Legal Aspects of National Forest Programmes

Editors:
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Zürich 2002
Recommended Catalogue Entry:


Keywords: National Forest Policy Programme, Administrative Law, Forest Law, Policy Analysis, Participation

ISSN 1420-1143
ISBN 3-9520829-8-8

Available from: Professur Forstpolitik und Forstökonomie
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Price: CHF 30.00 / € 20.00

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PREFACE

During the Rio follow-up process several countries have started to promote the sustainable use of forests by means of national forest programmes (NFP). In view of the widespread uncertainty with respect to development, design and implementation of such programmes, the EU and other European countries decided to approach this topic by means of a Pan-European research programme. The COST structure, which involves joint “actions” for research on international issues was selected as an institutional frame for this co-operation. More information can be obtained at www.belspo.be/COST.

Cost Action E 19 “National Forest Programmes in a European Context” was authorised by the EU in January 1999 and significant financial resources were allocated for its implementation. At the constitutive assembly in October 1999, eleven countries decided to participate with research projects. Since then nine countries more have joined the action. 20 out of a total of 33 COST participant states are now involved in Cost Action E 19. More information can be obtained at: http://www.metla.fi/eu/cost/e19.

The participants decided to create two working groups. Working Group (WG 1) is concerned with key elements and procedural aspects of NFP related to participation, coordination, iterative policy processes and new conflict-resolution procedures. Working Group 2 (WG 2) examines elements and factors which impede and support national forest programmes. These questions are to be discussed at three meetings for all participants involved.

Working Group 2 came to the conclusion that, along with other factors, law plays a crucial role in the development and implementation of an NFP. It examined whether existing law is rather supportive or impeding to NFP processes at a seminar held during March 29-31 2001 in Aberdeen, Scotland. Delegates from different countries with different legal backgrounds discussed the importance of law in the development and implementation of NFP. Since there are at present only few country examples available, such as in Finland, the meaning of law in NFP processes was approached in a relatively general and abstract manner. It led to a broad discussion and analysis during the meeting.

This volume contains the contributions presented at the Aberdeen seminar which were subsequently revised for publication. The papers may be considered as triggers for a more law-oriented approach in discussing the value of NFP. They provide a framework for the understanding of such programmes as new policy instruments and offer a useful basis for further contributions from Working Group 2 to the advancement of COST Action E 19. Other approaches, for example, the integration of policy programmes into national and international legal frameworks with different regulatory hierarchies will have to be examined.
In conclusion we may say that one finding emerges clearly from the seminar in Aberdeen. The relationship between national forest programmes and law has so far not been considered with much attention in political debates such as for example within the Ministerial Conference on the Protection of Forests in Europe, MCPFE. The available research documentation reveals that the issue of NFP has so far largely been seen in a political-science perspective and not under a legal one. This can be explained, among other reasons, by the fact that the NFP process is only getting off the ground and that no concrete legal questions have arisen until present. However, it seems to be obvious that law will play an important role in the formulation and implementation of such programmes once that the process gains more momentum. To analyse the relationship between policy development and international or national law and to provide more knowledge for policy makers will be one of the major challenges to Working Group 2 and to this COST Action as a whole.

We hope that the papers published in this volume will be of interest to the participants of the seminar in Aberdeen and to other members of the research community. This refers in particular to colleagues committed to the work of the IUFRO Research Group “Forest Law and Environmental Legislation”.

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ABSTRACT

During the Rio follow-up process, the elaboration and implementation of National Forest Policy Programmes (NFP) became more and more a predominant topic of the international policy debate. The forest research community was interested in the topic and deals with it within the frame of a specific COST Action E19. A special meeting in Aberdeen in March 2001 was dedicated to legal aspects of such programmes. The existing and possible legal aspects were analysed by various experts from different perspectives. The papers in these proceedings deal with relevant legal aspects which result from international, national or regional law. The contributions focus on the integration of the new policy tool into the existing forest and forest related legislation. Based on the principle of the rule of law some legal problems are to be expected. The analysis refers to existing programmes on the one hand, and to core elements or principal requirements for such programmes on the other hand. The legal considerations are supplemented by political analysis and comments.

Key words: National Forest Policy Programme, Administrative Law, Forest Law, Policy Analysis, Forest Policy, Participation

RESUME


Mots clé: programmes nationaux de politique forestière; droit administratif; droit forestier; analyse des politiques; politique forestière; participation.
ZUSAMMENFASSUNG


Schlüsselwörter: Nationale Forstpolitischer Programme, Verwaltungsrecht, Forstrecht, Politikfeld Analyse, Forstpolitik, Partizipation
ON THE INTERDEPENDENCY OF NATIONAL FOREST PROGRAMMES AND LAW

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ABSTRACT
This contribution provides an overview and a summary on the papers presented in this volume. It identifies major issues such as the interface between national forest policy programmes and national as well as international law; the insights to be gained from current processes; the key elements identifiable in relevant legislation; and the requirements for political participation. It draws attention to the need to use theoretical explicative patterns based on available literature and to take into account already existing legislation in implementing national forest policy programmes.

Keywords: International environmental law, forest legislation, policy processes, policy actors, participation
1 THE NFP AND INTERNATIONAL LAW

Based on an institutional approach, Beatrice Chaytor outlines the framework that exists for NFP’s within international, European and EU law. The examination of international law in this respect reveals inter alia that it has been significantly influenced by Rio and the Rio follow-up process and, although not legally binding, it can be an important source of orientation for national NFP processes. This is particularly true with respect to the substantive and procedural requirements that must be fulfilled by NFP’s. Most of the core elements of NFP’s currently under discussion can be found in the reports and documents produced in the framework of the IPF and IFF processes. These, in turn, have a significant influence on forestry policy developments on the second level, i.e. the pan-European level. NFP’s are currently on the agenda paper of the Ministerial Conference on the Protection of Forests in Europe (MCPFE) whose participants include the EU and a further 38 states (cf. MCPFE/Liaison Unit Vienna, Vienna 1999). Two conflicting trends can be observed within the MCPFE process: while, on the one hand, the forestry ministers are trying to work jointly towards the sustainable multifunctional use of forests in Europe, on the other, they are also ensuring that the development and implementation of NFP’s remains the task of nation states. Thus, the MCPFE is assuming an important co-ordinating function and it is able to do this in the absence of legally binding agreements or acts. Chaytor establishes that the most comprehensive, and probably also important, international NFP-relevant legal norms can be found at EU level. While the EU does not have any direct legislative competencies in the forestry area, it creates them indirectly via other policy areas with extended EU competence. This approach is also behind the resolution for a joint forest strategy which was passed by the EU in 1998 and does not have any direct legislative competencies in the forestry area, it creates them indirectly via other policy areas with extended EU competence. This approach is also behind the resolution for a joint forest strategy which was passed by the EU in 1998 and does not have any external legal effect but is intended as a guideline for the administration within the EU. Chaytor shows that among the forest-relevant EU sectoral policies, rural development policy, agricultural policy and environment and nature conservation policy have an important role to play. The relevant legislation in these areas, i.e. directives and regulations, contain numerous instruments which can also be used to control the use of forests. These direct control instruments are complemented by procedural and persuasive instruments which were already part of the core repertoire of NFP’s. Thus, Chaytor also demonstrates that procedural elements such as participation, iterative process, co-ordination and new conflict-resolution strategies alone do not make a substantial NFP. Clear objectives and a set of suitable control instruments are equally important. Chaytor also identifies the most important legal challenges facing ongoing NFP processes in Europe as the co-ordination of the various instruments from the different policy areas and between predominantly centralist EU control and the development and implementation of country-specific forest policies.

Richard Tarasofsky’s contribution also deals mainly with international law issues. He adopts a more instrumental approach and examines the extent to which the elements of NFP’s are already rooted in existing international agreements and contracts. Tarasofsky comes to the conclusion that many of the elements are already the object of international regulations. However, given the absence of a general legally-binding forest convention, it is hardly surprising that the situation is dominated by agreements and declarations which are politically but not legally binding. As the example of the NFP shows, these international political declarations of intent often lead to the introduction of legally binding instruments at national and/or international level.

According to Tarasofsky, the relationship that exists between NFP’s and the law is a very intimate and multifarious one. Thus, by providing definitions, the law can help to clarify the still rather vague concept of the NFP, regulate procedures and define the content of a programme (objectives and instruments) in legally binding form. As the short description of
the case of Brasil shows, an NFP can even be disguised in a form of law (NFP law); this is, however, more likely to be an exceptional case. As a rule, the law acts as partly a limiting factor in the development and implementation of NFP’s (e.g. constitutional basis); it can also be changed in part on the basis of NFP’s (e.g. adaptation of forest laws).

At international level, the majority and most substantial of the forest-specific regulations can be found in the globally-valid Convention on Biological Diversity (CBD). Not only is the forest not excluded as an object of application from this convention, various articles explicitly or implicitly declare it as belonging to its area of application. The same also applies for other global agreements which together comprise a series of potentially NFP-relevant instruments. It is difficult to estimate the significance of the Convention on Climate Change at present, in particular as the legally binding regulations will only take form at the level of the protocols which are still the subject of dispute and are undoubtedly in need of explanation. Like Chaytor, Tarasofsky concludes that the balancing of international and national forest-relevant legal acts, and above all their co-ordination, will be one of the main tasks to be tackled by future NFP’s. Tarasofsky also demonstrates the fact that law and policy are very closely related in this respect by referring to the policy cycle concept from political science in his methodological suggestions for an improvement in the embodiment of the law in NFP’s (cf. Parsons, W. 1995, p. 77ff.)

2 THE NFP AT THE INTERFACE BETWEEN INTERNATIONAL AND NATIONAL LAW

Willi Zimmermann’s contribution is also located on the interface between policy and law. He focuses on the key elements of NFP’s which are mostly defined as part of political processes, and, based on the principle of legality, he examines their legal implications. In accordance with the task set for WG2, Zimmermann explores the question as to whether the law promotes or hinders the development and implementation of NFP’s and their associated elements. The author concludes that while both scenarios are basically possible, the factors which support the development and implementation of a substantial or binding NFP predominate. Based on the example of the Swiss legislation, Zimmermann demonstrates that the embodiment of participation, subsidiarity, co-ordination, monitoring and evaluation and other typical NFP elements in the law is possible, reasonable and useful. In the absence of this explicit legal embodiment, the danger arises that NFP’s will amount to no more than – mainly forestry-internal – discussion processes (NFP as pure process) and will not lead to any substantive changes. The law can make a significant contribution to reducing this threat and help NFP’s to achieve greater legitimation, legitimacy, legally-binding force and, hence, greater substance.

3 POLITICAL AND LEGAL INSIGHTS FROM THE NFP PROCESS IN FINLAND

Olli Saastamoinen and Pekka Ollonqvist’s papers are mainly concerned with the NFP political process at national level. Based on a strongly historical approach, they demonstrate how the only substantial NFP that exists to-date in Europe came into being, how it was implemented in its initial phase and the driving forces or supporting factors behind it. Saastamoinen primarily explores the emergence of the NFP, while Ollonqvist gives an account of its implementation. What is striking here is that it is difficult to understand either the genesis or outcome of the Finnish NFP without first taking a look at the history of forest policy in Finland (on the theoretical basis, cf. Hofferbert, R. 1974). Up to the 1980s, this was characterised inter alia by strongly corporatist elements with forest owners, the timber industry and the state forest administration as its main actors, by the subordination of forest policy with respect to other policies such as agricultural, settlement,
economic and finance policy and by the relatively weak position of state forest policy and institutions. Finland regularly produced national forest policy programmes from the early 1960s. However, these programmes were always directed exclusively at timber production. They were developed and implemented by the two most important stakeholders and did not allocate adequate means to the state to control forest use in Finland. The turning point towards the advent of more effective state planning came with the decrease in the economic importance of the Finnish forestry industry and the simultaneous growth in the environment movement, both nationally and internationally. As a result of these developments, the prime minister (not the agriculture or forestry minister!) set up a working group in the mid-1980s whose task it was to develop a National Forest Programme 2000. The working group was open to non-forestry bodies and would deal with forestry issues beyond increasing timber production. The National Forest Programme 2000 was not very successful. However, it paved the way for other participatory processes and new forest-policy topics. The Environmental Programme of Forestry (EPF), which was developed jointly by the forest and environment ministries in 1994, marked the actual breakthrough to a comprehensive and more widely-based programme. This interdepartmental programme was responsible for the initiation of both the Finnish NFP-2010 programme and the complete revision of the Finnish forestry law which came into force in 1996 (cf. Saastamoinen, O. 2000).

The transition from EFP-2000 to NFP-2010 in Finland embodies a good example of the interaction of law and policy as already described in general terms by Zimmermann. According to Saastamoinen, an explicit legal basis for the development of an NFP did not exist in Finland. On the other hand, however, the law did not actually stand in the way of this political planning process. The fact that political planning can lead to the enactment of new legislation, the adaptation of existing laws, or facilitate these processes is another typical feature. The Finnish example also makes an interesting contribution to the debate surrounding a third legally controversial point, i.e. the question of the legal embodiment of NFP’s in forestry acts. The new Finnish forestry law contains neither an obligation or authorisation for the development and implementation of an NFP, however it does make compelling provision for regional forestry policy programmes which must fulfil certain procedural (e.g. participation) and substantive (e.g. SFM-oriented targets and measures) requirements. Despite not being legally intended as such, the regional forest programmes provided a significant source for the Finnish NFP-2010, which in turn formed the basis for a revision of the regional forest programmes. Like the NFP itself, this iterative and coordinating process is not legally embodied anywhere. Due to the extensive horizontal and vertical grounding of the NFP and the extensive options for state financial control of the forest sector, it is possible to implement the NFP widely even in the absence of any legal imperative. The formal ratification of the NFP by government and the involvement of parliament through the budget and its control ultimately resulted in the Finnish NFP not being classifiable as binding on property owners, however it can at least be classified as binding on the authorities. The example of Finland shows that institutional integration can play a crucial role in the fate of an NFP (cf. Zahariadis, N. 1999, p. 73ff.). At an initial glance, the theory that the superior institutional embodiment of the NFP has a positive impact on its acceptance and legitimation of appears to be confirmed. Due to the relative paucity of experience in relation to implementation however, it is not possible to judge conclusively whether this can also improve the efficacy of the programme.

According to Saastamoinen the involvement of all of the important stakeholders is one of the key features of the Finnish NFP-2010. This direct participation did not derive from the forest legislation but from the revised or new Finnish state constitution of 2000. Of particular interest here is the direct linking of the democratic rights of individuals with the use and preservation of the natural environment. Thus, Saastamoinen shifts the principle
of sustainability to the area of a basic right without, however, providing any more detail. Based on this explicit constitutional provision, in future, smaller and less influential groups, which have hitherto felt neglected in the programme formulation process, will have the right to actively participate in the design of Finnish forest policy, to introduce their interests and at least ensure greater transparency.

Ollonqvist also adopts a pronounced historical approach in his examination of the initial results of the implementation of Finland’s NFP. He divides the development of the NFP into three stages: 1) Sustainable Timber Management (STM); 2) transitional phase; and 3) Sustainable Forest Management (SFM). The three phases are more strongly characterised by fundamental changes in the actor network as opposed to new programme content. The process which took place in the late 1980s and is classified as a transitional phase is particularly interesting and probably also representative of many other states. According to Ollonqvist, the “hard” corporatist core of Finnish forest policy found itself confronted by new social (transformation of values), economic (reinforcement of private economy, globalisation) and state (above all deregulation and decentralisation) challenges. It initially tried to respond to these challenges by cutting itself off and later reacted with the marginal or symbolic adaptation of forest policy. Through the creation of new structures, in particular the involvement of the environment ministry, and through the reinforcement of the role of the regions in the new Finnish forest act, it finally became possible to dissolve the hard core of Finnish forest policy and widen it through the addition of new actors who are mainly active in the area of the environment. Most significantly, the binding embodiment of participatory regional forestry planning in the forest law has resulted in the introduction of substantive changes in the course of the implementation of NFP 2010 on the basis of a forest policy which is in turn based on the three sustainability dimensions. These dimensions will be reflected in the Finnish forest legislation in the short or long term. Thus, Ollonqvist’s account clearly shows, inter alia, that institutions and structures have a significant role to play in the adoption of a new direction by a public policy and that the law can also play an accelerating and supportive role in this process.

4 NFP KEY ELEMENTS IN THE LIGHT OF AUSTRIAN LAW

Unlike Finland and like most European states, Austria does not yet have an NFP as defined in the Rio follow-up process. For this reason, Johannes Voitleithner is unable to present the legal content of the Austrian NFP in the contribution dealing with his country. Instead, he explores the question as to the extent to which the existing legal regulations governing forest and forest-related activities in Austria already fulfil the new requirements of sustainable forest management and the basic principles of an NFP. The starting point of his account is, therefore, the law currently in force and he relates this to a possible future Austrian NFP which would fulfil the international substantive and procedural requirements. The approach adopted by Voitleithner is worthy of mention in that he does not restrict himself to the Austrian forest legislation in the strict sense but discusses all forest-relevant legislation and general procedural law. In doing this, he makes a valuable contribution to the fulfilment of two NFP basic elements, i.e. a holistic, intersectoral and co-ordinated perspective on the one hand and the integration of NFP’s into the national legislation, on the other. Another interesting aspect of Voitleithner’s approach is the emphasis he places on the fact that NFP’s are not mainly characterised by procedural elements but also consist of an output (programme) which is largely influenced by the principle of sustainable forest management.

Thanks to its federalist structure, Austria offers other European states a particularly interesting basis for comparison, and compared with other countries, Austria is already well placed with respect to the establishment of an NFP as the central state enjoys comprehensive legislative competencies vis à vis the forestry sector (cf. Weiss, G. 2000,
Despite this favourable starting position, in terms of constitutional law, the Austrian legislation contains few approaches which demonstrate a direct link to the procedural and substantive key elements or basic principles of the NFP as discussed by Voitleithner. Although no explicit legal bases are necessary for the implementation of most of the key elements, these are rarely brought to bear on current Austrian practice. The reasons for the absence of the key elements are political and legal in nature. Along with the relatively old forest legislation, which focuses on timber production, the neo-corporatist structure of the Austrian forestry sector appears to be the central explicative variable for the weak shaping of most of the NFP elements in legislation and practice (cf. Sabatier, P. A. 1993; Scharpf, F. 1997). As was formerly the case in Finland, according to Voitleithner, an iron triangle exists in Austria comprising the state forest administration, the agricultural associations and forest owners’ associations. This not only makes broad, comprehensive participation difficult but also represents a virtually insurmountable obstacle to new conflict-resolution mechanisms, the formal and material co-ordination of different sectoral policies and new institutional arrangements. New legal bases could offer a helpful means of breaking up this rigid situation and thus pave the way for sustainable forest use. The problem is, however, that the path to new legal bases (e.g. a new forest law) again passes via the same key actors. As the example of the Austrian certification law shows, the corresponding change in the legal basis does not offer any guarantee of fundamental change in public forest policy: they key actors still have the possibility of preventing or delaying any innovations at implementation level. Growing pressure from the outside, for example from the EU or NGOs, or a policy window in the form of an unexpected event may create more favourable preconditions and enable the creation of a substantial NFP in Austria in the medium to long term. Without a close linking of the law and policy, however, this is unlikely to succeed.

5 REQUIREMENTS FOR REAL POLITICAL PARTICIPATION

The interaction between the law and policy is also the subject of Marie Appelstrand’s contribution which takes a detailed look at the key element of public participation. Although public participation is more a matter of policy than law, it also has considerable legal implications. With respect to the question of the rationale behind participation, Appelstrand starts by establishing that participation is justified in its previous explicit embodiment in various recent legally-binding international agreements. With the Aarhus Convention (see Annex), participation actually received an separate regulation of its own which prescribes minimum standards in connection with political decisions in the area of the environment. Various implications which are relevant in law can be derived from the interpretation of this convention. Thus, the call for wider participation is explained, among other things, with the fact that this can lead to the improvement of the framing of legislation and application of the law, in particular by the administration (learning effect). The associations’ right of complaint and the right to information are particularly important in this context. Thus, participation is judged as a kind of concretisation of internationally recognised human rights such as the right to justice, equality, democracy and fairness and the protection of minorities. Finally, participation, which is viewed here as the opposite of hierarchic or expert decisions, contributes to greater legitimation and acceptance and hence greater trust in the law and a more effective implementation of the law. Using examples from different countries, Appelstrand substantiates these different functions or the legitimation of public participation. In doing this she stresses the manifest significance of procedural rules in terms of both legitimation and the outcome. She answers the key political-science question “does politics matter?” using legal-sociological arguments (cf., for example, Castles, F.G. & McKinlay, R. 1979, 169-186). Through this interdisciplinary
and transdisciplinary convergence, Appelstrand unfolds a broad scope for research questions which arise in the context of participation and hence also of NFP’s.

The concept of public participation is a nebulous one which can be interpreted and defined in different ways. It ranges from the completely non-binding hearing to the vested right of co-decision. Starting with the observation that different ideas concerning forest use can be found everywhere, Appelstrand defines participation in the context of NFP’s as an open, communicative and interactive dialogue which should lead to the joint fulfilment of objectives and consensual conflict resolutions. Based mainly on the Aarhus Convention, she develops a catalogue of five minimum procedural requirements which should not be absent from any substantial participation process. While the first three elements (earlier involvement of participants, availability of information for affected parties, openness to new inputs) are relatively undisputed, the fourth (accountability of decision-making authority) and fifth (right to legal judgement) requirements could prove controversial in certain circles. In many cases, the complete opening of the decision-making process can represent an obstacle to consensual unanimity. For institutional reasons, the legal power of avoidance is useful in the case of individual decisions and plans but not in legislative processes as otherwise the courts, which do not normally function according to the rules of participation, would have to assume the role of the legislator. Furthermore, it is possible to observe here that in the case of many consensual conflict resolution processes, recourse to legal instances is not in the interests of the parties and is thus excluded by consensus (for example, the decision of NGOs to renounce the associations’ right of complaint in concrete cases involving jointly agreed solutions). This differentiated perspective also shows that there is no standard recipe for participation processes and that each process must be considered in its context and designed accordingly (on the meaning of context, cf. Zahariadis, N. 1999, p. 73ff.). The factors to be observed in the initiation, implementation and outcome of a participatory process, which Appelstrand has assembled from various international sources, should not be seen as minimum requirements but as possible stumbling blocks (if not taken into account).

Appelstrand is convinced that participation will lead to a more sustainable use of the forest. This conviction is based on the assumption that participatory processes always lead to a consensual solution. As the “correct” use of the forest very often involves not only material interests but also moral concepts, it is questionable as to whether “finding consensus in diversity” can always succeed. With respect to sustainable forest use by forest owners and the general public, it should be noted that although participation fulfils an important criterion for social sustainability, it can lead to serious contradictions with ecological and economic sustainability. These difficulties are, in part, suggested in the general criticism of participatory processes outlined in this paper (time-consuming, obstructive and expensive). However, the strong emphasis on the undisputed positive aspects, such as learning effect, conflict revelation and resolution, increased transparency and access to information and better legitimation and acceptance, means that the critical perspective necessary for an objective evaluation of participation processes is somewhat lacking. The available empirical data is still insufficient to enable a judgement as to whether participatory solutions will have negative or positive effects on forest preservation, biodiversity in forests, the efficient use of public resources, the economic situation of forest owners or the social situation of forest workers (cf. Limacher, S./Kübler, D./Kissling-Näf, I./Zimmermann, W. 1999). This does not speak against the increased use of participatory (as opposed to hierarchic or elite) processes in forest policy but for a critical approach and examination on a case-by-case basis.
6 CONCLUSION

The different contributions in this collection show that the development, authorisation and implementation of NFP’s are connected with numerous legal issues. Both at international and national level, we face a situation whereby, in general, a new political planning instrument encounters existing legal structures which leads to the corresponding problems of co-ordination. The problem can be either resolved or intensified at a general level though the adaptation of the law to the new situation in the framework of the planning processes, or an attempt can be made to interpret the existing law in such a way that it does not represent an insurmountable obstacle. Based on the information presented here, these two options are basically open. International law, however, would appear to be significantly more open to the design and implementation of NFP’s than national law. This may be due, among other things, to the fact that all of the relevant international agreements, declarations and legal acts were passed in recent times and were hence able to take the philosophy associated with NFP’s or similar planning instruments into account. Despite this explicit integration of individual NFP elements, international law still partly requires extensive interpretation and supplements to cover all of the procedural and substantive requirements associated with NFP’s.

The situation with regard to national legislation is similar. Here again, it is possible to glean from the contributions that NFP elements are more explicitly and comprehensively integrated into more recent forest and/or environmental protection legislation and state constitutions than in the older versions. This applies, in particular, to participatory processes, new conflict resolution mechanisms and the legal embodiment of the sustainable use of natural resources or the forest in accordance with Rio 92. In cases in which the legal embodiment of these key elements fails to keep pace with planning developments, it will be difficult to realise substantial changes in forest policy solely through an NFP process. Firstly, this process often lacks democratic legitimation because it usually takes place at administrative level and not at the level of the political institutions (parliament or government) (cf. country surveys carried out as part of COST E19 by Mauderli, U./Zimmermann, W. 2002). A change in the formal legal basis can lead to the opening of the opinion-forming processes for actors interested in the forest who were previously excluded from the narrow, closed and often corporatist circle of forest policy makers. Secondly, in most cases, from the perspective of the rule of law, it should be difficult to make substantial changes to institutions, structures and the content of national forest policy without carrying out the necessary adaptation of the legal policy.

As demonstrated in particular by the example of Finland, the interaction between the NFP and the law should be understood as an iterative interactive process. As the law in force does not in general stand in the way of political planning, it is possible to start with this. Only when it emerges that the legal basis for the inclusion of important NFP elements is missing or inadequate, can its supplementation be initiated. Thus, an ongoing harmonisation between the NFP and the law is necessary and any division into NFP on the one side and the law on the other is erroneous. This kind of parallel development necessitates a will among the key actors for the creation of a new direction in national forest policy. If this is missing, the absence of a corresponding legal basis can easily be used as an argument to hinder the development of the NFP process and, thus also, the adaptation of the forest legislation. The relatively soft and partly non-binding formulations in the international legal basis may not exert an equal counter-pressure in this situation. The EU Rural Development Regulation could represent the main source of pressure here, however it does not require either a binding formulation or more consistent implementation. At national level, the launch of a substantial NFP requires either increased problem pressure or fundamental changes in the political or administrative
structures. These are again the preconditions which must be fulfilled for the successful addition of legislative change to the political agenda (cf. Schlager, E. 1999 p. 252; also True, J.L./ Jones, B. D./ Baumgartner, F.R.1999, p. 97ff.).

The contributions in this publication provide a positive answer to the question as to whether the NFP and the law influence each other and they examine the ways they influence each other from different perspectives. Now that their mutual dependency has been demonstrated, it is possible to address the question as to how an NFP process can be best integrated into the existing legislation or how it can be co-ordinated with new legislation to be created. The response to this question should vary according to the different political and legal situations that prevail in different countries. Common features exist with respect to the basic legal questions and the methodical approach. The contributions presented here may not provide a universally applicable recipe for these two aspects, however they do offer an abundance of solid bases, illustrative examples and thought-provoking inspiration.

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THE DEVELOPMENT OF NATIONAL FOREST PROGRAMMES: GUIDANCE FROM INTERNATIONAL AND EUROPEAN LEGAL AND INSTITUTIONAL FRAMEWORKS

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ABSTRACT
For many countries, forests are a key renewable natural resource, contributing significantly to economic, social and environmental development. In the 1990s, forests moved away from being solely the province of national authorities to being a matter of international concern and regulation. For the first time, forest-related issues were addressed on a global scale at the 1992 UN Conference on Environment and Development (UNCED). It signalled a re-orientation of international forest policy, seeing a shift away from the objective of sustainable timber production towards ecologically sustainable management and use of forests. Since then, general and overlapping policy guidance on sustainable forest management has been provided at the international level by the Statement of Forest Principles, Agenda 21 and the IPF/IFF Proposals for Action. The IPF/IFF process has been instrumental in identifying priority issues as well as creating political consensus on national and international action on forests. The Proposals for Action recognise the importance of comprehensive forest policy frameworks or ‘national forest programmes’ (NFPs) for the achievement of sustainable forest management. The significance of the political consensus, particularly on NFPs, is that there is no longer a question that action should be taken at the national level on sustainable forest management, even though governments may be unclear or may differ about the precise content of such national measures.

Although forestry policy has not been dealt with in a comprehensive way in any of the Community treaties, clear linkages exist between EU and national forestry policies. The Pan-European process of the Ministerial Conferences has helped to translate the general international policy advice into the European context, giving more specific guidance to countries in the design of their NFPs. Some of this policy advice has been further refined and detailed within the framework of the EU sectoral laws and strategies. The introduction of the EU Forestry Strategy means that now there is a basis for co-ordinated action and informed decision making on forest-related activities. The strategy is intended to contribute to the implementation of the international commitments entered into by member states and the EU, particularly the IPF proposals. Mirroring these international commitments the focus of interest in EU forest policy is likely to broaden even further from being an integral part of national economic policy increasingly towards the direction of international environmental policy.

Keywords: National forest programmes (NFPs), Sustainable forest management, European forest strategy, Environment, Natural resources, International forest policy
INTRODUCTION

National forest programmes (NFP’s) are termed as “the process used by a country to deal with forest issues, including the planning and implementation of forest and forest-related activities”. For many countries, forests are a key renewable natural resource, contributing significantly to economic, social and environmental development. In the 1990s, forests moved away from being solely the province of national authorities to being a matter of international concern and regulation. National and international actions on forests have therefore become interdependent, with NFP’s playing a crucial role in informing developments on both levels. The products of the UNCED process provide critical insight into the potential form and structure of NFP’s, giving guidance to national administrations in the development of a comprehensive tool for the sustainable management of forests. This paper, developed from a presentation delivered at the University of Aberdeen under the COST Action 19 programme, provides an overview of the international and European legal and institutional framework guiding the development of NFP’s. Section A focuses on the international legal structures, Section B examines Pan-European and EU policies on forestry, highlighting the ways in which they complement or develop policy at the international level. Section C provides a brief analysis of the effect of international and EU policies on NFP’s. The paper concludes with a brief assessment of future prospects in forestry policies.

A INTERNATIONAL LEGAL DEVELOPMENTS

Along with the international community’s changing priorities on forests and environment-related issues, international forest policy underwent a change in the 1990s. For the first time, forest-related issues were addressed on a global scale at the 1992 UN Conference on Environment and Development (UNCED). It signalled a re-orientation of international forest policy, seeing a shift away from the objective of sustainable timber production towards ecologically sustainable management and use of forests. The conference resulted in the adoption of principles on the management, protection and sustainable use of forests (Non-binding Statement of Forest Principles)\(^1\), and the Agenda 21 action programme aimed at preventing the destruction of forests (chapter 11, Combating Deforestation).\(^2\) In addition, the UN Framework Convention on Climate Change and the Convention on Biological Diversity were also concluded. International forest policy thus now incorporates biodiversity as an integral component of sustainable forestry. One of the key messages of the Non-binding Statement of Forest Principles was to ensure that forest issues are treated in a holistic and balanced manner, within the overall context of sustainable development, taking into account the multiple uses and functions of forests. The Forest Principles themselves provide guidance on the necessary national action for improved forest policy. Recommendations are made inter alia, for the development of institutional and legal frameworks;\(^3\) measures to protect forests from threats such as fire, pests and pollution;\(^4\) and support for scientific research.\(^5\) All of this must be done within the context of the integration of environment with economic and social development.\(^6\)


\(^3\) Forest Principles, para.3(a)

\(^4\) Ibid, para.2 (b).

\(^5\) Ibid., para.12(a)

\(^6\) Ibid., para.3(c)
Chapter 11 of Agenda 21 essentially contains the same themes of institutional and legal capacity; prevention against threats and sharing of information and research in order to improve national forest policies. Its main principles include:

- Sustaining the multiple roles and functions of forests
- Enhancing protection, sustainable management and conservation of all forests through afforestation
- Promoting efficient utilisation and assessment to recover full valuation of forest goods and services
- Establishing or strengthening capacities for planning assessment and systematic observation

Taken together these major forest policy instruments set the scene for the continued development of forest policy in the international sphere.

In 1995, the UN Economic and Social Council (ECOSOC), on the recommendation of the Commission for Sustainable Development (CSD) approved the establishment of an open-ended ad hoc Intergovernmental Panel on Forests (IPF). The IPF’s mandate was to pursue consensus among the international community and to formulate options for further actions in order to combat deforestation and forest degradation. It was to promote multidisciplinary action on forests at the international level consistent with the Forest Principles, the Rio Declaration and Agenda 21. In effect, these policy instruments formed the foundation of the IPF’s work in further developing international forest policy. The outcome of the IPF was endorsed by the fifth session of the CSD in April 1997. Most significantly, the Panel recognised the importance of comprehensive forest policy frameworks or ‘national forest programmes’ (NFP’s) for the achievement of sustainable forest management. There was general agreement that this generic term could include a wide range of approaches within different countries that could be applied at the national and sub-national levels but containing certain core principles that it outlined in its report. NFP’s must adopt a broad intersectoral approach at all stages including the formulation of policies, strategies and plans of action and their implementation, monitoring and evaluation.

The IPF report provides specific guidance to national authorities on the elements to be considered in the development of national forest programmes. These include participatory mechanisms, decentralisation, legal and constitutional frameworks, customary and traditional rights of indigenous peoples, secure land tenure systems, effective coordination mechanisms, and conflict resolution devices. NFP’s must also be developed using iterative and intersectoral approaches that take into account biodiversity conservation and the valuation of forest goods and services. In other words, the development of NFP’s involves both substantive and procedural aspects of planning to achieve sustainable forestry.

Further intergovernmental policy deliberations on forests continued under the auspices of the Intergovernmental Forum on Forests (IFF) in 1997. The IFF was mandated to progress 3 programme areas namely: promoting and facilitating implementation of the IPF

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7 See Agenda 21, Chapter 11, paras 11.3, 11.7, and 11.13(g).
10 Report of the IPF, para.8
11 Ibid.
12 Ibid., para.9
13 Ibid., para.17
Proposals for Action; matters left pending and other issues arising from the IPF Programme areas including trade and environment and transfer of environmentally sound technologies; and international arrangements and mechanisms to promote sustainable forest management. The IFF reported to the eighth session of the CSD in April 2000. On the whole, the IPF/IFF process has been instrumental in identifying priority issues as well as creating political consensus on national and international action on forests. Consensus has been reached in many areas such as underlying causes of deforestation and forest degradation, criteria and indicators, national forest programmes, forest conservation and protected areas and forest research. The significance of such consensus, particularly on NFP’s, is that there is no longer a question that action should be taken at the national level on such issues, even though governments may be unclear or may differ about the precise content of such national measures.

B EUROPEAN LEVEL INITIATIVES

1 THE MINISTERIAL CONFERENCES

The Ministerial Conferences on the Protection of Forests in Europe have been a major institutional initiative in the process of co-operation among European states. 38 European countries including the European Commission participate in the conferences aimed at contributing towards the protection and sustainable management of European forests. At the second Ministerial Conference on the Protection of Forests in Europe held in Helsinki in 1993, the signatory states and the European Community agreed to implement the Statement of Forest Principles adopted at the Rio summit. A resolution was adopted which provides guidelines for national efforts towards sustainable forest management. The guidelines contain similar themes to the elements contained in the IPF/IFF reports, but with a distinct European flavour, advocating attention to silvicultural practices, regional genetic diversity, the maintenance of national and regional landscapes, and the forest ownership structure in Europe. These guidelines form the basis of specific national or regional guidelines which are to be incorporated into forestry plans and programmes which in turn are intended to implement the pan-European guidelines. Other resolutions have been concluded on forest fires, forestry research, biodiversity conservation, forest adaptation, socio-economic aspects of sustainable forest management, and criteria and indicators. These issues reflect the particular forestry concerns identified by European countries: the emphasis is on multiple-use forestry. The elaboration of the issues in these resolutions enables valuable information to be channelled to national authorities so they can further the development of their NFP’s. The resolutions also provide specificity to the substantive and procedural aspects provided by the IPF Proposals for Action, while still maintaining an element of discretion to national authorities in applying these resolutions at the national level. In other words, the final decision making power about the content and form of NFP’s ultimately resides with national governments. Having said that, since NFP’s provide the basis for action at national level as well as for international co-operation, both these processes are actually interdependent, and they are supposed to constantly inform each other’s formation and development.

16 Resolution H1, para.13.
17 See http://www.minconf-forests.net/
2 THE EUROPEAN UNION

At the European Union (EU) level, neither the Treaty of Rome nor the Maastricht Treaty makes any provision for a common forest policy. Differences in patterns of forest use and the wide range of values attached to the use of forest in different member states, it was difficult to formulate a detailed and comprehensive forest policy. Forest-related issues are dealt with in conjunction with several other community policy areas such as: in agricultural policy, competition policy, harmonisation, commercial policy, and environment policy. Therefore there are a number of important decisions within existing EU policies which would have a significant impact on forests. At the same time, direct and indirect linkages exist between Community and national forestry policies. The EU member states are responsible for planning and implementing NFP’s, whilst the Community coordinates the members states’ approaches to international forest-related policy processes.

On 15 December 1998, the European Council adopted a Resolution on a Forest Strategy for the EU. The Resolution emphasises the importance of the multifunctional role of forests and sustainable forest management for the development of society, and in particular, rural areas. This is in keeping with the EU’s focus on ensuring that its forests are protected in order that they continue to provide economic, environmental, aesthetic and cultural values. The overall objective of the EU forestry strategy is to strengthen sustainable forest management and development. Specifically the strategy’s objectives include:

- furthering the objectives of the Community policies
- contributing to the implementation of international commitments entered into by Member States;
- adopting a flexible approach, based on the principle of subsidiarity,
- furthering the principle of integration of sustainable development and environment protection in forest-related policies.

The overall objectives of the strategy are consistent with those stated in the Rio Forest Principles and as defined in the Helsinki Resolution. The strategy in turn should be defined in, and implemented through, national or sub-national forest programmes or equivalent instruments applied by the member states. In this way, international forestry policy becomes a key component of the EU’s forestry strategy, and decisions taken at EU level on issues related to international forestry policy could then serve as common guidelines for national forestry policies.

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18 See Opinion of the Economic and Social Committee on The situation and problems of forestry in the European Union and potential for developing forest policies, O.J. 206/23, 1997, pp.128-139
20 Ibid., article 87.
21 Ibid., article 94
22 Ibid., article 133
23 Ibid., articles 174, 175
24 O.J. C 056, 26/2/1999, pp.0001-0004.
3 FOREST-RELATED EU POLICY

3.1 SUBSTANTIVE POLICIES

In accordance with the objective of sustainable forest management, the EU pursues substantive cross-sectoral policies including:

3.1.1 Rural Development and Agriculture

The main objective of the Rural Development Regulation\(^\text{26}\) is to allow member states to develop integrated programmes at an appropriate level to meet the diverse needs of European rural areas. The forestry chapter in the rural development programme provides support for a whole range of actions to promote sustainable forest management and to contribute to tackling specific problems such as biodiversity, climate change or wood as a source of energy.

