.

2 *Public participation in environmental decision-making and nature conservation policy*

“Public participation” has become a more and more important issue in environmental decision-making that is advocated by many actors in environmental policy. One starting point or first highlight in its political acknowledgement of this movement may be seen in Principle 10 of the (Rio-) Declaration on Environment and Development (UNCED 1992):

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

These requirements of the non-binding declaration have not been further elaborated in Agenda 21 (UNCED 1992b). Only in very general terms the necessity to strengthen the role of workers, trade unions, business, industry, indigenous people and their communities, NGOs and farmers in the design of policies and programs on the environment and development as well as their implementation and evaluation is emphasised on several occasions (e.g. UNCED 1992b, sec. 27, 38.42 and more often). There are no more specific accounts on participation in environmental decision-making. The Convention on Biological Diversity does not call for a general introduction of public participation in Biodiversity related decision-making. It calls for “Public Education and Awareness” (Article 13 CBD) and requires only, where appropriate, public participation in environmental impact assessment procedures on projects which are likely to have significant adverse effects on biological diversity (Article 14(1) lit.a CBD), and even more specifically the involvement of the holders of indigenous and local knowledge in the equitable sharing of the benefits arising from the utilization of such knowledge (Article 8 lit.j CBD). Also the Conference of the Parties (COP) only recently recommended within its Decision VII/11 on the Ecosystem Approach, previously developed (i.e. by COP 5) as the primary framework for action under the Convention, “that Parties and other Governments, facilitate the full and effective participation of indigenous and local communities and other stakeholders ...” (COP-CBD 2004).

The general idea of Article 10 (Rio-)Declaration was taken up by the United Nations Economic Commission for Europe and developed in detail within the Aarhus Convention in 1998 (UNECE 1998) including three pillars: access to information, participation in environ-

mental decision procedures and access to justice.⁴ The convention has been signed by the Member States of the EU and by the EU itself, which has partly implemented the Convention in its legislation e.g. the IPPC Directive (Directive on Integrated Pollution Prevention and Control) and the EIA Directive (Environmental Impact Assessment Directive), however not in the HD (see below sec. 4.2), but not yet completely, especially as regards the “access to justice” pillar.

3 Types of “public participation” and its justification

“Participation” describes essentially a relation: i.e. “x participates in/at y”. “y” describes here an activity by a public authority, e.g. setting up a list of sites that fulfill the criteria of a Natura 2000 site. It is commonly accepted that different levels of participation or levels of intensity can be distinguished. There are different terminologies and often no clear criteria to separate them from each other. In the following I will discriminate: information, consultation, negotiation, co-decision. In terms of the number of parties included I will distinguish unilateral (unidirectional), bilateral and multilateral forms of participation. Different types often occur/can only occur in certain forms, e.g. information is often unilateral whereas consultation, negotiations and co-decisions cannot be unilateral. “Unilateral” may also be any (uninvited) comments by individuals and NGOs to internal activities within administrations without having been invited to them. Consultations can only be bilateral or multilateral, but not unilateral. If the administration consults or negotiates with each affected individual separately then the administration acts bilaterally, if it brings together all affected parties it acts multilaterally. “Negotiation” implies here, that the formal power of decision remains with the public authority, whereas co-decision means that the formal responsibility lies not only with the public authority.

In “public participation” the term “public” can mean: a) directly affected individuals such as landowners or land users and their organizations, b) interested individuals such as environmental protectionists and their organizations and finally c) the general public. The “who” of participation interacts with the spatial level on which participation takes place: local, regional, national, international. On higher spatial levels direct participation of individuals becomes more and more practically difficult, and moves to participation of organized groups and their representatives. This motion then poses questions for the representativeness of these groups and the legitimacy of their participation. These questions become more pressing of course with increasing intensity of participation, especially if it comes to negotiations

⁴ UNECE, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998.

or even co-decisions. The legitimacy also depends on the internal structure of the groups, whether they are democratic or not, whether they have legitimate enforcement capabilities against their members etc. Finally public participation can be an ongoing process in e.g. an advisory board for the management of a nature protection area, or a recurring event, if e.g. a management plan has to be renewed every 6 years, or only a one-time event within e.g. the formal designation of an area as a nature protection site.

There are many arguments put forward in favour of public participation in environmental decision-making. A good survey of these arguments has been given by Newig (2005):

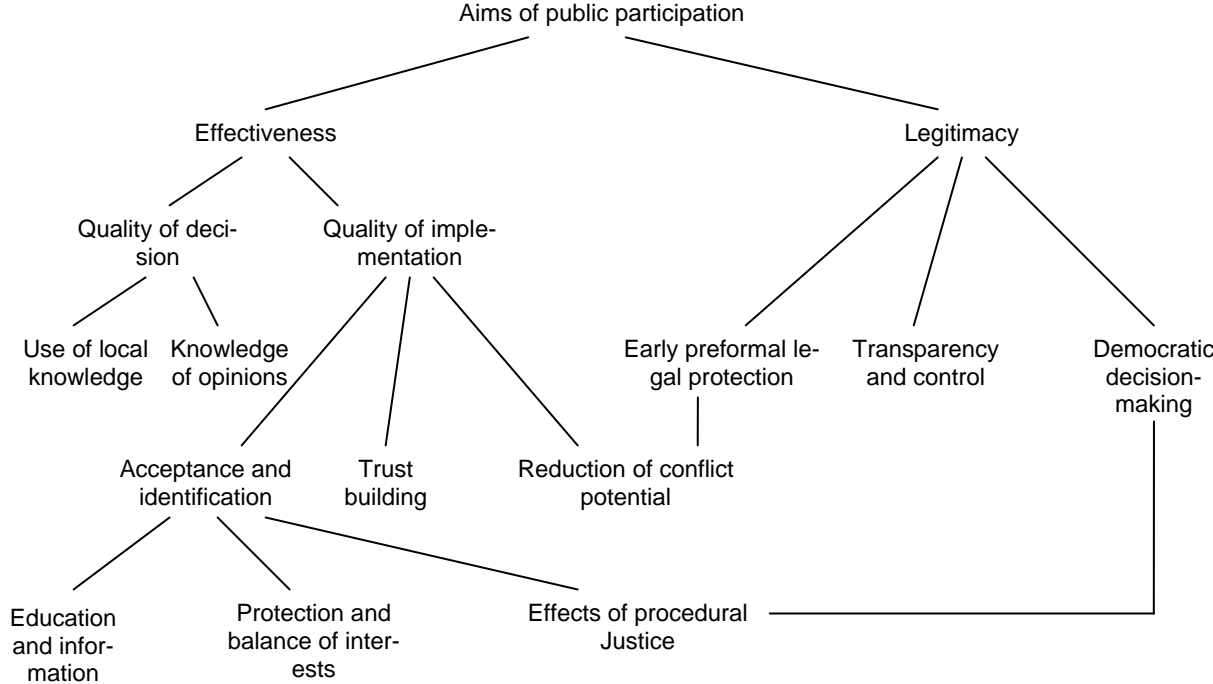


Figure 1: Aims of public participation (source: Newig 2005, 474; translation by Herwig Unnerstall)

