

ECONNECT

Alpine Space Program - ETC

Action 6.2:

Bilateral Country Comparisons among the Legal Frameworks of
Protected Areas

France/Italy

Pilot Region: Alpi Marittime-Mercantour



Italian Ministry of the
Environment, Land and Sea



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Contents

1. Introduction	6
1.1 Background	6
1.2 Aims of the studies	6
1.3 Expected outputs of the studies	7
1.4 Methodology	7
1.5 Collaboration with project partners and pilot regions	8
1.6 The Mercantour/Alpi Marittime Pilot Region.....	8
2. Bilateral comparison of the legal framework of protected areas.....	10
2.1 Institutional framework	10
2.2 Transborder Cooperation (outside EGTC)	12
2.2.1 Franco-Italian cooperation (ALCOTRA Programme)	13
2.3 Classification of protected areas	14
2.3.1 Different categories of protected areas	14
2.3.1.1 The classification of protected areas in France and Italy..	14
2.3.1.2 The Status of the protected areas of the Pilot Regions..	15
2.3.2 Management of protected areas	20
2.3.2.1 Active management	20
2.3.2.2 Passive management.....	21
2.3.3 Trans-border cooperation in natural protection law.....	25
2.4 Protection of the habitats.....	26
2.4.1 Protection of the mountain natural elements.....	26
2.4.1.1 The Alpine Convention.....	26
2.4.1.2 European Union Law	28

2.4.1.3	The national frameworks.....	28
2.4.2	Protection of the habitats of Community importance.....	30
2.4.3	Protection of habitats and wild species	32
2.4.4	Legal provisions concerning the linkage of habitats.....	33
2.4.4.1	The legal provisions.....	33
2.4.4.2	Ecological networking and spatial planning	36
2.4.5	Spatial planning.....	37
2.4.5.1	Land use planning	37
2.4.5.2	Evaluation of the incidence of plans and programmes on the environment	38
2.5	Landscape	40
2.5.1	Landscape protection (European Landscape Convention).....	40
2.5.2	Farming and forestry.....	41
2.5.2.1	Farming	41
2.5.2.2	Forestry.....	42
2.6	The surroundings of protected sites (applicable law)	43
2.6.1	The legal status of the surroundings of protected sites.....	43
2.6.2	The legal status of the areas surrounding Natura 2000 sites...44	

3. The EGTC.....45
3.1 Transposition in France and Italy.....47
 3.1.1 Italy.....47
 3.1.2 France47
3.2 Creation of an EGTC between two parks.....48
4. Conclusions49
5. Bibliography.....50

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 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:

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".

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

- What would the most appropriate legal instruments be in order to realize/improve transborder 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 transborder 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 transborder 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 already made 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, 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 Mercantour/Alpi Marittime Pilot Region

Seven Pilot regions exist under the umbrella of the ECONNECT Project⁴. Some of these Pilot Regions are international, while 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 short overview of said legal issues will follow the map of each Pilot Region. In this study we will focus our attention on the Maritime Alps-Mercantour Region.

⁴ Furthermore it should be mentioned that CIPRA-France is in charge of the analysis of the Pilot-Region “Isère”.

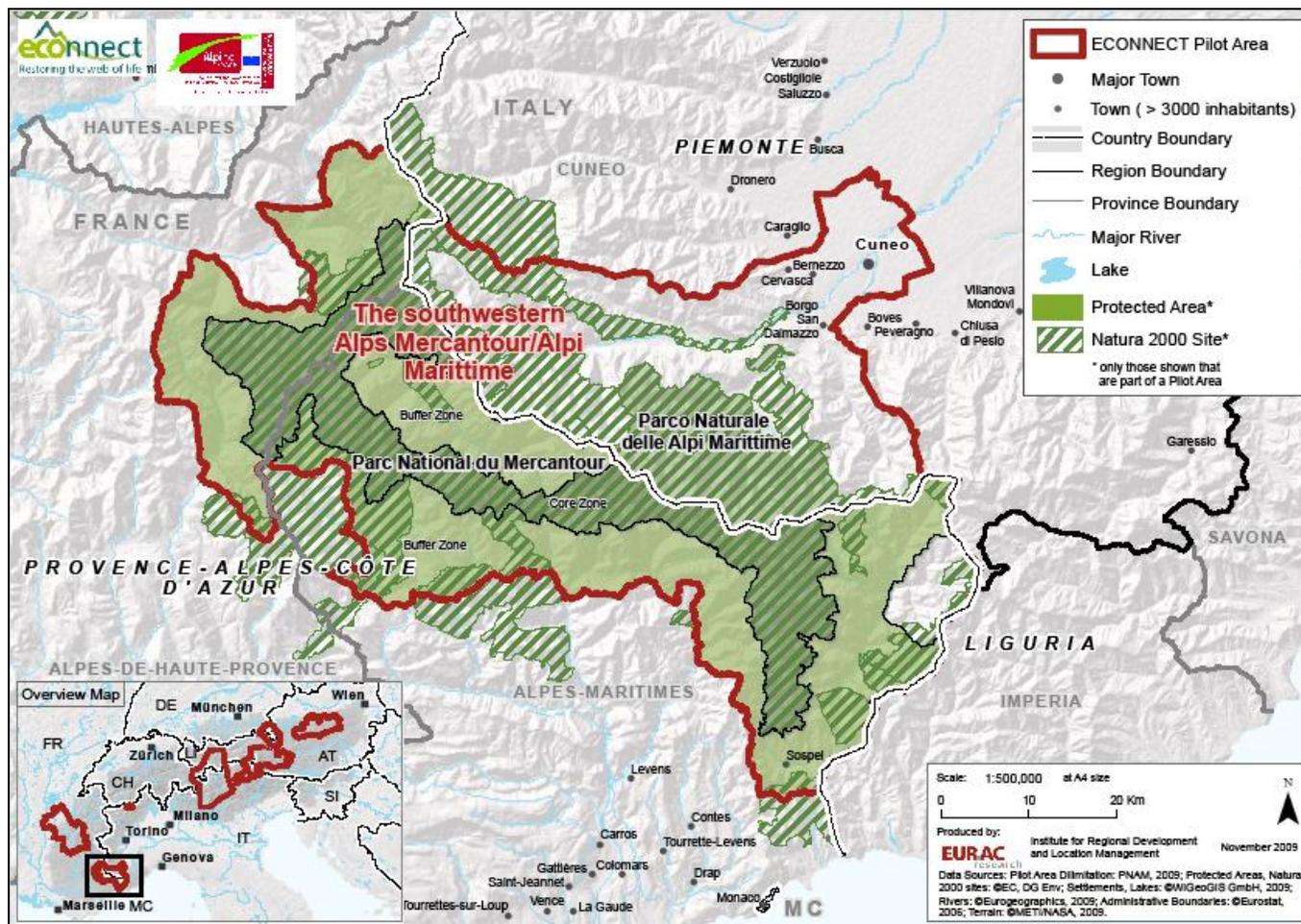


Fig 1: Econnect Pilot Area Mercantour-PN Maritime Alps

Legal issues

The Pilot Region “Mercantour/Maritime Alps” is international. The Pilot Region consists of Italian and French protected areas: the Alpi Marittime Natural Park (area: 279,827039 km²), located in Italy, and the Mercantour National Park (area: 678,060906 km²; surrounding area: 1478,487999 km²) located in France. The two parks have cooperated on a *de facto* basis for a long time, but their practice has yet to be institutionalised. Up to this point the cooperation was mainly funded through the INTERREG Projects and it therefore appears urgent to find the appropriate legal instrument to ensure its continuation. A European Grouping for Territorial Cooperation is already in preparation for the institutionalisation of the cooperation, which has been going on since 1987 with the twinning of the two parks. The question of the ecological connectivity between the two parks will also be discussed in this study.

2. BILATERAL COMPARISON OF THE LEGAL FRAMEWORK OF PROTECTED AREAS

2.1 The institutional framework

In terms of legislative powers, the French and Italian frameworks show significant differences. While in France the legislative competence is reserved to the Parliament, Italian Regions and Autonomous Provinces have legislative power in certain areas, such as environmental protection and spatial planning. In France only competences of legislative nature can be transferred⁵.

France

In France the legislative competence is vested in the Parliament, while the so-called “Territorial Collectivities” (*Collectivités Territoriales*) benefit from specific administrative competences. Regions, departments and municipalities have specific administrative powers in the field of environmental protection. Regions are in charge of spatial planning, and therefore also intervene in the field of environmental protection. The Region is competent, in particular, for drawing up the Regional Plan for Management and Development of the Territory (*Schéma Régional d’Aménagement et de Développement du Territoire* - SRADT), whose purpose is to define the basic guidelines for the sustainable development of the regional territory with regards to large-scale projects, infrastructures, public services, economic development and the protection and enhancement of the environment. Consistency between national policies and those promoted by territorial collectivities needs therefore to be ensured. The SRADT is drawn up by the Region, which is required to inform all of the other relevant territorial collectivities and public institutions (including departments, regional natural parks, national parks, etc.). Likewise, contracts for projects that see the State and Regions as partners may contain specific provisions for the conservation of natural resources.

Departments also have specific competences concerning the protection of sensitive natural areas. Indeed, pursuant to Article L. 142-1 of the Spatial Planning Code, departments are responsible for drawing up and implementing policies for protecting and managing sensitive natural areas, whether forested or not, whose natural characteristics are threatened and vulnerable, with the aim of preserving the quality of the sites, landscapes, natural environments and natural flood expansion fields, while safeguarding natural habitats. In order to implement policies for the protection of these areas, departments may create zones where they have a right of pre-emption on all land or a set of social rights, so that they can be granted ownership or possession of land which is offered for sale for valuable consideration. The department may also choose to avail itself of a specific tax instrument, such as a departmental tax, to preserve sensitive natural areas⁶. That enables Departments to finance the purchase of land or to manage and maintain all natural areas, whether forested or not, which the department is responsible for (Article L. 142-2 of the Spatial Planning Code). Moreover, according to Article L. 361-1 of the Environmental Code, following consultation with the municipalities involved, the

⁵ Constitutional Council, Decision of 9 May 1971, *Statute of Corsica*

⁶ This tax, among other things, may enable the institution to purchase and manage Nature 2000 sites and territories that qualify as natural reserves.

Department is responsible for establishing a departmental plan of walking and excursion itineraries, as part of a more general plan for the areas, sites and itineraries linked to outdoor sports.

