



Addressing threats to nature in the Carpathian Mountains

Legal and administrative instruments for addressing conflicts between
infrastructure and nature conservation in **Poland**

WWF-Poland
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.

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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 in **Poland**

Issue	Legal or administrative tool	Description	Comments
Access to information	Act on access to public information from 6 th September 2001 ²	Sets basic rules for providing public information held by all public bodies as well as other bodies providing public services.	The Act guarantees every individual's right to access public information regardless of the individual's interest or citizenship (Art. 2). The right can only be limited due to personal data or classified data protection, e.g. commercial secret (Art. 5). The internet Public Information Bulletin³ has been established based on the Act. One can find there information on the types of data collected by public bodies and access procedures to be followed in order to gain specific information, e.g. on environment, spatial planning etc. (active informing). Public information not included in the Bulletin is to be provided upon receiving a written application from a requesting party (passive informing) within 14 days (in exceptional cases extended to 60 days) (Art. 13). The applicant is allowed to take paper or digital copy of information for free or at minimum charge (Art. 12). In practice, it is common that public institutions representatives only allow the applicant to view the documents at the archive and to make notes on the spot or take pictures of relevant pages.
Access to information	Environment Protection Act (EPA) from 27 th April 2001 ⁴	Sets basic rules for providing information on the environment by all public bodies (Art. 19-24); the act is supposed to transpose the Aarhus Convention requirements into Polish legislation (however the transposition is not perfect).	The Act guarantees every individual's right to access to information concerning environment regardless of the individual's interests or citizenship (Art. 19). As information on environment is one of the types of public information it is to be provided in active (via web-sites of relevant bodies) as well as passive (on written request) form described in the Act on access to public information. However, the Environment Protection Act states that the information needs to be provided as soon as possible and no later than a month after receiving a request (in exceptional cases can be extended to 2 months). At the same time, the Act on access to public information (see above) states that public information is to be provided to an applicant within 14 days (exceptionally extended to 2 months). Therefore, in order to gain

² Official Journal No. 2001/112/1198, full text: www.isip.sejm.gov.pl/servlet/Search?todo=open&id=WDU20011121198

³ www.bip.gov.pl

⁴ Official Journal No. 2001/62/627, full text: www.isip.sejm.gov.pl/servlet/Search?todo=open&id=WDU20010620627

			information on environment within shorter time, it is common to ask for the information on the basis of the Act on access to public information rather than EPA. In practice, access to information regarding potentially controversial undertakings that are likely to have negative impacts on the environment or citizens is often denied by the public institutions representatives on the grounds of personal data or classified information protection, even though Article 22 of the Environment Protection Act states that the remaining public information is to be extracted and provided to the applicant. Examples of good practice in providing information (passive): • Genetically Modified Organisms Database⁵ – provides extensive information on all accepted and submitted applications regarding GMO usage in Poland • Natura 2000 Network in Poland⁶ – includes information on designated and consulted Natura 2000 sites in Poland, e.g. maps, standard data forms etc.; however it ought to be extended by information on proposed (Shadow List) Natura 2000 sites. Other information can be found e.g. via the Polish Ministry of Environment web-site⁷. Databases are available to the public free of charge. However, these databases still need to be made more known to the public, more user-friendly as well as extended by more detailed information.
Impact assessments	Environment Protection Act (EPA) from 27 th April 2001	Describes procedures of environmental impact assessment of plans and programmes (Art. 40-45); the act is supposed to transpose the Strategic Environmental Assessment Directive 2001/42/EC requirements into the Polish legislation (however the transposition is not	Environmental impact assessment of plans and programmes (often called a 'strategic impact assessment (SEA)', even though the naming does not function in the Polish legal documents). The most common lacks of the SEA process in Poland are as follows: - SEA is not considered as a process to be led parallelly to the programme drafting process - the SEA process is being initiated in the final stage of drafting process when the alternative solutions analysis, if any, has long been closed, - A prognosis of environmental impacts prepared as a summary document of the SEA process is only regarded as one of the necessary documents to adopt a programme, not a basis for modifications of the programme, - Public participation process is ineffective as public consultation is launched in the final