4 Public participation in implementing the Habitats- Directive

4.1 The procedural steps of establishing the Natura 2000 network

The main objective of the HD is to set up a coherent European ecological network of special areas of conservation entitled “Natura 2000”. The network is composed of sites hosting (certain) types of natural habitats and habitats of the species both listed in the HD. It also includes the special protection areas classified by the Member States pursuant to Birds Directive (BD)⁵. The network is supposed to enable the natural habitat types and the species’ habitats concerned to be maintained or, where appropriate, restored to a favourable conservation status in their natural range.

⁵ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds; Official Journal L 103, 25/04/1979 p. 1 - 18.

The establishment of the Natura 2000 network according to the Habitats Directive takes place in three steps:

1. Identify possible sites for the network and propose them to the European Commission by the Member States,
2. Select sites to set up the network by the European Commission,
3. Designate each of the selected sites as a “special area of conservation” by the Member States with a statutory, administrative and/or contractual act and/or appropriate management plan including varieties of the aforementioned types.

The first step took place in at least two rounds in almost all Member States, as the European Commission was not satisfied with the Member States’ results and urged them to propose additional sites. Even after the first round of step 2, the European Commission asked for the proposal of additional sites outside the consultation procedure of Art. 5 HD – and there may also still be some sites debated in terms of Art. 5 HD. Especially with regards to special protection areas according to the BD step 3 is to be taken by Member States immediately. Steps 1 and 3 are in the hands of the Member States and therefore governed by national legislation only – especially in terms of public participation, insofar as there are no obligatory requirements in the HD or other pieces of European environmental legislation.

4.2 Requirements on public participation in the Habitats Directive and related European environmental legislation

The Habitats Directive itself does not contain any provision requesting public participation within the steps of establishing the Natura 2000 network. Only in the case of an assessment of the implications of a plan or project for the conservation status of a Natura 2000 site, when “the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, *if appropriate, after having obtained the opinion of the general public*” [emphasis added] public participation is requested (Article 6(3) HD), but is still only an option for the administrations. As the plans and projects mentioned are only those not directly connected with or necessary for the management of the site, any participation of the general public is deemed unnecessary for the management plans. The idea of Article 2 (3) HD to take account of economic, social and cultural requirements and regional and local characteristics does not require in itself any kind of public participation.

There are also no indirect routes for obligatory public participation via the EIA or the SEA Directives. The management plans are not mentioned in the annexes of the EIAD and the SEAD⁶ refers only to the plan and programs which are subjected to the assessment according to Articles 6 and 7 HD (Article 3(2) lit.b SEAD), that are not management plans. This

⁶ Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, 21.7.2001, p.30.

result remains unchanged with respect to recent legislation to implement the Aarhus Convention. On the European level there are neither obligations to have public participation for establishing the Natura 2000 network nor for developing management plans for the Natura 2000 sites. This in turn leaves the Member States unlimited room to introduce elements of public participation on their own account within the steps they are responsible for, i.e. the identification of possible sites, the designation of sites selected by the European Commission, and finally the development of plans for their management as well as their implementation. In the following the legislative framework and the administrative practises regarding the establishment and management of the Natura 2000 network in the Netherlands, Italy, Finland, France and some federal states of Germany will be described and analysed.

5 Legal framework and administrative practices of public participation in establishing and managing the Natura 2000 network

In the following we analyse the legal framework(s) for the different steps of (administrative) implementation in different Member States, leaving aside the formal legal transposition of the HD in their respective national laws.

5.1 The Netherlands

a) Identifying and proposing (additional) sites

Within the second round of identifying sites, the national ministry in charge (Ministry of Agriculture, Nature and Food Quality; ANFQ) initiated a nationwide consultation process by publishing the list and inviting everybody (individuals, stakeholder groups as well as local governments and administrations) to comment on all the sites proposed on the list. These comments were taken into account and were debated in the final decision on the sites. As there was not a legal obligation to do so by national law there were not any formal requirements to be fulfilled. As it is unclear whether the comments and opinions of individuals and organisations were available to the respective other individuals and organisations who issued comments and opinions – unless they had been made public by themselves – this consultation process essentially is/was a bilateral one.

b) Designation of sites

The designation of sites selected by the European Commission as “Natura 2000 protected areas” is carried out by legal order of the Ministry of Agriculture, Nature and Food Quality (ANFQ) according to Article 10a Dutch Nature Conservation Act/Natuurbeschermingswet (DNCA). The designation contains the determination of the conservation/maintenance objectives for each site. A consultation process with the general public, including landowners, stakeholders as well as interest groups and other branches of the administration has to be car-

ried out by the provincial government as prescribed by the DNCA (Article 10a and 11 NCA together with Article 3.10 ff. of Dutch General Administration Act/DGAA). The DGAA defines the basic requirements of the consultation process, but Article 11(2) DNCA defines that everybody may comment on the proposed designation. The draft of the designation decision has to be published in suitable journals with the call for comments by stakeholders or the general public. They can issue their opinions in writing or orally. The provincial government in charge then analyses these comments, but has no specific obligation on how to deal with them. It simply has to report to the Ministry of ANFQ (Article 11(3) DNCA). The legal order of designation also contains the obligation to develop a management plan within three years. For the same reason as for the identification and proposal of additional sites, this process essentially is a bilateral consultation process.

c) Management plans

This task is assigned to the provinces and the national state respectively depending on the prevailing ownership or stewardship of the area concerned, i.e. in areas that are predominantly owned or managed by the national state, the management plans are set by the state and otherwise by the provinces. The authorities may also use private consulting firms for the development of the plan, but they have to formally adopt the plan themselves. The Ministry of ANFQ has published guidelines for the alignment of management plans that do not contain detailed prescriptions for the participatory process beyond the legal requirements set out above (ANFQ 2005).

The management plan contains a description of the conservation goal of the particular area, a description of the (current) activities and also upcoming, already planned activities that will not adversely affect the conservation goals. It also includes a description of activities that potentially contravene the conservation goals and may only be allowed after the “compatibility test” of Article 6(3) HD. Finally the management plan contains descriptions of the measures necessary to reach the conservation goals, but does not prescribe them.

