

# Co-operation with national judges in the field of environmental law under the European Commission Framework Contract ENV.A.I/FRA/2012/0018

## Training module

### HOW TO ENFORCE EU LEGISLATION ON BIODIVERSITY AND WILDLIFE TRAFFICKING

20 – 22 April 2016  
Madrid, Spain

Organized by Academy of European Law





# Workshop on Biodiversity and Wildlife Trafficking

20 – 22 April 2016, Centro de Estudios Jurídicos, Madrid, Spain.

## Mapping actors and instruments for co-operation in enforcing wildlife trafficking legislation.

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# Mapping actors and instruments for co-operation in enforcing wildlife trafficking legislation.

- This presentation does not deal with the international conventions, EU Directives or the national legislation giving effect to these.
- It does ***identify some of the international institutions, agencies and associations*** responsible co-ordinating or assisting national authorities to enforce their legislation, especially in respect of trans-border crime and OCGs.
- It also ***identifies some of the instruments or tools*** available to assist national authorities in one country to co-operate with other national authorities in this task.
- It has brief ***comments on some of the sanctions available***.
- More details are given in the document **‘Co-operation in enforcing Wildlife trafficking – Institutions and Instruments’**.



# INTERPOL

- The International Criminal Police Organization founded 1923, headquarters is in Lyon.
- Membership 190 countries, second only to the U N.
- An **intergovernmental organization facilitating international police cooperation** through a network of criminal law enforcement agencies, police and customs.
- Provides administrative liaison, through an **encrypted Internet-based, worldwide, communications network** (known as 'I-24/7') accessing an international database.
- INTERPOL criminal **analysts** can study the data and begin to **reveal the structure, extent and dynamics of international criminals and organizations involved**.
- Every INTERPOL member country has a **National Central Bureau (NCB), linking its national police with the I-24/7** network.
- **'Interpol notices'** are international alerts used by police to communicate information about crimes, and criminals around the world. They are colour coded according to information type and seriousness.
- They are **circulated by Interpol to all member states at the request of a member or an authorised international entity or tribunal**.
- The **Red Notice** is the 'closest instrument to an international arrest warrant'.

# Interpol activity in tackling Environmental and Wildlife crime

- **Leads global and regional operations to dismantle the criminal networks** behind environmental crime using **intelligence-driven investigations** under an Environmental Crime Programme. Member of the *International Consortium on Combating Wildlife Crime*.
- Coordinates and develops international law enforcement **‘best practice’ manuals**, guides and other resources.
- Developed the **‘Ecomessage system’**, to provide a uniform intelligence data reporting system for the many different law enforcement agencies involved.
- The ECP runs **four current wildlife ‘Projects’** for Asian big cats, elephants, illegal logging and illegal fishing.
- **‘Project Predator’** re Asian big cats between 2010 and 2015 facilitated 9 intelligence-led operations involving almost 50 countries, resulting in more than 560 arrests, the seizure of more than 100 tigers or leopards, 56 tiger and leopard skins, hundreds of kilograms of big cat bones, 12.8 tonnes of ivory, almost 11 tonnes of pangolins, their scales and meat, more than 2,500 turtles and tortoises.
- **‘Project Leaf’** re. illegal logging aims to: •Raise awareness of the impact of illegal logging; •Develop law enforcement capacity in relevant countries; •Enhance information and intelligence sharing; •Establish ‘National Environmental Security Task Forces’ to promote cooperation between national agencies and international partners.

## Interpol comments on Illegal logging and timber trafficking

*'It is estimated that **illegal logging accounts for 50-90 per cent of all forestry activities in key producer tropical forests**, such as those of the Amazon Basin, Central Africa and Southeast Asia, **and 15-30 per cent of all wood traded globally**. Illegal logging **continues to occur in many formally protected forests**, especially in tropical countries. The trade in **illegally harvested timber is highly lucrative and estimated to be worth between USD 30 and USD 100 billion annually**. **Illegal logging operations rely on corruption** and could not occur without some form of consent from government officials responsible for protecting forests. **Officials accept bribes that allow criminals to obtain logging permits, avoid detection and export illegal timber**. This results in the loss of crucial resources for developing countries, while damaging their economies, public trust, and institutional structures. Around **only eight per cent of the world's forests are certified as sustainably managed**.'*



