

The new nature conservation legislation in the Flemish Region (Belgium)

by: Geert Van Hoorick (University of Ghent - Belgium)

1. Introduction

At the end of the last year the Flemish Parliament adopted a new nature conservation legislation, the "Decree of 20 October 1997 relative to nature conservation and the natural environment"¹ (hereafter: "the decree"²), thereby replacing for a large part the old "Act of 12 July 1973 on nature conservation". It contains many innovating instruments. Inspiration hereto was found in i.a. the German federal nature conservation legislation, the "Bundesnaturschutzgesetz". Although the decree is in general a framework act, it contains also some detailed provisions. Presently the Flemish government is preparing a major regulation to implement the decree. In this short contribution I will focus on a few important provisions of this decree, which consists of not less than 74 articles.

2. Purposes

The main purpose of the decree is the maintenance, the restoration and the development of both nature and the natural environment through nature protection, nature development and nature management measures (art. 2 and 6). Although the decree contains provisions to guarantee a certain freedom of exploitation in agriculture and forestry³, it also introduces some important restrictions, such as measures to protect the so called "historical permanent pastures" (which often are of ecological importance) (art. 9).

3. Planning

The nature conservation policy planning, as integrated in the environmental policy planning, consists of the making of a nature policy plan in every five year and of a nature report (state of the nature) in every two year (art. 10 to 12).

4. General provisions

4.1. Protection of landscape elements and biotopes

¹ The decree was published in the Belgian State Gazette of 10 January 1998 and is in force since 20 January 1998.

² In Belgium "decree" means an act of a region.

³ The latter is already regulated in the Forest Decree of 13 June 1990.

The decree provides for the legal base permitting the Flemish government to establish general provisions (applicable to the whole Flemish territory) to protect i.a. ecologically important landscape elements (e.g. trees, hedges, ponds, verges) and biotopes (e.g. heathland, moorland, salt marshes, wetlands) by making the change of them subject to the granting of a license (art. 13 and 15). This is from my point of view very important since they can all be protected by a single provision in a regulation which protects a *certain kind* of landscape element or biotope, so that a separate designation for *every single* landscape element and biotope is not required anymore.

4.2. Environmental duty

Also the decree lays down an environmental duty for everybody: "Everyone which commits an activity or orders someone to commit an activity and knows or reasonably has to know that the nature elements in the neighbourhood can be destroyed or seriously damaged by this activity, shall take all the reasonable measures to prevent, to control or to restore the destruction or the damage" (art. 14). Two elements make this a very useful provision. Firstly, the infringement of this provision is covered by criminal sanctions. Indeed the decree provides for general criminal sanctions applicable to the infringement of all the provisions of the decree: a fine up to \$ 5.000.000 and imprisonment up to three years. Secondly the environmental duty also applies to government authorities in their decision making.

4.3. Provisions relative to encroachments on nature

Encroachments on nature are also covered by the decree (cfr. § 8 Bundesnaturschutzgesetz). The provisions relative to encroachments on nature aim at the integration of nature conservation in the decision making in other sectors of government policy, especially in the stage of the individual decisions, such as the granting of building or environmental licenses. Given the rule that government authorities have to ensure not to cause avoidable damage to nature, a license must be refused or attached by sound conditions in the case of potential damage to nature. Encroachments in the "Flemish Ecological Network" - as explained hereafter - are even submitted to more strict rules regarding possible damage (art. 16).

5. The "Flemish Ecological Network"

By the decree, the Flemish Region focusses on the establishment of an ecological network, this is a network of linked protected areas, so that species can migrate over the whole network. Inspiration hereto was found in the current nature policy plan in the Netherlands, which aims at the establishment of an "Ecological Mainstructure", and in similar developments in Germany, where the network is called "Biotop-

verbundsystem".

According to Chapter V of the decree 9 % of the Flemish territory must be designated as Flemish Ecological Network within a period of five year. In the designated area nature will be the main function. Activities (such as recreation, agriculture, ...) will only be allowed in so far as they are compatible with this main function. Also in the Flemish Ecological Network the water (quality and quantity) management by government authorities must be tuned to the actual and potential nature values (art. 18). Moreover the Flemish Ecological Network will be buffered by areas in which government will give financial support to stimulate the integration of nature conservation in agriculture and forestry, but in opposite to in the Flemish Ecological Network, no specific restrictive measures will be taken.

6. Moratorium on deforestation

In the Flemish Region deforestation is subject to a license due to the town and country planning legislation. The granting of such a license was according to the Forest Decree submitted to some material criteria (art. 90bis of the Forest Decree). Art. 69 of the decree provides for a new art. 90bis of the Forest Decree and enstaures more strict requirements: 1) The deforestation license may only be granted if the deforestation is required for the carrying out of *works of general interest in conformity with the actual zoning plan* (so private interests never justify the granting of the license); 2) The government authority, when granting the license, must lay down in the license the measures to compensate the deforestation. In my opinion in no other country a similar strict provision which applies to the *whole* territory, is in force⁴.

⁴ For more comments on the decree I refer to two publications (in Dutch):

- G. Van Hoorick, K. De Roo en J. Rutten, "Het decreet betreffende het natuurbehoud en het natuurlijk milieu", *Tijdschrift voor Milieurecht*, 1998, pp. 2-19;

- G. Van Hoorick, "Recente ontwikkelingen in het Vlaams natuurbehoudsrecht", *Tijdschrift voor Milieu en Recht*, 1998/June.