

## **Hallmarking. Legal Study on Market Surveillance**

*Beatrix Pintér*  
PhD candidate  
Faculty of Law  
University of Pécs

### Market Surveillance under the Hallmarking Convention of 1972

#### Introduction

The Convention was signed on 15 December 1972 and entered into force on 27 June 1975. Amendments of Articles 10 and 12 of the Convention of 18 May 1988 entered into force on 16 August 1993. All Contracting States have ratified these and are currently bound by them. Further amendments adopted in 2001 have not yet entered into force. They have been taken into account although their content seems of limited relevance for the question at issue apart from the revised text of the treaty preamble. The annexes to the Convention as amended several times are of a purely technical nature and have therefore not been included in the analysis of the actual text. The Explanatory Notes contain no substantive language that would contribute to answering the question at stake.

Market surveillance includes the following activities: inspections of retailers, wholesalers, importers, manufacturers, markets etc. (precious metals operators) with regard to whether articles were properly marked, existence of false marks, non-precious metal objects sold as precious metal, combination of metals and other materials, substandard articles. However, at the same meeting the Standing Committee added the term “Market Surveillance” to a newly created Glossary and introduced as a definition “Policing the whole market to ensure members of the public are not cheated”. On the whole, however, there is no coherent subsequent practice of the Parties in respect to market surveillance measures.

#### Terms of the Treaty

The Hallmarking Convention has been concluded in a single copy in English and French languages, both texts being equally authentic. But neither text of the Convention nor any other binding text agreed between the Parties refers directly to “market surveillance” (French: “surveillance du marché”) activities. The main question is therefore whether a proper interpretation of the Convention leads to the conclusion that the Contracting States have specific obligations with regard thereto.

According to Article 26 of the Convention on the Law of Treaties of 23 May 1969 every treaty in force is binding upon the parties to it and must be performed by them in good

faith. This obligation normally referred to as “pacta sunt servanda” is considered to be of customary nature.

The Vienna Convention on the Law of Treaties of 23 May 1969 contains also provisions on the proper interpretation of treaties (namely in Section II of Part III, Articles 31 - 33). Their customary nature was acknowledged by the International Court of Justice (hereinafter: ICJ) as customary law (Territorial Dispute [*Libyan Arab Jamahiriya v Chad*] Judgment, ICJ Reports 1994, page 6, para. 41; Oil Platforms [*Islamic Republic of Iran v United States of America*], Preliminary Objections, Judgment, ICJ Reports 1996, p. 803, para. 23; Kasikili/Sedudu Island [*Botswana v. Namibia*], Judgment, ICJ Reports 1999, p.1045, para. 18) and it is common practice for many national and international courts to take them as a basis for their interpretation of international treaties, although the Vienna Convention on the Law of Treaties of 23 May 1969 according to its Article 4 does formally not apply to treaties concluded before its entry into force, such as it is the case of the Hallmarking Convention. The principles shall nevertheless guide this analysis, as it is common practice of most legal writers and tribunals.

The ordinary meaning to be given to the terms of a treaty as a starting point for the interpretations of a treaty under Article 31 Paragraph 1 of the Vienna Convention on the Law of Treaties of 23 May 1969 does not lead to a conclusive result as no direct reference to any obligation to undertake market surveillance activities is made in the text. The terms market surveillance or any terms that could be considered synonymous are absent from the treaty.

There are no proper *travaux préparatoires* (i.e. documents that were produced during the drafting of the Convention) available from which any conclusions regarding the question could be meaningfully drawn with the exception of the Explanatory Notes. They have been taken into account where appropriate.

Thus only indirect indications through other terms of the treaty remain as a source for such a potential obligation.

### Facilitation of international trade in precious metals

The terms of a treaty are to be interpreted in the light of its object and purpose. Often the objectives appear only in the preamble of a treaty. The original preamble of the Hallmarking Convention refers to a specific objective of the Contracting States in relation to the conclusion of the Hallmarking Convention: “to facilitate international trade in articles of precious metals while at the same time maintaining consumer protection justified by the particular nature of these articles” (French: “faciliter le commerce international des ouvrages en métaux précieux tout en assurant la protection du consommateur”). It can thus be stated that the facilitation of international trade in precious metals is a primary goal of the Convention.

The proposed preamble resulting from the amendments of 2001 refers additionally to the positive effect of international harmonisation of standards and technical regulations and guidelines for methods and procedures for the control and marking of precious metal articles on the free movement of such products. This confirms basically the primary goal as set out in the original preamble. The reference to “guidelines for methods and procedures for the control ... of precious metal articles” can be seen as a clear indication that common control standards

are a means to achieve this goal but the terms used are rather vague and do not alter the possible interpretations of the main text of the Treaty, as will be shown below. The same must be said for the reference to “co-operation between ... assay offices and concerned authorities” as contained in the new version of the preamble.

## Consumer Protection

While at first sight the protection of the consumer could be considered an autonomous second objective of the Convention the historic context and the language imply rather that this is an element that should be taken into account when trade is facilitated (while at the same time / tout en). If one takes the view that the major problem at the time of the conclusion of the Convention was the potential trade barriers stemming from the existence of uncoordinated hallmarking rules and a potential multiplication of such requirements for traders – as it seems confirmed by the language of the preamble - it must be concluded that the Contracting States are to take measures to facilitate trade in articles of precious metals (primary goal). However, the Contracting States’ intention is to take these measures in such a way that they do not affect (i.e. reduce) consumer protection. This approach results as the clear intention of the Parties.

In its legal opinion of 18 July 2006 the Depositary came to the conclusion that “consumer protection is a condition *sine qua non* for the long-term facilitation of international trade in articles of precious metals”. More precisely the system of the Convention aims at facilitating the trade in articles of precious metals without obliging Contracting States to reduce their efforts regarding consumer protection. The measures taken by the Contracting States under the Convention in order to facilitate trade of articles in precious metals must be of such a nature that they do not affect the level of consumer protection (e.g. they must allow Contracting States to maintain measures which are necessary to protect consumers). An obvious consequence of this condition is that it is not a goal of the Convention to oblige the Contracting States to simply eliminate hallmarking requirements. At the same time the Convention does not require Contracting States to request compulsory hallmarking, as it is now also reiterated in the text of the revised preamble of 2001.

