



The ECONNECT Project and the Work Package 6

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Executive Summary

At European level the protection and the interconnection of protected areas pass through the so-called Birds Directive of 1979¹ and the so-called Habitats Directive² of 21st May 1992 whose express aim is that of *contributing to the safeguard of biodiversity through the conservation of natural habitats and the wild flora and fauna in the European territory of member states to which the Treaty applies (art.2)*.

According to an ecological connectivity vision, what counts more is the establishment of the network of the Natura 2000 sites established under the EU Habitats Directive (art.3), currently the largest ecological network in the world. The Natura 2000 network, operating in parallel to the Emerald network mentioned above aims at protecting the habitats of the animal and vegetal species of community interest through the creation of special conservation zones (SCZ) and the inclusion of the Special Protection Zones (SPZ) already established by the previous Birds Directive. In the Special Conservation Zones, Member States take all necessary measures to guarantee the conservation of the habitats and to avoid their degradation (art.6) and meaningful disturbances of the species.

The designation of the SCZ is made in three steps. Each Member State makes a list of sites that host natural habitats and animal species and wild vegetal ones, according to the criteria used by the annexes of the Habitats Directive. According to these national lists and in agreement with Member States³, the Commission adopts a list of sites of community relevance and the member state designates the site as SCZ. The Directive includes also the possibility that the Community could co-finance conservation measures. The Alpine region is one of the nine bio-geographic regions of the EU⁴ and, as we will see in the following chapters, some of the pilot regions of the ECONNECT Project have a Natura 2000 status.

The ECONNECT project weaves itself into the above mentioned fabric of rules, which aims at improving the ecologic connectivity of the whole alpine arc. The project is economically supported by the EU within the Territorial Cooperation Program Alpine Space and co-financed by the European Regional Development Fund⁵. The period of effectiveness was meant to be from September 2008 to August 2011, but it has been recently extended until 30 November 2011.

The main goal of the project is the protection of the alpine biodiversity through the creation of an ecological continuum in the whole alpine arc. The efforts of the ECONNECT Project focused particularly

¹ Directive 79/409/CEE, currently Directive 2009/147/CE on the conservation of wild birds.

² Directive 92/43/CEE on the conservation of the natural and semi natural habitats and of the wild flora e fauna.

³ If the Commission deems that a host site a type of natural habitat or priority species (those that are more likely to become extinct) has not been inserted in a national list, the Directive includes the possibility of starting a negotiating process. In case the negotiation fails the Commission can propose autonomously to the Council the nomination as site of communitarian importance.

⁴ The alpine region, the atlantic region, the Black sea region, the boreal region, the continental region, the macaronesian region, the mediterranean region , the pannonian region and the steppe region.

⁵ For a total amount of €3.198.240,00.

on the regions that are rich in biodiversity, trying to establish and to improve not only the connections between them, but also those with the neighboring eco-regions (e.g. Carpathian Region)

The actions of the ECONNECT Project deal with three main categories: information gathering, territorial activity and communication:

The gathering of information carried out has helped and will in the next future to:

- Harmonize the geographical data of the participant countries
- Analyze the physical and legal obstacles which prevent and hamper the creation of ecological networks
- Define migration corridors between the alpine areas richer in biodiversity and, among these, the bordering eco-regions.

The spatial activity was carried out in order to:

- Create, approve and test a methodology in order to create an ecological network and moreover to spread it in the whole Alpine arc.
- Strengthen the cooperation between the involved institutions.
- Give concrete actions and strategies to the pilot regions with a high value for the alpine biological diversity.

Finally, concerning the communication activities, the partners of the project intended to:

- Raise the awareness towards the importance of the biological connectivity
- Spread the project outcomes
- Create, approve and test a methodology for the creation of ecological networks and disseminate it across the whole Alpine arc.
- Strengthen the cooperation of the involved institutions
- Implement the concrete actions and strategies to pilot regions having a high value for the alpine biological

The complexity of this commitment required a multidisciplinary and holistic approach able to involve the administrative level as well as the scientific and the local community. The project, therefore, involves apart from the Alpine Convention itself, other international organizations related to the Alpine Convention, scientific institutions - as the European Academy of Bolzano - and several local partners. All these actors have coordinated their efforts in order to demonstrate the necessity of an ecological connectivity through the Alps, to explore different options to coordinate effectively these efforts, and to develop new innovative tools to foster the connectivity.

The ecological connectivity concerns also the unprotected areas, for this reason the project has taken into account also the effects of the implementation of ecological networks concerning the spatial planning, the development of infrastructures and the economic activities of the alpine region.

The existing barriers to the connectivity are not only geographical, but political as well (in particular to the extent that the mountain range forms a natural *limes (or border) traced by the political boundaries of the neighbouring countries*), which correspond to different legal systems. Different legislations correspond to the political borders of the countries, which have different status in complying with regard to the protected areas due to different competences, different strategies and protection mechanisms. All these failures risk to compromise the effort of the actors, as the wild fauna's movements doesn't respect the borders. In other words, as the Director of an Italian Park laconically remarked: "*Wolfs cannot read the road signs!*" The purpose of the WP6 Legal Barriers Study is focused expressly on the need to identify all these obstacles and the legal tools to remove or overcome them.

It is, therefore clear that making the statutes of protected areas through the Alpine arc more homogeneous and define the optimal statutes for the cross-border protected areas can increase the chance of migration, and therefore of survival of wild fauna. In this sense a first necessary step to identify the best suited legislative and administrative solutions is represented by the identification of the legal barriers that hinder the establishment of ecological networks.

The WP6 was led by the Italian Ministry for the Environment, the Land and the Sea.. The European Academy of Bolzano acted as organizer of the workshop of Domodossola (see further) and has coordinated the drafting of the legal publications. CIPRA has organized the workshop of Grenoble and provided the data regarding the French protected areas. Finally, the Valle d'Aosta Autonomous Region has supported through its own study the analysis of the different categories of protected areas, in particular the Italian and the Swiss ones, and hosted the final Conference of the Work Package in Aosta.

The application form of the ECONNECT Project required the WP6 to carry out various different actions:

- **Action 6.1:** identification of the legal situation of the alpine protected areas (comparison of the alpine protected areas and of the legal frameworks) highlighting the cross-border issues and Natura 2000 sites.
- **Action 6.2:** Comparison of the legal situation of the protected areas and of the surrounding ones in order to identify the possibility of the creation of ecological networks.
- **Action 6.3:** Organization of a workshop in English related to action 6.1 (involving managers of the protected areas, lawyers and bodies in charge of the spatial planning).
- **Action 6.4:** Organization of one workshop related to the Action 6.2 (with the involvement of the managers of the protected areas, lawyers and bodies in charge of spatial planning).
- **Action 6.5:** Organization of the final Conference in the four alpine languages (Italian, French, German and Slovenian) and summary of the results of the WP6 and of the legal aspects of WP7.

These tasks were completed by the lead partner MATTM and interested partners through the following actions:

- **Action 6.1 :** drafting of the National Assessment (EURAC, MATTM)
- **Action 6.2 :** drafting of the bilateral comparative studies (EURAC, MATTM, CIPRA France)
- **Action 6.3:** Organization of the workshop in Domodossola (2009) and drafting of its proceedings (EURAC, MATTM)
- **Action 6.4:** Organization of the workshop of Grenoble (2010) and drafting of its proceedings (CIPRA France, MATTM)

- **Action 6.5:** Organization of the Final Conference of Aosta and drafting of this document (Valle d'Aosta, MATTM)

The WP6 has provided to the main actors a broad background review of the physical and legal barriers that hamper the movements of the wild fauna on the alpine territory. Moreover it has been essential for the implementation of concrete measures and for the gathering of a significant quantity of data. A rich documentation regarding the legal barriers in the alpine area was gathered and disseminated in the alpine area in the form of national assessment and bilateral comparison and the two workshops became precious opportunities to collect, compare and let the experience of different fields experts negotiate and to give a cue for the official publications. Finally the Conference in Aosta represented an opportunity to sum up the outcomes of this component of the project.

The WP6 does not represent an isolated effort, but it is part of the broader context of the ECONNECT Project: its results complete in fact those of the WP5 *Barriers and Corridors*⁶ and will be available in particular by the WP7 *Implementation in the Pilot Regions*, besides by all the managers of the pilot areas and stakeholders interested in ecological connectivity in the Alps. The regular contacts kept by the WP6 with the WP4 data management have ensured a clear and practical management of the gathered information.

With the implementation of activity 6.1 the WP6 has produced a series of six publications titled *The Legal Framework of Protected Areas in The Alpine States*, which have considered the legal frameworks of Austria, Germany, Switzerland, Italy and Slovenia focusing their attention on the norms regarding the protected areas. These studies were produced by the project partner EURAC (CIPRA has provided the information on the French protected areas) under the supervision of the Project leader, MATTM.

Activity 6.1 focuses on the analysis of each national alpine legal framework, by investigating in particular four fields:

- Nature protection
- Spatial planning
- Ecological Connectivity
- Trans-border cooperation

Activity 6.2 focused on the regional level issue, in particular on the pilot regions of the ECONNECT Project. The Pilot Regions taken into account are the following:

- Mercantour /Maritime Alps
- Rhaetian triangle
- Hohe Tauern
- Monte Rosa
- Berchtesgaden

⁶ The objectives of the work package Barriers and Corridors is the identification and classification of the barriers created by humans which hamper or hinder the movement of wild species through the alpine arc; the group sets itself to propose solutions that allow to reduce obstacles, solutions that can be used in the pilot areas of the Project by WP7.

Four comparative studies have analyzed the legal situation of these trans-border areas and of the neighboring regions, in order to evaluate the potentiality and to indicate the most suited strategies for the creation of an alpine ecological network. The main issues tackled are:

- The institutional profile to be given to the cooperation experiences among protected areas
- The identification of legal solution to create/improve ecological networks within the different pilot regions of the ECONNECT Project

The comparative analysis of activity 6.2 started from the outcomes of the previous activity 6.1, highlighting the point of contact and differences within the four fields in the mentioned opening chapter ⁷, and concerned four couple of alpine states (each of them hosting of one or two pilot ECONNECT regions):

- Italy/France
- Italy/Austria
- Italy/Switzerland
- Austria/Germany

This analysis has shown the deep differences that exist between the different categories of protected areas according to the legal system of the respective country. Also when the areas share the same denomination (for instance “National Park”), the right meaning assigned to the term by the legislator, could vary with regard to the management mechanisms, competent bodies, permitted/prohibited activities etc. By the use of the IUCN’s protected areas classification as reference, it was noticed, as a matter of fact, how in an identical IUCN class, different categories of protected areas are included, depending on the various states. The same variety was verified within the zones surrounding the protected areas.

Furthermore within the second phase of the ECONNECT Project, a survey realized by CIPRA was submitted to the parks located in the Pilot Regions in order to evaluate the experiences of trans-border cooperation and the support to the existing ecological connectivity. The outcomes of the survey were taken into account in the elaboration of the four bilateral comparisons.

Whilst carrying out activity 6.2 a particular attention was given in evaluating the suitability of the community instrument of the European Grouping of Territorial Cooperation (EGTC); with regard to the EGTC, the WP6 has also produced a dedicated analysis and a model.

With regard to the topic of cross-border and interregional cooperation, it is worth to mention the framework produced by the Madrid Convention of 1980 and its additional Protocols of 1995 and 1998 (this came into force on February 2001 and it is relevant to the cooperation among non-contiguous territorial bodies).

Notwithstanding what said above the agreements settled among the above mentioned Convention are lacking both in internationalist nature (according to the article 1, paragraph 2 of the first additional Protocol, they concern exclusively the collectivity or territorial authorities which have made it) and in cogency, both necessary elements to ensure the punctual enforcement.

Currently the system of Madrid Convention, if not obsolete surpassed by the opportunity to make use of alternative forms of cooperation for instance based on structural funds or on INTERREG funds (as the ECONNECT Project example).

⁷Nature protection, spatial planning, ecological connectivity, trans-border cooperation

The necessity of overcoming the current situation is even clearer within the alpine scenario, given the participation of the Swiss Confederation to the Alpine Convention and the Italian non-ratification of the above mentioned protocols.

In the course of the comparative analysis of Italy/Switzerland, the EGTC did not therefore emerge as a practicable solution. The study has highlighted, instead, that it constituting a Transboundary Reserve of the Biosphere which includes also the Stelvio Italian Park (taking into account the recent election of the Regional Park Val Mustair as reserve of the UNESCO Biosphere and the fact that the Swiss National Park already benefits of an analogous status) could be the most practical way ahead.

With regard to the applicability of the EGTC in the course of the activity 6.2, the experience, already mature, of the National Park Mercantour and of the Nature Regional Park of the Maritime Alps was completely different. Both parks boast more than twenty years of collaboration that has found the right institutional and formal collocation. The comparative study dedicated to Italy and France, was illustrated from the twinning of 1998, the Shared Action Plan 2007-2013 and the Transboundary Integrated Plan 2010-2013 to the more recent development of the EGTC.

Both the Convention and the Statute of the EGTC, *called European Park Maritime-Mercantour Alps*, in fact were already approved by the leaders of the respective bodies. The aims of the EGTC with seat in Nice, will be the facilitation, fostering, and bringing to life of the transboundary cooperation among its members on a territory which comprises 22 French municipalities and 4 Italian municipalities.

For this reason the Group (constitutive Convention of the EGTC *European Park Maritime-Mercantour Alps*, Art. 4) will guide projects within the competences of its members and in particular of the related institutive laws of the Maritime Alps Nature Parks and of the National Park Mercantour. Moreover it will be allowed to look for different kind of public and private financing and in particular community financing and implement the program financed in this way

The Group will facilitate the territorial and functional connections among the territorial actors in order to promote the values of the sustainable development and its implementation, and it will be allowed to carry out actions or be the beneficiary for interventions related to the natural, cultural and landscape patrimony on the territory defined in the Art. 4.

Finally the EGTC will foster the registration of a common good of the Maritime Alps Nature Park and the National Park Mercantour inside the list of the UNESCO World Heritage sites, by implementing all the suitable actions to reach the registration of the good and acting as authority of the management, surveillance and preservation of the world heritage good and if necessary to carry out the required actions in order to develop this role, in particular the drafting of periodical reports about the status of the registered good.

The international workshop and the thematic conference held in Domodossola from the 16th to the 17th of April 2009. The first international workshop organized in the WP6, fulfilling activity 6.3 of the Application Form was organized by the Italian Ministry for the Environment (as lead partner of the WP) with the technical assistance of EURAC, a project partner. To the event, "the legal framework of

protected areas in each Alpine State”⁸ and held in Domodossola (Italy) on the 16th of April 2009, followed a thematic conference dedicated to legal questions on cross bordering cooperation between protected areas. This second event was organized by MATTM in association with EURAC, the Catholic University of the Sacred Heart and the Research Center Val d’Ossola.

The workshop had the precise goal of introducing as a draft the documents of activity 6.1 (National Assessments) and the document illustrating the European Grouping of Territorial Cooperation⁹, providing at the same time to the stakeholders with an opportunity to share experiences on cross-border cooperation and Exchange / disseminate good practices. During the morning session of the workshop the National assessments documents on Austria, Germany and Slovenia were introduced followed by the European community instruments of cooperation in the environmental field (Natura 2000, EGTC). During the afternoon session the publication on Italy Switzerland and France were presented and beside that traditional means of cooperation based upon International Law which were implemented in the Alps were also introduced. Each presentation was followed by a related moment of discussion.

The participants in the event of the 16th April therefore, had the opportunity to start a discussion on the basis of background documents previously circulated, contributing proactively to the development of a dialogue on the themes regarding cross border cooperation and ecologic connectivity. The suggestions received during this occasion were useful in finalizing the six National Assessments (Austria, Germany, Slovenia, France, Italy and Switzerland), disseminated during 2010, and the analysis of the EGTC.

The thematic conference the following day, saw, instead, three public readings followed by a round table on the theme of cross-border cooperation between protected areas. The readings addressed some particular points:

- The experience of cross-bordering cooperation of the natural parks of the Maritime Alps and of Mercantour (the reading was given by the director of the Regional Natural Park Mrs. Patrizia Rossi)
- The traditional tools of cross bordering cooperation in a historic perspective (Mr. Enrico Milano from the University of Verona)
- The EGTC (by Mr. Gianluca Spinaci, Committee of Regions of the EU)

The panel of the roundtable comprised the Italian Ministry for the Environment represented by the National Focal point of the Alpine Convention Mr. Paolo Angelini, the Swiss Federal Office for the Environment¹⁰, the Regional Affairs Department¹¹, the Veneto Region¹² and the University of Urbino¹³.

The last activity included in the application form of the ECONNECT Project’s related to the work package Legal Barriers, was the organization of a Final Conference in all the four languages of the Alps. Consistently with what was requested, on 9th December 2010 the city of Aosta hosted the event, “*Ecological Connectivity and Mountain Agriculture: Existing instruments and a vision for the future*”.

⁸ Clear reference to the activity 6.1 (National Assessment)

⁹ See previous chapter

¹⁰ Present: Dr. Silvia Jost

¹¹ Present: Dr. Giovanni Vetrutto

¹² Present: Dr. Oscar de Bona

¹³ In the person of Prof. Riccardo Santolini

The Conference was held at the building of the Autonomous Region of Valle d'Aosta and was organized by MATTM, the lead partner of WP6, jointly with Autonomous Region of Valle d'Aosta (PP12) and with the expertise of the European Academy of Bolzano (PP9).

The Conference was held in front of a large audience (whose questions were answered in a specific part of the Conference) and of the media. The opening speech was delivered by the President of the Valle d'Aosta Region Mr. Augusto Rollandin.

The main theme of the event was, of course, the presentation of the outcomes achieved by the legal component of the ECONNECT Project; these were illustrated in a series of presentations¹⁴ whose object was the work package and in particular the activities 6.1 and 6.2

As it is possible to infer from the title of the event of Aosta, the questions related to the elimination of the legal barriers tampering the ecological continuity and, moreover, the activities of conservation of biodiversity in general were delved with also referring to the species, both vegetal and animal, that characterize many typical food production of the mountains.

In fact, the ecological networks, broadly speaking, comprise also the farm products and the role assigned to the agricultural and environmental activities aiming at the conservation of the ecological network is a known fact (see Natura 2000).

In mountain areas, in particular, biodiversity is something that refers to the agricultural activities and herding and there are many local species or in any case that have adapted to mountain areas. Some food products and animal species are typical of the mountain areas and are a remarkable part of the genetic heritage of these areas. Examples of this kind are present all over the Alps (for instance the vines that grow in high altitudes in Valle d'Aosta, the late cherries of the Province of Bolzano, the local ovine and bovine races, etc.). Therefore, their preservation and exploitation fully falls within a conservation strategy of the alpine biodiversity.

There are legal or voluntary instruments that might be used relatively to these products and there are ideal strategies regarding territorial marketing that can contribute to the increase of value of these networks of quality products. In this sense, the Conference of Aosta received the beneficial contribution of FAO, which participates in the "Policy and Law" initiative of the Mountain Partnership, also in view of Expo 2015 of Milan.

The main theme of the Expo which was introduced during the Conference and the importance, in this sense, of food biodiversity, have made it possible to develop, through a series of presentations, a reflection regarding the food production in mountain areas, the diversity of these products and their ecological meaning an economic value.

¹⁴ The introductory ones of Dr. Santa Tutino of the Valle d'Aosta Region and of Dr. Frederick Dooley of EURAC, the one of the EURAC researcher Céline Randier concerning the National Assessments, and the one of the legal consultant Dr. Valerio Poscia on the Bilateral Comparisons

ANNEXES

- Annex I: The Legal Framework of Protected Areas in the alpine states - Austria national assessment
- Annex II: The Legal Framework of Protected Areas in the alpine states - France national assessment
- Annex III: The Legal Framework of Protected Areas in the alpine states - Germany national assessment
- Annex IV: The Legal Framework of Protected Areas in the alpine states - Italy national assessment
- Annex V: The Legal Framework of Protected Areas in the alpine states - Slovenia National Assessment
- Annex VI: The Legal Framework of Protected Areas in the alpine states - Switzerland National Assessment
- Annex VII: The comparative analysis Austria/Germany
- Annex VIII: The comparative analysis Italy/Austria
- Annex IX: The comparative Analysis France/Italy
- Annex X: The comparative analysis Italy/Switzerland
- Annex XI: Analysis of EGTC
- Annex XII: Model of EGTC
- Annex XIII: Aosta Conference Agenda



Work Package 6 “Legislation”

THE LEGAL FRAMEWORK OF PROTECTED AREAS IN THE ALPINE STATES

Austria

Bolzano/Bozen, August 2009



Italian Ministry for the
Environment, Land and Sea



Disclaimer

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The contents of this document are the sole responsibility of the authors and can under no circumstances be regarded as reflecting the position of the European Union, of the Alpine Convention or the partner institutions.

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Contents

1	GENERAL POINTS	4
1.1	Organisation of the State	4
1.2	The legislative and executive.....	4
1.3	International Law and European Law.....	4
2	NATURE PROTECTION AND SPATIAL PLANNING:	5
2.1	The protection of mountain areas and the law.....	5
2.2	The distributions of power and legislative competencies	5
2.3	The legal framework of Nature Protection	6
2.4	The legal framework of Spatial Planning	6
2.5	The protected areas in the legislation on Nature Protection	7
2.6	The legal provisions as regards ecological connectivity.....	7
2.7	Pilot areas and Pilot Regions in the ECONNECT Project	8
2.8	The management of protected areas.....	12
2.9	Experiences as regards transborder cooperation between protected areas.....	12
3	TRANSBORDER COOPERATION	12
3.1	The competences/powers of territorial entities as regards transborder cooperation	12
3.2	The international instruments for transborder cooperation and Austria.....	12
3.3	The European Grouping of Territorial Cooperation and the Austrian Law.....	13
4	Bibliography	16

1 GENERAL POINTS

1.1 Organisation of the State

Austria is a federal State.

- Article 2 of the Federal Constitutional Law:

„(1) Austria is a federal state/

(2) The Federal State is composed of the autonomous Länder of Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tirol, Vorarlberg and Vienna.“

1.2 The legislative and executive

1.2.1 The Federal Legislature

Federal legislative powers are vested with a body the constitution refers to as a parliament. Austria's parliament consists of two houses, the **National Council** and the **Federal Council**. The legislative is divided between the *Länder* and the *Bund* (Federation). According to the **article 15, paragraph 1, of the Federal Constitutional Law** „[insofar] as a matter is not expressly delegated by the Federal Constitution to the legislation or also the execution of the Federation, it remains within the autonomous sphere of competence of the Länder“: it is called „**Generalklausel**“.

1.2.2 The Federal Executive

Federal executive authority is vested with the federal president, an official elected by popular vote for a term of six years and limited to two consecutive terms of office. The president is the head of state and appoints the federal cabinet, a body consisting of the federal chancellor and a number of ministers.

1.3 International Law and European Law

1.3.1 International Law

According to the **article 9, paragraph 1 of the Federal Constitutional Law**, „[the] generally recognized rules of international law are regarded as integral parts of Federal law “. The articles 49 to 50 of the Federal Constitutional Law laid down the rules for the validity and the implementation of International law.

1.3.2 European Law

For all Member States : there is an obligation on administrations and national courts to apply Community law in full within their sphere of competence and to protect the rights conferred on citizens by that law (**direct application of Community law**), and to display any conflicting national provision, whether prior or subsequent to the Community provision (**primacy of Community law over national law**).

The **Articles 23a to 23f of the Federal Constitutional Law** deal with **European Union**. There is an **autonomous character of European Law** („*autonome Geltung des Gemeinschaftsrechts*“): European Law is not part of national law but exists besides the national law. There is also priority of the European Law before the Austrian Law. This priority is related to the implementation and not to the validity („*ein Anwendungsvorrang und kein Geltungsvorrang*“). The Länder take also measures for the implementation of the European Law as far as their competences are concerned. According to **article 23d, paragraph 5, of the Federal Constitutional Law**, „*[the] Laender are bound to take measures which within their autonomous sphere of competence become necessary for the implementation of juridical acts within the framework of European integration should a Land fail to comply punctually with this obligation and this be established against Austria by a court within the framework of European Union, the competence for such measures, in particular the issuance of the necessary laws, passes to the Federation*“.

2 NATURE PROTECTION AND SPATIAL PLANNING:

2.1 The protection of mountain areas and the law

There is **no specific law on mountain areas** in Austria and the protection of these areas depends on different sectorial politics. In 1979 the Federal Chancellery introduced the „Mountain Area Special Initiative“ but it was extended to other parts of the country in 1985 and renamed as the „Initiative for Endogenous Regional Development“. There was also a special programme for mountains farmers but it was extended to others of the country in 2000.

The Alpine Convention entered into force in 1995 in Austria and all the Protocols of the Alpine Convention entered into force in 2002. There is a lot of case-law and also administrative decisions based on the Protocols of the Alpine Convention. But we will not develop here the question of the implementation of the Alpine Convention.

2.2 The distributions of power and legislative competencies

Nature protection is in the autonomous sphere of competence of the *Länder*. Nature protection is not laid down expressly in the Federal Constitution as a competence of the Bund: it is an application of the „*Generalklausel*“. Legislation and execution of law in the field of Nature Protection are business of the *Länder*. There are 9 laws on nature protection and there is no outline law („*Rahmengesetz*“).

Spatial planning is a transversal field („*Querschnittmaterie*“) and the competencies in the field of spatial planning are divided between the *Länder* and the *Bund*. Spatial planning is a competence of

the Bund as far as the articles 10 to 12 of the Constitutional Law are concerned and for the others fields it is a competence of the *Länder*.

2.3 The legal framework of Nature Protection¹

In Austria all matters related to nature conservation are with the competence of the federal provinces (*Länder*). Therefore there are 9 separate provincial Nature conservation laws. There is no Federal law establishing the framework for detailed legislation by the *Länder* („*Rahmengesetz*“).

The nature conservation laws currently in force stipulate a general obligation to protect and care for nature as the basis of life for mankind, fauna and flora. In addition to these general provisions, the provincial laws contain the following regulations: obligation to obtain permission for and/or to notify projects, conservation of habitats, areas protected under nature conservation laws, conservation of animal and plant species.

But there is coordination between the Austrian *Länder* through various working groups. For instance there is cooperation for the implementation of the Habitats Directives: there was a working group for the evaluation of the conservative status of the natural habitats which produced criteria's for this evaluation.

The creation of a National Park requires the conclusion of an agreement between the Federation and the *Länder*. This agreement is concluded according to the article 15a, paragraph 1 of the Federal Constitutional Law, which stipulates that „[the] Federation and the *Länder* may conclude agreements among themselves about matters within their respective sphere of competence“. Concerning the conclusion of such agreements, it is precised that „[their conclusion] in the name of the Federation is, depending on the subject, incumbent on the Federal Government or Federal Minister. Agreements which are to be binding also on the authorities of the Federal legislature can be concluded by the Federal Government only with the approval of the National Council“.

2.4 The legal framework of Spatial Planning

There is no outline Law (*Rahmengesetz*) adopted on the federal level for spatial planning in Austria. According to the „*Generalklausel*“, spatial planning is principally a competence of the *Länder*: for the adoption and for the execution/ implementation of the laws. But some fields of spatial planning (those concerned by the articles 10 to 12 of the Federal Constitution) remain in the competence of the *Bund* (for instance railroading- Eisenbahnwesen-, Forestlaw², etc.). In the field of spatial planning, different levels have to be taken into account:

- the *Land* for the regional planning (*überörtliches Raumplanung*)
- the communes (*Gemeinde*) for the local planing (*örtliches Raumplanung*)

¹ On line on URL: http://www.umweltbundesamt.at/en/umweltschutz/naturschutz/natur_und_landschaft/?wai=1 (05 June 2009).

² Bundesgesetz vom 3. Juli 1975, mit dem das Forstwesen geregelt wird (Forstgesetz 1975) StF: BGBl. Nr. 440/1975 (zuletzt geändert mit BGBl. I Nr. 55/2007).

According to article 118, paragraph 3, of the Federal Constitution, „[a] municipality is guaranteed official responsibility in its own sphere of competence for performance of the following matters in particular: [...] local environment planning [...]“.

Although spatial planning is principally a *Länderkompetenz* there is coordination on the national level through the Austrian Conference on Spatial Planning (*Österreichische Raumordnungskonferenz*) which adopted Guidelines on spatial planning (*Österreichisches Raumentwicklungskonzept*).

The Austrian Conference on Spatial Planning is an organisation set up 1971 by the *Bund*, the *Länder* and the *Gemeinden* to coordinate spatial planning at the national level. The executive body at the political level, under the chairmanship of the Federal Chancellor, includes all the federal ministers and state governors, together with the presidents of the Austrian Union of Towns and the Austrian Union of Communities and with the presidents of the social and economic partners participating as advisors. We can also notice that there is also a Conference on Spatial Planning for the cooperation between Austria and Germany³.

2.5 The protected areas in the legislation on Nature Protection

The classification of protected areas („*Schutzgebiete und -objekte*“) could be different from *Länder* to *Länder* because nature protection is a *Länderkompetenz* but a general classification can be presented:

- Natural monument (*Naturdenkmäler*), protected part of a landscape with regional value (*geschützte Naturgebilde von örtlicher Bedeutung*), protection of trees (*Baumschutz*);
- Protected Landscape, protected part of a landscape (*Landschaftsschutzgebiete, geschützte Landschaftsteile*);
- Natural protected area (*Naturschutzgebiete*);
- Natura 2000 areas (*Europaschutzgebiete/ Gebiete von gemeinschaftlicher Bedeutung*);
- Nature park (*Naturparke*), Special protected area (*Sonderschutzgebiete*), Rest area (*Ruhegebiet, -zone, ökologische Entwicklungsflächen*);
- National park, Biosphere reserve (*Nationalparke, Biosphärenparke*);
- Protected cave (*Höhenschutz*).

2.6 The legal provisions as regards ecological connectivity

2.6.1 The provisions of the Habitats Directive

In Austria, there is no general prescription for the creation of an ecological network through the State or through the *Länder*: the prescription for the creation of an ecological network appears with the transposition of the provisions of the Habitats Directive concerning the European network Natura 2000. The Habitats Directive intends to create an ecological network through Europe.

Furthermore the provisions of the article 10 of this directive contain measures for improving the ecological coherence of the ecological network: „*Member States shall endeavour, where they con-*

³ Abkommen zwischen der Österreichischen Bundesregierung und der Regierung der Bundesrepublik Deutschland über die Zusammenarbeit auf dem Gebiete der Raumordnung (StF: BGBl. Nr. 87/1974). See the article 1 of this agreement:” *Zur Förderung und Erleichterung der Zusammenarbeit in Angelegenheiten der Raumordnung, insbesondere soweit sie die Gebiete nahe der gemeinsamen Staatsgrenze betreffen, wird eine österreichisch-deutsche Raumordnungskommission [...]“.*

sider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora.

Such features are those 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 ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species“.

It is clear from the text of the Habitats directive that the interpretation of „coherence“ is a key issue affecting the implementation of directives. When considering the ecological coherence of Natura 2000, it is important to note that the completed Natura 2000 network, defined by the Habitats directive as the sum of all areas designated for conservation under the Birds and Habitats directives (Article 3, paragraph 1, of the Habitats directive), is a collection of individual protected sites. In order for these protected sites to actually form an ecologically coherent network then necessary functional connections amongst the sites and their surroundings must be maintained. Therefore management measures may need to go beyond the designated sites' boundaries and apply to the wider environment.

2.6.2 The ecological connectivity in the Nature Protection Laws

As we saw, in the Laws on Nature protection of the Austrian *Länder*, the obligation to create an ecological network appears through the transposition of the Habitats Directive. There is no legal obligation to create an ecological network broader than the Natura 2000 Network like in the German law for instance.

2.6.3 The ecological connectivity and the spatial planning

Transports and ecological connectivity on the federal level⁴

The Federal Ministry of Transport, Innovation and Technology (BMVIT) has initiated a revision of the Guideline on Game Protection (RVS 3.01), which stipulates that in transport planning, specific road planning and environmental impact assessments the ecological aspects relating to game as detailed in the Guideline must be taken into account. This Guideline sets out minimum wildlife/ecological standards for wildlife passages on roads. The *Österreichische Autobahnen und Schnellstraßen GmbH* (Austrian Motorway and Expressway Company) was involved in the development of the Guideline.

2.7 Pilot areas and Pilot Regions in the ECONNECT Project

2.7.1 Pilot- Regions in the Econnect Project

The transboundary area Berchtesgaden - Salzburg⁵

⁴ CIPRA, Relevant instruments in the field of Ecological networks in the Alpine region, Background Report, March 2009.

⁵ Quote: Alpine Network of Protected Areas.

The pilot region Berchtesgaden/Salzburg lies along the **Austrian-German border** and comprises parts of the Free State of Bavaria (Germany) as well as the „Bundesland“ Salzburg (Austria). Several great protective areas are situated in this region: the national park und biosphere reserve Berchtesgaden as well as the nature reserve in the „eastern Alps of Chiemgau“, the natural park Weißbach, the nature reserves „Kalkhochalpen“ and „Tennengebirge“. Several cooperative projects already exist in this region and on their basis further cooperation can be established (e.g. data exchange, collective research, etc.). Due to the region being ecologically highly important and part of one biogeographical area, further cooperation towards interlinked biotopes is important.

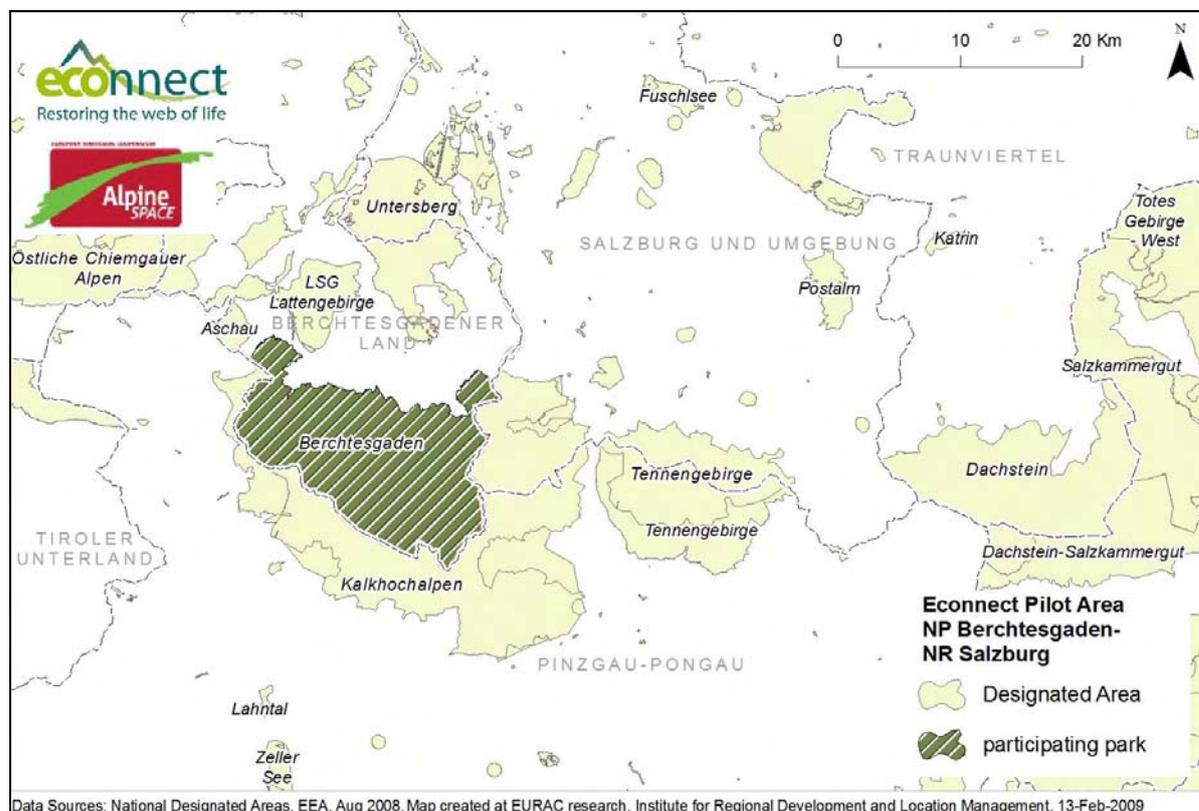


Fig 1: The transboundary area Berchtesgaden - Salzburg.

The region „Northern limestone Alps/Eisenwurzten/Gesäuse/Ötscher-Dürrenstein“⁶

The project region is shaped by its common history of the cultural area „Eisenwurzten“ and its more than 800 years of utilization. Even today the region builds a common cultural and economic space. It touches **three Bundesländer** as well as several protected areas. The region is characterised by vast areas with a low settlement density and a low degree of fragmentation, a large share of forest (>80 %), a densely structured cultural landscape and rich biodiversity. This region is also important

⁶ Quote: Alpine Network of Protected Areas.

as a connection to other alpine parts as well as to the neighbouring massifs of the Carpathian Mountains. During a first workshop in October 2006, a common initiative for building an ecological network was founded by the protected areas of the region.

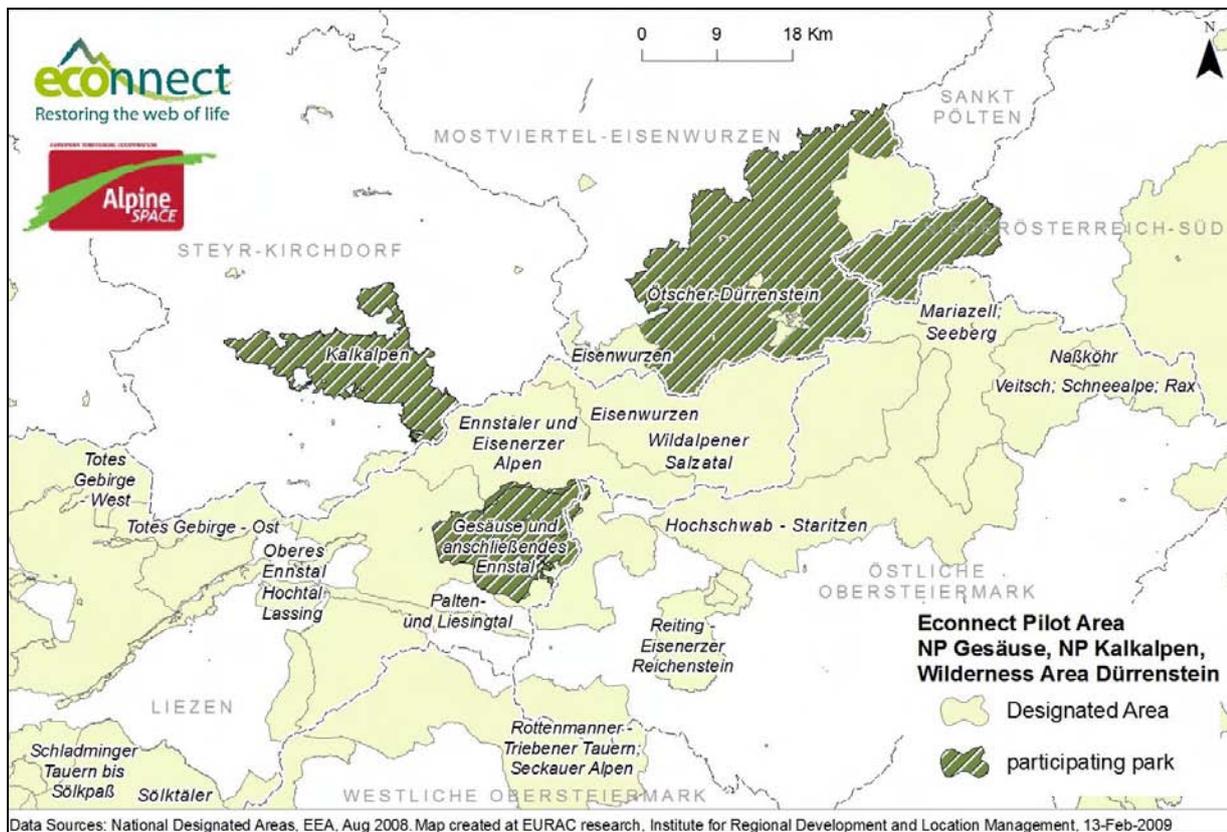


Fig 2: The region „Northern limestone Alps/Eisenwurzen/Gesäuse/ Dürrenstein“.

The area of „Hohe Tauern“⁷

In this region the south Tyrolean Natural Parks as well as the National Park „Hohe Tauern“ builds the largest cohesive protected network area in the Alps. Therefore this region is central for the alpine arc and an important intersection between the northern Alps and the southeast foothills in Slovenia which are specifically important for the large birds of prey. This area also represents the transition from the greater areas of the dolomites to the „Hohe Tauern“.

⁷ Quote: Alpine Network of Protected Areas.

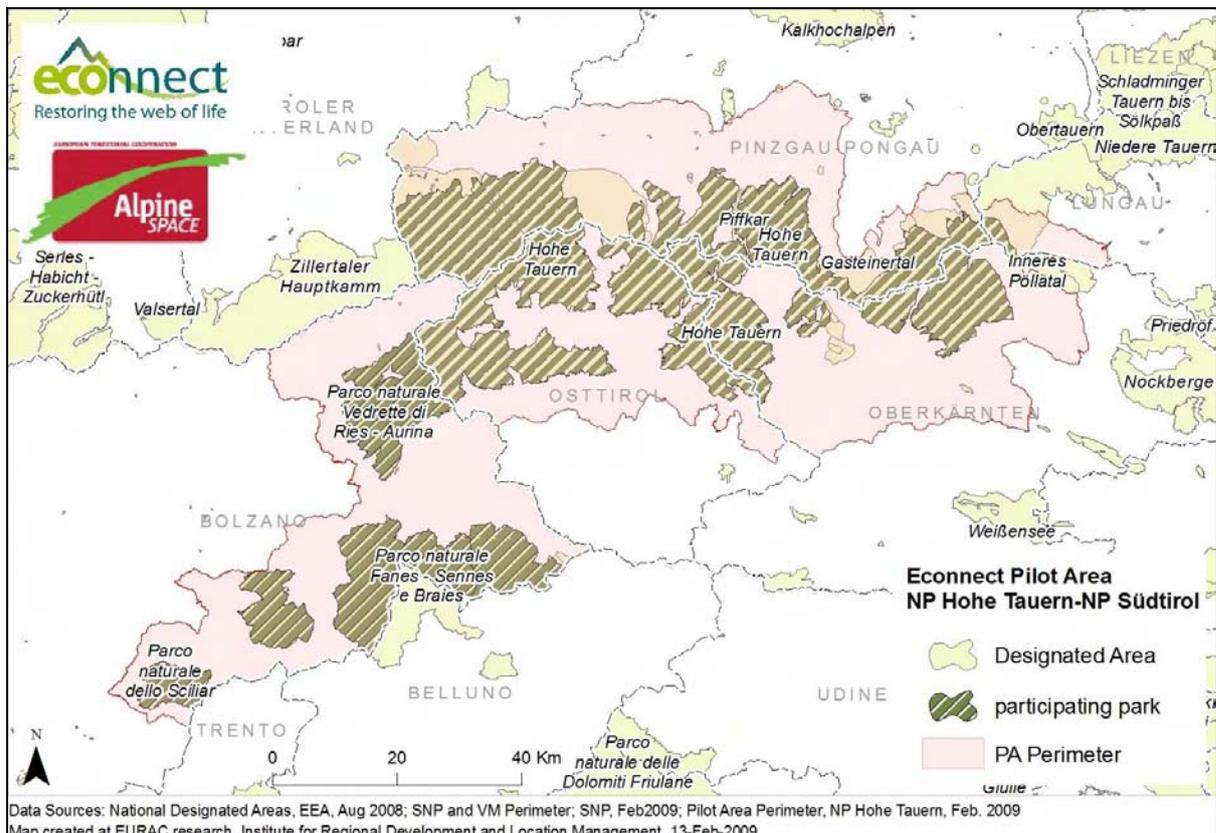


Fig 3: The Rhaethian Trinangel (Engadin/South Tyrol/Trentino/Tyrol).

2.7.2 Pilot areas in the ECONNECT Project⁸

For the creation of National Parks, there is conclusion of agreements between the *Bund* and the *Länder* according to the article 15 of the Constitution:

- Agreement on National Park Hohe Tauern (*Vereinbarung gemäß Art. 15a B-VG zwischen dem Bund und den Ländern Kärnten, Salzburg und Tirol über die Zusammenarbeit in Angelegenheiten des Schutzes und der Förderung des Nationalparks Hohe Tauern*⁹).
- Agreement on National Park Kalkalpen (*Vereinbarung gemäß Art. 15a B-VG zwischen dem Bund und dem Land Oberösterreich zur Errichtung und Erhaltung eines Nationalparks Oberösterreichische Kalkalpen*¹⁰).
- These agreements are not detailed and the provisions concerning the protection of the National parks are taken on regional level („*Unterschutzstellung von Teilen der Hohen Tauern durch die Nationalparkgesetze der Länder*“).

⁸ Quote: Alpine Network of Protected Areas.

⁹ Kundmachung des Landeshauptmannes vom 15. Juli 1994 betreffend die Vereinbarung gemäß Art. 15a B-VG zwischen dem Bund und den Ländern Kärnten, Salzburg und Tirol über die Zusammenarbeit in Angelegenheiten des Schutzes und der Förderung des Nationalparks Hohe Tauern, StF: LGBl. Nr. 71/1994.

¹⁰ Vereinbarung gemäß Art. 15a B-VG zwischen dem Bund und dem Land Oberösterreich zur Errichtung und Erhaltung eines Nationalparks Oberösterreichische Kalkalpen samt Anlagen (NR: GP XX RV 568 AB 636 S. 68. BR: AB 5417 S. 624.), StF: BGBl. I Nr. 51/1997.

2.8 The management of protected areas

There is no federal provisions concerning the management of protected areas and the provisions concerning this topic can be found in the regional law or ordinances adopted according to these laws. All the provisions concerning the planning, the regulations, the control and the monitoring in protected areas can be found on the regional level and in the most of the *Länder* in the Regional Law on Nature Protection (*Naturschutzgesetz* of the *Länder*).

2.9 Experiences as regards transborder cooperation between protected areas

There is a transborder cooperation between transborder protected areas and it happens particularly through the Programmes of the European Union like INTERREG. There is cooperation between the *Länder* concerning the transregional National Parks and also for Natura 2000.

3 TRANSBORDER COOPERATION

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

Two provisions of the Austrian Constitution have to be noticed for the question of transborder cooperation: the **article 10, paragraph 1**, which seems to be a limitation for the transborder cooperation of the *Länder*:

„The Federation has powers of legislation and execution in the following matters [...] external affairs including political and economic representation with regard to other countries, in particular the conclusion of international treaties, notwithstanding Länder competence in accordance with Art. 16 para. 1: demarcation of frontiers“.

But in fact there is no monopole of the Bund in the field of transborder cooperation¹¹.

Furthermore the **article 16, paragraph 1, of the Federal Constitutional Law**, laid down that *„[in] matters within their own sphere of competence the Länder can conclude treaties with states, or their constituent states, bordering on Austria“.* But for the time there is no agreement concluded on the basis of the article 16 of the Federal Constitution.

Although there is active transborder cooperation and it is often without a legal framework¹².

3.2 The international instruments for transborder cooperation and Austria

Austria has ratified the *European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities* and it entered into force in 1983 in Austria. This Convention was

¹¹ See the Report of the Austrian Parliament: *Rahmenbedingungen und Erfahrungen grenzüberschreitender regionaler Zusammenarbeit*, Parlamentarische Enquete des Bundesrates, November 2008.

¹² See the Report of the Austrian Parliament: *Rahmenbedingungen und Erfahrungen grenzüberschreitender regionaler Zusammenarbeit*, Parlamentarische Enquete des Bundesrates, November 2008.

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. Austria ratified also the two additional Protocols to the Outline Convention:

- The Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities. Austria ratified this text in March 2004 and it entered into force in June 2004 in Austria.
- Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation. Austria ratified this text in September 2006 and it entered into force in December 2006 in Austria.

According to the Outline Convention, **bilateral agreements** were concluded between Austria and others States:

- between Austria and Italian: *Rahmenabkommen zwischen der Republik Österreich und der Italienischen Republik über die grenzüberschreitende Zusammenarbeit von Gebietskörperschaften* (concluded a Vienna the 27 of Januar 1993 and entered into force in Austria and Italia in 1995)¹³.
- between Austria and Slovakia: *Rahmenabkommen zwischen der Republik Österreich und der Slowakischen Republik über die grenzüberschreitende Zusammenarbeit von Gebietskörperschaften*.

In Slovakia and in Italia the direct transborder cooperation of the territorial entities is only possible after the conclusion of executions agreement in the framework of the Madrid Convention.

A recent report on transborder cooperation underlined that the international legal tools are not very used in Austria for the transborder cooperation¹⁴.

3.3 The European Grouping of Territorial Cooperation and the Austrian Law

There is/was a debate in Austria in order to clarify who from the *Länder* or the *Bund* is competent to adopt the legislation for the EGTC. In the beginning of the transposition's proceedings, it was defined as a *Länderkompetenz*. Now it is clear that it is both competence of the *Bund* and the *Länder*: it will depend on the fields covered by the EGTC. It is an application of the so-called „*Generalklausel*” integrated in the **article 15 of the Austrian Basic Law/Constitution**. Article 15 is about the (about the sharing of competences between the *Bund* and the *Länder*). There will be 9 + 1 laws on the EGTC: 9 laws adopted on the regional (*Länder*) level and 1 adopted on the federal level. At the beginning of summer 2008, a bill¹⁵ was proposed on the federal level [*Entwurf* : „*Bundesgesetz über Europäische Verbände für territoriale Zusammenarbeit (EVTZ Bundesgesetz - EVTZ-BG)*”] and each *Länder* had to give his its opinion about the bill during the summer. There were different

¹³ Accordo sulla cooperazione transfrontaliera delle collettività territoriali.

¹⁴ See the Report of the Austrian Parliament: *Rahmenbedingungen und Erfahrungen grenzüberschreitender regionaler Zusammenarbeit*, Parlamentarische Enquete des Bundesrates, November 2008.

¹⁵ This text is under adoption at the date of the redaction of the text (End of March 2009): there will be changes in the next days.

opinions according to the *Länder* on this topic¹⁶. This Bill was sent by the National Council (*Nationalrat*) to the Constitutional Assembly (*Verfassungsausschuss*) during its 22. Session, the 19th May 2009. The first paragraph of this bill laid down the scope/area of application of the text. According to this first paragraph this law will be applied in case of the participation of the Bund in an EGTC and as far as the fields concerned by the EGTC do not fall in the exclusive competence of the *Länder*. Nature protection fall for instance in the exclusive competence of the *Länder*.

Article 1: „Dieses Bundesgesetz gilt [...]

1. für die Teilnahme [...] des Bundes sowie [...] von Einrichtungen gemäß Art. 3 Abs. 1 lit. d der Verordnung (EG) Nr. 1082/2006 über den Europäischen Verbund für territoriale Zusammenarbeit (EVTZ), ABl. Nr. L 210 vom 5. Juli 2006 S. 19, (im Folgenden EVTZ-Verordnung) und von aus solchen Einrichtungen gebildeten Verbänden an einem Europäischen Verbund für territoriale Zusammenarbeit (im Folgenden: EVTZ), soweit die genannten Einrichtungen und Verbände nicht in den selbständigen Wirkungsbereich der Länder fallen, sowie

2. für die Anzeige, Registrierung, Finanzkontrolle und Auflösung von EVTZ mit Sitz im Inland, all dies soweit die EVTZ-Verordnung keine Regelung enthält oder ausdrücklich auf ausführende Rechtsvorschriften der Mitgliedstaaten Bezug nimmt“.

On the regional level, laws were adopted and are under adoption in order to implement the European regulation:

- Laws on EGTC were already adopted in the *Länder* of Vorarlberg¹⁷ and Carinthia¹⁸.
- There are Bills in different *Länder*: in Styria¹⁹, in Salzburg²⁰, in Wien²¹.

The first paragraph of the Vorarlberg Law on the EGTC precises also that the law applies if the EGTC is concluded in domains where the *Land* is competent to legislate: „Dieses Gesetz regelt die Maßnahmen, die für die Anwendung der Verordnung (EG) Nr. 1082/2006 über den Europäischen Verbund für territoriale Zusammenarbeit (EVTZ) erforderlich sind und in die Gesetzgebungskompetenz des Landes fallen“. A similar precision is also given in the first paragraph of the Bills of the *Länder* Styria and Salzburg.

However there are contradictions between the bill of the Federal Law (*Bundesgesetz*) and the laws adopted by the *Länder* (or the bill elaborated by the *Länder*). Indeed according the bill of the Federal Law (*Bundesgesetz*) concerning the communication, the registration and the communication to the Bund it is competence of the governor (*Landeshauptmann*) otherwise it is competence of the and Land Government (*Landesregierung*) in the laws or bills of the *Länder*: see for instance the Law

¹⁶ On line on URL: http://www.parlament.gv.at/PG/DE/XXIII/ME/ME_00210/pmh.shtml (10 March 2009)

¹⁷ Gesetz über den Europäischen Verbund für territoriale Zusammenarbeit (EVTZ-Gesetz), Beilage 131/2008.

¹⁸ Gesetz vom 18. Dezember 2008 über den Europäischen Verbund für territoriale Zusammenarbeit (Kärntner EVTZ-Gesetz - K-EVTZG), StF: LGBl Nr 20/2009.

¹⁹ Entwurf- Gesetz [...] über die Anwendung der Verordnung des Europäischen Parlaments und des Rates über den Europäischen Verbund für territoriale Zusammenarbeit (Steiermärkisches EVTZ-Anwendungsgesetz - StEVTZG).

²⁰ Entwurf- Gesetz [...] betreffend die Anwendung der Verordnung des Europäischen Parlaments und des Rates vom 5. Juli 2006 über den Europäischen Verbund für territoriale Zusammenarbeit (EVTZ-Anwendungsgesetz - EVTZ-G).

²¹ Gesetz betreffend den Rahmen für die Anwendung der Verordnung (EG) Nr. 1082/2006 über den Europäischen Verbund für territoriale Zusammenarbeit (W-EVTZG).

on EGTC (*Gesetz über den Europäischen Verbund für territoriale Zusammenarbeit -EVTZ-Gesetz*) adopted by the Land Vorarlberg.

The inputs of the EGTC on the Austrian level :

The EGTC is an interesting instrument for transborder cooperation on Austrian level. In fact some remarks could be made on the current Austrian legal framework²²:

- a clear legal basis for public groupings in general (exemption: for the local level within one Land) is missing in the Federal Constitution
- there are any legal basis for public groupings beyond borders in the Federal Constitution. Indeed Austria made a reservation by the ratification of the First Additional Protocol to the Madrid Convention²³)
- the Federal Constitution offers only a complex procedure for intergovernmental treaties of *Länder* (no treaties has been concluded on this basis until today) (**Article 16**).
- as regarding cooperation beyond borders, the Federal Constitution is totally blind and neglecting the status of European Integration.

²² These critics were developed by J. Maier the 15 May 2009, in the framework of a Workshop held in the European Academy of Bolzano (Italy).

²³ Declaration contained in the full powers handed at the time of signature on 28 February 2001 - Or. Fr.- and confirmed in the instrument of ratification deposited on 17 March 2004. " *The Government of the Republic of Austria, in accordance with Article 8 of the Additional Protocol, declares that it will apply the provisions of Article 4 only*". [The preceding statement concerns Article(s) : 8].

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Work Package 6 “Legislation”

THE LEGAL FRAMEWORK OF PROTECTED AREAS IN THE ALPINE STATES

France

Elaborated by
CIPRA France



Grenoble, August 2009



Italian Ministry of the
Environment, Land and Sea



EURAC
research

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Contents

Contents	2
1 GENERAL POINTS	4
1.1 Organisation of the State	4
1.2 The legislative and executive.....	4
1.3 Status of International Treaties and European Community Law.....	5
2 NATURE PROTECTION AND SPATIAL PLANNING	5
2.1 The preservation of mountain areas and the law	5
2.2 The distribution of power and legislative competencies	6
2.3 The Legal Framework of Nature Protection	6
2.4 The Legal Framework of Spatial Planning	7
2.5 The protected areas in the legislation on Nature protection	9
2.6 The legal provisions as regards ecological connectivity.....	10
2.7 The ecological connectivity in non legally-binding documents	12
2.8 Pilot areas in the ECONNECT project.....	13
2.9 The existing transborder cooperation as regards protected areas.....	19
3 TRANSBORDER COOPERATION	19
3.1 The powers of the Rhône Alpes Region and Provence Alpes Côte d'Azur Region as regards transborder cooperation.....	19
3.2 France and the International Law on Transborder Cooperation	19
3.3 The European Grouping of Territorial Cooperation (EGTC) in Law.....	20
4 Bibliographie :	21

1 GENERAL POINTS

1.1 Organisation of the State

The French state is a unitary one. The executive, the legislature and the court systems are arranged on national lines.

According to **Article 1 of the Constitution**, the Republic is decentralised:

“France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralised basis.”

Article 72 of the Constitution quotes the various territorial communities:

“The territorial communities of the Republic shall be the Communes, the Departments, the Regions, the Special-Status communities and the Overseas Territorial communities to which article 74 applies. Any other territorial community created, if need be, to replace one or more communities provided for by this paragraph shall be created by statute.

Territorial communities may take decisions in all matters arising under powers that can best be exercised at their level.

In the conditions provided for by statute, these communities shall be self-governing through elected councils and shall have power to make regulations for matters coming within their jurisdiction.

In the manner provided for by an Institutional Act, except where the essential conditions for the exercise of public freedoms or of a right guaranteed by the Constitution are affected, territorial communities or associations thereof may, where provision is made by statute or regulation, as the case may be, derogate on an experimental basis for limited purposes and duration from provisions laid down by statute or regulation governing the exercise of their powers.

No territorial community may exercise authority over another. However, where the exercising of a power requires the combined action of several territorial communities, one of those communities or one of their associations may be authorised by statute to organise such combined action.

In the territorial communities of the Republic, the State representative, representing each of the Members of the Government, shall be responsible for national interests, administrative supervision and compliance with the law.”

1.2 The legislative and executive

1.2.1 The legislative

France has a bicameral parliament. The two chambers are the National Assembly (*Assemblée Nationale* - elected by the direct universal suffrage) and the Senate (*Sénat* - elected by the indirect universal suffrage). Both chambers can initiate the legislation and both chambers must approve most bills before becoming law. They control the Government action. Moreover the law making power is expressly given by the Constitution to Parliament.

1.2.2 The executive

The executive is composed of the Governmental crew with the Prime Minister at the head. The Government has also the legislation initiative.

1.3 Status of International Treaties and European Community Law

1.3.1 International Law

Article 55 of the Constitution provides that “[t]reaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party”.

1.3.2 European Law

The same rules of the International law apply to the European law. However the Constitution displays a heading title about the relations between the European Community and the French State (See Title XV and Articles 88.1 and 88.4 of the Constitution):

Article 88-1: “The Republic shall participate in the European Communities and in the European Union constituted by States which have freely chosen by virtue of the treaties which established them to exercise some of their powers in common.

It shall participate in the European Union in the conditions provided for by the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed on 13 December, 2007.”

Article 88-4: “The Government shall lay before the National Assembly and the Senate drafts of European legislative Acts as well as other drafts of or proposals for Acts of the European Union as soon as they have been transmitted to the Council of the European Union.

In the manner laid down by the rules of procedure of each House, European resolutions may be passed, even if Parliament is not in session, on the drafts or proposals referred to in the preceding paragraph, as well as on any document issuing from a European Union Institution.

A committee in charge of European affairs shall be set up in each parliamentary assembly.”

2 NATURE PROTECTION AND SPATIAL PLANNING

2.1 The preservation of mountain areas and the law

Before 1985 the State adopted Guidelines (directives) in the field of nature protection and spatial planning for the mountains local communities. There were not legally binding.

Law n° 85-30 of the 9 January 1985 concerning mountains development and conservation:

This law deals with protection and social-economic development of mountain areas. The law created specific institutions for mountains: massif comities (*comités de massif*) and the National

Mountain Council (*Conseil National de la Montagne*). This law, after integrated in the Building Code (*Code de l'urbanisme*), defines the principles for spatial planning in mountain areas and protection of mountain areas. Concerning ecological connectivity, the principle of “urbanization in continuity” is very interesting (Article L.145-3 Building Code):

“Urbanization should be realized in continuity with towns, villages, hamlets, group of traditional buildings or existing housings”.

“The lands required for maintaining and developing agriculture, pastoralism and forestry are preserved”.

See also **Articles L.145-1 to L.145-13 Building Code** (*Code de l'urbanisme*): land settlement principles, protection of mountains areas and principle of “new touristic units” (“*unités touristiques nouvelles*”).

France ratified also the Alpine Convention and its Protocols. The Framework Convention sets out the basic principles of all the activities of the Alpine Convention and contains general measures for the sustainable development in the Alpine region. The Framework Convention was ratified in 1995 and most of the Protocols in 2005. Specific measures implementing the principles laid down in the framework Convention are contained in the Protocols to the Alpine Convention. In the Protocols, concrete steps to be taken for the protection and sustainable development of the Alps are set out. The existing Protocols cover many different issues: spatial planning and sustainable development, conservation of nature and the landscape protection, mountain farming, mountain forests, tourism, energy, soil conservation and transport¹.

2.2 The distribution of power and legislative competencies

Both Executive and Legislative powers could be initiated by the law but the Constitution plans the each ability. Indeed, since the incorporation of the Charter for Environment in the Constitution in 2005, the power of making law in the environment estate is assigned to the Parliament authority. The article number thirty of the Constitution defines the legislative competence.

Generally, the Government crew steps in environmental matter. It takes several measures to implement the law like decree, bylaw (*décrets, règlements, arrêtés, etc.*).

2.3 The Legal Framework of Nature Protection

Legal tools on Nature Protection are brought together into the Environment Code (*Code de l'Environnement*). It is composed of two parts: laws and regulations.

¹ See the Internet Web-Site of the Alpine Convention.

2.4 The Legal Framework of Spatial Planning

2.4.1 National level

The main part of legislation on spatial planning is codified in the Building Code (*Code de l'urbanisme*) and few measures can be found in the Forest Code (*Code forestier*) and in the Tourism Code (*Code du tourisme*). There are also two parts: a legislative one and a regulatory one.

The Charter for the Environment (*Charte de l'environnement*) which has now a constitutional value could also support ecological connectivity. In fact everyone has to contribute to the improvement of environment and to the restoration of its quality.

Article 2: “Everyone is under a duty to participate in preserving and enhancing the environment”

Article 3: “Everyone shall, in the conditions provided for by law, foresee and avoid the occurrence of any damage which he or she may cause to the environment or, failing that, limit the consequences of such damage”.

Territorial communities are organized on several levels and each one has a special assignment. Local communities could not infringe between them. State and Region have an impulsion role for the local communities. Department devotes itself to general orientations. The group of communes passes measures concerning spatial planning. More particularly, this entity plans the SCOT (a tool defining the global spatial planning strategy of a precise area). In consequence, this level lays of a great power of estimation to define the politic concerning ecological connectivity. Moreover, we must include “river contract” or “Rhône-Alpes development contract”. “Communes” plan the building documents like the PLU and communal map (“*carte communale*”).

2.4.2 Regional level

Several means contribute to spatial planning. They point out to the law for “solidarity and urban regeneration” of the 13th December 2000 (*loi “solidarité et renouvellement urbain”*). It was planed that local spatial planning procedures have to take into account littoral, mountains, landscape laws, the charters of the Natural Regional Parks, environmental guidelines and other environmental protection measures (Biotopes protection protectoral by-law). This law is reinforced by a decree adopted in May 2005 on the assessment of town planning documents. Urban master plan and urban planning must realize an environmental assessment, which understands the ecological connectivity. Once identified, ecological connectivity was fully integrated of this approach.

Land settlement guidelines or regional spatial planning directives (such as the “*Directives Territoriales d’Aménagement*”) could be used to promote conservation and management of ecological connectivity. The Northern Alps spatial planning directive is under development and contains this notion (see the *Livre Blanc des Alpes du Nord*).

Urban master plan or long term urban-planning document (*Schéma de Cohérence Territoriale-SCOT*)

The different steps for the elaboration of an Urban Master Plan:

- a presentation report : economics, demographics forecast and needs (spatial planning). This document contains an analysis of an estimated environmental initial state, a perspective progress and an assessment impacts.
- a project on sustainable spatial planning and development (Projet d'Aménagement et de Développement Durable) and orientation guidelines : this legal document tries to conserve a balance between development and environmental protection (e.g. landscape protection).
- an environmental assessment: it is obligatory by due to the Decree n° 2005-6082.
- This document is not restrictive and the local communities are not obliged to consider ecological connectivity but this document has to fit with others official documents like "Schéma National des Services Collectifs des Espaces Naturels et Ruraux". Others non-restrictive documents plan the notion: i.e. Landscape Plan (plan paysage) between the State and local communities, and the environment Charter between the local communities and the Ministry of Ecology, Energy, Sustainable Development and Sea (MEEDDM - Ministère de l'Ecologie, de l'Energie, du Développement Durable et de la Mer). This document leans on contractual and regulatory instrument.

Urban Planning (Local urban plan - "*plan local d'urbanisme*")

The Building Code sets out general principles of the town planning rights (Article L.121-1 Building Code): local communities must find out the balance between urban renewal, the overcome of urban development and Natural Space preservation.

- Local authorities must ensure the natural continuity at the time in an initial state analysis (R 123-2 Building Code).
- Development projects and sustainable development (Articles L121-1 and R123-2 Building Code) define the town planning orientations and development in favour of urban renewal, architectural quality preservation and environment. It must do accommodate development and environmental preservation issue goals.
- The Local Urban Plan should respect the objectives of the sustainable development while it has find out a balance between different principles or phenomena such as, in one hand, urban renewal, a controlled urban development, rural area development, and in an other hand, the preservation of lands dedicated to agricultural activities and forestry, the protection of landscapes and natural areas. Despite the difficulties to integrate all these conditions, a PLU can ease and promote the development of ecological connectivity.
- Regulation: it deals with soil occupation and standardizes constructions, aspects and access implementation. It allows defining fences and obligations about plantation.
- Zoning (Articles R.123-9 and R123-11 and 12 Building Code): a zoning approach characterizes the PLU and thus allows the protection of ecological continuum and connectivity. Several zones could be defined: Zone A protects some background biologics, economics, etc., and Zone N protects ecological areas for example.
- Others particular regulatory dispositions were planned in Articles L123-1-7 and R123-8 Building Code's articles. It refers to ecological grounds or initiatives (permeable fences,

² Décret N° 2005-608 du 27 mai 2005 relatif à l'incidence des documents d'urbanisme sur l'environnement modifiant le Code de l'Urbanisme.

prohibit construction in a field). For example, we can quote reserved location on the roads and public works.

- Moreover local communities can create a “classified wood space” (Espace classé boisé - L130-1 Building Code). Therefore, a modification of the classification does not affect the conservation, protection and creation of these spaces.

Communal maps (“cartes communales”):

It is a report based on the analysis of an estimated initial state. The document justifies and values the choice made about the environment. It explains the preservation recommendations’ and their enhancement. Zoning is a lonely document to own juridical strength and allows or forbids constructions on the area.

2.5 The protected areas in the legislation on Nature protection

The legislation on nature protection is elaborated by the State. The dispositions concerning this point can be found in the Environment Code (*Code de l’environnement*). The different categories of protected areas in France are:

Tab. 1: Categories of protected areas on Nature Protection

Categories of protected areas	Legal dispositions (Code de l’environnement/ Environment Code) concerning these areas
National Parks Heart and adhesion area	Art. L. 331-1 à L. 331-29 Art. R. 331-1 à R. 331-85
Regional Nature parks	Art. L. 331-1 à L.333-4 Art. R. 331-1 à R. 333-16
Natural reserves (Réserves naturelles classées, réserves naturelles volontaires, réserves naturelles nationales, réserves naturelles régionales)	Art. L. 332-1 à L. 332-37 Art. R. 332-1 à R.332-81
Natura 2000 areas	Art. L. 414-1 à L. 414-7 Art. R. 414-1 à R. 414-24
Registered and classified sites	Art. L. 341-1 à L. 341-22 Art. R. 341-1 à R. 341-31
Other protected areas	Art. L. 342-1

Others areas have been created in the aim to reinforce the **ecological connectivity**. Among them, we can quote:

- Biosphere reserves: MAB network
- Wetlands result from Ramsar Convention;
- Sensitive natural areas (espaces naturels sensibles) and departmental taxes;
- ZNIEFF Natural Zone with ecological fauna and flora interest (zone naturelle d’intérêt écologique faunistique et floristique);
- Biotopes decree (Arrêtés préfectoraux de protection de biotopes);

- Inventory of natural and cultural patrimony (Inventaires du patrimoine naturel et culturel);
- Reserves (Réserves biologiques domaniales et forestières, de chasse, de faune sauvage et de pêche)
- Protected forest
- Operation grand site

2.6 The legal provisions as regards ecological connectivity

2.6.1 European Law

The provisions of the Habitats directive

The Habitats Directive³ intends to create an ecological network through Europe. The provisions of Article 10 of this directive contain measures for improving the ecological coherence of the ecological network. This disposition is like a recommendation:

„Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora. / Such features are those 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 ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species”.

