The influence of the Aarhus Convention on public participation in French and Dutch infrastructure projects

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Thesis of C.T. Ramaekers
Preface

When I started this master’s project for the Technical University Delft, I was already fascinated by large-scale infrastructure projects, not only for their functionality, but also for their important impact on society and its citizens. Having dealt with this subject for almost a year, my interest has only increased especially due to the international context in which this study was placed. The United Nations have developed a Convention applicable to the development of infrastructure projects focusing on environmental and democratic aspects of the decision-making process. This convention - known as the Convention of Århus - is described by the secretary-general of the UN Kofi Annan as ‘the most ambitious venture in environmental democracy undertaken under the auspices of the United Nations’ (UNECE 2004). Personally, I do think this is a very important issue and I believe that it is valuable reinforcing these principles by an international convention. But in this study, I have tried to describe the situations in the Netherlands and France objectively and express only the opinions of the actors involved. Thus normative expressions are used to reflect the opinion of actors involved.

This study could not have been conducted without the help of certain people. I would like to thank all French and Dutch respondents who have shared with me their indispensable knowledge and with whom I have had some inspiring conversations. I would particularly like to thank Denise Juin of IFEN for helping me gain insight into complex French legislation. Many thanks go also to Yvonne Willis for her willingness to revise my thesis on English within such a short delay.

I thank Jean-Michel Fourniau, my supervisor of INRETS. It was he who suggested that I should write a thesis on the United Nations Århus Convention and who enabled me to compare France and the Netherlands. I thank him gratefully, because the international dimension in this study was one of the most interesting aspects. Moreover, thanks to him it was possible to have a wonderful stay in Paris. Thanks go also to Yvette Taminiau, my supervisor of the Vrije Universiteit Amsterdam, because of her enthusiastic supervision and her flexible availability.

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been willing to sign every single administrative document that I needed and those were quite a lot. Thank you also for your willingness to help me with my project in Cambodia, I highly appreciate that and I am looking forward to it. All members of my graduation commission gave me critical comments which were always made in a very positive, constructive and complementary manner. Thank you for that.

Many thanks go to my parents for supporting me in all the daily things during the past three months and above all for your unconditional ongoing support on every level. Without you, this would have been impossible.

Caroline Ramaekers
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.3 Motivations</td>
<td>66</td>
</tr>
<tr>
<td>6.4 Participation Level</td>
<td>67</td>
</tr>
<tr>
<td>6.5 Policy Transfer</td>
<td>69</td>
</tr>
<tr>
<td>6.6 Actor Coalitions</td>
<td>69</td>
</tr>
<tr>
<td>6.7 Conclusions</td>
<td>72</td>
</tr>
<tr>
<td>CHAPTER 7: Conclusions and Recommendations</td>
<td>75</td>
</tr>
<tr>
<td>7.1 Introduction</td>
<td>75</td>
</tr>
<tr>
<td>7.2 Conclusions</td>
<td>75</td>
</tr>
<tr>
<td>7.3 Recommendations</td>
<td>81</td>
</tr>
<tr>
<td>Notes</td>
<td>86</td>
</tr>
<tr>
<td>Appendices</td>
<td>88</td>
</tr>
<tr>
<td>Appendix 1: Full text of the Århus Convention without annexes</td>
<td>89</td>
</tr>
<tr>
<td>Appendix 2: List of respondents</td>
<td>90</td>
</tr>
<tr>
<td>Appendix 3: Interview Guide</td>
<td>92</td>
</tr>
<tr>
<td>Appendix 4: Signatory parties</td>
<td>93</td>
</tr>
<tr>
<td>Appendix 5: The road to the Århus Convention</td>
<td>94</td>
</tr>
<tr>
<td>Appendix 6: European directives</td>
<td>95</td>
</tr>
<tr>
<td>Appendix 7: Access to information in France</td>
<td>98</td>
</tr>
<tr>
<td>Appendix 8: Public participation in France</td>
<td>99</td>
</tr>
<tr>
<td>Appendix 9: Access to information in the Netherlands</td>
<td>102</td>
</tr>
<tr>
<td>Appendix 10: Public participation in the Netherlands</td>
<td>103</td>
</tr>
<tr>
<td>References</td>
<td>106</td>
</tr>
</tbody>
</table>
List of tables and figures

Figures

Figure 1. The three pillars
Figure 2. Theoretical framework
Figure 3. Development of modernity
Figure 4. Procedure in France
Figure 5. Procedure in the Netherlands

Tables

Table 1. Normative and functional motivations
Table 2. Variables theoretical framework
Table 3. Environment for Europe conferences
Table 4. Variables preamble and negotiations
Table 5. Legislation at different levels in France
Table 6. Legislation at different levels in the Netherlands
Table 7. Comparison interpretation of the Convention
Table 8. Variables national legislation
Table 9. Variables national practices
Table 10. Differences in interpretation
Table 11. Variables France and the Netherlands
Table 12. Signatory parties
Table 13. Internal European decision-making
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>French</th>
<th>Dutch</th>
<th>English</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Études d’Avant Projet Detaillé</td>
<td>Algemene Wet Bestuursrecht</td>
<td>Detailed Preliminary Project Research</td>
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<td>Commissie van de Europese Gemeenschappen</td>
<td>General Preliminary Project Research</td>
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<td>AWB</td>
<td>Commission d’Accès aux Documents Administratifs</td>
<td>General law of Administrative Justice</td>
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<td>CADA</td>
<td>Commission des Communautés Européennes</td>
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<td>CCE</td>
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<td>DDR</td>
<td>Direction Des Routes</td>
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<td>Directoraat-Generaal Personenvervoer</td>
<td>Directorate General Passenger Transport</td>
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<td>Direction des Transports Terrestres</td>
<td>Directorate of Overland Transport</td>
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<td>Déclaration d’Utilité Publique</td>
<td>Declaration of Public Interest</td>
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<td>Commission Européenne</td>
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<td>Europees Milieu Agentschap</td>
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<td>Organisation Non-Gouvernemental</td>
<td>Non-Governmental Organisation</td>
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<td>Nationaal Milieu beleidsPlan</td>
<td>National Environmental Policy Plan</td>
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<td>OJ</td>
<td>Journal Officiel/JO</td>
<td>Staatscourant</td>
<td>Official Journal</td>
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<td>PvdA</td>
<td>Partie socialiste</td>
<td>Partij van de Arbeid</td>
<td>Labour Party</td>
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<tr>
<td>RFF</td>
<td>Réseau Ferré de France</td>
<td>(French Railroad Owner)</td>
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<td>RIVM</td>
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<td>National Institute for Public Health and Environment</td>
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<td>Strategische Milieu Effect Beoordeling</td>
<td>Strategic Environmental Impact Assessment</td>
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<td>UN</td>
<td>Nations Unies</td>
<td>Verenigde Naties</td>
<td>United Nations</td>
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<td>Union pour la Majorité Présidentielle</td>
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<td>VROM</td>
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<td>Wm</td>
<td>Wet Milieubeheer</td>
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<td>WOB</td>
<td>Wet Openbaarheid Bestuur</td>
<td>Law Publicity of Administration</td>
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<td>WRO</td>
<td>Wet Ruimtelijke Ordening</td>
<td>Physical Planning Act</td>
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<td>WWH</td>
<td>Wet op de WaterHuishouding</td>
<td>Law on Watermanagement</td>
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</table>
Summary

The United Nations Árhus Convention was signed in 1998 by France, the Netherlands and 38 other parties, including the European Union. This Convention guarantees access to environmental information, public participation in the decision-making process and access to justice. Its concept is to heighten the public’s awareness and sensitivity to environmental issues through their involvement in decision-making processes, which in turn would prove beneficial to the environment. A further advantage of this involvement is that the decision is based on a more democratic process thus enhancing participative democracy instead of relying solely on representative democracy. This study is a double case study on the following research question: “What are possible explanations for the differences in the influence of the Árhus Convention on the policies and practices in France and the Netherlands concerning public participation in the decision-making process of the development of road- and railway-infrastructure?”

The objective of such a Convention is to bring about a convergent development of national legislation and practices between all parties. The Árhus Convention did not achieve this aim as it has not overcome the unruliness of such processes. France and the Netherlands do have one thing in common concerning the implementation of the Árhus Convention: both countries were not willing to change the existing legislation in a major way. The influence of the Convention in France and in the Netherlands differed in three main areas. Firstly, unlike the Netherlands, France has not been able to translate correctly the fundamental idea behind the Convention, due to its inability to establish a clear link between the three pillars of the Convention (information, participation and justice). Secondly, despite ratification of the Convention, French legislation does not comply fully with the Convention. The Netherlands have not yet ratified the Convention, but the propositions for legislation demonstrate minimal inconsistencies with the Convention. Thirdly, in France, there is a move towards increased public participation, while more recent Dutch legislation has been restricting possibilities for public participation. This trend will continue in the foreseeable future, because while the Dutch have peaked on the attention curve of public participation, France is still evolving in their legislation and mentality. The attention curve is based on changes in the structure of society, in the political structure and in emphasis on environmental issues. Whether or not the trend is positive in a specific country, external actors like the Árhus Compliance Committee and NGO's may force them to execute the Árhus provisions, although the Committee has restricted power.
There are three barriers to overcome for the Convention to have a convergent effect and for participation to be effective. Firstly, it is necessary that many actors, favouring the idea of participation are present at national level, particularly actors in powerful positions. Secondly, normative arguments – meaning that one considers participation as a fundamental human right enhancing democratic virtues - should be the basis for participation in order to have participation in every project. Thirdly, the more functional arguments are present – meaning the more people consider that participation ameliorates the result of the project - the more public participation will be effective. The height of these barriers is dependent on the national attention curve. As the Convention includes functional as well as normative arguments, it could reinforce positive developments in both countries. But the national actor coalitions must allow the Convention to take effect; until now the signs for this are weak in France and even negative in the Netherlands.
Samenvatting

In 1998 is de Verenigde Naties Conventie van Århus ondertekend door Frankrijk, Nederland and 38 andere partijen waaronder de Europese Unie. Deze Conventie bevat wettelijk regelingen voor toegang tot milieu-informatie, publieke participatie in besluitvormingsprocessen en toegang tot de rechter in gevallen waar de eerste twee rechten geschonden zouden kunnen worden. De fundamentele idee van de Conventie is de bewustwording van de burgers voor milieu overwegingen te vergroten door hun betrokkenheid in het besluitvormingsproces; dit zou moeten resulteren in beter milieu-beleid. Een tweede voordeel van hun betrokkenheid is dat het besluit een hogere democratische waarde heeft, omdat het niet alleen door vertegenwoordigers van het volk of van bepaalde belangen is gemaakt, maar ook door de burgers zelf: dit versterkt de participatieve democratie in plaats van slechts terug te vallen op de representatieve democratie.

Deze scriptie bevat een vergelijkende case study met de volgende onderzoeksvraag: “Hoe kunnen de verschillen verklaren in de invloed van de Århus Conventie op het beleid over en de praktijk van publieke participatie in besluitvormingsprocessen voor de aanleg van weg- en spoorinfrastructuur in Frankrijk en Nederland?”

Het doel van deze Conventie was om een convergerende ontwikkeling te weeg te brengen tussen alle partijen in nationaal beleid en nationale praktijken. De Århus Conventie is hier niet in geslaagd. Frankrijk en Nederland hebben een gezamenlijke positie aangaande de nationale implementatie van de Conventie: beide landen waren niet bereid hun bestaande wetgeving op het toepassingsgebied van de Conventie aanzienlijk te veranderen. Er zijn drie belangrijke verschillen aan te geven in de invloed van de Conventie. Ten eerste heeft Frankrijk het fundamentele idee van deze Conventie niet vertaald op nationaal niveau doordat zij geen verbinding hebben gelegd tussen de drie pilaren van de Conventie (informatie, participatie en rechtsgang); dit in tegenstelling tot Nederland. Ten tweede heeft Frankrijk de Conventie wel al geratificeerd, maar de Franse wetgeving is niet in overeenstemming met de Conventie. In Nederland is de Conventie nog niet geratificeerd, maar de voorstellen van wet die in Nederland zijn gedaan zullen noemenswaardige tekortkomingen in de Nederlandse wetgeving na ratificatie uitsluiten. Ten derde is er in Frankrijk een ontwikkeling gaande die publieke participatie bevordert, terwijl in Nederland de mogelijkheden tot participatie worden beperkt. Waarschijnlijk zullen deze trends voortzetten, aangezien Nederland de top van de participatie conjunctuur al voorbij is, terwijl Frankrijk nog vooruitgaat in wetgeving en mentaliteit. Deze participatie-
conjunctuur is gebaseerd op veranderingen in structuur van de samenleving, in de politieke structuur en in aandacht voor milieu-vraagstukken. In landen met positieve trends en in landen met negatieve trends, kunnen externe actoren zoals het Århus Nalevingscomité en NGO’s, hen aansporen om de Conventie goed uit te voeren. Hierbij moet aangetekend worden dat het Nalevingscomité slechts beperkte mogelijkheden daartoe heeft.

De conclusie van deze studie is dat er drie voorwaarden zijn voor het wel of geen effect hebben van de Conventie en voor de effectiviteit van publieke participatie. Ten eerste moeten er veel actoren aanwezig zijn op nationaal niveau die de Conventie ondersteunen; actoren met machtige posities in de eerste plaats. Ten tweede moeten normatieve argumenten – namelijk dat men participatie beschouwt als een fundamenteel recht dat het democratische principe versterkt - de basis vormen voor publieke participatie om in elk project participatie mogelijk te laten zijn. Ten derde kan men stellen dat hoe meer functionele argumenten aanwezig zijn – namelijk dat men denkt dat participatie de kwaliteit van het besluit en project verhoogt -, hoe effectiever de participatie. De moeilijkheid om aan deze voorwaarden te voldoen wordt bepaald door de participatie-conjunctuur. De Conventie omvat zowel functionele als normatieve argumenten en zou dus positieve ontwikkelingen kunnen stimuleren in beide landen. Voorwaarde is dan wel dat de nationale actor coalities de Conventie steunen; indicaties hiervoor zijn zwak in Frankrijk en zelfs negatief in Nederland.
Résumé

En 1998, la Convention d’Ârhus des Nations Unies a été signée par la France, les Pays-Bas et par 38 autres parties dont l’Union Européenne. La Convention prévoit des stipulations pour accomplir l’accès à l’information environnementale, la participation publique dans les processus décisionnels et pour l’accès à la justice dans le cas où les droits surmentionnés seraient violés. L’idée fondamentale est sensibiliser davantage l’opinion public aux sujets environnementaux en engageant le public dans le processus décisionnel. Ceci doit mener d’abord à une meilleure stratégie environnementale et aussi à un processus décisionnel plus démocratique. Au lieu de se contenter de la démocratie représentative, la démocratie participative est donc renforcée. Ce mémoire contient une étude de cas comparative et il répond à la question suivante: "Comment expliquer les différences entre la France et les Pays-Bas concernant l’influence de la Convention d’Ârhus sur la politique et la pratique de la participation du public dans le processus décisionnel de l’aménagement de l’infrastructure du réseau routière et ferroviaire?"

L’objectif de cette Convention est de réaliser un développement convergent entre les pays membres à propos de la gestion et la pratique nationales. La Convention n’y a pas réussi. La France et les Pays-Bas ont une meme attitude concernant l’application de la Convention : ils n’étaient pas prêts à changer considérablement la législation existante. L’influence de la Convention diffère aux deux pays dans trois domaines. D’abord, la France, contrairement aux Pays-Bas, n’a pas pu traduire l’idée fondamentale de la Convention, dû au défaut d’établir une liaison entre les trois piliers de la Convention (information, participation, justice). Deuxièmement, bien que la France ait ratifié la Convention, la législation française n’est pas en accord avec les stipulations de la Convention. Aux Pays-Bas, la Convention n’a pas encore été ratifiée, mais avec les amendements législatifs prévus, il n’y aura plus de grandes inconsistencies. Troisièmement, en France il y a tendance à une participation publique augmentante, tandis qu’aux Pays-Bas, les possibilités de participation publique ont été réduites récemment. Probablement ces tendances poursuivront puisque aux Pays-Bas, la conjoncture de participation publique est déjà en declin, tandis qu’en France elle est toujours croissante. La conjoncture est basée sur la structure de la société, la structure politique et l'intérêt aux sujets environnementaux. Dans les deux cas, les parties externes comme le Comité d’Examen du Respect des Dispositions et les ONG’s peuvent stimuler les deux pays d’appliquer les stipulations de la Convention, mais il faut remarquer que le comité est restreint dans ses moyens.
En concluant, cette étude mentionne les trois conditions pour la réussite de la Convention et pour l’efficacité de la participation publique. Premièrement, beaucoup de soutien sur le plan national pour l’idée de la Convention est indispensable, surtout du soutien provenant de personnes haut placées. Deuxièmement, la participation doit être basée sur des arguments normatifs - c’est à dire considérer participation comme un droit fondamental qui renforce les principes démocratiques – afin de permettre la participation à chaque projet. Troisièmement, on peut dire que plus il y a d’arguments fonctionels – c’est à dire la conviction que participation améliore la décision et le projet – plus la participation est effective. Pouvoir répondre à ces conditions dépend de la conjoncture de participation. La Convention contient des arguments fonctionels et normatifs et pourrait ainsi stimuler des développements positifs dans les deux pays. Jusqu’à nos jours, les parties nationaux n’ont pas soutenu assez la Convention de sorte que ces effets positifs ne se sont pas encore produits ni en France ni aux Pays-Bas.
Chapter 1: Introduction to the study

1.1 Introduction
The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was signed on the 25th of June 1998 in Århus, Denmark. This Convention (generally called the Århus Convention) is an initiative of the Economic Commission for Europe of the United Nations (UNECE) and has been signed by 39 states and the European Union. This study will deal with the influence of this Convention on public participation in decision-making processes of the development of railway and road infrastructure in France and the Netherlands. The Århus Convention includes provisions to guarantee access to information for the public about projects that (may) harm the environment. Besides, it includes provisions to guarantee public participation in the decision-making process of such projects. Finally it has provisions on access to justice when these rights are ignored by one of the signatory parties. The fundamental idea behind this Convention is heightening the public's awareness and sensitivity to environmental issues through their involvement in the decision-making process, which in turn would prove beneficial to the environment. Another advantage of this involvement is that the decision is based on a more democratic process in the sense that it will enhance participative democracy instead of relying solely on representative democracy. The Convention is among others applicable to projects like the development of new roads and railways. This study deals with the influence of the Århus Convention on infrastructure projects in France and the Netherlands and why this influence differs in both countries (UNECE 1998). The full text of the Convention can be found in appendix 1.

The Århus Convention guarantees public participation in decision-making processes of new infrastructures in order to include environmental considerations in these processes. First, the term public participation needs to be explained. The Århus Convention offers a first grasp when analysing the function of its three pillars: it includes provisions on access to information, public participation and access to justice. The two pillars that have intrinsic value are the access-to-information pillar and the public-participation pillar. Access to justice is only included to reinforce the other pillars; thus access to justice is not an objective in itself (Figure 1). As the focus of this study is on public participation, the two other pillars are only dealt with as far as relevant for public participation.
The fact that access to information and public participation both have their own pillar, indicates that according to the Århus Convention, public participation is not defined in terms of access to information. However in France, the Barnier-law which has to deal with this subject, stipulates: “...the principle of participation according to which every person must have access to environmental information...” (JO RF 1995: art. L200-1). Clearly, in this law, participation is still defined in terms of access to information. If participation is supposed to be more than access to information, how then is it defined? Rather than one unique definition, it includes a range of different actions: from providing information about decisions already made until a codecision-making process between all actors. The past decade, increasing attention has been paid to the participation that is going beyond providing information (Fourniau 2000: 9). In this study, the word public participation is used in consonance with the Århus Convention which means in between this range of actions.

1.2 Context of the Århus Convention

Signing the Århus Convention by the signatory states implies that they can no longer define their own national rules for these environmental subjects, because they have handed over this responsibility to the United Nations. In addition to this, fifteen European states have handed this responsibility over to the European Union as well. The handing over of environmental responsibilities is common, because the effects of environmental policies are transboundary and must thus be tackled at supranational level. The development of the Convention by the United Nations Economic Commission for Europe and the signing of the Århus Convention by the European Commission was inspired by the prevailing ideas of that moment on environment, democratisation and transport.

In the environmental field, the European Treaty of Amsterdam of 1997 introduced a new paradigm: ‘sustainable development’. Sustainable development has to be achieved by integrating
environmental considerations, like local and global pollution and the use of natural resources, into Community policies. If these are structurally integrated, sustainable development results in an improvement of the environmental state. In 2001 the European Commission adopted a ten-year environmental action program. A cornerstone of this action program is that “Environmental policy-making must be based on participation and sound knowledge” (JO EU C154E 2001: 224). This must be pursued by means of actions like: consultations of stakeholders, continuing financial support to environmental NGO’s to facilitate participation in the decision-making process, and ensuring the provision of information to the public.

The democratic impact of the Århus Convention is also a concern of the European Commission. The European Union is an important governmental body that has many means to influence the national policies. Nevertheless, the public considers the European Union to be a bureaucratic organisation, which has less impact on them than the national government (OPTEM S.A.R.L. 2001: 8,41,43). In an effort to solve these problems, the European Union has undertaken the initiative of developing the European Convention, which states that citizens must be brought closer to the European design and its institutions (Secretariat of the European Convention 2003). The visibility and openness of proceedings of its institutions must be improved (art. 49), as well as the possibilities to participate in the decision-making process (art. 46). On the one hand, the European Union is promoting participatory democracy, while on the other hand the European Convention states that the working of the Union shall be founded on the principle of representative democracy (art. 45). This needs not to be contradictory, but it does require some reflection on how to develop both types of democracy in a way that will benefit to the citizens of the union. Introducing more participation may run counter to the fact that effectiveness and controllability must be maintained, while governing by representatives may pose problems to some democratic principles. In this context, the Århus Convention was signed by the European Commission, implying a willingness to enforce the participative democracy.

