

The Positive List

Implementation and
experiences
in Belgium

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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

What?

Animal Welfare Law

- General derogation:
 - Vets for animals in their care
 - Animal shelters
 - Animal traders:
 - For a short period (transit)
 - Written order
 - Circuses
 - Prohibition to advertise non listed species

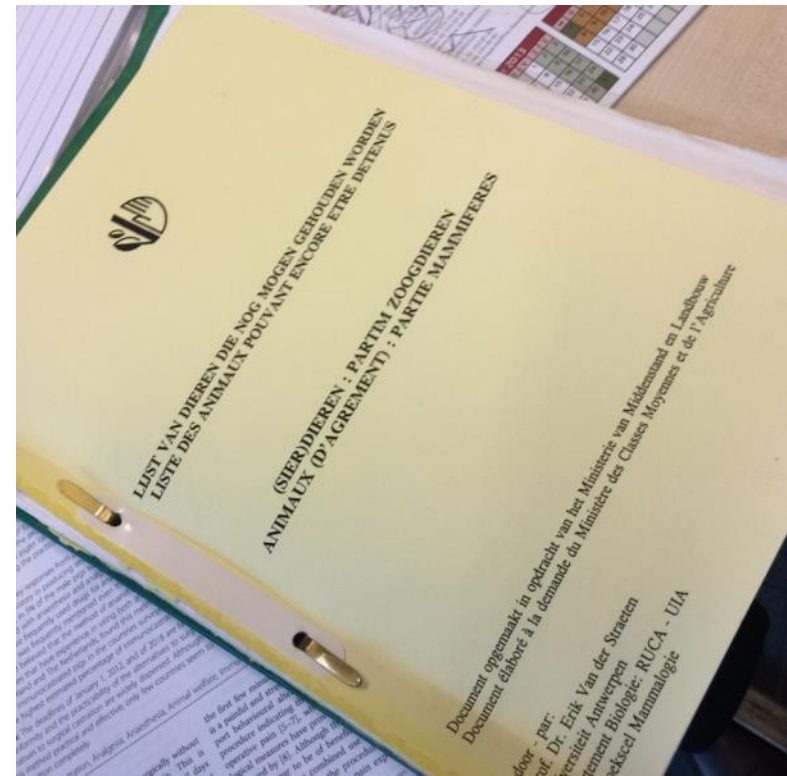


"COULDN'T YOU PEOPLE HAVE A DOG OR A CAT FOR A PET?"

Who? An expert drafting group

Working group of the Animal Welfare Council

- All parties represented
 - Scientific experts
 - Animal protection organisations
 - Animal breeders and traders
 - Animal keepers



How? The criteria

- 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



Legislation

2001: Royal Decree fixing a list of 42 mammal species

- Non listed species: only allowed if “before-ban”
- 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

Legal challenges: the procedure

- Council of State
 - 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.”



Legal challenges: the defence

- Position of the Belgian Government
 - 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

Legal challenges: the defence

- 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.

Legal challenges: the judgement



- 2007: Sent to European Court of Justice for preliminary ruling (C-219/07)
 - 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

Legal challenges: the judgement

- Limitations should be proportionate to legitimately pursued objectives
 - Negative list might not suffice
 - General provisions set out in the law are objectively justified and proportionate
- 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

The verdict

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



42 species or more?



- No massive demands
 - Some demands to add the African Hedgehog (*Atelerix albiventris*)
 - rejected on procedural grounds
 - Actually discussions on hybrids like Bengal and Savannah (cats), Saarloos and Tsjech (dogs)



<i>Atelerix albiventris</i>	Egel	21/01/2016	Negatief
<i>Macaca mulatta</i>	Aap	8/02/2016	Negatief
<i>Atelerix albiventris</i>	Egel	2/04/2014	Negatief
<i>Saimiri boliviensis</i>	Aap	6/11/2013	Negatief
<i>Atelerix albiventris</i>	Egel	29/08/2013	Negatief
<i>Equus quagga</i>	Zebra	7/02/2012	Negatief
Serval		18/02/2009	Negatief
<i>Calloscurus prevosti</i>	Eekhoorn	16/04/2007	Negatief
<i>Hystrix cristata</i>	Stekelvarken	9/10/2006	Negatief
<i>Camelus Bactrianus</i>	Kameel	10/08/2016	Positief
<i>Lemniscomys barbarus</i>	Muis	26/10/2006	Positief
<i>Rangifer Tarandus</i>	Rendier	13/12/2007	Positief
Savannah	Kat	24/10/2016	
Bengaal	Kat	18/02/2016	

Toevoegen aan de lijst			
Naam	Diersoort	Aanvraagdatum	Advies
<i>Atelerix albiventris</i>		5/05/2014	Negatief
<i>Petaurus breviceps</i>		5/05/2014	Negatief

Enforcement - implementation

- Philosophy =
 - A starting point (milestone) in legislation
 - A change in mentality
 - Effective after several (ten) years
- In practice =
 - Simple list → simple enforcement
 - The petshops (now the internet)
 - Not from door to door
 - Complaints (neighbours/ local police)
 - Supported by ban on advertisements
 - Confiscation (and press release)



Conclusions

- The sooner the better, the shorter the list
- Scientific and objective approach
- Procedure to add species
- No legal objections
- Enforcement is easy (depending on the list!)
- Change in mentality (no offer → no temptation)



**Thank you
for your
attention**

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