

## **Preliminary draft Ordinance on the Brussels Animal Welfare Code**

**Article 1.3.** § 1. This Code applies to vertebrate animals.

§ 2. It shall also apply to the following invertebrate animals:

- Cephalopods;
- Marine decapod crustaceans.

The Government may supplement this list and specify, where appropriate, the provisions of the Code applicable to them. This list shall be drawn up and amended on the basis of existing scientific knowledge, following the advice of the Animal Welfare Council, in accordance with the procedures laid down by the Government.

§ 3. The following provisions of this Code shall apply to invertebrate animals which are not referred to in § 2:

- Article 1.4 in the case of acts of cruelty;
- Articles 2.3 to 2.6 when the animals are kept for human companionship;
- Article 2.9;
- Article 3.1.

### **Section 3 – Definitions**

**Article 1.5.** For the purposes of this Code and its implementing orders, the following definitions shall apply:

(4) adoption: an act whereby a shelter transfers the custody of an animal to a person, excluding a foster family, called the adopter, whether or not this includes the transfer of ownership of the animal;

(5) pet: an animal kept or intended to be kept by a human being principally in order to keep him company or for other services rendered to him, excluding production animals;

(6) production animal: agricultural domestic animal and any other animal reared for production in the course of an agricultural or forestry activity, including an animal for the production of meat, eggs, milk, wool, feathers or hides;

(7) domestic animal: animal born and bred in captivity, whose genetic composition has been modified by humans through selection;

(8) exotic animal: any living specimen of a species, subspecies or lower-order taxon of animals, plants, fungi or micro-organisms introduced outside its natural range, including any part, gamete, seed, egg or propagule of that species, and any hybrid or variety or breed likely to survive and subsequently reproduce;

(9) fur animal: animal bred mainly for the purpose of killing it for its fur;

(10) wild animal: any animal that is not a domestic animal;

(12) animal bar: HoReCa establishment housing animals in order to be able to interact with

customers, whether or not the animals are offered for adoption;

(14) equidae-drawn carriage: vehicle driven by one or more equidae used for tourist, commercial, educational or recreational purposes;

(15) carousel: an activity in which equidae which may be ridden by the public or guests follow a circular route usually carried out on a mobile track at public or private gatherings, excluding the activity of equestrian centres;

(16) dog training centre: establishment where the person in charge of a dog can educate and socialise the dog under the guidance of a dog trainer;

(17) equestrian centre: establishment whose purpose is the promotion of equestrian sport, the development of teaching, learning and all activities related to horse riding;

(18) circus: mobile or non-mobile establishment in which animals are kept and present performances and activities for the amusement of the public, for which they are stimulated by a coach or trainer, with the exception of a zoological garden;

(20) shock collar: dog or cat collar with an electrical device that causes electric shocks that can be activated manually or automatically in order to avoid barking, running away or for education or training purposes;

(21) choke collar: dog collar, with or without tips facing the inside of the neck, whether or not incorporated into a leash, the two ends of which end with a ring and are assembled in such a way as to tighten around the neck of the animal by the principle of the slip knot;

(22) marketing: actions, whether or not they are classified as an act of trade, aimed at:

- a) offering for sale;
- b) keeping, acquiring or displaying for sale;
- c) exchanging;
- d) selling;
- e) transferring for consideration;

(23) animal competition: an event in which animals are evaluated and classified in a competitive context on the basis of their appearance, behaviour, strength and/or agility;

(24) marine decapod crustacean: decapod crustaceans of the suborder Pleocyemata, excluding Caridea and Stenopodidea;

(27) pet breeding facility: an establishment in which pets are kept for breeding, and in which animals are marketed or donated;

(28) business premises: an establishment, whether or not accessible to the public, where non-food-producing animals are kept for the purpose of marketing or donating them, excluding establishments selling only invertebrates;

(31) animal exhibition: a gathering of animals organised, principally, with a view to judging their qualities, comparing them or presenting them for educational purposes;

(32) travelling exhibition: mobile establishment in which animals are exhibited;

(34) pedagogical farm: establishment dedicated to keeping animals for educational purposes which organises physical interactions between the public and animals, including feeding animals;

(35) animal sitting facility: establishment where animals, entrusted by the person in charge of them, are cared for and housed for remuneration for a period not exceeding 24 hours, excluding animal boarding facilities and the activity of animal sitter;

(36) animal sitter: activity consisting, for remuneration, of caring for animals on behalf of the person usually in charge of them by walking, feeding or caring for them at a place designated by the usual person in charge, excluding animal boarding and sitting facilities;

(37) force-feed: forcibly administer food or beverages;

(38) manager of an establishment: natural or legal person legally responsible for the establishment, holder of the approval;

(39) animal market: officially recognised place where animals are gathered for the purpose of marketing them;

(42) zoological garden: a publicly accessible facility where at least live exotic animals are kept and exhibited, including animal parks, safari parks, aquariums and specialised collections, but excluding circuses, travelling exhibitions and business premises for animals or other types of establishments defined by the Government;

(43) boarding facility: establishment where animals, entrusted by the person in charge of them, are cared for and housed for a limited period of more than 24 hours and for remuneration, excluding animal sitting facilities and animal sitting activities;

(44) promenade: an activity in which one or more animals may be ridden by the public at fairgrounds, markets, car boot sales, flea markets, *kermesses*, village parties, festivals and fairs;

(45) animal shelter: public or non-public establishment, which has adequate facilities to provide necessary shelter and care for stray, lost, abandoned, surrendered, neglected, seized or confiscated domestic animals, including establishments which work with foster families;

(46) person in charge of an animal: any person, owner or keeper of an animal, who usually exercises direct control or supervision over it;

(47) specialised magazine or specialised website: a magazine or website whose advertisements relate exclusively to the marketing and donation of animals or goods and services directly related to it;

(48) transport: movements of animals carried out using one or more means of transport and associated operations, including loading, unloading, transfer and rest, until the animals have been unloaded at their destination;

## CHAPTER II: KEEPING ANIMALS

### Section 1 – General principles

**Article 2.1.** § 1. It shall be prohibited to keep:

- (1) a cetacean or a pinniped;
- (2) animals for the exclusive or principal purposes of fur production;
- (3) animals for the production of goose or duck foie gras resulting from force-feeding or by means of another technique the list of which is determined by the Government;
- (4) an amphibian;
- (5) a wild animal unless it is a stray cat.

By way of derogation from paragraph 1, such animals may be kept:

- (1) in animal shelters or by a veterinarian for the purpose of providing necessary care;
- (2) for transport to an animal shelter or to a veterinarian;
- (3) in the cases and under the conditions laid down in the Ordinance of 1 March 2012 on nature conservation and legislation on the management of invasive alien species.

§ 2. It is prohibited to keep animals not belonging to the species or categories of animals mentioned on a list drawn up by the Government. This list shall be drawn up without prejudice to the prohibition regime laid down in § 1 and to the legislation on endangered species.

By way of derogation from paragraph 1, animals of species or categories not included in the list drawn up by the Government may be kept:

- (1) by an individual:
  - a) where the animals are kept before the date of entry into force of the relevant list; or
  - b) approved on the advice of the Commission referred to in Article 11.3;
  - c) for transport to a veterinary practice, animal shelter or establishment authorised to keep them;
- (2) by a veterinarian, for animals temporarily entrusted for the purpose of receiving care;
- (3) in a shelter or foster family, in the case of animals:
  - a) seized and placed in the shelter or foster family in accordance with Article 13.6; or
  - lost or abandoned in so far as they are animals covered by the approval of the animal shelter;
- (4) in kennels or police premises in case of emergency care.

The Government shall lay down the procedure and conditions for the application of paragraph 2(2).

A fee shall be payable for the application for approval referred to in paragraph 1(2)(b), in accordance with the tariff set by the Government.

§ 3. Without prejudice to the derogations provided for in § 2, the Government may prohibit certain natural or legal persons listed in § 2 from keeping animals of other species or categories designated by it.

**Article 2.2.** § 1. It is prohibited to keep an animal without the keeping permit issued by the Government.

§ 2. The Government shall determine the terms and conditions under which the keeping permit is granted, suspended, withdrawn and returned, depending on the species, the categories or the number relating to the application for obtaining and returning the permit and the arrangements for collection.

A keeping permit may only be granted to a person who has reached the age of majority and who is not subject to a protective measure referred to in Title XI of Book I of the Civil Code.

§ 3. Brussels Environment keeps a register of authorisations and prohibitions of keeping, for the purpose of sharing judicial or administrative decisions authorising or prohibiting the keeping of animals. For part or all of this task, Brussels Environment may call on a service provider.

The purpose of the register is to enable the persons referred to in paragraph 3 to share their knowledge and to ensure the effectiveness of the enforcement policy on animal welfare by enabling appropriate measures to be taken in relation to animals which cannot be kept under this Code.

The register shall comprise:

- (1) administrative and judicial decisions prohibiting keeping;
- (2) administrative and judicial decisions limiting the number of animals that may be kept;
- (3) administrative and judicial decisions withdrawing a keeping authorisation such as a keeping permit or approval relating to the keeping of an animal not included in the list of animals authorised for keeping.

The register shall be kept in electronic format and shall be accessible only to the following persons:

- (1) the supervisory officers designated in accordance with Article 5(1) and (4) of the Inspection Code;
- (2) members of the operational framework of the local and federal police;
- (3) the official in charge of Brussels Environment;
- (4) the magistrates of the Public Prosecutor's Office.

The Government may make the register accessible to persons providing administrative support for the persons referred to in paragraph 2 in accordance with the terms and conditions it lays down.

Brussels Environment is responsible for the processing of data registered in the register. As such, it manages the register and collects the relevant data from the reference sources that have it in the course of their activities. The reference sources are:

- (1) the official in charge of Brussels Environment;
- (2) the Public Service of Wallonia Agriculture, Natural Resources and the Environment;
- (3) the Omgeving Department of the Flemish Region;
- (4) the public prosecutors.

Each reference source shall communicate to Brussels Environment the decisions it holds in accordance with the terms and conditions laid down in a protocol concluded between Brussels Environment and the reference source.

Brussels Environment shall keep a register of consultations containing at least the following information: the identification of the user who has accessed the register, the data consulted, the manner in which it was consulted, the date and time of the consultation and the reason for the consultation.

The person concerned by the decision authorising or prohibiting keeping shall be informed of the entry of the decision in the register under the conditions and in accordance with the procedures laid down by the Government. It shall also lay down the procedures for access to the information contained in the register by the person subject to registration. It shall also determine the procedures for exercising the right of rectification.

Decisions shall be deleted from this register ten years from the day following the day on which the decision of the courts or the official in charge of Brussels Environment is deemed to be enforced.

## Section 2 – Conditions of keeping and accommodation

**Article 2.3.** § 1. Any person who owns, care for or must care for an animal shall take the necessary measures to provide the animal with food, care and housing appropriate to its nature, physiological and ethological needs, state of health and degree of development, adaptation or domestication with regard to its physical and mental well-being.

The lighting, temperature, humidity, ventilation, hygrometry and other ambient conditions of the animal's housing shall be consistent with the animal's physiological and ethological needs.