- Created by the Maastricht Treaty in 1993 as the **law enforcement agency of the European Union**. Headquarters in The Hague.
- Handles criminal intelligence and combats **serious international organised crime**.
- Has an **operational coordination centre** and **secure information network**.
- Provides **information exchange, intelligence analysis, training, and liaison and support among the police of Member States**. Does not conduct its own investigations.
- It has over 900 staff, and 185 **Europol Liaison Officers** seconded from the police of Member States.
- Carries out over 18 000 cross–border investigations each year.
- Co-operates **outside the EU** on an operational basis with: Albania, Australia, Canada, Colombia, Iceland, Liechtenstein, Republic of Macedonia, Monaco, Montenegro, Norway, Serbia, Switzerland, the United States and *Interpol*.
- Strategic agreements with: Bosnia and Herzegovina, Moldova, Russia, Turkey, Ukraine, *United Nations Office on Drugs and Crime* and the *World Customs Organization*.



## Europol activity in tackling Environmental and Wildlife crime

### 2011 Policy Brief:

- *'OCGs based in the EU are involved in the illegal trafficking of (CITES) specimens...driven by the extraordinary 'low risk/high profit' ratio. Globally, the revenues generated by TES are estimated at over 4.4 billion Euros per year. Together, the EU Member States are the foremost destination for many endangered species from all over the world.'*
- Refers to **seizures of forged and fraudulent permits**, the use of the **internet** and **correlation of TES with other OC activities** as **all increasing**.
- Has provided the permanent Secretariat for [EnviCrimeNet](#).



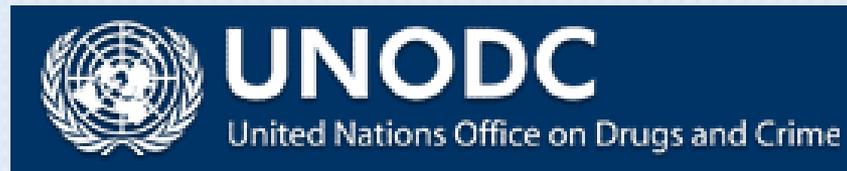
- 1948 the Convention establishing the Customs Co-operation Council (CCC) was signed in Brussels and it became effective from 1952, with 179 Customs administrations.
- **Global centre of customs expertise** and plays a leading role in the discussion, development, promotion and implementation of **modern customs systems and procedures**.
- Promoted International Conventions on: Harmonization of Commodity Descriptions and Coding Systems, and of Customs procedures.
- Manages an **on-line Customs Enforcement Network** and an **Information & Intelligence Centre**.
- Runs **conferences** for the sharing of ‘best practice’ and contributions from member countries.
- ***Current Strategic Plan, Strategic Goal 3.1:*** ‘The WCO has developed a wide range of instruments, tools and guidance materials in order to **assist Members in** implementing effective and efficient controls, ... and protect society by **intercepting and suppressing illicit trade and criminal activities through enhanced enforcement procedures.**’
- Participates in the ***International Consortium on Combating Wildlife Crime***.

## WCO activity in combating illegal wildlife trade

- Has led enforcement operations aimed at wildlife smuggling.
- WCO analysis identifies ‘escalating levels of poaching and illegal trade’ with ‘strong evidence of the increased involvement of organised crime groups’.
- Reports ‘organised and well-connected gangs blend illegal consignments with the huge volume of legitimate trade’.
- In 2009 created ‘ENVIRONET’, a secure web-based platform to enable sharing of encrypted information among Customs, police and other enforcement personnel eg. wildlife and game park managers.
- June 2014: ‘Declaration on the Illegal Wildlife Trade’ called for:
  - Use of ‘the full range of detection and investigative techniques’;
  - ‘The full extent of the law to secure an appropriate level of punishment that would act as a deterrent’;

*‘To be successful and achieve results a foundation of political will and integrity must already exist’;*

*‘The judiciary plays a vital role in responding to illegal wildlife trade. Customs authorities need to work closely with investigators and prosecutors to bring offenders before the courts, rather than relying on confiscations or limited administrative penalties’.*



