

JUDGMENT OF THE COURT (Second Chamber)

10 September 2009*

In Case C-76/08,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 21 February 2008,

Commission of the European Communities, represented by D. Recchia and D. Lawunmi, and by P. Oliver, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Republic of Malta, represented by S. Camilleri and D. Mangion, acting as Agents, assisted by J. Bouckaert, advocaat,

defendant,

* Language of the case: English.

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J.-C. Bonichot (Rapporteur), P. Küris, L. Bay Larsen and C. Toader, Judges,

Advocate General: M. Poiares Maduro,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 7 May 2009,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- ¹ By its application, the Commission of the European Communities seeks a declaration by the Court that, by authorising the opening of a hunting season for quails (*Coturnix coturnix*) and turtle doves (*Streptopelia turtur*) during the spring migration period since 2004, without complying with the conditions laid down in Article 9(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1), as amended, in respect of 2004 to 2006, by Council Regulation (EC) No 807/2003

of 14 April 2003 (OJ 2003 L 122, p. 36), and, in respect of 2007, by Council Directive 2006/105/EC of 20 November 2006 (OJ 2006 L 363, p. 368; in both cases 'the Directive'), the Republic of Malta has failed to fulfil its obligations under the Directive.

Legal context

- 2 In accordance with Article 1 thereof, the Directive seeks to guarantee the protection, management and control of all species of naturally occurring birds in the wild in the European territory of the Member States to which the EC Treaty applies and to lay down rules for their exploitation.
- 3 The 11th recital in the preamble to the Directive states that, because of their high population level, geographical distribution and reproductive rate in the Community as a whole, certain species may be hunted, which constitutes acceptable exploitation; where certain limits are established and respected, such hunting must be compatible with maintenance of the population of these species at a satisfactory level.
- 4 Article 2 of the Directive provides that Member States are to take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements.
- 5 Article 5 of the Directive also requires the Member States to establish a general system of protection prohibiting, in particular, killing, capture or disturbance of the birds referred to in Article 1 and destruction of their nests. However, application of that obligation is without prejudice to the provisions of Articles 7 and 9 of the Directive.

6 Article 7 of the Directive provides:

‘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/1 may be hunted in the geographical sea and land area where this directive applies.

3. The species referred to in Annex II/2 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 nor 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.’

7 Article 9 of the Directive nevertheless authorises certain derogations on the following conditions:

‘1. Member States may derogate from the provisions of Articles 5, 6, 7 and 8, where there is no other satisfactory solution, for the following reasons:

...

(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 must specify:

- the species which are subject to the derogations,
- 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,

- 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.

3. Each year the Member States shall send a report to the Commission on the implementation of this article.

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 these derogations are not incompatible with this directive. It shall take appropriate steps to this end.'

- ⁸ Annex II/2 of the Directive, which lists the species which may be hunted in certain Member States, includes quails (*Coturnix coturnix*) and turtle doves (*Streptopelia turtur*) among the species which may be hunted in Malta.

Pre-litigation procedure

- ⁹ Taking the view that, by authorising hunting of quails and turtle doves during their spring migration in 2004, the Republic of Malta had failed to fulfil its obligations under the Directive, the Commission decided to initiate the procedure laid down in Article 226 EC. By letter of 4 July 2006, the Commission invited the Republic of Malta to submit its observations in that regard and, by an additional letter of formal notice of

23 March 2007, widened the scope of the dispute to include subsequent years, during which, according to the Commission, hunting had been authorised in the same circumstances.

