

21<sup>st</sup> September 2024

**Honorable Prime Minister Dr Robert Abela**  
**Office of the Prime Minister**  
**Auberge de Castille**  
**Valletta**  
**VLT 1061**



*Open Letter*

Dear Prime Minister

We write to you a few days after the ruling by the European Court of Justice on Malta's 'scientific' finch trapping derogation. As you know, Malta has lost the court case and was found, for the third time (2009, 2018 and 2024), as not fulfilling its obligations as an EU Member State towards the EU Birds Directive.

This sentence has also proved that BirdLife Malta was right when it stated in all available fora and platforms, including the media, that this derogation was nothing but a ill conceived smokescreen, and that nothing of it, was scientific or bearing a conservation value. We have been the ones that served our country with the right advice. Once again, we have been vindicated by the European Court of Justice.

As Prime Minister of Malta the buck stops with you now. We genuinely believe that you might have adopted a position to fully trust Minister Camilleri with the design and implementation of this derogation. With trust, however, comes also accountability. It is high time to call a spade a spade and declare that Malta cannot keep on toying around with farcical ploys to try and fool the European Commission or the European Court of Justice with similar derogations. The finch trapping derogation has failed twice, and the latest one, disguised as scientific research, fooled no one from day one.

Apart from the tens, if not hundreds, of thousands of taxpayer money that have been wasted by Minister Camilleri with this derogation, the Minister did not just play around to fool the European Commission but has also played around with our country's reputation. During the course of this infringement procedure, we have even witnessed an attempt to derail the course of justice of the derogation by repealing legislation, only to re-issue the same derogation a few days after – a move which the Court has seen through, despite the Minister's attempt at fooling the course of justice that somehow a new derogation was coined up after the opening of the initial infringement procedure.



We belong to BirdLife International,  
the global Partnership of nature  
conservation organisations.

Malta now needs to make sure that we don't harm our reputation even further, since breaching such a clear sentence, would also question our country's position towards the rule of law. We believe this is a serious matter that needs a decisive decision of high level leadership.

Contrary to what Minister Camilleri has already declared, the ECJ sentence did not just find only one fault in Malta's derogation. We refer you to clause 70 of the sentence in which the Court upholds the Commission's claim that Malta failed to state reasons for applying this derogation in the absence of other satisfactory solutions.

Having no other satisfactory solution is the very basis for justifying the application of a derogation under Article 9 of the Birds Directive, and it is clear that in the case of the finch derogation, this could not be proven over the four years this derogation has been applied.

We then refer you to clause 71 of the sentence in which the Court states:

*"71. In the light of that finding, it does not appear necessary, in the present case, to examine the pleas alleging, respectively, a failure to demonstrate the absence of another satisfactory solution and that the Maltese derogation scheme does not pursue a research objective within the meaning of Article 9(1)(b) of Directive 2009/147 (see, to that effect, judgment of 21 June 2018, Commission v Malta, C-557/15, EU:C:2018:477, paragraph 53)."*

Minister Camilleri tried to give the impression that the Court found his derogation wrong on just one technicality from all claims put forward by the EU Commission. Contrary to his political spin, Clause 71 clearly explains that the court did not see it necessary to even pass judgement on other claims following the fact that it upheld the first plea relating to Malta's failure to state reasons in the derogation scheme concerning the absence of other satisfactory solutions within the meaning of Article 9(1)(b) of Directive 2009/147, as stated in clause 70.

It is disheartening and an offence to our public's intelligence to have a European Minister blatantly twist the facts of a judgement by the European Court of Justice, after attempting to initially fool everyone that this was a genuine research undertaking as well as attempting to derail the infringement procedure during its course. Whilst this is clearly be politically motivated, and in the interest of self preservation, just like the derogation itself, it doesn't make it right. Rather than assume the political responsibility as would be the case from an Western European Minister, Minsiter Camilleri wants to cry victory.

We also feel the need to stress that my criticism towards Minister Camilleri's decision to derogate for finch trapping should not be redirected towards the Ornithological Committee. This committee is first and foremost appointed by the Minister himself,


and while the ECJ has sent a clear message that science should be at the backbone of nature-based decision making, the committee is far from that. Malta needs to have a science-based Ornis Committee to give science-based advice and not politically motivated ones. Nothing stops the Minister from acquiring political advice from his people of trust, but the ornis committee should not be anything but scientific.

We look forward to seeing Malta's position of full respect to the rule of law, to this ECJ ruling and to the EU Birds Directive. BirdLife Malta will remain working hard for bird and nature conservation, and when necessary, use all possible tools that our democratic country offers, to achieve this.

Kind regards



Mark Sultana  
CEO



Darryl Grima  
President