The competence of town Councils in the field of environmental protection predominantly concerns urban and spatial planning; more precisely town Councils are in charge of drawing up the local planning documents (territorial coherence plan, local land and urban planning documents and municipal maps), urban planning procedures and land use permits. They are also involved in the environmental field by virtue of their competencies in the field of land use planning.

Italy:

Pursuant to Article 117 of the Italian Constitution, the legislative power is exercised by the State and the Regions, in compliance with the Constitution itself, EU legislation and international obligations. According to this article, a distinction has to be made between the matters for which the State retains exclusive legislative power and the matters subject to concurrent legislation. As for the latter, the legislative powers vested in the Regions are subject to the fundamental principles established in State legislation. Regions retain legislative power on all matters that are not expressly reserved for State legislation. While environmental protection is an exclusive State competence (Art.117 s)), the enhancement of 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 this power to the Regions. Regions have regulatory power in all other matters. The municipal, provincial and metropolitan city governments maintain regulatory power over their organisation and the performance of the functions attributed to them.

The division of powers differs between France and Italy. In addition to investigating Italy's national legislative framework, this study will take into account the regional legal framework of Regions Piedmont and Liguria. In Italy, Autonomous Regions and Provinces adopt their own laws concerning protected areas, which however must fully comply with the principles set forth in the national legal framework.

2.2 Transborder cooperation (outside EGTC)

Although this study 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 has been implemented over time in order to facilitate territorial cooperation among States. The most frequent approaches are:

- Multilateral framework treaties or conventions concluded at international level
- Bilateral or pluri-lateral 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.

2.2.1. Franco-Italian cooperation (the ALCOTRA programme)

The European Commission, with Decision C(2007) 5716 approved the ALCOTRA (the acronym stands for Latin Alps Trans-border Cooperation) operational programme for trans-border cooperation between France and Italy. The programme is co-financed by the European Regional Development Fund (ERDF). ALCOTRA is the fourth programme of its kind to take place on the border between France and Italy, and involves three Italian regions (Valle d'Aosta, Piedmont and Liguria), two French regions (Rhône-Alpes and Provence-Alpes-Côte d'Azur) and the Principality of Monaco (which will take part in the programme but will not receive any ERDF funding).

The general purpose of the programme is to improve the quality of life of the people living in the area of operations and to promote the sustainable development of cross-border economic and territorial systems through cooperation in the social, economic, environmental and cultural fields.

In line with the overall objective and with the priorities laid down in the regulations, the programme's strategic objectives are:

- to encourage the competitiveness and the sustainable development of cross-border production systems by means of action in three sectors: production systems, the rural economy and tourism;
- to develop joint strategies for protecting and managing the biodiversity, the natural resources and the landscape of the cross-border area;
- to anticipate and manage natural and technological risks and to increase the effectiveness of emergency action;
- to make the area concerned more attractive by improving services and by strengthening the cross-border communities' identity in the fields of health, equal opportunities and the provision of - and access to - services for the local population (mobility and cultural, educational and work-related services);
- to assist the development of genuine cross-border cooperation by ensuring that the programme is managed comprehensively and that action taken under the programme is effective

The operational programme is expected to create synergies and to provide support by facilitating cross-border cooperation between businesses, administrative bodies and members of the public. Furthermore, the Franco-Italian cross-border cooperation programme aims to facilitate student and worker exchanges and mobility and thus further the goals of increasing skills and job opportunities that are inherent in the employment-promotion objective. ALCOTRA is structured along four priorities:

- Development and innovation
- Environment and risk prevention
- Quality of life
- Technical assistance

ALCOTRA also introduced two new features: along with single projects, transborder integrated plans and strategic projects are envisioned. Region Piedmont has been appointed as the managing authority for the programme.

2.3 Classification of the protected areas

2.3.1 Different categories of protected areas [Legal framework, statute, organization]

2.3.1.1. The classification of protected areas in France and Italy

Article 2 of the Italian Framework Law on Protected Areas defines three categories of protected areas:

- National Parks consist of land, river and lake areas and may also include sea areas adjacent to the coast containing at least one intact ecosystem or even one partially altered by human intervention; at least one physical, geological, geomorphological, biological feature of international or national interest for naturalistic, scientific, educational, recreational reasons

such as to require the State intervention in order to preserve them for present and future generations.

- Regional Nature Parks consist of land, river and lake areas and may also include sea areas adjacent to the coast, which are of naturalistic and environmental value 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.
- Nature Reserves consist of land, river and lake areas and may also include sea areas adjacent to the coast containing one or more relevant plant or animal species, or presenting at least one ecosystem important for the preservation of bio-diversity or genetic resources. Both State and regional natural reserves may be constituted, according to the relevance of the interests represented.

A similar classification exists under French Law:

- According to the French Environmental Code (art. L.331-1) a territory can be declared National Park when there is a special interest in the preservation of its fauna, flora, waters and - more generally - of some natural environment, and it is therefore important to protect such an environment against natural deterioration as well as against any artificial action which may alter its aspect, composition and evolution.
- The aim of Regional Nature Parks is the protection, management and development of smaller territories, characterised by a rich natural and cultural heritage, but whose fragile balance is threatened. The territory of a Regional Park coincides with that of the Municipalities adhering to its Charter, a document which states the Park's objectives and the actions to be taken in order to realise them. Regional Parks' managing authorities are formed by representatives of all the interested entities - regions, departments and municipalities. Regional Parks aim at:
 - * protecting the territory's heritage, through a suitable management of natural environments and landscapes;
 - * contributing to the planning of the territory;
 - * enhancing economic, social and cultural development, as well as the quality of life;
 - * granting visitors suitable welcome, education and information;
 - * carrying out relevant experimental actions and contributing to research projects.
- Nature Reserves are areas where an outstanding natural heritage is protected by specific legislation which takes the local context into account; nature reserves are divided - according to their aims, geographical situation and local context - into National, Regional and Corsican Reserves.

2.3.1.2. The statute of the protected areas of the Pilot Regions

The Mercantour National Park and the Maritime Alps Park are both institutions governed by public law. According to Article L. 331-2-3 of the Environmental Code, the Mercantour National Park is a public administrative institution. According to Article 1 of the Piedmont Regional Law dated 14 March 1995,

which established the park⁷, the Regional Natural Park of the Maritime Alps (*Parco Naturale delle Alpi Marittime*) is an institution that operates under public law. The fact that these parks are governed by public law is important for the creation of an EGTC (European Grouping of Territorial Cooperation), as private-law institutions seem to be excluded from the range of Regulation no. 1082/2006 on EGTCs⁸. Both these parks are committed to ensure the conservation of biodiversity within their borders.

France

The objective behind the creation of a national park in France is established by the above-mentioned Article L. 331-1 of the Environmental Code:

"A national park can be created from land or sea areas; the natural environment, particularly wildlife, flora, soil, subsoil, air and water, landscapes and, where appropriate, cultural heritage are of special interest and it is important to ensure their protection and conservation and to prevent degradation and damage that could alter the diversity, composition, appearance and evolution of the area."

National Parks are formed by a central and a peripheral zone. A distinction must be made between the core (*cœur*) and the surrounding area (*aire d'adhésion*) of a national park, since different regulations apply. In the former, some human activities are regulated and organised as to prevent any change in the fauna, flora, natural environment and landscape. Within central zones, some areas can even be subject to further restrictions (*reserves intégrales*), and entrance may only be allowed for scientific purposes. On the contrary, peripheral zones are not subject to any specific regulations; they represent the privileged areas for tourist accommodation and for the Park facilities (museums, expositions, etc.). The protection arrangements for the core area of a national park will be stricter than those of a regional natural park.

Article L. 331-1 of the Environmental Code provides a definition of the surrounding area:

"[All] or part of the territory of those municipalities, which being eligible for becoming part of a national park due to their geographical proximity or ecological solidarity with the core area of the park, have decided to adhere to the charter of the national park and voluntarily contribute to its protection [...]."

Before the adoption of the National Parks Law of 2006, this area used to be called "peripheral zone" (*zone périphérique*). The prohibitions and obligations laid down by the decree establishing a national park do not apply to the peripheral zone. A recent study conducted by the French IUCN⁹ committee

⁷ Regional law no. 33 of 14 March 1995 establishing the Natural Park of the Maritime Alps (Incorporation of the Argentera Natural Park into the Natural Reserve of the Palanfrè Forest and Lakes) (Regional Official Gazette no. 12 dated 22 March 1995).

⁸ See Article 3 of regulation no. 1082/2006 concerning the make up of the EGCT: "1. 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 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. Associations consisting of bodies belonging to one or more of these categories may also be members."

⁹ Study by the French IUCN Committee, *Les espaces protégés français. Une diversité d'outils au service de la protection de la biodiversité (French Protected Areas. A variety of tools for the protection of biodiversity)*, French IUCN Committee, Paris, 2008, 67 pages

classifies the core area of French national parks (formerly called the 'central zone' of the park) under category II of the International Classification of Protected areas, while the surrounding area (peripheral zone) of such protected areas is classified under category V. Pursuant to the above-mentioned 2006 law, the areas surrounding national parks become sites for the promotion of sustainable development, according to a project described in the Park charter. The Environmental Code sets specific eligibility criteria.

The guidelines drawn up by the International Union for Conservation of Nature (IUCN)¹⁰ in 1994 classify protected areas according to their management objectives. These guidelines were revised in 2008¹¹. Although they are not legally binding, the State Parties to the Convention on Biological Diversity have been invited to apply them¹². The French government referred to these guidelines in its decree dated 23 February 2007, which laid down the fundamental principles applicable to all national parks¹³. The preamble of this decree acknowledges that French national parks can enjoy international recognition only if the fundamental principles that apply to them are compatible with the Guidelines for Protected Areas Management Categories defined by the World Conservation Union. As already mentioned, given the different legal status of the core and surrounding areas of French national parks, these two areas belong to different categories of the IUCN classification. So, according to their objectives and type of management, the core areas of the national parks belong to category II (national park) defined by the IUCN, while the surrounding areas of the national parks fall under category V (protected landscape)¹⁴. This latter category is defined by the IUCN as "[a] protected area where the interaction of people and nature has produced, over time, an area of distinct character with significant aesthetic, ecological and/or cultural value, and often with high biological diversity. Safeguarding the integrity of this traditional interaction is vital to protect and maintain the area, preserve nature and other associated values". The national parks, which belong to category II of the IUCN classification, are defined as "vast natural or almost natural areas, constituting reserves to protect ecological processes on a large scale, as well as the species and characteristics of the ecosystems of the region, which also provide a foundation for spiritual, scientific, educational, recreational and visitor opportunities, all of which must be compatible with the environment and the culture of the local communities."

