



# ECONNECT

Alpine Space Program - ETC

## Action 6.2:

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

Italy/Austria

**Pilot Regions:** - *The Rhaetian Triangle*

- *Hohe Tauern*



Italian Ministry of the  
Environment, Land and Sea





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# 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 analysed, in order to identify their potential to play a pro-active role in the ecological network creation process. The two main issues are the following:

- The institutionalisation of transborder cooperation between protected areas
- The identification of legal solutions for creating/improving an ecological networking process in the different ECONNECT Pilot Regions<sup>3</sup>.

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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”.

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

Hence the key questions to be solved appear:

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

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

### **1.3. Expected output of these studies**

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

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

### **1.4. Methodology**

Firstly we will undertake a comparative analysis of the National Assessments already made during the course of Action 6.1. We will analyse and compare the national and/or regional legislation currently in force within the ECONNECT Pilot Regions. We will analyse the existing legal frameworks concerning the protection of nature (the specific legal texts which regulate the management of the parks, ecological connectivity etc), spatial planning (both inside and outside the parks) and transborder cooperation. We will carry out the following bilateral comparisons between Alpine countries:

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

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

## 1.5. Collaboration with Project Partners and Pilot Regions

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

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

## 1.6 The ECONNECT Pilot Regions: The Rhaetian Triangle and the Hohe Tauern region

Seven Pilot regions exist under the umbrella of the ECONNECT Project<sup>4</sup>. Some of these Pilot Regions are international, while others are interregional (the term “interregional” is understood in this study as pertaining to an area spanning across several regions of the same State). In some Pilot Regions the protected areas are adjacent (like the Maritime Alps and Mercantour Parks) while in others they are not (such as the Pilot Region Engadin Inn, where not all of the protected areas are contiguous). Each Pilot Region has its own characteristic traits and legal issues. A short overview of said legal issues will follow the map of each Pilot Region.

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

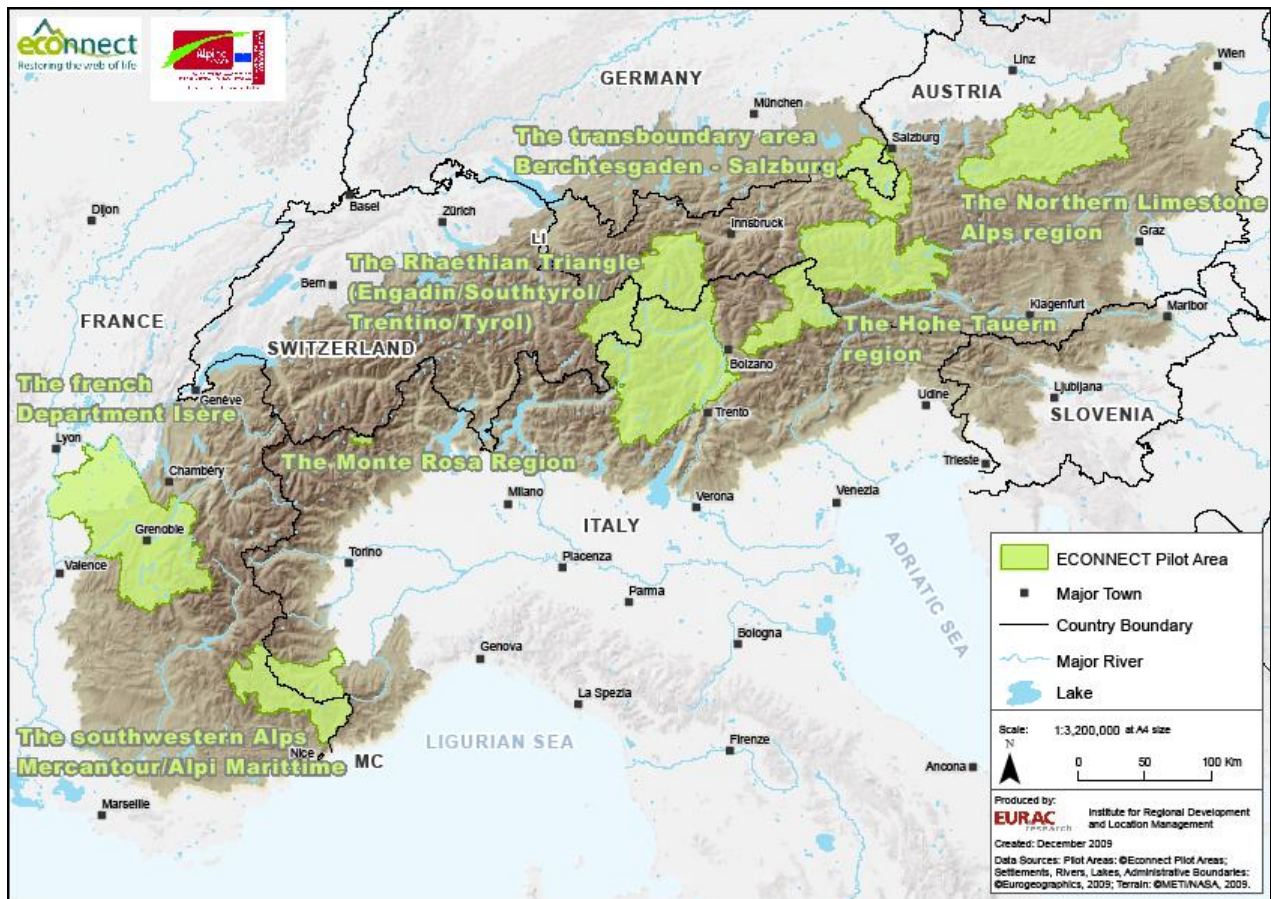


Fig 1: The ECONNECT Pilot Regions

In this study we will focus on two Pilot Regions: The Rhaetian Triangle and the Hohe Tauern Region (Figure 1). Whithin these Pilot Regions, we will examine the legal framework of the protected areas listed in the following table (Table 1).

Table 1: Protected areas of the pilot regions examined in this study.

Espace/Région-Pilot	Type de protection/ Italian side	Type de protection/ Austrian side
“The Rhaetian Triangle”	Nature park (Tessa Group Natural Park) (Autonomous Province of Bolzano)	Natural Site Ötztaler Alpen (Land Tyrol) Protected Landscape Section Stubai Alpen (Land Tyrol)
“Hohe Tauern region >>>	Natural Park Vedrette di Ries Aurina (Autonomous Province of Bolzano)	The National Park Hohe Tauern (Länder Salzburg, Tyrol and Carinthia)



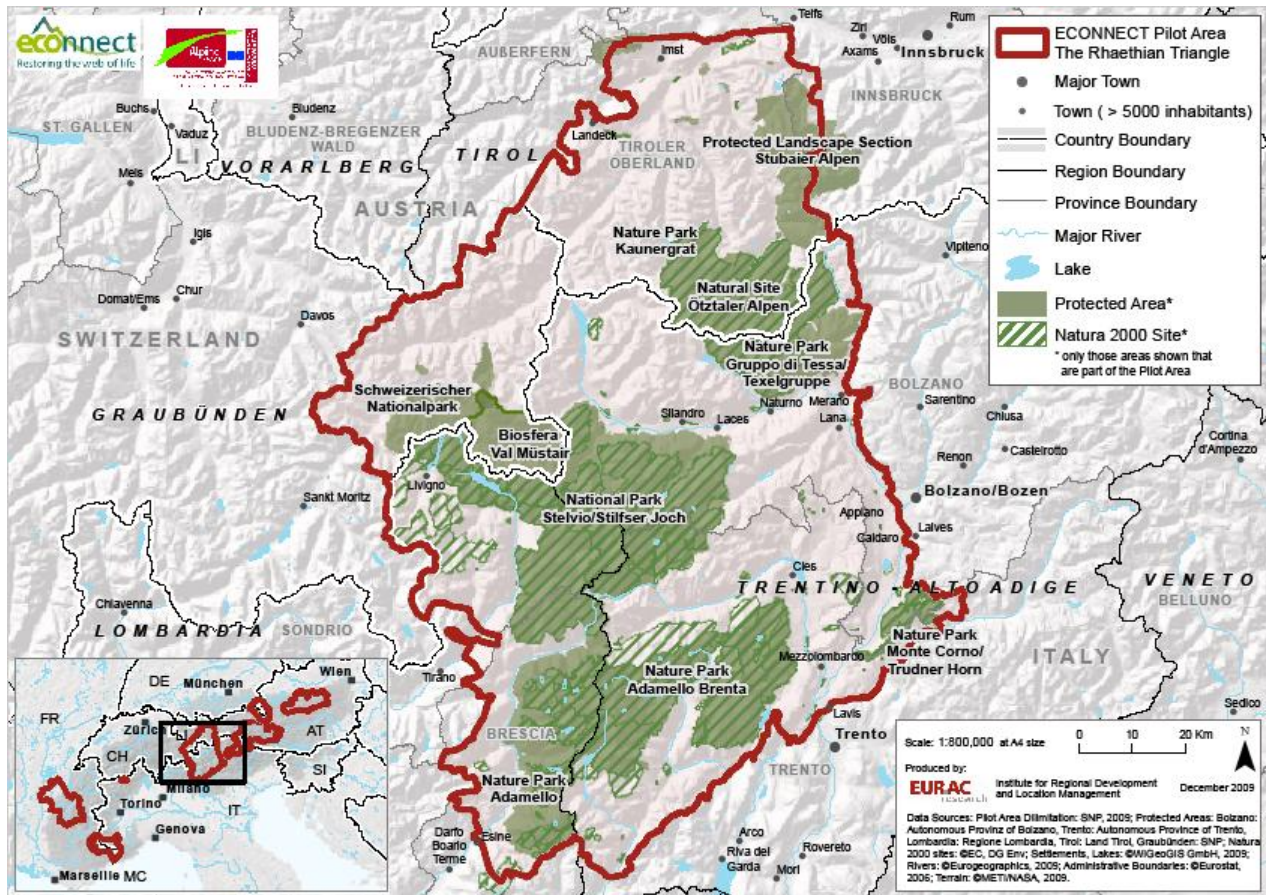


Fig 2: Econnect Pilot Area The Rhaetian Triangle

The Pilot Region “The Rhaetian Triangle” is international (Figure 2). It is composed of Italian, Swiss and Austrian protected areas (Tab. 1). The comparison between Switzerland and Italy is the subject of another study (the bilateral comparison Italy/Switzerland). The Pilot Region “The Hohe Tauern” is also international (Figure 3), being composed of Austrian and Italian protected areas. We will focus our attention on the protected areas located on the border between Austria and Italia, e.g. on the National Park Hohe Tauern and the nature parks of South Tyrol.

