

Ornis Committee Meeting Agenda Wednesday 9th October 2024 @ 7pm.

Attendees:

- Lucas Micallef (hunting expert)
- Joe Perici Calascione (FKNK)
- Dr. Gaynor Saliba
- Darrin Stevens (ERA)
- Twanny Caruana
- Mark Sultana (Birdlife Malta)
- Architect Andrew Psaila (FKNK)
- Mark Gauci (avifauna expert)
- Nicholas Barbara (Birdlife Malta)
- Dr. Joseph Grech (Chairman)
- Joseph Grech

- Jean Paul Portelli (Secretary)

1.0 Approval of the Minutes:

Chairperson explains that after the decision taken by the European Court of Justice there was the need for a meeting within the ORNIS committee to discuss this decision by all members. Mark Sultana agrees that today's meeting was necessary but questions if today's urgent meeting was done because of the FKNK'S proposal and says that proposals should be sent to all beforehand especially if a vote was to be taken. He said that today Bird Life Malta needs to present two motions and hopes that a vote is taken today where it concerns the 200m buffer zone at schools since yesterday a protected bird has fallen into the Seminary school in Rabat after being shot and so wishes that a vote is taken since it is as urgent as the ECJ issue. Mark argues on the FKNK stating 'the way forward item to vote should include what is the proposed way forward. Thus, BirdLife and other members of the committee need to know prior to the meeting what proposals will be discussed. In the past a decision was taken regarding presentation of proposals prior to meetings.

Mark Sultana noted that Jean Paul Portelli had forwarded the minutes in time within one week as agreed. He himself (Mark Sultana) and Andrew (FKNK) had given their feedback within one week as agreed between all committee members, yet some amendments for the minutes were sent just today.

Chairperson insisted that this meeting will discuss only the items related to the ECJ ruling as indicated in the agenda. Chairperson suggested that members should vote on whether the agenda should remain as is or include BirdLife's motions. He explained that members will first vote on approving the presented Agenda. If this is not approved, the members will then need to vote if they agree on the agenda presented now by Bird Life. Both ERA and Dr Saliba explained that agenda's are not voted upon.

1.1 Approval of the Agenda being presented prior to this meeting:

	Yes	No	Abstention
FKNK	✓		
Bird Life Malta		✓	

Anthony Caruana	✓		
Joseph Grech	✓		
Dr. Gaynor Saliba			✓
ERA			✓
Dr. Joseph Grech	✓		
Total	4	1	2

With this vote the motions suggested by birdlife Malta were excluded from the agenda of this meeting.

2.0 Matters arising and matters to Report:

Darrin Stevens says that the National Biodiversity and Action Plan up to 2030 has been approved and published if more information is needed it can be accessed from the ERA website even in a week's time.

3.0 Approval of the minutes held on 9/10/2023, 30/09/2024 and 05/09/2024

The above minutes were not approved during this meeting.

Darren suggests that a meeting is done explicitly regarding the minutes and if needed this can be carried out in Gozo and in person and we get everything sorted on that day as it is impossible to do so by email. Chairperson suggests that another meeting is carried out to approve the minutes and the issue regarding the schools. The Chairman Dr. Joseph Grech suggests meeting on the 30th of October. Nicholas Barbara states that he is not happy with the way the ORNIS Committee is functioning. Mark Sultana suggests that we also discuss today's minutes. Lucas Micallef suggested using Google Box. Members agree for a meeting in person on Wednesday 30th at 3pm to discuss only the minutes. Minutes will be corrected and then approved in the following meeting.

4.0 The way forward following the judgement of the Court of Justice of the European Union in Case C-23/23 on the Finches Research Project. Item proposed by the FKNK: FKNK proposes that Malta should consider having a finch scientific research derogation, if this is in line with scientific methodology and legal parameters, whilst having due regard to legal advice following the judgement of the Court of Justice of the European Union in Commission vs Malta (Case C-23/23).

4.1 The Chairman Dr. Joseph Grech proposes that if the ORNIS committee agrees we will call Richard Lia to attend the meeting to help the committee to better understand the judgement of the Court of Justice of the EU. Those present for this meeting agree. Jean Paul Portelli sends the link for Richard Lia to attend this meeting.

