



ECONNECT

Alpine Space Programme – ETC

Action 6.2:

Bilateral Country Comparisons

of the Legal Framework of Protected Areas

Italy / Switzerland

Pilot Region: The Rhaetian Triangle

- Monte Rosa



Italian Ministry of the
Environment, Land and Sea





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1. INTRODUCTION

1.1. Background

The Alps are one of the largest natural regions in Europe, and therefore of paramount importance for the preservation of biodiversity; but they also are home to about 14 million people, and one of the most visited areas in the world. Such a strong anthropization is bound to have a profound impact on biodiversity. The loss and fragmentation of habitats, climate change, changes in agricultural practices and pollution are among the most important causes for the loss of biodiversity and the destruction of landscapes in the Alps. The creation of a functioning ecological network in the Alps can help preserve the extraordinarily rich alpine biological diversity¹. Protected areas play an important role for the conservation of biodiversity as they cover 25% of the Alpine arc, but protecting isolated sanctuaries is not enough. The preservation of biodiversity through the creation of ecological networks is one of the most recent steps undertaken by policy-makers concerned with natural protection. Ecological corridors, as the linear connection elements allowing the passage of species between different living spaces, thus enabling genetic exchange between populations, play a key role in this regard. In the Alpine arc this strategy especially concerns the realization of ecological connections between protected areas. It means that concrete practical and legal measures have to be taken even outside of the protected areas in order to allow the safe transit of wildlife. This new challenge is gradually emerging on the legal stage, affecting not only *strictu sensu* environmental legislation but also a number of other fields such as spatial planning and agriculture.

1.2. Aims of the study

After analysing the legal framework of protected areas in the different Alpine States (nature protection, spatial planning, ecological connectivity and transborder cooperation)² during the course of Action 6.1, action 6.2 will focus on the regional level (Pilot Regions). The legal situation of the

¹ Scheurer T., Plassmann G., Kohler Y., Guth M.O., “No sustainable conservation of biodiversity without connectivity. Establishing Ecological Networks throughout the Alps”, Report of the 4th Symposium of Protected Areas, 2009.

² Action 6.1 of the ECONNECT Project: “Identification of legal situation of Alpine protected areas (compare categories of protected areas and their legal framework); emphasis on cross-border issues, Natura 2000”.

protected areas' surroundings will be analysed, in order to identify their potential to play a pro-active role in the ecological network creation process. The two main issues are the following:

- The institutionalisation of transborder cooperation between protected areas
- The identification of legal solutions for creating/improving an ecological networking process in the different ECONNECT Pilot Regions³.

Hence the key questions to be solved appear:

- What would the most appropriate legal instruments be in order to realize/improve trans-border cooperation?
- What could the most appropriate legal instruments be for overcoming the obstacles to the establishment of ecological networks?

Comparative analysis is the core of Action 6.2. We shall therefore examine the juridical framework of specific measures and other measures concerning the conservation of nature, the management of the territory and trans-border cooperation.

1.3. Expected outputs of these studies

The objective of our studies is the identification of possible strategies to be adopted by protected areas in order to take a pro-active role in the creation of ecological networks. Different possibilities will emerge by comparing the legal situation of different protected areas and their surroundings. During the course of our studies we will consider whether or not the European Grouping for Territorial Cooperation (EGTC) is the most appropriate legal instrument for the institutionalisation of the existing trans-border cooperation between protected areas. Other legislative/regulatory options will also be evaluated.

The results of WP6 (identification of the most appropriate measures to be used by protected areas management in order to create/improve ecological connectivity) are meant to be used for the achievement of other Econnect WPs' objectives. In this regard, further coordination with WP7 "Implementation in the Pilot Areas" is foreseen. In fact, WP7 envisions the identification of ecological barriers and corridors in the pilot areas.

1.4. Methodology

Firstly we will undertake a comparative analysis of the National Assessments produced during the course of Action 6.1. We will analyse and compare the national and/or regional legislation currently in force within the ECONNECT Pilot Regions. We will analyse the existing legal frameworks concerning the protection of nature (the specific legal texts which regulate the management of the parks,

³ PR(s) = Pilot Region(s)/ Pilot Region and Pilot Area have to be understood as the same concept.

ecological connectivity etc), spatial planning (both inside and outside the parks) and transborder cooperation. We will carry out the following bilateral comparisons between Alpine countries:

1. France-Italy
2. Italy-Switzerland
3. Germany-Austria
4. Austria-Italy

During the second phase of the Project, the development of questionnaires for the participating parks of each Pilot Region was envisioned, in order to get an overview of the existing transborder cooperation and the existing actions for improving ecological connectivity. The questionnaires were realized in cooperation with CIPRA-France and were also sent to other Project Partners for “feed-back” (CIPRA-International, ALPARC, etc.). The answers to these questionnaires were taken into account in this study.

1.5. Collaboration with Project Partners and Pilot Regions

CIPRA-France and Region Valle D’Aosta are both Partners of WP6, working jointly with EURAC Research on the issue of environmental legislation. As already mentioned, EURAC Research cooperates with CIPRA-France for the elaboration of questionnaires to be sent to managers of protected areas (of the Pilot Regions). Meetings with protected area managers would undoubtedly prove useful/beneficial in order to better define the most important questions to be answered. The Valle d’Aosta Region has conferred a mandate to a lawyer to work on questions related to cooperation between France and Italy and between Switzerland and Italy.

Coordination with WP7 is also a needed and recommended feature, as Action 7.2 (*“Analysis of legal obstacles in the pilot areas: identification of legal support and possible solutions to the identified difficulties for the network”*) expressly deals with a number of legal issues. The WP Leader for WP7 is the *Task Force Protected Areas* of the Alpine Convention.

1.6 The ECONNECT Pilot Regions

A total of 7 Pilot regions exist under the umbrella of the ECONNECT Project⁵ (Figure 1). Some of the Pilot Regions are international and others are interregional (the term “interregional” is understood in this study as pertaining to an area spanning across several regions of the same State). In some Pilot Regions the protected areas are adjacent (like the Maritime Alps and Mercantour Parks) while in others they are not (such as the Pilot Region Engadin Inn, where not all of the protected areas are contiguous). Each Pilot Region has its own characteristic traits and legal issues. A brief overview of these legal issues will follow the map of the Pilot Region.

⁵ At this time only 6 maps and Pilot Region descriptions are available: the information concerning Valle d'Aosta will be available soon. Furthermore it should be mentioned that CIPRA-France is in charge of the analysis of the Pilot-Region "Isère". CIPRA-France will also work on the question of the ecological connectivity between France and Switzerland (although the Isère Département -as ECONNECT PR- is not a cross-border area).

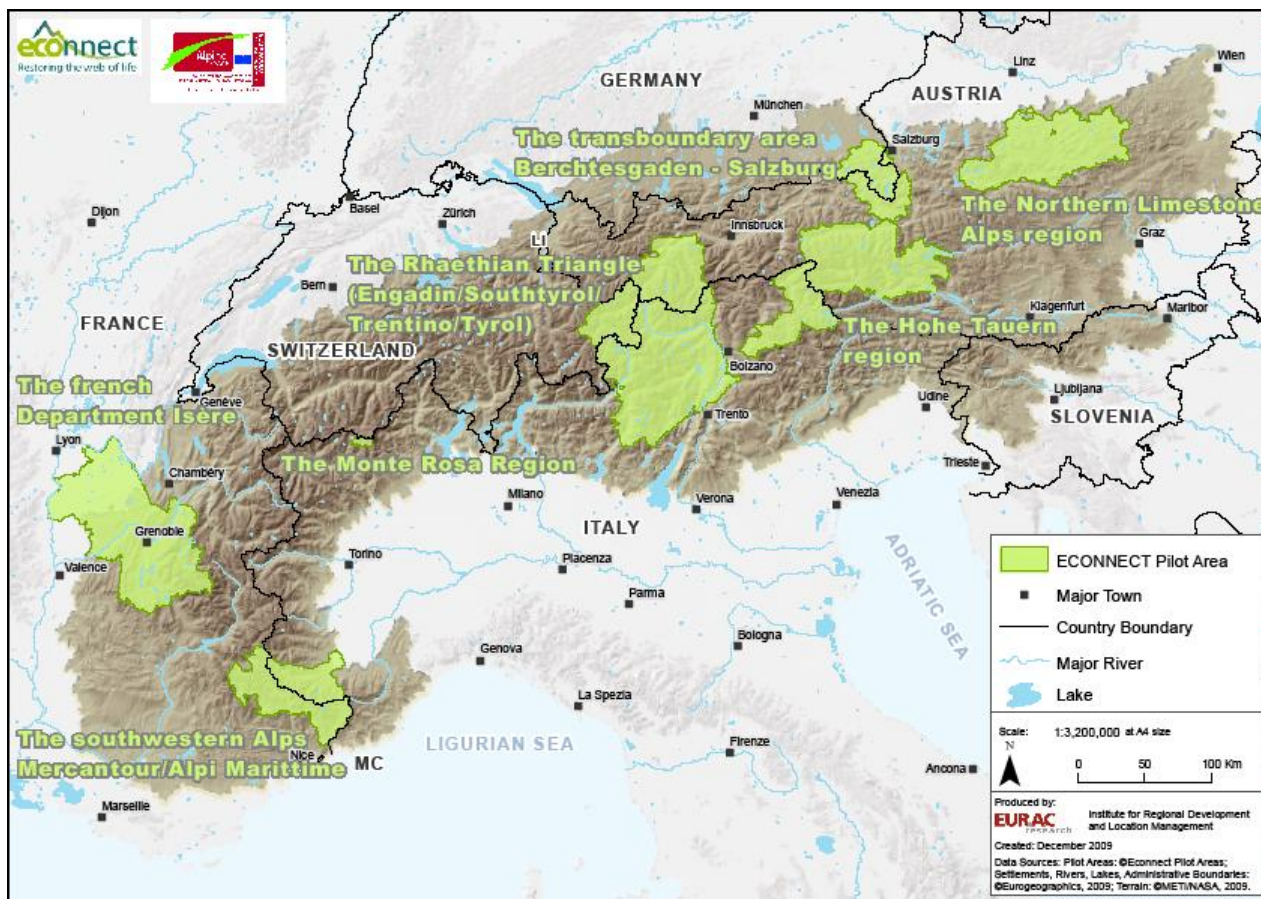


Fig 1: The ECONNECT Pilot Regions

Two of the seven Pilot regions of the Econnect Project will be used to illustrate the comparative study Italy/Switzerland: the Pilot Area “Monte Rosa” and the Pilot area “The Rhaetian Triangle”. Protected areas under consideration in these two Pilot regions are mentioned in Table 1. As far as the “Monte Rosa” Pilot region is concerned, only the Natura 2000 site of Monte Rosa in the region Valle d’Aosta is involved. We will nonetheless also analyse the regulations in force in the Alta Valsesia Nature Park (located in the Italian region of Piedmont, and bordering with the Econnect pilot area). Regarding this pilot area, we will also examine protected areas situated across the border, i.e. the Dent Blanche-Matterhorn-Monte Rosa site classified in Switzerland as protected landscape (IUCN category V). As for

the “*Rhaetian Triangle*”⁴ Pilot region, we shall specifically analyse the legal framework of the Stelvio National Park on the Italian side, as well as those of the Swiss National Park and the Val Müstair biosphere reserve for Switzerland.

Table 1 : The protected areas in the Pilot regions examined in this study.

Area/Pilot region	Type of protection/ Italian side	Type of protection/ Swiss side
“The Rhaetian Triangle”	Stelvio National Park (Region Lombardy, Autonomous Provinces of Bolzano and Trento)	Val Müstair biosphere reserve (Canton Graubünden) (<i>under project phase</i>)/ Regional nature park of national importance (<i>under project phase</i>) Swiss National Park (National Park of Canton Graubünden)
“Monte Rosa”	Natura 2000 site Monte Rosa (Valle d’Aosta Region) Alta Valsesia Nature Park (Piedmont Region) Site Natura 2000 “Monte Rosa “(in the Province of Verbano-Cusio-Ossala; Piedmont Region). Natura 2000 site Alta Val Sesia (Piedmont Region)	Protected landscape of national importance Dent Blanche- Matterhorn- Monte Rosa (Canton Valais)

⁴ This study will take into consideration the areas on the Swiss-Italian border. Those situated on the Austrian-Italian border will be the object of a separate study.

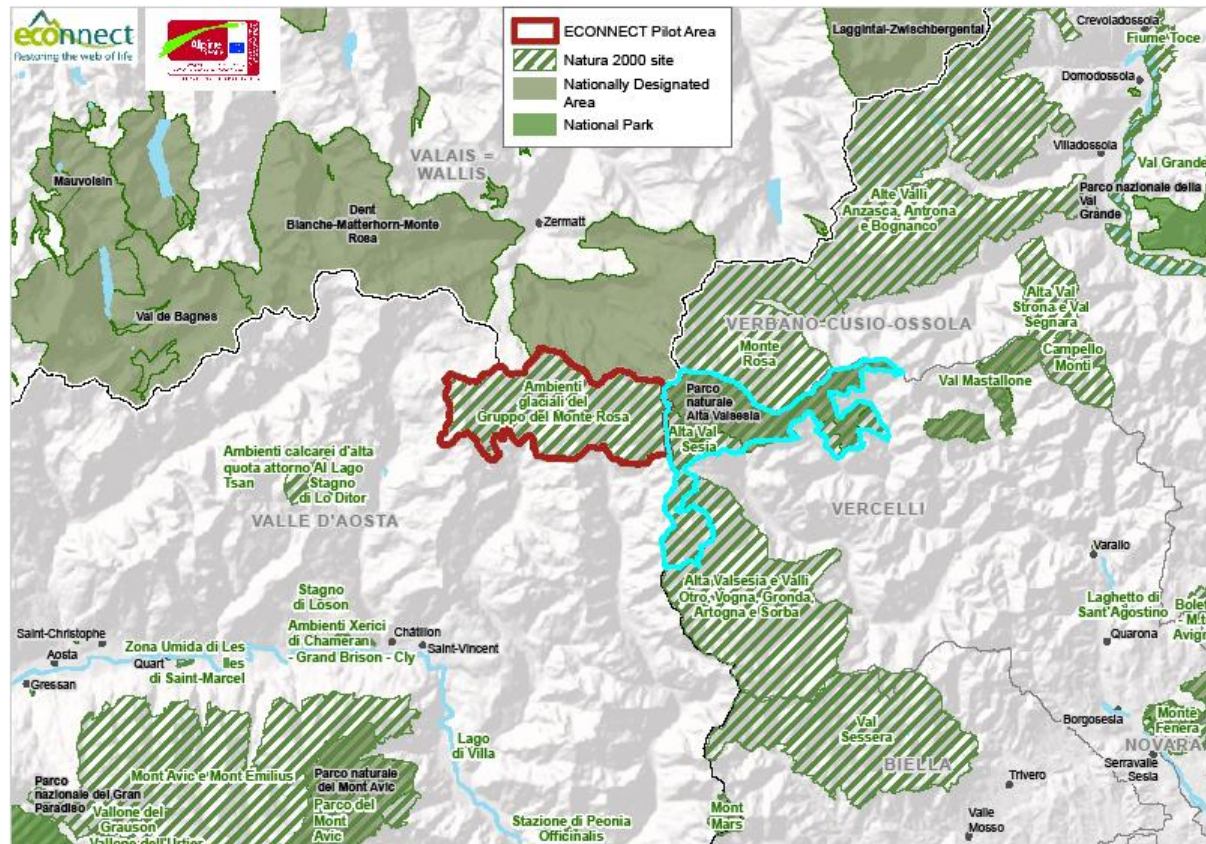


Figure 2: Pilot Region “Monte Rosa”

The Pilot Region “Monte Rosa” (Figure 2) is constituted by a single protected area, i.e. Italian Natura 2000 site Monte Rosa located in the Valle d’Aosta region. However, as this is an Italo-Swiss comparative study, the regulations of the “Dent Blanche-Matterhorn-Monte Rosa” bordering site, situated on the other side of the frontier, will also be taken into account. This area is classified in the Inventories of territories of national importance as protected landscape of national importance. We will also provide a brief overview of the regulations of the following areas :

- Alta Valsesia Regional Nature Park in the Piedmont Region (bordering Natura 2000 site Monte Rosa in the Valle d’Aosta region)
- Natura 2000 site Alta Val Sesia, whose perimeter is bigger than that of the Regional nature park bearing the same name (bordering Natura 2000 site Monte Rosa in the Valle d’Aosta region)
- Natura 2000 site Monte Rosa, in the Province of Verbano-Cusio-Ossola (Piedmont region). Although this is not a neighbouring area of the Valle d’Aosta Natura 2000, it seemed interesting to compare it as it is integrated within an ecologically homogeneous territory.

