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Participatory Approaches in the Management of Natura 2000: When EU Biodiversity Policy gets Closer to its Citizens

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Abstract

The Habitats Directive has created a European network of protected areas combining environmental protection with social and economic activities. Although not clearly advocated in the Directive, participatory approaches have incrementally emerged in order to ensure an adequate management of the Natura 2000 network. This paper looks at the reasons why the European Commission on one side and the national/local authorities on the other side chose to engage in participatory approaches and assesses the structure, degree and scope of these approaches in the light of input and output legitimacy.

Main findings are that participation was mostly implemented as a reaction to conflicts and out of a concern over policy implementation, two elements that continue to drive the philosophy of the Natura 2000 network's management. The limits of participation in Brussels are contrasted with the potential for more genuine and effective participation mechanisms on the field.

Introduction

Biodiversity loss occurs at a tremendous pace in Europe, putting at risk a unique natural heritage but also various ecosystem services which cannot be replaced. The European Union (EU) has lived up to this challenge: stemming from the Birds (1979) and Habitats (1992) Directives, the Natura 2000 network is the biggest network of protected areas in the world,¹ covering today 18% of EU territory² (roughly equal to the surface of Germany). Boosted by international developments (the 1992 Earth Summit and the 1992 Convention on Biological Diversity) as well as by the ‘Green wave’ of EU Environmental Policy in the 1980’s, the Natura 2000 initiative is ambitious in many respects. Ambitious first in its objectives and scope: stepping away from the traditional concept which saw protected areas as pure natural sanctuaries, Natura 2000 areas aim to combine environmental conservation with human activities. Ambitious then in its approach: the incremental search for more participatory guidance in policy implementation, participation being here defined as the ‘involvement of individual groups – who are not part of the elected or appointed legal decision-making bodies – in preparing, making or implementation collectively binding decisions’.³

The study of participatory mechanisms in Natura 2000 is particularly relevant given the dedication of both Member States⁴ and DG Environment⁵ to achieve the 2020 Biodiversity Strategy targets and, more generally, given the European Commission’s

¹ European Commission, *Communication From the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Options for and EU Vision and Target for Biodiversity Beyond 2010*, COM(2010) 4 final, Brussels, 19 January 2010, p. 4.

² Europa, Summaries of EU legislation, Natural Habitats (Natura 2000), http://europa.eu/legislation_summaries/environment/nature_and_biodiversity/128076_en.htm

³ F. Rauschmayer et al., ‘Introduction: Challenges of Governing Biodiversity and Water’, in F. Rauschmayer, J. Paavola & H. Wittmer, ‘European governance of natural resources and Participation in a Multi-Level Context: an editorial’, *Environmental Policy and Governance*, vol. 19, no. 3, 2009, p. 142.

⁴ Council of the European Union, *Council conclusions on EU Biodiversity Strategy to 2020*, 11978/11, Brussels, 23 June 2011, p. 5.

⁵ European Commission, *Communication From the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Our life insurance, our natural capital: an EU biodiversity strategy to 2020*, COM(2011) 244 final, Brussels, 3 May 2011.

concern over Member States' compliance towards EU Environmental Policy.⁶ While academic literature usually describes participation as a merely symbolic device⁷ and stresses its inability to provide input and output oriented legitimacy⁸ at the same time,⁹ the study of Natura 2000 brings a new perspective to this debate due to the singularity of this policy regime. Indeed, Natura 2000 is one of the few EU policies where participatory mechanisms are not limited to elite or expert groups in Brussels but also target stakeholders on the field, including the ones who are *a priori* hostile to the policy. Also, unlike most of the participatory schemes which usually take place in the policy formulation stage,¹⁰ participation in Natura 2000 applies to policy implementation.¹¹

This paper analyses the reasons why the European Commission (EC) chose to engage in participatory approaches, although this governance mode was not foreseen when the Natura 2000 legislation was adopted. Breaking away from conventional wisdom that participation is nothing more than a formality, and that the trade-off between participation and policy outcomes always constitutes a zero-sum game, it intends to analyse the extent to which participatory approaches are likely to improve simultaneously policy outcomes and policy legitimacy.

Participation is studied here at three different levels: Brussels, the national level and the local level. Developments concerning local participation are based on data collected in

⁶ European Commission, *Communication From the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness*, COM(2012) 95 final, Brussels, 7 March 2012.

⁷ K. Heard-Lauréote, *European Union governance: effectiveness and legitimacy in European Commission committees*, London, Routledge, 2010, p. 208-209.

⁸ Input legitimacy derives from ability to enhance citizens' involvement and participation' while output legitimacy 'derives from ability to produce results' according to K. Heard-Lauréote, *op. cit.*, p. 209.

⁹ *Ibid.*, p. 208.

¹⁰ *Ibid.*, p. 9.

¹¹ We refer here to substantive implementation, i.e. direct implementation of EU norms to individuals, by contrast to normative implementation which implies the adoption of implementing norms through a comitology procedure.

two comparable¹² Natura 2000 areas, the Pond area Midden Limburg in Flanders (Belgium), and the site NPC034 in the département du Nord, in France.

After having shed light on the potential for conflict enshrined in the Habitats directive (I), this paper shows that participatory approaches were essentially endorsed as a reaction to these conflicts and out of a concern over policy implementation (II). It finally compares participatory approaches at the EU and national/local level in the light of input and output legitimacy (III).

1. The design and emergence of Natura 2000: a potential for conflict

Natura 2000 radically modifies the traditional approach to nature conservation, and makes parcels of formerly untended nature a societal heritage. Despite the rhetorical consent to Natura 2000 - Eurobarometers show a general consensus on the need to protect biodiversity at the European level¹³ through the creation of protected areas –¹⁴ the fact that a significant part of these European protected areas is located in agricultural or forestry landscapes¹⁵ increases the likeliness of land-use conflicts. The Natura 2000 philosophy indeed breaks the traditional separation between protected areas and ordinary nature, which was thought before as something that could be sacrificed:¹⁶ large areas formerly dedicated to agriculture or forestry all of a sudden fall under specific legislation formerly limited to natural parks. As a result, Natura 2000 was seen by local stakeholders as ‘an appropriation tool for a territory that they were about to lose’.¹⁷

¹² See annex.

¹³ TNS Opinion and Social, *Attitudes of European citizens towards the environment*, Special Eurobarometer 295, Wave 68.2, March 2008, p. 11.

¹⁴ The Gallup Organisation, *Attitudes of Europeans towards the issue of biodiversity*, Flash Eurobarometer 290, Wave 2, March 2010, p. 35.

¹⁵ F. Rauschmayer et al., ‘Examining Processes or/and Outcomes? Evaluation Concepts in European Governance of Natural Resources’, *Environmental Policy and Governance*, vol. 19, no. 3, 2009, p. 161.

¹⁶ F. Pinton et al., *La construction du réseau Natura 2000 en France: Une politique européenne de conservation de la biodiversité à l’épreuve du terrain*, Paris, La Documentation Française, 2006, p. 18.

