

R2HE: compensating damage to nature with BIOVAL

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EU FORUM OF JUDGES FOR THE ENVIRONMENT
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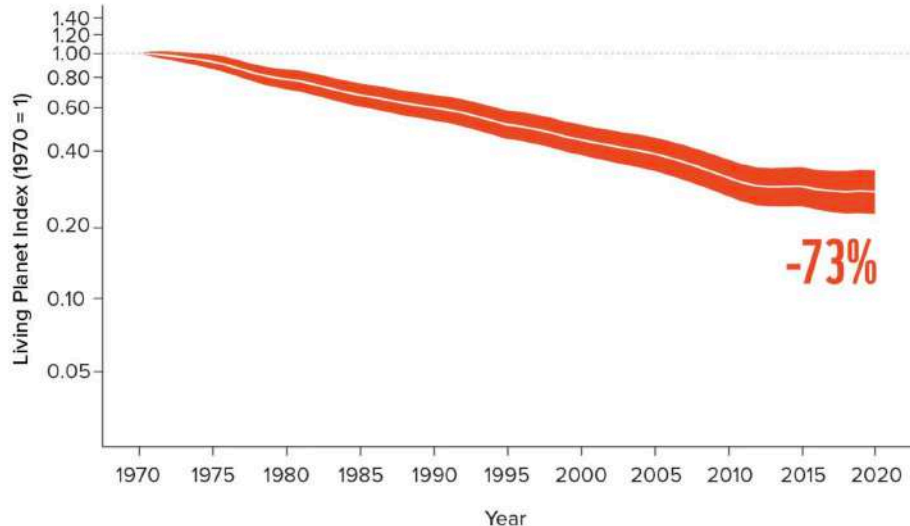




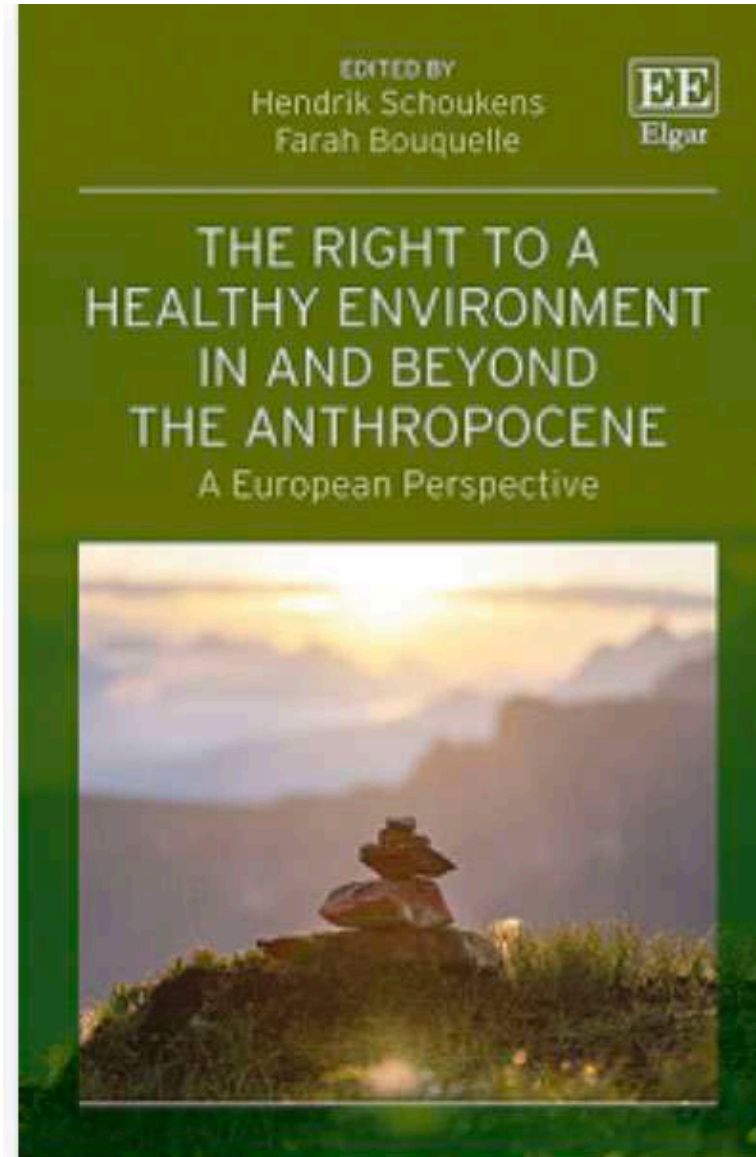
2024 LIVING PLANET REPORT

A System in Peril

Global Living Planet Index



- An Cliquet & Frank Maes:
“Link between human health and biodiversity”
- Ann Carette:
“R2HE and the remediation of ecological damage: seeking effective remedies”



