# JUDGMENT OF THE COURT (Third Chamber)

19 June 2008 *

In Case C-219/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Raad van State (Belgium), made by decision of 16 April 2007, received at the Court on 27 April 2007, in the proceedings

**Nationale Raad van Dierenkwekers en Liefhebbers VZW,**

**Andibel VZW**

v

**Belgische Staat,**

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J.N. Cunha Rodrigues (Rapporteur), J. Klučka, P. Lindh and A. Arabadjiev, Judges,

* Language of the case: Dutch.

Advocate General: V. Trstenjak,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 16 April 2008,

after considering the observations submitted on behalf of:

— Nationale Raad van Dierenkwekers en Liefhebbers VZW, by R. Portocarero, advocaat,

— Andibel VZW, by P. Calus, advocaat,

— the Belgian Government, by L. Van den Broeck, acting as Agent, assisted by J.-F. De Bock, advocaat,

— the Netherlands Government, by C. Wissels, M. de Mol and Y. de Vries, acting as Agents,

— the Swedish Government, by A. Kruse, A. Falk and S. Johannesson, acting as Agents,

— the Commission of the European Communities, by B. Stromsky and M. van Beek, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

## Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 30 EC and of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1997 L 61, p. 1).

2 The reference has been made in the course of two actions for annulment brought before the Raad van State (Council of State) by, respectively, the Nationale Raad van Dierenkwekers en Liefhebbers VZW (National Council of Animal Breeders and Animal Lovers ASBL) and Andibel VZW, a non-profit association grouping together traders in the bird, pet and pet accessories sales sector, against the Royal Decree of 7 December 2001 establishing the list of animals which may be held (*Moniteur belge* of 14 February 2002, p. 5479) ('the Royal Decree').

## Legal context

*Community legislation*

3 As stated in recital (3) in the preamble to Regulation No 338/97:

'[T]he provisions of this Regulation do not prejudice any stricter measures which may be taken or maintained by Member States, in compliance with the Treaty, in particular with regard to the holding of specimens of species covered by this Regulation'.

4 Article 1 of Regulation No 338/97 provides:

'The object of this Regulation is to protect species of wild fauna and flora and to guarantee their conservation by regulating trade therein in accordance with the following Articles.

This Regulation shall apply in compliance with the objectives, principles and provisions of the Convention defined in Article 2.'

5 Article 2 of Regulation No 338/97 contains the following definitions:

‘…

(b) “Convention” shall mean the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Cites);

…

(s) “species” shall mean a species, subspecies or population thereof;

(t) “specimen” shall mean any animal or plant, whether alive or dead, of the species listed in Annexes A to D, any part or derivative thereof, whether or not contained in other goods, as well as any other goods which appear from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be or to contain parts or derivatives of animals or plants of those species, unless such parts or derivatives are specifically exempted from the provisions of this Regulation or from the provisions relating to the Annex in which the species concerned is listed by means of an indication to that effect in the Annexes concerned.

A specimen will be considered to be a specimen of a species listed in Annexes A to D if it is, or is part of or derived from, an animal or plant at least one of whose “parents” is of a species so listed. In cases where the “parents” of such an animal or plant are of species listed in different Annexes, or of species only one of which

is listed, the provisions of the more restrictive Annex shall apply. However, in the case of specimens of hybrid plants, if one of the "parents" is of a species listed in Annex A, the provisions of the more restrictive Annex shall apply only if that species is annotated to that effect in the Annex;

(u) "trade" shall mean the introduction into the Community, including introduction from the sea, and the export and re-export therefrom, as well as the use, movement and transfer of possession within the Community, including within a Member State, of specimens subject to the provisions of this Regulation;

…'

6 Article 3 of Regulation No 338/97 provides:

'1. Annex A shall contain:

(a) the species listed in Appendix I to the Convention for which the Member States have not entered a reservation;

(b) any species:

(i) which is, or may be, in demand for utilisation in the Community or for international trade and which is either threatened with extinction or so rare that any level of trade would imperil the survival of the species;

or

(ii) which is in a genus of which most of the species or which is a species of which most of the subspecies are listed in Annex A in accordance with the criteria in subparagraphs (a) or (b)(i) and whose listing in the Annex is essential for the effective protection of those taxa.

