



Work Package 6 “Legislation”

# THE LEGAL FRAMEWORK OF PROTECTED AREAS IN THE ALPINE STATES

Switzerland

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## 1 GENERAL POINTS

### 1.1 Organisation of the State

Switzerland is a federal State: Article 1 of the Federal Constitution of the Swiss Confederation: „The People and the Cantons of Zurich, Bern, Lucerne, Uri, Schwyz, Obwalden and Nidwalden, Glarus, Zug, Fribourg, Solothurn, Basel Stadt and Basel Landschaft, Schaffhausen, Appenzell Ausserrhoden and Appenzell Innerrhoden, St. Gallen, Graubünden, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchâtel, Geneva, and Jura form the Swiss Confederation”.

The Confederation is the name used in Switzerland for the State<sup>1</sup>. Switzerland is made up of 26 states known as cantons. The communes are the lowest level of the state structure. All the cantons are divided up into political communes. In addition to the tasks that are allocated to them by their canton and also by the Confederation, the communes also have their own powers in various areas.

### 1.2 The legislative and executive

Federal authorities<sup>2</sup>:

- the Federal Assembly (the legislative)
- the Federal Council (the executive)
- the Federal Supreme Court (the judiciary)

### 1.3 International law and European Community Law

#### 1.3.1 International Law

The relationship between national and international law<sup>3</sup>

In Switzerland, national and international law constitute a single, integrated order. If a provision of international law is binding on Switzerland, it automatically acquires domestic validity. However, before an international legal instrument is ratified, the Federal Council checks whether the provisions it contains correspond with national law. If there is not the domestic political will to adopt certain provisions of the instrument in question, in most cases Switzerland is entitled to make reservations. As soon as Switzerland has accepted a body of international law, it becomes part of Swiss national law, and all state bodies must comply with, and apply the new provisions. The single legal concept - unlike the dual - does not require a provision of international law to be incorporated into national law by means of an additional act of parliament, such as a new law. Democratic rights are safeguarded through the referendum held on the treaty in question.

<sup>1</sup> Online on URL: <http://www.admin.ch/org/polit/index.html?lang=en>, (05 June 2009).

<sup>2</sup> Online at www on URL: [www.fr.jurispedia.org/index.php/Droit\\_constitutionnel\\_\(ch\)](http://www.fr.jurispedia.org/index.php/Droit_constitutionnel_(ch)), (23 January 2009).

<sup>3</sup> Online at www on URL: [www.eda.admin.ch/eda/en/home/topics/intla/cintla/natint.html](http://www.eda.admin.ch/eda/en/home/topics/intla/cintla/natint.html) ( 23 January 2009).

### Precedence of international law over national law

The Federal government and the cantons are required by the Swiss Constitution (Article 5, paragraph 4) to observe international law. However, the constitution makes no provision for cases of conflict between provisions of national and international law. Fundamentally, international law takes precedence. This arises from the obligation to fulfil treaties in good faith (1969 Vienna Convention on the Law of Treaties, Article 26). According to the Federal Council's message on the Swiss Constitution, all state bodies must ensure that their actions comply with Switzerland's international obligations. In its latest findings the Federal Court confirms without reservation the principle of the precedence of international law over national law<sup>4</sup>.

### The direct applicability of the provisions of international law

Not all provisions of international law have the effect of creating rights and duties directly. In order to do so, they must be properly formulated with the requisite degree of precision. International law that is not directly applicable or „self-executing“ is generally of a programmatic nature - i.e. it is primarily up to national legislatures to implement it.

The Federal Court has devised criteria for deciding whether a provision of international law is directly applicable or not:

- the provision relates to the rights and duties of the individual.
- the provision is justiciable, i.e. sufficiently concrete and clear to be applied directly to a legal issue by an authority or a court.
- the provision is aimed at authorities that apply the law, not at legislatures.

### 1.3.2 Switzerland and European environmental law

Switzerland is not engaged by the European Law and also European Environmental Law but there are **bilateral agreements between Switzerland and the European Community** in the environmental field. An agreement<sup>5</sup> about the participation of Switzerland in the European Environment Agency and the European Environment Information and Observation Network was concluded between Switzerland and the European Environment Agency in October 2004. Switzerland is also a member of the European Environment Agency since 1 April 2006. For many years Switzerland appeared as a white area in the middle of maps of the state of the environment in Europe. Following Switzerland's membership of the European Environment Agency this will now change. As a full member of the EEA, Switzerland will take part in the European Environmental Information and Observation Network (EIONET). From now on it will therefore be possible to compare Swiss data and those of the EU on the state of the environment.

