

**Meeting of the Malta Ornis Committee
(Video conference)**

**Wednesday, 26th August 2020,
1630 – 1945**

Minutes

Participants:

Dr Joseph Grech – Chairman
Mr Richard Lia – Secretary
Mr Nicholas Barbara – BirdLife (Malta)
Mr Marco Falzon – Member nominated by Government
Mr Lino Farrugia – FKNK
Mr Mark Gauci – Avifauna expert
Mr Horace Micallef – Member nominated by Government
Mr Joe Perici Calascione – FKNK
Mr Darrin Stevens – Representative of the Environment and Resources Authority
Mr Mark Sultana – BirdLife (Malta)
Mr Joseph Tabone – Member nominated by Government
Mr Frank Vassallo – Hunting and live-capturing expert

1. Approval of the agenda.

- 1.1 The Secretary welcomed the Committee members to the video conference and requested to proceed with approval of the previously-circulated agenda, specifying that item 5 is subject to a vote.
- 1.2 The agenda was approved.

2. Matters arising and matters to report.

- 2.1 The Secretary provided an update on satellite-tagging of Golden Plovers and Song Thrushes as a follow-up to Item 7 of the previous meeting held on 29 July. The Secretary informed members that, subject to approval from the Ministry of Finance, the Wild Birds Regulation Unit will procure thirty (30) satellite-tags for Golden Plovers and thirty (30) satellite-tags for Song Thrushes, including associated PinPoint Reader/Programme/Charger. The Secretary also informed the Committee that all costs related to monthly satellite-tag data charges will be borne by WBRU. Following MFIN approval, a sub-Committee meeting will be held to establish way forward.

3. Approval of the minutes of the meeting held on 29/07/2020.

- 3.1 The minutes of the previous meeting were approved, as amended by FKNK and ERA.

4. Conservation of Wild Birds (Falconry) (Amendment) Regulations, 2020: Outcome of public consultation and Ornis sub-Committee meeting held on 17 August 2020.

- 4.1 The Secretary updated the Committee on the proposed amendment to [SL 549.106](#) as a follow-up to Item 9 of the previous meeting held on 29 July. As agreed during the previous meeting,

discussions were held with ERA representatives, FKNK and WBRU on 17 August and it was agreed that the legal clarity being sought will be processed by ERA as an amendment to the Majjistrat Park Site Regulations [SL 549.83](#). The Secretary informed the Committee that no comments in relation to the proposed amendment to SL 549.106 were submitted during the four-week public consultation period and confirmed that, since the proposed amendments will be processed via SL 549.83, the proposed amendment to SL 549.106 will not be processed any further. The Secretary invited Darrin Stevens to update the Committee with the proposed way forward.

- 4.2 Darrin Stevens stated that, as agreed during the meeting held between ERA, FKNK and WBRU, the proposed amendment to the Falconry regulations will be processed as an amendment to the Majjistrat Park Site Regulations (SL 549.83) to ensure there is legal clarity on falconry and to address any issues related to cross-referencing between SL 549.83 and the Conservation of Wild Birds Regulations ([SL 549.42](#)). Darrin Stevens explained that a definition on ‘hunt’, ‘take’ and ‘falconry’ will be included in the amendments, as well as a provision on how falconry can operate within Majjistrat Park. The proposed amendments will be forwarded by Darrin Stevens to the Committee members during the first week of September so that comments are submitted within one week, followed by a four-week public consultation period in line with Article 55 of the Environment Protection Act. Darrin Stevens also pointed out that discussions with the Majjistrat Board will also be held so that they can have the same opportunity to submit their comments.
- 4.3 Mark Sultana asked whether the Committee is expected to take a vote on the proposed amendments to the Majjistrat Park Site Regulations, particularly in relation to specific details of the proposed amendments. The Secretary stated that during the previous meeting, the Committee voted in favour of falconry within Majjistrat Park, as an in-principle vote, suggesting that the Committee should proceed with a final vote to conclude. Chairman agreed.
- 4.4 Replying to Mark Sultana’s suggestion whether a final vote should be taken, Joe Perici Calascione replied that each member of the Committee has every right to ask for a vote. Regarding timelines, Joe Perici Calascione requested that the deadline for comments by the Committee members should not be more than one week. Lino Farrugia requested a confirmation whether the amendments to Majjistrat Park regulations will reflect those that were originally proposed in the amendments to the Falconry regulations. In particular, whether the amendments will specify that falconry will be permitted within Majjistrat Park after 2pm. Lino Farrugia pointed out that although he is not objecting to a final vote, the Committee, during the previous meeting, already voted in favour of permitting falconry during those hours when hunting with a shotgun is not permitted.
- 4.5 Darrin Stevens clarified that the total period for consultation will be five weeks, namely one week for the Committee followed by a four-week consultation period, adding that, should the Committee agree, the proposed amendments are put on the next available agenda during the same five-week consultation period. Replying to Lino Farrugia, Darrin Stevens stated that the agreement is that the hunting periods established in the Falconry regulations will also apply to the Majjistrat Park Site Regulations.
- 4.6 Joe Perici Calascione stated that a public consultation exercise on this amendment has already been carried out, but Darrin Stevens replied that the public consultation was on the Falconry regulations and not on the proposed amendments to Majjistrat Park regulations. Darrin Stevens also pointed out that, in the interim, discussions are also underway to set up a procedure on falconry within Majjistrat Park, either through permitting procedure from WBRU or ERA. Darrin Stevens further pointed out that, in other cases, ERA issued falconry permits under the provisions of [SL 549.44](#). Darrin Stevens remarked that whatever interim mechanism is adopted, ERA has to remain in line with all applicable legal parameters. Lino Farrugia stated that the legal amendments were requested to avoid conflicting activities between hunters using a

shotgun and hunters practicing falconry, expressing concern that such conflict can resurface if the Majjistral Park regulations do not explicitly state the hours during which falconry will be permitted. The Secretary stated that the Committee will be in a better position to assess the proposed amendments once these have been submitted by ERA.

