

Royal Decree 1055/2022 of 27 December 2022, on Packaging and Packaging Waste

Legal Alert



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28 December 2022 saw the publication in the Official State Gazette of [Royal Decree 1055/2022 of 27 December 2022, on Packaging and Packaging Waste](#).

The aims of the above Royal Decree are two-fold. On the one hand, it seeks to align Spain's packaging legislation with the new extended producer responsibility scheme set in place by the European Union, which is broadened to cover industrial and commercial packaging (both types of packaging were until now excluded from the scope of the scheme, which only affected household waste). On the other, it sets in place a series of measures to enhance the transparency and control of producers' obligations as regards both the marketing of their products and management of their waste.

Key concepts

Specific definitions are established for the key concepts relating to the implementation of the extended producer responsibility schemes set in place by the Royal Decree. These include "industrial packaging", "commercial packaging" and, notably, "service packaging", which is taken to mean packaging "*designed and intended to be filled at the point of sale and/or to permit or facilitate its direct consumption or use*".

In light of the growth in e-commerce and the ever-increasing possibility that packagers are not based in Spain, the definitions of "packager" and "producer of products" are also amended, to provide that in distance sales, packager will be taken to mean the agent tasked with marketing the products. Meanwhile, the e-commerce platforms that place packaging on the market in the course of the sale of products packaged by a third party will be deemed the packager in respect of such packages.

Also, where packaged products from outside Spain are placed on the market via these e-commerce platforms and the producer has not designated an authorised representative in Spain, the platform will be deemed the producer of the product for the purposes of the organisational, financial and reporting

obligations regulated in the Royal Decree.

Targets and measures for the prevention, re-use and recycling of packaging

With a view to reducing the environmental impact of packaging waste, the Royal Decree sets out a number of **targets and measures for the prevention, re-use and recycling of packaging**.

First of all, it establishes **prevention targets**, to be measured as the reduction in the weight of packaging waste produced with respect that generated in 2010. These targets are set at 13% for 2025 and 15% for 2030. Similarly, by 2030, all packages placed on the market must be recyclable and, where possible, reusable.

To achieve these targets, the Royal Decree introduces a series of **measures aimed at public administrations and the retail sector**. For example, public administrations are to encourage the consumption of drinking water by installing water fountains on their premises and in other public spaces, in an attempt to prevent the use of unnecessary packaging.

Food retail outlets are to be required sell whole fresh fruits and vegetables loose. However, this requirement will not apply to fruit and vegetables that are sold in multi-packs weighing 1.5 kg or more, protected or registered varieties of fruit and vegetables, those bearing labels indicating differentiated quality or identifying them as produced using ecological agriculture methods, or those at risk of deterioration if sold loose. The relevant distinctions are to be determined by ministerial order within six months of the entry into force of the Royal Decree. Once the above order is published, establishments selling non-exempt fruit and vegetables will have six months to comply.

Also with a view to promoting the loose sale of goods,

food retail outlets with a net floor area equal to or exceeding 400 m² must designate at least 20% of their sales area to the sale of products presented without primary packaging, including those sold loose or in reusable packaging.

As of 1 January 2023, food retail outlets with a net floor area equal to or exceeding 300 m² are required to inform their customers, of:

- The obligations to return reusable packaging and dispose separately of packaging waste in the relevant containers or at collection points.
- The promotion of reusable bags and optimised use of single-use bags.
- The availability in retail outlets of reusable packaging, and the possibility of consumers using reusable recipients.

These obligations will also apply to e-commerce platforms and retail outlets engaging in distance selling, which must place the above information in a prominent position on the relevant sales medium.

Elsewhere, **hotel, restaurant and catering establishments** (the “HORECA” sector) are now required to offer their customers the option of consuming non-bottled water free of charge in addition to the range of products on offer at the establishment, as provided in article 18.3 of Law 7/2022 of 8 April 2022 on Waste and Contaminated Soil for the Promotion of a Circular Economy (“**Law 7/2022**”).

