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Climate change adaptation : towards a legal change?

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CLIMATE CHANGE ADAPTATION: TOWARDS A LEGAL CHANGE ?



Abstract

The purpose of this poster is to analyse some French legislative instruments directly or indirectly used in the field of flood risk management (flood risk prevention plan [PPRI], flood risk management plan [PGRI], local urban planning scheme [PLU], territorial consistency plan [SCoT]) from a climate change perspective.

The main issue for this topic is **to what extent these different instruments can be a vehicle for adaptation to climate change.**

Adaptation to climate change: a political issue not transposed into French law

Adaptation to climate change (ACC) grows stronger in the French political discourse without any legal translation. The environment code, the rural code and the town planning code refer to this topic by stating for instance that one of the main aim of the environmental and rural French policy is to adapt to the consequences of climate change, mainly through a sectoral planning process.

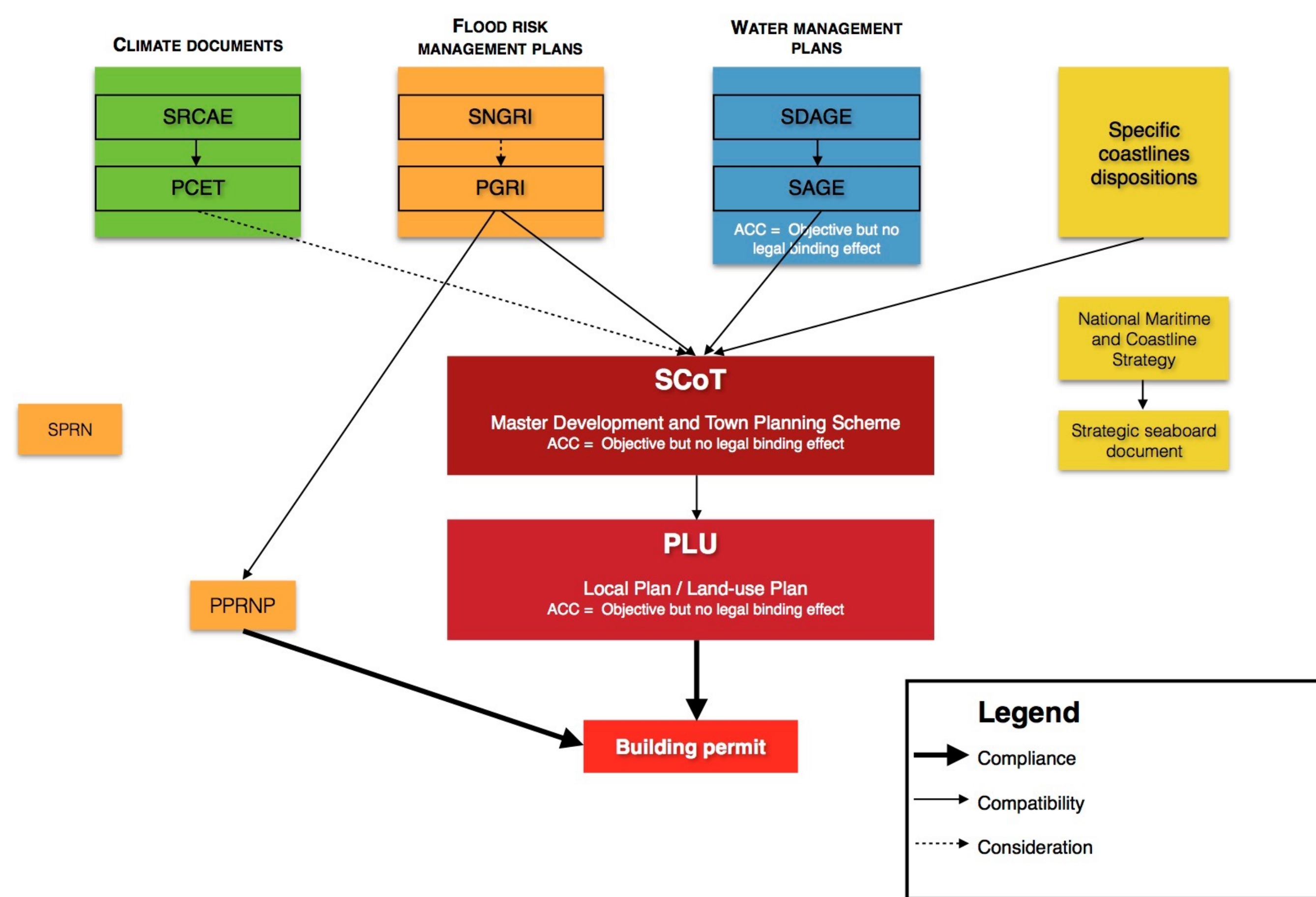
Even if these different dispositions have been adopted through a regular procedure (Parliament or Government), it is interesting to note that their **legal scope is almost non-existent**. These dispositions seem to be purely declaratory and are not implemented through other more precise dispositions. Yet, the administrative courts could have been integrated this aim in their monitoring of legality exerted over the different administrative decisions and planning or sectorial documents. The analysis of the administrative case law shows that adaptation to climate change dispositions are not handled by the courts, even though the constitutional judge considered the fight against climate change as an constitutional objective. (Cons. const., 29 Dec. 2009, n°2009-599 DC).

