



Work Package 6 “Legislation”

THE LEGAL FRAMEWORK OF PROTECTED AREAS IN THE ALPINE STATES

Italy

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1 GENERAL POINTS

1.1 Organisation of the State

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

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

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

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

1.2 The legislative and executive

1.2.1 The Legislative

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

1.2.2 The Executive

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

1.3 Status of International Treaties and European Community Law

1.3.1 International Law

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

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

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

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

1.3.2 European Law

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

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

2 NATURE PROTECTION AND SPATIAL PLANNING

2.1 Preservation of mountain areas in the law¹

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

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

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

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

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

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

2.2 Distribution of power and legislative competencies

2.2.1 Nature protection

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

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

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

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

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

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

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

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

2.2.2 Spatial planning

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

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

2.3 Legal framework on Nature Protection

2.3.1 National level:

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

2.3.2 Regional level

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

2.4 Legal framework on Spatial Planning

National level

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

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

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

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

Regional level

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

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

- *Legge regionale 10 novembre 1994, n. 45, Norme in materia di pianificazione del territorio¹¹.*
- *Legge regionale n. 2 del 16 gennaio 2006, Norme per la valorizzazione delle costruzioni in terra cruda, (B.U.19 Gennaio 2006, n. 3)*
- *Legge regionale 5 dicembre 1977, n. 56. (Testo coordinato), Tutela ed uso del suolo, (B.U. 24 dicembre 1977, n. 53)*
- *Legge regionale 3 aprile 1989, n. 20. (Testo coordinato), Norme in materia di tutela di beni culturali, ambientali e paesistici., (B.U. 12 aprile 1989, n. 15)*
- *Piano territoriale regionale¹²: this plan is implemented through different tools*
 1. *Piani territoriali di coordinamento of the Province, Piani territoriali for the implementation of the Piano Territoriale Regionale, Piani Territoriali Operativi)*
 2. *Piani Regolatori generali, comunali o intercomunali.*
 3. *Guidelines of the Consiglio Regionale, etc.*

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

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

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

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

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

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

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

2.5 Protected areas in the legislation on Nature protection

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

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

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

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

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

2.6 Legal provisions as regards ecological connectivity

2.6.1 The national provisions

The objectives of the Habitats Directive

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

Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species”. According to the Guidance on the maintenance of landscape connectivity features of major importance for wild flora and fauna¹³ elaborated at the European level for improving the coherence of the Natura 2000 Network, it is clear from the texts of the Habitats direc-

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

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

The national and regional provisions

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

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

2.6.2 The local initiatives in the field of ecological connectivity:

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

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

2.7 Landscape protection (I vincoli e i piani paesaggistici)

I vincoli paesaggistici

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

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

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

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

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

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

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

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

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

¹⁶ We translate.

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

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

Landscape plans (*piani paesaggistici*)