The person in charge of the animal responds to the animal's need for activity in a reasonable manner by providing the animal with appropriate exercise opportunities for its species, breed, state of health and behaviour.

§ 2. The Government shall, after consulting the Animal Welfare Council, lay down minimum standards of keeping as well as additional rules on feeding, accommodation and care, depending on the species or categories of animals.

§ 3. In the absence of minimum standards and additional rules laid down pursuant to § 2, the fact sheets published on this subject by Brussels Environment may serve as a reference for the application of § 1.

## Section 3 – Identification and registration of pets

**Article 2.7.** § 1. Any pet animal shall be identified and registered under the conditions and in accordance with the procedures laid down by the Government according to the species or category of animals concerned. It shall determine the tariff and the arrangements for collecting the fee for the identification and registration of the person responsible for the animal.

§ 2. In addition to the fee referred to in § 1, a contribution to combat the abandonment of animals is charged to the person in charge of the animal. For dogs and cats, the amount of this contribution is:

(1) EUR 4 per dog and EUR 1 per cat when the person carrying out the identification and registration is an individual;

(2) EUR 16 per dog and EUR 5 per cat when the person carrying out the identification and registration has an approval within the meaning of Article 2.17.

The Government shall lay down the arrangements for collecting this contribution.

For other pets, the amount of this contribution shall be:

(1) EUR 5 for small subjects;

(2) EUR 15 for large subjects.

The Government shall determine the list of small and large subjects and the arrangements for collecting of this contribution.

§ 3. The contribution referred to in paragraph 2 shall be borne by the person carrying out the identification and registration. This contribution shall be allocated to the Animal Welfare Budgetary Fund referred to in Chapter XII.

Shelters and foster families are exempt from payment of the contribution.

#### Section 6 – Structure of establishments and activities involving animals

**Article 2.17.** § 1. In order to operate an establishment and carry out the activities listed below, the Government shall require prior approval to be obtained by:

(1) pet breeding facility;

(2) animal boarding facility;

(3) animal shelter;

(4) animal sitting facility;

(5) pedagogical farm;

(6) animal sitter;

(7) slaughterhouse;

(8) equidae-drawn carriage;

(9) equestrian centre;

(10) animal bar;

(11) business premises;

(12) dog training centre

(13) animal mediation.

For establishments or activities other than those referred to in paragraph 1, and for certain types of limited-capacity establishment, the Government may:

(1) supplement the list referred to in paragraph 1;

(2) replace the need for an approval with an obligation to register in accordance with the procedure and the conditions it determines.

The list of establishments approved or subject to registration under this paragraph shall be published on the Brussels Environment portal and updated regularly.

§ 2. The Government shall lay down the conditions and procedures for granting, maintaining, renewing, suspending and withdrawing the approval and registration referred to in paragraph 1, depending on the nature of the establishment or activity concerned, the animal species kept and their number.

The Government may also impose competency requirements on persons who keep and care for animals.

§ 3. The Government shall set the amount of the fee relating to the application for approval or its renewal and may exempt the shelters and animal interest associations referred to in Article 2.21.

§ 4. It is prohibited to operate a zoological garden.

**Article 2.18.** § 1. The Government may, at any time, suspend or withdraw the approval or registration referred to in Article 2.17 in the event of non-compliance with the conditions of approval or in the event of an infringement of this Code or its implementing orders. In this context, it can clarify the fate of animals.

The withdrawal referred to in paragraph 1 shall entail, for the owner and managers of the establishment, those responsible for the welfare or supervision of the animals, as well as those responsible for the offence referred to in paragraph 1, a prohibition on directly or indirectly applying for an approval or registration referred to in Article 2.17 for a period of one month to two years. Where appropriate, the withdrawal decision shall specifically designate the persons concerned by the withdrawal.

The persons concerned may request the lifting of the above-mentioned prohibition provided that they demonstrate their ability to properly manage an approved establishment and knowledge of the physiological and ethological needs of the animals concerned.

The Government may specify the terms and conditions under which such lifting may be granted. These conditions concern, in particular, the training to be undertaken, the imposition of a probationary period and the absence of a subsequent conviction for certain



infringements of this Code.

In addition, such persons may not, during the period in question, directly or indirectly manage an establishment referred to in Article 2.17 or exercise direct or indirect supervision of the animals. The withdrawal decision shall specify the list of activities concerned.

§ 2. In the event of withdrawal of the approval, the manager of the establishment shall communicate to Brussels Environment, no later than 15 days before the withdrawal enters into force, a plan for the destination of the animals of the approved establishment. The plan shall be approved by Brussels Environment if the measures envisaged are credible and in line with the interests of the animals concerned.

In the absence of a plan approved upon the entry into force of the withdrawal of the approval or in the event of non-compliance with this plan, ownership of the animals shall be automatically transferred to the shelters designated by Brussels Environment. In this case, Brussels Environment may carry out the transfer of the animals to the shelter concerned, at the expense of the manager of the establishment.

§ 3. The obligations referred to in paragraph 2 shall also be imposed in the event of bankruptcy or cessation of business.

**Article 2.19.** § 1. It shall be prohibited to use the name ‘animal shelter’ without having the approval referred to in Article 2.17.

§ 2. Any animal shelter shall submit to Brussels Environment, using the template available on its website, by 31 March at the latest, an annual activity report containing at least statistics on the number of animals accommodated, the number of adoptions, the number of killings carried out and the number of foster families.

§ 3. Within the limits of the budget appropriations available, the Government shall grant an annual subsidy to approved animal shelters, in accordance with Article 2.17, which request it.

The Government shall determine the terms and conditions for granting subsidies, the eligible expenses, as well as the arrangements for the specific liquidation, monitoring and withdrawal of subsidies.

**Article 2.20.** Shelters may call on foster families as part of carrying out their tasks. They are responsible for these foster families, which they shall undertake to supervise.

The Government shall lay down the conditions for the accommodation of animals within foster families, their number and the arrangements for collaboration with the shelters. It may require the establishment of a register and set the minimum content of the agreement concluded between the shelter and the foster family.

**Article 2.21.** § 1. Any person acting as an intermediary for the placement of an animal and who does not need to have an animal shelter approval:

(1) shall ensure that the future person in charge of the animal is authorised to keep the animal concerned;

(2) shall ensure that the transferee can offer the animal appropriate conditions of keeping in accordance with Articles 2.3 to 2.6 of this Code;  
(3) shall inform the future person in charge of the animal of the identification and sterilisation obligations provided for in Articles 2.7 and 2.8 of this Code.

§ 2. The Government may lay down other conditions for the exercise of the activity referred to in § 1. It may also determine the minimum content of the transfer contract.

**Article 2.22.** § 1. A pet breeding facility may only market or donate animals derived from its own breeding facility.

The Government may impose additional conditions on this prohibition.

§ 2. By way of derogation from § 1(1), the Government shall determine the cases and conditions under which breeding animals may be marketed or donated.

**Article 2.23.** § 1. The selection of breeding animals in dogs and cats must take into account their anatomical, physiological and behavioural characteristics so that the well-being, including the health of the parent animal and its offspring, is not compromised by breeding.

Breeding with breeding animals in dogs and cats with a hereditary condition which cannot be remedied by judicious mating combinations between breeding animals within the breed population is prohibited, in accordance with the procedures laid down by the Government.

§ 2. The Government can organise the breeding of dogs and cats in order to reduce hereditary diseases and promote genetic diversity.

The Government may lay down conditions for:

- (1) keeping records or databases;
- (2) carrying out examinations of genetic predisposition for a certain characteristic or inherited diseases;
- (3) drawing up and issuing certificates of lineage;
- (4) determining the conditions for the recognition of associations active in the field of breeding and the procedure for such recognition;
- (5) registering breeding animals in registers or databases;
- (6) allowing breeding animals to breed.

### CHAPTER III: TRADE

#### Section 1 – Prohibition of marketing and ancillary operations in public and similar places

**Article 3.1.** § 1. The Government may prohibit the marketing of animals without the approval referred to in Article 2.17.

§ 2. The Government may prohibit or specify conditions for the marketing of animals as well as operations directed towards the donation and adoption of animals.

It may also set the minimum content of contracts for the sale, donation and adoption of animals.

**Article 3.2.** § 1. It shall be prohibited to market live animals in the public space as well as in markets, fairs, trade shows, animal exhibitions and in similar circumstances.

The prohibition referred to in paragraph 1 shall also extend to transactions involving the donation of animals or their adoption.

§ 2. By way of derogation from § 1, the Government may authorise the marketing of animals, excluding dogs and cats, in animal exhibitions in accordance with the terms and conditions it determines.

§ 3. It is prohibited to display live animals in markets.

**Article 3.3.** § 1. It is prohibited to market a dog or cat in a business premises or in its outbuildings.

The prohibition referred to in paragraph 1 shall also extend to transactions involving the donation of dogs or cats and their adoption.

§ 2. It is prohibited to display a live animal in the window displays of establishments.

**Article 3.4.** § 1. It shall be prohibited:

(1) to display sales, discounts or rebates, in any form whatsoever, for the purpose of marketing, donating or adopting an animal;

(2) to engage in doorstep selling for the purpose of marketing, donating or adopting an animal;

(3) to offer an animal in the form of a tie-in sale, within the meaning of Book VI of the Code of Economic Law;

(4) to offer or award animals as prizes, rewards or gifts in competitions, lotteries, bets or other similar circumstances;

(5) to enter into a credit agreement within the meaning of Title 4 of Book VII of the Code of Economic Law for the purpose of acquiring a pet;

(6) to market or donate an animal adopted in an animal shelter;

(7) to market or donate an animal remotely within the meaning of Book VI of the Code of Economic Law;

(8) to market or import an animal that has undergone a prohibited intervention in accordance with Article 7.1. It is also prohibited to donate that animal unless it is being transferred to an animal shelter;

(9) to market or donate a blinded bird;

(10) to market or donate an artificially dyed or coloured animal.

The Government may prohibit or lay down conditions relating to the sale of live animals for consumption.

§ 2. It shall be prohibited to market, transfer free of charge or place an animal for adoption:

(1) to a minor or a person subject to a protective measure referred to in Title XI of Book I of the Civil Code;

(2) that has not been identified or registered in accordance with the legal and regulatory requirements;

(3) that has been introduced or is being kept illegally in the territory. The Government shall lay down the procedure for taking care of these animals;

(4) that is wild unless a derogation is granted in accordance with Article 83 of the Ordinance of 1 March 2012 on nature conservation;

(5) in pet breeding facilities and business premises, without providing a document attesting to its age and origin. The government may lay down a model certificate;

(6) to a person who does not have the keeping permit required in accordance with Article 2.2 or who has been convicted, criminally or administratively, of a prohibition on keeping.

**Article 3.5.** § 1. The marketing, keeping and use of products which harm or are detrimental to the welfare of animals shall be prohibited, namely:

(1) shock collars;

(2) choke collars and collars with protruding parts in the interior;

(3) glue traps for vertebrates.

§ 2. The Government may, on the advice of the Brussels Animal Welfare Council, prohibit or restrict the marketing, possession and use of other products where:

(1) they are likely to have a negative impact on animal welfare and

(2) they are specifically designed for use on animals.