Consultations with the landowners, stakeholders as well as interest groups, other branches of the administration and other regional authorities are prescribed by the DNCA similarly to the designation (Art. 19a DNCA together with Article 3.10 ff. DGAA that defines basic requirements of the procedure). It is not prescribed to give the general public the opportunity to comment on the draft of the management plan,⁷ but only the stakeholder/interested persons (“belanghebbenden”). Nevertheless, the authority in charge may invite others to comment on the draft according to Article 3.13(2) DGAA. The authority in charge then

⁷ There is no provision in Articles 19a and 19b analogous to Article 11(3) DNCA.

analyses these comments, but has no specific obligation on how to deal with them. The guidelines only mention the obligation to inform the objectors about the final result (ANFQ 2005, 79). However, the competent authority is free to initiate the process of participation in order to reduce potential conflicts during the development of the plan before a draft is formally published. It is certainly also free to revise its own proposal and have a second round of consultation.

The management plans may be challenged in court according to general rules of Administrative Law, although they do not contain legally binding obligations for individuals. However, the intention is to use voluntary agreements and subsidies in the first place for the implementation of the management plans by management measures. This approach implicitly requires not only bilateral and multilateral consultations but also at least bilateral negotiations. In implementing the management plan the competent authorities nevertheless also have the possibility to change existing permissions, restrict current land use practices, restrict fishery and other activities, hence options for action that imposes legal obligations for individuals.

The management plans have to be renewed every six years, and therefore the participation process. But the management does not seem to be a permanent process accompanied by a steering committee including stakeholders and/or their representatives or other interest groups.

d) Summary

In the Netherlands the process of designating sites and its management are divided in to several steps, in each of which consultation of the general public or only individuals affected and interest groups is formally established, but no types of more intense participation. The real influence on the content of the plan depends on the willingness of the authority to change its own proposal. The competent authority is free to initiate the process of participation during the development of the plan to reduce potential conflicts. It is certainly also free to revise its own proposal and have a second round of consultation. As the management measures are intended to be implemented only on a voluntarily basis, the affected landowners or tenants will have a good negotiating position to achieve their interests.

5.2 Italy

a) Identifying and proposing (additional) sites

During the first round of identifying possible sites for the network and also during the supplementation of the list on request of the European Commission, no public participation took place. Also no spontaneous initiative of including stakeholders in the selection procedure can

be recognised. Even the environmental NGOs did not develop a shadow list with sites additional to the list of the national government, as it was the case in other Member States.

b) Designation of sites

The instruments for the designation of sites remain unclear. It is described as a hierarchical process carried out by the Ministry of Environment with apparently no public participation, neither required by law nor informal.

c) Management plans

There is no formal participation process required. There are informal guidelines for establishing management plans of the Ministry for Environment which also relate to consultation processes during site management. It is reported that for developing management plans of several sites public participation took place, but only randomly (WWF 2006, 36 and 88). It seems to include only the involvement of local public administrators (i.e. Majors), who represent the interests of citizens and stakeholders and representatives of local guild associations, but not in the form of consultations of individuals and stakeholder/interest groups. But participation is recommended in the above-mentioned guidelines to the lower administrative level responsible for the implementation of the management plans, i.e. the managing itself. This includes at this stage also participation in the form of consultations of individuals and stakeholder/interest groups. However, the possible influence of this participation remains unclear, as there is no information available on the content of the management plans and the possible means of the administrations to enforce measures defined in the management plans.

d) Summary

No participation process is provided by law or by informal guidelines during the procedure of selecting sites or proposing additional sites; nor is a spontaneous initiative of including stakeholders in the selection procedure recognised. Public participation is warmly recommended by the Ministry for Environment guidelines, once a managing plan is established and implemented. Where it happens, it is often realised by the involvement of local public administrators (i.e. Majors), but also of individuals and stakeholder groups.

5.3 Finland

a) Identifying and proposing (additional) sites

In Finland the process of proposing (additional) sites was carried out with the participation of the general public organised on the national level, and not site-specific, i.e. for each site separately, by the Finnish Ministry of Environment (FiMoE). This participation is/was required by

Sections 64 and 8 Finnish Nature Conservation Act (FiNCA). The required procedure is further described in Section 5 Finnish Nature Conservation Decree (FiNCD) and in the Public Announcements Act. Notifications on the list of possible sites were published in at least one local newspaper with wide distribution in the area as well as in major newspapers and the official journal. In addition maps and printouts from the Natura 2000 database of the proposed sites were available in the municipal offices concerned during a one-month hearing period. In addition general information on the implementation of the Natura 2000 network and the directives was provided. In addition to this written information, the Finnish Regional Environment Centres (REC) organized several local and regional information meetings for all stakeholders. There had been guidelines from the FiMoE to the FiRECs on how to prepare (details on the information material for each site, and what kind of additional information for the general public on how to interpret the information material should be on display) and conduct possible information sessions at a municipal level.⁸

The administrative bodies (FiMoE on the national level, FiREC on the regional and local levels) asked for an official opinion on the proposal from various stakeholders and interest groups, both local and national other ministries, NGOs (Central Union of Agricultural Producers and Forest Owners, nature protection organizations, and many others), Provincial Federations, Forestry Centres, municipalities and also from other branches of administrations (acc to Section 8 FiNCA and Section 5 FiNCD). All these comments and opinions were collected, but it is unclear whether they were also available to the respective other stakeholders and interest groups. Any stakeholder (“parties affected” acc. to Section 64(3) FiNCA) was allowed to give his/her written comments of the proposed sites to the authorities. In total around 14 000 comments were received and replied to before final decisions were made. Unless these statements had been repeated in the information sessions at a municipal level or had/have not been made public otherwise by those who issued them, meaning other commentators could take them into account within their respective statements, this consultation process essentially is/was a bilateral one.

The Council of State (i.e. the Finnish cabinet/government) took the final decision on the national proposal (acc. to Section 64(2) in conjunction with 8(3) FiNCA), taking into account the feedback from all stakeholders and the public. Their statements may have affected

⁸ The success of the measures is regarded weak and a communication strategy is missed by some stakeholders (WWF 2006, 89). Critical also is the National Audit Office of Finland in its report on the Natura 2000 Implementation (2007), that stated “that the idea of the role of stakeholders and participation that the Nature Conservation Act represents is quite old-fashioned compared e.g. with the Land Use and Building Act or the Act on Environmental Impact Assessment Procedure“ (pp. 9 and 43).

the boundaries of the sites, or even rarely the exclusion of a site, but only on scientific grounds regarding habitat types or habitats of species. The Decision could be appealed at the Supreme Administrative Court. The Court received more than 850 appeal documents, in which some 750 sites were challenged. The majority of the appeals were disallowed (cf. Vihervuori n.d. and Kuusiniemi and Leppikorpi 2006).

