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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee
20th meeting

Strasbourg, 27 November – 1 December 2000

Specific file

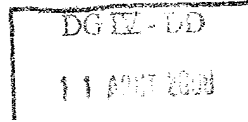
Conservation of the hamster
(*Cricetus cricetus*) in the Netherlands

Reports

by the Badger to Bear Foundation
by Professor Stubbe (presented by Das & Boom)
by Stichting Dassenwerkgroep Limburg

Badger to Bear Foundation*Established 1992*

Concerns: *Cricetus cricetus* in the
Netherlands
to: Council of Europe DG IV, EFG/ee



your reference: Mr. E. Fernandez-Galiano
F-67075 Strasbourg Cedex
France

our reference: cr-hjk-03

Date: 4 August 2000

AANGETEKEND

Dear mr Fernandez-Galiano,

On April 9th we informed you of the entirely inadequate protection of the hamster (*Cricetus cricetus*) in the Netherlands (reference al-hjk-72). During the 1911 meeting (December 1999) the Standing Committee decided to open a case file on the conservation of the hamster in the Netherlands and also adopted Recommendation No.79 on the protection of the common hamster in Europe. This recommends that the Netherlands, as well as the other countries in which the hamster population is threatened, continue their efforts to improve the conservation status of the hamster and implement the existing action plans. It also recommends the Netherlands to ensure an even distribution of interconnected hamster reserves across the whole of the former hamster distribution area and keep the reserves and connecting corridors in sustainable order and to cooperate with Germany and Belgium on this matter. Anticipating the discussion of agenda item 6 of the 20th meeting of the Standing Committee of the Bern Convention (case file *Cricetus cricetus* in the Netherlands) we wish to inform you by means of this letter of the progress of the hamster protection policy in the Netherlands.

Since our previous letter of the 9th of April a lot has happened regarding the hamster in the Netherlands. The major developments are:

- the start of a breeding programme in May 1999;
- the presentation in September 1999 of the 'Beschermingsplan Hamster 2000-2004' (2000-2004 hamster Protection Plan) by the Ministry of Agriculture, Nature Conservation, and Fisheries;
- during the spring census in May 2000 by Bureau Natuurbalans, by order of the Ministry of Agriculture, Nature Conservation, and Fisheries, a total of only three inhabited hamster burrows were found. These three hamster burrows were all found at one location (near Maastricht).

The 2000-2004 Hamster Protection Plan In the 2000-2004 Hamster Protection Plan, which is (provided it is carried out properly) rated positively by us, an action plan including future objectives has been included in Chapter 7. This action plan distinguishes 42 measures. Four of these measures are of crucial importance to make a success of the protection plan. In this letter we chiefly wish to comment on the state of affairs regarding those measures (measure 14, 15, 16 and 17). We also wish to point out in short the measures 4-10 that concern the breeding and reintroduction programme. For the description of the specialist terms used below we for brevity's sake refer to the Hamster Protection Plan. We assume that you have received this plan from the Dutch government. As an Appendix to our letter please find a letter (including English translation) from the 'Dienst Landelijk Gebied', the government service agency of the Ministry of Agriculture, Nature Conservation, and Fisheries who are supervising measures 15-17.

Progress measures 14, 15, 16 and 17

Measures 14, 15, 16 and 17 all four regard the purchase and management of eleven so-called core hamster habitats. These core habitats (indicated on the map in the Hamster Protection Plan) should form the essential basis for the survival of the hamster in the Netherlands. Below we shall explain that the present state of affairs provides little hope for a successful progress of the hamster protection policy.

Measure 14: Fitting in of the hamster management package for 500 hectares of core habitat into the Management Programme; and measure 16: Fitting in of the management agreements for the purchase of 150 hectares into the Management Programme The Management Programme is the legal basis for the management agreements with landowners for the benefit of nature. To date the hamster management package has not been included in this. As a result not a single management agreement has been closed for the hamster. As an emergency measure some management agreements were closed in 1999 for the duration of one year. One-year agreements, however, are clearly not permanent and offer insufficient guarantees to the landowners.

Measure 15: Purchase of 150 hectares for core habitats

The supervisor of this measure (Dienst Landelijk Gebied) announces in its letter of 4 May 2000 (see Appendix 1) that it is impossible to obtain land within the core habitats of the hamster. As a result nothing positive can be expected from the present measures. The conclusion of DLG is clear: ***"the policy objective described in the Hamster protection plan of obtaining 150 ha reservation for the hamster in the coming five years is unfeasible"***.

Measure 17.. Closing hamster management agreements for at least 350 hectares

To date the progress of this measure is not in the least hopeful. The Ministry of Agriculture, Nature Conservation, and Fisheries has organised various information meetings for farmers. During these meetings the willingness among farmers to close management agreements in accordance with the Hamster Protection Plan (Appendix 2 of the protection plan) appeared to be very slender. In the press too agriculture organisations have expressed themselves negatively with regard to the hamster management packages from the Protection Plan. As the agreements can only be effected on a voluntary basis it is unlikely that a positive result can be realised in the short term. The supervisor of this measure (Dienst Landelijk Gebied) writes in the above-mentioned letter of 4 May 2000 (see Appendix 1) that no agreements can be closed because the hamster package is still not included in the Management Programme (also see above: Measure 14 and 16). To date this is still the case.

