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(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

DIRECTIVE 2009/147/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 30 November 2009
on the conservation of wild birds
(codified version)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds ⁽³⁾ has been substantially amended several times ⁽⁴⁾. In the interests of clarity and rationality the said Directive should be codified.

(2) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme ⁽⁵⁾ calls for specific action for biodiversity, including to protect birds and their habitats.

(3) A large number of species of wild birds naturally occurring in the European territory of the Member States are declining in number, very rapidly in some cases. This decline represents a serious threat to the conservation of the natural environment, particularly because of the biological balances threatened thereby.

(4) The species of wild birds naturally occurring in the European territory of the Member States are mainly migratory species. Such species constitute a common heritage and effective bird protection is typically a trans-frontier environment problem entailing common responsibilities.

(5) The conservation of the species of wild birds naturally occurring in the European territory of the Member States is necessary in order to attain the Community's objectives regarding the improvement of living conditions and sustainable development.

(6) The measures to be taken must apply to the various factors which may affect the numbers of birds, namely the repercussions of man's activities and in particular the destruction and pollution of their habitats, capture and killing by man and the trade resulting from such practices; the stringency of such measures should be adapted to the particular situation of the various species within the framework of a conservation policy.

(7) Conservation is aimed at the long-term protection and management of natural resources as an integral part of the heritage of the peoples of Europe. It makes it possible to control natural resources and governs their use on the basis of the measures necessary for the maintenance and adjustment of the natural balances between species as far as is reasonably possible.

(8) The preservation, maintenance or restoration of a sufficient diversity and area of habitats is essential to the conservation of all species of birds. Certain species of birds should be the subject of special conservation measures concerning their habitats in order to ensure their survival and reproduction in their area of distribution. Such measures must also take account of migratory species and be coordinated with a view to setting up a coherent whole.

⁽¹⁾ Opinion of 10 June 2009 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 20 October 2009 (not yet published in the Official Journal) and Council Decision of 26 November 2009.

⁽³⁾ OJ L 103, 25.4.1979, p. 1.

⁽⁴⁾ See Annex VI, Part A.

⁽⁵⁾ OJ L 242, 10.9.2002, p. 1.

- (9) In order to prevent commercial interests from exerting a possible harmful pressure on exploitation levels, it is necessary to impose a general ban on marketing and to restrict all derogation to those species whose biological status so permits, account being taken of the specific conditions obtaining in the different regions.
- (10) Because of their high population level, geographical distribution and reproductive rate in the Community as a whole, certain species may be hunted, which constitutes acceptable exploitation where certain limits are established and respected, as such hunting must be compatible with maintenance of the population of these species at a satisfactory level.
- (11) The various means, devices or methods of large-scale or non-selective capture or killing and hunting with certain forms of transport must be banned because of the excessive pressure which they exert or may exert on the numbers of the species concerned.
- (12) Because of the importance which may be attached to certain specific situations, provision should be made for the possibility of derogations on certain conditions and subject to monitoring by the Commission.
- (13) The conservation of birds and, in particular, migratory birds still presents problems which call for scientific research. Such research will also make it possible to assess the effectiveness of the measures taken.
- (14) Care should be taken in consultation with the Commission to see that the introduction of any species of wild bird not naturally occurring in the European territory of the Member States does not cause harm to local flora and fauna.
- (15) The Commission will every three years prepare and transmit to the Member States a composite report based on information submitted by the Member States on the application of national provisions introduced pursuant to this Directive.
- (16) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (17) In particular, the Commission should be empowered to amend certain Annexes in the light of scientific and technical progress. Since those measures are of general scope and are designed to amend non-essential elements

of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

- (18) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the directives set out in Annex VI, Part B,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies. It covers the protection, management and control of these species and lays down rules for their exploitation.

2. It shall apply to birds, their eggs, nests and habitats.

Article 2

Member States shall take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.

Article 3

1. In the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1.

2. The preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures:

- (a) creation of protected areas;
- (b) upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones;
- (c) re-establishment of destroyed biotopes;
- (d) creation of biotopes.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

Article 4

1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

- (a) species in danger of extinction;
- (b) species vulnerable to specific changes in their habitat;
- (c) species considered rare because of small populations or restricted local distribution;
- (d) other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species in the geographical sea and land area where this Directive applies.

2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.

3. Member States shall send the Commission all relevant information so that it may take appropriate initiatives with a view to the coordination necessary to ensure that the areas provided for in paragraphs 1 and 2 form a coherent whole which meets the protection requirements of these species in the geographical sea and land area where this Directive applies.

4. In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.

Article 5

Without prejudice to Articles 7 and 9, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in Article 1, prohibiting in particular:

- (a) deliberate killing or capture by any method;
- (b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;
- (c) taking their eggs in the wild and keeping these eggs even if empty;
- (d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;
- (e) keeping birds of species the hunting and capture of which is prohibited.

Article 6

1. Without prejudice to paragraphs 2 and 3, Member States shall prohibit, for all the bird species referred to in Article 1, the sale, transport for sale, keeping for sale and the offering for sale of live or dead birds and of any readily recognisable parts or derivatives of such birds.

