

# European Communities

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### Report

drawn up on behalf of the Committee on the Environment, Public Health and  
Consumer Protection

on the proposal from the Commission to the Council (Doc. 512/76) for a  
directive on ~~bird~~ conservation

Rapporteur: Mr H. E. JAHN

PE 48.096/fin.



By letter of 11 January 1977 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 100 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive on bird conservation.

The President of the European Parliament referred this proposal to the Committee on the Environment, Public Health and Consumer Protection as the committee responsible.

On 14 February 1977 the Committee on the Environment, Public Health and Consumer Protection appointed Mr Jahn rapporteur.

It considered the proposal at its meetings of 17 March, 30 March, 29 April and 17 May 1977.

At its meeting of 17 May 1977 the committee adopted the motion for a resolution and the explanatory statement unanimously with two abstentions.

Present: Mr Ajello, chairman; Mr Jahn, vice-chairman and rapporteur; Mr Alber, Mr Baas, Mr Brégégère, Mr Brown, Mr Creed, Mr Evans, Mr Martens (deputizing for Mr van Aerssen), Mr Willi Müller, Mr Noè, Mr Schwabe, Mr Schyns, Mrs Squarcialupi, Mr Vernaschi and Mr Zeyer (deputizing for Mr Ney)

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A

The Committee on the Environment, Public Health and Consumer Protection hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive on bird conservation

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council<sup>1</sup>;
  - having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 512/76);
  - having regard to the report of the Committee on the Environment, Public Health and Consumer Protection (Doc. 113/77);
1. Notes with satisfaction that the Commission has now submitted the proposal for a directive on bird conservation long requested of it, since it represents the first specific measure by the Community aimed at counter-acting the imminent extinction or **large scale** destruction of many bird species in Europe;
  2. Calls on the Commission to base its proposal Articles 43, 100 and 235 of the EEC Treaty;
  3. Draws attention to the fact that the reduction in the number of existing species which has been recorded in recent years and the decline in their population are a serious threat to the preservation of our natural environment since the biological equilibria, which these species help to maintain are thereby in danger of being disrupted or destroyed;
  4. Sees as the keynote of the directive the idea that mankind's proper role in nature is not that of a master, but rather of an integral part wholly dependent on the other parts that make up the ecological systems of ours called 'Earth';
  5. Points to the great importance of birds as the bio-indicators of a clean environment, since the most sensitive and susceptible species of bird will be the very ones to die out in the situations where mankind can still survive;

<sup>1</sup> OJ No. C 24, 1.2.1977, p. 3

6. Emphasizes that the threat of extinction or the destruction of bird species are to a large extent due to birds being indiscriminately hunted as well as to human interference with their habitats, particularly through the use of chemical fertilizers and pesticides.
7. Is aware of the fact that it is not sufficient to implement the provisions contained in the directive solely in the territory of the Member States but that measures to promote bird protection must be realized on a world-wide basis, and accordingly urges the Commission to take the necessary steps to ensure that in the near future the Community initiates appropriate negotiations with third countries;
8. Agrees with the principle adopted by the Commission that a satisfactory level for the bird population needs to be established, bearing in mind not just the one criterion of bird protection but a number of different criteria, yet stresses that bird protection is a crucial factor if the objective of maintaining the bird population is to be achieved;
9. Notes with satisfaction that the small songbirds which are hunted in the countries bordering the Mediterranean receive better protection under the new directive;
10. Considers it essential that the species of bird listed in Annex II, Part 2 be subject to the regional protective measures contained in the directive throughout the Community;
11. Supports without reservation the provisions laid down in Article 8 prohibiting the use of largescale and/or non-selective capturing and slaughtering methods in the hunting of birds, and stresses that these prohibitions must be strictly applied and observed;
12. Fears that the derogations allowed by Article 9 from the standards of bird protection, which are laid down in principle, are so liberal and wide-ranging that there is a danger of abuse, and can only endorse them therefore if the supervisory function to be exercised by the Commission is retained and the Council institutes the proposed derogation procedures after consulting the European Parliament;
13. Urges that the coordination of the necessary research activities into the protection and wise use of bird populations be entrusted to the Commission of the European Communities;

14. Calls on the Commission to consider and put into effect measures to inform and educate the populations of those Member States where customary hunting practices will be reduced or abolished as a result of the implementation of this Community directive;
15. Calls on the Council, in view of the urgent need to implement the provisions contained therein, to adopt the directive and bring it into effect as soon as possible, and all events, in conformity with the obligation it entered into in the 1973 environmental action programme, within nine months of its having been submitted, i.e. by September 1977 at the latest;
16. Emphasizes that, in the interests of those species of bird that are threatened with extinction or further severe reductions in their numbers, it is imperative that swift action be taken, and therefore urges that the time-limit for incorporating the directive into national law be reduced to one year from the date of notification of the directive;
17. Requests the Commission to incorporate the following amendments in its proposal, pursuant to Article 149(2) of the EEC Treaty.

