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His Excellency
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of Germany
Werderscher Markt 1
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Subject: Notification No 2026/0234/DE

**Draft Third Law amending the Animal Husbandry Labelling Law
(Tierhaltungskennzeichnungsgesetz – THKG)**

**Delivery of a detailed opinion pursuant to Article 6(2) of Directive
(EU) 2015/1535**

Sir,

Within the framework of the notification procedure laid down in Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (hereinafter “SMTD”)¹, on 11 May 2026 the German authorities notified to the Commission the draft Third Law amending the Animal Husbandry Labelling Law (*Tierhaltungskennzeichnungsgesetz - THKG*, hereinafter “the notified draft”).

According to the notification message, *‘the amending act introduces various simplifications designed to reduce the administrative burden on businesses and administrative authorities. In addition, animal husbandry labelling will be extended to include food service establishments and certain processed foods. Another substantive change is the mandatory labelling of imported food products, replacing the previous voluntary participation by foreign market participants. This means that foreign market participants must partake in the animal husbandry labelling system if they wish to place their products on the German market’*.

The notified draft is an amendment to the THKG of 2023, which originally was also notified to the Commission pursuant to the SMTD under notification procedure 2022/0693/DE. Both the original THKG and its present amendment have also been

¹ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

notified pursuant to Regulation No (EU) 1169/2011 on the provision of food information to consumers (hereinafter “FIC regulation”).²

A distinction needs to be made between, on the one hand, the provisions of the notified draft that are subject to the provisions of the FIC regulation, and, on the other hand, aspects of the notified draft relating to the Union organic production legal framework established by Regulation (EU) 2018/848 of the European Parliament and of the Council on organic production and labelling of organic products³ as well as other provisions of the notified draft not harmonised under EU law. Provisions which may constitute additional mandatory particulars within the meaning of Article 39(1) of the FIC regulation are covered by the parallel notification procedure pursuant to that regulation. Other provisions of the notified draft are subject to an assessment on their compatibility with Regulation (EU) 2018/848 and an assessment under Articles 34-36 TFEU.

Some aspects of the provisions of the notified draft, such as the determination of the economic operator who needs to ensure, pursuant to § 3 of the notified draft, the extension of the rules on German labels also to foreign food products, the exclusion of other than the German types of husbandry categorisations for foreign economic operators under § 5 of the notified draft and the downgrading mechanism also applicable to foreign food products under § 6 of the notified draft will thus be assessed under Article 34-36 TFEU. Moreover, insofar as the notified draft also lays down rules applicable to products labelled as organic in accordance with Regulation (EU) 2018/848, its compatibility is also assessed in the light of that Regulation.

The examination of the notified draft has prompted the Commission to issue the following detailed opinion.

DETAILED OPINION

According to § 3-11, as proposed to be amended by the notified draft, undertakings supplying food products under its scope to final consumers are required to label such products with one of the German animal husbandry categories.

Under § 12-20, as proposed to be amended by the notified draft, food producers of food products under its scope are required to notify holding facilities, obtain an identification number, keep records on animals and husbandry facilities and to ensure traceability of the animal husbandry information.

Compared with the THKG of 2023, the notified draft extends the above provisions originally limited to food products produced in Germany to economic operators involved in producing or selling food products from other Member States imported to Germany.

² Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, OJ L 304, 22.11.2011, pp. 18.

³ Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ L 150, 14.6.2018, p. 1, ELI: <http://data.europa.eu/eli/reg/2018/848/oj>).

The notified draft further extends the scope of application of the THKG to ready-to-eat non-prepacked food products. Thus, the undertakings concerned selling food products to final consumers in Germany are not only food retailers of fresh meat but also restaurants and other undertakings from the hospitality sector and other places like bakeries, food stalls, sandwich shops, etc. selling ready-to-eat food items containing pigmeat.

In addition, the notified draft extends the possibility of so-called “downgrading”, which fully applies to foreign products. In that regard, according to §6(2) of the notified draft, food producers are required to „demonstrate to the competent authority that the relevant requirements for the housing systems [other than the lowest category of stable] have been met“. Otherwise, the product is labelled as „stable or higher“ pursuant to §6(1) of the notified draft, thus downgrading the label to the lowest category.

