



Work Package 6 “Legislation”

THE LEGAL FRAMEWORK OF PROTECTED AREAS IN THE ALPINE STATES

Austria

Bolzano/Bozen, August 2009



Italian Ministry for the
Environment, Land and Sea



Disclaimer

This publication was produced by the ECONNECT Project under the ETC Alpine Space Programme and co-financed by the European Union.

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

An early version of this study was presented in 2009 at a workshop held in Domodossola. The current version of the study benefits from the outcomes of the workshop.

The partial or total reproduction of the contents is authorized only with the source being duly quoted.

Coordination: Paolo Angelini, MATTM

Main author: Céline Randier, EURAC

Online: www.econnectproject.eu

Last update: August 2009

Preview edition

A copy of this volume can be obtained from the address below.

European Academy of Bolzano/Bozen (EURAC)

Institute for Regional Development and Location Management

Viale Druso, 1

I-39100 Bolzano - Italy

Tel. +39 0471 055300

Fax +39 0471 055429

Email: regionaldevelopment.management@eurac.edu

Contents

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

1 GENERAL POINTS

1.1 Organisation of the State

Austria is a federal State.

- Article 2 of the Federal Constitutional Law:

„(1) Austria is a federal state/

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

1.2 The legislative and executive

1.2.1 The Federal Legislature

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

1.2.2 The Federal Executive

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

1.3 International Law and European Law

1.3.1 International Law

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

1.3.2 European Law

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

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

2 NATURE PROTECTION AND SPATIAL PLANNING:

2.1 The protection of mountain areas and the law

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

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

2.2 The distributions of power and legislative competencies

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

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

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

2.3 The legal framework of Nature Protection¹

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

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

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

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

2.4 The legal framework of Spatial Planning

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

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

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

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

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

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

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

2.5 The protected areas in the legislation on Nature Protection

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

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

2.6 The legal provisions as regards ecological connectivity

2.6.1 The provisions of the Habitats Directive

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

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

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

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

Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species“.

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

2.6.2 The ecological connectivity in the Nature Protection Laws

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

2.6.3 The ecological connectivity and the spatial planning

Transports and ecological connectivity on the federal level⁴

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

2.7 Pilot areas and Pilot Regions in the ECONNECT Project

2.7.1 Pilot- Regions in the Econnect Project

The transboundary area Berchtesgaden - Salzburg⁵

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

⁵ Quote: Alpine Network of Protected Areas.