The rural development programmes are implemented in line with the EU’s Agenda 2000 project which aims to provide a comprehensive framework of the Union’s future into the 21\(^{\text{st}}\) century through stimulating employment and improving the quality of the natural environment. The rural development programmes in the context of Agenda 2000 will enable the community to support the implementation of national and sub-national forest programmes in line with the objectives of rural development and in accordance with the principle of subsidiarity.

Forest-related agriculture issues are dealt with in Council Regulation 2080/92, which provides for measures to promote afforestation as an alternative use for agricultural land and the development of forestry activities on farms.

3.1.2 Environmental Issues

The Community Scheme for the Protection of Forests against Atmospheric Pollution establishes a uniform periodic inventory of damage caused to forest, using an observation network of over 5,000 monitoring plots.\(^\text{27}\) The inventory provides information on the extent and development of forest conditions in various regions of the EU, and aims to provide a clearer understanding of the impact of air pollution and other factors on forest ecosystems.

Since forest fires present a significant danger to efforts on sustainable forest management, the EU is part financing forest fire prevention measures within the framework of the rural development policy and through Regulation 2158/92,\(^\text{28}\) which underpins the efforts of member states to prevent forest fires. The system enables fire-prevention measures to be assessed more precisely and priorities to be defined. Within the framework of the follow up to the pan-European Ministerial Conferences and implementation of the IPF proposals for action, the system also contributes to the development of international co-operation.


In line with the objectives of the Conservation on Biological Diversity, addressing biodiversity concerns in forests requires measures in three principal areas: conservation of biodiversity; the sustainable use of its components and the equitable sharing of the benefits arising from their use.\(^{29}\) The EU has developed a Biodiversity Strategy,\(^ {30}\) which has the following objectives:

- developing and implementing EU forest strategy
- ensuring that sustainable forest management includes biodiversity
- ensuring that biodiversity benefits from aid schemes
- limiting damage to eco-systems from afforestation schemes
- promoting international research

The Biodiversity Strategy also includes actions for \textit{in situ} conservation in two main aspects:

a) Conservation and enhancement of biodiversity in sustainable management systems for all forests

b) The establishment of specially managed protected zones through the ecological network NATURA 2000

The first aspect is necessary to ensure that forest species are able to survive under natural conditions and are able to maintain or recover vigorous populations over their distribution area. Thus forest managers need to take into account \textit{inter alia} the following considerations:\(^ {31}\)

- Appropriate ecological site adaptation measures through diverse silvi-cultural techniques combined with accessory measures. For instance, respecting dead wood and other key-micro-habitats present in forests
- Maintenance of forest eco-system health and vitality by enhancing regenerative capacity resistance and adaptive capacity of forest eco-systems
- Maintenance of traditional management of silvo-pastoral systems with high levels of biodiversity which may be lost if these areas are abandoned
- Improving harvesting techniques to keep related damages as limited as possible
- Conducting afforestation measures in a manner that does not negatively affect ecologically interesting or noteworthy sites, habitats and ecosystems landscapes.

For instance, the chosen tree species should be well suited to local conditions and ecosystems; native species or local provenances should be preferred; and whenever introduced species are used, sufficient attention should be taken to ensure the conservation of native flora and fauna.

The establishment of specially managed protected zones through the ecological network NATURA 2000 serves as a complementary instrument to the first aspect under the Biodiversity Strategy in order to achieve sustainable management of forests. The conservation of the remaining areas of primary forests and the protection of areas of high

\(^{29}\) Convention on Biological Diversity, Article 1.
\(^{31}\) Ibid., p 20
Beatrice Chaytor: The Development of NFP’s

ecologically fragility need specific initiatives. This is provided by the NATURA 2000 network, consisting of “Special Protection Areas” (SPAs) under the Birds Directive\(^\text{32}\) and Special Conservation Areas (SCAs) under the Habitat Directive.\(^\text{33}\)

Within the EU, \textit{ex-situ} conservation of biodiversity is considered within the framework of measures related to conservation, characterisation, collection and utilisation of genetic resources under Regulation 1467/94.\(^\text{34}\) The Regulation provides for harmonisation, among EU member states, of approaches to:

- data collection and analysis of indicators for assessing biodiversity of forest ecosystems
- application of Pan-European criteria and indicators for sustainable forest management

Member states have the responsibility to ensure that they integrate biodiversity concerns in an appropriate way in their national forest programmes or equivalent instruments. They must be aware of the impacts of forest management systems on biological diversity and on how such management systems can maintain and enhance biological diversity while ensuring the forests’ economic viability. The EU has the flexibility to support such efforts through support for preserving and enhancing the ecological values of forests, support for training activities, and appropriate afforestation measures adapted to local conditions and ecosystems. The EU measures on atmospheric pollution and forest fires also contribute to the conservation of biodiversity. The measures under the rural development programme are useful for enhancing biodiversity but much of their efficacy will depend on the relevance of the programmes and measures, which will be implemented at national and regional levels.

3.1.4 Climate Change

There is acknowledgement within the EU that forests play an important role in the global carbon cycle and can be significant carbon sinks.\(^\text{35}\) However, there is little scientific evidence about the potential of carbon sinks in relation to management of forest ecosystems. The forest strategy recognises that the potential of forests and forest soils as carbon sinks with the EU “can be best utilised through the sustainable development and protection of our forests...”\(^\text{36}\) Member states can therefore achieve the objectives of carbon storage through various forest management practices, land-use practices and marketing efforts. The EU will make use of its existing instruments, such as forest protection measures, research and development and the proposed forest measures under the rural development programme to support the efforts of member states in relation to climate change.

\(^{36}\) See O.J. C056, 26/02/1999.
3.2 PROCEDURAL ISSUES

Supporting the substantive policy areas are *procedural and systemic issues* specific to forestry, such as:

3.2.1 Support for Forestry Research

Under the Fifth Framework Programme for Research, Technological Development and Demonstration, forestry research is incorporated mainly within the Key Action ‘Sustainable agriculture, fisheries and forestry including integrated development of rural areas’ under the specific programme ‘Quality of Life and management of living resources’. Research priorities under the programme essentially follow the same themes as witnessed in the Forest Strategy and the Ministerial Conferences Resolutions: the multifunctional management of forests; the sustainable and multipurpose utilisation of forest resources, the forestry-wood chain and consumer requirements.

Further research is carried out under the Key Action ‘Climate, Global Change and Biodiversity of the specific programme ‘Preserving the Ecosystem’. Other actions are carried out under the programmes on ‘Co-operation with Third Countries and International Organisation’ (INCO), and ‘Co-operation on Science and Technology’ (COST).

3.2.2 Information and Communication

The European Forestry Information and Communication System (Efics) focuses on achieving the following objectives:

- Improving the quality of and encouraging the changes required in, national forest inventories with a view to reporting on sustainable forest management
- Establishing an EU database containing relevant information about European Community measures and member states’ national and sub-national forest polices and programmes
- Analysis of the future development of the forestry sector with respect to trade, industry, employment and environmental issues

The system of information is vital to both the Community’s and member states’ efforts to implement not only the IPF proposals on national forest assessments, but also the EU Forestry Strategy and the general guidelines in the Helsinki Resolution adopted by the Ministerial Conferences on the Protection of Forest in Europe, in particular those advocating that forest management should be based periodically updated plans and programmes as well as on forest surveys, assessments of ecological impact, and scientific knowledge.

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40 See IPF Report paras. 79-83.

41 See Resolution H1, Part I: General Guidelines, para.4.
3.2.3 Co-ordination and Participation

The responsibility for drawing up and the application of key EU laws and regulations affecting forestry is divided between various directorates-general of the European Commission. The most important unit is the unit for special measures in rural areas (the forestry unit) in DG Agriculture. Forestry measures are also dealt with by DG Internal market and industrial policy, which now has a separate forestry industry unit to oversee the particular interests of the forestry industry in decision making. Forestry also falls under the activities of DG Competition, DG Environment, DG Development, DG Science, research and development, DG external relations and DG Energy. This plethora of forest related mandates have made it difficult to co-ordinate forestry policy objectives in a coherent manner.

The IPF proposals for action on processes to establish national or sub-national forest programmes emphasise the benefits of effective co-ordination between the various policy sectors that have an influence on forestry within the member states. At the Community level, co-ordination and consultation on measures relating to forestry principally involve two main co-operation forums:

- The standing Forestry Committee: brings together representatives of the member states with the Commission as chair.
- The Consultative Committees: advises the commission, providing opinions and promoting exchange of information on forests and forestry-based and related industries.

The Standing Forestry Committee acts as a forum for discussion on, for instance, positions on international forestry issues. It also functions as an administrative committee when decisions are taken on, for instance, the funding of projects for monitoring the health of forests.

Recently, the need for participation by citizens in decision-making concerning forestry has been emphasised. But consideration of what form participation should take demonstrates the challenges in achieving an arrangement that satisfies all the parties concerned. The views of forest owners, the forest industry and conservationists are not always compatible. Planning based on participation is easier to implement in state or municipally owned forests, which may be considered to be the common property of citizens. In private forests, operations are largely steered by legislation, guidelines on forestry practices, or education and training.

3.3 COMPLEMENTARY FORESTRY POLICIES

Other aspects of EU policy also have a significant bearing on the achievement of sustainable forest management and the development of national forest programmes in this context.

3.3.1 Pre-accession measures

Council Regulation 1268/99 provides for community support to pre-accession measures for agriculture and rural development in the applicant countries of Central and Eastern Europe. The measures elaborated under the support programme aim to:
• Resolve priority and specific problems for the sustainable adaptation of the agricultural sector and rural areas in the applicant countries

• Contribute to the implementation by them of the *aquis communautaire* as regards the common agricultural policy and related policies.

Support for agricultural and rural development may in particular cover forestry, including afforestation, investments in forest holdings owned by private forest owners and the processing and marketing of forestry products. These measures will complement the wider European co-operation on forests under the Ministerial Conferences on the Protection of Forests in Europe, in order to promote forest management and conservation.

3.3.2 Forest Certification

Forest certification is a procedure that consists of verification by an independent third party that the forest in question is managed in a sustainable way. These systems and their related labelling are market-based instruments aimed at promoting sustainable forest management and the use of forest products coming from renewable and sustainable sources. Forest programmes and policies of member states are the key instruments for ensuring that sustainable forest management and certification schemes act as additional incentives. Recently representatives from member states’ forestry and trade industries began to devise a pan-European forest certification and authentication framework based on the pan-European criteria and indicators for sustainable management, which have been developed under the auspices of the European Ministerial Conferences. The criteria drawn up stress the simultaneous maintenance of the different functions of forests and the need to further these functions. These criteria and indicators provide a useful benchmark for national measures – forest management and use must be economically, ecologically and socially sustainable.

3.3.3 Internal and International Trade

The EU forestry sector has two main components having distinct economic characteristics. The first covers the management of the forest resource per se, for the supply of roundwood from forests under sustainable management within the EU internal market. Individual Member State and EU financial assistance support establishing and maintaining the forest resource in accordance with sustainable forest management principles. This support for forestry is based on financial contributions within the framework of aid systems established by the member states under their forest policies and programmes. However, such support must respect market-based disciplines and ensure the effective functioning of competition policy. The second component is forest-based and related processing industries and other commercial activities. This aspect is subject to market forces within the open economic situation of the EU.

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43 Ibid.
45 See [http://biodiversityeconomics.org/business](http://biodiversityeconomics.org/business)
46 Resolution L2: Pan-European criteria, indicators and operational level guidelines for sustainable forest management.
A number of legal instruments at the EU level influence commercial activities relating to the forestry sector:

- Technical and environmental standards for forest products. These guide the classification of rough timber and voluntary eco-labels for certain types of paper.
- Common rules on the quality and marketing of forest reproductive material. Such rules help to ensure high quality in forest reproductive material within the European Union.
- Plant-health controls are intended to prevent against risks derived from imports of timber into the Community.

All of these measures must be compatible with international trade obligations as well as subject to other international commitments the EU has undertaken, in particular, the rules of the World Trade Organisation (WTO).

3.4 EFFECT OF INTERNATIONAL AND EU FOREST POLICIES AND STRATEGY

One of the major policy problems facing forest policy in the EU was that although forests are an important source of economic wealth and an essential part of the environment, the forestry sector was not taken into account in a comprehensive manner in political decision making. This is because the forest sector is part of the open sector of the EU economy, and also because the forestry sector was of less significance before the accession to the EU of Sweden, Finland and Austria.47

Moreover in areas such as forestry the point of departure for formulating policy is the definition of the policy objectives, often in the face of conflicting interests. Finding a balance between the various functions of forests is a challenge. There may not always be enough time to consult landowners when implementing conservation programmes, and this may delay implementation. Forest and land-use planning which falls within the remit of local and regional authorities offers a good opportunity for reconciling conflicts involving different uses of forests and land. In this context, the fragmentation of forest ownership is both an opportunity and a constraint. In some countries, fragmentation has developed to such an extent that it hampers the commercial exploitation of forests.

Other practical problems involve the fact that environmental terminology differs considerably from one country to another. In order to achieve international data on for instance, conservation areas, a standard terminology will need to be developed (at least for the compiling of international statistics). Similar types of conservation area could then be included in the same category, although countries could go on using their own concepts for general purposes.

The introduction of the EU Forestry Strategy means that now there is a basis for coordinated action and informed decision making on forest-related activities. The strategy is intended to contribute to the implementation of the international commitments entered into by member states and the EU, particularly the IPF proposals. Mirroring these international commitments the focus of interest in EU forest policy is likely to broaden even further from being an integral part of national economic policy increasingly towards the direction of international environmental policy. Yet, the EU forest strategy could itself constitute a kind of NFP – one elaborated at the regional level, which provides guidance for actions taken at the national level. The entire policy framework provides national authorities with discretion and flexibility to elaborate their NFP’s in accordance with their specific forestry needs.

47 Opinion of the Committee of the Regions on ‘Management, use and protection of forests in the EU, O.J. C 64, 27/02/98.
It is interesting to note that the detailed actions and programmes elaborated within the context of specific EU forest related policies relate to the substantive policy areas whereas only general guidance is given on issues such as participation in policy formation. This could be because the Community has taken the view that national policies and the design of NFP’s are the province of member states, and that only where the Community can bring added value, such as pollution control, research and training and the co-ordination of international activities, will it provide detailed action.

CONCLUSION

The IPF Proposals for Action have clearly established that the development of NFP’s is largely the province of individual states. At the international level, general and overlapping policy guidance is provided by the Statement of Forest Principles, Agenda 21 and the IPF/IFF Proposals for Action. The IPF/IFF processes in particular have established consensus on a range of issues concerning sustainable forest management, including the design and development of NFP’s. It is significant that there is no longer a question of whether action should be taken at the national level, but about the precise content of the national action adapting to particular circumstances and needs. The Pan-European process of the Ministerial Conferences has helped to translate the general international policy advice into the European context, giving more specific guidance to countries in the design of their NFP’s. Some of this policy advice has been further refined and detailed within the framework of the EU sectoral laws and strategies. Clear linkages exist between EU and national forestry policies, although forestry policy has not been dealt with in a comprehensive way in any of the Community treaties. Nevertheless, it is obvious that Member States will have to take into account a range of sectoral policies including agriculture and rural development, atmospheric pollution, biodiversity and climate change.

However, a great deal of discretion and policy making is left to Member States to elaborate their NFP’s within the context of their particular economies, social structures and ecological conditions. On the one hand, this is as it should be. Neither EU nor international policy should exactly prescribe formulas for countries with different approaches to forest uses and values. Both the process of NFP development and content will vary from country to country. The advantage of variety is that each NFP will, and indeed must, be tailor made to suit particular circumstances. On the other hand, the lack of specific guidance means that national authorities may take considerable time in developing their NFP’s, and the plethora of programmes may create a distinct lack of forest policy coherence and co-ordination within the EU region. The new Forest Strategy provides some answers to these challenges. It provides a basis for co-ordinated action and informed decision making among EU countries. There is the possibility that it may itself constitute a form of regional NFP, which can provide guidance at the national level on the elaboration of individual NFP’s.
NATIONAL FOREST PROGRAMMES AND THE LAW: INTERNATIONAL, EUROPEAN AND NATIONAL PERSPECTIVES

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ANNEX
STATEMENT OF THE PRESIDENT OF BRAZIL ON THE ESTABLISHMENT OF A NATIONAL FOREST PROGRAMME ____________________________39

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1 INTRODUCTION

Legislation and other rules of law are central tools in the forest sector. In the best of circumstances, they establish Rules and standards and mechanisms that effectively assure sustainable forest management; in other circumstances, they pose obstacles. National Forest Programmes (NFP’s) not only present opportunities to assess the impacts of these laws, but also to improve them. Doing so with maximum effectiveness requires a strategic and holistic approach towards the relationship between law and sustainable forest management (SFM).

Although the term "NFP" is relatively new, planning in the forestry sector is not new at all. What make NFP’s different from their predecessors are their elements, some of which have a legal content. For example, the principle of national sovereignty over natural resources, which is often strongly asserted in the case of forests, is one that has been under development in international law since the 1960s. That principle has now been codified as legally binding in Article 3 of the Convention on Biological Diversity, although it is also balanced by the responsibility that States have to conserve their biodiversity and use their biological resources in a sustainable manner.

Another key principle is that the NFP should be consistent with international agreements and commitments. This corresponds to the basic principle of international law, *pacta sunt servanda*. As indicated above, there are numerous international legal obligations relating to forests, which States are responsible for complying with.

In marked contrast to the overly ambitious planning efforts of the Tropical Forests Action Plan, which tended to be top-down and unrealistic, NFP’s are based on bottom-up and flexible approaches. As Liss argues, NFP’s encompass a technical process, which involves identifying goals, policies, strategies and mechanisms, and a political process, whereby choices between available options are the outcomes of debates, negotiations and compromises of relevant stakeholders.

This paper will argue that laws are central to the development and success of NFP’s, because:

- They help define NFP’s
- They help establish the enabling conditions for developing the NFP,
- They can influence the issues to be considered in developing the NFP,
- They can place limits on the outputs of NFP’s,
- They can be the targets of NFP’s,
- They can impact on the implementation of NFP’s

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2 According to Paragraphs 8 and 9 of the IPF Proposals for Action, NFP’s are meant to be participatory, decentralised, recognise and respect customary and traditional rights, secure land tenure arrangements, establish effective coordination mechanisms and conflict resolution schemes, national sovereignty, consistent with national policies and international commitments, holistic and inter-sectoral, and long term and iterative.
3 See, e.g. UN General Assembly Resolution 1803 on Permanent Sovereignty over Natural Resources, 14 December 1962.
4 See Preamble.
5 This is also reflected in Article 26 of the Vienna Convention on the Law of Treaties.
The relationship between law and NFP’s can be dynamic. Laws can, and should, impact on NFP’s in the ways described in this paper. However, NFP’s can also help change the process in which law is made for forests, and possibly other natural resources. Taken to its full potential, NFP’s can trigger new levels of public consultation, compared to that which is customary for law reform, thereby also bringing in new views and inputs.

This is not to say that NFP’s need to be codified, *per se*, in a particular legal instrument, although this has happened in at least one country. Rather, the aim of the paper is to demonstrate that legal considerations play a key – although not exclusive – role in guiding the NFP process in all its stages.

2 LEGAL INSTRUMENTS THAT DEFINE NFP’S

Legally binding sources of law that are relevant for NFP’s are wide ranging, and are to be found at the international, regional and national level. In addition, some “soft law” instruments are relevant for NFP.

Although not *per se* legally binding, these "soft law" instruments can reflect a high degree of political commitment. They can also reflect principles of customary international law, but more significant is that "soft law" instruments are often precursors to legally binding instruments.

Several non-binding instruments have contributed to better understanding the NFP concept. Most significant are the IPF Proposals, which considered this topic extensively under the first item of its mandate. NFP’s were determined to be a generic term for a wide range of approaches, that demand a broad intersectoral approach at all stages, and should be integrated into wider programmes for sustainable land use. The IPF also defined the specific elements of NFP’s, referred to above, most of which relate to legal regulations. NFP’s are to interact with national desertification strategies and national sustainable development strategies.

The most detailed description appears in Paragraph 17(a), which expresses the following Proposal for Action:

17. The Panel:
(a) Encouraged countries, in accordance with their national sovereignty, specific country conditions and national legislation, to develop, implement, monitor and evaluate national forest programmes, which include a wide range of approaches for sustainable forest management, taking into consideration the following:

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7 See Annex I, which contains a Brazilian Decree establishing an NFP.
8 Examples of treaties at the global level that are relevant to NFP’s: Convention on Biological Diversity, Framework Convention on Climate Change/Kyoto Protocol, Convention to Combat Desertification, Convention on International Trade in Endangered Species of Wild Fauna and Flora, Ramsar Convention, World Heritage Convention, and the World Trade Organization Agreements. It must be emphasised that most of these treaties create institutions that agree decisions, recommendations and work programmes that can impact on NFP’s. These may be legally binding or non-legally binding, depending on the particular instance.
9 Examples of treaties at the European regional level that are relevant to NFP’s include: Alps Convention/Mountain Forest Protocol, Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. In addition, some pieces of EU legislation are relevant. Although the EU does not have legally binding legislation specifically on sustainable forest management, several pieces of secondary legislation relate to this theme: Flora and Fauna Directive, Birds Directive, Rural Development Regulation, EIA Directive, and the Access to Information Regulation.
10 Sources of national law include the constitution, Forestry law, Environmental law, Administrative law, Property law, Local government law, Planning law, and Criminal law. In addition to actual legislation, judicial rulings at all levels can alter the interpretation or application of law.
12 Paragraph 8.
13 Paragraph 44.
Consistency with national, subnational or local policies and strategies, and - as appropriate - international agreements;
Partnership and participatory mechanisms to involve interested parties;
Recognition and respect for customary and traditional rights of, inter alia, indigenous people and local communities;
Secure land tenure arrangements;
Holistic, intersectoral and iterative approaches;
Ecosystem approaches that integrate the conservation of biological diversity and the sustainable use of biological resources; and
Adequate provision and valuation of forest goods and services;
(e) Urged countries to develop, test and implement appropriate participatory mechanisms for integrating timely and continuous multidisciplinary research into all stages of the planning cycle.

So far, NFP’s have not been defined or required in any legally binding instrument at the international or regional level. The closest is the EU Rural Development Regulation, which creates a financial incentive for countries to have NFP’s, although it does not make any substantive prescription for their content.14 At the national level, there are only a few instances where NFP’s are called for.15 One notable case in Europe is the requirement under the Finnish Forest Act that regional (i.e. subnational) forest programmes be established.16

3 LEGAL INSTRUMENTS THAT ESTABLISH ENABLING CONDITIONS FOR NFP’S

Legal instruments can be significant in establishing the enabling conditions for developing NFP’s. Key conditions for the success of NFP’s include the involvement of all relevant institutions, and the right of stakeholders to receive relevant information and their right to participate in the NFP. These conditions are related and will affect the quality of the input of stakeholders. The legal framework for these measures will differ from country to country, however all countries have rules relating to:

- Participation in public decision-making relating to forests, land use and the environment
- Access to official information relating to forests
- Natural justice of those affected by decisions relating to forests (e.g. notice and comment, right to be heard, right of appeal, right of compensation)

Of course, each country will have its own set of conditions and policies that are relevant to NFP’s, many of which are legally grounded. For example, in developing its NFP, Malawi has identified as relevant the following policies that also contain elements: settlement policy, export taxes, tree tenure, royalties, and concessions policy.17

There are also important norms expressed at the international level. Although some of the basic principles regarding access to information and participation are reflected in the Rio

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15 See Brazilian Decree in Annex I.
16 The Forest Act, Issued in Helsinki 12th December 1996 (Section 4: Regional forestry target programme)
Declaration on Environment and Development,\(^{18}\) as well as in Agenda 21 and the World Charter for Nature, the recently concluded Aarhus Convention is particularly pertinent for developing NFP’s in Europe. The Convention’s first two pillars -- access to information and participation in environmental decision-making -- are part of the legal conditions under which NFP’s are carried out. In several respects, this treaty goes beyond the rules on access to information spelt out in the EC Directive 90/313/EEC.

Article 4 of the Convention provides that all persons have a right of access to information, regardless of interest. It then sets out a set of optional limited circumstances upon which access can be denied. These include where the request is material in the course of completion or internal communications, or where certain interests (e.g. intellectual property rights) would be adversely affected.

Article 7 of the Convention provides a right of public participation during the preparation of plans and programmes relating to the environment. It provides for time frames to be established public participation in the different phases of the plans and programmes, and requires that public participation take place early in the process. It also requires that the Parties that the plans take account of the public participation.

Of note is the that the “soft law” instrument MCPFE Resolution L1 calls for continuing to develop the conditions for the participation of relevant stakeholders in the development of forest policies and programmes.

4 LEGAL RULES THAT IMPACT ON THE CONTENT OF NFP’S

Most legal instruments that are specifically related to NFP’s are in the form of “soft-law”, and have emerged mainly out of the IPF/IFF and the MCPFE processes. However, many legally-binding instruments at the international and EU level also affect the content of NFP’s, both in establishing related processes of their own, and in their substantive obligations. The following summarises the substantive themes raised in the different types of legal instruments.

4.1 “SOFT LAW” INSTRUMENTS

The following actions aimed at, or are relevant to, NFP’s appear in “soft-law” instruments:

- Integrate criteria and indicators into the formulation, implementation, monitoring and evaluation of NFP’s,\(^{19}\)
- Undertake monitoring, assessment and reporting,\(^{20}\)
- Develop an integrated approach to implementing forest-related treaties,\(^{21}\)
- Assess potential for economic instruments and tax policies,\(^{22}\)
- Make rehabilitation and SFM in environmentally critical areas a higher priority,\(^{23}\)
- Take account of protection of threatened forest species and ecosystems,\(^{24}\)
- Coherence with programmes in other sectors.\(^{25}\)

\(^{18}\) See, e.g. Principle 10.
\(^{19}\) IPF Proposals, Paragraph 17(d), MCPFE L2 Resolution, paragraph 1.
\(^{20}\) IPF Proposals, Paragraph 12.
\(^{21}\) IPF Proposals, Paragraph 9(f)
\(^{22}\) IPF Proposals, Paragraph 115(a)
\(^{23}\) IPF Proposals, Paragraph 129(b)
\(^{24}\) MCPFE H2 Resolution, paragraph 5.2
\(^{25}\) MCPFE L1 Resolution, paragraph 4.
4.2 INTERNATIONAL TREATIES

Several international treaties contain provisions that impact on the content NFP’s:

4.2.1 Convention on Biological Diversity

In the absence of a global forest convention, the CBD is the treaty which addresses most forest values at a global level. It requires Parties to develop national strategies, plans or programmes for the conservation of biological diversity, reflecting the measures in the Convention. Furthermore, Parties are to integrate the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

Article 7 requires Parties to identify and monitor of components of biodiversity important for conservation and sustainable use. Annex I provides an indicative list of categories to guide Parties in applying this provision that include ecosystems and habitats, species and communities, and genomes and genes. In line with the Convention’s ambition to attack the root causes of biodiversity loss, Article 7(c) requires Parties to identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity.

Central to the Convention are its requirements on in situ conservation. Article 8 requires Parties to:

- Establish a system of protected areas
- Regulate or manage important biological resources to ensure their conservation and sustainable use
- Promote the protection of ecosystems, habitats and maintenance of viable populations of species in natural habitats
- Rehabilitate or restore degraded ecosystems
- Prevent the introduction of alien species that threaten ecosystems, habitats or species, and eradicate or control them if already introduced
- Develop or maintain legislation or other regulatory provisions to protect threatened species or populations
- Regulate or manage processes and activities which have or are likely to have significant adverse impacts on the conservation of biological diversity and the sustainable use of biological resources

Furthermore, Article 10, on sustainable use of components of biodiversity, calls on Parties to integrate consideration of the conservation and sustainable use of biological resources into national decision-making and to adopt measures to avoid or minimise adverse impacts on biodiversity.

In recognition that command-and-control regulation is not always the most effective means of achieving conservation ends, the Convention encourages Parties to adopt incentive measures.

In Article 15(1), the CBD affirms the right of a country providing genetic resources to determine access to those resources, and requires that such access be subject to the providing party’s prior informed consent. Articles 15(7) and 19(2) seek to channel the benefits derives from using genetic resources to the Party of origin: recipients are required

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26 Article 6(a).
27 Article 6(b).
28 Article 11.
to share in a "fair and equitable" way the results of research and the benefits of commercial and other use, on mutually agreed terms. Technology is also to be transferred to developing countries, taking account of existing patents and other intellectual property rights.\(^{29}\)

The Convention recognises the crucial role traditional and local communities play in conserving biological diversity and sustainably using biological resources. Article 8(j) stipulates that subject to their national legislation:

- Parties are to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities,
- Promote their wider application with the approval of the holders, and
- Encourage equitable sharing of benefits arising out of using such knowledge, innovations and practice.

In addition, Article 10(c) calls on Parties to protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation and sustainable use.

Finally, Article 14 calls on Parties to take account of the environmental consequences of programmes and policies likely to have adverse effects on biological diversity.

The COP of the CBD has addressed forest issues for a number of years. Decisions III/12 specifically urged that NFP’s be based on an ecosystem approach. Decision IV/7 established a work programme on forest biodiversity, \textit{inter alia}, to encourage integration of conservation and sustainable use of biodiversity into NFP’s, and to provide a tool for implementing the CBD at a national level that complements NFP’s Decision V/4 encouraged Parties to promote the integration of national forest programmes with national biodiversity strategies, applying the ecosystem approach and sustainable forest management.

4.2.2 Convention to Combat Desertification

This convention addresses forests, within the context of a broad approach to land use measures to combat desertification. The objective is to be achieved through effective action at all levels, in the framework of an integrated approach and the achievement of sustainable development in affected areas. According to Article 4(2)(a), this integrated approach involves addressing the physical, biological and socio-economic aspects of the processes of desertification and drought. The holistic approach of the Convention can be illustrated by the definition provided of land degradation in Article 1(f): as reduction or loss, in arid, semi-arid and dry sub-humid areas, of the biological or economic productivity and complexity of certain land resulting from land uses or processes such as long-term loss of vegetation. In addition, the Convention is to be implemented in light of other relevant multilateral environmental agreements.

\(^{29}\) Article 16.
Affected country Parties undertake to do the following:

- Give due priority to combating desertification and mitigating the effects of drought;
- Establish strategies and priorities to combat desertification and mitigate the effects of drought;
- Address the underlying causes of desertification;
- Promote awareness and facilitate participation of local populations in efforts to combat desertification and mitigate the effects of drought; and
- Provide an enabling environment through legislation, policies and action programmes.  

Affected country Parties are to prepare national action programmes, as appropriate in the framework of the regional implementation annexes, which should be updated regularly and be closely inter-linked with other policies for sustainable development. National Action Programmes are to identify the factors contributing to desertification and the practical measures necessary to combat desertification and mitigate the effects of drought. In so doing, they shall specify the roles of government, local communities and land users, and shall, *inter alia*, give particular attention to implementing preventive measures for land not yet or only slightly degraded, promote policies and strengthen institutional frameworks, and provide for effective participation. The Convention also requires affected country Parties to consult and prepare sub-regional and regional action programmes. Support is to be given for the elaboration and implementation of action programmes, including financial cooperation. Requirements relating to information collection, analysis, and exchange, as well as research and development, are set forth. In addition, Parties are to prepare national reports on the implementation of the Convention.

The Convention contains a set of regional implementation annexes, which contain more specific obligations. The Regional Annex for Northern Mediterranean calls for national action programmes to include forestry and to protect against forest fires. However, it must also be acknowledged that to date, forests have not had a prominent place on the CCD agenda.

4.2.3 UN Framework Convention on Climate Change (FCCC)

A number of provisions of both the FCCC and its Kyoto Protocol either refer directly to forests and forestry or are indirectly relevant to forest policies, although it remains unclear whether the latter will enter into force. The basis for the role of forests and forestry in international climate policy was laid in the UN Framework Convention on Climate Change of 1992. As a result of intense negotiations on the issue, the Convention in several places, but most importantly in Article 4.2 on the commitments of industrialised country Parties included in Annex I (so-called Annex I Parties), refers to “emissions by sources and removals by sinks of greenhouse gases” (emphasis added). The Convention thus

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30 Article 5
31 Article 9(1).
32 Article 19(1).
33 Article 10(2).
34 Article 11.
35 Article 13.
36 Article 16.
37 Article 17.
38 Article 26.
39 Article 6.
established the "comprehensive approach" favoured by the US and others as the basis of international climate policy.

According to the convention, sinks have to be taken into account with respect to the soft "aim" of returning Annex I Parties' GHG emissions to 1990 levels by 2000 (Article 4.2(b)). Consequently, national inventories have to include information on GHG removals by sinks (Article 12.1(a)) and on the impact of climate policies and measures on such removal (Article 12.2(b)). Appropriate methodologies for calculating such removals are to be developed under the auspices of the Conference of the Parties (COP) (Articles 4.2(c) and 7.2(d)).

The Convention also refers more specifically to forests and forestry. According to Article 4.1(c), all Parties are committed to "promote and cooperate in the development, application and diffusion ... of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including ... forestry ...". Article 4.1(d) commits Parties, generally, to "promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including ... forests ...". These provisions provide some safeguard against unsustainable forestry practices by calling upon Parties to promote sustainable forest management and reduce deforestation ("reduce or prevent emissions"; "conservation of sinks and reservoirs") as well as increase the growth of forests, i.e. afforestation and reforestation ("enhancement of sinks"). In addition, Article 4.8 stipulates that special consideration should be given, inter alia, to countries with forested areas and areas liable to forest decay.

In the course of the development of the Convention, another area has developed which has proven to be of importance for sustainable forest management: the "joint implementation" (JI) of projects by several Parties in order to reduce GHG emissions or enhance GHG removal by sinks. COP 1 in 1995 established a related pilot phase of "activities implemented jointly" (AIJ). No carbon credits accrue from any AIJ project. Nevertheless, a number of forest-related projects have been implemented in this framework in developing countries as well as in "countries with economies in transition" (CEIT).

The term "sinks" had been totally undefined under the Convention. In contrast, the Kyoto Protocol determines three categories of sinks that shall be used by industrialised country Parties in meeting their quantified emission limitation or reduction commitments: "afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period" (Article 3.3). Only "direct human-induced activities" shall be taken into account. While the scope of forestry activities that can be included thus appears to be limited, additional activities (most importantly forest management) might be included pursuant to Article 3.4. Article 3.4 enables the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP/MOP) to include further sink categories in the forestry sector. Such additional sink categories would generally only become relevant for the second commitment period (i.e. starting in 2013). However, Parties can choose to apply them already for the first commitment period, provided that the relevant activities have taken place since 1990 (Article 3.4). In addition, Parties which had positive emissions from forestry activities in the baseline year 1990 are allowed to subtract these emissions from their baseline in order to determine their emission reduction commitment (which thus becomes smaller accordingly; see Article 3.7). As in the case of the Convention, it follows from the inclusion of sinks in the Kyoto Protocol that Parties have to report on relevant forestry activities and have to include data on related emissions and removals in their annual emission inventories (Articles 5 and 7).
Furthermore, the Protocol's Article 6 opens up the opportunity to implement forest-related joint implementation projects among Annex I Parties, i.e. in practice between industrialised OECD countries and CEIT countries. Investing OECD countries can thus acquire "emission reduction units" from host CEIT countries which they may use in fulfilling their emission limitation or reduction commitments.

Article 12 of the Protocol defines the Clean Development Mechanism (CDM). The CDM basically provides a framework for implementing joint implementation projects with involvement of developing country Parties. Investor countries will earn "certified emissions reductions". Article 12 only mentions "emission reductions", but does not explicitly include removals by sinks. It is disputed whether sink projects should be included under the CDM.

Finally, rather general references to forests and forestry are included in Articles 2 and 10 of the Kyoto Protocol. Article 10, inter alia, obliges Parties to elaborate and implement programmes to mitigate and adapt to climate change. Such programmes as well as related reporting should include the forestry sector. According to Article 2, each Annex I Party shall implement policies and measures such as, protection and enhancement of sinks and reservoirs, promotion of sustainable forest management practices, afforestation and reforestation. Providing some safeguard for conflicts with other environmental objectives, protection and enhancement of sinks and reservoirs is to be undertaken by each Annex I Party "taking into account its commitments under relevant international environmental agreements".

The meaning and impact of the aforementioned forest-related provision of the Kyoto Protocol to a large extent depend on their further clarification and eventually their implementation. For example, definitions for central terms such as "forest", "reforestation" and "direct human-induced forestry activities" have not been fixed. It is also not clear whether and to what extent further sink categories may be allowed under Article 3.4 to be used to meet industrialised countries' commitments. Methodologies and accounting rules for estimating removals of sinks activities need to be developed (Article 5). And a decision on whether and, if so, which forest-related activities will become eligible under the CDM is still outstanding. These issues are addressed in the framework of the Buenos Aires Plan of Action adopted at the FCCC's COP 4 in 1998.

Finally, Article 10 requires all parties to formulate, implement, and update national and regional programmes on mitigating climate change and adaptation to climate change.

4.2.4 Ramsar Convention on the Protection of Wetlands

As the title suggests, the Ramsar Convention aims to promote the conservation and wise use of wetlands considered as internationally important. The definition of wetlands is such as to encompass mangrove forests, which are among the most threatened forest types.40

Every Party to the Convention is required to nominate at least one of its wetlands to the List of Wetlands of International Importance that meets one of the criteria set forth in the Convention.41 Listed wetlands are to be conserved, while other wetlands are to be used wisely.42 The Convention specifies that wetlands should have nature reserves on them, regardless of whether they are listed or not.43 Over time, the Ramsar Convention has evolved from its focus on wetlands as habitats for waterfowl to one that addresses broader issues of wetland destruction and wetland biodiversity. It now has a joint work programme on inland waters with the Convention on Biological Diversity. This has implications for how

40 Article 1.1
41 Article 2.
42 Article 3.
43 Article 4.
the both Conventions relate to forest areas in Ramsar sites. In addition, the Guidelines annexed to COP Resolution VII.6 on national wetland policies calls for linking these policies with, inter alia, forestry agreements.44

5 LEGAL REGULATIONS AS LIMITS FOR NFP OUTPUTS

NFP’s may be constrained by legal regulations, since, by definition, they are to conform to already existing national and international rules. Although the NFP can target some legal regulations for reform (see next section), certain rules will form a basic framework within which the NFP must operate. These include the national constitution (which is often very difficult to amend) and applicable international legal regulations. The latter may be identified as an area where the country concerned may seek changes as a result of the NFP, but until they are changed, it remains bound by them.

