

Suggestions on amendments of EIA Directive

Based on the summary of national roadmaps' main findings and workshops

T4.2 Detailed report on the possibilities to improve the EIA Directive

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Deliverable T4.2 Detailed report on the possibilities to improve the EIA Directive

ConnectGREEN Project – “Restoring and managing ecological corridors in mountains as the green infrastructure in the Danube basin.” Danube Transnational Programme, DTP2-072-2.3

Project Partners: Romania: WWF Romania (Lead Partner); National Institute for Research and Development in Constructions, Urban Planning and Sustainable Spatial Development; Piatra Craiului National Park Administration; Austria: WWF Central and Eastern Europe; Czech Republic: Nature Conservation Agency; Silva Tarouca Research Institute for Landscape and Ornamental Gardening; Hungary: CEEweb for Biodiversity; Hungarian University of Agriculture and Life Sciences; Slovakia: Slovak Environment Agency; The State Nature Conservancy; Slovak University of Technology in Bratislava – SPECTRA Centre of Excellence of EU; Serbia: Institute of Architecture and Urban & Spatial Planning; National Park Djerdap

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Work Package Leader: Dr. Nagy Gabriella Mária

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Author: Dr. Mészáros Szilvia

Contributors: Marina Nenковиć-Riznić, Oana Popescu, Raluca Dan, Rastislav Staník

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Introduction

ConnectGREEN project (June 2018– October 2021) aimed to contribute to maintaining and improving ecological connectivity between natural habitats, especially between Natura 2000 sites and other protected areas of transnational relevance in the Carpathian ecoregion, namely in the Czech Republic, Hungary, Romania, Slovakia and Serbia. Partners from various fields of activity joined forces to increase the capacity for the identification and management of ecological corridors and to minimize conflicts between infrastructure development and wildlife conservation. ConnectGREEN fostered cooperation among nature conservationists, natural asset managers, spatial planners and decision makers at the local, national and regional level.

Within work-package 6 the involved partner countries Hungary, Serbia, Slovakia, Romania started an initiative to support the fitness check process of EIA/SEA Directive. The partners consider the as first step to be taken to provide “national roadmaps” are essential tools in further contributing to the reconciliation between conservation and spatial planning. Concrete steps with clear guidance will be additionally jointly developed with stakeholders from key sectors on how to best integrate ecological corridors into spatial planning. The partners started the distributions of these roadmaps especially among spatial planners who need to improve their overview related to ecological corridors by having not only translated information in their technical language, but also simple to follow and use tools. In this way, as also stated by spatial planners in various consultation meetings, concrete ways to integrate ecological corridors into spatial planning shall be more straightforward and effective. The roadmaps can be used as communication and advocacy tools to promote integrated policy and legislative approaches and to create the basis for improving the sectorial legislation.

During the development of these roadmaps several practical problems have been identified in connection with EIA processes related to infrastructure projects, which can influence the effective protection of ecological connectivity. Several suggestions have been formulated on the arising problems. In this document, the connection has been outlined between the European Union Directive on Environmental Impact Assessments (2014/52/EU) and the formulated suggestions based on national roadmaps, in some cases with formulating proposals for the amendment of the EIA Directive.

Based on the national roadmaps a detailed report on the possibilities to improve the EIA Directive was elaborated. The feasibility check is important in order to understand the chances to perform a fitness check and improve the EIA Directive, which is applied differently in the participating countries. It is needed to perform such an analysis of conflicts in relation to the EIA process for nature protection, especially concerning ecological corridors together with conservationists, representatives of businesses performing such assessments, of academia, protected areas, etc. The EIA assessments should be performed according to the same principles across the countries. The process of changing Directives is slow and complex, and needs thorough assessments, such as this

document. This approach itself of raising awareness on the weaknesses and recommendations related to EIA processes among this target group is expected, to some extent, to improve the studies. However, for a greater impact, the improvement of the EIA Directive will be needed, which will be pushed on the EU's agenda with the occasion of programming of EU national and operational programmes which are in the revision phase. The programming process of these EU national and operational programmes (under the CAP and Cohesion Policy) creates the possibility and also the premises to raise the issue of improving the Directive with this occasion by contributing with input and recommendations both in written as well as by participating in the various consultation meetings that was organized by the partnership.

