



ERA Training Event

Investigation, prosecution and adjudication of wildlife and forest-related crimes and offences

Anne Brosnan,
Chief Prosecutor Environment Agency, England
ERA Training Event September 2024



Co-funded by the
European Union



What offences are we dealing with?

Wildlife Crime

Domestic eg Raptor persecution and killing
International eg Trade in endangered species and parts

Forestry Crime

Domestic eg Felling protected trees
International eg Illegal logging and timber trade



Co-funded by the European Union

Know the offence provisions

- **Know the elements of the crime you think was committed**
- **Marshall the evidence to meet the offence**
- **Focus on knowledge, not just actions**
- **Establish Culpability and Harm**
- **Explore contrary evidence and defences**



Wildlife Crime International Obligations & Framework

- Bern Convention on Conservation of European Wildlife and Natural Habitats 1979
- CITES Convention on International Trade in Endangered Species of wild flora and fauna 1975
- Natura 2000 network and Emerald Sites
- Aarhus Convention




Co-funded by the European Union

Aarhus Convention on Access to Justice in Environmental matters. 1998

Aarhus – the three pillars of Aarhus. Public participation in decision making, Access to environmental information and Access to Justice in environmental matters.

Bern Convention on Conservation of European Wildlife and Natural Habitats 1979

CITES - Convention on International Trade in Endangered Species 1975

When it comes to international trade CITES is the established international regime under which protections are provided, Transport and trade may be wholly restricted by CITES or subject to a licensing system.



CITES

- Internationally agreed legal framework
- Common Procedural mechanisms
- 180 countries are signed up to CITES
- The three Appendices are important
- System of permits and certificates for export or import detailing certain information
- National framework must be established
- Prohibition on Appendix 1 species – threatened
- Restricted trade in Appendix II and III species – endangered




Co-funded by the European Union

CITES: How it works in practice

Each party to the Convention must designate a Management Authority in charge of administering the CITES Licensing System and one or more Scientific Authorities to advise them of the effects of trade on the status of a species.

Signatories must then introduce laws prohibiting the trade in violation of CITES.

There must be penalties for such trade, and laws providing for the confiscation of specimens.

The Management Authority must administer a licensing system in relation to Endangered Species.

An import/export permit is required for Appendix I species and also for export. Specimens must be legally obtained, the trade will not be detrimental to the survival of the species and an import licence produced if appropriate.

Must be prepared and shipped to minimise any risk of injury, damage to health or cruel treatment.

Appendix II species similar. Common documentation which allows for easy recognition by

other authorities.



Relevant EU law

- Council Regulation (EC) no 338/97 on the protection of species of wild fauna and flora by regulating trade therein, and its modifications
- Commission Regulation (EC) no 865/2006 on the implementation of Council Regulation (EC) no 338/97
- EU Action Plan against wildlife trafficking (2022)
- Habitats Directive 1992/43 EEC
- Birds Directive 2009/147/EC (replaces 79/409 EEC)
- Environmental Crime Directive EU (new) 2024/1203




Co-funded by the European Union

Note Directives require transposition into domestic legislation whereas Regulations have direct effect.

Environmental Crime Directive 2008/99 EC

Enhancing application of the existing EU environmental legislation through **criminalisation**, making criminal law a tool of enforcement of environmental law.

Requires MS to have a sufficiently deterrent criminal sanctioning regime. Through the obligation to impose effective, proportionate and dissuasive criminal penalties.

Article 3 of the ECD on the offences foresees “Member States shall ensure that the following conduct constitutes a criminal offence, when committed intentionally or with at least serious negligence” .