- 4.7 Nicholas Barbara asked how many individuals are in possession of a falconry licence and whether ERA is required to issue a permit. The Secretary replied that the number of licensed falconers is in the region of 30, adding that WBRU issues special licences whenever falconry for the purpose of pursuit of quarry is proposed within an area prohibited by virtue of SL 549.106 or during the closed season. The Secretary added that ERA issues nature permits whenever falconry is proposed in areas protected by the Environment Protection Act. Nicholas Barbara asked FKNK representatives to provide information on the target species sought during falconry and whether specimens caught are reported through the game reporting system. Joe Perici Calascione replied that the Malta Falconers Club would be in a better position to answer such questions. Nicholas Barbara pointed out that the Club is represented by FKNK to which Joe Perici Calascione replied that the Malta Falconers Club is affiliated with FKNK, which makes a difference, adding that hunting by means of Falconry is a totally different activity than hunting by means of a shotgun. Joe Perici Calascione added that it would be opportune for the Committee to invite the President of the Malta Falconers Club to answer questions related to falconry. Nicholas Barbara remarked that considering that even ERA issues permits related to falconry, some form of data on what is being hunted by means of falconry in terms of species and quantity surely has been collated, adding that it has to be ascertained that such activity is not detrimental to non-target species.
- 4.8 The Secretary confirmed that all special licences issued by WBRU include a number of conditions related to game reporting obligations, adding that, to date, WBRU only issued two special licences for hunting by means of falconry. One of these special licences authorised falconry for the purpose of pursuit of wild rabbit on Comino, which was not utilised, and the other related to captive-bred quail, thus the amount hunted was not included as part of the game reporting system pertaining to hunting of wild (Schedule II) birds. Nonetheless, the special licences requested submission of the amount of specimens released and the amount caught. The Secretary specified that since falconry is considered another form of hunting, any wild Schedule II specimens caught by means of falconry should be reported at par with the reporting obligations for hunting with a shotgun. The Secretary suggested that proposed falconry activities within Bird Sanctuaries should be referred to the Committee.
- 4.9 Nicholas Barbara expressed concern on allowing falconry within Bird Sanctuaries, adding that notwithstanding that the numbers that may potentially be taken is low, the activity itself particularly during certain periods, surely leads to adverse impacts. The Secretary explained that the falconry activity proposed on Comino was for wild rabbit using falconry species trained to hunt rabbits. Nicholas Barbara pointed out that if the activity is carried out during the breeding season, there is a likelihood that it will adversely affect ground-nesting species such as the Short-eared Owl. Darrin Stevens clarified that the falconry activity that was vetted and approved by ERA on Comino did not coincide with the breeding period of the Short-eared Owl and confirmed that discussions are generally on birds that are pursued during a limited time. Darrin Stevens stated that the nature permits issued under SL 549.44 specify a number of conditions, including a requirement to report the number of specimens hunted and that detailed statistics will be provided during the next Ornis Committee meeting.
- 4.10 Mark Sultana remarked that even if a bird of prey is trained to catch only rabbits, it does not infer that the activity will not lead to disturbance to birds. Darrin Stevens replied that the presence of birds of prey is a natural occurrence and should not be considered as an artificial presence, adding that the laws on falconry ensure the activities are regularised in a strict manner. Mark Sultana replied that irrespective of the quantity of falcons used during falconry activities, there are periods during which there are no birds of prey as they occur naturally during a specific

period rather than throughout the year. Mark Sultana pointed out that there are less Bird Sanctuaries than there are falconers. Darrin Stevens replied that the falconry period is established in the law and that the general prohibition does not mean that falconers cannot do anything, adding that the law specifies that, without prejudice to the legal requirements of SL 549.44, falconry during an open season is not subject to a WBRU permit. Joe Perici Calascione remarked that whilst the presence of birds of prey in Malta is a natural phenomenon, the presence of falcons during falconry activities is insignificant and hence the Committee should focus on more salient issues. Mark Sultana replied that there are falconry species such as the Harris Hawk that do not naturally occur in Malta, adding that Bird Sanctuaries should continue to be protected.

4.11 The Secretary informed members that, as already agreed, the proposed amendments to the Majjistral Park Site Regulations will be submitted by ERA for the Committee's review.

5. Recommendations on the proposed enactment of Article 9(1)(b) framework regulations and application of Article 9(1)(b) derogations starting autumn 2020 to improve the knowledge base on the reference population of the seven finch species. *Draft framework regulations and draft notice of derogation circulated in advance. A summary of the legal advice read out ad verbatim during the meeting. Item subject to a vote.*

5.1 The Secretary referred to the previously-circulated draft framework regulations and draft notice of derogation, stating that a four-page summary of the legal advice on the proposed finches research project was submitted on 3 August. The Secretary informed the Committee that the legal advice sought spanned a period of two years following the 2018 judgment of the Court of Justice of the European Union in Case C-557/15, and that the legal advisors gave their consent to the Secretary to read the summary *ad verbatim* during this meeting, and for the summary to be minuted and subsequently published on the website of the Wild Birds Regulation Unit under the "Ornis Committee" sub-web, as follows:

The Court of Justice, in its C-557/15 judgment, held that "by adopting a derogation regime allowing the live capturing of seven species of wild finches (Chaffinch Fringilla coelebs, Linnet Carduelis cannabina, Goldfinch Carduelis carduelis, Greenfinch Carduelis chloris, Hawfinch Coccothraustes coccothraustes, Serin Serinus serinus and Siskin Carduelis spinus), the Republic of Malta has failed to fulfil its obligations under Article 5(a) and (e) and Article 8(1) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, read in conjunction with Article 9(1) of that directive" (Emphasis Added).

