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Verordening 2015/2424

DUTCH COURT OF FIRST AANLEG BRUSSEL

VON - EVT
B

Verdict

FINAL ADVERSARIAL JUDGMENT

3^{de} room
civil matters

Offered on

Do not register

The 3th Chamber gives the following judgment in the case:

A.R. 2023/2362/A

1. **VOGELBESCHERMING VLAANDEREN vzw**, enterprise number 0478.895.037, with registered office at 2000 Antwerp, Cadixstraat 39,

2. **DRYADE asbl**, company number 0762.778.603, with registered office at 1060 Sint-Gillis (Brussels), Rue England 34,

,
lawyers: mr. Hendrik Schoukens, with l'antoor at 1750 Lennik, Village 12A, hendril'schoul'ens@hotmail.com and Mr Gwijde Vermeire, with office at 9000 Ghent, Voskenslaan 301, vermeire.gwiide@telenet.be

Against:

VLAAMSE GEWEST, represented by the Flemish Government, at the request of the Flemish Minister for Environment and Agriculture, with offices at 1210 Sint-Joost-ten-Noode, Koning Albert II-laan 7, enterprise number 0220.819.807,

,
Lawyer: Mr Bart Bronders, with offices at 8400 Ostend, Zandvoordestraat 444 bus 1, bronders@bronders.be , where choice of domicile is .

Justice

By writ served on the defendant on 27 July , the plaintiffs the claim before the court.

By order dated 4 September 2023, pursuant to Article 747 of the Judicial Code, the time limits for conclusion agreed by the parties were confirmed and the court date was set at 17 June 2024, at which point the case was adjourned for oral argument to 24 March 2025.

In accordance with Article *y48bis* of the Judicial Code', the court will only take into account the last (synthesis) conclusions of the parties, viz:

- for the : the claim filed at the registry on 15 March 2024 (digital),
- for defendant: the statement deposited at the Registry on 2 May 2024 (digital).

Both parties a file of conviction documents, at the registry on 15 December 2023 and 15 March 2024 (digitally) and defendant on 2 May 2024 (digitally).

At the public hearing held on 24 March 2025:

appeared:

- o Mr Hendrik Schoukens and Mr Gwijde Vermeire for the ,
 - o Mr Bart Bronders for the defendant,
- the aforementioned lawyers were heard,
the debates were closed and the matter was .

The provisions of the Act of 15 June 1935 on the use' of languages in court cases were applied.

1. Facts

In these proceedings, the claimants object to the - in their view inadequate - policy that the Flemish Region has pursued in recent decades and continues to pursue to protect the wild hamster (*cricetus cricetus*) in Flanders and save it from extinction.

The wild hamster is a species in need of strict protection in Europe, and as such was included in Annex II of the Bern Convention of 19 September 1979*, to which both the European Union and Belgium are parties, and subsequently also in Annex IV of the European Habitats Directive of 21 May 1992².

The Habitats Directive requires member states to take measures to maintain or restore wild animal and plant species of Community interest to a 'favourable conservation status'.

This directive was transposed into the Belgian legal order, in the Flemish , by, among other things, the Decree of 21 October 1997 on nature conservation and the natural environment (hereafter: Nature Decree), where the hamster is listed in Annex III, as a species of Community interest of the Annex IV of the Habitats Directive, occurring in Flanders.

* Council of Convention of 19 September 1979 on the Conservation of Wildlife and Natural Habitats, adopted by Belgium on 24 August 1990, entered into force on 1 December 1990.

² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, *OJ No L 206*, 22/07/1992 pp 0007 - 0050.

On 15 May 2009, the Flemish government adopted the Decree on species protection and species management (hereinafter: Species Decree). The hamster was classified as a category 3 protected species in Annex I of the Species Decree. These are the species listed in Annex IV of the Habitats Directive, which occur or may occur in the Flemish Region.

The Species Decree makes it possible to draw up a species protection programme for European protected species or for typically Flemish animals or plants. In implementation of this, the Flemish Region drew up the 'Species protection programme for the European hamster in Flanders, 2015- 2020' (hereafter SBP 2015-2020), which was approved on 21 December 2015.

According to the information included in this SBP 2015-2020, the wild hamster is distributed in Europe and more specifically in Flanders as follows:

"The hamster is a Eurasian species whose range extends east to the Yenisey in Siberia. In Belgium, the species reaches its westernmost distribution. In Europe, the northernmost populations are located halfway between Germany and Poland, while Bulgaria forms the southern border. The is found from sea level to altitude of 770

*(...)
metres (Weinhold 2008).*

The hamster has been found in Flanders since the late 19th century in the field areas of the Leemstreek in the provinces of V'ooms-Brabant and Limburg (see Valck et al. 2001; Mercelis 2003). Some decades ago, the animal was still widespread in these provinces, since then the hamster biyna disappeared completely. Its range extended into Wallonia (Valck et al. 2001; Verbeylen & Hens 2008; La Haye et al. 2010). Anno 2014, the hamster is almost extinct in Flanders. In Bertem zyn the last 2 years (2012 and 2013) there have been no verifiable reports. In Widooie zyn a few burrows were still found in this period."

Annex 1 of the SBP 2015-2020 shows the results of hamster inventories conducted since 1998 for the (former) habitats in Bertem, Hoegaarden, Landen (Flemish Brabant) and Bilzen-Riemst, Heers-Widooie and Voeren (Limburg). In Bertem, the number of burrows went from 78 in 1998 in decline to zero in 2013, in Hoegaarden from five in 1998, 10 in 1999 and 11 in 2000 to zero in 2001, in Landen from two in 2002 to zero in 2007. In Bilzen-Riemst, the number of burrows went from 21 in decline to zero in 2002, in Heers from 20 in 2007 to zero in 2012, in Voeren from four in 1998 to zero in 1999 and in Widooie from 21 in 2001 to a dozen in 2013.

It is therefore uncontested that in 2013 only a very limited population of hamsters remained in Widooie and that hamster populations in the remaining habitats in Flemish Brabant and Limburg

had already disappeared by then, another reason why the 2015-2020 SBP focused only on hamster habitat in Widoöie.

On causes of drastic decline in hamster populations in Flanders, the SBP 2015-2020 explains the following:

"Some decades ago, this species was still widespread in the loess/loam region, especially on cereal fields. Due to a combination of a number of factors including agricultural intensification, persecution, habitat loss, habitat fragmentation and resulting genetic degradation, its numbers have declined dramatically and 2 relict populations were present in Flemish Brabant and Limburg a few years ago (<30 individuals)."

This trend occurred not only in Flanders, but also, among others, in the southern Netherlands, the north-east of France (Alsace) and the Rhine valley in Germany.

In accordance with Annex 1 of the Ministerial Decree of 12 November 2014 establishing three red lists implementing Article 5 of the Species Decree of 15 May 2009, the hamster obtained the status of 'endangered'.

In October 2004, more than a decade before the adoption of the 2015-2020 SBP, the European Commission had already declared the Kingdom of Belgium in default for failing to properly monitor the conservation status of the hamster and the necessary measures to establish a system to strictly protect the hamster in order to a favourable conservation status, in defiance of its obligations under the Habitats Directive.

This notice of default states, inter alia the following:

12. A number of studies on hamster populations in Belgium have been carried out in recent years. (...)

13. These studies clearly show that hamster populations in Belgium are in sharp decline. Nevertheless, it appears that there is still no systematic inventory the total range of the hamster in Belgium. The observations made do not meet the requirements of a systematic and regular monitoring system. The survey methods used vary from one area to another. For example, in some cases, the inventories did not distinguish between occupied and empty hamlets. As the available information is incomplete and not very systematic, any necessary conservation action might ineffective.

(...)

16. By' letter of 1 July 2004, the Flemish Region notified its legislation applicable to the hamster. The royal decree of 22 September 1980 containing

measures, applicable in the Flemish , for the protection of certain indigenous wild animal species not covered by the application of the laws and decrees on hunting, river fishing" and bird protection (Belgian Official Journal of 31 October), provides for provisions prohibiting the hunting and capture of the hamster and the deterioration and disturbance of its habitats and refuge areas. Articles 58 and 59 of the Decree of 21 October 1997 on nature conservation and the natural environment provide for criminal sanctions (Moniteur Belge of 10 January 1998).

17. A plan to protect the hamster (Hamster Species Protection Plan) was published in the Flemish in 2001. It appears that there are plans to purchase land in the hamster's distribution areas. In addition, management contracts may be concluded with farmers from 2005. These contracts will cover measures to protect hamster burrows and will require farmers to adapt their practices to the presence of hamsters on their land. These will be voluntary agreements.

(...)

19. Since there are clear indications that the conservation status of the hamster in Belgium has deteriorated in recent years, to the extent that it is now close to extinction, it follows that the measures taken by the Belgian authorities were not sufficient to achieve a favourable status for the hamster. It should be noted "that the contracts to be concluded with farmers in the Flemish and Walloon regions do not yet seem to be in force and their conclusion depends entirely on the willingness of the farmers in the area. The intention to purchase land does not seem to be yielding results because farmers do not want to give up their land. However, both the Walloon draft action plan and the Flemish action plan stress the urgent need to take measures to protect the hamster in Belgium. Finally, the Commission services have no data to confirm that the application of the legislation on hamster protection is strictly and consistently monitored."

The European Commission decided that the Kingdom of Belgium had failed to fulfil its obligations under Articles 11 and 12(1)(b) and (d) and (4), read together with Articles 1(i)(2) and Annex IV(a) of the Habitats Directive.

The SBP 2015-2020 states the following about the European Commission's letter of formal notice and subsequent actions:

"By signing the Habitats Directive, Belgium, and therefore Flanders, has committed itself to the sustainable conservation of this species. In 2005, Belgium received a final written warning from the European Commission regarding the hamster because insufficient conservation measures were being taken.

Following this initial warning, an action plan to protect the species was put in place. The measures mainly consisted of creating a favourable habitat entering into voluntary agreements with farmers and reintroducing 60 hamsters per core area over 2 years to genetic diversity. The combination of both measures led to a temporary resurgence of the population. Inventories found an average of 20 burrows before the and 160 burrows after the . Limited genetic monitoring results also showed that genetic exchange took place between added animals and animals from the autogenous population.