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

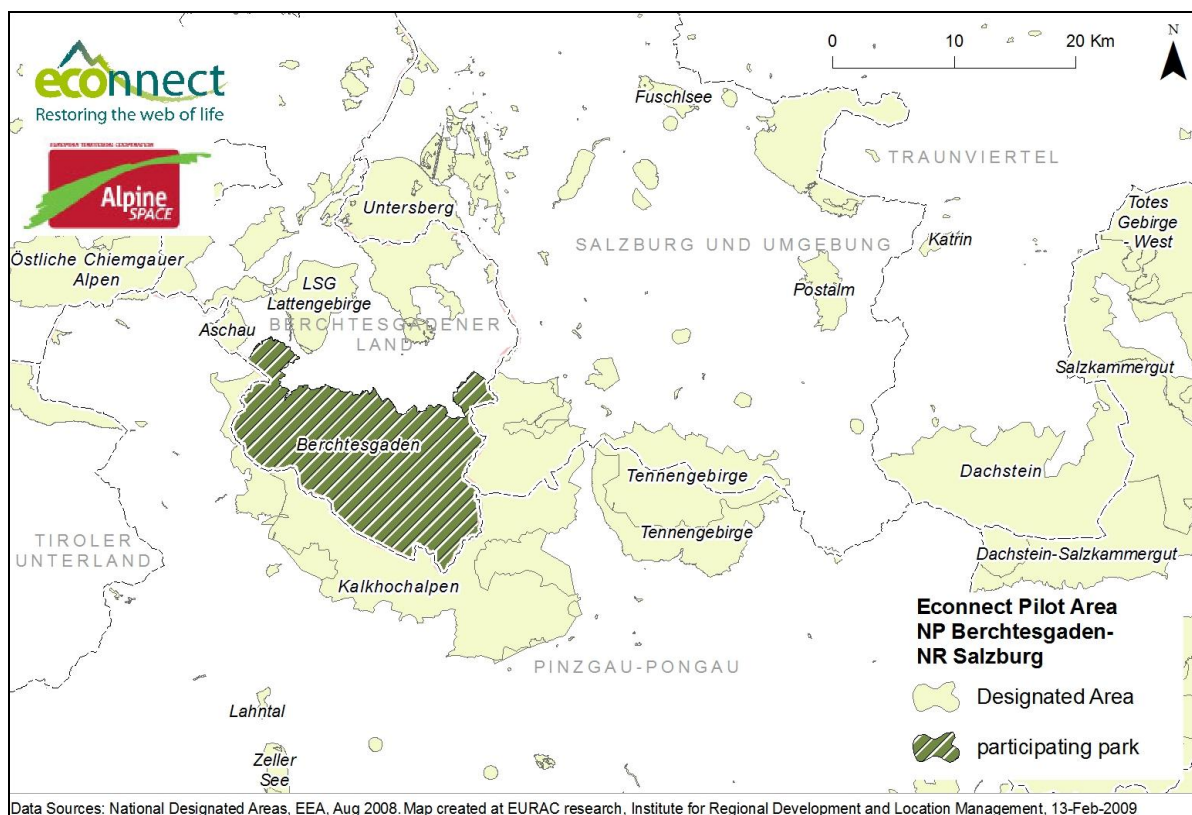


Fig 1: The transboundary area Berchtesgaden - Salzburg.

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

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

⁶ Quote: Alpine Network of Protected Areas.