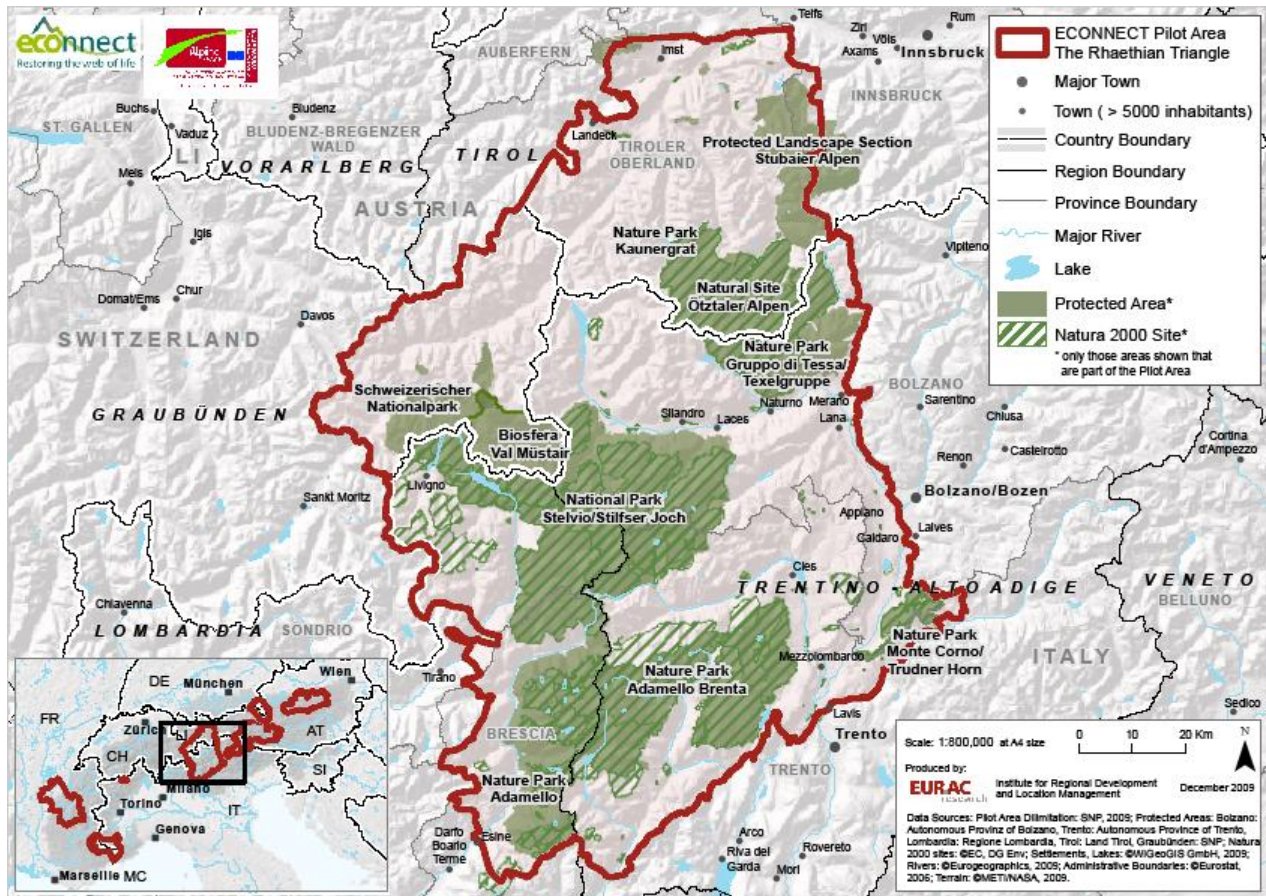


Fig. 3: Econnect Pilot Area “The Rhaetian Triangle”

The regulations of the areas within Pilot region “Rhaetian Triangle ” (see Figure 3), to be examined are as follows: on the Swiss side, those concerning the Swiss National Park and the future Regional nature park Val Müstair; on the Italian side, those concerning the Stelvio National Park. Val Müstair is situated between the Swiss National Park of Graubünden and the Stelvio Italian National Park. Therefore this territory is a sort of buffer zone for the two national parks, which is extremely important and reinforces the idea that cooperation between these three areas is necessary. The idea of creating a cross-border ecological area between the Parks of this Pilot Region (also including the parks of Trentino) had already been suggested in a non-binding document, a kind of “Letter of Interest”. As already mentioned, the regulations concerning the areas on the border between Italy and Austria will be the object of another study (a comparative study between Italy and Austria).

2. BILATERAL COMPARISON OF THE LEGAL FRAMEWORK OF PROTECTED AREAS

2.1 The institutional framework

Switzerland

Pursuant to Art. 1 of the Swiss Constitution, Switzerland is a Federal State. The Federal State is named “Confederation”, and is divided in 26 Cantons. Municipalities are the lowest layer of the federal administrative structure. All the Cantons are divided into political *Communes* (municipalities). As far as the environment is concerned, Cantons share legislative competences with the Confederation. Pursuant to Art. 73 of the Swiss Constitution, “*The Confederation and the Cantons shall endeavour to achieve a balanced and sustainable relationship between nature and its capacity to renew itself and the demands placed on it by the population*”. Article 74 states that “*The Confederation shall legislate on the protection of the population and its natural environment against damage or nuisance*”. With regards to the protection of natural heritage, article 78 specifies that it shall be entrusted to “*the responsibility of the Cantons*” and that “*in the fulfilment of its duties, the Confederation shall take account of concerns for the protection of natural and cultural heritage. It shall protect the countryside and places of architectural, historical, natural or cultural interest; it shall preserve such places intact if required to do so in the public interest*”. A law and an ordinance concerning the protection of nature and landscape have been approved by the Swiss Confederation⁵. These legislative instruments aim at supporting Cantons in the fulfilment of their tasks pertaining to this issue. Subsequently, Cantons approve their own specific laws: such is the case of Cantons Valais⁶ and Graubünden⁷, whose legal framework we shall examine in the following pages.

Italy

In Italy, Regions and Autonomous Provinces have legislative competence in specific matters, among which nature protection and spatial planning. Pursuant to Article 117 of the Constitution, the “*legislative power is exercised by the State and Regions*”. According to this article, a distinction must be made between matters for which the State has exclusive law-making powers and matters subject to concurrent legislation. Concerning the latter, the legislative powers vested in the Regions are subject to the fundamental principles established in State legislation. The Regions retain legislative power on all matters that are not expressly reserved for State legislation. While environmental protection is an

⁵ Federal Act of 1 July 1996 on the Protection of Nature and the Landscape (LPN) (status on 1 January 2008); Ordinance on the Protection of Nature and Landscape (OPN) of 16 January 1991 (status on 1 July 2008).

⁶ Act on the protection of nature, landscape and sites of 13 November 1998 approved by the Grand Council of Valais; Ordinance for Nature, Landscape and Site Protection (OcPN) of 20 September 2000 approved by the Grand Council of Valais.

⁷ Law on the Protection of Nature, Landscape and Sites in Canton Graubünden, approved by referendum on 24 October 1965; Ordinance for Nature, Landscape and Site Protection, approved by the Grand Council on 27 November 1946.

exclusive State competence, enhancing environmental assets is subject to concurrent legislation. Spatial planning is also a matter of shared competence between the State and the Regions. The State has regulatory power in matters for which it has exclusive legislative power, but may also delegate such power to the Regions. The Regions have regulatory power in all other matters. Municipalities, Provinces and Metropolitan Cities have their own regulatory power over matters pertaining to their organisation and the performance of the functions attributed to them.

CONCLUSION

In Italy, as well as in Switzerland, regional territorial entities (i.e. Cantons in Switzerland, Regions and Autonomous Provinces in Italy) have legislative power in the field of nature protection. Not only the national legislative framework, but also the regional one shall be the object of study. As far as Switzerland is concerned, the relevant regional framework shall be Cantons Valais and Graubünden; as far as Italy is concerned, the object of study shall be the Regions Valle d'Aosta, Piedmont and Lombardy, and the Autonomous Provinces of Bolzano and Trento.

2.2 Transborder cooperation (outside EGTC)

Although these studies will mainly focus on the European Grouping of Territorial Cooperation, as disciplined by Reg. (EC) No. 1082/2006, a number of other legal instruments and procedures have been implemented over time in order to facilitate territorial cooperation among States (this appears particularly important in the specific case of Italy and Switzerland, since the establishment of an Italo-Swiss EGTC is forbidden by Reg. (EC) No. 1082/2006 itself unless parties from at least another member State of the EU join the Grouping, see *infra*). The most frequent approaches are:

- Multilateral framework treaties or conventions concluded at international level
- Bilateral or multilateral agreements and protocols concluded among States
- Formal agreements, working protocols, conventions or contracts concluded among regional or local authorities
- Other legal instruments based on Community or national law to facilitate and promote cross-border cooperation

Multilateral treaties and conventions concluded at international level are among the most important and long-standing tools for territorial cooperation. Treaties and conventions can be concluded at different levels: between states or (in the form of quasi-executive agreements) between governments. In some federal States such as Germany the regions also have the necessary international competence to conclude or adhere to such agreements. Also important are the conventions elaborated and adopted under the auspices of the Council of Europe such as the Outline Convention on Transfrontier Cooperation between Territorial communities or Authorities (Madrid Outline Convention) of 1980, with its protocols.

The parties to the Madrid Convention are committed (within the framework of their respective national legislations) to resolving the legal, administrative and technical difficulties of cross-border cooperation

(Art.4), considering the possibility of providing regional and local authorities with special facilities in order to engage in cross-border cooperation (Art. 5) and supplying relevant information to other contracting parties (Art.6) as well as their own regional and local authorities (Art.7) and the Council of Europe (Art.8). The Convention, as well as its First Additional Protocol (1995) was limited by the fact that its systems and models were not directly applicable, as they merely provided a framework for cooperation. To enable regional and local authorities to actually engage in cross-border cooperation, there was still the need for the respective national states to conclude specific treaties. The second Protocol (1998) aimed at solving the problem providing territorial communities with an adequate legal instrument. It is worth mentioning, however, that some parties (e.g. Italy) have not yet ratified the Additional Protocols.

Interstate bilateral or pluri-lateral agreements, such as the German-Dutch Treaty on Territorial Cooperation or the BENELUX Convention of 1989, are among the most common instruments of territorial cooperation. Their content depends solely on the political will of the parties; it is, however, possible to outline the most frequent sub-types of such agreements:

- Specific agreements providing for the establishment of intergovernmental commissions on spatial planning, cross-border cooperation or regional development
- Simple good-neighbourliness agreements
- Agreements on the implementation of the above-mentioned Madrid Outline Convention

Regional and local authorities can also conclude agreements on territorial cooperation directly, without the involvement of their respective national governments. The level of their legal contractual engagement however, may vary significantly according to the constitutional, legal and administrative framework of each State. The Madrid Convention-based Mainz Agreement of 1996 is an example of formal agreement on general crossborder cooperation, concluded directly between regional authorities of federal states without national governments being involved; its contracting parties are the Federal States of North Rhine Westphalia and Rhineland Palatinate (Germany), the German-speaking Community (Belgium) and the Walloon Region (Belgium).

Community law also provides a number of instruments other than the EGTC whose potential as tools of project-based cooperation activities needs to be assessed. The European Economic Interest Grouping is one such instrument: first introduced by Regulation (EC) No. 2137/85, the EEIG allows the formation of a grouping of individual companies or other legal entities. The purpose of the grouping is to facilitate or develop cooperation among the members. A grouping must be formed by at least two members coming from two different EU Member States; members can be companies or legal bodies having a central administration in a Member State, or natural persons. The EEIG can be formed by subjects of different legal status, requires no assets, investment or transfer of know-how and pays no company taxes nor taxes on earnings. The EEIG, however, does not have its own legal personality in all Member States (its status depending on national legislations). Moreover, an EEIG can only act in the context of private law and is therefore unable to carry out any statutory functions of local authorities, which happen to be the main actors in European Territorial Cooperation programmes and projects. The European Company, also known as Societas Europea (SE- Council Regulation (EC) No. 2157/2001) and the European Cooperative Society or Societas Cooperativa Europea (SCE -Council Regulation (EC) No.

1435/2003) also seem to be unfit for the scope: as the SE only allows companies to merge or form a new holding company or joint subsidiary and is therefore irrelevant as far as territorial cooperation programmes are concerned, while national legislations do not usually allow public entities to participate in mixed economy companies such as those created *via* the SCE.

2.3 Classification of protected areas

2.3.1 Different categories of protected areas

2.3.1.1. The international classification of protected areas

In 1994, the International Union for Conservation of Nature (IUCN)⁸ issued guidelines classifying protected areas according to their management objectives. Such guidelines (see Table 2) are based on some key principles: the basis of categorisation is by primary management objective; assignment to a category is not a commentary on management effectiveness; the categories system is international; national names for protected areas may vary; all categories are important, and a gradation of human intervention is implied⁹. Initially published in 1994, the IUCN guidelines were later revised and, as a result of an intensive process of consultation, they were published again in 2008¹⁰. Although such guidelines are not legally binding, the States Parties to the Convention on Biological Diversity have been invited to apply them in their national or regional classification of protected areas¹¹. The new version of the guidelines, published in 2008, provides a new definition of protected areas, namely “[a] clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values” . In applying the categories system, the first step is to determine whether or not the site meets this definition and the second step is to decide on the most suitable category¹². This classification provides interesting definitions and indications that help us make a comparison between the different categories of protected areas in the Alpine arc, although Alpine regulations do not always explicitly refer to it.

⁸ IUCN, *Guidelines for Protected Areas Management Categories*, CNPPA with the assistance of WCMC. IUCN, Gland, Switzerland and Cambridge, UK, 261 pages.

⁹ Dudley N. (Editor), *Guidelines for Applying Protected Area Management Categories*, IUCN, Gland, Switzerland, 2008, p.5.

¹⁰ Dudley N. (Editor), *Guidelines for Applying Protected Area Management Categories*, IUCN, Gland, Switzerland, 2008, 96 pages.

¹¹ See in particular the Programme on Protected Areas implemented by the signatory Countries of the Convention on Biological Diversity (COP 7 Decision VII/28).

¹² Dudley N. (Editor), *Guidelines for Applying Protected Area Management Categories*, IUCN, Gland, Switzerland, 2008, p.10.

Table 2 : Classification of protected areas accompanied by their definition (according to Guidelines for Applying Protected Area Management Categories, published in 2008 by IUCN).

Category	Name	Definition
Ia	Strict nature reserve	Category Ia are strictly protected areas set aside to protect biodiversity and also possibly geological/geomorphological features, where human visitation, use and impacts are strictly controlled and limited to ensure protection of the conservation values. Such protected areas can serve as indispensable reference areas for scientific research and monitoring.
Ib	Wilderness Area	Category Ib protected areas are usually large unmodified or slightly modified areas, retaining their natural character and influence, without permanent or significant human habitation, which are protected and managed so as to preserve their natural condition.
II	National Park	Category II protected areas are large natural or near-natural areas set aside to protect large-scale ecological processes, along with the complement of species and ecosystems characteristic of the area, which also provide a foundation for environmentally and culturally compatible spiritual, scientific, educational, recreational and visitor opportunities.
III	Natural monument or feature	Category III protected areas are set aside to protect a specific natural monument, which can be a landform, sea mount, submarine cavern, geological feature such as a cave or even a living feature such as an ancient grove. They are generally quite small protected areas and often have high visitor value.
IV	Habitat/Species management area	Category IV protected areas aim to protect particular species or habitats and management reflects this priority. Many category IV protected areas will need regular, active interventions to address the requirements of particular species or to maintain habitats, but this is not a requirement of the category.
V	Protected landscape/seascape	A protected area where the interaction of people and nature over time has produced an area of distinct character with significant ecological, biological, cultural and scenic value: and where safeguarding the integrity of this interaction is vital to protecting and sustaining the area and its associated nature conservation and other values.
VI	Protected area with sustainable use of natural resources	Category VI protected areas conserve ecosystems and habitats, together with associated cultural values and traditional natural resource management systems. They are generally large, with most of the area in a natural condition, where a proportion is under sustainable natural resource management and where low-level non-industrial use of natural resources compatible with nature conservation is seen as one of the main aims of the area.

As far as the national classification of **protected areas according to the Swiss law** is concerned, reference must be made primarily to the Federal Act on the Protection of Nature and the Landscape ¹³,

¹³ Federal Law of 1 July 1996 on the Protection of Nature and the Landscape (LPN) (status on 1 January 2008); Ordinance on the Protection of Nature and Landscape (OPN) of 16 January 1991 (status on 1 July 2008).

to the Ordinance on the Protection of Nature and Landscape¹⁴ and to the Ordinance on the Protection of Parks¹⁵. Concerning the classification of **protected areas according to the Italian law**, reference must be made to the Framework Law on Protected Areas classifying the protected areas, as well as to regional laws on nature protection integrating the guidelines set in the Framework Law and adapting them to the regional context. In the specific Italian and Swiss State regulations, no reference is made to the IUCN classification of protected areas.

2.2.1.2. The classification of protected areas in the national legislation

Please refer to the study by Giampaolo Parodi.