After these initial positive results, due to other priorities, hamsters were no longer biyed and measures were less intensively monitored. This resulted in a decline in hamster numbers in both core areas. Possibly the sharp decline in numbers was exacerbated by a combination of a number of factors, including very limited genetic fitness, too small a population size, too small an area of suitable habitat, isolation of the areas, predation pressure and influences of climate.

The population size in Flanders is currently estimated at less than 30 individuals. A natural recovery of the population is therefore ruled out. The only way to preserve the hamster in Flanders in the short term is by adding hamsters to existing relict populations and increasing the area of suitable habitat by concluding agreements with farmers.

This species protection programme proposes a number of measures and actions to be able to verwezenliyen this. "

The overall - necessary - objectives of the 2015-2020 SBP were, on the one hand, to provide sufficient area of hamster-friendly management in a carefully constructed network within a wide habitat, and, on the other, to invest in improving the genetic fitness of the species and in increasing the numbers present to achieve a sustainable population.

The final objective was as follows:

"The proposed G-IHO targets for the hamster were stated in Paelinckx et al. (2009) as follows recorded:

- *Expand potential habitat by expanding acreage with hamster-friendly management and establishing safe connecting strips between these areas.*
- *Strengthen relict populations through biy placement of hamsters from a breeding programme to genetic variability and fitness.*
- *Improving habitat quality:*

Regional conservation objectives.

- o Hamster-friendly management consisting of fields with a combination of summer and winter cereals and alfalfa which is necessary for a sufficient food supply to successfully kriygen 2-3 nests per year and ensure shelter from predators.*
- o Link large cereal fields within regions where hamster populations are still present to achieve a proportion of more than 50% cereal fields within the habitat.*

(...)

The G-IHD targets rely on the scientific rationale from the INBO report "Designing criteria for the local conservation status of habitat target species" and its Isvi tables.

To achieve a good conservation status, it is assumed that more than 500 burrows (or individuals) per habitat should be available and that this requires a minimum of 125 ha with hamster-friendly management. Furthermore, the habitat should consist of more than 50% cereal fields interconnected in a network.

- *The end goal on longer termiyn*

To the chances of a sustainable population on a longer termiyn, it is desirable to further increase management to 350-400 ha to allow populations in these areas to grow to a minimum size of 500-750 burrows (during autumn inventories). This objective currently seems feasible only in the Widooie habitat, where connection (and expansion) to habitat in Wallonia is possible. Kuiters et al. (2010) a target of 2 (opened) burrows in spring and 4 burrows per ha in autumn.

To maintain genetic variation and to be able to cope with years with high mortality, a number of 500-750 burrows in autumn is necessary (La Haye et al. 2010), although on an even longer termiyn (>20 years) also (artificial) exchange of individuals or genetic material will have to become possible between both habitats or perhaps even more habitats in the Netherlands and North Rhine-Westphalia. Genetic variation per se is maximally restored when' introducing hamsters From the Dutch breeding programme. The genetlsche variation in the breeding programme liy seems sufficient for maintaining the fitness and survival of the population in the long termyn (La Haye et al. 2012b)."

The specific objectives of SBP 2015-2020 were:

Area under hamster management: "In two habitats, a total of at least 250 ha of suitable fields must managed in a hamster-friendly manner within a period of 10 years, " managed plots are located in close proximity to each other and form a mosaic in the . (...) In Widooie, the aim is to achieve 125 ha under hamster-friendly management within five years of this SBP. (...) The creation of a second habitat is necessary to spread risks geographically and to comply with the G-IHD, which sets the goal of increasing the area and population. (...) The effective activation of a second habitat is foreseen in the next programme period, after

year five. (...) In addition, a minimum area of more than 50 per cent cereal fields, with each other, should be achieved within the habitat."

Population density: "The objective is to an average density per habitat of at least two occupied burrows per hectare in spring with hamster management and at least 4 occupied burrows per hectare in autumn (Kayser 2004)."

- *Spatial location and suitability of plots: "Plots with hamster-friendly management should be connected as much as possible. Distances of >300 metres are hardly bridgeable by hamsters. Hamster-friendly managed fields in the habitat may consist of smaller (1 ha) and larger fields, with a maximum distance between them of 150 m (...). Fields located on wet soils, along forest edges and with many stones in the soil are unsuitable for the hamster and are not eligible for hamster management. (...)."*

Habitat qualittett:

- "- Suitable cereal crops are grown on at least 50% of the fields in the habitat,*
- bare should not be visible on hamster-managed plots from mid-April,*
- management acres should not be harvested before 1."*

Reintroduction: "To increase the chances of success, it is chosen to out the biy placement or reintroduction ty the duration of this SBP in Widooie. The addition will only be done if at least 50 ha of quality hamster-friendly management is present in the release area. (...) An important precondition for the success of a biy placement is the presence of quality hamster management. This means that fields are actually managed as productive fields and hamsters can produce enough young (at least two litters per) by postponing harvesting or immediately sowing a quick-covering (catching) crop. (...) A minimum of 80 hamsters per year, at least three years, needed for reintroduction. Additional releases after these three years depend on population development and genetic variation. A reintroduction is considered successful if, at the end of the year of reintroduction, the number of hamster settlements is equal to the number of reintroduced and the genetic variation after a few years is at the same level as at the start of the reintroduction (...)"

In its conclusions, the Flemish Region lists the measures that were subsequently :

- Working with and encouraging farmers to enter into management agreements,
- restocking of hamsters in suitable plots (in 2019, 2020 and 2021, 42, 56 and 69 hamsters were restocked, respectively),
- expansion of the area under hamster-friendly management agreements,
- Conclusion of innovative management agreements,

- deployment of the so-called arm stripper,
- Sow regular crops with additional seed mix to coverage,
- equipped with outlet plot,
- collaboration with GaiaZOO(Netherlands),
- monitoring the population since 2016,
- predation control,
- subsidising research,
- strengthening contacts with local farmers and increasing support for the hamster.

The area under hamster-friendly management agreements grew to about 93 ha during the term of the 2015-2020 SBP, instead of the targeted 125 ha.

As the situation of the hamster remained precarious despite the taken, the SBP 2015-2020 was extended, initially until 20 January 2022⁴ and then additionally until 21 July 2023⁵.

Claimants argue that not only the 2005 action plan failed, but also the 2015-2020 SBP, and this despite its extensions, and in this refer, inter alia, to the findings in this regard in the hamster SBP 2015- 2020 evaluation report they filed (version dated 31 August 2021 - it is a draft text, a final text does not appear to be available).

The Flemish Region points out that it nevertheless continued to take measures, including buying up grain in 2023 to stand as cover and buying plots in hamster territory in 2023 and in 2024, and that the competent Flemish minister set up a steering committee to a second SBP.

This steering committee met a first time on 25 November 2021 and a second time on 28 June 2022.

At the Environment Committee meeting of 15 November 2022, the minister responded to the questions of some MPs around the protection of the wild hamster, among others, as follows:

"If we want to protect the wild hamster in Flanders, sustainable solutions must be sought in both the short and long term. It is clear that the viyf year-old

Ministerial Decree of 25 January 2021 the Ministerial Decree of 21 December 2015 establishing a species protection programme for the hamster, BS 10 February 2021.

Ministerial Decree of 21 January 2022 the Ministerial Decree of 21 December 2015 establishing a species protection programme for the hamster, BS 22 March 2022.

management agreements alone are not sufficient to sustain a habitat and a sufficiently large hamster population.

In the short term and pending the follow-up, the remaining hamster population should be prevented from becoming extinct. Miyn administration is therefore currently working on a package of emergency measures to avoid the hamster becoming extinct in Flanders pending the medium- and long-term measures. Cooperation with the relevant organisations, authorities and especially local farmers will remain a key to success in this as we are talking about agricultural areas and must obtain results in the short term.

In order to have a sufficiently large and suitable habitat in the long term, there is also a need for a mix of measures, both technical and structural. The management agreements will undoubtedly also continue to play a role here, but we must have the guarantee that a sustainable population can develop over time. Working out a solid vision and package of measures in this agricultural area requires time. We have asked to do this together with the sector, with Natuurpunt and the landbouworganisaties. As you know, besides the authorities, the Department of Agriculture and Boerenbond are also in the steering committee, which is guiding the drafting of the follow-up and follow-up measures. I will give the order to start that consultation and explore the different avenues."

A third meeting of the aforementioned steering committee took place on 6 March 2023. The report of that meeting confirmed that the 2015-2020 SBP target was not met and that, despite an increase in the number of burrows in 2021 as a result of hamster evictions, there was again a negative trend. The limited willingness of farmers to enter into management agreements was again identified as a pain point in this regard:

"2.1 State of play season 2023

At the end of 2022, there were found to be 10 total strongholds left on the core plots with BO in the area (note: not all plots were visited so may still have strongholds). BO's on those plots expired at the end of 2022. Limited willingness to close new BOs; "emergency measures" with different scenarios were drafted:

- 2 innovative BOs ("IBOs")
 - o Plot/ (after German model)*
 - o Grain winter stock**
- 'When' not closing BOs: stockpiling genetic material*

An SO is in the making between ANB & VLM for the 2 IBOs. Talks with farmers in the core zone are ongoing (bedrijfsplanner VLM). IBOs will be concluded for 2 years."

On 9 May 2023, claimants and Natuurpunt had a meeting with the (then) competent minister. From the presentation sheets of this 9 May 2023 meeting, it was clear that the second SBP would be issued in the summer of 2023.

Demanding parties and Natuurpunt addressed a letter to the minister on 10 May 2023 to raise concerns that the Flemish government had made too little effort to conserve the wild hamster in Widooie and had made no efforts to reintroduce the species in former core areas, such as Bertem or Hoegaarden. The minister was also asked to sign the commitments, conditions and deadlines for al'koord set out in an annex.

