



Addressing threats to nature in the Carpathian Mountains

Legal and administrative instruments for addressing conflicts between infrastructure and nature conservation in the **Czech Republic**

Veronica Ecological Institute
WWF Danube-Carpathian Programme



Protected Areas for a Living Planet — delivering on CBD commitments

Carpathian Treasures

The Carpathian Mountains are Europe's greatest remaining wilderness area. They are a bastion of large carnivores, with over half the European populations of brown bear, wolves and lynx as well as the greatest remaining stands of natural forest. At the same time, the Carpathians have some of Europe's richest cultural landscapes, shaped and enriched by centuries of human cultivation.

Contents:

	Page
I. Introduction: What and whom this handbook is for	3
II. Legal and administrative instruments for addressing conflicts between infrastructure and nature conservation	4
III. Further use and acknowledgements	11

Available in digital form and on the Internet:

- **Handbook** of selected legal and administrative instruments for addressing conflicts between infrastructure and nature conservation in the Carpathian Mountains. The handbook provides a general description and overview as well as links to further information on instruments available across the Carpathian Mountains, including in both EU and non-EU member states.
- **Powerpoint presentation** on legal and administrative instruments for addressing conflicts between infrastructure and nature conservation across the Carpathian Mountains – essentially a powerpoint version of the handbook and free for use and adaptation.
- **Country reports:** Legal and administrative instruments for addressing conflicts between infrastructure and nature conservation in individual Carpathian countries (Czech Republic, Hungary, Poland, Slovakia).

All available at:

- <http://www.panda.org/dcpo>
- Direct link:
http://www.panda.org/about_wwf/where_we_work/europe/what_we_do/danube_carpathian/our_work/forest_and_protected_areas/carpathian_ecoregion/addressing_threats/index.cfm.

I. Introduction: What and whom this is for

What it is for

The purpose of this country report and the accompanying handbook¹ is to provide an introduction and overview of some of the legal tools available for addressing conflicts between infrastructure and nature conservation and protected areas in the Carpathian Mountains. These tools should help to prevent such conflicts from happening in the first place and, where they do occur, to help address them in the interest of long-term sustainable development in the Carpathians.

Who it is for

This country report and accompanying handbook are ultimately intended for all stewards of high nature value areas, including Protected Area managers, NGOs, local communities and interested stakeholders. While these materials are intended expressly for audiences in the Carpathian Mountains, many of the sources described are relevant in other areas as well.

How it is structured

This country report provides more country-specific information regarding some of the legal and administrative tools that are described in the accompanying handbook.

Both the country report and the handbook cannot provide more than an introduction to and by no means a definitive interpretation of individual legal and administrative instruments. For more specific information, readers will need to refer to references to further information – including the actual pieces of legislation – that are included.

This country report and accompanying handbook have been specifically designed as living documents, to be added to and changed in response to changes in legislation as well as input from users. In this light, we encourage you to provide us with your input and comments for incorporation in future versions.

¹ Addressing Threats to Nature in the Carpathian Mountains: Handbook of legal and administrative instruments for addressing conflicts between infrastructure and nature conservation (WWF-DCP, 2007). Available at:

<http://www.panda.org/dcpo>. For direct link see:

http://www.panda.org/about_wwf/where_we_work/europe/what_we_do/danube_carpathian/our_work/forest_and_protected_areas/carpathian_ecoregion/addressing_threats/index.cfm.

III. Legal and administrative instruments for addressing threats to nature in the Carpathian Mountains **Czech Republic**

Issue	Legal or administrative tool	Description	Comments
Access to information	Act Nr. 123/1998 Coll., stipulating right to information about the environment In Czech: "Zákon č. 123/1998 Sb., o právu na informace o životním prostředí"	Transposes the Aarhus Convention . Sets basic rules for providing environmental information by authorities. Specifies both active and passive informing.	ACTIVE informing – proactive information is provided by authorities. The most useful are electronic information systems that are accessible on-line. Examples of Czech good practice include the following: • EIA/SEA information system² – contains all EIA & SEA cases in Czech Rep. including full texts and documents. Most of the documents lack a user-friendly comprehensive summary, are difficult to open or are too large to download. The database content is becoming extensive. • Integrated register of pollution in the environment³ – national register of all subjects emitting any of 72 pollutants. • Clearing-House Mechanism of the Convention on Biological Diversity⁴ – The main source of information regarding biodiversity in the Czech Republic. • Databases of Environmentally Friendly Products⁵ – providing orientation in Czech and international eco-labeling Databases are publicly accessible; access is free of charge, optimized for all browsers. Some of the databases/portals are somewhat difficult to navigate and orientate oneself, and some lack English versions. PASSIVE informing (applicant needs to ask relevant authority): Applicants must be provided with any relevant information they request (or where appropriate referred to another authority) within a period of 30 days (in special cases up to 60 days). The service is free of charge. The applicant is allowed to take photocopies, snapshots, transcripts, etc. In practice, in some cases applicants are asked to pay for copies.