Offences concerning Radioactive substances;

Waste and Hazardous waste;

Water Quality and Water Resources;

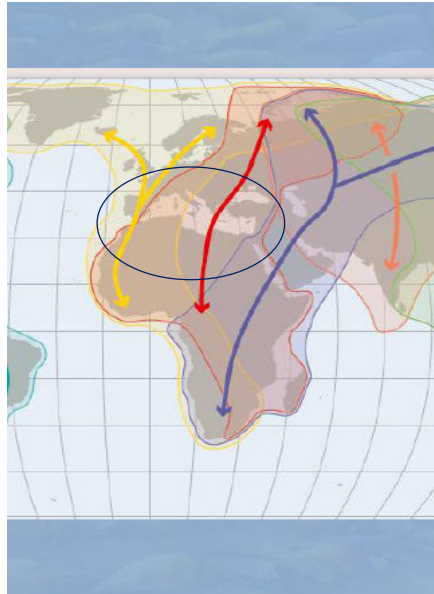
Protected Habitats.

This regime to be extended and improved

IKT Migratory Birds

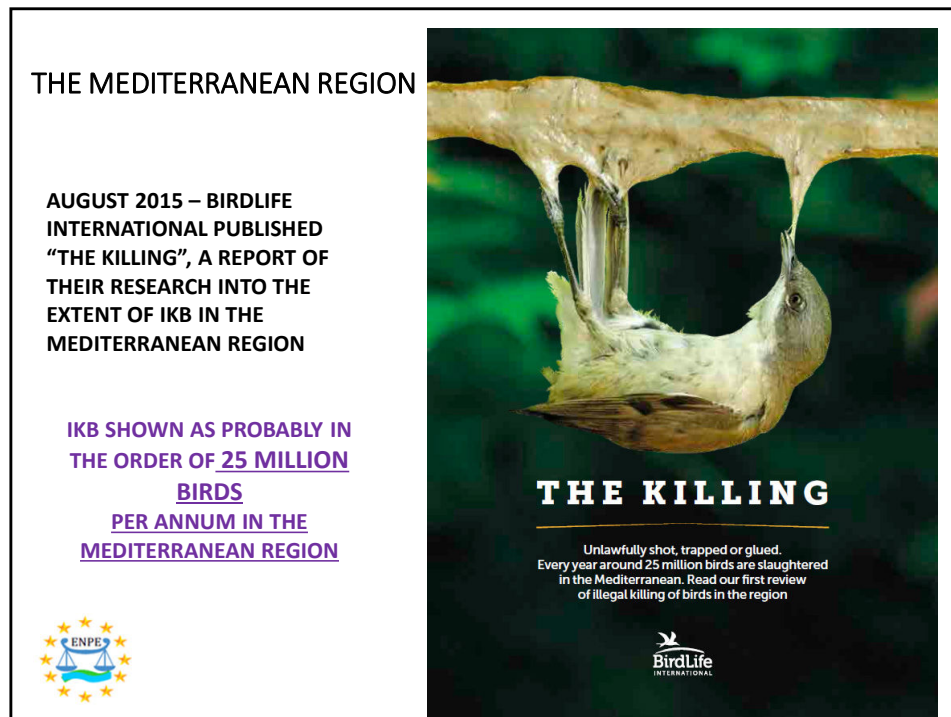
THE AFRICAN- EURASIAN FLYWAY

THE MED REGION
CIRCLED IN DARK
BLUE – TWO THIRDS
OF THE WIDTH OF
THE FLYWAY



Note the circle around the Mediterranean and passage of birds to, through and across the Mediterranean.

2015 ENPE Wildlife Crime workshop in Segovia included many Mediterranean countries including African representatives from Tunisia, Algeria and Morocco.