Thus, adaptation to climate change can be considered as **soft law** rather than hard law dispositions. Their implementation depends on the willingness of the public actors.

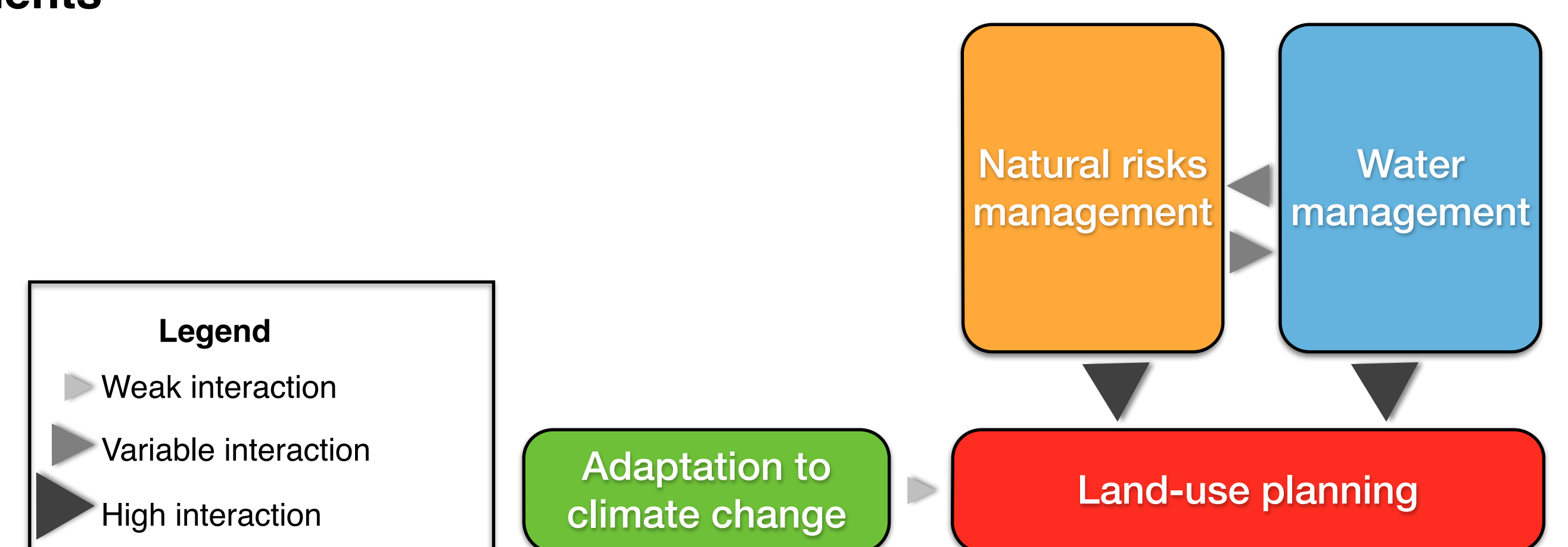
A legal segmentation, source of inefficacy and ineffectiveness

The climate, and particularly the adaptation (even if climate change mitigation is much more implemented by actors), is the subject of a specific planning such as the flood risk and the water management issues. The elaboration of such a strategic document is made by different actors, on different geographic scales and different temporalities. In addition, land planning documents, which have a general scope compared to the other plans and which have important and direct consequences, are more or less linked to the other sectorial documents. This link varies between consideration (very low normative input) to compliance (no room for manoeuvre). Schemes 1 and 2 clearly show that the link between climate documents and town planning documents is very weak, which explains why this topic is seldom integrated.

Weakness of prescriptive obligation, lack of coordination between the actors because of the multiplication of sectorial planning documents and normative conflicts risks, both of which act as a **brake to an effective adaptation to climate change policy, linked with the other strategies.**



