

HOW TO ENFORCE EU LEGISLATION ON BIODIVERSITY AND WILDLIFE TRAFFICKING

**EU Environmental Law training module on Biodiversity and Wildlife Trafficking
for the Academy of European Law (ERA)**

‘Co-operation in enforcing Wildlife trafficking – Institutions and Instruments’

INTRODUCTION

(i) This is a guide to some of the institutions and authorities active in the area of investigating and enforcing (both prosecuting and judicial) national legislation which gives effect to international conventions concerning wildlife conservation especially illegal trafficking and illegal logging. It gives a brief description of the institution or agency and some of its activities and competences in these areas. For many international enforcement organisations environmental crime of any kind is not their only nor their primary focus. However, it is apparent that increasing attention is being paid to this area of criminality now its sheer size in monetary value (profits being potentially linked to terrorist and other serious criminal activity), the devastating effect poaching and illegal de-forestation are having on the ecosystem, as well as their increasingly serious effects on human communities in source countries, are better understood. A web-link is given to allow further and up to date information of current events and activities to be obtained. It also contains brief descriptions of some of the instruments and tools which may be used against this illegal activity. Where one organisation has a particular link to another listed here, the connection is shown in [blue](#).

(ii) The ***institutions mentioned*** are:

Interpol – p. 2

Europol – p. 4

World Customs Organisation – p. 5

United Nations Office on Drugs and Crime – p. 5/6

CITES Secretariat – p. 6

International Consortium on Combating Wildlife Crime – p. 7

TRAFFIC – p. 8

The Global Initiative against Transnational Organized Crime – p. 8/9

European Union Network for the Implementation and Enforcement of Environmental Law – p. 9/10

Environmental Crime Network – p. 10/11

Eurojust – p. 11/12

European Union Forum of Judges for the Environment – p. 12

European Network of Prosecutors for the Environment – p. 12/13
European Network against Environmental Crime – p. 13/14
EU Commission - 'EU Action Plan against Wildlife Trafficking' 2016 – p. 15

(iii) The ***instruments and tools mentioned*** include:

'Ecomessage' System – p. 2
European Judicial Network – p. 15
European Arrest Warrant – p. 16
Joint Investigations Teams – p. 16
Joint Operations - examples – p. 16 - 18
Some specific sanctions available in national legislations – pp. 18 - 20
'Tunis Action Plan 2013 – 2020' under the Bern Convention on the Conservation of European Wildlife and Natural Habitats – p. 21 - 23

(iv) Some specific reference is made to ***illegal logging*** to highlight this less well-known form of illegality, such comments being in **green**.

INSTITUTIONS

INTERPOL - <http://www.interpol.int/en>

International Criminal Police Organization dates from 1923 is **an intergovernmental organization** facilitating international police cooperation and has a membership of 190 countries (as of 2015). The organization's headquarters is in Lyon, France. Four official languages English, French, Spanish and Arabic. It is the second largest political organization after the United Nations in terms of international representation. It is not a supranational law enforcement agency and has no agents who are able to make arrests. Instead, it is an international organization that functions as a **network of criminal law enforcement agencies from different countries for administrative liaison among their law enforcement, providing communications and database assistance**. Interpol's can assist law enforcement in fighting international crime. Interpol's **international databases** can track criminals and crime trends around the world. An **encrypted Internet-based worldwide communications network** allows Interpol agents and member countries to contact each other at any time. Known as I-24/7, the network offers constant access to Interpol's databases. Member countries can also access each other's criminal databases via the I-24/7 system. Every INTERPOL member country has a National Central Bureau (NCB), linking national police with its I-24/7 network

Has Environmental Crime Programme, run by the Environmental Compliance and Enforcement Committee with a Wildlife Crime Working Group. The INTERPOL Wildlife Crime Working Group initiates and leads a number of projects to combat the poaching, trafficking, or possession of legally protected flora and fauna and to deal with environmental crime: 'The same routes used to smuggle wildlife across countries and continents are often used to smuggle weapons, drugs and people. Indeed, environmental crime often occurs hand in hand with other offences such as passport fraud, corruption, money laundering and murder.' 'Leading global and regional operations to dismantle the criminal networks behind

environmental crime using intelligence-driven investigations; Coordinating and developing international law enforcement best practice manuals, guides and other resources;'

“**Ecomessage system**’ provides a **uniform intelligence data reporting system** for the many different law enforcement agencies involved. These messages are passed from an enforcement agency in one country, via INTERPOL National Central Bureaux, to the relevant agencies in the other countries concerned.

There are several advantages to this procedure:

- Data is shared in a standard format;
- Information passes through secure communications links at all stages of the process;
- The INTERPOL General Secretariat is copied on all messages and the information entered into the Organization's databases where it can then be cross-referenced with other entries.

Equally, there are a number of benefits to investigations:

- INTERPOL criminal analysts can study the data and begin to discern such information as the structure, extent and dynamics of international criminals and organizations involved.
- The reporting country can ask questions or make requests. For example, a customs agency in one country may have seized contraband smuggled from a second country. The Ecomessage system allows the first country to enquire about the exporter or carrier in the second country. In the case of smuggled wildlife, countries can address such issues as the repatriation and preservation of the seized wildlife.'

It has **four current wildlife ‘Projects’ for Asian big cats, elephants, illegal logging and illegal fishing.**

Project Leaf re. illegal logging aims to:

- Raise awareness of the impact of illegal logging;
- Develop law enforcement capacity;
- Enhance information and intelligence sharing;
- Establish *National Environmental Security Task Forces (NESTs)* to promote institutionalized cooperation between national agencies and international partners.

These aims will be delivered through ‘analysis, training, operational support and the dissemination of expert recommendations and best practice.’

