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## ORIGIN AND DEVELOPMENT OF THE FLEMISH FOREST DECREE

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### ABSTRACT

The Flemish forest decree of 13 June 1990 is the result of 15 years intensive discussions and scrutiny by several concerned parties. The first draft was mainly the work of a small forestry group, consisting of members of the forest administration and the university. Afterwards this first draft has been thoroughly scrutinized by different pressure groups : Private forest owners, local authorities, agricultural sector, nature conservation, rural planning and politicians. Finally a decree, that can be considered as a compromise, has been approved. In this decree the basic features of the first draft are still present but the influence of the pressure groups is manifest, especially from the nature conservationists and the agricultural lobby. Some articles are also rather confuse, because of controversy between the pressure groups.

### 1. INTRODUCTION

The Flemish Forest Decree, of 13 June 1990 is the result of 15 years intense preparation, exchange of ideas, careful consideration and political decisions. It is grown from a series of dynamic factors, leading to a contemporary forest policy :

- changes in society;
- new forest uses;
- increasing importance of ecological problems and nature conservational demands;
- development of forestry sciences.

The Forestry Act of 1854 was obviously obsolete. By the law of 1 August 1974 on the provisional regionalisation, a differentiated forestry policy was possible in Belgium. A definitive milestone was the Specific Act of 8 August 1980 on the reform of the institutions, by which a regionalised forest policy became possible. So, each region (Flanders, Wallonia and Brussels) was allowed to enact its own forest legislation.

The first steps towards an improvement of the existing forest act were already taken by the former unitary forest administration, however without succes. The initiative to the establishment of a specific "Flemish Forestry Act" was taken in 1979. The competent minister charged a work group with the establishment of an innovative forest legislation, adapted to flemish situations and demands. The work group consisted of officials of the forestry administration, representatives of the universities, and a jurist, and was chaired by a collaborator of the minister. The absence of representatives of the private forest owners,

the wood column and external pressure groups was striking. The activities of the work group led, after some hard discussions, to a completely elaborated ministerial proposal of forest decree (draft I). This proposal, however, has never been submitted to the Council of State and thus was never approved.

Draft I has been reviewed by the next minister, belonging to another political party. The reviewed proposal has then been submitted for advice to the High Flemish Forestry Council, which finally approved, almost unanimously, an adjusted draft. Afterwards that text has been submitted to a wide consultation. It was discussed in all kinds of so called think-cells and pressure groups. Finally in December 1984 a second ministerial proposal of decree was sent for advice to the Council of State (draft II). Then a period of practically complete unactivity started. Almost nothing happened during more than three years, when two new ministers were in charge.

Then came a new minister, and this time the work went to the finish. The Council of State gave, after ten meetings, its advice in June 1988. It formulated a lot of small and big remarks and recommendations. Of special importance was its advice on the decretal competence of the Flemish Region.

Indeed the Council came to the conclusion that the ministerial proposal did not take into consideration four articles of the Constitution. Certain competences are reserved by the Constitution to the law, and so they cannot be regulated by the Region by means of decrees. Consequently it appeared that this draft had to be reviewed thoroughly. However, the solution was simple. The articles involved were omitted and replaced by related articles of the forestry act of 1854. So 39 articles of the old forestry act were not abolished. It mainly concerns the articles on judicial procedure of crimes committed in forests and on determining the punishment. After new consultations and a new advice of the Council of State, a bill of Forest Decree was approved by the Flemish Executive (draft III).

Then this bill was scrutinized by the Commission of Environment and Nature Conservation of the Flemish Council. The Commission spent 18 meetings to that bill and approved 85 amendments and some 60 text alterations, however without changing basically the content of that bill.

On 31 May 1990 the Forest Decree was approved by the Flemish Council by a majority of 87 %. On 13 June 1990 it was ratified by the Flemish Executive. On 28 September 1990 the Flemish Forest Decree was publicized in the statute book (text 4).