² <http://www.ccu.cz/EIA/SEA>

³ <http://www.irz.cz/>

⁴ <http://www.chm.nature.cz/>

⁵ [http://www.cenia.cz/_C12571B20041E945.nsf/\\$pid/MZPMSFHMV9DV](http://www.cenia.cz/_C12571B20041E945.nsf/$pid/MZPMSFHMV9DV)

Assessments: SEAs	Act Nr. 106/1999 Coll., stipulating free access to information. In Czech: Zákon č. 106/1999 Sb., o svobodném přístupu k informacím. Also relevant: Act Nr. 93/2004 Coll., on environmental impact assessment and amending some related Acts (the Act on environmental impact assessments). Act Nr. 114/1992 Coll., on the Protection of Nature and the Landscape	To be used in cases not concerning Act Nr. 123/1998 (special cases). Strategic Environmental Assessment (SEA)	Applies to policies, plans and programmes, but only for ones developed after May 1, 2004. The most serious weakness of the SEA process in the Czech Republic is totally insufficient public participation in the process which is only <i>formal</i>. The reasons are: • The public is not allowed to participate in early stages of the project when it is possible to discuss alternatives solutions relatively easily; on the contrary, participation is only possible when the concept is complete. According to the Aarhus Convention, the public hearing should be held at a stage when the public can influence the final document. Comments raised in public hearings are written down but have no real impact on the final document. In the Czech Republic to date, no concept or policy has been given a negative opinion based on public comments or suggestions. • There is no comprehensive and non-technical summary of the document, making it difficult for non-specialists or experts to participate or gain access. • General awareness of the SEA procedure is limited. Practical obstacles to implementation of SEA legislation include: • Some strategies are too general and do not provide sufficient specific information to conduct a proper SEA (e.g. countrywide strategies); • SEAs and EIAs are not linked (not <i>ex lege</i>); • Information about the new policy or concept is published only on the internet.
Assessments: EIAs	Act Nr. 93/2004 Coll., on environmental impact assessment and amending some related Acts (the Act on environmental impact assessments).⁶ Act Nr. 114/1992 Coll., on the Protection of Nature and the Landscape.	Transposes the EU Directive on Environmental Impact Assessment (EIA).	Applies to individual projects, not plans or programmes. EIAs are usually paid for by project developers, so EIAs have a tendency to say what the developer wants to hear. The Czech Ministry of the Environment orders an independent expert's report, which effectively eliminates this tendency. The law permits the project proponent to work only with unrealistic alternatives as reference alternatives. This ensures that the project proponent's original alternative automatically wins. The law does not require authorities to force project proponents to develop or suggest realistic alternatives. The Czech EIA has one substantial specialty when compared to most other EU countries. The EIA is not a part of the licensing procedure for the project concept. The result of the EIA is an expert basis for decision by another authority. As the EIA is not a decision, it cannot be reviewed judicially. A solution to this problem would be to enable the public to challenge

⁶ 2003-05 Questionnaire: Link: <http://www.unece.org/env/eia/documents/Review%202003-2005/Questionnaire%20-%202003-2005%20-%20Czech%20Republic.pdf>

Funding sources for supporting nature conservation and related development the **Czech Republic**