Council Directive  
on bird conservation

Preamble and recitals unchanged

Article 1 unchanged

Article 2

The Member States shall take the requisite measures to maintain the population of these species at a level compatible with ecological, economic, recreational and scientific requirements.

Article 2

The Member States shall take the requisite measures to maintain the population of these species at a level, or restore it to a level, which is compatible with ecological, economic, recreational and scientific requirements.

Article 3 unchanged

Article 4

1. The species listed in Annex I shall be the subject of more stringent protection measures aimed at the conservation of habitats in a sufficient number of areas to ensure the survival and reproduction of these species throughout the territory of the Member States. To this end, after consulting the Commission, the Member States shall designate and classify the most appropriate areas as special protected areas.

Article 4

1. The species listed in Annex I shall be the subject of more stringent protection measures aimed at the conservation of habitats in a sufficient number of areas to ensure the survival and reproduction of these species throughout the territory of the Member States. To this end, after consulting the Commission, the Member States shall designate and classify the most appropriate areas as special protected areas

Steps should be taken in this connection to ensure that, in each Member State, an adequate part of the areas of international importance for the migratory species is protected from all disturbing factors (pollution, alteration of ground structure, urbanization, etc.). Such areas, moreover, shall be the subject of a total ban on the

<sup>1</sup> For full text see OJ No. C 24, 1.2.1977, p.3

hunting of all bird species.

Article 4, (2) and (3) unchanged

Article 5 unchanged

Article 6

The Member States shall prohibit the sale, the keeping for sale and offering for sale of live or dead birds, with the exception of dead birds of the species listed in Annex III during the periods in which they may be hunted.

Article 6

The Member States shall prohibit the sale, the keeping for sale and offering for sale of live or dead birds, with the exception of live and dead birds of the species listed in Annex III during the periods in which they may be hunted.

Article 7 and 8 unchanged

Article 9

1. For certain specific species, the Member States may, in accordance with the procedure provided for in paragraph 2, derogate the provisions of Article 5, 6 and 8, if there is no other satisfactory solution, for the following reasons:

- (a) to prevent serious damage to crops, forests and water, and, in general, to economic activity;
- (b) to protect indigenous flora and fauna;
- (c) for the purpose of scientific research, and for teaching and rearing.

Article 9

1. For certain specific species, the Member States may, in accordance with the procedure provided for in paragraph 2, derogate the provisions of Article 5, 6 and 8, if there is no other satisfactory solution, and in particular:

- (a) unchanged
- (b) unchanged
- (c) for the purpose of scientific research, and for teaching, rearing and repopulation.

2. To this end, they shall submit such derogations to the Commission before implementation thereof, accompanied by a full statement of reasons. The Commission, by means of a decision, may at any time request that such a derogation be revoked, suspended or amended if it produces or threatens to produce consequences jeopardizing the objectives of this Directive. The Member State or States to whom such a decision is addressed may put the matter before the Council, which acting by a qualified majority shall decide if the derogation may be authorized and under what conditions. The Commission's decision shall remain valid until the Council has acted.

2. To this end, they shall submit such derogations to the Commission before implementation thereof, accompanied by a full statement of reasons. The Commission, by means of a decision, may at any time request that such a derogation be revoked, suspended or amended if it produces or threatens to produce consequences jeopardizing the objectives of this Directive. The Member State or States to whom such a decision is addressed may put the matter before the Council, which after consulting the European Parliament and acting by a qualified majority shall decide if the derogation may be authorized and under what conditions. The Commission's decision shall remain valid until the Council has acted.

Article 10 unchanged

Article 11

1. The Member States shall forward to the Commission every two years starting from the date of notification of this Directive a report on the implementation of national provisions taken thereunder. This report shall also contain a progress report on the work referred to in Article 10.

Article 11

1. The Member States shall forward to the Commission within 6 months of the date of adoption of this Directive a progress report on national and international investigations in the field of bird conservation and on the funds available for these purposes together with details of their sources.
2. They shall forward to the Commission every two years (nine words deleted) a report on the application of national provisions implemented in pursuance of this Directive and on measures that are planned in connection with its implementation. This report shall also contain details of the current state of progress with the work stipulated in Article 10.

Articles 12 - 15 unchanged

Article 16

1. The 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. The Member States shall notify to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 16

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within one year of its notification. They shall forthwith inform the Commission thereof.
2. The Member States shall notify to the Commission the texts of the main provisions of national law which they propose to adopt in the field covered by this Directive, in sufficient time to enable it to express its opinion on them.

Article 17 unchanged  
Annexes I to III unchanged

EXPLANATORY STATEMENTI. General considerations

1. Your committee does not intend in this report to deal again with the numerous initiatives taken by the European Parliament with regard to bird conservation at European level. Suffice it to recall that, in paragraph 19 of its Resolution of 8 July 1976 on the continuation and implementation of a European Community policy and Action Programme on the Environment<sup>1</sup>, the European Parliament unequivocally stated that it 'expects the Commission to take full account of the demands made by the European Parliament in its proposal for a Directive on the harmonization of legislation in Member States on the protection of birds which it announced a long time ago but which has still not been submitted'. In view of the many protests by bird conservation organizations in the Community at the completely inadequate provisions put forward by the Commission in its 'Proposal for a directive on bird conservation' of 12 May 1976<sup>2</sup>, your rapporteur felt prompted, in October 1976, on behalf of the Christian-Democratic Group as well as of the Committee on the Environment, Public Health and Consumer Protection, to put an oral question (No O-58/76) to the Commission concerning its proposal for a directive on bird protection<sup>3</sup>.