It appears from the above, that during a long period several drafts have led to the definitive Forest Decree. It is worth mentioning, that :

- the whole procedure has lasted 11 years;
- it was treated by five ministers;
- an intensive working period of 5 years was followed by a black out of 3 years and a new intensive period of 3 years.

The Forest Decree is the result of discussions, in which several parties and pressure groups were involved:

- The forestry administration, together with university centers: they provided a basic text and an innovative forest legislation.

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- The private forest-owners were not directly involved in the elaboration of the text, although they represent 70 % of the forest area. Although the Forest Decree has a great impact on them, they resisted relatively little. They have mainly defended their point of view, at least publicly, in the Flemish High Forestry Council during the second phase. In general they offered more collaboration than opposition.
  - Local authorities : some big municipalities with large forest properties, asked for a greater autonomy. They have mainly tried to impose their point of view by politicians, during the discussions in the commission, in the final phase.
  - Rural planning: this group was temporarily very active, especially during the second phase. In general, their interest was rather limited.
  - Agricultural sector : this group was actually not interested in the forest. It only wanted to prevent that new afforestations would be established on agricultural lands. Later on, when the policy on set-aside became clear, there was a net increase of resistance. The lobby mainly acted by politicians in the commission.
  - Nature conservation : in the beginning this group was not involved in the project. Later on they tried, on one hand, to minimize the impact and the importance of the Forest Decree and of the forest administration and, on the other hand, to stress the ecological function of the forest. They partially succeeded.
  - Politicians : although they are hardly interested in the forest, their activity in the commission was remarkable. Their role was not clear : interest into the forest, support of pressure groups, value of a good legislation, party interests,... Their attitude was, of course, not always consistent.

The question should be put, how the Forest Decree has grown, what resemblances can be noticed between the first text, established by foresters, and the last one, approved after eleven years of seemingly endless discussions.

## **2. COMPARISON OF THE MAIN FEATURES OF THE DIFFERENT TEXTS**

An analysis of the four basic texts (three drafts plus the final decree) clearly proves, that practically all main features of the Forest Decree were already laid down in the first draft.

1. In all drafts the decree concerns all forests. Each time a differentiated policy is aimed at in relation with the owner, with especially a distinction between the public owner and the private forest owner.
2. The objective is always formulated identically : to regulate the maintenance, the protection, the establishment and the management of the forests.
3. In all texts, as introduction, several definitions are given, a.o. the definition of a "forest".

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4. Multifunctionality of the forest and of the forest management is stressed from the beginning.
  5. In all cases the principles of accessibility are the same:
    - public forest : normally freely accessible;
    - private forest : normally not accessible, unless with permission of the owner.
  6. The preservation and the protection of the forest have always been stressed.
  7. A central position has always been assigned to the forest administration. It is always charged with the application of the forest regulation in all forests.
  8. The principle of incentives, as a support for the private forest, has already been taken in the first draft.
  9. Attempts to prevent forest fragmentation are already foreseen from the beginning.
  10. The basic principles of judicial procedures of crimes committed in forests and of determining the punishment are always the same.
  11. Provisions on the Flemish High Council have always been taken.
  12. The central point of the Forest Decree, viz. the compulsory management plan for the private forest owners with forests areas larger than 5 hectares, or for connected areas larger than 5 ha, has never been rejected.

Only the regulations on the long term forestry planning were not yet foreseen in the first draft. They were introduced in the second phase, under the impulse of the group rural planning.

So, one could conclude that the basic principles of the Forest Decree have barely changed in the course of 10 years discussions and considerations. Nevertheless the insights and provisions on the subject forest, forest functionality, forest administration, management plan, long term planning, private-forest, forest protection, etc. have continuously grown and developed. Almost all articles were continuously slightly changed.