¹⁷ L. Garde, ‘Faut-il sauver Natura 2000? Regards d’acteurs sur une nature administrée’, in J. Dubois & S. Maljean-Dubois, *Natura 2000: de l’injonction européenne aux négociations locales*, Paris, La Documentation française, 2005, p. 170.

The implementation of Natura 2000 therefore triggers classical oppositions: scientific expertise versus local knowledge, urban versus rural, and economy versus ecology. Moreover its European character makes it difficult to take into account geographic and cultural specificities. The main challenge for the EC and national authorities in charge of implementing Natura 2000 has been the proper matching of a European biodiversity policy and social reality, which makes Natura 2000 a case in point of Europeanisation: the introduction of European legislation in a policy field – nature conservation through the establishment of protected areas – traditionally reserved for the nation-state. However, in this specific case, the need for Europeanisation was uncertain.

1.1 The lack of opportunity for Europeanisation

Europeanisation of a policy area usually depends on four factors: the extent to which the internal market is affected; the politicization of the policy area; the cross-border character of problems or the inability of the state to solve them; and the presence of international agreements.¹⁸ In the case of Natura 2000, all these four criteria were not fulfilled.

Even if biodiversity loss has certain economic implications, it does not affect directly the functioning of the internal market. Despite the Earth Summit in Rio in 1992, awareness about biodiversity was and is still today low (only 38% of European citizens know the meaning of the word ‘biodiversity’).¹⁹ If biodiversity loss in one area can have transboundary implications (because of the circulation of species), its cross-border character is less salient than in other environmental issues such as pollution, given the very limited proportion of migratory species.²⁰ The fourth criterion about international agreements is the only one which appears to be fulfilled, with the 1992 Convention on Biodiversity. But the

¹⁸ C. Knill & D. Liefferink, *Environmental politics in the European Union: policy-making, implementation and patterns of multi-level governance*, Manchester, Manchester University Press, 2007, p. 52.

¹⁹ The Gallup Organisation, *op. cit.*, p. 5.

²⁰ J. Golub, ‘Sovereignty and Subsidiarity in EU Environmental Policy’, *Political Studies*, no. 44, 1996, p. 693.

overall picture is that Europeanisation has derived not so much from the nature of the problem itself, but more from the willingness of European institutions to take over this policy field under the increasing influence of ENGOs.²¹

Natura 2000 therefore occurred thanks to the momentum provided by the ‘Green wave’ in Europe and internationally, but in the absence of some of the prerequisites suggested by Europeanisation theory.

1.2 The challenge of Multi-Level Governance

According to the subsidiarity principle, responsibilities in the establishment of the Natura 2000 network are divided between European and national levels. Member States propose sites on the basis of a list of habitats and species displayed in the annexes of the Habitats and Birds directives. Then the EC, with the help of the European Environmental Agency (EEA), designates Sites of Community Importance (SCI) on the basis of the Member States’ proposals. Finally, Member States make the SCI ‘Special Areas of Conservation’ (SAC) and manage them according to guidelines displayed in article 6 of the Habitats Directive.²²

²¹ J. Paavola et al., ‘Interplay of Actors, Scales, Frameworks and Regimes in the Governance of Biodiversity’, *Environmental Policy and Governance*, vol. 19, no. 3, 2009, p. 154.

²² J. Paavola et al., *op. cit.*, p. 154.

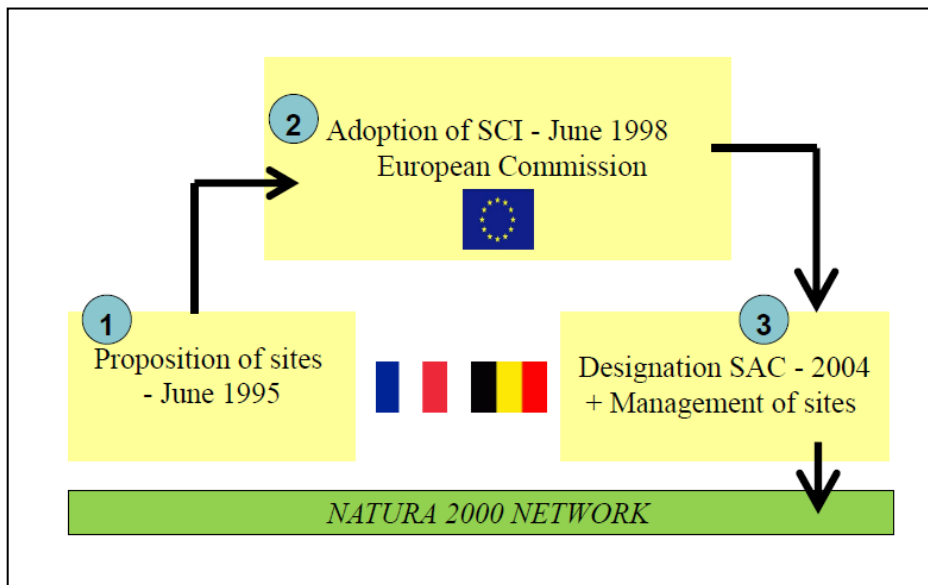


Figure 1: Responsibilities in the Natura 2000 Network

Although this decentralised organisation was supposed to allow for an optimal adaptation of the policy to the field's needs, the European Parliament has expressed concern 'that this degree of flexibility can lead to abuses by Member States when implementing [EU environmental legislation]'.²³ An unclear definition of roles may also enable each institutional actor to shift responsibility for a policy operation to each other,²⁴ therefore providing scapegoats to opponents of Natura 2000. This encourages blame-shifting from national authorities to the EU,²⁵ even if euroscepticism seems to be rather a channel used to fuel already existing oppositions²⁶ than a cause for opposition in itself.

Natura 2000 displays all the features of multi-level governance (MLG), 'a system in which power is shared among the supranational, national, sub-national, and local levels, with

²³ European Parliament, Committee on the Environment, Public Health and Food Safety, *Report on the Implementation of EU Legislation Aiming at the Conservation of Biodiversity*, (2009/2108(INI)), A7-0241/2010, 25 August 2010, p. 8.

²⁴ Interview with Official A, DG Environment, European Commission, Brussels, 14 March 2011.

²⁵ Interview with N. Nowicki, Déléguée générale, Eurosite, Skype interview, 1 April 2011.

²⁶ Interview with Official B, DG Environment, European Commission, Brussels, 31 March 2011.

considerable interactions between them'.²⁷ In the first place, the directive implies a certain degree of coercion given the obligation to designate sites according to a list of priority species. But once the final sites' list is approved, the Commission relies on decisions made at the local level to implement the Natura 2000 legislation. This element was in itself a challenge for policy implementation, since it brought an essential tension between a top-down and a bottom-up approach.