As the commission asked for the proposal of additional sites this process had to be repeated at least twice (2002 and 2005).

b) Designation of sites

The selection of sites for their proposal did not usually take into account future management issues regarding the respective sites. For the designation of sites, every option mentioned in the Article 1 lit. 1 Habitats Directive, i. e. statutory, administrative and/or contractual acts will be used. For $\frac{3}{4}$ of all areas statutory measures have been/will be taken, i.e. formal designation as protected areas based on different legal acts (FinCA, Wilderness Act, Outdoor Recreation Act). For around 20%, administrative measures, mainly based on the Finnish Water Act, are taken as means for designation and finally for the rest, i.e. less than 1% of all areas, contractual measures are/have been used. The decision on the instrument to use for designation was specifically taken for each site separately. These (then future) methods of designation have already been discussed within the identification process, and have therefore been the subject of the public consultation process and finally part of the proposing decision by the Council of State. Therefore no additional participation seems/seemed necessary at the designation.⁹

For administrative measures based on the Land Use and Building Act, i.e. mainly land use planning, public participation is required (Section 62 ff./Chapter 8). For other measures based on the Water Act it depends on the specific type of measure.

In the few cases where contractual measures are taken as instruments (at least) bilateral negotiations are the prerequisite for a contract.

c) Management plans

Protected areas that are state-owned are managed by a special state agency (Metsähallitus). The acts and statutes of individual protected areas determine the management objectives for individual protected areas. Setting up management plans is obligatory only for sites in national parks (Section 19 FinCA) and wilderness areas. These management plans describe in detail the management objectives and regimes. Management plans for these areas already existed before they became Natura 2000 sites and the use of participatory methods is common

⁹ Some types of protected areas (national parks and “strict nature reserves” are only allowed on state-owned land (Sections 11 and 12 FinCA). Only the type “other nature reserve” may be established on private land and against the will of the land-owner (Section 24 FinCA)

(cf. Loikkanen et al. 1999), although the FiNCA does apparently not prescribe them. In most cases the process is merely initiated in case of a revision of the management plan. There is no formal administrative procedure for the development or revision of management plans and where formal public participation could be included. For state owned areas there is probably no need for it. The designation decisions for nature conservation areas include the objectives for the site. The FiNCD only states the obligation of Metsähallitus to administer state-owned nature reserves (Section 7), and for National parks the option to appoint a council to oversee matters related to the management of them (Section 8). This is the basis for the few continuously working management boards or advisory committees with stakeholder participation (cf. Gilligan et al. 2005, 67).

Whether the administrative measures taken for the designation of the site are part of or rely on or are complemented by management plans for the sites remains unclear.

d) Summary

In the process of implementing the Natura 2000 network, public participation took place only within the process of selection of sites essentially in the form of bilateral consultations. Within the management planning of protected areas participation is a part of traditional administrative practice, although not prescribed by law, but based on general guidelines by the managing organisation. In this context, participation remains very different in its scope and intensity according to regional differences.

5.4 France

a) Identifying and proposing (additional) sites

In France two distinct phases of identifying possible Natura 2000 sites can be distinguished. In the first phase till 2001 the national nature conservation agencies selected a national list of possible sites (1316 sites), based on a list of proposals by regional nature conservation (1700 sites) authorities. Only the municipalities/local authorities were invited to comment on this list and only on scientific grounds. Local conservation agencies, interest groups and individuals were not entitled to comment on the list. Although the limits of the areas were not clear, they were not possible objects of the comments. Due to nationwide protests of interest groups (landowners, forest owners, hunting associations, mountain communities a. o.) this process was politically halted and the national law amended in 1997. However, the two lists of sites communicated to the European Commission in 1997 and 1999 were declared void due to a lack of public participation in 1999 and 2001 respectively (cf. Wendler/Jessel 2006, 226).

In 2001 the law was changed again. It has not greatly changed the participation as regards the identification of sites. According to Article L414-1 French Environmental Code

(FrEC), only the decision makers in the communes and the public inter-communal cooperation bodies are invited to comment on the perimeter of the sites. The administrative authority (i.e. in general the prefect of the Département) may deviate from the result of the consultation, but has the burden of argumentation for the change. It happened that site was totally rejected by the communes but still transmitted by the Prefect. The local authorities again may only comment on scientific grounds with solid arguments on the cartography of the species and habitats. However, often the communes did not have these data. Without being legally obliged, however, in some regions also multilateral consultation with representatives of landowners and stakeholders took place in the pre-definition of new sites (e.g. in Savoie in 2005).

More important at the change of the FrEC in 2001 was the new obligation to adopt a “document d’objectif” (DoF), i.e. an extended management plan, for each site subject to public participation during their development (details below under c)).

At the same time with the change of the FrEC in 2001 a number of committees were established on the national level:

- National Steering Committee for the development of guidelines for the management planning and the
- National Committee for the pursuance of Natura 2000 as well as on the level of Départements “Regional Committees for the pursuance of Natura 2000”

that were responsible for the information and communication with local actors, but had no specific task with the identification of sites.

b) Designation of sites

The formal designation of the sites selected by the Commission is only an administrative decision issued by the minister for the environment as prescribed by the FrEC (Article L414-1 (IV) in conjunction with R414-3¹⁰). The sites are designated as special conservation areas and special protection areas by decision of the administrative authority. They form part of the European ecological network Natura 2000, under the common appellation "Natura 2000 sites". The designation decision only contains the information on the boundaries with a map, and on the habitats and species that justified the inclusion in the Natura 2000 network, but not on the maintenance and development goals (R414-7 FrEC). There are no provisions as to public participation. Again only the municipalities and their organisations are consulted on these topics that are part of the designating decision only.

¹⁰ The FrEC has a legislative part labelled “L” and has a part being an ordinance supplementary to the Code labelled “R”. The provisions supplementing the provisions on the Natura 2000 network were revised and re-numbered in 2006.

c) Management plans

From the moment a site is/was proposed to the Commission, the process to develop of DoF for the site can be/could have been launched. The DoF has to be developed according to the provisions of the FrEC (Article L414-2 and R414-1 – 414-24). The DoF contains a description of the site and the conservation status of the habitats and species of community interest, existing protection measures and current human impact, and a definition of the conservation/maintenance and development goals (R414-11 FrEC). It also includes the broad outlines of management of,

- the measures designed to conserve or re-establish up to a state that is favourable to long-term stability of the natural habitats and the flora or wildlife species populations that justified their delimitation, and
- preventive measures to avoid the degradation of these same natural habitats and to avoid disturbances that may have a significant effect on these same species.