Claimants and Natuurpunt in their notice of default, inter alia, the following:

"3. Given these shortcomings, we are considering legal action(s) to avoid the extinction of the hamster. Following these actions, your cabinet has contacted us. On 9 May 2023, we' had a consultation with your cabinet and a broad group of officials working around hamster conservation. During this consultation, commitments and promises were made by your cabinet and several officials. The approach proposed by them is gradually moving the right direction. However, the experience of the first SBP shows that good intentions and a (too) liberal approach are not enough. Timely implementation of these actions, interim evaluation and redirection of actions where necessary will necessary to achieve a favourable conservation status for the hamster and prevent extinction in the short term.

4. Attached is a summary of the commitments made by your cabinet and administration during these consultations of 9 May 2023. We have a deadline and/or additional condition to each of these commitments, based on the considerations during the consultations. The purpose of these deadlines and/or additional conditions is to obtain guarantees that the proposed measures will be taken in a timely and appropriate manner. We kindly ask you to subscribe to the commitments, conditions and deadlines in this annex by signing this letter of agreement.

The commitments listed here concerned:

- urgent action: establish perimeter and contact farmers;
- adopt second SBP, which would also mandate INBO (or another institution) to conduct research during the first two years of the SBP and prepare a report on (a) what alternative options to meet the population and area objectives of the second SBP with a focus on measures that go beyond voluntariness and in particular on measures that would allow (i) acquiring additional plots or (ii) ensuring the required crop variation and coverage, and (b) which former hamster core areas (Bilzen-Riemst, Voeren, Bertem, Hoegaarden) or potential other areas are best suited for hamster population reintroduction, with formulation of the necessary recommendations and a proposed timeline for reintroduction;
- restoration of dialogue (steering committee).

The minister replied in detail to this formal notice by letter dated 19 May 2023.

As the perimeters, she informed that they were being afal'end and that the VLM was in the process of approaching local farmers.

the second SBP, it , inter alia, the following:

"The objectives of the second SBP ('SBP2') were already discussed at the meetings of the steering committee guiding the drafting of the SBP. Resulting from this and from the concerns raised by other Stakeholders, miyn administration sought to find a situation that was favourable both for hamster conservation and for maintaining support in the area. As also discussed during the 9 May II. consultation, this is crucial for hamster conservation.

As a habitat development target for the hamster, the SBP2 will prioritise the acquisition of 50 ha, including at least twice 10 ha as stocking plots. The consultation also outlined that this measure not a foregone conclusion, but is essential to provide the hamster with sustainable opportunities in its current habitat. In parallel, efforts are being made to conclude as many management agreements, eco-regulations and agri-environmental-climate measures as possible on surrounding plots, as an ecological network, suitable as habitat for the . Achieving a total habitat area of at least 357 ha is the objective. In the course of the next SBP, besides the realisation of a 50-hectare core area, I would like to further focus on increasing support (e.g. by engaging an agricultural expert), concluding management agreements and establishing cooperation between locally involved owners, managers and actors.

Once release plots are established and sufficiently , hamsters can be biyed. This is similar to the known case in Pulheim (Germany). But even in the most favourable scenario, with natural population growth in a larger , after three years still no 1,500 burrows at' the autumn censuses were found in Pulheim.

The focus of SBP2 will therefore be on maximising suitability. The byplacements that will follow should enable the population to itself independently. With growing habitat, opportunities to sustain a larger population should arise.

It liy me' therefore not realistic to set the following quantitative targets within the formulated timing as stated in the letter.' 'The second SBP will include the target of in the core area in Widooie within the viyf years:

- *a viable population with minimum population size ('minimum viable population') of at least 1,500 hamsters according to an autumn census / 500 hamsters according to a spring census; and*
- *a well-managed hamster territory of at least 357 hectares, consisting of at least 50 hectares of self-managed core area and remaining habitat for which management agreements are in place*

The drafting and implementation of SBP2 requires a thorough participatory process in which cooperation with other stakeholders a crucial role.

The habitat creation objective, in a coherent ecological network, will be under SBP2 as follows:

- *50 ha of long-term guaranteed habitat, to be realised through cooperation agreements and/or land acquisition, of which twice 10 ha are to be set up as restocking plots.*
- *at least half of the 310 hectares of temporary/flexible habitat, to be realised through management agreements, eco-regulations, AMKM, and regular cereal cultivation with under crops. This will be framed within a transparent and phased growth scenario that will be intensively monitored in terms of surface area, quality and the number of hamster colonies so that it can be phased in time.*

(...)

Efforts will be made to find alternative protection measures that overstay the vriywill through the use of the land bank, active acquisition but also alternative forms of long-term cooperation agreements. Myyn administration has already looked at ways to work around this and will report on this in the planned consultations (see below). The need for activation of biycoming conservation areas is also included in SBP2. The draft SBP2 envisages an annual release. The number of animals and locations will be determined each time on the basis of the area of existing and potential habitat, the area with BOs, eco-regulations, etc. To this end, an evaluation will be made prior to each release with a view to the actual release plan. This evaluation will be done by ANB, VLM, INBO and other experts. There is hereby' a strong link with monitoring and establishments in the field (both priority efforts of SBP2).".

Regarding the restoration of dialogue, the minister informed that the steering committee would be convened as soon as possible, and that an internal working group would be set up that would the Department of Agriculture and Fisheries, with a view to structural cooperation between nature and agriculture.

In the end, no new SBP was issued. The (then) competent minister explained at the meeting of the Environment Committee on 19 September 2023 that she had no

would start a separate programme for the hamster, but opted for *"an integrated approach in which" the measures required for the hamster, but also for other species, are part of a coherent approach to nature in the agricultural , in cooperation with all bodies involved.*

The minister :

"Therefore, I don't want to start a separate programme. Last legislature, there was a separate hamster programme with all kinds of stories around it and with a hamster coach or a hamster coordinator. I would like to work around an integrated approach where' we look at all kinds of endangered species and not with a separate programme or coaches. I have instructed miyn administration to include the measures needed for endangered species, including the hamster, in an overarching approach with maximum focus on implementation. The input during a final round of consultation with all stakeholders this summer will' also be taken into account.

During the drafting of SBP2, myn administration made a thorough evaluation of the results of the past SBP1, the existing instruments and the measures deployed in our neighbouring countries, especially Germany, France and the Netherlands. Consequently, the new measures will be more effective than those of the first SBP.

The measures should also ensure that a minimum area of suitable habitat secured for the species in the current Widooie hamster area for a long time. On these plots, the population can grow and then spread in a network of more flexible structure of plots, strips or edges in the . Regular crops can also be made more suitable for the species through some modifications and thus become part of this flexible network.

I want to achieve this flexible structure through the use of common agricultural policy (CAP) instruments, in particular management agreements and eco-regulations. For the minimum area of suitable habitat, I want to use the most effective instruments. This can be via self-realisation by private owners and farmers or land acquisition by the Flemish government. I think we should look at all three instruments.

I have therefore instructed miyn administrations to optimise the instruments to the maximum to meet the needs of the field fauna. Given the precarious situation in which the species finds itself, concrete and effective measures are needed in which we' as a government will and must take responsibility. Acquired land can perfectly well remain in agricultural use, but it must of course be suitable for the endangered species.

To all this, I will appoint an agricultural expert to take participating assisting farmers' in their management and working with them to achieve a win-win situation for agriculture and field nature.

{...}

I am glad to hear that the integrated approach to the species protection programme that we gave to the administration a few months ago is the way go, instead of making something for each species separately. For the hamster, we are still implementing measures from the first species protection programme. On top of that, an extra set of emergency measures is being taken in anticipation of that integrated programme, which should be ready by next spring, Mr Vandenhove.

I with you, Mr Coenegrachts, that we have to go as wide as possible. We will very broadly question all farmers and all land management associations to find suitable habitats in the short and to find solutions together.

The Nature and Forest Agency's (ANB) experts on biodiversity and the agricultural experts at the VLM will actively support farmers' in this regard.

I hope we're reaching as many associations on the ground as possible with that broad survey, both in relation to existing instruments but also perhaps to proposals that can come from their side.

At the Institute for Nature and Forest Research (INBO), a study is underway around the impact of predators. We will see if we can use that study for the species protection programme."

Meanwhile, by writ served on July 27, 2023, the plaintiffs had initiated the present proceedings against the Flemish Region.

It is not clear whether and which of the emergency measures announced by the (former) minister were in the meantime. In any case, it does not appear that the integrated programme, whose realisation was announced for spring 2024, was approved and/or implemented in the meantime.

2. Receivables

Claimants request the court in their summary judgment:

"1. To say for right that the defendant's species protection policy towards the hamster

1a. infringed its obligation to conserve and restore pursuant to Article 51 of the Nature Decree and Articles 10, 14 and 24 of the Species Decree - read in conjunction with and interpreted in the light of Article 12(1)(b) and (d)(j), Article 1(i), Article 2(2) of the Habitats Directives and Articles 2 and 3 of the Bern Convention - and thereby committed an error within the meaning of Articles 1382 and 1383 (ex) of the Civil Code;

1b. breached the principles of reasonableness and due care as general principles of good administration and thereby committed a fault within the meaning of Sections 1382 and 1383 (old) of the Civil Code;

1c. violated the standstill principle from article 8 of the Nature Decree read together with article 23, 4° of the Constitution and thereby committed an error within the meaning of articles 1382 and 1383 (old) of the Civil Code;

2. In order to prevent future and certain damage, some of which has already occurred, order the defendant under Sections 1382 and 1383 (old) of the Civil Code to take, within the three (3) months after service of the judgment, the required concrete and specific restoration and protection measures so that the following objectives can be met in the current and former hamster core areas on a five(5) year termijn:

- a minimum population size ("minimum viable population") of at least 1,000 hamsters during an autumn census on a well-managed hamster territory of at least 600 hectares, consisting of at least 150 hectares (i.e. 25%) of core areas under the Flemish government's own management and remaining hamster-friendly habitat around these core areas for which management agreements are concluded with third parties, or*
- population and area targets set by a research institute to be designated by your court, such as the Institute for Nature and Forest Research.*

In the light of the above, the plaintiffs also request that the defendant be required to withdraw or revise the Agriculture Agreement measures relating to the non-purchase of (i) land in reconfirmed agricultural area and agricultural area reconfirmed in RUPs for non-agricultural purposes and (ii) land located in agricultural area (not located in HAG) so that they are at least compatible with conservation and restoration obligations t.a.t. the hamster.