2. Annex B shall contain:

(a) the species listed in Appendix II to the Convention, other than those listed in Annex A, for which the Member States have not entered a reservation;

(b) the species listed in Appendix I to the Convention for which a reservation has been entered;

(c) any other species not listed in Appendices I or II to the Convention:

(i) which is subject to levels of international trade that might not be compatible:

— with its survival or with the survival of populations in certain countries,

or

— with the maintenance of the total population at a level consistent with the role of the species in the ecosystems in which it occurs;

or

(ii) whose listing in the Annex for reasons of similarity in appearance to other species listed in Annex A or Annex B, is essential in order to ensure the effectiveness of controls on trade in specimens of such species;

(d) species in relation to which it has been established that the introduction of live specimens into the natural habitat of the Community would constitute an ecological threat to wild species of fauna and flora indigenous to the Community.

3. Annex C shall contain:

(a) the species listed in Appendix III to the Convention, other than those listed in Annexes A or B, for which the Member States have not entered a reservation;

(b) the species listed in Appendix II to the Convention for which a reservation has been entered.

4. Annex D shall contain:

(a) species not listed in Annexes A to C which are imported into the Community in such numbers as to warrant monitoring;

(b) the species listed in Appendix III to the Convention for which a reservation has been entered.

5. Where the conservation status of species covered by this Regulation warrants their inclusion in one of the Appendices to the Convention, the Member States shall contribute to the necessary amendments.'

7 Article 8 of Regulation No 338/97 provides:

'1. The purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale of specimens of the species listed in Annex A shall be prohibited.

2. Member States may prohibit the holding of specimens, in particular live animals of the species listed in Annex A.

...

5. The prohibitions referred to in paragraph 1 shall also apply to specimens of the species listed in Annex B except where it can be proved to the satisfaction of the competent authority of the Member State concerned that such specimens were acquired and, if they originated outside the Community, were introduced into it, in accordance with the legislation in force for the conservation of wild fauna and flora.

6. The competent authorities of the Member States shall have discretion to sell any specimen of the species listed in Annexes B to D they have confiscated under this Regulation, provided that it is not thus returned directly to the person or entity from whom it was confiscated or who was party to the offence. Such specimens may then be treated for all purposes as if they had been legally acquired.'

*National legislation*

8 Article 3*bis* of the Law of 14 August 1986 concerning the protection and welfare of animals (*Moniteur belge* of 3 December 1986, p. 16382) ('the animal welfare law'), which was inserted by Article 3 of the Law of 4 May 1995 (*Moniteur belge* of 28 July 1995, p. 20360), reads as follows:

'1. Animals which do not belong to the species or categories referred to in a list established by the Crown shall not be held. The list shall not affect the legislation concerning the protection of endangered species of animals.

2. In derogation from paragraph 1, animals of species or categories other than those indicated by the Crown may be held:

(1) in zoological gardens;

(2) in laboratories;

(3) (a) by private individuals, on condition that they are able to produce evidence that the animals were held before the entry into force of the Decree referred to in this article. That evidence need not be produced in respect of the offspring of those animals, on condition that they are held by the first owner;

(b) by private individuals recognised by the Minister whose competence includes agriculture, on the advice of the committee of experts referred to in the second subparagraph of Article 5(2).

The Crown shall lay down the procedure for the application of (a) and (b). It may also specify certain conditions for the holding and the identification of the animals referred to;

(4) by veterinary surgeons, in so far as the animals entrusted to them by third parties are held temporarily for veterinary care;

(5) by animal shelters, in the case of the temporary housing of animals which have been confiscated, or which have been abandoned or found and whose owners cannot be identified;

(6) by firms trading in animals, in so far as they hold the animals for a short period and provided that a prior written agreement has been concluded with natural or legal persons, as referred to in (1), (2), (3)(b) and (7);

(7) in circuses or in travelling exhibitions.

3. Without prejudice to the exceptions provided for in paragraph 2, the Crown may prohibit some of the natural or legal persons referred to in paragraph 2 from holding animals of such other species or categories as it may specify.'

