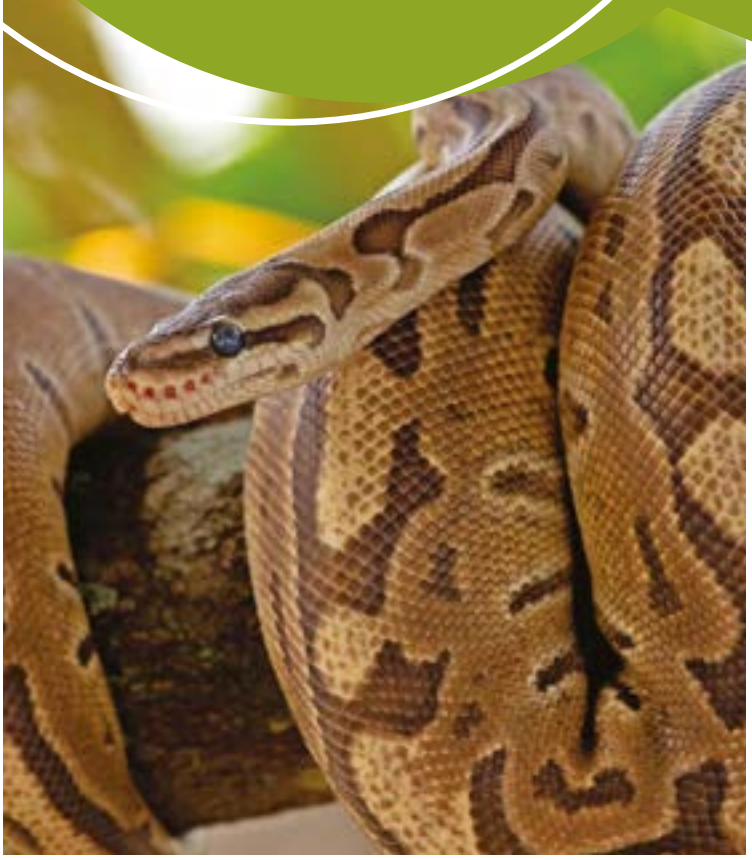
EUROGROUP FOR ANIMALS

EU POSITIVE LIST

A proposal to regulate the trade in animals destined for life as a pet



EXECUTIVE SUMMARY

Exotic pets in Europe are not only a mounting concern for animal welfare, public health and safety, and biodiversity conservation, but the patchwork of efforts to regulate the trade in Member States also undermines the internal market.

Investigations introduced in this paper, and reviews of existing research demonstrate that the EU plays a major role in the import and trade of thousands of species, and millions of individuals, caught in the wild or bred in captivity to be kept as pets in private households. However, the lack of uniformity in approaches across the Union makes the true extent of trade flows difficult to monitor and the enforcement of the rules that exist next to impossible.

Veterinarians are among the first to raise concerns that even enthusiastic and experienced keepers of exotic pets regularly fail to meet their basic biological needs, let alone provide adequately for their welfare. The physiological, biological and ethological characteristics of these wild animals often mean that a guarantee of their welfare is incompatible with captivity. In addition, while the animals suffer the effects of poor husbandry, the owners are often at risk of injury or infection by pathogens, which in turn can lead to the spread of zoonotic diseases, while escaped or abandoned pets can be dangerous for the public and other animals. In the worst cases, indigenous fauna and ecosystems are threatened by these Invasive Alien Species.

For each individual animal arriving in a European household, a great deal more have perished during capture or in transit, or suffered in breeding facilities. Not only are some target species being depopulated, but other animals, sometimes entirely unrelated, are also killed or injured during haphazard hunting operations in their habitats.

To tackle this complex problem, some jurisdictions rely on a negative list – species proscribed from being traded and kept as pets, often based on conservation or safety objectives; others use a positive list – only including suitable species, while some jurisdictions do not have a legal framework addressing this issue. Positive lists show significant advantages over negative lists, being simpler and more effective, precautionary rather than reactive in nature, and future proof. However, inconsistencies in the way lists are drawn up adds to the uneven delineations of what animal species can and cannot be traded and kept as pets in Member States, which blurs the line between the legal and illegal trades. This may result in not only offering opportunities for cross-border criminal activity, but also hampering international efforts to bring perpetrators to justice.

Meanwhile, wild animal pet markets and online adverts often exploit the legal complexity existing between Member States to create trade possibilities that are difficult to monitor.

As a solution, this White Paper proposes the establishment of an EU-wide positive list. This list would be elaborated using scientific risk assessments of which species can be considered 'companion animals'. This term offers an implementable definition of which animals can be traded to be kept as pets in full respect of their welfare needs, and their biological and husbandry requirements.

The 2008 ECJ ruling, and a recent independent legal opinion introduced in this paper, show that a positive list is a legally valid means to restrict the EU trade and imports in wild animals kept as pets. The development of this positive list approach represents an opportunity to incorporate Treaty demands for the respect of animal welfare directly into single market legislation, notably with the forthcoming revision of animal welfare legislation. Therefore, the equivalent legal bases of this proposal and the Commission's proposal for new EU rules on the welfare and traceability of dogs and cats, present a vital opportunity for the inclusion of a provision granting the Commission the power to establish an EU positive list. It is highly probable that, being established using criteria based on animal welfare, such a positive list would avoid raising issues involving World Trade Organization (WTO) international trade rules.

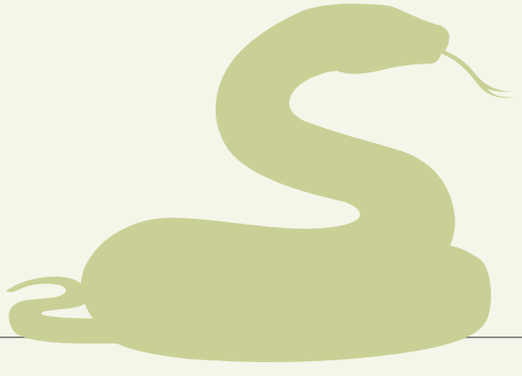
Work on a model methodology for establishing a positive list is already underway and recommendations should be in place by mid 2026. We celebrate that the ongoing study on the added value and feasibility of an EU-wide positive list, which will be completed in mid 2025, is designed to provide a well rounded assessment of many possible aspects of an EU positive list. We urge the Commission to ensure that, based on the results of the study, the appropriate DGs and units are informed of the results and steps are taken to develop a positive list of allowed companion animals.

In addition, opportunities for the inclusion of an EU positive list into upcoming legislation are happening before the end of this study. We therefore call upon the European Parliament, and the Council of the European Union to seize upcoming legislative opportunities, particularly the "dogs and cats" proposal, to include an empowerment for the Commission to adopt implementing acts, taking into account an impact assessment on added value and feasibility, to establish a list of fauna species allowed to be placed on the market. This approach ensures a legislative pathway for a positive list, subject to the necessary evidence.

CONTENTS

ACRONYMS

AHL	Animal Health Law
BCP	Border Control Posts
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CJEU	Court of Justice of the European Union
EU	European Union
GATT	General Agreement on Tariffs and Trade
FVE	Federation of Veterinarians of Europe
IAS	Invasive Alien Species
MS	Member States
SPS	Sanitary and phytosanitary measures
TBT	Technical Barriers to Trade
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
WTO	World Trade Organisation



GLOSSARY

BCP – A Border Control Post is an inspection post designated and approved in accordance with EU legislation for carrying out checks on animals and animal (or plants) products arriving from third countries at the EU borders. These checks are carried out to ensure that regulations are complied with, and that animal and public health, as well as animal welfare are protected. BCPs are located in every Member State at ports, airports and rail or road entry ports.

Bern Convention – The Bern Convention on the Conservation of European Wildlife and Natural Habitats, also known as the Bern Convention, is a binding international legal instrument that covers natural heritage in European, as well as some African countries. It came into force in 1982 in order to promote cooperation between the signatory countries in natural conservation. It has three main aims: conserve wild flora and fauna, as well as their natural habitats; promote cooperation between states; give particular attention to endangered and vulnerable species, especially migratory species.

CBD – Since 1992, the Convention on Biological Diversity is a multilateral agreement ratified by 196 parties. It develops strategies designed to promote the conservation and sustainable use of biodiversity. The CBD has three goals: protect biodiversity, sustainably use its components, and share fairly the benefits arising from genetic resources.

IAS – An Invasive Alien Species is a species whose introduction and/or spread threatens biological diversity. 'Alien species' refers to a species, sub-species or lower taxon, introduced outside its natural past or present distribution and includes any part, gametes, seeds, eggs or propagules of such species that might survive and subsequently reproduce.

CITES – The Convention on International Trade in Endangered Species of Wild Fauna and Flora is an international agreement between governments established in 1975. CITES is a legally-binding treaty to which states or countries (referred to as 'Parties') adhere voluntarily, which aims to protect wild animals and plants from over-exploitation through international trade. The Convention provides a framework that must be implemented in the national legislation of the Parties that have adopted the CITES treaty. CITES has been signed by 184 Parties and guarantees the protection of more than 37,000 species of animals and plants.

EUROPOL – An international law enforcement agency whose mission is to support MS in preventing and combating all forms of serious international and organised crime, cybercrime and terrorism. Europol also works with many non-EU partner states and international organisations.

Wild animals – For the purpose of this report, the term 'wild animal' comprises those species whose collective behaviour, life cycle or physiology remains unaltered from the wild conspecific despite their breeding and living conditions being under human control for multiple generations.

Exotic pets – Where studies using the term 'exotic pets' are referred to in this report, this document will use the term 'wild animals kept as pets'. We note that there is no definition in EU law of exotic or wild animals. Exotic pets, unless otherwise stated, refers to all non-domesticated animals, both native and non-native, or non-traditional companion animals, traded and kept as pets.

Companion animals – Typically, companion animals are considered only as domesticated animals kept as pets, in particular dogs and cats. In this document, animals that are kept and/or traded for the purpose of human companionship and/or leisure, or for being kept in a household are mainly referred to as 'companion animals'. When the term companion animals is used, it refers explicitly to the animals that could be placed on a positive list, after having been rigorously assessed as species that can be kept and/or traded in full respect of their welfare needs, and their biological and husbandry requirements.

Zoonotic disease – A disease transmittable between various animal species and human beings.

INTRODUCTION

The scale of the global pet trade is vast, estimated at over one thousand to two thousand species traded (Toland *et al.*, 2012; Altherr *et al.*, 2020), with some estimations reaching over 13,000 species across all classes (Warwick *et al.*, 2018). With approximately half the households in Europe keeping animals as pets (Davenport & Collins, 2016), the European Union (EU) is known to be a central player in the import and trade of wild-caught and captive-bred animals to be kept in private households.

It is no easy task to understand the full scale of the pet trade, which goes far beyond the domesticated animals typically considered as companion animals. Non-domesticated, wild animals are kept as pets in huge numbers, yet the true picture of how many, in which countries, and what the profile of people who trade wild animals to be kept in homes is blurred, and remains difficult to monitor. This trade raises a number of important issues for the internal market, animal welfare throughout the whole trading chain, human and animal health and safety, local biodiversity in case of release or escape of animals from other environments, and conservation where wild populations are endangered.

In order to tackle some of these issues, different strategies can be employed, including:

1. increased veterinary checks at border crossing points
2. increased standards and requirement on keeping animals
3. a prohibition on the keeping and/or trading of wild animals to be kept as pets
4. a prohibition on the keeping of certain animal species (a negative list), or
5. **regulation to allow the keeping of certain animal species (a positive list).**

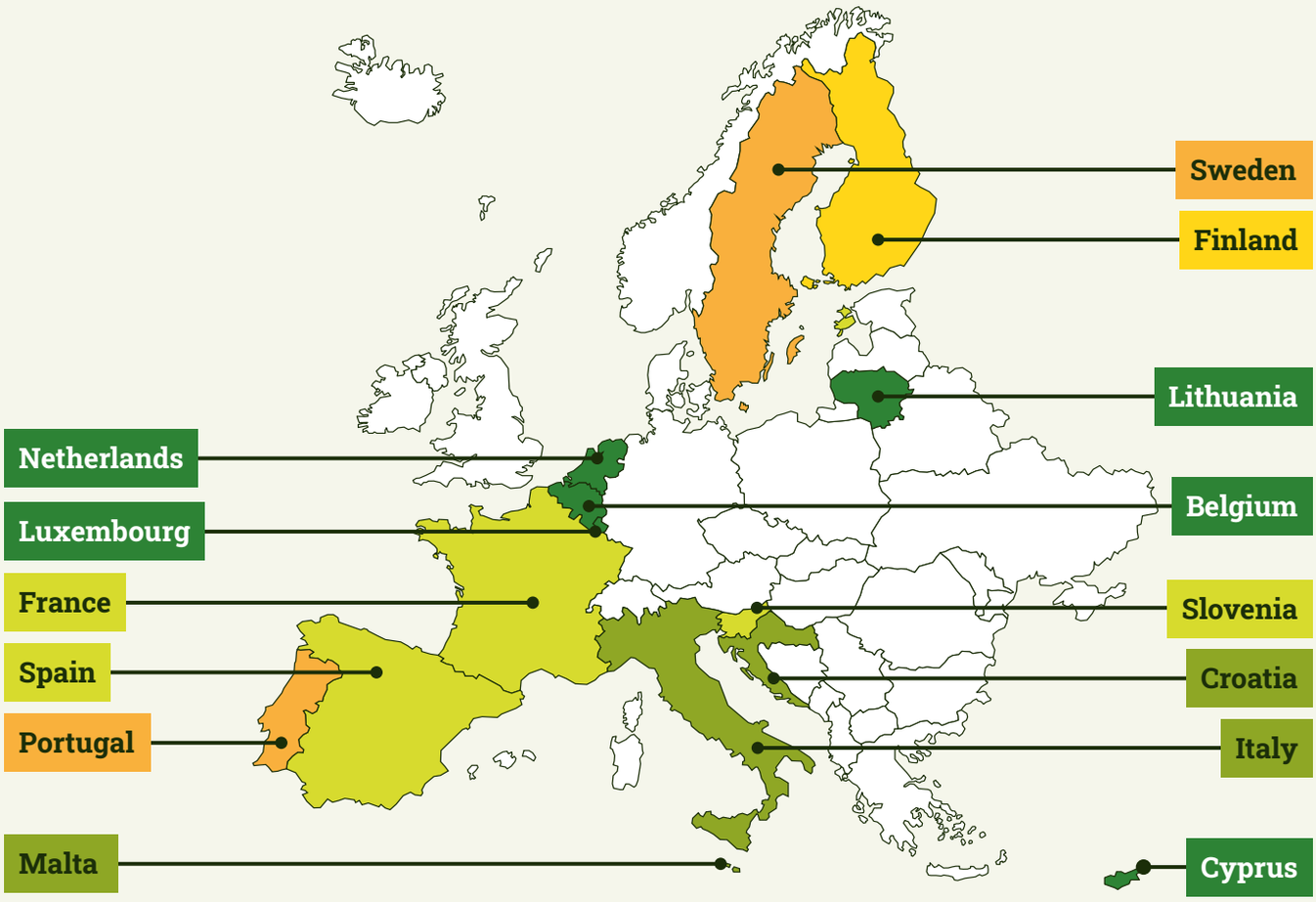
Unprecedented political will for a positive list at EU level has been evident in recent times, and the Commission received a Council instruction in 2022 to conduct a form of Impact Assessment to assess the added value and feasibility of an EU positive list.

This White Paper brings together extensive research conducted on positive lists over several years acting as a *'One Stop Shop'* for past and current research. It demonstrates the issues caused by the current trade in wild animals kept as pets; presents a solution in the form of an EU positive list of species permitted as companion animals; and elucidates a feasible legislative proposal. Finally, this paper provides recommendations for how an Impact Assessment should be conducted in order to fulfil the strong mandate given by the EU Parliament and the Council of the EU on this matter.

A positive list is a list of animal species that are allowed to be traded as companion animals[1]. De facto, any species that is not on the list cannot be legally traded to be kept as a pet. There are several possible objectives that a positive list legislation may set out to achieve. These include protection of animal welfare, reduction of the risk of zoonotic disease spillover, reduction in the risk of injury to other animals or people, reduction of the risk of pet animals becoming Invasive Alien Species (IAS), or the conservation of wild populations of animals used in the pet trade.

Several countries in the EU already have a positive list[2]. Five have full positive list for pets, already implemented (Belgium, Cyprus, Lithuania, Luxembourg, Netherlands), while three have variations on a positive list implemented (Croatia, Italy, Malta); others have positive list enshrined into law, and actively develop the list (France, Slovenia and Spain). Importantly, according to the European Court of Justice, a positive list is a legally valid mean to restrict the intra-EU trade in wild animals kept as pets[3].

The concept of an EU positive list is now commonly agreed to have excellent potential in tackling the major challenges that arise from the current pet trade. The Federation of Veterinarians of Europe (FVE) have called for competent authorities to work on positive lists of animals, based on a thorough assessment, according to certain scientific criteria, of the risks for the animal itself, its owners and the society, the indigenous species and ecosystems, where animals shall be approved for keeping by private individuals if they belong to a species on the list (Federation of Veterinarians of Europe, 2013). After all, veterinarians suffer significant moral stress when they cannot exercise their art to the benefit of animals (Rollin, 2019).



Full positive list for pets, already implemented

Variations on a positive list implemented

Positive list enshrined into law, actively developing lists

Provision for a positive list in law

Positive list law in discussion

STRUCTURE OF THE WHITE PAPER

Section 1

Concerns from the trade in wild animals kept as pets

Introduces the issues caused by the current wild animal pet trade in the EU including harms to animal welfare, public health, biodiversity and conservation. Two novel investigations then provide evidence of the scale of the trade across the EU and discuss issues associated with the lack of monitoring and data, with insights from veterinary practitioners, investigations on wild animal pet markets and the online trade.

Section 2

Legal framework, added value and challenges of the current pet trade

Introduces the current legal framework and focuses on the added value of an EU positive list to implement and enforce EU legislation. It introduces the significant diversity of the legislation across MS regarding the trade and keeping of wild animals as pets and discusses the resulting challenges.

Section 3

Proposal for an EU positive list

Introduces a proposal for an EU positive list discussing a feasible legal basis, proportionality, subsidiarity, legal instrument, WTO compliance and an argument for the inclusion of a provision for an EU positive list in the upcoming revision of the animal welfare legislation. The section closes with a discussion of existing good practice in MS regarding a positive list that would add value to a harmonised EU positive list.

Section 4

Next steps

Summarises the knowledge gaps identified in the previous sections and highlights recommendations for the positive list to be included in upcoming legislation.

Annexes

These provide more details on the possible WTO compliance of the proposal and information from an investigation into online trade.

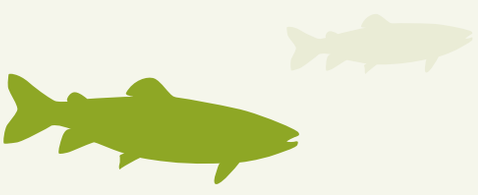


Figure 1. Timeline: Positive Political Momentum

2016

European Parliament resolution on the seventeenth Conference of Parties of CITES

"Calls on the EU Member States to establish a positive list of exotic animals that can be kept as pets."

Bern Convention guidance on Invasive Alien Species pathways action plans

States that "The positive list is a preventive model at its core: it is meant to address the exotic pets' pathway avoiding all these potential and not always predictable problems due to the spread of IAS (such as transmission of diseases, disruption of habitats, hybridisation and competition with indigenous species)."

2021

European Parliament resolution on the EU Biodiversity Strategy for 2030

"Calls further on the Commission to improve prevention by introducing mandatory risk assessments prior to the first import of non-native species and by proposing EU-wide white lists of species permitted for import, keeping, breeding and trade as pets on the basis of a scientific risk assessment and ecological characteristics in the EU as soon as possible."

2022

Council position paper on a new EU legislative framework for an EU positive list

"Call on the Commission to explore the potential benefits of an EU wide positive list, which builds on the experiences gained by those Member States who have implemented this system. The aims of such work should be to enhance animal welfare, safeguard biodiversity, protect public health and reduce administrative burdens across EU Member States."

European Parliament resolution on the nineteenth Conference of Parties of CITES

"Reiterates its call for the EU Member States to establish a science-based EU-wide positive list of animals allowed as pets, under appropriate welfare conditions, without harm to populations in the wild and to European biodiversity; stresses, in this regard, the need for a Commission study to facilitate the adoption of this list, which should be based, among other inputs, on the existing experience of Member States and lessons learned."

European Parliament resolution on Improving EU regulations on wild and exotic animals to be kept as pets in the European Union through an EU positive list

"takes note of the call by some Member States to establish an EU-wide positive list under appropriate welfare conditions; calls, in this context, on the Commission to carry out an impact assessment of the added value and feasibility of establishing such a list, using a science-based set of criteria to determine which species are suitable as pets and including a careful analysis of various criteria already used in national positive lists in order to establish the most effective ones which could possibly be adopted in an EU-wide positive list based on the Member States' best practices..."

Action Plan against Wildlife Trafficking

"Explore the need for, added value of, and feasibility of revising existing measures or creating new tools to reduce unsustainable trade in wildlife (e.g. a 'positive list' of species whose specimens taken from the wild can be traded and kept as pets...)"

2024

Dogs and cats Regulation proposal

"Commission proposal for new rules on the welfare of dogs and cats and their traceability" - This proposal does not yet foresee the scope to include wild animals on an EU-positive list.

By widening the scope of this proposal, there is a clear opportunity for inclusion of an empowerment for the Commission to develop and EU-wide positive list of companion animals.

Commission Feasibility Study on an EU- wide positive list

"Assessment of the need for, added value of and feasibility of a science-based EU-wide positive list of animals that would be allowed as pets in the EU" - We celebrate that the scope of this research goes beyond the language presented in the Action plan in 2022.

The idea of positive lists gained momentum prior to 2022 as several institutions referred to it as a potential solution to better regulate the trade; including the European Parliament and the Bern Convention[4,5] (Scalera & Genovesi, 2016).

In 2020, an opinion poll showed that EU citizens from six countries overwhelmingly supported better regulation of the trade of wild animals kept as pets within the EU[6].

2022 saw public and political backing shift to an EU-wide approach. Starting with the Conference on the Future of Europe, where an 'IDEA' on the EU positive list was published in the final report of the digital platform[7]. Shortly thereafter, the Petitions Committee of the European Parliament held a debate on written positions, submitted by three EU citizens[8]. The turning point came when 19 Member States (MS) supported the position paper on a new EU legislative framework for an EU positive list on behalf of Cyprus, Lithuania, Luxembourg and Malta, as presented at the Agriculture and Fisheries Council meeting of 24 May 2022[9]. This pivotal moment led, for the first time, the Commissioner for Health and Food Safety, Stella Kyriakides, to announce a study into the benefits of an EU-wide system. Moreover, it catalysed a change in the written response from the Commission to the Petitions Committee debate in Parliament, adding the need for an assessment on the feasibility and added value of an EU positive list to the conclusions[10].

The remainder of 2022 saw further clarification of the need for an assessment into an EU positive list. The European Parliament resolution on the nineteenth Conference of Parties of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) which reiterated its call for MS to establish a science-based EU-wide positive list of animals allowed as pets, under appropriate welfare conditions and other objectives[11]. Thereafter, the Revised Action Plan against Wildlife Trafficking released in November 2022 demonstrates commitment from the Commission to consider a positive list, by first conducting an assessment. However, this commitment fell far short of the calls expressed by the Council, Parliament and the public.

The definitive juncture in the political storm came exactly two weeks after the release of the Action Plan when the European Parliament adopted its resolution of 24 November 2022 on Improving EU regulations on wild and exotic animals to be kept as pets in the EU through an EU positive list[12]. The resolution highlights how the lack of an EU-wide positive list of animals to be kept as pets undermines the health and welfare of both animals and humans, and poses a threat to biodiversity[13]. Since then, in 2024, the Commission has begun a study on the need for, added value of, and feasibility of Introducing a 'positive list of pets' across the EU. The question remains as to what legislative paths are available, if this study has a favourable result, and what actions the Commission will take following the study's publication.

KEY MESSAGES

1.

We celebrate that the ongoing study on the added value and feasibility of an EU-wide positive list, which will be completed in mid 2025, is designed to provide a well rounded assessment of many possible aspects of an EU positive list. We urge the Commission to ensure that based on the results of the study, the appropriate DGs and units are informed of the results, and steps are taken to develop a positive list of allowed companion animals.

2.

For the inclusion of a provision, granting the Commission the power to establish an EU positive list in the proposal for new rules on the welfare of dogs and cats and their traceability[14].

01

CONCERNS FROM THE TRADE IN WILD ANIMALS KEPT AS PETS

This section presents the main concerns raised by the trading and private keeping of wild animals including animal health and welfare, zoonotic disease risk as well as biodiversity and conservation. In order to understand the need to regulate the trade in wild animals kept as pets, this section also gives an idea of the scale of this trade in the EU.