Consequences of the lacking long-term managed core habitat

A major instrument for the survival of the hamster in the Netherlands is reintroduction (Measures 410 of the Hamster Protection Plan). The conclusion of the earlier mentioned spring census has again confirmed that both the breeding programme and the reintroduction of the hamsters are of crucial importance for the survival of this species in the Netherlands. Without a guaranteed long-term managed core habitat reintroduction is, however, irresponsible. The breeding programme has meanwhile produced five litters of young, so that it is expected that there will be enough animals to release in the spring of 2001. For the reintroduction programme to be a success it is essential that a suitable location in which to release the animals is purchased and prepared this year. Without such a location the breeding programme will get into serious difficulties.

Cooperation between the Netherlands, Belgium and Germany in the breeding programme Recommendation 79 mentions "the possible subspecies of the west European common hamster". Tentative results of DNA-research confirm this suspicion of a subspecies on Dutch, Belgian and western German territory. During the 19th meeting of the Standing Committee the Belgian and German delegations raised the alarm with regard to the situation of the hamster in their country. In the meantime there is no apparent reason to assume that developments in the remaining hamster populations in Belgian and western Germany are any more positive than those in the Netherlands. The fifteen hamsters that form the basis of the breeding programme were captured on the only location where hamsters still occurred in the Netherlands and show external characteristics that suggest a far-reaching form of inbreeding. Today there are twelve of the fifteen 'original' hamsters alive and five litters of young are born. For the breeding programme to be a success and to preserve this subspecies of hamster, genetic material from Belgium and western Germany is of vital importance. Last year the Belgian and German delegations indicated that they were prepared to cooperate in the breeding programme (see Report 19th meeting). In view of the critical situation of the hamster in Belgium and Germany immediate action is needed. It is a cause for great concern to us that until now neither Germany nor Belgium have actively participated in the breeding programme.

Conclusion

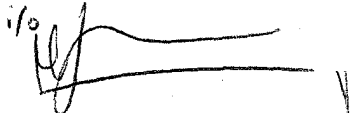
The conclusion to be drawn with regard to the developments in the hamster protection policy are clear and extremely worrying. There are no possibilities to acquire core habitats. Further it has been impossible to date to close management agreements with farmers in accordance with the Hamster Protection Plan. The lack in long-term managed core habitats will at the very least lead to serious delays in the implementation of the Hamster Protection Plan. Finally, the developments with regard to the breeding programme are highly alarming, as neither Germany nor Belgium has to date assumed an active role in the programme.

We trust we have sufficiently informed you.

Yours sincerely,
Badger to Bear Foundation,
Organisation for the protection of threatened species and their natural habitat in Europe,

J.J. Dirkmaat (chairman)

Drs H. Derckx secretary).

A handwritten signature in black ink, appearing to be 'J.J. Dirkmaat', with a horizontal line drawn through it.

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Netherlands

English translation of the letter from Dienst Landelijk Gebied (government service agency) sent to the Ministry of Agriculture, Nature and Fishery, dated 4 May 2000.

to: LNV Zuid
Mr L. Wijlaars
PO Box 6111
5600 HC Eindhoven

concerns	your reference	our reference	date
Progress DLG-actions		AP/FH 25842	
04-05-2000			
2000-2004 Hamster			
Protection Plan			

Dear Mr Wijlaars,

By means of this letter I wish to inform you regarding the present state of affairs of a number of measures that are mentioned in the Hamster Protection plan 2000-2004, in which the 'Dienst Landelijk Gebied' (DLG) is mentioned as supervisor. The action items/measures are described in Chapter 7, Paragraph 2 of this protection plan.

Action items 16 and 17 describe the role of DLG as supervisor to ensure that agreements are closed for 150 hectares of reservation territory and 350 hectares of management area. The budgetary sources are the Nature Conservation Scheme and the Agricultural Nature Conservation Scheme, both part of the so called Management Programme. Before being able to make use of this budget a package that prescribes a hamster friendly management should form part of the Management Programme. To date this is not the case. As a result no orders to ensure a hamster friendly management programme can be issued yet by LASER. In the execution of the subsidy scheme for Agricultural Nature Conservation and the subsidy scheme for Nature Conservation, the DLG has a testing role. The present situation also means that the acquisition to bring in new participants carried out in the past by DLG is cancelled. Consequently no action can be expected by the DLG for the acquisition of the 350 management hectares.

Though for this year on the basis of agreements with your directorate an emergency measures project hamster 2000 is being executed, in which DLG in anticipation of a package in Management Programme has taken care of the acquisition. For the emergency measures project hamster 1999 an evaluation has been carried out. This contains the account of actions carried out by DLG and also contains a number of experiences that have been brought forward in this project.