Finally the DoF includes methods for the implementation of the measures, the states monitoring measures planned and the accompanying financial provisions, especially specifications on the content of license agreements/contracts for the implementation of the measures with regard to good practice (e.g. good agricultural practice).

The Prefect also formally enacts the DoFs (R414-9 FrEC) although they do not contain legally binding measures. The DoF and its measures are not legally binding in themselves and have no legal effects against third parties (Wendler/Jessel 2006, 228). They have to be implemented by contract or in application of the legislative and regulatory provisions, especially those relating to national parks, nature reserves, biotopes and classified sites. But the DoF forms the basis for contracts with landowners. It also defines scope of the compatibility test, i.e. the assessment of implications for the site in case of a plan or project likely to have a significant effect on the site. The approved DoFs have to be published in the Official Journal of the Administration (R414-9-1 FrEC). The DoFs have to be renewed every six years.

For the drawing-up of the DoF and the monitoring of its implementation, a Natura 2000 steering committee (Comité de pilotage) is set up by the administrative authority, i.e. usually the Prefect of the Département, who, in general, also chairs the committee. If the committee does not agree on a DoF, the prefect has to draft it himself (R414-9 FrEC). There remains a residual responsibility of the public authority. The steering committee comprises the local authorities concerned and also their concerned groups as well as, notably, representatives of the owners and operators of the land included on the Natura 2000 site (R414-8 FrEC). State representatives sit on the committee in a consultative capacity including members of

other branches of the administration where necessary (e.g. water administration). The steering committee may be completed by Nature conservation NGOs. The participants may enter into multilateral negotiations to come to an agreement on the necessary measures. The steering committee has also the task to monitor implementation and to report to the Prefect on the implementation results and to suggest changes of the DoF if deemed necessary. Therefore participation is an ongoing process. There are guidelines for the development of management plans published by the national steering committee that contain – based on quite a number of pilot plans – a sort of tool box that illustrates the different steps of the planning process and allows for adaptations to regional conditions (Wendler/Jessel 2006, 228).

There are no provisions in the legislative part of the FrEC but in the ordinance part, that qualify a group as a relevant stakeholder group. Therefore the representativeness of the steering committees remains questionable. Individuals have no opportunity to take part in the design of the plan, as within the process there is no participation of the general public provided. However, as it is intended to implement the measures mainly by contracts, the individual landowners will be in a good position to negotiate, although there are general rules for their possible content – nationwide and site specific in the DoFs).¹¹

d) Summary

In France, during the phase of proposing sites for the network to the Commission, public participation generally took place only in a rather limited way, as officially only local authorities were involved, but not (other) stakeholders, interest groups or the general public. The protest by stakeholder groups leads more to the intensification of participation at a later stage, i.e. in the phase of setting up management plans (DoF) and their implementation especially by way of contracts. The management plans are developed by a steering committee that comprises representatives from relevant stakeholder groups and local authorities. This approach can be named a multilateral and political process of participation.

5.5 Germany

The situation in Germany is slightly intricate, as the implementation of the Natura 2000 network is essentially a task for the federal states (“Länder”), without general guidelines or legal requirements set on the national level. There is only some coordination by the working group of the federal state ministries for nature protection issues (Länderarbeitsgemeinschaft Naturschutz/LANA). Therefore there are 16 different approaches to the identification of sites and

¹¹ It is unclear, how flexible these rules are/will be in practice.

especially to the management planning for the sites. In the following I will analyse the situation for Baden-Württemberg in detail and some selected federal states.

5.5.1 Baden-Württemberg

a) Identifying additional sites

With regard to the (past and still ongoing) processes of identifying additional sites there was/is generally a formal public consultation procedure carried out, although there is no legal obligation for this process. The proposals for sites are published and may be commented on by municipalities, local authorities, stakeholder and interest groups as well as individuals within a two month period, not only on scientific reasons. Also confirmed rights and planning decisions already taken may be taken into account. The comments were collected and analysed by the local nature conservation agency that feeds the results to the regional nature conservation agency that made the final proposal for the sites to be notified to the commission. As this was a voluntary process there was no public hearing on the comments and no formal reply to the commentators how their comments were dealt with. As it is unclear whether the comments and opinions of individuals and organisations were/are available to the respective other individuals and organisations who issued comments and opinions – unless they had been made public by themselves – this consultation process essentially is/was a bilateral one. The comments in the past often led to corrections of the delineation of the sites.

b) Designation of sites

There is no general designation of sites as protected Natura 2000 sites in Baden-Württemberg. The law allows abstaining from a formal designation, if a site is already a protected area for nature conservation purposes, is already sufficiently protected for other (legal) reasons, is owned by a public authority or non-profit organisation or is equally protected by contractual means. This last option is the most important one and in practice there is the ambition to make additional formal designation unnecessary. It is determined in the management plan (see below), whether a formal designation as a protected area according to the already existing types of protected areas like “Nature Protection Area” will take place. The designation is a means for implementing the plan as well as by other regulatory or contractual means, whereas there is in practice a clear preference for the latter. If a designation is considered, a formal participation procedure is legally required, consisting of an invitation to agencies of public concern (Träger öffentlicher Belange) and professional associations of farmers and forest owners to comment on the draft (§ 74(1) Baden-Württemberg Nature Conservation Act/BWNCA) and a public display of the draft giving everyone the opportunity to give his/her opinion on it (§ 74(2) BWNCA). The authority in charge has to review the objections to the draft and to notify

the objectors of its result ((§ 74(3) BWNCA).¹² Depending on the type of protected area, the designation ordinance has to determine measures for the protection and maintenance of the site (§ 26(2) BWNCA for nature protection areas, § 29(2) for landscape protection areas, §28(2) for biosphere areas and § 30(2) for nature parks).

c) Management plans

The management plans – called maintenance and development plan (Pflege- und Entwicklungsplan: PELP) – just mentioned for each site are developed by the nature conservation department of the regional administrative authority (Regierungspräsidium/RP) – in mainly forested areas with scientific support by the state forest authority. In the BWNCA there is only a broad obligation to develop PEPLs assigned to the RPs (§ 72(3)), but the state agency for the environment has developed guidelines for the preparation of the plans that are internally binding upon the authorities in charge (LfU 2003). The guideline comprises not only the technical-scientific requirements but specification on the process including public participation.¹³ For each plan a process agent has to be named who coordinates the subsequent procedure.

