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**SPRING HUNTING OF MALE COMMON EIDERS IN THE
PROVINCE OF ÅLAND (FINLAND)**

Bachelor's Thesis

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I hereby declare that I have compiled the paper independently and all works, important standpoints and data by other authors have been properly referenced, and the same paper has not been previously presented for grading.

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ABSTRACT

The European Union's one of the goals is to become carbon free by 2050. This requires good environmental policy, which the EU is trying to do, and cooperation from the member states regarding the implementation of the EU's directives relating to environmental protection. Transposing these directives can be difficult and sometimes member states fail to implement the directives. Finland being part of the EU, it must follow the EU's rules as every other member state. Finland failed to implement directive 2009/147/EC, which is a directive made to conserve wild birds. Finland allowed Åland to spring hunt male common eiders, which was a breach of this directive. This led to court, and Finland was found guilty breaching directive 2009/147/EC. This thesis aims to find a solution on how Finland could allow spring hunting of male common eiders in the province of Åland without causing infringement to directive 2009/147/EC using quantitative method. One solution being trying to make the living conditions the best possible for common eiders, by keeping the current goal of Finland which is to become carbon free by 2035. Material is formed from scientific legal articles and books, judgements of the Court (first chamber) and few articles relating to common eiders.

Keywords:

Case C-217/19, concepts of "judicious use" and "small numbers", conservation of wild birds, environmental directives implementation, failure to fulfil obligations, spring hunting of male common eiders

INTRODUCTION

Implementing the European Union's directives is one of the member states' duties. The commission creates environmental directives to guarantee the environment's safety in the EU. Member states can have difficulties implementing given directives on time, especially environmental directives. The EU created an Environmental Implementation Review (EIR) tool to help member states implement environmental directives. So far, three EIRs have been published in 2017, 2019 and 2022. Although Finland successfully implements these environmental directives fairly, they have problems too.

Finland has covered about 75 per cent of its forests, so there is much wildlife in Finland, and as there is much life, hunting is quite a common hobby in Finland. In the 2022 version of EIR, Finland is risking the life of male common eiders, and the whole population is at risk. This research aims to solve the issue regarding the infringement of directive 2009/147/EC in case C-217/19. The directive is made to conserve wild birds in the EU area, and Finland failed to transpose this directive fully into their national legislation. The case law relating to this infringement is analysed later in the research. The research question for this research is how Finland can allow the hunting of male common eiders in Åland in spring without causing an infringement of directive 2009/147/EC.

Finland needs to implement environmental directives as every member state needs too. That is the most natural way to help the birds to reproduce again since it is a big problem if different species of birds begin to go extinct. Although in this research I focus mainly on Finland's implementation of directive 2009/147/EC, I also show possible researched reasons for non-compliance with the other environmental directives since it affects the bird population negatively, as Finland is having trouble with other environmental directives, not just directive 2009/147/EC.

The research method used in this research is the qualitative method. The material for this research is formed from related scientific books, peer-reviewed scientific articles, case laws, and information the EU gives on their website.

1. The EU's environmental policy

So that this paper makes sense, the EU's environmental policies and how the complete protection of the planet started are good to introduce. The EU has many principles it follows to maintain fairness on all levels. The subsidiary principle is essential when talking about the EU's environmental policies since it means that the EU should not take any action if the action taken by a member state is more effective. The principle of subsidiarity was introduced to environmental policy in 1986. The Single European Act established environmental objectives in the Treaty. Still, the assignment of Community powers was restricted by Article 130r, which stated: The Community shall take action relating to the environment to the extent to which the objectives... can be attained better at the Community level than at the level of the individual Member State.¹ The EU's progress from not considering the environment to this point where the environment and its protection is one of the highest priorities started in the 1970s. The EU's environmental protection began in 1972 at the Stockholm Conference when the United Nations Environment Programme (UNEP) was created. Even though UNEP was introduced in 1972, it was not until 1975 that the first area of the EU's environment policy took legislative form. This first policy area concerned water, meaning that the goal was to make water cleaner by setting quality requirements and limiting discharges of pollutants into water.² During this time, people began to realise that protecting the environment is essential, and with the current actions and how people behave, the globe will not withstand very long, at least not in the form we hope it would. These water directives, introduced in 1975, were an excellent way to begin going in the right direction. However, these first directives lacked any general overall strategic direction, leading to a new water directive the EU adopted in 2000.³

The first significant milestone regarding environmental protection was introduced in the Treaty by the Single European Act in 1986. The second considerable milestone was introduced in the

¹ Shaw D., Nadin V. and Seaton K. (2000). The application of subsidiarity in the making of European environmental law. *European Environment* Volume 10, Issue 2. (p. 87).

² Bryant C. (2010). Twenty-Five Years of EU Environmental Law. *Natural Resources & Environment*, Vol. 25, Issue 1. (p. 40).

