



# 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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# 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 diversity<sup>1</sup>. 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)<sup>2</sup> 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:

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<sup>1</sup> 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 4<sup>th</sup> Symposium of Protected Areas, 2009.

<sup>2</sup> 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 Regions<sup>3</sup>.

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:

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<sup>3</sup> 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 Project<sup>5</sup> (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.

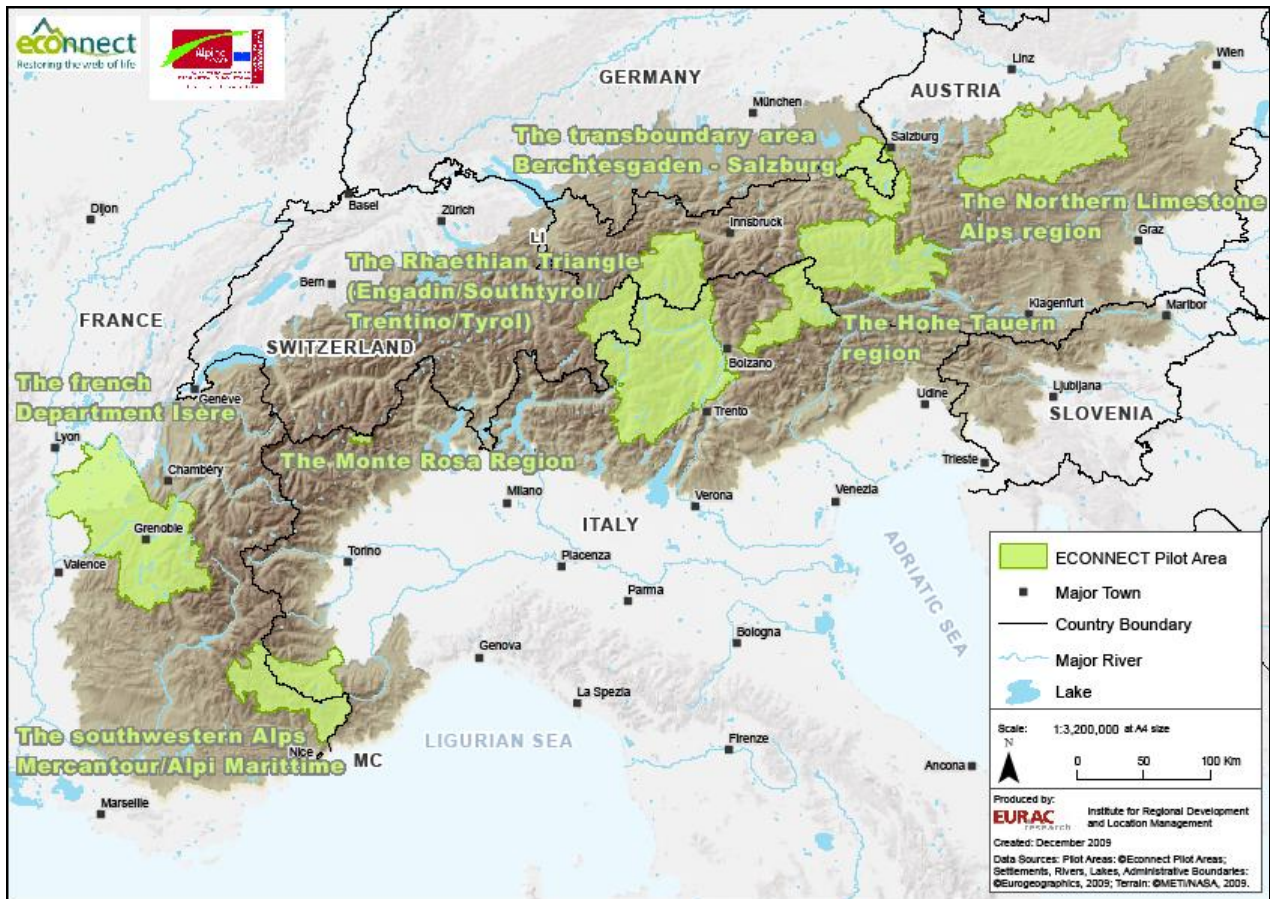


Fig 1: The ECONNECT Pilot Regions

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



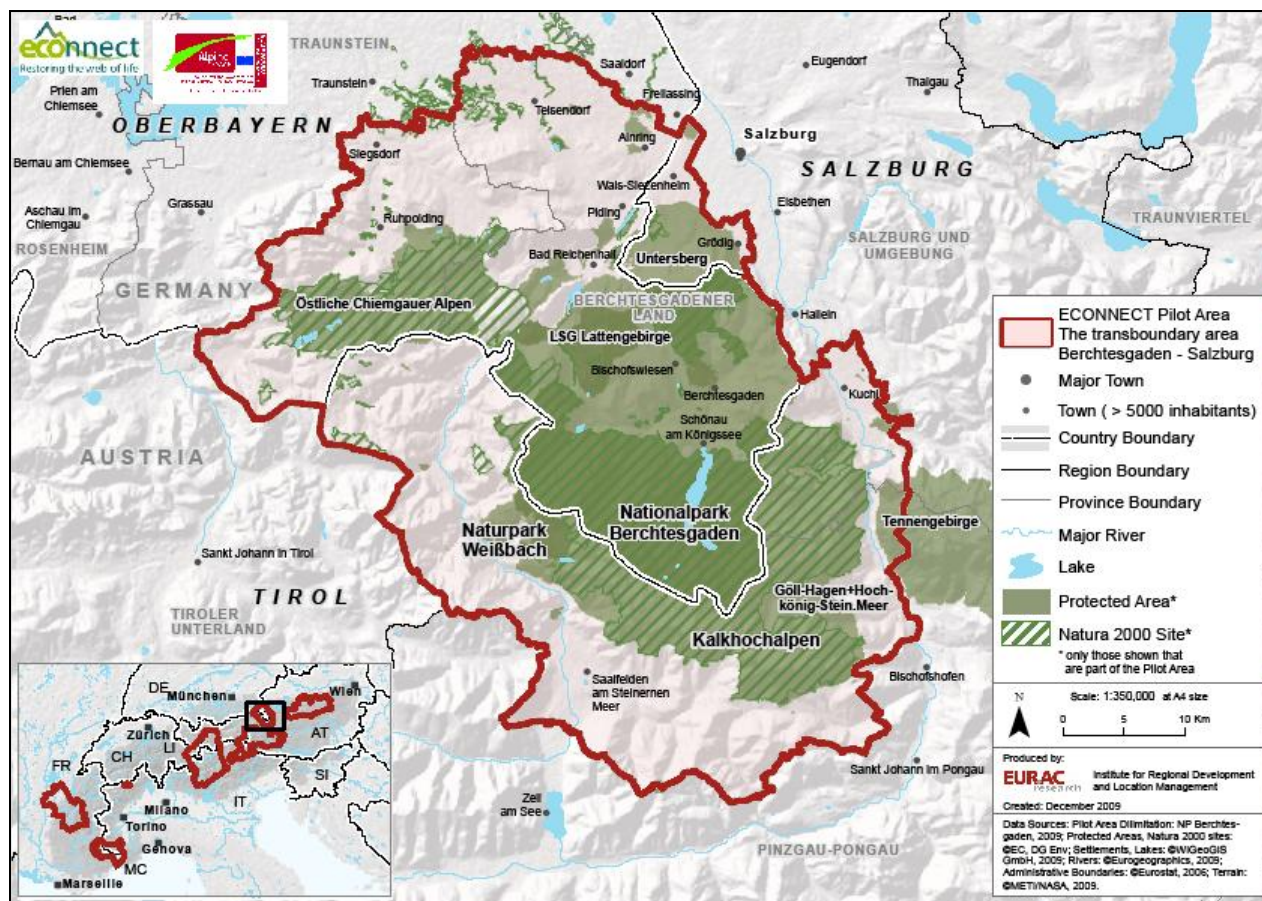


Fig 2: Econnect Pilot Area “Berchtesgaden Region”