It is interesting to note that merely the term “maintain” is used and not an alternative term like assure or guarantee which might imply a duty for a Contracting State to introduce specific measures in this respect. The French translation “assurer” hints more into this direction but it seems that even those parties using the French version internally have interpreted this term in the sense as used in the English text. This can be seen for example in the German translation as produced for domestic purposes in Switzerland which speaks again of “Aufrechterhaltung” – a term definitely closer to the term “maintain” as used in the English version. On the whole, the chosen language makes it seem very unlikely that the protection of the consumer is a primary goal of the Convention. Even if this were the case, the main obligations under the Convention are clearly aimed at preventing the creation or maintenance of technical barriers to trade. From this contextual approach the measures taken to protect the consumer such as check test (Article 6) are normally drafted as exceptions to the general obligations under the Convention. Even the far-reaching obligation to adopt specific criminal legislation and initiate criminal proceedings or take other suitable action is limited to the fight

against forgery and abuse of the Common Control Mark and authorized Assay Offices marks as a prerequisite for the functioning of the Convention.

### Specific Obligations

The Convention accordingly opts for a system of mutual recognition (Article 1 Paragraph. 1 and 2) and partial harmonization. This harmonization relies in the obligations under Article 3 which are further conditions in order to benefit from the guarantees in Article 1 (submission of precious metal articles to an authorized assay office, control of the articles in accordance with the common rules, use of a common control mark = CCM). The system even is flexible enough to allow the parallel existence of voluntary and compulsory hallmarking systems. Neither Articles 1 nor 3 of the Hallmarking Convention do, however, explicitly request Contracting States to adopt market surveillance measures.

Article 5 of the Hallmarking Convention requests as further action to be taken by the Contracting States in order to achieve the goals of the system to appoint one or more assay offices and the notification of such appointments and possibly withdrawals of authorizations. These assay offices “shall be the only bodies authorized in its territory to carry out the control of articles of precious metals provided for in this Convention” (French : seront les seuls établissements de son territoire habilités à effectuer le contrôle des ouvrages en métaux précieux prévu aux termes de la présente Convention). The control referred to in Article 5 of the Hallmarking Convention is the control of articles of precious metals in view of being marked with the Assay Office mark and the CCM (Article 1 and 3). It does not refer to any additional controls such as those related to market surveillance.

### Check Tests

Art. 6 of the Hallmarking Convention underlines the fact that the provisions of the Hallmarking Convention do not prevent a Contracting State from carrying out check tests (French: des essais par épreuve) on articles of precious metals even if they bear the marks provided for in the Convention. Without Article 6 these check tests might be considered potential infringements of the basic obligation in Article 1 of even if Article 1 Paragraph 2 already refers in a general way to these check tests in Article 6.

Article 6 allows Contracting States to undertake such measures as long as they are not carried out in such a way as to hamper unduly the importation or sale of articles of precious metals marked in conformity with the provisions of the Convention. However, it does not require that Member States apply such measures. Article 6 is relatively neutral with regard to the desirability or necessity of such check tests. While they can have a negative impact on the facilitation of trade in precious metals they are allowed. It is clear that primary purpose of such check test is to ensure the proper application of the Convention’s requirements in order to provide the Contracting States with a guarantee of the stability of the treaty regime. This indirectly increases also the level of consumer protection. However, the language of the preamble is clear in so far as it states as a goal that Contracting States shall adopt common measures to facilitate trade but without reducing consumer protection. Check tests mentioned in Articles 1 and 6 are among those measures explicitly authorized under the Convention.

The draft language of Article 6 went further and described the purpose of spot checks as to detect whether the CCM had been applied correctly and whether rules regarding fitnesses and methods of analysis, as provided in the Annexes to the Convention, had been respected (Note by the Secretariat of 7 November 2008, PMC/INF 28/2008). Nothing in Articles 1 and 6 can directly be interpreted as requiring a Contracting State to undertake such check tests in order to assure consumer protection, even less so in order to assure consumer protection of consumers in another Contracting State. The spirit of the Convention seems strongly based in a cooperation scheme that leaves check tests to each Contracting State according to its proper appreciation and purely on its own territory.

### Additional Surveillance Measures

Similarly, Article 9 specifically allows Contracting States to take (additional) surveillance measures (French: *les mesures de surveillance supplémentaire*) if a Contracting State fails to comply with a recommendation by the Standing Committee or if the Standing Committee fails to make such a recommendation. These measures have the character of counter measures (today regulated in a general way in the so-called Draft Articles on State Responsibility as adopted by the General Assembly in Resolution 56/83 of 12 December 2001 and more specifically the suspension of the operation of a treaty as a consequence of its breach as foreseen in the Vienna Convention on the Law of Treaties of 23 May 1969). However, Article 9 again simply authorizes such measures under the specific conditions contained therein without putting an obligation on Contracting States to apply such measures or implying that Contracting States should already have market surveillance measures in place.

### Forgery and Misuse of Marks

Article 8 contains a positive obligation to have and maintain legislation prohibiting, subject to penalties, any forgery or misuse of the marks regulated in the Convention (French: *toute contrefaçon ou tout usage abusif*). Furthermore Contracting States are required to institute proceedings under such legislation when sufficient evidence is gathered. However, here again the Convention contains no obligations on how this evidence is gathered (French: *“lorsqu’une preuve suffisante est établie”*) and leaves it implicitly to the Contracting States to take the appropriate policing measures.

At the same time, here it seems more justified to expect from Member States to take those measures that will lead to the gathering of such evidence. A State never applying its existing legislation by completely avoiding the gathering of evidence would certainly violate the spirit of Article 8 and act against good faith in accordance with Article 26 of the Vienna Convention on the Law of Treaties of 23 May 1969 and customary law. Whether the fact alone that a State does not undertake market surveillance measures can be considered as a violation of Article 8 seems more dubious. In view of the detail of the Convention and its technical nature it seems difficult to argue that the obligation to have legislation in place and enforce it when sufficient evidence is gathered leads necessarily to an obligation of the Contracting States to apply market surveillance measures.