³ *Ibid.* (p. 40).

Amsterdam Treaty in 1997. In the Amsterdam treaty, the principle of sustainable development and high-level environmental protection gained a constitutional status. The Amsterdam treaty was different because it did not introduce new principles but reinforced the old ones.⁴ In 2007, the Lisbon Treaty, the third significant milestone for environmental protection, presented a different legal basis for energy issues, meaning that producing and consuming energy was done in such an action that the environment could be preserved and improved.⁵

Sources of law in the EU are divided into primary and secondary sources. Primary sources are written down in the treaties, for example, the Treaty of Lisbon or the Treaty of Amsterdam. Secondary sources of law in the EU are directives, regulations, and decisions created by the EU Commission, using a voting system, meaning most voters must favour the law.⁶ A directive is a legislative act for member states to implement into their legislation in a period set in the directive, usually two years. If a directive is not implemented in the agreed time, it is possible to rely solely on the directive in a national court. In these situations, provisions must be unconditional and sufficiently precise. A provision is unconditional if the implementation of the provision is not subject, in its implementation or effects, to the taking of a measure of the institutions of the Community or the member states. A provision is sufficiently precise if the obligation it imposes is set out in unequivocal terms.⁷

The European Green Deal is the EU's new plan for a better future. It aims to transform the EU into a green society that functions resource-efficiently and economically competitively while being sustainable and free from greenhouse gas emissions by 2050. Economic growth is disconnected from the use of resources. Its goal is also to protect, preserve and strengthen the EU's natural capital and to protect citizens' health and well-being from environmental risks and impacts. At the same time, this transition must be fair and inclusive. It must put people first and pay attention to the regions, industries, and workers that face the greatest challenges. As it brings significant change, active public participation and trust in the transition are paramount for policies to work and be accepted. A new agreement is needed to get together citizens in all their diversity so that national,

⁴ Poostchi B. (1998). The 1997 Treaty of Amsterdam-implications for EU Environmental Law and Policy Making. *Review of European, Comparative & International Environment Law*, Vol. 7, Issue 1. (p. 83).

⁵ Van Calster G. and Leonie R. (2017). *EU Environmental law*. Edward Elgar Publishing. (p.1-4).

⁶ *Ibid.* (p. 4).

⁷ Peeters M. and Uylenburg R. (2014). *EU Environmental Legislation, Legal Perspective on Regulatory Strategies*. Edward Elgar Publishing. (p. 17).

regional, and local authorities, civil society, and industry work closely with EU institutions and advisory bodies.⁸

The EU's environmental legislation is divided into different categories, which currently suffer from emissions and other polluting factors. The sections are horizontal, air quality, water management, water quality, nature protection, industrial pollution control, chemicals, and noise. All these areas of the environment include directives and regulations, which member states then implement into their legislation in the period indicated in that directive. Due to failure to enforce the laws, the EU Commission can give a penalty for this infringement, which is stated in Article 260 of the Treaty on the Functioning of the European Union (TFEU) "If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after allowing that State to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances." The opportunity to submit one's observations is stated in article 258 of TFEU, "If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union." These directives and regulations, and the whole process of becoming climate-neutral by 2050, are enforced by the EU's Environment Action Programme (EAR) on 2 May of 2022 8th version of EAR entered into force, setting a framework for member states on how to continue making progress in environmental protection. Article 3 of the EAR states the conditions for member states to achieve the big goal of 2050. The conditions are: complete and adequate implementation of existing EU legislation; significantly decreasing the Union's material and consumption footprints; achieving environmental fairness; boosting sustainable finance; making use of economic and tax incentives to facilitate the sustainability transition; phasing out fossil fuel subsidies; developing summary beyond GDP dashboard; uptake by and cooperation at all levels of policymaking between different group of actors; harnessing the potential digitalisation; ensuring that policy action is firmly anchored in latest science and knowledge. Although the measures and actions taken so far by the EU seem to be sufficient, some problems regarding greenhouse gas emissions might hinder the goal of becoming climate-neutral by 2050 and decreasing greenhouse gas

⁸ European Commission, 2020. Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and The Committee of the Regions - The European Green Deal. P.2.

emissions by 55% by 2030. In some sectors, GHG has not reduced or, even worse, risen since the EU announced the Green Deal. Transport has rising greenhouse gas emissions, energy efficiency improvements in buildings have not satisfied enough, and industry decarbonisation has proven difficult.⁹

1.1. Environmental Impact Assessment (EIA)

Environmental impact assessment is a worldwide method used to prevent environmental damage caused by various projects by doing an assessment (calculating risk-reward ratio). The EU introduced it in 1985 in the European Community (EC) directive, accelerating its application in member states.¹⁰ Directive 2011/92/EU is the EU's EIA directive, later amended by directive 2014/52/EU. Article 2 of the directive 2011/92/EU states that "Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects." The process of EIA includes a description of the project, potential significant effects, reasonable alternatives, and measures to avoid powerful impacts on the environment. EIA is designed in a way that helps the developer to prevent sustainably harming the environment. The EIA system works by screening and deciding whether to use EIA on a particular project. Finland uses EIA as every other member state, and Finland has implemented the EU's directive into their national legislation. Legal dogmatic and empirical studies show that Finland's EIA screening system works well.¹¹ As stated earlier, Finland's surface area is covered by 75 per cent of forests, and still, the screening system in Finland does not apply in the cases of forest projects¹², which should be changed since wildlife lives in the forests.

