

OPINION OF ADVOCATE GENERAL
GEELHOED

delivered on 16 February 2006¹

I — Introduction

1. The questions referred by the Tribunale amministrativo regionale per la Lombardia (Regional Administrative Court, Lombardy) concern Article 9 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds ('the Birds Directive' or 'the Directive').² The referring court seeks to ascertain under what conditions the regions can exercise the derogation granted to Member States by Article 9(1)(c) of the Birds Directive.

naturally occurring in the European territory of the Member States to which the EC Treaty applies are declining in number, which 'represents a serious threat to the conservation of the natural environment, particularly because of the biological balances threatened thereby' (second recital in the preamble). Effective bird protection is seen as 'typically a trans-frontier environment problem entailing common responsibilities' (third recital). Conservation is aimed at 'the long-term protection and management of natural resources as an integral part of the heritage of the peoples of Europe' and 'the maintenance and adjustment of the natural balances between species as far as is reasonably possible' (eighth recital).

II — Applicable law

A — Directive 79/409

2. The Birds Directive is based on the finding that certain species of wild birds

3. In order to establish effective protection, the Directive incorporates three kinds of provisions. Firstly, it contains a general ban on the killing, capturing, disturbing, keeping and marketing of birds, as well as on the destroying, damaging and removing of their nests and eggs (Articles 5 and 6(1)). Secondly, with respect to the species of birds listed in the annexes, the Directive provides for an exception to the abovementioned general ban. Thus, the species listed in Annex III may be marketed and those listed in Annex II may be hunted, subject to the

¹ — Original language: Dutch.

² — OJ 1979 L 103, p. 1.

observance of certain conditions and restrictions (Article 6(2) to (4) and Article 7). This means that the general ban remains in force for bird species not mentioned in the annexes or when the conditions or restrictions laid down in the aforementioned articles are not observed. Thirdly, under Article 9 of the Directive, Member States may derogate from the abovementioned general ban and from the provisions concerning, in particular, marketing and hunting.

— for the protection of flora and fauna;

(b) for the purposes of research and teaching, of repopulation, of reintroduction 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.'

4. Under Article 9(1) of the Directive, where there is no other satisfactory solution, Member States may derogate from the provisions of Articles 5, 6, 7 and 8 for the following reasons:

5. Article 9(2) provides that the derogations must specify:

'(a) — in the interests of public health and safety,

'— the species which are subject to the derogations,

— in the interests of air safety,

— the means, arrangements or methods authorised for capture or killing,

— to prevent serious damage to crops, livestock, forests, fisheries and water,

— the conditions of risk and the circumstances of time and place under which such derogations may be granted,

— 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,

— the controls which will be carried out.’

6. Under Article 9(3), Member States are required to send the Commission an annual report on the implementation of this article. The Commission ‘shall at all times ensure that the consequences of these derogations are not incompatible with this Directive’ and ‘shall take appropriate steps to this end’ (Article 9(4)).

B — *National law*

7. Article 19 *bis* of Italian Law No 157/92 of 11 February 1992, introduced by Article 1 of Italian Law No 221 of 3 October 2002, transposes Article 9 of the Birds Directive into Italian law. The relevant provisions are summarised below.

8. Article 19 *bis* (1) confers on the regions the power to establish rules governing the exercise of the derogations for which the Directive provides. In applying these provisions, the regions are obliged to take into account the criteria and conditions of Article 9 of the Directive, as well as the principles and purposes of Articles 1 and 2 of the Directive and the other provisions of Law No 157/92.

9. Article 19 *bis* (2) states that, where there is no other satisfactory solution, the derogations may be applied if they are based on one of the grounds mentioned in Article 9(1) of the Directive and if they specify the formal conditions (listed in Article 19 *bis* (2)).

10. Article 19 *bis* (3) provides that the derogations as mentioned in the first paragraph are to be applied for specified periods while making it mandatory for the Regions first to obtain the — non-binding — opinion of the Istituto nazionale per la fauna selvatica (National Institute for Wild Fauna) (INFS) or of other institutions recognised at regional level. In no case may the derogations relate to species of birds whose population has sharply declined.

11. Under Article 19 *bis* (4), the President of the Council of Ministers may, after notification of the region concerned, on the proposal

of the Minister for Regional Affairs, having conferred with the Minister for the Environment and Town and Country Planning and consulted the Council of Ministers, annul regional measures in breach of Law No 157/92 or Directive 79/409.

out establishing how the maximum total quota of protected species that can be hunted on the national territory should be set and enforced.