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

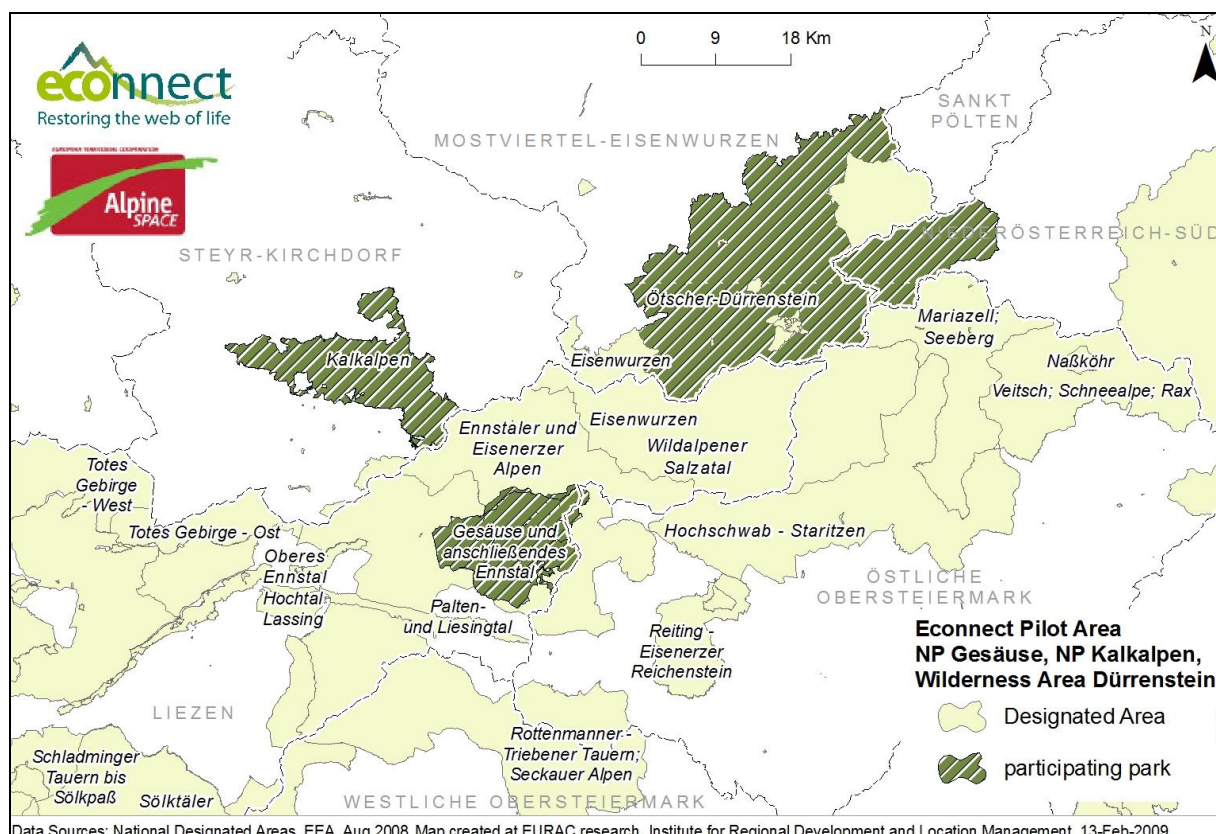


Fig 2: The region „Northern limestone Alps/Eisenwurzen/Gesäuse/ Dürrenstein“.

The area of „Hohe Tauern“⁷

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

⁷ Quote: Alpine Network of Protected Areas.