1.3 Top-down or bottom-up approach? A mismatch between policy ambition and policy formulation

This mismatch stems from the ambiguous formulation of the Habitats directive. While its article 2.3 stipulates that 'measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics',²⁸ the directive based the designation of sites exclusively on scientific criteria, did not impose any consultation procedure for the sites' designation, and only mentioned it as a possibility for the establishment of management plans.²⁹ This top-down approach is not coherent with another ambition of the Habitats Directive, which was to give to the Natura 2000 network a double legitimacy, scientific and social.³⁰

Indeed, article 2.3 of the directive stated a clear intention to back Natura 2000 with a strong component of input legitimacy, but failed to endow it with the necessary instruments to do so. The Habitats Directive imposed an obligation of result³¹ (the designation of sites had to be completed in 2004), but not an obligation of means: this fundamental element led the Commission to initially neglect participatory approaches and explains why some conflicts developed over the implementation of Natura 2000.

²⁷ J. McCormick, *Understanding the European Union: A Concise Introduction*, Houndmills, Palgrave Macmillan, 2008, 4th edn, p. 15.

²⁸ Council of the European Union, 'Council Directive (92/43/EEC) of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora', *Official Journal of the European Union*, L206, 22 July 1992, p. 4.

²⁹ As shown in article 6.3: '[...] the competent national authorities shall agree to the plan or project [...] if appropriate, after having obtained the opinion of the general public'.

³⁰ F. Pinton et al., *op. cit.*, p. 9.

³¹ F. Pinton et al., *op. cit.*, p. 12.

2. Participatory approaches: a pragmatic reaction of the Commission

On top of the conflicts tied to the Habitats Directive that were linked to a lack of input legitimacy, opposition to the way the legislation was implemented was linked to a lack of output legitimacy. The most important impetus was the lack of communication around Natura 2000. It led to fierce opposition, as shown by the French case study in Nord-Pas-De-Calais. Protests from the ‘Groupe des 9’ –³² a movement that denounced the absence of consultation, the excessive size of sites, and the lack of clarity over stakeholders’ compensation –³³ led Prime Minister Alain Juppé to freeze the procedure between July 1996 and February 1997³⁴ and finally to reduce the surface of sites initially proposed to the EC.³⁵

This lack of communication at times paved the way for misinformation from groups that could feel threatened by the directive, especially when additional factors were put into place. In France, for instance, the poor transposition of article 6.3 of the Habitats Directive (which requires an impact assessment for ‘any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon’)³⁶ led to a reinforcement of constraints and rules after the 2010 C-241/08 *Commission v France* ruling.³⁷ This poor transposition *a posteriori* legitimised the ‘Natura 2000 mythology’³⁸ that Natura 2000 meant much more constraints than was actually the case.³⁹

³² P. Alphanhéry & A. Fortier, ‘La contestation de Natura 2000 par le ‘groupe des 9’, une forme d’agrarisme anti-environnemental dans les campagnes françaises ?’, in Pierre Cornu & Jean-Luc Mayaud (eds.), *Au nom de la terre. Agrarisme et agrariens, en France et en Europe, du 19e siècle à nos jours*, Actes du 23e colloque de l’Association des ruralistes français, Paris, La Boutique de l’histoire éditions, 2007, p. 5.

³³ A. Fortier, ‘L’application de la directive Habitats en région: le cas du Nord/Pas-de-Calais’, in E. Remy (eds.), *La mise en directive de la nature. De la directive Habitat aux prémices du réseau Natura 2000*, rapport remis au Ministère de l’aménagement du territoire et de l’environnement, 1999, p. 169.

³⁴ P. Alphanhéry & A. Fortier, *loc. cit*

³⁵ *Ibid.*, p. 6.

³⁶ Council of the European Union, ‘Council Directive (92/43/EEC), *op. cit.*, p. 5.

³⁷ V. Edwards, ‘Significant EU Environmental Cases: 2010–11’, *Journal of Environmental Law*, 29 January 2011, retrieved 28 April 2011, <http://jel.oxfordjournals.org/content/early/2011/01/29/jel.eqr001.full>

³⁸ Interview with J. Bacquaert,

³⁹ *Ibid.*

In Flanders, the Flemish Green party used Natura 2000 to impose regulations that actually went far beyond the provisions of the directive,⁴⁰ notably regarding the prohibition of hunting. The protest, organised by the European Landowners Organisation (ELO), culminated in a demonstration in Ghent of more than 100,000 people,⁴¹ resulting in the strong defeat of the Flemish Green Party at the next electoral consultation.⁴²

2.1 The incremental endorsement of participatory approaches

These conflicts resulted in important delays in sites' designation, which pushed the European Commission to react. In 2004, seeing that the 2004 deadline for Special Areas of Conservation (SAC) had not been respected, the EC issued a report about the implementation of Natura 2000, pointing to the lack of citizens' information and public opposition.⁴³ A 2003 Commission memorandum indirectly acknowledged an initial lack of communication about Natura 2000 and recognised the need to include a large range of actors in its consultation strategy.⁴⁴ While underlining that consultation was not really needed at the sites' designation stage,⁴⁵ officials from DG Environment admitted that 'some mistakes'⁴⁶ were made at the beginning regarding information,⁴⁷ communication, and public awareness.⁴⁸

The shift towards participatory approaches was part of the broader governance shift following the resignation of the Santer Commission⁴⁹ and reflected in the 2001 White Paper on European Governance. In EU Environmental Policy, this period coincided with the shift

⁴⁰ Interview with N. Nowicki, *loc. cit.*

⁴¹ Interview with P. Crahay, European Landowners Organisation, Middle-Limburg, 14 April 2011.

⁴² *Ibid.*

⁴³ S. Maljean-Dubois, 'Le projet 'Natura 2000': des incertitudes scientifiques aux incertitudes juridiques', in J. Dubois & S. Maljean-Dubois, *Natura 2000: de l'injonction européenne aux négociations locales*, Paris, La Documentation française, 2005, p. 46.

⁴⁴ European Commission, *MEMO on Commission strategy to protect Europe's most important wildlife areas – frequently asked questions about NATURA 2000*, *op. cit.*, p. 1.

⁴⁵ Interview with Official A, *loc. cit.*

⁴⁶ Interview with Official B, *loc. cit.*

⁴⁷ Interview with Official A, *loc. cit.*

⁴⁸ Interview with Official B, *loc. cit.*

⁴⁹ H. Michel, 'Incantations and uses of civil society by the European Commission', in Bruno Jobert & Beate Kohler-Koch (eds.), *Changing Images of Civil Society: From Protest to Governance*, London, Routledge, 2008, p. 109.

from command-and-control, interventionist instruments towards New Policy Instruments (transparency, economic incentives, self-regulation and last but not least, public participation)⁵⁰ that were initiated in the 1993 fifth Environmental Action Programme and formalised in its successor in 2002. This change was especially motivated by the hope to ‘improve domestic compliance with EU environmental policies’⁵¹ by changing ‘the national contextual conditions’.⁵²

2.2 The Commission’s quest for compliance

The EC now seems to be convinced of the need for consultation in the management phase.⁵³ It has endorsed a pragmatic approach based on the acknowledgement of an essential interdependence between policy makers and stakeholders in the field, which makes the EC obliged to incorporate their input into policy.⁵⁴

European legislators have acknowledged that further protecting biodiversity does not require additional or revised legislation, but the ‘full implementation of EU Nature legislation,’⁵⁵ which is the first target of the 2020 Biodiversity Strategy. Therefore ‘increas(ing) stakeholders’ awareness and involvement’⁵⁶ and ‘ensur(ing) good management’⁵⁷ of the Natura 2000 network have been defined as priority actions for the achievement of this first target.