The extension of the mandatory rules of the THKG of 2023 to meat products produced outside Germany has a considerable impact on the internal market. The THKG of 2023 contained a voluntary system for producers and retailers of pigmeat produced outside Germany. Economic operators from other Member States were thus free to decide whether they would register under the German THKG. The notified draft would transform the voluntary system for pigmeat produced outside Germany into mandatory obligations. In view of the relevance for cross-border trade within the Union, this detailed opinion will focus on rules concerning food products from other Member States than Germany.

1. Assessment of compatibility with Regulation (EU) 2018/848

According to its §1(2), the THKG of 2023 applies to “*foods referred to in Annex 1 that have been obtained from animals of a species listed in Annex 2 and are intended for supply to the final consumer in Germany*”. Annex 1 to the THKG of 2023 as amended by the notified draft provides: “*Foodstuffs of animal origin within the scope hereof include: 1. Skeletal muscle, whether or not with adhering or stored fatty and connective tissues and stored lymph nodes, nerves, receptacles and pork pancreas (meat) which has not undergone any preserving process other than chilling, freezing or quick-freezing, including vacuum-wrapped meat or meat wrapped in a controlled atmosphere; 2. Meat that has not undergone any preserving process other than chilling, freezing or quick-freezing, including meat that is vacuum-packed or packed in a controlled atmosphere; 3. Food consisting predominantly of meat or offal and prepared or ready for human consumption.*” Annex 2 to the THKG (“Species of animals within the scope of the Act”) refers to the species “pig”.

Skeletal muscle, meat and food consisting predominantly of meat or offal, from pigs, prepared or ready for human consumption referred to in the notified draft fall within the scope of Regulation (EU) 2018/848 which provides in its Article 2 that it applies to products “*originating from agriculture, including aquaculture and beekeeping, as listed in Annex I to the TFEU and to products originating from those products, where such products are, or are intended to be, produced, prepared, labelled, distributed, placed on the market, imported into or exported from the Union:*

- a) *Live or unprocessed agricultural products, including seeds and other plant reproductive material;*
- b) *Processed agricultural products for use as food;*
- c) *Feed.*

Annex I TFEU includes “meat and edible meat offal” (Chapter 2) and “preparations of meat [...]” (Chapter 16).

Pursuant to §3(1) of the THKG of 2023, “[a] food business operator handing over to the final consumer a food of animal origin referred to in Annex 1 obtained from an animal species referred to in Annex 2 shall ensure that the food is accompanied, at the time when it is offered for supply to the final consumer, by an indication of the farming method of the animals from which the food was obtained (...)”. The notified draft modifies the third paragraph of §3 to delete the exclusion of application of §3(1) to animals obtained abroad and retitles §3 as “Mandatory labelling of domestic **and foreign** food products” (emphasis added). The THKG as modified by the notified draft makes clear that the labelling obligation applies to livestock producers established in other Member States, including its notification obligation (see for example §12(2) according to which livestock holdings not established in Germany are also subject to the notification requirement to the “Federal Office for Agriculture and Food”).

Pursuant to §4(1) THKG, the types of holding used in the labelling referred to in §3 are:

1. Stable)
2. Stable + place)
3. Fresh barn
4. Spout/pasture and
5. Organic⁴.

Pursuant to § 4(3) THKG, the ‘Bio’ husbandry category is reserved exclusively for products obtained from animals whose husbandry is certified in accordance with Article 35(1) of Regulation (EU) 2018/848. The German legislation therefore does not establish autonomous substantive criteria for the ‘Bio’ category but relies entirely on compliance with the harmonised Union organic production regime.