In Switzerland, the Federal Act on the Protection of Nature and the Landscape was amended in 2006, and its new articles from 23e to 23m laid down the legal basis for promoting parks of national importance. The law revision process and the new Ordinance on Parks of National Importance aim at creating a legal framework encouraging inhabitants and enterprises of the relevant regions to set up and manage parks¹⁶. Parks shall be set up within a region as a result of a participatory process. The planning, setting up and management of a park require the commitment of local inhabitants, enterprises, local authorities and park management authorities. Pursuant to Article 23e, paragraph 1 of the Act on the Protection of Nature and the Landscape, and to article 15, paragraph 1 of the Parks Ordinance, parks of national importance shall be characterised by their «*high natural and landscape values*» . These concern in particular «*the diversity and rarity of the indigenous animal and plant species as well as their habitats; [...] the exceptional beauty and the character of the landscape; [...] a low level of disturbance, by buildings, installations and uses, of the habitats of indigenous animal and plant species as well as of the landscapes and sites of local character*» . Furthermore, the second paragraph of the same article states that “*the territory of regional nature parks and of buffer zones in national parks shall also be characterised by the uniqueness and special quality of the cultural landscape as well as by historically significant sites and monuments*” .

On the basis of their management objectives, correspondence can be found between Italian protected areas and Swiss ones, as shown in the list below (Table 2).

Table. 2 : Correspondence between Italian and Swiss protected areas

Italy (see Article 2 of the Framework Act on protected areas, no.391 of 6 December 1991)	Switzerland
	National Park (IUCN category I) (Article 23f of the Federal Act on the Protection of Nature and the Landscape).
National Park (IUCN category II)	
Regional Nature Park (IUCN category V)	Regional Nature Park (Article 23g of the Federal Act on the Protection of Nature and the Landscape).
Nature Reserve	

¹⁴ Ordinance on the Protection of Nature and Landscape (OPN) of 16 January 1991 (status on 1 July 2008).

¹⁵ Ordinance on parks of national importance (Ordinance on parks, OParcs) of 7 November 2007 (status on 1 January 2008).

¹⁶ See Notes related to the Ordinance on parks of national importance (OParcs) of 25 January 2007.

Site Natura 2000 (IUCN category IV)	EU legislation is not applicable in Switzerland, therefore there are no Natura 2000 sites in this country. The equivalent could be the Emerald sites, however information is not complete yet on the juridical framework regulating the protection and management of these sites in Switzerland.
	Nature discovery parks (Article 23g of the Federal Act on the Protection of Nature and the Landscape)
Landscape protection	Protected landscape (Article 5 of the Federal Act on the Protection of Nature and the Landscape)

2.2.1.3. Legal status of Pilot regions in the ECONNECT Project

Protected areas of Pilot region Monte Rosa - legal status

The following areas are included in the study for this region:

- Protected landscape «Dent Blanche- Matterhorn- Monte Rosa” (Switzerland)
- Natura 2000 site Monte Rosa (Valle d’Aosta Region)
- Alta Valsesia regional nature park in Piedmont
- Natura 2000 site Alta Valsesia (whose perimeter is bigger than that of the regional nature park bearing the same name)
- Natura 2000 site Monte Rosa (Province of Verbano-Cusio-Ossala, Piedmont region)

Only Natura 2000 site Monte Rosa in the Valle d’Aosta Region falls within the Pilot region of the ECONNECT project; however, we shall examine the other areas in consideration of their bio-geographical closeness.

Protected landscape “Dent Blanche- Matterhorn- Monte Rosa”

The site “Dent Blanche- Matterhorn- Monte Rosa” is included in the Federal Inventory of Landscapes and Natural Monuments (IFP). This inventory, issued in 1977 by the Federal Council, aims at protecting and managing landscape diversity in Switzerland. This site is classified within IUCN category V, “*protected landscape*” . The definition of this category follows the IUCN guidelines as stated above¹⁷. The legal framework regulating the protection of areas classified as “sites of national importance” is laid down in articles 5 and 6 of the Federal Act on the Protection of Nature and the Landscape. Pursuant to article 6 of the same Law, “*The inclusion of a site of national importance in a federal inventory indicates that it particularly deserves to be preserved undiminished, or in any case to be managed with the greatest possible care, including the application of restoration or appropriate replacement measures*” ¹⁸. This is clearly a “*very ambitious*” goal¹⁹, because it implies granting the

¹⁷ Dudley N. (Ed.), *Guidelines for Applying Protected Area Management Categories*, IUCN, Gland, Switzerland, 2008, 96 pages.

¹⁸ See the protection objectives pursued in order to include this site within the IFP Inventory (please refer to the inventory list)/also verify if the objectives of the inventory have been modified since including this site in the IFP list.

¹⁹ *Effects of the Federal Inventory of Landscapes and Natural Monuments of National Importance (IFP)*, Report issued on 3 September 2003 by the Management Committee of the National Council, based on an assessment by the Parliamentary Body of Administration Control, Section 2.

site almost absolute protection, as it “*deserves to be preserved undiminished, or in any case to be managed with the greatest possible care*” . The areas included in the IFP Inventory have been classified by the Federal Council as “sites of national importance” , following consultation with the Cantons (article 5, paragraph 1 of the Federal Act on the Protection of Nature and the Landscape). Between 1977 and 1998, 162 sites were progressively classified in the Federal Inventory of Landscapes and Natural Monuments of National Importance (IFP). The area considered in our study (Dent Blanche-Matterhorn-Monte Rosa) does not fall within the list of 37 candidates to the Emerald area network submitted by the Federal Office for the Environment (FOEN) to the Council of Europe in autumn 2009.

ECONNECT Italian pilot area Monte Rosa (Valle d’Aosta Region)

Monte Rosa is classified as a Natura 2000 site, thus falling within the legal framework of the Birds and Habitats Directives transposed into Italian law. Apparently this area can be classified within IUCN category IV, “*Habitat/Species Management Area*” . Following the IUCN Guidelines, “*Category IV protected areas aim to protect particular species or habitats and management reflects this priority*” . The same applies to Natura 2000 sites, for which protection and management measures must be implemented in order to protect the habitats and species designated by the Birds and Habitats Directives.

Alta Valsesia regional nature park

Alta Valsesia regional nature park is situated in the Piedmont region. It falls within IUCN category IV, and has also been designated as Natura 2000 site. While stating the different categories of protected areas, article 2 of the Italian Framework Law on Protected Areas lists the fundamental characteristics of regional nature parks:

“Regional nature parks consist of land, river and lake areas and may also include sea areas adjacent to the coast, which are of natural and environmental importance and constitute, with one or more bordering regions, a homogeneous system identified by the natural structure of the places, by landscape and artistic values and the cultural traditions of the local population” .

Article 5 of the Piedmont Regional Law on the protection of nature areas and of biodiversity provides a classification of regional protected areas, consistent with the national Framework Law. According to its definition, nature parks are “*characterised by a variety of natural, landscape, cultural, historical and artistic values, where human presence is integrated with the environment in a well-balanced manner*”. The goals for the protection of these areas are laid down in Article 7 of the same Law (*Objectives of protected areas*). A few general objectives are pursued by all of the protected regional areas, while other objectives are specific to the individual areas. The following is a list of objectives concerning regional nature parks:

- “1) To protect, manage and reconstruct the natural and semi-natural habitats that are necessary for the conservation and enhancement of biodiversity;*
- 2) To develop scientific research to be applied to the management of natural and semi-natural areas subject to protection and to promote and disseminate models that have been experimented;*
- 3) To protect and enhance the historical, cultural and architectural heritage;*

4) To guarantee, through local spatial planning processes, a balanced development of the area and the recovery of landscape and environmental values;

5) To foster environment-friendly development initiatives by promoting production activities and land uses so as to strike a balance between integration of human activities and conservation of natural ecosystems” .

Natura 2000 sites Alta Val Sesia and Monte Rosa (Piedmont region)

Natura 2000 site Alta Val Sesia is situated for the most part within the boundaries of the Regional nature park bearing the same name, but to some extent goes beyond it. This site borders the Monte Rosa Natura 2000 site located in the Valle d’Aosta Region (Econnect pilot area). The Piedmont Natura 2000 site on the other hand is located in the Verbano-Cusio-Ossola province, and it borders the protected landscape «Dent Blanche- Matterhorn- Monte Rosa” (Switzerland).

CONCLUSION

The three priority areas included in the study, i.e. the protected landscape of “Dent Blanche-Matterhorn- Monte Rosa” , Natura 2000 site Monte Rosa in the Valle d’Aosta Region and regional nature park Val Sesia belong to different categories. Out of the three, the Italian regional park Alta Valsesia is the only one to benefit from a purposefully organised management structure. Never-the-less, the two Italian areas under study are both subject to the specific legal framework of protection contemplated for Natura 2000 sites. This legal framework resulting from the Birds and Habitats Directives is transposed into Italian law through several Acts.

Protected areas of Pilot region “The Rhaetian Triangle” - legal status

The following areas are included in the study for this region:

- Graubünden National Park (Swiss National Park)
- The Regional Park (and biosphere reserve) of Val Müstair
- Stelvio National Park in Italy

Swiss National Park / Graubünden National Park (Canton Graubünden)

The Swiss National Park was set up by the Federal Act of 19 December 1980 establishing a Swiss National Park in Canton Graubünden²⁰. Pursuant to Article 2 of this Act, the management body is the Foundation of public law “Swiss National Park” (*Schweizerischer Nationalpark*), whose headquarters are in Bern. Graubünden National Park falls under IUCN category I (strict nature reserve) rather than category II (national park) because of its management objectives. As far as the objectives pursued by a national park of national importance are concerned, reference must be made to article 23f of the Federal Act on the Protection of Nature and the Landscape, and to article 15 of the Ordinance on Parks of National Importance. Article 23f of the Federal Act on the Protection of Nature and the Landscape states that “a national park is a large area that offers the indigenous flora and fauna unspoiled

²⁰ Federal Act on the Swiss National Park in the Canton of Graubünden (National park act) of 19 December 1980.

habitats and which allows the landscape to evolve naturally” The Swiss National Park -or Graubünden National Park - was created before the approval of this Act, therefore a specific article was approved for this park and included as art. 23m in the federal act on nature and landscape protection:

“1 The existing National Park in Canton Graubünden is governed by the National Park Act of 19 December 1980.

2 The Confederation may award the “Park” label to the Swiss National Park Foundation before any expansion through the addition of a buffer zone in accordance with article 23f, paragraph 3, letter b.

3 Any expansion by means of a buffer zone shall be promoted in accordance with art. 23k” .

The objectives of the Swiss National Park are contained in Article 1 of the Federal Act dated 19 December 1980²¹ :

“The Swiss National Park in the Engadin and Münstertal is a reserve where nature is protected against any human intrusions and in particular where all flora and fauna is allowed to develop naturally” ²².

As far as provisions on the protection of the National Park are concerned, reference must be made to the National Park Regulation (*Nationalparkverordnung*)²³ which was adopted by the Council on 23 February 1983. The Swiss National Park has also been a biosphere reserve since 1979, i.e. before the creation of the Park.

The regional park of national importance / biosphere reserve Val Müstair/ (Switzerland)

The Val Müstair Park has been recently²⁴ appointed as a Regional Park of National Importance. According to art. 15 of the Ordinance on Parks of National Importance of November 7, 2007, the territory of a park of National importance is characterised by its high natural and landscape values, and in particular by:

- the diversity and rarity of the indigenous animal and plant species as well as their habitats;
- the exceptional beauty and the character of the landscape;
- a low level of disturbance, by buildings, installations and uses, of the habitats of indigenous animal and plant species as well as of the landscapes and sites of local character.

²¹ Federal Act on the Swiss National Park in the Canton of Graubünden (National park act) of 19 December 1980.

²² This is a translation of the original text of the Act in German: „ *Der Schweizerische Nationalpark im Engadin und Münstertal im Kanton Graubünden ist ein Reservat, in dem die Natur vor allen menschlichen Eingriffen geschützt und namentlich die gesamte Tier- und Pflanzenwelt ihrer natürlichen Entwicklung überlassen wird*“.

²³ Ordinance on the Protection of Swiss National Parks (Nationalparkordnung), based on Art. 7 of the Federal Act on the Swiss National Park in Canton Graubünden, Art. 15 of the Canton’s Constitution and Art. 139 of the Introductory Act to the Swiss Civil Code, approved by the Grand Council on 23 February 1983.

²⁴ August 27, 2010.

The territory of regional natural parks (and of buffer zones in national parks) shall also be characterised by the uniqueness and special quality of the cultural landscape as well as by historically significant sites and monuments. The Ordinance (art. 20) also rules that, in order to preserve and enhance the quality of nature and landscape in regional parks the diversity of the indigenous animal and plant species. Furthermore, the types of habitat as well as the landscapes and sites of local character must be preserved and as far as possible enhanced; and that the habitats of indigenous animal and plant species that are worthy of protection must be enhanced and linked

In addition to the above-mentioned National Importance status, the International Coordinating Council of UNESCO's *Man and the Biosphere* Programme has recently designed Val Müstair as a biosphere reserve of UNESCO. The designation took place during the Council's 22nd session, which was held from 31 May to 4 June, 2010, at the UNESCO Headquarters in Paris. Then, it will be an extension of the Swiss National Park reserve. Val Müstair Park now includes a buffer zone and a transition area east of the main core area, including local municipalities and villages, in particular Val Müstair to the south-east of the original Swiss National Park and Biosphere Reserve. Further extensions to the site, to be implemented before 2013, were agreed between the Council and the Swiss authorities. According to the statutory declaration of the World Network of Biosphere Reserves, "*biosphere reserves are areas of terrestrial and coastal marine ecosystems or a combination thereof, which are internationally recognised within the framework of UNESCO's Programme on Man and the Biosphere (MAB) [...]* "²⁵. The biosphere reserve concept is acknowledged by UNESCO under certain conditions, notably appropriate zonation and management²⁶. The areas, as already mentioned, should include a core area(s) and a buffer zone(s), as well as an outer transition area. In addition, provisions should be made for a management policy or plan for the area as a biosphere reserve, as well as mechanisms to manage human use and activities in the buffer zone or zones. The "biosphere reserve" title overlaps with an existing protection system and does not set up a protection system by itself²⁷. As already pointed out, the procedure for setting up a regional park of national importance is at an advanced stage. The Notes to the Ordinance on Parks of National Importance suggest that "*future biosphere reserve projects shall first of all follow the applicable procedure for regional nature parks, before applying for UNESCO recognition, on condition that they meet the additional international requirements concerning biogeographical representation, areas and research*" . A management structure for the future regional park of national importance has already been set up, in line with art. 25 of the Parks Ordinance

²⁵ Statutory framework laid down in Resolution 28C/2.4 of UNESCO's General Conference.

²⁶ See article 5 concerning the designation procedure, and article 4 on the criteria for an area to be qualified for designation as a biosphere reserve.

²⁷ The same applies to areas included in the List of UNESCO World Heritage Sites.

concerning the Park Authority. In the setup phase, the Authority (*Trägerschaft*) in charge of the regional nature park shall be the municipality of Val Müstair²⁸. A charter has been adopted in 2010 for Val Müstair regional park and reserve. Indeed, article 26 of the Ordinance on Parks of National Importance states that “*the Park Authority and the Communes concerned must, in consultation with the Canton, draw up and implement a charter on park management and quality assurance*”.

Stelvio National Park

Article 2 of the Framework Law on Protected Areas (Act no. 394 of 6 December 1991, *Legge quadro sulle aree protette*) lists the different categories of protected areas and the constituting elements of national parks:

“National parks consist of terrestrial, river, lake and sea areas, containing one or more intact ecosystems or even partially altered by human intervention, one or more geological, geomorphological, biological physical entities of national or international importance in terms of natural, scientific, aesthetic, cultural, educational and recreational values, so that State intervention is required to preserve them for present and future generations to enjoy them” .

A consortium of three regional bodies (Region Lombardy and the Autonomous Provinces of Trento and Bolzano) is in charge of Stelvio National Park’s management.

CONCLUSION

The 2010 Charter of Val Müstair Regional nature park / Biosphere reserve clearly envisages cooperation between these three areas²⁹. Val Müstair is situated between the Swiss National Park and the Italian Stelvio National Park. Consequently, according to the Charter, this geographical position makes it a sort of “buffer zone” for the two national parks. This is extremely important and implies cooperation between the three areas.

2.3.2 Management of protected areas

2.3.2.1 Active management

In Italy and in Switzerland, the core principles that govern the management of protected areas are stated respectively in the Framework Law on protected areas, and in the Ordinance on Parks of National Importance. Regulations are also adopted in Italy and Switzerland by regional authorities, i.e. by Cantons in Switzerland, by Regions and Autonomous Provinces in Italy.

“Monte Rosa” Pilot region

²⁸ The municipality of Val Müstair is the result of the merger of six Communes on 1 September 2009.

²⁹ See page 6 of this document.