⁵ www.gmo.mos.gov.pl

⁶ www.natura2000.mos.gov.pl/natura2000/index.php

⁷ www.mos.gov.pl/2materialy_informacyjne/index.shtml

		perfect)	stage of the SEA process, the comments issued by the public including NGOs are usually ignored and the information on the reasons of non-inclusion of the comments issued is often not provided to the public, - SEA is only led if obligatory e.g. when the European Commission requires such an assessment for sectoral and regional operational programmes on spending EU funds or when the Bern Convention Standing Committee recommends Poland to prepare the SEA for the Via Baltica expressway. Recommendations (what is needed to be improved to make the measure effective): - awareness raising on the SEA process, including the benefits of thorough SEA allowing to avoid infrastructure-environment conflicts on the individual investments level, - initiating the SEA process at the early stage of drafting process and close cooperation between the SEA and drafting experts to include the SEA outcomes in the document, - active involvement of interested public at the early stage of the SEA process, - providing updated information on the current stage of works on SEA and the drafted document assessed, - preparation and publication of detailed reports on the comments issued in the consultation process.
		Describes procedures of environmental impact assessment of planned undertakings (Art. 46-57); the act is supposed to transpose the Environmental Impact Assessment Directive 85/337/EEC as well as Art. 6 of Habitats Directive 92/43/EEC requirements into the Polish legislation (however the transposition is not perfect)	Environmental impact assessment of planned undertakings (EIA) applies to individual projects. The costs of the EIA procedure are covered by the investor, what makes the majority of EIA reports to be prepared in line with the investor's expectations. National and regional committees for EIAs gathering experts have been established to verify EIA reports' quality. However, these are only advisory bodies and the decision makers are not obliged to follow their opinion. The most common lacks of the EIA process in Poland are as follows: - EIA is not considered as a process that results in alterations in the assessed project but only as a tool to propose mitigation or compensatory measures, - EIA report prepared as a summary document of the EIA process is only regarded as one of the necessary documents for granting a consent on its realization, not a basis for modifications of the project, - The EIA analysis is often based on incomplete information on the affected environment and potential impacts, - Lack of alternative solutions analysis or contradicting the investor-proposed option with non-realistic alternatives, - Inadequate mitigation and compensation measures, - Public participation process is ineffective as public consultation is launched in the

		final stage of the EIA process, the comments issued by the public including NGOs are ignored and the information on the reasons of non-inclusion of the comments issued is not provided to the public (similarly to SEA)⁸. These mainly result from inadequate implementation of the EIA directive into the Polish law. The investors and EIA authors following the EPA are not aware that in fact they do not fulfill the EIA directive requirements (especially when Natura 2000 sites are potentially impacted by the assessed project). Moreover, the EIA directive sets goals to be achieved in every EIA conducted and the Polish procedures on EIA control and verification are highly insufficient. Therefore it is necessary to (to make the measure effective): - further adjust the Polish law including EPA to fully implement the EIA directive regulations, - promote European Commission's guidelines on EIA (Screening⁹, Scoping¹⁰, General Review¹¹) among EIA experts and decision makers to be followed, - broaden the competences of the existing EIA verification bodies in Poland (e.g. the national and regional expert committees on EIAs – currently advisory bodies only).
	Describes procedures of trans border environmental impact assessment of plans and projects (Art.58-70).	Trans border environmental impact assessment applies to plans and programmes as well as individual projects of potential environmental impacts on the territory of any other country. All the EIA documentation is to be prepared in the language of the potentially affected country. The Polish Minister of Environment is obliged to inform all the potentially affected countries about the EIA procedure. If the any of the countries in question is willing to take part in the EIA process, it is widely consulted on the EIA outcomes and recommendations. Public consultation process is to be led in all interested countries. In practice, however, there has been hardly any trans border EIA conducted in Poland, as similarly to the EIA and SEA the need of conducting an assessment as well as potential impacts on environment tend to be neglected by investors and decision makers, e.g. no trans border assessments have been made with respect to the planned cross border infrastructure investments.
	Nature Protection Act (NPA) from 16 th April 2004 ^{1,2}	Describes Habitat Assessment procedure (Art. 33-34 with reference Habitat Assessment set in the Habitats directive Art. 6 applies to plans and projects with potential impacts on habitats and species protected under Birds and Habitats directive within Natura 2000 network. When describing habitat assessment procedure NPA refers to

