
Subject:

RE: Scope of Birds Directive clarified by the Court of Justice

From: Byrnes, Emmet <Emmet.Byrnes@agriculture.gov.ie>**Sent:** Thursday 14 August 2025 17:12**To:** Moore, Fergus <Fergus.Moore@agriculture.gov.ie>; Collins, Kevin <Kevin.Collins@agriculture.gov.ie>**Cc:** Fahy, Orla <Orla.Fahy@agriculture.gov.ie>; Dunne, Seamus <Seamus.Dunne@agriculture.gov.ie>**Subject:** Scope of Birds Directive clarified by the Court of Justice**Scope of Birds Directive clarified by the Court of Justice****Fred Logue**

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Published Aug 2, 2025

Just before shutting up shop for its summer recess, the Court of Justice delivered an important judgment clarifying the scope of protection for wild bird species in the EU under the Birds Directive (Directive 2009/147) in case [C-784/23 - OÜ Voore Mets and AS Lemeks Põlva](#)

The Court confirmed that all wild birds, regardless of the population status, are protected from deliberate killing or capture and their nest and eggs are protected from deliberate destruction. This includes not only intentional acts but also activities where the possibility of harm is accepted, such as forestry, construction and farming activities. On the other hand deliberate disturbance is only prohibited where it would be significant at a population level.

This will have significant implications for consents involving activities such as tree felling and hedgerow clearance both in terms of the level of characterisation needed and whether the competent authority will need to grant derogations under the strict conditions of Article 9 of the Birds Directive.

The Court's analysis focused on several key aspects of the Birds Directive's interpretation.

First, regarding the concept of "deliberate" actions under Article 5, the Court held that this encompasses not only intentional acts but also situations where the actor accepts the possibility of protected birds being killed or disturbed, or their nests damaged. This interpretation aligns with the Court's previous interpretation of similar provisions in the Habitats Directive.

The Court emphasised that the Birds Directive's protections apply to all wild bird species, not merely endangered ones. This broad application reflects the directive's fundamental purpose of protecting all naturally occurring wild birds in EU territory.

A significant distinction was drawn between different prohibitions within Article 5. The Court held that Article 5(d), concerning deliberate disturbance, only applies where such disturbance would significantly affect the objective of maintaining bird populations at satisfactory levels. However, the prohibitions in Article 5(a) and (b), regarding killing and nest destruction, apply regardless of population impact.

The Court confirmed that scientific data and field observations provide a sufficient basis for establishing bird presence and applying protective measures, consistent with the precautionary principle enshrined in EU law. The fact that no endangered species were present does not affect the application of these protections.

From: Byrnes, Emmet

Sent: Thursday 14 August 2025 16:01

To: Moore, Fergus <Fergus.Moore@agriculture.gov.ie>; Collins, Kevin <Kevin.Collins@agriculture.gov.ie>

Cc: Fahy, Orla <Orla.Fahy@agriculture.gov.ie>; Dunne, Seamus <Seamus.Dunne@agriculture.gov.ie>

Subject: New case law regarding summertime felling and the Birds Directive

New case law regarding summertime felling and the Birds Directive

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[Innovative and award-winning business lawyers based in the Nordic and Baltic Sea region.]

Published Aug 6, 2025

Case C-784/23, OÜ Voore Mets and AS Lemeks Põlva v Keskkonnaamet, was published on 1.8.2025. It concerns the interpretation of the Birds Directive and its application to forestry activities during the bird breeding season. The case concerns the scope of protection for wild birds under EU law, particularly regarding the concept of “deliberate” harm and the conditions under which derogations from protective measures might be permissible.

It will be interesting to follow future interpretations regarding the permissibility of summertime felling under EU law.

Quick focus: The request for a preliminary ruling in Case C-784/23 centres on whether national rules allowing, under certain conditions, the felling of forests during birds’ breeding season are consistent with Article 5 of the Birds Directive, together with its derogation provisions in Article 9(1)(a). In particular, the Estonian referring court asks if such felling amounts to “deliberate” harm to birds if it is known beforehand that nesting or rearing activities will be disturbed, and whether exceptions (for instance, to prevent serious damage to property) may be invoked even during the critical period of breeding and rearing.