The EU Biodiversity strategy for 2030 has several important points, namely the Strategy emphasises that *„in order to have a truly coherent and resilient Trans-European Nature Network, it will be important to set up ecological corridors to prevent genetic isolation, allow for species migration, and maintain and enhance healthy ecosystems.”* Therefore one of the key commitments of the Strategy is to integrate ecological corridors as part of the Trans-European Nature Network.

One of the main environmental impacts on nature of transport infrastructure is the fragmentation of habitats. Several studies, reports, scientific papers, books and even EU guidelines have pointed out that fragmentation is a significant problem, because it has overall negative consequences on biodiversity. So fragmentation should be reduced as much as possible. As the transport infrastructure elements are linear elements in the landscape, their crossing with ecological corridors is often unavoidable, so basically the technical solutions and details of these crossings are determining factors regarding ecological connectivity. On the level of transport infrastructure, the environmental impact assessment (EIA) can serve the effective protection of ecological connectivity, by determining provisions for avoidance or mitigation measures for adverse impacts on nature.

EIA Directive's amendments in the last decade

An overview of the most important progression in connection with EIA Directive in the last decade can be seen in **Table 1**. In 2009 European Commission published a report on the application and effectiveness of the EIA Directive. In 2010 the Commission launched a wide public consultation on the EIA Directive, as a result 3 specific problem areas were identified. In 2011 the initial Directive and its three amendments have been codified in a new directive (2011/92/EU). In 2012 a result of the review process of 2010, the Commission adopted a proposal for a new directive. Finally, the binding directive came into force in 2014 (2014/52/EU).

Table 1. EIA Directive progression from 2009

Year	Progress
2009	The European Commission published a report on the application and effectiveness of the EIA Directive (COM(2009)378) - highlighting the main areas where improvements were needed.
2010	The Commission launched a wide public consultation on the EIA Directive. Three specific problem areas: (1) the screening procedure, (2) the quality and analysis of the EIA and (3) the risks of inconsistencies within the EIA process itself and in relation to other legislation.
2011	The EIA Directive of 1985 has been amended three times, in 1997, in 2003 and in 2009. The initial Directive of 1985 and its three amendments have been codified by Directive 2011/92/EU.
2012	As a result of the review process of 2010, the Commission adopted a proposal (COM(2012)628) for a new Directive that would amend the existing Directive (2011/92/EU).
2014	The amended EIA Directive came into force (Directive 2014/52/EU). While it does not make specific reference to ecological connectivity, it requires assessment of direct and indirect significant effects on biodiversity, with particular attention to species and habitats protected under B&H Directives, as well as landscape.

Based on the proposal for “amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment” [Brussels, 26.10.2012. COM(2012) 628 final, 2012/0297 (COD)] the last amendments of EIA Directive aimed – among other aspects – to better integrate biodiversity protection. Thus, e.g. the following modifications were implemented:

- The modifications to Article 3. aim to ensure consistency with Article 2(1), i.e. by referring to ‘significant’ effects, and adapt the EIA to environmental issues (biodiversity, climate change, disaster risks, use of natural resources).
- Annex II.A, which is a new Annex, sets out the information to be submitted by the developer as regards projects listed in Annex II, for which screening is carried out to determine whether an EIA is required. Among these information, use of natural resources (in particular biodiversity) have to be provided by the developer. This amendment is intended to harmonise the screening process.
- Annex III, which lays down the criteria used for screening Annex II projects, is amended to clarify the existing criteria (e.g. cumulative effects or links with other EU legislation) and to include additional ones (mainly those related to new environmental issues, such as biodiversity).
- Annex IV. contains the items to be considered in the environmental report required by Article 5. The main changes are additional information requirements concerning the assessment of reasonable alternatives, the description of monitoring measures and the description of aspects related to new environmental issues (e.g. climate change, biodiversity, disaster risks, use of natural resources).

Current content related to biodiversity

Based on Serbian and Hungarian experiences, consultants and experts who are responsible for the writing of EIAs rather follow the national legislation, they do not know the original EIA directive in details (in the case of Serbia it is not an obligation to follow the directive).

The main current content in the Directive (considering also directives 2011/92/EU and 2014/52/EU) in direct connection with biodiversity are summarized in **Table 2**. Thus, these are the articles and annexes in the current directive in which the term 'biodiversity' is nominated, but this does not necessarily mean that other parts do not serve the protection of biodiversity in an indirect manner.