1.2. The Kyoto Protocol

The EU has many goals to reach if they want to achieve carbon neutrality by 2050, and its current actions show that the goal is not a joke. Although the EU has its ways of working towards a greener

⁹ Claeys G., Tagliapietra S. and Zachmann G. (2019). How to make the European Green Deal work. (p. 2).

¹⁰ Glasson J. and Therivel R. (2013). Introduction to environmental impact assessment. (p. 3).

¹¹ Pölönen I., Hokkanen P. and Jalava K. (2011). The Effectiveness of the Finnish EIA System – what works, what doesn't, and what could be improved? Environmental Impact Assessment Review 31. (p. 122).

¹² Ibid. (p. 122).

earth, few international treaties have included more countries than just the EU. The Kyoto Protocol was the first international treaty in which agreed states tried to cut their greenhouse gas emissions. The treaty included legally binding emission targets for industrialised countries to achieve in a time frame between 2008 and 2012.¹³ Böhringer stated in his paper that cost-benefit analysis is needed when discussing environmental protection since, according to him and the scientists he quotes, it could tell how much GHG emissions should be abated, by whom, and when. The Kyoto Protocol did not include this analysis, which was one flaw and was criticised heavily.¹⁴ Although The Kyoto Protocol and its goals were not achieved and the GHG emissions have increased since 1997, it was an important landmark regarding environmental protection since it was the first official international treaty. It showed the way for future treaties and that industrialised states should protect the environment jointly.

The Kyoto Protocol, like every other environmental protection program, does have objectors. Objectors favour the current state of the world and think that environmental problems do not exist, or they think they live. Still, the actions required by the treaties are too severe compared to how the world is currently running on fuel and other energy sources which pollute the planet. Especially in the business world, there can be mixed reactions to these issues. Some businesses do not take any action, and some do everything possible to make the world green. Although the reasons behind the activities can vary, for example, one business takes all the possible actions because they genuinely care. On the other hand, some businesses take action because they think it is an excellent virtue to gain more customers and monitor their rival companies' activities to minimise any competitive advantage gained through non-compliance with legislation and regarding the Kyoto Protocol and its approval by people, an Australian business, Australian Plantation Timber, sold one million Australian dollars option to purchase carbon sequestered from 5092 hectares of its plantations in Western Australia to Cosmo, one the biggest oil companies in Japan.¹⁵ The Kyoto Protocol allows for creating "carbon credits" from emission reduction or removal projects - including forestry - and the Clean Development Mechanism and joint implementation.¹⁶ Australian Plantation Timber buying from a Japanese oil company is an excellent example of a private business taking action to reduce GHG emissions. Even though some might object to environmental

¹³ Böhringer C. (2003). The Kyoto Protocol: A Review and Perspectives. Oxford Review of Economic Policy, Vol. 19, NO. 3. (p. 451).

¹⁴ Ibid. (p. 452).

¹⁵ Wilder M. (2001). The Kyoto Protocol and Early Action. University of New South Wales Law Journal, Vol. 24, issue 2. (p. 565).

¹⁶ Ibid. (p. 567).

protection and some steps that are taken because of it, The Kyoto Protocol and every other environmental protection program are crucial for wildlife, in this case for birds, since it has been shown that the common eider population is decreasing. Following the protocols and abiding by the rules creates a safer environment for the common eiders, and through that, the population is more favourable to an increase instead decrease.

2. Environmental directives implementation in Finland

Finland became a member of the European Union in 1995. Since then, Finland has implemented EU laws into their legislation. Environmental protection in Finland is among legislators and businesses among the most important topics in politics and law. As a result of being so important, Finland is one of the leading countries when talking about environmental protection. Finland's Constitution has relevant provisions regarding environmental law, the safety of ownership, and the responsibility for the environment.¹⁷ Finland's current government aims to become carbon neutral by 2035, which can be hard to obtain since it requires resources and money. Because of unwanted situations such as Covid-19 or Russia attacking Ukraine, reaching the goal can be even more difficult. Finland is a welfare country, and things are considered good, so it is much easier to implement the EU's environmental policies compared to some countries in the EU, which economic situation might not be so good. And because of this, the implementation process is much harder to complete for those member states who struggle, and because of this, there is a risk of infringement of EU's articles 258 and 260 of TFEU. Although Finland is an excellent example for other member states and countries outside the EU to be greener, it has its problems regarding implementing EU environmental laws, especially Directive 2009/147/EC.