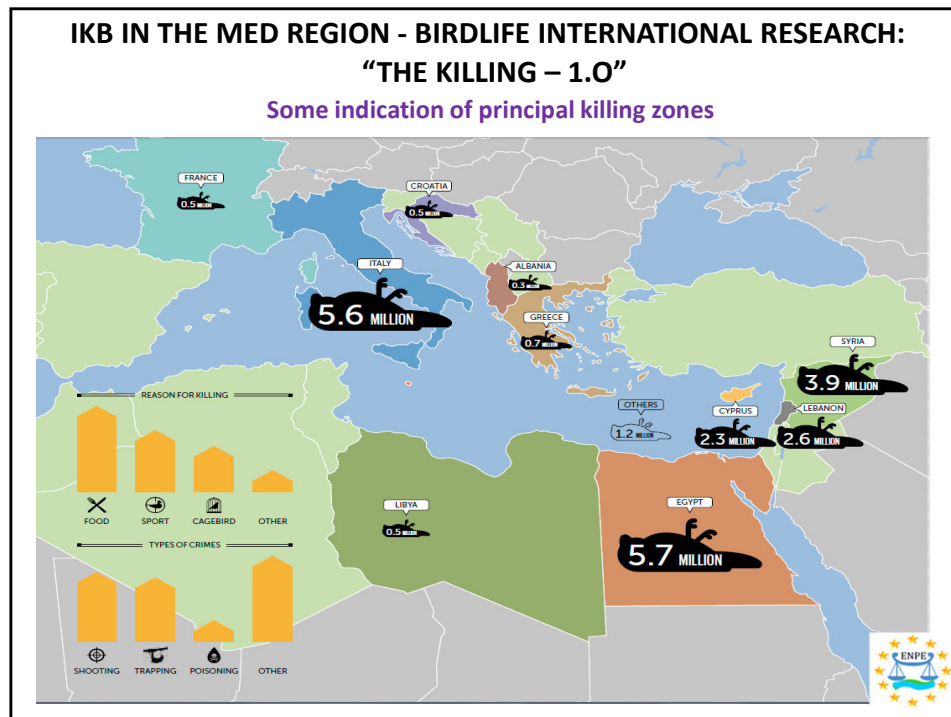
We support the work of NGOs such as Birdlife International in relation to the protection of migratory birds, soaring birds and other endangered species.

[BirdLife | Partnership for nature and people](#)

Their slogan “Every migration is a massacre.” : illegal trapping and hunting, collision with energy sector infrastructure and loss of key stop-over feeding and resting sites.

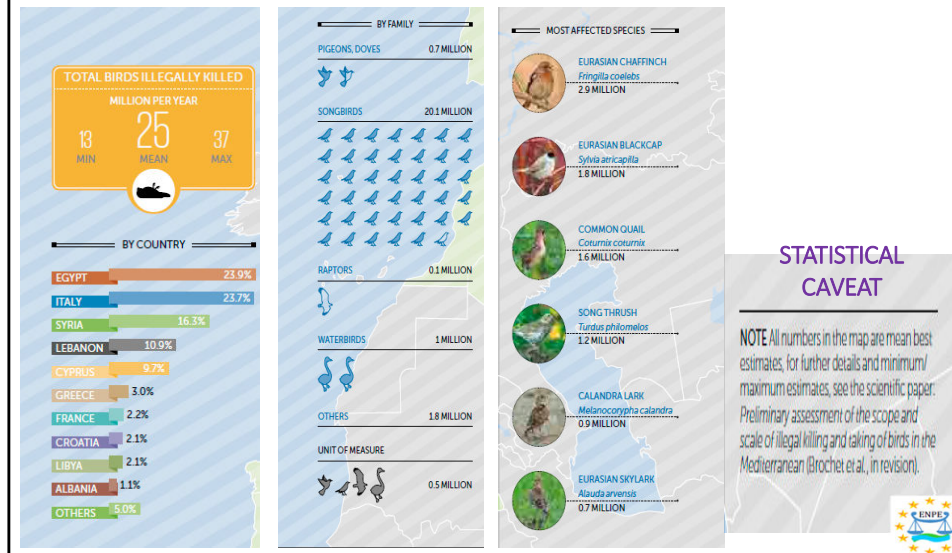
CMB Conservation of Migratory Birds International NGOs working in partnership with national partner organisations.

In Georgia the organisation SABUKO Society for Nature Conservation is an important NGO which encourages biodiversity conservation.