Furthermore, there may be national rules that limit NFP outputs. An example is environmental impact assessment legislation, which may apply to NFP’s. Similarly, strategic environmental assessments may also apply to some aspects of NFP’s, once the concept becomes further developed.

Finally, national rules may provide in great detail for the development and outcomes of NFP’s. The leading example is Brazil, whose Decree on establishing and NFP appears in the Annex of this paper. The Decree establishes the NFP process, which is meant to be executed in a participatory and integrated manner.45 It defines the objectives of the NFP process,46 and assigns the Ministry of the Environment the lead responsibility.47 The Decree further establishes a Working Group, composed of representatives of listed Ministries,48 and provides a set of projects that the Working Group is to undertake.49 It is noteworthy that this instrument is a Decree, suggesting that action by the executive branch alone may be sufficient to ground an NFP process into law. Although it may not be appropriate for every country to establish an “NFP law”, this precedent should be studied further to assess any comparative effectiveness arising out of its legal grounding.

6 LEGAL REGULATIONS AS TARGETS OF NFP’S

The NFP’s will likely produce a range of policy recommendations that will entail changes to legislation for these policies to be realised. Domestic legislation that may need modifying can include: Forest legislation, Environmental law, Administrative law, Property law, Criminal law, and Tax law.

For example, an assessment of the Sri Lanka Forestry Sector Master Plan (1998) and the Five-Year Implementation Plan (1997) found that a key obstacle to implementation is the out-dated legislation which does not sufficiently give participatory management a legal basis.50 As part of developing its NFP, Malawi undertook a comparison of the Forest Act and the Forest Policy, so as to identify areas where a one-to-one concordance did not yet exist.51
Finally, given that forests have an important international policy dimension, NFP’s can also be an input into the elaboration of national positions on international legal issues relating to forests.

7 EUROPEAN EXPERIENCES SO FAR

This section describes the impact of legal rules on the development of NFP’s in Europe. To date, only two European countries have completed NFP’s -- Finland and Germany.

7.1 FINLAND

Finland defined the aim of its NFP as meeting the domestic and international requirements in order to develop forest management and protection along such lines that the forests will provide the Finns with as much work and sources of livelihood as possible, remain healthy, vital and diverse and provide spiritual and physical recreation for the Finnish people (emphasis mine).

During the development of the NFP, Finland considered several pieces legislation.\(^5\) The drafters of the NFP also considered hunting rules and the “Every Man’s Rights”. The NFP affirmed that one of Finland’s positions vis-à-vis the international forest policy discussion is an aim of a legally binding instrument on all types of forests in order to advance sustainable management, utilisation, and protection of forests. The NFP also highlighted the challenge of coordinating forest activities as between the CBD and the FCCC.

Finland has undertaken to carry out a detailed environmental impact assessment of the NFP, which may lead to further adjustments to its NFP.

7.2 GERMANY

Germany based its concept of the NFP on the results of UNCED and the IPF. Thus, the principles it took into account include national sovereignty and responsibility in the use of resources, and consistency with the regulatory framework of the country and with international agreements. Its starting point was the assumption that key elements of the NFP were already reflected in its federal and laender forest-related legislation.

The NFP considered several statutory provisions\(^5\) and established several legally relevant policy targets including:

- Reducing air pollution
- Reducing harmful emissions
- Developing legal provisions relating to forests and game
- Implementing Natura 2000
- Take genetic diversity into account in the revision of the Act on Forestry Seed and Planting Stock
- Improve the legal framework conditions for the use of wood, particularly as related to environment and energy
- Take ecological benefits of wood into account in the further development of legal framework conditions for the sale and use of wood
- Monitor negotiations in the WTO
- Taking natural features of forestry into account in fiscal policy, as required by the Federal Forest Act


\(^5\) Basic Law; Federal Forest Act; Act on Forest Seed and Planting Stock; Forest Damage Compensation Act; Forestry Sales Fund Act; Act on the Classification Scales for Raw Timber; Nature Conservation Act; and the Hunting Act
8 ELEMENTS OF A METHODOLOGY FOR INTEGRATING LAW INTO NFP’S

This paper has shown that law is central to the development and implementation of NFP’s. The challenge is to ensure that these legal regulations are taken on board and integrated as effectively as possible into the NFP process.

This is no simple task. The legal regulations described above:

- May not be fully developed -- i.e. be unclear
- May be ineffective
- May not be integrated with each other
- May sometimes be contradictory or even perverse
- Can create overlapping legal jurisdictions
- Can be subject to overlapping and uncoordinated institutional mandates

In addition, the role and effectiveness of legal rules on forests will vary as between countries. In some developing countries, effective implementation of legal rules in the forest sector may be hampered by a lack of capacity, corruption, competing development priorities, as well as inconsistencies and other problems caused by decentralisation.

Thus, a key challenge for those leading the NFP process is to create a process of synergy among the different laws and institutions, and their programmes, that eliminate overlaps and contradictions, and allows for each to build on the strengths of the other. However, this must be done on the basis of a realistic assessment of the role and effectiveness of law in the forest sector of the countries concerned.

The following presents some elements of a methodology for integrating legal regulations into the NFP process. Further research is needed to develop this further. The concepts here would have to be individualised to fit particular national contexts.

8.1 INITIAL PHASE

Once the decision to undertake an NFP is taken, it is essential to ensure that the legal aspects of the exercise are brought in at the earliest stages. Possible actions might include:

Collecting all forest-related legal information. In doing so, the net should be cast widely, and include cross-sectoral laws and policies that impact on forests, such as international trade rules.

Defining of the “rules of the game” for the conduct of the NFP process based on existing law (institutional involvement, rights of participation, etc.)
8.2 DEVELOPING THE NFP

Once the NFP process is established, the legal dimension should be an active part of its development. Specific actions might include the following:

- Conducting an active review of all relevant legislation,\(^54\)

- Once substantive priorities are identified in the NFP, consolidating and classifying the legal information accordingly,

- Targeting specific laws (national, regional and international) that can help execute the substantive recommendations based on an assessment of the obstacles and opportunities for effectively carrying out effective law making desired,\(^55\)

- Developing a long term strategy for creating synergy between applicable laws and related programmes,

- Recommending the modification of laws that interfere with the full implementation of the NFP’s objectives.

8.3 EXECUTING THE NFP

The execution of an NFP will involve a variety of actions. In relation to law, the following might be undertaken:

- Amend existing legislation or enact new legislation to support the implementation of the NFP objectives and recommendations, and to eliminate legal obstacles thereto.

- Pursue positions defined in the NFP in international legal fora relating to forests.

8.4 EVALUATING THE NFP

Since NFP’s are meant to be iterative, long-term processes, they must be evaluated on a regular basis. This evaluation should include a legal component:

Assess the effectiveness of legal changes in relation to achieving sustainable forest management and consider whether to keep, change or clarify the applicable law.

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\(^54\) The International Expert Consultation at Feldafing recommended:

d) Harmonisation of forest and other land-use related legislation

In order to address the needs of the societies, countries should consider reviewing forest and other land-use legislation. The review processes should focus especially on: (i) promoting decentralisation of decision making by issuing the relevant legislation, (ii) harmonisation of forest and other related legislation at all levels of the administration, (iii) clarifying responsibilities of various levels of administration, (iv) ensuring that benefits from forests and other natural resources are proportionately distributed in accordance with the forest policy, (v) integrating customary rights and regulations on forest land use into the forest legislation process whenever relevant and existing, and (vi) promoting legal security on access to, and use of, land and forests. This process should be carried out at national, provincial and local levels and stimulate consensus building, formation of new alliances and consultative processes in forest policy and legislation review and implementation.

\(^55\) The Practitioner’s Guide to Implementing the IPF Proposals for Action calls for the following element of an NFP:

Policy, legislative and institutional reform: an intersectoral process of policy formulation and institutional development to support sustainable forest management, based on the sector review and dialogue with all actors, including clarification of their roles and mandates. This includes decentralisation, empowerment of regional and local government structures, e.g. transfer of responsibilities for planning and budgeting to local levels, decentralised funding, and building of local level capacities. The reform process needs to address land tenure arrangements dealing with access to natural resources, e.g. through land allocation, land ownership and user rights and certificates. It should address recognition and respect for customary and traditional rights of, inter alia, indigenous peoples, local communities, forest dwellers and forest owners, though, for example, the provision of an appropriate institutional (legal) framework, access to information, definition of rights and benefits, and channels of intervention (Page 5).
ANNEX

STATEMENT OF THE PRESIDENT OF BRAZIL ON THE ESTABLISHMENT OF A NATIONAL FOREST PROGRAMME

DECREE No. 3420

April 20, 2000

The PRESIDENT OF THE REPUBLIC, making use of the prerogatives conferred to him by Article 84, paragraph VI of the Constitution, DECREES:

Article 1. The National Forest Program - PNF is hereby created, to be comprised of projects that will be conceived and executed in a participatory and integrated manner by federal, state, district and municipal governments and organized civil society.

Article 2. The PNF has the following objectives:
I - encourage the sustainable use of native and planted forests;
II - foster reforestation activities, notably those in small rural properties;
III - recover permanent preservation and legal reserve forests and those with altered areas;
IV - support economic and social activities of the populations who live in forests;
V - repress illegal deforestation and the predatory extraction of forest products and byproducts, contain accidental burnings and prevent forest fires;
VI - promote the sustainable use of production forests, be they national, state district or municipal;
VII - support the development of forest based industries;
VIII - expand internal and external markets of forest products and byproducts;
IX - enhance the environmental, social and economic aspects of the services and benefits afforded by public and private forests;
X - encourage the protection of biodiversity and of forest ecosystems.

Article 3. The Ministry of Environment will be responsible for promoting institutional coordination to draft and implement the projects that will make up the PNF and also for coordinating the Program.

§ 1. The Ministry of Environment may receive suggestions from the Brazilian population to define the scope, goals, priorities and the institutional and community means and mechanisms of the PNF.

§ 2. The result of the consultation process referred to in the above paragraph, which will be made known by the Ministry of Environment on September 21, 2000, will guide the implementation of the Program.
Article 4. The Working Group is hereby established, made up of representatives from each of the following Ministries:

I - of Environment, which will coordinate it;
II - of Agriculture and Food Supply;
III - of Development, Industry and Foreign Trade;
IV - of Agrarian Development;
V - of Science and Technology;
VI - of National Integration;
VII - of Planning, Budget and Management.

Sole Paragraph. The members of the Working Group shall be designated by the Ministry of Environment on indication of the Ministers of the respective Ministries.

Article 5. The Working Group referred to in the above paragraph shall be responsible for:

I - supporting the actions of the programs FLORESTAR - Expansion of the Planted and Managed Forest Base; and Prevention and Combat to Deforestation, Burnings and Forest Fires, part of the Government’s Multi-year Plan of Investments for the period 2000-2003, so that they may be promptly implemented and gradually expanded;

II - outlining, with the participation of entities that represent the involved sectors, a project for the development and modernization of the forest base, indicating:
   a) the instruments required to improve methods of using raw materials and of labor specialization;
   b) the necessary equipment and means of capturing new markets;
   c) a proposal to adapt the means required to enable the project and its respective operational strategy;

III - developing a project to encourage and support reforestation and sustainable development of native forests with a view to expanding the supply of wood raw materials and other non-wood forest products, such as those for the production of oil, nuts and hearts of palm, also with the intent of strengthening agricultural income, particularly of small and medium sized rural producers, also indicating the means required to enable these undertakings.

IV - drafting a project to recompose and restore permanent preservation and legal reserve forests, and those with altered areas, which involves a mechanism capable of promoting an effective integration of institutions and communities, of implementing the programmed undertakings and of generating a demonstrative effect that can be disseminated and to consolidate methods for joint action in search of common benefits;

V - outlining actions for the sustainable management of national forests and other protected areas of direct use, whether to provide forest raw materials or for other purposes that permit the appropriate use of these areas to their own benefit, and the creation of new areas;

VI - assessing the governmental structures for implementing forest policies, such as those for preventing forest fires and containing accidental burnings, and propose the measures deemed necessary to lend greater effectiveness to Government actions.
Article 6. The Working Group, which may be composed of subgroups with members from other bodies and entities, at the invitation of the Ministry of Environment, will have a period of one hundred and twenty days from the date of publication of this Decree, to conclude its work and present conclusive and circumstantiated reports, being able to suggest other initiatives with the same aims.

Article 7. This Decree enters into force on the day of its publication.

Article 8. Decree No. 2473, dated January 26, 1998 is hereby revoked.

Brasilia, April 20, 2000; 179th Year of the Independence and 112th Year of the Republic.

FERNANDO HENRIQUE CARDOSO
President of the Republic
DO NFP’S NEED A NEW LEGAL FRAMEWORK?

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ABSTRACT

This paper examines the interaction between NFP’s and legal regulations. In a first step
the generic term NFP and the characteristics and essential elements of NFP’s are
clarified. Then individual legal aspects of key elements or requirements of substantial
NFP’s are analysed and discussed. Due to the author's familiarity with Switzerland, the
analysis is based on Swiss legislation. Participation and partnership on the one hand,
holistic, intersectoral and iterative approaches on the other, are of special interest. The
conclusion of the paper is that legal regulations do not contravene key elements of NFP’s.

Key words: National Forest Programmes, legal aspects, forest legislation, forest policy,
procedural rules
1 INTRODUCTION

In many European countries, the forestry sector is a public policy sector governed by one of the oldest and detailed bodies of state legislation (cf. Schmithüsen/Herbst/Le Master). A strong connection exists between forest management and forest use, on the one hand, and the legal rules of international, national, regional and even municipal authorities, on the other. This close connection raises, inter alia, the question as to how a new policy instrument like the NFP can be brought into line with existing legal requirements. If an NFP is, in fact, a new governmental planning instrument, one can expect that the introduction and implementation of such an instrument will have consequences in terms of the legal framework of national forest policy and vice versa. This paper, which has been developed from a presentation delivered at the Aberdeen meeting of the COST Action E19, will focus on the interaction between NFP’s and legal regulations.

Before attempting to explore this specific issue, it is necessary to clarify the generic term NFP. An analysis of the literature and documents and discussions held in the framework of the COST E19 Action show that the concept or term NFP has not been uniformly defined or clearly delineated in either the political or scientific arenas. It is possible to identify some generally accepted core elements or criteria which are typical of NFP’s, however a broadly accepted set of criteria, which constitutes this planning instrument, is still lacking (cf. MCPFE 2000). In this situation, for the purpose of research, the formulation of an operational working definition or framework, within which the relevant research questions can be tackled, is would appear both logical and necessary. Thus, the first task this paper will tackle is to characterise the phenomenon NFP. This will be followed by an analysis of some key elements of NFP’s. The examination will be made from a legal perspective. The paper will end with some conclusions with respect to the question as to whether the law is a factor which supports or impedes the development and/or implementation of NFP’s.

2 THE CHARACTERISTICS AND ESSENTIAL ELEMENTS OF NFP’S

Although several attempts have already been made, as yet there is no uniform definition of the term NFP (cf. for example, Bisang/Zimmermann; Egenstad; Hofmann/Liss/Pretsch). Extensive consensus exists with respect to the fact that the term or instrument NFP, which is being dealt with in the ongoing COST E19 Action, is a product of Rio and the Rio follow-up process (cf. e.g. Bisang/Zimmermann; Chaytor). The documents created in the context of the UNCED conference and the Intergovernmental Panel on Forests (IPF), the Intergovernmental Forum on Forests (IFF) and the United Nations Forum on Forests (UNFF) provide some indicators with respect to the contents of an NFP. These documents tend to be copious and rather vaguely formulated. However, what clearly emerges from them is the close connection between NFP’s as a steering or governing instrument and the sustainable use and management of forests.

All of the aforementioned documents emphasise that NFP’s should be considered as the most important planning instrument at the disposal of national governments for the promotion of the sustainable use and development of forests. Certain conclusions can be drawn from this overarching aim with respect to the characteristics and purposes of NFP’s. The following interpretation is derived from these approaches and combined with the consideration of some new trends in the field of public policy analysis (cf. e.g. Brühlmeier/Haldemann/Mastronardi/ Schedler; Jann; Kooiman; Parsons): it is broadly accepted that, today, forest use and management are not yet sustainable (= problem definition). To steer the development towards greater sustainability, national governments are mandated to prepare, pass, implement and evaluate policy programmes (=
programme development, implementation and evaluation). They are not allowed to cede this task exclusively to the market or to the societal system. Specific governance towards greater sustainability in the area of forest development involves the concerted action of an extensive and manifold net of actors. Normally such programmes consist of more or less clearly defined objectives and some relevant means or instruments which should be implemented effectively and efficiently. The form taken by individual programmes can differ significantly. As NFP’s are intended to be governmental programmes, it stands to reason that the planned activities must comply with the existing legal framework. This consideration is derived from the general principle that all public activities must be legitimated by a legal basis (principle of the rule of law). A legal basis is particularly necessary when the planned state activity has a direct or indirect effect on individual persons or target groups. If this basis is lacking the relevant legal competencies and instruments must first be developed in accordance with existing institutional and procedural rules.

According to the quoted documents and discussions, certain elements distinguish NFP’s from conventional policy-making processes and programmes. Their first particularity consists in the fact that the objective (i.e. sustainable forest management) of a national sectoral policy (forest policy) is set by an international agreement. However, the recommendations and requirements which were worked out by the international community for the formulation and implementation of NFP’s are more specific and important. Examination of the relevant documents reveals a long list of such key forestry-specific elements and recommendations. The following list, which is far from exhaustive, is the product of an attempt to summarise the various proposals for the key elements and requirements of NFP’s:

A. Key elements

- National sovereignty and country leadership
- Consistency with national policies and international commitments
- Integration with the country's sustainable development strategies
- Partnership and participation
- Holistic, intersectoral and iterative approaches

B. Further approaches

- Ecosystem approaches that integrate the conservation of biological diversity and the sustainable use of biological resources
- Adequate provision and valuation of forest goods and services
- Integration of suitable criteria and indicators for sustainable forest management into the overall process of the formulation, implementation, monitoring and evaluation of NFP’s
- Integration of continuous multidisciplinary research into all stages of the planning cycle
- Continuous reviewing of the policy framework
- ...

This list is not very systematic, exhaustive or balanced. It incorporates procedural, substantive and institutional issues. The elaboration of a set of key elements has not yet been completed either within the framework of the COST Action E19 or in the relevant Swiss project. Based on the examination of the international documentation and on Swiss
experiences, the following essential elements or constituent components give a relatively simple but meaningful description of the term NFP:

- a medium or long-term political programme (ca. 4 - 6 years)
- for the improvement of the sustainable use and management of a country’s forests
- composed of measurable objectives and appropriate means
- established by competent public authorities or institutions
- developed in co-operation with different governmental and non-governmental actors
- open for continuous improvements

According to this generic description, an NFP is primarily, but not exclusively, a political process which must lead to a product or to an output - the public forest programme. The formulation and implementation of this consistent programme must be effected in a participative, federal and non-hierarchical way. The content of the public programme is aimed at sustainable forest management which is to be defined and substantiated by competent policy actors or institutions, for example through suitable criteria and indicators. Objectives and instruments must be co-ordinated with other forest-relevant sectoral policies, especially with those which oppose the sustainable use of forests. The monitoring and evaluation of the efficacy and efficiency of the programme is compulsory. If monitoring and evaluation reveal that the programme is not suitable (e.g. invalid or inadequate objectives, incorrect, useless or weak instruments), or the implementation is ineffective or inefficient, changes are demanded on the relevant level. This leads to an iterative process in the formulation and implementation of NFP’s.

This approach to and understanding of NFP’s is more or less in line with the key elements and requirements highlighted in Sections A and B of this paper. In order to facilitate international comparability, the following examination of NFP’s basically refers to these key elements and additional approaches. Due to the author’s greater familiarity with Swiss legislation, the analysis is mainly made on this basis. Certain aspects of the international legislation, which are given a more extensive treatment in Chaytor’s and Tarasofsky’s papers, are also included.

3 THE LEGAL ASPECTS OF SOME OF THE KEY ELEMENTS AND REQUIREMENTS

This paragraph provides a brief analysis of the legal impacts of the implementation of the different key elements and the other approaches referred to in Sections A and B. All of the key elements are examined individually; the additional requirements are pooled in one group and analysed in summary. The comments are limited to tackling some legal questions inherent to the requirements; it is not intended to provide exhaustive answers to all the relevant questions.

3.1 NATIONAL SOVEREIGNTY AND COUNTRY LEADERSHIP

The fact that neither the UNCED products (Forest Principles and Agenda 21 Chapter 11) nor the IPF/IFF decisions have resulted in international legally binding authoritative agreements is uncontested (cf. Chaytor). These documents can be regarded as soft legal instruments (cf. Tarasofsky), which, for the moment, act as aspirational but not yet legally binding standards (cf. Cottier). One consequence of this weak status of these NFP-relevant documents is the lack of opportunities to oblige national governments to establish and implement NFP’s or – in the case of inactivity with respect to NFP’s – to sanction the
inactive states. For this reason, any mention of national sovereignty and country leadership is mere lip service from a legal perspective. However, this absence of legal force does not mean that all these declarations are useless. One can at least attribute to the first recommendation a moral or political obligation for governments to take leadership in forest policy and in the sustainable use and management of forests. The international declarations can serve the national forest administrations as a means of legitimising, enhancing or improving the role of forest policy and the forest administration within the national political system. However, in terms of leadership in forest policy, this point would not appear to be very relevant as in all of the countries participating in COST Action E19, forest policy is an established field of public policy based on relevant legal acts (cf. Schmithüsen/Herbst/Le Master).

The claim for national sovereignty and country leadership could create some conflicts with EU Regulation No 1257/1999, which, in paragraph 4, Article 29, states that (financial) support for forestry "shall be based on national or subnational forest programmes or equivalent instruments which ...". This obligation with respect to the formulation and implementation of NFP’s can be interpreted as rather weak. Firstly, due to the lack of constitutional provisions for a common EU forest policy (cf. Chaytor) it does not contain a general obligation for the development of NFP’s but only for cases whereby financial support from the EU is claimed for exhaustively designed measures in the context of rural development. Secondly, the definition of the requirements for NFP’s is quite non-specific. In particular, national and subnational programmes are accepted, i.e. several regional programmes are also admitted. Moreover, a country can fulfil its obligations under Article 29 with the help of instruments other than NFP’s. It can be assumed that a coherent list of proposed measures which are adapted for the promotion of the objectives stated in paragraph 2 of Article 29 will satisfy the formal requirements of the EU regulation. As long as more stringent or detailed restrictions and requirements for NFP’s are lacking, the EU regulation governing NFP’s will legally comply with the claim for national sovereignty and country leadership in forest policy.

3.2 CONSISTENCY WITH NATIONAL POLICIES AND INTERNATIONAL COMMITMENTS

Although this key element seems very clear, some interpretation is needed. It is supposed that in a given country different sectoral policies exist along with the corresponding legislation. Very often these policies conflict with respect to their objectives. Policies which support the destruction of forest areas or biotopes (e.g. all infrastructure policies) are hardly consistent with a forest policy which aims to prevent deforestation. However behind this demand for consistency lies a general recognition of the equality of all public policies. Which task should prevail in a concrete situation involving conflicting interests must be decided on a case-by-case basis. A fair balance of interests guaranteed by law is an important prerequisite for the optimum fulfilment of this key element. It can be strengthened and supported with procedural rules such as, for example, environmental impact assessment acts or acts on rights of appeal against dispositions with negative impacts on forest protection.

The recommendation that NFP’s should be made consistent with international commitments is relatively easy to comply with due to the lack of legally binding international treaties or conventions on forests (cf. paragraph 3.2). The strongest requirements may be stated in the Convention on Biological Diversity signed by all countries which are participating in COST Action E19. This convention makes no distinction between the conservation of biological diversity in forests and elsewhere (cf. Chaytor). Thus, many measures prescribed in a legally binding manner in the biodiversity convention (Article 6ff) must also be integrated into a NFP. It is interesting to note that
Article 6 of the Convention on Biological Diversity contains an instrument for biodiversity policy which is very similar to the NFP. Consistency with national policies and international commitments and other key elements demands, \textit{inter alia}, close co-ordination between NFP’s and "national strategies, plans or programmes for the conservation and sustainable use of biological diversity ..." as stated in Article 6 (a) of the Biodiversity Convention. It may be assumed that the process of establishing national strategies for the conservation of biological diversity is at a more advanced stage than the corresponding NFP-process. A more intensive exchange of ideas and experiences and a closer co-operation between these two policy fields could certainly be a useful and supporting factor for the establishment and implementation of NFP’s.

Other legally binding international agreements (e.g. the Climate Convention, the UNESCO World Heritage Convention, the Washington Convention CITES, the Alpine Convention, the rules of WTO etc.), which impact on forest use and management and ,hence, on NFP’s, also exist (cf. Schmithüsen/Ponce-Nava; Chaytor). What all – or most – of these agreements have in common is that the relevant obligations are formulated in rather non-specific terms. Thus, it will be difficult to find NFP processes and activities which are legally inconsistent with international commitments. They do not, at least, impede do the formulation and implementation of NFP’s.

3.3 INTEGRATION WITH THE COUNTRIES’ SUSTAINABLE DEVELOPMENT STRATEGIES

This element implies, among other things, the existence of an official national strategy for sustainable development. However, once again, there is no international legally binding agreement here which obligates the individual countries to develop or to pass such a strategy. To this extent it can be linked to the ideas explored in paragraph 3.1 and the papers by Chaytor and Tarasofsky. Switzerland is one of the countries which developed a so-called national strategy on sustainable development (cf. Interdepartmental Committee Rio). Formally, this strategy consists of an official report, prepared by an interdepartmental committee comprising members of 20 federal services and of which the Swiss Federal Council, the government, took note in 1996. The report was not presented to or discussed by the Swiss Parliament. Both the title "report" and the term "took note" are indicative of this document’s lack of legally binding effect. The document is more or less a retrospective list or enumeration of existing projects, actions and measures in different public policy fields which are in line with sustainable development. On the other hand, however, the Swiss government’s report can not be regarded as a self-contained prospective planning instrument for a comprehensive strategy for sustainable development in the country. As long as there is no substantial and at least politically accepted national strategy for sustainable development, it cannot be expected that such a strategy will have any legal effects. The (political) effect is similar to the international documents dealing with sustainability and NFP’s (cf. paragraph 3.1): In countries where a sustainability strategy exists, it can contribute to the launch or to acceleration the formulation or implementation of standards which support a shift to more sustainable development. In this sense a national strategy for sustainable development does not replace legal rules but it legitimates, accelerates and supports the relevant rule making. In this respect, the legal impact of national sustainable development strategies on the formulation, implementation and evaluation of NFP’s is minimal and of little significance.
3.4 PARTICIPATION AND PARTNERSHIP

One main claim for NFP’s is the need for the participation of all involved and interested parties. Various questions need to be clarified from a legal perspective. The first of these considers the type of participation (cf. e.g. Beckmann/Keck; FAO/ECE/ILC). A simple exchange of information does not normally require a special or explicit legal basis (cf. e.g. Druey; Häfelin/Müller). However, if participation goes beyond simple information or non-committal consultation, a special rule in the form of a formal legal act is at least desirable. The Swiss forest legislation contains such a rule, for example, whereby under Article 18 of the relevant ordinance the cantons are obliged to guarantee information, participation and consultation in connection with overarching forestry planning. Such an explicit legal rule can help to avoid the exclusion of some relevant actors or groups from the planning process. Similar regulations can be found in the Swiss Regional Planning Act (Article 4): according to this article, the planning administration is obliged to respect certain minimal procedural requirements vis à vis interested citizens and groups (cf. Muggli in Aemisegger/Kuttler/ Moor/Ruch; Tanquerel).

Another important question with respect to participation concerns the level of participation. From a legal point of view it is possible to identify three different levels:

- the law formulation level
- the planning level
- the individual decision level.

If an NFP requires the adaptation of legal regulations, participation will be possible within the general constitutional framework (cf. Article 136ff. Federal Swiss Constitution). The strongest and most immediate form of participation is the democratic decision by a popular vote. As the Swiss examples again show, popular votes are always preceded by intensive discussion processes with the participation of all involved and affected groups, actors and institutions.

The pre-parliamentary or pre-governmental consultation of interested actor groups, which can substantially influence the content of a legal act, constitutes a weaker form of participation. Switzerland has extensive experience in both of these types of participation (cf. for example, Linder).

The next level of partnership and participation involves the development, formulation and enforcement of policy plans which are, as a general rule, valid for a limited circle of persons, a limited area, topic and time. The legal status of such plans can differ significantly. The wide range of validity ranges from an informative document to a steering instrument which is legally binding for authorities and individual persons. The legal status is either defined in the relevant legislation or must be established by the means of juridical interpretation. Such plans are a familiar concept in forest practice. Given that these plans are not legally binding, participation in the development of these normally regional plans does not raise fundamental legal questions. However, if, for example, regional forest plans impose obligations on forest owners and forest users, the legal situation becomes more delicate. The stronger the imposed obligation, the more the obligated persons must be involved in the planning process. This rule can be deduced from the general right of parties to be heard in a legal process (Article 29 Federal Constitution). The consequence of this right to be heard can be the granting of a special right to appeal against negative dispositions by public planning authorities. An example for such a procedural mechanism can be found in the Swiss regional planning legislation (Article 33f.) in accordance with the Swiss legislation on nature and landscape protection (Article 12ff). Although the Swiss forest legislation contains a rule on participation regarding regional forestry planning, there
are no similar detailed rules with respect to the legal consequences of this public participation. It is the obligation of the cantons to pass additional regulations. These additional cantonal rules did not lead to a noticeable enlargement of the procedural rights of the affected forest owners or organisations (cf. Sutter).

To sum up, we can say that participation, especially at planning and implementation level, involves a lot of legal issues. Clear legal rules can contribute to greater predictability in planning decisions and improve the legitimacy, liability and acceptance of forest plans. Without legally binding rules, participation risks becoming an empty catchword or capsule with symbolic content at most. Legal regulations help to enhance the position of the target groups vis-à-vis the planning authorities. They contribute to the avoidance of conflicts concerning the rights of the persons and organisations affected by plans. From this legal and political perspective, it may be argued that substantial participation in any forest planning process requires a minimum of legally binding procedural rules. This improvement of legal certainty can be assessed as a supporting factor for the establishment and implementation of NFP’s.

A third level for partnership and participation can be identified when the state negotiates with individuals, e.g. with one or more forest owners within the framework of an enterprise plan. Partnership demands that all partners are more or less equal. The concept of hierarchical subordination which is dominant in most of the state forest policies does not go well with equal partnership. If an authority takes partnership seriously, it must abandon the option of state pressure and accept the method of voluntary agreement with all the inherent consequences (cf. Skjaersest). However, it must first be clarified whether a change from hierarchical decisions to voluntary agreements or to a network system is permissible in the absence of any change to the relevant legal basis. The answer to this question depends, on the one hand, on the existing legislation and on the consequences of such an authoritative act, on the other. If third parties are concerned by such an authoritative disposition, the legitimated rights of these third parties must be respected (cf. e.g. Siegward). This is particularly the case when matters of public security or property rights are at stake. In this case, all possibly concerned parties must be involved in the voluntary procedure, otherwise the entire agreement runs the risk of formal failure. Under Swiss legislation, persons or groups whose rights are not sufficiently respected have a right to demand a formal resolution or disposition which can be challenged in court (cf. Häfelin/Müller). To sum up, one can say that from a legal point of view, the replacement of a hierarchical decision with a voluntary agreement is not always permissible. This conceptual change often necessitates a formal change of the relevant legal acts. It would be rather difficult but not impossible to combine public participation and individual voluntary agreements. Due to the different procedural rules which apply for both types of decision, the consequences for all involved can be considerable.

3.5 HOLISTIC, INTERSECTORAL AND ITERATIVE APPROACHES

This threefold key element primarily aims to improve co-operation within the different forest-relevant administrative units. In general, improved co-ordination does not necessarily require a new legal basis. In Switzerland, for example, the obligation to co-ordinate all state activities is explicitly stated in the Federal Constitution (Article 180) and enshrined in the responsibilities of the Swiss government. Two years ago the Swiss Parliament enacted a new law on the co-ordination of authorisations and permits, including forest-relevant decisions. This represented an important step towards the more co-operative implementation of some regionally-relevant legislative acts at federal level. However, these regulations cannot counteract the often contradictory objectives of different sectoral laws or even of one and the same law. Thus, for example, the forest legislation contains both financial incentives for more efficient timber harvesting and for
the conservation of biodiversity in forests and the public support for infrastructure projects and power plants often results in small or large scale deforestation. If the legislator does not create rules for decision-making in the case of conflicts, the weaker partner risks always being the looser. This practice is hardly "in the spirit of a real sustainability". A possible task of the NFP could, therefore, consist in seeking out such unequal regulations within different forest-relevant federal laws and in developing adequate models of conflict resolutions. The methods developed for the sustainability assessment of sectoral policies or economic developments represent one possible approach (cf. e.g. Kübler/Kissling-Näf/Zimmermann). In the absence of such fundamental analysis of the legislation and of the development of new approaches, there is the risk that co-ordination will be restricted to organisational and administrative aspects and that the outcomes will remain untouched.

Similar conclusions can be drawn with respect to the claim for iterative approaches. From a legal point of view, the formulation and implementation of an NFP process as an iterative process do not raise any insurmountable problems. Too often at programme level too many changes could run in conflict with the principle of legal certainty. If these changes are undertaken in accurate legal forms, adaptations are often also permitted. At the implementation level, changes and adaptations are more restricted due to the frames set by the legislation. However, in the normal case, every administration has a certain capacity for discretion with respect to its implementation activities. Monitoring and evaluation are adequate instruments for improving the implementation and outcome of a policy (cf. e.g. Bussmann/Klöti/Knoepfel). Periodic monitoring or evaluation can be undertaken without the need for any special or explicit legal basis. However, this process could be rendered more effective and efficient, if the obligation for evaluation is stated in the law. This is the case, for example, in Swiss environmental policy: Article 44 of the Swiss Environment Act obliges the federal and cantonal authorities to evaluate the effect and the success of environmental policy (cf. Brunner). The environmental report, a product of this legally prescribed evaluation task which is compiled and published periodically, contains, inter alia, important elements of the intersectoral approaches which are constituent elements of NFP’s. The new Federal Swiss Constitution (Article 170) also contains an obligation for the periodic evaluation of federal policies. However, this norm is not self-executing; it must be substantiated by the Swiss Parliament, e.g. by establishing norms like Article 44 of the Swiss Environmental Act.

In conclusion, one can say that the key element holistic, intersectoral and iterative approach does not raise fundamental or insurmountable legal questions. In principle, all three prerequisites can be met without substantial legal adaptation. However, it will be difficult to fulfill this fifth element more than symbolically in the absence of a serious analysis of the different forest-relevant laws, legally binding rules for balancing contradictory laws and an explicit obligation for a periodical evaluation of national forest policy. Legislative work in these directions is suited to the support of both the establishment and implementation of co-ordinated and effective NFP’s.

3.6 FURTHER APPROACHES

Most of the topics to be discussed under the heading "further approaches" concern the content of an NFP rather than the process surrounding its development, implementation and evaluation. The further requirements that are not yet covered by the above-mentioned key elements, mainly involve the obligation a) to state the principles of sustainability and multifunctionality in the NFP’s and b) to establish a mix of adequate instruments in order to substantiate and implement these both principles. The further approaches are principally focused on a broadly, specifically scientifically-based and coherent programme which enables the competent implementing institutions to improve the sustainable use and management of the forests. It will be difficult to meet these substantive prerequisites if
multifunctional use or sustainable management of forests is not an explicit or at least implicit objective of the national forest legislation. The objectives of a policy programme (should) shape the relevant instruments. If, for example, the conservation of biological diversity in forests is not stated in a legal act, the competent administration will encounter difficulties in claiming and legitimating effective instruments (regulations, incentives, human resources etc.). The relatively new Swiss Forest Act of 1991 meets the prerequisites of multifunctionality and sustainability almost to the letter (in particular Article 1 and Article 20). However, the integration of suitable criteria and indicators for sustainable forest management into the overall process of the formulation, implementation, monitoring and evaluation of NFP’s is still partly lacking. Similar difficulties are to be registered with respect to the choice and balance of instruments. As the example of the Swiss expert assessment shows, this task can at least partially be fulfilled within the framework of the existing forest legislation, i.e. at implementation level (cf. Limacher/Kübler/Kissling-Näf/Zimmermann; Kübler/Kissling-Näf/Zimmermann). However, here again we encounter problems and obstacles with the implementation of such informal processes: as long as such a process is not embedded in institutional or legal structures, the product risks languishing in the well guarded desk drawers of an administration. Often, it depends on the goodwill or attitude of individuals in the administration whether the frame of discretion and interpretation is fully utilised or remains underachieved. A clear statement in a law or in another legal act can help to reduce this kind of arbitrariness. Furthermore, it helps the stakeholders to point out weaknesses in the concept or in the implementation of the forest policy and demand the balancing of the economic, social and environmental interests on forests.

4 CONCLUSION

The question raised in the title of this paper cannot be answered with a simple yes or no. The answer is the typical response of a lawyer: it depends! Whether an NFP requires a new legal framework depends basically on the definition and interpretation of the term NFP. If NFP is defined as a permanent discussion with the participation of a large number of involved groups, actors and institutions in order to improve the sustainable use and management of the forests in a certain country, the establishment of a specific law or the modification of the existing law can probably be avoided. However, if an NFP should consist of a coherent legally binding programme which is

a) developed as part of a democratic participatory process,

b) passed and periodically adjusted by a responsible authority, c) co-ordinated with other sectoral policies and national sustainability strategies,

d) implemented, monitored and evaluated by a competent administration and intends to

e) improve the sustainable use and management of forests,

it will be difficult to avoid the adaptation of the legal framework in many countries. Without this adaptation, NFP’s run the risk of triggering a lot of activities which have little or no effect on forest users and forest managers and ultimately on the condition of forests (no outcomes). Changing the behaviour of forest owners and forest users towards a more sustainable use and management is the primary objective of an NFP. It is, at the very least, doubtful whether this purpose can be achieved within the framework of existing legal and institutional instruments which were partly established a long time before the Rio process which marked the new definition of sustainability.

In this context, two particular problems must be considered. Countries with relatively old forest legislation could encounter difficulties when they try to find a provision in their legislation which contains the explicit or implicit objective of promoting sustainable forest
use and management (e.g. the old Swiss forest police law which was focused on the protection of forest areas). If this objective is lacking, it will be difficult to adopt legal and effective means to attain this goal. In countries where the interpretation of the principle of the rule of law is stringent and restrictive, it could prove extremely difficult to insert new efficient instruments without creating new legal basis. This is particularly valid in the case of regulative and incentive instruments; however it also applies for new procedural and organisational rules. In this case, a substantial NFP will most probably require the formulation and implementation of additional legal regulations. In democratically constituted states in particular, this process can take a long time, depending on the institutional level at which the adaptation must be affected. The advantage of such a process is the high level of democratic legitimation and the possibility of the application of some key NFP elements such as participation, co-ordination, integration, consistency, intersectoral approach, iterative process etc. A parallel process involving the formulation of new legal rules and implementation of existing instruments is possible. This would be an ideal pre-condition for an intensive and varied iterative process.