3. Order the defendant, pursuant to Sections 1382 and 1383 (old) of the Civil Code, to pay compensation for the moral damage suffered as a result of the failure to comply with the obligation of conservation and restoration in respect of the hamster to each of the plaintiffs, provisionally assessed for each of them at EUR 10,000 (ten thousand euros) (plus interest at least equal to the legal interest rate from the date of summons to the date of in full) per plaintiff;

and to grant to each plaintiff and thus twice reservation ad vitam or at least for 20 years from the judgment to be delivered and reservation in accordance with Article 2262bis (old) Civil Code for a claim for compensation of all other damages such as biyample, and non-exhaustively, all possible remedial measures and the further moral or ecological damage resulting from the aforementioned violations.

4. If these various measures, or any of these measures, which the court orders the defendant to take are not taken within the termijn set by the court, order the defendant to pay a penalty of EUR15,000 (vijftien thousand euros) per day of delay (and per violation) to the plaintiffs, where' the penalty will be forfeited from the day after the expiry of the termijn set by the court.

Order the defendant to pay the costs of the proceedings, including court fees in the amount of EUR 3,000 (three thousand euros), as provided for in Article 1022 Ger. W."

The Flemish Region asks the court to dismiss the plaintiffs' claims in their entirety as inadmissible, at least unfounded, and to order them to pay the costs of the proceedings, estimated at EUR 3,000 in litigation costs. Should the plaintiffs' claims be allowed in whole or in part, the Flemish Region requests that provisional enforceability not be imposed.

3. Review

3.1. Admissibility

Although the Flemish Region asks the court in the dispositive part of its summary judgment to declare the claims of the plaintiffs inadmissible, it does not develop any concrete pleas in that regard in the motivative part of its summary judgment.

The court also sees no grounds of inadmissibility of the claims that it should raise of its own motion.

The plaintiffs' claims are admissible.

3.2. Grounded

3.2.1. Basis of claims

Claimants bring an extra-contractual liability action against the Flemish Region under former Civil Code Article 1382-1383.

According to the plaintiffs, the Flemish Region committed an error by failing to adequately protect the wild hamster, which has contributed very to the extremely unfavourable conservation status in which the hamster finds itself in Flanders - on the verge of extinction - and thus to (ecological) damage.

For this, they claim €10,000.00 on the one hand and, on the other, reparation in kind to further future and certain damage, in the form of an order to the government to concrete and specific reparation and

to take protective measures so that specific targets of minimum population size in a minimum area of hamster territory can be within five years in the current and former hamster core areas.

3.2.2. Invoked (gedeeltelijke) prescription

The Flemish Region argues that since the summons is dated 27 July 2023, the court cannot assess the alleged errors that date from before 27 July 2018 or even before 1 January 2019, in view of Article 100(1)(1^o) of the State Accounts Acts, because they are time-barred.

Article 2227 old Civil Code stipulates that the State, public institutions and municipalities are subject to the same statutes of limitation as private individuals and may also invoke them.

Notwithstanding this rule, Article 100 of the State Accountability Act stipulates specific limitation periods for claims against the State. Article 100, first paragraph, 1^o, of this Act stipulates that a claim against the State lapses if the submission has not been made within a period of five years counting from the first January of the financial year in the course of which it arose, the financial year coinciding with the calendar year. Pursuant to Article 71 §1, this provision also applies to the Communities and Regions.

That five-year limitation period applies in to all personal claims against the government, including non-contractual liability claims.

The anomalous regulation of Article 100 of the Act on Rijk'scomptabiliteit was abolished by the Act of 22 May 2003 on the organisation of the budget and of the comptabiliteit of the federal State (BS 3 July 2003), which came into force on 1 January 2012 (see articles 127, 131 and 133 of that Act). The 'general provisions of prescription' of the Act of 16 May 2003 establishing the general provisions applicable to the budgets, the control of subsidies and to the accounts of the Communities and the Regions, as well as to the organisation of the audit by the Court of Audit also entered into force for the Flemish Region on 1 January 2012.

Consequently, Article 100(1) of the Rijk'scomptabiliteit Act continues to apply to claims against the Flemish Region that arose before the new law entered into force on 1 January 2012 but not yet time-barred on that date.

Claims that arose after 1 January 2012 are subject to the common law limitation regime of art. 2262bis, §1, second paragraph old BW, which provides that all legal claims for compensation of damages on the basis of extra-contractual liability shall be prescribed by the lapse of five years from the day following that on which the injured party became aware of the damage or the aggravation thereof and of the identity of the person liable for it and, in any event, by the lapse of 20 years from day following that on the event causing the damage occurred.

Since prescription is a defence against a late claim, it cannot begin to run before the claim has arisen. In principle, a legal claim arises when it is due, which, in the case of a claim based on extra-contractual liability, when all the constitutive elements of this liability - fault, damage and causal link - are united⁶.

, the claim for damages on the grounds of unlawful state action arises in principle at the time when the damage arises or when its future achievement is, according to reasonable expectations, certain⁷, even if the extent of the damage cannot yet be precisely determined or established at that time⁸.

In their summary conclusion, the plaintiffs describe the errors they accuse the Flemish Region of as follows:

"In this one, the consist of violations of the conservation and restoration obligation, the principle of reasonableness, the principle of due care and the standstill principle. These errors have resulted from years of failure to provide adequate protection for the hamster, including:

- the absence of any protection regime for 2005,*
- The failed 2005 action plan (following the Commission's letter of formal notice in 2004),*
- the first and only SBP that did not come into being until 2015 (and therefore too late), which was too unambitious according to scientific insights and territorially too limited, the lack of an integrated protection plan and interim measures that are in line with the measures in this SBP.*

This latest shortcoming was the proverbial straw that broke the camel's back. That despite the functionally extinct state of the hamster and despite all the promises of

⁶Cass. 17 January 2025, AR no. C.21.0435.N.

⁷ Cass. 2 February 2017 AR C.15.0298.F, AC 2017, no. 80; Cass. 24 April 2015, AR F.13.0153.N, AC 2015, no. 274; Cass. 16 February 2006, AR C.05.0022.N, AC 2006, no. 98; Cass. 20 December 2007, AR C. 06.0385.N, AC 2007, no 651; Cass. 16 February 2006, AR C.05.0022.N, AC 2006, no 98; Cass. 29 September 2005, AR C.03.0317.N, AC 2005, no. 465

Cass. 24 April 2015, AR F.13.0153.N, AC 2015, no 274; Cass. 20 December 2007, AR C.06.0385.N, AC 2007, no 651; Cass. 16 February 2006, AR C.05.0022.N, AC 2006, no 98; Cass. 29 September 2005, AR C.03.0317.N, AC 2005, no 465,

defendant - bj' the expiry of the 'first SBP' on 21 July 2023 - had still not developed a comprehensive and integrated protection plan, could no longer be considered reasonable. This omission was the deciding factor for the plaintiffs to sue."

Consequently, the Flemish Region is accused of a continuous default, with the plaintiffs situating the last damaging event prior to the writ of summons on the date when the extension of the 2015- 2020 SBP for the hamster came to an end, i.e. 21 July 2023.

In the case of continuing acts causing damage, there is no rule stipulating that the five-year limitation period (of Article 2262bis, §1, second paragraph old BW) would only start to run from the knowledge of the last fact. The limitation period for a claim for damages in the event of a continuous fault of the government does not start to run only once the faulty action of the government has ceased to exist⁹. The fact that the damage is the result of a continuing fault does not prevent the damage arising day by day and the claim for extra-contractual liability arises as and when the damage occurs^{(1) 0}.

This means that the limitation period in a *continuing/ouË* of the government runs from day to day with each new fact of which the injured party becomes aware and that the claim for damages for facts that occurred more than five years before the summons is barred*(¹).

However, the claimants rely on the exception to this rule according to which, in the case of *indivisibly connected acts*, the limitation period does not start to run until the last act by which the fault was committed.

This exception should be interpreted strictly and only applies when there is a series of facts where a last fact leads to the consummation of the fault (see also GwH 21 March 2007, no 47/2007). If not, there is a risk of eroding the institution of prescription.

In the I'ader of the five-year period under section 100 of the State Comptroller's Act, it was held that if, in the case of an unlawful act of government, the claim arises in principle when the damage comes into existence or when its future realisation is reasonably certain, the limitation period, if the government's unlawful act continues, does not begin to run until the first

⁹ Cass. 18 June 2021, AR no. C.20.0441.N.

¹⁰Cass. 17 January 2025, AR no. C.21.0435.N.

¹! see 1. CLAEYS, Overview of case law liberating prescription (1992-2017), TPR 2018, vol. 1-2, no. 60.

January of the financial year during which the guilty conduct ceased¹². It is assumed, however, that this too must not be a merely recurrent fault, but indivisible fault¹³.

The court notes that the plaintiffs base their claim for damages in these proceedings on the Flemish Region's global, continued and, in view, (still and therefore permanently) inadequate policy to protect and save the wild hamster in Flanders from extinction since at least 2004. It agrees with the plaintiffs that this can be qualified as indivisible set of continuing acts of damage, whereby the limitation period cannot begin to run as long as the government's (alleged) default continues.

Consequently, the court does not follow the Flemish Region's position that it cannot assess the alleged errors that date from (at least) before 27 July 2018 because they would be time-barred. The court the plea of partial prescription.

3.2.3. Errors cited

3.2.3.1. General position of partisans

Claimants argue that the fault of the Flemish Region consists, on the one hand, of inaction and, on the other, of deliberate action that has an effective recovery policy towards the wild hamster in Flanders impossible.

According to the plaintiffs, the Flemish Region thereby violated (i) the conservation and restoration obligation, (ii) the standstill principle and (iii) the principles of due diligence and reasonableness, as general principles of proper administration.

The Flemish Region disputes this and argues that it did take various actions and measures to protect and restore hamster (populations) in Flanders and these measures were implemented and are still progress. According to the Flemish Region, the 'accusations amount to a mere opportunity criticism of the policy it has pursued, but there is no .

