

- The General Court erred in upholding the Decision despite the Decision's failure to properly assess the conditions under which Google adopted an open-source licence for Android.
- The General Court failed to properly assess the evidence in the file regarding the anti-fragmentation agreement's necessity, given the inadequacy of a branding solution.

Fifth plea in law: the General Court erred in upholding the Decision despite striking out the portfolio RSA abuse.

Sixth plea in law: the General Court erred in exercising its unlimited jurisdiction to vary the fine.

Action brought on 20 January 2023 — European Commission v Republic of Malta

(Case C-23/23)

(2023/C 83/14)

Language of the case: English

Parties

Applicant: European Commission (represented by: C. Hermes and R. Lindenthal, Agents)

Defendant: Republic of Malta

The applicant claims that the Court should:

- declare that by adopting a derogation scheme allowing the live-capturing of seven species of wild finches (Chaffinch *Fringilla coelebs*, Linnet *Carduelis cannabina*, Goldfinch *Carduelis carduelis*, Greenfinch *Carduelis chloris*, Hawfinch *Coccothraustes coccothraustes*, Serin *Serinus serinus* and Siskin *Carduelis spinus*), the Republic of Malta has failed to fulfil its obligations under Article 5 and Article 8(1) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds⁽¹⁾ ('Birds Directive'), read in conjunction with Article 9(1) of the Birds Directive; and
- order Republic of Malta to pay the costs.

Pleas in law and main arguments

Malta introduced a derogation regime, invoking Article 9(1)(c) of the Birds Directive, for authorizing trapping seven species of wild finches for recreational purposes in 2014 under which it authorized trapping seasons in 2014 and 2015. In its judgment of 21 June 2018, *Commission v Malta* (C-557/15, EU:C:2018:477), the Court found that that derogation regime failed to meet the conditions of Article 9(1)(c) of the Birds Directive. Malta repealed that derogation regime.

In October 2020, Malta adopted a similar derogation regime for the trapping of the same finch species. This time, Malta invoked the derogation provision in Article 9(1)(b) of the Birds Directive arguing that the new derogation regime served research purposes. Malta opened trapping seasons for alleged 'research' in 2020, 2021 and 2022.

The Birds Directive obliges Member States to prohibit the capture and keeping of wild birds, such as the finches in question, and any capture of wild birds via non-selective means such as traps or nets. Any derogation from these prohibitions is subject to the strict conditions set out in Article 9 of the Birds Directive.

The Commission considers that Malta has not established that the conditions for a derogation pursuant to Article 9(1)(b) of the Birds Directive are met. Firstly, Malta failed to establish that its derogation regime pursues a genuine research purpose. Secondly, Malta failed to state reasons for the absence of another satisfactory solution. Thirdly, Malta failed to demonstrate the absence of another satisfactory solution on substance.

⁽¹⁾ OJ 2010, L 20, p. 7.