Problems with visibility, transparency and democratisation not only occur at large scale like the European level. For the decision-making process of infrastructure projects, these considerations count as well. The Århus Convention intends to lead the national governments, legislators and owners of specific projects into a direction of enhanced participative democracy. It is common knowledge that transportation harms the environment. The idea behind the Convention is that the negative influence of transport-related projects will decrease by giving a voice to the public who
will defend the environment. This is in line with the ideas of the European Commission. They have framed a program to mitigate environmental problems caused by transport stating that this can only be done by placing the users at the heart of the transport policy (CCE 2001: 70,87,90,91)\(^1\). States are faced with higher-level legislation on this field that should uniformise national legislation. The question is in what way these ideas are supported by the national governments that have to execute legislation.

### 1.3 Problem description

The Convention of Århus is intended as a solution to a wide variety of problems concerning environment, visibility and transparency of the government and means of participation. As time and manpower is not sufficient to deal with all the questions relevant to these subjects, it is necessary to mark out the exact research question covered by this study. This section will present the research question with the sub-questions derived from it. The next section will deal with the objective and relevance of this study. Together with the research design, elaborated in chapter two, the research plan will be complete ('t Hart et. al. 1996: 69). The main research question that will be discussed in this study is the following:

**What are possible explanations for the differences in the influence of the Århus Convention on the policies and practices in France and the Netherlands concerning public participation in the decision-making process of the development of road- and railway-infrastructure?**

This question can be divided into sub-questions. These sub-questions on their turn can be divided into theoretical questions (of which the answers are to be found in theoretical notions) and empirical questions (of which the answers are to be found in the empirical data).

#### Theoretical questions

- What are the possible motivations to introduce or enlarge the possibilities for public participation and can variation in these motivations explain the differences in the influence of the Århus Convention between the countries?
- What other explanatory variables can be defined for the differences between countries concerning the implementation of higher-level policies on public participation?

#### Empirical questions
• By whom and in which context is the Århus Convention developed and what is the result of this?
• What are the procedures and practices for public participation during the development of road- and railway-infrastructure in France and in the Netherlands and who execute these procedures?
• What are the changes in the procedures and practices in France and the Netherlands as a consequence of the Convention?
• Which are the striking differences between the influence of the Århus Convention in France and the Netherlands?

**Linking the theoretical and empirical questions**
• To what extent can the differences in influence between France and the Netherlands be explained with the explanatory variables found in the theory?

**1.4 Objective of the study**
The objective of this study is to give a systematic overview of the implications of the Århus Convention on infrastructure projects and to describe the way France and the Netherlands have implemented this Convention in their national legislation and in practice. Secondly, the objective is to analyse why differences exist in the way France and the Netherlands adopted a higher-level policy like the Århus Convention. Lastly, the possibility to bridge these differences and allowing the Convention to have a convergent effect at national level will be addressed. Recommendations will be made to enhance the chance that the Århus Convention is implemented in the intended way. Furthermore, recommendations are formulated for France and the Netherlands to smoothen the ratification path.

This study is requested by INRETS². This French institute conducts research on decision-making processes of infrastructure projects. Given that the Convention of Århus is applicable to infrastructure projects in France and in the Netherlands, it is important to have knowledge of this Convention and of the implications of this Convention on these projects. A comparison between the countries can help understand the implications better. Having deeper knowledge of this Convention can help INRETS to explore further the field of decision-making processes in an international context.

The research on the implications of the Århus Convention and the comparison between the different implications of the Århus Convention is still in its infancy. Therefore this study can be seen as an explorative study (‘t Hart et al. 1996: 71). The main purpose is to contribute new
knowledge to the research field, instead of testing existing knowledge. Theory is used to describe and analyse the situations in the two countries.

1.5 Relevance of the study
Decision-making processes of infrastructure projects is a subject that received quite some attention the last decades (Barber 1984, Flyvbjerg 1998, Fourniau 1996, Korsten 1979, Vallemont 2001). The influence of the Århus Convention on the decision-making processes of these projects is not yet analysed in a scientific manner. As this Convention is intended to determine significant parts of the decision-making processes, it is highly relevant for this field and important to have knowledge of. The knowledge gained by this study will be a systematic observation of the implications of the Århus Convention on projects in France and the Netherlands.

After the UNECE working group had developed the Århus Convention and different nations have signed this Convention, the governments of the European countries are obliged to make public participation and access to information a topic of high interest. It is far from evident that this will be done the way it is supposed to be in every country. People involved in the negotiations and ratification processes of legislation on environmental democracy might need references and learning experiences. This study can contribute to fulfil this need.

The Århus Convention is a unique treaty, because it defines the position of citizens instead of defining the position of states in an international treaty (Interview Pieters 05-11-03). However, despite the fact that the Convention of Århus is coercive legislation, only few people are aware of the provisions of this Convention and the importance of it for themselves. If more people would have knowledge of this Convention they would know what their rights and obligations are and would thus be better able to influence the decision-making processes. Knowledge of this Convention is a condition for the well-functioning of this Convention. Providing an overview and formalising the experiences with public participation and the Convention will contribute to this knowledge and thus to the functioning of this Convention.

1.6 Structure of the study
Chapter two will elaborate on the research design of this study. Chapter three gives an overview of relevant theories and will give the answers to the theoretical research questions. The development and preamble of the Convention of Århus is clarified in chapter four, as well as the
objectives of this Convention and the implications of the Convention on European directives. In this way, the Convention of Århus is illustrated. Chapter five covers national laws, procedures and institutions in France and the Netherlands, dealing with the development of roads and railways and with the procedures for public participation. The differences in legislation will be elaborated as well, but this does not imply that the same differences exist in the practices of the decision-making processes. Therefore chapter six will give additional information on this in the Netherlands and France to make comprehensive what the real impact is of the Convention of Århus on the road sector as well as on the railway sector in France and the Netherlands. The information that is provided in this chapter has been collected by doing interviews with people involved in these decision-making processes. The study will finish with the conclusions and recommendations drawn from this study in chapter seven.
Chapter 2: Research Design

2.1 Introduction
This chapter will elaborate on the research design of this study. The next section will explain which type of study is conducted; this is called the strategy of the study. The third section clarifies which research units are included in the study and why these units are chosen. The research methods will be covered in section four. Having elucidated this, the research plan will be clear which is necessary in order to demonstrate the reliability and validity of the study. The fifth section specifies the ways in which the obtained data have been analysed, while the last section clarifies the validity and reliability of the study.

2.2 Strategy of the study
The study is designed as a multiple-case study. A definition of a case study is: “an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident” (Yin 1994: 13). There are three conditions that determine whether a case study is appropriate or not (Yin 1994: 4-9). If the research questions concern primarily “how”- and “why”-questions, case studies are appropriate. In this study, it is exactly the objective to analyse the “how” and “why” of the decision-making process of the different cases, so the first condition is fulfilled. Secondly, one has to bear in mind that extensive control is not possible in a case study. In this study, the existing situation is analysed instead of an artificial situation, hence extensive control is not needed. Finally, when there is a focus on the contemporary set of events, a case study is suitable (Yin 1994: 6). Although this study has both contemporary and retrospective events, a case study is still appropriate, because the research methods can be adapted in order to analyse retrospective data as well.

2.3 Research Units
The subject of the implications of the Århus Convention on decision-making processes of infrastructure projects does not specify which actors and projects are chosen to be analysed in this study. The first choice that has been made was to compare France and the Netherlands. An analysis of these two countries is interesting, as they were known to have quite a different decision-making structure. France has a reputation as a unitary centralised state, while the Dutch are famous for their ‘poldermodel’. Although this prejudice about France is not fully true according to a study of the Dutch Ministry of Transport, the same study still states that the
Netherlands and France differ for example concerning the speed of development of high-speed trains (Ministry of Transport, Public Works and Water Management 1999: 48). Both countries have to satisfy the requirements of the Århus Convention. Because of their different historical and cultural roots, they might do this in a different way, providing an interesting comparison. This complies with what Patton calls “sampling on the basis of information-rich cases” (Patton 1987: 58).

Furthermore, the Århus Convention is applicable to many different kinds of projects. At first sight, only railway projects would be the subject of this study due to personal preferences. But it appeared that doing a comparative study to railway projects would not have given enough data, as there are not enough railway projects currently going on in the Netherlands. Therefore, projects of road development were also included. By doing this, the homogeneous sampling method is applied, because the decision-making procedures of road- and railway-infrastructures are the same within the countries (Patton 1987: 54). However, the owner of the project is different, but this will be further explained in the next section. In this way, sufficient data were available to make a comparison between France and the Netherlands. The analysis is not on the level of specific projects or actors but higher, namely the decision-making processes on roads and railways in the two countries. Thus, this study can be seen as a double case study: decision-making processes on roads and railroads in the Netherlands and in France.

2.4 Research Methods
Doing a field research creates conditions on which research methods might be appropriate to use. As this study is a case study, it is necessary to collect much detailed and in-depth information on a small number of people and cases. Qualitative methods suit this study as they provide the detailed and descriptive data demanded. Three principles guide the choice for methods: holism, contextuality and triangulation. This means that the research units should be analysed in total, in their context and from different perspectives (’t Hart et al. 1996: 269-271). Doing open interviews is a technique which suits the first two principles, as there are possibilities to explain the context and different aspects of the research unit. Data-triangulation and methodological triangulation should allow the study to comply with the third principle: it is tried to collect different kinds of data with different techniques. The main part is done with the use of two qualitative methods: analysis of documents and interviews. To complement and confirm these data, literature research
and observations of documents and behaviour of people during debates is done. It is indicated in the text, when information obtained from different sources was contradictory.

Firstly, an analysis is done of the existing documents and literature. These documents include the Århus Convention, relevant legislation at European and national level and reports of negotiations on new legislation. By doing this, the exact notions of the Århus Convention and all relevant legislation have become clear. The literature on relevant cultural differences between the two countries has been analysed as well. This provided background information to place the two countries in their context. Next to this, documents distributed by the several parties involved in this study have been analysed, for example: promotion material about the development of new roads and railways, documentation about public participation sessions and internet-sites of all relevant actors. This provides information about the working method and basic ideas of the parties involved in the decision-making processes, but additional interviewing is necessary to verify this data.

Interviewing is the most appropriate way to gain knowledge of the experiences and motivations of people involved. Desk research has been conducted to identify the right persons within several organisations. As far as possible, interviews have been done with more than one person within an organisation in order to come up to the triangulation-principle: more perspectives on the same subject. This was not always possible, because sometimes only one person was in the position to answer specific questions (i.e. chairman of the Århus negotiations is a unique position) and sometimes the subjects of discussion were not exactly the same. The desk research resulted in a list with relevant respondents to be found in appendix 2. Members of the French and Dutch delegations for the negotiations of the Århus Convention and the chairman of the Århus negotiations must be interviewed to gain more specific knowledge of the development and background of this Convention. Some people of the Dutch and French governments have been interviewed to know the background of the translation of the Århus Convention into national legislation and to know their opinion on this Convention. Next to this, employees of the organisations responsible for the development of transport projects have been interviewed to have more insight information on the process and their opinion regarding this. In France, these organisations are RFF (Réseau Ferré de France) and the Board of Roads (Direction des Routes); they are responsible for respectively railway- and road-infrastructure. In the Netherlands these responsibilities belong to ProRail and DGP (Directoraat-Generaal Personenvervoer). Interviews
have been done with people who were technical manager or communication manager of a specific project and with people in staff functions. Next to employees of these organisations, employees of the French CNDP (Commission Nationale du Débat Public) and the Dutch Inspraakpunt are included, because both have a specific responsibility for the process of public participation. With a few exceptions, all interviews were tape-recorded. All interviews were structured with an interview guide, a list of questions that are to be explored in the interview in order to obtain the same information from different people, while at the same time allowing them to elucidate the topics the way they want. The interview guide can be found in appendix 3.

2.5 Analysis of the data
Chapter three comprises a theoretical framework with four dimensions. The Netherlands and France have a position on each of the continua of these dimensions that will be characterised on the basis of the empirical evidence. Together these positions explain the influence of the Århus Convention on the countries. Chapter three will explain per variable which research methods are used and how the empirical evidence is analysed to characterise these positions. In fact, the characterisation of these positions is a three-step process. Firstly, chapter four will analyse the position of the two countries on the basis of the negotiations for the Convention. It will appear that this is insufficient for characterising all positions on the continua. Thus, the second step is taken in chapter five, where the national legislation is analysed. This step will add and re-characterise positions of both countries. Finally, chapter six will deal with national practices constituting the last part of the study and hence ending with the definitive position of the countries on the four dimensions. Each of these chapters ends with an overview of the positions of the countries upon that moment. In this way, it becomes clear that the positions of France and the Netherlands differ over the three steps.

2.6 Validity of the study
Two kinds of validity can be distinguished, which together measure the quality of a study: internal validity and external validity. Internal validity is realised when the elements of the field are described precise and explained within their context and when the research procedures are reliable and imitable. When this is ensured, the conclusions of this study are justified on the basis of the data. Four principles guarantee the internal validity of a study. The first one is using systematic methods and reporting explicit how and why these methods are used. The aim of the first part of this chapter is to fulfil this requirement. The second principle is triangulation. For most information counts that data-triangulation and methodological triangulation are ensured.
This increases the internal validity because the information is verifiable from more than one source. The third principle of internal validity is getting feedback from the informants, which is done by sending a copy of this research to all informants for comments and approval. Finally, the systematic development of theoretical notions must be guaranteed which is done in chapter three explaining the theoretical framework (‘t Hart 1996: 286-287).

Also, it is important to deal with the external validity of the study. External validity has to do with the question whether or not the conclusions of this study count for other situations that have not been included in this research. In this study, generalisations can be made to the implications of other conventions dealing with similar subjects, namely: public participation and/or protection of the environment. Generalisations can be made to other projects as well, especially to projects having an impact on spatial planning because the reactions of the public on these projects are similar. Examples of this are: water management projects and municipal development projects. Partly, one can generalise the findings of this study to European directives dealing with these subjects, but one has to be aware of the different decision-making procedures and compliance regulations at European level which might influence the outcome. It will be difficult to generalise this study to other countries, as these countries have different historical roots, cultures and mentalities, which are non-negligible factors for the influence of such a Convention at national level.
Chapter 3: Theoretical framework

3.1 Introduction

This chapter serves to give answers to the theoretical questions and to offer a framework to analyse the empirical evidence. For the sake of clarity, the theoretical questions will be repeated:

- What are the possible motivations to introduce or enlarge the possibilities for public participation and can variation in these motivations explain the differences in the influence of the Århus Convention between the countries?
- What other explanatory variables can be defined for the differences between countries concerning the implementation of higher-level policies on public participation?

As this is a comparative study between France and the Netherlands, it is first of all important to elaborate on societal developments that count for both countries. The theories of Beck and Barber will be used to explain this development and to create a common framework for France and the Netherlands. They both deal with the underlying motivations to introduce public participation in decision-making. Section two is dedicated to this part of the theory.

But it is not evident that the Netherlands and France will introduce this Convention in exactly the same way into their own legislation and practices. A difference in intensity between the two forms of motivations might influence the way both countries introduce the Convention into their legislation and practices. Besides different motivations, many other factors are important. Héritier et al. argue in their book Differential Europe (Héritier et al. 2001) that the outcomes of national policies made as a consequence of European policies are very different from one another, which is contrary to common expectations. Their theoretical notions, together with those of other authors (De Jong et al. 2002, North 1990, Taminiau 2001) enable to constitute a theoretical framework suitable for this study. Section three will elaborate this further. Explaining the similarities and differences between France and the Netherlands on the formal level does not imply that these differences will be the same in practice. Flyvbjerg explains the distinction between the reality in practice and on paper by two opposed models: the power-relation model and the discursive rationality model (Flyvbjerg 1998). The first model demonstrates that rationality is context-dependent and that the crucial context is determined by decision-makers' power, while the second model presupposes that everybody is rational and hence the reality will not deviate much of what is agreed on on paper. When analysing national practices in France and the Netherlands, some examples will be mentioned which can be characterised by this dichotomy.
Section four reproduces the complete theoretical framework and a table of variables to elaborate on similarities and differences between the French and Dutch policies on public participation. Figure 2 schematically demonstrates the theoretical framework. This framework does not include the European level for two reasons. Given that the European directives have not all been published yet, it is impossible to measure their effects. Besides, the directives (or propositions for directives) are more or less the same as the Convention and they are not going further than the provisions of the Århus Convention. Thus this study only includes the level of the United Nations (Århus Convention) and national legislation and practices.

![Theoretical framework diagram]

Figure 2. Theoretical framework

Figure 2 serves also to give an overview of the working method, used in this study. The societal developments are explained in this chapter as well as the theoretical notions, which will help to analyse the empirical evidence. Chapter four deals with the preamble and negotiations of the Århus Convention, while chapter five elaborates on national legislation. Chapter six covers the national practices based on the information obtained by several interviews. However, the choice to deal with the three boxes in this sequence does not mean that the influence is one-way. The double arrow between the three boxes signifies the interdependent relation between these. The flash between the Århus Convention to national practices is one-way, because the influence of practices on the Convention follows the formal way via national actors.

### 3.2 Societal developments

#### 3.2.1 Reinvention of politics and democracy

The last decades, increased attention has been paid to the societal developments on participative democracy. Beck reflects on this societal development in his book *Reinvention of Politics* (Beck 1997). The main concept of his theory is reflexive modernity. Beck argues that the Western industrialised countries are moving into a third stage of social development within modernity. He
suggests that before 1800 there was pre-modernity, then simple modernity and finally reflexive modernity. A characteristic of this last period is the apparent continuity of industrial society through the change. In other words reflexive modernity is about social development as a reflex to previous decisions and activities which may give rise to unintended consequences, the side effects of simple modernity (like pollution and congestion). If nothing will change, this will end up in counter-modernity, implying that all side effects that are present today will get worse.

Beck argues that the choices of the actors determine the shape of modernity. He suggests that while society is subjected to change processes that flow autonomously from previous actions, people still have options and decisions. However the sites for these decisions changed: the political arenas have changed to the sub-politics, the ‘shaping of society from below’. It covers activities that take place outside the apparent political structure. Citizens are no longer willing to follow one political program in total, instead, they undertake action themselves for a specific issue about which they are concerned and they will be involved in the sub-politics. As a consequence of the transition to a reflexive modernisation, the state and governmental organisations have lost the traditional monopoly of decision-making of the simple modernity and have to share this with science, media, business and interest groups (Beck 1997).

Another monopoly has been undermined as well: the citizens no longer grant the monopoly of knowledge to science experts. Beck states that there are two types of science: the laboratory science of the experts who analyse the world mathematically and technically and the public discursivity of experience that brings all values controversially into view. This experience-based discursivity gains importance because the public demands open procedures and a central place in the decision-making process. Beck states that doubt of the public is a fundamental characteristic in this process: “doubt which no longer only impels science, but also dethrones it, is the
layperson’s only opportunity to take revenge on the experts who are constantly patronising him” (Beck 1997: 162). As both orientations are important, the objective ought to be to allow the two kinds of knowledges complement each other by giving the opportunity to meet during the decision-making process. In this way, science has to give up their monopoly and start producing knowledge with the citizens. The loss of the monopoly of knowledge and the monopoly of decision-making at the benefit of the citizen explain the inception of sub-politics, which in fact implies new forms of public participation. Both developments of the simple modernity have major consequences for politics, therefore a reinvention of politics is necessary (Beck 1997).

Beck states that a reinvention of democracy is necessary as well. Firstly, because of the fact that democracy must adapt to the exigencies of national and supra-national level and secondly, because the foundations of democracy itself are questioned and set into motion one way or another. The democracy until now is based on a voting system and thus on representative democracy. But this will no longer hold: as the problems with which the decision-makers have to deal, are getting more complex and interdependent, it will not be sufficient to let the decision be made only by the representatives of the democracy. Instead, the public should be directly involved in the decision-making process. This implies that democracy has become reflexive and needs to be shaped in a new form, namely a society of citizens by means of public participation (Beck 1997, Aiken 2003).

3.2.2 Functional and normative motivations
Beck's theory is used in this study to elucidate the motivations behind the enlargement of public participation. These arguments can be classified as functional and normative. Beck gives a functional argument: some form of public participation is necessary if the parties are motivated to have a decision-making process with a satisfactory result. In fact, this functional argument is twofold: firstly, the demonopolisation of knowledge and the public's discursivity of experience require that a satisfactory decision-making process uses the source of knowledge of the public. Secondly, the loss of the monopoly of power induces the public to no longer accept the decisions made by the representatives. Instead, the representatives need the co-operation of the public in the sub-politics to take the decision and to implement it. These functional arguments arise from the government. However, Beck mentions a complementary argument from the perspective of the citizen. He states that the citizens are willing to undertake direct action for a specific issue instead of having the decision made by the government (Beck 1997). In this way, public participation in
the decision-making process serves as a mean to look after the interest of the citizen and as a mean to protect him for decisions imposed by the government.

Moreover, Beck deals with the reinvention of democracy that refers to the problem of adapting the rules for democracy to the enlarging scale of politics and the exigencies of the reflexive modernity. Consequently, Beck states that new forms of democracy have to replace or complement the old forms of democracy of the simple modernity; this can be done by public participation (Beck 1997). This belief in the democratic virtues of the participative decision-making process introduces a normative argument. Barber has more extensively described this normative argument in his book *Strong Democracy* (Barber 1984). He makes a very clear distinction between two different normative arguments. The first one has to deal with the well-functioning of the democracy and its intrinsic values. He concludes that participative democracy - in Barber's words strong democracy or politics in the participatory mode - is the only way possible to put into account the virtues of democracy described in his book. The second normative argument has to deal with the fact that representatives are not always capable of taking the best decision for all citizens. In this way the representative democracy has a problem with the legitimacy of the decision-making process. Introducing public participation enhances the legitimacy (Barber 1984).

Interesting is the fact that Barber not only mentions normative arguments from the perspective of the government, but also from the perspective of the citizen. He argues that the act of participating itself has its virtues too, because to participate is to create a community that governs itself and enhances citizenship; this is beneficial to the citizens. Table 1 gives an overview of the motivations in favour of public participation in the decision-making process with two dimensions: source of arguments and perspective. This table enables the reader to analyse the motivations for setting up the Convention of Århus and to know in which context France and the Netherlands have adopted this Convention. All this will be further explained and applied to France and the Netherlands in chapter six.