### 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)	Nationalpark Berchtesgaden (Bayern)
	Naturschutzgebiet Kalkhochalpen (Salzburg)	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 2009<sup>4</sup> 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.*”

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<sup>4</sup> 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 areas<sup>5</sup>

In 1994, the International Union for Conservation of Nature (IUCN)<sup>6</sup> 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 implied<sup>7</sup>. These guidelines, initially published in 1994, were revised following a long process of consultation and were published again in 2008<sup>8</sup>. 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 areas<sup>9</sup>. 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*

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

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

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

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

<sup>9</sup> 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”<sup>10</sup>.

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.

<sup>10</sup> 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><b>Nationalpark</b> (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 <b>Nationalpark (National Park)</b> (§ 24 <i>BNatSchG</i>)</p>
<p><b>Naturschutzgebiete</b> (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><b>Nationale Naturmonumente</b> (National Natural Monuments) (§ 24 <i>BNatSchG</i>) (this category has not been incorporated into Bavaria's nature protection law yet)</p> <p><b>Naturschutzgebiete</b> (Nature conservation areas) (§ 23 <i>BNatSchG</i> and art. 7 <i>BayNatSchG</i>)</p>

<b>Naturdenkmäler</b> (natural monuments) (St, Ty, Oö)	<b>Naturdenkmäler</b> (natural monuments) (§ 28 BNatSchG and art. 9 BayNatSchG)
<b>Landschaftsschutzgebiete</b> (landscape conservation areas) (St, Slz, Oö, Ty)	<b>Landschaftsschutzgebiete</b> (landscape conservation areas) (§26 BNatSchG and art. 10 BayNatSchG)
<b>Naturparke</b> (nature parks) (St, Ty, Slz)  (This designation refers to areas - either entire sites or parts of them - that are already protected) (Ty)	<b>Naturparke</b> (nature parks) (§ 27 BNatSchG et art. 11 BayNatSchG)
<b>Geschützte Landschaftsteile</b> (protected landscape elements) (Oö, Ty, )	<b>Geschützte Landschaftsteile</b> (protected landscape elements) (§29 BNatSchG and art. 10 BayNatSchG)
<b>Geschützte Naturgebilde von örtlicher Bedeutung</b> (protected natural formation of local importance) (Slz, St, Oö)	
<b>Ruhegebiete</b> (area of tranquillity/rest area) (Ty)	
<b>Gebiete von gemeinschaftlicher Bedeutung</b> (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
<b>Europäische Vogelschutzgebiete</b> (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 institutions<sup>11</sup>. 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 organisation<sup>12</sup> 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 areas<sup>13</sup> 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"*<sup>14</sup>. Therefore *"there is an urgent need to take action to improve the coverage, representativeness and management of protected areas nationally, regionally and*

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<sup>11</sup> 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.

<sup>12</sup> 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).

<sup>13</sup> 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).

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

globally”<sup>15</sup>. 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 areas<sup>16</sup>. 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 action<sup>17</sup>.

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 Nature<sup>18</sup>, 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

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

<sup>16</sup> See point 1.4 of the Programme of Work on Protected Areas (PoWPA).

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

<sup>18</sup> 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”*

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

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)<sup>19</sup>, 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.

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<sup>19</sup> 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 Liability<sup>20</sup>, 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)<sup>21</sup> 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 Nature<sup>22</sup>. 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 act<sup>23</sup> adopted in November 2009, whose paragraph 10 concerns transboundary damage.

#### Germany

##### Interregional and international cooperation

##### National

### CONCLUSION:

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<sup>20</sup> 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).

<sup>21</sup> 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

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

<sup>23</sup> 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 Austria<sup>24</sup> and in Bavaria<sup>25</sup> 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 Alps<sup>26</sup>, 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**:

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<sup>24</sup> Cite references of Austrian guidelines.