The main steps while implementing EU's policies, whatever branch of law it is, are transposition, conformity, and application. Transposition means that legislation is transposed into national laws so that the relevant duties and rights are written down in the legislation. Conformity is the second step of the monitoring process, conformity of those national laws with EU law so that the transposing measures are correct and complete and apply to the whole Member State concerned, and - application of those laws in practice.¹⁸ It is essential for the EU that member states succeed in the implementation since their legal recourse is limited, and monitoring these infringements requires capital.¹⁹

¹⁷ Hollo E.J., Vihervuori P. and Kuusiniemi K. (2010). *Environmental Law and Administrative Courts in Finland. Survey of Environmental Tribunals and Regulatory Schemes.* (p. 52).

¹⁸ Hattan E. (2003). *The Implementation of EU Environmental Law.* *Journal of Environmental Law*, Vol. 15. (p. 274).

¹⁹ *Ibid.*

2.1. The EU's infringement procedure

When a member state fails to implement the EU's directives or does not rectify when there has been a violation of the EU law, the EU can start the infringement procedure. There are a few steps the Commission follows that have been laid out in the treaties. One step is a formal letter from the Commission requesting a comprehensive reply with all the necessary information on why that infringement happened, usually within two months. The second step is when the commission, after noticing a breach of the EU law, sends an opinion which includes a formal request to comply with the EU law and requests this specific country to inform the Commission of the measures taken to fix this problem. In the third step, the Commission refers the case to the Court of Justice. Fourthly, if the specific member state fails to give valid reasons for its implementation failure, the commission may ask for a penalty for the member state by the Court. And lastly, if the Court finds that the member state has breached the EU law, the national authorities must take action to comply with the Court's judgement. Even after all these steps, if the member state still does not comply with the EU, they can be referred back to the Court, and the member state could receive a financial penalty. The penalties are calculated using three principles: the importance of the rules breached and the impact of the infringement on general and particular interest; The period the EU law has not been applied; and the country's financial ability, meaning it can pay the fine.²⁰

2.2. Infringement case in Finland, C-217/19

Directive 2009/147/EC Article 2: Member States shall 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, or to adapt the population of these species to that level.

They shall see, in particular, that the species to which hunting laws apply are not hunted during the rearing season or during the various stages of reproduction.

²⁰ Infringement procedure of the EU. https://commission.europa.eu/law/application-eu-law/role-member-states-and-commission/infringement-procedure_en.

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.

Directive 2009/147/EC Article 7(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.

Directive 2009/147/EC Article 9(1)(c): Member States may derogate from the provisions of Articles 5 to 8, where there is no other satisfactory solution, for the following reasons: to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

When the EIR was active in Finland, one infringement case occurred, mentioned in Finland's EIR, and on which Finland received a penalty from the European Court of Justice. In case C-217/19, Finland granted authorisation to Åland to hunt male common eiders, which was illegal according to directive 2009/147/EC Article 7(4) and Article 9(1)(c). The directive was created to conserve wild birds. Although this was the only significant case mentioned in the EIR, Environmental Infringement Interactive Map shows that there are currently six active infringement cases (two regarding the conservation of wild birds) regarding implementing these environmental directives in Finland. EIA was introduced earlier in the paper because one of Finland's active infringements cases is about EIA, titled "Non-conformity of the Finnish legislation with the EIA directive 2011/92/EU as amended by Directive 2014/52/EU". The problem with implementing this directive was that Finnish legislation stated that the statements made by the authorities when making EIA must contain information to the extent necessary, which was against the given Directive. While Finland has six active infringement cases now, it is number four on the list of member states ranked with the number of active infringement cases. Belgium, Spain, and Greece hold the top three positions, with operational issues of around 20.

In 2005, the court held that hunting male common eiders in Åland between 1998 and 2001 was incompatible with directive 79/409. Due to this decision, the officials in Åland did not grant permission to hunt male common eiders between 2006-2010, but in 2011 the officials resumed the permission to hunt male common eiders since it has been a tradition there to hunt them in the spring. After this, they were granted permission to hunt every year. According to the Commission, hunting in Åland in 2011 and after that was incompatible with the conservation of wild birds directive. After this, Finland, Åland, and the Commission exchanged letters back and forth, arguing whether it was ok or not. Åland used population management, predator control, and inventory strategy as an argument against the accusation of the Commission. The commission still did not agree and decided to bring the case to the European Court of Justice (later CJEU). After reviewing the case, CJEU declared that by recurrently granting authorisations for spring hunting of male common eiders in the province of Åland since 2011 and up to and including 2019, the Republic of Finland failed to fulfil its obligations under Article 7(4) and Article 9(1)(c) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds; Orders the Republic of Finland to pay the costs.²¹

