



CECA MAGÁN
ABOGADOS

**PRACTICAL GUIDE OF PACKAGING
AND INDUSTRIAL PACKAGING WASTE.
ROYAL DECREE 1055/2022**

February 2023

On 29 December 2022, Royal Decree 1055/2022 of 27 December on packaging and packaging waste came into force. Although the main obligation for the industrial sector - to collect and manage its industrial packaging waste through an Extended Product Responsibility System – **will not be enforceable before 31 December 2024**, we advise affected companies to start preparing now to comply with the Royal Decree, given the numerous requirements and its practical complexity.

In this guide, we take an executive look at **the main guidelines to be followed by those responsible for placing industrial packaging on the market** in order to comply with the new obligations.



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I. GENERAL CONSIDERATIONS

On 29 December, Royal Decree 1055/2022, of 27 December, **on packaging and packaging waste**, hereinafter referred to as the "Royal Decree", came into force.

Focusing on industrial packaging and industrial packaging waste, the **main innovation** is that although, in accordance with the previous regulations, all producers or holders of industrial packaging waste derived from their activity or industrial process managed it either internally or by entrusting its treatment to an authorized manager, with the new Royal Decree, **such packaging is now affected by the so-called Extended Producer Responsibility System**, hereinafter referred to as EPRS.

In this way, the EPRS will assume, on behalf of the producer or holder, the responsibility for organizing and financing the separate collection and management of industrial packaging waste.

Therefore, by the end of this year, the producer or holder, before placing his packaged products or their packaging on the market, will have to certify that the packaging is under a EPRS.



II. INDIVIDUALS AFFECTED BY THE EPRS

1. Who are the individuals affected by the Royal Decree?

The Royal Decree differentiates between:

- a. All parties affected by its provisions under the concept of "**economic agent**", meaning: manufacturers of raw materials and packaging, distributors and those responsible for the marketing of packaging and packaged products, including importers, as well as citizens and administrations.
- b. In relation to the EPRS, the so-called "**producer of the product**" includes the packagers, and the economic agents responsible for the first placing on the Spanish market, including importation or acquisition in other Member States of the European Union, of packaged products.

Next, we will define each of the aforementioned subjects.



2. What is meant by Producer of the Product?

Packers, or Economic Operators, **responsible for the first placing on the domestic market** of packaging or packaged products.

In case of doubt, **the following identification criteria are established:**

- a. The holder of the distribution brand based in Spain under which the product is marketed.
- b. In the case of products packaged on behalf of a third party who will be responsible for placing them on the market, the latter will act as the producer of the product.
- c. The e-commerce platforms through which the product is placed on the Spanish market will act in a subsidiary capacity as Product Producer for the purposes of financial and information obligations, as well as organizational obligations.

The identification of the individuals will, of course, depend on the situation. As a result, while the topics occasionally overlap in such a way that the person who markets a product is also the one who packages it, in other instances, the packaging is outsourced, meaning that the producer gives their products to a third party for the latter to package. Consequently, the legislator's goal was to guarantee that no one was excluded from the EPRS's arbitrary field of applicability.



III. GENERAL OBLIGATIONS FOR INDUSTRIAL PACKAGING

1. What are the main obligations of the Producer of the Product?

- a. Adapt packaging to certain manufacturing, design and marking requirements.
- b. To adopt prevention and eco-design plans.
- c. Adopt measures to try to meet prevention and reuse targets.
- d. Collect composition information from manufacturers and importers, or intra-community purchasers, of empty packaging.
- e. Achieve the required recycling targets in each case.
- f. To finance and/or organize the collection and treatment of single-use packaging waste.
- g. Periodically notify and inform the Administration of the types and quantities of packaging placed on the market.
- h. To enroll in the Register of Producers.
- i. Establish or join an EPRS.
- j. To provide the SCRAP with the necessary information, annually, before 28 February, to comply with their reporting obligations to the Administration.
- k. Establish a DRS for reusable packaging.
- l. Adapt, where appropriate, the deposit, return and refund systems (DRS) of their packaging to an EPRS.