In his answer of 15 October 1976, Mr Guazzaroni, Member of the Commission, stated inter alia that the complexity of the problem and the emotive atmosphere surrounding it obliged the Commission to be scrupulously careful in preparing its proposals. Mr Guazzaroni assured Parliament 'that the draft directive (...) will introduce general rules for the protection of species of wild birds and will take account of the views of the various interested parties and especially of the wishes expressed by the European Parliament.'<sup>4</sup>

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<sup>1</sup>OJ No C 178, 2.8.1976, p.47

<sup>2</sup>This proposal was attached as an annex to petition No 10/76 on saving migratory birds, which Mrs Fanny Rosenzweig presented to the European Parliament in August 1976 on behalf of the 'Mondiaal Alternatief Foundation' and numerous co-signatories.

<sup>3</sup>Cf. Doc 329/76

<sup>4</sup>Cf. OJ, Annex, No 207, Debates, p.221-225

2. The Committee on the Environment, Public Health and the Consumer Protection therefore naturally welcomes the fact that the Commission's long-awaited proposal for a directive on the protection of our bird life is at last available. In putting forward its proposal, the Commission is not only complying with a request from the European Parliament, but is also implementing a number of important points contained in the two programmes on environmental protection. The European Communities' action programme on the environment of 22 November 1973 includes for instance the following statement, 'policy for the protection of the environment should therefore include measures to prevent the large-scale destruction of birds, particularly song birds and migratory birds, and more generally to protect the existence of certain animal species threatened with extinction'<sup>1</sup>.

Furthermore, the Council resolution on the continuation and implementation of a European Community policy and Action Programme on the Environment recalls that in 1974 and in 1975 the Commission had investigated a number of questions concerning the protection of migratory birds and certain animal species that were either endangered or threatened with extinction. These studies had shown that the problems transcended national frontiers and that any solution would require initiatives at both international and Community level.<sup>2</sup>

3. The present situation in this field can be summarized as follows:

The destruction and the reduction in the population of indigenous bird species are unfortunately continuing at an alarming rate in the Community. This is due to the killing of certain species by hunters, to trapping using all kinds of equipment including nets and limes and also to interference with the biotopes (i.e. bird habitats), which no longer enable these species to survive and reproduce. This distressing situation means that some 60 species of bird are currently in danger of extinction.

It has furthermore been established that less than one third of the 400 species observed in the territory of the Member States show normal reproduction rates. Hunting continues to exact a high toll on the bird population, and it is the smaller species, in particular songbirds, that

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<sup>1</sup> OJ No C 112, 20.12.1973, p.40

<sup>2</sup> OJ No C 115, 20.5.1976, p.21

are being ruthlessly decimated especially during the migratory season by trappers using nets and limes. While these practices are not indulged in to the same extent in all Member States, they nonetheless remain a cause for alarm, since the majority of bird species observed in the territory of the Member States are migrant species. For this reason, until harmonized measures are applied to the whole of the Community territory, any restrictions implemented with a single Member State will be unlikely to have any effect upon the fate of the species affected.

The reduction in the number of existing species and in their population is a serious threat to the preservation of our natural environment, since the biological equilibria which these species help to maintain are thereby in danger of being disrupted or destroyed. The ensuing chain reactions are difficult to forecast and difficult to combat permanently. One consequence which has already been observed is that the biological regulating mechanisms are being weakened or are disappearing. This means that increased use must be made of chemical pesticides to control insects and rodents, which could have serious side-effects not only on other wild animal and plant species not deliberately attacked by pest control methods, but also on mankind.

The problems of bird conservation are giving rise to increasing anxiety amongst the general public. By way of example, the Commission of the European Communities has alone received petitions containing more than 50,000 signatures and demanding measures at Community level.

4. There are many reasons for this critical state of affairs; according to the Commission's explanatory memorandum on its proposal for a directive, they may be divided into two groups. Firstly, there are in the Commission's view those measures which affect the birds' habitat. Wild birdlife cannot be preserved without adequate space for the survival and reproduction of the species. Direct interference by mankind through measures of physical planning, agricultural development, civil engineering and the strengthening of coasts and estuaries has had a decisive impact on the population level of bird species. This applies particularly in the case of species dependent on specific environments such as wetlands and scrublands. The pollution of the habitats is also an important factor determining the level of the bird population.

The second reason for the critical state of our bird life is the pressure exerted by hunting, which decimates the bird population. The destructive effect is greatly magnified by the use of mass or non-selective slaughtering methods.

The Committee on the Environment, Public Health and Consumer Protection would, on the other hand, point out that the threat of extinction or large-scale destruction is due, as well as to human interference with their habitats, mainly to the indiscriminate hunting of birds. The measures laid down in the directive should reflect a corresponding order of priority.

