

SPAIN: LEGISLATIVE CHANGES INTRODUCED BY ACT 7/2022 ON WASTE AND CONTAMINATED SOIL FOR A CIRCULAR ECONOMY

On 10 April last, the new Waste and Contaminated Soil Act for a Circular Economy (*Ley 7/2022, de 8 de abril, de residuos y suelos contaminados para una economía circular*, “LRSC”) entered into force, transposing (i) the amendments to Directive 2008/98 (the Waste Framework Directive) implemented by Directive 2018/851, and (ii) Directive 2019/904, on the reduction of the impact of certain plastic products on the environment (the Single-Use Plastics Directive). The LRSC is strengthening the development of a circular economy and the principle of a waste hierarchy, by means of imposing mandatory economic instruments to make the waste hierarchy effective, encouraging the prevention, separate collection and recovery of waste, establishing minimum rules and expanding situations where the extended responsibility systems of product producers are mandatory, as well as prohibiting, limiting and encouraging separate collection, for recovery, of waste from single-use plastic products.

We describe below the main changes introduced by the LRSC.

1. IMPOSITION ON PUBLIC AUTHORITIES OF THE USE OF ECONOMIC OR FINANCIAL INSTRUMENTS TO ENCOURAGE COMPLIANCE WITH THE PRINCIPLE OF CIRCULAR ECONOMY

The public authorities are obliged to establish specific economic incentives that favour the prevention of waste or, if this is not possible, the recycling or at least the recovery of waste, rather than its disposal.

The LRSC introduces two specific vehicles for these economic instruments, such as the special tax on non-reusable plastic packaging and, in particular, the tax on landfill waste, incineration and co-incineration of waste.

Key issues

- The LRSC transposes several European Union Directives.
- It strengthens the development of a circular economy and the principle of a waste hierarchy.
- It obliges public authorities to use economic and financial instruments to guarantee the circular economy.
- It extends the scope of prevention and recovery of waste, and the extended liability systems of product producers.

2. PRESUMPTION THAT THE CADASTRAL OWNER OF LAND WHERE WASTE IS FOUND IS THE HOLDER OF SUCH WASTE, UNLESS OTHERWISE ESTABLISHED

The general rule will be that the cadastral owner of the land where waste is found is considered the holder thereof, unless the party materially responsible for the abandonment of such waste or its previous holder can be identified. It is therefore presumed on an *iuris tantum* basis that the cadastral owner of the soil where waste is present is its holder.

3. EXPANSION OF PRODUCT PRODUCER STATUS (AND THE CORRESPONDING EXTENDED RESPONSIBILITY) TO E-COMMERCE PLATFORMS

E-commerce platforms will acquire the status as product producer (and the corresponding financial or organisational obligations under the LRSC and the implementing regulations of each extended responsibility system), with respect to producers established outside Spain which sell their products directly through remote agreements to users in Spain, via the electronic platform, when the producer in question is not recorded in the existing registers for the extended responsibility of product producers.

4. AUTHORISATION GRANTED TO THE AUTONOMOUS COMMUNITIES SO THEY ARE ABLE TO DECLARE CERTAIN PRODUCTS AS BY-PRODUCTS, WHEN THERE IS NO GENERAL DECLARATION FROM THE MINISTRY FOR ECOLOGICAL TRANSITION AND THE DEMOGRAPHIC CHALLENGE

Autonomous Communities may recognise, for a specific industrial process located in their territory, those secondary substances or objects derived from an industrial process within the corresponding Autonomous Community as a by-product. If the by-product is used in another Autonomous Community, it will require the favourable report of that Autonomous Community.

5. AUTHORISATION GRANTED TO THE AUTONOMOUS COMMUNITIES SO THEY ARE ABLE TO DECLARE THE END OF WASTE STATUS IN THE CASE OF CERTAIN RECOVERED WASTE

The Autonomous Communities are also granted authorisation, when there are no EU or domestic rules on the prerequisites which must be met for a certain recovered waste to cease being considered waste, to declare the end of waste status, for a specific industrial process located in the Autonomous Community, or in another Autonomous Community, if the latter has provided a favourable report in this regard.

6. WASTE-RELATED ACTIONS MAY BE TAKEN BY THE PUBLIC

The LRSC establishes by way of public action any proceedings brought to demand that administrative bodies or Courts comply with its provisions and implementing regulations.

It is doubtful whether this public action also extends to contaminated soil, because the article in which it is included (article 10) is entitled "access to information and justice, and participation in the area of waste", so, since the LRSC treats waste and contaminated soil on a separate basis, it could be

understood that the possibility of taking public action does not refer to contaminated soil.