The producer may opt for a combination of EPRSs when placing the same category of industrial packaging of the same material on the market. In the case of single-use packaging, in addition to the above, the packaging must be dedicated to the same economic activity.

2. I am a Producer of a product not established in Spain, but I market industrial packaging in Spain, how do I comply with my obligations?

In this case, you must formally and expressly appoint an **authorized representative**, natural or legal person, established in Spain to assume compliance with these obligations and, if applicable, the responsibility for non-compliance.

3. Does the Royal Decree establish any obligations regarding packaging design?

The Royal Decree requires Product Producers to design packaging in such a way as to reduce adverse impacts throughout its life cycle. To this end, it requires, among others, the following: maximum metal concentration limits (100 ppm/by weight); volume and weight conditions; eco-design conditions; minimization of hazardous substances in their manufacture and composition (REACH Regulation, Annex III); or certain information requirements on the amount of recycled plastic contained in the packaging.

4. Does the Royal Decree set recycling targets for packaging?

While the targets for prevention and reuse have finally been configured as "**soft law**", the Royal Decree maintains binding, albeit increased, minimum recycling targets in weight for specific materials (plastic, glass, wood, ferrous metals, aluminium, paper and cardboard) for 2025 and 2030 compared to the previous version.

5. How will compliance with these targets be counted?

The targets, throughout the national territory, will be calculated based on the data communicated by the Autonomous Communities regarding the packaging waste generated in their territory, and by the waste managers in their annual reports.

Likewise, the information contained in the packaging section of the Register of Product Producers (see point 8) will be essential in this respect.



6. I put plastic packaging on the market that is not made of compostable materials, am I required to meet a recycling target?

Not as recycling targets. The Royal Decree sets aspirational targets for recycled plastic content per package, except for plastic bottles and single-use products which are binding.

7. Do I have to comply with any marking obligations?

Finally, the Royal Decree states that the new marking obligations will be enforceable from 1 January 2025. Article 13 establishes the following mandatory or voluntary requirements:

- a. Packaging may be marked to indicate the material of which it is composed, in accordance with the abbreviations or numbers regulated in Decision 97/129/EC in accordance with Directive 94/62. Note that such marking is voluntary.
- b. Packaging shall indicate its reusable status and the symbol associated with the DRS and shall indicate the container in which the packaging waste is to be deposited.
- c. The marking of packaging in such a way as to induce its abandonment is prohibited.
- d. Alternatively, they may be marked with the percentage of recycled material provided that it can be certified.

e. For compostable plastic packaging, the labelling shall state that it is certified according to the European UNE standard.

f. The packaging shall bear the markings indicated on the packaging itself or on the label. The marking must be legible, visible and durable.

8. How do I comply with my information obligations, and do I have to register in a Register?

In order to comply with the information obligations, a packaging section has been created in **the Register of Product Producers**, and packaging producers must register in this **register** within three months of the entry into force of this Royal Decree. This Register is unique for the entire national territory and is managed by the Ministry for Ecological Transition and the Demographic Challenge.

The Authorized Representative will assume this registration when he/she voluntarily agrees to do so in the case of industrial packaging.

9. What do I have to be informed about?

Producers of Products shall submit, on an annual basis, the quantity by weight per type of packaging material placed on the market, as well as the number of units, broken down for each packaging category in the SRAP, and differentiating between single-use and reusable (Annex IV.2). All elements of the packaging shall be considered.

This information shall be sent to the Directorate General for Environmental Quality and Assessment of Ministry for Ecological Transition and the Demographic Challenge following marketing, before 31 March of the year.

For small producers (less than 15T/year), platforms and first distributor or trader, it is allowed to provide this information in a simplified form.