- Established in 1997. Headquarters in Vienna.
- AIMS: to **equip governments better to handle drug-, crime-, terrorism-, and corruption-related issues**; to **maximise knowledge** on these issues **among governmental institutions and agencies**; to maximise awareness of these **in public opinion**, globally, nationally and at community level.
- Some main areas include: Human Trafficking and Migrant Smuggling, Money Laundering, Organized Crime, Piracy, Terrorism Prevention.
- The UNODC ***Global Programme for Combating Wildlife and Forest Crime*** ('WLFC') is a 4 year programme seeking to strengthen **'international co-operation among law enforcement agencies'** and **'national law enforcement, prosecutorial and judiciary capacity'**. Also:
  - Aims to ensure to ensure that **wildlife crime, illegal logging**, and related crimes are treated as **serious transnational organized crimes**.
  - It does **assessments of current actions to combat WLFC** at a national level to **strengthen law enforcement capacity at local, national and regional levels**.
- Participates in the ***International Consortium on Combating Wildlife Crime***.



## CITES Secretariat



- Operational 1975, CITES has 182 countries as Parties. Its Secretariat is administered by the United Nations Environment Programme, and located at Geneva.
- Secretariat's functions are laid down in Article XII of the Convention: eg. *'to **make recommendations** for the implementation of the aims and provisions of the present Convention, including the **exchange of information of a scientific or technical nature;**' and **'providing assistance in the fields of legislation, enforcement'**.*
- Runs a large number of projects **monitoring aspects of wildlife trade.**
- Organises and implements decisions of the **c.biennial Conference of the Parties** (2017).
- Agrees **multilateral agreements** and **memoranda of understanding** with individual **NGOs** (inc. **TRAFFIC**), **IGOs** (inc. **INTERPOL**) and individual **governments** and **universities** to help achieve broad aims of the Convention and specific goals.
- **Interpol and the Secretariat MoU**: includes agreed measures to improve **collaboration, co-operation and information exchange** between (national) Police and CITES Management Authorities. The Secretariat will provide Interpol with information to help the Police better understand the importance of issues related to the wildlife trade and the Convention's implementation. Participates in the **ICCWC**.

# International Consortium on Combating Wildlife Crime

- Formed in November 2009 in Vienna by *CITES Secretariat, the International Criminal Police Organization (INTERPOL), the United Nations Office on Drugs and Crime (UNODC), the World Customs Organization (WCO)*, and the World Bank.
- To design a strategy intended to **prevent** and **combat** illegal trade in wild animals and plants inc. **illegal logging**.
- In 2012, members of ICCWC developed the **Wildlife and Forest Crime Analytic Toolkit**.
- This provide comprehensive guidance in analysing administrative, preventive and criminal justice responses to wildlife and forest crime and other related offences in a given country, tailored to its needs.
- And to identify the different (illegal) actors in the wildlife and forest offences chain and to provide an understanding of the factors that drive their activities.
- It has five parts: (a) **legislation**; (b) **enforcement**; (c) **judiciary and prosecution**; (d) **drivers and prevention**; and (e) data and analysis, bringing together government agencies, civil society organizations and individuals, inc. **asset tracing and anti-money laundering expertise**.
- Emphasis on implementing measures to **prevent wildlife offences** from being committed **by offering alternative incentives**.
- Is being implemented now in countries at South America and South Asia.



## TRAFFIC (Trade Records Analysis of Flora and Fauna in Commerce)

- Founded in 1976. It is the wildlife trade-monitoring programme of WWF-World Wide Fund for Nature and IUCN-The World Conservation Union.
- Its main goal is to **ensure that trade in wildlife is at sustainable levels**, and undertakes its activities in close collaboration with governments and the *CITES Secretariat*.
- Investigates and **analyses wildlife trade trends, patterns, impacts and drivers** to provide the leading knowledge base on trade in wild animals and plants.
- Informs, supports and **encourages action by governments**, individually and through inter-governmental cooperation, to adopt, implement and **enforce effective policies and laws**.
- Advice to the **private sector** on effective approaches **to ensure sustainable uses of wildlife**.
- Developing insight into **consumer attitudes to dissuade purchasing of illicit wildlife goods**.
- **Illegal Logging**: It produces reports on the effectiveness of action by forest states' Governments; organises training workshops in forest states for forest stakeholders and forest law enforcement officers; agrees protocols with individual states to promote 'good practice'.