<table>
<thead>
<tr>
<th></th>
<th>Normative</th>
<th>Functional</th>
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<tbody>
<tr>
<td>Government</td>
<td>• Well-functioning of democracy</td>
<td>• Additional source of ideas and information</td>
</tr>
<tr>
<td></td>
<td>• Legitimacy of the decision-making process</td>
<td>• Enlarging the public acceptance</td>
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<tr>
<td>Citizen</td>
<td>• Reinforcing civility</td>
<td>• Protection and lobby for the interests</td>
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Table 1. Normative and functional motivations
3.3 Influence of higher-level legislation

3.3.1 Introduction
The societal developments on motivations for public participation count for both France and the Netherlands. However, additional dimensions are necessary to explain the differences between the two countries. Héritier et al. have analysed the impact of European legislation on the liberalisation of the transport sector in five countries (Héritier et al. 2001). They concluded that the outcomes of European policy-making tend to be much more diverse and complicated than one would expect, because they are subject to the dynamics of national politics. This conclusion contrasts with what is often claimed; namely that the definition of unique policy requirements at the European level implies converging patterns and structures of domestic regulations. Firstly, they say, it is important to bear in mind that the transformation imposed by Europe is an interactive process and not one-way traffic. Member states exert influence in the shaping of policies at the European level, by which they themselves are subsequently transformed. Secondly, European legislation is sometimes purposely vague in order to leave room for different solutions at national level. This is a consequence of the member states defending their policy making power and the fact that vague provisions are less difficult to agree on than more precise ones (Héritier et al. 2001). The principle of subsidiarity plays an important role as well.

The theory of Héritier is supplemented with some theoretical concepts of De Jong et al. (De Jong et al. 2002). Their book The theory and practice of institutional transplantation (De Jong et al. 2002) deals with institutional transplantation in several countries in the world and different domains. Institutions are defined in this theory as "stable patterns in social interactions, (...and) the rules of the game that structure action" (De Jong et al. 2002, 3). This includes laws and legal norms, policies, organisational procedures, informal codes and roles. Although institutions are mostly stable, they do change over time as a consequence of innovation or transplantation. However, multiple examples in this book demonstrate that transplantation of institutions is not always successful. De Jong et al. have two complementary perspectives. Firstly, the "actors pulling in" perspective, meaning institutions as a social construct. This means that transplants are pulled in by actors who support the ideas belonging to the transplant. These actors frame the transplant while playing a strategic game to serve their own preferences. The second perspective is the "goodness of fit" perspective, meaning institutions as a historical result of a long evolutionary process. This takes into account political, legal and cultural affinities and...
similarities between the institution and the country that has to or wants to introduce this institution (De Jong et al. 2002).

Together with the theory of Beck and Barber, the theories of Héritier and de Jong form the basis for a theoretical framework with four variables, explaining why differences exist between countries concerning the implementation of higher-level policies. Each variable will be respectively elaborated in the next sub-sections.

3.3.2 Motivations
The first variable returns to the theory on the motivations to enlarge the possibilities for public participation. The theories of Beck and Barber have been used to describe the societal development on these motivations and hence describes the common framework in which the Netherlands and France operate. But it is possible that the underlying motivations of the national actors explain also the differences in the way they interpret the Århus Convention, because differences in the intensity of normative and functional motivations exist. If a country introduces public participation based on mainly functional arguments, the way they introduce this will be visible in the way the representatives acknowledge the necessity for public participation for good decision-making. They should pay attention to the process in a way that the public must be involved and must be heard, but the output of this process is more important than the process itself. This output is expected to be a better decision because more information is available and the acceptance of the decision increases. A country that follows normative arguments emphasises the democratic virtues of participation. In such a country, the representatives will serve the citizens in the sense that the representatives are only necessary to make a synthesis of the individual values. Participative democracy is an intrinsic value, which implies that the process of the decision-making or throughput is far more emphasised than in the first country. The way the Århus Convention is implemented in the national policies will depend on the kind of motivations prevailing at national level. The development of these motivations is a long-term process and this is difficult to change. The most appropriate way of analysing the motivations is having interviews. This has been done with actors of every level (legislative, executive, etc.). Besides, a literature research on relevant cultural differences between France and the Netherlands is done. This results in a characterisation of the position of both countries on the continuum of this variable in between mainly normative or mainly functional.
3.3.3 Participation level
The second variable is the level of national policies regarding public participation, which can take a value in between advanced and backward. This defines the degree to which national legislation on public participation has been developed upon the moment of signing the Convention in comparison with other countries. A current way of defining this degree is investigating three aspects of policies on public participation (Fourniau 1996). Firstly, the moment of public participation: the earlier public participation is possible, the more the policy is advanced, because the public is still able to influence the outcome and vice versa. Secondly, countries with public participation sessions organised by independent parties are considered advanced, because in general independent parties get more confidence of the people. Countries in which the government or owner organises the sessions are considered backward. Finally, the question arises who is capable of defining the knowledge needed and adding knowledge to the process? If other parties than the government or the owner can bring in their expertise to enrich the knowledge of everyone involved in the decision-making process, this policy will be considered more advanced than countries that are relying for the expertise on the usual actors. These three aspects define together the public participation level. Logically, more changes will be required from a backward country as opposed to a advanced country if they want to satisfy all exigencies of the Århus Convention.

One aspect must be added to get a full comprehension of this variable: path dependency. According to North (North 1990: 98-99), path dependency is: “a way to narrow conceptually the choice set and link decision-making through time. It is not a story of inevitability in which the past neatly predicts the future.” Thus, path dependency makes the path constrained rather than strictly determined by history. This means that choices at specific moments in the past define the structure nowadays, as well as the possibilities for changes of this structure in the future (Arthur 1994). Consequently, a policy that is to be introduced in a new context must be viewed in the light of this context, because it has followed a specific path-dependent route. In this study, France and the Netherlands might have both a path-dependent route, because national legislation and institutions on public participation existed before the Århus Convention was signed. Hence, the implementation of the Århus Convention can encounter difficulties as a consequence of the existing legislation.
The variable public participation level must take into account the three aspects of this level and the idea of path dependency. This is necessary to be able to analyse the differences in the way France and the Netherlands have adopted the Convention of Århus. The position on the continuum of this variable is characterised on the basis of an analysis of the existing legislation on public participation concerning the three aspects. In addition to this, retrospective research on the development of the national legislation and the considerations in this process is done to identify whether or not path dependency is present.

3.3.4 Policy Transfer
This sub-section explains the third variable based on the "goodness of fit" perspective of De Jong et al (De Jong et al. 2002). This perspective takes into account political, legal and cultural affinities and similarities between the institution and the country that has to or wants to introduce this institution (De Jong et al. 2002). An important factor must be mentioned in order to make this perspective operational in this study: the fact that states can influence the higher-level policy. In this way member states can incorporate their own ideas on public participation into the Convention, decreasing differences between higher-level policies and national policies. Taminiau affirms this idea when elaborating the policy cycles in her book “Room for Manoeuvre” (Taminiau 2001). She concludes that the policy cycle often has a prolonged initial period, in which many important ideas are formulated that change minimally afterwards. She emphasises the importance of participating in this initial phase when an actor wants to influence this process. This leads to the supposition that the more and the earlier member states have been involved in the development of the Convention, the fewer difficulties they will have in coming up to this, because it will be in line with national ideas and institutions. The policy transfer is easier when the underlying ideas and spirit of the higher-level legislation are comparable. By analysing the way France and the Netherlands have participated in the negotiations during the development of this Convention, it becomes clear in what way this will influence the facility or difficulty in implementing the Århus Convention in their own legislation.

3.3.5 Actor coalitions
The last variable deals with the influence of national politics and coalitions on the adoption or introduction of higher-level policies in national policies. The concept reached by De Jong et al. that institutions can be seen as a social construct is an important notion to comprehend the effects of higher-level policies on national policies (De Jong et al. 2002). In this case it means that national actors that support firmly the ideas of public participation are needed to allow the Århus
Convention to be effective on national policies. Only then, enough efforts will be made to introduce the Convention well into the national policies with consequently a successful implementation. It is necessary to analyse the actor network at national level at two moments to be able to conclude if there have been many or few favouring actor coalitions for the Convention. Firstly, the actor coalitions favouring public participation before the signing of the Convention, during the preamble and the negotiations of the Convention, must be analysed. Secondly, the actor coalitions during the ratification process at national level and afterwards must be analysed. This will be done by comparing the input of French and Dutch actors during the preamble and negotiations of the Convention, analysing the national (preparatory) documents and doing interviews with members of the national delegations, employees of ministries and project owners.

### 3.4 Conclusions

First of all, this chapter has elaborated on societal developments that underlie the development of the Århus Convention, Dutch and French legislation on public participation and their practices. Secondly, it was described which variables explain differences in the adoption of higher-level policies by national governments. The societal development on underlying motivations counts for France as well as the Netherlands, but the intensity of these motivations might differ per country. Therefore, this is also an explanatory variable for differences in interpretation of the Convention. Table 2 gives an overview of the variables with the extremes of the continuum on each variable.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Continuum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motivations</td>
<td>Functional</td>
</tr>
<tr>
<td>Participation level</td>
<td>Advanced</td>
</tr>
<tr>
<td>Policy Transfer</td>
<td>Easy</td>
</tr>
<tr>
<td>Actor Coalitions</td>
<td>Many favouring</td>
</tr>
</tbody>
</table>

Table 2. Variables theoretical framework

The first variable defines the ruling motivations for introducing or enlarging public participation opportunities: mainly normative or functional. The second variable concerns the level upon which the policy for public participation has advanced, called participation level. These two variables apply to the period before the Århus Convention was developed, because both processes are long-term and have been initiated in the countries years or centuries ago. The third variable - policy transfer - applies to a more restricted period before the signing of the Århus
Convention, namely the preamble and negotiations of this Convention. It will be defined whether or not the national delegations were able to influence the negotiations and to facilitate the policy transfer. Finally, the actor coalition variable defines how many actor coalitions favouring legislation on public participation were present before the signing of the Convention and afterwards favouring the implementation of this Convention in a sufficient manner.

Together the positions of the countries on the four variables can assign the relationship between the Århus Convention and the national legislation as well as on the relationship between the Århus Convention and national practices. This means that the positions on the variables depend on the national legislation as well as on the behaviour of national actors in practice. The relationship between national legislation and national practices is not included in this table, because this requires additional in-depth research. However, the dichotomy of Flyvbjerg - the power-relation model vs. the discursive rationality model - emphasises the importance of understanding the differences between these two levels. In this study, both levels will be analysed as far as necessary to be able to describe the influence of the Århus Convention without having the ambition to analyse deeply the interaction between these two levels.

Chapter four, five and six will each end with a conclusion in which will be referred to table 2. Chapter four will fill in this table on the basis of the preamble and negotiations for the Convention. Chapter five will add to these findings the information found in the national legislation. This means that the positions might be different in this chapter than before as a consequence of the new information that became available. Data on national practices will be added to the analysis in chapter six. This will complete the analysis and provide the definitive positions of the countries on the four variables. These will be recapitulated in chapter seven, together with the explanatory value of these positions for the way both countries have interpreted the Århus Convention.
Chapter 4: Convention of Århus

4.1 Introduction
To understand the different implications of this Convention on national laws and specific projects, it is necessary to explain its preamble and provisions. That is what will be done in this chapter. Section two covers the preamble to the Convention, to make clear the historical roots of it. Section three will explain the negotiations for the development of the Convention focusing on the role of France and the Netherlands. The fourth section clarifies the objectives of the Convention. In this section, it will appear that its aspirations can be split into three pillars, which together form the Convention. To ratify the Convention by the European Union, some European directives had to be replaced or amended. This will be explained in section five. The last section contains the conclusions drawn from this chapter and will provide a first overview of the positions of France and the Netherlands on the continua of the variables.

4.2 Preamble
The full name of this Convention, which was adopted on the 25th of June 1998 in the Danish city of Århus, is the ‘Convention on Access to Information, Public participation in Decision-making and Access to Justice in Environmental Matters’. This Convention comes from the Economic Commission for Europe of the United Nations (UNECE) and is a result of the Fourth Ministerial Conference in the « Environment for Europe » process. During the conference, 35 countries signed that they accept and will ratify the Convention. After six months, the period in which the Convention was open for signature, 39 states and the European Commission had signed. A list of these countries is to be found in appendix 4. As stipulated in article 20 of the Convention, it would enter into force the ninetieth day after the sixteenth country ratified the Convention, namely 30 October 2001. The Århus Convention was developed during two years of negotiations with input from different nations and NGO’s under the chairmanship of Willem Kakebeeke of the Netherlands. This Convention could not have been created without previous conventions and negotiations processes and without some national actors favouring the development of such a Convention. The preamble of the Århus Convention makes clear in which context the Convention is written and which steps precede the drawing up of this Convention (Stec e.a. 2000: 2,4).

The preamble goes back to the Stockholm-Conference in 1972, when 114 states had acknowledged in the Stockholm-declaration that there is a connection between fundamental (human) rights and environment: “Man has the fundamental right to freedom, equality and
adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being” (United Nations 1972: art. 1). The preamble of the Århus Convention recalls this idea. In 1990, a European conference was held in Bergen to prepare the global Rio conference in 1992. The Bergen-conference was the first after the fall of the Soviet-Union on this subject. In these years, democratisation was an important issue. The belief was that participative democracy would ameliorate the environment. On this conference, the Netherlands and Norway tried to push public participation on the agenda, but they failed. In 1991, another conference was held in Finland and they succeeded. It resulted in the Convention on Environmental Impact Assessment in a Transboundary Context (EIA-Protocol). This included the most advanced public participation provisions in any UNECE convention before the Århus Convention (UNECE 2003b).

Principle 10 of the Rio Declaration drafted at the United Nations Conference on Environment and Development (UNCED) in 1992 is mentioned as well in the preamble. This principle states that: “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided” (United Nations 1992: principle 10). The Secretary-General of the United Nations, Kofi Annan, has stated that the Convention of Århus is “by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizens’ participation in environmental issues and for access to information on the environment held by public authorities” (Stec and Casey-Lefkowitz 2000: v).

The most recent reference of the preamble is to the Third Ministerial Conference in the “Environment for Europe” process in Bulgaria in 1995. This process is a political framework for co-operation on environmental protection in Europe. During this process, the ministers of environment, NGO’s, citizen organisations and others are working together to develop new environmental policies. These conferences are the only forum for environmental matters where Western and Eastern Europe meet each other. In general, West European countries wanted to stabilise Eastern Europe by investing and transferring knowledge to control the environmental problems (VROM 2003: 2). Specifically the Netherlands and Norway have played a large role
herein, while the role of France was very small. There have been five conferences within the framework of the “Environment for Europe process” as indicated in table 3 (UNECE 2002, VROM 2003: 1).

<table>
<thead>
<tr>
<th>Year</th>
<th>Place</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>Dobris, former Czechoslovakia</td>
<td>No attention for public participation</td>
</tr>
<tr>
<td>1993</td>
<td>Lucerne, Switzerland</td>
<td>Public participation included in seven guiding principles</td>
</tr>
<tr>
<td>1995</td>
<td>Sofia, Bulgaria</td>
<td>Sofia Guidelines and preparation of the Århus Convention</td>
</tr>
<tr>
<td>1998</td>
<td>Århus, Denmark</td>
<td>Signing of the Århus Convention</td>
</tr>
<tr>
<td>2003</td>
<td>Kiev, Ukraine</td>
<td>PRTR-protocol and SEA-protocol</td>
</tr>
</tbody>
</table>

Table 3. Environment for Europe conferences

During the process of Environment for Europe, the Netherlands and Norway have stressed this subject, but until the conference of Sofia, Great Britain and Germany blocked progress towards a juridical binding instrument (Interview Kakebeeke 21-08-03). This series of conferences demonstrates a development of ideas with several marking points. The UNECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making (the “Sofia Guidelines”) were one of the main stepping stones on the way to the Århus Convention (UNECE 1995). In fact, the Århus Convention can be regarded as an elaboration of the Sofia Guidelines. The PRTR-protocol (Protocol on Pollutant Release and Transfer Registers) and the SEA-protocol (Strategic Environmental Impact Assessment) are an elaboration of the Århus Convention with a more specific scope. Appendix 5 gives an overview of the main stepping stones of the road to the Convention of Århus.

4.3 Negotiations
4.3.1 General interests at stake
In the early part of 1996, the decision was made by the UNECE to create an ad hoc working group including NGO's, to prepare the Århus Convention. The environmental organisations were invited in this working group, because of their knowledge that can ameliorate the process and because the subject dealt with the rights for citizens and NGO's. A Dutch NGO Stichting Natuur en Milieu (SNM), represented by Mr. Hallo, stated: "It was logical that we were involved; otherwise, it would be paternalistic and old-fashioned." Following this reasoning, it would be logical to have invited citizen focus groups and national environmental institutes like RIVM and IFEN as well. However, this was not the case. SNM was involved in a non-official NGO-delegation. But Mr. Hallo was also member of the official Dutch delegation as an independent
Mr. Hallo thinks that he was also invited to be part of the national delegation because he could play the role of bridge between the NGO's and other national delegations. He says: "I helped building communication-lines, because I was easier to approach for other people than going directly to the NGO's, which was particularly necessary at the beginning because they were not used until then to communicate with NGO's at formal level."

It is evident that the objective of developing the Convention for almost all Western delegations was to converge legislation throughout Europe. In the East European countries, the Caucasus and Central Asia, the Århus Convention is primarily seen as a tool to foster further democratisation, and to address their environmental concerns. In some cases, this trend coincides with efforts to harmonise national legislation with European legislation (UNECE 2003a). At the moment of writing, more East European countries than West European countries have ratified the Convention. But, the question rises whether the Århus Convention will really take an effect on national practices in the East European states. Ms. Tanon, member of the French delegation: "The East European countries have copy-pasted the Convention; this means that it is impossible to implement it in practice, because the Convention is far too vague." Chairman Kakebeeke has more confidence: "I am very satisfied with the Convention, because it will have good effects on the democracy of Eastern Europe, notwithstanding the positive implications it will have on the existing Western legislation. It is clear that the Convention plays an important role because the European directives needed to be changed. This is a positive role, because when somebody has a question on information, the Århus Convention obliges to publish it. Moreover, you might be obliged to search the information before, which adds knowledge and you are thus capable of making a better decision". On the other hand, he says: "Believing in this argumentation was part of the spirit of that time. It was an optimistic belief. I am no longer sure of it. However, it is necessary to have a safety net of rules when environment is no longer a priority on the political agenda like at that time. This Convention serves as a safety net although there are a lot of subjects that are not (or not properly) included in the Convention because they were too difficult to agree on."

4.3.2 The Dutch and French delegation
The Dutch had a large delegation that included members of several ministries (justice, environment, external affairs, etc.) and SNM. The Dutch had an important role as initiator of the process since the early part of the nineties. Besides, the chairman of the negotiations Mr. Kakebeeke, was Dutch. Although he was chairman, he was very well informed of the stakes of
the Dutch delegation. Ms. Van Zomeren (VROM) and Mr. Portasse (V&W) affirm that the stake of the Netherlands was foremost a level playing field throughout Europe. In addition to this, they say that they had an ideological interest. The Dutch were pleased with their own practices and attach to it great democratic value. They wanted to export these practices to countries that did not have the same legal basis. The Dutch wanted to help the East European countries to build up their administrative capacity to be able to execute all possible provisions of the Convention. During negotiations, the Dutch did not want to change their entire legal system to have the same output, so sometimes they were against new provisions (particularly on the second pillar). And they succeeded, because the Convention has the same basic ideas and the same spirit as their own legislation; the provisions are nearly all comparable with those of the Netherlands as quite some provisions are included on the proposition of Dutch legislation. A minor interest for the Dutch during negotiations was not objecting too much to Mr. Kakebeeke; as he is a former high-placed official of the Dutch ministry of Environment, they wanted to support him (Interview Hallo 28-08-03).

According to the Dutch, France had no specific role during negotiations, because they thought that France had no avowed policy on these subjects. Ms. Tanon confirms this, as she was part of the French delegation in several sessions, together with the French ambassador in Geneva. Sometimes there was a third person in the delegation, but the French government was reluctant to spend as much money as the other governments, making three persons the maximum from a financial point of view. No French NGO was present during negotiations. Firstly, because the French delegation thought that NGO's do not belong to national delegations during negotiations. Secondly, because the French NGO's are not as powerful as the Anglo-Saxon NGO's, because they have less members, nor financially powerful like the Eastern European NGO's who are subsidised. Looking backward, Ms. Tanon thinks that the NGO's made the negotiations more dynamic, innovative and advanced, but far more difficult to manage. This is a less positive opinion than the one of the Netherlands, who were very satisfied with the participation of the NGO's.

Furthermore, Ms. Tanon explains that there was no clear political mandate for the French delegation until the seventh meeting out of ten, because the Convention was not a high priority in the French politics at that moment. French attention for public participation was elevated at that moment as Michel Barnier – the minister of Environment – had pushed public participation on the national agenda and developed advanced legislation on it. It is striking that a Convention with
the same subject is not actively supported by the French. Because of the lack of a political mandate, Ms. Tanon was not allowed to officially propose articles. The only thing she could do was criticising the propositions of others orally. She had no mandate, but she was instructed to slow down the negotiations, because some French ministries were worried about the possible implications of the Convention. These two reasons made that she was very restricted in her possibilities for action during negotiations. She thinks that other delegations were far more autonomous during negotiations.