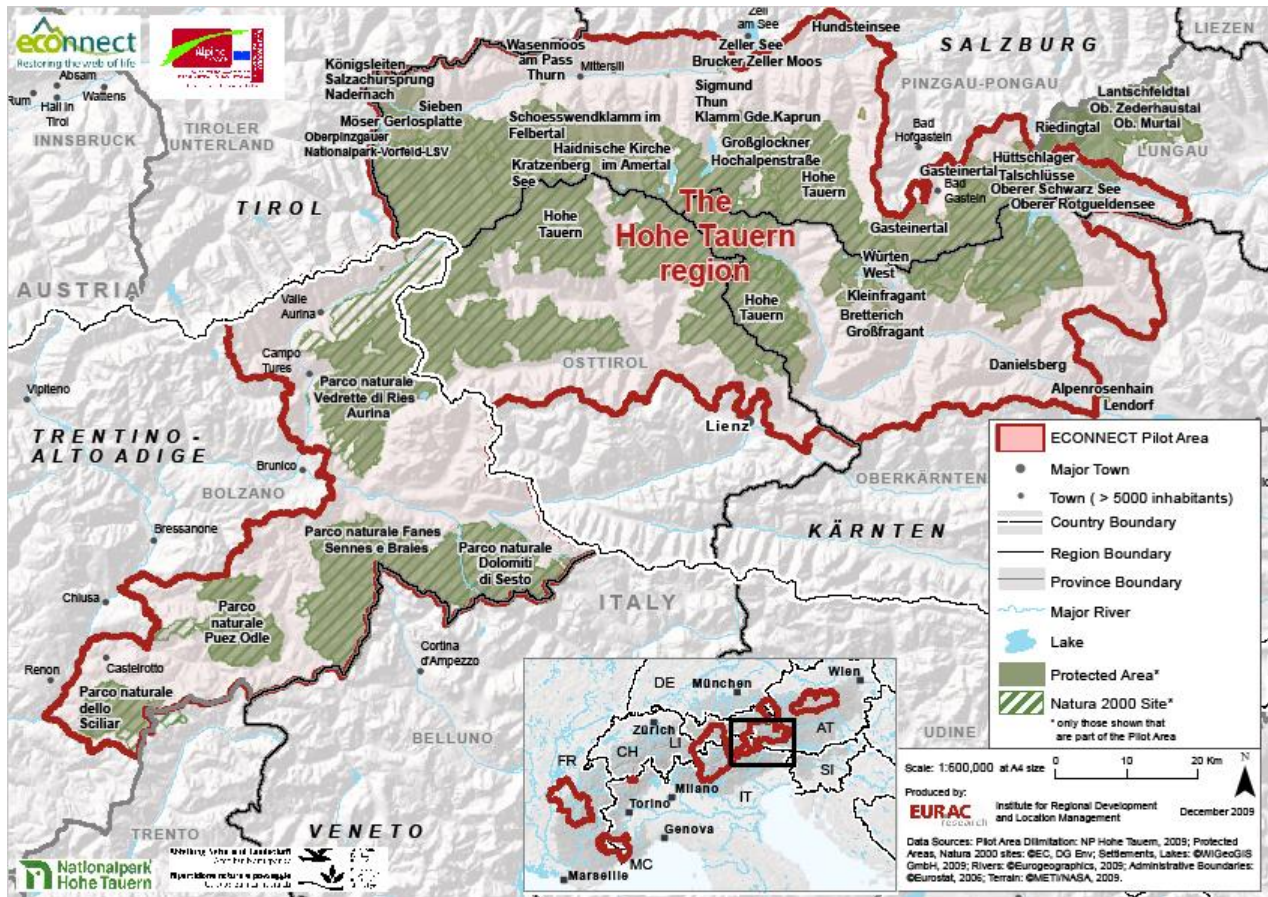


Fig 3: Econnect Pilot Area The Hohe Tauern



## 2. BILATERAL COMPARISON OF THE LEGAL FRAMEWORK OF PROTECTED AREAS

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

- The classification of the protected areas according to the law of the two States involved (paragraph 2.3.2)
- The protection of natural habitats (paragraph 2.4)
- The legal provisions on ecological connectivity (paragraph 2.4.4)
- The protection of the landscape (paragraph 2.5)
- The specific provisions concerning the areas surrounding protected sites (paragraph 2.6)
- The provisions on the European Grouping for Territorial Cooperation (Chapter 3)

### 2.1 The institutional framework

#### Italy

In Italy, pursuant to Article 117 of the Constitution, the *"legislative power is exercised by the State and Regions"*. According to this article, a distinction must be made between the matters for which the State has exclusive law-making powers and the matters subject to concurrent legislation. Concerning the latter, the legislative powers vested in the Regions are subject to the fundamental principles established in State legislation. The Regions retain legislative power on all matters that are not expressly reserved for State legislation. While environmental protection is an exclusive State competence, enhancing environmental assets is subject to concurrent legislation. Spatial planning is also a matter of shared competence between the State and the Regions. The State has regulatory power in matters for which it has exclusive legislative power, but may also delegate such power to the Regions. Regions have regulatory power in all other matters. The municipal, provincial and metropolitan city governments have regulatory power over matters pertaining to their organisation and the performance of the functions attributed to them.

#### Austria

In Austria, the legislative power is shared between the federal regions (Länder) and the Federation (*Bund*). According to article 15, paragraph 1, of the Federal Constitutional Law *"[insofar] as a matter is not expressly delegated by the Federal Constitution to the legislation or also the execution of the Federation, it remains within the autonomous sphere of competence of the Länder"*: that is the case of nature protection, which is in the autonomous sphere of competence of the Länder. Each Land therefore adopts its own provisions on nature conservation; however cooperation between Länder is ensured by the establishment of various working groups. Additionally, concerning Nature 2000, one Land, Tyrol, is competent for coordination between all federal regions. The situation is more complex in the field of spatial planning. Indeed this is a transversal domain that touches on many other matters (*Querschnittmaterie*): for that reason it is subject to the competence of the Bund if it falls within the scope of articles 10 and 12 of the Austrian Constitution; in all other cases, it falls within the

competence of the Länder. The Länder are competent for regional spatial planning, but coordination is envisaged between them through the Austrian Conference on Spatial Planning (*Österreichischer Raumordnungskonferenz*), which has been established on the basis of a voluntary agreement made between the Länder in compliance with the fundamental principles of Article 15a of the Austrian Constitution. The Conference primarily develops recommendations and its members include all relevant spatial planning authorities.

## **CONCLUSION**

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

### **2.2 Transborder cooperation (outside EGTC)**

Although this study will mainly focus on the European Grouping of Territorial Cooperation, as disciplined by Reg. (EC) No. 1082/2006, a number of other legal instruments and procedures has been implemented over time in order to facilitate territorial cooperation among States. The most frequent approaches are:

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

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

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

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

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

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

Community law also provides a number of instruments other than the EGTC whose potential as tools of project-based cooperation activities needs to be assessed. The European Economic Interest Grouping is one such instrument: first introduced by Regulation (EC) No. 2137/85, the EEIG allows the formation of a grouping of individual companies or other legal entities. The purpose of the grouping is to facilitate or develop cooperation among the members. A grouping must be formed by at least two members coming from two different EU Member States; members can be companies or legal bodies having a central administration in a Member State, or natural persons. The EEIG can be formed by subjects of different legal status, requires no assets, investment or transfer of know-how and pays no company taxes nor taxes on earnings. The EEIG, however, does not have its own legal personality in all Member States (its status depending on national legislations). Moreover, an EEIG can only act in the context of private law and is therefore unable to carry out any statutory functions of local authorities, which happen to be the main actors in European Territorial Cooperation programmes and projects. The European Company, also known as Societas Europea (SE- Council Regulation (EC) No. 2157/2001) and the European Cooperative Society or Societas Cooperativa Europea (SCE -Council Regulation (EC) No. 1435/2003) also seem to be unfit for the scope: as the SE only allows companies to merge or form a new holding company or joint subsidiary and is therefore irrelevant as far as territorial cooperation programmes are concerned, while national legislations do not usually allow public entities to participate in mixed economy companies such as those created *via* the SCE.

### **Transborder Cooperation between Austria and Italy**

Both States have ratified the Madrid Convention (although Italy has yet to ratify the additional Protocols to the Convention). However, the agreement reached on the basis of the above-mentioned Madrid Convention by Austria and Italy does not envision the establishment of a jointly managed or autonomous body with legal personality. That limits the scope of the cooperation for the joint cross-border management of protected areas.

Furthermore, a wide number of projects has been undertaken over time by Italian and Austrian regional/local authorities and stakeholders under the banner of the INTERREG IV Programme<sup>5</sup>. INTERREG IV Italy-Austria is part of the European Territorial Cooperation Programme 2007-2013. The second thematic priority of the Programme is indeed Territory and Sustainable Development (the first being Economic Relations); this priority envisions projects in thematic areas such as:

- Protected areas
- Natural and cultural landscape
- Environmental protection
- Biodiversity

## 2.3. Classification of protected areas

### 2.3.1. Towards an international classification of protected areas

The guidelines drawn up by the International Union for Conservation of Nature (IUCN)<sup>6</sup> in 1994 classify protected areas according to their management objectives. They are based on key principles: the basis of categorization is by primary management objective; assignment to a category is not a commentary on management effectiveness; the categories system is international; national names for protected areas may vary; all categories are important; and a gradation of human intervention is implied.<sup>7</sup> These guidelines, initially published in 1994, were revised following a long process 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<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 achieve the long-term conservation of nature with associated ecosystem services and cultural values*"<sup>10</sup>. The classification presented in table 1 of the Guidelines provides interesting definitions and indications that help us make a comparison between the different categories of protected areas in the Alpine arc, even though the regulations of the Alpine area's sites do not always refer explicitly to the Guidelines. Such comparison is shown in table 3, below.

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<sup>5</sup> A full list of the Italo-Austrian projects approved under INTERREG IV is available at:  
[http://www.interreg.net/download/2009-08-17\\_Liste\\_Beguenstigten\\_1\\_2\\_Aufruf.pdf](http://www.interreg.net/download/2009-08-17_Liste_Beguenstigten_1_2_Aufruf.pdf)

<sup>6</sup> IUCN *Guidelines for Protected Area 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).

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

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

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

### 2.3.2. Classification of protected areas at national and/or regional level

#### Austria

There is **no outline law on nature protection in Austria**. The Länder are competent for the legislation on nature protection and each Land has its own law on this topic. There are **9 laws on nature protection in Austria**. Concerning the creation of a national park, an agreement is concluded between

the Federation and the Länder (according to the **article 15a, paragraph 1 of the Federal Constitutional Law**: “The Federation and the Länder may conclude agreements among themselves about matters within their respective sphere of competence. The conclusion of such agreements in the name of the Federation is, depending on the subject, incumbent on the Federal Government or Federal Minister. Agreements which are to be binding also on the authorities of the Federal legislature can be concluded by the Federal Government only with the approval of the National Council. Art. 50 para. 3 shall by analogy be applied to such resolutions of the National Council; they shall be published in the Federal Law Gazette”). Agreements made pursuant to Art. 15a of the federal constitutional law define the fundamental aspects concerning the setting up and operation of national parks: area, purpose, administration, functions, financing and any advisory boards or boards of trustees. The detailed national park laws and regulations (management plans) are issued by the Länder.