<sup>25</sup> Cite references of German guidelines.

<sup>26</sup> 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 applicable<sup>27</sup>. [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 <sup>28</sup> 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.*"<sup>29</sup> However, for the time being, there is no specific EU policy for mountain areas, whereas there is one for coastal areas<sup>30</sup>.

## **CONCLUSION**

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<sup>27</sup> See the Alpine Convention Manual, p. 129.

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

<sup>29</sup> 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 Directive<sup>31</sup>, together with the Birds Directive<sup>32</sup>, 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 importance<sup>33</sup>.

### 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 sites<sup>34</sup>, 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"<sup>35</sup> 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 Conference<sup>36</sup>, 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

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<sup>31</sup> References

<sup>32</sup> References

<sup>33</sup> References of the Internet site from which this was taken.

<sup>34</sup> 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)*.

<sup>35</sup> Id., p. 20.

<sup>36</sup> "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 Commission<sup>37</sup> 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 level<sup>38</sup>”*. 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 practice<sup>39</sup>”*. 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 control<sup>40</sup>.

### Austria

The provisions concerning the implementation of conservation and management measures are contained in the nature protection laws<sup>41</sup> of the Länder<sup>42</sup>. 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.

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

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

<sup>39</sup> *Id.*, p.39.

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

<sup>41</sup> 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.

<sup>42</sup> 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 Länder<sup>43</sup>. 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’<sup>44</sup> 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*)<sup>45</sup>. Similarly, paragraph 9, subparagraph 5 of Lower Austria’s law on the protection of nature<sup>46</sup> states that maintenance, development and conservation measures may be taken, ‘if necessary’ (*erforderlichenfalls*), in Natura 2000 sites<sup>47</sup>. Styria<sup>48</sup> 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 nature<sup>49</sup> 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 3<sup>50</sup>, 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 Austria<sup>51</sup>.

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,

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

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

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

<sup>46</sup> 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.

<sup>47</sup> Translated by the authors of this paper.

<sup>48</sup> 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.[...]*”.

<sup>49</sup> 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 [...]*”.

<sup>50</sup> 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.[...]*”

<sup>51</sup> 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 site<sup>52</sup>. 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 standards<sup>53</sup>. 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 plans<sup>54</sup>. The Regional Government of Lower Austria has adopted guidelines for drawing up management plans<sup>55</sup>. 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<sup>56</sup>, 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 sites<sup>57</sup>. 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 report<sup>58</sup> drawn up by the Austrian Court of Auditors (*Rechnungshof*).

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

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

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

<sup>55</sup> Knoll T., *Managementpläne Natura 2000, Struktur und Inhalte Konzept* ([http://www.noe.gv.at/Umwelt/Naturschutz/Natura-2000/Natura\\_2000\\_Leitfaden\\_und\\_Managementplaene.pdf](http://www.noe.gv.at/Umwelt/Naturschutz/Natura-2000/Natura_2000_Leitfaden_und_Managementplaene.pdf), consulted on 4 October 2008).

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

<sup>57</sup> 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).

<sup>58</sup> 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 4<sup>59</sup> 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 2<sup>60</sup> 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 2000<sup>61</sup> 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

<sup>59</sup> BNatSchG, § 33 points 3 and 4:

<sup>60</sup> 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*)”.

<sup>61</sup> “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 law<sup>62</sup>. 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 site<sup>63</sup>. 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 required<sup>64</sup>. 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 provisions<sup>65</sup>.

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 sites<sup>66</sup> 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 2003<sup>67</sup>. 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.

<sup>62</sup> 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).

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

<sup>64</sup> 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.

<sup>65</sup> "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.

<sup>66</sup> *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.

<sup>67</sup> *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 Nature<sup>68</sup> 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 Germany<sup>69</sup>, 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*)<sup>70</sup>.

## **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 management<sup>71</sup>.

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<sup>68</sup> 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.

<sup>69</sup> 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.