Even countries with new forest legislation could encounter problems with the formulation and implementation of an NFP. It is quite probable that in these new forest acts the principle of sustainability is made statutory on both the objective and instrument level (e.g. the new Swiss forest law of 1991). In this case, the danger exists that the NFP process will remain at a low level and within the closed scope of the relevant (forest) administration. This may result in the refusal of superior political institutions, such as parliament, government or a ministry, to participate in the process or even to give an official mandate for the initiation of an NFP process. This official political mandate is extremely important for the fulfilment of the requirement of a co-ordinated, consistent intersectoral policy. It is also important for efficient monitoring and evaluation and for the introduction of new tools at implementation level (e.g. voluntary agreements in place of hierarchic dispositions, participation of third parties in administrative and judicial procedures etc.). If the legislator or government is not involved in the NFP process, the NFP risks being incomplete, ineffective, inefficient and symbolic.

In summary, it may be stated that NFP’s do not necessarily require a new or adapted legal framework. However, it can be argued that the parallel adaptation of a special legal framework contributes to making an NFP more substantial. Changing the legal rules leads to the involvement and participation of the competent political authorities and institutions. The possible positive consequences of the involvement of the legislator (parliament and government) include:

a) greater democratic legitimation of the programme,
b) better consideration of the principle of the rule of law by the administration,
c) more legal certainty for the administration and the NFP target groups,
d) greater legally binding force for the NFP,
e) more consistent intersectoral co-ordination of forest relevant policies,
f) greater significance for forest policy and administration.

These advantages outweigh possible disadvantages which could involve loss of time, risk of refusal, reduced flexibility and power in the existing forest administration and potential resistance to fundamental changes in forest policy. In conclusion, one can confirm that legal changes connected with NFP’s are more likely to be considered as a supporting than an impeding factor. In any case, legal regulations do not contravene either the key elements or the further developed prerequisites and elements of an NFP. The successful
formulation, implementation and evaluation of an NFP depends more on the political willingness than on the presence or absence of a legal framework.

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LEGAL AND POLITICAL ASPECTS OF FOREST PROGRAMMES IN FINLAND

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INTRODUCTION

The formulation of the national forest programmes does not occur in the vacuum but under existing political and economic structures of the society. These structures change slowly and provide the settings where more dynamic national and internationally induced political and economic processes occur and where the actors including the old and new stakeholders and groups pursue their political, economic and other interests. In these settings the government represents both the structures, the dynamic scene and the acting subject.

The existing legal basis for forestry is the joint result of the more permanent political structures of the society and the current political power balance and political climate. During the 1990s the legal framework for forestry has been completely reformed and revised in Finland. As it is a result of conventional democratic preparation processes including the thorough consideration and checking in parliament, it should fairly well represent the existing political will and consensus in the society. However, this does not mean that the dynamics of forest politics has lessened although the legal framework has been modernised.

The said in principle concerns the formulation of the most recent National Forest Programme 2010, prepared during 1998 and accepted by the Government in March 1999. Unlike in the past, the process of formulation was extraordinarily open but the programme was considered not to be in need to be brought into the parliament, due to the timetable and also because the Government represented a broad political coalition. The earlier forest programmes had much less political support and commitment behind them, but, nevertheless, similarly represented and reflected the political and economic structures and national economic challenges of their own time.

The purpose of this paper is to discuss the Finnish experience on national forestry programmes from the point of view of the differing roles and balance between the stakeholders and the public authorities in the planning process, and in particular consider what kind of implications the changing balance has had on the contents and political status of the programmes. Also the role of the legal framework in the programme preparation and implementation is considered.

1 THE DECREASING ROLE OF FORESTRY

In the light of economic statistics the position of Finland as forest country is nowadays less evident than in the past. From the fifties the export share of pulp, paper, lumber and other wood products in Finnish export has fallen from 70-80% to the present 26% in 2000. Metal based industries and engineering and information technology products have grown and made the structure of economy and export more diversified. The relative employment share of the forest sector has fallen even more and the productivity increase has been especially significant in logging. In the fifties during the era of axe, manual saw and horse transport almost half a million seasonal forest workers (most of them small-farmers) were earning their cash income in the deep snow of the Finnish winter. Nowadays in addition to the numerous multi-purpose logging machines, forwarders and logging trucks utilising dense forest road network, modern logging employ only about 5000 professional loggers and machine-operators. Forestry GDP was 2.1% in 2000, and employment only 1% of the total.

Despite these structural changes in the national economy the forest image of the country still has a firm macro-economic basis. The forest based export share is relatively high and
highest in the world when calculated per capita. Nationally, it is recognised now better than earlier that the role of forestry and forest industries goes much beyond the traditional industrial borders. The concept of “the forest cluster” has been adopted to represent the new way of grouping industries, enterprises and relevant public activities related and dependent on each other. Besides forest industries and forestry, the Finnish forest cluster includes machinery and equipment construction for paper, pulp and woodworking industries, production of logging and transport machinery, chemicals and other intermediate products for forest sector industries as well as the know-how and other infrastructure. The forest cluster is still one of major economic clusters in Finland, and represented 9.6% of GDP in 1998 and one third of the export of the country (Lammi 2000).

2 BUT DO WE REALLY HAVE A FOREST POLICY?

"Everyone who reads the available material [...] on our forest policy [...] is forgiven if he is not quite sure whether we have it or not, whether we have had it but don't have anymore, or whether it would be good to have although not implementable in practice“, wrote Carron (1983) in his article "National forest policy - myth, manifesto, mandate or mandala". His worries concerned the situation in Australia where some obscurity in forest policy is understandable (cf. Saastamoinen 1996). It would be less so, if a similar situation were prevailing in Finland, and indeed, during the course of time there have been numerous voices expressing that kind of concerns (e.g. Holopainen 1967, Kuusela 1988, Saarenmaa 1994) although the long trend in forest policy has also been identified (Ollonqvist 1998). In any case, whether the official (and emphasis is on this word) forest policy in Finland has played the role required in the country of forests is a controversial issue, which is closely related to the emergence of forest programmes and the ways they have been prepared and implemented.

The existence or non-existence of official and declared forest policy is often culminated in the analysis of the lack of "independence" of the forest policy in Finland. The point emphasised has been that forest policy has been subordinated to other politically more important policy areas and interests such as agricultural policy, settlement policy (e.g. Holopainen 1967, Kuusela 1988, Saarenmaa 1994) although the long trend in forest policy has also been identified (Ollonqvist 1998). In any case, whether the official (and emphasis is on this word) forest policy in Finland has played the role required in the country of forests is a controversial issue, which is closely related to the emergence of forest programmes and the ways they have been prepared and implemented.

An interesting point is that just an opposite view - that forest policy has been "too independent" and even formed its own "socialistic or corporative planned economy" (Palo 1993, Vaara 1995) - has also been expressed. In the nineties the latter view has strongly emphasised the need to tear down the planning and control capacities of forest administration so that market forces are allowed to feed free entrepreneurship in forestry.

Although a claim to "socialistic planned economy in forestry" is a misleading concept (Saastamoinen 1994) there are good grounds to emphasize strong features of corporatism in the forest policy scene. The Finnish model is often regarded as bipolarized corporatism between forest industries' association and forest owners' association, and if the state structures are included it can be called as tripartite corporatism (Metz 1993). The influence of forest owners and forest industries has also been strengthened due to the support in the parliament by related political parties. The agricultural party (later the Centre Party) was closest to the forest owners and until early nineties had almost a complete control of the Ministry of Agriculture and Forestry. The conservative party most consistently supported the cause of the forest industries, often together with the social-democratic party which was influenced by the trade union. Forest authorities, financial institutions (especially the state Bank of Finland), trade unions (increasingly in the
seventies and eighties, for some time regarded as a fourth member in corporatism) and earlier weak state leadership in forestry formed the additional ingredients in the corporative mixture where Finnish forest policy - or attempts to that - have developed. Forest science community due to its expertise and in some cases, advocacy (this refers to single members, not the whole community), also had important roles to play. Nowadays, of course, there are more non-corporative players at the scene (e.g. Palo 1993, Ollonqvist 1998, Hyttinen & Tikkanen 1999, Hänninen 1999).

3 THE FIRST FOREST PROGRAMMES: FROM VOLUNTEER FIRE BRIGADES TO A CORPORATIVE CONSENSUS?

The period after the World War II was that of the reconstruction of the economy. The political leadership in the government was a coalition of the agricultural party, and the communist led National Democratic Union. The state had a strong hand in the economy of reconstruction. In 1949 the Government established a Planning Committee for Forestry to make a holistic plan for the development of forestry and raising the production during the coming years. However, after the first report in 1951, where it proposed the development of road network, it interrupted its work to wait for the results of the third national forest inventory implemented in 1951 - 1953. The planning committee continued the work between 1957 - 1961 and called a working group to study possibilities to raise allowable cut so that the increased wood demand by forest industries could be met in a sustainable way. This was regarded feasible only under the condition of suggested silvicultural intensification programme (Linnamies 1970). The proposed programme can be considered as the first national forestry programme, and got its name HKLN-programme according to the initials of the experts compiling the programme.

The need for intensification of forestry towards the late fifties was growing due to several reasons. In the World War II Finland lost 12% of its forest resources to Soviet Union and the war compensations and restructuring of economy were partially financed by large cuttings. Despite that, the results of third national forest inventory published in 1953 indicated that forest resources were in better condition than assumed. This situation, together with the Korea boom in 1950-52 and World Bank financing for forest industries as well as FAO's favourable predictions on forest products demand caused an extensive and uncontrolled investment boom in the Finnish forest industries, which by the beginning of sixties resulted in considerable overcuttings and predicted growing wood shortage. In 1960-63 the annual drain was 6 million or 13% larger than allowable cut (Holopainen 1967). Sustainability of forestry was seriously threatened and the intensification of wood production was seen as a national necessity and as a challenge to save the economy of the country so decisively dependent on forest industries (Holopainen 1967, Saastamoinen 1994). Ollonqvist (1998) emphasised the hindrance of actual and predicted wood shortage to the growth possibilities of forest industry.

In the same year 1961 the Agricultural committee asked a researcher group to prepare a report what kind of employment and income effects forestry can provide for rural people during the next decades. The working group, consisting two same members from the first one, prepared three alternative programs, one for extensive forestry, the second same as HKLN, and the most intensive called Teho (“effectiveness”), which was the one recommended (Holopainen 1967, Ollonqvist 1998).

The two first programmes (HKLN and Teho) did not get sufficient financing in the state budgets. In 1963 an unofficial meeting was held where the top representatives of the Finnish Forest Industries’ Association and the Central Union of Agricultural Producers (representing the private non-industrial forest owners) met and decided to seek new ways of financing for the forestry development programmes. For that purpose, a new voluntary
Forest Financing Committee or Mera (this abbreviation means "financing of forestry") work group was established under the chairmanship of the governor of the Bank of Finland. (Palosuo 1979). It was regarded that the chairmanship of the Bank of Finland would give some semi-official status to the working group. Other members of the working group presented the two initiating interest groups and leaders of state and private forest authorities. Two representatives from the Forest Research Institute participated as experts in the work.

Mera committee prepared its first forestry intensification programme (Mera I), where annual targets for reforestation and peatland drainage were again higher than in HKLN- and Teho-programmes and the estimates for future allowable cut after 70 – 80 years were as much as 100 – 120 million cubic meters (Mera I 1964). However, the primary task of Mera committee was to find out an appropriate solution for the financing of the forest improvement work outlined in the programme. The committee suggested that the needed additional funds for 1965-1970 could be supplied by using forest improvement bonds released by the Bank of Finland as the financing instrument. The bonds were sold to the consortium of the Finnish banks (Palosuo 1979). The funds thus collected were directed through the state budget to contribute to the financing of the programme.

In 1963 the Economic Council called for already a fourth expert group to prepare a programme called an extended Teho programme as one of the three alternatives to correspond an assumption that the capacity of pulp industry will grow faster than predicted previously.

Mera II programme in 1966 raised the targets of Mera I programme in forest fertilisation, forest drainage and forest road construction. However, in Mera III programme (1969) for the years 1970-75 fertilisation, drainage and artificial reforestation targets were reduced while forest road construction target was further raised.

In 1969 a comprehensive study “The production possibilities of the Finnish forest and wood economy in 1970 – 2015” was completed. It studied more widely than the earlier programmes the impacts of growing wood use on forest improvement and silvicultural work. It also included economic profitability analysis, which indicated that forest improvement works were profitable until the levels of intensification suggested in Mera programmes, but not any further (Ervasti et al 1970).

However, again in the early seventies the Government was unwilling to allocate budget financing for forest programme and therefore a loan from the World Bank was found to be a means for further financing. The loan was negotiated successfully, but there was also some criticism concerning the ways how the procedure was done, including the lack of transparency (e.g. Saastamoinen 1973). According to the most bitter comments, the loan was "smuggled" past the parliamentary decision making processes. However, Palosuo (1979) brings some counter-argumentation to that view. The loan conditions emphasised financial profitability of the project and therefore excluded the use of funds to less profitable investments in the northern parts of the country. Another condition of the loan was, that a co-ordinating body for forestry should be established.
4 AN UNEVEN WAY TOWARDS MORE INSTITUTIONALISED APPROACHES

As a result of the World Bank request, an official advisory Forestry Council was created, where the different interest groups of forestry were represented. The council prepared a wood production programme in 1975, which was a 5 year programme but it was meant to be revised annually. The target year was 2000.

However, although the Forestry Council was under the Ministry of Agriculture and Forestry, the Government did not confirm officially the programme and actually in 1981 it was left to “rest” and wait for the new programme, although the council, and probably the Union of Agricultural Producers in particular, were hoping for the confirmation (Metz 1993). It may look a bit surprising, that programmes made under officially appointed forestry council working under the ministry, were less influential (in fact almost non-functioning) than those done largely outside the government. Palo (1993) claims that this was a climax of what he calls the “corporative planning economy”. However, there were other reasons: the initiative for the council came outside from the Government, the needs for further intensification of forestry were less acute, the environmental concerns emerged and the programme of the council apparently was not able to respond for the real challenges.

A need for official forest policy program and targets was nevertheless widely felt in the society and in 1983 after the proposal of the social-democratic Prime Minister, a Forest 2000-programme group was established under the Economic Council. According to a source, this pattern of action was probably first agreed upon between the forest industry and the Union of Agricultural Producers and Forest Owners (Palo 1993). The Forest 2000-programme already to some extent represented a different era and opened slightly a door to wider participation in preparing forest programmes. For example, first time trade unions and a non-governmental nature conservation organisation were invited to participate the work. The emphasis of Forest 2000-programme was shifted from the intensification of silviculture and forest improvement into increasing the use of forest resources, wood supply, development of forest industry and taking into account the needs for multiple-use of forests (Talousneuvosto 1985, Maa- ja metsätalousministeriö 2000).

Despite the through preparation work with a lot of people engaged in, many documents produced (Talousneuvosto 1985) and a monitoring system created, the practical results of the programme proper as well as its revised version from 1992 have been evaluated being rather modest in many respects. Basic criticism was that although the programme was able to get a consensus of the goals it could not agree upon the means to achieve the goals (Riikilä & Tikkanen 1993, Metz 1993, Palo 1993). Reunala (2000) stated that the Forest 2000-programme was not as successful as the earlier ones. Silvicultural and forest improvement investments lagged behind the objectives but the annual cuttings and forest industry capacity increased as expected. A merit of the programme was that the multiple-use and non-timber values of forests were first time recognised and considered in the national planning. However, the real concern of the programme in regard to multiple-use have received also critical comments (Saastamoinen 1988).
5 THE RISE OF ENVIRONMENTAL CRITICISM

The rising standard of living, which largely was due to the success of the forest sector, increased leisure time, urbanisation but also the evident adverse signs of industrial development such as water and air pollution, brought gradually environmental concerns into the public agenda. It was more than natural that the drastic changes in forests due to intensification programmes raised environmental criticism against forest drainage, clear-cutting and soil scarification, use of pesticides and road construction. The environmental criticism was in some cases well-articulated and based on scientific-type of argumentation - and so was often also the counter argumentation. This dimension of discussion has been existent through the 30 years of debate, but in the early years it soon was pushed into the background. The conflict between "environmentalists" and "forestry" gradually escalated into what was popularly called as "forest wars", the concept which largely dominated the public image of during the seventies in particular (Reunala & Heikinheimo 1987) and also later on. The recent comparative analysis of seven environmental conflict cultures in six countries (Hellström 2001) did not use this popular concept, but it categorised Finland's forest conflicts most intense after Pacific Northwest, USA. It also concluded that Finland was very poor in relation management to resolve specific conflicts.

There are no doubt some psychological reasons for the intensity of forest conflicts in Finland. From forestry side it has been pointed out to been created by some offending articles of most radical environmentalists, but the strength of conflict escalation and the stability of the fronts was largely due to the fact that the style of fighting polemics was soon adopted by the representatives of forestry, too. This reaction was probably much due to the psychological shock of the forestry profession being transformed from the carrier of the national flag of economic growth into the culprits of ecological destruction. For most foresters it was regarded inconceivable and unjust.

But apparently other causes were involved: it was also conflict between the generations, manifesting the gap between the men experienced the real war and economic scarcity and those mainly grown in the welfare state - as the former often reminded. To some extent at least, it might also have included a dimension of power game between the professions (forestry vs. environmental) and it may also have had some urban-rural dimension. However, the major reason that the conflict became rigid was that (at least in the mind of forefront fighters) it turned to get a strong political and ideological dimension, which by and large combined many of the above causes.

A pamphlet "Forest responds - Finland a country of forestry or conservation power?" (Holopainen and Timonen 1995) manifests in detail this approach. The book traces the roots of environmental conflicts in general and in forestry from the rise of student radicalism from the sixties to the strengthening of the political left in the seventies. After the decreasing political influence of the left the authors claim that radical political ideas have been transformed into the environmental thinking of the following times. Interestingly, in the comparative study the direct political dimension of the forest conflict (a "party political interest") was not found in Finland nor in any other cases except Pacific Northwest by Hellström (2001).

Although not without its biases the book (which is not the only one in its series) makes understandable the legitimate purposes and achievements of forestry professionals. It also includes documentations of excessive actions and exaggerated postulates presented in environmental movements but certainly fails to recognise their positive contributions in the society or practice the art of self-criticism. It evidently bears concern of the future of the Finnish economy and employment but - perhaps not surprisingly - strongly doubts the usefulness of the recent environmental turn of the official Finnish forest policy.
6 THE ENVIRONMENTAL PROGRAMME FOR FORESTRY

Indeed, during the nineties a significant environmental turn occurred in the Finnish forest policy. The major reasons behind the turn include international processes, the pressures from national and international environmental movements on existing forestry practices and especially for the preservation of old-growth forests, as well as the changing attitudes of European consumers and major business clients of the Finnish forest industries. The latter reflected on the one hand the genuine environmental concerns but also represented reactions to the impressive environmental media operations of the international environmental movements. Simultaneous factors were the growing sensitiveness of the Finnish forest industries to the environmental pressures while building the new green imago, the growing role of the Ministry of Environment with regard to forest matters, and finally, but not the least, the leadership of the Forest Department of the Ministry of Agriculture and Forestry to re-orientate forest policy to correspond to growing environmental challenges (e.g. Saastamoinen 1996). Possibly, to some extent at least also forest policy research (spearheaded by “The strategy of the environmentally conscious forest policy” by Palo 1993) contributed to the attitudes of change.

The impact of the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992 was evident also in Finnish forestry as it finally brought environment and forestry issues in a legitimate way into the administration. The fact that a year after UNCED Finland hosted the second European ministerial conference on the protection of European forests, strengthened the political willingness and commitment of forest administration for changes.

This international and domestic development contributed to the preparation of the Environmental Programme for Forestry, jointly elaborated by the Ministry of Agriculture and Forestry, and the Ministry of Environment in 1994 (Maa- ja metsätalousministeriö1994). It brought the concept of ecological sustainability to the forefront of the forestry agenda, and discussed widely the many basic concepts and principles related of sustainable development and modifications needed in forestry practices in particular. This environmental programme represented the consensus of the two ministries, often having been in hidden or open conflict with each other, and therefore it has often been used as the basic document of future policy actions. It is among the major documents constituting the environmental turn of the Finnish forestry in the 1990s. It envisaged and strengthened both need and political will to renew forest legislation and also recognised a need for what at that time was called a National Forest Plan, leading later to the formulation of the Finnish National Forest Programme 2010.

As a result Finnish forest legislation underwent a comprehensive reform during the 1990s. All major forest laws were revised and rewritten to reflect the new focus of sustainable forestry, including not only economic but also ecological and social aspects. Most important of these is the new Forest Act.

7 THE NEW FOREST ACT OF 1996 MAKES REGIONAL FOREST TARGET PROGRAMMES MANDATORY …

A novelty in the Forest Act (1996) is that regional Forestry Centres are obliged to draw up a forestry target programme for the area covered by its activities and follow up the implementation of the programme. In drawing up the programme, the forestry centre shall co-operate with the parties representing forestry in the area and with other relevant parties. The Act orders that the regional programmes shall be revised when necessary.

The programme shall include the general targets set for promoting the sustainable forest management, the targets set for the measures and their financing as specified in the Act
on the Financing of Sustainable Forestry (1996), and the overall targets set for the
development of forestry in the area. However, detailed information concerning individual
holdings shall not be included in the programme.

Regional forestry programmes are supposed to be useful tools in promoting forestry and
strengthening the regional interests and public influence in forest development. The first
round of regional forestry programmes were completed in early 1998. They served among
the sources in the compilation of the National Forest 2010 programme. After the national
programme was approved by the Government in 1999, the Ministry of Agriculture and
Forestry ordered that the regional forestry target programmes shall be revised to be in
concordance of the national programme. This work was done during the year 2000.
Although regional forestry target programmes are mandated by the Forest Act, unlike the
national forest programme, the “political will” of the latter has been seen a sufficient
reason for the revision of the former.

8 BUT PROVIDES ONLY A BACKGROUND FOR THE NATIONAL FOREST PROGRAMME

One may wonder why the new Forest Act does not mention the need for national forestry
programme? That should have been logical for several reasons: 1) forest holding level
planning has been seen as an important means to develop private forestry and has been
encouraged with subsidies long time; 2) new regional forestry target programmes were
established as a major tool to further forestry development in the regions; 3) the country
has a long and rather successful tradition in national forestry planning and programming,
4) Finland herself has been promoting actively national Forestry Master Plan schemes for
the developing countries already from the eighties, and 5) has also done the same in the
arena of international forest policies in the nineties.

There are no clear-cut answers to this question, but two reasons can be given. First of all,
the economic and political climate of the nineties were against state intervention in all
economic areas, and similar arguments largely based on neoliberalism were also targeted
against major state institutions in forestry (e.g. Palo 1993). Another reason may be found
in the suspicions of forest owners towards institutionalised national planning, perhaps due
to the fears that it might cause more restrictions and weaken the strong positions the
powerful interest groups have had in the earlier non-institutionalised type of planning.

Certainly, the new Forest Act does not prevent from preparing national forest
programmes. The first paragraph also defines the basic orientation for sustainable forest
management to serve as a standpoint, for example, for national forest programme, by
stating that “the purpose of this act is to promote economically, ecologically and socially
sustainable management and utilisation of the forests in such a way that the forests
provide a sustainable satisfactory yield while their biological diversity is being maintained.”
(Forest Act 1996).

9 THE MISSING JURISDICTIONAL STATUS OF THE NATIONAL FOREST PROGRAMME

Like many countries (Tarasofsky 1999) also Finland lacks specific paragraphs in forest or
other legislation concerning directly the jurisdictional status of NFP. The Forest Act only
recognises regional forestry target programmes. And as Kivilaakso (1997) points out, even
the regional programmes do not have direct jurisdictional implications for the authorities.

NFP is a strategic and political programme, which as such does not have direct legal
consequences. It is strategic in its orientation to the future, in its goal formulations and in
its efforts to provide the necessary means and resources to achieve its goals through co-
operation. The implementation of the programme is entirely depending on the political commitment and the consensus of the stakeholders and parties involved at all levels. Certainly, the cornerstones of the political commitment are the approval of the programme by the previous Government and the inclusion of the programme into the Government programme of the new one (representing the same broad political coalition as the previous one) as well as the active leadership and co-ordination of the Ministry of Agriculture and Forestry in the programme implementation. The international dimension related to the NFP's represents an additional political cornerstone of the programme also in the Finnish case. This and all the other factors together mean, that the NFP besides being an official document carries a high political status, which only occasionally was true for the earlier forest programmes.

It is especially worth of noticing, that the programme does not have any compelling implications for the private sector. The programme is market oriented, and it is assumed that the programme strategy promotes the investments of forest industries and wood energy sector, leading in due course to an increase in the annual use of wood. Improved wood demand and consequent timber sales income, together with the financial incentives and extension, are assumed to encourage silvicultural and forest improvement investments of the forest owners, and carrying out necessary and voluntary measures for biodiversity conservation.

Finally, the political commitment of the Government and the Parliament is tested annually, as the public sector financing of the National Forest Programme is channelled mainly through the Act of Sustainable Financing of Forestry. By so far, the test has been passed satisfactorily.

10 A CONSTITUTIONAL BASIS FOR PARTICIPATORY APPROACH

One of the essential features of the new National Forest Programme 2010 was that the process of preparation was made open to all interested parties, the importance of co-operation with all stakeholders was emphasised, and environmental and other NGOs were formally invited to participate to the steering committee and work groups. For example, of 14 members of the steering committee 3 represented environmental NGOs.

Although the National Forest Programme did not mention that explicitly, the legal basis for involving the NGOs and the public at large can be directly derived from the Finland's Constitution, which was amended in this respect in 1995. The similar statuses are in the new Constitution, which came into force in March 2000. The second section of the new Constitution (Suomen perustuslaki 2000) states that "Individual's right to participate and influence the development of the society and the living environment belongs to democracy". Section 20 defines responsibility for nature and affirms that "Responsibility for nature and its biodiversity, for the environment and for our cultural heritage is shared by all. Public authorities shall strive to ensure for everyone the right to a healthy environment as well as the opportunity to influence decision-making concerning the living environment".

As the Forest Act does not recognise the National Forest Programme, a formal recognition of participation can only be found in the context of regional forestry target programmes. Section 4 says that "in drawing the programme, the forestry centre shall co-operate with the parties representing forestry in the area and with other relevant parties". One can see, that the status given to participation is not very high. One the other hand, the formulation leaves it to the forestry centres to decide which are the relevant parties and does not restrict the participation.
PARTICIPATION OF POWERFUL GROUPS

Long before the constitutional reforms of 1995 and 2000, the participation of selected interests in the formulation of forest policies was regarded almost as "constitutional". Palo (1993) reviewed the historical development in forest policy in Finland and found that the varying decisions and leading ideas composing forest policy could be largely interpreted as a power game between the interests and interest groups: were it shipbuilding for king's military interest, safeguarding fuelwood supply for the interest of ore industry, or liberating the mercantilist control of sawmills, it was the most powerful in the society who were able to decide the direction of the forest policy.

During the first decades of the independence of Finland the growing forest industries and their union developed a strong position in policies affecting forestry but the role of agricultural unions and agricultural party was similarly strong and increasing as land reforms and settlement policy increased the number of (small) farmers. If put briefly, forest industries and agricultural union and the political parties supporting them have had the lead in forest related policies until the late sixties and early seventies. After that the trade union and political parties of the left also had some influence in policies without much weakening the positions of the traditional players. The decision making structure fulfilled many of the conditions of what is known corporatism - the strong position of major interest groups while the official leading role of the state bureaucracy is lacking or very weak at least.

Krott (1999) points out the well-known political reason for weak goal setting. The powerful users of forest lands are strongly opposed to binding decisions in public plans, because they can fulfil their user interests best without additional regulations. He further emphasizes, that the formal and mainly informal political opposition causes an exhausting planning process for the forestry planner, requiring huge inputs of time and other sources (Krott 1999).

The Finnish experience, as has been shown, is that the "powerful users" (the associations of forest owners and forest industries, i.e. the core of corporatism) have until recently been the active players in the national forest programmes because their interests for increased wood production and public support for financing of it (the latter aspect has been important in particular for the private forest owners) have been very similar. At the same time, there has been nothing to be lost in the planning processes, perhaps at least not until recent times when the environmental issues have been growing in importance.

There are two reasons to assume that even the higher role of environmental question in national forest programmes would hardly present an impediment for their active participation. First, as known, well-done environmental management is not only a cost factor but also a necessity and possibility, especially so for the forest industries. Secondly, when dealing environmental issues, the national forest programme is a home field, less hostile and less unpredictable compared to the other arena, where the environmental views probably are more dominating. Krott (1999) states that if increasing pressure is threatening the enterprise (here: forest owners and industries) planning could offer a procedure for actively dealing with the new pressure and an instrument for coping with political threats, which in older European democracies in many cases mean increased restrictions for forest owners.
12 THE ROLE OF PROFESSIONAL EXPERTISE

As mentioned, Eriksson (1993) used the concepts of expert power and planning network, when she analysed the period of Mera –programmes and the other previous programmes. The network describes the personal structure of the planning groups and the organisations they represent.

During the period of first plans about half of the members of the national planning network were forest scientists and other members rather evenly represented other organisations. Same persons were participating in the several sequential planning groups, which can be explained by the limited number of authoritative persons as well as by the short periods between the new planning tasks, due to the experienced urgent necessity to intensify forestry.

For foresters of all levels the intensification offered a professional challenge to develop silvicultural activities and forest production. It also provided career opportunities as the intensification in a relatively short period doubled the number of forestry people in forest improvement and field work organisations (Ollonqvist 1998). No doubt forestry people at that time were devoted to fulfil the national obligations for intensive forest production. The title of the history of forest improvement work "Forest improvement 1908 - 1988 - a national cause" (Tuokko 1992) probably indicates how the mission was perceived. This in mind the frustration brought by ever increasing environmental criticism from early seventies onwards was understandable.

13 LESS POWERFUL GROUPS: FROM NON-EXISTENCE TO MARKET POWER?

From the seventies the role of non-traditional players, spearheaded by environmental movements, was gradually increasing. Presently environmental movement can be regarded as being among major powers in the forest policy scene both domestically and internationally. Besides that, the official inter-governmental environmental and forestry communities have been largely involved in biodiversity conservation.

Similarly, market forces more and more are flagging for environmental cause.

"Greening" is the essential part of the competitive strategies of the companies and the environmental image is one of the most sensitive assets of the firms. And despite much "artificial" image building many companies also realize, that the essence in a way to build a sustainable image is to make the homework. This is the lesson learnt in the most advanced part of world forest industries, including the Finnish forest industries, and also one of the major reasons behind the new environmental strategies adopted in Finnish forest policy.

Although the real characteristics and performance of each product, company, and industry in any country in the long term at least should decide their environmental goodness (and that is what certification, eco-labelling, environmental auditing, environmental impact assessments, life cycle analyses etc. are attempting for), but in the short term the environmental image seems to very sensitive, sometimes unpredictable, and apt for manipulation.

Indisputably, in the area of image building some environmental organizations do have a considerable power. As some of them also are fighting for the market shares in the emerging markets of forest certification, one may sometimes wonder where the borderline between these environmental groups and what traditionally has been understood to be the "market forces" actually should be drawn. In drawing or moving the borderline, the mass
media also has the most influential role to play. No doubt, the environmental organisations have been moving from the group of "less powerful" into more influential one. An increased influence brings along more responsibilities. Whether the new actors will be able to balance between power and responsibilities better than some of the older ones in the past, is one of the many challenges they face. One should also recognise, that although the group of the less powerful may have now some members less than earlier, there are still many voices that may remain poorly recognised and listened even in the present processes of developing participatory approaches.

The experiences in Finland concerning the participation of non-traditional actors (citizens, groups and NGOs) in preparation of the most recent national forest programme have mostly been positive, but also difficulties have been met. For example, Reunala (1999), having been in charge of the national planning process, reported that some NGOs did not apply the same rules of co-operation as others, thus creating misunderstanding and mistrust within the process.

However, the (small) League of Ecoforestry claimed, that the provincial “citizen forums” were an example of wings-democracy and mostly the spirit raising occasions for forestry people. They also wondered “why the programme was not meant to be brought to the parliament, although forest policy and related energy policy and rural policy are major orientation issues for the whole country.” The league further stated that “one should not give in the pressure of state officials and some interest groups. It is a high time to start the democratic processing of the forest policy”. (Ministry of Agriculture and Forestry 1999).

It is worth of noticing, that all the criticism and other comment and statements (as those cited above) concerning the preparation and contents of the programme well documented in the background report of the National Forest Programme published by the Ministry of Agriculture and Forestry (Maa- ja metsätalousministeriö 1999). This on its part indicates an improved transparency of planning and implementation processes. Also, the comprehensive environmental analysis (Hildén et al 1999) which the programme went through, as a precondition of its political approval, increased the availability of the critical material, although it did not cause direct changes in the contents of the programme.

14 CONCLUSIONS

National planning process leading to national forest programme has a mission (following Krott 1999) of rationality (the forest resource and their multiple uses and protection should be analysed in a scientific sound way), democracy (integrating all user groups and stakeholders and developing a democratic procedure for decisions) and innovation (if rational analysis show serious new problems or if conflicts arise innovations are needed to go forward). How to combine all these aspects represents the major challenges for the processes of preparation and implementation of the national forest programmes.

Some of the conclusions to be drawn from the Finnish experiences can be summarized in the following ways.

The need for early national programmes came from the deep concerns on the future sustainability of wood production in Finland. Consequently, the first programmes solely focused on intensification of wood production with minimal, if any, consideration for environmental or multiple use issues.

The initiatives for the first programmes came not from the Government or ministries but from the “independent” state committees (a peculiar institution in Finland used by the Government for the periodic preparation of certain important political issues, or sometimes to “bury” the same; they composed of authorities, stakeholders and experts) or directly from the voluntary corporate-type Forest Financing Committee, established by the
The role of the latter was particularly important in organising financing of the programmes, which the Government was not interested in although it had supported the expansion of forest industries (Holopainen 1967). The corporative consensus between the forest owners and forest industries formed the major backing to the early programmes.

The role of forest expertise - Eriksson (1993) has characterised it with the concept of expert power - has no doubt played a visible and decisive role in establishing and maintaining the rationality of intensified forest production in the forest programmes. Of course, this does not mean that there were no actions brought into the practise, which could not be understood to be failures. For example, it has been estimated that forest drainage was done in some cases brought into too poor sites, which did not give appropriate physical or economic benefits. However, in this context one has also to recognise, that inside the forest science community there also existed different opinions concerning the possibilities of intensifying forestry, the inclusion of intensification in the form of “allowable cut effect” and, in particular, the justification of increased financial support to private forest owners (Holopainen 1967, Riihinen 1965).

The “voluntary fire brigades” of forest experts from stakeholder associations, administration and science compensated the missing governmental capacity and apparently also political will for progressive forest policies. The official political recognition and political support for the forest programmes of the past has been rather thin and unstable.

The first attempts to make government based (by the Forestry Council) national forest programmes were unsuccessful compared to the “corporatism” based programmes, which were implemented effectively and by and large with good results in wood production.

However, the capacity of corporative forest programming, and the implementation of the programmes was rather weak in anticipating or taking into account the new environmental demands. Also the role of forest expertise has been rather modest in promoting multiple-uses of forests and nature conservation in the context of the programme. Many reasons, from economic to psychological ones, have maintained the intensity of certain environmental conflicts in Finnish forestry.

The national forest policy capacity of the government authority has only been purposefully developed in the late eighties and the nineties. During the nineties the Ministry of Agriculture and Forestry, influenced largely to the “environmental turn” of forest policy, pushed and supported by the Ministry of Environment and several kind of outside pressures and challenges.

The citizen participation tradition has almost been lacking in the national planning processes until the formulation and implementation of the current National Forest Programme 2010 from 1998 onwards. However, in mid-nineties the participatory approaches was adopted is state forest planning and later on in the regional forestry target programmes. Most of the recent experiences at the national level participation have been encouraging, but also reason for, and signs of frustration has emerged. However, there are no other ways to go than improved participation and communication. Although the Forest Act gives only limited support to participatory approaches, the provisions of the Constitution legitimise the new planning policies adopted in national and regional forest planning and in the state forests.

As the forest programmes of the past, also the current National Forest Programme 2010 lacks legal status and binding legal implications. However, this does not prevent it to be reasonably well implemented as it is politically properly recognised and supported. The
non- legally binding nature of the programme may actually be an asset as it makes it more flexible and more easily accessible from the point of view of implementation and revision. It is important also to notice that the present national forest programme is based on market principles in its relations to forest industries and forest owners and mainly provides possibilities and the framework for voluntary cooperation and coordination. Also it deserves to be mentioned, that the programme made proposals for furthering innovations in the forest sector, but the results of these are yet to be seen.

Finally, one can conclude that also in Finland the international support for national forest programmes has raised the profile of forest programmes and strengthened their institutional and political role.

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IMPLEMENTATION OF THE FINNISH NATIONAL FOREST PROGRAM
- TRANSFER FROM TOP-DOWN TO
BOTTOM-UP POLICY PROCESS

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ABSTRACT

Sustainable timber management (STM) remained the unquestionable forest policy objective from 1920's up to the late 1980's in Finland. The key partners of forest policy community could easily identify the relevant stakeholders to be joined into the forest policy actions and activate them to co-operate for the national programs to increase public investment subsidies for timber production in 1960's- 80's. Parallel objectives of forest investment programs with those of macroeconomic target planning made it easy to arrange external financing for subsidy funds at that time. There was a permanent network of key forestry organisations in forest policy arena that had large sovereignty and internal professional autonomy among to arrange the extension service networks for non-industrial private forest owners. The quantitative targets of the investment programs were easy implement.

Market allocation was substituted for macroeconomic target planning in economic policy during the early 1990's in Finland. Difficulties to identify new relevant stakeholders in the forest policy arena and the permanence of the prior corporatist policy network became evident at that time. The transfer from sustainable timber management (STM) to sustainable forest management (SFM) failed in the revision of the public investment subsidy program (Revised FOREST 2000 program) in 1992. However, the main controversies were identified and analysed in the preparation of Environmental Programme for Forestry (EPF) next year and wide consensus was achieved on the policy targets for SFM.

The initial steps in the preparation of Finland's National Forest Program 2010, accepted by the Government in 1991, were characterised by the technocrat traditions tradition of top-down forest policy. The policy planning in FNFP process was based on a single ex ante scenario of exogenous development.

The forest policy white paper was a symbolic NFP. The promotion of inter-sectoral co-ordination and institutions for conflict resolution were fair during the program process. The program was transferred towards the substantive NFP during the implementation. FNFP constitutes the core of the subsidiary approach as adopted by the forest policy community.

