

Q&A - Royal Decree 1055/2022 on packaging and packaging waste

As a result of the Circular Economy Action Plan approved by the European Commission in 2015, Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018, amending the Waste Framework Directive, was approved with the aim of advancing the circular economy, harmonising, improving information and traceability of waste and strengthening governance in this area.

At the national level, Law 7/2022 of 8 April on waste and contaminated soils for a circular economy transposed this Directive into Spanish law. In turn, the Government was empowered to approve the regulatory provisions necessary to establish, among other measures, those aimed at preventing the generation of waste, developing extended producer responsibility, establishing provisions for the different types of products in relation to the waste they generate, as well as establishing rules on the production and management of such waste. In response to this, the Government approved Royal Decree 1055/2022, of 27 December, on packaging and packaging waste, which came into force on 29 December, except for the new obligations regarding the marking of packaging, which will come into force on 1 January 2025.

However, it should be noted that on 30 November 2022, the European Commission approved the Proposal for a Regulation of the Parliament and of the Council on packaging and packaging waste, which proposes to establish a harmonised regulatory framework applicable in all EU Member States. This Regulation should help to eliminate the disparity of provisions between the different EU Member States with regard to the regulation of requirements on the environmental sustainability of packaging and its labelling, its placing on the market, as well as in relation to extended producer responsibility and the collection, treatment and recycling of packaging waste.

Notwithstanding the above, the most relevant provisions of the new Royal Decree 1055/2022, on packaging and packaging waste are highlighted below, taking into account the special relevance and impact that its application will have on the activities of both the production and distribution of products.

***RD 1055/2022 came
into force on 29
December, except for
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What is the aim of the Royal Decree?

This Royal Decree establishes the legal regime applicable to packaging waste in order to prevent and reduce its impact on the environment, establishing measures to prevent the production of packaging waste, the reuse of packaging, recycling and other forms of recovery that allow progress to be made in the implementation of the circular economy.

When did the Royal Decree enter into force?

The provisions contained in the Royal Decree entered into force on 29 December 2022, with the exception of the new marking obligations contained in Article 13, which will enter into force on 1 January 2025.

Which is the most important consequence of the Royal Decree?

Among other relevant new features, it should be noted that from the entry into force of this Royal Decree, industrial and commercial packaging will also be subject to the extended producer responsibility regime, which, therefore, is no longer limited exclusively to household packaging.

What is industrial packaging?

Industrial packaging is packaging intended for use and consumption in the course of the economic activity of industries, livestock, forestry, aquaculture or agricultural holdings. Examples of industrial packaging are films, bags, sacks, buckets, drums, pallets or wooden or cardboard boxes that industry operators use for the development of their activity.

What is commercial packaging?

It is the packaging used by the retailer or wholesaler, in the HORECA sector, in offices, markets, as well as in the rest of the services sector for their own use and consumption in the exercise of their activity. Examples of commercial packaging are packaging films, boxes or pallets that logistics platforms use to ship goods to the points of sale of such products.

What is household packaging?

Packaging of products intended for use or consumption by private individuals and which are likely to be purchased by consumers in shops.

Who is considered to be a "producer of product"?

Producers of the product are considered to be packagers (those who package the product and place it on the market), importers and intra-Community purchasers of packaged products who place such products on the market.

Industrial and commercial packaging will also be subject to the extended producer responsibility regime

In relation to distribution trademarks, who is considered to be the producer of the product?

In the case of packaged products placed on the market by means of distribution trademarks, if the producer of the product is not identified, the holder of the trademark based in Spain will be considered the producer of the product.

Who is the producer of product in products marketed at a distance?

If, by means of distance selling, packaged products from outside Spain are introduced into the Spanish market and the producer has not appointed an authorised representative in Spain, the platform will be considered as the producer of product for the purposes of the financial and information obligations, as well as organisational obligations where applicable, regulated in this Royal Decree, with respect to that packaging.

In which cases is it necessary to appoint an authorised representative?

Producers of products that market products in Spain, but are established in another Member State or in third countries for the purposes of compliance with the obligations of the producer of the product, must appoint an authorised representative.

In the absence of an authorised representative, the first distributor of the packaged product who is based in Spain will become responsible for the obligations of the producer of the product.

Do producers of products have to register in a registry and make a declaration?