Action item 15 describes the purchase of 150 hectares of reservation territory by DLG. In the autumn of 1999 DLG together with nature conservation organisation 'Natuurmonumenten' carried out a study into the purchasing possibilities within the core areas of Heer and Amby. This study indicated that within the two mentioned core areas there were at that time no purchasing possibilities.

The DLG will during the coming years if land becomes available for purchase within the hamster core area, take action. The DLG will not undertake any supplementary inventories of purchasing possibilities in other core areas. No agreements for this have been made within

the framework of the present arrangements between the DLG and the Province of Limburg. It is also expected that the realistic possibilities for purchase within other core areas, given the present state of the land market in Limburg, will be extremely limited. This makes the policy objective described in the Hamster protection plan of obtaining a 150 ha reservation for the hamster in the coming five years unfeasible.

I request you, as secretary of 'Hamster Overleg Limburg' (hamster deliberation Limburg, HOL), to take note of the above. I also request you to place this information on the agenda of the next HOL meeting.

Yours sincerely,

Ir. CM. la Chapelle
Account manager DLG-Limburg

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HOL 7.5.00

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t.a.v. de heer L. Wijlaars
Postbus 6111
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uw brief van	uw kenmerk	ons kenmerk AP-FH 25842	datum 04-05-2000
Onderwerp bijlagen		doorkiesnummer	

Voortgang DLG acties Soortbeschermingsplan hamster 2000- 2004	356801	2
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Geachte heer Wijlaars,

Middels deze brief wil ik u informeren over stand van zaken van een aantal maatregelen die genoemd staan in het Beschermingsplan Hamster 2000-2004, waarbij de Dienst Landelijk Gebied genoemd staat als uitvoerder. De actiepunten 1 maatregelen staan beschreven in hoofdstuk 7 paragraaf 2 van dit beschermingsplan.

Actiepunt 16 en 17 beschrijft de actie van DLG om als uitvoerder zorg er voor te dragen dat er voor 150 hectare reservaatgebied en 350 hectare beheersgebied overeenkomsten worden gesloten. Het budget is afkomstig vanuit resp. de Regeling Natuurbeheer c.q. de Regeling Agrarisch Natuurbeheer, beiden onderdeel van Programma Beheer. Alvorens gebruik te kunnen maken van dit budget dient een pakket dat een hamstervriendelijkbeheer voorschrijft onderdeel uit te maken van Programma Beheer. Tot op dit moment is dat niet het geval. Daardoor kunnen op dit moment nog geen beschikkingen voor hamstervriendelijkbeheer door LASER worden afgegeven. Bij de uitvoering van de Subsidieregeling Agrarisch Natuurbeheer en de Subsidieregeling Natuurbeheer heeft de DLG een toetsende rot. Dit betekent tevens dat de acquisitie die DLG in verleden verrichtte, voor het werven van deelnemers komt te vervallen. Hiermee is er geen actieve acquisitie van DLG voor de invulling van de 350 beheershectaren te verwachten.

Wel is voor dit jaar op basis afspraken met uw directie een project noodmaatregelen hamster 2000 in uitvoering, waarbij DLG vooruitlopend op een pakket in Programma Beheer de acquisitie heeft verzorgd. Voor het project noodmaatregelen hamster 1999 is een evaluatie uitgevoerd. Deze bevat de verantwoording van de door DLG uitgevoerde activiteiten en bevat tevens een aantal ervaringen die in dit project naar voren zijn gebracht. De evaluatie over 1999 treft u aan in bijlage 1.



Datum	Kenmerk	Vervolgblad
04-05-2000	AP/FH	2

Actiepunt 15 beschrijft de aankoop van 150 hectare reservaatgebied door DLG. In het najaar van 1999 heeft DLG samen met Natuurmonumenten een onderzoek gedaan naar de aankoopmogelijkheden binnen de kerngebieden Beer an Amby. Dit onderzoek gaf aan dat er binnen de twee genoemde kerngebieden op dat moment geen aankoopmogelijkheden waren. Een afschrift van deze evaluatie treft u aan in bijlage 2.

Voor de komende jaren geldt dat DLG - indien zich aankoopmogelijkheden in een hamster-kerngebied voordoen- hierop nadrukkelijk zal ingaan. DLG verricht geen aanvullende inventarisaties omtrent aankoopmogelijkheden in de andere kerngebieden. Hiertoe zijn geen afspraken gemaakt in het kader van de prestatie-afpraak zoals door DLG met Provincie Limburg overeengekomen. Overigens wordt ook verwacht dat de reële aankoopmogelijkheden in de andere hamsterkerngebieden, gegeven de huidige grondmarkt in Limburg, uiterst beperkt zullen zijn. Dit maakt de in het beschermingsplan Hamster beschreven beleidsdoelstelling om de komende 5 jaar 150 ha reservaat ten behoeve van de hamster te verwerven niet realiseerbaar.

Ik verzoek U, als secretaris van het Hamster Overleg Limburg (HOL) van bovenstaande kennis te nemen. Tevens verzoek ik u om deze informatie te agenderen op de eerstvolgende vergadering van het HOL.