- 10 By letters of 23 March and 23 April 2007, the Maltese authorities submitted that the conditions for application of the derogation laid down in Article 9(1)(c) of the Directive had been met. In particular, they submitted that there was no ‘other satisfactory solution’ within the meaning of that provision to the opening of hunting of the species in question in spring since only a limited number of specimens of those species are available to hunt during the autumn hunting season on the territory of the Republic of Malta.
- 11 The Maltese authorities also took the view that the Commission could not validly extend the scope of the infringement to cover the opening of the spring hunting season in 2005 to 2007 without having received the annual reports on the implementation of Article 9 of the Directive which those authorities were required to send to it. On 28 June 2007, they sent the Commission additional information on migration of birds in the Mediterranean region and in Malta in particular.
- 12 Since it did not find those replies convincing, on 23 October 2007 the Commission issued a reasoned opinion setting out the complaints raised in its two letters of formal notice and requested that Member State to take the measures necessary to comply with that opinion within a period of two months of receiving it.
- 13 By a letter of 31 December 2007, the Maltese authorities responded to that reasoned opinion, stating that they were maintaining their position.

14 In those circumstances, the Commission brought the present action.

Procedure before the Court

15 By an application registered at the Court Registry on 21 February 2008, the Commission, on the basis of Article 243 EC, requested the President of the Court to order the Republic of Malta not to open the hunting season for quails and turtle doves in spring 2008.

16 By order of 24 April 2008 in Case C-76/08 R *Commission v Malta*, the President of the Court ordered the Republic of Malta to refrain from authorising, on the basis of Article 9 of Directive 79/409, hunting of the two species in question during the 2008 spring migration period.

The action

Admissibility

Arguments of the parties

17 The Republic of Malta submits that the Commission's action is inadmissible in its entirety, since the Commission is in fact asking the Court to find, in general, that the opening of the spring hunting season since 2004 infringes Article 9 of the Directive.

That Member State submits that the Commission's application, which amounts to imposition of a definitive prohibition of spring hunting on its territory of the two bird species concerned, would rob Article 9 of Directive 79/409 of its practical effect. In that regard, it submits that whether the conditions for application of that article are met depends on an assessment on a case-by-case basis and that, in particular, the Commission must base its arguments, in relation to a given year, on the annual report on the implementation of Article 9 of the Directive which the Member State in question must send to the Commission pursuant to Article 9(3) thereof.

¹⁸ The Republic of Malta takes the view that the Commission's action must, in any event, be considered inadmissible in so far as it seeks a finding that Community law was infringed by the opening of the 2007 spring hunting season, since Malta still had not sent the report for that year to that institution. A fortiori, the same is true of the subsequent years.

¹⁹ The Commission takes the view that its action is admissible. It states that its application specifically relates to the opening of the spring hunting season in 2004 to 2007, but does not concern 2008 since, following the order in *Commission v Malta*, the Republic of Malta refrained from authorising spring hunting of the two species of birds in question during that year.

²⁰ The Commission accepts that the question whether Article 9 of the Directive has been complied with can be ascertained only after that provision has been implemented by the Member State in question. However, it takes the view that the admissibility of its action is not subject to prior examination of the annual reports which must be sent to it by the Member States pursuant to Article 9(3) of the Directive. It points out that, having regard to its role as guardian of the Treaties, it is alone empowered to decide whether it is appropriate to bring proceedings for failure to fulfil obligations.

Findings of the Court

- 21 With regard to the first plea of inadmissibility raised by the Republic of Malta, alleging that the Commission does not have the power to request the Court to find that there was a general and continued failure to fulfil obligations under Article 9 of the Directive, on the ground that this impairs the practical effect of that article, it is apparent, both from the reasoned opinion and the grounds for the application and reply of the Commission, that the Commission is requesting the Court not to prohibit, in general, authorisation by the Republic of Malta of spring hunting of quails and turtle doves and therefore definitively to prohibit use of the derogation in Article 9 of the Directive, but rather to find that, by having authorised such a practice each year under the same conditions between 2004 and 2007, that Member State has failed to fulfil its obligations under the Directive.
- 22 With regard to the second plea of inadmissibility raised by the Republic of Malta, alleging that the Commission cannot request the Court to find that there was an infringement in respect of the opening of the spring hunting season for 2007 and thereafter without having received the annual reports for those years, it is sufficient to note that Article 9(3) of the Directive does not have the effect — and could not legally have the object — of making the Commission's ability to bring an action for infringement subject to the submission, by the Member State concerned, of the annual report required under that provision. On the contrary, Article 9(4) of the Directive requires the Commission, on the basis of the information available to it, and in particular the information communicated to it pursuant to Article 9(3), at all times to ensure that the consequences of these derogations are not incompatible with the Directive.
- 23 Furthermore, making the initiation by the Commission of proceedings for a declaration of failure to fulfil obligations subject to the prior communication of a report by the Member State concerned would, in any event, be likely to harm the role of the Commission as guardian of the Treaties, by virtue of which it alone is empowered to decide whether it is appropriate to bring such proceedings and to determine the grounds on which they should be initiated (see, *inter alia*, to that effect, Joined Cases C-20/01 and C-28/01 *Commission v Germany* [2003] ECR I-3609, paragraph 30).