Following this, the rechtbank¹⁴ will assess the fault(s) alleged against the Flemish Region.

3.2.3.2. Cited breach of the conservation and restoration obligation, the principle of due care and reasonableness and the standstill principle

¹² Cass. 2 February 2007, C.15.0298.F.

¹³ see I. CLAEYS, Overview of case law on liberatory prescription (1992-2017), TPR 2018, vol. 1-2, no. 60.

The claimants argue that by failing to take the necessary recovery measures, despite the hamster being functionally extinct in Flanders, and even failing to strengthen the protection of the last specimens of this species until a sufficiently large population can , the Flemish Region has manifestly failed to comply with the obligations arising from Article 51 of the Nature Decree and Articles 10, 14 and 24 of the Species Decree - read together with and interpreted in the light of Article 12(1)(b) and (d)(j) Article 1,i) and Article 2(2) of the Habitats Directive and Articles 2 and 3 of Bern Convention - manifestly do not fulfil.

As cited above, the legislative and regulatory framework on the conservation and restoration obligation consists of the Bern Convention, the Habitats Directive, the Nature Decree and Species Decree.

Article 2 of the Bern Convention states:

"The contracting parties shall take the necessary measures to maintain or restore populations of species of wild fauna and flora to a level which corresponds in particular to that from an ecological, scientific and cultural point of view, while taking into account economic and recreational requirements and the needs of subspecies, varieties or forms locally."

Article 3 of the Bern Convention states:

"Each Contracting Party shall take the necessary measures to promote a national policy for the conservation of species of wild fauna and flora and natural habitats, giving particular attention to those species threatened with extinction and which are vulnerable, especially endemic species, and to endangered habitats, in accordance with the provisions of this Convention."

2. Each Contracting Party undertakes to take into account the conservation of wild species of flora and fauna in its spatial planning and development policies and measures against pollution."

3. Each Contracting Party shall promote the education and dissemination of general information concerning the need for conservation of species of wild fauna and flora and their associated habitats."

Article 2 of the Habitats Directive states:

"1. The purpose of this Directive is to contribute to ensuring biological diversity through the conservation of natural habitats and of wild flora and fauna in the European territory of the Member States to which the Treaty applies."

2. The measures taken on the basis of this Directive shall aim to maintain or restore natural habitats and wild animal and plant species of Community interest to a favourable conservation status."

3. Measures taken on the basis of this directive shall take into account economic, social and cultural requirements, as well as regional and local biophysical peculiarities."

The Habitats Directive defines 'conservation' as *"a set of measures required to maintain or restore natural habitats and populations of species of wild fauna and flora to a favourable conservation status as defined in (e) and (i)"* (see article 1(a)).

'State of conservation of a species' is defined in Article 1(i) as *"the effect of sum of influences on the species concerned that may in the long term cause a change in the distribution and size of populations of that species in the territory referred to in Article 2"*.

The "conservation status" is considered "favourable" when:

*"- population dynamics data show that the species concerned is still a viable component of the natural habitat in which it occurs, and is likely to remain so in the long term, and
- the natural range of that species is not diminishing or likely to diminish in the foreseeable future, and
- there exists and is likely to continue to a sufficiently large habitat to populations of that species in the long term."*

Article 11 of the Habitats Directive states:

"Member States shall monitor the conservation status of the species and natural habitats to in Article 2, paying particular attention to priority natural habitat types and priority species."

Article 12 of the Habitats Directive states:

Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, ."

- a) the deliberate capture or killing of wild specimens of those species;*
- b) deliberately disturbing those species, especially during the periods of reproduction, young dependency, hibernation and migration;*
- c) deliberately destroying or collecting eggs in the wild;*
- d) the damage or destruction of breeding or resting places.*

2. In respect of these species, Member States shall prohibit the possession, transport, trade or exchange, and offering for sale or exchange of taken from the wild

specimens, except already legally taken before the application of this Directive.

3. The prohibitions paragraph 1(a) and (b) and paragraph 2 shall apply regardless of the life stage of the animals referred to in this Article.

4. Member States shall establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV (a). In the light of the information obtained, Member States shall carry out further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the concerned.

Article 51 of the Nature Decree states:

"§ 1. The Flemish government, after the advice of the MiNa Council, shall take any measures it deems useful

eight:

1° on the conservation of populations of species or subspecies of organisms listed in Annexes III and IV of this decree and of their habitats;

2° to , restore or develop populations of the remaining species or subspecies of organisms.

These measures can be anywhere or for certain areas or habitats, they can include species protection and can cover such things :

1° all developmental forms of organisms;

2° a prohibition of deliberate disturbance species and their habitats during the period of breeding, and hibernation;

3° protective measures for regularly occurring migratory birds in their breeding, moulting, foraging and wintering areas and resting places in their migratory zones;

4° a ban on deliberately destroying or collecting eggs of wild species; 5° a ban on damaging or destroying habitats;

6° a ban on deliberately picking and gathering, cutting off, uprooting or destroying plant species;

7° a ban on the exploitation of certain populations;

8° a ban on the use of all non-selective means that may localised disappearance or serious disturbance of the tranquillity of the populations listed in Annex III of this decree;

9° establishing a system of withdrawal licences or quotas; 10°

rehabilitating injured wildlife species.

These measures may apply permanently, for a specified period or tide, and may be supported by fees to which they may, within the limits of budgetary resources, establish financial arrangements.

The Flemish government shall down further rules on the measures and procedure."

Article 2, 66° of the Nature Decree defines 'conservation measures' as *"the plans or programmes, orders or prohibitions and other actions aimed at , restoring or developing habitats or populations of species to be protected at European level and their habitats and habitats, and the natural environment thereof"*.

'Species conservation programme' is defined as *"a programme of species conservation measures aimed in particular at achieving the favourable conservation status of a native species or group of species in the area to which the programme applies"* (article 2, 68° of the Nature Decree).

Article 10 of the Species Decree states:

"§ 1. With regard to specimens of protected animal species, the following acts are prohibited:

1° intentional killing; 2°

intentional capture;

3° deliberate and significant disturbance, in particular during the periods of breeding, young dependency, hibernation and migration.

It is prohibited to deliberately destroy, damage or collect the eggs of protected animal species."

Article 14 of the Species Decree states:

"1. It shall be prohibited to deliberately destroy, damage or take away the nests of protected species of birds or the breeding sites or resting places of protected species of animals other than birds.

§ Destroying, damaging or removing nests, breeding sites or resting places of protected animal species is deemed to be unintentional, among other things, if the person responsible for this action did not know and could not reasonably have been expected know that this action could lead to the negative effects on nests, breeding sites or resting places described in § 1.

However, with regard to animal species where category 3 is ticked in Annex 1, the unintentional destruction or damage of breeding sites or resting places is also prohibited.

§ 3. Nests shall include occupied nests, nests under construction in preparation for the coming breeding season, as well as nests that generally reused year after year during the breeding season."

Article 24 of the Species Decree states:

"In addition to the protective status arising from the prohibitions under Section 2, for species protected as mentioned in Section 9 or species listed in the classes 'extinct', 'critically endangered', 'endangered', 'vulnerable' and 'biyna at risk' of a red list as mentioned in Section 5, the may take species conservation measures or establish species protection programmes to:

1° to achieve a good conservation status of those species or groups of species, where appropriate on the basis of the conservation objectives established in that ; 2° to ensure that the incidental capture or killing of the species, whereby' category 3 is ticked in the aforementioned biylag 1, does not have a significant adverse impact on the conservation status of the species in question."

Article 25 of the Species Decree states:

"The species conservation measures for certain species or groups of species referred to in Article 24 may, within the limits of the budgetary resources established for that purpose, concern :

1° carrying out awareness-raising actions, including issuing codes of good practice;

2° carrying out specific acquisition, establishment or management activities; 3° granting subsidies;

4° concluding agreements with administrative authorities or with legal subjects, organisations or associations, to support regional or local species conservation initiatives.

The species conservation measures referred to in Article 24, in addition to the measures referred to in the first paragraph, may concern derogations from the prohibitions of Section 2, provided are included in a set of measures in the of a species protection programme, as referred to in Articles 26 and 27.

With regard to species for which' category 3 is ticked in Annex 1, the species conservation measures referred to in Article 24 may also relate to additional, specific prohibitions, over and above the prohibitions referred to in Section 2, provided that they are included in a species protection programme, as referred to in Articles 26 and 27, which, moreover, has been established by the Flemish Government."

A dispute exists between the parties as to the of the obligations arising from these laws and regulations, and whether or not the Flemish Region has fulfilled the obligations thus imposed on it.

A first point of discussion concerns the question of whether the Flemish Region has a result obligation or a (heavy) effort obligation to prevent the extinction of the wild hamster in Flanders.

The court concurs with the Flemish Region's view that, to the extent that the extinction of a species may be co-dependent on factors beyond the control of the government and to the extent that the proposed species conservation measures depend the scientific knowledge available at a given time, it is difficult to speak of an obligation of result on this point.

However, this does not alter the fact that the Flemish Region does in any case have a duty to reasonably do everything necessary to achieve the objectives of the Bern Convention and the Habitats Directive, as concretised in the Nature Decree and the Species Decree, specifically to maintain or restore the wild hamster to a favourable conservation status.

For the further concrete interpretation of the obligations that apply to the (European) member states and, more specifically, also to the Flemish Region, the plaintiffs refer to the Court of Justice's legal preliminaries mentioned below, as well as those of various courts in our neighbouring countries France, Germany and the Netherlands, of which the court explains the most relevant aspects:

1. the '*Caretta caretta*' judgment of the Court of Justice of 30 January 2002 in which the Court found that *by failing "to adopt, within the prescribed term, the measures necessary to establish and implement an effective system of strict protection for the sea turtle *Caretta caretta* on Zante (Greece), in order to any deliberate disturbance of the species during its breeding period and any activity which might damage or destroy its breeding sites, Greece had failed to fulfil its obligations under Article 12(1)(b) and (d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and wild fauna and "**4.