Table 2. Current content related to biodiversity

Reference	Main essence	Citation
Article 3.	Article 3. requires that direct or indirect significant effects of a project on biodiversity have to be identified, assessed in EIAs.	1. The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors: (b) biodiversity , with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC
Annex II A.	Annex II A. determines the information to be provided by the developer on the projects which may be a subject to an EIA. Among these requirements a description of any likely significant effect on biodiversity have to be provided.	Annex II A. – Information to be provided by the developer on the projects listed in Annex II. 3. A description of any likely significant effects , to the extent of the information available on such effects, of the project on the environment resulting from: (b) the use of natural resources , in particular soil, land, water and biodiversity .
Annex III.	Annex III. set the base requirements of the criteria to determine whether the project should be a subject to an EIA or not. Among these criteria, the characteristics of projects must be considered, with particular regard to biodiversity. Environmental sensitivity of the location of projects also must be considered with particular regard to biodiversity. Among these criteria in connection with the location of projects, the absorption capacity of the natural environment must be considered, paying particular attention to the following areas: wetlands, coastal zones, mountain and forest areas, nature reserves and parks, areas classified or protected under national legislation; Natura 2000	Annex III. – Criteria to determine whether the projects listed in Annex II. should be subject to an EIA 1. Characteristics of projects The characteristics of projects must be considered, with particular regard to: (c) the use of natural resources , in particular land, soil, water and biodiversity ; 2. Location of projects The environmental sensitivity of geographical areas likely to be affected by projects must be considered, with particular regard to: (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground; (c) the absorption capacity of the natural environment , paying particular attention to the following areas: (i) wetlands, riparian areas, river mouths; (ii) coastal zones and the marine environment; (iii) mountain and forest areas;

Reference	Main essence	Citation
	areas. We can recognize that the ecological network is missing from the list.	(iv) nature reserves and parks ; (v) areas classified or protected under national legislation ; Natura 2000 areas designated by Member States pursuant to Directive 92/43/EEC and Directive 2009/147/EC;
Annex IV.	Annex IV. set the base requirements for the content of the EIA reports. In the description of the main characteristics of the project's operational phase, materials and natural resources used have to be summarized in EIAs. The description of the factors affected by the project, the caused significant effects and the cumulation of effects with other projects on biodiversity must be highlighted, considering as far as possible the sustainable availability.	Annex IV. Information for the environmental impact assessment report 1. Description of the project, including in particular: (c) a description of the main characteristics of the operational phase of the project , for instance, (...), the nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used ; 4. A description of the factors specified in Article 3(1) likely to be significantly affected by the project : (...) biodiversity (for example fauna and flora), (...) 5. A description of the likely significant effects of the project on the environment resulting from, inter alia: (b) the use of natural resources , in particular land, soil, water and biodiversity , considering as far as possible the sustainable availability of these resources ; (e) the cumulation of effects with other existing and/or approved projects , taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources .

Suggestions on EIA Directive

The connection between the national roadmaps' main suggestions and EIA Directive has been outlined in **Table 3**. It is important to decide which formulated suggestions should be handled on the national level and which aspects should be raised to the EU level. There are some suggestions, which could effectively contribute to a better protection of ecological connectivity in EIA processes, but should be handled on the national level.

Moreover it is important to have autonomy of each Member States to implement EIA Directive into national legislation in a way which can fit to their administrative environment. It is in line with the views of Slovak colleagues, who think *"Each country should have a little bit of autonomy in regards of the EIA directive implementation. Exact transposing of the Directive limits to a certain level the approach for scientific and rational implementation of positive effects in ensuring of the ecological connectivity. It is important to take national differences into consideration."* The EIA Directive should be transposed into national legislation on a relevant scientific basis, not just by applying the legal approach. Many of the formal requirements are representing obstacles to the EIA process from the practical point of view, not benefiting the landscape and environment ecological stability.

