



10.6.2011

NOTICE TO MEMBERS

Subject:

Petition 798/2004 by Nicola Leugio (Italian) on poaching in Malta.

Petition 0334/2005 by Kevin Sourd (French), bearing 3 signatures, concerning the slaughter of birds in Malta.

Petition 0886/2005 by Hugues FANAL (Belgian), on behalf of the Belgian Royal Society for the Protection of Birds (LRBPO), on the transposition by the Maltese authorities of Directive 79/409/EEC concerning the protection of migrant birds.

Petition 0530/2006 by Lutz Blume (German), on the killing of birds in Malta.

Petition 1091/2007 by Mr Seamus Feeney (Irish), on hunting of protected migratory birds in Malta and Cyprus

Petition 1374/2010 by Bernhard Vetter (German), on illegal hunting of migratory birds in a number of EU Member States

1. Summary of petition 0798/2004

The petitioner expresses concern at the failure of the local authorities to take any action against poachers on the island of Malta responsible for the slaughter of 8000 birds of prey during the migratory period in 2004 and asks the EP to condemn such barbarous practices

Summary of petition 0334/2005

The petitioner expresses concern at the hunting of protected bird species in Malta and at the failure of the Maltese authorities to comply with the relevant EU legislation, referring in

particular to Directive 79/409/EEC on the protection of wild birds and calling for immediate action by the European Parliament.

Summary of petition 0886/2005

The petitioner, on behalf of the LRBPO, expresses concern at the wholesale slaughter of protected migrant bird species in Malta. He is accordingly seeking action by the EP to ensure that the Maltese Government complies with the bird protection Directive and that it is properly implemented. He calls on the EP to ensure that immediately after expiry of the transitional period authorised by the EU (31 December 2008) the practice of trapping of wild birds in Malta is ended completely.

Summary of petition 0530/2006

The petitioner maintains that many migrant birds 'stopping over' in Malta are either shot or snared for sale at local markets. He argues that this contravenes EU bird protection rules and is seeking action by the European Parliament.

Summary of petition 1091/2007

The petitioner denounces the hunting of protected migratory birds in their way over Malta and Cyprus and the fact that this is considered to be a form of "sport" in these countries. The petitioner asks the European Parliament to intervene and pressure the two governments into taking the necessary measures to prevent further hunting of protected birds.

Summary of petition 1374/2010

The petitioner expresses concern about the hunting of migratory birds in Malta, Cyprus, Spain and Italy. He considers that this conflicts with the relevant EU legislation, referring in particular to Directive 79/409/EEC on the protection of wild birds, and calls for the European Parliament to take the necessary measures to prevent further hunting of protected birds.

2. Admissibility

Petition 0798/2004: Declared admissible on 30 March 2005.

Petition 0334/2005: Declared admissible on 29 August 2005.

Petition 0886/2005: Declared admissible on 10 February 2006

Petition 0530/2006: Declared admissible on 24 November 2006

Petition 1091/2007: Declared admissible on 14 March 2008

Information requested from the Commission under Rule 192(4).

Petition 1374/2010: Declared admissible on 11 February 2011.

Information requested from Commission under Rule 202(6).

3. Commission reply, for petitions 0798/2004 and 0334/2005 received on 20 October 2005.

The petitions refer to the failure of the authorities in Malta to prevent illegal hunting of birds on Malta, including the shooting of an alleged 8000 birds of prey during the migratory period 2004.

The hunting of birds of prey is not permitted under the Birds Directive (Council Directive 79/409/EEC¹ on the conservation of wild birds), with Article 5 providing a general protection for wild birds, prohibiting *inter alia* the deliberate killing or capturing of such bird species.

The Commission is currently undertaking an exercise to assess the conformity of Maltese transposing legislation with a number of environmental Directives, including the Birds Directive. On the basis of this study, where the Commission considers that there is evidence of non-compliance, it will take the necessary steps to ensure, within the limits conferred on it by the Treaty, compliance with Community law.