However, a combined reading of §§ 3(1), 4(3), 7 and 12 THKG as proposed to be amended by the notified draft, indicates that operators (who are required to label the farming method in accordance with the notified draft) wishing to market their products compliant with Regulation (EU) 2018/848, have to do so under the THKG ‘Bio’ category (as this is the category corresponding to the quality of their products) and remain subject to the notification, registration, record-keeping and traceability obligations laid down in Section 2 of the THKG. Indeed, under §12 (1) THKG as modified by the notified draft, the owner of a livestock farm must notify the competent authority that animals from which foodstuffs are derived in accordance with §3(1) are kept in a holding facility. However, the owner of the livestock farm is not required to notify that animals are being kept in a holding if that facility does not operate under the “stable + place”, “fresh barn”, “spout/pasture” and “organic” categories. Therefore, whilst § 12(1) exempts holdings operating exclusively under the basic ‘Stall’ (Stable) category from the notification obligation, that exemption does not extend to holdings operating under the ‘Bio’ category.

Since the THKG as modified by the notified draft combines the mandatory labelling of husbandry practice for all products within its scope, including foreign products, using one of the five categories established in §4(1), including ‘Bio’, with a mandatory notification and other procedural requirement applicable to all food operators who are subject to the labelling obligation (except for the category ‘stable’, as will be explained

⁴ ‘Bio’ in the original language.

below), organically certified operators, including those established in other Member States, would therefore appear to remain subject to the German notification and registration regime to be able to market their products as organic and use the term “Bio” in Germany notwithstanding the fact that they are already certified and controlled under Regulation (EU) 2018/848.

Those additional administrative requirements raise problems of compatibility with Regulation (EU) 2018/848. According to Article 34(1) of Regulation (EU) 2018/848, “[P]rior to placing any products on the market as ‘organic’ (...) operators (...) shall notify their activity to the competent authorities of the Member State in which it is carried out and in which their undertaking is subject to the control system”. It is not required that such operators notify several times their activity to different authorities in their Member State, nor that they notify their activity to all the competent authorities of all the Member States in which their products will be marketed. Article 50 of that Regulation expressly provides that Member States are not to prohibit or restrict the marketing of organic products complying with that Regulation and, in particular, not perform official controls or other official activities other than those provided for under Regulation (EU) 2017/625. Concerning specifically “foreign products” covered by the notified draft, this provision seeks to ensure that the movement of organic products that comply with the Regulation and have been subject to a control in one Member State cannot be restricted in another Member State. Therefore, the requirement to comply with an additional national notification, registration and traceability regime before products may be marketed in Germany as organic is not in line with Regulation (EU) 2018/848, in particular with its Article 50.

2. Assessment under Articles 34-36 TFEU for products other than those labelled as organic

For products other than products labelled as organic in accordance with Regulation (EU) 2018/848, the provisions of the notified draft are assessed under Article 34-36 TFEU.

2.1. Restriction of the free movement of goods

Article 34 TFEU, as interpreted by the Court of Justice of the European Union (hereinafter ‘the Court’), prohibits any measures that are likely to form an obstacle to intra-EU trade, directly or indirectly, actually or potentially. National rules that lay down requirements, such as those proposed by the notified draft, to be met for goods coming from other Member States, can represent obstacles to free movement of goods and constitute measures of equivalent effect prohibited by Article 34 TFEU⁵.

At the outset, it should be noted that there is no harmonised EU legislation on the definition of husbandry systems representing different levels of animal welfare. Minimum standards for the protection of pigs exist⁶ but Member States may – in compliance with the general rules of the Treaty – maintain or apply stricter provisions

⁵ See judgment of 11 July 1974, C-8/74, *Dassonville*, EU:C:1974:82.

⁶ Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs, OJ L 47, 18.2.2009, p. 5, ELI: <http://data.europa.eu/eli/dir/2008/120/oj>.

within their territories for the protection of pigs beyond the minimum standards. In that case, Member States must inform the Commission of such measures⁷.

Where EU law does not harmonise a sector, Member States must comply with the principle of mutual recognition. If a market operator is lawfully selling a product in one Member State, in compliance with the applicable national rules of that Member State, it should be able to sell it in other Member States without having to adapt the national rules of that other Member States. The Court has established that in the absence of harmonisation, national rules such as those relating to designation or labelling to be met by goods coming from other Member States where they are lawfully manufactured and marketed, represent obstacles to free movement of goods and constitute measures of equivalent effect prohibited by Article 34 TFEU⁸.