Italian site Monte Rosa

Monte Rosa is a protected area pursuant to the Birds and Habitats Directives (Special Protection Areas - SPAs and Special Areas of Conservation - SACs) (site IT1204220, “glacial environment of Monte Rosa chain”³⁰). This is not a “typical” protected area. As far as the management of Natura 2000 sites is concerned, article 5 of Regional Law no.8 dated 21 May 2007 envisages two different situations: the Natura 2000 site is situated either within a protected area, or outside it. In the first case, the site shall be managed by the Management Body of the protected area; in the latter case, management shall be conferred either to the management authority of a neighbouring protected area, or to single/associated municipalities. However, since Natura 2000 site “Monte Rosa” is in Valle d’Aosta and Valsesia Regional nature park is in Piedmont, its management shall not be conferred to the relevant authority of this neighbouring protected area.

Alta Valsesia Regional Nature Park

The principles concerning the management of regional protected areas are laid down in Italy’s national Framework Law on Protected Areas: the Regions and the Autonomous Provinces of Bolzano and Trento shall approve their relevant regulations in compliance therewith. As far as the management of regional protected areas in Italy is concerned, pursuant to art. 25, paragraph 1 of the Framework Law on Protected Areas, these areas must rely on a Plan for the Park (*piano per il parco*) and develop a multi-annual economic and social plan for the promotion of activities compatible with the Park objectives (*piano pluriennale economico e sociale per la promozione delle attività compatibili*). This Plan is implemented by the Management Body and approved by the Region. Pursuant to art. 25, paragraph 3 of Italy’s Framework Law, the Plan is also a landscape and spatial planning reference document. Artt. 25 to 28 of Piedmont’s regional act on protected natural areas and the preservation of biodiversity are related to park planning instruments (*Pianificazione*). In the regional law, the “Park Plan” (*piano parco*) goes by the name of “Area Plan” (*piano di area*). Article 26, paragraph 1 of the regional act states that the park plan/area plan is equivalent to a regional spatial plan and replaces territorial and urban development plans at different levels. This plan must also set restrictions as well as measures to be implemented in the various zones. Specific measures concerning the participation of people and local authorities in the adoption of the area plan (*piano di area*) are laid down by article 26, paragraphs 3 and 4. Article 25 of the Piedmont regional act concerns the development of the multi-annual economic and social plan.

Site Dent-Blanche-Matterhorn-Monte Rosa

This area is included in the Federal Inventory of Landscapes and Natural Monuments (IFP). Unlike the parks of national importance, no specific management structure is specified for this area. The IFP Inventory is binding only for the Confederation and only as regards the tasks assigned to the latter. The Inventory is not necessarily binding for the Cantons. Following assessment activities carried out in 2003, it was actually reported that the objective of absolute preservation for landscapes of national importance has only been partially achieved, despite improvements made. For this reason, in

³⁰ See below for the management of Natura 2000 sites.

December 2003 the Federal Council instructed the Federal Department of Environment, Transport, Energy and Communications (*DETEC*) to improve the effectiveness of the IFP.

CONCLUSION

As far as the areas of this pilot region are concerned, the management system of the Italian areas differs from that of the Swiss area Dent Blanche-Matterhorn-Monte Rosa. Indeed, although specific guidelines for the management of the Italian sites have been implemented (within the Natura 2000 framework for the two sites and within the legislation of regional parks for Alta Valsesia), the protected landscape area Dent Blanche-Matterhorn-Monte Rosa is not subject to specific management arrangements. The inclusion of an area in the Federal Inventory (IFP) implies that this area particularly deserves the right to be preserved intact, or in any case to be managed as well as possible. However, there are no management requirements comparable to those of art. 6 of the Habitats Directive, or to those for the management of Italian regional nature parks. This could pose an obstacle to the joint management on both sides of the border.

“Rhaetian Triangle” Pilot region

Graubünden National Park

Graubünden Swiss National Park has a specific management structure, the public-law Foundation “Parc national suisse”. This Foundation is run by the National Park Committee (*Nationalparkkommission*), whose organisational chart is governed by art. 4 of the Federal Act on the Swiss National Park in Graubünden. The need to implement a management body is stated by art. 25 of the Ordinance on Parks of National Importance (*Park authority*). As the Parks Ordinance was issued long after the creation of the Swiss National Park, the latter has no charter, but will maintain the traditional management instruments already in force. The Swiss National Park has been part of UNESCO’s biosphere reserve network since 1979.

The future regional park of national importance / (future) biosphere reserve Val Müstair (Switzerland)

A management structure is already in place for the future Val Müstair Regional Park. The park authority shall be the municipality of Val Müstair. A charter for the future park was approved in 2010, pursuant to art. 26 of the Ordinance on Parks of National Importance. An application for membership of UNESCO’s World Network of Biosphere Reserves has also been submitted. The future area will be the extension of the biosphere reserve of the Swiss National Park. Pursuant to art. 26 of the Ordinance on Parks of National Importance, “*the Park Authority and the Communes must, in consultation with the Canton, draw up and implement a charter on park management and quality assurance*” . This charter shall be stipulated for a minimum duration of ten years, and the minimum content of this document is laid down in the second paragraph of the same article:

- *“[the charter shall contain measures to ensure] maintenance of the natural, landscape and cultural values of the park;*
- *enhancement and development measures in the territory of the park;*
- *guidance on requirements to be met by activities carried out by the Communes which are likely to affect land use; requirements to be fulfilled by the park;*

- *investment planning for the provision of human and financial resources as well as the required infrastructures for park management and quality assurance”.*

This charter is the contractual basis for an agreement on objectives aimed at assuring the consistency and coordination of activities implemented by the Park and the communes within the territory of the park³¹. This document is also the main foundation for the park management and quality assurance system, as well as for the Conventions-programmes between the Confederation and the Canton³².

Stelvio National Park

Italy's Stelvio National Park was established by Act no. 740 of 24 April 1935. At the time, its management was entrusted to the National Forestry Agency (*Azienda di Stato per le Foreste Demaniali*), whereas surveillance and control of the territory were the task of the State Forestry Department (*Corpo Forestale dello Stato*). Since 1974, administrative competence has been granted to the two Autonomous Provinces of Trento and Bolzano, however on condition that a Consortium be set up assuring the common management of the Park. This Consortium was eventually set up by legislative decree dated 26 November 1993. The National Park Consortium has been operational since October 1995 and is made up of four institutional bodies. The *Consiglio Direttivo* (Board) sets the rules for a jointly coordinated management, whereas three Management Committees are in charge of ordinary and extraordinary administration for the Lombardy Region and the Autonomous Provinces of Trento and Bolzano (within dedicated management structures). Surveillance and control of the territory are the exclusive task of the State Forestry Department in Lombardy and of the Provincial Forestry Departments in the Provinces of Trento and Bolzano.

CONCLUSION

On both sides of the frontier lie two national parks, Graubünden National Park and Stelvio National Park. The fact that there is a management structure for these two areas is a positive step towards the implementation of cross-border management actions. Moreover, the area of Val Müstair, which will soon be designated regional park of national importance by the Swiss authorities, already has a management structure.

2.3.2.2 Passive management

Regulation of leisure activities

Switzerland

As far as national parks are concerned, article 17 of the Parks Ordinance contains special prohibition rules for the core zone of national parks. These also include leisure activities. Among other things, in the core zone, it is prohibited “[...] *to leave marked paths and routes and bring in animals, [...] the use of any vehicles, [...] taking off or landing using any type of aircraft, including hang-gliders and*

³¹ See *Notes related to the Ordinance on Parks of National Importance (OParcs)* of 27 January 2007, Federal Department of Environment, Transport, Energy and Communications DETEC, p. 24.

³² See *Notes related to the Ordinance on Parks of National Importance (OParcs)* of 27 January 2007, Federal Department of Environment, Transport, Energy and Communications DETEC, p. 24.

paragliders” . Article 17, paragraph 2 further states that “*derogations [...] are permitted, provided they are minor and made for good cause*”. As far as the buffer zone of national parks is concerned, article 18 states that “*within the buffer zone, for the purpose of maintenance and near-natural management of the countryside and its protection against detrimental intrusions : [...]tourism and recreation activities must be organised in an ecological manner; [...]the distinctive features of landscapes and local sites must be preserved and as far as possible enhanced;[...] in the case of new buildings, installations and uses, the characteristic features of the landscapes and local sites must be preserved and enhanced [and] [...] damage to the characteristic features of the landscapes and sites by buildings, installations or uses must be minimised or eliminated when the opportunity arises*” .

As far as regional nature parks are concerned, article 20 of the Parks Ordinance states that “*in a regional nature park, in order to preserve and enhance the quality of nature and the landscape, the types of habitat as well as the characteristic features of landscapes and sites must be preserved and as far as possible enhanced; [...] in the case of new buildings, installations and uses, the character of the landscapes and sites must be preserved and enhanced; [and, in general] any damage to the distinctive features of landscapes and sites by buildings, installations or uses must be minimised or eliminated when the opportunity arises*” . These are general restrictions. Settlement within a park does not imply any restrictions in the activities of the municipalities involved, except for those which municipalities freely pledge to respect in the Charter³³. These parks are not the priority subject of restrictions of use or of new conditions related to the protection of nature and the landscape, as these territories have strong nature and landscape connotation and already enshrine several widely recognised and protected natural, landscape-related and cultural elements. The Charter is much more intended to define goals and measures related to the sustainable development of natural resources, in order to protect natural landscapes and traditional rural landscapes, to preserve biological diversity and to maintain quiet, relaxing havens in the territory of the park³⁴.

Italy

As far as regulation of activities in the national and regional parks is concerned, reference must be made to the legal instruments establishing the parks. Article 11 of the Framework Law on Protected Areas concerns the Regulations for National Parks (*il regolamento per il parco*). Paragraph 1 of Article 11 states that these Regulations, adopted by the Park management authority, govern the activities carried out and permitted within the park. It aims at favouring the respect of goals pursued by the Framework Law, and by each national park. Article 11, paragraph 2 lists the specific points to be included in the relevant regulations. As far as leisure activities are concerned, mention is made among other things of circulation of the public inside the park, the practice of sports, recreational and educational activities. Paragraph 3 of the same article further states that any activities liable to be detrimental to the landscape and to the natural elements of the park must be prohibited. One example is unauthorised flight over the park. The Regulations shall be approved by the Ministry of the Environment, following consultation with the relevant local authorities (pursuant to article 11, paragraph 6 of this Law).

³³ Notes related to the Parks Ordinance, p.18.

³⁴ Taken from the Notes related to the Parks Ordinance, p.19.

As far as regional nature parks of the Piedmont Region are concerned, article 24 of Piedmont's act on the protection of natural habitats and the preservation of biodiversity states that reference is to be made to the regulations establishing the Park.

Regarding Natura 2000 sites, a general prohibition to jeopardise the natural habitats and species whose presence led to the designation of the site is laid down in the Habitats Directive, in paragraph 2 of Article 6:

"Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbances of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this directive" .

Article 4, paragraph 2 of Italy's Presidential Decree dated 8 September 1997 amended by the Presidential Decree no. 120³⁵ of 12 March 2003, states that Regions and the Autonomous Provinces of Trento and Bolzano shall take appropriate measures to avoid the deterioration of habitats and any disturbance caused to the species whose presence led to the creation of the protected area.

Hunting and Fishing

Italy

As far as Italian Natura 2000 sites outside protected areas are concerned, reference will be made to the site management and preservation measures and to the specific management of Natura 2000 sites. A specific set of rules aiming to avoid the endangering of the habitats and species, whose presence led to the creation of the area, is envisaged for Natura 2000 sites. Measures to set up the site must be adopted six months after designation of the site (pursuant to article 2, paragraph 3 of the 2007 Decree on the preservation measures decree on the conservation measures applying to Special Protection Areas 'SPAs' and Special Areas of Conservation 'SACs').

Hunting activities in the Italian regional nature parks are expressly prohibited by article 22s of Italy's Framework Law on Protected Areas:

"In regional natural parks and regional natural reserves, hunting is prohibited, with the exception of wildlife removal and selective killing of animals for the purpose of redressing any ecological imbalance. Animal removal activities and selective hunting must take place in compliance with the park rules and regulations, and in the event no regulations on the matter exist, with the regional directives. Activities must be carried out upon the initiative and under the direct responsibility and surveillance of the park management body and must be performed by park management employees or by persons authorised by the management".

Only selective takings and killings of animals performed under specific circumstances can justify hunting activities in a nature park. Regional laws cannot go against the above provision of the national framework law, which is one of the fundamental principles governing protected natural areas in Italy (*principi fondamentali per la disciplina delle aree naturali protette regionali*). This principle has been

³⁵ Presidential Decree of 12 March 2003, no.120, Regulations

recently reaffirmed by Italy's Constitutional Court in a judgement of 29 October 2009³⁶. As far as bordering territories of protected areas are concerned, these are subject to specific provisions of the Framework Law on Protected Areas, as well as to provisions of the recently approved Piedmont's act on protected areas (Regional Act no. 19 of 29 June 2009). The delimitation of these areas is made at regional level and, according to the Piedmont Law, it is the subject of an agreement between the authorities managing the protected area and the relevant local authorities (article 6, paragraph 1 of Regional Law no.19 of 29 June 2009). Art. 32 of the Framework Law describes possible measures to be taken in these areas with respect to hunting and fishing activities, and Piedmont's regional act reiterates such provisions. Plans and programmes must be implemented in order to manage hunting and fishing, among other activities. Article 2, paragraph 2 states that the Region can regulate hunting in the form of controlled hunting, reserved only for residents of the municipalities within the protected area and the neighbouring territory. Regarding fishing activities, article 32 of Italy's Framework Law on Protected Areas states that measures concerning hunting and fishing activities can be implemented in the areas surrounding Italian regional nature parks. Piedmont translated this provision into art. 6 of its Consolidation Act (*Testo Unico*)³⁷. Plans and programmes must be implemented in order to manage hunting and fishing, among other activities.

In the **Swiss National Park**, pursuant to article 4 of the Ordinance on Swiss National Parks, hunting and fishing activities are prohibited (*Jagd- und Fischereiverbot*). Moreover, Art. 1, paragraph 1 of the Ordinance states that in a national park, nature is protected from any human intervention.

2.3.3 Cross-border cooperation in nature protection law

Concrete cooperation between certain Alpine protected areas has developed without a sound legal basis. However, new provisions concerning nature protection take into account the need for cooperation between protected cross-border areas and encourage this type of action.

³⁶ The explicit prohibition of applying the "limitations to hunting activities pursuant to Article 22, paragraph 6 and Article 32, paragraphs 3 and 4 of Law no. 394/1991", foreseen by Article 8, paragraph 1 letter c) of Liguria's regional act no. 34 of 2007, is constitutionally illegitimate. In this connection, sentence no. 165 of 2009 serves as a reference. It states that "state regulations limiting the hunting period [...] are an indispensable measure to ensure the survival and reproduction of species that can be hunted, and fall within the minimum required instruments for safeguarding wild fauna, which are deemed binding even for Regions with a special statute and Autonomous Provinces". The sentence also adds that "the state legal provisions identifying huntable species" are fundamental norms of economic and social reform (sentence no. 227 of 2003, which refers to sentence no. 323 of 1998). Pres. Amirante, Rapporteur Napolitano - President of the Council of Ministers vs. Liguria Region - CONSTITUTIONAL COURT - 29 October 2009, no. 272.

³⁷ Article 6 of the Regional Law ("*Testo unico*" - Consolidation Act): « *In agreement with the management authorities of the protected areas and with the relevant local authorities, following a decision by the Regional Advisory Committee under proposal of the Regional Council, the Region establishes that specific neighbouring areas are aimed at assuring the adequate environmental protection on the border with protected areas themselves, for which specific plans and programmes shall be developed in agreement with the local authorities involved and with the management authorities, to regulate hunting, fishing, mining, environmental protection and biodiversity preservation* ».

Switzerland

The issue of cooperation between the parks is regulated by art. 28 of the Parks Ordinance implemented in 2007:

*“1 OFEV, together with the Park Authorities, the Cantons concerned and research institutions shall ensure the coordination of research on parks, where such research relates to several parks. It may issue recommendations on research involving the parks.
2 It shall ensure cooperation and knowledge transfer among parks and with parks abroad”.*

This cooperation, concerning both the Swiss territory and international cooperation, is focused on research and cooperation between the parks in general, as well as on knowledge transfer. The cooperation task is the responsibility of the *Office fédéral de l’environnement* (OFEV) (Federal Office for the Environment - FOEN). It is also worth mentioning that, for some years now, operational cooperation has been established between border parks. This is the case of the Swiss National Park, which cooperates with Italy’s Stelvio National Park across the border. Similarly, the Guidelines on Parks of National Importance highlight that one of the objectives for a national park must be the promotion and coordination of research within the park and beyond it. Activities aimed at achieving this goal can include *“cooperation [projects] concerning research activities with other parks and institutions”*. This is a necessary goal for biosphere reserves, but it is optional for regional nature parks, as well as for nature discovery parks. However, it is not specified whether this cooperation concerns Swiss parks, or whether it falls within international cooperation initiatives. Based on the Notes to Article 28 of the Parks Ordinance, research carried out in parks of national importance shall focus on two main axes. On the one hand, programmes have to be developed which are targeted towards protected, sensitive areas; on the other hand, interdisciplinary projects must be implemented focusing on issues that bring together natural, social and economic sciences and capable of building long-term comparisons at national and, for some topics, at European level. Each park shall develop its own research plan. The second paragraph points out the importance and the need for cooperation between the parks. The importance of such cooperation notably concerns management tools. The Notes to the Parks Ordinance also mention that *“the Confederation may encourage, on the basis of specific mandates, projects that are of interest to several parks of national importance and include cooperation between these parks and parks of neighbouring foreign countries”*³⁸.