Met vriendelijke groet,

Ir. C.M. Chapelle

Accountmanager DLG-Limburg

REPORT BY PROFESSOR STUBBE

Subject: Hamster Report Professor Stubbe

Reference: Your fax of August 4th 2000

Dear Mr Knot,

In reply to your request I enclose a copy of the research report with regard to the hamster population in the area between Heerlen and Aachen where a cross-border trading estate has been planned. This report has been drawn up by order of the Commission by Professor Doctor Michael Stubbe (Arbeitsgruppe Tierökologie, Institut für Zoologie und der Martin-Luther-Universität Halle-Wittenberg). The title of the report is 'Status und Massnahmen zum Fortbestand der Hamsterpopulation im deutsch-niederländischen Grenzgebiet Aachen-Heerlen'. The Commission received the report about two months ago. The report has been drawn up within the framework of case A 1998/2016 versus the Netherlands. The Commission is currently examining the report and has not yet taken a standpoint regarding the issue.

The research is chiefly aimed at the factual situation of the hamster population in the Heerlen-Aachen area, whereby particular attention has been paid to the question as to which causes have led to the strong decline in the population and to compensatory measures that are necessary to save this population.

In his report Mr Stubbe has reached the following conclusions.

- (1) The hamster population in the Horbacher Börde area forms part of the three moor hamster populations in Nordrhein-Westfalen. The industrial area Heerlen-Aachen has been planned in the core area of this population where the soil conditions for the survival of the population is the most favourable.
- (2) Until about 1998 another hamster population lived in a favourable state of preservation in the Horbacher Börde area. The area should still be regarded as extremely important for the survival of the population. Hamsters that have fled to surrounding areas will soon return to the Horbacher-Börde if the right actions are taken. The hamster population will then recover in that area in a favourable state of preservation.
- (3) The report mentions agricultural practices (such as deep ploughing and fertilisation) and the already commenced activities for the construction of the trading estate as the chief causes for the decline in the hamster population in the Horbacher-Börde.
- (4) The compensatory measures that have been taken so far, are insufficient to recover the hamster population in a favourable state of preservation in its natural habitat. The measures should lead to a good result before the habitat in the Heerlen-Aachen region is allowed to be destroyed.

The Commission has the opinion that the report contains important information for the settlement of case A 1998/2016. This is why the Commission has decided that this information should also be made available to the Dutch and German authorities as well as the complainants in this case.

The research report only states the opinion of the independent expert Mr Stubbe and not the opinion of the Commission. The Commission is in no-way bound by the report. As mentioned above, the Commission has not yet decided how to continue case A 1998/2016 as it is still in the process of examining the report. Finally the Commission points out that reproduction or circulation of the report or parts of this for commercial ends is not allowed without prior permission.

Yours sincerely,

G. KREMLIS

EUROPESE COMMISSIE

INGEKOMEN 22 AUG 2000

DIRECTORAAT-GENERAAL

MILIEUZAKEN

Directoraat B-

ENV.B.3 - Juridische aspecten wetgeving en loepassing van het gemeenschapsrecht

Brussel

D(O)432440

Betreft: rapport Prof. Stubbe hamsters

Kenmerk: Uw fax van 4 augustus 2000

Geachte heer Knot,

In antwoord op Uw desbetreffende verzoek zend ik U een kopie toe van het onderzoeksrapport inzake de hamsterpopulatie in het gebied tussen Heerlen en Aken waar een grensoverschrijdend bedrijventerrein is gepland. Dit rapport is in opdracht van de Commissie opgesteld door Prof Dr. Michael Stubbe (Arbeitsgruppe Tierökologie Institut für Zoologie an der Martin-Luther-Universität Halle-Wittenberg. De titel van het rapport is 'Status und Massnahmen zum Fortbestand der Hemsterpopulation im deutschniederländischen Grenzgebiet Aachen-Heerlen'. De Commissie heeft het rapport ongeveer twee maanden geleden ontvangen. Het rapport is opgesteld in het kader van zaak A 1998/2016 tegen Nederland. De Commissie bestudeert het rapport en heeft ter zake nog geen standpunt ingenomen

Het onderzoek is met name gericht op de feitelijke situatie waarin de hamsterpopulatie in het gebied Heerlen-Aken verkeert, waarbij in het bijzonder aandacht is besteed aan de vraag welke oorzaken ertoe hebben geleid dat deze populatie sterk is teruggelopen en aan de compensatiemaatregelen die nodig zijn om deze populatie te redden.

De heer Stubbe komt in zijn rapport tot onder meer de volgende conclusies.

(1) De hamsterpopulatie in het gebied Horbacher Börde behoort tot de drie belangrijkste hamsterpopulaties in Nordrhein-Westfalen. Het industriegebied Heerlen-Aken is gepland in het kerngebied van deze populatie, waar de bodemgesteldheid voor het voortbestaan van de populatie het gunstigst is.

(2) Tot ongeveer 1998 kwam in het gebied Horbacher Börde nog een hamsterpopulatie in een gunstige staat van instandhouding voor. Het gebied moet voor het behoud van de populatie nog steeds als zeer belangrijk worden aangemerkt. Hamsters die naar omliggende gebieden zijn uitgeweken, zullen spoedig naar de Horbacher Börde terugkeren indien de juiste maatregelen worden getroffen. De hamsterpopulatie zal zich dan in dat gebied in een gunstige staat van instandhouding herstellen.