The same reason leads, however, to the conclusion that Contracting States are under an obligation to maintain and apply efficiently legislation with a view to fight forgery and misuse of marks. The general obligation to execute treaties in good faith leads here to an obligation to effectively apply measures to achieve this goal. In this sense, Contracting States are expected to provide for measures that allow for the gathering of sufficient evidence or “where more appropriate, to take other suitable action” (French: *Lorsque cela est plus approprié, d’autres mesures adéquates peuvent être prises.*). Both are relatively open obligations, but sufficiently clearly linked to the common goal of fighting forgery and misuse of marks to become meaningful.

For certain Contracting States it seems obvious that the only measures that lead to compliance with the obligations under Article 8 are market surveillance measures. The Standing Committee came in 1995 to the conclusion “that market surveillance and border controls were the only means of ensuring that the CCM marks put on the articles were genuine”. According to the Text of Article 8, however, such measures can only be expected from the Contracting States to the extent that they can be considered a necessity in order to gather evidence or take other suitable action in order to fight forgery and misuse of marks, including the genuine use of the CCM.

### Dynamic Interpretation of Articles 6 and 8

Both Article 6 and 8 leave it to Member States to take the appropriate measures on their respective territory. The type of police cooperation and harmonization of measures in this field as we know it today e.g. in the European Union seems difficult to reconcile with the traditional models of cooperation of the time of the conclusion of the Convention. While Article 6 (and Article 9) defines merely an exception to the general prohibition of erecting trade barriers through specific measures, Article 8 requires as a type of “minimum harmonization” the mere existence of legislative and policing measures. However, even Article 8 leaves it essentially to the Contracting States to decide which measures are suitable. Furthermore, the scope of Article 8 is limited to the fight of forgery and misuse of marks.

A next step in the analysis could, however, be whether the changed circumstances and the increased need for cross-border cooperation in an ever more integrated economic system could justify to expect from Contracting States to undertake such measures in order to respect the obligations under the Convention. While such a dynamic or evolutive interpretation is not uncommon in certain areas of international treaty law (e.g. Human Rights obligations under the European Convention on Human Rights), it is highly controversial and remains certainly an exception. It is not mentioned a such in the Vienna Convention on the law of treaties of 23 May 1969, but can be seen as a very special case of interpreting a treaty according to “the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.

The language of the Hallmarking Convention is generally very precise and technical. There are hardly any obligations of a general nature such as to take necessary measures to achieve the objectives of the Convention or to assure the achievement of these goals in a general way. The terms “where more appropriate, to take other suitable action” in Article 8 are an exception to this precise drafting. Even these terms are limited in their scope by the

general goal of such measures to fight forgery and abuse of marks. It seems therefore illegitimate to interpret the Convention as a whole or the terms in Articles 6 to 8 in a way that would automatically lead to an obligation to introduce or maintain general market surveillance measures.

## Summary Conclusions

The interpretation of the provisions of the Convention and of the Preamble as set out above come to the conclusion that the text contains no indication that market surveillance measures constitute a specific obligation of the Contracting States: The ordinary meaning to the terms used throughout the text is sufficiently clear and leaves no room for such a conclusion. Such a result respects also the presumption that in case of doubt the interpretation should prevail which affects State sovereignty the least (*interpretatio in favorem debitoris / in dubio mitius*).

Can the Convention properly operate in a country where there is basically no control and marking and at the same time no market surveillance? This is for the Contracting States to decide and possibly to negotiate in the form of a treaty amendment or revision. Apart from the measures to be taken by each Contracting State in the context of Article 8 of the Hallmarking Convention, there is no explicit obligation to undertake market surveillance measures. Each State is free to do so in order to maintain the level of consumer protection considered adequate but just as the Convention does not require States to introduce a compulsory hallmarking system it leaves them free to undertake market surveillance measures outside the scope of Article 8 of the Hallmarking Convention.

## Analysis of legal systems in the field of hallmarking in the European Union member states

### I. EU member states which apply the compulsory hallmarking system

#### **Bulgaria**

Statutory obligation to test and hallmark precious metal articles.

Hallmarking is regulated by the Ordinance on the conditions and the procedure for register and the requirements for persons carrying out activities of extraction, manufacturing and operations with precious metals and precious stones (State Gazette 69/6, August 2004, last amended SG 59/21, July 2006).

No information about mass limits for articles exempted from the testing and hallmarking obligation.

#### Structure of authorities:

Ministry of Finance  
Bulgarian Institution of Standardization  
State assay offices

#### Standards of fineness for precious metal articles:

For gold articles: 0.916; 0.833; 0.750; 0.585; 0,500; 0,333

For silver articles: 0.950; 0.925; 0.800; 0.750; 0.500

Market surveillance is effected by authorised representatives of the State Agency for Metrological and Technical Surveillance.

No information about acceptance of hallmarks from the other EU member states.

Contact Points:



A) Ministry of Finance, Sofia

B) National Enquiry Point/TBT

State Agency for Metrology and Technical Surveillance 21, "6th September" Street  
1000 Sofia, Bulgaria

Mrs. Violetta VELEVA

Note: Bulgaria has a state mandatory hallmarking system. The hallmarks are as follows:

	
Other finenesses: 833, 750, 585, 500, 333	Other finenesses: 925, 800, 750, 500

### **Czech Republic**

Statutory obligation to test and hallmark precious metal articles.

Mass limits for articles exempted from the testing and hallmarking obligation: 0.5g for gold and platinum articles, 3g for silver articles.

Structure of authorities:

State offices supervised by the Ministry of Trade and Industry.



Central office: Prague

Branches in Brno, Ostrava, Jablonec

Agency outlets in Cerveny Kostelec, Tabor, Olomunc, Pilzno, Hradec

Kralovy and Turnov

Standards of fineness for precious metal articles:

For gold articles: 0.999; 0.986; 0.900; 0.750; 0.585

For silver articles: 0.999; 0.959; 0.925; 0.900; 0.835; 0.800

For platinum articles: 0.999; 0.950; 0.900; 0.850; 0.800

Market surveillance is effected by authorised representatives of the assay offices.

Limited acceptance of hallmarks from the other EU member states (requirement of mutuality and compliance with the local legal system).

Czech Republic is a member of the Convention on the Control and Marking of Articles of Precious Metals.

## **France**

The official hallmarking of precious metal objects is mandatory.