Overall, the following main suggestions can be formulated in order to better integrate ecological aspects into the directive (see in details **Table 3**):

- The term of 'ecological corridor' or 'ecological connectivity' should be nominated in EIA Directive.
- Impacts of the railway/road projects on ecological corridors / ecological connectivity should be assessed and evaluated in EIAs, so the criteria to determine whether the project listed Annex II should be subject to an EIA and basic requirement of EIA report should also be complemented.
- The Directive should set the base requirement for the national legislative level to regulate the unified methods for field studies related to linear infrastructure projects; main aspects of environmental-based planning process; assessing (adverse) impacts on biodiversity, especially on ecological connectivity.
- The Directive should regulate that a national database should be created from the results of monitoring activities related to major road and railway projects.
- Timeframe should be outlined for the field studies connecting to road/railway EIAs' wildlife protection part and for the monitoring activities in a 3 phases framework: before the design, during the construction, during the operation and maintenance, while emphasis has to be given in connection with effectiveness of mitigation measures.

Table 3. Connection between EIA Directive and main suggestions from national roadmaps

Main suggestions in national roadmaps	The current content of the Directive in connection with the suggestion		Remark	Suggestion on EIA Directive (if it is necessary)	
	Reference	Extract		Summary	Relevant directive point(s)
Consideration of ecological corridors is often underestimated in EIAs, so preserving and strengthening of ecological connectivity should be enforced in EIAs.	Article 3. (1) b)	The EIA shall identify, describe and assess (...) the direct and indirect significant effects of a project on (...) biodiversity	Ecological network or corridors / ecological connectivity is not mentioned in the current Directive.	The term of ‘ecological corridor’ or ‘ecological connectivity’ should be nominated in EIA Directive , to highlight its important role in prevent genetic isolation and maintain healthy ecosystems, in line with the current EU Biodiversity Strategy.	Article 3. (1) b), Annex III., Annex IV.
	Annex III. 2. c), Annex IV. on EIA report	Annex III. 2. The environmental sensitivity of geographical areas likely to be affected by projects must be considered, with particular regard to: (c) the absorption capacity of the natural environment, paying particular attention to the following areas: (...) (see Table 2.) Annex IV. 4. A description of the factors likely to be significantly affected by the project: (...) biodiversity 5. A description of the likely significant effects of the project		Impacts of the railway/road projects on ecological corridors / ecological connectivity should be assessed and evaluated in EIAs , so the criteria to determine whether the project listed Annex II. should be subject to an EIA and basic requirement of EIA report should also be complemented.	

Main suggestions in national roadmaps	The current content of the Directive in connection with the suggestion		Remark	Suggestion on EIA Directive (if it is necessary)	
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		on the environment resulting from (b) the use of natural resources (...) (e) the cumulation of effects			
Applicable methods for field studies; environment condition-based planning aspects; base requirements for assessing impacts on biodiversity should also be unified.	Article 5 (3)	3. In order to ensure the completeness and quality of the EIA report: (a) the developer shall ensure that the EIA report is prepared by competent experts; (b) the competent authority shall ensure that it has, (...) sufficient expertise to examine the EIA report; and (c) where necessary, the competent authority shall seek from the developer supplementary information, in accordance with Annex IV, which is directly relevant to reaching the reasoned conclusion on the significant effects of the project on the environment.	The standardization is probably not the task of the directive or a task of an EU guideline, but the directive with base requirements can draw attention that it is necessary to rethink the used methods at national level.	The Directive should set the base requirement for the national legislative level to regulate the followings: • unified methods for field studies related to linear infrastructure projects; • main aspects of environmental-based planning process (strengthening the relation of nature conservation experts and technical planners); • outline the base requirements for assessing (adverse) impacts on biodiversity, especially on ecological connectivity .	Article 5. (3), Annex IV.
National databases should be created including all the results of ecological monitoring activities carried out in practice, with evaluation of the results,	Article 8a.	1. The decision to grant development consent shall incorporate at least the following	The necessity of monitoring activities is regulated, but a	The Directive should regulate – or at least suggest – that a national database should be created from the results of	Article 8a. – monitoring activities / Article 5. (3) –

