

## INFORMATION FOR ECONOMIC OPERATORS

The Portuguese regime of control and verification of standard of finenesses of precious metals articles (PMA's) before they are put on the market established in "Regulamento das Contrastarias" (Portuguese Regulation for Assay Offices) attached to the Act 391/79, of 20th September altered by the Acts 384/89, of 8th November, 57/98 of 16<sup>th</sup> March and 171/99 of 19<sup>th</sup> May, is considered a prior authorization regime whereas the recital 11 of Regulation (CE) 764/2008, of 9<sup>th</sup> July, which establishes procedures for the application of certain national technical rules to products legally traded in another Member-State and that revokes the Decision n° 3052/95/CE.

This regime also predicts the compulsory hallmarking of PMAs in national territory or in a territory of an EEA country, Turkey or international agreement or Convention, as long as the hallmarking is performed by an independent organism, with an informative content equivalent and understandable for the consumer as recognised by the Instituto Português da Qualidade - IPQ (Portuguese Institute for Quality). As such, during the prior authorization procedure, exams and assays may be required to verify the finenesses and to hallmark the PMAs with the standard of fineness marks.

The Assay Office mark (which in Portugal is at the same time, the assay office mark and the fineness mark) indicates, besides the conformity of articles with precious metals with the standard of fineness, that these articles were subjected to the compulsory prior authorization procedure.

The Regulation (CE) 764/2008, which will enter into force on 13<sup>th</sup> May 2009, applies directly in each Member-State not needing to be transposed to national law. Meanwhile of the General-Directorate of Economic Activities of the Ministry of Economy and Innovation and INCM – National Print and Mint, consider that, for transparency reasons, its necessary to inform all the economic operators of the national procedures that are product of the application of articles 4 and 6 of Regulation (CE) 764/2008, in agreement with the recitals 11 and 12, which obliges the adaptation of some current internal assay offices procedures.

Regarding the current assay offices procedures and all above mentioned, the General-Directorate of Economic Activities of the Ministry of Economy as the Supervisor Organism of the application of Regulation (CE) 764/2008 and the INCM inform that the national procedures regarding PMAs are the following:

1. A PMA can't be put to sale without prior authorization, i.e., without the hallmarks legally stated: sponsor's mark, assay office mark and fineness mark or equivalent marks from an EEA country, Turkey or an international agreement or Convention, such as the Vienna Convention as legally stated.
2. A PMA found for sale without hallmarks indicates that it wasn't subjected to prior authorization procedure or that prior authorization was denied and therefore is taken out of the market.
3. However, when the competent authority invokes a non-conformity to withdraw an article from the market, the applicable procedures are the ones mentioned in 4.2 to 4.6.
4. When the economic operator presents, in writing, the request for prior authorization procedure to put a PMA in the market:
  - 4.1 If this PMA meets the requested legal fineness the prior authorization is granted and the PMA is hallmarked with the Assay Office mark
  - 4.2 If this PMA is not in accordance with the requested legal fineness and the authority has the intention to deny the prior authorization's request the competent authority must:
    - i) inform, in writing, the economic operator of the intention to deny the authorization.
    - ii) justify, specifying the technical rule in which the decision is based.
    - iii) present technical or scientific proof to demonstrate the justification of the decision:
      - for one of the public interest reasons as in article 30° of the Treaty or an imperious reason of public interest;
      - for being appropriate to fulfil the purpose and doesn't exceed the necessary to fulfil the purpose.

- iv) define a deadline to the economic operator of, at least, 20 days to present its observations
- 4.3 The competent authority decides in a period of 20 days, from the deadline given to the economic operator to present its observations, and notifies, within this time, the economic operator of its decision.
  - 4.4 The decision mentioned in the last point must contain the reasons for which the decision is based including, if applicable, the reasons to reject the economic operator's observations, the technical or scientific proofs referred to in iii) of 4.2 and also specify the means of the appeals and the deadlines that the economic operator can choose. This decision can be impugned in judicial or extra-judicial appeal.
  - 4.5 The deadline referred to in 4.3 can be extended only one time, for a maximum period of 20 days, before the deadline referred to in iv) of 4.2 is over if the complexity of the case so requires it; the economic operator must be informed of the time extension and of its justification.
  - 4.6 If the competent authority does not notify the economic operator of the denial of the prior authorization within the deadlines referred to in 4.3 it is considered that the product is legally traded in Portugal. From this fact, the competent authority for market surveillance must be informed.
  - 4.7 The economic operator can not put the articles in the market during the periods mentioned in iv) of 4.2, 4.4 and 4.5, i.e., as long as the decision to authorize or to deny the prior authorization.
5. The competent authority can request relevant information from the economic operator about the characteristics of a PMA as well as the legislation of the Member-State from where the products come, in order to verify that these articles were legally commercialized in this Member-State.
  6. The assays, as well as the reports from the accredited Assay Offices within Regulation (CE) 765/08 can't be questioned by its technical competence.
  7. The assay offices can, whenever possible, present the economic operators alternative solutions to avoid the denial of the prior authorization request, as indicated in national rules.