



30/09/2020

## Cosmetics Europe comments to the TRIS notification 2020/410/F

To the attention of the European Commission  
DG Growth – unit B2 "Prevention of technical barriers"

Cosmetics Europe, the European trade association representing the cosmetics and personal care industry, would like to hereby submit its comments on the Draft Implementing Decree on consumer information symbols indicating the sorting rule for waste resulting from products subject to the principle of extended producer responsibility (the "Draft Implementing Decree"), notified by France on 30<sup>th</sup> June 2020 through TRIS under the notification number 2020/410/F. The decree mainly implements article 17 of the French Law 2020-105 of 10 February 2020 on Waste Prevention and the Circular Economy (the "Law on Circular Economy").

### **Objective of Article 17 of the Law on Circular Economy and the Draft Implementing Decree**

In France, the principle of extended producer responsibility ("EPR") makes the product marketers responsible to manage the end-of-life of their products.<sup>1</sup>

Article 17 of the Law on Circular Economy and the Draft Implementing Decree impose new obligations (in particular, waste labelling requirements in the format of a Triman logo and sorting instructions) to producers of packaging and products placed on the French market for household use and subject to the principle of EPR.

The purpose of these requirements is to better inform the French consumers about the sorting rules for waste resulting from these packaging and products.

### **Preliminary note on the absence of notification of the Law on Circular Economy**

Despite the obligation stemming from the TRIS Directive for Member States to communicate to the European Commission any draft technical regulation<sup>2</sup>, France did not notify, through the TRIS consultation procedure, the Law on Circular Economy. However, several articles of this law could be considered as technical regulation.<sup>3</sup>

In addition, Cosmetics Europe would like to raise the Commission's attention that some articles of the Law on Circular Economy are problematic in terms of compliance with the EU internal market rules. In particular, article 62 penalizes the use of other symbols that could create confusion with the Triman logo. For example, with this article 62 of the Law on Circular Economy, the use of the

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<sup>1</sup> L. 541-10 of the French Environmental Code.

<sup>2</sup> Article 5, 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.

<sup>3</sup> This is for example the case of article 17 of the Law on Circular Economy which imposes labelling requirements.

existing “Green Dot” logo (currently used to inform that producers have paid their EPR fees) on products in the French market could come with a financial penalty notwithstanding this logo is mandatory in several other Member States. France did not bring justification to this potential obstacle to the EU internal market that will be caused by the new requirements.

### **Concerns related to the impact on the internal market of the requirements imposed by article 17 of the Law on Circular Economy and the Draft Implementing Decree**

Cosmetics Europe considers that article 17 of the Law on Circular Economy and its Draft Implementing Decree could impair the free movement of goods by creating unjustified barriers to the EU internal market.

These effects are developed further in the following analysis.

#### **1. Barriers to the EU internal market**

By imposing labelling requirements, article 17 of the Law on Circular Economy and its Draft Implementing Decree create restrictions to the free movement of goods (article 28 of the TFEU) and have to be considered as measures having an effect equivalent to quantitative restrictions (article 34 TFEU).

The fact that the Triman logo and the sorting rules requirements do not exist in other Member States will have as consequences that producers from other countries will have to tailor their products and packaging specifically for the French market. This will constitute significant administrative burden and costs due to relabeling, repackaging and/or creation of additional documents as well as organization of separate production runs. These administrative burden and costs could impair not only trade within the EU internal market but also at the international level.

These additional labelling requirements are also in breach with the obligations of Member States to not impede the placing on their market of packaging which satisfies the requirement of the Packaging and Packaging Waste Directive.<sup>4</sup>

#### **2. Unjustified restrictions to trade in the EU internal market**

The restrictions to the internal market resulting from the new waste labelling requirements imposed by France cannot be justified in particular because the new requirements (i) do not achieve the objective of the French regulations at stake and (ii) are not proportioned. Therefore, article 17 of the Law on Circular Economy and its Draft Implementing Decree infringe the EU internal market rules.

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<sup>4</sup> Article 18, Directive 94/62/EC of the European Parliament and Council of 20 December 1994 on packaging and packaging waste (“Packaging and Packaging Waste Directive”).