In its answer to the questionnaire (PE 47.982/Ann.) compiled by the rapporteur, the Commission itself admits, incidentally, that the directive places most emphasis on the surveillance of hunting and trapping, which are easier to control.

5. The Commission bases its proposed directive on Article 100 and Article 235 of the EEC Treaty. The fourth recital states that in the field of bird conservation certain laws, regulations and administrative provisions of the Member States have a direct impact on the operation of the common market. However, the requisite powers to act are not all provided for in the Treaty. On this assumption, the Commission concludes that it must also base its proposal for a directive on Article 235 of the EEC Treaty<sup>1</sup>. This is not necessary, however, as Article 100 of the EEC Treaty is in itself an adequate legal basis for the directive. The preconditions for applying Article 100 of the EEC Treaty do in fact already exist:

- (a) there are differing legal and administrative provisions in the Member States, as is clearly stated in point II of the Commission's explanatory memorandum on the proposed directive.
- (b) these differing legal and administrative provisions directly affect the operation of the common market, as is explicitly stated by the Commission in its fourth recital.

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<sup>1</sup> Article 235 of the EEC Treaty reads: 'If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures'.

If both of these conditions are fulfilled, however, the Council must on a proposal from the Commission issue directives in the areas concerned (Article 100 of EEC Treaty). The Commission considers it expedient to base its proposal for a directive on Article 235 as well. Your committee has no objection to this, although it is of the view that Article 43 (measures in the framework of the common agricultural policy) should also be taken as a legal basis.

6. Your committee regrets that in considering the proposal for a directive, it was not given the opportunity by the Committee on the Rules of Procedure and Petitions to take into account the above-mentioned Petition No 10/76 (PE 45.658). Although this petition was referred for formal consideration as to its admissibility to the Committee on Rules of Procedure and Petitions, the latter committee neglected to obtain the opinion of the committee responsible for the environment on the matter beforehand. Moreover, a precedent already exists since, by its resolution of 21 February 1975, the European Parliament took up a position on the basis of a report drawn up by Mr Jahn (Doc. 449/74) on behalf of the Committee on the Environment, Public Health and Consumer Protection on Petition No 8/74 concerning the conservation of migratory birds. On that occasion, the responsible committee was the one concerned with environmental matters and it dealt promptly with Petition No 8.

7. Your committee agrees in principle with the Commission's proposed directive as it represents the first serious attempt by the Community to counteract the imminent extinction and large-scale destruction of many bird species in Europe. The committee calls on the Council to adopt the directive and bring it into effect as soon as possible, in view of the urgent need to implement the provisions contained therein. This is in any case only the first step and will in the foreseeable future need to be followed by further action to close the remaining loopholes in this first directive.

8. On a matter of principle, the committee could point out that it is not sufficient to implement the provisions contained in a directive solely in the territory of the Member States. The measures to promote bird conservation need instead to be realized on a world-wide basis.

Your committee accordingly urges the Commission to see to it that in the near future the Community starts talks with third countries aimed at inducing them to adopt the provisions contained in the directive.

(a) Your committee is well aware that the application of the directive in certain Member States must lead to changes in customary hunting practices. The point and purpose of the directive will have to be explained to the population so that it can be implemented without difficulty for the good of human beings and their environment. Paragraph 14 of the resolution therefore calls on the Commission to consider and put into effect measures to inform and educate the populations of those Member States where customary hunting practices will be reduced or abolished as a result of the implementation of this directive.

## II. Main provisions of the proposed directive

9. In considering the proposal for a directive, your committee has also taken account of the Commission's answers to the questionnaire (PE 47.982/Ann.) compiled by the rapporteur.

The overall approach and scope of the directive are laid down in Article 1. It contains measures relating to the conservation of all species of wild bird which are normally to be found in the territory of the Member States, including the protection and management thereof. Domestic birds, imported species and birds that are only rarely observed in the territory of the Member States do not therefore come within the scope of the directive.

The Committee on the Environment welcomes the fact that the Commission has now included all species of wild bird in their proposed directive, whereas the original draft dated 12 May 1976 covered only some species.

The directive applies not only to the birds themselves but also to their young, eggs, nests and habitats.

10. The general objective of the directive is defined in Article 2. The aim of the measures proposed in the directive is to maintain the numbers of the various species at a level compatible with:

- (a) ecological
- (b) economic
- (c) recreational
- (d) and scientific

requirements. As the Commission explains in the explanatory memorandum preceding the proposal for a directive, the underlying principle is to find a satisfactory level for the bird population, bearing in mind not just one criteria such as protection but a number of different criteria.

Your committee agrees with this principle while stressing the point that bird protection is a crucial factor, if the objective of maintaining the bird population is to be achieved. Your committee is convinced that the only effective means of protection is to safeguard birdlife against all forms of human interference and molestation which may endanger it. This does not exclude the provision of care and attention, e.g. feeding birds at critical periods, protection against other hazards, the creation of special protected zones, the setting up of suitable breeding reservations for birds and the establishment of staging points in migratory zones.