Minimum weight required for the official hallmarking: 3g for gold and platinum articles, 30g for silver articles.

The assay of standard of fineness and the official hallmarking are effected by:

- the assay offices,
- the approved control bodies or laboratories,
- the precious metal professionals under licensing agreements.

Assay offices operating under the French customs excise duty authorities, supervised by the Ministry of Economy, Finance and Industry.

Offices are located in the following towns and locations:

Lyon, Marseille, Nice/Monaco, Paris, Saumur, Strasbourg, Toulouse, Martinique, Guadeloupe, Reunion.

Standards of fineness for precious metal articles:

For gold articles: 0.999; 0.916; 0.750 and 0.585; 0.375

For silver articles: 0.999; 0.925; 0.800

For platinum articles: 0.999; 0.950; 0.900; 0.850

The fineness mark takes the form of a symbol (e.g. Eagle's head for gold) and is not available in Arabic numeral. The fineness mark is also the State hallmark or assay office mark.

Precious metal articles marketed in France

Two marks must be applied to the article complying with the required standards of fineness (the manufacturer's mark or the importer's mark) and the assay office mark corresponding to the legally recognised fineness mark.

Market surveillance is effected by authorised representatives of the French customs offices who are responsible for fighting the abuse of precious metal legislation.

Condition of movement for European precious-metal articles:

Articles can be placed on the French market without any additional hallmarking formalities if they have been a subject to inspection and fineness conditions equivalent to those required in France; in the absence of such conditions articles imported into France are assayed and marked with the French assay office marks.

Only articles from the European Union member states, from a state party to the agreement establishing in European Economic Area or from Turkey, bearing on the hand a manufacturer's mark and on the other a fineness mark affixed by the independent body (equivalent to an approved control body) or by a government authority of the state concerned (assay office) in accordance with standards identical or equivalent to those required in France, can be marketed on French territory without a prior hallmark inspection.

### **Hungary**

Statutory obligation to test and hallmark precious metal articles.

Mass limits for articles exempted from the testing and hallmarking obligation:

1g for gold articles, 2g for silver articles.

Structure of authorities:

Hungarian Assay Authority in Budapest supervised by the Hungarian Trade Licensing Office.

Standards of fineness for precious metal articles:

For gold articles: 0.916; 0.750; 0.585; 0.375;

For silver articles: 0.925; 0.900; 0.835; 0.800;

For platinum articles: 0.950; 0,900

Market surveillance is effected by authorised representatives of the Assay Authority in cooperation with the Hungarian Customs and Finance Guard.

From 3rd February 2007 upon the authorization of the Commercial Law the Assay Authority has the right to impose administrative fine in the cases of commercial contraventions. The amount of the financial penalty can be from 200,-EURO to 4000,-EURO.

Limited acceptance of hallmark designs of the other EU member states (requirement of compliance with the local legal system).

Hungary is a member of the Convention on the Control and Marking of Articles of Precious Metals.

### **Ireland**

Statutory obligation to test and hallmark precious metal articles.

No mass limits set for exempting articles from obligatory tests and hallmarking.

Structure of authorities:

Assay office supervised by the Department of Enterprise, Trade and Employment  
Assay office in Dublin

Standards of fineness for precious metal articles:

For gold articles: 0.999; 0.990; 0.916; 0.833; 0.750; 0.585; 0.417; 0.375

For silver articles: 0.999; 0.958; 0.925; 0.800

For platinum articles: 0.999; 0.950; 0.900; 0.850

The assay office is not responsible for market surveillance. The new State legislation in this area is underway.

Acceptance of hallmarks from other EU member states: if they are equivalent to Irish Hallmarks enquire at Department of Enterprise, Trade and Employment.

Ireland is a member of the Convention on the Control and Marking of Articles of Precious Metals.

### **Latvia**

Statutory obligation to test and hallmark precious metal articles.

Mass limits: none

Structure of authorities:

State office in Riga supervised by the Ministry of Finance

Standards of fineness for precious metal articles:

For gold articles: 0.958; 0.916; 0.900; 0.750; 0.585; 0.583; 0.500; 0.375; 0.333

For silver articles: 0.960; 0.925; 0.916; 0.875; 0.830; 0.800; 0.750

For platinum articles: 0.950; 0.850

For palladium: 0.850; 0.500

Market surveillance is effected by authorised representatives of the assay office and the police.

Declaration of unconditional acceptance of hallmarks from the other EU member states.

Latvia is a member of the Convention on the Control and Marking of Articles of Precious Metals.

Declaration of unconditional acceptance of hallmarks from the other EU member states.

### **Lithuania**

Statutory obligation to test and hallmark precious metal articles.

Mass limits: none

Structure of authorities:

State offices supervised by the Ministry of Finance

Central office: Druskienniki

Branches in Wilno, Kovno, Shauliai, Klaipedos

Standards of fineness for precious metal articles:

For gold articles: 0.999; 0.916; 0.750; 0.585; 0.375

For silver articles: 0.999; 0.925; 0.830; 0.800

For platinum articles: 0.999; 0.950; 0.900; 0.850

For palladium: 0.999; 0.950; 0.850; 0.500

Market surveillance is effected by authorised representatives of the assay offices.

Limited acceptance of hallmarks from the other EU member states.

Main requirements stated in law:

- responsibility mark, registered in origin country,
- hallmarking of independent control body (assay office),
- no negative tolerance.

Other requirements:

- registration of responsibility mark in Lithuania,
- providing to Lithuanian Assay Offices the English translation of the document confirming registration at the local assay office.

Lithuania is a member of the Convention on the Control and Marking of Articles of Precious Metals.

### **The Netherlands**

Statutory obligation to test and hallmark precious metal articles.

Mass limits for articles exempt from the testing and hallmarking obligation: 0,5g for platinum articles, 1g for gold articles, 8g for silver articles.

Structure of authorities:

Supervisory body: Ministry of Economic Affairs

Private Assay Office in Gouda

Private Assay Office in Joure

Standards of fineness for precious metal articles:

For gold articles: 0.916; 0.833; 0.750; 0.585

For silver articles: 0.925; 0.835; 0.800

For platinum articles: 0.950

Market surveillance is effected by Verispect – a company officially authorised by the Ministry of Economic Affairs to conduct such tasks.