In this perspective, participation is a key element of the Commission’s toolbox dedicated to the general quest for compliance.⁵⁸ This quest can be understood from a twofold perspective. First, the EC sees participatory approaches as a way to tie citizens to the

⁵⁰ C. Knill & D. Liefferink, *op. cit.*, p. 162.

⁵¹ *Ibid.*

⁵² *Ibid.*, p. 164.

⁵³ Interview with Official A, *loc. cit.*

⁵⁴ *Ibid.*

⁵⁵ Council of the European Union, *Council conclusions on EU Biodiversity Strategy to 2020*, 11978/11, Brussels, 23 June 2011, p. 5.

⁵⁶ European Commission, *Communication From the Commission*, 3 May 2011, *op. cit.*, p. 12.

⁵⁷ *Ibid.*

⁵⁸ European Commission, *Communication From the Commission*, 7 March 2012, *op. cit.*

policy.⁵⁹ Behind compliance lies a search for effectiveness - completing the Natura 2000 network by 2012 –⁶⁰ and efficiency – doing so with as less resources as possible, given the fact that two-thirds of financial investments for Natura 2000 already go to the ongoing management of the sites.⁶¹ Besides, there is also a quest for credibility⁶² of the Commission's actions, as shown by its dedication in tackling potential conflicts in the implementation of Natura 2000.⁶³ Although the EC now advocates the development of participatory approaches, its first objective remains to deliver results (complete the sites' designation, minimize conflicts) while the progress of input legitimacy only remains a secondary concern.

⁵⁹ M. Rhodes & J. Visser, 'Seeking commitment, effectiveness and legitimacy. New modes of socio-economic governance in Europe', in A. Héritier & M. Rhodes, *New modes of governance in Europe : governing in the shadow of hierarchy*, Basingstoke, Palgrave Macmillan, 2011, p. 108.

⁶⁰ European Commission, *Communication from the Commission*, 3 May 2011, *op. cit.*, p. 12.

⁶¹ V. Valant, Member of the Cabinet of the EU Environment Commissioner Janez Potočnik, opening speech of the 'Conference on the participation of landowners in management of Natura 2000 areas' organised by the European Landowners Organisation, 9 November 2011.

⁶² *Ibid.*

⁶³ Alterra, Eurosite, European Center for Nature Conservation, *Dealing with Conflicts in the Implementation and Management of the Natura 2000 Network: Best Practice at the Local/Site Level (lot 3)*, Final report for Task 2, EC publications, Brussels.

2.3 Multi-level participation: a summary of findings

Participatory approaches at European level

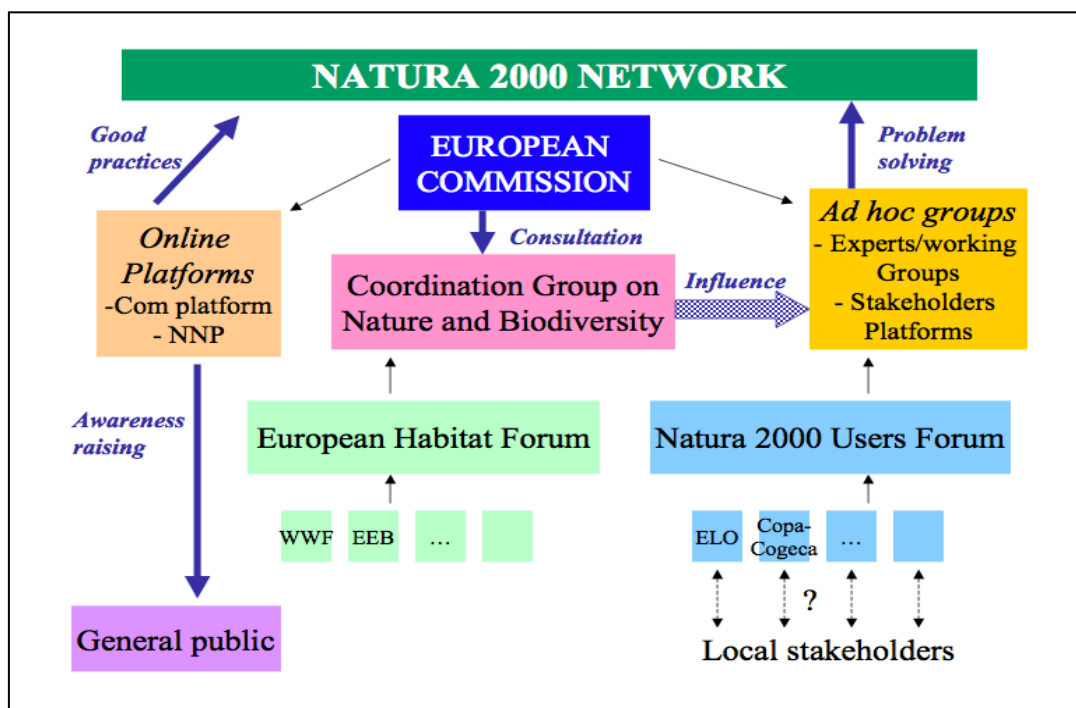


Figure 2: Participatory approaches in Natura 2000 at Brussels level

Participation in Brussels first happens online, through the Natura 2000 Communication Platform for good practices' exchange⁶⁴ and the Natura 2000 Networking Programme.⁶⁵ Some *ad hoc* working groups have been created as a second instance problem-solving area: second instance because they tackle problems that could not be solved at the local or national level, and problem-solving because of their specific and *ad hoc* nature. They follow guidelines given by a permanent Coordination group on Nature and Biodiversity composed of stakeholders, Member States' representatives, members of the European Environment Agency and representatives of the EC, meeting twice or three times a

⁶⁴ Natura 2000 Communication Platform on Good Practice Exchange <http://www.natura2000exchange.eu/>

⁶⁵ Natura 2000 Networking Programme <http://www.natura.org/>

year.⁶⁶ It identifies potential problems and has a deliberative and consultative function.⁶⁷ The EC remains the final decision-maker, but decides in a consultative way.