§ 3. By way of derogation from § 1, the Government shall introduce a temporary derogation when these products are used on dogs by the Civil Protection, the Local and Federal Police, Customs and Defence. It shall determine the terms and conditions under which such derogation may be obtained, suspended and withdrawn.

## Section 2 – Framework for advertising

**Article 3.6.** Articles 3.7 to 3.10 shall apply to advertising, including advertisements, regardless of the medium, issued by or to a person established in the territory of the

Brussels-Capital Region, with a view to marketing, donating or placing an animal for adoption.

**Article 3.7.** The following is prohibited:

- (1) advertising of an animal whose keeping is prohibited by or under Article 2.1;
- (2) advertising relating to activities involving animals the list of which is drawn up by the Government. This list applies only to activities taking place in a country or Region that does not have animal protection legislation at least equivalent to the provisions of this Code.

**Article 3.8.** § 1. When it concerns an animal whose keeping is authorised, advertising is permitted only in a specialised magazine or on a specialised website recognised as specialised by the Government in accordance with the procedure it lays down.

Advertising shall be prohibited on social networks and similar media, except in the case of an establishment approved in accordance with Article 2.17.

The Government may impose measures on the owners, managers or publishers of magazines and websites to limit or monitor the violation of this prohibition.

The following specialised magazines or websites shall be exempt from the recognition provided for in paragraph 1(1):

- (1) those published by or for Brussels Environment;
- (2) those published by an approved pet breeder intended to market or donate animals born within his breeding facility;
- (3) those aimed at the marketing or donation of equidae;
- (4) those relating exclusively to the marketing or donation of animals authorised for keeping for which no list is drawn up by the Government pursuant to Article 2.1;
- (5) those published by veterinarians for a professional audience;
- (6) those published by associations promoting pedigree dogs and cats.

In addition to advertisements authorised in accordance with paragraph 1:

- (1) advertisements for the purpose of marketing or donation of production animals are authorised in a magazine or on a website intended for the agricultural sector;
- (2) advertisements for the purpose of marketing the invertebrates referred to in Article 1.3(2) for consumption are authorised.

§ 2. By way of derogation from § 1, animal shelters are allowed to publish advertisements for the purpose of placing animals for adoption outside a magazine or a specialised website.

The Government may determine other cases in which advertising intended to market or donate an animal is authorised outside a magazine or a specialised website.

**Article 3.9.** Any advertising aimed at the marketing, donation or adoption of an animal shall contain the information and particulars defined by the Government.

**Article 3.10.** § 1. Advertising, including the placement of advertisements, regardless of the medium, as well as any form of promotion of a product or practice prohibited by or under this Code is prohibited.

§ 2. The Government may, on the advice of the Brussels Animal Welfare Council, lay down conditions relating to any form of advertising or promotion of a product, practice or activity which is liable to harm the welfare of animals.

#### CHAPTER IV: ANIMAL TRANSPORT

**Article 4.1.** It is prohibited to transport or cause to be transported animals in such conditions as to be at risk of injury or suffering.

**Article 4.2.** § 1. It is prohibited to transport vertebrate animals when temperatures are below 5 °C and above 30 °C unless the compartment intended to transport the animals is equipped with air conditioning or a heating system to maintain adequate ventilation and an adequate temperature at all times within a range of 5 °C to 25 °C within the means of transport for all animals, whether the vehicle is moving or stationary.

Paragraph 1 shall not apply to:

- journeys to veterinary clinics or practices. It must be possible to provide proof of a non-emergency or emergency consultation at any time;
- the transport of an injured or abandoned species to a rehabilitation centre in accordance with the Ordinance of 1 March 2012 on nature conservation;
- journeys made by bicycle.

§ 2. The Government may lay down additional rules concerning temperatures below and above which animals may not be transported.

**Article 4.3.** § 1. It is prohibited to carry live walking decapods directly on ice or in iced water.

§ 2. It is prohibited to transport lobsters vertically.

**Article 4.4.** § 1. The Government may, with regard to animal transport in order to ensure the welfare of animals, prohibit or lay down the conditions relating to:

- (1) means of transport or parts thereof, its equipment and fittings and containers;
- (2) loading, conditions of keeping, and unloading of animals;
- (3) assembly centres, check points and places for rest and transfer;
- (4) accompaniment, food, water supply and animal care during their transport;
- (5) the age, weight, gestation and state of health of the animals;
- (6) transport, including the duration, distance and circumstances of the transport;
- (7) documents that must be kept up to date;

(8) the competence of drivers and drivers' assistants and personnel handling animals in assembly centres, check points or carriers, the organisation of training for such persons and the teachers who may provide such training;

(9) the organisation of examinations on the professional aptitude required of drivers and drivers' assistants. It determines the fee rate for participation in these examinations. These fees shall be levied by the training institutes which organise such examinations and are intended for them;

(10) the issuing, suspension and withdrawal of the certificate of competence of drivers and drivers' assistants.

§ 2. With regard to the matters regulated in paragraph 1, the Government may authorise the minister or his delegate to grant, in particular cases, derogations or waivers and impose obligations or restrictions on such derogations or waivers.

As regards § 1(10), no certificate of competence for the export of live vertebrate animals in the course of an economic activity may be issued in order to authorise the transport of such animals to third countries outside the European Union which do not have animal protection legislation at least equivalent to the provisions adopted by or under this Code.

§ 3. The Government shall lay down the tariff and rules for the payment of the fee for the granting of an authorisation to carriers and a certificate of approval for means of road transport within the meaning of Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97.

## CHAPTER V IMPORT, TRANSIT AND INTRODUCTION OF ANIMALS INTO THE TERRITORY OF THE BRUSSELS-CAPITAL REGION

**Article 5.1.** § 1. The Government may, with a view to ensuring the protection and welfare of animals, determine the conditions for the importation or transit of animals, without prejudice to the applicable legislation on nature conservation. These conditions relate to the species and number of animals, the age of the animals, the registration of importers and sellers, the conditions for issuing authorisations, the measures to be taken on the arrival of the animals, the care and accommodation of the animals and the principle of fees, their tariff and arrangements for collection.

§ 2. In order to comply with international treaties or European regulations, the Government may lay down the conditions and procedures under which a derogation from the provisions established under § 1 can be granted.

**Article 5.2.** It is prohibited to import an animal from abroad for adoption. The Government may lay down a derogation regime.

**Article 5.3.** It is prohibited to import an animal that has undergone a prohibited intervention within the meaning of Article 7.1 of this Code.

The Government may determine the cases in which importation is authorised by way of derogation from paragraph 1.

## CHAPTER IX. OTHER PROHIBITIONS

**Article 9.1.** It is prohibited to:

- (5) force-feed an animal except for veterinary reasons;
- (7) send an animal by post;
- (8) use dogs as traction animals;
- (9) dye or colour an animal or have an animal dyed or artificially coloured;
- (11) organise or participate in a race of equidae or a training in preparation for such a race if the race or training takes place on the public road. In other places, it is prohibited to organise or participate in a race of equidae or a training, if the race or training takes place wholly or mainly on a surface made of hard or inappropriate material;
- (12) rear animals with a view to involving them in an animal fight;
- (13) organise animal fights or shooting exercises on animals, to participate in them with one's animals or as a spectator, to lend one's assistance in any way or to organise or participate in betting on their results;
- (14) use an animal for the purposes of training, staging, advertising or similar purposes, where it may result in foreseeable or preventable pain, suffering or injury;
- (15) operate or organise attractions using equidae for public entertainment such as a carousel or promenade;
- (16) operate or organise a circus;
- (17) operate or organise an animal market;
- (20) market, promote directly or indirectly, reference the recording on the internet or disseminate free of charge any visual or audiovisual content constituting an infringement of Articles 1.4 and 9.1(2) of this Code unless it is a matter of denouncing the facts to the competent authority. The dissemination is authorised by the persons referred to in Article 13.1 for educational purposes;
- (22) use fireworks whose explosion noise exceeds 70 dB.

**Article 9.2.** The Government may prescribe measures to ensure the welfare of animals presented in animal exhibitions or used for training, advertising, staging, competitions, contests, demonstrations, fairs and similar purposes.

In the context of the events referred to in paragraph 1, the Government shall determine, as appropriate:

- (1) the rules imposed on organisers and their agents;
- (2) prohibited substances which are intended to influence the performance of animals or which are such as to prevent the screening of such substances.

**Article 13.4.** § 1. With a view to investigating and establishing infringements of Articles 2.17 to 2.22 of the Code and Chapter III of the same Code and their implementing orders, the persons referred to in Articles 13.1(2) and (3) and 13.2 of this Code and third parties mandated by Brussels Environment have the competence to approach any person, by any useful means, by presenting themselves as customers or potential customers, without having to communicate their position and the fact that the findings made on this occasion may be used for the exercise of supervision or control.

The persons referred to in § 1 who commit absolutely necessary offences in this context are exempt from punishment.

§ 2. This competence is used under the following conditions:



- (1) the natural or legal person or persons concerned who are the subject of the findings cannot be provoked within the meaning of Article 30 of the preliminary title of the Code of Criminal Procedure;
- (2) the persons referred to in paragraph 1 may, if they consider it appropriate, use a cover identity or refrain from revealing their identity;
- (3) all the actions carried out by the persons referred to in § 1 and their results shall be recorded in a report.

**Article 14.** By way of derogation from Article 2.1(1)(2), (3) of this Code, the keeping of amphibians remains authorised under the following conditions:

- (1) the amphibian was kept before the entry into force of this Code;
- (2) the person in charge of the animal has declared that he is in possession of the amphibian referred to in (1) in the year of the entry into force of this Code.

The Government shall determine the content of this declaration and the arrangements for making it.

## ANNEX

### COMMENTS ON THE ARTICLES

#### Article 1.3

This provision clarifies the Act of 14 August 1986 which referred to 'animals' without defining that concept, which left too much discretion to the courts in assessing whether the harm caused to certain animals, in this case invertebrates, was unlawful.

On the assumption that sensitivity or sentience is recognised for vertebrate animals, all the provisions of the Code are made applicable to them.

As far as invertebrates are concerned, in the light of current scientific knowledge, the code as a whole only applies to some of them. The invertebrates referred to in paragraph 2 are:

- cephalopods, i.e. octopuses and cuttlefish, for example;
- marine decapod crustaceans, i.e. lobsters, crabs and crayfish, for example.

As regards decapod crustaceans, a definition is inserted in Article 1.5 of the Code on the basis of the recommendations made by the Brussels Animal Welfare Council in its opinion of 24 June 2021.

Delegation is given to the Government to draw up an additional list of invertebrates to which the Code may be applied. When the Government draws up this list or subsequently amends it, it may decide to apply all or part of the Code to these species. It is also up to the Government to lay down the procedure and arrangements for setting up and amending this additional list. As this list is linked to the evolution of scientific knowledge, it involves the prior opinion of the Brussels Animal Welfare Council.

Finally, in paragraph 3, it is stated that a part of the Code, namely Article 1.4, is to be applied to other invertebrates, i.e. those not referred to in § 2 or in the list established by the Government, provided that acts of cruelty are involved. An act of cruelty is the behaviour by which a person knowingly and willingly harms the life or physical integrity of an animal. This type of act requires malicious intention (consciousness and the will to make the animal suffer) and the will to harm the animal. One example would be the keeper of a tarantula who would tear one or more legs from it.