Limited acceptance of hallmark designs of the original EU member states (requirement of compliance with the local legal system). The declaration of acceptance of hallmark designs of the new EU member states, after analysis of their legal systems.

The Netherlands is a member of the Convention on the Control and Marking of Articles of Precious Metals since 1999 year.

### **Poland**

Statutory obligation to test and hallmark precious metal articles.

Mass limits for articles exempted from the testing and hallmarking obligation: 1g for gold and platinum articles, 5g for silver articles.

Structure of authorities:

State offices submitted to the Central Office of Measures supervised by Ministry of Economy

Regional Assay Offices in Cracow and in Warsaw with submitted local assay offices:

- in the Region of Cracow : Cracow, Poznań, Wrocław, Chorzów, Częstochowa
- in the Region of Warsaw: Warsaw, Gdańsk, Łódź, Białystok, Bydgoszcz

Temporary open branches:

- in the Region of Cracow : Szczecin
- in the Region of Warsaw: Lublin

Standards of fineness for precious metal articles:

For gold articles: 0.960; 0.750; 0.585; 0,500; 0,375; 0,333

For silver articles: 0.925; 0.875; 0.830; 0.800

For platinum articles: 0.950;

For palladium articles: 0,850; 0,500.

Market surveillance is effected by authorised representatives of assay offices.

Acceptance of hallmarks from other EU member states - accordingly to Houtwipper. Additional requirements: hallmarks must be current (present-day use) and legibly (good quality of marking).

Poland is a member of the Convention on the Control and Marking of Articles of Precious Metals.

## **Portugal**

Statutory obligation to test and hallmark precious metal articles.

Mass limits for articles exempted from the testing and hallmarking obligation: 1g for silver articles

Structure of authorities:

ASAE and INCM

Supervisory body: Assay Offices of INCM (State Mint and Print)

And ASAE (for market surveillance)

Assay Offices in Lisbon and Oporto

Standards of fineness for precious metal articles:

For gold articles: 0.999; 0.916; 0.800; 0.750; 0.585; 0.375

For silver articles: 0.999; 0.925; 0.835; 0.830; 0.800

For platinum articles: 0.999; 0.950; 0.900; 0.850

Market surveillance is assured by ASAE eventually with co-operation with Assay Office staff.

Hallmarking system recognition of independent EU/EEA assay offices is done by IPQ (Portuguese Institute for Quality) or by Mutual Recognition Agreement (contact to be made with Ministry of Economy – Enterprise General Directorate).

Sponsor's mark register in EU state of origin has to be deposited at INCM.

Portugal is one of the founder members of the Convention on the Control and Marking of Articles of Precious Metals.

### **Republic of Cyprus**

Statutory obligation to test and hallmark precious metal articles.

Compulsory system according to the Law 179/91.

Mass limits: 3g for silver and 1 g for gold

Structure of authorities: Board of directors.

Independent authority in Larnaca supervised by the Ministry of Commerce, Industry and Tourism.

Standards of fineness for precious metal articles:

For gold articles: 0.916; 0.750; 0.585; 0.375

For silver articles: 0.925; 0.830; 0.800

Market surveillance is effected by inspection bodies from the Cyprus Assay Office.

Limited acceptance of hallmark designs EU member states (required compliance with local legal system).

Republic of Cyprus is a member of the Convention on the Control and Marking of Articles of Precious Metals.

### **Slovakia**

Statutory obligation to test and hallmark precious metal articles. Act number 10/2004 and regulations 143/2004, 102/2004.

Mass limits for articles exempted from the testing and hallmarking obligation: 0.5g for gold and platinum articles, 3g for silver articles.

Structure of authorities:

Assay Office of the Slovak Republic

State offices supervised by the Ministry of Economy.

Central office: Bratislava

Branches in Kosice, Levice and Trencin

Standards of fineness for precious metal articles:

For gold articles: 0.999; 0.986; 0.900; 0.750; 0.585

For silver articles: 0.999; 0.959; 0.925; 0.900; 0.835; 0.800

For platinum articles: 0.999; 0.950; 0.900; 0.850; 0.800

Market surveillance is effected by authorised representatives of the assay offices in head office in Bratislava and branch in Kosice.

Limited acceptance of hallmarks from the other EU member states (requirement of compliance with the local legal system).

Slovakia is a member of the Convention on the Control and Marking of Articles of Precious Metals.

## **Spain**

Statutory obligation to test and hallmark precious metal articles.

Mass limits : 3g for gold articles, 2g for platinum articles, 7g for silver articles.

Additional remark from Spain: mass limits and other factors (hollow objects or geometric obstacles ) are a reasons for the exemption of placing the mark physically, but not exempt from hallmarking. In these cases the objects are labelled with a tag which contains the maker or importer's mark and the fineness and Assay Office mark.

### Structure of authorities:

Depends of each autonomous region, normally on the Industry and Trade Councils. The law of precious metals is national but its control and supervision is transferred to regional authorities.

Each region has its own Assay Office which is independent of the others.

The list of Official Assay Offices and their marks:

### Accredited by EN ISO/ IEC Standard 17025:

Valencia (V1), Andalusia (A1), Catalonia (C1), Madrid (M1), Galicia (G1), Balearic Islands (B2),

### Non accredited by EN ISO/ IEC Standard 17025:

Aragon (A1), Asturias (AS1), Castille-Leon (CL1), Murcia (MU1), Basque Country (PV1)

### Standards of fineness for precious metal articles:

For gold articles: 0.999; 0.916; 0.750; 0.585; 0.375

For silver articles: 0.999; 0.925; 0.800

For platinum articles: 0.999; 0.950; 0.900; 0.850

Market surveillance is effected by representatives of authorities supervising the sales outlets.

Acceptance of hallmarks from other EU member states: if hallmarking is carried out through independent Assay Offices (compulsory hallmarking a priori and market surveillance a posteriori) these marks are accepted in Spain. Other different systems are not accepted. Likewise is valid for the new member states.

## **United Kingdom**

Statutory obligation to test and hallmark precious metal articles.

Mass limits: 0.5g for platinum articles, 1g for gold articles, 7.78g for silver articles.