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

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

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

## Italy

The classification of protected areas in Italy is governed by the provisions of the framework law on protected areas (**Law no. 394 of 6 December 1991, Legge quadro sulle aree protette**), that has been supplemented by a resolution approved by the Permanent Conference for Relations between State, Regions and Autonomous Provinces on 24 July 2003.

The protected land and marine areas include national parks, regional parks, land reserves, marine reserves and areas of local interest. One of the key **general principles** set forth by the framework law on protected areas of 1991 is that of **cooperation between central and local institutions in regulating and managing protected areas**.

The table below shows a comparison between the Austrian and Italian protected areas, according to their management objectives.

*Table 3: Comparison between protected areas in Austria and Italy*



AUSTRIA <sup>11</sup>	ITALY
St: Styria; Ty: Tyrol; Oö: Upper-Austria; Slz: Salzburg	Autonomous Provinces of South Tyrol and Trento, the Veneto Region and Friuli-Venezia-Giulia  (Concerning the classification of Italian protected areas, see Article 2 of the Framework Law on Protected Areas no. 394 of 6 December 1991).
<p><b>Nationalpark (National Park)</b></p> <p>National parks are large areas characterized by distinctive landforms, plants and animal species and their habitats, which have a recreational function for the population and are important for the economy (tourism); they are under constant management and scientific supervision.</p>	<p><b>Parco nazionale (National Park)</b></p> <p><i>"Consisting of land, river, lake or marine areas that contain one or more intact ecosystems or even ecosystems that have been partially altered by anthropic intervention, one or more physical geographic, geomorphological or biological systems of international or national importance by virtue of their natural, scientific, aesthetic, cultural, educational and recreational features, which are such as to require the intervention of the State to preserve them for present and future generations."</i></p>
<p><b>Naturschutzgebiete (Nature conservation areas)</b> (St, Ty, Slz, Oö)</p> <p>Protected areas are generally areas that have preserved their original natural features, that host rare or endangered animals and plants and / or rare or endangered communities of animals or plants and have been designated as such by a decree of the Regional Government.</p>	<p><b>Parchi naturali regionali /Naturparke for the Autonomous Province of South Tyrol (Regional nature parks /Nature parks )</b></p> <p><i>"Regional nature parks consist of land, river and lake areas and may also include sea areas adjacent to the coast, which are of natural and environmental importance and constitute, with one or more bordering regions, a homogeneous system identified by the natural structure of the places, by landscape and artistic values and the cultural traditions of the local population".</i></p> <p><b>Riserva naturale (Nature reserve)</b></p> <p><i>"Natural reserves are land, river, lake or marine areas that contain one or more species of flora and fauna of natural importance, or else which have one or more ecosystems that are important for biological diversity or for the conservation of genetic resources. Natural reserves may be governed State or regional laws authorities depending on the interests they represent".</i></p>
<p><b>Naturdenkmäler</b> (natural monuments) (St, Ty, Oö)</p>	
<p><b>Landschaftsschutzgebiete</b> (landscape conservation areas) (St, Slz, Oö, Ty)</p>	
<p><b>Naturparke</b> (nature parks ) (St, Ty, Slz)</p> <p>This designation refers to areas - either entire sites or parts of them - that are already protected.</p>	
<p><b>Geschützte Landschaftsteile</b> (protected landscape elements) (Oö, Ty, )</p>	<p><b>Vincolo paesaggistico</b> (landscape constraint/ area of special planning control - but this is not a category of protected areas).</p>

<sup>11</sup> See *Handbuch Umweltrecht*, WUV Universitätsverlag, Vienna 2006, p. 377 et s.

<b>Geschützte Naturgebilde von örtlicher Bedeutung</b> (Slz, St, Oö) (protected natural formation of regional importance)	<b>Vincolo paesaggistico</b> (landscape constraint/ area of special planning control - but this is not a category of protected areas).
<b>Ruhegebiete</b> (area of tranquillity) (This category does not exist in the laws of Land Tyrol)	This category does not exist in Italian law.
<b>Gebiete von gemeinschaftlicher Bedeutung</b> (all Länder) (Site of Community Importance) The areas designated under the Birds or the Habitats Directives are called " <i>Europaschutzgebiete</i> " in all Austrian Länder, except in Tyrol where they are called " <i>Natura 2000 Gebiete</i> " ( Natura 2000 sites).	<b>Sites designated under the EU Habitats Directive</b>
<b>Europäische Vogelschutzgebiete</b> (all the Länder) (Bird conservation area designated under EU legislation) The areas designated under the Birds or the Habitats Directives are called " <i>Europaschutzgebiete</i> " in all Austrian Länder, except in Tyrol where they are called " <i>Natura 2000 Gebiete</i> " ( Natura 2000 sites ).	<b>Sites designated under the Birds Directive</b>

## CONCLUSION

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

### The Hohe Tauern Region

Nature parks (*Naturparke*) located in the Autonomous Province of South Tyrol are all managed in a uniform manner by South Tyrol's provincial authorities. There is no such thing as a specific management structure for each natural park. That represents an exception to the provisions of the national framework law on protected areas. Parks are managed in close cooperation with provincial forestry authorities (*Landesforstbehörde*). A provincial law (*Landesgesetz*) was adopted for the creation of each of South Tyrol's nature park . A Board of Directors has been established for each park consisting of representatives from the municipalities involved, associations for nature conservation, representatives of the land owners and representatives of the Provincial Administrations concerned. The Hohe Tauern national park is managed in cooperation with each of the three Austrian Länder concerned, namely Tyrol, Salzburg and Carinthia. In 1994 these three Länder<sup>12</sup> entered into an agreement concerning the cooperation for the protection and promotion of the Hohe Tauern national Park (*Zusammenarbeit in Angelegenheiten des Schutzes und der Förderung des Nationalparks Hohe*

<sup>12</sup> Agreement pursuant to art. 15 of the Federal Constitutional Law (B-VG) between the Federal Government and Länder Carinthia, Salzburg and Tyrol concerning cooperation for the protection and promotion of the National Park Hohe Tauern (26 July 1994).

Tauern) based on Article 15a of the Austrian Constitution. Later on each of the three Länder adopted its own more detailed law on the subject<sup>13</sup>.

### The Rhaetian Triangle Region

As mentioned earlier, nature parks (*Naturparke*) located in the Autonomous Province of South Tyrol are all managed in a uniform manner by the provincial authorities. For this pilot region, the present study will focus on the Gruppo di Tessa/ Texelgruppe natural park.

The areas situated in Austria's Land Tyrol are designated as "nature parks" (*Naturparke*). *Naturpark* is a sort of "label" defining areas that are already protected under the nature conservation laws of Land Tyrol (areas whose landscape is already protected [*Landschaftsschutzgebiet*], tranquillity zones [*Ruhegebiet*], nature reserves [*Naturschutzgebiet*] or areas of special protection [*Sonderschutzgebiet*]). The Ötztaler Alpen site is a "tranquillity zone" (*Ruhegebiet*) and was designated as a *Naturpark* by a regulation dated 9 June 2009. The Kaunergrat Site (*Naturpark* Kaunergrat-Pitztal-Kaunertal) groups together a number of protected areas (a part of which also belongs to the Ötztaler Alpen site), namely: the nature reserve (*Naturschutzgebiet*) Fließler Sonnenhänge, the protected landscape (*Landschaftsschutzgebiet*) Arzler Pitzeklamm and the protected landscape (*Landschaftsschutzgebiet*) Riegetal. These protected areas were designated as *Naturpark* by a regulation of Land Tyrol of 1 July 2003.

### 2.3.3 Management of protected areas

Currently, the management of protected areas - notably the effectiveness and efficiency in management - has become an increasingly important topic for international and European institutions. Over the past twenty years, the attention of international organisations for the protection of the environment had been focused primarily on establishing protected areas. Even though the creation of these areas and of a network to link them together is still a matter of concern, the efficient management of protected areas is now a much more topical issue for the World Commission on Protected Areas (WCPA) of the International Union for Conservation of Nature (IUCN). This organisation<sup>14</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

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<sup>13</sup> Tyrol: Act of 9 October 1991 establishing the National Park Hohe Tauern (*Tiroler Nationalparkgesetz Hohe Tauern*); Carinthia: act on the establishment of national parks and biosphere parks (*Kärntner Nationalpark- und Biosphärenparkgesetz K-NBG*) (Regional Law Gazette - *LGBl.* no. 55/1983, last modified by the law published in *LGBl.* no. 25/2007); Land Salzburg: Act establishing the National Park Hohe Tauern; Ordinance of Land Salzburg's Government - Definition of the boundaries of the core and outer areas of the National Park Hohe Tauern in Land Salzburg.

<sup>14</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).

working programme on the protected areas<sup>15</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>16</sup>. Therefore "*there is an urgent need to take action to improve the coverage, representativeness and management of protected areas nationally, regionally and globally*"<sup>17</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>18</sup>. Let us examine the measures of active and passive management taken for Austria and Italy.

### 2.3.3.1 Active Management Plans

#### Italy

According to Italy's national framework law, specific management plans shall be adopted for national parks and regional nature parks, namely: the plan for the park (*piano per il parco*) and the multi-annual economic and social plan respectively. The obligation to draw up a specific management plan for each type of protected area does not appear in Austrian regional provisions concerning protected areas. The measures of active management are called "development and protection measures" (*Entwicklungs- und Schutzmassnahmen*). Sometimes they take concrete form in the adoption of a management plan.

Specific protection arrangements are applied for Italian regional nature parks and national parks, as well as for Austrian protected areas.

#### Austria

Under the laws of Austria, the implementation of conservation or management measures in protected areas must occur through the stipulation of contracts for the protection of nature (*Vertragsnaturschutz*), which take priority over the adoption of regulatory measures, to the extent that the objectives of nature protection can be achieved. Such contracts are veritable custom-made tools for the implementation of measures to promote the protection of habitats and biotopes. They may be entered into by and between the Land and the municipalities on one side, and the land owners or other rights holders on the other.

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<sup>15</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>16</sup> UNEP/CDB/SBSTTA/9/5, Status and trends of, and threats to, protected areas.

<sup>17</sup> Preamble/Introduction to the Programme of Work on Protected Areas (PoWPA), (paragraph 2).

<sup>18</sup> See point 1.4 of the Programme of Work on Protected Areas (PoWPA).