This is the infringement that occurs in the EIR of 2022. Although the reason for the violation of the directive was not so that it could not have been implementable, a political motivation to keep the tradition of hunting alive for the citizens of Åland, and as Åland's officials stated, the strategy behind the hunting was population management, predator control, and inventory. Finland's surface area is around 75% of forests, meaning there is much wildlife, so hunting is a popular hobby and sport in Finland. When the officials take that away from the citizens, they are unhappy. From this case, we can deduce that implementing the EU's environmental policies is not about the national capability to transpose them into federal legislation but rather a sum of many factors, such as political or economic, etc. Uusikylä and Lampinen published a paper to show why member states fail to implement the EU laws. Their study showed that member states with stable and trustworthy political institutions have a higher success rate in the implementation process and that public opinion matters since it indicates that in countries where people support the EU, implementation is more successful.²² Perkins and Neumayer also showed in their study, similarly to Uusikylä and

²¹ Case C-217/19.

²² Lampinen R. and Uusikylä P. (1998). Implementation deficit – Why Member States do not comply with EU directives. (p. 248-249).

Lampinen, that political institutions have a great connection to the implementation success rate. It is stated in their paper that countries with less stable political institutions and possible veto players have a lower success rate, contrary to Scandinavian countries with more stable and well-functioning political institutions and higher success rates. Although Finland is not a Scandinavian country, it can be deduced that they belong in this group with the other northern countries.

The study by Thomson, Torenvlied and Arregui dealt with the problem of implementation and the infringements caused by this. They showed three hypotheses: Member states with higher preference-based incentives to deviate are less likely to comply; Directives that grant high levels of discretion to member states are more likely to be complied with; Member states with high preference-based incentives to deviate are less likely to comply with directives that grant low levels of discretion than with directives that give high levels of discretion. As for infringements, states with increased incentives to deviate are likelier to initiate infringement proceedings against them. This is consistent with the first hypothesis that conditions would be less likely to comply with directives they disagree with. Discretion does not directly affect the likelihood of violations, as our second hypothesis suggests. Nevertheless, in line with the third hypothesis, discretion is a critical variable in assessing the effect of state incentives on deviance. States with many incentives to deviate are likely only to break if the directives give them much discretion. Discretion also affects transposition delays. Delays tend to be longer in directives that provide much discretion. State incentives to deviate or the interaction between incentives and discretion do not significantly affect uncertainties.²³ Although this study was made in 2007, and there were only a handful of infringements related to the implementation process, it can be deduced that things have only worsened since the number of violations has increased.

The EU's study regarding the implementation gap of the different targets of environmental protection, which are air and noise, nature and biodiversity, water, waste, chemicals, industrial emissions and significant accident hazards, and horizontal instruments. The study's focus on the implementation gap of these different targets showed that some are easy to measure and others are not since there is no clear baseline to compare. For example, nature, biodiversity, chemicals, and horizontal instruments have low measurability. Case C-217/19 falls in the category of nature and biodiversity, so it can be deduced that although Finland failed to implement the directive nationally, the problem is also in the EU's hands since there is no absolute baseline on which to

²³ Thomson R., Torenvlied R. and Arregui J. (2007). The Paradox of Compliance: Infringements and Delays in Transposing European Union Directives. *British Journal of Political Science*. (p. 706).

compare the loss of male common eiders. Three of Finland's six active infringement cases are from low measurability targets.²⁴ The study also mentioned that noncompliance with these directives cost 55 billion euros to the EU in 2018, indicating that something must be done to make the implementation more successful in avoiding costs.

2.2.1. Judgement of the Court

In the judgement of case C-217/19 given on 23 April 2020, two points were discussed by the court when it was making the decision. The two things were "judicious use" and "small numbers". Article 9(1) of the directive 2009/147/EC states that the member states may derogate from articles 5-8 of the same directive if certain conditions are fulfilled. Articles 5 to 8 set the framework for the directive on what is allowed and what is not. Article 9(1)(c) states that "Member states may derogate from the provisions of articles 5 to 8, where there is no other satisfactory solution, for the following reasons: 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 The two terms judicious use and small numbers were for Finland to prove that they did have some judicious use and that hunting did affect only small numbers. Finland's argument for their judicious use was that spring hunting was necessary so that the hunter could understand better the rearing conditions by eliminating small predators in the areas of Åland. The court did not find this satisfactory enough since they responded that this function could be achieved later than in spring. Regarding small numbers, Finland showed data on the Baltic/Wadden Sea flyway wintering population to prove that the hunters did only affect small numbers. The court did not find this satisfactory because not all common male eiders from the Baltic/Wadden sea flyway come to Finland. Instead, they should have shown data on the population of these birds in the province of Åland.²⁶ The term "small numbers" means 1 per cent of the population of those species which may be hunted.²⁷ The main goal is to keep the population of the birds at a satisfactory level, and if this was to fail, nothing could be considered judicious use at that point.