The profile of Finland's National Forest Program 2010 is sequential. Conflict resolution on the core issues of ecological sustainability were postponed at the implementation stage, whereas policy implementation for economic sustainability was fully covered by the FNFP output. Social sustainability, was subordinated to the objectives of economic and ecological sustainability and is the endogenous output from the policy activities for economic and ecologic sustainability.

Keywords: sustainable forest management, forest policy, national forest program
1 INTRODUCTION

There is a long tradition of national programmes in Finnish forestry and forest policy. These programs were formulated and implemented for sustainable timber management (STM) up to the early 1990's. The objectives of these programs addressed to the expansion and intensification of timber production. The parallel tradition of economic policy processes, characterised by top-down approach, helped to formulate the institutions in the forest policy arena. The features of the neo-corporatist forest policy agenda applied in the preparation of these programs are discussed in Chapter II.

The challenges in preparing forest program for sustainable forest management (SFM) were not met during the late 1980's. Internal friction in the implementation of programs resulted from the permanent neo-corporatist agenda and an inability to identify new stakeholders in forest policy arena. The policy failures of the early 1990's are discussed in Chapter II.

The formulation of the Environmental Programme for Forestry (EPF) in 1993 became the initial to the comprehensive modernisation of forestry legislation. Finland's National Forest Program (FNFP) 2010 was formulated in 1999 to implement the transfer from STM to SFM into forestry practice. The difficulties to abolish the corporatist structures and adopt the bottom-up mode to policy process are discussed in Chapter III.

2 SUSTAINABLE TIMBER MANAGEMENT AND PUBLIC SUBSIDIES FOR TIMBER PRODUCTION INVESTMENTS - TOP DOWN- FOREST POLICY OF 1960’s - 80’s

2.1 INSTITUTIONS OF CORPORATIST FOREST POLICY

Technocrat planning and top-down implementation were adopted as the major mode of macroeconomic policy in the industrialised European countries during the 1960’s. Inter-sectoral coordination in macroeconomic planning was adopted symbolically. The approach was a logical solution to the challenges from targets of stable growth and a smooth distribution of income and welfare. The target to dampen business cycles was the third major reason for favouring an active financial policy at that time. The growth of neo-corporatist structures in macroeconomic policy had their origin in the comprehensive contract bargaining found in income division in general and especially in labour market. Financial policy was subordinated to income policy via contracts that also covered stumpage prices after the late1960’s\(^1\).

The institution calculating and proposing forest investment programs was established in the early 1960’s. Detailed inventories of forest resources and timber use initiated by the inner circle of forest policy community organisations. The forestry organisations listed below are counted into the inner circle of forest policy community Central Forestry Board (currently Forest and Park Service (FPS)) had the position of central public authority of NIPFO in addition to the management duties of commercial state forests and Nature Parks and Environmental Parks. The semi-public organisations, a) National Forestry Board (currently Forestry Development Centre Tapio (FDC)) as central unit and b) Regional Forestry Centres (RFC) supervised forest management and provided extension services for NIPFO and c) the regional organisations of FDC provided investment services had the major responsibility on forest policy implementation in NIPF. Central Union of Agricultural Producers and Forest Owners (CUAP), representing all fractions among

\(^1\) Ollonqvist (1998)
Pekka Ollonqvist: Implementation of the Finnish NFP

NIPFO, was the only totally private stakeholder. Finnish Forest Research Institute was the main provider of R & D information base for the preparation of policy actions for STM. It was adopted in the early stage into this forest policy community. The representatives of the key interest organisations of forest policy community comprised the national forest elite at that time (Eriksson 1995). These organisations actively initiated the corporatist preparation of forest programs in Finland up to the end of 1980's. The subsidy programs for timber production investments (MERA I-III in 1963-1975, FOREST 2000 in 1983-85 and Rev. FOREST 2000 in 1990-92) had permanent substantial background. The investment programs, based on the scenario evaluations of the increasing allowable cut, had parallel objectives to those of macroeconomic target planning.

Public subsidies were prepared by corporatist program network but issued through the State Budget. Programs provided expansionary visions on the annual allowable cut volumes and rural employment helping to adapt the rest of the economy to support public funds into investments with (exceptionally) long maturity.

The secondary stakeholders of the program process could easily joined to co-opt for the timber investment programs. The inclusions of stakeholders outside the forest sector, originating to that of Bank of Finland in 1960's, were expanded in 1980's to the inclusion of key ministries (Ministry of Finance, Ministry of Trade and Industry, Ministry of Labour) and the forest sector labour unions (Rural Labour Union, Union of Paper Workers, Union of Forest Workers).

The network preparing forest policy programs expanded gradually and became the corporatist forest policy actor outside the Parliament. The key ministries and representative organisations of forest industries, workers and forest owners were constantly involved in the committee work and the other forms of institutional management.

2.2 DOMINANCE OF ALLOWABLE CUT PROJECTIONS IN FOREST POLICY

Sustainable timber management (STM) was widely accepted as the forest policy objective in Finland already in the 1950's. The steady state projection alternative were formally included into forest policy preparation in the late 1960's during the hearings for World Bank loan. The approach applied, was based on three alternative scenarios for the allowable cut was applied.

The group of forest researchers was established to update and develop an Allowable Cut Program (ACP) in Finland in the early 1960's. The three basic scenarios of the ACP has since then been the basis for the preparation of forest programs.

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3 Korhonen (1990)
5 Komiteamietinto 1964: A16.
6 Ollonqvist (1998)
7 Korhonen (1990), Eriksson (1995)
8 cf. discussion on the specifications see Pearce & Putz & Vanclay (1999)
9 Memorandum from the Feasibility Committee of MERA (1972)
10 Ervasti et. al. (1964)
2.3 IMPLEMENTATION OF INVESTMENT TARGETS

Both the absolute and proportional share of pulp and paper production capacity in forest industry increased rapidly from the 1950s on. The managers of pulp and paper industry became interested in forest policy due to large capital investments needed in the investments of new production plants. The (timber)resource dependence of pulp and paper production was of outmost importance in spite of the low cost share of timber input. This dependence encourage forest industry stakeholders to promote investments to increase the potential domestic supply of timber\textsuperscript{13}.

There was a continuous excess demand in the domestic roundwood market from the early 1960's. The timber demand scenarios of forest industry increased constantly due to the rapid growth pulp and paper production capacity from 1950's on. The total supply of timber from private forests had at the same time become irregular due to the diversified economic and non- economic interests behind tenure motives. The scenarios on domestic resource dependence on timber reserves in forest industry increased firm's interests to promote investment subsidies on timber production. The key issue behind this policy agenda was, how to motivate numerous and diversified private owners to make voluntary timber production investments to intensify their (in most cases small scale) forestry.

The diversified tenure with low expertise in forestry issues has been the characteristic structural feature of private tenure in Finland from 1918 on. The comprehensive, semi-public extension service network for private forestry substituted the essential parts of public control\textsuperscript{14}. The local forest management associations (compulsory membership for NIPFOs in the commune) and the forest district centres that promoted forestry investments, covered the forest policy issues as applied in private forests.

2.4 SUCCESSFUL IMPLEMENTATION OF INVESTMENT PROGRAMS: GOOD LUCK OR PROFESSIONAL IDENTIFICATION OF VALID PUBLIC SUBSIDIES?

There were numerous factors supporting the top-down forest policy agenda to implement sustainable timber management objective in forestry.

a) The investments promoting steady economic growth were favoured in the financial policy of 1960's and 1970's. The advocacy provided by macroeconomic planning targets gave the forestry organisations the basis for adopting Bank of Finland (and World Bank indirectly) to co-opt the MERA (investment subsidy) programs in the 1960's. Similarly, a wide array of public and private non-forestry stakeholders were co-opted to the forest investment program FOREST 2000 in 1980's\textsuperscript{15}.

b) High priority of the key interest groups to join the corporatist institutions was typical of that time. The stakeholders inside the forest cluster co-opted the stakeholders of public organisations and other non- foresters into the visions of forest investment programs.

c) Considerable internal autonomy existed among the extension service network of private forest owners with respect to the public control and the strong internal position of forestry professionals. These, together with the supply monopoly of the semi- public district organisation of Forest Centre on those services of timber production investments that were subsidised by public funds helped to propagate the investment activities without strict calculations of the private profitability of these investments. No system or tradition to

\textsuperscript{13} Tainio & Ollonqvist & Korhonen (1989)
\textsuperscript{14} Public issues over NIPF were managed through a) \textit{Local Forest Management Associations} in regeneration and other activities of the ordinary forest management and b) \textit{District Forest Centres} (DFC) in voluntary forest investment issues. Both (compulsory and voluntary ) lines of extension services had the common semi- public central institution \textit{Forestry Development Centre} (FDC) (Metsätalouden kehittämikeskus Tapio).
\textsuperscript{15} Korhonen (1990)
calculate the private profitability of investments was applied to the implementation of investment programs. The systematic research of the ex post analyses on the private profitability of those investments during 1960's and 1970's is missing.

d) The average annual yield forest taxation indirectly supported the making of the publicly subsidised investments.\(^{16}\)

3 CONTROVERSIES IN ADOPTING THE BOTTOM UP- PRINCIPLE IN FORESTRY PLANNING AND ENLARGED SUSTAINABILITY COMMITMENTS INTO DOMESTIC FOREST POLICY IN 1990'S

3.1 DIFFUSE GROWTH OF ENVIRONMENTAL POLICY ISSUES

The interests in the preservation of non-timber values in forests grew in the agendas of the elements of the forest policy arena in the late 1980's and early 1990's.\(^ {17}\) The curtailed public funds among the non-forest sectors of the economy decreased their commitments to forest policy activities. The strong position and solid internal structure of the key forestry organisations turned into the internal resistance to the new challenges of forest policy. The key stakeholders in forest policy became inclined to ex-post reactivity in the policy transfer from STM to sustainable forest management (SFM).

3.2 MONETARISM PROVOKE PRIVATE PROFITABILITY CHALLENGE

Market allocation replaced macroeconomic target planning as the basis of financial policies of the industrialised European countries during the 1980's. The expansion of public spending in investments, as well as in public subsidies, were criticised because of the inefficiency in resource allocation. The restoration of the external balance of payment and the reduction of unemployment became the additional parameters of the macroeconomic policy in Finland in the early 1990's due to the deep economic recession.\(^ {18}\)

Private profitability was widely adopted as a necessary condition to public subsidies during the late 1980's and was also adopted in forest policy in the early 1990's. The policy targets characterised by the bottom-up preparation and decentralised implementation were used in forest policy parallel with the decentralisation of public administration in general during the late 1980's.\(^ {19}\)

3.3 INSTITUTIONS AND COMMITMENTS ON ENVIRONMENTAL ISSUES

Environmental issues became diversified during 1980's.\(^ {20}\) The public management of environmental issues was at the same time developed on more solid and comprehensive basis. The strict separation between commercial and nature forests was preserved and the public control of the latter was issued to Ministry of Environment. It became more and more difficult to buy all the nature forests proposed in the numerous programs and

\(^{16}\) Forest taxation of NIPFO based on the average annual yield was an important indirect incentive for forest investments. Yield over the average could be acquired tax free.

\(^{17}\) see the summaries in: Holopainen & Timonen (1995)

\(^{18}\) Hulkko & Pöysä (1999), Kiander & Vartia (1998)

\(^{19}\) The internal autonomy of local and regional institutions in forest administration were increased to diminish the authoritarian power of forest experts. The major changes in the internal power of forest authorities in that change were: The transfer of the forestry investment activities from the internal district organisation of CFB into DFC in 1987. The exclusion of the private forestry affairs from NFB in 1991 increased the status of DFC and the Parliamentary control of MAF. On the other hand the transfer of the nomination of the members in the Board of CFB into Government in 1991 increased the Parliamentary control.

\(^{20}\) Ministry of Environment and Bureau of Environmental Issues in County Administration organised in 1983.
evaluations into the public property. The latter became evident, when the interests to preserve forest environments became more diversified.

The bottom-up principle in forestry planning and the enlarged sustainability commitments were adopted by forest policy in the early 1990's. In this new situation the allowable cut target plans of STM were updated throughout the late 1980's. The forest policy stakeholders had poor preparedness and devices for conflict resolution. The policy network had difficulties to identify the relevant new stakeholders and institutions into the policy for SFM. The former neo/corporatist coalitions in forest policy arena had declining interest in forest policy planning. A similar situation prevailed with the international commitments, where the prior general declarations became the binding restrictions on the management of commercial forests. The concept of ecological sustainability in forestry spread rapidly after the Rio Conference in 1992 and the controversies between private economic interests and those of the commons obtained new dimensions.

3.4 FAILED REVISION OF THE SUSTAINABLE TIMBER MANAGEMENT OBJECTIVE

Monetary policy became adopted as the major mean of economic policy in the early 1990's. The public subsidies on forest investments were tended to be curtailed. The aim of the policy transfer was to proceed the means of market allocation instead of the public initials and subsidies.

The initial to revise Forest 2000 program (1985) in the early 1990's can be considered an attempt of the key forestry organisations to preserve STM as the principle of management in commercial forests. The agenda and organisation in the program work repeated the corporatist pattern applied in the prior programs.

The program (Rev. Forest 2000 1992) totally discarded non-timber utilities, irrespective the multinational challenges to adapt these issues into the policy objectives and to co-opt Ministry of Environment into the preparation.

The policy proposals in the program turned out to be rhetorical announcements concerning the efficiency of market forces compared to public subsidies in forestry. The public forest policy revisions on commercial forests were aimed to expand the supply base of roundwood and to recover the profitability of foreign export for new investments. The policy means to recover the profitability of forest industry was based on the targets of stable strong currency and the private profitability of voluntary investments in timber production.

---

22 The framework of forest policy has expanded in the 1990's and become an international issue. At the UN Conference on Environment and Development in Rio de Janeiro, IFF, IPF and other conferences and meetings since then, new principles have been agreed on. At the so-called Helsinki Process, the European Ministers of Forestry attuned the principles sustainable forestry to the prevailing circumstances in Europe.
23 The annual reports of Forest Council in the 1980's
24 Kuusela (1999)
26 The members of program committee (8+ 2 secretaries) those of the work groups (macroeconomic, forestry and forest industry) came from the corporatist structure of forest policy preparation being the only new stakeholder.
27 High unemployment and international debt payments made the public debt to grow rapidly during the depression of the early 1990's and the capacity expansion of forest industry was rehabilitated as a major source to acquire new export incomes.
3.5 PROGRAM FAILURE: PREVENTION OF FOREST DISEASES AND DAMAGES AS POLICY REACTIONS TO ADOPT SUSTAINABLE FOREST MANAGEMENT

The main non-timber policy recommendations of the Revised FOREST 2000 programme were related to the environmental management of the forest industries and wastes and the activities related to air pollution\textsuperscript{28}. The adaptation of Sustainable Forest Management into forest policy was postponed in 1992 due to the controversies over the ways and extent of the activities to include non-timber values into the forest policy objective. The stakeholders from the prior neo-corporatist structure dominated the policy preparation and the key forestry organisations had fair scientific expertise concerning the new dimensions of sustainable forest management with respect to those of sustainable timber management.

4 POLICY UNDER CONTINUOUS CHANGE - EVALUATION OF FUTURE DEMANDS FOR FORESTRY UTILITIES DURING FINLAND’S NATIONAL FOREST PROGRAM (FNFP) 2010

4.1 FAST ADAPTATION TO INTERNATIONAL COMMITMENTS ON SUSTAINABLE FOREST MANAGEMENT

The international commitments for Sustainable Forest Management were adopted in Finland through the Environmental Programme for Forestry (EFP) in the early 1990’s\textsuperscript{29}. The program work was a joint effort of Ministry of Agriculture and Forestry (MAF) and Ministry of Environment (ME) respectively. The key non-profit private organisations of nature conservation (Union of Finnish Natural Associations and World Wildlife Fund) and that of the administrative body concerning environment issues, Finnish Environment Institute (FEI), became the new stakeholders in the preparatory institution. The feasibility of the program was evaluated by the official committee\textsuperscript{30}.

The movement to reform the forestry legislation was initiated immediately after the acceptance of the environmental program\textsuperscript{31}. Two major new steps were taken in the modernisation of forestry legislation. 1) The introduction of mandatory Regional Forest Programs, started in 1997, gave the formal status to the decentralisation of policy decision making. The programs increased the decision autonomy of regional authorities and institutions over those at the national level. 2) The specifications of the types of small-scale key biotopes to be preserved in commercial forests were declared in Forest Act (1996).

The latter changed the management of commercial forests by opening up opportunities to preserve non-timber values in commercial forests. The public tenure policy was preserved with large nature forests (Strict nature reserves and National parks). However, the discussion on the preservation of small scale nature environments by voluntary temporary contracts was introduced\textsuperscript{32}.

\textsuperscript{29} The preparation of the Environmental Programme for Forestry was a joint effort of Ministry of Agriculture and Forestry (MAF) and Ministry of Environment (ME). The Programme, launched in 1994, made the current national forest policy to cope with the international commitments. The intensive program work with three consecutive analysis over the feasibility of the program turned out to be an effective institution for comprehensive national consensus over the revised policy.
\textsuperscript{30} Metsätalouden ympäristöohjelman toteutuminen (1994)
\textsuperscript{32} Hetemäki & Ollonqvist (1995), Hetemäki (1995)
The Indicators and Criteria on Sustainable Development were defined to evaluate Sustainability in forest management and institution was determined permanent\textsuperscript{33}.

4.2 NEO-CORPORATIST PREPARATION TO FNFP

The early stages in the preparation of Finland's National Forest Program (FNFP) 2010 were characterised by the top-down policy tradition. The expert scenario for the future forest policy in Finland in 1998, was an attempt to start the policy process to adopt SFM instead of STM in forestry practice\textsuperscript{34}. The bottom-up approach substituted top-down on the forest policy arena when the outcome and recommendations of this evaluation were put aside from the future preparation of FNFP.

The draft organisation of the FNFP, appointed in 1999, had strong similarities with those of the prior programs. The key stakeholders from the forest sector organisations were included at all levels of program preparation. The draft organisation was organised by applying three hierarchical levels. Joint top governance of 6 Ministries headed by the Minister of Agriculture and Forestry and a steering group with membership reflecting the traditional neo-corporatist power structure of prior forest policy notably FOREST 2000 in 1985 and Revised. FOREST 2000 in 1992. Executive Committee of the program was headed by the key executive of forest policy in the Ministry and the members came from the chairmen of work groups, as well as the general secretary of the FNFP.

The three work groups for the preparation of the features of the program were a) Forest management and protection, b) Forest utilisation and markets, c) Forestry innovation. The stakeholders in the groups represented the key organisations of the ne-corporatist structure. The low participation of scientific experts was the only notable difference in the sphere of participation with respect to the preparation of the prior programs.

A single ex-ante scenario of exogenous development in the forest product and roundwood market was applied in the policy planning of FNFP. This scenario, characterised by assumptions concerning stable economic growth and permanent market structures, continued the earlier technocrat traditions in the program preparation.

The prior evaluation of forest policy incentives for economic sustainability was continued in the preparation of FNFP. The promotion of inter-sectoral co-ordination and institutions for conflict resolution were fair during the FNFP process but achieved a solid structure in the program implementation. Ad-hoc work groups were provided during the final stages of the process as the basic solution for the arena on conflict resolution.

4.3 SYMBOLIC PROGRAM OUTPUT

The key elements of FNFP, accepted by the Government in 2000, preserved the traditional neo-corporatist institutions. The new executive organisation, Forest Council, substituted the preceding FC in 2000 without major modifications. The new stakeholders joined into FC came mainly from the interest organisations of the potential users of non-timber utilities. Policy output from the program work was a symbolic NFP\textsuperscript{35}. The program innovations proposed for the implementation, Public Forums and Innovation Forum, were the unspecified means to cope with the bottom up- policy challenges\textsuperscript{36}. Ad hoc groups were proposed as the institutions to conflict resolution. No new proposals for decentralisation were proposed.

\textsuperscript{33} the Criteria and Indicators for Sustainable Forest Management, developed by the Commission on Sustainable Development inside UN, were adopted into the domestic solution in Finland in 1997.

\textsuperscript{34} The Announcement of Government on Forest Policy (ed. Tikkanen, I.) (1998)

\textsuperscript{35} Hogl &Pregernig (2000)

\textsuperscript{36} Finland's National Forest Programme 2010 and Hellström (2001).
4.4 TOWARDS A SUBSTANTIVE NFP

The profile of FNFP is sequential. Policy outcome on economic sustainability was covered through the increments of the public subsidies of timber management investments\textsuperscript{37}. Conflict resolution on the implementation of the core policy issues with respect to ecological sustainability were delegated to the ad hoc groups. The third dimension of SFM, that of social sustainability, was subordinated to the outcomes of economic and ecological sustainability.

Consideration of private profitability of timber management investments and the poor incidence of public subsidies pointed out by the working group on Environmental Impact Assessment led to minor changes in the program implementation\textsuperscript{38}.

The symbolic policy output was transferred to the substantive NFP during its implementation. Regional Forest Councils, nominated in 2001, expand the stakeholders in the policy formation. The evaluation of Regional Forest Programs is among their major duties. Regional Forest Programs revised and updated by Regional Forest Councils together with regional public forums are the major revisions of the policy agenda of FNFP. The latter constitute the core among the additional institutions to introduce the subsidiary to the Finnish forest policy.

The Innovation Forum is the initiative for utilising the potentials of the Internet Era. It can become the rhetorical Magnificent Hall of Fame or the substantive channel for the valid propagation of the new policy.

The major challenge concerning program implementation is the formation of the permanent and temporary institutions to cope with the challenges of new forest policy. The core question is how to be progressive ex ante instead of being reactive ex post. One of the key issues so far disregarded in the FNFP is the future globalisation of the roundwood market\textsuperscript{39}.

The core policy stakeholders must cope with the internal conflicts created by the lobbying for the expanded public subsidies to become adaptive and inter-sectoral\textsuperscript{40}. The theoretical and empirical research tradition of partnership in forest policy is missing from FNFP 2010. The challenges of formulating (new and revised) institutions for the key stakeholders inside and outside forest sector must be faced in order to achieve valid and active participation in the preparation of forest policy changes\textsuperscript{41}.

\textsuperscript{37} FNFP (2010) Appendix 3
\textsuperscript{38} The expert group of economists and environmental scientists calculated for the Steering Group of FNFP2010 alternative scenarios for the future development in Finland during the program period. They evaluated the effects of the decreasing profitability in timber production, decreased real stumpage prices, increased international competition of roundwood market and the increasing use of imported roundwood in Finland etc. Only minor changes were done to the final program due to the conclusions from those evaluations. (The conclusions of the evaluation see: the Environmental Effect Evaluation of FNFP 2010 (1999)).
\textsuperscript{39} The roundwood import to Finland has increased during 1990's in Finland. The share of import in the commercial roundwood (the aggregate from NIFPO and import) the was 18 % in 1989 and 25 % in 1999.
\textsuperscript{40} The Forest Forum of Top Decision Makers was established by the Government in 1996. The institution was aimed as the top level forum for the key stakeholders of the forest inner circle to discuss with the elite groups of public administration and business on forest policy issues and the current challenges in forest policy.
\textsuperscript{41} Voitleithner (2001)
5 CONCLUSIONS

Programs to increase public funds into timber investments were easy to prepare, finance and implement up to the late 80's in Finland. There were strong supporting factors promoting the timber production investment programs as well as their implementation. The neo-corporatist program network was able to expand the sphere of stakeholders in the preparation of programs and to expand subsidies to timber production investments.

The transfer from neo-corporatist policy agenda to bottom-up initials and decentralised decision making was a challenge to the forest policy network. The scientific expertise available for the neo-corporatist forest policy network on the non-timber utilities was fair and the participation among the non-profit nature conservation organisations into forest policy excluded. The widespread consensus of the policy principles on sustainable forest management in Finland was achieved in the Environmental Forest Programme Committee in 1993 and the fast modernisation of forestry legislation and administration became possible.

The international commitments for sustainability in general and forest management in particular increased in the 1990's. They, together with the target programs in the EU, could be identified to be behind the initial program work for FNFP. The program output was a symbolic NFP. The program innovations proposed for its implementation, Public Forums and Innovation Forum, were the unspecified means to cope with the bottom up-policy challenges.

The symbolic policy output was transferred towards the substantive NFP during the implementation. The theoretical and empirical research tradition of participation in forest policy is still missing from FNFP. Innovation Forum is the completely new initiative to utilise the potentials of the Internet Era.

The structure and participation of the neo-corporatist forest policy network has remained stable in the transfer from sustainable timber management to sustainable forest management. The priority of economic sustainability in forest policy programs has been the major advantage of that stability. The inability to react rationally to the challenges of new forest policy issues has been the major drawback of stable corporatist structures of policy preparation. The challenges to formulate (new and revised) institutions for the key stakeholders inside and outside the forest sector must be faced in order to achieve their valid and active participation in the preparation of forest policy changes.
ACRONYMS

BOF  Bank of Finland (Suomen Pankki)
CUAP Central Union of Agricultural Producers and Forest Owners (Maa- ja Metsäaloustuottajain Keskusliitto ry.)
DFC District Forestry Centre (Metsäkeskus)
EC Economic Council (Talousneuvosto)
EU European Union
FC Forestry Council (Metsätalousen neuvottelukunta)
FDC Forestry Development Centre Tapio (Metsätalousen kehittämiskeskus Tapio)
FFA Finnish Forest Association (Suomen metsäyhdistys)
FEI Finnish Environment Institute (Suomen ympäristökeskus)
FFIF Finnish Forest Industries Federation (Metsäteollisuus ry.)
FFRI Finnish Forest Research Institute (Metsäntutkimuslaitos)
FPS Forest and Park Service (Metsähallitus)
HU Helsinki University
IFF Intergovernmental Forum on Forests
IPF Intergovernmental Panel on Forests
MAF Ministry of Agriculture and Forestry (Maa- ja Metsätalousministeriö)
ME Ministry of Education (Opetusministeriö)
MNE Ministry of Environment (Ympäristöministeriö)
MF Ministry of Finance (Valtionvarainministeriö)
ML Ministry of Labour (Työministeriö)
MSH Ministry of Social Affairs and Health (Sosiaali ja terveysministeriö)
MTI Ministry of Trade and Industry (Kauppa- ja teollisuusministeriö)
N&E Nature &Environment (Natur & Miljö rf.)
RLU Rural Labour Union (Maaseutrutyöväen liitto ry.)
UFA Union of Forestry Association (Metsänhoitoyhdysten liitto ry.)
UFC Union of Finnish Communes (Suomen Kuntaliitto ry.)
UFE Union of Forestry Entrepreneurs (Koneyrittäjien liitto ry.)
UFT Union of Forestry Technical Engineers (Metsäalan toimihenkilöliitto ry.)
UFW Union of Forest Workers (Puu- ja erityisalojen Liitto ry.)
UIE Union of Industry and Employers (Teollisuuden ja Työnantajien Keskusliitto ry.)
UN United Nations
UNE Union of Natural Environment in Finland (Suomen Luonnon-suojeluliitto ry.)
UPW Union of Paper Workers (Paperiliitto ry.)
USI Union of Sawmill Industries (Suomen Sahat ry.)
WWF World Wildlife Fund
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LEGAL REGULATIONS IN AUSTRIA
- SUPPORTING AND IMPEDING FACTORS FOR A NATIONAL FOREST PROGRAMME

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ABSTRACT

The paper analyses the existing legal framework in Austria with regard to procedural elements and output of a national forest programme (NFP). The procedural elements of an NFP are defined by international organisations, but are still vague. Thus, they are operationalised by exemplary features and by developing typologies. The output of an NFP refers to the goal of ensuring the sustainable management, conservation and sustainable development of forests.

Whether legal regulations in Austria support or impede a substantive NFP depends on the considered element or output. For some procedural elements a weak legal framework exists that impedes an NFP, namely for public participation, intersectoral co-ordination as well as long-term, iterative and adaptive planning. The legal framework for participatory mechanisms in general, conflict resolution schemes and decentralisation is moderate. The legal framework for customary and land-tenure rights is well developed. Regarding the output of an NFP, the Austrian Forest Act and other forest regulations are strongly oriented at timber production when compared with ecological, social and cultural goals.

To sum up one may say the procedural elements of an NFP and its goal sustainable forest management can be met without major amendments of forest relevant legal regulations or the enacting of new regulations in Austria. However, shortcomings exist and adaptations would support an NFP to be more substantive.

Keywords: legal regulations, national forest programmes, sustainable forest management, forest policy, Austria

1 INTRODUCTION

Legal regulations are part of the framework of a country's forest policy. As a result of political processes, they are also instruments for the implementation of forest policy. It is expected on the one hand, that legal regulations will have consequences on process and output of a national forest programme (NFP). On the other hand, a substantive NFP will have consequences to some legal regulations in Austria.

The term NFP stems from international political processes and is rather vaguely explained in several political documents. In the final report of the Intergovernmental Panel on Forests NFP’s are described as generic expression for a wide range of approaches to sustainable forest management within different countries, to be applied at national and sub-national levels (UN-CSD-IPF 1997). NFP’s are political processes, which take into account basic principles and aim to achieve the sustainable development of forests.

This paper aims at analysing existing legal regulations with regard to procedural elements and output of an NFP in Austria. The question is on how legal regulations in Austria are supporting or impeding factors for the development of a substantive NFP as well as for the substantive output of an NFP. Or in other words, it is asked to what extent existing legal regulations in Austria for forest and forest-related activities already meet the demands on the new requirements of sustainable forest management and the basic principles of an NFP.
2 ANALYTICAL APPROACH AND DEFINITIONS

When identifying the components of Austria's legal framework that are relevant supporting or impeding factors for the development of a substantive NFP there is an easily identifiable core of applicable legal texts. But this core represents only a small part of the relevant legal framework influencing an NFP. That's why a country’s forest and forestry law cannot be understood without reference to numerous other sectoral or general laws. These include the national constitution, civil and criminal codes, land tenure laws; laws on finance, taxation, contracts, investment, credit, labour, companies and associations; laws on environment, land use, water, soil conservation, wildlife, hunting, fishery, protected areas, plant protection; laws on transport, energy, communication infrastructure, education and research; European regulations and international agreements to which the country may be a party.

An Austrian NFP process and its output (e.g. a resulting programme) will also have influences on the implementation of existing regulations and on the formulation of new ones. As an NFP process has not yet started in Austria, the basis for the formulation of respective hypotheses is rather limited.

Legal regulations interact with a lot of other influencing factors of an NFP, in particular, existing financial incentives\(^1\), advocacy coalitions, institutional aspects, multilevel governance, land tenure situation, political culture and social context\(^2\). These interactions have to be kept at the back of one's mind when analysing legal aspects. There is also an interaction between the procedural elements of an NFP.

As already mentioned, legal regulations are investigated in their effects on the substance of an NFP on the one hand and on the substance of the output of an NFP on the other hand. The assessment whether an NFP is substantive or symbolic is based on the basic principles of an NFP, which are listed in international political documents (FAO 1996, UN-CSD-IPF 1997). The basic principles of an NFP are for the most part procedural elements. Based on the results of the NFP-seminar in Freiburg (Boon et al. 1999) and the NFP-workshop which was organised by the Ministerial Conference on the Protection of Forests in Europe in Tulln (MCPFE 2000) the following basic principles or procedural elements of an NFP are seen as most relevant in European countries: participatory mechanisms, conflict resolution schemes, intersectoral co-ordination, long term iterative and adaptive planning, decentralisation as well as customary rights, traditional rights and land-tenure arrangements.

To analyse the influence of existing legal regulations on the substance of an NFP, these rather vague basic principles of an NFP are operationalised by exemplary features and by developing typologies. It is then asked to what extent the existing legal framework already meets the demands on the basic principles of an NFP.

The assessment whether the output of an NFP is substantive or symbolic refers to the goal of ensuring the sustainable management, conservation and sustainable development of forests, in short: sustainable forest management (SFM). Level and amendment of this politically postulated goal can be measured by the definition of SFM (through criteria and indicators), policy programmes (content elements) as well as procedural and institutional aspects (Hogl & Pregernig 2000).

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1 Financial incentives are connected with legal regulations in many ways, e.g. objectives and extent of financial support, conditions for the access to funding, sources of funds and evaluation.

2 Political culture and social context strongly interact with legal regulations. Legal aspects can change the political culture of a country and vice versa, particularly in the long-term perspective as well as through the implementation of supranational agreements.
To analyse the influence of legal regulations on the output of an NFP, it is asked to what extent the existing legal framework already meets the demands on the new requirements of sustainable forest management. The definition of SFM is analysed with regard to the understanding of SFM in legal regulations on the one hand and the effects of legal regulations on the framework for defining criteria and indicators of SFM on the other hand.

This broad understanding for analysing the influence of legal regulations on an NFP is shown in Figure 1.

![Figure 1: Approach for analysing the influence of legal regulations on national forest programmes based on a broad understanding (arrows symbolise the paths of influence)](image1.png)

Divergent from the above-described broad approach this paper narrows the analysis of legal aspects concerning national forest programmes by looking only at the core of applicable legal regulations. It is asked to what extent existing legal regulations in Austria for forest and forest-related activities already meet the demands on the new requirements of sustainable forest management and the basic principles of NFP’s. It is not asked in what way legal regulations will react to these new requirements and how legal regulations interact with all other influencing factors of an NFP (Figure 2).

![Figure 2: Approach of this paper for analysing the influence of legal regulations in Austria on a national forest programme (arrows symbolise the paths of influence)](image2.png)

Here, legal regulations are understood both as legally binding instruments and non-legally binding policy means (“soft laws”). Relevant soft laws are the Statement of Forest Principles at UNCED 1992, criteria and indicators adapted through official processes, Resolutions of the Ministerial Conferences on the Protection of Forests in Europe and the IPF/IFF Proposals for Action.

The legal framework is not limited to laws, written or unwritten. It also includes the manner in which laws are formulated, implemented and enacted. This includes the institutional apparatus responsible for administering and interpreting the laws as well as the degree of familiarity and acceptance of legal regulations by the persons affected. Hence, for the understanding of legal regulations, political culture and social context have to be considered too.
Both aspects, the substantive content and the implementation of legal regulations concerning an Austrian NFP are dealt with in connection with the examples of legal regulations listed in the following chapters.

3 LEGAL FRAMEWORK FOR FOREST AND FOREST-RELATED ACTIVITIES IN AUSTRIA

Austria is a federal state that consists of nine provinces. Legislative powers are divided between the federal state and the provinces, with the distribution of power heavily tilted towards the federal parliament. Four different levels of legal regulations referring to forests in Austria can be distinguished (Table 1).

Firstly, according to the Austrian constitution (Article 10), forestry is a matter of federal legislation and administration. Forestry in this context is meant to comprise all activities in connection with the tending, maintenance and protection of forest stands including the importing and exporting of roundwood, forestry education as well as torrent and avalanche control (Pregermig 1999). The federal government is also in charge of emission protection, air quality (except for emissions from heating systems), permissions for industrial installations, steam boilers and engines, traffic, water protection and environmental impact assessment (legislation).

Secondly, a number of areas directly or indirectly relating to forests or forestry are under the responsibility of the provinces. The most important issues are regional planning, airborne emissions from heating systems, agriculture, nature conservation, hunting and environmental impact assessment (enforcement).

With Austria’s accession to the European Union (EU) in 1995, a third level with legislative powers was established. There are a number of EU regulations with direct or indirect effects on forests and the forestry sector. The greatest part of this legislation provides funding opportunities for afforestation, protection of forests, the harmonisation of procedures for data collection and related activities.

Fourthly, international regimes and initiatives led to several agreements that address forestry matters in Austria. Partially, these legal instruments are not legally binding. They have the character of soft laws (Glick et al. 1997).

European Community legislation and international legal instruments have a growing impact on public policies and legislation at national levels (Cirelli & Schmithüs en 2000). Because of competition the EU-member states get into the wake of regulations of others and they are driven towards regulatory innovations at the national level.

Table 1: Legal regulations on the international, European, national and sub-national level, affecting a national forest programme in Austria

<table>
<thead>
<tr>
<th>Levels of legal regulations</th>
<th>Examples of legal regulations with effects on a national forest programme in Austria</th>
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</thead>
<tbody>
<tr>
<td>International level</td>
<td>Aarhus Convention, Statement of Forest Principles, Chapter 11 of Agenda 21, Convention on Biological Diversity, United Nations Framework Convention on Climate Change (Oslo-Protocol 1994, Kyoto-Protocol 1997), Alpine Convention, etc.</td>
</tr>
<tr>
<td>National level</td>
<td>Austrian Forest Act, Environmental Impact Assessment Act, etc.</td>
</tr>
<tr>
<td>Provincial level</td>
<td>Provincial hunting laws, nature conservation laws, land-use planning laws, etc.</td>
</tr>
</tbody>
</table>
With reference to the different levels of regulations as listed in Table 1, this article concentrates on the national and sub-national (provincial) level in Austria. The most important regulatory instrument of Austrian forest policy is the **Forest Act** of 1975, amended in 1996. It applies to private and public forests alike. Implementation of the law is in the hands of the forest authority. The Forest Act aims at the preservation of the forests and their effects (guaranteed by the prohibition to devastate and clear forest land and the obligation to reforest it after harvesting) as well as the sustainable utilisation of forests (ensured by the protection of immature stands, the prohibition of clearcuttings and the supervision of fellings by the authority). Additionally, the Forest Act regulates the definition of forestland, forest land-use planning, forest protection, logging and timber hauling, the qualification of forest personnel, forest research and subsidies. It also determines the responsibilities of the Forest Service and of the Torrent and Avalanche Control Service.

**Political culture**

As mentioned above, *political culture* has to be considered for the understanding of legal regulations. Austria's political culture is characterised by the institutionalisation of consensus and co-operation. **Corporatism**, in its broadest sense, implies co-operative policy styles in various arenas of the political system. In Austria, consensual politics has been practised both in party politics and in the interaction of interest groups, within the system of "social partnership." The organisations taking part in the Austrian corporatist policy network are the Forest Authority, the Chambers of Agriculture, the Austrian Federation of Forest Owners' Associations and the Austrian Forest Association. Within these organisations, actual power has been concentrated in the hands of a very small group of high-ranking functionaries. Forest policy in Austria is made within a close circle of powerful lobbyists who negotiate compromises by mutual accommodation. Permanent lines of communication between all decision-making factors strongly facilitate a continual process of bargaining and consensus building. Additionally, the forest bureaucracy, private forest owners' associations and forestry science are characterised by shared values and a system of common believes (Pregernig 1999).

In addition to its duty to implement forest regulations, the forest authority, mainly the Federal Ministry, exerts strong influence on the making of forest-related laws. The Austrian Constitution (Article 18) obliges the administration to be perfectly neutral, in the sense that it should implement the political directives of parliament. In reality bureaucracy is much more influential and its role in the making of laws is generally regarded as being very important. Not only in formulation but also in policy implementation the forest authority is strongly oriented at its main clientele, the forest owners. While a participatory style of policy-making would consider different public interests in the forest more evenly, the traditional technocratic and introverted style of forest politics and forest policy supports strong economic interests. With respect to democratic principles this clientelistic behaviour of the authority is problematic, because the different public interests as formulated in the forest law are not considered in a balanced way (Pregernig 1999).