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

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

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

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

2.8 Pilot areas in the ECONNECT project

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

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

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

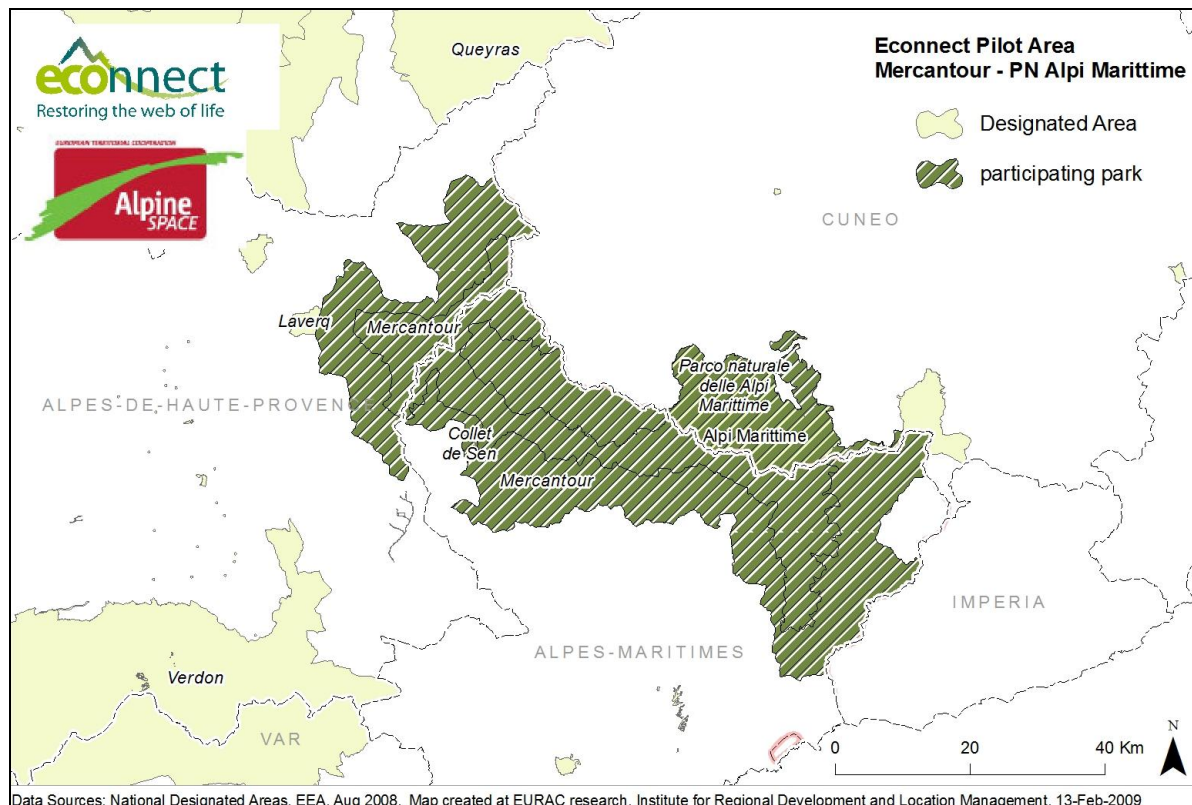


Fig 1: The region South-east Alps - Mercantour/Alpi Marittime

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

2.9.1 Provisions of the Outline Law on Protected areas:

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

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

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

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

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

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

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

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

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

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

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

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

2.9.2 Provisions on the regional level

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

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

More precisely:

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

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

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

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

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

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

2.10 The existing cooperation between transborder protected areas

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

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

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

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

3 TRANSBORDER COOPERATION

3.1 The Territorial Entities Competencies

Article 117, paragraph 9, of the Italian Constitution:

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

3.2 The International Law on Transborder Cooperation and Italy

Italy ratified in March 1985 the *European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities* and it entered into force in Italy in June 1985. This Convention was drawn up within the Council of Europe by the Committee on Co-operation in Municipal and Regional Matters and adopted by the Committee of Ministers, was opened for signature by the member States of the Council of Europe on 21 May 1980.

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

But Italy did not ratify the two additional protocols to the Framework Convention (the *Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities* and the *Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation*).

3.3 The European Grouping of Territorial Cooperation in law

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

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

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

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

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

According to the **third paragraph**, the regional authorities and local authorities designed in the article 3 of the Regulation N.1082/2006 are respectively the regions and the autonomous Provinces of Trento and Bolzano and also the local entities designed in the “*article 2, paragraph 1, of the legislative decree n.267/2000(decreto legislativo 18 agosto 2000, n. 267)*”

(„*Ai fini del presente testo unico si intendono per enti locali i comuni, le province, le città metropolitane, le comunità montane, le comunità isolate e le unioni di comuni*”).

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

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

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

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

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

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

The inputs of the EGTC to Italian Law

¹⁹ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, (OJ L 134, 30.4.2004, pp. 114-240).

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

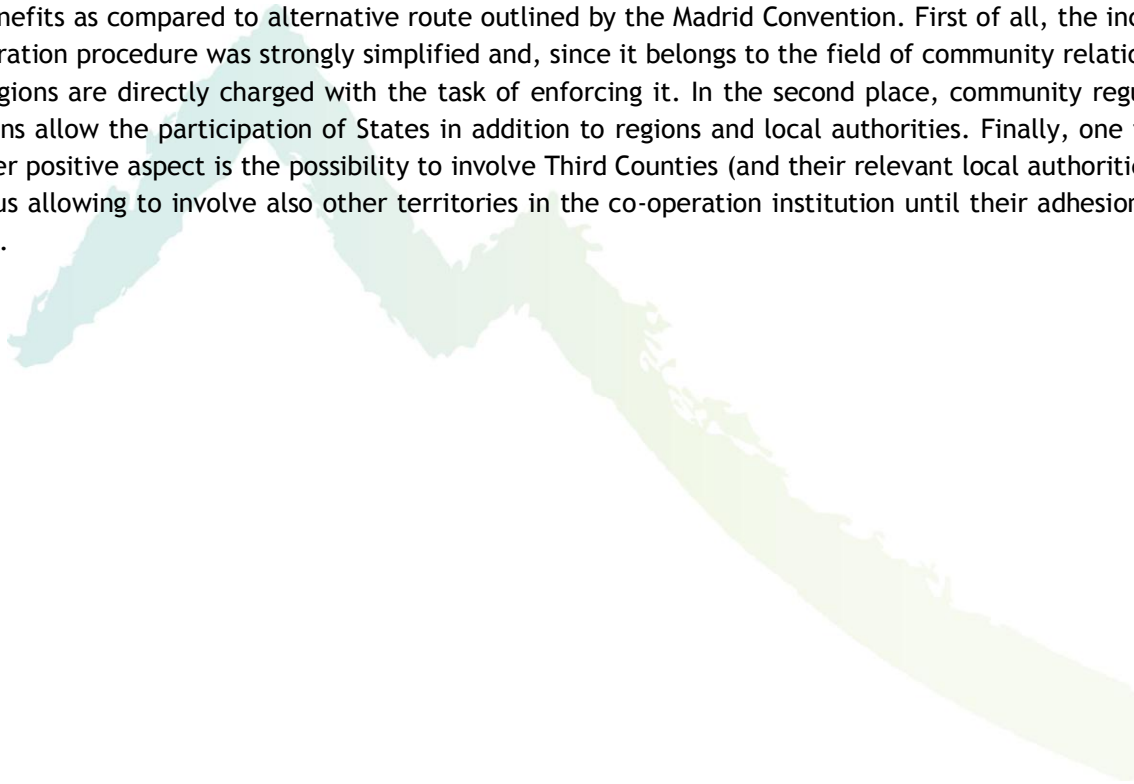
(a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) having legal personality; and

(c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law”.

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

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



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