Invertebrates that are kept or intended to be kept by a human for his companionship are also subject to Articles 2.3 to 2.6 of the Code. These Articles cover the conditions of keeping that must be offered to the animals. This does not therefore apply to invertebrates that unexpectedly enter the homes, but, for example, to 'exotic' invertebrates (tarantula, scorpion, etc.) which are purchased in pet stores. This does not apply to invertebrates kept for consumption (e.g. oysters, mussels). Articles 2.9 and 3.1 of the Code are also made applicable to them and concern, firstly, the prohibition on abandoning an animal and, secondly, the prohibition on the marketing of animals without the approval that would have been put in place by the Government. With regard to the prohibition on abandoning an animal, reference should be made to the definition in Article 1.5 (leaving an animal in any place with the intention of discarding it and without ensuring the direct transfer of responsibility) which implies wanting to discard the animal (e.g. the dog tied to a tree in the forest or in front of the gates of a shelter, the kitten placed in a trash can, etc.). It would therefore not be the case for the beekeeper who can leave his bees without direct supervision for several months, because he does not have the will to get rid of them, and these animals are also independent.

The application of these provisions is justified in the light of the necessary respect for life which permeates this Code and reflects the will of the population expressed through the 'Give Us Your Voice' survey conducted in 2021 and which aimed to collect citizens' requests for this Code.

It should be noted that the Brussels Zoological Gardens Commission has also made it clear that the ability of certain invertebrates kept and reared in captivity (spiders and some other arthropods) to experience suffering should not be overlooked. It even speaks of a certain level of sentience, which therefore justifies a minimum protection for them.

#### **Article 2.1**

This provision regulates the keeping of species by establishing in § 1 a list of species or categories of animals whose keeping is prohibited unless they are transported directly to a shelter or to a veterinarian who will provide the necessary care. The cases and conditions set out in the Ordinance of 1 March 2012 on nature conservation were also covered. These structures are therefore authorised to keep them.

Firstly, it concerns cetaceans and pinnipeds whose prohibition on keeping was originally the result of an Ordinance of 18 March 2021 which took into account the opinion of the Brussels Zoological Gardens Commission but also the high degree of intelligence of these animals whose captivity and exploitation in theme parks are strongly criticised.

It is also prohibited to keep animals for the exclusive or principal purposes of fur production. The purpose here is to maintain the prohibition introduced on the basis of the Ordinance of 11 May 2017 in order to prohibit the rearing of animals for their fur in view of the conditions of rearing which give rise to significant animal welfare problems.

At the request of the Brussels Animal Welfare Council, a prohibition on the keeping of animals for the production of foie gras by the force-feeding technique was inserted directly within this provision. Initially, it stems from an Ordinance of 27 July 2017 and is a priori aimed at geese and ducks. The Council also wishes to incorporate an emerging technique that would circumvent the prohibition on force-feeding by injecting bacteria into the livers of animals which would allow the development of the liver in as high proportions as via the force-feeding technique. Given the lack of scientific knowledge of this new technique, veterinary organisations are currently opposed to the introduction of this prohibition. Delegation is given to the Government in order to be able to establish the list of techniques for the production of foie gras which would be problematic for the welfare of the animals concerned, which could eventually cover this new technique.

The keeping of amphibians is then prohibited in principle in order to combat removal from the wild and the proliferation of these species in Brussels homes due to the bandwagon effect, which poses many problems with regard to the welfare of these animals, including increased risks of abandonment and inappropriate conditions of keeping. The keeping of these animals is also nonsensical in view of the alarming reports published on the preservation of species (including the

conclusions of the conference 'Dead or alive: towards a sustainable wildlife trade', held in 2019, and the conclusions of the International Union for Conservation of Nature of 2019 stating that there is a risk of extinction of 40 % of the species of amphibians). This prohibition is supported by the Brussels Animal Welfare Council even though two minority opinions have been issued. The Brussels Zoological Gardens Commission (now the Brussels Commission for Animals Authorised for Keeping) stated in its opinion that it considered that the establishment of a negative list (list of animals prohibited from keeping) accompanied by the prohibition on the keeping of wild animals would have been preferable. In addition to the fact that this method contravenes the principle of positive lists (admission of an exhaustive list of animals authorised for keeping), the continued keeping of amphibians by private individuals does not offer the appropriate guarantees for the welfare of such animals and poses a significant risk to the preservation of the species as explained above.

For similar reasons, the keeping of wild animals is expressly prohibited, excluding (stray) cats. The aim is to avoid any removal from the wild, since it is detrimental to the welfare of the animals concerned, which will in any event have to be subjected to inappropriate conditions of keeping. It is about the welfare of animals separated from their congener such as premature weaning, social disorganisation, etc. The cat, for its part, is not covered by this prohibition given the problem of the proliferation of stray cats (whose parents are often domestic animals) and the difficulty for them to survive, alone, in nature, given their origin. Many stray cats were not born in captivity and care (keeping) is necessary for socialisation in view of potential adoption.

Derogations are provided for in specific cases related to the need to ensure the protection of these animals (transport to a veterinarian or a shelter). The hypotheses referred to in the Ordinance of 1 March 2012 on nature conservation are also covered. This includes, for example, Article 68(2), which concerns, inter alia, the short distance movement of a protected species. It would also include Article 83 laying down a series of cases in which a derogation could be obtained. The aim is to avoid situations where wild animals in difficulty (stuck in a fence, weakened or on public roads) cannot be taken care of (by being placed directly in their natural environment or housed in a structure with appropriate authorisations).

§ 2 sets out the principle of so-called 'positive' lists, i.e. the establishment of lists of animals authorised for keeping. Currently, there is a list of mammals (Royal Decree of 16 July 2009 establishing the list of mammals not kept for production purposes that may be kept) and a list of reptiles (Government Order of the Brussels-Capital Region of 26 November 2020 laying down the list of reptiles that may be kept and the minimum standards for their keeping).

Such lists shall be drawn up without prejudice to other legislation which may have an impact on whether or not animals of the species concerned may be kept.

The second paragraph of this § 2 puts in place a derogation regime allowing a series of actors to keep species not included on these positive lists.

It primarily concerns individuals. Two hypotheses must be distinguished:

(1) an individual who keeps the animals before the entry into force of the list may continue to keep them. This derogation does not apply to the offspring of such animals. For the latter, an approval must be applied for.

(2) an individual who wishes to keep an animal not on the list must obtain prior approval, the procedure for which is determined by the Government. This situation could concern, for example, a person who wishes to acquire an animal but also a person who wishes to move to Brussels when he already owns that animal. The aim is to ensure that the applicant has sufficient knowledge and appropriate infrastructure to provide the appropriate conditions for keeping the animal concerned.

Veterinarians may also keep non-listed animals to the extent that they are provided with the appropriate care only. The same applies to shelters when confronted with stray, lost, abandoned or seized animals. However, the approval of the shelter must cover the keeping of this type of animal.

In order to avoid impulsive acquisitions and to avoid the proliferation of animals not included in the list, the derogation which was granted to business premises, under Article 3 *bis* of the Act of 14 August 1986, has been deleted.

Finally, the power left to the Government to prohibit a person covered by the derogation from keeping other species or categories of animals designated by it has been retained.

## **Article 2.2**

This Article establishes the principle of a keeping permit for animals authorised for keeping under Article 2.1. This is a strong citizen demand expressed as part of the 'Give Us Your Voice' survey. The regime differs from the rules applicable in the Walloon Region because its content must be determined by the Government according to the species concerned or by category of animals.

The purpose of this provision is, in the long run, to allow animals to be kept only by persons who have the knowledge and, where appropriate, sufficient capacity to provide the animals concerned with conditions of keeping in accordance with their physiological and ethological needs.

The aim is therefore not to grant a keeping permit to any person who has reached the age of majority, but rather to grant this permit to adults (not subject to special protective measures) who meet the conditions set by the Government, for example, undertaking training recognised by Brussels Environment or the passing of an examination.

The Government will also determine the procedure and conditions for the suspension, withdrawal and return of this keeping permit.

A register of authorisations and prohibitions of keeping is managed by Brussels Environment. Its objective is to centralise decisions on authorisation and prohibition on keeping. This includes, at this stage, keeping permits, approvals granted for the keeping of animals not on the positive lists, withdrawals of keeping permits and prohibitions of keeping. Any decision rendered by a court or administrative authority shall be included. This register is not made available to the public but to a limited list of persons, namely, regional and municipal officials responsible for surveillance, the police, the official in charge of Brussels Environment and the Public Prosecutor's Office. It may also extend to persons acting as administrative support for the exhaustive list of data subjects.

Delegation is given to the Government to lay down the procedures for access to the information in the register by the person concerned. The latter must, when acquiring an animal, demonstrate that he is indeed authorised to keep the animal concerned or that he has not been affected by a withdrawal of a permit, withdrawal of approval or a prohibition on keeping.

The information contained in the register will automatically be deleted within 10 years of the execution of the relevant judicial or administrative decision.

## **Article 2.3**

This Article reproduces Article 4 of the Act of 14 August 1986 and rewrites it in order to refine it and divide it into several Articles.

It is therefore necessary for this Article to impose on any person who keeps an animal (production, pet, or other) the obligation to provide sufficient food and water for it, housing that is comfortable and adapted to its lifestyle, but also the care that contributes to its physical and mental well-being. Veterinary visits are essential care for animal welfare. Since the animal is a living being endowed with sensitivity/sentience but also with its own interests and dignity, the person in charge of it is obliged to satisfy the animal's needs with regard to the species to which it belongs but also the specific needs related to the animal, as an individual (which are for example according to its character, temperament, age, gestation period, etc.).

The animal must be able to be active and meet its needs for exercise and socialisation.

Paragraph 3 requires any person keeping an animal to adequately meet these needs based not only on the species concerned but also on its specific behaviour, since any animal of the same species does not have the same needs. In the case of the dog, for example, the person in charge of it will have to take care to walk it every day and according to its individual exercise needs.

The Brussels Animal Welfare Council also supports these considerations in its opinion of 5 May 2023 by stressing that: 'Since each animal is an individual who can react differently from its congeners to certain environmental parameters, consideration should be given to, in addition to environmental parameters, animal parameters, e.g. physiological parameters (hormonal, immunological, etc.) and animal behaviour.' § 2 empowers the Government to lay down the minimum conditions for keeping animals but also additional rules on feeding, accommodation and care. These rules may be laid down according to the animal species or categories of animals. For example, the Government could lay down a set of rules on production animals or other pets, dogs or reptiles.

It should be noted that those rules may not derogate from the principles referred to in § 1 which means that production animals cannot be reared in cages. Indeed, § 1 results in a prohibition on factory (and/or cage) farming as it does not meet the physiological and ethological needs of the animal. This includes, for example, battery laying hens or sow gestation stalls.

A European citizens' initiative entitled 'End the Cage Age' currently carries such a request and has collected 1.4 million signatures from supporters in 28 Member States. A provision with similar effects was adopted in the Netherlands.