Legal interpretation of ‘deliberate harm’

The ECJ clarified that the concept of “deliberate” harm under Article 5 of the Birds Directive includes activities where the possibility of harm is accepted, not just intentional acts. This interpretation aligns with similar provisions in the Habitats Directive, emphasizing that the prohibitions apply to all wild birds, regardless of their conservation status. The prohibition on deliberate disturbance under Article 5(d) applies only where such disturbance would significantly affect the objective of maintaining bird populations at satisfactory levels.

The ECJ ruled that the prohibitions in Article 5(a) and (b) of the Birds Directive apply to all wild birds, regardless of their conservation status, and cover activities where “the possibility of harm is accepted,” not just intentional acts. However, the prohibition on deliberate disturbance under Article 5(d) only applies where such disturbance would significantly affect the objective of maintaining bird populations at satisfactory levels. The ECJ emphasised that scientific data and field observations are sufficient to establish bird presence and apply protective measures, consistent with the precautionary principle.

Precautionary Principle

The ruling clarifies that the Birds Directive’s protections extend to all wild bird species, not just endangered ones, and that the concept of “deliberate” includes accepted risks of harm. This interpretation aligns with similar provisions in the Habitats Directive. The decision also highlights the need for competent authorities to consider derogations under strict conditions, balancing environmental protection with economic activities like forestry.

The ECJ’s decision reflects a strict application of the precautionary principle, prioritising ecological integrity over economic convenience. Particularly interesting is that the presence of birds in the area to be felled is not necessarily related to their conservation status, but rather to the risk of species occurrence and the probability of harm.

Impacts and Conflicts

The Advocate General's opinion highlights potential conflicts between environmental protection and economic activities, such as forestry. The ruling requires competent authorities to consider derogations under strict conditions, balancing environmental protection with economic activities.

This also raises questions about the practical implementation of these protections and the potential for conflicts with property rights and business freedoms, as highlighted by the Advocate General’s opinion.

Implications

Particularly interesting is the conclusion that the presence of birds in the area to be felled is not related to the conservation status of those birds. Moreover, the presence of birds in the specific area or plot of land does not necessarily say anything about the conservation status of those bird species.

Reading this, one outcome could be that the scope of the prohibitions in Article 5 is not related solely to the unfavourable conservation status of observed birds but to all birds present in the planned area.

Also, any specific number of nesting birds in an area would not be a reliable indicator (although the Estonian court referred to a number). What needs to be considered is that felling during the nesting and rearing period may be deemed deliberate killing of birds if there is a risk of species occurrence and if that risk is somewhat probable. As such, summertime felling would be prohibited under the Birds Directive if the derogation criteria laid down in Article 9 are not met.

Does this ruling mean that deliberateness may always be established whenever the spatial and temporal requirements are met—signalling the end for summertime felling under current EU nature laws? This could signal significant (?) changes in forestry practices within the EU, requiring halting felling and forestry activities during critical periods for bird breeding and rearing.

From: Byrnes, Emmet

Sent: Tuesday 12 August 2025 17:02

To: Moore, Fergus <Fergus.Moore@agriculture.gov.ie>; Collins, Kevin <Kevin.Collins@agriculture.gov.ie>

Cc: Fahy, Orla <Orla.Fahy@agriculture.gov.ie>; Dunne, Seamus <Seamus.Dunne@agriculture.gov.ie>

Subject: Ministry, private sector interpret differently ECJ ruling on bird nesting sites

[Ministry, private sector interpret differently ECJ ruling on bird nesting sites | News | ERR](#)

Ministry, private sector interpret differently ECJ ruling on bird nesting sites

The European Court of Justice (ECJ) has issued a ruling on suspending logging to protect bird nesting sites in Estonia. However, the Ministry of Climate and forestry industry representatives interpret the ruling in opposing ways, each claiming their stance is the right one.

The final decision on the matter is set to be made in the autumn by the Estonian Supreme Court, which should clarify whether current practices will be changed or not.

Head of the Ministry of Climate's Biodiversity Protection Department, Timo Kark, said overall the ECJ considered the suspension of logging to be justified.