**THE GLOBAL INITIATIVE  
AGAINST TRANSNATIONAL  
ORGANIZED CRIME**

- A small **network** of prominent individual **law enforcement, governance and development practitioners**.
- Members from UN, *Interpol*, national enforcement agencies and academics.
- **Seeking** new and innovative **strategies to end organized crime**.
- Examining the global **impact of organized environmental crime on security, governance and development**.
- To assess what is being done in response now, how effective it is, what is being lost and to propose policy recommendations.
- Identifies **Illegal wildlife trading as a priority** due to: (i) links to **terrorist activities**, (ii) the **rising value** of environmental contraband and (iii) the clear **lack of success among law enforcers**.
- Illegal wildlife trading *'inflicts untold damage to national and regional ecosystems,...resulting in revenue losses for the state and businesses, fosters corruption, and increases insecurity. It now ranks among the most valuable illicit markets in the world'*.
- 'Growing demand for wildlife products in key markets has triggered a **professionalization and aggression in poaching which is unparalleled**'.
- *'This is no longer just a criminal act: it is warfare'*.



## European Union Network for the Implementation and Enforcement of Environmental Law ('IMPEL')

- Set up in 1992, membership is for **European organisations or authorities** working in the public sector who implement and enforce environmental legislation. It is not open to individuals.
- 35 countries including all EU Member States, the former Yugoslav Republic of Macedonia, Turkey, Iceland, Kosovo, Albania, Switzerland and Norway.
- Helps strengthen the **implementation of environmental law** in Europe by: (i) **sharing knowledge**, skills and good practices; (ii) producing technical **guidance**; (iii) **coordinating action** among countries; (iv) **facilitating communication** between different actors and networks, eg. prosecutors, judges.
- **Organises conferences** on implementation and enforcement of EU Environmental Law.
- **Runs Projects** - eg. *'Contributing to the elimination of illegal killing of birds: exchange of intelligence between MS'*: which concluded that the illegal killing of birds (IKB) is often a cross border problem, enforcement is scattered (even within MS) and information and intelligence are crucial.
- Nature protection and the implementation of the **EU Nature Directives a major topic.**

# EnviCrimeNet - Environmental Crime Network

- An informal network **connecting police officers and other crime investigation services** or competent authorities responsible for **fighting environmental crime, especially OCGs**, to exchange information about the extent and nature of environmental crime, and best practises to handle it. Secretariat provided by *Europol*.
- **Aims** inc.: Establishing tactical analyses of particular forms of environmental crime; Establishing joint investigations into environmental crime; Exchanging investigation methods; Exchanging information prior to initiating an operation; To create training possibilities; Establishing relevant risk assessments that can be exchanged amongst the participants.
- **Objectives** inc.: (i) Enhance the effectiveness of fight against organized environmental crime; (ii) Detect, investigate, disrupt and prosecute environmental crimes; (iii) Exchange information and experiences relating to best practices in dealing with environmental crimes.
- Identifies issues that: (i) **Several parties are responsible for the supervision and maintenance of legislation** and regulations, which is one of the key problems arising in the fight against environmental crime. (ii) **Administrative bodies at the municipal, provincial and governmental levels** in particular play an important role in **supervising companies**. (iii) Environmental crime is often **interwoven with legitimate enterprises**.

Progress! We've made it to the half-way point...!





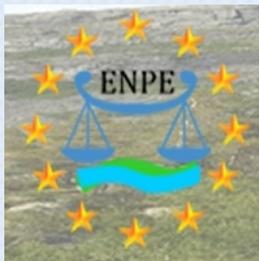
## Eurojust

- Established in 2002 in The Hague.
- **EU judicial cooperation and co-ordination unit** composed of national prosecutors, magistrates, or police officers **to reinforce the fight against serious organised crime.**
- Covers the **same types of crime and offences as Europol.**
- **Assists in investigations and prosecutions** at the request of a Member State.
- **Facilitates the execution of extradition (EAW) requests,** and the **use of mutual legal assistance.**
- Finances the activities of **joint investigation teams (JITs).**
- It cooperates and consults with the **European Judicial Network (EJN).**
- May ask the competent authorities of the Member States to investigate or prosecute specific acts and coordinate with one another in an investigation.
- Report of **Strategic Project on Environmental Crime (Oct 2014),** section 3 on TES has good analysis of problems for enforcement and co-operation, inc. OCG involvement.