			As with the SEA, a non-technical summary of the EIA would help make the documentation more use-friendly and facilitate review of EIA databases. Contrary to complaints among project promoters and some Czech politicians that interventions by NGOs are primarily responsible for holding up projects, in fact delays within current infrastructure projects are 40% due to incomplete documentation; 40% due to lengthy administrative procedures; and only 20% due to interventions by NGOs and other actors.
Assessments Natura 2000	Act Nr. 93/2004 Coll., on environmental impact assessment and amending some related Acts (the Act on Environmental Impact Assessments) Act Nr. 114/1992 Coll., on the Protection of Nature and the Landscape	Transpose Article 6 of the EU Habitats Directive, so-called Natura 2000 Assessment.	Only applies to habitats and species protected by the Natura 2000 network, but can include projects outside of Natura 2000 areas if these have an impact on species or habitats that are the focus of protection. The Czech Republic probably has one of the better systems for selecting experts for undertaking independent and professional Natura 2000 assessments.
Assessments Trans-border	Espoo Convention Convention on the Environmental Impact Assessment in a Trans-boundary Context (Espoo, 1991)	Applies to trans-border projects	The trans-border EIA according to the Espoo Convention fulfills basically the same rules as the national Czech EIA, with some specialties (e.g. documents must be translated into the partner's language or at least to English). Every project which has a complete EIA and which can have negative impacts in another state that is a party to the Espoo Convention must be announced to that state. The affected state can apply for a trans-boundary assessment. Information regarding projects must be published in both states. The affected authority in the case of trans-border projects is always the Czech Ministry of Environment, which must cooperate with the Czech Ministry of Foreign Affairs. Public participation in the affected state should be of the same manner and scope as in the state of origin. Details of trans-boundary EIAs and SEAs are an object of bilateral agreements. At present, the Czech Republic has signed bilateral agreements only for trans-boundary EIAs. There is only limited experience with trans-border EIAs and SEAs in the Czech Republic. Requirements of the Espoo Convention have been repeatedly contravened in the process of constructing international motorways to Poland and Germany, where no trans-border assessments have been undertaken.
Access to information	Aarhus Convention Convention on Access		The Aarhus Convention only concerns environmental issues. Public participation in the Czech Republic is supposed to be of two kinds:

Funding sources for supporting nature conservation and related development the **Czech Republic**

	to Information, Public Participation in Decision-making And Access to Justice in Environmental Matters	1) "Consultative participation" – every person can give comments or suggestions, which will be seriously assessed and taken into account. This is relevant for EIA/SEA processes and for local/city planning. No appeals can be lodged in the process. 2) "Full participation" – aside from the right to information and possibility to comment decisions, this supposes an option to lodge an appeal to review the final decision not only with state authorities but with the court. This sort of participation is <i>missing</i> in the Czech Republic. Weaknesses in public participation in the Czech Republic - Generally, the public has legal protection when any of its rights are broken. In cases of landscape and nature protection, NGOs represent the public. Individuals are not permitted to participate in administrative procedures in these cases. However, only individuals have the right to a good environment and living conditions. NGOs lack a physical body, and therefore (according to Czech courts) they do not need good living conditions. This basic paradox greatly complicates efforts to achieve good environmental and living conditions. - To become a participant in an administrative procedure, an NGO must register in writing and within a certain period of time after announcement of the procedure. The announcement can be done on an official board (more frequent) or on a website. This approach requires potential participants in administrative procedures to actively search for such announcements.
	Czech constitution, Charter of Fundamental Rights and Freedoms – article 35, 41	Right to favorable living conditions of every man
Access to decision making, public participation		Some infrastructure projects can strongly influence the quality of living conditions. As mentioned above, the right to favorable living conditions is a right with relative content and under Czech law applies only to individuals, not to corporate bodies, including NGOs. In the Czech Republic, no action based <i>exclusively</i> on claim of contradiction of an administrative process with law and environmental damage connected to it ("objective right") has hope of success. Such an action would be rejected as "given by a non-rightful person". This has historical reasons. In the past, Czech jurisdiction of administrative courts was focused exclusively on protection of subjective rights, i.e. cases where the individual or corporate body prosecuting a case had themselves been injured by the administrative action or procedure. Thus, no actions can be filed in the "common interest" or for the "public good", e.g. concerning environmental protection. Unlawful conduct of state administrative authorities is only a matter of judicial review if there is a clear and identifiable injury to an individual or corporate body. The concept of "active right of action" is inevitably in conflict with the concerns of environmental NGOs. Some kind of "special right of action" for environmental NGOs has never been and is still lacking in Czech legislation. It is established in the Aarhus Convention;