The C-557/15 judgment does not preclude Malta under absolute terms from putting in place a live-capturing season and (subsequent) keeping with regard to the seven finch species. However, it is clear from the C-557/15 judgment that some changes to the previous derogation-scheme are necessary to enable such live-capturing season to comply with the Birds Directive. These changes were deemed in particular necessary as regards to the "small numbers"-requirement. The Court criticized in its C-557/15 judgment that no sufficient data were provided that would enable a proper assessment of the "small numbers"-requirement with regard to the seven finch species.

*The current proposal entails a regulatory framework that allows **research** on the seven finch species by licensed bird ringers **as well as** by licensed trappers using clap-nets and live-decoys. Note however that the trappers' involvement will be limited solely to the "control" of the seven finch species. For the purpose of the derogation regime, the term "control" means the determination which of the captured specimens are fitted with a ring and to take note of the ring details, date of capture etc. This implies that no rings will have to be supplied to licensed bird*

trappers.^[1] The envisaged scheme also allows the licensed bird ringers and trappers authorized thereto to affix “satellite-tags” or “geo-locators” on the seven finch species, even though the suppliers of satellite-tags have confirmed that they do not currently supply the required tags that are small enough for small passerines.

The Framework Regulations and Notice of Derogation (hereafter: “the proposed Derogatory Framework”) should help in acquiring the necessary scientific information as regards to the reference population that needs to be taken into account when applying the 1%-rule (small numbers). Given the scope of the proposed Derogatory Framework no reference is made to the “keeping”-element.

The scope of the new regulations

Analysis

It is clear that a derogation is sought under Article 9(1)(b) of the Birds Directive, in particular read in conjunction with Article 10 of the Birds Directive, which imposes an obligation on the Member States to encourage research and any work required as a basis for the protection, management and use of the population of all species of birds. This includes research and work on the listing and ecological description of areas particularly important to migratory species on their migratory routes and as wintering and nesting grounds, the listing of data on the population levels of migratory species as shown by ringing and assessing the influence of methods of taking wild birds on population levels (see Annex V of the Birds Directive).

Consequently, the requirements of Article 9(1)(c) of the Birds Directive (“judicious use”, “selectivity”, “small number”, “supervision”) do not apply to the proposed Derogatory Framework. The requirement that there is “no other satisfactory solution” remains however relevant for the envisaged research derogation. Secondly, the derogation must comply with the precise formal conditions set out in Article 9(2) of the Birds Directive, which are intended to limit derogations to what is strictly necessary and to enable the Commission to supervise them. Also an Article 9(1)(b) derogation must therefore be subject to a proportionality test. The European Court of Justice considers that “[a]lthough Article 9 [...] authorizes wide derogations from the general system of protection, it must be applied appropriately in order to deal with precise requirements and specific situations”.^[2]

Although this proportionality test is not to be equated with the conditions under Article 9 (1)(c) of the Birds Directive, which have been subject to the proceedings before the Court of Justice against Malta, there is a certain analogy between both requirements. For instance, it remains essential to determine the means for capture, the period within which the derogation will apply etc.

Are the conditions for an Article 9(1)(b) Derogation fulfilled?

Absence of another satisfactory solution

As stressed by the European Court of Justice in its judgement *European Commission v. Ireland*, C-418/04 of 13 December 2007, Member States must transpose Article 10 of the Birds Directive in their national legal order. In accordance with this obligation Malta decided to launch a research programme that deals with (some of) the activities specified in Annex V of the Birds Directive.

The fact that the aim of the research is to provide for sufficient scientific information for allowing the trapping of finches under Article 9(1)(c) of the Birds Directive does not render the recourse to Article 9(1)(b) of the said Directive, flawed. Annex V(d) of the said Directive

^[1] The main reason why ringing by licensed trappers will be excluded from the envisaged Derogatory Framework is that currently Maltese law (Regulation 23 of S.L. 549.42) only allows licensed bird ringers to fit scientific rings. The use of rings that are not recognized by EURING is not recommended. Since they are not accepted by EURING, they will not be accepted for use by EURING members. EURING (European Union for Bird Ringing) is the organisation that co-ordinates bird ringing throughout Europe. This would likely undermine the scientific ambition of the proposed Derogatory Framework.

^[2] ECJ 7 March 1996, nr. C-118/94, *Associazione Italiana per il World Wildlife Fund*, § 21.

explicitly refers to research on the influence of methods of taking wild birds on population levels.

Proportionality test

It is recalled that also a derogation under Article 9(1)(b) is only allowed to the extent it is strictly necessary to pursue the identified objective. This principle of proportionality applies both to the duration of the derogation, as well as to the means allowed under the derogation, the amount of captured birds and the type of birds that are subject to the derogation. In other words, the derogation should only be granted as long as it is required to attain its objective. That should be no problem in the case at hand given that the objective is to obtain conclusive information on the regions of origin of the main bird contingents of finches migrating through Malta. As soon as this conclusive evidence is obtained, the research project should stop.

Limitation on the numbers of birds to be caught, ringed, controlled or tagged

The proposed Derogatory Framework rightly does not provide limitation on the numbers of birds to be caught, ringed, controlled or tagged, given that the derogation regime solely has a research purpose. The proposed Derogatory Framework does not allow the keeping of any specimen of the seven finch species longer than is strictly necessary to fit the specimen with a ring (by bird ringers, not by trappers) or to gather ring details within the context of a recapture (by bird ringers and trappers) or affixing satellite-tags or geo-locators (by bird ringers and trappers). There is no need to provide for such limitation.

This being said, we believe it is useful to ascertain how many rings need to be issued in order for Malta to acquire sufficient scientific data as regards the regions of origin of the main bird contingents frequenting the region to which the derogation at issue applies (the reference population) and, subsequently, as regards the reference population that needs to be taken into account when applying the 1%-rule. We would then only issue the amount of rings that is – based on this analysis – strictly necessary for the intended purpose. The foregoing presumes that EURING is willing to participate in the envisaged scheme and that EURING will supply the rings (it will not be the trappers, but the bird ringers that will ring finches).