### Structure of authorities:

Assay offices in London, Birmingham, Edinburgh and Sheffield, supervised by the British Hallmarking Council which was set up under the relevant act in 1973.

The British Hallmarking Council is supervised by the State Department.

National Weights and Measures Laboratory.

### Standards of fineness for precious metal articles:

For gold articles: 0.999; 0.990; 0.916; 0.750; 0.585; 0.375

For silver articles: 0.999; 0.958; 0.925; 0.800

For platinum articles: 0.999; 0.950; 0.900; 0.850

### Market surveillance:

The compulsory UK hallmarking system is “a priori” so that articles must be assayed and hallmarked before being put on the market. Enforcement of the Hallmarking Act in the market itself is undertaken throughout the UK by Trading Standards Officers employed by the local government authorities.

Under Houtwipper, the British Hallmarking Council believes that in order to provide the equivalent guarantee to consumers as the UK Hallmark, the hallmark must comprise a makers mark; fineness mark; and independent assay office mark; and be from an EEA country that does not allow negative tolerances. Acceptable marks are those from Denmark, Finland, Ireland, Netherlands, Portugal, Switzerland, UK and Spain, but only those Spanish marks from independent assay offices marked A1, V1 and M1. No advice has yet been given on the acceptance of hallmarks from new EU Member States.

United Kingdom is one of the founder members of the Convention on the Control and Marking of Articles of Precious Metals.

## **II. States which apply the facultative hallmarking system**

In these countries, there are assay offices which test and hallmark precious metal articles, although the trade in articles marked by producers is also allowed.

## **Belgium**

No detailed information on the system and structure of authorities. Representatives of Belgium do not participate in the Association of European Assay Offices and haven't submitted any documents regarding the applicable legal system.

### Standards of fineness for precious metal articles:

For gold articles: 0.833; 0.750; 0.585

For silver articles: 0.925; 0.835

For platinum articles: 0.950

Market surveillance is effected by the trade control authorities.



Hallmark designs of other EU states are accepted without limitations.

### **Denmark**

Statutory facultative system, where precious metal articles can be tested and hallmarked at assay offices, although articles can also be marked by producers. Producers are obliged to mark articles with responsibility mark and fineness mark.

Mass limits: 1g for gold, platinum and palladium articles, 3g for silver articles.

Structure of authorities:

Assay office in Copenhagen, operating within the structures of the Force Technology supervised by the Agency of Economic and Trade Affairs.

Minimum standards of fineness for precious metal articles:

For gold articles: 0.333

For silver articles: 0.800

For platinum articles: 0.850

For palladium articles: 0,500

Market surveillance is effected by authorised personnel of the assay office.

In DK all finenesses not being lower than the minimum fineness is accepted and can be hallmark at the assay office.

Denmark is a member of the Convention on the Control and Marking of Articles of Precious Metals.

### **Estonia**

Statutory facultative system, where precious metal articles can be tested and hallmarked at assay offices, although articles can also be marked by producers.

Mass limits: none

Structure of authorities:

State offices are governed by the Ministry of Finance

Central office: Tallinn

Minimum standards of fineness for precious metal articles:

For gold articles: 0.375

For silver articles: 0.800

For platinum articles: 0.850

For palladium articles: 0.500

Market surveillance is effected by authorised representatives of the Technical Inspectorate.

The following institutions, within their limits of competence shall exercise surveillance upon the compliance with the requirements established in the hallmarking act:

- Consumer Protection Board,
- Police prefecture,

- Estonian Tax and Customs Board,
- City governments and rural municipalities (provide surveillance upon the correctness of the data in the Register of Economic Activities)

Declaration of unconditional acceptance of hallmarks from the other EU member states. The regulation from 9.12.2004 equalize all the responsibility marks different EU member states with the responsibility marks registered in Estonia. Also the fineness marks of all EU member states are permitted.

### **Finland**

Statutory facultative system, where precious metal articles can be tested and hallmarked at assay offices, although articles can also be marked by producers. At least two marks are needed when an article is brought onto the Finnish market: a registered responsibility mark + a fineness mark or the Finnish assay office mark + a fineness mark.

Mass limits: 1g for gold and platinum articles; 10g for silver articles

Structure of authorities:

1. The highest authority in the field of hallmarking: The Ministry of Trade and Industry
2. Surveillance authority: The Safety Technology Authority (TUKES) has the responsibility to monitor the trade with market surveillance, to register the responsibility marks, aid the Ministry in developing the statutes, to inform about the amendments in the statutes and to participate in national and international co-operation. TUKES admits the licence upon application for the Assay Office and supervises its actions.

3. The Assay Office in Finland has not the status of an authority organisation. Inspecta Oy is a private company that has got a licence to perform assaying. Inspecta Oy has 9 of regional offices in Finland.

Standards of fineness for precious metal articles:

For gold articles: 0.999; 0.916; 0.750; 0.585; 0.375

For silver articles: 0.999; 0.925; 0.830; 0.800

For platinum articles: 0.999; 0.950; 0.900; 0.850

Market surveillance is effected by personnel of TUKES.

Finland is one of the founder members of the Convention on the Control and Marking of Articles of Precious Metals.

### **Malta**

Statutory facultative system, where precious metal articles can be tested and hallmarked at assay offices, although articles can also be marked by producers.

Mass limits: 1g for all precious metals.

Structure of authorities:

Assay office in Valetta supervised by the Ministry of Finance

Standards of fineness for precious metal articles:

For gold articles: 0.916; 0.750; 0.585; 0.375

For silver articles: 0.959; 0.925; 0.830; 0.800

Producers are permitted to apply more standards:

For gold articles: 0,999; 0,990; 0,916; 0,840; 0,800; 0,750; 0,585; 0,500; 0,417; 0,375; 0,333

For silver articles: 0,959; 0,925; 0,830; 0,800

For platinum articles: 0,999; 0,950; 0,900; 0,850

For palladium articles: 0,999; 0,950; 0,500

Market surveillance, namely control of the precious metal articles in entities that process and trade in precious metal articles is effected by state office.

## **Romania**

Statutory facultative system, where precious metal articles can be tested and hallmarked at assay offices, although articles can also be marked by producers, importers and sellers.

Structure of authorities:

The main body in the field of hallmarking is the National Authority for Consumers Protection, through the Precious Metals and Precious Stones Department (NACP -PMPSD), as specialized body of the public central administration.