*‘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.’*

Project Predator re Asian big cats: 'Between 2010 and 2015 it facilitated nine **intelligence-led operations** involving almost 50 countries.

These have resulted in more than 560 arrests and 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, pangolin scales and pangolin meat, more than 2,500 turtles and tortoises and a variety of other wildlife including bears and bear parts, rhino horn, red pandas, reptiles and protected bird and plant species.

Dozens of **operational meetings and training events** have been held across South, Central and Southeast Asia. Training events have addressed a range of topics including crime scene investigation, questioning wildlife smugglers and intelligence analysis.'

Interpol circulates 'Interpol Notices' inc. the '**International arrest warrant**'. An Interpol notice is an international alert used by police to communicate information about crimes, and criminals around the world. They are colour coded according to type and seriousness and are circulated by Interpol to all member states at the request of a member or an authorised international entity. **The Red Notice is the "closest instrument to an international arrest warrant in use today"** and is a request to 'seek the location and arrest of a person wanted by a judicial jurisdiction or an international tribunal with a view to his/her extradition.'

Participates in the [International Consortium on Combating Wildlife Crime \(ICWC\)](#) see below.

EUROPOL - <https://www.europol.europa.eu/>

Created by the Maastricht Treaty in 1993 as the **law enforcement agency of the European Union** that handles criminal intelligence and combating serious international organised crime by **means of cooperation between the relevant authorities of the member states**. Headquarters in The Hague. Not entitled to conduct investigations, provides support with its tools of **information exchange, intelligence analysis, expertise and training to national authorities**. Europol **cooperates 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, and it has strategic agreements with: Bosnia and Herzegovina, Moldova, Russia, Turkey, Ukraine, United Nations Office on Drugs and Crime and the World Customs Organization.

It has over 900 staff, and 185 **Europol Liaison Officers (ELOs)** are based at Europol headquarters. These ELOs are police officers seconded to Europol by the EU Member States and our non-EU partners. They guarantee fast and effective cooperation based on personal contact and mutual trust. It has an **operational coordination centre and secure information network**, to carry out over 18 000 cross-border investigations each year.

For the last five years, **Europol has provided the permanent Secretariat** for [EnviCrimeNet](#) (see below).

Focus on wildlife trafficking: 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.

(During its Presidency of the Council of the EU in the first half of 2016, Dutch law enforcement authorities will put a focus on financial investigations related to environmental crimes. **Concerns in Europe are the illegal logging and timber trade, in particular, the huge illicit profits gained through logging.**)

See also comments in [EU Commission’s 2016 ‘EU Action Plan against Wildlife Trafficking’](#) (below).

(Source: Europol)

WORLD CUSTOMS ORGANISATION - <http://www.wcoomd.org/en.aspx>

1948 the Convention establishing the Customs Co-operation Council (CCC) was signed in Brussels and effective from 1952. Now the WCO, it has 179 member countries and is the **global centre of customs expertise** and plays a leading role in the discussion, **development, promotion and implementation of modern customs systems and procedures.** ‘International Convention on the Harmonized Commodity Description and Coding System’ and ‘International Convention on the Simplification and Harmonization of Customs procedures.’

‘Current Strategic Plan at 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.**’

Activities in respect of trade in environmental and wildlife items: WCO identifies the illegal trade as increasing with strong evidence of OCG involvement and frequent use of ‘blending’ illegal items with legal. In 2009 it launched **‘ENVIRONET’**, an internet-based global communication tool dedicated to environmental protection. It provides a secure (encrypted) platform for Customs officials, law enforcement authorities, and international organizations as well as their regional networks to cooperate with one another and share information in real-time under six headings. Three of these are **Wildlife, fauna and flora, illegal logging** and **Illegal fishing.**

In 2014 it adopted the **‘Declaration on the Illegal Wildlife Trade’** which called for eg. **‘The (use of the) full range of detection and investigative techniques, including risk profiling, intelligence sharing, controlled deliveries, forensic techniques, detector dogs and other non-intrusive equipment, and ‘the full extent of the law to secure an appropriate level of punishment that would act as an effective deterrent’,** and highlighted **‘the need to address the problem of corruption related to the wildlife trade, by adopting a zero tolerance policy on corruption in this sphere’.**

Participates in the [International Consortium on Combating Wildlife Crime \(ICWC\)](#) see below.

UNITED NATIONS OFFICE on DRUGS and CRIME - <http://www.unodc.org/>

Established in 1997. Headquarters in Vienna. The office **aims long-term to equip governments better to handle drug-, crime-, terrorism-, and corruption-related issues, to maximise knowledge on these issues among governmental institutions and agencies, and also to maximise awareness of said matters in public opinion, globally, nationally and at community level.** The main areas that UNODC deals with are: Alternative Development, Corruption, Criminal Justice, Prison Reform and Crime Prevention, Drug Prevention, -Treatment and Care, HIV and AIDS, Human Trafficking and Migrant Smuggling, Money Laundering, Organized Crime, Piracy, Terrorism Prevention.

But it also has an Environmental focus: **The UNODC Global Programme for Combating Wildlife and Forest Crime (GP)** is a four-year programme aiming to link existing regional efforts in a global system, enhancing capacity-building and wildlife law enforcement networks at regional and sub-regional levels. The GP is **working for and with the wildlife law enforcement community** to ensure that wildlife crime, illegal logging, and related crimes are treated as serious transnational organized crimes. Inter alia it **seeks to strengthen 'international co-operation among law enforcement agencies' and 'national law enforcement, prosecutorial and judiciary capacity'**. It will undertake comprehensive assessments of current actions to combat WLFC at a national level and a priority given to **strengthening law enforcement capacity at local, national and regional level.**

CITES Secretariat - <https://www.cites.org/eng/disc/sec/index.php>

Administered by the **United Nations Environment Programme**, is located at Geneva. Its functions are laid down in Article XII of the Convention, which include '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;**' which includes 'providing assistance in the fields of legislation, enforcement'.