Given that – when it comes to the trappers – the envisaged scheme will be limited to controlling birds rather than ringing and controlling the birds, there is no reason to impose any limitation of numbers of birds to be controlled. In light of the pursued objective, the more birds are being controlled, the better even. The logic from Article 9(1)(b) of the Birds Directive is totally different from the logic of Article 9(1)(c).

Selectivity

Although no reference is made to the selectivity-requirement in Article 9(1)(b) of the Birds Directive, any capture of specimens must serve the pursued objective: if the objective of the derogation is research on specific finch species, the capturing methods must be finch-selective. The selectivity-requirement therefore plays a central role in the application of the Article 9(1)(b)-derogation, too.

The proposed Derogatory Framework addresses some important issues raised by the Court, the Advocate-General and the Commission in the past. The allowed use of clap-nets as a selective method is not unreasonable, quite on the contrary: if the reasoning of the Advocate-General and the Commission is to be followed, then the possibility to derogate from Article 8 of the Birds Directive would become merely theoretical.

Strict supervision

Although no reference is made to the strict supervision-requirement in article 9 (1)(b) of the Birds Directive, a strict enforcement framework is a prerequisite for an effective implementation of any derogatory regime. The supervision-requirement therefore is relevant in light of the proportionality test, too.

The proposed Derogatory Framework addresses some of the concerns uttered by the Court in its C-557/15 judgment. For instance, during the procedure before the Court it was argued that several infractions were committed in protected areas (Natura 2000 sites) and that police control was lacking in these areas. The proposed Derogatory Framework provides for daily police spot-

checks throughout all the season, in all the regions. Also, no research stations or clap-nets are allowed in protected areas.

The proposed Derogatory Framework sets a higher minimum enforcement deployment than that agreed between the European Commission and the Maltese authorities for the Golden Plover and Song Thrush Framework Regulations, that is, from “in the region of forty (40)” to “in the region of fifty (50)”. We see this as a very positive step in ensuring that the research derogation is properly implemented in line with the spirit of the Birds Directive.

In addition, the new regulations set a clear obligation to report ringing details, including the automatic rendering of licensee who failed to submit the ring recovery forms within a pre-set deadline as ineligible to obtain another special licence the following research period, if such period is declared.

In conclusion, one can state that the enforcement regime is now more robust than it was under the previous finch live-capturing regulations (2014–2017).

- 5.2 Nicholas Barbara requested clarification whether AG’s advice is based on the draft Framework Regulations that were previously-circulated to the Committee members. The Secretary replied that the legal advice was an iterative process over a period of two years and that the draft framework regulations are the result of such process, including direct input by a team of lawyers in the text of the framework regulations and notice of derogation.
- 5.3 Nicholas Barbara asked whether the Committee can thus consider the legal notices as drafted in consultation with AG’s Office. The Secretary clarified that the legal advice was provided by a Belgian law firm with expertise in the case-law of the Court of Justice of the European Union, and had also assisted Malta during previous Court cases. The Secretary confirmed that the law firm vetted and amended the draft framework regulations and notice of derogation, followed by the submission of a consolidated legal advice in the form of a memorandum together with a summary of such advice. Nicholas Barbara requested a clarification as to whether the summary of the legal advice was submitted by AG’s Office on the basis of the advice provided by the Belgian law firm. The Secretary replied that the summary of the legal advice was submitted by the Belgian law firm.
- 5.4 Lino Farrugia stated that on the basis of the draft framework regulations that were circulated to the Committee members and the correspondence received by trappers on 24 August, it became very clear that a decision not to apply a traditional finch trapping derogation was already taken. Lino Farrugia added that under the circumstances, FKNK subsequently withdrew its proposals for a finch trapping derogation under Article 9(1)(c) of the Birds Directive. Lino Farrugia added that FKNK has nothing against research and is willing to contribute and participate in any scientific study or research such as the one proposed by the Government so that its outcome may lead to the reinstatement of traditional finch trapping that includes a keeping component. Lino Farrugia added that nonetheless, there are a number of considerations relating to the draft framework regulations that should be brought to the attention of the Committee.
- 5.5 Mark Sultana suggested that the Committee should first discuss the legal advice before focusing on the details of the proposed regulations. Lino Farrugia replied that he has no issues with discussing the legal advice, adding that the advice has just been provided and that the Committee received the proposed regulations for discussion by the members. Mark Sultana requested a copy of the legal advice by email. The Secretary stated that whilst he has no objection with circulating the summary of the legal advice, the same procedure when the advice of AG’s Office is relayed to the Committee was adopted. In previous occasions, AG’s Office had only given consent for the Secretary to read out the contents of the advice rather than circulating it to the members. Nonetheless, the Secretary informed the Committee that during the meeting, the law firm will be requested to provide their consent for the Secretary to forward their summary of the legal advice to the members. Mark Sultana asked whether the legal advice

would subsequently be made public. The Secretary confirmed, noting that the minutes are published on WBRU's website after the Committee approves them. Darrin Stevens requested clarification on the legal advice, but informed the Secretary that clarifications will be sought once the advice is circulated to the members.