(3) In het rapport worden landbouwpraktijken (zoals diepploegen en bemesting) en de reeds aangevangen werkzaamheden ten behoeve van de aanleg van het bedrijventerrein als voornaamste oorzaken genoemd voor de achteruitgang van de hamsterpopulatie in het gebied Horbacher Börde

(4) De compensatiemaatregelen die tot dusver zijn getroffen, zijn onvoldoende om de hamsterpopulatie in een gunstige staat van instandhouding in haar natuurlijke

verspreidingsgebied te herstellen. De maatregelen moeten tot een goed resultaat leiden voordat de habitat in het gebied Heerlen-Aken mag worden vernietigd

De Commissie is van mening dat het rapport belangrijke informatie bevat voor de afhandeling van zaak A 1998/2016. Daarom heeft zij gemeend deze informatie ook ter beschikking te moeten stellen van de Nederlandse en Duitse autoriteiten en de klagers in deze zaak.

Het onderzoeksrapport geeft slechts de mening van de onafhandelijke deskundige de heer Stubbe weer en niet de mening van de Commissie. De Commissie is op generlei wijze aan het rapport gebonden. Zoals gezegd heeft de Commissie nog niet besloten hoe zij zaak A 1998/2016 zal voortzetten aangezien zij het rapport nog bestudeert. Tenslotte wijst de Commissie er op dat reproductie of verspreiding van het rapport of onderdelen ervan voor commerciële doeleinden zonder haar voorafgaande toestemming niet is toegestaan.

Met bijzondere hoogachting,

G. KREMLIS

Stichting Dassenwerkgroep Limburg

Secretariaat : Eykerstraat 42, 6269 BN Margraten. Telefoon : 043-4581330.

Council of Europe
Standing Committee
Convention on the Conservation of European Wildlife and Natural Habitats
Mr E. Fernandez - Galiano
F-67075 Strasbourg Cedex
France

Margraten, 27th November 1999

Re: Complaint about the nonobservance of the Convention of Bern by the member state of The Netherlands.

Dear Mr Fernandez - Galiano,

In view of the 19th meeting of the Standing Committee the Stichting Hamsterwerkgroep Limburg and the Stichting Dassenwerkgroep Limburg wish to draw your attention to the fact that, in our firm conviction, the Dutch government and the Dutch judicial authorities neglect their obligations resulting from the Convention of Bern, which The Netherlands was the first to sign.

We would like to do this on the basis of the situation of the hamster population (*Cricetus cricetus* L., 1758) in the border district between the towns of Heerlen (NL) and Aachen (D).

The hamster (*Cricetus cricetus*) is listed in Appendix 11 of the Convention of Bern, under the heading "strictly protected fauna species".

Limburg is the only province in the Netherlands where from times immemorial hamsters have been found. Frequent inspection in the province of Limburg in the nineties has shown that the hamster population is doing badly.

Hence the conclusion: if no prompt action is taken the hamster in Limburg will be threatened with extinction.

Close collaboration of the Stichting Hamsterwerkgroep Limburg with research scientists from other countries, united in the Internationale Arbeitsgruppe Feldhamster, shows that the situation in Nordrhein-Westfalen is equally dramatic. It also appears that between the rivers Meuse and Rhine there are only **five** core populations, **one** of which is in the border region between Heerlen and Aachen.



As early as 1992 the Dutch authorities, first of all the local administration of Heerlen, were informed of the presence of this hamster population. In spite of this information the town of Heerlen, together with Aachen, pressed ahead with her plans for a regular industrial estate (*Beitel Zuid*) and a cross border business park (GOB). Initially the presence of the hamster was suppressed by Heerlen, because no investigation into natural values (including the hamster) had been carried out while the plans were being developed.

On the basis of information from the Stichting Dassenwerkgroep Limburg the Environmental Impact Assessments (MER) expected that the development of these industrial areas was bound to have a destructive and irreparable effect on the hamster population in the area.

The protected status of the hamster (based on the Convention of Bern) was not mentioned in the MER, let alone worked out or discussed in its implications for the zoning plans ("bestemmingsplannen"). Only a table written by the Stichting Dassenwerkgroep saying that the hamster falls within the reach of the Convention of Bern was admitted. This table also shows that on the location there are many more animals which, too, come within the scope of the Convention. The MER (GOB) does not spend one single word on these animals either.

Completely in defiance of the Convention of Bern as well as the European FFH guideline the MER committee said in the MER that the disappearance of this hamster population could be compensated for.

The MER committee believed it to be possible to keep and to preserve the hamster population in the planned locations, **of which the habitat of the core population covers an area of about 150 ha**, by creating a compensation area of 42 ha (!!!) in the vicinity of the locations, with access migration routes, "because hamsters will follow behind their food". This resettling process was to be furthered by catching animals and releasing them again in the compensation areas. The requirements for a hamster biotope were completely ignored.

