



PRESS RELEASE

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Legal opinion clearly proves: Positive list for pets would be against the law

Positive list would violate international law, EU law and the German constitution / Legal opinion available free of charge in German and English at www.tierwohl-statt-heimtierverbot.de

Prof. Dr. Dr. Tade Matthias Spranger from the Faculty of Law at the University of Bonn (Germany) has written an "Expert Opinion on the Legal Admissibility of the Introduction of a National Positive List for Pets with Special Consideration of Constitutional and European Law Aspects" on behalf of the German Pet Trade & Industry Association (Zentralverband Zoologischer Fachbetriebe Deutschlands e.V. - ZZF).

On 167 pages, the legal opinion comes to a clear assessment: The introduction of a national positive list for pets, as recently proposed by German Federal Minister Cem Özdemir, would comprehensively violate various provisions of international, European and constitutional law. If the Federal Republic of Germany would introduce a national pet positive list, the initiation of infringement proceedings, in particular by the European Commission, would be foreshadowed. A positive list at the level of the European Union would also not be compatible with European law. "A pet positive list is contrary to European law regardless of whether the author of such a list is the German legislator or the European Union itself," clarifies the law professor.

Spranger teaches in the fields of constitutional and administrative law, European law as well as German and international biotechnology law.



In an honorary capacity, he is appointed as a commissioner in the Animal Protection Commission by the State Office for Nature, Environment and Consumer Protection of the State of North Rhine-Westphalia in Germany. His numerous publications include "Pet keeping and constitutional law", which he published in 2018.

At the presentation of his expert opinion on 17 June 2023, Spranger emphasised: "I am of the rock-solid conviction that the results I have worked out are solid. The study should therefore be given considerable attention in the political discourse."

The report is freely available in German and English as a pdf: www.zzf.de/fileadmin/ZZF/Dokumente/Studien/Expert_opinion_Spranger_english_06-2023.pdf "The English version is very important to me so that the report can also have an impact at the European level," Spranger clarifies.

The German-language report and the English translation will appear together in a book to be published by LIT-Verlag in July. In addition to the ZZF, funding was made possible by the Industrieverband Heimtierbedarf (IVH), the European Pet Organisation (EPO), the Bundesverband für fachgerechten Natur-, Tier- und Artenschutz (BNA), the Deutsche Gesellschaft für Herpetologie und Terrarienkunde (DGHT), the German Kennel Club (VDH), the Association of Zoological Gardens (VdZ), Leipzig Zoo, the Citizen Conservation Foundation (CC), the Austrian Federal Economic Chamber (WKO) and Pet Industry Services (WZF).

International law pro pet ownership

The expert opinion states that a national positive list would already violate the "European Convention for the Protection of Pet Animals" signed and ratified by Germany and is thus contrary to international law. The Convention contains a clear commitment to private animal husbandry, animal breeding and animal trade and emphasises the importance of pets because of their contribution to the quality of life and their consequent value for society.

On the level of EU law, a national positive list would constitute a violation of fundamental freedoms and here in particular of the free movement of goods.



"The alleged dangers from >>dangerous animals<< do not meet the requirements that the European Court of Justice has attached to the protection of >>public safety and order<<. Similarly, the abstract reference to zoonoses is not capable of justifying a national positive list with reference to the protection of health and human life," the summary of the opinion reads. And further: "Contrary to what is sometimes portrayed in public discourse, the case law of the European Court of Justice on the >>Belgian positive list<< does not reinterpret animal welfare considerations in this respect. On the contrary, this case law is diametrically opposed to a national pet positive list." Aspects of biodiversity protection are also not suitable to justify interference with the free movement of goods. Irrespective of the fact that there is no evidence for positive biodiversity effects of a positive list anyway, the case law of the European Court of Justice shows that the term biodiversity is understood there in the sense of a genetic diversity of certain livestock breeds.

In addition to the free movement of goods, the freedom to provide services would also be violated as soon as service providers from other EU countries were no longer allowed to offer corresponding pet care services in Germany.

"A circumvention of the described legal limits for the German legislator by the alternative implementation of an EU positive list is not possible. In particular, the European Union already lacks a viable legislative competence for animal protection," explains Prof. Spranger. The Union's competences in the field of animal protection law are mainly in the area of agricultural policy. Union law itself does not know any general animal protection law and the pet animal convention of the Council of Europe has neither been signed nor ratified by the EU itself. A Union-wide positive list would violate the freedom of occupation and, depending on the form, also the guarantee of property and the prohibition of discrimination.

Furthermore, a national positive list would violate various fundamental rights and constitutional principles of the German Constitution. The corresponding violations cannot be based on a constitutional requirement for action under Article 20a of the German Constitution (protection of the natural foundations of life and of animals), as this is a purely state objective provision. On the one hand, freedom of occupation under Article 12(1) of the German Constitution is violated.



On the other hand, a pet positive list would cause unjustified encroachments on the general right of personality and - depending on the concrete legal form - on the guarantee of property (Article 14 (1) of the German Constitution) as well as on the general principle of equal treatment and the prohibition of discrimination (Article 3 (1) of the German Constitution). Furthermore, a national pet positive list would be disproportionate, as milder means of equal effectiveness are available. The disadvantages of so-called negative lists put forward in this context do not exist when viewed objectively.

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The German Pet Trade & Industry Association (ZZF) represents the professional, economic and socio-political interests of the German pet industry. Members include pet retail businesses, system headquarters in the pet supplies trade, wholesale companies, breeders, pet groomers and pet supply manufacturers.

WZF – Pet Industry Services (Wirtschaftsgemeinschaft Zoologischer Fachbetriebe) is a fully-owned subsidiary of ZZF. WZF is the founder, owner and organizer of INTERZOO in Nuremberg, the world's largest international trade fair for the pet supplies industry.

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