1.1 Animal health and welfare

Wild animals kept as pets go through several stages during trade: capture or breeding, transport, and captivity in the household. The following sub-sections present ways these stages can threaten the health and welfare of wild animals.

> **"An animal is an animal... It has needs and interests determined by its nature which must be accommodated for it to enjoy positive welfare and which generate suffering when they are not accommodated."**
> ***– Rollin. E. Bernard, Veterinary Medical Ethics, 2018***

Aside from being kept in the household, wild animals kept as pets suffer at every stage of their trade, as do some breeds of domesticated animals. This can lead to pain, fear and death, where the more animals that perish in trade because of unregulated and unenforced rules, the more are sourced in the wild to maintain supplies (see Nuwer, 2021). Whether captured in the wild or captive-bred, animals suffer long journeys to reach our homes. They are often shipped over long distances in cramped enclosures, unable to move. Many die of suffocation, starvation, or disease before they reach their destination.

The health and welfare of many wild species cannot be guaranteed when they are traded and kept in captivity as it might be difficult to provide for the "Five Freedoms" defined by the Farm Animal Welfare Council (1992) (Schuppli & Fraser, 2000). More recently, the welfare of animals is assessed in relation to the "Five Domains" (Mellor *et al.*, 2020). It would be important that assessment criteria used to determine which animals are suitable as being traded and kept as pets is based largely on the ability to fulfil the "Five Domains" at every stage of the trade (see Figure 2).

Figure 2. The Five Domains

1.1.1 Capture

The inhumane methods used to capture animals from the wild to be kept in people's homes cause environmental disturbance, socio-behavioural disturbance of populations, non-target species injury/death, stress and injury to target animals.

For example, wild macaws are used as decoys to trap conspecifics. Decoy birds are tied to the ground or to trees where their loud, stressed calls lure other birds to a trap (World Animal Protection, 2022 b). When ball pythons *(Python regius)* are taken from the wild, hunters scour the bush, often with dogs. When they find pythons after tearing through the undergrowth, they are pulled from their burrows. This can cause snakes immense distress, and injuries after which they are thrown into sacks, often with many other snakes. For solitary animals like ball pythons, this process can be extremely traumatic (see World Animal Protection 2020a). They are often then placed in ranches or transferred for the pet trade. Cyanide fishing is used for several species of aquarium fish. Fishermen use cyanide as a cheap method of stunning ornamental fish so they can be caught for sale, but this is extremely destructive to coral and other reef inhabitants. Not to mention the use of glue traps which causes horrific, sometimes fatal, injuries to vulnerable wildlife (Sekhon, 2021).

Beyond the inappropriate methods that do not meet high animal welfare standards, many wild animals die during or as a result of capture because of a condition named capture myopathy and several associated syndromes. This condition, a non-infectious disease, occurs when wild or domestic animals are exposed to severe stress, in which muscle damage results from extreme exertion, struggle, or stress. There is currently no treatment or adequate solution to prevent mortality from capture myopathy efficiently (Breed *et al.,* 2019).

1.1.2 Breeding

Wild animals, whether they are taken from the wild or born in captivity, have complex needs that in many cases cannot be met by private keepers in a household (Born Free Foundation & RSPCA, 2021). Captive breeding is often suggested as a humane alternative to wild capture, but it can still lead to immense suffering and exploitation. Selection techniques for specific traits can lead to neurological disorders, which can negatively impact animals' welfare, such as in ball pythons (Rose & Williams, 2014). The mere fact that animals can survive and successfully breed does not indicate whether their welfare is satisfactory, as many animals successfully bred under captive conditions are found to have severe welfare problems (Engebretson, 2006). Parrots bred in captivity can be hand reared, resulting in numerous associated problems including aspiration pneumonia (due to food inhaled into the lungs of the bird), malnutrition and starvation.

It has been suggested that parrots reared this way may demonstrate more stereotypical (e.g., feather plucking) behaviours associated with poor welfare (Lightfoot, 2002). Wild animals still have their natural instincts. As with keeping in the home, captive breeding facilities are simply inadequate to house many wild animals.

Intensive breeding practices can potentially be used by breeders to increase their productivity. For instance, the use of hormones to stimulate fertility and increase reproduction rate has been demonstrated as viable on diverse captive-bred wild species, but this practice raises serious animal welfare concerns (Silla *et al.,* 2021). In addition, several studies on the behaviour and fertility of mammals such as big cats have shown that fertility highly depends on the nursing period, meaning that females will only come back to oestrus once their young are old enough or have died (see Bertram, 1975). In this context, it can be assumed that young are separated from their mothers at an early stage in captive breeding facilities in order to increase the number of births (Harkin & Locke, 2022). This concern is also corroborated by the fact that young wild animals, especially mammals, are very popular on the pet market (see FOUR PAWS, 2019). This is particularly alarming considering that some species require long nursing periods for their development and well-being.

1.1.3 Transport

There are numerous examples of animal suffering in transport (Nawer, 2021), including the three sloths that recently froze to death in an aeroplane at Liege airport (Camut, 2023). Such as where transport conditions cause dead and dying frogs to be crushed together in small compartments with no hydration – in that specific case the importer was found not guilty on a technicality. In addition to the stress of uneven roads in inappropriate transport as they are passed between people up the trade chain, live animals often go hungry or thirsty, or are placed in contact with other animals causing fear and distress, even increasing the risk of disease transmission.

While wildlife transport guidelines exist[15] under CITES, they are not legally binding. Unfortunately, although recent small improvements at COP19 have been made[16], there are few consequences for traders if these guidelines are not followed. Moreover, EU Regulation No 1/2005 on the protection of animals during transport remains insufficient to guarantee the welfare of animals during transport. As a precaution, trading should only be allowed for those animals who are not likely to suffer in the transportation process. Even if animals do survive transportation to their final destination, they are often distressed, unable to eat, move, or behave as they would in the wild.

Alarmingly, of the estimated 14 to 30 million aquarium fish caught in the wild each year, mortality can be up to 90% throughout the supply chain (Thornhill, 2012). It has been estimated that for the 700,000 wild birds brought into the USA each year (prior to 1992), 3.5 million more died, and yet there is no evidence this situation has improved[17]. Huge numbers of animals are regularly found in raids to be suffering appalling conditions, dead or dying. In fact, the percentage of animals that die before they are exported from their country of origin remains unknown. Please see a detailed list of recommendations for wild animals in the upcoming revision of the Transport Regulation in the white paper entitled "Transport regulation: due time to change the rules".

1.1.4 Captivity

All animals traded as pets are sentient beings, individuals capable of experiencing positive and negative feelings such as pleasure, joy, pain and distress. This means the way animals are traded and 'used' by humans as pets can seriously undermine their welfare. Every type of animal has a complex, and unique, set of needs, from biological requirements (temperature, ultraviolet light and soil (Fischer *et al.,* 2015)) for health and survival to ethological (behavioural) needs. Importantly, every stage of the trade can greatly impact the well-being of animals, causing pain, stress, fear, hunger, confusion and loneliness. Many times, the culmination of these negative factors results in a high mortality rate (Baker *et al.,* 2013; Robinson *et al.,* 2015; Wyatt *et al.,* 2022). It must be noted that the suffering experienced by countless animals in these poor conditions is immeasurable. As such, an animal welfare advisory committee of a major international pet company even convinced the management not to sell parrots because they can live longer than their owners and are very easily traumatised when they are shifted to a new household (Rollin, 2019). A review of the welfare of wild animals kept as pets by the Scottish government (see Box 1) (Oldham, 2022) systematically searched the literature and revealed several examples of the negative welfare effects (as well as a lack of information for many traded species).

Box 1
Typical issues experienced by animals in captivity

- Stress-related behaviours, e.g., feather plucking, self-mutilation, stereotypic behaviours (rocking, pacing) (Jenkins, 2001).
- Inappropriate diet, through complexity, or lack of knowledge which can lead to serious health issues, e.g., metabolic bone disease.
- Injuries from inappropriate housing/diets, co-mingling with other species or poor handling.
- Surgical procedures, e.g., dental extraction, descenting, declawing.
- Unregulated and informal breeding of pet animals requires more investigation where congenital conditions recorded as inbreeding and breeding for rare phenotypes can be a risk to welfare (Oldham, 2022).
- Lack of adequate conditions, e.g., natural light, UVB and warmth, as well as in sufficient opportunity for exercise preventing normal behaviours, especially in birds, large or dangerous species of mammals.
- Inability to meet the social needs of animals; these are often misunderstood, especially for species that live in dynamic groups.

Meeting the needs of exotic pets such as large parrots, reptiles and amphibians is likely to be challenging in captivity (Grant *et al.*, 2017). A significant change must occur in the way we trade and keep pets to ensure they will not systematically suffer at any stage of the trade. It would lead the way to a society that transitions from a human dominion over animals towards a stewardship where the rights and well-being of animals are fully recognised and respected.

Box 2
Concerns of veterinarians over the keeping of wild animals

Experts recognise that not all species are suitable as pets (Federation of Veterinarians of Europe, 2013). 90.4% of veterinarians surveyed consider that it is difficult for owners to provide adequate care for certain species. Many times, this is due to the fact that their needs can never be met in captivity, or are prohibitively difficult to meet for private citizens lacking in expertise.

37.8% of veterinary visits to wild animals were for advice on keeping and feeding (De Briyne & Iatridou, 2016) suggesting that wild animals are being traded to a large number of private keepers who do not have sufficient knowledge. Different types of owners have different levels of expertise for the keeping of wild animals; casual owners are not experts and rarely possess the experience required to provide good husbandry **(see Box 7)**. Veterinarians reported that owners of wild animals as pets frequently acquire information about how to keep their wild pets directly in pet shops, despite the fact that sellers often cannot provide clear, accurate, and correct guidelines for proper husbandry. Yet, sellers in these shops are perceived by the owners as trustable experts. This often leads to misinformation and to poor husbandry (Sapience, 2022).

Another challenge is the limited treatment options with very few veterinary medicines authorised for wild animals, meaning that unauthorised medicines must sometimes be used. Negative profit margins mean that medicines for these wild animals are unlikely to be developed, greatly affecting the health and well-being of these animals when kept as pets (De Briyne & Iatridou, 2016).

Moreover, the investigation observed that since many exotic pets are prey in nature, they tend to hide their pain and their symptoms (see Dwyer, 2004), making it difficult to spot early signs of distress in these animals. Several interviewed veterinarians reported that most of the pathologies are linked to poor husbandry, with two veterinarians declaring that up to 90% of the pathologies observed in their everyday veterinary practice are linked to poor husbandry (Sapience, 2022). Animal welfare harms are not intentional, instead they are due to a lack of knowledge of the needs of the animals, or the fact they are very difficult to maintain.

In addition, there is no information available on the care and husbandry of pet owners unwilling to, or incapable of visiting a vet. In a study in Ireland (Goins & Halon, 2021), 34% of owners of wild animals kept as pets never sought veterinary services.

1.2 Risk to public health and safety

Another main concern raised by the trade in wild animals kept as pets is the risk of zoonotic disease transmission, which threatens public health globally. For further details, and full scientific references we direct the reader to two important resources.

→ Report: Infected and Undetected

→ Under their skin: Zoonotic threats from exotic mammal pets

Zoonoses are diseases that are transmitted between vertebrates and humans under natural conditions. They are caused by microorganisms or pathogens, such as viruses, bacteria, parasites or fungi and are transmitted through a vector, which transmits the disease from host animal to human.

Globally, zoonotic disease outbreaks have been on the rise since the 1980 (Smith *et al.,* 2014), such as SARS coronaviruses, MERS coronaviruses, Ebolavirus and monkeypox virus (Wang *et al.,* 2020). It is estimated that 75% of infectious diseases are zoonotic, many of these coming from wild animals (UNEP, 2020; Jones *et al.,* 2018; Taylor *et al.,* 2001). The risk of pandemics is increasing. More than five new diseases are now emerging in people every year, each of which carries a risk of spreading globally (The Lancet Planetary Health, 2021). The spread of zoonotic diseases has been front and centre of daily life since the rise of the COVID-19 pandemic, but such risks were inherent through the trade in wild animals, including the exotic pet trade, long before this (Chomel *et al.,* 2007; Souza, 2009).

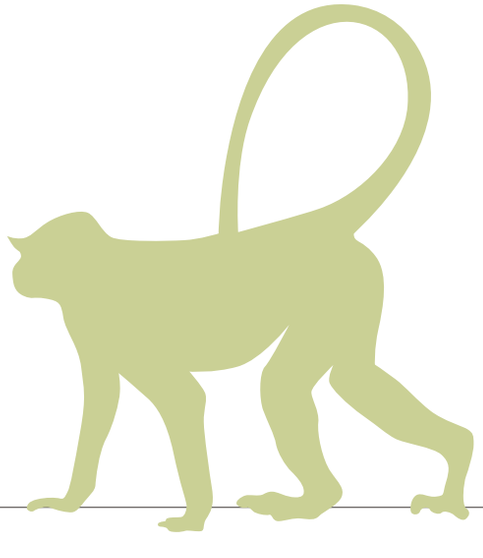
The international pet trade causes spillover risks where the trade in animals as pets, including wild animals, overlaps with natural environments and agricultural food systems (Warwick *et al.,* 2012). The poor understanding of risk factors throughout the trade and pet keeping chain, sometimes even in healthcare and public health professions, distinguishes wild animals kept as pets as a particular threat to public health. By the time the owner, or a veterinarian, notices signs of illness, the animal might have already infected humans. Furthermore, the conditions in which wild animals are kept and transported along the trade chain – which tend to be unsanitary, over-crowded with conspecifics or other species, and highly stressful for the animals – can lead to serious health deteriorations and exacerbate the risks of zoonotic disease (Nuwer, 2021). Strikingly, even at the height of the COVID-19 pandemic, the trade in wild animals kept as pets continued largely uninterrupted[18], including through wild animal pet markets that bring humans and a huge variety of wild animal species into close physical proximity[19].

Sadly, vaccines and medication only exist for a relatively small number of zoonoses from wild animals and implementation remains a challenge (Carpenter *et al.,* 2022). Recent reminders of the threat of zoonotic diseases come from the spread of monkeypox virus, which the WHO has declared a global health emergency, as it has spread across 110 countries with over 82,600 cases as of December 2022 (Mbenywe, 2022). Worryingly, according to a new study, a family of viruses that causes Ebola-like symptoms in African primate populations is *"poised for spillover"* to humans (Warren *et al.,* 2022).

This risk also threatens farm animals, international trade, rural livelihoods, native wildlife populations and the health of ecosystems, costing hundreds of billions of dollars of global economic damage (Karesh *et al.,* 2005). The International Monetary Fund expects to raise its forecast that the COVID-19 pandemic will cost the global economy $12.5 trillion through 2024, while estimating that a precautionary approach preventing future zoonotic outbreaks could cost from $22 billion to $31 billion per year – just 2% of the COVID-19 response costs (Dobson *et al.,* 2020).

Importantly, the vast majority of pathogens hiding in animal species is unknown and a wide variety are still to be identified in wild species (Taylor *et al.,* 2018). For example, an estimated 1.6 million viral pathogens are yet to be discovered in mammal and bird populations (Caroll *et al.,* 2018). Of those, an estimated 650,000 to 840,000 have the capacity to infect and cause disease in humans. Which means the risk of zoonotic disease spread through the pet trade is largely unknown.

Interestingly, 14.47% of veterinarians reported that they had seen clients whose exotic animal had had an impact on their family's health. The most reported health problems were psittacosis followed by bites or attacks, mycosis, scabies, salmonella and others (Leptospirosis, tuberculosis, Giardia, Pasteurella) (De Briyne & Iatridou, 2016).



Box 3
The high risk of pathogen transmission from wild animals kept as pets

'The Infected and Undetected' report from AAP highlights that the exotic pet industry provides a large-scale mechanism for potential pathogen transmission (AAP, 2021).

The report found:

- Around **one in seven exotic pets** rescued by AAP in this timespan carried at least one potentially dangerous zoonotic pathogen.
- Of the **262 animals** retrieved directly from private owners,

  > 22 animals (8.4%)
  carried a parasitic zoonosis

  > 5 animals (1.9%)
  carried a zoonotic virus

  > 15 animals (5.7%)
  carried a bacterial zoonosis.

  13 out of 36 infected exotic pets
  carried more than one zoonotic pathogen.
- The animals carrying these pathogens comprised 26 different mammal species, including several primate species[20] as well as the American red squirrel, variegated squirrel, Siberian chipmunk, American mink, raccoon, raccoon dog, coati, Bennet's wallaby, silver fox, arctic fox, lion, puma, serval, leopard cat and genet.
- Even if these animals underwent thorough screening, it cannot be ruled out that they may still carry other pathogens for which they were not tested.

Box 4
Pathway diagram of potential pathogen transmission

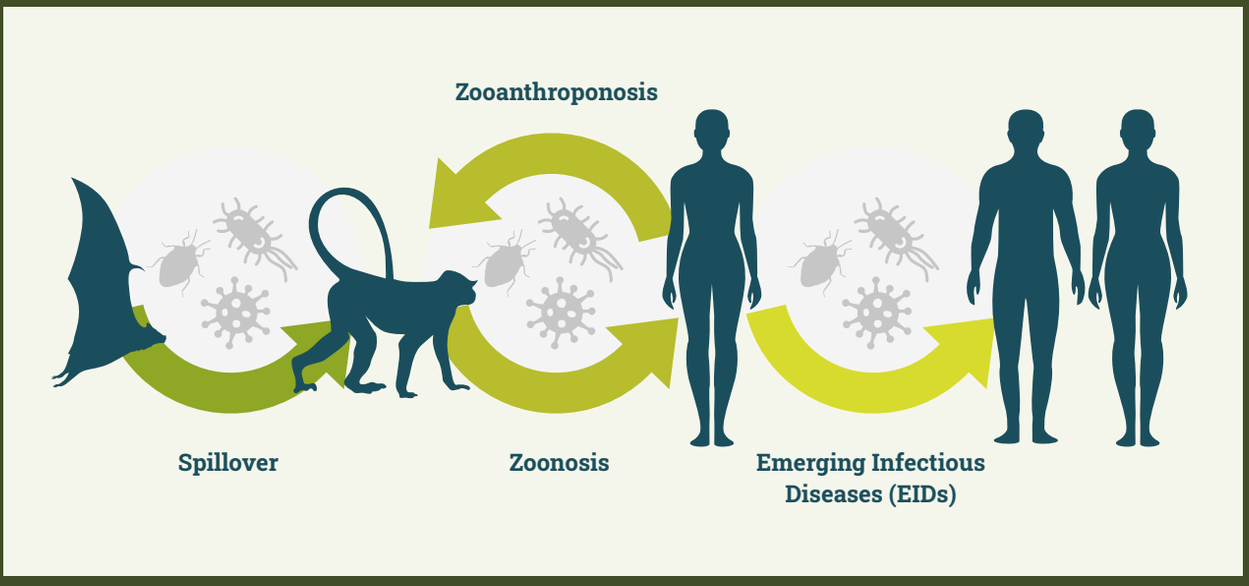


Diagram adapted from 'Under their skin'

The **'Under their skin' report** uses data from the Dutch Centre for Infectious Disease Control (RIVM) and highlights several examples of diseases found in pets that are insufficiently monitored[21]. The report highlights four zoonoses reported by RIVM and carried by species that are still allowed to be kept as pets in the Netherlands and many other EU countries. It also provides an example of a human health threat that has emerged from uncontrolled trading and keeping of wild animals as pets, the Variegated Squirrel Bornavirus 1 (VSBV-1).

Box 5
Private keeping of wild animals as a risk to public safety

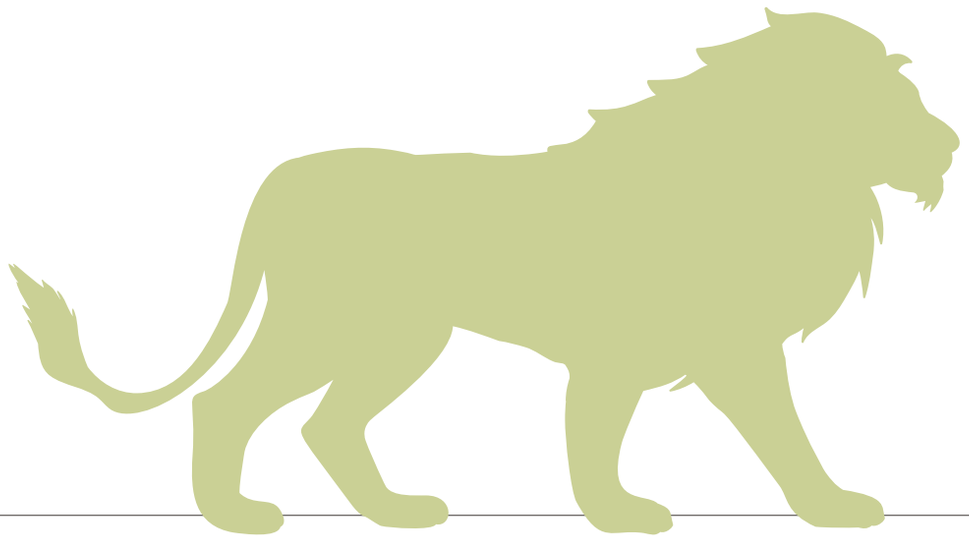
Private keeping of wild animals can be a threat to public safety. Although in some MS the ownership of wild animals is banned as certain animals are considered as "dangerous", the mosaic of legislation within the EU allows a private individual in several MS to keep wild animals such as non-domesticated felines, primates, venomous reptiles, or amphibians at home. Nevertheless, these wild animals often do not adjust well to a captive environment, which poses safety and health risks to their owner, as well as neighbours and the wider community. As a simple example, the keeping of cubs of wild felines as pets can potentially cause serious injuries as they grow up. These wild animals can also carry zoonotic diseases, all communicable to humans (Anon.).

Wild animals are not suitable companions and individuals possessing these species often pose a threat to their welfare as these animals require special care, housing, diet and maintenance. Instead, these animals live in confined enclosures, are mistreated to enforce obedience, or undergo painful mutilations such as teeth removal. Under these conditions, these animals suffer greatly and are more likely to present aggressive behaviours. These pets are then often abandoned or given to rescue centres because their owners can no longer manage to take care of them or cope with their behaviour (Born Free USA, 2021). AAP, a rescue centre for wild mammals in the Netherlands, has received several wild cats such as servals on account of the risk of injury to the owner.

In recent years, several incidents of severe injuries to owners by different types of wild animals in the EU have been reported, such as the following:

- In 2013, a pet vervet monkey *(Chlorocebus pygerythrus)* attacked five people after escaping from its home in Cyprus. The monkey was shot by its owner afterwards (Christou, 2013).
- A highly venomous green mamba snake *(Dendroaspis angusticeps)* attacked its owner in the Czech Republic, before escaping from its home in 2018 (BBC News, 2018). This species' venom components are highly toxic and untreated bites are usually fatal.
- In 2019, in the Czech Republic, a man who kept two lions as pets died from wounds inflicted by one of his felines. One of the felines had already attacked a cyclist several months before as she was walked by her owner on a leash (Matamoros, 2019).

These examples, and many others, demonstrate that the private keeping of wild animals as pets, in addition to not respecting their welfare, poses a serious risk to public safety. The issue demonstrates another layer of added value that an EU positive list would provide.



1.3 Biodiversity and conservation

The trade in wild animals kept as pets has negative impacts on ecosystems. This section presents the impacts on biodiversity and indigenous species. The trade can be a driver of biodiversity loss in countries of origin, as well as promoting pathways for IAS to spread in the EU, which threatens local biodiversity.

The reader is directed to the report

→ Exotic Pet Trade: Analysis of the Problems and Identification of Solutions

1.3.1 Driver of biodiversity loss

An estimated 90% of traded reptile species, and 50% of individually traded reptiles, are caught in the wild (Marshall & Hughes, 2020). It is well demonstrated that capture in the wild for the trade in wild animals to be kept as pets can contribute to declines in wild populations (Bush *et al.,* 2014; Bohm *et al.,* 2013). Damage to ecosystems can also occur as a result of the crude and non-species-specific methods employed in capture, which can result in the death or injury of target and non-target animals. It has been estimated that the high demand for wild animals can deplete native wildlife populations by up to 70% (Ecohealth Alliance, 2011). Indeed, the pet trade has precipitated extreme population decline in 73% of 16 species taken from the wild for the pet trade (Morton *et al.,* 2021). The EU continues to be one of the largest importers of animals for the trade in wild animals kept as pets, where demand for rare species is increasing, especially reptiles and amphibian (Altherr *et al.,* 2022) International and EU legislation only covers a small fraction of the species currently traded (Altherr *et al.,* 2022). The collection of individuals from the wild to supply the wild animal pet trade has been cited as a major factor in the population decline of a number of reptile species. For example, over-collection of Greek or spur-thighed tortoises *(Testudo graeca)* has contributed to serious depletions of populations in North Africa (Van Dijk *et al.,* 2004). A recent EUROPOL report states that "Traffickers operating in Europe are increasingly targeting less monitored endemic non-CITES-listed species […], which are trafficked to both EU and non-EU destinations" (EUROPOL, 2022). Many of these animals are then legally sold as pets in the EU.