9 Article 1 of the Royal Decree provided, in respect of mammals, that Article 3*bis* of the animal welfare law was to enter into force on 1 June 2002; Article 2 of the Royal Decree established the list of mammals which may be held; and Articles 3 to 5 of the Royal Decree laid down the implementing provisions provided for in the second subparagraph of Article 3*bis*(2)(3) of the animal welfare law. The Royal Decree was amended by a Royal Decree of 22 August 2002 (*Moniteur belge* of 25 September 2002, p. 43346), which introduced a charge for any application for recognition as a private individual wishing to hold mammals not referred to in the list of species which may be held (Article 1) and extended that list to bring the number of species concerned to 46 (Article 2).

**The disputes in the main proceedings and the questions referred for a preliminary ruling**

10 Before the Raad van State, the Nationale Raad van Dierenkwekers en Liefhebbers VZW and Andibel VZW submit that the Royal Decree, read in conjunction with the

animal welfare law, gives rise to an absolute prohibition on importing from another Member State, holding or trading in mammals belonging to species which are not included in the 'positive' list attached as an Annex to the Royal Decree, whereas such a prohibition is contrary to Regulation No 338/97 and to the Treaty, in particular to Article 30 EC.

11 The Raad van State observes that the Royal Decree means that, except in the cases listed in Article 3*bis*(2) of the animal welfare law, no mammal which does not belong to the species included in that list may be held in Belgium. A regulatory decree of that kind undeniably has an influence on trade between Member States.

12 In those circumstances, the Raad van State decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Must Article 30 [EC], in itself or in conjunction with … Regulation No 338/97 …, be interpreted as meaning that a prohibition on the importation of or trading in fauna, imposed in implementation of Article 3*bis*(1) of the [animal welfare] law, is not justified in respect of mammals which are imported from another Member State of the European Union and which come under [Annex] B, C or D [of that] regulation or which are not referred to in [that] regulation, where those mammals are held in that Member State in accordance with the legislation of that State and that legislation complies with the provisions of the Regulation?

2. Does Article 30 [EC] or Regulation No 338/97 preclude the adoption by a Member State of rules which, under existing legislation on animal welfare, prohibit any commercial use of specimens, save where those specimens are explicitly referred to in those national rules, where the objective of the protection of those species, as referred to in Article 30 EC, can be achieved just as effectively by measures which obstruct intra-Community trade to a lesser extent?'

**The questions referred for a preliminary ruling**

13 By its two questions, which it is appropriate to examine together, the national court is essentially asking whether Articles 28 EC and 30 EC, read separately or in conjunction with Regulation No 338/97, preclude national legislation, such as that at issue in the main proceedings, under which a prohibition on importing, holding or trading in mammals belonging to species other than those expressly referred to in that legislation applies to species of mammals which are not included in Annex A to that regulation.

14 It must be pointed out at the outset that, in accordance with recital (3) of Regulation No 338/97, the provisions of that regulation do not prejudice any stricter measures which may be taken or maintained by Member States, in compliance with the Treaty, in particular with regard to the holding of specimens of species covered by that regulation.

15 Furthermore, Article 176 EC provides that protective measures which, like Regulation No 338/97, are adopted pursuant to Article 175 EC are not to prevent any Member State from maintaining or introducing more stringent protective measures, which must be compatible with the Treaty (see Case C-510/99 *Tridon* [2001] ECR I-7777, paragraph 45).

16 It is apparent from the order for reference that, under the legislation at issue in the main proceedings, only mammals belonging to the species included in the list which constitutes Annex I to the Royal Decree may be held, imported or traded in Belgium, except in the cases listed in Article 3*bis*(2) of the animal welfare law.

17 The questions referred for a preliminary ruling refer to the prohibition on importing, holding or trading in mammals imposed by the contested legislation only in so far as it applies to the species of mammals referred to in Annexes B, C and D to Regulation No 338/97 or to those which are not covered by that regulation.

18 It is common ground that Regulation No 338/97 does not contain a general prohibition on importing, and trading in, species other than those which are referred to in Annex A thereto.

19 As regards, specifically, the prohibition on the commercial use of specimens of species in Annex B to Regulation No 338/97, the Court has already held that that prohibition constitutes a more stringent measure for the purposes of Article 176 EC (*Tridon*, paragraph 49). That is also true as regards specimens of species in Annexes C and D to that regulation, as the regulation does not contain any specific provision laying down a general prohibition on their commercial use. The same finding is all the more compelling as regards specimens of species which are not covered by Regulation No 338/97 as there has been no adoption of any harmonisation measure at Community level prohibiting their commercial use.