Funding sources for supporting nature conservation and related development the **Czech Republic**

			however consistent implementation is missing (see above).
Procedures		Practical problems of access to courts in the Czech Republic (regarding environmental legislation)	When administrative decisions regarding controversial infrastructure projects (or any construction) are made, rightful person can make an appeal. If this appeal is rejected, the investor can start construction. Filing an action in such a case costs ca. €100.00 (the cost varies), and the procedure can take years. The result of the review has no practical significance when the project has already been completed. A respite of feasibility of the controversial decision can be given in special cases. In practice, this option is not used by courts (various reasons).
	Treaty establishing the European Community Aarhus Convention Convention on Access to Information, Public Participation in Decision-making And Access to Justice in Environmental Matters	Access to European courts	An option of an action in public interest is practically excluded in environmental cases (as mentioned above). At present, rules specifying access to courts on European courts level do not exist. Article No. 230 of the Treaty establishing the European Community defines the right of European institutions to request reviews of EC acts. Relevant institution for that is the European Court of Justice. Directions of EC are, however, not addressed to individuals. Therefore the European Court of Justice has so far rejected requests to review the acts as well as rejected intentions of environmental institutions to attack co-financing (by European Commission) of infrastructure projects which are in contradiction with environmental protection. The Aarhus Convention only applies to access to justice in environmental matters, not to other areas. The original statutory text of the Convention addresses both substantive and procedural law. In Czech practice, however, only procedural law is taken into account. According to the Aarhus Convention, environmental NGOs have the right to file an action in the public interest. However, this principle is not fully implemented in Czech legislation.
	The Convention for the Protection of Human Rights and Fundamental Freedoms	Access to the European Court of Human Rights (is an institution of the European Council)	The basic concept of "active right of action" is similar to Czech procedural legislation (physical individual's rights must be violated). However, the interpretation of the Court in practice is much more extensive. The Court does not demand evidence of the active right of action in certain cases; it implies the practical possibility to file an action in the public interest (in cases concerning the right to favorable living conditions or other rights mentioned in the Convention).
Complaints, infringements	Bern Convention		The Bern Convention is implemented by Czech legislative tools including: Act Nr. 114/1992 Coll. on the Protection of Nature and the Landscape; Act Nr. 17/1992 on the Environment; Act Nr. 16/1997 on conditions for importing and exporting endangered species of wild fauna and flora and other measures for protection of these species; as well as other legislation. Any citizen or organization within the contracting country can bring to the attention of the

Funding sources for supporting nature conservation and related development the **Czech Republic**

			Secretariat of the Bern Convention any violation of the principles stated in the Bern Convention.
	Ramsar Convention		In the Czech Republic, many wetlands are protected according to national legislation, e.g. in Act Nr. 114/1992 Coll. on the Protection of Nature and the Landscape (mentioned above). The fact that some of the most valuable sites are listed on the Ramsar list does not change this fact. Cases where the ecological character of wetland sites have been deteriorated or are threatened can be brought to the attention of the Secretariat of the Ramsar Convention, which can decide to put the wetland site on the so-called "Montreux Record" of threatened sites that deserve special international attention.
	Complaint to European Commission		The EC can take – and has taken – Member States to the European Court of Justice on the basis of complaints, and can apply pressure on governments to take action in the interim. However, the EC decides itself which complaints to pursue. In practice, the EC is flooded by complaints and has limited resources available for addressing them, and it takes years to prosecute cases before the European Court of Justice. The applicant is not informed how the process is progressing. However, it is accessible, cheap and relatively user-friendly way to reach the justice.
	Petition to European Parliament		Possibly useful for attracting attention to an issue, particularly if it involves issues of EU relevance and political interest. In practice, the actual tools available to the European Parliament are limited.
	EU Ombudsman		Every European citizen or corporate body can file an appeal to the EU Ombudsman regarding maladministration by EU institutions, including e.g. the European Commission or the European Investment Bank. <i>For further information, please refer to EU Ombudsman in accompanying Carpathians Handbook</i>

Relevant links:

- <http://eia.cenia.cz/eia/>
- <http://eia.cenia.cz/sea/koncepce/prehled.php>
- <http://www.irz.cz>
- <http://www.otevrete.cz/>
- <http://obcan.ecn.cz>
- <http://www.ucastverejnosti.cz>
- <http://www.env.cz>

IV. Further use and acknowledgements

Further use and translation of these materials:

Our aim with this publication is to spread practical information regarding legal and administrative instruments available for addressing conflicts between infrastructure projects and nature conservation in the Carpathians. Therefore we welcome and support any efforts to do so, including photocopying and printing as well as translation into other languages. We would appreciate it if in doing so you note the source and would be interested to know how this handbook is being used and distributed. Get in touch with us – we can probably provide you with assistance, e.g. use of digital files, graphic templates, photos, etc. Please send your email titled “Carpathian handbook” to: office@wwfdcp.org.

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