**a. The new French labelling requirements do not achieve the objective of the related regulations**

The objective of article 17 of the Law on Circular Economy and its Draft Implementing Decree is to enhance the consumer information about sorting rules for waste resulting from packaging and products under the EPR.

However, the new measures imposed on producers will have in fact adverse consequences on the environment. Indeed, the Triman logo and sorting rules could increase waste, especially for small products, as companies will have to add the logo and the rules on a physical support, which could lead to the creation of packaging for products that do not have one, increase the existing packaging in terms of size and/or create additional documents. This possible increase of waste is contrary to the objective of the Packaging and Packaging Waste Directive which is to keep the packaging to the minimum adequate<sup>5</sup>.

Besides, the Triman logo and the sorting rules will not enhance consumer information but could to the contrary create confusion for consumers as other logos already exist, both at national and EU level<sup>6</sup>. In addition, as the Triman logo and sorting rules are specific to the French market, additional information imposed by the French regulations could be even less relevant for consumers that are not familiar with the French rules.

The fact that currently, the Triman logo, which already exists in France, but is only applicable to products which can be sorted and recycled, will have, if the new labelling requirements become applicable, to be displayed on all plastic packaging, whether these can be sorted/recycled or not, could also be confusing for consumers.

Last but not least, enhancing consumers information on sorting rules in order to reduce waste would be better achieved at the European level. Not only has the EU already adopted several regulations<sup>7</sup> and a logo related to waste<sup>8</sup>, but it indicated a few month ago its intention to develop a EU-label having the same objective as the French logo Triman.<sup>9</sup> Adopting national measures in that context could compromise the EU's action.

**b. The restrictions are not proportionate**

First, less restrictive measures than additional national labelling requirements could achieve the objective of better informing consumers.

For example, having the Triman logo and the sorting rules accessible through digital means would be a less restrictive measure than having them displayed on a physical support. Indeed, digitalization of the sorting logo and rules would not require the creation of new or larger

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<sup>5</sup> Annex II, Point 1, Packaging and Packaging Waste Directive.

<sup>6</sup> For example, at the EU level, the crossed-out-wheeled bin logo for electrical and electronic equipment.

<sup>7</sup> Packaging and Packaging Waste Directive and Directive 2008/98 of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives ("Waste Framework Directive").

<sup>8</sup> Directive 2012/19/EU of 4 July 2012 on waste electrical and electronic equipment (WEEE).

<sup>9</sup> European Commission Communication, *A next Circular Economy Action Plan for a cleaner and more competitive Europe*, 11 March 2020, COM(2020) 98 final.

packaging and/or separate documents. Besides, if producers are allowed to opt for online information, it will reduce the administrative burden and costs imposed on them.

Second, even the French legislator, in the new Law on Circular Economy, underlines the advantages of having the Triman logo and sorting rules available online as “this will facilitate the understanding of these logo and rules and explain their conditions and meaning”.<sup>10</sup> It is therefore questionable that the new requirements have, in addition to the dematerialized information, to be printed on products, packaging and/or additional documents.

Besides, it has to be noted that the current applicable rules regulating the Triman logo do not impose that the logo is printed on a physical support.

Third, article 17 of the Law on Circular Economy and its Draft Implementing Decree introduce divergences of treatment without bringing any justification. The French measures impose different rules (i) whether the product is packaging or not and (ii) only exclude glass beverage packaging from the labelling requirements.

### **Requests to the European Commission**

Cosmetics Europe asks the European Commission to examine the Draft Implementing Decree towards the EU internal market rules and to extend the standstill period as necessary. France should also be requested to postpone the adoption of its national measures related to waste labelling requirements as the EU indicated its intention to adopt measures on this aspect. Finally, the Law on Circular Economy, which contain several articles that are technical regulations, should be notified by France to the European Commission through TRIS.

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<sup>10</sup> This is a free translation made by Cosmetics Europe. The original text reads as follows: “*L'ensemble de cette signalétique est regroupé de manière dématérialisée et est disponible en ligne pour en faciliter l'assimilation et en expliciter les modalités et le sens.*” Article 17, Law on Circular Economy.