III — Facts and proceedings

12. On 15 September 2003 the Regione Lombardia adopted Decision No 14250 authorising, for the 2003/04 hunting season, the hunting of the finch and brambling species. The association World Wild Life Fund Italia and a number of other organisations ('the nature conservation groups' or 'applicants') sought to have this decision annulled on the grounds that it allows the use of finches³ and bramblings,⁴ both protected species, as live decoys.

13. The nature conservation groups also argued that Article 19 *bis* of Law No 157/92 is in breach of the Birds Directive in so far as it confers on the regions the power to govern the exercise of the derogations for which the Directive provides, with-

14. Finally, the applicants maintain that there is no question of effective enforcement. The regions do not operate any strict control system that would enable them to check compliance with the requirements concerning the number of birds which may be taken.

15. The Tribunale amministrativo regionale per la Lombardia doubts that Article 19 *bis* of Law No 157/92 ensures effective application of Article 9(1)(c) of the Directive. First of all, it entrusts the determination of the maximum quota of birds which may be taken to the non-binding, albeit mandatory, opinion of the INFS or of other institutions recognised at regional level, without providing for an appropriate system for setting a binding quota for the national territory as a whole. Secondly, the national legislation does not provide for suitable machinery for determining the distribution between the regions of the specified quota of birds which may be hunted. Finally, the referring court questions whether, considering the time it takes, the system for verifying the compatibility of regional measures with national and Community rules fulfils the requirements of celerity associated with the need to avoid unlawful exploitation during the brief period (about 40 days) in which the derogation is in operation.

3 — Scientific name: *Fringilla coelebs*.

4 — Scientific name: *Fringilla montifringilla*.

16. The Tribunale amministrativo regionale per la Lombardia has therefore stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

- (1) Is Directive 79/409/EEC to be interpreted as meaning that, irrespective of the internal allocation of powers between the State and the regions laid down by national systems, the Member States must prepare implementing provisions governing all situations considered deserving of protection by the same, in particular as regards ensuring that hunting derogations do not exceed the small numbers laid down in Article 9(1)(c)?
- (2) As regards in particular the numbers covered by hunting derogations, should Directive 79/409/EEC be interpreted as meaning that the national implementing provision must refer to a criterion which is determined or can be determined, and even entrusted to qualified technical bodies, so that the exercise of hunting derogations is governed by criteria objectively establishing a quantitative level which may not be exceeded at national or regional level, having regard to the various environmental conditions which may prevail?
- (3) Does the national provision in Article 19 *bis* of Law No 157/92, by requiring the obligatory, but non-binding, opinion of the INFS to determine that criterion without, however, providing for a process for reaching agreement between the regions on the binding determination of the distribution for each species of the numerical limits of hunting derogations set at national level as small numbers, constitute a proper application of Article 9 of Directive 79/409/EEC?
- (4) Is the procedure for verifying the compatibility with Community provisions of the hunting derogations authorised by the Italian regions under Article 19 *bis* of Law No 157/92, preceded by a period of notice and therefore requiring fixed periods of time, which are also necessary for the adoption and publication of the measure, during which the brief period of hunting derogations itself may expire, suitable for ensuring effective application of Directive 79/409/EEC?

IV — Admissibility

17. The Regione Lombardia and the Associazione migratoristi italiani (ANUU) dispute

the admissibility of the reference for a preliminary ruling on the grounds that the Court of Justice is being asked to rule on the validity and lawfulness of the internal distribution of the powers of the Italian State by which the regional structure is established at constitutional level.

20. In my opinion, the present reference for a preliminary ruling is therefore admissible.

V — Substance

18. ANUU argues that the reference for a preliminary ruling is also inadmissible because the questions put by the national court concern the compatibility of the Italian provisions with Article 9 of the Directive rather than the interpretation of the scope of Article 9.

A — General background

19. From the wording of the questions submitted for a preliminary ruling, as from the order for reference, it appears that the national court is seeking to obtain an interpretation of Article 9 of the Directive. It is clear from the order that the national court considers the interpretation of the Directive necessary in order to judge whether Law No 157/92 is compatible with the Directive. Although, to be sure, within the context of the present procedure, the Court may not rule on the compatibility of national provisions with Community law, it may provide 'the criteria for the interpretation of Community law which will enable the national court to solve the legal problem with which it is faced'.⁵

21. The questions posed by the national court essentially concern the implementation of the Directive, and especially Article 9 thereof. Thus, this case forms part of a series of cases in which the Court has ruled on the Birds Directive.⁶

22. More particularly, the case concerns the application of Article 9(1)(c) of the Birds Directive, read in conjunction with Article 9(2), the Italian arrangements for the implementation of this provision also playing a part. The implementation and enforcement of Article 9 are reserved for the regions.