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

<sup>71</sup> 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 2004<sup>72</sup>

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 site<sup>73</sup>, 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 damage<sup>74</sup>. 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*)<sup>75</sup>. 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.

<sup>72</sup> 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).

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

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

<sup>75</sup> 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 transposition<sup>77</sup>. 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 law<sup>78</sup>.

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

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

<sup>77</sup> 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).

<sup>78</sup> 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*<sup>79</sup>) and the **Act on Environmental Damage** (*Umweltschadengesetz*<sup>80</sup>). 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*"<sup>81</sup>.

### 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 protection<sup>82</sup>. 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.

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<sup>79</sup> 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) ".

<sup>80</sup> References of the Act.

<sup>81</sup> Article 2, paragraph 11, referring to Annex II.1 and II.1.1.

<sup>82</sup> 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”<sup>83</sup>.

### 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 Carinthia<sup>84</sup> and Tyrol<sup>85</sup> 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 protection<sup>86</sup>. The requirement to set up an ecological network was transposed into the nature conservation laws of the Länder<sup>87</sup> 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

<sup>83</sup> Underlined by the authors of this study.

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

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

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

<sup>87</sup> 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-Württembergs », in *Natur und Recht*, 2007, no.29, pages 22-26.

policies were somewhat more ‘aggressive’<sup>88</sup>. 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*’<sup>89</sup>) 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 Land<sup>90</sup>.

It therefore has a broader scope. Sub-paragraph 3 of paragraph 21 defines the components of this network of biotopes<sup>91</sup>: the core areas, buffer areas and connecting elements<sup>92</sup>, 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. Recommendations<sup>93</sup> 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 network<sup>94</sup>. 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

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

<sup>89</sup> That means biotope network, biotope networking

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

<sup>91</sup> 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”.

<sup>92</sup> That is the translation of the following: *Kernflächen, Verbindungsflächen et Verbindungselementen*.

<sup>93</sup> 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.

<sup>94</sup> 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 conservation<sup>95</sup>. 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*"<sup>96</sup>.

But the administrative judge<sup>97</sup> 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***<sup>98</sup>

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

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<sup>95</sup> 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.

<sup>96</sup> Translation provided by the authors of this paper.

<sup>97</sup> 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.

<sup>98</sup> 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 Land<sup>99</sup>. 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 programme<sup>100</sup>. 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 Albrecht<sup>101</sup>. 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*"<sup>102</sup>.

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,

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<sup>99</sup> 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.

<sup>100</sup> 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.

<sup>101</sup> 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).

<sup>102</sup> 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 Tyrol<sup>103</sup>, Carinthia<sup>104</sup> and Salzburg<sup>105</sup>. Such laws provide

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<sup>103</sup> 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*<sup>106</sup>), 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 allowed<sup>107</sup>. 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 1985<sup>108</sup> 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*

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<sup>104</sup> 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).

<sup>105</sup> 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.

<sup>106</sup> “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).

<sup>107</sup> 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.

<sup>108</sup> 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 2001<sup>109</sup> 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.

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<sup>109</sup> 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”<sup>110</sup>.*

## **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).

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<sup>110</sup> 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 indirectly<sup>111</sup>. 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 gap<sup>112</sup>. 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 decisions<sup>113</sup>. 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*”.

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<sup>111</sup> Reference is made for instance to the Convention on Biological Diversity.

<sup>112</sup> Point 31 of the Explanatory Report of the European Landscape Convention.

<sup>113</sup> 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 act<sup>114</sup> 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 protection<sup>115</sup> and spatial planning<sup>116</sup> (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

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<sup>114</sup> Law concerning nature protection and landscape development (Source: Regional Law Gazette *LGBl.* no. 22/1997, 58/2001, 38/2002, 1/2008).

<sup>115</sup> 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.

<sup>116</sup> 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 areas<sup>117</sup> 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

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<sup>117</sup> 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 site<sup>118</sup>. 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

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<sup>118</sup> 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**