Recent examples include lava lizards, which appeared in online trade for the first time in recent years. Yet the species is endemic to the Galapagos islands, which do not permit exports for commercial trade (Altherr *et al.,* 2022). The increasing number of species listing proposals at the 19th Conference of Parties (COP19) of the Convention on International Trade of Endangered Species (CITES) was a stark reminder that the pet trade can cause population decline[22]. There is a striking lack of data for the native populations of many of these species, while trade is often allowed to continue. In fact, a lack of population data can be cited as the reason for not requiring more trade restrictions under CITES. Although it provides a mechanism for some of these species to gain stronger protection, CITES listings only occur every three years, and many decisions can be made on political grounds. It will never be able to keep up with the ever-evolving trends in the pet trade, which may mean it is too late for some species. EU trade regulations fall short in several areas, including where it allows the marketing of stolen wildlife in the Union[23]. Trade may also dilute unique phylogeographic populations through the release of pets or repatriation of animals confiscated from illegal trade (Hughes *et al.,* 2022).

Moreover, besides population decline, the trade in wild animals kept as pets is one of the main factors of biodiversity loss in the origin countries where the species are taken from the wild. This trade is considered as a major threat to reptiles and amphibians, driving biodiversity loss around the globe (Altherr & Lameter, 2020). The EU is considered as playing a role in this ecological collapse as it is a central hub for wildlife traded as pets. More specifically, the increasing demand for rare species with striking colours, or special biology, is threatening species that are key to their ecosystems (Altherr & Lameter, 2020). Several bird species of Psittacidae are also threatened as they are the world's most popular pet birds due to their beauty and capacity to replicate voices. However, excessive capture in the wild is causing biodiversity decline in South America (Nóbrega *et al.,* 2013). There is currently no up-to-date information available on the trade in wild pets in the EU, which makes it difficult to evaluate the exact source of all animals and, thus, the impacts of their removal from the wild.

Box 6
Examples of the pet trade impacts on ecosystems and biodiversity

This box presents Hughes and colleagues' research results (Hughes *et al.*, 2014), which highlight the ecological implications of the pet trade as well as its cascade effects on ecosystems around the globe.

- CITES-listed species are usually more expensive to buy than non-CITES species. For instance, having corrected for adult body mass, CITES-listed amphibian, lizard, snake, and turtle species sold in 2006 by the largest herpetologist retailer in France commanded twice to four times higher prices than those not listed by CITES. Rare species can command extremely high prices. For example, the five most expensive turtle species traded in Hong Kong are all critically endangered, and the most expensive of which sold for over US $38,000 per individual (Sung & Fong, 2018).
- The rarity of wild animals is a driver of population decline and biodiversity loss. Indeed, wild animals with greater colour uniqueness are generally more likely to be traded as pets. Moreover, the size of the species, as it has been observed for Psittacidae, is also a factor determining attractiveness.
- Although the trade of highly abundant species has a higher likelihood of sustainability than the trade in species with small population sizes, it still has the potential to cause rapid population declines. Indeed, it can drive species conservation status to crisis as constant, insatiable market demand can persist. For example, less than 40 years ago, black-winged myna *(Acridotheres melanopterus)* was considered common, but the Indonesian songbird trade has driven a precipitous decline with an estimated wild population of less than 250 individuals now remaining.
- In Madagascar, the ploughshare tortoise (*Astrochelys yniphora*) is on the verge of demographic collapse, because of the sustained collection of small juveniles captured for the international pet trade (Mandimbihasina *et al.*, 2020). In this case, juveniles are preferentially targeted as they are easier to conceal and can be transported in larger numbers.

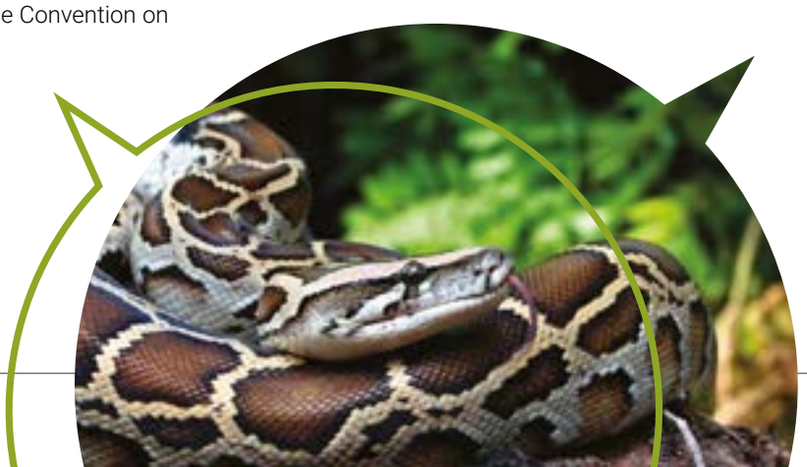
All these examples highlight that local economic and cultural factors influence the use of species and that predicting and managing the impacts of the pet trade is challenging without understanding these factors.

1.3.2 Invasive Alien Species pathways

Wild animals have a complex set of needs that make them difficult or impossible to be kept as pets. It is common for pets to escape or be deliberately released because owners can no longer cope (Genovesi *et al.*, 2012; Genovesi *et al.*, 2015). Once they escape, these animals threaten native biodiversity and ecosystems, through increasing competition for food or shelter, increasing predation, or hybridisation. The number of so-called IAS has been increasing and it consequently has devastating impacts on the local ecosystems. The pet trade has been recognised as a frequent pathway for this invasion in guidance under the Bern Convention and the Convention on Biological Diversity (CBD)[24].

Some species can physically alter habitats, while others can kill large numbers of endemic species (Dorcas *et al.*, 2012; Worth, 2014).

The Burmese Python *(Python bivittatus)* in the Florida everglades, decimated populations of birds and mammals. The conditions for a species to become invasive differ and are not always known since species behaviour can vary in different ecological conditions (Faraone *et al.*, 2008).



Other examples are ring-necked, and monk parakeets, of which millions have been captured and bred for export worldwide as they are popular pets (Souviron-Priego *et al.,* 2018). Many owners of monk parakeets have released their birds in the past, where they have now established populations in several EU countries, causing crop damage and potential negative impacts on native wildlife (Postigo *et al.,* 2019). This species is not yet on the Union List of IAS, meaning that they can still be traded as pets in the EU, except for Spain, where their trade has been restricted[25]. Additional examples include red lionfish *(Pterois volitans)*, red-eared slider turtles *(Trachemys scripta elegans)* and many others (Lockwood et al., 2019).

Globally, for reptiles and amphibians, the pet trade is recognised as one of the primary pathways of introduction (Kraus, 2009). The estimated global cost of invasive reptiles and amphibians totalled $17 billion between 1986 and 2020. Meanwhile, the same study showed that Europe incurs the highest economic costs, equalling $6.04 billion (Soto *et al.,* 2022). Due to the increased pressure of hobbyists and pet traders, shifting trends in the turtle species may result in increased risk because some species represent serious invasive risk, and are imported to the EU in substantial numbers[26]. In fact, the increased trade in common snapping turtles may be referenced because the species has been added to CITES Appendix II.

For species groups listed as potentially invasive species for the Netherlands, the most frequently occurring pathways were the pet and aquarium trade (Matthews *et al.,* 2014). Several of the animal species placed on the Union List of IAS came after escape or release from being held as pets. This begs the question if the IAS Regulation can react fast enough to deal with the ever-looming threat of IAS pathways due to the current trade in wild animals as pets?

Further afield, Brazil has considered online trade as an important potential introduction of invasive species, especially as pets and for aquariums (Convention on Biological Diversity, 2019). Globally, further recognising the pet trade's role in IAS pathways, the Bern Convention's Guidance for governments concerning IAS pathways action plans states that:

> **"The positive list is a preventive model at its core: it is meant to address the exotic pets' pathway avoiding all these potential and not always predictable problems due to the spread of IAS (such as transmission of diseases, disruption of habitats, hybridisation and competition with indigenous species)"[27]**

According to the European Code of Conduct on Pets and IAS, 15 bird species, 9 amphibian/reptile species and 10% mammalian species invasions originated from the escape of pets (Davenport & Collins, 2016), as well as 9% of fish invasions (Gherardi *et al.,* 2009). Furthermore, in preparation for the 18th meeting of the CBD Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA), the classification of existing IAS pathways was tested using 500 species from the Global Invasive Species Database. This highlighted horticulture and pet and aquarium escapees as the most frequent pathways by which IAS are introduced and spread (CIRCABC, 2023).

An EU positive list approach is likely to have significant added value in reducing IAS pathways into Europe and may help to strengthen existing IAS Regulation by removing or significantly reducing the threat posed by the pet trade.

1.4 Scale of the wild animal pet trade in the EU

To understand the necessity of regulating the trade in wild animals kept as pets, the scale of the trade needs to be assessed. This sub-section presents research that provides an initial data of the scale of the pet trade in the EU, noting that a lack of data is a significant problem. Moreover, it presents insights from three different areas: veterinarians specialised in wild animals; wild animal pet markets; and online trade.

A huge number and diversity of species of wild animals are traded as pets. More than 2,400 species of terrestrial birds, mammals, amphibians and reptiles are currently traded as pets, and it is predicted that many more species will be traded in future (Scheffers *et al.*, 2019). Trends come and go, sometimes driven by the media (Bush *et al.*, 2014), species rarity or increased levels of protection (Courchamp, 2006), or just after scientific discovery (Marshall *et al.*, 2020). The ever-changing nature of the trade in wild animals kept as pets means that listing species that cannot be traded, rather than those that can, represents an unwinnable arms race. However, data on the scale of the pet trade in the EU is lacking. Novel studies presented in this section aim to provide a snapshot of the scale of live pet imports into the EU and intra-EU trade. They use a variety of techniques to provide insights from veterinarians, online and live pet market investigations.

→ The Current Pet Trade in the EU and its Variation between Member States

→ Pets in the EU: scale, protocols and online apprehension[28]

Box 7

Pets in the EU: scale, protocols and online apprehension - Sapience (2022)

Objectives

The research had the objective to gain an understanding of:

1. The number of exotic animals imported, traded, and kept in the EU;
2. The major differences in terms of import and keeping laws and procedures among selected EU countries;
3. The major challenges to the welfare of the exotic pets traded and kept within the EU.

Scope

Four categories of stakeholders were approached:

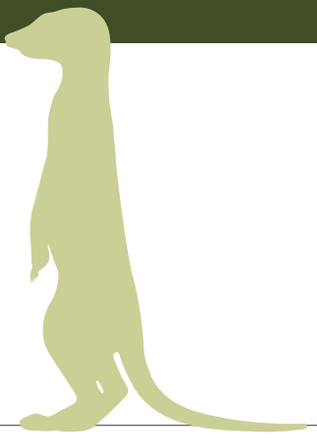
1. Veterinary centres (clinics, hospitals, laboratories) specialised in providing healthcare services to exotic animals;
2. Rescue centres;
3. Border Control Posts designated for the inspection of live animals at EU entry points;
4. Online vendors of exotic pets.

The veterinary centres as well as the rescue centres were approached via comprehensive, semi-structured qualitative phone interviews, while online vendors of exotic pets were approached with mystery interviews.

Headline findings:

- Official data on the number of exotic animals imported, traded, and kept in the EU is difficult to obtain, due to the lack of accessible species-specific statistics for intra-EU trade and extra-EU imports.
- Using both direct and indirect parameters (i.e., official import data, and interviews with veterinarians), the current research revealed that such a trade involves at least millions of animals for the MS selected.
- Veterinarians report a high variability in quality of husbandry provided by the pet owners (i.e., breeders, enthusiasts, casual). This is reported by some veterinarians to be one of the reasons for which veterinarian interventions are requested.
- 17 out of the 18 online sellers interviewed did not mention the existence of restrictions in the movement of the exotic pets across the EU countries. Therefore, it is probable that the intra-EU trade of exotic pets takes place without any checks or notifications to the competent authorities.
- The online advertisement investigation revealed that purchasing animals that are illegally traded in the country of the buyer is easy, showing that part of this market is essentially illicit.
- The online trade shows the existence of an animal welfare issue concerning a lack of proper species-specific guidance by the vendors and a lack of animal welfare consideration for transport.

Note: *Sapience specialises in understanding that human behaviour cannot be based only on traditional surveys and interviews, because there can be a huge gap between what people say and how they behave. For each specific marketing, management, or community issue, Sapience implements the most appropriate methodology to capture what people really think and feel in order to provide unbiased and authentic behavioural insights*[29].



Box 8

The Current Pet Trade in the EU and its Variation between Member States - Eurogroup for Animals (2023a)

This research uses desk study and the CITES Trade Database to estimate the current scale of the number of wild animals kept as pets in EU private households; then it investigates the current trade in wild animals kept as pets including imports from outside the EU. The study looks into potential links between the data and varying national legislation on the trading of exotic pets in different MS. It represents an initial snapshot of the larger picture.

The study highlights:

- Ownership of wild animals as pets in EU private households is likely in the millions, even when removing the more common 'traditional' small mammals.
- CITES data only represents a fraction of that actual pet trade, therefore data represented in this report is a major underestimation.
- Millions of wild animals are imported into the EU each year, a large proportion of these destined for the pet trade.
- Over 3 million reptiles from CITES-listed species were imported into the EU solely for commercial trading purposes over a 10-year period.
- Between 2017 and 2021, more than 1 million CITES-listed live reptiles have been imported from outside the EU to fuel the intra-EU trade. This information is reported by exporting countries and only concerns CITES listed species which are captive bred or wild caught in their origin countries. Most imports of CITES-listed reptiles were made by Italy (506,164) and Germany (350,481).
- Between 2010-2021, 26,543 CITES-listed mammals were imported to MS for commercial and personal reasons.
- MS rules may have an impact on the amount of trade recorded when investigating imports at species level. This may have implications for the potential size of the market of pet animals, as well as representing a barrier to trade.
- MS with less restrictive regulations, such as Germany or France, show more imports of live wild animals and are more active in the trade than countries with more restrictions on the trading of exotic animals using negative or positive lists.
- The study suggests that where there is smoke, there is indeed fire, and that systematic monitoring of CITES and non-CITES species is desperately needed.

1.4.1 General lack of reliable data

Two novel investigations use a variety of methods to provide rough estimations of the size of the current wild animal pet trade in the EU. They both use existing trustworthy data (CITES Trade database), online investigations and interviews[30] with experts. CITES data was chosen as non-CITES-listed species trade records can be prone to error, be uncertain and incomplete (Toland *et al.*, 2020). This lack of information, aggravated by the legal but unreported trade resulting from the free movement of goods in the single market, means the true scale of the EU pet trade in its current form is very difficult to monitor. However, there is clear evidence of an increase in the number of wild animals traded to be kept as pets (Toland *et al.*, 2020), which is corroborated by the fact that the number of veterinary specialists of the European College of Zoological Medicine (ECZM) (focused on wildlife species) has increased at a faster rate than the other Colleges of the European Board of Veterinary Specialists (EBVS), from 1996 to 2016 (Sapience, 2022). Interestingly, veterinarians who recently graduated tend to receive significantly more undergraduate training on wild animals kept as pets than those who graduated earlier (De Briyne & Iatridou, 2016). Moreover, between 2004 and 2014, EU MS officially reported the import of over 20 million live reptiles (CITES and non-CITES species), an average of more than two million reptiles per year (Auliya *et al.*, 2016).

While many knowledge/data gaps remain, including in the number of animals specifically bred for the pet trade, 3,902 consignments of live animals were imported from extra-EU countries into France and inspected by Border Control Posts (BCPs) – in 2017 alone (SIVEP, 2017). However, there is no information about the actual numbers and types of live animals imported into the country. Conversely, in Italy, the official data provides more clarity. In total, more than 2.5 million ornamental fish, almost 1 million reptiles, and more than 50,000 mammals have been legally imported to Italy from extra-EU countries since 2019 (Sapience, 2022).

However, the report does not specify the intended purpose of the imported live animals, and therefore, it is not possible to establish what proportion of the imported animals are kept as pets. Similar to findings in the Eurogroup 2023 study, data from Ireland was completely lacking from BCPs. This begs important questions. How can differences in monitoring between MS be so wide, and reports include so few details?

A small insight into intra-EU trade can be gathered from Italy where 2,623 consignments, representing 947,329 individual animals, refer to "Other live animals", for which species-specific details are not provided[31]. According to the TRACES (2020) annual report, 28.5% of the live animals imported into the EU in 2020 were what could be described as exotic animals[32]. Although all the imports may not be for pets, the trade of exotic animals represents an important part of live animal imports into the EU each year (Altherr *et al.*, 2022).

Eurogroup for Animals' own analysis of data from TRACES provides a broader picture. To give an example, according to data provided by TRACES, 2.9 million reptiles have been imported under the "pets" commodity code between 2016 and 2021 into MS. Italy was the largest importer with more than 1.3 million individual reptiles, followed by Germany with almost 473,000 and the Netherlands and Spain with more than 240,000. These numbers represent only a small fraction of the wild animal trade but demonstrate that the trade comprises hundreds of thousands of individuals each year.

Figure 3. Extra EU imports of reptiles to EU Member States between 2016 and 2021

Source: TRACES (2022)

1.4.2 Insights from veterinarians specialised in wild animals

To give insights into the scale of the trade in wild animals as pets, research based on veterinarians is presented, as these experts are in direct contact with wild and exotic animals.

A veterinarian specialised in wild and exotic animals typically conducts between 750 and 1,500 visits of exotic pets per year, while veterinary clinics and hospitals providing healthcare services for exotic animals conduct between 2,500 and 12,500 visits of exotic pets per year. While the number of exotic vet specialists varies between MS, the Società Italiana di Veterinari per gli Animali Esotici (SIVAE) represents the largest association of veterinary specialists for the diagnosis and the treatment of exotic and wild animals in Italy, and currently counts 822 members, where evidence shows that for 32% of these vets, around half of their visits are for wild animals kept as pets (Sapience, 2022).

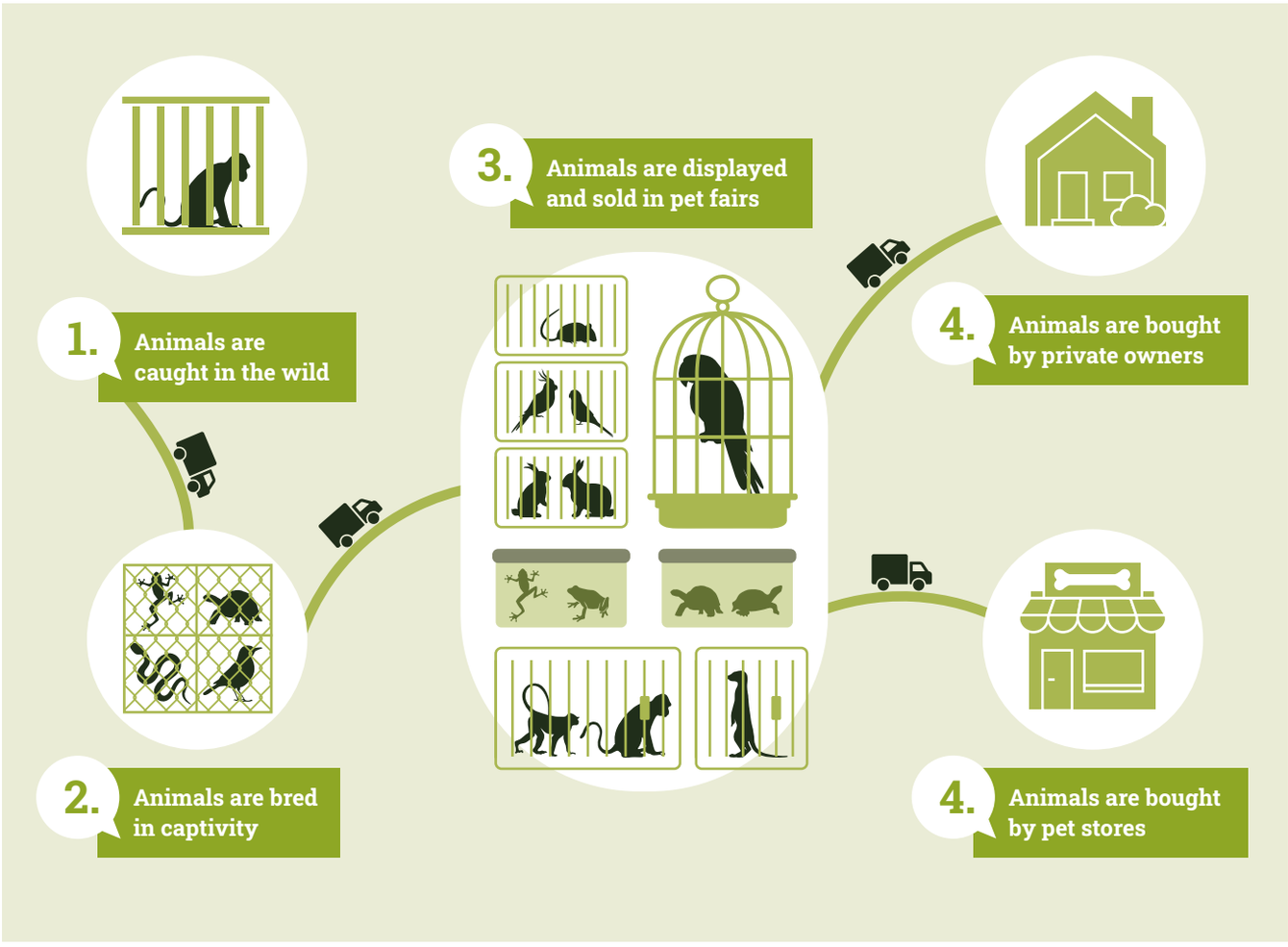
Further research on a wider scale is required to accurately estimate the number of veterinarians with expertise to care for wild animals kept as pets in the EU, though a survey on wild animals kept as pets showed that in Europe there were over 2,519 respondents (De Briyne & Iatridou, 2016). The results indicate that there are 121,652 practitioners in Europe, of which 12% work mostly with zoos or wild animals.

1.4.3 Insights from wild animal pet markets

Pet markets represent one of the main hubs and channels for the trading of wild animals. Many of the issues that have been highlighted so far, including harm to the welfare of animals traded as pets, escape/ release and subsequent damage to local ecosystems, risk of zoonoses and conservation concerns, are exacerbated by the wild animal pet markets taking place throughout the EU. Eurogroup for Animals has produced a review of investigations into these markets, which highlights several important concerns, related in particular to animal welfare, public health and invasiveness.

In Europe, such markets are itinerant events meaning that animals are transported across the continent to be displayed at various locations for a short period of time. Some notorious examples are Terraristika in Germany, Terraria Houten in the Netherlands, and Expoterraria in Spain.

Figure 4. Origin and destination of exotic pets displayed at wild animal pet markets in the EU



Most investigations focus on the welfare of animals offered for sale in these markets. The size of enclosures has been raised as a particular concern, severely undermining the welfare of the mammals, reptiles and birds on display. For example, when assessed against RSPCA minimum guidelines, the enclosure of ball pythons in pet exhibitions and on YouTube videos were too small and they were not provided with sufficient water or shelter in almost all cases (D'Cruze *et al.*, 2020). In Germany, guidelines on animal welfare for the organisation of animal fairs have been adopted but are not necessarily complied with (Altherr *et al.*, 2010; Bläske *et al.*, 2018). Such conclusions are further consolidated by the findings of studies in several wild animal pet markets including Terraristika (Hamm, Germany), the IHS Show, (Doncaster, UK), Expoterraria (Sabadell, Spain), I Love Reptiles events (Rome, Italy), Reptiles Day in Longarone (Belluno, Italy) and Esotika Pet (Arezzo, Italy).

Box 9
The terrible conditions of wild animals on display in pet markets

Between June and July 2021, LAV conducted an investigation in Italy's three main wild animal pet markets, revealing an *"out of control"* reality for thousands of animals plus a serious public health risk[33]. The investigation documents the terrible display conditions in which thousands of amphibians, reptiles, birds, mammals and invertebrates are exhibited at these fairs, highlighting the risks arising from the direct contact with humans at the events.

Equally worrying are the results of investigations by World Animal Protection conducted in 2020, 2021 and 2022.