Italy

Concerning natural regional parks in Italy, reference should be made to the already-mentioned Article 3 of the Framework Law on Protected Areas (*Legge Quadro sulle Aree Protette*), which outlines the different categories of protected areas (Law no. 394 of 6 December 1991, framework law on protected areas):

"Regional natural parks consist of land, river and lake areas and may also include sea areas adjacent to the coast, which are of naturalistic and environmental value 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."

¹⁰ IUCN *Guidelines for Protected Area Management Categories*. CNPPA with the assistance of WCMC. IUCN, Gland, Switzerland and Cambridge, UK, 261 pages.

¹¹ Dudley N. (Editor), *Guidelines for Applying Protected Area Management Categories*, IUCN, Gland, Switzerland, 2008, 96 pages.

¹² See the Programme for protected areas, in particular, adopted by the Party States to the Convention on Biological Diversity (COP 7 Decision VII/28).

¹³ Decree of the Ministry of Ecology and Sustainable Development, dated 23 February 2007, establishing the fundamental principles applicable to all national parks (Official Journal of 6 April 2007).

¹⁴ Study by the French IUCN Committee, *French protected Areas. A variety of tools for the protection of biodiversity*, French IUCN Committee, Paris, 2008, 67 pages

Article 5 of the Piedmont regional law on the protection of natural areas and the conservation of biodiversity provides a classification of regional protected areas and defines natural parks as areas *"characterised by a variety of naturalistic, landscape, cultural, historical and artistic values, where human presence is integrated with the environment in a well-balanced manner"*. Article 7 of the same law specifies the goals to be achieved by the institution of such areas (*Finalità delle aree protette*). A number of general objectives is common to all of the protected regional areas, while others only pertain to certain individual areas. In the case of natural parks, the following objectives are to be pursued:

- "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 promote environmentally friendly development initiatives, favouring productive activities and land uses so as to strike a balance between integration of human activities and conservation of natural ecosystems."*

In terms of protection status, Italian regional natural parks resemble French regional natural parks (see article L. 333-1 of the Environmental Code, in particular¹⁵) more than French national parks. As a matter of fact, the core areas of national parks are subject to stricter protection rules than regional parks, and the pursuit of economic and social development is not envisioned. These objectives, however, can be pursued in the surrounding area (formerly called "peripheral area"). By contrast, economic and social development is one of the objectives of the Italian regional natural parks, which adopt a multi-annual economic and social plan to that end. Therefore, there are some differences between the two categories of protected areas, notably between the objectives pursued by the core areas of French national parks and those pursued by Italian regional natural parks.

Moreover, it should be noted that article 6 of Piedmont's regional law on the protection of natural areas and the preservation of biodiversity grants a special status to the neighborhoods surrounding the protected areas. Once such areas have been designated by the Region in consultation with the management bodies of protected areas and local authorities concerned, they must be made subject to specific protection arrangements to ensure that the activities conducted therein do not damage the natural heritage of the protected area.

- "1. In collaboration with the management bodies of the protected areas and the local authorities concerned, the Regional Council will resolve, upon proposal of the Regional Executive Committee, to designate the areas contiguous with the protected areas, in order to guarantee appropriate environmental protection at the borders of such protected areas; in collaboration with the local institutions involved and the management bodies of the parks suitable plans and programmes will*

¹⁵ Article L. 333-1-1 of the Environmental code: *Regional natural parks contribute to the environmental protection, spatial planning, economic and social development and education and information of the public. They constitute a privileged framework of action for public bodies in favour of landscape, natural and cultural heritage conservation*".

be drawn up for such contiguous areas, so as to manage hunting, fishing and mining activities appropriately, while protecting the environment and biodiversity.

2. Pursuant to article 32, paragraph 3 of law 394/1991, the Region may regulate hunting in the contiguous areas by allowing controlled hunting reserved for residents of the municipalities of the protected and contiguous area only."

These clauses transpose some provisions of Italy's framework law on protected areas - namely article 32 (*Aree contigue - Contiguous areas*) - into regional legislation:

"1. The Regions, in collaboration with the management bodies of the protected natural areas and local authorities concerned, will establish plans and programmes and specific measures governing hunting, fishing, mining activities and environmental protection, to be applied in the areas contiguous with protected areas, where actions are needed to ensure proper conservation of the protected area values.

2. The boundaries of the contiguous areas mentioned in paragraph 1 above are determined by the Regions in whose territory the protected natural area is located, in collaboration with the management body of the protected area.

3. In the contiguous areas, the regions may regulate hunting, as an exception to paragraph three of article 15 of law no. 968 dated 27 December 1977, and allow controlled hunting only, reserved only for residents of the municipalities lying in the protected natural area and in the adjacent area, in compliance with the second paragraph of article 15 of the same law.

4. The management body of the protected natural area may impose hunting restrictions concerning the manner and period of hunting specific animal species to help protect wildlife in the area.

5. If areas contiguous with protected areas span across two or more regions, each region will provide for the portion of the area located within the boundaries of its territory, in consultation with the other regions, in accordance with articles 8 and 66, last paragraph, of Presidential Decree no. 616 of 24 July 1977. An agreement will be promoted by the region whose territory includes the greatest part of the protected natural area."

The areas contiguous with the Italian regional natural park can be compared to the peripheral zone of the Mercantour Park, where spaces surrounding the protected area are subject to a specific protection status. However, the Piedmont Region has not yet identified and established the boundaries for the contiguous areas (*aree contigue*) of the Maritime Alps Natural Park. Both the core area of the Mercantour National Park and its surrounding area are located on the border with Italy's regions of Piedmont and Liguria. The Maritime Alps regional natural park borders primarily with part of the core area of the French national park (see *Figure 2* below). The contiguous areas (or rather the areas 'nearby' the Maritime Alps Park, pending the official delimitation of the 'contiguous' areas) of the Maritime Alps Park also border on the surrounding area of the Mercantour Park. In the course of our study we will mention some legal provisions concerning the Liguria region, but we will focus primarily on those of the Piedmont region. Indeed, although Liguria is not part of the Econnect Maritime Alps-Mercantour Pilot region, since it shares borders with the Mercantour Park (surrounding area) it is submitted that certain comparisons with the French legal and regulatory framework will prove both interesting and useful.

The different protection status of the two parks determines a difference in the type of regulations, in particular, between the core area of the French national Park and the Maritime Alps Natural Park. The surrounding area of the French national Park and the Italian

Natural Park, on the other hand, are more similar in terms of regulation as both of them can be filed under category V of the IUCN system. As a result of such differences, the two protected areas might be given different assignments.

2.3.2 Management of protected areas

When considering the management of protected areas, a distinction can be made between measures of active management and measures of passive management

2.3.2.1 Active management

Italy

The principles concerning the management of regional protected areas are set forth in the national framework law on protected areas, while Regions and Autonomous Provinces adopt their own regulations on the subject. Concerning the management of Italian regional protected areas, according to article 25, paragraph 1 of the framework law on protected areas, said areas must be provided with both a "Park plan" (*Piano parco*) and 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 adopted by the park management body, upon approval by the Region. Pursuant to article 25, paragraph 3 of the law, such plan is also valid as an instrument of landscape and spatial planning. Articles 25 and 28 of Piedmont's regional law on protected natural areas and the preservation of biodiversity refer to the planning instruments for the park. The "Park Plan" is called the "Area Plan" (*piano di area*) in the regional law. Article 26, paragraph 1 of the regional law states that the park plan/area plan is equivalent to a regional spatial plan and replaces territorial and urban development plans of different levels. This plan must also indicate the prohibitions, as well as the measures to be implemented in the different zones. Specific measures concerning the participation of inhabitants 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 law concerns the development of the above-mentioned multi-annual economic and social plan.

France

The instrument to manage French national parks is the National park charter, whose components are established by article L. 331-3 of the Environmental Code¹⁶. This instrument was introduced by the law of 14 April 2006. The Charter of the Mercantour National Park has yet to be adopted. The park charter makes a distinction between the core area of the park (formerly called the "central zone") and the surrounding area (formerly called the "peripheral zone"). These areas are discussed in two separate sections of the national park charter:

“ 1. The national park charter defines a territorial project, which is the expression of the ecological solidarity between the core of the park and its surrounding areas. [...] It consists of two parts:

¹⁶ Decree of the Ministry of Ecology and Sustainable Development, dated 23 February 2007, establishing the fundamental principles applicable to all national parks (Official Journal of the French Republic - JORF of 6 April 2007).

1. For the core area, it defines the objectives for the protection of the natural, cultural and landscape heritage and describes procedures for applying the provisions of article L. 331- 2;

2. For the surrounding area, it defines the guidelines for the protection, enhancement and sustainable development of the area and describes how to implement such guidelines. [...] Each part of the charter includes a general section that refers to the fundamental principles applicable to all national parks by virtue of their high value, and a specific section devoted to each individual national park containing the objectives or guidelines and measures set for the relevant park taking into account its territorial, ecological, economic, social or cultural characteristics.”

The Mercantour National park charter is in the process of being drawn up. Nevertheless, the governing principles were adopted and published in 2007¹⁷.

Both parks intend to adopt specific management plans. In order to realise the ecological corridors, the measures included in the management plans should be coordinated. Since the Mercantour park charter is in the process of being drawn up, it will be interesting to see to what extent it will draw inspiration from the management measures currently being adopted in Italy. Management plans also contain specific provisions concerning participation, and this should be taken into account with a view to cross-border cooperation.

2.3.2.2 Passive management

Regulation of activities

Certain activities are prohibited both in French national parks and Italian regional parks, and are listed in the regulations set forth upon creation of these parks. According to article 24 of the Piedmont law on the protection of natural areas and the preservation of biodiversity, the activities allowed in a regional natural park must be defined in the regulation establishing the park¹⁸. With regards to the Park of the Maritime Alps restricted and permitted activities (*Vincoli e permessi*) are laid down by article 7 of the regulation establishing the park. In the case of French national parks, article L. 331-4-1 of the Environmental Code states that the regulations and charter of a natural park may establish, for the core area of the park, the conditions under which existing activities can be maintained and subject certain activities to specific conditions, prohibiting them if necessary.