A national mandate became even more necessary at the moment that the European Commission got a mandate, because this meant that the national delegations had to be co-ordinated to develop an opinion on community basis. This made that after the seventh meeting France had an official mandate and had two stakes to protect during the rest of the negotiations: firstly, to take care that the provisions were not too far away from the ones already existing in France. The Dutch also had this objective, but the Dutch succeeded better in this objective than the French. The second objective of the French was to prevent the Convention to be too Anglo-Saxon. In France they did not want Anglo-Saxon concepts in their legislation because this does not fit within their traditions. The French politics were afraid of this influence. Ms. Tanon did not at all succeed at this point, which was one of the reasons for having difficulties afterwards with the Conseil d’État (Council of State) to get a positive advice for the ratification. The biggest problem for France during negotiations was the fact that the Convention applies to both private and public projects, which is considered to be an ultimate Anglo-Saxon idea (art. 6.1 of the Convention). The French argue that public and private projects are so different, that you can not apply the same legislation to them. Debates on public projects have to deal with the feasibility of the project, defence of the public concerning expropriation by the state and the protection of the environment. As a consequence of such a debate you might change the project. However, concerning private projects, you cannot have a debate on the feasibility of the project because that is up to the proprietor of the project. The only thing about which one has to debate is the environmental impact of a private project. This means that debating right from the start about the basis of a private project is useless, because you can only change some details during the execution in order to protect the environment. However, the Anglo-Saxon idea is that all projects need to be treated in the same way, so they do not make a distinction between public and private projects.
In line with this reasoning, the French government opposed also to the fact that the industrial secret would be violated by the guarantee of giving access to information (art. 4.3). Kakebeeke stated that most West European countries did not favour a possible violation of industrial secrets, but the French in particular. During negotiations, the French government instructed Ms. Tanon that if she would not be capable of guaranteeing the industrial secret, France would not sign the Convention. First, the Belgians had proposed an article on this subject, but it was not accepted. The French proposed an article that was weaker and this was accepted. The maximum Mr. Kakebeeke could get out of this part of the negotiations was adding the provision that one has to interpret the exceptions restrictively. But Mr. Kakebeeke thinks that this is not very convincing. Ms. Tanon states: "It was a nightmare to accomplish the signing and ratification of the Århus Convention, because the industrial secret is so important for the French government." The reason behind this was that the ministry of industry fears transparency and was afraid that this stipulation would count also for the nuclear industry (Interview Lafont 30-05-03). The solution was that they made a declaration upon signing\textsuperscript{10}. Ms. Tanon: "It is not a big deal, but this means that the judges are interpreting the provisions in a certain sense, which means that the industrial secret will not be violated because they will prevail this value above the environmental one. I think that in practice other countries might do the same, but they sign it just for formality. France is always very honest, which means that they only sign when they are going to execute it in practice too." However, Mr. Portasse (V&W) stated: "Usually, the Dutch maintain better the European laws than other countries, because we are the goody, goody of the class". Hence, both countries doubt the way other countries implement the Convention and are convinced that they implement what they ratify.

4.4 The three pillars
But what then are the results of these negotiations? To analyse the content of the Convention, one has to read the preamble again. The Århus Convention emphasises in its preamble two fundamental ideas: to look upon environmental rights as human rights and to acknowledge the importance of access to information, public participation and access to justice to a sustainable development of the environment. The argumentation is that the more a government makes environmental information accessible and admits public in the decision-making process, the more the environment will get the attention of the public as well as the attention of the government. This will result in better policy on sustainable development of nature and environment. With these fundamental ideas as starting point, article one, the objective of the Convention of Århus, is
defined as follows (UNECE 1998: art. 1): “In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.” By using the words ‘the right of every person of present and future generations’, the Convention of Århus is the first international legal instrument to extend this concept to a set of legal obligations. It is clear that the Convention is not primarily about the right to a healthy environment, but about the procedural rights to achieve this objective (Stec and Casey-Lefkowitz 2000: 29). To pursue this, the Convention consists of three pillars, each of which concerns a different right for the public:

The right of access to environmental information. It is stipulated that the information must be full, accurate and up-to-date. The access-to-information pillar can be split in two. The first one is the “active” access to information, comprising the obligation of the parties to diffuse the information without a specific request for it. The second one is the so-called “passive” access to information comprising the obligation for the party to provide information in response to a request. In both cases, the Convention mentions that media like Internet and electronic information can be useful, but it does not oblige the parties to use it (UNECE 1998: art. 4, 5).

The right of the public to participate in decision-making processes. This pillar stipulates that public participation must be possible in the beginning and throughout the elaboration of: 1) a specific project, which can be private and public; 2) the development of plans and policies related to the environment; and 3) the preparation of executive regulations and generally applicable instruments (UNECE 1998: art. 6, 7 and 8).

Access to justice. The third pillar of the Convention has the purpose to enforce the previous two pillars into the national juridical systems. This pillar should ensure that practices on access to information and public participation stroke with what is agreed on in legislation. It comprises provisions that, if there is no access to information or participation, the public has the right to withstand this particular party by going to court (UNECE 1998: art. 9).

The three pillars need each other to fulfil the missions of the Convention of Århus entirely: they are thus dependent on each other. The rights, contained by these three pillars, involve obligations
for the parties to have open politics and policy-making. By doing so, it links government accountability and transparency with the environmental protection and the democratic rights of the public.

4.5 Implications at European level
The Convention of Århus was signed by the European Community and all fifteen states of the European Union at the ministerial conference held in Århus in 1998\(^\text{14}\). This study intends to explain the implication of the Convention of Århus on the development of French and Dutch infrastructure projects. This influence might take effect directly at national level. The other possibility is that it takes an indirect effect by the European directives which are developed to allow the European Union to ratify the Convention. Consequently, the member states have to comply with these new directives. But in all cases the effect will be the same, as community legislation prevails over national legislation (BIR UvA 2002: 2)\(^\text{15}\). At the moment, only the access-to-justice pillar is not yet enforced by a European directive. A proposal is done, which means that after the approval of this proposal the ratification instrument can be lodged at the United Nations. However, the European Commission has been criticised by NGO's that they have not gone far enough with the first two directives on access to information and public participation. Indeed, one can argue that the European Union could have gone further than the Århus Convention, because all states in the European Union already have a certain level of legislation on public participation, while the Århus Convention is a Convention between states with an advanced level of public participation policies and between states that had no such provisions at all in their legislation. Detailed information on the European directives dealing with the subjects of the Århus Convention can be found in appendix 6.

4.6 Conclusions
The Århus Convention has a long preamble, in which the Netherlands played a large role, while France’s role was very small. In the mid-nineties, much attention was paid in France to participative democracy because the minister of Environment placed high value on this. Nevertheless, even during negotiations for the Convention that were held just after his governing period, the input of France was very small. The Netherlands have paid much attention to environmental democracy during the nineties and were willing to do many efforts in order to convince other countries to follow their example. The result of the Convention is still considered impressive as it defines two new fundamental rights: the right of access to information and public participation. Comparing this with the theoretical framework, it is clear that the normative
argument does count in here. But, the functional argument is present too as the preamble states: “...public participation in decision-making enhance(s) the quality and the implementation of decisions...” (UNECE 1998: 1). Although the Convention of Århus can be considered quite advanced, there are some vague provisions included. This is partly due to the principle of subsidiarity, partly because one could not agree on a stronger provision. In some cases it might be possible that the argument of subsidiarity was used in a strategic way, because the member states did not want to have a specific strong provision. Weaker provisions provide the opportunity to the signatory parties to loosely translate the Convention into their legislation. This is also the case for directives at European level, due to difficult negotiations and because the European Union wanted to ratify the Convention as soon as possible, which goes quicker with less advanced propositions for directives.

Which conclusions can be drawn from this chapter concerning any similarities or differences between the positions of France and the Netherlands in the preamble towards the Convention of Århus? Three points of similarity are interesting, both countries:

• are positive about the Århus Convention and the effect on the East European countries, because it will result in a level playing field in Europe. In addition to this, the Netherlands have actively helped the East European countries in developing their capacity for administrative affairs, which demonstrates also a more ideological point of view;
• were not enthusiastic about making major adaptations in their national legislation and;
• state that they put into practice what they ratify and do not fully trust the other countries herein.

But the differences between France and the Netherlands are more striking:

• the way both countries have entered the negotiations. The Netherlands were actively involved in this actor network since 1990 and were one of the initiators of the Convention. The French were barely involved in the conferences before the Århus negotiations, although participation was a high topic in France at that moment;
• the composition of the delegation: in France it was a variable, sometimes nobody was present, most of time there were one or two persons and never a French NGO-delegation has participated; the French were not very enthusiastic about the NGO-participation. On the contrary, the Dutch were always present with an important delegation including a NGO-member and the fact that the chairman was Dutch made a difference as well;
- initiative for proposals: during negotiations the French had no political mandate until the seventh meeting which was too late to influence the negotiations by giving in proposals. The Dutch have participated with many new proposals;
- this resulted in a Convention that has the spirit which is comparable with Dutch legislation, but totally incomparable with the French, because it is considered Anglo-Saxon by the French.

Of the four variables of the theoretical framework, two can be characterised on the basis of this chapter. It is clear that the Dutch will have an easier policy transfer in the sense that they have more actively participated and hence were better able to influence the content of the Convention and aligning it with their own legislation. The actor coalition variable is negative for France and positive for the Netherlands, because in France there was barely attention for a Convention at UN-level, while the Dutch have pushed this subject on the international agenda. However, the next chapter will recharacterise the position of the two countries on these variables on the basis of the information found in the national legislation and the adaptations the two countries made to comply with the Århus Convention. It will become clear that the amount of favouring Dutch actor coalitions for the Convention have decreased after signing. Hence, they will not maintain the position they have in table 4.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Continuum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motivations</td>
<td>Functional ------------------ Normative</td>
</tr>
<tr>
<td>Participation level</td>
<td>Advanced ------------------- Backward</td>
</tr>
<tr>
<td>Policy Transfer</td>
<td>Easy                       NL ------------------------------- FR Difficult</td>
</tr>
<tr>
<td>Actor Coalitions</td>
<td>Many favouring             NL ------------------------------- FR Few favouring</td>
</tr>
</tbody>
</table>

Table 4. Variables preamble and negotiations
Chapter 5: National legislation

5.1 Introduction
At the present time, the Netherlands have not yet ratified the Århus Convention, while France has ratified the Convention on the 8th of July 2002 (UNECE 2004a). This chapter describes the ratification process for France, while for the Netherlands the changes will be described of the approved proposition for amendments of the Dutch government. Section two will elaborate on difficulties in the French ratification process. The existing legislative situation on the three pillars will be clarified with a strong focus on the second pillar: public participation. By doing this, it will be clear where French legislation lay prior to the signing of the Århus Convention and which aspects of French legislation do not comply with the Århus Convention. Section three elaborates on French legislation which have been developed to fulfil the requirements of the Århus Convention. Sections four and five will cover the Dutch situation similarly. Section six will analyse the data from the previous sections and will compare the French and Dutch legislation. Finally, section seven will cover the conclusions drawn from this chapter and will also set out the position of both countries on the variables.

5.2 Procedures in France
5.2.1 Signing and ratification
Supporting the Convention was not a political priority in France, because the French thought that they had to change their legislation without any effect. However, supporting the idea of public participation was a political priority. "The value of public participation is clear in France, but we want to implement this with respect to our own traditions and not imposed by external forces" (Interview Tanon 08-10-03). This also explains the lack of French input during the preliminary stages of negotiations. They considered the nature of the subject as a matter of internal administration of each industrial state. This principle of subsidiarity was the main criticism of the Conseil d'État (Council of State) and was, together with the problem of industrial secret, the reason for which the Conseil d'État had almost given negative advice. They accused the national delegation of France of not having an overview of the consequences and that they were too easy during negotiations. Ms. Tanon, being criticised severely by the French administration, is still optimistic about this Convention as it can serve as a point of reference for other ministries regarding the importance of the principles of the Convention. Ratification in the parliament was not difficult as the French parliament considered existing national legislation to be in compliance with the Convention. But “...even for countries like France, the adoption of the Convention must
enable more participative procedures to come into force” (Assemblée Nationale 2002: 19). The policy of giving access to information was indeed already quite advanced and well established in France, but not so for the policy of public participation. Direct involvement in the decision-making process from the outset of the project is a more recent development in the French decision-making structure. The Århus Convention brought about several changes in legislation. France tried to incorporate the European directives (of which the proposals for two pillars were already present) to be able to ratify and translate both the Århus Convention and European legislation. The Convention was approved by the Senate and the National Assembly and ratified on the 8th of July 2002.

5.2.2 Existing legislation
Current legislation on access to information is not specific to environmental information, but is covered in general legislation, namely the CADA-law of 1978. Another relevant law - in particular for the public participation, but also for access to information – dates from 1995, generally known as the Barnier-law, named after the French minister of Environment. This law stipulated the following principle: “...participation according to which every person must have access to environmental information...” (JO RF 1995: art. L200-1). This fits exactly into the Århus Convention because access to information is formulated as a right. This definition defines participation in terms of access to information, posing a problem when it comes to compliance with the public-participation pillar of the Århus Convention. Other deficiencies are detailed in appendix 7, but there are also some positive developments. An environmental charter is currently being adopted by the French council of ministers, which will be added to the constitution of the republic, meaning that all environmental rights, stipulated in this charter, will become fundamental human rights for the French. Two articles in this charter are particularly important: firstly, article one states that everybody has the right to live in a healthy environment. Furthermore, article seven states that every person has the right to have access to environmental information in possession of public authorities and has the right to participate in the elaboration of projects and plans that will have an effect on the environment (MEDD 2003).

French legislation on public participation is not as well established as legislation to guarantee access to information. The main problem is that several laws (or charters and circulars which do not have legislative power) applicable to different fields and types of infrastructure, exist side by side, without any clear link between the different provisions on public participation. Ms. Tanon:
“We do not have a good definition of the subsequent phases in large-scale projects as a consequence of the complex legislation; this poses a big problem for us.” An attempt by the Conseil d'État to include all legislation into one transparent law failed in 1999. Unlike the access-to-information pillar, legislation regarding public participation is included in French laws on the basis of environmental considerations. Hence, public participation as an item is not covered specifically in French legislation. Table 5 illustrates the different laws on participation for projects and plans and programs at national and local level in order to tackle the complexity of French legislation.

<table>
<thead>
<tr>
<th>Level/Subject</th>
<th>Projects</th>
<th>Plans and programs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local</td>
<td>Code de l'Urbanisme L300-2 (1985)</td>
<td>SCOT/PLU (Municipal Zoning Plan), Public Inquiry</td>
</tr>
<tr>
<td></td>
<td>Public Inquiry (1983)</td>
<td></td>
</tr>
</tbody>
</table>

Table 5. Legislation at different levels in France

Despite the fact that French legislation is complex, it is clear that the main moment for public participation is the public inquiry for projects as well as for plans and programs. The public inquiry is a procedure dating from the 19th century, introduced to guarantee private property. A small-scale environmental impact assessment is part of this public inquiry. However, it comes too late in the procedures. Hence, the decision is neither open nor is the process participative. As a consequence of negative public opinions on some large-scale projects, the French were forced by the public to change this. The Barnier-law has been developed, creating a National Commission for the Public Debate (CNDP) to organise debates for large-scale projects. Railways and routes fulfilling specific criteria must be submitted to the CNDP. A research done by the owner is used by the CNDP to determine whether or not a public debate is necessary depending of the national interest of the project, the socio-economical effects and the impact on the environment. The task of this commission is not to judge the outcome from the debate, but to ensure that every opinion on the objectives and characteristics of the project can be heard freely and constructively. This debate is a very advanced form of participation, because it comes early in the procedure, allowing everybody to participate and the owner is then obliged to demonstrate in what way he comes up to the remarks. A schematic overview and a more detailed explanation of the decision-making process for large-scale projects can be found in appendix 8.
In general, it can be said that legislation in France does not contain enough strong provisions to guarantee early public participation in every project. The Århus Convention stipulates that public participation must commence at the outset of the project allowing the public to contribute positively to the project, rather than being handed a *fait accompli*. This poses a problem for French legislation because the public inquiry constitutes the basis of the public participation procedure. But this procedure has many judicial constraints. Therefore, changes in the project might result in more public inquiries increasing costs and time for public participation. The CNDP is a solution for this in case of large-scale projects; however, this is not the case for small projects, which are hence not in compliance with Århus. In fact the public debate of the CNDP and public inquiries mirror each other: the inquiries have a wide scope but are non-participative, while the CNDP-procedure is only applicable to large-scale projects but is really participative. This gap is supposed to be filled by a less formalised procedure in the Code de l'Urbanisme, requiring participation throughout all projects. The following chapter will demonstrate that this does not give sufficient guarantee for public participation (Vallemont 2001: 47).

The Barnier-law includes also certain provisions on access to justice. This law offers possibilities for French and international associations to follow several judicial routes if they believe that the government has not acted in accordance with this law, implying access to justice. This law also states that environmental organisations always have an interest to go to court, as they defend (inter-)national environmental state. Before the creation of this law, environmental organisations were allowed to go to court, only if the project affected the department in which they are located. According to the National Assembly, access to justice is sufficiently provided for in French legislation.

### 5.3 Adjustments in French legislation

The previous section elaborated on legislation in France regarding the three pillars, focusing on public participation. Many laws and other forms of legislation deal with this subject, but these are insufficient according to the Århus Convention. This section will elaborate on what has been done to eliminate the inconsistencies regarding public participation so that French legislation should be in compliance with the provisions of the Århus Convention. The French did not use the Implementation Guide of the Convention to adapt their legislation to the Århus Convention. This Guide was considered to be too voluminous and being only available in English made it difficult for them to work with (Interview Colon 04-07-03).
To comply with the Århus Convention concerning public participation and as a result of national developments, a new law came into force in February 2002: the Law on Proximity of Democracy. The fourth title of this law deals fully with public participation. The objective of this new law is threefold: to enlarge the democracy and the transparency of the development process of projects; to take into account the decentralisation effects on the public inquiry procedure; and to modernise and rationalise the procedures. The stipulations necessary for ratification of the Århus Convention are thus included in a law that is not dedicated solely to public participation. The legislators have put all these provisions in one single law in order to quicken the procedure, because they wanted the proposition of this law to be voted for before the new elections. This law has a tenuous link with the Århus Convention and is a minimal interpretation of the Convention. Nevertheless, this resulted in some adjustments, like adding a phrase to the definition of public participation in the Barnier-law, making a distinction between public participation and access to information: “...and the public is involved in the development process of projects which has an important effect on the environment or on the national and regional development” (JO RF 50 2002: art. 132).

Another implication of this law is a change in the legal status of the CNDP: it has become an independent administrative authority, emphasising more its independence. Moreover, the scope of the CNDP has been enlarged in order to allow more public debates to come under the control of this commission; the aim is to multiply the number of debates by four to approximately twenty a year. The minimum requirements for submittance to the CNDP have been lowered and private projects are also subject to this law. This means that the CNDP can also organise a public debate on private projects as is in line with the Århus Convention. Moreover, it stipulates that the owner of the project has to make a follow-up report with his conclusions. This report is included in the dossier of the public inquiry. The interventionist role played by the CNDP will no longer be restricted to the public debate, but will be enlarged until the moment that the project is realised and functions. Together, this must take care of the fact that a clear link exists between the different phases of public participation. Its financial budget has been increased accordingly.

However, the idea of public participation in an early stage of the project is not ensured by these amendments. In most cases, the public inquiry will still be the only officially legal binding instrument for the owners of a project and this is too late and not extensive enough. Besides, this
new law complicated legislation another time, which is why the Senate has asked to amend the new law of 2002 to simplify it (Interview Audhui 28-05-03).

5.4 Procedures in the Netherlands
5.4.1 Ratification and signing
The Netherlands have played an active role in developing the Århus Convention; firstly, by providing the chairman for the working group and secondly, by bringing in propositions for articles. It can be said that the Netherlands pioneered the Convention resulting in a Convention in line with the provisions of Dutch legislation. For this reason the Dutch National Assembly assumed that ratification of the Århus Convention would not take many efforts. Contrary to expectations, the French have already ratified the Convention, while the Dutch are still in the process of ratification. SNM, the Dutch NGO, stated: “The 22 countries that have already ratified the Convention are astonished by the fact that the Netherlands have not yet ratified it. They were playing an important role in the development and were creating expectations (to ratify the Convention soon) by doing so…” (SNM 2002: 1). There are three possible explanations for this: firstly because of different perspectives regarding the timetable. While some members wanted to “retain” the role of the pioneer by ratifying the Convention as soon as possible, others wanted to wait for the European Union in order to ratify the Convention and the European directives simultaneously18 (Tweede kamer der SG 2003b: 1). A second reason for the delay according to Mr. Hallo of the SNM is that some ministries have delayed the ratification of the Convention. In particular, the Dutch minister of Economic Affairs and the minister of Justice were causing trouble concerning legal terminology. According to Mr. Portasse of the Dutch Ministry of Transport (V&W), his ministry was in principle not against a legal basis for giving access to information and possibilities for public participation, provided that the procedures are not protracted. They were even quite constructive according to some employees of the Ministry of Environment (VROM): they wanted to go further than VROM, because this creates transparency, allowing V&W to sell its policy easier. A third reason for the delay was the new elections and length of time taken to form the new government; therefore no substantial debate could take place in the Assembly for nearly a year. Finally, the Dutch government developed new legislation in line with the Convention and the proposed provisions of the European Union. In January 2004, the Convention and the amendments on existing legislation have been discussed in the assembly (Interview van Zomeren 26-01-04). At the moment it is unclear whether or not they approved all amendments as a result of this discussion.
5.4.2 Existing legislation
As previously stated, there were quite a few laws on public participation in the Dutch system prior to the development of the Århus Convention. The most important existing provisions are covered here. Concerning access to information, the general provisions are included in the Law Publicity of Administration (WOB), which is in some aspects even more advanced than the Århus Convention, namely that the delay of providing information is two weeks (Staatscourant 1991, WOB: art. 3.11). Although a number of provisions in the Århus Convention are Dutch initiative, the provisions still have a strong implication on the WOB. The Dutch government wanted to keep legislation transparent and uniform. Therefore, they made the provisions not only applicable to environmental information, but to all kinds of information. Dutch legislation is nearly completely in compliance with the Århus Convention. Only minor aspects of the Convention are not included in Dutch legislation. A detailed overview of this is given in appendix 9.

All laws that define procedures for decision-making refer to the General law of Administrative Justice (AWB) concerning the way public participation must be implemented. For plans and programs concerning spatial planning, the Physical Planning act (WRO) is applicable, which also refers to the AWB. However, the way the AWB was incorporated in plans and programs was not clearly defined, resulting in some necessary changes done in the proposal to ratify the Convention\(^{19}\). Contradictory, the moments for public participation in projects concerning the development of infrastructure are well defined. Table 6 gives an overview of legislation at national and local level and for projects as well as plans and programs. All legislation mentioned in this table refers to the WOB. The focus will be on national projects as this is the legislation applicable on the development of new transport infrastructure.