20 As the Royal Decree means that specimens of species which are not referred to in Annex A to Regulation No 338/97 cannot, as a general rule, be imported, held or traded in Belgium, that Royal Decree constitutes legislation which is more stringent than that regulation and must therefore be examined in the light of Article 28 EC.

21 Legislation such as that at issue in the main proceedings is liable — since it is applied to specimens from another Member State — to restrict intra-Community trade for the purposes of Article 28 EC (see, to that effect, *Tridon*, paragraph 49).

22 Any legal provision of a Member State prohibiting goods which have not been previously authorised from being marketed, acquired, offered, put on display or sale, kept, prepared, transported, sold, disposed of for valuable consideration or free of charge, imported or used, constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 28 EC of the Treaty (see, to that effect, inter alia, Case C-400/96 *Harpegnies* [1998] ECR I-5121, paragraph 30).

23 The Court has also held that legislation which requires for the marketing of certain goods prior inclusion of those goods on an 'authorised list' makes the marketing of those goods more difficult and more expensive, and consequently hinders trade between the Member States (see, to that effect, inter alia, Case C-24/00 *Commission* v *France* [2004] ECR I-1277, paragraph 23).

24 According to the Belgian Government, the legislation at issue in the main proceedings, although it hinders the free movement of goods, pursues a legitimate objective, namely the welfare of animals held in captivity. It is based on the finding that the holding of mammals is acceptable only in a limited number of cases, in view of the minimum physiological and ethological needs of those mammals. The Belgian Government submits in that regard that, if it appears, having regard to those needs, that specimens of a particular species of mammal may not be held by anyone without jeopardising the welfare of those animals, they may not be included in the positive list and, consequently, they may not be traded in, subject to the derogations provided for in Article 3*bis*(2) of the animal welfare law. That legislation is therefore justified in the interests of the protection of the health and life of the animals concerned.

25 Furthermore, according to the Belgian Government, the contested legislation is proportionate to the objective pursued. First, it does not impose an absolute prohibition on the importation of those animals. Under Article 3*bis*(2) of the animal welfare law, specimens of species or categories other than those included in the list constituting Annex I to the Royal Decree may nevertheless be held inter alia in zoological gardens, laboratories, circuses and travelling exhibitions, but also by private individuals recognised by the Minister responsible for the protection of animals and by

firms trading in animals provided that a prior written agreement has been concluded with the natural or legal persons in one of the abovementioned categories.

26 Secondly, the authorised list was drawn up after the National Council for animal welfare had established objective criteria, inter alia on the basis of contributions from scientists and specialists. Those criteria are as follows. First, the animals must be easy to keep and capable of being given shelter with respect for their fundamental physiological, ethological and ecological needs; secondly, they must not be aggressive in nature or constitute any other particular danger to human health; thirdly, they may not belong to species in respect of which there are clear indications showing that specimens, once they have escaped into the wild, can continue to exist there and may therefore constitute an ecological threat; and, fourthly, there must be bibliographical data with regard to holding them. Where there is a conflict between the data or the available information on whether specimens of a species may be held, the benefit of the doubt must be given to the animal.

27 In that regard, it should be noted, first, that the protection of animal welfare is a legitimate objective in the public interest, the importance of which was reflected, in particular, in the adoption by the Member States of the Protocol on the protection and welfare of animals, annexed to the Treaty establishing the European Community (OJ 1997 C 340, p. 110). Moreover, the Court has held on a number of occasions that the interests of the Community include the health and protection of animals (see Joined Cases C-37/06 and C-58/06 *Viamex Agrar Handel and ZVK* [2008] ECR I-69, paragraphs 22 and 23, and the case-law cited).

28 Secondly, it must be borne in mind that, according to Article 30 EC, the provisions of Articles 28 EC and 29 EC are not to preclude prohibitions or restrictions justified on grounds, inter alia, of the protection of the health and life of humans or animals, provided that such prohibitions or restrictions do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States, and that the Court has held that the protection of the health and life of animals constitutes a fundamental requirement recognised by Community law (see, to that effect, Case C-350/97 *Monsees* [1999] ECR I-2921, paragraph 24).