A long list of resolutions, decisions, **memoranda of understanding** with NGOs (inc. **TRAFFIC**), IGOs (inc. one with **ICPO-Interpol***(see above)) and individual governments and universities, and **multilateral agreements.**

(*This includes: '3. To combat the illicit trafficking in species listed in the CITES appendices, the two Secretariats will jointly draft and implement, each in its own field of competence, **measures to improve collaboration, co-operation and information exchange between Police authorities and CITES Management Authorities.**

4. The CITES Secretariat will provide ICPO- Interpol with information to **help the Police better understand the importance of issues related to the trade in fauna and flora** and the implementation of the Convention.)

Runs a large number of projects monitoring aspects of wildlife trade.

International Consortium on Combating Wildlife Crime (ICWC) - [for web pages, visit agencies involved](#)

In November 2009, five international organizations and agencies with mandates in law enforcement and criminal justice capacity-building decided to come together to work jointly on the formation of an international consortium. Representatives from the [Convention on International Trade in Endangered Species of Wild Fauna and Flora \(CITES\) 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 held their first joint meeting in Vienna to design a strategy intended to prevent and combat illegal trade in wild animals and plants, and decided to form the **International Consortium on Combating Wildlife Crime** to be able to act in a coordinated manner. UNODC focuses on national capacity-building of law enforcement, judiciary, prosecution and legislation. In mid-2012, UNODC, in partnership with other members of ICCWC, developed the **Wildlife and Forest Crime Analytic Toolkit**. The Toolkit is a technical resource to assist government officials in wildlife and forestry administration and customs as well as other relevant agencies, to conduct a comprehensive analysis of the strengths and weaknesses of preventive and criminal justice responses and other measures related to the protection and monitoring of wildlife and forest products which are crucial to curtailing wildlife and forest crime both nationally and internationally. The Wildlife and Forest Crime Analytic Toolkit aims to provide comprehensive guidance in analysing administrative, preventive and criminal justice responses to wildlife and forest crime and other related offences in a given country. An additional purpose of the Toolkit is to identify the different actors in the wildlife and forest offences chain and to provide an understanding of the factors that drive their activities, in order to begin the comprehension of what may be required to prevent an increase in wildlife offences as a global phenomenon.

The Toolkit has four key elements, which assist users in the following ways:

1. Identifying current patterns of wildlife and forest offences, including their drivers and actors;
2. Analysing the criminal justice response, including the legislative, enforcement, prosecutorial and judicial systems in use;
3. Understanding the different links and actors in the wildlife and forest offenses chain; and
4. Implementing measures to address and prevent wildlife offences from being committed by offering alternative incentives.

The Wildlife and Forest Crime Analytic Toolkit is **organized into five parts**: (a) legislation; (b) enforcement; (c) judiciary and prosecution; (d) drivers and prevention; and (e) data and analysis. Each part represents one of the sectors involved in the preventive and criminal justice response to wildlife and forest offences. The five parts also reflect and bring together a great variety of government agencies, civil society organizations, individuals and other stakeholders.

Currently the Wildlife and Forest Crime Analytic Toolkit is **being implemented in countries at South America and South Asia**. Additionally, it has received official requests for implementation in Central Africa and other countries from Asia and Africa have expressed their interested in implementing this practical analytical tool.

New 'Strategic Programme 2016 – 2020' has just been agreed.

TRAFFIC (Trade Records Analysis of Flora and Fauna in Commerce) - <http://www.traffic.org/>

Founded in 1976 as the joint **wildlife trade-monitoring programme** of WWF-World Wide Fund for Nature and IUCN-The World Conservation Union, TRAFFIC is an international network, with culturally diverse staff, based in offices on five continents, in 20 countries and territories, with ongoing research and activities in dozens of others. The main **goal is to ensure that trade in wildlife is at sustainable levels**. TRAFFIC recognises the diversity of cultural perspectives related to consumptive use of wildlife. It has grown to become the world's largest wildlife trade monitoring programme, and a **global expert on wildlife trade issues**. TRAFFIC actively **monitors and investigates wildlife trade**, and provides its information to a diverse audience world-wide, as a basis for effective conservation policies and programmes. This NGO often **undertakes its activities in close collaboration with governments and the CITES Secretariat**.

TRAFFIC specializes in:

- Investigating and analysing wildlife trade trends, patterns, impacts and drivers to provide the leading knowledge base on trade in wild animals and plants;
- Informing, supporting and encouraging action by governments, individually and through inter-governmental cooperation to adopt, implement and enforce effective policies and laws;
- Providing information, encouragement and advice to the private sector on effective approaches to ensure that sourcing of wildlife uses sustainability standards and best practice;
- Developing insight into consumer attitudes and purchasing motivation and guiding the design of effective communication interventions aimed to dissuade purchasing of illicit wildlife goods.

eg. on **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 - <http://www.globalinitiative.net/>

Begun in 2011/12, it is a small network of prominent individuals who are **law enforcement, governance and development practitioners who are dedicated to seeking new and innovative strategies to end organized crime, to examine the global impact of organized environmental crime on security, governance and development**. Members are from UN, **Interpol** (see above), government enforcement agencies and academics.

The intention is not for a mere assessment of the problem, but a forward looking analysis of the costs and impacts in different spheres, to **assess what is being done in response now, how effective it is, what is being lost and to propose policy recommendations**.

'The escalation of environmental crime over the past decade, its links to terrorist activities, the rising value of environmental contraband and the **clear lack of success among those trying to stem the tide – these crimes are inching their way up the to-do lists of law enforcers, politicians and policymakers**.