"In the opinion of the European Court, the birds directive must be interpreted such that its provisions apply to all bird species, including those that are not protected. So any activity that may result in birds being killed, such as logging during the spring-summer nesting period, can be suspended," Kark said.

However, Indrek Veso, lawyer representing Jõgeva-based forestry firm Voore Mets OÜ, at the center of the current case, said that the second point of the ECJ's decision clearly stated that logging during the nesting season is considered intentional killing of birds, destruction of nests, and disturbance of birds only if it takes place in a forest where approximately 10 pairs of birds are found nesting per hectare, or if the disturbance significantly affects the satisfactory status of that bird species.

This means, in his opinion, it is no longer justified to suspend logging in forests if scientific data and observations reveal that fewer than approximately ten pairs per hectare are nesting.

Veso noted: "In recent years, the Environmental Board has created a traffic-light system. And in 'red' forests, they have said these are older forests, classified according to site types. And in 'red' forests, six or more pairs of birds nest per hectare. Therefore, the current practice of the Environmental Board, as I understand it, based on this European Court decision, is disproportionate and overblown."

The ECJ does not give assessments or make decisions on a specific case, but provides its position on the basis of the interpretation of the directive. The final decision is still to be made by the Estonian Supreme Court.

Kark said that the Supreme Court decision must be awaited, meaning the state is not in a hurry to act before that. "Our position is that the Environmental Board's practice today is correct and does not need to be changed. This makes it sensible to wait for the Supreme Court's decision, to see how the Supreme Court will use the input given by the European Court. If everyone understood it the same way, this legal dispute would not even exist," he said.

The ongoing legal dispute began when, in 2021, the Environmental Board (Keskonnaamet) suspended logging by Voore Mets OÜ and Lemeks Põlva AS for an initial five-day period, later extending the ban through to midsummer. The board justified the ban on the basis that the work posed a real risk of disturbing bird nesting or destroying bird nests.

The companies filed a complaint in court, and the Supreme Court referred the matter to the ECJ for interpretation of the provisions of the [Birds Directive](#).

The process will now continue to allow the parties to the proceedings to formulate their positions and submit them to the Supreme Court by the start of September, with a decision due from the Tartu-based court this fall. Whether and how Estonia's current practice should be changed will be discussed after this ruling.

From: Byrnes, Emmet

Sent: Monday 11 August 2025 13:16

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Cc: Fahy, Orla <Orla.Fahy@agriculture.gov.ie>; Dunne, Seamus <Seamus.Dunne@agriculture.gov.ie>

Subject: RE: ENDS Europe - Environmental News - Library Newsletter - Friday 08/08/2025

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EU top court clarifies law on unintended killing, disturbance of birds

By Simon Pickstone

04 Aug 2025

The European Court of Justice (ECJ) has said that a ban on the 'deliberate' disturbance or killing of wild birds and their nests should still apply even when it is unintended, in a case concerning forest clear-cutting in Estonia.

In a ruling handed down on Friday (1 August), the court provided guidance to Estonian judges on how to interpret article 5 of the Birds Directive, which sets out general bans on deliberately killing or capturing birds, disturbing them during breeding and rearing season, and destroying or damaging their nests. Estonia's supreme court had referred a case to the ECJ relating to a compensation claim filed by a forestry company against the country's environmental board after it had ordered clear-cutting in Põlva County to be suspended for more than a month to protect nesting birds.

The court sought clarity from the ECJ on the notion of 'deliberateness' in the Birds Directive, asking how it applies to activities such as tree cutting that do not have the express purpose of either killing or disturbing birds, or destroying their nests. In line with case law on the Habitats Directive, the ECJ said article 5 would also cover cases where an actor had "accepted the possibility of such capture or killing, disturbance or destruction" even if it was unintended.

But it ruled that the ban on deliberately disturbing birds during nesting season should only apply "in so far as it is necessary to prevent disturbances which would have a significant effect" on the directive's goal to maintain wild bird populations at a satisfactory level.

On the other hand, the ban on the deliberate killing or capture of birds, and on the deliberate destruction or damage to their nests, should apply unconditionally, the court added. "The examination of the effect of a human activity on the population level of the bird species concerned is not relevant for the purposes of applying the prohibitions laid down in that provision," the court ruled.