> **"A veterinary inspection is by no means a guarantee for the absence of pathogens in the animals. Animals can be asymptomatic carriers or still be in the incubation period of a disease. Stress makes animals more susceptible to pathogens. Moreover, due to the presence of different animal species, new mutations of viruses can arise."**
> *— Spokesperson for Caring Vets*

These wild animals usually have no place to hide, no possibility to fully stretch, no water or suitable food and some prey animals sometimes look a potential predator straight in the eye.

> **"World Animal Protection have previously published research that showed that a large majority (81%) of the Dutch find it unacceptable that reptile fairs are still being held in the Netherlands."**
> *— World Animals Protection (2020)*

Images Copyright:
World Animal Protection Netherlands

The investigations also reveal that such markets present a very high risk for zoonotic disease transmission. Indeed, visitors often make direct contact with the animals and multiple species that do not encounter each other in the wild are placed in close quarters, while being cramped and stressed, exacerbating the risks. Some studies have pointed to the potential zoonotic disease from the pet trade, highlighting that such markets are high risk zones (Warwick *et al.*, 2012).

To a lesser extent, the investigations provide insights into the invasive risk, even indicating that in some instances some species run free in the building and can potentially escape (Arena *et al.*, 2012). However, the current investigations are insufficient to reflect the true scope of wild animal pet markets in the EU as they only focus on a handful of countries and pet fairs, some of which are covered by several investigations. It would be particularly interesting to map pet fairs in the EU, as well as trade routes to better understand how animals are transported across the continent to be displayed at the various markets. This could also provide an indication of internal market distortions, where weaker rules may lead to unfair advantages. Given that many of the transactions at these markets are done without a receipt, monitoring the size of the market value is complex.

The review highlights several important knowledge gaps that need to be addressed:

- The link between the legal and illegal trade as information on origins are missing and individuals can be illegally acquired;
- The profile of sellers to understand better the origin of animals that are displayed and potential links with organised crime;
- The full mapping of wild animal pet markets in Europe and trade routes;
- A full picture of the number of animals and variety of species exhibited at these events;
- Existence of safety and welfare rules and compliance with these;
- Profiling of visitors and buyers; and
- Attendance and popularity of these events.

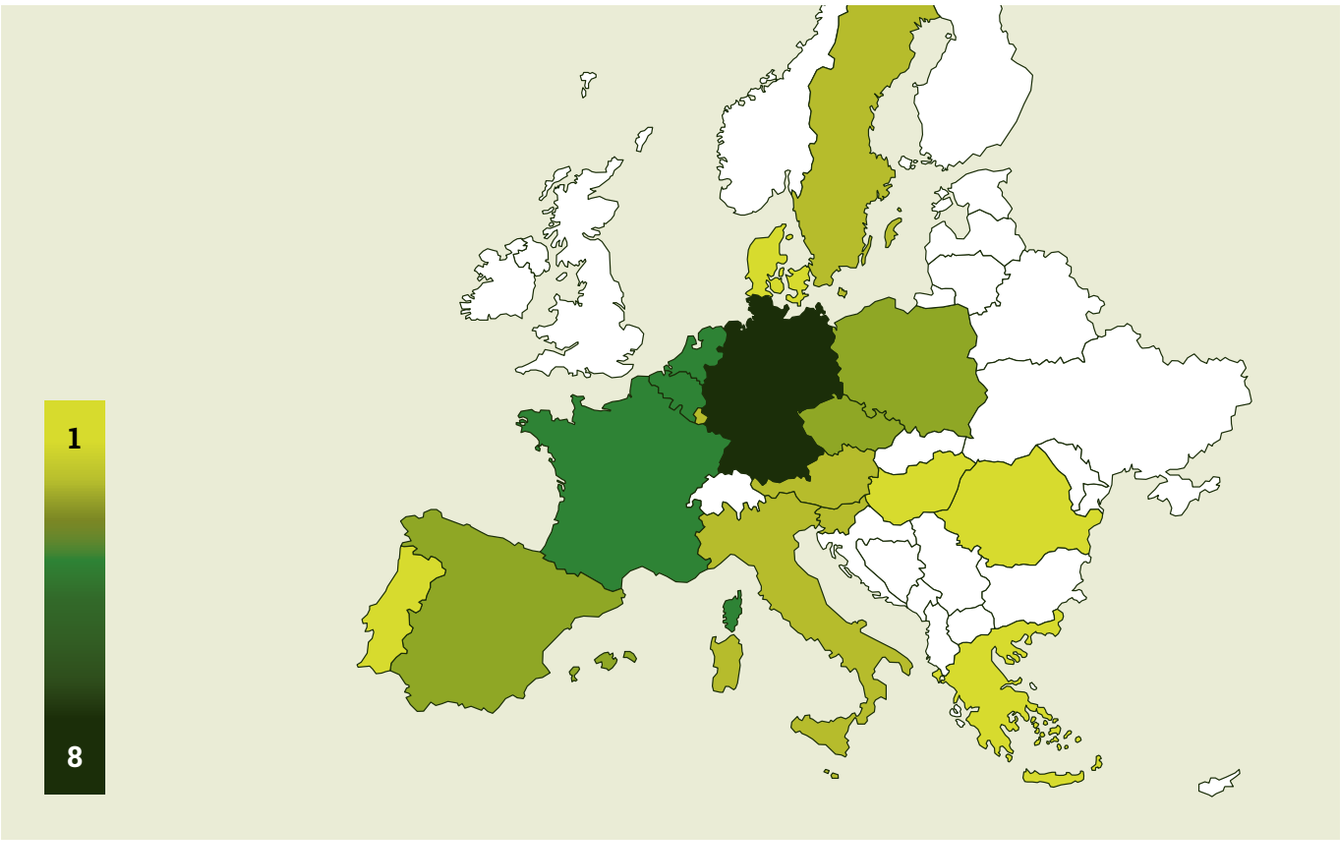
1.4.4 Insights from the online trade

The online market is the preferred method of acquisition of wild animals kept as pets. In this context, the online trade of exotic animals in the EU has been extensively investigated and documented thanks to several assessments conducted by NGOs and researchers. These investigations have been compiled and analysed in a **review** into these markets (Eurogroup for Animals, 2023c). The methods to measure the state of play of the online trade of wild animals consist in identifying online marketplaces / platforms / websites or social media groups and searching online advertisements of wild animals destined for the pet market. The investigations sometimes also consider products derived from animals such as ivory or used as traditional medicine.

These investigations highlighted the diversity of platforms used to trade wild animals, including social media, that are increasingly used in this context. A recent investigation shows that 52% of advertisements were found on 'specialist' websites, 26% on Facebook and 22% on general online marketplaces (Debève *et al.*, 2020).

These studies provide information on the name and number of mammal, reptile, amphibian and bird species traded and the number of individual animals concerned. Reptiles and birds are the most online traded categories of taxa in the EU. 35% of all reptile species have been documented in the online trade (Debève *et al.*, 2020). It is difficult to specifically assess the number of advertisements and individuals offered on the EU market. Fish have not been covered, or only partially, by the investigations reviewed and further research is needed to appropriately assess the scope of the online trade with regards to this category of taxa.

Figure 5. Number of online trade investigations mentioning the Member State in the results



With regards to the geographical scope, investigations have shown results in 17 EU countries, with a particular emphasis on Germany, France, Belgium and the Netherlands. It must be noted that despite the fact that official statistics highlight the importance of Italy in the trade (see Box 7, Box 8 and Section 1.4.1), few investigations have focused on this country. With respect to the online trade of wild animals as pets in the EU, investigations point to Germany as the main hub (see Box 10). This can be partly explained by the presence of the largest European wild animal pet market in the country. Indeed, these markets are a preferred method of delivery and the online trade often aligns with these events. For instance, the number of online advertisements on German platforms increases significantly during the weeks prior to the Hamm fair.

The origin of the animals remains a significant knowledge gap. While some advertisements specify whether the animal was wild-caught or captive-bred, most offers do not give any indication. This is also the case for species listed under CITES appendices that do not refer to CITES permits or other documentation attesting the legality of the trade. For instance, this is the case for 38% of CITES-listed species advertisements identified recently in Italy (LAV, 2022).

The following knowledge gaps have been identified and could be further researched to better understand the trade:

- Full overview of the animal species and number of individuals offered online throughout the EU;
- Overall trend of the trade online;
- Profile of buyers and sellers, especially in a cross-border context;
- Impact of voluntary and compulsory policies on the online trade;
- Origin of the animals traded, whether or not they are CITES-listed; and
- Costs to ecosystem services[34] provided by species threatened by the trade.

Box 10
Germany, the hub of the online exotic pet trade in the EU

Pro Wildlife is a German organisation working for the protection of wild animals and the conservation of their habitats. The organisation conducted two assessments into the exotic pet trade in Germany, published in 2015 (Fischer *et al.*, 2015) and 2020 (Altherr *et al.*, 2020).

The first investigations focused on mammal species. It revealed that 291 species representing 10,120 individual animals were advertised on two German online platforms from 2010 to 2014. The investigations published in 2020 were broader, covering additional taxa (reptiles and amphibians), and showed that 2,078 species representing 100,343 individual animals had been offered for sale on five online platforms and 10 Facebook groups over 1 year (2017-2018).

In the research published in 2020, the origin of the animal was not specified for 63% of the animals advertised, corresponding to 62,575 individuals. Additionally, nearly 1,600 animals were advertised as having been taken from the wild while around 36,000 were presented as coming from breeders.

49% of these animals were not listed under CITES (75% of species advertised) and 48% were listed under CITES Appendix II (20% of species advertised). 2% of the animals advertised, corresponding to 3% of species, were listed under CITES Appendix I. It should be noted that mammals offered from 2010 to 2014 represented a market value over eight million euros.

Interestingly, the most recent investigations show that 38 additional species of mammals have been identified in advertisements. This is evidence that the trade is continuously expanding to new species.

Other investigations also show that Germany plays a key role in the online trade of exotic animals. For instance, IFAW focused on the illegal trade and identified 2,149 advertisements on 18 German online platforms, representing more than 6,000 individuals, over just a six-week period in 2017 (IFAW, 2017).

While the assessments conducted by Pro Wildlife only considered animals destined for the German pet market, several studies highlight the cross-border dimension of the trade originating from Germany. For instance, numerous advertisements are in both German and English, indicating that sellers target buyers from other countries (Rinne, 2022).

02

LEGAL FRAMEWORK, ADDED VALUE AND CHALLENGES OF THE CURRENT PET TRADE

This section presents the current legal framework at EU level: EU regulations that in some way relate to the trade in wild animals kept as pets. It first introduces current EU legislation, then describes the added value that a positive list can have for this legal framework, before focusing on national legislation of some MS regarding the trading and private keeping of wild animals as pets. This demonstrates the need for better regulation at EU level and a harmonised approach in the form of an EU positive list.

Regulation (EU) 2016/429 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law')

This regulation aims to control diseases that can be transmitted by animals or humans by providing for clearer responsibilities for farmers and other stakeholders, simplifying administration for international trade of certain live animals and products, providing veterinarians with better tools for preventing disease transmission and reducing adverse effects on human health. In some areas it pertains to pet animals, giving requirements for identification and registration of certain animals, and entry of animals and animal products into the EU and their movements within the EU[35]. In 2026 this law will also address the non-commercial movement of animals within the EU.

Regulation (EC) 1/2005 on the protection of animals during transport and related operations ('Transport Regulation')

This regulation governs the transport of live vertebrate animals between EU MS and provides for checks on animals entering or leaving the EU. The detailed rules aim at safeguarding animal welfare and preventing injury or unnecessary suffering to the animals. On 7 December 2023, the Commission adopted the proposal of revision of the Regulation on the protection of animals during transport. See our White paper for our detailed calls for wild animals.

Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products ('Official Controls Regulation')

The purpose of this regulation is to establish common rules for EU official controls to ensure that agri-food chain legislation for the protection of human health, animal health and welfare, and plant health, is correctly applied and enforced. It introduces a better harmonised and coherent approach to official controls and enforcement measures along the agri-food chain and strengthens the principle of risk-based controls.

Regulation (EU) 1143/2014 on the prevention and management of the introduction and spread of invasive alien species ('IAS Regulation')

This regulation provides a set of measures that must be taken across the EU regarding IAS included in the Union List[36]. It pertains to the pet trade because Article 7 states that IAS of Union concern shall not be intentionally […] kept, including in contained holding; bred, including in contained holding; placed on the market; used or exchanged; permitted to reproduce, grown or cultivated, including in contained holding.

Regulation (EC) 338/97 on the protection of species of wild fauna and flora by regulating trade therein ('Wildlife Trade Regulation')

This regulation lays down provisions for the import, export and re-export and the internal trade of specimens of species in its four annexes. It is the law under which the EU implements CITES, but it goes beyond the protections of CITES. It also regulates the movement of live specimens and the pet trade, where Article 8 lists provisions relating to the control of commercial activities, where 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 is prohibited.

Regulation (EU) 2022/2065 on a Single Market for Digital Services ('Digital Services Act')

The Digital Services Act (DSA) was adopted in 2022 to ensure a safer digital environment. In this context, the DSA contributes to tackling the dissemination of illegal and harmful content on online platforms and clarifies the liability and accountability of these platforms. It will be directly applicable in MS in 2024.

2.1 Added value of a positive list for existing EU regulations

The legal framework governing the health, transport and keeping of live animals for commercial purposes aims to improve conditions to reduce harm to animal welfare and protect public health. However, regarding trade in animals kept as pets, the enforcement of these rules is extremely difficult. Non-CITES-listed animals are so varied in terms of species, and vast in number of individuals that identification and registration is simply impractical, where a reduced number of species traded under an EU positive list would be far more feasible to monitor. Currently, often commercial transactions/ movements cannot be known, and rules are not enforced. Therefore, while in many cases wild animals are legally covered by the Animal Health Law (AHL) for commercial movements, the enforcement of these rules is not feasible in much of the intra-EU pet trade. An EU positive list would narrow the number of animals legally traded as companion animals, which would enhance and facilitate the enforcement of legal provisions of the AHL, Transport Regulation and Official Controls Regulation.

Regarding the DSA, an EU positive list could enhance its effectiveness by making it more practical for Very Large Online Platforms (VLOPs) to fulfil the requirements. For example, to strengthen checks to prove that the information provided by sellers is reliable and accurate. If the variety of companion animals in trade is reduced (compared to the extensive current trade in pets) through a positive list, and possibly identified and registered, potential mechanisms exist to apply these checks. Additionally, it may ease the process of assessing and mitigating systemic risks (including dissemination of illegally traded animal content) periodically, implementing "effective mitigation measures", including moderation processes and advertising and recommendation systems/algorithms.

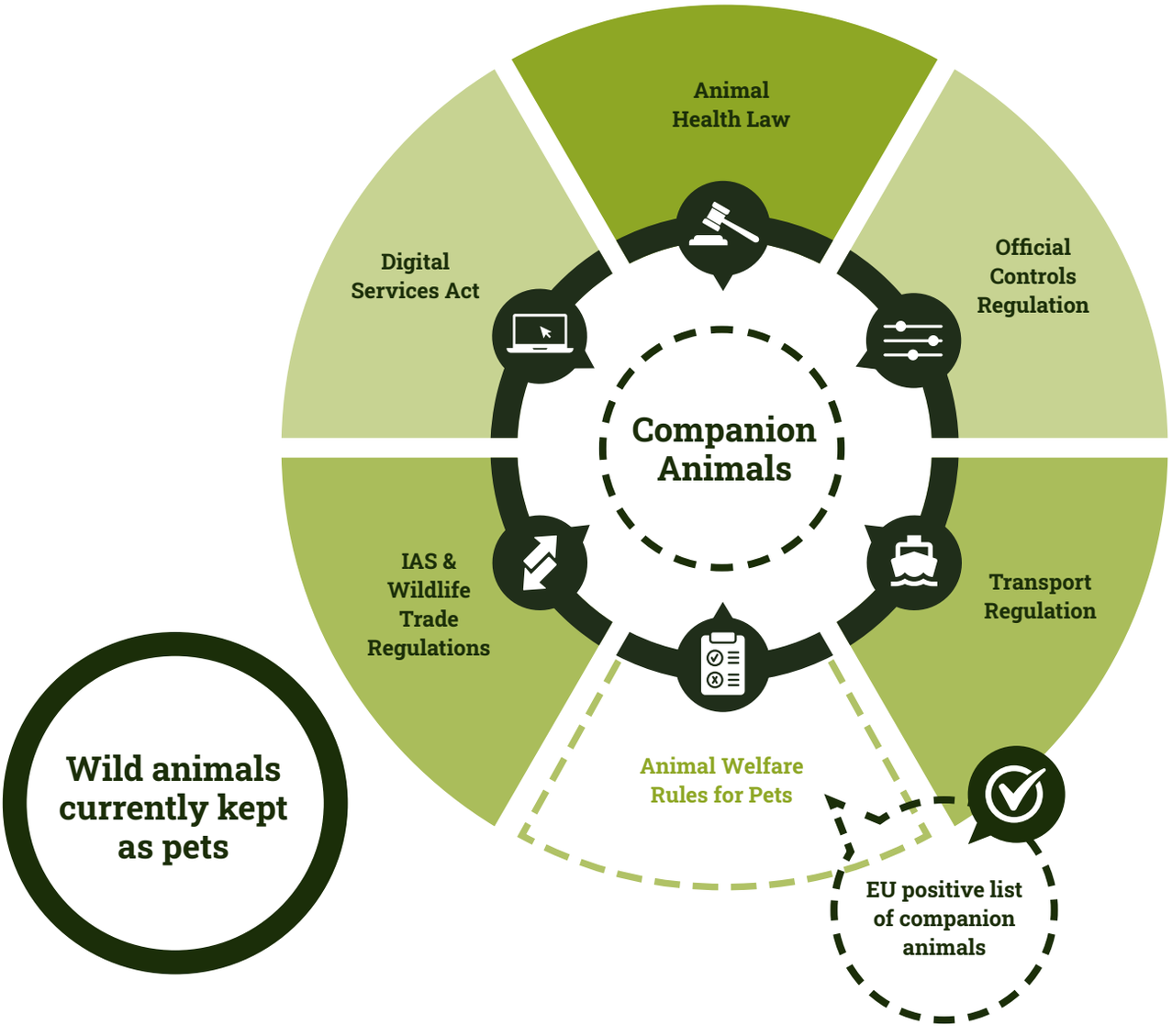
The IAS Regulation and Wildlife Trade Regulation restrict the trade and keeping of certain species as pets[37]. However, while flexible mechanisms exist within both regulations, inevitably, both are reactionary and too slow to keep up with the ever-changing trends in trade of wild animals kept as pets. The IAS Regulation in no way matches the magnitude of the threat that IAS pose to EU biodiversity (Carboneras, *et al.*, 2017). Meanwhile, the Wildlife Trade Regulation also only covers a mere fraction of the species that exist worldwide, many of which are traded as pets (Bush *et al.*, 2014). Only after trade in these species is demonstrated as detrimental to wild populations does listing occur, and this can often be politically driven rather than a result of scientific processes[38].

An EU positive list of companion animals would narrow the number of species traded for this purpose. As many species are restricted from trade, it reduces the threat of invasive species introduction through this pathway, and eases the pressure of one of the multiple threats to conservation.

If species allowed as a companion animal through an EU positive list were shown to be an IAS threat, or that trade endangers its population, the IAS and Wildlife Trade Regulations would be able to focus on these species through their existing mechanisms. As such, proper implementation and enforcement of these regulations could be enhanced through an EU positive list.

Figure 6.

A depiction of the current legal framework pertaining to the pet trade and the missing rules for animal welfare in this regard. An EU positive list of companion animals, with listing criteria primarily based on animal welfare requirements would fill this gap. The resulting number of species of animals (which could now be referred to as companion animals) in this trade would be dramatically reduced, making enforcement of these regulations in this area of trade more manageable and effective.



Box 11
The lack of animal welfare legislation addressing the EU Pet Trade

Several important pieces of legislation concern animal welfare, but these mainly concern farm animals. In fact, none of the legislative acts relating to animal welfare that have been adopted by the EU in the past 40+ years governs the welfare of animals kept and traded as pets within the EU internal market. The evidence in this paper and numerous peer reviewed studies demonstrates that many of the species currently kept and traded in the EU are wholly unsuitable as companion animals. This lack of welfare legislation on pets was even acknowledged by the EU Strategy for the Protection and Welfare of Animals 2012-2015, noting it *"would consider the feasibility of introducing a simplified EU legislative framework with animal welfare principles for all animals kept in the context of an economic activity including where appropriate pet animals (….)"*. However, such a framework has yet to be delivered, meaning the key opportunity in the revision of the Kept Animals Regulation should be capitalised upon **(see Section 3.4)**.

2.2 National legislation

In this section the reader is directed to a previous assessment of Member State rules:

→ Analysis of national legislation related to the keeping and sale of exotic pets in Europe

It contains an in-depth analysis of the rules for keeping, trading, of pets as well as pet shop requirements. Moreover, Table 1 contains an update of the several MS where new rules on positive lists have changed since 2020.

As has been referred to several times in this White Paper, MS have widely differing legislation regulating the pet trade. This includes inter alia positive lists, negative lists, minimum standards, certification schemes and absence of regulation. The differences in laws and even protocols for entry into countries can cause tremendous confusion for law enforcement officers, and even private citizens.

Table 1. Updates to recent positive list rules in the EU

Member State	Update
France	The positive list principle has been included in the law aiming to fight against animal abuse and to strengthen human-animal relationships adopted in 2021[39]. To date, the application decree has yet to be published.
Cyprus	A positive list was introduced in 2021[40], allowing the possession and sale of only a limited number of mammal species – namely dogs, cats, ferrets, rabbits and rodents. Pigs, sheep, goats, cattle, horses, donkeys, mules and hinnies are also permitted, but for these species additional municipal or city regulations may apply (which can for example prohibit their being kept in residential areas). Apart from the wider category of rodents, the list also contains broad categories of permitted non-mammal species (birds, fish, and – with some exceptions – reptiles and amphibians).
Italy	In 2022, Italy adopted a new law[41] including a list concerning the species of wild and exotic animals that can be kept (positive list), drawn up on the basis of health risk, risk to biodiversity or the compatibility of each animal with being kept in captivity, considering behavioural, physical, biological and ethological aspects. It includes a limited group (5) fish species and (1) nudibranch.
Netherlands	A positive list for mammals has been introduced in the Netherlands, permitting just 30 species to be legally kept as pets in the country[42]. This move will prevent exotic mammals from being kept as pets in unsuitable conditions. Over 300 mammal species were assessed for the list, making it clear that many species commonly kept as companion animals are unsuited to life in captivity. The list came into force as of July 1st 2024. The Dutch government has carried out various transitional regulations to enable the practical implementation and enforcement of the list[43]. They will continue to evaluate the implementation of the list.
Belgium	Belgium has enforced a positive list for mammals since 2009[44], but the keeping of reptiles has been addressed more recently. In Flanders, a reptile positive list includes 422 reptile species and entered into force in 2019[45]. More recently, in Wallonia, a positive list of 275 species for the keeping and commercialisation of reptiles by private owners was enforced from December 2020[46].

Box 12
Analysis of the Belgian positive list

Belgium was the first European country to adopt a positive list for mammals, which came into force in 2009. It lists 42 species that are allowed to be kept as pets[47]. In 2015, animal welfare switched from a national competence to a regional one, resulting in some differences in species listings in the different regions. In Wallonia, a positive list for the detention and commercialisation of reptiles by private owners has been enforced since 2020. This list includes 257 species of lizards, snakes and turtles that can be detained without specific authorisation[48]. In Flanders, a similar reptile positive list includes 422 reptile species and entered into force in 2019[49]. The owners of animals from species that are not on these lists must provide evidence that they acquired the animal prior to the entry into force of the decree and their breeding is prohibited. In Wallonia, the judicial sanction for the keeping of an animal species that is not on the list without authorisation ranges from 8 days to 3 years imprisonment and/or a minimum fine of 100 euros and a maximum of 1,000,000 euros, depending on the circumstances (e.g., number, species and conditions of animals)[50,51]. Perpetrators can also be given an administrative fine ranging from 50 to 100,000 euros[52].

The legislation is enforced by animal welfare departments within the Flemish, Walloon and Brussels law enforcement administration responsible for making inspections according to the animal welfare legislation. Authorisation applications for the keeping of animals not included on the lists are processed by animal welfare departments of public administrations. Confiscated animals are handed to rescue centres or zoos able to care for the animals.

Several elements indicate that buyers and sellers of wild animals in Belgium generally comply with the regulation. For instance, on several Facebook groups dedicated to wild animals to be kept as pets, members clearly indicate that conversations on the keeping of illegally owned species are not allowed (Di Silvestre & van der Hoeven, 2016). Moreover, each confiscation of a non-listed species was widely publicised by the government, increasing public awareness of the positive list.

