NOTIFICATION (TRIS) NR. 2021/118/P, 23/02/2021

Draft Decree-Law proceeds to the fifth amendment to Decree-Law no. 152-D / 2017, of December 11, amended by Laws No. 69/2018, of December 26, and 41/2019, of December 21 June, by Decree-Law No. 86/2020, of October 14th**, and amended and republished by Decree-Law No. 102-D / 2020, of December 10th.**

AIC and AISDPCL POSITION

AIC – the Portuguese association that represents the manufacturers, the importers and the distributors of cosmetics, perfumes, and personal hygiene products. AIC is an Active Association Member of Cosmetics Europe

And

AISDPCL – the Portuguese association that represents the manufacturers, the importers and the distributors of soaps, detergents, and maintenance products. AISDPCL is an Active Association Member of AISE

Are affiliated of FIOVDE, the Portuguese Federation that includes besides the sectors represented by AIC and AISDPCL, the Aerosols manufactures (APA) and the biofuels manufacturers (APPBIO). FIOVDE and its Members Associations are actively engaged in CIP, the Portuguese Business Confederation. CIP is an active Member of Business Europe.

The NOTIFICATION (TRIS) NR. 2021/118/P, 23/02/2021 will have an important impact for the sectors represented by AIC, AISDPCL as it will impose barriers to the adequate functioning of the Internal Market. This justifies the comments here stated and the intervention of the Commission.

1 AIC and AISDPCL regret that the Portuguese Government has decided to make changes to the recently published Decree-Law 102-D / 2020, resuming requirements that were abandoned after the public consultation during which the current decree-law proposal was discussed.

2 AIC and AISDPCL reiterate that:

2.1. The imposition of specific rules for marking packaging available on the national market, imposes technical barriers to the functioning of the Single Market.

2.2. The proliferation of markings on packaging intended for the final domestic consumer does not always add great informative value unless

accompanied by massive communication campaigns, and, in most cases, the perception of citizens about the meaning of the symbols is disparate and contradictory with the target message.

2.3. The novel interpretation that placing on the market in the territory of a Member State includes, in addition to the manufacture and physical import into that Member State's territory, distribution and availability to the end user, means a total disruption of the operating principles Internal Market, which goes against the principle that a product placed on the market in one Member State is legally placed on the market in all Member States of the European Union.

3 AIC and AISDPCL consider that unilateral legal obligations for marking packaging should not be imposed without an assessment of their relevance and the impact on the free movement of products and materials in the European Union, as well as the disproportionate and asymmetric burden that would be required of economic operators in Portugal.

Specifically, about the notified proposal:

3.1. N.º 4, Art. 28.th

"4 - In order to facilitate the collection, reuse and recovery, including recycling, the packaging must indicate the nature of the packaging material (s) used, for the purpose of identification and classification by the respective industry, according to the identification system. established in Decision No. 97/129 / EC, of the Commission, of January 28, 1997, the regime of which is set out in Annex IX to this Decree-Law and of which it forms an integral part."

● The obligation to indicate materials has been discussed since the Packaging and Packaging Waste Management Directive was published. However, 25 years after the Directive came into force and the first packaging waste management entity started to operate, we were not shown the non-fulfillment of packaging material recycling targets due to the lack of identification of packaging materials.
● In addition, the cost of mandatory identification of packaging materials and the imposition of this obligation in Portugal, with the obvious **consequences for the free movement of products in the Single Market**, clearly discourage the adoption of this measure.
● The possible reference to a 1997 Decision should be weighed based on an assessment of its up-to-date market.

3.2. N.º 5, Art. 28.th

"5-In order to promote the correct separation of waste and increase the

levels and quality of recycling, recyclable packaging placed on the market is subject to marking with the indication of its appropriate destination, namely the color of the recycling bin where it should be placed, under the terms to be determined by ordinance of the members of the Government responsible for the areas of the economy and the environment. "

● The reasons why this marking has never been "legally" mandatory are several, but essentially have to do with the fact that, on the one hand, the different Member States made different decisions on the type of packaging covered by their integrated systems and, on the other On the other hand, the different Member States made specific decisions on the packaging materials and type of packaging to be deposited at each bin.

● Today, almost thirty years after the implementation of the specific regime for the flow of packaging waste and the evolution in the forms of collection from the domestic consumer - which do not necessarily go through the disposal in a bin, but rather the selective collection door to door that much facilitated the understanding of the screening - the benefits of this marking are not seen.

● In order to bring some added value in terms of improving separation and recycling rates, it would have to be a harmonized measure between Member States and be based on the prior harmonization of collection systems, which is not considered.

● The adoption of this marking obligation should not, in our opinion, be assumed unilaterally by Portugal, since it is not feasible to have packages marked only for the Portuguese market, it will result in a **technical barrier to the functioning of the Single Market**.

● Note that there is no harmonized definition of what should be considered "recyclable packaging". Recyclable packaging can be reusable or non-reusable. As the bin is refer, it is assumed that the scope of this obligation is that of non-reusable packaging and not covered by Article 23c on the deposit system, since they have a specific marking. It is therefore necessary to clarify the scope of application of this standard.

3.3. N.º 7, Art. 28.th

"7 - Primary packaging, as well as secondary packaging intended for the consumer, is covered by the marking obligation provided for in paragraph 5. "

● In order to be clearer, we propose to change the wording of this point to:

"7 - Primary packaging, as well as secondary packaging, are covered by the marking obligation in paragraph 5, ***in both cases when*** *destined for the consumer."*

3.4. N.º 9, Art. 28.th

"9-In order to clarify information to consumers and promote the correct routing of packaging waste, it is prohibited, as from the date of entry into force of the obligation provided for in paragraph 5, the placing on the market of recyclable and reusable packaging that are marked with the tidy-man symbol. "

● The ban on the use of the "tidy-man" symbol had already been the subject of a contrary opinion during the public consultation prior to the publication of Decree-Law 102-D / 2020. We do not understand why it is being proposed again.
● Even the Delegated Marking Regulation on the SUP Directive does not prohibit this marking. And, in any case, the "tidy-man" symbol is intended to inform the end user of the pre-packaged product that empty packaging must be treated as solid waste, preventing it from being channeled via domestic effluents.
● The symbol is known to the consumer and the target message is recognized. Why ban it?
● Once again, if this prohibition is adopted, we are faced with a unilateral position of Portugal, which will constitute a **technical barrier to the functioning of the Single Market.**

4 In order to ensure that packaging and packaged product waste no longer results due to the imposition of these marking requirements, products placed on the European Union market, in the light of the definition in the Blue Book on the Internal Market, on the date of entry previous obligations, they must be able to move freely.