⁸ More details available in the report on 'EIA quality in Poland. National practice and EU law', WWF Poland and Institute for Environmental Economics (2006), available at: www.wwf.pl/informacje/publikacje/fundusze_ue/jakosc_oos.pdf

⁹ Guidance on EIA – Screening; European Commission (2001)

¹⁰ Guidance on EIA – Scoping; European Commission (2001)

¹¹ Guidance on EIA – EIS Review; European Commission (2001); Polish language version of the summary available in the 'EIA quality in Poland. National practice and EU law', WWF Poland and Institute for Environmental Economics (2006), see footnote no 7

		to the EPA); the act is supposed to transpose the Art. 6 of Habitats Directive 92/43/EEC requirements into the Polish legislation (however the transposition is not perfect).	the EPA; therefore the habitat assessment is divided and described in 2 Polish legislation texts what causes confusion and extends the difficulties in proper application. The procedure includes: • assessing impacts of planned project on protected habitats and/or species (however, the scope of the assessment is described in the EPA); • in case of negative impacts of undertaking an analysis of alternative solutions to achieving goal set in the project is to be conducted, • if there is no viable alternative and there is overriding public interest the project can be put into life having provided adequate compensatory measures. However, it is common in Poland while conducting habitats assessment to: • ignore existing scientific data on protected habitats and species as well as site integrity, • ignore potential threats for the protected habitats and species, • analyze the variant proposed by the investor together with unviable alternatives, • use the overriding public interest as the basis for the harmful project's realization – contrary to the Habitats directive Art. 6 procedure, • add the habitat assessment report as a cover to previously prepared faulty EIA report, • propose inadequate, ineffective or damaging compensatory measures, • propose compensatory measures even if no negative impacts are identified. EIA reports authors in Poland lack knowledge on proper habitat assessment procedure, tend to assess the project's impacts on the area of Natura 2000 site while they ought to assess the project's impacts on the habitats or species protected within and the ecological functions the area provides (site integrity). The 'experts' often claim that the project located outside the Natura 2000 site boundaries does not influence it and therefore they do not analyze potential impacts of the project on the protected habitats and species. These mainly result from ignoring the Habitats directive Art. 6 procedure described in NPA as well as European Court of Justice rulings on the Habitats directive providing knowledge on the directive's proper interpretation. Therefore it is necessary to: - promote the European Commission's guidelines on Assessment of plans and projects significantly affecting Natura 2000 sites¹³ as well as on Managing Natura 2000 sites¹⁴
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¹² Official Journal No. 2004/92/880, full text: <http://isip.sejm.gov.pl/servlet/Search?todo=open&id=WDU20040920880>

¹³ 'Assessment of plans and projects significantly affecting Natura 2000 sites. Provisions of Article 6 (3) and (4) of Habitats directive', European Commission (2002); Polish language version published by WWF Poland available at: www.wwf.pl/informacje/publikacje/inne/procedura_artykulu.pdf

¹⁴ 'Managing Natura 2000 sites. Provisions of Article 6 of Habitats directive', European Commission (2000); Polish language version published in 2007 by WWF Poland available at: www.wwf.pl/informacje/publikacje/natura/zarzadzanie_natura_2000.pdf

Access to decision making, public participation	Environment Protection Act (EPA) from 27 th April 2001 ¹⁵	Sets rules for public participation within decision-making process concerning environment (Art. 31-39); the act is supposed to transpose the Aarhus Convention requirements into the Polish legislation (however the transposition is not perfect)	among EIA experts and decision makers to be followed. Public participation is guaranteed in environment bound decision making processes such as plans and programmes drafting process (e.g. environment protection plans, acts and regulations concerning environment, national and regional policies as well as spatial planning documents ¹⁶ , river basin management plans ¹⁷) and individual projects decision making process whenever EIA is conducted. The relevant authority is obliged to provide the consulted documents/information on the consulted projects to the general public. Everyone is entitled to issue comments on the consulted document/project. The consultation timeline is to be 21 days at minimum (in practice 21 days is also maximum timeline). All the comments issued should be considered and taken into account when preparing the final version of the document/issuing consents for the project. The final document/decision on the project ought to be accompanied by a report on the public participation process and the way its outcomes were included in the final document/decision. However, only an NGO that provided comments within consultation timeline can lodge an appeal against the issued decision at the court. This applies only to the three primary stages of the decision making process: a) decision on the localization of an investment (so called 'localization decision'), b) decision on environmental conditions for realization of an investment (so called 'environmental decision') and c) decision on the conditions for conducting building works. When issuing the last possible decision – a consent for construction NGOs are not allowed to take part so that they could not stop the investment at the very final stage of the decision making process. This contradicts the rules set in the Aarhus Convention as the consent for construction can seriously influence the way the project is realized and so impact the environment. In case of potential negative environmental impacts, the EIA process with full public participation procedure is to be conducted and EIA report is to be prepared before issuing the environmental decision (b). As there is no tradition for public participation in Poland, the process in practice bears multiple weaknesses: - little awareness among the society on their right to participate,
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¹⁵ Official Journal No. 2001/62/627, full text: www.isip.sejm.gov.pl/servlet/Search?todo=open&id=WDU20010620627