### **3. MOST IMPORTANT CHANGES IN THE CONSECUTIVE PROPOSALS**

#### **3.1. Removal of the Forestry Act 1854**

Originally there was the intention to completely remove the Forestry Act of 1854. After the second phase however, in order to comply with the advice of the Council of State, 39 articles had to be maintained. In this respect it was remarkable that:

- During the preparatory period no one had ever considered this eventuality.
- The advice of the Council of State was very divided. The contradiction between the ministerial proposal of decree and the constitution was only established by a minimal majority.

It means that the basic legislation is not clear enough and does not provide security.

### 3.2. Definition of forest

In the first as well as in the last text, the definition contains three parts :

- the actual definition of the subject "forest";
- what also can be considered as forest;
- what not can be considered as forest.

In phase three of the draft, part three was omitted. The content of the different parts continuously changed. The definition of the subject "forest" was strongly simplified in the last phase, and thus made clearer and improved. It contains four elements :

- a ground area;
- trees and woody shrub vegetation;
- a specific fauna and flora;
- one or multiple functions.

The referring to the specific fauna and flora was due to the politicians. But there was no mentioning of a specific forest climate.

The most remarkable change however is, that, under the pressure of the political agricultural representatives, the following was taken up: " all temporary plantations with woody crops, in execution of the regulations of the E.C. concerning the set-aside of arable land, are not submitted to the Forest Decree".

### 3.3. Definition of domanial forest

The object domanial forest was not defined in the first two phases. It had still the same meaning as in the unitary Belgian period, viz. a state forest. After the regionalisation of the matter forestry it became slowly clear, that the term "state forest" should be replaced and that the term domanial forest should be newly defined. However, this appeared very difficult, taking into account the complex state structures of Belgium. Finally the following compromise has been approved : " public forest, of which the full management is entrusted to the forest administration ". As a consequence, this definition means that on the one hand not all forests, owned by the Flemish Region, should be considered as domanial forests, whereas on the other hand also local public forests can be considered as domanial forests, provided the full management is entrusted to the forestry administration.

### 3.4. The forest functions

Although the multifunctionality of the forest has always been stressed, some remarkable evolutions can be noticed.

- In the last phase, five functions are elaborated: the economic, the social and the educational, the protection, the ecological and the scientific function (the latter in combination with forest reserves). Moreover also the flora and fauna management functions were mentioned in the introduction, yet were not worked out.
- In the first draft the "ecological function" was not considered, although the nature conservational function and also the landscape function were mentioned. In the second phase the ecological function was just mentioned, but not elaborated. It was worked out in the third phase, under the pressure of the nature conservation group.
- From the second phase on, the landscape function was, due to unclear reasons, not mentioned anymore.

It is obvious that the Forest Decree does not treat the chapter on forest functions in a scientific way, on the contrary. This is partly due to the great differences in opinions of the different interest groups, but also to a poor scientific knowledge and to the continuous misuse of the terms ecology and ecological function.

### 3.5. The long term planning

Although foresters are familiar with long terms, they did not pay attention in the first phase to a long term forestry planning. That article was introduced, fortunately, by the group of rural planning. Nowadays it appears to be very worthwhile, especially in competition with other sector plans.

Once introduced, the content of the provision has been continuously changed. In this respect, it is obvious that many people have problems with this subject. It is striking that in course of time:

- the terminology used has been changed;
- besides of the long term planning there is also mentioning of implementation plans;
- the importance of all kinds of advisory committees has increased strongly;
- the period for the validity of the implementation plans has been lengthened from 10 years up to 20 years;
- the link with the decree on rural planning has been stressed more strongly;
- the Flemish Executive has alternately to approve or reject the long term plans, finally it was also decided to announce that planning to the Flemish Council.

### 3.6. The economic function

For the public forests it was stated, from the third phase on, that the level of the growing stock together with the average annual felling quantity should be tuned to the long term planning. This provision, however, has always been very disputed by the forest administration. Anyway there is no reference to it in the ordinance on the management plan. Neither the growing stock level nor the felling quantity have to be determined. This must be considered as a weak point.