<table>
<thead>
<tr>
<th>Level/Subject</th>
<th>Projects</th>
<th>Plans and programs</th>
</tr>
</thead>
<tbody>
<tr>
<td>National</td>
<td>Route Act/MER</td>
<td>PKB, NMP</td>
</tr>
<tr>
<td>Local</td>
<td>Route Act/MER</td>
<td>Regional and Municipal Zoning Plans (MZP's)</td>
</tr>
<tr>
<td></td>
<td>Municipal Zoning Plans (MZP's)</td>
<td></td>
</tr>
</tbody>
</table>

Table 6. Legislation at different levels in the Netherlands

The regulations for the development of new roads and railroads are included in three laws: the Route Act, the Law of Environmental Policy (Wm) and the Law Publicity of Administration (AWB). Together they constitute the Route-procedure. An informal exploration phase, very often
involving residents, precedes the formal part of the Route Act (Interview Van der Kolk 22-08-03). During the formal part of the procedure, participation is possible in every procedural step. Besides, an environmental impact assessment (EIA) is done by the owner and adapted after each governmental decision. A dedicated commission checks compliance with the legal requirements for the EIA: the MER-Commission. This is a private foundation, with its own budget funded by governmental subsidies. The MER-commission has a legal task for advice. This advice is based on profound expertise and is considered so important, that the decision-makers often follow the advice. The organisation charged with the task organising all participation sessions is the Inspraakpunt. This service organisation, part of the Ministry of Transport, was founded in 1997. Its function is to execute and ameliorate the process and quality of all legally based public participation as well as to diffuse clear and up-to-date information during the decision-making process. Unlike the MER-Commission, they do not have a content-related responsibility, but they do have a responsibility for the execution of the participation. The owner remains responsible for the result of the participation and the project, allowing the Inspraakpunt to take a content-independent position. A schematic overview and a more detailed explanation can be found in appendix 10.

Access to justice is arranged by the General law of Administrative Justice (AWB). In 1986, a certain judgement has favoured interest groups in their right to participate, which made that since then Dutch legislation completely satisfy the exigencies of the Århus Convention concerning access to justice (Tweede kamer der SG 2003c: 8).

5.5 Adjustments in Dutch legislation
The Dutch government used the Implementation Guide to develop legislation necessary to be in compliance with Århus. After legislative adjustments, any inconsistency with the Århus Convention will be minor and will not pose problems. Parliamentary approval and lodging a ratification instrument at the secretary-general of the United Nations are the actions left for ratification by the Netherlands. This is foreseen for the second half of 2004.

Some autonomous trends in the Netherlands demonstrate a movement away from the Århus Convention. The EIA, controlled by the MER-commission has appeared to be an effective instrument, because the majority of the projects is environmental friendlier than previously (Ketting 2003). However, the MER-commission considers a simplification of the current
procedures necessary, because this will save time and money: instead of stipulating strict
procedures, they want to stipulate minimal guarantees resulting in the abolishment of public
participation in the first phase of some smaller projects (Ketting 2003). Procedures for large-scale
projects must be remained unchanged. The government took this opinion into account in 2002,
when it agreed to a *lex specialis* on the Route Act concerning a restricted number of road
enlargement projects. The aim of this law is to accelerate the decision-making process for such
projects. This decreases the possibilities for public participation, shortens the delays for
reviewing documentation and introduces less restrictive provisions on noise pollution. The
motivation for this law is as follows: "In an administrative culture where everybody "polders\(^{20}\)"
less, and decides more, a substantial time gain can be expected" (Tweede Kamer der Staten-
Generaal 2002: 2). The first project applicable under this law had a public hearing, during which
the comments of the public were focused on the new law. Concerns are raised regarding limited
public participation and the hierarchic behaviour of the state: "It is shocking that the National
Assembly has agreed on this law. This act is barbaric in a time that the citizen must be able to
have confidence in an integer government" (Platform A2 2003: 6). Nevertheless, the new law is
in compliance with the Århus Convention, although it moves away from the essence of Århus.

The same is true for a proposed revision of the AWB, which restricts the definition of the public
who has the right to participate in decision-making procedures of infrastructure projects. At the
present time, everybody has the right to participate (*actio popularis*), but this revision will restrict
this right to those with an interest. Moreover, only those people who have participated can have
access to justice afterwards. Again, this law is in compliance with Århus, but it is an indicator
that environment and public participation are no longer of high priority.

### 5.6 Analysis

It has become clear that neither France, nor the Netherlands have made major alterations to their
legislation. In fact, the implementation of the Convention has been degraded to some technocratic
adjustments. Contradictions between the national legislation and the Convention had to be
resolved, but this was done with minimal impact on the legislation. This demonstrates that the
Århus Convention has not opened up new opportunities and a new way of thinking about public
participation. Both countries still have their own different interpretation of public participation;
thus, the Convention has no convergent influence on national legislation. One common variable
behind this development is a lack of will of the actor coalitions to make the Århus Convention
more than just a bureaucratic job. In the Netherlands respondents agreed that the underlying reason was because public participation was no longer a priority. This implies that the actor coalitions present before and at the signing of the Convention differ from those afterwards at national level. It is sometimes argued that countries are willing to export their ideas and defend their ideas at international level without implementing these very ideas themselves, but this does not count that much for the Netherlands. This is reflected by the Dutch investment and progressive action undertaken to implement their preached policy in other countries while having quite advanced policies themselves. Then, another conclusion must be drawn, namely that a gap has originated between the policy preached at international level and the national policies. The reason for this is simple: a new government coalition with less favouring actors came into being at national level, while the people at international level were officials of the previous governmental coalition with the old ideas. In France there was also a lack of will of the actors but because of the fact that the Århus Convention was Anglo-Saxon. In France, environment is still an important issue. These national trends on participation and environment - attention curves - will be further dealt with in the next chapter. A second variable is important in France as well: French respondents confirm that these minimal changes are also due to path dependency in France, because the public inquiry procedure is too rigid (Interview Lefloch 21-10-03, Interview Colon 04-07-03).

Differences in legislation between the two countries must be assessed as well. A striking difference is the interpretation of the principle idea of the Århus Convention: giving access to information for efficient public participation resulting in a better environment. The French have transposed the two pillars without any link between these two rights. This does not support the fundamental idea of the Århus Convention. The Dutch refer in their decision-making procedures to the AWB and have more obligations to make information available during the development of infrastructure projects, establishing a link between these two rights. Another difference is the amount of inconsistencies between the countries and the Århus Convention, in particular the French. This might present a problem for the Compliance Committee of the Århus Convention who may ask France to better transpose the Convention in their legislation. The most important deficiencies in French legislation are its lack of transparency and the insufficient possibilities for public participation except for large-scale projects. The Netherlands too have some details in their legislation which are not well transposed of the Århus Convention. Nevertheless, the
principal idea of the Convention has been adopted in Dutch legislation and above all, the legislation is more transparent and comprehensible for the public than French legislation.

The Inspraakpunt has a less ambitious goal and a less independent status than the CNDP but is more integrated in the procedure and more transparent in their practices. They take care of all projects, irrespective of size. Although the Inspraakpunt is not an independent administrative authority like the CNDP, both organisations are content-independent. That is to say that the presidents of the public participation sessions are independent as far as the project is concerned, because they do not have any administrative interest in this project. However, people who fulfil this function do have experience in this field, because they come from communities, ministerial advisory boards or political parties. The MER-Commission is an example of a really independent actor in the Netherlands. It demonstrates that the environmental principles behind the Convention are well integrated into the Dutch legislation.

5.7 Conclusions

The conclusion is that legislation in the Netherlands is currently more in line with the Århus Convention than the French, but there are indicators that in the future this may change: new legislation in France supports public participation and enlarges the possibilities for it, while new legislation in the Netherlands restricts it. Secondly, the environment has lost its priority status in the Netherlands, while in France the current government places high value on the environment. However, the French attention for environment will not be evident at international level, unlike the Dutch with the Århus Convention, because they do not aspire exporting their legislation (Interview Tanon 08-10-03). Table 7 gives an overview of all the similarities and differences between France and the Netherlands concerning the introduction of the Convention into their legislation.

<table>
<thead>
<tr>
<th>FRANCE</th>
<th>THE NETHERLANDS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Similarities</strong></td>
<td></td>
</tr>
<tr>
<td>Minimise adjustments and continue their chosen path</td>
<td>Minimise adjustments and continue their chosen path</td>
</tr>
<tr>
<td><strong>Differences</strong></td>
<td></td>
</tr>
<tr>
<td>No link between pillars</td>
<td>Link between pillars</td>
</tr>
<tr>
<td>Several major inconsistencies (less elaborated EIA, public participation too late in procedure, no transparency)</td>
<td>Sufficient policy (Inspraakpunt, MER-Commission, only a few minor inconsistencies)</td>
</tr>
<tr>
<td>New legislation advanced</td>
<td>New legislation step backwards</td>
</tr>
</tbody>
</table>

Table 7. Comparison interpretation of the Convention
The position of both countries on the variables of the theoretical framework can be (re-)characterised on the basis of this chapter except for the first variable “motivations”; this will be dealt with in chapter six. The second variable, public participation level, must be defined according to three aspects: moment, independence and expertise. In France, the majority of the projects has only one opportunity for public participation which is too late for the public to influence it. The same is true for the presence of an independent party: large-scale projects rely on an independent commission (CNDP), while the rest of the projects has a prefect or owner responsible for public participation. The expertise that can be brought into French decision-making processes is less than in the Netherlands, due to the lack of a commission for environmental impact assessments and the late moment for public participation. The conclusion is that the majority of the French projects do not have an advanced form of participation. Because the CNDP is quite advanced as a commission and because of the fact that there are some laws that are supposed to fill the gap between public inquiries and CNDP, France will not be judged having an extreme backward policy, but falls between average and backward. Dutch legislation is more uniform for all projects; it stipulates public participation throughout the project, it has two (content-)independent commissions (Inspraakpunt and Commission-MER) and offers more possibilities for bringing in expertise by the public and by the Commission-MER. This is why the Dutch policy is considered advanced. Moreover, in France, one can recognise path dependency: the national legislators had restricted possibilities to introduce the Århus Convention in their legislation. The public inquiry procedure is so important and established that it is very difficult to change this. The legislators have chosen to follow the path notwithstanding the fact that it was necessary to change this procedure in order to comply fully with the Århus Convention. Path dependency occurs merely in advanced policies, but the French do suffer from path dependency although the French policy is characterised as average backward, since it is evident that the implementation of the Århus Convention encountered difficulties as a consequence of the existing legislation.

The third variable – policy transfer - has remained unchanged since the previous chapter. The opposite extreme positions of both countries have been affirmed. The fourth variable demonstrates a difference between France and the Netherlands. Both countries state that they support the idea of public participation. However, France is reluctant to support a Convention that is not in line with its own traditions because it is considered Anglo-Saxon. In fact, the French oppose the basic idea of policy transfer. In the Netherlands, the idea of public participation was
no longer an important issue. This means that many active favouring actor coalitions who have pushed the Convention in the nineties were disappeared when they were needed to ratify and implement the Convention properly. In conclusion, France has very few favouring actor coalitions for the Convention, while the Netherlands have a few more left. Table 8 gives an overview of the variables and the positions of France and the Netherlands on the continua at this moment.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Continuum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motivations</td>
<td>Functional</td>
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<tr>
<td></td>
<td>Normative</td>
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<td>Participation level</td>
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<tr>
<td></td>
<td>Backward</td>
</tr>
<tr>
<td>Policy Transfer</td>
<td>Comparable</td>
</tr>
<tr>
<td></td>
<td>Different</td>
</tr>
<tr>
<td>Actor Coalitions</td>
<td>Many favouring</td>
</tr>
<tr>
<td></td>
<td>Few favouring</td>
</tr>
</tbody>
</table>

Table 8. Variables national legislation
Chapter 6: National practices

6.1 Introduction
Chapter five has explored the differences in the way the Århus Convention is implemented in the French and Dutch legislation. However, this is insufficient evidence to conclude whether or not the Convention of Århus has an influence on public participation practices in France and the Netherlands because it is up to the project leaders, owners and actors like the CNDP and Inspraakpunt to execute the procedures; a difference might exist between the provisions in the law and in practice. Flyvbjerg described this as a difference between the power-relation model in practice and the discursive rationality model in theory. It will become clear in this chapter that some practices in France and the Netherlands belong indeed to the power-relation model and hence differ from the rational procedure in legislation. The attention curve is already mentioned, but has to be clarified, which will be done in section two of this chapter, refering to some cultural and political factors in France and the Netherlands. Together these factors form the basis for the attention curve, which influences the countries' positions on the four variables of the theoretical framework and has thus an indirect influence on the way the Convention of Århus will be implemented. This attention curve can be used to predict a change in the countries' positions on the variables. Section three to six will clarify the French and Dutch practices for each variable refering in some sections to these underlying factors. Data in these sections come mainly from French and Dutch respondents and literature study. A list of the respondents can be found in appendix 2. Section seven will cover the conclusions drawn from this chapter and will also set out the definitive positions of France and the Netherlands on the continua.

6.2 Underlying factors
6.2.1 Structure of society
The different structure of society and the position of the government and the citizen herein is an important cultural difference between France and the Netherlands. Mr. Simon of the CGPC (Ministry of Transport) has an interesting opinion, stating that France is handicapped on the implementation of the rights on public participation. "France is represented by a considerable amount of bureaucratic levels, like the elected representatives, powerful syndicates and other representative groups. On historical grounds, France had always great confidence in these representatives. This makes that the French citizens are less used to express themselves; consequently a public debate is culturally not evident." Though, Mr. Simon states that this mentality is changing, because of the differences between older and younger engineers. But this
difference is small, because they come from a school where teaching is a one-way process: the teacher teaches and the student listens, resulting in much respect for science and knowledge. Changing this will take a lot of time, because the knowledge of the engineers and the power of the representatives must be broken down. This development fits neatly into the theory of Beck. Beck would say that a reinvention of politics is beginning in France and as a consequence, functional arguments for public participation will grow in importance.

De Jong and Prieur affirm that the structure of society is different in France and in the Netherlands (De Jong 1999, Prieur 1999). De Jong says that in reality, decision-making is concentrated in the hands of certain people who have known each other since they were together in the *Grandes Écoles*. He states: "It is not so much a matter of a concentration of power at national level, as a limited group of politicians and officials with technical and economic skills who have double positions and sit like spiders in the middle of the decision-making web" (De Jong 1999: 166-167). In particular, the *Grands Élus* play an important role in this web: they are normally elected as mayors of the large cities but are also deputy in the National Assembly. This means that they can influence the decision-making processes on several levels and use their power at national level to force a change at local level and vice versa. This is a reason why the French have less confidence in the results of public participation than the Dutch (Prieur 1999: 22, De Jong 1999: 167). This is an important factor as the citizen must feel that public participation is useful in the sense that the government will take into account the outcome of the debate instead of rejecting it a priori; otherwise they will not participate. In the Netherlands the public has more confidence in the open attitude of the government (Prieur 1999: 15). Even some French authors take the Dutch situation as an example of *comme il faut*. They say for example that a public decision is preceded by an internal dialogue between the state, the economic actors and the citizens (*Poldermodel*). This administrative culture is based on transparency and consensus, but they are aware of the disadvantage: the process is lengthier than in France. On the contrary, they say, France has a decision-making process that is more behind closed doors. France has a culture of conflict while the Netherlands have a culture of consensus (Prieur 1999). These national administrative cultures are strongly based on legislation and traditions and are anchored in the mentality of the administrators. As mentalities do not change quickly, this might become an obstacle for successful implementation of the Århus Convention.
6.2.2 Political structure: decentralisation and democratisation

Two elements of the political structure have to be clarified: decentralisation and democratisation. Dutch administration is more decentralised than French administration. Prieur says that the more the decision is taken on local level, the more public participation can be effective (Prieur 1999). This is the case in the Netherlands, as opposed to France where environmental decision-making is the responsibility of the prefect, representing the national government. In both countries, a move towards (more) decentralisation is going on, which will result in fewer infrastructure projects coming under the responsibility of the national government. In the Netherlands this will result in fewer projects included in the national plans, but without major consequences for possibilities for public participation. In France, projects will be executed under the responsibility of the regional or departmental government. Although this French development seems positive at first glance, it will have the negative consequence that fewer debates will be submitted to the CNDP. At the present time, the CNDP is in charge of projects of national interest. Projects owned by the state are undoubtedly of national interest. For other projects, it is more difficult to demonstrate national interest. This provision should be changed to guarantee the positive effect of this move towards decentralisation. Otherwise, participation will decrease, because a CNDP-debate is the most advanced form of participation in France (Fourniau 2004).

Another factor that stems out of the political structure might be democratisation processes. In both countries, no important developments take place currently concerning democratisation (although in the Netherlands, a political party wants to develop an improved model for representative democracy). But one has to be aware of the stimulus that can be brought forth by possible future democratisation processes, because then politics focus on democracy and its institutions which has to result in some kind of reflection on the relation between government and citizen. This heightens the attention curve for the role of the public and possibly for public participation.

6.2.3. Environmental issues in politics and society

A third underlying factor is whether or not great emphasis is put on environmental issues. This must be seen in two ways. Firstly, the political choices reflect the environment-economy balance, meaning whether economic or environmental values are emphasised by politicians. Traditionally, left-wing parties emphasise environmental values, while right-wing parties emphasise economic aspects. Hence, the coalition of the government might influence the position of the countries on
the variables. This is visible in both France and the Netherlands. Since the nineties, a French left-wing political party - *les verts* - who have a strong focus on environment, were growing in importance. More and more people supported their ideas and actions, although the power remained and still is in hands of the conservative party UMP. *Les verts* made the lack of an environmental political program of the UMP visible, forcing them to develop one. The increase in attention for environmental matters of all parties resulted in the development of an environmental charter which is to be included in the constitution. The Dutch also demonstrated growing attention for environmental matters since the beginning of the nineties. At that moment a left-wing party was included in the government (PvdA in cabinet Lubbers-III in 1989). In these years, the Dutch stimulated environmental democracy on the international agenda. In 2002, a new government coalition excluded the left-wing party resulting in a policy with less emphasis on environmental issues. This government is still in power currently. But one should not only clarify the environmental consideration of political parties, but also of important individual politicians. In France, M. Barnier (minister of Environment) has played an important role which counts for M. Pronk (minister of Environment) and M. Kakebeeke (highly placed official before he became chairman of Århus) in the Netherlands. Nowadays they all have left the national politics. Secondly, the emphasis on environmental issues in society is reflected in the will of the citizens to participate in environmental debates. If this is expressed in supporting national environmental organisations, the French population emphasises environmental issues less than the Dutch: 3% of the French population is supporting some kind of environmental organisation, while in the Netherlands 13% of the population (Prieur 1999: 21).

### 6.2.4. Conclusions

Three underlying factors have been identified in this section:

- society structure, which is a rather general term for the position of the citizen vis-à-vis the government, the educational system and the administrative culture;
- political structure comprising decentralisation and democratisation developments;
- emphasis on environmental issues in terms of political choices and public's interest in debates and membership of environmental NGO's.

The hierarchic position of the government towards the citizen, the authoritarian educational system and the conflictuous administrative culture, together with the low-developed interest for environmental issues by the public and a concentrated political structure, form important differences between France and the Netherlands, resulting in a more difficult environment in
France than in the Netherlands to implement the Convention successfully. Both countries demonstrated an increased attention for environmental matters, although in the Netherlands it obviously went backward recently. Together these factors form the attention curve. The next sections will discuss each of the four variables demonstrating the importance of this attention curve for the position on the four variables. Besides, this attention curve can help predicting a change in the French and Dutch position on the four variables. However, one has to be careful with such predictions because these factors are an indication of dynamics rather than a complete framework to predict the future.

6.3 Motivations
According to a study by Inspraakpunt, public participation was introduced in the 1970's in the Netherlands out of normative arguments. It was not until the 1980's that all procedures were properly institutionalised. In recent years, these procedures have been criticised and the Dutch are trying to change them in order to adapt them to several situations (Coenen et al. 2001: 23). This means that they are no longer assessing public participation as a normative value, namely equal rights for the public in every case. Instead, they see it as a functional value. Indeed, all respondents of the owners believe that the decision will be better due to participation sessions, because one can retrieve information from the public and hence is able to analyse the real issues of conflict. Although some owners also say that participation suit them because it can withhold people to complain afterwards, their functional motivations are dominant.

When we compare the Dutch evolution to the French, we can conclude that France has not yet completed institutionalisation of legislation for public participation and first and foremost, they have not succeeded until now to change the mentality of all the actors involved. There are still people in France who do not favour public participation at all. Respondents in France who do favour public participation, which is the majority, agree that public participation is a response to social demand. The public was no longer satisfied with the way decisions were made by the representatives and wanted their own voice. This is a normative argument, namely a lack of legitimacy in the decision-making process. After the failure of some large-scale infrastructure projects, France has recognised that a project is no longer imposable. The fact that Mr. Simon implies that a reinvention of politics is necessary in France reinforces the development towards functional arguments. Hence, the French have derived on normative as well as functional arguments for enlarging the possibilities for public participation. The intensity of these
motivations depends on the position of the actor. On the one hand, the CNDP is convinced that a public debate improves the decision-making process; they believe that public participation can be an additional source of information for the government. On the other hand, most French owners reply that legislation has imposed it on them, so they do not have a choice. Sometimes, it is even considered as a fault of the responsible governmental organisation when public participation would really ameliorate the project, because the knowledge of the engineers should have been sufficient (Interview Mignerey 28-05-03).

6.4 Participation level

6.4.1. Introduction

This section will argue that the Netherlands are further ahead at the participation level variable than France on every single aspect. Major differences are: 1) public participation is done without delay at the start of the project; 2) the Netherlands have two independent parties in all projects at its disposal; 3) the expertise brought in comes from other actors than the government or the owner, namely the MER-Commission and the public and 4) path dependency that hinders the implementation of the Århus Convention is not found in the Netherlands. France has none of these. Further support of these statements will follow in the next sub-sections.