During the 2009–2014 period, 129 exotic mammals belonging to 29 non-listed species had been recorded as confiscated or found as strays and handed over to rescue centres. In Wallonia in 2016, of the 532 animals seized by the authorities, 9 were exotic or wild animals[53]. These numbers tend to indicate a decrease in the number of wild animals kept as pets in Belgium.

2.3 Challenges

This section sets out the current challenges presented by the trade in wild animals to be kept as pets and demonstrates that an EU positive list is an effective solution. The challenges vary from probable internal market barriers, to the risks of international trade, and cross-border issues to animal welfare problems.

2.3.1 Internal market distortion

With reference to Article 114 of the Treaty on the Functioning of the European Union (TFEU)[54] and as stated by the Directive 2001/95/EC on general product safety (recital 2), *"It is important to adopt measures with the aim of improving the functioning of the internal market, comprising an area without internal frontiers in which the free movement of goods, persons, services and capital is assured"*[55]. The adoption of a positive list of companion animals that are allowed to be traded and/or kept in the whole EU, would be coherent with the directive's requirement and the functioning of the internal market: common rules, preventive at their core, would ensure that only suitable species could be traded.

The current legal framework likely creates an *"internal market barrier"* resulting from disparities in the laws, regulations or administrative provisions of the MS[56]. This barrier is present as some MS have already implemented a positive list or are in the process of doing so, while others have negative lists, or no discernible laws on the keeping and/or trading of pets (Eurogroup for animals, 2020). These disparities can obstruct the freedom of movement of goods (in this case animals), and may result in unequal opportunities in different MS, or a form of competition within the internal market. In short, where rules are enforced, different MS and even different regions within MS in the single market will have different opportunities to access and trade goods. Tackling trade flows of pet animals may therefore be more difficult for some MS than others according to their geographical location.

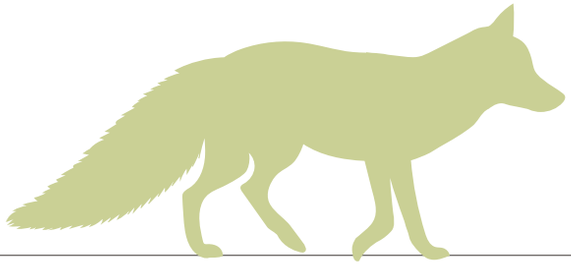
2.3.2 Knowledge gaps, lack of consistency of monitoring and enforcement

It is difficult to determine how many pets were imported into certain MS (e.g., Ireland) (Sapience, 2022). Therefore, while it is likely that different MS have varying extents of trade in multiple species as a result of different rules, the current legal frameworks and monitoring systems makes it impossible to accurately assess the scope and trade routes of wild animals kept as pets. Moreover, the large difference in the number of exotic pet specialists between MS gives an indication that there are differences in the demand of wild animals as pets, and the size of the pet market[57]. There is potentially a significant distortion when considering the short list of wild mammals allowed to be kept as pets in Belgium and a growing number of other countries.

However, in many cases, the lack of consistent data on non-CITES-listed species means that it is difficult to determine accurately if distortions in the internal market are occurring on a broader scale. Data on non-CITES-listed species have been reported as confusing, irregular, and far from complete and can only provide an indication of the actual numbers traded (Jordi & Chris, 2018). Moreover, it only concerns the import and not the largely unregulated breeding that occurs within the EU. This undermines the objective of TFEU Article 114, which is to maintain the functioning of the internal market[58]. As such, a precautionary approach should be utilised.

As can be seen from the **investigation into online advertisements**, there is likely a distinct lack of compliance with the rules that currently exist. During *"Mystery visits"* with the online vendors of wild animals as pets, 17 out of 18 sellers did not mention any national restrictions in the movement of exotic pets across MS[59]. This happened despite the fact the trades would imply the transport of animal species into MS that legally forbid their entry and keeping[60]. Therefore, these alternate scenarios remain:

- MS that enforce their rules more effectively are at a disadvantage in trade compared to those with weaker enforcement, where there is potentially more illegal trade. Wild animals obtained illegally can then easily cross borders, ultimately undermining the functioning of the internal market;
- The barrier to trade is reduced as a result of illegal activities within the EU, if rules are poorly enforced;
- If all rules were equally well enforced, the fact that they are not harmonised would create a trade barrier due to the high variability on the number of species that can be traded.



2.3.3 Import of wild animals from outside the EU

Data is lacking on the number of imports of wild animals to be kept as pets from third countries. Yet such data is crucial for a full picture of the number of animals available on the pet market in various MS. This section discusses the number of imports into different MS, along with the possible consequences for the internal market.

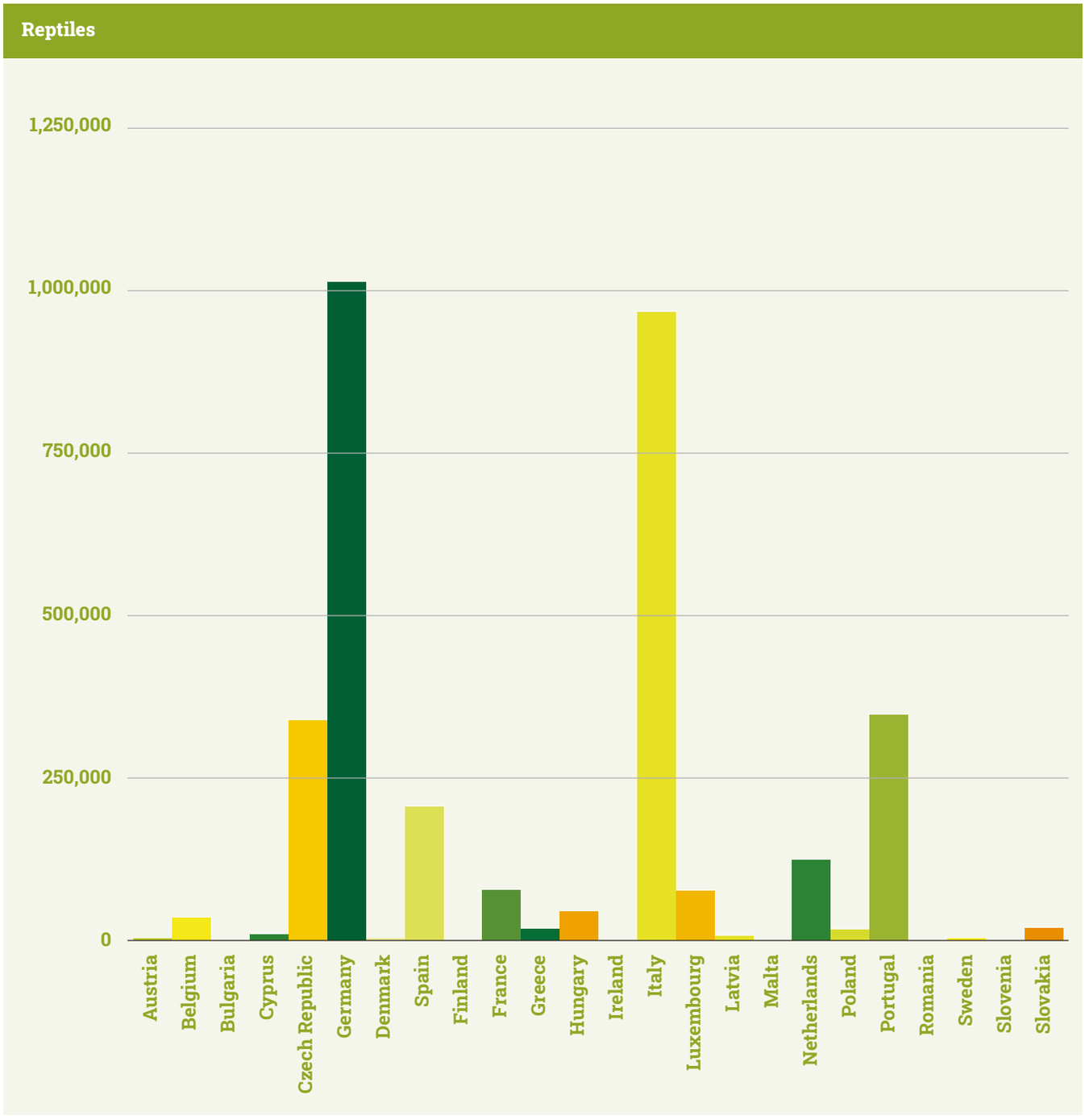
Estimates from the European Pet Food Industry (FEDIAF) and the CITES Trade Database[61], demonstrate major differences between the numbers of animals imported into the different MS to be traded as pets. These numbers are neither aligned with gross domestic product nor the population of MS, meaning this may be attributable, at least in part, to MS laws on the regulation of trading or keeping of pets. Additionally, countries differ in their proportion of their trade depending on the taxa. For example, some studies demonstrate that Germany is the largest importer of reptiles, closely followed by Italy, whereas for mammals, this shifts to Germany and France **(see Figure 6)**.

It was beyond the scope of the **Eurogroup for Animals 2023 initial analysis** to definitively show where MS rules account for each of these discrepancies. Instead the analysis highlights potential distortions in imports that might be occurring. Based only on CITES data, it is unreasonable to draw concrete conclusions[62]. However, the worrying lack of data for non-CITES-listed species leads to the justifiable assumption that where laws in MS are stricter with regards to certain taxa, there would be discrepancies in the number of imports, the size of markets, with subsequent effects on competition with other MS, hence possible internal market distortions[63].

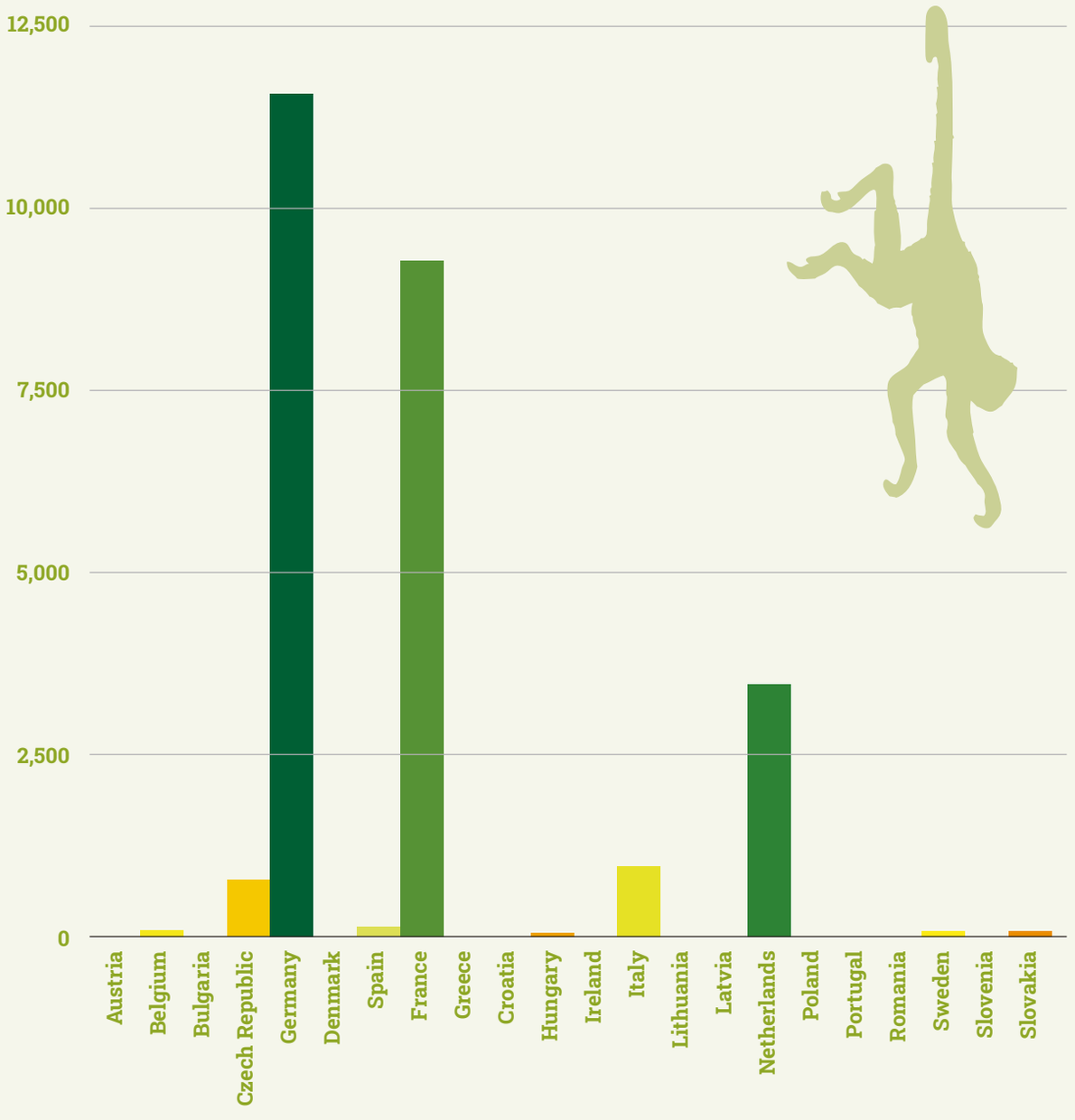
On a small scale, illuminating examples exist of barriers to imports related to wild animal species known to be kept as pets for which 1) data is available and 2) different rules apply in each MS[64]. Levels of imports apparently vary between MS on account of the differences in national legislation on trading and keeping exotic animals as pets.

Figure 7.

Compiled data, from the CITES Trade Database, showing the imports of CITES-listed live reptiles (left) and mammals (right) in the 27 MS between 2010 and 2021. These animals were imported for commercial and personal reasons.



Mammals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Bulgaria
Czech Republic
Germany
Denmark
Spain
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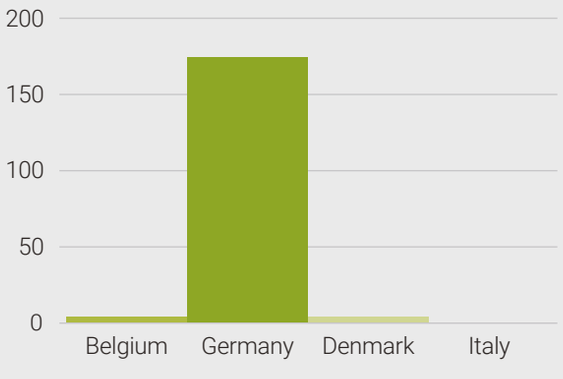
Hungary
Ireland
Italy
Lithuania
Latvia
Netherlands
Poland
Portugal
Romania
Sweden
Slovenia
Slovakia

Here are examples of different rules correlating with the number of imports of specific species:

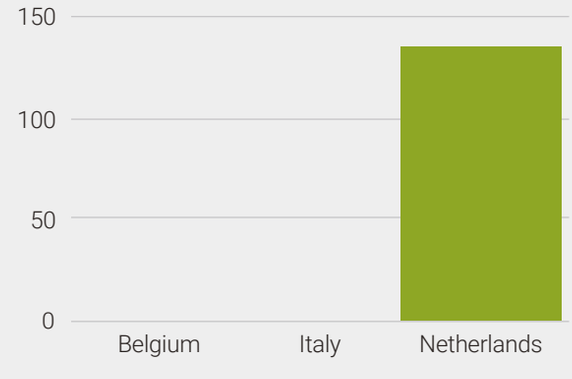
Caracal

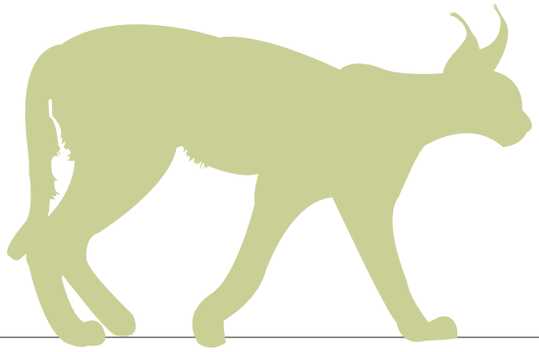
Between 2010 and 2020, 183 CITES-listed caracals *(Caracal caracal)* were imported to four MS for commercial reasons. No caracals were imported to Italy, since this species is on the 1996 negative list of animals that can be kept as pets[65]. Denmark imported four caracals before 2015, when a negative list was implemented[66]. Belgium imported four individuals in 2010, which correlates with the implementation of a positive list forbidding the keeping of most mammals, including caracals, in 2009[67]. The main importer was Germany with 175 individuals, which can be explained by the fact that Germany does not forbid the trading or keeping of caracals as pets[68].



Fennec fox

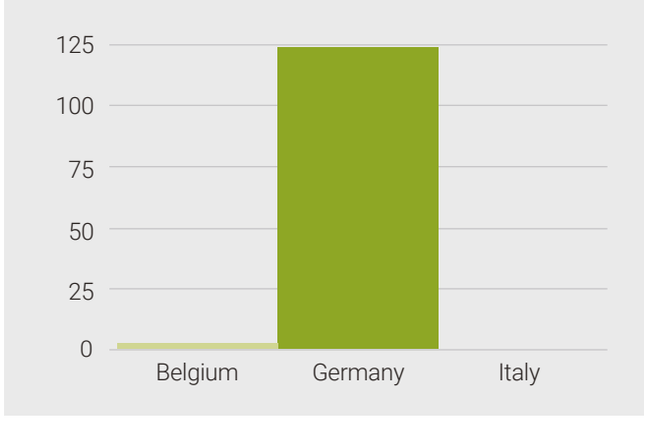
In the 2010-2020 period, 135 CITES-listed fennec foxes *(Vulpes zerda)* were imported to three MS for commercial reasons. The Netherlands was the only importer of fennec foxes as this species does not appear on the country's negative list. However, other countries, such as Belgium, with a positive list did not report any imports since fennec foxes cannot be kept as pets[69], while the Italian negative list does not allow the keeping of this species[70].





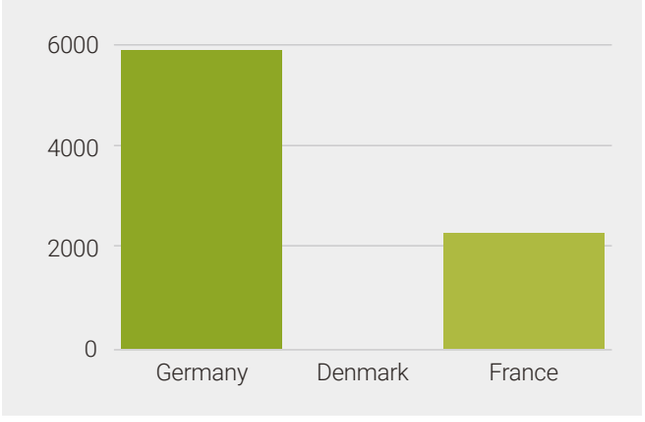
Serval

Between 2010 and 2020, 126 CITES-listed servals *(Leptailurus serval)* were imported to three MS for commercial reasons. No servals were reported as imported to Italy, since these species are listed on the 1996 negative list of animals that can be kept as pets[71]. Meanwhile, Belgium reported two imports despite having implemented a positive list of mammals in 2009, forbidding the keeping of servals[72]. However, there is a large gap with Germany, which reported 124 imports of servals. This is the only country of the three that imposes no restrictions on the trading and keeping of servals[73].



Varanidae

In the 2010-2020 period, 8,098 CITES-listed individuals from the Varanidae family have been imported to three MS for commercial reasons. Germany does not forbid trading or keeping varanids as pets[74] and was by far the main importer with 5,855 individuals imported, ahead of France with 2,239. However, since 2018, a certificate has been required for the keeping of Varanidae in France, possibly leading to a decrease in the number of individuals imported[75]. Meanwhile, Denmark reported the import of four individuals before 2015, when the Danish negative list was implemented forbidding the keeping of varanids[76].



Some extra insights gleaned from France indicate that a reduction in the number of imports of varanids can be observed since legislation regarding the keeping of animals was implemented in 2018, suggesting that the rules do indeed have an effect[77]. It should also be noted that Italy very recently adopted, and implemented, a positive list of animals taken from the wild (see AAP, 2022). This will likely have an effect on the number of imports that could demonstrate the impact of regulatory measures on the size of the market, thus resulting in competitive distortions.

2.3.4 Cross-border risks

Wild animals allowed to be kept as pets in one MS can escape and can move across geographical borders. If this species has potential to become invasive or carries a disease that can be passed on to humans, then they can pose a risk for neighbouring MS. Live animals cannot respect borders, countries or rules. For example, grey squirrels *(Sciurus carolinensis*), ruddy ducks *(Oxyura jamaicensis)* and parakeets are examples of animals that have spread to other countries (some of which are now banned from trade and/or keeping through the EU IAS regulation). Once an animal enters one MS, it can also be very difficult to trace its movements across borders. As with all the findings presented, such risks require in-depth follow-up investigations. It should be noted that additional complexities can be associated with the internal market, making the case for the solution of an EU positive list, which would abide by the principle of subsidiarity[78].

2.3.5 Animal welfare in trade and the internal market

The welfare of animals is negatively affected in trade, and the wide variety of MS laws makes it possible for the welfare of wild animals to be highly inconsistent across the EU.

Article 13 of the TFEU, confirms that the EU affords importance to animal welfare based on an acknowledgement that they are sentient beings[79]. The first part of the TFEU devoted to principles requires that the EU and its MS pay full regard to the welfare requirements of animals in formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies. It is therefore clear that the conditions for the trading of pets under an EU legislative framework should incorporate the welfare of animals. However, as expounded in **Section 2.1**, current EU law does not cover animal welfare for pets, and the investigations included in this paper demonstrate major shortcomings in the welfare of wild animals currently being traded in the internal market as pets. Differences in expertise, care and reliable information available in different MS, combined with the large disparities in the number of wild animals kept and traded between MS, mean that through trade, the current MS laws and legal frameworks at EU level are not enough to maintain high levels of welfare evenly throughout the single market, eroding the EU's adherence to Article 13 TFEU. A harmonised approach is therefore recommended.

Box 13
Pets in the EU: scale, protocols and online apprehension. A study by Sapience (2022)

Regarding online trade, **(see Box 7 and Section 1.4.4)** investigations revealed that sellers do not always share the guidelines about the basic needs of the animal or take the necessary precautions to guarantee animal welfare during transport. In fact, out of 18 mystery shopper interviews, only 5 vendors spontaneously provided accurate guidelines about the basic needs of the animal concerned, such as diet, ideal environment or safety risks. The remaining 13 either provided only very general information (e.g., recommended diet, temperature, environment, etc.) or ensured that more detailed information would have been provided upon the consignment (Sapience, 2022).

2.3.6 Enforcement

The final challenge of the trade in wild animals to be kept as pets is the enforcement of differing MS laws. The mosaic of MS rules on the keeping and trading of pets creates a complexity that not only makes it difficult for the public to understand what is allowed or not, but it means that enforcement can become a challenge. Law enforcement, including border control officers, require extensive training to identify individual species. Ever-changing laws in 27 MS necessitate additional efforts to ensure up-to-date information and competence. The legal and illegal trades in wild animals do not operate in separate MS silos, but are extremely interconnected and should therefore be addressed in unison. Legal trade channels are frequently misused for illegal trade activities, where criminals use legal business structures such as pet stores. This happens for example when permitted wild animal species are publicly displayed at wild animal pet markets, while prohibited species can be simultaneously traded in parking lots or nearby hotels; or when endangered animals harvested from the wild are being falsely advertised or labelled as captive-bred (EUROPOL, 2022). As a direct result of the complexity of MS laws, there is a lack of systematic monitoring of the pet trade, meaning a lack of sound statistical data on the legal trade. Combined with a lack of dedicated wildlife/environmental crime units in MS, this hampers investigations into the illegal trade. Where MS criminal investigations are lacking, international and organised crime monitoring institutions such as EUROPOL cannot play their role as effectively[80].

Harmonisation and simplification of the rules on the legal trade through an EU positive list would likely make monitoring of legal business owners and operators more manageable, as well as facilitating the systematic collection of data on the legal trade in different MS, through possible identification and registration of the animals allowed as companion animals. This simplification would make the illegal trade more obvious, and potentially aid in launching criminal investigations. As both legal and illegal trade occur in diverse, difficult to monitor, marketplaces and sales-channels (internet, markets, shops), a simplified system that changes less sporadically than negative lists, or the current patchwork of MS rules, would aid in regulating these channels and by proxy support enforcement. An EU positive list would likely have a mechanism to add or remove species from the list – however, this alteration would occur infrequently and on an EU-wide level. Training for customs and law enforcement officials would be able to occur simultaneously and in a standardised way. A harmonised positive list would raise pan-EU public awareness, of benefit to law enforcement officials. Similarly, greater awareness among law enforcement officials would help to increase cross-border communication between agencies and add value for agencies such as EUROPOL. The successful raising of awareness in Belgium is testament to this potential, where, as a result of the positive list, the public is well-informed on the species suitable to be kept as pets, thus limiting illegal trade (Di Silvestre & van der Hoeven, 2016). In fact, the Action Plan against Wildlife Trafficking proposes to "improve cooperation on enforcement between the MS, EU enforcement actors and key non-EU countries"[81].