<sup>4</sup> See Federal Court decision 125 II 417, p. 424f. or 128 IV 201, p. 205f.

<sup>5</sup> Agreement between the European Community and the Swiss Confederation concerning the participation of Switzerland in the European Environment Agency and the European Environment Information and Observation Network.

## 2 NATURE PROTECTION AND SPATIAL PLANNING:

### 2.1 The preservation of mountain areas and the law

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

Switzerland ratified the Alpine Convention and it entered into force in Switzerland in April 1999 in Switzerland. For the time Switzerland did not ratify any Protocol to the Alpine Convention.

### 2.2 The Legal Framework on Nature Protection

#### The protection of environment in the Constitution

- **Article 74 of the Constitution of the Swiss Confederation** about „Protection of the environment”: „1. The Confederation shall legislate<sup>6</sup> on the protection of the population and its natural environment against damage or nuisance. / [...] 3. The Cantons shall be responsible for the implementation of the relevant federal regulations, except where the law reserves this duty for the Confederation”.
- **Article 78 of the Constitution of the Swiss Confederation** about “Protection of natural and cultural heritage”: „1. The protection of natural and cultural heritage shall be the responsibility of the Cantons. / 2. In the fulfillment of its duties, the Confederation shall take account of concerns for the protection of natural and cultural heritage. [...] /3. It may support efforts made for the protection of natural and cultural heritage and acquire or preserve properties of national importance by contract or through compulsory purchase. /4. It shall legislate on the protection of animal and plant life and on the preservation of their natural habitats and their diversity. It shall protect endangered species from extinction. / 5. Moors and wetlands of special beauty and national importance shall be preserved. No buildings may be built on them and no changes may be made to the land, except for the construction of facilities that serve the protection of the moors or wetlands or their continued use for agricultural purposes”.

#### The legal framework on Nature protection (on the federal level):

- Federal Law on Environment protection (*Loi fédérale du 7 octobre 1983 sur la protection de l’environnement-Loi sur la protection de l’environnement, LPE*)<sup>7</sup>
- Federal Law on Nature and Landscape Protection (*Loi fédérale du 1er juillet 1966 sur la protection de la nature et du paysage, LPN*)<sup>8</sup>
- Ordinance on Nature and Landscape protection (*Ordonnance du 16 janvier 1991 sur la protection de la nature et du paysage, OPN*)<sup>9</sup>

<sup>6</sup> We underlined.

<sup>7</sup> Bundesgesetz vom 7. Oktober 1983 über den Umweltschutz (Umweltschutzgesetz, USG); Legge federale del 7 ottobre 1983 sulla protezione dell’ambiente (Legge sulla protezione dell’ambiente, LPAmb).

<sup>8</sup> Bundesgesetz vom 1. Juli 1966 über den Natur- und Heimatschutz (NHG); Legge federale del 1° luglio 1966 sulla protezione della natura e del paesaggio (LPN).

- Ordinance on the Parks of national importance (*Ordonnance du 7 novembre 2007 sur les parcs d'importance nationale, Ordonnance sur les parcs, OParcs*)<sup>10</sup>

**The protected areas can be classified in different categories:**

- National park (Art. 23f LPN, art ; 16 à 18 Oparcs)
- Regional park (Art. 23g LPN, art. 19 à 21 Oparcs)
- Periurban nature park (Art. 23h LPN, art. 22 à 24 Oparcs)
- Natural reserve (see the provisions at the cantonal level)
- Integral natural reserve
- Biosphere reserve
- Cantonal reserve
- Protected landscape
- Forest reserve (article 20, paragraph 4, of the *Forest Law*)
- Integral forest reserve ( in the Canton Valais)

The Cantons adopt their own laws and/or ordinances on nature and landscape protection for the implementation of the federal provisions. According to the **Article 26, paragraph 1, of the Ordinance on Nature protection**, „[the] cantons ensure an adequate and effective implementation of the tasks fixed by the constitution and the law”. For instance, the Canton Valais adopted a Law (*Loi sur la protection de la nature, du paysage et des sites*) and an Ordinance on this topic (*Ordonnance sur la protection de la nature, du paysage et des sites, OcPN*).

### 2.3 The Legal Framework on Spatial Planning<sup>11</sup>

A new article 75 on spatial planning incorporated in the Federal Constitution in 1969, transferred responsibility for framework legislation on spatial planning to the Confederation.