¹⁶ Act on spatial planning and development (Art. 11,17,18) from 27th March 2003, Official Journal No. 2003/80/717

¹⁷ Water Act (Art. 119) from 18th July 2001, Official Journal No. 2001/115/1229

		- unwilling attitude of decision makers and investors to the idea of public consultation, - passive informing is of poor quality and active forms of informing are hardly ever used, - the time for submitting comments of 21 days is too short (especially when poor quality of informing is taken into account), - public consultation is launched at the very final stage of the project and only one option is submitted to consultation, - reports on public consultation outcomes, if any, rarely include information on the way comments submitted by the public were taken into account and on the reasons for non-inclusion of remnant comments, - NGOs that represent general public interests within administrative procedures (decisions (a), (b) and (c) as given above) still lack capacity in Poland, especially when compared with the rapid increase in infrastructure investments to be consulted, - in order to become a party in the administrative procedure for granting environmental decision an NGO needs to notify that in writing and within a 21 days term since the procedure was announced. This is again contrary to Aarhus Convention. Moreover, relevant authorities rarely act to invite NGOs to the process. That is why NGOs need to monitor the procedures announced and stay updated on the current events. Recommendations (to make the measure effective): - shift from passive to active forms of informing general public, including NGOs, on the ongoing public participation procedures and their right to submit comments, - launch public consultation process on the earliest possible stage of the project, - provide the information on the project in an easily accessible way, using non-technical language, - prepare detailed reports on the public participation process outcomes and provide it to the public, - support NGOs in building up their capacity to participate (human resources, funding, training, expertise etc.)
Procedures	Polish Constitution, Chapter II on Fundamental Freedoms, Rights and Duties (Art. 74, 86)	Art. 74 (2) of the Polish Constitution states that the authorities are obliged to protect the environment. Art. 74 (3) guarantees general public right to access to information on environment. Art. 86 states that everyone is obliged to protect the environment and bears responsibility for any damage caused to the environment. In practice, however, when requesting access to information on environment or challenging decisions on harmful investments it is advisable to base on more detailed legal acts such as Act on access to public information or EPA. Right to access to information on environment and obligation to protect the environment.
		Practical problems with access to courts in Poland, (with regards to environment) If an administrative decision on environmentally harmful project is issued, a rightful person/party (e.g. NGO) can lodge an appeal. However, it depends on the courts decision whether the investment is halted or not. As the appealing procedure can last years it is much probable that the harmful investment will be realized regardless of the courts ruling