According to the Guidance on the maintenance of landscape elaborated at the European level, connectivity features of major importance for wild flora and fauna⁴ and for improving the coherence of the Natura 2000 Network. It is clear from the texts of the Habitats directive that the interpretation of the concept of „coherence” is a key issue affecting the implementation of directives. When considering the ecological coherence of Natura 2000, it is important to note that the completed Natura 2000 network - defined by the Habitats directive as the sum of all areas designated for conservation under the Birds and Habitats directives (*Article 3.1 of the Habitats directive*) - is a collection of individual protected sites in order for these protected sites to actually form an ecologically coherent network. Then, necessary functional connections amongst the sites and their surroundings must be maintained. Therefore management measures may need to go beyond the designated sites’ boundaries and apply to the wider environment.

The article 10 of this Directive is not transposed in the Environment Code.

³ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora OJ L 59, 8.3.1996, p. 63.

⁴ KETTUNEN Marianne, TERRY Andrew, TUCKER Graham and JONES Andrew, *Guidance on the maintenance of landscape connectivity features of major importance for wild flora and fauna. Guidance on the implementation of Article 3 of the Birds Directive (79/409/EEC) and Article 10 of the Habitats Directive (92/43/EEC)*, Institute for European Environmental Policy, August 2007.

The Pan European Ecological Network

The Emerald network intends to create an ecological network composed of areas of special conservation interest. This project registers in the continuity of the Habitats Directive but it concerns also the non communitarian States like Switzerland. The objective of this Ecological Network is to conserve wild flora and fauna and their natural habitats, especially when conservation requires the cooperation of several States. The Standing Committee has taken the 16 Recommendation (1989) which recommend to the parties “to take steps to designate Areas of Special Conservation Interest to ensure that the necessary and appropriate conservation measures are taken for each area situated within their territory or under their responsibility where that areas fits one or several of the followings conditions”. More specifically, the agreement foresees to link together the Areas of Special Conservation Interest, the cores areas and form a coherent ecological network.

The Emerald Network has the same objectives of the Directive Habitats but it is not legally binding and depends on the States’ will.

The European Water Framework Directive⁵

The Directive 2000/60/EC of the European Parliament and of the Council establishes a framework for the Community action in the field of water policy. According to Article 4 of this text, “Member States shall protect, enhance and restore all bodies of surface water, subject to the application of subparagraph for artificial and heavily modified bodies of water, with the aim of achieving good surface water status at the latest 15 years after the date of entry into force of this Directive (...)”.

2.6.2 National Law

Recently adopted legislative measures: see Articles 23 to 26 of the Programming Law for the implementation of the *Grenelle de l’environnement* (Loi de programmation relative à la mise en oeuvre du Grenelle de l’Environnement) adopted the 3th of August 2009⁶. The articles 23 to 26 are dealing with the creation of a “green way” (“trame verte”) and a “blue way” (“trame bleue”).

According to Article 23 of this law, the State is attached to create, by 2012, a Green Way. It will be constituted on the basis of scientific indications. These Green and Blue Ways will associate the State, the territorial communities and the stakeholders on a contractual basis. The taking into account of the Green Way by spatial planning will be defined at the end of 2009.

The Law on nature protection of 10th July 1976⁷ statues that “landscape preservation is of general interest”. The importance of the landscape in law was also reinforces with the transposition of the

⁵ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, pp. 1-73).

⁶ Loi n° 2009-967 du 3 août 2009 de programmation relative à la mise en œuvre du Grenelle de l’environnement (JORF n°0179 du 5 août 2009).

⁷ Loi n°76-629 du 10 juillet 1976 relative à la protection de la nature (JORF du 13 juillet 1976 p. 4203).

provisions of the Directive 85/337 on the assessment of the effects of certain public and private projects on the environment⁸.

The Law on Landscape preservation of 8th January 1993⁹ plans initial state analysis and environmental studies.

The Orientation Law for spatial planning and sustainable development of 25th June 1999 (*Loi d'Orientation pour l'Aménagement et le Développement Durable du Territoire*) identifies ecological network, protected areas continuity and extension. It plans the establishment of a national ecological network within 20 years. One of the goals of the national ecological network is to carry out the implementation of connectivity between areas of major ecological interest due to the creation of links between main ecological cores. It aims at facilitating genetics exchanges among biological species, migration and scattering.

This law has created the Scheme of Collective Services of Rural Natural Areas (le Schéma des services collectifs des Espaces Naturels Ruraux) by a decree pronounced on the 18th April 2002.

Other provisions concerning ecological network:

- **Biotopes Decree (1976)** is dealing with specific preservation areas.
- Forest preservation: Article L.130-1 Building Code codifies legal measures and plans financial compensation for wooded massif.
- Ecological and transport infrastructures and equipments: fish passes (*“les passes à poisson”*) are predicted by law of 29th June 1984 and codified in the article L432-5 and 6 of the Environment Code. The Transport White Book makes a reference to fauna passing (*“Passage à faune”*). The Law of 10th July 1976 concerning land settlement development (*loi pour l'aménagement du territoire*) gives to the departments the possibility to class sensitive natural areas (article 16 and followings).
- Farming, fishing and hunting policies contain measures about the preservation of the “ordinary nature” (*nature ordinaire*).

2.7 The ecological connectivity in non legally-binding documents

2.7.1 National level

- The *National Strategy on Biological Diversity* was adopted in 2004 by the French Government. One of the measures of this Strategy is the improvement of ecological connectivity (it refers to landscape diversity preservation and to the ecological connectivity improvement on a territory scale). This text is not legally-binding but expresses the will of the government. It is also completed by different action plans in the fields of agriculture, infrastructures, spatial planning, etc.

⁸ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40-48).

⁹ Loi n° 93-24 du 8 janvier 1993 sur la protection et la mise en valeur des paysages et modifiant certaines dispositions législatives en matière d'enquêtes publiques (JORF n°7 du 9 janvier 1993 p. 503).

Regional and departmental level

- Region Rhône-Alpes is working at the implementation of its Ecological Network. The Region helps the Department of Isere to strengthen its Ecological network and to extend it to the whole region. The Region Rhône-Alpes accomplished in 2009 a great step for the concrete implementation of ecological connectivity by having realized a map of the regional ecological corridors. While this map is currently spread and distributed to all local communities, it has to encourage local communities (and more specifically group of local communities) to precisely identify the ecological corridors in their own territory. A contract can be signed between the Regional Council and local communities when these last ones set up a strategy to implement or maintain ecological corridors. Local communities can thus obtain a financial support from the Regional Council.
- Although, the Department of Haute Savoie has elaborated its own initiative for ecological network with the participation of the Canton of Geneva. The “*Agglomération Franco Valdo Genevoise*” foresees the implementation of ecological connectivity between 200 French and Swiss communes. The French Communes are financially supported by the Region Rhône-Alpes.
- The Ecological Network of the Isere Department (Réseau Départemental de l’Isère - REDI). Building process is supported by a voluntary participation between territorial communities. This first step was discussed by territorial communities as much as by citizens. Moreover, its establishment involves more significant constraints such as “non-buildable” land.
- The Department’s policy for Sensitive Natural Areas (SNA), aims at protecting natural spaces (articles L. 110, L. 142 and L. 442 Building Code). A Department disposes of two procedures to protect these particulars areas: the perception of the Departmental Tax for Sensitive Natural Areas and the pre-emptive right. This policy finds difficult to apply but it allows a SNA network.

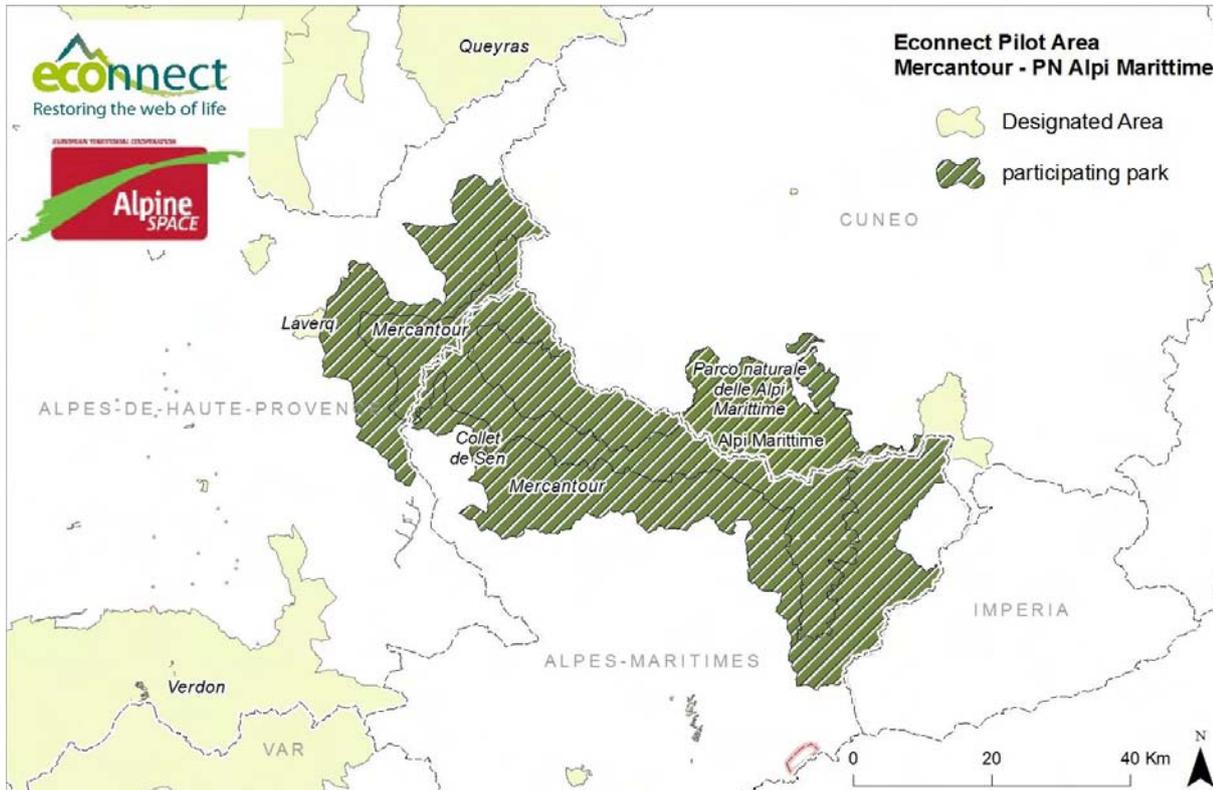
Some provisions of the French Constitution open the possibility for the Region and the Department of supporting/improving the ecological connectivity. These last years, an important policy about ecological network was developed on these levels. The Rhône-Alpes Region realized cartography at the regional level and identified the main conflicts points in this level. They step in this field like instigators, partners, financial, human and economic support. Several contracts are concluded with communes and group of communes for the promotion of ecological network. So, they conclude rivers, biodiversity, ecological or country contracts.

With these contracts, the Region has a fundamental place. This territorial community is very interested in this politic and plays an impulsive function because it crews communes throughout the project. A new tool has been created, the “*contracts corridors*” which are contracts concluded between the Region and Communes or their association to implement ecological connectivity on their territory. A first steps implies a territorial diagnostic and the realization of precise local cartography and a plan of measures. The second steps deals with the elaboration of a five-year action plan. The five-year action plan contains several measures: acquisition, restoration, conservation, etc.

2.8 Pilot areas in the ECONNECT project

The Mercantour National Park (Part of one pilot region in the ECONNECT project and Partner of this project) is located in the southwest of France, and concerns the two Departments of Alpes

Maritimes and of Alpes de Hautes Provence. The Park was founded in 1979 and covers a surface of 2149,5 km². Fauna and flora diversities characterize its high mountains landscapes.



Data Sources: National Designated Areas, EEA, Aug 2008. Map created at EURAC research, Institute for Regional Development and Location Management, 13-Feb-2009

Fig 1: Econnect Pilot Area Mercantour-PN Alpi Marittimi

The transboundary area "Rhône-Alpes Region - Piemonte Region": pilot region in the ECONNECT project

The pilot Region Mercantour/Parco naturale Alpi Marittime lies along Alpi Marittime border and comprises parts of the Department of Alpes Maritime (French) as well as Regione Piemonte (Italia). These both Parks are characterized by their cooperation. Indeed, since 1984, the Mercantour National Park established a preferential relationship with the Parco naturale Alpi Marittime. Moreover, these Parks have been twined in 1987. Together, they create an ecological unitary area and they are qualified of no-borders Mountains. This cooperation allows them to answer to the conservation and administration objectives for their common patrimony. These no-borders Mountains are registered on the UNESCO World Heritage Centre list¹⁰.

¹⁰ Abstract of the Internet Web Site of the National Park Mercantour (online one url: www.mercantour.eu)

National Park establishment proceeding:

It is a long proceeding and it ends by a State Council Decree (*décret en Conseil d'État*), art. L.331-7 and followings Environment Code. Enforceable rules are aggregated into the Environment Code regulatory part.

Several phases characterize the establishment of a national park:

- Realisation of feasibility survey by an interdepartmental committee. This will be the base of the process that will lead to the creation of the national park. At the end of the proceeding, the Prime Minister takes the establishment decision.
- A public research is organised by the prefect of department.
- Minister of Environment can suggest a Decree project. Ministers' Council can review it, so the Republic President can agree with the scheme.

National Park organisation:

Parks' zoning: the heart of Park areas and the accession area (before the reform: the central and the peripheral zone) can be distinguished. The central area is the most preserved. This area is determined by an allocation Decree, which defines rules and constraints. Generally, the heart of heart is protected against all activities. Peripheral zone has been designed for double interests. In this area, national park's goal has been deflected because the development has prevailed on the preservation of these areas (**Article L331-1 of the Environment Code**).

"The territory of all or part of one or several communes may be classified a national park by a Conseil d'Etat decree, when the preservation of fauna, flora, ground, subsoil, atmosphere, water and the natural environment in general, is of special interest and it is important to preserve the area against the effect of natural damage and remove any artificial interventions which could alter its appearance, composition and development. Classification decrees may affect public coastal areas and French territorial and inland waters".

Administrative organisation:

It is a local public establishment that handles administrative questions (un établissement public à caractère administratif). It is controlled by the Department prefect and the Administrative Judge.

Framework:

The Administrative Council is a deliberative assembly that comes together two times each year. A standing commission manages the park during the rest of the year.

The main role of this organ is an orientation function. It defines the principles concerning space development, administration and regulation (it anticipates project about spatial planning). It has a decision power about budget. Moreover it has a consultative opinion concerning all questions about the park's life. It controls the Park's Director.

This organ gathers many corporations such as local elected official, forest national office, scientific, socioprofessional, land-owner representatives, etc.

There are executive and administrative politics. Director implements the Administration Council's resolutions. He represents the legal life of the Park and manages the staff. The Administration Council delegates him powers, for example normative powers.

The Director disposes of a special policy power and he takes regulatory by-law. This power has to serve the implementation of the law and spatial planning rules. He takes also individual measures towards some activities (notably concerning sports activities). He has a consultative power concerning forest and ore-mining.

Director's powers differ according to the filing decree from a park to another.

Regulatory activities:

There is a regulatory principle of human activity in heart of park (central area), which can ban some activities. Generally filing decree softens this restriction. The Mountains' law enounced that *"the cooperation between parks and territorial communities" is promoted "for the development"*, which put aside the protection principle. However, judge prevail the preservation.

In every instance the filing decree or the Environment Code regulates natural resources and farming, pastoral, forest activities and sport activities. As a rule, works are banned except when they are planned by the development policy. Director gives licence for building.

For land-owners, the Environment Code predicts a financial compensation. Moreover, the Law punishes violations to the effective regulation.

Balance:

The goal of conserving nature is efficient and it concerns generally great areas. Moreover, National Parks are created in humanized areas, even if citizens have rejected the project. Indeed, citizens are not consulted when the creation decision is taken.

Yet we can notice an accession area (peripheral area) failure. It was first planed to create a buffer zoning whereas it has finally been used to get financial compensation and to allow development projects.

Parks suffer from structural inadequacies and label effect (the creation has caused mass effect from population).

National Park reform:

There are several critics against Park administration by local elected officials. Despite these critics the Republic President Jacques Chirac wanted to promote and extend the ecological image of France which is mainly communicated through National Parks. The Decree of 14th April 2006 has melt down again articles L331-1 and followings Environment Code. Since this date, more regulatory disposals have been planed to complete the 2006 Decree.

The new Article L.321-29 Environment Code predicts a new local public establishment. It coordinates parks' mission, serves to the communication, and has a consultative function with all parks. This organ is called France national parks (Parcs Nationaux de France). The restoration and the conservation of the ecological connectivity have been adopted by the solidarity strategy established by them.

Mains reforms

Park creation: the motivations are the same but the reference to cultural heritage preservation is added. This modification only concerns future Parks.

A new structure will be created to help the new project. It is a Public Interest Group (groupement d'intérêt public). Its aim is to enable collaboration between several actors. A new vocabulary applies in order to distinguish areas. Existing Park must revised their creation decree and consider new regulatory.

Zoning: the old central area (la zone centrale) becomes heart of Park areas (zone Coeur de Parc) with a distinction between urbanized and non-urbanized areas, and the old peripheral area (la zone périphérique) becomes accession area (aire d'adhésion). This last area aims at carrying out geographical continuity in relation to the heart of Park area, and at improving an ecological solidarity in the heart of Park area.

Centralized authorities have aspired to lay down a strong authority for the heart of Park area and a concerted and voluntary approach for the accession area.

“Contractualisation”: now, Charters allow discussion between local authorities and rules are no more laid down by the convention. The State controls and approves Charter. Administrator organism or public interest group prepare Charter which is adopted by Decree. Territorial communities and more particularly group of communities (le groupement de communes) give their opinion about Charter's project while the Charter is going to lay down development documents. Parks authorities are associated to the elaboration of these documents. Therefore, environmental standard requirements are quite weak.

The aim of the Charter is to apply similar principles at all parks.

Concerning the heart of Park area, the Charter determines the preservation objectives, details the protection measures taken by the decree. Concerning the accession area, it determines preservation orientation and development objectives.

The public establishment tries to carry out a contractual policy. Moreover a revising procedure is anticipated and village could step down from the Park.

Administrative evolution:

Local authorities have their power reinforced in the Administration Council. Consequently, the executive power is shared between the Director and the Administration Council President, who is generally a local elected official. The goals of the Parks could be reduced due to the wishes of local elected officials.

The Charters of National Parks has to be approved in 2011.

The national regulation is reinforced. It bans industrial, mining and publicity activities. A compulsory regulation must be taken for farming and pastoral activities. For the works occurring in the park, it is necessary to delimit authorized areas because the impacts of these works are different. The opportunity to realize works are different according to the localisation, e.g. urbanised or non-urbanised zone in the heart of Park area.

Particular rules are enforceable in the Park: depending on the area they result from either the fling decree (what concerns the heart of Park area), or the Charter (for the rest of the Park).

The repressive system is reinforced and it is more efficient because it gives control means to the Park staff.

The French Department of Isère

The Department of Isère lies in the French Rhône-Alpes Region. An intense density of population characterizes this region and constitutes a factor of spatial fragmentation. Human activities are concentrated in the valley but this area is essential for the migration of fauna and flora species. So, the Valley of Grésivaudan has been identified like pilot area because of potentials on ecological connectivity matter. This pilot region is composed of protected and unprotected areas. Therefore, all legal tools have to be used in order to protect these areas. The Department Isère works on ecological networking since 1996. One of the first tasks was to analyse the existing ecological networks in this pilot region. A group of experts was mandated to realise a study about the habitat connectivity in the department. A map was produced in 2001. The results of this study are now used to create or restore biological corridors for wildlife and have to be integrated in landscape plans. Several different actions are carried out to promote and realise the idea of an ecological network in the department. The thematic of transboundary cooperation does not belong to the preoccupations of the Isere Department.

The Principality of Monaco

The Principality of Monaco ratified the Protocol on the implementation of the Alpine Convention of 1991 relating to the conservation of Nature and the Countryside on 8th February 2005. A bill concerning Environmental Code foresees the integration of the provisions of this protocol. In this bill are foreseen to:

- restore biotopes, ecosystem and natural state
- create nature protection areas
- create National Park or others protected areas.

Moreover, Monaco participates to the Alpine Network of Protected Areas (Réseau Alpin des Espaces Protégés) and principally contributes through a financial support.

It supports the cooperation between the Mercantour National Park and Alpi Marittime Park. Agreements are often concludes on the territory of the Principlality and the Principality of Monaco pays allocation to realize projects.

Indeed, there are no mountain protected areas in Monaco because of its very small acreage. The Principality is much more involved in coastal and maritime protection. An Agreement with France and Italy has been concluded for the creation of a transboundary marine protected areas. The Barcelona Convention (1976) foresees RAMOGE and PELAGOS plans which aim to protect landscapes and species. This Agreement allows the creation of an ecological network between borders countries.

The Principality of Monaco is more and more involved in transboundary cooperation in the field of nature protection and seeks to reinforce bonds with the French Government. They identified together areas which need a border protection.

2.9 The existing transborder cooperation as regards protected areas

There is no legal obligation to cooperate with transborder protected areas in the legal framework on nature protection. A voluntary cooperation already exists between Switzerland and France. Indeed, this cooperation appeared when the Department of Isere has carried out the ecological connectivity. The Department appealed an office in Switzerland (Econnat) which has already worked on these projects. The Department partly applies similar rules.

3 TRANSBORDER COOPERATION

3.1 The powers of the Rhône Alpes Region and Provence Alpes Côte d'Azur Region as regards transborder cooperation

Legislation concerning the transborder cooperation is codified in the Territorial Communities General Code (*Code Général des Collectivités Territoriales*).

According to the article L. 1115-1 of the *Code Général des Collectivités Territoriales*, French territorial communities and their groupings can, in the respect of the international law ratified by France, conclude agreements (*conventions*) with foreign territorial communities.

“ Les collectivités territoriales et leurs groupements peuvent, dans le respect des engagements internationaux de la France, conclure des conventions avec des autorités locales étrangères pour mener des actions de coopération ou d'aide au développement. Ces conventions précisent l'objet des actions envisagées et le montant prévisionnel des engagements financiers ”.

3.2 France and the International Law on Transborder Cooperation

France ratified the **European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities** in February 1984 and it entered into force in May 1984. France ratified also the two additional Protocols to the Convention:

- the Additional Protocol to the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities was ratified in October 1999 and entered into force in January 2000.
- the Protocol N°2 to the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities concerning inter-territorial cooperation was ratified in May 2007¹¹ and entered into force in July 2007.

An agreement between France and Italy was concluded the 26th of November 1993 in the framework of the Madrid Convention: *“Accord entre le gouvernement de la République française et le gouvernement de la République italienne concernant la coopération transfrontalière entre collectivités territoriales”*. According to **Article 3 of this agreement**, the French and Italian territorial communities can conclude agreements for transborder cooperation in different fields: for

¹¹ Loi n° 2007-298 du 5 mars 2007 autorisant l'approbation du protocole n° 2 à la convention-cadre européenne sur la coopération transfrontalière des collectivités ou autorités territoriales relatif à la coopération interterritoriale.

instance energy and nature protection. (*“Dans le respect du droit national et des engagements internationaux de chacune des Parties contractantes ainsi que dans les limites des compétences qui sont reconnues en droit national aux collectivités territoriales (...)”*).

This legal agreement does not foresee the possibility for the French and Italian territorial communities to create a transborder (cooperation) entity (*organisme de coopération transfrontalière*) allocated to legal status (*personnalité juridique*).

France ratified in 2001 the **Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)**. This Convention was adopted in 1991 and entered into force on 10 September 1997. The Espoo Convention is intended to help to set up a sustainable development by promoting international cooperation in assessing the likely impact on the environment. It applies, in particular, to activities that could damage the environment in other countries. It ensures that explicit consideration is given to environmental factors before the final decision is taken. It ensures that the people living in areas likely to be affected by an adverse impact are told of the proposed activity. It provides an opportunity for these people to make comments or raise objections to the proposed activity and to participate in relevant environmental impact assessment procedures. And it ensures that these comments and objections are transmitted to the competent authority and are taken into account in the final decision¹².

3.3 The European Grouping of Territorial Cooperation (EGTC) in Law

The General Code for Territorial Communities (*Code général des collectivités territoriales - CGCT*) was modified in order to be adapted to the European regulation on the EGTC by the law n° 2008-352 (*Loi n° 2008-352 du 16 avril 2008 visant à renforcer la coopération transfrontalière, transnationale et interrégionale par la mise en conformité du code général des collectivités territoriales avec le règlement communautaire relatif à un groupement européen de coopération territoriale*).

The main changes are:

- Modification of **Article L. 1115-4** of the CGTC in order to authorize the adhesion of territorial entities to foreign organizations.
- Modification of **Article L. 1115-5** of the CGTC. The previous article prevented the territorial communities to conclude agreements with foreign states. According to the new law, it is now possible but only for the creation of an EGTC¹³: it will be possible with a Member State of the European Union or with a Member State of the Council of Europe.
- A new **Article L. 1115-4-2** was also introduced in the CGTC in order to fix the legal provisions relating to the EGTC.

¹² Extract of the *Guidance on the Practical Application of the Espoo Convention*.

¹³ « *Aucune convention de quelque nature que ce soit, ne peut être passée entre une collectivité territoriale ou un groupement de collectivité territoriale et un Etat étranger, sauf si elle a vocation à permettre la création d'un groupement européen de coopération territoriale* ».

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Internet Links:

- See the Internet Website of Legifrance in order to have an access to the different French Codes: <http://www.legifrance.gouv.fr/>



Work Package 6 “Legislation”

THE LEGAL FRAMEWORK OF PROTECTED AREAS IN THE ALPINE STATES

Germany

Bolzano/Bozen, August 2009

Disclaimer

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Contents

Contents	2
1 GENERAL POINTS	4
1.1 Organisation of the State	4
1.2 The legislative and executive.....	4
1.3 Status of International Treaties and European Community Law.....	4
2 NATURE PROTECTION AND SPATIAL PLANNING	5
2.1 The preservation of mountain areas and the law	5
2.2 The distribution of power and legislative competencies	5
2.3 The Legal Framework of Nature Protection	6
2.4 The Legal Framework of Spatial Planning	6
2.5 The protected areas in the legislation on Nature protection	7
2.6 The legal provisions as regards ecological connectivity.....	7
2.7 The ecological connectivity in non legally-binding documents	9
2.8 Pilot areas in the ECONNECT project.....	10
2.9 The existing transborder cooperation as regards protected areas	11
3 TRANSBORDER COOPERATION	11
3.1 The powers of the German <i>Länder</i> as regards transborder cooperation	11
3.2 Germany and the International Law on Transborder Cooperation	12
3.3 The existing transborder cooperation between the Land Bayern and the others alpine regions („ <i>die regionale Zusammenarbeit</i> ”).....	12
3.4 The European Grouping of Territorial Cooperation (EGTC) in law	13
4 Bibliography	14

1 GENERAL POINTS

1.1 Organisation of the State

The German state is a federal one. It is divided into 16 individual states/regions (*Länder*). According to the Article 20, paragraph 1, of the Basic Law for the Federal Republic of Germany (*Grundgesetz*, GG), „ [the] Federal Republic of Germany is a democratic and social federal state”.

1.2 The legislative and executive

1.2.1 The legislative

Germany has a bicameral parliament. The two chambers are the Bundestag (Federal Diet or lower house) and the *Bundesrat* (Federal Council or upper house). Both chambers can initiate legislation, and most bills must be approved by both chambers, as well as the executive branch, before becoming law.

1.2.2 The executive

There is a federal government for the whole of Germany, as well as governments for the individual *Länder*. Executive powers are primarily a matter of the Land governments, although certain executive competences are given exclusively to the federal governments, e.g. relations with foreign country and the armed forces. Most federal legislation is, however administered by the Land governments. The federal government can usually control this by issuing general directions, or applying the *Bundesrat* when a *Land* government is not complying the Law. Sometimes the federal government will use the Land authorities as agents, e.g. in respect of motorways and federal roads.

1.3 Status of International Treaties and European Community Law

1.3.1 International Law

Article 25 of the Basic Law provides that „[the] general rules of international law are an element of federal law. They take precedence over statutes and produce rights and duties directly for the inhabitants of the territory of the Federation”.

1.3.2 European Law

For all Member States: obligation on administrations and national courts to apply Community law in full within their sphere of competence and to protect the rights conferred on citizens by that law (**direct application of Community law**), and to display any conflicting national provision, whether prior or subsequent to the Community provision (**primacy of Community law over national law**).

A new article 23 was introduced into the Basic Law in 1992 to deal with the status of the European Community Law. This article goes on to provide for consultation with the *Bundestag*; and participation by the *Bundesrat* in so far as matters involving the *Länder* are concerned. In the Solange II case 1986, the Federal Constitutional Court stated that the fundamental rights were sufficiently protected by the European Court of Justice, as long as this was so, there was no need for EC law to be reviewed in the light of the German Constitution.

2 NATURE PROTECTION AND SPATIAL PLANNING

2.1 The preservation of mountain areas and the law

There is no specific regulations/law for the protection of mountain areas. As far as the Alpine territory is concerned, the Alpine Convention entered into force in March 1995 in Germany and all the protocols in December 2002. These international treaties aim at the preservation and the sustainable development of the Alps¹.

2.2 The distribution of power and legislative competencies²

The legislative competences of the Federation (*Bund*) and the *Länder* are clearly laid down in Articles 70-78 of the Basic Law, and within these areas the law made by the competent legislature will prevail. Moreover the article 31 of the Basic Law provides that the „ [federal] law has priority over Land law”. The distribution of power and legislative competencies between the Federation and the *Länder* is subject of constant debate and ongoing constitutional reforms. The *Länder* generally have the right to legislate insofar the basic constitutional Law does not confer legislative power to Federation (*Grundgesetz*, article 70, paragraph 1). The Basic Constitutional Law specifies a number of policy fields in which the Federation either has exclusive legislative power or in which the Federation and the *Länder* share legislative power (concurrent legislation) (*Grundgesetz*, articles 70, paragraph 2, 73 and 74).

Both nature protection and spatial planning are cases of concurrent legislation of the Federation and the *Länder* (*Grundgesetz*, article 74, paragraph 1, subpara. 29 and 31). This means that the *Länder* have the power to legislate as long as and to the extent the Federation has not exercised its legislative power by enacting a law (*Grundgesetz*, article 72, paragraph 1). Yet spatial planning and nature conservation represent two of only six policy fields in a result of the last amendment of the Basic constitutional Law on 2006 (*Föderalismusreform*), the *Länder* have been granted the right to enact individuals laws which deviate from federal legislation (*Grundgesetz*, article 72, paragraph 3, subpara. 2 and 4). In the field of nature conservation, however, they may only enact laws after the

¹ Bayerisches Staatsministerium für Umwelt, Gesundheit und Verbraucherschutz und Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit, *Die Alpenkonvention. Leitfaden für ihre Anwendung. Rahmenbedingungen, Leitlinien und Vorschläge für die Praxis zur rechtlichen Umsetzung der Alpenkonvention und ihrer Durchführungsprotokolle*, Munich, October 2007, 41 pages.

² LEIBENATH Marcus, Country Study Germany, SPEN- Interactions between Policy Concerning Spatial Planning and Ecological Networks in Europe, ENCN, September 2008.

Federation has amended the nature conservation act or, if the Federation fails to do so, only from 1 January 2010 on (*Grundgesetz*, article 125b, paragraph 1).

2.3 The Legal Framework of Nature Protection

The Federal Law on Nature protection is an outline law (*Rahmengesetz*): each *Land* adopts its own law on nature protection. There are 16 regional laws on nature besides the Federal Law on nature protection. In Bavaria, the Law on nature protection is: „*Gesetz über den Schutz der Natur, die Pflege der Landschaft und die Erholung in der freien Natur*“³. As we see before, according to the Reform of the Federalism of 2006, the outline law will cease to exist for nature conservation in January 2010. Then we will have only concurrent laws on the federal and state level.

2.4 The Legal Framework of Spatial Planning⁴

2.4.1 Federal level

There is a federal spatial planning act, the *Raumordnungsgesetz* which defines the principles of spatial planning- It is a framework for the respective *Länder* laws. The federal spatial planning act defines two types of spatial plans:

- the *Länder* are obliged to set up states development plans, i.e. comprehensive plans for their entire territories
- larger *Länder* which include several places of highest order -i.e. several big cities- are obliged to establish regional plans. These have to be derived from the states development plans (*Raumordnungsgesetz*, Articles 8 and 9).

Spatial plans are supposed to specify principles of spatial development for the respective territory and for a medium-term period. In particular they have to include specifications on the desired settlement structure (e.g. spatial categories, central places and development axes), the desired open place structure (e.g. green belts) and on sites for large infrastructure.

We have also to mention that the **Paragraph 16 of the Federal Law on spatial planning** („*Grenzüberschreitende Abstimmung von raumbedeutsamen Planungen und Maßnahmen*“) foresees the transborder cooperation with the transborder States concerning the plans and the measures which could have an impact on the other States:

„*Raumbedeutsame Planungen und Maßnahmen, die erhebliche Auswirkungen auf Nachbarstaaten haben können, sind mit den betroffenen Nachbarstaaten nach den Grundsätzen der Gegenseitigkeit und Gleichwertigkeit abzustimmen*“. This provision obliges also the *Land* to cooperate with the transborder States“.

³ Gesetz über den Schutz der Natur, die Pflege der Landschaft und die Erholung in der freien Natur (Bayerisches Naturschutzgesetz - BayNatSchG) in der Fassung der Bekanntmachung vom 23. Dezember 2005, Fundstelle: GVBl 2006, S. 2.

⁴ LEIBENATH Marcus, Country Study Germany, SPEN- Interactions between Policy Concerning Spatial Planning and Ecological Networks in Europe, ENCN, September 2008.

2.4.2 Regional level

At the federal level the Federal spatial planning act is in force in combination with spatial planning acts of the individual *Länder*. For the *Land Bayern*, the law is the *Bayerisches Landesplanungsgesetz (BayLplG)*⁵. A distinction has to be made between the state planning (*Landesplanung*) and the regional planning (*Regionalplanung*).

2.5 The protected areas in the legislation on Nature protection

According to the Paragraph 22 of the Federal Law in Nature Protection, the *Länder* designate the protected areas: „*The Länder designate the part of nature and landscapes which have to be declared as Naturschutzgebiet, Nationalpark, Biosphärenreservat, Landschaftsschutzgebiet, Naturpark oder Naturdenkmal oder geschützten Landschaftsbestandteil*“.

Tab. 1: Categories of protected areas in the Federal and Bavarian Laws on Nature Protection

Federal Law on Nature Protection (BNatSchG)	Bavarian Law on Nature Protection (BayNatSchG)
National park (<i>Nationalpark</i>) (§24)	Nationalpark (Art. 8)
Nature protection area (<i>Naturschutzgebiet</i>) (§23)	Naturschutzgebiet (Art. 7)
Natural monument (<i>Naturdenkmal</i>) (§28)	Naturdenkmal (Art. 9)
Protected landscape (<i>Landschaftsschutzgebiet</i>) (§26)	Landschaftsschutzgebiet (Art. 10)
Natural park (<i>Naturpark</i>) (§27)	Naturpark (Art. 11)
Protected parts of landscape (<i>Geschützte Landschaftsbestandteile</i>) (§29)	Landschaftsbestandteile und Grünbestände (Art. 12)
Protected biotope (<i>Gesetzlich geschütztes Biotop</i>) (§30)	Gesetzlich geschützte Biotope (Art.13d)
Natura 2000 areas (<i>Gebiete von gemeinschaftlicher Bedeutung und europäische Vogelschutzgebiete</i>) (§32)	Gebiete von gemeinschaftlicher Bedeutung und Europäische Vogelschutzgebiete (Art. 13b)
Biosphere reserve (<i>Biosphärenreservat</i>) (§ 25)	Biosphärenreservat (Art.3a)
Schutz von Gewässern und Uferzonen (§31)	Gesetzlich geschützte Biotope (Art.13d)

2.6 The legal provisions as regards ecological connectivity

2.6.1 European Law (the provisions of the Habitats directive)⁶

The Habitats Directive⁷ intends to create an ecological network through Europe. The provisions of the article 10 of this directive contain measures for improving the ecological coherence of the ecological network. This disposition is like a recommendation:

⁵ Bayerisches Landesplanungsgesetz (BayLplG) vom 27. Dezember 2004.

⁶ For further informations about the implementation of the Habitats Directive in Germany, see the last National report made by Germany according to article 17 of the Habitats Directive.

„Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora. / Such features are those 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 ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species”.

According to the Guidance on the maintenance of landscape connectivity features of major importance for wild flora and fauna⁸ elaborated at the European level for improving the coherence of the Natura 2000 Network, it is clear from the texts of the Habitats directive that the interpretation of the concept of „coherence” is a key issue affecting the implementation of directives. When considering the ecological coherence of Natura 2000, it is important to note that the completed Natura 2000 network, defined by the Habitats directive as the sum of all areas designated for conservation under the Birds and Habitats directives (Article 3, paragraph 1, of the Habitats directive), is a collection of individual protected sites. In order for these protected sites to actually form an ecologically coherent network then necessary functional connections amongst the sites and their surroundings must be maintained. Therefore management measures may need to go beyond the designated sites’ boundaries and apply to the wider environment.

2.6.2 Federal Law

Ecological networks hold a prominent position in German Federal Law on Nature protection: the third article of this Law and the complementary article 5, paragraph 3, have been introduced in 2002. These articles have to be implemented besides the provisions concerning the Habitats directive.

Article 3 of the Federal Law on Nature Protection on Ecological network/Habitats linkage (*Biotopverbund*)⁹.

Since 2002 there is a legal obligation to create an ecological network (*Biotopverbund*/Habitat linkage) through the whole state and through the *Länder*. This legal obligation is inserted in the paragraph 3 of the federal law (BNatSchG) and in the different laws on nature protection of the German *Länder*. This interstate/interregional habitat linkage shall comprise at least 10% of each *Länder*’s surface. This measure seeks a sustainable preservation of native species and plants, their biospheres and communities, as well as preservation, restitution and development of functioning ecological interaction. By that the fragmentation and isolation of biotopes shall be reduced and an exchange between natural entities and genera be facilitated. Despite being a new instrument, the habitat

⁷ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora OJ L 59, 8.3.1996, p. 63.

⁸ KETTUNEN Marianne, TERRY Andrew, TUCKER Graham and JONES Andrew, *Guidance on the maintenance of landscape connectivity features of major importance for wild flora and fauna. Guidance on the implementation of Article 3 of the Birds Directive(79/409/EEC) and Article 10 of the Habitats Directive (92/43/EEC)*, Institute for European Environmental Policy, August 2007.

⁹ Online on URL: http://www.naturschutzrecht.net/Gesetze/Bund/English/BNatSchG_Eng_Intro.htm. (19 November 2008).

linkage shall be achieved via the already existing means of nature protection. Part of this network may be national parks, FFH areas, protected zones, biotopes in a statutory protection, sanctuaries or parts of the respective sites as well as further areas and elements, provided they qualify from the perspective of biological science for habitat linkage. In order to warrant a sustainable habitat linkage, all involved areas have to be secured legally to that end. That may be achieved through designation as protected areas, through landscape planning, long-term schemes for contract-based nature protection or other appropriate measures.

Article 5 (3) of the Federal Law on nature protection (*Agriculture, forestry and fishery*)

By contrast to the article 3, the article 5, paragraph 3, of the Federal Law on Nature Protection is not targeted as a comprehensive network, but a compensating for barriers which result from farming activities. It aims at defining minimum standards for good practice farming. Those parts of the country that are used for agriculture shall be ecologically upgraded.

2.6.3 Bavarian Law on Nature Protection:

The Federal provisions of the article 3 of the Federal Law on Nature Protection are integrated in the article 13f of the Bavarian Law on Nature Protection. In Bavaria, there are currently 350 projects relating to the *Biotopverbund* (some are not begun while others are already in application). Bayern does not dispose of an ecological network concept at state level. The local initiatives in Bavaria for the implementation of the provisions as regards the ecological network (*Biotopverbund*) are called „BayernNetz Natur“- *Bayerns landesweiter Biotopverbund*.

2.7 The ecological connectivity in non legally-binding documents

2.7.1 National level

- National Strategy on Biological Diversity (2007)¹⁰
- Recommendations on the implementation of article 3 of the German Law on Nature Protection
- Publications by the Federal Agency for Nature Conservation (BfN) on the result of scientific studies the BfN had contracted.

2.7.2 Regional level

Bavarian Strategy on Biological Diversity was adopted the 1st April 2008 and is also partly about the ecological connectivity. For instance, according to the second objective about the preservation of habitats, the ecological network (*Biotopverbund*) has to be completed and durable protected until 2020.

¹⁰ Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, *National Strategy on Biological Diversity*, October 2007, 180 pages.

2.8 Pilot areas in the ECONNECT project

The National Park Berchtesgaden, partner and part of one pilot region (see figure 1) in the ECONNECT project.

The Berchtesgaden National Park is located in southeast Germany in the Free State of Bavaria and borders on the Austrian state of Salzburg. The park was founded in 1978 and, covering a surface of 210 km² or 81 sq. miles, it is state property in its entirety. Its high mountain landscapes are characterized by extensive forests and steep rock faces¹¹.

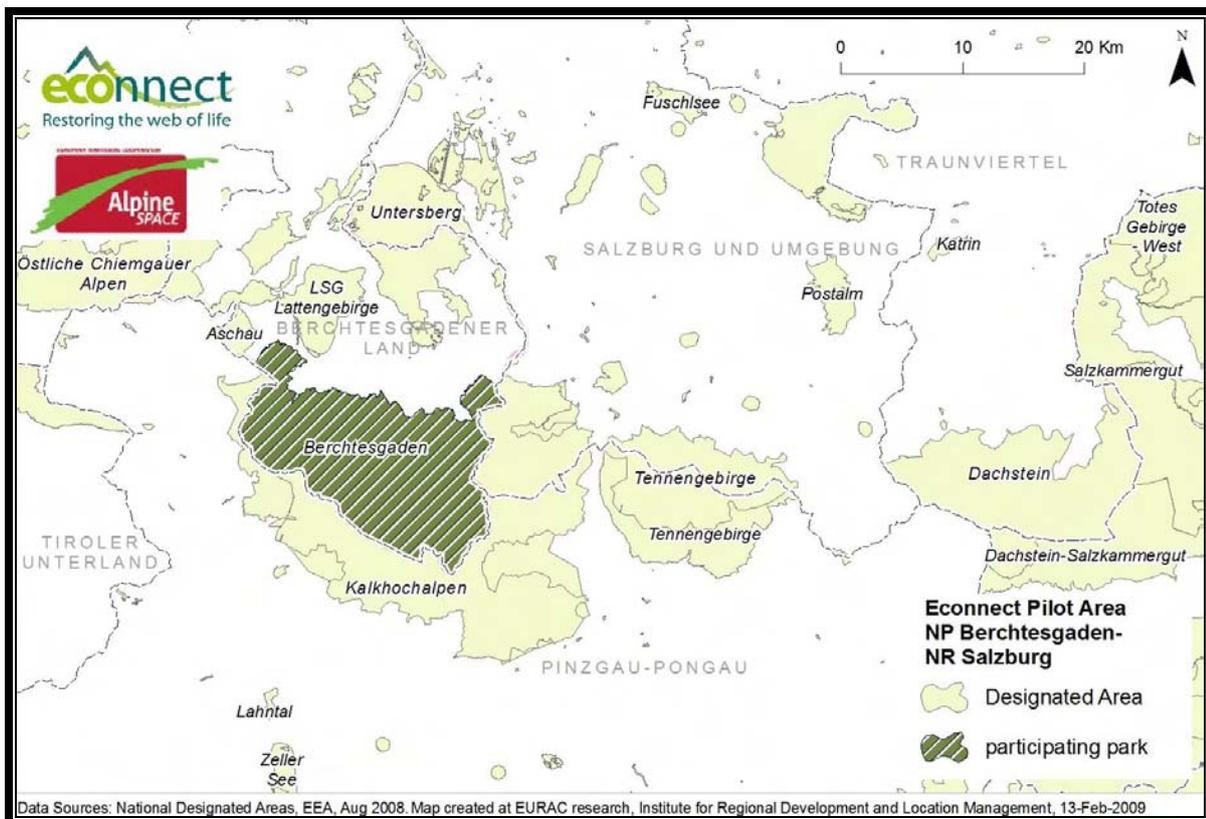


Fig 1: The transboundary area Berchtesgaden - Salzburg.

The transboundary area Berchtesgaden - Salzburg¹²: pilot region in the ECONNECT project

The pilot region Berchtesgaden/Salzburg lies along the Austrian-German border and comprises parts of the Free State of Bavaria (Germany) as well as the „Bundesland“ Salzburg (Austria). Several great protective areas are situated in this region: the national park und biosphere reserve Berchtesgaden as well as the nature reserve in the „eastern Alps of Chiemgau“, the natural park Weißbach, the

¹¹ Abstract of the Internet Web Site of the National Park Berchtesgaden (online on url: www.nationalpark-berchtesgaden.bayern.de/publikationen/fremdspracheneng/index.htm (4 March 2008).

¹² Quote: Task Force Protected Areas, Permanent Secretariat of the Alpine Convention.

nature reserves „Kalkhochalpen“ and „Tennengebirge“. Several cooperative projects already exist in this region and on their basis further cooperation can be established (e.g. data exchange, collective research, etc.). Due to the region being ecologically highly important and part of one biogeographical area, further cooperation towards interlinked biotopes is important. The management of protected areas (National parks)

The Management of National Parks

The main legal provisions concerning the National Park Berchtesgaden and its management are the following:

- Federal Law on nature protection (Bundesnaturschutzgesetz)
- Bavarian Law on nature protection (Bayerisches Naturschutzgesetz)
- National park ordinance (Nationalparkverordnung)
- National park plan (Nationalparkplan)

The provisions of the first subparagraph of the paragraph 24 of the Federal Law on Nature protection define the objectives of the National parks. There are no provisions concerning the management of the National Parks on the federal level: the provisions concerning the management of the national parks are adopted on the regional level. The provisions concerning the regulation in protected areas can also be found on the regional level or are subject of specific regulations (for the National Parks, see the article 8 of the Bavarian Law on Nature Protection).

2.9 The existing transborder cooperation as regards protected areas

There is no legal obligation to cooperate with transborder protected areas in the legal provisions on nature protection. A voluntary cooperation already exists between Austria and Germany. This cooperation appears through working groups or also through the European INTERREG Programms.

3 TRANSBORDER COOPERATION

3.1 The powers of the German *Länder* as regards transborder cooperation

As regards transborder cooperation, constitutional provisions can be found in the Basic Law of Germany and also in the Bavarian Constitution.

Preamble of the Basic Law:

„Inspired by the determination to promote world peace as an equal partner in a united Europe, the German people, in the exercise of their constituent power, have adopted this Basic Law“.

Article 32 of the Basic Law:

„ (1) Relations with foreign states shall be conducted by the Federation. / (2) Before the conclusion of a treaty affecting the special circumstances of a Land, that Land shall be consulted in timely

fashion. / (3) Insofar as the Länder have power to legislate, they may conclude treaties with foreign states with the consent of the Federal Government".

Article 28, paragraph 2, of the Basic Law:

„Municipalities must be guaranteed the right to regulate all local affairs on their own responsibility, within the limits prescribed by the laws. Within the limits of their functions designated by a law, associations of municipalities shall also have the right of self-government according to the laws”.

Article 24, paragraph 1, and letter a) of the Basic Law:

„Insofar as the Länder are competent to exercise state powers and to perform state functions, they may, with the consent of the Federal Government, transfer sovereign powers to transfrontier institutions in neighbouring regions”.

Article 3a of the Bavarian Constitution:

According to this article (*Bekanntnis zu geeintem Europa*), the Land Bavaria has to cooperate with the others European regions (*„Bayern arbeitet mit anderen europäischen Regionen zusammen”*).

The territorial entities are not subject of the international law (*„keine Völkerrechtssubjekte”*) and it was several times highlighted by the Constitutional Court of Germany (*Bundesverfassungsgericht*).

3.2 Germany and the International Law on Transborder Cooperation

Germany has ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities. 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.

Germany ratified also the two additional Protocols to the Outline Convention:

- the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities. Germany ratified this text in September 1998 and it entered into force in December 1998 in Germany.
- the Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation. Germany ratified this text in October 2001 and it entered into force in January 2002 in Germany.

3.3 The existing transborder cooperation between the Land Bayern and the others alpine regions (*„die regionale Zusammenarbeit”*)

Bavaria is as a strong autonomous Province (*Land*) since a long time working for cooperation with comparable local entities which are facing to common problematics. With connected multilateral working groups from other regions (parts of states/cantons). Bavaria sees a good possibility of treating common problems and requests for instance in the alpine or in the Bodensee- area with a minimum of institutionalisation and can easier make proposals for solution. The working group Arge Alp was created in 1972 und was through Europe an example for the cooperation between regions.

3.4 The European Grouping of Territorial Cooperation (EGTC) in law

In Germany, the Bund considers the rules implemented by having nominated the component authorities for all *Länder* (regions). According to the authorities, the federal and/or regional laws contain already the necessary regulations for the implementation of the EGCT. No special provisions are foreseen for questions relating to the limitation of liability, registration/publication and task delimitation. But if necessary, further regulations could be adopted for the practical implementation of the regulation on EGTC. For the Land Bavaria the component authority is the “*Regierung der Oberpfalz*” and for the Land Baden Württemberg it is the “*Regierungspräsidium Freiburg*”. In Bavaria, this possibility is underlined in the **article 13 of the Bavarian Law on the competencies for the execution of economic regulations** (*Gesetzes über die Zuständigkeiten zum Vollzug wirtschaftsrechtlicher Vorschriften-ZustWiG*¹³):

„[...] Zuständig für den Vollzug der Verordnung (EG) Nr. 1082/2006 des Europäischen Parlaments und des Rates vom 5. Juli 2006 über den Europäischen Verbund für territoriale Zusammenarbeit - EVTZ - (ABl EU Nr. L 210 S. 19) ist die Regierung der Oberpfalz. Das Staatsministerium für Wirtschaft, Infrastruktur, Verkehr und Technologie wird ermächtigt, das Nähere zur Anwendung dieser Verordnung durch Rechtsverordnung zu regeln“.

=An ordinance could be adopted by the Bavarian Ministry on Economy, Infrastructure, Transport and Technology in order to clarify the modalities for the implementation of the regulation.

¹³ Gesetz über die Zuständigkeiten zum Vollzug wirtschaftsrechtlicher Vorschriften (ZustWiG) in der Fassung der Bekanntmachung vom 24. Januar 2005 (GVBl S. 17, BayRS 700-2-W), zuletzt geändert durch § 1 des Gesetzes vom 20. Dezember 2007 (GVBl S. 964).

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Work Package 6 “Legislation”

THE LEGAL FRAMEWORK OF PROTECTED AREAS IN THE ALPINE STATES

Italy

Bolzano/Bozen, August 2009



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Contents

Contents	2
1 GENERAL POINTS	4
1.1 Organisation of the State	4
1.2 The legislative and executive.....	4
1.3 Status of International Treaties and European Community Law.....	4
2 NATURE PROTECTION AND SPATIAL PLANNING	5
2.1 Preservation of mountain areas in the law	5
2.2 Distribution of power and legislative competencies	6
2.3 Legal framework on Nature Protection	7
2.4 Legal framework on Spatial Planning.....	7
2.5 Protected areas in the legislation on Nature protection.....	9
2.6 Legal provisions as regards ecological connectivity	9
2.7 Landscape protection (<i>I vincoli e i piani paesaggistici</i>).....	10
2.8 Pilot areas in the ECONNECT project.....	12
2.9 Management of regional nature parks (<i>aree naturali protette regionali</i>).....	13
2.10 The existing cooperation between transborder protected areas.....	15
3 TRANSBORDER COOPERATION	16
3.1 The Territorial Entities Competencies	16
3.2 The International Law on Transborder Cooperation and Italy	16
3.3 The European Grouping of Territorial Cooperation in law.....	16
4 Bibliography	19

1 GENERAL POINTS

1.1 Organisation of the State

Italy is a State with a unitary structure with a tendency to federalism, in particular following the constitutional reform of 2001 (Reform of the Title V of the Italian Constitution by the Constitutional Law n° 3-2001). The most important aspect of the Reform relates to **article 117**: with this new article the domains which are not laid down in the Constitution are in the competencies of the Regions („*competence régionale résiduelle*”).

Article 5 of the Italian Constitution: „*The republic, one and indivisible, recognizes and promotes local autonomy; it fully applies administrative decentralization of state services and adopts principles and methods of legislation meeting the requirements of autonomy and decentralization*”.

Article 114, paragraphs 1 and 2, of the Italian Constitution: „ (1) *The republic consists of municipalities, provinces, metropolitan cities, regions, and the state.*

(2) *Municipalities, provinces, metropolitan cities, and regions are autonomous entities with their own statutes, powers, and functions according to the principles defined in the constitution*”.

1.2 The legislative and executive

1.2.1 The Legislative

Legislative power is vested in the two houses of Parliament primarily and secondarily in the Council of Ministers. The legislative power is **given concurrently to the Parliament and the Regions or autonomous Provinces** in Italy.

1.2.2 The Executive

Executive power is exercised collectively by the Council of Ministers, which is led by a President, informally referred to as „*premier*” or *primo ministro* (that is, „prime minister”). As regards nature protection the executive powers are divided between the state and the regions or autonomous provinces.

1.3 Status of International Treaties and European Community Law

1.3.1 International Law

With respect to the Italian legal order can be differentiated between the simple procedure and the special procedure. In the simple procedure the assumption of the international-law source of right takes place via the creation of appropriate national sources of right (constitutional laws, laws or regulations), which are necessary, in order to adapt the national legal order to the international-law requirements. With the special procedures however the adherence to the international-law standard is arranged by a reference, without the international-law standard is recast into a domestic source

of right. The adherence to the international-law standard can be arranged in general way or by particularly in each case a taking place application instruction.

Article 10, paragraph 1, Constitution: general clause about Italian law and International Law: „The legal system of Italy conforms to the generally recognized principles of international law”.

Article 117, paragraph 1, of the Italian Constitution: „Legislative power belongs to the state and the regions in accordance with the constitution and within the limits set by European Union law and international obligations”.

1.3.2 European Law

The „*Legge comunitaria*” is the main instrument for the implementation of the European regulation and defines the modalities and schedules for the transposition of the European directives. Previewed since 1989 with the Law 9 March 1989, n.86 (*Law La Pergola*), comes now regulated from the Law 4 February 2005, n. 11, „*Norme generali sulla partecipazione dell'Italia al processo normativo dell'Unione Europea e sulle procedure di esecuzione degli obblighi comunitari*”.

Article 117, paragraph 5, of the Italian Constitution: „(5) Regarding the matters that lie within their field of competence, the regions and the autonomous provinces of Trento and Bolzano participate in any decisions about the formation of community law. The regions and autonomous provinces also provide for the implementation and execution of international obligations and of the acts of the European Union in observance of procedures set by state law. establishes procedures for the state to act in substitution of the regions whenever those should fail to fulfill their responsibilities in this respect”.

2 NATURE PROTECTION AND SPATIAL PLANNING

2.1 Preservation of mountain areas in the law¹

The 1947 Italian Constitution gives a special place to mountain zones. It provides that they must be given specific statutory advantages to protect them and foster their balanced development taking account of their precarious environmental conditions and the particular needs in terms of amenities and services (Articles 44 and 129 - Art. 129 was subsequently replaced by the 2001 Constitutional Act)². These constitutional provisions were the basis of several mountain-related Acts enacted since the 1950s.

There are also some specific dispositions for the mountains in Italy. Forming part of the devolution movement that began several years ago, the **Constitutional Act, 18 October 2001**, amended **Title V of the Constitution** governing the regions, provinces and municipalities, to give the latter their

¹ Angelini P., Egerer H. and Tommasini D. (Ed.), *Sharing the experience, Mountain sustainable development in the Carpathians and the Alps*, International Meeting and Roundtables, EURAC, Bolzano, 2002, 316 pages.

² Villeneuve A, Castelein A. and Mekouar M.A., *Mountain and the law: emerging trends*, Rev.1, Legislative Study 75, FAO, Roma, 2006,140 pages.

own powers, particularly over administrative matters. Today, there are essentially two complementary acts for protecting and enhancing mountain regions: **Act 1102 of 1971 (Legge 3 dicembre 1971, n.1102³)** enacting new provisions for mountain development, and **Act 97 of 1994 (Legge sulla montagna n.97 del 1994⁴)** enacting new provisions for mountain zones. In order to combat the socio-economic inequalities between valley-dwellers and mountain communities, it stresses improving the living conditions of the latter communities, particularly by promoting public services and infrastructure facilities. It also adopts an integrated approach to the various components of rural development: agriculture, forestry, tourism and the environment.

The **Alpine Convention** was ratified by Italy and entered into force in 1999⁵. For the time Italy did not ratify any Protocol to the Alpine Convention. **Article 3** of the ratification law assigned the responsibility of the enactment of the Convention to the Ministry of the Environment in agreement (d'intesa) with the other pertinent Ministries and a specific Council between the State and Regions of the Alpine Arc („*Consulta Stato - Regioni dell'Arco alpino*”). The Council between the State and Regions of the Alpine Arc is an institutional configuration specifically created for the Alpine Convention, including the Regions, the six Ministries involved in the domains relevant to the Alpine Convention (environment, production, agriculture and forestry, infrastructure and transport, interior, culture), as well as the representatives of the councils of local authorities (mountain communities, municipalities, provinces).

2.2 Distribution of power and legislative competencies

2.2.1 Nature protection

As regards nature protection the legislative and executive powers are divided between the State and the regions or autonomous provinces. But it was not clear after the Constitutional Reform of 2001: in fact, according to the **article 117**, paragraph 2, of the Constitution, the environment is subject to an exclusive competence of the State and according to the third paragraph of the same article, the promotion of environmental and cultural heritage is subject to current legislation of both the State and the regions.

Article 117, paragraph 2, of the Italian Constitution: „(2) *The state has exclusive legislative power in the following matters [...] protection of the environment, of the ecosystem and of the cultural heritage*”.

Article 117, paragraph 3, of the Italian Constitution: „*The following matters are subject to concurrent legislation of both the state and regions [...] promotion of the environmental and cultural heritage*”.

³ Legge 3 dicembre 1971, n.1102, “Nuove norme per lo sviluppo della montagna”, G.U. 23 dicembre 1971, n.324.

⁴ *Legge sulla montagna*, Legge 31 gennaio 1994, n. 97 (in Suppl. ordinario n. 24, alla Gazz. Uff. n. 32, del 9 febbraio), Nuove disposizioni per le zone montane.

⁵ Legge n°403 del 14 ottobre 1999, “Ratifica ed esecuzione della Convenzione per la protezione delle Alpi, con allegati e processo verbale di modifica del 6 Aprile 1993, fatta a Salisburgo il novembre 1991”, in G.U.N. N.262 dell’8 novembre 1995-S.O. n.194.

According to a ruling of the Constitutional Court (*Corte costituzionale*) (decision n° 407 from 10 July 2002⁶): the environment is a „transverse field” (*materiale trasversale*) and is subject to the competences of the State and the Regions/autonomous Provinces.

The Constitutional Court (*Corte costituzionale*) also confirmed the principle of the loyal cooperation between the State and the Regions or the autonomous Provinces as regards Nature protection. This principle is integrated in the Outline Law on Protected Areas (*Legge quadro 6 dicembre 1991, n.394*).

2.2.2 Spatial planning

According to the article 117, paragraph 3, spatial planning is subject to concurrent legislation of both the State and the Regions.

Article 117, paragraph 3, of the Italian Constitution: „The following matters are subject to concurrent legislation of both the state and regions [...] land-use regulation and planning”.

2.3 Legal framework on Nature Protection

2.3.1 National level:

- Outline law on Protected areas (*Legge quadro 6 dicembre 1991, n.394*): gives principles for nature protection and also precise/specific provisions as regards management of protected areas.
- Legislative decree (*Decreto legislativo*) 2 April 2006⁷ contains the new provisions in the environmental field: it forms the *Codice del ambiente*. This text coordinates and reorganizes legal texts regarding different sectors. It aims also to adapt the Italian law to European environmental law.

2.3.2 Regional level

The Regions and the autonomous provinces adopt their own legal framework for protected areas. These regulations are adopted within the national framework on protected areas. Each regional framework on nature protection can be consulted on the Internet Web Site of the Region or of the Autonomous Province.

2.4 Legal framework on Spatial Planning

National level

- Decree 4 November 2004 (*Decreto del Ministero delle Attività Produttive 11 Novembre 2004, determinazione delle risorse da trasferire ai comuni per l'attenuazione degli interventi nelle aree di degrado urbano*)

⁶ See also Corte costituzionale, sentenze n.507 e n.54 del 2000, n.382 del 1999, n.273 del 1998.

⁷ Decreto Legislativo n° 152 recante Norme in materia ambientale („Codice del Ambiente“).

- Legislative decree October 1999 (*Decreto Legislativo 29 ottobre 1999, n. 490, „Testo unico delle disposizioni legislative in materia di beni culturali e ambientali, a norma dell'articolo 1 della legge 8 ottobre, n. 352⁸“*)
- Law n.109 June 2005 (*Legge 25 giugno 2005, n. 109, „Disposizioni urgenti per lo sviluppo e la coesione territoriale“⁹*)

Regional level

In the framework of the Law on local autonomy n.142/90 (*Legge sulle Autonomie locali L. 142/90 - attualmente confluita nel D.Lgs. 267/00, art.5 e art.20¹⁰*), the Regions and the autonomous Provinces adopt laws on spatial planning and develop also concepts (territorial plans) for the regional (*piano territoriale regionale*) and sub-regional level.

For instance, in the **Region Piedmont**:

- *Legge regionale 10 novembre 1994, n. 45, Norme in materia di pianificazione del territorio¹¹.*
- *Legge regionale n. 2 del 16 gennaio 2006, Norme per la valorizzazione delle costruzioni in terra cruda, (B.U.19 Gennaio 2006, n. 3)*
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- *Legge regionale 3 aprile 1989, n. 20. (Testo coordinato), Norme in materia di tutela di beni culturali, ambientali e paesistici., (B.U. 12 aprile 1989, n. 15)*
- *Piano territoriale regionale¹²: this plan is implemented through different tools*
 1. *Piani territoriali di coordinamento of the Province, Piani territoriali for the implementation of the Piano Territoriale Regionale, Piani Territoriali Operativi)*
 2. *Piani Regolatori generali, comunali o intercomunali.*
 3. *Guidelines of the Consiglio Regionale, etc.*

⁸ Decreto Legislativo 29 ottobre 1999, n. 490, „Testo unico delle disposizioni legislative in materia di beni culturali e ambientali, a norma dell'articolo 1 della legge 8 ottobre, n. 352“, pubblicato nella Gazzetta Ufficiale n. 302 del 27 dicembre 1999 - Supplemento Ordinario n. 229.

⁹ Conversione in legge, con modificazioni, del „Decreto-legge 26 aprile 2005, n. 63, recante disposizioni urgenti per lo sviluppo e la coesione territoriale, nonché per la tutela del diritto d'autore. Disposizioni concernenti l'adozione di testi unici in materia di previdenza obbligatoria e di previdenza complementare“, pubblicata nella Gazzetta Ufficiale n. 146 del 25 giugno 2005.

¹⁰ Decreto Legislativo 18 agosto 2000, n. 267, „Testo unico delle leggi sull'ordinamento degli enti locali“ pubblicato nella Gazzetta Ufficiale n. 227 del 28 settembre 2000 - Supplemento Ordinario n. 162.

¹¹ Legge regionale 10 novembre 1994, n. 45, Norme in materia di pianificazione del territorio: modifiche alla L.R. 5 dicembre 1977, n. 56 e successive modifiche ed integrazioni e alle LL.RR. 16 marzo 1989, n. 16 e 3 aprile 1989, n. 20, (B.U. 16 novembre 1994, n. 46). provinciali.

Costituisce un punto di partenza per attivare l'auspicato sistema delle Autonomie locali che, in forma cooperativa, sia in grado di svolgere un'effettiva azione di tutela e di uso del territorio.

In concreto il Ptr individua e norma i caratteri socio-economici ed i caratteri territoriali

¹² Il PTR della Regione Piemonte è in grado di costituire un quadro di riferimento per tutte le politiche che interferiscono con il territorio, soprattutto per i piani e paesistici e definisce gli indirizzi di governo per le trasformazioni dell'attuale sistema regionale.

2.5 Protected areas in the legislation on Nature protection

For the protected areas, there is a Outline Law: *Legge quadro 6 dicembre 1991*, n.394. On the basis of this law is produced the official list of protected areas. Since the „deliberazione” approved by the *Conferenza Stato-Regioni e Province autonome* (24 July 2003), the terrestrial and marin protected areas are included in this official list (*Elenco ufficiale delle aree protette*). This list includes the national parks, the regional parks, the terrestrial reserves (*reservi terrestri*), the maritime reserves and the areas of local interest (*aree di interesse locale*). The cooperation between the central and the local authorities is a basis principle of this law.

Article 2 of the Outline Law on protected Areas classifies the protected areas in 3 main categories:

- the national parks (*parchi nazionali*)
- regional and interregional natural parks (*parchi naturali e interregionali*)
- natural reserves (*riserve naturali*)

This list was completed with further deliberations of the Comity for the Protected Areas (*Comitato per le Aree Naturali Protette*) and after by the deliberations of the *Conferenza Stato-Regioni*:

- wetlands of international importance (designated under the Ramsar Convention) (*zone umide di importanza internazionale*)
- special protection areas (SPA) (*zone di protezione speciale, ZPS*)
- special areas of conservation, SPA (*zone speciali di conservazione, ZSC*)

2.6 Legal provisions as regards ecological connectivity

2.6.1 The national provisions

The objectives of the Habitats Directive

The Habitats Directive intends to create an ecological network through Europe. The provisions of the article 10 of this directive contain measures for improving the ecological coherence of the ecological network. This disposition is like a recommendation: „*Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora.*

Such features are those 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 ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species”. According to the Guidance on the maintenance of landscape connectivity features of major importance for wild flora and fauna¹³ elaborated at the European level for improving the coherence of the Natura 2000 Network, it is clear from the texts of the Habitats direc-

¹³ KETTUNEN Marianne, TERRY Andrew, TUCKER Graham and JONES Andrew, *Guidance on the maintenance of landscape connectivity features of major importance for wild flora and fauna. Guidance on the implementation of Article 3 of the Birds Directive(79/409/EEC) and Article 10 of the Habitats Directive (92/43/EEC)*, Institute for European Environmental Policy, August 2007.

tive that the interpretation of the concept of „coherence” is a key issue affecting the implementation of directives. When considering the ecological coherence of Natura 2000, it is important to note that the completed Natura 2000 network, defined by the Habitats directive as the sum of all areas designated for conservation under the Birds and Habitats directives (Article 3.1 of the Habitats directive), is a collection of individual protected sites. In order for these protected sites to actually form an ecologically coherent network then necessary functional connections amongst the sites and their surroundings must be maintained. Therefore management measures may need to go beyond the designated sites’ boundaries and apply to the wider environment.

The national and regional provisions

The legal provisions for the implementation and the management of the Natura 2000 Network can be found on the national and regional level. There is a national framework and regional provisions are adopted according to this framework.

