

Meeting of the Malta Ornis Committee

15th December 2014, Hexagon House, MEPA, 1600 - 1945

Minutes

Attending members:

Prof Mark Anthony Falzon – Chairman
Mr Sergei Golovkin - Secretary
Mr Nicholas Barbara – Birdlife (Malta)
Mr. Geoffrey Saliba - Birdlife (Malta)
Mr Lino Farrugia – FKNK
Mr Mark Gauci – Avifauna Expert
Mr Gwido Baldacchino - Member nominated by Government
Mr Marco Falzon – Member nominated by Government
Mr Frank Vassallo – Hunting and Trapping Expert

Excused: Ms Emeline Fenech – Member nominated by Government; Mr Joe Perici Calascione – FKNK; Mr Stephen Saliba – MEPA

1. Continuation of the discussion on the proposed revisions to SL 504.71

- 1.1 Chairman said this meeting is a continuation of the meeting held on 10th December to conclude discussion on the proposed revisions to Conservation of Wild Birds Regulations.
- 1.2 Lino Farrugia requested to register FKNK's strong objection to Birdlife Malta's protest action outside Ornis venue. He referred to this action as being "unethical, irresponsible, provocative and unacceptable". He asked whether Ornis would be able to function if, for example, every time the FKNK does not agree with an item being discussed, it would organise a protest outside Ornis venue? He also raised the issue of whether it is acceptable for the Committee if a member were to leak confidential internal discussion documents to the press even before these have been discussed at Ornis. Lino Farrugia further stated that this was the uncountable time that BirdLife had leaked confidential internal discussions, documents and even Ornis Committee decisions.
- 1.3 Sergei Golovkin seconded this objection and said that the leak of an internal draft document to select members of the press before it was fully discussed within Committee seems like an attempt at undermining the Committee's work and pressuring the Committee. He said that Ornis exists for the sole reason of discussing proposals and advising the government, and that function seems to have been deliberately undermined by Birdlife's actions in this instance. He would have expected Birdlife (Malta)'s representatives, being members of the Committee, to debate and to criticise any proposals or ideas within the Committee. Moreover, the statements made by Birdlife personnel during press conference outside Ornis are clearly a misrepresentation of the aim and scope of the proposal being discussed. He said that Birdlife seems to be not interested in participating in this discussion constructively, but works to derail any discussion simply on account of its disagreement with the contents of the proposal.
- 1.4 Chairman said he cannot dictate to any Committee member what to do and what not to do.
- 1.5 Sergei Golovkin said that ideally the Committee should have internal procedures and should adhere to basic code of ethics, otherwise there can be no meaningful and construction discussion. If the government wished to hold a press conference to announce WBRU's preliminary draft proposals to the public it would have done so. But the government chose to seek Ornis opinion on

scientific and technical aspects before considering draft proposals further. As a consequence of Birdlife's actions the quality of the Committee's advice to government is being compromised. Moreover, the public is being misinformed by being presented with snippets from leaked technical drafts which are being quoted selectively and out of context.

1.6 Nicholas Barbara and Geoffrey Saliba said the protest was an expression of strong objections that Birdlife (Malta) has in relation to what the organisation deems to be the proposed amnesty. The registration fines listed in the proposal seem like a "Christmas sale" on illegally shot protected birds and Birdlife cannot accept this in principle because the proposal is effectively tantamount to legalising what is essentially illegal. This goes against the Birds Directive and national law. It is unclear why there is a need for such a measure, other than to please the hunters. There is no way one can distinguish between birds shot last year and birds shot prior to 2003 and therefore the WBRU knows that the proposal opens up wide door for abuse. Is that what is being intended in the first place? Birdlife disagreed with the past amnesties and cannot accept a further one. Also the fact that the legal notice has been drafted and there is even a space for minister's signature shows that this is a very advanced draft and possibly a *fait accompli* which is being pushed through the Committee for rubber-stamp. Because of this Birdlife (Malta) felt that an urgent public action was needed to stop this proposal in its tracks.