The explanatory memorandum to Article 10 of the Species Decree also refers to the '*Caretta caretta*' judgment to conclude that general prohibitions or area-specific protection measures (in that case: the establishment of a national park over the breeding area) are not sufficient if specific acts are to be prevented (in that : a ban on recreational motor vehicles on the beach where the

* ECJ 30 January 2002, No C-103/00, Commission v Greece, ECLI:EU:C:2002:60, paras 31-40.

sea turtles deposit their eggs), in which case specific bans should consequently be issued. The fact that the sea turtle itself did not seem to have deteriorated over the past 15 years did not alter this ; in any case, there was a need to the disturbance.

2. the Court of Justice's judgment of 9 June 2011, which specifically concerned the wild hamster and in which the Court found that the French Republic, *"by failing to adopt a package of measures allowing strict protection of the hamster species, has failed to fulfil its obligations under Article 12(1)(d) of the Habitats Directive"*¹⁵.

In this judgment, the Court of Justice reiterated that the system of strict protection presupposes concrete and specific protective measures, as well as the adoption of coherent and coordinated preventive measures which effectively prevent the damage or destruction of the breeding or resting places of the strictly protected animal species, which, in the case of the wild hamster, implies a sufficiently large territory with sufficiently favourable crops.

That the measures taken by the French Republic' were insufficient can be inferred from the following - summarised - considerations of the court:

the number of hamster burrows in the core areas between 2001 and 2007 had declined sharply (from more than 1,160 to less than 180) and in 2009 no population of the wild hamster in Alsace reached the minimum threshold to spre'l'en from a viable population for this species, this threshold being estimated at 1,500 specimens spread over a contiguous favourable territory of 600 hectares; the development of maize cultivation at the expense of diversity of cultivation has been fatal for the hamster, which is dependent on l'unstable pastures, especially those on which alfalfa is grown, was one of main causes of the decline in the hamster population;

such development, even during late years, has not completely slowed down in Alsace, the only area in France where this occurs;

although the agri-environmental measures taken - *in particular the establishment of areas in which land use is no longer changed apart from changes related to agriculture and for which a () target cypher of 22% crops favourable to the hamster was set, being 2% alfalfa and 20% cereals, in order to reach a viable population of approximately 1.200 to 1,500 hamsters per area (with financial support to agricultural managers to promote cultivation of alfalfa and winter cereals)* - agricultural practices in a hamster-favourable sense

¹⁵ ECJ 9 June 2011, No C-383/09, Commission v France, ECLI:EU:C:2011:369.

did evolve, the was only achieved in one of the three areas set up, which, in addition, only moulded out 2% of all areas favourable to the hamster; the French Republic recognised that further urbanisation and associated infrastructure, leading to the disappearance and ver'l'avelng of agricultural land, another determining factor in the hamster population decline, with the rules for urban planning projects in recolonisation areas being unclear.

The applicants also refer to the opinion of the Advocate General in this , in particular where he states that if, as in the case of the wild hamster, the populations of the species are so small that they may become extinct on the basis of natural fluctuations in numbers an effective protection system must aim at a sufficient increase in numbers and, consequently, be capable of ensuring the long-term survival of the species in the area concerned, which means, in particular, managing the habitats in the vicinity of hamster dens in such a way as to enable hamster populations to in sufficient numbers.

3. Judgment of the District Court of The Hague of 29 August 2011*⁶in which the , at the request of the 'Stichting Das & Boom', ordered the Dutch State to ensure that the connecting zones between the hamster-friendly managed areas are extended by 50 hectares, in such a way that the situation prevailing in 2010 is restored, now that the Boom', ordered the Dutch State to ensure that the connecting zones between the hamster-friendly managed area be expanded by 50 hectares, in such a way as to the situation prevailing in 2010, now that the management plan of the Ministry of Landbouw, Nature and Food Quality itself showed that the number of connecting zones between hamster-friendly managed areas had been reduced by 50 hectares in compared to previous years, and the so-called (scientific) Alterra report of 2010 showed that connecting zones were necessary for the conservation status of the hamster.

In that case, the Netherlands State did not dispute that it had obligation to take appropriate measures to establish a system of strict protection for the hamster in its natural range, which must contribute to restoration of the hamster's favourable conservation status in the Netherlands. The parties also agreed that the content of the measures to be taken should follow the recommendations of the Alterra report (which, according to the foundation, were not or insufficiently followed and would be restricted in the (near) future). In that case, the Dutch State undertook to comply (also) in the future with its (international) obligations to conserve the hamster, and

*° Available at: ECLI:NL:RBSGR:2011:BR6099 - Rechtbank 's-Gravenhage, 29-08-2011 / 397371 / KG ZA 11-761.

according to the court, there was no reason to believe that the State would not honour that commitment.

4. 'Uitspraak' of the 'Oberverwaltungsgericht Sachsen Anhalt' of 3 January 2017¹⁷ regarding the development of an industrial zone in hamsterl'ern territory, where the issue was about the exceptions under Article 161) of the Habitats Directive, which can only be allowed if they do not further deteriorate the unfavourable conservation status of the population or impede the recovery of a favourable conservation status.
5. Ruling of the 'Court administrative de Toulouse' of 6 March 2017¹⁸ which held that:
 - the actions taken by the French State could not be considered sufficient in the light of the challenges identified for the sustainable conservation of the brown bear
 - also strictly protected under Annex IV of the Habitats Directive - in the Pyrenees massif; the applicants in that case (in particular associations objectives include the recovery and enhancement of the Pyrenean brown bear population) rightly argued that the French State did not comply with the obligation to restore the brown bear to a favourable conservation status arising from Article 2 of the Habitats Directive;
 - the State's default constitutes a fault that entailed the liability of the French State.

To its decision, the court in question considered that although the French State had measures, including the establishment of a protection scheme in 1981 and release of new bears in 1996 and 2006, the conservation status of the species was still inadequate and had therefore not returned to the favourable conservation status required by the Habitats Directive, which was why the European Commission had declared the French State in default in 2012. A scientific report dated 26 September 2013, prepared at the request of the government, showed that, on the one hand, the positive trend in the numbers and distribution of the species and despite the stability of the species' habitat, the outlook for the future remained unfavourable, particularly as the ' numbers and range remained lower than in the . The bear population was therefore subject not only to a significant demographic risk, as the overall population size was insufficient to the long-term viability of the species, but also to a very high genetic risk, given the frequency of inbreeding.

¹⁷ Available at: <https://www.landesrecht.sachsen-anhalt.de/bsst/document/NJRE001290240>.

¹⁸ Available at: <https://toulouse.tribunal-administratif.fr/decisions-de-justice/dernieres-decisions/protection-des-ours-dans-les-pyrenees-l-etat-condamne-par-le-tribunal>.

Furthermore, the court based its judgment on the circumstance that the government had refused a reintroduction of bears because of the opposition of certain local actors and pending the results of a (global) strategic plan to improve the biodiversity of the Pyrenees, and that although the existing recovery and conservation plan for the brown bear that was due to expire in 2009 was extended the had not adopted a global plan before launching on 18 December 2013 the elaboration of a 'bear component' of it, which had not been achieved by 2017 - without adequate justification - and which, in order to achieve the target of a population of around 50 individuals, relied on the species' ability to grow independently and considered new introductions only to the extent that they would be necessary to favourable population dynamics.

6. Court rulings of 2 July 2020 and 28 October 2021¹⁹ on the 'Vienna city hamster' which, inter alia, that:

even resting places that are no longer occupied by protected species may not be damaged or destroyed if there is a sufficiently high probability that the species concerned will return to them,

the concept of 'reproduction site' is not limited to the hamster's burrows themselves, but also extends to the immediate surroundings of that site where that environment is found to be necessary to enable protected species listed in Annex IV(a) to that, such as the *Cricetus cricetus* (field hamster), to reproduce successfully,

- the concept of damage in Article 12(1)(d) of the Habitats Directive covers the progressive loss of the ecological functionality of a breeding site or resting place of a protected species, while the concept of destruction in Article 12(1)(d) of the Habitats Directive covers the total loss of the ecological functionality of a breeding site or resting place of a protected species, in each case irrespective of whether such damage is intentional.

Claimants infer from these latest judgments that the Habitats Directive requires more than just formal protection and that the measures to be taken must take into account the wider ecology of the species.

In its conclusions, the Flemish Region does not appear to dispute that the aforementioned legal provisions, as applied in the aforementioned court judgments, impose not only passive protection prohibitions but also active conservation and restoration obligations.

¹⁹ 1 ECJ 2 July 2020, No C-477/19, Magistrat der Stadt Wien, ECLI:EU:C:2020:517. Hv J 2 8 2021, No C-357/20, IE v Magistrat der Stadt Wienn, ECLI:EU:C:2021:881.

Incidentally, this is also expressly stated so in the report to the Flemish government accompanying the Species Decree (underlining by the court):

"prohibitions is the traditional mode through which the government acts in species policy. This prohibits certain acts, activities or courses of action in respect of specimens of protected species. Throughout most of the history of species policy, particularly since the nineteenth century, such prohibitions have been mainly concerned. This is therefore rather a 'passive species protection', in vergelijking with 'active species protection', which refers to effective measures for the benefit of a protected species.

Over the decades, it has become clear that it is not enough to protect only individual specimens of a species and their nests in order to achieve a good conservation status. A species protected at the level of individual specimens will still not be protected against surface or environmental degradation of its habitat. However, the reverse is also true: merely protecting the habitat of a species when its individuals are simultaneously outlawed and exposed to trapping, killing or other destruction is not sufficient either.

The is that both types of protection - 'passive' and 'active' - in order to protect a species worthy of protection in an adequate way."

Accordingly, the Flemish Region's contention, now in claims, that taking species conservation measures or establishing species protection programmes would only an option, given the wording of Article 24 of the Species Decree ("... the minister... may..."), must be highly qualified, since the government is in any case obliged to reasonably take all measures to maintain or restore seriously endangered species, such as the wild hamster, to a good state conservation. As a matter of fact, the article-by-article explanation of the report to the Flemish government also explicitly clarifies that the regulator's intention with Article 24 of the Species Decree was precisely to create a legal point of reference for active species policy.