PROJECT BIOVAL

*An indicative practical tool to value
damage to
nature in court proceedings*



Belgium: Marsh harrier poisoning case 2018

Court of Appeal of Ghent 28 June 2018:

Constable convicted for poisoning 3 Marsh Harriers

- Fine of 6000 EUR
- “restoration into the original state” > to finance a “breeding and restoration program” for 3 Marsh Harriers in a bird rescue centre in consultation with the Flemish Agency for Nature and Forest (ANB)



THE AIM OF BIOVAL

- Joint project of EUFJE, IMPEL, ENPE
- Create a non-binding, practical instrument to value nature damage in court
- Focus on compensation, **NOT** on sanctions / fines / penalties
- Scope: valuation of wild fauna / vertebrates
- 2024: second phase on valuation of vegetation
- Not for ELD cases



European Union Network for the
Implementation and Enforcement
of Environmental Law



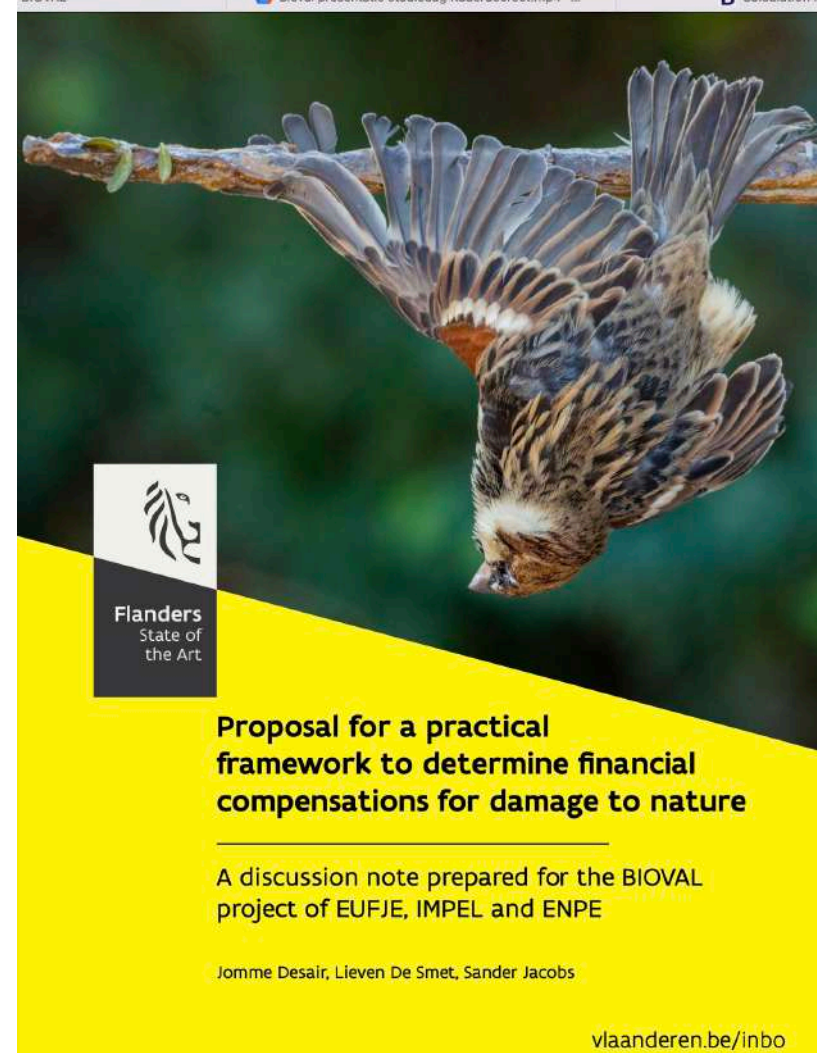


2020 SURVEY

- 2020: find and examine existing valuation methods in EU Member States through online survey of judges, prosecutors, inspectors in 2020
- Some countries have a valuation system or a price list to compensate for the damage to fauna and/or flora, e.g. Bulgaria, Croatia, Estonia, Finland, Hungary, Latvia, Lithuania, Romania, Spain (regional regulations)
 - Amounts vary significantly from country to country or region to region
 - Little information on how amounts were set (except for Finland)
 - Difficult to obtain information on background of criteria

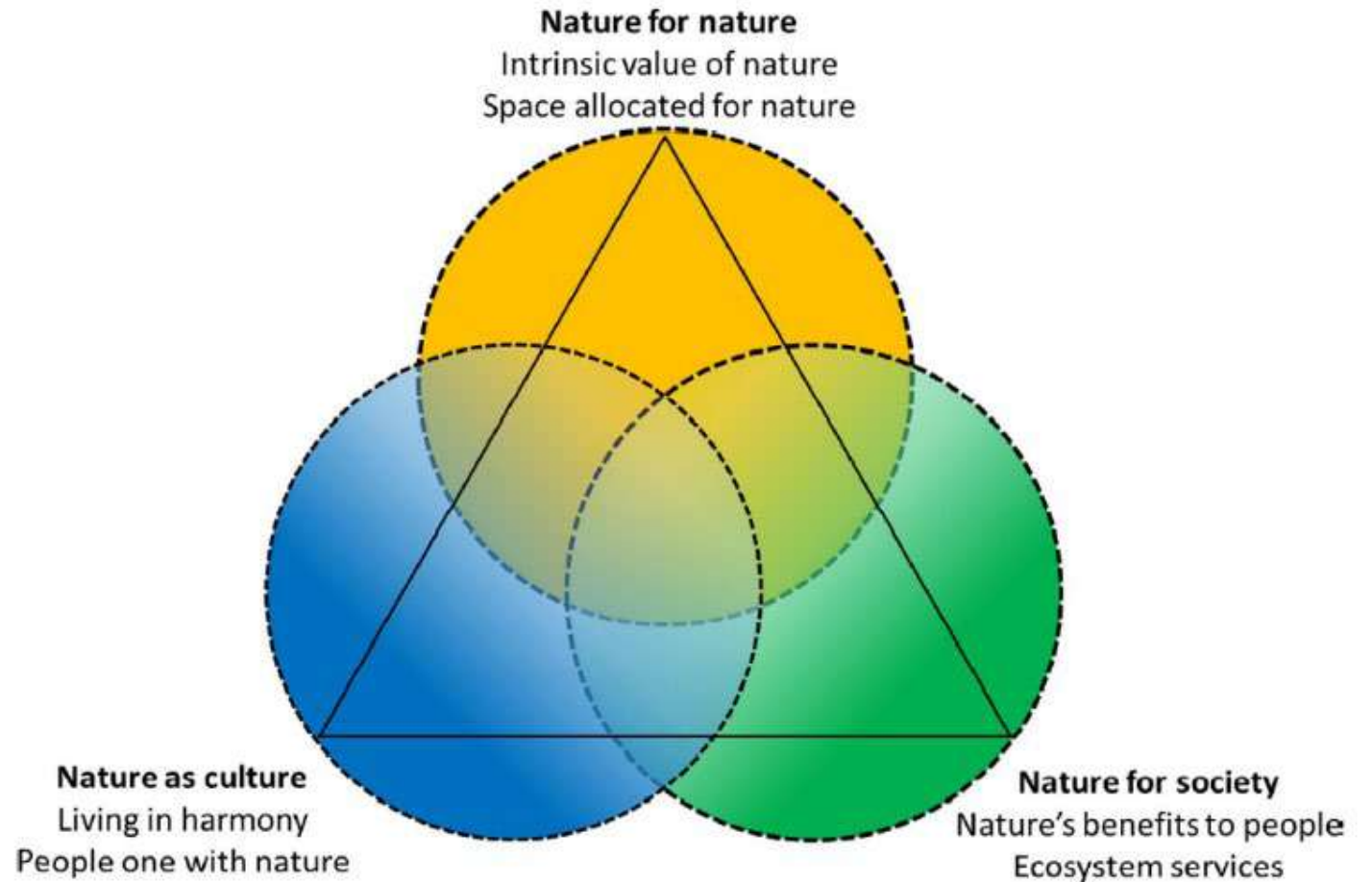
BIOVAL and INBO

- 2021: start note Instituut voor Natuur- en Bosonderzoek
- 2022: expert workshops to discuss and refine INBO study
- 2023: development website, list of 100 species
- 2024: publication website with method and list