29 As regards the risk that specimens, once they have escaped into the wild, may continue to exist there and may therefore constitute an ecological threat, it must be borne in mind, thirdly, that the Court has consistently held that restrictions on the free movement of goods may be justified by imperative requirements such as the protection of the environment (see Case C-341/95 *Bettati* [1998] ECR I-4355, paragraph 62, and Case C-314/98 *Snellers* [2000] ECR I-8633, paragraph 55).

30 Although the principle of proportionality, which underlies the last sentence of Article 30 EC, requires that the power of the Member States to prohibit imports of animals from other Member States in which they are legally traded should be restricted to what is necessary to achieve the objectives of protection being legitimately pursued (see, to that effect, inter alia, *Harpegnies*, paragraph 34), it is necessary, for the application of that principle in a context such as that of the case in the main proceedings, to take into account the specific nature of the species concerned and the interests and requirements noted in paragraphs 27 to 29 of this judgment.

31 The fact that one Member State imposes less stringent rules than another Member State does not mean that the latter's rules are disproportionate and hence incompatible with Community law. The mere fact that a Member State has chosen a system of protection different from that adopted by another Member State cannot affect the appraisal as to the need for and proportionality of the provisions adopted (see, inter alia, Case C-108/96 *Mac Quen and Others* [2001] ECR I-837, paragraphs 33 and 34).

32 Contrary to the submission of the applicants in the main proceedings, a negative list system — which entails limiting the prohibition to the species of mammals included in that list — might not suffice to achieve the objective of protecting or complying with the interests and requirements mentioned in paragraphs 27 to 29 of this judgment. Reliance on such a system could mean that, as long as a species of mammal is not included in the list, specimens of that species may be freely held even though there has been no scientific assessment capable of guaranteeing that that holding

entails no risk to the protection of those interests and requirements (see, by analogy, Joined Cases C-154/04 and C-155/04 *Alliance for Natural Health and Others* [2005] ECR I-6451, paragraph 70).

33 However, the Court has consistently held that legislation, such as that referred to in the main proceedings, which makes the holding of mammals subject to the prior inclusion of the species to which they belong in a positive list and which also applies to specimens of species which are legally held in other Member States is in compliance with Community law only if a number of conditions are satisfied (see, by analogy, inter alia, Case C-344/90 *Commission* v *France* [1992] ECR I-4719, paragraphs 8 and 16, and Case C-24/00 *Commission* v *France*, paragraph 25).

34 First, the drawing up of such a list and the subsequent amendments to it must be based on objective and non-discriminatory criteria (see, to that effect, inter alia, Case C-192/01 *Commission* v *Denmark* [2003] ECR I-9693, paragraph 53).

35 Secondly, that legislation must make provision for a procedure enabling interested parties to have new species of mammals included in the national list of authorised species. The procedure must be one which is readily accessible, which presupposes that it is expressly provided for in a measure of general application, and can be completed within a reasonable time, and, if it leads to a refusal to include a species — it being obligatory to state the reasons for that refusal — the refusal decision must be open to challenge before the courts (see, by analogy, Case C-344/90 *Commission* v *France*, paragraph 9, and Case C-24/00 *Commission* v *France*, paragraphs 26 and 37).

36 Lastly, an application to obtain the inclusion of a species of mammal in that national list may be refused by the competent administrative authorities only if the holding of specimens of that species poses a genuine risk to the protection of or compliance with the interests and requirements mentioned in paragraphs 27 to 29 of this judg-

ment (see, by analogy, inter alia, Case C-344/90 *Commission* v *France*, paragraph 10, and Case C-24/00 *Commission* v *France*, paragraph 27).

37 In any event, an application to have a species included in the list of species of mammal which may be held may be refused by the competent authorities only on the basis of a full assessment of the risk posed to the protection of the interests and requirements mentioned in paragraphs 27 to 29 of this judgment by the holding of specimens of the species in question, established on the basis of the most reliable scientific data available and the most recent results of international research (see, by analogy, inter alia, *Alliance for Natural Health and Others*, paragraph 73).

38 Where it proves impossible to determine with certainty the existence or extent of the risk envisaged because of the insufficiency, inconclusiveness or imprecision of the results of the studies conducted, but the likelihood of real harm to human or animal health or to the environment persists should the risk materialise, the precautionary principle justifies the adoption of restrictive measures.