24 Consequently, the two pleas of inadmissibility raised by the Republic of Malta must be rejected.

Substance

Arguments of the parties

25 The Commission states that quails and turtle doves are species listed in Annex II to the Directive and that, accordingly, Member States must comply with the requirements of Article 7(4) thereof. It states that that means, in particular, that hunting is to be practised in accordance with Article 2 of the Directive and must not take place in periods when it would have a harmful effect on the maintenance of the population of those birds or, in particular, during their return to their rearing grounds.

26 The Commission takes the view that the opening of the spring hunting season for quails and turtle doves in Malta does not meet those conditions. On the one hand, hunting of those two species during their return to their rearing grounds is prohibited under Article 7(4) of the Directive and, on the other, the requirements laid down in Article 9 of the Directive for derogation from that prohibition are not met.

27 The Commission adds that it is for the Member State which wishes to apply Article 9(1) of the Directive to prove that the conditions for application of that provision are met (see, to that effect, Case C-507/04 *Commission v Austria* [2007] ECR I-5939, paragraph 198).

- 28 After recalling that Article 9(1) of the Directive permits derogation from the prohibition in Article 7 of hunting migratory species during their return to their rearing grounds only 'if there is no other satisfactory solution', the Commission asserts that that requirement is not satisfied in the present case.
- 29 The Commission recalls that, in accordance with the case-law of the Court, a hunting season under a derogation may not coincide, without need, with periods in which the Directive aims to provide particular protection, and that in particular there is no such need if the sole purpose of that measure is to extend the hunting seasons for species of birds in territories which they already frequent during the authorised hunting seasons (see, to that effect, Case C-344/03 *Commission v Finland* [2005] ECR I-11033, paragraph 33).
- 30 Furthermore, where the birds hunted are present, even in limited numbers, during a period of the year when hunting is authorised under the Directive, the condition that there be no other satisfactory solution is not met (see, to that effect, *Commission v Finland*, paragraphs 35, 38 and 42, and *Commission v Austria*, paragraphs 203 and 204).
- 31 According to the Commission, the annual reports submitted by the Republic of Malta for 2004 and 2005 show that both turtle doves and quails were actually present in Malta during the autumn hunting seasons of those years. On the basis of that information, it takes the view that that was also true of 2006 and 2007.
- 32 The Commission states that it is irrelevant that, in autumn, the birds merely fly over part of Malta, namely the Western Cliffs, since that part of the territory is accessible to hunters. It adds that, in the present case, the areas flown over are close to those frequented in spring, that the hunting may be practised when the birds are migrating, and that hunting opportunities could be improved in autumn by habitat management measures.

33 In addition, the Commission submits that the state of conservation of turtle doves and quails is unfavourable and that opening the spring hunting season aggravates that situation.

34 It also submits that the Republic of Malta has not shown that the other conditions for application of Article 9(1) of the Directive, set out in subparagraphs (a) to (c) thereof have been met and, in particular, that the species concerned have been hunted only in 'small numbers'. With respect to the latter condition, it submits that the number of birds killed must be compared with the total annual mortality rate.