Environmental crimes, by their nature, tend to be concentrated in areas of low population density, in national parks and in remote areas or hinterlands, and can thus continue largely under the radar, inflicting untold damage to national and regional ecosystems. In addition, **they result in revenue losses for the state and businesses, foster corruption, and increase insecurity. Illegal wildlife trading now ranks among the**

most valuable illicit markets in the world. The “tipping point” on wildlife crime is fast approaching: the extinction of key species and irreparable damage to the environment are both imminent possibilities in the near future. **Growing demand for wildlife products in key markets has triggered a professionalization and aggression in poaching which is unparalleled. Armed with advanced weaponry, surveillance equipment and facilitated by extensive corruption, the criminal market in wildlife crime is now one of the most significant illicit markets in the world.** Key species such as the rhino are being slaughtered at record levels. Lesser known animals are traded at a scale that is almost incomprehensible. **This is no longer just a criminal act: it is warfare.’**

European Union Network for the Implementation and Enforcement of Environmental Law (‘IMPEL’) -
<http://www.impel.eu/>

Set up in 1992. Membership of IMPEL is open to **organisations or authorities working in the public sector who implement and enforce environmental legislation.** It is not open to individuals. IMPEL has 50 members from 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 (including):

- helping countries get to compliance more quickly, for example, by **sharing knowledge, skills and good practices,** and carrying out peer reviews;
- helping implementing organisations use their limited resources more effectively, for example, by **producing technical guidance** and promoting the use of risk-based approaches to target effort;
- **coordinating action between countries,** for example, in the enforcement of regulations to tackle illegal trans-frontier movements of waste;
- **facilitating communication between different actors and networks, for example, prosecutors, judges and ombudsmen;**
- informing policy with practical experience and expertise.

Organises conferences on implementation and enforcement of EU Environmental Law. On average over 200 experts in permitting, inspection, enforcement and policy and lawmaking from all IMPEL Member countries and the European Commission participate in these conferences.

Runs Projects - eg. **‘Contributing to the elimination of illegal killing of birds: exchange of intelligence between MS’** - Crimes related to the illegal killing of birds (IKB) are, in many cases, a cross border problem. With many agencies involved in enforcement (even within MS,) sharing information and intelligence are crucial for proper enforcement strategies. Previous projects on this topic confirmed there is a need to gather and exchange information and intelligence.

The aim is to create a way (method) to exchange and share information with other EU MS Enforcement teams working in the field of IKB.

Nature protection and the implementation of the Nature Directives a major topic.

Environmental Crime Network - <http://envicrimenet.eu/EN/>

Set up 2011. **‘EnviCrimeNet’** is an informal **network connecting police officers and other crime investigation services or competent authorities responsible for fighting environmental crime and Public**

prosecutors or their networks in European states in the field of environmental crime to learn from each other about the extent and nature of environmental crime, the best practises to handle it. The Secretariat is provided by **Europol** (see above).

Seeks to identify aspects of wildlife crime to assist with targeting enforcement. Investigating environmental crime is a complex, global issue. With regard to global issues, such as climate change and damage to biodiversity, being involved in the fight against environmental crime is of the utmost importance to the police. Within countries several agencies are responsible for the supervision and enforcement of legislation and regulations, which is one of the key problems arising in the fight against environmental crime. Administrative bodies at the municipal, provincial and governmental levels in particular play an important role in supervising companies. Another key characteristic of environmental crime is legitimate and illegitimate enterprises interconnect. In addition, environmental crime, unlike other forms of crime, is often revealed as a result of targeted investigations, rather than reports on an environmental offence committed.

EnviCrimeNet is aiming to **improve the results of the fight against environmental crime** by:

- Ensuring that member states are aware of the fight against environmental crime at the international level;
- Mutual sharing of expertise;
- Establishing relevant risk assessments that can be exchanged amongst the participants;
- Learning from one another in the fields of risk assessments and intervention strategies;
- Establishing **tactical analyses of particular forms of environmental crime**;
- **Establishing joint investigations into environmental crime**;
- **Exchanging investigation methods**;
- Exchanging information prior to initiating the operational phase of an investigation or operation;
- To create the right training and schooling possibilities in cooperation with Cepol.

Objectives:

- Fight against and enhance the effectiveness of the fight against organized environmental crime.
- Detect, investigate, disrupt and prosecute environmental crimes.
- Exchange information and experiences relating to best practices in dealing with environmental crimes.
- Non-operational information exchange about legal frameworks.

Its fifth Annual General Meeting was held on 21 and 22 October 2015 in Milan, Italy, hosted by the Italian Corpo Forestale dello Stato (CFS) and the Italian Carabinieri, with experts and practitioners from Europol, the European Commission and 16 European countries attending.

(Source: EnviCrimNet)

EUROJUST - <http://www.eurojust.europa.eu/Pages/home.aspx>

Established in 2002, headquarters in The Hague. **An EU judicial cooperation and co-ordination unit** composed of national prosecutors, magistrates, or police officers of equivalent competence from 27 MSs, **to reinforce the fight against serious organised crime**, as stated in the Lisbon Treaty Art 85: *‘to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States.’* Also Art 86 refers to *‘combat crimes affecting the financial interests of the Union’*. **Co-operation agreements** with Europol, Norway, Iceland, the USA, Croatia, OLAF, Switzerland, and the former Yugoslav Republic of Macedonia. Liaison prosecutors from Norway and the USA are now permanently based at Eurojust. It has established **contact points** in 23 non-Member States: Albania, Argentina, Bosnia and Herzegovina, Canada, Egypt, the former Yugoslav Republic of Macedonia, Iceland, Israel, Japan, Korea, Liechtenstein, Moldova, Mongolia, Montenegro, Norway, Russian Federation, Serbia, Singapore, Switzerland, Thailand, Turkey, Ukraine and the USA. It has several **memoranda of understanding** with bodies such as the **United Nations Office on Drugs and Crime**. December 2008 revised Council Decision aimed to strengthen Eurojust’s potential to help fight transnational organised crime, eg by increasing the interchange of information about serious cross-border cases, and making Eurojust available to national authorities on a 24/7 basis.