In Carinthia such contracts are governed by paragraph 2a of the Law on the Protection of Nature<sup>19</sup>, while in Tyrol they are governed by paragraph 4 of the Law on the Protection of Nature. Especially adapted to the nature conservation laws of the Land concerned, said contracts are aimed at implementing management measures taken under the Habitats and Birds Directives, as well as conservation and management measures of protected areas (see paragraph 1, subparagraph 1 of the Land Tyrol's law on the Protection of Nature).

The report on activities for the year 2007 concerning the Tyrolean part of the Hohe Tauern National Park reveals that many nature conservation contracts have been concluded with land owners and parties having the right to hunt. These contracts are very important for nature and landscape conservation. The 2009 report on activities for the Carinthian part of the Hohe Tauern National Park also shows the importance of the nature conservation contracts for the protection of the park's natural heritage.

As for planning within the protected areas, paragraph 32 of Land Tyrol's Law on the Protection of Nature foresees that the Land Government may adopt specific plans for the conservation and management of natural resources (*Naturpflegepläne*) for certain protected areas (*Landschaftsschutzgebiete; Ruhegebiete, geschützter Landschaftsteil, Naturschutzgebiete, Sonderschutzgebiete*). But this is not an obligation under the law. Similarly, Land Vorarlberg's Law on the Protection of Nature states among its fundamental principles that when drawing up any plan, the Land and municipal authorities must take into account the objectives pursued by the regional law (paragraph 3 of Land Vorarlberg's Law on the Protection of Nature): "*When preparing policy papers and plans, the Land and the Municipalities shall take into account the objectives of nature conservation and landscape development*". Land Vorarlberg's Law on the Protection of Nature also foresees, in paragraph 7, the drawing up of "development concepts for the protection of nature and the landscape (*Entwicklungskonzepte der Natur- und Landschaftsräume*). Municipalities must be involved in the preparation of said plans, which shall serve as a basis for planning activities carried out by the Land and the municipalities. Similarly, the municipalities may adopt local development plans for their territories (*örtliche Entwicklungskonzepte*). Paragraph 7 also specifies the measures that a "concept" should typically contain, namely measures intended to preserve the habitats, to improve or to restore the habitats, etc.

## **CONCLUSION**

In Italy the requirement to draw up management plans applies to both regional nature parks and national parks, but it is not systematically foreseen for protected areas. Nevertheless, protected areas must adopt management measures. At a later stage it will be interesting to compare the measures contained in the Italian management plans with those of Austria's protected areas.

### **2.3.2.2 Passive management - Regulation of activities in protected areas**

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<sup>19</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.

## Italy

Italy's Framework Law on Protected Areas provides that national and regional protected areas (national parks and regional nature parks ) shall be subject to specific protection arrangements. Such regimen will be described also in the relevant regional laws. The latter, specifically those relating to the parks, must also contain provisions concerning the regulation of activities.

## Austria

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

## **CONCLUSION**

A comparison of the regulation schemes applying to the different activities would be essential at a later stage to determine whether an equivalent level of protection of habitats and species is ensured in both countries. Ideally, certain activities that could disturb the species or destroy natural habitats should be regulated in the same manner on both sides of the border.

### **2.3.4 Transborder cooperation in nature protection law**

#### Austria

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

Following the transposition of the EU's Directive on Environmental 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

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



were integrated into the Law on the Protection of 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 law<sup>23</sup> adopted in November 2009, whose paragraph 10 concerns transboundary damage.

## Italy

Italy's national framework law contains no provisions on transborder cooperation between bordering protected areas. That type of provision is contained instead in some regional laws on the protection of nature, such as Piedmont's conservation laws (see the study on France and Italy). There is no such provision in South Tyrol's nature conservation law. Concerning cooperation on landscape conservation, the Italian Code of the Cultural and Landscape Heritage lays down the obligation to cooperate between States, in particular with respect to the principles of cooperation between States established in international agreements in the field of landscape conservation and enhancement.

*"1. The Republic of Italy shall comply with the obligations and principles of co-operation between States deriving from international agreements on the protection and enhancement of the landscape.*

*2. The division of competencies concerning landscape management is established in compliance with the constitutional principles, also having regard to European Landscape Convention adopted in Florence on 20 October 2000, including the associated provisions for ratification and implementation".*

Similarly, the provisions of the EU's Directive on Environmental Liability were transposed into Italian law by Legislative Decree no. 152/2006, which contains provisions on transborder cooperation in the event of transboundary environmental damage. Article 318, paragraph 4 of the text states the following:

*" Where environmental damage affects or is likely to affect several Member States of the European Union, the Ministry for the Environment Land and Sea Protection shall cooperate, including through the appropriate exchange of information, with a view to ensuring that preventive action and, where necessary, remedial action is taken in respect of any such environmental damage. In this event, when the environmental damage originates in the Italian territory, the Ministry for the Environment Land and Sea Protection shall provide sufficient information to the potentially affected Member States. If the Ministry identifies damage within the national borders which has not been caused within them, it shall report the issue to the Commission and any other Member State concerned; it may make recommendations for the adoption of preventive or remedial measures and it may seek, in accordance with Section six of this Decree, to recover the costs it has incurred in relation to the adoption of preventive or remedial measures".*

## CONCLUSION

Cooperation between the managing institutions of protected areas occurs primarily on a voluntary basis (in particular through the implementation of INTERREG programmes) and with no specific legal basis.

<sup>22</sup> Carinthia's nature protection law (*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.

Provisions encouraging the States to cooperate in this field have been integrated in Italian regional legislation (Piedmont). Additionally, concerning the pilot region of the Rhaetian Triangle, a common decision of the Parliaments of Trento, South Tyrol and North Tyrol (the "Dreier Landtag"<sup>24</sup>), adopted in July 2007 (*Decisione riguardante la promozione di un rapporto tra le aree protette e la creazione di corridoi ecologici*) aims to promote cooperation between protected areas and to create biological corridors. This is a genuine statement of intent to promote the adoption of the necessary instruments for setting up cross-border biological corridors. Again concerning this region, it should be noted that although the Euro-region has been created, the statutes of the European Grouping for Territorial Cooperation (EGTC) that set forth its mission have not yet been adopted.

## 2.4 Protection of the habitats/biotopes

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

### 2.4.1 Protection of the mountain natural elements

#### 2.4.1.1. The Alpine Convention and its Protocols

Austria and Italy have both ratified the Framework Convention on the Protection of the Alps. However, while Austria has ratified all of the accompanying implementing Protocols of the Alpine Convention and they have been in force since 2002, for the time being Italy has ratified none of them. This means that Italy is not bound by certain provisions of the Protocol on the conservation of nature and landscape protection that are particularly interesting for the cooperation between protected areas. However, many provisions of the Alpine Convention and its Protocols are applied through the national or regional laws in force<sup>25</sup>. A draft law on the ratification of all of the Alpine Convention's Protocols has been around for years, but the ratification of the Transport Protocol is fraught with problems.

As for the cooperation between protected areas, which is the main subject-matter of this study, article 12 of the Protocol on the conservation of nature and landscape protection of the Alpine Convention conceives cooperation as one of the stages in the creation of an ecological network across the Alps:

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

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

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

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<sup>24</sup> See the Dreier Landtag's website: <http://www.landtag-bz.org/de/dreier-landtag.asp> (status: 19.03.2010).

<sup>25</sup> Ventura E. et Martini M., *La Convenzione delle Alpi, Politiche, leggi e misure di attuazione in Italia*, EURAC, Ministero dell'Ambiente, della Tutela del Territorio e del Mare (Ed.), Bolzano, 2006, (521 p.).



The Contracting Parties also recognised, with the adoption of the Plan of Action on Climate Change in the 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 Plan of Action sets forth the following objectives:

- to create an ecological continuum in order to facilitate the migration of Alpine fauna and flora species;
- to preserve the biodiversity of protected areas and maintain ecosystem services;
- to ensure the preservation of habitats and species that are representative of the Alps;
- to support quality agriculture, which contributes to the quality of the environment and to the preservation of biodiversity;
- to preserve peatlands as CO<sub>2</sub> sinks and biodiversity reservoirs.

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

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

## **CONCLUSION**

The Protocol on the Conservation of Nature and Landscape Protection contains concrete measures for establishing an ecological network. However, only Austria is bound by the provisions of this Protocol, because Italy has not yet ratified the text. It should be mentioned that in 2005 the Conference of Experts on the Protection of Nature declared that this article is directly applicable<sup>27</sup>. Nevertheless, we will see in the paragraph on ecological connectivity that several Italian regions in the Alps have in fact adopted provisions pursuing the objective of networking ecologically important habitats.

### **2.4.1.2. Community Law**

The European Union law does not foresee a specific policy for mountain areas. Nevertheless, a number of different policies apply to mountain areas, first and foremost the regional and agricultural policies. Mountain areas are taken into account indirectly in policies for nature conservation and in the

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<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.

<sup>27</sup> *Die Alpenkonvention: Handbuch für ihre Umsetzung. Rahmenbedingungen, Leitlinien und Vorschläge für die Praxis zur rechtlichen Umsetzung der Alpenkonvention und ihrer Durchführungsprotokolle*, Lebensministerium - Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft, 2006, Vienna, p. 129.

implementing rules of the Habitats and Birds Directives. The Habitats Directive is implemented by biogeographical regions: the Alpine biogeographical region includes several European mountain ranges and the Alps constitute one of the sub-regions of the Alpine biogeographical region. It is worth noting that mountain areas made their first appearance in the EU's primary law with the recent adoption and entry into force of the Treaty of Lisbon, very much like the concept of "territorial cohesion". Article 174 of the Treaty on the Functioning of the European Union<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.

## **CONCLUSION**

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

### **2.4.1.3. Protection of the mountain natural elements on the national level**

Austrian and Italian law both contain specific measures for the preservation of natural mountain areas.

#### **Austria**

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

#### **Italy**

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<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.

In Italy, the need to adopt specific measures for mountain areas is mentioned in Article 44 of the Italian Constitution, according to which "*the law shall envisage measures in favour of mountain areas*". Since this provision is of a general nature, it is not restricted to the economic and social sectors, but may also concern other fields, such as the protection of nature, for example. Moreover, mountain areas are indirectly protected by legal instruments concerning, among other things, spatial planning, the conservation of nature, etc. So, the Galasso Act adopted in 1985<sup>30</sup> established that certain natural elements should be protected by law, and some of them are typical of mountain areas. The Galasso Act established full and comprehensive landscape conservation by ensuring the protection of "assets of outstanding natural beauty" (*bellezze naturali*). Landscape assets (*beni paesaggistici*) enjoying protection are listed in the law and include rivers, creeks, glaciers, mountain areas above 1600 m in the Alpine range, wetlands, etc. (Legislative Decree D. Lgs. 157/2006). The provisions of the Galasso Act were integrated in various texts, including Legislative Decree no. 42/2004 and Legislative Decree no. 157/2006.