In order to be heard better by the EC and to weigh more heavily in these meetings, interest groups or NGOs have constituted forums where they coordinate their positions. Funded in 1991, the European Habitat Forum (EHF) composed of 14 international ENGOs⁶⁸ meets with the Commission twice a year, has one seat in the Coordination Group for Biodiversity and Nature,⁶⁹ and provides expertise to the Commission.⁷⁰ The Natura 2000 Users' Forum, founded in 1999 has more or less the same function.⁷¹

Participatory approaches at national/regional levels

In order to minimise the implementation costs and maximise its effectiveness, Member States chose the option that would best fit in their existing institutional and social context and require as little adjustment as possible.⁷² In reaction to opposition from the *Groupe des 9*, the French government took a radical turn and created a participatory approach based on a mixture of legislative, regulatory and contractual tools.⁷³ The core of this system is a 'Document d'Objectifs' (DOCOB), which contains general information on the Natura 2000 area, a hierarchy of conservation priorities, a socioeconomic diagnosis, and proposals for conservation and other measures.⁷⁴ It is developed by a Steering Committee (Comité de Pilotage – Copil) designated by the departmental authority and includes the local or regional administrations concerned, representatives of stakeholders, and eventually the

⁶⁶ Eurosite – Webpage on European Habitat Forum <http://www.eurosite.org/en-UK/content/european-habitats-forum>

⁶⁷ Interview with Offical B, *loc. cit.*

⁶⁸ *Ibid.*

⁶⁹ Eurosite – Webpage on European Habitat Forum <http://www.eurosite.org/en-UK/content/european-habitats-forum>

⁷⁰ Interview with N. Nowicki, *loc. cit.*

⁷¹ *Ibid.*

⁷² C. Knill & D. Liefferink, *op. cit.*, p. 173, and A. Jordan, 'Introduction: European Union Environmental Policy: Actors, Institutions and Policy Processes', in A. Jordan, *Environmental policy in the European Union: actors, institutions and processes*, London, Earthscan, 2005, p. 162.

⁷³ H. Souheil *et al.*, 'Document d'objectifs Natura 2000: Guide méthodologique d'élaboration', *Outils de Gestion et de Planification*, Cahier technique no. 82, 2009, p. 5.

⁷⁴ *Ibid.*, p. 4-5.

departmental authorities that have a consultative role.⁷⁵ Once the Docob is approved, two actors – an *animateur* and a Head of mission - take charge of the site's management.⁷⁶

Finally, stakeholders can sign Natura 2000 contracts with the administrative authorities (series of environmental commitments relative to conservation and restoration of natural habitats and species),⁷⁷ and a Natura 2000 charter which recognises good environmental practices in a Natura 2000 site.⁷⁸

In Flanders, the implementation of Natura 2000 is coordinated by the Agency of Nature and Forest (Agentschap voor Natuur en bos, ANB), which has developed regional Nature Conservation Objectives (NCO) for all the Natura 2000 sites.⁷⁹

The Flemish government along with ANB builds institutional actors' involvement by offering communication training about Natura 2000.⁸⁰ Second, it involves stakeholders through 'intense consultation (steering committees, local consultation) and intense involvement (process design, implementation)'.⁸¹ Stakeholders also have to sign a 'declaration of intent'⁸² by which they commit to respect the NCO. The third level of cooperation involves local authorities, which are trained and informed about the general conservation objectives and consulted for the establishment of local objectives.⁸³

Participation at local level – Case studies

The case studies illustrate two very different institutional designs of participatory approaches, represented by the figure below:

⁷⁵ *Code de l'environnement*, Partie législative, Livre IV, Titre Premier, Chapitre IV, Section 1 'Sites Natura 2000', article L. 414-2, consolidated version 17 November 2010.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*, article L. 414-3.

⁷⁸ Interview with Official from the French Ministry of Ecology, Sustainable development, Transports and Housing, Ministère de l'écologie, du développement durable, des transports et du logement, Phone interview, 25 March 2011.

⁷⁹ B. Geertsma, Natuurpunt, exchange of emails, April 2011.

⁸⁰ Agentschap voor Natuur en Bos, *Natura 2000 in Flanders: Together, more and better*, Presentation shown at the Biodiversity Conference organised under the Belgium EU Presidency in Ghent, November 2010.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

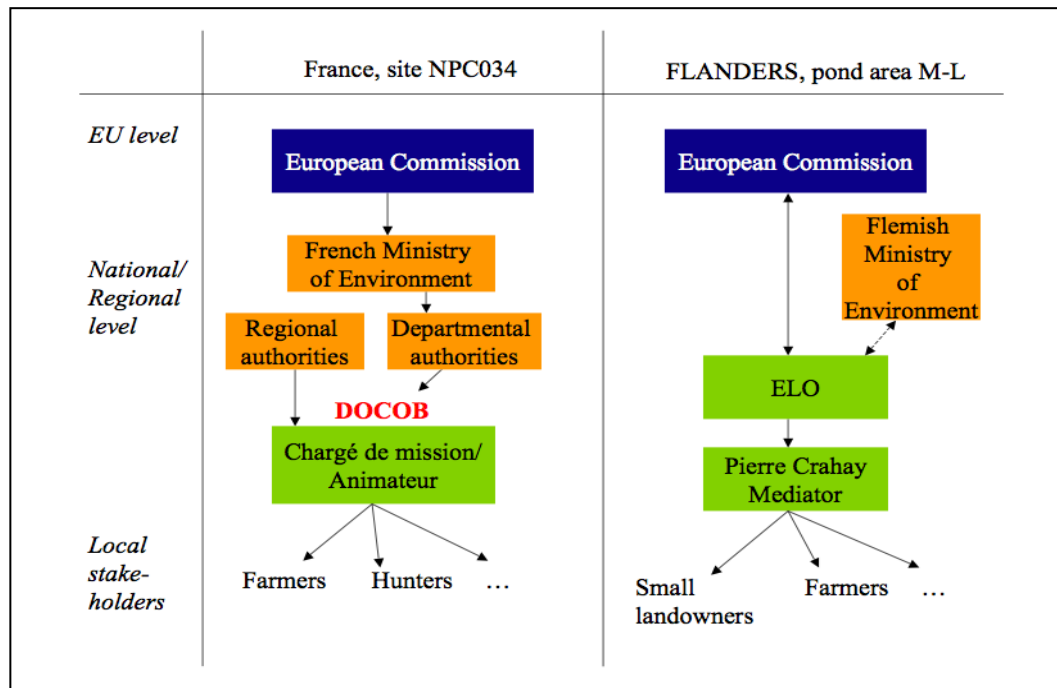


Figure 3: Compared designs of the participatory processes in case-study sites

The French site NPC034 is managed in a very hierarchical way, with the *animateur* being the driving force of the participatory approaches. The asset of this approach lies in the efficiency and creativity of the instruments and strategies proposed for participation: legitimacy of the Docob through effective deliberation, and a differentiated strategy of communication and information. However, weaknesses range from the reluctance of the local elective representatives with the Natura 2000 process and the ongoing misinformation due to the poor transposition of the Habitats Directive by the French government.