Eurojust's competence covers the **same types of crime and offences for which Europol has competence**, inc’ Environmental. Eurojust may **assist in investigations and prosecutions** at the request of a Member State, and it acts by **facilitating the execution of extradition (EAW) requests**, and the **use of international mutual legal assistance** by the authorities of the Member States to make their investigations and prosecutions more effective when dealing with cross-border crime. It cooperates and consults with the **European Judicial Network (EJN)**, and make use of, and contribute to the improvement of, its documentary database. It may assist Europol, particularly with opinions based on analyses carried out by Europol and supply logistical support, e.g. assistance in translation, interpretation and the organisation of coordination meetings.

Also, Eurojust may ask the competent authorities of the Member States concerned to:

- investigate or prosecute specific acts;
- coordinate with one another;
- accept that one country is better placed to prosecute than another;
- set up a Joint Investigation Team; or
- provide Eurojust with information necessary to carry out its tasks.

Eurojust finances the activities of **joint investigation teams (JITs)** from its regular budget, and with **Europol** jointly produced a ‘JITs Manual’, which is intended to inform practitioners of the legal basis and requirements for setting up a JIT and to provide advice on when a JIT can be usefully employed.

Oct 2014 report of **Strategic Project on Environmental Crime** inc. section 3 on TES.

See also comments in **EU Commission’s 2016 ‘EU Action Plan against Wildlife Trafficking’** (below).

(Source: Eurojust)

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

<http://www.eufje.org/index.php/en/>

This association was created in Paris in 2004, though established under the law of Belgium. It is **open to all EU and European Free Trade Association judges**. The objective of the Forum is 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**. The Forum was created with a view to raising the awareness of judges of the key role of the judicial function in the effectiveness of sustainable development, and **give the judiciary a central role in the enforcement of environmental law**.

It organises an annual conference.

With ENEP is a partner in the European Judicial Training Network (EJTN).

(Source: EUJFE)

European Network of Prosecutors for the Environment (ENPE)

<http://www.environmentalprosecutors.eu/>

In 2012, in Brussels, representatives from **prosecuting bodies and environmental agencies in seven European countries from the Environment Agency for England, and from similar bodies in Sweden, France, Belgium, Ireland and Germany** came together to establish the **European Network of Prosecutors for the Environment (ENPE)**. It seeks to establish how it can best work with the Commission, and with **European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL)** (see above) and **EU Forum of Judges for the Environment (EUFJE)** (see below). **The prosecutors' network completes the chain of representative bodies across Europe for those involved in tackling environmental crime, from enforcement officers, through to prosecutors and on to judges.**

Aims of ENPE: the Network seeks to:

- support the operative work of environmental prosecutors
- promote the exchange of information and experience of the enforcement and prosecution of environmental crime between members
- foster knowledge of environmental law among prosecutors and promote the development of environmental criminal law as an integral part of criminal law enforcement generally
- share experience of investigations, prosecutions and sanctions in the field of environmental criminal law
- contribute to better understanding, implementation and enforcement of environmental criminal law
- encourage and support co-operation between Members and facilitate capacity building in relation to the prevention and prosecution of environmental crime
- facilitate collection of data about environmental crime across Europe and enforcement action taken in relation to environmental crime
- identify and develop good, and whenever possible, best practice, for successful prosecutions and produce guidance, tools, common standards and approaches to the prosecution of environmental offences
- share training programmes in relation to environmental criminal law.

Has held one conference in 2013.

(Source: ENPE)

European Network against Environmental Crime (ENEC) - <http://www.lawyersfornature.eu/>

This is a fixed term **NGO project** which **runs from April 1, 2014 to May 1, 2016**, set up by SEO/BirdLife (Spanish bird conservation society) and the Royal Society for the Protection of Birds (RSPB). BirdLife Europe, Hellenic Ornithological Society and the Czech Society for Ornithology participate as Associate Partners of this project. This **allows NGOs to interact with enforcement authorities at an international level** (cf. principles of the Aarhus Convention).

The project is to **create a European Network against Environmental Crime (ENEC)** aiming to **improve the implementation and application of the Directive 2008/99/EC** on the protection of the environment through criminal law, with the aim of strengthening the work of the partners of BirdLife Europe in the fight against environmental crime, **by facilitating the exchange of information and the experience of legal and other practitioners** who are working to prevent or prosecute this type of crime.

ACTIONS proposed:

- 1) Carry out a study to **assess the degree of implementation of Directive 2008/99/CE** in the EU Member States (MS) national legislation and practice, comparing the criminal law provisions of the 28 EU MS where the partners of BirdLife Europe carry out their activity, thus providing a detailed picture of the degree of implementation of this aspect of Community law in the EU. This information will be used to identify possible gaps in the protection of the environment through criminal law and inform the need for future measures to be adopted by the European Commission, Member States and/or the members of the ENEC.
- 2) **Bring together legal and other practitioners** who work in the fight against environmental crime. A first project meeting will launch the ENEC partnership with the attendance of lawyers, policy and investigations experts who work on behalf of the partners of BirdLife Europe. During the meeting the results of the study on Directive 2008/99 will be presented, establishing a series of conclusions and future courses of action on criminal law at EU level and in the different MS.
- 3) **Strengthen the application of criminal law in the fight against wildlife crime in the EU.** The project includes three concrete lines of action through ENEC: **illegal bird killing and capture, poisoning and habitat destruction.** The joint action of ENEC members will allow efforts to be combined, supporting action in EU countries with fewer resources, and sharing knowledge and experience in the fight against these crimes. With this in mind, three workshops will be held which will make recommendations for strengthening the application of criminal law in MS.
- 4) Integrate with the activities of other networks and international institutions involved in the protection of the environment. **ENEC will establish coordination and communication channels with other networks that work on the application and implementation of Community environmental law**, as well as the Secretariats of the international nature conservation conventions.