- 1990s - emergence of international action for the conservation of migratory birds in the world's "flyways", including our flyway – the African-Eurasian flyway.
- In 1999 the African-Eurasian Waterbirds Agreement AEWA was signed; 2008 saw the Raptor's MoU for the same flyway; 2014 – the Africa-Eurasian Migratory Landbirds Action Plan (AEMLAP). All are international agreements under the aegis of CMS (Convention of Migratory Species).
- The CMS (Bonn) Convention initiated the inter-governmental task force on IKB in the Mediterranean (MIKT), joining with the Bern convention. Its first meeting which ENPE attended was in Cairo in 2016.

IKB IN THE MED REGION - BIRDLIFE INTERNATIONAL RESEARCH:
 “THE KILLING – 1.0”
 An unsustainable loss.



Shocking statistics.

This slide sets out some of the cultural and financial drivers.

We are not dealing with overfishing, we are looking at a combination of many factors which in combination act to reduce viability of bird populations.



Evidence in Wildlife Crime cases – Domestic

- Details of any relevant licence or permit
- Observation of circumstances of offence
- Witness evidence
- Species citation
- Photos, videos, drone footage
- Interviews & Admissions
- Culpability
- Impact/risks/harm to the species or habitat
- Financial gain to offender



Co-funded by the
European Union



Evidence in Wildlife Crime cases – CITES International

- Details of any relevant licence or permit
- CITES certificates
- Import licences
- Species citation
- Status in relation to CITES appendices
- Veterinary expert re condition/viability
- Examination of potentially forged documents
- Impact/risks/harm to the species or habitat
- Value of specimen - note BioVal project
- Financial gain to offender
- Damages claim?



Co-funded by the
European Union



Working with officers investigators and experts

- Finding specialists
- Working with enforcement officers and police
- Seeking out experts
- Second opinions
- Assistance through Networks
- Build your own network



Co-funded by the
European Union



Assessing and reviewing the Evidence

- Prompt first assessment - Organise and index
- Talk to the officers – all notes, emails, texts?
- Issue litigation holds/preservation letters
- Investigate the regulatory history
- Arrange to discuss samples/analysis with experts
- Look for the problem(s)? Missing documents? Amendments or alterations?
- Retain your evidence securely
- Separate out privileged material



Co-funded by the
European Union

- Keep your evidence safe
- Preserve your samples
- Ensure digital materials are properly downloaded and explained/exhibited by an IT specialist



Witness interviews

- Be prepared
- Have the relevant documents
- Have a colleague witness with you
- Go in person
- One witness at a time
- Get contact information and availability
- Make no promises
- Properly and timely document the interview



Co-funded by the
European Union



Suspects - Tape Recorded interviews

- Have the rules been followed?
- Have all notices been given?
- Audio and/or Video?
- Have Defendants Rights been complied with?
- Effect of silence or “no comment” responses
- Have the elements of the crime been put?
- What explanation is offered?



Co-funded by the
European Union



Forestry offences

Deforestation



Domestic and International Deforestation

- Obtain import and export licences
- Arboricultural Assessment
- Endangered status or rarity
- Environmental value
- Financial value




Co-funded by the European Union

In 2020, the European Union (EU) had about 160 million hectares of forests, covering about 39% of its territory (source: [Eurostat](#)), while other wooded lands covered about 20 million hectares. This area covered by forests and other wooded land equated to 45.1% of the EU-27's land area.

EU forests are exceptionally diverse, with a large variety of forest types, characteristics and ownership structures. They provide multiple benefits for society and the economy whilst being a major source of biodiversity.

Deforestation is the purposeful clearing of forested land. Throughout history and into modern times, forests have been razed to make space for agriculture and animal grazing, and to obtain wood for fuel, manufacturing, and construction. Deforestation has greatly altered landscapes around the world

The new EU Forest Strategy for 2030 sets out how to protect and restore forests in the European Union



Forestry offences and illegal logging

Domestic offences

- What are the domestic protections?
- Do you have evidence of infringement?
- Have you checked licences & permissions?
- Are these protected trees?