²⁴ The cost of not implementing EU environmental law. European Commission final report. (2019).

²⁵ Directive 2009/147/EC of the European Parliament and of the Council.

²⁶ Case C-217/19.

²⁷ Ibid.

“With regard to the studies provided, those produced by the Republic of Finland are insufficient to contradict the evidence showing declining common eider population trends, which are an important indicator of an unsatisfactory population status.”²⁸ Finland provided five documents regarding the whole issue. Two documents were from 2015, which cannot be used since the hunting happened during 2011-2014. The other two were from 2004 and 2008, as stated earlier, so they were considered out-of-date.

Final Judgement of the court in the case C-217/19, “The Court declares that, by recurrently granting authorisations for spring hunting of male common eiders (*Somateria mollissima*) in the province of Åland since 2011 and up to and including 2019, the Republic of Finland failed to fulfil its obligations under Article 7(4) and Article 9(1)(c) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds; Orders the Republic of Finland to pay the costs.”

Finland is one of many who struggle with the bird directive since there have been other similar cases, such as C-76/08, where Malta opened a hunting season for quails and turtle doves during the same spring migration season Finland did with the male common eiders. The Court declared in that case 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”²⁹ Other similar case which also involves Malta is C-557/15, where Malta adopted a derogation which allowed live-capturing of seven species of wild finches. In the Court judgement, it declared that “by adopting a derogation regime allowing the live-capturing of seven species of wild finches the Republic of Malta has failed to fulfil its obligations under Article 5(a) and (e) and Article 8(1) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, read in conjunction with Article 9(1) of that directive.”³⁰ From these cases, it can be deduced that hunting birds is a worldwide hobby and, to some, even profession, so these new rules and directives which have

²⁸ Ibid.

²⁹ Case C-76/08.

³⁰ Case C-557/15.

come into play in the recent decades, have shown that for the decision-makers, it can be hard to keep the hunters happy or satisfied if they cannot hunt, which leads to non-compliance of the bird directive or trying to find a loophole to allow the hunting. The birds being protected by the directive are birds whose population is decreasing and whose living conditions have worsened. Countries like Finland and Malta should try to increase these birds' populations so that hunting would not affect them as much.

2.3. Common eider population decrease

Male common eiders have been reported to go down in population in the last few decades worldwide, which is why female common eiders are protected all year round. Population decrease is the result of either adult mortality or decreased reproduction. There is not just one explanation for the decrease but a lump of sums, one being the changing environment. Male common eiders are allowed to be hunted during fall since, in spring, they reproduce. This raises the problem with case C-217/19 because Finland told the commission that they allowed people to hunt male common eiders in spring in Åland because of population control. Finland provided data to the commission on the population of male common eiders in Åland, trying to prove that the population was not decreasing. The court did not think the data was adequate since it was from 2004 and 2008, meaning Finland lost the case. If Finland wants to allow male common eider hunting in Åland during spring, one way would be to prove to the commission that the population is not decreasing and provide more recent data with that information. Of course, that can be hard for Finland if the population is declining. Finland stated to the commission in case C-217/19 that predator control was one of the reasons for the hunting; the court did not find this reason adequate since the population would not be at a satisfactory level, which gives no reason for hunting in the spring since the article 7(4) of the directive 2009/147/EC states that “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.”³¹

A study regarding environmental pollution and whether it affects genetic diversity in the wild bird population examined whether certain heavy metals, nuclear waste and radiation affect the birds'

³¹ Ibid.

DNA. The study stated that “our study shows that environmental pollution affects genetic variation in free-living bird populations, and the effect depends on species and emission type. Our study cannot assess the exact mechanism whereby genetic differences have arisen, but we consider increased mutation rates at polluted sites as the most likely explanation. We also suggest that the different responses of the two species may be due to their different ability to handle toxic compounds in the body”³² One would imagine that this pollution-caused mutation effect does not have any good long-term impact on these birds.