The Ministry in charge of environment adopted in 1999 a program for the definition and the realisation of an ecological network for vertebrates. This program ran until 2002. But this document was not legally-binding for the spatial planning. But this concept appears in some programme-documents. For instance it appears in guidelines for the landscape planning in South Tyrol. Provisions like these of the article 10 of the Habitats Directive are integrated in the landscape plans which are adopted pursuant to the Law on Landscape protection¹⁴.

2.6.2 The local initiatives in the field of ecological connectivity:

In various Italian regions initiatives for the creation of ecological networks were initiated:

- **Region Venetia:** there is a project of local ecological network (*Progetto di Rete Ecologica Comunale*). The ecological connectivity has to be seen as an innovative element of the sustainable spatial planning.
- **Regione Piemonte:** the protected areas and also other areas of regional importance have to be taken into account in the spatial planning. The Province Novara (in Piedmont) has integrated the concept of ecological network in its *piano territoriale di coordinamento*.
- **Regione Lombardia:** one of the objectives (point 1.5.1) of the Lombardian regional spatial plan (*piano territoriale regionale*, PTR) is the creation of an ecological network (*Rete Ecologica Nazionale*, RER) which is recognized as infrastructure of utmost importance
- **South Tyrol:** similar objectives to the articles 10 of the Directive Habitats are integrated in the Landscape plans adopted according to the South Tyrol Law on Landscape. Subsidies (*Landchaftsprämien*) are also awarded for the conservation of habitats of ecological importance.

2.7 Landscape protection (I vincoli e i piani paesaggistici)

I vincoli paesaggistici

The minimal requirements for the landscape protection were adopted by the Legge Galasso adopted in 1985 (and the Legge del 1939- per la tutela delle bellezze naturali).

The Law n° 431/1985 (Legge 431/1985, the so-called Legge Galasso)¹⁵ was completely integrated in the Decreto Legislativo 1999 n. 490, which was itself completely integrated in the Decreto Legislativo 22 gennaio 2004, n.42: *Codice dei Beni Culturali e del Paesaggio*. It is also interesting to highlight that the article 131, paragraph 1, of this text gives a definition of the landscape: “ *Ai fini del presente codice per paesaggio si intende una parte omogenea di territorio i cui caratteri derivano dalla natura, dalla storia umana o dalle reciproche interrelazioni*”.

The provisions of this text have to be considered as a **minimal requirement for the landscape protection** which is more and more tending to be taken through the spatial planning (pianificazione urbanistica). A list of natural elements listed in the *Decreto Legislativo 22 gennaio 2004, n.42* (Article 142) are protected *ex legge*:

“1. *Until the approval of the landscape plan according to the article 156, the after-specified natural elements are because of their landscape interest protected under this code:*

- a) *the coastal territories comprised in a 300 meters deep wraps from the shore line*
- b) *the territories on the border of lakes comprised in a 300 meters deep wrap from the shore line*
- c) *the rivers, the torrents, the water courses protected comprised in the list adopted with the decree of the 11th of December 1933, n. 1775,*
- d) *the mountains for the exceeding part 1,600 meters above sea level for the alpine arc and 1,200 meters above sea level for the Appennine chain and the islands;*
- e) *glaciers and the glacial cirques;*
- f) *the parks and the national or regional reserves and the potected areas located outside the parks,*
- g) *the territories covered by forests and woods;*
- i) *the wetlands included in the presidential decree of 13th of March 1976, n. 448;*
- l) *the volcanos;*
- m) *the areas of archaeological interest nominated at the date of entry into force of the present code*”¹⁶.

The provisions concerning the landscape protection in the *Codice dei Beni Culturali e del Paesagio* can be found in the articles 131 and f.

- **Article 131:** gives a definition of landscape; the third paragraph is about the competences of the State and the regions or aonomous Provinces
- **Article 132:** the Landscape Convention has to be implemented according the competences of the State and the regions or autonomous Provinces.
- **Article 133:** cooperation between the Ministry and the regions for the definition of the landscape protection policies

¹⁴ Landesgesetz vom 25 Juli 1970, Nr 16 (Landschaftsschutz).

¹⁵ Legge 8 agosto 1985, n. 431 (Galasso), *Conversione in legge con modificazioni del decreto legge 27 giugno 1985, n. 312 concernente disposizioni urgenti per la tutela delle zone di particolare interesse ambientale* (Gazzetta Ufficiale della Repubblica Italiana n.197 del 22 agosto 1985).

¹⁶ We translate.

- **Article 135:** is about the elaboration of landscape plans (*pianificazione paesaggistica*); the regions have to elaborate landscape plans (*piani paesaggistici, piani urbanistico-territoriale*); for some specific parts of the region, the plans can integrate regulatory measures.

In South Tirol there is specific law for the protection of the Landscape (*Legge provinciale del 25 luglio 1970, n. 16: tutela del paesaggio*). The article 1 of this law defines the aim of the protection and the different categories of protection for the landscape plans.

Landscape plans (*piani paesaggistici*)

The Chapter III (*Capo III*) of the *Decreto Legislativo 22 gennaio 2004, n.42* is about landscape planification. **Article 143** of this text is about landscape plans (*piano paesaggistico*) and it precises also the minimal content of the landscape plans. The Regions have to follow the principles adopted in this text for the elaboration of landscape plans. The regions have to assure by adoption of landscape plans that the landscape are correctly protected and promoted. The natural elements which are *ex legge* protected according to **Article 142** can be protected before the adoption of a landscape plan. The objectives of these plans are the following:

- to preserve the characteristics of the protected natural elements
- to identify the lines of the urban development
- to restore the damaged natural elements and to promote them.

For instance, in **Piedmont**, the first landscape plan (*Piano Paesaggistico Regionale (PPR)*) was adopted by the Giunta regionale in 2005. This landscape plan pursues the following goals:

- to reinforce the knowledge of the regional territory
- to create a strategical framework of reference
- to create legal framework coherent with the regional and national legal frameworks.

2.8 Pilot areas in the ECONNECT project

The regional nature park is located in the pilot region South-east Alps - Mercantour/Alpi Marittime

This pilot region is located at the southwest end of the alpine arc in the French region Provence-Alpes-Côte-d'Azur and the Italian region Liguria and Piedmont.

The Natural Park Alpi-Marittime on the Italian side and the National Park Mercantour on the French side together build one geographical unit. Both regions are also close to each other culturally, so that one can speak of a single local unit. Therefore the transboundary cooperation in this region has a long tradition. The area plays an important role as a connection to the other Italian mountain ranges (Apennines).

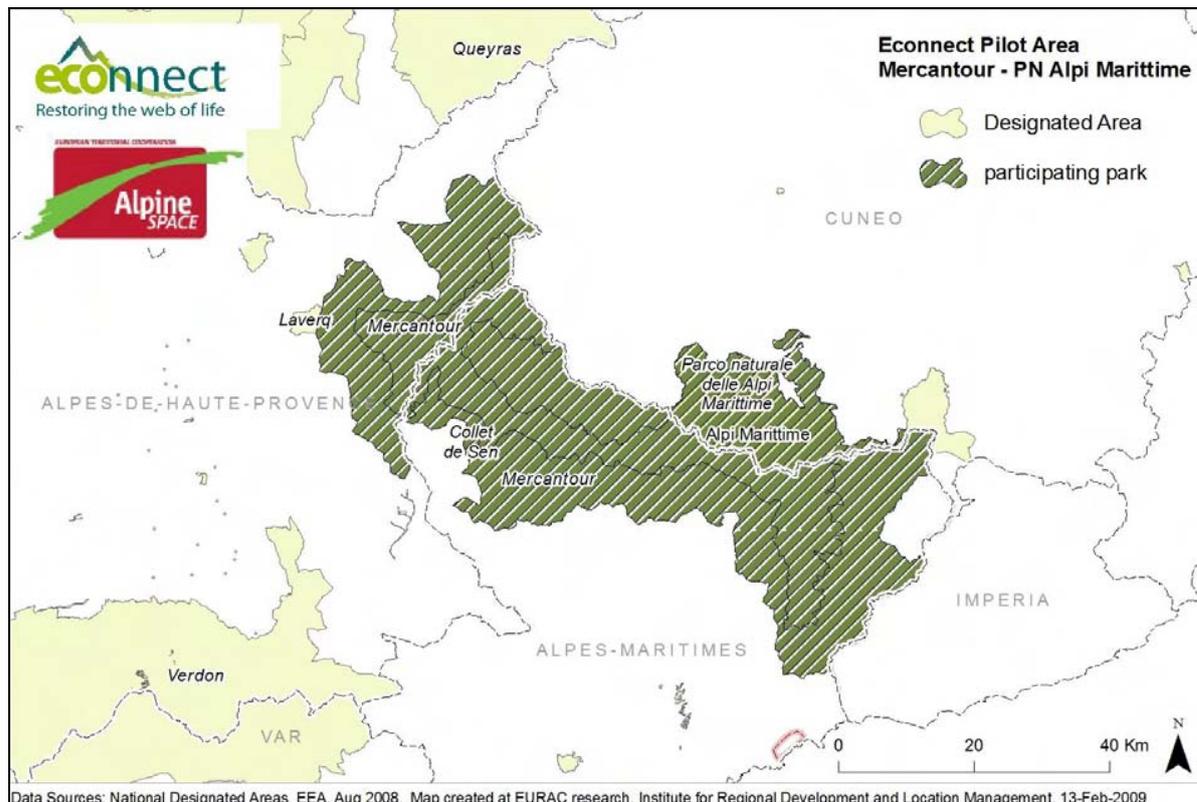


Fig 1: The region South-east Alps - Mercantour/Alpi Marittime

2.9 Management of regional nature parks (*aree naturali protette regionali*)

2.9.1 Provisions of the Outline Law on Protected areas:

- Articles 22 to 28 of the Outline Law on Protected areas
- Article 23 of the Outline Law on Protected areas: „1. *La legge regionale istitutiva del parco naturale regionale, tenuto conto del documento di indirizzo di cui all'articolo 22, comma 1, lettera a), definisce la perimetrazione provvisoria e le misure di salvaguardia, individua il soggetto per la gestione del parco e indica gli elementi del piano per il parco, di cui all'articolo 25, comma 1, nonché i principi del regolamento del parco*”.
- Article 24 of the Outline Law on Protected areas: „ *Organizzazione amministrativa del parco naturale regionale*”:
„1. *In relazione alla peculiarità di ciascuna area interessata, ciascun parco naturale regionale prevede, con apposito statuto, una differenziata forma organizzativa indicando i criteri per la composizione del consiglio direttivo, la designazione del presidente e del direttore, i poteri del consiglio, del presidente e del direttore, la composizione ed i poteri del collegio dei revisori dei conti e degli organi di consulenza tecnica e scientifica, le modalità di convocazione e di funzionamento degli organi statutari, la costituzione della comunità del parco*”.

2. Nel collegio dei revisori dei conti deve essere assicurata la presenza di un membro designato dal Ministro del tesoro.

3. Gli enti di gestione dei parchi naturali regionali possono avvalersi sia di personale proprio che di personale comandato dalla regione o da altri enti pubblici”.

- **Article 25 of the Outline Law on Protected areas (Strumenti di attuazione)**

„1. Strumenti di attuazione delle finalità del parco naturale regionale sono il piano per il parco e il piano pluriennale economico e sociale per la promozione delle attività compatibili.

2. Il piano per il parco è adottato dall'organismo di gestione del parco ed è approvato dalla regione. Esso ha valore anche di piano paesistico e di piano urbanistico e sostituisce i piani paesistici e i piani territoriali o urbanistici di qualsiasi livello.

3. Nel riguardo delle finalità istitutive e delle previsioni del piano per il parco e nei limiti del regolamento, il parco promuove iniziative, coordinate con quelle delle regioni e degli enti locali interessati, atte a favorire la crescita economica, sociale e culturale delle comunità residenti. A tal fine predispone un piano pluriennale economico e sociale per la promozione delle attività compatibili. Tale piano è adottato dall'organismo di gestione del parco, tenuto conto del parere espresso dagli enti locali territorialmente interessati, è approvato dalla regione e può essere annualmente aggiornato.[...].”

- **Article 22 of the Outline Law on Protected areas (provisions concerning participation)**

- **Article 27 of the Outline Law on Protected areas (vigilanza e sorveglianza):**

„1. La vigilanza sulla gestione delle aree naturali protette regionali è esercitata dalla regione. Ove si tratti di area protetta con territorio ricadente in più regioni l'atto istitutivo determina le intese per l'esercizio della vigilanza.

2. Il Corpo forestale dello Stato ha facoltà di stipulare specifiche convenzioni con le regioni per la sorveglianza dei territori delle aree naturali protette regionali, sulla base di una convenzione-tipo predisposta dal Ministro dell'ambiente, di concerto con il Ministro dell'agricoltura e delle foreste”.

- **Article 30 of the Outline Law on Protected areas (sanzioni)**

2.9.2 Provisions on the regional level

Besides the provisions of the Outline Law on Protected areas, provisions are laid down on the regional level in the legal texts on nature protection. For instance, for the management of the regional park Alpi Maritimi Parco Naturale Alpi Maritimi, the national and regional provisions have to be taken into account:

- **Articles 22 to 28 of the Outline Law on Protected areas**
- **Legge quadro 6 dicembre 1991, n.394** (Outline Law on Protected areas)
- **Legge regionale 22 marzo 1990 (Piemonte), n. 12** (Nuove norme in materia di Aree protette „Parchi naturali, Riserve naturali, Aree attrezzate, Zone di preparato, Zone di salvaguardia”).
- **Legge regionale 14 marzo 1995, n. 33.** Istituzione del Parco naturale delle Alpi Marittime (Accorpamento del Parco naturale dell'Argentiera con la Riserva naturale del Bosco e dei Laghi di Palanfre'). (B.U. 22 marzo 1995, n. 12).

More precisely:

- **Article 1 of the Legge regionale 14 marzo 1995, n. 33:** „1. *Ai sensi della legge regionale 22 marzo 1990, n. 12, e' istituito il Parco naturale delle Alpi Marittime, Ente di diritto pubblico*”.
- **Article 4 de la della Legge regionale 14 marzo 1995, n. 33**
- **Article 7 de la Legge regionale 14 marzo 1995, n.33:** „Vincoli e permessi”
- **Article 8 of the Legge regionale 14 marzo 1995, n. 33**
- **Article 9 (Vigilanza) della Legge regionale 14 marzo 1995, n. 33:**

„La vigilanza sull'area di cui alla presente legge e' affidata:

a) *al personale di sorveglianza dell'Ente di gestione di cui all'articolo 4;*

b) *agli agenti di polizia locale, urbana e rurale, alle guardie di caccia e di pesca, al Corpo Forestale dello Stato in base alle disposizioni di cui all'articolo 27, comma 2, della legge 6 dicembre 1991, n. 394;*

c) *a guardie ecologiche volontarie in virtu' di specifica convenzione con l'Ente di gestione del Parco come previsto dall'articolo 14, comma 3, della L.R. 36/1992*”.

According to the provisions of the Outline Law on Protected areas, a plan for the park and a socio-economic plan have to be adopted (*piano per il parco, piano pluriennale economico e sociale per la promozione delle attività compatibili*).

2.10 The existing cooperation between transborder protected areas

A cooperation between the Parks Mercantour and Alpi Maritimi exists for a long time. This is a voluntary cooperation. For France it complies with the recently added provisions of the article L. 331-9 of the Environmental Code (added to the Environmental Code in 2006): „*[The public institution of the National Park] can engage common actions with the body of management of a transborder protected area within the framework of the national and European policies entering their respective field of competences and, if necessary, create the management tools contributing to the implementation of their common missions. /Subject to the prior approval of the minister in charge for nature protection, it can moreover subscribe to agreements of international twinning with foreign bodies competent for the management of protected areas*”.

Steps of the cooperation between the Parks Mercantour and Alpi Maritimi:

- **1987** : twinning of the two parks.
- **1993** : getting of the European Diploma of Protected Areas (for the two parks)
- **1998** : adoption of a charter concerning the pairing of the two parks.
- **2000** : common request of inscription of the two Parks to the World Heritage List and for the creation of a transborder biosphere reserve.
- **2001** : starting of the first INTERREG project
- **2002** : creation of a transborder structure called “Interparcs” and renewal of the European Diploma of Protected Areas

- **2006** : adoption of a common actions plan for the protection and the sustainable development of the parks („*Piano d'azione commune per la protezione e il sviluppo sostenibile* »)
- **2006 (October)**: conclusion of an agreement between the Italian Ministry for Environment, the region Piemonte and the Natural Park Alpi Marittime (in order to evaluate the legal and administrative conditions for a transnational management of the two Parks)
- **2008 (September)** : signature in Monaco of a partnership agreement between the two parks

3 TRANSBORDER COOPERATION

3.1 The Territorial Entities Competencies

Article 117, paragraph 9, of the Italian Constitution:

„*Within its field of competence the region may establish agreements with foreign states and understandings with territorial entities that belong to a foreign state, in the cases and forms provided for by state law*”.

3.2 The International Law on Transborder Cooperation and Italy

Italy ratified in March 1985 the *European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities* and it entered into force in Italy in June 1985. 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.

Bilateral agreements were concluded on the basis of this text. We can mention for instance a bilateral agreement between Italy and France¹⁷ (concluded in 1993) and a bilateral agreement between Italy and Switzerland¹⁸ (concluded in 1993).

But Italy did not ratify the two additional protocols to the Framework Convention (the *Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities* and 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 European Grouping of Territorial Cooperation in law

The provisions for the implementation of the European regulation on the EGTC are integrated in the **Legge Comunitaria 2008** adopted in Giulio 2009. The Chapter III of this text is about the EGTC.

Article 46 is relating to the creation and the legal nature of the EGTC.

¹⁷ Accord de Rome, Accord entre le Gouvernement de la République française et le gouvernement de la République italienne concernant la coopération transfrontalière entre collectivités territoriales, conclu à Rome, le 26 novembre 1993.

¹⁸ Accord-cadre entre la Confédération suisse et la République italienne sur la coopération transfrontalière des collectivités et autorités régionales et locales, conclu à Berne le 24 février 1993.

According to the **paragraph 2**, the GECT whose bench is in Italia have the legal personality governed by public law („*personalità giuridica di diritto pubblico*”). According to the regulation 1082/2006 the notion of body governed by public law is the one defined in the Directive 2004/18/CE¹⁹ (Article 9, paragraph 9²⁰).

According to the **third paragraph**, the regional authorities and local authorities designed in the 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 the “*article 2, paragraph 1, of the legislative decree n.267/2000(decreto legislativo 18 agosto 2000, n. 267)*”

(„*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*”).

According to the **fourth paragraph**, the object and the duties of the EGTC have to be laid down in a statute. It can be noticed that the minimal requirements to be laid down in the statute are more in the Italian text as in the European Regulation.

„*Gli organi di un GECT avente sede in Italia, nonché le modalità di funzionamento, le rispettive competenze e il numero di rappresentanti dei membri in detti organi, sono stabiliti nello statuto. Le finalità specifiche del GECT ed i compiti ad esse connessi sono definiti dai membri del GECT nella convenzione istitutiva*”.

- **Article 47** is relating to the **authorization for the creation of an EGTC**.

Different authorizations have to be given for the creation of an EGTC. There is a broad control of the State on the creation of an EGTC. The agreement of all the interested administrations has to be given for the creation of an EGTC („*necessaria ‘conformità’ dei pareri*”). This complex procedure could be an obstacle for the creation of a EGTC.

- **Article 48** is relating to the **financial provisions concerning the EGTC**.

The Region of Lombardy adopted a regional Law before the adoption of the Community Law 2008 (*Legge comunitaria 2008*). But the President of the Council of Ministers (*Presidente del Consiglio dei ministri*) lodged a complaint by the Constitutional Court in order to be verified the constitutionality of this law²¹. That is why the Valle d’Aosta and the Piedmont waited before adopting their law on the EGTC (there are already bills).

The inputs of the EGTC to Italian Law

¹⁹ 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, (OJ L 134, 30.4.2004, pp. 114-240).

²⁰ A „body governed by public law” means any body:

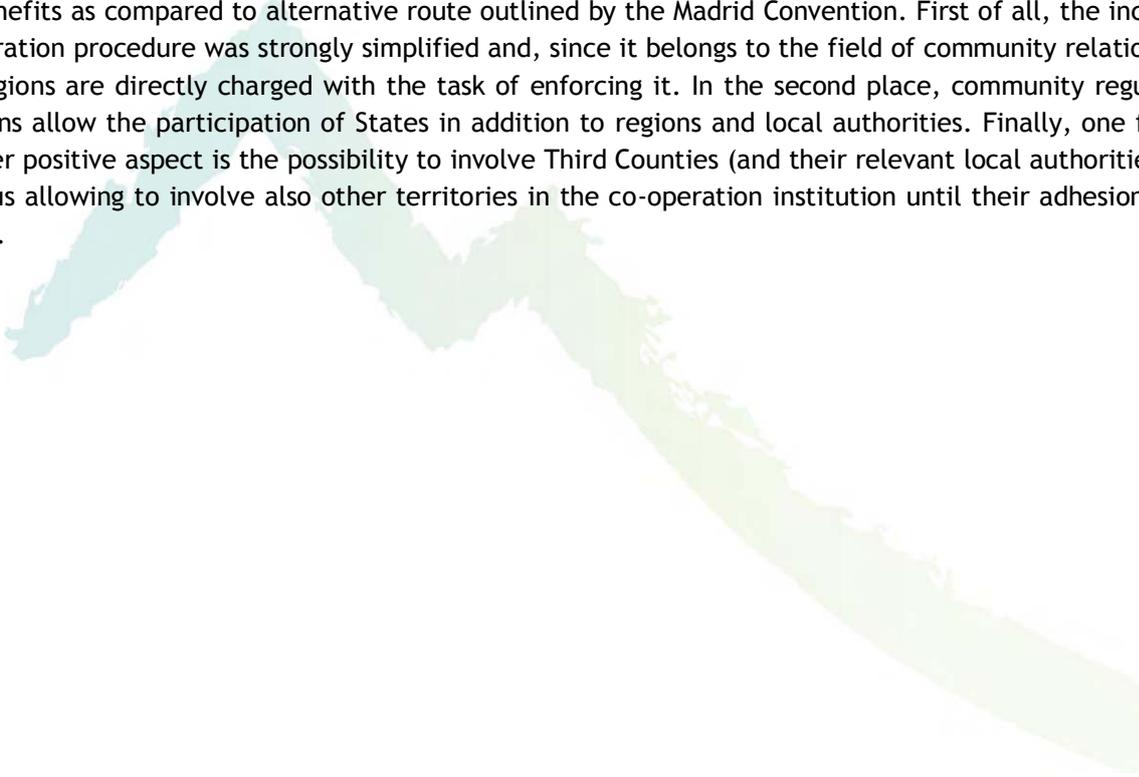
(a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) having legal personality; and

(c) 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 by other bodies governed by public law”.

²¹ Ricorso per legittimità costituzionale del 5 maggio 2009, n.30, Ricorso per questione di legittimità costituzionale depositato in cancelleria il 5 maggio 2009 (del Presidente del consiglio dei ministri).

The Madrid Convention on Transfrontier Cooperation among Territorial Communities, signed within the Council of Europe and which came into force on 22nd December 1981, was undersigned by Italy on the very same day of its opening, and then ratified by the **National Law n. 948/ 1984**. The first Additional Protocol to the Madrid Convention was signed by Italy on 5th December 2000; the second Additional Protocol was not signed by Italy for the time. These two instruments are then not into force in Italy. The provisions introduced by the Ratification Law n°948/1984, particularly **Articles 3 and 5**, determine that the possibility for the Regions and Local Authorities to stipulate agreements with corresponding bodies of other States is dependent upon the conclusion of bilateral agreements between States (the so-called “coverage agreement”), aiming at identifying the subjects which are eligible for such international agreements (see Article 3, paragraph 1); the agreements stipulated by the Regions and Local Authorities are subject to preliminary approval from the State (see **Article 5**). The possibility to take advantage of an instrument such as the EGTC is clear and leads to several benefits as compared to alternative route outlined by the Madrid Convention. First of all, the incorporation procedure was strongly simplified and, since it belongs to the field of community relations, Regions are directly charged with the task of enforcing it. In the second place, community regulations allow the participation of States in addition to regions and local authorities. Finally, one further positive aspect is the possibility to involve Third Counties (and their relevant local authorities), thus allowing to involve also other territories in the co-operation institution until their adhesion to EU.



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Work Package 6 “*Legislation*”

THE LEGAL FRAMEWORK OF PROTECTED AREAS IN THE ALPINE STATES

Slovenia

Bolzano/Bozen, August 2009



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Contents

Contents	2
1 GENERAL POINTS	4
1.1 Organisation of the State	4
1.2 The legislative and executive	5
1.3 Status of International Treaties and European Community Law	5
2 NATURE PROTECTION AND SPATIAL PLANNING	6
2.1 Preservation of mountain areas and the law	6
2.2 Distribution of power and legislative competencies	6
2.3 Legal Framework of Nature Protection	7
2.4 Legal Framework of Spatial Planning	9
2.5 Protected areas in the legislation on Nature protection	9
2.6 Legal provisions as regards ecological connectivity	10
2.7 Ecological connectivity in non legally-binding documents	12
2.8 Management of Protected Areas	13
2.9 The existing transborder cooperation as regards protected areas	14
3 TRANSBORDER COOPERATION	14
3.1 Powers of local authorities as regards transborder cooperation	14
3.2 An exemple of an Alpine Transborder Cooperation involving Slovenia: Matriosca.	14
3.3 Slovenia and International Law on Transborder Cooperation	15
3.4 European Grouping of Territorial Cooperation (EGTC) and Slovene law	15
4 Bibliography	16

1 GENERAL POINTS

1.1 Organisation of the State

According to the Article 4 of the Slovene Constitution, „Slovenia is a territorially unified and indivisible state”. Under the Constitution, Slovenia is a democratic republic and a social state governed by law. The state’s authority is based on the principle of the separation of legislative, executive and judicial powers, with a parliamentary system of government. As regards the organisation of the State, the Constitution was recently amended by the **Constitutional Act Amending Articles 121, 140 and 143 of the Constitution of the Republic of Slovenia**¹.

Tab. 1: Relevant articles in the Slovenian Constitution before and after the reform process.

Articles of the Constitution	Now (After the Constitutional Reform)	Before the Constitutional Reform
Article 121	<p>Public authorities : <u>Legal entities and natural persons</u> may be vested by law or on the basis thereof with the public authority to perform certain duties of the state administration”</p>	<p>„Duties of Administrative Bodies: Duties of the state administration are performed directly by ministries. Self-governing communities, enterprises, other organisations and individuals may be vested by law with public authority to perform certain duties of the state administration”.</p>
Article 140	<p>„Scope of Local Self-Government The competencies of a municipality comprise local affairs which may be regulated by the municipality autonomously and which affect only the residents of the municipality. <u>The state may by law transfer to municipalities the performance of specific duties within the state competence if it also provides financial resources to enable such.</u></p> <p>State authorities shall supervise the proper and competent performance of work relating to matters vested in the local community bodies by the state”.</p>	<p>The competencies of a municipality comprise local affairs which may be regulated by the municipality autonomously and which affect only the residents of the municipality. With the prior consent of the municipality or wider self-governing local community, the state may by law vest specific duties within the state jurisdiction in the municipality or wider self-governing local community, if the state provides financial resources for this purpose. State authorities shall supervise the proper and competent performance of work relating to matters vested in the local community bodies by the state”</p>
Article 143	<p>„<u>Region</u> A region is a self-governing local community that manages local affairs of wider importance, and certain affairs of regional importance provided by law. Regions are established by a law which also determines their territory, seat, and name. Such law is adopted by the National Assembly by a two-thirds majority vote of deputies present. <u>The participation of the municipalities must be guaranteed in the procedure for adopting the law.</u></p> <p><u>The state transfers by law the performance of specific duties within the state competence to the regions and must provide to them the necessary financial resources to enable such”.</u></p>	<p>„Wider Self-Governing Local Communities Municipalities may independently decide to join into wider self-governing local communities, as well as regions, in order to regulate and manage local affairs of wider importance. In agreement with such communities, the state may transfer specific matters within the state competence into their original competence and determine the participation of such communities in proposing and performing particular matters within the state competence.</p> <p>The principles and criteria regarding the transfer of competence from the preceding paragraph are regulated by law”.</p>

¹ Constitutional Act Amending Articles 121, 140 and 143 of the Constitution of the Republic of Slovenia, adopted on 20 June 2006 and entered into force on 27 June 2006 (Official Gazette of the Republic of Slovenia, No. 68/06).

1.2 Legislative and executive

1.2.1 The legislative

National Assembly: 90 deputies (88 elected representatives of the parliamentary parties and one representative each from the Italian and Hungarian national communities).

The highest legislative authority is the National Assembly (90 deputies), which has the right to enact laws. Elections to the National Assembly are held every four years.

1.2.2 The executive

The Government consists of the Prime Minister and other Ministers. The government and the ministers are independent within the framework of their jurisdiction, and responsible to the National Assembly.

Government: Prime Minister, 15 Ministers, 3 Ministers without Portfolio (from 21.11.2008).

1.2.3 A specific institution: the National Council

National Council: 40 elected representatives of employers, employees, farmers, tradesmen and the self-employed, as well as from the non-economic sector and local interest groups. According to the Constitution, the National Council of the Republic of Slovenia is the representative body for social, economic, professional and local interests. It is composed of:

- representatives of labour and social interests (functional interests)
- representatives of local interests (territorial interests).

The powers of the National Council are laid down in the **article 97 of the Slovene Constitution**. The National Council has a **legislative Initiative**. It may propose to the National Assembly to adopt certain laws or amend certain legal provisions. The council's role as provider of initiatives is an important one within the legislative process. These proposals comprise initiatives and requests made by members, and proposals made by the National Council's committees and interests groups.

1.3 Status of International Treaties and European Community Law

1.3.1 International Law

Article 8 of the Slovene Constitution: „Laws and regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly”.

Article 153 of the Slovene Constitution: (Conformity of Legal Acts): „Laws, regulations and other general legal acts must be in conformity with the Constitution. / Laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly, whereas regulations and other general legal acts must also be in conformity with other ratified treaties. / Regulations and other general legal acts must be in conformity

August 2009

Page 5

with the Constitution and laws. / Individual acts and actions of state authorities, local community authorities and bearers of public authority must be based on a law or regulation adopted pursuant to law”.

Ratification of treaties: according to **article 86 of the Slovene Constitution**, „[the] National Assembly adopts laws and other decisions and ratifies treaties by a majority of votes cast by those deputies present, save where a different type of majority is provided by the Constitution or by law”.

1.3.2 European Law

For all Member States: obligation on administrations and national courts to apply Community law in full within their sphere of competence and to protect the rights conferred on citizens by that law (**direct application of Community law**), and to disapply any conflicting national provision, whether prior or subsequent to the Community provision (**primacy of Community law over national law**).

2 NATURE PROTECTION AND SPATIAL PLANNING

2.1 Preservation of mountain areas and the law

There is no specific law on preservation of mountain areas. Slovenia did not develop specific regulations, policies and programs for conservation and sustainable use of biological diversity in mountain ecosystems. The mountain areas are protected through the existing laws in different fields: Environment Protection Law, National Environmental Action Program, Nature Conservation Law, Biodiversity Conservation Strategy, Forestry Law, National Forest Development Programme, Agri-environmental Programmes, and Water Law.

The Alpine Convention entered into force in 1995 in Slovenia and all the Protocols of the Alpine Convention entered into force in Slovenia in 2004.

2.2 Distribution of power and legislative competencies

2.2.1 Nature protection

The competences of the State and local communities in the field of nature protection are laid down in the **Article 8 of the Nature Conservation Act**:

„(1) *The regulation of issues concerning biodiversity conservation and protection of valuable natural features shall fall within the competence of the State, with the exception of issues of local importance concerning the protection of valuable natural features, which fall within the competence of a local community.*

(2) *The issues of local importance referred to in the preceding paragraph shall be:*

- programming and planning in the field of protection of valuable natural features of local importance;

- the adoption of measures for the protection of valuable natural features of local importance;
 - the provision of local nature conservation public services;
 - the popularisation of the protection of valuable natural features of local importance.
- (3) *Notwithstanding the provision of the preceding paragraph, the State shall take action if the existence of a valuable natural feature of local importance is threatened*".

2.2.2 Spatial planning

The competences concerning spatial planning are laid down in the **Spatial Planning Act (ZPNacrt)**². According to **article 11 of the Spatial Planning Act**:

„(1) The state is competent for:

1. target setting for spatial development of the state,
2. determining references and guidelines for planning spatial arrangements at all levels,
3. planning spatial arrangements of national importance, and
4. supervision of the legality of spatial planning at the municipal level.

(2) The municipality is competent for:

1. determining references and guidelines for the spatial development of the municipality,
2. determining the use of space and conditions for placing interventions in space, and
3. planning spatial arrangements of local importance".

2.3 Legal Framework of Nature Protection³

The general obligation of preserving natural values is set in **Article 5 (States Objectives)** and **Article 73 (Protection of Natural and Cultural Heritage)** of the Slovenian Constitution.

Article 5, paragraph 1,: „*In its own territory, the state [...] provide for the preservation of the natural wealth and cultural heritage*".

Article 73: „(1) *Everyone is obliged in accordance with the law to protect natural sites of special interest, rarities and cultural monuments.*

(2) *The state and local communities shall promote the preservation of the natural and cultural heritage*".

In Slovenia, the field of biodiversity conservation is rather well regulated by statutory acts, in particular the **Nature Conservation Act** but also with the **Environmental Protection Act**. The key executive acts concerning biodiversity conservation are the **Decree on threatened plant and animal species**, the **Decree on the protection of endangered animal species**, the **Decree on the protection of endangered plant species**, the **Decree on habitat types**, the **Decree on ecologically important areas**, . Some provisions are embedded in legislation of other sectors, e. g. regarding forestry, fishing, hunting... The financial support for the conservation of agricultural biodi-

² Spatial Planning Act (ZPNacrt), Official Gazette of RS, no. 33/2007.

³ Quote: Andrej BIBIC, *Operational Programme 2007-2013*, Natura 2000 Site Management Programme.

versity is regulated by the **Agriculture Act**. The regulations concerning the establishment of protected areas and the designation of their management authorities therefore play a significant role in the conservation of biodiversity. Such national regulations are the Triglav National Park Act, the Trebce Memorial Park Act (renamed by the Nature Conservation Act into Kozjansko Park), the Kocjanske jame Regional Park Act, the Skocjanski zatok Nature Reserve Act, the Decree on Sečovlje soline Landscape Park, Landscape Park Goricko and Landscape park Ljubljansko barje. At the municipal level, for instance, the Ordinance on the designation of Zelenci Nature Reserve was adopted⁴ and Regional park Cerknisko jezero.

The **Environment Protection Act (Zakon o varstvu okolja, hereinafter ZVO-1)** (*Official Gazette of the Republic of Slovenia, No. 39/06 - official consolidated version, 49/06 - ZmetD, 66/06 - judicial decision of the Constitutional Court of the Republic of Slovenia, and 33/07 - ZPNačrt*) provides a systematic framework for nature conservation, of which biodiversity conservation is a fundamental part. The **Environment Protection Act (ZVO-1)** thus regulates the protection of the environment from overburdening as a fundamental condition for sustainable development, and within this framework it provides basic principles of environmental protection, environmental protection measures, monitoring of the state of the environment and information on the environment, economic and financial instruments for environmental protection, public environmental protection services, and other issues related to environmental protection. The purpose of environmental protection is to promote and guide the kind of social development that will ensure long-term conditions for human health, well-being and quality of life, as well as the preservation of biodiversity.

Nature conservation remains inextricably embedded into the system of environmental protection, through joint planning and programming, joint environmental assessment procedures, joint environmental monitoring, environmental data publicity, access to environmental data, environmental taxes on the use of natural resources, nongovernmental organisations for environmental protection acting in the public interest, and the regulation of concessions on natural resources. The **Environment Protection Act (ZVO-1)** thus provides for a joint national environmental protection programme, which also encompasses a **national programme on nature protection**⁵. The National Assembly of the Republic of Slovenia adopted the programme jointly with the **Resolution on the National Environmental Action Plan 2005-2012** and, based on long-term objectives, policies and biodiversity protection tasks, has drafted an operational programme for the management of Natura sites as one of the key programmes for environmental protection.

Operational programmes for environmental protection are identified in **Article 36 of ZVO-1**. They are adopted by the Government of the Republic of Slovenia (hereinafter: Government) pursuant to the procedure defined in **Article 37 of the Environment Protection Act (ZVO-1)**.

The **Nature Conservation Act (Zakon o ohranjanju narave, hereinafter ZON)** (*Official Gazette RS, No. 96/04 - official consolidated version ZON-UPB2*) establishes an **integrated system of nature conservation**, the purpose of which is the protection of valuable natural features and the

⁴ Quote: National Strategy on Biodiversity.

⁵ Provisions regarding the National nature protection programme are laid down in the article 94 of the Nature Conservation Act. Furthermore according to the Article 95 of the Nature Conservation Act, “[the] Local communities shall adopt programmes for the protection of valuable natural features of local importance in their territory” and “[these] programmes [...] shall not be contrary to the national programme” adopted according to the Article 94 of the Nature Conservation Act.

conservation of biological diversity. It identifies subjects of protection; methods and measures for their protection; organisation, financing, programming and planning of nature protection; and other content necessary for effective nature protection. Subjects of protection in biodiversity conservation which are identified or identifiable by area include habitat types whose maintenance at a favourable status shall be given priority, as well as habitats of nationally and internationally protected species, ecologically important areas and special protected areas (Natura 2000 sites) which form the European ecological network. Subjects of protection also include threatened, protected and internationally protected wild plant or animal species. All subjects of protection are defined under the relevant implementing regulation, act by the minister responsible for nature protection, and Government decree.

2.4 Legal Framework of Spatial Planning

Spatial Planning Act

According to the article 13, paragraph 3, of the Spatial Planning Act, „*Spatial planning documents are national, municipal and inter-municipal spatial planning documents*”.

- National spatial planning documents are the national strategic spatial plan and national spatial plan.
- Municipal spatial planning documents are the municipal spatial plan and municipal detailed spatial plan. A municipality can adopt the strategic part of a municipal spatial plan as a municipal strategic spatial plan, which is thus an independent municipal spatial planning document.
- An inter-municipal spatial planning document is a regional spatial plan.

2.5 Protected areas in the legislation on Nature protection

There are different categories of protected areas in Slovenia and it can be also distinguished between the small and the large protected areas.

The small protected areas:

- Natural monument (*Naravni spomenik*): Article 64 Nature Conservation Act (IUCN equivalent: III)
- Strict Nature reserve (*Strogi naravni rezervat*): Article 65 Nature Conservation Act (IUCN equivalent: I)
- Nature reserve (*Naravni rezervat*): Article 66 Nature Conservation Act (IUCN equivalent: I or IV)

The large protected areas:

- National park (*Narodni park*) Article 69 Nature Conservation Act (IUCN equivalent: II)
- Regional park (*Regijski park*): Article 70 Nature Conservation Act (IUCN equivalent: V)
- Landscape park (*Krajinski park*): Article 71 Nature Conservation Act (IUCN equivalent: V)

Article 67 of the Nature Conservation Act laid down the objectives of the large protected areas and precises also that „ *[small] protected areas protected areas may be established within large*

protected areas". A general protection regime for the large protected areas is also laid down in the **article 68**. The areas according to the Habitats and Birds Directives are designated as „special protected areas" But Natura 2000 areas are not an automatic part of the protected areas system. They are esignated separately and can be part of a protected area.

2.6 Legal provisions as regards ecological connectivity

2.6.1 European Law (The provisions of the Habitats directive)⁶

The **Habitats Directive**⁷ intends to create an ecological network through Europa. The provisions of the **article 10 of this directive** contain measures for improving the ecological coherence of the ecological network. This disposition is like a recommendation:

„Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora. / Such features are those 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 ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species".

According to the Guidance on the maintenance of landscape connectivity features of major importance for wild flora and fauna⁸ elaborated at the european level for improving the coherence of the Natura 2000 Network, it is clear from the texts of the Habitats directive that the interpretation of the concept of „coherence" is a key issue affecting the implementation of directives. When considering the ecological coherence of Natura 2000, it is important to note that the completed Natura 2000 network, defined by the Habitats directive as the sum of all areas designated for conservation under the Birds and Habitats directives (**Article 3.1 of the Habitats directive**), is a collection of individual protected sites In order for these protected sites to actually form an ecologically coherent network then necessary functional connections amongst the sites and their surroundings must be maintained. Therefore management measures may need to go beyond the designated sites' boundaries and apply to the wider environment.

⁶ For further informations about the implementation of the Habitats Directive in Germany, see the last National report made by Germany according to article 17 of the Habitats Directive.

⁷ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora OJ L 59, 8.3.1996, p. 63.

⁸ KETTUNEN Marianne, TERRY Andrew, TUCKER Graham and JONES Andrew, Guidance on the maintenance of landscape connectivity features of major importance for wild flora and fauna. Guidance on the implementation of Article 3 of the Birds Directive(79/409/EEC) and Article 10 of the Habitats Directive (92/43/EEC), Institute for European Environmental Policy, August 2007.

2.6.2 Slovene Law

The obligations resulting from the **Birds and the Habitats Directives** have been transposed into the Slovenian legal order in their entirety, jointly with the regulations on nature conservation. The recommendations of the article 10 of the Habitats Directive are also laid down in the **Article 33, paragraph 4, of the Nature Conservation Act**. There is no provision concerning the creation of an ecological network like in the German law, but are the aims and goals of ecological network reached through different provisions of the Nature Conservation Act (ZON) that relate also to the ecological connectivity:

- **Article 32 about the ecologically important areas (*ekološko pomembno območje*):**
 - „(1) Ecologically important area shall be the area of a habitat type, its part or large ecosystem unit which significantly contributes to biodiversity conservation.
 - (2) *The ecologically important areas referred to in the preceding paragraph shall be:*
 1. *the areas of habitat types which are with regard to the biotic characteristics exceptionally diverse or well preserved where there are habitats of endangered or endemic plant or animal species and habitats which are internationally important according to the criteria of the ratified international treaties or which in any other way contribute to biodiversity conservation;*
 2. *the areas of a habitat type or large ecosystem unit which significantly contribute to the maintenance of natural balance by being evenly biogeographically distributed with regard to other ecologically important areas and by composing an ecological network;*
 3. *the habitats of the species referred to in Article 26;*
 4. *animal migration routes; and*
 5. *areas which significantly contribute to the genetic flow between the populations of plant or animal species.*
 - (3) Ecological network is a system of interconnected ecologically important areas or areas close to one another that through an even biogeographical distribution significantly contribute to the maintenance of natural balance and consequently biodiversity conservation.
 - (4) The Government shall specify ecologically important areas and ensure their protection through the measures for the protection of valuable natural features taken pursuant to the law.
 - (5) The rules of conduct, protection regimes or development orientations specified in the documents issued pursuant to the preceding paragraph shall be the mandatory basis for spatial planning and use of natural assets”.
- **Article 35 about the landscape (*krajina*):**
 - „(1) *Landscape shall be a spatially explicit part of nature with specific distribution of landscape components resulting from the characteristics of living and non-living nature and human activity.*
 - (2) *Landscape diversity shall be a spatial composition of natural and anthropogenic landscape elements.*

(3) Landscape diversity and those landscape features which are important for biodiversity conservation shall be conserved, developed and restored.

(4) Activities affecting the physical space shall be planned and carried out in such a way that the conservation of landscape features referred to in the preceding paragraph and of landscape diversity are given priority.

(5) The Government shall specify the landscape features and landscape diversity important for biodiversity conservation and the guidelines for conserving biodiversity in a landscape which have to be taken into account in the spatial planning and use of natural assets".

- **Article 36 about the agglomerations:**

„(1) In agglomerations biodiversity shall be conserved in such a way that:

- the connection between habitats in agglomerations and nature outside such areas is fostered if that is technically feasible and does not incur excessive costs;
- green areas, trees, groups of trees, still and running waters and other habitats are conserved;
- in the construction of plants and facilities such technical solutions are applied which do not present a trap or an obstacle to animals; and that technical solutions which after the construction turn out to present a trap or an obstacle to animals are eliminated by additional measures.

(2) For plant or animal species or habitats of their populations in agglomerations the minister shall, with the consent of the competent minister, prescribe the manner and conditions for an activity affecting nature which will comply with the requirements referred to in the preceding paragraph".

We have also to care about the provisions concerning the **measures for the protection of valuable natural features** which are laid down in the **articles 45 to 52 of the Nature Conservation Act**. The article 45, paragraphs 1 and 2, precise that the “ [the] State and local communities shall carry out the measures for the protection of valuable natural features in order to protect valuable natural features or maintain natural processes and to determine the manner of protecting valuable natural features” and that “[the measures] for the protection of valuable natural features shall be contractual protection, protection, temporary protection and restoration”.

2.7 Ecological connectivity in non legally-binding documents

The necessity to create an ecological network is highlighted in the **Biodiversity Conservation Strategy of Slovenia**. See the **point 2.1 of the Strategy** which defines some guidelines:

*„In view of the efficient conservation of ecosystems, it is important to promote the **establishment of a network of protected areas**, taking into account the network of protected areas of the European Union - NATURA 2000. However, **the established system of protected areas is not sufficiently efficient and adequate to guarantee the conservation of populations of numerous wild species and their habitats. It is therefore neces-***

sary for the in-situ conservation that a state ensures the conservation and sustainable use of biodiversity components outside protected areas”.

Slovenia: Programme to develop Slovenia’s forests⁹

Forests are of particular significance in Slovenia. With forest covering 58,5 % (Slovenia Forest Service, 2007) of its land surface, Slovenia ranks third in Europe in terms of proportion of forested land. That proportion is increasing as agricultural land is abandoned. Slovenia’s forestry policy is based on principles of sustainability, near-natural and multi-function forest management. The „Programme to develop Slovenia’s forests” of 1996 contains the key facts on Slovenian forests and their role in conserving biodiversity. The fact that the forests have a high degree of conservation, cover a significant proportion of the country’s land surface and are home to many of Europe’s endangered species gives them special importance in any Alpine network. Ecologically important habitats and wetlands in the forests and forest reserves enjoy special protection status. The development programme envisages involving the forestry agency, as well as the hunting authority and hunting associations in aspects of spatial planning, in particular infrastructure plans, to ensure that habitats for game are preserved.

2.8 Management of Protected Areas

There is some specific regulations for the management of protected areas in the Nature Conservation Act:

- **Article 59 relates to the management of protected areas**
„(1) The management of the protected area shall be the performance of tasks concerning the protection of valuable natural features and the tasks which are necessary to achieve the purpose of the protection of the area and are laid down in the instrument of protection.
(2) In compliance with the instrument of protection the establisher may manage the protected area by himself through a service unit, he may establish a public institute for this purpose or he may grant a concession for the management.
(3) The protected area shall be managed on the basis of the protected area management plan if so laid down in the instrument of protection”.
- **Article 60 relates to the management plan: nature, elaboration, participation to the procedure for the adoption.**
„(1) A protected area management plan shall be a programme document by which the development orientations, the manner of protection, use and management of the protected area and the detailed orientations for the protection of valuable natural features in the protected area are laid down while taking into account the development needs of the local community.
(2) Pursuant to the instrument of protection, the protected area management plan shall be adopted by the body which has adopted the instrument of protection.

⁹ Quote: Alpine Network of Protected Areas (in CIPRA, Background report on ecological connectivity).

(3) *The management plan for the protected area established by the State shall be adopted by the Government in a decree.*

(4) *Local communities in the protected area shall participate in the procedure for the adoption of the management plan referred to in the preceding paragraph by giving an opinion.*

(5) *The proposal for the protected area management plan shall be drawn up by the manager pursuant to the instrument of protection and with technical assistance of the organisation responsible for nature conservation”.*

- **Article 61** relates to the contents of the protected area management plan: it precises the essential components of the plan and precise also that “[the] management plan shall be a mandatory basis for spatial planning and the use of natural assets”.

2.9 The existing transborder cooperation as regards protected areas

There is no legal obligation to cooperate with transborder protected areas in the legal provisions on nature protection. But a voluntary cooperation is already existing. There is for instance cooperation through the Programme INTERREG between Slovenia and the Julian Alps (Alpi Giulie). The cooperation aims at elaborating a common cross-border management plan and between Landscape park Goricko, Naturpark Raab (Austria) and Órség (Hungary)

3 TRANSBORDER COOPERATION

3.1 Powers of local authorities as regards transborder cooperation

Article 6, paragraph 2, of the Environment Protection Act: „*The State shall ensure cooperation and solidarity in resolving global and international environmental protection issues, in particular by concluding international agreements, by cooperating with other countries with regard to the plans, programmes and activities affecting the environment with cross-border impact, by informing other countries of ecological accidents, and by exchanging environmental information at the international level*”.

3.2 An exemple of an Alpine Transborder Cooperation involving Slovenia: MATRIOSCA.

The project MATRIOSCA-AAP is aimed at promoting integrated and co-ordinated development in the territory of the cooperation area „Adria-Alpe-Pannonia”. The project will provide a unique forum for the cooperation of adequate members (in terms of responsibility, function and level) from all 14 partner regions. The backbone of the project is constituted by Working Groups in four

key areas influencing spatial development. The project should lead to an institutional setting which is based on present requirements and suited to grasp future opportunities¹⁰.

There was similar co-operation in the border area of Karavanke (Slovenia/Austria). Phare CBC Project „Kravanke-Natura 2000”¹¹ and current project „Karawanke@future”.

There are also crossborder activities in the frame of the project Interreg IIIB-CADSES-GREENBELT.

3.3 Slovenia and International Law on Transborder Cooperation

Slovenia ratified in July 2003 the **European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities** and it entered into force in October 2003. 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. Slovenia ratified also the two additional Protocols to the European Outline Convention:

- in September 2003 the **Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities** (concluded in 1995) and it entered into force in December 2003.
- in September 2003 the **Protocol N° 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation** (concluded in 1998) in December 2003.

We can mention a bilateral agreement between Slovenia and Austria in field of spatial planning exist: *Agreement among Slovenia and Austria on the Co-operation in the spatial planning and regional politics*, concluded in 1995.

3.4 European Grouping of Territorial Cooperation (EGTC) and Slovene law

For the implementation of the Regulation, Slovenia adopted rules on 20 March 2008: Decree on establishment of European Grouping of Territorial Cooperation (*Uredba o ustanavljanju evropskega združenja za teritorialno sodelovanje*, Ur.l. RS, št. 31/2008).

The question of the participation of third countries under the Regulation is taken into account in a particular manner in Slovenia.

¹⁰ Quote: Web Site of the project.

¹¹ Online on URL: http://www.karavanke.si/?dep_id=19 (10 July 2009).

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Work Package 6 “Legislation”

THE LEGAL FRAMEWORK OF PROTECTED AREAS IN THE ALPINE STATES

Switzerland

Bolzano/Bozen, August 2009



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Contents

1	GENERAL POINTS	4
1.1	Organisation of the State	4
1.2	The legislative and executive.....	4
1.3	International law and European Community Law	4
2	NATURE PROTECTION AND SPATIAL PLANNING:	6
2.1	The preservation of mountain areas and the law	6
2.2	The Legal Framework on Nature Protection	6
2.3	The Legal Framework on Spatial Planning.....	7
2.4	The ecological connectivity in law.....	8
2.5	The national or regional initiatives as regards ecological connectivity	10
2.6	Pilot region for the Project ECONNECT located partly in Switzerland: the Rhaethian Trinangel (Engadin/Southtyrol/Trentino/Tyrol)	12
2.7	The management of the National Park(s) in Switzerland	13
2.8	Experiences as regards transborder cooperation between protected areas.....	15
3	TRANSBORDER COOPERATION	15
3.1	The competences/powers of territorial entities as regards transborder cooperation.	15
3.2	Switzerland and the International Law on transborder cooperation.....	16
3.3	The EGTC and Switzerland	17
4	Bibliography	18

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 State¹. 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 authorities²:

- 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 law³

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.

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

² 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).

³ Online at www on URL: 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 law⁴.

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 agreement⁵ 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.

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

⁵ 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 legislate⁶ 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*)⁷
- Federal Law on Nature and Landscape Protection (*Loi fédérale du 1er juillet 1966 sur la protection de la nature et du paysage, LPN*)⁸
- Ordinance on Nature and Landscape protection (*Ordonnance du 16 janvier 1991 sur la protection de la nature et du paysage, OPN*)⁹

⁶ We underlined.

⁷ 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).

⁸ 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*)¹⁰

The protected areas can be classified in different categories:

- National park (Art. 23f LPN, art ; 16à 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 Planning¹¹

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

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

¹⁰ 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).

¹¹ See 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 les 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 REN¹²)¹³ 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 OFEV „Landscape 2020” (“Paysage 2020”)**¹⁴ and is integrated in the **Concept „Swiss Landscape”** (*Conception “Paysage Suisse”, CPS*)¹⁵.

The guidelines „Landscape 2020” (“Paysage 2020”)¹⁶ (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*)¹⁷ 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:

¹² 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>.

¹³ Nationales ökologisches Netzwerk, REN; Rete ecologica nazionale, REN.

¹⁴ Das Leitbild „Landschaft 2020“; il progetto “Paesaggio 2020”.

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

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

¹⁷ 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 passages¹⁸

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 platform¹⁹. For instance the criteria for the implementation of the Ordinance on Ecological Quality were fixed in 2004 by the Canton Jura²⁰ 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*).

¹⁸ CIPRA, Background report on ecological connectivity.

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

²⁰ On line on URL: Online at www on URL: http://www.jura.ch/_portal/site/acju/menuitem.b18b3953a670a23669c708021f816f1c/?vnextoid=c3ad7c0dbdcf9010VgnVCM100000f118f6c1RCRD (22 March 2009).

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

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

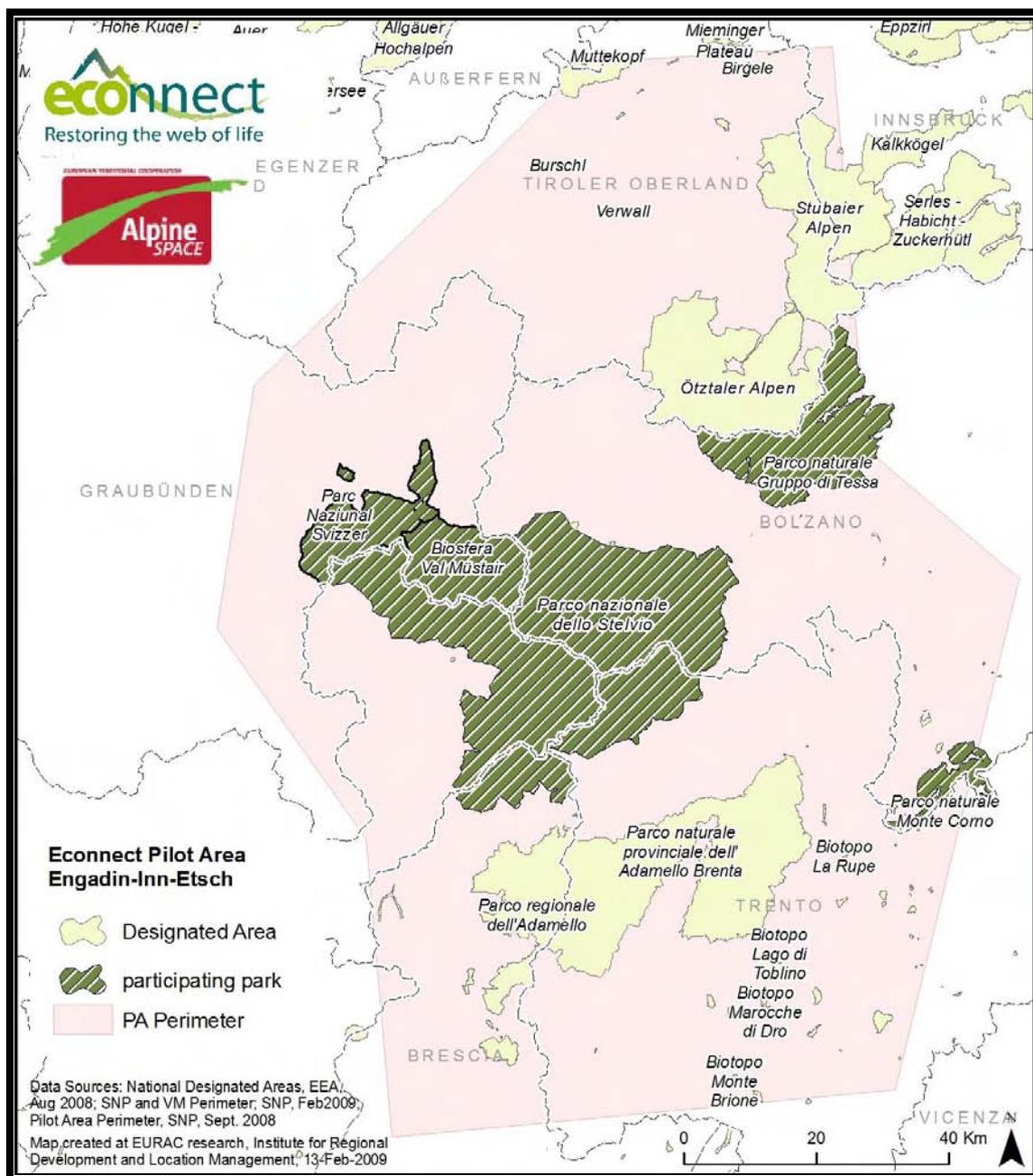


Fig 1: Engadin/Southtyrol/Trentino/Tyrol.

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:

a. guarantee the participation of the local population;

b. 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 Park²² (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.

²² 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*²³: 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 Constitution²⁴

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”.

²³ 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 (22 Januar 2009).

²⁴ Online at www on URL: 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. Switzer-

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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ECONNECT

Alpine Space Program – ETC

In the framework of the **Action 6.2**

**Bilateral Country Comparisons
of the Legal Framework of Protected Areas**

Austria/Germany

Pilot Region: - Berchtesgaden



Italian Ministry of the
Environment, Land and Sea





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Contents

1. INTRODUCTION	5
1.1. Background.....	5
1.2. Aims of the study	5
1.3. Expected outputs of these studies	6
1.4. Methodology/approach.....	6
1.5. Collaboration with Project Partners and Pilot Regions	7
1.6. The ECONNECT Pilot Regions: The Berchtesgaden Region	7
2. BILATERAL COMPARAISON OF THE LEGAL FRAMEWORK OF PROTECTED AREAS.....	10
2.1 Institutional Framework.....	10
2.2 Transborder cooperation (outside EGTC)	12
2.3. Classification of the protected areas	12
2.3.1. Towards an international classification of protected areas.....	12
2.3.2. Classification of protected areas on the national and/or regional level.....	14
2.3.2. Management of protected areas.....	17
2.3.3 Transborder cooperation in nature protection law.....	21
2.4 Protection of the habitats/biotopes.....	22
2.4.1 Protection of the mountain natural elements	22
2.4.2 Protection of the communitarian habitats	25

2.4.3 Protection of habitats (outside the Community Law).....	34
2.4.4. Legal provisions on habitats linkage.....	35
2.4.5 Spatial Planning in Protected Areas	40
2.5.6. Développement rural et connectivité écologique	43
2.5 Landscape protection and landscape management.....	44
2.5.1. La Convention européenne du paysage.....	44
2.5.2. Landscape management in the legal provisions on nature protection.....	45
2.6 The Protected Areas surroundings in law	46
2.6.1. Le régime juridique des espaces contigües aux espaces protégés	47
2.6.2 Le régime juridique spécifique des « alentours » des sites Natura 2000	47
3. THE EUROPEAN GROUPING ON TERRITORIAL COOPERATION.....	48
3.1. An European instrument for the facilitation of transborder cooperation	48
3.2. Transposition in Austria and in Germany	50
3.3. Creation of a grouping (GECT or another grouping) in the Berchtesgaden Region	52
4. CONCLUSIONS	52
5. BIBLIOGRAPHY	52
5.1. Publications générales.....	52
5.2. Autriche	52
5.3. Germany.....	52

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 taken into account, 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:

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”.

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

Hence the key questions to be solved appear:

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

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

1.3. Expected outputs of these studies

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

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

1.4. Methodology/approach

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

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

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

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

1.5. Collaboration with Project Partners and Pilot Regions

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

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

1.6. The ECONNECT Pilot Regions: The Berchtesgaden Region

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

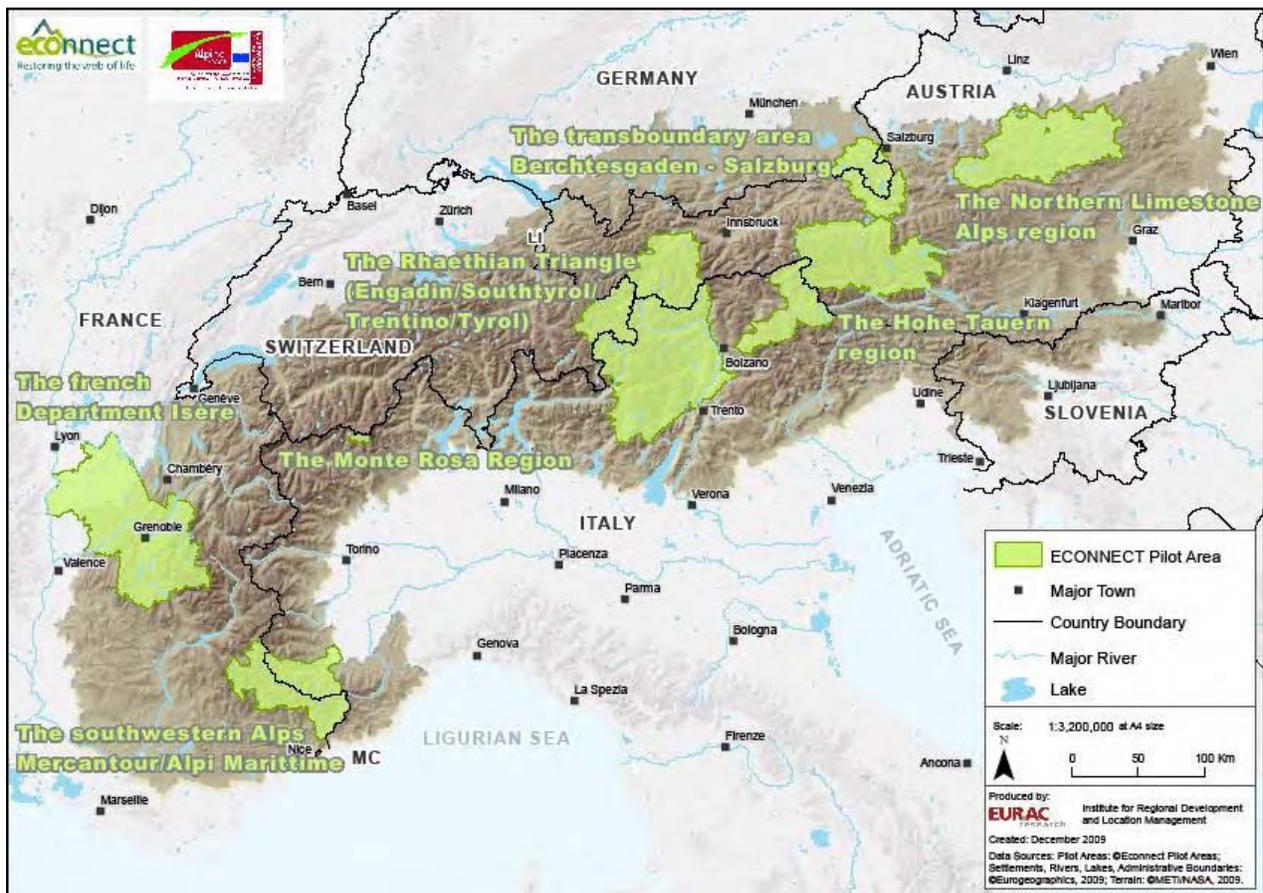


Fig 1: The ECONNECT Pilot Regions

In this study we will focus our attention on the Berchtesgaden Pilot Region.

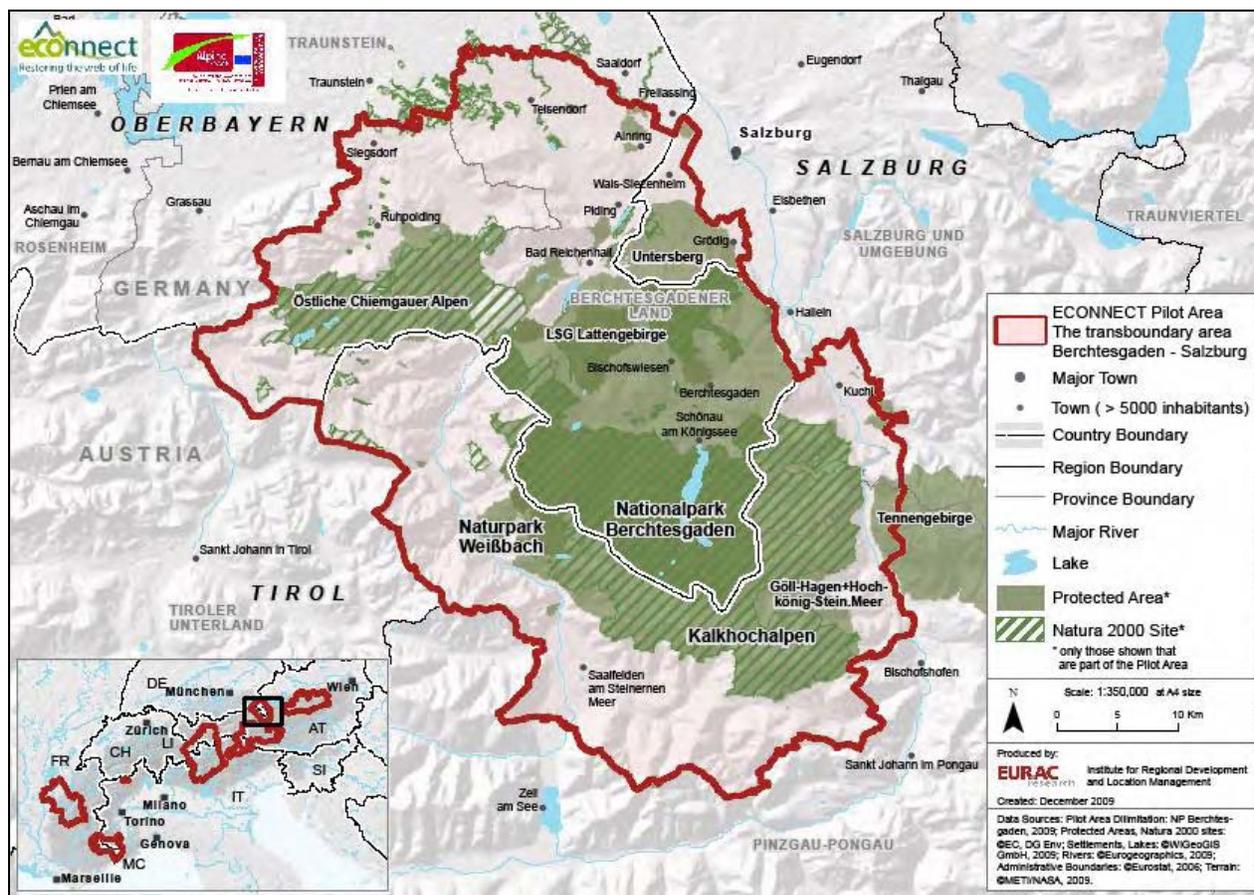


Fig 2: Econnect Pilot Area “Berchtesgaden Region”

Legal issues

The Pilot Region “The Rhaetian Triangle” is international (see Figure 1 above). It is composed of German and Austrian protected areas.

Site/ Pilot region	Type of protection/ Austrian side	Type of protection/ German side
The Berchtesgaden Region	Naturpark Weißbach (Salzburg) Naturschutzgebiet Kalkhochalpen (Salzburg)	Nationalpark Berchtesgaden (Bayern) Landschaftsschutzgebiet Lattengebirge (Bavaria) Naturschutzgebiet Östliche Chiemgauer Alpen (Bavaria)

Tab.1 : The protected areas of the pilot regions examined in this study.