International offences

- Obtain import and export licences
- Arboricultural Assessment
- Endangered status or rarity
- Environmental value
- Financial value





Co-funded by the European Union

Illegal logging is **the harvest, transportation, purchase, or sale of timber in violation of laws**. It concerns the harvesting of timber in contravention of the laws and regulations of the country of harvest.

Rates and causes of deforestation vary from region to region around the world. In 2009, two-thirds of the world's forests were located in just 10 countries, namely, Russia, Brazil, Canada, the United States, China, Australia, the DR of Congo, Indonesia, India and Peru.

Europe has lost more than half of its forests in the past 6,000 years. This has primarily been due to agricultural expansion and demand for wood for fuel. According to satellite data, the loss of biomass in EU's forests increased by 69% in the period from 2016 to 2018, compared with the period from 2011 to 2015. Deforestation has been noted in Finland, Iceland, Italy, the Netherlands and the UK.

Most logging is now forbidden by statute except as allowed and facilitated under a permit system.



The ECD amended. Offences involving flora, fauna and timber

Wildlife Crime and Forestry New offences
Under the revised ECD certain behaviour must be capable of being dealt with as a criminal offence.

l) Killing, destruction, taking of, possession, sale or offering for sale of specimens of wild fauna or flora species;
m) Trading in certain specimens of wild fauna or flora species or parts or derivatives thereof;
n) **Placing on the market** illegally harvested timber or of timber products that were made of illegally harvested wood, (new offence)
o) Causing Significant Deterioration of habitat (Directive 92/43/EEC)




Co-funded by the European Union

Know the offence provisions

- Know the elements of the crime you think was committed
- Marshall the evidence to meet the offence
- Focus on knowledge, not just actions
- Establish Culpability and Harm
- Explore contrary evidence and defences

Some Pictures -

Birds Directive (2009/147/EC)

Imposes obligations on Member States
“Good Conservation Status”



With the contribution of the LIFE financial instrument of the European Community

The Birds Directive is one of the oldest Directives within the EU relating to conservation and environmental protection. It was first enacted in 1979 but revisions have been made over time and the latest version was published in 2009, some 30 years later.

The overall objective of Directive 2009/147/EC 2 - the so-called “**Birds Directive**” - is to maintain and restore the populations of all naturally occurring wild bird species present in the EU at a level that will ensure their long term survival.

Europe is home to more than 500 wild bird species. But at least 32% of EU bird species are currently not in good conservation statuses. The Birds Directive aims to protect all of the 500 wild bird special naturally occurring in the EU.

Special Protection Areas (SPAs)

- Require Member States to protect species
- Require MSs to protect breeding grounds of birds












With the contribution of the LIFE financial instrument of the European Community

Often migratory, wild bird species can only be protected by cooperating across borders. Urban sprawl and transport networks have fragmented and reduced their habitats, intensive agriculture, forestry, fisheries and the use of pesticides have diminished their food supplies, and hunting needed to be regulated in order not to damage populations. Concerned with their decline, Member States unanimously adopted the Directive 79/409/EEC in April 1979. It is the oldest piece of EU legislation on the environment and one of its cornerstones. Amended in 2009, it became the [Directive 2009/147/EC](#) .

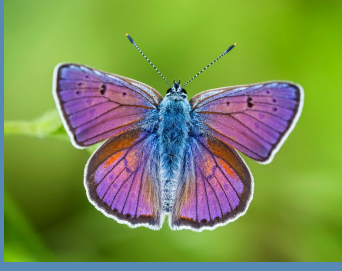
Habitat loss and degradation are the most serious threats to the conservation of wild birds. The Directive therefore places great emphasis on the protection of habitats for endangered and migratory species. It establishes a network of Special Protection Areas (SPAs) including all the most suitable territories for these species. Since 1994, all SPAs are included in the [Natura 2000](#) ecological network, set up under the [Habitats Directive 92/43/EEC](#).