# The European Union Forum of Judges for the Environment (EUFJE)

- Created in Paris in 2004 under Belgian law, this association is **open to all EU and European Free Trade Association judges.**
- With **ENPE** is a partner in the European Judicial Training Network (EJTN).
- **Objectives:** to promote the enforcement of national, European and international environmental law by contributing to a **better knowledge by judges of environmental law**, by **exchanging judicial decisions and by sharing experience** in the area of training in environmental law, and thus **give the judiciary a central role in the enforcement of environmental law.**
- It organises an annual conference.



## European Network of Prosecutors for the Environment (ENPE)

- Set up in 2012 in Brussels by representatives from prosecuting and environmental bodies in seven EU countries, inc. Belgium, England, France, Germany, Ireland and Sweden.
- Works with the EU Commission, the *European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL)* and *EU Forum of Judges for the Environment (EUFJE)*.
- **Aims** include: promote the **exchange of information and experience of the enforcement and prosecution of environmental crime**; promote the development of environmental criminal law **as an integral part of criminal law**; **identify best practice for successful prosecutions**; produce guidance, tools, common standards and approaches to the prosecution of environmental offences; **share training programmes** and contribute to better **understanding, implementation and enforcement of environmental criminal law**.
- Has held one conference in 2013.

# European Network against Environmental Crime (ENEC)

- This is an **NGO project** which runs from April 1, 2014 to May 1, 2016. SEO/BirdLife (Spanish bird conservation society) and the Royal Society for the Protection of Birds (RSPB) are the principal partners, BirdLife Europe, Hellenic Ornithological Society and the Czech Society for Ornithology participate as Associate Partners. **It allows NGOs to interact with enforcement authorities at an international level.** (Aarhus Convention).
- Aims: to **improve the implementation and application of the Directive 2008/99/EC**, and facilitating the **exchange of information and the experience of legal and other practitioners** in enforcement and **strengthen the application of criminal law in the fight against wildlife crime** in the EU.
- The project includes arranging **three Workshops**: illegal bird killing and capture, poisoning and habitat destruction.
- In Feb 2015 the **IKB Workshop** proposed (int. alia): **Harmonisation of criminal sanctions** in the different Member states. Training, specialization and raising awareness **measures targeted at judges, prosecutors, inspectorates, enforcement officers and lawyers** on the seriousness of illegal killing and taking and its consequences on biodiversity conservation, and recognition of environmental Non-Governmental Organisations (**NGOs**) **right to bring criminal proceedings** in a court of law in cases of wildlife crime.

# European Judicial Network

- The EJN gives effect to the Council Act 2000/C 197/01 of May 2000 establishing the ***Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union***. (Builds on the 1959 Council of Europe's 'European Convention on Mutual Assistance in Criminal Matters' which is a mutual legal assistance treaty ratified by all 47 member states of the Council of Europe.)
- There is an **electronic Atlas of competent national authorities**, which **allows direct interaction and communication among EU legal practitioners** which is password protected.
- It is composed of **Contact Points** in the Member States **designated** by each in their central authorities and other competent or judicial authorities **with specific responsibilities for international judicial cooperation**, to **facilitate judicial cooperation in criminal matters** between the EU Member States, particularly in actions to **combat forms of serious crime**.
- It guides practitioners through the form used for the request for **Mutual Legal Assistance**.
- It also contains (publically available) various **legal instruments** of the EU, UN and Council of Europe.
- It is the home for the form of and advice on the *European Arrest Warrant*.

# European arrest warrant

- *Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, 2002/584/JHA* (Official Journal L 190, 18.07.2002).
- Amended from 28th March 2011 by the implementation of the *Trials in Absence Framework Decision 2009/299/JHA* of 26th February 2009. (The latter decision inserted article 4a, 'Decisions rendered following a trial at which the person did not appear in person', and deleted article 5(1), one of the 'Guarantees to be given by the issuing Member State in particular cases').
- **Scope of the European arrest warrant** - Article 2:
  - 1. A European arrest warrant may be issued for acts **punishable** by the law of the issuing Member State by a custodial sentence or a detention order **for a maximum period of at least 12 months** or, where a sentence has been passed or a detention order has been made, for **sentences of at least four months**.
  - 2. The following **offences** (the '**Framework list**'), if they are **punishable** in the issuing Member State by a custodial sentence or a detention **order for a maximum period of at least three years** and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and **without verification of the double criminality** of the act, give rise to surrender pursuant to a European arrest warrant: **Inc. inter alia: 'participation in a criminal organisation', and 'environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties'**.