6.4.2 Moment of participation

According to legislation, both countries fulfil the requirements of the Århus Convention concerning the moment of participation. France has made provisions in the Code de l'Urbanisme that public participation must be done throughout the project. However in practice, the respondents admit that the public is not able to participate in the early stages of the project. There have been several court cases where citizens and organisations have stated that opportunities for public participation were too restricted in France, while the judge stipulated that one month is sufficient. Hence, the most important deficiency of French legislation on the Århus Convention is the fact that participation is too late in the procedure, while in the Netherlands, early participation is always possible. Still, both countries have problems with any form of public participation in the early phases of the project, because the subject is less precise and the information you can give is less accurate. Thus, the responsible ministries in both countries are searching for a more optimal form of public participation. Concluding, both countries encounter practical problems with providing opportunities for public participation in early phases, but the Netherlands are obliged to in any case, while France is not.
6.4.3 Independent party
Concerning the independence of a third party, the answers of the respondents demonstrate that practice is conform legislation. In France, only very large-scale projects that have a debate by the CNDP have an independent party executing the public participation. In the Netherlands, the Inspraakpunt is a content-independent party and the MER-Commission is independent in every aspect. Thus, it can be concluded that the Netherlands are more advanced in this aspect.

6.4.4 Expertise
Two differences in the expertise in Dutch and French projects can be mentioned. Firstly, the Dutch MER-commission that plays a role in every project enlarges the expertise brought into the project. France does not have use of such a Commission. This was already clear after having read the national legislation. The second difference appears when analysing practices embedded in the national cultures: the Netherlands have a more open consensus-culture, while the French closed actor coalitions avert expertise from actors outside this coalition to be brought in. The different position of the citizen in society towards the government makes that the French actor network is far more closed than in the Netherlands and the French public is less demanding for having a voice. The CNDP tries to open this coalition because they think that it is necessary that the public can bring in their expertise, but they do not always succeed.

The similarity between the two countries is that both have a problem with the representativeness of the public. This means that both think that not everybody has the possibility or is willing to bring in their expertise. All owners recognise that there is always an active minority who dominates the debate and who influence the atmosphere of a debate. Sometimes this can result in an emotional, rebellious atmosphere; then it becomes counterproductive, because it is no longer possible to hear the personal story. Another difficulty with the expertise of the public recognised in both countries, is the fact that the public has more difficulties to argue their point of view in front of engineers because they use less rational arguments.

6.4.5 Path Dependence
The previous chapter has already concluded that both countries suffer from path dependence. The difference in this is that the Netherlands had fewer changes to make than France resulting in less visible path dependency. In general, it is elucidating to notice that the dialectics of progress are applicable to both countries when one compares it to the East European countries. Most of the East European countries have adopted the Convention as such without making it applicable. This
was possible because there was no pre-existing legislation. The question remains what the result in practice will be of this legislation. For the Netherlands and France, the conclusion is clear: France suffers more from path dependency than the Netherlands concerning the implementation of the Århus Convention.

### 6.5 Policy Transfer

The conclusion on this variable drawn from the previous chapter was that France has initiated a process within France to advance the possibilities for public participation due to internal, autonomous developments like the mobilisation movements of the French citizens and the difficulties around large-scale infrastructure projects and not due to the Århus Convention. Thus, international treaties are not of highest priority in France. Indeed, in practice it appeared that the Århus Convention is not really known among the executors of the public participation, the owners RFF or DTT. Several actors in France state also that it is impossible to comply with the stipulations of the Convention, because of a lack of capacity and means to execute the Convention in the case that demands for additional environmental information would increase. Mr. Audhui (French Ministry of Transport) says: “At the moment the Convention is like an utopia because it can not be implemented properly.” Moreover, the owners state that the Convention does not comply with the different configurations of each country. Therefore, the Convention is not directly applicable to the French projects and consequently is not a direct reference for the French actors. Even the members of the CNDP do not use the Convention as an important reference. The Netherlands are more familiar with this Convention and do not complain about the differences between the idea of the Convention and their own ideas concerning public participation. They used the Implementation Guide to implement it and believe that if every country will do this, the Convention really serves to uniformise all procedures among the signatory states of the Convention (Interview Van Zomeren 26-08-03). On the level of project owners of ProRail, the Convention is not known in the Netherlands. Concluding, because of the lack of priority for international treaties, the lack of implementation capacity and the lack of knowledge of the existence of the Convention, France has not an easy policy transfer. For the Netherlands, the opposite is true.

### 6.6 Actor Coalitions

The previous chapter has demonstrated already that France has very few favouring actors coalitions, while the Netherlands have not many, but more than France. This section will demonstrate that there is a huge difference between the actors at national level in France. In fact,
they are in the middle of a struggle to convince everyone that public participation is useful and necessary and they are searching for appropriate ways of having public participation in every project. In the Netherlands, the concept of public participation has been proven since a while for all actors involved; they are currently struggling with the practices. The Dutch are still convinced of the fact that public participation is useful, but want to find an appropriate form for each project.

In France, a difference in opinion exists between people officially involved in promoting public participation (members of the CNDP) and the people who are practically involved in decision-making processes (RFF, DTT), but the dominant idea is changing. Most of the people are aware of the fact that public participation is necessary to execute a project; the TGV-Mediterranée served as an eye-opener for this. However, because of the fact that there are actor groups in powerful position who do not favour public participation, and because of the complex legislation, the opportunities for public participation in reality are restricted. For example, some employees of the RFF say that more and more managers are intellectually interested by the idea of public participation, but are encountered with practical difficulties. Firstly, because of the fact that legislation is too rigid, secondly because RFF is (financially) dependent on several actor groups who are not in favour of public participation, like the state, regions and Grands Élus. The result of this is that the collaborative planning (the decision-making between the actors formally involved) is getting more closed. In this way, they defend themselves to the involvement of the public in this phase. Afterwards they will give the public the opportunity to participate, but in most cases this will be too late. It is very well possible that the more public participation is obliged, the more the RFF will protect itself by closing the decision-making procedures that take place before. This is also reflected in the fact that when a project must be submitted to the CNDP, the RFF sometimes plays a game by not naming it a “new” project or by not saying this out loud. The reason behind this is that when everybody knows that a project has been submitted to the CNDP, they might want to be involved; consequently, there is a higher chance of an obligatory debate. Nonetheless, all respondents agree that public participation will be more favoured in the future, because more and more people recognise that it is necessary. This means that they have confidence that owners and other actors will find an appropriate way of dealing with public participation.

A recent decision of the French government demonstrates the contrary of this fairly positive trend and might weaken it. Last year, the minister of Equipment has asked the National Commission of
for Public Debate to organise a debate on a new route around Bordeaux. The questions were whether the project was opportune and if yes, under which conditions it must be executed? Some debates have been held, but before the end of all debates and hence before the result of these debates was published, the government had already decided to execute the project. The CPDP (special commission dedicated to the project of Bordeaux) has concluded that the government lacks an interest in the result of the debates and that more participation sessions on this project would be of no use. Hence, they have offered their resignation to the CNDP, except for the president. He will still publish the result of this debate and will be present for answering questions of the public (CPDP-Bordeaux 2003).

One can imagine the power of such a decision: the most advanced form of public participation in France can not take place because of one governmental decision. The people who already participated in this debate and were told that the government would listen to their comments will be disillusioned and their confidence in the government will be nullified. As this happened recently, not much has been published on the motives to take this decision and on the consequences of this decision for the functioning of the CNDP. For this study, it must be undoubtedly clear, that the positive trend described above must be nuanced. The statements of the respondents that more and more actors are positive towards public participation might still be true, but this situation has made very clear that it is necessary to convince all, and foremost all powerful actors of the benefit of public participation. As long as this is not the case, efforts to execute public participation will strand at higher level, where people not favouring public participation are in power. This is a very clear example of the theory of Flyvbjerg: the rational legislation favours public participation and stipulates that it has to be done in a certain way. In reality, the powerful actors can impose their own ideas with just one decision.

In the Netherlands there is a mentality change in the negative direction. Despite the fact that the department of the Ministry of Transport that is responsible for the development of roads (DGP) favours in principle the idea of public participation, they did propose several laws to decrease the public participation procedures. According to them, public participation took too much time without having useful results in some cases. Therefore they decided to shorten the delays of participation and to abolish some participation sessions. The Dutch ministries have sufficient experience with public participation procedures in the past decade that they are now able to point out the problems with the procedures with which they are confronted. They want to change this,
because the idea of public participation is no longer a priority; efficiency and finances have become currently more important (Interview Portasse 27-08-03, Interview Duvoort 21-08-03). Hence, the direction proposed by the Århus Convention is not followed by the Dutch.

Concluding, one can say that the Netherlands are heading towards fewer actor coalitions who actively favour public participation, but until now the safety net of regulations developed in the nineties protect the citizen enough. In France the idea of participation is not favoured by all actor coalitions and in particular not by those in power. This is even more problematic because in France there is not a sufficient safety net of regulations. The Århus Convention should be able to serve as a safety net, but the very first direct experience with the Convention in France was not that positive, which will be explained now\textsuperscript{22}.

At the end of 2003, an electrification project of a railroad between Tours-Vierzon was developed by RFF. Mr. Lefloch of RFF explained that for this project, they demanded the European Union for a subsidy because it was in a ERDF-zone\textsuperscript{23}. The Directorate-General Environment (DG Environment) of the European Union has asked if RFF had held public participation sessions as obliged by the Århus Convention, but upon that moment that was not the case. The regions and the state that needed the financial support, said to RFF that they had to do the public participation as soon as possible. This resulted in the fact that RFF started with public participation sessions two weeks later. It is unclear whether or not the subsidy depends on the result of the public participation, but Lefloch thinks that the result of this public participation session will not be good, because it will be badly prepared and it will be done too quickly. Mr. Lefloch: “In all cases, this implication of the Convention of Århus is negative; we hold the participation sessions for the money but the effect of the public participation is little or negative.” Concluding, the fact that RFF is financially dependent on the DG Environment results in a DG who can make demands on public participation, while they are not realising that this will not have the effect that they probably want it to have. The Århus Convention thus has an effect opposite to its intentions.

### 6.7 Conclusions
This chapter adds the empirical evidence of the national practices to outline the positions of France and the Netherlands on the variables. Until now, the motivations of French and Dutch actors were not analysed. This chapter has demonstrated that in the Netherlands the functional motivations are dominant. In France, the actors were motivated to introduce public participation
out of normative motivations, but nowadays they mention normative and functional motivations. It must be noticed, that there are still actor coalitions who do not at all favour public participation (Grands Élus and some partners or employees of the owners). Nevertheless, the position of France is in the middle of a move in direction of functional arguments. In the Netherlands, all actors mention functional arguments.

The second variable, public participation level, can be split up in three aspects. At all aspects the Netherlands lie further ahead than France. Moreover, France suffers from path dependency which has a negative influence on the translation of the Convention into the national legislation, while the Netherlands do not. Hence, France and the Netherlands both take in an extreme position on the continuum, but the Netherlands on the advanced side and France on the backward side.

The third variable, policy transfer, has been explained in chapter five. There are two aspects to add on the basis of this chapter. Firstly, the Convention is not at all known among French respondents, while in the Netherlands most respondents know it. Secondly, in France, all owners state that they would have a capacity problem if the Convention would be really executed as it should be; the Dutch respondents did not mention this problem. Again, both countries take in an extreme position and again France is on the negative side of the continuum.

The last variable, actor coalitions, demonstrates a difference in reactions within France. The respondents professionally occupied with public participation like the members of the CNDP, are of course in favour of it. Unfortunately for them, there are still actor coalitions in France who do not favour public participation and those are often the ones in power. The execution of public participation depends for a large part on their ideas and motivations which means that sometimes it will not be (properly) done. The overruling governmental decision concerning the road of Bordeaux is a very clear example of this. Among the owners, public participation is not very favoured neither which is reflected in strategic games they play. The Netherlands have a safety net of regulations, which is nowadays important, because of the fact that the actor coalitions are no longer actively favouring of public participation. This safety net takes care that it will be done anyway, although minor changes are made in the regulations to have less practical problems with the participation. In France, the Convention might serve as safety net, although the first experiences are not very positive. Moreover, whether or not the Convention is really useful as safety net must still be proven in the coming years, probably as a consequence of trials, as it is
only the jurisprudence that can make the Convention effective. As in France the powerful actors are not favouring public participation, they have a very low position on this variable. The Netherlands do have these problems but less than France and hence their position is a bit more positive.

<table>
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<tr>
<th>Variable</th>
<th>Continuum</th>
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<tbody>
<tr>
<td>Motivations</td>
<td>Functional</td>
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<tr>
<td>Participation level</td>
<td>Advanced</td>
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<td>Policy Transfer</td>
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<td>Actor Coalitions</td>
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Table 9. Variables national practices

This chapter has also revealed three factors underlying the countries' motivations, participation level, policy transfer and actor coalitions:

- society structure (the position of the citizen vis-à-vis the government, the educational system and the administrative culture);
- political structure (decentralisation and democratisation developments);
- emphasis on environmental issues (political choices and public's interest and action)

A change in position of France and the Netherlands on the four variables can be predicted by changes in these three factors. This means that when in a certain country the gap between government and citizen narrows, the educational system becomes less hierarchich, the administrative culture is more open and less conflictuous, a shift in position of this country on the four variables is expected towards a direction favouring participation and the Århus Convention (or a convention with a similar subject). The same counts for a country where a decentralisation development or democratisation development is going on and where environmental issues are emphasised by politics and/or citizens.
Chapter 7: Conclusions and recommendations

7.1 Introduction
The research question from chapter one, which formed the basis of this study was: “What are possible explanations for the differences in the influence of the Århus Convention on the policies and practices in France and the Netherlands concerning public participation in the decision-making process of the development of road- and railway-infrastructure?” By undertaking literary research and interviews with French and Dutch respondents, it has been possible to formulate an answer to this question. The next section will recapitulate the differences in influence of the Convention found in this study, followed by the characterisation of the position of the countries on the four variables and the relationship between these positions and the differences in influence will be clarified. Section three will give recommendations for further research, for increasing the influence of the Århus Convention and for introducing effectively the Convention in the national legislation and practices in France and the Netherlands.

7.2 Conclusions
7.2.1 Differences in interpretation
It is often claimed that the definition of a unique policy requirement at higher level implies converging patterns and structures of national regulations. This study has demonstrated that this is not necessarily the case; there are some barriers to overcome to allow the Århus Convention to have effect. The question lies in the way the Convention was introduced into national legislation in France and in the Netherlands, how it was applied in national practices and how it should have been applied to achieve a convergent effect and minimise the differences. It is clear that neither France, nor the Netherlands were willing to make major changes to their legislation thus reducing the influence of the Århus Convention. The Convention has not succeeded in bringing about a convergent policy between the Netherlands and France: France develops in a fairly positive way, while the Netherlands develop in the opposite direction to what the Convention proposes; both occur as a consequence of autonomous trends, dependent of the attention curve. Nevertheless, the Convention has a minor influence, but different in the two countries (see table 10).

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<tr>
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<th>France</th>
<th>The Netherlands</th>
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<tr>
<td>No link between pillars</td>
<td>Link between pillars</td>
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<tr>
<td>Several major inconsistencies (less elaborated EIA, public participation too late in procedure, no transparency)</td>
<td>Sufficient policy (Inspraakpunt, MER-Commission, only a few minor inconsistencies)</td>
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<tr>
<td>New legislation advanced</td>
<td>New legislation step backwards</td>
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Table 10. Differences in interpretation
7.2.2. Position of the countries on four variables

The theoretical framework offered the structure for analysis of the differences between France and the Netherlands. Four variables were defined and the positions of France and the Netherlands on these variables were defined in a three-step process: firstly, on the basis of the preamble and negotiations of the Convention. Secondly, data of the national legislation was added and finally national practices in both countries were analysed. Every step has added new aspects to defining the position of the countries on the variables. This will be explained below.

The first variable is the motivations of the actors involved with a continuum between mainly normative or mainly functional motivations. It is above all the national practices which have demonstrated that in the Netherlands the functional motivations are dominant, while in France, the actors were motivated to introduce public participation out of functional as well as normative arguments.

The second variable is defined as public participation level, meaning the possibilities for public participation prior to the Århus Convention, with a continuum between advanced and backward. The national legislation of both countries appeared to be in compliance with Århus, although a difference between the Netherlands and France was obvious. The national practices reinforced this difference. The French level of public participation was scaled down because in reality the opportunities for public participation are even less than in legislation. The Dutch have an advanced policy on public participation. Despite the fact they have some practical problems as well, the difference between legal procedures and practices does not prevent the public being heard.

The third variable is the level of difficulty in policy transfer, which is dependent on the level of similarity between the Convention and national legislation. The continuum lies between an easy and difficult policy transfer. A first difference is that the Netherlands were more actively involved in the preamble and negotiations than France. This resulted in a Convention that has a comparable spirit with Dutch legislation, but totally incomparable with the French, because it was considered Anglo-Saxon by the French. A second difference is that in national practices, the Convention is known among most Dutch respondents, while in France few people know it and they confirmed that they would have a capacity problem if the Convention were to be executed as required.
Finally, the fourth variable is the amount of actor coalitions involved, supporting the implementation of the Convention. The preamble of the Convention gave the impression that there were many favouring actor coalitions in the Netherlands. Indeed, this was the case before the signing of the Convention, but afterwards public participation was no longer a priority. The actor coalitions at national level had changed as a result of elections and a new government; this was one of the reasons why the attention curve for public participation decreased resulting in a lack of will to change the national legislation and practices. In France, the idea of public participation does not have a solid base yet. Firstly, the national legislators were reluctant to make major changes because of the Anglo-Saxon spirit, demonstrating that the French themselves oppose the very idea of policy transfer instead of opposing the idea of public participation. Secondly, powerful actor coalitions like the Grands Élus oppose the idea of public participation and thirdly, owners have many practical problems with the implementation of the Convention. These conclusions are schematically presented in table 11 pointing out the definitive positions of France and the Netherlands on the four variables.

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<td>NL----------------------------------------FR----------------------------------------Few favouring</td>
</tr>
</tbody>
</table>

Table 11. Variables France and the Netherlands

7.2.3 Explanatory value of the variables

How can the positions on these variables account for the differences in interpretation and influence of the Århus Convention in France and the Netherlands? First of all, attention should be paid to the similarity found between France and the Netherlands: both countries did not want many changes in their legislation. The low position on the fourth variable ‘Actor Coalitions’ explains this, because in both countries not many actors were present who favoured the implementation of the Convention. The importance of favouring actor coalitions is clear: without them, a Convention will not have the effect as it was supposed to. The fact that France suffers from path dependency, is a variable to be added to the situation in France. In theory, path
dependency normally occurs within countries that have advanced policies. This is not the case for France, therefore, this might need further explanation. In fact, one might state that the Netherlands as well as France are advanced and suffer from the progress of dialectics in comparison with East European countries as these Eastern countries can simpler ratify the Convention because there is no existing legislation. However, in comparison with the Netherlands, France is backward. In Eastern European countries, many actor coalitions favoured the Convention (although with probably other motivations) and as a result, ratification has taken place much faster. The practice might not follow immediately, but new doors have been opened.

The first difference to explain is the fact that the inconsistencies of France with regard to the Århus Convention are larger than those of the Netherlands. This is due to the fact that France is a backward country. Backward countries must make more efforts to be in line with higher-level policies than advanced countries. In France, not enough efforts have been done, because there was a lack of will to do it in an advanced way. This resulted in legislation that is not completely in compliance with the Århus Convention. Besides, the difficult policy transfer adds herein as well: the Convention is developed with another spirit than French legislation. The Netherlands do not have such problems: their legislation is in line with the Convention due to the fact that they are an advanced country and they had an easy policy transfer because the provisions of the Convention are comparable with their own. Indeed, there was no will to change many provisions, but as this was not necessary to be in compliance with the Convention, it is less visible. Still, it can be concluded that actor coalitions remains the critical variable. If there were more favouring actors, more efforts would have been made and hence the deficiencies would be abolished. This does not mean that policy transfer and participation level do not influence the situation, but less than the actor coalitions.

A second difference is that the Netherlands have made a clear link between the access-to-information pillar and the public-participation pillar, while the French have not. This can be explained by a difference in motivations. The Dutch have functional arguments meaning that they believe in the source of knowledge of the public. To retrieve this knowledge, the public must be informed to be able to express its opinion on the project and be involved in the decision-making process. This is why they recognise the importance of linking the public-participation pillar with the access-to-information pillar. France does not make a clear link between these pillars due to the fact that they have less functional arguments. Most French recognise the right of the public to
participate out of normative arguments, but as they do not all believe in the additional source of knowledge of the public, they do not make the link between the three pillars.

The third difference is that legislation in the Netherlands is going backward, while France develops advanced legislation. This has to do with the fact that actor coalitions and their motivations are changing over time. This results in a change in policies and practices of public participation as well. The attention curve of public participation is in a different phase in the Netherlands and France. The influence of the Århus Convention could have been more important in both countries. Now, the Convention did neither open new ways of thinking about public participation, nor did it have a convergent influence on national practices. This is due to a lack of support from those in power for this concept; perhaps in a few years time, the impact of the Convention will be more because more attention will be paid to it. All actors are reasoning out of functional motivations, which is positive in the sense that they believe in the usefulness of public participation. On the other hand, the ideological idea of the 1980’s about democratisation processes and environmental protection is over. This poses a problem, because having normative arguments for public participation is a minimal condition for a successful implementation of public participation. People must believe that the public always has the fundamental right to participate, because otherwise, public participation will be held only when it might be useful according to the actor in power. This is exactly what is happening now in the Netherlands as is reflected in the efforts made to restrict possibilities for public participation. In France, not even everyone favours the idea of public participation, but the majority does, and they all have normative argument for public participation, which is reflected in the fact that they try to increase the amount of projects open to real public participation. The problem in France is a lack of favouring actor coalitions on powerful level and a lack of functional motivations among the executors of the public participation. In France, it is first of all necessary to increase the amount of favouring actor coalitions, especially at powerful level. If the people in power within the ministries and the Grands Élus would favour public participation this would get more attention. Secondly, if the normative basis for public participation is present, the functional argument should be increased especially among the employees of the owners. If they really think that public participation would ameliorate the project, they would make more effort to execute it properly. It is possible that the French decentralisation development might add to these motivations, because these developments have one aspect in common: to bring the citizen closer to the government, but legislation must be changed so as not to have a negative effect on the
amount of projects under the responsibility of the CNDP, and hence on participation opportunities.

