



Derogations from the protection of birds

Under the EU Birds Directive,
the Bern Convention and the
African-Eurasian Waterbird Agreement

Eurasian Sparrowhawk

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Summary

The EU Birds Directive, the Bern Convention and the African-Eurasian Migratory Waterbird Agreement (AEWA) aim to conserve birds by, among other things, protecting birds, eggs and nests, regulating hunting and prohibiting unselective or large-scale methods of killing. All three agreements have a system of derogations from the legal protection requirements in order to prevent birds from causing damage to human activities and property and to allow for research and the use of small numbers of birds.

The Birds Directive has a mature derogation system, building on rulings by the ECJ. There are however persistent problems with reporting, with Member States sending incomplete reports or no reports at all. The new reporting system in 2015 represents a significant downgrade in terms of quality of information compared to the previous system. Due to poor reporting, an estimated 19 % of derogations recorded did not have a clear purpose and at least 22 % did not meet legal requirements in terms of required information. Between 2009 and 2017, more than 84 000 derogations were granted under the Birds Directive, resulting in the killing of more than 14 million birds. For the Great Cormorant in particular, the numbers of individuals killed under derogations are so large that EU population impacts are likely, but impacts on other species cannot be ruled out.

For this study, we examined the situation in more detail in eight EU Member States (Bulgaria, Finland, France, Ireland, Italy, Malta, Poland and Spain). We found several further deficiencies. Derogations were missing from the reports in the derogation-reporting tool, HABIDES. Among these eight Member States there are many cases of unlawful derogations or ordinances. The scope of activities subject to derogations also varied, as sometimes a derogation is required to fell a few trees in a city during the breeding period, while forestry activities involving the clear cut of tens of hectares in the same period do not. This results in the patchy implementation of species protection provisions across the EU.

The Bern Convention has in theory an adequate system to make exceptions (the equivalent of derogations), but suffers from a lack of reporting. The vast majority of birds reported to be killed under exceptions outside of the EU are killed by spring hunting in Belarus, which is presumably unlawful under the Convention. The system to make exemptions under AEWA has a much more limited scope in terms of species protection and also suffers from a major lack of reporting.





BirdLife urges to ensure complete and functional reporting on derogations by the EU Member States, through an annual review of derogations. Failure to abide by the rules stipulated in the law should result in infringement procedures processed by the European Commission. BirdLife recommends improving the EC HABIDES system, requiring a short description for derogations, more detailed information on controls and alternatives, and a mandatory estimation of the number of individuals affected for all derogations, at the very least, for this system to actually be effective.

BirdLife supports an update of the EC Guidance on Species Protection, in particular on the scope of activities subject to derogations and the interpretation of 'protection of flora and fauna' under the Birds Directive. The EC should support more research on bird scaring methods and other technical solutions.

BirdLife recommends that EC, Bern Convention and AEWA all regularly review and check reported information and follow up with responsible authorities where a derogation may have been authorised inappropriately, inadequate effort had been put into seeking alternative solutions or where there are unexplained gaps in reporting.

BirdLife recommends that the institutions in charge of implementing the Birds Directive, and the aforementioned environmental agreements, put in place the necessary measures to investigate population impacts of derogations and develop population models for selected species including the combined impacts of derogations, legal hunting and illegal killing and taking. All stakeholders, including environmental NGOs and hunting federations, should promote research on bird scaring methods and other technical solutions. This may be able to resolve conflicts between humans and birds without the need for derogations.

BirdLife recommends the Bern Convention Secretariat to ensure reporting on exemptions in particular from the contracting parties outside the EU. BirdLife invites the secretariat to look in detail at the spring hunting season in Belarus, especially on those species that have an autumn hunting season.

BirdLife recommends the AEWA Secretariat to ensure reporting on exemptions, in particular from the contracting parties outside the EU.

Acronyms



AEWA	African-Eurasian Migratory Waterbird Agreement
BSPB	Bulgarian Society for the Protection of Birds
BWI	BirdWatch Ireland
CI	Confidence Interval
CNPN	Conseil National de la Protection de la Nature
CP	Contracting Party
CSPRN	Conseil Regional Scientifique du Patrimoine Naturel
DOM	Document Object Model
ECJ	Court of Justice of the European Union
EIA	Environmental Impact Assessment
EU	European Union
GDOŚ	Generalna Dyrekcja Ochrony Środowiska
HABIDES	Habitats and Birds Directive Derogation System
HBW	Handbook of the World's Birds
ISPRA	Istituto Superiore per la Protezione e la Ricerca Ambientale
LIPU	Lega Italiana Protezione Uccelli
LPO	Ligue pour la Protection des Oiseaux
MS	Member State
NGOs	Non-governmental Organisations
OTOP	Ogólnopolskie Towarzystwo Ochrony Ptaków
RDOŚ	Regionalna Dyrekcja Ochrony Środowiska
SEO	Sociedad Española de Ornitología
Small numbers	Derogation granted for the use of a small number of birds under supervised conditions and on a selective basis ¹
UNEP	United Nations Environment Programme
WBRU	Wild Birds Regulation Unit

¹ Based on Article 9.1.c of the Birds Directive, Article 9.1. of the Bern Convention and Annex III paragraph 2.1.3d of AEWA.

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Eurasian Magpie

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Eurasian Wigeon nest

Introduction

Recognising that bird species were in danger, and that the conservation of migratory birds is an international challenge, governments in Europe and the wider African-Eurasian flyway started to cooperate in the 20th century to this end. This led to the adoption of three international instruments for protecting birds – the EU Birds Directive² and the Bern Convention³ in 1979 and AEWA⁴ in 1996. All of these agreements aimed to conserve bird species by prohibiting the deliberate killing of birds and destruction of eggs and nests, by protecting and restoring key habitats, and by encouraging monitoring and research.

Legal protection of birds, eggs and nests effectively dealt with the dual threats of persecution and overexploitation⁵. The legislators of the three international instruments granted protection to individual birds, nests and eggs; limited the number of species that could be hunted or

traded; prohibited hunting during spring migration and the breeding season; and banned hunting methods that were large scale or non-selective. This has led to major population increases, and has brought back at least 15 species of birds in Europe⁶. Many species, such as the Common Crane (*Grus grus*) and the White-tailed Eagle (*Haliaeetus albicilla*) greatly expanded their range and are now common sights again.

The legislators recognised that birds are capable of causing risks to people and serious damage to their property. Therefore, they introduced the possibility to give derogations⁷ from the legal protection of bird species. A derogation allows people to carry out activities that are normally prohibited, such as intentionally killing birds or removing their nests. The EU Birds Directive (Box 1), the Bern Convention (Box 2) and AEWA all allow derogations for

² Directive 2009/147/EC as amended, original text from 1979.

³ Convention on the Conservation of European Wildlife and Natural Habitats (1979). Council of Europe Treaty number 104.

⁴ African-Eurasian Migratory Waterbird Agreement (1995), UNEP Secretariat as amended by MOP7.

⁵ Persecution is defined here as the deliberate extermination of birds. Overexploitation is hunting or trading species resulting in significant population impacts.

⁶ Deinet, S., Ieronymidou, C., McRae, L., Burfield, I. J., Foppen, R. P., Collen, B., & Boehm, M. (2013). Wildlife comeback in Europe. The recovery of selected mammal and bird species. Zoological Society of London, UK.

⁷ It should be highlighted that the term 'derogation' is used in practice somewhat ambiguously. Derogation can both refer to the legal framework or decision allowing a certain activity or an individual permit to carry out an activity. The Bern Convention refers to exceptions, and AEWA to exemptions.

public health and safety and for air safety, and derogations to prevent serious damage to crops and fisheries. Derogations are also foreseen for research and conservation, which require activities that are normally prohibited, such as trapping. Under all three conventions an examination of other satisfactory solutions is required before derogations can be granted. Derogations should also be compatible with the objectives of the conventions. Finally, all three conventions also have small numbers derogations⁸. Small numbers derogations allow for the continuation of traditional use of small numbers of birds, on a selective basis and under strictly supervised conditions.

The practice of granting a derogation is inevitably complicated. In particular, whether there is serious damage or not is a hard question. So far, the answer tends to depend on the perceptions of the people involved⁹. Damage by birds can be perceived as normal business losses, but also as the result of a lack of management of a 'pest' species. As a result it is likely that differences exist between countries and (sub)cultures and that there will be changes in interpretation over time. In addition, when large ecosystems are involved, assessing the amount of damage can be very complex¹⁰.

On top of this, all derogations require an examination of other satisfactory solutions. This is also a political process. Whether for example doing nothing and paying compensation payments is a satisfactory solution, or whether scaring is an option instead of killing birds, again very much depend on perceptions. Other satisfactory solutions quickly become a very complicated question for small numbers derogations. These derogations were originally intended for traditional use, and traditions inherently are difficult to change or replace.

Granting derogations is a formal procedure, as derogations can only be granted by authorities, and require a formal assessment and reporting to the relevant interna-

tional bodies. A formal procedure on such a political topic typically disadvantages those who lack the resources or skills to engage with and to influence these procedures. Among those affected by conflicts between humans and birds, there are two groups that should be of particular concern.

The first group are the smaller stakeholders such as small farmers and owners of small fish ponds that suffer from damage. They are at risk from high application fees, limited capacity to navigate technical procedures and a lack of collective action, and many of them are in a precarious economic position¹¹ where economic damage by birds can be very hard to deal with. While it is outside the scope of this paper, it is important for conservationists to be mindful of this aspect.

The second group is the birds. In light of numerous illegalities, and underfunding of government conservation agencies, those working to protect birds (including NGOs, other civil society groups and scientists) need to have the resources to monitor and appeal derogations, and to provide evidence for population impacts, in order to be able to influence the formal derogation process. In the absence of human advocates for the birds, experience has shown that birds will be killed if there is consensus on this between the authorities and applicants for a derogation that this is the desired course of action - often regardless of its actual impact on real or perceived damage.

The present report gives an overview of the practice of giving derogations under the EU Birds Directive, the Bern Convention and AEWA. For pragmatic reasons this report restricts itself to look at derogations from the perspective of these international agreements, assuming that they are a widely supported common framework for decision-making. The question of whether any damage should be considered serious enough to justify the activities under a specific derogation requires a level of detail on the

⁸ Small numbers derogations were introduced into the Birds Directive in on a proposal by the United Kingdom and Denmark in 1977 for the use of birds of prey for falconry and the use of motorboats respectively (Council Document R/2158/EN/77).

⁹ Risks and damage are 'socially constructed' analogous to soil erosion or land degradation, see Robbins, P. (2011). *Political ecology: A critical introduction* (Vol. 16). John Wiley & Sons.

¹⁰ Heikinheimo, O., Rusanen, P., & Korhonen, K. (2015). Estimating the mortality caused by great cormorant predation on fish stocks: pikeperch in the Archipelago Sea, northern Baltic Sea, as an example. *Canadian Journal of Fisheries and Aquatic Sciences*, 73(1), 84-93.

¹¹ For small farmers see Davidova, S. (2014). Small and Semi-subsistence Farms in the EU: Significance and Development Paths. EuroChoices. For the aquaculture sector see Bostock, J., Lane, A., Hough, C., & Yamamoto, K. (2016). An assessment of the economic contribution of EU aquaculture production and the influence of policies for its sustainable development. *Aquaculture International*, 24(3), 699-733.

nature and extent of damage that is not possible to cover in this report. Instead, the reports strictly focusses on the overview of whether derogations being authorised are lawful, and whether they might be having negative effects on the survival of the populations of wild bird species¹².

Since the derogation system under the Birds Directive is the most mature, with most EU Member States actively granting derogations and reporting, the report concentrates on these derogations. The report reviews the rulings

of the ECJ on the EU Birds Directive, and analyses all derogations in the European Commission's HABIDES system, plus an in-depth analysis of the practice of derogations in eight EU Member States: Bulgaria, Finland, France, Ireland, Italy, Malta, Poland and Spain. The derogations under Bern and AEWA are summarised in chapters five and six. The report concludes with recommendations for the European Commission, the Bern and AEWA secretariats and the BirdLife Partnership.

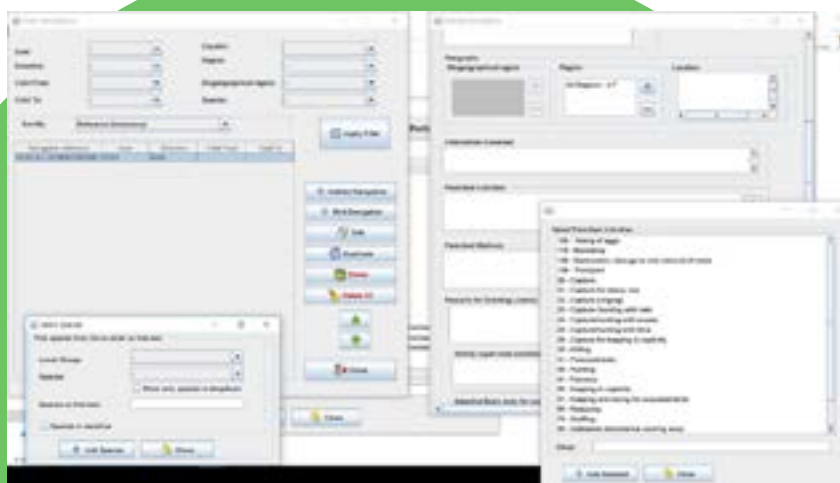


Figure 1:
The user
interface of
HABIDES 1.



Figure 2:
The user
interface of
HABIDES 2.0.

¹² Article 9.4 and 13 of the Birds Directive, Article 9.1 Bern Convention, paragraph 2.1.3 of the Action Plan to AEWA.



Common Starling

2

Methodology

The review of ECJ rulings was carried out using the Curia database of the ECJ, with additions from previous reviews by the European Commission¹³ and the Fitness Check of the Birds and Habitats Directives¹⁴. All relevant rulings that were based on Article 9.1 of the Birds Directive were extracted from Curia, reviewed and summarised.

Next, all derogations granted in the years 2009 until 2017 were extracted from HABIDES. During this period, the European Commission used two different software packages with a different corresponding database. The HABIDES 1.0 software (Figure 1) was used from the years 2009 until 2014 or 2015. The reports in this software were downloaded as XML files and processed in Java language using the DOM parser, with a custom-made XML scheme.

The resulting database was then converted to Microsoft Excel. Some fields exceeded the maximum number of characters and were capped. Illegal characters in Excel, such as 'Enter' and '#', the latter of which was used to

separate fields, were removed. Austria, Slovakia and Sweden submitted reports covering multiple years (e.g. 2009-2010). If derogations in these multiyear reports had a starting date, the derogation was assumed to have been granted in this year, if not, the end date of the derogations was used. Derogations without any information on dates were left blank.

From 2014 until present, the HABIDES 2.0 software is used (Figure 2), which allows for downloading reports directly as Microsoft Excel files. The resulting database was then converted into the latest taxonomy of the Handbook of the World's Birds¹⁵. Most taxonomic changes were changes to a single species. In a few cases, geographical information or information about the subspecies could be used to assign species that were split (e.g. Western Bonelli's Warbler *Phylloscopis bonelli*). For some species of seabirds, such as Manx Shearwater (*Puffinus puffinus*) this was not possible, and the original name was retained.

¹³ European Commission. (2006). Nature and Biodiversity Cases: Ruling of the European Court of Justice.

¹⁴ Milieu, IEEP & Ecosystems (2015). Evaluation Study to support the Fitness Check of the Birds and Habitats Directives. *Draft-Emerging Findings*, 68.

¹⁵ del Hoyo, J., Elliott, A., Sargatal, J., Christie, D.A. & de Juana, E. (2019). Handbook of the Birds of the World Alive. Lynx Edicions, Barcelona. Accessed 1 October 2019.

There are significant differences between HABIDES 1.0 and HABIDES 2.0. A translation table was developed and is included in Annex 1. The general category of 'Capture' under HABIDES 1.0 corresponded to killing (e.g. the use of lime sticks, trapping of Golden Plover *Pluvialis apricaria*), capture with immediate release, or capture with the intention to keep the birds temporarily or permanently in captivity. The relevant derogations recorded in HABIDES 1.0 were assigned to the HABIDES 2.0 categories insofar as possible on the basis of other information in the derogation.

Similarly, the 'Falconry' category from HABIDES 1.0 did not readily correspond to any new category in HABIDES 2.0, but derogations were assigned to killing (of prey species), capture, disturbance or keeping based on other information in the derogation.

Next, a typology of derogations was developed. A first typology was drawn up on the basis of expert knowledge, and refined on the basis of a first inspection of the dataset. Using the `pwr.p.test` package in the R 3.6.1 software, with alpha 0.05, beta 0.2 and detectable effect size 5 %, a minimum sample size of 783 was derived. A sample of derogations was randomly extracted out of the HABIDES 1.0 derogations and a second sample of derogations out of the HABIDES 2.0 derogations.

The derogations were then assigned to different derogation types. The two samples were merged into a single

sample of 783 derogations, with 400 from HABIDES 1.0 and 383 from HABIDES 2.0 to correct for the different number of entries in the two systems. Confidence intervals were generated by bootstrapping this sample with 10 000 replications. Most derogations could be readily assigned to one category on the basis of the free text fields and the species, activities and methods used. Within derogations for prevention of damage, derogations on herbivorous Anseridae and *Turdus* sp. were assumed to have been for the prevention of crop damage and Great Cormorant (*Phalacrocorax carbo*) and other piscivorous species for the prevention of damage to fisheries and aquaculture. Derogations that referred to multiple derogation types were classified as unknown.

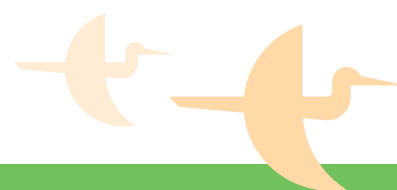
In order to derive a minimum estimate of birds killed under derogations, the total minimum number of birds reported as actually affected under derogations was calculated, for categories that involved (1) killing or (2) deliberate capture of birds by any method with the intention of temporarily or permanently keeping the captured specimens in captivity. Unfortunately, the second type of activity was not always consistently applied by the authorities in the EU Member States, with a large number of derogations for bird ringing involving keeping birds temporarily in captivity. To address this problem, derogations granted exclusively for the purposes of research, teaching, repopulation and reintroduction were excluded. Derogations that were granted for one or both these purposes together with protection of flora were also excluded.



Great Cormorant

Derogations for the Great Cormorant were examined in detail, as this species is not listed on Annex II of the Birds Directive, meaning that all the birds legally killed must have been killed under derogation. For each derogation, a likely number of birds affected was calculated. If the actual number of individuals affected was reported, this was used, but if the actual number was absent or zero, the maximum number of individuals affected was used instead. To account for gaps in reporting by Member States, the minimum and maximum number killed in any single year of the given Member State was used to derive an estimate of the minimum number killed.

On the basis of the review of the rulings by the ECJ, the dataset, the typology and the estimates of birds killed; in total eight semi-structured interviews were held with the BirdLife Partners BSPB (Bulgaria), BWI (Ireland), BirdLife Finland, LPO (France), LIPU (Italy), BirdLife Malta, OTOP (Poland) and SEO (Spain). The Member States were selected to cover the geographic extent of EU with a bias for larger Member States. The following questions were addressed in each interview:



1 Do you know where the derogations are published in your country or in the regions of your country?	7 Are you aware of any derogations having been granted for construction projects?
2 Is there a public consultation on derogations that have been granted?	8 Are you aware of any derogations having been granted for birds being caught in fisheries, or birds/nests being killed/destroyed by agricultural operations?
3 Is it possible to appeal derogations that are unlawful? If so how?	9 Is the attached/sent set of derogations complete?
4 Have you successfully appealed to a derogation in court or otherwise?	10 Are you aware of any illegal killing happening under the cover of derogations?
5 What kind of evidence do applicants for a derogation need to present before the derogation is granted?	11 Are you aware of species being threatened by derogations with local or regional extinction?
6 Is there a committee or a scientific body that scrutinises derogations before they are issued?	12 Are you aware of any impacts of control of problem species on other species?