Italy

Italy’s Framework Law on protected areas does not contain any provisions on international cooperation. Instead, a provision of this kind is included in Piedmont’s Act on the Protection of Natural Habitats and the Preservation of Biodiversity. Article 4, paragraph 4 of this Act envisages the possibility for protected area management authorities to foster the stipulation of agreements with their counterparts across the Italian border. These agreements shall focus on cooperation in the management of protected areas.

³⁸ Notes related to the Ordinance on parks, Article 28, p.25.

“The management bodies of protected areas located along the regional borders will promote international and interregional agreements with the management bodies of bordering or neighbouring protected areas, in order to coordinate the management of the protected territories”.

CONCLUSION

Cross-border cooperation concerning protected areas is contemplated in a different way in the nature protection laws of Italy and Switzerland; however, operational cooperation initiatives already exist. Cooperation as conceived by the Swiss and Italian legislators includes the need for collaborative management of the protected areas. Moreover, it is worth noting that, unlike other European directives such as the Water Framework Directive, the Habitats Directive does not impose any obligation concerning cross-border cooperation for the purpose of managing protected area. The Directive does not even mention the concept of Natura 2000 cross-border site, though the Birds and Habitats Directives acknowledge that nature has no administrative borders.

2.2 Protection of the habitats

2.2.1 Protection of the mountain natural elements

The protection of the mountain areas and their habitats is contemplated in several juridical systems, more or less specifically.

2.2.1.1. The Alpine convention

Switzerland and Italy have both ratified the Framework Convention on the Protection of the Alps³⁹ (the Alpine Convention), but none of its accompanying Protocols. Consequently, Switzerland and Italy are not bound by certain provisions of the Protocol on the Conservation of Nature and Landscape Protection that are particularly interesting for the cooperation between protected areas. However, the Italian government participates in the implementation of this Treaty. Mention must also be made of the fact that the Italian Ministry for the Environment published a book where all the legal texts contributing to the implementation of the Alpine Convention are listed. A draft law on the ratification of all of the Protocols of the Alpine Convention has been around in the Italian Parliament for years, but the ratification of the Transport protocol is fraught with problems.

Although both Switzerland and in Italy have failed to implement the Alpine Convention provisions so far, we shall nonetheless mention them briefly. Regarding cooperation between protected areas, a topic well worth of interest in the current study, article 12 of the Protocol on the Conservation of Nature and Landscape Protection of the Alpine Convention considers cooperation as a fundamental step towards the creation of an ecological network across the Alps:

³⁹ The Alpine Convention entered into force in April 1999 in Switzerland, and in March 2000 in Italy.

«The Contracting Parties shall pursue the measures appropriate for creating a national and cross-border network of protected areas, biotopes and other environmental assets protected or acknowledged as worthy of protection. They shall undertake to harmonise the objectives and measures with the cross-border protected areas».

Despite the fact that this measure is not yet applicable in either Italy or in Switzerland, its innovative character in the field of nature protection deserves to be highlighted. As far as the functional character of habitats is concerned, mention must also be made of Article 13, paragraph 1 of the Protocol, which imposes the obligation for the countries ratifying the Protocol to guarantee an adequately functional variety of biotopes:

«The Contracting Parties undertake to adopt the measures necessary to ensure the lasting preservation of the natural or near-natural biotopes of a sufficient size and with territorial distribution in accordance with their functions. They shall also promote the re-naturalisation of the impaired habitats «.

Recent developments in nature protection law are thus clearly perceivable in these texts. Indeed, protocols go beyond the protection of habitats and species, by drawing up specific lists and creating new protected areas, as well as promoting the creation of an ecological network across the Alps, thus developing an ecosystemic approach.

With the recent implementation of an Action Plan on Climate Change in the Alps⁴⁰, the Contracting Parties, and possibly also Italy and Switzerland, have thus acknowledged that climate change is a real threat for the preservation of biodiversity:

“Climate change triggers major changes in flora and fauna, that could even lead to extinction for a large number of species. In order to counteract this phenomenon, further fragmentation of natural habitats should be avoided. Moreover, the key role played by mountain farming in preserving “ordinary” biodiversity should be recognised” .

The Action Plan includes objectives and examples of measures to be implemented. Regarding the preservation of biodiversity, the Action Plan sets forth the following objectives:

- create an ecological continuum in order to facilitate the migration of Alpine fauna and flora species;
- preserve the biodiversity of protected areas and maintain ecosystem services;
- ensure the preservation of habitats and species that are representative of the Alps;
- support quality agriculture, which contributes to the quality of the environment and to the preservation of biodiversity;
- preserve peatlands as CO₂ sinks and biodiversity reservoirs.

⁴⁰ The Action Plan on Climate Change in the Alps was adopted by the Party States to the Alpine Convention during the 10th Alpine Conference held in Evian in March 2009.

These objectives are pursued by adopting different measures, especially by “[*adapting*] management plans for large protected spaces in order to take into account expected climate changes in the Alpine space and the results of monitoring programmes implemented for this purpose (adaptation and management of leisure activities, maintenance measures for infrastructures ...).”

The examples presented in this Action Plan are intended to help towards the implementation of the Declaration on Climate Change, adopted during the 9th Alpine Conference held in Alpbach, Austria, in 2006.

CONCLUSION

The Alpine Convention is an essential instrument for the preservation of habitats and Alpine species, since it defines nature conservation measures as well as measures in other fields. Indeed, integrating environmental issues into other policies (transport, spatial planning, etc.) ensures that also such other policies contribute to limiting habitat fragmentation, which causes biodiversity reduction. Nevertheless, Italy and Switzerland, which are Party States to the Convention, have not yet ratified any of the implementation protocols of the Alpine Convention. Like the other Contracting Parties, however, they have adopted the Action Plan on Climate Change in the Alps, as well as the Declaration on Climate Change.

2.2.1.2. European Union Law

The European Union law does not foresee one specific policy for mountain areas. Indeed, a number of different policies apply to mountain areas, first and foremost the regional and agricultural policies. Mountain areas are also taken into account indirectly in policies for nature conservation and in the implementing rules of the Habitats and Birds Directives. The Habitats Directive is namely implemented by bio-geographical regions: the Alpine bio-geographical region includes several European mountain ranges and the Alps constitute one of the sub-regions of the Alpine bio-geographical region. It is worth noting that mountain areas made their first appearance in the EU’s primary law with the recent adoption and entry into force of the Treaty of Lisbon, very much like the concept of *territorial cohesion*. Article 174 of the Treaty on the Functioning of the European Union⁴¹ states, that “*in order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion [...]. In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions [...]. Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps, such as the northernmost regions with very low population density and island, cross-border and mountain regions*”. However, for the time being, there is no specific EU policy for mountain areas, whereas there is one for coastal areas.

CONCLUSION

⁴¹ This article is based on Title XVIII of the Treaty on the Functioning of the European Union, devoted to economic, social and territorial cohesion.

When it comes to creating ecological corridors and preserving habitats, we should consider not only nature conservation legislation but also the common agricultural policy provisions, particularly those defining rural development measures. The CAP offers possibilities for financing activities that have a positive influence on ecological connectivity.

2.2.1.3. The National Framework

Swiss and Italian law both contain specific measures for the preservation of natural mountain areas. Furthermore, the delimitation of mountain areas is provided by national law, and that explains why there are differences between the Alpine countries. This definition is mainly based on criteria related to height, slope, accessibility, etc.

Switzerland

Switzerland has not a single “Mountain Act” but a series of texts which form its “Mountain Legislation” . Since the country is almost entirely mountainous, a large number of legal texts have been adopted over the years to regulate different aspects of mountain development and protection. Their main provisions are often financial in character, generally in the form of funding granted for the benefit of mountain regions.

Italy

Similarly, Italy has no specific law on mountain areas, despite the fact that its Constitution contemplates the specific character of mountains. In fact, article 44 of the Italian Constitution states that “*the law envisages measures in favour of mountain areas*”. Moreover, mountain areas are indirectly protected by several legal instruments concerning, among other things, spatial planning, the conservation of nature and landscape, etc. Additionally, the Galasso Act adopted in 1985 established that certain natural elements should be protected by law, and some of them are typical of mountain areas. The Galasso Act established full and comprehensive landscape conservation by ensuring the protection of “assets of outstanding natural beauty” (*bellezze naturali*). Landscape assets (*beni paesaggistici*) enjoying protection are listed in the law and include rivers, creeks, glaciers, mountain areas above 1600 m in the Alpine range, wetlands, etc. (Legislative Decree D. Lgs. 157/2006).

CONCLUSION

Although Italy and Switzerland have no specific law for the protection of natural mountain areas, various laws indirectly ensure the preservation of the natural heritage of these areas. The laws on the conservation of landscape assets and protected areas are particularly worthy of mention.

The legislation on protected areas, which is of particular interest in the current study, is fundamental for the preservation of natural mountain areas in both Switzerland and Italy. In fact, many protected sites are located in mountain areas.

2.2.2 Protection of the Habitats of European importance (Natura 2000 and Emerald Networks)

Natura 2000 and the Emerald network both contribute to the implementation of the Council of Europe's Pan-European Biological and Landscape Diversity Strategy launched in 1995 by the European Ministers of the Environment, with the aim of strengthening environmental and biodiversity conservation policies. Their strategy aimed at promoting nature protection, both inside and outside protected areas, by implementing a European ecological network, a physical network consisting of reserves in the strict sense of the word, linked together through corridors and surrounded by buffer zones, that could facilitate scattering and migration of species. After examining the actual work-in-progress of the Emerald network implementation in Switzerland, we will realise that the difference in legal status between these two networks can account for the different speed of progress towards implementation.

The Emerald Network in Switzerland

In May 2000, Switzerland launched a pilot project for the creation of the Emerald network. This project consisted of different stages:

- building of a national work team,
- identification of species and habitats in each bio-geographical area of the country,
- identification of potential Areas of Special Conservation Interest (ASCI - ZISC),
- description and designation of ASCI areas,
- constitution of a database of selected Emerald sites.

In 2001, on behalf of the Swiss WWF and the *OFEFP* (Swiss Agency for the Environment, Forests and Landscape), and in cooperation with administrators of other databanks and several experts, the Swiss Centre for the Cartography of Fauna (*Centre suisse de cartographie de la faune - CSCF*) analysed the data available on a national scale, in order to identify those sites which complied with the Emerald Network's criteria. 139 potential Emerald sites were identified, corresponding to 16% of the national territory⁴². As far as bird fauna is concerned, the Swiss Association for the Protection of Birds (ASPO) and the Swiss Ornithological Institute suggested the institution of 31 areas of special importance for birds (IBA, Important Bird Areas). However, for the time being, these are only potential protected areas since their boundaries have not been definitively traced yet (scientific inaccuracies prevent the proposed perimeter of these areas from being considered as final⁴³). In parallel with the designation of sites to be included in the Emerald network, Switzerland has also implemented a network of protected areas, i.e. the national ecological network, whose protection objectives are largely in line with those

⁴² See the map of the Emerald sites identified by the WWF and enclosed in this study (document C.2.).

⁴³ WWF Switzerland, « *Guide Emeraude pour les sections du WWF* », WWF Switzerland, Bern (working document).

of the Bern Convention. The decision was made to consider these other areas, in order to improve the selection process of the Areas of Special Conservation Interest and to integrate the latter into the existing protection framework in a consistent way. On the basis of these results, a proposal for an action plan was to be made in the subsequent years so as to set up the Emerald Network in Switzerland. The Swiss national ecological network is the product of Switzerland's contribution to the Pan-European ecological network⁴⁴. Therefore, used methods and data largely refer to guidelines and directives of the Pan-European ecological network (*REP*) published by the ECNC (European Centre for Nature Conservation). However, the approach adopted by the national ecological network differs from that of the Pan-European ecological network owing not only to specific national features (e.g. small geographical scale, diversity of deteriorated semi-natural environments, strong fragmentation, etc.), but also to information collection methods, the interpretation of functional qualities of the ecological network concerned and the use of additional original concepts (such as the 'continuums'). The designation of the Emerald network sites has not been completed yet. The first thirty sites⁴⁵ have been declared official candidates by the Federal Office for the Environment. Other site candidatures have been put forward in 2009, so there are now 37 applications. The perimeters of these sites must be subsequently validated by the Cantons.

Difference between Natura 2000 and Emerald networks in terms of legal status

The Emerald Network has been established in response to a recommendation⁴⁶, which has no binding nature unlike the Habitats Directive, which indeed sets obligations in terms of results for the Member States⁴⁷. Nevertheless, the non-binding nature of the constituent instrument of the Emerald network does not mean that there are no obligations concerning the protection of habitats, which, for their part, are clearly defined in the Bern Convention⁴⁸. To fulfil the Bern Convention's obligations, the Contracting States must designate the Areas of Special Conservation Interest. "*Article 4-1 of the Bern Convention implies obligations concerning the conservation of habitats, which resolution no. 19 (89) seeks to achieve, while resolution no. 3 (96) focuses on the content of binding obligations*"⁴⁹. In its harmonisation effort concerning the laws of the Member States, the Council of Europe produces a considerable number of regulations and "undertakes actions [...] both on conventions and on recommendations on the basis of the intrinsic nature of each of them, of pursued objectives and of the situation to be regulated"⁵⁰. Moreover, it must be highlighted that, even in the absence of a binding nature, the recommendations of the Council of Europe's Committee of Ministers enjoy 'moral' authority being the collective expression of the European governments on a given subject, and there is

⁴⁴ Swiss Agency for the Environment, Forests and Landscape, *Réseau écologique national REN*, *op. cit.*, p. 15.

⁴⁵ Another 28 Alpine sites or so have submitted their candidature to the Cantons (source: WWF Switzerland).

⁴⁶ Recommendation no.16 (1989) concerning the areas of special interest for conservation, and Recommendation no.3 (1989) concerning the institution of a Pan-European ecological network by the Bern Convention's Permanent Committee.

⁴⁷ See Isaac G. and Blanquet M., *Droit général de l'Union européenne*, *op. cit.*, p. 206 and f.; CJCE, Decree of 18 December 1997, *Inter-Environment Wallonia*, Case C- 129/96, (Rec. 1997, p. I- 7411).

⁴⁸ The Bern Convention was ratified by Switzerland in 1982.

⁴⁹ Bonnin M.A., *Les aspects des corridors biologiques. Vers un troisième temps de la conservation de la nature*, *op. cit.*, p.61.

⁵⁰ F. Benoît- Rohmer F. and Klebes H., *Council of Europe Law*, Council of Europe, Strasbourg, 2006, p. 123 and f.

clear evidence that they influence Member States⁵¹. In addition, certain recommendations of the Council of Europe's Parliamentary Assembly or Committee of Ministers may, in some cases, become a sort of 'soft law', which in spite of its non-binding nature does produce direct effects in international law. Indeed, it is an accepted fact, that should one of these recommendations be mentioned in an international treaty, then, in the framework of legal relationships ensuing from the treaty, that recommendation would have the same legal value as the provisions of the treaty. Therefore, a specific mention of the Emerald network within the Bern Convention would be of vital importance to strengthen the legal status of the Emerald network and give momentum to its implementation. The Standing Committee of the Bern Convention has examined the possibility of amending the text of the Convention (or drawing up a protocol) with the aim of integrating the Emerald network to give it stronger legal value, but no decision has been taken yet. The non-binding nature of the requirement to implement the Emerald network is undoubtedly a weak point, if one considers how crucial the role of the European Court of Justice was (and still is) for the application of the provisions of the Directive⁵².

2.2.3 Protection of the habitats in general

2.2.4 Linkage of habitats and the law

The notion of ecological connectivity is gaining increasing importance in the nature protection legislations of Alpine countries. This holds true both for Switzerland and Italy.