Concluding, one can say that there are three barriers to overcome for the Convention to have an impact and for participation to be effective. Firstly, it is essential that many favouring actor coalitions are present, particularly on powerful level. Secondly, normative arguments should be the basis for participation in order to have participation in every project. Thirdly, the amount of functional arguments determine the level of effectiveness of participation. The two other variables – policy transfer and participation level – can facilitate this process, but are no critical variables. All values on these variables are dependent on the national attention curve.

7.2.4 Future trends
Future trends in the position of the countries on the four variables can be predicted partially by following the attention curve, thus analysing the underlying factors:

- society structure: the citizens' position vis-à-vis the government, the educational system and the administrative culture;
- political structure: decentralisation and democratisation developments;
- emphasis on environmental issues by politics and public.

If society is moving towards a more open and less hierarchic structure, if the politics are heading towards more decentralisation and more democratisation and if environmental issues are gaining in importance, chances are high that public participation, the Århus Convention and similar conventions or regulations receive renewed attention and hence will have a renewed (or larger) impact on legislation and practices. But external forces might have an influence as well on the implementation of the Convention. Whether or not the national legislation is in compliance with the Convention, the countries might be confronted with the Convention by NGO's who refer to the Convention in a specific decision-making process. Because the Convention is a legal reference when it is ratified, the countries will be forced to allow the Convention to have an influence on national practices, because the jurisprudence will oblige them to. However, the governments must take responsibility for making the Århus Convention known amongst NGO's and citizens to allow this to happen. This Convention deals with access to information, which makes it logical to publish and present this Convention in a more advanced way than other legislation, because this is the very essence of the Convention.
Another possibility is that the Compliance Committee of the Århus Convention might oblige the countries and especially France to better transpose the Convention into their legislation. The Compliance Committee is open to communications from the public as well, which is unusual for such a committee. This does not withstand that the power of the Committee is restricted. France and the Netherlands have one year following ratification in which they cannot be accused of having insufficiently transposed the Convention in their legislation. Moreover, they have the possibility to set up a declaration that they do not accept accusation of the Compliance Committee for another four years. This means that in the worst case scenario, the Compliance Committee can only demand the countries to better transpose the Convention five years after ratification. However, it is not expected that states will make use of this possibility (Interview Van Zomeren 26-01-04). After these five years, the measures must be “non-confrontational and non-judicial, resulting in a Committee that is not very powerful”\(^\text{24}\). So the question remains what effect this Committee will have and whether or not this is a real external force resulting in a bigger influence of the Convention.

7.3 Recommendations

7.3.1 Recommendations for further research

Just a short amount of time has elapsed since the Convention came into force in October 2001. Given that the Netherlands have yet to ratify it, and that France has only done so in 2002, it would be premature to give a definitive overview of the national practices for the two countries. Therefore additional research will be necessary after having gained some experience on the application of the Convention and after having jurisprudence on this subject.

Interesting factors that might require additional research are first and foremost the role and influence of the European Union on national legislation and practices. Due to the fact that the directives are very recent and to the complexity of the research if the level of the European Union would be included, this was not possible in this study. However, the impact of this level is not negligible and hence requires additional research. A related research topic is an analysis of the way East European countries have introduced the Convention. All Western countries (including France and the Netherlands) had among their objectives to create a level playing field between Eastern and Western Europe. This analysis might define whether or not the legislation of East and West European countries has converged.
Furthermore, it is interesting to know the role environmental organisations play regarding this Convention and the role of the citizen. Until now, it is not evident that every citizen knows about the Århus Convention, making it even less evident that they will stand for their rights. This means that it will only be the NGO's who are going to make use of the Convention, which is not the intended purpose. The only way to prevent this from happening is to make the Convention widely known to everybody. It would be interesting to do a research in a few years’ time, measuring the extent to which this has been done and its effect. This could be a longitudinal research to define the development in confidence of the citizen in the government, of their expectations towards public participation and the possible development of their role in the decision-making process.

It is also important to explore the factors underlying the attention curve deeper. This study has identified three factors (structure of society, structure of politics and attention for environment), but it is possible that there are more factors that can predict changes in countries' positions. Moreover, these subjects are so complex that additional research is needed dedicated to sociological or political aspects.

Finally, two recent developments in France and the Netherlands are described in chapter five: the overruling decision of the government on a CNDP-debate and the new restricting legislation in the Netherlands. It would be interesting to analyse the consequences of these decisions and legislation in a few years’ time as it is expected to have an important impact.

7.3.2 Lessons to learn for higher-level legislators

Which recommendations can be made to allow the Århus Convention greater influence and perhaps a more convergent influence at national level, at least in France and the Netherlands? Several recommendations can be made regarding this. Firstly, the Convention would have had a stronger influence on national practices and legislation, if the citizens were involved in the negotiations as well, in the form of a focus group for example. The way the NGO's participated in the negotiations of this Convention is a good lesson and warming up of the spirit of some delegations for other Conventions and regulations that deal with subjects like this. Initially, not all countries were enthusiastic, but in the end they all recognised its usefulness. This could be the same when involving citizens in the negotiations in the form of a focus group.
Secondly, during negotiations for such a Convention, attention must be paid to the use of the subsidiarity principle by the national delegations. In the case of the Århus Convention, some countries used this principle to prevent stronger provisions being agreed upon during negotiations. In this way, a much looser translation into the national legislation is possible. It is of the utmost importance to check whether or not the claim for subsidiarity is justified. The Convention of Århus might have included stronger provisions if the principle of subsidiarity was not used that often by the national delegations.

Thirdly, it is useful that there is a Compliance Committee and an Implementation Guide on the Convention as well, but this did not prevent countries implementing the Convention in a minimal way. Translating the guide into languages other than English to accommodate the French and other nations (in a linguistical way and in a political way, namely to avoid reinforcing their anti Anglo-Saxon sentiments) would make sense. Making the guide less voluminous would help as well as this was a reason mentioned quite often by the respondents for not having read it. Moreover, the power of the Compliance Committee must be enlarged and must be applicable on short-term. Otherwise, real influences of the Convention are not to be expected for another decade. Additionally, more active guidance than the guidance of the Compliance Committee is necessary during implementation in the states. National governments should be able to rely on this committee for support, to exchange experiences with this committee and other countries and to ask questions about the implementation. This Committee as well as the Guide could then serve as a reference for actor coalitions who do not favour public participation.

Finally, a follow-up benchmarking study should yield indicators of differences in the countries. This can have the positive effect that no country would like to be described negatively in this study and thus would lead to more efforts for a successful implementation of the Convention.

7.3.3 Lessons to learn for France

Are there lessons to learn for the French actors involved in the development, ratification and execution of the Århus Convention? For France counts that they should have been involved in the negotiations long before they have done now. Now they have encountered a Convention that was more difficult to implement and that was not at all in their spirit. They might have underestimated the impact of the Convention and did not realise that having a political mandate at the outset of the negotiations is a necessity to be able to influence the Convention and to have fewer
difficulties implementing the Convention afterwards. On the other hand, they are aware of their own anti Anglo-Saxon position. If they want to defend this position, they should have been involved at the beginning of the Convention. Otherwise, they will have to accept that an Anglo-Saxon Convention will influence their legislation, like they were forced to do now.

Although the compliance regulations for the Convention are not very powerful, France should abolish their major inconsistencies with the Convention before an NGO goes to court to demand the rights of the Convention, because then it can be too late. Until now, the French NGO's were not very active, but this will change as a consequence of a general trend to pay more attention to environmental matters in France. A second reason to be aware of NGO behaviour is the fact that international NGO's also have the right to access to justice and participation. The NGO's will make the government work under time pressure, resulting in less precise and less practical changes. It is better to amend legislation after having done an open and profound study and debate. It would be a premature conclusion to say that this means creating an alternative to the public inquiry, because they have already encountered a lot of problems trying this. Nevertheless, they have to concentrate on how to make legislation more transparent and consistent for all projects before they are forced to by the NGO's. In all cases, the French government should increase the means available for the execution of public participation, because currently the owners say that complying with the Århus Convention is impossible because of a capacity lack.

7.3.4 Lessons to learn for the Netherlands
The objective of the Netherlands was to have a level playing field concerning the subjects of the Århus Convention throughout Europe and beyond. This level playing field is not to be expected when the effect on all countries is as minimal as on France and the Netherlands. Still, one might say that the policies are becoming more convergent, but than in the negative sense: advanced countries like the Netherlands are decreasing their legislation on public participation and hence the differences in national policies will decrease. The Netherlands have to be aware of their decreasing national attention curve having a negative effect on public participation. They develop legislation which does not support the idea of considering public participation as a fundamental human right, although this idea was present a few years earlier. If the Dutch do not want to lose their advanced position completely, they have to maintain the balance between their objectives: being a distribution country and a country that stands for its environmental principles. In the near future, chances are high that the distribution objective will be emphasised, as the new
government emphasises this in the coalition agreement. The first thing they must do when they are willing to maintain this balance is ratifying the Convention; not only for their own facility, but especially so as not to lose completely the trust of the other countries involved in these affairs.

7.3.5 Final
Last but certainly not least, the most important challenge for all actors to allow the Convention to become powerful: changing the mentality into a truly open mind to the voice of the public. In the Netherlands, they have developed this mentality quite well; in France, a longer path lies still ahead. It can be argued that having basic normative arguments is a necessity for public participation to be executed. However, the more functional arguments are present among the actors, the more they can and will ameliorate practices and implementation of public participation. If all actors not only think that they should do it, but also want to do it, because they believe it benefits everybody including themselves, public participation would be put in practice in a better way. In France, enlarging the functional arguments can only happen in a situation where the power of the representatives like the Grands Élus and the power of the engineers of the Grandes Écoles are fundamentally challenged. This is already the case, but the French could accelerate this process by changing the educational system in which this elite is created. This is a necessary but insufficient condition to enforce the participative democracy and to have really open and useful public debates. In the Netherlands, they have to be conscious that they do not lose the normative idea behind public participation, because this could end up in opportunistic behaviour. As the Convention includes functional as well as normative arguments, it could reinforce positive trends in both countries. But the national actor coalitions should allow the Convention to have this effect; until now the signs for this are weak in France and even negative in the Netherlands.
Notes

1 The following reasoning lies behind this idea: the modal split demonstrates an unequal growth between the different modes of transport. The usual definition of modal split is the percent of trips made by certain modes. Modal split can also be defined using the number of miles (kilometers) traveled (Boulder, Planning and Public Works 2003). While this reflects the fact that some modes have adapted better to the needs of a modern economy, it is also a sign that not all external costs have been included in the price of transport and certain social and safety regulations have not been respected, notably in road transport. Consequently, road now makes up 79% of the passenger transport market compared with 6% for rail and 5% for air transport in Europe. For goods transport, this gives more or less the same image (European Communities 2002: 11). Modal split for France is in line with the European, the Netherlands have 42% of their goods transport on the inland waterways (CCE 2001: 7).

2 Institut National de Recherche sur les Transports et leur Sécurité

3 This is a complex system based on joint consultation and consensus used for social and economic issues (Ministry of Transport, Public Works and Water Management 1999: 24,29,48)

4 A study done by the Inspraakpunt has made the same choices concerning the dimensions (Coenen et al. 2001). They did not base this choice on Barber and Beck, but it does reinforce the theoretical framework of this study.

5 The Single European Act defined this principle as: "The Community shall take action ... to the extent to which the objectives ... can be attained better at Community level than at the level of the individual member states" (OJ EU L 169, 1987, Art. 130 R, §4).

6 The Århus Convention can thus be defined as an institution according to De Jong et al. This section will use the concept of institution because this is the term used in the theory explained, but afterwards, the word legislation is more precise and is thus more appropriate to use.

7 The SEA-Protocol requires the parties to evaluate the environmental consequences of their official draft plans and programmes and is an elaboration of article seven of the Århus Convention. SEA is undertaken much earlier in the decision-making process than EIA (Environmental Impact Assessment), so it will supplement the Convention and it is therefore seen as a key tool for sustainable development (UNEP 2003b). Moreover, this conference has brought forth the Protocol on Pollutant Release and Transfer Registers (PRTR). Its objective is "to enhance public access to information through the establishment of coherent, nation-wide pollutant release and transfer registers (PRTR's)..." (UNEP 2003c).

8 During the negotiations there were three NGO-groups: 1. The representatives (6-8 persons) who fully participated at the negotiations except that they were not allowed to vote. 2. A group that was very involved in the negotiations and functioned as a focus group (SNM belonged to this group). 3. Approximately 300 actors who wanted to be informed.

9 At the moment of writing, 25 countries have ratified the Convention. The list of signatures on the Århus web site makes a difference in ratification, approval, acceptance and accession, but these terms differ only with respect to the moment of entering the Århus Convention and have no consequences for the way the countries ratify the Convention. All states who want to be party of this Convention have to lodge an instrument of ratification at the secretary-general of the United Nations, which is possible after the fulfilling of two conditions: the states have made the necessary changes in the national legislation to be consistent with the treaty and the states have approved the treaty by law (Tweede kamer der SG 2003a: 1).

10 ‘The French Government will see to the dissemination of relevant information for the protection of the environment while, at the same time, ensuring protection of industrial and commercial secrets, with reference to established legal practice applicable in France’ (UNECE 2004a).

11 A party means a contracting party to this Convention (39 states and the EC), but legislation is applicable to all public authorities, which comprises: governments, public administrators, persons with public environmental responsibilities and the institutions of any regional economic integration organisation (like the EC). Owners of
railways are not submitted to the Århus Convention, because they do not work in direct relation with the environment.

12 Environmental information comprises among others: the state of elements of the environment and the relationship between these elements, factors, activities and measures affecting (or likely to affect) the elements of the environment and economic analyses and assumptions in the context of environment, the state of human health and safety in as much as they are or may be affected by the environment or the factors and activities.

13 The term ‘public’ means one or more natural or legal persons, and their associations, organisations or groups. This implies that this definition has no restrictions, nor any condition.

14 The fifteenth state, Germany has signed the Convention in December 1998 instead of June 1998 because of “difficult questions regarding its practical implementation in the German legal system” (UNECE 2004a: 5).

15 Ratifying the Convention by the EU implies that the behaviour of the EU itself must be in accordance with the Århus Convention and at the same time that all Member-States are submitted to this Convention, because all member States have transferred competence over matters governed by this Convention (including the competence to enter into treaties in respect of these matters) to the European Union (BIR UvA 2002: 2).

16 After the amendments of the 2002-law, the border for obliged submission to the CNDP is 300 million Euro or a section of more than 40 kilometer, while the border for facultative submission to the CNDP is 150 million Euro or a section of more than 20 kilometer.

17 In five years nine public debates have taken place under direction of the CNDP and two debates that have taken place on recommendation of the CNDP but under the responsibility of the owner. Each year 15.000 public inquiries take place.

18 Arguments for this position were that if the Netherlands had ratified the treaty, they would have been adopted as party and as such they would have had more influence in the further development and implementation of the treaty. Another argument was that the negotiating position of the Netherlands on the Kiev-conference of May 2003 would have been better if they already had ratified it. Thirdly, because the European Union will follow the treaty, ratifying the treaty as a state means that one can influence the European policy on the scope of the three pillars of the Convention.

19 Public participation in the development of plans and programs is well arranged in the Law of Environmental Policy, but this law does not cover the whole scope of the Århus Convention. There are two other laws that are relevant to the Århus convention, namely: the Law on Environmental Protection (NBW) and the Law on Watermanagement (WWH) in which public participation was insufficiently arranged. These laws have been amended by refering to the AWB in these laws (Tweede kamer der SG 2003b: 7).

20 To ‘polder’ ironically refers to the poldermodel. In this case, it has the negative connotation that negotiating with everyone means losing time.

21 A combination of factors cause this respect, namely: 1) the strong Greek and Latin influence with emphasis on the justice of the reasoning; this makes that rational scientists and foremost engineers are respected; 2) the catholic church with its authority and 3) the absolute monarchy.

22 In the Netherlands, there is no direct experience with the Århus Convention on infrastructure projects as far known. In fact, a direct experience would be possible after ratification.

23 European Regional Development Fund (ERDF) has the objective to promote economic and social cohesion by correcting the main regional imbalances and participating in the development and conversion of regions, while ensuring synergy with assistance from the other Structural Funds (European Union 2003).

24 The strongest measure it can take is a suspension of rights, meaning to suspend the special rights and privileges accorded to a party for a certain time.
CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

done at Århus, Denmark, on 25 June 1998.
(original at www.unece.org/env/pp)
Appendix 2: List of respondents

The Netherlands

Ministry of Housing, Spatial Planning and Environment (VROM)

- Frédérique van Zomeren, Directorate-General for Environmental Protection, Directorate for International Environmental Affairs, Division Europe. Focal Point for Århus Convention. The Hague, August 26, 2003
  Telephone interview, January 26, 2004
- Willem-Jan Mesters: Directorate-General for Environmental Protection, Directorate Strategy and Administration, Division Law and Policy. The Hague, August 26, 2003
- Mari van Dreumel, Directorate-General for Environmental Protection The Hague, August 26, 2003

Ministry of Transport, Public Works and Water Management (V&W)

- Hans Claus, Directorate-General Passenger Transport, Directorate Railways The Hague, August 26, 2003
- Herman Krans, Legal Affairs Department The Hague, August 27, 2003
  Telephone interview, January 20, 2004
- Andy Portasse, Legal Affairs Department The Hague, August 27, 2003
- Marieke Ekelenkamp, Inspraakpunt V&W Telephone interview, September 5, 2003
  Telephone interview, January 20, 2004

National Institute for Public Health and Environment (RIVM)

- Olav-Jan van Gerwen, Head Co-ordination of Policy advice Bilthoven, August 21, 2003
- Roel Thomas, National Focal Point EEA, Department for Environmental Assessment Bilthoven, August 21, 2003
- Geert Duvoort, Division Climate and Global Sustainability Bilthoven, August 21, 2003

ProRail

- Anton Korlaar, Division South, Projectmanager Regional Projects (Sloelijn) Eindhoven, August 20, 2003
- Daniëlle Coenen, Division Randstad, Int. and Ext. Relations (Rijngouwelin, prev. HSL-Zuid) Rotterdam, August 25, 2003
- Annemarie Groot-Wienese, Division Communication Project Organisation Betuweroute Utrecht, August 27, 2003
Others:
- Willem Kakebeeke, Chairman of the ad hoc working group for preparing a draft UNECE Convention of Århus
  Oegstgeest, August 21, 2003
- Ann Bouckaert, Communicatie Bureau Lievens, Communication consultant Sloelijn
  Yzendijke, August 18, 2003
- Ralph Hallo, Stichting Natuur en Milieu, Co-ordinator International Program, Comm.&Strat.
  Utrecht, August 28, 2003
- Steven Pieters, Commissie MER
  Telephonical interview, September 5, 2003

France

National Commission of the Public Debate (CNDP)
- Yves Mansillon, president
  Paris, May 26, 2003
- Claude Marzolf, vice-president, president of the dedicated commission for the CDG Express
  Paris, July 3, 2003

French Institute of Environment (IFEN)
- Denise Juin
  Orléans, June 27, 2003

Ministry of Ecology and Sustainable Development (MEDD)
- Marie-Laure Tanon, French delegation for the Århus negotiations
  Paris, October 8, 2003
- Isabelle Colon, Direction des études économiques et de l’évaluation environnementale
  Paris, July 4, 2003

Ministry of Equipment, Transport and Tourism (METT)
- Thierry Masnou, Conseil Général des Ponts et Chaussées
  Paris, June 5, 2003
- Gilbert Simon, Conseil Général des Ponts et Chaussées
  Paris, June 5, 2003
- Jean Lafont, Conseil Général des Ponts et Chaussées
- Pascal Mignerey, Direction des Transports Terrestres
- Jérôme Audhui, Direction des Routes

Réseau Ferré de France (RFF)
- Jean-Marc Dziedzicki
  Paris, June 2, 2003
- Yann Lefloch
  Orléans, October 21, 2003
Appendix 3: Interview Guide

Public Participation and the Århus Convention
- What are the reasons for the attention for public participation and what does it mean to your organisation?
- Have there been any changes in the last five years concerning access to information, public participation or access to justice?
- Did the Convention of Århus play a role in these changes?
- Since when have you been aware of this Convention?
- What were the difficulties during the ratification of the Convention?

Legislation/procedures/institutions around the decision-making processes
- Which legislation and procedures are relevant nowadays?
- Which actors/institutions have an influence on infrastructure projects?
- What is the influence of the Århus Convention concerning access to information, public participation (who, when, which result?) and access to justice?

Role of the organisation in the development and application field of the Århus Convention
- In what way the employees of your organisation have become aware of the Convention? And about the implementation guide?
- Did your organisation play a role during the development of this Convention?
- Is your organisation submitted to the provisions of the Convention? In what way?

Opinion
- Are the decision-making procedures well organised within your country? Do you think either France or the Netherlands are pioneers?
- In what way public participation has a positive or negative influence on the procedure?
- Have the public participation sessions / debates gone well or not? What do you know about the opinion of other actors on this question? (France: is there a difference between a debate held by the owner or by the CNDP?)
- Do you believe that the goal of public participation is to make better decisions or is the goal to allow the decision to be accepted? Is there a problem to comply the engineering culture with the emotional reactions of the public?
- Do you consider access to information and public participation as a justifiable right?
- What are your expectations and hope for the future?

Personal questions
- What is your function?
- What do you do on a typical day concerning public participation?
- Do you have previous professional experiences with public participation?
- Can I send you some additional questions and a copy for approval afterwards?

Additional questions for MEDD and METT:
- Why has the French government made a declaration to protect the industrial secret upon signing the Convention?
- The application field of the Århus Convention is larger than French legislation covers right now. Will your organisation be involved to enlarge this application field?
Appendix 4: Signatory parties
Signatories to the Convention on Access to information, Public participation in decision-making and Access to justice in environmental matters (Convention of Århus).