Yes, the Royal Decree creates the Packaging Section of the Registry of Producers of Product in which, as a general rule subject to certain exceptions, producers of product (or their authorised representative) must register before 29 March 2023.

Registration will result in the assignment of a registration number which must be stated on all invoices issued by the producer of product, as well as on any other documentation accompanying commercial transactions of packaged products from placing on the market to retail outlets for household packaging, or to the end user for commercial and industrial packaging.

*Packers, importers
and intra-Community
purchasers of
packaging are
considered as a
"producer of product"*

Is there any communication to be made through the Registry after registration?

Registered producers of products or their authorised representatives must provide the competent authority annually with the quantities by weight and by type of material of the packaging they place on the market, the units, with a breakdown for each Collective Extended Producer Responsibility System (EPRS, in Spain "SCRAP", acronym of "Sistema Colectivo de Responsabilidad Ampliada del Productor") of the packaging categories (household, commercial or industrial) and differentiating whether they are single-use or reusable. However, producers of product who place less than 15 tonnes of product on the market may make a simplified declaration.

For the years preceding the entry into force of the Royal Decree, information on packaging placed on the market from 2021 onwards must be provided within the following periods:

- From 1 January to 30 April 2023: Data for the year 2021 may be provided, although the system is still in a testing period.
- From 1 May to 31 July 2023: Data to be provided for the year 2021.
- From 1 August to 31 October 2023: Data must be provided for the year 2022.
- For 2023 and subsequent years, the declaration must be made before 31 March of the following year (e.g. in 2024, the declaration for 2023), although it shall probably be made through the SCRAP.

What does the regulation establish with regard to the marking of packaging?

This Royal Decree regulates (i) packaging marking provisions (fraction or container in which to deposit household packaging, identification of whether the packaging is reusable, identification of the UNE standard if the packaging is domestic or industrially compostable, symbol of the refund, deposit and return system or RDRS); (ii) voluntary marking indications (material, recyclability, quantity of recycled material and the SCRAP symbol) and (iii) marking prohibitions (such as "environmentally friendly").

Does the obligation to identify the symbol identifying the SCRAP (e.g. Ecoembes green dot) therefore disappear?

According to Article 13.2 of the Royal Decree "Packaging may also be identified by means of symbols indicating that it belongs to the extended producer responsibility system in accordance with Article 21.4".

Article 21(4) provides that "packaging included in the extended producer responsibility system, if the system so provides, may be identified by means of an identical symbol throughout the territory of that system".

***Producers of product
(or their authorised
representative) must
register in the
packaging section of
the Producers of
Product Register
before 29 march 2023***

Therefore, we understand from the wording of the regulation that the indication of the symbol identifying the SCRAP, if it has a symbol, will be voluntary, and this is also the understanding of the SCRAPs themselves.

However, having consulted the Circular Economy Sub-Directorate of the Ministry for Ecological Transition and the Demographic Challenge on this voluntary nature, it currently seems to consider that, if the SCRAP establishes that the packaging may be identified with its symbol, this packaging must be identified with this symbol.

In any case, the European Union Regulation Proposal may hopefully help to unify the applicable regime at EU-level.

Does the regulation set targets for prevention, reuse, recycling and recovery?

Indeed, the regulation establishes a series of targets and time and percentage milestones to be achieved in terms of prevention, reuse, recycling and recovery, as well as public, social and business measures that can be implemented to achieve these targets.

By way of example, by 2030 all packaging should be recyclable, should contain 30% recycled plastic and 70% by weight of all packaging waste should be recycled; it establishes obligations for food retailers to avoid the use of packaging through bulk sales or to be in possession of reusable packaging, the gradual return to the deposit, refund and return system for packaging in the HORECA channel and, to a lesser extent, in sales to consumers.

In addition, separate collection targets are set for each packaging waste material (paper, plastic, wood, ferrous metals, aluminium, glass and paper/cardboard). In the event that these targets are not achieved, the mandatory implementation of the RDRS is foreseen for some household packaging.

What other obligations are imposed on the producers of product?

Producers of product must comply with a wide range of obligations deriving from Extended Producer Responsibility (EPR), which, in summary, consist of all those actions necessary to finance and organise the management of packaging waste that the producers of product places on the Spanish market, as well as to provide information on such packaging and its traceability.