An EU positive list would add considerable value in helping to implement such measures effectively.

Case Study from EUROPOL
Mode of trafficking for bird species

"Transporters use forged CITES documents, or declare the trade of different species, or that the specimens are bred in captivity and not caught in the wild. Shipping companies falsify consignee statements and couriers use fraudulent identity documents while travelling. Increasingly, criminal sellers attach counterfeit rings to birds' legs captured in the wild, to pretend that they come from legal breeders. Transporters also make large use of corruptive methods and bribes to pass border controls. At arrival, birds are caged in warehouses while waiting to be sold. In many instances, illegally traded birds are sold online, in pet shops as well as at national and international fairs, which confirms once again the systematic links between legal business structures and illegal bird trafficking."

An EU positive list would make the identification of illegal animals significantly easier at each stage of the illicit trade chain. The raised awareness of law enforcers would facilitate inspection.

03

PROPOSAL FOR AN EU POSITIVE LIST

This section presents a concrete legal proposal for an EU positive list. It presents the legal feasibility of this positive list with definitions and a scope for the measure, as well as its objectives, and a detailed legal basis. Moreover, it assesses the potential legal instrument that could be used in the form of a regulation and demonstrates how a positive list can be developed in compliance with World Trade Organisation (WTO) rules. Finally, it highlights the opportunity granted by the upcoming revision of the animal welfare legislation.

Two legal opinions have been independently produced and both are highly aligned on the key elements for the development of an EU positive list, namely the definition of companion animals, the legal basis under TFEU, as well as conformity with the principles of proportionality and subsidiarity. In addition, the legal opinion developed by Fratini Vergano provides for an EU positive list that could be designed to be compatible with WTO agreements and other international treaties such as CITES (Fratini Vergano, 2022). Moreover, this proposal would also strengthen existing EU regulations (see also Section 2.1). The section concludes with a discussion on clauses that may strengthen the measure and improve its proportionality and acceptance by MS. The proposal presented here represents a feasible approach to an EU positive list. This is particularly timely given the upcoming assessment of the added value and feasibility of an EU positive list[82].

3.1 Legal feasibility of an EU positive list

The choice of the legal basis for an EU positive list requires the identification of the content[83], the scope and the intended aims of the measure. An EU positive list adds value and is feasible in that it is proportional, adheres to the principle of subsidiarity and can fit within the current legal framework at EU level as discussed in this section.

3.1.1 Definitions and scope of the measure

There is no EU definition of companion animals. Regulation 576/2013 on the movement of pet animals linked the concept of companionship exclusively to the non-commercial movement of pets[84]. However, the Council of Europe Convention for the protection of pet animals of 1987 – which has not been ratified by the EU and is thus not part of EU legal framework[85] – defines pets as "any animal kept or intended to be kept by man in particular in his household for private enjoyment and companionship" – thereby providing a useful basis for defining a companion animal.

Although slightly altered, for context and consistency with the above, and with Article 2(u) of Council Regulation 338/97[86], the scope of the establishment of an EU positive list may be limited to allowing the trade of the listed companion animals within the EU.

The possible definition of the term 'trade' should mean *"the introduction into the Union, and the export and re-export therefrom, as well as the sale, use, movement and transfer of possession within the Union, including within a Member State, of companion animals subject to the provisions of"* the measure establishing the EU positive list.

A possible definition of 'companion animals' means any dog or cat, or any other animal kept for the purposes of companionship or leisure[87].

Importantly, only animal species (or breeds) assessed and added to the list would be able to be traded for the above purpose. Therefore, only these animals could be considered by law as companion animals.

3.1.2 Objectives of an EU positive list measure

The legal opinion of Fratini Verganio concludes that feasible objectives of an EU positive list include the following:

1. *Protect animal welfare and public morals. Many animal species have highly complex physiological and behavioural needs which are extremely difficult, if not impossible, to accommodate in a home environment. When kept in captivity as companion animals, they suffer from serious health and welfare problems and many die prematurely;*[88]

2. *Improve the conditions for the establishment and functioning of the internal market for companion animals. The patched existence of non-harmonised positive lists, negative lists and lack of regulation of tradable species at national level affects trading conditions within the EU and creates obstacles to cross-border trade of companion animals between MS.*

By prohibiting the trade of animal species other than those in the list, the measure would determine uniformity of trade conditions, and therefore of conditions of cross-border trade, for companion animals in the EU, while at the same time aiming to improve animal welfare. In this context, the measure would incidentally also contribute to protecting public health and safety, preventing the global decline of wild species and protecting native plants and animals in the EU against IAS.

3.1.3 Legal basis

Given the objectives laid out above, considerations on the legal basis follow:

3.1.3.1 Animal welfare

While Article 13 TFEU cannot constitute a legal basis for the EU to legislate in the field of animal welfare (Simonin & Gavinelli, 2019), the Court of Justice of the European Union (CJEU) has recognised the protection of animal welfare as a legitimate objective in the public interest and considerations of the welfare of animals are usually taken into account in specific references in the recitals of the legislative acts[89,90]. Animal welfare requirements should be fully taken into account in formulating the measure.

3.1.3.2 Internal market distortions

According to settled case-law, three conditions must be fulfilled in order to rely upon Article 114 TFEU as a legal basis:

1. There must be an *"internal market barrier"* resulting from disparities in the laws.
2. The internal market barrier obstructs freedom of movement (i.e., creates obstacles to cross-border trade) or creates a *"distortion of competition"* within the internal market.
3. The measure must *"genuinely have as its object the improvement of the conditions for the establishment and functioning of the internal market"*.

The current proposal for an EU-wide positive list meets these conditions.

1. Firstly, as demonstrated in **Section 2.2** we provide initial evidence that there are disparities in the laws, regulations or administrative provisions of the MS that may constitute an internal market barrier.
2. Secondly, these national rules laying down the species that can be traded or kept as pets are in themselves liable, in the absence of harmonisation at EU level, to constitute obstacles to the free movement of pets. This is not only between MS with a positive list and those without, but also between MS whose positive lists do not match, due to 1. different criteria, on which the positive lists have been based; 2. different levels of protection; and 3. differences in the way the risk assessment has been carried out. This results in trade of several species being prohibited in some MS, but not in others. Further obstacles to cross-border trade are likely to emerge when other MS adopt their positive list.
3. Thirdly, establishing an EU positive list of companion animals would remove existing obstacles to their free movement and prevent likely future obstacles to harmonisation within the internal market. As such, the measure would have a clear internal market dimension.

In order to counter barriers to the free movement of companion animals in an effective and proportionate fashion, the trade of companion animals could, as a general rule, only be allowed for the species on the EU positive list.

The number of MS to adopt legislation that have the effect of creating barriers to trade is not decisive for proposing or adopting an EU-wide measure under Article 114 TFEU[91]. However, the political and hence also the legal pressure to adopt EU-wide legislation in order to eliminate barriers to trade caused by the adoption of MS legislation mounts as more MS adopt such legislation or consider an adoption: all such national measures increase the likelihood and seriousness of obstacles to free movement.

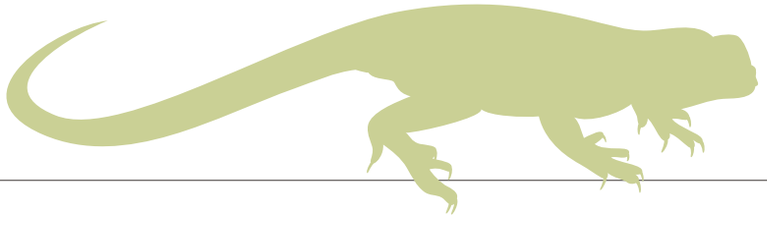
3.1.4 Proportionality, subsidiarity and the link with existing legislation

While the principle of conferral governs the limits of the EU competences, the use of those competences is governed by the principles of subsidiarity and proportionality. Subsidiarity focuses on justifying the need for action to be taken at EU level, rather than leaving it to the MS to pursue the goals within their own competence, while proportionality focuses on justifying the extent or intensity of such an action.

3.1.4.1 Subsidiarity

The competence to legislate trade of companion animals on the single market is shared between the EU and the MS[92]. Therefore, it has to be examined whether a measure establishing an EU positive list for the trading of companion animals is compatible with the principles of subsidiarity and proportionality.

The subsidiarity principle is laid down in Article 5(3) of the Treaty on European Union (TEU). It provides that *"in areas which do not fall into its exclusive competence, the EU shall act only, if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member State alone, but can, by reason of the scale or the effect of the envisaged action, be better achieved at EU level"*.



It is settled case-law that a measure that effectively contributes to the functioning of the EU internal market by harmonising national provisions pursues an objective that, by definition, cannot be adequately pursued by MS alone and thus can be better achieved at EU level[93]. In other words, a harmonisation measure based on Article 114 TFEU inherently complies with the principle of subsidiarity. It follows that a measure establishing an EU positive list based on Article 114 TFEU would also be in conformity.

Positive lists by the individual MS alone could not reach the same result as an EU positive list. Indeed, it is by no means certain that all MS would choose the approach of a positive list. The present diversity of approaches is clear evidence for this. Different national approaches would not be able to establish a level playing field for trade in companion animals and eliminate the obstacles caused by the positive list initiatives of some MS. Furthermore, new technologies – in particular online-shopping, internet purchases, trans-frontier marketing campaigns and digitalised delivery systems – constitute a significant risk for individual national systems that may be circumvented and bypassed by traders from other MS[94].

3.1.4.2 Proportionality

According to the established case-law of the CJEU, the principle of proportionality laid down in Article 5(4) TEU requires that the measure

1. is appropriate (suitable) for attaining its legitimate objectives ('suitability test');
2. does not go beyond what is necessary to achieve those objectives (i.e., there are no less far-reaching measures capable of obtaining the same result, 'necessity test'); and
3. does not cause disadvantages that are disproportionate to the objectives pursued ('proportionality *stricto sensu* test').

3.1.4.3 Appropriate

The information collected and presented in this report provides initial evidence that the EU trade in wild animals as pets is on a large scale even though the numbers cited are likely underestimated. Importantly, the range of species being traded can be seen changing over time. A negative list will always be lagging behind, while a positive list system is future proof, able to cope with varying trends in the trade, or, even a new species entering the pet market from other areas of the globe – it would be automatically prohibited in the EU. Numerous knowledge gaps demonstrate that the complexity of the current rules create difficulties in monitoring and regulating the trade that would be simplified through harmonisation. Finally, the pet trade inflicts severe negative impacts on the welfare of wild animals inappropriately kept as pets, and raises serious public health and safety concerns. These elements demonstrate the need for a systematic change in the way we regulate the trade in companion animals, indeed making such measures both warranted and appropriate, even necessary.

Additionally, to remain appropriate, the measure establishing the EU positive list should provide for an application procedure designed to allow a given species to be added to the list in case adequate reliable scientific data and/or recent results of international research show that that species meets the criteria for inclusion. Such an application procedure should comply with the above-mentioned principles of EU law. That would ensure the proportionality of the positive list, thereby addressing the concerns that the list might result in "a blanket ban on trading or keeping any species not included in a *"white list" as it would effectively result from such a measure"* [95].

Moreover, there are certain clauses or provisions that can accompany an EU positive list in legislation that further distance the measure from being a blanket ban. Examples of these include certification schemes for certain keepers who can demonstrate resources and expertise to keep certain animal species not included on the EU positive list. They would, under certain conditions, be able to trade and keep unlisted animals. A form of 'grandfather clause' would be important to ensure those people already keeping species of animal not on the list, and who could prove that they had gained ownership (traded) the animal before the application of the EU positive list legislation, would not be prohibited from holding on to the animals until the end of their natural life **(see Table 4)**.

3.1.4.4 Less far-reaching/restrictive measures

A negative EU list, or other alternatives to an EU positive list would not reach the same or an equivalent result. Assessing if less trade-restrictive measures can achieve the same outcome is important in consideration of WTO compliance (see Section 3.3).

In terms of its necessity, a less far-reaching measure such as a negative list would not have an equal preventive effect as a positive list[96]. An EU negative list runs the risk of becoming extremely long[97]. Also, for many wild animals, their complex needs of housing nutrition, social life etc., their capacity to transmit diseases to domesticated animals or even to humans – including allergies – are insufficiently researched, so that divergences on the necessity or usefulness to include a specific species in a negative list are likely to be frequent. Individual characteristics and needs are only well enough known for a relatively limited number of species to be considered or classified as companion animals. As the EU legislature has some margin of discretion on how to design, implement and orient the legislation, it is therefore not disproportionate to opt for a positive list instead of a negative list[98,99].

This is all the more so, as Article 114 TFEU requires the EU institutions to provide for a high level of human health and environmental protection. Undoubtedly, a positive list gives greater legal certainty as to which animals may be traded, as well as being easier to update. Additionally, hybridisation/crossing and domestication of species continues via home-breeding, with undesirable animal welfare effects. New species are created that also have new and changing commercial names. An instrument to stop this practice of hybridisation is preferable from an animal welfare perspective, and could be easily incorporated into a positive list system. Negative lists are less suitable because the instrument is reactive to this practice – there is a continuous need to add names of new hybrids. Table 3 provides some examples of less far-reaching/restrictive methods and reasons as to why a positive list is preferable.

Table 2. Negative vs Positive List systems
Summarized from Toland et al. (2020)[100]

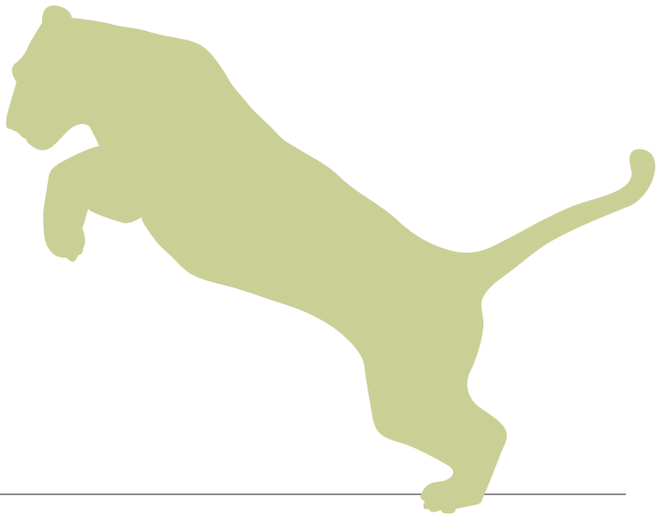
Negative List System	Positive List System
No evidence that permitted species offer consumer, animal, and environmental protection	Evidence-based risk assessments which certify permitted species offer consumer, animal, and environmental protection
Administrative complexity for law enforcement requiring a high level of expertise	Administrative simplicity for law enforcement and the public
Unreliable husbandry guidance	Reliable husbandry guidance
Authorities forced to be reactive	Authorities able to take proactive measures

Table 3. Alternatives and why they may be insufficient compared to an EU positive list.[101]

Instrument	Explanation	Does it achieve the same outcome as a positive list?
Keeping requirements/ animal leaflets (Less trade restrictive)	These may help improve animal welfare. However, without legal obligation, these measures are often not enforceable. Regulations may change based on increased understanding of welfare needs.	No, on a positive list, only suitable species are listed. Proactive: A positive list prevents the trading of animals that are unsuitable to be traded or kept because their welfare cannot be guaranteed.
Keeping requirements in combination with a negative list (Less trade restrictive)	Some species unsuitable to be kept may be prohibited, while for the permitted species keeping requirements are established.	No, on a positive list all species unsuitable to being kept as pets are prohibited from trade.
General prohibition to trade wild, non-domesticated species (More trade restrictive)	One can only trade domesticated species or species used to living in the direct vicinity of humans. This may open questions regarding a strict definition of domestication.	Yes, for non-domesticated species, but a positive list would also be able to regulate the trade of certain species of domesticated animals whose welfare is compromised.
Complete worldwide ban on the trade of wild animals (More trade restrictive)	Species not taken from the wild / stay in their natural habitat. This approach may also stop the breeding of wild animals to be kept as pets.	Yes, for non-domesticated species, but a positive list would also be able to regulate the trade of certain species of domesticated animals whose welfare is compromised.

3.1.4.5 Disadvantage

Important to note is that a reduction of the activities previously regarded as accessible may cause a shift in the way animals are traded. It is unlikely that job losses among current traders would be significant. One possible reason is that there will likely be an increase in the availability and trade of pets whose welfare needs can be easily met, and a shift to the trade in these species; it is likely therefore that as some activities are lost, other opportunities within the pet trade industry may increase. It will be the role of any impact assessment on the EU positive list from the Commission to consider this aspect, and make recommendations for the mitigation of any negative impacts on those trading in species excluded from the positive list.



3.2 Legal instrument

This section presents the potential legal instruments that could be used for an EU positive list. It is important to consider carefully which of them would be most suitable in the context of the current proposal. The choices considered here are limited to a Directive vs. a Regulation.

Directive

- Legally binding on the MS to which they are addressed in respect of the result to be achieved.
- Not directly applicable, allows MS some flexibility as to the transposition of the EU measure into national law and its application.
- Leave the MS a margin of discretion as to the most appropriate means for achieving its goals.
- May lead to a *"race to the bottom"*[102].

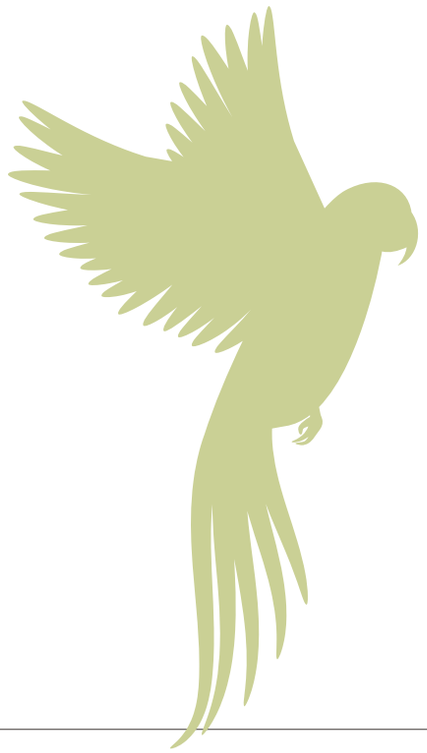
Regulation

- Legally binding in all MS.
- Directly applicable in the MS, a regulation would ensure a uniform identification of companion animals to be traded within the EU and would enable a coherent and effective application of those rules.
- Provide legal certainty and transparency for economic operators and consumers alike.
- Ensure consistent monitoring of the obligations and equivalent sanctions in all MS.
- Enable effective cooperation between the competent authorities of different MS and at Union level.
- Consistent with the existing policy framework in the field of animal welfare, which is mostly composed of regulations.
- The need to have provisions which are, to the greatest extent possible, equal in all MS, plead strongly in favour of an EU-wide regulation.

To address concerns that full harmonisation might force a 'downward game' in pursuing the Positive List's objectives, the measure could be designed to involve an 'upward harmonisation' instead of a 'downward harmonisation', in order to preserve the integrity of the internal market[103].

As full harmonisation is an EU positive list's objective, the most appropriate legal instrument for a measure establishing such a list would be a regulation. An important consideration regarding the implementation of a regulation, is the possibility for MS to maintain their own positive list laws in case they have stricter rules in place (e.g., MS with a positive list including fewer animal species than the proposed EU list). Continuing to allow too much flexibility between MS laws may undermine the overall objective of maintaining the functioning of the internal market, as discrepancies between MS would continue. However, Article 114 TFEU does contain language suggesting that where a MS deems it necessary, it can keep national provisions in place, subject to approval by the Commission of its justifications[104].

It should be noted that a maximally harmonising regulation under Article 114(5) where animal welfare criteria are used to establish the list regulating specifically the trade of companion animals may leave room for MS to implement their own laws where the scope of the law and the objectives are different. It is possible that MS laws might then act on the already significantly reduced list of animals allowed to be traded as companion animals from an EU-wide list. This question goes beyond the scope of this White Paper, however, if MS were to be able to enact more stringent legislation in specific circumstances, variation in the internal market would still be significantly reduced.



3.3 WTO compliance

It is important to note that a full analysis of compliance with WTO agreements cannot be made until an EU positive list measure is fully conceptualised. Considerations in the design of a model measure are outlined in the following section, though it falls beyond the scope of this White Paper to detail the full methodology of building an EU positive list. We focus here on how the objectives of the above proposal might be feasible under WTO rules. In summary:

- When assessing the feasibility of an EU-wide positive list, an objective of animal welfare is considered not to fall within the scope of the Sanitary and phytosanitary measures (SPS) Agreement, but it may be relevant under the Technical Barriers to Trade (TBT) Agreement and the General Agreement on Tariffs and Trade (GATT) 1994.
- An objective of animal welfare would need to be carefully and expressly defined in the measure itself, but it would arguably allow for the effects of the measure to be justified under the 'public morals' exception of Article XX of the GATT 1994, as well as under the legitimate objectives enumerated under Article 2.2 of the TBT Agreement.
- This approach would likely prevent the Commission from having to conduct a scientific risk assessment of all animals/animal species that are excluded from trade by the 'positive list'. Instead, the Commission could focus on the animals most traded, or currently traded and kept as pets to ease the initial risk-assessment burden of a positive list approach.

See Annex I for a broader discussion on WTO Compliance.

3.4 Opportunity in the upcoming revision of the Animal Welfare Acquis

Two legislative proposals are under deliberation in the EU currently regarding animal welfare.

The proposal for new rules on the welfare of dogs and cats and their traceability is based on the legal basis of Article 43 TFEU and Article 114 TFEU. It should therefore be explored how a provision for the EU positive list can be included in this milestone revision. For example, it is proposed that the scope of the Regulation applying to cats and dogs is adapted to include all companion animals. The proposed regulation could therefore:

- Include a provision that the Commission may through a delegated or implementing act establish an EU positive list of allowed companion animals.

This provision could usefully pertain to the definitions and scope elaborated in **Section 3.1.1 of this White Paper**. E.g., 'companion animals' to mean animals that are traded for the purposes of companionship or leisure.

This would provide an important mechanism for which an EU positive list could be developed following a favourable assessment of the feasibility and added value of an EU positive list, which is currently being undertaken and is set to be completed in May 2025, and is an action under the revised Action Plan against Wildlife Trafficking from November 2022.

3.5 Developing the positive list

This section aims to present the possible methodology and provide pathways in order to develop an EU positive list. It presents existing methodologies on which the positive list could be based, as well as examples of clauses and provisions that could be included in the list.

Several existing methodologies exist for developing a positive list. A description of these can be found in **Annex III**. A new tool is being developed by AAP, which will help MS and the EU develop specific listing methodologies for a positive list.

Various MS are currently looking into the legal basis for a positive list for keeping and /or trading of animals. Once this basis is established, the actual positive list will have to be developed on the basis of an objective, scientific and legally sound methodology that takes into account the specific objectives/basis/national legal context of the positive list.