1.7 Sergei Golovkin said in reaction to Birdlife (Malta)'s statement that this is a complete misrepresentation of the scope and contents of the proposal. It was previously explained on multiple occasions that no amnesty whatsoever is being envisaged, and that the only aim is to strengthen fight against illegal killing of protected birds. The proposed possibility for registration of stuffed birds that were, for some reason or other, not registered in 2003 must be seen in this context. The aim is to penalise the offence (non-declaration and subsequent illegal possession of undeclared birds that were not registered in 2003) at the rates of penalty that are commensurate with presently applicable levels, prior to the introduction of new, much harsher penalties. The proposal would enable the authorities to address the flaws in previous registrations, to take situation with regards to taxidermy and possession fully under control, and to introduce new more effective deterrents in the form of much harsher penalties. It would not be fair or feasible to introduce these harsher penalties without providing a possibility for persons who failed to comply with the 2003 registration to come forward and declare their possession, against very hefty fines. The only difference with the present situation would be that the offenders will be dealt with administratively in lieu of prosecution. This does not amount to an "amnesty". The benefit of an administrative approach is that the authorities will be able to rapidly take stock of the situation, and enforce the law across the entire sector, as opposed to relying on sporadic detection and prosecution of offenders caught throughout the year. There is also the issue of proportionality and fairness. Major increase in penalties is necessary to increase deterrent. But on the other hand it also raises the issue of how to deal with *bona fide* collectors who may have, for example, inherited their collections prior to 2003, and for some reason failed to declare. Should these too be fined with a hundred thousand Euro fine and be sent to prison? This is why there should be a one-off possibility of regularisation. However such a possibility would still not exonerate such a person from liability, and the proposed fines are hefty enough to penalise administrative offence of non-declaration. Although as Nicholas Barbara pointed out, it may be difficult to verify in practice through a forensic examination whether a particular specimen was shot before 2003 or after, the proposal envisages that the onus of legal responsibility will reside with the person declaring possession. Someone who is found submitting a false declaration, which may be made in the form of a sworn statement, would be liable not only to huge fines and custodial prison term, but possibly also to additional criminal liability for lying under oath. Such sworn statements are commonly accepted by Maltese courts in many different legal situations, and there seems to be no reason why the same approach cannot also adopted with regards to this particular situation. It was highlighted time and again that the sole reason behind the proposal is to pave way for qualitatively better levels of enforcement, and to put an end to illegal shooting of birds.

- 1.8 Lino Farrugia said that the FKNK reiterates that it will never accept the “unreasonable and draconian” penalties proposed. The FKNK always leaves decisions concerning specific fines, fees or penalties up to the government, but in this case the proposed disproportionate increases are unacceptable as a matter of principle. It was the FKNK itself which initiated discussion with the government on the need to regulate taxidermy and possession, however the FKNK disagreed that such discussion should occur through Ornis. The FKNK also emphasizes that the proposal would only work if there is a system of spot-checks to verify compliance. Also one has to consider potential loopholes such possibility of persons pooling declarations. For example somebody who under-declared in 2003 may illegally trade declarations with someone who has extra undeclared specimens. With reference to BLM’s demonstration, Lino Farrugia also remarked that it was a bad idea these amendments were proposed via Ornis. Sergei Golovkin said that with a hindsight, given the manner in which Ornis discussion on this item has unfolded, he agrees with the FKNK that it was indeed a bad idea to propose this item at Ornis.
- 1.9 In relation to proposed increase in penalties, Mark Anthony Falzon said that the law must distinguish between first count and subsequent offences. It was already previously highlighted that the proposed increase is disproportionate and unreasonable. Government should obtain specialised criminological advice on levels of penalties that apply to other forms of crime, to ensure proportionality. The issue of “historic” specimens must be addressed, as well as the issue of potential abuse as highlighted by the FKNK. He also expressed reservations with regards to how spot checks can be conducted. He also said that the issue raised by Birdlife, namely that it seems not possible to forensically confirm date of specimens’ death is a major factor that militates against the proposal as a whole.
- 1.10 Sergei Golovkin said that the issues raised seem all valid and that is why the Committee was asked for its advice. However it would be most useful to government if the advice is given in a more concrete form, that is, not simply pinpointing issues, but also recommending concrete and specific ways of addressing these issues. BLM suggested that a sure and effective mean of tackling the issue of taxidermy was to increase the capacity of doing spot checks and proceed with spot-checking collections in order to curtail under and over declarations once and for all. This would be the only means of curtailing abuse with taxidermy collections and not granting an amnesty as was being proposed by WBRU.
- 1.11 Chairman said that some issues seem to be impossible to address, for example the issue of verification of specimen. The government cannot expect the committee to come up with solutions to issues that may not have a solution. He asked whether the Committee should schedule another meeting to conclude discussion.
- 1.12 Sergei Golovkin said that it would not be possible to schedule further meetings by the end of the year, and in any case the government will be taking note and considering the outcome of discussion held so far. This item was debated during four sessions and the discussion seems to have been exhausted.
- 1.13 Chairman said he will prepare written recommendations which will be circulated for comments prior to transmission to government.
- 1.14 Meeting was adjourned at 1945 hrs.