



ERA Training Event

EU Environmental Law – Habitats Directive Considerations

Anne Brosnan, Secretary General ENPE,
Chief Prosecutor Environment Agency, England
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First of the Nature Directives.

The overall objective is to ensure that these species and habitat types are maintained, or restored, to a favourable conservation status within the EU. In addition to halting the further decline or disappearance of these species and habitats, the Directive aims to allow them to recover and thrive over the long-term.

In particular, Member States must prohibit

- all forms of deliberate capture or killing in the wild
- deliberate disturbance, e.g. during breeding, rearing, hibernation, migration
- deterioration or destruction of breeding sites or resting places
- deliberate destruction of nests or eggs, or the picking, collecting, cutting, uprooting or destruction of protected plants in the wild
- the use of all indiscriminate means of capture or killing capable of causing local disappearance and serious disturbance to populations of such species, and
- the keeping, transport and sale of specimens taken from the wild



Purpose

What is the purpose of the Habitats Directive?

Long Established Directive - 1992/43 EEC
 Protection of wildlife species and habitats
 Contribute towards ensuring biodiversity through conservation of habitats and species.
 Habitats and Species to be maintained or restored to "Favourable Conservation Status"
 Establishes a network of site based habitats and species protections at European Level – Natura 2000.




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Objectives

Overall aim to contribute towards ensuring biodiversity through conservation of habitats and species. To ensure that these species and habitat types are maintained at, or restored to, a '**favourable conservation status**' (Article 2(2)).

Habitats Directive: • To ensure that these species and habitat types are maintained at, or restored to, a 'favourable conservation status' (Article 2). Birds Directive: • to maintain the populations of all wild bird species in the EU at a level which corresponds to their ecological, scientific and cultural requirements, or to adapt the population of these species to that level (Article 2) 5152



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




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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.

Natura 2000 Network established by Habitats and Birds Ds, come to that in detail shortly.



Relevant EU law

- Water Framework Directive 2000/60/EC (WFD)
- Waste Framework Directive 2008/98/EC
- Enviro Impact Assessment Directive 2011/92/EU
- Enviro Impact Assessment Directive 2014/52/EU
- Strategic Enviro Assessment Directive 2001/42/EC
- Environmental Information Directive 2003/4/EC
- EU Action Plan against wildlife trafficking (2022)
- Habitats Directive 1992/43 EEC
- Birds Directive 2009/147/EC (replaces 79/409 EEC)
- Environmental Crime Directive (new) EU 2024/1203





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

Environmental Crime Directive 2008/99 EC now amended.

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” .

Water Quality and Water Resources;

Protected Habitats.

The EU [Nature Directives](#) prohibit the sale and transport of a number of strictly protected wild species in the EU. Hence inclusion in EU Action Plan on Wildlife Crime.



Habitats and Birds Directives.

Relationship between the Birds & Habitats Directives

- Two Nature Directives
- Shared structure
- Articles 3 and 7 of the Habitats Directive

‘Even if both Directives are to be interpreted in a way that includes their respective specific features, that interpretation cannot be regarded as diverging, since, subject to their specific features, that interpretation contains similar considerations relating to, inter alia, their respective protection system’

C-217/19, Commission v Finland, para 84.




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The Habitats Directive came in to being 13 years after the first Birds Directive 1979.

Objectives and scope of the Habitats Directive (Article 2 HD)

- Overall aim to contribute towards ensuring biodiversity through conservation of habitats and species.
- To ensure that these species and habitat types are maintained at, or restored to, a ‘favourable conservation status’ (Article 2(2)).

Habitats Directive Site-based protection Annex I
Habitat types Annex II Species Species protection Annex IV species Annex V species

Birds Directive

Protects all species of naturally occurring birds in the wild state in the EU.

Overall objective is to maintain the populations of all wild bird species in the EU at a **level which corresponds to their ecological, scientific and cultural requirements**, or to adapt the population of these species to that level (Article 2).

Was Directive 79/409/EEC Conservation of Wild Birds.

Now amended to 2009/147 EC

Read Habitats and Birds Directives together. The Nature Directives.



Habitats Assessment as part of the EIA or SEA.