All Member States have to submit [reporting](#) on the status and trend in bird populations (article 12) as well as on derogations (article 9) they may apply to the directive's obligations

Habitats Directive (92/43/EEC)

Formally established the N2K network.
Protects wild flora, fauna and sensitive sites
Places reporting obligations on MSs













With the contribution of the LIFE financial instrument of the European Community

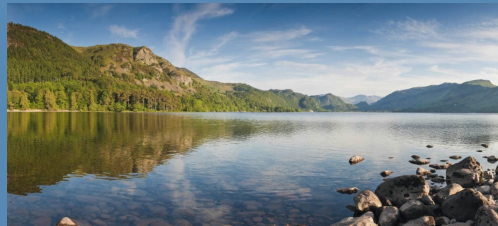
The Habitats Directive Council Directive 92/43/EEC 3 ensures the conservation of a wide range of rare, threatened or high value animal and plant species. Some 200 rare and characteristic habitat types are also targeted for conservation in their own right. The “**Habitats Directive**” - has similar objectives to the Birds Directive but targets species other than birds.

Adopted in 1992, [Council Directive 92/43/EEC](#) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora aims to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements. It forms the cornerstone of Europe's nature conservation policy with the [Birds Directive](#) and establishes the EU wide [Natura 2000](#) ecological network of protected areas, safeguarded against potentially damaging developments.

The Birds and Habitats Directives have had to evolve to reflect successive enlargements of the European Union. There is available from the EU a [consolidated version of the directive](#) including the latest versions of the annexes.

Special Areas of Conservation (SACs)

- Requires MSs to protect SACs
- Requires reporting on Conservation Status
- Identify Derogations and Compensatory measures



With the contribution of the LIFE financial instrument of the European Community

Certain articles of the Habitats Directive (Art. 6, 12, 16 and 17) require Member States to report on the conservation status of habitats and species, on compensation measures taken for projects having a negative impact on Natura 2000 sites or on derogations they may have applied to the strict protection measures.

All in all, over 1.000 animal and plant species, as well as 200 habitat types, listed in the directive's annexes are protected in various ways:

Annex II species (about 900): core areas of their habitat are designated as sites of Community importance (SCIs) and included in the Natura 2000 network. These sites must be managed in accordance with the ecological needs of the species.

Annex IV species (over 400, including many annex II species): a strict protection regime must be applied across their entire natural range within the EU, both within and outside Natura 2000 sites.

Annex V species (over 90): Member States must ensure that their exploitation and taking in the wild is compatible with maintaining them in a favourable conservation status.

The European Commission has published [guidance on species protection](#) to help Member States implement correctly the directive's provisions. [EU Species Action](#)

[Plans](#) are developed to restore the populations of certain species across their range within the EU. The European Commission also promotes the conservation of Europe's 5 species of [large carnivores](#) and supports the [European Red Lists of Threatened Species](#), developed by the IUCN to provide an overview of the conservation status of c. 6,000 European species, so that appropriate action can be taken to protect those threatened with extinction

Natura 2000 & the Emerald Network



- Network of European sites
- Habitats and species protection through EU legislation
- 18 % of EU land area
- 9.5% of marine territory
- Public and private land
- Across all 27 Member States (and UK)



With the contribution of the LIFE financial instrument of the European Community

The Birds and Habitats Directives, sometimes jointly called “Nature directives”, are the cornerstones of the EU’s biodiversity policy. They enable all 28 EU Member States to work together, within a common legislative framework, to conserve Europe’s most endangered and valuable habitats and species across their entire natural range within the EU, irrespective of political or administrative boundaries.

