

COUNCIL DIRECTIVE 79/409/EC**of 2 April 1979****on the conservation of the wild birds**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article. 235 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Whereas the Council declaration of 22 November 1973 on the programme of action of the European Communities on the environment⁴ calls for specific action to protect birds, supplemented by the resolution of the Council of the European Communities and of the representatives of the Governments of the Member States meeting within the Council of 17 May 1977 on the continuation and implementation of a European Community policy and action programme on the environment⁵;

Whereas 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; whereas this decline represents a serious threat to the conservation of the natural environment, particularly because of the biological balances threatened thereby;

Whereas the species of wild birds naturally occurring in the European territory of the Member States are mainly migratory species; whereas such species constitute a common heritage and whereas effective bird protection is typically a trans-frontier environment problem entailing common responsibilities;

Whereas the conditions of life for birds in Greenland are fundamentally different from those in the other regions of the European territory of the Member States on account of the general circumstances and in particular the climate, the low density of population and the exceptional size and geographical situation of the island;

Whereas therefore this Directive should not apply to Greenland;

Whereas the conservation of the species of wild birds naturally occurring in the European territory of the Member States is necessary to attain, within the operation of the common

¹ OJ No C 24, 1.2.1977, p.3; OJ No C 201, 23.8.1977, p.2.

² OJ No C 163, 11.7.1977, p.28.

³ OJ No C 152, 29.6.1977, p.3.

⁴ OJ No C 112, 20.12.1973, p.40.

⁵ OJ No C 139, 13.6.1977, p.1.

market, of the Community's objectives regarding the improvement of living conditions, a harmonious development of economic activities throughout the Community and a continuous and balanced expansion, but the necessary specific powers to act have not been provided for in the Treaty;

Whereas 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; whereas the stringency of such measures should be adapted to the particular situation of the various species within the framework of a conservation policy;

Whereas 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; whereas 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;

Whereas the preservation, maintenance or restoration of a sufficient diversity and area of habitats is essential to the conservation of all species of birds; whereas 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; whereas such measures must also take account of migratory species and be coordinated with a view to setting up a coherent whole;

Whereas, 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;

Whereas, 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, such hunting must be compatible with maintenance of the population of these species at a satisfactory level;

Whereas 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;

Whereas, 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;

Whereas the conservation of birds and, in particular, migratory birds still presents problems which call for scientific research; whereas such research will also make it possible to assess the effectiveness of the measures taken;

Whereas 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;

Whereas 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;

Whereas it is necessary to adapt certain Annexes rapidly in the light of technical and scientific progress; whereas, to facilitate the implementation of the measures needed for this purpose, provision should be made for a procedure establishing close cooperation between the Member States and the Commission in a Committee for Adaptation to Technical and Scientific Progress,

HAS 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.
3. This Directive shall not apply to Greenland.

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.

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, taking into account their protection requirements 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 above 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 above, 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 7 (Directive 92/43/EEC) Obligations arising under Article 6 (2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4 (4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4 (1) or similarly recognized under Article 4 (2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later.

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 the provisions of 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 recognizable 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/1, 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/2, allow within their territory the activities referred to in paragraph 1, making provision for certain restrictions, provided the birds have been legally killed or captured or otherwise legally acquired.

Member States wishing to grant such authorization 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 authorization 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 will inform the Member State concerned accordingly.

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

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

4. The Commission shall carry out studies on the biological status of the species listed in Annex III/3 and on the effects of marketing on such status.

It shall submit, at the latest four months before the time limit referred to in Article 18 (1) of this Directive, a report and its proposals to the Committee referred to in Article 16, with a view to a decision on the entry of such species in Annex III/2.

Pending this decision, the Member States may apply existing national rules to such species without prejudice to paragraph 3 hereof.

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 jeopardize conservation efforts in their distribution area.
2. The species referred to in Annex II/1 may be hunted in the geographical sea and land area where this Directive applies.
3. The species referred to in Annex II/2 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 nor 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 (a).
2. Moreover, Member States shall prohibit any hunting from the modes of transport and under the conditions mentioned in Annex IV (b).

Article 9

1. Member States may derogate from the provisions of Articles 5, 6, 7 and 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 must specify:
- the species which are subject to the derogations,
 - the means, arrangements or methods authorized for capture or killing,
 - the conditions of risk and the circumstances of time and place under which such derogations may be granted,
 - 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,
 - the controls which will be carried out.
3. Each year the Member States shall send a report to the Commission on the implementation of this Article.
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 these derogations 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.
2. Particular attention shall be paid to research and work on the subjects listed in Annex V. 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 this Article.

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 the date of expiry of the time limit referred to in Article 18 (1), a report on the implementation of national provisions taken thereunder.
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 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 this Directive to technical and scientific progress and the amendments referred to in the second paragraph of Article 6 (4) shall be adopted in accordance with the procedure laid down in Article 17.

Article 16

1. For the purposes of the amendments referred to in Article 15 of this Directive, a Committee for the Adaptation to Technical and Scientific Progress (hereinafter called 'the Committee'), consisting of representatives of the Member States and chaired by a representative of the Commission, is hereby set up.
2. The Committee shall draw up its rules of procedure.

Article 17

1. Where the procedure laid down in this Article is to be followed, matters shall be referred to the Committee by its chairman, either on his own initiative or at the request of the representative of a Member State.
2. The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit set by the chairman having regard to the urgency of the matter. It shall act by a majority of 41 votes, the votes of the Member States being weighted as provided in Article 148 (2) of the Treaty. The chairman shall not vote.

3. a) The Commission shall adopt the measures envisaged where they are in accordance with the opinion of the Committee.
- b) Where the measures envisaged are not in accordance with the opinion of the Committee or if no opinion is delivered, the Commission shall without delay submit a proposal to the Council concerning the measures to be adopted. The Council shall act by a qualified majority.
- c) If, within three months of the proposal being submitted to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 18

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.
2. 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 19

This Directive is addressed to the Member States.

Done at Luxembourg, 2 April 1979.

For the Council
The President
J. FRANÇOIS-PONCET