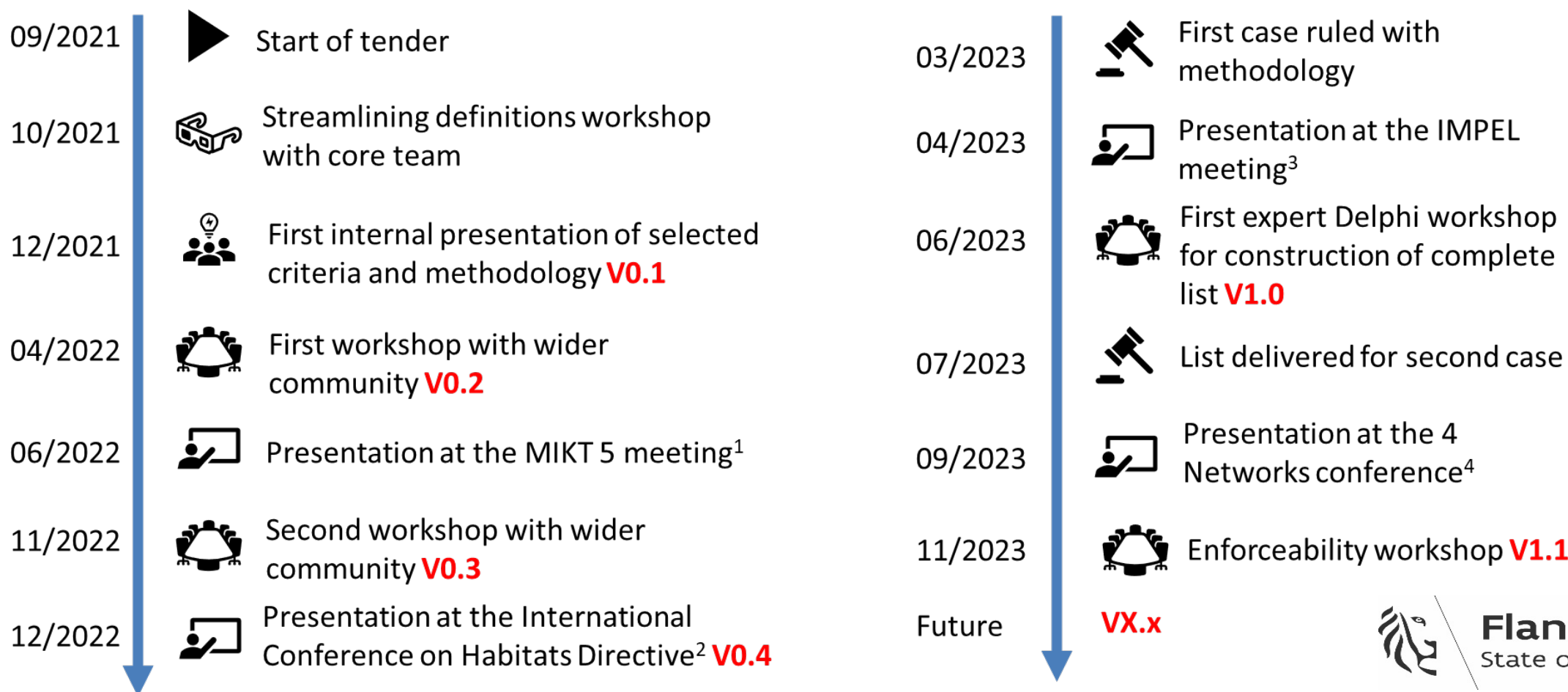
The plural values of nature – Specific values

- Durán et al. (2023). Bringing the Nature Futures Framework to life: creating a set of illustrative narratives of nature futures. Sustainability Science. <https://doi.org/10.1007/s11625-023-01316-1>.

