

On December 28th, 2022, the Royal Decree 1055/2022, of December 27th, on packaging and packaging waste (the “RD 1055/2022”) was published in the Official State Gazette (BOE), which represents a paradigm shift in terms of waste management and prevention, reuse, and recycling.

Its main objective is to establish the applicable legal frame for packaging in order to prevent and reduce its impact on the environment. For this purpose: (a) the use of reusable and recycled packaging is promoted; (b) an extended responsibility system of the manufacturer is established for all types of packaging; and (c) the obligations for information transparency are increased, among others.

To this end, we highlight the new regulation of extended manufacturer responsibility, which implies the obligation of the "product manufacturers" to finance and organize the management of packaging waste, as well as the packaging, which is introduced into the Spanish market. The concept of “product manufacturer” is extremely broad, including, among others, the following:

- packers, broadly defined as those companies that carry out any activity that involves packaging at any level of the supply chain (including, by way of example but not limited to service companies that package products at the point of sale).
- economic agents dedicated to the import or intra-community acquisition of packaged products for their sale on the Spanish market;
- authorized representatives of foreign companies that sell their products in Spain;
- the owners of distribution brands based in Spain, if the manufacturer of the product is not identified;
- the company that commissions the packaging, in case of products packaged on behalf of a third party;
- Electronic commerce platforms that place packaged products from outside Spain on the market if the manufacturer has not designated an authorized representative.

Likewise, on the packaging section created by the Registry of Product Manufacturers, has been established the obligation to register product manufacturers before March 29th, 2023. Once registered, RD 1055/2022 establishes: (a) the obligation of annual reporting of all packaging that has been introduced into the market in each calendar year; and (b) that the registration number in the Registry of Product Manufacturers is recorded on the invoices and other commercial documentation.

It should be noted that certain obligations are also established for merchants or distributors of packaged products, even if they are not considered product manufacturers. Among them: (a) ensure that the marketed packaged products include the identification number of the Register of Product Manufacturers; and (b) provide information to individual or collective extended manufacturer responsibility schemes about packaged products belonging to these schemes.

Finally, non-compliance with these obligations will be penalized in accordance with the provisions of Law 7/2022, of April 8th, on waste and contaminated soil for a circular economy. Specifically, failure to comply with the obligations of registration in the Register of Manufacturers of products, as well as the obligations of information on the identification number of the registered manufacturer or the submission of information on products introduced into the national market will be considered a serious infringement and may result in a fine from 2,001 euros to 100,000 euros.

Consequently, and given the breadth of this rule in terms of potentially affected subjects, it is convenient to carry out a case-by-case analysis to determine if the company is an affected subject and, where appropriate, the set of obligations that derive from it.

CASES & LACAMBRA

Our *Corporate & M&A* team will be happy to provide you with more information. Contact us:

Lucas Palomar

Partner

lucas.palomar@caseslacambra.com

Bojan Radovanovic

Partner

bojan.radovanovic@caseslacambra.com

Pablo Echenique

Partner

pablo.echenique@caseslacambra.com

Jose Manuel Llanos

Partner

josemanuel.llanos@caseslacambra.com

© 2023 CASES & LACAMBRA.

All rights reserved.

This document is a compilation of recent legal aspects prepared by Cases & Lacambra.
The information and contents in this document do not constitute, in any case, legal advice.
www.caseslacambra.com