The legal framework regulating animal welfare labelling in different Member States varies greatly. While Germany introduced a system with five husbandry categories ('Stall' (Stable), 'Stall+Platz' (Stable+space), 'Frischlufstall' (Fresh air stable), 'Auslauf/Weide' (Open-air area/free-range) and 'Bio' (Organic)) in the THKG of 2023, now also imposed on producers and retailers of pig meat produced outside Germany by the notified draft, most Member States have no animal welfare labelling scheme in place. Some Member States have established voluntary schemes with different categorisations⁹.

The notified draft does not expressly recognise other national systems of categorisation. § 5 of the notified draft requires that no other designation may be used than the German types of husbandry referred to in § 4(1) THKG (§ 4 (1) THKG refers to § 3 (1) of the THKG, which would apply to both domestic and foreign products following the amendment of § 3 (3) of the THKG, see Article 1 Number 4 of the notified draft). The German provisions do not distinguish whether or not other national labelling requirements exist for products from other Member States. In addition, while the Commission understands that § 4(2) Nr. 2 of the current THKG refers, as an alternative for assigning one of the relevant German husbandry methods referred to in that provision for the purpose of labelling, to requirements comparable to the requirements of the corresponding husbandry method of Annex 4 of the THKG, the notified draft amending the THKG neither refers to national husbandry labelling requirements from other Member States nor explains how they could be compared to husbandry requirements under the German system. The THKG as amended by the notified draft would not expressly recognise foreign labels of products that are lawfully marketed in another Member State under a national animal welfare labelling scheme.

Consequently, producers from other Member States that have husbandry systems going beyond EU minimum animal welfare requirements and do not wish their products to be marketed under unfavourable conditions (i.e. do not want to use the downgrading mechanism mentioned above) have to fulfil additional notification, registration,

⁷ See Article 12 of Directive 2008/120/EC.

⁸ See e.g. judgement of 10 February 2009, *Commission v Italy*, C-110/05, ECLI:EU:C:2009:66 paragraph 34 and judgement of 18 October 2012, *Elenca*, C-385/10 ECLI:EU:C:2012:634, paragraph 23.

⁹ As shown in a 2022 study on animal welfare labelling, there is no uniformity in the definition of different levels of animal welfare supporting the numerous animal welfare labelling schemes available on the EU market. A minority of Member States have voluntary animal welfare labelling schemes organised at governmental level; most animal welfare labelling schemes are private initiatives. <https://op.europa.eu/en/publication-detail/-/publication/49b6b125-b0a3-11ec-83e1-01aa75ed71a1/language-en>

information and traceability requirements under the German system before their products can be sold in Germany (pursuant to §§ 12-14, 19 and 20 of the notified draft).

In addition, as indicated in the notification message, the notified draft introduces an obligation for the husbandry categories ‘Stable+space’, ‘Fresh air stable’, ‘Open-air area/free-range’ to comply with the essential minimum requirements of German animal welfare legislation for sow and piglet husbandry. This includes, among others, the German requirements concerning non-curative interventions (prohibition on piglet castration without anaesthesia), as well as the restrictions concerning the use of gestation crates for sows during gestation and farrowing. Producers from other Member States wishing to have their products marketed under the above labelling categories would need to meet those requirements and provide proof of compliance.

Lastly, producers holding animals under the lowest German husbandry category (Stall) or applying the downgrading mechanism mentioned above can waive the notification, registration and information requirements, but not the traceability requirement.

In conclusion, the rules of the notified draft thus restrict the free movement of goods within the EU. In that regard, the Commission notes that the German authorities have themselves acknowledged that the measure constitutes a restriction under Article 34 TFEU in the justification accompanying the notified draft¹⁰.