In France, the surveillance of national parks is entrusted to the officers of the national public park service. These officers assess and report violations of the regulations in national parks. Surveillance in the Italian regional natural parks is governed by article 27 of the framework law on protected areas (Art. 27- *Vigilanza e sorveglianza*):

“1. Surveillance of management of regional protected natural areas is exercised by the Region. In the case of protected areas whose territory extends across more than one region, the constituent

¹⁷ Strategic axes of the Mercantour National Park Charter adopted by the Board of Directors on 10 December 2007.

¹⁸ Regional law no. 33 of 14 March 1995 establishing the Natural Park of the Maritime Alps (Incorporation of the Argentera Natural Park into the Natural Reserve of the Palanfrè Forest and Lakes) (Regional Official Gazette no. 12 dated 22 March 1995).

instrument determines which agreements should be entered into for the performance of surveillance tasks.

2. The State Forestry Corps have the authority to stipulate specific agreements with the regions for monitoring the territory of regional protected natural areas, on the basis of a general uniform agreement drawn up by the Ministry of the Environment together with the Ministry of Agriculture and Forests."

Article 21 of the Piedmont law concerns surveillance of regional protected areas. The entities responsible for monitoring regional protected areas have law enforcement powers.

Leisure activities

France

Leisure activities in French national parks are regulated by article L. 331-4-1 of the Environmental Code, which states:

" In the core area, the national park regulations and charter [...] may:

- 1. Establish the conditions under which existing activities may be performed;*
- 2. Impose specific rules, and where appropriate, prohibit business activities, water use, traffic regardless of the means of transport used, overflying the core area at an altitude below 1000 m, all activities capable of damaging the natural development of the flora and fauna and, more generally, of altering the characteristics of the national park[...] ».*

According to the regulations of the Mercantour National Park, in the core area of the park, it is prohibited to ¹⁹:

- use vehicles outside authorised routes (whether automobiles, bicycles, motorcycles, quads ...).
- overfly the area at altitudes of less than 1000 m (paragliding, ultralight aircraft, gliders helicopters, sailplanes, hang gliding, etc.).
- light fires. This is in order to prevent the risk of fires and degradation of the ground.
- make noise or use sound equipment, to respect the tranquillity of the animals and avoid frightening them.
- bivouac, camp in sites at less than an hour's walk from road access or install caravans or campers.

Concerning the use of motor vehicles in the natural areas, specific provisions are contained in the Environmental Code, namely in articles L.362-1 to 362-8 and R.362-1 to 362-5. Rules concerning circulation in national parks are included in the National park charter, both for the core area of the park and the surrounding areas.

Article L. 362-1, second paragraph: « *The charter of [...] each national park contains an article that establishes the traffic rules for motor vehicles on the roads and paths of each municipality of the regional natural park or national park and the municipalities included entirely or in part within the core area of the national park.*»

Italy

Pursuant to article 24 of the Piedmont law on the protection of natural areas and the preservation of biodiversity, the rules governing activities in the Regional Natural Park of the Maritime Alps must be

¹⁹ Decree no. 2009-486 dated 29 April, for adaptation of the designation and regulations of the Mercantour National Park to the provisions of the Environmental Code following promulgation of Law no. 2006-436 dated 14 April 2006 (Official Journal of the French Republic- JORF no. 0102 dated 2 May 2009).

stated in the funding instrument of the park²⁰. Indeed article 7 of the Regional Law no. 33 of 14 March 1995 establishing the Park of the Maritime Alps lists restricted and permitted activities. (" *The management bodies of the protected areas shall adopt regulations to govern activities and behaviour permissible in each protected area, as well as any integrations or exceptions to the prohibitions set forth in article 8, paragraph 7, hereinafter referred to as the regulation for protected areas*"). Concerning the circulation of motor vehicles in the park, article 7, paragraph 1 of the park regulation states that "*Throughout the territory of the natural park compliance shall be ensured with state and regional laws on environmental, flora and fauna protection, hunting and fishing; in addition it is prohibited to [...] perform recreational and sports activities with mechanical off-road means [...]*". Additionally, the decree of 2007 on the definition of conservation measures applying to Special Areas of Conservation (SAC) and Special Areas of Protection (SAP) introduced rules for the use of platter lifts and snowmobiles for the SAP in an open Alpine type environment. The entire Maritime Alps Natural Park is included in the Natura 2000 zoning area.

It is essential that the rules applying to certain activities capable of damaging the natural habitats and disturbing wild animals are similar on both sides of the border. This regulation de facto of certain activities is performed through the adoption of regulatory measures imposed on all, which may be susceptible to exceptions under certain specific conditions.

Hunting and Fishing

Hunting

France

Although the Environmental Code does not expressly prohibit hunting in French national parks, it states that, within a park's core area, hunting may be subject to special rules, which may include a ban. According to article L. 331-4-1 of the Environmental Code:

" In the core area, the national park regulations and charter [...] may:

- 1. Establish the conditions under which existing activities may be performed;*
- 2. Submit hunting to a special rules and, where appropriate, prohibit hunting and fishing[...];*

According to Decree 79-696 of 1979, which created the Mercantour national park, hunting is prohibited in the central/core area of the park. This is reiterated by article 9 of Decree no. 2009-486, dated 29 April 2009, concerning the rules applying in the Mercantour National Park, according to which hunting is prohibited in the core area of the park.²¹ Provisions concerning hunting in the surrounding area are contained in the park charter, which defines *the guidelines for the protection, enhancement and*

²⁰ Regional law no. 33 of 14 March 1995 establishing the Natural Park of the Maritime Alps (Incorporation of the Argentera Natural Park into the Natural Reserve of the Palanfrè Forest and Lakes) (Regional Official Gazette no. 12 dated 22 March 1995).

²¹ Decree no. 2009-486 dated 29 April, for adaptation of the designation and regulations of the Mercantour National Park to the provisions of the Environmental Code following promulgation of Law no. 2006-436 dated 14 April 2006 (Official Journal of the French Republic- JORF no. 0102 dated 2 May 2009).

sustainable development [in the surrounding area] and how to implement them, as required by article L. 331-3 of the Environmental Code.

Italy

Hunting in Italian regional natural parks is expressly prohibited by article 22 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 animal removal and selective killing activities performed under certain conditions may justify the practice of hunting in a natural park. Regional laws cannot rule against the above-mentioned provision of the national framework law, which is one of the fundamental principles governing Italian protected natural areas (*principi fondamentali per la disciplina delle aree naturali protette regionali*). This was recently reaffirmed by the Italian Constitutional Court in a sentence dated 29 October 2009²². As for the Maritime Alps regional natural park, the prohibition of hunting throughout the territory of the park is established by article 7, paragraph 1 of the park rules and regulations²³:

"It is forbidden to hunt throughout the territory of the natural park; additionally, state and regional laws on environmental, flora and fauna protection must be respected, as well as laws on hunting and fishing."

The national framework law on protected areas, as well as the recent Piedmont law on protected areas (regional law no. 19 dated 29 June 2009), contains specific provisions concerning the areas surrounding the protected area (the so-called contiguous areas). According to the Piedmont Law, the boundaries of contiguous areas shall be established by regional authorities and must be agreed on by the managing authority of the protected areas and the local authorities involved (article 6, paragraph 1 of regional law no. 19 dated 29 June 2009). Article 32 of the framework law lays down that specific measures may be taken in the field of fishing and hunting, and the Piedmont law reiterates such provision. Plans and programmes must be adopted in order to manage hunting and fishing activities, among others. Article 2, paragraph 2 foresees that the Region may regulate hunting in the form of controlled hunting,

²² The explicit prohibition of application of the "limitations to hunting activities pursuant to Articles 22, paragraph 6 and 32, paragraphs 3 and 4 of law no. 394/1991", foreseen by Article 8, paragraph 1 letter c) of Ligurian regional law 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 species that can be hunted" are fundamental norms of economic and social reform (sentence no. 227 of 2003, which refers to sentence no. 323 of 1998)". Pres. Ammirante, Rapporteur Napolitano - President of the Council of Ministers vs. Liguria Region - CONSTITUTIONAL COURT - 29 October 2009, no. 272.

²³ Regional law no. 33 of 14 March 1995 establishing the Natural Park of the Maritime Alps (Incorporation of the Argentera Natural Park into the Natural Reserve of the Palanfrè Forest and Lakes) (Regional Official Gazette no. 12 dated 22 March 1995).

reserved only for residents of the municipalities within the protected area and surrounding area. Furthermore, it is worth mentioning that since the entire Maritime Alps Park is a Natura 2000 site, special rules apply, in order to prevent all types of damage to the habitats and species that prompted the designation of the site. Measures to set up the site must be adopted within six months from the designation of the site or, in this case, after the appointment of the managing authority of the Maritime Alps Park (article 2, paragraph 3 of the 2007 decree on the conservation measures applying to SAC and SAP).

Fishing

France

Fishing in French national parks is governed by decree no. 2009-486 dated 29 April 2009²⁴. According to article 11 of this act, in the core area of the parks *"fishing is regulated by the management body in order to prevent any harm to animal species, vegetation or their habitats, following consultation with the scientific committee and the departmental federation of fishermen involved."*

Italy

In the areas surrounding Italian regional natural parks, article 32 of the framework law on protected areas foresees that measures may be taken in the field of fishing and hunting. The Piedmont law reiterates this provision in article 6 of the Consolidated Text (*Testo Unico*)²⁵. Plans and programmes must be adopted in order to manage hunting and fishing activities, among others.

2.3.3 Transborder cooperation in nature protection law

For the realisation of cross-border ecological corridors, it is essential to establish cooperation in the field of nature conservation between the two neighbouring countries. This possibility is envisaged in the Environmental Code for national parks, but is not included in the framework law on protected areas. Nevertheless, the possibility of cooperation between Piedmont parks and parks on the other side of the border is foreseen by the Piedmont law on the conservation of nature.

France

Concerning French national parks, article L. 331-9 of the Environmental Code, modified by the law of April 2006 on national parks²⁶, envisages cross-border cooperation for the management of a national park:

"The public institution in charge of the national park [...] may undertake common activities with the management body of a frontier protected area, in the framework of national and EU policies falling within their respective fields of competence and, where appropriate,

²⁴ Decree no. 2009-486 dated 29 April, for adaptation of the designation and regulation of the Mercantour National Park to the provisions of the Environmental Code following promulgation of Law no. 2006-436 dated 14 April 2006 (Official Journal dated 2 May 2009).