Natura 2000 is a European Designation that protects important natural habitats and species. Stretching over 18% of the EU’s land area and almost 9.5% of its marine territory it is the largest co-ordinated network of protected areas in the world. It offers a haven to Europe’s most valuable and threatened species and habitats.

It is a regime established under European Directives which impose obligations on Member States. The system allows for transparency. Sense of ownership of this protection by those who live within or close to sites. Public and private land.

The EU Commission can hold Member states to account by infraction proceedings. Relationship may be analogous to the relationship between SPP and other government bodies within your Public Interest Litigation model.

EEA provides reporting and open data on the network.

Emerald Network



- Network of Designated European sites
- Habitats and species protection
- Established December 2019 - Andorra, Belarus, Georgia, Republic of Moldova, Norway, Switzerland and the Ukraine
- Under the Bern Convention on the Conservation of European Wildlife and Natural Habitats
- Requires action by members in relation to endangered species
- EU contribution is Natura 2000 network
- Enforceable by domestic legislation



With the contribution of the LIFE financial instrument of the European Community

The Bern Convention is a binding international legal instrument in the field of nature conservation, covering most of the natural heritage of the European continent and extending to some States of Africa.

<https://youtu.be/K0gSR6JiPQM>

The emerald network is an ecological network made up of Areas of Special Conservation interest.

The **Network is to be set up in each Contracting Party or observer State to the Convention.** It thus involves all the European Union member States, some non-Community States and a number of African States. The European Union, as such, is also a Contracting Party to the Bern Convention. In order to fulfil its obligations arising from the Convention, particularly in respect of habitat protection, it produced the Habitats Directive in 1992, and subsequently set up the Natura 2000 network. The Natura 2000 sites are therefore considered as the contribution from the EU member States to the Emerald Network.

Aims

- To protect rare and threatened species
- Protect core breeding and resting sites
- Preserve rare natural habitats
- Ensure the long term survival of biodiversity
- Builds upon existing protections laid down in the
 - i) Birds Directive
 - ii) Habitats Directive



With the contribution of the LIFE financial instrument of the European Community

N2K is a network of core breeding and resting sites for rare and threatened species and some rare natural habitat types which are protected in their own right. It stretches across all 28 EU countries both on land and at sea. The aim of the network is to ensure the long term survival of Europe's most valuable and threatened species and habitats listed under the Birds Directive and the Habitats Directive.



When to involve the environmental and other experts

- Get prior approval for cost
- The earlier, the better
- Expert should cover :
 - Species citation
 - Conservation status
 - Endangered Species List
 - Impact of the loss
 - Financial impact on local communities
 - Impact of loss on species or habitat.
- Evidential Issues for forestry crimes
- Geospatial intelligence.



Co-funded by the
European Union



Strategies for serious and organised crime

- Work with your investigating officers
- Start with the small participants and use them
- Focus on working up to senior officers
- Follow the money
- Communications are a weak link
- Surveillance
- Use every possible offence provision
- Properly resource the investigation and prosecution



Co-funded by the
European Union



Don't forget the environment

- Get compensation for and to victims
- Get remediation plans underway
- Make the Polluter Pay
- Publicise Action plans
- Involve local communities where you can
- Get all the ancillary orders you can e.g. Directors disqualification, compensation, confiscation and removal of proceeds of crime, rehabilitation orders, seizure of goods.



Co-funded by the
European Union



Publish your success

- Let affected/inured parties know.
- Press alerts on forthcoming cases
- Publish your successes
- Get you case onto television and into social media
- Involve your citizens
- Publicise ancillary orders especially species rehabilitation, compensation.



Co-funded by the European Union

Don't forget the victims

Victims Rights Directive 2012/29 EU

- Victim Impact Statements
- Notice of hearing dates and plea agreements
- May challenge decisions not to prosecute

Offence Provisions within Member States

Enforceable through domestic legislation.
Are penalties and sanctions sufficient?












 With the contribution of the LIFE financial instrument of the European Community

An example of how sensitive sites are protected is afforded by the Wildlife and Countryside Act 1981 within the UK.