For the private forests it was also stipulated in the first two phases, to determine in the management plan, for forest areas larger than 50 hectares, the growing stock that should be aimed at and also the average annual felling quantity. Afterwards these obligations were omitted.

### 3.7. The protection function of the forest.

Although the main features of this subject have not been changed, some points are remarkable:

- the objective has been extended considering water winning areas;
- initially only existing forests were mentioned, whereas from the third phase on "forests to be established" are also mentioned;
- in the first phase the implementation was exactly determined; later on, the competence of the Flemish Executive increased and advice had also to be given by the Flemish High Council for Nature Conservation;
- it is three times foreseen that a compensation "must" be given; in the second phase, however, a compensation "can" be given.

### 3.8. Ecological function

The ecological function has only been elaborated in the third phase, under the pressure of nature conservation group. The content has been taken over, for the greater part, from already existing articles concerning the forest reserves.

In the last phases the commission has introduced, some more refinements :

- there is reference to other existing acts or decrees;
- the prohibitions are linked with the management plan;
- more attention is paid to "plants";
- legal action is foreseen for offences on the use of biocides.

### 3.9. Forest reserves

There have always been fierce discussions on forest reserves. Before the Forest Decree there were no forest reserves in Flanders. Certain forests however were classified as nature reserves.

- The title "Forest reserves" and its incorporation with the other chapters in the Forest Decree have always been a matter of discussion.  
Forest reserves have always been, more or less, associated, with the scientific function of the forest.  
In the first phases of the Decree only the scientific function was mentioned, but finally the title of the chapter became : " scientific function and forest reserves."  
This combination is acceptable, as it is recognized that forest reserves have mainly a scientific function for the benefit of forestry. Nevertheless it should have been better to separate both subjects.
- Only in the first phase it was clearly stated, that all forests can fulfil a scientific function. At that time also criteria for scientific value were determined.
- The management objectives have always been the same : either a complete spontaneous development, or the aiming at specific forest types.
- The impact of nature conservation (and of hunting) became increasingly greater.
- The designation and recognition of forest reserves is vague .In the first phase, however, state forest reserves and recognized forest reserves were clearly mentioned. In the Forest Decree designation and recognition are mentioned but without a precise description. Also the implementation is confused.
- The accessibility and the degree of protection have been clearly determined in the first phase. Later on this competence was left to the Flemish Executive.
- The terms for forest reserves were initially not fixed. In the following phases the terms have ever been changed, in function of the forest owner. Only the forests, owned by the Flemish Region, remain forest reserves for an indefinite time.
- In a first phase no term was determined for the establishment of the management plan. Later on it was fixed on three years. Also the specific objectives, which must be aimed at by the management, were indicated from the second phase onwards.
- The management of all forest reserves is mainly entrusted to the forest administration. In the second phase, however, this was only the case for the public forest reserves.
- The spatial competence and the assignment of the advisory committee evolve.  
The first one becomes greater, whereas the assignment is not clearly described anymore in the latest phases.

- The possible measures in the immediate vicinity are clearly described from the third phase on; e.g. use of biocides, regulation of water levels and of land use.
- Prohibitions become increasingly more severe. Deviations can be permitted in different ways. The role of the forest administration and of the management plan increases.
- Only the first draft deals with hunting. Basically hunting is prohibited. As the Forest Decree does not mention anything at all on hunting, this matter can be ruled freely, provided the advice of the advisory committee is taken into account.
- The first draft clearly fixes the minimal area of wanted forest reserves. Later on, that provision is completely omitted.

### 3.10. Forests as state nature reserves

This is very sensitive matter, due to the competition on competence between the administrations of nature conservation and forestry.

Some nature reserves contain a certain area of forest, mainly artificial forest.