Additional questions on certain regions or species were drawn up on the basis of the information available.

Article 5

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

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

Article 6

1. Without prejudice to paragraphs 2 and 3, Member States shall prohibit, for all the bird species referred to in Article 1, the sale, transport for sale, keeping for sale and the offering for sale of live or dead birds and of any readily recognisable parts or derivatives of such birds.
2. The activities referred to in paragraph 1 shall not be prohibited in respect of the species referred to in Annex III, Part A, provided that the birds have been legally killed or captured or otherwise legally acquired.
3. Member States may, for the species listed in Annex III, Part B, allow within their territory the activities referred to in paragraph 1, making provision for certain restrictions, provided that the birds have been legally killed or captured or otherwise legally acquired. Member States wishing to grant such authorisation shall first of all consult the Commission with a view to examining jointly with the latter whether the marketing of specimens of such species would result or could reasonably be expected to result in the population levels, geographical distribution or reproductive rate of the species being endangered throughout the Community. Should this examination prove that the intended authorisation will, in the view of the Commission, result in any one of the aforementioned species being thus endangered or in the possibility of their being thus endangered, the Commission shall forward a reasoned recommendation to the Member State concerned stating its opposition to the marketing of the species in question. Should the Commission consider that no such risk exists, it shall inform the Member State concerned accordingly.

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

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

Article 7

1. Owing to their population level, geographical distribution and reproductive rate throughout the Community, the species listed in Annex II may be hunted under national legislation. Member States shall ensure that the hunting of these species does not jeopardise conservation efforts in their distribution area.
2. The species referred to in Annex II, Part A may be hunted in the geographical sea and land area where this Directive applies.
3. The species referred to in Annex II, Part B may be hunted only in the Member States in respect of which they are indicated.
4. Member States shall ensure that the practice of hunting, including falconry if practised, as carried on in accordance with the national measures in force, complies with the principles of wise use and ecologically balanced control of the species of birds concerned and that this practice is compatible as regards the population of these species, in particular migratory species, with the measures resulting from Article 2.

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

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

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

Article 8

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

Article 9

1. Member States may derogate from the provisions of Articles 5 to 8, where there is no other satisfactory solution, for the following reasons:
 - (a) — in the interests of public health and safety,
 - in the interests of air safety,
 - to prevent serious damage to crops, livestock, forests, fisheries and water,
 - for the protection of flora and fauna;
 - (b) for the purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes;
 - (c) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.
2. The derogations referred to in paragraph 1 must specify:
 - (a) the species which are subject to the derogations;
 - (b) the means, arrangements or methods authorised for capture or killing;
 - (c) the conditions of risk and the circumstances of time and place under which such derogations may be granted;
 - (d) the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom;
 - (e) the controls which will be carried out.
3. Each year the Member States shall send a report to the Commission on the implementation of paragraphs 1 and 2.
4. On the basis of the information available to it, and in particular the information communicated to it pursuant to paragraph 3, the Commission shall at all times ensure that the consequences of the derogations referred to in paragraph 1 are not incompatible with this Directive. It shall take appropriate steps to this end.

Results

Review of rulings of the ECJ on derogations

The relevant articles from the EU Birds Directive are reprinted in Box 1. Before an EU Member State can give a derogation, three conditions must be met:

- (1) There is no other satisfactory solution;
- (2) The derogation is based on one of the reasons under Article 9.1; and
- (3) The formal requirements of Article 9.2 are met, e.g. specific authorities are designated to approve the derogation, controls will be carried out, and specific methods will be used .

Importantly, condition (2) also means that no derogations can be granted for imperative reasons of overriding public interest¹⁷ or for local interests¹⁸, as only the reasons under Article 9.1 can be considered, which have a more narrow scope.

Derogations must cover specific situations. This means that derogations should be limited in time and place¹⁹ and should be limited to what is strictly necessary²⁰. A general exemption derogation for the 'normal' use of land for agriculture, forestry and fishery is not in line with the Birds Directive²¹. Derogations are required for all naturally occurring wild bird species in the European territory of the Member States, even if the bird species does not occur in the Member State concerned²². Derogations are also required for subspecies that do not occur in the European territory of the Member States²³. However, derogations are not required for birds born in captivity²⁴.

Prevention of damage

Derogations for the damage to crops, livestock, forests, fisheries and water can only be granted for serious damage, meaning that a certain degree of damage is

¹⁶ Case C-247/85, C-262/85

¹⁷ C-192/11

¹⁸ C-247/85

¹⁹ C-247/85, C-252/85

²⁰ C-262/85

²¹ C-412/85

²² C-247/85

²³ C-202/94

²⁴ C-149/94

required before Article 9.1.a can be used²⁵. The scope of derogations should be in proportion with the damage²⁶. A hunting season is for example not a valid method to implement Article 9.1.a, as among other reasons it is not strictly necessary to prevent serious damage²⁷.

Similarly, categorically excluding species in certain locations²⁸ from Article 5 is also not in line with the Birds Directive. Similar to other reasons, Member States must examine other satisfactory alternatives before granting derogations for damage prevention. A satisfactory alternative can for example be a method that is being used to prevent serious damage in other regions of the Member State²⁹. Finally, derogations for public health and safety may be granted to prevent noise and pollution³⁰.

Small number derogations (Article 9.1.c)

The concept of satisfactory alternatives under Article 9.1.c has been the subject of several rulings by the ECJ. Hunting can fall within judicious use under Article 9.1.c³¹. However, the hunting of birds during the normal period specified in the Birds Directive is a satisfactory alternative for hunting the birds during other periods e.g. spring hunting or summer hunting³². This means that if the species is present during the normal period in sufficient numbers to be hunted, derogations to extend the hunting season are not possible³³. On the contrary, derogations for hunting species not listed on Annex II are possible under Article 9.1.c, as hunting the species on Annex II cannot be considered a satisfactory alternative³⁴.

Capturing birds for recreational purposes can also fall within judicious use under Article 9.1.c³⁵. However, breeding in captivity is a satisfactory alternative to capturing wild birds, provided that this is scientifically and technically feasible³⁶. Similarly, exchanging birds and cooperation between breeding establishments is a satisfactory alternative to capturing wild birds to deal with problems of inbreeding of captive birds³⁷.

Derogations under Article 9.1.c should be subject to strictly supervised conditions. An adequate number of hunters, trappers etc. must be subject to on-the-spot checks³⁸. Transgressions of restrictions in time and space must be infrequent, and the catch limit cannot be exceeded by a large amount³⁹. Furthermore, the activities under Article 9.1.c. should be restricted and subject to precise rules⁴⁰. Derogations under Article 9.1.c should be authorised on a selective basis. The use of methods of capture of a non-selective nature cannot be authorised⁴¹. Clapnets with bycatch⁴² and limesticks⁴³ are methods of capture of a non-selective nature.

Only the keeping and capture of small numbers of certain birds can be authorised under Article 9.1.c. Small numbers can be determined by reference to the study of the ORNIS Committee, in the absence of other scientific evidence⁴⁴. A small number is any sample of less than 1% of the total annual mortality of the population in question (average value) for non-hunnable species and a sample in the order of 1% for huntable species⁴⁵. The 'population in question' is to be understood, with regard to migratory species, as the population of those regions from which the main contingents are coming that are passing through the region to which the derogation applies during its period of application⁴⁶.

The migratory movements of the birds must be studied before the derogations are granted⁴⁷. If Article 9.1.c. is used to authorise spring hunting, the bag limit must be in proportion with autumn hunting⁴⁸.

Small numbers also require that the trapping of birds authorised by way of derogation ensures the maintenance of the population of the species concerned at a satisfactory level⁴⁹. If the populations in question are declining or their trend is unknown, the derogation cannot be granted⁵⁰. Reference can also be made to the Global Red List of Birds⁵¹.

25 C-247/85

26 C-247/85

27 C-262/85

28 C-192/11, C-247/85

29 C-79/03

30 C-247/85

31 C-118/94

32 C-182/02, C-344/03, C-135/04

33 C-344/03

34 C-118/94

35 C-262/85

36 C-10/96

37 C-10/96

38 C-557/15

39 C-557/15

40 C-252/85

41 C-557/15

42 C-557/15

43 C-79/03

44 C-60/05

45 C-164/09

46 C-164/09

47 C-557/15

48 C-76/08

49 C-182/02

50 C-557/15

51 C-76/08

Derogations under the Birds Directive in HABIDES

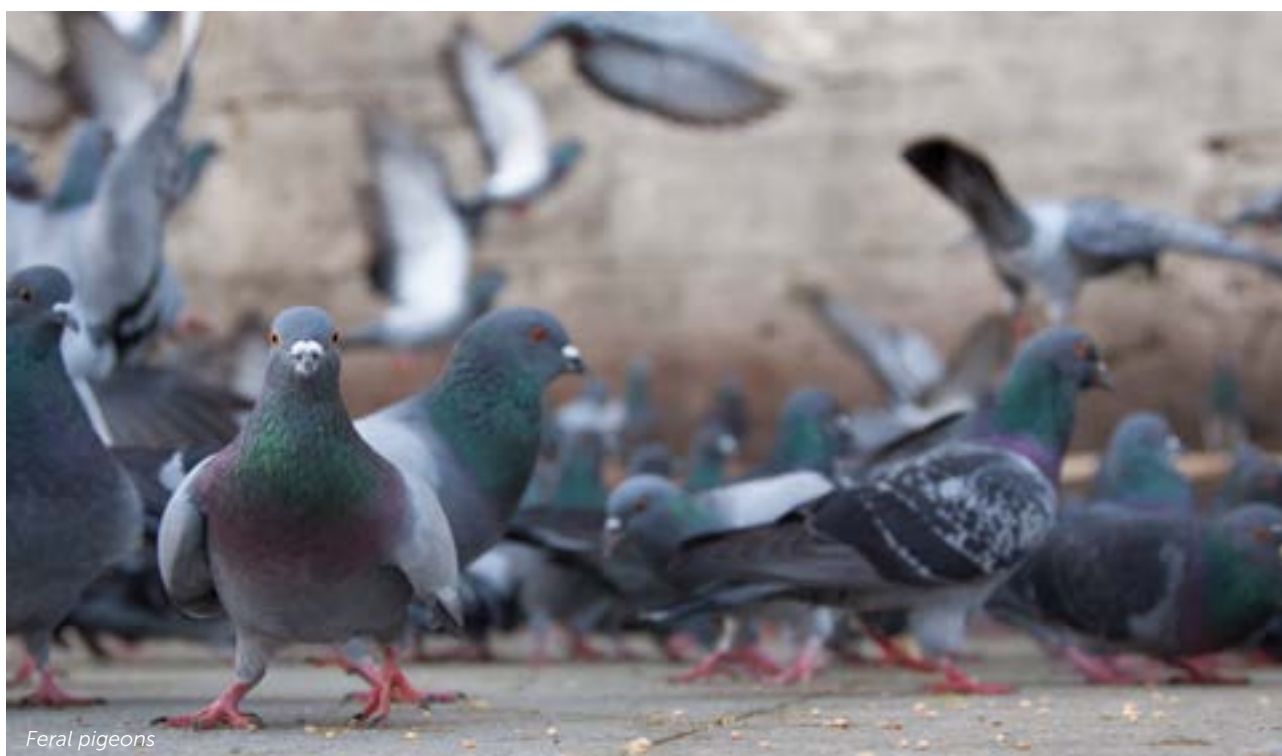
An overview of the reports in HABIDES between 2009 and 2017 is given in Table 1 and Table 2. Table 1 presents the completeness of the reports. In total, 205 reports were available. Nineteen reports were inaccessible or not in HABIDES, and 24 reports were missing. Greece has not submitted any derogation reports through HABIDES during this entire period. There was a notable drop in reports in 2015 following the introduction of HABIDES 2.0, although Ireland and Spain have later on submitted reports relating to previous years. At least one Member State, France, appears to have had ongoing technical problems in using HABIDES 2.0.

In total there are 84 867 unique derogations in the database based on the HABIDES. There are an additional 5 547 derogations that are a duplicate of other derogations in every field but where submitted in a different year. It is possible that Member States submit derogations for the same species, with the same start and end date and the same reference number (in error), etc. while referring to different derogations. There are also clear genuine errors, for example the German Bundesland Sachsen-Anhalt submitted two entirely identical sets of 59 derogations in 2011 and 2012. As a precautionary measure all duplicate derogations were therefore removed from further analysis.

Table 2 shows the considerable variation in the number of derogations between the Member States. While it is of course understandable that Germany gives more derogations than Luxembourg, owing to the size of the countries and the different human-wildlife conflicts, some other differences in results are difficult to explain. Romania's reports contained maximum 11 derogations, all of which were for air safety, and it is highly unlikely that no other activities take place in the country that would require a derogation. Differences between France and Germany are also remarkable, with very different numbers of derogations in spite of their relatively similar size and population.

Figure 4 presents the estimated proportions of the different types of derogations granted by EU Member States on the basis of the types in Table 3. The most common types are derogations for ringing birds, for construction works and maintenance, for the prevention of damage to crops, and for the prevention of damage to fisheries and aquaculture. Around 19 % of the derogations could not be attributed to one of the types, as too little information was provided.

Several types of derogations were practically limited to one country. Derogations for trapping live-decoys were exclusively granted by Italy and derogations for hunting



Feral pigeons

with falcons were almost entirely granted by the United Kingdom, while derogations for predator control for hunting were almost exclusively granted in Finland.

With around 24 % of unidentifiable derogations, the HABIDES 2.0 system performs significantly worse than HABIDES 1.0; which has 13 % of unidentifiable derogations ($X^2 = 41.652$, $df = 1$, $p\text{-value} < 0.001$). HABIDES 2.0 has less useful information for attributing derogations to the different types. In particular, the lumping together of all damage prevention derogations and of all forbidden methods. Additional 'Yes/No' fields were introduced for alternatives assessed and controls on derogations, which on its own does not provide sufficient detail to verify whether alternatives have in fact been assessed and whether sufficient controls are carried out. Logically, most authorities selected 'Yes' for both these fields and then did not provide any further information.

Figure 3 shows a histogram of all derogations reported as actually resulting in the death or taking of at least one bird, excluding derogations for ringing, science and conservation (see Methodology). It should be emphasized here that this is a minimum estimate, as not only are 39 reports missing, but many derogations do not contain this information, including all reports from Ireland. More than 60 % of the derogations involving killing and taking resulted in the killing or taking of more than 100 birds, and 18 derogations in Spain, Italy, France and Denmark resulted in killing or taking of over 100 000 birds each.

In total, more than 14 million birds were reported as actually killed or taken. Table 4 shows that the most killed or taken bird species is the Feral Pigeon (*Columba livia*), followed by the Wood Pigeon (*Columba palumbus*), the Common Starling (*Sturnus vulgaris*), the Carrion Crow (*Corvus corone*)⁵² and the Greylag Goose (*Anser anser*). A large number of birds were also killed or taken under derogations for multiple species. The species that were killed or taken in low numbers are typically under derogations for air safety or for animal rescue centres.

The numbers of Great Cormorant (*Phalacrocorax carbo*) killed under derogation are relatively high compared to their EU population. Interpolation of numbers (see Annex II) results in an estimated 353 636 – 437 927 birds killed between 2009 and 2017, compared to a breeding population of 223 000 – 259 000 pairs or wintering population of 384 000 – 503 000⁵³.

Many derogations were lacking information. 161 derogations had no species information at all and 400 derogations did not have any legal justification. Giving multiple justifications is also a common practice, with in total 5 242 derogations citing more than one legal justification. This is problematic since it prevents the proper consideration of other satisfactory solutions. In particular derogations for the protection of flora and fauna are used in conjunction with other reasons, with 3 649 derogations using this reason in addition to another reason. Protection of flora and fauna has been interpreted broadly, covering protection of the birds themselves, protection of crops and livestock and the conservation of other species. Some derogations presumably were granted with an incorrect justification; for example, 73 derogations for spring hunting Eurasian Woodcock (*Scolopax rusticola*) in Hungary were granted for the HABIDES category for research, teaching or for the protection of flora and fauna.

On the basis of the sample of 783 derogations, it is estimated that of all derogations in HABIDES between 2009-2017, around 22 % have evident shortcomings (95% CI 19.7 % - 24.5 %). This includes derogations lacking any species information, lacking a start date or an end date, derogations without a legal justification, and derogations involving the killing or taking of birds or destruction of nests and eggs for which there was no information on numbers. For derogations involving killing and taking of birds it also includes a lack of information on alternatives assessed or the controls carried out.

⁵² Following the HBW this includes also the Hooded Crow (*Corvus corone cornix*) as one species.

⁵³ On the basis of the EU population assessment under Article 12 of the Birds Directive: <https://nature-art12.eionet.europa.eu/article12/summary?period=1&subject=A391>. For more on the data see: European Environment Agency (2015). State of nature in the EU. EEA, Copenhagen.

	2009	2010	2011	2012	2013	2014	2015	2016	2017	Accessible
Austria	1.0*	1.0*	1.0	1.0	1.0	2.0**	No report	No report	No report	5/9
Belgium	1.0	1.0	1.0	1.0	1.0	2.0	2.0	2.0	2.0	9/9
Bulgaria	1.0	1.0	1.0	1.0	1.0	2.0	2.0	2.0	2.0	9/9
Croatia	Not a MS	Not a MS	Not a MS	Not a MS	1.0	2.0	2.0	2.0	2.0	5/5
Cyprus	1.0	No derog.	1.0	1.0	1.0	2.0	2.0	2.0	2.0	9/9
Czech Republic	***	***	1.0	1.0	1.0	1.0	1.0	Locked	2.0	6/9
Denmark	1.0	1.0	1.0	1.0	1.0	2.0	2.0	2.0	2.0	9/9
Estonia	1.0	1.0	1.0	1.0	1.0	2.0	2.0	2.0	2.0	9/9
Finland	1.0	1.0	1.0	1.0	1.0	1.0	2.0	2.0	2.0	9/9
France	Paper	Paper	Locked	1.0	1.0	1.0	2.0**	2.0**	No report	3/9
Germany	Paper	No report	1.0	1.0	1.0	1.0 + 2.0	1.0 + 2.0	2.0	2.0**	6/9
Greece	Paper	No report	No report	No report	No report	No report	No report	No report	No report	0/9
Hungary	1.0	1.0	1.0	1.0	1.0	2.0	2.0	2.0	2.0	9/9
Ireland	***	***	1.0	2.0	2.0	2.0	2.0	2.0	2.0	7/9
Italy	1.0	1.0	1.0	1.0	1.0	1.0	2.0	2.0	2.0	9/9
Latvia	1.0	1.0	1.0	1.0	1.0	2.0	2.0	2.0	2.0	9/9
Lithuania	1.0	1.0	1.0	1.0	1.0	2.0	2.0	2.0	2.0	9/9
Luxembourg	***	***	1.0	1.0	1.0	2.0	2.0	2.0	2.0	7/9
Malta	Paper	1.0	1.0	1.0	1.0	1.0	2.0	2.0	2.0	8/9
Netherlands	1.0	1.0	1.0	1.0	1.0	1.0 + 2.0	2.0	2.0	Locked	8/9
Poland	1.0	1.0	1.0	1.0	1.0	1.0	2.0	2.0	2.0	9/9
Portugal	1.0	1.0	1.0	1.0	1.0	1.0	No report	No report	No report	6/9
Romania	No report	No report	1.0	1.0	No report	No report	No report	2.0	2.0	4/9
Slovakia	1.0*	1.0*	1.0*	1.0*	1.0	1.0	2.0	2.0	2.0	9/9
Slovenia	1.0*	1.0*	1.0*	1.0*	1.0	2.0	2.0	2.0	No report	8/9
Spain	1.0	No report	1.0	1.0	1.0	Locked	2.0	2.0	No report	6/9
Sweden	1.0*	1.0*	1.0	1.0	1.0	2.0	2.0	2.0	2.0	9/9
United Kingdom	1.0	1.0	1.0	1.0	1.0	1.0	2.0	2.0	2.0	9/9
Total accessible	19/27	19/27	25/27	26/27	26/28	24/28	23/28	23/28	20/28	205/248

Table 1: Overview of derogation reporting in HABIDES 1.0 and 2.0


* Multiple years in a single file. ** Inaccessible due to technical problems. *** Other format than HABIDES. No derog.: no derogations.