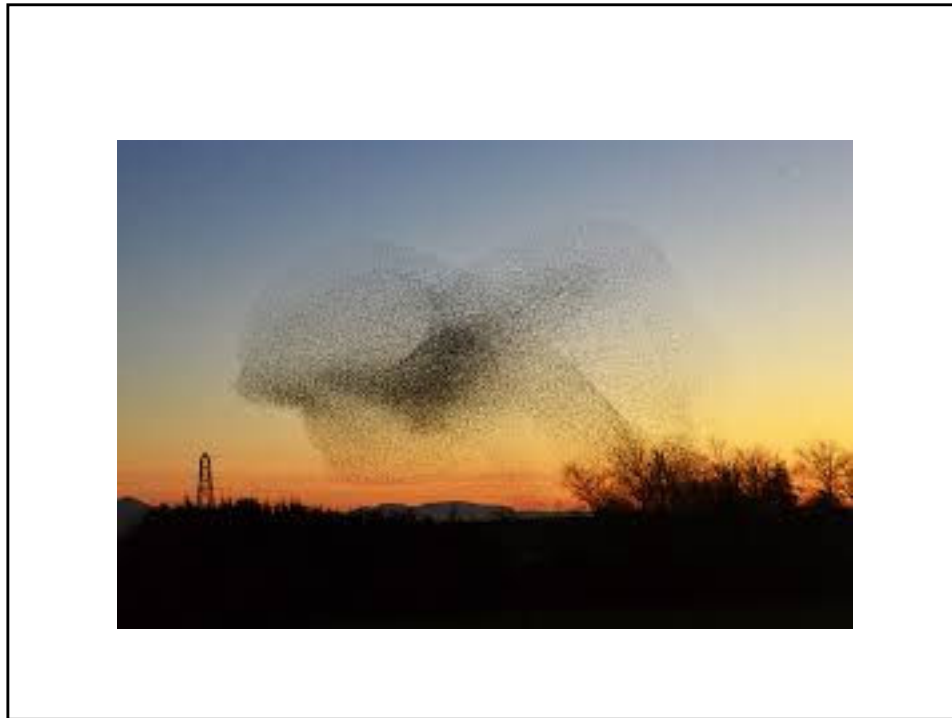
Piece of domestic legislation which prohibits hunting and killing of wild animals and birds. Offences are created for doing so. The state will prosecute offenders in the criminal courts.

Analogous provisions and prosecution powers in other Member States of the EU.

IPENS project – Improvement programme for England’s Natura 2000 sites sets out blue print for the long term management of 338 of England’s most important sites. These cover more than 2 million hectares. Designated either as an SPA due to the rare vulnerable or migratory birds present or SAC which protect a variety of wild animals plant and habitats. On land these attract an SSSI designation.

The Project

- *Produces a site improvement plan for each N2K site
- *Develops strategic plans to address issues that affect multiple sites
- *Outlines priority actions needed to achieve favourable conditions
- * Identifies gaps in N2K evidence



The 500 wild bird species naturally occurring in the European Union are protected in various ways:

Annex 1: 194 species and sub-species are particularly threatened. Member States must designate Special Protection Areas (SPAs) for their survival and all migratory bird species.

Annex 2: 82 bird species can be hunted. However, the hunting periods are limited and hunting is forbidden when birds are at their most vulnerable: during their return migration to nesting areas, reproduction and the raising of their chicks.

Annex 3: overall, activities that directly threaten birds, such as their deliberate killing, capture or trade, or the destruction of their nests, are banned. With certain restrictions, Member States can allow some of these activities for 26 species listed here.

Annex 4: the directive provides for the sustainable management of hunting but Member States must outlaw all forms of non-selective and large scale killing of birds, especially the methods listed in this annex.

Annex 5: the directive promotes research to underpin the protection, management and use of all species of birds covered by the Directive, which are listed in this annex.