On 11th **February 2015** was held in Madrid the First European Workshop against Environmental Crime. ENEC members met in Madrid adopted a series of legal **recommendations to eliminate illegal killing and taking of birds**. This document agreed proposed a series of action to improve the implementation and enforcement of European Union and national laws in relation to that type of crime. The main lines of action are the following:

1. Assessment of the implementation of protection for species listed under Article 2(b) of Directive 2008/99/EC in national penal law.
2. Harmonisation of criminal sanctions in the different Member states.
3. 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.
4. Recognition of environmental Non-Governmental Organisations (NGOs) right to bring criminal proceedings in a court of law in cases of wildlife crime.
5. Improving the implementation of the Birds and Habitats Directives as necessary legal instruments to protect wildlife against illegal killing and taking.
6. Information exchange, cooperation and networking between legal professionals.

Intended Results:

- 1) A new coordination mechanism for European partners of BirdLife International to tackle environmental crime.
- 2) A model network in the fight against environmental crime that can be extended to other types of organization or other areas of non-compliance with the law.

(Source: ENEC)

EU Commission's 'EU Action Plan against Wildlife Trafficking' (Brussels, 26.2.2016 COM(2016) 87 final):

Action 13: 'Improve cooperation among Member States on cases of cross-border wildlife trafficking': –

- 'Sufficient resources earmarked in **Europol** and **Eurojust** for work on wildlife trafficking',
- 'Regular **joint operations** involving cross-border cooperation carried out by EU Member States (facilitated by **Europol**)',
- '**Joint Investigation Teams**' involving **Europol** and/or **Eurojust** set up'.

TOOLS and INSTRUMENTS

EUROPEAN JUDICIAL NETWORK - http://www.ejn-crimjust.europa.eu/ejn/ejn_home.aspx

The original version dates from 1998, but now operates under Council Decision 2008/976/JHA of 16 December 2008, the **EJN website** allows access to a **part of the website allowing interaction and communication among legal practitioners which is password protected**. It also contains various legal instruments of the EU, UN and Council of Europe, eg.

Council Framework Decision **2006/783/JHA** of 6 October 2006 on the application of the principle of **mutual recognition to confiscation orders**.

Council Framework Decision **2005/214/JHA** of 24 February 2005 on the application of the principle of **mutual recognition to financial penalties**.

Council Act **2000/C 197/01** of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the **Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union**.

(Also The **European Convention on Mutual Assistance in Criminal Matters** which is a 1959 Council of Europe mutual legal assistance treaty. It has been ratified by **all 47 member states of the Council of Europe**.)

The **EJN is composed of Contact Points in the Member States designated by each Member State among central authorities** in charge of international judicial cooperation **and the judicial authorities** or other competent authorities with specific responsibilities **in the field of international judicial cooperation**, to facilitate judicial cooperation in criminal matters between the EU Member States, particularly in actions to combat forms of serious crime, **for the establishment of direct contacts between the judicial authorities (including public prosecutors) in the EU Member States**. There is an electronic Atlas allows the identification of the locally competent authority. It guides practitioners through the form used for the request for Mutual Legal Assistance.

It also contains the 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). The framework decision was 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, 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: Within the EU the setting up JITs between 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)

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.

Examples include: (i) **Operation COBRA III**, the biggest ever coordinated international law enforcement operation targeting the illegal trade in endangered species, was conducted in two phases between mid-March and the end of May 2015, and saw the participation of law enforcement teams and agencies from 62 countries in Europe, Africa, Asia and America. Europol supported the operation across Europe by facilitating operational information exchange and coordinating the activities of police, customs, forestry and other law enforcement authorities from 25 participating EU Member States. The operation was organised by the Association of Southeast Asian Nations Wildlife Enforcement Network (ASEAN-WEN) and the Lusaka Agreement Task Force (LATF), and supported by numerous international agencies and organisations such as Interpol. It led to the recovery of a huge amount of wildlife contraband, including over **12 tonnes of elephant ivory and at least 119 rhino horns**. **European seizures** included 11,439 dead and live specimens, almost 2000 parts and products, and over **6 tonnes of timber, plants and animal parts**. In addition, **100,000 pills of traditional Asian medicine** were confiscated. Within the EU, key activities included the interception and seizure of: 20 kg of live leeches and 25 kg of coral in Bulgaria; 10,000 dead seahorses and over 400 live turtles/tortoises in the UK (and another 300 in Croatia); over 90 kg of coral and more than 50 kg of animal parts (including heads and horns) in Spain; more than 500 kg of frozen eel in Poland; over 800 cacti in a joint German/Chinese operation; 16 whale ribs in the Netherlands; and 50 kg of raw (unworked) ivory in France. Several individuals have been arrested and investigations are continuing in many countries. (Source: Europol.)