- 5.6 With reference to draft framework regulations, Lino Farrugia asked whether licensed bird-ringers will be allowed to use clap-nets instead of mist-nets and requested clarification on the use of clap-nets in case a live-capturer applies for both the Golden Plover/Song Thrush live-capturing special licence and the special licence for research on finches. The Secretary replied that the framework regulations allow licensed bird-ringers to apply for a special licence, including submission of a site plan showing a registered clap-net pair from one hide, to control and ring finches caught by the live-capturer by means of clap-nets and live-decoys. The Secretary further explained that the proposed framework regulations do not in any way prohibit licensed bird-ringers from carrying out ringing (on finches and any other bird species) by means of mist-nets neither during the finches research period nor at any point throughout the year.
- 5.7 Regarding the use of clap-nets, the Secretary stated that at application stage, licensed live-capturers have the option of submitting two separate application forms, one for the Golden Plover and Song Thrush live-capturing special licence under the terms of [SL 549.74](#), and the other form for the finches research special licence, under the terms of the proposed framework regulations. In both instances, the applicant is required to submit a site plan with each application form showing the location of the registered clap-net pair(s) outlined in red. For the Golden Plover and Song Thrush special licence, the maximum limit is two registered clap-net pairs from one hide and for finches special licence only one registered clap-net pair from one hide. The Secretary further explained that as specified in the proposed new framework regulations, if an individual applies for both special licences, he can either:
- submit two copies of the same site plan, one for live-capturing of Golden Plovers/Song Thrushes and the other copy for finches research, but for the finches special licence he has to outline the boundary of only one of the two clap-net pairs and the latter can be used for the capture of all species allowed under the terms of both special licences; or
 - submit two site plans, one for each application, showing a maximum of two clap-net pairs from one hide for live-capturing of Golden Plovers/Song Thrushes and a separate clap-net pair for the finches research project.
- 5.8 The Secretary pointed out that in both cases listed above, only the submission of site plans showing the boundary of clap-net pairs that are already registered will be allowed. The Secretary further stated that no new clap-net pairs will be registered, and that, as was always the case in previous years, the Wild Birds Regulation Unit will carry out post-application vetting of all site plans to ensure that all conform to SL 549.42.
- 5.9 Lino Farrugia requested a clarification on the prohibition of creating 'pockets' within the context of the proposed framework regulations, whether these refer to the Maltese term '*ħoġor*' or those used in mist-nets. The Secretary replied that the term refers to pockets that are used in mist-nets. Lino Farrugia also pointed out that the proposed framework regulations are referring to mechanical means, claiming that the entire clap-net system may be considered as mechanical. The Secretary explained that the regulation in question was taken directly from SL 549.74 and that there were never any issues on such prohibition. The Secretary remarked that if the concern relates to the use of springs, the special licences include a condition that requires licensees to remove the clap-net set-up, including springs, following closure of the season—the existing and proposed regulations do not prohibit the use of springs. Lino Farrugia took note but stated that this issue should nonetheless be kept in mind.

- 5.10 Regarding the requirement to cover or remove the nets before the licensee leaves the site, Lino Farrugia pointed out that the former laws had specified that nets should be deactivated rather than covered or removed. The Secretary replied that this obligation is related to the selectivity requirement and that SL 549.74 was amended in 2018 ([LN 333/2018](#)) specifying that *before the licensee leaves the live-capturing site and during prohibited hours, the nets shall either be removed or the clap-net pair(s) deactivated and the nets completely covered*¹. The Secretary further explained that neither mist-nets nor clap-nets must be left unattended to ensure that no fauna becomes entangled. Whilst a net with a mesh-size of 35mm x 35mm or 45mm x 45mm renders entanglement of fauna very unlikely due to their large mesh-size, it is particularly crucial to ensure that small-mesh nets such as mist-nets and nets with a mesh-size of 18mm x 18mm are covered or removed when unattended to ensure that the activity is completely selective. The Secretary pointed out that all nets are included in the general prohibitions of the Birds Directive (Annex IV) and hence the need to apply derogations when an activity related to avifauna includes the use of nets.
- 5.11 Regarding the legal clause on unattended bird-callers, Lino Farrugia explained that despite discussions during previous Ornis Committee meetings and submission of a correspondence by FKNK's legal representative on this matter, the law remained unchanged, adding that anyone can place a bird-caller in someone else's live-capturing site as an act of vengeance. The Secretary asked Lino Farrugia whether he is proposing this clause to be removed, adding that the main problem with unattended bird-callers is that these are usually set on a timer to play automatically during prohibited hours albeit this practice is not known to occur when finches are the target species. Lino Farrugia expressed concern on the legal requirement to publish the coordinates of clap-nets submitted during the derogation period. The Secretary explained that publication of site coordinates does not include personally-identifiable information, but Lino Farrugia replied that the area pertaining to the individual can be deduced from such coordinates.
- 5.12 Regarding the use of live-decoys, Lino Farrugia explained that the proposed framework regulations has rendered many individuals unable to take part in the research due to the limited availability of finches fitted with an R16U ring, as well as limited availability of mules, hybrids and colour mutations. Lino Farrugia stated that since the objective of the proposed framework regulations is specifically for research as opposed to traditional live-capturing, FKNK are proposing the use of pre-recorded bird callers for finches in addition to live-decoys. Lino Farrugia also proposed that in addition to ring recoveries, licence holders should also write down all specimens caught before released to determine which percentage of these are fitted with a scientific ring. The Secretary explained that the purpose of the research is to determine Malta's reference population of the seven finch species by allowing licensed trappers to control finches, that is, to determine which specimens are fitted with a scientific ring, prior to their release, as well as the fitting of scientific rings by licensed bird-ringers through the use of registered clap-nets. Lino Farrugia also expressed FKNK's concern with regards the exam that the potential researchers will have to do in order to be granted the respective special licence, adding that in FKNK's opinion the 'course' these same applicants will also have to attend for should have been enough.
- 5.13 Lino Farrugia asked why the net size for finches has been reduced from 38m² per net to 20m² per net considering that the framework regulations are for research purposes. The Secretary replied that the proposed reduction in net size was a WBRU proposal and subject to Ornis recommendation. The Secretary concurred with Lino Farrugia's observation regarding live-decoys, stating that, as soon as eligible applicants received the notification letter from WBRU, many called personally at the office complaining that the authorities failed to take into account the fact that current stock is almost depleted and that some colour mutations, mules or hybrids are impossible to acquire. The Secretary explained that it is not biologically possible for a

¹ Refer to point 5 in para. 6.8 of Ornis Committee minutes of meeting held on 25 July 2018, available at: <https://mgoz.gov.mt/en/Documents/WBRU/Ornis%20Committice/Minutes%202018/ornisMinutes25Jul18.pdf>

hawfinch or a chaffinch to cross-breed with a domestic canary to produce mules, nor is it possible for a hawfinch to cross-breed with any other species to produce hybrids.