10. When do I have to adopt a Prevention and Eco-design Plan?

Producers of Products will be obliged to adopt a five-yearly Business Plan for prevention and eco-design when they place certain quantities of packaging on the market, in general, between 15 and 300 tonnes depending on the type of material.

Such plans **are required from the year following the year in which the Producer exceeds these thresholds.**

11. How do I comply with the Prevention and Eco design Plan: individually or through the EPRS?

You can comply either individually or through the EPRS.

In this way, the Product Producers, individually, will report to the Autonomous Community where their headquarters are located, the progress in achieving the objectives of the plan.

For their part, the **EPRSs**, although responsible for the preparation and monitoring of these plans, their execution corresponds to the Producers, who must report to the EPRS on the progress of the plan, and the EPRS, in turn, must report to the Autonomous Community.



IV. OBLIGATIONS OF EACH PARTY CONCERNED IN RESPECT OF ITS INDUSTRIAL PACKAGING.

1. I am a producer, what are my obligations?

The Producers of the Product are obliged to finance and organize the total management of their waste, with the sole exception that local authorities are responsible for managing industrial packaging waste, as it can be assimilated to household waste.

These obligations must be fulfilled by the Producer through an EPRS, either individually or collectively. However, they may agree with the manufacturers, intra-Community purchasers or importers of the packaging that the latter, on their behalf, assume the financial, organizational and information obligations that fall under the EPRS.

In this case, these parties must set up or join the EPRS in place of the Producer, and must provide him with the documentation accrediting compliance with his obligations.

2. I am a producer, can I change from one EPRS to another?

Producers may change from one EPRS to another EPRS that is authorized to treat their waste by informing the System of origin, the new system in which it is integrated or which it forms part of, and the Register of Product Producers, before the last quarter of the year. Obviously, in order to make this change, the producer must prove that he is up-to-date with the financial obligations assumed with the extended producer responsibility system of origin.

The change from one system of responsibility to another means that the new system fully assumes the producer's obligations arising from the placing of packaging on the market in the following year.





3. What are the obligations of the SRAP?

The individual and collective systems will be obliged to fulfill the obligations conferred on them by the Producers in terms of organizing the separate collection and management of their packaging waste, to try to achieve the recycling targets and to assume the financing of the collection and management of their packaging waste. In short, they must:

- a. Achieve the recycling targets for industrial packaging set out in Article 42 of the Royal Decree.
- b. Have financial or financial and organizational resources.
- c. Comply with the conditions of their notification or authorization.
- d. Enter into agreements with the waste managers to treat their waste.
- e. Provide the waste managers with information on the composition of the packaging.
- f. Enter into agreements, where appropriate, with other extended producer responsibility systems in order to be able to economically compensate the management operations they have carried out.
- g. Implement self-monitoring mechanisms.
- h. Publish annual information on the achievement of objectives on their websites.
- i. They shall send, before 31 May each year, to all the Autonomous Communities in which they operate and to the Coordination Commission, a report with data on placing on the market, separate collection, recycling, reuse, and recovery.

4. Are there any additional obligations for EPRs?

In addition to the obligations listed above, collective schemes must:

- a. Give equal treatment to producers.
- b. Establish operating rules for the participation of producers in decision-making.
- c. Maintain confidentiality of information.
- d. Establish an information system for the allocation of waste, at the collection points, to the collectors.
- e. Inform producers about the fulfillment of the objectives.
- f. To inform on the initiation of sanctioning procedures.
- g. To send reports before 31 May of the following year to the Autonomous Regions on the economic data of the system;
- h. To report three months in advance on the termination of the system's activity.
- i. To inform the public about the legal form of the system, and the financial contributions of the producers.
- j. The systems may fulfill their obligations themselves or set up or contract an administrative entity; with the producers' permission and on a voluntary basis, they may allocate part of the financing to complementary activities.