Supervisory body: Ministry of SME's, Trade, Tourism and Liberal Professions of Romania.

Assay Office: Precious Metals and Precious Stones Department, National Authority for Consumers Protection.

Central Assay Office in Bucharest

Branches in following counties: Arad, Arges, Bacău, Bihor, Brasov, Buzău, Cluj, Constanța, Dolj, Galați, Gorj, Harghita, Hunedoara, Iasi, Maramures, Mures, Prahova, Sibiu, Suceava, Timis.

Standards of fineness for precious metal articles:

Legal fineness in Romania is expressed in parts per thousand, as follows:

- a) for gold: 375; 500; 585; 750; 833; 900; 916 and 999‰;
- b) for silver: 750; 800; 875; 916; 925 and 999‰;
- c) for platinum: 950‰;
- d) for palladium: 950‰.

The admissible tolerance between the real fineness and the marked fineness must not exceed +/- 4‰.

Market surveillance

The following institutions, within their limits of competence, shall exercise surveillance upon the compliance with the requirements established in the hallmarking legal framework:

- National Authority for Consumers Protection;
- National Bank of Romania (ref. precious metals activities of commercial banks);
- Ministry of Economy and Finance (Customs and Finance Guard);
- Ministry of Interior and Administrative Reform (Police).

Structure of authorities:

*Assay Office:* Precious Metals and Precious Stones Department, National Authority for Consumers Protection.

*Central office:* Bucharest.

*Branches in following cities:* Arad, Argeş, Bacău, Bihor, Braşov, Buzău, Cluj, Constanţa, Dolj, Galaţi, Gorj, Harghita, Hunedoara, Iaşi, Maramureş, Mureş, Prahova, Sibiu, Suceava, Timiş.

Contact Points:

A) National Agency for Consumer Protection:

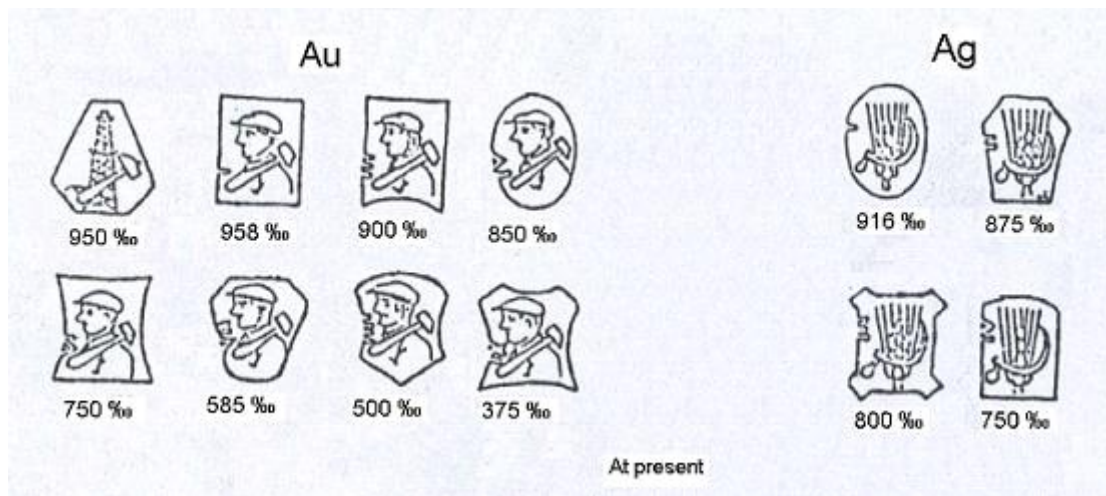
Aentia Nationala Pentru Protectia Consumatorului Directia Metale Pretioase si Pietre Pretioase

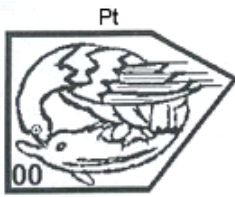
Domnul Director Dumitru Dumba

Str. Octavian Goga Nr. 2 Et.VII Cam. 4-6 Bucuresti Sector 3 Romania

B) Ministry of Economy and Commerce Division for Internal Market M. Razvan CUC  
Hallmarking Section: Mrs Silvia Duta

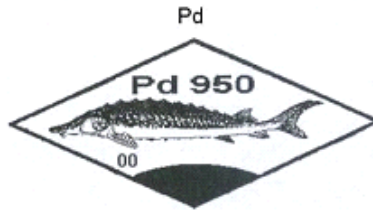
Note: This Agency deals with hallmarking. Before, Romania had a state mandatory system, but a voluntary system with new hallmarks was introduced in 2007.





Pt 950 ‰

after 2007



Pd 950 ‰

Ag



Ag 999 ‰



Ag 925 ‰



Ag 916 ‰



Ag 875 ‰



Ag 800 ‰



Ag 750 ‰

Au after 2007



Au 999 ‰



Au 916 ‰



Au 900 ‰



Au 835 ‰



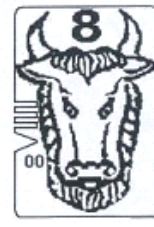
Au 750 ‰



Au 585 ‰



Au 500 ‰



Au 375 ‰

## INFORMATION ON ROMANIA

### Note by Romania's National Authority for Consumers Protection Precious, Metals & Precious Stone Department

According to the legislation in force in Romania<sup>1</sup>, precious metal articles must be hallmarked before their commercialization or making available for sale. Both the State Hallmark or the responsibility mark and fineness mark of the authorised economic operators are accepted as legal marks on jewellery and articles of precious metals.

The main body in the field of hallmarking is the National Authority for Consumers Protection, through the Precious Metals and Precious Stones Department (NACP -PMPSD), as specialised body of the public central administration.

The economic operators authorised to hallmark their own precious metals goods are registered at the NACP-PMPSD, and the punches they use are also registered and imprinted at this institution.

