

## **DIRECTIVE 79/409/EEC of 2 April 1979 on the conservation of wild birds**

### ***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.<sup>1</sup>**

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 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.

<sup>1</sup> According to Article 16(iv) of the Treaty, the *acquis communautaire* on environment includes Article 4(2) of Directive 79/409/EEC.

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 rep-

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<sup>2</sup>**

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.

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<sup>2</sup> Contracting Parties were obliged to bring into force the laws, regulations and administrative provisions necessary to comply with that Directive until 1 July 2006 (in accordance with their Accession Protocols, 30 December 2010 for Moldova, 1 January 2015 for Ukraine and 1 September 2019 for Georgia).

**ANNEX I**

1. *Gavia immer* | Great northern diver
2. *Calonectris diomedea* | Cory's shearwater
3. *Hydrobates pelagicus* | Storm petrel
4. *Oceanodroma leucorhoa* | Leach's petrel
5. *Phalacrocorax carbo sinensis* | Cormorant (continental race)
6. *Botaurus stellaris* | Bittern
7. *Nycticorax nycticorax* | Night heron
8. *Ardeola ralloides* | Squacco heron
9. *Egretta garzetta* | Little egret
10. *Egretta alba* | Great white heron
11. *Ardea purpurea* | Purple heron
12. *Ciconia nigra* | Black stork
13. *Ciconia ciconia* | White stork
14. *Plegadis falcinellus* | Glossy ibis
15. *Platalea leucorodia* | Spoonbill
16. *Phoenicopterus ruber* | Greater flamingo
17. *Cygnus colombianus bewickii*(*Cygnus bewickii*) | Bewick's swan
18. *Cygnus cygnus* | Whooper swan
19. *Anser albifrons flavirostris* | White-fronted goose (Greenland race)
20. *Branta leucopsis* | Barnacle goose
21. *Aythya nyroca* | White-eyed pochard
22. *Oxyura leucicephala* | White-headed duck
23. *Pernis apivorus* | Honey buzzard
24. *Milvus migrans* | Black kite
25. *Milvus milvus* | Kite
26. *Haliaeetus albicilla* | White-tailed eagle
27. *Gypaetus barbatus* | Bearded vulture
28. *Neophron percnopterus* | Egyptian vulture
29. *Gyps fulvus* | Griffon vulture
30. *Aegypius monachus* | Black vulture
31. *Circaetus gallicus* | Short-toed eagle
32. *Circus aeruginosus* | Marsh harrier
33. *Circus cyaneus* | Hen harrier

34. *Circus pygargus* | Montagu's harrier
35. *Aquila chrysaetus* | Golden eagle
36. *Hieraaetus pennatus* | Booted eagle
37. *Hieraaetus fasciatus* | Bonelli's eagle
38. *Pandion haliaetus* | Osprey
39. *Falco eleonora* | Eleonora's falcon
40. *Falco biarmicus* | Lanner falcon
41. *Falco peregrinus* | Peregrine
42. *Porphyrio porphyrio* | Purple gallinule
43. *Grus grus* | Crane
44. *Tetrax tetrax* (*Otis tetrax*) | Little bustard
45. *Otis tarda* | Great bustard
46. *Himantopus himantopus* | Black-winged stilt
47. *Recurvirostra avosetta* | Avocet
48. *Burhinus oediacnemus* | Stone curlew
49. *Glareola pratincola* | Pratincole
50. *Charadrius morinellus* (*Endromias morinellus*) | Dotterel
51. *Pluvialis apricaria* | Golden plover
52. *Gallinago media* | Great snipe
53. *Tringa glareola* | Wood-sandpiper
54. *Phalaropus lobatus* | Red-necked phalarope
55. *Larus genei* | Slender-billed gull
56. *Larus audouinii* | Audouin's gull
57. *Gelochelidon nilotica* | Gull-billed tern
58. *Sterna sandvicensis* | Sandwich tern
59. *Sterna dougallii* | Roseate tern
60. *Sterna hirundo* | Common tern
61. *Sterna paradisaea* | Arctic tern
62. *Sterna albifrons* | Little tern
63. *Chelidonias niger* | Black tern
64. *Pterocles alchata* | Pin-tailed sandgrouse
65. *Bubo bubo* | Eagle owl
66. *Nyctea scandiaca* | Snowy owl
67. *Asio flammeus* | Short-eared owl
68. *Alcedo atthis* | Kingfisher



- 69. *Dryocopus martius* | Black woodpecker
- 70. *Dendrocopus leucotus* | White-backed woodpecker
- 71. *Luscinia svecica* | Blue-throat
- 72. *Sylvia undata* | Dartford warbler
- 73. *Sylvia nisoria* | Barred warbler
- 74. *Sitta whiteheadi* | Corsican nuthatch