The driving force of the pond area M-L is the mediator who ensures a linkage between local stakeholders while having a direct relationship, through the European Landowners Organization, with the European Commission. Its Triple E approach seeking to combine Ecology, Environment and Economy is also a positive point, along with the creation of yearly agreements between the ANF and fishfarmers for the management of

ponds, and enshrined in shared ownership of the ponds between the two stakeholders.⁸⁴ However, the stakeholders' reluctance to change and the discrepancy (or at least the perception of the discrepancy) between expert and local knowledge remain important obstacles.

3. Participatory approaches in Natura 2000 in the light of input and output legitimacy

The potential of participatory approaches in Natura 2000 can be assessed through 4 sets of criteria: the structure of participation, its degree, its design and the presence (or lack) of enablers.

3.1 Structure of participation

Participatory approaches in Natura 2000 can be classified into three categories. First, they encompass Policy networks, described as 'arenas in which decision-makers and interests come together to mediate differences and search for solutions'.⁸⁵ They can be either Policy communities, with a few homogeneous members and whose main function is bargaining, or issue networks encompassing a large and heterogeneous range of members with conflicting interests, and whose function is limited to consultation.⁸⁶ Participatory approaches can also happen through Governance networks, which place deliberation and information-sharing at the core of their functions and intend to produce social learning.⁸⁷ Finally, participatory approaches can take the form of Deliberative Democracy (DD), usually

⁸⁴ Officer from LNE-Vlaanderen, (Departement Leefmilieu, Natuur en Energie van de Vlaamse overheid), informal talk during a site visit on the Pond area Middle-Limburg organised in the framework of the 'Conference on the participation of landowners in management of Natura 2000 areas' organised by the European Landowners Organisation, 9 November 2011.

⁸⁵ N. Nugent, *The Government and Politics of the European Union*, Houndmills, Palgrave Macmillan, 2010, 7th edn., p. 439.

⁸⁶ *Ibid.*, p. 277.

⁸⁷ Social learning happens when 'a change in understanding has taken place in the individuals involved, [which] goes beyond the individual and becomes situated within wider social units or communities of practice; [...] and occur through social interactions and processes between actors within a social network' M. S. Reed *et al.* 'What is social learning?' *Ecology and Society*, 2010, retrieved 2 February 2011, <http://www.ecologyandsociety.org/volXX/issYY/artZZ/>, p. 1.

described as a ‘talk-centric decision-making process’.⁸⁸ Direct Deliberative Polyarchy (DDP), for instance, ‘aims at promoting direct participation, and thereby transforming the institutional setting, not simply at opening it or putting it under pressure’.⁸⁹ A concurrent theory is Reflexive Deliberative Polyarchy (RDP) which builds on its predecessor DDP, but without the direct character participation.

TYPE OF STRUCTURE		Policy community	Issue network	Governance network	DDP	RDP
PROCESS		<i>Bargaining</i>	<i>Consultation</i>	<i>Deliberation and information transmission</i>	<i>Democratic deliberation</i>	
DESIRED OUTCOME		<i>Policy outcome = output legitimacy</i>		<i>Social learning</i>	<i>Input legitimacy</i>	
B R U S S E L S	Coordination group on Nature and Biodiversity, and Ad hoc expert groups		✓			✓
	Online platforms			✓		
F R A N C E	Copil		✓ (output=docob)		(✓)	(✓)
	Working groups, informal meetings			✓	(✓)	(✓)
FLANDERS			✓ (output=NCO)	✓	✓	✓

Figure 4: Structure of participation in Brussels, France and Flanders

The main observation that can be made is that there is no discrepancy in the framework of participation implemented at the different levels. The only difference concerns the direct character of participation, defined by the extent to which stakeholders take part themselves in participatory forums. It is naturally not the case in Brussels, and only happens

⁸⁸ J. Sonnicksen, ‘Deliberative democracy as a model for the EU. Normative implications of adapting democracy to governance beyond the nation-state’, in E. Amnå, *New forms of citizen participation: normative implications*, Baden-Baden, Nomos, 2010, p. 81.

⁸⁹ P. Magnette, ‘Democracy in the EU: why and how to combine representation and participation?’ in S. Smismans, *Civil society and legitimate European governance*, Cheltenham, Edward Elgar, 2006, p. 28.

to a limited extent in France, where individual citizens living in a Natura 2000 site or interested in it cannot participate in the Copil unless represented by an association. In France, participation first and foremost happens in the working groups⁹⁰ and numerous informal meetings, but its qualification in DDP or RDP depends on the extent to which the Head of Mission is willing to adopt an inclusive and local approach.

3.2 Degree of participation: from consultation in Brussels to unreachable co-decision in the field

The comprehensiveness of participatory approaches varies, depending on the form it takes. Unnerstall distinguishes four types of participation:⁹¹ information, which can be just unilateral⁹² (for example the EC informs the general public, or ENGOS inform the EC); consultation, which can be multilateral or bilateral;⁹³ negotiation (when public authorities keep the decision-making power);⁹⁴ and co-decision.

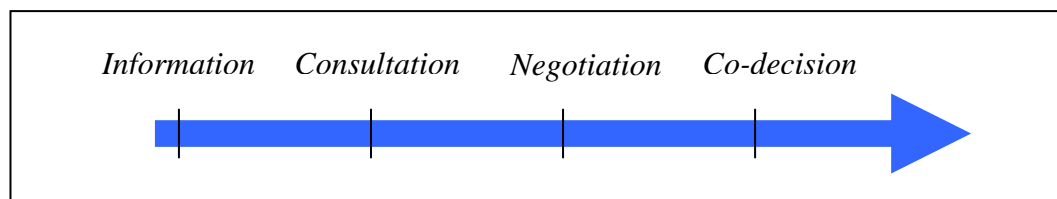


Figure 5: Continuum of the different forms of participation

In the case of Natura 2000,⁹⁵ participation seems to be incomplete. At the EU level, it essentially consists in information (online platforms) and consultation (Coordination Group on Nature and Biodiversity). Only the *ad hoc* working groups, with their problem-solving function, sometimes engage in negotiations, but they never reach co-decision since the EC still firmly controls the process. The examples of France and Belgium show that at national and local levels, efforts are made to move beyond consultation and to come as close as

⁹⁰ F. Pinton *et al.*, *op. cit.*, p. 130.

⁹¹ H. Unnerstall, 'Public Participation in the Establishment and Management of the Natura 2000 Network. Legal Framework and Administrative Practices in Selected Member States', *Journal for European Environmental and Planning Law*, vol. 5, no. 1, April 2008, p. 38.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*, p. 39.

⁹⁵ *Ibid.*

possible to co-decision. Whereas consultation can still be defined as a top-down process,⁹⁶ Member States look more and more towards participation schemes aiming at ‘shared responsibility’,⁹⁷ and made of a mix of top-down and bottom-up approaches.⁹⁸ However, the weight of public authorities in the French Copil, as well as the leading role of the ANB and Flemish government in the endorsement of regional and local NCO, show that participation approaches are still hesitating between negotiation and complete co-decision.