The vagueness of some terms in a lot of legal regulations is part of the Austrian political culture, resulting from the variety of informal influences of neo-corporatist actors to the formulation procedure. As an example, the Forest Act defines that conversion of forest land should not be a decision of private interests but should be decided politically – in the interest of the public. This *vague formulation* allows the authority to decide in the implementation process. Here, the private interests come in again back door: interest groups already place their interests in the formulation of the law, and further on in the implementation process (Weiss 2000).
4 LEGAL REGULATIONS CONCERNING ELEMENTS AND OUTPUT OF AN NFP

4.1 LEGAL REGULATIONS CONCERNING PARTICIPATORY MECHANISMS

Participation of those parties which are affected by forest policy, including forest owners and the public, is one core element of a substantive NFP and can be characterised by the following features: administrative level of participation (e.g. local, regional, provincial, national), stages in the policy process where participation takes place (e.g. formulation, decision-making, implementation, evaluation), duration of involvement (e.g. one-shot event, process), type and number of actors involved (e.g. citizens, organisations, municipalities, authorities) and power of stakeholders in decision-making (e.g. passive or active information, consultation, involvement in decision-making regarding measures or goals).

Exemplary legal regulations in Austria and their content regarding different forms of participation, expressed through several features and dimensions, are listed in Table 2.

Table 2: Relevant Austrian legal regulations and their content regarding different features of participatory mechanisms

<table>
<thead>
<tr>
<th>Exemplary Austrian regulations</th>
<th>Features and dimensions of participation</th>
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<tbody>
<tr>
<td></td>
<td>level</td>
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<tr>
<td>Forest Act 1975, amended 1996</td>
<td></td>
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<tr>
<td>- Clearing of forests for other uses (conversion) §19</td>
<td>local</td>
</tr>
<tr>
<td>- Forest development plan §9</td>
<td>regional</td>
</tr>
<tr>
<td>- Hazard zones plan §11</td>
<td>local</td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal Law on the Creation of a Quality Mark for Timber and Timber Products from SFM 1992,</td>
<td></td>
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<tr>
<td>am. 1993</td>
<td>national</td>
</tr>
<tr>
<td>- Advisory board for the formulation of criteria</td>
<td></td>
</tr>
<tr>
<td>Environmental Impact Assessment Act 2000</td>
<td></td>
</tr>
<tr>
<td>- Permission procedure</td>
<td>local, regional</td>
</tr>
</tbody>
</table>

In a passive way, the Forest Act enables concerned citizens to take part in the drafting of hazard zones plans. Referring to forest development plans there are no possibilities for citizens to participate except the right to get information. The same applies to the management of state forests where the relevant Federal Forest Act 1996 includes no provisions about participation.
Referring to political culture an important form of participation represents the neo-corporatist structure of the Austrian social partnership. But influence to legislation and administration is restricted to the member organisations of the social partnership. Hence, the neo-corporatist structure in Austria is an impeding factor when looking at broad participation (especially public participation).

In sum, public participation, the access to information and procedural transparency are included in the Forest Act or in other forest relevant regulations only in a limited way. They are also a very limited matter of practice in forestry decision-making processes, especially outside the system of social partnership.

4.2 LEGAL REGULATIONS CONCERNING CONFLICT RESOLUTION SCHEMES

Conflict resolution schemes serve for regulating conflicting interests. Basically, there can be distinguished between market mechanism, hierarchical mechanism and negotiation mechanism (Scharpf 1993). These three ideal mechanisms for conflict resolution can be further subdivided into the type of applied method (with respect to the negotiation mechanism, e.g. joint inspection, collaboration in committees, mediation). Additional features are the kind and number of actors involved (e.g. citizens, organisations, municipalities, authorities) and the administrative level where conflict resolution takes place.

Exemplary legal regulations in Austria and their content regarding different modes of conflict resolution schemes, expressed through several features and dimensions, are listed in Table 3.

Table 3: Relevant Austrian legal regulations and their content regarding different features of conflict resolution schemes

<table>
<thead>
<tr>
<th>Exemplary Austrian regulations</th>
<th>Features and dimensions of conflict resolution schemes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>mechanism (type of method)</td>
</tr>
<tr>
<td>Forest Act 1975, am. 1996</td>
<td>hierarchy (co-operatives with obligatory membership, if two thirds of the forest area are in the hand of forest owners which support the planned logging facility; - enforced by the forest authority)</td>
</tr>
<tr>
<td>logging facility §69</td>
<td></td>
</tr>
<tr>
<td>Provincial hunting laws</td>
<td>negotiation (hunting board as advising body of the hunting authority)</td>
</tr>
<tr>
<td>hunting boards and committees</td>
<td></td>
</tr>
<tr>
<td>Farm Workers Act</td>
<td>negotiation</td>
</tr>
<tr>
<td>collective treaties in forestry</td>
<td></td>
</tr>
<tr>
<td>Environmental Impact Assessment (EIA) Act 2000</td>
<td>negotiation (mediation, if the EIA authority considers it necessary)</td>
</tr>
<tr>
<td>permission procedure §16</td>
<td></td>
</tr>
<tr>
<td>Federal Law on the Creation of a Quality Mark for Timber and Timber Products from Sustainable Forest Management 1993</td>
<td>market (voluntary certification system)</td>
</tr>
</tbody>
</table>
With a system of shared values and attitudes serving to harmonise conflicting interests inside the close forestry circle, civil servants of the forest authority are on common ground with forest owners as well as forestry professionals working in private enterprises and chambers (Glück 1987). The neo-corporatist structure of the Austrian social partnership is an institutionalisation of conflict resolution by negotiation and collaboration, but restricted to interest groups within this system.

The legislative framework for the new type of negotiation mechanisms, such as mediation, is weak so far in Austria. More regulations exist about collaboration amongst forest owners or users as well as collaboration between private and community groups. For example, the creation of associations and co-operatives for undertaking forestry activities is encouraged by legislation linked to support programmes of the European Community (conditions for the access to funding). Legal provisions regulating conflicting interests are also included in the statutes of communal forests.

Further examples of conflict resolution by negotiation are the co-operative agreement between forestry, paper and board industry to the further processing and marketing of forest goods and services, game damage commissions at the local and district level as well as local hunting committees of the landowners. The regulation of other people’s use rights in the Forest Act is an example for hierarchical conflict resolution.

The instrument of joint management systems on a contractual basis between forest owners and public authorities (e.g. for environmental protection, regulated in environmental laws of the provinces) is an example for market mechanisms, but in practice not very common in Austria so far. The creation of a quality mark for timber is another example of conflict resolution through market mechanisms.

4.3 LEGAL REGULATIONS CONCERNING INTERSECTORAL CO-ORDINATION

Intersectoral approaches serve to co-ordinate forest-related policies with other sectoral policies and programmes. Features are the administrative level of co-ordination (e.g. local, regional, provincial and national), stages in the policy process where co-ordination takes place (e.g. formulation, decision-making, implementation, evaluation), type and number of involved sectors, formality of co-ordination (e.g. formal commissions, informal meetings), extent of co-ordination (e.g. mutual information, consideration, adjustment) and duration of co-ordination (e.g. one-shot event, continuous).

Exemplary legal regulations in Austria and their content regarding different forms of intersectoral co-ordination, expressed through several features and dimensions, are listed in Table 4.

The federal administration is strictly subdivided according to the department principle, which is based on the Austrian Constitution. Therefore, intersectoral co-ordination between politics and administration on federal level is difficult. The strict subdivision also leads to a high independence of the Federal Ministers (Pernthaler et al. 1992).

However, from the federal constitution a restricted duty to intersectoral co-ordination of state activities can be derived (Pernthaler et al. 1992). Corresponding regulations exist in the field of sectoral planning of different authorities as well as in cross-sectoral land-use planning. Additionally, process steering provisions regulate to a high extent structures, competencies, communication and intersectoral co-ordination between government services and non-governmental organisations.
### Exemplary Austrian regulations

<table>
<thead>
<tr>
<th>Features and dimensions of intersectoral co-ordination</th>
<th>Exemplary Austrian regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>level</strong></td>
<td><strong>stage in the policy process</strong></td>
</tr>
<tr>
<td>local</td>
<td>implementation</td>
</tr>
<tr>
<td>national</td>
<td>formulation</td>
</tr>
<tr>
<td>regional, national</td>
<td>implementation</td>
</tr>
<tr>
<td>provincial</td>
<td>implementation</td>
</tr>
</tbody>
</table>

---

The competency of authorities at federal level overlap in some policy fields. A respective example is the formulation of a Forest Decree on the protection against air pollution, where agreement is necessary amongst the Federal Ministry of Agriculture, Forestry, Environment and Water Management, the Federal Ministry of Economy and Employment as well as the Federal Ministry of Transport, Innovation and Technology.

The Federal Ministry of Agriculture, Forestry, Environment and Water Management is headed by the Federal Minister, who can fall back on an extensive bureaucratic apparatus. Within the ministry’s framework of activities forestry is only of minor importance. The official formally in charge at provincial and local level, the governor or the district commissioner, follows a concept of “political rationality” which means that he has to represent social interests according to their political weight. The governor for example acts as general authority deciding on subjects like forest matters, hunting, nature protection or trade and industry (Pregernig 1999). This representation of different social interests supports intersectoral co-ordination by the Federal Minister, the governor and the district commissioner, but not by the bureaucratic apparatus.

In Austria there is a long tradition in co-ordination between the Forest Authority and the Chambers of Agriculture at provincial and district level with regard to extension services and the distribution of financial incentives. Chambers are statutory interest organisations, established by public law and with obligatory membership. The corporatist principle of negotiating compromises by mutual accommodation supports co-operation and co-ordination between agriculture and forestry (Pregernig 1999). In a broad perspective, consultation geared towards the interests of private forest owners and the ideological narrowness of the Austrian consultation network are in contradiction to the holistic and intersectoral approach of an NFP.

The fact that forestry is a matter of federal legislation and administration might increase the chances of initiating an NFP in Austria. Additionally, with one uniform federal forest law instead of nine different provincial laws, co-ordination within the forest sector becomes much easier (Pregernig 1999). But with an intersectoral perspective, the coexistence of national law and provincial law and particularly their application to the same object – in
this case the same piece of forest land – inevitably leads to problems of co-ordination. In terms of regulating game management and nature protection, forest legislation is in conflict with provincial legislative and administrative bodies. The approval of forest roads, landscape protection, national parks, etc. is in the competency of the provincial nature and landscape protection authority (Weiss 2000).

Measures for the protection of forests against damages caused by game are in the competency of the provincial hunting authority regarding legislation and implementation. Thus, different agencies pursuing different policy goals and a lack of co-ordination frequently lead to situations in which the forest authority detects game damages but does not have effective regulatory instruments to tackle the problem. Formulation and implementation of hunting laws is highly influenced by the strong interest groups of hunters (Pregernig & Weiss 1998).

Cross-sectoral laws in areas such as environmental protection, nature and landscape conservation, land-use planning and regional development directly and indirectly addresses forest conservation and forest resources utilisation. The broad and unsystematic division of competencies in these areas leads to problems in co-ordination (Pernthaler et al. 1992).

There is no effective co-ordination of forest planning with general land-use planning. The Austrian forest development plan follows the forest functions concept and principally strives for a prescription of forest management goals. On an informal level, both the forest authority and the powerful forest interest groups were successful in trying to avoid a commitment to public plans and binding planning measures. Hence, the forest development plan is merely an informational tool for the tasks of the forest authority and not binding on the forest owners (Pregernig 1999). This noncommittal nature also applies to national land-use planning. The hazard zones plan is not binding either, unless the authority responsible for local land-use planning incorporates it into the municipal land-use plan.

The example of forest damages caused by air pollution shows that in the case of external effects the forest authority’s room for manoeuvre is rather limited - despite apparently quite favourable legal conditions. Corresponding to the Forest Act, the forest authority is only responsible for finding out the origin of air pollution. The forest authority is entitled to take appropriate measures against the pollutant only in special cases. Beyond that, the onus of proof is on the forest authority. In the case of forest damages caused by air pollution forestry has to face strong interests from the transport sector as well as from trade and industry. The persistent vetoing of the revision of an ordinance regulating air pollution with detrimental effects on forests on the part of the Federal Ministry of Economy and Employment gives evidence for this (Pregernig 1999).

As also contradictory objectives of different sectoral laws exist, unequal regulations within different laws should be the topic of an analysis of the forest relevant legislation in Austria. Altogether, the existing legal framework in Austria supports “negative” co-ordination (Scharpf 1993: 69) of activities affected by forest management as well as activities affecting forest management. This means a low degree of intersectoral co-ordination.

4.4 LEGAL REGULATIONS CONCERNING LONG TERM, ITERATIVE AND ADAPTIVE PLANNING

Long-term orientation is characterised by the fragmentation of a strategy into an iterative planning process and by review and assessment of the achieved goals. It means a continuous cycle, comprising planning, implementation, monitoring, evaluation and adaptation of national forest policies. Further features are the aspiration for long term orientation as explicit goal, the reasons for adjustments (e.g. changes in the environment,
acquisition of new knowledge and new international commitments), the evaluation of alternatives and the extent of institutionalisation.

Exemplary legal regulations in Austria and their content regarding different types of long term, iterative and adaptive planning, expressed through several features and dimensions, are listed in Table 5.

**Table 5: Relevant Austrian legal regulations and their content regarding different features of long term, iterative and adaptive planning processes**

<table>
<thead>
<tr>
<th>Exemplary Austrian regulations</th>
<th>Features and dimensions of long term, iterative and adaptive planning</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Forest Act 1975, amended 1996</td>
<td>Explicit goal: foresighted planning of forest conditions</td>
<td>reasons for adjustments: if the respective actual status of development changes</td>
</tr>
<tr>
<td>- Forest development plan §6 §9</td>
<td></td>
<td>institutionalisation: forest authority</td>
</tr>
<tr>
<td>- Hazard zones plan §11</td>
<td>if principles or their evaluation changes</td>
<td></td>
</tr>
<tr>
<td>Environmental Impact Assessment (EIA) Act 2000 §25</td>
<td>monitoring of the implementation of the EIA Act</td>
<td>Council of Environment</td>
</tr>
</tbody>
</table>

Long-term orientation is expressed in some guidelines for subsidies, which changed in the last years with regard to control mechanisms (e.g. parts of the subsidies for afforestation and reforestation are paid to the land owner not before the area is controlled after a couple of years by the forest authority).

Forest land-use planning, as defined in the Forest Act, aims at the description and foresighted planning of forests on national as well as on local level. The most important tools of forest land-use planning are the "forest development plan" and the "hazard zones plan." The noncommittal nature of forest land-use planning (on the part of forest owners) and of national land-use planning are impeding factors of an NFP when looking at long term, iterative and adaptive planning processes. The National Environmental Plan without legal basis is another example for a noncommittal planning approach.

There are no legal regulations in Austria concerning the fragmentation of a long-term strategy into medium-term action plans and short-term work programmes, although a legally binding framework is desirable in order to ensure a continuing planning process independent from changes in the government (Glück 1998). Additionally, there are no regulations concerning evaluation systems to measure quantitative targets. The lack of a legally binding framework in order to ensure a continuing planning process is an impeding factor of an NFP regarding long term, iterative and adaptive planning.

Referring to political culture one can say, as more committal a forest plan and planning measures are as more vague is their content because of informal interests of the forest authority and forest interest groups. This aspect is another impeding factor of an NFP regarding long term, iterative and adaptive planning.

### 4.5 LEGAL REGULATIONS CONCERNING DECENTRALISATION

Decentralisation means the empowerment of regional and local governmental structures. It is characterised by the distribution of power, which can be measured by the influence of each level in the hierarchy over the others, by the delegation of decisions in a certain number of decision areas as well as on how often individual members of an organisation participate in decision-making. Additional features are the object of decentralisation (e.g. 4.5.1...
information collection and exchange, administration, decision-making power), and the administrative level of power and responsibility.

Exemplary legal regulations in Austria and their content regarding different modes of decentralisation, expressed through several features and dimensions, are listed in Table 6.

**Table 6: Relevant Austrian legal regulations and their content regarding different features of decentralisation**

<table>
<thead>
<tr>
<th>Exemplary Austrian regulations</th>
<th>Features and dimensions of decentralisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forest Act 1975 (amended 1996)</td>
<td></td>
</tr>
<tr>
<td>- Enforcement §170</td>
<td>responsibility for implementation in the first instance</td>
</tr>
<tr>
<td>- Authorisation of provincial governments for further regulation §95-§97</td>
<td>decision-making</td>
</tr>
<tr>
<td>Forest Development Plan Decree 1977 §6</td>
<td>drafting and adjustments of partial plans</td>
</tr>
<tr>
<td>Environmental Impact Assessment Act 2000</td>
<td>administration competence</td>
</tr>
</tbody>
</table>

The political decision-making process, the distribution of powers between elected authorities and the organisation of the bureaucracy in Austria is determined through many constitutional givens.

A main characteristic of the Austrian constitution is the instrument of indirect federal administration by the provinces. This means that legislation remains within the competence of the central state, while the execution of these regulations is a matter of the provincial authorities. Also forest legislation is enacted in the form of indirect federal administration. There are three levels of forest administration in Austria. At state level the Federal Ministry of Agriculture, Forestry, Environment and Water Management has jurisdiction over forest-related matters. In the provinces the governor is the competent forest authority. A separate forestry department assists the provincial governor in forest-professional questions. Formally this department has only consulting functions. The same applies at local level: The official in charge is the district commissioner who is assisted by a forestry department (Pregernig 1999).

The system of indirect federal administration leads to a well-developed co-operation between the federal state and the provinces. Basically, the first instance of administration is at the local level. These are supporting factors of an NFP when looking at decentralisation.

The fact that a number of areas directly or indirectly relating to forests or forestry are under the responsibility of the provinces (such as regional planning, agriculture, nature conservation and hunting) is a supporting factor of an NFP when looking at decentralisation. Additionally, this supports especially the formulation of regional forest programmes.
4.6 LEGAL REGULATIONS CONCERNING CUSTOMARY RIGHTS, TRADITIONAL RIGHTS AND LAND-TENURE ARRANGEMENTS

In Austria there is a long tradition of forest ownership and related management. Various customary laws and traditional rights apply to the management and allocation of resources. Wood utilisation and pasture rights of third parties in Austria are explicitly recognised and are subject to national and sub-national legal regulations.

Features are the objects of customary and traditional rights (e.g. concerning timber, berries, mushrooms, forest pasture, collection of leaf and needle litter, tapping for resin) as well as the extent and legal basis of the respective right (e.g. linked to land ownership or to a person).

Exemplary legal regulations in Austria and their content regarding different modes of customary and traditional rights as well as land-tenure arrangements, expressed through several features and dimensions, are listed in Table 7.

Table 7: Relevant Austrian legal regulations and their content regarding different features of customary and traditional rights as well as land-tenure arrangements

<table>
<thead>
<tr>
<th>Exemplary Austrian regulations</th>
<th>Features and dimensions of customary and traditional rights as well as land tenure arrangements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forest Act 1975 (amended 1996)</td>
<td>object: access to forests, use of forests and forest products&lt;br&gt;extent and legal basis: everybody has the right for access to any forest for recreational purposes, restricted to day-time use and to enter on foot, management in a way that guarantees the use rights</td>
</tr>
</tbody>
</table>

According to the Forest Act, measures for other uses, like berry production, wildlife habitat management, enhancing biological diversity and nature protection, are not allowed if timber production is affected significantly. The Act presupposes forest management by the forest owner. It not only assumes but also demands that this means timber production, except for protective forests, ban forests and recreation forests that explicitly are defined as in the public interest. Other management goals are only considered and allowed as "by-uses," such as forest pasture, collection of leaf and needle litter as well as tapping of resin (Weiss 2000).

While these by-uses are regulated in the Forest Act, game management is dealt with by different laws (competency of provincial governments). Hunting rights are connected with land-ownership, and everyone can acquire a hunting permission by completing a course and renting a hunting license.

4.7 LEGAL REGULATIONS CONCERNING THE OUTPUT OR CONTENT OF AN NFP

The output of an NFP in terms of level and amendment of sustainable forest management can be measured by the definition of SFM (Hogl & Pregernig 2000). The definition of SFM is analysed with regard to the understanding of SFM in legal regulations on the one hand and the effects of legal regulations on the framework for defining criteria and indicators of SFM on the other hand.
The understanding of SFM in legal regulations as regards their content concerning social, ecological and economic aspects

The analyses of the understanding of sustainability in the Austrian Forest Act and other forestry regulations reveal, that these acts are strongly oriented at timber production (Sehling 1999, Weiss 2000). The Forest Act contains the concept of forest functions, three of which relate to non-timber services of forests (protection against natural forces, welfare in terms of favourable impacts on the environment, and recreation). Nature and environmental protection issues (for instance, the protection of biological diversity) have hardly been taken up by forest legislation. Exceptions are the maintenance of forest genetic resources as well as the support for natural regeneration and mixed stands. Also goals regarding rural development or employment are not included in the forest law, but in regulations of support programmes. Social needs that are considered in the Forest Act are fresh water protection and recreational interests. The forest development plan as a tool of forest land-use planning gives timber production priority unless another function is assigned outstanding importance.

This clear priority to the production of timber stands in contrast to a "new" definition of sustainable forest management within the international discourse on sustainable development, which calls for an evenly recognition of economic, ecological, social and cultural goals in forest management (Weiss 2000). Therefore, the present understanding of sustainable forest management in the Austrian Forest Act is an impeding factor for a substantive output of an NFP.

Various actors, including environmental groups, have called for a reformulation of the Austrian Forest Act for years. Forest interest groups (especially the forest land owner organisations) fear that in the case of a fundamental reform, conservationist claims could not be rejected any more and that further regulations restricting the forest land owners' right of free disposal of their property could find its way into the forest law. Thus they are fighting passionately against the opening up of the existing legal framework (Pregernig 1999). It is expected that forest interest groups will impede the development of a substantive NFP with a substantive output because an NFP would increase the latent pressure for a reformulation of the Austrian Forest Act.

Ecological goals, such as the recognition of the variety of ecosystems, the maintenance of biodiversity as well as the preservation of forest lands for reasons of nature and landscape protection mainly are regulated in nature protection laws of the Austrian provinces.

Again, political culture and social context have to be considered regarding the output of an NFP. The Austrian Forest Act contains regulatory instruments dealing with the preservation and restoration of protection forests, such as the forest ban or legal restrictions to the management of protection forests. But these instruments cannot be implemented because powerful social interests prefer other solutions (Pregernig & Weiss 1998).

Legal regulations concerning the framework for defining criteria and indicators of SFM

Here again, legal regulations concerning the basic principle "participation" have an influence (see chapter 4.1). A substantive NFP with broad participation of all interested groups changes the procedures for defining criteria and indicators as well as standards for sustainable forest management. Private forest owners, as established actors within the Austrian policy-making system, continuously try to avoid restrictions of private property rights. Thus, strong resistance against substantive participation, mainly by private forest owners' associations, is expected.

Due to the Austrian "Federal Law on the Creation of a Quality Mark for Timber and Timber Products from Sustainable Forest Management" 1993, the former Ministry of Environment
was made responsible to formulate a voluntary certification system. Since 1993, the Ministry of Environment has assembled all the stakeholders in a "Timber Committee." Therefore the law also serves to define the procedures how sustainable forest management is to be interpreted. Until today, a strong opposition from the interest groups of forest owners and the forest industry has hindered the implementation of the law successfully. These groups favoured the Austrian Pan-European Forest Certification (PEFC) process, which was established in August 2000. Criteria and indicators for sustainable forest management are an example for a non-legally binding policy means at the national and sub-national level in Austria.

Forest policy programmes as a result of an NFP process can be described by different content elements. Exemplary elements of the content are situation analyses, quantitative and qualitative targets, time horizon, responsibility, resources, priority setting, and mix of policy instruments as well as monitoring and evaluation procedures. Here, legal regulations are only relevant, as the planned activities and content elements of forest policy programmes have to comply with the existing legal framework in Austria. Plans, programmes and policies are no subjects to an Environmental Impact Assessment in Austria so far. On that score no limits for the output of an NFP exist.

A substantive NFP will likely produce a range of policy recommendations that entail changes to the existing domestic law, e.g. forest and administrative law. If the success of an NFP requires modifications to the legal framework in Austria, it is important to ask what type of government action is necessary to bring the particular change. The appropriate Ministry can accomplish it through issuing new regulations or administrative rules, or it requires the co-operation of another Ministry or the action of the Government or the Parliament. Although an NFP can target some legal regulations for reform, certain rules will form a basic framework within which the NFP must operate. Some legal regulations are only slow or hard to change, especially constitutional ones, which then could be constraints for an NFP.

5 CONCLUSIONS

Forest relevant legal regulations in Austria are very inconsistent when looking at their effects on an NFP, characterised by its procedural elements and its output. Hence, the assessment of legal aspects as supporting or impeding factors of an NFP depends on the considered element or output.

Based on the previous chapters, Table 8 shows, for which procedural elements of an NFP the existing legal framework in Austria is well developed (and has therefore a supporting effect on an NFP), moderate or weak (and has therefore an impeding effect on an NFP).

Based on the previous chapters, Table 8 shows, for which procedural elements of an NFP the existing legal framework in Austria is well developed (and has therefore a supporting effect on an NFP), moderate or weak (and has therefore an impeding effect on an NFP).

Basically, forest relevant regulations contain very few statements regarding participation, intersectoral co-ordination, decentralisation as well as long term, iterative and adaptive planning. For some procedural elements a weak legal framework exists that impedes an NFP, namely for public participation, intersectoral co-ordination as well as long-term, iterative and adaptive planning. The legal framework for participatory mechanisms in general, conflict resolution schemes and decentralisation is moderate. The legal framework for customary and land-tenure rights is well developed. Regarding the output of an NFP, the Austrian Forest Act and other forest regulations are multi-purpose oriented, but do not refer in particular to the new understanding of sustainable forest management within the international discourse on sustainable development.

Table 8: Supporting and impeding effects of the legal framework in Austria with regard to substantive procedural elements and substantive outputs of an NFP
<table>
<thead>
<tr>
<th>Procedural elements (basic principles) and output of an NFP</th>
<th>Legal framework in Austria</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>well developed (supporting effects)</td>
</tr>
<tr>
<td>participatory mechanisms</td>
<td>X</td>
</tr>
<tr>
<td>- public participation</td>
<td>X</td>
</tr>
<tr>
<td>- access to information</td>
<td>X</td>
</tr>
<tr>
<td>- procedural transparency</td>
<td>X</td>
</tr>
<tr>
<td>conflict resolution schemes</td>
<td>X</td>
</tr>
<tr>
<td>- based on hierarchical mechanism</td>
<td>X</td>
</tr>
<tr>
<td>- based on market mechanism (e.g. contractual arrangements)</td>
<td>X</td>
</tr>
<tr>
<td>- based on negotiation mechanism within the &quot;social partnership&quot;</td>
<td>X</td>
</tr>
<tr>
<td>- based on negotiation mechanism outside the &quot;social partnership&quot; (e.g. procedures for mediation)</td>
<td>X</td>
</tr>
<tr>
<td>intersectoral co-ordination</td>
<td>X</td>
</tr>
<tr>
<td>long term, iterative and adaptive planning</td>
<td>X</td>
</tr>
<tr>
<td>decentralisation</td>
<td>X</td>
</tr>
<tr>
<td>customary rights, traditional rights and land tenure arrangements</td>
<td>X</td>
</tr>
<tr>
<td>new understanding of sustainable forest management within the international discourse on sustainable development</td>
<td>X</td>
</tr>
</tbody>
</table>

The neo-corporatist structure of the Austrian "social partnership" is reflected in a lot of forest relevant regulations. It is institutionalised conflict resolution, participation and co-ordination, but restricted to interest groups within this system.

Legal analysis is not solely a tool for identifying legal changes, but is also a tool for identifying ways in which the concept NFP itself or its interpretation might be better designed in order to accommodate legal reality.

In summary it may be said, the procedural elements of an NFP and its goal sustainable forest management can be met without major amendments of forest relevant legal regulations or the enacting of new regulations in Austria. However, shortcomings exist and adaptations would support an NFP to be more substantive.
LITERATURE


PUBLIC PARTICIPATION AS AN INCENTIVE IN FOREST DECISION-MAKING PROCESSES

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ABSTRACT
The attention devoted to participatory elements in the context of both international and national environmental law and policy reflects a fundamentally new system of management of natural resources which is coming to replace the formerly dominant conception of environmental management as a technological process best left to professionals. This development of new norms and perspectives encouraging a bottom-up strategy was set out in the 1992 Rio Declaration and furthered by the Aarhus Convention of 1998, currently the most detailed and advanced treaty on participation.

This paper focuses on why public participation is necessary in natural resource decision-making. The increased belief in the benefits of a participative approach to environmental decision-making reflects the pluralistic nature of modern society where both goals-objectives and planning at large are the results of interaction between parties with different aims and value systems. From a global viewpoint one might say that participation is about finding consensus in diversity, reflecting a normative shift toward multiple-use values, which recognizes that in contemporary forest management it is necessary to be able to blend multiple management objectives into a coherent set of stewardship practices.

Participation could then provide a means of gaining an overall view over the various interests and conflicts surrounding land use - embarking from a common approach rather than a divided, sectoral one, which could create a basis for arriving at a balanced solution, at least acceptable to all parties concerned. From a practical, ‘the art of the possible’ perspective, participation is not just a means but also a model for involving concerned parties: a pro-active approach to create more understanding for objectives and problems and possible ways to solve them. Optimally the outcome of the participative process will help create more qualified operative decisions in the present situation, and thus provide a more solid base for the final solution. From a general point of view, public participation is an essential part of a democratic society, where the different aspects of participation: transparency, flexibility and access to information, are the very notion of democracy itself, and democracy is a precondition for sustainable development.

Keywords: Public participation, forest decision-making, value pluralism, resource management, democracy, Aarhus Convention, Rio Declaration.
1 INTRODUCTION

The increased belief in the benefits of a participative approach to environmental decision-making reflects a fundamentally new system of management of natural resources. This new belief is coming to replace the formerly dominant conception of environmental management as a technological process, best left to professionals. Initiatives emphasising ecosystem management based on adaptive planning and an ongoing collaborative dialogue between stakeholders\(^1\), represents attempts to adopt a more integrative and holistic approach for long-term sustainability of forest environments, rural livelihoods and lifestyles. By creating instruments and mechanisms which allow a diverse range of interests to convene in order to work out differences and implement shared solutions to forest resource challenges, a broad-based approach to forest management is created. Both in the formulation and the implementation of environmental law and policy, as well as in monitoring and supervision, participation can be a fruitful part of the process. The manner in which law defines the role of the public\(^2\) may even give relevance to a participative element in the enforcement of substantive laws, not least in the forestry arena.

This is nonetheless reflected in the attention devoted to participatory elements in the context of both international and national environmental law and policy, enhanced at the 1992 Rio Conference on Environment and Development (UNCED)\(^3\) where public participation envisages a full-fledged bottom-up strategy; decisions should no longer be run top-down, exclusively by a custodial agency without consulting the local community before initiating and implementing any projects. Furthering the goals of the Rio Declaration and related instruments\(^4\), the Aarhus Convention of 1998\(^5\) is presently the most detailed and advanced treaty on public participation, adding important means for implementing

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1 ‘The public’ as a concept applied in this paper follows the definition established by the FAO/ECE/ILO Team of Specialists on Participation in Forestry (2000) Public Participation in Forestry in Europe and North America, p. 31, Geneva: ILO as “a vast and heterogeneous group of people or stakeholders, organized or not, who are concerned by a specific problem or issues”. ‘The public’, discussed in a more specific participatory process, is defined by using the generic concept of ‘stakeholder’, which has been divided in two categories by the FAO/ECE/ILO Team of Specialists on Social Aspects of Sustainable Forest Management (1997) People, Forests and Sustainability: Social Elements of Sustainable Forest Management in Europe, p. 10, Geneva: ILO. Partly as “commodity and producer interest groups” (e.g. forest owners, forest industries, tourism and leisure industry), and partly as “citizens and socio-cultural interest groups” (e.g. individuals, environmental NGOs, rural communities, indigenous people, various associations of recreation, sporting, hunting). The definition used in the 1991 Convention on Environmental Impact Assessment in a Transboundary Context, 30 I.L.M. (1991), art. 1(x) [hereinafter the Espoo Convention] views ‘the public’ as “one or more natural or legal persons”. The Aarhus Convention (infra note 5) at art. 2(4) refers to ‘the public’ as “one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups”, while ‘the public concerned’ is defined as “the public affected or likely to be affected by, or having an interest in, the environmental decision-making”.

2 Supra note 1.


5 The Economic Commission for Europe (ECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25 June 1998 (hereinafter the Aarhus Convention). The Convention should be regarded as a minimum model, and it is binding for the countries which have ratified. For treaty text, see UN Doc. ECE/CEP/43. In contrast to the Rio Declaration though, the Aarhus Convention does not deal with community rights of indigenous people in environmental decision-making.
substantive rules of international environmental law through the intermediation of national institutions.  

From a global viewpoint one might say that participation is about finding consensus in diversity, representing immense diversity with widely varying goals, reflecting a normative shift toward multiple-use values, which recognizes a wider range of forest values and hence substantially changes the goals of forest management. This calls for a movement towards methods of planning as a solution to conflict, negotiation, learning, communication and adoption; methods involving less top-down steering aiming at more negotiation between parties to secure long-term programmes for sustainable management, while not neglecting the market forces. The aspect of participation by owners and other interested parties within a planning area to increase knowledge of their situation and viewpoint, will be as important as the need for government agencies to develop routines to blend moral and scientific elements in diverse ways to serve a growing value pluralism. An increasing number of policymakers and forest administrators recognize that forest management cannot simply be ‘scientific’ and value free, but has to reflect diverse public priorities. The emphasis on dialogue and negotiation reflects this change in orientation regarding the ways to set management objectives.

2 THE RATIONALES FOR PUBLIC PARTICIPATION

2.1 THE NOTION OF PUBLIC PARTICIPATION IN INTERNATIONAL ENVIRONMENTAL POLICY AND LEGISLATION

The development of public participation as a manifest part of international environmental law and policy is of somewhat recent origin. It did not become a real issue in the international policy arena until the beginning of the 1990s, though it was part of some domestic discourse since early 1970s. The topic during this time was, however, not entirely overlooked in the international context; being addressed both by the Stockholm Conference on the Human Environment in 1972, and by the UN General Assembly through the adoption of the World Charter for Nature in 1982.

An important part of this development is that the present understanding of the need for public participation in both international and national environmental steering-instruments must be viewed from a whole new perspective. Today we have realised that bringing the different interests together is a necessity for arriving at sound and long-term sustainable

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6 Predating the Aarhus Convention, several important issue-specific international treaties regarding environmental protection were signed during the 1990s (e.g. on biodiversity, climate change, desertification, regional seas, mountain environments and international watercourses).


9 The Stockholm Declaration on the Human Environment, see Report of the United Nations Conference on the Human Environment, UN Doc. A/CONF/48/14/Rev. 1 (1972) 11 I.L.M. 1416, stressed the right of access to relevant environmental public information and civic means to influence the environment, as well as the need for education furthering environmental awareness.

10 The World Charter for Nature, G.A. Res. 37/7, UN Doc. A/37/51 (1982) recognizes that all persons ‘shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment’ (principle 23).
decisions. Implicit in this is a growing awareness of the close connection between ecological, economic and social sustainability – i.e. the recognition of the three E’s of sustainability: Ecology, Economy and Equity - which also gives weight to the participative elements in recent legislative instruments.

The primary international instrument on the environment and development current today that underlines the importance of public participation is the Rio Declaration on Environment and Development (Rio Declaration). This instrument has laid the foundation and identified the major elements in the discourse on public participation in environmental decision-making:

- a broad notion of participation by the public in decision-making procedures\(^{11}\)
- access to environmental information
- access to legal review of administrative decisions

In the documents adopted at UNCED the core purpose of public participation (as a policy instrument) is articulated as being a means for the implementation of sustainable development\(^{12}\): governance through popular participation rather than through a centralist driven, coercive environmental policy for the management of natural resources. The significance of public participation in this connection is certainly enhanced through the explicit statement in Agenda 21 which is a bit extraordinary for an international instrument like this, as it quite directly expresses a statement of fact, compared to – in these connections more commonly - a policy agreement:

One of the fundamental prerequisites for the achievement of sustainable development is broad participation in decision-making /.../ Furthermore, in the more specific context of environment and development, the need for new forms of participation has emerged.\(^{13}\)

The Aarhus Convention of 1998, furthering the goals set at UNCED regarding public participation, accentuates the same elements, but it also highlights the potential of participatory procedures\(^{14}\) reflected in three ‘pillars’, or three categories of arguments, which might provide a somewhat deeper explanation and justification for the emergence of public participation as an issue in environmental law and policy:

Firstly, on the basis of environmental concern, the policy argument (partly pragmatic, rooted in political theory) would be that environmental protection and legal implementation could benefit in general from public participation: to involve non-state actors in environmental decision-making processes would not only help improving the quality of the decisions (by adding the perspective of layman knowledge and insights on the matter) but would also strengthen the control of governmental and administrative decisions.\(^{15}\)

Secondly, the preamble and some provisions of the Aarhus Convention reflects the deductive aspects and established notions of international human rights law as a requirement for the introduction of participative measures. The participatory elements in the Aarhus Convention draws from established human and minority rights, such as the

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\(^{11}\) This prerequisite has been explicit articulated in Agenda 21, supra note 4, para. 23.2.

\(^{12}\) In terms of environmental quality, just management and long-term perspectives.

\(^{13}\) Agenda 21, supra note 4, para. 23.3.

\(^{14}\) Some treaties require the establishment of procedures for public participation, in general (e.g. the Desertification Convention) or in more specific terms such as the environmental impact assessment concept (EIA) set out in the Espoo Convention, supra note 1. The Espoo Convention explicitly states that public participation is part of an EIA, and that the EIA procedure in this way provides a means for improving the quality of environmental decisions.

rights to fair trial, to political participation, to information and the participatory rights for indigenous people.

The third pillar, legitimacy, places participation in a broader context; that public participation should promote legitimacy – and thus acceptance – of decisions relating to environmental issues, implies a more expansive notion of democracy and political participation drawing on sociological explanations. An outcome of the recognition of legitimacy as a basis for a participative approach might be a greater acceptance of the need of environmental legislation and governance and thus the understanding that procedure matter as a means. This rationale is especially important as democracy – and thus legitimacy – is a precondition for sustainable development, and it will therefore be further elaborated in Section I (3).

All of these arguments or pillars underline the discussion of an important legal issue regarding public participation: To what extent does the legal framework contribute to giving citizens influence in environmental decision-making processes?