- 5.14 Joe Perici Calascione added that this is not a traditional live-capturing derogation but a research project and hence prohibitions that apply to an Article 9(1)(c) derogation do not apply, including the use of pre-recorded bird-callers to make up for the significant shortfall in live-decoys. FKNK does not exclude to participate in a scientific exercise at the same time to help in certain aspects of population structure of migrating finches, based on the outcome of this meeting. Joe Perici Calascione added that FKNK was unaware that WBRU issued the notification letter to eligible applicants and requested that in future FKNK is pre-advised to ensure they can properly reply to queries from their members. Joe Perici Calascione added that whilst he does not necessarily agree with not setting a capping on the amount of live-decoys that can be used, given that licensees cannot use captive-bred finches fitted with a closed ring for use as live-decoys, in reality there is also no alternative to the use of pre-recorded bird-calls, notwithstanding that its use is contrary to his principles. Regarding the proposed course and the exam, Joe Perici Calascione stated that participants have to be informed that this project is strictly for research purposes and not traditional trapping.
- 5.15 Mark Sultana asked whether, in the event that the Committee proposes amendments to the current draft regulations, whether such amendments need to be re-issued for public consultation. Mark Sultana added that the public would have submitted comments on the basis of the current draft and not on subsequent amendments, citing the case of bird-callers as an example. The Secretary replied that amendments to draft regulations already issued for public consultation are made available to the public through the Ministry's online portal. Darrin Stevens added that in the case of subsidiary legislation, in fulfilment of the requirements established in Article 55 of the Environment Protection Act, the procedure entails publication of the consultation table that includes details of the person or entity submitting the comment, the comment reproduced *ad verbatim*, date of submission and whether the comment was taken into consideration and if not, the reason why. Darrin Stevens recommended that the same procedure is adopted in this case since it refers to the same Act. Regarding subsidiary plans, Darrin Stevens pointed out that the procedure is different since in the event of substantial changes they have to be re-issued for public consultation. The Secretary confirmed that the statutory procedure related to public consultation will be followed.
- 5.16 Mark Sultana asked whether WBRU's letter sent on 24 August was sent to all eligible live-capturers in possession of a valid general licence and whether individuals not in possession of a general live-capturing licence will be considered eligible. Regarding research stations, Mark Sultana asked whether only those registered in 2014 will be eligible or whether new ones will be registered. The Secretary replied that no new live-capturing general licences will be issued and thus the letter was sent to current general licence holders. Regarding research stations, the Secretary also confirmed that there will be no new registrations and thus only those sites registered in conformity with the definition of protected area in SL 549.42 will be accepted. The Secretary further pointed out that, as was the case in previous years, all site plans will be vetted at post-application stage to ensure conformity with SL 549.42, adding that this procedure is necessary to weed out re-submission of revoked site plans. The Secretary also informed the Committee that, as per agreement with the European Commission in relation to the Golden Plover and Song Thrush live-capturing derogations, the coordinates of all research stations forming part of the 2020 project on finches will be published on WBRU's website by not later than three days before the start of the research period.
- 5.17 Mark Sultana remarked that since no new research stations will be allowed, it is presumed that bird-ringers can only participate in the project if they manage to find live-capturers willing to allow ringing from their research station. Mark Sultana pointed out that he was not aware that bird-ringers are allowed to take part in this research. Mark Sultana further suggested that, pending Committee's recommendation, WBRU should set a meeting with the head of the

national ringing scheme to discuss logistics and procedures. Mark Sultana also asked whether the legal advice had specified any capping on the number of licensed live-capturers. The Secretary replied that the legal advice specifies that, for the purpose of this research derogation, the more specimens that are controlled by way of concerted effort at national level the better, which explains why no capping on the number of licensees was proposed. The Secretary added that the legal advice also recommends participation by the national ringing scheme in order to increase the number of specimens fitted with a scientific ring that can be subsequently controlled abroad.

- 5.18 Lino Farrugia remarked that he too was unaware that bird-ringers can visit trapping sites to ring finches. The Secretary clarified that, as specified in the proposed framework regulations, the research project will be open to both licensed live-capturers and licensed bird-ringers and that, through collaboration, a bird-ringer can fit rings on finches caught by the live-capturer prior to their release.
- 5.19 Lino Farrugia requested clarification whether ringing of birds caught by means of a clap-net pair will be carried out with the consent of the live-capturer. The Secretary confirmed, pointing out that the proposed framework regulations provide the necessary legal means for a bird-ringer and a live-capturer to collaborate in a joint control and ringing effort concurrently from the same clap-net pair. Mark Sultana also requested clarification on this issue, specifically whether a bird-ringer will be required to obtain a copy of the site plan from the live-capturer who is willing to participate jointly in this research. The Secretary confirmed and explained that a prior agreement has to be reached between the bird-ringer and live-capturer to participate in this research project together. The Secretary further explained that a bird-ringer willing to fit finches with a scientific ring can do so if he submits an application for a special licence, which must contain a copy of the site plan delineating the boundary of the same clap-net pair (*mansab*) submitted by the live-capturer with whom a prior agreement has been reached for a joint control and ringing effort.
- 5.20 The Secretary recommended that, without prejudice to the Committee's deliberation, a sub-Committee meeting is held with all relevant stakeholders to establish a way forward. Mark Sultana also suggested a meeting between the Head of the National Ringing Scheme and the Head of WBRU is held before the sub-Committee meeting. The Secretary explained that this research project is an additional activity over and above the current methods adopted by licensed bird ringers who can still capture and fit finches with scientific rings from their own research stations using mist-nets. The special licence allows the bird-ringer to fit scientific rings on finches caught by the live-capturer using a clap-net pair registered on both individuals, subject to an *a priori* agreement between them.
- 5.21 The Secretary informed the Committee that due to connectivity problems, he will read out the comments submitted by Mark Gauci during the video conference. Mark Gauci asked about the content of the exam paper and logistics in view of the current COVID-19 situation. The Secretary confirmed that all health guidelines on social distancing will be strictly adhered to and that the exam questions will be based on the actual course content to ensure that applicants are fully aware of the rules and regulations related to this research project. Mark Gauci asked how many finches need to be controlled and ringed in order to obtain robust data on the reference populations of the seven finch species. The Secretary replied that the required sample size must be determined on the basis of the C-557/15 judgment on finches ring recoveries and that this matter will also be discussed with the Head of the National Ringing Scheme. Regarding control by licensed live-capturers, the legal advice specifies that the more finches are controlled to check which are already fitted with a ring the better.
- 5.22 Darrin Stevens remarked that ERA reviewed the draft framework regulations and draft notice of derogation, noting some concerns related to cross-referencing with SL 549.42, which merit further discussion. Darrin Stevens quoted part of the framework regulations that specify the use