In order to facilitate both phases of that process, AAP has tasked an external and independent project manager with the development of a model methodology for a positive list in MS. The model methodology will be made available in the shape of a web-based tool that guides interested parties in the development of an assessment methodology for their own positive lists, giving insight into:

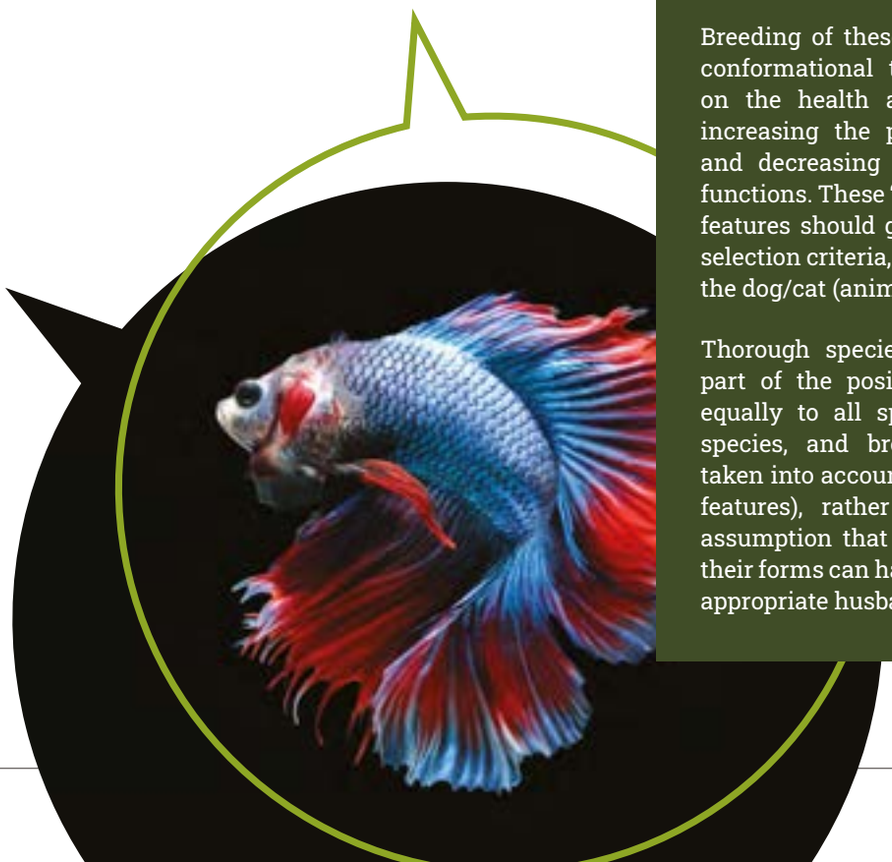
- The decision-making process
- Criteria to be considered
- How to enshrine it into law
- Additional considerations for the adoption of a positive list

Independent experts with knowledge of animal welfare, public safety and public health, and biodiversity and invasiveness will be consulted for the development of the criteria for the model methodology. This model positive list methodology will also become available and equally applicable in case the Commission chooses to design a risk-assessment method for suitable species. Work on the project started recently and is expected to produce the tool before mid 2026, after which it will be accessible to any party wishing to implement a positive list for animals.

3.6 Building legislation based on good practices

The publication from Toland and colleagues in 2020 also provides a set of recommendations for any positive list that is produced. Eurogroup for Animals agrees with these recommendations. Any instrument to regulate the trade in companion animals, including an EU positive list, needs to be acceptable in any given socio-political context. The legal context in which a policy instrument is implemented is key. Instruments need to be fit for purpose while fulfilling the principle of proportionality and subsidiarity; they should inflict the least harm on stakeholders and society, and not more than strictly necessary.

Additionally, it is important not to demonise pet owners, who for the most part, no doubt care deeply for their pets and would not wish them any harm. Heavy restrictions, if care is not given, might produce some level of social disruption and unintended consequences for pet owners, rescue centres and others. Some provisions have been included in MS positive lists to mitigate these possible consequences, and they could be applied in an EU context. What should be emphasised at this point, is the need for a form of 'proof of expertise' for the remaining positively listed species. Private pet owners must be aware of the species-specific biological and ethological needs in order to be able to purchase and keep them. With this additional tool another barrier will be established to prevent people from obtaining pets spontaneously and inconsiderately, not knowing how to keep them properly.



Box 13
Domesticated animals on the EU positive list

It should be noted that not all domesticated animals have their needs met when kept/bred/transported as pets. There are a whole host of welfare issues, particularly for some breeds.

Selective breeding was originally directed towards the ability of the dog: hunting, guarding, herding. Nowadays this selective breeding has become more and more focused on the appearance and popularity of certain breeds, with no further concern for the breed's longevity, health nor welfare in general.

This is the case while selecting for certain traits such as short muzzles, dome-shaped heads, excess skin, 'droopy' eyes etc. The most flagrant of all being the so-called BOAS (Brachycephalic Obstructive Airway Syndrome) commonly occurring in 'flat-faced' breeds of both dogs and cats causing, among other issues, respiratory distress, eye problems and impaired thermoregulation.

Many dogs with such extreme features cannot mate nor give birth naturally, needing to undergo surgical procedures to correct these disorders, procedures that rather than exceptional are becoming common practice for certain breeds.

Breeding of these excessive (albeit fashionable) conformational traits have a negative impact on the health and welfare of these animals increasing the prevalence of certain diseases and decreasing normal and highly necessary functions. These 'typical for the breed' normalised features should give way to the most important selection criteria, that is, the health and welfare of the dog/cat (animal).

Thorough species assessments undertaken as part of the positive list process should apply equally to all species, including domesticated species, and breed-specific issues should be taken into account (e.g., breeding for exaggerated features), rather than there being a blanket assumption that all domesticated species in all their forms can have their welfare needs met with appropriate husbandry.

Table 4. The following table describes the clauses and highlights where similar ideas can be found in MS positive lists:

Feature/ clause/ provision	Description	MS with similar clauses
Grandfather clause	A clause exempting certain pre-existing classes of people or establishments from the requirements of a piece of legislation (Oxford Language Dictionary, 2023). In this case it would allow unlisted (prohibited) animals that are already owned to be kept until the end of their natural life, with a commitment not to sell, breed or replace the animal. A registration system should be in place for these animals, and they should not be allowed to be traded or bred further. For cases falling under a grandfather provision, guidelines could be applied to mitigate problems regarding animal welfare; public health and safety; species invasive risks.	Netherlands[105] Belgium[106] Cyprus[107] Luxembourg[108]
Certified keepers	It may be necessary for certain private individuals, or establishments to be allowed to keep or trade certain animals that do not fit the criteria for an EU positive list. This means they may need to be permitted to trade (under strict conditions); in this situation certification for approval may be an option. This needs to be carefully developed in the law as derogations can be abused, however such measures could greatly help in maintaining expertise, and in some cases relieving the pressure placed on overflowing rescue centres and sanctuaries.	Netherlands[109] Belgium[110] Cyprus[111] Luxembourg[112]

Table 4. Continued...

Feature/ clause/ provision	Description	MS with similar clauses
Listing/ delisting possibilities	The EU positive list is not a blanket ban on animals as pets, instead it is a systematic assessment of the appropriateness of a species to be traded as a companion animal. New evidence can become available over time, meaning that it is important for proportionality reasons that there is an assessment of the list to allow species to be added and removed from the positive list. In addition, not all animals are able to be assessed immediately[113]. Therefore, if a species is restricted from trade and has not been assessed, stakeholders may be able to suggest certain species to be assessed. The burden of proof for why this species should be deemed suitable as a companion animal included on the list should lie with the person introducing the request.	**Belgium**[114] **Netherlands** **Italy**[115]
Taxa by taxa (e.g., Mammals, followed by reptiles, etc.)	Producing a scientifically sound risk assessment of species requires a significant amount of expertise, resources and time. Therefore, most MS have developed lists of certain taxa, for example mammals first, with the aim of developing positive lists of animals for other taxa later (e.g., reptile, birds, amphibians and fish) to ease the administrative burden.	**Netherlands** – Mammals **Belgium** – Mammals, Reptiles[116] **Cyprus** – All taxonomic groups (mammals with specific listings), general categories for other taxonomic groups (birds, reptiles, amphibians, fish and invertebrates) **Luxembourg** – List of Mammals, while a form of allowed species is available for other taxa[117] **Norway** – Reptiles[118]

04

NEXT STEPS

The next steps regarding the development of an EU positive list are vital. Based on the knowledge gaps identified in this report, this section emphasises recommendations on how the EU-wide positive list should be included in upcoming legislation.

4.1 Identified knowledge gaps

This report has identified several important knowledge gaps, on which future research should focus:

- Precise number and name of species and number of individuals in intra and extra EU pet trade
- Law enforcement monitoring, especially with regards to the online trade
- Origin of the species and individuals entering the EU pet trade
- Profile and number of breeders, sellers, buyers and owners with emphasis on the degree of expertise
- Potential links between the legal and illegal trade and subsequent involvement of organised criminal networks
- Socio-economic impacts and benefits of an EU positive list.

CONCLUSION

The European wild animal pet trade is extensive. Millions of wild animals are imported into the EU, or traded within the EU through live pet markets, pet shops and online platforms. This trade causes acute problems within the EU and beyond, including the suffering of millions of animals inappropriately imprisoned for a life in captivity, where their biological and behavioural needs are neglected.

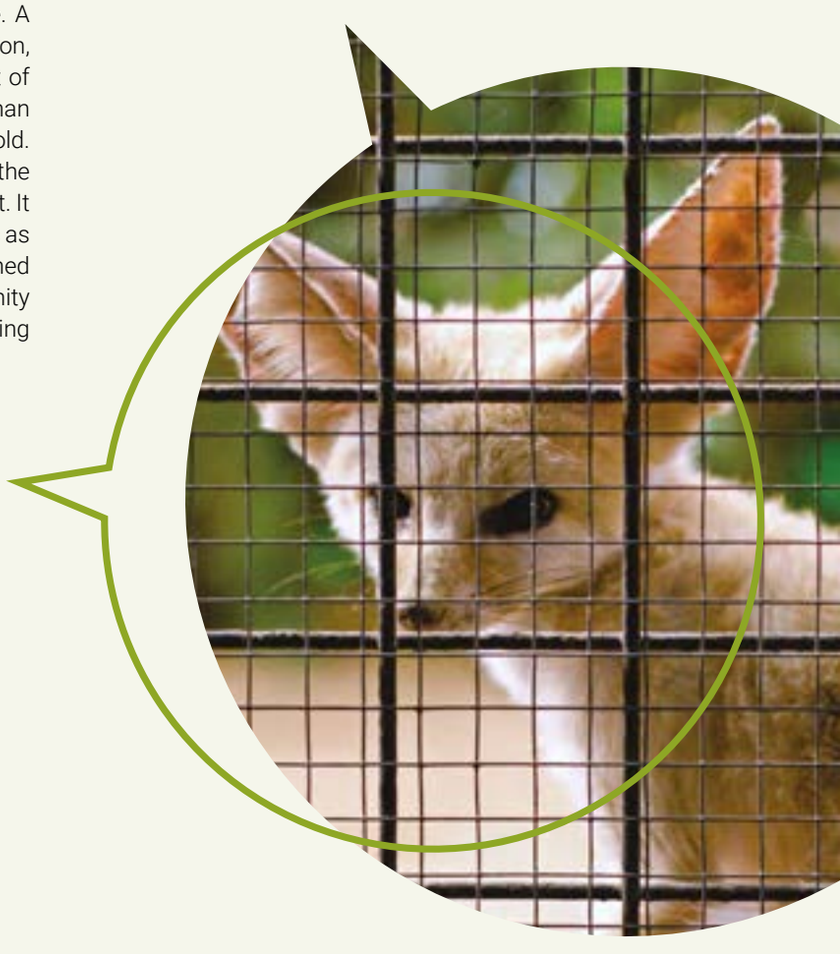
This exacerbates risks to human health and safety, through the spillover of zoonotic diseases, pathways for IAS introduction, and the reduction of wild populations in their native range states. A distinct lack of dedicated EU legislation on animal welfare and the pet trade, and the great variation between MS laws concerning the legal trade of wild animals kept as pets, results in a lack of monitoring and inability to fully assess the scale and routes of trade. The mosaic of laws may lead to distortions in the internal market, unequal conditions for animals in the pet trade and difficulties in enforcement. According to many vets, there is evidence for a lack of knowledge on how to care for many species currently traded in the EU as pets, and there are numerous individual animals involved for each species. Effective enforcement is difficult under these conditions.

This paper highlights many of the problems associated with the current EU pet trade and its regulation with evidence from several novel studies and reviews, as well as existing research and peer reviewed academic literature. The current EU and internal legislation regarding pet animals leave room for uncertainty from the public of what species people are allowed to trade and keep. This poorly regulated legal trade allows for exploitation through the illegal trade, which can exacerbate the issues mentioned above.

This White Paper proposes an EU positive list of allowed companion animals as a tool to regulate the EU pet trade. A feasible approach to this legislation could be a Regulation, which sets out rules on the trade of animals through a list of fauna species allowed to be traded for the purpose of human companionship and/or leisure or for being kept in a household. This approach would harmonise the law on trading pets in the EU, helping to maintain the functioning of the internal market. It represents a systematic change in the way we use animals as pets, moving from a system of domination to one more aligned with stewardship. There is an unprecedented opportunity to include a provision for an EU positive list in the upcoming revision of the animal welfare legislation.

Not all animals are appropriate to be traded as pets, and this practice should be much better regulated. A positive list is simpler and more effective than the alternatives; it requires less frequent updates; is preventive at its core, meaning that the risks of the trade are mitigated more effectively than by other approaches. It may help facilitate monitoring of the legal pet trade and thus aid in fighting the illegal pet trade. Moreover, it would add value to existing regulations helping especially, at least for the pet trade, to focus the IAS, and the Wildlife Trade Regulations on the animal species remaining in the EU pet trade.

The Commission has communicated in the Action Plan against Wildlife Trafficking that it will explore the need for, added value of, and feasibility of revising existing measures or creating new tools to reduce unsustainable trade in wildlife (e.g., a 'positive list' of species whose specimens taken from the wild can be traded and kept as pets). We celebrate that the scope of the action was extended to include a positive list of all animals, including captive-bred animals, not just species whose specimens were taken from the wild. Political backing has been extensive and growing.



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ANNEX I

WTO considerations continued:

Depending on the specific wording and exact objective(s) pursued, as well as the applicable WTO agreements (i.e., the General Agreement on Tariffs and Trade (GATT) 1994, the WTO Agreement on Technical Barriers to Trade (TBT), and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)), a number of specific WTO requirements will have to be assessed and taken into account when designing and drafting the proposed measure, as well as possibly in any future scrutiny of the proposed measure within the relevant WTO fora (e.g., committee or council discussions, dispute settlement proceedings, etc.). This concerns, inter alia:

→ **The risk assessment at the basis of the proposed measure**

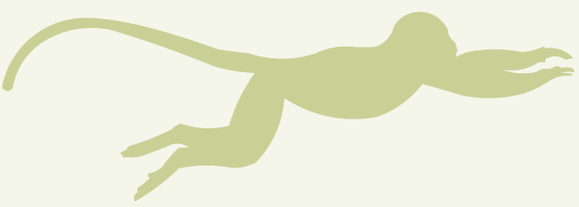
With respect to the EU positive list, where the measure pursues objectives other than SPS ones, such as the protection of animal welfare and the protection of human safety, it may be considered to be a technical regulation. This is because the proposed positive list would likely take the form of a mandatory written document, laying down a list of species that possess particular characteristics that allow them to be traded, which would be in line with the definition of a technical regulation under the TBT Agreement and, therefore, lead to the application of the TBT Agreement. This could be considered as a technical regulation if it applies to identifiable species by objectively defining particular identification features of the enlisted species. The measure would also contain the clear criteria and methodology for the basis of which only these particular species would be included on the positive list. Compliance with this regulation would be obligatory in the sense that it would prohibit all but the enlisted species from being traded (including imported). While animal welfare is not expressly considered as a 'legitimate objective' for the purpose of Article 2.2. Of the TBT Agreement, as indicated by the words 'inter alia' at the beginning of the list, this is not an exhaustive list of legitimate policy objectives. It is an open question in WTO law which other policy objectives may be considered to be legitimate within the meaning of Article 2.2 of the TBT Agreement, but previous case law have established that objectives recognised in other WTO covered agreements are a relevant consideration in determining this (World Trade Organization, 2012). It is also important to note that it would be for a prospective complainant in a WTO dispute to prove that an objective is not legitimate within the meaning of Article 2.2 of the TBT Agreement.

→ **The setting of the appropriate level of protection**

While measures with a trade impact should generally be based on international standards and be based on scientific evidence, WTO Members may determine themselves the appropriate level of protection. Still, this remains a balancing act that requires diligent considerations, particularly in light of CITES and other existing EU legal instruments that already provide protection. With respect to compliance under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), it appears indeed that the Parties to the Convention, like the EU, may pursue a more restrictive approach, such as the one proposed through the positive list[119,120]. Importantly, a positive list under animal welfare objectives means these measures do not share the same objectives as CITES, nor the Wildlife Trade Regulations[121].

→ **'Likeness'**

Under the GATT, a determination of likeness serves to ensure products that should be compared to establish whether less favourable treatment is being accorded to imported products. It is a determination about the nature and extent of a competitive relationship between imported and domestic products to avoid protectionism in the application of internal measures[122]. The question is whether it could be claimed that an EU positive list measure modifies the conditions of competition between domestic animals and imported animals. This could stand only if there is a competitive relationship between species not included in the list and domestic species included on the list. Firstly, a soundly developed methodology for listing based on animal welfare should avoid 'like' animals being listed differently, as they would share similar welfare needs, therefore would be assessed similarly if they are indeed 'like' species. Moreover, it is difficult to see how different species could share close enough physical characteristics to be considered 'like'. However, the end use as 'pets' may be considered as similar. In this case, it would be difficult to support that consumers generally perceive wild animals as substitutable to more 'traditional' companion animals. Hence, differences in species necessarily influence consumers' choice, to a rather significant extent.



→ **The necessity of the measure**

Any draft regulation setting out the EU positive list would have to contain a convincing explanation as to why this separate instrument is necessary in order to achieve the intended objectives and why the existing EU legal instruments are deemed incapable of achieving the same objectives and the same levels of protection. The specific reasons for this have been discussed in **Section 1** on the issues caused by the EU pet trade, and **Section 3** on the proposal and legal basis.

→ **Reasonable availability of alternative measures and the need to select the least trade-restrictive approach**

In order to justify the proposed measure, it is important to demonstrate that there are no less trade-restrictive alternative measures that are reasonably available and that would make an equivalent contribution to achieving the relevant legitimate objective. Similarly, under WTO law, the 'least trade-restrictive' approach should always be preferred and chosen. Additionally, WTO law requires that the measure at issue be 'not more trade-restrictive than necessary' to fulfil a legitimate objective, taking account of the risks that non-fulfilment would create. A similar comparison is required at EU level and the reader is referred to **Section 3.1.4.4**, where several alternatives have been discussed and the added value of an EU positive list highlighted.

Interim conclusion: Is the EU positive list compatible with WTO rules?

The current proposal for an EU positive list cannot be fully assessed as WTO compatible until a model measure is ready, which is a necessary next step after a provision for an EU positive list is foreseen in EU legislation. However, an EU positive list could be designed in such a manner as to very likely be in compliance with WTO rules. In this context it may be prudent to avoid objectives which fall under the SPS agreement, as strict risk-assessment criteria may cause the development of a positive list to become burdensome. It may be important to ensure that the EU positive list legislation is not considered as a "quantitative restriction" (Noël, 2021). A solution to this could be to build it as an internal measure with consequences at the border, where the measure should not modify the conditions of competition between imported products and domestic products to the benefit of the latter. It is likely that if there were a need to rely on a GATT exception, the one based on public morals, and citizens' concerns regarding animal welfare would likely be the most appropriate, if challenged (Noël, 2021). The current proposal in **Section 3** is aligned with these needs and would likely be compliant with WTO rules.

See Annex II for a possible secondary line of defence to extend this proposal to environmental and health objectives, which may fall under SPS rules.

ANNEX II

Secondary line of defence

Through an EU positive list as proposed in Section 2, the import of animals traded for the purpose of human companionship and/or leisure or for being kept in a household would then be prohibited, unless certain strict (and yet to be defined) conditions are met. Notably, that there is no risk for negative impacts to animal welfare through trade. A secondary line of defence comes if the law proposes that, even if the animal welfare requirements are met and verified, animal species on the positive list be licensed in line with a set of applicable sanitary and phytosanitary (SPS) requirements. Only the animals that can be accepted under all such conditions would make up the 'positive list'.

Importantly, the second 'line of defence' (in addition to the animal welfare considerations), in order to prevent importation of the animals that fall within the definition and scope of the measure, must be scientific in nature. Such further conditions could range from SPS considerations (possibly linked to existing EU animal health rules), to conditions related to the potential consequences of the entry of invasive species in the EU.

The idea would be to allow trade of certain animals, while restricting it. Compliance of all animals with the conditions would be checked upon importation into the EU by MS competent authorities, de facto creating a 'positive list'.

The primary consideration would be a positive list based on animal welfare objectives as described previously. In addition, the pursuit of SPS objectives would need to be properly defined and spelled out in the measure. The approach outlined above would prevent the EU from having to conduct a scientific risk assessment of all animals/animal species that are excluded from trade by the 'positive list'. The burden of proving compliance with the SPS requirements would rest on the traders trying to access the EU market, thereby creating a very complex and often insurmountable task that, in combination with animal welfare requirements, would make it difficult or impossible to import any animals on a positive list that still represented a threat of invasive species pathways or zoonotic disease transfer.

ANNEX III

Existing methodologies

Example of suitability assessment of species as companion animals.

Schuppli & Fraser (2000) presented a methodology to assess the suitability of different wild species as companion animals taking into consideration animal welfare, owner welfare, public health and safety, as well as the well-being of ecosystems. They created an assessment framework in the form of a checklist of twelve questions and several sub-questions based on the three main concerns of keeping animals as companions: welfare of the animals; welfare of others; risk to the environment. Examples of some questions and sub-questions for each concern can be found below:

Welfare of the animal

1. Is there adequate knowledge of the species with respect to: 1.1. nutritional requirements? 1.2. health care? 1.3. environmental requirements for physical and thermal comfort? 1.4. recognising and preventing negative states such as fear, pain, and distress? 1.5. requirements for exercise, social interaction, and natural behaviour?

Welfare of others

2. Is there any appreciable risk of the animal attacking or injuring: 2.1. humans? 2.2. other animals?

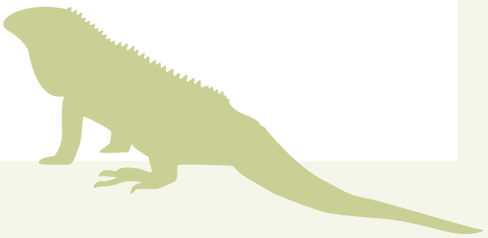
Risks to the environment

3. For species that exist in the wild, are trade and transportation subject to adequate regulation and enforcement?

Depending on the answers to the questionnaires, the animal species are classified in five categories according to their degree of suitability as companion animals:

- Category A: Species whose use for companionship is generally positive for the animal and the owner. Their welfare and the owner's welfare are respected, and there are no risks to the environment.
- Category B: Species that require significant commitment, but their ownership is unproblematic with regard to procurement, transportation and effects on the community and the environment.
- Category C: Species that have complex or demanding requirements needing skilful and knowledgeable owners. Control of ownership may be appropriate for such species.
- Category D: Species where there is insufficient knowledge to allow a confident assessment of its suitability as a companion animal and more knowledge is needed.
- Category E: Species that are unsuitable as companion animals because of undue harm or risk of harm to one or more of: the animal, the owner, the community, or the environment.

These five categories can be used to create a positive list adapted to the species' welfare as well as the capacity of an owner to cope with the biological needs of his pets.



Determining the suitability of mammals as companion animals.

Koene *et al.* (2012) paper aims to provide theory and practice of determining the suitability of mammals as companion animals. The basic criterion of establishing the positive list was the natural behaviour of the animals, and their ability to adapt to captive environments and changes in surroundings. If the animal species cannot adapt because of biological and behavioural needs, this might lead to welfare problems. The behavioural assessment was based on the following criteria to evaluate if a mammal can be added to a positive list and makes a suitable companion:

- Space (e.g., walking around)
- Time (e.g., sleeping)
- Food (e.g., eating)
- Safety (e.g., sheltering)
- Maintenance of integument (e.g., dust bathing)
- Reproduction (e.g., courtship)
- Other animals of the same species (e.g., grooming each other)
- Information (e.g., exploring)

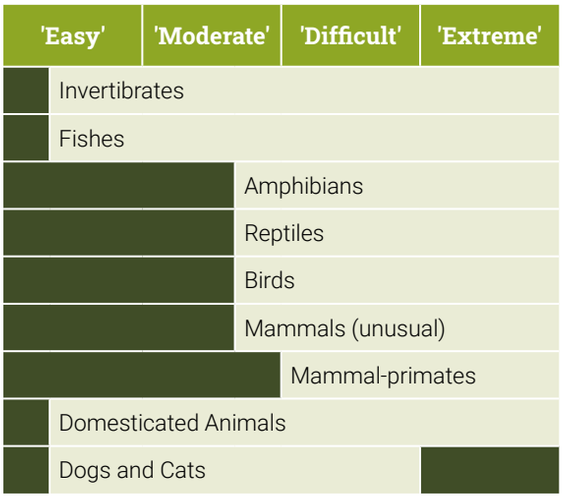
The next step in the method is the assessment of the welfare risks of keeping the species in a human environment as a companion animal. Finally, this information is combined with legal and risk factors such as disease transmission or danger to the owner, to provide the final assessment of the suitability or potential of an animal species as a companion animal.