35 The Commission rejects the argument advanced by the Republic of Malta in its defence alleging that the Commission failed to have regard to the legitimate expectations which it engendered during the accession negotiations with regard to the ability of the Republic of Malta to authorise spring hunting of quails and turtle doves under Article 9 of the Directive. It submits that it gave no undertaking to that effect to that Member State.

36 The Republic of Malta submits that the objective of the Directive is not the absolute protection of species and the total prohibition of any use or exploitation thereof, but that it pursues an objective of conserving bird populations at a satisfactory level. It refers, in particular, to Articles 2, 7 and 9(1)(c) of the Directive, to the Convention on the conservation of European wildlife and natural habitats, signed in Bern on 19 September 1979 and concluded on behalf of the Community by Council Decision 82/72/EEC of 3 December 1981 (OJ 1982 L 38, p. 1), and to the Convention on the conservation of migratory species of wild animals, signed in Bonn on 23 June 1979 and concluded on behalf of the Community by Council Decision 82/461/EEC of 24 June 1982 (OJ 1982 L 210, p. 10).

37 The Republic of Malta takes the view that the opening of the spring hunting season for quails and turtle doves in its territory meets the conditions laid down in Article 9(1) of the Directive.

38 It observes that, in Case C-182/02 *Ligue pour la protection des oiseaux and Others* [2003] ECR I-12105, paragraph 9, the Court held that Article 9(1) of the Directive authorises hunting during periods when it is, in principle, prohibited. It states that there is, in the present case, no 'other satisfactory solution' within the meaning of that provision. Firstly, the spring period cannot, by definition, be regarded as extending the autumn period. Secondly, the lack of any other satisfactory solution does not refer to the lack of any alternative solution, but to the lack of any acceptable and sufficiently appropriate solution in relation to the objective pursued, that is to say, in the present case, permitting the capture and a judicious exploitation of the birds in small quantities, while maintaining a well-established tradition.

39 The Republic of Malta submits that the opening, in autumn, of the hunting season for the two species concerned does not constitute a satisfactory solution, having regard to the number of birds passing at that time of the year and the very conditions of their overflight of the islands concerned, which permit capture of only an inconsiderable number of them. In that regard, it refers to the Court's findings in *Commission v Finland* (paragraphs 35 and 41).

40 The Republic of Malta adds that that situation is thus different from the one described in the judgment in *Commission v Austria*, in which the climatic conditions were at issue, and it submits that, having regard to its specific geographical situation, its size, its high population density and the physical characteristics of its countryside, the species of migratory birds able to be hunted on its territory do not, generally, reproduce there. It states that its territory lies at least 300 km from the route of the birds which migrate across the Mediterranean and that the migratory flows of quails and turtle doves vary with the time of year. Thus, those two species do not, in general, migrate over Malta during autumn and, when they do, they fly over only part of the territory during a short period between the end of August and the end of September, sometimes without

landing there. However, during spring, those two bird species migrate in much greater numbers and spread over all the Maltese islands.

41 The Republic of Malta adds that more than 80% of Maltese hunters hunt only on their own land and that a total prohibition on spring hunting of the bird species concerned would in practice amount to prohibiting them entirely from hunting those two species.

42 It submits that providing, as the Commission suggests, more natural sanctuaries would not alter the situation and it states that the sanctuaries already created cover 4.5% of the land area of the islands, namely 1434.2hectares.

43 The Republic of Malta also takes the view that the conservation status of quails and turtles doves is not at an unfavourable level. It submits that in 2007 the International Union for Conservation of Nature and Natural Resources (UICN) classified those species in the 'least concern' category. It takes the view that the opening of the spring hunting season on its territory cannot have any impact on the conservation status since only very small numbers are hunted, which the Commission disputed only in its reply. It adds that there is no scientific proof to show that, in Europe, the current hunting practices have a harmful impact on the bird population; any decline therein must be ascribed to other causes, such as the increase in surface area of agricultural land.

44 The Republic of Malta states that compliance with the conditions laid down in Article 9 of the Directive must be assessed at the level of each Member State.