Finally, § 3 specifies that where the Government has not set minimum standards of keeping and/or additional rules pursuant to § 2, the fact sheets published by Brussels Environment may serve as a reference in the interpretation of the application of § 1. They will be able to guide citizens and persons responsible for criminal police tasks (e.g. surveillance and police officers) in the context of the detection of the offences in paragraph 1.

#### **Article 2.4**

The purpose of this provision is to prohibit all means of reducing the freedom of movement of an animal to the point of causing avoidable harm to its physical and/or mental integrity.

The 'avoidable' nature of the harm has been inserted in order to incorporate a certain form of proportionality into the action of the person responsible. Removing this term could mean that no reduction of freedom is possible any longer, since it could systematically involve, at the very least, mental suffering or stress.

The provision refers to the concept of living space necessary for animal welfare. The pet is usually kept in housing (apartment or house) or in facilities (farm and pasture, etc.). The interior of the housing/facilities then constitutes its living space. The question of tying up and confinement within this living space must comply with the conditions listed in this Article.

It is prohibited to tie up an animal continuously or in a way that exceeds what is necessary. However, temporary tying up to allow the animal to enjoy the outdoors, for example by means of a zip line system, is acceptable in terms of animal welfare. The Article aims to differentiate between ingenious solutions to ensure the safety of the animal and its need for movement from inappropriate behaviour aimed, for example, at chaining animals without regard to their welfare.

It then aims to prohibit the confinement of an animal in a restricted space continuously or beyond the necessary time. The notion of restricted space varies from animal to animal and refers to a space that does not meet the physiological and ethological needs of the animal. It is therefore not aimed at the house or apartment as a whole, as such. In its opinion of 29 March 2019 on minimum standards for the keeping of dogs, the Brussels Animal Welfare Council cites the example of a 'bench' cage as a restricted space by specifying that it must be adapted to the weight and size of the dog, the latter having to 'have enough space to be able to comfortably lie on its side (in *decubitus lateralis*), get up and turn around'. In an urban city such as Brussels, it is not uncommon

to see dogs on balconies or terraces. Although it cannot be the usual living space of the animal, keeping for a limited time may be justified exceptionally, provided that it can get up, lie down and turn around but also protect itself from adverse climatic conditions (high heat and prolonged exposure to the sun, rain, snow, wind, etc.).

The provision also provides that it is prohibited to usually keep an animal in a vehicle. It is a question of prohibiting making the vehicle the usual living space of the animal, whether the person in charge is present with the animal in the vehicle or not. Vehicles such as cars and vans do not meet the minimum keeping requirements for any type of animal. However, this prohibition does not apply to residential caravans. For this specific type of keeping, reference is made to the general conditions set out in Article 2.3 and the Brussels Environment fact sheets.

A prohibition on keeping a dog or cat in a cellar is also specifically postulated. The cellar does not constitute an adequate place to live for these animals and does not meet the general conditions of keeping prescribed by Article 2.3. Nevertheless, it seems important and useful to refer specifically to this situation, since the authorities responsible for the investigation of offences found this practice during checks even though keeping in a cellar can already be regarded as prohibited under Article 4 of the Act of 14 August 1986.

The concept of 'free' space is important since it means that the elements of the 'housing' cannot be found in exactly the same place (eating, drinking, resting, defecating, etc.).

The ideal way of life for mammals is free living in the housing or facilities. Life in a cage is therefore not suitable for most of them. Restricted space is therefore defined differently according to the specific needs of each species. Dogs, cats and rabbits, for example, must be able to leave their pens and move freely in the house or apartment. In contrast, fish live in a habitat confined to the aquarium space.

In its opinion of 5 May 2023, the Brussels Animal Welfare Council clarified what should be understood by pain via the following reference: 'An unpleasant sensory and emotional experience associated with or resembling that associated with actual or potential tissue injury.'

'This definition is supplemented by the addition of six key notes:

- Pain is always a personal experience that is influenced to varying degrees by biological, psychological and social factors.
- Pain and nociception are different phenomena. Pain cannot be inferred solely from the activity of sensory neurons.

Through their life experiences, individuals learn the concept of pain.

- A person's report on an experience of pain must be respected.
- Although pain usually plays an adaptive role, it can have negative effects on functioning and social and psychological well-being.
- Verbal description is just one of many behaviours to express pain; inability to communicate does not exclude the possibility of a human being or non-human animal experiencing pain.

\*Taken from Raja, S. N., Carr, D. B., Cohen, M., Finnerup, N. B., Flor, H., Gibson, S., etc. & Vader, K. (2020). The revised IASP definition of pain: Concepts, challenges, and compromises. *Pain*, 161(9).'

The Brussels Animal Welfare Council requested that a specific prohibition be included as regards the prohibition on the installation or putting into service of cages for the rearing of laying hens. This request is particularly echoed at the European level as a European citizens' initiative has garnered the support of 1 397 113 citizens in order to end the farming of production animals in cages. In so far as it follows from Articles 2.3 et seq. of the Code that the rearing of animals in cages is, as a matter of principle, inappropriate in view of the necessary respect for physiological and ethological needs, it is not necessary to include this prohibition specifically. On the contrary, it could give the impression that it is permissible to rear production animals under conditions which do not comply with the requirements laid down in Article 2.3 et seq. The same reasoning can therefore be applied to pig keeping, for example, which cannot satisfy, in the light of this Code, the minimum keeping standards laid down by Directive 2008/120 of 18 December 2008 laying down minimum standards for the protection of pigs and the Royal Decree of 15 May 2003.

The Article also applies to any animal living in the wild whether it belongs to an indigenous species

(protected or not) or an invasive (alien) species. These animals, if they are not a priori intended to be kept, could, for example, be the subject of capture operations (the Ordinance on Nature Conservation provides for certain derogations). In this context, the keeping of these animals must comply with the provisions of this Article.

The Government may lay down additional, more specific and precise rules or prohibit certain methods restricting the freedom of movement of an animal, depending on the experience gained and the evolution of scientific knowledge in the field. In accordance with the principle of non-regression laid down in Article 1.2, such standards must not imply a setback in the protection of animals.

#### **Article 2.7**

This provision reproduces the former Article 7 of the Act of 14 August 1986 on the question of the identification and registration of animals in an official database. The aim is to allow the person in charge of the animal to find it and discourage abandonment, but also to ensure the control of transfers of responsibility in the context of the marketing, donation or adoption of animals.

Previously, only dogs and cats were covered by this obligation. In view of the growing popularity of 'new pets' (NACs), and for the same reasons as dogs and cats, this obligation is thus extended to include all pets.

It is up to the Government to determine, by order, the species concerned and the conditions and procedures to be complied with in the context of the identification and registration of these animals. The tariff of the fee and the arrangements for its collection are also set by the Government.

A contribution to combat the abandonment of animals intended to contribute to the Budgetary Fund referred to in Chapter 12 is provided for.

For dogs and cats, the amounts set are close to those established by the Walloon Region and an exemption is provided for shelters and foster families, who are the actors providing reception or follow-up to abandoned animals or those from which the person in charge wishes to separate.

Separate amounts are applied depending on the position of the person in charge of the animal (individual or breeder). A higher amount is provided for dog and cat breeders who usually profit from selling their litters. However, every year thousands of animals are abandoned in Brussels shelters, which generates significant costs for these structures.

A contribution is also set when the animal falls into the category of small or large subjects. It will be up to the Government to draw up the list.

#### **Article 2.17**

This provision lays down the basis for the supervision of activities involving animals in view of their impact on their welfare and the need to ensure their protection. It is not a question of replacing the environmental permit regime, but rather of aiming for concurrent application of the regimes.

It begins by drawing up a list of activities requiring prior approval to be obtained. This is not an exhaustive list. Other establishments or activities may be covered by an order.

The Government may decide to replace obtaining an approval with a registration procedure for the activities it determines. In the case of an activity listed in paragraph 1, these can only be limited-capacity establishments.

§ 2 allows the Government to lay down the terms and conditions for granting, maintaining, renewing and withdrawing approval taking into account the specificities related to the activity concerned.

The broad wording of this paragraph is inherited from the amendment adopted by an Ordinance of 18 March 2021 with a view to extending the scope of this provision as far as possible.

§ 3 provides for the payment of a fee relating to the application for approval or its renewal. It leaves the possibility for the Government to exempt shelters and animal interest associations from the payment of this fee, which is understood in the light of the public service rendered by these entities.

§ 4 prohibits the operation of a zoological garden, the definition of which is referred to in Article 1.5. Given the urban nature of Brussels, the establishment and operation of such an establishment does not appear to be possible since it cannot meet the physiological and ethological needs of animals. Although the measure seems rather symbolic, it is consistent with the objectives of this Code and the recognition of the sentience and sensitivity that characterises animals, implying that the place of exotic and wild animals is not in a zoo, exposed to the eyes of the general public and subject to many stresses. The creation of sanctuaries, being understood as 'specialised shelters for wild animals, seized or otherwise kept, which are permanently housed and cared for in the best possible conditions and which can also be open to visitors', as suggested by the Brussels Animal Welfare Council, instead of zoological gardens, does not appear to be an appropriate solution, at least in the Brussels-Capital Region, given the urban character of the Region which could not offer the minimum guarantees of space necessary to satisfy the ethological and physiological needs of these animals.

#### **Article 2.18**

This provision gives the possibility, at any time, to suspend or withdraw the approval and the registration of the activities referred to in Article 2.17 in the event of non-compliance with the conditions of approval or in case of infringement of this Code.

In the case of a serious measure likely to have a significant impact, in particular for the managers of the establishment and its employees, any such decision must be the subject of a particular statement of reasons as to the proportionality of the measure.

The withdrawal of approval or registration automatically entails for a series of persons (owner, manager of the establishment, person responsible for animal welfare or animal supervision and the perpetrator of the infringements) a prohibition on directly or indirectly applying for approval for a period of one month to 2 years. In certain circumstances, it does not seem appropriate for the consequences of the withdrawal to fall on all the persons listed above. The withdrawal decision will therefore have to specify the list of persons concerned by the prohibition to apply for a new approval/registration.

In view of the seriousness of the consequences of a withdrawal, the person concerned may request the lifting of that prohibition provided that he demonstrates his ability to manage an establishment referred to in Article 2.17 which he wishes to manage but also his knowledge of the physiological and ethological needs of the animals which will be involved in the exercise of the proposed activity.

Furthermore, § 1(5) provides that the persons covered by the withdrawal decision will no longer be able to manage, directly or indirectly, an establishment referred to in Article 2.17 or even carry out direct or indirect supervision of the animals. The withdrawal decision could cover all the activities listed in Article 2.17 as well as the list of activities established by the Government. It could also list exhaustively the list of activities subject to this prohibition.

§ 2 regulates the fate of the animals in the event of withdrawal of approval and requires the manager of the establishment to submit a plan for the destination of the animals concerned. This could include, for example, a transfer to other structures for remuneration, the transfer of certain



animals free of charge to a natural or legal person, etc.

Brussels Environment must approve this plan before the withdrawal decision enters into force. Such approval may only take place if the measures contained therein are credible (in the sense that they are serious and trustworthy in particular with regard to the personality of the person in charge of the holding) and in the interests of the animals concerned.

Failure to approve the plan or failure to comply with it entails an automatic transfer of ownership of the animals to the shelter (in Brussels or not) designated by Brussels Environment. This transfer will be carried out at the expense of the manager of the establishment concerned.