During the four steps of the planning process identified in the above-mentioned guidelines, i.e. preliminary phase (p1), inventory taking and evaluation, goal development (p2), planning of measures (p3) and finalisation of the plan (p4), different types of public participation are provided. The first draft of the PELP is produced usually by a private planning office via contract for services.¹⁴ In p1 the process agent informs the other branches of regional administrations, the municipalities and interest groups among others on the content of the contract and the work to be done. In p2 the results of the inventory and on proposals for the definition of the maintenance and development aims are publicly displayed so that the general public can comment on them. In addition a public hearing has to be carried out, where also the written comments may be discussed. The comments and results of the hearing are analysed and lead to a determination of the boundaries and maintenance aims by the nature conservation department of the regional administrative authority.

For p3 of the process an advisory board is established, that is composed of representatives of the municipalities, approved nature conservation associations, private forest owners,

¹² The administrative rules governing the designation of protected sites are rather similar in all federal states in Germany. The main difference concerns the obligation/option to have a date for a public debate on the objections in addition to or instead of the notification.

¹³ § 4 (2) BWNCA contains only a general provision that all nature conservation administrations shall consult all so called agencies of public concern, if they can be significantly affected by an activity of the administration, and professional associations of farmers and forest owners, if interests of agriculture and forestry can be significantly affected.

¹⁴ There is also a handbook containing a catalogue of typical possible impairments, maintenance and development measures for each habitat type and habitats for protected species of Natura 2000 sites found in Baden-Württemberg (LfU 2002).

professional organisations of farmers, sports organisations, local nature conservation agencies, forest administration, agricultural administration, water and fisheries administration. All the groups may appoint their representatives autonomously. Other affected interest groups may also be invited where appropriate. This advisory board discusses development aims and measures to reach with the maintenance and development aims that have been proposed in the draft. The private planning office will revise the draft according to the results of the discussion. In p4 this revised version will then be publicly displayed allowing for additional comments from interest groups as well as from individuals. If necessary there may also be an additional public hearing on the measures proposed. The nature conservation department of the regional administrative authority will analyse these comments and will complement the PEPL according to them. There is no obligation to notify the commentators on how their comments were handled. The finished plan will then be distributed to the same institutions as in the initial phase. The implementation of the measures will mainly be done by way of contracts with the land and forest owners again influencing the design and the success of the measures.

This process combines informal multilateral negotiations between different stakeholder representatives in p1 as well as formal public participation procedures in p2 and p4 allowing also everybody to comment on the different aspects of the management, and finally some kind of a political procedure in p3 with the establishment of an advisory board, but there is – at least officially – no ongoing task of the advisory board to monitor the implementation of the measures as is the case in France.

d) Summary

For the identification of additional sites and their proposal to the European Commission a consultation of the general public took place. As regards the management planning, the consultation is tiered according to the leeway that remains after the designation as a Natura 2000 site. With respect to maintenance aims there is hardly any room for negotiations and compromises. Therefore only a formal hearing of the general public takes place via publication and allowing for comments. Regarding the development aims, which are not obligatory, and possible measures for the achievement of the aims there is room for a greater variety of solutions and options for activities that can be the subject-matter of more extensive consultation on these issues.¹⁵ It takes place both in terms of one-time consultations of the general public and in terms of multilateral stakeholder consultations via advisory boards.

¹⁵ The maintenance aims remain obligatory especially if the good conservation status is not yet reached. In this case it is obligatory to take some measures that are reasonably suitable to reach this status.

5.5.2 Other Federal States

a) Mecklenburg-Western Pomerania

In Mecklenburg-Western Pomerania at least in the later rounds of identifying additional sites for the proposal to the Commission, public participation took place by a formal consultation procedure where everybody could comment on a list provided by the State Government, although there was no obligation in the Nature Conservation Act of Mecklenburg-Western Pomerania (MWPNCa) in this regard.

There is no formal process of designating the sites selected by the European Commission as protected areas. As is the case in Baden-Württemberg the formal designation as a protected area is only a means of management (§ 28 (2) and (3) MWPNCa), but most of the areas already feature the status of some type of protected site (see Mecklenburg-Western Pomerania 2004, 14). The designation decrees may define measures for the protection, the maintenance and development of the site, but may also include only the authorisation of the competent authority to determine such measures. In practice the management plans are developed by the regional councils/government based on the designation decrees. They have to be approved by the environmental ministry of the State. The plans are usually divided in two parts (Berg and Mölle 2006, p. 97). The first part contains a description of the current conservation status and defines the necessary maintenance and remedial action aims as well as possible development aims. This is seen as a purely professional task that apparently does not require public consultation.¹⁶ Only the second part, the measures to reach these aims and possible instruments to implement these measures are discussed with local actors and stakeholders (mostly representatives but also individuals if appropriate) as well as municipalities and affected branches of other administrations.¹⁷ It is generally intended to use only agreements and other voluntary instruments. Therefore the consultation may take the shape of negotiations. There are no formal guidelines for the participation procedure. There is no additional formal participation of the general public provided for in the process. There is no advisory board for the monitoring of the implementation of measures. Only in case of a formal designation process as a “protected area” does the law (§ 30 MWPNCa) require a formal participation of authorities and administrations as well as individuals.

b) Brandenburg

As in the other Federal States, in Brandenburg it was necessary to identify and propose additional sites for the Natura 2000 network to the European Commission. But this process appar-

¹⁶ See IKZM (n.d.). In case of the designation as protected site, the designation decree defines these issues (§ 21(3) MWPNCa).

¹⁷ See IKZM (n.d.).

ently took place without public participation. At least there is no positive information available.

In Brandenburg the management planning process adapts to the legal status of the Natura 2000 site, so there is no general instrument “management plan”. In large protected areas (Großschutzgebieten), i.e. National Parks, Biosphere Reserves and Nature Parks, management measures are integrated into the existing maintenance and development plans (Pflege- und Entwicklungsplan/ PEP). For sites outside these areas there are management decrees.

The PEPs are developed by external planning consultancies in cooperation with the state agency for the environment. Public participation takes place by establishing for each large protected area a board of trustees that comprises representatives of municipalities, other branches of administration and stakeholder organisations (§ 58 Brandenburg Nature Conservation Act/BrNCA and Decree on the Composition of Boards of trustees). This board also discusses the drafts for the PEPs. In addition, on the lower level and the state level there are Nature Conservation Advisory Councils (NCACs) composed of qualified and experienced citizens. Apart from this there is no participation of the general public via public display and formal consultations at the development of PEPs.