	2009	2010	2011	2012	2013	2014	2015	2016	2017	No year	Total
Austria	5	76	93	84	57					2	317
Belgium	87	89	125	127	141	220	320	296	264		1669
Bulgaria	109	128	111	87	75	22	29	33	39		633
Croatia					10	72	84	96	101		363
Cyprus	2		1	2	4	4	4	2	2		21
Czech Republic					483	533	490		378		1884
Denmark	41	45	42	47	43	47	45	57	54		421
Estonia	4	4	5	5	5	5	4	4	4		40
Finland	1399	256	1671	1608	1542	1523	1598	1747	1772		13116
France				254	89	148					491
Germany			893	1039	1138	1063	1972	1042			7147
Greece											0
Hungary	221	255	252	269	269	289	277	323	343		2498
Ireland			53	50	191	200	309	263	216		1282
Italy	369	263	367	335	432	353	506	579	329		3533
Latvia	8	13	8	17	14	6	12	5	6		89
Lithuania	3	2	3	11	19	7	8	27	41		121
Luxembourg			2	2	2	5	3	3	3		20
Malta		130	126	234	300	230	155	199	13		1387
Netherlands	227	204	268	358	606	835	647	832			3977
Poland	142	281	429	705	798	775	3392	4552	6948		18022
Portugal		117	107	89	137	165					615
Romania			11	11					8		30
Slovakia	23	21	12	13	25	37	75	18	20		244
Slovenia	22	19	7	52	6	27	21	19			173
Spain	397		937	1376	546		1903	2088			7247
Sweden	99	172	214	352	126	217	209	481	498	1	2369
United Kingdom	1515	1413	32	2229	2005	2359	2448	2498	2659		17158
Total	4673	3488	5769	9356	9063	9142	14511	15164	13698	3	84867

Table 2: Overview of number of unique derogations in HABIDES 1.0 and 2.0.

Type	Legal basis	Description
Public health and safety 	Article 91.a first indent	Public health and safety are public interests. Especially in urban environments, birds can be a risk to public health and safety. Derogations therefore typically cover urban or urbanised bird species. The derogations typically include killing, trapping, nest destruction and removal, destruction of eggs, and disturbance.
Air safety 	Article 91.a second indent	Air safety is a public interest. The presence of any bird species can be a risk to air safety, with the relevant aspects being the weight of the birds and their number ⁵⁴ . Derogations can cover all bird species. The derogations typically include killing, nest destruction and removal, destruction of eggs or disturbance.
Fisheries and aquaculture 	Article 91.a third indent	Aquaculture and fisheries are commercial activities. Some fish-eating birds can cause damage to aquaculture or fish stocks. Derogations normally target cormorants or herons. Other species can also cause damage to mussel farms. The derogations typically include killing, destruction of eggs, or disturbance.
Crops 	Article 91.a third indent	Producing crops is a commercial activity. A wide variety of species can cause damage to one or more crops. Crops includes grass, hay and orchards. The derogations typically include killing, destruction of eggs, disturbance, or the use of forbidden methods.
Livestock 	Article 91.a third indent	Producing livestock is a commercial activity. Corvids and birds of prey can cause harm to livestock. Livestock includes fur farming, with gulls and corvids causing damage to feed for fur animals. The derogations typically include killing, disturbance, or the use of forbidden methods.
Animal rescue centres 	Article 91.a fourth indent	Animal rescue is a public interest. In animal rescue centres animals are typically treated and released, or euthanised. Animal rescue centres normally take care of any animal that is brought to them, or transport the animals to other centres. Derogations can cover any bird species. The derogations can include killing, capture, keeping in captivity and the use of forbidden means and modes of transport.
Predator control for hunting 	Article 91.a fourth indent	Hunting is a recreational activity. Predator control is carried out to maintain or increase populations of game species. Derogations therefore typically target birds of prey, corvids and other nest predators. The derogations can include killing, capture and the use of forbidden means and modes of transport, and for corvids and gulls hunting during spring migration or the breeding season.

⁵⁴ See Thorpe J. (2016) Conflict of Wings: Birds Versus Aircraft. In: Angelici F. (eds) Problematic Wildlife. Springer, Cham https://link.springer.com/chapter/10.1007/978-3-319-22246-2_21

Type	Legal basis	Description
Bird control for conservation 	Article 9.1.a fourth indent	Conservation is a public interest. In some cases population control of (nest) predators or herbivorous species is needed for the conservation of local populations. The derogations can include killing, capture, removal of nests and eggs and the use of forbidden means and modes of transport.
Ringing 	Article 9.1.b	Scientific research is a public interest. Ringing is carried out worldwide. Sometimes blood samples are also taken. Young birds of prey are commonly ringed on the nest. Derogations can cover all bird species or a subset. The derogation can include capture with immediate release, disturbance and the use of forbidden means (nets).
Research 	Article 9.1.b	Scientific research is a public interest. There is large variation of research activities carried out in the EU. Typically, derogations for rare or endangered species are granted for this purpose. The use of satellite tags is a common example. Derogations can include any activity, including capture, keeping in captivity, disturbance, and the use of forbidden means (nets and traps).
Education 	Article 9.1.b	Education is a public interest. Typically, these derogations are granted for nature photography or documentaries. The derogations can cover any species and are typically granted for disturbance.
Conservation 	Article 9.1.b	Conservation is a public interest. These derogations typically cover endangered or rare species. Captive breeding and reintroduction fall within this type. The derogations can include the capture, possession and transportation of birds.
Taxidermy 	Article 9.1.b	Taxidermy is a recreational (or commercial) activity. Any species can be stuffed. The derogations include the possession of dead birds, and sometimes the transportation and sale of stuffed birds.
Spring hunting 	Article 9.1.c	Hunting is a recreational activity. These derogations involve the hunting of birds during spring migration or breeding season. The derogations therefore exclusively target species that are huntable during autumn. The derogations are exclusively granted for killing birds.

Type	Legal basis	Description
Forbidden hunting methods 	Article 91.c	Hunting is a recreational activity. These derogations involve hunting birds with methods that are listed under Annex IV of the Birds Directive. The derogations therefore exclusively target species that are huntable during autumn. The derogations can be granted for the use of traps or (semi-) automatic weapons.
Hunting non-huntable species 	Article 91.c	Hunting is a recreational activity. These derogations involve hunting birds that are not huntable in the Member State concerned or throughout the EU. The derogations can target any species. The derogations can be granted for killing birds or collecting eggs.
Hunting with falcons 	Article 91.c	Falconry is a recreational activity. Falcons and other birds of prey are used to hunt birds, some of which can be non-huntable species in the Member State concerned. The derogations typically target larks or corvids. The derogations can be granted for killing birds or for disturbance.
Trapping live decoys 	Article 91.c	Hunting is a recreational activity. Live-decoys are used for luring huntable species, in order to facilitate hunting. The derogations exclusively target huntable species (in some cases under derogation). The derogations are granted for the use of nets and traps and live-decoys and possession and keeping in captivity.
Capturing songbirds 	Article 91.c	Trapping is a recreational activity. Songbirds are typically kept as pets, although some may be destined for consumption. The derogations target a variety of songbirds, mainly finches. The derogations are granted for the use of nets and traps and for possession and keeping in captivity.
Capturing birds of prey 	Article 91.c	Falconry is a recreational activity. In order to obtain or to breed birds of prey for falconry, these derogations involve taking birds from the wild by trapping them or removing young from the nest. The derogations exclusively target a few species of falcons and hawks. These derogations can be granted for the use of traps or snares, disturbance, keeping in captivity.
Keeping birds in captivity 	Article 91.c	Keeping pets or an aviary is a recreational activity. A large variety of bird species is kept in captivity. Sometimes these derogations are linked to CITES permits. These derogations are granted for keeping in captivity but can also involve transport, exchange or sale.






Type	Legal basis	Description
Sale 	Article 9.1.c	Selling birds is a commercial activity. A large variety of bird species are being sold. These derogations involve selling birds for other purposes, such as selling songbirds for keeping as a pet, or selling dead birds for taxidermy.
Construction and maintenance 	Various	Construction works and maintenance works can be commercial activities, public interest or both. This is a broad category of activities, including demolition and renovation works and tree felling. Typically, these derogations only involve nest removal. The derogations can cover destruction of eggs, destruction of breeding sites and disturbance.
Operation of installations 	Various	The operation of installations is a commercial activity. These derogations have thus far been restricted to the extractive industry and wind turbines. For extractive industries, the derogations cover the disturbance and destruction of nests and eggs. For wind turbines the derogations cover the killing of birds.
Other 	Various	Several activities do not fall within the other types, but are clearly described in the derogations reports. These types of derogations include, for example, festivals and other large events, and are typically granted for disturbance.
Unknown 	Various	These derogations do not correspond to one of the above types. Usually this is because the information in the derogation is incomplete or cryptic. Derogations corresponding to multiple types such as generic population control derogations are also included in this type.

Table 3: Typology of derogations.

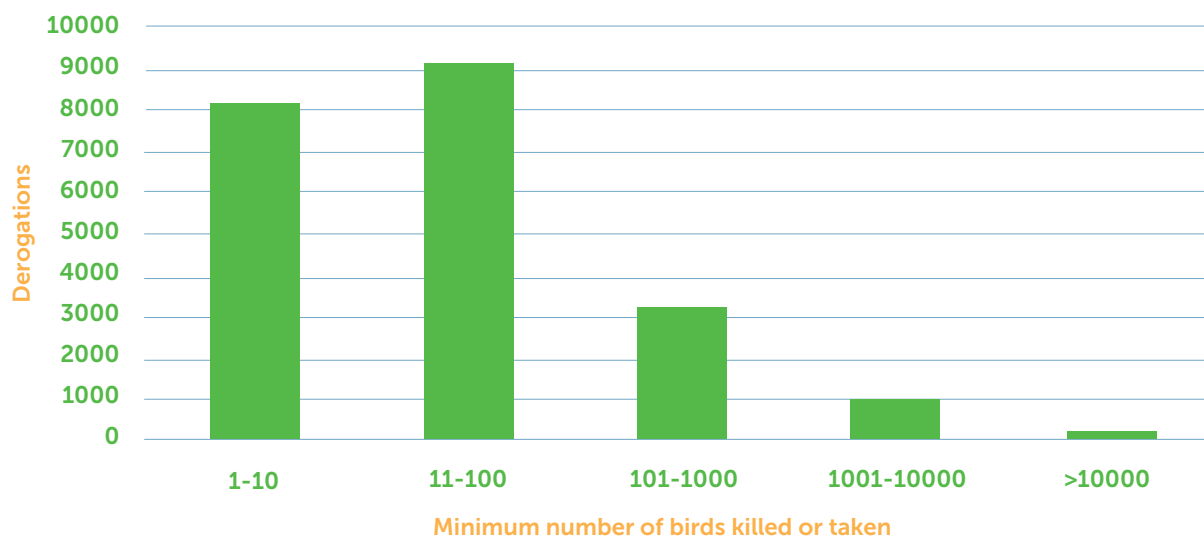


Figure 3: Minimum number of birds reported to be actually killed or taken in individual derogations under the Birds Directive.

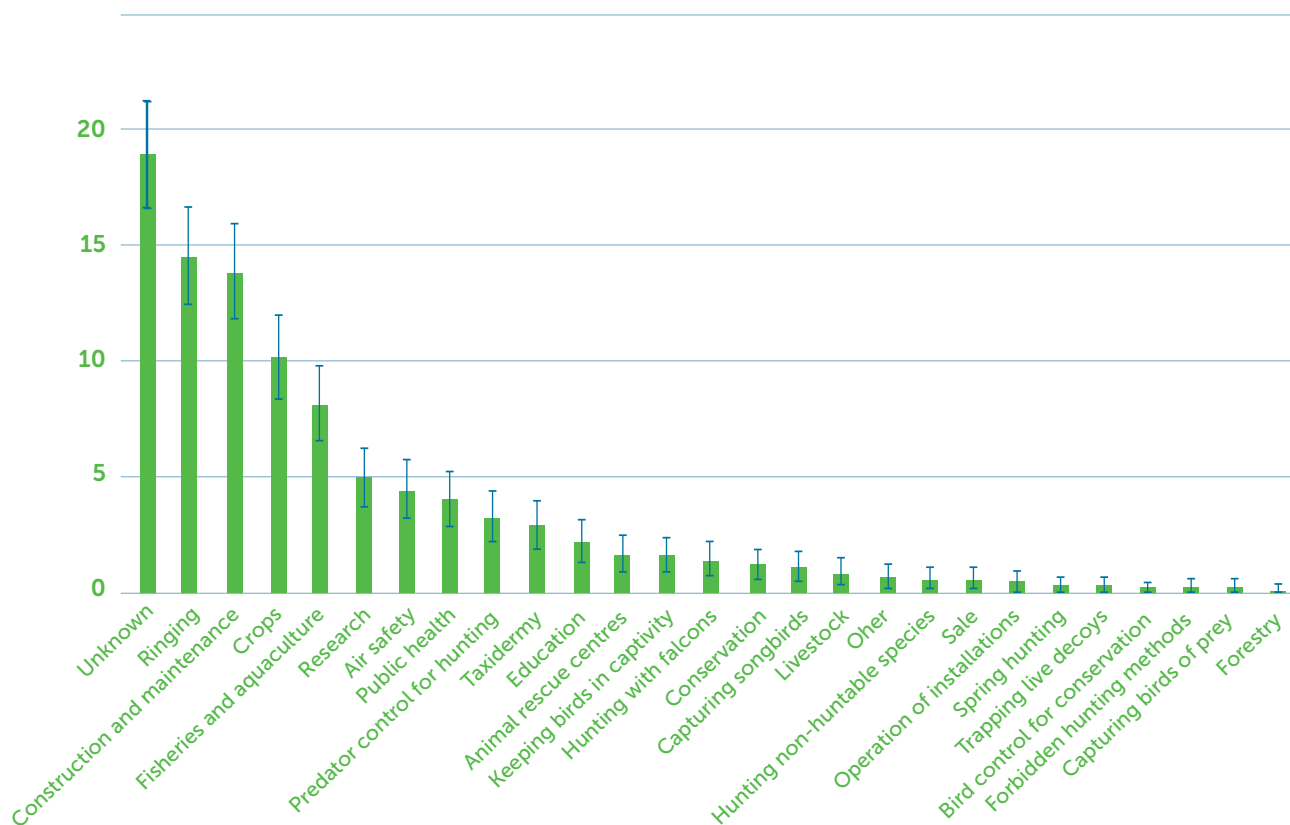


Figure 4: Types of derogations between 2009 and 2017, based on a sample of derogations under the Birds Directive.

Species	Number	Species	Number	Species	Number
<i>Columba livia</i>	2402198	<i>Clangula hyemalis</i>	6387	<i>Pyrrhula pyrrhula</i>	16
<i>Columba palumbus</i>	1950217	<i>Larus marinus</i>	5774	<i>Spatula querquedula</i>	14
<i>Sturnus vulgaris</i>	1513973	<i>Lyrurus tetrix</i>	4938	<i>Fulica cristata</i>	11
<i>Corvus corone</i>	1021836	<i>Larus ridibundus</i>	4827	<i>Circus cyaneus</i>	9
<i>Anser anser</i>	817343	<i>Alectoris rufa</i>	3637	<i>Delichon urbicum</i>	9
<i>Multiple species</i>	758906	<i>Spinus spinus</i>	3632	<i>Falco peregrinus</i>	9
<i>Turdus philomelos</i>	724256	<i>Perdix perdix</i>	3144	<i>Numenius phaeopus</i>	9
<i>Corvus frugilegus</i>	723497	<i>Anser brachyrhynchus</i>	2817	<i>Apus apus</i>	8
<i>Pica pica</i>	692965	<i>Columba oenas</i>	2342	<i>Acanthis flammea</i>	7
<i>Fringilla coelebs</i>	556391	<i>Larus fuscus</i>	2321	<i>Calidris alpine</i>	7
<i>Passer domesticus</i>	415478	<i>Coturnix coturnix</i>	2054	<i>Motacilla alba</i>	7
<i>Turdus merula</i>	353031	<i>Anser fabalis</i>	1966	<i>Sterna paradisaea</i>	6
<i>Turdus pilaris</i>	322133	<i>Anthus trivialis</i>	1866	<i>Asio flammeus</i>	5
<i>Phalacrocorax carbo</i>	276840	<i>Mergus merganser</i>	1863	<i>Dendrocopos major</i>	5
<i>Anser albifrons</i>	262972	<i>Branta bernicla</i>	1578	<i>Cyanistes caeruleus</i>	4
<i>Alauda arvensis</i>	260371	<i>Buteo buteo</i>	1484	<i>Falco columbarius</i>	4
<i>Sturnus unicolor</i>	234082	<i>Phasianus colchicus</i>	1377	<i>Gallinago gallinago</i>	4
<i>Branta leucopsis</i>	138909	<i>Vanellus vanellus</i>	1167	<i>Milvus milvus</i>	4
<i>Larus argentatus</i>	92335	<i>Hirundo rustica</i>	1131	<i>Puffinus puffinus</i>	4
<i>Carduelis carduelis</i>	89313	<i>Tetrao urogallus</i>	1101	<i>Alectoris graeca</i>	3
<i>Fringilla montifringilla</i>	88416	<i>Falco tinnunculus</i>	1050	<i>Bubo bubo</i>	3
<i>Streptopelia decaocto</i>	78419	<i>Pluvialis apricaria</i>	726	<i>Oenanthe Oenanthe</i>	3
<i>Garrulus glandarius</i>	66238	<i>Parus major</i>	370	<i>Siberionetta formosa</i>	3
<i>Coccothraustes coccothraustes</i>	54967	<i>Clamator glandarius</i>	240	<i>Cygnus columbianus</i>	2
<i>Gallinula chloropus</i>	44190	<i>Haematopus ostralegus</i>	175	<i>Hydroprogne caspia</i>	2
<i>Mareca penelope</i>	43257	<i>Cygnus cygnus</i>	154	<i>Loxia curvirostra</i>	2
<i>Linaria cannabina</i>	39058	<i>Accipiter gentilis</i>	144	<i>Picus viridis</i>	2
<i>Anthus pratensis</i>	38209	<i>Mergus serrator</i>	141	<i>Strix aluco</i>	2
<i>Turdus iliacus</i>	35925	<i>Numenius arquata</i>	117	<i>Turdus viscivorus</i>	2
<i>Larus michahellis</i>	30766	<i>Ardea alba</i>	108	<i>Asio otus</i>	1
<i>Chloris chloris</i>	24556	<i>Buteo lagopus</i>	89	<i>Dryocopus martius</i>	1
<i>Branta canadensis</i>	20348	<i>Ciconia ciconia</i>	72	<i>Emberiza citronella</i>	1
<i>Scolopax rusticola</i>	19175	<i>Grus grus</i>	66	<i>Falco Subbuteo</i>	1
<i>Somateria mollissima</i>	16157	<i>Charadrius hiaticula</i>	62	<i>Haliaeetus albicilla</i>	1
<i>Serinus serinus</i>	14485	<i>Erithacus rubecula</i>	62	<i>Lagopus lagopus</i>	1
<i>Ardea cinereal</i>	13773	<i>Mareca strepera</i>	56	<i>Melanitta nigra</i>	1
<i>Fulica atra</i>	13266	<i>Catharacta skua</i>	52	<i>Pelecanus crispus</i>	1
<i>Streptopelia turtur</i>	13261	<i>Accipiter nisus</i>	38	<i>Phoenicurus phoenicurus</i>	1
<i>Corvus monedula</i>	13212	<i>Bucephala clangula</i>	38	<i>Podiceps auratus</i>	1
<i>Cygnus olor</i>	12916	<i>Tadorna tadorna</i>	31	<i>Podiceps cristatus</i>	1
<i>Alopochen aegyptiaca</i>	11029	<i>Anas crecca</i>	30	<i>Saxicola rubetra</i>	1
<i>Morus bassanus</i>	9900	<i>Circus aeruginosus</i>	27	<i>Spatula clypeata</i>	1
<i>Larus canus</i>	8166	<i>Circus pygargus</i>	20	<i>Stercorarius parasiticus</i>	1
<i>Anas platyrhynchos</i>	8070	<i>Tringa totanus</i>	20	<i>Strix uralensis</i>	1
<i>Corvus corax</i>	8036	<i>Columba junoniae</i>	17	<i>Sylvia atricapilla</i>	1
				Total	14381396

Table 4: Total number of birds reported to be killed or taken under derogation in the EU between 2009 and 2017.