The Commission is aware of the problem of effective enforcement of the Birds Directive in Malta. This issue has been discussed with the Maltese authorities who have assured the Commission that the police resources to deal with this matter have been substantially reinforced. Nevertheless, the problem is still acute and the Commission has emphasised to the Maltese authorities that further reinforcement of actions is needed to bring the problem under control.

for petition 0886/2005 received on 28 March 2006

The petition refers to the threat to migrant species as a result of the trapping of birds in Malta. Under a transitional agreement to the Treaty of Accession, the trapping of seven species of finch (songbirds) is permitted in Malta for a limited period with the objective of establishing a full captive breeding system. This transition period runs until 31st December 2008.

At the end of the transition period (December 2008) and in line with the Directive, trapping will not be allowed with the possible exception of a few specimens taken from the wild to ensure the refreshment of the genetic pool of the captive breeding population of finches. This exception can only be granted under Article 9 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds which allows all Member States to derogate from the Directive's main provisions under very restricted circumstances and conditions. Any trapping permitted under a derogation would only relate to a limited number of specimens intended to directly input into the captive breeding programme and would not permit a general continuation of trapping.

The Commission is aware of some delay in the implementation of the transitional agreement and the Commission services are in contact with the Maltese authorities in order to emphasise the need to ensure effective compliance with and reporting of the obligations under the Accession Treaty. The Maltese authorities have previously informed the Commission that the first annual implementation report, demonstrating compliance with the requirements of the transitional agreement and due by the end of 2005, is now finalised. Notwithstanding this information, to date no copy of the report has been received by the Commission; as a result the Commission will seek to take the necessary steps to commence legal proceedings against Malta for a breach of its obligations under the Accession Treaty.

The Commission considers that compliance with the provisions of the Birds Directive

¹ OJ L 103, 25.4.1979, p. 1-18

(Directive 79/409/EC) is a key element in ensuring the protection of bird species and habitats throughout the EU. Where the Commission considers that there is evidence of non-compliance with the Birds Directive, it will take the necessary steps to ensure, within the limits conferred on it by the Treaty, compliance with Community law.

- 4. Further Commission reply**, for petitions 0798/2004 and 0334/2005 and 0886/2005 received on 10 October 2006.

Further to its previous communications on 20 October 2005 and 28 March 2006, the Commission is in a position to provide an update on the issues raised in these three petitions.

The Commission has been notified by the Maltese government that new legislation governing hunting in Malta came into force on March 29th 2006. The Commission services are reviewing the text to assess the extent to which this legislation (Legal Notice 79 of 2006) addresses those specific elements of the Birds Directive (Council Directive 79/409/EEC on the conservation of wild birds) which to date had not been adequately transposed into Maltese national law.

In addition to the recently-adopted legislation, the Commission notes the progress made by the Maltese authorities in seeking to improve the enforcement of legislation transposing the Birds Directive. These improvements cover increases in the sanctions available, reinforced cooperation with the police force and a proposed educational programme, despite the limited resources at the disposition of the Maltese authorities to police fully breaches of the directive. The Commission is aware that there are ongoing enforcement problems, especially regarding illegal bird hunting activities in Malta and is committed to undertaking all possible measures to ensure compliance with the obligations under the Birds Directive.

With regard to the trapping of birds, the Commission notes that the first report from the Maltese authorities on the transitional measures related to bird trapping was received on 29th March 2006. This report shows that, while there has been some initial delay in implementing elements of the transition programme in the last year, the Maltese authorities have put in place some significant elements of the programme. The Commission considers that this report indicates that progress is being made with regard to complying with the deadlines set out under the programme and demonstrates the commitment of the Maltese authorities to respect their engagement. The Commission will continue to monitor this programme to ensure that the outstanding deadlines are respected

- 5. Further Commission reply**, for petitions 0798/2004 and 0334/2005 and 0886/2005 and 0530/2006 received on 28 February 2007

Further to its previous communication of 10 October 2006, the Commission is in a position to provide an update on the issues raised in these four petitions.

The hunting of birds in Malta is covered by the provisions of the Birds Directive (Directive 79/409/EEC on the conservation of wild birds¹; the Directive) which prohibits the hunting of

¹ OJ L 103, 25.4.1979, p. 1-18

endangered species and regulates the hunting season for huntable bird species. In the case of migratory species, the Directive states that they shall not be hunted during their return to their rearing grounds, notably during spring. Under Article 9 of the Directive, Member States may derogate from this general prohibition if certain conditions are met.