7. CITY COUNCILS MUST CHARGE A FEE OR NON-TAX CONTRIBUTION TO COVER ALL WASTE MANAGEMENT COSTS INCURRED AT A LOCAL LEVEL

By 10 April 2025, the City Councils must have approved a municipal tax regulation to collect a fee (or non-tax contribution, as the case may be) to recover waste management costs incurred at a local level.

This payment must be specific, distinct and, above all, it must not be loss-making, by taking into account all management costs, including direct and indirect infrastructure and operating costs (specifically foreseeing all costs involved in overseeing management activities and maintenance after closing landfill sites), environmental and greenhouse gas emission costs, as well as the costs of social awareness and communication campaigns.

8. CITY COUNCILS MUST ADAPT THEIR EXISTING WASTE MANAGEMENT CONTRACTS ON A LOCAL LEVEL TO THE NEW PREREQUISITES FOR SEPARATE COLLECTION, RECOVERY AND SOCIAL AWARENESS CAMPAIGNS ESTABLISHED IN THE LRSC

It is expressly envisaged that the City Councils must amend and rebalance their existing public waste management contracts on a local level, to include the new obligations for waste managers, and in particular, with respect to separate collection, preparation for reuse and recovery, as well as the waste-related social awareness campaigns that must be carried out. This must, of course, be in full compliance with the legally-established restrictions with regard to the amendment of public contracts.

9. WASTE MANAGEMENT ACTIVITIES CAN ONLY BE DECLARED A PUBLIC SERVICE IF AN ONGOING MISMANAGEMENT OF WASTE IS DEMONSTRATED WHICH MAY POSE A SIGNIFICANT RISK TO HUMAN HEALTH OR THE ENVIRONMENT

Apart from the management of waste on a local level, which is considered a public service, and the network of waste disposal and mixed waste recovery facilities that must be guaranteed by the State and the Autonomous Communities, the LRSC only allows a waste management operation to be declared a public service when it is possible to demonstrate the ongoing inadequacy of its management carried out on a private basis, as opposed to the regime established in the previous legislation which allowed any such operation to be declared a public service when justified on grounds of affording adequate protection to the environment and public health.

10. MORE AGGRESSIVE MEASURES ARE PUT IN PLACE TO FACILITATE WASTE PREVENTION

The LRSC establishes a weight reduction goal for generated waste amounting to 13% in 2025, and 15% in 2030, compared to the weight of waste generated in 2010. The goal in 2020 was 10 per cent. For this purpose, the new legislation also includes a series of measures to ensure waste prevention, including:

- a) Non-perishable products which have not been sold (such as textiles, toys or electrical equipment, among others) should preferably be used for reuse,

including through donation, unless they are destroyed in accordance with their specific regulations or for reasons of consumer protection.

- b) The establishments in the hotel and catering sector must offer the users of their services, free of charge, the possibility of consumption of non-bottled water.
- c) As of 1 January 2023, food retailers, whose sales area is 400 square metres or more, must allocate at least 20% of the sales area to the supply of products without primary packaging, whether for bulk sale or with reusable packaging.
- d) All food establishments selling fresh products (including cooked foods and beverages) must accept the use of reusable containers, provided they are suitable for this purpose.
- e) Primary food production companies, and collective distribution and catering companies should prioritise the donation of food and other types of redistribution for human consumption, or the processing of unsold products that are still fit for consumption. Failing this, for animal feed and feed manufacture, and if not, for use as by-products in another industry. Only as a last resort, as waste, for recycling, and in particular for obtaining compost or digested for use in soils, and if not possible, as fuel. The disposal of food waste is not possible. It is envisaged that the City Councils may grant significant exemptions from the waste management fee to food distribution and catering companies that have established management systems that significantly and verifiably reduce food waste, in collaboration with non-profit social economy entities.
- f) The introduction into the domestic market of any plastic products with oxo-degradable plastic, as well as cutlery, plastics, straws and cotton swabs made of single-use plastic (except medical devices) is prohibited, as are beverage cups or food or beverage containers made of expanded polystyrene, among others.
- g) As from 1 January 2023, a price, itemised on the receipt, must be charged for the sale of drinks cups, containers for food intended for immediate consumption that are normally consumed in the container itself and ready for consumption without any other preparation.
- h) From 3 July 2024, only beverage containers with a capacity of up to three litres, single-use and containing plastic, whose plastic covers and caps, or plastic seals, remain attached to the container, may be placed on the market.
- i) Single-use plastic-containing sanitary towels, tampons, wet wipes, plastic cups, and tobacco products must comply with the legally established labelling rules.