3.3 Scope of participation: Brussels-based consultation, an illusion of input legitimacy?

The scope of participatory processes can be analysed through four criteria: inclusiveness, balance, linkage, and spillover potential. The lack of inclusiveness occurs when there are only a limited number of actors included in the participatory process, and therefore only a limited range of knowledge (France, Flanders for regional NCO). The imbalance appears when some actors are more represented than others, as shown by the weight of public authorities in France in terms of presence in the COPIL (administration and ‘collectivités territoriales’ account together for 36% of the COPIL’s composition)⁹⁹ and in terms of the role played in the elaboration of the Docob, at least in the framing and validation of decisions.¹⁰⁰ The lack of linkages is to be seen when different networks are consulted, but without interactions between them. In Brussels indeed, the division in consultation between Natura 2000 users and ENGOS reinforces the traditional opposition between nature protection and land-use, precisely the one that Natura 2000 tried to abolish. Evidence of this division is that ELO was denied access to the EHF. Finally, the lack of spillover stems from the elitist and centralised nature of the consultation processes (Brussels case).

⁹⁶ R.W. Kruk et al., Information and communication on the designation and management of Natura 2000 sites. Organizing the management in 27 EU Member States, Main report 2, EC publications, Brussels, 2009, retrieved 8 March 2011, <http://www.inbo.be/files/bibliotheek/40/213540.pdf>, p. 18.

⁹⁷ *Ibid.*, p. 18.

⁹⁸ *Ibid.*

⁹⁹ F. Pinton *et al.*, *op. cit.*

¹⁰⁰ The Docob must be for example approved by the departmental authority (art L. 414-2, IV), according to F. Pinton *et al.*, *op. cit.*, p. 93.

	INCLUSIVE NESS	BALANCE	LINKAGE	SPILLOVER
Brussels	+	+/-	-	-
France	-	-	+	+
Flanders	-	+	+	+

Figure 6: criteria of assessment for scope of participation in Brussels, France and Flanders

The table above shows that in the light of these criteria, the scope of participation appears to be much more limited in Brussels than at national or local level.

Participatory approaches can usually be linked to input legitimacy, since information, consultation and negotiation are all ways to empower citizens and counterbalance top-down approaches. ‘A critical function of participation is for local people to be allowed to control the speed and direction of changes in their social-ecological systems’.¹⁰¹ It may also enable the involvement of groups that were usually marginalised in policy-making.¹⁰² In Brussels, however, not only are participatory procedures limited to consultation, but this consultation itself is fake: different networks are consulted without interaction between them. It is also biased, since some actors are over-represented. One of the reasons for that might be that at the end, the primary goal of Natura 2000 remains nature conservation.¹⁰³ There is therefore a risk that participatory processes might only have a formal character, knowing that

¹⁰¹ C. J. P. Colfer, *The complex forest: communities, uncertainty and adaptive collaborative management*, RFF Press and CIFOR, Washington D.C., USA & Bogor, Indonesia, 2005, cited in L.C. Stringer *et al.*, ‘Unpacking “participation” in the adaptive management of social-ecological systems: a critical review’, *Ecology and Society*, vol. 11, no. 2, 2006, retrieved 15 April 2011, <http://www.ecologyandsociety.org/vol11/iss2/art39/>, p. 3.

¹⁰² Stringer, Lindsay C. *et al.*, ‘Unpacking “participation” in the adaptive management of social-ecological systems: a critical review’, *Ecology and Society*, vol. 11, no. 2, 2006, retrieved 15 April 2011, <http://www.ecologyandsociety.org/vol11/iss2/art39/>, p. 3.

¹⁰³ Interview with Senior Policy Advisor, Copa-Cogeca, Brussels, 31 March 2011.

‘individuals who feel that they have at least been listened to may be more prepared to accept an unpopular decision’.¹⁰⁴ This element corroborates one of the main criticism addresses by scholars to new modes of governance in that they ‘recreate hierarchy’¹⁰⁵ to hide a ‘constant quest for leadership’¹⁰⁶ or to allow the ‘manipulation of governance networks (...) by public authorities’.¹⁰⁷

3.4 Enablers of participation: balancing input and output legitimacy of Natura 2000 in the field

In the field, however, the situation is more mixed, and local case studies were useful in identifying enablers for effective participation. The French case shows the importance of differentiated strategies that better answered the needs of stakeholders and allowed for the reduction of uncertainty. Both the French and Flemish examples use an intermediary or mediator between knowledge holders and stake- or shareholders, a necessity that is also underlined by ENGOs.¹⁰⁸ Communication is absolutely central, as acknowledged by the European LIFE programme’s recently issued related guidelines.¹⁰⁹ The main asset of the two case studies is the presence of effective and adapted management instruments: the Natura 2000 contract and charter in France, and yearly agreements and shared ownership in the pond area M-L. These instruments can do the following: balance or accompany integrated management plans which are more and more recommended by the EC and ENGOs;¹¹⁰ set comprehensive goals;¹¹¹ be as inclusive as possible;¹¹² if possible, exclude compensation;¹¹³

¹⁰⁴ J. Sonnicksen, *op. cit.*, p. 87.

¹⁰⁵ M. Rhodes & J. Visser, *op. cit.*, p. 123.

¹⁰⁶ *Ibid.*, p. 124.

¹⁰⁷ *Ibid.*

¹⁰⁸ I. Bouwma, Rob van Apeldoorn & D. Kamphorst, *Current practices in solving multiple use issues of Natura 2000 sites: Conflict management strategies and participatory approaches*, Final report for Task 1, EC publications, Brussels, retrieved 6 March 2011, http://ec.europa.eu/environment/nature/natura2000/management/docs/report%20LOT3_Task%201-European_review.pdf, p. 32.

¹⁰⁹ European Commission, ‘LIFE-Nature: Communicating with stakeholders and the general public. Best practice examples for Natura 2000’, *LIFE-Focus*, Luxembourg, Office for Official Publications of the European Communities, 2004.

¹¹⁰ R.W. Kruk et al., *Information and communication on the designation and management of Natura 2000 sites: Towards Integrated Management*, Main report 3, EC publications, Brussels, 2009, retrieved 8 March 2011, www.inbo.be/files/bibliotheek/34/213534.pdf, p. 31.

¹¹¹ *Ibid.*, p. 33.

¹¹² *Ibid.*, p. 32.

¹¹³ *Ibid.*

and include participation at the earliest stage possible.¹¹⁴ The case studies have finally shown that the presence of a LIFE funding (pond area M-L) or the presence of a pre-existing protected area (national park Scarpe-Escaut in France) can be external facilitators.

The fulfilment of the enablers maximise the benefits of participatory approaches and have the potential to allow social learning, i.e. ‘changing the perception of Natura 2000 from a threat to a potential benefit [...]’,¹¹⁵ as observed in the two case-studies.