5. What are the distributor's obligations?

Distributors have the following obligations:

- a. To place on the market packaged products that come from producers who have a Producers' Register identification number.
- b. To take part in the DRSs established voluntarily for single-use industrial packaging.
- c. Collaborate with the separate collection of some packaging waste, when the management system organized by the Producer so provides.
- d. Comply with the obligations to separate waste by material and hazardousness when it does not belong to the DRS and to deposit it where appropriate, and to provide information to the EPRSs regarding the packaging waste of which they are the final holder.
- e. Provide information to the EPRSs on the packaging products from these systems that have been placed on the market each year.

6. What are the obligations of the final holder of industrial packaging waste subject to the DRS?

They are obliged to return to distributors or SRAPs the waste subject to the DRS in the conditions of conservation, emptying and cleaning.

On the other hand, for waste not subject to the DRS, final holders must separate industrial packaging waste by material and hazardousness, and deposit or deliver it, as the case may be, to:

At collection points established by the SRAPs.

Deliver it to authorised collectors when so provided for in the agreements between the SRAPs and these holders.



7. What are the financing obligations?

EPRs must finance the following costs: the cost of separate collection; the cost of separation and sorting at intermediate treatment plants; the cost of transport; the cost of management, including treatment at incineration or co-incineration plants or landfilling; and the cost of informing final holders.

V. EXTENDED PRODUCER RESPONSIBILITY SYSTEM, EPRS

1. What is EPR?

Extended Producer Responsibility (EPR) transfers to producers the cost of managing the waste generated by the products they place on the market after use. In this way, producers must take responsibility, before placing their products on the market, for the treatment of their waste by organizing, themselves or through an independent body, the collection and management of this waste.

2. What is the legal framework of the EPRS?

Law 7/2022 of 8 April on Waste and Contaminated Land for a Circular Economy establishes the minimum requirements for all EPRSs, transposing Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste.

However, the Law 7/2022 provides in its second transitional provision that the systems in place at its entry into force will be governed by the provisions of the regulatory rules for each waste stream, such as, in our case, the Royal Decree on packaging and packaging waste. In other words, the special or specific law for each waste stream takes precedence over the general waste law.



3. When is industrial packaging required to be under an EPRS?

Producers must have a SRAP in place by 31 December 2024: taking into account that the deadline for processing the authorisation is six months, extendable for a further six months, the application should be submitted by 31 December 2023.

4. How can I fulfill my obligations through the EPRS?

Producers of Product may choose to fulfill their obligations through an EPRS:

- a. **Individually** through the constitution of an Individual EPR. Such an IPR is subject to the notification regime.
- b. **Collectively**, by setting up and/or joining a Collective EPR System. Such a collective producer responsibility system (**CPR**) is subject to the authorization regime. In this way, each producer adhering to the CPR pays fees to an independent body, managed as a non-profit entity, which will be responsible for organizing, on its behalf, the collection and management of its waste, as well as complying with the awareness-raising and notification obligations required by the Royal Decree.

Note that the rest of the obligations required outside the extended producer responsibility system, such as eco-design of packaging, marking and information, must be fulfilled by the Producer of the Product himself.



5. How is an IPR constituted?

To set up an IPR, the Producer must submit a communication to the Autonomous Community where the IPR's registered office is to be established, including:

- a. Identification details of the producer, registered office, Tax Identification Number, information and contact person. Indicate whether the producer is: manufacturer, importer or intra-Community purchaser.
- b. Territorial scope of action.
- c. Identification (category, material and weight) of the packaging placed on the market annually and an annual estimate in weight, by category (domestic, commercial and industrial), and material.
- d. Financial guarantee.

After evaluation, the Autonomous Community will enter the SIRAP in the Register.

In order to avoid unfair practices, the Royal Decree expressly recognizes **the non-consideration of an individual system, when two or more producers group together or enter into agreements, among themselves or with third parties**, for the joint fulfillment of part of their obligations, and the traceability and individualized information of the products and derived waste corresponding to each producer cannot be guaranteed. However, it seems that these are two conditions that must be met for the system not to be considered as a system when the grouping of two producers should already be considered as a collective system, and not an individual one.