2.2. Justification of the restriction

If a measure is considered as contrary to Article 34 TFEU, it may still be justified under Article 36 TFEU or based on one of the overriding requirements in the public interest recognised by the Court of Justice, provided that it is necessary for securing the attainment of that objective and that the same objective cannot be achieved by other means which place less of a restriction on the free movement of goods¹¹.

When Member States decide to adopt national-only restrictive obstacles to intra-EU trade, the design of such measures is to be supported by tangible evidence, and that chosen measure is not to go beyond what is necessary to attain the public interest pursued¹². It is thus for the Member States to prove, in a concrete manner and by reference to the circumstances of the case, that the notified provisions are justified¹³.

According to the German authorities, interference with the free movement of goods under Article 34 TFEU is warranted on the grounds of animal welfare-oriented consumer protection¹⁴. The German authorities invoke the significant need of end consumers for information. They claim that the measure enables informed decision-making of

¹⁰ Notified draft, Justification, A. General part, VI. Compatibility with European Union law and international treaties, p. 32 (EN version).

¹¹ See judgment of 19 October 2016, *Deutsche Parkinson Vereinigung*, C-418/15, EU:C:2016:776, paragraph 34; judgment of 9 December 2010, *Humanplasma*, C-421/09, EU:C:2010:760, paragraph 34 and judgment of 23 December 2015, *The Scotch Whisky Association and Others*, C-333/14, EU:C:2015:845, paragraph 33.

¹² *ibid.*

¹³ Judgement of 18 June 2020, *Commission v Hungary*, C-78/18, ECLI:EU:C:2020:476, paragraph 77.

¹⁴ Notified draft, Justification, A. General part, VI. Compatibility with European Union law and international treaties, p. 32 (EN version).

consumers and improves the possibility for companies to more easily recoup investment costs in more animal friendly farming. Germany also provides information about the comprehensive possibility to downgrade (labelling food products under animal welfare labelling schemes not according to the actual farming method used but according to a method that is less animal friendly). The notified draft extends this option also to products from outside Germany.

While consumer protection is not one of the public interest considerations mentioned in Article 36 TFEU, the Court of Justice in its case-law recognised mandatory requirements such as consumer protection an overriding reason of public interest for justifying restrictions of Article 34 TFEU.¹⁵

The notified measure aims at improving consumer information and seeks to respond to the desire of consumers to obtain more information on animal welfare. It thus appears that the measure, now extended to food products from other Member States, could be suitable to attain the objective of enhanced consumer protection. However, there are concerns as regards the suitability of the measure:

First, as the THKG as amended by the notified draft would impose its national categorisation on foreign products, valuable information on animal husbandry under other national systems may be either lost or distorted through the requirement to apply the German system.

For instance, Denmark, one of the main exporters of pig meat to Germany, has its own system of animal husbandry categorisation with different requirements than the German categories. In Denmark, important contributions to improving animal welfare such as producing more pigs with intact tails or increasing the number of none-castrated pigs are not included in the proposed mandatory German animal welfare labelling scheme. Consequently, suppliers to the German market, even if they perform better on some animal welfare criteria that are however not included in the proposed German scheme, may be placed in German animal welfare labelling categories not appropriately reflecting their animal welfare efforts under their own national systems. Where the operation of an animal welfare label limits the information consumers receive on products complying with labelling schemes of other Member States, its suitability to achieve the aim of better consumer protection through better information is not established.

Secondly, the notified draft has a built-in mechanism of downgrading that makes it likely that foreign products will be labelled frequently with the lowest German category ('Stall' (Stable) or 'Mindestens Stall' (Stable or higher) pursuant to § 6 and Annex 4 of the notified draft), irrespective of how the animals concerned have been raised.