2. BILATERAL COMPARISON OF THE LEGAL FRAMEWORK OF PROTECTED AREAS

In order to make a bilateral comparison of the legal framework of protected areas in the Alpine arc, we shall focus on a number of specific issues:

- the classification of the protected areas according to the law of the two States involved in the comparison and the management objectives pursued by such areas
- the protection of natural habitats
- the legal provisions on ecological connectivity
- the protection of the landscape
- the specific provisions concerning the areas surrounding protected sites
- the provisions on the European Grouping for Territorial Cooperation.

2.1 Institutional Framework

Germany

With the entry into force of the **constitutional reform on federalism** (*Föderalismusreform*) in **September 2006**, the field of nature conservation and landscape falls within the **concurrent legislative powers of the Federation (Bund)** (article 74, paragraph 1, no. 29 the German Constitution). The Bund does no longer have the power to pass framework legislation and the right to enact general rules in the field of nature and landscape conservation (article 75 of the German Constitution in its older version); instead the Federal Government must pass provisions that are directly applicable. The new Federal Act on Nature Protection was adopted on 29 July 2009⁴ and entered into force on 1 March 2010. However, once the federal legislation (in the field of nature protection) has been adopted, the German Constitution (*Grundgesetz*, literally ‘Basic Law’) provides that the Länder can adopt provisions that deviate therefrom (*Abweichungsrecht*). According to **Article 72, paragraph 3, of the Constitution (Grundgesetz)**: “*If the Federation has made use of its power to legislate, the Länder may enact laws at variance with this legislation with respect to: 1. hunting (except for the law on hunting licenses); 2. protection of nature and landscape management (except for the general principles governing the protection of nature, the law on protection of plant and animal species or the law on protection of marine life); [...]3. land distribution; 4. regional planning*”. The Basic law also specifies that: “*Federal laws on these matters shall enter into force no earlier than six months following their promulgation unless otherwise provided with the consent of the Bundesrat.*”

⁴ Act on Nature Protection and Landscape Conservation (Bundesnaturschutzgesetz - BNatSchG) BNatSchG, Bundesnaturschutzgesetz of 29 July 2009 (German Law Gazette- BGBl. I page 2542).

As for the relationship between federal law and the law of the Länder, the latest law enacted shall take precedence with respect to matters within the scope of the first sentence”.

The Länder therefore are not allowed to deviate from certain provisions of the federal law, namely from the provisions for the protection of species and the marine natural spaces and the basic principles of the federal law (*die allgemeine Grundsätze*):

- **Paragraph 1, sub-paragraph 1:** the goals of nature conservation and landscape maintenance
- **Section 6, sub-paragraph 1:** the monitoring of nature and landscape as an instrument
- **Paragraph 8:** landscape planning as an instrument
- **Paragraph 13:** the different steps involved in regulatory intervention concerning nature and landscape conservation (alternative solutions, replacement or compensation, payments for replacement)
- **Paragraph 20:** the categories of protected areas and the network of biotopes (*Biotopverbund*) as an instrument
- **Paragraph 30, sub-paragraph 1:** the protection of biotopes by law as an instrument
- **Paragraph 59, sub-paragraph 1:** ensure the right to enter open landscapes.

Austria

In Austria, the legislative power is shared between the federal regions (Länder) and the Federation (Bund). According to article 15, paragraph 1, of the Federal Constitutional Law "*[insofar] as a matter is not expressly delegated by the Federal Constitution to the legislation or also the execution of the Federation, it remains within the autonomous sphere of competence of the Länder*": it is the case of nature protection which is in the autonomous sphere of competence of the Länder. Each Land therefore adopts its own provisions on nature conservation; however cooperation between Länder is ensured by the establishment of various working groups. Additionally, concerning Natura 2000, one Land, Tyrol, is competent for coordination between all federal regions. The situation is more complex in the field of spatial planning and territorial management. Indeed this is a transversal domain that touches on many other matters (*Querschnittmaterie*): for that reason it is subject to the competence of the Bund if it falls within the scope of articles 10 and 12 of the Austrian Constitution; in all other cases, it falls within the competence of the Länder. The Länder are competent for regional spatial planning, but coordination is envisaged between them through the Austrian Conference on Spatial Planning (*Österreichischer Raumordnungskonferenz*), which has been established on the basis of a voluntary agreement made between the Länder in compliance with the fundamental principles of Article 15a of the Austrian Constitution. The Conference primarily develops recommendations and its members include all relevant spatial planning authorities.

[Talk about Austrian national parks : competences/powers of the Länder, responsibility of the Bund - as mentioned in the agreement on the Hohe Tauern Park].

CONCLUSION

In both Austria and Germany, regional authorities have legislative competence in the field of nature conservation (and share this with the State - also in Germany. Provisions concerning ecological corridors should therefore be adopted at the regional level in both countries.

2.2 Transborder cooperation (outside EGTC)

Austria

Germany

2.3. Classification of the protected areas

IUCN has developed a classification of protected areas according to their management objectives. Thanks to the definitions and information it contains, this classification is useful for comparison between different categories of protected areas in the Alps, even though the regulations of such areas do not always mention it explicitly. We will compare the German and Austrian protected areas according to the management objectives they pursue and we will state the IUCN category to which they belong.

2.3.1. Towards an international classification of protected areas⁵

In 1994, the International Union for Conservation of Nature (IUCN)⁶ issued guidelines classifying protected areas according to their management objectives. Such guidelines are based on some **key principles**: the basis of categorization is by primary management objective; assignment to a category is not a commentary on management effectiveness; the categories system is international; national names for protected areas may vary; all categories are important; and a gradation of human intervention is implied⁷. These guidelines, initially published in 1994, were revised following a long process of consultation and were published again in 2008⁸. Although such guidelines are not legally binding, the States Parties to the Convention on Biological Diversity have been invited to apply them in their national or regional legislation concerning protected areas⁹. The new version of the guidelines published in 2008 provided a new definition of protected area, stating that it is « *[a] clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to*

⁵ This paragraph and the general introduction could be included only once, rather than being repeated in each study.

⁶ IUCN, *Guidelines for Protected Areas Management Categories*, CNPPA with the assistance of WCMC. IUCN, Gland, Switzerland and Cambridge, UK, 261 pages.

⁷ Dudley N. (Editor), *Guidelines for Applying Protected Area Management Categories*, IUCN, Gland, Switzerland, 2008, p.5.

⁸ Dudley N. (Editor), *Guidelines for Applying Protected Area Management Categories*, IUCN, Gland, Switzerland, 2008, 96 pages.

⁹ See in particular the Programme on Protected Areas implemented by the signatory Countries of the Convention on Biological Diversity (COP 7 Decision VII/28).

achieve the long-term conservation of nature with associated ecosystem services and cultural values”¹⁰.

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

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

¹⁰ Dudley N. (Editor), *Guidelines for Applying Protected Area Management Categories*, IUCN, Gland, Switzerland, 2008, p.5.; reference to guidelines, p.10.

2.3.2. Classification of protected areas on the national and/or regional level

Austria

There is no outline law on nature protection in Austria. The Länder are competent for the legislation on nature protection and each Land has its own law on this topic. There are 9 laws on nature protection in Austria. Concerning the creation of a national park, an agreement is concluded between the Federation and the Länder (according to the article 15a, paragraph 1 of the Federal Constitutional Law: the Federation and the Länder may conclude agreements among themselves about matters within their respective sphere of competence. The conclusion of such agreements in the name of the Federation is, depending on the subject, incumbent on the Federal Government or Federal Minister. Agreements which are to be binding also on the authorities of the Federal legislature can be concluded by the Federal Government only with the approval of the National Council. Art. 50, paragraph 3 shall by analogy be applied to such resolutions of the National Council; they shall be published in the Federal Law Gazette. Agreements made pursuant to Art. 15a of the federal constitutional law define the fundamental aspects concerning the setting up and operation of national parks: area, purpose, administration, functions, financing and any advisory boards or boards of trustees. The detailed national park laws and regulations (management plans) are issued by the Länder.

Therefore there is no framework law for the classification of protected areas at national level; however there are similarities between the laws on nature conservation of the various Länder. In Austrian law, protected areas (*Schutzgebiete*) can be classified as follows:

- Natural monuments (*Naturdenkmäler*), protected natural formation of local importance (*geschützte Naturgebilde von örtlicher Bedeutung*), protected trees (*Baumschutz*)
- Landscape protection area (*Landschaftsschutzgebiete*), protected landscape elements (*geschützte Landschaftsteile*)
- Nature reserve (*Naturschutzgebiete*)
- Protected areas according to European legislation (*Europaschutzgebiete*)
- Nature parks (*Naturparke*), special protection areas (*Sonderschutzgebiete*), areas of tranquillity (*Ruhegebiete*), zones of tranquillity (*Ruhezonen*), ecological development sites (*ökologische Entwicklungsflächen*)
- National parks (*Nationalparke*), biosphere parks (*Biosphärenparke*)

Certain types of areas are not featured in all Länder. For instance, the "tranquillity zones" (*Ruhegebiete*) appear only in the legislation of Land Tyrol.

Germany

As mentioned in the paragraph concerning the division of powers, the classification of protected areas is one of the fundamental principles of Federal Act on the Protection of Nature and the Länder cannot enact laws at variance with it. According to paragraph 20 of the Federal Act on the Protection of Nature, "parts of nature and landscapes can be protected as:

- nature reserve (*Naturschutzgebiet*)
- national park or national natural monument (*Nationalpark, nationales Naturmonument*)
- biosphere reserve (*Biosphärenreservat*)
- area of landscape protection (*Landschaftsschutzgebiet*)
- nature park (*Naturpark*)

- natural monument (*Naturdenkmal*)
- protected landscape element (*geschützt Landschaftsbestandteil*) (see also the book on the nature conservation law of Bavaria: p.155).

The Länder are required to abide by this classification of protected areas, but they are not obliged to designate protected areas. In addition, no derogation is allowed from protection conditions and prohibition rules for national parks, national monuments, nature reserves and landscape protection areas. Thus, major protected areas have common standard provisions, which prevent any protected area dumping (*Schutzgebietsdumping*).

Comparison between protected areas in Austria and Germany :

AUSTRIA	GERMANY
<p>The Länder located at the border with Germany are Upper Austria, Tyrol, Salzburg and Vorarlberg</p> <p>St: Styria; Ty: Tyrol; Oö: Upper-Austria; Slz: Salzburg</p>	<p>Federal law provisions (BNatSchG 2009)</p> <p>Regional law provisions (Bavaria) (BayNatSchG 2005)</p>
<p>Nationalpark (national park)</p> <p><i>(National parks are large areas characterized by distinctive landforms, plants and animal species and their habitats, which have a recreational function for the population and are important for the economy (tourism); they are under constant management and scientific supervision).</i></p>	<p>o Nationalpark (National Park) (§ 24 <i>BNatSchG</i>)</p>
<p>Naturschutzgebiete (nature conservation areas) (St, Ty, Slz, Oö)</p> <p><i>(Protected areas are generally areas that have preserved their original natural features, that host rare or endangered animals and plants and / or rare or endangered communities of animals or plants and have been designated as such by a decree of the Regional Government)</i></p>	<p>Nationale Naturmonumente (National Natural Monuments) (§ 24 <i>BNatSchG</i>) (this category has not been incorporated into Bavaria's nature protection law yet)</p> <p>Naturschutzgebiete (Nature conservation areas) (§ 23 <i>BNatSchG</i> and art. 7 <i>BayNatSchG</i>)</p>

Naturdenkmäler (natural monuments) (St, Ty, Oö)	Naturdenkmäler (natural monuments) (§ 28 BNatSchG and art. 9 BayNatSchG)
Landschaftsschutzgebiete (landscape conservation areas) (St, Slz, Oö, Ty)	Landschaftsschutzgebiete (landscape conservation areas) (§26 BNatSchG and art. 10 BayNatSchG)
Naturparke (nature parks) (St, Ty, Slz) (This designation refers to areas - either entire sites or parts of them - that are already protected) (Ty)	Naturparke (nature parks) (§ 27 BNatSchG et art. 11 BayNatSchG)
Geschützte Landschaftsteile (protected landscape elements) (Oö, Ty,)	Geschützte Landschaftsteile (protected landscape elements) (§29 BNatSchG and art. 10 BayNatSchG)
Geschützte Naturgebilde von örtlicher Bedeutung (protected natural formation of local importance) (Slz, St, Oö)	
Ruhegebiete (area of tranquillity/rest area) (Ty)	
Gebiete von gemeinschaftlicher Bedeutung (all Länder) (Site of Community Importance) The areas designated under the Birds or the Habitats Directives are called 'Europaschutzgebiete' in all Austrian Länder, except in Tyrol where they are called 'Natura 2000 Gebiete' (Natura 2000 sites).	Sites designated under the EU Habitats Directive
Europäische Vogelschutzgebiete (all Länder) (Bird conservation area designated under EU legislation) The areas designated under the Birds or the Habitats Directives are called 'Europaschutzgebiete' in all Austrian Länder, except in Tyrol where they are called 'Natura 2000 Gebiete' (Natura 2000 sites).	Sites designated under the EU Birds Directive

Tab. 1: Comparison between categories of protected areas

CONCLUSION

The classification of protected areas according to their management objective reveals that protected areas that have the same name, for example "national park" may have a different meaning, different management objectives or different protection status in the two countries. Major differences on the two sides of the border could be an obstacle for the creation of an ecological network. The presence of specific measures to manage the protected areas in these regions and of a well defined structure in charge of the management will be essential for the cooperation between the protected areas.

The Berchtesgaden Region

In the pilot region Berchtesgaden, protected areas differ in terms of level of protection. The German part of the pilot area located in Bavaria includes the Berchtesgaden National Park, the nature conservation area Östliche Chiemgauer (*Naturschutzgebiet Östliche Chiemgauer*) and the protected landscape Lattenbirge (*Landschaftsschutzgebiet Lattengebirge*). The Austrian part of the pilot region includes the nature park Weissbach (*Naturpark Weissbach*) and the nature conservation area Kalkhochalpen in Land Salzburg (*Naturschutzgebiet Kalkhochalpen*). The status of protection differs across the border.

2.3.2. Management of protected areas

Currently, the management of protected areas - notably the effectiveness and efficiency in management - has become an increasingly important topic for international and European institutions¹¹. Over the past twenty years, the attention of international organisations for the protection of the environment had been focused primarily on establishing protected areas. Even though the creation of these areas and of a network to link them together is still a matter of concern, the efficient management of protected areas is now a much more topical issue for the World Commission on Protected Areas (WCPA) of the International Union for Conservation of Nature (IUCN). This organisation¹² defines protected areas as "*managed areas*": such definition testifies to the essential nature of management. The mission of the World Commission on Protected Areas of the IUCN is to promote the creation of a world network representative of the protected land and marine areas and to manage them. Its objectives are therefore to help governments and others plan protected areas, strengthen capacity and effectiveness of protected areas managers while increasing investment in protected areas. In line with these objectives, the **Convention on Biological Diversity (CBD)** adopted a working programme on the protected areas¹³ and stressed, in the decision adopting the programme, that "*while the number and extent of protected areas has been increasing in the past decades, so that around 11 per cent of the world's land surface is currently in protected status, existing systems of protected areas are neither representative of the world's ecosystems, nor do they adequately address conservation of critical habitat types, biomes and threatened species*". It has been underlined in the programme of work, that "*the current global systems of protected areas are not sufficiently large, sufficiently well-planned, nor sufficiently well-managed to "maximize their contribution to biodiversity conservation"*"¹⁴. Therefore "*there is an urgent need to take action to improve the coverage, representativeness and management of protected areas nationally, regionally and*

¹¹ See on this point Williamson D., "How effective is Protected Area Management in Mountains?", in Ch. Körner and E. M. Spehn (Ed.), *Mountain Biodiversity, A Global Assessment, A Global Assessment, op. cit.*, pp. 307-313.

¹² IUCN provides the following definition of protected area: "*An area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means*". (IUCN, Guidelines for Protected Area Management Categories).

¹³ Decision VII/28 on the Protected Areas (following a work programme on the protected areas) (COP 7, Seventh Meeting of the Conference of the Parties to the Convention on Biological Diversity *Kuala Lumpur, Malaysia*, February 2004).

¹⁴ UNEP/CDB/SBSTTA/9/5, Status and trends of, and threats to, protected areas.

globally”¹⁵. In addition to designating areas to protect, the States are urged also to provide them with the means necessary for effective management. The objective of the work programme on protected areas is to put effective management in place, between now and 2012, in all protected areas¹⁶. Let us examine the measures of active and passive management taken for Austria and Germany)

2.3.2.1 Active management

Nature conservation contracts (*Vertragsnaturschutz*)

Germany

Under federal law, nature protection provisions can be implemented through nature conservation contracts (*Vertragsnaturschutz*):

“For measures of nature conservation and landscape management, it should be assessed first, whether the purpose can be achieved with reasonable effort by contractual agreements”.

This paragraph reproduces paragraph 8 of the federal framework law on nature protection of 2002. As in the 2002 Act, the new federal act on nature protection does not provide for priority application of nature conservation measures by contract (*‘kein Vorrang’* - no priority), but it includes an obligation to check whether such conservation measures can indeed be implemented by contract. This verification requirement is a priority under the terms of the 2009 Act. However there is no priority adoption of contractual measures over regulatory measures. This is instead an application of the principle of proportionality, which must be implemented in each action¹⁷.

See paragraph 2a of the Bavarian nature conservation act / consider revising because a new act has come into force.

Austria

Under the laws of Austria, the implementation of conservation or management measures in protected areas must occur through the stipulation of contracts for the protection of nature (*Vertragsnaturschutz*), which take priority over the adoption of regulatory measures, to the extent that the objectives of nature protection can be achieved. Such contracts are veritable custom-made tools for the implementation of measures to promote the protection of habitats and biotopes. They may be entered into by and between the Land and the municipalities on one side, and the land owners or other rights holders on the other. In Carinthia such contracts are governed by paragraph 2a of the Act on the Protection of Nature¹⁸, while in Tyrol they are governed by paragraph 4 of the of the Act on the Protection of Nature. Especially adapted to the nature conservation laws of the Land concerned, said contracts are aimed at implementing management measures taken under the Habitats and Birds

¹⁵ Preamble/Introduction to the Programme of Work on Protected Areas (PoWPA), (paragraph 2).

¹⁶ See point 1.4 of the Programme of Work on Protected Areas (PoWPA).

¹⁷ Fuchs, Egner, *Naturschutz- und Wasserrecht 2009, Schnelleinstieg für den Praktiker*, C.F. Müller, p.120.

¹⁸ Pursuant to article 2a of Carinthia’s nature protection act, the Regional Government and the Municipalities can sign agreements with the land owners or other assignees for the purpose of conservation of nature and landscapes or else concerning activities that are currently performed in these areas and which must be made subject to rules for nature and landscape protection.

Directives, as well as conservation and management measures of protected areas (see paragraph 1, subparagraph 1 of Land Tyrol’s Act on the Protection of Nature).

The report on activities for the year 2007 concerning the Tyrolean part of the Hohe Tauern National Park reveals that: *“Once the bulk of the negotiations with landowners and hunting rights holders were completed in 2005 and 2006 for the purpose of designating a natural area, in the year 2007, additional 650 hectares of land were designated and agreed on by contract as ‘hunting rest and management areas’. To date about 23,000 hectares of total contract area have been secured in for the natural zone under 60 private law agreements “.*

The 2009 report on activities for the Carinthian part of the Hohe Tauern National Park also shows the importance of the nature conservation contracts for the protection of the park’s natural heritage: *“The year 2009 was marked by negotiations in the course of the planned expansion of the protected area in the valley Großes and Kleines Fleißtal in the municipality of Heiligenblut and in the areas of Apriach alpine pastures. Landowners gave their consent in the appropriate assemblies and thus detailed planning received green light. To maintain the current standards of protection after any expansion is a top priority for the Carinthian National Park Authority (Kärntner Nationalparkfonds). Such protection standards include: each protected area must have a ratio between the core and outer zone of two thirds to one third; furthermore for at least 75% of the core zone area, the hunting rights have to be leased to the Carinthian National Park Authority. On these areas the traditional hunting practices have to be replaced by wildlife management practices which meet the requirements of a national park. These are the basic principles that underlie negotiations with landowners and spatial planning in the Fleiß valleys. These are important preconditions for the legal implementation of the national park expansion due to occur from 01/01/2011 on. In accordance with the strategic objectives, the Carinthian National Park Authority will provide specific contractual nature conservation services (for instance natural landscape compensation against non-use) only for those sites in the core zone, where the Authority has hunting rights”*

Overall figures:	Total contracting parties: 228 (+/- 0)
	Total contracts: 498 (+3 compared to 2008)
	of which:
	General compensation: 293 contracts € 171.653,98
	Cultural landscape compensation: 105 contracts € 86.786,95
	Natural landscape compensation: 100 contracts € 199.463,61
	Total: € 457.904,54

Concerning planning within the protected areas, paragraph 32 of Land Tyrol’s Act on the Protection of Nature foresees that the Land Government may adopt specific plans for the conservation and management of natural resources (*Naturpflegepläne*) for certain protected areas (*Landschaftsschutzgebiete; Ruhegebiete, geschützter Landschaftsteil, Naturschutzgebiete, Sonderschutzgebiete*). But this is not an obligation under the law. Similarly, Land Vorarlberg’s Act on the Protection of Nature states among its fundamental principles that when drawing up any plan, the Land and municipal authorities must take into account the objectives pursued by the regional law (paragraph 3 of Land Vorarlberg’s Act on the Protection of Nature): *“When preparing policy papers and*

plans, the Land and the Municipalities shall take into account the objectives of nature conservation and landscape development". Land Vorarlberg's Act on the Protection of Nature also foresees, in paragraph 7, the drawing up of "development concepts for the protection of nature and the landscape (*Entwicklungskonzepte der Natur- und Landschaftsräume*)". Municipalities must be involved in the preparation of said plans, which shall serve as a basis for planning activities carried out by the Land and the municipalities. Similarly, the municipalities may adopt local development plans for their territories (*örtliche Entwicklungskonzepte*). Paragraph 7 also specifies the measures that a "concept" should typically contain, namely measures intended to preserve the habitats, to improve or to restore the habitats, etc.

2.3.2.2 Passive management

Regulation of activities within protected areas (+ hunting and fishing, recreational activities)

Germany

The protection status for national parks is governed by paragraph 24 of the Federal Act on the Protection of Nature. Under paragraph 24, sub-paragraph 3, national parks must be protected according to their conservation objectives and enjoy the same type of protection as nature reserves (*Naturschutzgebiete*). This means that all actions that are likely to cause destruction, damage or alteration to these areas must be prohibited. Also paragraph 23, sub-paragraph 2, of the Federal Nature Protection Act shall apply in that case. It should be noted that the recent Act provides that national parks should be unfragmented areas (*weitgehend unzerschnitten*).

For Bavaria, reference must be made to the regional nature conservation act (paragraph 12)¹⁹, and more specifically to Regulation concerning the Alps and the Berchtesgaden National Park. The latter contains provisions for the control of activities in the national park (see especially paragraphs 9-12 of said regulation).

Austria

Nature conservation laws provide a **specific protection scheme for protected areas**. A system of prohibitions and authorisations is defined for each type of protected area. It is worth noting that, as a general rule, the law requires nature protection provisions to be implemented by contracts (*Vertragsnaturschutz*) and only in the event this is not possible, through regulatory measures. National parks are governed by specific laws. Contracts for the protection of nature (*Vertragsnaturschutz*) are concluded with the land owners and other rights holders concerning their actual entitlement to exercise hunting. As regards the protection of individual protected areas reference shall be made to the ordinance establishing such areas (*Verordnung*) which contains, among other things, rules for the control of activities.

The areas in the pilot region.

¹⁹ Bavaria's nature protection act (*Naturschutzgesetz*) in the version of July 2010.

See the specific regulation of the Berchtesgaden National Park

Monitoring and ascertainment of violations within the parks

2.3.3 Transborder cooperation in nature protection law

Austria

The Länder's laws on the protection of nature do not contain provisions on transborder cooperation for the management of bordering protected areas. Cooperation with neighbouring countries often takes place through INTERREG programmes, which are financed by the European Union, but are implemented on a voluntary basis.

Following the transposition of the EU's Directive on Environmental Liability²⁰, the Länder have introduced provisions that lay down the obligation to collaborate in order to remedy environmental damage. The EU's Directive on Environmental Liability was first transposed by the Federal Government (Bund)²¹ and then by each Land. The Directive's scope of application concerns various areas and different competencies, which pertain to the Bund and the Länder alike. Thus, all Länder which have exclusive competence for the protection of nature will also be required to adopt provisions on damage to biodiversity. For Land Carinthia, the environmental liability provisions concerning nature protection were integrated into the Act on the Protection of Nature²². Paragraph 57m of such law deals with transboundary environmental damage (*Grenzüberschreitende Umweltschaden*), including both trans-regional damage between Länder, and cross-border damage which adversely affects another Member State. In Land Tyrol, the provisions of directive 2004/35/CE became the subject of a specific act²³ adopted in November 2009, whose paragraph 10 concerns transboundary damage.

Germany

Interregional and international cooperation

National

CONCLUSION:

²⁰ Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (Official Journal L. 143, 30/04/2004 P. 0056 - 0075).

²¹ Austria's federal act on environmental liability with regard to the prevention and remedying of environmental damage (*Bundesgesetz über Umwelthaftung zur Vermeidung und Sanierung von Umweltschäden - Bundes-Umwelthaftungsgesetz - B-UHG*). Standard version: Regional Law Gazette - *LGBl.* I no. 55/2009

²² Carinthia's nature protection act (*Kärntner Naturschutzgesetz 2002 - K-NSG 2002*.) Standard version: Regional Law Gazette *LGBl* no. 79/2002.

²³ Act of 18 November 2009 on liability concerning damage to protected species and natural habitats, and specific soil damage (*Haftung bei Schäden an geschützten Arten und natürlichen Lebensräumen sowie für bestimmte Schädigungen des Bodens - Tiroler Umwelthaftungsgesetz - T-UHG*). Regional Law Gazette - *LGBl.* Nr. 5/2010.

2.4 Protection of the habitats/biotopes

An ecological network is implemented through the preservation of natural habitats, whether they are protected or not. We shall therefore examine the provisions that apply to such preservation.

2.4.1 Protection of the mountain natural elements

2.4.1.1. The Alpine Convention and its Protocols

Germany and Austria have both ratified the Framework Convention on the Protection of the Alps and its Protocols.

These international treaties are in force since 2002 in both countries, which are therefore bound by the provisions of the Protocol on the conservation of nature and landscape protection, some of which are particularly interesting for the cooperation between protected areas. Regarding the implementation of the Alpine Convention and its Protocols, guidelines have been issued in Austria²⁴ and in Bavaria²⁵ for Germany.

As for the cooperation between protected areas, and the setting up of a biotope network, article 12 of the Protocol on the conservation of nature and landscape protection of the Alpine Convention states that *“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.”* Cooperation between protected areas for the purpose of managing them is conceived as one of the stages in the creation of an ecological network.

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”*.

The Contracting Parties also recognised, with the adoption of the Plan of Action on Climate Change in the Alps²⁶, that climate change threatens 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 Action Plan specifies the **following objectives**:

²⁴ Cite references of Austrian guidelines.

²⁵ Cite references of German guidelines.

²⁶ The Plan of Action on Climate Change in the Alps was adopted by the Parties to the Alpine Convention during the 10th Alpine Conference in March 2009.

- 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;
- to preserve peat lands 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.

CONCLUSION

The Protocol on the Conservation of Nature and Landscape Protection contains concrete measures for establishing an ecological network. In Austria, the Conference of Experts on the Protection of Nature declared in 2005 that article 12 of the Protection Protocol is directly applicable²⁷. [complete]

2.4.1.2. Community Law

The European Union law does not foresee a specific policy for mountain areas. Nevertheless, 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 bio-geographical region includes several European mountain ranges and the Alps constitute one of the sub-regions of the Alpine bio-geographical region. It is worth noting that mountain areas made their first appearance in the EU's primary law with the recent adoption and entry into force of the Treaty of Lisbon, very much like the concept of "*territorial cohesion*". Article 174 of the Treaty on the Functioning of the European Union ²⁸ 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.*"²⁹ However, for the time being, there is no specific EU policy for mountain areas, whereas there is one for coastal areas³⁰.

CONCLUSION

²⁷ See the Alpine Convention Manual, p. 129.

²⁸ This article is based on Title XVIII of the Treaty on the Functioning of the European Union, devoted to economic, social and territorial cohesion.

²⁹ Underlined by the authors of this paper.

When it comes to creating ecological corridors and preserving habitats, we should consider not only nature conservation legislation but also provisions contained in the common agricultural policy (CAP), particularly those defining **rural development** measures. CAP offers possibilities for financing activities that have a positive influence on ecological connectivity. We will have to examine actions financed by rural development plans, to determine whether they are equivalent on both sides of the border [complete].

2.4.1.3. Protection of the mountain natural elements at national level

The laws of both Austria and Germany contain specific measures for the preservation of natural mountain areas.

Austria

Nature conservation laws in certain Austrian Länder, namely Carinthia, Salzburg and Vorarlberg, contain **specific provisions for the protection of the Alpine region and glaciers**.

The Alpine region is understood as the area “above the tree line”, which therefore involves high mountain areas. It follows, that the scope of application of said measures differs from that of the Alpine Convention. The measures for the protection of the Alpine area (*Alpinregion*) consist of general prohibitions: as a result, authorisations are necessary for the realisation of certain projects. As for Carinthia, specific measures for the protection of the Alpine region and glaciers are laid down by paragraphs 6 and 7 of its Nature Conservation Act. In Tyrol, the general authorisations required (*Allgemeine Bewilligungspflicht*) are listed in paragraph 6 of its Conservation Act. Similarly, a specific regulation on cableways was adopted in 2005 by Land Tyrol, which contributes to the preservation of high mountain areas.

Germany

[complete]

CONCLUSION

Various laws contribute to the preservation of natural mountain areas in Austria and Germany. Legislation has been adopted in the field of the **protection of nature, rural development** and in the area of **spatial planning** and territorial management. The legislation on protected areas is fundamental for the preservation of natural mountain areas in both Austria and Germany. In fact, many protected sites are located in mountain areas. One should also mention the Birds and Habitats Directives on the conservation of habitats and species of Community interest. For the purpose of protection, such directives designate bio-geographical regions, including the Alpine bio-geographical region, to which the Alps belong as a sub-region.

2.4.2 Protection of habitats of Community interest (EU directive Natura 2000)

The Habitats Directive³¹, together with the Birds Directive³², forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the **Natura 2000 network of protected sites** and the **strict system of species protection**. All in all the directive protects over 1.000 animals and plant species and over 200 so called 'habitat types' (e.g. special types of forests, meadows, wetlands, etc.), which are of European importance³³.

2.4.2.1. The management of Natura 2000 sites

All the Alpine Members States transposed the Habitats directive in their national legislations and/or in their regional legislations on nature protection. We will focus here on the management of the Natura 2000 sites. Pursuant to Article 6, paragraphs 1 and 2 of the Habitats Directive, Member States are required to adopt specific measures for the protection of Natura 2000 sites:

- 1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.*
- 2. 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”.*

According to these provisions, the adoption of the required conservation measures may imply, if need be, the development of appropriate management plans specific for the sites, which may also be integrated into other development plans. The words "if need be" indicate that it may not be necessary to draw up a management plan specifically designed for Natura 2000 sites³⁴, but the Commission specifies that "a management plan focused on the site will provide a wider framework, and its contents will provide a useful starting point for the specific details of contractual measures"³⁵ needed to implement conservation measures. The management plan may also be part of, or may be integrated into, an already existing management plan, such as a forestry plan. As stated in the Proceedings of the Bath Conference³⁶, management plans could constitute an effective means to fulfil the obligations provided for by the Habitats Directive. They may also be an instrument of consultation and cooperation, which should preferably be drawn up in cooperation with local actors. Any management plan should primarily aim at ensuring the accomplishment of the Directive's general purpose. While

³¹ References

³² References

³³ References of the Internet site from which this was taken.

³⁴ European Court of Justice, judgement of 7 November 2000, *First Corporate Shipping* (Rec.2000,p.1-9235); see European Commission, *Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' directive (92/43/EEC)*.

³⁵ Id., p. 20.

³⁶ "Natura 2000 and people: a partnership", Proceedings of a Conference organised by the United Kingdom Presidency of the European Council and the Unit for Nature Protection, coastal zones and tourism of the European Commission, held in Bath, (June 1998).

article 6, paragraph 1 of the Directive does not define the form, procedure or structure that management measures should have, the methodological guidelines of the Commission³⁷ recommend that such measures take into account the specific characteristics of each site and all of the activities carried out there. All of the other activities that are not directly connected with, or necessary to, the management of the site for conservation purposes fall within the scope of Article 6, paragraph 3 of the Habitats Directive. Annex II of the methodological guide specifies that the objectives of the management plans for a Natura 2000 site have to correspond to the ecological requirements of the natural habitats and species significantly present on it and must be as clear and realistic as possible, quantified and manageable. Only areas where the presence of species is classified as ‘not significant’ in the standard data form should not be subject to management measures. “*This means that the principle of subsidiarity is fully applicable to the way in which the management of Natura 2000 sites, including forests, is applied at field level³⁸*”. Indeed, “*in practice, the way in which management decisions or options are formalised will depend on different factors, such as ownership of the site, intensity of economic use, occurrence of priority species and habitats, the relative rarity and sensitivity of the habitats or species concerned and the existing traditional or customary rules on use of natural resources in practice³⁹*”. The Habitats Directive does not specify what the minimum contents of a management plan should be. The previously mentioned Conference on the Management of Natura 2000 sites held in Bath in 1998 led to an agreement between Member States on the essential elements to be put into a management plan. Direct reference has been made to such agreement by some Alpine regions at the time of defining the minimum contents of their management plans. The plan should contain a description of the site and of the use that has been made of it, a description of the short-term and long-term objectives established for the site, a description of the activities designed to meet such objectives, a list of the measures realised with the corresponding financial and time plan, procedures for involving the public and elements concerning the surveillance (monitoring), as well as the manner of control⁴⁰.

Austria

The provisions concerning the implementation of conservation and management measures are contained in the nature protection laws⁴¹ of the Länder⁴². There is no federal framework law on the protection of nature, nor have guidelines been drawn up by the Federal Government concerning the implementation of conservation measures for Natura 2000 sites. Most of the Austrian Länder’s laws on the protection of nature contain the provisions of article 6, paragraph 1 of the Habitats Directive.

³⁷ European Commission, *Managing Natura 2000 sites: The provisions of Article 6 of the ‘Habitats’ directive (92/43/EEC)*, 2000.

³⁸ European Commission, *Natura 2000 and forests ‘Challenges and opportunities’*. Interpretation guide, Office for Official Publications of the European Communities, Luxembourg, 2003, p. 32.

³⁹ *Id.*, p.39.

⁴⁰ European Commission, *Managing Natura 2000 sites: The provisions of Article 6 of the ‘Habitats’ (92/43/EEC)*, *op. cit.*

⁴¹ Provisions concerning Natura 2000 sites are contained also in the hunting and fishing regulations, as well as in the Länder’s spatial planning/ territorial management laws.

⁴² Only Land Vorarlberg has transposed the provisions of the Habitats Directive by means of an Ordinance (*Verordnung*). Ordinance of the Land Government for implementing the law on nature protection and landscape development (*Verordnung der Landesregierung zur Durchführung des Gesetzes über Naturschutz und Landschaftsentwicklung* - Regional Law Gazette LGBl. No. 12/2007.

Generally speaking, however, the transposition of Community law occurred without going beyond the wording of the Directive, and seems even inadequate in some Länder⁴³. The Habitats Directive requires the implementation of conservation measures for each Natura 2000 site and leaves a margin of manoeuvre for the Member States concerning management plans. As discussed above, the words ‘if need be’⁴⁴ of article 6, paragraph 1 of the Directive refer solely to the drawing up of management plans. In many Austrian Länder, instead, the words ‘if need be’ have been taken to refer also to conservation measures. As a matter of fact, the laws of Lower Austria and Styria introduce the implementation of conservation measures not as an obligation, but as a possibility (*Kann - Bestimmungen*)⁴⁵. Similarly, paragraph 9, subparagraph 5 of Lower Austria’s law on the protection of nature⁴⁶ states that maintenance, development and conservation measures may be taken, ‘if necessary’ (*erforderlichenfalls*), in Natura 2000 sites⁴⁷. Styria⁴⁸ lets the regulation designating the site indicate whether it is necessary to take measures or establish prohibitions. Paragraph 13, subparagraph 2 of Vorarlberg’s law on the protection of nature⁴⁹ also states that the Government may undertake, ‘if necessary’ (*soweit notwendig*), supplementary measures for maintenance, development and conservation (*Pflege-, Entwicklungs- und Erhaltungsmaßnahmen*) of Natura 2000 sites. Similar observations hold true also for provisions transposing paragraph 1 of article 6 of the Habitats Directive into the nature protection laws of Tyrol, Upper Austrian and Carinthia. By contrast, conservation measures are mandatory in Burgenland, whose nature conservation act, in paragraph 22c, subparagraph 3⁵⁰, provides for the establishment of a development and maintenance plan/ management plan for each Natura 2000 site (*Entwicklungs- und Pflegeplan/Managementplan*). These management plans may also be called “landscape maintenance plans” (*Landschaftspflegepläne*). This is also the case for Upper Austria⁵¹.

With regard to management plans, almost all Austrian Länder exploit the room for manoeuvre offered to the Member States by the Habitats Directive. Indeed, with the exception of Burgenland, management plans are not a legal requirement under the nature conservation laws that govern Natura 2000 sites. They may be drawn up if necessary. That is an understandable approach considering that many Austrian sites are located at high altitudes and are not subject to conflicts of use. Nevertheless,

⁴³ Ellmayer T., Knoll T., Pröbstl et Suske W., “Managementplanungen für Natura 2000 in Österreich”, *op. cit.*, pp.285-299

⁴⁴ The following expressions are used: “*erforderlichenfalls, gegebenenfalls, soweit notwendig*” meaning: “if need be, where appropriate, if necessary”.

⁴⁵ Ellmayer T., Knoll T., Pröbstl et Suske W., *Managementplanungen für Natura 2000 in Österreich, op. cit.*, pp.285-299.

⁴⁶ A judgement against Austria concerning failure to implement the directive was delivered on this point in 2007, but at that time only the Land of Lower Austria had been found to have transposed article 6, paragraph 1 of the Habitats Directive inadequately.

⁴⁷ Translated by the authors of this paper.

⁴⁸ Paragraph 13a point 1 of Land Styria’s nature protection act: “*Areas falling within the scope of § 13 paragraph must be designated as special protected areas by ordinance of the Land government and shall bear the name ‘Europaschutzgebiet’. Ordinances shall specify the boundaries of the protected area, the object of protection, in particular priority habitats and priority species, the protection purpose and, where appropriate, relevant orders and prohibitions applying thereto.[...]*”.

⁴⁹ Paragraph 13, 2 of Land Vorarlberg’s nature protection regulation: “*For these areas, if need be, the Land Government shall define additional appropriate maintenance, development and conservation measures by means of management plans or similar agreements, or else by means of decree or ordinance [...]*”.

⁵⁰ Paragraph 22c subparagraph 3 of Burgenland’s nature protection act “*A development and maintenance plan (management plan) shall be defined for each Europaschutzgebiet or part thereof.[...]*”

⁵¹ See paragraph 15, subparagraph 1, of Upper Austria’s nature protection act.

many Austrian Natura 2000 sites have decided to draw up their management plans: since 2005 management plans have been completed or are in the process of being developed in more than half of the 212 Austrian Natura 2000 sites. However, only two Alpine Länder, namely Burgenland - in compliance with regional legislation - and Lower Austria, have prepared or are preparing management plans for each special area of conservation. Land Tyrol requires that management plans be drawn up in accordance with common criteria for each Natura 2000 site⁵². The technical editing of such management plans for all or part of the Natura 2000 sites is commonly performed by consulting firms specializing in ecology and the landscape, following a call for tender issued by the Länder's nature protection departments. Since guidelines provided by the Länder are not very detailed, each firm follows its own strategies. Burgenland again stands out from the other Länder for having established a specific coordination unit that supervises the drafting of such plans according to common standards⁵³. Given the division of competencies in the area of nature protection in Austria, no guidelines have been established by the Federal Government. The Länder are responsible for establishing, if need be, their own guidelines for the management plans of Natura 2000 sites. To determine what the minimum contents of the management plans for the Natura 2000 sites should be, most of the Regional Governments refer directly to the Proceedings of the Galway Seminar concerning the drawing up of management plans⁵⁴. The Regional Government of Lower Austria has adopted guidelines for drawing up management plans⁵⁵. These guidelines are part of the general guidelines on application of the Natura 2000 programme in the region (*Leitfaden Natura 2000 Niederösterreich*). This document, which is only informative, is subject to revision in the future, according to experience that will arise from management of the sites. Similarly, Land Vorarlberg has adopted its own guidelines, which are based on the experience gained from the first management plans implemented in Natura 2000 sites. Also Land Tyrol has established some guidelines.

According to the figures contained in the latest Austrian report prepared pursuant to article 17 of the Habitats Directive⁵⁶, 58 management plans have been adopted and 51 are in the process of being prepared in Austria. The progress of management plans differs from one Land to the next and according to the size of the sites⁵⁷. Indeed, 60% of the sites with an area of less than 1000 ha have a management plan, while for the larger sites, only 30% have a management plan. Drawing up a management plan for large sites often entails financial problems for the Länder. Thus, management plans have been established as a priority for smaller sites. This is illustrated in the following table taken from a report⁵⁸ drawn up by the Austrian Court of Auditors (*Rechnungshof*).

⁵² Lentner R. Kostenzer J., *Konzept Schutzgebietsbetreuung in Tirol* (Concept for protected area management), Regional Government of Tyrol, Department Environmental Protection (*Abteilung Umweltschutz*), December 2004.

⁵³ Ellmauer T., Knoll T., Pröbstl et Suske W., "Managementplanungen für Natura 2000 in Österreich", *op. cit.*, pp. 285-299.

⁵⁴ Land Styria refers to the conclusions of this workshop also to specify the minimum contents of a management plan.

⁵⁵ Knoll T., *Managementpläne Natura 2000, Struktur und Inhalte Konzept* (http://www.noe.gv.at/Umwelt/Naturschutz/Natura-2000/Natura_2000_Leitfaden_und_Managementplaene.pdf, consulted on 4 October 2008).

⁵⁶ National report sent by Austria to the European Commission in March 2007 pursuant to article 17 of the Habitats Directive.

⁵⁷ Figures taken from a report on Natura 2000 sites by Austria's Court of Auditors - to be published (*Rechnungshof, Ergebnis der Überprüfung der Umsetzung des Natura 2000-Netzwerks in Österreich*, Vienna, 26 September 2007, draft).

⁵⁸ *Rechnungshof, Ergebnis der Überprüfung der Umsetzung des Natura 2000-Netzwerks in Österreich, op. cit.*

Länder	Share of Natura 2000 sites with a management plan	Share of Natura 2000 sites with a management plan in the process of being drawn up	Share of Natura 2000 sites with no management plan
Burgenland	0,4%	14,8%	84,8%
Carinthia	13%	0,3%	86,7%
Lower Austria	0 %	27%	73%
Upper Austria	22%	8%	70%
Styria	9%	19%	73%
Tyrol	33 %	0%	67%

Germany

Provisions concerning Natura 2000 are incorporated into the federal law on the protection of nature as well as into the nature conservation laws of several Länder/ regions. Paragraph 33, sub-paragraph 3 and 4⁵⁹ of the federal framework law on the protection of nature lays down that specific management measures, defined as ‘maintenance and development measures’ (*Entwicklungs-und Pflegemassnahmen*) must be taken in each Natura 2000 site to ensure compliance with the Habitats Directive. No reference is made to the preparation of management plans or their possible integration into existing plans. The federal act of July 2009 includes a new specific provision to that end, contained in paragraph 32, sub-paragraph 5, stating that in the case of Natura 2000 sites, management plans can be tailored specifically to these sites or else management measures can be integrated into existing management plans. Concerning Land Bavaria, paragraph 13b, sub-paragraph 2⁶⁰ of the regional nature conservation act states that the instrument establishing the site should describe the purpose of protection, the conservation objectives and the orders or prohibitions to achieve them. The interministerial notice of August 2000⁶¹ reiterates the obligation to adopt conservation measures for each Natura 2000 site. The Bavarian law does not mention the ‘maintenance and development measures’ called for in the federal law. As a result, general provisions on protected areas apply instead. The wording of nature conservation laws varies across Länder. Reference to maintenance and

⁵⁹ BNatSchG, § 33 points 3 and 4:

⁶⁰ Paragraph 13a, sub-paragraph 2, sentence 2: “The Protection Ordinance shall define the purpose of protection in relation to the relevant conservation objectives, as well as the obligations, prohibitions and area delimitations considering influences from outside (*In der Schutzverordnung werden der Schutzzweck entsprechend den jeweiligen Erhaltungszielen sowie die dafür erforderlichen Gebote, Verbote und Gebietsbegrenzungen unter Berücksichtigung der Einwirkungen von außen festgelegt*)”.

⁶¹ “Protection of the European Network ‘Natura 2000’ (*Schutz des Europäischen Netzes ‘Natura 2000’*)”, Joint Announcement of the Bavarian State Ministries of the Interior, Economics, Transport and Technology, Food, Agriculture and Forestry, Labour and Social Affairs, Family, Women and Health Affairs and Office for Development and Environmental Affairs of 4 August 2000 no. 62-8645.4-2000/21, *Allgemeine Ministerialblatt* (Joint Law Gazette of the t Ministries), no. 16, Munich 21.08.2000.

development measures is made in paragraph 36, sub-paragraph 4, of Baden-Württemberg's nature conservation act, which transposes the wording of the federal framework law⁶². In Bavaria, instead, no indication or requirement regarding the elaboration or content of management plans is given. However, management plans are clearly contemplated by the Bavarian interministerial notice of 2000. Such document states that it is not necessary to establish specific management plans for sites that are already the subject of an existing management plan, provided such existing plan meets the conservation objectives defined for the site⁶³. It will be up to Bavaria's regional authorities for the protection of nature and forests to decide at a later stage, by common agreement, what type of management plan should be defined for each Natura 2000, where required⁶⁴. The Bavarian Ministry has also clarified that while the scientific responsibility of drawing up management plans rests with the Authorities for the protection of nature and forests, the Federal Ministry of the Environment is generally responsible for implementing Natura 2000 provisions⁶⁵.

Until recently, no federal guidelines had been issued in Germany for the development of management plans for Natura 2000 sites. Guidelines have often been developed by the Länder, with different approaches. Some Länder are working on the definition of concepts to develop harmonized management plans for the sites, while others have prepared 'pilot guidelines' for selected sites. In Bavaria, guidelines were first adopted for Natura 2000 forest sites. It is worth noting that forests do not fall within the competence of the Bavarian Ministry in charge of protecting nature. Therefore, informative guidelines on how to draft management plans for forest areas in Natura 2000 sites (*Arbeitsanweisung zur Fertigung von Managementplänen für Waldflächen in Natura 2000-Gebieten*) have been published by the Bavarian Forest Institute in December 2004. Other guidelines for non-forest sites⁶⁶ were published in 2006 by the Bavarian Office for Nature Protection (*Bayerisches Landesamt für Umweltschutz, LfU*). Guidelines were also adopted by the Land Baden-Württemberg in 2003⁶⁷. These guidelines have been prepared in cooperation with research departments, the Institute of Botany and Landscape of Karlsruhe and the working group on species and management of Filderstadt. A working group composed of representatives from the fields of agriculture, forestry, fisheries, water and protection of nature has also participated in the preparation of this document, which was first applied in 2005 in a number of Natura 2000 pilot sites.

⁶² Act on the protection of nature, maintenance of the landscape and recreational activities in the open countryside (*Gesetz zum Schutz der Natur, zur Pflege der Landschaft und über die Erholungsvorsorge in der freien Landschaft - Baden-Württemberg*). Version of 13 December 2005 (Law and ordinance gazette GVBl. no. 18 of 16.12.2005 p. 745; corr. 2006 p. 319).

⁶³ "Schutz des Europäischen Netzes Natura 2000" », *op. cit.* point 6.1, paragraph 3.

⁶⁴ Schreiber R., *Schwerpunkte der Umsetzung von natura 2000 in Bayern im Jahr 2001-abschließende Meldung, Erhaltungsziele, Managementpläne, Internet*, in Tätigkeitsbericht LfU 2002, p.2; see also *Umweltbericht Bayern 2007 (Bavaria's Environmental Report 2007)* prepared by the Bavarian State Ministry of Environment, Health and Consumer Protection, Munich, 2007, p.77.

⁶⁵ "Protection of Europe's natural heritage, conservation of Bavaria's habitat, management plan and roundtable for the Habitats and Birds Directive in Bavaria (*Europas Naturerbe sichern, Bayerns Heimat bewahren, Managementplan und Runder Tisch für FFH- und Vogelschutzgebiete in Bayern*)", Bavarian State Ministry of Environment, Health and Consumer Protection and Bavarian State Ministry of Agriculture and Forestry, 2006, Regensburg, p. 11.

⁶⁶ *Europas Naturerbe sichern, Bayerns Heimat bewahren, Managementplan und Runder Tisch für FFH- und Vogelschutzgebiete in Bayern*, Bavarian State Ministry of Environment, Health and Consumer Protection and Bavarian State Ministry of Agriculture and Forestry, 2006, Regensburg.

⁶⁷ *Handbuch zur Erstellung von Pflege -und Entwicklungsplänen für die Natura 2000-Gebiete in Baden-Württemberg* (Manual for the definition of conservation and development plans for natura 2000 sites in Baden-Württemberg), Landesanstalt für Umweltschutz (Regional Institute for Environmental Protection), 2003.

A study by the Federal Office for the Protection of Nature⁶⁸ has collected experiences with the management of Natura 2000 sites and has developed initial recommendations, a sort of guidelines in fact, for the management of Special Areas of Conservation in Germany. The study lists the features of sites where a management plan is mandatory. These include sites where the habitats and/ or species need to be maintained or display an unfavourable conservation status, sites where conflicts may arise or cross-border national or regional sites. A management plan must be established for all of them. The authors of the study recommend that management plans should be developed for the majority of Natura 2000 sites. Already protected sites - particularly *Naturschutzgebiete* for which conservation and development objectives (*Erhaltungs-und Entwicklungsziele*) have already been defined and where land use conflicts have already been resolved - do not need to be made the subject of a specific management plan; it will suffice to ensure that existing arrangements comply with the objectives of the Directive. In large protected areas with a management body and management plans already available it will suffice to adjust such plans so as to make sure that they meet the requirements of the habitats and species of the Habitats Directive. However, given the lack of adequate staff and funds for the implementation of the Directive, the authors of the study recommend to set priorities and concentrate on 'sensitive' sites (hot spots), such as those hosting typical habitats and priority species, sites exposed to specific threats, sites where projects are pending or sites where land uses should be regulated by contractual or binding measures. Moreover, coordination between authorities responsible for Natura 2000 sites has occurred through the Federal Office for Nature Protection (*Bundesamt für Naturschutz - BfN*) to assess the conservation status of all habitats and species mentioned in the Directive and present in Germany⁶⁹, as we shall see below. This cooperation has led also to develop a model to assess the sites which is being used by some Länder with some modifications; other Länder instead, such as Baden-Wuerttemberg, have created their own models (*Schemata*)⁷⁰.

CONCLUSION

One should ensure that active management measures pursuing the same objectives are adopted on both sides of the border, as this would help establish ecological corridors. This, of course, is not a mandatory provision of the Habitats Directive and constitutes a voluntary action on the part of the management bodies of the sites. In fact, the Habitats Directive, does not contain the notion of a "transboundary" Natura 2000 site, therefore it does not impose cross- border cooperation in form, for example, of a common plan of management⁷¹.

⁶⁸ Ellwanger G., Schröder E. et Ssymank A., „Erfahrungen mit der Managementplanung in Natura 2000-Gebiete in Deutschland » (Experiences with management plans in Natura 2000 sites in Germany), in Ellwanger G. und Schröder E. (Bearb.), *Management von Natura 2000-Gebieten. Erfahrungen aus Deutschland und ausgewählten anderen Mitgliedstaaten der Europäischen Union* (Management of Natura 2000 sites. Experiences from Germany and a selection of other Member States of the European Union) , *op. cit.*, pp. 9-26.

⁶⁹ Schnitter P., Eichen C., Ellwanger G., Neukirchen M. et Schröder E. (Bearb.), *Empfehlungen für die Erfassung und Bewertung von Arten als Basis für Monitoring nach Artikel 11 und 17 der FFH- Richtlinie in Deutschland* (Recommendations for assessing species as a basis for monitoring pursuant to articles 11 and 17 of the Habitats Directive in Germany), reports of the Regional Office for Environmental Protection of Saxony Anhalt (Landesamt für Umweltschutz Sachsen-Anhalt - Halle), Special issue no. 2, 2006.

⁷⁰ Ellwanger G., Schröder E. et Ssymank A., « Erfahrungen mit der Managementplanung in Natura 2000-Gebiete in Deutschland », *op. cit.*, pp. 18.

⁷¹ For example, the Water Framework Directive calls for cross-border river basin management plans.

2.4.2.2. Damage to the natural habitats and protected species in Community law (damage to biodiversity)

The Habitats Directive contains an obligation for the Members States to "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". The text of the Habitats Directive is essentially of a preventive nature and does not deal with the issue of compensation for damage to habitats and species, which is the subject matter of Directive 2004/35/CE focusing on the prevention and remedying of environmental damage, including damage to biodiversity. In article 2, paragraph 2, directive 2004/35/CE defines damage as a "measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly."

The notion of damage to biodiversity in the directive 2004/35/CE of 21 April 2004⁷²

According to the directive 2004/35/CE, "environmental damage" means: (a) damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species." (article ..). Concerning damage to resources, the damage caused to protected natural habitats and species must have produced severe adverse effects on the constitution or maintenance of a favourable status of conservation for said habitats or species. Over the long term, a large number of factors may affect the state of conservation of a site⁷³, its division, structure and functions. The Directive specifies that "the significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in the Annex". Knowing the initial state of the site is therefore a fundamental starting point for assessing the damage⁷⁴. That was the type of information collected during the scientific work which led to the establishment of the Natura 2000 network.

The definition of damage to biodiversity in national and/or regional provisions

Austria

At federal level, the EU directive 2004/35/CE was transposed into Austria's Federal Act on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage (*Bundesgesetz über Umwelthaftung zur Vermeidung und Sanierung von Umweltschaden*)⁷⁵. However the federal act does not cover all of the aspects dealt with by the Directive, and therefore transposition is incomplete. According to the division of competences between the Bund and the Länder codified by article 15 of the Austrian Constitution, legislative provisions or regulations must be adopted by the Länder. The field of application (*Anwendungsbereich*) of the federal act is defined in paragraph 2 of the same.

⁷² Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (Official Journal L 143, 30/04/2004, p. 0056 - 0075).

⁷³ Article 2, paragraph 1, letter a, of the EU Directive on Environmental Liability.

⁷⁴ Steichen Pascale, "La responsabilité environnementale dans les sites Natura 2000", in *Revue européenne de droit de l'environnement* no. 3-2009, pp. 247-271.

⁷⁵ References.

Länder are competent for the areas that fall within the scope of Directive 2004/35. Since nature conservation is the responsibility of the Länder, provisions on the protection of habitats and species are dealt with in the regional laws. The provisions of Directive 2004/35 may be transposed into a specific new act or integrated into already existing laws.

Länder are competent for damage to biodiversity and certain forms of soil damage, as specified in the provisions that define the scope and field of application of the specific act. In the case of Lower Austria, for instance, it's paragraph 2 of the regional act that defines the scope and the field of application thereof (*Geltungsbereich*). The first Land to start was Lower Austria (*Niederösterreich*) that adopted its environmental liability act (*NÖ Umwelthaftungsgesetz - NÖ UHG*) in July 2009 ; more recently specific laws transposing the Directive were adopted also by Upper Austria, Vienna and Tyrol. Carinthia has integrated the provisions transposing the Directive into its already existing law on the protection of nature.

Following the delay in the transposition procedure, Austria was sentenced by the Court of Justice of the European Communities on 18 June 2009 for failure to transpose Directive 2004/35/CE within the period prescribed by directive 2004/3576. During litigation, Austria invoked as a defence that the two levels of transposition (*Bund* and *Länder*) delay the process of transposition⁷⁷. However, as the Community Judge has reiterated on several occasions especially with regard to the transposition of the Habitats Directive, the institutional structure of a Member States cannot justify its failure to fulfil obligations deriving from Community law⁷⁸.

Concerning the scope of the Directive, and damage to biodiversity in particular, there is no common definition for all of the Länder. Some Länder refer to the definition contained in the Directive and consider only damage caused to habitats and species protected under the EU's nature conservation laws (namely the Habitats and Birds Directives), while others expand the field of application to habitats and species protected under the Länder's legislation on nature conservation. Land Vienna has adopted the latter approach. By contrast, the laws of Lower Austria (*Niederösterreich*), Upper Austria (*Oberösterreich*), Carinthia and Tyrol have a more restricted scope and apply 'only' to the habitats and species protected under Community law [I've considered all Länder bordering on Germany : Tyrol, Salzburg, Upper Austria and Vorarlberg).

Germany

⁷⁶ CJCE, Judgement of 19 June 2009, case C-422/08, Commission of the European Communities v. Republic of Austria.

⁷⁷ See points 8 and 9 of the CJCE Judgement of 18 June 2009, Commission v. Republic of Austria («The Republic of Austria does not dispute that the transposition of the Directive has failed to occur within the time prescribed. It suggests, however, that transposition requires the adoption of texts, first at the federal level, then at the Länder level. [...]. If the draft federal law on environmental liability had already been adopted by the Council of Ministers in May 2007 and submitted to the Austrian Parliament for consideration, because of the legislative elections, that project would have required a new approval by the Council of Ministers. The adoption of draft legislation at Länder level would occur only after the adoption of such federal law).

⁷⁸ See point 11 of the Judgement: "In addition, under the established case-law of the Court, a Member State may not invoke as a defence provisions, practices or situations of its domestic law, including those resulting from its federal organization, to justify its failure to fulfil obligations and meet deadlines prescribed by a directive (see also judgement of 6 July 2000, Commission v. Belgium, C 236/99, Rec. p. I 5657, point 23, and judgement of 12 March 2009, Commission v. Belgium, C 342/08, point 13)".

The provisions of the EU Environmental Liability Directive have been transposed into German law by the **Environmental Liability Act** (*Umwelthaftungsgesetz*⁷⁹) and the **Act on Environmental Damage** (*Umweltschadengesetz*⁸⁰). The provisions regarding damage to habitats and species have been included in the new Federal Act on the Protection of Nature. Regarding the definition of such damage, the Act on Environmental Damage refers to **paragraph 19 of the Federal Act on the Protection of Nature**, which in turn incorporates the provisions of EU Directive 2004/35. According to paragraph 19, subparagraphs 2 and 3 of the Federal Act, the damage to natural habitats and species is to be understood as **damage caused to habitats and species protected by EU law**. The concept of damage to biodiversity has not been interpreted in an extensive way.

CONCLUSION

The provisions transposing EU's Directive 2004/35/CE concerning environmental damage vary across the legislation of Austrian Länder. Some Länder have opted for a wider definition of the concept of habitat and protected nature.

German law provides a strict interpretation of the concept of damage to natural habitats and species: habitats included in the network of biotopes but not protected by Community law are therefore not protected under Directive 2004/35. Moreover, Directive 2004/35/CE introduces the concept of remedial measures for repairing environmental damage, defining them as *"any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services"*⁸¹.

2.4.3 Protection of habitats (outside Community Law)

Habitat protection is a recent nature conservation instrument that complements measures for the protection of species. It stems primarily from international and Community environmental law. Alongside European law, which has been already cited, there are also obligations arising from international law (the Ramsar Convention, the Bern Convention, etc.).

Austria

The protection of habitats differs across Austrian Länder with respect to the types of habitats protected and the quality of the protection⁸². Nevertheless, there are certain types of habitats or areas that are protected by all legislation on the protection of nature. This primarily concerns the protection of shorelines and bodies of water (*Ufer- und Gewässerschutz*) and wetlands (*Feuchtgebiete*). Moreover, certain Länder, including Carinthia and Tyrol, have adopted specific provisions for the protection of Alpine areas and glaciers (*Alpinregion und Gletscher*). The Alpine zone here is understood as the high mountain area extending above the tree line.

⁷⁹ Act on Environmental liability (*Umwelthaftungsgesetz*) of 10 December 1990 (Germany's Federal Law Gazette - *BGBl.* I p. 2634), as amended by Article 9 paragraph 5 of the Law dated 23 November 2007 (*BGBl.* I p. 2631) ".

⁸⁰ References of the Act.

⁸¹ Article 2, paragraph 11, referring to Annex II.1 and II.1.1.

⁸² See *Handbuch Umweltrecht* (Manual on Environmental Law), *WUV Universitätsverlag*, 2006, p. 373 et s.

Germany

Paragraph 30, sub-paragraph 1 of the Federal Act on the Protection of Nature (*Bundesnaturschutzgesetz*) provides for the **statutory protection of certain habitats** (*gesetzliche geschützt Biotope*) as a **fundamental principle** (*allgemeiner Grundsatz*) from which the Länder cannot depart (*kein Abweichungsrecht*). A list of habitats that must be protected by the laws of the Länder is specified in paragraph 30, sub-paragraph 2 of the federal act. Any intervention that could destroy or damage any of the listed biotopes shall be prohibited. The Länder may also include other types of habitats in the list of protected habitats. In Bavaria, provisions concerning biotopes protected by law are contained in **paragraph 13d of Bavaria's nature conservation act**. Some of the habitats protected both by the federal and the regional laws are typical of mountain areas, such as open rock formations (*Felsbildungen*), alpine grasslands (*Alpine Rasen*) and small depressions where snow lingers for a longer time than usual (*Schneetälchen*) and krummholz formations (*Krummholzgebüsche*). Paragraph 30, sub-paragraph 3 of the federal nature conservation act allows for exceptions to the regime of prohibitions aimed at protecting habitats if damage can be compensated. The Bavarian act contains this condition in article 13d, sub-paragraph 2, but adds that such exceptions may be granted for reasons of overriding public interest (*überwiegenden Gründen of Gemeinwohl*). [See also paragraph 38 of the federal act and article 13 of the Bavarian nature conservation act: *Schutz von Lebensstätten*)

CONCLUSION

Implementation of cross-border biological corridors.

2.4.4. Legal provisions concerning the linkage of habitats

In Germany provisions aiming at supporting ecological connectivity were integrated in the Federal Law on nature protection since 2002. There are no national legal provisions in Austria to support implementation of an ecological network across the country.

Although the Habitats Directive aims to develop a coherent ecological network, it introduces the concept of functional coherence between Natura 2000 sites as a recommendation rather than as an obligation for Member States. Indeed, the provisions of article 3, paragraphs 2 and 3, and article 10 'encourage' Member States to improve the ecological coherence between Natura 2000 sites. These provisions are written in the form of recommendations: that explains why they have not been transposed by all Member States of the EU. They have not been included among the Austrian provisions transposing the Habitats Directive but in Germany the provisions on *Biotopverbund* contribute to this objective.

Article 3, paragraph 3: "Where they consider it necessary, Member States shall endeavour to improve the ecological coherence of Natura 2000 sites by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora, as referred to in Article 10.

Article 10: “Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora.

Such features are those 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 ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species”⁸³.

Austria

The Länder have exclusive law-making authority in the field of nature conservation. The Austrian nature protection law contains no provisions at all for the establishment of a regional ecological network. By contrast, in recent times a few Italian regions (Piedmont and Liguria, for example) have introduced such provisions. The ‘coherence between Natura 2000 sites’ is considered in the nature conservation laws of Carinthia⁸⁴ and Tyrol⁸⁵ only in relation to compensatory measures in case of projects which undermine the coherence of the network.

Further initiatives in support of ecological networking have been adopted in some Länder, especially in Styria, concerning spatial planning and territorial management

Germany

The realization of an ecological network is an obligation under the federal nature conservation act of 2002. This requirement has been progressively integrated into the law of the German Länder. It will be implemented mainly through the integration of ecological networking requirements into landscape planning.

• **National provisions**

The concept of ecological network appeared in German law in 2002, with the reform of the federal framework law on nature protection⁸⁶. The requirement to set up an ecological network was transposed into the nature conservation laws of the Länder⁸⁷ in accordance with Chapter VII of the German Basic Law which governs the distribution of legislative powers between the Bund and the Länder. The decision to have such requirement stated by law testifies to the strong political will and national consensus around the need to restore biological interconnections. That translated into law the nature conservation policy concepts developed years before. Indeed, by the time of the reform most Länder had already adopted a strategy called *Biotopverbund* (biotope network) or *Ökotopverbundsystem* (ecotope network system). Like nature conservation policies, policies to create ecological networks had varied across Länder. In the western part of Germany nature conservation

⁸³ Underlined by the authors of this study.

⁸⁴ Carinthia’s nature protection act (*Kärntner Naturschutzgesetz 2002* - K-NSG 2002 Standard version: Regional Law Gazette LGBl no. 79/2002.)

⁸⁵ Tyrol’s nature protection act (*Tiroler Naturschutzgesetz 2005* - TNSchG 2005.)

⁸⁶ Act on nature protection and landscape conservation (*Gesetz über Naturschutz und Landschaftspflege*), 25 March 2002, Germany’s Federal Law Gazette *BGBl I* 2002, 1193.

⁸⁷ Länder were required to adjust their law on nature protection to the new provisions of the federal framework law by 4 April 2007. Land Baden-Wurtemberg included provisions concerning the biotope network (*Biotopverbund*) into its new act on the protection of nature on 1 January 2006 (concerning the provisions of this new act see Rohlf D., « Das neue Naturschutzrecht Baden-Wurttembergs », in *Natur und Recht*, 2007, no.29, pages 22-26.

policies were somewhat more ‘aggressive’⁸⁸. The new federal act on nature protection was adopted in July 2009 and entered into force on 1 March 2010; its paragraph 21 refers to biotope networks (title: ‘*Biotopverbund, Biotopvernetzung*’⁸⁹) and largely reflects the previous provisions of paragraph 3 of the Federal Framework Law on Nature Conservation of 2002, with some modifications. The creation of a network of biotopes is one of the principles from which the Länder cannot derogate (*abweichungsfest*). This network must have specific characteristics. Under paragraph 21, sub paragraph 2 of the federal act the network must be interregional (*länderübergreifend*). This requires collaboration between the various Länder in implementing their nature protection policies. Moreover, under paragraph 20 of the federal act, the biotope network must cover at least 10% of the surface of each Land. Paragraph 21, sub-paragraph 1 of the new federal act states the objective of this network of biotopes, which is that of guaranteeing the sustainable conservation of animals and plants of local origin and their habitats. Also their ecological functions and development must be secured. Unlike the Natura 2000 network, the German biotope network does not concern solely the habitats and species mentioned in a specific list, but all species of wild fauna and flora present in each Land⁹⁰.

It therefore has a broader scope. Sub-paragraph 3 of paragraph 21 defines the components of this network of biotopes⁹¹: the core areas, buffer areas and connecting elements⁹², which are the conventional components of an ecological network. This network can include protected areas, biotopes subject to protection under paragraph 30 of the Act, nature reserves, Natura 2000 sites, biosphere reserves, and all elements contributing to the objectives set out in sub-paragraph 2 of paragraph 3 of the federal framework law. The latter may be elements of the landscapes that connect these biotopes. The purpose of networking biotopes is precisely to improve the coherence between Natura 2000 sites (paragraph 21, sub-paragraph 1). Moreover, according to new federal legislation, the sites designated as “*Nationales Naturerbe*” (national natural heritage) and “*Grünes Band*” (green belt) are to be integrated into this network of biotopes. Recommendations⁹³ were developed by a group of experts from the Bund and the Länder, coordinated by the Federal Office for Nature Protection, to clarify the selection criteria for admitting areas to this network⁹⁴. This network of biotopes must be protected in an effective way through different measures: designation of protected areas, spatial planning and territorial management measures, (long term) nature conservation contracts and any other measure pursuing the same goal. Although no minimum duration has been specified, it is clear that the

⁸⁸ That is due also to a stronger fragmentation of habitats in this part of Germany.

⁸⁹ That means biotope network, biotope networking

⁹⁰ Erbguth W. et Schlacke S., *Umweltrecht*, 1st Edition, Nomos (Ed.), Baden- Baden, 2005, p. 194.