²⁵ Article 6 of Regional Law (Unified Text): *In collaboration with the managing institutions of the protected areas and the local institutions involved, the Regional Council will deliberate, upon proposal by its Executive Committee, to establish the boundaries of the surrounding areas, in order to guarantee appropriate environmental protection on the borders of the protected areas, for which suitable plans and programmes will be drawn up, in collaboration with the local institutions involved and the management of the parks, for the management of hunting and fishing, mining, environmental protection and biodiversity.*

²⁶ Law no. 2006-436 dated 14 April 2006, concerning national parks, natural marine parks and regional natural parks (Official Journal no. 90 dated 15 April 2006, page 5682)

create management instruments that contribute to the implementation of their common objectives."

The public institution in charge of the national park, "subject to the prior authorisation of the ministry responsible for the conservation of nature, may sign international twinning agreements with foreign organisations for the management of protected areas". These provisions are the legal foundations of international cooperation activities which have existed for several years in certain protected areas, notably between the Mercantour National Park and the Park of the Maritime Alps. There is no such provision in the law concerning regional natural parks.

Italy

The possibility for cross-border cooperation mentioned by Piedmont's regional legislation (that applies to the Maritime Alps regional park). Article 4, paragraph 4 of the Piedmont law on the protection of natural areas and the preservation of biodiversity states that:

"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."

Such provision concerning cooperation among trans-frontier protected areas is not envisioned in the framework law on protected areas.

"Cross-border" cooperation in the field of protected areas with a view to improved management of the areas on both sides of the border has only recently been acknowledged by the law. Cross-border cooperation has already been taken into account by the French legislator, but has yet to be included in Italy's national environmental protection laws, although it has already been introduced in Piedmont's regional laws. These provisions fix in a legal text the rationale behind initiatives carried out in recent years by several parks in the Alpine arc, especially in the framework of the INTERREG programme. Cooperation in the framework of European INTERREG projects is on a voluntary basis.

2.4 Protection of the habitats

2.4.1 Protection of the mountain natural elements [Protection of Mountain Areas]

2.4.1.1. The Alpine Convention

Italy and France have both ratified the Framework Convention on the Protection of the Alps. However, while France has recently ratified all of the implementing Protocols of the Alpine Convention²⁷, as of

²⁷ Law no. 2005-492 dated 19 May 2005, which authorised the approval of protocols for implementing the Alpine Convention of 7 November 1991 in the field of conservation of nature and the countryside, spatial planning and

this writing Italy has yet to do the same. The first obstacle to the ratification process was the long inactivity of the State-Region council of the Alpine Arc (Consulta Stato -Regioni dell'Arco Alpino), the organ charged with the designation of the regional and local structures that were to implement the Alpine Convention and its Protocols. The second obstacle was represented by the Transport Protocol, namely by its controversial article 11, under which contracting Parties may not construct any “*new large-capacity road for trans-alpine transport*” (while on the matter, it is worth mentioning that on April 22, 2009 the European Parliament ratified the Protocol on Transport, making it *de facto* enforceable in Italy). It is worth mentioning, however, that although Italy is not formally bound by certain provisions of the Protocol on the conservation of nature and landscape protection that are particularly relevant for the cooperation between protected areas many provisions of the Alpine Convention and its protocols are applied through the implementation of national or regional laws²⁸. As for the cooperation between protected areas, which is the main subject of this study, article 12 of the Protocol on the conservation of nature and landscape protection of the Alpine Convention regards it as one of the stages in the creation of an ecological network throughout the Alps:

“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 acknowledge as worthy of protection They shall undertake to harmonise the objectives and measures with the cross-border protected areas.”

With regard to the functional efficiency of the habitats, article 13, paragraph 1 of the same Protocol states that:

“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.”

With the adoption of the Plan of Action on Climate Change in the Alps²⁹ both France and Italy acknowledged the threat posed by climate change to 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.

This plan includes objectives and examples of measures. Concerning the preservation of biodiversity, the Plan of Action sets forth the following objectives:

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

sustainable development, mountain forests, energy, tourism, soil conservation and transport (Official Journal of the French Republic- JORF no. 116 dated 20 May 2005, page 8729).

²⁸ Source: EURAC Research.

²⁹ The Plan of Action on Climate Change in the Alps was adopted by the Party States to the Alpine Convention during the X Alpine Conference, in March 2009.

- to preserve peatlands as CO2 sinks and biodiversity reservoirs.

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 IX Alpine Conference in Alpbach, Austria.

The Alpine Convention is an essential instrument for the preservation of habitats and Alpine species since it defines nature conservation measures and measures in other fields. Indeed integrating environmental issues into other policies (transportation, spatial planning, etc.) ensures that also such other policies contribute to limiting habitat fragmentation, which causes biodiversity reduction. Although Italy, which is a Party State to the Convention, has not yet ratified any of the implementing protocols it has adopted the Action Plan on Climate Change in the Alps, including the Declaration on Climate Change.

2.4.1.2. European Union law

European law does not envision specific policies for mountain areas. Indeed a number of different policies apply to mountain areas, first and foremost the regional and agricultural policies. Mountain areas are taken into account indirectly in policies for nature conservation and in the implementing rules of the Habitats and Birds Directives. The Habitats Directive is implemented by bio-geographical regions: the Alpine biogeographical region includes several European mountain ranges and the Alps constitute one of the sub-regions of the Alpine biogeographical 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 Union ³⁰ 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.

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. CAP offers possibilities for financing activities that have a positive influence on ecological connectivity.

³⁰ This article is based on Title XVIII of the Treaty on the Functioning of the European Union, devoted to economic, social and territorial cohesion.

2.4.1.3. The National Framework

Both French and Italian law contain specific measures for the preservation of natural mountain areas. The definition of mountain areas is provided by national law, which explains the differences between the two countries.

France

In France, the preservation of natural mountain environments is addressed both by the "typical" nature protection legislation (especially the legislation on natural areas) and by spatial planning legislation. The Mountain Act³¹ defines the principles of spatial planning and urban development in mountain areas. Concerning ecological connectivity, we can underline the different value attributed to the principle of "continuity in urbanisation" (article L.145-3 of the Building Code): "*Urbanisation should be realized in continuity with towns, villages, hamlets, groups of traditional buildings or existing housing*". "*The lands required for maintaining and developing agriculture, pastoralism and forestry are preserved*". The purpose of these provisions is to avoid the creation of new housing in mountain areas. In fact, the fragmentation of habitats is one of the main causes for the loss of biodiversity. Several principles contained in the Mountain Act of 1985 have been integrated in the Building Code (see articles L.145-1 to L.145-13): land settlement principles, protection of mountain areas and the principle of "new touristic units" ("*unités touristiques nouvelles*"). There is specific case law for the protection of mountain areas as regards the implementation of the "Mountain Law". Nevertheless, many cases of slack application of the principle of continuity of urbanisation have been reported³². Thus, while the principle of continuity was originally applied to "existing housing", it later underwent five revisions, and was extended to towns, villages and groups of traditional dwellings. The ambiguous formulation of the rule has increased urbanisation opportunities remarkably³³, and may provide the opportunity for risky interpretations.

Italy

Unlike France, Italy has no specific law on mountain areas. However, article 44 of the Italian Constitution states that "*the law envisages measures in favour of mountain areas*". Moreover, mountain areas are indirectly protected by legal instruments concerning, among other things, spatial planning, the preservation of nature, etc. Additionally, the Galasso Act adopted in 1985 established that certain natural elements should be protected by law, and among them are some 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*")

³¹ Law no. 85-30 dated 9 January 1985, concerning the development and protection of mountain areas (Official Journal of the French Republic- JORF of 10 January 1985, page 320).

³² Information resulting from a study by the French IUCN Committee: 1985-2005: *20 ans de la loi Montagne. Bilan et propositions* (20 years of mountain law. Assessment and proposals), French IUCN Committee, Paris, 2005, 15 pages.

³³ Information resulting from a study by the French IUCN Committee: 1985-2005: *20 ans de la loi Montagne. Bilan et propositions* (20 years of mountain law. Assessment and proposals), French IUCN Committee, Paris, 2005, 15 pages.

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).

Although Italy has no specific law for the protection of natural mountain areas, various laws indirectly ensure the preservation of these areas. The law on the conservation of landscape assets, in particular, is worthy of mention.

The legislation on protected areas is fundamental for the preservation of natural mountain areas in both France and Italy. In fact, many protected sites are located in mountain areas. One should also mention the Bird and Habitat Directives on the conservation of habitats and species of Community interest. For the purpose of protection such directives designate biogeographical regions, including the Alpine biogeographical region, to which the Alps belong as sub-region.

2.4.2 Protection of the habitats of Community importance (EU Natura 2000 Directive)

The Habitats Directive, together with the Birds Directive, forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and a strict system of species protection. All in all the directive protects over 1,000 animals and plant species and over 200 "habitat types" (e.g. special types of forests, meadows, wetlands, etc.), which are considered of Community (EU) importance. According to the Directive, a site of community importance (SCI) is a site which, in the biogeographical region or regions to which it belongs, contributes significantly to the maintenance or restoration at a favourable conservation status of a natural habitat type or of a species. France and Italy transposed the Habitats directive in their national legislations (also regional legislations in the case of Italy). In this section we will focus on the management of Natura 2000 sites.

France

In France, article L. 414-2-1 of the Environmental Code requires that a document of objectives be drawn up for each Natura 2000 site³⁴. The document should "*define management guidelines, list the measures foreseen by article L. 414-1 and the way of implementing them, and describe accompanying financial provisions*". It specifies that "*[when] the site is situated mostly within the perimeter of the core area of a national park and, by way of derogation, it is classified under category II instead of category V, the public body responsible for managing the park shall draw up the document containing the objectives and implementing measures*". In terms of management, Natura 2000 sites located in the core area of national parks derogate from the general management of Natura 2000 sites. No steering committee is to be created in this case, and the provisions contained in paragraphs II through V of article L. 414-2 of the Environmental Code do not apply. No coordination is envisaged with bordering Natura 2000 sites. Cooperation, however, is foreseen with a bordering protected area for the purpose of managing the site in accordance with the provisions on national parks (article L. 331-9 of the Environmental Code).

³⁴ In the case of the Mercantour Natura 2000 site reference should be made to **DOCOB FR 9301559**, 2004-2009 (prolonged until 2011).