- **Art. 75 of the Spatial planning act:**

„1. The Confederation shall lay down principles on spatial planning. These principles shall be binding on the Cantons and serve to ensure the appropriate and economic use of the land and its properly ordered settlement.

2. The Confederation shall encourage and coordinate the efforts of the Cantons and shall cooperate with them.

3. Confederation and Cantons shall in the fulfilment of their duties take account of the requirements of spatial planning”.

However, practical planning implementation was to remain essentially a matter for the Cantons, which in turn often delegate a number of tasks to the communes (local authorities). In addition

<sup>9</sup> Verordnung vom 16. Januar 1991 über den Natur- und Heimatschutz (NHV); Ordinanza del 16 gennaio 1991 sulla protezione della natura e del paesaggio (OPN).

<sup>10</sup> Verordnung vom 7. November 2007 über die Pärke von nationaler Bedeutung (Pärkeverordnung, Päv); Ordinanza del 7 novembre 2007 sui parchi d'importanza nazionale (Ordinanza sui parchi, OPar).

<sup>11</sup> See [http://www.vlp-aspan.ch/content/home/files/spatial\\_planning.pdf](http://www.vlp-aspan.ch/content/home/files/spatial_planning.pdf) (05 June 2009).

to this federal framework legislation, the Confederation promotes and co-ordinates the spatial planning of the Cantons and also takes into consideration the „demands” of spatial planning in its own activities.

The reality of Swiss spatial planning is not as simple as stated in the article of the Constitution. In fact, Confederation, Cantons and communes are jointly responsible for ensuring economical land use. They do this, inter alia, by harmonizing their activities which have spatial impact and “*implementing planning which is orientated towards the desired development of the country*”.

The Cantons enact cantonal implementing legislation for the Federal Law on Spatial Planning. As already mentioned, the federal law lays down only the principles and therefore does not constitute a set of rules which answers all important questions. Cantonal spatial planning and building regulations also contain public building regulations, and often road construction regulations and regulations on building land rationalization. In simple terms, the cantonal public building regulations are concerned with the requirements for building, the integration and form of buildings and the requirements for construction, operation and maintenance. In addition, there are rules of procedure. When enacting their spatial planning regulations, the Cantons are bound by the aims and principles as well as the instruments of the federal law. This together with the related case-law of the Federal Court allows a certain standardization of planning law. However the spatial planning and building regulations of the Cantons differ markedly from each other in the extent of regulation and the terminology.

## 2.4 The ecological connectivity in law

Provisions about ecological connectivity can be found on the federal and on the regional (cantonal) level.

### 2.4.1 Federal level

- See the provisions about the buffer zones (zones tampon) as regards the parks of national importance.
- **Article 14, paragraph 2, of the Ordinance on Nature and Landscape Protection** (Ordonnance sur la protection de la nature et du paysage): „*The protection of biotopes is in particular insured by [...] the delimitation of sufficient buffer zones in an ecological point of view [...]*”.
- **Article 18b of the Law on Nature and Landscape Protection** (Biotopes of international and regional importance and ecological compensation): „*1. The disappearance of indigenous animal and vegetable species must be prevented by the maintenance of a sufficiently wide vital space (biotopes), like by other appropriate measures. During the application of these measures, it will be taken account of the worthy interests of protection of agriculture and forestry. / 1bis. It is necessary particularly to protect banks, the marshes, rare forest vegetable associations, the hedges, the thickets, the dry lawns and other mediums which play a part in natural balance or present conditions particularly favorable for the biocénoses*”.
- **Article 15 of the Ordinance on Nature and Landscape Protection** (article 15 de l’OPN): „*1. The purpose of the ecological compensation (Article 18b, Al 2, LPN) is in particular to connect isolated biotopes between them it could be by creating new biotopes), to support the diversity of*



*the species, to arrive to a land use as natural and moderated as possible, to integrate natural elements in the residential areas and to animate the landscape. /2. Being subsidies for particular ecological services in agriculture, the definition of the ecological compensation appearing in the ordinance of April 26 1993 on the ecological contributions is applicable”.*

- **Article 1 of the Ordinance on Ecological Quality ( Ordonnance sur la promotion régionale de la qualité et de la mise en réseau des surfaces de compensation écologique dans l’agriculture- Ordonnance sur la qualité écologique, OQE- du 4 avril 2001):**

*„1. Afin de conserver et d’encourager la richesse naturelle des espèces, la Confédération alloue des aides financières pour les surfaces de compensation écologique (SCE) d’une qualité biologique particulière et pour la mise en réseau de SCE, sur la surface agricole utile.*

*2. Elle alloue des aides financières aux cantons qui, dans le cadre des dispositions des sections 2 et 4, versent des contributions (contributions à la qualité écologique) aux exploitants pour les SCE d’une qualité biologique particulière et la mise en réseau de SCE ”.*

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

#### 2.4.2 Regional/Cantonal level

In the cantonal legal texts on nature protection, there are provisions affecting directly or indirectly the ecological connectivity. The regulations on nature protection can be different from canton to canton. For example, the Canton Valais integrated clearly in the legal provisions on nature protection the need to improve the ecological connectivity.