As mentioned above, according to §6(2) of the notified draft, food producers are required to „demonstrate to the competent authority that the relevant requirements for the housing systems [other than the lowest category of stable] have been met“. Otherwise, the product is labelled as „stable or higher“ pursuant to §6(1) of the notified draft, thus downgrading the label to the lowest category. As mentioned above, foreign producers in particular would likely face complex food supply chains and the problem to apply the German categories to their national husbandry method. Rather than spending resources on

¹⁵ Judgement of 20 February 1979, *Rewe v Bundesmonopolverwaltung für Branntwein*, C-120/78, ECLI:EU:C:1979:42, paragraph 8.

fulfilling all the notification, registration, record keeping and traceability requirements to apply a categorisation to their products that may not fully reflect the correct animal husbandry information, foreign products are more likely to be downgraded and labelled with the lowest German husbandry category if they enter the German market. While the downgrading always entails that a label may not accurately reflect the actual husbandry conditions of the product concerned, the higher likelihood of foreign products being subject to downgrading raises additional doubts as regards the suitability of this measure.

Thirdly, § 11 (2) of the notified draft allows for pre-packaged products containing several different food products to apply categories to batches rather than individual packaging. Such lack of accurate categorisation of products also puts into question the suitability of the requirements in the notified draft.

In view of the above, it is concluded that the notified measure is not suitable for the attainment of the intended level of consumer protection with regard to foreign meat products, in particular, those subject to other national animal husbandry labelling schemes.

Even if the suitability of the notified measure were assumed (*quod non*), the envisaged measure would not be necessary and proportionate.

The German authorities have argued in their notification message that consumers seek additional information on animal welfare and that a large share of end-consumers in Germany regularly eats at restaurants, pubs or taverns. No information has been provided on whether this need for additional information requires the imposition of the German husbandry categories on producers from other Member States which have their own systems of animal welfare labelling, requiring them to fulfil specific notification, registration, information and traceability requirements.

Furthermore, the notified draft does not indicate whether the German authorities had considered alternative means that would have imposed less burden on producers, traders and undertakings selling ready-to-eat food products.

As regards products from Member States that have an existing national scheme for animal welfare labelling, a mutual recognition clause in line with Regulation 2019/515¹⁶ could have been included in the draft. In addition, even in relation to products from Member States without such a national scheme, less burdensome registration and certification measures, including the possibility to reuse national registration and certification, could have been considered. The German authorities have not explained that they have considered such alternative less restrictive measures.

In light of the above, the German authorities have not established that the notified measure imposing notification, registration, information and traceability requirements on producers from other Member States would be necessary to satisfy the demand of German consumers for more information on animal husbandry with regard to products from these producers and for non-prepacked ready-to-eat products.

¹⁶ Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No 764/2008 (OJ L 91, 29.3.2019, p. 1, ELI:<http://data.europa.eu/eli/reg/2019/515/oj>).

Even assuming the suitability and necessity of the proposed measure to provide guarantees for the attainment of the public interest of consumer protection (*quod non*), the elements provided by the German authorities are not sufficient to substantiate the proportionality of the measure by establishing that the burden created is not excessive in relation to the benefit for the pursued objective.

On one hand, as described in detail above, the measures mentioned above would create a significant burden on different market operators working in the food-chain. In particular, the implementation of the notified measures would require food producers from other Member States where national animal welfare labelling schemes exist to undergo, for products marketed under other categories than the 'Stable'-category, additional notification requirements and another registration from Germany for selling products lawfully manufactured and marketed in the Member State of their establishment. Market operators who have already made investments to comply with their Member States' animal welfare label would now incur costs to gain access to the German market by establishing and proving compliance with the obligations that would be introduced by the notified draft. This would require setting up new costly traceability systems to establish whether their products are actually sold in Germany further downstream of the complex cross border supply chain and incur additional costs for compiling information for the German authorities. In comparison, producers established in Germany only have to comply with the requirements of one scheme, i.e. the German one, which may give them a competitive advantage compared to foreign operators on the German market. Furthermore, producers from other Member States complying with EU animal welfare rules but not applying further husbandry conditions would be subject by default to the 'Stable' category. In a legal framework where all the products concerned by the scheme are required to be labelled, the 'Stable' category could be negatively perceived by consumers as the lowest category, and this could potentially entail a significant economic impact for producers from other Member States.

In addition, foreign producers' investments in animal welfare improvements under the national rules of other Member States may not receive appropriate recognition in Germany if the implementation of these rules does not correspond to the German categorisation.