In the beginning there were no problems at all. The forests, located in nature reserves, were managed according to the ordinances, valid for the nature reserves to which they belong. The forest administration was in charge. The situation changed completely by the designation of certain very valuable forests as nature reserve and by the increasing competition on competence between the forest administration and nature conservation. Concerning this matter a strong discussion took place in the commission. Finally it was decided that the management plan of these forests had to be established according to the rules of the Nature Conservation Act. The problems, however, are not solved, as the stipulations involved are very vague and unclear.

### 3.11. The forestry administration

There has always been a large unanimity on most points concerning the general organisation of the forest service. Small changes, however, were proposed for several points, such as : taking the oath, statute of personnel, conditions of recruitment, assignments of different staffmembers, specific compensations, the acting as judicial expert, incompatibilities and position of private forest guards.

In the commission, however, a heavy discussion took place concerning the assignment of the forest service. Before, it was generally accepted that it should take care of the application of the forest regulation in all forests. However, during the discussion in the commission an amendment was submitted, aiming at the withdrawing of a series of forests (viz, nature reserves; see above) from the forest regulation. Finally it was decided that all forests should remain under the supervision of the forest service, unless the Flemish Executive issued a specific ordinance.

### 3.12. The Flemish High Forest Council

It is conspicuous that the commission has determined, that at least half of the members must belong to the group of forest owners or forest groups. This happened of course under pressure of the private forest owners.

The assignment of the Flemish High Forest Council becomes always more restricted. In the beginning the minister had to ask advice about 19 articles. This is reduced in the Forest Decree to 7 articles.

Noticeable is also that, contrary to the decreasing influence of the Flemish High Forest Council, the position of the Flemish High Council for Nature Conservation is increasingly strengthened. The position of the Flemish High Council for Hunting, however, has always been very restricted.

### 3.13. The management plan

The principle of the management plan has always been generally accepted. Nevertheless all kinds of provisions concerning competence for the establishment and approval, appeal, position of the forest service, alterations and publication were permanently changed (figure I).

A couple of items remain unchanged:

- the group of private forest owners that has to make a management plan;
- the private forest owners establish their management plans themselves.

Especially the following changes concerning the local public forests are striking:

- the drafting can be done by the public owner, eventually in collaboration with a committee, as well as by the forest service;
- it can be approved by the forest service as well as by the owner itself.

It is also striking that in the first phase, the private owners can entrust the drafting of the management plan to the forest service, that in the second phase each owner is allowed to do that, but that finally both the private forest owner and the public forest owner have to make themselves the management plan.

The obligation to set up a common management plan for joined forests existed from the beginning for private owners, but was only introduced in the last phase for the local public forests.

	phase 1	phase 2	phase 3	phase 4
<b>1. Domianial forest</b>				
establishment approval	committee forest service	cfr. public forest -	cfr. public forest -	forest service Flemish Executive
<b>2. Local public forest</b>				
establishment approval appeal	owner + committee forest service by owner to the minister	owner to be determined by the Flemish Executive to immediate higher level	forest service forest service + owner -	owner (?) owner, on advice of the forest service by forest service to Flemish Executive
<b>3. Private forest</b>				
which forests ?	- at least 5 ha - joined areas of 5 ha	idem	idem	idem
establishment approval appeal	owners forest service - to (provincial) deputation - to Flemish Executive	idem to be determined by the Flemish Executive to immediate higher level	idem forest service to committee	forest service to committee
<b>4. Help of forest service</b>				
entrust to forest service changes	private owner  private owner can same procedure	owner  owner can -	advice to private owner  - approval	advice to private owner  - - approval - appeal for public forest owner

Figure 1 : Comparative survey of the provisions on the management plan

### 3.14. The private forest

As usual the basic principles were here also already determined in the beginning. Yet in course of time some striking changes were introduced.

