

Recent EU case law concerning the Habitats directive

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Chambers of Advocate General Juliane Kokott

Court of Justice of the European Union

Interruptions are welcome

About the Advocate General

- She is a member of the Court of Justice
- Assists the Court of Justice by delivering independent opinions (proposals for decisions) on pending cases
- Does not participate in deliberations on judgments
- The opinion is not the judgment!
- Only judgments have the authority of the Court
- Opinions provide additional information

Overview

- Deliberate Action in the Protection of Birds (C-784/24, Voore Mets)
- Other Jurisprudence
 - Protection of the Wolf
 - Site Management

Judgment Voore Mets and Lemeks Põlva (C-784/23, EU:C:2025:609) Background

Art 12 of the Habitats Directive (92/43) requires prohibitions of certain **deliberate** action (capture or killing, disturbance and destruction or taking of eggs from the wild) wrt to certain protected species, listed in Annex IVa

- C-103/00 – COM/Greece (Caretta caretta - Zakynthos)
- C-221/04 – COM/Spain (Otter)
- C-504/14 – COM/Greece (Caretta caretta – Kyparissia)
- C-473/19 and C-474/19 - Föreningen Skydda Skogen



An action is deliberate if the author of the act intended the effect or, at the very least, accepted the possibility of such an outcome

Art 5 of the Birds Directive (1979/409, 2009/147) requires similar prohibitions wrt to **all** European bird species

All European birds, eg



Osprey

Grey Heron

Crow

Common
blackbird

European
Robin

Judgment of August 1, 2025, Voore Mets and Lemeks Põlva (C-784/23, EU:C:2025:609)

Course of the preliminary ruling procedure

- Spring 2021: Estonian authorities prohibit tree felling in the applicants' forest areas due to risks to birds during the breeding season > harm to birds is accepted
- The applicants seek damages and a declaration of unlawfulness; partial success at first instance
- In Dec. 2024, the Riigikohus (Supreme Court) refers a question to the Court of Justice for a preliminary ruling:
 - Do the prohibitions in Article 5 of the Birds Directive apply?
 - Can forest management be justified under Article 9?
 - If the directive precludes such forest exploitation, is it compatible with freedom of enterprise and the protection of property?

Opinion of Advocate General Kokott in Voore Mets and Lemeks Põlva (C-784/23, EU:C:2025:67)

- Deliberate: Confirmation of the Opinion in Skydda Skogen, emphasis on Art 7 of the Birds Directive: Why is hunting in certain cases allowed, but all other activities are almost completely prohibited if harm is possible? >> Acceptance should only be prohibited in the case of endangered species
- Regarding exceptions: „prevent serious damage to ... forests" does not really fit, but could be used here if necessary with an interpretation that complies with fundamental rights. In other conflicts (e.g., road construction), this is even more difficult.
- If deliberate includes acceptance, but the exceptions do not resolve most conflicts, there is a fundamental rights problem.

Judgment Voore Mets and Lemeks Põlva (C-784/23, EU:C:2025:609)

- Paragraph 46: Art 5 of the Birds Directive and Art 12 of the Habitats Directive use the term „deliberate“.
- Paragraph 47: **Identical terms should have the same meaning in the same field.**
- Paragraph 48: In 2009, the legislature was aware of the judgments on *Caretta caretta* and the otter, but did not make any changes (this was not a recast, but a codification)
- Paragraphs 50–53: Only the prohibition of disturbance is linked to the objectives of the directive, i.e., the conservation of the population—no extension to the other prohibitions.
- Paragraphs 55 and 56: Endangerment can only play a role in the case of exceptions.

Judgment Voore Mets and Lemeks Põlva (C-784/23, EU:C:2025:609)

- Paragraphs 58–62: abstract assumptions about breeding density are sufficient to conclude that harm is accepted if those assumptions are scientifically sound
- Exceptions and fundamental rights? No exception was granted in this case. These questions are therefore hypothetical in nature and consequently inadmissible.
[Opinion: We do not know enough about Estonian procedural law to dismiss these questions as manifestly irrelevant.]

And now?

- Exceptions under Art 9?
- CEF measures?
- A comprehensive solution from the legislature?
 - REPowerEU?
 - Limiting Art 5 of the Birds Directive to the protected birds of the Berne Convention?
 - Clarify Art 5 to exclude unintended adverse effects?

Art 9(1) of the Birds Directive?

Member States may derogate from the provisions of Art 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.

CEF measures?

- CEF = continued ecological functionality
- The COM has proposed CEF measures to exclude the application of the prohibition on the destruction of breeding sites and resting places (Guidance on the strict protection system for species of Community interest under the Habitats Directive, [C\(2021\) 7301 final](#), p 46 f).
- Practical: Damage mitigation and compensation measures
- Problem: No basis for compensation measures in the text of Art 12(1)(d) of the Habitats Directive or in most other prohibitions
- On the prohibition of disturbance under Art 5(d) of the Birds Directive, see Opinion of AG Kokott VIRUS ([C-131/24](#), [EU:C:2025:714](#))

And what else?

Wolf

- [C-601/22](#) - WWF Austria et al.
- [C-436/22](#) - ASCEL
- [C-629/23](#) - Eesti Suurkiskjad

Management of protected sites

- [C-461/23](#) - Umweltforum Osnabrücker Land
- [C-66/23](#) - Elliniki Ornithologiki Etaireia and others
- [C-47/23](#) - Commission v Germany (deterioration of grasslands)
- [C-85/22](#) - Commission v Bulgaria (protective measures in protected areas)

Wolf

- C-601/22 – (old) strict protection system (Art 12)
 - Exception under Art 16 requires a favorable conservation status locally
 - Serious damage only includes damage caused directly by the animals (but not the growth of scrub on alpine pastures if farmers no longer bring cows up there)
 - Other satisfactory solution = comprehensive consideration, economic implications not decisive
- C-461/22 – weaker (future) protection (Art 14)
 - Use (hunting) only if the conservation status is known (para 59)
 - No hunting in case of uncertainty about compatibility with a favorable conservation status (para 72)
- C-629/23 – weaker (future) protection (Art 14)
 - Local conservation status may depend on neighbouring areas and states (paras 52 et seq.)
 - Economy, society, and culture may endanger the conservation status, but cannot justify a low population level that has no foundation in science (paras 68 et seq)

Site Management

- C-85/22 – Bulgaria did not designate all Natura 2000 sites, but the action was dismissed with regard to the protection measures.
- C-47/23 – Germany did not sufficiently protect habitat types 6510 (lowland hay meadows) and 6520 (mountain hay meadows) because the areas concerned have declined significantly. However, the exact extent remains unclear.
Follow-up question: Is there a restoration obligation?
- C-66/23 – In bird protection areas, conservation objectives, protection measures, and priorities must be established for all species listed in Annex I and migratory species.
- C-461/23 – The designation of a Natura 2000 site does not require a strategic environmental assessment.

Thank you for your attention!
Questions?