## **CONCLUSION**

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

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

The Habitats 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

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<sup>30</sup> Law no. 431 of 8 August 1985 (Galasso Act).

<sup>31</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L.206 of 22 July 1992, corrigendum L.59 of 8 March 1996 and L.31 of 6 February 1998), amended by directive Council Directive 97/62/EC of 27 October 1997 (OJ L 305, of 8 November 1997).

<sup>32</sup> Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ L.103 of 25 April 1979) (OJ L. 59 of 8 March 1996, p. 61s.).

<sup>33</sup> See URL: [http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index\\_en.htm](http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm).

2000 sites. Pursuant to Article 6, paragraphs 1 and 2 of the Habitats Directive, Member States are required to adopt specific measures for the protection of Natura 2000 sites:

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

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

According to these provisions, the adoption of the required conservation measures may imply, if need be, the development of appropriate management plans specific for the sites, which may also be integrated into other development plans. The words “*if need be*” indicate that it may not be necessary to draw up a management plan specifically designed for Natura 2000 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 primary aim at ensuring the accomplishment of the Directive’s general purpose. While article 6, paragraph 1 of the Directive does not define the form, procedure or structure that management measures should have, the methodological guidelines of the 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,*

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

<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).

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

including forests, is applied at field 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. 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

<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.

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

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 law, 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, 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>.

<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.

<sup>52</sup> Lentner R. Kostenzer J., *Konzept Schutzgebietsbetreuung in Tirol*, Landesregierung Tirol, Abteilung Umweltschutz, December 2004.

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



Given the division of competencies in the area of nature protection in Austria, no guidelines have been established by the Federal Government. The Länder are responsible for establishing, if need be, their own guidelines for the management plans of Natura 2000 sites. To determine what the minimum contents of the management plans for the Natura 2000 sites should be, most of the Regional Governments refer directly to the Proceedings of the Galway Seminar concerning the drawing up of management 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 table 4, taken from a report<sup>58</sup> drawn up by the Austrian Court of Auditors (*Rechnungshof*).

Table 4: Progress of management plans for Natura 2000 sites in Austria

Länder	Share of Natura 2000 sites with a management plan	Share of Natura 2000 sites with a management plan in the process of being drawn up	Share of Natura 2000 sites with no management plan
Burgenland	0,4%	14,8%	84,8%
Carinthia	13%	0,3%	86,7%

<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.*

Lower Austria	0 %	27%	73%
Upper Austria	22%	8%	70%
Styria	9%	19%	73%
Tyrol	33 %	0%	67%

## Italy

Article 4, paragraph 2 of Legislative Decree no. 357/1997<sup>59</sup>, lays down an obligation to implement conservation measures for each special area of conservation and the Regions and Autonomous Provinces of Bolzano and Trento are responsible for establishing and implementing such measures. The adoption of said measures must occur no later than six months after designation of the site, which is a relatively short period of time; the identified measures may be the subject of management plans or may be integrated into existing management plans, as appropriate. The Regions and Autonomous Provinces of Bolzano and Trento must also take appropriate regulatory, administrative or contractual measures that meet the ecological requirements of natural habitats listed in Annex A and of species listed in Annex B, which are present in the sites. Moreover, pursuant to article 3, paragraph 3 of the above mentioned decree, the Ministry for the Environment, following consultation with the Permanent Conference for Relations between the State, Regions and Autonomous Provinces of Trento and Bolzano, shall designate the essential areas to ensure the ecological coherence of the Natura 2000 network. The Italian Government has taken advantage of a LIFE-Nature 99 Project to prepare the guidelines for the management of Natura 2000 sites; management plans for nine pilot sites were produced. In December 2002, following a hearing of the Permanent Conference for Relations between the State, the Regions and the Autonomous Provinces of Bolzano and Trento, the National Government issued a decree containing guidelines<sup>60</sup>, whose objective was to provide "technical and legal support"<sup>61</sup> for development of management plans in the Autonomous Regions and Provinces. The decree established the conditions for drawing up the plans and their indicative contents. These national guidelines pointed out that the Natura 2000 network does not replace the existing network of nature parks, but complements it; management plans are not always necessary. This document also stressed that where management plans are prepared, it is fundamental for them to be in accordance with the spatial planning documents/ territorial management plans issued by relevant authorities. However, as we will see later, these guidelines define only a relatively loose framework for the Regions and Autonomous Provinces, which will have to develop and adopt their own guidelines. Thus, the Autonomous Province of South Tyrol drafted its own guidelines in 2004<sup>62</sup>. These guidelines are based on the national guidelines, but place the accent on the distinctive features of the Region, as one would expect. They

<sup>59</sup> Presidential Decree dpr of 8 September 1997, no. 357.

<sup>60</sup> Decree of the Ministry for the Environment Land and Sea Protection of 3 September 2002 "Guidelines for managing the sites of the Natura 2000 network" (*Linee guida per la gestione dei siti della Rete Natura 2000*), Italian Official Journal no. 224 of 24.09.2002.

<sup>61</sup> Translated by the authors of this paper.

<sup>62</sup> Ruffini V.F. (dir.), *Natura 2000 in Südtirol, Leitfaden für die Ausführung der Managementpläne*, Autonome Provinz Bozen-Südtirol, Abteilung Natur und Landschaft, 2004.



also state the elective nature of management plans<sup>63</sup>. Other regions and provinces belonging to the Alpine biogeographical region have manifested no intention of drawing up regional guidelines to date. Article 4, paragraph 3 specifies that if a conservation site is located in an area belonging to the national network of protected areas, the existing conservation measures also apply to the special area of conservation. A later amendment of the 2003 decree clarified that if the special area of conservation lies partially outside an area that is already protected, any conservation and management measures shall be adopted after hearing the local institutions involved and the management body of the site concerned. A decree of the Ministry for the Environment of October 2007<sup>64</sup> set forth common criteria for the definition of conservation measures applying to special areas of conservation (SACs) and special protection areas (SPAs). Following an appeal by the Autonomous Provinces of Bolzano and Trento, the Italian Constitutional Court, in a decision of 1 August 2008<sup>65</sup>, stated that the decree did not concern the Autonomous Provinces because their special statute gives them a free hand to the practical application (*concreta attuazione*) of the Habitats and Birds Directives in their territory. In February 2007, the provincial nature conservation department of South Tyrol drew up management plans for all of its sites located in nature parks. In national parks, management plans have to be prepared by the management body, that is also required to draw up specific management plans for Natura 2000 sites. For the Autonomous Region of Val d'Aosta, article 6, paragraph 2 of law no. 8 of 21 May 2007<sup>66</sup> states that the Regional Government shall decide whether a management plan is needed, on the basis of the national guidelines.

## **CONCLUSION**

Another step towards the practical establishment of the ecological network will be the detailed analysis of the management plans for the sites, to ensure that the foreseen active management measures pursue the same objectives on both sides of the border. This, of course, is not a mandatory provision of the Habitats Directive and constitutes a voluntary action on the part of the management bodies of the sites. In fact, the Habitats Directive, does not contain the notion of a "transboundary" Natura 2000 site, therefore it does not impose cross-border cooperation in form, for example, of a common plan of management<sup>67</sup>.

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

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<sup>63</sup> Ruffini V.F. (dir.), *Natura 2000 in Südtirol, Leitfaden für die Ausführung der Managementpläne, 2., überarbeitete Fassung, op. cit.*, point 6.

<sup>64</sup> Decree of 17 October 2007 of the Italian Ministry for the Environment Land and Sea Protection. Minimum uniform criteria for defining conservation measures in special areas of conservation (SAC) and special protection areas (SPAs) (*Criteri minimi uniformi per la definizione di misure di conservazione relative a Zone speciali di conservazione (ZSC) e a Zone di protezione speciale (ZPS)*) (Italian Official Journal GU no. 258 of 6 November 2007).

<sup>65</sup> Constitutional Court, 1 August 2008, no. 329.

<sup>66</sup> Regional act no. 8 of 21 Mai 2007, containing provisions for implementing the obligations of the Autonomous Region Valle d'Aosta deriving from the membership of Italy to the European Communities pursuant to Council Directives 79/409/EEC on the conservation of wild birds and 92/43/EEC on the conservation of natural and semi-natural habitats and of wild the fauna and flora (Community Law 2007) (Regional Law Gazette No. 24 of 12 May 2007).

<sup>67</sup> For example, the Water Framework Directive calls for cross-border river basin management plans.

The Habitats Directive contains an obligation for the Member States to "take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive". The text of the Habitats Directive is essentially of a preventive nature and does not deal with the issue of compensation for damage to habitats and species, which is the subject matter of Directive 2004/35/CE focusing on the prevention and remedying of environmental damage, including damage to biodiversity. In article 2, paragraph 2, Directive 2004/35/CE defines damage as a "measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly."

### The notion of damage to biodiversity in the directive 2004/35/CE of 21 April 2004<sup>68</sup>

According to article 2, paragraph 1 of this directive 2004/35/CE, "environmental damage" means: (a) damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species." Concerning damage to resources, the damage caused to protected natural habitats and species must have produced severe adverse effects on the constitution or maintenance of a favourable status of conservation for said habitats or species. Over the long term, a large number of factors may affect the state of conservation of a site, its division, structure and functions. The Directive specifies that "the significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in the Annex<sup>69</sup>". Knowing the initial state of the site is therefore a fundamental starting point for assessing the damage<sup>70</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 Law on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage (*Bundesgesetz über Umwelthaftung zur Vermeidung und Sanierung von Umweltschaden*). However the federal act does not cover all of the aspects dealt with by the Directive, and therefore transposition is incomplete. According to the division of competences between the Parliament and the Länder codified by Article 15 of the Austrian Constitution, legislative provisions or regulations must be adopted by the Länder. The field of application (*Anwendungsbereich*) of the federal law is defined in paragraph 2 of the same.

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

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<sup>68</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>69</sup> Article 2, paragraph 1, letter a, of the environmental liability directive.

<sup>70</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.

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

Following the delay in the transposition procedure, Austria was sentenced by the Court of Justice of the European Communities on 18 June 2009 for failure to transpose Directive 2004/35/CE within the period prescribed<sup>71</sup>.

During litigation, Austria invoked as a defence that the two levels of transposition (*Bund* and *Länder* ) delay the process of transposition<sup>72</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>73</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.

## Italy

The Directive on environmental liability has been transposed into Italy's national legislation, namely into Part VI of legislative decree no. 152/2006 (*Norme in materia di tutela risarcitoria contro i danni all'ambiente* - Norms on compensatory measures for damage to the environment), more precisely into articles 299 and 318 of the text. Environmental damage and damage to biodiversity are defined as

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<sup>71</sup> European Court of Justice (CJCE), Judgment of the Court of 18 June 2009, Case C-422/08, Commission of the European Communities v Republic of Austria.