§ 3 makes the obligations referred to in § 2 applicable in the event of bankruptcy or cessation of business.

#### **Article 2.19**

This provision is inspired by Article D.31 of the Walloon Animal Welfare Code and seems appropriate in order not to create confusion in the minds of citizens between approved structures and structures that do not have the appropriate approval.

Animal shelter is defined in Article 1.5 of this Code as a 'public or non-public establishment, which has adequate facilities to provide necessary shelter and care for stray, lost, abandoned, neglected, seized or confiscated animals, including establishments which work with foster families to provide the necessary accommodation and care for such animals'.

These structures must comply with a series of obligations to ensure the protection and welfare of animals. This approval has a 'value' which should be highlighted in relation to other structures promoting animal welfare.

In addition, this provision imposes an obligation on shelters to report. The objective is to enable the Brussels Region to monitor the evolution of the shelter situation and the impact of the policies implemented to combat animal abandonment.

Finally, § 3 contains the foundations for structural subsidies for shelters, which can be explained in the light of the public service tasks carried out daily by these structures.

#### **Article 2.20**

This provision is intended to legitimise the use of foster families. On the one hand, every year, the Brussels shelters welcome thousands of animals and sometimes find themselves confronted with too many animals to take care of. On the other hand, the infrastructures of animal shelters are not always adapted to the specific needs of certain animals which require more 'personalised' care (for example, specific care or socialisation needs of the puppy or kitten involving special follow-up). The use of foster families therefore allows shelters to reduce the overload of their structures and ensure more appropriate care for certain animals. These foster families can be seen as an extension of the shelter for which they are responsible. The Government can therefore determine the conditions under which the services of a foster family can be used and require the maintenance of a register to ensure that the list (address and name, etc.) of foster families linked to a shelter can be kept at all times.

#### **Article 2.21**

Some persons (legal or natural) who do not have a shelter approval act as an intermediary in (re)placing animals. Although the desire to find a new family for an animal is quite commendable, this activity cannot be carried out under just any conditions, whether or not it is remunerated.

Given the consequences of this activity for animal welfare, it seems necessary to ensure a minimum framework by setting a series of obligations. Thus, the person assuming the role of intermediary will have to ensure that the candidate is authorised to keep the animal (he has his keeping permit, the relevant approval and/or has not been subject to a prohibition on keeping). It must also ensure that the candidate is able to offer the appropriate conditions of keeping to the animal. Finally, it will have to inform the future person in charge about the existing identification and sterilisation obligations.

Delegation is given to the Government in order to insert other conditions and set the minimum content of the transfer agreement.

## **Article 2.22**

This provision concerns only the breeding of pet animals requiring approval to carry out that activity, that is to say 'an establishment in which pets are kept for breeding and animals are marketed or donated' (Article 1.5). At this stage, the provision therefore concerns only facilities for the breeding of dogs and cats.

It is intended to prohibit a breeder from marketing or donating animals which are not derived from his own breeding facility. It is the activity of 'commercial breeders' which is covered and currently governed by the Royal Decree of 27 April 2007 laying down the conditions for the approval of establishments for animals and laying down the conditions for the marketing of animals. It can also be noted that it is already prohibited to present or display puppies or kittens in the absence of the mother.

Currently, there is no such breeder in the Brussels Region. The exercise of such an activity is strongly criticised by the population in view of the damage to the welfare of the animals affected by this type of trade. The aim is to promote responsible breeding in Brussels. Allowing a breeder to market or donate litters which are not derived from his own breeding facility favours practices that are not respectful of the well-being of the young animals concerned (stress linked to long-distance transport, premature weaning, etc.).

A similar provision was adopted in Wallonia.

The Brussels Animal Welfare Council supports this measure, excluding Ani-zoo, which has issued a minority opinion in which it considers that trade is a federal competence on which the Brussels Region cannot decide. Ani-zoo also considers that this provision constitutes an obstacle to free trade and freedom to practise a profession.

That argument cannot be followed. As far as trade in animals is concerned, this is indeed a competence belonging to the regions as a result of the transfer of the competence of animal welfare during the Sixth Reform of the State. The Council of State stated in opinion 67.856 of 13 October 2020: 'The competence of the regions in the field of animal welfare also includes the competence to regulate trade in animals (See point 3.3). As regards the obstacle to free trade and freedom to practise a profession, they are justified by the general interest objective of animal welfare as expressed above. This objective is enshrined in Article 13 TFEU as well as by the Constitutional Court and the Council of State.

Delegation is given to the Government to lay down the conditions and cases in which breeding animals may be marketed or donated. The Brussels Animal Welfare Council states that these conditions could be linked to the prevention of hereditary disorders and hypotypes.

The Council would have liked a reformulation of § 2 in order to allow the Government to impose conditions for the marketing of animals. However, this delegation already exists in Article 3.1 (Chapter on trade in animals).

### **Article 2.23**

Some breeding practices are problematic for the welfare of animals derived from these breeding facilities in that they lead to the development of hereditary disorders and hypertypes (i.e. exaggerated external characteristics deliberately selected by breeders). In its opinion of 30 September 2022, the Brussels Animal Welfare Council draws our attention to this complex issue which, in its view, requires only 'responsible combinations of breeding animals' and the establishment of a system of scientific quality control of breeding programmes. In order to combat the development of hereditary disorders and hypertypes, the Code prohibits the use of breeding animals with hereditary disorders which cannot be remedied by appropriate mating combinations.

Delegation is given to the Government to regulate breeding activities in a form that would reduce hereditary disorders, including hypertypes, but also to promote genetic diversity.

### **Article 3.1**

This provision deals with trade in animals in general and states, in the first paragraph, that animals may not be marketed without the approval referred to in Article 2.17. This therefore concerns only those activities for which an approval has been put in place under an implementing order.

The Government could determine the cases and conditions under which the marketing of animals without an approval is authorised. This could include, for example, the following cases: suspension/withdrawal of the approval or derogation for certain species of animals.

In the second paragraph, delegation is given to the Government to prohibit or specify conditions for the marketing of animals. This is essentially a repetition of Article 10 of the Act of 14 August 1986, the scope of which has been widened by an Ordinance of 18 March 2021. Parliament decided to extend as far as possible the scope of Article 10 of the 1986 Act in order to allow the government to cover conditions other than those relating to the age of animals, identification, information to the buyer, guarantee certificate, treatment against diseases, presentation and display for marketing.

Finally, subparagraph 2 of that paragraph is a new addition which makes it possible to set the minimum content of contracts for the sale, donation and adoption of animals with a view to preserving the welfare of the animals covered by these different types of contracts.

### **Article 3.2**

This Article carries a series of prohibitions on the marketing, donation and adoption of animals in certain places. This is a rewriting of Article 12 of the Law of 14 August 1986 with a view to extending it to all species of animals, whether vertebrates or invertebrates (provided that the Code is applicable to them – see Article 1.3).

The public space must be understood as the place that is shared, for the use of all and accessible to all. The acquisition of an animal in the public space is not carefully thought out, and therefore translates into impulsive purchases by people who are not necessarily able to guarantee the proper management and welfare of the animals.

This Article echoes the opinion of the Brussels Animal Welfare Council of 21 September 2018 on the prohibition on the sale of live animals in public markets in which it advocates a prohibition on the sale of all live animals (vertebrates and invertebrates) in public places including animal markets and municipal markets.

The concept of 'markets' referred to in the first paragraph refers to animal markets, i.e. the gathering of animals for the purpose of marketing them, and the municipal market, i.e. the

gathering of street traders who, at fixed periods, offer goods for sale in a public place approved by the municipal administration.

The second paragraph allows the Government to determine the cases in which paragraph 1 may be derogated from when it comes to the display of animals and as long as they are not dogs and cats.

Paragraph 3 refers to a global prohibition on the practice of street vendors and other exhibitors exhibiting animals in a market for public entertainment, without that practice being necessarily characterised by an intention of marketing or donating them.

In Brussels, several complaints have been lodged concerning the display of animals in markets in relation to the inappropriate conditions of keeping offered to these animals, such as exposure to bad weather throughout the market without adequate shelter or unwanted contact with the public. These animals are also subjected to unnecessary stress associated with their transport to this type of place. The presence of these animals is of no educational interest and tends to objectify the animal thus displayed.

The prohibition does not apply to people who go to these markets with their pet.

This provision shall apply without prejudice to prohibitions placed in the context of nature conservation legislation. Reference is made to Article 68(1)(1)(9) of the Ordinance of 1 March 2012 on nature conservation which prohibits the exhibition of animals of protected species in a public place.

### **Article 3.3**

This provision is intended to prohibit the marketing, donation or adoption of dogs or cats in the commercial space of a business premises or in its outbuildings. This is a measure resulting from the Act of 14 August 1986 (Article 12(3)), which is based on Article D.47(2) and (3) of the Walloon Animal Welfare Code. This prohibition aims to combat impulsive and reckless acquisitions that too often lead to abandonment or animal abuse.

Paragraph 2 lays down the principle of prohibiting the display of animals in the window displays of establishments. The aim is to put an end to certain practices observed in recent years, such as displaying live chicks in the window of a store that sells decorative items in order to attract the customer. These practices are unacceptable because they can involve avoidable stress and suffering for animals and participate in their objectification even as federal lawmakers have intended to remove them from the property category.

### **Article 3.4**

This provision carries a series of prohibitions in that the acts it prohibits contribute to the objectification of the animal and facilitate impulsive/reckless acquisitions that generally lead to animal abuse or abandonment.

Acquiring an animal entails responsibilities that the master assumes towards the animal he acquires. It is a decision that must be carefully considered, because the animal is not an object that can be discarded when it becomes useless or when one grows tired of it.

Paragraph 1(2) refers to doorstep selling operations, i.e. the technique of contacting the customer at his home, which therefore includes the prohibition referred to in Article 12 of the 1986 Act (marketing dogs and cats at the buyer's home unless the initiative comes from the buyer).

As regards a tie-in sale, the reference to the Code of Economic Law implies having regard to the

definition given in Article I.8(21) of that code, namely an 'offer linking the acquisition of goods or services, free of charge or not, to the acquisition of other goods or services'. Transposed to animal law, it is prohibited here, for example, to offer a dog for sale and to impose the purchase of one or more packets of kibbles with this animal.

(5) is a repetition of Article 10*bis* of the Act of 14 August 1986. The reference to the Code of Economic Law implies having regard to the definition given to a credit agreement in Article I.9(39) of that code, namely 'any contract under which a creditor consents or undertakes to grant a consumer credit, in the form of a payment period, a loan or any other similar payment facility'. Indeed, it is necessary to prevent a person from buying an animal on a whim when he does not have the means to look after it properly.

As far as (7) is concerned, it covers distance contracts within the meaning of Article I.8(15) of the Code of Economic Law, that is to say, 'any contract concluded between the company and the consumer, within the framework of an organised system for the sale or provision of services at a distance, without the simultaneous physical presence of the company and the consumer, by the exclusive use of one or more techniques of distance communication, until and including at the time when the contract is concluded.' In addition to the fact that this type of contract participates in the objectification of the animal and can generate impulsive acquisitions, this process is particularly challenging when we know that the pet is considered a member of the family. An animal is not chosen 'from a catalogue', on the contrary it is important that the future master has been able to take the time to observe the animal and to choose the animal on site.