Note that derogations for ringing, research and conservation are excluded (see Methods).



European Turtle-dove

4

In-depth country reviews



BULGARIA



Legislation

The legal basis for species protection and derogations is the Biodiversity Law as amended⁵⁵. The Biodiversity Law has three categories of species: strictly protected animals, huntable bird species and other bird species. Strictly protected animals and huntable species together include most species with a few exceptions such as the House Sparrow (*Passer domesticus*) and the Feral Pigeon. For strictly protected animals the legislation prohibits:

- all forms of deliberate capture or killing with any device, mean or method;
- all persecution and disturbance, especially during breeding, juvenile stages, overwintering and migration;
- destruction or taking of eggs, including abandoned eggs, destroying, damaging or moving nests;
- damage or destruction of breeding, resting and congregation sites for migration;

- finding dead specimens;
- possession, breeding, transportation, exportation overseas, trade and offering for sale or exchange of specimens taken from nature;
- taxidermy, holding, display in public places, transport, export abroad, trade and offering for sale or exchange of stuffed specimens.

For huntable species the legislation prohibits hunting during spring migration and breeding season, as well as the destruction, damage or transfer of nests and the destruction, collection and possession of eggs, and the use of a list of non-selective instruments, means and methods.

For the other species the legislation also prohibits the capture or killing by any means and methods, keeping of these birds, destruction, damage and transfer of nests, destruction, taking and keeping of eggs and disturbance, in particular during breeding and rearing.

⁵⁵ Available on the website of the Ministry of Environment and Water here:
https://www.moew.government.bg/static/media/ups/tiny/filebase/Nature/Legislation/Zakoni/BiodiversityAct_Rev2018.pdf

The sale, offering for sale and transport, etc. is forbidden for all species, except for the species listed in an annex if these have been legally killed or acquired.

Derogations under the Biodiversity Law can then be granted if there are no satisfactory alternatives and the species is in favourable conservation status and is not harmed in its distribution by the derogation. Derogations are allowed for the protection of wild flora and fauna and to protect habitats; to prevent serious damage to crops, livestock, forest, water, aquaculture, game farms and other property; in the interest of public health and safety; in the interest of air safety; and for research, education and introduction reintroduction. Note that game farms and other property are not foreseen in the Birds Directive as such. There is no

equivalent for small numbers derogations. The Biodiversity Law limits all derogations for strictly protected animals to a limited number of individuals.

A separate Ordinance⁵⁶ specifies the procedure for granting derogations. The Minister of Environment and Water is the competent authority for strictly protected animals and the Minister for Agriculture Food and Forests for huntable bird species.

The Hunting Law and implementing regulation⁵⁷ contain only one exemption. Hunting for research purposes can be authorised by the Executive Director of the Executive Forest Agency throughout the year for Capercaillie. It is not clear if this exemption is being used.



Assessment of the derogation system

The derogation system in Bulgaria is only used to a limited extent. The majority of derogations have been granted for science and education, with a handful derogations for removal of House Sparrow from supermarkets or removal of nests of White Stork from buildings. Presumably, the set of derogations in HABIDES is complete, as other activities are not subject to derogations (see below).

There are several human-wildlife conflicts in Bulgaria that involve birds. Grey Heron and cormorants cause damage to fish farms. White Fronted Geese cause

damage to agricultural crops, and Common Starling causes damage to orchards. Shooting of species regarded as pests is common⁵⁸, but occurs outside derogations. A likely explanation is that citizens in Bulgaria have low trust in the authorities owing to the widespread corruption at the lower levels of government⁵⁹ and therefore prefer not to ask for permits.

Construction works, agriculture and forestry activities and fisheries bycatch do not fall within the scope of derogations in Bulgaria.

⁵⁶ Available on the website of the Ministry of Environment and Water here: <https://www.moew.government.bg/static/media/ups/tiny/filebase/Nature/Legislation/Naredbi/BR/Naredba%238-REV%202018.pdf>

⁵⁷ Available on http://www5.moew.government.bg/?wpfb_dl=18455 and http://www.iag.bg/data/docs/PRAVILNIK_za_prilagane_na_Zakona_za_lova.pdf

⁵⁸ http://datazone.birdlife.org/userfiles/file/hunting/HuntingRegulations_Bulgaria.pdf

⁵⁹ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_bulgaria_chapter_en.pdf



Decision making on derogations

Derogation applicants need to put in a written application under the Ordinance. Among other things, they need to provide their name, the species concerned and the period during which the derogation is needed. Additional information is requested for certain types of derogations. For example for derogations concerning damage prevention this includes the location of the property, the nature and extent of the damage and the competent hunter that will carry out the shooting if applicable. For air safety, this includes documentation from competent authorities of the Ministry of Transport and Communications.

For damage prevention derogations, the Ministry communicates the request to the Regional Inspectorate for Environment and Water, who installs a commission to review the derogation. Within 5 or 15 days, depending on the type of derogation, the Minister

grants the derogation or provides a motivated refusal. There is an explicit prohibition for the authorities to grant derogations on strictly protected animal species that are not in favourable conservation status, with the exception of research and education. The authorities also cannot grant derogations if satisfactory alternatives exist.

Derogations are not published anywhere and there is no public consultation on decisions on derogations. NGOs can appeal to derogations, similar as to other environmental decisions, in the Supreme Administrative Court. Applicants can also appeal a refusal. Notably, there is enforcement on the derogations in Bulgaria, as BSPB has been fined for accidentally exceeding the permit for capturing Red-Breasted Goose for fitting satellite tags.



BSPB work on derogations

BSPB has applied for and obtained several derogations for research. Otherwise, since the system is hardly used, they have not yet invested resources in it.



Common Pheasant



Legislation

The legal basis for species protection and derogations in Finland is the Nature Conservation Act⁶⁰ and the Hunting Act⁶¹. The Nature Conservation Act contains species protection provisions and both the Nature Conservation Act and the Hunting Act contain derogation provisions. The autonomous Åland islands have separate hunting legislation⁶² and a Cormorant Ordinance⁶³.

The Nature Conservation Act prohibits killing, capture, the taking of eggs and disturbance of birds. However, nests are not protected under this legislation. There are two exemptions to this. Trees hosting a large bird of prey are protected if the bird in question nests in it on a regular basis and the nest is clearly visible. Large birds of prey are defined in a separate act⁶⁴ as Golden Eagle (*Aquila chrysaetos*), White-tailed Eagle, Greater Spotted Eagle (*Clanga clanga*), Lesser Spotted Eagle (*Clanga pomarina*) and Osprey (*Pandion haliaetus*). In addition, trees with nests of a protected bird species are protected if they are marked. Before a derogation can be granted, the Nature Conservation Act requires that one of the conditions of the Birds Directive is applicable.

A general exemption from the species protection provisions is foreseen for species covered by the Hunting Act. The Hunting Act contains a list of huntable species and a list of unprotected species. For the huntable species, the restrictions from the Birds Directive apply in terms of seasons and methods, and derogations can be granted for the reasons under the Birds Directive.

The unprotected species are Raven (*Corvus corax*) in the reindeer husbandry area, Hooded crow, Eurasian Magpie (*Pica pica*), European Herring Gull (*Larus argentatus*), Great Black-backed gull (*Larus marinus*), Feral Pigeon, and Fieldfare (*Turdus pilaris*). These species

are unprotected outside the spring migration and the breeding season. For the unprotected species, normal derogations can also be granted, for example for killing during the breeding season. Importantly however, the Hunting Act allows any owner or holder of an area or building to kill and capture unprotected species, as long as no forbidden methods or transport means are used.

The Åland Islands hunting legislation does not foresee unprotected species. There is a Cormorant Ordinance in place, which allows for a set quota to be shot across the Islands⁶⁵. The legislation allows hunting Hooded Crows, which is currently open all year except for the breeding season and overlaps with the spring migration as defined in the European Commission's Key Concepts Document⁶⁶. Common Gull can be killed all year to protect flora and fauna, public health or fishing, and Herring Gull, Greater Black-backed Gull and Hooded Crow can be killed from March to July for the same reasons. Canada Goose and Greylag Goose can be killed for public health and safety reasons, and to prevent damage to crops in June and July under the hunting legislation.

It should be highlighted here that the lack of nest protection under the Nature Conservation Act, and the lack of protection of Raven are presumably infringements of the Birds Directive.

There are two authorities in Finland that can grant derogations: the Centre for Economic Development, Transport and the Environment (for protected species) and the Finnish Wildlife Agency (for huntable and unprotected species). There is a special role for the Ministry of Agriculture which can grant general exemptions for unprotected species in case of animal disease, public health, or damage to property. There is no explicit definition specifying who is responsible for reporting to

⁶⁰ <http://www.finlex.fi/en/laki/kaannokset/1996/en19961096>

⁶¹ <https://www.finlex.fi/en/laki/kaannokset/1993/en19930615.pdf>

⁶² Available on the Åland government website here:

https://www.regeringen.ax/sites/www.regeringen.ax/files/attachments/page/jaktlag_afs_1985_31.pdf and
https://www.regeringen.ax/sites/www.regeringen.ax/files/attachments/page/landskapsforordning_om_jakt.pdf

⁶³ Available on the Åland government website here: <https://www.regeringen.ax/miljo-natur/jakt-viltvard/jakttillstand>

⁶⁴ http://www.finlex.fi/en/laki/kaannokset/1997/en19970160_19990694.pdf

⁶⁵ For the 2019 quota see: https://www.regeringen.ax/sites/www.regeringen.ax/files/attachments/page/riktlinjer_storskarv_2019.pdf

⁶⁶ https://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/key_concepts_en.htm

the European Commission, and in practice, the authorities or their regional branches report on derogations.

Finland has an open season on 26 species on Annex II of the Birds Directive and another 6 species on Annex II are unprotected. There is therefore no major overlap between hunting and control activities under derogations, as the unprotected species have a different status altogether. The hunting season for some species of duck overlaps with the breeding season, in particular Red-Breasted Merganser and Tufted Duck.

There is also a hunting season without a quota from 1 June to 16 June for male Common Eider in the outer archipelago of Finland, which takes place in the breeding area and overlaps with the breeding season, in particular the incubation period and the young chicks. Hunting of male Eiders also disturbs other breeding birds, mostly terns, gulls, waders and some

duck species.

The Åland islands have an open season on 17 species on Annex II of the Birds Directive. This includes the Hooded Crow, and overlap between hunting and control activities is likely, as there are no derogations for Hooded Crow in Åland. The islands also have a winter hunting season on Black Grouse males in January and February and a hunting season on Common Eider males in May⁶⁷. The quota for Common Eider in 2019 was 2000 birds.

This derogation was condemned by European Court of Justice in 2020.



Assessment of the derogation system

The Finnish reporting in HABIDES is likely mostly complete. There are derogations for unprotected species, but the killing of unprotected species outside the spring and breeding seasons by landowners and owners of buildings are not reported as derogations. The information on almost all of the individual derogations is also complete.

There are major human-wildlife conflicts in Finland. Several bird species, in particular Fieldfare, damage fruit: in particular, strawberries. Damage to hay is frequent as a result of Crows and Jackdaws pecking holes into the plastic wrapping around the bales. Gulls and corvids also eat the food for fur animals in fur farms as they can access this food relatively easily. Some birds, such as Great Tit and House Sparrows, frequently enter shops, supermarkets and restaurants in winter.

There is also a common perception among landowners and hunters that corvids need to be controlled since they predate young game animals. Together these make up the majority of the derogations. Derogations for Cormorant are not very common in Finland, due to the work of the Cormorant Working

Group, but the Åland islands are an exception in this regard.

In recent years Barnacle Goose conflict has been growing, because the number of field feeding birds has been growing in eastern Finland both in spring and autumn. Recently, the number of permits to kill and disturb Geese has been growing.

On the other hand, in spite of a very large forestry sector, there are virtually no derogations for forestry work during the breeding season, which is unsurprising given the lack of protection for nests. Derogations for construction work are also missing for the same reason, as they also would mainly concern nests. Derogations for bycatch in fisheries do not exist.

BirdLife Finland frequently receives reports of illegal killing of birds as part of activities under the derogations. In particular Song Thrush and Redwing are often being shot as part of derogations on Fieldfare, and Common Gull and Lesser Black-backed Gull are often targeted as part of derogations for Herring Gull.

⁶⁷ Available on the Åland government website here:

https://www.regeringen.ax/sites/www.regeringen.ax/files/attachments/page/bilaga_1_n4a19p01_riktlinjer_ejder.pdf



Decision making on derogations

Derogations are not published anywhere. An informal consultation is usually held with local NGOs, who have a period of 30 days to object to derogations.

Applicants for a derogation need to complete a form, indicating among other things the activities, their time and place on a map, the species concerned, the methods, if there are less damaging alternatives and, in case of killing, they need to explain the criteria for their local circumstances in concrete terms and using economic indicators and attributes. Applicants also need to pay a fee of 150 EUR.

Depending on the species, either the Centre for Economic Development, Transport and the Environment or the Finnish Wildlife Agency then examines the derogations, including in terms of alternative solutions and population impacts. NGOs can appeal derogations both in the Regional Administrative Courts and in the Supreme Administrative Court and have done so successfully in the past. The appeals of NGOs have resulted in a lower number of individual birds killed in reality and a lower number of permits overall, and several derogations have been prevented for killing Hooded Crow to protect game birds.



BirdLife Finland work on derogations

BirdLife Finland has invested considerable resources in contesting unlawful derogations. The Common Eider and the Long-Tailed Duck that were included in spring hunting on the Åland Islands are of global conservation concern⁶⁸, and the ECJ has ruled against the derogation⁶⁹.

However, summer hunting of Common Eider is continuing, and this case is pending before the ECJ. BirdLife has also submitted a complaint to the Commission on the hunting of male Common Eider in June on the coast of Finland.

There are potential impacts on Lesser Black-Backed Gull, as it is declining and the reasons behind its decline are poorly understood, and it might be the result of derogations on other gulls. Hunting in May and June of Common Eider is disturbing other breeding birds in the

archipelago (see above). BirdLife Finland is not aware of major conservation impacts of derogations on other species.

They have also been involved several court cases at national level. BirdLife Finland has successfully challenged construction works during the breeding season, arguing that works outside the breeding season are a satisfactory alternative. BirdLife Finland is also an active member of the Cormorant Working Group. Recently they have also started to look into nature photography, which due to a high demand for photos of rare species can also be a threat to some populations. Finally, BirdLife Finland are actively promoting technical solutions for damage caused by birds. For example, damage to hay can be easily prevented through better storage facilities, and damage to strawberries can be prevented with nets.

⁶⁸ <http://datazone.birdlife.org/species/search>

⁶⁹ Case C-344/03



Legislation

The granting of derogations in France is governed by the Environmental Code. The Environmental Code⁷⁰ specifies the overall species protection provisions and the derogation provisions. The Code foresees an Order (Arrêté) on Protected species which then operationalises the prohibitions.

The Order on Protected bird species⁷¹ contains a list of all native breeding or migratory species. For these species, the Order prohibits the deliberate destruction or removal of eggs or nests; deliberate killing, mutilation, capture or removal of animals; and intentional disturbance during the breeding and rearing period if it poses a risk to the successful completion of the species' life cycle. The destruction, alteration or degradation of breeding sites and resting areas of animals where the species is present and core areas for natural movements is also prohibited, if these areas are in use or usable and if the activities would pose a risk to the successful completion of the species' life cycle. The keeping in captivity, transport, domestication, sale, purchase, offering for sale, falconry, commercial and other use is also prohibited, both in France and in other EU Member States. For vagrant species and species that are not regularly present in France but are regularly present in other Member States, all prohibitions apply with the exception of degradation of breeding and resting areas. The Order also specifies limits to falconry derogations. There are no general exemptions foreseen from these protection requirements.

Derogations can then be authorised if there are no other satisfactory solutions and one of the reasons in the Environmental Code applies. In addition to the reasons in the Birds Directive, the Environmental Code also foresees derogations for damage to property, and imperative reasons of overriding public interest, presumably due to France transposing the provisions

of the Birds and Habitats Directive into a single article. A separation provision in the Environmental Code allows the Minister responsible for hunting to authorise traditional hunting methods for small numbers of migratory birds, under strictly supervised conditions and in a selective manner.

The Environmental Code also foresees a list of pest species to be adopted by the Council of State. During the years 2012-2018 the Rook (*Corvus frugilegus*), Carrion Crow, Eurasian Magpie, Eurasian Jay (*Garrulus glandarius*) and Common Starling were on the list⁷². These species may be trapped year-round with the exception of the Jay which only can be trapped during a limited period. The species also may be shot between the end of the hunting season and the 31st of March or longer on the basis of an individual license, if there is no satisfactory alternative and if one of the reasons for a derogation applies, e.g. to prevent damage to crops. Shooting on the nest is forbidden. The Wood Pigeon can be added as additional pest species at prefectural level⁷³ subject to a Prefectural Order.

It should be highlighted here that, notwithstanding the overlap between huntable species and pest species (see below), the authorisation of year-round trapping is presumably an infringement of the Birds Directive, as it involves forbidden means and killing during spring migration and the breeding season, notably outside a derogation.

The Prefects are the main authorities that grant derogations in France under a separate Order⁷⁴ covering the administrative procedure, with some exceptions. Derogations for killing, capturing and other activities involving threatened species can only be granted by the Minister. The Minister also grants derogations to government agencies and other state actors for their

⁷⁰ <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074220>

⁷¹ <https://www.legifrance.gouv.fr/eli/arrete/2009/10/29/DEVN0914202A/jo/texte> (the version in force 2009-2016).