To be lawful an EIA or SEA must:

- Identify the project, plan or proposal;
- Identify relevant SACs, SPAs, Emerald sites
- Identify habitats present; or
- Identify species present, or both
- Establish impact on Habitats and Species
- Impact must include risk
- How can risk be avoided or addressed;
- Can it be ameliorated ? Compensated?
- Must be considered before the plan, project or proposal can be approved.



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All of these issues together make up an Appropriate Assessment.
Usually referred to as a Habitats Assessment.

Birds Directive (2009/147/EC)

Imposes obligations on Member States
“Good Conservation Status”



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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



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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 had to submit a list of sites, maintain these, undertake [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)

Article 3 established the N2K network.
Protects wild flora, fauna and sensitive sites
Places reporting obligations on MSs



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The Habitats Directive came in to being 13 years after the first Birds Directive.

Council Directive 92/43/EEC 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. Details of protected species are in its annexes.

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



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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)



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The Birds and Habitats Directives, sometimes jointly called “Nature Directives”, are the cornerstones of the EU’s biodiversity policy. They enable all 27 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.

Art 3 Habitats Directive: A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000.

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.

EEA provides reporting and open data on the network.

Some species and habitats covered by the Natura 2000 network



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Photos by Frank Vassen

Not just Habitats !

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 where not within the EU.



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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. MS are signatories as is the EU.

<https://youtu.be/K0gSR6JiPQM>

The emerald network is an ecological network made up of Areas of Special Conservation interest including SPAs and SACs.

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 of Natura 2000 network

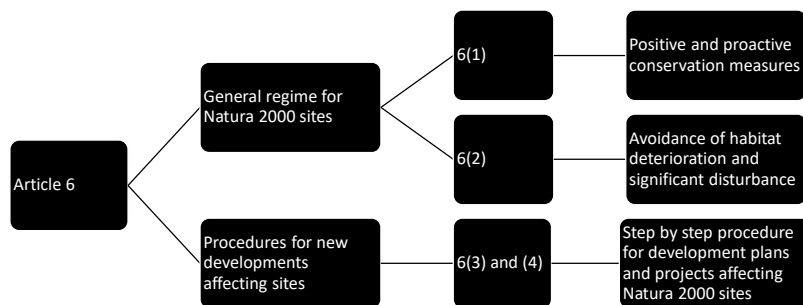
- To protect rare and threatened species
- Protect core breeding and resting sites
- Preserve rare natural habitats
- Ensure the long term survival of biodiversity
- Builds upon existing protections laid down in the
 - i) Birds Directive
 - ii) Habitats Directive



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To Finish - 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 27 EU countries (and still the UK where it is assimilated or retained legislation) 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.

Article 6 Habitats Directive: Protecting and managing Natura 2000 Sites



‘a coherent whole in light of the conservation objectives
pursued by [the Habitats Directive]’
C-387/15, *Hilde Orleans*

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Art 6.2. MS shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

Art 6. 3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

Art 6.4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.



Article 6 Habitats Directive

Article 6 General Management regime for Natura 2000 sites

Article 6: Protecting and managing habitats sites

6(1) Positive and proactive conservation measures

6(2) Taking appropriate Steps to avoid habitat deterioration and significant disturbance

6(3) Procedures for new developments 6(3) and (4)

Step by step procedure for development plans and projects affecting Natura 2000 sites





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- i) Applies to SAC
- ii) Applies to SPA, SCI & SAC
- iii) Applies to SPA, SCI & SAC ‘a coherent whole in light of the conservation objectives pursued by [the Habitats Directive]’

In Case C-399/14, *Grüne Liga Sachsen v Freistaat Sachsen* the CJEU considered what is meant by the term ‘appropriate steps’ contained in Article 6(2) of the Habitats Directive in the context of a bridge built without appropriate assessment. It should be recalled that an activity complies with Article 6(2) of the Habitats Directive only if it is guaranteed that it will not cause any disturbance likely significantly to affect the objectives of that directive, particularly its conservation objectives. The Court has held that the very existence of a probability or risk that an economic activity on a protected site might cause significant disturbances for a species is capable of constituting an infringement of Article 6(2) of the Habitats Directive, and a subsequent review should be undertaken. Some discretion is available here but the meaning of the Directive may cause a subsequent review to be required.