45 It submits that the Commission failed to have regard to the legitimate expectations which it engendered during the accession negotiations with regard to the ability of the Republic of Malta to authorise spring hunting of quails and turtle doves under Article 9 of the Directive.

Findings of the Court

46 By virtue of Article 7(1) of the Directive, the species listed in Annex II may be hunted under national legislation. Nevertheless, Article 7(4) provides, in particular, that in the case of migratory species, Member States are to see that they are not hunted during their return to their rearing grounds.

47 In the present case, quails and turtles doves fall within the scope of Article 7(1) and (4) of the Directive and, consequently, those species must not be hunted during their return to their rearing grounds.

48 Nevertheless, provided that the conditions laid down in Article 9(1) of the Directive are complied with, the Member States may derogate from their obligations under Article 7 thereof. It is a derogation which must, accordingly, be interpreted strictly and in respect of which, in order for it to be implemented, the Member States must establish that the conditions for its application are met (see, to that effect, Case C-60/05 *WWF Italia and Others* [2006] ECR I-5083, paragraph 34).

49 One condition which must be met for the Member States to apply that derogation is, in Article 9(1) of the Directive, the requirement that there be no other satisfactory solution.

- 50 In that regard, the Court has consistently held that that condition is not satisfied when the hunting season under a derogation coincides, without need, with periods in which the Directive aims to provide particular protection. There is no such need, in particular, if the sole purpose of the derogation authorising hunting is to extend the hunting seasons for certain species of birds in territories which they already frequent during the hunting seasons fixed in accordance with Article 7 of the Directive (see *Ligue pour la protection des oiseaux and Others*, paragraph 16, and Case C-135/04 *Commission v Spain* [2005] ECR I-5261, paragraph 19).
- 51 It follows from the case-law that there is also no such need when the species concerned are actually present in autumn in the areas open for spring hunting, even if they are present in considerably smaller numbers than in the spring, provided that those numbers are not inconsiderable (see, to that effect, *Commission v Finland*, paragraphs 35 and 43).
- 52 In the present case, it is apparent from the documents and, in particular, the annual reports submitted by the Republic of Malta to the Commission pursuant to Article 9(3) of the Directive that turtle doves and quails are present in certain areas of the territory of that Member State during the autumn hunting season.
- 53 Furthermore, even if, as that Member State claims, the areas visited by the two species concerned during the autumn hunting season are more limited than those visited by them during the spring migration, they are not far from the latter areas and, above all, it is not apparent from the documents that the areas visited by those species during the autumn hunting season are not easily accessible to hunters during that period.
- 54 Consequently, the two species at issue are in fact present in autumn in the areas open for spring hunting.

- 55 However, that finding alone is not sufficient for it to be held that there is another 'satisfactory solution' within the meaning of Article 9(1) of the Directive.
- 56 The Community legislature, by using the expression 'other satisfactory solution', did not intend to prevent use of the derogation laid down in Article 9(1)(c) of the Directive where any opportunity whatsoever exists of hunting during the open seasons authorised under Article 7 of the Directive, but sought to permit derogations from that provision, only so far as necessary, where hunting opportunities during those periods, in the present case in the autumn, are so limited as to upset the balance sought by the Directive between the protection of species and certain leisure activities.
- 57 It is apparent, however, from the provisions of Article 9 of the Directive, which refer to the strictly supervised conditions for that derogation and the selective basis on which birds are captured, and, moreover, from the general principle of proportionality, that the derogation of which a Member State intends to make use must be proportionate to the needs which justify it.
- 58 It follows that the finding that there is no other satisfactory solution, namely, as in the present case, that there are insufficient hunting opportunities in autumn, far from opening up, without limit, the possibility of authorising hunting in spring, does so only so far as it is strictly necessary and provided that the other objectives pursued by the Directive are not jeopardised.
- 59 Thus, the Court has stated that derogations under Article 9 of the Directive may be used only if it is ensured that the population of the species concerned is maintained at a satisfactory level and that, if that condition is not fulfilled, hunting of birds cannot, in any event, be considered judicious and, accordingly, acceptable exploitation for the purposes of the 11th recital in the preamble to the Directive (*WWF Italia and Others*, paragraph 32).