Most recent version here: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000021384277&dateTexte=20191127>

⁷² The list for 2012-2014: <https://www.legifrance.gouv.fr/eli/arrete/2012/8/2/DEVL1227528A/jo/texte>;

for 2015-2018: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030836978>

and for 2019-2022: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000038732796&dateTexte=20191127>

⁷³ <https://www.legifrance.gouv.fr/eli/arrete/2012/4/3/DEVL1107123A/jo/texte>

⁷⁴ <https://www.legifrance.gouv.fr/eli/arrete/2007/2/19/DEVN0700160A/jo/texte>

Most recent version here: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000614256&dateTexte=20191127>

activities. Further responsibilities for the Minister are introduced in the Order on Protected Bird Species, in particular related to research and some additional activities threatened species.

France had open hunting seasons between 2009 and 2017 on 51 species⁷⁵. There is considerable overlap with species classified as pests, since Rook, Carrion Crow, Eurasian Magpie, Eurasian Jay and Common Starling and Wood Pigeon were all huntable.



Assessment of the derogation system

The reporting of France in HABIDES is substantially incomplete. There are several unsuccessful attempts visible in HABIDES 2.0 to upload data for 2015 and 2016, but these are not usable owing to technical errors. There is currently no report for 2017. The data from 2011 is locked by the French authorities and has not been released by the European Commission. As a result, only the years 2012-2014 can be accessed. The 2014 data also contained erroneous codes for modes of transport and all years had multispecies derogations mixed with species protected under the Habitats Directive. All the data does exist in digital form at national level⁷⁶.

In terms of geographic coverage, the derogations are very likely largely complete, as all regions and most departments appear to have granted derogations between 2012 and 2014. There are however presumably some derogations missing from the system. There are no derogations for trapping corvids (see above). Also absent are the derogations for trapping Northern Lapwing (*Vanellus vanellus*) and Golden Plover (*Pluvialis apricaria*) in the Ardennes department.

There are several human-wildlife conflicts in France involving birds. Cormorants are causing damage to fish

farms and Herring Gulls to mussel farming, and Rooks and other corvids cause damage to crops. The damage is a politically significant issue as both the fisheries and aquaculture sector and the agriculture sector are in a difficult situation economically.

Construction projects and other projects and renovation works fall in practice within the species protection requirements and are subject to derogations. For some projects, the species protection component is addressed during the Environmental Impact Assessment. Agricultural and forestry activities that, for example, cause destruction of nests are however in practice not subject to the species protection requirements. Forestry activities are only subject to Forest Management Plans, which do not include the relevant species protection provisions. Seabird bycatch also falls outside the scope of derogations in France.

There are incidental reports of illegal killing during the control of pest species⁷⁷, and lime sticks and stone crush traps⁷⁸ are an unselective method resulting in killing other species. LPO has also indications that the quota for Greylag Goose during the spring hunting season are being exceeded.

⁷⁵ <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006057733&dateTexte=20141231>

⁷⁶ LPO has obtained a copy of all data since 2015 from the French authorities.

⁷⁷ An incident in 2019 involved the shooting of a Little Egret during activities carried out under a derogation for Great Cormorants.

⁷⁸ Stone crush traps (tendelle) are being phased out, with no new authorisations possible after 2005.

Derogation here: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000449718&categorieLien=id>



Decision making on derogations

Before the prefect or the Minister can give a derogation, they are required to consult the Conseil National de la Protection de la Nature (for projects requiring an EIA or for threatened species) or the Conseil Scientifique Régional du Patrimoine Naturel (for all other species). The Environmental Code also requires the authorities to hold a public consultation. Public consultations are held online⁷⁹.

Applicants for a derogation need to write to the Prefect, providing information such as the purpose of the derogation, species concerned, the methods used and the qualifications of the staff carrying out the actions.

Importantly, information on alternative solutions and the extent of the damage are not required, but if an EIA is required they may be covered.

Decisions are issued in the form of a ministerial or prefectural order, which is published online and in the Official Journal of the French Republic or the Prefecture. Some examples are the 2012 Order for lime sticks in Alpes-de-Haute-Provence⁸⁰ and the Order for capturing Northern Lapwing in the Champagne-Ardenne⁸¹. Derogations can be appealed in an Administrative Court, and conservation NGOs have frequently successfully challenged derogations.



LPO work on derogations

LPO has invested considerable resources in contesting unlawful derogations over the years. Derogations in France are extremely political, with Ministers and Prefects ignoring the advice of the CNPN and the CSRPN, and public consultations receiving large volumes of public comments. For twelve years in a row LPO challenged the spring hunting of Greylag Goose before the Council of State and they won every year; sometimes when spring hunting is already ongoing. LPO is also working on contesting Great Cormorant derogations and the building of irrigation reservoirs, which they assert are breaching the species protection requirements.

LPO is not aware of any population effects of activities carried out under derogation, although these cannot be ruled out for declining species in France, such as the Herring Gull and House Martin. For House Martins there is also uncertainty regarding the effectiveness of the compensation nests provided.

LPO has also submitted a complaint to the European Commission on hunting in France. In respect to derogations, they are highlighting the unlawfulness of derogations authorising the use of lime sticks and derogations on spring hunting of Greylag Goose.

⁷⁹ On websites of the departments, see for an example for the Department Indre here: <http://www.indre.gouv.fr/Politiques-publiques/Environnement/Natura-2000-et-Biodiversite/Consultation-du-public>. The national website is here <http://www.consultations-publiques.developpement-durable.gouv.fr>

⁸⁰ http://www.alpes-de-haute-provence.gouv.fr/index.php/content/download/3059/17759/file/2012_10_05_RAA_46_Septembre.pdf (page 177). For an example of a Ministerial order on lime sticks see: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037439433&categorieLien=id>

⁸¹ <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006059166&dateTexte=20151219>. For an example of a Ministerial order on Northern Lapwing see <https://www.legifrance.gouv.fr/eli/arrete/2018/9/24/TREL1820978A/jo/texte/fr>.



Legislation

There are three main pieces of legislation that are relevant for derogations in Ireland:

- 1) the Wildlife Act 1976 (amended in 2000)⁸²;
- 2) the EU Regulations on Birds and Natural Habitats⁸³;
- 3) the Ministerial State-wide Declarations on certain species⁸⁴.

The Wildlife Act as amended contains the species protection provisions. There are some explicit exemptions to species protection under Article 22. These include:

- Unintentionally injuring or killing a protected wild bird while so engaged in agriculture, fishing, forestry or turbary (*turf-cutting*) (Article 22.5.b);
- Removal for conservation purposes or unintentional destruction of the eggs or nest of a protected wild bird in the ordinary course of agriculture or forestry (22.5.c);
- Removal or destruction of any such nest which is built in or on an occupied building unless the nest contains the eggs or young of a protected wild bird (22.5.g);
- Killing or injuring a protected wild bird or removing or destroying the eggs or nest of a protected wild bird while constructing a road or while carrying out archaeological operations, building operations or engineering works (22.5.h).

Under the Wildlife Act and the EU Regulations the Minister is the only authority able to give derogations in the form of a permit and may specify restrictions. The normal procedure for derogations for damage prevention requires the owner or occupier to apply for a permission, detailing the particulars of the damage.

The EU Regulations add the obligations for the Minister to assess whether there are satisfactory alternatives and to report to the Commission according to Article 9.2 of the Birds Directive.

The State-Wide Declarations specify activities and species for which according to the Minister no alternatives exist and are renewed every year. In 2015-2016 there were two State-Wide Declarations in place. The general State-Wide Declaration in 2015-2016 covered Magpie, Hooded Crow, Rook, Jackdaw (*Corvus monedula*), Stock Dove (*Columba oenas*), Wood Pigeon, Collared Dove and Feral Pigeon. The general State-Wide Declaration granted the owner or occupier of a property (or their agent) permission to capture or kill any of these species during specified periods. This is on the condition that a threat to public health is present or to prevent serious damage to crops, livestock or fauna on the property. Recently the latter also covered removal of nests and eggs of Herring Gull, Greater Black-backed Gull and Lesser Black-backed Gull (*Larus fuscus*) in the area around Balbriggan.

The second declaration, the Declaration on Air Safety, covered 16 species in 2015-2016, and grants the owner or occupier of a property on which a risk to air safety exists (or their agent) permission to capture or kill 15 of these species, with any means (excluding poison or anaesthetic bait). The activities for the other 5 species are restricted to Dublin and/or Shannon airport.

Since 2012 Ireland has had open seasons on 17 bird species listed on Annex II of the Birds Directive⁸⁵. It should be noted that there is little overlap between control activities under Article 7 of the Birds Directive and derogations, as no gulls, corvids or thrushes are listed on Annex II/B for Ireland.

⁸² <https://www.npws.ie/legislation/irish-law/wildlife-act-1976> and <https://www.npws.ie/legislation/irish-law/wildlife-amendment-act-2000>

⁸³ <http://www.irishstatutebook.ie/eli/2011/si/477/made/en/print>

⁸⁴ <https://www.npws.ie/legislation/irish-law/eu-birds-directive-derogations>

⁸⁵ <https://www.npws.ie/sites/default/files/general/SI%20402%20of%202012%20Birds.pdf>



Assessment of derogations and the derogation system

The Irish reporting on derogations in HABIDES is highly incomplete. The activities under the State-Wide Declaration are not being reported in HABIDES, but instead the government submits the State-wide declaration to the European Commission every year⁸⁶, which explains the absence of air safety derogations in the HABIDES reporting. The government also reported for only 6 out of the 1061 derogations the maximum number of birds affected, and for no derogations the actual number of birds affected. In addition, there is almost no other information beyond the minimum requirements of Article 9(2) of the Birds Directive. The only way to obtain information is to issue a Freedom of Information Request. This severely limits the assessment of the derogations for example in terms of population impacts or key areas of human-wildlife conflict.

The general State-Wide Declaration is a clear infringement of the Birds Directive. Derogations should be limited in time and space and should be limited to what is strictly necessary (see Chapter 3), which is not the case in the State-Wide Declaration by its general provision on alternative solutions. The declaration now allows capturing and killing to take place in areas where scaring may have been a satisfactory solution to prevent damage to crops or food storages from occurring.

Due to the lack of information there are not many other derogations that can be demonstrated to be clearly unlawful under the Birds Directive. In the years 2011 to 2016 Ireland issued six derogations for capturing wild Peregrine Falcons for falconry. However,

Peregrine Falcons can be easily bred in captivity⁸⁷ and obtaining a captive bred Peregrine Falcon is an alternative to capturing wild birds. Several derogations are very different from normal derogations practice, such as trapping Redpolls or Crossbills to prevent serious damage to crops, livestock, forests, fisheries or water, but the lack of information does not allow a more detailed assessment.

In comparison to other Member States, the scope of the activities that require a derogation appears more limited in Ireland. Notably, there are no derogations for construction or maintenance works in buildings at all, as is evidenced by the absence of any derogations for Common Swift and House Martin. There are no derogations for species that are being impacted by agriculture, forestry or for the bycatch of seabirds. This is presumably due to the exemptions written in Article 22 of the Wildlife Act. It should be highlighted here that it is extremely unlikely that there were never any works affecting occupied nests of Common Swifts or House Martins in Ireland in over six years.

There appears to be relatively little conflict with aquaculture and fisheries in Ireland, as there are very few derogations on Cormorants and Shags, and none for Eider ducks, for example. On the other hand there is a substantial number of derogations presumably or stated to be granted for predator control for nature conservation or for protecting flora.

⁸⁶ Available on <https://rod.eionet.europa.eu/obligations/276/>

⁸⁷ https://www.peregrinefund.org/explore-raptors-species/Peregrine_Falcon



Decision making on derogations

The derogations are not published by the government of Ireland and are only available on HABIDES. The State-wide Declarations are published. Due to the limited information on the derogations, stakeholders would need to rely on Freedom of Information Requests in any case to identify the derogations, in particular what kind of damage the derogations are meant to address.

Owners of a property or others will contact the Ministry or other authorities to ask for a permission, usually by email in which they state the damage that is occurring. The informal nature of the assessment of damage is

also a cause for concern. There is for example evidence that damage to sheep by corvids is likely to be much lower than perceived by farmers⁸⁸. The current system does not specify how to assess whether there is serious damage or not.

A public consultation is held every year on the State-Wide Declaration. It should be noted that several stakeholder groups support an increase of the scope of the State-Wide Declaration⁸⁹. It is possible to appeal derogations and the State-Wide Declarations in court.



BirdWatch Ireland work on derogations

BirdWatch Ireland has increased its resources for working on derogations, following the granting of derogations for gulls in Balbriggan. They have submitted a complaint in February 2018 on the derogations in Balbriggan and have previously urged the European Commission to take action against Ireland for not reporting any derogations for five years in a row. Owing to large financial risks associated with a legal challenge, they have not appealed the State-Wide Declarations or other derogations in court.

Most of the species covered by derogations are currently not a conservation priority, and BirdWatch Ireland is not aware of any impacts on the targeted species, or on non-target species. However, several species that are a conservation priority would potentially benefit from inclusion of a broader scope of activities in the derogation system, such as the Yellowhammer in relation to hedgerow cutting and the Common Swift in urban areas.



Falcon

⁸⁸ Houston, D. (1977). The Effect of Hooded Crows on Hill Sheep Farming in Argyll, Scotland: The Food Supply of Hooded Crows. *Journal of Applied Ecology*, 14(1), 1-15. doi:10.2307/2401822

⁸⁹ <https://www.npws.ie/sites/default/files/general/aniar-final-report-060918.pdf>



Legislation

The legal basis for species protection and giving derogations is the Law 157⁹⁰. It has been amended several times, notably by Article 42 of the 2009 Community Law⁹¹. Regions are responsible for the implementation of derogations in Italy and this assessment therefore covers the two regions, Lombardia and Veneto, in detail. The regions have transposed Law 157 and the amendments into regional legislation⁹².

Law 157 prohibits all forms of bird trapping and capture of wild birds, as well as the collection of eggs, nests and young. It also prohibits the killing of wild birds, with the exception of hunting, unforeseeable circumstances or force majeure. There are four further general exemptions under Article 4 and Article 6:

1. Science. Regions can authorise the capture and use of birds by scientific institutes of the universities and the National Research Council and natural history museums for the purpose of study and scientific research. This also includes the collection of eggs, nests and young.
2. Ringing. Regions can grant permits for ringing and advice of the National Institute for Wildlife. Ringers need to take courses and pass an exam.
3. Live decoys. Regions can authorize trapping of live decoys on the advice of ISPRA. Trapping sites need to be owned by the provinces, managed by qualified personnel and assessed as suitable by ISPRA. ISPRA also carries out the control and certification of trapping sites and determines their period of activity. Before 2002 this legislation had a list of 10 species that could be captured for live decoys. Since 2002 this has been reduced to seven species, removing House Sparrow, Tree Sparrow and Common Starling.

Forbidden means under the Birds Directive, such as nets and traps, can no longer be used.

4. Taxidermy. The law obliges the regions to adopt a specific regulation for taxidermy⁹³. Taxidermists who want to stuff a non-huntable species or a huntable species outside the hunting season need to request permission from the authorities. Failure to comply results in having their license revoked and a penalty for possession of protected species.

Article 19 bis of Law 157 contains the derogations provisions. Derogations can only be granted for the reasons mentioned in the Birds Directive. Derogations can only be granted in the absence of other satisfactory solutions, with an explicit requirement for them to be exceptionally and for limited periods. They need to be justified by a precise analysis of the assumptions and conditions and must mention the assessment of the absence of other satisfactory solutions. Derogations cannot be granted for species that are in serious decline.

The regions and the two autonomous provinces (Trento and Bolzano) are the administrative authorities that can grant derogations. The derogations are granted through administrative acts. The Minister of Transport is responsible for bird control measures for air safety.

Italy had an open season on 36 bird species between 2009 and 2017⁹⁴. Carrion Crow, Hooded Crow, Eurasian Jay and Eurasian Magpie are on the list. Overlap with typical species targeted by derogations to prevent damage is therefore likely. It should be highlighted here that only trained specialised personnel can carry out shooting under derogations.

⁹⁰ <https://www.gazzettaufficiale.it/eli/id/1992/02/25/092G0211/sg>

⁹¹ <http://www.gazzettaufficiale.it/eli/qu/2010/06/25/146/so/138/sg/pdf>. This is the yearly law that deals with EU regulations and the transposition of EU directives.

⁹² For the legislation in the Veneto Region see:

<http://www.consiglio Veneto.it/crvportal/leggi/1993/93lr0050.html?numLegge=50&annoLegge=1993&tipoLegge=Alr>

For the Region Lombardy law see:

<http://normelombardia.consiglio.regione.lombardia.it/NormeLombardia/Accessibile/main.aspx?view=showsum&idoc=lr001993081600026>

⁹³ See the Veneto taxidermy legislation here: <https://bur.regione.veneto.it/BurVServices/pubblica/DettaglioDecreto.aspx?id=193867>

⁹⁴ http://datazone.birdlife.org/userfiles/file/hunting/HuntingRegulations_Italy.pdf



Assessment of the derogation system

The Italian reporting in HABIDES is presumably highly incomplete. While the information on most derogations is complete, there are large gaps geographically. All regions and the two autonomous provinces have issued derogations, but there are significant and inexplicable differences between them. The Calabria region has issued only 7 derogations in total between 2009 and 2017, and only for research and teaching. The Campania region has issued 19 derogations, also mostly for research and teaching. In addition, the derogations covering the measures for bird control concerning air safety from the Ministry of Transport are also absent, although it is possible that there is only limited bird control carried out around airports.

There are human-wildlife conflicts in Italy involving birds⁹⁵. According to farmers, corvids cause damage to a variety of crops and cereals and Common Starling cause damage to orchards, vineyards and olive groves⁹⁶. There is an ongoing conflict involving Great Cormorants and owners of fish ponds. These conflicts are reflected in the derogations.

In the 2009-2017 period, there have been many derogations that are presumably unlawful. Small numbers derogations were granted relatively frequently, with more than 600 derogations having this legal basis. It is worth highlighting that these derogations have now largely stopped, and in 2017 there were no small numbers derogations granted.

Trapping for live decoys was relatively common, but appears to have stopped following legal action by the European Commission⁹⁷. Similarly, hunting seasons for 6 species not on Annex II were authorized under small numbers derogations. These include: Meadow pipit (*Anthus pratensis*), Tree pipit (*Anthus trivialis*), Common

Chaffinch (*Fringilla coelebs*), Brambling (*Fringilla montifringilla*), Hawfinch (*Coccothraustes coccothraustes*), and Common Starling. This appears to have stopped after 2013, following legal action by the European Commission against Italy⁹⁸. Regions which consistently used derogations for such a purpose were the Veneto Region and the Lombardy Region.

Another type of presumably unlawful derogation is population control under the Long Term Plans – a type of wildlife management plan. For the Great Cormorant, many derogations have the explicit target to reduce the population by 10 or 20 %. For corvids, the derogations often involve multiple reasons (e.g. air safety, prevention of damage to crops) and large numbers, raising the question of properly considering alternatives and whether these derogations are limited to what is strictly necessary. More than 300 000 corvids have been reported as actually killed under these derogations.

There are no derogations for construction or maintenance works. According to Lipu, this is based on the interpretation of 'deliberate' in Italy. Similarly, in spite of large agriculture and forestry sectors, there are no derogations for these activities, and there are also no derogations for the bycatch of seabirds.