Will there still be the obligation for the producers of product to implement prevention business plans if it exceeds a certain volume of packaging placed on the market?

Yes, although the business prevention plans now also include eco-design obligations, their validity is changed from three to five years and the maximum amounts above which it is compulsory to apply a Business Plan for prevention and eco-design are slightly modified in relation to certain materials.

The Royal Decree lays down new marking obligations, optional marking and prohibitions on marking

How can the producers of product comply with the obligations under EPR?

There are two ways to comply with the obligations arising from the EPR: by implementing an Individual Extended Producer Responsibility System (IPRS or "SIRAP" by the Spanish acronym) through which the obligations are fulfilled individually or by joining a Collective System of Extended Producer Responsibility (SCRAP). Given the complexity of organising a SIRAP on an individual basis, we generally recommend compliance with the EPR by joining a SCRAP, although this should be analysed on a case-by-case basis.

When should producers of product join a SCRAP?

Producers of product must join a SCRAP by 31 December 2024. While a SCRAP already exists for household packaging (Ecoembes/Ecovidrio) there are currently no SCRAPS for industrial and commercial packaging. However, some associations have already been set up and are planning to apply for authorisation.

How will the producers of the product contribute financially to the management of the packaging waste they place on the market?

The Royal Decree establishes for the first time specific criteria for the eco-modulation of the financial contribution to the SCRAP for packaging placed on the market categorised as general penalties or bonuses and specific penalties and bonuses depending on the material. These criteria relate to factors such as the nature and quantity of material used in their manufacture, their durability, reparability, reusability and recyclability, their superfluity, the amount of recycled materials they contain, the presence of hazardous substances or other factors affecting the ease of reuse, the recycling of packaging waste or the incorporation of recycled materials.

Therefore, two producers of the product, the packaging placed on the market being identical in terms of type and quantity, may face completely different contributions depending on their composition, packaging colours, marking and other characteristics.

How should reusable packaging be managed?

Another of the new features introduced by the regulation is the mandatory establishment of the RDRS for reusable packaging in order to guarantee the recovery of such packaging throughout the distribution chain and, in the case of household packaging, from the end consumer.

Consequently, all operators involved in the marketing of the product (including distance selling), as well as the consumer, will be obliged to collaborate in the correct development of the RDRS.

To this end, both the producer of the product and the distributors and traders are obliged to charge their customers, if applicable, up to the final consumer, an amount of at least 10 cents for each unit of packaging as a deposit.

Before 31 December 2024 Producers of product shall join SCRAP or form a SIRAP in relation to industrial packaging, commercial or household packaging that they place on the market

They must also return the deposit when they are given used packaging of the same type, format or brand which they place on the market. However, the producer of product is only obliged to accept the return of packaging for products it placed on the market.

Once the reusable packaging is no longer useful, the producer must either hand it over to a waste manager for proper management, assuming the cost of such management, or reach agreements with the holders of such waste so that they, on behalf of the producers of product, comply with the obligations regarding organisation, management and compliance with the obligations.

The above obligations may be fulfilled by a SIRAP or by a SCRAP.

What is the penalty regime applicable for non-compliance with the provisions of the Royal Decree?

The penalty regime for non-compliance with the provisions contained in the Royal Decree on Packaging is contained in Law 7/2022, of 8 April, on waste and contaminated soils for a circular economy. By way of example, this law classifies as a serious infringement the failure to register in the Registry of Producers of Product, to provide annual information on the packaging placed on the market or to manufacture, market or use products in breach of the obligations deriving from the Waste Law or the implementing regulations on the design and composition of products, provided that public health and hygiene, environmental protection or consumer safety are not seriously disturbed. In this case, the penalty to be imposed for the commission of each infringement may range from 2,001 to 100,000 euros.

However, if the infringement seriously disturbs public health and hygiene, environmental protection or consumer safety, the infringement will be classified as very serious, in which case, a sanction of between 100,001 euros and 3,500,000 euros may be imposed.

As an accessory sanction to the monetary fines and in relation to some infringements, the seizure of the goods is also foreseen. Depending on the type of infringement committed for non-compliance with the Royal Decree, inspection and sanctioning powers correspond to the Ministry for Ecological Transition and the Demographic Challenge, the Autonomous Communities or local authorities.

*The deposit, return
and refund system for
reusable packaging is
made compulsory*



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