6. How is a CPR constituted?

An application is sent to the Autonomous Community where its head office is planned, with the following content:

- a. Legal form of the system.
- b. Registered office of the system.
- c. Territorial scope of action.
- d. List of producers that form part of the system, criteria and conditions for the incorporation of new members.
- e. Category of packaging with which the system will work.
- f. Identification symbol for reusable and single-use packaging.
- g. Identification of the managing body (legal form, registered office), the relationship between this body and the collective system and those who are members of the system, as well as the functions performed by the managing body.
- h. Functioning and operating conditions
- i. Financing of the system
- j. Annual estimate in tonnes of waste to be managed.
- k. Criteria for financing the public collection and management system.
- l. Participation of partners in decision-making.
- m. Information obligations.
- n. Affidavit of non-conflict with waste managers.
- o. Identification of agreements with other RPCs and/or final waste holders.

All this documentation shall be accompanied by a declaration of truthfulness of the legal representative of the RPC, and a financial guarantee.



7. How is the CPR processed?

The Waste Coordination Commission of Ministry for Ecological Transition and the Demographic Challenge will assess the content of the application in relation to compliance with the obligations of the EPR.

The Autonomous Community will grant the authorization in which the operating requirements will be established, with a maximum processing period of six months, which may be extended for a further six months. Once this period has elapsed, silence is negative, except in the case of renewal of an authorization.

This authorization will be entered in the Waste Production and Management Register, after accreditation of the validity of the financial guarantee, and the activity may begin at that time.

The permit will be valid for 8 years, and failure to comply with its conditions may give rise to sanctioning procedures.

8. What is the scope of the financial contribution of Producers to the EPRS?

The financial contribution should cover the full cost of packaging waste management, including: separate collection, transport and treatment, recovery costs; information costs for the final user or holder, data collection and reporting costs, and clean-up of landfills, if applicable.

9. Particularities of the fee in the EPRSs.

The fee shall be calculated according to the type of packaging placed on the market, using the modulation rule. This fee shall not exceed the costs necessary for the provision of waste management services. They will have compensation schemes to repay excess revenues. Finally, they will subscribe to a financial guarantee.

10. How is the DRS affected in the case of reusable packaging?

Whereas in the previous regime packers and traders of packaged products had the choice between setting up a DRS, or participating in an integrated packaging waste management system, the DRS is now integrated into the EPRS.

For reusable industrial packaging, the reuse service provider will have to fulfill the obligations required for the Producers of the product under the EPRS, either IPR or CPR.

In addition, for industrial packaging, the deposit of a quantity and its return for the return of the packaging will not be necessary, if the Producer only transfers the right to use the packaging, and maintains its ownership by means of an agreement formalized by the Parties.

Regarding marking, reusable packaging subject to a DRS shall be suitably distinguishable, with clear and unambiguous symbols.



KEY DATES

CONSTITUTION AND IMPLEMENTATION OF THE EPRS

Their industrial packaging shall be covered by a EPRS.	From 31 December 2023 and before 31 December 2024
Submitting the Business Plan for Prevention by the SRAP	Within three months of completion, the Plan shall be submitted to the Autonomous Region where the SRAP has its registered office. The first Plan to be drawn up by the SRAP shall be submitted before 31 March 2024.
Additional obligations CPR: reports on economic data to the ACs	Advised before 1 January 2024
Entry in the Register of Producers, packaging section	3 months from the entry into force of the RD, i.e. by 29 March 2023