As far as (8) is concerned, it is a question of resuming the regime of Article 19(3) (whether the animal has undergone this intervention in Belgium or abroad) and adding to it the prohibition on importing such animals. In so far as it is not possible to prosecute prohibited interventions carried out in a foreign country in application of the principle of territoriality of criminal law, this measure appears necessary in order to protect animals which would be acquired or transported abroad in order to carry out an intervention that is prohibited in Belgium. It is prohibited to donate these animals unless they are surrendered to an animal shelter. This is also a strong demand from the Brussels Animal Welfare Council.

Finally, (9) refers to the trade or donation of a blinded bird which is understood in the light of the prohibition referred to in Article 9.1(4), consisting of improving the vocal abilities of a bird by blinding it. This is a prohibition which has its origin in the Law of 29 March 1929 on the protection of animals, which covers temporary or permanent blindness (e.g. by gouging out the eyes of the animal).

Subparagraph 2 of paragraph 1 then allows the Government to prohibit the marketing or to lay down the conditions under which live animals may be marketed for consumption.

Paragraph 2 also contains a series of prohibitions systematically concerning the marketing, donation or adoption of animals. The prohibition on the marketing of wild animals aims to protect these animals from stress and damage to their well-being that may be caused by removal from the wild, in addition to the fact that it is a source of trafficking leading to, *inter alia*, inappropriate transport conditions and a source of damage to biodiversity.

(5) concerns the certificate which must systematically be issued by farms and business premises concerning the age and origin of the animal.

(6) refers to the situation where the acquirer would not have the keeping permit (either it was never granted or it was withdrawn) or would be affected by a decision (judicial or administrative which has become final) imposing a prohibition on keeping. It is a question of giving a sense of responsibility to anyone surrendering an animal. Even an individual should therefore ensure that he does not entrust an animal to a person affected by this type of 'incapacity for keeping'.

### **Article 3.5**

This provision concerns the prohibition of the marketing, possession and use of shock collars and choke collars, but also collars with protruding parts in the interior. It is also aimed at glue traps for vertebrates, a particularly cruel trapping method denounced by the Brussels Animal Welfare Council in its opinion of 3 October 2019.

A definition has been laid down in Article 1.5(18): 'dog or cat collar with an electrical device that causes electric shocks that can be activated manually or automatically in order to avoid barking, running away or for education or training purposes'. The damage to the well-being of dogs and cats on which they are used is described extensively in the opinion of the Brussels Animal Welfare Council of 6 May 2022. In the same year, Wallonia prohibited its use as well as Flanders, which also prohibited its marketing. In the light of the opinion of the Brussels Animal Welfare Council, a transitional period and a derogation regime have been put in place (see Article 17).

The prohibitions set out in this provision do not contain any requirements to be met by the products it concerns when placed on the market and cannot therefore be regarded as a product standard. There is no market foreclosure effect as only certain categories of products are prohibited.

Furthermore, if the prohibitions affect the free movement of goods, this is fully justified in the light of the necessary preservation of animal welfare, a legitimate objective of general interest recognised by the Constitutional Court, the Council of State and Article 13 TFEU.

Paragraph 2 gives the Government the possibility, after consulting the Brussels Animal Welfare Council, to extend the list of products subject to a prohibition regime, taking into account their negative impact on animal welfare and to the extent that they are specifically designed for use on animals. The Government's initiative is linked to the Council's prior opinion in order to take account of developments in scientific knowledge.

Paragraph 3 provides for a derogation from the prohibition on shock collars and choke collars when using them on service dogs of the Civil Protection, Local and Federal Police, Customs and Defence. A similar option has been adopted in Wallonia and is intended to prevent early retirement of dogs trained with this type of device, which would weaken the aforementioned services and would be likely to impose an early and reluctant separation of the master and the animal. Risks of aggression were identified by the police in the absence of a derogating measure.

### **Article 3.6**

The purpose of this provision is to clarify the scope of the measures referred to following this section, which concern advertising for the purpose of marketing, donating or adopting animals.

Any type of advertising shall be covered provided that it can be detected in that advertisement that it is intended in whole or in part for an audience situated in the territory of the Brussels-Capital Region. A series of clues can be used such as the language of the publication or the address of the author of that publication.

It is also a question of supervising publications issued from the Brussels Region for a foreign audience, which includes Flanders, Wallonia but also other countries.

The aim is to prevent impulsive acquisitions that are the source of animal abuse/neglect and

abandonment of animals, which animal shelters continually bemoan.

### **Article 3.7**

This Article prohibits, as a matter of principle, two types of advertising. First of all, it prohibits any advertising relating to an animal not included in the list of species authorised for keeping. That prohibition is easily understood in so far as it is not intended to encourage the acquisition of animals the keeping of which is reserved for certain 'experienced' persons and which require, at the very least, before their acquisition, a specific approval in the context of the procedure by which that person has demonstrated that he has the appropriate knowledge and accommodation capacity for the keeping of that animal.

It is then a question of prohibiting the promotion of activities involving animals that take place in a region or a country that does not have protective standards at least equivalent to those of the Brussels Region. This Code recognises the special place animals occupy within our society and intends to protect them in the light of the due respect for life and taking into account their sensitivity/sentience. It would therefore be inconsistent to allow advertising for activities that undermine the welfare of animals and which are prohibited or strictly supervised in the Brussels Region. Some examples of this are lion hunting, cockfighting, bullfighting, etc. It is up to the Government to establish the list of activities concerned.

### **Article 3.8**

This provision regulates advertisements relating to animals authorised for keeping. These are either animals belonging to the species or categories covered by a positive list or animals for which no list has been drawn up.

The topic very often goes beyond the borders of the Regions and the country, especially given the use of dedicated web pages or social networks such as Facebook; this regime is inspired by the one put in place in Wallonia in order to allow the system to be coherent.

Account was taken of judgment 10/2021 of the Constitutional Court of 21 January 2021 which validated the mechanism in place, excluding the delegation which was given to the Government to define the arrangements for use of closed groups and the pre-registration regime for their use. The latter part of the judgment was therefore not repeated in view of its annulment.

Paragraph 1 allows only advertising in a specialised magazine or a specialised website recognised as such in accordance with the procedure laid down by the Government. A specialised magazine or a specialised website is defined in Article 1.5 as 'a magazine or website whose advertisements relate exclusively to the marketing of animals or goods and services directly related to it'. Unlike Wallonia and at the request of the Brussels Animal Welfare Council, the possibility of advertising in a closed group within social networks has not been provided for because the activities are difficult or impossible to control. It is also a question of avoiding the concealment of illegal practices.

Pages or discussion groups accessible to the public via social networks may not be used to advertise except in the case of the page or group belonging to an establishment approved in accordance with Article 2.17.

The system in place therefore implies that only persons a priori interested in the acquisition of an animal consult these advertisements. By going to specialised websites and closed groups or by reading a specialised magazine, these people already had it in mind to acquire an animal. It is not, therefore, an 'untimely advertisement' which could give rise to a 'whim', an impulsive acquisition.

Unlike the Walloon regime, delegation has been given to the Government to impose measures on

publishers of magazines and websites or social networks to limit or monitor the violation of this prohibition. This could, for example, require an immediate withdrawal of any advertisement that does not contain the minimum required information.

It was then planned to exempt a series of specialised magazines and websites from the recognition procedure. These are the websites/magazines edited by or for Brussels Environment. These are also websites/magazines published by an animal breeder approved in accordance with this Code for the purpose of marketing or donating animals born within his breeding facility. These are also websites concerning the marketing or donation of equidae, those concerning species for which there is not yet a positive list and, finally, websites published by veterinarians for a professional audience.

In the case of production animals, advertising is also permitted in a magazine/website for the agricultural sector.

Paragraph 2 allows shelters to publish advertisements outside specialised websites and specialised magazines. This derogation is due to the tasks assumed by these structures, which are considered to be public service tasks and taking into account the strict supervision of this type of activity.

The Government could determine other cases in which advertising could be carried out outside a specialised website or a specialised magazine.

#### **Article 3.9**

This provision allows the Government to set the minimum content of advertisements in order to avoid impulsive or reckless acquisitions and to preserve the welfare of the animals concerned by these publications.

#### **Article 3.10**

This Article lays down the principle of prohibiting the promotion of a product or practice prohibited by or under the Code. It is logically a continuation of the prohibitions put in place via the Code in view of the damage to the welfare of the animals they intend to avoid. It would therefore be incomprehensible to allow the promotion of prohibited products or practices.

Delegation has been given to the Government to set the conditions in which the advertising and the promotion of a product, practice or activity likely to harm the welfare of animals may take place. This type of framework is linked to the prior opinion of the Brussels Animal Welfare Council in order to take account of developments in scientific knowledge.

#### **Article 4.1**

This provision refers to a general principle of animal transport under conditions such as to cause injury or suffering.

#### **Article 4.2**

This provision is inspired by Regulation 1/2005 on the commercial transport of animals. The aim is to generalise this obligation to all animals covered by the Code and not to be limited to commercial transport of animals. Transport carried out in a private setting on a personal basis or on behalf of third parties is therefore also covered by this provision. An exception is provided for the need to transport an animal to a veterinary clinic or practice.

The Brussels Animal Welfare Council wanted the maximum threshold to be set at 25 °C. Since



this opinion was not shared by all the members of the Council, in particular for scientific reasons, and the intention of the legislator to align with European Regulation 1/2005, the temperature difference was maintained between 5 °C and 30 °C.

However, in view of the discussions in the Council, delegation has been given to the Government to adjust the minimum and maximum temperatures in certain cases or under certain circumstances. The Government may therefore choose to provide for other thresholds where necessary to protect the welfare of animals, in particular with regard to the physiology of certain species, the state of health or the age of the animals transported, the stage of gestation of a female, or depending on the means of transport.

#### **Article 4.3**

This provision concerns the transport of walking decapods which did not enjoy any special protection under the Act of 14 August 1986 other than the very general provision. This provision is therefore intended to put an end to practices which are particularly detrimental to the welfare of such animals.

Live lobster is often transported out of water, vertically, in a polystyrene case with gel packs. This method is considered ideal for transport from an economic point of view but poses various problems with regard to animal welfare. The lobster is an aquatic animal that is not exposed to air in its natural environment. Although it is able to survive out of the water during transport thanks to the humidity of the air, this exposure is not conducive to its well-being. Lobster can exhibit physiological and immune reactions and even die depending on the humidity level and the temperature to which it is exposed. Lobsters generally prefer the cold; temperatures above 20 °C may be lethal. Conversely, iced water does not reproduce the natural environment of walking decapods either.

#### **Article 4.4**

This provision allows the Government to adopt a series of specific measures for animal transport by specifically targeting the different topics on which it can intervene. Although this is largely a repetition of Article 13(1) of the 1986 Act, other topics have been inserted, such as the age, weight and management situation of animals and their state of health. It could be useful to have more precise standards on these issues; for example, a maximum waiting time when animals are unloaded in slaughterhouses or the prohibition of painful and stressful guiding devices, such as electroshock devices, will be studied.