In addition to the prevention targets and with a view to fostering the use of reusable packaging, **re-use targets** are set for both the HORECA sector, where these types of packaging are already used, and households, where they have not been widely used until now. These targets are established for both drinks containers and other household packaging, and also apply to commercial and industrial packaging. Among the measures aimed at promoting the reuse of used packaging, is the obligation on all food and beverage establishments selling loose food and drink to accept the use of clean reusable recipients (bags, Tupperware containers, bottles, etc.) that are appropriate for the products being acquired. The cleanliness and state of such recipients are the responsibility of the customer.

In addition, depending on the size of their sales area, such establishments must offer one or more of the beverages on sale in reusable packaging. Article 9 of the Royal Decree sets out a range of deadlines for compliance with each of these measures.

With a view to promoting the high-quality recycling of packaging waste, the Royal Decree incorporates the **recycling targets** established in Directive (EU)

2018/852 of the European Parliament and of the Council, of 30 May 2018, amending Directive 2008/98/EC on waste, which are supplemented by minimum separate collection targets as part of the extended producer responsibility for household, commercial and industrial packaging. This measure aims not only to increase the degree of recovery of materials contained in packaging waste but also to ensure that recovered materials are of the highest possible quality with a view to their safe reintroduction into the productive cycle, including the packaging production cycle.

New extended producer responsibility scheme

Particularly relevant, aside from the prevention, re-use and recycling targets set out above, is the **new extended producer responsibility scheme** introduced by the Royal Decree to align it with the requirements of the European Directives.

This scheme defines the obligations on all agents involved in the correct management of their waste with a view to achieving the objectives established in the Royal Decree, while also setting specific targets for certain agents. The extended producer responsibility scheme thus now applies not only to household packaging, but also to commercial and industrial packaging to which it was not generally applicable in Spain until now, thereby fulfilling the obligation under Directive EU 2018/852 to set in place extended producer responsibility schemes for all packaging by 2025.

Some of the most salient features of this new regime are as follows:

- First of all, producers of products are required to **set up an individual or collective extended producer responsibility scheme** and arrange the necessary **financial guarantee** to secure the necessary financing for the management of packaging waste.
 - If they opt to set up an individual scheme, producers must submit the relevant notification to the competent body of the autonomous region in which they have their corporate headquarters, together with the financial guarantee required for registration on the Waste Production and Management Register.

Individual scheme operators must also file annual accounts detailing the financial resources allocated to fulfilment of the extended producer responsibility obligations to the Coordination Committee each year.

- Where they opt for a **collective scheme**, producers must set up an association or alternative not-for-profit legal entity in accordance with article 50 of Law 7/2022 and the scheme must be authorised by the autonomous region in which the headquarters is to be established. The competent regional authority will register it on the Waste Production and Management Register once the documentation evidencing the validity of the financial guarantee has been filed.

To fulfil these obligations and, in line with transitional provision three of the Royal Decree, producers of products not required to participate in an integrated management system until the entry into force of the Royal Decree shall have until **31 December 2023** to submit the notice of establishment of an individual scheme or request for authorisation as a collective extended producer responsibility scheme. For all other producers, the deadline for filing the notification or request for authorisation is **30 June 2023**.

- As regards the **financial guarantee** required to set up extended producer responsibility schemes, this must cover the insolvency of both the producers and the scheme itself, breach of the notification or authorisation requirements or termination of the scheme. The guarantee must be valid for one year and may be arranged in any of the manners provided for in Royal Decree 208/2022 of 22 March 2022, on financial guarantees for waste. The amount of the guarantee will be determined based on quantities of waste, differentiated by material, that enters the market via the scheme and the average packaging waste management costs per the formula envisaged in Appendix IX of the Royal Decree.
- Elsewhere, the Royal Decree defines the **financial contributions** of producers to extended producer responsibility schemes, so that it is the producers that assume the total cost of managing the packaging waste generated, which includes the cost of separate collection and subsequent transportation and processing; the costs of providing information to end users or owners, the cost of awareness-raising campaigns and the cost of data collection and communication.

