

23 April 2014

### **Dolfinarium's transfer of killer whale Morgan to Tenerife was lawful**

The Administrative Jurisdiction Division of the Council of State found in its judgment of 23 April 2014 that the Minister for Agriculture acted lawfully in granting permission for Morgan the killer whale to be transferred to Tenerife. In November 2011 the Minister gave permission to the Dolfinarium marine mammal park to move the whale to Loro Parque on Tenerife. Two animal welfare groups, Dolphinmotion and Sea First, were not convinced that this was the best option for Morgan and believed she should have been released into the wild.

### **Morgan**

The young killer whale Morgan was rescued from the Wadden Sea in a severely emaciated condition in June 2010. After attempts to lead her to open sea failed, she was brought to the Dolfinarium in Harderwijk to recuperate. At the end of November 2011 Morgan was transferred to Loro Parque on Tenerife because the Dolfinarium's basins were too small for an animal of her size.

### **Satisfactory solution**

The Council of State found that Morgan was lawfully moved to Tenerife because there was 'no sufficiently realistic and satisfactory alternative' in this case. Returning the killer whale to the ocean, as proposed by the animal welfare groups in the Morgan Release Plan, was not deemed to be an 'alternative, satisfactory solution' because Morgan's native pod had not been found and she belonged to a population with a highly complex social structure. In addition, Morgan was a juvenile and it was uncertain whether she would be able to meet her own dietary needs.

### **Loro Parque**

The Council of State also found that the Minister was entitled to give permission for Morgan's transfer to Loro Parque on Tenerife. This marine animal park has a long history of keeping killer whales and conducts various research and educational activities. The fact that the park also carries out commercial activities does not make it unsuitable for Morgan. With regard to the animal welfare groups' belief that Morgan is not receiving adequate treatment and care at Loro Parque, the Council noted that Morgan's present state of health was not the subject of the legal proceedings. The question was whether it was lawful for the Minister to give permission for Morgan to be transferred to Tenerife based on the facts and circumstances in November 2011.

### **Legal costs**

The Council of State's judgment on appeal today upholds almost the entire judgment of Amsterdam District court in December 2012. The Council of State quashed only one formal part of that judgment, as the district court had disregarded a request by the two claimants for compensation of the legal costs in the objection phase.