The EMODE system concept

Warwick and colleagues' (2014) research presents the EMODE system model, which scores animals and classifies them by categories indicating the ease or difficulty of keeping them as pets. By EMODE is meant "Easy", "Moderate", "Difficult" and "Extreme". This system has two fundamental components: animal welfare, based on the 'five freedoms' principle; and public health and safety, which considers the management associated with risks of disease and injury (both to owners and others). EMODE aims to offer a reasonable guide for most of the animals concerned by the trade, and incorporates two tiers of assessment:

- Tier 1: a primary and general assessment of animals by class or group;
- Tier 2: a secondary assessment of animals by species or breed.

This assessment was based on previous research and over 500 species and breeds were tested using EMODE to offer a reasonable cross-section of examples. The following table, cited in the original report, "EMODE: indication of degree of ease or difficulty to keep animals by class or group", presents the results of the EMODE system based on their research.



This methodology aims to offer an accessible procedure for people considering acquiring a pet, as well as governments in their creation of positive lists to regulate animal trading and keeping.

Ten criteria to assess the suitability of wild animals as companions.

A final methodology was presented in the Warwick & Steedman (2021) report aimed to produce a new method to develop positive lists to allow operational objectivity, accessibility, and resource efficiency. Given the concerns associated with wild animals being traded and kept as pets, and the failure of negative lists to reactively control these problems, this report proposes a new methodology based on previous ones relevant to the development of positive lists. Then, it analyses the suitability of animals for inclusion on positive lists by proposing a list of ten criteria that must all be passed by the species to be included on the positive list, which include the following:

- Animal/species must be suitable to keep in the context of social needs;
- Animal/species must be safe to keep in the context of zoonotic and other animal-human infections;
- Animals/species must be safe to keep in the context of introduction and becoming environmentally invasive organisms.

This proposed methodology makes it possible to provide objectivity and consider animal welfare while offering a concrete protocol for the development of positive lists for trading and keeping wild animals as pets.

ANNEX IV

The range of species for sale in an online investigation

Country buyer	Country seller	Animal
BE	IT	**Bearcat** *(Arctictis binturong)*
BE	SK	**Corsac fox** *(Vulpes corsac)*
BE	BE	**Golden eagle** *(Aquila Chrysaetos)*
BE	LT	**Fennec foxes** *(Vulpes zerda)*
IT	PL	**Common marmoset** *(Callithrix jacchus)*
IT	CZ	**Common marmoset** *(Callithrix jacchus)*
BE	NL	**Banded mongoose** *(Mungos mungo)*
BE	IT	**Meerkat** (*Suricata suricatta)*
IT	CZ	**Two-toed sloth** *(Choloepus didactylus)*
BE	IT	**Striped skunk** *(Mephitis mephitis)*
FR	BE	**Hooded vulture** *(Necrosyrtes monachus)*
IT	PL	**Serval cat** *(Leptailurus serval)*
BE	DE	**Scarlet ibis** *(Eudocimus ruber)*
BE	PT	**Kinkajou** *(Potos flavus)*
BE	DE	**Caracal cats** *(Caracal caracal)*
IT	DE	**Reticulated python** *(Malayopython reticulatus)*
IT	LT	**Porcupine** *(Hystrix hystrix)*
BE	DE	**Nimlai** *(Boselaphus tragocamelus)*

ENDNOTES

1. See Section 3.1. In this document, a positive list may refer to regulation of the trade in and/or the keeping of companion animals. However, so as to remain consistent with the proposed legal basis discussed in section 3, it is acknowledged that a regulation on trade is more feasible.
2. While there may have been changes to some of the information in the previous analysis, Section 2.2 includes an update on Member State law with respect to a positive list. See Eurogroup for Animals, 2020
3. Judgement of 19 June 2008, National Raad van Dierenkwekers en Liefhebbers VZW and Andi bel v Belgische Staat, C-219/07, EU:C:2008:353.
4. European Parliament resolution of 15 September 2016 on the EU strategic objectives for the 17th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), to be held in Johannesburg (South Africa) from 24 September to 5 October 2016 [2016] OJ C 204. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2018.204.01.0136.01.ENG&toc=OJ%3AC%3A2018%3A204%3ATOC
5. European Parliament resolution of 9 June 2021 on the EU Biodiversity Strategy for 2030: Bringing nature back into our lives [2021] OJ C 67. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2022.067.01.0025.01.ENG&toc=OJ%3AC%3A2022%3A067%3AFULL
6. Opinion poll available at: https://www.eurogroupforanimals.org/news/exotic-animals-should-not-be-kept-pets-agree-87-europeans-asked
7. The European Parliament, the Council of the European Union and the European Commission committed to listen to Europeans and to follow up on the results of the Conference on the Future of Europe. The digital platform was a way for citizens to have a voice. See https://www.eurogroupforanimals.org/news/democracy-action-animal-welfare-features-conference-future-europe-report
8. See Eurogroup for Animals analysis available at: https://www.eurogroupforanimals.org/news/eu-positive-list-received-unanimous-support-peti-committee
9. Position paper on a new EU legislative framework for an EU Positive List for the keeping of companion animals on behalf of Cyprus, Lithuania, Luxembourg and Malta, 16 May 2022, 9127/22. Available at: https://data.consilium.europa.eu/doc/document/ST-9127-2022-INIT/x/pdf
10. European Parliament, Committee on Petitions, Notice to Members, 12 August 2022. Available at: https://www.europarl.europa.eu/doceo/document/PETI-CM-692912_EN.pdf
11. European Parliament resolution of 5 October 2022 on the EU strategic objectives for the 19th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), to be held in Panama from 14 to 25 November 2022 [2022]. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0344_EN.html
12. Resolution of 24 November 2022 on Improving EU regulations on wild and exotic animals to be kept as pets in the European Union through an EU positive list [2022]. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0425_EN.html#def_1_2
13. Ibid 12. Recital N.
14. Proposal for a Regulation of the European Parliament and the Council on the welfare of dogs and cats and their traceability. Document 52023PC0769. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2023:769:FIN
15. CITES Nineteenth meeting of the Conference of the Parties, Panama City, Panama, 14-25 November 2022. Transport of Live Specimens, Improving Implementation of the transport Regulations. Cop 19 Doc. 52. Available at: https://cites.org/sites/default/files/documents/E-CoP19-52.pdf
16. At CITES COP19 in November 2022, recommendations in Doc 52 were approved and the guidelines will be additionally available to a wider variety of stakeholders.
17. As stated by Teresa Telecky, vice president for wildlife at Humane Society International, see Nuwer, 2021.
18. A study of the online exotic pet trade revealed that only 0.04% of advertisements mentioned COVID-19, mostly after the WHO declared COVID-19 a pandemic. No traders discussed the role of trade in spreading diseases; instead, advertisements stimulated the trade in wild species during lockdown. See Morcatty *et al.*, 2021. Research also revealed a spike in illegal wildlife seizures during the COVID lockdown and continued trade in pangolins for traditional medicine uses, even though the species had been identified as a reservoir for SARS-CoV-2. See Sethi, 2020.
19. For example, in September 2020, a reptile fair took place in Houten, The Netherlands, where a large variety of reptiles and amphibians as well as mammals were sold. Even though the organisation (VHM events) running Exopet in Houten prohibits the presence of species like foxes, bats and skunks in its own regulations, World Animal Protection identified these animal species as being offered for sale at the fair that took place on 20 September 2020. The main exotic animal fair of Southern Europe, ExpoTerraria, also took place on 22 May 2021 in Madrid, Spain. See AAP, 2021.
20. Primates included the following species: olive baboon, lemur, tamarin, vervet monkey, talapoin monkey, Barbary macaque, black-capped capuchin, squirrel monkey, marmoset.
21. E.g., monkeypox (related to pet prairie dogs), lyssaviruses in pet bats,), roundworms (Baylisascaris procyonis) in pet raccoons, less severe but more common ringworm infections from African pygmy hedgehogs or chinchillas, the Seoul virus (a severe Hantavirus) in homebred rats.
22. See the listings proposals, which can be found in the Species Survival Networks COP19 Digest. Available at: https://ssn.org/app/uploads/2022/10/SSN_CoP19_Digest_EN.pdf

23. The Action Plan against Wildlife trafficking should be extended during implementation to prepare new EU legislation that would prohibit the import, export, sale etc. of any wildlife taken, possessed, transported or sold in violation of any foreign law, in a manner similar to the EU Lacey Act. See Altherr *et al.*, 2022.
24. Bern Convention Standing Committee 36th meeting, Strasbourg, 15-18 November 2016. Guidance for governments concerning invasive alien species pathways action plans. T-PVS/Inf (2016) 10. Available at: https://rm.coe.int/1680746339
25. Real Decreto (R.D.) 1628/2011, de 14 de noviembre, por el que se regula el listado y catálogo español de especies exóticas invasoras, BOE 2013, 56764. Available at: https://www.boe.es/buscar/act.php?id=BOE-A-2013-8565#:~:text=En%20desarrollo%20de%20esta%20norma,espa%C3%B1ol%20de%20especies%20ex%C3%B3ticas%20invasoras
26. Species including the common snapping turtle, spiny softshell turtle, smooth softshell turtle, and common musk turtle, which were considered most problematic. See Kopecký *et al.*, 2013.
27. Ibid 24.
28. This research provides Eurogroup for Animals and Stitching AAP with insights that can be used to better understand the exotic pet trade, and to put forward policy recommendations. In the execution of the current research, we referred to a very broad definition of exotic pets that includes all animals that are kept as pets and that are not dogs or cats, as there is no uniform definition of exotic pets in legislation in the EU. Exotic pets in this report therefore include birds, reptiles and amphibians (lizards, snakes, turtles, etc.), small mammals (rabbits, ferrets, rats, rodents, etc.), ornamental fish, as well as wild mammals (primates, big cats, foxes, etc.).
29. More information available at: https://wearesapience.com
30. See Sapience, 2022. Appendix 1 for a full methodology.
31. "Other animals" excludes equids, cattle, swine, sheep, goats and poultry.
32. More than 50,000 animals arrived at Border Controls Posts in the EU, presented with a Common Veterinary Entry Document for Animals (CVEDA) / Common Health Entry Document for Animals (CHED-A) (TRACES, 2020). In this case, taxons were regrouped together to create different groups of animals such as animals used for livestock and breeding such as poultry, pigs and sheep. "Exotic animals" represents reptiles, other mammals, and birds other than poultry, as grouped by Eurogroup for Animals.
33. LAV's undercover investigation can be viewed here: https://www.eurogroupforanimals.org/news/undercover-investigation-reveals-out-control-italian-wet-markets
34. Ecosystem services are the direct and indirect contributions of ecosystems to human well-being. See https://www.earthwiseaware.org/what-are-ecosystem-services/
35. Recital 23 states that animals such as reptiles, amphibians, marine mammals, and others which are not aquatic or terrestrial animals as defined in the Regulation usually do not present a significant health risk and therefore only a few animal health rules apply. Recital 24 provides that general requirements concerning registrations, record keeping and movement within the EU should not apply to animals kept as pets for purely private purposes.
36. See Eurogroup for Animals, 2022.
37. IAS Regulation indeed prohibits the keeping, breeding and trade of animal species that are included in the List of Species of Union Concern (the 'Union List').
38. Interesting discussions on this issue are available at UNODC (2019). CITES and the international trade in endangered species. Available at: https://www.unodc.org/e4j/en/wildlife-crime/module-2/key-issues/cites-and-the-international-trade-in-endangered-species.html
39. Loi n° 2021-1539 du 30 novembre 2021. Art. 14. Available at: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044387560
40. Οι περί Προστασίας και Ευημερίας των Ζώων (Κατοχή και Πώληση Ζώων) Κανονισμοί του 2021, 4 Μαρτίου 2021 [The Protection and Welfare of Animals (Possession and Sale of Animals) Regulations 2021, 4 March 2021]. Available at: http://www.moa.gov.cy/moa/vs/vs.nsf/All/AE8F30701CEC1EECC22586A8003C2518?OpenDocument
41. Decreto 11 ottobre 2022, in G.U. 27 ottobre 2022, n. 252. Available at: https://www.gazzettaufficiale.it/eli/id/2022/10/27/22A06190/sg
42. The list of permitted species is available at: https://www.eurogroupforanimals.org/files/eurogroupforanimals/2022-07/NetherlandsPositiveListMammals.pdf
43. More information and updates are available on Rijksdienst voor Ondernemend Nederland [Netherlands Enterprise Agency] website available at: https://www.rvo.nl/onderwerpen/dieren-houden/huisdierenlijst#de-huis--en-hobbydierenlijst
44. Arrêté royal du 16 juillet 2009 fixant la liste des mammifères non détenus à des fins de production qui peuvent être détenus, M.B. 4 août 2009, p. 56347 [Royal Decree of 16 July 2009 establishing the list of mammals not kept for production purposes that may be kept]. Available at: https://wallex.wallonie.be/de/contents/acts/4/4103/1.html?doc=29263&rev=30773-8964&from=rss
45. Besluit van de Vlaamse Regering tot vaststelling van de lijst van reptielen die gehouden mogen worden [Decree of the Flemish Government establishing the list of reptiles that may be kept]. Available at: https://codex.vlaanderen.be/PrintDocument.ashx?id=1031543&datum=&geannoteerd=false&print=false
46. Arrêté du Gouvernement wallon du 10 décembre 2020 encadrant la commercialisation et la détention de reptiles [Order of the Walloon Government of 10 December 2020 regulating the marketing and possession of reptiles]. Available at: https://wallex.wallonie.be/eli/arrete/2020/12/10/2021200297
47. Ibid 44.
48. Ibid 46.
49. Ibid 45.
50. Code Wallon du Bien-être Animal. Art. D.105. Available at: https://www.wallonie.be/sites/default/files/2019-04/code_wallon_bea.pdf
51. Code de l'Environnement. Art. D.151. Available at: https://wallex.wallonie.be/files/medias/10/Code_de_l'environnement_-_Livre_ler_-_partie_decretale.pdf
52. Ibid 51. Art. D.160

53. See Question écrite du 26/09/2017 de ARENS Josy à DI ANTONIO Carlo, Ministre de l'Environnement, de la Transition écologique, de l'Aménagement du Territoire, des Travaux publics, de la Mobilité, des Transports, du Bien-être animal et des Zonings [Written question of 26/09/2017 from ARENS Josy to DI ANTONIO Carlo, Minister for the Environment, Ecological Transition, Spatial Planning, Public Works, Mobility, Transport, Animal Welfare and Zoning]. Available at: https://www.parlement-wallonie.be/pwpages?p=interp-questions-voir&type=28&iddoc=81515
54. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2016] OJ C202/1 (TFEU). Art. 114(1). "The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in MS which have as their object the establishment and functioning of the internal market. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A12008E114
55. Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety [2001] OJ L 11. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0095
56. Measures that can be adopted under Article 114 must have the specific object of improving the conditions for the establishment and functioning of the internal market; they must be designed to remove genuine obstacles to free movement or appreciable distortions of competition, not purely abstract risks.
57. See Sapience, 2022 & De Briyne & Latridou, 2016.
58. See https://lexparency.org/eu/TFEU/ART_114/
59. See Sapience, 2022. Annex 4 for a list of animals that were offered for sale in these investigations.
60. LAV's undercover investigation can be viewed here: https://www.eurogroupforanimals.org/news/undercover-investigation-reveals-out-control-italian-wet-markets
61. Note: conclusions made in this report are only able to demonstrate potential, rather than definitive links between the number of imports and national MS laws; correlation does not equal causation. It can, however, demonstrate a clear lack of consistency between MS roles in the pet trade, highlight knowledge gaps, and show that if MS laws are implemented effectively, a clear difference in the potential markets would become apparent.
62. Note: as stated in the study, CITES-listed species are estimated to represent only 20% of the total number of species imported into the EU, see Marshall *et al.*, 2020.
63. This does not account for captive breeding facilities, however the rules in different MS may affect the number of these facilities. In addition, there are significant issues caused in part by captive breeding as discussed in section 1.1.2.
64. Caveat: This is an illustration of a limited number of MS, it is not claimed that this is a strict pattern for all MS, nor that there are no other factors involved. It simply demonstrates that in some cases, where there are differences in rules, differences in imports can be observed. Read the full study for further disclaimers
65. Decreto 19 aprile 1996, in G.U. 3 ottobre 1996, n. 232. Available at: https://www.mise.gov.it/images/stories/commercio_internazionale/cites/dm19_04_1996.pdf
66. Bekendtgørelse nr. 1261 af 17.11.2015 om forbud mod hold af særlige dyr. [Order prohibiting the keeping of special animals]. Available at: https://www.retsinformation.dk/eli/lta/2015/1261
67. Ibid 44.
68. Verordnung zum Schutz wild lebender Tier- und Pflanzenarten (Bundesartenschutzverordnung - BArtSchV) v. 16.02.2005, BGBl. I S. 258, 896. Available at: https://www.gesetze-im-internet.de/bartschv_2005/BArtSchV.pdf
69. Ibid 44.
70. Ibid 65.
71. Ibid 65.
72. Ibid 44.
73. Ibid 68.
74. Ibid 68.
75. Arrêté du 8 octobre 2018 fixant les règles générales de détention d'animaux d'espèces non domestiques [Order of 8 October 2018 laying down general rules for the keeping of animals of non-domestic species]. Available at: https://www.legifrance.gouv.fr/loda/id/JORFTEXT000037491137/
76. Ibid 66.
77. Ibid 75.
78. When applied in the context of the EU, the principle of subsidiarity serves to regulate the exercise of the Union's non-exclusive powers. It rules out Union intervention when an issue can be dealt with effectively by MS themselves at central, regional or local level. The Union is justified in exercising its powers only when MS are unable to achieve the objectives of a proposed action satisfactorily and added value can be provided if the action is carried out at Union level. More information is available on European Parliament's website available: https://www.europarl.europa.eu/factsheets/en/section/186/the-european-union-s-legal-system-and-decision-making-procedures
79. The first reference to animal welfare may be considered the Declaration on the protection of animals (24) to the Treaty on European Union, signed in Maastricht on 7 February 1992. In 1997, a Protocol on protection and welfare of animals was annexed to the Treaty of Amsterdam, referring for the first time to animals as 'sentient beings'.
80. Europol relies on the information of criminal investigations provided by at least two separate MS.
81. European Commission (2022). Revision of the EU action plan against wildlife trafficking, COM(2022) 581 final, Brussels, 9 November 2022. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0581&from=EN
82. Council of the European Union. Agriculture and Fisheries Council, Public session. Tuesday, 24 May 2022. Available at: https://video.consilium.europa.eu/event/en/25808
83. Judgement of 26 March 1987, Commission v Council, C-45/86, EU:C:1987:163, p. 12: "(…) the argument with regard to the correct legal basis was not a purely formal one, since Articles 113 and 235 of the EEC Treaty entail different rules regarding the manner in which the Council may arrive at its decision. The choice of the legal basis could thus affect the determination of the content of the contested regulations".

84. Regulation (EU) 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 [2013] OJ L 178. Article 3(b): "'Pet animal' means an animal of a species listed in Annex I accompanying its owner or an authorised person during non-commercial movement and which remains for the duration of such non-commercial movement under the responsibility of the owner or the authorised person". Annex I to the Regulation lists dogs, cats and ferrets, as well as – each time with some restrictions – invertebrates, ornamental aquatic animals, amphibia, reptiles, birds and mammals. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0576
85. The Convention was ratified by 17 EU MS: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxemburg, Portugal, Romania and Sweden.
86. Council Regulation (EC) 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein [1997] OJ L 61. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31997R0338
87. Adapted from Recital 99 of Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') [2016] OJ L 84. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.084.01.0001.01.ENG
88. See Section 1.1.
89. Judgement of 17 January 2008, Viamex Agrar Handels, C-37/06 and C-58/06, EU:C:2008:18, p. 22.
90. See Fratini Vergano, 2022 for a list of examples.
91. Judgement of 3 September 2015, Inuit Tapiriit Kanatami and Others v Commission, C-398/13P, EU:C:2015:535, para. 24.
92. With regard to the internal market, see for example judgement of 12 July 2005, Alliance for Natural Health and Others,C-154/04, EU:C:2005:449, para. 103: "the principle of subsidiarity applies where the Community legislation makes use of Article 95 EC [now Article 114 TFEU] inasmuch as that provision does not give it exclusive competence to regulate activity on the internal market, but only a certain competence for the purpose of improving the conditions for its establishment and functioning by eliminating barriers to the free movement of goods and the freedom to provide services or by removing distortions of competition".
93. For example, judgement of 22 November 2018, Swedish Match, C-151/17, EU:C:2018:938, pp. 67-69; judgement of 8 June 2010, Vodafone, C-58/08, EU:C:2010:321, pp. 76-77; judgement of 12 July 2005, Alliance for Natural Health and Others, C-154/04 and C-155/04, EU:C:2005:449, pp. 104-108.
94. This is corroborated by the evidence from Sapience, 2022, also as explained in section 2.3.2.
95. See answers given by Commissioner Sinkevičius on behalf of the European Commission to the parliamentary questions P-2424/2020 and E-2442/2021.
96. See Opinion of Advocate General Geelhoed, 5 April 2005, C-154/04 and C-155/04, Alliance for Natural Health, EU:C:2005:199, p. 64: "the mere fact that the legislature might, in theory, have been able to attain a high level protection of public health by less restrictive measures than those at issue, does not suffice to support the conclusion that it has infringed the principle of proportionality as a system of positive lists undoubtedly provides a high level of protection eliminating ex ante as many potential health risks as possible".
97. Note that there are around 5,400 species of mammal alone. Many of these are unsuitable to be traded as companion animals.
98. See Table 2 for a summary comparison of negative and positive lists.
99. See also on the general advantage of a positive list over a negative list, judgement of 12 July 2005, Alliance for Natural Health and Others, C-154/04, EU:C:2005:449.
100. Similarly, placing a given species in quarantine before it enters the EU is not realistic, as trade in exotic animals for the purposes of companionship is already too extensive and is expanding.
101. Comparison with the status quo has not been included as it is inherent throughout this White Paper.
102. A situation characterised by a progressive lowering or deterioration of standards, especially (in business contexts) as a result of the pressure of competition, affecting in this case the animal welfare criteria for establishing an EU positive list.
103. In this sense, ex multis Bradford, A. (2020). The Brussels effect - How the European Union rules the world, OUP.
104. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2016] OJ C202/1 (TFEU). Article 114(4). Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A12008E114
105. Ibid 43.
106. Wet 14 augustus 1986 betreffende de bescherming en het welzijn der dieren. [Animal Protection and Welfare Act of 4 August 1986]. Available at: https://codex.vlaanderen.be/PrintDocument.ashx?id=1028445&geannoteerd=false
107. Ibid 40.
108. Règlement grand-ducal du 16 novembre 2018 fixant les listes des animaux autorisés et les modalités particulières des demandes d'autorisation de détention [Grand-ducal regulation of 16 November 2018 setting the lists of authorized animals and the terms specific to requests for authorization of detention]. Available at: https://www.stradalex.lu/fr/slu_src_publ_leg_mema/document/mema_etat-leg-rgd-2018-11-16-a1055-jo?access_token=0ab3ff4bbad219dfdc055010059064908c1d1e49; see also Loi du 27 juin 2018 sur la protection des animaux [Law of 27 June 2018 on the protection of animals]. Available at: https://legilux.public.lu/eli/etat/leg/loi/2018/06/27/a537/jo
109. Ibid 43.
110. Ibid 50.
111. Ibid 40.
112. Ibid 108.
113. For example, The Netherlands assessed >300 mammal species.

114. Ibid 3. The European Court of Justice ruled that the Belgian Positive List was not in violation of EU free trade regulations as long as it was based on objective and non-discriminatory criteria and a procedure was in place for parties to request the inclusion of species on the list.
115. Ibid 41.
116. Ibid 45 & 46.
117. Other groups allow non- venomous reptiles, amphibians and invertebrates and snakes, lizards and crocodiles below a certain size.
118. Forskrift om forbud mot å innføre, omsette og holde eksotiske dyr - øya 18. May 2017 nr. 597 [Regulations prohibiting the introduction, trading and keeping of exotic animals]. Available at: https://lovdata.no/dokument/SF/forskrift/2017-05-11-597 119. Article XIV paragraph I states the following: The provisions of the present Convention shall in no way affect the right of Parties to adopt: (a) stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendix I, II or III, or the complete prohibition thereof; or (b) domestic measures restricting or prohibiting trade, taking, possession or transport of species not included in Appendix I, II or III.
120. CITES is implemented in the EU through a set of Regulations known as the EU Wildlife Trade Regulations. One of these is Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (known as the Basic Regulation). The Basic Regulation has four Annexes. They contain both CITES-listed and non-CITES-listed species. Also, for the species in Annexes A and B, import conditions are stricter than under CITES.
121. See Section 2.1 on the added value of an EU positive list for existing EU regulations.
122. More specifically, the purpose of GATT Article III is to ensure that internal measures "not be applied to imported or domestic products so as to afford protection to domestic production". See Noël (2021).

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