Scheme 1: The coordination between planning documents

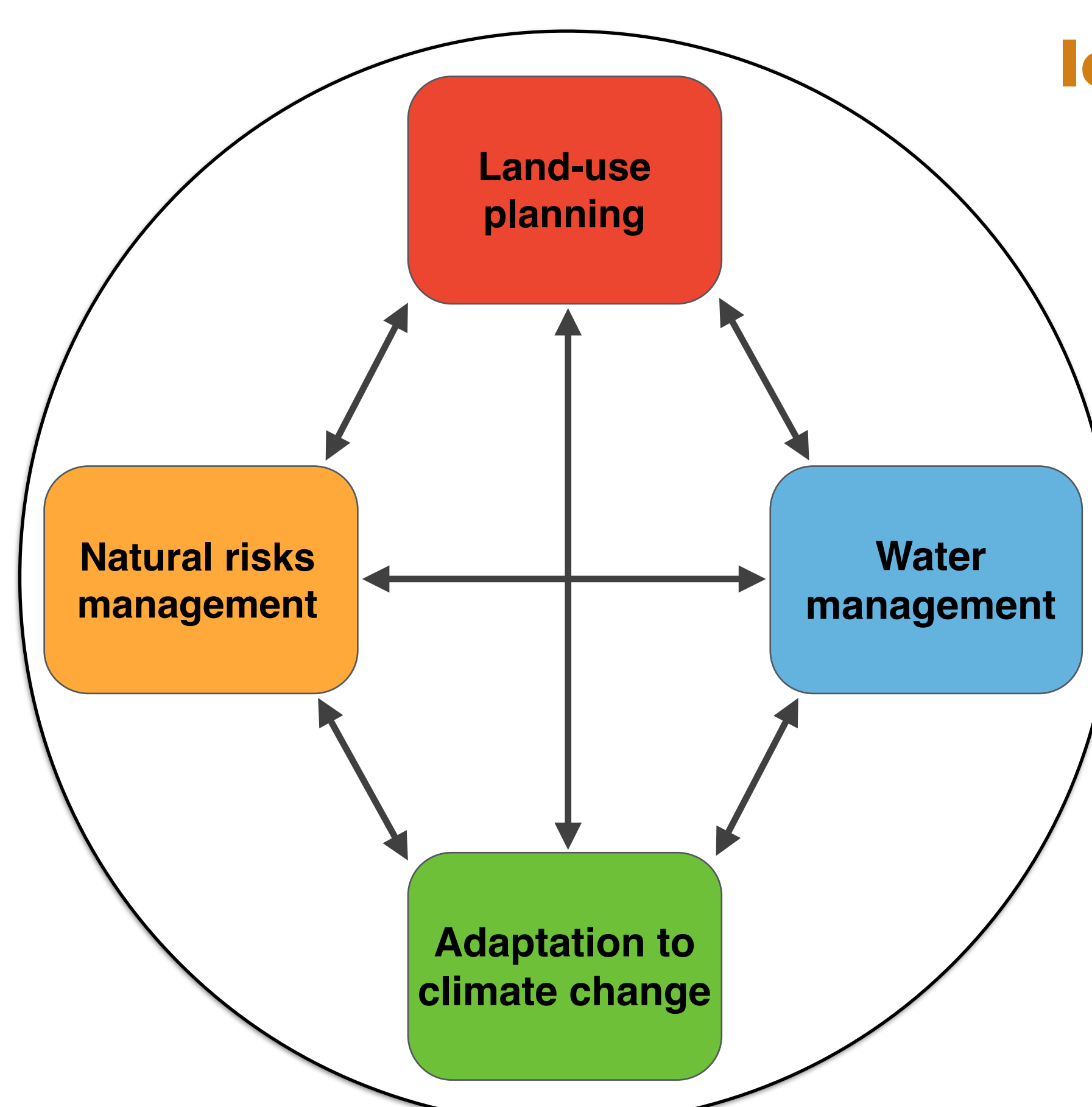


Scheme 2: The current interactions between general and sectorial documents

Anticipate through law to prevent future risks

Land planning documents are currently characterized by a **short-termism**. Indeed, the average length of such a document is approximately 10 years.

This approach restrains any strategic anticipation in order to manage land-use planning in relation to the consequences of climate changes. Indeed, because of rising sea level, it is necessary to operate through planning law a strategic relocation of all properties and activities located on the coast. Such measures have to be adopted into a medium and long-term statutory strategy, amended on the light of new scientific knowledge. Furthermore, the **precaution principle** should be used in the field of planning law in order to avoid the construction of a building that will be submerged in 80 years. This approach would put an end to the today's perspective which only focus on existing risks, but not on future risks.



Scheme 3: Integrated normative tool

Encouraging the emergence of legal integrated norms

Because of the multiplication of sectorial planning documents, interactions between the different "strategies" (water management, natural risks, adaptation to climate change and land-planning) are generally weak and constitute a brake to a global and appropriate land planning management.

Climate change has to be seen as an **opportunity to adopt innovative legal tools**. Rather than segmenting land planning, it seems necessary to adopt integrated normative tools allowing interactions between the four strategies previously mentioned (scheme 3). Upstream, a first step could be crossed by introducing adaptation to climate change into the existing compatibility relation between water management and flood risk management and by strengthening the relation between adaptation and land-planning management (from consideration to compatibility).

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