4.2 Richard Lia states that the European Court of Justice has limited one item which is the declarations of the 2020 until 2022 where the court has said that even though there were no other solutions to this, these declarations were not satisfactory. He continues by explaining this further into detail. Richard Lia states that as Statement of reasons and justification as to the absence of other satisfactory solution. This refers to article 9. And for the court it is not enough to say that there is no other possible solution but one must give a detailed explanation to this to justify such reduction. After this judgement the lawyers including the Deputy State Advocate summarised the judgement where they stated that the framework regulations. The court also found that Regulation 2021; 5.1.945 was clear and precise and there is no need for this to be amended. It also states that when there is a declaration to open the Research Period for the 'L-ghasfar tal-ghana' in Regulation 8 it states clearly that the Minister requires

that: (Quoting from the Report) Statement of reasons and justifications to the absence of another satisfactory solution. He concluded by saying that the Court's Decision was completely different to that of the AG of the same court. The court's decision was different than that of the EU attorney General. Joseph Perici Calascione argues that Trapping has been completely terminated and now Research has taken place. He also stated that to him it is satisfactory that the Government of Malta is trying to safeguard our traditions. He also noted that EU Court of Justice went into a lot of detail regarding this Research Project, and one should see that we will need to do what it takes to prove that this Research Project will be as satisfactory as possible to the Court of Justice of the European Union. Richard Lia addresses Joe Perici Calascione that in this case the C-23/ 23 the court has limited itself to the notices of derogation of 2020-2022. The court did not present itself on specific pleas but had limited itself to declarations. The declarations will be able to cater for the declarations found by the court. Mark states that Malta has lost its case, and we must admit that we as ORNIS Committee have given the wrong advice to open the Derogation for Bird Research as presented. He also stated that he disagrees on the statement that the Legal Judgement was totally different to the AG opinion. He agrees that the Court did not pronounce itself on all the issues raised in the AG's Opinion but this does not mean the court is against what the AG stated. It just did not comment about it because on the declaration of no alternative solutions was enough to find Malta guilty of not fulfilling its obligations as an EU member state. He continues by saying that going to court again with certain proposals does not necessarily mean that the EU Court of Justice will accept this proposed Derogation. Mark Sultana asks Richard Lia whether he has seen the proposal of the FKNK which is subject to a vote during this meeting. Richard Lia states that he is only aware that there is an ORNIS Committee meeting that will be discussing the judgement of the Court of Justice of the European Union. Richard Lia also stated that as they all know he is no longer a part of the ORNIS Committee but is informed that FKNK has requested a discussion regarding the way forward after the judgement. Richard Lia states that when it comes to this Derogation; Malta has explained the methodology used through the framework regulations including also referring to reports in this act and the court had stated that these framework regulations are clear and precise while in the same context Malta needs to provide the declaration which justifies the declaration referring to the Notice of Derogation 2020-2023. He continues by saying that as a country when in 2018 the court has stated that there was no sufficient declaration for the deficiencies for a satisfactory derogation the EU Commission has stated that there is no statement of reasons and enough justification to compensate for the lack of solutions. Mr. Lia states that in the process of the litigation procedure the Legal Notice of 2020 compared to 2021, 2022 and 2023 there was a difference. Malta has provided further reasons for the derogation, but the court has stated that these were still not enough. He stated that Malta has one month to answer to the Commission and present the changes made for the research Derogation from the 19th of September until the 19th October. Mr. Lia continues by saying that if the European Commission is still not convinced, we will need to start a new procedure. Mark Sultana asks 1) whether WBRU is of the opinion to continue with this derogation and 2) if the ECJ ruling affects the Plover and Song Thrush derogation too. For the first question Richard Lia says that they only follow up they have is from the advocates that defended Malta where it concerns the declaration in line with what the EU Court has stated and with regards to the second question Mr. Lia answered no; this does not influence the pending infringement of the Song Thrush and Plovers. Mr. Lia continues by saying that the only relevance is that in the declaration for the Song Thrush and Plovers Malta needs to be certain that there is enough reason and justification to confirm the shortcomings of other solutions. In the case of the Plover and Song Thrush their declarations as far as the C-20-23 is concerned and as far as the declaration is concerned there is no legal repercussions or further measures that Malta is obliged to carry out. Joe Perici Calascione states that FKNK did not have time to send their proposal in time because the date of the court hearing was close. The reasons that the FKNK is proposing that the Research should start to see the reference population by means of a capture and release process. Joe Perici Calascione continues