In 2004, the Maltese government exercised this option to apply derogation for spring hunting of a limited number of Turtle-Doves and Quails – on the basis that these birds were only present in numbers during the spring migration, and therefore spring provided the only opportunity for them to be hunted. However, in order to be valid, the derogation of spring hunting must comply with all the conditions set out under Article 9 of the Birds Directive. The Maltese authorities were required to demonstrate that the spring hunting season was limited and strict quotas on numbers of birds which could be shot were stipulated and enforced.

Following an assessment of the information provided by the Maltese authorities in their 2004 derogation report, the Commission concluded that the derogation did not comply with all the conditions set down in Article 9 of the Directive, in that alternative periods for hunting were available, for example during autumn. As a result, legal infringement proceedings were commenced by the Commission against Malta in July 2006, with a letter of formal notice under Article 226 of the European Treaty being sent to the Maltese authorities, setting out the grounds for non-compliance with the Directive. It is now for the Maltese authorities to respond to the Commission. Due at the beginning of September, the deadline for the Maltese response was extended by a further two months, at the request of the Maltese authorities. The Commission notes the passing of the extended deadline; if no response is received in due course, the next stage of the legal procedure will automatically be launched.

With regard to the issue of illegal hunting of other species of bird in Malta, information received by the Commission indicates that problems regarding the enforcement of illegal hunting continue, with reports that legislation adopted in March 2006, intended to fully implement the Birds Directive, is not being adequately enforced. On the basis of these reports, a new complaint has been opened, with the objective of raising this issue with the Maltese authorities.

As concerns the trapping of birds and the programme for transitional measures set out under the Accession Treaty, the Commission notes that figures for the number of birds trapped in 2005 and a list of registered trapping sites are expected to be notified by the Maltese authorities by the end of 2006. The Commission will continue to monitor this programme to ensure that the outstanding deadlines are respected.

6. Further Commission reply, for petitions 798/2004, 334/2005, 886/2005, 530/2006 received on 7 March 2008

As stated in its communication of 23 March 2007, infringement proceedings were commenced by the Commission against Malta in July 2006, for permitting the spring hunting of turtle doves and quail in breach of Articles 7 and 9 of the Birds Directive (Directive 79/409/EEC on the conservation of wild birds¹). A letter of formal notice under Article 226 of

¹ OJ L 103, 25.4.1979, p. 1-18

the European Treaty was sent to the Maltese authorities on 28 June 2006, setting out the grounds for non-compliance with the directive. A request for an extension of time in which to respond was subsequently received. A two-month extension was granted, until 5 November 2006.

The Maltese authorities replied by letter dated 23 March 2007. In response to the grounds that alternatives to spring hunting exist, they stated that insignificant numbers are present in autumn to allow hunting at that time. Data provided regarding the hunting figures for 2005 did not provide additional information to indicate that no alternatives to spring hunting were available. A reasoned opinion was subsequently sent to the Maltese authorities on 17 October 2007.

A reply to the reasoned opinion was received on 11 January 2008. In their reply the Maltese authorities stated that insufficient opportunities for hunting in autumn existed which meant they did not consider that it represented a viable alternative. Following an analysis of the response, the Commission takes the view that, although more limited, possibilities for hunting in autumn do exist and as such alternatives to spring hunting are available. The case was subsequently transferred to the Court of Justice on 31 January 2008.

With regard to the issue of the illegal hunting of other species of birds in Malta, the information received by the Commission indicates that in two months, from September to November 2007, 57 cases were brought forward as a result of persons found to be hunting in breach of the legislation. In the course of their actions, the enforcement authorities also seized a number of illegal items, including bird callers, cage traps and decoys. Penalties in connection with illegal hunting have been increased, with maximum fines in the region of €14,000 and two years in prison.