- **Art. 18 of the Law on Nature Protection of the Canton Valais** (about ecological connections and balances): *„The canton and the communes, take care, within the framework of the spatial planning and their projects, of the maintenance of the diversity and mobility of the species”.*
- **Article 25 of the Ordinance on Nature Protection of the Canton Valais** (about ecological connections and balances): *„1. The Service works out regional concepts envisaging of measurements making it possible to guarantee sufficient ecological connections and balances to maintain the diversity and the mobility of the species. It (the Service) collaborates with the cantonal services and the communes concerned. - 2. These regional concepts will be taken into account at the time of the revision of the plans („plans d’assignement des zones”) and of the planning of infrastructures projects. The recommended measures can be realized inter alia within the framework of the compensations fixed at the time of these various procedures”.*

## 2.5 The national or regional initiatives as regards ecological connectivity

### 2.5.1 Federal level

The National Ecological Network of Switzerland (*Réseau écologique national suisse*: le REN<sup>12</sup>)<sup>13</sup> whose final report was published in 2004, contains detailed maps indicating the ecological habitats and their interconnections and can be a planning tool extremely useful. It does not present only the current location but takes also account of the potential of the landscape. Its concept based on the dynamic and natural evolution of the landscape rests on:

- an evolution of the landscape with large scales,
- the setting in network of the split up habitats,
- conservation of the vegetable/plants and animals populations.

The National Ecological Network of Switzerland is one important element of the **Guidelines of the EFEV „Landscape 2020” (“Paysage 2020”)**<sup>14</sup> and is integrated in the **Concept „Swiss Landscape”** (*Conception “Paysage Suisse”, CPS*)<sup>15</sup>.

The guidelines „Landscape 2020” (“Paysage 2020”)<sup>16</sup> (adopted in 2003) are used as a technical basic by the OFEV in order to prepare its decisions and to collaborate with the various sectoral policies which affect the territory. In the Guidelines „Landscape 2020” („Paysage 2020”), the OFEV exposes:

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

The **strategic paper** forms a part of a system of objectives arranged hierarchically in the field of nature and landscape protection at the federal level. It rises from the legal provisions, from the sixteen general objectives of the **Concept „Swiss Landscape”** (*Conception „Paysage Suisse”, CPS*) and from the concept of sustainable development (**Article 73 of the Federal Constitution**). The program makes operational the objectives of the CPS for the development of the federal policy on nature and landscape. The qualitative aims and the program of the Guidelines „Landscape 2020” („Paysage 2020”) give the OFEV the opportunity to adopt a clearly and coherent position. They are also used for the evaluation of projects or any use (of the territory) which have an impact on the landscape.

The **„Concept Swiss Landscape”** (*Conception „Paysage Suisse”, CPS*)<sup>17</sup> is a concept adopted by the Federal Council in 1997 according to **Article 13 of the Law on spatial planning** about the concepts and the sectorial plans. It constitutes a binding guiding principle for protection of nature and of the landscape as regards the tasks of the Confederation. It introduces a coherent policy, defines general and sectoral objectives and puts forward/suggests measures to reach them. The general main objectives of the CPS are:

<sup>12</sup> Voir pour développer les informations sur le site Internet de la Confédération suisse la page consacrée au Réseau écologique national: <http://www.bafu.admin.ch/lebensraeume/01580/index.html?lang=fr>.

<sup>13</sup> Nationales ökologisches Netzwerk, REN; Rete ecologica nazionale, REN.

<sup>14</sup> Das Leitbild „Landschaft 2020“; il progetto “Paesaggio 2020”.

<sup>15</sup> Das Landschaftskonzept Schweiz LKS; la Concezione „Paesaggio svizzero“ (CPS).

<sup>16</sup> Online at www on URL: <http://www.bafu.admin.ch/landschaft/00524/01676/01688/index.html?lang=fr>, consulté le 22 mars 2009.