Italy

Concerning the management of Italian Natura 2000 sites, reference must be made primarily to Presidential Decree no. 357 of 8 September 1997³⁵, which contains the guidelines for the management of Natura 2000 sites³⁶, and the Ministerial Decree dated 17 October 2007, which sets forth uniform criteria for the definition of conservation measures in the special areas of conservation (SACs) and special protection areas (SPAs)³⁷. Measures of conservation have been undertaken for each Natura 2000 site, but a management plan for each site has yet to be established³⁸. Regions and Autonomous Provinces were required to adopt the conservation measures within six months from the designation of the site, in accordance with article 2, paragraph 3 of the Decree dated 17 October 2007. For sites located in protected areas, article 4, paragraph 4 of Decree no. 357 dated 8 September 1997 specifies that the provisions in force also apply to Natura 2000 sites.

According to article 41, paragraph 2 of the Piedmont regional law on the protection of natural areas and the preservation of biodiversity, the management of Natura 2000 sites is delegated to the entities that manage the neighbouring protected areas. Thus, for sites located entirely within a protected area, like the Natural Park of the Maritime Alps, the management will be entrusted to the organisation managing the protected area. Article 42 of the Piedmont regional law on the protection of natural areas and the preservation of biodiversity concerns the management plan of Natura 2000 sites. Paragraph 6 of this article refers to the legal status of management plans. The plans are legally binding:

Management Plans are declarations of general public interest and their provisions take effect immediately and are binding in accordance with the Decree of 3 September 2002 of Ministry for the Environment Land and Sea Protection".

If Natura 2000 sites are located in protected areas, the plans for managing such protected areas³⁹ shall serve as the management plans of the sites, in accordance with article 42 of the aforementioned Piedmont law and must be adapted, if necessary, to meet the objectives of conservation of Natura 2000 sites (article 42, paragraph 7 of the aforementioned Piedmont law):

"The plans for the protected areas and their amendments will be effective as management plans for the territory designated as area belonging to the Natura 2000 network and site of Community interest, providing they are drawn up in compliance with the guidelines contained in paragraph 1."

³⁵ Presidential Decree no. 357 of the President of the Republic dated 8 September 1997, modified by the Presidential Decree of 12 March 2003

³⁶ Ministry of the Environment Decree dated 3 September 2002, adopting the guidelines for the management of Natura 2000 sites.

³⁷ Ministry of the Environment Decree of 17 October 2007 setting forth uniform criteria for the definition of conservation measures within SACs and SPAs.

³⁸ See the guidelines on page 3 on the management of Natura 2000 sites; see **Article 4, paragraph 2 of Decree no. 357 on Natura 2000 sites**: *"The Regions and Autonomous Provinces of Trento and Bolzano shall adopt appropriate conservation measures for the special areas of conservation, within six months from their designation. Such measures will include, if necessary, the drawing up of specific management plans or plans integrated with other development instruments and appropriate regulatory, administrative or contractual measures, which meet the ecological requirements of natural habitats listed in Annex A and of the species listed in Annex B, which are present in the sites"*.

³⁹ A management plan is already in force for the Maritime Alps Park and also one for the Natura 2000 site.

The managing organizations of Natura 2000 sites located in the core area of the Mercantour National Park (France) and the Maritime Alps regional Park (Italy) are the management bodies of such parks. In the surrounding area of the Mercantour Park it could not be otherwise, since, as mentioned earlier, the general provisions for the management of Natura 2000 sites apply, namely, articles L. 414-2, paragraphs II through V. Cooperation for the management of the Natura 2000 sites between France and Italy will therefore take place through cooperation between the two parks. This could be facilitated by the creation of a joint management structure for the two parks. Ecological corridors could be more easily created if measures pursuing similar objectives are adopted on both sides of the border. This, of course, is not a mandatory requirement of the Habitats Directive and will therefore result from a voluntary action on the part of the two managing entities. In fact, the Habitats Directive does not envisage the concept of a "cross- border Natura 2000 site."

2.4.3 Protection of habitats/wild species (not specifically in protected areas)

When considering the preservation of habitats and wild fauna outside protected areas, we must refer to the planning instruments adopted at regional level in both France and Italy. For France, according to article L. 414-18 of the Environmental Code, regional guidelines for management and conservation of wild fauna are adopted with a view to promoting sustainable management:

"In each region and in the territorial collectivity of Corsica, regional guidelines for management and conservation of wild fauna and its habitats will be drawn up, with a view to promoting sustainable management, in compliance with the principles set forth in article L. 420-1 and taking into account the regional forestry guidelines mentioned in article L. 4 of the Forestry Code and the priorities of the policy guidelines for agricultural production and management of farms mentioned in article L. 313-1 of the Rural Code.

The regional guidelines for management and conservation of wild fauna and its habitats specify the objectives to achieve in the field of conservation and sustainable management of the fauna of the region, which may or may not be hunted, its habitats and the coexistence of different uses of the natural area. These guidelines must include an assessment of the main development trends of animal populations and their habitats, as well as of the threats due to human activities and the damage suffered by wild animals and their habitats. The departmental plans establishing hunting rules laid down by article L. 425- contribute to such assessment.

Regional guidelines for management and conservation of wild fauna and its habitats are established by the regional prefect following consultation with territorial collectivities and competent natural or legal persons in the areas concerned, [...].

It will be necessary to investigate what forms of cooperation have been implemented in this connection between the Provence Alpes Côte d'Azur region and the Italian border regions.

2.4.4 Legal provisions concerning the linkage of habitats

2.4.4.1. The legal provisions

France

France is about to adopt legislation aimed at establishing a national ecological network, called the "*trame verte et bleue (TVB - blue and green network)*". As of now similar provisions are not present in national law, but have already been adopted in regional law.

Such provisions ("Grenelle II" Act), will transpose articles 3 and 10 of the Habitats Directive into national law. The planned ecological network will be made up of protected areas. Article 45 of the draft "Grenelle II" Act concerns the components of the green network for France. With reference to French national parks, the national guidelines for the preservation and restoration of ecological continuity (guideline no. 2)⁴⁰ specify that "*existing areas subject to strict protection⁴¹ [...] in a given region may be eligible for becoming a reservoir of biodiversity belonging to the green and blue network of the region*". According to the COMOP⁴², failure to integrate these areas will only be permissible as an exception and must be justified within the regional plan of ecological coherence. There are then other areas which, for one reason or another, benefit from protection measures of some kind (regulations, financial or property rules) or else are subjected to special management. Following a regional assessment, decisions will be made concerning the possible contribution of such areas to the TVB and their complete or partial integration in the green and blue network, as well as inclusion in the reservoir of biodiversity or ecological corridor. So far, France has failed to transpose the provisions on ecological connectivity between Natura 2000 sites into its national laws governing Natura 2000 sites; the "Grenelle II" Act will finally fulfil the requirements of articles 3 and 10 of the Habitats Directive. The Act will adopt specific measures to promote ecological connectivity. Concerning national parks, ecological coherence between areas of the core of the Park and the surrounding areas is clearly envisaged by the provisions of the Environmental Code, resulting from the law of 2006 on national parks. That entails the implementation of the principles of ecosystem management stemming from the Convention on Biological Diversity. A "*Territorial Plan*" must be drawn up with the charter, aimed at "*taking into account the large-scale functional ecological systems*". Said plan must consider the "*ecological solidarity between the protected areas of the core part of the park*

⁴⁰ Two documents/guides (temporary as of November 2009) make up the national guidelines for the preservation and restoration of ecological continuity, drawn up by the COMOP, provide indications on the methodologies concerning the development of the green and blue network. Two guides are provided:

- The first refers to the matters at stake and the principles of the green and blue network (TVB)
- The second rests on the methodology for drawing up the regional blue and green network (TVB).

⁴¹ Areas subject to strict protection include:

- The core area of national parks,
- Natural reserves,
- Biological reserves in public forests,
- Biotope protection areas according to sentence by the Prefect
- Sites listed as natural heritage

⁴² COMOP: Operational Committee for the Green and Blue Network established by the Grenelle law on the environment.

*and the surrounding areas where protection, enhancement and sustainable development policies apply.*⁴³

Italy

In Italy, provisions on ecological connectivity have been adopted by some regions, with the aim of creating a regional ecological network. Currently, 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 an ecological network and ensuring ecological coherence between protected areas.⁴⁴

For the Piedmont Region, article 2, paragraph 2 of the above mentioned regional law describes the components of the regional ecological network, which includes the regional protected areas.

“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) the 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, the 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 negative effects of a project /plan on the corridors. This provision transposes articles 3 and 10 of the Habitats Directive. The Decree of March 2003, which modified the Decree of 1997 transposing the Habitats Directive, 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 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 law no. 394 dated 6 December 1991.”

⁴³ Provision of the Decree of the Ministry of Ecology and Sustainable Development, dated 1 February 23, bearing the fundamental principles applicable to all national parks (Official Journal of the French Republic - JORF of 6 April 2007).

⁴⁴ *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 the ecological network; verify the relations between the national ecological network, the Natura 2000 network, the territorial ecological network and the ecological network at species, groups of species and communities level, etc. (see pg. 12 of the presentation concerning the future strategy on biological diversity in Italy).*

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. "

It is worth mentioning that the Liguria Region, which is PACA's neighbour and adjacent to the surrounding area of the French Mercantour National Park, has recently integrated provisions for the establishment of a regional ecological network into its regional nature conservation legislation. This was accomplished through regional law no. 28 of 10 July 2009 concerning the conservation and enhancement of biodiversity (*Legge Regionale 10 Luglio 2009 n°28, Disposizioni in materia di tutela e valorizzazione della biodiversità*). According to article 1, paragraph 2 of the law, which sets the objectives, the Region shall "set up a regional ecological network consisting of the Natura 2000 network, the areas providing functional ecological connectivity referred to in articles 3 and 10 of the European Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural and semi-natural habitats and of wild fauna and flora and later amended and integrated, as well as of protected areas and any other regional areas of particular naturalistic interest". According to article 2 of this law, the Region shall define the criteria, guidelines and procedures for the management and monitoring of the sites included in the regional ecological network. Article 3 of the law is devoted to the regional ecological network. This ecological network will consist, according to article 3, paragraph 1, of the Natura 2000 sites, the protected areas and the areas serving as ecological and functional linkages (stepping stones), which are particularly important for the conservation, migration, dispersal and genetic exchange of wild species.

Both French and Italian laws consider protected areas as a component part of the ecological network. Concerning cross-border cooperation aimed at setting up ecological networks, the French Guidelines for the preservation and restoration of ecological continuity (guideline no. 2) foresee that the regional "green and blue network" should be made consistent with similar networks of neighbouring countries and regions. The French provisions have not been adopted yet, as mentioned above. The need to guarantee continuity in the green and blue network beyond administrative boundaries is recognised by the network's Managing Committee. Nothing has been specified on this matter in the Italian laws concerning ecological corridors. Nevertheless, article 4, paragraph 4 of the Piedmont law on the protection of natural areas and the preservation of biodiversity states that "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."