⁹¹ Paragraph 3, sub-paragraph 3- 3 of the federal act on nature protection (BNatSchG 2002, Germany’s Federal Law Gazette *BGBl I* 2002, 1193): “[...] established national parks, [...] legally protected biotopes under the terms of § 30, [...] nature reserves, [...] areas within the meaning of § 32 and biosphere reserves or parts of these areas, [...] additional areas and elements, including parts of landscape conservation areas and nature parks if they are conducive to achieving the objective mentioned in paragraph 2”.

⁹² That is the translation of the following: *Kernflächen, Verbindungsflächen et Verbindungselementen*.

⁹³ Burkhardt et al., “*Naturschutzfachliche Kriterien zur Umsetzung des §3 BNatSchG ‚Biotopverbund‘* (Technical nature protection criteria to implement §3 BNatSchG ‚biotope network’», in *Natur und Landschaft*, 78th year (2003), Issue 9/10, pp. 416- 428.

⁹⁴ See on this point Krüsemann E., *Der Biotopverbund nach §3 BNatSchG* (The biotope network according to §3 BNatSchG), in *Natur und Recht*, 2006, Issue 9, pages. 546-554; Krüsemann E., *Biotopverbund im Naturschutzrecht, Umweltrecht und Umweltpolitik* (The biotope network in the nature protection law, environmental law and environmental policy), Volume 15, Berliner Wissenschafts-Verlag, 2005.

protection of the network must be ensured in the long term. It is interesting to note that measures envisaged for the protection of this network go beyond mere nature conservation measures in the strict sense. Here it's spatial planning and territorial management that are put at the service of nature conservation⁹⁵. This is therefore the same approach as that of the Habitats Directive. Moreover, there must be complementarity between the network of biotopes promoted by the provisions of the federal framework law and the Natura 2000 network. That is an explicit requirement of paragraph 2, sub-paragraph 2, of the federal act, which states : "*the Bund and the Länder support international efforts and the implementation of Community law provisions on the protection of nature and landscape conservation. The development of a Natura 2000 network should be supported. Its protection is to be guaranteed and also improved through the development and maintenance of the network of biotopes*"⁹⁶.

But the administrative judge⁹⁷ has repeatedly stated that the concept of ecological coherence does not play a major role in Stage 1 of Annex III of the Habitats Directive, namely in the national selection of sites. Ecological coherence comes into play at a later stage, that is to say, when assessing the sites to determine whether they are of Community importance. Furthermore, a provision contained in paragraph 1, sub-paragraph 5 of the 2009 federal act is worth mentioning: it requires that large-sized or uniform landscape areas should not be split up. This provision contributes indirectly to improving connection between natural habitats. In a sense, it is similar to those provisions of the Mountain Act that require land development to occur according to the principle of 'continuous urbanisation' and thus help avoid fragmentation of the landscape. This provision is one from which Länder cannot derogate.

- ***The provisions of Bavaria's act on nature protection***⁹⁸

The content of the provisions of the federal framework law of 2002 on the network of biotopes has been incorporated into Bavaria's Nature Conservation Act of 2005 , more precisely into article 13f thereof entitled "*Biotopverbund; Arten-und Biotopschutzprogramm*" (network of biotopes, programme for the protection of species and biotopes). Article 13f reiterates the requirements concerning the minimum area to be covered by the network set forth in the federal act of 2002; it also states that the network of biotopes must be protected over time through agreements and that it must be integrated into regional planning policies. Sub-paragraph 4 of article 13f specifies that the network is based

⁹⁵ Dietrich B., *Der Biotopverbund- mögliche Instrumente der Ausweisung und Sicherung* (The biotope network - possible instruments for designating and protecting it), in *UPR*, 5/2004, pp. 168- 175.

⁹⁶ Translation provided by the authors of this paper.

⁹⁷ Hösch U., « *Die Rechtsprechung des Bundesverwaltungsgerichts zu Natura 2000 Gebieten* (The jurisprudence of the Federal Administrative Court concerning Natura 2000 sites), in *Natur und Recht* 2004, Heft 6, pp. 348-355.

⁹⁸ Act on the protection of nature, maintenance of the landscape and recreational activities in the open countryside (*Gesetz zum Schutz der Natur, zur Pflege der Landschaft und über die Erholungsvorsorge in der freien Landschaft* (Bayerisches Naturschutzgesetz -BayNatSchG) in the version of the Communication of 23 December 2005 (GVBl 2006 S. 2, BayRS 791-1-UG), amended by art. 78 paragraph 8 of Act dated 25 February 2010 (GVBl S. 66).

largely on a programme for the protection of species and biotopes developed by the Land⁹⁹. The programme, called *BayernNetzNatur* (literally: Bavaria Network Nature) aims to establish a network of biotopes across the Land and is the source of more than 300 projects, many of which are developed in the Alps.

These projects are conducted on a voluntary basis, but funded by grants from the Bavarian Ministry of the Environment (notably through the cultural landscape conservation programme called ‘KULAP’), from the Bavarian Ministry for Agriculture and Forestry, the Federal Government or the European Union. The relatively large number of projects proves that citizens support the objectives of this programme¹⁰⁰. The 2005 Act, amended in 2010, fails to specify that the network of biotopes should contribute to improve the links between Natura 2000 sites. Such statement instead is contained in paragraph 21 of the Federal Nature Conservation Act.

- ***The integration of requirements concerning the network of biotopes (Biotopverbund) into landscape planning (Landschaftsplanung)***

The federal law does not specify which authorities are responsible for establishing the network of biotopes, nor the structure that such network should have. It is the Länder that have jurisdiction on this matter. Landscape planning seems to be one of the most suitable domains for the realization of this network of biotopes according to G. J. Janssen Albrecht¹⁰¹. This is reflected in the provisions on landscape planning contained in paragraph 14, sub-paragraph 1, 1-c of the federal nature conservation act of 2002: "*(landscape) plans should contain the requirements and measures concerning areas that, by virtue of their condition, situation or possible natural development are suitable to be used for building the network of biotopes*"¹⁰².

The content of this provision is reiterated in paragraph 13, sub-paragraph 3, of the 2009 Act. According to the authors mentioned above, the requirements concerning the network of biotopes can be integrated into landscape planning in two ways. One way is to make use of the instruments foreseen by the federal nature protection act mentioned earlier in the text. In that case, issues concerning the need to avoid damage to the areas and the improvement of the latter will be addressed. Another way is for the Länder to develop specific plans for the implementation of ecological networks, handling landscape planning as a separate issue pursuant to paragraph 14 of the 2009 Act. The latter option is used by most Länder, including Bavaria, as we shall see below. However this might turn out to be a questionable solution if the requirements concerning the biotope network fail to be integrated into landscape planning at a later stage. A two-step integration should be pursued here. Failure to do so would prevent the biotope network from acquiring any binding character vis-à-vis other authorities,

⁹⁹ The Bavarian programme for the protection of biotopes and species is aimed at nature protection and landscape maintenance; Land Bavaria started developing it in 1985 and the programme was first mentioned in the Federal Nature Protection Act of 1998.

¹⁰⁰ Involving local actors is essential for establishing biological corridors and keeping them in good shape since participation implies positive obligations (obligations to do) rather than prohibitions.

¹⁰¹ Janssen G. und Albrecht J., *Umweltschutz im Planungsrecht. Die Verankerung des Klimaschutzes und des Schutzes der biologischen Vielfalt im raumbezogenen Planungsrecht* (Environmental protection in spatial planning law. Integrating climate protection and biological diversity protection in local spatial planning law), on behalf of the Federal Environmental Office (*Umweltbundesamt*), research report (*Forschungsbericht*) 363 01 176, UBA-FB-001123, 2008, (p.121).

¹⁰² Translated by the authors of this paper.

including those competent in the field of spatial planning. Opting for integration in two phases would also give more time to fine-tune measures and requirements related to the ecological network during the first phase.

This concept developed by German law is very interesting and has allowed transposing the recommendations of article 10 of the Habitats Directive into national legislation, even though the objective to establish a biotope network (*Biotopverbund*) made its official appearance only in the Act of 2009. Natura 2000 sites are expressly mentioned as a component of the network of biotopes in the latest federal nature conservation act, while they were still missing in the 2002 Act. The influence of German nature protection law can be found in the Protocol on Nature Conservation of the Alpine Convention, whose article 12 is devoted to the creation of an ecological network across the Alps. It was a German working group which was responsible for drafting the protocol.

CONCLUSION

Ensuring connectivity between habitats is one of the new stages of nature conservation. The task ahead therefore is that of linking protected areas together to create a regional ecological network. These laws transpose the provisions of articles 3 and 10 of the Habitats Directive which call for functional coherence between Natura 2000 sites. Such provisions do not appear in Austrian law, even though some relevant initiatives are under way in some Länder. The absence of concrete provisions on the subject in Austria's regional laws (Länder level) can be an obstacle to the achievement of cross-border ecological corridors.

2.4.5 Spatial Planning in Protected Areas

We will examine here whether spatial planning in protected areas is governed by specific provisions.

2.4.5.1. Land use planning

Germany

Spatial planning and territorial management in the area of the Berchtesgaden Park must comply with the provisions concerning the regime of protection in national parks (national law and Bavaria's Nature Conservation Act) as well as with the Ordinance on the Alps and the Berchtesgaden National Park (paragraphs 9-12 and paragraph 2 of the landscape master plan, "*Landschaftsrahmenplan*").

Austria

With reference to spatial planning and territorial management in protected areas, the protection system applied to the areas includes ban and permit policies which can lead to prohibition of certain activities. Moreover, the National Park Hohe Tauern is governed both by national laws on parks (*Nationalparkgesetze*) and by the specific park laws of the three Länder which have a part of their territory within the park boundaries, namely Tyrol¹⁰³, Carinthia¹⁰⁴ and Salzburg¹⁰⁵. Such laws provide

¹⁰³ Act of 9 October 1991 establishing the National Park Hohe Tauern (*Tiroler Nationalparkgesetz Hohe Tauern*)

for specific zoning with different levels of protection; specific regulations apply to peripheral park areas (*Außenzone*¹⁰⁶), core areas (*Kernzone*) and special protection areas (*Sonderschutzgebiete*). Regulations typically concern spatial planning and territorial management. The strictest rules apply to the “*Sonderschutzgebiet*” where no intervention on the natural environment and the landscape is allowed¹⁰⁷. See the regional and local territorial management measures

Moreover, pursuant to paragraph 32 of Tyrol’s nature conservation act, the Land Government can adopt specific spatial planning instruments for certain protected areas (*Landschaftsschutzgebiete*; *Ruhegebiete*, *geschützter Landschaftsteil*, *Naturschutzgebiete*, *Sonderschutzgebiete*). Such instruments are called “*Naturpflegepläne*” (literally: nature maintenance plans). However this not a mandatory requirement stated by the law.

CONCLUSION

To achieve ecological continuity between two protected areas, we must first ascertain what measures are adopted in the sites concerned or have an effect on them. Measures may vary depending on the specific status of the protected area.

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

General provisions and the recognition of cross-border effects

The provisions of EU directives on the assessment of projects, plans and programmes and their impact on the environment apply both in France and Germany. These directives contain, in particular, provisions for projects, plans and programmes that may affect neighbouring countries. Council Directive 85/337/EEC of 27 June 1985¹⁰⁸ 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 assessed by the competent national authorities before consent to execution is given. Such environmental impact assessment shall 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

¹⁰⁴ Act on the establishment of national parks and biosphere parks (*Kärntner Nationalpark- und Biosphärenparkgesetz K-NBG*) (Regional Law Gazette - *LGBL*. NO. 55/1983, last modified by the law published in *LGBL*. no. 25/2007).

¹⁰⁵ Act on the establishment of the National Park Hohe Tauern; Ordinance of Land Salzburg’s Government - Definition of the boundaries of the core and outer areas of the National Park Hohe Tauern in Land Salzburg.

¹⁰⁶ “Peripheral park areas include all areas lying within the park boundaries but outside the core zones (§ 5) and the special protection areas (§ 6)” (Paragraph 4 of Land Salzburg’s act on the National Park Hohe Tauern).

¹⁰⁷ See paragraph 6 of Land Salzburg’s act establishing the National Park Hohe Tauern; see paragraph 7 of Land Carinthia’s act on the establishment of national parks and biosphere parks; see paragraph 9 of Land Tyrol’s act establishing the Tyrol National Park.

¹⁰⁸ Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, Official Journal No. L 175, 05/07/1985 P. 0040 - 0048.

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”.

Directive 85/337/EEC was developed further by Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001¹⁰⁹ on the assessment of the effects of certain plans and programmes on the environment. Plans and programmes 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”.

CONCLUSION

When setting up cross-border ecological corridors, special attention shall be paid to projects, plans and programmes that may have an impact on the environment of neighbouring countries. That is required by article 7 of Directive 85/337/EEC for projects and by article 7 of Directive 2001/42/EC for plans and programmes. The definitions of ‘project’, ‘plan’ and ‘programme’ are contained in those directives.

2.4.5.3. 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 German and Austrian legislation. 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.

¹⁰⁹ 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, OJ L 197, 21.7.2001, pp. 30-37.

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 European Court of Justice. Article 6, paragraph 3 of the Directive describes 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”¹¹⁰.

CONCLUSION

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 adopted pursuant to article 6, paragraph 4 of the Habitats Directive, 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 site management documents, to ensure that it is safeguarded.

2.5.6. Rural development and ecological connectivity

2.5.6.1. Rural development and biodiversity in community texts

Regulations/ rural development plans.

2.5.6.2. Rural development and biodiversity in Germany and Austria

Measures concerning ecological continuity in the rural development plans (national/ regional versions).

¹¹⁰ Underlined by the authors of this paper.

2.5 Landscape protection and landscape management

When establishing ecological networks, it is essential to examine which landscape conservation measures have been adopted. Indeed, the preservation of landscape elements contributes to the preservation of biodiversity.

2.5.1. The European Landscape Convention

The **European Landscape Convention** was adopted by the Committee of Ministers of the Council of Europe on 19 July 2000. This is the first international convention dealing exclusively with the protection of the landscape, even though other international legal instruments concern the landscape, either directly or indirectly¹¹¹. Yet, no international legal instrument deals directly, specifically and comprehensively with European landscapes and their preservation, despite their immense cultural and natural value, and the many threats facing them. The Convention is intended to fill this gap¹¹². However, it should be mentioned that at the regional level, the Alpine Convention contains specific provisions concerning landscape conservation, namely in the Protocol on the Conservation of Nature and Landscape Protection. The general purpose of the European Landscape Convention is to encourage public authorities to adopt policies and measures at local, regional, national and international level for protecting, managing and planning landscapes throughout Europe so as to maintain and improve landscape quality and bring the public, institutions and local and regional authorities to recognise the value and importance of landscape and to take part in related public decisions¹¹³. According to **Article 1** of this text, the **landscape can be defined as “an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors“**. Pursuant to **article 5** of the European Convention landscapes must be recognised in law “*as an essential component of people’s surroundings, an expression of the diversity of their shared cultural and natural heritage, and a foundation of their identity*”. The Convention also calls for the implementation of active and passive landscape management policies, that is to say measures aimed at landscape protection, management and planning. That includes a requirement to introduce landscape planning measures. According to the European Landscape Convention, « **‘landscape protection’ means actions to conserve and maintain the significant or characteristic features of a landscape, justified by its heritage value derived from its natural configuration and/or from human activity**», whereas «**‘landscape management’ means action, from a perspective of sustainable development, to ensure the regular upkeep of a landscape, so as to guide and harmonise changes which are brought about by social, economic and environmental processes**». Competent authorities shall develop a veritable "landscape policy" and set "landscape quality objective". It is also worth noting that the European Landscape Convention contains provisions for cross-border cooperation in the field of landscape management. Pursuant to **article 9** “*the Parties shall encourage transfrontier co-operation on local and regional level and, wherever necessary, prepare and implement joint landscape programmes*”.

¹¹¹ Reference is made for instance to the Convention on Biological Diversity.

¹¹² Point 31 of the Explanatory Report of the European Landscape Convention.

¹¹³ Point 25 of the Explanatory Report of the European Landscape Convention.

CONCLUSION

Although Austria and Germany are Alpine countries with a strong legal tradition of protecting the landscape, neither of them has ratified or even signed the European Landscape Convention. It is important to note that the working group responsible for developing the Protocol on the Conservation of Nature and the Landscape of the Alpine Convention was chaired by Germany and this has influenced the wording of the text. The provisions concerning the preservation of the landscape were indeed innovative measures for other countries, such as France for example, that had no legal tradition of landscape preservation. We shall see in the next paragraph that even though these two states have failed to ratify the Convention so far, they have implemented specific domestic law provisions for the protection and management of landscapes.

2.5.2. Landscape management in the legal provisions on nature protection

Provisions for landscape protection are present in both the Austrian and the German law. These are both active and passive management measures (landscape planning).

Germany

German law contains various provisions on the protection of the landscape: the creation of protected landscape areas, the creation of protected landscape elements or, again, landscape planning (*Landschaftsplanung*). This is the subject of Chapter 2 of the Federal Act on the Protection of Nature (*Kapitel 2 - Landschaftsplanung*). Landscape planning (**paragraph 8 BNatSchG**) is one of the federal law provisions from which Länder cannot depart (*abweichungsfest*). The Länder must adopt landscape planning provisions in order to achieve the nature and landscape conservation objectives set by the legislator. Paragraph 8 of the federal act defines minimum standards for the Länder in the field of landscape planning. (complete and see commentary on the act by O. Henrichske, p. 111). Regarding Bavaria, articles 3 to 6f of the Bavarian Nature Conservation Act are related to landscape planning and landscape maintenance (*Landschaftspflege*).

Measures of landscape protection (new elements of the 2009 act on landscape planning - which is no longer required).

Areas of landscape protection.

Austria

Landscape protection in Austria is governed by various provisions; we will examine those contained in nature protection law. Landscapes should be preserved primarily by creating 'landscape conservation areas' (*Landschaftsschutzgebiete*). The nature conservation laws of all Austrian Länder mention this type of protected area. These areas are designated by an Ordinance (*Verordnung*). The Ordinance establishing the protected area shall specify its boundaries as well as the objectives of protection, licensing actions, restrictions, prohibitions and exemptions that shall be adopted. Activities that might have an impact on an landscape conservation area will be allowed only if they do not impair the conservation purpose (*Schutzzweck*) in a long-lasting way, or else where there is an overriding public

interest (*öffentliches Interesse*). With the exception of Carinthia, Lower Austria and Vorarlberg, Länder's nature protection laws contain provisions for the creation of 'protected landscape elements' (*geschützte Landschaftsteile*). These are small-sized nature or cultural landscape areas that are particularly important for the landscape or as a resting place. Also these areas are designated by Ordinance (*Verordnung*). Nature protection laws contain also provisions for the conservation of landscapes in general, that is to say outside of protected areas. For instance, paragraph 5 of Carinthia's nature conservation act concerns the protection of open landscapes (*Schutz der freien Landschaft*). Similarly, paragraph 5 of Tyrol's conservation act contains provisions concerning landscape protection (*Landschaftsschutz*). Such provisions introduce a general scheme of prohibitions and permissions for a number of activities (*Allgemeine Verbote* and *Allgemeine Bewilligungspflicht*). In addition, specific measures may be imposed on landowners to preserve parts of the landscape (*besondere Massnahmen zur Pflege der Landschaft*). That is envisaged for example by paragraph 18 of Tyrol's nature conservation act. Not all Länder have provisions on landscape planning in their nature protection laws. Such provisions appear in paragraphs 5 to 7 of Vorarlberg's nature protection act¹¹⁴ where reference is made to the formulation of 'development concepts' (*Entwicklungskonzept*). The latter have a two-fold purpose: first, to take an inventory of current landscapes, second to identify potential protection and management measures. Generally speaking, provisions concerning landscape planning are presented in a very fragmented way in the laws on nature protection¹¹⁵ and spatial planning¹¹⁶ (see for instance the development programme for Land Salzburg - *Salzburger Landesentwicklungsprogramm 2003*, Item B.2). However Land Salzburg's nature conservation act provides for the adoption of 'landscape maintenance plans' (*Landschaftspflegepläne*) (**paragraph 35**). Similarly, Styria's nature protection act provides that the regional government should adopt master plans for the landscape (*Landschaftsrahmenpläne*).

CONCLUSION

Austrian law does not consider landscape planning in a systematic way, unlike the German foreseen specific provisions on landscape planning. Italian law which sees it as an obligation resting upon the Regions. Italy's system complies

¹¹⁴ Law concerning nature protection and landscape development (Source: Regional Law Gazette *LGBl.* no. 22/1997, 58/2001, 38/2002, 1/2008).

¹¹⁵ Burgenland: § 4, § 16 c NatG; Carinthia § 45, § 46 NatG; Lower Austria: § 3 NatG; Upper Austria: § 4, § 15 NatG; Salzburg: § 35, § 36 NatG; Styria: § 2 III, § 31 NatG; Tyrol: § 30 NatG; Vorarlberg: §§ 5 - 7 NatG.

¹¹⁶ Manual for the implementation of the Alpine Convention and its protocols produced by Austria's Federal Ministry of Agriculture, Forestry, Environment and Water Management „*Die Alpenkonvention: Handbuch für ihre Umsetzung, Rahmenbedingungen, Leitlinien und Vorschläge für die Praxis zur rechtlichen Umsetzung der Alpenkonvention und ihrer Durchführungsprotokolle*“. Published by: Lebensministerium - Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft, 2007, p.125.

2.6 Areas surrounding protected sites - applicable law

2.6.1. The legal status of areas contiguous with protected sites

Italian law contains specific arrangements for sites contiguous with protected areas (*aree contigue*). This type of zoning is not foreseen in the laws of Austrian Länder concerning protected areas.

2.6.1.1. A specific system

Austria

The nature conservation laws of the Austrian Länder do not contain specific provisions concerning the surroundings of protected sites. This means that in such outer areas the general provisions on nature and landscape protection (habitat protection, preservation of open landscapes, etc..) and territorial management will apply. However spatial planning instruments and other specific measures, such as those intended to limit the expansion of ski areas, can contribute to protect the surroundings of protected areas. So, for instance, paragraph 4 of the regulation approving Land Tyrol's programme on cableways and ski areas¹¹⁷ states that ski areas can be extended only provided they do not adversely affect nature and landscapes.

Germany

German legislation

CONCLUSION

The Austrian law does not lay down specific provisions for the surroundings of protected areas. The latter are governed by general spatial planning and nature protection provisions adopted by the Länder.

2.6.2.2. The involvement of protected area managers in decisions taken outside protected areas

Discuss this issue

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 Austrian and Italian law, prohibits any damage to Natura 2000 sites originating from

¹¹⁷ Ordinance of Tyrol's Government of 11 January 2005 establishing a spatial planning programme for cable ways and technical ski facilities (*Tiroler Seilbahn- und Schigebietsprogramm 2005*).

inside or outside the site¹¹⁸. In fact, according to the Directive “*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 CONCLUSION of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public*”. Therefore, plans, projects or programmes that might damage a Natura 2000 site shall not be authorised, even if they are outside the area. Such projects can only be authorised in accordance with the strict conditions set forth in article 6, paragraph 4 of the Habitats Directive. Furthermore, it should be noted that the Directive provides for the protection of habitats and species listed in the Annexes both inside and outside Natura 2000 sites.

(to be completed).

3. THE EUROPEAN GROUPING FOR TERRITORIAL COOPERATION (EGTC)

3.1. An European instrument for the facilitation of transborder cooperation

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

¹¹⁸ See also the guidelines of the European Commission on this point, concerning the implementation of Article 6 of the Habitats Directive: European Commission, *Managing Natura 2000 Sites. The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC*, Office for Official Publications of the European Communities, Luxembourg, 2000 (73 p.).

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 public policy, it will give a statement of its reasons for withholding approval (Reg. (EC) no. 1082/2006, art. 4).

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

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

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

- They have to designate the responsible authorities for the approval of the EGTC, and the participation of prospective members subject to their jurisdiction

- They have to designate competent authorities to overlook the management of public funds by the EGTCs registered in their territory
- They can become members of an EGTC

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

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

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

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

3.2. Transposition in Austria and in Germany

Austria

The question on whether the competence to adopt the legislation for the EGTC remained with the *Länder* or the *Bund* was an object of debate for quite some time in Austria. Originally the partners regarded the EGTC implementation as a matter of *Länderkompetenz*, but eventually, due to constitutional constraints, it was decided to opt for a regional approach with nine regional sets plus one federal set of provisions. This is an application of the so-called *Generalklausel* integrated in article 15 of the Austrian Basic Law/Constitution (about the sharing of competences between the *Bund* and the *Länder*). A proposal containing general provisions applicable to all types of EGTC in Austria was submitted at the federal level. The Land of Carinthia coordinated the new process.

At the beginning of summer 2008, a bill was proposed at the federal level [Entwurf : „Bundesgesetz über Europäische Verbände für territoriale Zusammenarbeit (EVTZ Bundesgesetz - EVTZ-BG)“] and each *Länder* had to give its opinion about the bill during the summer of the same year. The Bill was then sent by the National Council (*Nationalrat*) to the Constitutional Assembly (*Verfassungsausschuss*) during its 22nd Session, on May 19, 2009. The first paragraph of this bill laid down the scope/area of application of the text. According to this first paragraph this law will be applied in case of the participation of the Bund in an EGTC and as far as the fields concerned by the EGTC do not fall in the exclusive competence of the *Länder* (nature protection, for instance, falls under the exclusive competence of the *Länder*).

Article 1: „Dieses Bundesgesetz gilt [...] 1. für die Teilnahme [...] des Bundes sowie [...] von Einrichtungen gemäß Art. 3 Abs. 1 lit. d der Verordnung (EG) Nr. 1082/2006 über den Europäischen Verbund für territoriale Zusammenarbeit (EVTZ), Abl. Nr. L 210 vom 5. Juli 2006 S. 19, (im Folgenden EVTZ-Verordnung) und von aus solchen Einrichtungen gebildeten Verbänden an einem Europäischen Verbund für territoriale Zusammenarbeit (im Folgenden: EVTZ), soweit die genannten Einrichtungen und Verbände nicht in den selbständigen Wirkungsbereich der Länder fallen, sowie 2. für die Anzeige, Registrierung, Finanzkontrolle und Auflösung von EVTZ mit Sitz im Inland, all dies soweit die EVTZ-Verordnung keine Regelung enthält oder ausdrücklich auf ausführende Rechtsvorschriften der Mitgliedstaaten Bezug nimmt“. On the regional level, laws were adopted and are under adoption in order to implement the European regulation:

- Laws on EGTC were already adopted in the *Länder* of Vorarlberg, Styria, Lower Austria and Carinthia.
- There are Bills in other different *Länder*: in Salzburg, in Wien.

The first paragraph of the Vorarlberg Law on the EGTC precises also that the law applies if the EGTC is concluded in domains where the *Land* is competent to legislate: „Dieses Gesetz regelt die Maßnahmen, die für die Anwendung der Verordnung (EG) Nr. 1082/2006 über den Europäischen Verbund für territoriale Zusammenarbeit (EVTZ) erforderlich sind und in die Gesetzgebungskompetenz des Landes fallen“. A similar prevision is also featured in the first paragraph of the Bills of the *Länder* Styria and Salzburg. However there are contradictions between the bill of the Federal Law (*Bundesgesetz*) and the laws (or bills) adopted (drafted) by the *Länder*: according to the *Bundesgesetz* the communication to the Bund and the registration are tasks of the governor (*Landeshauptmann*); while these same actions are deemed as tasks of the Land Government (*Landesregierung*) in the laws or bills of the *Länder* above mentioned: see for instance the Law on EGTC of the Vorarlberg.

Germany

In Germany, the Bund considers the rules implemented by having nominated the component authorities for all *Länder* (regions). According to the authorities, the federal and/or regional laws contain already the necessary regulations for the implementation of the EGTC. No special provisions are foreseen for questions relating to the limitation of liability, registration/publication and task delimitation. But if necessary, further regulations could be adopted for the practical implementation of the regulation on EGTC. For the Land Bavaria the component authority is the „*Regierung der Oberpfalz*“ and for the Land Baden Württemberg it is the „*Regierungspräsidium Freiburg*“. In Bavaria, this possibility is underlined by Article 13 of the Bavarian Law on the competencies for the execution of economic regulations (*Gesetzes über die Zuständigkeiten zum Vollzug wirtschaftsrechtlicher Vorschriften-ZustWiG21*): „[...] Zuständig für den Vollzug der Verordnung (EG) Nr. 1082/2006 des Europäischen Parlaments und des Rates vom 5. Juli 2006 über den Europäischen Verbund für

territoriale Zusammenarbeit - EVTZ - (ABl EU Nr. L 210 S. 19) ist die Regierung der Oberpfalz. Das Staatsministerium für Wirtschaft, Infrastruktur, Verkehr und Technologie wird ermächtigt, das Nähere zur Anwendung dieser Verordnung durch Rechtsverordnung zu regeln”.

An ordinance could be adopted by the Bavarian Ministry on Economy, Infrastructure, Transports and Technologie in order to clarify the modalities for the implementation of the regulation

3.3. Creation of a grouping (EGTC or another grouping) in the Berchtesgaden Region

Conclusion and possible solution

4. CONCLUSIONS

5. BIBLIOGRAPHY

5.1. General publications

5.2. Austria

5.3. Germany



ECONNECT

Alpine Space Program - ETC

Action 6.2:

Bilateral Country Comparisons
of the Legal Framework of Protected Areas

Italy/Austria

Pilot Regions: - *The Rhaetian Triangle*

- *Hohe Tauern*



Italian Ministry of the
Environment, Land and Sea





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Contents

1. INTRODUCTION	5
1.1. Background.....	5
1.2. Aims of the study.....	5
1.3. Expected outputs of these studies.....	6
1.4. Methodology/approach.....	6
1.5. Collaboration with Project Partners and Pilot Regions	7
1.6 The ECONNECT Pilot Regions: The Rhaetian Triangle and the Hohe Tauern region ...	7
2. BILATERAL COUNTRY COMPARAISON OF THE LEGAL FRAMEWORK OF PROTECTED AREAS ...	11
2.1 The sharing of competences.....	11
2.2 Transborder cooperation (outside EGTC).....	12
2.3. Classification of the protected areas	14
2.3.1. Towards an international classification of protected areas	14
2.3.2. Classification of protected areas on the national and/or regional level.....	15
2.3.3 Management of protected areas	19
2.3.4 Transborder cooperation in nature protection law	22
2.4 Protection of the habitats/biotopes.....	24
2.4.1 Protection of the mountain natural elements	24
2.4.2 Protection of the communitarian habitats	27
2.4.3 Protection of habitats (outside the Community Law)	36
2.4.4. Legal provisions on habitats linkage	37
2.4.5 Spatial Planning in Protected Areas.....	40
2.5 Landscape protection and landscape management	44
2.5.1. La Convention européenne du paysage	44
2.5.2. Landscape management in the legal provisions on nature protection	46

2.6 The Protected Areas surroundings in law	48
2.6.1. The juridical regimen of the environs of protected areas	48
2.6.2 The specific juridical regimen of the "environs" of Nature 2000 sites	49
3. THE EUROPEAN GROUPING ON TERRITORIAL COOPERATION	50
3.1. A European instrument for the facilitation of transborder cooperation	50
3.2. Transposition in Austria and in Italia.....	52
3.3. Creation of a grouping (GECT or another grouping) between two parks.....	53
6. CONCLUSION	Errore. Il segnalibro non è definito.
7. BIBLIOGRAPHY	54
5.1. Austria.....	54
5.2. Italy.....	54

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.

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.

Hence the key questions to be solved appear:

- 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 output 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 experiences 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 "feedback" (CIPRA-International, ALPARC, etc.). The answers to these questionnaires were taken into account in this study.

1.5. Collaboration with Project Partners and Pilot Regions

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

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

1.6 The ECONNECT Pilot Regions: The Rhaetian Triangle and the Hohe Tauern 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.

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

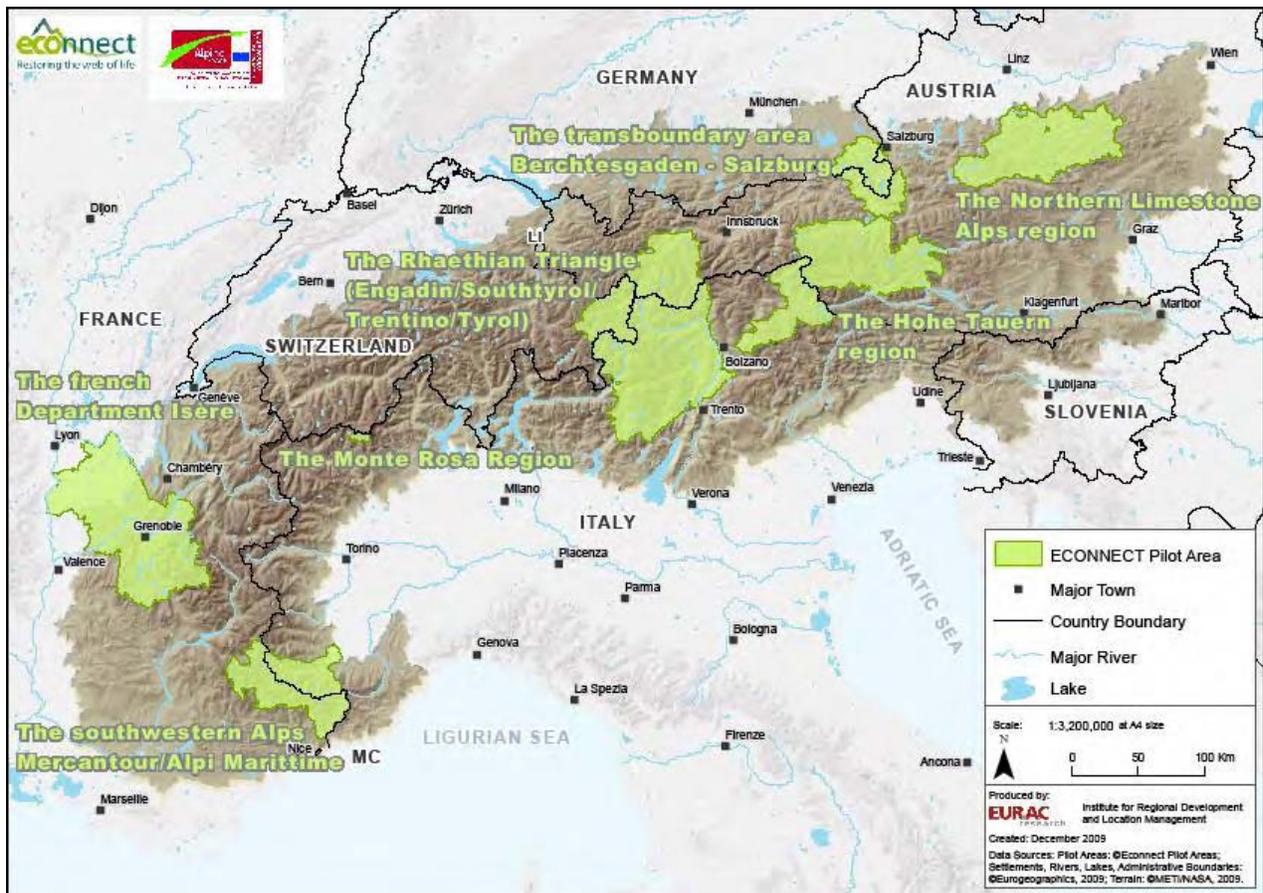


Fig 1: The ECONNECT Pilot Regions

In this study we will focus on two Pilot Regions: The Rhaetian Triangle and the Hohe Tauern Region (Figure 1). Whithin these Pilot Regions, we will examine the legal framework of the protected areas listed in the following table (Table 1).

Table 1: Protected areas of the pilot regions examined in this study.

Espace/Région-Pilot	Type de protection/ Italian side	Type de protection/ Austrian side
“The Rhaetian Triangle”	Nature park (Tessa Group Natural Park) (Autonomous Province of Bolzano)	Natural Site Ötztaler Alpen (Land Tyrol) Protected Landscape Section Stubai Alpen (Land Tyrol)
“Hohe Tauern region »»»	Natural Park Vedrette di Ries Aurina (Autonomous Province of Bolzano)	The National Park Hohe Tauern (Länder Salzburg, Tyrol and Carinthia)

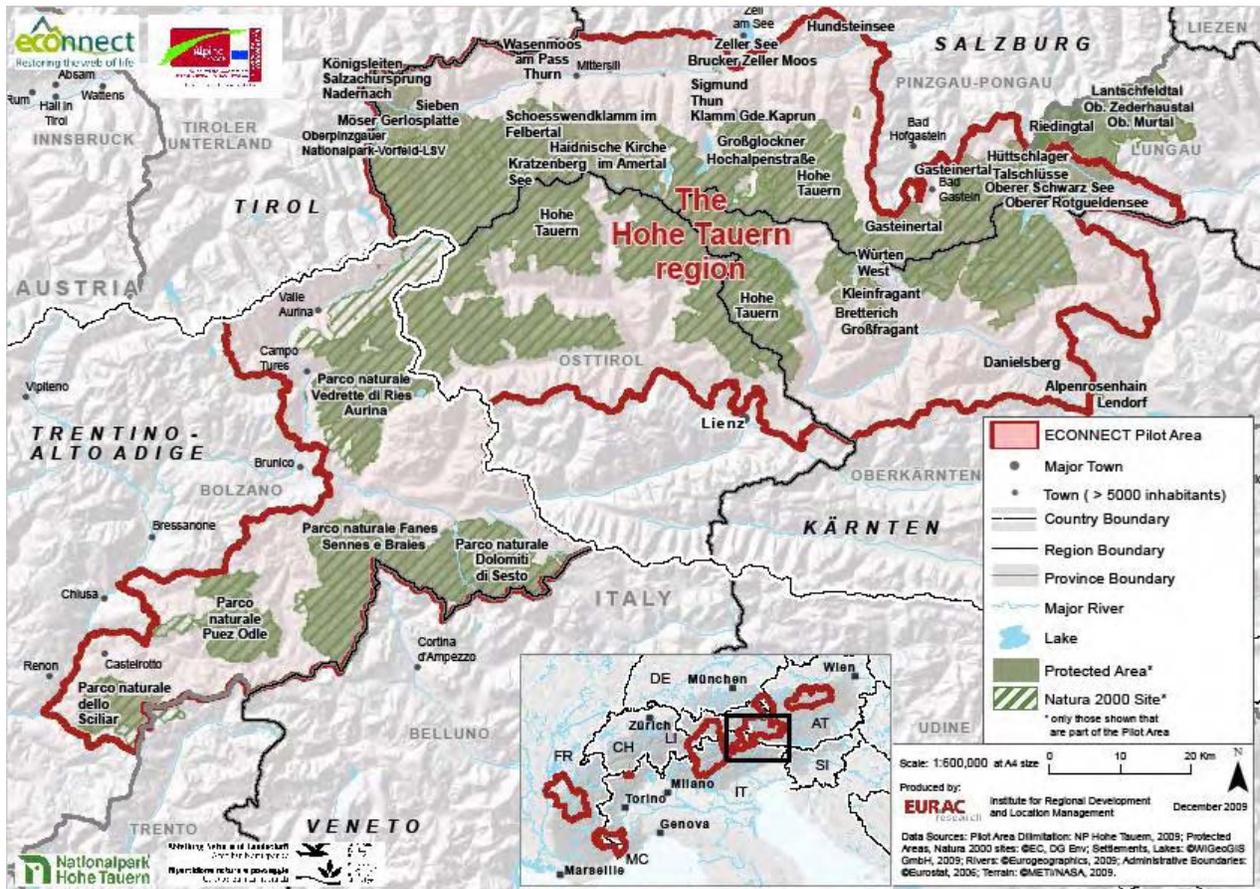


Fig 3: Econnect Pilot Area The Hohe Tauern

2. BILATERAL COMPARISON OF THE LEGAL FRAMEWORK OF PROTECTED AREAS

In order to make a bilateral comparison of the legal framework of protected areas in the Alpine arc, we shall focus on a **number of specific issues**:

- The classification of the protected areas according to the law of the two States involved (paragraph 2.3.2)
- The protection of natural habitats (paragraph 2.4)
- The legal provisions on ecological connectivity (paragraph 2.4.4)
- The protection of the landscape (paragraph 2.5)
- The specific provisions concerning the areas surrounding protected sites (paragraph 2.6)
- The provisions on the European Grouping for Territorial Cooperation (Chapter 3)

2.1 The institutional framework

Italy

In Italy, pursuant to Article 117 of the Constitution, the *"legislative power is exercised by the State and Regions"*. According to this article, a distinction must be made between the matters for which the State has exclusive law-making powers and the matters subject to concurrent legislation. Concerning the latter, the legislative powers vested in the Regions are subject to the fundamental principles established in State legislation. The Regions retain legislative power on all matters that are not expressly reserved for State legislation. While environmental protection is an exclusive State competence, enhancing environmental assets is subject to concurrent legislation. Spatial planning is also a matter of shared competence between the State and the Regions. The State has regulatory power in matters for which it has exclusive legislative power, but may also delegate such power to the Regions. Regions have regulatory power in all other matters. The municipal, provincial and metropolitan city governments have regulatory power over matters pertaining to their organisation and the performance of the functions attributed to them.

Austria

In Austria, the legislative power is shared between the federal regions (Länder) and the Federation (*Bund*). According to article 15, paragraph 1, of the Federal Constitutional Law *"[insofar] as a matter is not expressly delegated by the Federal Constitution to the legislation or also the execution of the Federation, it remains within the autonomous sphere of competence of the Länder"*: that is the case of nature protection, which is in the autonomous sphere of competence of the Länder. Each Land therefore adopts its own provisions on nature conservation; however cooperation between Länder is ensured by the establishment of various working groups. Additionally, concerning Nature 2000, one Land, Tyrol, is competent for coordination between all federal regions. The situation is more complex in the field of spatial planning. Indeed this is a transversal domain that touches on many other matters (*Querschnittmaterie*): for that reason it is subject to the competence of the Bund if it falls within the scope of articles 10 and 12 of the Austrian Constitution; in all other cases, it falls within the

competence of the Länder. The Länder are competent for regional spatial planning, but coordination is envisaged between them through the Austrian Conference on Spatial Planning (*Österreichischer Raumordnungskonferenz*), which has been established on the basis of a voluntary agreement made between the Länder in compliance with the fundamental principles of Article 15a of the Austrian Constitution. The Conference primarily develops recommendations and its members include all relevant spatial planning authorities.

CONCLUSION

In both Austria and Italy, regional authorities have legislative competence in the field of nature conservation (and share this with the State - also in Italy). Provisions concerning ecological corridors should therefore be adopted at the regional level in both countries.

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.

Transborder Cooperation between Austria and Italy

Both States have ratified the Madrid Convention (although Italy has yet to ratify the additional Protocols to the Convention). However, the agreement reached on the basis of the above-mentioned Madrid Convention by Austria and Italy does not envision the establishment of a jointly managed or autonomous body with legal personality. That limits the scope of the cooperation for the joint cross-border management of protected areas.

Furthermore, a wide number of projects has been undertaken over time by Italian and Austrian regional/local authorities and stakeholders under the banner of the INTERREG IV Programme⁵. INTERREG IV Italy-Austria is part of the European Territorial Cooperation Programme 2007-2013. The second thematic priority of the Programme is indeed Territory and Sustainable Development (the first being Economic Relations); this priority envisions projects in thematic areas such as:

- Protected areas
- Natural and cultural landscape
- Environmental protection
- Biodiversity

2.3. Classification of protected areas

2.3.1. Towards an international classification of protected areas

The guidelines drawn up by the International Union for Conservation of Nature (IUCN)⁶ in 1994 classify protected areas according to their management objectives. They are based on key principles: the basis of categorization is by primary management objective; assignment to a category is not a commentary on management effectiveness; the categories system is international; national names for protected areas may vary; all categories are important; and a gradation of human intervention is implied.⁷ These guidelines, initially published in 1994, were revised following a long process and were published again in 2008⁸. Although such guidelines are not legally binding, the States Parties to the Convention on Biological Diversity have been invited to apply them in their national or regional legislation⁹. The new version of the guidelines published in 2008 provided a new definition of protected area, stating that it is "*a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values*"¹⁰. The classification presented in table 1 of the Guidelines provides interesting definitions and indications that help us make a comparison between the different categories of protected areas in the Alpine arc, even though the regulations of the Alpine area's sites do not always refer explicitly to the Guidelines. Such comparison is shown in table 3, below.

⁵ A full list of the Italo-Austrian projects approved under INTERREG IV is available at:
http://www.interreg.net/download/2009-08-17_Liste_Beguenstigten_1_2_Aufruf.pdf

⁶ IUCN *Guidelines for Protected Area Management Categories*. CNPPA with the assistance of WCMC. IUCN, Gland, Switzerland and Cambridge, UK, 261 pages.

⁷ Dudley N. (Editor), *Guidelines for Applying Protected Area Management Categories*, IUCN, Gland, Switzerland, 2008, p.5.

⁸ Dudley N. (Editor), *Guidelines for Applying Protected Area Management Categories*, IUCN, Gland, Switzerland, 2008, 96 pages.

⁹ See in particular the Programme on Protected Areas implemented by the signatory Countries of the Convention on Biological Diversity (COP 7 Decision VII/28).

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

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

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

2.3.2. Classification of protected areas at national and/or regional level

Austria

There is **no outline law on nature protection in Austria**. The Länder are competent for the legislation on nature protection and each Land has its own law on this topic. There are **9 laws on nature protection in Austria**. Concerning the creation of a national park, an agreement is concluded between

the Federation and the Länder (according to the **article 15a, paragraph 1 of the Federal Constitutional Law**: “The Federation and the Länder may conclude agreements among themselves about matters within their respective sphere of competence. The conclusion of such agreements in the name of the Federation is, depending on the subject, incumbent on the Federal Government or Federal Minister. Agreements which are to be binding also on the authorities of the Federal legislature can be concluded by the Federal Government only with the approval of the National Council. Art. 50 para. 3 shall by analogy be applied to such resolutions of the National Council; they shall be published in the Federal Law Gazette”). Agreements made pursuant to Art. 15a of the federal constitutional law define the fundamental aspects concerning the setting up and operation of national parks: area, purpose, administration, functions, financing and any advisory boards or boards of trustees. The detailed national park laws and regulations (management plans) are issued by the Länder.

Therefore there is no framework law for the classification of protected areas at national level; however there are similarities between the laws on nature conservation of the various Länder. In Austrian law, protected areas (*Schutzgebiete*) can be classified as follows:

- Natural monuments (*Naturdenkmäler*), protected natural formation of local importance (*geschützte Naturgebilde von örtlicher Bedeutung*), protected trees (*Baumschutz*)
- Landscape protection area (*Landschaftsschutzgebiete*), protected landscape elements (*geschützte Landschaftsteile*)
- Nature reserve (*Naturschutzgebiete*)
- Protected areas according to European legislation (*Europaschutzgebiete*)
- Nature parks (*Naturparke*), special protection areas (*Sonderschutzgebiete*), areas of tranquillity (*Ruhegebiete*), zones of tranquillity (*Ruhezonen*), ecological development sites (*ökologische Entwicklungsflächen*)
- National parks (*Nationalparke*), biosphere parks (*Biosphärenparke*)

Certain types of areas do not appear in all of the Länder. For instance, the "tranquillity zones" (*Ruhegebiete*) appear only in the legislation of Land Tyrol.

Italy

The classification of protected areas in Italy is governed by the provisions of the framework law on protected areas (***Law no. 394 of 6 December 1991, Legge quadro sulle aree protette***), that has been supplemented by a resolution approved by the Permanent Conference for Relations between State, Regions and Autonomous Provinces on 24 July 2003.

The protected land and marine areas include national parks, regional parks, land reserves, marine reserves and areas of local interest. One of the key **general principles** set forth by the framework law on protected areas of 1991 is that of **cooperation between central and local institutions in regulating and managing protected areas**.

The table below shows a comparison between the Austrian and Italian protected areas, according to their management objectives.

Table 3: Comparison between protected areas in Austria and Italy

AUSTRIA ¹¹	ITALY
St: Styria; Ty: Tyrol; Oö: Upper-Austria; Slz: Salzburg	Autonomous Provinces of South Tyrol and Trento, the Veneto Region and Friuli-Venezia-Giulia (Concerning the classification of Italian protected areas, see Article 2 of the Framework Law on Protected Areas no. 394 of 6 December 1991).
<p>Nationalpark (National Park)</p> <p>National parks are large areas characterized by distinctive landforms, plants and animal species and their habitats, which have a recreational function for the population and are important for the economy (tourism); they are under constant management and scientific supervision.</p>	<p>Parco nazionale (National Park)</p> <p><i>"Consisting of land, river, lake or marine areas that contain one or more intact ecosystems or even ecosystems that have been partially altered by anthropic intervention, one or more physical geographic, geomorphological or biological systems of international or national importance by virtue of their natural, scientific, aesthetic, cultural, educational and recreational features, which are such as to require the intervention of the State to preserve them for present and future generations."</i></p>
<p>Naturschutzgebiete (Nature conservation areas) (St, Ty, Slz, Oö)</p> <p>Protected areas are generally areas that have preserved their original natural features, that host rare or endangered animals and plants and / or rare or endangered communities of animals or plants and have been designated as such by a decree of the Regional Government.</p>	<p>Parchi naturali regionali /Naturparke for the Autonomous Province of South Tyrol (Regional nature parks /Nature parks)</p> <p><i>"Regional nature parks consist of land, river and lake areas and may also include sea areas adjacent to the coast, which are of natural and environmental importance and constitute, with one or more bordering regions, a homogeneous system identified by the natural structure of the places, by landscape and artistic values and the cultural traditions of the local population".</i></p> <p>Riserva naturale (Nature reserve)</p> <p><i>"Natural reserves are land, river, lake or marine areas that contain one or more species of flora and fauna of natural importance, or else which have one or more ecosystems that are important for biological diversity or for the conservation of genetic resources. Natural reserves may be governed State or regional laws authorities depending on the interests they represent".</i></p>
<p>Naturdenkmäler (natural monuments) (St, Ty, Oö)</p>	
<p>Landschaftsschutzgebiete (landscape conservation areas) (St, Slz, Oö, Ty)</p>	
<p>Naturparke (nature parks) (St, Ty, Slz)</p> <p>This designation refers to areas - either entire sites or parts of them - that are already protected.</p>	
<p>Geschützte Landschaftsteile (protected landscape elements) (Oö, Ty,)</p>	<p>Vincolo paesaggistico (landscape constraint/ area of special planning control - but this is not a category of protected areas).</p>

¹¹ See *Handbuch Umweltrecht*, WUV Universitätsverlag, Vienna 2006, p. 377 et s.

Geschützte Naturgebilde von örtlicher Bedeutung (Slz, St, Oö) (protected natural formation of regional importance)	Vincolo paesaggistico (landscape constraint/ area of special planning control - but this is not a category of protected areas).
Ruhegebiete (area of tranquillity) (This category does not exist in the laws of Land Tyrol)	This category does not exist in Italian law.
Gebiete von gemeinschaftlicher Bedeutung (all Länder) (Site of Community Importance) The areas designated under the Birds or the Habitats Directives are called " <i>Europaschutzgebiete</i> " in all Austrian Länder, except in Tyrol where they are called " <i>Natura 2000 Gebiete</i> " (Natura 2000 sites).	Sites designated under the EU Habitats Directive
Europäische Vogelschutzgebiete (all the Länder) (Bird conservation area designated under EU legislation) The areas designated under the Birds or the Habitats Directives are called " <i>Europaschutzgebiete</i> " in all Austrian Länder, except in Tyrol where they are called " <i>Natura 2000 Gebiete</i> " (Natura 2000 sites).	Sites designated under the Birds Directive

CONCLUSION

Protected areas that have the same name, for example "national park" may have a different meaning, different management objectives or different protection status in the two countries. Major differences on the two sides of the border could be an obstacle for the creation of an ecological network. The presence of specific measures to manage the protected areas in these regions and of a well defined structure in charge of the management will be essential for the cooperation between the protected areas.

The Hohe Tauern Region

Nature parks (*Naturparke*) located in the Autonomous Province of South Tyrol are all managed in a uniform manner by South Tyrol's provincial authorities. There is no such thing as a specific management structure for each natural park. That represents an exception to the provisions of the national framework law on protected areas. Parks are managed in close cooperation with provincial forestry authorities (*Landesforstbehörde*). A provincial law (*Landesgesetz*) was adopted for the creation of each of South Tyrol's nature park . A Board of Directors has been established for each park consisting of representatives from the municipalities involved, associations for nature conservation, representatives of the land owners and representatives of the Provincial Administrations concerned. The Hohe Tauern national park is managed in cooperation with each of the three Austrian Länder concerned, namely Tyrol, Salzburg and Carinthia. In 1994 these three Länder¹² entered into an agreement concerning the cooperation for the protection and promotion of the Hohe Tauern national Park (*Zusammenarbeit in Angelegenheiten des Schutzes und der Förderung des Nationalparks Hohe*

¹² Agreement pursuant to art. 15 of the Federal Constitutional Law (B-VG) between the Federal Government and Länder Carinthia, Salzburg and Tyrol concerning cooperation for the protection and promotion of the National Park Hohe Tauern (26 July 1994).

Tauern) based on Article 15a of the Austrian Constitution. Later on each of the three Länder adopted its own more detailed law on the subject¹³.

The Rhaetian Triangle Region

As mentioned earlier, nature parks (*Naturparke*) located in the Autonomous Province of South Tyrol are all managed in a uniform manner by the provincial authorities. For this pilot region, the present study will focus on the Gruppo di Tessa/ Texelgruppe natural park.

The areas situated in Austria's Land Tyrol are designated as "nature parks" (*Naturparke*). *Naturpark* is a sort of "label" defining areas that are already protected under the nature conservation laws of Land Tyrol (areas whose landscape is already protected [*Landschaftsschutzgebiet*], tranquillity zones [*Ruhegebiet*], nature reserves [*Naturschutzgebiet*] or areas of special protection [*Sonderschutzgebiet*]). The Ötztaler Alpen site is a "tranquillity zone" (*Ruhegebiet*) and was designated as a *Naturpark* by a regulation dated 9 June 2009. The Kaunergrat Site (*Naturpark* Kaunergrat-Pitztal-Kaunertal) groups together a number of protected areas (a part of which also belongs to the Ötztaler Alpen site), namely: the nature reserve (*Naturschutzgebiet*) Fließler Sonnenhänge, the protected landscape (*Landschaftsschutzgebiet*) Arzler Pitzeklamm and the protected landscape (*Landschaftsschutzgebiet*) Riegetal. These protected areas were designated as *Naturpark* by a regulation of Land Tyrol of 1 July 2003.

2.3.3 Management of protected areas

Currently, the management of protected areas - notably the effectiveness and efficiency in management - has become an increasingly important topic for international and European institutions. Over the past twenty years, the attention of international organisations for the protection of the environment had been focused primarily on establishing protected areas. Even though the creation of these areas and of a network to link them together is still a matter of concern, the efficient management of protected areas is now a much more topical issue for the World Commission on Protected Areas (WCPA) of the International Union for Conservation of Nature (IUCN). This organisation¹⁴ defines protected areas as "*managed areas*": such definition testifies to the essential nature of management. The mission of the World Commission on Protected Areas of the IUCN is to promote the creation of a world network representative of the protected land and marine areas and to manage them. Its objectives are therefore to help governments and others plan protected areas, strengthen capacity and effectiveness of protected areas managers while increasing investment in protected areas. In line with these objectives, the Convention on Biological Diversity (CBD) adopted a

¹³ Tyrol: Act of 9 October 1991 establishing the National Park Hohe Tauern (*Tiroler Nationalparkgesetz Hohe Tauern*); Carinthia: act on the establishment of national parks and biosphere parks (*Kärntner Nationalpark- und Biosphärenparkgesetz K-NBG*) (Regional Law Gazette - *LGBl.* no. 55/1983, last modified by the law published in *LGBl.* no. 25/2007); Land Salzburg: Act establishing the National Park Hohe Tauern; Ordinance of Land Salzburg's Government - Definition of the boundaries of the core and outer areas of the National Park Hohe Tauern in Land Salzburg.

¹⁴ IUCN provides the following definition of protected area: "*An area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means*". (IUCN, Guidelines for Protected Area Management Categories).

working programme on the protected areas¹⁵ and stressed, in the decision adopting the programme, that " *while the number and extent of protected areas has been increasing in the past decades, so that around 11 per cent of the world's land surface is currently in protected status, existing systems of protected areas are neither representative of the world's ecosystems, nor do they adequately address conservation of critical habitat types, biomes and threatened species*". It has been underlined in the programme of work, that "*the current global systems of protected areas are not sufficiently large, sufficiently well-planned, nor sufficiently well-managed to maximize their contribution to biodiversity conservation*"¹⁶. Therefore "*there is an urgent need to take action to improve the coverage, representativeness and management of protected areas nationally, regionally and globally*"¹⁷. In addition to designating areas to protect, the States are urged also to provide them with the means necessary for effective management. The objective of the work programme on protected areas is to put effective management in place, between now and 2012, in all protected areas¹⁸. Let us examine the measures of active and passive management taken for Austria and Italy.

2.3.3.1 Active Management Plans

Italy

According to Italy's national framework law, specific management plans shall be adopted for national parks and regional nature parks, namely: the plan for the park (*piano per il parco*) and the multi-annual economic and social plan respectively. The obligation to draw up a specific management plan for each type of protected area does not appear in Austrian regional provisions concerning protected areas. The measures of active management are called "development and protection measures" (*Entwicklungs- und Schutzmassnahmen*). Sometimes they take concrete form in the adoption of a management plan.

Specific protection arrangements are applied for Italian regional nature parks and national parks, as well as for Austrian protected areas.

Austria

Under the laws of Austria, the implementation of conservation or management measures in protected areas must occur through the stipulation of contracts for the protection of nature (*Vertragsnaturschutz*), which take priority over the adoption of regulatory measures, to the extent that the objectives of nature protection can be achieved. Such contracts are veritable custom-made tools for the implementation of measures to promote the protection of habitats and biotopes. They may be entered into by and between the Land and the municipalities on one side, and the land owners or other rights holders on the other.

¹⁵ Decision VII/28 on the Protected Areas (following a work programme on the protected areas) (COP 7, Seventh Meeting of the Conference of the Parties to the Convention on Biological Diversity *Kuala Lumpur, Malaysia*, February 2004).

¹⁶ UNEP/CDB/SBSTTA/9/5, Status and trends of, and threats to, protected areas.

¹⁷ Preamble/Introduction to the Programme of Work on Protected Areas (PoWPA), (paragraph 2).

¹⁸ See point 1.4 of the Programme of Work on Protected Areas (PoWPA).

In Carinthia such contracts are governed by paragraph 2a of the Law on the Protection of Nature¹⁹, while in Tyrol they are governed by paragraph 4 of the Law on the Protection of Nature. Especially adapted to the nature conservation laws of the Land concerned, said contracts are aimed at implementing management measures taken under the Habitats and Birds Directives, as well as conservation and management measures of protected areas (see paragraph 1, subparagraph 1 of the Land Tyrol's law on the Protection of Nature).

The report on activities for the year 2007 concerning the Tyrolean part of the Hohe Tauern National Park reveals that many nature conservation contracts have been concluded with land owners and parties having the right to hunt. These contracts are very important for nature and landscape conservation. The 2009 report on activities for the Carinthian part of the Hohe Tauern National Park also shows the importance of the nature conservation contracts for the protection of the park's natural heritage.

As for planning within the protected areas, paragraph 32 of Land Tyrol's Law on the Protection of Nature foresees that the Land Government may adopt specific plans for the conservation and management of natural resources (*Naturpflegepläne*) for certain protected areas (*Landschaftsschutzgebiete; Ruhegebiete, geschützter Landschaftsteil, Naturschutzgebiete, Sonderschutzgebiete*). But this is not an obligation under the law. Similarly, Land Vorarlberg's Law on the Protection of Nature states among its fundamental principles that when drawing up any plan, the Land and municipal authorities must take into account the objectives pursued by the regional law (paragraph 3 of Land Vorarlberg's Law on the Protection of Nature): "*When preparing policy papers and plans, the Land and the Municipalities shall take into account the objectives of nature conservation and landscape development*". Land Vorarlberg's Law on the Protection of Nature also foresees, in paragraph 7, the drawing up of "development concepts for the protection of nature and the landscape (*Entwicklungskonzepte der Natur- und Landschaftsräume*). Municipalities must be involved in the preparation of said plans, which shall serve as a basis for planning activities carried out by the Land and the municipalities. Similarly, the municipalities may adopt local development plans for their territories (*örtliche Entwicklungskonzepte*). Paragraph 7 also specifies the measures that a "concept" should typically contain, namely measures intended to preserve the habitats, to improve or to restore the habitats, etc.

CONCLUSION

In Italy the requirement to draw up management plans applies to both regional nature parks and national parks, but it is not systematically foreseen for protected areas. Nevertheless, protected areas must adopt management measures. At a later stage it will be interesting to compare the measures contained in the Italian management plans with those of Austria's protected areas.

2.3.2.2 Passive management - Regulation of activities in protected areas

¹⁹ Pursuant to article 2a of Carinthia's nature protection act, the Regional Government and the Municipalities can sign agreements with the land owners or other assignees for the purpose of conservation of nature and landscapes or else concerning activities that are currently performed in these areas and which must be made subject to rules for nature and landscape protection.

Italy

Italy's Framework Law on Protected Areas provides that national and regional protected areas (national parks and regional nature parks) shall be subject to specific protection arrangements. Such regimen will be described also in the relevant regional laws. The latter, specifically those relating to the parks, must also contain provisions concerning the regulation of activities.

Austria

Nature conservation laws provide a specific protection scheme for protected areas. A system of prohibitions and authorisations is defined for each type of protected area. It is worth noting that, as a general rule, the law requires nature protection provisions to be implemented by contracts (*Vertragsnaturschutz*) and only in the event this is not possible, through regulatory measures. National parks are governed by specific laws. Contracts for the protection of nature (*Vertragsnaturschutz*) are concluded with the land owners and other rights holders concerning their actual entitlement to exercise hunting.

CONCLUSION

A comparison of the regulation schemes applying to the different activities would be essential at a later stage to determine whether an equivalent level of protection of habitats and species is ensured in both countries. Ideally, certain activities that could disturb the species or destroy natural habitats should be regulated in the same manner on both sides of the border.

2.3.4 Transborder cooperation in nature protection law

Austria

The Länder's laws on the protection of nature do not contain provisions on transborder cooperation for the management of bordering protected areas. Cooperation with neighbouring countries often takes place through INTERREG programmes, which are financed by the European Union, but are implemented on a voluntary basis.

Following the transposition of the EU's Directive on Environmental Liability²⁰, the Länder have introduced provisions that lay down the obligation to collaborate in order to remedy environmental damage. The EU's Directive on Environmental Liability was first transposed by the Federal Government (Bund)²¹ and then by each Land. The Directive's scope of application concerns various areas and different competencies, which pertain to the Bund and the Länder alike. Thus, all Länder which have exclusive competence for the protection of nature will also be required to adopt provisions on damage to biodiversity. For Land Carinthia, the environmental liability provisions concerning nature protection

²⁰ Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (Official Journal L. 143, 30/04/2004 P. 0056 - 0075).

²¹ Austria's federal law on environmental liability with regard to the prevention and remedying of environmental damage (*Bundesgesetz über Umwelthaftung zur Vermeidung und Sanierung von Umweltschäden - Bundes-Umwelthaftungsgesetz - B-UHG*). Standard version: Regional Law Gazette - *LGBl.* I no. 55/2009

were integrated into the Law on the Protection of Nature²². Paragraph 57m of such law deals with transboundary environmental damage (*Grenzüberschreitende Umweltschaden*), including both trans-regional damage between Länder, and cross-border damage which adversely affects another Member State. In Land Tyrol, the provisions of directive 2004/35/CE became the subject of a specific law²³ adopted in November 2009, whose paragraph 10 concerns transboundary damage.

Italy

Italy's national framework law contains no provisions on transborder cooperation between bordering protected areas. That type of provision is contained instead in some regional laws on the protection of nature, such as Piedmont's conservation laws (see the study on France and Italy). There is no such provision in South Tyrol's nature conservation law. Concerning cooperation on landscape conservation, the Italian Code of the Cultural and Landscape Heritage lays down the obligation to cooperate between States, in particular with respect to the principles of cooperation between States established in international agreements in the field of landscape conservation and enhancement.

- "1. The Republic of Italy shall comply with the obligations and principles of co-operation between States deriving from international agreements on the protection and enhancement of the landscape.*
- 2. The division of competencies concerning landscape management is established in compliance with the constitutional principles, also having regard to European Landscape Convention adopted in Florence on 20 October 2000, including the associated provisions for ratification and implementation".*

Similarly, the provisions of the EU's Directive on Environmental Liability were transposed into Italian law by Legislative Decree no. 152/2006, which contains provisions on transborder cooperation in the event of transboundary environmental damage. Article 318, paragraph 4 of the text states the following:

" Where environmental damage affects or is likely to affect several Member States of the European Union, the Ministry for the Environment Land and Sea Protection shall cooperate, including through the appropriate exchange of information, with a view to ensuring that preventive action and, where necessary, remedial action is taken in respect of any such environmental damage. In this event, when the environmental damage originates in the Italian territory, the Ministry for the Environment Land and Sea Protection shall provide sufficient information to the potentially affected Member States. If the Ministry identifies damage within the national borders which has not been caused within them, it shall report the issue to the Commission and any other Member State concerned; it may make recommendations for the adoption of preventive or remedial measures and it may seek, in accordance with Section six of this Decree, to recover the costs it has incurred in relation to the adoption of preventive or remedial measures".

CONCLUSION

Cooperation between the managing institutions of protected areas occurs primarily on a voluntary basis (in particular through the implementation of INTERREG programmes) and with no specific legal basis.

²² Carinthia's nature protection law (*Kärntner Naturschutzgesetz 2002 - K-NSG 2002.*) Standard version: Regional Law Gazette LGBl no. 79/2002.

²³ Act of 18 November 2009 on liability concerning damage to protected species and natural habitats, and specific soil damage (*Haftung bei Schäden an geschützten Arten und natürlichen Lebensräumen sowie für bestimmte Schädigungen des Bodens - Tiroler Umwelthaftungsgesetz - T-UHG*). Regional Law Gazette - LGBl. Nr. 5/2010.

Provisions encouraging the States to cooperate in this field have been integrated in Italian regional legislation (Piedmont). Additionally, concerning the pilot region of the Rhaetian Triangle, a common decision of the Parliaments of Trento, South Tyrol and North Tyrol (the "Dreier Landtag"²⁴), adopted in July 2007 (*Decisione riguardante la promozione di un rapporto tra le aree protette e la creazione di corridoi ecologici*) aims to promote cooperation between protected areas and to create biological corridors. This is a genuine statement of intent to promote the adoption of the necessary instruments for setting up cross-border biological corridors. Again concerning this region, it should be noted that although the Euro-region has been created, the statutes of the European Grouping for Territorial Cooperation (EGTC) that set forth its mission have not yet been adopted.

2.4 Protection of the habitats/biotopes

An ecological network is implemented through the preservation of natural habitats, whether they are protected or not. We shall therefore examine the provisions that apply to such preservation.

2.4.1 Protection of the mountain natural elements

2.4.1.1. The Alpine Convention and its Protocols

Austria and Italy have both ratified the Framework Convention on the Protection of the Alps. However, while Austria has ratified all of the accompanying implementing Protocols of the Alpine Convention and they have been in force since 2002, for the time being Italy has ratified none of them. This means that Italy is not bound by certain provisions of the Protocol on the conservation of nature and landscape protection that are particularly interesting for the cooperation between protected areas. However, many provisions of the Alpine Convention and its Protocols are applied through the national or regional laws in force²⁵. A draft law on the ratification of all of the Alpine Convention's Protocols has been around for years, but the ratification of the Transport Protocol is fraught with problems.

As for the cooperation between protected areas, which is the main subject-matter of this study, article 12 of the Protocol on the conservation of nature and landscape protection of the Alpine Convention conceives cooperation as one of the stages in the creation of an ecological network across 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".

²⁴ See the Dreier Landtag's website: <http://www.landtag-bz.org/de/dreier-landtag.asp> (status: 19.03.2010).