Italy is the worst country in Europe in terms of illegal killing and taking of birds⁹⁹. There have been no explicit links between activities under derogation and the illegal killing and taking of birds, but the scale of the problem makes it difficult to disentangle illegal activities from derogations, in particular for the past hunting and trapping derogations.

⁹⁵ There are bigger conflicts with mammals, in particular the Wild Boar (*Sus scrofa*)

⁹⁶ http://www.gestioneafaunistica.it/wp-content/uploads/2012/02/prevenzione_danni_avifauna.pdf

⁹⁷ https://ec.europa.eu/commission/presscorner/detail/EN/MEMO_14_2130

⁹⁸ Case C-573/08

⁹⁹ Brochet, A. L. et al (2016). Preliminary assessment of the scope and scale of illegal killing and taking of birds in the Mediterranean. Bird Conservation International, 26(1), 1-28.



Decision making on derogations

Applications for a derogation need to provide detailed information before a derogation can be considered. In the Lombardy Region, derogations for scientific research and ringing can be requested per mail or per post¹⁰⁰. For damage prevention, derogation applicants need to provide detailed information on the risks for damage. In recent years, most damage prevention derogations in Lombardy and Veneto have been issued centrally under the Long Term Plans (see above).

The regions need to consult the ISPRA institute before they can grant derogations. For small numbers derogations, the intention to adopt a derogation on migratory species need to be communicated to ISPRA in April. ISPRA calculated the small number for the hunting season 2004 and 2005, which was then divided between regions through negotiation. After the publication of

the European Commission's Guidance to Sustainable Hunting under the Birds Directive¹⁰¹, which required small numbers to be below 1% of the annual mortality, ISPRA made it explicit that the available data did not make it possible to calculate the small numbers according to these criteria.

Derogations need to be published in the Regional Official Bulletin at least sixty days before the date set for the start of withdrawal activities. There is no public consultation on derogations, but derogations can be appealed in Administrative Courts.

The regions and autonomous provinces report the derogations every year to the central government and ISPRA, following which the Ministry of Environment sends the report to the European Commission.



Lipu work on derogations

Lipu has invested considerable resources in contesting unlawful derogations. They have actively contested so-called derogation hunting, derogations for hunting non-huntable species (see above). This ultimately led to the case before the ECJ by the European Commission against Italy, specifically the Veneto Region, following which the granting of this type of derogations stopped. Lipu also contested trapping for live decoys, which again led to legal action by the European Commission

(see above). The trapping for live-decoys is since then diminishing, and in 2017 no such derogations were granted.

Lipu is not aware of current derogations having a population impact. Lipu is currently focusing on other pressing problems, such as illegal killing and taking of birds, which still have a huge impact on bird populations.



¹⁰⁰ <https://www.regione.lombardia.it/wps/portal/istituzionale/HP/servizi-e-informazioni/cittadini/agricoltura/fauna-selvatica-e-caccia>

¹⁰¹ https://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/docs/hunting_guide_en.pdf



Legislation

The granting of derogations in Malta is governed by the 2006 Conservation of Wild Birds Regulation (as amended)¹⁰². The Wild Birds Regulation is accompanied by subsidiary legislation, the framework legislation, which govern particular derogations. Between 2010 and 2016 the following frameworks were in place:

1. Framework for allowing a derogation opening a spring hunting season for Turtle Dove (*Streptopelia turtur*)¹⁰³ and Common Quail (*Coturnix coturnix*) during the years 2010 – 2017¹⁰⁴.
2. Framework for allowing a derogation opening an autumn live-capturing season for Song Thrush (*Turdus philomelos*) and Golden Plover¹⁰⁵ during the years 2012 – 2017.
3. Framework for allowing a derogation for the control of birds in the interest of air safety¹⁰⁶ during the years 2013 – 2017.
4. Framework for allowing a derogation opening an autumn live-capturing season for finches¹⁰⁷ during the years 2014 – 2017.

The frameworks are then the basis for declarations, which activate the derogations in a specific year, and

specify the species and bag limits in case of the legislation covering hunting and capture. For each derogation season, a new law is issued setting the dates and other parameters such as quotas for the season within the general limits set in framework law.

The Wild Birds Regulations contains the species protection provisions. The provisions are in line with the Birds Directive and no general exemptions are foreseen. The Minister is the only authority able to grant derogations. The Maltese Ornithology Committee needs to provide a recommendation to the Minister before he or she can grant a derogation, including regarding compatibility with the Birds Directive (e.g. the absence of other satisfactory alternative solutions). The only exception to this is urgent derogations for air safety.

Individuals licensed under derogation report to the Wild Birds Regulation Unit, which then report to the Minister. The WBRU also prepared the reports on derogations since 2013¹⁰⁸. The reports were then formally submitted by the Maltese Environment and Planning Authority through HABIDES during the entire period.



Assessment of derogations and the derogation system

The Maltese reporting on derogations in HABIDES is mostly complete. The information on all the individual derogations is complete, and in most cases the actual number of birds taken or killed is reported, but there are grounds to assume that these numbers are not correct (see below).

Derogations have only been granted for three reasons: the rehabilitation of injured birds (within the scope of protection of fauna under Birds Directive Article 9.1.a), research (Article 9.1.b) and judicious use of small numbers (Article 9.1.c).

¹⁰² <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11548&l=1>

¹⁰³ In 2017 only Common Quail was hunted. The Framework law still technically allows possibility of Turtle Dove hunting – but the Government notice 538 of 2016 issued later banned it – see:

<https://www.gov.mt/en/Government/DOI/Government%20Gazette/Government%20Notices/Pages/2016/05/Gov-Notices-2705.aspx>

¹⁰⁴ <http://www.justiceservices.gov.mt/DownloadDot.aspx?app=lom&itemid=11570&l=1>

¹⁰⁵ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11936&l=1>

¹⁰⁶ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12091&l=1>

¹⁰⁷ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26213&l=1>. Note that no consolidated version is available, so this is the original version without amendments.

¹⁰⁸ <https://msdec.gov.mt/en/Pages/WBRU/Reports-and-Statistics.aspx>

The derogations for air safety are missing altogether from the database. Declarations to activate the air safety framework have been issued in 2013¹⁰⁹ (Common Starling only), and in 2014, 2015 and 2016 (Common Starling and Feral Pigeon)¹¹⁰.

Two frameworks have been ruled unlawful by the ECJ. The framework on Turtle Dove and Quail was ruled unlawful in 2009 on grounds of proportionality to the autumn hunting season¹¹¹, resulting in a lowering of the bag limits in subsequent years. The framework on the trapping of finches was ruled unlawful in 2018¹¹² on several grounds. The ECJ found that trapping for recreational use is unlawful, that the migratory movement of the finch species had not been sufficiently studied to establish that only small numbers were trapped. The court also found that the clap nets were not selective and that there was a lack of strictly controlled conditions.

The Commission sent a Reasoned Opinion on the trapping of Song Thrush and Golden Plover in 2012¹¹³, which was active at the time of writing this report. It should be noted that the case on trapping finches provides several grounds on which the trapping of Song Thrush and Golden Plover could be ruled unlawful.

There is currently no major conflict between birds and agriculture or birds and fisheries and aquaculture in Malta, but the industry is planning to expand and conflicts may emerge in the future. There is also no major conflict between gulls and other interests, and only a small breeding population of Yellow-legged Gull (*Larus michahellis*) is present on the island¹¹⁴.

There are no derogations for species that are being impacted by construction and maintenance works, agriculture, forestry or for the bycatch of seabirds.

Illegal shooting of birds during the spring hunting season is a persistent problem in Malta¹¹⁵. The shooting

is partially recreational shooting, and partially for collecting specimens for taxidermy. Quotas for spring hunting were also presumably being exceeded and poorly controlled owing to the use of an SMS self-reporting system¹¹⁶. In this respect, it should be highlighted that the WBRU is responsible for enforcement but also for the reporting on derogations, and as such is unlikely to report exceedance of quotas to the European Commission.

Illegal shooting is not limited to hunting derogations, as it is also occurring during the autumn hunting season and the rabbit hunting season. Targeting of turtle doves in spring during the open hunting season by derogation for quail remains a serious conservation issue for the species.

BirdLife Malta¹¹⁷ has documented several problems with trapping. The trapping season for finches and Song Thrush and Golden Plover has resulted in illegal activities. Frequently other species are being illegally trapped in the clapnets and the bag limit for finches has in all likelihood been exceeded every year. The demand for trapped finches has fuelled smuggling of finches from Italy. Trapping sites have destroyed vegetation in Natura 2000 sites. Further damage to wildlife is occurring through negligent behaviour of trappers who leave or discard nets in the countryside.

Common Chaffinch, European Serin (*Serinus serinus*), European Goldfinch (*Carduelis carduelis*), European Greenfinch (*Chloris chloris*) and Common Linnet (*Linaria cannabina*) have no permanent breeding populations on Malta, while in Cyprus these species are very numerous, according to a 2007 study¹¹⁸. Turtle Dove is also absent from Malta, but there are documented breeding attempts¹¹⁹. Derogations may prevent these species from properly recolonising the Maltese islands.

¹⁰⁹ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12092&l=1>

¹¹⁰ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12249&l=1>;
<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12597&l=1>;
<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12691&l=1>

¹¹¹ Case C-76/08

¹¹² C-557/15

¹¹³ http://europa.eu/rapid/press-release_IP-12-171_EN.htm

¹¹⁴ According to the report under Article 12 of the Birds Directive. See: EEA (2015) State of Nature in the EU. European Environmental Agency

¹¹⁵ Raine AF et al. (2016) Illegal bird hunting in the Maltese Islands: an international perspective. *Oryx*, 50(4), 597-605. For recent reports on exceedance of quota and illegal killing during the rabbit hunting season see <https://birdlifemalta.org/category/news/>

¹¹⁶ The SMS self-reporting system was not accepted by the ECJ for finch trapping in Case C-557/15, and for Common Quail and Turtle Dove identical systems were used.

¹¹⁷ <https://birdlifemalta.org/wp-content/uploads/2018/01/STOPTRAPPINGNOW.pdf>

¹¹⁸ Raine (2007) The international impact of hunting and trapping in the Maltese islands. BirdLife Malta. Ta'Xbiex, Malta.

¹¹⁹ <https://birdlifemalta.org/conservation/current-projects/satellite-tracking-of-migratory-turtle-doves/>



Decision making on derogations

The Ornithological Committee is tasked with providing recommendations to the Minister on derogations under the Wild Bird Regulations, and therefore derogations are normally tabled in the Ornithological Committee. The Ornithological Committee has a fixed representation and therefore acts as a limited form of public consultation. The environment authority, BirdLife Malta and the main hunting organisation Il-Federazzjoni Kaċċaturi Nassaba Konservazzjonisti have a vote each, while three votes are allocated to government appointed members with a casting vote left to the chairman of the committee. Accordingly, recommendations rarely outvote government's will or political direction when it comes to

derogations applied on request of the hunting lobbies. The Minister also may override recommendations, without the need to publish the reasons to the Ornithological Committee. No particular evidence needs to be put forward in order to ask for a derogation, although the Wild Birds Regulation Unit may provide evidence itself.

The frameworks and the declarations are published in the Government Gazette. The Wild Bird Regulation Units reports every year on the hunting and trapping derogations¹²⁰. The derogations are not published by the government of Malta and are only available on HABIDES.



BirdLife Malta work on derogations

BirdLife Malta has invested considerable resources in contesting unlawful derogations over the years, including participating in the Ornithological Committee and formal complaints and their follow-up with the European Commission. They have also filed a judicial protest in 2014 against spring hunting, but this has not led to any court proceedings. It is unclear on what other legal basis BirdLife Malta can challenge declarations on derogations and to file complaints with the European Commission has been the only successful option thus far.

BirdLife Malta has also spent considerable resources on tackling the illegal activities associated with derogations. Currently they are carrying out a project with the OAK foundation to tackle the illegal killing associ-

ated with derogations¹²¹. Spring hunting seasons are monitored with the assistance of international volunteers in the form of organised camps reporting and filming hunting activity.

BirdLife Malta is not aware of major conservation issues arising from maintenance or renovation works or agriculture. Construction works are a problem in terms of habitat destruction which is becoming the major conservation issue on the island. Seabird bycatch is a problem in Malta with potentially up to 10% of the local population of Scopoli's Shearwater (*Calonectris diomedea*) being caught each year¹²². More data and more recent data, such as the forthcoming Breeding Bird Atlas, will be needed to have a better picture of this threat.

¹²⁰ <https://msdec.gov.mt/en/Pages/WBRU/Reports-and-Statistics.aspx>

¹²¹ <https://birdlifemalta.org/oak-foundation/>

¹²² Dimech M et al. (2009) Preliminary data on seabird by-catch from the Maltese longline fishery (Central Mediterranean). Collect. Vol. Sci. Pap. ICCAT 64(7), 2335-2341.



Legislation

The legal basis for species protection and derogations in Poland is governed by the Nature Conservation Act¹²³. The Nature Conservation Act introduces two categories of protected species: strictly protected species and partially protected species. Under Article 49, the basis for this is a list of species and specific exemptions drawn up by the Ministry for the Environment¹²⁴. A general exemption is foreseen under Article 52a.2 for fishery activities that are carried out following good practice requirements.

The current list of protected species includes 427 strictly protected bird species and 9 partially protected bird species: Feral Pigeon, Herring Gull, Common Gull (*Larus cachinnans*), Great Cormorant, Grey Heron (*Ardea cinerea*), Eurasian Magpie, Rook, Raven and Hooded Crow. For all of these species, all the prohibitions from Article 5 of the Birds Directive apply, as well as some additional provisions such as a prohibition on import and export from Poland. There is an exception for destruction of unoccupied nests and disturbance of Feral Pigeon, and for intentional disturbance of Great Cormorant and Grey Heron on areas officially recognised as fish ponds.

Huntable species and other wild bird species are also partially protected, however, some species protection provisions do not apply, such as the import and export provisions and the prohibition on disturbance outside the breeding season. In addition, the hunting legislation provides for the conditions and methods of hunting¹²⁵.

The General Director for Environmental Protection (GDOŚ) is the only authority that can grant derogations for killing, destruction of eggs and import and release of strictly protected species. The Regional Directorates (RDOŚ) can permit other activities for strictly protected species, such as capture and disturbance, as well as any activity for partially protected species. Finally, the Minister can directly authorise certain activities in National Parks following consulting with the Parks' Director. For Great Cormorant and Grey Heron, the RDOŚ can issue a special derogation in the form of an ordinance for a period of up to five years authorising killing and other activities in areas officially recognised as fish ponds. This can be only done in the absence of other solutions and in the absence of detrimental population impacts.

The Minister reports all derogations to the European Commission on the basis of a report by the GDOŚ to him or her, which is based on the reports by the RDOŚ to the GDOŚ. The RDOŚ also reports on the ordinances each year.

Since 2012 Poland has had open seasons on 13 bird species listed on Annex II of the Birds Directive¹²⁶. It should be noted that there is little conceivable overlap between hunting and control activities under derogations, as corvids, starlings and gulls are not listed on Annex II/B for Poland.



Assessment of derogations and the derogation system

The Polish reporting in HABIDES is likely mostly complete. All regions (Województwo) have submitted derogations, and derogations for airports are present. The information on individual derogations is also mostly complete, however essential information on several individual derogations is however missing. Examples are derogations without legal justification, derogations

without information on species covered by the derogations, or derogations without any information on the number of birds affected.

Some derogations appeared problematic at first glance, in particular the capture of songbirds for keeping in some cities and birds of prey such as Saker Falcon (*Falco*

¹²³ <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20180000142>

¹²⁴ <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20160002183>

¹²⁵ <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19951470713>

¹²⁶ <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20050450433>

cherrug). The latter were particularly puzzling since the species does not occur in the northeast of Poland where derogations were granted. However, an inquiry with the RDOŚ by OTOP revealed that these were reporting errors as the derogations covered birds that were already in captivity.

A Code of Good Practice for aquaculture has been adopted in 2015¹²⁷. The code requires that mowing of emergent vegetation is done outside the breeding season if possible. If not possible, mowing needs to be done by boat with an underwater mower.

There are major human-wildlife conflicts involving birds in Poland. Most of the derogations cover impacts by humans on birds, in particular construction, insula-

tion and renovation works, and tree-cutting in towns. Derogations for forestry and agriculture activities are notably absent, as well as derogations for fisheries bycatch.

Poland has a relatively large aquaculture sector, mainly Carp (*Cyprinus carpio*) and several species of Trout¹²⁸ and as a result, there is a major conflict over fish-eating birds and fish ponds. Rooks can cause damage to seedlings of cereals. In western and northern Poland, geese and Cranes (*Grus grus*) cause damage to crops.

There is no predator control for game birds and illegal killing and taking of birds is limited, but OTOP has indications that illegal killing of Osprey around fish ponds is limiting their numbers and distribution in the country.



Decision making on derogations

Derogations in Poland are usually granted as permits for specific activities. Derogations granted by the GDOŚ and the RDOŚ are published on their websites and in a central register¹²⁹. Applicants for a derogation need to complete a form¹³⁰, indicating among other things the activities, their time and place, the species concerned, the reason, and in case of killing birds how the killing will be carried out and by whom. Applicants also need to pay a fee.

The application is then reviewed by the GDOŚ or the RDOŚ. It is possible to appeal derogations under an administrative procedure. The RDOŚ in this case refers the derogation to the GDOŚ. Appeals are usually filed by applicants that receive a negative answer, but environmental NGOs can also appeal if they are a party to the proceedings.



OTOP work on derogations

OTOP has appealed several derogations and has at the time of writing three cases pending in the Administrative court. In the past, they have mainly appealed against the destruction of nests of Rooks and the use of falcons for disturbance. Other NGOs have also appealed loss of bird nesting opportunities due to insulation of buildings.

OTOP is not aware of any conservation impacts of derogations. However, the lack of implementation of species protection in the forestry sector is very problematic and does have conservation impacts. OTOP has challenged this in the past but so far without success. Similarly, there are major problems with protection of seabirds in the Baltic Sea, and OTOP is actively engaged in addressing fisheries bycatch.

¹²⁷ https://mgm.gov.pl/wp-content/uploads/2016/02/Kodeks_Dobrej_Praktyki_Rybackiej_w_Chowie_i_Hodowli_Ryb.pdf

¹²⁸ http://www.fao.org/fishery/countrysector/naso_poland/en

¹²⁹ <https://wykaz.ekoportal.pl/>

¹³⁰ <http://bip.warszawa.rdos.gov.pl/zezwozenie-na-odstepstwa-od-zakazow-w-stosunku-do-gatunkow-dziko-wystepujacych-zwierzat-objetych-ochrona>



NB The assessment in this section is largely based on a forthcoming publication by SEO.



Legislation

The legal basis for species protection and granting derogations is the Law 42/2007¹³¹. This law is directly applicable in the 17 Spanish autonomous communities. The assessment for Spain examines in detail the legislation and derogation practice in the autonomous communities of Asturias, Madrid, Navarra and Valencia to get further insight in the derogation practice.

Article 54.5 of Law 42/2007 prohibits the intentional killing, injury and disturbance of all wild animals. It also prohibits capture and keeping in captivity, destroying, damaging, collecting and keeping of nests, young and eggs, even if empty. Possession, transporting, trafficking and trading of live or dead specimens is also forbidden, including international trade.

An exception is foreseen for species not listed on the National list of protected species or the List of endangered species¹³². This exception needs to be included in specific legislation to be valid, in particular under forestry, hunting, agriculture, public health and health, fisheries legislation, or in the cases regulated by the General State Administration or the autonomous communities, within the scope of their powers, for the exploitation of the species. The exception needs to be, in some manner, compatible with the conservation of these species. This exception is relevant for common species that cause damage, such as Great Cormorant, Wood Pigeon, sparrows (*Passer sp.*) and most corvids.