2.4.4.2. Ecological network and spatial planning

Both the French and the Piedmont laws lay down that biological corridors should be taken into account in urban development/ spatial planning instruments.

Italy (Piedmont)

Articles 53 and 54 of Regional Law 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 to be 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 the subjects in charge of the projects which generated the negative effects.

France

The link between the ecological corridors and spatial planning in French law is established by articles 23 through 26 of the "Grenelle I Act" and by articles 45-46 and 5-10 of the draft "Grenelle II" Act. Articles 45 and 46 concern the definition of the objectives of the "green and blue network" (TVB), the system of the TVB and the connection with the SDAGE in the Environmental Code. Articles 5 through 10 of the text are devoted to the integration of the objectives of conservation and restoration of ecological continuity into the Spatial Planning Code (DTADD⁴⁵, SCoT⁴⁶, PLU⁴⁷, CC⁴⁸).

Both in France and Italy, setting up an ecological network is conceived as a spatial planning instrument at the service of environmental protection. It should be noted that both France and Piedmont emphasise the need for the relevant bodies to be involved in the implementation of an ecological network. It would be very helpful to have entities from both countries involved.

⁴⁵ Territorial Directive on spatial planning and sustainable development.

⁴⁶ Territorial coherence plan.

⁴⁷ Local spatial planning plan.

⁴⁸ Municipal map.

2.4.5 Spatial Planning

2.4.5.1 Land use planning

France

Concerning French national parks, a distinction must be made between the core area of the park (referred to as the "central zone" before 2006) and the surrounding area (referred to as the "peripheral zone" prior to 2006). A sentence of the Administrative Court specified that prohibitions and obligations set forth in the decree establishing a national park do not apply in the peripheral areas of national parks⁴⁹. According to the provisions introduced by the Law of 2006 on national and regional parks, however, local spatial planning instruments (the plan of territorial coherence, the local land use plan and municipal maps) must, pursuant to article L. 331-3-III of the Environmental Code, be compatible with the conservation objectives and guidelines of the national park charter (including therefore both the core area and the surrounding area). The charter therefore prevails over local spatial planning instruments. National park authorities can therefore oppose solutions foreseen in the surrounding area if they deem that such solutions may endanger the core area of the park. That is a way of implementing the innovative principle of "ecological solidarity" between the core area and the surrounding area of the park. The difference between the core area of the national park and the surrounding area has already been explained in the previous paragraphs. It is worth adding that pursuant to article L. 331-3-III of the Environmental Code, *"upon drawing up or revision, planning and management instruments and plans for the use of natural resources in the field of agriculture, forestry, mechanical wind energy, quarries, access to nature and nature sports, the management of water, hunting, wild fauna, tourism and the management or enhancement of the sea, which are included in a list established by the decree foreseen in article L. 331-7, are submitted to the national park establishment for an opinion if they apply to the areas included in the national park."*

Several documents deal with spatial and land use planning in the Mercantour National Park. For a start, one should mention the Mercantour National Park's management plan for the 2004- 2010 period⁵⁰, which will later be replaced by the park charter. The Charter of the Mercantour National Park will soon be adopted and will establish and define a site-specific project. For the core area, it will define the conservation objectives applying to the natural, cultural and landscape assets. It will also state how the Park's rules and regulations should be applied in the core area. For the surrounding area, it will define the guidelines for conservation, enhancement and sustainable development. Pursuant to article L. 331-3-III of the Environmental Code, the spatial planning documents must be compatible with the conservation objectives and guidelines of the national park charter (valid both for the core and the surrounding area). The national park authorities may oppose planning solutions proposed for the surrounding area if they are likely to impair the core area. Also the Spatial Planning Directive (DTA) of the Maritime Alps, which is an instrument adopted within the framework of the law on mountain areas, concerns the territory of the Mercantour National Park. It lays down guidelines for the sustainable development of the Maritime Alps and serves as a reference for the assessment of projects and programmes of the plan.

⁴⁹ CE, 15 December 1982, *The Municipality of Léchère and others*, req. n°21092: RJ env. 1984, n°1, page 3, note Caballero.

⁵⁰ This program was approved by an interministerial decree dated 15 February 2006.

Italy

As far as spatial planning in regional natural parks is concerned, reference must be made to article 25 of the framework law on protected areas, which lists the main planning instruments for the park, namely the : the park plan and the economic and social plan. Pursuant to article 25, paragraph 2 of this law, « *the park plan is adopted by the park management organisation 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 document, regardless of the issuing echelon of government. The framework law provisions are reiterated in articles 26 through 28 of the Piedmont law 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 of a regional spatial plan and replaces existing norms on urban development and spatial planning.

Concerning spatial planning outside the Maritime Alps Park, it should be noted that a specific system applies in the surrounding area of the park in order to protect its natural assets. Outside the contiguous area, whose boundaries are defined by the Region in consultation with the Park management and the local institutions involved, "general" regional spatial planning provisions apply. Part of the core area of the Mercantour Park and part of its surrounding area are located on the border with the "off-park area" of the Maritime Alps Park.

Spatial planning is dealt with specifically in the two parks and is governed by specific laws. The Mercantour park charter has not yet been adopted at this time - it is still in the process of being drawn up.

2.4.5.2 Evaluation of the incidence of plans, projects and programmes on the environment

General provisions

The provisions of EU directives on the assessment of projects, plans and programmes and their impact on the environment apply both in France and Italy. These directives contain, in particular, provisions for projects, plans and programmes that may affect bordering countries. Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment states that certain projects, which are likely to have significant effects on the environment, shall be made subject to an assessment by the competent national authorities before consent to execution is given. Such environmental impact assessment will identify the direct and indirect effects of a project on the following factors: human beings, fauna and flora, soil, water, air, climate and the landscape, material assets and the cultural heritage, as well as the inter-action between said factors. Concerning the cross-border impact, we must refer in particular to article 7 of the directive:

" Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall forward the information gathered pursuant to Article 5 to the other Member State at the same time as it makes it available to its own nationals. Such information shall serve as a basis for any consultations necessary in the framework of the bilateral relations between two Member States on a reciprocal and equivalent basis. "

The scope of Directive 85/337/EEC was further developed by 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. Plans and programs that may have transboundary environmental effects are dealt with in article 7 of this directive, which envisages transboundary consultations:

"1. Where a Member State considers that the implementation of a plan or programme being prepared in relation to its territory is likely to have significant effects on the environment in another Member State, or where a Member State likely to be significantly affected so requests, the Member State in whose territory the plan or programme is being prepared shall, before its adoption or submission to the legislative procedure, forward a copy of the draft plan or programme and the relevant environmental report to the other Member State.

2. Where a Member State is sent a copy of a draft plan or programme and an environmental report under paragraph 1, it shall indicate to the other Member State whether it wishes to enter into consultations before the adoption of the plan or programme or its submission to the legislative procedure and, if it so indicates, the Member States concerned shall enter into consultations concerning the likely transboundary environmental effects of implementing the plan or programme and the measures envisaged to reduce or eliminate such effects.

Where such consultations take place, the Member States concerned shall agree on detailed arrangements to ensure that the authorities referred to in Article 6(3) and the public referred to in Article 6(4) in the Member State likely to be significantly affected are informed and given an opportunity to forward their opinion within a reasonable time-frame.

3. Where Member States are required under this Article to enter into consultations, they shall agree, at the beginning of such consultations, on a reasonable timeframe for the duration of the consultations."

When setting up cross-border ecological corridors, special attention shall be paid to projects, plans and programmes that may have an impact on the natural sites of bordering countries. See in particular article 7 of Directive 85/337/EEC.

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 in 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 Justice⁵¹. Article 6, paragraph 3 of the Directive lists 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 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 ."

The implementation of common conservation measures in all Natura 2000 sites is essential for the preservation of habitats of community interest. It is worth noting that where compensatory measures are taken, Member States must ensure that the global coherence of the Natura 2000 site is protected. Therefore, it is essential that the existence of such coherence and in particular, of the cross-border coherence, be stressed in the park management documents, to ensure that it is safeguarded.

2.5 Landscape

2.5.1 Landscape protection (European Landscape Convention)

France

Article L. 331-3 of the Environmental Code lays down that, as far as core areas are concerned, the charter should define the "objectives for the protection of the natural, cultural and landscape heritage and specify the procedures for implementing the regulations foreseen in paragraph 1 of article L. 331-2". Also the provisions of the Mountain Law (Law 85-30 of 1985) concerning, among other things, the conservation of mountain landscapes apply to the Mercantour Park. In additions, certain

⁵¹ E.g. Court of Justice of the European Communities, Section II, Sent. October 26, 2006, Case C-239/04

provisions of regulation no. 2009-486 dated 29 April 2009 refer to the impact of activities on the landscape of the park (especially those related to works being executed in the core area of the park).

Italy

Landscape protection is expressly mentioned in the fundamental principles of the Italian Constitution: article 9 states that: "*the Republic protects the landscape and artistic heritage of the Nation*". Italian law also provides a definition of the term "landscape". Pursuant to article 25, paragraph 3 of the framework law on protected areas, the park plan adopted by the organisation that manages the park and approved by the Region is valid as landscape and spatial development plan. It therefore supersedes, upon adoption, any existing landscape, spatial and urban development plans. This provision has been transposed into article 26, paragraph 1 of the Piedmont regional law on the protection of natural areas and the preservation of biodiversity⁵².

Both Italy and France take the preservation of landscape into account in their legislation on national parks and regional natural parks. It is also worth mentioning that the two countries are Parties to the European Landscape Convention, adopted by the Committee of Ministers of the Council of Europe on 19 July 2000. The French government made direct reference to this Convention in the preamble of the decree establishing the fundamental principles applicable to all national parks⁵³. In article 1, this Convention defines landscape as an " area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors".

2.5.2 Farming and forestry

2.5.2.1. Farming

France

Pursuant to article L. 331-4-1 of the Environmental Code, in French national parks "*the park rules and charter [...] may establish, for the core area of the park [...], the conditions under which existing activities may be maintained [.] [...]. They will also apply to agricultural, pastoral or forestry activities*". Also the future charter of the Mercantour Park may contain provisions concerning the conduct of agricultural or pastoral activities. Indeed, this is likely to happen, as the strategic axes of the Mercantour National Park charter adopted by the Board of Directors on 10 December 2007 suggest.. Article 12 of decree no. 2009-486 regulates the performance of agricultural and pastoral activities in the core area of the Mercantour Park.