²⁵ Ventura E. et Martini M., *La Convenzione delle Alpi, Politiche, leggi e misure di attuazione in Italia*, EURAC, Ministero dell'Ambiente, della Tutela del Territorio e del Mare (Ed.), Bolzano, 2006, (521 p.).

The Contracting Parties also recognised, with the adoption of the Plan of Action on Climate Change in the Alps²⁶, that climate change threatens 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;
- 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.

CONCLUSION

The Protocol on the Conservation of Nature and Landscape Protection contains concrete measures for establishing an ecological network. However, only Austria is bound by the provisions of this Protocol, because Italy has not yet ratified the text. It should be mentioned that in 2005 the Conference of Experts on the Protection of Nature declared that this article is directly applicable²⁷. Nevertheless, we will see in the paragraph on ecological connectivity that several Italian regions in the Alps have in fact adopted provisions pursuing the objective of networking ecologically important habitats.

2.4.1.2. Community Law

The European Union law does not foresee a specific policy for mountain areas. Nevertheless, 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

²⁶ The Plan of Action on Climate Change in the Alps was adopted by the Parties to the Alpine Convention during the 10th Alpine Conference in March 2009.

²⁷ *Die Alpenkonvention: Handbuch für ihre Umsetzung. Rahmenbedingungen, Leitlinien und Vorschläge für die Praxis zur rechtlichen Umsetzung der Alpenkonvention und ihrer Durchführungsprotokolle*, Lebensministerium - Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft, 2006, Vienna, p. 129.

implementing rules of the Habitats and Birds Directives. The Habitats Directive is implemented by biogeographical 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 ²⁸ 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.”²⁹ However, for the time being, there is no specific EU policy for mountain areas, whereas there is one for coastal areas.*

CONCLUSION

When it comes to creating ecological corridors and preserving habitats, we should consider not only nature conservation legislation but also provisions contained in the common agricultural policy (CAP), particularly those defining rural development measures. CAP offers possibilities for financing activities that have a positive influence on ecological connectivity. We will have to examine actions financed by rural development plans, to determine whether they are equivalent on both sides of the border.

2.4.1.3. Protection of the mountain natural elements on the national level

Austrian and Italian law both contain specific measures for the preservation of natural mountain areas.

Austria

Nature conservation laws in certain Austrian Länder, namely Carinthia, Salzburg and Vorarlberg, contain specific provisions for the protection of the Alpine region and glaciers. The Alpine region is understood as the area “above the tree line”, which therefore involves high mountain areas. It follows, that the scope of application of said measures differs from that of the Alpine Convention. The measures for the protection of the Alpine area (*Alpinregion*) consist of general prohibitions: as a result, authorisations are necessary for the realisation of certain projects. As for Carinthia, specific measures for the protection of the Alpine region and glaciers are laid down by paragraphs 6 and 7 of its law on the protection of nature. In Tyrol, the general authorisations required (*Allgemeine Bewilligungspflicht*) are listed in paragraph 6 of its conservation law. Similarly, a specific regulation on cableways was adopted in 2005 by Land Tyrol, which contributes to the preservation of high mountain areas.

Italy

²⁸ This article is based on Title XVIII of the Treaty on the Functioning of the European Union, devoted to economic, social and territorial cohesion.

²⁹ Underlined by the authors of this paper.

In Italy, the need to adopt specific measures for mountain areas is mentioned in Article 44 of the Italian Constitution, according to which *"the law shall envisage measures in favour of mountain areas"*. Since this provision is of a general nature, it is not restricted to the economic and social sectors, but may also concern other fields, such as the protection of nature, for example. Moreover, mountain areas are indirectly protected by legal instruments concerning, among other things, spatial planning, the conservation of nature, etc. So, the Galasso Act adopted in 1985³⁰ established that certain natural elements should be protected by law, and some of them are typical of mountain areas. The Galasso Act established full and comprehensive landscape conservation by ensuring the protection of "assets of outstanding natural beauty" (*bellezze naturali*). Landscape assets (*beni paesaggistici*) enjoying protection are listed in the law and include rivers, creeks, glaciers, mountain areas above 1600 m in the Alpine range, wetlands, etc. (Legislative Decree D. Lgs. 157/2006). The provisions of the Galasso Act were integrated in various texts, including Legislative Decree no. 42/2004 and Legislative Decree no. 157/2006.

CONCLUSION

Various laws contribute to the preservation of natural mountain areas in Austria and Italy. Legislation has been adopted in the field of the protection of nature, rural development and in the area of spatial planning and territorial management. The legislation on protected areas is fundamental for the preservation of natural mountain areas in both Austria and Italy. In fact, many protected sites are located in mountain areas. One should also mention the Birds and Habitats 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 a sub-region.

2.4.2 Protection of habitats of Community interest (EU directive Natura 2000)

The Habitats Directive³¹, together with the Birds Directive³², forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. All in all the directive protects over 1.000 animals and plant species and over 200 so called "habitat types" (e.g. special types of forests, meadows, wetlands, etc.), which are of European importance³³.

2.4.2.1. The management of Natura 2000 sites

All the Alpine Members States transposed the Habitats directive in their national legislations and/or in their regional legislations on nature protection. We will focus here on the management of the Natura

³⁰ Law no. 431 of 8 August 1985 (Galasso Act).

³¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L.206 of 22 July 1992, corrigendum L.59 of 8 March 1996 and L.31 of 6 February 1998), amended by directive Council Directive 97/62/EC of 27 October 1997 (OJ L 305, of 8 November 1997).

³² Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ L.103 of 25 April 1979) (OJ L. 59 of 8 March 1996, p. 61s.).

³³ See URL: http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm.

2000 sites. Pursuant to Article 6, paragraphs 1 and 2 of the Habitats Directive, Member States are required to adopt specific measures for the protection of Natura 2000 sites:

“ 1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. 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”.

According to these provisions, the adoption of the required conservation measures may imply, if need be, the development of appropriate management plans specific for the sites, which may also be integrated into other development plans. The words “*if need be*” indicate that it may not be necessary to draw up a management plan specifically designed for Natura 2000 sites³⁴, but the Commission specifies that “*a management plan focused on the site will provide a wider framework, and its contents will provide a useful starting point for the specific details of contractual measures*”³⁵ needed to implement conservation measures. The management plan may also be part of, or may be integrated into, an already existing management plan, such as a forestry plan. As stated in the Proceedings of the Bath Conference³⁶, management plans could constitute an effective means to fulfil the obligations provided for by the Habitats Directive. They may also be an instrument of consultation and cooperation, which should preferably be drawn up in cooperation with local actors. Any management plan should primary aim at ensuring the accomplishment of the Directive’s general purpose. While article 6, paragraph 1 of the Directive does not define the form, procedure or structure that management measures should have, the methodological guidelines of the Commission³⁷ recommend that such measures take into account the specific characteristics of each site and all of the activities carried out there. All of the other activities that are not directly connected with, or necessary to, the management of the site for conservation purposes fall within the scope of Article 6, paragraph 3 of the Habitats Directive. Annex II of the methodological guide specifies that the objectives of the management plans for a Natura 2000 site have to correspond to the ecological requirements of the natural habitats and species significantly present on it and must be as clear and realistic as possible, quantified and manageable. Only areas where the presence of species is classified as “not significant” in the standard data form should not be subject to management measures. “*This means that the principle of subsidiarity is fully applicable to the way in which the management of Natura 2000 sites,*

³⁴ European Court of Justice, decision of 7 November 2000, *First Corporate Shipping* (Rec.2000,p.1-9235); see European Commission, *Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' directive (92/43/EEC)*.

³⁵ *Id.*, p. 20.

³⁶ “*Natura 2000 and people: a partnership*”, Proceedings of a Conference organised by the United Kingdom Presidency of the European Council and the Unit for Nature Protection, coastal zones and tourism of the European Commission, held in Bath, (June 1998).

³⁷ European Commission, *Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' directive (92/43/EEC)*, 2000.

including forests, is applied at field level³⁸”. Indeed, “in practice, the way in which management decisions or options are formalised will depend on different factors, such as ownership of the site, intensity of economic use, occurrence of priority species and habitats, the relative rarity and sensitivity of the habitats or species concerned and the existing traditional or customary rules on use of natural resources in practice³⁹”. The Habitats Directive does not specify what the minimum contents of a management plan should be. The previously mentioned Conference on the Management of Natura 2000 sites held in Bath in 1998 led to an agreement between Member States on the essential elements to be put into a management plan. Direct reference has been made to such agreement by some Alpine regions at the time of defining the minimum contents of their management plans. The plan should contain a description of the site and of the use that has been made of it, a description of the short-term and long-term objectives established for the site, a description of the activities designed to meet such objectives, a list of the measures realised with the corresponding financial and time plan, procedures for involving the public and elements concerning the surveillance (monitoring), as well as the manner of control⁴⁰.

Austria

The provisions concerning the implementation of conservation and management measures are contained in the nature protection laws⁴¹ of the Länder⁴². There is no federal framework law on the protection of nature, nor have guidelines been drawn up by the Federal Government concerning the implementation of conservation measures for Natura 2000 sites. Most of the Austrian Länder’s laws on the protection of nature contain the provisions of article 6, paragraph 1 of the Habitats Directive. Generally speaking, however, the transposition of Community law occurred without going beyond the wording of the Directive, and seems even inadequate in some Länder⁴³. The Habitats Directive requires the implementation of conservation measures for each Natura 2000 site and leaves a margin of manoeuvre for the Member States concerning management plans. As discussed above, the words “if need be⁴⁴” of article 6, paragraph 1 of the Directive refer solely to the drawing up of management plans. In many Austrian Länder, instead, the words “if need be” have been taken to refer also to conservation measures. As a matter of fact, the laws of Lower Austria and Styria introduce the implementation of conservation measures not as an obligation, but as a possibility (*Kann - Bestimmungen*)⁴⁵. Similarly, paragraph 9, subparagraph 5 of Lower Austria’s law on the protection of

³⁸ European Commission, *Natura 2000 and forests ‘Challenges and opportunities’*. Interpretation guide, Office for Official Publications of the European Communities, Luxembourg, 2003, p. 32.

³⁹ *Id.*, p.39.

⁴⁰ European Commission, *Managing Natura 2000 sites: The provisions of Article 6 of the ‘Habitats’ (92/43/EEC)*, *op. cit.*

⁴¹ Provisions concerning Natura 2000 sites are contained also in the hunting and fishing regulations, as well as in the Länder’s spatial planning/ territorial management laws.

⁴² Only Land Vorarlberg has transposed the provisions of the Habitats Directive by means of an Ordinance (*Verordnung*). Ordinance of the Land Government for implementing the law on nature protection and landscape development (*Verordnung der Landesregierung zur Durchführung des Gesetzes über Naturschutz und Landschaftsentwicklung* - Regional Law Gazette LGBl. No. 12/2007.

⁴³ Ellmauer T., Knoll T., Pröbstl et Suske W., “*Managementplanungen für Natura 2000 in Österreich*”, *op. cit.*, pp.285-299

⁴⁴ The following expressions are used: “*erforderlichenfalls, gegebenenfalls, soweit notwendig*” meaning: “if need be, where appropriate, if necessary”.

⁴⁵ Ellmauer T., Knoll T., Pröbstl et Suske W., *Managementplanungen für Natura 2000 in Österreich*, *op. cit.*, pp.285-299.

nature ⁴⁶ states that maintenance, development and conservation measures may be taken, “if necessary” (*erforderlichenfalls*), in Natura 2000 sites⁴⁷. Styria⁴⁸ lets the regulation designating the site indicate whether it is necessary to take measures or establish prohibitions. Paragraph 13, subparagraph 2 of Vorarlberg’s law on the protection of nature⁴⁹ also states that the Government may undertake, “if necessary” (*soweit notwendig*), supplementary measures for maintenance, development and conservation (*Pflege-, Entwicklungs- und Erhaltungsmaßnahmen*) of Natura 2000 sites. Similar observations hold true also for provisions transposing paragraph 1 of article 6 of the Habitats Directive into the nature protection laws of Tyrol, Upper Austrian and Carinthia. By contrast, conservation measures are mandatory in Burgenland, whose nature conservation law, in paragraph 22c, subparagraph 3⁵⁰, provides for the establishment of a development and maintenance plan/ management plan for each Natura 2000 site (*Entwicklungs- und Pflegeplan/Managementplan*). These management plans may also be called “landscape maintenance plans” (*Landschaftspflegepläne*). This is also the case for Upper Austria⁵¹.

With regard to management plans, almost all Austrian Länder exploit the room for manoeuvre offered to the Member States by the Habitats Directive. Indeed, with the exception of Burgenland, management plans are not a legal requirement under the nature conservation laws that govern Natura 2000 sites. They may be drawn up if necessary. That is an understandable approach considering that many Austrian sites are located at high altitudes and are not subject to conflicts of use. Nevertheless, many Austrian Natura 2000 sites have decided to draw up their management plans: since 2005 management plans have been completed or are in the process of being developed in more than half of the 212 Austrian Natura 2000 sites. However, only two Alpine Länder, namely Burgenland - in compliance with regional legislation - and Lower Austria, have prepared or are preparing management plans for each special area of conservation. Land Tyrol requires that management plans be drawn up in accordance with common criteria for each Natura 2000 site⁵². The technical editing of such management plans for all or part of the Natura 2000 sites is commonly performed by consulting firms specializing in ecology and the landscape, following a call for tender issued by the Länder’s nature protection departments. Since guidelines provided by the Länder are not very detailed, each firm follows its own strategies. Burgenland again stands out from the other Länder for having established a specific coordination unit that supervises the drafting of such plans according to common standards⁵³.

⁴⁶ A judgement against Austria concerning failure to implement the directive was delivered on this point in 2007, but at that time only the Land of Lower Austria had been found to have transposed article 6, paragraph 1 of the Habitats Directive inadequately.

⁴⁷ Translated by the authors of this paper.

⁴⁸ Paragraph 13a point 1 of Land Styria’s nature protection act: “*Areas falling within the scope of § 13 paragraph must be designated as special protected areas by ordinance of the Land government and shall bear the name ‘Europaschutzgebiet’. Ordinances shall specify the boundaries of the protected area, the object of protection, in particular priority habitats and priority species, the protection purpose and, where appropriate, relevant orders and prohibitions applying thereto.[...]*”.

⁴⁹ Paragraph 13, 2 of Land Vorarlberg’s nature protection regulation: “*For these areas, if need be, the Land Government shall define additional appropriate maintenance, development and conservation measures by means of management plans or similar agreements, or else by means of decree or ordinance [...]*”.

⁵⁰ Paragraph 22c subparagraph 3 of Burgenland’s nature protection act “*A development and maintenance plan (management plan) shall be defined for each Europaschutzgebiet or part thereof.[...]*”

⁵¹ See paragraph 15, subparagraph 1, of Upper Austria’s nature protection act.

⁵² Lentner R. Kostenzer J., *Konzept Schutzgebietsbetreuung in Tirol*, Landesregierung Tirol, Abteilung Umweltschutz, December 2004.

⁵³ Ellmayer T., Knoll T., Pröbstl et Suske W., “*Managementplanungen für Natura 2000 in Österreich*”, *op. cit.*, pp. 285-299.

Given the division of competencies in the area of nature protection in Austria, no guidelines have been established by the Federal Government. The Länder are responsible for establishing, if need be, their own guidelines for the management plans of Natura 2000 sites. To determine what the minimum contents of the management plans for the Natura 2000 sites should be, most of the Regional Governments refer directly to the Proceedings of the Galway Seminar concerning the drawing up of management plans⁵⁴. The Regional Government of Lower Austria has adopted guidelines for drawing up management plans⁵⁵. These guidelines are part of the general guidelines on application of the Natura 2000 programme in the region (*Leitfaden Natura 2000 Niederösterreich*). This document, which is only informative, is subject to revision in the future, according to experience that will arise from management of the sites. Similarly, Land Vorarlberg has adopted its own guidelines, which are based on the experience gained from the first management plans implemented in Natura 2000 sites. Also Land Tyrol has established some guidelines.

According to the figures contained in the latest Austrian report prepared pursuant to article 17 of the Habitats Directive,⁵⁶ 58 management plans have been adopted and 51 are in the process of being prepared in Austria. The progress of management plans differs from one Land to the next and according to the size of the sites⁵⁷. Indeed, 60% of the sites with an area of less than 1000 ha have a management plan, while for the larger sites, only 30% have a management plan. Drawing up a management plan for large sites often entails financial problems for the Länder. Thus, management plans have been established as a priority for smaller sites. This is illustrated in table 4, taken from a report⁵⁸ drawn up by the Austrian Court of Auditors (*Rechnungshof*).

Table 4: Progress of management plans for Natura 2000 sites in Austria

Länder	Share of Natura 2000 sites with a management plan	Share of Natura 2000 sites with a management plan in the process of being drawn up	Share of Natura 2000 sites with no management plan
Burgenland	0,4%	14,8%	84,8%
Carinthia	13%	0,3%	86,7%

⁵⁴ Land Styria refers to the conclusions of this workshop also to specify the minimum contents of a management plan.

⁵⁵ Knoll T., *Managementpläne Natura 2000, Struktur und Inhalte Konzept* (http://www.noel.gv.at/Umwelt/Naturschutz/Natura-2000/Natura_2000_Leitfaden_und_Managementplaene.pdf, consulted on 4 October 2008).

⁵⁶ National report sent by Austria to the European Commission in March 2007 pursuant to article 17 of the Habitats Directive.

⁵⁷ Figures taken from a report on Natura 2000 sites by Austria's Court of Auditors - to be published (*Rechnungshof, Ergebnis der Überprüfung der Umsetzung des Natura 2000-Netzwerks in Österreich*, Vienna, 26 September 2007, draft).

⁵⁸ Rechnungshof, *Ergebnis der Überprüfung der Umsetzung des Natura 2000-Netzwerks in Österreich*, *op. cit.*

Lower Austria	0 %	27%	73%
Upper Austria	22%	8%	70%
Styria	9%	19%	73%
Tyrol	33 %	0%	67%

Italy

Article 4, paragraph 2 of Legislative Decree no. 357/1997⁵⁹, lays down an obligation to implement conservation measures for each special area of conservation and the Regions and Autonomous Provinces of Bolzano and Trento are responsible for establishing and implementing such measures. The adoption of said measures must occur no later than six months after designation of the site, which is a relatively short period of time; the identified measures may be the subject of management plans or may be integrated into existing management plans, as appropriate. The Regions and Autonomous Provinces of Bolzano and Trento must also take appropriate regulatory, administrative or contractual measures that meet the ecological requirements of natural habitats listed in Annex A and of species listed in Annex B, which are present in the sites. Moreover, pursuant to article 3, paragraph 3 of the above mentioned decree, the Ministry for the Environment, following consultation with the Permanent Conference for Relations between the State, Regions and Autonomous Provinces of Trento and Bolzano, shall designate the essential areas to ensure the ecological coherence of the Natura 2000 network. The Italian Government has taken advantage of a LIFE-Nature 99 Project to prepare the guidelines for the management of Natura 2000 sites; management plans for nine pilot sites were produced. In December 2002, following a hearing of the Permanent Conference for Relations between the State, the Regions and the Autonomous Provinces of Bolzano and Trento, the National Government issued a decree containing guidelines⁶⁰, whose objective was to provide "technical and legal support"⁶¹ for development of management plans in the Autonomous Regions and Provinces. The decree established the conditions for drawing up the plans and their indicative contents. These national guidelines pointed out that the Natura 2000 network does not replace the existing network of nature parks, but complements it; management plans are not always necessary. This document also stressed that where management plans are prepared, it is fundamental for them to be in accordance with the spatial planning documents/ territorial management plans issued by relevant authorities. However, as we will see later, these guidelines define only a relatively loose framework for the Regions and Autonomous Provinces, which will have to develop and adopt their own guidelines. Thus, the Autonomous Province of South Tyrol drafted its own guidelines in 2004⁶². These guidelines are based on the national guidelines, but place the accent on the distinctive features of the Region, as one would expect. They

⁵⁹ Presidential Decree dpr of 8 September 1997, no. 357.

⁶⁰ Decree of the Ministry for the Environment Land and Sea Protection of 3 September 2002 "Guidelines for managing the sites of the Natura 2000 network" (*Linee guida per la gestione dei siti della Rete Natura 2000*), Italian Official Journal no. 224 of 24.09.2002.

⁶¹ Translated by the authors of this paper.

⁶² Ruffini V.F. (dir.), *Natura 2000 in Südtirol, Leitfaden für die Ausführung der Managementpläne*, Autonome Provinz Bozen-Südtirol, Abteilung Natur und Landschaft, 2004.

also state the elective nature of management plans⁶³. Other regions and provinces belonging to the Alpine biogeographical region have manifested no intention of drawing up regional guidelines to date. Article 4, paragraph 3 specifies that if a conservation site is located in an area belonging to the national network of protected areas, the existing conservation measures also apply to the special area of conservation. A later amendment of the 2003 decree clarified that if the special area of conservation lies partially outside an area that is already protected, any conservation and management measures shall be adopted after hearing the local institutions involved and the management body of the site concerned. A decree of the Ministry for the Environment of October 2007⁶⁴ set forth common criteria for the definition of conservation measures applying to special areas of conservation (SACs) and special protection areas (SPAs). Following an appeal by the Autonomous Provinces of Bolzano and Trento, the Italian Constitutional Court, in a decision of 1 August 2008⁶⁵, stated that the decree did not concern the Autonomous Provinces because their special statute gives them a free hand to the practical application (*concreta attuazione*) of the Habitats and Birds Directives in their territory. In February 2007, the provincial nature conservation department of South Tyrol drew up management plans for all of its sites located in nature parks. In national parks, management plans have to be prepared by the management body, that is also required to draw up specific management plans for Natura 2000 sites. For the Autonomous Region of Val d'Aosta, article 6, paragraph 2 of law no. 8 of 21 May 2007⁶⁶ states that the Regional Government shall decide whether a management plan is needed, on the basis of the national guidelines.

CONCLUSION

Another step towards the practical establishment of the ecological network will be the detailed analysis of the management plans for the sites, to ensure that the foreseen active management measures pursue the same objectives on both sides of the border. This, of course, is not a mandatory provision of the Habitats Directive and constitutes a voluntary action on the part of the management bodies of the sites. In fact, the Habitats Directive, does not contain the notion of a "transboundary" Natura 2000 site, therefore it does not impose cross-border cooperation in form, for example, of a common plan of management⁶⁷.

2.4.2.2. Damage to the natural habitats and protected species in Community law (damage to biodiversity)

⁶³ Ruffini V.F. (dir.), *Natura 2000 in Südtirol, Leitfaden für die Ausführung der Managementpläne, 2., überarbeitete Fassung, op. cit.*, point 6.

⁶⁴ Decree of 17 October 2007 of the Italian Ministry for the Environment Land and Sea Protection. Minimum uniform criteria for defining conservation measures in special areas of conservation (SAC) and special protection areas (SPAs) (*Criteri minimi uniformi per la definizione di misure di conservazione relative a Zone speciali di conservazione (ZSC) e a Zone di protezione speciale (ZPS)*) (Italian Official Journal GU no. 258 of 6 November 2007).

⁶⁵ Constitutional Court, 1 August 2008, no. 329.

⁶⁶ Regional act no. 8 of 21 Mai 2007, containing provisions for implementing the obligations of the Autonomous Region Valle d'Aosta deriving from the membership of Italy to the European Communities pursuant to Council Directives 79/409/EEC on the conservation of wild birds and 92/43/EEC on the conservation of natural and semi-natural habitats and of wild the fauna and flora (Community Law 2007) (Regional Law Gazette No. 24 of 12 May 2007).

⁶⁷ For example, the Water Framework Directive calls for cross-border river basin management plans.

The Habitats Directive contains an obligation for the Member States to "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". The text of the Habitats Directive is essentially of a preventive nature and does not deal with the issue of compensation for damage to habitats and species, which is the subject matter of Directive 2004/35/CE focusing on the prevention and remedying of environmental damage, including damage to biodiversity. In article 2, paragraph 2, Directive 2004/35/CE defines damage as a "measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly."

The notion of damage to biodiversity in the directive 2004/35/CE of 21 April 2004⁶⁸

According to article 2, paragraph 1 of this directive 2004/35/CE, "environmental damage" means: (a) damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species." Concerning damage to resources, the damage caused to protected natural habitats and species must have produced severe adverse effects on the constitution or maintenance of a favourable status of conservation for said habitats or species. Over the long term, a large number of factors may affect the state of conservation of a site, its division, structure and functions. The Directive specifies that "the significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in the Annex⁶⁹". Knowing the initial state of the site is therefore a fundamental starting point for assessing the damage⁷⁰. That was the type of information collected during the scientific work which led to the establishment of the Natura 2000 network.

The definition of damage to biodiversity in national and/or regional provisions

Austria

At federal level, the EU Directive 2004/35/CE was transposed into Austria's Federal Law on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage (*Bundesgesetz über Umwelthaftung zur Vermeidung und Sanierung von Umweltschaden*). However the federal act does not cover all of the aspects dealt with by the Directive, and therefore transposition is incomplete. According to the division of competences between the Parliament and the Länder codified by Article 15 of the Austrian Constitution, legislative provisions or regulations must be adopted by the Länder. The field of application (*Anwendungsbereich*) of the federal law is defined in paragraph 2 of the same.

Länder are competent for the areas that fall within the scope of Directive 2004/35. Since nature conservation is the responsibility of the Länder, provisions on the protection of habitats and species are dealt with in the regional laws. The provisions of Directive 2004/35 may be transposed into a specific new law or integrated into already existing laws. Länder are competent for damage to

⁶⁸ Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (Official Journal L 143, 30/04/2004, p. 0056 - 0075).

⁶⁹ Article 2, paragraph 1, letter a, of the environmental liability directive.

⁷⁰ Steichen Pascale, "La responsabilité environnementale dans les sites Natura 2000", in *Revue européenne de droit de l'environnement* no. 3-2009, pp. 247-271.

biodiversity and certain forms of soil damage, as specified in the provisions that define the scope and field of application of the specific law. In the case of Lower Austria, for instance, it's paragraph 2 of the regional law that defines the scope and the field of application thereof (*Geltungsbereich*). The EU Directive is now in the process of being transposed into the Länder's legislation. The first Land to start was Lower Austria (*Niederösterreich*) that adopted its environmental liability act (*NÖ Umwelthaftungsgesetz - NÖ UHG*) in July 2009 ; more recently specific laws transposing the Directive were adopted also by Upper Austria, Vienna and Tyrol. Carinthia has integrated the provisions transposing the Directive into its already existing law on the protection of nature.

Following the delay in the transposition procedure, Austria was sentenced by the Court of Justice of the European Communities on 18 June 2009 for failure to transpose Directive 2004/35/CE within the period prescribed⁷¹.

During litigation, Austria invoked as a defence that the two levels of transposition (*Bund* and *Länder*) delay the process of transposition⁷². However, as the Community Judge has reiterated on several occasions especially with regard to the transposition of the Habitats Directive, the institutional structure of a Member States cannot justify its failure to fulfil obligations deriving from Community law⁷³.

Concerning the scope of the Directive, and damage to biodiversity in particular, there is no common definition for all of the Länder. Some Länder refer to the definition contained in the Directive and consider only damage caused to habitats and species protected under the EU's nature conservation laws (namely the Habitats and Birds Directives), while others expand the field of application to habitats and species protected under the Länder's legislation on nature conservation. Land Vienna has adopted the latter approach. By contrast, the laws of Lower Austria (*Niederösterreich*), Upper Austria (*Oberösterreich*), Carinthia and Tyrol have a more restricted scope and apply "only" to the habitats and species protected under Community law.

Italy

The Directive on environmental liability has been transposed into Italy's national legislation, namely into Part VI of legislative decree no. 152/2006 (*Norme in materia di tutela risarcitoria contro i danni all'ambiente* - Norms on compensatory measures for damage to the environment), more precisely into articles 299 and 318 of the text. Environmental damage and damage to biodiversity are defined as

⁷¹ European Court of Justice (CJCE), Judgment of the Court of 18 June 2009, Case C-422/08, Commission of the European Communities v Republic of Austria.

⁷² See points 8 and 9 of the CJCE Judgement of 18 June 2009, Commission v. Republic of Austria («The Republic of Austria does not dispute that the transposition of the Directive has failed to occur within the time prescribed. It suggests, however, that transposition requires the adoption of texts, first at the federal level, then at the Länder level. [...]. If the draft federal law on environmental liability had already been adopted by the Council of Ministers in May 2007 and submitted to the Austrian Parliament for consideration, because of the legislative elections, that project would have required a new approval by the Council of Ministers. The adoption of draft legislation at Länder level would occur only after the adoption of such federal law).

⁷³ See point 11 of the Judgement: "In addition, under the established case-Act of the Court a Member State may not invoke as a defence provisions, practices or situations of its domestic law, including those resulting from its federal organization, to justify its failure to fulfil obligations and meet deadlines prescribed by a directive (see also judgement of 6 July 2000, Commission v. Belgium, C 236/99, Rec. p. I 5657, point 23, and judgement of 12 March 2009, Commission v. Belgium, C 342/08, point 13)".

follows : *"the adverse change, compared to the baseline condition, affecting [...] species and natural habitats protected under national and Community laws, as set forth in law no. 157 of 11 February 1992, which contains provisions for the protection of wild fauna and transposes Council Directive 79/409/EEC of 2 April 1979; Commission Directive 85/411/EEC of 25 July 1985 and Commission Directive 91/244/EEC of 6 March 1991, and implements the Paris Convention for the Protection of Birds of 18 October 1950 and the Bern Convention on the Conservation of Wildlife and Natural Habitats of 19 September 1979, having regard to the Presidential Decree no. 357 of 8 September 1997, which contains the regulations for implementing Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural and semi-natural habitats and of wild fauna and flora, applicable also to the natural protected areas referred to in law no. 394 of 6 December 1991, and later implementing regulations"*. The damage to biodiversity therefore includes not only damage to the habitats and species that motivated the designation of Natura 2000 sites, but also damage to protected areas designated under the Framework Law on Protected Areas.

CONCLUSION

The provisions transposing EU's Directive 2004/35/CE concerning environmental damage vary across the legislation of Austrian Länder. Some Länder have opted for a wider definition of the concept of habitat and protected nature. Also Italy has applied a wider meaning of the concept, including not only habitats and species protected by the Directive, but also damage to sites protected under the Framework Law on Protected Areas. Moreover, Directive 2004/35/CE introduces the concept of remedial measures for repairing environmental damage, defining them as *" any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services as foreseen in Annex II "*⁷⁴.

2.4.3 Protection of habitats (outside Community Law)

Habitat protection is a recent nature conservation instrument that complements measures for the protection of species. It stems primarily from international and Community environmental law. Alongside European law, which has been already cited, there are also obligations arising from international law (the Ramsar Convention, the Bern Convention, etc.).

Austria

The protection of habitats differs across Austrian Länder with respect to the types of habitats protected and the quality of the protection⁷⁵. Nevertheless, there are certain types of habitats or

⁷⁴ Article 2, paragraph 11, referring to Annex II.1 and II.1.1.

⁷⁵ See *Handbuch Umweltrecht*, WUV Universitätsverlag, 2006, p. 373 et s.

areas that are protected by all legislation on the protection of nature. This primarily concerns the protection of shorelines and bodies of water (*Ufer- und Gewässerschutz*) and wetlands (*Feuchtgebiete*). Moreover, certain Länder, including Carinthia and Tyrol, have adopted specific provisions for the protection of Alpine areas and glaciers (*Alpinregion und Gletscher*). The Alpine zone here is understood as the high mountain area extending above the tree line.

Italy

In Italy's national laws, the protection of certain types of habitats is governed by provisions related to the preservation of specific elements of the landscape (*beni paesaggistici*). These elements, recognised as being "of significant landscape value" (*di interesse paesaggistico*), are identified in article 142 of Legislative Decree 42/2004⁷⁶, which is regarded as Italy's Code of Cultural and Landscape Heritage (*Codice dei beni culturali e del paesaggio*). Assets of significant landscape value must be protected in compliance with the law even before the adoption of landscape plans. In particular, this concerns areas around lakes, mountain areas above 1600 m (in the Alpine range), forests and woods, wetlands, etc. The category "elements of the landscape" also contains areas identified and subject to protection in landscape plans adopted pursuant to Article 143 of the Cultural and Landscape Heritage Code.

CONCLUSION

Before establishing any ecological corridor we need to compare the types of habitats subject to protection in Italy and Austria, in order to determine whether protection criteria are consistent on both sides on the border and the protection measures adopted. The issue of environmental damage regulations is also essential, especially with regard to authorisation procedures: the so-called "*autorizzazione paesaggistica*", i.e. "landscape authorisation" in Italian law (article 146 of the Code of the Cultural and Landscape Heritage) and the "*Eingriffsverfahren/Eingriffsschutz*", literally "intervention procedures/ interference protection" in Austrian law.

2.4.4. Legal provisions concerning the linkage of habitats

There are no national legal provisions in Austria to support implementation of an ecological network across the country. In Italy, provisions for ecological connectivity have been adopted by some Regions and aim at establishing a regional ecological network. So far there are no national legal provisions on the matter. A National Strategy on Biodiversity is under preparation in Italy and should be formally presented in early 2010. It will deal with the establishment of ecological networks and the ecological coherence between protected areas⁷⁷.

Although the Habitats Directive aims to develop a coherent ecological network, it introduces the concept of functional coherence between Natura 2000 sites as a recommendation rather than as an

⁷⁶ Legislative decree amending and integrating D.Lgs. no. 42 laying down the Code of the Cultural and Landscape Heritage (*Codice dei beni culturali e del paesaggio*), pursuant to article 10 of Law no. 137 of 6 July 2002.

⁷⁷ *National Biodiversity Strategy in Italy, Ministry for the Environment Land and Sea Protection, Nature Protection Directorate, April 2009*. The Strategy includes the following tasks: to assess whether protected areas are effective as ecological networks; to investigate the relationships between the national ecological network, the Natura 2000 network, the territorial ecological network and ecological network at species, groups of species and communities level, etc.. (See p. 12 of the presentation on the future strategy on biodiversity in Italy).

obligation for Member States. Indeed, the provisions of article 3, paragraphs 2 and 3, and article 10 “encourage” Member States to improve the ecological coherence between Natura 2000. These provisions are written in the form of recommendations: that explains why they have not been transposed by all Member States of the EU. They have not been included among the Austrian provisions transposing the Habitats Directive, whereas they have been acknowledged by Italian laws.

Article 3, paragraph 3: *“Where they consider it necessary, Member States shall endeavour to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora, as referred to in Article 10.”*

Article 10: *“Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora.*

Such features are those 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 ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species”⁷⁸.

Austria

The Länder have exclusive law-making authority in the field of nature conservation. The Austrian nature protection law contains no provisions at all for the establishment of a regional ecological network. By contrast, in recent times a few Italian regions (Piedmont and Liguria, for example) have introduced such provisions. The “coherence between Natura 2000 sites” is considered in the nature conservation laws of Carinthia⁷⁹ and Tyrol⁸⁰ only in relation to compensatory measures in case of projects which undermine the coherence of the network. However, a joint decision of the Parliaments of Trentino, South Tyrol and North Tyrol, adopted in July 2007 (*Decisione riguardante la promozione di un rapporto tra le aree protette e la creazione di corridoi ecologici*) supports the creation of a cross-border ecological network between the Italian Autonomous Provinces of Trento and Bolzano and the Austrian Land of Tyrol. Aimed at fostering cooperation between protected areas and the creation of biological corridors, this Decision is in fact a Memorandum of Understanding to promote the adoption of instruments for establishing transboundary biological corridors. Further initiatives in support of ecological networking have been adopted in some Länder, especially in Tyrol and Styria

Italy

Italy has transposed into national law the provisions of article 10 of the Habitats Directive to ensure ecological coherence between Natura 2000 sites. Thus, article 3, paragraph 3 of the Presidential Decree DPR of 8 September 1997 provides that “3. *In order to ensure the ecological coherence of the “Natura 2000” network, the Ministry for the Environment Land and Sea Protection, following*

⁷⁸ Underlined by the authors of this paper.

⁷⁹ Carinthia’s nature protection act (*Kärntner Naturschutzgesetz 2002 - K-NSG 2002* Standard version: Regional Law Gazette LGBl no. 79/2002.)

⁸⁰ Tyrol’s nature protection act (*Tiroler Naturschutzgesetz 2005 - TNSchG 2005.*)

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. That shall be done when drawing up the Spatial Planning Guidelines required by article 3 of Law no. 394 dated 6 December 1991". Presidential Decree DPR of 12 March 2003 dwells on the concept of "areas of functional ecological connectivity" (*aree di collegamento ecologico funzionale*), specifying that "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". Provisions on ecological connectivity have been adopted by a number of Regions, with the aim of creating a regional ecological network. That is the case of the Piedmont's act on the conservation of natural areas and biodiversity (*Testo unico sulla tutela delle aree naturali e della biodiversità*). Piedmont's regional law provides for the realization of a regional ecological network, whose components are specified in article 2, paragraph 2 of the regional law. The protected areas and the Natura 2000 sites of the Region are part of the network:

"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 any damage to 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 ».

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".

The Liguria Region has recently integrated provisions for the establishment of a regional ecological network into its regional nature conservation legislation, more specifically into regional law no. 28 of 10 July 2009 concerning the conservation and enhancement of biodiversity (*Legge Regionale 10 Luglio 2009 no. 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 as later amended and integrated, as well as of protected areas and any other areas of significant natural value in the region”. According to article 2 of this law, the Region shall define the criteria, guidelines and procedures for managing and monitoring the sites included in the regional ecological network. Article 3 of the law is devoted to the regional ecological network (*Rete ecologica nazionale*). According to article 3, paragraph 1, such ecological network will consist 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. Also the Autonomous Province of Trento has adopted provisions for ecological connectivity to achieve coherence between sites belonging to the provincial network of protected areas. Provincial Law no. 11 of 23 May 2007, states that the coherence between protected areas must be secured through the identification of ecological corridors (*corridoi ecologici*). These are defined as “areas of functional connectivity between protected areas which, by virtue of their linear structure or their function as stepping stones favour the migration, dispersal and genetic exchange of wild species”. Ecological corridors are mentioned also in other articles of this act.

CONCLUSION

Ensuring connectivity between habitats is one of the new stages of conservation. The need for ecological coherence between protected areas and Natura 2000 sites is stated clearly in several Italian regional laws on the protection of nature.

The task ahead therefore is that of linking protected areas together to create a regional ecological network. These laws transpose the provisions of Articles 3 and 10 of the Habitats Directive which call for functional coherence between Natura 2000 sites. Such provisions do not appear in Austrian law, even though some relevant initiatives are under way in some Länder. The absence of concrete provisions on the subject in Austria’s regional laws (Länder level) can be an obstacle to the achievement of cross-border ecological corridors.

2.4.5 Spatial Planning in Protected Areas

We will examine here whether spatial planning in protected areas is governed by specific provisions

2.4.5.1. Land use planning

Italy

As far as spatial planning in national and regional nature parks is concerned, reference must be made to articles 12, 14 and 25 of the framework law on protected areas, which lists the main planning instruments for the national and regional parks respectively. The two main planning instruments for the park are the "plan for the park" (*piano per il parco*) and the "multi annual economic and social plan" (*piano pluriennale economico e sociale*). In the case of national parks, the park plan must provide for the subdivision of the site according to protection levels. The area where the strictest conservation rules apply is designated as integral natural reserve (wilderness area): no intervention seems to be allowed because the environment is preserved in its entirety in accordance with paragraph 2 of article 12 of the Act. Concerning the legal status of the park plan, article 12, paragraph 7 states that it commands other planning instruments: "*The plan is valid as a declaration of general public interest and urgency; measures contained therein cannot be postponed and the plan shall replace any landscape, spatial planning or urban development instrument*". As for regional nature parks, pursuant to article 25, paragraph 2 of the framework law, "*the park plan is adopted by the park management body 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. Concerning spatial planning outside protected sites, it should be noted that a specific system applies in the surrounding area (contiguous with the site). Instead, "general" regional spatial planning provisions apply outside the contiguous area, whose boundaries are defined by the Region in consultation with the park management bodies and the local institutions involved.

Austria

With reference to spatial planning and territorial management in protected areas, the protection system applied to the areas includes ban and permit policies which can lead to prohibition of certain activities. Moreover, the National Park Hohe Tauern is governed both by national laws on parks (*Nationalparkgesetze*) and by the specific park laws of the three Länder which have a part of their territory within the park boundaries, namely Tyrol⁸¹, Carinthia⁸² and Salzburg⁸³. Such laws provide for specific zoning with different levels of protection; specific regulations apply to peripheral park areas (*Außenzone*⁸⁴), core areas (*Kernzone*) and special protection areas (*Sonderschutzgebiete*). Regulations typically concern spatial planning and territorial management. The strictest rules apply to the "*Sonderschutzgebiet*" where no intervention on the natural environment and the landscape is allowed⁸⁵. Moreover, pursuant to paragraph 32 of Tyrol's nature conservation law, the Land Government can adopt specific spatial planning instruments for certain protected areas (*Landschaftsschutzgebiete; Ruhegebiete, geschützter Landschaftsteil, Naturschutzgebiete,*

⁸¹ Act of 9 October 1991 establishing the National Park Hohe Tauern (*Tiroler Nationalparkgesetz Hohe Tauern*)

⁸² Act on the establishment of national parks and biosphere parks (*Kärntner Nationalpark- und Biosphärenparkgesetz K-NBG*) (Regional Law Gazette - *LGBL*. NO. 55/1983, last modified by the law published in *LGBL*. no. 25/2007).

⁸³ Act on the establishment of the National Park Hohe Tauern; Ordinance of Land Salzburg's Government - Definition of the boundaries of the core and outer areas of the National Park Hohe Tauern in Land Salzburg.

⁸⁴ "Peripheral park areas include all areas lying within the park boundaries but outside the core zones (§ 5) and the special protection areas (§ 6)" (Paragraph 4 of Land Salzburg's act on the National Park Hohe Tauern).

⁸⁵ See paragraph 6 of Land Salzburg's act establishing the National Park Hohe Tauern; see paragraph 7 of Land Carinthia's act on the establishment of national parks and biosphere parks; see paragraph 9 of Land Tyrol's act establishing the Tyrol National Park.

Sonderschutzgebiete). Such instruments are called “*Naturpflegepläne*” (literally: nature maintenance plans). However this not a mandatory requirement stated by the law.

CONCLUSION

To achieve ecological continuity between two protected areas, we must first ascertain what measures are adopted in the sites concerned or have an effect on them. Measures may vary depending on the specific status of the protected area. It will be interesting to examine also measures adopted in the areas surrounding the protected sites and capable of affecting the latter, or else measures intended to limit the influence of external interventions in protected areas but which, in fact, may have an impact on them.

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

General provisions and the recognition of cross-border effects

The provisions of EU directives on the assessment of projects, plans and programmes and their impact on the environment apply both in Austria and Italy. These directives contain, in particular, provisions for projects, plans and programmes that may affect neighbouring countries. Council Directive 85/337/EEC of 27 June 1985⁸⁶ 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 assessed by the competent national authorities before consent to execution is given. Such environmental impact assessment shall 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”.

Directive 85/337/EEC was developed further by Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001⁸⁷ on the assessment of the effects of certain plans and programmes on the environment. Plans and programmes that may have transboundary environmental effects are dealt with in article 7 of this directive, which envisages transboundary consultations:

⁸⁶ Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, Official Journal No. L 175, 05/07/1985 P. 0040 - 0048.

⁸⁷ 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, OJ L 197, 21.7.2001, pp. 30-37.

“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 time-frame for the duration of the consultations”.

CONCLUSION

When setting up cross-border ecological corridors, special attention shall be paid to projects, plans and programmes that may have an impact on the environment of neighbouring countries. That is required by article 7 of Directive 85/337/EEC.

“ 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”.

Similarly, article 7 of Directive 2001/42/EC requires that consultations shall take place whenever a plan or a programme is likely to have significant effects on the environment of a neighbouring country. Such provisions concern the protection of an already existing corridor, rather than the act of establishing a corridor.

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

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 Italy’s national and regional legislation. 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 European Court of Justice. Article 6, paragraph 3 of the Directive describes the impact assessment requirements and envisages that an administrative authorisation may be refused

“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 CONCLUSION 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”⁸⁸.

CONCLUSION

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 adopted pursuant to article 6, paragraph 4 of the Habitats Directive, 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 site management documents, to ensure that it is safeguarded.

2.5 Landscape protection and landscape management

When establishing ecological networks, it is essential to examine which landscape conservation measures have been adopted. Indeed, the preservation of landscape elements contributes to the preservation of biodiversity.

2.5.1. The European Landscape Convention

The European Landscape Convention was adopted by the Committee of Ministers of the Council of Europe on 19 July 2000. This is the first international convention dealing exclusively with the protection of the landscape, even though other international legal instruments concern the landscape,

⁸⁸ Underlined by the authors of the paper.

either directly or indirectly⁸⁹. Yet, no international legal instrument deals directly, specifically and comprehensively with European landscapes and their preservation, despite their immense cultural and natural value, and the many threats facing them. The Convention is intended to fill this gap⁹⁰. However, it should be mentioned that at the regional level, the Alpine Convention contains specific provisions concerning landscape conservation, namely in the Protocol on the Conservation of Nature and Landscape Protection. The general purpose of the European Landscape Convention is to encourage public authorities to adopt policies and measures at local, regional, national and international level for protecting, managing and planning landscapes throughout Europe so as to maintain and improve landscape quality and bring the public, institutions and local and regional authorities to recognise the value and importance of landscape and to take part in related public decisions⁹¹. According to Article 1 of this text, the landscape can be defined as “*an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors*”. Pursuant to article 5 of the European Convention landscapes must be recognised in law “*as an essential component of people’s surroundings, an expression of the diversity of their shared cultural and natural heritage, and a foundation of their identity*”. The Convention also calls for the implementation of active and passive landscape management policies, that is to say measures aimed at landscape protection, management and planning. That includes a requirement to introduce landscape planning measures. According to the European Landscape Convention, « *‘landscape protection’ means actions to conserve and maintain the significant or characteristic features of a landscape, justified by its heritage value derived from its natural configuration and/or from human activity*», whereas «*‘Landscape management’ means action, from a perspective of sustainable development, to ensure the regular upkeep of a landscape, so as to guide and harmonise changes which are brought about by social, economic and environmental processes*” ». Competent authorities shall develop a veritable “landscape policy” and set “landscape quality objective”. It is also worth noting that the European Landscape Convention contains provisions for cross-border cooperation in the field of landscape management. Pursuant to article 9 “*the Parties shall encourage transfrontier co-operation on local and regional level and, wherever necessary, prepare and implement joint landscape programmes*”.

CONCLUSION

Unlike Italy, Austria has not yet ratified the European Landscape Convention. In Italy the Convention was ratified in May 2006 and entered into force in September of the same year. Italy’s Cultural Heritage and Landscape Code of 2004, later amended and integrated by legislative decree no. 157/2006⁹², defines the concept of landscape and uses the definition taken from the European Landscape Convention. Article 132 of the Code makes direct reference to the Convention:

“1. The Republic of Italy complies with the obligations and principles of cooperation between the States set by international conventions on landscape conservation and enhancement.

⁸⁹ Reference is made for instance to the Convention on Biological Diversity.

⁹⁰ Point 31 of the Explanatory Report of the European Landscape Convention.

⁹¹ Point 25 of the Explanatory Report of the European Landscape Convention.

⁹² Modified by legislative decrees no. 62 and 63 of 26 March 2008, published in Italy’s Official Journal G.U. no. 84 of 9 April 2008, and by Law no. 129/2008 converting Law Decree D.L. no. 97/2008.

2. The division of powers in relation to landscape is determined in accordance with constitutional principles, also with reference to the implementation of the European Landscape Convention, adopted in Florence on 20 October 2000, and its ratification and implementing rules.”

The fact that Austria has so far failed to ratify the European Landscape Convention does not mean that it has not implemented any landscape conservation measures. Below is a description of them.

2.5.2. Landscape management in the legal provisions on nature protection

Provisions for landscape protection are present in both the Austrian and the Italian law. The Austrian law however does not refer to landscape planning as clearly as the Italian law.

Austria

Landscape protection in Austria is governed by various provisions; we will examine those contained in nature protection law. Landscapes should be preserved primarily by creating "landscape conservation areas" (*Landschaftsschutzgebiete*). The nature conservation laws of all Austrian Länder mention this type of protected area. These areas are designated by an Ordinance (*Verordnung*). The Ordinance establishing the protected area shall specify its boundaries as well as the objectives of protection, licensing actions, restrictions prohibitions and exemptions that shall be adopted. Activities that might have an impact on an landscape conservation area will be allowed only if they do not impair the conservation purpose (*Schutzzweck*) in a long-lasting way, or else where there is an overriding public interest (*öffentliches Interesse*). With the exception of Carinthia, Lower Austria and Vorarlberg, nature protection laws contain provisions for the creation of "protected landscape elements" (*geschützte Landschaftsteile*). These are small-sized nature or cultural landscape areas that are particularly important for the landscape or as a resting place. Also these areas are designated by Ordinance (*Verordnung*). Nature protection laws contain also provisions for the conservation of landscapes in general, that is to say outside of protected areas. For instance, paragraph 5 of Carinthia's nature conservation act concerns the protection of open landscapes (*Schutz der freien Landschaft*). Similarly, paragraph 5 of Tyrol's conservation law contains provisions concerning landscape protection (*Landschaftsschutz*). Such provisions introduce a general scheme of prohibitions and permissions for a number of activities (*Allgemeine Verbote* and *Allgemeine Bewilligungspflicht*). In addition, specific measures may be imposed on landowners to preserve parts of the landscape (*besondere Massnahmen zur Pflege der Landschaft*). That is envisaged for example by paragraph 18 of Tyrol's nature conservation act. Not all Länder have provisions on landscape planning in their nature protection laws. Such provisions appear in paragraphs 5 to 7 of Vorarlberg's nature protection act⁹³ where reference is made to the formulation of "development concepts" (*Entwicklungskonzept*). The latter have a two-fold purpose: first, to take an inventory of current landscapes, second to identify potential protection and management measures. Generally speaking, provisions concerning landscape planning are presented in a very fragmented way in the laws on nature protection⁹⁴ and spatial planning⁹⁵ (see for instance the

⁹³ Law concerning nature protection and landscape development (Source: Regional Law Gazette *LGBl.* no. 22/1997, 58/2001, 38/2002, 1/2008).

⁹⁴ Burgenland: § 4, § 16 c NatG; Carinthia § 45, § 46 NatG; Lower Austria: § 3 NatG; Upper Austria: § 4, § 15 NatG; Salzburg: § 35, § 36 NatG; Styria: § 2 III, § 31 NatG; Tyrol: § 30 NatG; Vorarlberg: §§ 5 - 7 NatG.

development programme for Land Salzburg - *Salzburger Landesentwicklungsprogramm 2003* Item B.2). However Land Salzburg's nature conservation act provides for the adoption of "landscape maintenance plans" (*Landschaftspflegepläne*) (paragraph 35). Similarly, Styria's nature protection act provides that the regional government should adopt master plans for the landscape (*Landschaftsrahmenpläne*)

Italy

The Galasso Act adopted in 1985⁹⁶ introduced the principle of full and comprehensive landscape protection in Italian law, leading to reconsider the national territory according to aesthetic and cultural values. The Galasso Act was later integrated into Italy's Cultural Heritage and Landscape Code (*Codice dei beni culturali e del paesaggio*)⁹⁷. The Regions, in collaboration with the State, are in charge of developing and approving landscape plans. They do so according to the principles laid down in Articles 143-145 of the Cultural Heritage and Landscape Code. Article 135 of the Code states that the Regional Governments must take specific measures for managing the landscape by adopting specific plans:

"1. The Regions shall ensure that the landscape is adequately protected and enhanced. To that end, they impose specific land-use rules and approve landscape plans or spatial planning- urban development plans taking into due account landscape values. Such plans will apply to the entire regional territory and hereinafter will be referred to as "landscape plans".

2. With particular reference to the assets referred to in Article 134, the landscape plan shall define changes compatible with landscape values, actions for recovery and regeneration of buildings and areas under protection, as well as landscape enhancement actions taking into consideration sustainable development prospects".

The Autonomous Province of Bolzano has its own guidelines for nature and landscape conservation (*Linee guida natura e paesaggio Alto Adige*). Provisions of the Galasso Act and provisions for landscape planning are incorporated into the landscape act of the Province of Bolzano (*Legge provinciale del 25 luglio 1970, no. 16, Tutela del paesaggio*). Similarly, in Piedmont a regional landscape plan (*Piano Regionale Paesaggistico*) was adopted in 2009 by the Regional Council (*Giunta Regionale*); in 2008 provisions had been passed to adapt Piedmont's regional act to the national Cultural Heritage and Landscape Code (*Legge Regionale no. 32 del 1 dicembre 2008*)⁹⁸.

CONCLUSION

⁹⁵ Manual for the implementation of the Alpine Convention and its protocols produced by Austria's Federal Ministry of Agriculture, Forestry, Environment and Water Management „*Die Alpenkonvention: Handbuch für ihre Umsetzung, Rahmenbedingungen, Leitlinien und Vorschläge für die Praxis zur rechtlichen Umsetzung der Alpenkonvention und ihrer Durchführungsprotokolle*“. Published by: Lebensministerium - Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft, 2007, p.125.

⁹⁶ Act no. 431 of 8 August 1985 (Galasso Act).

⁹⁷ Legislative decree amending and integrating D.Lgs. no. 42 containing the "Cultural Heritage and Landscape Code" pursuant to article 10 of Law no. 137 of 6 July 2002.

⁹⁸ Piedmont's regional act no. 32 of 1 December 2008. Urgent measures for adjustment to legislative decree D.lgs. no. 42 of 22 January 2004 (Cultural Heritage and Landscape Code, pursuant to article 10 of Law no. 137 of 6 July 2002) (Regional Official Gazette B.U. no. 49 of 4 December 2008).

Italian and Austrian laws differ mainly in regard to landscape planning. Austrian law does not consider landscape planning in a systematic way, unlike the Italian law which sees it as an obligation resting upon the Regions. Italy's system complies both with the requirements of the European Landscape Convention as well as with the provisions of article 7 of the Alpine Convention's Protocol on the Conservation of Nature and the Landscape, which is explicitly devoted to landscape planning. It is worth emphasizing that these two international treaties consider cross-border cooperation in the field of landscape management as essential (article 9 of the European Landscape Convention and article 3 of the Alpine Convention's Protocol on the Conservation of Nature and the Landscape).

2.6 Areas surrounding protected sites - applicable law

2.6.1. The legal status of areas contiguous with protected sites

Italian law contains specific arrangements for sites contiguous with protected areas (*aree contigue*). This type of zoning is not foreseen in the laws of Austrian Länder concerning protected areas.

2.6.1.1. A specific system

Austria

The nature conservation laws of the Austrian Länder do not contain specific provisions concerning the surroundings of protected sites. This means that in such outer areas the general provisions on nature and landscape protection (habitat protection, preservation of open landscapes, etc..) and territorial management will apply. However spatial planning instruments and other specific measures, such as those intended to limit the expansion of ski areas, can contribute to protect the surroundings of protected areas. So, for instance, paragraph 4 of the regulation approving Land Tyrol's programme on cableways and ski areas⁹⁹ states that ski areas can be extended only provided they do not adversely affect nature and landscapes.

Italy

Italian law provides specific arrangements for sites contiguous with protected areas (*aree contigue*), regardless of the type of the latter. Such system is laid down by article 32 of the framework law on protected areas. Pursuant to the first paragraph of article 32, contiguous areas shall be designated by the Region in cooperation with the management bodies of the protected areas; they represent areas where specific provisions may be taken to protect the natural heritage that prompted the creation of the protected area: *"The Regions, in collaboration with the management bodies of the protected natural areas and local authorities concerned, shall establish plans and programmes and specific measures governing hunting, fishing, mining activities and environmental protection, to be applied in*

⁹⁹ Ordinance of Tyrol's Government of 11 January 2005 establishing a spatial planning programme for cable ways and technical ski facilities (*Tiroler Seilbahn- und Schigebietsprogramm 2005*).

the areas contiguous with protected areas, where actions are needed to ensure proper conservation of the values of the protected areas ». In Piedmont, article 6 of the regional act 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 protected areas:

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

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

“Contiguous 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 Law no. 19 dated 29 June 2009 of the Piedmont Region; article 37, paragraph 2 of Friuli Venezia Giulia’s regional law no. .42 of 30 September 1996¹⁰⁰). In the law of the Veneto Region, contiguous zones are designated by the term “*zone di preparco*”, literally meaning “pre-park zones”: these are areas of protection and controlled development (*area di protezione e di sviluppo controllato*)¹⁰¹. Despite their name, however, those areas, are not only the ones adjacent to parks, but also those contiguous with nature reserves. In the parks, specific provisions concerning Natura 2000 sites apply where relevant, in particular provisions contained in article 6 of the Habitats Directive. The majority of ECONNECT pilot sites are designated under the Habitats and Birds Directives (see paragraph below).

CONCLUSION

Contrary to the Italian law, the Austrian regional law does not lay down specific provisions for the surroundings of protected areas. The latter are governed by general spatial planning and nature protection provisions adopted by the Länder (especially provisions concerning protected biotopes).

2.6.2.2. The involvement of a protected area managers in decisions taken outside protected areas

Discuss this issue if necessary

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 Austrian and Italian law, prohibits any damage to Natura 2000 sites originating from inside or outside the site¹⁰². In fact, according to the Directive “*Member States shall take appropriate*

¹⁰⁰ Friuli Venezia Giulia’s regional act no. 42 of 30 September 1996 concerning regional parks and nature reserves.

¹⁰¹ See article 4 of Veneto’s regional act no. 40 of 16 August 1984, (Regional Law Gazette no.38/1984) concerning new rules for establishing regional parks and nature reserves.

¹⁰² See also the guidelines of the European Commission on this point, concerning the implementation of Article 6 of the Habitats Directive: European Commission, *Managing Natura 2000 Sites. The provisions of Article 6 of the*

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 CONCLUSION of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public ". Therefore, plans, projects or programmes that might damage a Natura 2000 site shall not be authorised, even if they are outside the area. Such projects can only be authorised in accordance with the strict conditions set forth in article 6, paragraph 4 of the Habitats Directive. Furthermore, it should be noted that the Directive provides for the protection of habitats and species listed in the Annexes both inside and outside Natura 2000 sites.

3. THE EUROPEAN GROUPING FOR TERRITORIAL COOPERATION (EGTC)

3.1. An European instrument for the facilitation of transborder cooperation

European Grouping for Territorial Cooperation (EGTC).

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

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

'Habitats' Directive 92/43/EEC, Office for Official Publications of the European Communities, Luxembourg, 2000 (73 p.).

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

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

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

According to Regulation (EC) n.1082/2006, art.3, an EGCT can be 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. In principle, the possibility for Member States to participate had hitherto not been considered in the field of cross-border cooperation, and this constitutes an important change for territorial cooperation. It will allow some Member States to participate in such cooperation where no regions exist (e.g. Slovenia, Luxembourg) or where the envisaged theme of cooperation is a competence of the national level. Member States can therefore play three roles in the process of establishing an EGTC:

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

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

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

For all 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.

3.2. Transposition in Austria and in Italia

Austria

The question on whether the competence to adopt the legislation for the EGTC remained with the *Länder* or the *Bund* was an object of debate for quite some time in Austria. Originally the partners regarded the EGTC implementation as a matter of *Länderkompetenz*, but eventually, due to constitutional constraints, it was decided to opt for a regional approach with nine regional sets plus one federal set of provisions. This is an application of the so-called *Generalklausel* integrated in article 15 of the Austrian Basic Law/Constitution (about the sharing of competences between the *Bund* and the *Länder*). A proposal containing general provisions applicable to all types of EGTC in Austria was submitted at the federal level. The Land of Carinthia coordinated the new process.

At the beginning of summer 2008, a bill was proposed at the federal level [*Entwurf : „Bundesgesetz über Europäische Verbände für territoriale Zusammenarbeit (EVTZ Bundesgesetz - EVTZ-BG)*”] and each *Länder* had to give its opinion about the bill during the summer of the same year. The Bill was then sent by the National Council (*Nationalrat*) to the Constitutional Assembly (*Verfassungsausschuss*) during its 22nd Session, on May 19, 2009. The first paragraph of this bill laid down the scope/area of application of the text. According to this first paragraph this law will be applied in case of the participation of the *Bund* in an EGTC and as far as the fields concerned by the EGTC do not fall in the exclusive competence of the *Länder* (nature protection, for instance, falls under the exclusive competence of the *Länder*).

Article 1: *„Dieses Bundesgesetz gilt [...] 1. für die Teilnahme [...] des Bundes sowie [...] von Einrichtungen gemäß Art. 3 Abs. 1 lit. d der Verordnung (EG) Nr. 1082/2006 über den Europäischen Verbund für territoriale Zusammenarbeit (EVTZ), ABl. Nr. L 210 vom 5. Juli 2006 S. 19, (im Folgenden EVTZ-Verordnung) und von aus solchen Einrichtungen gebildeten Verbänden an einem Europäischen Verbund für territoriale Zusammenarbeit (im Folgenden: EVTZ), soweit die genannten Einrichtungen und Verbände nicht in den selbständigen Wirkungsbereich der Länder fallen, sowie 2. für die Anzeige, Registrierung, Finanzkontrolle und Auflösung von EVTZ mit Sitz im Inland, all dies soweit die*

EVTZ-Verordnung keine Regelung enthält oder ausdrücklich auf ausführende Rechtsvorschriften der Mitgliedstaaten Bezug nimmt". On the regional level, laws were adopted and are under adoption in order to implement the European regulation:

- Laws on EGTC were already adopted in the *Länder* of Vorarlberg, Styria, Lower Austria and Carinthia.
- There are Bills in other different *Länder*: in Salzburg, in Wien.

The first paragraph of the Vorarlberg Law on the EGTC precises also that the law applies if the EGTC is concluded in domains where the *Land* is competent to legislate: „*Dieses Gesetz regelt die Maßnahmen, die für die Anwendung der Verordnung (EG) Nr. 1082/2006 über den Europäischen Verbund für territoriale Zusammenarbeit (EVTZ) erforderlich sind und in die Gesetzgebungskompetenz des Landes fallen*”. A similar prevision is also featured in the first paragraph of the Bills of the *Länder* Styria and Salzburg. However there are contradictions between the bill of the Federal Law (*Bundesgesetz*) and the laws (or bills) adopted (drafted) by the *Länder*: according to the *Bundesgesetz* the communication to the Bund and the registration are tasks of the governor (*Landeshauptmann*); while these same actions are deemed as tasks of the Land Government (*Landesregierung*) in the laws or bills of the *Länder* above mentioned: see for instance the Law on EGTC of the Vorarlberg.

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 the 2008 Community Law (*Legge Comunitaria 2008* - Law No. 88 of July 7, 2009).

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

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

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

3.3. Creation of a grouping (EGTC or another grouping) between two parks

In the Rhaetian Triangle Region

Over recent times the members of Euroregion Tyrol-Alto Adige-Trentino sought a way to support and furtherly implement the cohesion process started with the creation of the Euroregion and identified the European Grouping of Territorial Cooperation as their option of choice¹⁰³. Parties originally expected the statutes to be signed by the first six months of 2011, but approval by the Italian Parliament is still pending.

(To be expanded further)

In the Hohe Tauern Region

Conclusion and possible solution

To be expanded further

4. CONCLUSION

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

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¹⁰³ Europeation Gemeinsame Erklarung, Innsbruck, October 15, 2009.

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. Introduction6
 - 1.1 Background6
 - 1.2 Aims of the studies6
 - 1.3 Expected outputs of the studies7
 - 1.4 Methodology7
 - 1.5 Collaboration with project partners and pilot regions8
 - 1.6 The Mercantour/Alpi Marittime Pilot Region.....8
- 2. Bilateral comparison of the legal framework of protected areas.....10
 - 2.1 Institutional framework10
 - 2.2 Transborder Cooperation (outside EGTC)12
 - 2.2.1 Franco-Italian cooperation (ALCOTRA Programme)13
 - 2.3 Classification of protected areas14
 - 2.3.1 Different categories of protected areas14
 - 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 areas20
 - 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 Law28



- 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 species32
- 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 planning36
- 2.4.5 Spatial planning.....37
 - 2.4.5.1 Land use planning37
 - 2.4.5.2 Evaluation of the incidence of plans and programmes on the environment38
- 2.5 Landscape40
 - 2.5.1 Landscape protection (European Landscape Convention).....40
 - 2.5.2 Farming and forestry.....41
 - 2.5.2.1 Farming41
 - 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".