<sup>17</sup> Online at www on URL: <http://www.bafu.admin.ch/landschaft/00524/01671/02393/index.html?lang=fr> ( 22 March 2009).

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

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

#### Guideline on dimensions for wildlife passages<sup>18</sup>

In 2001, the Swiss Federal Department of Environment, Transport, Energy and Communications (UVEK) issued a **guideline on dimensions for wildlife passages** stipulating that passages along wildlife corridors with nationwide significance should be 45 +/- 5 metres wide. In the process of developing this stipulation, the Federal Highways Agency (ASTRA) and the Federal Environment Agency (BAFU) agreed to take remedial action to improve the situation for wildlife along the Swiss network of motorways and major roads. This concept includes plans to establish around 50 wildlife passages over the next few decades to increase the passability of the road network by native wild mammals. The conflict points in need of remedial action were roughly defined in the “corridor report” (SRU 326). The detailed planning - in particular the exact sitting and design of the structures and their surroundings - will take place within the framework of concepts developed by the cantons. Relevant documents - either the overall strategy for the whole canton or simply relating to those corridors which are part of the above list - are already available in six cantons and are in the planning stage in others. Moreover, detailed planning for the construction of wildlife passages has started for three sites. Information from the „corridor report” - supplemented to some extent by that provided by the national ecological network, or REN, [...] including details on the location of each of the wildlife corridors and specific degree of risk - was also incorporated into the structure plans of 17 cantons, thus increasing the level of protection afforded to these important connecting axes.

#### 2.5.2 Regional/Cantonal level

There is an intercantonal platform about the Ordinance on Ecological Quality (OEQ) animated by the Swiss Center for Agricultural Extension. The ideas developed within the framework of this platform have contributed to the definition of directives for each canton. Today, most of the cantons have finalized their directives and these texts can be consulted on the Internet Website of this platform<sup>19</sup>. For instance the criteria for the implementation of the Ordinance on Ecological Quality were fixed in 2004 by the Canton Jura<sup>20</sup> in a document which defined the regional priorities for the realisation of an ecological network (*Définition des objectifs régionaux prioritaires pour les projets de mise en réseau*).

<sup>18</sup> CIPRA, Background report on ecological connectivity.

<sup>19</sup> Online at www on URL: <http://www.oqe.ch/index.php?l=FR&rub=1&cat=1&page=2> ( 21 March 2009).

<sup>20</sup> On line on URL: Online at www on URL: [http://www.jura.ch/\\_portal/site/acju/menuitem.b18b3953a670a23669c708021f816f1c/?vgnextoid=c3ad7c0dbdcf9010VgnVCM100000f118f6c1RCRD](http://www.jura.ch/_portal/site/acju/menuitem.b18b3953a670a23669c708021f816f1c/?vgnextoid=c3ad7c0dbdcf9010VgnVCM100000f118f6c1RCRD) ( 22 March 2009).

## 2.6 Pilot region for the Project ECONNECT located partly in Switzerland: the Rhaethian Trinangel (Engadin/Southtyrol/Trentino/Tyrol)<sup>21</sup>

The Pilot Region Rhaethian Trinangel - Engadin/Southtyrol/Trentino/Tyrol- is situated in the Italian-Swiss borderland (see figure 1).