As concerns the trapping of birds and the programme for transitional measures set out under the Accession Treaty, data provided by the Maltese authorities indicate that there are 7 310 registered trapping sites on the islands. As part of the targets established under Chapter 10(D) of Annex XI of the Accession Treaty, the Maltese Government set up the Għammieri Bird Breeding Project in February 2006. The area of the site where the project is being carried out is 171m² with 29 cages of 2.1m² each, 2 larger cages of 8m² and 6 smaller cages which are used during the breeding period. Initially, the project started with four pairs from each specimen of the seven species of song-birds, namely Hawfinch, Greenfinch, Goldfinch, Chaffinch, Eurasian siskin, European Serin and the Linnet. Currently, the aviary holds 4 specimen of Hawfinch (3 males and 1 female); 8 specimen of Chaffinch, Eurasian siskin, Linnet and European Serin (4 males and 4 females from each of these mentioned species); 16 specimen of Greenfinch (7 males and 9 females) and 7 Goldfinch (3 males and 4 females) The Malta Ornithology Committee is currently examining the conditions at the aviaries to assess possible improvements that could be made to the current infrastructure to improve breeding results.

7. Further Commission reply, for petitions 798/2004, 334/2005, 886/2005, 530/2006 1091/2007 received on 17 July 2008

Further to its previous communication dated 7 March 2008, the Commission notes that in the infringement case against Malta for permitting the spring hunting of turtle doves and quail in breach of Articles 7 and 9 of the Birds Directive (Directive 79/409/EEC on the conservation

of wild birds¹), on 31 January 2008 the Commission applied to the Court requesting interim measures to prevent spring hunting taking place this year. On 24 April, the Court ruled that no legislation permitting spring hunting in 2008 be adopted in Malta. The main case, concerning the general principle of spring hunting in Malta itself, is still under consideration by the Court.

In accordance with the principle of equal treatment, the aim of the Commission is to ensure a consistent application of the Birds Directive in relation to illegal hunting throughout the EU. The Commission also notes the judgement of the Court in the case concerning spring hunting in Liguria, Italy (Case C-503/06), dated 15 May 2008, in which the Court reemphasised the conditions to be met for spring hunting to be permitted, including the absence of other satisfactory solutions.

The Commission is aware of the decision of the Cypriot authorities to grant a derogation permitting the hunting of two species (carrion crow and magpie) during six days in May 2008. The Commission is assessing the situation in order to ensure compliance with the relevant provisions of the Birds Directive.

8. Further Commission reply, for petitions 798/2004, 334/2005, 886/2005, 530/2006 and 1091/2007 received on 24 June 2010

Further to its previous communication dated 16 July 2008, the Commission informs the Committee that on 10 September 2009 the Court of Justice of the European Union gave its judgment in the case concerning the issue of spring hunting in Malta (Case C-76/08). It found that the practice of hunting of quails and turtle doves during spring migration between 2004 and 2007 was contrary to the Birds Directive², specifically the requirements under Article 9.

While finding that spring hunting in Malta breached the Birds Directive, the Court confirmed that some spring hunting might be permitted on the basis that (1) hunting can be the subject of derogations and that (2) a crucial pre-condition for derogations - absence of alternative solutions - is met because, in the specific circumstances applying in Malta, the birds are not sufficiently available for hunting in the autumn.

The judgment found that Malta had failed to comply with the conditions under Article 9(1) of the directive, interpreted in light of the principle of proportionality. It should be noted, however, that the judgment did not exclude the future possibility of opening a limited and strictly supervised spring hunting season in Malta.

The Commission can confirm that there have been discussions with the Maltese Government on the execution of the Court's judgment in relation to a proposed spring hunting derogation in 2010. On 9 April 2010, the Maltese Government adopted legislation permitting spring hunting of some 7,500 birds in Malta for one week at the end of April 2010. The legislation imposes a number of restrictions in relation to spring hunting and provides detailed measures

¹ OJ L 103, 25.4.1979, p. 1-18

² Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version) (*OJ L 20, 26.1.2010, p. 7-25*)

for controlling spring hunting.

The Commission considers that, in principle, the new legislation permitting spring hunting in 2010 appears to comply with the requirements of the judgment of the Court of Justice of the European Union. It is, nevertheless, essential to enforce effectively all the conditions set out in the new legislation (duration of the hunting season, number of hunting licences and number of birds to be hunted). The Commission will monitor the spring hunting period in 2010 in order to assess whether the conditions for the derogation are complied with.

