



Work Package 6 “Legislation”

THE LEGAL FRAMEWORK OF PROTECTED AREAS IN THE ALPINE STATES

France

Elaborated by
CIPRA France



Grenoble, August 2009



Italian Ministry of the
Environment, Land and Sea



EURAC
research

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

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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.

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Online: www.econnectproject.eu

Last update: August 2009

Preview edition



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1 GENERAL POINTS

1.1 Organisation of the State

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

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

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

Article 72 of the Constitution quotes the various territorial communities:

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

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

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

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

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

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

1.2 The legislative and executive

1.2.1 The legislative

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

1.2.2 The executive

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

1.3 Status of International Treaties and European Community Law

1.3.1 International Law

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

1.3.2 European Law

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

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

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

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

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

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

2 NATURE PROTECTION AND SPATIAL PLANNING

2.1 The preservation of mountain areas and the law

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

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

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

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

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

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

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

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

2.2 The distribution of power and legislative competencies

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

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

2.3 The Legal Framework of Nature Protection

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

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

2.4 The Legal Framework of Spatial Planning

2.4.1 National level

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

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

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

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

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

2.4.2 Regional level

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

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

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

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

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

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

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

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

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

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

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

Communal maps (“cartes communales”):

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

2.5 The protected areas in the legislation on Nature protection

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

Tab. 1: Categories of protected areas on Nature Protection

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

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

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

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

2.6 The legal provisions as regards ecological connectivity

2.6.1 European Law

The provisions of the Habitats directive

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

„Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora. / Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species”.

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

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

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

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

The Pan European Ecological Network

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

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

The European Water Framework Directive⁵

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

2.6.2 National Law

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

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

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

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

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

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

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

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

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

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

Other provisions concerning ecological network:

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

2.7 The ecological connectivity in non legally-binding documents

2.7.1 National level

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

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

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

Regional and departmental level

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

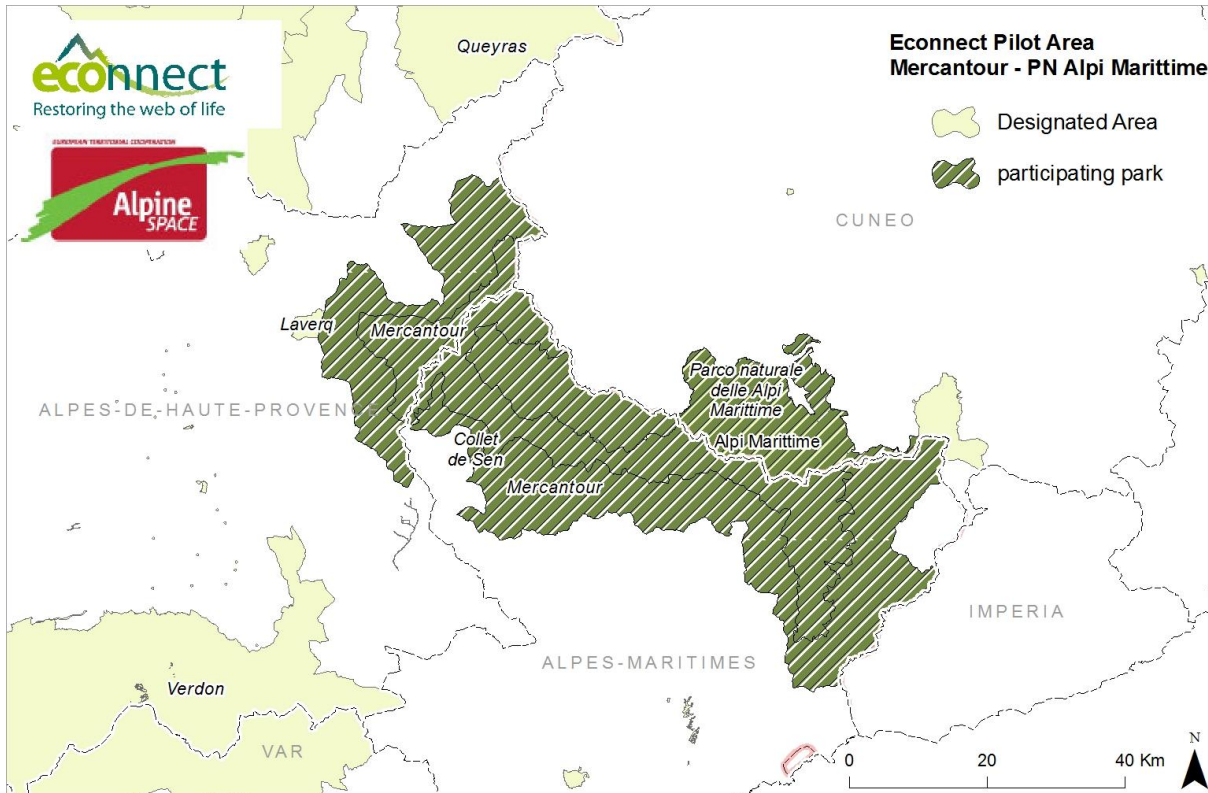
Some provisions of the French Constitution open the possibility for the Region and the Department of supporting/improving the ecological connectivity. These last years, an important policy about ecological network was developed on these levels. The Rhône-Alpes Region realized cartography at the regional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

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

2.8 Pilot areas in the ECONNECT project

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

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



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

Fig 1: Econnect Pilot Area Mercantour-PN Alpi Marittimi

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

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

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

National Park establishment proceeding:

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

Several phases characterize the establishment of a national park:

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

National Park organisation:

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

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

Administrative organisation:

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

Framework:

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

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

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

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

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

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

Regulatory activities:

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

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

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

Balance:

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

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

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

National Park reform:

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

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

Mains reforms

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

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

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

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

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

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

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

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

Administrative evolution:

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

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

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

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

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

The French Department of Isère

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

The Principality of Monaco

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

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

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

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

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

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

2.9 The existing transborder cooperation as regards protected areas

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

3 TRANSBORDER COOPERATION

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

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

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

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

3.2 France and the International Law on Transborder Cooperation

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

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

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

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

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

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

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

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

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

The main changes are:

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

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

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

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

Reports, books:

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- *The Building, Forest, Environment and General Local Communities Code.*

Internet Links:

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