<sup>72</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>73</sup> See point 11 of the Judgement: "In addition, under the established case-Act of the Court a Member State may not invoke as a defence provisions, practices or situations of its domestic law, including those resulting from its federal organization, to justify its failure to fulfil obligations and meet deadlines prescribed by a directive (see also judgement of 6 July 2000, Commission v. Belgium, C 236/99, Rec. p. I 5657, point 23, and judgement of 12 March 2009, Commission v. Belgium, C 342/08, point 13)".

follows : *"the adverse change, compared to the baseline condition, affecting [...] species and natural habitats protected under national and Community laws, as set forth in law no. 157 of 11 February 1992, which contains provisions for the protection of wild fauna and transposes Council Directive 79/409/EEC of 2 April 1979; Commission Directive 85/411/EEC of 25 July 1985 and Commission Directive 91/244/EEC of 6 March 1991, and implements the Paris Convention for the Protection of Birds of 18 October 1950 and the Bern Convention on the Conservation of Wildlife and Natural Habitats of 19 September 1979, having regard to the Presidential Decree no. 357 of 8 September 1997, which contains the regulations for implementing Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural and semi-natural habitats and of wild fauna and flora, applicable also to the natural protected areas referred to in law no. 394 of 6 December 1991, and later implementing regulations"*. The damage to biodiversity therefore includes not only damage to the habitats and species that motivated the designation of Natura 2000 sites, but also damage to protected areas designated under the Framework Law on Protected Areas.

## **CONCLUSION**

The provisions transposing EU's Directive 2004/35/CE concerning environmental damage vary across the legislation of Austrian Länder. Some Länder have opted for a wider definition of the concept of habitat and protected nature. Also Italy has applied a wider meaning of the concept, including not only habitats and species protected by the Directive, but also damage to sites protected under the Framework Law on Protected Areas. Moreover, Directive 2004/35/CE introduces the concept of remedial measures for repairing environmental damage, defining them as *" any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services as foreseen in Annex II "*<sup>74</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>75</sup>. Nevertheless, there are certain types of habitats or

<sup>74</sup> Article 2, paragraph 11, referring to Annex II.1 and II.1.1.

<sup>75</sup> See *Handbuch Umweltrecht*, WUV Universitätsverlag, 2006, p. 373 et s.

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

## Italy

In Italy's national laws, the protection of certain types of habitats is governed by provisions related to the preservation of specific elements of the landscape (*beni paesaggistici*). These elements, recognised as being "of significant landscape value" (*di interesse paesaggistico*), are identified in article 142 of Legislative Decree 42/2004<sup>76</sup>, which is regarded as Italy's Code of Cultural and Landscape Heritage (*Codice dei beni culturali e del paesaggio*). Assets of significant landscape value must be protected in compliance with the law even before the adoption of landscape plans. In particular, this concerns areas around lakes, mountain areas above 1600 m (in the Alpine range), forests and woods, wetlands, etc. The category "elements of the landscape" also contains areas identified and subject to protection in landscape plans adopted pursuant to Article 143 of the Cultural and Landscape Heritage Code.

## CONCLUSION

Before establishing any ecological corridor we need to compare the types of habitats subject to protection in Italy and Austria, in order to determine whether protection criteria are consistent on both sides on the border and the protection measures adopted. The issue of environmental damage regulations is also essential, especially with regard to authorisation procedures: the so-called "*autorizzazione paesaggistica*", i.e. "landscape authorisation" in Italian law (article 146 of the Code of the Cultural and Landscape Heritage) and the "*Eingriffsverfahren/Eingriffsschutz*", literally "intervention procedures/ interference protection" in Austrian law.

### 2.4.4. Legal provisions concerning the linkage of habitats

There are no national legal provisions in Austria to support implementation of an ecological network across the country. In Italy, provisions for ecological connectivity have been adopted by some Regions and aim at establishing a regional ecological network. So far there are no national legal provisions on the matter. A National Strategy on Biodiversity is under preparation in Italy and should be formally presented in early 2010. It will deal with the establishment of ecological networks and the ecological coherence between protected areas<sup>77</sup>.

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

<sup>76</sup> Legislative decree amending and integrating D.Lgs. no. 42 laying down the Code of the Cultural and Landscape Heritage (*Codice dei beni culturali e del paesaggio*), pursuant to article 10 of Law no. 137 of 6 July 2002.

<sup>77</sup> *National Biodiversity Strategy in Italy, Ministry for the Environment Land and Sea Protection, Nature Protection Directorate, April 2009*. The Strategy includes the following tasks: to assess whether protected areas are effective as ecological networks; to investigate the relationships between the national ecological network, the Natura 2000 network, the territorial ecological network and ecological network at species, groups of species and communities level, etc.. (See p. 12 of the presentation on the future strategy on biodiversity in Italy).

obligation for Member States. Indeed, the provisions of article 3, paragraphs 2 and 3, and article 10 “encourage” Member States to improve the ecological coherence between Natura 2000. These provisions are written in the form of recommendations: that explains why they have not been transposed by all Member States of the EU. They have not been included among the Austrian provisions transposing the Habitats Directive, whereas they have been acknowledged by Italian laws.

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

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

*Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species”<sup>78</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>79</sup> and Tyrol<sup>80</sup> only in relation to compensatory measures in case of projects which undermine the coherence of the network. However, a joint decision of the Parliaments of Trentino, South Tyrol and North Tyrol, adopted in July 2007 (*Decisione riguardante la promozione di un rapporto tra le aree protette e la creazione di corridoi ecologici*) supports the creation of a cross-border ecological network between the Italian Autonomous Provinces of Trento and Bolzano and the Austrian Land of Tyrol. Aimed at fostering cooperation between protected areas and the creation of biological corridors, this Decision is in fact a Memorandum of Understanding to promote the adoption of instruments for establishing transboundary biological corridors. Further initiatives in support of ecological networking have been adopted in some Länder, especially in Tyrol and Styria

## Italy

Italy has transposed into national law the provisions of article 10 of the Habitats Directive to ensure ecological coherence between Natura 2000 sites. Thus, article 3, paragraph 3 of the Presidential Decree DPR of 8 September 1997 provides that “3. *In order to ensure the ecological coherence of the “Natura 2000” network, the Ministry for the Environment Land and Sea Protection, following*

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<sup>78</sup> Underlined by the authors of this paper.

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

<sup>80</sup> Tyrol’s nature protection act (*Tiroler Naturschutzgesetz 2005 - TNSchG 2005.*)



*consultation with the Permanent Conference for Relations between the State, Regions and Autonomous Provinces of Trento and Bolzano, shall define the guidelines for managing areas of functional ecological connectivity, which are of primary importance for wild flora and fauna. That shall be done when drawing up the Spatial Planning Guidelines required by article 3 of Law no. 394 dated 6 December 1991*". Presidential Decree DPR of 12 March 2003 dwells on the concept of "areas of functional ecological connectivity" (*aree di collegamento ecologico funzionale*), specifying that "The areas of functional ecological connectivity are those areas which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as wetlands and forests) are essential for the migration, dispersal and genetic exchange of wild species". Provisions on ecological connectivity have been adopted by a number of Regions, with the aim of creating a regional ecological network. That is the case of the Piedmont's act on the conservation of natural areas and biodiversity (*Testo unico sulla tutela delle aree naturali e della biodiversità*). Piedmont's regional law provides for the realization of a regional ecological network, whose components are specified in article 2, paragraph 2 of the regional law. The protected areas and the Natura 2000 sites of the Region are part of the network:

*"The regional ecological network consists of the following areas:*

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

The ecological corridors are one of the components of the regional ecological network and are dealt with in articles 53 and 54 of the aforementioned regional law. According to article 53, paragraph 1, the ecological corridors are "functional connection areas outside the protected areas and the areas of the Natura 2000 network, which, due to their linear and continuous structure or their connecting role, are essential elements for the migration, dispersal and genetic exchange of wild species". These corridors must be clearly identified and taken into account in the planning documents, at all levels. Compensatory measures must be defined and implemented in order to compensate for any damage to the corridors. This provision transposes articles 3 and 10 of the Habitats Directive. The Decree of March 2003, which modified the Decree of 1997 transposing the Habitats Directive, takes into account the ecological coherence between Natura 2000 sites:

*« 3. In order to ensure the ecological coherence of the "Natura 2000" network, the Ministry for the Environment Land and Sea Protection, following consultation with the Permanent Conference for Relations between the State, Regions and Autonomous Provinces of Trento and Bolzano, shall define the guidelines for managing areas of functional ecological connectivity, which are of primary importance for wild flora and fauna. Such guidelines are intended also as an instrument to be used when drawing up the Spatial Planning Guidelines laid down by article 3 of law no. 394 dated 6 December ».*

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

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

The Liguria Region has recently integrated provisions for the establishment of a regional ecological network into its regional nature conservation legislation, more specifically into regional law no. 28 of 10 July 2009 concerning the conservation and enhancement of biodiversity (*Legge Regionale 10 Luglio 2009 no. 28, Disposizioni in materia di tutela e valorizzazione della biodiversità*). According to article 1, paragraph 2 of the law, which sets the objectives, the Region shall “set up a regional ecological network consisting of the Natura 2000 network, the areas providing functional ecological connectivity referred to in articles 3 and 10 of the European Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural and semi-natural habitats and of wild fauna and flora as later amended and integrated, as well as of protected areas and any other areas of significant natural value in the region”. According to article 2 of this law, the Region shall define the criteria, guidelines and procedures for managing and monitoring the sites included in the regional ecological network. Article 3 of the law is devoted to the regional ecological network (*Rete ecologica nazionale*). According to article 3, paragraph 1, such ecological network will consist of the Natura 2000 sites, the protected areas and the areas serving as ecological and functional linkages (stepping stones), which are particularly important for the conservation, migration, dispersal and genetic exchange of wild species. Also the Autonomous Province of Trento has adopted provisions for ecological connectivity to achieve coherence between sites belonging to the provincial network of protected areas. Provincial Law no. 11 of 23 May 2007, states that the coherence between protected areas must be secured through the identification of ecological corridors (*corridoi ecologici*). These are defined as “areas of functional connectivity between protected areas which, by virtue of their linear structure or their function as stepping stones favour the migration, dispersal and genetic exchange of wild species”. Ecological corridors are mentioned also in other articles of this act.

## **CONCLUSION**

Ensuring connectivity between habitats is one of the new stages of conservation. The need for ecological coherence between protected areas and Natura 2000 sites is stated clearly in several Italian regional laws on the protection of nature.

The task ahead therefore is that of linking protected areas together to create a regional ecological network. These laws transpose the provisions of Articles 3 and 10 of the Habitats Directive which call for functional coherence between Natura 2000 sites. Such provisions do not appear in Austrian law, even though some relevant initiatives are under way in some Länder. The absence of concrete provisions on the subject in Austria’s regional laws (Länder level) can be an obstacle to the achievement of cross-border ecological corridors.