With regard to paragraph 2, the possibility for the Government to grant certificates to carriers for the transport of live vertebrate animals outside the European Union as part of an economic activity has now been withdrawn. Regulation 1/2005 aims to regulate the transport of live vertebrate animals within the European Union. Member States are therefore free to provide for more restrictive measures for those aspects which fall outside the scope of the Regulation. Since transport conditions are difficult or impossible to control once the vehicle has left the European Union, it is not acceptable for susceptible animals to be transported from the Brussels Region without the assurance that they will not suffer unnecessary injury or suffering. In addition, long-term transport causes a great deal of suffering for animals and should be limited within the framework of Brussels competences. To date, no carriers are approved by the Brussels Region for journeys outside the European Union. This measure will therefore not affect the economic situation of the Region. It is therefore not necessary to provide compensatory measures for third party economic partners.

With regard to paragraph 3, it is a question of conferring the appropriate legal basis in order to allow the determination of the fee and its payment arrangements for the approval of the carrier. This is a repetition of the former Article 13(3) as amended by an Ordinance of 18 March 2021.

#### **Article 5.1**

The main purpose of this provision is to put an end to trafficking in animals of all kinds. This

trafficking sometimes involves conditions of transport, and more generally of introduction into Brussels, which are inadequate and detrimental to the welfare of the animals concerned. This can include, for example, stress and injury, but also behavioural disorders and damage caused by removal from the wild, organised travel in conditions unsuitable for the age or state of health of the animals, etc. For reasons related to the preservation of animal welfare, the Government may therefore take appropriate measures to control and limit imports.

This option shall apply without prejudice to the provisions put in place in the context of nature conservation. This includes, for example, Articles 75 to 77 of the Ordinance of 1 March 2012 on nature conservation relating to the intentional reintroduction or introduction into the nature of certain species/animals.

A derogation system is laid down in paragraph 2 where it is necessary to comply with international treaties or European regulations such as Regulation 1/2005 on the protection of animals during transport.

### **Article 5.2**

This measure is based on Article 12 *bis* of the 1986 Act but is extended to the extent that it no longer concerns only shelters and associations. It also directly incorporates a prohibition instead of delegating this power to the Government.

Brussels shelters constantly draw the Government's attention to the saturation of their structures and the difficulties of placing animals for adoption. The same observation is made in the other two Regions. This explains why shelters are currently prohibited from introducing animals from abroad for adoption.

Each year, about one thousand dogs from abroad are brought to Belgium for placement in adoptive families.

This introduction can be opposed in principle on the basis of the following reasons:

- animal welfare problems must first and foremost be resolved in the country of origin;
- Belgium continues to face an overabundance of animals in shelters;
- the introduction of animals from abroad is not without risk to animal and public health;
- this paves the way for animal trafficking.

In its opinion of 5 May 2023, the Brussels Animal Welfare Council stressed the need for this prohibition regime for the above reasons.

Sanitary conditions, on the other hand, fall under the federal authority.

The provision also allows the Government to put in place a derogation regime. It could consider the most diverse and appropriate conditions with regard, for example, to certain categories or species of animals.

### **Article 5.3**

The provision is introduced with a view to combating the behaviour of certain people in charge of animals aiming to carry out an intervention that is prohibited on Brussels territory (e.g. cutting the tail or ears of a dog) in a country where it is still authorised or to acquire an animal abroad for that purpose. The aim is to combat the damage to animal welfare caused by the intervention itself and the stress associated with the transport of these animals.

Delegation is given to the Government to determine the cases in which an import could be authorised. One could consider, for example, the intervention that would have taken place before the entry into force of this Code or the fact that the intervention would have been carried out by the

first owner of the animal.

### **Article 9.1**

This provision introduces a series of prohibitions in order to preserve the welfare of animals. For the majority of them, these are prohibitions stemming from the 1986 Act.

The purpose of shipping a live animal by post is to send an animal to a recipient through the mail or a parcel carrier. It does not apply to the activity of animal transport, which is subject to compliance with the provisions of Chapter 4 of the Code.

As regards the use of dogs for traction, the possibility of granting specific derogations has been removed compared to what was provided for under the 1986 Act, which is supported by the animal welfare organisations represented in the Brussels Animal Welfare Council.

As regards equidae racing, the prohibition only covers competitions where speed is the essential element. Therefore, it does not cover parades, for example. As regards 'training', this refers to organising or participating in the course planned by the organisers. Races (and treatments) are, in any event, prohibited in the public space. This type of event can therefore only take place in private places, provided that the equidae do not compete on a track whose surface is made of hard materials. The term 'mainly' means that it is permitted, in respect of the course, that a limited part of it is a hard material surface when that section is absolutely necessary to connect two authorised surfaces. Hard materials include asphalt, concrete, pebbles or clinkers. Other types of inappropriate materials may include frozen soil or mud (risk of slipping), for example.

As regards attractions using equidae, this is a repetition of the prohibition adopted by an Ordinance of 18 March 2021. The term 'attraction' refers to an entertainment made available to the public. Two attractions are covered by the prohibition. First of all, there is the 'carousel'. It follows from the opinions of the Council of State and the Council of Animal Welfare (federal and Brussels) that the damage caused to the well-being of equidae used for this type of activity is such that an outright prohibition is fully justified. The equidae used in this activity are led to circle for many hours which, in addition to the boredom to which they are subjected, reduces the animal to the status of an object. This lack of consideration for the animal is criticised by a very large part of the population and is no longer acceptable today.

In addition, there is the damage caused to the well-being of the animal which suffers significant stress due to its exposure to a noisy crowd and physical contact with inexperienced riders as well as the impossibility of enjoying adequate rest during breaks and at night. These considerations lead us to extend the prohibition previously imposed on fairgrounds to any public or private gathering which covers markets, demonstrations, village festivals, *kermesses*, fairs, festivals, flea markets, car boot sales and private parties celebrating, for example, birthdays of children. Next, it prohibits promenades which would be carried out at fairgrounds, markets, village parties, *kermesses*, fairs, festivals, flea markets and car boot sales in so far as this type of activity has the same type of problems as the carousel: the stress of the noisy crowd and the impossibility for equidae to rest adequately. For this activity, it cannot be claimed that the animal would be subject to boredom but the organisation and/or operation of this type of activity in such places appear inappropriate given the danger to animals, inexperienced riders and the rest of the public.

This prohibition does not apply to shows and competitions in which equidae participate nor to the activities of an equestrian centre (also called riding school) whose purpose is to train equidae, train riders, practise horse riding and/or provide accommodation for equidae. If the equidae used in these infrastructures may be required to make a circular journey, the conditions under which these journeys take place are completely different.

As regards the prohibition on the operation or organisation of a circus, the aim is to target the activity of a mobile or non-mobile establishment in which animals are kept and perform tricks for the amusement of the public for which they are stimulated by a coach or trainer (with the exception of a zoological garden). Currently, the activities of these establishments are governed by a Royal Decree of 2 September 2005 on the welfare of animals used in circuses and travelling

exhibitions. Like the equidae used in the above-mentioned attractions, circus animals experience significant stress as a result of their exposure to a noisy crowd. This is in addition to the many transport journeys to which they are subjected and a perpetual life in restricted enclosures.

The prohibition on the operation or organisation of an animal market stems from the opinion of the Brussels Animal Welfare Council of 21 September 2018 and must be read in conjunction with the prohibitions laid down in Article 3.2.

The dissemination of images of acts of cruelty to animals or sexual relations between a human and an animal is also criminalised unless it is a matter of denouncing the facts to the competent authorities.

Finally, it is prohibited to fire fireworks whose explosion noise exceeds 70 dB. This is to echo the opinion of the Brussels Animal Welfare Council of 4 November 2022. According to the Council, 'the ignition on the ground, the detonation in the air and (to a lesser extent) the light flashes of fireworks cause many reactions in animals. These intense stimuli are able to produce states of fear, phobias and/or anxiety.' As the source of many harms in terms of the welfare of domestic and wild animals, their use should be limited.

#### **Article 9.2**

This provision allows the Government to supervise a series of activities with a view to ensuring and preserving the welfare of the animals affected by the exercise of these activities, whether carried out in a private or professional context.

At this stage, for the moment, there are already decrees regulating animal competitions, for example (Royal Decree of 23 September 1998 on the protection of animals at competitions).

#### **Article 13.4**

This provision makes it possible to use the mystery shopping technique in order to monitor compliance with the provisions of the Code and its implementing orders relating to trade and supervision of activities involving animals (this is essentially the exercise of an activity without approval or the failure to comply with the obligations surrounding the exercise of this activity).

This technique is particularly necessary in certain cases where it is very difficult to identify the offender (e.g. when it comes to illegal trade on social networks) or when it is necessary to ensure that certain licensed establishments comply with their prior information obligations (e.g. business premises or shelters that are required to provide a series of information at the time of the sale or adoption of a pet). It may also involve detecting the exercise of an activity without having the required approval.

This technique can be used by a series of persons listed directly in the provision, i.e. officials (municipal or regional) responsible for surveillance on the basis of the Inspection Code, but also veterinarian officers or any person authorised for this purpose by Brussels Environment.

It is intended that 'any useful means' may be used in order to use this technique. The persons concerned may use any method to effectively exercise this competence. This could include, among other things, visiting, calling, sending one or more mail(s) or e-mail(s) or using online means of communication (including private discussions on social networks).

The use of the mystery shopping technique could give rise to two situations: it will either reveal evidence that one or more offences are being committed or have been committed, or it will immediately reveal the existence of one or more offences. In the first case, it will be necessary to carry out further investigations in order to complete the file and confirm the existence of an infringement. In the second case, the supervisory officers will be able to implement the various powers at their disposal (formal notice, warning, administrative transaction, report, etc.).

The last subparagraph of paragraph 1 makes it possible to exempt persons with this power from prosecution for the absolutely necessary offences that would be committed in the context of the

implementation of this power. An absolutely necessary offence is, for example, the use of a false name, forgery and the use of forged documents. The introduction of such an excuse is justified on the basis of Article 10 of the Special Law of 8 August 1980 on institutional reforms. It appears necessary to apply such an exemption in order to enable the competent persons to carry out their tasks and, consequently, to ensure that regional competence in matters of animal welfare is not impeded by criminal proceedings against those persons carrying out their monitoring tasks. Furthermore, animal welfare is well suited to differential treatment and also focuses on specific types of infringements. Finally, the impact of the encroachment on federal jurisdiction is marginal since it is confined to the limited supervision of the use of this technique (specific infringements and conditions of use of the technique).

Several conditions govern the use of this technique. First, there can be no provocation within the meaning of Article 30 of the preliminary title of the Code of Criminal Procedure. There is therefore no question of inciting the person concerned to commit an offence which he did not intend to commit. It is only a matter of revealing the existence of an illegal practice. The competent persons may, if they consider it appropriate, use a cover identity or refrain from revealing their identity in order to prevent those committing infringements from being informed that 'mystery shoppers' are carrying out checks via a specific cover identity, which would ultimately prevent the effective use of that technique. A final condition requires a report of the actions that have been implemented and their results, which makes it possible to ensure compliance with the conditions referred to above and the context in which the use of this technique was carried out.