If participatory processes can help reach consensus among stakeholders, they can also foster conflicts. They bring together people who used to never talk to each other and have conflicting interests,¹¹⁶ especially if the enablers mentioned before are not in place.

Lessons from both case-studies show that when participation goes beyond just formal consultation, it can turn conflicting interests into a mutual understanding of interdependence¹¹⁷ and lead to a better fit between people’s preferences and the final decisional outcome, something that can be truly called ‘government for the people’. But the risk is then that participatory approaches might drift away from the initial intention of policy makers and hinder the objective of nature protection.¹¹⁸ This was observed in the French case study where the dialogue with local municipalities led to the freezing of the extension of the Natura 2000 area. It happened as well in Flanders, when a consultation process led to a change in the prohibition of red oak plantings in a 20% capping. Unlike the Brussels-based consultation process, input legitimacy is not fake (stakeholders’ opinion weighs much more heavily), but it is pushed to such an extent that it may hinder the legislation’s effectiveness regarding its nature conservation’s objective, and ultimately the policy’s ability to deliver outputs. In this sense, participatory approaches do not enable for both input and output

¹¹⁴ *Ibid.*, p. 34.

¹¹⁵ *Ibid.*, p. 18.

¹¹⁶ N. Nowicki, *loc. cit.*

¹¹⁷ Officer from LNE-Vlaanderen, *loc. cit.*

¹¹⁸ J. Dubois & S. Maljean-Dubois, *Natura 2000: de l'injonction européenne aux négociations locales*, Paris, La Documentation française, 2005, p. 18.

legitimacy to be maximised, but they can lead to an acceptable level of both if the conditions previously mentioned are fulfilled.

Conclusion

Resistance to Natura 2000 was neither totally new nor unpredictable. The nature of the legislation activated traditional opposition between different forms of knowledge, actors and legitimacy that went beyond simple opposition to policy objectives and were further catalysed by abusive uses made of the Habitats directive. The mismatch between the policy's ambition and the policy formulation, leading to opposition encountered at the early stage of implementation, made the European Commission more and more concerned about compliance and credibility. These growing concerns, reinforced by the shift in Governance regime, explain why stakeholders' involvement incrementally made its way towards the very heart of Natura 2000. *A posteriori*, the paradox is not that the Commission chose to engage in participation whereas it had not been its initial intention, but that the Commission had initially kept away from participation when it was required by the legislation's design.

Participatory approaches have been endorsed by the EC and by national or regional authorities, but more as a reaction to implementation gaps than as a turn to more transparent and democratic governance. While participation has certainly improved input legitimacy, which is one of the Habitats Directive's objective, the EC has continuously considered that Natura 2000 was primarily intended to deliver results. It has therefore conceived participation mostly as a tool for improving compliance, consequently participatory approaches have been very often limited in terms of scope and design and have not always enabled to close the feedback loop. The Brussels-based participatory mechanisms in particular are formal procedures that ultimately do not prevent nature conservation objectives from being prioritised anyway.

In the field, nevertheless, participatory approaches have been much more genuine, especially when the right enablers were in place, which led, if not to maximise both input and output legitimacy, at least to bridge the gap between them. Even though local case studies highlight a risk that stakeholders' involvement might result in a lowest common-denominator outcome for the environment, participatory approaches do provide for a forum of deliberation, knowledge exchange, and the incorporation of stakeholders' input in the management of Natura 2000 sites. This ultimately reinforces the acceptability of the Natura 2000 policy and therefore strengthens the sustainability of environmental outcomes.

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ANNEX

Comparative chart of Natura 2000 case-study sites in France and Flanders

	TRIPLE E POND AREA VIJVERGEBIED MIDDEN-LIMBURG	FORETS DE RAISMES / SAINT AMAND / WALLERS ET MARCHIENNES ET PLAINE ALLUVIALE DE LA SCARPE
<i>Location</i>		
Country	Belgium	France
Region	Limburg	Nord-Pas-de-Calais
Location	Vlaams Gewest	Département du Nord
Surface (in hectares)	2650	1927
Biogeographical region	Atlantic	
<i>Habitats and species</i>		
Habitat types and references	Oligotrophic waters containing very few minerals generally on sandy soils of the West Mediterranean, with Isoetes spp - 3120	
	Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or of the Iso-Nanojuncetea - 3130	
	Northern Atlantic wet heaths with Erica tetralix - 4010	
	European dry heaths - 4030	
		Old acidophilous oak woods with Quercus robur on sandy plains - 9190
		Sub-Atlantic and medio-European oak or oak-hornbeam forests of the Carpinion betuli - 9160
		Lowland hay meadows (Alopecurus pratensis, Sanguisorba officinalis) - 6510
		Alkaline fens - 7230
		Natural eutrophic lakes with Magnopotamion or Hydrocharition-type vegetation - 3150
		Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) - 6410
		Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels - 6430
		Transition mires and quaking bogs - 7140
		Depressions on peat substrates of the Rhynchosporion - 7150
		Calcareous fens with Cladium mariscus and species of the Caricion davallianae - 7210
		Bog woodland – 91D0
		Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion alvae) – 91F0
Target species		
- Birds	Botaurus stellaris (bittern)	
- Amphibians	Hyla arborea (tree frog)	Triturus cristatus (crested newt) - 1166
- Invertebrates		Leucorrhinia pectoralis - 1042
		Vertigo moulinsiana - 1016
- Plants		Apium repens - 1614
<i>Human activities</i>		
Forestry	✓	✓
Hunting	✓	✓
Farming	✓	✓
Fish farming	✓	✗
Tourism	✓	✓

Others	Yearly automobile race in June	
<i>Natura 2000 status</i>		
Date of designation	1997	1999 (proposition as a SCI)
Target EU legislation	Directive 92/43/EEC - "Conservation of natural habitats and of wild fauna and flora" (21.05.92)	
	Directive 79/409/EEC - "Conservation of wild birds" (02.04.79)	
Preexisting protected area	✗	✓ (PNR Scarpe-Escaut)
Presence of a LIFE funding	✓	✗
- Duration	01/01/2010 to 31/12/2013	
- Total Budget	2,696,042.00 €	
- EU contribution	1,348,021.00 €	
- Coordinator	ELO	
- Project Partners	Ontwikkeling Vijvergebied Midden-Limburg (OVML), Belgium vzw Regionaal Landschap Lage Kempen (RLLK), Belgium vzw Limburgs Landschap (Lila), Belgium Municipality of Hasselt (HAS), Belgium Municipality of Zonhoven (ZON), Belgium Agentschap voor Natuur en Bos (ANB), Belgium	

Source: LIFE + Triple E project, <http://lifevijvergebied.eu/> & Portail Natura 2000, site 'Forêts de Raismes / Saint Amand / Wallers et Marchiennes et Plaine Alluviale de la Scarpe', <http://natura2000.ecologie.gouv.fr/sites/FR3100507.html>

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