#### Exceptions from hallmarking are:

1. precious metals objects and jewels, which due to their construction can suffer alterations, cracking or other types of deformations when the marking procedure is underway.
2. precious metals made plates, fragments and dental works;
3. fragments of precious metals objects and jewels;
4. precious metals made coins, medals and ceremonial plates;
5. precious metals ingots;

---

<sup>1</sup> **Urgency Ordinance of the Government of Romania no. 190/2000** regarding the regime of precious metals and precious stones in Romania, republished, amended by Law no. 458/2006, published in the Official Gazette of Romania, Part I, no. 1004 from 18th of December 2006, in force from 18th of March 2007.

**Government Decision no. 1344/2003** for the approval of the Methodological Norms implementing the provisions of the Urgency Ordinance no. 190/2000, published in the Official Gazette of Romania, Part I, no. 838 from 25<sup>th</sup> of November 2003.

**Order no. 37 from 20/02/2004** regarding the approval of the hallmarks used by the manufacturers, producers, importers, exporters and as the case may be, by the sellers of jewellery and articles of precious metals and their alloys, published in the Official Gazette of Romania, Part I, no. 195 from 05/03/2004.

**Order no. 38 from 20/02/2004**, regarding the approval of the State Hallmarks, published in the Official Gazette of Romania, Part I, no. 195 from 05/03/2004.

**Order no. 102 from 28/04/2004**, approving the Technical Norms for analysis and hallmarking of precious metals and their alloys, published in the Official Gazette of Romania, Part I, no. 426 from 12/05/2004.

6. precious metals used as raw material;
7. precious metals made instruments used in laboratories;
8. precious metals objects and jewels production designated for exports;
9. base metal objects and jewels plated with precious metals.

Romanian legislation in force does not have a special provisions regarding the acceptance hallmarks from other EU/EEA member states.

The legislation is currently under revision having in view a conditional acceptance of the legally applied state hallmarks, responsibility marks and (or) marks applied by an independent control body from EU/EEA member states.

### **Slovenia**

Statutory facultative system, where precious metal articles can be tested and hallmarked at assay offices, although articles can also be marked by producers.

Mass limits: 1g for gold, platinum and palladium articles, 7g for silver articles.

Structure of authorities:

State office governed by Metrology Institute of Republic of Slovenia

Central office: Ljubljana, Branch: Celje

Standards of fineness for precious metal articles:

For gold articles: 0.999; 0.990; 0.916; 0.900; 0.840; 0.800; 0.750; 0.585; 0.500; 0.417; 0.375; 0.333

For silver articles: 0.999; 0.925; 0.835; 0.800

For platinum articles: 0.999; 0.950; 0.900; 0.850

For palladium articles: 0.999; 0.950; 0.500

Market surveillance is effected by inspectors of Metrology Institute of Republic of Slovenia

Slovenia is a member of the Convention on the Control and Marking of Articles of Precious Metals.

Declaration of unconditional acceptance of hallmark designs of other EU member states.

### **Sweden**

Statutory facultative system, where precious metal articles can be tested and hallmarked at assay offices, although articles can also be marked by producers.

Mass limits: 1g for gold, platinum and palladium articles, silver articles can be traded without hallmarked fineness, regardless of mass.

Structure of authorities:

Assay office in Stockholm accredited as inspection body by the state accreditation body – SWEDAC.

There are no legally determined standards of fineness for precious metal articles - the law specifies only the minimum levels:

For gold articles: 0.375  
For silver articles: 0.800  
For platinum articles: 0.850

Market surveillance, namely control of the precious metal articles in entities that process and trade in precious metal articles, is effected by Swedac.

Declaration of unconditional acceptance of hallmark designs of other EU member states if the hallmarks and/or Sponsor's Mark (Name Mark) are traceable.

Sweden is one of the founder members of the Convention on the Control and Marking of Articles of Precious Metals.

### **III. States which apply the producer's declaration**

#### **Austria**

Up to 31st March 2001 – the mandatory obligation to test and hallmark articles of precious metals. The Main Assay Office in Vienna (with branches) was the authority under supervision of the Ministry of Finance. The obligation was waived in April 2001.

Nowadays: only the Precious Metal Testing and Analysing Laboratory in Vienna exists, which additionally has the function of an assay office for Convention on the Control and Marking of Articles of Precious Metals purposes (determine the precious metal content in the articles for export to member states of the Convention hallmarked with CCM).

This Laboratory supports Austrian Market Surveillance Inspectors at the several Custom Offices. Those inspectors test articles withdrawn from trade during inspections, too.

Austria is one of the founder members of the Convention on the Control and Marking of Articles of Precious Metals.

#### **Italy**

Italy made attempts to introduce the marking applied by the Chamber of Commerce, however, the European countries (except France) to which Italian articles are exported, refused to treat this mark as an official hallmarking standard and, as a consequence, the mark is not applied in practice. Two Italian precious metal laboratories are officially authorised for marking articles with the state mark: Arezzo (mark number 1) and Vicenza (mark number 2).

Laboratories are also responsible for market surveillance.

#### Standards of fineness for precious metal articles:

For gold articles: 0.750; 0.585; 0.375; - all standards higher than 0,750 are also accepted

For silver articles: 0.925; 0.800; - all standards higher than 0,925 are also accepted

For platinum articles: 0.950; 0.900; 0.850; - all standards higher than 0,950 are also accepted

For palladium articles: 0.950; 0.500; - all standards higher than 0,950 are also accepted

Declaration of unconditional acceptance of articles of precious metals from other EU member states which are marked with fineness marks and responsibility marks registered in



these countries and articles marked with national hallmarks of EU countries if they are equivalent and intelligible for consumers.

### **Germany**

The German system is based on the hallmarking law from 1884 year.

This law applies only to gold and silver articles – other precious metals like platinum and palladium are excluded.

At the German legal system three groups of articles are distinguished: jewellery, watches and equipment (e.g. cutlery, candleholders, stylographs).

Jewellery and watches should be marked with fineness and manufacturer's mark. Other precious metal articles (equipment) should be mark additionally with the stamp of credence (the crown, the sun, the halfmoon).

Articles imported from EU countries have to be marked only with the fineness mark in thousandth parts.

**In other countries, i.e. Greece and Luxemburg** there are also no assay offices operating. Articles are marked by producers, trade is supervised by the trade control authorities, tests which verify the precious metal content in articles introduced to trade are performed in accredited chemical laboratories.

States which apply the producer's declaration, accept unconditionally the hallmark designs of other European Union states.