

# Keeping of exotic animals in Belgium : the “positive list”

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## What?

- Animal Welfare Law
  - only listed animals can be kept by anyone = “positive list”
  - General derogation :
    - Zoological gardens
    - Laboratories
    - Private persons
      - Animals already in possession + offspring
      - With a license



3

## What?

- Animal Welfare Law
  - **General derogation :**
    - Vets for animals in their care
    - Animal shelters
    - Animal traders :
      - **For a short period (transit)**
      - **Written order**
    - Circuses and itinerary expositions
  - **Prohibition of advertising for the sale, ... of non listed species**



# History

- Working group of the Animal Welfare Council
  - All parties represented
    - Scientific experts
    - Animal protection organisations
    - Animal breeders and traders
    - Animal keepers



## History

- Working group of the Animal Welfare Council
  - **5 objective criteria**
    - Easy to keep and capable of being given shelter with respect for fundamental physiological, ethological and ecological needs
    - No particular danger to human health (aggressiveness or other)
    - No threat to local fauna if escape
    - Bibliographic data on the keeping of the species is available
    - Conflict between data / insufficient data : benefit of the doubt goes to the animal



## History

- 2001 : Royal Decree fixing a list of 42 mammal species
- Possibility for private persons to obtain a license for keeping other species
  - Have to proof they have sufficient knowledge and necessary installations / equipment to keep the species
  - Application submitted for advice to the “Zoo Commission”
    - Evaluation on scientific basis



## History

- Court cases (Council of State)
    - Position of animal breeders, traders and keepers
      - Prohibition on keeping = prohibition / limitation on importing and trading
      - No legitimate objective in the public interest
      - Positive list is not proportionate to the objective pursued
        - **Negative list could be just as good**
- > infringement of art. 34 (former art. 28) of the Treaty :

**“Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.”**



# History

- Court cases
  - **Position of the Belgian Government**
    - Keeping of mammals is acceptable only in a limited number of cases
    - Animal welfare is a legitimate objective in the public interest
    - Legislation is proportionate
      - **No absolute prohibition on keeping, trading, importation**
      - **Based on objective, scientific criteria**
      - **No less restrictive measure possible for obtaining the same result**
        - *Negative list would not have the same effect*





## History

- Court cases
  - Position of the Belgian Government
    - > legislation is justified under art. 38 (former art. 30) of the Treaty :

**The provisions of Articles 34 ... shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of ... the protection of health and life of humans, animals or plants... Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.**



## 10 History

- Court cases
  - **2007 : Sent to European Court of Justice for preliminary ruling (C-219/07)**
    - « positive list » has effect equivalent to quantitative restriction
    - Animal welfare is a legitimate objective in the public interest
    - Stricter rules may be adopted a.o. on the grounds of the health and life of animals
    - Restrictions on free movements may be justified for protection of the environment
      - **Invasive species**



# History

- Court cases
  - 2007 : Sent to European Court of Justice for preliminary ruling (C-219/07)
  - Limitations should be proportionate to legitimately pursued objectives
    - Does not mean that a MS can not be more restrictive than other MS
    - Negative list might not suffice
      - *Keeping allowed if not listed, even without scientific assessment to guarantee that keeping entails no risk to the animal*
    - General provisions set out in the law are objectively justified and proportionate



## History

- Court cases
  - 2007 : Sent to European Court of Justice for preliminary ruling (C-219/07)
  - Conditions to be satisfied :
    - **List must be based on objective, non-discriminatory criteria**
    - **Procedure for adding new species to the list**
      - *Readily accessible*
      - *Completed within reasonable time*
      - *Refusal only after full assessment and on scientific basis*  
*no / inconclusive data : refusal allowed*
    - *Refusal must be open to challenge before the courts*



# History

- Court cases
  - **9/3/2009 : Annulment of the Royal Decree by the Council of State because of lack of procedure to add species to the list**



# History

- Solution
  - **16/7/2009 : new Royal Decree**
    - Same list of species
    - Same licensing procedure
    - Added : procedure for adding species to the list
      - Extensive [form](#)
  - New court cases
    - 24/5/2012 : Rejected by the Council of State



## In practice

- Very active trade in the period between annulment of old and publication of new royal decree
- There still are « illegal » animals being kept and traded
- But :
  - No « illegal » animals in pet shops -> no impulsive buys
  - Very heavy « social control »
    - Illegally kept animals are often quickly reported
    - Illegal advertisements on the internet, ... are very quickly reported
  - Less « illegal » animals in animal shelters