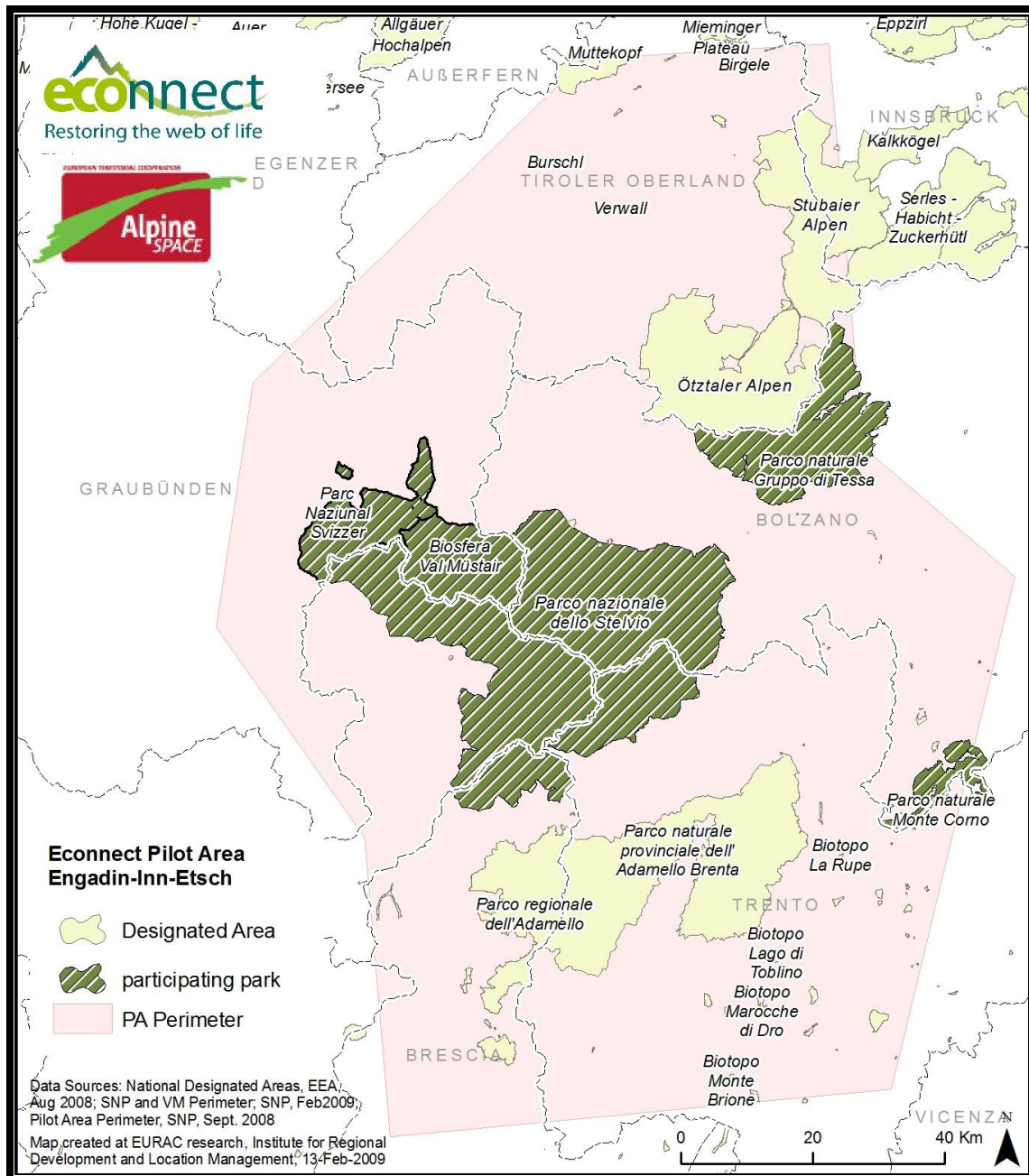


Fig 1: Engadin/Southtyrol/Trentino/Tyrol.

Two areas are particularly important in this region: the first one along the Adige-valley from the Po-Plains over the central Alps up to the Engadin/ Inn-Valley (here migration paths from the east and south exist). Aspects of networking are of particular importance in the densely populated and intensively used Adige-valley (fruit-growing). The second important area is to develop a connection between the existing protected areas like the Swiss National Park and the National Park Stilfserjoch, the Biosfera Val Müstair, the Natural Park Kaunergrat, Adamello and Adamello Brenta as well as the south Tyrolean Natural Park.

## 2.7 The management of the National Park(s) in Switzerland

### 2.7.1 The Amendment of the Law on Nature and Landscape Protection

The Federal Parliament adopted on October 2006 an amendment of the Federal law on Nature and Landscape Protection. The new articles 23e to 23m LPN institute the legal basis for the promotion of parks of national importance. The revision of the Law on Nature and Landscape Protection foresees in the article 23e, three categories of parks of national importance: national parks, regional natural parks and periurban natural parks. Further provisions can be found in the articles 23f, 23g and 23h of this law. The corresponding requirements are fixed in the third chapter 3 of the Ordinance on Nature and Landscape Protection. This amendment and the new ordinance on the parks of national importance aim at creating an incentive legal framework for the creation and the management of parks. The ordinance is the support for the basis to the creation of new national parks, regional natural parks and periurban natural parks. It regulates the granting of global financial aids of the Confederation for the parks of national importance and the attribution of the protected labels insofar as the fixed requirements are respected. Besides these requirements, it does not introduce new regulations for the territories or the socio-economic activities. The parks must be created in the areas after a participative process. The planning, the creation and the management of a park require the engagement of the population, of the companies, of the authorities and of the bodies of management of the park. The parks aim at preserving and developing nature and the landscape, at reinforcing the regional identity and at promoting the sustainable economy.