Ways for Finland to increase the population to allow spring hunting can be challenging. Still, one way of doing it is to implement the EU’s environmental directives and allow a green and non-pollutant environment for the birds to grow because pollution is one of the reasons for the decrease. As said earlier, Finland states that predator control was one of the reasons for spring hunting. Still, if Finland wants to increase the population of common eiders, predator control should focus on the predators that eat common eiders: raccoon dogs and mink. Hunting raccoon dogs and minks is different because they are classified as harmful alien species, and other hunting methods can be used, but of course, the hunting must still follow the EU’s directives. However, some studies have shown that predators have little effect on the population of birds.³³ The Kyoto Protocol was a good beginning for a greener future. Still, Finland can also increase the use of different conservation practices, for example, restoring and protecting the habitats and removing anthropogenic pressure from the areas where common eiders live, since it will increase the population growth and ecosystem adaptive capacity to climate change.³⁴ It was also shown that the time of ice break negatively affected common eiders’ lives, such as clutch sizes and fledging success.³⁵

In case C/217-19, Finland stated that if they deny the spring hunting of male common eiders in the province of Åland, the hunters will lose the motivation to hunt. Hunting male common eiders is done in other northern countries, such as Sweden, Denmark, and Norway. Denmark and Sweden comply with the same rules as Finland, so they do not allow spring hunting of male common eiders

³² Eeva T., Belskii E. and Kuranov B. (2006). Environmental pollution affects genetic diversity in wild bird populations. *Mutation Research* 608 (2006) 8-15. (p. 14).

³³ Cresswell W. (2010). Predation in Bird populations. *Journal of Ornithology*, suppl 1. (p. 254).

³⁴ Dawson T., Jackson S., House J., Prentice I. and Mace G. (2011). Beyond Predictions: Biodiversity Conservation in a Changing Climate. *Science* Vol. 332. (p. 57).

³⁵ Lehikoinen, A., Kilpi M. and Öst M. (2006). Winter climate affects subsequent breeding success of common eiders. *Global Change Biology* 12:1355–1365.

since it is the time when common eiders reproduce, which could have resulted in the loss of interest in hunting as a hobby. For example, in Denmark, after the population of common eiders began to decrease and after the bird directive took place, the hunting pressure decreased in Denmark. Their hunting numbers of common eiders were almost reduced in half because of fewer hunters.³⁶ Finland wants to avoid this in the province of Åland by granting them access to spring hunt, which resulted in a court battle with the Commission. Finland needs to prove judicious use and that their actions only affect a small number of common eiders, which is one per cent, and that the common eider population stays satisfactory. Creating the best possible environment for the common eiders to nest and reproduce all year around is the best way to at least increase the population.

³⁶ Hario M., Mazerolle M.J. and Saurola P. (2008). Survival of female common eiders *Somateria m. mollissima* in a declining population of the northern Baltic Sea. *Oecologia* (2009) 159:747-756. (p. 752).

3. Effective implementation and non-compliance

The EU demands member states to implement the directives the Commission gives, and the implementation must be effective since it is mentioned in article 197 of TFEU “Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest”. The second time effective implementation is mentioned is in article 83 of TFEU “If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules concerning the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure followed for adopting the harmonisation measures in question, without prejudice to Article 76.” Although the EU states in these two articles that the implementation must be effective, it is never mentioned or specified what exactly is effective implementation. That is why Nicolaides and Geilmann concluded a study aiming to discover what exactly is effective implementation. Their study showed that the elements of effective implementation could be divided into four categories: methods, procedures, institutional structure, and outcomes. Methods: In this regard, the primary aspects of effective law enforcement are the use of objective criteria and the requirement for evidence-based decision-making. Procedures: Enforcement and enforcement decisions must be justified and explained, enforcement procedures must be open and transparent, affected parties must be made aware of their rights and obligations, and decisions must be enforceable in court. Institutional structure: Impartiality and objectivity of the executive or implementing authority are ensured by an independent evaluation of policy proposals and segregation of duties related to preparing and assessing such bids. Results: Authorities must always prefer the least restrictive or least distorting means to achieve their political goals. Restrictions on market freedom can never exceed the minimum necessary.³⁷

³⁷ Nicolaides P. and Geilmann M. (2012). What is Effective Implementation of EU Law. *Maastricht Journal of European and Comparative Law*. (p. 383-398).

Effective implementation is the goal of member states. As said earlier, northern European countries succeed in it reasonably well, at least compared to southern countries with higher populations and different conditions that must be considered. It is argued that the reasons southern countries have more infringements regarding environmental directives are because the countries suffer from considerable horizontal and vertical fragmentation of their administrative structures; they lack the organisational capacity to implement EU's policies; they have a lower level of economic development; the idea of protecting the environment is starting to get more recognition not until recently.³⁸

The study I presented showed what effective implementation is and the elements of practical implementation. Member states probably know these elements but must comply with the directives and deadlines. Nicolaidis and Oberg concluded a study to determine why this non-compliance is happening. Penalties or threatening member states with legal actions are not enough since it would have been done if they were. One way not tested yet is switching from one legal instrument to another, but it has no advantage other than skipping the transposing stage. The solution to this problem should be found in the Court of Justice rulings, the first notices of reasoned opinions, and subsequent arguments the Commission gives before the Court of Justice.³⁹ Other than the connection between the implementation success rate and the political institutes, it seems like there is no honest answer to why member states fail to implement the EU's environmental directives. Of course, there are many reasons, depending on the geological spot, altitude, population, etc.