Accordingly, the court follows the plaintiffs' position that there is a conservation and restoration obligation on the Flemish Region to reasonably take the necessary measures that contribute to the restoration of a favourable conservation status of the wild hamster in Flanders, and that this presupposes, among other things, that a sufficiently large and sufficiently suitable habitat must exist and is likely to continue to exist in order to maintain populations of this species in the long term.

As cited above, under facts, the Kingdom of Belgium received a letter of formal notice from the European Commission in October 2004 - which, however, did not lead to infringement proceedings before the Court of Justice - in which it referred to several studies on hamster populations to conclude that they were declining steadily, and concluded that the measures by the Belgian authorities in recent years were not sufficient

were to come to achieve a status favourable to the hamster. In doing so, the European Commission also denounced the fact that the management contracts to be signed with farmers from 2005 onwards depended entirely on the willingness of farmers in the zone, and that the intention to purchase land did not seem to be yielding any results because farmers did not want to give up their land.

It is true, as the Flemish Region argues, that an action plan was set up in 2005 to protect the wild hamster in Flanders, more specifically by creating a favourable habitat through the conclusion of - though still - voluntary agreements with farmers and the addition of 60 hamsters per 1'ern area spread over 2 years to genetic diversity, which led to a temporary resurgence of the population.

However, as the Flemish government itself acknowledged in the SBP 2015- 2020, subsequently, 'due to other priorities', no more hamsters were added and measures were less intensively monitored, in a decline in numbers of hamsters in both core areas (possibly exacerbated by a combination of other factors such as very limited genetic fitness, too small a population size, too small an area of suitable habitat, isolation of the areas, predation pressure and climatic influences).

As a result, the former habitats of the wild hamster in Flemish Brabant and Limburg, other than this one in Widooie, disappeared, leaving only a single habitat.

Evidently, no lessons were learned from this, as almost 20 years after the European 's notice of default, when the (extended) SBP 2015-2020 expires in July 2023, obstacles similar to those cited by the European Commission at the time still appeared to stand in the way of strict and adequate protection of the wild hamster in Flanders.

Indeed, the (draft) evaluation report of the 2015-2020 hamster SBP, dated 31 August 2021, again noted that the aspect of farmers' voluntariness/willingness still proved to be an obstacle to the objectives. The latter was also one of the findings of the steering committee, which last met on 6 March, as reflected in the minutes of that meeting (discussed under facts).

It is also true, as the Flemish Region argues, that despite measures were indeed taken in implementation of the 2015-2020 SBP for the hamster, as described above under the facts.

However, the aforementioned evaluation report of the 2015-2020 SBP shows that several concrete objectives were not or insufficiently achieved under this action plan either, such as under

more the conclusion of innovative management agreements, preparation of an overall management plan, establishment of sufficient quality habitat and habitat monitoring. Of the necessary 125 ha of habitat to be realised under hamster-friendly management, within the stipulated five years, only 93 ha were realised.

Consequently, on the one hand, the Rechtbank¹ found that measures that were deemed strictly necessary to protect the species (cfr. the European Commission's letter of formal notice), such as abandoning management contracts that depend entirely on the willingness of farmers in the area and ensuring alternative ways of acquiring land if farmers do not wish to give it up, were not , and on the other hand, certain measures, which, according to the scientific available at the time, were considered strictly necessary to ensure the success of the species protection programme, were put forward but subsequently not (fully) implemented.

Not surprisingly, the overall objective of the 2015-2020 SBP, aimed at maintaining or restoring the favourable conservation status of the wild hamster in Flanders, was not .

Nor l'an be disputed that the Flemish Region's hamster policy, characterised by persistent non-committal and insufficiently decisive action as well as laxity, manifestly fails the test of maintaining or restoring the wild hamster to a favourable conservation status and that, as a result, the Flemish Region has manifestly failed in its obligation to take all reasonable steps maintain or restore the wild hamster to a favourable conservation status.

The Steering Group also came to that finding as the report of the meeting on 6 March 2023 unequivocally that *"it cannot currently be shown that Flanders has done everything possible to save species, neither in terms of measures nor (financial) resources"*.

The Flemish Region argues that, after the expiry of the 2015-2020 SBP extended until July 2023, the (then) competent minister ultimately did not opt for a new concrete species protection programme for the wild hamster, but rather for an integrated approach around nature in agricultural areas, thus focusing not only on the hamster but also on other species. The 's ver'laring on this in the Flemish 's Environment Committee on 19 September 2023 was quoted above, when setting out the facts.

However, the court can only note that the integrated programme for field fauna, which, according to the (former) competent minister, was supposed to be ready by spring 2024, now a year ago, still does not appear to in place.

The Flemish Region does not provide any enl'el explanation on this, nor on whether the emergency measures, which the minister concerned had also announced, have now been taken and implemented (and what they are exactly), this while it not in dispute that the number of hamster settlements - at the end of 2022, there were only a dozen hamster settlements left on the core plots with a management agreement - and thus the population of wild hamsters in Widooie continues to decline for the time being.

In these circumstances, it can be assumed that concrete and specific protection measures under which the wild hamster is strictly protected in its (perennial) habitat in Flanders, as required by Article 12(1)(d) of the Habitats Directive, are still not applied to date.

On the basis of the foregoing, the court concludes that the Flemish Region has manifestly not complied, and as yet does not appear to be complying, with its obligation to maintain and/or restore the wild hamster in Flanders to a favourable status, and that through the aforementioned laxity and its persistently non-committal and insufficiently decisive policy, the Flemish Region has also breached the principle of due care and the principle of reasonableness, which are a concretisation of the general standard of due care with regard to the administration. After all, a normally far-sighted and prudent government may be expected to take, and then continue to take all reasonable measures that, according to the (scientific) insights prevailing at the time, are deemed strictly necessary to protect a seriously endangered species.

Consequently, is also established that the Flemish Region acted wrongfully within the meaning of Articles 1382 and 1383 of the old Civil Code. The plaintiffs' claim is well-founded on this point.

Claimants further argue that the Flemish Region has also violated the stondesti// principle, as contained in Article 23, 4° of the Constitution, in Article 12, 1, d) Habitats Directive as an implicit prohibition of deterioration or 'prohibition of deterioration', as well as in Article 8 of the Nature Decree.

Article 23 of the Constitution reads as follows:

"Everyone has the right to lead a dignified life. To this end, the law, decree or rule referred to in Article 134 guarantee, taking into account the corresponding duties, economic, social and cultural rights, the conditions for the exercise of which they define. These rights include, in particular:

(...)

4° the right to the protection of a healthy environment;

(...)".

Article 8 of the Nature Decree reads:

"The Flemish government shall take all necessary measures to supplement existing regulations in order to safeguard over the entire territory of the Flemish Region the environmental quality required for conservation and to apply the standstill principle both in terms of the quality and quantity of nature. This standstill principle is also applicable after the expiry of the term of each management plan when the realisation of the management objectives and measures of a nature management plan as mentioned in Article 16 of the Nature Decree or the implementation of the management plans under or in implementation of this decree or the Forest Decree of 13 June 1990, leads to a higher nature quality."

According to the plaintiffs, the infringement consists in the fact that the Flemish Region did not take the required measures to prevent the number of wild hamsters in Flanders and the species' habitat from declining from the legally relevant date, i.e. the entry into force of the Habitats Directive in 1994, at least in comparison with the 1995 reference situation (four hamster core areas), with the Flemish Region failing to demonstrate that the species' decline was due to external circumstances over which active species protection measures would have no control. The fact that the 2015-2020 SPA was limited to the only remaining habitat at Widooie also violates the standstill principle, according to the plaintiffs, as it was the Region's duty to safeguard environmental quality - and thus also the hamster - over the entire territory of the Flemish Region, and thus also in the former habitats.

In doing so, plaintiffs also denounce the fact that, in the recent Agricultural Agreement, the Flemish Region has committed not to acquire land in (reconfirmed) agricultural areas, thus making the main pillar of its recovery policy, namely the development of a hamster core area under its own, impossible and causing the hamster's further decline, in violation of the 'deterioration ban'.

Article 23 of the Constitution has no "direct effect" and consequently does not confer subjective rights on individual citizens, but it does contain a standstill obligation that prevents the competent legislature (and regulator) from substantially reducing the level of protection by applicable law without reasonable justification (see GwH 27 April 2023, judgment no 69/2023).

Similarly, Article 23 of the Constitution prohibits the competent public authority, in the absence of reasons of public interest, from taking measures that would significantly impair the rights guaranteed in that article, but it does not deny the authority the power to judge how that right is most adequately guaranteed (see Cass. 8 February 2018, AR C.15.0537.N).

Whether there is deterioration is not judged by the current *state* of the environment, but rather the level of protection provided by current *regulations*.

Well, the courtbanl' that the regulations enacted by the Flemish Region generally provide a level of protection consistent with its international law obligations to restore the wild hamster to a favourable conservation status, so that the standsti// obligation has not been breached on this point.

Furthermore, the general principles of environmental law, including the standsti// obligation or the *standstill* principle, do serve as guidelines for the government in the exercise of its discretionary power of assessment, which was thus explicitly included in article 8 of the Nature Decree (see also ool' the Explanatory Memorandum to the Nature Decree, *Parl St. VI. Part. 1996-97, stul' 690, no. 1, p. 7*).

It has already been held above that the Flemish Region has, by the concrete actions it has taken - or not taken - apparently tel'ort complied with its obligation to maintain or restore the wild hamster to a 'favourable status'. However, this does not mean that the Flemish Region could obliged, by way of restoration of rights, to restore the wild hamster in Flanders, in terms of population size and habitat, to the *actual situation* as it was in 1994 or 2005.

After all, the obligations under the Habitats Directive do not extend so far that the government would be obliged to take the necessary protection measures even in former hamsterl'ern areas, where no hamster burrows have been found for a long time. The touchstone is and remains the favourable conservation status of the hamster, it is up to the Flemish Region to protect the current habitat and to decide afterwards which (additional) habitats will eventually be (re)established with a view to the survival of the .