by stating that this process is more efficient when using the traditional methods, culturally passed on to us from one generation to the next as part of our culture. He concludes by saying that FKNK sees this as the best research project that we can have in place to obtain a positive result or at least to gain knowledge of which birds migrate from which country. He argues that Bird Life Malta are so biased with regards to trapping that they (referring to Bird Life Malta) have refused to accept a positive and effective research project. Mark Gauci asks Richard Lia whether he thinks the ORNIS Committee should revise the research. Mark Gauci argues that one might agree with the research but not the quantity such as 3000. Research should not just involve numbers. Research is most often a sample. He asks Richard Lia to advice. Mr. Lia explains that from 1920 until 2018, which amounts to 99 years, the Siskin tracked amounted to 16 Siskins from the Ringing Recovery. With the Research Project the data collected by the WBRU after receiving the ringing forms were passed on to the head of ringing Galea so that through Euring the collected data becomes vetted by Euring and within two months last year it was reported that 16 foreign Siskin ring recoveries. He stated that in October 2023 there was the first Ring Recovery of Hawfinch in Maltese History. Mark Gauci asks Richard Lia at what cost? Discussion persists as there are only 4 Bird ringers for robins according to Mark Gauci. Richard Lia states that it was open for everyone who applied so we shouldn't limit the other Research Project. Richard Lia explains that the Maltese Authorities have identified that this is the best method of how data is collected. Mr. Lia explains that if as Ornis the methodology is being questioned even when the court did not question this methodology, who are we to question the methodology even when the European Court had every opportunity to question the methodology or find Malta guilty of applying the inappropriate methodology. Mr. Lia continues by saying that the EU court of justice did not even question the proportionality. Richard Lia states that same as the committee he personally and not as WBRU is in favour of ringing if it is capture and release as he does not see any wrongdoing in the capture and release procedure. Reason being that from the data acquired this process is useful for this project. Nicholas Barbara states that when it comes to the derogation if we keep insisting that this is a research derogation, the issue remains that there has been abuse when implementing this derogation. Nicholas Barbara questions why the other members do not have the FKNK proposal available for viewing in writing. He questions whether this is intentional. He also asks Mr. Lia what the State Advocate is proposing whether if we should consider only the verdict of the EU Court or take also into consideration what has been stated by the Attorney General to find a way forward. Nicholas Barbara asks Richard Lia to have the advice given by the State Advocate tabled for the viewing of ORNIS. Richard Lia replies to the said questions stating that the State Advocate does not grant him (Richard Lia) permission to table the advice given to the Maltese Government. He states that he can give a summary of the advice given to the Government, but he is not authorised to publish the advice. He also states that both the State Advocate and the Advocate representing Malta took also into consideration the declarations of the Attorney General. He explains that the Attorney General 's opinion is taken into consideration but once the judgement is issued; it is that judgement that forms part of the case law and not the Attorney General's opinion. He stated that one can note the diverse opinion of the Attorney General in this case to the verdict given by the Court of the European Union. Mark Sultana says that we need to base our decision on a scientific basis, and we do not need to wait for a court's decision to inform us therefore we need to avoid having to go to court. He agrees with Richard that the court has mentioned one sentence, and it is a matter of interpretation but quotes item 71 of the judgement that states that considering that finding (that Malta did not present proper alternative solution declarations) it does not appear necessary to comment further. Mark continues to explain that because of issue with numbers one cannot confuse cultural reasons with the scientific aspect. Chairperson asks Richard Lia to leave meeting. Richard Lia exits the meeting.