⁵³ Decree of the Ministry of Ecology and Sustainable Development, dated 23 February 2007, bearing the fundamental principles applicable to all national parks (Official Journal of the French Republic - JORF of 6 April 2007).

Italy

Article 34 of the Piedmont law on the protection of natural areas and the preservation of biodiversity specifically deals with agricultural and pastoral activities conducted in protected areas (and therefore in the Maritime Alps Natural Park). This article states that agricultural, forestry and pastoral activities may be carried out in the protected areas if they comply with the principles of sustainable development. Said activities must be explicitly mentioned in the planning instruments of the park. Such local economic activities should then be supported and enhanced. Although the regional framework law provides no specific information on agricultural and pastoral activities in regional protected areas, there is a clear mention in the general objectives of the law that protected areas are also intended to safeguard the traditional agricultural, forestry and pastoral activities conducted in the area, to ensure the protection of the environment (article 1, paragraph 3, letter b). Concerning Natura 2000 sites and the conduct of agricultural activities in Italy, reference must be made to the decree of 17 October 2007, which lays down the minimum criteria for the definition of conservation measures in the Special Areas of Conservation (SACs) and Special Protections Areas (SPAs). The entire regional natural park of the Maritime Alps falls within these two protection zones.

2.5.2.2. Forestry

France

According to article L. 331-4-1 of the Environmental Code *"the park rules and charter [...] regulate the conduct of agricultural, pastoral or forestry activities"*. For the Mercantour national park, article 17 of decree no. 2009-486 of 29 April 2009 sets forth the rules applying to certain works and activities performed in the forests located in the area of the park. The future charter of the Mercantour Park will definitely contain provisions concerning the performance of such forestry activities. This seems to be the case, given the strategic axes of the Mercantour National Park charter adopted by the Board of Directors on 10 December 2007.

Italy

Forestry activities carried out in the protected areas (and therefore in the Maritime Alps Natural Park), are dealt with by Piedmont's law on the protection of natural areas and the preservation of biodiversity. Its article 34 is devoted to agricultural, forestry and pastoral activities and states that such activities may be carried out in the protected areas if they comply with the principles of sustainable development. These activities must be foreseen in the planning instruments of the park. Such local economic activities should then be supported and enhanced. Although the regional framework law provides no specific information on agricultural and pastoral activities in regional protected areas, there is a clear mention in the general objectives of the law that protected areas are also intended to safeguard the traditional agricultural, forestry and pastoral activities conducted in the area, to ensure the protection of the environment (article 1, paragraph 3, letter b).

2.6 The surroundings of 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. For the Pilot Region Mercantour-Maritime Alps such surrounding areas are located outside the Maritime Alps Park (see Figure 2). On the French side of the region, the territory of the Mercantour Park (core area and surrounding area) corresponds to the French part of the Pilot Region.

2.6.1. The legal status of the surroundings of the protected areas.

France

For national parks, French laws make a distinction between the core area and the surrounding area. This distinction was already explained during the course of the study. In the peripheral areas of the parks, the provisions of the Mountain Law apply, in particular, those concerning spatial planning and urban development in the mountains and the conservation of natural mountain areas. Nevertheless, it must be noted that in French mountain areas, *"tourist facilities surround the protected areas and reduce the effectiveness of their protection They interfere with the necessary continuity of natural areas"*⁵⁴. The French IUCN Committee has made the example of the Vanoise Park in its study, but a number of ski resorts also exist in the peripheral area of the Mercantour National Park. The legal provisions for the protection of natural areas are much less strict in the areas surrounding the national park.

Italy

Italian law provides specific arrangements for sites contiguous with protected areas (*"aree contigue"*). The system is laid down by article 32 of the framework law on protected areas. Pursuant to the first paragraph of article 32, contiguous areas are to be designated by the Region in cooperation with the management bodies of the protected areas; in these areas areas specific provisions may be put in force 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 the Piedmont law on the protection of natural areas and the preservation of biodiversity (*Testo unico sulla tutela delle aree naturali e della biodiversità*) establishes a specific regime for sites contiguous with the protected areas.

⁵⁴ French IUCN COMMITTEE, 1985-2005: *20 ans de la loi Montagne. Bilan et propositions (20 years of mountain law. Assessment and proposals)*, French IUCN Committee, Paris, 2005, 16 pages.

"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 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 Law no. 19 dated 29 June 2009). It should be noted, however, that the areas contiguous with the Maritime Alps natural Park have not yet been identified and designated by the Piedmont Region. The question therefore remains on 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. Indeed, the Park of the Maritime Alps is entirely included in the EU Birds and Habitats Directives.

2.6.2 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 both French and Italian law, prohibits any damage to Natura 2000 sites originating from inside or outside the site⁵⁵. 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 no plan, project or programme that might damage a Natura 2000 site shall be authorised, even if they are to take place 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. It is worth mentioning however that the French Administrative Court proved rather reluctant to prohibit projects in the proximity of Natura 2000 sites. Indeed, the Court rarely recognises the potential negative implications for the habitats and the species of the site. On the other hand, a recent sentence by the Council of State suspended the construction of

⁵⁵ Also see 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, (72 pages).

an embankment in the proximity of a ZNIEFF (*Zone naturelle d'intérêt écologique, faunistique et floristique* - natural area which is of particular interest in terms of ecology or wildlife) which hosts a priority natural habitat in accordance with the Habitats Directive⁵⁶. That is consistent with article 6 of the Habitats Directive, which prohibits any damage to Natura 2000 sites, whether originating from inside or outside the area. As the amount of laws and general information on the subject increases, Italian and French judges can be expected to become increasingly strict concerning the recognition of damage to a Natura 2000 site.

Once again, since the legal status results from the Habitats Directive, it must be the same in France and Italy. That is the reason why the French law was modified in 2008: prior to the amendment it foresaw that certain activities could be exempted de facto from an environmental impact assessment.

3. The 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 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

⁵⁶ CE, 24 July 2009, *Ministry of Ecology, Energy, Sustainable Development and Spatial Planning*, n° 319836.

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 participated 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. 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 France and Italy

3.1.1 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 GECT 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.

3.1.2 France

In France, Law No. 2008-352 modified the Territorial Community Code (*Code general del collectivités territoriales* - CGCT) in order to make its provisions consistent with those of Reg (EC) No. 1082/2006. Namely, Articles L. 1115-4 and L. 1115-5 were modified in order to allow territorial entities (*collectivités territoriales*) to:

- join international international organizations and
- conclude agreements with foreign states;

the latter will only be possible for the creation of an EGTC with a Member State of the European Union or a Member State of the Council of Europe. The interdiction -based on constitutional considerations-

for territorial entities to conclude agreements therefore remains in place for agreements other than EGTCs or any agreement with States which are not part of the EU or the COE; and may halt cooperation with micro-States such as Monaco and Luxembourg. A new article L. 1115-4-2 was also introduced in the Code in order to fix the legal provision related to the EGTC.

3.2 Creation of an EGTC between two parks

The cooperation between the Mercantour National Park and the Alpi Marittime Regional Nature Park dates back more than twenty years. The two parks have first been twinned in 1987, and have since then undertaken a number of joint actions in the fields of scientific research, management, spatial planning and trans-border communication. The Twinning Charter of June 1998 intensified this cooperation and laid the foundation for the following Joint Action Plan 2007-2013 and Integrated Transborder Plan 2010-2013 *“Marittime Mercantour transborder space: natural and cultural diversity at the centre of integrated and sustainable development”*. The project for an EGTC among the two parks derives from the need to provide this long-standing cooperation with a stable juridical base. As of this writing, the draft Convention and Statute for the *“Alpi Marittime Mercantour European Park”* EGTC among the two parks have already been agreed upon by their respective boards⁵⁷.

The EGTC will be active on the territory of both the Mercantour National Park, with 22 towns⁵⁸ being involved on the French side, and the Alpi Marittime Regional Nature Park where 4 towns located in the Cuneo Province⁵⁹ will be involved. The EGTC will also be able to undertake actions on the territory of neighbouring towns, provided the interested town councils agree on such actions.

The EGTC is a body governed by public law and is established under French law, as its head office will be in Tende, although in the future scientific and educational offices may be opened elsewhere on its territory. Pursuant to art. 15 of Reg. (EC) no. 1082/2006, French law will apply to any controversy concerning the EGTC and its actions.

The goal of the EGTC is the facilitation, promotion and encouragement of transborder cooperation among its members (Convention, art. 4). To this purpose, the Group will be able to guide projects within the limits of the competence of its members (as defined by their respective founding laws: Decree 79-696 for the Mercantour and Regional Law 33/1995 for the Alpi Marittime Park), and seek for public, private and community funding in order to finance or co-finance its programs. The Group is qualified to carry out or order interventions concerning its landscape, natural and cultural heritage. Furthermore, the Group will promote the inscription of a transboundary or serial transnational site of its own to the UNESCO World Heritage List.

⁵⁷ Decision n. 8 of April 15, 2010 of the Alpi Marittime Nature Park Ad. Council, and decision April 26, 2010 of the Mercantour National Park AC.

⁵⁸ Tende, Fontan, Saorge, Breil, Sospel, Moulinet, La Bollène Vésubie, Belvédère, Saint Martin Vésubie, Valdeblore, Rimplas, Roure, Roubion, Saint Sauveur sur Tinée, Isola, Saint Etienne, Saint Dalmas le Selvaie, Beuil, Péone, Guillaumes, Châteauneuf d'entraunes, Entraunes, Colmars les Alpes, Allos, Uvernet-fours, Jausiers, Meyronnes, Larche.

⁵⁹ Valdieri, Aisone, Entracque and Vernante.

4. Conclusions

The course of this study highlighted a significant number of differences between the legal frameworks of Italy and France. While the two countries are bound by the same Community obligations and pursue similar objectives as far as environmental protection and ecological networking are concerned, there is still a significant number of differences that need to be taken into account. The different powers to the Regions, as well as the different juridical status and protection level accorded to the core protected areas and their surroundings, may slow down or halt the creation and management of ecological networks. The Alpi Marittime/Mercantour area, with its long tradition in trans-border cooperation, is a territory well suited to act as a laboratory for innovation in this field; and in this particular case the European Grouping of Territorial Cooperation appears to be the right tool to ensure the necessary level of consistency in both legal provisions and management policies across the border.

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