# Joint Investigation Teams

- Setting up JITs between EU Member States is provided for in **Article 13 of the 2000 MLA Convention** and the 13 June 2002 **Framework Decision (2002/465/JHA)**.
- Art 1 refers to: **'difficult and demanding investigations'** and **'circumstances of the case necessitate coordinated, concerted action** in the Member States involved'.
- A joint investigation team (JIT) is a team consisting of judges, prosecutors and law enforcement authorities, **established for a fixed period and a specific purpose** by way of a **written agreement** between the States involved to carry out criminal investigations in one or more of the involved States.
- Team members carry out their **duties in accordance with the national laws** of the territory in which the investigation takes place.
- JITs enable the **direct gathering and exchange of information and evidence** without the need to use traditional channels of mutual legal assistance (MLA).
- No types of crime specified – no exclusions.

# Joint Operations

- These fall into two broad types.
- First, the **intelligence-led, multi-agency operation targeting a known criminal activity** being conducted by a number of individuals with a network which spans a number of countries. These **take time to plan and require secrecy** in the preparation period and **the co-ordinated action of several enforcement agencies**, and may be **on-going for weeks or months** depending on where the evidence from the initial arrests and seizures leads.
- Secondly, there are investigations which begin with either a **single intelligence-led arrest and seizure, or a random discovery** eg. at an airport security check, which **reveal wider connections** which either require a more substantial investigation than initially thought, or trigger further investigations elsewhere. These thus require to be **built up as investigators seek assistance from, or provide information to, others** whether in the same jurisdiction or outside it. It is here that the E U's 'Mutual Legal Assistance' instruments and the channels for speedy communication provided by Europol and EJM can be very effective in trans-national instances.

## 'Tunis Action Plan 2013 – 2020' under the Bern Convention on the Conservation of European Wildlife and Natural Habitats

- Council of Europe, Biodiversity Unit, **Recommendations 164**, 33rd Standing Committee (2013) and **177**, 35th S C (2015).
- Three Aspects: **Enforcement and Legal; Biological and Institutional; Awareness.**
- It includes **an internationally applicable enforcement model** to be adopted by each jurisdiction using: (i) national priorities, (ii) conservation impact statements, (iii) specified gravity factors and (iv) principles to inform the process of imposing sanctions (not 'sentencing guidelines' US style!)
- Creating a common approach allows **enforcers across jurisdictions to evaluate wildlife crime in a similar way.**
- Inspired by the problems of international bird crime, it **applies to all wildlife crime and fits trafficking well.**
- **Recommendation 177** gives:
  - (i) **expanded definitions to the listed 'Gravity Factors'** to be used in evaluating these offences, and,
  - (ii) a number of **'Guiding principles for informing the process for the imposition of sanctions in wildlife crime cases, especially the illegal killing, taking and trading of wild birds'**.

Whether civil or criminal (penal) in nature **SANCTIONS** are **imposed under the law of the country or jurisdiction**, not under the authority of an international treaty or institution.

## *Confiscation and Forfeiture*

- Seizure and retention by Customs of items deemed illegally entering a jurisdiction, or by Court order following conviction.
- Represents a financial loss, both in terms of what it cost to obtain and transport, and of any subsequent loss of profit that might have been earned.

### **BUT....**

- It leaves the organisers free to try again and their organisation intact.
- It does not remove the profits earned from a 'criminal lifestyle or enterprise' of past illegal trading.
- It makes no provision for compensation of any sort to be made for the ecological damage that the specimens in question represent.
- The non-imposition of any other sanction that could have been imposed and to which the illegal act rendered the perpetrator liable sends a signal that the offence and activity is seen as of low seriousness.

### **THEREFORE....**

- It represents the minimum sanction only and a low 'social condemnation' of the act.

## *Ecological reparation or compensation*

- Some jurisdictions incorporate into their sanctions regime **orders for a fixed amount**, varied **according to the 'conservation status' of the species involved**,
- **Or** legislation may provide for a **more detailed costing case by case** to be the basis of a more substantial order.
- This will be **additional** to a fine or financial imposition which the legislation states may be levied as a penalty and paid to the state, or **any other sanction** imposed.
- It reflects, notionally at least, the 'damage done' by the offence, and may go directly into conservation activity.
- eg. Finland, Turkey.