5 — See, for example, Case C-150/88 *Parfumerie-Fabrik* 4711 [1989] ECR I-3891, paragraph 12.

6 — See, inter alia, Case 247/85 *Commission v Belgium* [1987] ECR 3029 and Case 262/85 *Commission v Italy* [1987] ECR 3073, Case C-339/87 *Commission v Netherlands* [1990] ECR I-851; Case C-118/94 *Associazione Italiana per il WWF and Others* [1996] ECR I-1223 and Case C-79/03 *Commission v Spain* [2004] ECR I-11619.

Within this decentralised structure the following problems arise: B — *Article 9(1)(c) of the Birds Directive*

1. At what level should it be determined what constitutes responsible hunting of certain birds in small numbers? What criteria should be taken into account in determining the 'small number' of birds?
 2. How should the 'small number' determined be shared out?
 3. How can it be ensured that in the event of implementation at regional level the maximum number of birds of a particular species which may be hunted, as determined for the territory of the Member State as a whole, is not exceeded?
 4. Is supervision of the establishment of the hunting rules by the competent authorities and compliance with the hunting licence conditions effectively regulated?
23. The abovementioned case-law (see point 21) developed by the Court in connection with Article 9(1)(c) of the Birds Directive is also an important part of the general background.
24. In principle, the hunting of bird species not listed in Annex II to the Directive is prohibited under Article 5 of the Directive. By virtue of Article 9(1)(c) of the Directive, where there is no other satisfactory solution, Member States may derogate from, inter alia, Article 5 'to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers'.
25. In accordance with the case-law of the Court, it is possible to derogate from the prohibition on hunting bird species not listed in Annex II to the Directive, to which Article 7(1) refers, in particular, on the grounds mentioned in Article 9(1)(c) of the Directive.⁷ Therefore, the hunting of wild birds for recreational purposes may constitute a judicious use authorised by Article 9(1)(c) of the Directive.⁸
- 7 — *Associazione Italiana per il WWF and Others* (cited in footnote 6), paragraph 21.
- 8 — Case C-182/02 *Ligue pour la protection des oiseaux sauvages and Others* [2003] ECR I-12105, paragraph 11, and *Commission v Italy* (cited in footnote 6), paragraph 38.

26. Four conditions are attached to the possibility of derogating from the prohibition on hunting provided for in Article 9(1)(c), in conjunction with Article 9(2), of the Directive. Firstly, the Member State must restrict the derogation to cases in which there is no other satisfactory solution.⁹ Secondly, the hunting must take place under strictly supervised conditions and on a selective basis. Thirdly, hunting may be authorised only if it relates to certain birds in small numbers. Fourthly, the derogation from the prohibition on hunting must satisfy the formal requirements set out in detail in Article 9(2), which are designed to confine the derogations to what is strictly necessary and to enable the Commission to apply the appropriate controls.

27. The second condition will be fulfilled if the national legislation guarantees that the hunting is carried on selectively and under strict supervision.¹⁰ This means that the authorities competent to apply the derogation must provide for intensive supervision so that offenders run a serious risk of being caught and punished.

28. To satisfy the third condition, the national regulations must ensure that bird species not listed in Annex II are hunted only in small numbers and that the population of the species concerned is maintained at a satisfactory level.

29. If this condition is not satisfied, the use of wild birds for recreational hunting cannot, in any event, be considered judicious and, accordingly, acceptable for the purposes of the 11th recital in the preamble to the Directive. From Article 2, read in conjunction with the 11th recital of the Directive, it follows that the 'small numbers' criterion is not an absolute one but rather refers to the maintenance of the total population and to the reproductive situation of the species concerned.¹¹

30. In its 'Second report on the application of Directive 79/409/EEC on the conservation of wild birds', published in 1993,¹² the Commission developed a method of determining what may be deemed to be a small number for the purposes of Article 9(1)(c). The maintenance or stability of a particular population depends on the reproductive situation and the total annual mortality rate due to natural causes and — for species that can be hunted — to hunting using ordinary

9 — The first condition cannot be deemed to have been fulfilled if the period of capture coincides unnecessarily with periods in which the Directive aims to provide particular protection. *Commission v Italy* (cited in footnote 6), paragraph 39.