- 60 In the present case, it is apparent from the documents in the case and, in particular, the annual reports submitted by the Republic of Malta to the Commission and from the arguments presented at the hearing that, in the autumn hunting seasons of the years in question, hunters were able to capture only an inconsiderable number of birds.
- 61 Moreover, it is not disputed by the Commission that, during that period, only a restricted part of the territory of that Member State is visited by the two bird species in question and that they migrate mainly at the end of August and during September.
- 62 Finally, it is not apparent from the documents in the case that the population of the two species of bird hunted is below a satisfactory level. It is apparent, in particular, from the IUCN Red List of Threatened Species that the species in question are listed in the 'least concern' category.
- 63 Having regard to those very specific circumstances, hunting for quails and turtle doves during the autumn hunting season cannot be regarded as constituting, in Malta, another satisfactory solution, so that the condition that there be no other satisfactory solution, laid down in Article 9(1) of the Directive, should, in principle, be considered met.
- 64 However, it must be considered whether the conditions on which the Republic of Malta authorised spring hunting of the two species at issue fulfil the requirement for proportionality, noted in paragraph 58 above, and the other requirements laid down in Article 9(1) of the Directive.
- 65 The prolongation of the hunting season for those two migratory species by authorisation of hunting for approximately two months in spring, during which the two hunted species are returning to their rearing grounds, which results in a mortality

rate three times higher (around 15 000 birds killed) for quails and eight times higher (around 32 000 birds killed) for turtle doves than for the autumn hunting season, does not constitute an adequate solution that is strictly proportionate to the Directive's objective of conservation of the species.

⁶⁶ In those circumstances, even though only an inconsiderable number of the two species at issue are present in autumn and for a very limited period, and since hunting is not impossible in autumn, by authorising the opening of the spring hunting season for quails and turtle doves for several weeks each year, from 2004 to 2007, the Republic of Malta has failed to comply with the conditions for a derogation under Article 9(1) of the Directive, interpreted in the light of the principle of proportionality and, accordingly, has failed to fulfil its obligations under that directive.

⁶⁷ Finally, the Republic of Malta invokes the principle of the protection of legitimate expectations on the ground that it was assured, during the negotiations prior to its accession to the European Union, that it would be able to continue to authorise hunting of turtle doves and quails on the same conditions as before that accession. However, apart from the fact that this is not apparent from the documents before the Court, it is in any event irrelevant to the assessment of compliance with the condition that there be no other satisfactory solution within the meaning of Article 9(1) of the Directive and, consequently, cannot affect the finding in the previous paragraph of this judgment that that condition was not met.

⁶⁸ Having regard to the foregoing considerations, it must be held that, by having authorised the opening of a hunting season for quails (*Coturnix coturnix*) and turtle doves (*Streptopelia turtur*) during the spring of 2004 to 2007, without complying with the conditions laid down in Article 9(1) of the Directive, the Republic of Malta has failed to fulfil its obligations under that directive.

Costs

⁶⁹ Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs against the Republic of Malta and since the Republic of Malta has been unsuccessful, it must be ordered to pay the costs.

On those grounds, the Court (Second Chamber) hereby:

- 1. Declares that, by authorising the opening of a hunting season for quails (*Coturnix coturnix*) and turtle doves (*Streptopelia turtur*) during the spring migration period in the years 2004 to 2007, without complying with the conditions laid down in Article 9(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended, in respect of 2004 to 2006, by Council Regulation (EC) No 807/2003 of 14 April 2003, and, in respect of 2007, by Council Directive 2006/105/EC of 20 November 2006, the Republic of Malta has failed to fulfil its obligations under that directive;**
- 2. Orders the Republic of Malta to pay the costs.**

[Signatures]