of clap-nets for the purpose of control and ringing of finches, implying that bird-ringers cannot use mist-nets. The Secretary clarified that, as explained earlier, the proposed framework regulations do not prohibit bird-ringers from using mist-nets in areas used for bird-ringing purposes and that this derogation is an addition to, not a replacement of, bird-ringing derogations as have always been applied to date. Regarding cross-referencing issues, the Secretary clarified that the framework regulations purposely specify ‘for the purpose of these regulations’ whenever the legal provisions contained therein apply solely to the proposed framework regulations and that this should not be construed as running counter to the provisions of the principal regulations, which in this case is SL 549.42. The Secretary further clarified that the saving clause clearly states that *the provisions and conditions laid down in these regulations shall be without prejudice to the Wild Birds Regulations [SL 549.42] to the extent that the latter are not inconsistent with these regulations in which case, and to the extent of the inconsistency, these regulations shall prevail*. Darrin Stevens suggested that a meeting is held between ERA and WBRU to discuss these issues in more detail. The Secretary agreed and Darrin Stevens confirmed that ERA’s comments will be submitted to WBRU in track changes prior to the meeting.

- 5.23 Nicholas Barbara referred to the possibility of fitting satellite-tags on finches and requested clarification on who will be fitting such tags, whether licensed bird-ringers or licensed live-capturers or other individuals, and whether this would be subject to a separate licence procedure. Nicholas Barbara also asked why such tagging provision is included in the proposed regulations given that tags small enough to be fitted on finches are current unavailable. Joe Perici remarked that if satellite-tagging will be carried out, it will be done by experts from all relevant fields.
- 5.24 The Secretary stated that although manufacturers of satellite-tags confirmed that they do not currently supply tags that are small and lightweight enough to be fitted on finches, they also indicated that such tags will be available in the near future. The Secretary explained that since there is a likelihood such tags will be available in the market justifies retaining this provision in the proposed legislation rather than leaving it as an afterthought. The Secretary further added that the proposed legal provisions would ensure that, through a separate special licensing procedure and training on satellite-tagging, as explained in the proposed framework regulations, bird-ringers and live-capturers can fit satellite tags on finches if such tags are available during the lifespan of the research project.
- 5.25 Although the research project is time-bound, in that it will have to stop once robust data on the reference population is established, as specified in the legal advice, the actual duration of the project cannot be determined *a priori* as it depends on multiple factors. Such factors primarily include the extent and effort in collecting the required data, both in terms of ring recoveries (control) as well as the amount of specimens fitted with a scientific ring by bird-ringers.
- 5.26 Nicholas Barbara pointed out that the use of live-decoys for the purpose of bird-ringing is not permitted and hence requested clarification on how ringing can be carried out in practice. The Secretary clarified that a live-capturer will be manning his clap-net pair and live-decoys and that the bird-ringer will fit scientific rings on specimens caught by the live-capturer prior to their release. Nicholas Barbara pointed out that ringing of specimens caught by means of a clap-net pair is a different set-up to a set-up consisting of a mist-net. The Secretary confirmed, adding that, as pointed out earlier, this derogation is an additional research activity to the current methods adopted by bird-ringers and that anything related to current bird-ringing practices will remain the same.
- 5.27 The Secretary explained that one of the reasons both this research activity and bird-ringing in general are subject to an Article 9(1)(b) derogation is the method of capture, since all nets are part of the general prohibitions of the Birds Directive (Annex IV) and hence subject to a derogation. Nicholas Barbara asked whether the legal provision of 50 officers will be in addition

- to the current deployment of 40 officers established in SL 549.74. The Secretary clarified that the number of officers deployed during the research period will be in the region of 50 at any one time, not 90.
- 5.28 Mark Sultana suggested an amendment to the proposed framework regulations regarding licensees' obligation to submit satellite-tag data, stating that since this is a government project, the owner of the data should be WBRU not the licence holder. The Secretary agreed and confirmed that this suggestion will be reflected in the final version. Mark Sultana also asked whether, apart from the legal advice sought from the Belgian lawyers, WBRU or Government sought the advice from the European Commission and whether the proposed regulations were communicated to the Commission. The Secretary replied that, based on the information at hand, the Government is seeking Ornithology Committee's feedback and recommendation before proceeding further.
- 5.29 The Secretary proceeded with putting this item to the vote, informing voting members that an in-principle vote will be taken first, to establish whether the Committee recommends the opening of a research period on the seven finch species, followed by two sub-votes relating to FKNK's proposal on net size and use of bird-callers for finches. Five members voted in favour of the proposed finches research derogation, BirdLife Malta voted against and ERA abstained. Mark Sultana informed the Committee that BirdLife Malta voted against because, whilst not against any research per se, the way these regulations have been formulated, the fact that there will be close to 5,000 live-catchers out in the field and uncertainties whether finches will be released or not, left too many loopholes. Mark Sultana concluded by stating that for these reasons, this research project is considered by BirdLife Malta as a smokescreen for illegal trapping. Darrin Stevens stated that ERA abstained in view of a number of issues with the wording of the proposed regulations that merit further clarification.
- 5.30 FKNK's proposal to amend the provision on net size from 20m² per net to 38m² per net was put to the vote. Five members voted in favour, whereas BirdLife Malta and ERA abstained. FKNK's proposal on the use of bird-callers for finches, in addition to the use of live-decoys as set out in the proposed framework regulations, was also put to the vote. Five members voted in favour, BirdLife Malta voted against and ERA abstained.
- 6. Discussion on the system used for taxidermy birds listed under the amnesty. *Item requested to be placed on agenda by BirdLife Malta.***
- 6.1 Mark Sultana requested this item to be deferred to the next available Committee meeting.
- 7. BirdLife Malta's allegation that Ornithology Committee "remains a rubber stamping body that goes along with what is agreed between FKNK and Government, including WBRU". *Item requested to be placed on agenda by FKNK.***
- 7.1 The Secretary invited FKNK to open the discussion. Lino Farrugia remarked that this type of accusation cannot be made, as it implies there is some form of collusion with Government. Lino Farrugia remarked that today's session is in itself proof that BirdLife Malta's allegation is unfounded, also because FKNK were unaware of WBRU's letter to their members adding that, without concrete proof, one cannot be accused of such allegations.
- 7.2 Joe Perici Calascione remarked that if one had to look back at the history of Ornithology Committee and the way it used to operate, chaired by members of BirdLife Malta, he does not feel it is appropriate for anyone to send an email accusing individuals of collusion between a Government entity and FKNK, adding that this goes beyond reasonable comment.