Estonia's supreme court had also asked whether the clear-cutting or selective cutting of a forest area during nesting season should be banned under article 5 where authorities can assume that there are around 10 pairs of breeding birds without an established conservation status.

The ECJ concluded that tree cutting in such cases would in any event fall within the directive's ban on deliberately killing birds or destroying their nests. It would also fall within the ban on disturbing birds during nesting season in so far as it would have a "significant" impact on efforts to keep bird populations at a satisfactory level, the court added.

The case will now return to the Estonian supreme court for a final ruling.

From: Moore, Fergus <Fergus.Moore@agriculture.gov.ie>

Sent: Monday 11 August 2025 12:43

To: Byrnes, Emmet <Emmet.Byrnes@agriculture.gov.ie>; Collins, Kevin <Kevin.Collins@agriculture.gov.ie>

Subject: FW: ENDS Europe - Environmental News - Library Newsletter - Friday 08/08/2025

FYI

- [EU top court clarifies law on unintended killing, disturbance of birds](#)

ECJ ruling on Art 5 of the Habitats Directive and clear-cutting activities in Estonia conflicting with breeding birds

From: Library <Library@agriculture.gov.ie>

Sent: Friday 8 August 2025 10:32

Subject: ENDS Europe - Environmental News - Library Newsletter - Friday 08/08/2025



Please find a link to [recent articles](#) (01/ 08 August 2025) from ENDS Europe, which may be of interest. Previous issues are available [here](#);

- [Circular Economy Act: Commission to address e-waste, reinforce single market](#)

The European Commission has announced that its upcoming proposal to accelerate the transition towards circularity will be based on two pillars – increasing the recovery of materials from e-waste and unifying the

fragmented regulatory framework. In a 'call for evidence' for the Circular Economy Act, published today, the Commission said that progress towards a circular economy has been "insufficient" – with the rate rising from 10.7% in 2010 to just 11.8% in 2023 – and that greater efforts are required.

- **EU takes step towards common rulebook on CO2 transport**

The European Commission is consulting on tentative plans for new legislation governing the trade and transport of captured CO₂, as part of efforts to develop a market within the EU and in third countries. The proposal, pencilled in for the third quarter of 2026, may include provisions for a new EU regulator to oversee CO₂ transport and storage, along with a "planning mechanism" to coordinate the build-out – and repurposing – of infrastructure across the bloc "in a cost-efficient way", according to a call for evidence published last week.

- **More sectors set to enjoy compensation for indirect ETS costs**

The European Commission is consulting on plans to allow more industries to claim compensation for increased electricity costs caused by the EU's emissions trading system (ETS). In a call for evidence last week, the Commission gave few new details about its intention to include more sectors at risk of carbon leakage in state aid guidelines covering indirect ETS costs, announced last month as part of its chemicals action plan.

- **EU top court clarifies law on unintended killing, disturbance of birds**

The European Court of Justice (ECJ) has said that a ban on the 'deliberate' disturbance or killing of wild birds and their nests should still apply even when it is unintended, in a case concerning forest clear-cutting in Estonia. In a ruling handed down on Friday (1 August), the court provided guidance to Estonian judges on how to interpret article 5 of the Birds Directive, which sets out general bans on deliberately killing or capturing birds, disturbing them during breeding and rearing season, and destroying or damaging their nests.

- **ECJ upholds annulment of titanium dioxide carcinogenicity classification**

The European Court of Justice (ECJ) has dismissed two appeals lodged against a General Court decision to reverse the classification of titanium dioxide as a carcinogen – marking a win for the chemicals industry. The judgement, handed down on 1 August by the EU's top court, effectively annuls a 2019 decision to class the substance as a carcinogen by inhalation, removing labelling obligations for its manufacturers and users.

- **Environmental law: European Court of Justice issues slew of rulings**

The EU's top court handed down six rulings related to environmental law on Friday last week ahead of the summer recess. Here's what you need to know.