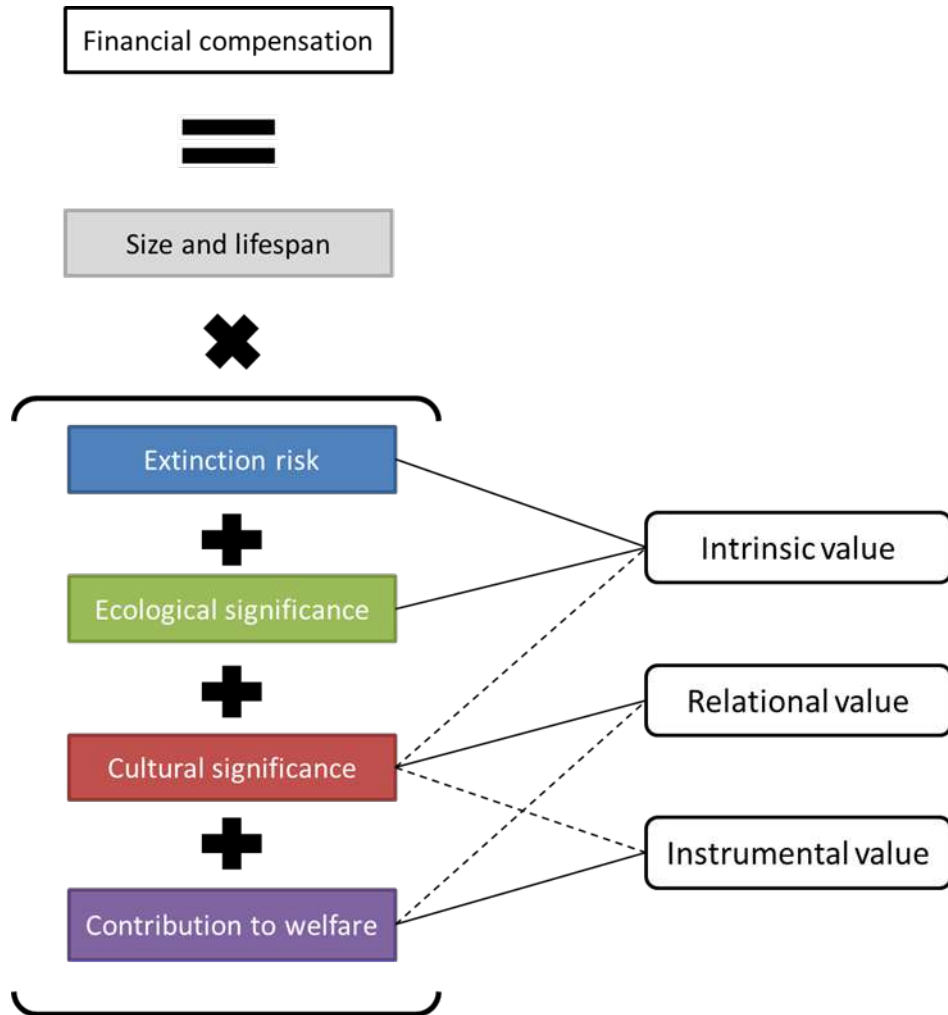


1. Construct a Legitimate Process

► Main stakeholders are the legal community



CRITERIA FOR CALCULATION



- Extinction risk: least concern, vulnerable, near threatened, threatened, critically endangered (IUCN Red List status)
- Ecological significance: normal, important, key role in the ecosystem
- Cultural significance: normal or high (species' occurrence in culturally significant literature, occurrence on flags and emblems, dedicated species protection plans based on cultural motivations, attraction of significant numbers of tourists)
- Contribution to welfare: damage to human welfare, normal contribution to human welfare, key contribution to human welfare
- Size and lifespan > scale the maximal acceptable amount for the compensation of damage



Indicative tool for compensating nature damage

BIOVAL website is online!