- In the first two phases all fellings, also the ones approved in the management plan, had to be reported to the forest service. To the contrary, in the last two phases, the fellings already foreseen in the approved management plan had not to be reported anymore.
- In the last two phases all communal and provincial ordinances, which are conflicting with the Forest Decree, are suspended by right.
- From the second phase on, it is stated that a provincial official will deal with the private forest.
- Initially the very small forest owners (< 5 ha) can only enjoy a few benefits. Later on, they are also involved with the incentives.
- The amount of incentives was originally similar to those of the public forests. Later on the amount was no longer mentioned.
- Especially striking are the very strict conditions, imposed to plantations in agrarian zones. Whereas in the beginning no special licences were required, the unanimous advice from both the agricultural service and the forest service is required in the latest phase.
- Also remarkable are the facilities, accorded in the last phase, for the uprooting of plantations in agrarian zones within a term of 12 years.
- Noticeable too is the provision, only taken up in the Forest Decree, concerning the afforestation in nature zones and ecologically valuable zones. Afforestation in these regions are, under the pressure of nature conservation, only permitted after advice of the Nature conservation service. The commission, however, was not of the opinion that this provision was necessary for reafforestation.
- In the first phase the possibilities of appeal for the private forest owner were much greater. Later on, appeal was only possible for the approval of the management plan.
- In a first phase a right on previous sale was assigned to the Flemish Region, in case of the sale of forests. Later on this was rejected.
- In the second phase, under the pressure of the private forest owners, the possibility was foreseen for the establishment of regional centra for the private forest. Afterwards the forest service opposed.

### 3.15. Forest protection

- A specific protection against sale of the public forests was only introduced in the third phase.
- Provisions about the changes of the physical situation of the soil were also introduced in the third phase under the pressure of nature conservation.
- In the first two phases deforestations were strongly hampered. In all cases the authorization of the Flemish Executive was required. Later on, however, these provisions were weakened.
- To prevent a further forest fragmentation, it was foreseen in a first phase that a permit of the minister was needed for a forest split up for areas under 10 hectares. In the second phase that permit had to be issued by the forest service, while in the third phase the area was reduced to 5 ha. But finally this provision has been omitted entirely.
- Only from the third phase on a series of prohibitions were also imposed for the private forest.
- Possibilities for a regulation of occasional forest use were only foreseen in the last phase.

### 4. CONCLUSIONS

The drafting and approval of the Flemish Forest Decree have required more than 10 years. It is obvious that the first draft is quite different from the final decree. But nevertheless one can state that the basic features of the decree remain unchanged. So the question arises to what extent those 10 years of discussion and consideration have been useful.

A total of seven important pressure groups can be distinguished. With the first draft, however, only one group was really involved, namely the forest service.

In the course of time mainly the following developments have occurred.

1. Forest service. On one side it has lost a part of its influence on other pressure groups, but on the other hand its position has been strengthened by the introduction of still greater number of articles requiring an ordinance of the Flemish Executive and thus actually prepared by the forest service.
2. Private forest owner. His influence has steadily increased. He is better represented in the Flemish High Forest Council. The reporting duty has been abolished because of the management plan. He gets more logistic support through the provincial official for the private forest. The small forest owner is better supported.
3. Local authorities. On the one side their influence has increased as they are now allowed to establish and approve themselves their management plan. On the other hand, by abolishing communal felling ordinances and by hampering the selling of their forests, their position has weakened.

4. Agricultural sector. They have obtained that forests in the framework of set-aside are not submitted to the forest decree. They also succeeded to hamper seriously afforestations of agricultural lands and to facilitate the deforestations of such lands.
5. Nature conservation. Its impact has steadily increased. It emphasized to a large extent the ecological aspect, especially in public forests, but also in private forests. The position of the Flemish High Council for Nature Conservation became always stronger.
6. Rural planning. It enabled the long term forestry planning. Its position concerning deforestation, initially strongly limited has increased.
7. Politicians. A number of them have undoubtedly made great efforts to improve the text of the decree. However, mutual discussions, stimulated by pressure groups, have often led to unclear provisions.

To conclude : more than ten years of discussion has led on the one hand to some improvements, but on the other to vagueness, all kinds of compromises and, consequently, to a remaining discussion.