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EUROMCONTACT comments on Draft French Decree on consumer information symbols indicating the sorting rule for waste resulting from products subject to the principle of extended producer responsibility

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EUROMCONTACT is the European association representing the manufacturers of contact lens and lens care products to the European Institutions and stakeholders. Our members represents 95% of the soft contact lenses; 80 % of the contact lens solutions and 50% of the rigid gaz permeable contact lenses made available on the EU market.

EUROMCONTACT would hereby like to comment on the French Draft Implementing Decree on the Requirement to Feature the Triman Logo and Additional Sorting Instructions, implementing Article 17 of the Law 2020-105 of 10 February 2020 on Waste Prevention and the Circular Economy.

French Decree constitutes a barrier to trade within the EU Single Market

EUROMCONTACT is of the view that the French Decree on consumer information symbols indicating the sorting rule for waste constitutes a technical regulation.

The French decree stipulates that the waste mark (Triman logo) must be attached to the Sorting Instructions for products subject to the principle of extended producer responsibility; i.e. products for household use. The decree stipulates that both the logo and the sorting instructions shall be affixed on the packaging while Article 17 of the Law on Circular Economy leaves the possibility to affix Triman logo and the Sorting Instruction either on the product itself, its packaging or other documents supplied with the product. The Decree is therefore stricter than the Law on Waste Prevention and the Circular Economy.

The Triman logo is a French specificity. Making it compulsory will require the introduction of a separate labelling requirement for products placed on the French market, leading to additional costs and burden for this specific packaging for the French market. This will impact the free movement of packaged goods and will damage the functioning of the EU's Internal Market. EUROMCONTACT considers that the measure is disproportionate with regard to the policy objectives.

Sectoral medical devices regulation supersedes the French Decree

EUROMCONTACT believes that devices should clearly be exempted from the French Decree as the sectorial legislation applying to medical devices already governs the labelling and marking of devices being placed on the EU market - including the labelling and information on environmental issues.

The intention of the legislators when discussing, amending and endorsing Reg. 2017/745 was to reinforce the rules governing the placing on the EU single market of devices. The labelling provisions of the Regulation are strictly defined on what should appear on the packaging and what should appear on the instructions for use[1].

[1] See Section 23.2 of Annex I of Ref. 2017/745 defines all information that should appear on the label; Section 23.4 describes information that shall appear on the instructions for use. Section 14.7 of Annex I governs requirements for environmental information.

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Reg. 2017/745 in its Annex I section 14.7 deals with environmental information. This Art. stipulates that measures on waste disposal after use shall be described in the instructions for use. The labelling and information of medical devices are part of the obligations that manufacturers shall abide to be able to place their products on the market.

The French Decree contradicts Reg. 2017/745 as it requires that '*for Medical Devices intended for the general public consumed or used by households (…), the signage and information shall both have to be affixed to the packaging'*. This information obligation will create additional burden for manufacturers for the French market only, creating a violation of the functioning of the EU single market.

Conclusion

The Decree is clearly a technical barrier to trade, considering that Reg. 2017/745 stipulates that '*Member States shall not refuse, prohibit or restrict the making available on the market or putting into service within their territory of devices which comply with the requirements of this Regulation*'[2].

EUROMCONTACT is therefore of the view that Reg. 2017/745 takes precedence over the national legislation, including for labelling and information provided to the user and patient on environmental issues. For this reason, EUROMCONTACT believes medical devices should be excluded from the scope of the French decree.

[2] Art. 25 of Reg. 2017/745