2.2 THE ARGUMENTATIVE LOGICS FOR JUSTIFYING PUBLIC PARTICIPATION IN ENVIRONMENTAL LAW

A. Access to justice in environmental matters

The pragmatic policy-argument of protecting public environmental interests has many different aspects, but it all comes down to the securing of different public interests. Though government and environmental authorities are to act on behalf of (sometimes conflicting) public interests, the risk for discretion, favouritism of certain recognized interests, would be diminished by allowing other parties, such as non-governmental organizations (NGOs) and individuals, to invoke and act on behalf of public interests. This would further the likelihood that all relevant concerns and aspects will be considered and brought to the fore. From a straightforward environmental point of view, it has also been argued that the fact that environmental authorities often are understaffed, and thus not able to act as forcefully as desired (or even at all) when environmental laws are violated. This shows that public interest here could benefit from allowing other actors into the arena. If their activities would enhance the legal assessment, this might, in extension, promote a more respected and efficient environmental legislation. 16

The protection of public environmental interests has – given this - a basic point of departure in considering the prerogative of standing; i.e. the question of legal capacity of non-state actors: who should be capable of acting on behalf of which interests? Many legal systems have, during the past few decades, been affected by the public participation discourse, resulting in a less restrictive view of the matter of standing, departing from the standard approach that in order to have standing the subject must have a private interest (injured party) in the case. 17 Thus, the understanding of the term “being affected” is rather narrowly interpreted; maybe a more generous interpretation would open up for a more relaxed linkage between subject and the interest at stake. 18 Different models have appeared though, in different national legal systems, giving non-state actors opportunities to be formal parties in legal proceedings concerning public environmental interests, or at a non-legal level, providing for hearings or similar procedures in which persons, who would

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17 Although European Community (EC) law has remained rather unaffected; in order to have standing before the European Court of Justice, the subject must prove that he/she is affected in a different way than the public at large. Cf. Ebbesson, supra note 15.
18 See e.g. Stone, supra note 8; Robinson, D. and Dunkley, J. (eds) (1995) Public Interest Perspectives in Environmental Law.
otherwise not be recognized as formal parties in a legal dispute, are given an opportunity to express their views. An ‘NGO-approach’ to pursue public environmental interests can be instituted in different forms; in Denmark, means of law or regulation provide a basis for certain NGOs to institute public law procedures.\textsuperscript{19} In Norway, a method of allowing NGO participation on a case-by-case basis based on certain specific criteria (a general standard of legal interest) was tried in a Supreme Court decision.\textsuperscript{20} In Sweden, the new Environmental Code, Miljöbalken (SFS 1998:808)\textsuperscript{21}, introduced somewhat expanded rules of standing for non-state actors, allowing NGOs to be formal parties in legal disputes if they fulfil certain \textit{specified criteria} (such as having a certain number of members, the age of the organisation etc.) Precisely this is one of the most radical and important features of the Aarhus Convention: the explicit statement that environmental NGOs may act on behalf of public environmental interests, that NGOs – in most cases – are entitled to participate in environmental decision, to require relevant information and to complain and bring cases to court.\textsuperscript{22}

There is also a ‘qualitative’ dimension to this argument, concerning \textit{the quality of decisions}. In the preamble to the Aarhus Convention it is stated that “improved access to information and public participation in decision-making enhance the quality and the implementation of decisions”. It all comes down to how the concept of ‘quality’ is perceived; a rather sensitive matter\textsuperscript{23} as various ethical and moral standards are involved. The participation of multiple stakeholder interests in decision-making will thus likely add more information and knowledge to the process. The process will also benefit in other ways: “the chances of reaching ‘sustainable’ decisions that consider long-term effects are likely to increase with the amount of relevant information brought into the decision-making process.”\textsuperscript{24}

So, in short: the involvement of ‘outsiders’ may not only contribute to “\textit{making bureaucracy think}”\textsuperscript{25}, but it may also enhance the informational basis as well as the ongoing scrutiny of environmental matters, given the particular expertise of NGOs and the valuable lay knowledge and insights otherwise provided by the public.

B. Human rights and the right to political participation

The \textit{deductive} aspect, that environmental protection derives from the \textit{human right} concept, is expressed as and related to the right to a \textit{certain level} of environmental quality, and whether the protection of this right should qualify individuals to take part in administrative and legal procedures\textsuperscript{26}. Apart from procedural rights\textsuperscript{27} – which in and of

\begin{footnotesize}
\begin{enumerate}
\item The Danish Environment Protection Act (1991:358), part XI.
\item The Case of Framtiden i våra händer and Svenska Naturskyddsforeningen v. Saugsbruksforeningen and Borregard Industrier; Norsk Retstidning 1992 (1618). See also Ebbesson, supra note 15, at 65.
\item Government Bill 1997/98:45.
\item The Aarhus Convention has –as being the first international convention ensuring citizen’s rights in the field of environment – enhanced the balancing of interests by providing a quite radical step forward by the statement that environmental NGOs may act on behalf of public environmental interests. See art 2(5) where the definition of ‘the public concerned’ presumes the legal concern of NGOs promoting environmental protection: “the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest” (emphasis added) and art. 9
\item See further the discussion in Ebbesson, supra note 15, at 68, where it is argued that “the notion of sustainability...constitutes such an ethical standard”.
\item Supra note 20.
\item Taylor, supra note 16, at 272.
\item The European Convention for the Protection of Human Right and Fundamental Freedoms, 4 Nov. 1950, 213 U.N.T.S. 221. Each state is to determine the content of its environmental laws, though not decide whether an issue implies a civil right in the meaning of the convention.
\item Procedure is an important prerequisite for participation as a process, because it provides certain basic entitlements for the participants, giving them the possibility to take part in the public discussion
\end{enumerate}
\end{footnotesize}
themselves are central to the Aarhus Convention - this aspect is to a certain extent reflected in the preamble and in some of the provisions of the Convention. The human rights foundation for participatory claims rests on at least four established international human rights concepts and norms: the right to information\(^{28}\), the right to fair trial\(^{29}\), the participatory rights for indigenous people\(^{30}\), and the right to political participation. The linkage between the human rights concept and the right to political participation\(^{31}\) can be seen as “a more expansive notion of democracy than the standard liberal approach”\(^{32}\) suggesting that public participation in environmental decision-making actually is a “form of political participation”. The right to political participation provides a starting point and also a conceptual basis for the rationales for public participation at large in environmental matters, as set out in the documents adopted at UNCED\(^{33}\). Participatory elements with regard to political participation are of course given varying weight in different societal structures and political systems where the actual ‘division of power’ and representation spreads over a scale from the right to vote to a more direct participatory approach with public involvement in local government.

C. Legitimacy as a justifying mechanism

“Legitimacy means that there are good arguments for a political order’s claim to be recognized as right and just; a legitimate order deserves recognition.”\(^{34}\)

Are participatory elements in decision-making processes essential legitimacy factors?

What makes a specific policy, legal programme, a rule or decision legitimate and thus generally accepted by those affected or concerned? How can the system at large better accept environmental decisions, more ‘grounded’ long-term, sustainable decisions?

The third pillar and justification for participatory elements in environmental decision-making is the democratic aspect of participation, which calls for a more sociological interpretation.

It also provides different legal approaches to defining legitimacy factors\(^{35}\) regarding:

- the rules on decision-making, focusing on procedural aspects of a specific process or decision
- substantive and procedural elements
- the outcome, in terms of equality, fairness and justice.

\(^{28}\) The right to seek, receive and impart information is set out in most international human rights instruments, but the right to access to environmental information is specified in the Aarhus Convention.

\(^{29}\) This right, clearly incorporated in the Aarhus Convention, is above the minimum-standards set out in the relevant instruments, dependent on the substantive norms on environmental protection in domestic law.

\(^{30}\) In this context, it might be added that considering participatory rights for indigenous people, group rights is outside the scope of the Aarhus Convention. In addition to the the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), 27 June 1989, 28I.L.M. 1382, art 6 (hereinafter the ILO Convention), various other international instruments on environmental protection have endorsed the idea of a collective right to participation. See e.g. Rio Declaration, supra note 4, principle 22; Forest Principles, supra note 4, (A21) at paras. 2(d) and 5(a). The World Bank has also adopted guidelines and policies on participation with particular application to indigenous people.

\(^{31}\) The dichotomy of this concept is in most contexts recognized as partly a right to vote and to be elected, and partly a right to take part in public affairs.

\(^{32}\) Ebbesson, supra note 15, at 70.


\(^{35}\) See the definition in Ebbesson, supra note 15, at 75ff.
Developments that have affected legitimacy factors and thus the structure and function of law – not least environmental law - can be understood as structural changes relating to the development of the welfare state with increased social and economic responsibilities placed upon the state, bringing with it a multitude of changes in perceptions and hence reflecting a growing value pluralism which has led to a normative shift. This paved the way for the introduction of interventionist legislation with certain implications not least for environmental regulations. Here, possible for the first time, the biological, physical and ecological environment was coupled to the social environment, placing environmental problems in a social context. Environmental problems came to be seen as social constructions, regarding nature as part of a social and economic context. Implicit in the changes in systems of governance that are part and parcel of the welfare state is the transition to legislation of a more ‘open-ended’ character. This means-ends kind of regulation, framework legislation, implies less detailed steering directives. Striving towards deregulation and less state intervention, this type of legislation is today common in the field of environmental law. Framework legislation may be defined as goal-oriented regulations consisting of normative objectives to be realised by officials and administrative personnel. What distinguishes this type of regulation from ‘traditional’ legislation is that it is based on policy declarations, and therefore constructed to achieve certain substantive goals and values in accordance with prevailing ideology. The sometimes rather vague and abstract regulations typical for this kind of legal instrument require specific means for its implementation. As a law is never applied into legal practice in a vacuum, there are certain risks to be considered at the level of implementation. Decisive for the acceptance (and thus the legitimation) of a legal programme is the normative context in which it is to be implemented. If there are strong counter forces it will be more difficult for a policy instrument like framework legislation to be efficiently put into practice. Even though framework regulations have a certain legal content, it can be ideologically displaced, given a wider, more extended application. It will also become more sensitive to the influence of non-legislative factors, such as public discussion, dominated by certain interests.

2.3 THE REQUIREMENT FOR LEGITIMACY IN LAW

Accepting that a ‘legitimation crisis’ actually exists, some authors suggest that – in this context - environmental law then does or should provide an example of a field of law in which participatory measures have been introduced in order to reduce such a ‘legitimation crisis’, at least in national legal orders.

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36 Cf. Hydén, H. (1999) Rättssociologi som emancipatorisk vetenskap. Lunds Studies in Sociology of Law. Lund: Dept.of Sociology. Interventionist regulation can be seen as a structurally conditioned type of law, a form of steering that can be used when one wants to set certain restrictions without changing the rules of the game.


38 Cf. Applestrand, M. (1998) The New Policy of Swedish Forestry. A Policy Towards Practical Fulfilment of Sustainable Forestry or Merely ‘the Emperor’s New Clothes’? pp. 323-334 in Tikkanen, I. and Pajari, B. (eds) Future Forest Policies in Europe, EFI Proceedings No.22. Saarijärvi: Gummerus Oy. Framework legislation is, as suggested, a means-ends legislation and this implies that the law in itself loses controlling power. As a consequence, the actual wording of the law can become more vague and based on more generalised guidelines and goals; in practice making the legal interpretation very much dependent on attitudes and professional competence among the administrators – thus opening up for and leaving discretion to decision-making institutions.


Many different theories – apart from the above mentioned points – have been occupied with the relevance of legitimacy, linking the concept to different practical problems. The *procedural* approach is related to the positivist paradigm that assumes that law as such is valid. The question of legitimacy is not really relevant for *legal positivists* such as Hart\(^{41}\) and Kelsen\(^{42}\): the legitimacy of law is something granted, evident when a decision is made in accordance with the relevant rules - as a certain *procedure* is followed, grounded in ‘the web of rules’. Legal positivists do not calculate with *external factors* as something that can influence legal decisions. If an environmental decision is made in accordance with applicable rules contained in the relevant laws and regulations, being part of the greater system, then external factors such as ‘involvement of those affected by the decision’ are irrelevant. As a certain procedure is followed, described in the relevant rule, then the question of legality is met. Critics of legal positivism, e.g. Dworkin, emphasise the internal, intrinsic value of legitimacy itself as it is related to “the principles of fairness, justice and integrity”. Even though Dworkin admits the importance of legitimacy, he does not place much trust in *participation* as a means of reaching a legitimate decision. Instead his ideal type of decision-maker, the superhuman judge “Hercules”\(^{43}\), should – through a fair and due process – make the decision alone as superior to the public.

If the theories of legal philosophers couldn’t be bothered with the relevance of *participation as a legitimacy factor*, sociological perspectives on law do take an interest in this. *Reflexive law* is given a strict proceduralist approach, as interpreted by Teubner\(^{44}\), concentrating on the formal relationships between the parties, rather than the material side of that relation. As his focus allows for the division and splitting of power on a ‘micro-level’\(^{45}\) it may also provide a structure for the development of participatory elements in environmental regulation. As Teubner implies in his theory (through ‘invisible hands mechanisms’ in the decision-making process), he fails to realise that the power balance between parties involved might affect the outcome with – especially when it comes to environmental disputes - marginalisation of economically weaker interests as an effect. In his efforts to describe law as a self-referential system, Teubner uses as a platform Nonet and Selznick’s concept of ‘the inner dynamic’\(^{46}\) in the relation between law and society as a concept in the development from repressive to autonomous to responsive law. In this shift towards responsive law, law becomes *purpose-oriented, flexible and participatory with broad delegation*. Nonet and Selznick realise, as does Teubner, the importance of procedures and participation for legitimacy, but – contrary to Teubner – they also view legitimacy as dependent upon *outcome*.

Legitimacy requires a *procedure* that provides means for a *decentralised dialogue* about political decisions. Habermas advocates what has been proposed in much recent writing on public participation: not just that the making and application of legal norms must be based on the participation of citizens to claim legitimacy, but also that the *procedure* itself should rest upon *transparency* and *fairness* and provide an *equal opportunity* for the parties to influence each others.\(^{47}\) In this Habermas could be said to be in accord with the

\(^{41}\) Hart is not to be bothered with the question of the validity of the rule of recognition: “it can neither be valid nor invalid but is simply accepted as appropriate for use in this way”. See Hart, H.L.A.(1994) *The Concept of Law*, p.109, Oxford: Clarendon Press.

\(^{42}\) Kelsens’s ‘Pure Theory’ does not realize legitimacy as a concept, as his Theory “aims to depict the law as it is, without legitimizing it as just or disqualifying it as unjust”; Kelsen, H. (1991) *Introduction to the Problems of Legal Theory*, p. 18. Oxford: Clarendon. Also cf. Ebbesson, supra note 14, at 771.


\(^{44}\) Cf. Teubner, supra note 40.


second legal approach suggested above. Procedure should provide certain basic entitlements for individuals, giving them ability to take part in public discussion, but procedural arrangements must not be overrated in regard to the outcome. They cannot entirely substitute substantive entitlements given the enhanced risk for discretion by administrative authorities, and must not be overseen in regard to the outcome.

3 THE CONCEPT OF PUBLIC PARTICIPATION

3.1 A MULTI-STAKEHOLDER PROCESS

It is obviously important to try to understand the dynamics of the concept of public participation, as it seems to be a concept that changes over time. Various attempts have been made to establish a definition from different points of views. A pattern might be traced through some common themes that appear in most texts. Unanimity seems to prevail regarding the contextual application – that the concept is to be realised progressively in different contexts, not least in national contexts. That seems to be a good starting-point, as a contextual definition of public participation provides us with another kind of knowledge than a more concrete one.

The foundation for this concept is though to be found in the overriding aim - that participation in a broader, global sense is endorsed as a means for implementing sustainable development, implying “long-term and just management of natural resources – while protecting the quality of the environment”\(^{48}\), or to quote the Agenda 21-document:

> one of the fundamental prerequisites for the achievement of sustainable development is broad participation in decision-making\(^{49}\)

From a global viewpoint one might say that it is about finding consensus in diversity, representing immense diversity with widely varying goals. As a consequence, there are no simple formulas that can be broadly applied as blueprints for the process. Rather, what is emerging is a diversity of processes and dialogues that allow differing viewpoints to be voiced and that may lead to comprise and consensus regarding how to care for the environment. This is stated in the philosophy of public involvement supporting the idea that there are varying interests in society, but they all have a right to participate. Participation can

- drawing from the Agenda 21-concept - be viewed as a grassroots approach in decision-making that leads to collective and constructive activities and policies in the management of natural resources. Conflicts between different actors, e.g. in forestry: government, industry, private forest owners, special interest organisations and environmentalists over forest management goals, has indicated the need for the establishment of participatory planning processes. This communicative approach facilitates a dialogue between two (or more) differing opinions, enabling stakeholders to share their knowledge, better understand the somewhat conflicting practices used to manage forests, and to collectively find new approaches to meet varying needs and demands in the use of natural resources. Ultimately the participative approach should function as a civil society dialogue guiding forest policy formulation; a broad-based approach to forest management.\(^{50}\)

\(^{48}\) Ebbesson, supra note 15, at 54.

\(^{49}\) Agenda 21, supra note 4, para. 23.2

Loikkanen\textsuperscript{51} embarks at the grassroots level as he defines participative forest management as a tool “to pursue an open, interactive and people oriented everyday management and planning philosophy” where “the values and expectations of /.../ citizens and society, nature’s potential, and the economic aspects of activities are all taken into account.”

The FAO Team of Specialists has agreed on a definition which they view as a ‘more direct’ form of participation: “a voluntary processes whereby people, individually or through organized groups, can exchange information, express opinions and articulate interests, and have the potential to influence decisions or the outcome of the matter at hand.”\textsuperscript{52}

Taking a starting-point at the grassroots, basic implementation level provides a certain flexibility to the concept, enhancing its intrinsic dynamic aspect: that it can be given different forms adaptable to different legal systems and contexts. Though there is no ready, fixed, precise manner in which participation is to be carried out, there are, on the basis of the Aarhus Convention, other international documents on participation, EIAs and legal procedures, some preliminary elements identified by Ebbesson\textsuperscript{53} which he claims “should be reflected” in participative processes at large:

1) the process should provide \textit{a true opportunity} for the public to take part in decision-making, offering it a possibility \textit{to influence the outcome}

2) it should reflect a broad understanding of \textit{who may act} to protect the ‘public interests’ – the premise being that not only governmental and administrative institutions should do so

3) the decision-making process, as well as the follow-up monitoring of any implementation measures, should be \textit{transparent and open}

4) the public at large should have access to \textit{environmental information}

5) the process should allow \textit{for legal review} and the right to appeal (assessment).

The importance of these elements will be further discussed in Section III (2).

We can conclude that public participation only take on a concrete form first when applied at the \textit{national level}, where consideration is paid to a country’s political tradition, legislation, and the structure of forest ownership. The concept must be interpreted from national circumstances and traditions. The contextual application then enhances, by allowing a \textit{subjective dimension} into decision-making (a dimension of lay knowledge and, for example, the insights of local interests and traditions) – the strength of participation by placing the problem or conflict in another context, lending it a different perspective.

Obtaining a fair balance between competing interests implies that modern planning should include both negotiation and measures to stimulate various degrees of participation.\textsuperscript{54} At the earliest stage, the informational aspect seems to be of great importance: gaining knowledge of peoples’ demands and of conflicting interests and viewpoints. But participation in the sense that is discussed in this paper, ought to be more. As Mattson\textsuperscript{55} concludes, a full right to participation includes both \textit{consultation, negotiation} and a \textit{certain limited right of decision-making}.

\begin{footnotesize}

\textsuperscript{52} Team of Specialists on Participation in Forestry, supra note 1, at 9.

\textsuperscript{53} Ebbesson, supra note 15, at 59.


\end{footnotesize}
3.2 THE CONCEPT OF DIALOGUE AND NEGOTIATION

A planning and/or decision-making procedure that aims at being democratic, needs to develop dialogue and consensus building to ensure that all voices have a chance to be heard and acted upon. The aspect of communication between public authorities and citizens as well as other actors, has been emphasised by many writers, e.g. Healy, who underlines the pluralistic nature of modern society where both goals-objectives and planning at large are the result of interaction between parties with different aims and value systems. Dialogue is (in this context) seen as an important requirement of learning and a corner-stone in a participative structure more focused on understanding issues and arguments than forming strategic positions, allowing the participants to get beyond initial polarization in the search for a common ground. If dialogue provides us with a structured process and “a framework for communicative action and interaction between the participants”, negotiation has different aspects. Firstly, it may be looked upon as “a more interactive” form of participation than dialogue, increasing the participants knowledge of problems and solutions, bringing forward possible options to be studied and providing a more solid base for the final proposals. Hence, negotiation can be a positive means to reach understanding, inducing greater participation of those interested in a process of give and take. Secondly, another aspect is however that it also may entail problem ‘solutions’, involving mainly public interests and strong group interests, which may reduce the process to mere formality, excluding other interests and more general participation. Then the process as well as the outcome will more likely be a result of conflict solving and mediation, whereas the final result will be determined by the relative powers of the different actors and whether they know how to use their power in the negotiation process. One runs the risk of ending up in a situation where:

participation and consultation is pro forma: typically public meetings are held to inform local groups of decisions that have already been reached. The people (not to speak of natural ecosystem) are not involved as actors, they are objects acted upon, or instruments for the realization of the project.

From a practical, concrete point of view, the scale of complexity (scale of dialogue and negotiation) of a communicative process is usually determined by the size of the area and the nature of the conflict. The outcome of negotiations also depends on the local, social, economic and environmental consideration. Most environmental decision-making processes will though benefit from introducing a participative structure, because if the people affected by a policy, a program or a plan are not involved in the process, the implementation will likely run a greater risk of being contested or flouted. So as to create greater acceptance for decisions, transparency and communication are inevitable mechanisms: people generally make reasonable demands and respect the solutions reached, if the viewpoints they put forward are treated with respect and thought. Gardner and Stern concludes that “people are unlikely to design programmes for themselves that they find objectionable” because “participation and fairness increase the likelihood that that people will internalize the rules and obey hem without coercion.”

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58 Loikkanen, supra note 51, at 21.


4 OPERATIONAL CRITERIA: A TRANSITION FROM ‘MAKING’ DECISIONS TO ‘GETTING’ DECISIONS

4.1 PRACTICAL IMPACT; PUBLIC PARTICIPATION IN REALITY

While the notion of public participation has been influential in principle, the practical impact has yet been less effective. Thus, public participation can, in different forms, provide a useful and creative means for contributing to and influencing decision-making and for implementing environmental laws. A variety of dialogue processes and stakeholder coalitions can contribute to, for example, forest management; e.g. regional dialogues initiated to ameliorate conflicts between the values of those in favour of conservation and those of established stakeholders. Or, in other cases, dialogue among stakeholders can be highly localized, while some might operate on a larger regional or even national scale. The key issue is communication: participation as a communicative mechanism may foster a productive dialogue to break down misconceptions and set common goals, that is to say a transitions from ‘making’ decisions to ‘getting’ decisions by convening and providing leadership to different stakeholders. In order for public participation to emerge, there need not be a specifically defined project, event or occasion – continuous observation by the public of the authorities’ environmental information is also a form of participation. Important to notice is though the distinction made in the Aarhus Convention between participation in decision-making processes concerning (i) specific activities; (ii) plans, programs and policies; and (iii) the drafting of generally applicable regulations and/or legally binding normative instruments.62

Of course the most fundamental demand for the practical impact to be successful is that there is a sincere desire among decision-makers, authorities, forest owners etc., to pay attention to the beliefs and opinions of various groups and individuals. In this way the process can be decentralised and decisions can be more solidly established. One aspect is how costs and benefits can be distributed, as well as decisions receiving greater acceptance in that the interested parties feel integrated in the decision-making process. Ultimately, this can also lead to all parties concerned becoming more involved in sustainable forest management. Given this, it is of the utmost importance to ensure that the participative process is not just an illusory spectacle, delivering nothing more than the appearance of democratic participation, nor merely a pro forma matter. Participation must - to have a democratic foundation - have a decisive influence on the outcomes of the decision-making process.

4.2 HOW TO ASSURE THAT PARTICIPATION IS NOT MERELY PRO FORMA?

In other words, how can it be ensured that public participation actually influences decision-making?

Without being able to guarantee such influence, the Aarhus Convention sets out five means for enhancing the impact of participation; a general framework for transparent and participatory procedures:

First, it obliges the parties to provide for early participation, when all options are open and effective public participation can take place. This is essential, since the later the public gets involved, the more difficult it is to influence the decision.

62 The Aarhus Convention, supra note 15, at art. 6: public participation in decisions on specific activities; art. 7: public participation concerning plans, programs and policies relating to the environment; art. 8: public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments.
Second, early in the decision-making procedure, each party must inform the public concerned, by public notice or individually, about the proposed activity, the nature of possible decisions, the envisaged possibilities and procedures for participating in the decision-making process, time-frames and so on.

Third, the public shall be allowed to submit comments, either in writing or at hearings or inquiries.

Fourth, each party shall ensure that in its decision due account is taken of the outcome of the public participation. This point reflects a critical moment in the decision-making process since the ‘due account’ requirement is not very precise and thus provides leeway for the decision-making authority.63

The fifth means for avoiding mere pro forma participation is provided by the right to have the decision reviewed by a court. Any member of the public having a sufficient interest or alleging impairment of a right shall be ensured access to a review by a court of law or an equally independent and impartial body. In this sense, public participation and access to courts are closely linked.64

The degree of participation thus varies, and given these suggested five means we can discern three stages in the participative decision-making process:

STAGE 1: INITIATION65

For a high degree of participation at the initiating stage, before the actual procedure starts, the following preconditions are to be recognized:

a) political commitment to use the outcome
b) sufficient financial resources to support participation
c) cross-sectoral representation
d) (the use of an) independent moderator/facilitator
e) mutual agreement to share information
f) procedures in place to monitor and evaluate the process
g) recognition that it is a long-term, adaptive and iterative process

STAGE 2: THE PROCESS; PROCEDURAL ASPECTS

For a high degree of participation, the process (itself) should provide for:

a) early participation, when all options are open

63 This element, stating that the process giving the participants a true opportunity to participate, has been fully regarded and manifested through the EU Directive 97/11/EG, and as well reflected in the new Swedish Environmental Code. In the Aarhus Convention, supra note 5, this requirement reflects though a weak point in the process, as its not very precise and might provide for leeway for the decision-making authorities. The decision-making authority can, however, not simply disregard the comments and opinions expressed, and it must also be evident in the final document that the authorities, in reaching their decisions, have taken into consideration the publics comments and contributions.

64 It is a matter for national law to define what constitutes a sufficient interest or an impairment of right, but this definition must be consistent with the objective of ‘wide access to justice’ that is contained in the Aarhus Convention, supra note 5. Regarding ‘standing’, the Aarhus Convention does not require the person ‘concerned’ to be more affected or more likely to be affected than the public in general. If the entire population in an area is likely to be affected, then all such persons have the right to participate in the relevant decision-making procedures and submit any decision taken to a court for review.

65 I base the following recommendations for participatory decision-making processes on various international instruments for participation: e.g. the Espoo Convention, supra note 1; Agenda 21, supra note 4; the Aarhus Convention, supra note 5; EU Directive 97/11/EG, supra note 63, as well as practical application similar to the ideas voiced by Margaret Shannon and Tove Enggrob-Boon at the COST Action E19-meeting in Aberdeen, March 2001.
b) true opportunity to take part in the process  
c) a broad understanding of who may act (to protect a certain interest; standing)  
d) transparency and openness  
e) access to all relevant information – each party must inform the public concerned  
f) that the requirements for participation are institutionalised and normally expected  
g) that the process has a ‘code of conduct’, i.e. procedures dealing with minority viewpoints

STAGE 3: SUBSTANTIVE ELEMENTS RELATING TO THE OUTCOME OF THE COMPLETED PROCESS

For a high degree of participation in regard to the outcome, the following elements should be secured:

a) the public shall be allowed to take part in developing the actual plan or decision (to submit comments)  
b) each party shall ensure that in its decision due account is taken of the outcome of public participation, and that this is clearly shown and substantiated/documentated66  
c) the public shall have the right to legal review and the right to appeal  
d) the follow-up monitoring of implementation measures shall be open and transparent  
f) the public shall have a decisional, not just consultative role

5 SOCIAL AND STRUCTURAL IMPLICATIONS FOR A PARTICIPATIVE PROCESS IN STRATEGIC FOREST DECISION-MAKING

Civil society engagement in forest management can take a variety of forms, but the increased involvement of national and local environmental NGOs has definitely played a key role in making various conflicts over forest management goals visible and has thus provided a substantive basis for the debate. Bringing the conflicts out in the open has also led to greater emphasis on establishing participatory planning processes.

Public perceptions about how forestland should be managed have changed markedly since the 1970s, when the modern environmental movement grew from a grassroots social movement into a more professional and institutionalised part of the political arena. In connection with the diminishment of the rural sector and the growing influence of urban values, this has led to quite far-reaching changes for the perception of forest values and issues. Rural residents are more likely to support traditional uses of forest land for production, while urban residents tend to express values that are more oriented towards recreation, out-door activities, environmental quality and preservation for future generations. Cherry has noticed this as he points out what seems to be the main core of rural land use conflicts:

66 See supra note 63.
It [rural planning] is now much more a question of recognizing emergent areas of conflicts in values and taking action to reconcile or otherwise meet the conflict; conflict of urban interests against rural, of one power group against another, of one sectional interest against another, of one value system against another.67

These value shifts have led to increased tension and public conflict over forest issues, hence the call for more collaborative and/or participatory approaches to managing forest ecosystems where diverse forest stakeholders convene to work out differences and implement shared solutions. The need for a framework to incorporate interest groups’ values and needs into functional management systems is unquestionable. This, of course, has yet to be institutionalised in forest policy and management practices.68 But an increasing number of policymakers and forest administrators recognize that forest management cannot simply be ‘scientific’ and value free, but has to reflect diverse public priorities. The emphasis on ecosystem management, adaptive planning and collaborative stewardship represent attempts to adopt a more holistic, integrative approach to forest management. A new forest management paradigm will likely evolve through trial end error. A diverse and extensive stakeholder dialogue reflects this search for new approaches to forest management.

Land management is thus a game with many actors, all pursuing different goals. In contemporary forest management, multipurpose usage must consequently be taken into consideration in the attempts to reach a reasonable balance between overlapping but also conflicting interests; between requirements for high yields and demands for conservation of a good environment – arriving at a balance that utilises the full capacity of the forests in the best possible manner. The difficulty lies in opinions being divided on how this balancing act should be achieved and how much weight each of the different objectives should carry. Hence it may be difficult to arrive at a united view, because what is needed for one purpose must be taken from another, unless the different uses can be superimposed; that out-door activities and conservation demands can be met without loss of production and so on. However, certain land requirements can only be satisfied by the exclusion of others.

Participation could then provide a means of gaining an overall view of the various interests and conflict surrounding land use – departing from a common approach rather than a divided, sectoral one, which could create a basis for arriving at a balanced solution, at least acceptable to all parties concerned.

5.1 THE BENEFITS OF A PARTICIPATIVE STRUCTURE IN FOREST DECISION-MAKING PROCESSES

Knowledge of forest ecosystems has grown rapidly during the last decades, initially within the field of forestry, and later in ecology. Developments in these fields have led to a new paradigm for forest custodianship reflected in process, ecosystem and adaptive management strategies. The revised and advanced perspectives allow forest administrators, scientists, conservationists and forest owners to better understand how forest use affects the environment. Today the focus in the forestry sector has moved toward the concept of long-term sustainability of forest ecosystems; the maintenance and restoration of ecosystem integrity and biodiversity. This revised approach to forest management calls for innovation and use of new silvicultural methods, acknowledging a need to broaden the scope of forest management and consider multiple forest values, uses and functions, and hence the introduction and use of collaborative processes.

67 Cherry, G. (1975) Rural Planning Problems, London: Leonard Hill, observes that problems and objectives in rural planning are broader and different and often more conflicting than urban planning concepts.
68 It is also important that forestry planning does not become isolated from other types of social planning.
Such collaborative ‘multi-stakeholder’ processes could provide an input in forest decision-making processes concerning specific activities regarding:

- areas with significant natural values (the role of forestry v. conservation)
- protected areas
- timber harvest methods and volumes (introducing new methods etc)
- urban forests (also areas of especially aesthetic value)
- tourist enterprises
- areas with ‘overlapping’ activities: logging, hiking, hunting, recreation
- overall planning situations

and the advantage of introducing a participatory approach could then be:

- to avoid and anticipate possible conflicts
- to predict the impact of proposed actions (reactions and concerns)
- to pass on and gather information
- for the authorities to learn about new ideas and alternatives to proposed plans and actions; to induce ‘local expertise’
- to resolve ongoing conflicts

As a general, over-arching policy instrument, public participation in the forestry context can be expected to have great importance in the following three respects:

1) to foster stewardship of private land: via market and non-market incentives including state conservation easement programs, certification programs, educational programs, setting up of local stakeholder groups etc. This is an especially delicate area as even a strong right like ownership gives no absolute freedom to treat land only according to the wishes of the owner; full ownership of land is to be regarded as a relative concept. The right of private property is though constitutionally protected in Sweden and guarantees against governmental action by the Instrument of Government (Regeringsformen) in Chapter 2, Article 18, but other legal interests holders as well as public interests and the interests of neighbours, have to a certain degree the power to influence private management. Land management is – in most countries - regulated both by rules giving a) certain groups or certain individuals the right to use land to the exclusion of others: (the introduction of specific user rights) - exclusive rights to land use; and by rules giving b) authorities and others with a recognised legal interest opportunities to exert an influence on land use - limitations by more general rules and restrictions.

2) to protect forestland with exceptional public and ecological values, fully funding conservation programs, state programs to conserve and enhance biodiversity, and monitoring programs to assess water quality trends, and

3) to promote more informed discussions and more effective decisions concerning forest management strategies.

69 At least not to tolerate expropriation or other such disposition “other than where necessary to satisfy pressing public interests”. In such cases the landowner shall be guaranteed compensation for his loss. Compensation shall also be guaranteed when restrictions are affecting ongoing land use in such a manner that the affected part of the property is “substantially impaired or injury results which is significant in relation to the value of that part of the property.” This is of special importance to forest owners. (The Instrument of Government 2:18)

70 Cf. the discussion in Larsson, supra note 54, at 10f.
If public participation is to be integrated as a permanent mechanism in forestry decision-making processes in the above suggested situations - especially when it concerns privately owned forest land - it is of great importance to consider the delicate balance between the legal stability and the need for flexibility. This must then be reflected both in the drafting of legislation and its implementation to overcome the inherent tension between security and flexibility which might occur between legal demands and participatory demands. This ‘struggle’ can be described as resting on two overarching principles: the need of the state government to utilize natural resources and the recognition of the need for preserving the biodiversity respectively the recognition of the right of people to participate in decision-making. Of great importance in this context is also – as mentioned – to strike a balance between democratic principles of public participation and the protection of private ownership rights. The constitutionally protected right of private property as formulated in the Instrument of Government, mandates that forest owners’ participation must be voluntary.

This tension between participatory and legal demands may not the least be evident if the process of implementation is exclusively steered from the top, communicated down by the setting of certain parameters – not seldom by means of law – by actors at ‘the top’ with the power to constrain those ‘lower down’. To obtain a reasonable balance between stability and flexibility in the process, there need to be room for negotiation and bargaining, representing a bottom-up perspective when “lower level actors take decisions which effectively limit hierarchical influence, pre-empt top decisions-making or alter ‘policies’”.

Planning-implementation can be seen as a filtering process, where the project has to pass certain stages: laws and regulations, permits and approvals, acceptance by land owners (holders of rights) and not least the scrutinizing by concerned citizens and interest groups. These stages may be regarded as obstacles but can as well be seen as possibilities to improve and clarify the plan or programme. Flexibility at this point will allow new knowledge and new considerations to successively improve the project, making it more realistic.

5.2 PARTICIPATION AS A MEANS TO EFFICIENT IMPLEMENTATION: ‘THE ART OF THE POSSIBLE’

There are many factors that determine the efficiency and potential outcome of policy and plan implementation - a well worked-out plan or programme is certainly no guarantee that what is proposed will be done. Implementation efficiency expressed as “the correspondence between what is intended according to explicit plans or otherwise and what really happens”, is often low. In an OECD publication on urban planning implementation, Haywood points out a number of possible ‘failure’ factors stating that low implementation efficiency partly can be said to be dependent on the planning phase and partly on factors connected to implementation mechanisms:

- a fundamental reason for this failure is that plan-making and plan-implementation have been separated, and that disproportionate attention has been given to the former/...If the implementation process is neglected so that the powers of implementation and of control of development are insufficient or inappropriate, then the plan is only an exercise on paper. If the people affected by the plan – citizens, landowners, investors, industrialists - are not involved in the planning process, the implementation of the plan will be contested or flouted [emphasis added].

71 For example the legal stability a statutory binding plan will give a landowner.
73 Larsson, supra note 54, at 67.
Participation and transparency are – as suggested above – important in the planning phase and are - if properly carried out – likely to facilitate implementation. The actual process of implementation - when ’policy meets reality’; is sometimes discussed in terms of a top-down model of action “where implementation is strictly supposed to follow policies and plans decided from the top” and other times seen as more of a bottom-up model “with considerable influence exerted by local people and secondary stages on objectives, plans and actions during the implementation phase”; more focused on ensuring the local perspective. The ‘top-down’ view of implementation, being merely a question of finding resources, agencies and people with the power and will to carry out what has been decided, has been opposed by many writers, for example Barrett and Fudge who even ascribe the primary role in land development to implementation (instead of to the planning phase), and particularly emphasise the importance of its interactive nature when defining it as: “a policy/action continuum in which an interactive and negotiative process is taking place over time between those seeking to put policy into effect and those upon whom action depends”. They conclude:

if implementation is defined as ‘putting policy into effect’, that is, action in conformance with policy, then comprise will be seen as policy failure. But if implementation is regarded as ‘getting something done’, then performance rather than conformance is the central objective, and compromise a means of achieving performance albeit at the expense of some original intentions. Emphasis thus shifts to the interaction between policy-makers and implementers, with negotiation, bargaining and compromising forming central elements in a process that might be characterised as ‘the art of the possible’ [emphasis added].

If one subscribes to this position and regards implementation as being an integral part of the policy process rather than an administrative ‘follow on’ from policy making, then one assumes that implementation continues to influence the political process through which policy is negotiated, mediated and modified during its formulation and legitimisation through the behaviour of those responsible for its implementation and those affected by policy acting. It is perhaps not necessary to go as far as Barrett and Hill do when they argue that: “Policy, as the framework for action, is only really created during the implementation process” realised the importance of choosing the right means, in order to carry out a successful and efficient implementation.