The policy of the parks is based on five basic principles:

- free adhesion
- democratic process profiting from a broad regional basis
- realization by using the existing legal instruments
- particular values given to nature and landscape
- protection and sustainable use of the natural resources

### 2.7.2 The National Parks management

- **Article 23f of the Law on Nature and Landscape Protection:** it defines the objectives pursued by the creation of a National Park and its zoning.
- See the Ordinance on Parks of National Importance
- **Article 25 of the Ordinance on Parks of National Importance** on Park authority:

- „1. The park authority must have the legal form, organisation and financial resources that guarantee the establishment, operation and quality assurance of the park.
2. Communes located within the perimeter of the park must be properly represented in the park authority.
3. In relation to the establishment and management of the park, the park authority must:
- guarantee the participation of the local population;
  - enable the participation of interested businesses and organisations in the region”.

• **Article 26 of the Ordinance on Parks of National Importance (on the Charter):**

- „1. The park authority and the communes concerned must, in consultation with the canton, draw up and implement a charter on park management and quality assurance.
2. The charter shall regulate: [...] the maintenance of the natural, landscape and cultural values of the park; [...] the enhancement and development measures in the territory of the park; [...] the alignment of activities carried out by the communes and that affect land use with the requirements to be fulfilled by the park; [...] the investment planning for the provision of human and financial resources as well as the required infrastructure for park management and quality assurance. /3. The charter must be concluded for a term of at least ten years”.

For the control and the monitoring in protected areas:

• **Article 27a of the Ordinance on Nature Protection**

- „1. The OFEV [Federal Office of Environment] looks after the monitoring of biological diversity and harmonizes it with the other measures relating the observation of the environment. The cantons can complete this monitoring. They coordinate the measures they take with the OFEV and leave at disposal of the OFEV their information /2. The OFEV, the OFC [Federal Office of Culture] and the OFROU [Federal Office of Roads] ensure a follow-up in order to examine the implementation of legal measures and their effectiveness. The federal offices concerned and the cantons have to be closely associated to this task”.

For the management of the **Swiss National Park**, the relevant legal dispositions are:

- the Law on National Park<sup>22</sup> (Bundesgesetz über den Schweizerischen Nationalpark im Kanton Graubünden- Nationalparkgesetz, 19. Dezember 1980)
- the Cantonal Ordinance on National Park (Verordnung über den Schutz des Schweizerischen Nationalparks -Nationalparkordnung- vom Grossen Rat, 23. February 1983)

The Law on National Park, adopted in 1980, define the purpose of the Park’s existence. According to the law „[the] Swiss National Park is a reserve in which the entire fauna and flora are protected from any human interference and are left to their natural development”. The law provides the framework for the protection of the National Park. Detailed regulations covering the aims of protection, paths, prohibitions and penalties are laid down within the cantonal ordinance on the protection of the National Park.

<sup>22</sup> Bundesgesetz über den Schweizerischen Nationalpark im Kanton Graubünden- Nationalparkgesetz- vom 19. Dezember 1980.

## 2.8 Experiences as regards transborder cooperation between protected areas

Example: the *Espace Mont-Blanc*<sup>23</sup>: it is an initiative of transborder cooperation which brings together 35 communes of the French Savoy and Haute Savoy, the Italian Aosta Valley and the Swiss Canton Valais. Under the Transborder Conference Mont-Blanc (*Conférence Transfrontalière Mont-Blanc*) these entities are engaged for the sustainable development and the valorization of the Mont-Blanc.

## 3 TRANSBORDER COOPERATION

### 3.1 The competences/powers of territorial entities as regards transborder cooperation.

#### 3.1.1 Federal Constitution<sup>24</sup>

According to the Federal Constitution (Art. 54, paragraphs 1 and 2, Art. 166, Art 184 paragraphs 1 and 2), concluding international agreements is the prerogative of the federal government:

- **Article 54, paragraphs 1 and 2, of the Federal Constitution:**

„1. Foreign relations are the responsibility of the Confederation.

2. The Confederation shall ensure that the independence of Switzerland and its welfare is safeguarded; it shall in particular assist in the alleviation of need and poverty in the world and promote respect for human rights and democracy, the peaceful coexistence of peoples as well as the conservation of natural resources”.

- **Article 166 of the Federal Constitution:**

„1. The Federal Assembly shall participate in shaping foreign policy and supervise the maintenance of foreign relations.

2. It shall approve international treaties, with the exception of those that are concluded by the Federal Council under a statutory provision or an international treaty”.