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	Reference	Extract		Summary	Relevant directive point(s)
providing access for professionals involved in road/railway planning processes. It could be a good feedback to other projects.		information: b) (...) monitoring measures. 4. In accordance with the requirements referred to in paragraph 1(b), Member States (...) shall determine the procedures regarding the monitoring of significant adverse effects on the environment. (...)	database creation from the monitoring results is not mentioned.	monitoring activities related to major road and railway projects.	add an aspect to the quality of the EIA report
National databases should be created including all the relevant up-to-date environmental data on nature which can contribute to the good quality of EIAs. Databases should include especially: actual ecological state of the ecological network; road/railway underpasses/overpasses; occurrence of protected species; spread of invasive species; vehicle collisions with animals.	Article 5.	Article 5. 4. Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3*, make this information available to the developer. *Biodiversity is included in Article 3, as a factor need be assessed in EIAs.	This suggestion goes beyond the scope of the directive and needs to be addressed at national level, so modification is not needed . The basic problem is – based on the examined countries' findings – the insufficient data available in relevant authorities (nature conservation / environmental protection).		
Ecological aspects should be enforced in the road/railway corridor choice and substantive assessment of corridor alternatives should be considered in EIAs in order to provide	Annex IV.	2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the	The main problem is with the implementation of EIA Directive, not with the Directive itself, so modification is not needed .		

Main suggestions in national roadmaps	The current content of the Directive in connection with the suggestion		Remark	Suggestion on EIA Directive (if it is necessary)	
	Reference	Extract		Summary	Relevant directive point(s)
the avoidance of significant adverse impact on ecological connectivity.		proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.			
Proposed mitigation and compensation measures in EIAs should be implemented in practice. Large infrastructure projects should also provide in their budget means for maintaining ecological connectivity.	Article 8a.	Article 8a. 4. (...) Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer , (...)	The main problem is with the implementation of EIA Directive on the national level, not with the Directive itself, so modification is not needed . A national legislation change may be needed to provide the proper financial source for the mitigation and compensatory measures (e.g. minimum percentage of the entry cost of a given project should be stipulated in legislation).		
No/low funding for post-realisation monitoring resulting in missed opportunities for negative impact mitigation and compensation measures. Implementation of follow-up processes should be strengthened (e.g. effectiveness of mitigation measures, impacts of maintenance works / lack of maintenance works).	Article 8a.	Article 8a. 4. (...) Member States shall (...) determine the procedures regarding the monitoring of significant adverse effects on the environment . The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment based on the	The main problem is with the implementation of EIA Directive on the national level, not with the Directive itself, so modification is not needed . The Directive intends to regulate the necessity of monitoring measures, but it leave the decision for the Member States to outline the exact parameters.		

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		3 phases monitoring framework: before the design, during the construction, during the operation and maintenance.			
Active involvement of stakeholders should be implemented into decision-making processes.	Article 6.	Article 6. 1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities or local and regional competences are given an opportunity to express their opinion (...). 2. In order to ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed (...). 4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures (...)	The main problem is with the implementation of EIA Directive on the national level, not with the Directive itself, so modification is not needed.		
Timeframe is needed for field studies to provide enough time for data collection on-site, in order to improve data quality used in EIAs.	Article 6., Article 4., Article 8a	Article 6. (7) The time-frames for consulting the public concerned on the environmental impact assessment report referred to in	There are exact timeframes in the Directive for public consultation and	Adding more timeframes to the Directive could facilitate the EIA work and the follow-up processes:	Article 5 (3): „in order to ensure the completeness

Main suggestions in national roadmaps	The current content of the Directive in connection with the suggestion		Remark	Suggestion on EIA Directive (if it is necessary)	
	Reference	Extract		Summary	Relevant directive point(s)
Timeframe is also needed for monitoring activities, in order to be able to measure the effectiveness of mitigation measures.		Article 5(1) shall not be shorter than 30 days.	for the decision process of the competent authority. In order to increase the effectiveness of protection the ecological corridors, another timeframes should be set up.	- Timeframe should be outlined for the field studies connecting to road/railway EIAs' wildlife protection part: minimum one growing season (vegetation period) is needed. - Timeframe should be outlined for the monitoring activities, mainly in connection with effectiveness of mitigation measures (green bridges, eco-ducts): minimum 5 years is needed after the implementation of a project, but also long-term (10 years) monitoring activity would be useful in connection with major infrastructure projects (e.g. motorways).	and quality of EIA report (...)”
		Article 4. (6) Member States shall ensure that the competent authority makes its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the developer has submitted all the information required (...).			Article 8a (4) – minimum duration of the monitoring should be added
		Article 8a. (4) (...) The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment.			