And so Heerlen, basing herself on this MER, uncritically took a positive decision on the projected industrial areas, disregarding the hamster.

Next, our objections against the destructive impact of the plans on the hamster population were declared inadmissible by the government of the province of Limburg. This public body, too, uncritically took a positive decision on the zoning plans without taking the hamster and the Convention of Bern into account. The Convention was not even mentioned in their reasons.

In spite of our heavy protest, including one lodged with the Dutch Council of State, the Dutch authorities (viz. the Minister of Agriculture, Nature Conservancy and Fisheries, abbr. the Minister of LW)) exempted Heerlen on 8th August 1998, thus enabling the realization of the projects.

The exemption contained conditions "for the preservation" of the hamster population, and a "compensation plan" was made. Actually the conditions and regulations in the Exemption come down to a scheme to make the hamster disappear from the planned locations and to force them to move out to the compensation areas, which basically are unsuited for the species.

Hence, in spite of the Convention of Bern and the FFH guideline, the hamster population in the region between Heerlen and Aachen will become extinct. Fields that from an abiotic point of view are most suitable for hamsters are being sacrificed to industry, whereas ??compensation areas" are being made available in which hamsters can barely survive.

Since the exemption date (06-08-98) excavation work and road construction have been in progress. To that end all scenic natural elements important for the survival of the hamster population have been removed systematically.

The present situation of the hamster in the area between Heerlen and Aachen is sad. Work on the infrastructure has decimated the hamster population. However, there are still hamsters there. And they are being threatened continually and systematically. The current sad situation of the hamster can be changed only if the parties concerned take their responsibility within the framework of the European laws and guidelines. But:

The exemption by the Minister of LNV was incorrect itself and is being violated continually. The very same minister has refused, from the moment of the exemption, to maintain the conditions mentioned in the Exemption.

Time and again the Council of State (Raad van State) has tolerated the progress of excavation and road works. The Council constantly gives an incorrect interpretation of the Convention of Bern and of the Flora-, Fauna- and Habitat Guideline (92/43 EEG), using the wrong articles.

The Ministry of LNV as well as the State Council pursue a long term decision policy. Reactions to objections are put off as long as possible and meanwhile the building works go on. They want to create as many accomplished facts as possible, meanwhile causing everincreasing harm to the remainder of the hamster population.

In parts of the area for which the Council of State has already nullified the decisions of the authorities the building work simply goes on. The Council does not attach to her decisions any consequences in line with the regulations imposed by the Convention of Bern and the FFH guide-line. The builders, including NV GOB, work harder and harder, ordered by Heerlen, even in defiance of the decisions of the Raad van State, so as to reach the point of no return as soon as possible, while doing their utmost to eliminate the hamster population as soon as possible. In doing so the authorities hope to prove that the experts paid by them and/or by NV GOB were right when saying that no hamsters could be found and consequently the treaties (including the Convention) are no longer applicable.

No action is taken against violations of the decisions in the recent verdict of the Raad van State, not by or on behalf of the public prosecutor, nor by the Raad van State herself.

In her recent verdict (appendix 2) this highest Dutch court of justice indicates that the two foundations can only refer to the Convention of Bern if it is evident that the Convention has been implemented incorrectly or incompletely, because otherwise only the national legislation is normative.

In prior verdicts the Raad van State already indicated that in her view the international treaties have been implemented fully. We continue to dispute this. In her reasons in the present verdict the Raad van State takes the view that inadequate account has been taken of the Convention of Bern as well as the FFH guideline by the provincial authorities and therefore the decision should not have been taken. For that reason the decision ought to be nullified. But in her decision the nullification does not apply to the whole plan but only to a part of it. Thus as regards the zoning plan the Raad van State gives permission to exterminate the population in the remaining area.

In our view also this verdict completely conflicts with the Convention of Bern. For as a result of this verdict this core population is affected so considerably in its survival that it will

disappear, because in the remaining area it will be isolated. All the more because the population has now considerably been thinned out by the recent building works.

The other species in the above-mentioned zoning plans falling within the reach of the Convention of Bern (Appendix 1) are completely ignored in the procedures by the Dutch authorities and the judicial bodies, as if these species do not exist any longer and so need no longer be taken into account.

If possible, our two foundations would like this letter to be considered as an official complaint to the Standing Committee about the negligence of the Dutch authorities with regard to the Convention of Bern.

Should further information be needed because this letter can be no more than only an outline and an example, we are willing at all times to send to you more detailed information and specific documents.

We have already lodged a complaint with the European Committee in Brussels about the hamster issue and the FFH guideline. This complaint was accepted and led to a letter to the member state of The Netherlands containing a proof of default. In our contacts with the Committee regarding that complaint it became clear to us that the information on the hamster issue sent from The Netherlands to Brussels **was not in every respect consistent with the facts**. We had to send much additional information, even during the procedure. We must make similar observations with regard to Dutch documents we have seen, sent to the Standing Committee (e.g. from the Ministry of LNV and from *Das en Boom* [Badger to Bear Foundation]) and the draft report by Nechay commissioned by the Council of Europe). We will soon notify you of this.