11. PRODUCERS OR HOLDERS OF WASTE ARE NOT EXEMPT, WHEN THEY DELIVER THEIR WASTE TO OPERATORS WHO DO NOT TAKE CHARGE OF THE FULL WASTE TREATMENT PROCESS, UNTIL THEY RECEIVE PROOF THAT THE ENTIRE PROCESS HAS BEEN COMPLETED

The responsibility of the initial producer or waste holder, if they deliver the waste to parties only performing an intermediate waste treatment or to a negotiator, will only cease when sufficient documentation is provided corroborating that the waste treatment process has been completed.

12. PRODUCERS OF HAZARDOUS WASTE WILL BE OBLIGED TO TAKE OUT INSURANCE OR PROVIDE ANOTHER FINANCIAL GUARANTEE COVERING WASTE-RELATED LIABILITIES

Under the LRSC it is mandatory for producers of hazardous waste to take out insurance, although there is an exemption in the case of producers that generate less than 10 tons/year of hazardous waste, as well as installation and maintenance companies and initial producers with EMAS environmental certification or equivalent, which includes waste minimisation measures, thus reflected in the validated environmental statement.

13. IT IS RENDERED MANDATORY FOR PRODUCERS OR HOLDERS OF WASTE TO INCLUDE THE INITIAL DATE OF WASTE STORAGE IN THE CHRONOLOGICAL FILE AND ON THE CAGES, CONTAINERS OR SHELVES WHERE SUCH WASTE IS STORED

In addition to time-based restrictions on waste storage, the initial date of storage should be included not only in the electronic chronological file (if required to keep one), but also on the storage systems used.

14. THE MIXING OF NON-HAZARDOUS WASTE IS PROHIBITED IF THIS HINDERS ITS RECOVERY

15. THE LEGISLATION ESTABLISHES THAT WASTE COLLECTION IS ONLY CONSIDERED A WASTE MANAGEMENT OPERATION WHEN CARRIED OUT ON A PROFESSIONAL BASIS, AND THE WASTE COLLECTION OPERATOR MUST OBTAIN AUTHORISATION

Under the LRSC waste collection may only be considered a waste management activity if it is carried out on a professional basis. In this case, apart from the authorisation necessary for the pre-treatment storage facility, the LRSC requires the collection operator to obtain a personal authorisation, granted by the Autonomous Community where it has its registered address.

16. AUTHORISATION IS REQUIRED IN THE CASE OF MOBILE WASTE TREATMENT FACILITIES AS WELL AS NOTIFICATION PRIOR TO CARRYING OUT WASTE TREATMENT ACTIVITIES IF THE PARTY IN QUESTION DOES NOT HAVE ITS OWN FACILITY OR IS USING MOBILE FACILITIES

17. PRODUCERS OF NON-HAZARDOUS WASTE GENERATING MORE THAN 10 TONS PER YEAR ARE OBLIGED TO KEEP A CHRONOLOGICAL FILE INCLUDING LEGALLY-ESTABLISHED INFORMATION ON SUCH WASTE

18. SPECIFIC MEASURES ARE INTRODUCED TO ENCOURAGE SEPARATE COLLECTION, PREPARATION FOR REUSE, RECYCLING OR OTHER FORMS OF WASTE RECOVERY

Firstly, incineration and landfill of waste collected separately for preparing for reuse and recycling is prohibited, and incineration of any waste eligible to be prepared for reuse or recycling is also prohibited.

The local authorities are also required to collect the following separate fractions of waste for which they are responsible:

- a) Paper, metals, plastic and glass
- b) Domestic bio-waste, before 30 June 2022 for local entities with a population of more than five thousand inhabitants, and before 31 December 2023, for the rest.
- c) Textile waste, before 31 December 2024.
- d) Hazardous household waste, before 31 December 2024.
- e) Large waste items (furniture and fittings) before 31 December 2024.
- f) Used oils (other than used cooking oils), provided that it is technically feasible in accordance with good practice.
- g) Non-hazardous construction and demolition waste, which must be classified as at least wood, minerals, metals, glass, plastic and plaster, with tiles, sanitary or structural elements eligible for reuse, since 1 July 2022.
- h) Other fractions of waste, as provided for in the regulations.

In the case of waste not managed by local entities, separate collection of the same fractions of waste is also required, within the same time limits, except that used cooking oil must be collected separately from 30 June 2023.

In separate collection, the existence of improper waste shall be allowed, within the maximum established by the regulations. In the case of bio-waste, the maximum percentage allowed will be 20%, although it will fall to 15% in 2027.

On the other hand, a minimum of 55% by weight of municipal waste must be prepared for reuse or recycled. This percentage will be 65% in 2035.

In the case of bio-waste, local entities with a population of less than 1000 inhabitants shall adopt the necessary measures to ensure domestic and community composting, while the other local entities shall promote separate collection and subsequent treatment in recycling facilities, preferably in anaerobic composting and digestion.