2.2.4.1. Legal provisions concerning ecological networks

Switzerland

Ecological compensation (nature protection law / rural law)

Article 14 of the Ordinance on Nature and Landscape Protection (*OPN*) concerns the need to protect biotopes. Protection of the latter must be assured through biological compensation, whose objectives are listed in article 15 of the Ordinance, as well as through provisions for the protection of species, set by article 20 of the same Ordinance, and the survival of wild autochthonous flora and fauna. The second paragraph of article 14 of the Ordinance specifies that the protection of biotopes is assured in particular by "*the establishment of buffer zones to provide adequate ecological protection*", by measures designed to preserve or restore biotopes, and by compensatory measures in the event of damage to biotopes. The text of the Ordinance refers to "*structural measures that make it possible for existing damage to be remedied, and future damage to be avoided*". The notion of 'ecological compensation' developed by Swiss law must be clearly distinguished from the notion of 'compensatory measures', which apply in case of environmental damage. Pursuant to article 15, paragraph 1 of the *OPN* Ordinance "*the purpose of ecological compensation is primarily to connect isolated biotopes, if*

⁵¹ *Idem*, p. 125.

⁵² Mayer R., *Die Wirkung der Vertragsverletzungsklagen auf die Umsetzung von Natura 2000*, University of Konstanz, Faculty of Politics and Administration, degree thesis in Administration, 2004.

necessary by the creation of new biotopes, in order to promote species diversity, to achieve forms of land use that are as near-natural and benign as possible, to integrate nature into residential areas, and to enliven the landscape”. This concept thus reminds that of ‘biological corridor’/ ‘green network’ developed/under development in French law, or the notion contained in article 10 of the Habitats Directive. Article 15 of the OPN Ordinance is based on the founding principle of art. 18b, paragraph 2 of the Federal Act on Nature and Landscape Protection, according to which *“In intensively used areas within and outside residential areas, the Cantons shall ensure ecological compensation by means of thickets, hedgerows, riparian tree plantations, or other near-natural vegetation adapted to the site”* . Pursuant to article 14, paragraph 3 of the OPN Ordinance ‘biotopes deserving protection’, are those specified in Annex 1 of the Ordinance. The Cantons are responsible for implementing the ecological compensation policy and shall adopt provisions for that purpose. Ecological compensation also pertains to rural law and relevant provisions are contained in the Federal Act on Agriculture (LAg)⁵³ and in the Ordinance on the regional promotion of quality and interlinking of ecological compensation areas in agriculture. Pursuant to article 76, paragraph 3 of the Federal Act on Agriculture, *“the Confederation encourages the conservation of the natural wealth of species, as a complement to the Federal Law of 1 July 1966 on the Protection of Nature and the Landscape. It grants payments to favour ecological compensation on useful agricultural areas”* ⁵⁴. Financial aid is granted by the Confederation, pursuant to article 1 of the Ordinance on ecological quality, *“for ecological compensation areas (ECAs) of particular biological quality and for the interconnection of such areas, on usable agricultural areas”* . Minimum quality requirements are stated in Annex 1 of the Ordinance on ecological quality, while minimum networking requirements are contained in Annex 2. Minimum quality requirements are relatively detailed and can be directly taken over by the Cantons. The minimum networking requirements of Annex 2 instead are formulated in a brief and general way, so that the Cantons cannot make direct use of them. Cantons must therefore ‘translate’ each point of Annex 2 into cantonal rules. The recommendations concerning the networking of ecological compensation areas (Annex 3 of the Ordinance) should help them do so⁵⁵.

Measures concerning ecological connectivity are integrated into regional nature protection provisions, such as art. 18 of Canton Valais’ Act on Nature Protection:

“Art. 18 Ecological connection and balance/ As far as space planning and the implementation of their projects is concerned, the Canton and the Municipalities shall ensure diversity and the mobility of species” .

⁵³ Federal Act on Agriculture (*Loi sur l’agriculture, LAg*) of 29 April 1998 (status on 1 January 2010).

⁵⁴ Since 2001, the Ordinance on Ecological Quality (ÖQV) has provided outcome-oriented incentives aimed not only at promoting biological quality, but also at linking up ecological compensation areas. The aim of this is to use target or reference species typical for the region to connect remaining populations that have become isolated. In the case of meadows, quality evaluation is carried out on the basis of indicator plants. For other types of habitat, additional criteria are also used; for example, for hedges they include structure, minimum width, origins of species, management. The Cantons are obliged to participate financially. The allowances for link-up and quality measures are cumulative. In a short space of time, the market incentives provided by the Ordinance have - particularly in mountain regions - brought about extensive network and biological enhancement of species-rich meadows and pastureland that had become endangered by intensive farming and abandonment of pastures.

⁵⁵ Document 1 enforcing the Ordinance on ecological quality (OEQ), October 2001.

Based on this article, the following article 25 of the Ordinance on the Protection of Nature in Canton Valais has been adopted:

“The Service shall develop regional concepts with measures capable of ensuring adequate ecological links and balance to preserve diversity and mobility of species. It shall cooperate with cantonal offices and municipalities concerned.

These regional concepts will be taken into account when reviewing plans for the allocation of areas and planning infrastructure projects. Envisaged measures can be implemented, among other things, in the framework of compensation schemes defined for the various procedures” .

An inter-cantonal platform on the Ordinance on Ecological Quality (OEQ) is coordinated by the Swiss Centre for Agricultural Extension. The ideas developed within the framework of this platform have contributed to the definition of guidelines for each Canton. Today, most of the Cantons have finalised their guidelines and these texts can be consulted on the Internet Website of this platform⁵⁶. For instance, criteria for the implementation of the Ordinance on Ecological Quality were fixed in 2004 by the Canton Jura⁵⁷ in a document which defined the regional priorities for the implementation of an ecological network (*Définition des objectifs régionaux prioritaires pour les projets de mise en réseau*).

The “Réseau écologique national ” (REN)

The National Ecological Network of Switzerland (*Réseau écologique national Suisse*, REN⁵⁸)⁵⁹ whose final report was published in 2004, contains detailed maps indicating the ecological habitats and their interconnections and can be an extremely useful planning tool. It does not present only the current location but takes also account of the potential of the landscape. The REN is one important element of the Guidelines of the EFV “Landscape 2020” (*Paysage 2020*)⁶⁰ and is integrated in the Concept “Swiss Landscape” (*Conception “Paysage Suisse” - CPS*)⁶¹. The “Landscape 2020” guidelines (*Paysage 2020*)⁶² (adopted in 2003) are used as a technical basis by the FOEN in order to prepare its decisions and to cooperate with the various sectoral policies which affect the territory. In the “Landscape 2020” Guidelines (*Paysage 2020*), the FOEN provides:

- its opinion concerning the evolution of the landscape in Switzerland and the combination with sustainable development;
- tools needed to reach the objectives of utmost importance.

The strategic paper is part of a system of objectives arranged hierarchically in the field of nature and landscape protection at the federal level. It takes inspiration from legal provisions, from the sixteen general objectives of the Concept “Swiss Landscape” (*Conception “Paysage Suisse”, CPS*) and from the concept of sustainable development featured in the Federal Constitution (Art. 73). The programme

⁵⁶ Online at www on URL: <http://www.oqe.ch/index.php?l=FR&rub=1&cat=1&page=2> (21 March 2009).

⁵⁷ Online at www on URL: <http://www.jura.ch/portal/site/acju/menueitem.b18b3953a670a23669c708021f816f1c/?vgnextoid=c3ad7c0dbdcf9010VgnVCM100000f118f6c1RCRD> (22 March 2009).

⁵⁸ To develop information, see the page on the Swiss Confederation’s website devoted to the National ecological network : <http://www.bafu.admin.ch/lebensraeume/01580/index.html?lang=fr>.

⁵⁹ Nationales ökologisches Netzwerk, REN; Rete ecologica nazionale, REN.

⁶⁰ Das Leitbild « Landschaft 2020“; il progetto "Paesaggio 2020".

⁶¹ Das Landschaftskonzept Schweiz LKS; la Concezione „Paesaggio svizzero”(CPS).

⁶² Online at www on URL: <http://www.bafu.admin.ch/landschaft/00524/01676/01688/index.html?lang=fr>, consulted on 22 March 2009.

makes CPS objectives operational for the development of the federal policy on nature and landscape. The qualitative aims and the programme of “Landscape 2020” Guidelines (Paysage 2020) provide FOEN with the opportunity to adopt a clearly and coherent position. They are also used for the evaluation of projects or any use (of the territory) likely to have an impact on the landscape.

The “Swiss Landscape Concept” (*Conception “Paysage Suisse”*, CPS)⁶³ is a concept adopted by the Federal Council in 1997, according to Article 13 of the Law on spatial planning about concepts and sectoral plans. It constitutes a binding guiding principle for the protection of nature and landscape as regards the tasks of the Confederation. It introduces a coherent policy, defines general and sectoral objectives and puts forward/suggests measures to reach them. The general main objectives of the CPS are:

- to add value to the water in the landscape;
- to reserve free spaces for natural dynamics;
- to preserve the habitats and to reconstitute their networks;
- to concentrate the infrastructures in the territory;
- to develop strongly requested landscapes from an ecological point of view - in particular the “zones d' habitat” - and make them attractive.

The sectoral objectives of the CPS, which are constraining for the federal services concerned, are divided into thirteen political fields (constructions of the Confederation, transport, use of hydraulic power, etc.). The CPS puts forward binding measures to reach them.

Italy

National provisions

In Italy, provisions on ecological connectivity have been adopted by some regions, with the aim of creating a regional ecological network. Currently, however, no legal provisions have been adopted on this subject at national level. A national strategy on biodiversity is in the process of being drawn up in Italy and should be introduced officially at the beginning of 2010. It will be aimed, in particular, at establishing ecological networks and ensuring ecological coherence between protected areas⁶⁴. As far as national provisions transposing the Habitats Directive are concerned, the Decree of March 2003, which modified the Decree of 1997, takes into account the ecological coherence between Natura 2000 sites:

“3. In order to ensure the ecological coherence of the “Natura 2000” network, the Ministry for the Environment, Land and Sea Protection, following consultation with the Permanent Conference for relations between the State, Regions and Autonomous Provinces of Trento and Bolzano, shall define the guidelines for managing areas of functional ecological connectivity, which are of primary

⁶³ Online at www on URL: <http://www.bafu.admin.ch/landschaft/00524/01671/02393/index.html?lang=fr> (22 March 2009).

⁶⁴ *National Biodiversity Strategy in Italy*, Ministry for the Environment Land and Sea Protection, Nature Protection Directorate, April 2009. The Strategy includes the following points: to assess the effectiveness of the protected areas in terms of ecological networks; verify the relations between the national ecological network, the Natura 2000 network, the territorial ecological network and the ecological network at the level of species, groups of species and communities, etc. (see p. 12 of the presentation concerning the future strategy on biological diversity in Italy).

importance for wild flora and fauna. Such guidelines are intended also as an instrument to be used when drawing up the Spatial Planning Guidelines laid down by article 3 of Act no. 394 dated 6 December 1991” .

A definition of the concept of “area of functional ecological connectivity” (*area di collegamento ecologico funzionale*) is set forth in article 2, letter p of the Presidential Decree of 8 September 1997 on Natura 2000:

“The areas of functional ecological connectivity are those areas which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as wetlands and forests) are essential for the migration, dispersal and genetic exchange of wild species” .

Regional law

Provisions concerning the ecological network have been adopted by several Alpine regions⁶⁵. We shall examine in particular legislation adopted in Piedmont, Lombardy and Valle d’Aosta. The aim is to set up a regional ecological network in these three regions.

Article 1 of **Piedmont’s** regional Act on the Protection of Nature and Preservation of Biodiversity, adopted in July 2009, introduces the obligation to set up a regional ecological network (*rete ecologica regionale*). Article 2 of the regional Act specifically describes its implementation: paragraph 2 describes the components of the regional ecological network, which includes the regional protected areas, Natura 2000 sites as well as ecological corridors:

“The regional ecological network consists of the following areas:

- a) Piedmont’s protected areas;*
- b) special areas of conservation, proposed and approved sites of Community interest and the special protection areas, which are part of the Natura 2000 network;*
- c) ecological corridors” .*

The ecological corridors are one of the components of the regional ecological network and are dealt with in articles 53 and 54 of the aforementioned regional law. According to article 53, paragraph 1, ecological corridors are *“functional connection areas outside the protected areas and the areas of the Natura 2000 network, which, due to their linear and continuous structure or their connecting role, are essential elements for the migration, dispersal and genetic exchange of wild species” .* These corridors must be clearly identified and taken into account in the planning documents, at all levels. Compensatory measures must be defined and implemented in order to compensate for the possible negative effects on the previously identified corridors. This provision transposes articles 3 and 10 of the Habitats Directive.

Valle d’Aosta

A regional ecological network shall be set up in the **Valle d’Aosta Region** within the regional territory. This project shall be implemented *“by means of regional bodies in charge of managing protected*

⁶⁵ To compare legislation adopted by the region of Liguria, see the comparison study between France and Italy.

natural areas as well as flora and fauna”, pursuant to art. 3 of Regional Act no. 8 dated 21 May 2007. The definition of ‘regional ecological network’ is provided in article 2, letter q of Regional Act no. 8 dated 21 May 2007 : it is *“the ecological network connecting parts of the territory hosting the most abundant natural heritage formed by protected areas, Natura 2000 sites, as well as sites being particularly interesting from an ecological point of view, and ecological corridors contemplated in the landscape territorial plan - PTP”* . Pursuant to this law, a *“site being particularly interesting from an ecological point of view”* is for example a *“site of regional interest (SIR)”* as defined in art. 2, letter t, i.e. *“any geographically defined area, whose surface is clearly delimited and which clearly contributes to maintaining or restoring a natural or semi-natural type of habitat, or a species of regional interest. As far as species occupying vast territories are concerned, SIR sites are those places within the natural dispersal area for such species, which offer physical or biological characteristics being vital for their survival and reproduction”* . By subdividing the territory into local units, the landscape territorial plan - (*piano territoriale paesaggistico- PTP*) pays special attention to landscape and ecological connections, describing them as *“made up of continuous sequences of natural and near-natural components, and corridors linking them”*. By identifying its constituent elements and the need to protect them, the landscape territorial plan actually defines a regional ecological network, though not explicitly mentioning it. Such network is made up of natural and near-natural areas, and ecological corridors linking them (that is, by more or less extended surfaces of prairies, woods, cliffs and linear elements such as watercourses, tree lines, hedges in rural as well as urban areas).

Lombardy

With Decision no. 8/10962 of 30 December 2009, the Regional Executive Committee (*Giunta regionale*) approved the final proposal of a Regional ecological network, by including the Alpine and Prealps area. The Regional Ecological Network is acknowledged to be a priority infrastructure in the Regional Territorial Plan and it provides orientation strategies for local and regional planning.

CONCLUSION

Differences can be found in the provisions concerning the ecological network. First of all, Switzerland does not participate in the implementation of Europe’s Natura 2000 network. Instead it supports the Emerald network, whose aim, just as the Natura 2000 network, is to contribute to the implementation of a pan-European ecological network. However, the Emerald network is not operational yet. The implementation of the Emerald Network is optional for Switzerland, as it does not derive from provisions of the Bern Convention, but from a Resolution adopted by the Signatory Countries of the Convention. Both in Switzerland and in Italy, the implementation of ecological networks is supported by provisions adopted at regional level. Instead, the actual establishment of an ecological network is conceived differently in the two countries. While in Italy this activity is the result of legal provisions adopted by the Regions in order to create a regional ecological network, in Switzerland, instead, a national ecological network has been taken into account and its infrastructures have been defined. Network components are different, too. While in Italy a regional ecological network consists primarily of protected areas, Natura 2000 sites and their linking corridors, Switzerland follows a different methodology to set up a Swiss national ecological network.

2.2.4.2. Ecological networks and urban planning law

Once biological corridors or ecological networks have been identified, they must be considered in spatial planning related activities. The same holds true for the above mentioned provisions, which actually establish a direct link between ecological connectivity and spatial planning.

Italian regional law

Piedmont

The regional ecological network is explicitly mentioned and defined in the spatial planning documents, in terms of integration within the 'Regional Nature Charter' (*carta della natura regionale*), pursuant to Article 3 of the Regional law on the protection of natural areas and the conservation of biodiversity. This document defines the regional ecological network as well as territories which, owing to their environmental and natural features, could be designated as protected areas.

"Art. 3. (Regional Nature Charter)

1. The Regional Nature Charter is an integral part of regional spatial planning policy and it pictures the situation of natural environment in Piedmont, highlighting natural values and territorial vulnerability profiles, by defining:

a) the regional ecological network;

b) the territories which, owing to their environmental and natural features could be declared protected areas.

2. No later than three years after the entry into force of this Act, the Regional Executive, in agreement with the Provinces, shall adopt the Regional Nature Charter approved by the Regional Council in compliance with the procedures applicable to instruments of regional spatial planning laid down by the current spatial planning and territorial management legislation in force.

3. Provinces shall acknowledge the Regional Nature Charter and Municipalities shall adapt their own spatial planning instruments within their relevant territory, in full respect of applicable procedures for the development and approval of the instruments concerned.

4. Areas identified in the Regional Nature Charter as belonging to the regional ecological network are subject to the provisions contained in Titles II to VI".