- **Commission envisions 'streamlining' EU food certification in trade deal with US**

Officials have confirmed plans to simplify paperwork for food and agricultural imports as part of a trade deal with the US that would offer "improved access" to the EU market for American producers. A Commission official clarified today that the recently agreed contours of a trade deal with the US include specific plans to reduce the administrative burden for US producers of food and agricultural products requiring so-called sanitary and phytosanitary certificates.

- **'Real warning sign': Chemical cocktails from road run-off impacting marine food web, study finds**

The growth of an organism relied on by the entire ocean ecosystem is significantly slowed down by exposure to chemicals commonly found in road run-off, a study has found, with researchers stating that this issue must be at the 'forefront of environmental regulation'. A peer-reviewed University of Portsmouth study, published in *Aquatic Toxicology*, has identified that exposure to three chemicals often found in road run-off – mercaptobenzothiazole (MBT), diphenylguanidine (DPG), and 6PPD-quinone – significantly slowed the growth of *Phaeodactylum tricornutum*, a tiny marine algae known as a diatom.

- **Commission approves first clean energy project under new state aid rules**

An €11 billion scheme to support the construction of three floating offshore wind farms off the coast of France is "a major step" towards meeting the EU's 2030 clean energy goals, European Commission vice-president Teresa Ribera said. The Commission announced today that it had approved the French government's plan to subsidise two wind farms in the Mediterranean and one off the coast of Brittany, each with a capacity of around 500 MW, through its new state aid framework (CISAF) adopted in June.

- **The key issues at stake at the global plastics treaty talks**

Representatives of more than 180 countries have assembled today in Geneva, Switzerland, to finalise a legally binding treaty to end plastic pollution. Here's what you need to know. The second round of the fifth session of the Intergovernmental Negotiating Committee (INC 5.2) to develop a global plastics treaty opened in

Geneva today – after talks stalled in Busan, Korea last year, due to a small group of petrostates objecting to limits being imposed on plastic production.

- **[Ombudsman upholds Commission's refusal to grant access to infringement documents](#)**

The European Ombudsman has found no maladministration in the European Commission's decision to not provide public access to documents relating to an infringement case on the Water Framework Directive. In October last year, the Commission issued Finland with a letter of formal notice – the first stage in the infringements process – for failing to correctly transpose measures around periodic reviews of river basin management plans under the directive.

- **[Commission mulls new funding tools for low-carbon fuels](#)**

Contracts-for-difference and pooled national funds are among the ideas being considered to support the uptake of alternative fuels in the transport sector, the European Commission has said. In a call for evidence published today, the EU executive indicated that its planned communication on sustainable transport investment, due to be unveiled after the summer, will focus on ways to support the production and supply of renewable and e-fuels.

- **[EU clamp-down on creosote-treated wood due next year](#)**

The European Commission is preparing to close a loophole that allows old railway sleepers treated with creosote, a presumed carcinogen, to be sold to consumers despite an EU ban. Creosote, which is widely used as a wood preservative, contains a range of polycyclic aromatic hydrocarbons and is already restricted under the REACH Regulation because it is presumed to be carcinogenic, as well as persistent and bioaccumulative.

- **[CRMA: Commission under fire for opaque green assessments of priority projects](#)**

Environmentalists say questions remain over the European Commission's process for assessing the impact of projects to extract and process critical raw materials given priority status under EU law. European Commission vice-president Stéphane Séjourné has indicated that priority projects under the bloc's Critical Raw Materials Act (CRMA) were confirmed based on pledges that selected projects will fulfil its green requirements.

- **[Commission vague on global climate diplomacy strategy](#)**

The European Commission is considering both economic and regulatory partnerships to boost the global energy transition, as part of its new climate vision – though many details are left unconfirmed. A call for evidence, published today, laid out plans for a communication due to be presented ahead of COP30 in Belem, Brazil, in November on how the EU will build the “means and momentum for increased global action” on climate change.

- **[Why summertime energy poverty is rising up the agenda](#)**

As heatwaves grow in intensity and in duration, families across southern Europe are struggling to keep their energy inefficient homes cool – and support from the EU and national governments is lacking. Richard Weyndling investigates. A study by Greenpeace Spain published last month, which used thermal cameras, has revealed that temperatures as high as 48° have been recorded inside some Spanish homes.

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