39 Furthermore, derogations such as those provided for in Article 3*bis*(2) of the animal welfare law must not lead to the favouring of domestic products, because that would constitute arbitrary discrimination against or a disguised restriction on products imported from other Member States (see, inter alia, Case 27/80 *Fietje* [1980] ECR 3839, paragraph 14).

40 As regards specifically conditions such as those set out in Article 3*bis*(2)(3)(b) and (6) of the animal welfare law, in relation to the holding by private individuals or firms trading in animals of specimens of mammals not referred to in the list attached as an Annex to the Royal Decree, it is important to establish that such conditions are

objectively justified and do not go beyond what is necessary to achieve the objective pursued by the national legislation as a whole.

41 It is clear that the assessment to be made of the proportionality of a body of rules such as that at issue in the main proceedings, in particular as regards the question whether the objective sought could be achieved by measures having less effect on intra-Community trade, cannot be carried out in the present case without additional information on that body of rules and on the implementation thereof. The assessment of the criteria established and of their application, of the scope of the derogations provided for in Article 3*bis*(2) of the animal welfare law and of the characteristics of the procedure for inclusion in the list, such as its accessibility and the possibilities of review where there is a refusal to include a species, requires a specific analysis on the basis, inter alia, of the various applicable provisions, previous practice and scientific studies, it being for the national court to make that analysis (see, to that effect, *Tridon*, paragraph 58).

42 In the light of the foregoing, the answers to the questions referred for a preliminary ruling must be that Articles 28 EC and 30 EC, read separately or in conjunction with Regulation No 338/97, do not preclude national legislation, such as that at issue in the main proceedings, under which a prohibition on importing, holding or trading in mammals belonging to species other than those expressly referred to in that legislation applies to species of mammals which are not included in Annex A to that regulation, if the protection of or compliance with the interests and requirements referred to in paragraphs 27 to 29 of this judgment cannot be secured just as effectively by measures which obstruct intra-Community trade to a lesser extent.

43 It is for the national court to determine:

— whether the drawing up of the national list of species of mammals which may be held and subsequent amendments to that list are based on objective and non-discriminatory criteria;

— whether a procedure enabling interested parties to have species of mammals included in that list is provided for, readily accessible and can be completed within a reasonable time, and whether, where there is a refusal to include a species, it being obligatory to state the reasons for that refusal, that refusal decision is open to challenge before the courts;

— whether applications to obtain the inclusion of a species of mammal in that list or to obtain individual derogations to hold specimens of species not included in that list may be refused by the competent administrative authorities only if the holding of specimens of the species concerned poses a genuine risk to the protection of the abovementioned interests and requirements; and

— whether the conditions for the holding of specimens of mammals not referred to in that list, such as those set out in Article 3*bis*(2)(3)(b) and (6) of the animal welfare law, are objectively justified and do not go beyond what is necessary to achieve the objective pursued by the national legislation as a whole.

**Costs**

44 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**Articles 28 EC and 30 EC, read separately or in conjunction with Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, do not preclude national legislation, such as that at issue in the main proceedings, under which a prohibition on importing, holding or trading in mammals belonging to species other than those expressly referred to in that legislation applies to species of mammals which are not included in Annex A to that regulation, if the protection of or compliance with the interests and requirements referred to in paragraphs 27 to 29 of this judgment cannot be secured just as effectively by measures which obstruct intra-Community trade to a lesser extent.**

**It is for the national court to determine:**

— **whether the drawing up of the national list of species of mammals which may be held and subsequent amendments to that list are based on objective and non-discriminatory criteria;**

— **whether a procedure enabling interested parties to have species of mammals included in that list is provided for, readily accessible and can be completed within a reasonable time, and whether, where there is a refusal to include a species, it being obligatory to state the reasons for that refusal, that refusal decision is open to challenge before the courts;**

— **whether applications to obtain the inclusion of a species of mammal in that list or to obtain individual derogations to hold specimens of species**

**not included in that list may be refused by the competent administrative authorities only if the holding of specimens of the species concerned poses a genuine risk to the protection of the abovementioned interests and requirements; and**

— **whether conditions for the holding of specimens of mammals not referred to in that list, such as those set out in Article 3*bis*(2)(3)(b) and (6) of the Law of 14 August 1986 concerning the protection and welfare of animals, as amended by the Law of 4 May 1995, are objectively justified and do not go beyond what is necessary to achieve the objective pursued by the national legislation as a whole.**

[Signatures]