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Participation of the public in the making of public decisions having an impact on the environment: a democratic progress or a new dreadful infant of the charter for the environment?

Order of August 5, 2013 (the “Order”) on the implementation of the public participation process defined in Article 7 of the Charter for the Environment, adopted in application of the Law of September 27, 2012 (the “Law”) and that entered into force on September 1, 2013, imposes on public authorities the obligation to consult the public before making any decision likely to have an impact on the environment.

The contours of the Law and the systems put in place by public authorities – with some confusion – are outlined in an article entitled *“Launch of the public participation process”* authored by Ms. Laure Marolleau and published in our [November 2013 e-newsletter](#).

The generality of Article 7 of the Charter for the Environment, incorporated into the French Constitution in 2005, and the lack of clarity of the Law will inevitably be a source of disputes.

Some difficulties have already surfaced on the means to be put in place to consult the public. In addition, the impact that these widespread public consultations may have on the timelines within which public decisions must be rendered seems poorly handled.

For instance, pursuant to the French Rural Code, the French Minister of Agriculture must grant / reject an

application for market authorization within 2 months as from receipt of the opinion issued by the ANSES, i.e. the French Agency for Food, Environmental and Occupational Health & Safety in charge of assessing plant protection products and their impact on the environment and health.

If we assume that the Minister's decisions will be subject to the newly introduced public participation process, notwithstanding the fact that the impact that products for which a market authorization is sought may have on the environment and health is assessed by an independent Agency comprising experts, the Minister has the obligation to consult the public on the decisions he contemplates issuing.

As the French Rural Code provides that the Minister must issue his decision within 2 months as from receipt of the ANSES' opinion, should we conclude that the public participation process must be organized and completed within this timeline? The answer to this question is anything but unimportant since the absence of a response from the Minister implies the rejection of the application and confers a right of appeal.

In practice, on November 12, 2013, the Minister of Agriculture posted on the Ministry's website draft decisions, some of which are behind the 2-month timeline set forth by law.

There is no doubt that many national and local administrative decisions in a broad range of areas will be affected by the new public participation process while the issuing authorities (Ministers, *préfets*, i.e. local representatives of the State, mayors, etc.) may not be always sure whether such process ought to be implemented for their decision.

Just like for the eco-tax, the Law, viewed as a democratic progress, found a broad consensus among members of the French Parliament but the Order, supposed to implement the Law, was adopted amidst widespread indifference.

Yet, the participation of the public in the preparation of decisions having an impact on the environment in the framework of a public consultation prior to the making of the decision raises important societal issues in fields where decisions are based on scientific assessments conducted by independent national or international agencies such as the ANSES in France or the European Chemicals Agency (ECHA) in Europe.

This public participation process is likely to provide a new means of expression to radical environmental organizations that have declared war on the chemical and agrochemical industries by initiating multiple legal proceedings – generally without success – and launching press campaigns based on pseudo-scientific studies from biased militant experts whose lack of scientific rigor is regularly denounced by the scientific community.

What would be the attitude of the Minister of Agriculture if thousands of messages were posted on the Ministry's website asking him to reject a market authorization application for a plant protection product, despite a favorable opinion of the ANSES based on undisputable scientific elements?

Even if other forms of public consultation have been in force for several decades in other countries such as the USA, there remains a risk that in France the implementation of the public consultation process will be influenced by the current doom-mongering, in a context of widespread opposition to all forms of progress,

perceived in France as a risk generator and as undermining “values” shared by conservatives on all sides.

This risk is all the more high as radical environmentalists, boosted by recent legislative innovations such as the protection of whistleblowers and public participation in decision-making, have other ideas in mind.

During the discussions that took place at the various stages of the *Grenelle de l’environnement*^[1], some people even thought about subjecting companies’ R&D programs to the prior approval of a committee, a large portion of whose member would come from the “civil society”, in order to make sure that the expected results would not be likely to harm the environment.

The advocates of this proposal claim that it would be nothing more than the proper implementation of Article 5 of the Charter for the Environment that reads as follows: *“When the occurrence of any damage, albeit unpredictable in the current state of scientific knowledge, may seriously and irreversibly harm the environment, public authorities shall, with due respect for the precautionary principle and their areas of jurisdiction, ensure the implementation of procedures for risk assessment and the adoption of temporary measures commensurate with the risk involved in order to preclude the occurrence of such damage.”*

For them, the above requires the need to control companies’ R&D programs, even in case of uncertain – i.e. unproven – risks. This would initiate a drift from democracy to people’s democracy, without the members of our Parliament being even aware of this discreet step-by-steps evolution towards a different model of society where ideology would prevail over science and emotion over the rules of law, bucking the trend in all other developed countries that must face the emergence of developing countries in all areas of innovation.

In the nineteenth century, some mayors refused that their city/town be connected to the railway network because of the dangers that speed would allegedly generate for the local citizens.

The map of the “*désert français*” often corresponds to the resistance of local mayors who considered that this new means of transportation was a frightening innovation. As a result, the railway network did not extend to these areas, thereby leaving large portions of our territory by the wayside for a long time.

Members of the French Parliament, wake up! Otherwise research facilities will continue moving out of France and industrial companies will continue leaving our country, causing the loss of hundreds of thousands, if not millions, of jobs and prompting France to be wiped off the world map.

[1] Sometimes referred to in English as the “*Grenelle Environment Round Table*”: an open multi-party debate that was held in [France](#) in 2007 to define the key points of public policy on environmental and sustainable development issues for the coming five years.



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