Articles 53 and 54 of Regional Act no. 19 of 29 June 2009 (*Testo unico sulla tutela delle aree naturali e della biodiversità*) - Consolidated Text on the Conservation of Natural Areas and Biodiversity) refer to the ecological corridors. According to the second paragraph of article 53, the corridors are identified in the spatial and urban planning instruments. Additionally, according to article 54, paragraph 1, the ecological corridors must be marked in the urban and spatial planning instruments at all levels. If ecological corridors are affected negatively by specific activities, compensatory measures must be adopted. The compensatory measures, as well as the conservation and restoration measures, shall be borne by subjects in charge of the projects which generated the negative effects.

Lombardy

As stated here above, the regional ecological network in Lombardy is considered as a spatial planning component. It is therefore managed directly within spatial planning objectives. The whole system of

protected areas in Lombardy is disciplined by Law no. 86 of 20 November 1983 (Regional plan for protected areas), integrated in Regional Law no.16 of 16 July, 2007. In order to implement the Natura 2000 network, Region Lombardy adopted D.G.R. no. 7/14106 of August 8, 2003⁶⁶, and D.G.R. 8/6648 of 20 February, 2008⁶⁷. It is also worth mentioning the recent Regional Law no.10 of 31 March, 2008 for the safeguard and preservation of small fauna and spontaneous flora.

References to the creation of ecological networking and the creation of ecological corridors can also be found in D.G.R. no. 7/4345 of 20 April 2001⁶⁸.

Valle d'Aosta

In the Autonomous Region Valle d'Aosta the regional ecological network is defined by article 2.1 *let. c* of Law No. 8 of 21 May 2007 as a network connecting natural habitats and formed by Natura 2000 sites regional natural interest sites and ecological corridors as defined by the PTP (Piano Territoriale Paesistico - Territorial Plan).

Trento

In the autonomous province of Trento ecological connectivity is disciplined by art. 34 of Law no.11 of 23 May 2007⁶⁹, according to which the network of protected areas in the province is composed by:

- Natura 2000 sites
- Province natural parks
- Province natural reserves
- Local reserves
- River protected areas

The National ecological network (*Réseau écologique national*) in Switzerland and spatial planning

The concepts (*conceptions*) outlined by the Swiss Confederation need to be taken into consideration by the Cantons in their spatial planning activities.

Pursuant to article 6, paragraph 4, of the Law on Spatial Planning, "*Cantons need to take into account federal instruments like general concepts and sectoral plans, master plans of neighbouring cantons, regional development programmes and regional spatial planning instruments*". The National Ecological

⁶⁶ "Elenco dei proposti siti di importanza comunitaria ai sensi della direttiva 92/43/CEE per la Lombardia, individuazione dei soggetti gestori e modalità procedurali per l'approvazione della valutazione di incidenza".

⁶⁷ "Nuova classificazione delle Zone di Protezione Speciale (ZPS) e individuazione dei relativi divieti, obblighi e attività, in attuazione degli artt. 3, 4, 5 e 6 del d.m. 17 ottobre 2007, n. 184".

⁶⁸ "Approvazione del programma regionale per gli interventi di conservazione e gestione della fauna selvatica nelle aree protette e del protocollo di attività per gli interventi di reintroduzione di specie faunistiche nelle aree protette della regione Lombardia".

⁶⁹ "Governo del territorio forestale e montano, dei corsi d'acqua e delle aree protette".

Network of Switzerland (*REN*), a component of the Swiss Landscape Concept, falls within this category of documents (concepts and sectoral plans) established at federal level to organise activities on the territory. These documents are drawn up on the basis of article 13 of the Law on Spatial Planning:

“1. In order to implement activities that have an impact on territorial planning, the Federal Government shall undertake background studies and establish concepts, principles and the necessary sectoral plans, making sure they are consistent.

2. The Federal Government cooperates with the Cantons and promptly informs them of its principles and sectoral plans, as well as of building projects”.

Moreover, article 6, paragraphs 1 and 2 of the Law on Spatial Planning, states that in their spatial planning activities, Cantons must consider protected areas and, more generally speaking, *“in their master plans they have to identify [...] parts of the territory [...] distinguishing themselves for their beauty or value, [...] which fulfil a remarkable ecological function”* . These plans are legally binding. Pursuant to art. 9 of the same Law, master plans *“have legally binding force before the authorities”*, not only for the authorities of the canton where the plan is implemented, but also for the neighbouring Cantons and the Federal Government. Indeed, art. 11 states that *“the Federal Council shall approve master plans and their adaptation if they comply with this Act”* and that *“approval of master plans by the Federal Council confers them compulsory nature for the federal authorities as well as for the authorities of the neighbouring Cantons”*. These provisions are taken up in the cantonal laws concerning spatial planning. Article 5 of Canton Valais’ Act transposing the Federal Act on Spatial Planning⁷⁰ states that the Grand Council of Valais adopts by decision the general spatial planning principles and specifies that these principles *“define the general spatial planning policy of the territory by taking into consideration background studies and sectoral plans”*. This provision is also included in article 2, paragraph 2 of Graubünden’s spatial planning act:

*“Municipalities, regional federations and the Cantons fulfil their tasks in joint agreement and coordinate their principles, their planning activities as well as their activities affecting spatial planning, with principles, concepts and planning activities of the Federation, as well as planning activities of the neighbouring cantons and countries”*⁷¹

CONCLUSION

Both in the regional Italian legislation concerning the creation of a regional ecological network, and in the Swiss law, once identified, ecological corridors should be duly considered during territorial management activities. While these corridors have been identified at national level in Switzerland, they have been designated at regional level in Italy.

⁷⁰ Law concerning the implementation of the Federal Act on Spatial Planning of 23 January 1987, adopted by the Grand Council of Canton Valais.

⁷¹ This is a translation of the original text of the provision in German: *« Gemeinden, Regionalverbände und Kanton erfüllen ihre Aufgaben im gegenseitigen Einvernehmen und stimmen ihre Grundlagen, Planungen und raumwirksamen Tätigkeiten aufeinander und mit den Grundlagen, Konzepten und Sachplanungen des Bundes sowie den Planungen der benachbarten Kantone und Länder ab“.*

2.2.5 Spatial Planning

2.2.5.1 Land use planning

Switzerland⁷²

Concerning spatial planning in parks of national importance, reference is made to article 27 of the Parks Ordinance, concerning “*spatial planning safeguards and coordination of activities affecting land*”. Pursuant to article 27, paragraph 1, parks of national importance must be marked on cantonal master plans approved in accordance with article 6 of the Spatial Planning Law. Pursuant to article 27, paragraph 2, letter b, parks that have been awarded the Park Label in accordance with article 7 of the Ordinance shall be included in the cantonal master plan, with specification of their perimeter and their protection objectives. This implies compliance with the master plan and the adaptation of communal and regional planning strategies, in order to guarantee coordination with the other activities of territorial impact. Pursuant to art. 9 of the Spatial Planning Act, master plans have binding character for the authorities at all levels. The inclusion of a park in the cantonal master plan also confers binding character upon its perimeter and its protection objectives for the federal authorities. According to letter b of article 9, measures having a territorial impact and envisaged in the Charter must be included in land use plans, mostly together with development and protection guidelines matching the plans. The core areas of national parks and of nature discovery parks must necessarily be included in the land use plans, as they imply certain restrictions of use. Pending the adaptation of land use plans, protection of certain areas must be assured by means of transitory measures, in the form of restrictions of use defined through an agreement. Land use plans should therefore be adapted at the time of adopting the Charter”⁷³.

Italy

National parks

As far as spatial planning in a national park is concerned, reference is made to article 12 of Italy’s Framework Law on Protected Areas, which concerns the park plan (*piano per il parco*). The law imposes the obligation for the Park Management Authority to protect natural and environmental elements of the park, through the development and implementation of a plan for the park. The minimum content of this plan is defined in art. 12, paragraph 1, of the Framework Law on Protected Areas. The park plan must also define a geographical classification into areas depending on the various degrees of protection. Once the park plan has been adapted, pursuant to article 2, paragraph 7 of the same law it shall be tantamount to a general declaration of public interest and replace all existing landscape and spatial planning tools. Similarly, once published, this plan shall have immediate binding power for the administrations and the individuals.

Regional nature parks

As far as spatial planning in regional nature parks is concerned, reference must be made to article 25 of Italy’s Framework Law on Protected Areas, which lists the main planning instruments for the park, namely: the park plan and the economic and social plan. Pursuant to article 25, paragraph 2 of this

⁷² See the Act on Spatial Planning (article 6, article 11).

⁷³ See Notes related to the Ordinance on Parks (Notes concerning Article 27, p.24).

Law, “the park plan is adopted by the park management authorities and is approved by the Region. It is also valid as a landscape and spatial planning instrument and replaces the landscape, spatial planning or urban development plans at any level”. Therefore, once adopted, the park plan supersedes any existing landscape and spatial planning instrument and prevails over other planning documents, regardless of the echelon of government issuing them. The Framework Law provisions are reiterated in articles from 26 to 28 of Piedmont’s act on the protection of natural areas and the conservation of biodiversity. Pursuant to article 26 of the aforementioned Piedmont law, the park plan (*piano di area*) is also valid as a regional territorial plan and replaces existing norms on urban development and spatial planning. Concerning spatial planning outside Alta Valsesia Park, it should be noted that a specific system applies in the surrounding area of the park aimed at protecting the park’s natural assets. Outside the contiguous area, whose boundaries are defined by the Region in consultation with the Park management authorities and the local institutions involved, “general” regional spatial planning provisions apply.

As far as **Natura 2000 sites** are concerned, activities are allowed, provided that they do not negatively affect habitats and species whose presence led to designate the site. The following step shall be the analysis of measures integrated in the site management plans.

2.2.5.2 Assessment of the environmental impact of plans, projects and programmes

The impact assessment system in Italy and in Switzerland

The obligation to evaluate the environmental impact of plans, projects and programmes was introduced by two directives approved in 1985 and in 2001 respectively. The first directive concerns the environmental impact assessment of projects⁷⁴, whereas the second one concerns the environmental impact assessment of certain plans and programmes⁷⁵. This general system of environmental impact assessment can therefore be applied only in Italy, which is a Member State of the EU, but not in Switzerland, which is not a Member State. Provisions transposing this system can be found in Italy’s decree no. 152/2006 of 2006 better known as *Codice dell’ambiente* (Environmental Code)

In Switzerland, as far as spatial planning and nature protection are concerned, the Law on the Territorial Management⁷⁶ states that the Confederation, the Cantons and municipalities pledge to assure the rational use of the land, and through spatial planning measures they support efforts undertaken to protect land, water, air, forests and the landscape.

⁷⁴ Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC) (Official Journal N°L. 175, 05/07/1985, pp.0040 - 0048).

⁷⁵ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (Official Journal L 197, 21/07/2001 pp. 0030 - 0037).

⁷⁶ *Loi Fédérale sur l’Aménagement du Territoire* (LAT) of 22 June, 1979. As of this writing, a project for the partial revision of the LAT is in course.

Conclusion

For the purpose of our study, it is worth mentioning the Espoo Convention concerning environmental assessment within a transboundary context. This Convention sets procedural obligations for a certain number of projects liable to seriously damage natural habitats and ecosystems. The Convention has been enforced both in Italy and in Switzerland.

The impact assessment system in the Pilot regions

Pilot Region Monte Rosa

Site Dent Blanche-Matterhorn-Monte Rosa

Impact assessment studies published in 2003 showed that sites included in the Federal Inventory of Landscapes and Natural Monuments (IFP) were not adequately considered in spatial planning projects. IFP's general protection objective confirmed by article 6 of the Swiss Act on Nature Protection has not been achieved. According to this article, a site of national importance must be preserved intact or managed as well as possible, which means that only a minimum impact on this object is allowed. In case of negative impact on such classified site, adequate measures to reconstitute or replace the existing situation need to be taken. Moreover, derogations envisaged in article 6, paragraph 2 are very strict. It is stated that *"in fulfilling a federal task, departures from the principle that sites are to be preserved undiminished, as specified in the inventories, may only be considered if opposing interests, also of national importance, carry equal or greater weight"* .

Special provisions concerning the impact assessment are implemented in **Monte Rosa Natura 2000 site (Valle d'Aosta Region)**, pursuant to article 6 of the Habitats directive and to article 7 of Regional Act no. 8 of 21 May 2007, concerning the implementation and procedural provisions of the Birds and Habitat directives.

Pilot Region "The Rhaetian Triangle"

Stelvio National Park

[See the national and regional provisions, and Natura 2000 provisions]

Graubünden National Park

Regarding possible intrusions detrimental to the natural heritage of Graubünden National Park, article 1 states that intrusions shall be permitted only if they are directly instrumental in the upkeep of the Park. Indeed, all interventions in Graubünden National Park that run counter to the objectives of the natural reserve will be strictly prohibited⁷⁷. The process of natural evolution of the all animal and vegetable species must be guaranteed.

⁷⁷ This is a translation of the following original text of the provision (in German): *„Im vertraglich festgesetzten Gebiet des Schweizerischen Nationalparks wird die Natur entsprechend den Verträgen, welche die Eidgenossenschaft mit den Parkgemeinden und dem Kanton Graubünden abgeschlossen hat, vor allen dem Zwecke dieses Naturreservates nicht dienenden menschlichen Eingriffen geschützt und die gesamte Tier- und Pflanzenwelt ihrer freien natürlichen Entwicklung überlassen. Es sind nur Eingriffe gestattet, die unmittelbar der Erhaltung des Parkes dienen“.*

The need to reconcile nature protection with other interests is stated, in general terms, in article 4 of the Ordinance on the Protection of Nature and Cultural Heritage (*Verordnung über den Natur- und Heimatschutz*):

*“While weighing up the interests linked to implementation activities that affect the preservation of parts of the natural and cultural heritage, the special and irreplaceable nature of this heritage shall be taken into consideration”*⁷⁸

Future regional nature park / future biosphere reserve of Val Müstair

The designation “biosphere reserve” does not generate a specific set of legal requirements, instead it is applied within the existing legal framework. Therefore reference is to be made to provisions concerning regional nature parks established by the Parks Ordinance (*OParcs*). Article 20 of the Parks Ordinance states that *“In a regional nature park, in order to preserve and enhance the quality of nature and the landscape, [...] the diversity of the indigenous animal and plant species, the types of habitat as well as the characteristic features of landscapes and sites must be preserved and as far as possible enhanced; [...] in the case of new buildings, installations and uses, the characteristic features of the landscapes and sites must be preserved and enhanced; [...] existing impairments to the landscapes and sites of local character by buildings, installations or uses must be minimised or eliminated when the opportunity arises”* .

Rules applying to the assessment of environmental impact on Natura 2000 sites

The assessment of the environmental impact of projects in Natura 2000 sites falls within the scope of article 6, paragraphs 3 and 4 of the Habitats Directive, as transposed into Italian national and regional laws. After calling on the Member States to establish the necessary conservation measures for Natura 2000 sites in paragraphs 1 and 2 of article 6, the Habitats Directive sets forth measures to safeguard the environment in specific cases, namely when plans or projects have to be carried out. Derogations from the system of conservation measures laid down by the directive are possible, but the rules to obtain them are strict. A procedure must be followed, which has been defined by the Commission and by the rulings of the EU Court of Justice. Article 6, paragraph 3 of the Directive states the impact assessment requirements and envisages that an administrative authorisation may be refused.

“Article 6 [...] 3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the

⁷⁸ This is a translation of the original text of the provision in German: *« Bei der Abwägung der Interessen an der Ausführung der in Frage stehen-den Projekte und der mit ihnen kollidierenden öffentlichen Interessen an der Erhaltung von Natur- und Heimatschutzobjekten ist auf die Einzigartigkeit und Unersetzlichkeit der letzteren gebührend Rücksicht zu nehmen“*.

competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest” .

2.3 Landscape

2.3.1 Landscape protection (European Landscape Convention and general measures)

As far as the instruments of landscape protection are concerned, mention must be made of the European Landscape Convention adopted by the Council of Ministers of the Council of Europe on 19 July 2000. The Convention entered into force in Italy in 2006, but Switzerland has not ratified it yet. The Convention has an innovative character and it is interesting to note that it introduces legal recognition of the landscape. Pursuant to Article 5, “*Each Party undertakes [...] to recognise landscapes in law as an essential component of people’s surroundings, an expression of the diversity of their shared cultural and natural heritage, and a foundation of their identity*”.

Switzerland

In general, it is stated in article 78 of the Federal Constitution of the Swiss Confederation that in the fulfilment of its duties, the Confederation shall take account of concerns for the protection of natural and cultural heritage. It shall protect the countryside and places of architectural, historical, natural or cultural interest; it shall preserve such places intact if required to do so in the public interest. As specified by art. 1, the Federal Act on the Protection of Nature is intended to protect, manage and preserve the characteristic appearance of landscapes and sites, and the country’s natural and cultural monuments, and to promote their upkeep. To achieve this aim, it shall identify landscapes and natural and cultural monuments of national importance. These are included in the Federal Inventory of Landscapes and Natural Monuments (IFP). As mentioned above, their protection is detailed in articles 5 and 6 of the Federal Act on the Protection of Nature.