10 — Case 252/85 *Commission v France* [1988] ECR 2243, paragraph 28.

11 — *Commission v France* (cited in footnote 10), paragraph 28.

12 — COM(93) 572 final of 24 November 1993.

methods. If for a given balance between reproduction and annual mortality the population level remains broadly stable, the exceptional authorisation of a special method of capture for 'small numbers' may not upset that balance.

— the means, arrangements or methods authorised for capture or killing;

— the conditions of risk and the circumstances of time and place under which such derogations may be granted;

31. In the report in question, on the basis of ornithological studies, the Commission concluded that for species which may not be hunted a sample of less than 1% of the usual annual mortality rate within a population may still be regarded as a small number within the meaning of Article 9(1)(c) of the Directive. If this upper limit is respected, there should be no threat to the stability of the species.¹³

— 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; and

— the controls which will be carried out.¹⁴

32. Finally, in accordance with Article 9(2) of the Directive, the measures authorising hunting on the basis of Article 9(1)(c) must specify:

— the species which are subject to the derogations;

33. In the light of these considerations, I shall now proceed to answer the questions posed.

34. In passing, I note that the 'small numbers' authorised in the present case appear to be at odds with the margins that follow from Article 9 of the Directive.

¹³ — Although this small numbers criterion is not legally binding on the Member States, it can, by reason of its acknowledged scientific value, be used as a basis of reference for assessing whether a Member State is meeting the requirement under Article 9(1)(c) of the Directive that the birds concerned be hunted in small numbers. Case C-3/96 *Commission v Netherlands* [1998] ECR I-3031, paragraphs 69 and 70.

¹⁴ — *Ligue pour la protection des oiseaux sauvages and Others* (cited in footnote 8), paragraph 18.

35. According to the hunting regulations adopted by the Regione Lombardia for finches and bramblings, in each season 360 000 finches and 32 000 bramblings may be captured. If these figures are compared with the criterion that the Commission considers justified for the application of the derogation under Article 9(1)(c) of the Birds Directive — that is to say, a maximum of 1% of the annual mortality rate among the population concerned — then the annual mortality rate among finches and bramblings passing through the Regione Lombardia should amount to 36 million and 3.2 million, respectively. Assuming that 30% of the population dies every year — a realistic assumption for small migratory bird species — that would mean populations of 120 million finches and 10.7 million bramblings for the Regione Lombardia alone.

37. Although Article 249 EC provides that a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed but is to leave to the national authorities the choice of form and methods, this does not mean that the implementation process is left entirely to the discretion of the Member States.

38. Firstly, for correct implementation the substantive content of the directive must be absorbed into national law in sufficiently clear and precise terms within the time schedule set in the directive.¹⁵ With respect to the transposition of the Birds Directive, the Court has stated that the criteria which the Member States must meet in order to derogate from the prohibitions laid down in the Directive must be reproduced in specific national provisions, since a faithful transposition becomes particularly important in a case where the management of the common heritage is entrusted to the Member States in their respective territories.¹⁶

C — First question

36. In posing its first question, the referring court seeks to ascertain whether the national provisions that transpose the Directive should govern all situations considered deserving of protection by the same. The national court poses this question in particular with respect to one of the conditions laid down in Article 9(1)(c) of the Directive, namely, that the capture, keeping or other judicious use of certain birds should be restricted to small numbers.

39. Secondly, Member States are required to create a legal and administrative framework for the proper application and enforcement of the national provisions incorporating the standards contained in the directive. This involves designating authorities competent

15 — See, for example, Case C-197/96 *Commission v France* [1997] ECR I-1489, paragraph 15.

16 — *Commission v Italy* (cited in footnote 6), paragraph 9; *Commission v Belgium* (cited in footnote 6), paragraph 9; and *Commission v Netherlands* (cited in footnote 6), paragraph 28.

for applying these provisions, ensuring that these authorities are endowed with adequate powers, creating facilities for monitoring compliance with these provisions, providing guarantees for legal protection, ensuring the availability of legal remedies, laying down sanctions in case of offences against these provisions and establishing enforcement structures in relation to offences.

where the national measures correctly implementing the directive are not being applied in such a way as to achieve the result sought by it'.¹⁸