(ii) **Operation Paws II** (Protection of Asian Wildlife Species) was undertaken between April and May 2015 across 17 countries in Asia and beyond targeted criminal networks involved in wildlife crime. The operation's investigative outcomes included the publication of INTERPOL Purple Notices on the smuggling methodology and concealment methods of trafficked wildlife animals. During the operation, more than 13 tonnes of pangolin products were seized, representing some 1,000 animals at an estimated street **value exceeding USD 2 million**. In Singapore alone, authorities seized almost 1,800 pieces of elephant ivory, four pieces of rhino horn and 22 pieces of big cat teeth, **worth some USD 5.2 million** in total. After Nepal Police seized tiger skin bones from a village on the India-Nepal border, INTERPOL facilitated communications between investigators in both countries to assist them identify and arrest an alleged tiger poacher. The suspect, Ramjas Banjara, remains in custody in Bardia, Nepal. The operation sought to **enhance communication and intelligence sharing between countries regionally and globally**, including via cyber

investigations, intelligence and DNA analysis, and joint enforcement activities involving police, customs and wildlife agencies. (Source: Interpol)

Secondly, there are **investigations which begin with either an 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 particularly can be very effective in transnational instances. Examples include: (i) A man convicted in June **2013 at Gloucester, UK**, for illegal CITES wild bird trading and associated fraud sentenced to 40 weeks prison sentence, suspended for 18 months, 12 week curfew, fined £4,500 plus £6,500 costs and £6,674.25 compensation. Documentation linked this to a man in Belgium. Earlier in **2009, an investigation in South Wales** had also exposed links to **Belgium**, the intelligence gathered being handled by the UK's National Wildlife Crime Unit (NWCU). A six year investigation there led to the same man and three other persons being convicted in **Ghent in June 2014** for similar offences involving fraud and many illegal bird sales of up to €10,000 each. Sentences were imposed of between 12 months imprisonment suspended and 4 years with 1 year suspended, fines of €130,000, financial confiscations over €800,000 and dozens of birds, and all the prosecution's costs. (ii) A man was convicted in **2010 at Durham, UK** for illegal importation and sale of birds eggs from **USA and Australia**, and sentenced to 9 month sentence imprisonment suspended for 2 years and £3607 costs. Seized documents led to other E U countries and intelligence reports were prepared by NWCU. 6,000 eggs were seized in Sweden and 10,000 in Finland. Three men were convicted in January **2014 in Sweden** of many offences of illegal egg taking and sales, with sentences of 1 year imprisonment, c.£3,800 and c.£1,100 and over £3,000 in costs. In January **2015 in Finland** a man was convicted of offences relating to 5,000 illegally held eggs, and to a sentence of 1 year prison was added an order for an 'environmental compensation' payment of €250,000. (Source: RSPB 'Legal Eagle')

National or Jurisdictional Tools - SANCTIONS

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

Confiscation - All countries allow seizure and retention by their Customs authority of items deemed illegally entering their jurisdiction. While this represents a financial loss, both in terms of what it cost to obtain and bring it to that point, and in terms of any subsequent loss of profit that might have been earned, confiscation or forfeiture represents the minimum sanction. It means one 'trading attempt' failed, 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. It represents only a low 'social condemnation' of the act.

“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.” (©WCO and illegal wildlife trade – an article in the *‘UN Chronicle’* Sept 2014)

Ecological reparation or compensation – Some jurisdictions incorporate into their sanctions regime a fixed amount, varied according to the ‘conservation status’ of the species involved, which may go directly into conservation activity, which reflects, notionally at least, the ‘damage done’ by the offence. 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.

‘Stop’ and ‘Reinstatement Orders’ - Sometimes imposed under what are known as ‘civil sanctions’, these allow a civil order, which may be backed up by a criminal penalty if breached or not complied with, to prevent environmental damage or to compel the rectification of it by returning a habitat to its former condition at the expense of the perpetrator. These are usually imposed as an alternative to a prosecution.

‘Civil Sanctions or ‘Administrative Penalties’ – The idea of these has 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. The basic thesis is that 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. 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 it may be more of a deterrent. Their aim is simply 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 – These are ‘confiscation orders’ made against assets of a convicted person where it is shown that he has ‘benefited’ from the present offence(s) (ie. this specific ‘criminal conduct’) or he has a ‘criminal lifestyle’ (ie. his past offences together with his present offence(s)). The court is required to make assumptions in respect of the source of his assets unless he shows they were legitimately

acquired. The value of the 'benefit' he is deemed to have acquired is made the subject of a payment order backed by a term of imprisonment in default.

Imprisonment, deprivation of liberty, restrictions on liberty and fines – These are the traditional area for criminal or penal sanctions. Over the last decade there has been a marked *upward trend in the maximum fine and prison terms for wildlife offences*, particularly illegal trading, in national legislation and recently 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. *In 2015 a court in northern Myanmar (formerly Burma) sentenced 153 Chinese nationals to life imprisonment for illegal logging, the export of raw logs having been banned to protect forests;*
eg. A gradual increase in sentences imposed in UK wildlife trafficking prosecutions has occurred:

Analysis of sentencing in wildlife trafficking prosecutions in the United Kingdom 1986 – 2015

Source: Traffic UK

Year	Number of <u>Cases</u> prosecuted	Number of <u>sentences</u> of either Imprisonment or Community Penalty	Percentage of Imprisonment and Community Penalty over 5 year periods
1986	2	0	1 out of 16 cases, 6%
1987	4	0	
1988	1	0	
1989	9	1	
1990	4	2	5 out of 20 cases, 25%
1991	6	0	
1992	8	2	
1993	0	0	
1994	2	1	
1995	8	3	7 out of 27 cases, 26%
1996	4	2	
1997	6	1	
1998	4	1	
1999	5	0	
2000	9	2	11 out of 37 cases 29%
2001	11	4	
2002	7	1	
2003	6	2	
2004	4	2	
2005	2	1	9 out of 29 cases, 31%
2006	9	2	
2007	3	0	
2008	6	1	
2009	9	5	
2010	13	9	32 out of 62 cases, 51%
2011	6	3	
2012	12	6	
2013	17	9	
2014	14	5	
2015	7	5	5 out of 7 cases 71%

With the wide range of heavier sanctions and methods of dealing with wildlife offences that legislation is increasingly making available to judges it is becoming **critical to be able to assess the gravity of an incident or offence and to identify ‘serious’ offences in a similar way across jurisdictions** and ensure that these receive the heavier penalties. Where one country’s level of sanctions whether in legislation or in practice is generally lower it is likely to become a magnet for criminality. There needs to be a broad level of similarity of outcomes in terms of sanctions imposed across jurisdictions.