Under Article 61.1 derogations can then be given if there is no other satisfactory solution, if there is no damage to the maintenance at a favourable status of the populations in question and for the following reasons:

- a) Risks to health and safety of persons.
- b) To prevent significant damage to crops, livestock, forests, fisheries and water quality. [...] ¹³³
- c) [...]

- d) When necessary for research, education, repopulation or reintroduction, or when required for captive breeding for such purposes.
- e) In the case of birds, to prevent accidents in relation to air safety.
- f) To allow, under strictly controlled conditions and through selective methods, the capture, retention or any other wise exploitation of certain species not included in the National list of protected species in small quantities and with the necessary limitations to guarantee its conservation.
- g) To protect wild flora and fauna and natural habitats.

The autonomous communities and the General State Administration are the only authorities that can give derogations. The autonomous communities are obliged to report the derogations to the Minister of Agriculture, Food and Environment, who then reports to the European Commission and other international bodies.

Hunting legislation in Spain is highly devolved and can even differ within autonomous communities¹³⁴. There is however clear evidence for overlap between huntable species and derogations. In some autonomous communities a derogation regime is in place but in others hunting is directly authorized through the annual hunting seasons and bag limits regulation (Andalucía, Baleares, Castilla-La Mancha, Extremadura, Murcia and Valencia). In relation to damage prevention, in Valencia; Eurasian Magpie, Carrion Crow, Eurasian Jackdaw, Common Starling, Feral Pigeon and Wood Pigeon had an open season in 2019¹³⁵. Hunting of these last three species is also allowed year-round in Navarra¹³⁶, along with the House Sparrow, as these species are considered agricultural pest species.

¹³¹ <https://www.boe.es/buscar/act.php?id=BOE-A-2007-21490>

¹³² Listado de Especies Silvestres en Régimen de Protección Especial and Catálogo Español de Especies Amenazadas on the basis of Article 56 and 58 of Law 42. See: <https://www.miteco.gob.es/es/biodiversidad/temas/conservacion-de-especies/especies-proteccion-especial/ce-proteccion-listado-situacion.aspx>

¹³³ Reasons not applying to birds are omitted.

¹³⁴ http://datazone.birdlife.org/userfiles/file/hunting/HuntingRegulations_Spain.pdf

¹³⁵ http://www.fecaza.com/images/4fotospdf_2019/valencia.pdf

¹³⁶ <https://www.navarra.es/NR/rdonlyres/9C52CA33-05DA-478A-A939-C77E4D8D9BC0/452408/Caza201920CAST.pdf>



Assessment of derogations and the derogation system

The reporting of Spain in HABIDES is incomplete. There are geographical gaps with País Vasco, Murcia and Asturias not reporting any derogations for one or more years. Airports are also patchily represented. The information on individual derogations is also highly incomplete. There are also around 600 derogations for the capture of finches for the practice of silvestrismo (see below) that do not contain numbers for the individual species taken. In the year 2016 Valencia published a derogation for silvestrismo in its Official bulletin¹³⁷ which to date has not been reported in HABIDES.

Between 2009 and 2017, more than 1200 derogations have been granted for taking for small numbers of birds. Since 2000, more than 4.5 million birds have been caught under this type of derogation. This is mostly for the practice of trapping song birds for keeping them in captivity (silvestrismo) which is a widespread tradition in Spain, focusing on a handful of finch species such as Common Linnet (*Linaria cannabina*), European Goldfinch (*Carduelis carduelis*) and European Greenfinch (*Chloris chloris*). This practice of giving this derogation appears to have stopped after an infringement procedure¹³⁸ and scientific advice, with no such derogations given in 2017. However, the Regional Government of Madrid in 2018 and 2019 allowed the Hunting Federation Madrid¹³⁹ to implement a project authorising hundreds of hunters (silvestristas) to ring finches to study their distribution at the regional level with their own rings. In this way, the ringing of wild birds is authorized the applicants demonstrating their ringing skills or their knowledge on the activity, without certification of scientific bodies or bird ringing societies.

It is likely that further unlawful derogations exist. For example hunting Red-Legged Partridge (*Alectoris rufa*) with decoys is authorized during their period of reproduction. On the other hand, the use of lime sticks

for bird trapping (parany for thrushes or arbolillo for finches) stopped earlier, with the last such derogation given in 2013.

There are human-wildlife conflicts involving birds in Spain. Great Cormorants can cause damage to fish ponds, and according to fishermen also cause damage to wild stocks. Thrushes, sparrows (*Passer sp.*), Wood Pigeon, Collared Dove (*Streptopelia octo*), Common Starling and Spotless Starling (*Sturnus unicolor*) have been causing damage to crops and orchards. However, the extent of the damage is disputed, as for some species the possibility for opening or extending hunting season has played a role in how the damage was portrayed¹⁴⁰.

Construction and maintenance works fall under the derogation regime in Spain, and a limited number of such derogations is given (somehow because there is not a sufficiently widespread culture of the obligation to ask for derogations). The main activity is the removal of nests for White Stork (*Ciconia ciconia*), Northern House Martin (*Delichon urbicum*) and Common Swift (*Apus apus*). For the last two species and the Barn Swallow (*Hirundo rustica*), derogations are also granted for public health, in order to prevent the pollution produced by their droppings. However, it is doubtful that no alternative solutions exist to avoid problems with bird droppings. Forestry, agriculture and seabird bycatch are in practice not subject to derogations.

There is evidence for illegal killing under derogations and impacts of derogations on other species. The use of limesticks in Spain in the past under parany resulted in around 30 % of non-target species being captured¹⁴¹. In addition after the prohibition of silvestrismo, some cases of illegal capture have been recorded.

¹³⁷ See here: <https://www.dogv.gva.es/es/eli/es-vc/o/2016/07/28/20/>
Modified by <https://www.dogv.gva.es/es/eli/es-vc/o/2016/09/21/28/>

¹³⁸ https://ec.europa.eu/commission/presscorner/detail/EN/MEMO_18_3446

¹³⁹ <http://www.fmcaza.es/primer-mes-del-proyecto-sefricam-2019-completado>

¹⁴⁰ In Case C-79/03 the ECJ ruled against Spain as the use of parany was hardly correlated with damage to orchards.

¹⁴¹ Reviewed in Murgui, E. (2014). When governments support poaching: a review of the illegal trapping of thrushes *Turdus* spp. in the parany of Comunidad Valenciana, Spain. *Bird Conservation International*, 24(2), 127-137.



Decision making on derogations

In Valencia, derogation proponents for damage prevention derogations need to complete a form online, by post or in person, similar to for example Aragón and Extremadura¹⁴². In Valencia, derogations can be requested by the property owner, the mayor, the president of the agriculture chamber, or similar. An environmental agent needs to complete a section on the form, indicating the nature of the damage that has been observed in previous years and that he or she recommends control measures. Other than this, applicants do not need to provide any information on satisfactory alternatives. The application is then examined by the technical staff of the relevant directorate of the environment, the forestry unit and then issued through a resolution by the Environmental Director of Valencia.

Most categories of derogations are not subject to an independent scientific review before they are given. For small numbers derogations there is a scientific review required under Law 42/2007 Article 61.4 by the State Commission for Natural Heritage and Biodiversity, covering viable alternatives, quotas at national level and catch quotas, the control systems for capture and for keeping in captivity. Following their review, the capture of finches for silvestrismo was phased out.

There are additional requirements for some categories. Article 61.2 requires that for birds for damage prevention derogations under b) the competent authorities need to specify how no net loss of biodiversity will be guaranteed, either through conservation banks or through other instruments. Article 61.3 requires scientists working with captive animals to meet the standards for experiments on animals. Under Article 61.8 ringers need to demonstrate their skill and knowledge before they can be given permission to ring birds.

Derogations are not published anywhere centrally. There is a legal requirement to publish the derogations under Article 61.5 of the Law 42/2007. The publication should contain the following information:

- a) The objective and justification of the action.
- b) The species to which it refers.
- c) The means, facilities, systems or methods to be used and their limits, as well as the reasons and qualified personnel for their use.
- d) The nature and conditions of risk, the circumstances of time and place and if applicable, the alternative solutions not adopted and the scientific data used.
- e) The control measures to be applied.

In some autonomous communities, indeed, some derogations are published in the Official bulletin (see above). However, other derogations given were not published there, such as derogations for damage control for Great Cormorant in Asturias. It is possible that these derogations are included in a hunting plan or other secondary legislation or published elsewhere, or that they are not published at all. There is no public consultation on derogations.

NGOs can appeal derogations by taking the administration granting the derogation to court. Under Law 39/2015 when a derogation is published, the time period to appeal derogations is two months for applicants and opponents.

¹⁴² Valencia: https://www.gva.es/downloads/publicados/IN/27016_P_BI.pdf.

Website here https://www.gva.es/va/web/portal/inicio/procedimientos?id_proc=673;

Aragón: <https://www.aragon.es/-/autorizaciones-excepcionales>;

Castilla y León: https://www.tramitacastillayleon.jcyl.es/web/jcyl/AdministracionElectronica/es/Plantilla100Detalle/1251181050732/Tramite/1284255305894/Tramite_

Extremadura: http://extremambiente.juntaex.es/files/pdf_rellenables/SOLICITUD%20DE%20ACCIONES%20PARA%20PALIAR%20DANOS%20A%20LA%20AGRICULTURA%20mod2016_rln_gble.pdf



SEO work on derogations

SEO has invested considerable resources in contesting derogations and has been instrumental in national cases and cases for the ECJ¹⁴³, contributing to phasing out some practices such as catching songbirds for silvestrismo or parany. However, they are hampered by the lack of transparency in the derogation process. Some derogations are not public or published only in local official journal, and by the time that SEO can act the period for appeals often has already expired. SEO is not aware of any conservation impacts of current derogations, with the limitation that the publicly available information on derogations may be incomplete.

SEO is currently working to review the conditions for granting derogations for removing nests of migratory species or for the control of species for damage to agriculture or fisheries, as well as the hunting of species during their reproductive period. In addition, SEO works to extend the derogation regime to all activities that have an impact on birds, in particular urban planning, construction and maintenance works and outdoor sports activities.

¹⁴³ <https://www.seo.org/2013/05/16/la-caza-con-parany-declarada-definitivamente-ilegal-por-el-tribunal-constitucional/>



5

Common Starling

Bern Convention

The Bern Convention, under the administration of the Council of Europe, protects flora and fauna species and their habitats. To achieve this, the Convention requires their contracting parties to put in place legislative and administrative measures to ensure protection of individual birds, to regulate hunting and other exploitation, including through closed seasons, and to prohibit indiscriminate or large-scale means for killing and capture. Exceptions from these provisions can be made under the Bern Convention if there is no other satisfactory solution, if the exception will not be detrimental to the survival of the population concerned, and if one of the reasons from Article 9 applies. The relevant articles of the convention are printed in Box 2.

Some contracting parties are also EU Member States and report both under the Birds Directive and under the Bern Convention¹⁴⁴, and the European Commission also reports all the derogations from HABIDES to Bern. It should be highlighted here that there are exceptions made under Bern that do not correspond to derogations under the Birds Directive. The majority of these relate to the keeping in captivity of birds of prey for falconry. While it is questionable that contracting parties have fulfilled their duties under Article 9 if the European Commission submits a report on their behalf, as there is no such provision in the Bern Convention, for pragmatic reasons these countries are not further covered in this section.

Table 5 gives an overview of the reports submitted by contracting parties. Only 44 out of possible 85 reports were submitted between 2009/2010 and 2015/2016. Two of these reports were not available online¹⁴⁵, and 23 reports did not contain any information on new exceptions for bird species, although some did contain information on birds in captivity. This leaves only 19 reports with useful information for this review.

Table 6 gives an overview of the total number of birds reported to be killed under exceptions in contracting parties (excluding the EU). This is the total number on the basis of the available reports. Exceptions for research and conservation, including those made together for protection of flora and fauna are excluded. The most commonly killed bird was Mallard (*Anas platyrhynchos*), followed by Eurasian Woodcock, Common Coot (*Fulica atra*), Greater White-fronted Goose (*Anser albifrons*) and Bean Goose (*Anser fabalis*). Over 97 % of the birds reported to be killed were killed under exceptions made by Belarus for spring hunting. These exceptions have no reference to alternatives assessed. The reports from Belarus state that for all species there are also regular autumn hunting seasons in place.

¹⁴⁴ The Bern Convention also accepts reports in HABIDES 2.0 since 2018.

¹⁴⁵ <https://www.coe.int/en/web/bern-convention/biennial-reports>, accessed 1 October 2019.
In addition to this, three other reports were more than 2 400 pages long.

Box 2: Relevant articles of the Bern Convention

Article 6

Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II. The following will in particular be prohibited for these species:

- a) all forms of deliberate capture and keeping and deliberate killing;
- b) the deliberate damage to or destruction of breeding or resting sites;
- c) the deliberate disturbance of wild fauna, particularly during the period of breeding, rearing and hibernation, insofar as disturbance would be significant in relation to the objectives of this Convention;
- d) the deliberate destruction or taking of eggs from the wild or keeping these eggs even if empty;
- e) the possession of and internal trade in these animals, alive or dead, including stuffed animals and any readily recognisable part or derivative thereof, where this would contribute to the effectiveness of the provisions of this article.

Article 7

1. Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species specified in Appendix III.
2. Any exploitation of wild fauna specified in Appendix III shall be regulated in order to keep the populations out of danger, taking into account the requirements of Article 2.
3. Measures to be taken shall include:
 - a) closed seasons and/or other procedures regulating the exploitation;
 - b) the temporary or local prohibition of exploitation, as appropriate, in order to restore satisfactory population levels;
 - c) the regulation as appropriate of sale, keeping for sale, transport for sale or offering for sale of live and dead wild animals.

Article 8

In respect of the capture or killing of wild fauna species specified in Appendix III and in cases where, in accordance with Article 9, exceptions are applied to species specified in Appendix II, Contracting Parties shall prohibit the use of all indiscriminate means of capture and killing and the use of all means capable of causing local disappearance of, or serious disturbance to, populations of a species, and in particular, the means specified in Appendix IV.

Article 9

1. Each Contracting Party may make exceptions from the provisions of Articles 4, 5, 6, 7 and from the prohibition of the use of the means mentioned in Article 8 provided that there is no other satisfactory solution and that the exception will not be detrimental to the survival of the population concerned:
 - for the protection of flora and fauna;
 - to prevent serious damage to crops, livestock, forests, fisheries, water and other forms of property;
 - in the interests of public health and safety, air safety or other overriding public interests;
 - for the purposes of research and education, of repopulation, of reintroduction and for the necessary breeding;
 - to permit, under strictly supervised conditions, on a selective basis and to a limited extent, the taking, keeping or other judicious exploitation of certain wild animals and plants in small numbers.

2. The Contracting Parties shall report every two years to the Standing Committee on the exceptions made under the preceding paragraph. These reports must specify:

- the populations which are or have been subject to the exceptions and, when practical, the number of specimens involved;
- the means authorised for the killing or capture;
- the conditions of risk and the circumstances of time and place under which such exceptions were granted;
- the authority empowered to declare that these conditions have been fulfilled, and to take decisions in respect of the means that may be used, their limits and the persons instructed to carry them out;
- the controls involved.



Common Woodpigeon

	2009/10	2011/12	2013/14	2015/16	TOTAL
Albania	*	No report	No birds	No birds	3/4
Andorra	No report	No report	No report	No birds	1/4
Armenia	*	No birds	Report	Report	4/4
Azerbaijan	No report	No report	No report	No report	0/4
Belarus	No CP	Report	Report	No report	2/3
Bosnia and Herzegovina	No report	No report	No report	No report	0/4
Burkina Faso	No report	No report	No report	No report	0/4
Georgia	No CP	No report	No birds	No birds	2/3
Iceland	Report	Report	Report	No report	3/4
Liechtenstein	No birds	No birds	No birds	No birds	4/4
Moldova	No birds	No birds	No birds	No birds	4/4
Monaco	No birds	No birds	No birds	No birds	4/4
Montenegro	No CP	No report	No birds	No report	1/3
Morocco	No report	Report	Report	No report	2/4
North Macedonia	Report	Report	Report	No report	3/4
Norway	No birds	No birds	Report	No report	3/4
Senegal	No report	No report	No report	No report	0/4
Serbia	Report	Report	Report	Report	4/4
Switzerland	No birds	No birds	No report	No report	2/4
Tunisia	No report	No report	No report	No report	0/4
Turkey	No report	No report	No report	No report	0/4
Ukraine	No report	Report	Report	No report	2/4
TOTAL	10/19	12/22	14/22	8/22	44/85

Table 5: Overview of reports on exceptions by Bern contracting parties between 2009 and 2016. 'No birds' means that the report did not contain any (active) exceptions on bird species. Note that Belarus, Georgia and Montenegro joined the Bern Convention during this period.

Species	Number	Species	Number	Species	Number
<i>Anas platyrhynchos</i>	173796	<i>Anser anser</i>	6015	<i>Lyrurus tetrax</i>	341
<i>Scolopax rusticola</i>	21117	<i>Bonasia bonasia</i>	5227	<i>Tetrao urogallus</i>	204
<i>Fulica atra</i>	17854	<i>Perdix perdix</i>	4092	<i>Phalacrocorax carbo</i>	68
<i>Anser albifrons</i>	15866	<i>Gallinago gallinago</i>	3276	<i>Branta bernicla</i>	7
<i>Anser fabalis</i>	9179	<i>Podiceps cristatus</i>	519		
				Total	257 561

Table 6: Total number of birds reported to be killed between 2009 and 2016 under exceptions made by Contracting Parties of the Bern Convention (excluding EU Member States).



Greylag Goose

6

AEWA

The AEWA agreement, under the administration of UNEP, aims to conserve migratory waterbirds. To achieve this, the Action Plan that operationalises AEWA requires the contracting parties to take protective measures. These measures include prohibiting the taking of birds and eggs and the use and trade of endangered migratory waterbird species listed in Table 1 Column A¹⁴⁶. Contracting parties should also ensure that taking of birds and eggs of species listed in Column A (category 2 and 3 with asterisk and category 4) is carried out on a sustainable use basis under an international Species Action Plan, and that the use of species listed in Column B is regulated. For sustainable and regulated use, AEWA requires the prohibition of taking birds during spring migration and the breeding season.

Contracting Parties can grant exemptions under paragraph 2.1.3 of the Action Plan if there are no other satisfactory alternatives and if one of the reasons listed in the paragraph applies. Exemptions should be precise, limited in space and time, and not be detrimental to populations. Due to the use of different columns, overlap between the

exemptions and hunting are in general not possible under AEWA. A special role in implementing AEWA is foreseen for goose management plans, which among other objectives aim to reduce agricultural damage and risks to air safety. For the column A listed Svalbard-population of Barnacle Goose (*Branta bernicla*), the goose management plan can serve to demonstrate that the conditions for an exemption are met.

Between 2009 and 2017, only Belgium, Denmark, Germany, Hungary, Italy, the Netherlands, Slovakia and Slovenia reported exemptions to the AEWA Meeting of the Parties. However, since these exceptions are all already covered under derogations under the Birds Directive, the exceptions are not further discussed here. Similarly, most exceptions under Bern did not concern species listed on Column A of AEWA as this column only includes endangered migratory waterbird species. The only two exceptions, concerning research in North Macedonia on Great Snipe (*Gallinago media*) and Lesser White-fronted Goose (*Anser erythropus*), were however not reported to AEWA.