<https://biovaltool.eu/>

Starling case

Criminal Court East-Flanders, Ghent division 7 March 2023:

- Illegal catching of starlings (*Sturnus vulgaris*)
 - Sanction of 120 hours community service ordered
 - Restoration in natura by breeding and reintroducing 77 starlings (application of art. 16.6.6 of the Flemish Region Decree of 5 April 1995 on General Environmental Policy) was impossible and prohibited (Flemish Species Regulation of 15 May 2009)
 - Financial compensation instead of restoration, using the BIOVAL calculation method: 200 EUR/starling (short-living species, least concern, important cultural significance, normal ecological significance and normal contribution to welfare)
- Pay 200 EUR x 77 starlings = 15.400 EUR to the Flemish Environment and Nature Fund within 4 months
- Decision appealed



Starling decision upheld on appeal

Court of appeal of Ghent, 26 January 2024:

- Community service confirmed
- Principle of a compensation confirmed
 - « the perpetrator pays »
- Use of BIOVAL methodology and calculated amount confirmed:
 - ✓ extinction risk: 2 euros
 - ✓ cultural value: 166 euros
 - ✓ ecological value: 16 euros
 - ✓ contribution to prosperity: 16 euros
 - Total: 200 euros



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Second BIOVAL case

Court of First Instance of East-Flanders, Oudenaarde division 27 February 2024:

- Complaint for mainly:
 - Keeping 9 specimens of Annex A CITES without a CITES certificate
 - Keeping 6 specimens of Annex B CITES without proof of legal origin
 - Pinching a dunnoek to death
 - Possessing/transporting or selling 134 birds not ringed or not legally ringed and 2 wall lizards
 - Possessing a mill cage, a folding net and a bird catching net
 - Having kept 41 turtles of the trachemys group, and failed from feeding and caring for them
- Restoration in nature is impossible and prohibited by the law
- Interpretation *in dubio pro natura*
 - Author of environmental damage cannot escape any obligation to repair the damage
 - financial compensation can be ordered



- Financial compensation instead of restoration, using the BIOVAL calculation method and list of EUR values per species (indicative assessment for the Flemish region of Belgium only), for instance, *inter alia*:
 - Hawfinch (*Coccothraustes coccothraustes*) 100.00
 - Hooded crow (*Corvus cornix*) 2,500.00
 - Tawny Owl (*Strix aluco*) 2,860.38
 - Canada goose (*Branta canadensis*) 4,166.67
 - Magpie (*Pica pica*) 2,500.00
 - Pheasant (*Phasianus colchicus*) 12,500.00
 - Crossbill (*Loxia curvirostra*) 244.15
 - Blackbird (*Turdus merula*) 100.00
 - Wall lizard (*Podarcis muralis*) 100.00
 - Song Thrush (*Turdus philomelos*) 100.00
 - Summer turtle dove (*Streptopelia turtur*) 736.04
 - Carrion crow (*Corvus corone*) 2,500.00
 - Black starling (*Sturnus unicolor*) 250.00
- Compensation only for specimens caught from nature
- Lower compensation for species that may legally be controlled/hunted
- Total compensatory amount: EUR 68,545.06
- Decision appealed (decision expected by the end of 2024)



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Grey heron case

Criminal Court Brussels 3 October 2024:

- Illegal killing of 1 grey heron (*ardea cinerea*)
 - Fine of 4.000 euro (half suspended)
 - Restoration in natura by breeding and reintroducing a grey heron (application of art. 16.6.6 of the Flemish Region Decree of 5 April 1995 on General Environmental Policy) is impossible and prohibited (Flemish Species Regulation of 15 May 2009)
 - Financial compensation instead of restoration, using the BIOVAL calculation method: 5.000 euro / grey heron (large long-living species, least concern, normal cultural significance, normal ecological significance and normal contribution to welfare)
- Pay 5.000 euro to the Flemish Environment and Nature Fund within 4 months



Conclusion and next steps

- Art. 5 and 5 New Ecocrime-directive 2024/1202: obligation to pay compensation for damage to the environment if irreversible -> BIOVAL
- Expansion list of compensations
- 2nd phase: valuation of habitats (ANB, INBO, EUFJE)
- Training: BIOVAL workshop Brussels 13/12/2024
- Dissemination in other MS
- Collecting case-law and feedback
- Update method in 2026

Thanks for your attention!

Questions/interested?

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