### **2.4.5 Spatial Planning in Protected Areas**

We will examine here whether spatial planning in protected areas is governed by specific provisions

#### **2.4.5.1. Land use planning**

##### **Italy**



As far as spatial planning in national and regional nature parks is concerned, reference must be made to articles 12, 14 and 25 of the framework law on protected areas, which lists the main planning instruments for the national and regional parks respectively. The two main planning instruments for the park are the "plan for the park" (*piano per il parco*) and the "multi annual economic and social plan" (*piano pluriennale economico e sociale*). In the case of national parks, the park plan must provide for the subdivision of the site according to protection levels. The area where the strictest conservation rules apply is designated as integral natural reserve (wilderness area): no intervention seems to be allowed because the environment is preserved in its entirety in accordance with paragraph 2 of article 12 of the Act. Concerning the legal status of the park plan, article 12, paragraph 7 states that it commands other planning instruments: "*The plan is valid as a declaration of general public interest and urgency; measures contained therein cannot be postponed and the plan shall replace any landscape, spatial planning or urban development instrument*". As for regional nature parks, pursuant to article 25, paragraph 2 of the framework law, "*the park plan is adopted by the park management body and is approved by the Region. It is also valid as a landscape and spatial planning instrument and replaces the landscape, spatial planning or urban development plans at any level*". Therefore, once adopted, the park plan supersedes any existing landscape and spatial planning instrument and prevails over other planning document, regardless of the issuing echelon of government. Concerning spatial planning outside protected sites, it should be noted that a specific system applies in the surrounding area (contiguous with the site). Instead, "general" regional spatial planning provisions apply outside the contiguous area, whose boundaries are defined by the Region in consultation with the park management bodies and the local institutions involved.

### Austria

With reference to spatial planning and territorial management in protected areas, the protection system applied to the areas includes ban and permit policies which can lead to prohibition of certain activities. Moreover, the National Park Hohe Tauern is governed both by national laws on parks (*Nationalparkgesetze*) and by the specific park laws of the three Länder which have a part of their territory within the park boundaries, namely Tyrol<sup>81</sup>, Carinthia<sup>82</sup> and Salzburg<sup>83</sup>. Such laws provide for specific zoning with different levels of protection; specific regulations apply to peripheral park areas (*Außenzone*<sup>84</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>85</sup>. Moreover, pursuant to paragraph 32 of Tyrol's nature conservation law, the Land Government can adopt specific spatial planning instruments for certain protected areas (*Landschaftsschutzgebiete; Ruhegebiete, geschützter Landschaftsteil, Naturschutzgebiete,*

<sup>81</sup> Act of 9 October 1991 establishing the National Park Hohe Tauern (*Tiroler Nationalparkgesetz Hohe Tauern*)

<sup>82</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>83</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>84</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>85</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.

*Sonderschutzgebiete*). Such instruments are called “*Naturpflegepläne*” (literally: nature maintenance plans). However this not a mandatory requirement stated by the law.

## **CONCLUSION**

To achieve ecological continuity between two protected areas, we must first ascertain what measures are adopted in the sites concerned or have an effect on them. Measures may vary depending on the specific status of the protected area. It will be interesting to examine also measures adopted in the areas surrounding the protected sites and capable of affecting the latter, or else measures intended to limit the influence of external interventions in protected areas but which, in fact, may have an impact on them.

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

#### **General provisions and the recognition of cross-border effects**

The provisions of EU directives on the assessment of projects, plans and programmes and their impact on the environment apply both in Austria and Italy. These directives contain, in particular, provisions for projects, plans and programmes that may affect neighbouring countries. Council Directive 85/337/EEC of 27 June 1985<sup>86</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 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>87</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:

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<sup>86</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.

<sup>87</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.

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

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

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

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

## **CONCLUSION**

When setting up cross-border ecological corridors, special attention shall be paid to projects, plans and programmes that may have an impact on the environment of neighbouring countries. That is required by article 7 of Directive 85/337/EEC.

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

Similarly, article 7 of Directive 2001/42/EC requires that consultations shall take place whenever a plan or a programme is likely to have significant effects on the environment of a neighbouring country. Such provisions concern the protection of an already existing corridor, rather than the act of establishing a corridor.

### **2.4.5.3. Rules applying to the assessment of environmental impact on Natura 2000 sites**

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

The assessment of the environmental impact of projects in Natura 2000 sites falls within the scope of article 6, paragraphs 3 and 4 of the Habitats Directive, as transposed in Italy's national and regional legislation. After calling on the Member States to establish the necessary conservation measures for Natura 2000 sites in paragraphs 1 and 2 of article 6, the Habitats Directive sets forth measures to safeguard the environment in specific cases, namely when plans or projects have to be carried out.

Derogations from the system of conservation measures laid down by the directive are possible, but the rules to obtain them are strict. A procedure must be followed, which has been defined by the Commission and by the rulings of the European Court of Justice. Article 6, paragraph 3 of the Directive describes the impact assessment requirements and envisages that an administrative authorisation may be refused

*“3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the CONCLUSION of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.*

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

*Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest”<sup>88</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 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,

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<sup>88</sup> Underlined by the authors of the paper.

either directly or indirectly<sup>89</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>90</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>91</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*”.

## CONCLUSION

Unlike Italy, Austria has not yet ratified the European Landscape Convention. In Italy the Convention was ratified in May 2006 and entered into force in September of the same year. Italy’s Cultural Heritage and Landscape Code of 2004, later amended and integrated by legislative decree no. 157/2006<sup>92</sup>, defines the concept of landscape and uses the definition taken from the European Landscape Convention. Article 132 of the Code makes direct reference to the Convention:

*“1. The Republic of Italy complies with the obligations and principles of cooperation between the States set by international conventions on landscape conservation and enhancement.*

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<sup>89</sup> Reference is made for instance to the Convention on Biological Diversity.

<sup>90</sup> Point 31 of the Explanatory Report of the European Landscape Convention.

<sup>91</sup> Point 25 of the Explanatory Report of the European Landscape Convention.

<sup>92</sup> Modified by legislative decrees no. 62 and 63 of 26 March 2008, published in Italy’s Official Journal G.U. no. 84 of 9 April 2008, and by Law no. 129/2008 converting Law Decree D.L. no. 97/2008.

2. The division of powers in relation to landscape is determined in accordance with constitutional principles, also with reference to the implementation of the European Landscape Convention, adopted in Florence on 20 October 2000, and its ratification and implementing rules.”

The fact that Austria has so far failed to ratify the European Landscape Convention does not mean that it has not implemented any landscape conservation measures. Below is a description of them.

### 2.5.2. Landscape management in the legal provisions on nature protection

Provisions for landscape protection are present in both the Austrian and the Italian law. The Austrian law however does not refer to landscape planning as clearly as the Italian law.

#### Austria

Landscape protection in Austria is governed by various provisions; we will examine those contained in nature protection law. Landscapes should be preserved primarily by creating "landscape conservation areas" (*Landschaftsschutzgebiete*). The nature conservation laws of all Austrian Länder mention this type of protected area. These areas are designated by an Ordinance (*Verordnung*). The Ordinance establishing the protected area shall specify its boundaries as well as the objectives of protection, licensing actions, restrictions prohibitions and exemptions that shall be adopted. Activities that might have an impact on an landscape conservation area will be allowed only if they do not impair the conservation purpose (*Schutzzweck*) in a long-lasting way, or else where there is an overriding public interest (*öffentliches Interesse*). With the exception of Carinthia, Lower Austria and Vorarlberg, nature protection laws contain provisions for the creation of "protected landscape elements" (*geschützte Landschaftsteile*). These are small-sized nature or cultural landscape areas that are particularly important for the landscape or as a resting place. Also these areas are designated by Ordinance (*Verordnung*). Nature protection laws contain also provisions for the conservation of landscapes in general, that is to say outside of protected areas. For instance, paragraph 5 of Carinthia's nature conservation act concerns the protection of open landscapes (*Schutz der freien Landschaft*). Similarly, paragraph 5 of Tyrol's conservation law contains provisions concerning landscape protection (*Landschaftsschutz*). Such provisions introduce a general scheme of prohibitions and permissions for a number of activities (*Allgemeine Verbote* and *Allgemeine Bewilligungspflicht*). In addition, specific measures may be imposed on landowners to preserve parts of the landscape (*besondere Massnahmen zur Pflege der Landschaft*). That is envisaged for example by paragraph 18 of Tyrol's nature conservation act. Not all Länder have provisions on landscape planning in their nature protection laws. Such provisions appear in paragraphs 5 to 7 of Vorarlberg's nature protection act<sup>93</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>94</sup> and spatial planning<sup>95</sup> (see for instance the

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<sup>93</sup> Law concerning nature protection and landscape development (Source: Regional Law Gazette *LGBl.* no. 22/1997, 58/2001, 38/2002, 1/2008).

<sup>94</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.



development programme for Land Salzburg - *Salzburger Landesentwicklungsprogramm 2003* Item B.2). However Land Salzburg's nature conservation act provides for the adoption of "landscape maintenance plans" (*Landschaftspflegepläne*) (paragraph 35). Similarly, Styria's nature protection act provides that the regional government should adopt master plans for the landscape (*Landschaftsrahmenpläne*)

## Italy

The Galasso Act adopted in 1985<sup>96</sup> introduced the principle of full and comprehensive landscape protection in Italian law, leading to reconsider the national territory according to aesthetic and cultural values. The Galasso Act was later integrated into Italy's Cultural Heritage and Landscape Code (*Codice dei beni culturali e del paesaggio*)<sup>97</sup>. The Regions, in collaboration with the State, are in charge of developing and approving landscape plans. They do so according to the principles laid down in Articles 143-145 of the Cultural Heritage and Landscape Code. Article 135 of the Code states that the Regional Governments must take specific measures for managing the landscape by adopting specific plans:

*"1. The Regions shall ensure that the landscape is adequately protected and enhanced. To that end, they impose specific land-use rules and approve landscape plans or spatial planning- urban development plans taking into due account landscape values. Such plans will apply to the entire regional territory and hereinafter will be referred to as "landscape plans".*

*2. With particular reference to the assets referred to in Article 134, the landscape plan shall define changes compatible with landscape values, actions for recovery and regeneration of buildings and areas under protection, as well as landscape enhancement actions taking into consideration sustainable development prospects".*

The Autonomous Province of Bolzano has its own guidelines for nature and landscape conservation (*Linee guida natura e paesaggio Alto Adige*). Provisions of the Galasso Act and provisions for landscape planning are incorporated into the landscape act of the Province of Bolzano (*Legge provinciale del 25 luglio 1970, no. 16, Tutela del paesaggio*). Similarly, in Piedmont a regional landscape plan (*Piano Regionale Paesaggistico*) was adopted in 2009 by the Regional Council (*Giunta Regionale*); in 2008 provisions had been passed to adapt Piedmont's regional act to the national Cultural Heritage and Landscape Code (*Legge Regionale no. 32 del 1 dicembre 2008*)<sup>98</sup>.