41. In the present case, the second requirement for correct implementation is not met.

40. Finally, the objectives of the directive must be secured by the full and active application by the competent national authorities of the national provisions transposing the directive into national law and the credible enforcement of these provisions where they are infringed.¹⁷ In the *Marks & Spencer* judgment, the Court noted that 'the adoption of national measures correctly implementing a directive does not exhaust the effects of the directive. Member States remain bound actually to ensure full application of the directive even after the adoption of those measures'. The Court ruled that individuals are therefore entitled to rely before national courts, against the State, on the provisions of a directive which appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise 'when-ever the full application of the directive is not in fact secured, that is to say, not only where the directive has not been implemented or has been implemented incorrectly, but also

42. Under Article 9(1)(c) of the Directive, subject to the conditions set out therein, Member States may, by way of derogation, authorise the hunting of protected species to which a hunting ban applies. One of these conditions is that the national rules must ensure that bird species not listed in Annex II are hunted only in small numbers and that the population of the species concerned is maintained at a satisfactory level.

43. Article 19 *bis* (1) of Law No 157/92 empowers the regions to apply this special derogation. Naturally, as the responsible

¹⁷ — See points 23 to 27 of my Opinion in Case C-494/01 *Commission v Ireland* [2005] ECR I-3331.

¹⁸ — Case C-62/00 *Marks & Spencer* [2002] ECR I-6325, paragraph 27.

public authorities, the regions must take the criteria and conditions of Article 9(1) and (2) of the Directive into account.

44. In my opinion, the assignment of this task to the competent regional authorities alone fails to provide for the proper implementation of the Directive, since the Italian legislature has not thereby ensured that the numbers of birds of the species in question whose capture is allowed by each of the competent regional authorities acting individually amount, in total, to less than the 'small numbers' authorised by Article 9(1)(c) of the Directive.

45. Because the Italian legislation implementing the Directive lacks a mechanism for determining the total permissible numbers of the species in question that can be captured on Italian territory and there are no arrangements to ensure that the competent regions do not collectively exceed the maxima, adequate implementation within the national legal order is not secured. In other respects, this determination does nothing to detract from the discretion enjoyed by Member States with regard to their internal arrangements for the implementation of the Directive and the enforcement of the relevant rules.

46. I therefore propose that the first question be answered as follows: Article 9(1)(c) of the Directive requires Member States to

ensure, when implementing this provision, that in the process of applying the derogation contained therein the catches deemed permissible do not exceed the maxima implied by the expression 'in small numbers'. Even if implementation is entrusted to decentralised provincial authorities, Member States remain obliged to secure the intended result of Article 9(1)(c) of the Directive.

D — Second question

47. By its second question, the national court seeks to discover whether the national provisions transposing the Directive should refer to a criterion which is or can be determined and on the basis of which the small number of birds that may be hunted can be established.

48. From the 11th recital in the preamble to the Directive, it follows that the 'small numbers' criterion is not an absolute one but is related to the population level of the species concerned, its reproductive rate in the Community as a whole and the total annual mortality rate.

49. Article 2 of the Directive requires the Member States to take the requisite

measures to maintain the population of all bird species at a level, or to adapt it to a level, which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements.

bility of a national measure with Community law. Although it is true that the Court may not, within the context of the present procedure, rule on the compatibility of national provisions with Community law, it may 'provide the criteria for the interpretation of Community law which will enable the national court to solve the legal problem with which it is faced'.¹⁹

50. It follows that national rules must ensure that in determining the 'small number' Member States take into consideration the population level of the species concerned, its reproductive rate in the Community as a whole and the total annual mortality rate, so that the population of the species is maintained at a satisfactory level.

51. Therefore the answer to the second question must be that the Directive requires the national provisions transposing the Directive to ensure that in determining the 'small number' consideration is given to the population level of the species concerned, its reproductive rate in the Community as a whole and the total annual mortality rate, so that the maintenance of the population of the species concerned at a satisfactory level can be guaranteed.

53. Therefore it must be assumed that in posing the third question the national court essentially seeks to ascertain whether Article 9(1)(c) of the Directive should be interpreted as requiring a procedure for enabling the regions to reach a binding agreement on how the quota should be shared out.

54. In the order for reference, the national court points out that under Article 19 *bis* (3) of Italian Law No 157/92 the regions are required to consult the INFS or another recognised scientific institution before their hunting regulations under Article 9(1)(c) of the Directive are put into effect.

E — *Third question*

52. The third and fourth questions referred for a preliminary ruling concern the compati-

19 — See, for example, *Parfümerie-Fabrik 4711* (cited in footnote 5), paragraph 12.