Where obligations are met collectively, possible criteria are established for modulating the financial contributions of producers for each category of similar packaging, having regard to aspects such as the type and quantity of material used in their manufacture, their durability or the possibility of

repair, re-use or recycling, among others.

- In addition, **packaging design and marking obligations** are established, which include how to indicate the reusable nature of the packaging, the category to which the packaging belongs or container in which it should be deposited once it becomes waste, or, where appropriate, the symbol associated with the deposit, refund or return system. The above obligations will be enforceable as of 1 January 2025, as stated in final provision five of the Royal Decree.
- Certain **reporting obligations** are introduced in relation to the **placing on the market of packaging**, whereby producers of products are required to:
 - register on the packaging section of the Register of Producers of Products created by Royal Decree 293/2018 of 18 May 2018, within three months of the entry into force of the Royal Decree.
 - submit annual information on the placement of packaging on the market to the Directorate General of Environmental Assessment and Quality of the Ministry for Ecological Transition and Demographic Challenge, by 31 March of the year following the year to which the information relates.
- Meanwhile there is now an obligation on producers of products which, over the course of a calendar year, place on the market a quantity of packaging equal to or exceeding the amounts provided for in article 18 for each type of material, to implement a five-year **corporate prevention and eco-design plan**. These corporate prevention and eco-design plans may be prepared individually by producers of products, or by the collective extended producer responsibility schemes in which they participate, and must be implemented as of the year following the year in which the relevant thresholds are exceeded.
- Lastly, a mandatory **deposit, refund and return scheme** (“**DRS**”) is introduced for reusable packaging and, in the event of failure to meet of the recycling targets set in article 10.4 of the Royal Decree, for single-use plastic bottles with a capacity of up to 3 litres for mineral and spring water, juices, nectars, freshly squeezed fruit and vegetable mixes, squashes, fizzy drinks, energy drinks, isotonic drinks and alcoholic beverages. For all other single-use packaging, the establishment of the DRS will be voluntary.

Producers must comply with this obligation by setting up the relevant individual or collective extended producer responsibility schemes and the affected packaging must be identified with clear, unequivocal symbols.

Other reporting obligations

In addition to the extended producer responsibility obligations, the Royal Decree provides for a number of reporting obligations aimed at natural and legal persons authorised to conduct professional packaging waste collection and processing activities, who are required to keep up-to-date information on packaging waste management in their area of competence. This information must include the regular quantification and classification of incoming and outgoing packaging waste, and details of the specific facilities at which outgoing packaging waste recovery or disposal takes place, for each of the infrastructures available in the autonomous region.

In the case of packaging waste for which competence lies with local authorities, such authorities must submit to the regional authorities each year a report on the management of the packaging waste in question. Likewise, the reporting obligations of public authorities vis-à-vis users, the general public and NGOs, other administrations and the European Commission are also established.

Penalty regime and entry into force

As regards the penalty regime, article 54 of the Royal Decree provides that failure to fulfil the obligations introduced will be subject to penalties in accordance with Law 7/2022; Industry Law 21/1992 of 16 July 1992 and the Revised General Consumer and User Protection Law and other supplementary laws, approved by Royal Legislative Decree 1/2007 of 16 November 2007.

Finally, the Royal Decree sets in place the transitional regime applicable for the purposes of fulfilment of the recycling and recovery targets in force until 2025, the reporting obligations for producers of products for 2021 and 2022 and adaptation to the new extended producer responsibility scheme, among others.

All of the provisions of the Royal Decree on Packaging and Packaging Waste entered into force on 29 December 2022, with the exception of that concerning the obligation concerning the marking of packaging, which will enter into force on 1 January 2025.

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