Failure to transpose EU environmental directives is a problem that became a hot topic after the announcement of the Green Deal. This problem is in the environment and every other area of law too. It has been tried to find out why member states fail to transpose specific directives, but it is hard to measure something when there is nothing to calculate. Researchers have used qualitative and quantitative methods to solve this problem. Qualitative researchers have provided direct measures of timeliness and correctness of the implementation, usually based on expert interviews, legal documents, NGO reports, and the media; quantitative studies are bound by such limitations, at least if they are still based on readily available official data. Thus, whereas most quantitative studies cover several or even all policy areas, they substitute a more extended period and cover

³⁸ Borzel T.A. (2011). Why there is no 'southern problem'. On environmental leaders and laggards in the European Union. *Journal of European Public Policy*, Vol. 7, Issues 1. (p. 143).

³⁹ Nicolaidis P. and Oberg H. (2006). The Compliance Problem in the European Union. *EIPAscope* 2006. (p. 17-18).

many member states.⁴⁰ Regarding quantitative methods, three different approaches were introduced in the study, made by Treib. The first approach is based on the combined implementation rate published annually by the European Commission. The second and most widely used approach is based on information on national transposition actions obtained from the official EUR-lex databases, often supplemented by details from domestic legal databases. The third method uses all the implementing measures contained in the databases. Still, the member states' reactions are classified on an ordinal scale into main categories that vary from situations where all notified measures have been adopted before the directive is issued between the adoption of the directive and the transposition deadline and after the deadline.⁴¹ As said earlier, measuring something that does not exist physically is hard. Although these methods have found some links, they fail to see the reason for the non-compliance of member states, but rather the temporal reaction of member states to EU directives.⁴² There is no linear explanation for the non-compliance, since there can be several reasons for one infringement, such as political or economic reason. In the referenced case C-217/19, Finland said that one reason for the infringement was to keep the hunters happy, which is one example of a political agenda behind the non-compliance.

These non-compliances affect the bird population since the environment does not meet the requirements to start developing greener and pollution-free, making it safer for wildlife. Suppose Finland wants to increase the population of male common eiders to keep the hunting allowed in spring in Åland. In that case, they must implement the environmental directives and show other member states how to do it and that it is possible. Doing this allows the birds to reproduce more successfully.

⁴⁰ Treib O. (2014). Implementing and Complying with EU governance outputs. *Living Reviews in European Governance*, Vol. 9, No. 1. (p. 17).

⁴¹ *Ibid.* (p. 18).

⁴² *Ibid.* (p. 18).

CONCLUSION

Hunting male common eiders is a nationwide hobby in Finland, especially in Åland, where they live, since they live in the coastal areas and Åland is a small island southwest of Finland. The EU's environmental policies are a good way of making a better environment for the birds to keep on living the way nature meant them to; the Kyoto Protocol is the first international environmental treaty and showing the way for future treaties, even though The Kyoto Protocol failed in a way that the emissions only kept growing after the treaty became active. Environmental Impact Assessment is a good calculator for determining whether specific projects are worth initiating when there is more risk of polluting the environment. Finland's EIA screening system does not include forest projects, which in my opinion, is a mistake, and Finland should change that because trees and forests are crucial for wildlife and humans. Including a screening system for the forest, projects would better the ecosystem and, through that, the life of common eiders. In the future, if Finland wants to allow Åland to keep the spring hunting of male common eiders alive, it should prove to the commission that it is, in fact, a small number of common eiders they hunt and that the population stays of a satisfactory level. Proving that can be difficult since the number of common eiders has only decreased in the last few decades. There are a couple of ways of doing it; one is predator control, meaning hunters should hunt more animals that eat common eiders: raccoon dogs and minks. Another simple way of trying to increase the population is, in fact, just following the environmental policies of the EU. Implementing the EU's environmental directives is essential to begin the process of becoming greener and pollution free by 2050. Finland has succeeded in this reasonably well, with only six infringement cases. Effective implementation of all directives is essential for the effectiveness of the EU, especially the directives that protect the environment, such as Directive 2009/147/EC. For the sake of common eiders, it is not only Finland's duty to do well in this implementation process but all member states. As a welfare country, Finland can be an excellent example for the other member states with poorer results regarding implementing environmental directives and how to do it effectively. Finland just had parliament elections in the spring of 2023, and as deciders changed, the goal of becoming carbon-free by 2035 could be transformed into the EU's target (2050). In my opinion, this would be a mistake, since if Finland can do this, they should, even though if it does not succeed, trying to accomplish this goal would

be almost as good, especially for the common eiders and other wildlife which suffer from the loss population, one reason being the warming climate.

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