Furthermore, in many cases it is certainly not enough to maintain existing numbers. For, as the Commission rightly points out in point I (3) of the explanatory memorandum, some 60 species of birds are currently in danger of extinction and less than one-third of the species to be found in Europe show normal reproduction rates. Consequently, one of the directive's main aims must be to restore the numbers of our bird species to an optimum level. Accordingly, your committee urges the Commission to amend Article 2 of the proposed directive by adding the following:

'The Member States shall take the requisite measures to maintain the population of these species at a level or restore it to a level, which is compatible with ecological, economic, recreational and scientific requirements.'

In its answer on the questionnaire, the Commission merely points out that Article 2 sets as its objective the maintenance of the population of these species at an optimum level. This is in fact what your committee is calling for, but it is not expressly stated in Article 2 of the directive.

11. Within the framework of this general objective, the directive introduces a system of protection, which in principle is applicable to all species of bird. The only exceptions are those species expressly named, which are subject to a special system. The Commission explains that the need for a general system of protection was revealed by the convergent views of experts. The measures proposed to this end cover three fields:

- bird habitats,
- capture and killing of birds,
- trade in birds.

12. Article 3 stipulates that measures are to be taken to maintain or to restore a sufficient diversity and area of habitats for all species of wild birds. Your committee would also stress at this point the need to restore the diversity and overall area of bird habitats. As is rightly pointed out by the Commission in its explanatory memorandum, these measures must take account of the birds ethological needs, especially at the crucial reproduction stage.

13. Article 4 (1) provides for more stringent protection measures for the 62 species of bird regarded as rare or in danger of extinction (Annex I). The additional measures are aimed at the conservation of habitats in a sufficient number of areas to ensure the survival and reproduction of these species throughout the territory of the Member States. The Member States shall designate the most appropriate areas for this purpose and classify them as protected areas. Provision has rightly been made for prior consultation with the Commission to ensure a coherent and sufficiently dense network of such areas in the territory of the Community.

Similar measures are also laid down for migratory species (Article 4(2) ) with the aim of establishing protected areas which are adequate in number and in area for the reproduction, moulting and wintering of these species and of providing staging points within their zones of migration. Furthermore, steps are to be taken to preserve recognized wetlands of international importance.

Your committee considers that this paragraph needs to be more specific so as to make the directive more effective. It therefore calls on the Commission to expand Article 4 (1) as follows:

'Care should be taken in this connection that, in each Member State, an adequate part of the areas of international importance for the migratory species are protected from all disturbing factors (pollution, alteration of ground structure, urbanization, etc.). Such areas, moreover, shall be the subject of a total ban on the hunting of all bird species.'

Finally, it is stipulated that steps must be taken to prevent any pollution, deterioration of the habitat or disturbance of birds in the protected areas, which significantly affects the objectives of the increased protection measures (Article 4(3)).

14. Article 5 aims at protecting bird populations from all direct attacks on them by man by introducing a general system of protection for all species of wild bird. This will take the form of a ban on, in particular:

- deliberate killing or capture,
- deliberate destruction of nests and eggs,
- egg collecting.

The view was expressed in your committee that the ban should be extended to cover the wanton killing and capture of birds and the wanton destruction of nests and eggs, in addition to premeditated activities of this kind.

Tightening up this provision would certainly provide more effective protection for birdlife. Experience had also shown that it was as a rule comparatively difficult to prove in practice that a lawbreaker had criminal intent. It was therefore requested that the word 'deliberate' be deleted from Article 5(a) and (b).

This amendment would not, of course, have affected the destruction of bird life resulting - as the Commission points out in its answer to the questionnaire - from routine activities in, say, the agricultural or forestry sectors.

This view did not, however, find a majority in the committee and Article 5 therefore remains unchanged.

15. The provisions contained in Article 6 are aimed at removing commercial pressures in cases where the capture and killing of birds are authorized. Accordingly, the sale, the keeping for sale and the offering for sale of live or dead birds are prohibited. Trade in dead birds is authorized only in certain game species (see Annex III) and even then only during the period in which they may be hunted. The Commission based the list of exceptions contained in Annex III on the following three principles:

- (a) the special situation of migratory species,
- (b) the possibility of breeding in captivity to offset the pressures of hunting,
- (c) the risks of additional pressure on the level of the bird population on account of trade.

Your committee believes, however, that the exceptions should also apply to trade with live birds of the species listed in Annex III and that Article 6 should be amended accordingly.

16. Article 7 makes provision for two exceptions:

- (a) the species listed in Annex II, part 1 may be regarded as game species throughout the Community; the species listed in Annex II, part 2 may be regarded as game species in the Member States in respect of which they are indicated as such. This means that these species of bird may be hunted.
- (b) the Member States may themselves decide whether to exclude the species listed in Annex II, part 3 from the provisions of Article 5(a) and (b), i.e. allow them to be hunted.