			what makes the procedure often ineffective. Halting feasibility of the controversial administrative decision can be issued in special cases, e.g. well-founded threat of irreversible damage to environment. In practice this option is not used by courts. Appealing procedure usually requires specialist legal advisory (compulsory when appealing to the Supreme Administrative Court) that is costly or time consuming when provided by the court. EU and international law are often not considered by the national courts and decision makers to stand above the national law.
Complaints, infringements	Aarhus Convention	Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters	Ratified by the Polish Government in 2001. Implemented among others within EPA and Act on access to public information. The Convention guarantees public participation in every decision making process concerning the environment (with few exceptions). The Polish law, however, provides this right at three primary stages of administrative decision making procedure (localization decision, environmental decision and decision on the conditions for conducting building works) while the final consent for construction is granted without any public participation. In practice Aarhus Convention implementation is also weak in Poland, as the authorities are often unwilling to include general public in decision making process and the society is unaware of their right to participate. That provides basis to lodge complaints to Aarhus Convention Compliance Committee. The appealing process before the Committee is, however, very slow and can take several years. The Convention guarantees human right to life, private and family life and home, property protection, access to justice etc. The European Court of Human Rights has therefore addressed the problem of public participation in decision making process that is necessary for protection of the rights listed above. Any citizen or organization within signatory country can refer to the European Court of Human Rights if any right guaranteed in the Convention is broken.
	European Convention on Human Rights (by the European Council)	Access to the European Court of Human Rights	Ratified by the Polish Government in 1995. Implemented among others within NPA. Any citizen or organization within signatory country can refer to the secretary of the Bern Convention if any rule set in the Convention is broken. This procedure was used by the Polish NGOs to press the Polish authorities to take nature protection requirements in to account when choosing the Via Baltica expressway route (I Pan-European transport corridor). The Bern Convention Standing Committee officially urged Poland in 2003 to lead a thorough SEA including all possible alternatives and their influence on the national as well as international law protected areas in North-Eastern Poland.
	Bern Convention	Convention on the Conservation of European Wildlife and Natural Habitats	Ratified by the Polish Government in 1978. Wetland areas in Poland protected under the Ramsar Convention are also protected under the Polish and EU law. Any citizen or organization within signatory country can lodge a complaint on Ramsar
	Ramsar Convention	Convention on Wetlands of International Importance Especially as Waterfowl Habitat	

			Convention non-compliance, e.g. to the European Commission. In practice, however, it is more effective to base the complaint on the national or EU environmental law regulations. Whenever EU or EU ratified law is breached it is possible to send a complaint to the European Commission (EC). The EC decides whether to take up the complaint and pressures the non-complying Member State to change its decisions/legal regulations. If the Member State does not comply, the EC brings the Member State to the European Court of Justice (ECJ). The court procedure in ECJ can take years (usually app. 2 years) before the ECJ final ruling, that is why EC can ask ECJ to issue interim measures to halt the harmful project until the ECJ ruling is issued.
	Complaint to European Commission		However, as the EC receives huge amount of complaints, it pursues only selected cases. Still if an individual or organization convinces the EC to act in the case, the EC is firm and effective advocate for environment protection and nature conservation. The Via Baltica and Augustow Bypass cutting through EU law protected Rospuda Valley provides a good example of EC effective actions in the field as the EC brought Poland to ECJ and pressed the Polish Government to halt destructive construction works within protected area until the ECJ final ruling.
	Petition to European Parliament		Even though the EC does not have the capacity to take up all the complaints, often one precedence case and ECJ ruling can prevent other environmentally harmful decisions to be made in a given Member State. Any citizen or organization can lodge a petition to the European Parliament Petition Committee when EU law is breached asking the Committee to investigate the case. The Committee can issue an official opinion on the case and urge the EC to take necessary action.
	Polish Ombudsman ¹⁸		In the case of the Via Baltica and Augustow Bypass cutting through EU law protected Rospuda Valley the petition to the Committee resulted in the Committee's investigation, including on-site visit, and adopting in September 2007 an official report on the environmental procedures non-fulfilment by the Polish authorities. Therefore, the NGOs striving for Rospuda Valley protection have gained another important supporter. Every Polish citizen/a person obliged to follow the Polish law or corporate body can send an appeal to the Polish Ombudsman. The Ombudsman is to act against any human right guaranteed by the Polish law breach, including the right to favourable living conditions, information on environment, public participation etc. In December 2006 the Ombudsman supported NGOs in their actions aiming at saving the

¹⁸ www.rpo.gov.pl

			EU law protected Rospuda Valley stating that the environmental decision for Augustow Bypass construction was granted ignoring the constitutional rules of environment protection and sustainable development as well as against the rule of EU law supremacy over the national law. The Ombudsman also became a party in the appealing procedure against the environmental decision initiated by NGOs in the Polish administrative court.
	EU Ombudsman		Every European citizen or corporate body can send a complaint to EU Ombudsman. The Ombudsman is to act in case of EU bodies and institutions maladministration. The EU Ombudsman cannot investigate complaints on the Member States maladministration. These should be directed e.g. to national courts, national Ombudsman. The EU Ombudsman could be involved e.g. in a European scale infrastructural projects/policies not in line with EU environmental regulations.

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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