- 7.3 Mark Sultana stated that he did not state that there was collusion so much so that the item title does not specify collusion. Mark Sultana stated that if, in his opinion, he feels that the Committee members are reaching some form of agreement *a priori* on how to proceed, then he has every right to voice his concerns. Mark Sultana apologised if his comments offended anyone, adding that when Lino Farrugia called BirdLife Malta representatives as trash, no apologies were forthcoming.
- 7.4 The Secretary remarked that when it comes to collusion or other accusations and criticism levelled at WBRU, or in his capacity as Head of Unit or as Secretary of the Ornithology Committee, he is definitely not part of such alleged schemes and will continue to distance himself from such. The Secretary added that he was very disheartened when he received an email from Mark Sultana accusing him of collusion with the hunting lobby, not only because its contents were unfounded, but also because it was copied to the Minister for the Environment, the Permanent Secretary of the Ministry for the Environment, ERA's CEO as well as ERA's representative on the Ornithology Committee. The Secretary explained that the only reason he had asked the Committee members to set aside all Wednesdays in August for the next meeting was purely of an administrative nature and had nothing to do with FKNC—the consolidated legal advice on the finches research project was due in August and the Committee's term would expire on the 29th.
- 7.5 Lino Farrugia clarified that when he called BirdLife Malta trash he was not referring to any particular individual but to BirdLife Malta's request to stop the hunting season in view of illegalities that had occurred. Darrin Stevens noted that, considering that Mark Sultana's email was copied to ERA, the Authority is not and does not feel it is a stamping body and its participation at Ornithology Committee is based solely on its legal and regulatory functions. Darrin Stevens also remarked that this is evident in the way ERA votes during Ornithology Committee meetings.
- 7.6 Mark Sultana pointed out that whilst there are no hard feelings to what Lino Farrugia had stated during a previous Committee meeting, FKNC's requests for changes to the proposed framework regulations were all considered favourably by the Committee. Mark Sultana concluded by stating that whilst he sees nothing wrong in that, proof of ERA's impartiality and proof of lack of impartiality of other members is in the way members vote. Joe Perici Calascione pointed out that members of the Committee have the right to vote as they feel is right and this should not be perceived as having ulterior motives. Mark Sultana added that as equally as FKNC had a right to voice their concern when previous Ornithology Committee meetings were deemed biased, so does BirdLife Malta have a right to voice its concern about the impartiality of the current Committee. Lino Farrugia stated that whilst it is true that FKNC had voiced their concerns about impartiality of previous Ornithology Committees over a number of years, FKNC never submitted their concerns in writing, adding that there is a difference between voicing one's concern and submitting it in writing. Mark Sultana replied that he has nothing to hide and that is why he submits his concerns in writing. Following a lengthy exchange of views between Mark Sultana and Lino Farrugia, the Secretary invited the Chairman to intervene.
- 7.7 The Chairman stressed the importance of working in harmony, to avoid mudslinging and unfounded allegations. The Chairman stated that he never insinuated anything against anyone and made reference to a news article spearheaded by some of the members of the Committee, which article was strewn with false allegations and lies against him. The Chairman further pointed out that the editor of the news article had realised it contained false accusations and was subsequently amended. Mark Sultana remarked that the Chairman is appointed by the Government and hence can never have the same concerns as BirdLife Malta, adding that if everyone had to be honest with themselves, they would draw the same conclusion on how the Committee operated in the past, how it operates at present and how it is likely to operate in future. Following a lengthy exchange of views between the Chairman and Mark Sultana, the Secretary requested members to conclude their interventions, adding that as far as he is concerned, he can vouch for the fact that he has never been in collusion with anyone, neither in

his capacity as Head of WBRU, nor as Secretary of the Ornithology Committee. The Secretary maintained that it is not in WBRU's or the Secretary's interest to be in collusion with anyone, and that it is not the way the Unit or himself operate, despite what others may write, perceive or believe.

8. Any other business

- 8.1 Nicholas Barbara asked how the Committee should proceed to review the outcome of the public consultation exercise on the finches research derogation given that the Committee's term expires on 29 August and has not yet been reconstituted, and asked who will have the final say regarding proposals submitted by members of the public. The Secretary replied that he will circulate the outcome of the public consultation exercise with the Committee members via email, as a follow-up to Item 5, to conclude the process, pointing out that the outcome of the public consultation will also be available online.
- 8.2 The Committee agreed to reconvene after it is reconstituted. The meeting was adjourned at 1945 hrs.