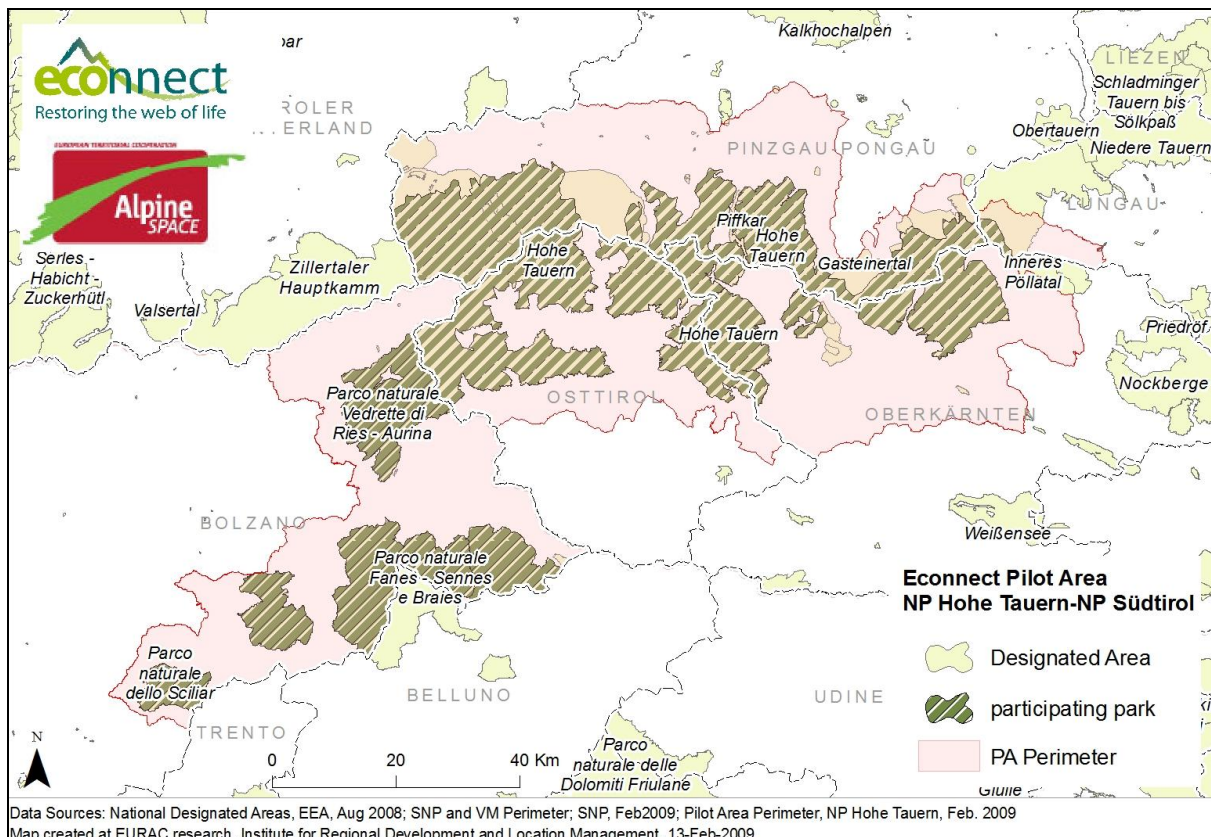


Fig 3: The Rhaethian Trinangel (Engadin/South Tyrol/Trentino/Tyrol).

2.7.2 Pilot areas in the ECONNECT Project⁸

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

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

⁸ Quote: Alpine Network of Protected Areas.

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

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

2.8 The management of protected areas

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

2.9 Experiences as regards transborder cooperation between protected areas

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

3 TRANSBORDER COOPERATION

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

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

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

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

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

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

3.2 The international instruments for transborder cooperation and Austria

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

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

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

drawn up within the Council of Europe by the Committee on Co-operation in Municipal and Regional Matters and adopted by the Committee of Ministers, was opened for signature by the member States of the Council of Europe on 21 May 1980. Austria ratified also the two additional Protocols to the Outline Convention:

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

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

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

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

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

3.3 The European Grouping of Territorial Cooperation and the Austrian Law

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

¹³ Accordo sulla cooperazione transfrontaliera delle collettività territoriali.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The inputs of the EGTC on the Austrian level :

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

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

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

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

4 Bibliography

Legal Texts

Burgenland:

- Gesetz vom November 1990 über den Schutz und die Pflege der Natur und Landschaft im Burgenland (Burgenländisches Naturschutz- und Landschaftspflegegesetz - NG 1990) LGBl. Nr. 27/1991 idF LGBl. Nr. 58/2004
- Verordnung der Burgenländischen Landesregierung vom 18. September 2001 über den besonderen Schutz von Pflanzen- und Tierarten (Bgl. Artenschutzverordnung 2001) LGBl 36/2001
- Gesetz vom 10. November 2004 über die Regelung des Jagdwesens im Burgenland (Bgl. Jagdgesetz 2004) LGBl Nr. 11/2005
- Verordnung der Burgenländischen Landesregierung vom 21. Dezember 2005, mit der Bestimmungen des Bgl. Jagdgesetzes 2004 ausgeführt werden (Bgl. Jagdverordnung) LGBl Nr 23/2005 idF LGBl Nr. 2/2006
- Verordnung der burgenländischen Landesregierung vom 22. März 1949, betreffend die Wiederverlautbarung des Fischereigesetzes LGBl. Nr. 1/1949 idF LGBl. Nr. 94/2002

Kärnten:

- Kärntner Naturschutzgesetz 2002 - K-NSG 2002, StF: LGBl Nr 79/2002, idF: LGBl Nr 103/2005
- Gesetz über die Errichtung von Nationalparks- und Biosphärenparks (Kärntner Nationalpark- und Biosphärenparkgesetz - K-NBG), StF: LGBl Nr 55/1983, idF: LGBl Nr 25/2007
- Gesetz vom 24. November 1969 über die Raumordnung (Kärntner Raumordnungsgesetz - K-ROG), StF: LGBl Nr 76/1969, idF: LGBl Nr 136/2001
- Kärntner Jagdgesetz 2000 - K-JG, StF: LGBl Nr 21/2000 (WV), idF: LGBl Nr 72/2001, LGBl Nr 53/2006
- Gesetz vom 30. September 2004 über die Umweltprüfung und Öffentlichkeitsbeteiligung bei der Ausarbeitung bestimmter Pläne und Programme im Land Kärnten (Kärntner Umweltplanungsgesetz - K-UPG), StF: LGBl Nr 52/2004, idF: LGBl Nr 24/2007
- Verordnung der Kärntner Landesregierung vom 30. Jänner 2007, Zl. 15-NAT-81/16/2007, über den Schutz wildwachsender Pflanzen (Pflanzenartenschutzverordnung) (LGBl. 9/2007)
- Verordnung der Landesregierung vom 6. Dezember 1988 über den Schutz freilebender Tierarten (Tierartenschutzverordnung), StF: LGBl Nr 3/1989, idF: LGBl Nr 35/2006