Outside the large protected areas Natura 2000 sites may be designated as “Nature Conservation Areas” or “Landscape Protection Areas” by ordinances that contain of course the delineation of the area and provisions on the “do’s and don’ts” (including land-use restrictions) within the area, but usually no description of the measure to be taken for the management of the site. Within the formal designation procedure public participation takes place by publication of the draft of the designation ordinance with an invitation to possibly affected individuals and lower branches of administrations including municipalities to comment on the draft (§ 28 BrNCA). The administration has to take into account the comments and has to notify the commentators on the results. The management of the sites remains a task of the administration only. The role of the NCACs in this process remains unclear, as they shall be consulted only in the preparation of important decisions and measures.

For the remaining Natura 2000 sites “management decrees” are developed by the highest Nature conservation authority together with the lower authorities and in consultations with other affected branches of the administration like authorities for water management, agriculture and forestry. Municipalities or stakeholder representatives do not participate in this process. Only the individually affected landowners will be informed informally on the content and on the instruments, i.e. support programmes and subsidy schemes, in order to reach a consensus with the landowners on the aims and measures to be taken (Kruse/Bader 2006, 59).

There are no guidelines published for this process. Again the NCAC have no task in this process.

c) North Rhine-Westphalia

During the identification of sites, that took several rounds also in North Rhine-Westphalia, extensive public consultations were common, including public display of the sites to be proposed and public hearings (Schäpers 2006, 119).

The management of Natura 2000 sites is characterized by a combination of a formal designation as a protected site and voluntary agreement with affected landowners. Each (not yet designated) site will be designated as a nature protection area according to the state nature conservation act, but the normative content, especially the obligations imposed on landowner or -users in that area are reduced to the minimum essential for maintaining the status quo, i.e. to implement the non-deterioration obligation. All other measures to improve the conservation status and to develop the area shall be based on voluntary agreements. The formal designation of sites as protected areas is usually embedded in a landscape plan that also determines the measures for the maintenance and development of the area (§ 26 North Rhine-Westphalia Landscape Act/NRWLA). The “rural districts” (Kreise) and “larger cities not belonging to a rural district” (Kreisfreie Städte) are obliged to develop the landscape plans (§ 16(2) NRWLA). They are obliged to inform and consult other branches of the administrations and agencies of public concern (§ 27a NRWLA). In addition, the general public shall be informed publicly on the general aims, principles and possible effects of the plan (§ 27b NRWLA). The citizens shall be given the opportunity to comment on these issues and a public hearing has to be carried out. The draft of the plan then has to be published or publicly displayed. The agency of public concern, stakeholders and their representatives and other individuals may again comment on the draft. These comments have to be reviewed and the results have to be communicated to the commentator (§ 27c NRWLA). The final draft has to be approved by the higher landscape authorities, i.e. the regional governments (Regierungspräsidien) (§ 28 NRWLA). Once the plan is enacted the rural districts and larger cities are responsible for the implementation of the measures determined in the plan, unless public bodies like municipalities own the affected areas (§ 36 NRWLA). For the planning of additional measures, not yet described in the landscape plans, there is no participation process prescribed by law, but may be established by the authorities in charge. There are also landscape advisory councils established on all administrative levels, that are composed of representatives of various stakeholder groups (§ 11(4) NRWLA). Whether they are involved in implementation of the plan and additional measures remains unclear. However, as the measure determined in the landscape plans shall be implemented by agreement with landowners, they have to be consulted at least.

For Natura 2000 sites in forests they have been “immediate conservation management plans” based on the available data set up by the forest administration. These plans were not legally binding, but serve as proposals to be integrated into the landscape plans for the area.

6 Comparison and preliminary evaluation

The analysis of the legal framework and analysis of administrative practices of public participation has to start with an analysis of the different implementation steps where a participation process can be established, and the scope of decisions to be taken at this step. For the implementation after the European Commission has selected the sites to become part of the Natura 2000 network two main steps can be distinguished: the designation of sites according to national legal provisions (using the options given in the Habitats Directive including “designation by contractual means”) and the development of management plans. Both steps can also be put together within one process with either the management planning as part of the designation or the other way round: designation as part of the management plan. The management planning in addition can be subdivided in: determination of maintenance aims, determination of development aims, the development of measures, and finally their implementation. As the maintenance aims are essentially (de facto) fixed by the description of the site that is provided at the proposal of the site, there is not much leeway for compromises emerging from a participation process that therefore may not be deemed useful. The situation is different as regards the development aims and of course for the measures and their implementation. The aim to maintain or reach a good conservation status remains obligatory and therefore also at least to take some measures, which reasonably secure this result.

The comparison of different practices described in sec. 5 of public participation in the process of developing management plans for Natura 2000 sites and their implementation allows the identification of three distinct types/modes of participation that are mainly used. These modes can nonetheless be combined. The first type may be called the “informal administrative approach”, at which the public administration is the authority in charge that organizes consultations and discusses management options with (somehow selected) stakeholder and/or their representatives. The results are fed into the management plan that most likely has to be approved by the higher authority. The second type may be named as “formal administrative approach” where the administration develops the draft for the management plan that is then publicly displayed, so that everybody may comment on the plan within a fixed time period and the administration is bound to review the comments and to notify the commentators on the results. In both “administrative approaches” the implementation of measures and the subsequent monitoring task lie completely in the hands of the administration. The third type may be called the “political approach”: the administration in charge sets up a committee that con-

sists of agencies of public concerns (such as local authorities, other branches of the administration) and stakeholder representatives (such as professional associations of farmer and forest owners, environmental NGOs) for the development of management plans. This committee drafts the plan that at least has to be enacted by the organizing authority and still possibly has to be approved by a higher authority. The monitoring of the implementation of the management plan and the review of conflicts arising at this stage are then possible (additional) tasks of the committee.