Application of Article 6(3) & (4) The Appropriate Assessment

- Possible negative impact on Natura 2000 site?
 - No ⇒ OK
 - Yes ⇒ Appropriate Assessment (AA)
 - No impact ⇒ OK
 - Negative impact ⇒ Alternatives?
 - There are alternatives ⇒ no authorization ⇒ new AA
 - No alternative ⇒ Imp. Reasons of Overriding Public Interest?
 - No IROPI ⇒ no authorization
 - IROPI ⇒ Priority habitats/species affected?
 - No ⇒ OK with compensation measures, notification to EC
 - Yes ⇒ Commission opinion required



Imperative reasons of Overriding Public Interest

- A plan or project must be both 'public' and 'overriding', which means that it must be of such an importance that it can be weighed against that directive's objective of the conservation of natural habitats and wild fauna, including birds, and flora.
- C-43/10, Achelooos, para 121. •



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**Article 16f Renewable Energy Directive
III: renewable energy plants,
connection of such plants, the energy
grid, and storage assets are presumed
IROPI. CJEU 48 Case-521/12,**



Article 6 (4) Derogations from Art 6 and compensatory measures

- Article 6(4) Offers a limited avenue for derogations to allow for activities which will lead to an impact on the site.
- Absence of alternatives must be demonstrated
- Compensatory measures aim to protect the overall coherence of the network (measures can be implemented inside or outside the affected site)
- Stricter requirements in relation to priority habitat types and species in Annexes I and II.



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**Article 16f Renewable Energy Directive
III: renewable energy plants,
connection of such plants, the energy
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IROPI. CJEU 48 Case-521/12,**



Case law. Appropriate Assessments & authorisation

Case C-258/11, *Sweetman*
Two stage procedure

Case C – 142/16, *Moorburg*
Activities outside Natura 2000 sites.

Case C-239/04, *Castro Verde*
Absence of alternative solutions required

Case C-127/02, *Waddenzee*
Using best scientific knowledge




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Waddenzee , where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorisation

Member States are to authorise such activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.

Commission v Portugal – Castro Verde By implementing a project for a motorway whose route crosses the Castro Verde special protection area, notwithstanding the negative environmental impact assessment and without having demonstrated the absence of alternative solutions for the route concerned, the Portuguese Republic has failed to fulfil its obligations under Article 6(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Directive 97/62/EC of 27 October 1997;



Case law Compensatory Measures if IROPI.

Case C-304/05, *Commission v. Italy*

Article 6(3) a prerequisite of compensatory measures. Article 6(4) of Directive 92/43 can apply only after the implications of a plan or project have been studied in accordance with Article 6(3) of that directive.

C-387/15, *Orleans*, Compensatory measures

Case-521/12, *Briels*

Compensatory measures must aim for overall coherence of Natura 2000 sites.



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Article 6(4) of Directive 92/43 can apply only after the implications of a plan or project have been studied in accordance with Article 6(3) of that directive.

Knowledge of those implications in the light of the conservation objectives relating to the site in question is a necessary prerequisite for application of Article 6(4)

Article 16f Renewable Energy Directive III: renewable energy plants, connection of such plants, the energy grid, and storage assets are presumed IROPI.

CJEU 48 Case-521/12,



Where do obligations under the HD lie?

- Requirements of the HD rest on Member States and their state entities and agencies;
- Failure to comply with the HD is enforceable by the EU Com by way of Infraction proceedings or challenge by NGO;
- Judicial review likely for failure to implement or inadequate implementation or action;
- But note provisions of new ECD: Article 3 paragraph (q) requires the criminalisation of acts causing harm to habitats (where there is likely to be significant damage or deterioration).
- More action may follow at Member State level.



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Note new provisions though: SEE NEXT SLIDE

(q) any conduct which causes the deterioration of a habitat within a protected site, or the disturbance of animal species listed in Annex II, point (a), to Directive 92/43/EEC within a protected site, within the meaning of Article 6(2) of that Directive, where such deterioration or disturbance is significant;



The ECD amended. Offences involving flora, fauna and timber

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

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




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Was 2008/99 EC. Revised in 2024.