This issue is addressed by the **‘Tunis Action Plan 2013 – 2020’ under the Bern Convention on the Conservation of European Wildlife and Natural Habitats**, (Council of Europe, Biodiversity Unit,

Recommendation 164, 33rd Standing Committee 2013 -

[https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2013\)164&Language=lanEnglish&Ver=original&Site=&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2013)164&Language=lanEnglish&Ver=original&Site=&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864) and

Recommendation 177, 35th Standing Committee 2015 -

<https://wcd.coe.int/ViewDoc.jsp?id=2395245&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>). Its ‘Enforcement and Legal Aspects’ section (see Rec 164) includes an

internationally applicable enforcement model to be adopted by each jurisdiction. Inspired by the problems of international bird crime, it applies to all wildlife crime and fits trafficking well. It includes a list of **‘Gravity Factors’** to be used in evaluating these offences, a ‘short definition’ being used in 2013, which was expanded in 2015 in Rec 177 (see list below). Rec 177 also includes some **‘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’**, which are an attempt to provide a harmonised approach to the use of sanctions across the range of jurisdictions represented by the Parties to the Convention, which include the EU and all its Member States.

Bern Convention 35th Standing Committee (2015) Recommendation 177, Appendix I (abstracted)

List of Gravity factors to be used to evaluate offences

Gravity Factors	Comments, any link to criteria for national priorities and any proposed expanded definition of TAP gravity factors
1. Conservation status of species	<p>‘Conservation status of species’ includes: consideration of any IUCN, Bern Convention, EU Nature Directives or other international listing or standards which evaluates conservation concern; whether the crime targets or impacts adversely local, national or international conservation measures or places of conservation activity.</p> <p>Listed as a criterion for national priorities, and cf. to ‘nature conservation hotspots’ criterion.</p>

2. Impact risk for ecosystem	<p>‘Impact risk for ecosystem’ includes an assessment of:</p> <ul style="list-style-type: none"> (i) the actual or potential damage to habitat; if reparable, the cost of actual damage or loss eg. of restoration, restocking, or whether damage was irreparable; (ii) the actual or potential impact on local, national or regional population(s) of the species affected by the offence(s); (iii) the potential or actual damage the type of offence, the way it was committed, has previously caused or could have caused. <p>Listed as a criterion for national priorities.</p>
3. Legal obligation to protect under international legislation	<p>Recognition should be given to ‘international solidarity’ in that the Convention objectives are sufficiently important to require binding commitments from national governments to achieve them and require mutually consistent enforcement across all Parties to be achieved.</p>
4. Indiscriminate method used in committing offence	<p>Consideration may be given to the actual damage to habitat or loss to populations or species the method has caused and any potential or actual damage or loss that method has previously caused.</p>
5. Commercial motivation	<p>‘Commercial motivation’ includes: any planned activity aiming for financial benefit whether of the offender or another person, as well as organised (especially serious) crime, particularly if trans-national.</p>
6. Illegal gain/quantum	<p>‘Illegal gain/quantum’: includes actual gain as well as potential gain had the offence been fully completed.</p> <p>‘Prevalence of offence and need for deterrence’ includes: whether the habitat or species is frequently targeted generally, or where the offence is prevalent in an area (‘black spot’). These suggest a particular need for stronger deterrence by way of heavier sanction.</p>
7. Prevalence of offence and need for deterrence	<p>‘Prevalence of offence and the need for deterrence’ includes: whether the habitat or species is frequently targeted generally, or where the offence is prevalent in an area (‘black spot’). These suggest a particular need for stronger deterrence by way of heavier sanction.</p> <p>Cf. list of criteria for national priorities.</p>
8. Professional duty on defendant to avoid committing offence	<p>Cf. list of criteria for national priorities.</p> <p>Professional duty on defendant to avoid committing offence’ includes: persons (whether natural or legal) in the course of trade or business committing offence(s) to assist the business (eg. pet shop owner, property developer), those employed to carry out tasks for another’s benefit who choose to do so in an illegal way against wildlife (eg. gamekeeper), as well as those granted licences, or exercising rights, to carry out activities in connection with wildlife which would otherwise be illegal (eg. licensed or other legal hunter) who commit offence(s) against wildlife.</p>
9. Scale of offending (number of specimens involved)	<p>Numbers can be assessed either in absolute terms, or relative to the species involved, ie. a small</p>

number of one species may have a greater impact on it (locally, nationally or internationally) than a greater number of a more numerous species, or if relevant, both can be used.

10. Intent and recklessness by defendant

This includes the culpability of the accused person, including the level of involvement in committing the offence and whether he/she was the ultimate 'beneficiary' of it

11. History/recidivism

Consideration should always be given to whether the offender has committed wildlife offences previously and to the level of sanctions previously imposed. 'Repeat offenders' should usually receive heavier sanctions.

Acknowledgements: The sources for the above are publically available and include the websites of the institutions and authorities mentioned, for the use of which permission was requested, specific acknowledgement being given where this has been requested by the organisation or authority.

Nicholas Crampton
Barrister (retired) & formerly CPS Crown Prosecutor, UK
npdc@btinternet.com
March 2016.