According to Faludi successful implementation rests on the twin factors of knowledge and power. The background situation for implementation decisions must be known, and the available means must be adequate to implement the decisions. In contemporary forestry, effective implementation means should then be able to blend multiple management objectives into a coherent set of stewardship practices. There is of course a wide range of official implementation stimulants, different types in different national

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75 See Larsson, supra note 54, at 58. Cf. Elmore, R. (1978) Organizational Models of Social Program Implementation. Public Policy, p. 185f, who specifies four different organisation models regarding implementation, where his “system management model” represents a top-down approach whereas “the bureaucratic process model”, “the organisational development model” resp. “the conflict and bargaining model” corresponds to a bottom-up view. The two approaches of implementation have also been elaborated by Sabatier, P. (1986) Top-down and Bottom-up Approaches to Implementation Research. Journal of Public Policy, Vol.6:1, pp. 21-48, and Mc Loughlin, J.G. (1969) Urban and Regional Planning. A System Approach. London: Faber & Faber, who opposes the top-down “system view” as looking upon implementation as “mainly a checking of development and if so correcting it to keep the system on course”. Barrett and Fudge, supra note 72, also discusses implementation as to be seen either from a top-down or a bottom-up perspective.

76 Barrett and Fudge, supra note 72.


contexts, but some of the more commonly used means to carry out implementation are classified by Larsson\(^{79}\) in a – for our purposes – useful manner:

1) legal rules and institutions
2) agreements
3) public contribution
4) incentive means (economic)
5) propagandist-informative means
6) participation

The *legal and institutional* system\(^{80}\) must be regarded as being of basic importance for efficient implementation. Legal rules can in many ways function as a driving force for the attainment of certain goals and objectives. *Agreements*, on the other hand, are the voluntary results of previous negotiations, and are as such seldom legally regulated and sanctioned other from what is prescribed for contracts by civil law. Using voluntary agreements as a means of regulating responsibilities has become more and more common, where one reason can be found in increased standards and costs combined with a weak economic base. Another possible reason can be found in the increased involvement of the authorities in partly new areas, e.g. the protection of the natural environment and cultural heritage. Participation on a voluntary basis and negotiations are in such cases preferred, as to establish such protection by force may be both costly and complicated. *Public contribution* is otherwise the primary method for land acquisition by the authorities for conservation, protection or other purposes. Regarding forestry, incentive means are of varying importance in different countries. In Sweden the previous trend is towards less use of economic incentives. Instead the forest authorities’ strategy is to depend more on *propagandist – informative means* to create an informed attitude and foster voluntary activity. Much of the consideration nowadays to environmental impacts depend on the active information available about the importance of these aspects.

To effectively respond to this development involving new priorities of changing public values and scientific understanding of forest values, the need for a collaborative means of implementation is unquestionable. As the participatory approach indisputably “is a process that unites different phases of planning and implementation”\(^{81}\), *participation* in the implementation process operates not only as a means but rather as a *model* for involving those concerned, a *proactive approach* to create more understanding of objectives and problems, possible ways to solve them and the necessity for efficient implementation. As an optimal outcome it will hence help create a more sympathetic attitude towards the proposed activities and by this stimulate the integration of the different actors. This may facilitate implementation considerably. As participation to such a great extent is a two-way communication - a mutual dialogue – the one great benefit here is the value of bringing together:

*Objective knowledge* (*’hard’ facts, expertise) and

*Subjective knowledge* (*’soft’ values, expressed by layman, individuals or representatives*)

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79 Larsson, *supra* note 54, at 63ff. Larsson relates in his classification to Etzioni’s, A. (1968) *The Active Society*, London: Collier-McMillan, classification of power: *coercive power* (to use or threaten to use force), *utilitarian power* (to offer something in exchange) and *persuasive power* (to convince others to do as is wished).

80 Cf. Hydén, *supra* note 36, who – in regard to the function of legal rules as driving forces – discusses three kinds of motivating systems: *planned systems*, *intervention systems* and *self-regulating systems*. In intervention systems, regulations are mostly adopted in order to balance effects of certain interests, i.e. regulating environmental conflicts between private interests and vital environmental considerations. The self-regulating system, for example a market system, merely provides the rules for the game with no immediate controlling aim.

81 Loikkanen, *supra* note 51, at 23.
Something that further accentuates the importance of a well functioning implementation process is the European perspective with the actual trend of increased regionality stressed by current EU-level policies aiming to work directly with regions, making the importance of functional and well implemented regional programmes highly visible. This calls for national policies responding to multiple-use thinking in forest management, making room for participation by owners and other interests within a planning area. As many national forest policies throughout Europe – not least in the Scandinavian countries striving towards deregulation and less state intervention - have been manifested through framework legislation, the process of implementation is a critical phase. For the policy to gain legitimacy at the implementation level a means to anticipate potential problems must be found. An example of such a problem would be how to avoid relying solely on the discretion of the professional administrative culture’s way of implementing policy, or a conflation of roles such as that expressed by Emmelin as “a conflict between implementing a policy given to the administration and the expert role of advising on policy or even formulating the problems and agenda”.82

If a fair chance is given to the different stakeholders involved: authorities (both within local government and at other levels), landowners, developers, interest groups and other citizens to express their views, give information and influence a project, then there is also greater likelihood that most problems will be solved and a general agreement reached before the programme or plan is adopted. Through this and the better psychological climate, a simpler implementation can be expected.83

### 6 DISCUSSION

Acknowledging the pluralistic nature of modern society as consisting of an aggregate of individuals and groups in competition, trying to influence developments where both goals and planning processes are not exclusively the result of a rational top-down steering model but rather that of an interaction between parties with different interests and value systems, gives weight to the argument of public participation as a necessary part of environmental decision-making. There are, though, some weaknesses related to this concept which must be acknowledged to obtain a balanced discussion. A criticism sometimes voiced is that “participatory elements are time-consuming, obstructive and costly [emphasis added]”84. These economic arguments must be confronted to the extent to which participatory elements enhance democracy - and, being a well known fact, institutions and procedures that foster democracy in a civic society are often costly and time-consuming. On the other hand, participation may well foster economic efficiency, by promoting rational and shorter processes through (in fact) less obstruction and mutual understanding, and by promoting more environmentally sound decisions gaining sustainable use of natural resources. Participation may also be time-saving as a means ‘to meet the conflict’: resolving ongoing conflicts and anticipating new ones, considering both short-term and long-standing issues. An important aspect of participatory conflict resolution has been discussed by Carlman85 who notes that certain conflicts can, through expanded participation implying enhanced communication and transparency in the

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83 Cf. Larsson, supra note 54, at 67ff.

84 See the discussion on justifications for a participatory approach in Ebbesson, supra note 15, at 62ff.

process, be revealed as “false” conflicts - opposed to “real” conflicts which will remain obstacles even after making the arguments structured and the material and facts transparent. Such “false” conflicts can then be resolved and diminished by revealing their true character.

That public participation could be a means to ‘meet the conflict’, a conflict that actually might be a mismatch in perceptions, “demonstrates the power of consensus in joining former adversaries in pursuit of common interests”. Among some environmental organizations, though, there is a concern that consensus obtained through participative procedures can mask a ‘sell-out’ of environmental protection and co-optation by resource industries, or even that national environmental laws may be comprised through a collaborative process.

As the impact of public participation as a means to find a consensual balance to a great deal is dependent on a holistic approach: the normative structure of the current political context, the environmental problem being addressed and the structure and design of the national legal system and its institutions (including the implementation of its substantive norms) will be decisive for its effectiveness. If this normative structure allows for the balancing of various interests, “participatory processes may enhance the environmental interests, while counter-interests may reduce the standard of environmental protection in favour of other concerns, such as employment and economic growth”.88

6.1 PARTICIPATORY DEMOCRACY AS A NORM

The different aspects of participation: transparency, flexibility and access to information, are the very notion of democracy itself. Hence, the increased belief in public participation as a means for pursuing environmental interests and a sustainable use of natural resources, reflects indeed an enlightened aspect of democracy, providing a basis for thinking in terms of alternatives.

Some theories of democracy are more expansive and place a higher value on participatory elements, whereas others are more focused on representation. Dalberg-Larsen voices a growing orientation when he argues that a change during the last half-century has taken place, towards a ‘closer’, more decentralized democracy with participatory properties, a natural reaction against state intervention, and an increasing abstraction of the political debate. The relation between social involvement and democracy is though one of the most important issues for enhancing civic engagement. In society today we find networks and informal activities for specific tasks, which can be quite different from formal voluntary associations. Social cooperation – e.g. public participation – implies some sort of face-to-face relation, some kind of activity that goes beyond passive membership in an association. New types of social involvement can in this regard be seen as part of a general change in modern society; a development where the democratic learning processes

86 See Poffenberger and Selin, supra note 50, at 109.
87 These fears are most evident among environmental NGOs in North America, and also reveal the growing division between some national environmental organizations in the United States.
88 Ebbesson, supra note 15, at 59.
89 Some theories on democracy are less focused on representation and see the right to vote for representatives as satisfactory. Other, more expansive theories, place a higher value on representative elements, and might even suggest citizens’ participation before local authorities (with decentralized power) and public involvement in local government. See the comprehensive analysis in Steiner, H. (1998) Political Participation as a Human Right, 1 Harv. Hum. Rts. Y.B. 77, and Ebbesson, supra note 15.
90 Dalberg-Larsen, supra note 40, at 153-167.
are disseminated to strengthen the individual in relation to the state. In a democratic society where not only the elected representatives but also other groups and citizens should be included in the discussion, participatory elements will enhance democracy as the participatory process reduces the risk that relevant arguments, on either side, will be ignored.

Effective democratic decision-making that implies a more expansive notion of democracy, calls for transparent decision-making processes to ensure the different stakeholders insight into the factual as well as the value-laden basis for decisions. Transparency should then function as a key to manage complexity in the decision-making context in today’s society, as well as to counteract fragmentation amongst different interest-groups. If sustainable forest management is to be viewed as a democratic process, it requires public participation to create consensus on the most proper and rational use of forest resources. This may be achieved on the basis of an integrative use of knowledge – expertise as well as layman knowledge dealing with ecological, economic, social and managerial aspects of forestry. The basis for introducing participatory elements into the decision-making process should – by involving relevant stakeholders - best serve to maintain ecosystem sustainability and biodiversity, but also support human culture through sustainable economics and social civic communities offering sustainable alternatives for the environment in which they live. Democracy – and thus legitimacy – is a precondition for sustainable development.

In the light of the inevitable introduction of the participatory approach in environmental decision-making, one of the most important challenges will be to balance local and national interests. But perhaps the reflection of Thomas Frank can give us a glimpse of what to expect from a generalized, future development in this field: “we can currently see the outlines of this new world in which the citizens of each state will look to international law and organization to guarantee their democratic entitlement.”

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92 Andersson et al., supra note 57, at 3.
7 CONCLUSIONS

The challenge of creating participative structures in decision-making that will help fulfil the goal of sustainability - equity in regard to democracy - is reflected in the increased attention devoted to participatory elements in the context of both domestic and international law and policy. The concept of sustainability has in the last few decades also been the major goal of forestry and forest sciences – drawing from leading principles in global and national development strategies. The traditional concept of sustainability in forestry - focusing on economic efficiency - has remained too narrow and unable to accommodate with the new environmental and social demands forestry is facing today. Today we have realised the close and inevitable connection between ecological, economic and social sustainability - i.e. the recognition of the three E’s of sustainable development: Ecology, Economy and Equity – emphasising the emergence of participative elements in recent international instruments.

The development of new norms and perspectives encouraging a broad-based, bottom-up approach in the management of natural resources, was set out in the 1992 Rio Declaration. The goals of UNCED: a broad notion of participation in decision-making, access to environmental information and access to courts, was furthered by the Aarhus Convention of 1998, the currently most detailed and advanced treaty on public participation. The rationales and explanation for the development of public participation in environmental decision-making are expressed in the Aarhus Convention through three ‘pillars’, or categories of arguments. The first ‘pillar’, a policy argument drawing on environmental concern, argues that the involvement of non-state actors may not only contribute to ‘making bureaucracy think’, but that it also may enhance the informational basis as well as the ongoing scrutiny of environmental matters, given the valuable lay knowledge and subjective perceptions and insights provided by the public. The second argument, addresses the deductive aspect by applying the norms and notions of international human rights law for the introduction and requirement of participative measures. Participatory claims could be argued to draw from four established human rights concepts, where especially the right to political participation could provide a starting point and a conceptual basis for the rationales for public participation at large in environmental matters. The third rationale argues that public participation is relevant in an environmental context because it constitutes a prerequisite for legitimacy (and thus acceptance of the law, the rule and the decision). By this, public participation is placed in a broader context, relating to the democratic aspect of participation. It also reflects structural changes relating to a growing value pluralism creating a normative shift which, in turn, has affected legitimacy factors. A question that must be asked in this context is: Are participatory elements in decision-making processes essential legitimacy factors? What makes a policy, a programme or a decision legitimate and thus accepted by those affected or concerned? Legitimacy also requires a procedure that provides means for a decentralised dialogue, and suggested by Habermas, not just the making and application of legal norms must be based on the participation of citizens to claim legitimacy, but also the procedure itself should rest upon transparency and fairness and provide an equal opportunity for the parties to influence each others. This third rationale is especially important as democracy – and thus legitimacy – is a precondition for sustainable development.

The importance of giving public participation a contextual application is evident, though it has its general foundation in the overriding aim: as a means for implementing sustainable development. Ultimately the participative approach should function as a civil society dialogue, and public participation can – drawing from the Agenda 21-concept – be viewed as a grassroots approach in decision-making that leads to collective and constructive activities in the management of natural resources. From a global viewpoint one might say that it is about finding consensus in diversity, representing immense diversity with widely varying goals.
Though there is no ready, fixed precise manner in which participation is to be carried out, there are some elements that should be set out to ensure that the participatory process is not just an illusory spectacle, delivering nothing more than the appearance of ‘democratic’ participation, nor merely a pro forma matter. A structured process, a framework, is though important in facilitating a dialogue based on equality between the different stakeholders, a process more focused on understanding issues and arguments than forming strategic positions, allowing the participants to get beyond initial polarization in the search for a common ground.

Sustainable development relating to economic, ecological and social dimensions is actually a question of the efficient use of resources and in contemporary forest management it is necessary to be able to blend multiple management objectives into a coherent set of stewardship practices. The attempts to find a reasonable balance between overlapping but also conflicting interests of forest resources, underlines the pluralistic nature of modern society where both goals-objectives and planning at large are the results of interaction between parties with different aims and value systems. Participation could then provide a means of gaining an overall view of the various interests and conflicts surrounding land use – departing from a common rather than a divided approach.

In sum: why is public participation in natural resource decision-making necessary?

The need for a framework to incorporate interest groups’ values and needs into functional management systems is unquestionable. This, of course, has yet to be institutionalised in forest policy and management practices. Participation is not just as a means but also as a model for involving those concerned: a pro-active approach to create more understanding for objectives and problems and possible ways to solve them. From a practical, ‘the art of the possible’ perspective, participation is a set of procedures and methods for collaborating and learning, a means to increase knowledge of the factual situation, bring forward possible options to be studied, and given this be a help in deciding what to do next and a base for discussions and negotiations. Optimally the outcome of the participative process will help create more qualified operative decisions in the present situation, and thus provide a more solid base for the final solution. From a general point of view, public participation is an essential part of a democratic society, where the different aspects of participation: transparency, flexibility and access to information, are the very notion of democracy itself. Hence, the increased belief in public participation as a means for pursuing environmental interests and a sustainable use of natural resources, reflects indeed an enlightened aspect of democracy, providing a basis for thinking in alternatives. Participation can contribute to the formulation as well as the implementation of environmental policy and law. It is as relevant in decision-making processes concerning general plans and programs (for example National Forest Programs) as when it comes to specified projects.
CONVENTION ON ACCESS TO INFORMATION,
PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO
JUSTICE
IN ENVIRONMENTAL MATTERS¹

ECONOMIC COMMISSION FOR EUROPE
COMMITTEE ON ENVIRONMENTAL POLICY
Fourth Ministerial Conference
"Environment for Europe",
Aarhus, Denmark, 23-25 June 1998

The Parties to this Convention,

Recalling principle I of the Stockholm Declaration on the Human Environment,
Recalling also principle 10 of the Rio Declaration on Environment and Development,
Recalling further General Assembly resolutions 37/7 of 28 October 1982 on the World
Charter for Nature and 45/94 of 14 December 1990 on the need to ensure a healthy
environment for the well-being of individuals,
Recalling the European Charter on Environment and Health adopted at the First European
Conference on Environment and Health of the World Health Organization in Frankfurt-am-
Main, Germany, on 8 December 1989,
Affirming the need to protect, preserve and improve the state of the environment and to
ensure sustainable and environmentally sound development,
Recognizing that adequate protection of the environment is essential to human well-being
and the enjoyment of basic human rights, including the right to life itself,
Recognizing also that every person has the right to live in an environment adequate to his
or her health and well-being, and the duty, both individually and in association with others,
to protect and improve the environment for the benefit of present and future generations,
Considering that, to be able to assert this right and observe this duty, citizens must have
access to information, be entitled to participate in decision-making and have access to
justice in environmental matters, and acknowledging in this regard that citizens may need
assistance in order to exercise their rights,
Recognizing that, in the field of the environment, improved access to information and
public participation in decision-making enhance the quality and the implementation of
decisions, contribute to public awareness of environmental issues, give the public the
opportunity to express its concerns and enable public authorities to take due account of
such concerns,
Aiming thereby to further the accountability of and transparency in decision-making and to
strengthen public support for decisions on the environment,

¹ Source: http://www.mem.dk/aarhus-conference/issues/public-participation/ppartikler.htm, visited as of February 13th
2002.
Recognizing the desirability of transparency in all branches of government and inviting legislative bodies to implement the principles of this Convention in their proceedings,

Recognizing also that the public needs to be aware of the procedures for participation in environmental decision-making, have free access to them and know how to use them,

Recognizing further the importance of the respective roles that individual citizens, non-governmental organizations and the private sector can play in environmental protection,

Desiring to promote environmental education to further the understanding of the environment and sustainable development and to encourage widespread public awareness of, and participation in, decisions affecting the environment and sustainable development,

Noting, in this context, the importance of making use of the media and of electronic or other, future forms of communication,

Recognizing the importance of fully integrating environmental considerations in governmental decision-making and the consequent need for public authorities to be in possession of accurate, comprehensive and up-to-date environmental information,

Acknowledging that public authorities hold environmental information in the public interest,

Concerned that effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced,

Noting the importance of adequate product information being provided to consumers to enable them to make informed environmental choices,

Recognizing the concern of the public about the deliberate release of genetically modified organisms into the environment and the need for increased transparency and greater public participation in decision-making in this field,

Convinced that the implementation of this Convention will contribute to strengthening democracy in the region of the United Nations Economic Commission for Europe (ECE),

Conscious of the role played in this respect by ECE and recalling, inter alia, the ECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making endorsed in the Ministerial Declaration adopted at the Third Ministerial Conference "Environment for Europe" in Sofia, Bulgaria, on 25 October 1995,

Bearing in mind the relevant provisions in the Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo, Finland, on 25 February 1991, and the Convention on the Transboundary Effects of Industrial Accidents and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, both done at Helsinki on 17 March 1992, and other regional conventions,

Conscious that the adoption of this Convention will have contributed to the further strengthening of the "Environment for Europe" process and to the results of the Fourth Ministerial Conference in Aarhus, Denmark, in June 1998,

Have agreed as follows:
Article 1

OBJECTIVE

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

Article 2

DEFINITIONS

For the purposes of this Convention,

1. "Party" means, unless the text otherwise indicates, a Contracting Party to this Convention;

2. "Public authority" means:
   (a) Government at national, regional and other level;
   (b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;
   (c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;
   (d) The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention.

This definition does not include bodies or institutions acting in a judicial or legislative capacity;

3. "Environmental information" means any information in written, visual, aural, electronic or any other material form on:
   (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
   (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;
   (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;

4. "The public" means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;

5. "The public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.
Article 3

GENERAL PROVISIONS

1. Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.

2. Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.

3. Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.

4. Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.

5. The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention.

6. This Convention shall not require any derogation from existing rights of access to information, public participation in decision-making and access to justice in environmental matters.

7. Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.

8. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.

9. Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

Article 4

ACCESS TO ENVIRONMENTAL INFORMATION

1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

(a) Without an interest having to be stated;

(b) In the form requested unless:
(i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or
(ii) The information is already publicly available in another form.

2. The environmental information referred to in paragraph 1 above shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.

3. A request for environmental information may be refused if:
   (a) The public authority to which the request is addressed does not hold the environmental information requested;
   (b) The request is manifestly unreasonable or formulated in too general a manner; or
   (c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.

4. A request for environmental information may be refused if the disclosure would adversely affect:
   (a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;
   (b) International relations, national defence or public security;
   (c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
   (d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;
   (e) Intellectual property rights;
   (f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;
   (g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material; or
   (h) The environment to which the information relates, such as the breeding sites of rare species.

The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.

5. Where a public authority does not hold the environmental information requested, this public authority shall, as promptly as possible, inform the applicant of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.

6. Each Party shall ensure that, if information exempted from disclosure under paragraphs 3 (c) and 4 above can be separated out without prejudice to the confidentiality of the
information exempted, public authorities make available the remainder of the environmental information that has been requested.

7. A refusal of a request shall be in writing if the request was in writing or the applicant so requests. A refusal shall state the reasons for the refusal and give information on access to the review procedure provided for in accordance with article 9. The refusal shall be made as soon as possible and at the latest within one month, unless the complexity of the information justifies an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.

8. Each Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount. Public authorities intending to make such a charge for supplying information shall make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge.

Article 5

COLLECTION AND DISSEMINATION OF ENVIRONMENTAL INFORMATION

1. Each Party shall ensure that:
   (a) Public authorities possess and update environmental information which is relevant to their functions;
   (b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;
   (c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.

2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible, inter alia, by:
   (a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;
   (b) Establishing and maintaining practical arrangements, such as:
      (i) Publicly accessible lists, registers or files;
      (ii) Requiring officials to support the public in seeking access to information under this Convention; and
      (iii) The identification of points of contact; and
   (c) Providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b) (i) above free of charge.
3. Each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks. Information accessible in this form should include:

(a) Reports on the state of the environment, as referred to in paragraph 4 below;
(b) Texts of legislation on or relating to the environment;
(c) As appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements; and
(d) Other information, to the extent that the availability of such information in this form would facilitate the application of national law implementing this Convention, provided that such information is already available in electronic form.

4. Each Party shall, at regular intervals not exceeding three or four years, 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.

5. Each Party shall take measures within the framework of its legislation for the purpose of disseminating, inter alia:

(a) Legislation and policy documents such as documents on strategies, policies, programmes and action plans relating to the environment, and progress reports on their implementation, prepared at various levels of government;
(b) International treaties, conventions and agreements on environmental issues; and
(c) Other significant international documents on environmental issues, as appropriate.

6. Each Party shall encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products, where appropriate within the framework of voluntary eco-labelling or eco-auditing schemes or by other means.

7. Each Party shall:

(a) Publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals;
(b) Publish, or otherwise make accessible, available explanatory material on its dealings with the public in matters falling within the scope of this Convention; and
(c) Provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels.

8. Each Party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices.

9. Each Party shall take steps to establish progressively, taking into account international processes where appropriate, a coherent, nationwide system of pollution inventories or registers on a structured, computerized and publicly accessible database compiled through standardized reporting. Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and off-site treatment and disposal sites.

10. Nothing in this article may prejudice the right of Parties to refuse to disclose certain environmental information in accordance with article 4, paragraphs 3 and 4.
Article 6
PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES

1. Each Party:
   (a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;
   (b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; and
   (c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.

2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:
   (a) The proposed activity and the application on which a decision will be taken;
   (b) The nature of possible decisions or the draft decision;
   (c) The public authority responsible for making the decision;
   (d) The envisaged procedure, including, as and when this information can be provided:
      (i) The commencement of the procedure;
      (ii) The opportunities for the public to participate;
      (iii) The time and venue of any envisaged public hearing;
      (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;
      (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and
      (vi) An indication of what environmental information relevant to the proposed activity is available; and
   (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.

6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of
charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:

(a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;
(b) A description of the significant effects of the proposed activity on the environment;
(c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;
(d) A non-technical summary of the above;
(e) An outline of the main alternatives studied by the applicant; and
(f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.

7. Procedures for public participation shall allow 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.

8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.

10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.

11. Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

Article 7

PUBLIC PARTICIPATION CONCERNING PLANS, PROGRAMMES AND POLICIES RELATING TO THE ENVIRONMENT

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.
Article 8
PUBLIC PARTICIPATION DURING THE PREPARATION OF EXECUTIVE REGULATIONS AND/OR GENERALLY APPLICABLE LEGALLY BINDING NORMATIVE INSTRUMENTS

Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To this end, the following steps should be taken:

(a) Time-frames sufficient for effective participation should be fixed;
(b) Draft rules should be published or otherwise made publicly available; and
(c) The public should be given the opportunity to comment, directly or through representative consultative bodies.

The result of the public participation shall be taken into account as far as possible.

Article 9
ACCESS TO JUSTICE

1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) Having a sufficient interest
or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of
subsection (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

5. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

Article 10

MEETING OF THE PARTIES

1. The first meeting of the Parties shall be convened no later than one year after the date of the entry into force of this Convention. Thereafter, an ordinary meeting of the Parties shall be held at least once every two years, unless otherwise decided by the Parties, or at the written request of any Party, provided that, within six months of the request being communicated to all Parties by the Executive Secretary of the Economic Commission for Europe, the said request is supported by at least one third of the Parties.

2. At their meetings, the Parties shall keep under continuous review the implementation of this Convention on the basis of regular reporting by the Parties, and, with this purpose in mind, shall:

(a) Review the policies for and legal and methodological approaches to access to information, public participation in decision-making and access to justice in environmental matters, with a view to further improving them;

(b) Exchange information regarding experience gained in concluding and implementing bilateral and multilateral agreements or other arrangements having relevance to the purposes of this Convention and to which one or more of the Parties are a party;

(c) Seek, where appropriate, the services of relevant ECE bodies and other competent international bodies and specific committees in all aspects pertinent to the achievement of the purposes of this Convention;

(d) Establish any subsidiary bodies as they deem necessary;

(e) Prepare, where appropriate, protocols to this Convention;

(f) Consider and adopt proposals for amendments to this Convention in accordance with the provisions of article 14;
(g) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention;

(h) At their first meeting, consider and by consensus adopt rules of procedure for their meetings and the meetings of subsidiary bodies;

(i) At their first meeting, review their experience in implementing the provisions of article 5, paragraph 9, and consider what steps are necessary to develop further the system referred to in that paragraph, taking into account international processes and developments, including the elaboration of an appropriate instrument concerning pollution release and transfer registers or inventories which could be annexed to this Convention.

3. The Meeting of the Parties may, as necessary, consider establishing financial arrangements on a consensus basis.

4. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State or regional economic integration organization entitled under article 17 to sign this Convention but which is not a Party to this Convention, and any intergovernmental organization qualified in the fields to which this Convention relates, shall be entitled to participate as observers in the meetings of the Parties.

5. Any non-governmental organization, qualified in the fields to which this Convention relates, which has informed the Executive Secretary of the Economic Commission for Europe of its wish to be represented at a meeting of the Parties shall be entitled to participate as an observer unless at least one third of the Parties present in the meeting raise objections.

6. For the purposes of paragraphs 4 and 5 above, the rules of procedure referred to in paragraph 2 (h) above shall provide for practical arrangements for the admittance procedure and other relevant terms.

Article 11
RIGHT TO VOTE

1. Except as provided for in paragraph 2 below, each Party to this Convention shall have one vote.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 12
SECRETARIAT

The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions:

(a) The convening and preparing of meetings of the Parties;

(b) The transmission to the Parties of reports and other information received in accordance with the provisions of this Convention; and

(c) Such other functions as may be determined by the Parties.
Article 13

ANNEXES

The annexes to this Convention shall constitute an integral part thereof.

Article 14

AMENDMENTS TO THE CONVENTION

1. Any Party may propose amendments to this Convention.
2. The text of any proposed amendment to this Convention shall be submitted in writing to the Executive Secretary of the Economic Commission for Europe, who shall communicate it to all Parties at least ninety days before the meeting of the Parties at which it is proposed for adoption.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.
4. Amendments to this Convention adopted in accordance with paragraph 3 above shall be communicated by the Depositary to all Parties for ratification, approval or acceptance. Amendments to this Convention other than those to an annex shall enter into force for Parties having ratified, approved or accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three fourths of these Parties. Thereafter they shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the amendments.
5. Any Party that is unable to approve an amendment to an annex to this Convention shall so notify the Depositary in writing within twelve months from the date of the communication of the adoption. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for its previous notification and, upon deposit of an instrument of acceptance with the Depositary, the amendments to such an annex shall become effective for that Party.
6. On the expiry of twelve months from the date of its communication by the Depositary as provided for in paragraph 4 above an amendment to an annex shall become effective for those Parties which have not submitted a notification to the Depositary in accordance with the provisions of paragraph 5 above, provided that not more than one third of the Parties have submitted such a notification.
7. For the purposes of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 15

REVIEW OF COMPLIANCE

The Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention.
Article 16

SETTLEMENT OF DISPUTES

1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.

2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 above, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:
   (a) Submission of the dispute to the International Court of Justice;
   (b) Arbitration in accordance with the procedure set out in annex II.

3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 above, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

Article 17

SIGNATURE

This Convention shall be open for signature at Aarhus (Denmark) on 25 June 1998, and thereafter at United Nations Headquarters in New York until 21 December 1998, by States members of the Economic Commission for Europe as well as States having consultative status with the Economic Commission for Europe pursuant to paragraphs 8 and 11 of Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence over matters governed by this Convention, including the competence to enter into treaties in respect of these matters.

Article 18

DEPOSITARY

The Secretary-General of the United Nations shall act as the Depositary of this Convention.

Article 19

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Convention shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organizations.

2. This Convention shall be open for accession as from 22 December 1998 by the States and regional economic integration organizations referred to in article 17.

3. Any other State, not referred to in paragraph 2 above, that is a Member of the United Nations may accede to the Convention upon approval by the Meeting of the Parties.

4. Any organization referred to in article 17 which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under
this Convention. If one or more of such an organization’s member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under this Convention concurrently.

5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in article 17 shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Depositary of any substantial modification to the extent of their competence.

Article 20
ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.

2. For the purposes of paragraph 1 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of such an organization.

3. For each State or organization referred to in article 17 which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

Article 21
WITHDRAWAL

At any time after three years from the date on which this Convention has come into force with respect to a Party, that Party may withdraw from the Convention by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depositary.

Article 22
AUTHENTIC TEXTS

The original of this Convention, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention. DONE at Aarhus (Denmark), this twenty-fifth day of June, one thousand nine hundred and ninety-eight.
Annex I

LIST OF ACTIVITIES REFERRED TO IN ARTICLE 6, PARAGRAPH 1 (a)

1. Energy sector:
   - Mineral oil and gas refineries;
   - Installations for gasification and liquefaction;
   - Thermal power stations and other combustion installations with a heat input of 50 megawatts (MW) or more;
   - Coke ovens;
   - Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors 1/ (except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kW continuous thermal load);
   - Installations for the reprocessing of irradiated nuclear fuel;
   - Installations designed:
     - For the production or enrichment of nuclear fuel;
     - For the processing of irradiated nuclear fuel or high-level radioactive waste;
     - For the final disposal of irradiated nuclear fuel;
     - Solely for the final disposal of radioactive waste;
     - Solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

2. Production and processing of metals:
   - Metal ore (including sulphide ore) roasting or sintering installations;
   - Installations for the production of pig-iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tons per hour;
   - Installations for the processing of ferrous metals:
     (i) Hot-rolling mills with a capacity exceeding 20 tons of crude steel per hour;
     (ii) Smitheries with hammers the energy of which exceeds m50 kilojoules per hammer, where the calorific power used exceeds 20 MW;
     (iii) Application of protective fused metal coats with an input exceeding 2 tons of crude steel per hour;
   - Ferrous metal foundries with a production capacity exceeding 20 tons per day;
   - Installations:
     (i) For the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes;
     (ii) For the smelting, including the alloying, of non-ferrous metals, including recovered products (refining, foundry casting, etc.), with a melting capacity exceeding 4 tons per day for lead and cadmium or 20 tons per day for all other metals;
   - Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process where the volume of the treatment vats exceeds 30 m3.

3. Mineral industry:
- Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tons per day or lime in rotary kilns with a production capacity exceeding 50 tons per day or in other furnaces with a production capacity exceeding 50 tons per day;
- Installations for the production of asbestos and the manufacture of asbestos-based products;
- Installations for the manufacture of glass including glass fibre with a melting capacity exceeding 20 tons per day;
- Installations for melting mineral substances including the production of mineral fibres with a melting capacity exceeding 20 tons per day;
- Installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tons per day, and/or with a kiln capacity exceeding 4 m3 and with a setting density per kiln exceeding 300 kg/m3.

4. Chemical industry: Production within the meaning of the categories of activities contained in this paragraph means the production on an industrial scale by chemical processing of substances or groups of substances listed in subparagraphs (a) to (g):

(a) Chemical installations for the production of basic organic chemicals, such as:
   (i) Simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic);
   (ii) Oxygen-containing hydrocarbons such as alcohols, aldehydes, ketones, carboxylic acids, esters, acetates, ethers, peroxides, epoxides, epoxysilanes;
   (iii) Sulphurous hydrocarbons;
   (iv) Nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates;
   (v) Phosphorus-containing hydrocarbons;
   (vi) Halogenic hydrocarbons;
   (vii) Organometallic compounds;
   (viii) Basic plastic materials (polymers, synthetic fibres and cellulose-based fibres);
   (ix) Synthetic rubbers;
   (x) Dyes and pigments;
   (xi) Surface-active agents and surfactants;

(b) Chemical installations for the production of basic inorganic chemicals, such as:
   (i) Gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride;
   (ii) Acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids;
   (iii) Bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide;
   (iv) Salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate;
   (v) Non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon, silicon carbide;

(c) Chemical installations for the production of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers);
(d) Chemical installations for the production of basic plant health products and of biocides;
(e) Installations using a chemical or biological process for the production of basic pharmaceutical products;
(f) Chemical installations for the production of explosives;
(g) Chemical installations in which chemical or biological processing is used for the production of protein feed additives, ferments and other protein substances.

5. Waste management:
   - Installations for the incineration, recovery, chemical treatment or landfill of hazardous waste;
   - Installations for the incineration of municipal waste with a capacity exceeding 3 tons per hour;
   - Installations for the disposal of non-hazardous waste with a capacity exceeding 50 tons per day;
   - Landfills receiving more than 10 tons per day or with a total capacity exceeding 25 000 tons, excluding landfills of inert waste.

6. Waste-water treatment plants with a capacity exceeding 150 000 population equivalent.

7. Industrial plants for the:
   (a) Production of pulp from timber or similar fibrous materials;
   (b) Production of paper and board with a production capacity exceeding 20 tons per day.

8. (a) Construction of lines for long-distance railway traffic and of airports 2/ with a basic runway length of 2 100m or more;
   (b) Construction of motorways and express roads; 3/
   (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road, would be 10 km or more in a continuous length.

9. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tons;
   (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tons.

10. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

11. (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;
    (b) In all other cases, works for the transfer of water resources between river basins where the multiannual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5% of this flow. In both cases transfers of piped drinking water are excluded.

12. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tons/day in the case of petroleum and 500 000 cubic metres/day in the case of gas.
13. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

14. Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 mm and a length of more than 40 km.

15. Installations for the intensive rearing of poultry or pigs with more than:
   (a) 40 000 places for poultry;
   (b) 2 000 places for production pigs (over 30 kg); or
   (c) 750 places for sows.

16. Quarries and opencast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.

17. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.

18. Installations for the storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tons or more.

19. Other activities:
   - Plants for the pretreatment (operations such as washing, bleaching, mercerization) or dyeing of the fibres or textiles where the treatment capacity exceeds 10 tons per day;
   - Plants for tanning of hides and skins where the treatment capacity exceeds 12 tons of finished products per day;
     (a) Slaughterhouses with a carcass production capacity greater than 50 tons per day;
     (b) Treatment and processing intended for the production of food products from:
       (i) Animal raw materials (other than milk) with a finished product production capacity greater than 75 tons per day;
       (ii) Vegetable raw materials with a finished product production capacity greater than 300 tons per day (average value on a quarterly basis);
     (c) Treatment and processing of milk, the quantity of milk received being greater than 200 tons per day (average value on an annual basis);
   - Installations for the disposal or recycling of animal carcasses and animal waste with a treatment capacity exceeding 10 tons per day;
   - Installations for the surface treatment of substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating, with a consumption capacity of more than 150 kg per hour or more than 200 tons per year;
   - Installations for the production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitization.

20. Any activity not covered by paragraphs 1-19 above where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation.

21. The provision of article 6, paragraph 1 (a) of this Convention, does not apply to any of the above projects undertaken exclusively or mainly for research, development and testing of new methods or products for less than two years unless they would be likely to cause a significant adverse effect on environment or health.

22. Any change to or extension of activities, where such a change or extension in itself meets the criteria/thresholds set out in this annex, shall be subject to article 6, paragraph
1 (a) of this Convention. Any other change or extension of activities shall be subject to article 6, paragraph 1 (b) of this Convention.

Notes

1/ Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

2/ For the purposes of this Convention, "airport" means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).

3/ For the purposes of this Convention, "express road" means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

Annex II

ARBITRATION

1. In the event of a dispute being submitted for arbitration pursuant to article 16, paragraph 2, of this Convention, a party or parties shall notify the secretariat of the subject matter of arbitration and indicate, in particular, the articles of this Convention whose interpretation or application is at issue. The secretariat shall forward the information received to all Parties to this Convention.

2. The arbitral tribunal shall consist of three members. Both the claimant party or parties and the other party or parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party to the dispute, designate the president within a further two-month period.

4. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may so inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. If it fails to do so within that period, the president shall so inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.

5. The arbitral tribunal shall render its decision in accordance with international law and the provisions of this Convention.

6. Any arbitral tribunal constituted under the provisions set out in this annex shall draw up its own rules of procedure.

7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.
8. The tribunal may take all appropriate measures to establish the facts.

9. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

   (a) Provide it with all relevant documents, facilities and information;
   (b) Enable it, where necessary, to call witnesses or experts and receive their evidence.

10. The parties and the arbitrators shall protect the confidentiality of any information that they receive in confidence during the proceedings of the arbitral tribunal.

11. The arbitral tribunal may, at the request of one of the parties, recommend interim measures of protection.

12. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the mother party may request the tribunal to continue the proceedings and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings.

13. The arbitral tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.

14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

15. Any Party to this Convention which has an interest of a legal nature in the subject matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.

16. The arbitral tribunal shall render its award within five months of the date on which it is established, unless it finds it necessary to extend the time limit for a period which should not exceed five months.

17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute. The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to this Convention.

18. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.
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