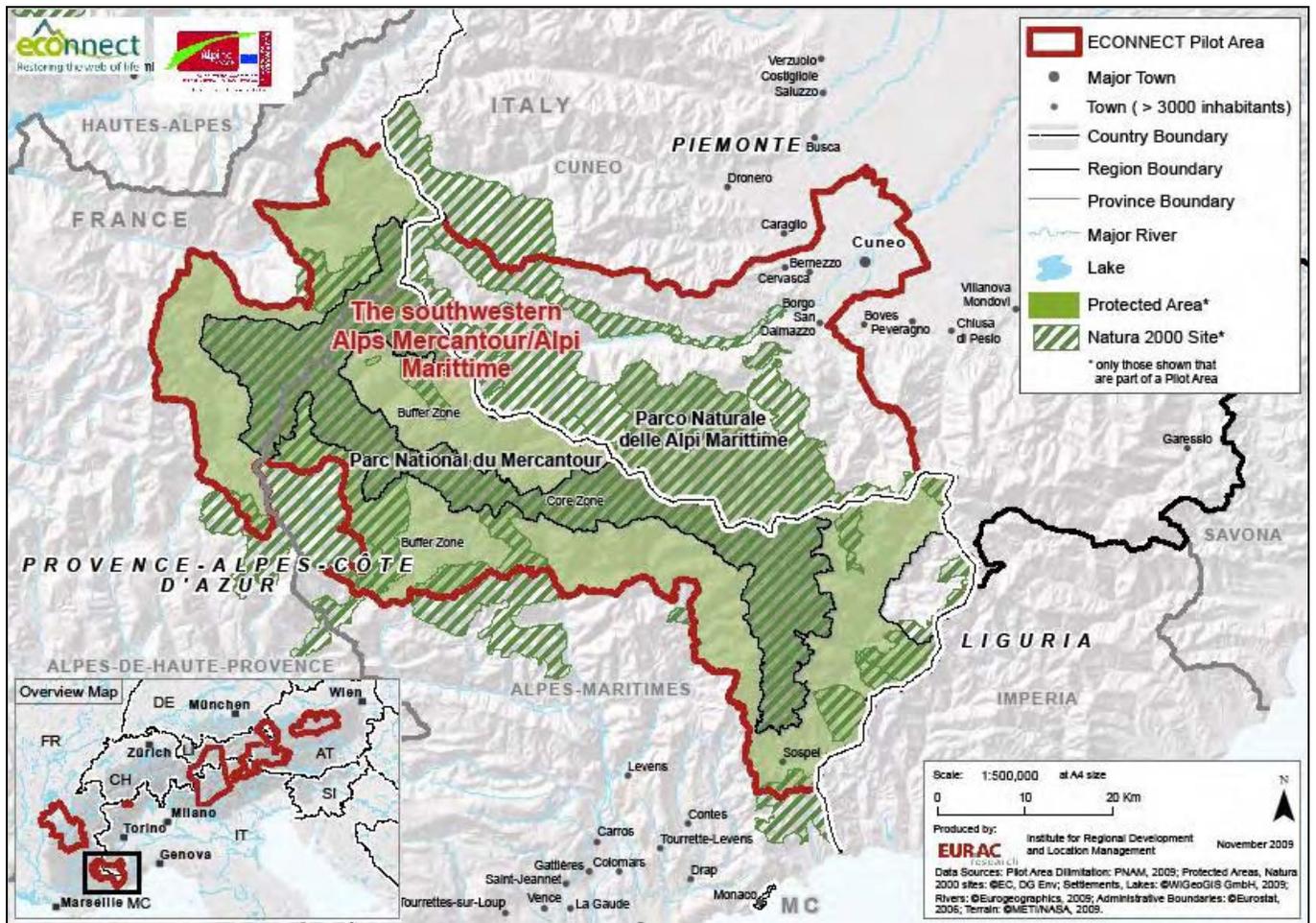


Fig 1: Econnect Pilot Area Mercantour-PN Maritime Alps

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 Selvage, 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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ECONNECT

Alpine Space Programme – ETC

Action 6.2:

**Bilateral Country Comparisons
of the Legal Framework of Protected Areas**

Italy / Switzerland

Pilot Region: The Rhaetian Triangle

- Monte Rosa



Italian Ministry of the
Environment, Land and Sea





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Contents

1. INTRODUCTION	5
1.1. Background.....	5
1.2. Aims of the study	5
1.3. Expected outputs of these studies	6
1.4. Methodology	6
1.5. Collaboration with Project Partners and Pilot Regions	7
1.6 The ECONNECT Pilot Regions.....	7
2. BILATERAL COMPARISON OF THE LEGAL FRAMEWORK OF PROTECTED AREAS.....	12
2.1 The institutional framework.....	12
2.2 Transborder cooperation (outside EGTC).....	13
2.3 Classification of protected areas.....	15
2.3.1 Different categories of protected areas.....	15
2.3.2 Management of protected areas.....	23
2.3.3 Cross-border cooperation in nature protection law	29
2.2 Protection of the habitats	31
2.2.1 Protection of the mountain natural elements	31
2.2.2 Protection of the Habitats of European importance (Natura 2000 and Emerald Networks).....	35
2.2.3 Protection of the habitats in general	37
2.2.4 Linkage of habitats and the law	37

2.2.5 Spatial Planning	46
2.3 Landscape.....	50
2.3.1 Landscape protection (European Landscape Convention and general measures)	50
2.4 Protected Area surroundings in law	52
3. THE EUROPEAN GROUPING OF TERRITORIAL COOPERATION (EGCT).....	50
3.1. Transposition in Italy and participation of Switzerland to an EGTC	56
3.2 Creation of an EGTC between two parks.....	58
5. Conclusions	58
5. BIBLIOGRAPHY	59
5.1. General publications	59
5.2. Italy	59
5.3. Switzerland	60

1. INTRODUCTION

1.1. Background

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

1.2. Aims of the study

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

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

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

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

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

Hence the key questions to be solved appear:

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

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

1.3. Expected outputs of these studies

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

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

1.4. Methodology

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

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

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

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

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

1.5. Collaboration with Project Partners and Pilot Regions

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

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

1.6 The ECONNECT Pilot Regions

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

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

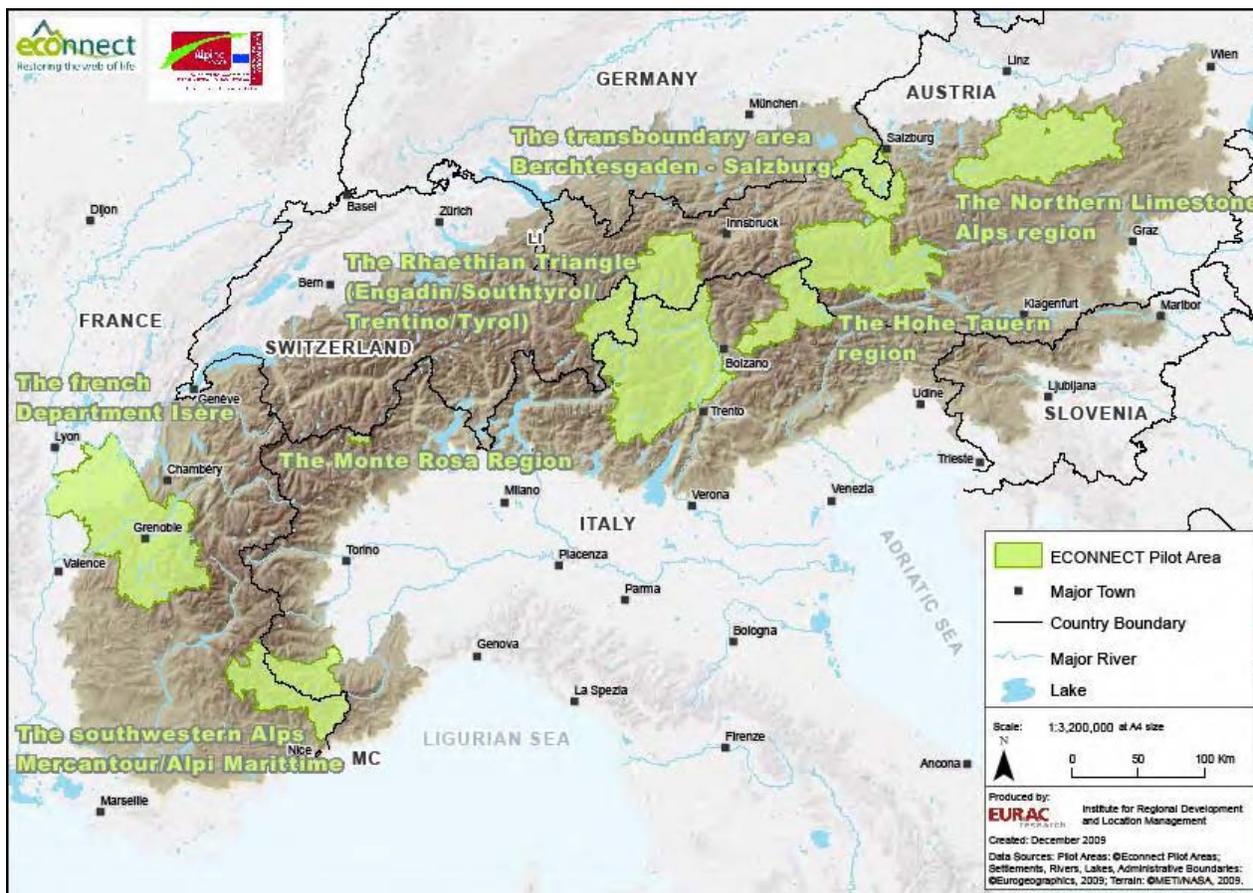


Fig 1: The ECONNECT Pilot Regions

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

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

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

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

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

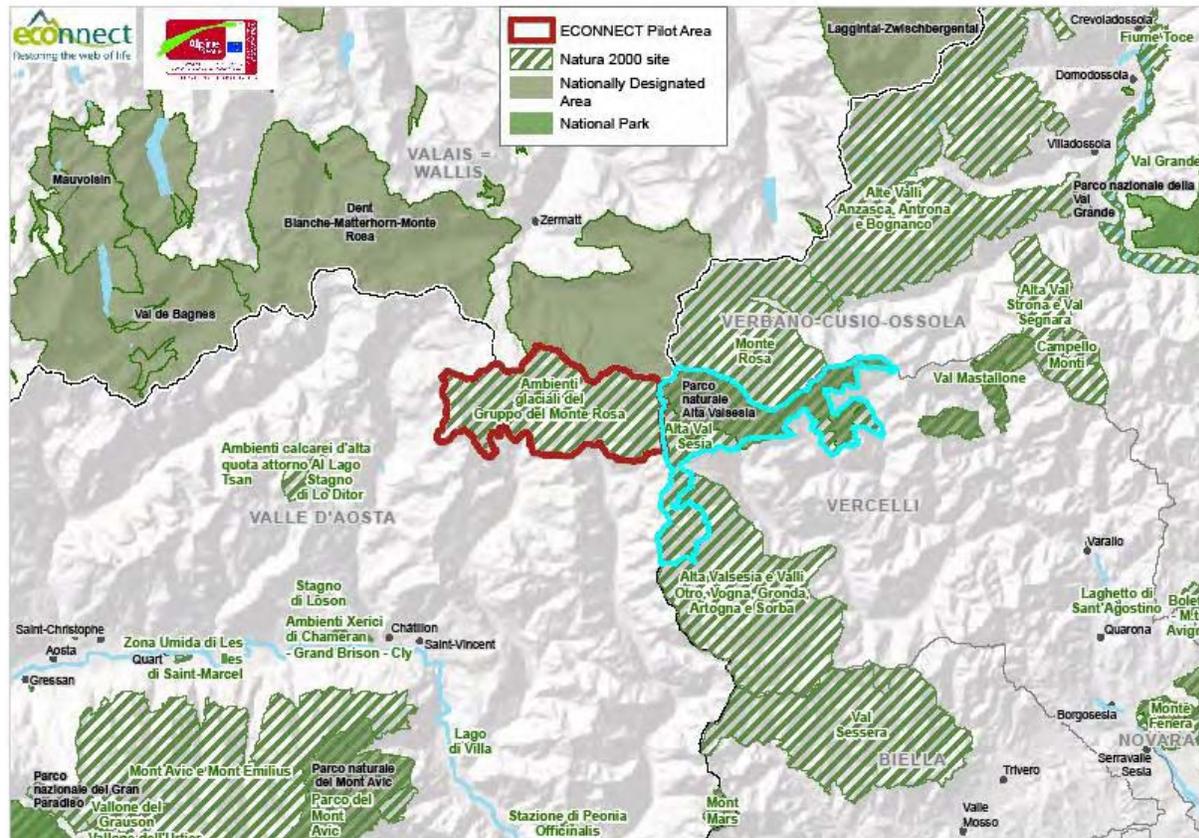


Figure 2: Pilot Region “Monte Rosa”

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

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

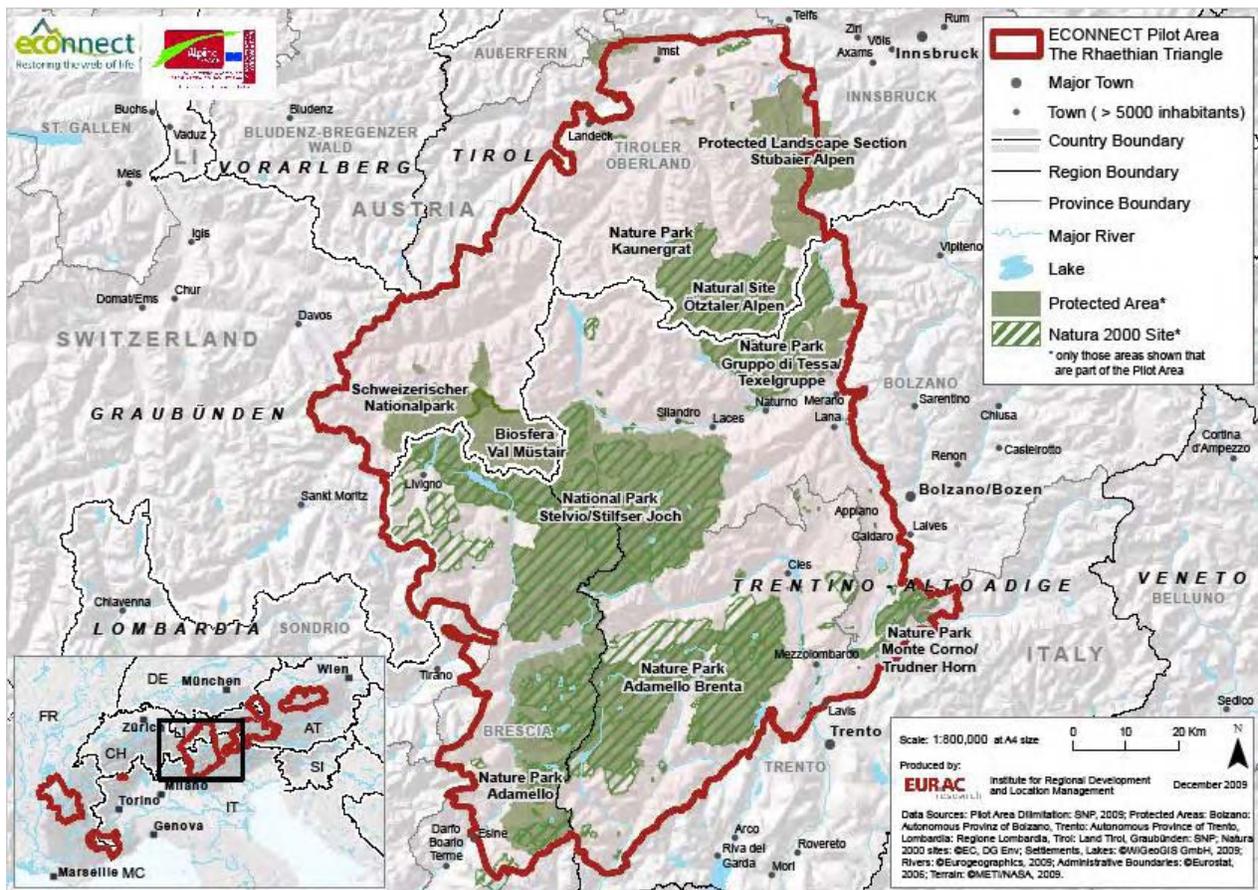


Fig. 3: Econnect Pilot Area “The Rhaetian Triangle”

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

2. BILATERAL COMPARISON OF THE LEGAL FRAMEWORK OF PROTECTED AREAS

2.1 The institutional framework

Switzerland

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

Italy

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

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

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

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

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

CONCLUSION

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

2.2 Transborder cooperation (outside EGTC)

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

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

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

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

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

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

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

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

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

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

2.3 Classification of protected areas

2.3.1 Different categories of protected areas

2.3.1.1. The international classification of protected areas

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

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

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

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

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

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

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

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

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

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

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

2.2.1.2. The classification of protected areas in the national legislation

Please refer to the study by Giampaolo Parodi.

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

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

Table. 2 : Correspondence between Italian and Swiss protected areas

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

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

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

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

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

2.2.1.3. Legal status of Pilot regions in the ECONNECT Project

Protected areas of Pilot region Monte Rosa - legal status

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

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

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

Protected landscape “Dent Blanche- Matterhorn- Monte Rosa”

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

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

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

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

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

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

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

Alta Valsesia regional nature park

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

Swiss National Park / Graubünden National Park (Canton Graubünden)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁴ August 27, 2010.

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

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

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

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

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

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

Stelvio National Park

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

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

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

CONCLUSION

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

2.3.2 Management of protected areas

2.3.2.1 Active management

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

“Monte Rosa” Pilot region

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

²⁹ See page 6 of this document.

Italian site Monte Rosa

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

Alta Valsesia Regional Nature Park

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

Site Dent-Blanche-Matterhorn-Monte Rosa

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

³⁰ See below for the management of Natura 2000 sites.

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

CONCLUSION

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

“Rhaetian Triangle” Pilot region

Graubünden National Park

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

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

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

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

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

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

Stelvio National Park

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

CONCLUSION

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

2.3.2.2 Passive management

Regulation of leisure activities

Switzerland

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

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

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

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

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

Italy

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

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

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

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

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

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

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

Hunting and Fishing

Italy

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

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

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

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

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

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

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

2.3.3 Cross-border cooperation in nature protection law

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

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

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

Switzerland

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

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

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

Italy

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

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

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

CONCLUSION

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

2.2 Protection of the habitats

2.2.1 Protection of the mountain natural elements

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

2.2.1.1. The Alpine convention

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

2.2.1.2. European Union Law

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

CONCLUSION

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

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

2.2.1.3. The National Framework

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

Switzerland

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

Italy

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

CONCLUSION

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

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

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

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

The Emerald Network in Switzerland

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

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

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

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

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

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

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

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

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

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

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

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

⁴⁸ The Bern Convention was ratified by Switzerland in 1982.

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

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

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

2.2.3 Protection of the habitats in general

2.2.4 Linkage of habitats and the law

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

2.2.4.1. Legal provisions concerning ecological networks

Switzerland

Ecological compensation (nature protection law / rural law)

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

⁵¹ *Idem*, p. 125.

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

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

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

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

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

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

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

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

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

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

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

The “Réseau écologique national ” (REN)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Italy

National provisions

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

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

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

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

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

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

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

Regional law

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

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

“The regional ecological network consists of the following areas:

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

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

Valle d’Aosta

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

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

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

Lombardy

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

CONCLUSION

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

2.2.4.2. Ecological networks and urban planning law

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

Italian regional law

Piedmont

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

"Art. 3. (Regional Nature Charter)

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

a) the regional ecological network;

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

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

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

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

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

Lombardy

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

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

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

Valle d'Aosta

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

Trento

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

2.2.5 Spatial Planning

2.2.5.1 Land use planning

Switzerland⁷²

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

Italy

National parks

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

Regional nature parks

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

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

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

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

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

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

The impact assessment system in Italy and in Switzerland

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

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

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

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

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

Conclusion

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

The impact assessment system in the Pilot regions

Pilot Region Monte Rosa

Site Dent Blanche-Matterhorn-Monte Rosa

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

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

Pilot Region "The Rhaetian Triangle"

Stelvio National Park

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

Graubünden National Park

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

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

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

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

Future regional nature park / future biosphere reserve of Val Müstair

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

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

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

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

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

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

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

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

2.3 Landscape

2.3.1 Landscape protection (European Landscape Convention and general measures)

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

Switzerland

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

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

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

Italy

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

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

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

2.4 Protected Area surroundings in law

2.4.1. Areas surrounding protected sites - applicable law

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

Switzerland

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

Italy

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

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

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

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

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

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

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

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

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

2.4.2 The legal status of the areas surrounding Natura 2000 sites

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

3. The European Grouping of Territorial Cooperation (EGTC)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Italy

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

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

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

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

Switzerland

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

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

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

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

3.2 Creation of an EGTC between two parks

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

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

5. Conclusions

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

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

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

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Work Package 6 “*Legislation*”

THE EUROPEAN GROUPING OF TERRITORIAL COOPERATION (EGTC)

Bolzano/Bozen, August 2009



Italian Ministry of the
Environment, Land and Sea



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Contents

Contents	2
1 The international legal framework of transborder cooperation	4
2 The Regulation (EC) n°1082/2006 on a European Grouping of Territorial Cooperation	6
2.1 The aim of the Regulation n°1082/2006.....	6
2.2 The „legal nature” of the EGTC	8
3 The European Grouping of Territorial Cooperation in the Law of the Alpine States	12
3.1 The European Grouping of Territorial Cooperation in Austrian Law.....	12
3.2 The European Grouping of Territorial Cooperation in French law.....	14
3.3 The European Grouping of Territorial Cooperation in German Law	15
3.4 The European Grouping of Territorial Cooperation in Italian Law	16
3.5 The European Grouping of Territorial Cooperation in Slovene Law	18
3.6 The European Grouping of Territorial Cooperation in Swiss Law	18
4 SWOT Analysis: the EGTC and transborder cooperation between protected areas	19
4.1 STRENGTHS	19
4.2 WEAKNESS	21
4.3 OPPORTUNITIES.....	23
4.4 TRENDS	23
5 Bibliography.....	25

1 The international legal framework of transborder cooperation

The Council of Europe set up a framework for transborder cooperation with the **European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities** (also called Madrid Convention) which was opened to signature the 21 of May 1980. This text has an important political value because it recognizes the importance of transborder cooperation and is also the basis of the legitimacy for the local entities to develop such actions which go beyond the national territory and legal order. The Outline Convention provides also in the first paragraph of its second article the definition of the notion of „transborder cooperation” as *„mean any concerted action designed to reinforce and foster neighbourly relations between territorial communities or authorities within the jurisdiction of two or more Contracting Parties and the conclusion of any agreement and arrangement necessary for this purpose”*. The limit to the transborder cooperation is the sharing of competences in each State as specified in the same paragraph: *„Transfrontier co-operation shall take place in the framework of territorial communities' or authorities' powers as defined in domestic law. The scope and nature of such powers shall not be altered by this Convention”*. The notion of „territorial communities and authorities” is also defined in the second paragraph of the second article as *„communities, authorities or bodies exercising local and regional functions and regarded as such under the domestic law of each State”*.

Two protocols to the Outline Convention were concluded and a third Protocol is still in project: the **Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities** and the **Protocol N°2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation**. The first additional protocol was opened to the signature in November 1995 and entered into force in December 1998. It recognized a subjective right to the territorial entities to develop crossborder relations in the limits of the field of competences. The second additional protocol was opened to the signature in May 1998 and entered into force in February 2001.

Until the adoption of the **Regulation (EC) N°1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC)**, the cooperation happened principally with agreements between territorial entities adopted on the basis of the bilateral- international law or within the framework of conventions of the Council of Europe. The regulation set up common regulations and incentives for a cooperation between territorial entities in the implementation of the structural policies.

The Preamble of the EGTC Regulation specifies the **link between the international law on transborder cooperation and this instrument**. It specifies that *„[the] Council of Europe acquis provides different opportunities and frameworks within which regional and local authorities can coop-*

erate across borders” and that “[this] instrument is not intended to circumvent those frameworks or provide a set of specific common rules which would uniformly govern all such arrangements throughout the Community”.

The legal framework created by the Council of Europe is important because it has set up the conditions for the territorial cooperation, which was initially crossborder cooperation. However the results are limited and it is probably because of the weight of the States in this proceeding. Furthermore we have to add that not all the Alpine States ratified the legal instruments adopted by the Council of Europe. All the Alpine States ratified the Framework Convention. Concerning the two Protocols, Italy and Liechtenstein did not ratify them. That is why the paragraph 5 of the Preamble of the Regulation specifies that „Measures are necessary to reduce the significant difficulties encountered by Member States and, in particular, by regional and local authorities in implementing and managing actions of territorial cooperation within the framework of differing national laws and procedures”.

2 The Regulation (EC) n°1082/2006 on a European Grouping of Territorial Cooperation

According 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”. However the Regulation (EC) No. 1082/2006 determines in its **Article 16** that Member States have 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 law¹) 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. We will study in the second part of the study the provisions adopted in the different Alpine EU-Members in order to implement the Regulation (EC) No. 1082/2006.

2.1 The aim of the Regulation n°1082/2006

Regulation (EC) N°1082/2006, of the European Parliament and Council, of 5 July 2006, establishes the juridical figure of the **European Grouping of Territorial Cooperation (EGTC)**. It is a new juridical instrument for territorial cooperation within the framework of the European Union, permitting the establishment of public entities with a juridical personality with the aim of facilitating and promoting territorial cooperation among its Members with a view to strengthening economic and social cohesion.

Article 1, paragraph 2, of the regulation: „The objective of an EGTC shall be to facilitate and promote cross-border, transnational and/or interregional cooperation, hereinafter referred to as “territorial cooperation”, between its members as set out in Article 3(1), with the exclusive aim of strengthening economic and social cohesion”.

Three different realities are inherent in the notion of territorial cooperation referred to in the above mentioned Community Regulation: **crossborder cooperation, transnational cooperation, and inter-regional cooperation**. The EGTC is a juridical figure that is particularly suited for the execution of cooperation actions or projects involving established partners in different Member States, namely those with access to European Union cofinancing through structural funds.

¹ Article 249, paragraph 3, of the TUE : “A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods”.

Territorial cooperation for improving the territorial cohesion is a new objective of the EU. A title of the future Treaty (*Lisbon Treaty*) is dedicated to the „*economic, social and territorial cohesion*”. The Protocol n°28 is also dedicated to this concept. According to **Article 3, paragraph 3**, of this Treaty, „[the Union] shall promote economic, social and territorial cohesion, and solidarity among Member States”². This concept of territorial cooperation was not present in the former Treaties.

The use of an EGTC³

It is primarily a tool to be used for the management of EU Structural Funds, but different functions can be envisaged for an EGTC:

- In charge of the implementation of a Territorial Cooperation programme (upon delegation by the Member State to the EGTC);
- Lead partner or partner in an Territorial Cooperation project;
- Other cooperation actions with EU-funding;
- Other cooperation actions without EU-funding (yet actions outside EU funding can be restricted by Member States to ERDF-like actions (Art.7 (3)).

The potentialities of the EGTC for the management of INTERREG Programmes⁴

Territorial cooperation still exists through Europe and is particularly supported with the INTERREG programmes. As mentioned in the Operational programme Alpine Space for the period 2007-2013, „[the] Alpine Space offers a tradition in transnational cooperation over several decades, starting from political and administrative cooperation on national or regional level to cooperation on smaller scale between local authorities and private institutions, partly within the frame of European Community Initiatives and Programmes (CIP)”⁵. There is a specific programme dedicated to the Alps, the INTERREG Alpine Space programme). The transnational cooperation in the Alps happened within „working communities (...) or further initiatives and networks of relevant actors were established such as “ARGE Alpenstädte” (network of small and medium-sized Alpine towns), „Alliance in the Alps” (network of communities aiming at implementing the Alpine Convention locally), „Alpine Network of Protected Areas”, the “REGIONALP” platform of the Pilot Action Programme „Eastern Alps”

² See also the article 174 of this text (ex Article 158 TEC): „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”.

³ Online on www under URL: www.interact-eu.net/the_egtc_regulation/68 (26 May 2009).

⁴ Online on www under URL: www.interact-eu.net/egtc_and_interreg/67 (26 May 2009).

⁵ *European Territorial Cooperation 2007 – 2013, Operational Programme Alpine Space*, p. 9.

and numerous cooperation between private, public bodies and NGOs”⁶. The importance of the Alpine Convention in this cooperation is also underlined in the Operational Programme.

However **the existing cooperation needs a juridical statute** and it is added in the European regulation on the EGTC that „[the] existing instruments, such as the European economic interest group, have proven ill-adapted to organising structured cooperation during the 2000-2006 programming period”. Currently, as example, only 6% of the INTERREG IIIA programmes are managed by a cross-border structure, acting as Managing Authority, Paying Authority and/or Joint Technical Secretariat. Most programmes are actually managed by local, regional or national authorities. Several cases can be encountered:

- „**Concentrated**” management: a single authority is in charge of managing the programme, acting on behalf of the other partners, on the basis of a convention signed by all partners.
- „**Decentralised**” management: the functions of MA, PA and JTS are ensured by several authorities (on one side or on all sides of the border), or the authority in charge of these functions uses intermediate bodies to implement part of these functions in the other country.

Probably one of the main challenges that joint structures have to face is connected with their legal personality. This has implications e.g. on the power to hire international staff or to be bound to a national legal framework. The EGTC should be a tool to step over these difficulties as well.

2.2 The „legal nature” of the EGTC

2.2.1 Legal personality of the EGTC

According to **Article 1, paragraph 3**, of the regulation, „[an] EGTC shall have legal personality”. It is specified in the next paragraph that „[an] EGTC shall have in each Member State the most extensive legal capacity accorded to legal persons under that Member State's national law. It may, in particular, acquire or dispose of movable and immovable property and employ staff and may be a party to legal proceedings”. According to **Article 5** legal personality is acquired on the day of the registration and/or publication of its statutes.

2.2.2 Scope of the EGTC

According to **Article 1**, the geographical scope of the EGTC regulation is the cross-border, territorial and interregional cooperation. The thematic scope is strengthening economic and social cohesion (**Art.1**)⁷.

⁶ European Territorial Cooperation 2007 – 2013, Operational Programme Alpine Space, p. 10.

⁷ Online on www under URL: www.interact-eu.net/the_egtc_regulation/68 (26 May 2009).

Article 1, paragraph 2: „The objective of an EGTC shall be to facilitate and promote cross-border, transnational and/or interregional cooperation, hereinafter referred to as ‘territorial cooperation’, between its members as set out in Article 3(1), with the exclusive aim of strengthening economic and social cohesion”.

Article 7, paragraphs 2 and 3: „2. An EGTC shall act within the confines of the tasks given to it, which shall be limited to the facilitation and promotion of territorial cooperation to strengthen economic and social cohesion and be determined by its members on the basis that they all fall within the competence of every member under its national law.

3. Specifically, the tasks of an EGTC shall be limited primarily to the implementation of territorial cooperation programmes or projects co-financed by the Community through the European Regional Development Fund, the European Social Fund and/or the Cohesion Fund.

An EGTC may carry out other specific actions of territorial cooperation between its members in pursuit of the objective referred to in Article 1(2), with or without a financial contribution from the Community”.

The limit to the scope of the regulation is to exercise **actions within the limits of the members’ competences under national law (Article 3, paragraph 1:** „An EGTC shall be made up of members, within the limits of their competences under national law [...]”).

Another limit is set up in **Article 13: the public interest.** It means the public interest of a Member State. Under the concept of public interest are included „public policy, public security, public health or public morality, or public interest” of a Member State. The Member authorities appreciate themselves the existence of such a contravention. But the **second paragraph of Article 13** is like a “**safeguard clause**” towards a possible unjustified position of these authorities:

„Such prohibitions shall not constitute a means of arbitrary or disguised restriction on territorial cooperation between the EGTC’s members. Review of the competent body’s decision by a judicial authority shall be possible”.

2.2.3 Composition of the EGTC

Article 3 of the regulation deals with the composition of the EGTC:

„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.

2. An EGTC shall be made up of **members located on the territory of at least two Member States**".

According to the Directive 2004/18/EC, „a body governed by public law” means any body:

(a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) having legal personality; and

(c) 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 by other bodies governed by public law”.

2.2.4 Creation of the EGTC

Article 4 of the regulation deals with the **establishment** of an EGTC and defines a specific procedure with an important role devoted to the State. In fact, according to the **paragraph 3** of this article, „the Member State concerned shall [...] approve the prospective member’s participation in the EGTC, unless it considers that such participation is not in conformity with this Regulation or national law, including the prospective member’s powers and duties, or that such participation is not justified for reasons of public interest or of public policy of that Member State”.

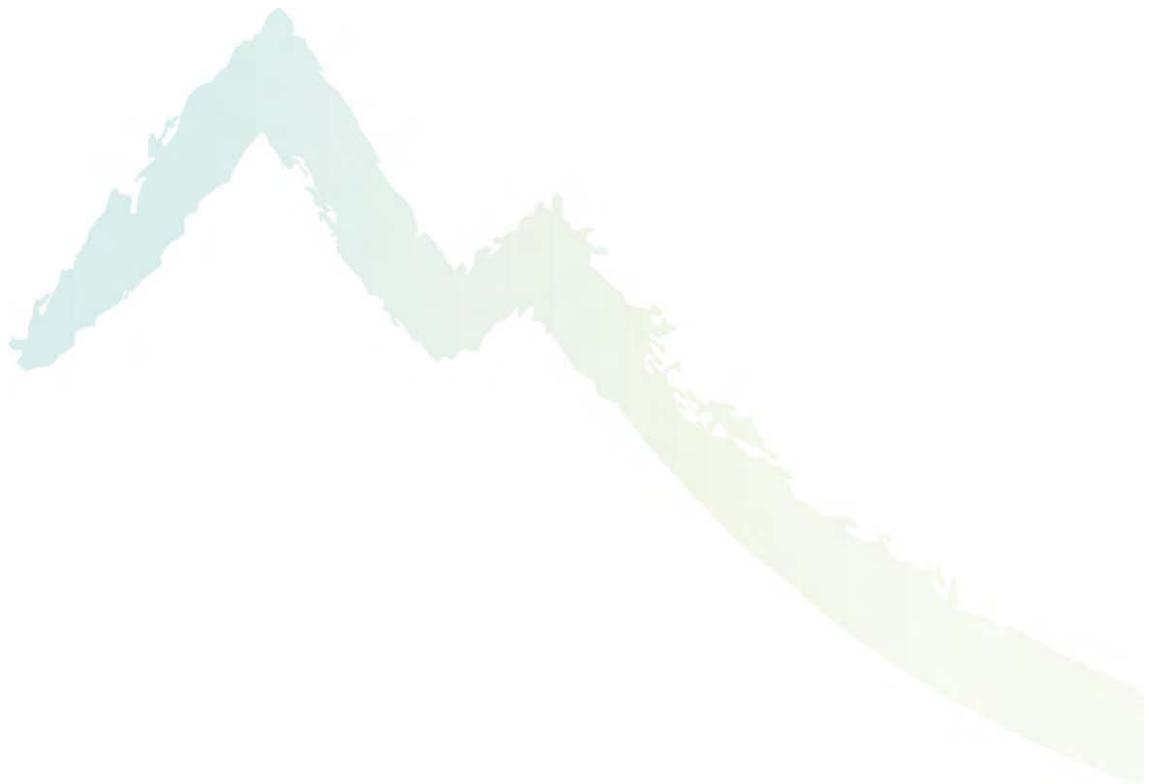
2.2.5 Basis of the EGTC: the Convention and the Statute (Articles 8 and 9)

An EGTC is founded by a convention and a statute, both adopted unanimously. Prior to foundation, the convention and the statute have to be transmitted to the central authorities of the national states for approval. **Article 8** of the regulation specifies the minimal requirements of the convention like for instance the specific objective and task of the EGTC, its duration and the conditions governing its dissolution, the list of the EGTC’s members. This whole minimal requirement and also others provisions have to be contained in the statute of the EGTC according to **Article 9** of the regulation.

2.2.6 Dissolution of the EGTC/Shelf life of the EGTC

The (ordinary) conditions of the dissolution of the EGTC have to be specified in the convention. According to **Article 8, paragraph 2**, „[the] convention shall specify [...] the specific objective and tasks of the EGTC, its duration and the conditions governing its dissolution”.

An extraordinary procedure is foreseen in **Article 14**. This case does not concerns the provisions specified in the convention of the EGTC: it is an extraordinary procedure. Such dissolution can be decided in case the EGTC „no longer complies with the requirements laid down in Articles 1(2) or 7 or, in particular that the EGTC is acting outside the confines of the tasks laid down in Article 7”. It can be an administrative or a judicial procedure.



3 The European Grouping of Territorial Cooperation in the Law of the Alpine States

According to **Article 18**, the regulation entered into force (except for **Article 16**) the 1st August 2007.

Article 18 of the regulation: „*This Regulation [...] shall apply by 1 August 2007, with the exception of Article 16, which shall apply from 1 August 2006*”.

Article 16, which requires the adoption of national provisions in order to ensure the effective application of the regulation, entered into force the 1st August 2006.

Article 16, paragraph 1, of the regulation: „*Member States shall make such provisions as are appropriate to ensure the effective application of this Regulation*”.

There were difficulties through the Alps for the adoption of national provisions for the implementation of the regulation. These difficulties deal with the effects of the regulation in the national orders (competencies of territorial entities in the field of transborder cooperation). It deals also then with the sharing of competences within the Alpine States.

3.1 The European Grouping of Territorial Cooperation in Austrian Law

3.1.1 The national and regional provisions

There is/was a debate in Austria in order to clarify if who (*Länder* or *Bund*) is competent to adopt the legislation for the EGTC. In the beginning of the transposition's proceedings, it was defined as a *Länderkompetenz*. Now it is clear that it is both competence of the *Bund* and the *Länder*: it will depend on the fields covered by the EGTC. It is an application of the so-called „**Generalklausel**” integrated in the **article 15 of the Austrian Basic Law/Constitution**. **Article 15** is about the (about the sharing of competences between the *Bund* and the *Länder*). There will be 9 + 1 laws on the EGTC: 9 laws adopted on the regional (*Länder*) level and 1 adopted on the federal level.

At the beginning of summer 2008, a **bill**⁸ was proposed on the federal level [*Entwurf: „Bundesgesetz über Europäische Verbände für territoriale Zusammenarbeit (EVTZ Bundesgesetz – EVTZ-BG)*”] and each *Länder* had to give his its opinion about the bill during the summer. There were different opinions according to the *Länder* on this topic⁹. This Bill was sent by the National Council (*National-*

⁸ This text is under adoption at the date of the redaction of the text (End of March 2009): there will be changes in the next days.

⁹ On line on URL: www.parlament.gv.at/PG/DE/XXIII/ME/ME_00210/pmh.shtml (10 March 2009)

rat) to the Constitutional Assembly (*Verfassungsausschuss*) during its 22. Session, the 19th May 2009.

The first paragraph of this bill laid down the scope/area of application of the text. According to this first paragraph this law will be applied in case of the participation of the Bund in an EGTC and as far as the fields concerned by the EGTC do not fall in the exclusive competence of the *Länder*. Nature protection fall for instance in the exclusive competence of the *Länder*.

Article 1: „Dieses Bundesgesetz gilt [...]

1. für die Teilnahme [...] des Bundes sowie [...] von Einrichtungen gemäß Art. 3 Abs. 1 lit. d der Verordnung (EG) Nr. 1082/2006 über den Europäischen Verbund für territoriale Zusammenarbeit (EVTZ), ABl. Nr. L 210 vom 5. Juli 2006 S. 19, (im Folgenden EVTZ-Verordnung) und von aus solchen Einrichtungen gebildeten Verbänden an einem Europäischen Verbund für territoriale Zusammenarbeit (im Folgenden: EVTZ), soweit die genannten Einrichtungen und Verbände nicht in den selbständigen Wirkungsbereich der Länder fallen, sowie
2. für die Anzeige, Registrierung, Finanzkontrolle und Auflösung von EVTZ mit Sitz im Inland, all dies soweit die EVTZ-Verordnung keine Regelung enthält oder ausdrücklich auf ausführende Rechtsvorschriften der Mitgliedstaaten Bezug nimmt“.

On the regional level, laws were adopted and are under adoption in order to implement the European regulation:

- Laws on EGTC were already adopted in the *Länder* of Vorarlberg¹⁰ and Carinthia¹¹.
- There are Bills in different *Länder*: in Styria¹², in Salzburg¹³, in Wien¹⁴.

The first paragraph of the Vorarlberg Law on the EGTC precises also that the law applies if the EGTC is concluded in domains where the *Land* is competent to legislate: „Dieses Gesetz regelt die Maßnahmen, die für die Anwendung der Verordnung (EG) Nr. 1082/2006 über den Europäischen Verbund für territoriale Zusammenarbeit (EVTZ) erforderlich sind und in die Gesetzgebungskompetenz des Landes fallen“. A similar precision is also given in the first paragraph of the Bills of the *Länder* Styria and Salzburg.

However there are contradictions between the bill of the Federal Law (*Bundesgesetz*) and the laws adopted by the *Länder* (or the bill elaborated by the *Länder*). Indeed according the bill of the Fed-

¹⁰ Gesetz über den Europäischen Verbund für territoriale Zusammenarbeit (EVTZ-Gesetz), Beilage 131/2008.

¹¹ Gesetz vom 18. Dezember 2008 über den Europäischen Verbund für territoriale Zusammenarbeit (Kärntner EVTZ-Gesetz – K-EVTZG), StF: LGBl Nr 20/2009.

¹² Entwurf- Gesetz [...] über die Anwendung der Verordnung des Europäischen Parlaments und des Rates über den Europäischen Verbund für territoriale Zusammenarbeit (Steiermärkisches EVTZ-Anwendungsgesetz – StEVTZG).

¹³ Entwurf- Gesetz [...] betreffend die Anwendung der Verordnung des Europäischen Parlaments und des Rates vom 5. Juli 2006 über den Europäischen Verbund für territoriale Zusammenarbeit (EVTZ-Anwendungsgesetz – EVTZ-G).

¹⁴ Gesetz betreffend den Rahmen für die Anwendung der Verordnung (EG) Nr. 1082/2006 über den Europäischen Verbund für territoriale Zusammenarbeit (W-EVTZG).

eral Law (*Bundesgesetz*), the communication to the Bund and the registration are tasks of the governor (*Landeshauptmann*); these actions are tasks of the Land Government (*Landesregierung*) in the laws or bills of the Länder above mentioned: see for instance the Law on EGTC of the Vorarlberg.

3.1.2 Inputs of the EGTC:

The EGTC is an interesting instrument for transborder cooperation on Austrian level. In fact some remarks could be made on the current Austrian legal framework¹⁵:

- A clear legal basis for public groupings in general (exemption: for the local level within one Land) is missing in the Federal Constitution
- There is not any legal basis for public groupings beyond borders in the Federal Constitution. Indeed Austria made a reservation by the ratification of the First Additional Protocol to the Madrid Convention¹⁶)
- The Federal Constitution offers only a complex procedure for intergovernmental treaties of Länder (no treaties has been concluded on this basis until today) (Article 16).
- As regarding cooperation beyond borders, the Federal Constitution is totally blind and neglecting the status of European Integration.

3.2 The European Grouping of Territorial Cooperation in French law

3.2.1 The Law n°2008-352

The ***Code général des collectivités territoriales (CGCT) (Territorial Community Code)***¹⁷ was modified by the Law n° 2008-352¹⁸. This law adapted the French law to the provisions of the European regulation on the EGTC. It allows the French local entities, within the limit of their competences and the respect of the international engagements of France, to create such a grouping with territorial collectivities, statutory bodies of the EU Member States, like with Member States. The law authorizes also the creation of an EGTC with Border States Members of the Council of Europe.

¹⁵ These critics were developed by J. Maier the 15 May 2009, in the framework of a Workshop held in the European Academy of Bolzano (Italy); see also by Johannes Maier, "Rechtliche Hindernisse für die Implementierung des EVTZ-Instrumentes in die föderale Verfassungsstruktur Österreichs", in *Jahrbuch des Föderalismus 2009, Föderalismus, Subsidiarität und Regionen in Europa*, Europäisches Zentrum für Föderalismus-Forschung Tübingen (Hrsg.), 2009, pp.455-470.

¹⁶ Declaration contained in the full powers handed at the time of signature on 28 February 2001 - Or. Fr.- and confirmed in the instrument of ratification deposited on 17 March 2004. "The Government of the Republic of Austria, in accordance with Article 8 of the Additional Protocol, declares that it will apply the provisions of Article 4 only". [The preceding statement concerns Article(s) : 8].

¹⁷ It is not an official translation.

¹⁸ Loi n° 2008-352 du 16 avril 2008 visant à renforcer la coopération transfrontalière, transnationale et interrégionale par la mise en conformité du code général des collectivités territoriales avec le règlement communautaire relatif à un groupement européen de coopération territoriale (JORF n°0093 du 19 avril 2008 pp. 6562 et s.).

3.2.2 The main changes of the *Code général des collectivités territoriales* are:

- Modification of the article L. 1115-4 of the *Code général des collectivités territoriales* in order to authorize the adhesion of territorial entities to foreign organizations.
- Modification of the article L. 1115-5 of the *Code général des collectivités territoriales*. The previous article prevented the territorial entities (collectivités territoriales) to conclude agreements with foreign states. According to the new law it is now possible but just for the creation of an EGTC19: it will be possible with a Member State of the European Union or with a Member State of the Council of Europe.
- A new article L. 1115-4-2 was also introduced in the *Code général des collectivités territoriales* in order to fix the legal provisions relating to the EGTC.

The new opportunities offered by the article L.115-5 of the CGCT are limited to the creation of an EGTC. Indeed the general interdiction for the territorial collectivities to conclude agreements with foreign states remain. This general interdiction generates problems for the collaboration between France and „micro-States” like Luxembourg or Monaco. This interdiction is based on constitutional considerations as it was explained in a study of the French Council of State (*Conseil d’Etat*) published in 2007²⁰.

3.3 The European Grouping of Territorial Cooperation in German Law

In Germany, the Bund considers the rules implemented by having nominated the component authorities for all *Länder* (regions). According to the authorities, the federal and/or regional laws contain already the necessary regulations for the implementation of the EGCT. No special provisions are foreseen for questions relating to the limitation of liability, registration/publication and task delimitation. But if necessary, further regulations could be adopted for the practical implementation of the regulation on EGTC. For the Land Bavaria the component authority is the “*Regierung der Oberpfalz*” and for the Land Baden Württemberg it is the „*Regierungspräsidium Freiburg*”. In Bavaria, this possibility is underlined in **Article 13 of the Bavarian Law on the competencies for the exe-**

¹⁹ „Aucune convention de quelque nature que ce soit, ne peut être passée entre une collectivité territoriale ou un groupement de collectivité territoriale et un Etat étranger, sauf si elle a vocation à permettre la création d’un groupement européen de coopération territoriale”.

²⁰ See Decocq Christian, *Rapport sur la proposition de loi n°2624, adoptée par le Sénat, relative à l’action extérieure des collectivités territoriales et de leurs groupements*, Rapport de l’Assemblée nationale n°3610, p.12 ; Conseil d’Etat, *Le cadre juridique de l’action extérieure des collectivités territoriales*, Les études du Conseil d’Etat, Paris, La documentation française, 2006.

cution of economic regulations (*Gesetzes über die Zuständigkeiten zum Vollzug wirtschaftsrechtlicher Vorschriften-ZustWiG²¹*):

„[...] Zuständig für den Vollzug der Verordnung (EG) Nr. 1082/2006 des Europäischen Parlaments und des Rates vom 5. Juli 2006 über den Europäischen Verbund für territoriale Zusammenarbeit - EVTZ - (ABl EU Nr. L 210 S. 19) ist die Regierung der Oberpfalz. Das Staatsministerium für Wirtschaft, Infrastruktur, Verkehr und Technologie wird ermächtigt, das Nähere zur Anwendung dieser Verordnung durch Rechtsverordnung zu regeln“.

An ordinance could be adopted by the Bavarian Ministry on Economy, Infrastructure, Transport and Technology in order to clarify the modalities for the implementation of the regulation.

3.4 The European Grouping of Territorial Cooperation in Italian Law

3.4.1 The national provisions

The provisions for the implementation of the European regulation on the EGTC are integrated in the Community Law 2008 (*Legge Comunitaria 2008*) adopted in July 2009. The **Chapter III** of this text is about the EGTC.

Article 46 is relating to the **creation and the legal nature of the EGTC**.

According to the **paragraph 2**, the **GECT whose bench is in Italia have the legal personality governed by public law** („*personalità giuridica di diritto pubblico*“). The regulation refers to the notion of body governed by public law defined in the Directive 2004/18/CE²² (Article 9, paragraph 9²³), but the Community Law 2008 (*Legge Comunitaria 2008*) does not quote this 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 the “*article 2, paragraph 1, of the legislative decree n.267/2000(decreto legislativo 18 agosto 2000, n. 267)*”

²¹ Gesetz über die Zuständigkeiten zum Vollzug wirtschaftsrechtlicher Vorschriften (ZustWiG) in der Fassung der Bekanntmachung vom 24. Januar 2005 (GVBl S. 17, BayRS 700-2-W), zuletzt geändert durch § 1 des Gesetzes vom 20. Dezember 2007 (GVBl S. 964).

²² 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, (OJ L 134, 30.4.2004, p. 114–240).

²³ A „body governed by public law“ means any body:

- (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- (b) having legal personality; and
- (c) 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 by other bodies governed by public law“.

(„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”).

According to the **fourth paragraph**, the object and the duties of the EGTC have to be laid down in a statute. It can be noticed that the minimal requirements to be laid down in the statute are more in the Italian text as in the European Regulation.

„Gli organi di un GECT avente sede in Italia, nonché le modalità di funzionamento, le rispettive competenze e il numero di rappresentanti dei membri in detti organi, sono stabiliti nello statuto. Le finalità specifiche del GECT ed i compiti ad esse connessi sono definiti dai membri del GECT nella convenzione istitutiva”.

- **Article 47** is relating to the **authorization for the creation of an EGTC**.

Different authorizations have to be given for the creation of an EGTC. There is a broad control of the State on the creation of an EGTC. The agreement of all the interested administrations has to be given for the creation of an EGTC (*„necessaria ‘conformità’ dei pareri”*). This complex procedure could be an obstacle for the creation of an EGTC.

- **Article 48** is relating to the **financial provisions concerning the EGTC**.

The Region of Lombardy adopted a regional Law before the adoption of the Community Law 2008 (*Legge comunitaria 2008*). But the President of the Council of Ministers (*Presidente del Consiglio dei ministri*) lodged a **complaint by Italian Constitutional Court** in order to be verified the constitutionality of this law²⁴. That is why the Valle d’Aosta and the Piedmont waited before adopting their law on the EGTC (there are already bills).

3.4.2 Inputs of the EGTC

The Madrid Convention on Transfrontier Cooperation among Territorial Communities, signed within the Council of Europe and which came into force on 22nd December 1981, was undersigned by Italy on the very same day of its opening, and then ratified by the **National Law n. 948/ 1984**. The first Additional Protocol to the Madrid Convention was signed by Italy on 5th December 2000; the second Additional Protocol was not signed by Italy for the time. These two instruments are then not into force in Italy. The provisions introduced by the Ratification Law n°948/1984, particularly **Articles 3 and 5**, determine that the possibility for the Regions and Local Authorities to stipulate agreements with corresponding bodies of other States is dependent upon the conclusion of bilateral agreements between States (the so-called “coverage agreement”), aiming at identifying the subjects which are eligible for such international agreements (see Article 3, paragraph 1); the agree-

²⁴Ricorso per legittimità costituzionale del 5 maggio 2009, n.30, Ricorso per questione di legittimità costituzionale depositato in cancelleria il 5 maggio 2009 (del Presidente del consiglio dei ministri).

ments stipulated by the Regions and Local Authorities are subject to preliminary approval from the State (see **Article 5**).

The possibility to take advantage of an instrument such as the EGTC is clear and leads to several benefits as compared to alternative route outlined by the Madrid Convention. First of all, the incorporation procedure was strongly simplified and, since it belongs to the field of community relations, Regions are directly charged with the task of enforcing it. In the second place, community regulations allow the participation of States in addition to regions and local authorities. Finally, one further positive aspect is the possibility to involve Third Countries (and their relevant local authorities), thus allowing to involve also other territories in the co-operation institution until their adhesion to EU.

3.5 The European Grouping of Territorial Cooperation in Slovene Law

For the implementation of the Regulation, Slovenia adopted rules on 20 March 2008: Decree on establishment of European Grouping of Territorial Cooperation (*Uredba o ustanavljanju evropskega združenja za teritorialno sodelovanje*, Ur.l. RS, št. 31/2008).

The question of the participation of third countries under the Regulation is taken into account in a particular manner in Slovenia.

3.6 The European Grouping of Territorial Cooperation in Swiss Law

Switzerland could 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 cooperation (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.

4 SWOT Analysis: the EGTC and transborder cooperation between protected areas

We will make in this paragraph a **SWOT Analysis** concerning the use of the **EGTC for improving transborder cooperation between (Alpine) protected areas**. It means that we will answer to the fourth following questions:

- What could be the advantage of such an instrument (EGTC) for the transborder cooperation between two Parks (**Strengths**)?
- What are the characteristics of this instrument which could be harmful to achieve this objective (the objective of better transborder cooperation between two parks)? (**Weakness**)
- What are the external conditions that are helpful to achieving the objective (**Opportunities**)?
- What are the external conditions which could prevent to reach this objective (**Trends**)?

The more advanced example of transborder cooperation between protected areas in the Alps is probably the one between the *Parc du Mercantour* and the *Parco Alpi Maritimi*. Indeed cooperation exists since more than 20 years. But it was several times highlighted that this cooperation needs to be institutionalized.

4.1 STRENGTHS

The regulation on the EGTC provides a **homogenous legal basis which combines community law** (for the creation and the main modalities for the creation of the EGTC) **and national law**. It creates a common **legal framework** through the Alpine EU Member States and some provisions could also be adopted in other non-EU Member States like Switzerland. The different legal instruments at the disposal of the protected areas for cooperation were an obstacle: it was for instance the case between the *Parc du Mercantour* and the *Parco Alpi Maritimi*²⁵.

The thematic scope of the EGTC is broad:

Article 1, paragraph 2, of the regulation : „*The objective of an EGTC shall be to facilitate and promote cross-border, transnational and/or interregional cooperation, hereinafter referred to as ‘terri-*

²⁵ Fodella A. (coord.), „Creazione di nuove forme di cooperazione transfrontaliera a livello sub-statale per lo sviluppo sostenibile del territorio”, in *Strumenti giuridici della cooperazione per lo sviluppo sostenibile di un’area montana transfrontaliera*, Atti del convegno del 1°giugno 2005, Eurac-Research (Ed.), pp. 69-125.

torial cooperation', between its members as set out in Article 3(1), **with the exclusive aim of strengthening economic and social cohesion**".

Article 7, paragraph 2: „An EGTC shall act within the confines of the tasks given to it, which shall be limited to the facilitation and promotion of territorial cooperation to strengthen economic and social cohesion and be determined by its members on the basis that they all fall within the competence of every member under its national law”.

The EGTC may also carry out other specific actions of territorial cooperation between its members in pursuit of the objective referred to in **Article 1, paragraph 2**, with or without a financial contribution from the Community. But it has to pursue always the aim of strengthening economic and social cohesion. See also Paragraph 11 of the Preamble of the Regulation: „An EGTC should be able to act, either for the purpose of implementing territorial cooperation programmes or projects co-financed by the Community, notably under the Structural Funds in conformity with Regulation (EC) No 1083/2006 and Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund, **or for the purpose of carrying out actions of territorial cooperation which are at the sole initiative of the Member States and their regional and local authorities with or without a financial contribution from the Community**”.

It is specified in Article 7, paragraph 3, that “[the] Member States may limit the tasks that EGTCs may carry out without a Community financial contribution. These tasks shall include at least the cooperation actions listed under Article 6 of Regulation (EC) No 1080/2006” (joint protection of natural resources and natural heritage is one of these listed tasks).

The common structure (EGTC) will have a **legal personality** and according to **Article 4, paragraph 4**, of the Regulation, „[an] EGTC shall have in each Member State the most extensive legal capacity accorded to legal persons under that Member State's national law. It may, in particular, acquire or dispose of movable and immovable property and employ staff and may be a party to legal proceedings”. Specific staff could be employed for achieving the tasks/objectives of this structure. And if necessary this structure could be party to legal proceeding and then defend common interests of the EGTC-Members. The common structure will then able to take common decisions and also common decisions as regards budget.

Through this instrument could be created a **broad partnership**: in such a partnership could be included not only regional authorities and local authorities but also bodies governed by public law and also States (see Article 3 of the Regulation)

It will be possible to institutionalize the transfrontier activities initiated through INTERREG Projects. It is very important because in the field of nature protection, the transborder cooperation goes especially through INTERREG Projects. In the Alps the Alpine Space Programmation²⁶ is impor-

²⁶ 2001-2006: „2001-2006 INTERREG IIIB Alpine Space Programme”.

2007-2013: „The Alpine Space Programme 2007-2013”. It is a part of the "European Territorial Cooperation" (Objective 3 of the Regional Policy 2007-2013).

tant but also others EU-cofounded bilateral programmes. For instance different INTERREG Projects run between the French and Italian Parks, Mercantour and Alpi Maritimi.

Concerning the cooperation between protected areas in general, we could also mention a European Project which dealt with the problematic of cooperation between protected areas: the project SISTEMaPARC (Spatial Information Systems for Transnational Environmental Management of Protected Areas and Regions in CADSES – SISTEMaPARC)²⁷. It launched between 2004 and 2006 and aimed to sustain the cooperation between protected areas. The overall, long-term objectives of the project SISTEMaPARC were:

- foster the coordinated transnational development of cross-border protected regions by improving or establishing spatial data base networks and spatial information systems, and initiate the transnational exchange of experiences and know-how,
- support transnational strategies of monitoring, planning and management of cross-border protected areas and respective regions by integration and application of spatial information systems with special regard to European initiatives of protecting natural heritage and transnational planning strategies (Natura 2000, European biodiversity corridors), etc.

4.2 WEAKNESS

The tasks of the EGTC have to remain in the competences of the entities of the EGTC. According to **Article 3, paragraph 1**, of the regulation: “An EGTC shall be made up of members, within the limits of their competences under national law [...]”.

One potential limit to the creation of an EGTC for cooperation between two parks is the taking part of this grouping to the regulations adopted in the protected areas. According to **Article 7, paragraph 3**, of the Regulation: „The tasks given to an EGTC by its members shall not concern the exercise of powers conferred by public law or of 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”. It means that a potential EGTC created for the cooperation between two Parks cannot have the competence to adopt regulations for the parks (for instance the provisions concerning the surveillance of the parks). This grouping will probably not be able to employ specific staff for the surveillance of the park although it could have been interesting for transborder activities. And this grouping cannot adopt common regulations concerning the exercise of specific activities in the park. The different regulations concerning the permitted activities in the core of the park or near the park could be problematic. Or these activities could have an impact on the other side of the border (for instance the regulation on the heliskiing in France and in Italy).

²⁷ For more information, see online on www under URL: www.tu-dresden.de/sistemaparc/project.html (17.08.2009).

The elaboration of a common management plan or others types of plans could be interesting for the cooperation between two Parks. But we have to notice that the elaboration of management plan is often regulated differently between two members States. The procedures are different. The differences could be for instance in matter of participation. The provisions as regards the elaboration of management plans are often integrated in the nature protection laws and a future EGTC will not be able to modify these provisions (if there are adopted by laws or regulations). But it is not always provisions adopted by laws or regulations. It depends on the States or on the regions.

See also Article 7, paragraph 3: *„Member States may limit the tasks that EGTCs may carry out without a Community financial contribution. However, those tasks shall include at least the cooperation actions listed under Article 6 of Regulation (EC) No 1080/2006”*.

Furthermore we have to notice that 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 a non EU-Member State, like for instance Switzerland. According to these provisions, an EGTC could not be created between Italy and Switzerland or between France and Switzerland for instance. See also **Paragraph 16 of the Preamble of the Regulation**: *„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 this instrument could be used for cooperation between Switzerland and two EU-Member States and in fact this possibility is taking into account by the grouping called “Espace Mont Blanc”²⁸.

Another limit is the need of an **agreement of the State** for the creation of an EGTC according to the procedure described in **Article 4** of the regulation on the EGTC: *„[...]the Member State concerned shall, taking into account its constitutional structure, approve the prospective member's participation in the EGTC, unless it considers that such participation is not in conformity with this Regulation or national law, including the prospective member's powers and duties, or that such participation is not justified for reasons of public interest or of public policy of that Member State. In such a case, the Member State shall give a statement of its reasons for withholding approval”*.

Questions linked to **labour Law** have to be clarified: indeed some persons coming from a given State of the Grouping could have to work in one other State of the Grouping and especially the State where the Grouping has its registered office (headquarter). According to **Article 2** of the regulation, *„[an] EGTC shall be governed by the following:*

(a) this Regulation;

²⁸ Online on www under URL: www.espace-mont-blanc.com/it/struttura-giuridica.aspx, (11 August 2009).

(b) where expressly authorised by this Regulation, the provisions of the convention and the statutes referred to in Articles 8 and 9;

(c) in the case of matters not, or only partly, regulated by this Regulation, the laws of the Member State where the EGTC has its registered office”.

One questioning could be for instance in France the assignment of a public official (“*fonctionnaire*”) in a foreign State. In fact there are specific rules concerning the work of a public official.

4.3 OPPORTUNITIES

The creation of a European Grouping for Territorial Cooperation in order to **support the transborder cooperation** between two parks **could also be a provisory measure**. The grouping can be created in order to enhance the cooperation between the two Parks and after disappear: it will then be a provisory structure.

The preservation of the biodiversity in the Alps needs transborder cooperation between the Alpine States. This is also underlined in the Alpine Convention and in the Protocol Conservation of Nature and the Countryside to the Alpine Convention. It was specified in the Alpine Convention that “[*the Contracting Parties are*] aware of the substantial differences existing between national legal systems [...]” and after in Article 12 of this Protocol that „*the] Contracting Parties shall undertake to harmonise the objectives and measures with the cross-border protected areas*”. The same need exists on the European level. The European States have to cooperate for a more efficient preservation of biodiversity and the transfrontier threats to the European biodiversity justify an action of the European Union: „*whereas given that the threatened habitats and species form part of the Community's natural heritage and the threats to them are often of a transboundary nature, it is necessary to take measures at Community level in order to conserve them*”²⁹.

4.4 TRENDS

The external conditions which could prevent efficient transborder cooperation between protected areas through the creation of a EGTC could be the adoption of complex national procedures by the Member States/States in order to implement the regulation n°1082/2006. Indeed the national procedure adopted by Italy with the Community Law 2008 (*Legge Comunitaria 2008*) seems to be

²⁹ Preamble of the Habitats Directive; Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, pp. 7–50).

complicated because the creation of an EGTC requires the agreement of several different bodies (see Article 47 of the *Legge Communitaria 2008*).

Interpretation of the notion of „general interests of the State or of other public authorities“: a broader interpretation of this notion by a State or another public authority could be problematic for the authorization concerning the creation of an EGTC

Strengths	Weakness	Opportunities	Trends
Broad thematic of the GECT	Restrictions posed by the regulation (Article 7)	Possibility to create a provisory structure	Complex implementation procedure on national level
(Broad) legal personality	At least 2 EU-Member States in an EGTC	Necessity of transborder cooperation for the preservation of biodiversity	Interpretation of the notion of “general interests of the State or of other public authorities”
Common legal framework on transborder cooperation	Agreement of the State is necessary		Repartition of the competences of the EGTC Members under national law
Broader partnership			
Institutionalization of the activities initiated with the INTERREG programmes			

Summary of the above developed points.

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CONVENTION

Comments on the application of Italian Law	Model of EGTC between two Protected Areas (2010)	Example of the EGTC “Euroregion Alps-Mediterranean” (2009)	Comments on the application of French Law
<p>Regolamento Comunitario No 1082 /2006, art, 12.2 par 5 “<i>La denominazione di un GECT i cui membri hanno responsabilità limitata include la locuzione «a responsabilità limitata»</i>”.</p> <p>Saranno potenziali membri del GECT lo Stato, le regioni e le province autonome di Trento e di Bolzano e gli enti locali (i comuni, le province, le città metropolitane, le comunità montane, le comunità isolate e le unioni di comuni).</p> <p>Legge Comunitaria 2008 prevede che “<i>Possono essere membri di un GECT i soggetti di cui all’articolo 3, paragrafo 1, del citato regolamento (CE) n. 1082/2006. Ai fini della costituzione o partecipazione ad un GECT, per «autorità regionali» e «autorità locali» di cui all’articolo 3, paragrafo 1, del citato regolamento, si intendono rispettivamente le regioni e le province autonome di Trento e di Bolzano e gli enti locali di cui all’articolo 2, comma 1, del testo unico delle leggi sull’ordinamento degli enti locali, di cui al decreto legislativo 18 agosto 2000, n. 267.</i>”</p> <p>Decreto legislativo 18 agosto 2000, n. 267. Art. 2. 1. “<i>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.</i>”</p>	<p><u>Articolo 1 – Costituzione e composizione</u> E costituito un Gruppo Europeo di Cooperazione Territoriale (GECT) dotato di personalità giuridica. Il GECT si compone di ... membri: ...</p>	<p><u>Article 2 – Liste des membres</u> Sont membres du GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » :</p> <ul style="list-style-type: none"> - la Région Ligurie, - la Région Piémont, - la Région Provence-Alpes-Côte d’Azur, - la Région Rhône-Alpes, - la Région Autonome de la Vallée d’Aoste. 	<p>L’adhésion d’une entité d’un pays non-membre de l’UE au GECT pourrait être envisageable au regard de la loi française ayant procédé à la mise en œuvre du règlement (CE) n° 1082/2006 (loi n° 2008-352 du 16 avril 2008). L’article L. 1115-4-2 du CGCT résultant de cette loi prévoit en effet que les collectivités territoriales peuvent créer un GECT notamment « <i>avec les Etats frontaliers membres du Conseil de l’Europe</i> », parmi lesquels figure ... (membre du Conseil de l’Europe depuis ...). Toutefois, il reste à s’assurer que la réglementation ... l’autorise ou qu’il existe un accord entre la France, l’Italie et ... permettant la participation de ...¹.</p>

* This model was initially developed within the Working Table “Italian Ministry for the Environment, Piedmont Region and Alpi Marittime Park”, with the participation of the French Ministry for Ecology and the Mercantour National Park and with the support of Monaco and the assistance of the European Academy of Bolzano (EURAC). This table was further developed in the frame work of the ECONNECT project.