¹⁴⁶ The Action Plan and Table 1 can be found here: https://www.unep-aewa.org/sites/default/files/basic_page_documents/agreement_text_english_final.pdf.

Discussion and conclusions

The EU Birds Directive has a mature system for granting derogations, which is heavily used by the EU Member States. Through their interpretation of the EU Birds Directive, the rulings of the ECJ have provided considerable detail on how and when derogations can be granted, and the ECJ has usually restricted the scope for derogations. Unfortunately, ECJ rulings have not and indeed cannot address the gaps in the current EU legislative framework concerning the possession of birds born in captivity that are undermining efforts to enforce the prohibition on taking birds from the wild. While this is beyond the scope of the present report, this problem may be addressed through other solutions such as 'positive lists'¹⁴⁷.

One important legal question remains unresolved, which is also evident from the in-depth review of derogation practice. The scope of 'deliberate' under the Birds Directive is currently unclear. Using the *Caretta caretta*-cases and other analogous ECJ cases under the Habitats Directive¹⁴⁸ in some Member States the scope of species protection has been extended to activities involving 'conditional intent'. In the case of birds, conditional intent means consciously accepting to kill, capture or disturb birds, or consciously accepting to destroy or damage nests. Examples of

derogations for conditional intent are the construction and maintenance works and the operation of installations such as wind turbines.

However, no Member States appear to have introduced a requirement for derogations for what are arguably other cases of conditional intent, such as agricultural and forestry activities and bycatch of seabirds. Neither in the sampling nor in the in-depth reviews of eight Member States were any such derogations found. This leads to paradoxical situations. For example, in some Member States, felling a few trees in the city requires a derogation but felling thousands of trees in forestry operations during the breeding season does not.

The reporting in HABIDES is highly incomplete with 24 reports missing between 2009 and 2017, and another 19 reports are not accessible in HABIDES for various reasons. Greece has not reported since 2010, and Romania has only reported derogations for air safety. The reporting of Ireland is highly deficient. It is a step forward that the European Commission has taken legal action against Greece¹⁴⁹, but much more needs to be done to ensure Member States report correctly and on time.

¹⁴⁷ See Stichting Aap and Eurogroup for animals (2017) Think positive: Why europe needs 'positive lists' to regulate the sale and keeping of exotic animals as pets.

¹⁴⁸ Cases C-103/00 and C-504/14

¹⁴⁹ https://ec.europa.eu/commission/presscorner/detail/EN/INF_19_4251

The HABIDES 2.0 Microsoft Excel functionality is a significant upgrade. However, for the remainder HABIDES 2.0 is a major downgrade compared to HABIDES 1.0, with a loss of relevant categories and information. As a result, in HABIDES 2.0 there are significantly more records of derogations where the purpose and the character of derogation is unclear. HABIDES 2.0 has also resulted in less information being recorded on controls carried out and on the consideration of alternatives. This is extremely worrying, especially given the fact that the HABIDES system is the only public dataset on derogations in most countries examined in this report.

If at least 22 % of derogations are missing mandatory information, this suggests that the oversight and follow-up from the European Commission on derogations has also been severely lacking, and that the Commission has failed to ensure proper implementation of the Birds Directive. It is worth highlighting that further investigation of derogations could reveal further inaccuracies, such as lack of details in geographical information or conditions of risk for which damage prevention derogations have been granted.

Overall, a large number of derogations has been granted between 2009 and 2017. The high number of derogations for ringing, construction and maintenance works and prevention of damage to crops and fisheries and aquaculture was to be expected, and corresponds with an earlier review in Germany¹⁵⁰. The large number of derogations with multiple legal justifications and the fact that some types of derogations are practically limited to one country suggest that there is considerable scope in harmonising the way derogations are granted.

Undoubtedly, some of the derogations granted were not strictly necessary. While it goes beyond the scope of this report to assess whether all the damage was in fact serious and, for example, whether disturbance would have been a satisfactory alternative to lethal interventions, it is worthwhile continuing to invest in technical measures for reducing or eliminating damage, as many promising options exist¹⁵¹. In addition, other derogations were potentially not necessary for other reasons. In total, 13 282

derogations were granted for destruction or damage of nests and eggs alone. However, some bird species build a new nest every year and do not use their nest outside the breeding season. There is little use for having a derogation for removal of nests for these species outside the breeding season, as long as sufficient breeding habitat remains¹⁵². The Netherlands¹⁵³ have therefore lifted the protection of the nests of these species outside the breeding season.

The large number of birds reported to be killed under derogation between 2009 and 2017, at least 14 million, is a cause for concern; as are the 18 derogations each resulting in the death of more than 100 000 birds. This is at odds with the legal requirement that derogations should be limited in scope and limited to what is strictly necessary. Instead the numbers suggest that authorities have opened hunting seasons or attempted population control. The number of birds reported to be killed under derogations is particularly high for the Great Cormorant, which is not a huntable species. It should be highlighted that the estimated number does not take into account gaps in reporting within Member States (at regional level) or Member States with highly incomplete reporting.

Further research is needed to investigate population impacts. Population models in combination with collated information on hunting bags are needed to give an indication of whether derogations are compatible with the requirement of the Birds Directive to restore or maintain birds at a favourable conservation status.

On the basis of in-depth review of the legislation and practice of granting derogations in Bulgaria, Finland, France, Ireland, Italy, Malta, Poland and Spain there are some patterns emerging. The reporting of most countries in HABIDES had obvious deficiencies, with derogations known to exist that were missing from HABIDES or had geographical gaps. In most countries, there was overlap between derogations and regular hunting, with species of corvids, gulls or geese having both hunting seasons and substantial derogations. Between 2009 and 2017 unlawful small numbers derogations were granted in most countries examined. Ordinances with a very wide scope

¹⁵⁰ Langhout W. (2019) Report on the derogations under the Birds Directive in Germany between 2011 and 2016. Langhout Ecologisch Advies, Rotterdam.

¹⁵¹ BirdLife Finland (forthcoming) Prevention of agricultural damage caused by birds – an international survey BirdLife Finland, Helsinki. English summary of the Finnish report.

¹⁵² In case C-252/85 the ECJ ruled that nest protection under Article 5 of the Birds Directive includes the birds' habitat.

¹⁵³ Implementation of nest protection in the Netherlands is based on five categories. The first four categories are always protected and require a derogation. Category 5 consists of nests of species that are sufficiently flexible to move to another location if the nest location of the previous year was destroyed and are therefore not protected outside the breeding season (if sufficient breeding habitat remains after the activities have finished). See for the national list https://www.provincie-utrecht.nl/publish/pages/311710/beschermde_soorten_wnb_huisstijlteam_aanpassingen.pdf. The provinces Limburg and Overijssel have their own lists.

are also common. In general, applicants do not need to provide detailed evidence of damage during the application process of derogations for damage prevention, but instead the authorities rely on their own experts or scientific bodies to review derogations.

Finland and France have categories of pest species for which the legal protection is practically non-existent outside the breeding season. France, Italy, Spain and Malta heavily used small number derogations, although the use of these derogations for trapping songbirds in Spain and for hunting non-huntable species and trapping live-decoys in Italy had stopped in 2017. Bulgaria does not really use the derogation system, probably due to serious problems with governance. Out of all countries examined, Poland appears to have the most robust derogation system.

BirdLife Partners in the eight countries were in general actively working on derogations. Some BirdLife Partners encountered problems with access to justice in their country, but the other Partners have been actively and successfully contesting derogations in national courts, although the European Commission's infringements and resulting rulings of the ECJ have also played a key role.

The results of this report correspond with a similar analysis of derogations in Germany¹⁵⁴, which also found incomplete reporting, presumably unlawful derogations and Cormorant ordinances. The German derogation practice differed substantially between Bundesländer. In addition to the Great Cormorant, that report also highlighted potential impacts on wintering populations of Brent Goose (*Branta hrota*).

The Bern Convention has a potentially strong system for making exceptions. The Convention suffers however from a lack of reporting, with almost half of the reports by contracting parties outside the EU missing. Also, for the Bern Convention, further research is needed to investigate potential population impacts. The large scale spring hunting in Belarus is a cause for concern, and presumably violates the requirements of the Bern Convention.

The AEWA agreement has a limited system for granting exemptions, covering only endangered species and forbidden hunting methods. Reporting under AEWA is also severely lacking, and needs to be addressed before any conclusions can be drawn.

¹⁵⁴ Langhout W. (2019) Report on the derogations under the Birds Directive in Germany between 2011 and 2016. Langhout Ecologisch Advies, Rotterdam.



Carrion crow

8

Recommendations

For the European Commission:

- Ensure complete and functional reporting on derogations by the EU Member States, through an annual review of derogations and effective and persistent use of infringement procedures.
- Improve the HABIDES system, requiring a short description for derogations, more detailed information on controls and alternatives, a mandatory estimation of number of individuals affected for all derogations,
- Update the Guidance on Species Protection, in particular regarding the scope of activities subject to derogations and the interpretation of 'protection of flora and fauna' under the Birds Directive.

For the Bern Convention Secretariat:

- Ensure reporting on exceptions in particular from the contracting parties outside the EU.
- Open a case file against Belarus on the spring hunting seasons on species also having an autumn hunting season.

For the AEWA Secretariat:

- Ensure reporting on exemptions in particular from the contracting parties outside the EU.

For the BirdLife Partnership:

- Monitor the derogations structurally. Ensure that BirdLife Partners receive the derogations every year. Develop a rule of thumb for potentially harmful derogations and flag these up.
- Investigate the population impacts of derogations. Develop population models for selected species and investigate the combined impacts of derogations, legal hunting and illegal killing and taking.
- Pursue strategic complaints with the European Commission, focussing on population impacts, structural problems with reporting and quality of information, sectoral or other general exceptions to the derogations, and access to environmental information and access to justice.
- Promote research on bird scaring methods and other technical solutions. This may be able to resolve conflicts between humans and birds without the need for derogations.
- Restart the work on Great Cormorants. In addition to investigating population impacts, the work on reducing the damage through restoring rivers and other water bodies and promoting technical measures for fish protection should be restarted.
- Reflect on the protection of nests. Removal of nests of some species that are abandoned after the breeding season may not require derogations and could be part of a constructive dialogue on species protection and derogations.

Annex 1

Translation tables

HABIDES 1.0 Code	HABIDES 1.0 Text	HABIDES 2.0 Code	HABIDES 2.0 Text
10	in the interests of public health and safety	10	in the interests of public health and safety
11	in the interests of public health		
12	in the interests of public safety		
20	in the interests of air safety		
30	to prevent serious damage to crops, livestock, forests, fisheries and water	20	in the interests of air safety
31	to prevent serious damage to crops	30	to prevent serious damage, in particular to crops, livestock, forests, fisheries and water
32	to prevent serious damage to livestock		
33	to prevent serious damage to forests		
34	to prevent serious damage to fisheries		
35	to prevent serious damage to water		
36	to prevent serious damage to agricultural stock-breeding		
40	for the protection of flora and fauna		
41	for the protection of wild flora	40	for the protection of flora and fauna
42	for the protection of wild fauna		
50	for the purposes of research and teaching, of repopulation, of re-introduction and for the breeding necessary for these purposes		
51	for the purposes of research and teaching		
52	for the purposes of repopulation	50	for the purposes of research and teaching, and for the breeding necessary for these purposes
53	for the purposes of re-introduction		
54	for the purposes of breeding necessary for activities 51, 52, 53	55	for the purposes of re-population or re-introduction, and for the breeding necessary for these purposes
60	to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers (old version)		
61	to permit, under strictly supervised conditions and on a selective basis the capture of certain birds in small numbers		
62	to permit, under strictly supervised conditions and on a selective basis the keeping of certain birds in small numbers	NA	NA
63	to permit, under strictly supervised conditions and on a selective basis other judicious use of certain birds in small numbers		

NA	NA	64	to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers (derogation from the protection regime for a protected bird species, for purposes other than falconry)
		65	to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers (derogation from the protection regime for a protected bird species, for the purpose of falconry)
		66	to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers (derogation for hunting a huntable bird species during a season when its hunting would not be allowed according to Article 7.4 of the EU Birds Directive)
		67	to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers (derogation for the use of a forbidden mean, arrangement, method or mode of transport listed in Annex IV of the EU Birds Directive)

Table 7: Translation table for the reasons (legal justification) for giving derogations between HABIDES 1.0 and HABIDES 2.0

HABIDES 1.0 Code	HABIDES 1.0 Text	HABIDES 2.0 Code	HABIDES 2.0 Text
20	Capture*	1, 2 or 3	NA
21	Capture for decoy use	2	Deliberate capture of birds by any method, with the intention of temporarily or permanently keeping the captured specimens in captivity
22	Capture (ringing)	3	Deliberate capture of birds by any method, followed by their immediate release of the captures specimens in an unharmed state
23	Capture / hunting with nets*	1, 2 or 3	NA
24	Capture / hunting with snares*		
25	Capture / hunting with lime	1	Deliberate killing by any method
26	Capture for keeping in captivity	2	Deliberate capture of birds by any method, with the intention of temporarily or permanently keeping the captured specimens in captivity
30	Killing	1	Deliberate killing by any method
31	Poisoned baits		
40	Hunting		
41	Falconry*	1, 2, 6 and/or 7	NA
50	Keeping in captivity	7	Keeping (alive or dead specimens of) birds of species the hunting and capture of which is prohibited
51	Keeping and caring for wounded birds		
60	Releasing		
70	Stuffing		
80	Deliberate disturbance, scaring away	6	Deliberate disturbance, particularly during the period of breeding and rearing, in so far as disturbance would be significant with regard to the objectives of the Directive
81	Deliberate disturbance during the period of breeding		
82	Deliberate disturbance during the period of rearing		
90	Breeding	NA	NA
FT	Free text		

Table 8: Translation table for the activities under derogations between HABIDES 1.0 and HABIDES 2.0. HABIDES 1.0 Activities that are marked with * need further inspection before they can be assigned to a corresponding HABIDES 2.0 category.

HABIDES 1.0 Code	HABIDES 1.0 Text	HABIDES 2.0 Code	HABIDES 2.0 Text
B001	(Semi)automatic weapons	2	Any of the following: Snares, Limes, Hooks, Live birds used as decoys which are blind or mutilated, Tape recorders, Electrical devices capable of killing and stunning, Artificial light sources, Mirrors and other dazzling devices, Devices for illuminating targets, Sighting devices for night shooting comprising an electronic image magnifier or image converter, Explosives, Nets, Traps, Poison and bait, Semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition
B002	Artificial light sources		
B003	Electrocuting devices		
B004	Decoys		
B005	Devices for illuminating targets		
B006	Explosives		
B007	Hooks		
B008	Limes		
B009	Mirrors		
B010	Nets		
B011	Poison and baits		
B012	Sighting devices for night shooting comprising an electronic image magnifier or image converter		
B013	Snares		
B014	Tape recorders		
B015	Traps		
H1	Non selective means of capture and killing	1	A non-selective mean, arrangement or method not listed in Annex IV (a) of the EU Birds Directive or Appendix IV of the Bern Convention
H2	Modes of transport	0	A mode of transport not listed in Annex IV (b) of the EU Birds Directive or Annex IV of the Bern Convention / or this question is not relevant for this type of derogation
FT	Free text	NA	NA

Table 9: Translation table for the methods under derogations between HABIDES 1.0 and HABIDES 2.0. Note that HABIDES 1.0 contains a generic category for modes of transport, but also specific categories which are shown below.

HABIDES 1.0 Code	HABIDES 1.0 Text	HABIDES 2.0 Code	HABIDES 2.0 Text
T001	Aircraft	1	Aircraft
T002	Motor vehicles	2	Motor vehicles
T003	Boats driven at a speed over 5 km/h	3	Boats driven at a speed over 5 km/h on freshwater or coastal waters
FT	Free text	NA	NA

Table 10: Translation table for the modes of transport under derogations between HABIDES 1.0 and HABIDES 2.0.

Annex 2

Great Cormorant

	2009	2010	2011	2012	2013	2014	2015	2016	2017	TOTAL
Austria	NC	1737	525	515	204	204	204	204	204	3797
Belgium	542	423	331	333	500	579	735	537	662	4642
Croatia					NC	NC	NC	NC	867	867
Czech Republic	893	893	893	893	893	4680	4488	893	7829	22355
Denmark	209	1346	1464	1557	2252	3207	4070	5431	9134	28670
Estonia	707	594	498	508	413	392	528	871	778	5289
Finland	NC	928	605	60	180	60	549	1003	1023	4408
France	72	72	72	200	72	588	72	72	72	1292
Germany	2847	2847	7066	13763	9333	11860	12064	2847	2847	65474
Hungary	3588	5932	4442	6515	10672	5584	12517	10227	11437	70914
Ireland	0	0	NC	6	0	0	0	6	3	15
Italy	3751	898	810	4502	5008	4591	5097	570	957	26184
Latvia	66	80	77	51	117	142	158	140	194	1025
Lithuania	1895	2210	1433	1889	3492	1654	2188	2708	3058	20527
Netherlands	NC	0	NC	15	1	5	20	20	0	61
Poland	1919	747	13047	2854	1469	540	4860	5821	13342	44599
Slovakia	405	NC	200	NC	NC	10	60	NC	NC	675
Slovenia	NC	48	NC	143	21	22	NC	NC	21	255
Spain	73	73	179	2560	297	73	648	322	73	4298
Sweden	79	2704	2636	1644	6811	4247	4630	2853	8796	34400
United Kingdom	2307	1797	96	165	143	133	2528	3469	3271	13909
TOTAL	19353	23329	34374	38173	41878	38571	55416	37994	64568	353636

Table 11: Interpolation of minimum numbers of Great Cormorants reported to be killed under derogation in the EU. NC: No Great Cormorant derogations. Numbers in **red** are interpolated.

	2009	2010	2011	2012	2013	2014	2015	2016	2017	TOTAL
Austria	NC	1737	525	515	204	1737	1737	1737	1737	9929
Belgium	542	423	331	333	500	579	735	537	662	4642
Croatia					NC	NC	NC	NC	867	867
Czech Republic	7829	7829	7829	7829	893	4680	4488	7829	7829	57035
Denmark	209	1346	1464	1557	2252	3207	4070	5431	9134	28670
Estonia	707	594	498	508	413	392	528	871	778	5289
Finland	NC	928	605	60	180	60	549	1003	1023	4408
France	588	588	588	200	72	588	588	588	588	4388
Germany	13763	13763	7066	13763	9333	11860	12064	2847	13763	98222
Hungary	3588	5932	4442	6515	10672	5584	12517	10227	11437	70914
Ireland	6	6	NC	6	0	0	0	6	3	27
Italy	3751	898	810	4502	5008	4591	5097	570	957	26184
Latvia	66	80	77	51	117	142	158	140	194	1025
Lithuania	1895	2210	1433	1889	3492	1654	2188	2708	3058	20527
Netherlands	NC	0	NC	15	1	5	20	20	20	81
Poland	1919	747	13047	2854	1469	540	4860	5821	13342	44599
Slovakia	405	NC	200	NC	NC	10	60	NC		675
Slovenia	NC	48	NC	143	21	22	NC	NC	143	377
Spain	73	2560	179	2560	297	2560	648	322	2560	11759
Sweden	79	2704	2636	1644	6811	4247	4630	2853	8796	34400
United Kingdom	2307	1797	96	165	143	133	2528	3469	3271	13909
TOTAL	37727	44190	41826	45109	41878	42591	57465	46979	80162	437927

Table 12: Interpolation of maximum numbers of Great Cormorants reported to be killed under derogation in the EU. NC: No Great Cormorant derogations. Numbers in **red** are interpolated.



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