Consequently, by choosing to limit the 2015-2020 SBP to the only habitat where hamster nests were still found since 2013, namely at Widooie, and to protect and strengthen, in a first phase, the population and its habitat existing there, the Flemish Region did not, in the court's opinion, take a manifestly unreasonable policy decision, even in light of the fundÊi// obligation, does not alter the fact that urgent action is needed to further decline of the wild hamster in Flanders.

The plaintiffs' claim is unfounded on this point.

3.2.4. Damages and causation

Based on what was set out above, the rechtbank is of the opinion that the government's negligent, careless and inadequate conservation policy helped bring about, or at least perpetuated, the unfavourable state of the wild hamster in Flanders - on the verge of extinction.

The causal link between the errors found and the ecological damage so described has been proved.

3.2.4.1. Moral damages

The plaintiffs claim damages, which they specifically estimate at EUR 10,000 each for the moral damage they have suffered as a consequence/impact of the aforementioned ecological damage. They base this concrete damage estimate :

- their statutory objectives, being, for Vogelbescherming Vlaanderen vzw, among others, the protection and conservation of wild fauna and their habitats and the reduction of the causes of the reduction and/or extinction of wildlife species and, for Dryade vzw, the conservation and improvement of ;
- their efforts to encourage the relevant minister to take better recovery and conservation measures with regard to the hamster;
- the seriousness of the environmental damage, in particular the (functional) extinction of a species strictly protected under EU law as well as threatened with extinction.

The court finds that both , established in 2002 and 2021 respectively, have included the objectives in their statutes and have indeed made efforts to persuade the minister to urgently concrete, effective restoration and protection measures, going beyond voluntariness, in order to strictly protect the wild hamster, being a species threatened with extinction in Flanders, which also benefits other 'field species' such as the partridge and the hare, among others.

In the court's opinion, the plaintiffs suffered moral damages as a result of the Flemish Region's negligent and insufficiently decisive protection policy with regard to the wild hamster, which - based on the parameters they cited - can be specifically estimated at 2,500 for each of them.

3.2.4.2. *Recovery in kind*

In order to prevent further future and certain damage, the plaintiffs ask the court to also order the Flemish Region to take specific restoration and protection measures so that the following objectives can be in the current and former hamster core areas within a period of five (5) years:

- a minimum population size of at least 1,000 hamsters during an autumn census on a well-managed hamster territory of at least 600 hectares, consisting of at least 150 hectares (i.e. 25%) of core areas under the Flemish government's own management and residual hamster-friendly habitat around these core areas for which management agreements are concluded, or
- population and area targets set by a court-appointed research institute, such as the INBO.

The claimants also ask the court to oblige the Flemish Region to repeal or revise the measures in the Agricultural Agreement regarding the non-purchase of (i) land in reconfirmed agricultural area and agricultural area reconfirmed in RUPs for non-agricultural purposes and (ii) land located in agricultural area (not located in reconfirmed agricultural area) so that they are at least compatible with conservation and restoration obligations towards the hamster.

The Flemish Region rightly notes that it is not for the court to put itself in its place and concretely outline the future policy regarding the wild hamster in Flanders.

Indeed, the court should refrain from issuing policy measures itself, as this task was entrusted to the legislative and executive branches of government, which are subject to direct democratic control and, with a supporting apparatus and the consultation of interest groups, can arrive at a socially broad-based decision.

This does not, however, prevent the court from ordering the Flemish Region, in view of the faults found, to order reparation in kind for damage already suffered and to issue measures to put an end to the damage-well'ing situation, without, admittedly, depriving the Flemish Region of its freedom of policy and itself for the administration, and thus without restricting the Flemish Region in the precise choice of measures (see also Cass. 26 June 1980, Cass. 4 September 2014, Cass. 12 March 2020), as long as they meet its obligation to maintain or restore the favourable conservation status of the wild hamster.

It is not in that view that the plaintiffs formulate their claim against the Flemish Region in such a way that they ask the court to impose the order to take specific measures, without depriving the Flemish Region of the freedom to determine the concrete measures, as long as they meet population and area targets that, according to the plaintiffs, guarantee that the hamster species in Flanders can be brought a favourable conservation status.

The claimants rightly argue that a favourable conservation status for the wild hamster can only be achieved if a minimum population size and a minimum area of habitat (with crops favourable to the hamster) are . This need was also mentioned as such in the SBP 2015-2020, which however also mentioned the need to invest in improving the genetic fitness of the species and in increasing the numbers present to achieve a sustainable population.

The concrete population and area targets proposed by claimants are based on researchers' findings, as reflected in the evaluation report 'Evaluation of 25 years of hamster protection and policy', which INBO published in 2023, commissioned by the Dutch province of Limburg and the competent ministry.

However, unlike the proceedings conducted in the Netherlands before the court in The Hague - where the parties agreed that the content of the measures to be taken should follow the recommendations of the so-called Alterra report - there is no consensus in the present proceedings to transpose the findings of the aforementioned INBO report to the situation in Flanders, insofar as this would be feasible in practice at all. For instance, in the limited context of these proceedings, the court has no insight into the area of potential available habitat. Consequently, in these circumstances, it is also not open to the court to impose on the Flemish Region the concrete population and surface targets claimed by the plaintiffs.

Moreover, the Rechtbank considers that it would also deprive the Flemish Region of its policy freedom by itself appointing a research institute, such as INBO, to set population and surface area targets with which the recovery and protection measures to be taken by the Flemish Region must then comply.

Consequently, the rechtbank the plaintiffs' claims regarding the injunctions to be imposed on the Flemish Region, and there is also no reason to a penalty.

Of course, the above does not alter the fact that it follows from the infringements identified above that the Flemish Region should take urgent (not non-binding) measures to restore the wild hamster a favourable conservation status in Flanders, which

implies, among other things, that the Flemish Region must provide a minimum area of suitable habitat with hamster-friendly crops and a sufficiently large hamster population.

For the sake of completeness, the Court also pointed out that it had already ruled that any obligation to restore the hamster could not be extended to the actual situation as it was in 1994 or 2005, and therefore not to the *former* hamster core areas either, which does not alter the fact that the Flemish Region is obliged to take urgent and necessary measures to prevent further deterioration of the wild hamster in its current habitat in Flanders and to establish additional habitats to the extent necessary for the survival of the species in Flanders.

As to the claim repeal or revise the aforementioned measures from the Agricultural Agreement, the court notes that the plaintiffs do not dispute that this was only a *timelijl'* agreement that until 1 October 2024. Accordingly, this claim is without merit.

3.2.4.3 Reservation for possible future damage

The court grants ' reservation to claims in of any future damages, in order to avoid that the *res judicata* of this judgment would retrospectively mean that plaintiffs would no longer be able to claim damages or reparation in kind for such damages.

4. Court costs

Pursuant to Article 1017(1) of the Judicial Code, every final judgment, even *ex officio*, orders the unsuccessful party to pay the costs, without prejudice to the agreement between the parties, which it may confirm.

Pursuant to Article 1017(4) of the Judicial Code, costs may be apportioned as the court deems advisable when the parties are respectively ruled against on any point of dispute. This is not an obligation and the court sees no reason to do so in this .

Consequently, the court here ordered the Flemish Region to pay the costs of the , whereby the procedural indemnity due to both plaintiffs together should be assessed at the basic amount of EUR 1,020.35 for claims between EUR 2,500.01 and EUR 5,000.00.

5. Provisional implementation

Article 1397, first paragraph of the Judicial Code states:

"Subject to the exceptions provided for by law or unless the court, of its own motion or at the request of one of the parties, orders otherwise by reasoned decision, without prejudice to Article 1414, final judgments shall be provisionally enforceable, notwithstanding appeals and without security if not ordered by the court."

The Flemish Region requests that provisional enforceability be expressly ruled out *"in such contested matter, given the discretionary power of the Flemish Region and the far-reaching nature of the claims asserted by the plaintiff parties"*.

The court does not find the arguments put forward by the Flemish Region to exclude enforceability convincing. After all, all matters to be decided by a court are, by definition, 'contested', and the mere fact that a government has discretionary power, where appropriate, is no reason to deviate from the general rule of enforceability of a judgment providing judicial redress for shortcomings of that same government in the exercise of that discretionary power. Moreover, in this judgment, the court the plaintiffs' claims only in part.

Consequently, the court the Flemish Regions request.

6. Court decision

The court gives judgment at first instance, in an adversarial fashion.

Declares the plaintiffs' claim admissible and well-founded to the following extent.

Says for right that the Flemish Region, with its species protection policy with regard to the wild hamster in Flanders, breached its conservation and restoration obligation arising from Article 51 of the Nature Decree and Articles 10, 14 and 24 of the Species Decree - read together with and interpreted in the light of article 12(1)(b) and (d)(j) Article, 1(i), Article 2(2) of the Habitats Directive and Articles 2 and 3 of the Bern Convention, as well as the principles of due care and reasonableness as general principles of proper administration, violated the Habitats Directive and thereby committed an error within the meaning of Articles 1382 and 1383 of the former Civil Code, from which it follows that the Flemish Region must take the necessary measures to the wild hamster in Flanders to a favourable conservation status.

Orders the Flemish Region to pay each of the damages of 2,500, plus compensatory at the legal interest rate from the date of summons to the date of judgment, and then default interest at the legal interest rate until the date of in full.

Grants reservation claims for any future damages.

Order the Flemish Region to pay the costs of the proceedings.

Consequently, orders the Flemish Region to pay following amounts to the plaintiffs:

- EUR 292.79 (summons costs including budget fund contribution legal second-line assistance)
- EUR 1,020.35 (court fees) for both claimants together.

Establishes the role fees budgeted at 165 to be by the Flemish Region, which is exempt from the role fees due in accordance with Article 161, 1° bis *in conjunction with* Article 279 of the Registration, Mortgage and Court Fees Code.

Rejects parties from otherwise and/or more advanced.

Thus pronounced at the public hearing of the 3rd Chamber of the Dutch-speaking Court of First Instance Brussels, on 28 April 2025,

where present and seated were : Ms K.

Vereist, judge,

Ms T. Couck, Registrar.

COuCI'

Required