The Commission justifies these exceptions by explaining that scientific opinion agrees that a reasonable level of harvesting can be considered as an acceptable exploitation of wild life species, compatible with the maintenance of these species at a satisfactory level, provided that certain necessary limits are established and respected. In particular, it is important to ensure that the practice of hunting complies with the principles of wise use and ecologically balanced control of the species of bird concerned.

For those species listed in Annex II, part 1, the principle of harvesting at a reasonable level throughout the Community may be applied.

The twenty species of bird listed in Annex II, part 2 may not in principle be regarded as game species (i.e. eider, red-breasted merganser, goosander, wild turkey, quail, moorhen, collared turtle dove, turtle dove, stock dove, water rail, lapwing, oyster catcher, curlew, whimbrel, black-tailed godwit, bar-tailed godwit, spotted redshank, redshank, greenshank, and knot). They may however be hunted in the Member States for which they are indicated as game (see table in Annex II, part 2). It is clear from this table that in some Member States the exceptions prevail over the general principle of a ban on hunting. This means for example that of the twenty species listed the following number may be hunted:

- France	17
- Denmark	14
- Italy	11
- Great Britain	10

Some members of your Committee advocated the general protection of the twenty species throughout the Community, particularly in view of the fact that the derogations contained in Article 9 of the proposed directive (to be considered below) remove the danger of these species causing damage. The fact that hunting these twenty species is subject to a general ban in some Member States is in any case a clear indication that their numbers have already been severely reduced. This is in fact disputed by the Commission in its answer to question No. 4 in the questionnaire, but it is still difficult to accept, where the protection of the 20 species is at stake, that 'the hunters' preferences and customs' should be a decisive criterion. Moreover, the Commission completely ignores the vital question as to whether the risk of any damage that these birds might cause in the agricultural and forestry sectors is not in any case fully covered by the derogation set out in Article 9 (1).

However, there was no majority in the committee for the entire deletion of Article 7 (2) and Annex II, Part 2.

The derogation contained in Article 7(5), which would enable Member States to permit 14 species of bird (see Annex II, part 3) to be hunted, also appeared questionable, to a number of committee members. Minimum protection ought to be guaranteed for these species as well to prevent them from being destroyed at will. Furthermore, included among the 14 species subject to this derogation is the rook. According to the Red List of endangered species published by the German Section of the International Council for Bird Preservation, a ban on hunting throughout the year as well as additional protective measures are needed in order to maintain the level of the rook population.

In its answer to question No. 5 the Commission justifies this derogation on the grounds of preserving 'the proper and legitimate requirements of certain activities, farming in particular'. Here again reference was made to the flexible derogation laid down in Article 9 (1), under which agricultural requirements are taken fully into account.

In conformity with the request made by the bird protection organizations, several members of your committee therefore urged that Article 7(5) and hence the list contained in Annex II, Part 3 be deleted. The very existence of adequate numbers of these species could make a substantial contribution to maintaining the ecological balance.

A majority in the committee, however, did not support these deletions, fearing that the directive would otherwise have only a slim chance of being adopted by the Council. Limited protection of bird species living in the wild was nevertheless preferable to the present situation which offered none at all.

17. It is laid down in Article 8 that the use of large-scale and/or non-selective capturing and slaughtering methods is prohibited for all the species listed in Annex II. A non-exhaustive list of such prohibited methods is contained in Article 8, e.g. snares, lines, hooks, nets, traps, decoys, semi-automatic or automatic weapons, pistols, etc.

Your committee supports this ban without reservation and stresses the need for it to be scrupulously applied and observed.

18. Article 9 (1) contains a further set of exceptions, which allow Member States to derogate from the principle of prohibiting hunting as laid down in Articles 5 (ban on killing and capture), 6 (ban on trade) and 8 (ban on large-scale and/or non-selective capturing and slaughtering methods).

These exceptions are only permissible however, if there is no other satisfactory solution available, for the following reasons:

- (a) to prevent serious damage to crops, forests and water, and, in general, to economic activities;
- (b) to protect indigenous flora and fauna;
- (c) for the purpose of scientific research, and for teaching and rearing.

Your committee considers that these exceptions should not be exhaustive but merely exemplary, and that the words 'in particular' should therefore be added. In this connection, a majority of the committee is thinking in particular of the trapping of birds for bird fanciers, for which permission was to be granted upon application. Moreover, a majority of your committee would like to see the exceptions contained in Article 9 (1) (c) extended to cover repopulation.

It is stipulated in Article 9(2) however that derogations by Member States are subject to supervision by the Commission; this means that the Commission may, by means of a decision, at any time request that the proposed derogation be revoked, suspended or amended if it produces or threatens to produce consequences jeopardizing the objectives of this directive.

The Member State to whom such a decision is addressed may put the matter before the Council, and the latter, acting by a qualified majority, shall decide if the derogation may be authorized and, if so, under what conditions. The Commission's decision shall remain valid until the Council has given its ruling.

Your committee would point out that the derogations allowed by this Article from the standards of bird protection, which are laid down in principle, are so liberal and so wide-ranging that there is a danger of abuse. This is a danger of which the Commission is also aware. Your committee agrees to this derogation provided that the Commission's right of control, laid down in Article 9 (2), is retained and that the Council adopts the proposed derogations after consulting the European Parliament. Article 9 (2) should be accordingly expanded. The Commission, as its answer to question No. 8 makes clear, agrees in principle with this solution.