The following tables classify the procedures described in sec. 5 on the basis of the three modes of participation found in the Member States for the different steps of the Natura 2000 implementation:

Proposal of (additional) sites	Informal administrative approach	Formal administrative approach	Political approach
Netherlands	+ (general public)	-	-
Italy	-	-	-
Finland	+	+ (restricted to “parties affected”)	-
France	- (only in a few Départements (+))	-	-
Baden-Württemberg	+	-	-
Mecklenburg-Western Pomerania	+	-	-
Brandenburg	-	-	-
North Rhine-Westphalia	+	-	-

Table 1: Types of participation at proposing (additional) sites

Formal (national) designation	Informal administrative approach	Formal administrative approach	Political approach
Netherlands	–	+	–
Italy	–	–	–
Finland	+ (as part of identifying sites)	+	–
France	–	–	– (only public authorities may participate)
Baden-Württemberg	–	–/+ (as part of the management process and in case of a formal designation as ‘protected area’ acc. to domestic legal categories)	(+) (only as part of the management)
Mecklenburg-Western Pomerania	–	–/+ (only in case of a formal designation as ‘protected area’ acc. to domestic legal categories)	–
Brandenburg	–	–/+ (only in case of a formal designation as ‘protected area’ acc. to domestic legal categories)	–
North Rhine-Westphalia	+	+ (for all Natura 2000 sites, as part of larger landscape plans)	–

Table 2: Types of participation at formal (national) designation

Management planning	Informal administrative approach	Formal administrative approach	Political approach
Netherlands	–	+ (but not consultations with general public)	–
Italy	–	–	–
Finland	–	–	–/+ (only voluntarily at a few national parks)
France	–	–	+
Baden-Württemberg	+ (in phase 1)	+ (in phase 2 and 4)	+ (but only with regard to the planning of measures, no ongoing task to monitor the implementation)
Mecklenburg-Western Pomerania	+	–	–
Brandenburg	– (only with individual landowners)	–	+ (only within large protected areas)
North Rhine-Westphalia	+	–	–

Table 3: Types of participation at management planning

This overview reveals that some kind of participation process was introduced from the beginning or at least introduced in later rounds of the identification of possible Natura 2000 sites in many Member States. These processes were carried out predominantly in the form of the informal administrative approach, where the administrations continue to be the “master of the procedure”, but can profit significantly from scientific information on nature conservation features of sites provided by the stakeholders. As for the political leeway for the proposal of sites to the European Commission, the influence of stakeholders, apart from the scientific information they provide, is generally low and depends very much on the goodwill of the administrations. As it is an informal procedure there is no real obligation for the administration to deal intensively with the arguments put forth by stakeholders, as there is usually no legal remedy in case the arguments are ignored, especially as regards any kind of “social” or “economic” arguments, that were not relevant at this stage. Not all, but only a few respective Natura 2000 sites are usually formally designated as protected areas in the Member States. This is done within formal administrative procedures that are already known in the respective domestic laws in similar cases, that often embrace public participation of the type “formal administrative approach”. In the German federal states the administrations often aspire to

avoid the formal designation. However, the normative content of the designation act is often – especially where all sites are formally designated – confined to the basic features of the site, that were relevant for its proposal, determining only the maintenance aims and the delineation already part of the proposal to the Commission or refined by the Commission during its selection process. Advanced development goals and the determination of (necessary) measures to reach the aims are usually left to the subsequent management planning.

At the stage of management planning the situation is more diverse with respect to public participation. Essentially one can find all types as well as no participation at all. The most extensive participation is found in Baden-Württemberg, which combines the different types of participation. Whether the different modes of participation have different rates of acceptance among the citizens or different results as regards the conservation success cannot be determined at the moment, as these procedures are still on their way. But from an abstract point of view different advantages and disadvantages can be identified, with respect to three criteria: flexibility, transparency, legitimacy and the social commitment of the outcome.

The advantage of an informal approach may be the lack of formal rules and the flexibility in the negotiations if the consultations of stakeholders take place in a multilateral way. One disadvantage of not having a participation of the general public is a lack of a certain legitimacy of the decision process that can be mitigated by the final responsibility and veto-right of the public authority. Another disadvantage could be that it may be a “one-time only” process: if it is carried out only in the development of the management plan, any difficulties in its implementation or changing situation may not be handled in the process. On the other hand, the informal character of the process does not prevent the administration from repeating the process if it deems necessary. Such a flexible reiteration of the process is missing in the formal administrative approach. This mode has also the disadvantage that the measures within the management plan cannot be optimized in open discussion with stakeholders, if there is no (additional) public hearing, and that the implementation of the management plan may be rather inflexible with regard to changing implementation conditions. On the other hand the formal procedure has the advantage, that not only the “usual suspects” may influence the development of the management plan, but also outsiders, minorities and the general (neutral) public. Therefore the formal process has some kind of higher legitimacy and – dependent on the actual realization of the process – it boasts higher transparency, if all comments are made publicly available and discussed in an open hearing. This advantage disappears, if the process is strictly a bilateral and anonymous one. Finally the political solution, the establishment of a steering committee reaches the same flexibility as the informal administrative approach. It re-

quires, however, a good relationship between representatives and those they represent. There is the danger that minority positions within stakeholder groups, that e. g. result from specific conditions at a certain site, are neglected. The general public may not exercise any control over the results as these types of negotiations are often held confidentially and not publicly. Therefore the public interest is then only represented by the administration. The resulting lack of transparency and legitimacy may (again) be mitigated by a final responsibility of the administrations which includes a right to veto in case of insufficient results of the negotiation process with respect to the obligatory conservation goals. The political process, however, may reach the highest level of validity and commitment among the participants, as the continuous process allows for social control of participants enhancing their commitment to results of the negotiations and the decisions taken. There is no similar option with the informal or informal administrative approaches. With the formal administrative approach the commentators may remain anonymous and therefore there is little social pressure on the individuals. The combination of different modes of participation finally may well be suitable to compensate for each other's weaknesses, but also greatly increases the time and effort of the whole process for the administrations.

Type of participation	Advantages	Disadvantages
Informal administrative approach	<ul style="list-style-type: none"> – medium flexibility – medium validity 	<ul style="list-style-type: none"> – (certain) lack of legitimacy – (certain) lack of transparency
Formal administrative approach	<ul style="list-style-type: none"> – transparency – legitimacy 	<ul style="list-style-type: none"> – inflexible – low validity
Political approach	<ul style="list-style-type: none"> – high flexibility – high validity 	<ul style="list-style-type: none"> – (certain) lack of legitimacy – (certain) lack of transparency

Table 4: Advantages and disadvantages of different types of participation

Independent from the mode of participation at the management planning for Natura 2000 sites remains the implementation of the management plan. In many of the Member States considered it is aspired to do this in consensus with land and forest owners and not by compulsory instruments. Therefore large influence stays with these individuals. On the other hand, as the maintenance aims are obligatory, there are restrictions as regards the possible solutions of upcoming conflicts. Therefore a full co-decision at the management planning, that would include a de facto veto right for stakeholders, cannot be found. In any case there remains a residual responsibility of public authorities for the development of management plans and their implementation in order to fulfill the obligations of the HD.

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