Actual wording is interesting :

n) species listed in Annexes to 92/43/EEC or 2009/147/EC so this section specifically references the Annexes to the Habitats and Birds Directives.

q) any conduct which causes the deterioration of a habitat within a protected site, or the disturbance of animal species listed in Annex II, point (a), to Directive 92/43/EEC within a protected site, within the meaning of Article 6(2) of that Directive, where such deterioration or disturbance is significant;

Does not prevent MS going further. Conversely does not oblige then to prosecute.



Env'mental Crime Directive

- Environmental Crime Directive 24/1203 Article 3
- Habitats offences must be criminalised where committed intentionally or with serious negligence
- Article 3 3. (n and o)
- Or where serious damage.
- So criminal proceedings for Habitats offences ?
- Look to your domestic legislation for offences.




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As with all criminal offending

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



Evidence in Wildlife Crime cases – Habitats and Species

- 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



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When to involve the environmental and other experts

- You need Appropriate Assessments done by experts
- Get prior approval for cost
- The earlier, the better
- Expert should cover :
 - Species citation
 - Conservation status Annexes to HD
 - Endangered Species List
 - Impact of the loss
 - Financial impact on local communities
 - Impact of loss on species or habitat.
- Evidential Issues for habitats crimes
- Geospatial intelligence before and after.



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Remediation of the environment

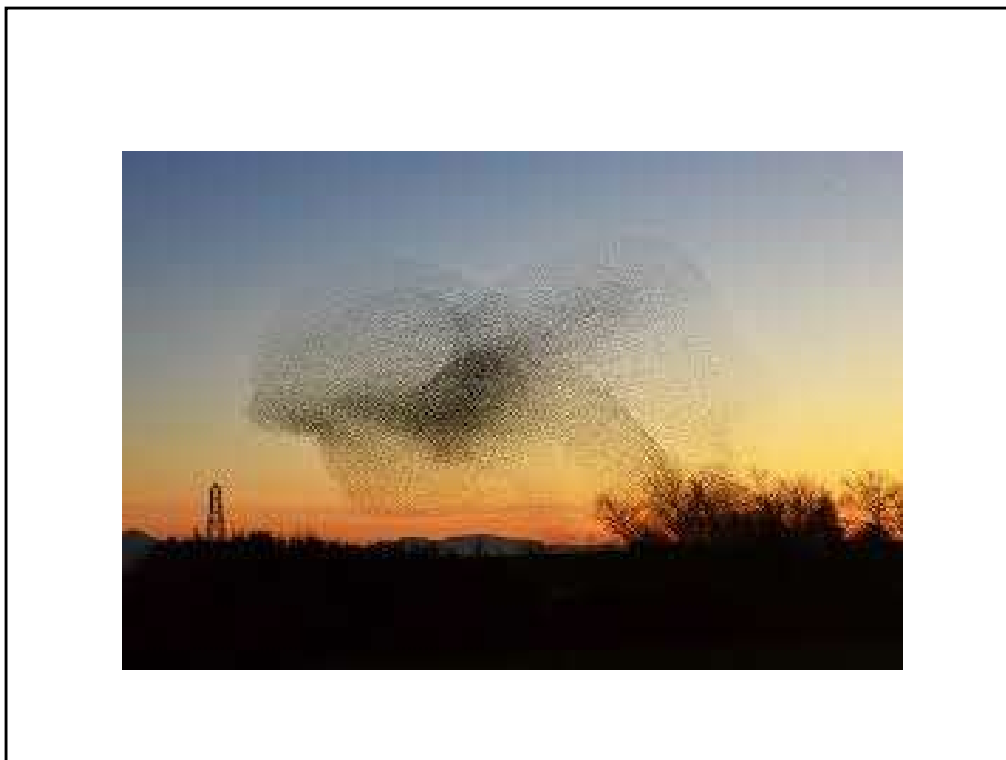
- Get compensation for and to those affected
- Get remediation plans underway
- Make the Polluter Pay
- Publicise Action plans
- Involve local communities where you can
- Get all the ancillary orders you can e.g. Directors disqualification, compensation, confiscation and removal of proceeds of crime,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




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q)

any conduct which causes the deterioration of a habitat within a protected site, or the disturbance of animal species listed in Annex II, point (a), to Directive 92/43/EEC within a protected site, within the meaning of Article 6(2) of that Directive, where such deterioration or disturbance is significant;



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

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.