19. Article 10 stipulates that appropriate research activities are to be conducted so as to provide a necessary basis for the protection, management and wise use of bird populations and in addition a means for assessing the effect of the measures taken. They will cover the following areas:

- variations in bird population levels,
- reproductiveness and replacement rates,
- geographical distribution during nesting and hibernation,
- migratory paths,
- hunting and its effect upon the populations of the main species,
- the role of certain species as indicators of pollution.

In its explanatory memorandum, the Commission rightly points out that coordination of research activities and cooperation with international organizations are of particular importance in these fields.

Your committee therefore urges that the task of coordination be undertaken by the Commission of the European Communities. It is hoped that the results of these research activities will be able to bring knowledge about the situation of birds up to date and thus form a reference basis for adapting the provisions of the directive and its annexes to technical and scientific progress.

Subject to these comments, your committee agrees to Article 10 of the proposed directive.

20. Article 11 contains the provision that Member States shall forward to the Commission every two years, starting from the date of notification of the directive, a report on the implementation of national provisions taken thereunder. This two-yearly report shall also contain a survey of the progress being made with the research activities stipulated in Article 10.

Your committee objects to the provisions of Article 11 as being a major step backwards compared with the draft directive. In particular, the Commission had in the original version rightly laid down that an annual report was to be produced covering not only the measures that had been taken but also the measures that were planned by Member States in connection with implementation of the directive.

In the draft directive, Member States were in addition obliged to submit within six months of the date of notification of the directive a progress report on investigations at the national and international level in the field of bird protection and on the funds available for these purposes together with details of sources. It is not clear why these useful provisions have not been included in the final version of the Commission's proposal for a directive. The research measures laid down in Article 10, to which the Commission refers in its answer to question No. 10, do not after all relieve the Member States of their obligation to draw up a progress report. Your committee therefore urges that these provisions be included in the directive so as to enable the Commission and not least the European Parliament to be kept adequately informed about the application of the directive in all fields and, if necessary, to propose further measures.

Article 11 should accordingly be expanded as follows:

1. The Member States shall forward to the Commission within six months of the date of adoption of this Directive a progress report on national and international investigations in the field of bird conservation and on the funds available for these purposes together with details of their sources.
2. They shall forward to the Commission every two years a report on the application of national provisions implemented in pursuance of this Directive and on measures that are planned in connection with its implementation. This report shall also contain details of the current state of progress with the work stipulated in Article 10.

21. There was criticism in committee of the fact that the proposed directive makes no provision for any kind of monitoring of the measures prescribed, let alone for penalties in case of failure to observe the prohibitions imposed. In recent years, experience has, however, shown that appeals made by the general public for good conduct are scarcely heeded. Even serious and dangerous offences can only be prevented if severe penalties are not only threatened but actually enforced which is now only rarely the case in many countries. It is well known that hunting offences and, in particular, contraventions of existing nature conservancy regulations are in general regarded only as 'petty offences' or 'minor breaches of the rules' and punished, if at all, with a small fine. Furthermore, the prosecution of offences of this kind is as a rule simply left to the discretion of the administrative authorities (already burdened with other tasks), who are only obliged to impose a fine if the proceedings involve a matter of public interest.

In its answers to the questions, the Commission too recognizes the importance of checks on compliance with the proposed measures and of penalties should the prescribed bans be violated. It intends to consider the possibility of a further harmonization directive covering checks and penalties.

A minority in your committee, however, thought that these provisions should be included in the directive forthwith.

It therefore insisted that the directive be amended to include an Article 11a to read as follows:

'The Member States shall monitor scrupulously the implementation of the provisions of the Directive and impose severe penalties where the prescribed prohibitions are not observed'.

A majority of your committee, however, rejected this proposal on legal grounds.

22. Article 12 contains the fairly obvious provision that Annexes I, II and III are an integral part of the directive, i.e. they are binding on the Member States in the same way as the provisions of the directive itself.

23. Articles 13 - 15 lay down the procedure for adapting the annexes to the directive to technical and scientific progress. Your committee agrees with the Commission that adaption of this type is necessary for achieving the aims of the directive, i.e. above all the conservation of bird life.

24. Article 16 (1) stipulates that the Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the directive within two years of its notification and that they shall forthwith inform the Commission thereof.

Your committee would point out that this time-limit is very generous. In the interests of those species of bird that are threatened with extinction or further severe reductions in their numbers, it is imperative that action be taken more quickly. Moreover, the responsible national authorities (government departments) are already following the Community's activities in the field of bird conservation, and this means that they will certainly be in a position to translate the directive promptly into national law at the given time. It would therefore seem both essential and appropriate to reduce the time-limit from two years to one year.