¹ Cf. Rapport du 26 mars 2008, fait au nom de la commission des Lois constitutionnelles, de législation, du suffrage universel, du Règlement et d’administration générale par Madame Catherine TROENDLE, Sénateur : « *Ces dispositions doivent notamment permettre à des collectivités territoriales françaises du sud de la France et à leurs groupements de créer un groupement européen de coopération territoriale avec Monaco. Toutefois, comme l’a souligné en séance publique Mme Michèle Alliot-Marie, ministre de l’intérieur, de l’outre-mer et des collectivités territoriales, le droit interne des Etats membres du Conseil de l’Europe, en l’occurrence Monaco, devra être préalablement adapté pour intégrer ce nouveau statut. En outre, le groupement européen de coopération territoriale devra comprendre des collectivités territoriales ou des groupements de collectivités territoriales d’au moins un autre Etat membre de l’Union européenne que la France, en l’espèce l’Italie.* »

<p>La disciplina dei GECT prevista dal testo della legge comunitaria 2008 presenta delle caratteristiche, per alcuni versi, innovativi per l'ordinamento italiano.</p> <p>A differenza della legge francese di attuazione del regolamento comunitario, il la legge italiana di attuazione non rende obbligatoria la formazione di una specifica forma di cooperazione (syndicats mixtes ouverts) bensì si limita a definire la natura del GECT come di diritto pubblico e a recepire quanto contenuto nel regolamento comunitario (vedi Legge n. 88 del 7 luglio 2009 (cd. Legge Comunitaria 2008), Capo III, artt 46-48).</p> <p><i>“I GECT aventi sede in Italia sono dotati di personalità giuridica di diritto pubblico.(...)”</i></p> <p>La forma organizzativa è lasciata alla discrezione dei membri del costituendo GECT, fatti salvi i requisiti posti per ricevere l'autorizzazione statale.</p> <p>Nonostante sia riscontrabile un discreto livello di flessibilità nell'adozione della forma organizzativa, si possono trovare già nell'ordinamento italiano in vigore forme di cooperazione tra enti pubblici territoriali a vario livello e li si esporrà sinteticamente di seguito.</p> <p><i>Il GECT visto come consorzio tra regioni.</i></p> <p>La possibilità di consorzi tra diverse regioni nell'esercizio delle loro competenze non sembra avere precedenti nell'ordinamento italiano. L'approvazione definitiva del disegno di legge licenziato dal Senato introdurrebbe una nuova modalità di cooperazione non solo perché regioni di Stati diversi si troverebbero a collaborare ma anche perché diverse regioni italiane potrebbero cooperare nell'ambito delle rispettive competenze.</p> <p>Esistono già diversi metodi di coordinamento tra le varie articolazioni statali come indicato dal <i>decreto legislativo 267/2000</i>, che possono essere utilizzate da esempio nell'organizzazione del costituendo GECT. L' Accordo di Programma previsto dal <i>decreto legislativo 267/2000, art.34</i> si incentra principalmente sulla realizzazione di opere pubbliche. È da verificare se la gestione di un ente di gestione di un'area naturale possa rientrare nel concetto di opera pubblica come delineato dall'ordinamento giuridico italiano. Nella definizione dei soggetti che possono partecipare all'accordo di programma rientrano, tra l'altro, regioni, province e comuni</p> <p>Il Consorzio tra Enti locali, invece, previsto anch'esso dal <i>decreto legislativo 267/2000 art 31</i>, costituiti <i>“per l'esercizio associato di funzioni”</i> potrebbe fornire qualche spunto per risolvere le esigenze organizzative poste dalla costituzione di un GECT.</p> <p>Art. 31 <i>“Gli enti locali per la gestione associata di uno o più servizi e l'esercizio associato di funzioni possono costituire un consorzio secondo le norme previste per le aziende speciali (...)”</i></p> <p>La norma richiede per la costituzione del consorzio la stipula tra gli enti di una Convenzione (art .30) e di uno Statuto che ne regola il funzionamento. Per la definizione della struttura di un consorzio tra enti locali l'art 31 fa riferimento alle norme previste per le “aziende speciali” (<i>decreto legislativo 267/2000 art 114</i>) <i>“in quanto compatibili?”</i> (occorre verificare come, in concreto, questi consorzi si sono strutturati e come si sono differenziati dalle aziende speciali, che occorre ricordarlo, sono enti strumentali e quindi con un' autonomia decisionale ridotta).</p> <p>Art.30.1. <i>“Al fine di svolgere in modo coordinato funzioni e servizi determinati, gli enti locali possono stipulare tra loro apposite convenzioni.(...)”</i></p> <p>Tuttavia, nel Consorzio tra Enti locali il testo della norma fa riferimento a Province e Comuni mentre non si applica alle Regioni <i>“se incompatibili con le attribuzioni previste dagli statuti e dalle relative norme di attuazione.”(art.1,comma 2).</i></p>	<p>Articolo 2 - Denominazione e sede</p> <p>La denominazione del Gruppo Europeo di Cooperazione Territoriale così costituito è la seguente:</p> <p>(...), qui di seguito designato come « il Gruppo ».</p> <p>La sede sociale del Gruppo è stabilita al seguente indirizzo: (...)</p> <p>La sede potrà essere trasferita con decisione dell'Assemblea del Gruppo in altro luogo dello stesso territorio nazionale.</p> <p>Potranno essere successivamente istituite sedi operative scientifiche o/e didattiche.</p>	<p>Article 1 – Nom</p> <p>Il est créé un GECT dénommé « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo »</p> <p>Article 3 – Lieu du siège</p> <p>Le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » a son siège en France.</p> <p>Article 4 – Bureau de représentation</p> <p>Le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » dispose d'un bureau de représentation à Bruxelles.</p>	<p>Les GECT dont le siège est en France ont le statut de syndicats mixtes ouverts. Ils sont régis par le titre II du livre VII de la cinquième partie du CGCT (ie articles L. 5721-1 à L. 5722-9).</p> <p>Les syndicats mixtes ouverts présentent l'avantage de permettre à leurs membres de disposer d'une assez grande liberté pour fixer les règles qu'ils souhaitent. En contrepartie, ils laissent également la place à un certain flou (et donc à une insécurité juridique) dès lors qu'un point n'a pas été précisé dans les textes constitutifs.</p> <p>Quelques conséquences du statut de syndicat mixte ouvert :</p> <ul style="list-style-type: none"> - contrôle de légalité des actes du GECT = effectué dans les mêmes conditions que le contrôle des actes des CT et de leurs groupements ; - comptable = comptable public soumis aux mêmes dispositions que les comptables des CT ; - contrôle budgétaire = assuré par la CRC (art. L. 5721-4 CGCT) ; - toute personne pourra demander communication des procès-verbaux, des budgets et des comptes (art. L. 5721-6 du CGCT). <p>Risques : il semblerait nécessaire d'être plus précis dans la désignation de la situation géographique du siège du GECT.</p> <p>Prévoir éventuellement la possibilité de transférer le siège en un autre endroit du même territoire national ? Si oui, en préciser les modalités dans les statuts.</p>
<p>Art 131 e 132 Cost.</p> <p>Verificare se esiste normativa che definisce nei particolari i confini regionali.</p>	<p>Articolo 3 – Territorio</p> <p>Il Gruppo svolge i propri compiti sul territorio del (...), vale a dire su ventidue comuni nelle (...): (elenco dei comuni interessati).</p> <p>Il Gruppo può inoltre realizzare azioni sul territorio dei comuni vicini al suo territorio, previo accordo dei comuni interessati.</p>	<p>Article 5 – Territoire</p> <p>L'étendue du territoire sur lequel le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » peut exécuter ses missions est celui de ses membres.</p>	<p>Est-ce suffisamment précis ?</p> <p>Prévoir en annexe une carte de la zone couverte.</p>

<p>Il disegno di legge si limita ad indicare quale fine del GECT quello della cooperazione per rafforzare la coesione economica e sociale, espressamente indicando che il GECT non ha fini di lucro.</p> <p>Per la Legge Comunitaria 2008, i GECT: <i>“(...)perseguono l’obiettivo di facilitare e promuovere la cooperazione transfrontaliera, transnazionale o interregionale al fine esclusivo di rafforzare la coesione economica e sociale e comunque senza fini di lucro.”</i></p> <p><i>(...)“ In aggiunta ai compiti di cui al comma 4, al GECT può essere affidata la realizzazione anche di altre azioni specifiche di cooperazione territoriale, purché coerenti con il fine di rafforzare la coesione economica e sociale, nonché nel rispetto degli impegni internazionali dello Stato.”</i></p> <p>Per la Legge Comunitaria 2008: <i>“Le finalità specifiche del GECT ed i compiti ad esse connessi sono definiti dai membri del GECT nella convenzione istitutiva. Fermo restando quanto stabilito dall’articolo 7, paragrafi 1, 2, 4 e 5, del citato regolamento (CE) n. 1082/2006 i membri possono in particolare affidare al GECT:</i></p> <p><i>a) il ruolo di Autorità di gestione, l’esercizio dei compiti del segretariato tecnico congiunto, la promozione e l’attuazione di operazioni nell’ambito dei programmi operativi cofinanziati dai fondi strutturali comunitarie riconducibili all’obiettivo «Cooperazione territoriale europea», nonché la promozione e l’attuazione di azioni di cooperazione interregionale inserite nell’ambito degli altri programmi operativi cofinanziati dai fondi strutturali comunitari;</i></p> <p><i>b) la promozione e l’attuazione di operazioni inserite nell’ambito di programmi e progetti finanziati dal Fondo per le aree sottoutilizzate di cui all’articolo 61 della legge 27 dicembre 2002, n. 289, in attuazione del quadro strategico nazionale 2007-2013, purché tali operazioni siano coerenti con le priorità elencate dall’articolo 6 del citato regolamento(CE) n. 080/2006 e contribuiscano, mediante interventi congiunti con altre regioni europee, a raggiungere più efficacemente gli obiettivi stabiliti per tali programmi o progetti, con benefici per i territori nazionali.”</i></p>	<p>Articolo 4 - Oggetto, compiti</p> <p>Il Gruppo ha come oggetto la facilitazione, promozione e animazione della cooperazione transfrontaliera tra i suoi membri sul territorio definito all’articolo 4. Costituisce l’assise giuridica di tale cooperazione e ne rafforza la continuità nel tempo.</p> <p>A questo titolo, il Gruppo guida progetti nell’ambito di competenza dei suoi membri e in particolare delle relative leggi istitutive del (...). Tali azioni consolidano l’identità transfrontaliera del territorio interessato.</p> <p>Potrà altresì ricercare vari tipi di finanziamento pubblico e privato ed in particolare finanziamenti comunitari ed attuare i programmi così cofinanziati.</p> <p>Il Gruppo facilita le connessioni territoriali e funzionali tra gli attori territoriali per promuovere i valori dello sviluppo sostenibile e le loro attuazioni.</p> <p>E’ abilitato a realizzare interventi o ad essere committente per interventi relativi al patrimonio naturale, culturale e paesaggistico sul territorio definito all’articolo 4.</p> <p>Promuove l’iscrizione di un bene comune al (...) e al (...) sulla lista del Patrimonio Mondiale dell’Umanità, sotto l’egida dell’Unesco. Attua ogni azione idonea a pervenire all’iscrizione di tale bene e può essere designato come istituzione garante della gestione, sorveglianza e conservazione dei beni del patrimonio mondiale e realizzare ogni azione per lo svolgimento di tale ruolo, in particolare per la stesura dei rapporti periodici sullo stato del bene iscritto.</p>	<p>Article 6 – Objectifs</p> <p>Le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » permet à ses membres :</p> <ol style="list-style-type: none"> 1) de renforcer les liens politiques, économiques, sociaux et culturels entre leurs populations respectives, 2) d’œuvrer en faveur du développement du territoire de l’Eurorégion Alpes Méditerranée en apportant notamment une attention particulière aux domaines de coopération suivants : <ul style="list-style-type: none"> - développement économique et emploi, - innovation et recherche, - environnement, développement durable, prévention des risques naturels, - accessibilité et transports - tourisme et culture, - éducation et formation, - et à tout autre domaine de coopération entrant dans les domaines de compétences communs de ses membres. 3) de favoriser, pour la mise en œuvre des actions de l’Eurorégion, une plus grande concertation dans la participation commune aux programmes de coopération territoriale européenne et aux autres programmes thématiques de l’Union européenne ; 4) de réaliser d’autres actions spécifiques de coopération couvrant les domaines de coopération communs cités en 2. et bénéficiant ou non d’une contribution financière communautaire. 5) de faire valoir les intérêts de l’Eurorégion Alpes-Méditerranée auprès des institutions communautaires et nationales. <p>Article 7 – Missions</p> <p>Pour atteindre son objectif, le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » mettra en œuvre les missions suivantes :</p> <ol style="list-style-type: none"> 1) promotion, définition et mise en œuvre de projets de coopération territoriale dans les domaines communs de compétences de ses membres, avec ou sans contribution financière communautaire, 2) promotion des intérêts de l’Eurorégion vis-à-vis des Etats et des institutions européennes, 3) recherche et gestion des moyens de financement disponibles pour réaliser ses objectifs, 4) adhésion à tout organisme, association et réseau en lien avec les objectifs du GECT dans le respect du droit interne le régissant et du droit interne de chacun de ses membres, 5) gestion de programme opérationnels dédiés à la coopération territoriale européenne dans les conditions fixées par le droit communautaire, le droit interne qui le régit et le droit interne qui régit chacun de ses membres, 6) engagement de toute autre action contribuant à la réalisation de ses objectifs, dans le respect des dispositions du droit communautaire, du droit interne qui le régit, ainsi que du droit interne qui régit chacun de ses membres. 	
	<p>Articolo 7 – Modalità idonee per il reciproco riconoscimento (...)</p>	<p>Article 10 – Reconnaissance mutuelle</p> <p>§1 Comme prévu à l’article 6 du règlement communautaire 1082/2006 relatif au GECT, le contrôle de la gestion des fonds publics par le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » est assuré par les autorités compétentes de l’Etat membre où le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » a son siège.</p> <p>§2 L’Etat membre où le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » a son siège désigne l’autorité compétente pour cette tâche avant d’approuver la participation au GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » comme prévu à l’article 4 du règlement 1082/2006 relatif au GECT.</p>	<p>S’agit-il vraiment d’une clause de reconnaissance mutuelle ?</p> <p>Même si l’autorité effectuant le contrôle relève de la France, les règles applicables varieront selon la nature des fonds concernés :</p> <ul style="list-style-type: none"> - pour les fonds nationaux ou locaux (y compris les contributions des Membres) : application des règles nationales, selon les normes d’audit reconnues sur le plan international. L’article 6, §2 du Règlement GECT permet également aux autres Etats Membres, si leur législation nationale le prévoit, de participer aux contrôles en contrôlant les actes du GECT exécutés sur leur territoire et en informant l’autorité de contrôle principale (celle du siège du GECT) de ces contrôles ; - si le GECT reçoit des fonds communautaires, leur utilisation reste soumise aux règles communautaires d’éligibilité et, le cas échéant, aux règles françaises d’éligibilité. Si le GECT est chargé d’un programme de coopération territoriale, il gèrera le budget d’assistance technique dudit programme conformément aux règles nationales et communautaires applicables.

<p>In caso di GECT a durata limitata si applicherebbe il Legge Comunitaria 2008 art 41.3 <i>“Le modifiche alla convenzione e allo statuto del GECT sono altresì iscritte nel Registro, secondo le modalità ed entro gli stessi termini previsti nei commi 1 e 2. Di esse va data altresì comunicazione con pubblicazione, per estratto, nella Gazzetta Ufficiale della Repubblica italiana e nella Gazzetta Ufficiale dell’Unione europea.(...)”</i></p>	<p><u>Articolo 5 – Durata e modalità di scioglimento</u> Il Gruppo è costituito con durata illimitata. Potrà essere sciolto con decisione unanime dei membri o su richiesta di un’ autorità competente che abbia un legittimo interesse conformemente all’ articolo 14 del regolamento CE n° 1082/2006.</p>	<p><u>Article 8 – Durée</u> Le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » a une durée illimitée.</p>	<p>Si une durée déterminée devait être retenue, il conviendrait de prévoir des modalités de prorogation, sur proposition de l’Assemblée et avec l’ accord des Membres à l’ unanimité.</p>
	<p><u>Articolo 6 – Diritto applicabile</u> Al Gruppo si applica il citato regolamento (CE) n° 1082/2006 a titolo principale, la presente convenzione, lo statuto ed il regolamento interno che potrà essere adottato dall’ Assemblea dei membri. Alla presente convenzione si dà interpretazione e attuazione secondo il diritto francese. Il controllo amministrativo, contabile e finanziario del Gruppo si espleta conformemente alle disposizioni del diritto francese. Le autorità incaricate del controllo in Francia sono tenute ad informare dei propri adempimenti le omologhe autorità italiane.</p>	<p><u>Article 9 – Droit applicable à l’interprétation et à l’application de la convention</u> Le droit applicable est le droit français, comme prévu à l’ article 8.2 e) du règlement communautaire 1082/2006 relatif au GECT.</p>	
	<p><u>Articolo 10- Entrata in vigore e notifica</u> La presente convenzione entra in vigore nel momento in cui il GECT (...) acquisisce la personalità giuridica, vale a dire il giorno della pubblicazione dello statuto al termine della procedura descritta all’ articolo 4 del regolamento CE n° 1082/2006. I membri informano gli Stati membri nonché il Comitato delle Regioni della presente convenzione.</p>		
<p>Per la Legge Comunitaria 2008 <i>“Le modifiche alla convenzione e allo statuto del GECT sono altresì iscritte nel Registro, secondo le modalità ed entro gli stessi termini previsti nei commi 1 e 2. Di esse va data altresì comunicazione con pubblicazione, per estratto, nella Gazzetta Ufficiale della Repubblica italiana e nella Gazzetta Ufficiale dell’Unione europea.(...)”</i></p>	<p><u>Articolo 8 – Procedura di modifica della convenzione</u> La presente convenzione può essere modificata nel rispetto degli articoli 4 e 5 del regolamento 1082/2006 del Parlamento europeo e del Consiglio relativo a un gruppo europeo di cooperazione territoriale, su proposta di uno dei suoi membri e con decisione unanime dei membri.</p>	<p><u>Article 11 – Procédure de modification de la convention</u> <u>Article 11.1 – Règle générale</u> §1 La convention est modifiée après décision à l’ unanimité des cinq représentants des membres composant l’Assemblée du groupement. §2 Le règlement communautaire 1082/2006 prévoit que toute modification de la convention doit être approuvée par les Etat membres.</p>	
<p>Vd. Procedura di modifica della Convenzione e dello Statuto. Legge Comunitaria 2008.</p>		<p><u>Article 11.2 – Admission d’ un membre</u> §1 L’Assemblée décide de l’ admission de nouveaux membres à l’ unanimité des cinq représentants des membres composant l’Assemblée du groupement. §2 L’ admission d’ un membre se fait sur demande écrite adressée au Président du groupement par lettre recommandée avec accusé de réception. §3 L’ admission modifie la convention et les statuts pour tenir compte de l’ admission de ce nouveau membre, comme prévu par le règlement communautaire 1082/2006.</p>	<p>Le détail des procédures d’ admission et de retrait relèverait davantage des statuts que de la convention. La convention pourrait donc renvoyer aux statuts pour la procédure à suivre.</p>

		<p><u>Article 11.3 – Retrait d’un membre</u> §1 Le membre souhaitant se retirer du groupement : - peut le faire uniquement à la fin de l’exercice budgétaire - en informe le comité de pilotage 6 mois avant la fin de l’exercice budgétaire par lettre recommandée avec accusé de réception. §2 Les membres engageant leur responsabilité après avoir cessé d’être membres du GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » pour des actions découlant d’activités du groupement réalisées alors qu’ils en étaient membres, comme prévu par l’article 12.2 du règlement communautaire 1082/2006. §3 Le membre qui quitte le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » doit apurer ses dettes au regard de ses engagements financiers antérieurs dans le financement du GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo ». §4 L’Assemblée modifie la convention et les statuts pour tenir compte de ce retrait, comme prévu par le règlement communautaire 1082/2006.</p>	
<p>La juridiction du Tribunale Amministrativo Regionale competente dipende dalla regione italiana in cui avrebbe sede il GECT. <i>Legge 6 dicembre 1971 n.1034 e successive modifiche, che istituisce i Tribunali Amministrativi Regionali.</i> Art.1 par 2 “<i>Sono istituiti tribunali amministrativi regionali, quali organi di giustizia amministrativa di primo grado.</i> <i>Le loro circoscrizioni sono regionali e comprendono le province facenti parte delle singole regioni. Esse hanno sede nei capoluoghi di regione.</i>” Art. 2. “<i>Il tribunale amministrativo regionale decide:</i> (...)” <i>B) sui ricorsi per incompetenza, per eccesso di potere o per violazione di legge contro atti e provvedimenti emessi:</i> 1) <i>dagli organi periferici dello stato e degli enti pubblici a carattere ultraregionale, aventi sede nella circoscrizione del tribunale amministrativo regionale;</i> 2) <i>dagli enti pubblici non territoriali aventi sede nella circoscrizione del tribunale amministrativo regionale e che esclusivamente nei limiti della medesima esercitano la loro attività;</i> 3) <i>dagli enti pubblici territoriali compresi nella circoscrizione del tribunale amministrativo regionale.</i>”</p>	<p><u>Articolo 9 – Competenza giurisdizionale e controversie</u> Conformemente all’articolo 15 del regolamento CE n° 1082/2006., per le controversie si applica il diritto francese. In tutti i casi non previsti dal diritto comunitario, ogni controversia che non abbia trovato una soluzione -----, sarà portata davanti alla competente giurisdizione francese.</p>	<p><u>Article 12 – Litige</u> Les litiges résultant de l’application de cette convention relèvent du tribunal administratif du lieu du siège du GECT.</p>	<ul style="list-style-type: none"> - Inclure les différends qui pourraient résulter de l’interprétation de la convention ; - Prévoir une procédure de règlement amiable préalable à la phase contentieuse ; - Préférer une formulation plus générale prévoyant la compétence des juridictions françaises compétentes.
		<p><u>Article 13 – Conditions de dissolution</u> §1 Le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » est dissous après décision à l’unanimité des cinq représentants des membres composant l’Assemblée du groupement.</p>	<p>Quand la dissolution prendrait-elle effet ? Renvoyer aux statuts sur ce point. Préciser la forme prise par la dissolution (arrêté du représentant de l’Etat français).</p>
		<p>§2 En ce qui concerne la liquidation, le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » est soumis à la législation de l’Etat membre dans lequel il a son siège, comme prévu à l’article 12 du règlement communautaire 1082/2006 relative au GECT.</p>	

<p>L'articolo 14 del Regolamento 1082/2006 prevede la dissoluzione del GECT in caso un'autorità competente con un interesse legittimo, che sia una corte o autorità competente dello Stato Membro dove il GECT ha sede rilevi l'avvenuta violazione dei requisiti posti dall'art. 1 comma 2 e art 7 del Regolamento Comunitario. Si rammenta che il Legge Comunitaria 2008 prevede che <i>“L'autorizzazione e` revocata nei casi previsti dall'articolo 13 del regolamento (CE) n.1082/2006 del Parlamento europeo e del Consiglio, del 5 luglio 2006”</i>. La convenzione stessa del GECT può contenere disposizioni circa la dissoluzione del GECT.</p>		<p>§3 Un GECT de droit français peut être dissous par décret motivé pris en conseil des ministres et publié au Journal officiel, comme prévu par le code général des collectivités territoriales.</p>	<p>La procédure de dissolution du §3 est prévue à l'article L. 1115-4-2, al. 3 du CGCT. Il n'est précisé, ni dans le CGCT, ni dans la convention Eurorégion, que cette procédure ne vaut qu'en cas de mise en œuvre de l'article 14 du règlement (CE) n° 1082/2006², ie uniquement lorsqu'il est constaté que l'activité du GECT n'est pas conforme à son objet ou à ses missions. Toutefois, le verbe « <i>pouvoir</i> » utilisé dans cette disposition tend à souligner que cette procédure n'est pas applicable à toute dissolution. De plus, les rapports parlementaires relatifs à la proposition de loi ayant abouti à la loi n° 2008-352 semblent limiter la procédure décrite à l'article L. 1115-4-2, al. 3 du CGCT aux cas de dissolutions dues au non respect de l'objet ou des missions (à confirmer).</p>
<p>Se la forma scelta segue il modello del consorzio tra enti locali le condizioni di liquidazione saranno conseguenti.</p>		<p>§4 La décision de dissolution fixe les conditions de liquidation dans le respect du code général des collectivités territoriales.</p>	<p>Préciser la forme prise par la dissolution (arrêté du représentant de l'Etat français) ?</p>

TRANSLATE

² Selon l'article 14 du règlement (CE) n° 1082/2006 : « *nonobstant les dispositions sur la dissolution figurant dans la convention, sur demande d'une autorité compétente ayant un intérêt légitime, la juridiction ou l'autorité compétente de l'État membre où le GECT a son siège ordonne la dissolution du GECT lorsqu'elle constate que le GECT ne respecte plus les exigences prévues à l'article 1er, paragraphe 2, ou à l'article 7, ou, en particulier, que le GECT agit en dehors des tâches définies à l'article 7.* », étant précisé que « *la juridiction ou l'autorité compétente peut accorder un délai au GECT pour rectifier la situation* », mais que « *si le GECT échoue dans le délai imparti, la juridiction ou l'autorité compétente ordonne sa dissolution* ».

STATUTES³

Situation in Italy	Model of EGTC between two Protected Areas	Example of the EGTC “Euroregion Alps-Mediterranean”	Situation in France
<p>Prendendo come esempio il funzionamento di un Consorzio tra Enti Locali come descritto dal D.Lgs 267/2000 è possibile descrivere la struttura del consorzio nei seguenti termini:</p> <ul style="list-style-type: none"> • Ai fini dell’attuazione del consorzio, i Consigli degli enti locali interessati approvano a maggioranza assoluta dei componenti una <u>convenzione</u>, ai sensi dell’articolo 30, unitamente allo <u>statuto</u> del consorzio (art. 31, comma 2, d.lgs. 267/2000). • L’<u>assemblea</u> del consorzio è composta dai rappresentanti degli enti locali associati (Sindaci e Presidenti o loro delegati) (art. 31 comma 4). L’assemblea elegge il <u>consiglio di amministrazione</u> del consorzio (art. 31 comma 5). <p><i>Quindi, tipici organi del consorzio fra enti, sono:</i></p> <ol style="list-style-type: none"> 1) <i>l’assemblea;</i> 2) <i>il consiglio di amministrazione.</i> <ul style="list-style-type: none"> • Per quanto riguarda il funzionamento, ai consorzi tra enti locali si applicano le norme previste per le <u>aziende speciali</u>, in quanto compatibili. <p><i>Da ciò discende che il consorzio, se disciplinato come un’azienda speciale, avrà i seguenti organi:</i></p> <ol style="list-style-type: none"> 1) <i>l’assemblea;</i> 2) <i>il consiglio di amministrazione;</i> 3) <i>il presidente;</i> 4) <i>il direttore (art. 114, comma, 3 d.lgs. 267/2000).</i> <ul style="list-style-type: none"> • Dal punto di vista delle norme applicabili, il Testo Unico individua due tipologie di consorzio a seconda del tipo di attività svolta: <ol style="list-style-type: none"> 1) i consorzi che gestiscono <u>attività aventi rilevanza economica e imprenditoriale</u> sono regolamentati dalle norme previste per le aziende speciali; (art. 31 comma 8 D. lgs 267/2000). 2) i consorzi creati per la gestione dei <u>servizi sociali</u> sono disciplinati dalle norme previste per le aziende speciali, solo se stabilito nello statuto. (art.31 comma 8). 	<p>Articolo 10 - Organi Il Gruppo dispone dei seguenti organi:</p> <ul style="list-style-type: none"> • Un’Assemblea • Un Presidente • Un Direttore <p>Su richiesta dell’Assemblea, potranno essere costituite commissioni tecniche o gruppi di lavoro.</p>	<p>Article 16 – Organes §1 Comme prévu à l’article 10 paragraphe 1 du règlement communautaire 1082/2006 relatif au GECT, un GECT dispose au moins des organes suivants :</p> <ol style="list-style-type: none"> a) une assemblée constituée par les représentants de ses membres, b) un directeur, qui représente le GECT et agit au nom et pour le compte de celui-ci. <p>§2 Le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » dispose des organes suivants :</p> <ol style="list-style-type: none"> a) Une Assemblée constituée par les représentants de ses membres, b) Un Président qui exerce les fonctions de directeur au sens de l’article 10.1 b du règlement communautaire relatif au GECT, c) Un comité de pilotage. 	
<p>Una soluzione paragonabile ai syndicats mixtes ouverts nell’ordinamento italiano può essere quella dei Consorzio tra Enti locali, previsto dal <i>decreto legislativo 267/2000 art 31</i>, costituiti “<i>per l’esercizio associato di funzioni</i>” La norma richiede per la costituzione del consorzio la stipula tra gli enti di una Convenzione (art .30) e di uno Statuto che ne regola il funzionamento. Per la definizione della struttura di un consorzio tra enti locali <i>l’art 31</i> da riferimento alle norme previste per le “aziende speciali” (<i>decreto legislativo 267/2000 art 114</i>) “<i>in quanto compatibili</i>”</p>	<p>Articolo 11 – Assemblea L’Assemblea rappresenta l’insieme dei membri del Gruppo. Ogni membro designa 3 rappresentanti. Il Presidente del consiglio di amministrazione dell’ente pubblico del (...) e il presidente del Consiglio direttivo dell’ente pubblico del (...) ne fanno parte di diritto Ogni rappresentante deve disporre di un mandato valido. La designazione ed il mandato dei rappresentanti dei membri del Gruppo in seno all’Assemblea sono disposti da ognuno dei membri. Il numero dei rappresentanti è fissato a 6. Tale numero può essere modificato dall’Assemblea con voto a maggioranza assoluta. Il mandato ha una durata di 3 anni. I membri dell’assemblea esercitano le loro funzioni senza percepire retribuzione. Le modalità di rimborso delle spese di trasferta sono precisate dal regolamento interno del Gruppo.</p>	<p>Article 17 – Assemblée L’Assemblée est l’organe délibérant du GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo ».</p> <p>Article 17.1 – Composition §1 L’Assemblée est constituée par les représentants des membres du GECT, comme prévu à l’article 10.1 a) du règlement communautaire 1082/2006 relatif au GECT. §2 Chaque membre est représenté par son Président. §3 Chaque membre désigne un suppléant du Président dans le respect de son droit interne. §4 En cas d’empêchement du Président, chaque membre est représenté par le suppléant du Président. §5 Chaque représentant dispose d’une voix.</p>	<p>Prévoir une durée pour le mandat des délégués ? En droit français, en l’absence de précision dans les statuts, dans un syndicat mixte ouvert, le mandat des délégués prend fin lors du renouvellement du comité syndical à la suite des élections municipales. Mais cette règle est difficilement transposable à un GECT...</p>

³ Il sembrerebbe preferibile di fare 2 documenti veramente distinti, piuttosto che di fare dei statuti una suite della convenzione. In effetti, il regolamento comunitario distingue bene 2 documenti e certi elementi che devono figurare nella convenzione devono anche figurare negli statuti.

	<p><u>Articolo 12 – Compiti dell’Assemblea</u> L’Assemblea è il principale organo del Gruppo. Essa delibera:</p> <ol style="list-style-type: none"> 1. la strategia generale del Gruppo 2. il bilancio annuale dell’esercizio successivo che comporta una parte di funzionamento ed eventualmente una componente operativa 3. il conto economico e il rendiconto finanziario dell’esercizio precedente 4. la relazione sulle attività 5. il programma delle attività 6. la modifica dello statuto 7. il regolamento interno del Gruppo <p>L’Assemblea elaborerà ed approverà un regolamento interno.</p>	<p><u>Article 17.3 – Compétences</u> §1 Chaque année, l’Assemblée :</p> <ol style="list-style-type: none"> 1) établit les lignes d’intervention prioritaires nécessaires pour la définition du programme de travail annuel qui devra être ensuite préparé par le secrétaire exécutif, 2) adopte le programme de travail annuel préparé par le secrétaire exécutif, 3) fixe le montant des contributions financières des membres, conformément à l’article 17.2 des présents statuts, 4) adopte le budget annuel, conformément à l’article 11.1 du règlement communautaire 1082/2006 relatif au GECT et aux dispositions du code général des collectivités territoriales, 5) délibère sur le compte administratif et le bilan comptable présenté chaque année par le Président, conformément à l’article 17.2 des présents statuts, 6) désigne le Président et le Vice-Président parmi ses membres conformément aux dispositions de l’article 18.1 des présents statuts, 7) prend les décisions nécessaires au fonctionnement du groupement en dehors des attributions du Président. <p>§2 Si besoin, l’Assemblée :</p> <ol style="list-style-type: none"> 1) valide le profil de poste du secrétaire exécutif et décide du choix du secrétaire exécutif et de sa révocation, 2) valide le profil des autres postes et le choix du personnel, sur proposition du secrétaire exécutif dès qu’il est nommé, 3) valide l’organigramme où la représentation des deux Etats membres est assurée, 4) approuve les conventions et contrats à passer par le GECT et autorise le Président du GECT à signer ces conventions et contrats, 5) peut déléguer au Président la signature des conventions et des contrats passés par le groupement dont le montant est inférieur à 90 000 euros hors taxe, 6) décide de la modification de la convention et des statuts conformément à l’article 17.2 des présents statuts, 7) adopte et modifie le règlement intérieur, 8) approuve le recours à l’emprunt et les modalités de remboursement, conformément à l’article 17.2 des présents statuts et autorise le Président à signer l’emprunt, 9) met en place une commission d’appel d’offres conformément à l’article 28 des présents statuts, 10) met en place une commission pour la sélection du personnel où la représentation des deux Etats membres est assurée, 11) définit les modalités d’association à titre consultatif des catégories suivantes : 12) organise une ou des réunions thématiques des Vice-Présidents des régions françaises et des Adjointes au Président des régions italiennes, 13) peut déléguer au Président la représentation du groupement en justice dans les conditions qu’elle détermine, 14) décide de la dissolution du groupement conformément à l’article 17.2 des présents statuts. 	<p>Ne faut-il pas prévoir une compétence générale pour l’Assemblée de sorte qu’elle puisse toujours se prononcer, même sur un sujet qui aurait été omis dans l’énumération de l’article 17 (le §1 sous 6 ne concerne que le fonctionnement du groupement) ?</p> <p>Modalités d’adoption du budget : art. L. 1612-1 et suivants du CGCT⁴ (à vérifier avec les services financiers) :</p> <ul style="list-style-type: none"> - Budget à adopter avant le 31/03 - Budget doit respecter des principes (cf. art.25) - Budget primitif à transmettre au préfet avant le 15/04 (sinon : intervention du préfet et de la CRC) - DOB <p>A la suite de la création du GECT, le budget devra être adopté par l’organe délibérant dans un délai de 3 mois à compter de sa création, faute de quoi il est réglé et rendu exécutoire par le préfet après avis public de la CRC (art. L. 1612-3 du CGCT)</p> <p>Article L. 5722-3 du CGCT => chaque année, l’organe délibérant doit délibérer sur le bilan des acquisitions et cessions opérées par le syndicat mixte et le bilan doit être annexé au compte administratif du syndicat.</p> <p>Au §2 : pourquoi « si besoin » ? Par exemple :</p> <ul style="list-style-type: none"> - il y aura forcément un secrétaire exécutif ; il faudrait donc indiquer clairement le rôle de l’Assemblée dans la validation du profil et le choix du secrétaire, - avant que le Président puisse engager le GECT dans une relation contractuelle avec un tiers, il devra obligatoirement (ce n’est pas facultatif) y avoir été autorisé par l’Assemblée.
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⁴ Bien que ces dispositions constituent le chapitre II du Titre Ier du livre VI du CGCT, que l’article l’art. L. 5721-4, al. 2 rend applicable aux syndicats mixtes ouverts, leur applicabilité peut être discutée, dans la mesure où l’article L. 5721-4, al. 2 indique que les dispositions de ce chapitre « relatives au contrôle budgétaire » leur sont applicables. Une lecture stricte conduirait à penser que les règles d’adoption du budget ne sont pas nécessairement applicables.

In altri GECT la presidenza è esercitata a rotazione (e.g. in un caso : *la Presidenza e la Vicepresidenza durano in carica due anni e sono assegnate a rotazione ad un rappresentante di una parte italiana e ad un rappresentante dell'altra*).

Articolo 12 – Presidenza dell'Assemblea

La Presidenza dell'Assemblea è esercitata alternativamente dal Presidente del Consiglio Direttivo dell'Ente pubblico (...) e dal Presidente del Consiglio di Amministrazione dell'Ente pubblico (...).

Tra i membri dell'Assemblea, viene eletto un Vice-Presidente la cui cittadinanza deve essere di uno Stato diverso da quella del Presidente.

Il mandato ha durata triennale.

Il Presidente convoca e presiede l'Assemblea e ne stabilisce l'ordine del giorno, previo parere del Direttore.

Il Presidente cura l'attuazione delle deliberazioni dell'Assemblea nonché il rispetto dello statuto e del buon funzionamento del Gruppo.

Il Presidente rappresenta, con il Direttore, il Gruppo. Ne definisce la politica globale e gli assi strategici.

In caso di cambiamento del Presidente del Consiglio Direttivo dell'Ente pubblico (...) o del Presidente del Consiglio di Amministrazione dell'Ente pubblico (...), la fine del mandato di Presidente del Gruppo è assicurata dal successore del Presidente in carica.

Article 18 – Président et Vice-Président

Article 18.1 – Désignation

§1 Le Président et le Vice Président du GECT sont désignés parmi les représentants des membres de l'Assemblée du GECT pour un mandat de 6 mois.

§2 La présidence est exercée à tour de rôle entre toutes les régions.

§3 Le Vice-président supplée le Président en cas d'empêchement.

§4 A l'issue de son mandat, le Vice-Président devient président du GECT.

§5 L'Assemblée procède à la désignation d'un nouveau Vice-président.

§6 En cas de défection du Président du GECT, celui-ci est remplacé par le Vice-président du GECT jusqu'à la nouvelle élection du Président de la région qui assure la présidence du GECT.

Article 18.2 – Compétences

§1 Le Président exerce les fonctions de directeur au sens de l'article 10 1.b) du règlement 1082/2006 relatif au GECT : il représente le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » et agit au nom et pour le compte de celui-ci.

§2 De sa propre initiative, le Président :

- 1) propose le lieu de réunions de l'Assemblée,
- 2) prépare les réunions de l'Assemblée et arrête notamment l'ordre du jour de l'Assemblée,
- 3) convoque les représentants des membres aux réunions de l'Assemblée,
- 4) préside l'Assemblée du groupement,
- 5) présente à l'Assemblée le budget, le programme de travail, le compte administratif et le rapport annuel accompagnant le compte administratif,
- 6) signe les procès verbaux des réunions de l'Assemblée,
- 7) est l'ordonnateur des dépenses et prescrit l'exécution des recettes du GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo »,
- 8) si besoin, organise une ou des réunions thématiques des Vice-présidents des régions françaises et des Adjoints au Président des régions italiennes.

§3 Sur décision expresse de l'Assemblée, le Président met en œuvre les décisions de l'Assemblée, et notamment :

- 1) nomme le secrétaire exécutif,
- 2) signe les conventions et les contrats passés par le groupement dont le montant est supérieur ou égal à 90 000 euros hors taxe,
- 3) signe les emprunts,
- 4) représente le groupement vis-à-vis des instances européennes, nationales, régionales ou de tout autre organisme, après concertation. Il rend compte de son activité à chaque réunion de l'Assemblée.

§4 Sur délégation de l'Assemblée, le Président :

- 1) signe les conventions et contrats passés par le groupement dont le montant est inférieur à 90 000 euros hors taxe,
- 2) représente le groupement en justice.

Dans les deux cas cités ci-dessus, le Président rend compte à l'Assemblée à chaque réunion des décisions qu'il a prises.

	<p><u>Articolo 13 – Modalità di funzionamento dell’Assemblea</u> L’Assemblea si riunisce almeno una volta all’anno su convocazione del Presidente o, in caso di impedimento, del Vice-Presidente, previa consultazione del Direttore. L’Assemblea è convocata in seduta straordinaria su richiesta della maggioranza dei membri secondo un ordine del giorno da essi determinato. Le convocazioni sono disposte per lettera, fax o posta elettronica ad ogni membro del Gruppo almeno quindici giorni prima della data della riunione. Le riunioni dell’Assemblea sono pubbliche, salvo casi particolari previsti dal regolamento interno. Le deliberazioni sono redatte sotto forma di verbali in francese e in italiano e firmate dal Presidente e dal Direttore. I membri hanno il diritto di prendere conoscenza di tutti i registri ed atti depositati presso la sede sociale per le assemblee già convocate e di ottenerne una copia. Ogni membro assicura, conformemente alle disposizioni costituzionali in vigore, l’accesso dei cittadini alle informazioni relative al Gruppo.</p>	<p><u>Article 17.4 – Réunions de l’Assemblée</u> §1 Le nombre de réunions annuelles est fixé à deux au minimum. §2 L’Assemblée est convoquée par le Président ou bien sur demande d’au moins trois des membres, dont au moins le représentant d’un membre français et d’un membre italien.</p>	
	<p><u>Articolo 14 – Modalità di voto in seno all’Assemblea</u> Ogni rappresentante in seno all’Assemblea dispone di un voto. E ammesso il voto per delega. Uno stesso rappresentante può avere più di una delega. L’Assemblea delibera a maggioranza assoluta dei voti. In caso di parità di voti, il voto del Presidente ha valore doppio. L’Assemblea può deliberare solo qualora sia raggiunto il numero legale, vale a dire la presenza della metà dei suoi membri.</p>	<p><u>Article 17.2 – Procédures décisionnelles</u> §1 En première convocation, l’Assemblée ne peut délibérer qu’en présence des représentants de ses cinq membres. §2 En seconde convocation, l’Assemblée ne peut délibérer qu’en présence de trois des cinq représentants de ses membres, dont au moins le représentant d’un membre français et d’un membre italien. §3 Cette règle ne s’applique pas dans les six cas suivants, où l’Assemblée ne peut délibérer qu’en présence des représentants de ses cinq membres : 1) modification de la convention ou des statuts 2) emprunt 3) dissolution du groupement 4) fixation du montant de contribution financière des membres 5) adoption du budget annuel 6) délibération sur le compte administratif et le bilan comptable. §4 Les décisions sont prises à l’unanimité des représentants des membres présents. §5 L’Assemblée ne délibère valablement que sur les questions mises à l’ordre du jour.</p>	

	<p><u>Articolo 15 – Direzione del Gruppo</u> La Direzione del Gruppo è assunta alternativamente dai direttori dell'ente pubblico (...) e dell'ente pubblico (...). La Direzione è esercitata dal direttore del Parco che non è responsabile della presidenza durante il medesimo periodo. Il mandato ha durata triennale. Il Direttore rappresenta il Gruppo e agisce in nome e per conto di quest'ultimo. Assicura la gestione ordinaria del Gruppo, con facoltà di adottare ogni misura necessaria all'attuazione dei compiti del Gruppo. Cura l'attuazione delle deliberazioni, firma i contratti e le convenzioni, elabora i bilanci e programmi di attività che devono essere presentati all'Assemblea. I posti di lavoro sono istituiti con decisione del Direttore che ne assicura la copertura. Il Direttore ha autorità sul personale in servizio presso il Gruppo. Il Direttore ha potere di firma e detiene la rappresentanza legale del Gruppo nei rapporti con i terzi e con i tribunali. Il Direttore esercita le proprie funzioni senza percepire una specifica retribuzione. Le modalità di rimborso delle spese di trasferta sono precisate dal regolamento interno del Gruppo.</p>	<p><u>Article 19 – Comité de pilotage</u> §1 Le comité de pilotage rassemble les représentants techniques de chaque membre. §2 Il assiste l'Assemblée dans la mise en œuvre des objectifs et des missions du GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » tels qu'ils figurent aux articles 6 et 7 de la convention et des présents statuts.</p> <p><u>Article 20 – Secrétaire exécutif</u> §1 Le secrétaire exécutif assure le fonctionnement du GECT. §2 Le secrétaire exécutif dirige le personnel du groupement et participe à son recrutement conformément aux dispositions de l'article 21 des présents statuts et en conformité avec le choix de l'Assemblée. §3 Le secrétaire exécutif prépare le programme de travail annuel sur la base des lignes d'interventions prioritaires établies par l'Assemblée. §4 Le secrétaire exécutif assiste le Président dans l'exercice de ses fonctions. §5 Le Président peut déléguer une partie de ses fonctions au secrétaire exécutif dans le respect du droit interne régissant le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo ». §6 Le secrétaire exécutif rend compte de son activité au Président. §7 La délégation prend fin avec le mandat du Président.</p>	<p>§5 : la notion de délégation de fonctions rejoint certainement celle de délégation de pouvoirs. Une telle délégation ne sera régulière en droit français qu'à 3 conditions :</p> <ul style="list-style-type: none"> - la délégation doit être autorisée par un texte adéquat ; - la délégation doit être explicite, de façon à ce qu'il n'y ait aucun doute sur son existence, l'identité du délégataire (qui est désigné de façon abstraite ès qualité). De plus, elle doit être suffisamment précise quant à l'étendue des compétences déléguées ; - la délégation ne peut pas être totale ; le délégant ne peut transférer qu'une partie de ses attributions. <p>De plus, la délégation doit être publiée. Si ces principes ne sont pas respectés, la délégation de compétence est illégale et son illégalité emporte celle des décisions du délégataire. Le temps de la délégation, le délégant n'est plus compétent pour exercer les compétences déléguées (NB : Distinguer de la délégation de compétences de la délégation signature)</p>
<p>In altri GECT la forma scelta è quella dei Comitati (es. Comitato Trasporti, Energia ecc.), ma si tratta solo di una questione nominale.</p>	<p><u>Articolo 16 – Gruppi di lavoro</u> L'Assemblea può istituire commissioni tecniche o gruppi di lavoro di cui determina il mandato e le modalità di funzionamento. I partecipanti alle commissioni tecniche o gruppi di lavoro esercitano le loro funzioni per il Gruppo a titolo gratuito. Le modalità di rimborso delle spese di trasferta sono precisate dal regolamento interno del Gruppo.</p>		
<p>Entrambe le lingue hanno lo stesso valore nell'interpretazione della convenzione e dello statuto del GECT? Sì, l'art 9 del Reg. (CE) no. 1082/2006 riconosce la possibilità che vi siano più lingue di lavoro, limitandosi a richiedere che queste vengano indicate nello Statuto (verif. Giurisprudenza).</p>	<p><u>Articolo 18 - Lingue</u> La convenzione ed il presente statuto sono redatti in francese e in italiano che costituiscono le lingue ufficiali del Gruppo.</p>	<p><u>Article 14 – Langues</u> §1 Les langues de travail du groupement sont l'italien et le français. §2 Tous les actes et les documents officiels du GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » sont rédigés en français et en italien.</p>	<p>Les 2 versions linguistiques font-elles foi ?</p>
	<p><u>Articolo 19 - Legislazione applicabile</u> Gli atti e le deliberazioni del Gruppo sono soggetti ai controlli previsti dal diritto interno dello Stato francese. Conformemente a tale legislazione, l'autorità incaricata del controllo è la Prefettura (...).</p>	<p><u>Article 15 – Droit applicable au fonctionnement du groupement</u> Comme prévu à l'article 2 du règlement communautaire 1082/2006 relatif au GECT, le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » est régi par :</p> <ol style="list-style-type: none"> a) le règlement communautaire 1082/2006 relatif au GECT b) lorsque le règlement précité l'autorise expressément, les dispositions de la convention et des présents statuts c) pour les questions qui ne sont pas régies par le règlement précité ou ne le sont qu'en partie, les lois de l'Etat français et notamment les dispositions du titre II du livre VII de la cinquième partie du code général des collectivités territoriales qui ne sont pas contraires aux règlements communautaires 	<p>Les dispositions françaises applicables sont celles relatives aux syndicats mixtes ouverts (articles L. 5721-1 à L. 5722-9).</p>

<p>Vd. <i>Titolo V del Decreto legislativo 267 / 2000</i></p> <p>Cosa si intende per “personale”? lo statuto fin qui ha dato alcune indicazioni: 5 membri dell’Assemblea (i Presidenti) + 5 supplenti + 5 membri “tecnici” del comitato di pilotaggio + 1 Segretario esecutivo + un numero indefinito di personale di supporto. Il Comitato di pilotaggio rientra tra le funzioni esecutive del GECT? Il GECT per quanto riguarda le spese di personale prevede (può prevedere) di avvalersi del personale degli enti fondatori utilizzando strumenti quali il comando e similari ai sensi della normativa vigente (DPR 3 dd. 10.01.1957)</p>	<p>TITOLO IV – MODALITA’ DI FUNZIONAMENTO</p> <p><u>Articolo 19 - Personale</u></p> <p>Il personale del Gruppo è costituito da:</p> <ul style="list-style-type: none"> • personale messo a disposizione dai Membri del Gruppo; • personale assunto per contratto e retribuito con il bilancio del Gruppo <p>Il personale del Gruppo messo a disposizione dai membri conserva il proprio statuto di origine.</p> <p>Il datore di lavoro di origine mantiene a proprio carico lo stipendio e la copertura previdenziale e assicurativa e conserva la responsabilità dell’avanzamento del personale messo a disposizione.</p> <p>Tale personale è tuttavia posto sotto l’autorità gerarchica e funzionale del Direttore del Gruppo.</p> <p>Il suddetto personale è rimesso a disposizione del corpo, qualifica o ente di origine:</p> <ul style="list-style-type: none"> • con decisione dell’Assemblea su proposta del Direttore del Gruppo, • su richiesta del corpo, qualifica o ente di origine, • su richiesta degli interessati, <p>Possano essere distaccati al Gruppo dipendenti dello Stato, degli enti territoriali o degli enti pubblici conformemente ai rispettivi statuti e alle norme applicabili al pubblico impiego.</p> <p>Nel caso in cui il raggiungimento degli obiettivi del Gruppo lo renda necessario e se non esistono in seno al Gruppo specifiche competenze tecniche necessarie alle attività del Gruppo stesso, può essere assunto personale proprio con contratto di diritto privato.</p> <p>Il Gruppo funziona <i>a minima</i>, con due dipendenti equivalenti tempo pieno di cui uno fornito dall’ente pubblico (...) e l’altro dall’ente pubblico (...).</p>	<p><u>Article 21 – Personnel</u></p> <p>§1 Le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » peut employer directement du personnel, bénéficiaire de mises à disposition ou de détachement conformément au régime des syndicats mixtes régis par les articles L. 5721-1 et suivants du code général des collectivités territoriales et selon les lois italiennes relatives.</p> <p>§2 La commission pour la sélection du personnel mise en place par l’Assemblée, comme prévu à l’article 17.2 10) des présents statuts, est chargée d’évaluer les candidatures à soumettre à l’approbation de l’Assemblée.</p>	
<p>La tematica è sottoposta anche all’adozione del decreto interministeriale che detta le norme sulla gestione economica, finanziaria e patrimoniale dell’ente.</p> <p>Verificare modalità e normativa per un ente di diritto pubblico di ottenere prestiti.</p> <p>A questo scopo bisognerebbe verificare ruolo e attività della Cassa depositi e prestiti. Può essere d’interesse il metodo dell’<i>investment pooling</i>, un approccio per superare la debolezza e la frammentazione istituzionale degli enti di piccola dimensione attraverso l’adozione di diversi meccanismi per giungere ad un raggruppamento di obiettivi, progetti e risorse.</p>	<p>TITOLO V – MODALITA’ FINANZIARIE</p> <p><u>Articolo 20 - Contributi dei membri al finanziamento del Gruppo</u></p> <p>I contributi finanziari sono stabiliti sulla base di una partecipazione finanziaria uguale da parte di ogni membro.</p> <p>Ogni anno, l’Assemblea vota, sulla base dei contributi notificati dai suoi membri, un bilancio preventivo proposto dal Direttore.</p> <p>I contributi possono anche assumere le seguenti forme:</p> <ul style="list-style-type: none"> • Messa a disposizione di locali; • Messa a disposizione di attrezzature e materiali; • Messa a disposizione o distacco di personale da parte dei Membri; <p>Le altre possibili forme di contributo nonché il loro valore sono stabiliti di comune accordo tra i Membri del Gruppo.</p> <p>In caso di attività insufficienti a coprire le passività, il versamento aggiuntivo di contributi dovrà essere deciso dall’Assemblea a maggioranza assoluta.</p>	<p><u>Article 23 - Modalités de contribution financière des membres</u></p> <p>§1 Chaque membre finance le groupement.</p> <p>§2 La contribution annuelle des membres repose sur le principe d’égalité entre les cinq Régions.</p> <p>§3 La contribution de chaque membre est fixée à hauteur d’un cinquième du budget annuel.</p> <p>§4 Les membres inscrivent à leur budget la somme nécessaire pour couvrir la contribution annuelle.</p> <p>§5 Chaque contribution est versée en une fois.</p> <p>§6 En cas d’admission ou de retrait en cours d’année civile, la contribution annuelle sera due pour toute année engagée.</p>	<p>Il ressort du CGCT que les contributions des membres d’un syndicat mixte ouvert ne constitueraient pas des dépenses obligatoires (DO). Aussi, il apparaît tout à fait opportun de préciser expressément le caractère obligatoire de la dépense dans les statuts => le §4 pourrait être rédigé de façon plus impérative (par ex, en s’inspirant de l’article L. 5212-20 du CGCT : « Les contributions des membres sont obligatoires pour ces membres (pendant la durée du GECT) » ou bien : « Les membres ont l’obligation d’/ doivent inscrire à leur budget la somme nécessaire pour couvrir la contribution annuelle »)</p>

<p>Si segnalano sostanziali differenze fra il modello e l'esempio.</p>	<p><u>Articolo 21 - Altri mezzi finanziari</u> Le entrate del Gruppo potranno inoltre essere costituite da:</p> <ul style="list-style-type: none"> • contributi dell'Unione Europea, degli Stati, degli enti territoriali e di ogni altro ente • proventi da operazioni di mecenatismo • somme ricevute da pubbliche amministrazione, comuni, imprese, associazioni, cittadini, in cambio di un servizio reso. • prestiti • proventi di doni e lasciti. • Messa a disposizione di locali, attrezzature o personale da parte di enti non membri del Gruppo 	<p><u>Article 22 – Ressources du groupement</u> Les ressources du groupement sont constituées par :</p> <ol style="list-style-type: none"> 1) les contributions annuelles acquittées par ses membres, fixées par l'Assemblée ; 2) les aides et subventions publiques nationales ou européennes accordées au GECT ; 3) les dons et legs ; 4) les emprunts ; 5) toute autre recette conforme au droit interne s'appliquant au GECT. <p><u>Article 24 – Emprunt</u> §1 Le groupement peut recourir à l'emprunt dans le respect des dispositions s'appliquant à chaque membre concernant ses propres conditions de recours à l'emprunt. §2 L'Assemblée approuve le recours à l'emprunt et les modalités de remboursement à l'unanimité des cinq représentants des membres composant l'Assemblée du groupement.</p>	<p>Dans la mesure où le CGCT pose assez peu de règles pour les syndicats mixtes ouverts, il serait prudent de prévoir expressément le maximum de choses dans les statuts, et par exemple la possibilité pour les membres de verser des subventions au GECT (sous réserve bien sûr de respecter les formes applicable dans ce cas).</p> <p>La formulation du §1 mériterait d'être clarifiée.</p>
	<p><u>Articolo 23 - Attrezzature e materiale</u> Le attrezzature e il materiale messi a disposizione dai Membri del Gruppo rimangono di loro proprietà e tornano in loro possesso allo scioglimento del Gruppo. Il materiale acquistato dal Gruppo appartiene a quest'ultimo e sarà devoluto in caso di scioglimento del Gruppo.</p>		

<p>Secondo la Legge Comunitaria 2008 <i>“Ferma restando la disciplina vigente in materia di controlli qualora i compiti di un GECT riguardino azioni cofinanziate dall’Unione europea, di cui all’articolo 6 del citato regolamento (CE) n.1082/2006, il controllo sulla gestione e sul corretto utilizzo dei fondi pubblici e` svolto, nell’ambito delle rispettive attribuzioni, dal Ministero dell’economia e delle finanze, dalla Corte dei conti e dalla Guardia di finanza.”</i></p>	<p><u>Articolo 24 - Gestione contabile</u> La contabilità del Gruppo e la sua gestione sono assicurate secondo le norme del diritto francese. Conformemente al codice delle giurisdizioni finanziarie, il Gruppo è sottoposto al controllo della Corte dei Conti. Sono inoltre applicabili le disposizioni del titolo II del decreto n° 55-733 del 26 maggio 1955 e successive modificazioni, relativo al controllo economico e finanziario dello Stato ed eventualmente del decreto n° 53-707 del 9 agosto 1953 relativo al controllo dello Stato sulle imprese pubbliche nazionali e determinati enti a scopo economico o sociale.</p>	<p><u>Article 25 – Règles budgétaires et comptables applicables</u> §1 Le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » établit un budget annuel, à adopter par l’Assemblée, comportant en particulier un volet de fonctionnement et, le cas échéant, un volet opérationnel conformément aux dispositions de l’article 11.1 du règlement communautaire 1082/2006 relative au GECT. §2 Conformément aux dispositions de l’article 11.2 du règlement communautaire 1082/2006 relatif au GECT, l’établissement des comptes du GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » et du rapport annuel les accompagnant ainsi que le contrôle et la publication de ces comptes sont régis par les lois de l’Etat membre où le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » a son siège. §3 La comptabilité est tenue selon les règles de la comptabilité publique française. §4 Les documents budgétaires sont transmis aux régions italiennes membres en respectant une présentation conforme aux règles comptables des deux pays. §5 Les dispositions des chapitres II et VII du titre un du livre VI de la première partie du code général des collectivités territoriales relatives au contrôle budgétaire et au comptable public sont applicables au GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo ». §6 Les fonctions de comptable du GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » sont exercées par le trésorier désigné par l’arrêté préfectoral de création du GECT.</p> <p><u>Article 27 – Marchés publics</u> Le GECT « Eurorégion Alpes Méditerranée – Euroregione Alpi Mediterraneo » applique le code des marchés publics français.</p> <p><u>Article 28 – Commission d’appel d’offre</u> L’Assemblée met en place une commission d’appel d’offres comme prévu à l’article 22 du Code des marchés publics français, où la représentation des deux Etats membres est assurée.</p>	<p><u>Principes budgétaires à respecter :</u></p> <ul style="list-style-type: none"> - équilibre réel (sinon : intervention du préfet et de la CRC), - unité (toutes les dépenses et recettes doivent être retracées dans un document unique), - annualité (budget voté et exécuté du 01/01 au 31/12 avec extension jusqu’au 31/01 de N+1 pour le paiement des mandats antérieurs au 31/12 de N), - universalité, - spécialité, - sincérité <p><u>Nomenclature comptable</u> applicable aux syndicats mixtes ouverts : plan des comptes M1-M5-M7⁵. Toutefois, il ne s’agit que d’une solution provisoire. Il est probable que, dès 2010, la M1-M5-M7 spécifique aux syndicats mixtes soit supprimée au profit de l’application d’une instruction budgétaire et comptable renouvelée (M14, M52 ou M71) (point à vérifier et préciser avec les services financiers) .</p> <p>§3 : les règles de droit privé ne seraient applicables que si le GECT gérait un SPIC.</p> <p>§5 : le contrôle budgétaire du syndicat mixte sera assuré par la chambre régionale des comptes (CRC) (art. L. 5721-4 du CGCT)</p> <p>Si le GECT était un EPIC, il ne serait pas soumis au CMP. Cf. article 2 du CMP : « <i>Les pouvoirs adjudicateurs soumis au présent code sont : 1° l’Etat et ses établissements publics autres que ceux ayant un caractère industriel et commercial [...]</i> ».</p>
	<p><u>Articolo 25 – Controllo finanziario</u> Il Gruppo (...) elabora un bilancio annuale, approvato dall’Assemblea, che comporta una parte di funzionamento ed eventualmente una componente operativa. L’Assemblea vota ogni anno uno stato patrimoniale ed un conto economico. Il controllo finanziario del Gruppo è esercitato dalla Corte dei Conti regionale.</p>		
<p>Approvata la Legge comunitaria 2008 bisognerà attendere l’adozione di un decreto interministeriale che detti le norme sulla gestione economica, finanziaria e patrimoniale. <i>“(...) il Ministro dell’economia e delle finanze e il Ministro dello sviluppo economico, previa intesa con la Conferenza permanente per i rapporti tra lo Stato, le regioni e le province autonome di Trento e di Bolzano, adottano, con decreto interministeriale, le norme per la gestione economica, finanziaria e patrimoniale, conformemente a principi contabili internazionali del settore pubblico. I soggetti che costituiscono un GECT recepiscono nella convenzione e nello statuto le predette norme.(...)”</i></p>	<p><u>Articolo 26 - Regime fiscale</u> Il Gruppo e il suo personale a contratto sono disciplinati dal diritto fiscale dello Stato (...).</p>		

⁵ Le plan de comptes M1-M5-M7 applicable, au 1^{er} janvier 2009, aux syndicats mixtes ouverts est consultable sur : http://www.colloc.minefi.gouv.fr/colo_otherfiles_fina_loca/docs_som/plan_m157_sm09.pdf.

	<p><u>Articolo 26 – Insolvenza</u> Qualora le attività del Gruppo siano insufficienti a coprire le passività, i membri sono responsabili dei debiti del Gruppo, qualunque sia la loro natura ; la quota a carico di ogni membro è fissata in proporzione al suo contributo, quale risulta dall’ articolo 20.</p>	<p><u>Article 26 – Responsabilité des Etats membres</u> §1 Les membres sont responsables des dettes du groupement de quelque nature qu’elles soient, quand les avoirs du groupement sont insuffisants pour honorer ses engagements, comme prévu à l’article 12.2 du règlement communautaire 1082/2006 relatif au GECT. §2 La part de chaque membre est fixée proportionnellement à sa contribution.</p>	
Il GECT sarebbe sottoposto alla normativa italiana in materia di appalti pubblici. (decreto legislativo 163/2006 “testo unico appalti”; Decreto legislativo 267 /2000 “Testo unico enti locali” e ulteriori modifiche)	<p>TITOLO VI - SCIoglimento, LIQUIDAZIONE</p> <p><u>Articolo 28 – Scioglimento</u> Il Gruppo potrà essere sciolto su richiesta della maggioranza assoluta dei membri dell’Assemblea o su richiesta di un’ autorità competente che abbia un legittimo interesse, nel caso in cui questa accerti che il Gruppo non soddisfa più le condizioni di cui all’articolo 1 o all’articolo 7 del regolamento (CE) n° 1082/2006.</p>		
Ai fini dalla liquidazione, la ripartizione del patrimonio del GECT andrà effettuata sulla base delle quote di partecipazione indicate nello Statuto art 17.3 par 1.3.	<p><u>Articolo 29 – Liquidazione</u> Lo scioglimento del Gruppo comporta la sua liquidazione. La personalità giuridica del Gruppo permane per gli adempimenti della liquidazione fino alla chiusura di quest’ultima. L’Assemblea fissa le modalità della liquidazione e nomina uno o più liquidatori. Le funzioni dell’Assemblea cessano contestualmente a tale nomina. Una clausola tra i membri del Gruppo preciserà diritti e doveri di ogni membro dopo lo scioglimento del Gruppo, tendo conto dei prestiti e delle garanzie che dovranno essere portati a termine. Il Gruppo è responsabile dei propri debiti qualunque sia la loro natura.</p>		
	<p>TITOLO VII – DISPOSIZIONI TRANSITORIE E FINALI</p> <p><u>Articolo 30 - Controversie</u> In tutti i casi non previsti dal diritto comunitario, ogni controversia relativa all’applicazione della convenzione o dello statuto che non abbia trovato una composizione amichevole sarà sottoposta al competente organo giurisdizionale francese.</p>	<p><u>Article 30 – Litige</u> Les litiges résultant de l’application de ces statuts relèvent du tribunal administratif du lieu du siège du GECT.</p>	<ul style="list-style-type: none"> - Inclure les différends qui pourraient résulter de l’interprétation des statuts ; - Prévoir une procédure de règlement amiable préalable à la phase contentieuse ; - Préférer une formulation plus générale prévoyant la compétence des juridictions françaises compétentes.
Procedura di modifica della Convenzione e dello Statuto. Legge Comunitaria 2008	<p><u>Articolo 31 – Modifica dello statuto</u> Le modifiche al presente statuto possono essere apportate e sottoposte all’approvazione dell’Assemblea. Per la modifica del presente statuto, è necessaria l’unanimità dei membri dell’Assemblea. Le modifiche dello statuto sono approvate nel rispetto degli obblighi di cui agli articoli 4 e 5 del regolamento(CE) n. 1082/2006 del Parlamento Europeo e del Consiglio del 5 luglio 2006 relativo a un Gruppo Europeo di Cooperazione territoriale.</p>	<p><u>Article 29 – Procédure de modification des statuts</u> §1 La convention est modifiée après décision à l’unanimité des cinq représentants des membres composant l’Assemblée du groupement. §2 Le règlement communautaire 1082/2006 prévoit que toute modification substantielle des statuts doit être approuvée par les Etats membres. §3 <u>Les modifications substantielles des statuts sont celles qui entraînent, directement ou indirectement, une modification de la convention.</u></p>	-
	<p><u>Articolo 32 - Entrata in vigore</u> Il Gruppo acquisisce la personalità giuridica il giorno successivo alla pubblicazione della convenzione e dello statuto sulla gazzetta ufficiale della Comunità europea..</p>		-

OTHER IMPORTANT ISSUES

Situation in Italy	Issues	Situation in France
<p><i>Oneri fiscali</i> Se la sede fosse dislocata in Italia il GECT non sarebbe soggetta, in quanto esonerata dal pagamento dell'imposta comunale sugli immobili (ICI) (decreto legislativo 30 dicembre 1992 n.504 art 7 comma.1 lett. a). Tuttavia il GECT sarebbe soggetto all'imposta regionale sulle attività produttive (IRAP) (decreto legislativo 446/97 art 3 comma 1 lett. e). Lo stesso dicasi per la tassa per lo smaltimento dei rifiuti solidi urbani (TARSU) (Decreto legislativo n.507/1993 art 62 comma 1)</p>	Value added tax	<p>Le GECT ne sera pas éligible au FCTVA⁶. En effet, les personnes éligibles au FCTVA sont limitativement énumérées à l'article L. 1615-2 du code général des collectivités territoriales (CGCT). Cette liste inclut les syndicats mixtes fermés ou les syndicats mixtes ouverts limités à des collectivités et leurs groupements (art. L. 1615-2, §2 du CGCT). En revanche, les syndicats mixtes ouverts auxquels participent d'autres personnes morales non bénéficiaires ne figurent pas dans cette liste et ne sont donc pas éligibles au FCTVA. Aussi, puisque le GECT serait notamment composé d'établissements publics, éventuellement d'Etats (français ou étrangers), lesquels ne sont pas éligibles au Fonds, le GECT ne sera pas éligible au FCTVA.</p>
	Executive character of the acts of the EGTC	<p>Les actes pris par le GECT sont exécutoires de plein droit dans les mêmes conditions que les actes pris par les autorités départementales (cf. art. L. 5721-4 du CGCT qui renvoie à l'article L. 3131-1), ie dès que :</p> <ul style="list-style-type: none"> - l'acte a été publié ou affiché, ou notifié aux intéressés, - et l'acte a été transmis au représentant de l'Etat dans le département. <p>Les actes suivants doivent <u>obligatoirement être transmis au représentant de l'Etat dans le département</u> (cf. art. L. 5721-4 et L. 3131-2 du CGCT) :</p> <ul style="list-style-type: none"> - les délibérations de l'assemblée délibérante du GECT ; - les actes à caractère réglementaire ; - les conventions relatives aux emprunts, aux marchés et aux accords-cadres, à l'exception des conventions relatives à des marchés et à des accords-cadres d'un montant inférieur à un seuil défini par décret, ainsi que les conventions de concession ou d'affermage de services publics locaux et les contrats de partenariat ; - les décisions individuelles relatives à la nomination, à l'avancement de grade, à la mise à la retraite d'office, à la révocation des fonctionnaires, ainsi que les décisions individuelles relatives au recrutement, y compris le contrat d'engagement, et au licenciement des agents non titulaires, à l'exception de celles prises dans le cadre d'un besoin saisonnier ou occasionnel, en application du deuxième alinéa de l'article 3 de la loi n° 84-53 du 26 janvier 1984 portant dispositions statutaires relatives à la fonction publique territoriale ; - les ordres de réquisitions du comptable pris par l'exécutif du GECT.
Ad esercitare il controllo di legittimità degli atti è il Tribunale Amministrativo Regionale. Bisogna specificare che è competente la Prefettura Francese in prima battuta, il prefetto può poi deferire al Tribunale.	Lawfulness control	Le Préfet peut <u>déferer au tribunal administratif</u> les actes ci-dessus listés qu'il estime contraires à la légalité, dans les 2 mois suivant leur transmission (contrôle a posteriori, art. L. 5721-4 et L. 3132-1 du CGCT).
Il luogo in cui gli atti degli enti pubblici vengono affissi e resi noti alla cittadinanza è l'Albo Pretorio. Alcuni atti di modifica della Convenzione e dello statuto richiedono per legge la pubblicazione sulla Gazzetta Ufficiale Italiana e delle Comunità Europee.	Publicity	<p>Les actes réglementaires pris par le GECT (dispositif des délibérations de l'assemblée délibérante du GECT + actes de l'exécutif à caractère réglementaire) devront être publiés dans <u>un recueil des actes administratifs</u> ayant une périodicité au moins mensuelle. Ce recueil doit être mis à la disposition du public au siège du GECT. Le public en est informé, dans les 24h, par affichage aux lieux habituels de l'affichage officiel du GECT. La diffusion du recueil peut être effectuée à titre gratuit ou par vente au numéro ou par abonnement (art. L. 5721-4, L. 3131-3 et R. 3131-1 du CGCT).</p>
Vanno tenute in debita considerazione i tempi e i costi per redigere la convenzione e lo statuto del GECT secondo le norme stabilite dal Codice civile italiano per gli atti pubblici, La Legge Comunitaria 2008 prevede che <i>“La convenzione e lo statuto di un GECT, previsti dagli articoli 8 e 9 del citato regolamento (CE) n. 1082/2006, sono approvati all'unanimità dei suoi membri e sono redatti in forma pubblica ai sensi degli articoli 2699 e seguenti del codice civile, a pena di nullità”</i> art 2699 Codice Civile <i>“L'atto pubblico (2714) è il documento redatto, con le richieste formalità, da un notaio o da altro pubblico ufficiale autorizzato ad attribuirgli pubblica fede nel luogo dove l'atto è formato”.</i>	Formalities	Les statuts d'un syndicat mixte ouvert ne sont pas soumis à enregistrement. En revanche, ils seront <u>publiés avec l'arrêté préfectoral portant autorisation</u> de création du GECT. La convention entrera en vigueur et le GECT acquerra la personnalité juridique le jour de la publication des statuts, à l'issue de la procédure décrite à l'article 4 du règlement GECT.
	Availability of documents	Toute personne peut demander communication des procès-verbaux de l'organe délibérant, des budgets et des comptes ainsi que des arrêtés de l'exécutif (art. L. 5721-6 du CGCT)

⁶ Le Fonds de compensation pour la TVA (FCTVA) doit permettre de compenser une partie de la charge de TVA supportée par des collectivités territoriales, des établissements publics sur leurs dépenses réelles d'investissement.

Ecological connectivity and mountain agriculture: existing instruments and a vision for the future



AGENDA

9:00-9:30 Conference registration

9:30-9:45 Welcome speech: A. Rollandin, President of Regione Autonoma Valle d'Aosta; G. Isabellon, Agriculture and Natural Resources Councillor of Regione Autonoma Valle d'Aosta

9:45-10:00 D. McGuire, Mountain Partnership Secretariat, FAO: Presentation of the FAO perspective*

10:00-10:15 H. Egerer, UNEP Vienna ISCC: the potential of the Alpine, Carpathian and (future) SEE conventions*

10:15-10:30 general remarks on the structure and objectives of the conference (P. Angelini, Italian Ministry for the Environment), presentation of ECONNECT project (R. Nigro, WWF Italy)

10:30-11:00 coffee break

11:00-12:00 roundtable (P. Angelini, chairman): a discussion on biodiversity and mountain agriculture with:

- R. Santolini, University of Urbino: Agricultural diversity as an ecosystem service
- A. Catorci, University of Camerino*: Biodiversity and territorial branding
- A. Radic, Expo 2015, Milan*: The Expo 2015 as an opportunity
- A. Barmaz, Institut Agricole Régional, Regione Autonoma Valle d'Aosta: The activity of the Institut Agricole Régional

12:00-12:15 S. Tutino, Regione Autonoma Valle d'Aosta: WP6 and its goals

12:15-12:45 C. Randier, EURAC Bolzano: A general presentation of national assessments

12:45-13:15 G. Parodi, Regione Autonoma Valle d'Aosta: A general presentation of comparative outlooks and case studies

13:15-14:30 light lunch, typical products

Afternoon session

14:30-14:50 A. Mignotte, CIPRA: A presentation of the project workshops of Domodossola and Grenoble

14:50-15:10 G. Spinaci, EU / Council of Regions*: An overview of the EGTC as a tool for overcoming legal barriers

15:10-15:30 G. Pettarin, Gorizia Municipality: An example of the implementation of the EGTC in the case of Gorizia and its Slovenian partner cities

15:30-16:00 P. Angelini, Italian Ministry for the Environment: Synthesis of the conference outcomes and closing remarks