- **Article 184, paragraphs 1 and 2 of the Federal Constitution**

„1. The Federal Council shall be responsible for foreign relations, subject to the right of participation of the Federal Assembly; it shall represent Switzerland abroad.

2. It shall sign and ratify international treaties. It shall submit them to the Federal Assembly for approval”.

However, the **Article 56, paragraph 1, of the Federal Constitution** grants the cantons the right to conclude agreements with foreign agencies in the areas for which they are responsible:

„A Canton may conclude treaties with foreign states on matters that lie within the scope of its powers”.

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<sup>23</sup> Online at www on URL:

[www.eda.admin.ch/etc/medialib/downloads/edazen/topics/scoop/sccom.Par.0034.File.tmp/EuroRegion\\_Mont-Blanc\\_f.pdf](http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/scoop/sccom.Par.0034.File.tmp/EuroRegion_Mont-Blanc_f.pdf) (22 Januar 2009).

<sup>24</sup> Online at www on URL: [www.eda.admin.ch/eda/en/home/topics/scoop/sclaw.html](http://www.eda.admin.ch/eda/en/home/topics/scoop/sclaw.html) (19 January 2009).

The powers of the cantons, however, are subordinated to those of the federal government. It has for many years been the Federal Council's liberal practice to allow the cantons maximum autonomy in the conduct of their cross-border relations. They can conclude agreements with foreign agencies not only in fields such as economic relations, official contacts, police and the like, but in all fields for which they are constitutionally responsible. However, agreements must not contain anything contrary to the interests of the confederation or of other cantons. Swiss law requires the federal government and the cantons to collaborate closely on cross-border matters. The cantons may thus maintain direct contacts with subordinate - i.e. local or regional authorities. This applies to territorial but not to central authorities. It is generally a matter of dealing with specific problems of relations between neighbours within the region. The Federal Constitution (**Article 56 paragraph 3**) provides that official contacts between cantons and the central authorities of foreign countries must be arranged by the Federal Council. It is accordingly for the Federal Council to conduct negotiations and to sign and ratify the agreement. Though the Federal Council acts at the request and on behalf of the cantons concerned, it also takes account of the interests of the Confederation or of other cantons. The Federal Council usually concludes the agreement on behalf of a canton. The canton is thus a party to the agreement, and it must consent to it in accordance with its own internal procedures. If it is in the direct interests of the Confederation, however, the federal government can also conclude agreements on behalf of itself and of the cantons. The cantons must notify the federal government of proposed agreements in advance

- **Article 56, paragraph 2, of the Federal Constitution:**

„Such treaties must not conflict with the law or the interests of the Confederation, or with the law of any other Cantons. The Canton must inform the Confederation before concluding such a treaty”.

The federal authorities then verify that the agreement is constitutional and that it accords with the foreign policy of the federal government.

### 3.1.2 Agreements between regions

By entering into agreements with effects extending beyond the national border, the cantons have given themselves a legal framework for facilitating relations with their cross-border partners. The relevant areas of activity have a regional orientation and are framed very broadly. Such agreements are designed to develop contacts between Swiss cantons and their cross-border partners at subordinate level.

## 3.2 Switzerland and the International Law on transborder cooperation

Switzerland has ratified *the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities* in March 1982 and it entered into force in the beginning of June of the same year. This Convention was drawn up within the Council of Europe by the Committee on Co-operation in Municipal and Regional Matters and adopted by the Committee of Ministers, was opened for signature by the member States of the Council of Europe on 21 May 1980. Switzerland



land ratified also in September 1998 the first additional Protocol to the Outline Convention (*Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities*) and the second additional protocol in May 2003 (the *Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation*).

### 3.3 The EGTC and Switzerland

Switzerland can take part in a GECT. According to the **paragraph 16 of the preamble of the Regulation n° 1082/2006 on a European grouping of territorial (EGTC)**:

*„The third subparagraph of Article 159 of the Treaty does not allow the inclusion of entities from third countries in legislation based on that provision. The adoption of a Community measure allowing the creation of an EGTC should not, however, exclude the possibility of entities from third countries participating in an EGTC formed in accordance with this Regulation where the legislation of a third country or agreements between Member States and third countries so allow”*. But we have also to highlight that there is another limit for the participation of Switzerland in an EGTC. In fact according to article 3, paragraph 2, *„ [an] EGTC shall be made up of members located on the territory of at least two Member States”*: the underlined provision does not enable to create an EGTC between only 2 States including Switzerland. National provisions have to be taken on the Swiss level in order to give the possibility to the Swiss authorities to take part to a EGTC.

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