## *‘Civil Sanctions’ and ‘Administrative Penalties’*

- **‘Civil Sanctions’** have been developed by a number of academics, eg. Professor Michael Faure of Maastricht University and Professor Richard Macrory of the Centre for Law and the Environment, University College, London, **for ‘legal persons’** - companies.
- **The thesis is:** businesses are tempted to depart from environmental standards and avoid the costs of compliance if the use of prosecution and criminal penalties is sufficiently infrequent and the risks of getting caught are too low (due to high enforcement costs and limited budgets.)
- Therefore, ***It may be a better use of public funds to impose more modest financial penalties coupled with ‘management’, ‘stop’ or ‘reinstatement’ orders more frequently, as these may be more of a deterrent.***
- Their **aim is to change behaviour and remove any financial gain.**
- These are **imposed by a government agency or regulator swiftly** and as an alternative to the delay and costs of a full-scale police investigation and judicial hearing.
- The **criminal law is still to be applied**, but reserved for the more serious offences and more damaging incidents and reinforce the effectiveness of the lesser sanctions imposed by the regulator, as well as providing ‘a social disapproval of a qualitatively different nature’.
- Many European jurisdictions include the option for the imposition of **set administrative financial penalties** alongside their provision for criminal or penal penalties, some still have these as the only method for some wildlife crime.

## *Orders directed at companies or 'legal persons'*

- There is some evidence for an increasing willingness to use **sanctions aimed at the structure, finances and trading ability of businesses** in cases of illegal trading.
- *eg. Legislation in France* provides for: dissolution of the company, periodic or permanent bans on exercising specified professional activities, closure of offices/premises where offences were committed, disqualification for specified types of state aid.

## *'Proceeds of Crime' orders*

- **Following conviction and sentence**, an investigation into the accused's financial affairs is made in which he must show his assets came from his legal income. **Any 'unexplained' assets the court may presume to have been acquired with illegally acquired funds and their value ordered to be forfeited**, with an additional prison term in default of payment.
  - *Are there similar provisions in all jurisdictions? Have they been used in wildlife crime?*

## *Imprisonment, deprivation of liberty, restrictions on liberty and fines*

- Over the last decade there has been a **marked upward trend in national legislation in the maximum fine and prison terms for wildlife offences, particularly illegal trading.**
- And some provision is made specifically for **incidents to be deemed 'serious organised crime'**.
- There is also evidence of an upward shift in sentencing, signifying a **change in judicial attitudes** - *eg. 'life' imprisonment for 153 Chinese illegal loggers in Myanmar in 2015; table of UK wildlife trafficking prosecutions.*

# Analysis of sentencing in wildlife trafficking prosecutions in the U K 1986 – 2015

Source: TRAFFIC UK

Year	Number of <u>Cases</u> prosecuted	Number of <u>sentences</u> of either <b>Imprisonment or Community Penalty</b>	Percentage of Imprisonment and Community Penalty over 5 year periods
1986	2	0	1 out of 16 cases, <b>6%</b>
1987	4	0	
1988	1	0	
1989	9	1	
1990	4	2	5 out of 20 cases, <b>25%</b>
1991	6	0	
1992	8	2	
1993	0	0	
1994	2	1	
1995	8	3	7 out of 27 cases, <b>26%</b>
1996	4	2	
1997	6	1	
1998	4	1	
1999	5	0	
2000	9	2	11 out of 37 cases <b>29%</b>
2001	11	4	
2002	7	1	
2003	6	2	
2004	4	2	

Year	Number of <u>Cases</u> prosecuted	Number of <u>sentences</u> of either <b>Imprisonment or Community Penalty</b>	Percentage of Imprisonment and Community Penalty over 5 year periods
2005	2	1	9 out of 29 cases, <b>31%</b>
2006	9	2	
2007	3	0	
2008	6	1	
2009	9	5	
2010	13	9	32 out of 62 cases, <b>51%</b>
2011	6	3	
2012	12	6	
2013	17	9	
2014	14	5	
2015	7	5	5 out of 7 cases <b>71%</b>



## Our Responsibility



*'The tasks of protecting birds in the long term are in the main done by people behind desks, in the corridors of decision-making power and in the courts.'*

*Conor James, 'Birds' magazine, RSPB, 2004,  
(Discussing ambelopoulia trade in Cyprus.)*

Will there ever be Justice for me?