2. The activities referred to in paragraph 1 shall not be prohibited in respect of the species referred to in Annex III, Part A, provided that the birds have been legally killed or captured or otherwise legally acquired.

3. Member States may, for the species listed in Annex III, Part B, allow within their territory the activities referred to in paragraph 1, making provision for certain restrictions, provided that the birds have been legally killed or captured or otherwise legally acquired.

Member States wishing to grant such authorisation shall first of all consult the Commission with a view to examining jointly with the latter whether the marketing of specimens of such species would result or could reasonably be expected to result in the population levels, geographical distribution or reproductive rate of the species being endangered throughout the Community. Should this examination prove that the intended authorisation will, in the view of the Commission, result in any one of the aforementioned species being thus endangered or in the possibility of their being thus endangered, the Commission shall forward a reasoned recommendation to the Member State concerned stating its opposition to the marketing of the species in question. Should the Commission consider that no such risk exists, it shall inform the Member State concerned accordingly.

The Commission's recommendation shall be published in the *Official Journal of the European Union*.

Member States granting authorisation pursuant to this paragraph shall verify at regular intervals that the conditions governing the granting of such authorisation continue to be fulfilled.

Article 7

1. Owing to their population level, geographical distribution and reproductive rate throughout the Community, the species listed in Annex II may be hunted under national legislation. Member States shall ensure that the hunting of these species does not jeopardise conservation efforts in their distribution area.

2. The species referred to in Annex II, Part A may be hunted in the geographical sea and land area where this Directive applies.

3. The species referred to in Annex II, Part B may be hunted only in the Member States in respect of which they are indicated.

4. Member States shall ensure that the practice of hunting, including falconry if practised, as carried on in accordance with the national measures in force, complies with the principles of wise use and ecologically balanced control of the species of birds concerned and that this practice is compatible as regards the population of these species, in particular migratory species, with the measures resulting from Article 2.

They shall see in particular that the species to which hunting laws apply are not hunted during the rearing season or during the various stages of reproduction.

In the case of migratory species, they shall see in particular that the species to which hunting regulations apply are not hunted during their period of reproduction or during their return to their rearing grounds.

Member States shall send the Commission all relevant information on the practical application of their hunting regulations.

Article 8

1. In respect of the hunting, capture or killing of birds under this Directive, Member States shall prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, in particular the use of those listed in Annex IV, point (a).

2. Moreover, Member States shall prohibit any hunting from the modes of transport and under the conditions mentioned in Annex IV, point (b).

Article 9

1. Member States may derogate from the provisions of Articles 5 to 8, where there is no other satisfactory solution, for the following reasons:

- (a) — in the interests of public health and safety,
 - in the interests of air safety,
 - to prevent serious damage to crops, livestock, forests, fisheries and water,
 - for the protection of flora and fauna;
- (b) for the purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes;
- (c) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

2. The derogations referred to in paragraph 1 must specify:

- (a) the species which are subject to the derogations;
- (b) the means, arrangements or methods authorised for capture or killing;
- (c) the conditions of risk and the circumstances of time and place under which such derogations may be granted;
- (d) the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom;
- (e) the controls which will be carried out.

3. Each year the Member States shall send a report to the Commission on the implementation of paragraphs 1 and 2.

4. On the basis of the information available to it, and in particular the information communicated to it pursuant to paragraph 3, the Commission shall at all times ensure that the consequences of the derogations referred to in paragraph 1 are not incompatible with this Directive. It shall take appropriate steps to this end.

Article 10

1. Member States shall encourage research and any work required as a basis for the protection, management and use of the population of all species of bird referred to in Article 1. Particular attention shall be paid to research and work on the subjects listed in Annex V.

2. Member States shall send the Commission any information required to enable it to take appropriate measures for the coordination of the research and work referred to in paragraph 1.

Article 11

Member States shall see that any introduction of species of bird which do not occur naturally in the wild state in the European territory of the Member States does not prejudice the local flora and fauna. In this connection they shall consult the Commission.

Article 12

1. Member States shall forward to the Commission every three years, starting from 7 April 1981, a report on the implementation of national provisions taken under this Directive.

2. The Commission shall prepare every three years a composite report based on the information referred to in paragraph 1. That part of the draft report covering the information supplied by a Member State shall be forwarded to the authorities of the Member State in question for verification. The final version of the report shall be forwarded to the Member States.

Article 13

Application of the measures taken pursuant to this Directive may not lead to deterioration in the present situation as regards the conservation of the species of birds referred to in Article 1.

Article 14

Member States may introduce stricter protective measures than those provided for under this Directive.

Article 15

Such amendments as are necessary for adapting Annexes I and V to technical and scientific progress shall be adopted. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 16(2).

Article 16

1. The Commission shall be assisted by the Committee for Adaptation to Technical and Scientific Progress.

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 17

Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 18

Directive 79/409/EEC, as amended by the acts listed in Annex VI, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex VI, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VII.

Article 19

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 20

This Directive is addressed to the Member States.

Done at Brussels, 30 November 2009.

For the European Parliament
The President
J. BUZEK

For the Council
The President
B. ASK