55. However, this is insufficient to ensure that the conditions of the Directive will be met, since the opinion of the INFS is non-binding.

56. In point 46 above, I noted that Article 9(1)(c) of the Directive includes an obligation on Member States, in implementing this provision, to ensure that in the process of applying the derogation contained therein the catches deemed permissible do not exceed the maxima implied by the expression 'in small numbers'. Even if implementation is entrusted to decentralised provincial authorities, Member States remain obliged to secure the intended result of Article 9(1)(c) of the Directive.

57. Whether, in securing the intended result, the legislature chooses a distribution mechanism or some other process as the procedure for reaching agreement is part of the discretion enjoyed by the Member States with respect to the internal arrangements for the implementation of the Directive. Whatever solution the legislature may choose, it must ensure that the competent regions do not collectively exceed the total permissible catches for the species concerned and that for the national territory as a whole the capture, keeping or other judicial use of particular birds remains confined to small numbers.

58. Thus, the answer to the third question should be that Article 9(1)(c) of the Directive includes an obligation on the Member States to ensure, in implementing this provision, that the competent regions do not collectively exceed the total permissible catches for the species concerned.

F — *Fourth question*

59. By its fourth question, the national court essentially seeks to ascertain whether Article 9(1)(c) of the Directive precludes a national enforcement procedure such as that contained in Article 19 *bis* of Italian Law No 157/92 which is preceded by a period of notice and requires fixed periods of time during which the brief period of hunting derogations itself may expire.

60. Under Article 19 *bis* (4) of Italian Law No 157/92, the President of the Council of Ministers may, after notification of the region concerned, on the proposal of the Minister for Regional Affairs, having conferred with the Minister for the Environment and Town and Country Planning and consulted the Council of Ministers, annul regional measures in breach of Law No 157/92 or the Directive.

61. From the case-file it appears that in the main proceedings two objections were made to this mode of supervision:

- (a) It takes no account of the possibility that, although the decisions of one or more individual regions may well be compatible with the Directive, in combination with the decisions of a number of other regions they may exceed the standard set out in Article 9(1)(c) of the Directive;
- (b) The procedure outlined in Article 19 *bis* (4) of Italian Law No 157/92 falls short of effective supervision of compliance with the Directive because the fixed periods involved mean that regional decisions inconsistent with the Directive and the national implementing legislation cannot be annulled in time.

62. Without going explicitly into the merits of these arguments, I consider it possible to deduce from the object and purpose of Article 9(1)(c) of the Directive the requirements which national regulations for implementing this provision must satisfy. I have already made it clear, in point 46 above, that the Directive implies that the national legislation must ensure observance of the maximum capture limit that follows from Article 9(1)(c) of the Directive. Logically, then, it should also grant the power to intervene in a timely and effective manner if the resolutions of the competent regional authorities lead or threaten to lead to a result inconsistent with the Directive.

63. The answer to the fourth question may therefore be expressed as follows. From the obligation on the Member States, even in the case of decentralised implementation of Directive 79/409, to ensure observance of the maximum capture limits set in connection with the application of Article 9(1)(c) of the Directive it follows that the national legislation must provide for timely and effective supervision of the decisions of the competent regional authorities.

VI — Conclusion

64. In view of the foregoing, the questions referred by the Tribunale amministrativo regionale per la Lombardia should, in my opinion, be answered as follows:

- (1) Article 9(1)(c) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds requires Member States to ensure, when implementing this provision, that in the process of applying the derogation contained therein the catches deemed permissible do not exceed the maxima implied by the expression 'in small numbers'. Even if implementation is entrusted to decentralised provincial authorities, Member States remain obliged to secure the intended result of Article 9(1)(c) of the Directive.
- (2) Directive 79/409 requires the national provisions transposing the Directive to ensure that in determining the 'small number' consideration is given to the population level of the species concerned, its reproductive rate in the Community as a whole and the total annual mortality rate, so that the maintenance of the population of the species concerned at a satisfactory level can be guaranteed.
- (3) Article 9(1)(c) of Directive 79/409 includes an obligation on the Member States to ensure, in implementing this provision, that the competent regions do not collectively exceed the total permissible catches for the species concerned.
- (4) From the obligation on the Member States, even in the case of decentralised implementation of Directive 79/409, to ensure observance of the maximum capture limits set in connection with the application of Article 9(1)(c) of the Directive it follows that the national legislation must provide for timely and effective supervision of the decisions of the competent regional authorities.