Niederösterreich:

- NÖ Naturschutzgesetz 2000 (NÖ NSchG 2000), LGBl. 5500-5
- NÖ Artenschutzverordnung, LGBl. 5500/2-0
- NÖ Raumordnungsgesetz 1976 (NÖ ROG 1976), LGBl. 8000-21

Oberösterreich:

- Oö. Natur- und Landschaftsschutzgesetz 2001 (Oö.NSchG 2001), LGBl. Nr. 129/2001
- Novelle zum Oö. Nationalparkgesetz (Oö. NPG), LGBl. Nr. 129/2001
- Verordnung der Oö. Landesregierung über den Schutz wildwachsender Pflanzen und Pilze sowie freilebender Tiere (Oö. Artenschutzverordnung), LGBl. Nr. 73/2003 i.d.F., LGBl. Nr. 85/2003 und LGBl. Nr. 148/2003
- Novelle zum Oö. Raumordnungsgesetz, LGBl. Nr. 115/2005

Salzburg:

- Salzburger Naturschutzgesetz 1999 -- NSchG, LGBl. Nr. 73 idF LGBl. Nr. 58/2005
- Gesetz vom 21. Oktober 1992 über die Raumordnung im Land Salzburg, wieder verlaublich als Salzburger Raumordnungsgesetz 1998 -- ROG 1998, LGBl. Nr. 44/1998 idF LGBl. Nr. 86/2004

Steiermark:

- Gesetz vom 30. Juni 1976 über den Schutz der Natur und die Pflege der Landschaft (Steiermärkisches Naturschutzgesetz 1976 - NSchG 1976) idF LGBl. Nr. 9/2007
- Verordnung der Steiermärkischen Landesregierung vom 14. Mai 2007 über den Schutz von wild wachsenden Pflanzen, von Natur aus wild lebenden Tieren einschließlich Vögel (Artenschutzverordnung) idF LGBl. Nr. 40/2007

Tirol:

- Tiroler Naturschutzgesetz 2005 - TNSchG 2005, LGBl. Nr. 26,

- Gesetz vom 9. Oktober 1991 über die Errichtung des Nationalparks Hohe Tauern in Tirol (Tiroler Nationalparkgesetz Hohe Tauern), LGBl. Nr. 103/1991,
- Tiroler Naturschutzverordnung 2006 - TNSchVO 2006, LGBl. Nr. 39,
- Verordnung der Landesregierung vom 20. Dezember 1988 zum Schutz wildwachsender Pflanzen und freilebender, nicht jagdbarer Tiere im Gebiet des Alpenparks Karwendel, LGBl. Nr. 32/1989,
- Verordnung der Landesregierung vom 18. September 2001 über die Erklärung der Fließler Sonnenhänge zum Naturschutzgebiet (Naturschutzgebiet Fließler Sonnenhänge), LGBl. Nr. 88/2001,
- zivilrechtliche Vereinbarung mit den ÖBF für das Natura 2000-Gebiet Afrigal
- Bescheid über die Erklärung zum Naturdenkmal für das Natura 2000-Gebiet Egelsee
- Gesetz vom 20. März 2002, mit dem die Fischerei in Tirol geregelt wird (Tiroler Fischereigesetz 2002), LGBl. Nr 54/2002

Vorarlberg:

- Vorarlberger Gesetz über Naturschutz und Landschaftsentwicklung (LGBl.Nr. 22/1997, Nr. 58/2001 und Nr. 38/2002)
- Vorarlberger Raumplanungsgesetz (LGBl.Nr. 33/2005)
- Vorarlberger Naturschutzverordnung (LGBl.Nr. 8/1998 und Nr. 36/2003)

