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**Subject: Directive (EU) 2015/1535 on technical rules - Notification
2024/086/DK**

Draft Order on the voluntary animal welfare labelling scheme

**Delivery of comments pursuant to Article 5(2) of Directive (EU)
2015/1535 of 9 September 2015**



Within the framework of the notification procedure laid down by Directive (EU) 2015/1535⁽¹⁾, the Danish authorities notified to the Commission on 19 February 2024 the draft order on the voluntary animal welfare labelling scheme (hereafter “the notified draft”).

According to the notification message, the “*Order on the voluntary animal welfare labelling scheme contains criteria that the herds and establishments that have signed up for the scheme with the Danish Veterinary and Food Administration must comply with in order for their products to be labelled with the animal welfare label. The requirements for the herds registered for the scheme are more far-reaching compared to the general animal welfare requirements for pig, broiler and bovine herds*” in EU legislation ⁽²⁾

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.

² ()Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes (OJ L 221, 8.8.1998, p. 23) ; Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens (OJ L 203, 3.8.1999, p. 53) ;Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production (OJ L 182, 12.7.2007, p. 19), Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves (OJ L 10, 15.1.2009, p. 7) 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), Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport (OJ L 3, 5.1.2005, p. 1) and Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (OJ L 303, 18.11.2009, p. 1)

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Examination of the notified draft has prompted the Commission to issue the following comments.

Firstly, the Commission understands that, according to the notified draft (section 12), certified organic pig herds and broiler flocks, and primary producers of certified organic bovine and pigs herds are considered to be in compliance with the requirements to produce under the voluntary animal welfare labelling scheme. Furthermore, establishments keeping herds that are certified as organic would benefit from the Danish voluntary animal welfare labelling scheme. Certified organic herds that have been registered for the animal welfare label do not need to be audited and certified in accordance with Section 10 of the notified draft, as controls of the requirements with regard to the Order are undertaken by the Danish Agricultural Agency in connection with the organic controls.

In this context, the Commission underlines that a quality label must specify the requirements related to the characteristics of the product that go beyond the standards and that give superior quality to the products with respect to similar products. The affixing of a quality label to products or foodstuffs not complying with superior requirements would mislead the consumer, suggesting a quality that appears to be higher, when similar products or foodstuffs are actually of the same quality (judgement in case 13/78 Eggers, ECLI:EU:C:1978:182, paragraphs 24 and 25; reiterated in the judgment in case C-325/00, Commission v Germany, ECLI:EU:C:2002:633, paragraph 24). In this regard, it should be noted that according to Article 7(1)(c) of Regulation (EU) No 1169/2011 on the provision of food information to consumers⁽³⁾, food information shall not be misleading, particularly by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients.

In respect of organic products, the Danish voluntary animal welfare labelling scheme could be misleading for consumers because it provides that the organic products covered by the label comply with higher animal welfare requirements when in fact they comply with the animal welfare requirements set out in Regulation (EU) 2018/848 of 30 May 2018 on organic production and labelling of organic products⁽⁴⁾ (i.e. ‘the Organic Regulation’), and therefore with the same animal welfare requirements as other organic products not bearing the label, without going beyond the legal requirements. The Danish authorities are therefore invited to clarify which, if any, of the requirements of the voluntary labelling scheme go beyond the requirements provided for in the “EU Organics Regulation” or to clarify why the Danish voluntary animal welfare label would not mislead the consumer in case it is affixed to organic products.

Secondly, the Commission notes that the requirements regarding chickens, including laying hens, might be in contradiction with certain EU legal requirements applicable to animal welfare and organic products. Section I, Chapter 1 *Scope and definitions*, Section 2. of the notified draft provides for the following general definitions:

³ () 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, p. 18.

⁴ () 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. 1–92).

“6) Flock: A group of chickens placed in a house and present there together.

7) Useable area: An area accessible to the chickens at any time.”.

As far as the definition of flock is concerned, the Commission notes that Article 13(b) of Commission Implementing Regulation (EU) 2020/464 of 26 March 2020 laying down certain rules for the application of the EU Organics Regulation as regards the documents needed for the retroactive recognition of periods for the purpose of conversion, the production of organic products and information to be provided by Member States ⁽⁵⁾ provides that ‘flock’ in the context of compartments in poultry houses means a group of birds that are kept together not mixing with other poultry species, and with their own dedicated indoor and outdoor areas”. Therefore, there seems to be a discrepancy between the definition of flock in the notified draft which does not allow organic operators to count birds per compartment and, as a consequence, does not allow the application of the applicable threshold per compartment, and the definition of “flock” in Commission Implementing Regulation (EU) 2020/464. The Commission wishes to remind the Danish authorities that the latter definition of “flock” is binding when assessing compliance of organic operators with the EU Organics Regulation regarding the maximum number of animals in a compartment.

Concerning the definition of useable area, Art 3(31) of the Organics Regulation refers to the definition of usable areas set out in Article 2(2)(d) of Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens ⁽⁶⁾. It provides that “‘usable area’ means: an area at least 30 cm wide with a floor slope not exceeding 14 %, with headroom of at least 45 cm. Nesting areas shall not be regarded as usable areas.”. The Commission notes that the definition of usable area as provided for in the notified draft seems to depart from the one in Council Directive 1999/74/EC. The draft does not include the characteristics and size limitation provided for in the Council Directive 1999/74/EC and may create a difference in the calculation of stocking density. Such definition is binding and shall be applied in order to identify the usable areas when calculating the stocking density and verifying compliance of operators with the voluntary animal welfare labelling scheme.

Finally, with regard to housing and husbandry practices, the presence of litter is required for poultry, including broilers, under the Organic Regulation which provides that “With regard to housing and husbandry practices, the following rules shall apply: (a) at least one third of the floor area shall be solid, that is, not of slatted or of grid construction, and shall be covered with a litter material such as straw, wood shavings, sand or turf” (see part II of Annex II of Organic Regulation). The notified draft does not include such requirement for poultry. Furthermore, regarding animal welfare, the definition of usable area for broilers in Article 2(1)(h) of Council Directive 2007/43/EC of 28 June 2007 laying down minimum standards for the protection of chickens kept for meat production ⁽⁷⁾ provides that ‘useable area’ means a littered area accessible to the chickens at any time”. The definition of ‘usable area’ in the notified draft differs from the one provided in the above-mentioned Council Directive as it does not mention the presence of litter. However, the presence of such litter should be required when

⁵ (OJ L 98, 31.3.2020, p. 2–25.

⁶ (OJ L 203 3.8.1999, p. 53, lastly amended by Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 (OJ L 95, 7.4.2017, p. 1–142).

⁷ (O)Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production (OJ L 182, 12.7.2007, p. 19–28)

establishing animal welfare requirements that broiler operators must comply with to be part of the voluntary animal welfare labelling scheme.

The Commission invites the Danish authorities to take into account the above comments when introducing the voluntary animal welfare labelling scheme.

The Commission furthermore recalls that once the definitive text has been adopted, it must be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

Yours faithfully,

For the Commission
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Development