The Commission also understands that the Maltese Government has adopted a framework legislation seeking to permit spring hunting in future years which sets out a higher figure for birds (some 25,000) and provides for a three-week long open season. The Commission is currently considering this framework legislation regarding its compliance with the provisions of the judgment with a view to taking additional steps in the future if necessary.

With regard to spring hunting of birds in Cyprus in 2007, the Cypriot authorities committed not to allow spring hunting of turtle doves in future years. This commitment was reconfirmed by Cyprus in 2008. As regards the derogation to allow spring hunting of crows, the Commission considers that this has been granted in accordance with the requirements of the Birds Directive to prevent serious damage to agriculture.

9. Further Commission reply, for petitions 798/2004, 334/2005, 886/2005, 530/2006 and 1091/2007, received on 9 December 2010

In its judgment in the case concerning the issue of spring hunting in Malta of 10 September 2009 (Case C-76/08), the Court held that the hunting of quails and turtle doves during the autumn hunting season cannot be regarded as constituting a satisfactory solution in the specific case of Malta. Therefore, the judgment does not exclude the possibility of opening a limited and strictly supervised spring hunting season in Malta. However, the Court has also held that the principle of proportionality and the other requirements laid down in Article 9(1) of the Birds Directive¹ must be satisfied when seeking to rely on a derogation under Article 9 of the directive. In the present case, the Court found that Malta had failed to satisfy the principle of proportionality when it permitted spring hunting in the period 2004-2007.

An in-depth analysis of Malta's framework legislation (L.N. 221 of 2010), which would permit future spring hunting of a maximum of 25,000 birds (12,000 quails and 13,000 turtle doves), with a three-week hunting season, adopted by the Maltese Government in April 2010, has led the Commission to conclude that Malta's spring hunting legislation for future years does not comply with the Court ruling because it does not address properly the principle of proportionality.

Consequently, on 28 October 2010, the Commission decided to send Malta a letter of formal notice in accordance with the procedure laid down in Article 260 of the Treaty on the Functioning of the European Union. The Commission has invited the Maltese Government to

¹ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version) (*OJL 20, 26.1.2010, p. 7–25*)

submit its observations on the matter within two months of receipt of this letter. After examining these observations, or if no observations have been submitted within the prescribed time-limit, the Commission may refer the case back to the Court of Justice, requesting financial penalties.

10. Further Commission reply, for petitions 798/2004, 334/2005, 886/2005, 530/2006 and 1091/2007 & 1374/2010 received on 10 June 2011

As stated in the Commission's previous communication in relation to this petition, on 28 October 2010, the Commission decided to send Malta a letter of formal notice in accordance with Article 260 of the Treaty on the Functioning of the European Union to address shortcomings identified in Malta's new framework legislation (L.N. 221 of 2010), adopted in April 2010, which sets out the conditions and parameters for a restrictive opening of a spring hunting derogation in Malta in the future.

Following receipt of Malta's reply to the aforementioned letter of formal notice, the Commission followed up with a series of bilateral discussions with the Maltese authorities with a view to resolving the shortcomings identified by the Commission. As a result, Malta has made several amendments to the framework legislation.

The Commission welcomes these legislative amendments and considers that the amended framework legislation appears to comply with the Court's judgment dated 10 September 2009 and the strict conditions laid down in the EU's Birds Directive.

Nevertheless, the welcoming of the above-mentioned legislative amendments should not be interpreted as the Commission having agreed with the Maltese Government on the application of any particular spring hunting derogation in the future. It will still remain for the Maltese Government, before opening any season, to determine whether all the restrictive conditions for opening a Spring hunting derogation are met. In this context, it should also be recalled that it remains ultimately with the Member State to take all the necessary measures to ensure compliance with EU legislation at all times and it is, therefore, primarily the responsibility of the Maltese Government to make sure that any particular Spring hunting derogation is applied in full compliance with the strict criteria laid down in the Birds Directive.

Conclusions

The Commission took note of Malta's decision to open a limited spring hunting season in 2011 in accordance with the amended framework legislation. The Commission will continue to monitor whether Malta takes all the necessary measures to ensure compliance with EU legislation, and has underlined the importance of strict monitoring and supervision to ensure that the limits of any derogation are respected.