Specific provisions concerning landscapes are contained in the Parks Ordinance. With reference to the national parks, several activities are prohibited in the core zone, “to enable free natural development” as specified in article 17 of the Parks Ordinance. Artificial modifications of the landscape are

forbidden. Article 18 of the Ordinance states that *“Within the buffer zone, for the maintenance and near-natural management of the countryside and for its protection against detrimental intrusions [...] the characteristic appearance of landscapes and sites must be preserved and as far as possible enhanced [...], the characteristic features of the landscapes and sites must be preserved and enhanced [and] existing disturbances to the characteristic features of landscapes and sites by buildings, installations or uses must be minimised or eliminated when the opportunity arises”* . As far as regional nature parks are concerned, article 20 of the Parks Ordinance states that *“in a regional natural park, in order to preserve and enhance the quality of nature and the landscape [...] the characteristic features of the landscapes and sites must be preserved and enhanced; existing impairments to the characteristic features of landscapes and sites must be minimised or eliminated when the opportunity arises”*.

Italy

Specific provisions are enforced for the conservation of landscapes and protected areas. They replace general provisions concerning the protection of landscapes. The relevant measures shall be laid down in the park plan. With regard to national parks, article 12 paragraph 7 of the Framework law on Protected Areas states that the park plan is tantamount to a general declaration of public interest and replaces all existing landscape and land use plans, as well as all planning tools :

“The park plan is valid as a declaration of general public interest and urgency; measures contained therein cannot be postponed and the plan shall replace any landscape, spatial planning or urban development instrument at all levels, as well as any other planning tool”

As for regional nature parks, article 25 paragraph 3 of the Framework Law on Protected Areas states that the park plan (*piano per il parco*) implemented by the Park management authority and approved by the Region is valid as a landscape and spatial/ urban planning instrument. Therefore, once adopted, the park plan shall supersede any existing landscape and spatial planning instrument. The framework law provision is reiterated in article 26, paragraph 1 of Piedmont’s Act on the Protection of Natural Areas and the Conservation of Biodiversity. Landscape planning activities are also carried out outside protected areas. As regards Valle d’Aosta, reference is made in particular to the regional landscape plan.

2.4 Protected Area surroundings in law

2.4.1. Areas surrounding protected sites - applicable law

The Econnect project has designated several “Pilot Regions” (also called “Pilot Areas” in order to avoid using the term “region”, which has a specific legal and administrative connotation). For the purpose of the project, the areas surrounding the protected sites are located geographically outside the boundaries of the protected areas, but inside such Pilot Regions.

Switzerland

Concerning the applicable law for areas surrounding parks of national importance, provisions set in article 27 of the Parks Ordinance shall be brought to attention. The inclusion of parks of national importance within cantonal master plans implies conformity to the master plan and the adaptation of municipal and regional planning activities, in order to maintain coordination with the other activities having a territorial impact.

Italy

Italian law provides specific arrangements for sites contiguous with protected areas (*aree contigue*), for any type of protected area. Such system is laid down by article 32 of the Framework Law on Protected Areas⁷⁹. Pursuant to the first paragraph of article 32, contiguous areas shall be designated by the Region in cooperation with the management authorities of the protected areas; they represent areas where specific provisions may be taken to protect the natural heritage that prompted the creation of the protected area: *“The Regions, in collaboration with the management bodies of the protected natural areas and local institutions involved, will establish plans and programmes and possible measures governing hunting, fishing, mining and environmental protection in sites contiguous with the protected areas, where actions are needed to ensure the conservation of the values of the protected areas.”* In Piedmont, article 6 of Piedmont’s Act on the Protection of Natural Areas and the Preservation of Biodiversity (*Testo unico sulla tutela delle aree naturali e della biodiversità*) establishes specific rules for sites contiguous with the protected areas:

“Art. 6. (Contiguous Areas) “1.The Regional Government, in collaboration with the management bodies of the protected areas and the local institutions involved, following a resolution of the Regional Council upon proposal put forward by the Regional Executive Committee, shall establish the boundaries of the contiguous areas, in order to guarantee appropriate environmental protection along the borders of the protected areas. In collaboration with the local institutions involved and the management bodies of the parks, suitable plans and programmes will be drawn up for such contiguous areas in order to manage hunting, fishing and mining activities and protect the environment and biodiversity.

Pursuant to article 32, paragraph 3 of Law 394/1991, the Region may regulate hunting in the contiguous areas, in the form of controlled hunting, reserved only for residents of the municipalities of the protected area and surrounding area”.

These areas shall be designated by the Region in collaboration with the management bodies of the protected areas and the local authorities involved (article 6, paragraph 1 of Regional Act no. 19 dated 29 June 2009). The question remains whether the specific arrangements for these areas may apply. Pending the application of such arrangements, the specific scheme for Natura 2000 sites will apply, as set forth in article 6 of the Habitats Directive.

⁷⁹ **Article 32 of the Italian Framework Law on protected areas** : « 1. *The Regions, in collaboration with the management bodies of the protected natural areas and local institutions involved, will establish plans and programmes and possible measures governing hunting, fishing, mining and environmental protection in sites contiguous with the protected areas, where actions are needed to ensure the conservation of the values of the protected areas.*

2. *The borders of the contiguous areas as per paragraph 1 are established by the Regions on whose territory the natural protected area is situated, in joint agreement with the protected area management authority.*

3. *The Regions may regulate hunting in the contiguous areas, in derogation from Art. 15 paragraph 3 of Law no. 968 of 27 December 1977, in the form of controlled hunting, reserved only for residents of the municipalities of the protected natural area and surrounding area. Hunting activities shall be controlled pursuant to the second paragraph of Art. 15 of the same law.*

4. *For needs related to the preservation of fauna in the protected area, the management authority can impose bans or time restrictions on the hunting activities concerning specific animal species”.*

5. *As far as contiguous cross-regional areas are concerned, each region shall manage the relevant area falling within its territorial competence, in agreement with the other regions and pursuant to art. 6 and 88, last paragraph of Presidential Decree no. 616 of 24 July 1977. The agreement shall be suggested by the Region on whose territory the major surface of the natural protected area is situated ”.*

2.4.2 The legal status of the areas surrounding Natura 2000 sites

Concerning the legal status of Natura 2000 sites, article 6, paragraph 2 of the Habitats Directive, transposed into Italian law, prohibits any damage to Natura 2000 sites originating from inside or outside the site⁸⁰. In fact, according to this provision “*Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive*”. Moreover, pursuant to article 6 paragraph 3 of the Habitats Directive, “*Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public*”. Therefore, plans, projects or programmes that might damage a Natura 2000 site shall not be authorised, even if they are outside the area. Such projects can only be authorised in accordance with the strict conditions set forth in article 6, paragraph 4 of the Habitats Directive.

3. The European Grouping of Territorial Cooperation (EGTC)

The EGTC (European Grouping of Territorial Cooperation) is an innovative Community legal instrument introduced by Regulation (EC) No. 1082/2006 of the European Parliament and the Council. According to art. 2 of the above-mentioned Regulation, the EGTC is meant to “*facilitate cross-border, transnational and interregional cooperation (...) with the exclusive aim of strengthening economic and social cohesion*”. To this purpose art.1.4 rules that the EGTC shall have in each Member State “*the most extensive legal capacity accorded to legal persons under that Member State’s national law*”. The EGTC may therefore acquire or dispose of movable and immovable property and employ staff, and may also be a party to legal proceedings. Unlike other instruments of cooperation, the EGTC therefore has full legal personality in its own right, thus allowing public authorities of different states to associate and deliver joint services without the need for a prior international agreement to be ratified by national parliaments.

The initiative to establish an EGTC remains with its prospective members. The State, however, has to agree on the participation of a potential member: to this purpose each prospective member is bound by article 4 of Regulation (EC) n.1082/2006 to notify the Member State under which it has been formed

⁸⁰ See also the guidelines of the European Commission on this point, concerning the implementation of Article 6 of the Habitats Directive: European Commission, *Managing Natura 2000 Sites. The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC*, Office for Official Publications of the European Communities, Luxembourg, 2000, (73 pages).

of its intention to take part in the Group, sending the State a copy of the proposed Convention and Statutes intended to govern the Group. An EGTC Convention sets out in particular:

- the name of the EGTC and its headquarters
- the list of its members
- the area covered by the EGTC
- its objective
- its mission
- its duration

The State shall then, as a general rule, reach its decision within three months from the date of receipt. In deciding on the prospective member's participation Member States may apply national rules. Should the Member State consider the proposed participation not to be in conformity with either Reg. (EC) no. 1082/2006 or its national law, or that the participation would be detrimental to public interest or public policy, it will give a statement of its reasons for withholding approval (Reg. (EC) no. 1082/2006, art. 4).

According to Regulation (EC) n.1082/2006, art.3, an EGCT can be constituted/joined by: Member States, regional and local authorities and bodies governed by public law within the meaning of the second subparagraph of Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. According to this directive a "body governed by public law" means any body:

- established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character
- having legal personality and
- financed for the most part by the State, regional or local authorities or other bodies governed by public law, or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities or other bodies governed by public law.

As we just mentioned, although its main objective is to serve as a cooperation tool for local/regional authorities it is also possible for a Member State to become part of an EGCT. In principle, the possibility for Member States to participate had hitherto not been considered in the field of cross-border cooperation, and this constitutes an important change for territorial cooperation. It will allow some Member States to participate in such cooperation where no regions exist (e.g. Slovenia, Luxembourg) or where the envisaged theme of cooperation is a competence of the national level. Member States can therefore play three roles in the process of establishing an EGTC:

- They have to designate the responsible authorities for the approval of the EGTC, and the participation of prospective members subject to their jurisdiction
- They have to designate competent authorities to overlook the management of public funds by the EGTCs registered in their territory
- They can become members of an EGTC

Art.3 also allows the membership of associations consisting of bodies belonging to one or more of the above-mentioned categories. It is worth mentioning that art. 1.2 of Regulation (EC) No. 1082/2006 requires the EGTC to be formed by members located on the territory of at least two Member States.

The exact objectives and tasks of each EGTC are laid down in the convention. EGTCs may be set up either to implement a single action or project (uni-functional EGTCs) or to function as a platform for a variety of missions (multi-functional EGTCs). While pursuing such tasks, however, the Regulation forbids the EGTC from *“the exercise of powers conferred by public law or duties whose object is to safeguard the general interests of the State or of other public authorities such as police and regulatory powers, justice and foreign policy”* (art. 7.4).

For the matters not regulated by Reg. (EC) No. 1082/2006 or the provisions of its own funding convention and statute, the laws of the Member State where the EGTC has its registered office become applicable.

Although Community Regulations are, as a general rule, entirely binding and directly applicable pursuant to Article 249, paragraph 2 of the TUE (*[a] regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States*”), article 16 of the Regulation (EC) No. 1082/2006 requires Member States to adopt the necessary regulations within their respective legislation to ensure effective application. It could be surprising that a regulation which is directly applicable (unlike to the directive which need to be transposed in national law) foresee the adoption of national regulation for the application of the regulation but it is not the first time that such a procedure is required.

3.1. Transposition in Italy and participation of Switzerland to an EGTC

Italy

The provisions for the implementation of the European regulation on the EGTC in Italy are integrated in the third chapter (artt. 46-48) of Community Law 2008 (*Legge Comunitaria 2008* - Law No. 88 of July 7, 2009).

Article 46 disciplines the creation and defines the legal nature of the EGTC. According to paragraph 2, the EGTC whose bench is in Italy will have the legal personality of a body governed by public law (*“personalità giuridica di diritto pubblico”*). The regulation refers to the notion of body governed by public law as defined in the already-mentioned Directive 2004/18/CE22 (Article 9, paragraph 923), although the Community Law does not directly quote the directive. According to the third paragraph, the regional authorities and local authorities designed in Article 3 of the Regulation N.1082/2006 are respectively the regions and the autonomous Provinces of Trento and Bolzano and also the local entities designed in article 2, paragraph 1, of legislative decree no. 267/2000: *“Ai fini del presente testo unico si intendono per enti locali i comuni, le province, le città metropolitane, le comunità montane, le comunità isolate e le unioni di comuni”*.

Pursuant to Reg. (EC) no. 1082/2006 and Law 88/2009, the State maintains a strong measure of control over the creation of new EGTCs. Before the General Secretariat of the Presidency of the Council of Ministers approves the foundation of an EGTC the agreement (*parere conforme*) of the following bodies must be sought: Foreign Ministry, Ministry of Finance, Ministry of Economic Development, Ministry of the Interior, Department for Community Policies and Department for Regional Matters.

The Italian Register for EGTCs was established by a Decree of the Presidency of the Council of Ministers (DPCM 6/10/2009) published on the *Gazzetta Ufficiale* (official publication containing the text of new laws) no. 273 of November 23, 2009.

Switzerland

Non-EU Member States are not concerned by the EGTC as such, be they candidate, pre-candidate or other third countries such as Switzerland. Third countries can be involved in an EGTC if their legislation and agreements between Member States and the concerned third country allow it and if the concerned Member States do not exclude this possibility. According to Reg. (EC) No. 1082/2006, art. 16, Switzerland can therefore join an EGTC. However, article 3 paragraph 2 of the Regulation states that an EGTC shall be made up of members located on the territory of at least two Member States. This clause rules out the possibility of setting up an EGTC between one (of the) Swiss park(s) and one (of the) park(s) of a single Member State. This means that at least two Member States, plus Switzerland, need to join an EGTC in order for Switzerland to be allowed to take part in it.

Participation of entities from third countries in an EGTC may therefore be possible, as stated in preamble clause 16 of Regulation (EC) No 1082/2006, under the following conditions:

- The third country adopts national legislation to create an instrument similar or close to the EGTC. The integration of the EGTC provisions into the national legislation could be of particular relevance for candidate and pre-candidate countries as part of the integration of the *acquis communautaire*.
- The third country may alternatively sign agreements with EU Member States in order to enable their authorities to participate in EGTCs. It is worth mentioning that while the Regulation presents these two measures as alternative solutions ('legislation of a third country or agreements between Member States and third countries'), it might be necessary to both adopt national legislation and sign an interstate agreement, e.g. in order to clarify relationships between third countries and Member States regarding financial control procedures and because of the different powers and jurisdictions involved in different countries, i.e. regional and national.
- Participation of entities from third countries in an EGTC is also subject to the national provisions of the concerned Member State, whether these allow or not such participation.

To establish an EGTC participated by Switzerland, in particular, international agreements would have to be signed following the complex procedure required by art. 6 of Law No. 131/2003. Furthermore, if a Canton was to take part in an EGTC, the question would also have to be answered on whether Cantons can be considered "*regional authorities*" pursuant to article 3 of the above-mentioned Regulation ("*An EGTC shall be made up of members, within the limits of their competences under national law, belonging to one or more of the following categories: (a) Member States; (b) regional authorities; (c) local authorities; (d) bodies governed by public law (...)*").

3.2 Creation of an EGTC between two parks

The possibility of setting up a **European grouping of territorial cooperation aimed at cross-border cooperation** between the parks of Pilot Region “Monte Rosa” must apparently be ruled out for two reasons: on the one hand, there would not be two EU Member States joining the grouping in this pilot region; on the other hand, there is no specific management structure for the Swiss site listed in the Inventory of sites of national importance. With reference to parks of the Rhaetian Triangle Pilot Region, that option could be feasible only if both Italy and Austria joined the EGTC. Then, there would be two Member States in addition to Switzerland. The EGTC regulation namely requires at least two Member States to participate in such management structure.

In the light of Regional Park Val Müstair’s recent appointment as UNESCO Biosphere Reserve, the creation of a **transboundary biosphere reserve (TBR)** also seems to be a viable cooperation tool between Regional Park Val Müstair, the Swiss National Park (already designated biosphere reserve) and Italy’s Stelvio National Park. UNESCO has approved specific recommendations for the creation and management of such reserves. Management coordination measures and appropriate joint zonation shall be assured. The recommendations further specify that the TBR shall function with a common structure in charge of coordination activities. These activities can take different forms, however UNESCO provides a few specific guidelines on this matter⁸¹ : *“Transboundary Biosphere Reserves (TBR) provide a tool for common management. A TBR is an official recognition at an international level and by a UN institution of a political will to co-operate in the conservation and sustainable use through common management of a shared ecosystem⁸².”*

5. Conclusions

In conclusion, it would be interesting to examine the management documents of protected areas in more depth, as well as at the management measures laid down by such documents or by the regulations which designate protected areas. Ecological connectivity can be achieved only through a coordinated system of management and protection on both sides of the border. Existing legal instruments are important to implement such coordination. Moreover, at a later stage, one should examine what practical difficulties managers face and what could be the solutions to them. That could be done through interviews to the managers of protected areas as well as taking into account the outputs of WP7 of the ECONNECT Project.

⁸¹ UNESCO, *Recommendations for the Establishment and Functioning of Transboundary Biosphere Reserves*.

⁸² UNESCO, *Recommendations for the Establishment and Functioning of Transboundary Biosphere Reserves*.

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