The claim by the German authorities that the measure improves the possibility for companies to more easily recoup investment costs in more animal-friendly farming and has not been substantiated in view of the additional costs, in particular for producers from other Member States.

In addition, the measure of the notified draft combines notification, registration, record keeping and traceability obligations for farmers from other Member States with labelling obligations for undertakings supplying food products from other Member States to final consumers. It thus creates obligations for producers/farmers and suppliers, i.e. at the beginning and end of the food supply chain.

However, food supply chains rarely consist of only two levels (the producer/farmer and the supplier). At the domestic level (and possibly in some limited border areas between Member States) it may be possible in rare occasions that a producer is in direct contact with the entity supplying food products to end users. In most cases, however, food supply chains are more complex and, particularly for food products from other Member States, may involve multiple establishments located in different Member States. Furthermore,

frequent changes of suppliers are quite common in the food supply chain. A farmer from another Member State may not be aware that the slaughterhouse processing his animals sells to wholesalers supplying also retailers serving the German market but would nevertheless have to comply with the obligations as regards notification, record-keeping etc. mentioned above. This adds to the burden caused by the German national animal welfare label. The addition of ready-to-eat non-prepacked food products to the scope of the THKG adds even more complexity to the food supply chains, since meat products may be further processed by additional levels added to the food supply chain, further complicating the traceability of animal husbandry information. Similar burden would be created also for traders and sellers of ready-to-eat products.

The burden described above has to be proportionate in relation to the objective pursued by the notified measure, namely enhanced consumer protection via improved consumer information. To that end, the notified draft would extend the German categorisation to products from other Member States. The notification, registration and traceability requirements serve the purpose of verification by the German authorities of the fulfilment by the producers of the requirements of the German animal husbandry methods.

This above-mentioned overriding reason of public interest is attained in particular for products from Member States without their own national animal husbandry scheme in the absence of a harmonised system for animal husbandry categorisation and labelling at EU level. However, for products from Member States with their own labelling scheme, higher consumer protection could also be safeguarded by recognising the foreign scheme or by relying on other labels. Imposing the German categorisation to products subject to the rules of other national schemes leads to a fragmentation of rules for trading such products in the Single Market.

The German authorities have not demonstrated that the requirements proposed under the notified measure are proportionate for food products from other Member States sold on the German market.

From the above considerations, it can therefore be concluded that the proposed measures cannot be considered to comply with the requirements imposed by Articles 34-36 TFEU. The elements of the notified draft assessed above neither confirm the suitability, nor the necessity and proportionality for securing the attainment of the objectives pursued.

For the above reasons, the Commission delivers a detailed opinion in accordance with Article 6(2) of Directive (EU) 2015/1535, to the effect that the notified draft would be in breach of Article 50 of Regulation (EU) 2018/848 and of Article 34-36 TFEU and would not necessarily be justified on the basis of Article 36 TFEU, were it to be adopted without due consideration being given to the above remarks.

Any provisions of the notified draft which may constitute additional mandatory particulars within the meaning of Article 39(1) of the FIC regulation are being assessed in a separate procedure in accordance with Article 45 of that Regulation. The present detailed opinion does not pre-empt the assessment under the FIC Regulation.

The Commission reminds the German authorities that under the terms of Article 6(2) of Directive (EU) 2015/1535, the delivery of a detailed opinion obliges the Member State which has drawn up the draft law concerned to postpone its adoption for six months from the date of its notification.

This standstill period therefore comes to an end on 12 November 2026.

The Commission further draws the attention of the German Government to the fact that, under this provision, the Member State, which is the addressee of a detailed opinion, is obliged to inform the Commission of the action which it intends to take as a result of the opinion.

Should the German Government not comply with the obligations foreseen in Directive (EU) 2015/1535 or should the text of the draft law under consideration be adopted without account being taken of the abovementioned objections or be otherwise in breach of European Union law, the Commission may commence proceedings pursuant to Article 258 of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Piotr SERAFIN
Member of the Commission