In the case of used oils (not used cooking oils), priority will be given to their regeneration or other types of recycling.

Non-perishable products which have not been sold (such as textiles, toys or electrical equipment, among others) and that it has not been possible to reuse, should preferably be used for preparing for reuse, recycling or other forms of recovery, unless they are destroyed in accordance with their specific regulations or for reasons of consumer protection.

19. THE EXTENDED RESPONSIBILITY SYSTEMS OF PRODUCT PRODUCERS ARE EXPANDED, AND MINIMUM RULES ARE ESTABLISHED FOR SUCH SYSTEMS, INCLUDING THE PROHIBITION TO ORGANISE COLLECTION SERVICES BASED ON COST-

EFFECTIVENESS, THE DETERMINATION OF THEIR COST AND FINANCIAL CONTRIBUTION REGIME, THE REPORTING AND PUBLICITY OBLIGATIONS CORRESPONDING TO PRODUCT PRODUCERS AND THE ABOVE-MENTIONED SYSTEMS AND THE OBLIGATION TO SELECT WASTE MANAGERS IN ACCORDANCE WITH THE PRINCIPLES OF EQUAL TREATMENT AND PUBLICITY

At present, there are already some extended producer responsibility systems in the areas of packaging, light packaging and paper-board, glass packaging, agricultural packaging, phytosanitary product and fertiliser packaging, expired drugs and drug packaging, batteries and accumulators, disused tyres, used industrial oils and waste electrical and electronic equipment.

The regulatory implementation of new extended responsibility systems is planned for textiles, furniture and goods, agricultural plastics other than packaging (all of which must be implemented before 10 April 2025), coffee capsules, certain single-use plastic products, wet wipes and sanitary waste.

It is mandatory under the LRSC for these systems to carry out self-control mechanisms, both as regards their financial management and the quality of the data collected and reported, which must be subject to independent audit. A series of transparency and reporting obligations are also imposed on end consumers.

The LRSC establishes the obligation to reach agreements with the public entities responsible for waste management, in order to compensate them for the management costs corresponding to the products produced by the affiliates of these responsibility systems, including the percentage agreed on the residual fraction and the cleaning of waste from public roads, recreational areas, green areas or beaches.

The LRSC also stipulates the costs to be covered by these extended liability systems, as well as the procedure for the calculation of the financial contributions of taxpayers, which will not be required to pay for additional actions other than those legally envisaged.

To this end, possible ceilings are established on the amount of costs to be met by product producers (including the costs of information to be provided to waste holders, the costs of data collection and reporting, and the costs of granting financial guarantees, among others), although the other costs must be met, in such cases, by distributors and waste producers.

Moreover, the extended responsibility systems are obliged to comply with the principles of free competition, publicity, concurrence and equal treatment, as well as the principles protecting health and the environment, in conjunction with the principles of waste hierarchy, self-sufficiency and proximity, as the case may be, for the selection of waste managers. In practice, it is to a certain extent a *sui generis* manner of subjecting these systems to the general principles of public procurement, when selecting waste managers that will collaborate with such systems.

20. IN THE CASE OF CONTAMINATED SOIL, THE LRSC INTRODUCES AN OBLIGATION ON THE PART OF THE OWNER OF THE LAND WHERE POTENTIALLY CONTAMINATING ACTIVITIES HAVE BEEN CARRIED OUT TO STATE THIS CIRCUMSTANCE IN THE DEED OF

DECLARATION OF NEW WORKS AND IN THE DEED FOR THE CONTRIBUTION OF PLOTS FOR URBAN PLANNING PROCEDURES

The LRSC extends the obligation to state whether potentially contaminating activities have been carried out on plots (according to the list included in Annex I of Royal Decree 9/2005, of 14 January) not only in the case of the transfer of ownership or *in rem* rights over plots, but also in the case of declarations of new works and the contribution and allotment of plots deriving from urban planning procedures.

21. THE DECONTAMINATION ACTIONS THAT MUST BE CARRIED OUT IN THE CASE OF CONTAMINATED SOIL ARE EXTENDED BY THE LRSC TO INCLUDE THOSE NECESSARY FOR THE INTENDED USE OF THE SOIL AT ANY GIVEN TIME

The LRSC requires that decontamination and recovery actions not only comprise those necessary to restore the soil based on the use of the soil at the time of contamination, but also take into account decontamination actions required for the intended use of the soil at any given time.

However, the responsibility for decontamination actions to align the use of the soil at the time of contamination with its current use does not fall to the party that caused the contamination, or the owner or holder, as the case may be, but to the developer of the new use of the soil.

22. THE INVENTORY OF CONTAMINATED SOILS IS EXPANDED TO ALSO RECORD VOLUNTARY DECONTAMINATIONS

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