We are looking forward to your speedy reaction about the steps you intend to take to put an end to these practices of the Dutch authorities with regard to the Convention of Bern, in order to achieve the protection for all organisms required in the Convention of Bern.

Yours faithfully,

Stichting Hamsterwerkgroep
Limburg

Stichting Dassenwerkgroep Limburg

Ir.Ed.J. Gubbels

drs.J.M.W. Baars

Appendix 1.
The other species in the above-mentioned zoning plans falling within the reach of the Convention of Bern.

Dutch name	Scientific name	Appendix number.
Bos/Beemdspitsmuis	Sorex araneus/coronatus	3
Das	Meles meles	3
Egel	Erinaceus europaeus	3
Hermelijn	Mustela erminea	3
Huisspitsmuis	Crocidura russula	3
Steenmarter	Martes foina	3
Wezel	Mustela nivalis	3
Watervleermuis	Myotis daubentonii	2
Rosse vleermuis	Nyctalus noctula	2
Gewone dwergvleermuis	Pipistrellus pipistrellus	3
Gewone grootoorvleermuis	Plecotus auritus	2
Baardvleermuis	Myotis mystacinus/brandtii	2
Laatvlieger	Eptesicus serotinus	2
Wespendief	Pernis apivorus	2
Rode wouw	Milvus Milvus	2
Bruine kiekendief	Circus aeruginosus	2
Blauwe kiekendief	Circus cyaneus	2
Grauwe kiekendief	Circus pygargus	2
Sperwer	Accipiter nisus	2
Havik	Accipiter gentilis	2
Buizerd	Buteo buteo	2
Torenvalk	Falco tinnunculus	2
Boomvalk	Falco subbuteo	2
Steenuil	Athene noctua	2
Gierzwaluw	Micropus apus	2
Huiszwaluw	Delichon urbica	2
Boerenzwaluw	Hirundo rustica	2
Witte kwikstaart	Motacilla alba	2
Boompieper	Anthus trivialis	2
Roodkeelpieper	Anthus cervinus	2
Graue klauwier	Lanius collurio	2
Braamsluiper	Sylvia curruca	2
Tuinfluit	Sylvia borin	2
Zwartkop	Sylvia atricapilla	2
Grasmus	Sylvia communis	2
Goudhaan	Regulus regulus	2
Vuurgoudhaan	Regulus ignicapillus	2
Grauwe vliegenvanger	Muscicapa striata	2
Pimpelmees	Parus caeruleus	2
Matkop	Parus montanus	2
Boomkruiper	Certhia brachydactyla	2
Rietgors	Emberiza schoeniclus	2
Geelgors	Emberiza citrinella	2

Apendix 2.

The two relevant pages of the recent verdict by the Raad van State.

Raad
VanState

E01.97.0672.

Datum uitspraak: 26 oktober 1999

AFDELING
BESTUURSRECHTSPRAAK

Uitspraak in het geding tussen:

1. de stichting "Stichting Milieufederatie Limburg", gevestigd te Maastricht, de stichting "Stichting Dassenwerkgroep Limburg", gevestigd te Margraten an de stichting "Stichting Aktiegroep Industrierrein Langveld, gevestigd te Bocholtz, an

2. de vereniging Das & Boom", gevestigd te Seek Ubbergen appellanten

en

gedeputeerde staten van Limburg
verweerders.

E01 -97.0672

een systeem van strikte bescherming van de in bijlage IV, letter a). vermelde diersoorten in hun natuurlijk verspreidingsgebied, waarbij een verbod wordt ingesteld op de beschadiging van of de vernieling van voortplantings- of rustplaatsen. De hamster (*cricetus cricetus*) wordt op deze lijst vermeld.

2.8.10. Artikel 16, eerste lid, van de Habitatrichtlijn bepaalt dat wanneer er geen andere bevredigende oplossing bestaat en op voorwaarde dat de afwijking geen afbreuk doet aan het streven de populaties van de betrokken soort in hun natuurlijke verspreidingsgebied in een gunstige staat van instandhouding te laten voortbestaan, de Lid-Staten in de in dit artikellid nader omschreven gevallen mogen afwijken van het bepaalde in de artikelen 12, 13, 14 en 15, letters a) en b).

2.8.11. Voorzover appellanten sub 1 een beroep doen op schending van artikel 12 eerste lid, aanhef en onder d., van de Habitatrichtlijn. overweegt de Afdeling het volgende.

2.8.12. De hamster is krachtens artikel 22, aanhef en onder b, van de Natuurbeschermingswet, gelezen in samenhang met artikel 1, aanhef en onder a, van het Besluit beschermde inheemse diersoorten aangewezen als beschermde diersoort. Ingevolge artikel 24, derde lid, van de Natuurbeschermingswet, voorzover hier van belang, is het verboden zonder noodzaak een dier, behorende tot een beschermde diersoort, te verontrusten of zijn nest, hol of voortplantings- of rustplaats te verstoren dan wel te beschadigen of te vernielen.