<table>
<thead>
<tr>
<th>Country</th>
<th>Date of signing</th>
<th>Date of ratification</th>
</tr>
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<tbody>
<tr>
<td>Armenia</td>
<td>25 June 1998</td>
<td>1 August 2001</td>
</tr>
<tr>
<td>Austria</td>
<td>25 June 1998</td>
<td></td>
</tr>
<tr>
<td>Azerbaijan</td>
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<td>23 March 2000</td>
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<td>16 December 1998</td>
<td>9 March 2000</td>
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<td>Croatia</td>
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<td>Cyprus</td>
<td>25 June 1998</td>
<td>19 September 2003</td>
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<td>Czech Republic</td>
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<td>Hungary</td>
<td>18 December 1998</td>
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Table 12: Signatory parties
Appendix 5: The road to the Århus Convention


1972 Stockholm Declaration on the Human Environment: principle 1 linked environmental matters to human rights and set out the fundamental right to “an environment of a quality that permits a life of dignity and well-being”.

1982 World Charter for Nature: The most relevant provisions for the Århus Convention can be found in chapter III (paragraphs 15, 16, 18 and 23) which comprises principles handling about all three pillars of the Århus Convention.

1989 European Charter on Environment and Health, adopted at the First European Ministerial Conference on Environment and Health in Frankfurt, recognised public participation to be an important element in the context of environmental and health issues.

1990 Draft charter on environmental rights and obligations of individuals, groups and organisations, adopted by a group of experts invited by the Dutch government at the Bergen Conference (Norway) on 11 May 1990 and the UN/ECE draft charter of environmental rights and obligations, adopted by the qualified intergovernmental meeting at Oslo on 31 October 1990. These early drafts had an influence on later instruments.

1990 General Assembly resolution 45/94 of 14 December 1990, recognised that individuals are entitled to live in an environment adequate for their health and well-being.


1991 First Ministerial Conference “Environment for Europe” at Dobris, former Czechoslovakia. First of series conferences that brought forth the Århus Convention.


1992 UN/ECE Convention on the Protection and Use of the Transboundary Watercourses and International Lakes, adopted at Helsinki on 17 March 1992 and the UN/ECE Convention on the Transboundary Effects of Industrial Accidents, adopted at Helsinki on 17 March 1992. The Convention of Århus was partly based on the experiences of applying these conventions: the obligation to consider the experiences of other multilateral agreements in the implementation of a policy is copied from these conventions.

1995 Sofia Guidelines: The UN/ECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making were endorsed at the Third Ministerial Conference “Environment for Europe” at Sofia on 25 October 1995. The 26 articles deal with all three pillars of the Århus Convention.
Appendix 6: European directives

After signing by the European Community, the Århus Convention is not yet ratified, nor empowered by additional European legislation. To be consistent with the requirements of the Convention of Århus, different actions are necessary. First of all, legislation for the European decision-making procedures and institutions had to be changed, because the Århus Convention is the first Convention of this nature that is a legally binding instrument that applies specifically to the European institutions. Secondly existing directives comprising provisions on access to information, public participation and access to justice had to be amended or replaced. Only the access-to-justice pillar is not yet empowered by its own directive.

Implications for European institutions

Article 1 of the Treaty on the European Union stipulates that within the European Union, "decisions are taken as openly as possible and as closely as possible to the citizen". A democratic, open society is called upon to associate citizens in its decision-making process and to ensure that its political and administrative action is as transparent as possible. The principles of the Århus Convention are nothing else than the application of good governance to the environmental sector (Commission of the European Communities 2003a: 4). The European Union had already of a regulation of 2001 that granted a right of access to documents of all European institutions. Besides, some general comments are made like broadening the consultation of interested parties and enlarge participation in decision-making, making Community legislation more accessible and giving public access to the institutions’ internal documents (OJ EU L145 2001, 43-48). All this was not imperative which made it necessary to change it by new regulations. To comply with this, a proposal for a regulation has been made in October 2003 by the European Union. The European Union states that its institutions are nowadays completely in compliance with the Århus Convention.

Access to information directive

The European Commission thinks that public awareness and involvement in environmental matters first of all depend on public access to environmental information. Besides, as environmental problems have very often a transboundary dimension, the European Union thinks community action is needed in order to develop appropriate environmental policy. Directive 90/313 constituted a first cornerstone in European legislation regarding these matters, because it imposed the obligation to authorities to make environmental information available to any person at his request, without having to prove an interest in this information. The only exception for this obligation is when the protection of other values (like public security and industrial confidentiality) is in danger (OJ EU L158 1990: 56-58). The directive was successful in the way that individuals and organisations have made extensive use of its possibilities (EC 2000: 1). Nevertheless, the 28th of January 2003, directive 2003/04/EC on public access to environmental information was voted for (EC 2003b). The aim of this new directive was three-fold: to pave the way for Community ratification of the Convention of Århus; to adapt directive 90/313 to the electronic revolution; and to correct the shortcomings identified in the practical application of directive 90/313. This new directive replaces directive 90/313/EEC, which is thus repealed with effect from 14th February 2005 onwards. The main difference between the two directives is the difference between the objectives: Directive 90/313 mentions “the freedom of access to and dissemination of information on the environment” (OJ EU L158 1990: 56-58). The new directive strengthens its objective into two: (a) to guarantee the right of access to environmental information and (b) to ensure that environmental information is progressively made available and disseminated and that computer telecommunication and/or electronic technology shall be
promoted. These two objectives are in compliance with the Århus Convention. Other corrections that have been made in the new directive to be in line with the Århus Convention, were the following (Commissie van de Europese Gemeenschappen 2000: 8-9):
- an extended definition of "environmental information" encompassing a wider range of matters related to the environment such as human health and safety, cost-benefit and other economic analyses and assumptions used in environmental decision-making;
- an extended definition of "public authorities";
- more detailed provisions on the form in which information is to be made available;
- one month instead of two months is the deadline for making available the information requested, but with the possibility for extension;
- limitation of exceptions: a request for environmental information may only be refused if disclosure would adversely affect one of the interests mentioned;
- additional duties placed on national authorities for collecting and disseminating information even when there is no request to do this.

Public participation directive

The second pillar is empowered by directive 2003/35 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment. This directive amended two other directives: The amended directives are: directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (EIA-directive) and directive 96/61/EC on concerning integrated pollution prevention and control (IPPC-directive). It is unclear why the European Commission has chosen to amend these directives instead of replacing them, as is done with the access-to-information directive. A possible explanation for this is that the European Commission thinks that public participation starts with sufficient diffusion of information and hence access to information was considered to be of higher priority. Besides, more experience is available with the provisions on access to information as such provisions have been present in different conventions and legislation since 1966. The European Union emphasises the importance of the same basic conditions throughout Europe on which the public can rely for the participation. The European Union wanted the EIA- and IPPC-directive to be a framework for the national policies, in particular concerning public participation. Upon that moment these directives did not fulfil to these aspirations, which is the first reason why the directives have been amended. The second reason is the alignment with the Århus Convention, as to be able to ratify this Convention later on. To bring about these goals, the European Union developed a new directive: directive 2003/35 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending directives 85/337/EEC and 96/61/EC. The new directive 2003/35 obliges the member states to take measures to ensure that the public is given early and effective opportunities to participate in the preparation of the plans or programmes and that relevant information about these plans and programmes is made available to the public. In line with the Århus Convention, this implies that: the public must be informed about any proposal for such plans or programmes giving reasonable timeframes to have an effective involvement of the public; the public is entitled to express comments and opinions when all options and alternatives are still open; the definitions of 'public' and 'public concerned' are copied from the Århus Convention; authorities has to take account of the results of these comments and opinions; and the application field of the directive is enlarged (Korhola 2003).
### Table 13. Internal European decision-making

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### Access to justice directive

At the beginning, it was not sure that the third pillar of the Århus Convention would and should be empowered by a specific directive. The member states had difficulties related to the principle of subsidiarity and to the impact on their different national juridical systems (Tweede kamer der Staten-Generaal April 2003c: 4). However, in October 2003, a proposal for a directive on access to justice in environmental matters has been developed because the negotiations resulted in an agreement for the development of a directive (Commission of the European Communities 2003b). This proposal is not very advanced neither. The European Community can ratify the Århus Convention after having approved this directive and lodging a ratification instrument at the Secretary-General of the UN. When this will happen, is unknown at the moment of writing.

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† The initial proposal of Directive 2003/04 was accompanied by the presentation of the report from the Commission to the Council and the European Parliament on the experience gained in the application of Council Directive 90/313/EEC (COM 2000/400)
Appendix 7: Access to information in France

Until 1978, the provisions on access to information were not very advanced in France; law 78-753 generally called the CADA-law has altered this. This law stipulates some improvements of the relationship between the government and the public. It contains the right of the public to have access to administrative documents, including environmental documents as well. Moreover, this law has created an independent authority (Commission d’Accès aux Documents Administratifs, CADA) that has to look after the fulfilment of these rights (JO RF 1978). If this right is violated this commission must be heard before going to court (CADA 2003). Such an institution is in line with the Århus Convention because it is an independent institution.

Internet is a common medium in France to satisfy the exigencies on access to information (www.cada.fr, www.gouv.fr, www.legifrance.gouv.fr). But to ensure the active access to information, a special organism exists which has the task to assemble, diffuse and validate all the information concerning the environment. This organism is called IFEN (Institut Français de l’Environnement) and is a public administrative body under the authority of the Ministry of Environment (MEDD). One of the missions of this organisation is to diffuse the information, which is done among others by publishing it on the Internet, as is consistent with article 5-3 of the Århus Convention. This organisation thus serves to fulfil the obligation to have active diffusion of environmental information. Publishing a report about the state of the environment in France every three years is also one of the tasks (IFEN 2003). Next to these general laws, there are some laws specifically applying to the subject of water, air, waste, noise pollution and chemical products, providing obligations to give access to information in the active way, meaning the public authorities are obliged to diffuse relevant information (Sénat 2002: 22-23).

The French have ratified the Århus Convention, but in January 2003, the European Commission has lodged a complaint against France for not having transposed the 90-313 directive in a good way. In 2001, the French government has developed edict 2001-321 to be able to ratify the 90/313 directive of the European Union; this introduced a new chapter in the Code de l'Environnement. The adjustments made by the French to ratify the 90/313-directive served as a first step in the direction of ratification of the Århus Convention. The most important accusation was that the definition of environmental information was too restrictive and that there were too many exceptions for obligatory access to information (Stix-Hackl 2003). Other accusations were:

- no guarantee for assistance in seeking information by the public authorities;
- no obligation that the information must be relevant and up-to-date;
- no obligation to disseminate any information held by the authorities that could enable the public to take measures to prevent or mitigate a threat;
- no obligation to encourage operators whose activities have a significant environmental impact to communicate information regularly.

Until now, the French do not have an appropriate response on this accusation which means that if they really want to have their legislation in line with the Århus Convention (which means naturally that it comply with the 90/313-directive) they have to change it another time to have an answer for these shortcomings.
Appendix 8: Public participation in France

Procedure
French legislation on infrastructure development and public participation is very complex. For national projects (to which railways and routes mostly belong), the procedure starts first of all with a ministerial decision to include the project in the General Spatial Plans (Schéma Directeur), during which the departments and regions can give their opinion. No particular possibilities for public participation are included in this first step. Public participation during plans and programs as stipulated in article seven of the Århus Convention is not translated in French legislation regarding infrastructure projects, neither for any other project. This ministerial decision is not very formal and can be initiated by the owner too, namely: the Board of Roads (DDR) of the Ministry of Transport (METT) for the development of roads or Réseau Ferré de France (RFF) for railways. After that, prefactual research by the owner is done to be able to describe the project. This is the phase where a special commission comes within sight: the National Commission for the Public Debate (CNDP, Commission Nationale du Débat Public), because this research is used by the CNDP to determine whether or not a public debate is necessary depending of the national interest of the project, the social-economical effects and the impact on the environment. Depending of the estimated budget of the project, the owner is obliged to submit it to the CNDP. Otherwise, the owner must give the public the opportunity to refer to the CNDP by providing appropriate information, for which this research serves as well. In pursuance of this description and the reactions, the CNDP takes the decision whether there will be a debate organised by them or not (CNDP 2003: 1). A public debate under the responsibility of the CNDP takes four months. Exceptionally, the CNDP can enlarge this period for additional research with a period of two months. The next sub-section will elaborate more on the CNDP.

If there is no debate under the responsibility of the CNDP, another form of public participation will take place but this is the responsibility of the owner, which makes it less transparent. This is compulsory according to article L300-I/II of the Code de l'Urbainisme. This is to say that the owner must make clear in what way the project has changed as a consequence of the debate. However, this does not mean that they explain why some reactions are not taken into account, which does not satisfy the requirements of the Århus Convention. In all cases, there is a ministerial decision after this phase whether continuation of the project is desirable or not (JO RF 1985). When the answer is positive, preliminary research takes place, in which the functions and feasibility of the project are investigated, and in which the zone of the section is defined upon several kilometres. Hereafter, a ministerial decision is taken to choose one alternative, which is to be explored in the next phase: General Preliminary Project Research (APS: études d’Avant-Projet Sommaire) in which an environmental impact assessment (EIA) is done by the owner. French legislation on environmental impact assessments was advanced: in 1976, France was the first country to have such stipulations included in their legislation. However, nowadays this is not an elaborated EIA in comparison with the Netherlands.

This phase supplies a document that forms the basis of the public inquiry executed by the commissioner-inquiry, which takes place hereafter. The public inquiry is a procedure inherited of the 19th century, introduced to guarantee private property and forms the basis for all projects concerning public participation (Assemblée Nationale 2001: 7). On the basis of the public inquiry, a government can demand for licenses. The Bouchardeau-law of 1983 has modernised these public inquiries and made the link with environmental matters. Next to the EIA-document, a summary of the public debate (or for smaller projects the summary of the consultation under the
auspices of the prefect) will be given to the commissioner-inquiry to be able to take these notions into account during this phase. The result of the public inquiry is a declaration of public utility (DUP), mentioning the object of the project and the motives to consider this as a project of general interest, on the basis of which licences can be demanded. It is possible that in the meanwhile, the Detailed Preliminary Project Research (APD: études d'Avant Projet Détailé) is set going, with the objective to gain the approval of the minister for the detailed elaboration of the project. After the minister has signed this declaration, the realisation of the project can start (Fourniau 2000: 10, Vallemont 2001: 65,66). Please, find below a schematical overview of this procedure.

**CNDP**

After the huge problems with the public acceptance of the development of the TGV Méditerranée, the French government decided that projects with a comparable size should be managed differently. The Barnier-law was created to fulfil these wishes and has brought about some major changes in the decision-making procedures for large-scale projects by creating the CNDP. Such a debate complies with the requirements of the Århus Convention and is very progressive in the national legislation. The CNDP was created by the Barnier-law on 2 February 1995 to reinforce the taking into consideration of the environment in important development projects. The CNDP was installed in September 1997 by the French minister of Regional Planning and Environment. At that moment, the first proposition was that the CNDP would be an administrative independent authority, but the METT and particularly the DDR was against this because they were not willing to handle over responsibilities to a commission outside the government. The decree that defined the barriers of submission and thus the scope of this commission posed bigger problems than the law itself to be voted for. The administration and Prime Minister were not very supportive towards these subjects and therefore they used some strategies of delay (Interview Lafont 30-05-03). Still, it has been installed before the elections have taken place. However, in 2002, the law of 27 February 2002 on Proximity of Democracy has transformed the CNDP into an administrative independent authority as a consequence of the report of the Conseil d'État about the reform of the public utility. The role of this commission is now threefold (CNCE 2002: 1):

- to take care of the provision on good information during the development of a project;
- to advise authorities and owners to involve the public into the decision-making process;
- to do everything possible to enlarge the possibilities to have a dialogue with the public.

The task of this commission is thus not to judge the solution coming out of the debate, but to ensure that every opinion about the objectives and characteristics of the project can be heard freely and constructively. The commission consists of 21 people, among whom representatives of the parliament, town councillors, members of the Conseil d'État and members of associations for the protection of nature (Assemblée Nationale 2001: 91). If the CNDP decides that a debate is necessary, the CNDP can take care of this debate itself by constituting a particular commission for this project, or it hands over the execution of this debate to the owner of the project and only stipulates what this debate should look like and how it is settled. Still the last option is, as a consequence of the double role of the owner, less transparent. The CNDP has introduced this possibility, so that the owner can learn how to deal with its public by organising a debate himself. Besides, the CNDP does not have enough means to organise all debates. If the CNDP decides that a public debate is not necessary, she can give some recommendations to the owner concerning a consultation of the public.
Figure 4. Procedure in France
Appendix 9: Access to information in the Netherlands

The Law Publicity of Administration (WOB) has been changed little in order to be able to execute the provisions of directive 90/313 of the European Union. Article 3.11 states that documents with environmental information must be provided to the public for at a maximum the cost price within two weeks. Next to this, the law of Environmental Policy (Wm) has some specific provisions on the publication of environmental information. This law obliges to make every four years reports about the environmental status in the Netherlands and to explain the policy in environmental matters for the next years, which is called the National Environmental Policy Plan (NMP) (Staatscourant 1979: H1, art. 4,2). Concerning more specifically environmental information, the National Institute for Public Health and Environment (RIVM) conducts research on public health and environmental issues in the Netherlands. RIVM is an independent agency, that not only conducts research itself, it also gathers data from other organisations (enterprises and all kinds of governmental layers), which it then interprets and publishes. RIVM does not have a legal function to provide the public with information, but they do have an elaborated internet-site with up-to-date information. The legal responsibility for providing the public with information is beard by Postbus 51, which is the Dutch government’s central information point. It provides information about subjects for which the government has a responsibility, including environmental matters. Internet functions very well in the Netherlands to comply with the right of access to information (www.overheid.nl). The Commission Future of Governmental Communication, over which Wallage presided, has done a research on the possibilities for the government to use Internet. Following the advice of this commission, the government will enhance the active role of itself in case of access to information (Tweede kamer der SG April 2003: 14-16). The WOB has been adjusted in two senses: the general provisions have been changed to comply with the level of transparency of the Convention. Secondly, some provisions specifically on the environment have been added. The result of this is that Dutch legislation has the same provisions as the Århus Convention, except for:

- the time limit is two weeks instead of one month, which means that Dutch legislation is more advanced;
- information in preparatory documents is more easily diffused than the Convention stipulates. Another advancement of Dutch legislation;
- there is only one deficiency in Dutch legislation, which is the fact that operators are not encouraged to publish the environmental information they have.
Appendix 10: Public participation in the Netherlands

Dutch legislation on public participation is quite advanced and structured. Concerning the development of new roads and railways, the Route Act / MER is applicable. Before the formal part of the Route Act there is already an exploration phase that is informal, in which the residents are often involved as well (Interview Van der Kolk 22-08-03). The first step in the formal procedure is the appearance of the Initial Memorandum (Startnotitie), which means that the minister is going to do a study on the possibilities for the development of a new road or railway. Some alternatives for the new road or railway will be investigated, including a small-scale environmental impact assessment (Milieu Effect Rapportage, MER) under auspices of the MER-Commission. It has no administrative responsibilities and does not interfere with political judgements. In this way, the MER-Commission plays an important role in the decision-making process of the development of roads and railways (Commissie MER 2003). Four elements must be present in a MER: the state of affairs in the present situation without the development of the plan, the defined plan, the possible alternatives and the consequences of the plan and of the alternatives. The MER-procedure is next to the Route-procedure, legally obligatory for large-scale projects, like the development of roads longer than 10 kilometres and railroads; the MER-provisions on public participation are the same as the Route Act-provisions. The appearance of this Initial Memorandum, like all documents to be published, is announced in the newspapers and the official journal and is to be viewed four weeks on public places.

In pursuance of this Initial Memorandum, the first phase of public participation is entered to add or adjust the research objectives or the formulation of the problem by sending written comments to the focal point of public participation of V&W (Inspraakpunt). Inspraakpunt is founded in 1997 with the mission to: 1) carefully co-ordinate the preparation and execution of legal public participation procedures by organising hearings, publishing where and how one can participate, registrating all reactions of the public and looking after an appropriate response of the responsible actor and 2) guarantee and developing the quality of the process of public participation by doing research. Inspraakpunt takes care of the treatment of these comments and develops a report with the summary of all phases of public participation. This report forms the basis, together with the advice of the MER-commission for the minister to develop guidelines for the research to be done, which has a time frame of approximately one or two years. The results of this research, an investigation of aspects concerning finances, security and environment are written in the Route Memorandum/MER. The idea is that knowledge generated by this research is used to make a choice that is among others based on environmental criteria. On the basis of this Memorandum/MER, the second phase of public participation starts: which of the alternatives that have been investigated is the best? The public is able to give their opinion on such questions. The minister decides on the basis of the result of the second round of public participation, the advice of the MER-commission and of lower governmental organisations, which alternative is preferred. This alternative is elucidated in a report, called Draft Route Decision, defining the exact position of the route and all kinds of effects of the development of this route. A minimum of eight weeks is dedicated to public participation after the publication of the Draft Route Decision to give comments on the elaboration of the chosen alternative. The minister decides if the project is going to be realised in the Route Decision, which is also based on the public opinion. After this decision, the public has the possibility to appeal to a higher court against the decision or the procedure that is followed.

The Route Act replaces a large deal of the procedure for the Municipal Zoning Plans (MZP: Bestemmingsplanprocedure) which means that one can ask for licenses on the base of the Route
Decision. In the procedure for the MZP's, no possibilities for appealing to court are included as far as it concerns decisions already taken in the Route Act Procedure. However, appealing to court for decisions that are not defined in this procedure is possible, like the concession procedures. Although this restricts the possibilities for the public to be involved, this law is still considered to guarantee justice protection on national and local level (Staatscourant 1993, Commissie MER 2003).
Figure 5. Procedure in the Netherlands
Books


United Nations

- UNECE (1998). *Convention on access to information, public participation in decision-making and access to justice in environmental matters*. Århus, Denmark.

**European Union**

• Commission of the European Communities (2003c). *Proposal for a council decision on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision making and access to justice regarding environmental matters*. Brussels. COM2003/625
• Korhola, E-R. (2003). *Third report on the joint text approved by the Conciliation committee for a European Parliament and Council directive on providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and*


French Government


Dutch Government

- Tweede Kamer der Staten-Generaal (2002). Memorie van toelichting op regels ter bespoediging en vereenvoudiging van procedures met het oog op het zo spoedig mogelijk vergroten van de capaciteit van een aantal hoofdweg door middel van een betere benutting en verbreding van die wegen (Spoedwet wegverbreding). Nr. 28/679/3. SDU Uitgevers, Den Haag.


**Other**