The chairman asks about the proposal presented by the FKNK that is whether the said FKNK is requesting a vote from the ORNIS Committee. The chairman asks Joe Perici Calascione to go into further detail. Joe explains that when it comes to the Research project the FKNK is requesting that this Research Project needs to be continued but with great attention to that of what has been said in the last sentence of the Court of Justice of the European Union. He continues by saying that the FKNK is asking for the opening of the Season for the Research Project so that the said research can continue in a way that we can acquire more information on the population dynamics and reference population of the targeted birds. The chairman Dr. Joseph Grech says that majority of members were always consistent and had agreed on the Research Project. Joe Perici Calascione re explains and says that everyone should feel free to vote as he/she wants. The Chairman Dr. Joseph Grech says that as a committee we can discuss but and decide at a higher level, but it is also up to the Government to respect the decisions taken.

Darrin Stevens says that he wants to make himself clear that he does not feel comfortable telling people to vote knowing that there is a judgement that he did not analyse. He states that he understands the point of both Joe Perici Calascione and Mark Gauci that when you have an application for research you must analyse the methodology and how it is going to be implemented. Darren Stevens says that if the Research is according to clear legal parameters and scientific methodology, he (Darrin Stevens) does not have an issue to vote but he still feels that he has not seen the judgement.

Joe Perici Calascione states that he agrees on some points with Darrin Stevens and states that he himself (Joe Perici Calascione) he has seen the opinion of the Attorney General as well as the statement given by the court. Joe Perici Calascione explains the statement given by the court to detail. DS says that rather than imposing something on the government with his decision he would rather entrust the decision with the Government. He suggests that we recommend that they agree with the research on any species if it is done within a scientific manner within the parameters of the law. Joe Perici Calascione states that as ORNIS they (ORNIS) will only be recommending.

Mark Sultana suggests that the proposal needs to be more specific with dates etc. Discussion evolves with different suggestions.

Dr. Gaynor suggests that we should change the wording. Members give their input and Dr. Gaynor Saliba finalises the wording:

FKNK proposes that Malta should consider having a finch scientific research derogation, if this is in line with scientific methodology and legal parameters, whilst having due regard to legal advice following the judgement of the Court of Justice of the European Union in Commission vs Malta (Case C-23/23).

	Yes	No	Abstention
FKNK	✓		
Bird Life Malta		✓	
Anthony Caruana	✓		
Joseph Grech	✓		
Dr. Gaynor Saliba	✓		
ERA			✓
Dr. Joseph Grech	✓		
Total	5	1	1

Darren Stevens abstained saying that he did so because although he is in favour of the principle if it is within the legal parameters, he has not seen the analysis that the Government has been given.

5.0 Recommendations of the application of autumn 2024 live-capturing derogation for Golden Plover and Song Thrush. Item proposed by FKNK.

Andrew Psaila explains that in principle the application for the Golden Plover and Song Thrush should be the same as in the previous years including quote and dates. Darin Stevens said that this had already been discussed in the previous meeting. ORNIS Committee members agree that there is no need for Richard Lia does not need to come for this part of the meeting.

	Yes	No	Abstention
FKNK	✓		
Bird Life Malta		✓	
Anthony Caruana	✓		
Joseph Grech	✓		
Dr. Gaynor Saliba	✓		
ERA	✓		
Dr. Joseph Grech	✓		
Total	5	1	

NB Darrin Stevens representing Era states that it is important to ensure that there is due supervision compliance and enforcement, and that the derogation is within legal parameters.

6.0 Other Business:

6.1 Mark Gauci states that the wording should be worded prior to the meeting and presented with the agenda and not have the wording reworded during the meeting. All members agreed.

6.2 Re School: Dr. Gaynor Saliba and Darrin Stevens explained to BirdLoife Malta that with legal notices it should first go through WBRU. WBRU can carry out the risk assessment before a vote is taken. Whatever the proposal the Chairperson said that it shall be discussed in the next meeting and the proposal will be presented by Bird Life Malta.

Next meeting to approve minutes to be held on the 30th of October 2024.