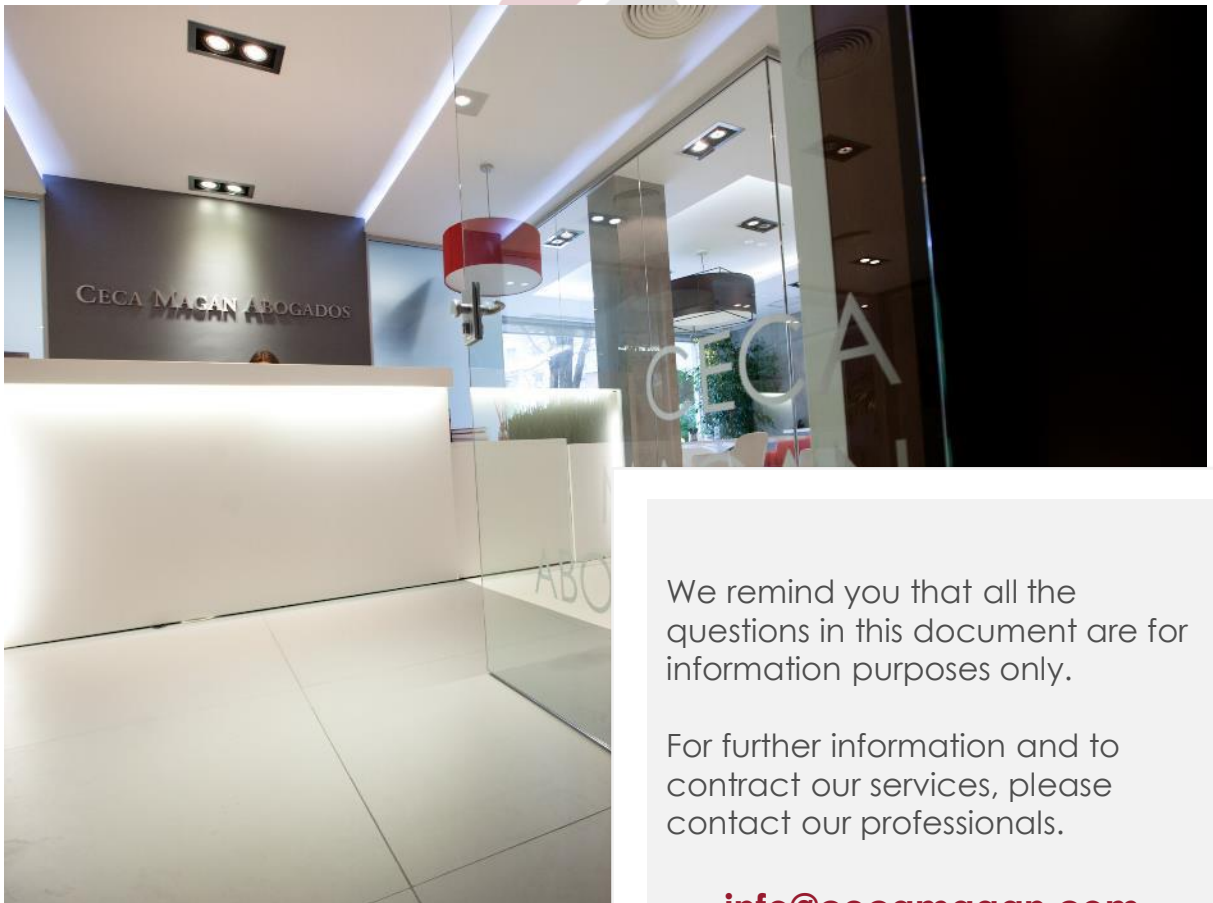
PERIODICAL INFORMATION

Productor deberá proporcionar al SCRAP la información para cumplir con la obligación de información a la Administración	Before 28 February each year
Producer's report on the quantity by type of packaging material placed on the market.	Before 31 March of each year submission to Ministry for Ecological Transition and the Demographic Challenge
<p>Obligations:</p> <ol style="list-style-type: none"> 1. Report with market entry data. 2. Data on waste management. 	<ol style="list-style-type: none"> 1. Before 31 May of each year 2. Before 31 March each year
Additional obligations SCRAPs: reports on economic data to the ACs	By 31 May of the following year

May we help you?



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We remind you that all the questions in this document are for information purposes only.

For further information and to contract our services, please contact our professionals.

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