Ingevolge artikel 25, eerste lid, van de Natuurbeschermingswet, voorzover hier van belang, kan door of vanwege de Minister van Cultuur, Recreatie en Maatschappelijk Werk (thans Landbouw, Natuurbeheer en Visserij) hiervan ontheffing worden verleend.

Ingevolge artikel 2, eerste lid, van het Besluit ontheffingen en vrijstellingen Natuurbeschermingswet, voorzover hier van belang, kan in de in dit artikellid genoemde gevallen ten aanzien van niet-gekweekte dieren behorende tot beschermde soorten die zijn genoemd in bijlage IV bij de Habitatrichtlijn, slechts ontheffing of vrijstelling worden verleend, indien er geen andere bevredigende oplossing bestaat en indien daarmee geen afbreuk wordt gedaan aan het streven de populaties van de betrokken soort in hun natuurlijke verspreidingsgebied in een gunstige staat van instandhouding te laten voortbestaan. Met het Besluit ontheffingen en vrijstellingen Natuurbeschermingswet wordt blijkens de daarbij behorende Note van toelichting beoogd de Habitatrichtlijn volledig te kunnen uitvoeren.

2.8.13. Zoals in 2.8.2. is overwogen kan er alleen een direct beroep op artikel 12, eerste lid, aanhef en onder d, van de Habitatrichtlijn worden gedaan, indien de richtlijn niet correct is geïmplementeerd. De vraag of de richtlijn correct is geïmplementeerd en zo ja, of het inmiddels genomen maar ook in rechte aangevochten besluit tot het verlenen van een ontheffing in overeenstemming is met artikel 25 van de Natuurbeschermingswet, komt pas aan de orde in de procedure waarin het besluit tot het verlenen van de ontheffing in het geding is.

In geval van incorrecte implementatie geldt hetzelfde wat betreft de vraag of een direct beroep op de Habitatrichtlijn kan worden gedaan.

2.8.14. Het bovenstaande doet er niet aan af dat verweerders geen goedkeuring aan het plan hadden kunnen verlenen, indien en voorzover zij op voorhand in redelijkheid hadden moeten inzien dat geen ontheffing zou kunnen worden verleend. Evenmin hadden verweerders aan het plan goedkeuring kunnen verlenen, indien zij in redelijkheid hadden moeten inzien dat het plan, mede gelet op artikel 2, eerste lid, van het Besluit ontheffingen

en vrijstellingen Natuurbeschermingswet, er toe zou leiden dat het natuurlijke verspreidingsgebied van de hamsters in die mate wordt aangetast dat zij daarin niet meer kunnen voortbestaan.

2.8.15. Op overeenkomstige wijze zijn de overwegingen 2.8.13. tot en met 2.8.14. evenzeer van toepassing op het beroep dat appellanten sub 1 en sub 2 hebben gedaan op het Verdrag van Bern, dat wil zeggen dat enerzijds in de procedure over de ontheffing zal kunnen worden nagegaan of verweerders in strijd met dat Verdrag hebben gehandeld, maar dat anderzijds het plan de nakoming van dat Verdrag niet onmogelijk mag maken.

2.8.16. De Afdeling is niet gebleken dat verweerders in voldoende mate in hun besluitvorming hebben betrokken hetgeen hiervoor onder 2.8.14. en 2.8.15. is overwogen. Gelet hierop is het bestreden besluit genomen in strijd met artikel 3:2, van de Algemene wet bestuursrecht en is het beroep van appellanten wat dit onderdeel betreft gegrond en dient het bestreden besluit in zoverre te worden vernietigd.

2.9. Voorts stellen appellanten sub 1 dat het plan leidt tot een onaanvaardbaar en onherstelbaar verlies van natuurwaarden. De voorgestelde compenserende maatregelen zijn volstrekt onvoldoende. terwijl bovendien onzeker is in hoeverre deze maatregelen zullen worden getroffen, laat staan dat zeker is dat deze maatregelen zullen zijn getroffen voordat de waarden definitief verloren zijn gegaan. Het bestreden besluit is dan ook in strijd met het compensatiebeleid.

2.9.1. Uit de milieu-effectrapportage komt naar voren dat in het plangebied grote aantallen broedvogels voorkomen. Nog afgezien van de hamster leven in het plangebied ook andere beschermingswaardig soorten zoals dassen en enkele soorten bedreigde vleermuizen. Deze zoogdiersoorten gebruiken het plangebied als foerageer- respectievelijk jachtgebied.

2.9.2. Verwacht wordt, aldus de milieu-effectrapportage, dat door het verlies aan leefruimten van circa 40 broedvogels het aantal broedparen meer of minder sterk achteruit zal gaan. Ook het aantal vleermuizen en dassen zal achteruitgaan.

De noodzakelijke bescherming van deze en andere getroffen populaties kan worden gerealiseerd, aldus de milieu-effectrapportage, door een verbetering van de kwaliteit van gebieden waarin intensieve landbouw wordt bedreven. Dergelijke compensatiegebieden liggen echter niet in het plangebied maar wel in de Horbacher Börde een gebied ten oosten van het plangebied.