In addition and in accordance with the wish expressed by the interested parties, a minority in your committee called for the adaptation Committee also to act as a supervisory and control body. It should therefore consist not only of representatives of the Member States but also of members of representative organizations with specific interests in this area. It accordingly called for Article 14(1) to be amended as follows:

'A Committee (hereinafter called 'the Committee'), consisting of representatives of the Member States and of members of representative hunting, environmental protection, nature conservancy animal protection and bird conservation organizations and chaired by a representative of the Commission, is hereby set up for the purpose of adapting this Directive to technical and scientific progress.'

It also called for Article 13 to be worded as follows:

'Such amendments as are necessary for adapting the Annexes to this Directive to technical and scientific progress and the requisite supervisory and control measures shall be adopted in accordance with the procedure laid down in Article 15.'

In its answer to the questionnaire, the Commission itself has recognized the need for scientific and technical opinions from qualified experts in the various fields which affect bird conservation. It intends to set up a panel of experts and consult them regularly. The minority view of the committee, however, was against the setting up of one new panel of experts after the other and stood by the, in its view, rational and thoroughly practical solution it had proposed.

The majority of the committee rejected this amendment, in favour of the setting up of a panel of experts on questions of bird protection of the kind proposed by the Commission.

25. Pursuant to Article 16(2) Member States shall notify to the Commission the text of the main provisions of national law which they adopt in the field covered by the directive.

In conformity with its previous attitude in similar cases, your committee insists that the Commission must be informed in time of proposed provisions of national law so as to enable it to check whether they agree with the objectives of the directive and if necessary to veto them. Article 16(2) should accordingly be amended as follows:

'The Member States shall notify to the Commission the texts of the main provisions of national law which they propose to adopt in the field covered by this directive in sufficient time to enable the Commission to express its opinion on them.'

26. Annex I lists the 62 species of bird that are regarded as rare or in danger of extinction. They are covered by the more stringent protection measures contained in Article 4.

27. Annex II, Part 1 lists 34 species of bird, which under the provisions of Article 7(1) may be regarded as game birds (for hunting), Hunting is subject, in respect of the methods that may be employed to the restrictions contained in Article 8. No less than 14 of these 34 species are included in the Red List published by the German Section of the International Council for Bird Preservation, i.e. for the conservation of these species special protective measures are required. The following species are concerned: white-fronted goose, bean goose, pink-frosted goose, teal, gadwall, garganey, pintail, shoveler, goldeneye, red-legged partridge, rock partridge, golden plover, jack snipe, woodcock. A minority in your committee urged the Commission to delete these 14 species of bird from the list contained in Annex II, Part 1 and to place them on the list of species in need of protection (Annex I). In the minority view, even the point made by the Commission in its answer to question No. 6 of the questionnaire - that there was nothing to prevent the Federal Republic of Germany from adopting stricter implementing measures - made absolutely no difference. After all, the very purpose of this directive was to set up a system of cross-border bird protection measures, something that could not be achieved on the basis of measures taken by one Member State alone, however effective they were.

The minority also regretted the fact that the list contained in Annex I takes no account of the small songbirds which are hunted intensively in

the countries bordering the Mediterranean. It therefore recommended that these small songbirds, which are in danger of extinction, likewise be placed on the list of species requiring special protection contained in Annex I, even if the Commission believes that a mere hunting ban has proved to be an adequate measure (see answer to question No. 7).

The 20 species listed in Annex II, Part 2 may, under the provisions of Article 7(2), be regarded as game species in those Member States in respect of which they are indicated as such. As already stated in point 16 of the explanatory statement, the minority felt that these species ought to be covered by the general system of protection throughout the Community.

As regards the 14 species listed in Annex II, Part 3, they are subject to the derogation contained in Article 7(5), i.e. Member States may exclude them from the protective provisions of Article 5(a) and (b) (ban on killing and capture, ban on destruction of nests and eggs). In the minority view these species of bird too, should continue to be generally protected (see point 16 of the explanatory statement).

A majority in the committee, however, felt it would be more appropriate to leave the annexes to the directive in the form proposed by the Commission after hearing the views of experts. The majority came to this conclusion mainly in the hope that the Council would adopt the directive as soon as possible, so that the protective measures contained in it will soon come into effect. This is only likely if a fair compromise can be found between the often conflicting interests of the hunting associations and the bird protection organizations. Your committee feels it has made a not unimportant contribution to this end.

28. Finally, Annex III lists 6 species of bird (mallard, red grouse, red-legged partridge, partridge, pheasant, wood pigeon) which under the provisions of Article 6 may be sold and offered for sale during the authorized hunting season.

29. In conclusion, your committee responsible for environmental matters would draw attention to the great importance that birds have for mankind: they are the bio-indicators of a clean environment. This is because many species of bird react far more sensitively than mankind to negative environmental influences. The most sensitive and susceptible species of bird will be the very ones to die out in situations where mankind can still survive.

The committee is convinced that the keynote of the directive on bird conservation must be that mankind's role in nature is not to be seen as that of a master but rather as an integral part wholly dependent on the other parts that make up the ecological system of ours called 'Earth.' The prospect of restoring a healthy pattern of living is the only possible basis for a policy of bird conservation. The directive must therefore take full account of the ecological importance of birdlife in the development of the living environment in Europe.

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