## CONCLUSION

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<sup>95</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.

<sup>96</sup> Act no. 431 of 8 August 1985 (Galasso Act).

<sup>97</sup> Legislative decree amending and integrating D.Lgs. no. 42 containing the "Cultural Heritage and Landscape Code" pursuant to article 10 of Law no. 137 of 6 July 2002.

<sup>98</sup> Piedmont's regional act no. 32 of 1 December 2008. Urgent measures for adjustment to legislative decree D.lgs. no. 42 of 22 January 2004 (Cultural Heritage and Landscape Code, pursuant to article 10 of Law no. 137 of 6 July 2002) (Regional Official Gazette B.U. no. 49 of 4 December 2008).

Italian and Austrian laws differ mainly in regard to landscape planning. Austrian law does not consider landscape planning in a systematic way, unlike the Italian law which sees it as an obligation resting upon the Regions. Italy's system complies both with the requirements of the European Landscape Convention as well as with the provisions of article 7 of the Alpine Convention's Protocol on the Conservation of Nature and the Landscape, which is explicitly devoted to landscape planning. It is worth emphasizing that these two international treaties consider cross-border cooperation in the field of landscape management as essential (article 9 of the European Landscape Convention and article 3 of the Alpine Convention's Protocol on the Conservation of Nature and the Landscape).

## 2.6 Areas surrounding protected sites - applicable law

### 2.6.1. The legal status of areas contiguous with protected sites

Italian law contains specific arrangements for sites contiguous with protected areas (*aree contigue*). This type of zoning is not foreseen in the laws of Austrian Länder concerning protected areas.

#### 2.6.1.1. A specific system

##### Austria

The nature conservation laws of the Austrian Länder do not contain specific provisions concerning the surroundings of protected sites. This means that in such outer areas the general provisions on nature and landscape protection (habitat protection, preservation of open landscapes, etc..) and territorial management will apply. However spatial planning instruments and other specific measures, such as those intended to limit the expansion of ski areas, can contribute to protect the surroundings of protected areas. So, for instance, paragraph 4 of the regulation approving Land Tyrol's programme on cableways and ski areas<sup>99</sup> states that ski areas can be extended only provided they do not adversely affect nature and landscapes.

##### Italy

Italian law provides specific arrangements for sites contiguous with protected areas (*aree contigue*), regardless of the type of the latter. Such system is laid down by article 32 of the framework law on protected areas. Pursuant to the first paragraph of article 32, contiguous areas shall be designated by the Region in cooperation with the management bodies of the protected areas; they represent areas where specific provisions may be taken to protect the natural heritage that prompted the creation of the protected area: *"The Regions, in collaboration with the management bodies of the protected natural areas and local authorities concerned, shall establish plans and programmes and specific measures governing hunting, fishing, mining activities and environmental protection, to be applied in*

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<sup>99</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*).

*the areas contiguous with protected areas, where actions are needed to ensure proper conservation of the values of the protected areas ».* In Piedmont, article 6 of the regional act on the protection of natural areas and the preservation of biodiversity (*Testo unico sulla tutela delle aree naturali e della biodiversità*) establishes a specific regime for sites contiguous with protected areas:

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

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

“Contiguous areas” shall be designated by the Region in collaboration with the management bodies of the protected areas and the local authorities involved (article 6, paragraph 1 of Law no. 19 dated 29 June 2009 of the Piedmont Region; article 37, paragraph 2 of Friuli Venezia Giulia’s regional law no. .42 of 30 September 1996<sup>100</sup>). In the law of the Veneto Region, contiguous zones are designated by the term “*zone di preparco*”, literally meaning “pre-park zones”: these are areas of protection and controlled development (*area di protezione e di sviluppo controllato*)<sup>101</sup>. Despite their name, however, those areas, are not only the ones adjacent to parks, but also those contiguous with nature reserves. In the parks, specific provisions concerning Natura 2000 sites apply where relevant, in particular provisions contained in article 6 of the Habitats Directive. The majority of ECONNECT pilot sites are designated under the Habitats and Birds Directives (see paragraph below).

## **CONCLUSION**

Contrary to the Italian law, the Austrian regional law does not lay down specific provisions for the surroundings of protected areas. The latter are governed by general spatial planning and nature protection provisions adopted by the Länder (especially provisions concerning protected biotopes).

### **2.6.2.2. The involvement of a protected area managers in decisions taken outside protected areas**

*Discuss this issue if necessary*

## **2.6.2 The legal status of the areas surrounding Natura 2000 sites**

Concerning the legal status of Natura 2000 sites, article 6, paragraph 2 of the Habitats Directive, transposed into Austrian and Italian law, prohibits any damage to Natura 2000 sites originating from inside or outside the site<sup>102</sup>. In fact, according to the Directive “*Member States shall take appropriate*

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<sup>100</sup> Friuli Venezia Giulia’s regional act no. 42 of 30 September 1996 concerning regional parks and nature reserves.

<sup>101</sup> See article 4 of Veneto’s regional act no. 40 of 16 August 1984, (Regional Law Gazette no.38/1984) concerning new rules for establishing regional parks and nature reserves.

<sup>102</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*

steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive". Moreover, pursuant to article 6, paragraph 3 of the Habitats Directive, "any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the CONCLUSION of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public ". Therefore, plans, projects or programmes that might damage a Natura 2000 site shall not be authorised, even if they are outside the area. Such projects can only be authorised in accordance with the strict conditions set forth in article 6, paragraph 4 of the Habitats Directive. Furthermore, it should be noted that the Directive provides for the protection of habitats and species listed in the Annexes both inside and outside Natura 2000 sites.

### **3. THE EUROPEAN GROUPING FOR TERRITORIAL COOPERATION (EGTC)**

#### **3.1. An European instrument for the facilitation of transborder cooperation**

##### **European Grouping for Territorial Cooperation (EGTC).**

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

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

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*'Habitats' Directive 92/43/EEC*, Office for Official Publications of the European Communities, Luxembourg, 2000 (73 p.).

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

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

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

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

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

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

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

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

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

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

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

## 3.2. Transposition in Austria and in Italia

### Austria

The question on whether the competence to adopt the legislation for the EGTC remained with the *Länder* or the *Bund* was an object of debate for quite some time in Austria. Originally the partners regarded the EGTC implementation as a matter of *Länderkompetenz*, but eventually, due to constitutional constraints, it was decided to opt for a regional approach with nine regional sets plus one federal set of provisions. This is an application of the so-called *Generalklausel* integrated in article 15 of the Austrian Basic Law/Constitution (about the sharing of competences between the *Bund* and the *Länder*). A proposal containing general provisions applicable to all types of EGTC in Austria was submitted at the federal level. The Land of Carinthia coordinated the new process.

At the beginning of summer 2008, a bill was proposed at the federal level [*Entwurf : „Bundesgesetz über Europäische Verbände für territoriale Zusammenarbeit (EVTZ Bundesgesetz - EVTZ-BG)*”] and each *Länder* had to give its opinion about the bill during the summer of the same year. The Bill was then sent by the National Council (*Nationalrat*) to the Constitutional Assembly (*Verfassungsausschuss*) during its 22nd Session, on May 19, 2009. The first paragraph of this bill laid down the scope/area of application of the text. According to this first paragraph this law will be applied in case of the participation of the *Bund* in an EGTC and as far as the fields concerned by the EGTC do not fall in the exclusive competence of the *Länder* (nature protection, for instance, falls under the exclusive competence of the *Länder*).

Article 1: *„Dieses Bundesgesetz gilt [...] 1. für die Teilnahme [...] des Bundes sowie [...] von Einrichtungen gemäß Art. 3 Abs. 1 lit. d der Verordnung (EG) Nr. 1082/2006 über den Europäischen Verbund für territoriale Zusammenarbeit (EVTZ), ABl. Nr. L 210 vom 5. Juli 2006 S. 19, (im Folgenden EVTZ-Verordnung) und von aus solchen Einrichtungen gebildeten Verbänden an einem Europäischen Verbund für territoriale Zusammenarbeit (im Folgenden: EVTZ), soweit die genannten Einrichtungen und Verbände nicht in den selbständigen Wirkungsbereich der Länder fallen, sowie 2. für die Anzeige, Registrierung, Finanzkontrolle und Auflösung von EVTZ mit Sitz im Inland, all dies soweit die*



*EVTZ-Verordnung keine Regelung enthält oder ausdrücklich auf ausführende Rechtsvorschriften der Mitgliedstaaten Bezug nimmt*". On the regional level, laws were adopted and are under adoption in order to implement the European regulation:

- Laws on EGTC were already adopted in the *Länder* of Vorarlberg, Styria, Lower Austria and Carinthia.
- There are Bills in other different *Länder*: in Salzburg, in Wien.

The first paragraph of the Vorarlberg Law on the EGTC precises also that the law applies if the EGTC is concluded in domains where the *Land* is competent to legislate: „*Dieses Gesetz regelt die Maßnahmen, die für die Anwendung der Verordnung (EG) Nr. 1082/2006 über den Europäischen Verbund für territoriale Zusammenarbeit (EVTZ) erforderlich sind und in die Gesetzgebungskompetenz des Landes fallen*”. A similar prevision is also featured in the first paragraph of the Bills of the *Länder* Styria and Salzburg. However there are contradictions between the bill of the Federal Law (*Bundesgesetz*) and the laws (or bills) adopted (drafted) by the *Länder*: according to the *Bundesgesetz* the communication to the Bund and the registration are tasks of the governor (*Landeshauptmann*); while these same actions are deemed as tasks of the Land Government (*Landesregierung*) in the laws or bills of the *Länder* above mentioned: see for instance the Law on EGTC of the Vorarlberg.

### Italy

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

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

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

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

### **3.3. Creation of a grouping (EGTC or another grouping) between two parks**

In the Rhaetian Triangle Region

Over recent times the members of Euroregion Tyrol-Alto Adige-Trentino sought a way to support and furtherly implement the cohesion process started with the creation of the Euroregion and identified the European Grouping of Territorial Cooperation as their option of choice<sup>103</sup>. Parties originally expected the statutes to be signed by the first six months of 2011, but approval by the Italian Parliament is still pending.

*(To be expanded further)*

In the Hohe Tauern Region

Conclusion and possible solution

*To be expanded further*

## 4. CONCLUSION

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

## 5. BIBLIOGRAPHY

*Add*

**5.1. Austria**

**5.2. Italy**

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<sup>103</sup> Europeation Gemeinsame Erklarung, Innsbruck, October 15, 2009.